



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

On-the-runs Administrative Scheme and Letters:  
Mr Nick Perry, Department of Justice

25 March 2014

# NORTHERN IRELAND ASSEMBLY

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

Mr Paul Givan (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Sydney Anderson  
Mr Tom Elliott  
Mr William Humphrey  
Mr Seán Lynch  
Mr Alban Maginness  
Ms Rosaleen McCorley  
Mr Patsy McGlone  
Mr Jim Wells

**Witnesses:**

Mr Nick Perry Department of Justice

**The Chairperson:** Today, we are dealing with oral evidence on the on-the-runs (OTRs) administrative scheme. At our meeting on 6 March, we discussed the on-the-runs scheme and letters. The Committee agreed to request the attendance of a range of individuals to discuss the matter.

I welcome Nick Perry, permanent secretary at the Department of Justice, to the meeting. I advise members and Mr Perry that the meeting is being reported by Hansard and will be published in due course. I invite Mr Perry to make some opening remarks, and then we will move straight to questions, which will hopefully help enlighten members on the scheme. Mr Perry, I hand over to you at this point.

**Mr Nick Perry (Department of Justice):** Thank you very much. If I may, I will say just a few words by way of introduction. Your letter inviting me here today referred to a lack of clarity relating to the issue of OTRs. I am happy to try to clarify matters as they relate to the work of the Department of Justice since its creation in April 2010. Developments before that and any operation of a scheme relating to OTRs after devolution are, of course, a matter for the Secretary of State and the Northern Ireland Office.

The Justice Minister has already addressed, on a number of occasions, one area of confusion that has arisen in parts of the media, but I mention it again here because it is of fundamental importance. Neither the Department of Justice nor any of its staff have had any involvement with the operation of any scheme relating to OTRs since the Department came into being on 12 April 2010. There had been suggestions that the Department had been implementing these arrangements without the Minister's knowledge or at the direction of NIO Ministers. That is wholly incorrect. The Department

has not been involved in any way in such a scheme, and I think that it is important to make that point absolutely clear.

The second area where there has been a degree of confusion is around whether or not the responsibility for this issue devolved in April 2010. The reality is that it was not devolved. It remained a matter that was reserved to the Secretary of State. At one point, the Secretary of State appeared to suggest that responsibility for the scheme had devolved subsequently. She has since clarified publicly and definitively that it was not. In planning and implementing the devolution of justice, there was never any suggestion that the scheme should form part of the DOJ's responsibilities, and it did not. It is not, of course, unique in that regard. Several policy areas relating to justice and policing have remained reserved or excepted since 2010: national security; aspects of dealing with the past, such as pre-1998 public inquiries; extradition; parading legislation and so on. The British Government clearly regarded this issue as falling within that group of excepted or reserved matters.

A third area on which there has been public comment is the fact that the Justice Minister was not briefed about the scheme by NIO Ministers and that I, or other DOJ officials, did not tell him of the scheme. The Minister was not briefed on the scheme because it had not been devolved and, therefore, as I have said, did not form any part of the DOJ's responsibilities. That position was, I believe, entirely consistent with the rules and conventions governing disclosure of such information.

The particular arrangements for addressing the OTR issue within the NIO remained a matter for the Secretary of State when justice was devolved. It was and is a matter for the Secretary of State what is made public about those arrangements. In point of fact, I personally did not know that the scheme continued to operate after April 2010. I first became aware of that at the same time as the Minister, with the outcome of the Downey case.

The procedural guidance in the ministerial code relating to access to the papers of a former Minister approved by the Executive in March 2009 outlines the conventions that govern the disclosure of information in these circumstances. I believe that the Committee has a copy of that guidance. The conventions are designed to ensure that Ministers are able to consider and discuss policies without fear of their deliberations being made available to their successors and to protect the confidentiality and impartiality of Civil Service advisers. These conventions operate across the Northern Ireland Civil Service (NICS) in every Department and are a key element of how our system of government, with a politically neutral and impartial Civil Service, operates.

I understand that equivalent rules operate not only in Whitehall but in Edinburgh and Cardiff. I have, I believe, acted throughout in accordance with that guidance. The Minister has been briefed comprehensively on every aspect of the DOJ's responsibilities since the first day of devolution. However, in this particular instance, the issue had not been transferred and remained the political and operational responsibility of different Ministers in a separate Administration; nor, even if it had been appropriate, would I have been able to assist the Minister on the detail, since I was not involved in the administration of the scheme. I believe that it was proper that officials should not have discussed with the Justice Minister a matter that remained the responsibility of NIO Ministers. I believe that the Justice Minister shares that view.

Thank you, Chair. I am, of course, happy to try to help the Committee in any way that I can.

**The Chairperson:** Thank you, Mr Perry. There may be some questions that touch on some of the points that you have already raised. I have endeavoured to highlight some of those points. You may not be able to answer some of the questions, or may feel that you do not have to answer them, but I will ask them anyway and we will deal with the response that you provide to us.

When you served in the Northern Ireland Office, what position did you hold?

**Mr Perry:** I was director general of criminal justice and policing.

**The Chairperson:** What responsibility, then, did you have over the OTR scheme within the Northern Ireland Office?

**Mr Perry:** None at all.

**The Chairperson:** Were you aware of the scheme when you were in the Northern Ireland Office?

**Mr Perry:** I was aware of the existence of a process for looking at individual cases, along the lines that Drew Harris outlined to the Policing Board in 2010. I was aware that the outcome of that process was conveyed to individuals by means of a letter. However, I have no knowledge of which individuals applied, what letters they received or what information those letters contained.

**The Chairperson:** Before the devolution of justice, were you aware that the scheme had ended?

**Mr Perry:** I did not know — I am sorry: could you ask that question again?

**The Chairperson:** Before the point of devolution, were you aware that the scheme had ended?

**Mr Perry:** I knew that the scheme had been in operation. I did not know that it continued after devolution, as I said.

**The Chairperson:** That is not quite the question I asked.

**Mr Perry:** Well, I did not know that it had ended, but I did not know that it had continued either.

**The Chairperson:** You did not? So you knew that scheme was operating —

**Mr Perry:** Before devolution.

**The Chairperson:** — before devolution.

**Mr Perry:** Yes.

**The Chairperson:** At no point were you aware that the scheme had ended prior to devolution.

**Mr Perry:** I had not been aware of it formally ending, no.

**The Chairperson:** OK. So, at the point of devolution, acknowledging that you were aware that the scheme existed and that the scheme had not ended, what advice did you take to decide that this was not a devolved matter and that the Minister should be not be made aware of it?

**Mr Perry:** Decisions on what issues were and were not devolved were taken by direct rule Ministers on the basis of legal advice. I was not consulted on them.

**The Chairperson:** You highlighted that issues such as public inquiries were retained by direct rule Ministers. Am I not correct in saying that that was specifically legislated for, so if inquest requests were on the Attorney General's desk, legislation was enacted to explicitly give him the power to decide on those cases that were with him?

**Mr Perry:** It may well have been, Chair. I do not know the answer to that.

**The Chairperson:** Well, I am informed that there was legislation to enable that provision, so that inquests that currently existed for the Attorney General could be decided on. Were you aware of any legislation that was put in place to say that this on-the-run administrative scheme would be reserved matter?

**Mr Perry:** I was not aware of any legislation, but it was a decision taken by direct rule Ministers on the basis of legal advice, and due to the fact that, as I understand it, the law officers in London continued to have some oversight role in it, I assume that they agreed with that view.

**The Chairperson:** I will come back to that point shortly, but what other DOJ officials had knowledge of the administrative scheme when they served in the Northern Ireland Office?

**Mr Perry:** I do not know.

**The Chairperson:** Would there be more than you in the Department of Justice who was aware of the scheme in the NIO and subsequently transferred to the Department of Justice?

**Mr Perry:** I am not sure who might have been aware of it. I do not believe that anyone who was working on it transferred. If anyone had been, I am sure that they were carrying out their duties to the direct rule Ministers as they should as civil servants.

