



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

On-the-runs Administrative Scheme and Letters:
Mr David Ford MLA, Minister of Justice

3 April 2014

had not previously been with the Northern Ireland Office (NIO). The review identified no files relating to the administrative scheme.

I again make it clear that, prior to the Downey judgement, I was unaware that an on-the-runs administrative scheme was in operation. I first became aware of it when I received a telephone call from the NIO on Friday 21 February to brief me about the Downey judgement before it became public on Tuesday 25 February. I knew that my Department had no role in the scheme, so I arranged to meet the Secretary of State on 27 February. On 26 February, she made her comments about it being a devolved matter, and I insisted on meeting her that evening. Without going into the details of our discussions, I can say that we had a robust exchange, and the Secretary of State apologised — she subsequently apologised publicly — for wrongly implying that my Department was responsible for the scheme. For the record, I did ask her whether there were any other issues such as that "lurking in the woodwork", as Mr McGlone put it last Tuesday. She gave me an assurance that there were not.

I have also sought my own legal advice on the scheme. The Committee made much of that during Mr Perry's appearance. On other occasions, as Mr Perry explained, I have asked for legal advice without a formal request going through the permanent secretary because of the convenience of having an office located in the same building as the Department's legal advisers. On this occasion, I made a deliberate decision to seek my own legal advice without any formal request going through Mr Perry. I later informed Mr Perry of the fact that I had sought legal advice. I consider it entirely appropriate that we seek independent legal advice from separate legal advisers, given the different nature of our roles, mine as Minister and his as head of the Department but with a previous role in the NIO.

As I have repeatedly said, my Department has had no involvement with the scheme and so does not have information on the requests made or the contents of letters and names of those to whom letters issued. That information is held by the NIO. The Secretary of State made a statement to the House of Commons last week on the number of cases considered by the NIO. Clearly, the PSNI and the Public Prosecution Service (PPS) have been involved in operating the scheme, even since the devolution of policing and justice powers, but you will appreciate that the PSNI has operational independence, and the PPS is not in any way accountable to me. The PSNI was already providing information to the Policing Board.

I am now responsible for the Northern Ireland Prison Service (NIPS), and I said in the Chamber that I was making enquiries to the Prison Service about the reference to it in the Downey judgement. However, the reference relates to the period prior to devolution, when the Prison Service was the responsibility of the NIO. In line with the ministerial code and the long-standing conventions preventing me from asking officials about the papers or information available to a previous Minister, I have asked the NIO for the relevant information. If the NIO does not agree to pass papers to the DOJ, I will raise the reference to the Prison Service with Lady Justice Hallett.

The Committee will be aware that Lady Justice Hallett has been appointed to carry out a review and report to the Secretary of State. The terms of reference were clarified by the NIO earlier this month, and that information is in the public domain. Lady Justice Hallett also published a statement outlining her approach on 27 March. Her team has already started work, and I met her briefly and informally on 24 March and expect to meet her again. I await her findings with interest, along with those of the Police Ombudsman and, in due course, the Policing Board, the Select Committee on Northern Ireland Affairs and, of course, this Committee. I also had an informal discussion with the Select Committee on 28 February.

The Secretary of State made the welcome announcement on 7 March that the scheme had ended, but I am conscious that there are many issues to be resolved and am as keen as anyone to ensure that that is the case. In doing so, my main concern is to look after the interests of victims and their right to seek truth and justice. Since becoming Minister, I have been working to reform our justice system and build confidence in it. We have been making good progress, but controversies such as this highlight the challenge in trying to deliver an effective justice system now and into the future when faced with a pressing need to deal with the legacy of our past. That is why we need to get an effective and urgent solution through all-party talks.

Chair, I thank you for this opportunity and am happy to take the Committee's questions.

The Chairperson: Minister, thank you. For the record, when did you find out, and from whom, that the on-the-runs scheme existed?

Mr Ford: As I said in my statement, I was briefed by the Northern Ireland Office on Friday 21 February after the conclusion of the Downey case but before it became officially public on the following Tuesday.

The Chairperson: There seems to be a fair amount of debate about whether or not this is a devolved matter. Do you regard the on-the-runs issue as being devolved?

Mr Ford: I could only regard something as being devolved if it had been formally transferred from the NIO to the DOJ on the point of devolution, and it is absolutely clear that that is not what happened. As the Secretary of State has said in two written statements, the NIO continued with the scheme following devolution.

The Chairperson: When the news was breaking about the scheme, you said, on 26 February, that the issuing of these letters was "deeply disturbing". I think that that was the language that you used in your statement. Why was this information deeply disturbing? In fairness to you, I have found the exact quote. You said:

"Comments made by the Secretary of State in the House of Commons that letters have been issued since the devolution of justice are deeply disturbing."

Why did you find it deeply disturbing that these letters had issued, given that the devolution of policing and justice powers had taken place?

Mr Ford: My political opposition to any such scheme was well recorded in some of my previous comments, purely as a party representative. The fact that the scheme was continuing without it being made public and open or being managed in line with the concerns that many of us had expressed was deeply disturbing.

The Chairperson: So you were deeply disturbed from a purely political perspective as opposed to a legal perspective.