**The Chairperson:** You knew of the scheme; you knew the scheme did not end. When you became permanent secretary of the Department of Justice, what steps did you take to enquire about the scheme — whether it ended, was continuing to operate, or should have been a matter that your Department was now responsible for?

**Mr Perry:** I did not ask whether it had continued. I had no reason to believe that it had continued, but it was not part of the DOJ's devolved responsibilities so I did not ask that question. In terms of asking whether it had properly remained a reserved or excepted matter, that was a decision for NIO Ministers.

**The Chairperson:** On whose advice did you act in taking the view that this was not a Department of Justice responsibility?

**Mr Perry:** Legal advisers, advising direct rule Ministers at the point of devolution, clearly took that view.

**The Chairperson:** So legal advice was sought at the time by the NIO that this was not something that should be devolved?

**Mr Perry:** I am assuming that, Chair. I did not see it.

**The Chairperson:** OK, but as permanent secretary to the Department of Justice, you did not take legal advice to determine whether this was a matter that was transferred.

**Mr Perry:** No, I did not.

**The Chairperson:** Are arrests, charges and prosecutions a devolved matter?

**Mr Perry:** They are devolved, but not every aspect, as I said earlier, relating to justice and policing is devolved.

**The Chairperson:** Is an administrative scheme a matter of national security?

**Mr Perry:** I am not sure what classification direct rule Ministers put on it, but that may have been the view they took.

**The Chairperson:** Now that this is obviously in the public domain, what steps have you taken to assure yourself that it is not a devolved matter, or that it is?

**Mr Perry:** I believe that legal advice has been sought, but I have not seen the result of that.

**The Chairperson:** Was that commissioned by the Minister, or did you suggest to him that this was something that he needed to bottom out?

**Mr Perry:** I think that is a question you probably need to ask the Minister when you see him.

**The Chairperson:** Why did you not ask for legal advice at the point of devolution?

**Mr Perry:** Because direct rule Ministers, having received whatever advice they had, decided what was going to be devolved and what was not.

**The Chairperson:** And you took the word of a direct rule system, which you do not know sought legal advice on the issue, but you make an assumption that it did.

**Mr Perry:** I believe it did, Chair, but I did not see the advice. The constitutional arrangement around devolution was that certain matters were reserved or excepted, and I am assuming that the basis on

which they were reserved or excepted was sound. As I have said, the continuing involvement of the law officers in London suggests that they took the same view.

**The Chairperson:** Did the Minister or his special adviser ever ask about this issue until it became public very recently?

**Mr Perry:** No, but they would not have known about it.

**The Chairperson:** In terms of the figure of 38, which is put out as the number of people who received these letters at the point of devolution, I think it is 38 that were issued by the current Conservative/Liberal Democrat coalition. Is 38 the total figure at the very point of devolution? Obviously, the Labour Government were still in power for a period of time.

**Mr Perry:** I have no idea how many letters were issued by either Administration.

**The Chairperson:** Have you sought to establish that information?

**Mr Perry:** No. I have had no involvement in the scheme either before or after devolution.

**The Chairperson:** Do you not think it is something that you now should be seeking to find out?

**Mr Perry:** As I understand it, until the legal advice is clearer, I think this remains a matter for the Secretary of State and the British Government.

**The Chairperson:** Have you ever discussed this issue in your role as permanent secretary with any of the criminal justice agencies that you are responsible for?

**Mr Perry:** No.

**The Chairperson:** Let me just go through some of them specifically. You have never discussed it with the Police Service?

**Mr Perry:** No.

**The Chairperson:** The Public Prosecution Service?

**Mr Perry:** No.

**The Chairperson:** The Policing Board?

**Mr Perry:** No.

**The Chairperson:** What about the English Attorney General, who had the oversight of this?

**Mr Perry:** No. I had no dealings with him at all.

**The Chairperson:** So neither you personally nor the Department of Justice have ever had any dealings with this issue at all from the point of devolution.

**Mr Perry:** Yes.

**The Chairperson:** In terms of the first-day brief, I want to touch on the Executive paper that referred to access to papers of a former Minister. You have taken the view that this was an issue that the Minister did not need to be informed about because, in your opinion, it was not a devolved matter. You took that opinion without seeking any advice on it.

**Mr Perry:** Well, that is the constitutional arrangement as I understood it at the point of devolution.

**The Chairperson:** Paragraph 2 of what the Executive agreed on 5 March 2009 states:

*"Ministers have a legitimate interest in the development of the policies which they may inherit on taking up office and officials will need to reconcile as best they can the need to provide present Ministers with all the information they need to do their job with the convention outlined above."*

The "convention outlined above" seems to refer more to not revealing a Minister's particular opinions or deliberations on the issue, as opposed to the facts pertaining to the issue. When you were drawing up the first-day brief for the Minister of Justice, did you ever look at the Executive guidance as to what a Minister should be informed about, or did you, from that very point, decide, "This is not a devolved matter so I am not telling the Minister because I did not need to?"

**Mr Perry:** I think the operative word in that sentence, Chair, is "inherit". The DOJ did not inherit the scheme, or anything to do with it. It remained a reserved matter for the Secretary of State.

**The Chairperson:** It strikes me as very convenient, with the greatest respect, that, at the point of devolution, you decided, without taking any advice, that it was not a devolved matter and was something that direct rule Ministers had taken a view that they would retain. You are making an assumption that they had sought legal advice at that time but, as permanent secretary of the Department, did you not have a new master? Your new master was not just the Minister for Justice but the Executive and the Assembly, and your duty in the first place was to your new political masters. Therefore, should you not have been seeking to advise them of that policy, which you were aware of? You knew that it had not ended, but it appears to me that you have made a number of assumptions to justify why you did not tell anybody about it.

**Mr Perry:** I am completely responsible to the Justice Minister, the Executive and the Assembly for all the responsibilities that are devolved to the DOJ. This issue was not devolved, as I understand it, that decision was taken prior to devolution by direct rule Ministers, who I think had the authority to make that decision.

**The Chairperson:** Who you think had the authority to take this decision?

**Mr Perry:** I believe that they had.

**The Chairperson:** Based on your own opinion or based on legal advice that you sought at the time.

**Mr Perry:** Based on my assumption that they took legal advice on what should and should not be devolved.

**The Chairperson:** Do you not think that that was a very dangerous assumption to have made? We are talking about arrests, prosecutions and charging, which are all matters that are devolved, unless they are matters of national security or unless they are reserved by Westminster, which you did not know, bar an assumption that you took on which you based a decision not to inform the Minister of Justice, the Executive and the Assembly about it.

**Mr Perry:** As I said, there are a number of areas that are reserved or excepted that remain the responsibility of the British Government. They remain accountable and answerable for those issues, and this was one of them. As I said, I am not sure which heading this particular issue fell under as far as they were concerned, but I am quite clear that it was not devolved.

**The Chairperson:** You say that you are quite clear, but you are quite clear based on a number of assumptions that you made at the time. You did not seek legal advice at the point of devolution to satisfy yourself about a scheme that you knew existed and had not ended, but you made an assumption that this was a matter to be dealt with by Westminster. Surely you should have sought your own independent legal advice to advise you, as the permanent secretary, as to what information should be passed on to the new Minister and the Executive, but you did not do that.

**Mr Perry:** I believed that the decision about what was devolving and what was not was one for direct rule Ministers to make. I have no reason to think that they did not make that decision, based on proper and authoritative legal advice.

**The Chairperson:** As the accounting officer for the Department, surely you should have known — if you did not know, you should have made it your business to know — how taxpayers' money was being spent by the police when they were administering this particular scheme, which you knew existed and

you knew had not ended. However, it would appear that, when you became the permanent secretary, it was a case of "See no evil, hear no evil" and, "Let's keep the head down because I am making an assumption that this is a reserved matter and not devolved." Surely you should have made it your business to have found out. Have you not failed in your job?

**Mr Perry:** I do not believe so, Chair. As I said, I did not know it had continued. However, in terms of what the police and the PPS spend their money on, those are operational matters that are a matter of operational decision for them.

**The Chairperson:** You say that you did not know it continued. However, you knew that it existed and you knew that it had not ended. It is a clever play on words to say that you did not know that it continued. You knew that it had not come to an end at the point of devolution, yet you did not, at that point, seek your own advice as to whether or not it was a devolved matter. Had you done so, that advice may well have indicated that you should have advised the Minister, the Executive and the Assembly about the issue. I find that remarkable.

**Mr Perry:** I know that I am repeating myself, but the decision on what was devolved and what was not was a matter for Ministers who then had that responsibility. I did not know that it had continued. The range of issues that was devolving to the DOJ was quite clear and, on all those issues, I ensured that the Justice Minister was completely briefed.

**The Chairperson:** What about the Prison Service? It was involved in the scheme. What information are you aware of that the Prison Service involvement had been?

**Mr Perry:** I know there is a reference in Mr Justice Sweeney's judgement to some work that the Prison Service did before 2002, as I recall it, but I have no further information than that.

**The Chairperson:** You are seeking that information though or, at least, I think that the Minister has been seeking that information.

**Mr Perry:** Yes. I have not spoken to the Minister about that. I think that the formal position is that papers up to 2010 formally belong to the NIO, and this issue was not devolved. So, in order to pursue that, I imagine that the Minister will need the agreement of the NIO, but I have not had the chance to speak to him about that.

**The Chairperson:** What baffles me around the foolhardy assumptions that you made at the time of devolution is illuminated by one of the Members of Parliament who asked a question and the Attorney General's response to this. It was put to him that the process continued after devolution, yet it had profound implications for the work of the HET and the Northern Ireland Policing Board and continued without the knowledge of the Minister of Justice for Northern Ireland or the Policing Board. Who administered the scheme and who negotiated with devolved institutions behind the back of the Minister of Justice for Northern Ireland so that this scheme could continue? That question was asked by Naomi Long, Member of Parliament for East Belfast. The response from the Attorney General was this:

*"The hon. Lady raises a large number of highly pertinent questions".*

If the Attorney General regarded those questions as highly pertinent, surely you, as permanent secretary of the Department of Justice, should have regarded them as highly pertinent, rather than making assumptions that led to you withholding information from the Minister of Justice, the Executive and this Assembly.

**Mr Perry:** The questions, I am sure, are pertinent, but for the NIO. For non-devolved matters, the British Government have direct engagement with a whole range of independent organisations in terms of criminal justice and policing. This remained a matter for the British Government and not the Department of Justice.

**The Chairperson:** Based on assumptions that you made, that was the opinion that you came to. It certainly was not on the basis of any independent legal advice that you took at the time, because you did not take any.



**Mr Perry:** As I say, on the constitutional arrangements around the devolution of justice, I have no doubt that the then responsible Ministers did take legal advice.

**The Chairperson:** You talk about the constitutional arrangements, yet I point out to you that the likes of inquests were deliberately legislated for to allow the Attorney General to continue to take decisions on issues that were currently with him. This was an issue that was clearly with the British Government at the time and that nobody knew about. However, I do not see anything in legislation at the point of devolution that explicitly states that an administrative scheme providing letters to republicans will be retained and be a reserved matter for Westminster to deal with. However, you make an assumption that, because a direct rule Minister says that this is a matter we are going to keep, it is an issue that you are now going to close your ears and shut your eyes to, without getting any independent legal advice as permanent secretary of the Department of Justice. I find it not just remarkable but I am incredulous that that is the position that you would take.

**Mr Perry:** I just repeat the point, Chair: I do make the assumption, but I think it is a reasonable one, that the decision on the division between devolved and non-devolved matters that direct rule Ministers took was taken on the basis of authoritative legal advice. It was quite clear which issues were devolving to the DOJ for which I had responsibility, and those were the ones that I briefed the Minister on.

**The Chairperson:** OK. Have you sought any advice from the head of the Civil Service to identify whether you carried out your duties within the protocols that would have been expected?

**Mr Perry:** I have discussed the issue with the head of the Civil Service and I have no doubt that, if he thinks that I have done anything wrong, he will tell me.

**The Chairperson:** So it has been raised with the head of the Civil Service. Did he give an initial opinion to you about your withholding of this information?

**Mr Perry:** He is aware of the issue. I am not sure whether he has given an authoritative view.

**The Chairperson:** I have spoken with a number of Ministers about this issue, and they know what position they would have taken had you been the permanent secretary to them.

**Mr Perry:** I think you probably heard David Ford's position.

**The Chairperson:** I heard David Ford's position, yes. You may, if you want, ask some other Ministers what their views are. Certainly, if I were the Minister of Justice and you had withheld this information from me, you would not be my permanent secretary because it would, in my view, be a clear breach of trust that you withheld this information based on nothing more than your own assumptions. That is not something that I would tolerate from any permanent secretary, so I am surprised that David Ford is tolerating it.

**Mr Perry:** I am entirely satisfied, Chair, that I have acted entirely in line with the ministerial or procedural guidance issued by the Executive and the constitutional arrangements surrounding the devolution of justice.

**The Chairperson:** I am certainly not satisfied at this point. I appreciate that I have taken up quite a bit of time. I have other questions, but let me bring in members first.

**Mr A Maginness:** Thank you, Mr Perry, for coming. Mr Downey was arrested on 19 May 2013. Did you have any discussion with the Minister of Justice after his arrest?

**Mr Perry:** No. I was not aware that he had been arrested.

**Mr A Maginness:** You were not aware that he was arrested.

**Mr Perry:** It may have been in the news, but I was not aware of it.

**Mr A Maginness:** When did you become aware of the fact that Mr Downey had been arrested and charged, and was in possession of a letter from a senior official in the Northern Ireland Office dated July 2007? That letter was part of the administrative scheme. When did you become aware of that?

**Mr Perry:** When Mr Justice Sweeney's judgement came out.

**Mr A Maginness:** So, you were not aware from May 2013 until the case concluded on 21 February 2014.

**Mr Perry:** No.

**Mr A Maginness:** Are you serious about that?

**Mr Perry:** I am, Mr Maginness. It may have been in the news, but I certainly did not pick it up.

**Mr A Maginness:** I find that quite surprising, given your senior position in the NIO prior to devolution and knowing about these letters of comfort. Yet, you did not put two and two together in relation to Mr Downey.

**Mr Perry:** As I said, I had no involvement in the scheme, and I was not paying attention to the case against Mr Downey.

**Mr A Maginness:** We have received procedural guidance on access to papers of a former Minister. You have said that this was not a devolved matter. Do we assume then that that procedural guidance on access to papers of a former Minister are irrelevant to our discussion today?

**Mr Perry:** I think that they are relevant in the general sense of papers belonging to former Ministers of a different party, but I think they have a particular force when the issue has not been devolved in the first place.

**Mr A Maginness:** But how can they be relevant at all?

**Mr Perry:** Well —

**Mr A Maginness:** Sorry, I just want to clarify the position from where I am coming from. If you say that this was not a devolved matter, does the procedural guidance on access to papers of a former Minister matter one way or t'other? Surely it does not matter.

**Mr Perry:** I think the general principles probably still apply, but I agree that the guidance does not quite capture the situation we are talking about here when an issue has not been transferred.

**Mr A Maginness:** Why have we been given these papers in relation to procedural guidance?

**Mr Perry:** Because, as I say, they are broadly relevant in terms of the principle.

**Mr A Maginness:** I do not understand that. It seems to me that we have shifted ground here. You are saying that this is a non-devolved matter. When the Minister was in the Assembly and being asked questions about the OTR letters he said, "There is a convention, and, therefore, I didn't know anything about this". That is not the position. It was a non-devolved matter. Is that the preferred position?

**Mr Perry:** I do not think it is shifting position; I think it is a combined position, Mr Maginness. These conventions would apply even in relation to a non-devolved matter. I think they have a particular force, as that has not been devolved.