Mr Ford: I am not sure that it is possible to separate those things entirely, given that part of my political concern was the legal dubiousness — if that is the most appropriate word — of the way in which the scheme was being run. We are now straying somewhat into my role as a party leader rather than anything else.

The Chairperson: For you, there was a merging of two issues. There were political and legal issues with the role of the devolved institutions to deal with these matters. It was a combination of both.

Mr Ford: There was a political concern that the scheme was set up without being open and transparent and without being in any way in accordance with the normal legal process as I saw it.

The Chairperson: On 27 March, in the House of Commons, your party colleague Naomi Long said:

"It is understandable that people want to know who knew what and when, and what the process was, not least my colleague the Northern Ireland Justice Minister, particularly given that the scheme continued to operate under devolution, interfering—that is the only word I can suggest—with the devolved responsibilities of the Justice Department and other devolved structures of government."

What assessment do you make of Naomi Long's view that this was "interfering" in responsibilities that had been devolved?

Mr Ford: Having said that it was not devolved, I do not think that there is anything inconsistent with saying that a scheme that continued covering matters that should have been regarded as devolved was interfering. I think that that is entirely consistent with the point that I outlined.

The Chairperson: Should it have been devolved?

Mr Ford: I do not think that it should have existed in the first place.

The Chairperson: That is not the question, Minister.

Mr Ford: No, but it is the answer.

The Chairperson: No, it —

Mr Ford: If you do not believe that a scheme is accorded with proper due legal process, it should not exist, devolved or not devolved.

The Chairperson: Again, that is not quite the question.

Mr Ford: Sorry, it is the answer.

The Chairperson: Let me frame it in a slightly different way for you, Minister. However the scheme was devised and whatever one's view of whether or not the scheme is appropriate, it was there nevertheless, and it operated under direct rule. As you know, the devolution of justice powers commenced in 2010, and the scheme continued to operate. Forget about the rights and wrongs of the scheme, at that point of devolution, should the scheme have been devolved to the Assembly?

Mr Ford: As Minister of Justice, I simply do not have the detail to know whether it should or should not have been devolved. There are issues relating to the justice system that are not devolved, and remain not devolved, and which, presumably, will continue to remain not devolved. Those are matters relating to national security and issues such as admissions to separated conditions in prisons. Those issues remain with the NIO, and I simply do not have the detail to know, in that sense as Justice Minister, whether the scheme covers matters that would properly be devolved or not. What is absolutely clear is that its continuance is interfering with the normal operation of devolved justice.

The Chairperson: Is this scheme —

Mr Ford: Sorry, I should say "was" interfering, given that we are now informed that it ceased in 2012.

The Chairperson: Has the scheme ceased by way of the NIO, and is it now a matter for your Department to deal with?

Mr Ford: No requests have been made to my Department, and no requests for anything that appears to purport to be this scheme would be accepted by my Department, certainly not as long as I am Minister.

The Chairperson: So is this now a devolved matter?

Mr Ford: I really think that you need to ask the Secretary of State, given that she said that it is devolved and has then apologised for saying that.

The Chairperson: Let me read what the Secretary of State said on 27 March in the House of Commons:

"On behalf of the Government I have expressed regret that we did not discuss the scheme with Ministers in the Executive".

This is the important point. She continued:

"especially after we concluded in August 2012 that any new cases should be directed to the devolved authorities."

So in August 2012, the Secretary of State, as part of the Westminster Government, concluded that any new requests would now be directed to the devolved authorities. That begs the question: is this now a devolved matter? The Westminster Government concluded in August 2012 that any more requests would be referred to the devolved authorities.

Mr Ford: There was some confusion about the term that was used in referring to devolved authorities, because, in statements from some Ministers in the UK Government, the "devolved authorities" clearly

meant the PPS and the PSNI. I think that those of us who are Members of this Assembly and those of us who work in devolved Departments will not accept that that is the normal assumption that is made when reference is made to "devolved authorities".

The Chairperson: I am still not clear, given that the Secretary of State repeated the phrase "devolved authorities" only last week. I accept that you got an apology from her when the confusion first arose, but she repeated the phrase only last week in the House of Commons that the Westminster Government concluded on the issue in August 2012 and rightly apologised to you because they did not tell you. I accept that, because neither did they tell the First Minister. They concluded then that any further requests would be referred to the devolved authorities.

That takes me into the next area. Obviously, to get clarity on the issue, as you said, legal advice is being sought. Can you elaborate on the issues that you have sought legal opinion on?

Mr Ford: I am afraid that, in line with the usual convention, I cannot.

The Chairperson: Have you sought legal advice on whether the issue is devolved and, furthermore, should it have been devolved at the point of devolution?

Mr Ford: I do not think that you heard me, Chair. I said that I am sorry that, in line with the usual convention, I cannot disclose issues relating to legal advice.

The Chairperson: With the greatest respect, Minister, this is what you said on 28 February about Tony Blair:

"I would think there is a moral onus on Blair to inform the inquiry what was going on".

You added:

"anyone who was a minister or prime minister responsible for the deal must help the inquiry."

I say to you that there is a moral onus on you to tell the people of Northern Ireland, through this Committee, what legal advice you are seeking to get to the bottom of a deal that you have said has:

"damaged public confidence in the justice system"

and "traumatised victims" who suffered at the hands of some of the people who got these letters. So, Minister, tell us: have you sought legal opinion on the basic question of whether this is a devolved matter, and should it have been devolved in the interests of the people whom you say need to be treated sensitively — namely, the victims?

Mr Ford: I have already explained the convention, Chair.

The Chairperson: It is certainly at odds with what you expect of Tony Blair and others when you say that they should cooperate with the inquiries that are going on.

Mr Ford: No, Chair, it is not the least bit at odds. I said that those who were responsible for the administrative scheme have a duty to explain what they did to the appropriate forum, whether it is Lady Justice Hallett's inquiry or the House of Commons Select Committee inquiry. That is an entirely different point from me talking to this Committee against the normal convention of not disclosing issues relating to legal advice. I am quite happy to discuss what I have done as Minister, and I come to this Committee regularly to make those points, but there are conventions about legal advice, and I do not intend to break them.

The Chairperson: There certainly is a matter of public interest. I say to you, Minister, that you raised the issue by saying that it was deeply disturbing that the letters had continued to be issued past the point of devolution. This was an issue that, at the time of this controversy, you were very keen to highlight as being deeply disturbing. Your party colleague talked about interference, and we are now trying to find out what actions you are taking to get to the bottom of something about which the public are asking whose responsibility it is. We are trying to get clarity on whether it is the Department of Justice now, because justice powers have been devolved, or whether it is the NIO. That is why you said that, in response to me in an Assembly question, you have sought legal opinion on a range of

issues, but you will not reveal what those issues are, not even the basic question of whether this is a devolved matter.

Mr Ford: I have made it absolutely clear that, in relation to this scheme, the Department of Justice is doing nothing, and will do nothing, as long as I am Minister. That is the assurance that people need. The precise issue of legal advice I may have sought is a different issue. I suggest that the appropriate forums in which issues should be teased out are the judicial inquiry, the work being done by the House of Commons Select Committee, whatever formal inquiry this Committee may set up or the other work being done by the ombudsman and the Policing Board. Those are all issues whereby it is proper to enquire about people's actions but not to enquire about legal advice that they have received.

The Chairperson: I will park that point. You indicated that 38 letters were issued at the point of devolution for which the current Government were responsible. Have you been able to identify how many were handed out before the coalition Government took office?

Mr Ford: I refer you to the most recent written statement by the Secretary of State on 26 March in which she increased that number from 38 to 45. She referred to the fact that, on 4 March, she stated a figure of 38 in answer to the Member for Belfast East, and now, after further work, she had established that 45 individuals have had their cases considered:

"since this Government came to power in May 2010".

The Chairperson: So we know what the figure is when the coalition Government came to power in May 2010. Obviously, the devolution of justice took place a number of months before that, to which —

Mr Ford: It was three weeks rather than a number of months.

The Chairperson: Do we know how many letters were issued by the Labour Government in those three weeks?

Mr Ford: I do not know, and there is no reason why I would know whether that information would be available or that that was the information conveyed by the Northern Ireland Office or by the individuals who were responsible at the time.

The Chairperson: In order that I know what actions you took in that three weeks when you were the Justice Minister, have you asked for that information to be released to you?

Mr Ford: I am sorry —

The Chairperson: I refer to the three weeks that the Labour Government were still in power before the coalition Government took office. We know how many they were responsible for when the devolution of justice took place.

Mr Ford: No. I have not formally requested that. I am not sure from whom it would be possible to request that information formally, given the usual conventions about information passing between Ministers of different parties in the same Department.

The Chairperson: I will get to the convention about papers, because we obviously want to get to that area. I have a whole range of questions that I still want to put to you.

Mr Elliott has asked me to let him in at this point because he needs to leave, so I will do that and come back for round two.

Mr Elliott: Thank you very much, Chair; you are very kind. Thanks, Minister. I have a couple of quick points, one of which follows on from the Chairman's point about legal opinion. My understanding is that, if legal opinion is in the wider public interest, there is nothing to stop a Minister releasing it. Do you agree with that?

Mr Ford: That is not the advice that I have received, which is that the convention is that legal opinions, and the persons from whom legal opinions are sought, are not disclosed.

Mr Elliott: Do you accept, however, that Ministers have released legal opinions in the past on the basis that it is in the wider public interest.

Mr Ford: That may have been the case, but that is not the normal convention.

Mr Elliott: It is accepted, however, that that can happen.

Mr Ford: You would need to ask those who have chosen to do so.

Mr Elliott: Clearly, you are saying that there is no convention at all for Ministers to release legal opinion.

Mr Ford: The only convention that I am aware of is that Ministers do not release legal opinions.

Mr Elliott: What actions do you think that the Department of Justice needs to take about this matter?

Mr Ford: Frankly, the key issue for nearly all of us is to wait and see the outcomes of the various inquiries that are under way. As you will know, the Select Committee started its work yesterday. Lady Justice Hallett has commenced her work. Her report is due by the end of June at the very latest. I suspect that the Select Committee may take a bit longer, given the breadth of its inquiries. I see little that it is appropriate for anybody to do until those inquiries are concluded.

Mr Elliott: So you do not think that any interventions or actions are required by the Department of Justice at this stage.