**Mr A Maginness:** Very quickly, the whole essence and thrust of the procedural guidance is to prevent embarrassment for a previous Minister by the successor taking over and saying, "Ha, ha, he did such and such, blah, blah; I am going to embarrass him". It is to prevent that sort of embarrassment happening, is that correct? You see that in paragraph 2.

**Mr Perry:** That is one of the reasons. There are a number of reasons listed in paragraph 1, too, of course.

**Mr A Maginness:** Paragraph 2 states:

*"The guiding principles should be to avoid embarrassment to previous Ministers and to ensure that the disclosure of particular documents or information to present Ministers would not be liable to reveal (directly or indirectly) the personal opinions of a previous Minister of a different political party."*

So, it is to avoid political embarrassment. Is that right?

**Mr Perry:** And to protect the ability of Ministers to consider and discuss policies without fear of deliberations being made available, and to protect the confidentiality and impartiality of the Civil Service.

**Mr A Maginness:** The main thrust is to avoid embarrassment, but, in actual fact, the opposite is true in this case. The current Minister, Mr Ford, was acutely embarrassed in a situation where he had no knowledge of the OTR letters.

**Mr Perry:** The disclosure of information about the OTR scheme rested with the Ministers who had political and operational responsibility for it. Those are direct rule Ministers.

**Mr A Maginness:** It seems to me that the purpose of the procedural guidance — if I can just go back to that — was to avoid embarrassment to a previous Minister, but, conversely, you could say that it was to avoid embarrassment to a current Minister. Is that not the case? Or is that straining things?

**Mr Perry:** I think these arrangements are designed as you have described them, Mr Maginness. It is the responsibility of those who have political responsibility for the issue to make public details about it.

**Mr A Maginness:** This is a convention. There is no statutory duty or anything of that nature. In the circumstances, even given your limited knowledge in relation to the OTR letters, did you not think that it was such an exceptional case and a unique situation that you should disclose some information to the Minister in relation to this scheme?

**Mr Perry:** As I said, this is a number of issues which have not been devolved relating to policing and justice. And —

**Mr A Maginness:** No, I understand that point that you are making, but you had personal knowledge in relation to this scheme. It might not have been the complete knowledge that others may have had, but you had knowledge of it surely. You had knowledge of Operation Rapid surely.

**Mr Perry:** Is Operation Rapid the issue about this after devolution?

**Mr A Maginness:** Yes. Well, it was February 2007.

**Mr Perry:** In fact, I did not have knowledge of that. As I said, I had no involvement in the scheme.

**Mr A Maginness:** You had no knowledge of Operation Rapid.

**Mr Perry:** No, I did not.

**Mr Humphrey:** Thank you very much for your time today. Mr Perry, you are the permanent secretary in the Department of Justice now, but what was your role in the Northern Ireland Office prior to the devolution of justice?

**Mr Perry:** Director general of criminal justice and policing.

**Mr Humphrey:** So, as others have said, you then became the senior civil servant in the Department and the accounting officer to the Minister. Was it not naive of you, given your experience in the

Imperial Civil Service and the Northern Ireland Civil Service, to believe that the issue would not re-emerge in the administrative workings of the Department of Justice, which you are now head of, and for the Minister, for whom you are the principal civil servant?

**Mr Perry:** I do not know about being naive, Mr Humphrey. As I said, I did not know the scheme had continued after devolution, but, any issue that arose in relation to it, is a matter for Ministers who had political responsibility for it, which is the Secretary of State.

**Mr Humphrey:** Ultimately, Ministers are responsible for politics; that is right, but the point I am making to you is this: do you believe that your inaction and lack of trust — if we call it that — has in any way undermined David Ford as the Minister of Justice in Northern Ireland?

**Mr Perry:** I do not believe so.

**Mr Humphrey:** How can you believe that, given the reaction that there has been and the pressure that has been placed on the Minister subsequent to the announcement of this dirty, shoddy, sleekit deal?

**Mr Perry:** The Minister, as he has made clear, had no knowledge of the scheme. As I said, I had no knowledge of it continuing after devolution. The responsibility for the operation of the scheme and for information being made public about it rests with the Secretary of State.

**Mr Humphrey:** You are aware that there has been this deal done between the IRA and the national Government. The decision to do that came after a Bill was withdrawn in the House of Commons, and, the House of Commons, we are told, knew nothing about it. As a senior civil servant in the Northern Ireland Office, did you warn Ministers that this was going to subvert the House of Commons and undermine the parliamentary structure within this nation?

**Mr Perry:** As I said, I had no involvement in the scheme. Any question on advice given to NIO Ministers before devolution is one to ask the Secretary of State.

**Mr Humphrey:** Sorry, you were a senior adviser in the Northern Ireland Office to the Secretary of State. I am asking you.

**Mr Perry:** As I said, I had no involvement in the scheme.

**Mr Humphrey:** As the permanent secretary at the Department of Justice, do you believe, in your judgement, that this scheme has breached national security?

**Mr Perry:** I do not have any knowledge of how the scheme operated, so I cannot comment on that.

**Mr Humphrey:** I hope you will understand, but I find it difficult to believe that a senior official in the Northern Ireland Office, who, after devolution, became the permanent secretary in the Department of Justice, did not tell his Minister. This then became a matter of public record, and your Minister was exposed and placed in an embarrassing position. It was a matter of public ridicule, nationally and internationally. Do you feel any guilt about that?

**Mr Perry:** As I have said, this issue was not transferred and, therefore, any responsibility for any fallout from the scheme falls to the Secretary of State. As for the Justice Minister's position, he has made it quite clear that he has no knowledge of the scheme. I am not sure that he would agree with the description that you have just given about the reaction to his position.

**Mr Humphrey:** He is in cloud-cuckoo-land if he does not believe that about the reaction to his position. I am not talking about him personally, because, clearly, he did not know, as the First Minister did not know. Clearly, people around him knew, and you were one of those people. Obviously, there is no certainty around the number of these letters that have been sent. Would you aware of whether any of these letters have been sent to any Members of this House?

**Mr Perry:** As I have said, I have had no involvement in the scheme. I have no idea who applied to it. I have no idea who got letters. I have no idea what any of those letters may have said.

**Mr Humphrey:** OK. Prior to your ceasing being involved with the scheme, would you have been aware?

**Mr Perry:** I have never been involved in the scheme.

**Mr Humphrey:** Prior to you not being directly responsible in your Northern Ireland Office role after devolution, if you were not involved in the scheme, would you have been aware of any names?

**Mr Perry:** No.

**Mr McGlone:** Thank you, Mr Perry, for being with us today. I have read the procedural guidance, and just to reflect on it, paragraph 2 states:

*"Ministers have a legitimate interest in the development of the policies which they may inherit on taking up office and officials will need to reconcile as best they can the need to provide present Ministers with all the information they need to do their job with the convention outlined above."*

I have picked up on that general theme running through the, if you like, legacy role and the sweeping up of hereditary issues. That is the nature of government, and that is the way that it works. We will talk about the transition or the actual mechanics of sweeping up. I am not being specific to you. During that sweeping-up period, did you or anyone else at the Department or, indeed, acting on behalf of the Department pick up on this issue?

**Mr Perry:** No.

**Mr McGlone:** Following on from that, are you aware or have you since been made aware of any undertakings of an amnesty, immunity or implied immunity from prosecution having been given to any former or serving member of the security forces, any person who has acted as an agent of the security forces or British Government intelligence services or any other member of any other paramilitary organisation?

**Mr Perry:** No, I am not.

**Mr McGlone:** I go back to the procedural guidance. On access to papers of a former Minister, the guidance states in paragraph 1:

*"Ministers and Junior Ministers will observe the convention that they, and their Special Advisers, should not normally ask to see, or be shown, documents or papers".*

Since this issue has erupted, has either the Minister or the special adviser or anyone acting on behalf of the Department sought sight of any papers relating to this issue or any other potential issues that may arise as a consequence of this in the line of those issues that I have already outlined to you?