Mr Ford: I do not see anything that it is appropriate for the Department of Justice to do.

Mr Elliott: You said that you did not know anything about the scheme at the time or until the information was released, but what details do you know now?

Mr Ford: I know nothing now that is not in the public domain.

Mr Elliott: Has no inside information been given to you by the NIO other than what is in the public domain?

Mr Ford: No.

Mr Elliott: Have any of the letters been used in Northern Ireland courts?

Mr Ford: Again, I am unaware. Unless it is a case that directly involves the Department of Justice, I would not be aware of information that is supplied in court cases.

Mr Elliott: The courts, however, come under the jurisdiction of the Department of Justice.

Mr Ford: The management of the Courts and Tribunals Service comes under the Department of Justice. That is different from being aware of the contents of individual cases.

Mr Elliott: I totally accept that, but even though this has come to light, did you not think it relevant to ask the Northern Ireland Courts Service whether any of those letters were used in Northern Ireland courts?

Mr Ford: I imagine that, had any been used, it is quite likely that that would have been reported in the media. I am completely unaware. I am not sure how that information could have been sourced other than by going through old court records. I certainly do not believe that it would have been appropriate to do that.

Mr Elliott: You do not think that it would be appropriate for you to check with your own Courts Service whether any of them had been used.

Mr Ford: It would be an issue to be considered in individual court cases in which there were prosecutions or whatever. That would be a matter for the PPS not the DOJ.

Mr Elliott: However, when the Courts Service comes under the jurisdiction of the Department of Justice, and there has been such a major issue around the letters, I would have thought it appropriate for you to try to establish whether any had been used in your Courts Service.

Mr Ford: I suspect that the independent judiciary and independent prosecution service would take it fairly ill if I were to start to enquire into those matters. Those are matters for them, not for the administration of the courts.

Mr Elliott: I would have thought that this matter is in the public interest and that it would have been in your interest, and certainly in the wider public interest, to find out whether any of the letters were used in any of the courts of the Department of Justice's Courts Service.

Mr Ford: One would assume that, if it were a matter of public interest, journalists reporting court proceedings would have reported it; that could have happened over many years. If it were an appropriate thing to do, what you are suggesting is effectively a manual trawl through thousands of records to see whether anything had come up.

Mr Elliott: OK; anyway, the answer is that you did not look for that.

Mr Ford: No.

Mr Elliott: Chair, thank you very much. I have to go for a short period, but I will be back.

The Chairperson: I will pick up where Mr Elliott left off. Do you regard arrests, charging and prosecution as devolved matters?

Mr Ford: Arrests that are the responsibility of the PSNI are clearly devolved matters. Charging is similarly a devolved matter. However, they are not matters for my Department. They are matters for independent agencies.

The Chairperson: And prosecution likewise is a devolved matter.

Mr Ford: Yes.

The Chairperson: I accept that individual decisions about whether you prosecute or not will be for the PPS. However, the overall policy framework in which the PPS and the PSNI operate is devolved and is something that your Department and the Assembly is responsible for.

Mr Ford: I do not think that my Department has any policy responsibilities for the PPS.

The Chairperson: So, we have no role in terms of the types of laws that we create to determine whether —

Mr Ford: The creation of laws, clearly, is a matter for the legislature. However, the policies, other than the law with which the PPS operates, are independent policies for the PPS. If it applies the public interest test, for example, that is a matter that is entirely for the director. It is nothing to do with anybody else.

The Chairperson: But given that we have laws that say that it is a criminal offence to go on the run and that, if you are on the run, you will be sought and subsequently prosecuted, surely it is in the public interest to determine whether the PPS and the PSNI are actually doing what they are supposed to do, which is to ensure that the law is being followed. Surely it is not enough to say, "It is entirely independent of me, and, therefore, I am not even going to ask if this has ever happened in Northern Ireland."

Mr Ford: No, but you are now conflating the question of whether there is a legitimate public interest in the way that those policies are carried out, which there is, and suggesting that it is a responsibility of the Department of Justice, which it is not.

The Chairperson: Well, I think that the public will find it hard to distinguish the differences that you are trying to point out as to why we would not want to enquire of the PPS and the PSNI whether this letter has ever been used in Northern Ireland courts or has ever been presented to the PPS in Northern Ireland as a reason not to prosecute.

Mr Ford: There are appropriate ways to make those enquiries, but the Minister of Justice asking those questions is not the appropriate way.

The Chairperson: OK, let me stick to where I want to go with this. On your relationship with the permanent secretary, Nick Perry, you have indicated that you believe that he did not need to brief you and that, if he had, he should not have because of conventions. Can you point out to me where the Executive guidance that was agreed and referenced at the meeting with the permanent secretary precludes, at any point, Nick Perry from being able to advise you of the facts of this scheme as opposed to the Ministers' views at the time, which may have embarrassed them?

Mr Ford: The Stormont ministerial code issued in 2000 made it clear that:

"Ministers should not seek access to documents created before devolution or created by or for Ministers of other political parties, nor should a Minister seek to ascertain either from officials or documents the views of previous Ministers or advice given to them."