**Mr Perry:** No, I am not aware of that.

**Mr McGlone:** Is that you are not aware of it or is it a no?

**Mr Perry:** That is a no.

**Mr McGlone:** Right, OK. Finally, a judge has been appointed to look over this. The Westminster Select Committee may, I presume, seek and will get access to the papers around this.

**Mr Perry:** I assume so. They are NIO papers, I assume.

**Mr McGlone:** Similarly, the judge, who may have oversight of the investigation into these matters —

**Mr Perry:** I am sure Lady Justice Hallett will get access.

**Mr McGlone:** Yes. That brings me back to the other point. In case there is anything else, would it not be prudent for the Justice Minister to have an overview or oversight of these matters to ensure that

there are no other booby-traps, for want of a better phrase, political or otherwise, lying among some papers that may have been shuffled or parted to the one side?

**Mr Perry:** I believe any relevant information relating to the sorts of issues that you are talking about, Mr McGlone, belong to the NIO. The DOJ has no such papers.

**Mr McGlone:** Sorry, you have said that the DOJ has no such brief.

**Mr Perry:** I said papers.

**Mr McGlone:** No such papers. No, I appreciate that. I was not thinking of the DOJ papers. I was thinking of those others. As Mr Humphrey quite rightly said, this has put the spotlight on the Minister of Justice, and I am sure it is a spotlight that he could have done without. I am sure that he will be anxious to ensure that there are not any further spotlights brought on him on this issue or other related issues of the ilk that I have already outlined. So, do you not think it would be prudent to engage in a scoping exercise before any of this material, if it exists, is revealed, either as a consequence of the Select Committee's investigations or, indeed, the judicial proceedings, whatever shape or form they might take?

**Mr Perry:** I imagine that any information of the sort that you describe, either pre-devolution or related to the OTR scheme or any other kind of arrangement that you have touched on is in the possession of the British Government. So, I am not sure what the Justice Minister could look into. That is something that one might ask him.

**Mr McGlone:** Right, OK. Obviously, I cannot ask you to answer on his behalf. So, he has taken no action of any description to request meetings with NIO Ministers or NIO officials to seek further information from them to see whether there is anything else lurking in the woodwork.

**Mr Perry:** He is on the record as saying that he has met the Secretary of State and that he has had robust meetings with her. It might be best to ask him about the detail of that.

**Mr McCartney:** Thank you very much for your presentation. As the Chair said, you will not be able to answer some of these questions, but it is best that they are asked.

In your former role in the Northern Ireland Office, were you involved in the process that led to the transfer of certain powers to the Assembly? Were you part of that sort of —

**Mr Perry:** I was part of the planning around the creation of the Department of Justice.

**Mr McCartney:** Though, you would have been well aware of what was being transferred and what was not being transferred, and the basis on which —

**Mr Perry:** I was well aware of what was being transferred.

**Mr McCartney:** So, you would have known, in terms of public inquiries, that that would have been retained by —

**Mr Perry:** I would not have had any detailed knowledge of it since it did not fall into the area that was being devolved. My focus was on those areas that were definitely being devolved.

**Mr McCartney:** So, your focus was more on what was being devolved rather than what was not.

**Mr Perry:** Yes.

**Mr McCartney:** Before coming here today, did you receive or seek any briefing from the PSNI as to how it brought this to the attention of the public in the past?

**Mr Perry:** No, I have not.

**Mr McCartney:** In terms of the Policing Board —

**Mr Perry:** No, I have not.

**Mr McCartney:** Would you be aware that both the Policing Board and the PSNI say that this was in the public realm through briefings to the Policing Board and other public statements?

**Mr Perry:** I am aware that there was the conversation that Drew Harris had with the board in 2010, and that is now an ongoing discussion, as I understand it, between the PSNI and the Policing Board.

**Mr McCartney:** OK. Have you been involved in the discussions with the British Secretary of State on behalf of the Department?

**Mr Perry:** No, I sat in on one meeting that the Justice Minister had with her, but I have had no meetings.

**Mr McCartney:** OK. Do you know about the process that has led her to say, in one instance, that it was a devolved matter and then to change her opinion and say now that it is not a devolved matter?

**Mr Perry:** I do not know what led her to say that, but she was certainly incorrect.

**Mr McCartney:** Did you not think, as a part of that conversation, to perhaps ask her why, on one day, she said that it was a devolved matter — particularly when it became almost the focus of the conversation — and then changed her mind? Did the Minister ask her that?

**Mr Perry:** I believe he did. He can speak for himself, but I believe he did. After that, she clarified the position.

**Mr McCartney:** And did the Minister relay to you the explanation offered by the British Government for their change of mind?

**Mr Perry:** Not in detail. I think she clearly misunderstood the position.

**Mr McCartney:** You say, "not in detail". What did he tell you?

**Mr Perry:** The Justice Minister himself would be best placed to give a definitive account. It was clearly when challenged about the scheme being devolved, or what she had meant by devolved authorities, and the implication that that included the Department of Justice. She made clear that it did not.

**Mr McCartney:** What was the basis on which the Minister challenged it? Were you part of briefing the Minister?

**Mr Perry:** Because he knew that the DOJ had had no part.

**Mr McCartney:** How? Did he just decide, "I know this, and I am going to tell Theresa Villiers that this is not my responsibility". And she said, "Right, David, I accept that". There was no discussion or examination of papers. It was just a sort of friendly, "You are wrong and I am right" exchange, and she changed her mind.

**Mr Perry:** Obviously, the Minister sought confirmation that the DOJ had had no involvement and he received it. As I say, he put that to the Secretary of State.

**Mr McCartney:** So, you were a part of putting that, so that the Minister could go and do it.

**Mr Perry:** Yes.

**Mr McCartney:** On what basis did you do that?

**Mr Perry:** The DOJ has had no part in this scheme, I know.

**Mr McCartney:** Did you present papers or evidence?

**Mr Perry:** The Department has no papers on this issue, because it has had no part in it. He had my assurance that we have not been involved.

**Mr McCartney:** OK. We have talked here about the role of the Civil Service, and it is understandable. The transfer of policing and justice powers may not have been unique, but it was certainly different from the devolution of the powers of all the other Departments, given that some of the powers remain reserved. Have you ever found yourself in a situation where the Minister has been asked a question that you may have information about that could compromise him into giving a misleading position in his answer?

**Mr Perry:** No, I have not.

**Mr McCartney:** You have never found yourself —

**Mr Perry:** No.

**Mr McCartney:** Could you find yourself in that position?

**Mr Perry:** I do not believe so.

**Mr McCartney:** Take the inquiry into interference in the Police Ombudsman's office. If some of those issues were matters that were in the NIO, and the Justice Minister makes a statement saying that there was only one instance of interference, could you or any other official be in a position to know that there were other instances but would be duty-bound not to say because of the code of conduct?

**Mr Perry:** The Minister would make any such statement only on the basis of what had happened since devolution. Anything before that is a matter for the Secretary of State and for other accountable —

**Mr McCartney:** I refer you to the McCusker inquiry: that crossed both eras. Obviously, the recruitment of the Police Ombudsman at that time was prior to devolution. Therefore, that is why I ask the question. Given the code of conduct, could there be a situation where there are people in the DOJ, who were previously in the NIO, and are duty-bound, and possibly legally bound, not to divulge information?

**Mr Perry:** I think that anything that the Justice Minister said about that issue related to events since April 2010.

**Mr McCartney:** No, no. No, no. It went into the recruitment, and allegations were made that some of the criteria for recruitment were changed. That was prior to the transfer.

**Mr Perry:** I do not think that the Justice Minister, as far as I am aware, made any comment about what happened before April 2010.

**Mr McCartney:** Because he could not. That is the point I am making about the code of conduct. That is my precise point. You could find yourself in a position where you have information but you are prohibited from telling the Minister about it. So, a Minister could be put in a position of giving a misleading statement simply because you are not permitted to inform him otherwise.

**Mr Perry:** You mention that example, Mr McCartney, but I think that, when briefing the Minister, we would always try to frame it in terms of what has happened since April 2010. He cannot comment on issues that happened before that.

**Mr McCartney:** Again, you are making the point for me. If a civil servant finds himself in a position where he has information and, because of the point of transfer, cannot inform the Minister, the Minister can then be put in the position of making comments and statements that may be misleading, and the person would know that and cannot do anything about it.

**Mr Perry:** To continue on that particular point: I hope that we would not put the Minister in a position where he was commenting on matters from before he became Justice Minister. So, anything he said publicly would be framed in such a way that he is only speaking for the time since he took responsibility for an issue.



**Mr McCartney:** OK. The Chair mentioned a number of people in terms of contact. Has the Department been in contact with the British Attorney General for his reading of the legitimacy of the scheme?

**Mr Perry:** No.

**Mr McCartney:** You have had no contact.

**Mr Perry:** No.

**Mr McCartney:** OK. Thank you very much.

**Mr Anderson:** Thank you, Mr Perry, for coming along this afternoon. Mr Perry, you are telling us that you were director general of justice and policing up until the devolution of justice in 2010. Is that right?

**Mr Perry:** Yes.

**Mr Anderson:** You are also telling us that you were aware of a scheme up to 2010.

**Mr Perry:** I was aware of the existence of a process, yes.

**Mr Anderson:** When you say that you were aware of a process, how much were you aware of?

**Mr Perry:** As I explained earlier, as much as Drew Harris set out to the Policing Board, with the additional fact that I knew the outcome was conveyed by means of a letter. That is all.

**Mr Anderson:** You were in such a senior position, and you say that you were aware. Bear in mind the questions that were asked in Parliament to Peter Hain. Were you aware of the questions that were asked to Peter Hain in 2006 or 2007 in relation to the amnesty for on-the-runs that was withdrawn? Other questions were asked about whether there were any other processes in place. Did you know about those questions?

**Mr Perry:** I imagine that, at the time, I would have been aware that the questions had been asked, but I was not dealing with the issue.

**Mr Anderson:** You keep telling us that you were not dealing with the issues. You keep telling us that you were just aware of the scheme. I would like to know how much you were aware of. It is such a national issue in relation to those questions being asked in Parliament. For someone like yourself, do you not think that it would have been best to have acquainted yourself? If Peter Hain got up in the House and said that there was no other procedure and nothing else in place, and you were in a senior position up to 2010, did you not feel uncomfortable with those answers in Parliament when you knew that there was something in place?

**Mr Perry:** The then Secretary of State must stand over whatever answer he gave back then.

**Mr Anderson:** Yes, but I am not talking about the then Secretary of State and the answers that he gave. I am talking about you and your position. If you, like many other people, knew about that and those questions were being asked in Parliament, did it not make you, as the director general of justice and policing, very uncomfortable that Peter Hain was saying that there was nothing in place when you, I would say, were aware of it? I do not know what knowledge you had, but you tell us that you had very little knowledge, obviously. You were aware of something and yet Peter Hain stood up in Parliament and said that there was no other procedure in place. Would that not have made you or anyone uncomfortable?

**Mr Perry:** I do not believe so, Mr Anderson. Some kind of arrangement or process going on is one thing. I did not have sufficient knowledge of the detail to know that anything that Peter Hain said publicly contradicted that. I am not sure that it did.

**Mr Anderson:** I find your replies to the questions, not just from me but from others, very sketchy, Mr Perry. If someone in your position knew something and something else was said that related to the

something that you knew, do you not think that you should have made it your business to get to the bottom of what was being done, given your position in that Department?

**Mr Perry:** As I said, another part of the Department was dealing with the issue, and I have no reason to believe that the Secretary of State's answers were not correct. The answer to your question is that I do not know.

**Mr Anderson:** Your answers to us today have been along the lines of "I knew of the scheme, but it is nothing to do with me. I wash my hands of it and will get on with what I perceive to be my job, because this is someone else's issue". Even given the high position that you held, you washed your hands of it.

**Mr Perry:** I am not washing my hands of it, but you have just summarised my position very accurately. I am afraid that I cannot give you any information that I do not have.

**Mr Anderson:** OK, Mr Perry. Thank you.

**Ms McCorley:** As you said, you were aware that the scheme was in operation when you were in the NIO but were not involved in it.

**Mr Perry:** Yes.

**Ms McCorley:** Did you sense that it was something that was classified and top secret? Was it something that people generally knew about?

**Mr Perry:** I do not know that it was generally known. Information about it was, I think, fairly constrained. However, that was often the way in which issues were handled in the NIO.

**Ms McCorley:** You do not know one way or the other.

**Mr Perry:** No.

**Mr McCartney:** Would it be the case with other issues that you would not really know one way or the other?

**Mr Perry:** Yes.

**Ms McCorley:** Since this has become a big issue, part of the discussion has been about who knew what and when. A lot of people are saying that politicians generally knew about it, because it was an anomaly in the peace process. Is that your view? Did you have a sense that politicians probably knew about it?

**Mr Perry:** I cannot say what particular politicians or parties knew about it. Obviously, the OTR issue was in the public domain, but what people knew about the arrangements or the scheme, I cannot say.

**Ms McCorley:** Would it shock you to find that nobody knew about it?

**Mr Perry:** My understanding is that people are not saying that they did not know that there was an issue. The particular arrangements seem to have come as a surprise to people, but I am speculating, as I do not know.

**Ms McCorley:** Given that it is a Good Friday Agreement issue and an anomaly coming out of the prisoner release scheme — that is the context — would it be no surprise to you that any politician operating at the time was aware of it?

**Mr Perry:** As I said, I was aware of it as an issue, but what detail there was about any arrangements, I cannot say.

**The Chairperson:** Mr Humphrey, you have a supplementary question.

**Mr Humphrey:** Thank you very much, Chair, for your indulgence.

Mr Perry, earlier I asked you about national security and the fact that you were aware of the scheme and then had a new boss whom you did not brief on the scheme. I want to return to that. We are told that there are some 138 letters, although we do not know how many there are. I find your answer on national security incredible. We do not know who the recipients of the 138 letters were, but some of them, if not all, were terrorists, and many of them murderers, yet you do not believe that that was an issue of national security.

**Mr Perry:** It may well have been an issue of national security, and that may be the reason that it was not devolved.

**Mr Humphrey:** With respect, sir, we are speaking to you today because it was devolved. The point that I am making is that, when the scheme was devolved, it remained an issue of national security. At that point, you did not feel that it was such an issue of national security that you should brief your new boss, the Justice Minister for Northern Ireland.

**Mr Perry:** The OTR scheme was not devolved, and national security is not devolved.

**Mr Humphrey:** I go back to this point: national security is breached if letters that may well amount to being amnesties are sent to some 138 people, some of whom were terrorists and involved in murder.

**Mr Perry:** As I said, I do not know who got letters or what those letters said. I cannot really —

**Mr Humphrey:** OK. You are not going to be specific, so let me try to be a bit more specific in my questioning. If a certain terrorist receives a letter, and he was involved in murder — he may even have been involved in targeting a Government Minister, a senior policeman or a judge — that is an issue of national security. Is that not correct?

**Mr Perry:** It may well be.

**Mr Humphrey:** It is or it is not. Are you suggesting for one moment that the targeting of a Government Minister, a judge or a senior policeman would not be an issue of national security?

**Mr Perry:** I am sure that it would be a matter of national security.

**Mr Humphrey:** The point that I am making is that devolution happened, and, even though those people may have been involved in such nefarious activities, you still did not believe it important to brief your new boss, the Justice Minister for Northern Ireland.

**Mr Perry:** The operation of that particular scheme, as I have explained, was not devolved. It did not form part of the Justice Minister's responsibilities. Anything about the operation of the scheme or information about it made public remained the responsibility of the British Government.

**Mr Humphrey:** I have to say that I believe that your answers to the Committee today have been wholly inadequate, and I think that the people of Northern Ireland will also.

Finally, after you were aware of the scheme, you will have briefed Secretaries of State when they were going in to make statements or answer questions in the House of Commons. You were director general of the NIO before you came to the Department of Justice. Was there ever a time when a Secretary of State was asked a question by the shadow Minister or by any Member of the House of Commons and, in response, misled the House and did not tell the truth?