It was not in the rather abridged version of the code that was issued in 2008 but is addressed in guidance documents agreed by the Executive in March 2009, which would have been appropriate guidance for Executive Departments at the point when the DOJ came into existence. 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 or former Executive Minister of a different political party."

That is almost a direct parallel to the guidance that applies to the UK Government, which is in the Cabinet Office directory of guidance, also published in 2000.

The Chairperson: I note the operative term that they should "not normally" get or seek this type of information. Given that this was a pretty abnormal, never mind obnoxious, scheme, one would have thought that it would have been drawn to your attention.

Mr Ford: That is your judgement. It is not certainly the judgement that either I or the permanent secretary made.

The Chairperson: The policy that we have indicates that:

"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 that they need to do their job with the convention outlined above."

The "convention above" talks about not embarrassing your previous Minister.

Mr Ford: It was a policy that I did not inherit on taking up post in the Department of Justice.

The Chairperson: Yes. Do you not find it strange that, at the point of devolution, your permanent secretary did not get his own advice as to whether or not that was a policy that should have been inherited?

Mr Ford: No.

The Chairperson: You do not?

Mr Ford: The decisions on matters being transferred were taken by NIO Ministers on the basis of whatever advice they received.

The Chairperson: That is what worries me, because the permanent secretary said that he made an assumption that direct rule Ministers had taken advice. You used the phrase "whatever advice". It is a very haphazard approach to determining what should or should not have been devolved.

Mr Ford: No. It was the Ministers' decision on what was devolved. The issue of exactly what advice they received is not relevant to the fact that it was a ministerial decision.

The Chairperson: Did Nick Perry become your permanent secretary, and therefore you became his political master, or was he still serving the interests of his previous political masters?

Mr Ford: I believe that Nick Perry has served my interests as Minister of Justice since he took up his post as permanent secretary on 12 April 2010.

The Chairperson: So you do not feel aggrieved at all about the information that Nick Perry knew about. He openly admits that he never knew that the scheme had come to an end but, even though the devolved authorities were responsible for continuing with the scheme, he withheld that information from you. You do not have any difficulty with that.

Mr Ford: I heard him say last week — I do not have the Hansard transcript with me — that he was not aware of whether or not it continued.

The Chairperson: Yes, there was a clever play on words. I asked him if he knew that it had come to an end and he said, "No, I did not know that it came to an end". But within 24 hours of —

Mr Ford: I think that what you are describing as a clever play on words was the permanent secretary giving you honest answers.

The Chairperson: That will be for others to judge. He described his relationship with you as "fine". How would you characterise your relationship with Nick Perry?

Mr Ford: I think that it is a very reasonable adjective.

The Chairperson: Not good, not bad, just fine.

Mr Ford: I suspect that when he said "fine", he did not mean not good. He meant fine, as in good and professional.

The Chairperson: You referred to the issue of legal advice in your opening statement. When Nick Perry was in front of the Committee, he tried to explain why you have not included him, and you referred to that. When I asked him did he not find it peculiar that he had not been included by you in that, he responded by saying:

"No, I think that, under the circumstances, it is quite appropriate."

Can you elaborate on what you understand the phrase "under the circumstances" to mean?

Mr Ford: I outlined in my opening statement that I believed that it might be perceived that he and I had different interests and, therefore, that it was appropriate that we should seek separate advice.

The Chairperson: You have said publicly and at the Committee that your permanent secretary has always served your interests. Why would he use the phrase "under the circumstances" and why would you continue to talk about the perceived different interests that there may have been from his perspective, having served in the NIO, and from your perspective? If everything is rosy in the garden, why do you need to take the permanent secretary out of the loop when it comes to getting legal advice?

Mr Ford: You have just made the point. It was because he had a prior role as well.

The Chairperson: So, you feel that that prior role justified excluding him from your independent process to gather legal advice.

Mr Ford: The suggestion that I have excluded him implies that I went behind his back to exclude him. I did not. I acknowledged that there were different responsibilities. I do not get all my legal advice by going through the permanent secretary. I frequently get legal advice by speaking directly to my legal advisers, because my role and his role are not identical.

The Chairperson: Under these circumstances, is that because the public need to be satisfied that there has not been something not quite right about your permanent secretary's role and, therefore, you will get independent legal advice without him being involved? Is it to provide you with an assurance that your permanent secretary has done his job properly?

Mr Ford: Any advice that I received did not relate to his role. It was about the wider issues relating to the Department.

The Chairperson: OK. I am assuming from that — a lot of people have made assumptions, so you can correct me if I am wrong — that, if it is related to whether or not your Department should have had the matter devolved, Nick Perry would have had a key role in that at the time and you have not included him in the process of seeking legal advice, lest the legal opinion come back and say, "Yes, this is devolved. It should have been devolved," thereby meaning that your permanent secretary did not do his job.

Mr Ford: You have made a presumption.

The Chairperson: Am I wrong in that presumption as to why you have kept him out of the loop in getting the legal advice?

Mr Ford: You are now taking me into the issue of the legal advice, and I am not going there.

The Chairperson: OK. The permanent secretary has indicated that he met the head of the Civil Service about it. Have you had a conversation with the head of the Civil Service about your permanent secretary's role in the issue? *[Interruption.] [Laughter.]*

Mr McCartney: That is the spooks.

Mr McGlone: That is the ones he cannot tell us about. *[Laughter.]*

Mr McCartney: My apologies.

Mr Wells: Resign, resign.

The Chairperson: Is that straight from MI5? *[Laughter.]* Sorry, Minister, you were saved by the interruption.

Mr Ford: I have not had any formal discussion with the head of the Civil Service about the issue. The issue, in general terms, was discussed between him and me whilst we waited for other Ministers to turn up at an Executive meeting.

The Chairperson: So, you have not asked him to do anything formal about it.

Mr Ford: I have not asked him to do anything formal.

The Chairperson: OK. You had a meeting with the Secretary of State, as she had initially said that this was now a devolved matter, and that caused you some consternation — quite rightly so. You then met her, and she retracted her statement and apologised. How much can you tell us about the nature of the conversation that led her to realise that she had got it wrong?

Mr Ford: I do not think that I need to say anything more than what I have already said about the reference to the devolved authorities. It appears that those who drafted her statement meant the police and the PPS, but, as I said earlier, I think that most of us in this Building would assume that that means the Assembly and the Department. She made it clear that that was not the intention. That is why she apologised then and, either the following day or the day after, made that apology public.

The Chairperson: Have you subsequently sought any of the papers relating to the scheme formally from the NIO?

Mr Ford: The only specific issue that I followed up is, as I said, in answer to one of the supplementaries to the urgent oral question that you asked me. There was an issue about requests going from the Prison Service. At the time, the Prison Service was part of the NIO, but the Prison Service is now directly responsible to the DOJ. I asked officials in the Prison Service to follow that up in the specific context that they, at the time, owed their duty to the NIO. Having not had a formal response from the NIO to that, I have written to the Secretary of State formally requesting whether that information can be released to me, given that the Prison Service is now part of the DOJ.

The Chairperson: You said in February that damage has been caused to confidence in the justice system. Who do you feel has damaged the confidence in the justice system? Who is responsible for that damage?

Mr Ford: I think that the principal responsibility for the damage lies with those who devised the scheme and made the political decision to put it in place, including in particular those who denied that any such scheme existed after the proposed legislation at Westminster was withdrawn.

The Chairperson: In terms of damage, which I assume will concern you greatly, to the PSNI, the judgement said that it had made a catastrophic mistake. Matt Baggott subsequently apologised and took full responsibility on behalf of the PSNI. How concerned are you about the damage to public confidence in the PSNI?

Mr Ford: At the moment, we see a very high level of confidence in the PSNI as it deals with its responsibilities today. There clearly is an issue of reputational damage from the past. Without having studied the detail of yesterday's Hansard of the Select Committee's inquiry, I note that a former senior PSNI officer has suggested that the role carried out by the PSNI was entirely proper and should not have been apologised for by the Chief Constable. I think that, as the Select Committee inquiry progresses, details will emerge as to exactly how much responsibility the PSNI and PPS had, how much may have been the responsibility of other police forces across the water, and how much responsibility lay with whoever the officials were who put together the final letters.

The Chairperson: I am glad that you have mentioned the evidence from yesterday's Committee hearing. Are you going to take action, as Justice Minister, to get to the bottom of whether the PSNI actually was culpable? Clearly, Norman Baxter has defended himself and the work that he was in charge of through Operation Rapid. He said that Mr Baggott had "reacted without knowledge", shown "poor leadership" and had offered the PSNI up as:

"a sacrifice to cover for the NIO".

How concerned are you about those statements?

Mr Ford: I do not think that it is my job to intervene between Mr Baxter and Mr Baggott. As far as I am aware, Norman Baxter retired from the PSNI, after many years' service, prior to the devolution of justice. So the issues that he describes would have taken place before the Assembly or I had any responsibility for policing matters. Frankly, that issue will have to be further teased out by the Select Committee.

The Chairperson: And, indeed, the Chief Constable was not the Chief Constable at the time of some of the evidence that Norman Baxter referred to, but nevertheless he apologised and took full responsibility for the PSNI. So, I accept that you were not Justice Minister at the time, but neither was Matt Baggott the Chief Constable. Surely you would be concerned about confidence in the police if the Chief Constable has, as Norman Baxter said, "reacted without knowledge", shown "poor leadership", and offered the PSNI — for which you, as Justice Minister, ultimately have a role — as a scapegoat and sacrificial lamb to cover up for the NIO. Certainly, the response that I have got from the community and public to the evidence that Norman Baxter gave yesterday has been damning if what he says is true, and I have no reason to doubt it. That being the case, will you seek a meeting with Matt Baggott to find out if he offered up the PSNI as a sacrifice to cover up what the NIO had been doing with this secret deal?

Mr Ford: As I said, there is clearly an issue between what Mr Baggott said and Mr Baxter's evidence yesterday. That is something that, frankly, we have to wait to see the Select Committee, which is hearing that evidence, tease out a bit further. I repeat that there is, I think, a significant difference between the PSNI in the duties it has today and some of the difficult historical issues that the PSNI is forced to deal with in the absence of any other mechanism.