**Mr Perry:** I am not aware of that. You would need to ask the Secretary of State.

**Mr Humphrey:** With respect, the reason that I am asking you is because, before a Minister goes to the Dispatch Box, he will be briefed by his senior officials and advisers. You would have been one of those senior officials briefing Secretaries of State for Northern Ireland. Were you ever aware of a Secretary of State misleading the House of Commons?

**Mr Perry:** The detail of what the Secretaries of State were briefed on is a matter for the Secretaries of State. As I have said, I had no involvement in the scheme, so, to answer your question, I have never briefed a Secretary of State on the operation of the scheme.

**Mr Humphrey:** I did not say that you briefed; I asked whether you were aware.

**Mr Perry:** You would have to ask that question of the Secretary of State.

**Mr Humphrey:** Are you not answering that question?

**Mr Perry:** I am not in a position to answer it. I was not aware.

**Mr McGlone:** I am looking at the procedural guidance on access to papers to inform the Minister. It states:

*"Ministers and Junior Ministers will observe the convention that they, and their Special Advisers, should not normally ask to see, or be shown, documents or papers, prepared by NI departments for a direct rule Minister".*

At any point did either you or anyone else in the Department suggest to the Minister or anyone acting on his behalf that it would be prudent to be shown papers relating to the OTR scheme?

**Mr Perry:** No, because the Department possesses no papers relating —

**Mr McGlone:** Sorry, but I am not asking you whether it possessed them. The guidance, as you know fine well, applies to the transition between direct rule and — I do not have to go over it. You know where I am coming from. Did you or anyone acting on your behalf suggest at any point in time that the papers should be shown to the Minister or anyone acting on his behalf?

**Mr Perry:** No.

**Mr McGlone:** That is OK.

I want to take you on to the theme that Mr McCartney was exploring about a situation in which a Minister could be about to make a statement and a senior civil servant withholds from that Minister information from a Department in which that civil servant previously worked, and, as a consequence, the Minister makes a misleading statement. Are we not into disciplinary territory if a person who is serving not two masters at that point in time but one — the Minister — withholds the completeness of their experience and knowledge? If that person deliberately and wilfully withheld the information in the full knowledge that it could have ramifications either policy-wise or politically, leading potentially to an extremely embarrassing situation for a Minister or significant policy implications further down the line, would it not then become a serious disciplinary matter to be handled by the head of the Civil Service?

**Mr Perry:** If an official deliberately allowed the Minister to make a misleading statement about an issue for which he did not have political responsibility, I think that that would be an issue.

**Mr McGlone:** OK. Thanks for that.

**The Chairperson:** I want some more clarity on a couple of points. The Public Prosecution Service indicated that it did not want to deal with the issue through the Northern Ireland Office, and that is why the Attorney General had oversight of it. Have you any view on why the PPS would not work with the office that, you maintain, retained the power to handle the issue? The PPS would not work with him, instead wanting to work directly with the oversight of the Attorney General for England and Wales.

**Mr Perry:** I do not know. One would need to ask them that question. I think that there may have been a convention that the Director of Public Prosecutions worked directly to the law officers. However, I do not know, so you would need to ask them. *[Interruption.]*

**The Chairperson:** We are not quite saved by the bell.

I asked the question earlier this month, and the Minister came back to me and indicated that he is waiting on legal advice on a range of issues. Are you able to tell us what the range of issues is on which he has sought legal advice?

**Mr Perry:** I am afraid that I am not.

**The Chairperson:** Did the Minister consult you about the legal advice that he is now seeking?

**Mr Perry:** No.

**The Chairperson:** Do you not find it peculiar that he did not ask the permanent secretary's opinion about legal advice on —

**Mr Perry:** No, I think that, under the circumstances, it is quite appropriate.

**The Chairperson:** Has the Minister deliberately kept you out of the loop on the issue because of your previous involvement?

**Mr Perry:** You would need to ask him that question. I think that it is entirely appropriate for the Minister to seek legal advice directly.

**The Chairperson:** Is it normal protocol for a Minister to commission legal advice without the permanent secretary's involvement?

**Mr Perry:** It is entirely possible.

**The Chairperson:** From your experience in the Department to date, has David Ford typically sought legal advice without seeking your view on it?

**Mr Perry:** On a number of occasions, yes.

**The Chairperson:** He has.

**Mr Perry:** Yes.

**The Chairperson:** Did you clear the paper to do with the request for legal advice that was presented to the Minister?

**Mr Perry:** No.

**The Chairperson:** How did the Minister commission the legal advice? My experience is that a submission to a Minister will be cleared by the permanent secretary before it gets to the Minister's desk. If you have been kept out of the request for legal advice, what process has been followed?

**Mr Perry:** The Department has its own legal advisers, and there are other sources of legal advice. The Minister can go directly to them. In the DOJ not everything goes through the permanent secretary.

**The Chairperson:** I take it that the Department of Justice is paying for the legal advice that the Minister has requested.

**Mr Perry:** I am sure that we are.

**The Chairperson:** But you do not know exactly what process is being followed by David Ford for his request.

**Mr Perry:** It would probably be best to ask the Minister himself. He has sought legal advice, and there is nothing unusual in that.

**The Chairperson:** Do you know from whom he has sought that legal advice?

**Mr Perry:** I do not.

**The Chairperson:** From whom would the Minister usually seek legal advice?

**Mr Perry:** The Department has its own legal advisers, and there is the Departmental Solicitor's Office (DSO).

**The Chairperson:** Which? You say that the Department has its own legal advisers and DSO.

**Mr Perry:** DSO provides support to the Department.

**The Chairperson:** Has the Minister sought the view of the Northern Ireland Attorney General about whether this is or is not a devolved matter?

**Mr Perry:** I do not know whether he has. However, I think that there is a convention about not commenting on that even if I did know.

**The Chairperson:** Whatever the crime is, people who have been charged can abscond and go on the run. Who deals with people involved in any criminal activity who go on the run in Northern Ireland?

**Mr Perry:** The police.

**The Chairperson:** Is that a devolved matter?

**Mr Perry:** Generally, yes.

**The Chairperson:** Therefore, if anyone goes on the run in Northern Ireland today, the police will deal with that because it is a devolved matter. That is your understanding of the law.

**Mr Perry:** Yes.

**The Chairperson:** And if people are prosecuted, they will be prosecuted by the Public Prosecution Service. Is the PPS devolved?

**Mr Perry:** Yes. However, both the police and the PPS deal with some matters that are reserved and excepted.

**The Chairperson:** I covered that point earlier, in that I think that there is a huge question mark over the administrative scheme not having any legal foundation for being withheld at the point at which devolution took place.

You confirmed earlier that the Minister has not asked for any papers on the issue from the Northern Ireland Office. He had a conversation with the Secretary of State, but, to your knowledge, he has made no request for access to papers.

**Mr Perry:** Not as far as I am aware. Again, you can ask him that question.

**The Chairperson:** He has kindly agreed to come to the Committee, so we will ask him.

On the legal advice that is now being sought, do you think that it is necessary to seek legal advice on whether this is a devolved matter?

**Mr Perry:** The Minister is certainly entitled to seek legal advice.

**The Chairperson:** Obviously, the Minister is entitled to do that, but, as permanent secretary in the Department of Justice, do you believe that there is a question mark over who is now responsible for dealing with the issue, or are you absolutely certain that it is not a devolved matter?

**Mr Perry:** It is entirely proper to seek that advice now that this has become a public issue. I am clear that, at the point of devolution, the judgement was that this was not a devolved matter.

**The Chairperson:** I want to home in on that particular question. Do you believe that there is a question mark over who is legally competent to deal with on-the-runs?

**Mr Perry:** I am not going to prejudge whatever legal advice is now being sought.

**The Chairperson:** Do you believe that there is a question mark over to who is legally competent to deal with the issue of on-the-runs?