The Chairperson: The Garda Commissioner had to resign over secret tapes. Who is going to take responsibility in the PSNI for, one, contacting Norman Baxter to seek the release of Gerry McGeough, who was subsequently successfully prosecuted and given 20 years? Norman Baxter believes that the person involved was seeking to pervert the course of justice. Secondly, who will take responsibility for Matt Baggott showing poor leadership and a lack of understanding, and offering the PSNI as a sacrifice to cover up for the NIO? Who will take responsibility for covering up the secret letters, when the Garda Commissioner had to walk over secret tapes?

Mr Ford: The answer is that whoever who was responsible will have to account for the secret letters. I repeat the point: after one day's evidence before the Select Committee, I am not going to rush to judgement.

Mr Humphrey: Thank you, Minister, for being here today. Do you think that the on-the-run scheme and yesterday's revelations in any way played on the decision by the Chief Constable to announce his retirement earlier in the year?

Mr Ford: I have absolutely no knowledge of whether that is the case.

Mr Humphrey: You talk about this damage that the scheme, and, I suggest, the revelations yesterday at the Northern Ireland Select Committee, has done to the Public Prosecution Service and the police. I agree with the Chair: considerable damage has been done to the reputation of both. It shows clearly that politicians should never interfere with policing and the judicial system. What can you, as Minister, do to rebuild the confidence in the PPS and the police?

Mr Ford: Frankly, one of the things I would do to restore confidence in the police is resist attempts by politicians to [*Inaudible.*] policing decisions.

Mr Humphrey: With respect, we are not dealing with your actions, because you were not the Minister —

Mr Ford: Sorry, you asked what I could do to restore confidence. I can ensure that things are done properly today —

Mr Humphrey: I do not really think that that is going to give confidence to the people out there. What are you, as the Minister responsible for the Justice Department and ultimately responsible for the police, going to do to ensure that the people out there can be confident that the police are not being politically interfered with? I am not accusing you of being involved in that in any way, but, clearly, other politicians have been involved. We are not aware at this stage, but we may even become aware of decisions taken by the police to carry out the political will of some of those politicians.

Mr Ford: I repeat the point that, in my time as Minister, some politicians have sought to interfere with policing matters, and I have resisted them. When you talk about confidence in the police, there are issues that have to be addressed by a number of agencies, not just by the Department. The Policing Board is clearly the key body for holding the [*Inaudible due to mobile phone interference.*]. The ongoing role of the ombudsman is clearly another important issue.

Mr Humphrey: Are you aware of which individuals received the letters, or any individuals who received the letters?

Mr Ford: I thought I had made it fairly clear for several weeks that I have no knowledge of the detail.

Mr Humphrey: Are you aware of whether terrorists from organisations other than the IRA have received such letters?

Mr Ford: I am unaware of any of the detail.

Mr Humphrey: Do you believe that this odious deal between the IRA and the British Government is a natural flow from the Belfast Agreement, which your party was a signatory to? It has been seen as such by some.

Mr Ford: If you look at the comparison with the Good Friday Agreement, or the Belfast Agreement, if you wish to call it that, and the sentence arrangements, there was clearly a difference between people who still had a conviction on their record but were released on licence. I appreciate that your party did not approve of the early releases, but, nonetheless, for victims, people were released on licence still holding their conviction. That seems to me to be very different from what happened in this scheme.

Mr Humphrey: Look at the Downey case in particular. Do you believe that the families of the four soldiers murdered, because of the application of double jeopardy in the Downey case, will ever see justice for the murder of their loved ones?

Mr Ford: You are now asking me to speculate on something not anywhere within my responsibility, before my time and in another jurisdiction.

Mr Humphrey: I accept that, but —

Mr Ford: It appears that, on the face of it, after that case was dismissed, unless there are others who may stand trial for those murders, those families will not see justice, as you describe it.

Mr Humphrey: Well, do you not describe it as justice being denied to them? It is not my description.

Mr Ford: Sorry, I was quoting your remark. Of course I agree with you: justice is seen when those who are guilty of crimes are found guilty in court and pay the penalty.

Mr Humphrey: Do you believe that the letters that Downey and whoever else received would, effectively, be worthless without political interference?

Mr Ford: Do you mean without prior political interference or current political interference?

Mr Humphrey: Either.

Mr Ford: The answer is that I do not know the content of the letters to know exactly what value they have. I thought that you were implying that there was prior political interference that got the letters established in the first place.

Mr Humphrey: Yes, and now there should be political interference to ensure that those letters are worthless.

Mr Ford: As I said, without knowing the detail of those letters — I understand, from what is being reported, that there are various different forms of those letters — I cannot give you an answer.

Mr McGlone: I thank the Minister. You have read my comments from the previous day with your permanent secretary. You have made reference — and, indeed, I made reference — to things that may have been lying about the shelf that could go on to be potentially embarrassing to you because you have inherited a legacy, more than anything else.

You made reference earlier to your meeting with the Secretary of State. You alluded to this briefly earlier, but I have to put the same question now: in that meeting, did she make you aware of any other schemes about the place that had immunities or implied immunities to British agents, other members of the security forces that have been involved in criminal activity, other paramilitaries or anyone else lying about the place that could come forward to shed some of the spotlight on you, your Department or officials in your Department? Did she make any reference to that?