**Mr Perry:** I believe that the question has been raised and legal advice has been sought.

**The Chairperson:** Do you believe that it is necessary to seek that advice?

**Mr Perry:** I am sure that it is appropriate to seek it.

**The Chairperson:** You did not think it appropriate at the point of devolution to seek it, so why now, some four years later, do you think it appropriate that we seek advice to determine who is legally competent to deal with the issue?

**Mr Perry:** Because it is now an issue of public debate. As I said before, however, I am absolutely clear that, at the point of devolution, the view was taken that the scheme was not a devolved matter.

**The Chairperson:** If this had never been raised publicly, and there had been no debate around it, you, as permanent secretary, do not believe that it would be necessary to get the legal clarity around whether it is a devolved matter or not.

**Mr Perry:** At the point of devolution, the clear view was that it was a reserved or excepted matter. The legal advice that is now being sought may throw further light on things and may confirm that opinion.

**The Chairperson:** Yes, but you have said that you feel it is now, given the public interest, appropriate to seek legal advice. Surely permanent secretaries do not always dance to the tune of public opinion or matters of public interest to determine what their Department should be doing on an issue. I am struck that you think that it is appropriate to seek legal advice now, yet, at the point of devolution, you clearly made assumptions and did not feel it necessary to seek the advice that you now believe is appropriate.

**Mr Perry:** It is appropriate to seek advice because it has now become a matter of public debate. At the point of devolution, the clear view of the Ministers responsible at the time was that the scheme was not an issue that should be devolved.

**The Chairperson:** Will you be wanting to seek advice to determine whether, after the point at which devolution occurred, the NIO had any authority to be involved in the issuing of letters?

**Mr Perry:** I am assuming that that is the area on which the legal advice will be sought.

**The Chairperson:** Do you think that advice should be sought to determine whether the letters issued after devolution were issued illegally, because the Northern Ireland Office did not have the legal competence to deal with the scheme?

**Mr Perry:** I imagine that that is one of the areas that the legal advice, or Lady Justice Hallett's review, will cover.

**The Chairperson:** We will wind this up soon.

You are next, Mr Humphrey, but please be brief.

**Mr Humphrey:** The line of questioning that we have just had makes the point that I made earlier, which is that the issue was always going to re-emerge. You have clearly said that this is now a matter of public debate, but, quite frankly, a blind man on a galloping horse would have realised that the issue was going to re-emerge and become a matter of public debate. That is why you should have briefed

your Minister at the time, but you failed to do that. What is the relationship between you and the Minister of Justice for Northern Ireland?

**Mr Perry:** In personal terms?

**Mr Humphrey:** In professional terms, following the announcement of the on-the-runs scheme, of which you had knowledge and he did not, yet you did not tell him.

**Mr Perry:** It is entirely constructive, as it has always been. That might be a question that you had best put to him when you see him next week.

**Mr Humphrey:** I will, but I am asking you now.

**Mr Perry:** The relationship is fine.

**Mr Humphrey:** In the way that the Department is run, it is entirely normal and appropriate that the Minister seek legal advice without your input. You said that he has done that on more than one occasion. In addition, he has asked for papers, and you think it is appropriate that he has done so, but, again, you have no input. Having listened to the evidence that you have given here today, I suggest that the Department, with the Minister as its political head and you, sir, as its administrative head, is dysfunctional.

**Mr Perry:** I do not agree with that description.

**Mr Humphrey:** If the Minister is getting legal opinion and asking for papers without your say-so or knowledge, that suggests to me that there is a clear breach of trust and that the Department is dysfunctional.

**Mr McGlone:** I am listening very carefully to your line of answering, Mr Perry. Have you sought legal advice on your role in the matter?

**Mr Perry:** Yes.

**Mr McGlone:** Was that legal advice sought in preparation for your appearance before the Committee?

**Mr Perry:** Yes.

**The Chairperson:** Why did you feel that it was necessary to get legal advice?

**Mr Perry:** To confirm my understanding that the way in which I had dealt with these matters was appropriate. The legal advice has reinforced my impression.

**The Chairperson:** The legal advice that you sought has been that you have conducted yourself appropriately in this.

**Mr Perry:** Yes.

**Mr McGlone:** Did you seek that advice personally or through the Department?

**Mr Perry:** It was sought on behalf of the permanent secretary through government lawyers.

**Mr Elliott:** Apologies for being late. Thanks for coming, Mr Perry. I have just one question — if it has been answered, I apologise — on the procedural guidance on access to the papers of a former Minister. Is that relevant to you having access to the papers of former Ministers of the UK Government in the NIO? The procedural guidance was brought in by the Northern Ireland Executive. What is the relationship between that guidance and the NIO?

**Mr Perry:** The same principles apply right across the United Kingdom, as I said earlier. Essentially, the same guidance applies in Whitehall, Edinburgh and Cardiff. The principles relate to devolved



Departments and changes between them and also to changes between a devolved Department and a non-devolved Department.

**Mr Elliott:** The guidance strictly relates to any Minister in any Government in the United Kingdom.

**Mr Perry:** The same broad rules apply, yes.

**Mr Elliott:** Even though this is Northern Ireland Executive procedural guidance.

**Mr Perry:** Yes, that is obviously specific to Northern Ireland and approved by the Executive, but very similar rules apply across the Civil Service throughout the UK.

**Mr Elliott:** They may apply, but there is nothing to say that this particular guidance applies to you and your former UK Government Department.

**Mr Perry:** I think that the same basic rules would apply. Do you mean when I was previously serving in another Department?

**Mr Elliott:** Yes, when previously serving in another Department of the UK Government as opposed to a Northern Ireland Department.

**Mr Perry:** The same basic rules would apply.

**Mr Elliott:** Has legal advice been sought on that issue?

**Mr Perry:** Do you mean on the procedural guidance and its application in this case?

**Mr Elliott:** Yes.

**Mr Perry:** I am not sure. If you mean at a general level, my understanding is that it applies.

**Mr Elliott:** What do you base that on?

**Mr Perry:** On the legal advice that I received on the steps that I took.

**Mr McCartney:** Is this your first role as a permanent secretary?

**Mr Perry:** Yes.

**Mr McCartney:** You said today that David Ford, the Minister, has sought legal advice on other issues without your knowledge.

**Mr Perry:** I know that he has sought legal advice, but I have not been directly involved in it.

**The Chairperson:** Did the legal advice that you sought include whether you should appear in front of the Committee?

**Mr Perry:** No.

**The Chairperson:** Did you ever give consideration to whether or not the judge-led inquiry should come first and this session should be put off until that process had been concluded?

**Mr Perry:** No, my accountability is to this Committee.

**The Chairperson:** Would you expect the director of the Public Prosecution Service to take the same approach that you have taken?

**Mr Perry:** That would be a matter for him.

**The Chairperson:** Do you think that saying that there is a judge-led inquiry and that that should take precedence over appearing in front of this Committee is an appropriate line of defence for anyone to use?

**Mr Perry:** I am not able to comment on that, Chair.

**The Chairperson:** Finally, are there any questions that we have not asked —

**Mr Wells:** Are there any questions that he has answered?

**The Chairperson:** — that we should ask to solicit information relating to the issue that needs to be put into the public domain?

**Mr Perry:** I do not believe so, Chair. Your questioning has been very comprehensive. The point is that many of the questions that have been raised today are matters for the Secretary of State.

**The Chairperson:** We want to determine who is actually legally competent to deal with the issue today. I find it very strange that you are not party to and have not been included in the legal opinion being sought by the Minister. My experience, having worked with Ministers, is that it is highly irregular and unusual for a Minister to seek advice of that nature without the permanent secretary being involved. That is a question that we will want to put to the Justice Minister when he appears before us. We have asked a number of questions, and I think that more questions arise from the answers that you have provided. I would rather go through a transcript of what has just taken place and determine whether there are any more questions to follow up. If there are, are you prepared to come back to the Committee?

**Mr Perry:** Of course.

**The Chairperson:** Mr Perry, thank you for taking the time to come to the Committee today.