Likewise, Mr Perry suggested that I ask whether you were aware of any further scoping exercise done by your Department, officials in your Department or anyone else acting on behalf of you or your Department to establish whether in fact there were any other loose ends such as this lying about the place that would come about to potentially be a source of political embarrassment or concern.

Mr Ford: To largely repeat what I said earlier, the Secretary of State did not volunteer whether there were any similar schemes. I specifically asked her whether there was anything else like this. She assured me that there was nothing else. I can only go on her word.

In terms of any issue of further scoping out, at the time of devolution, clearly a large number of files were transferred from the NIO to the DOJ. In some cases, files were transferred that should not have been, and, in others, files were not transferred that should have been. An obvious issue relates to things like firearms appeals: there is a difference between those on grounds of national security, which remain NIO matters, and normal firearms appeals, which are dealt with by the DOJ. There was a degree of confusion about things like that, so some sorting out had to be done. At that point, we had a discussion, and there was an FOI request as well. Nick Perry formally instructed the most senior person in the Department who had not been in the NIO to check whether there were any files relating to on-the-runs that had transferred to us. She established that it was the case that nothing was transferred on our records. That was the sole scoping exercise that we were in a position to carry out.

Mr McGlone: A scheme implies something quite formal that has been established, usually, officially. Did you ask her about, or did she make you aware of, individual activities or actions that, again, would apply to British agents, paramilitaries or members of the security forces who had been involved in criminal activity?

Mr Ford: She certainly did not find anything. The search was not looking for a scheme specifically but for anything relating to on-the-runs.

Mr McGlone: Was the conversation specifically about on-the-runs?

Mr Ford: That was the issue of concern. Given the complexities of the filing system, even though it is supposed to be computerised, I am not sure whether it would be possible to search for everything possible without reading every file the Department has. There was nothing apparent that related in any way to this or anything like it.

Mr McGlone: Do you accept that anything of that nature would be seen to dilute the fundamental principles of a justice system and the fundamental need for truth and justice for families who may have lost loved ones through this, irrespective of whether it is OTRs, some other scheme or some other action? It is imperative that the truth, justice and integrity of the political and justice system is seen to be manifest.

Mr Ford: I agree. It is necessary to get the maximum possible opportunities so that, to take up Mr Humphrey's point, where it is possible to obtain justice for victims, justice is obtained. I would say further that, perhaps on occasions, it may be possible to get people truth, if not justice.

Mr McGlone: OK. Thanks for that. Chair, with your indulgence, I ask the Minister for an update on the Desertcreat —

The Chairperson: I was going to do that, Mr McGlone, once we get through the OTRs. If you could hold it to there, we will do that, Minister, with your indulgence.

Mr McGlone: Right. That is OK; that is grand.

Mr Ford: I said that I could take two or three questions.

The Chairperson: You did.

Mr McCartney: Thank you very much for your patience, Minister. When you say that you were first made aware of this on 21 February 2014, was that as Minister of Justice? Was that the first time that you were officially made aware as Minister?

Mr Ford: Yes. I presume that I was made aware as Minister. A call came from an NIO official after the conclusion of the Downey case but before it was publicised.

Mr McCartney: From your own background, as a leader and political activist, you had no sense that there was a scheme dealing with the on-the-runs as far back as 2000?

Mr Ford: No. I had no sense of that at all.

Mr McCartney: Was there a reason why you asked for a legal opinion?

Mr Ford: It is a complex issue that potentially has ramifications for the DOJ.

Mr McCartney: Have you received it?

Mr Ford: I am sorry. You are now taking me into the issue on which I declined to answer the Chair's questions.

Mr McCartney: I am not asking you to tell us what you got or did not get; I am just asking whether you have now been briefed.

Mr Ford: I am sorry. You can smile as you ask the question, but I am still not going to answer.
[Laughter.]

Mr McCartney: I hope that my smile was not to try to make you answer.

Mr Ford: I assume that it is due to your friendly character.

Mr McCartney: I understand. The word "convention" is fine. However, convention will be pushed to the side if it suits a Minister to do so. If it suited a Minister to tell us what legal advice he had received, he would say of the convention, "It is not in statute; therefore it has no legal status."

It is a reasonable question. If you are seeking legal advice to inform yourself, it is reasonable to ask whether you have received it. I do not think that it has anything to do with convention or content.

Mr Ford: I accept that you think that it is a reasonable question. At this point, I see no reason to break the convention.

Mr McCartney: Yes, but if you ask someone for advice and come out the other end reinforced in your position, without going into what you were told, I think that it would be good to know that. Or you might respond: "No, I was mightily shocked by the advice that I got", because, as you said, you knew nothing about this until 21 February. No one in the system, even when John Downey was arrested, when it was stated publicly that he was using, as part of his abuse of process, that he had a letter, no one in the system thought to tell the Minister of Justice. No one picked it up in a daily newspaper report, put it on your desk and said: "Look, there is something that we should be asking questions about."

Mr Ford: It was not "picked up" as you describe it.

Mr McCartney: Is that a gap perhaps?

Mr Ford: The role of the Department of Justice is not to deal with cases that occur in the jurisdiction of England and Wales.

Mr McCartney: No, but you have a relationship with the Policing Board. I am sure that, at the end of every Policing Board meeting, you receive a briefing or a copy of the minutes.

Mr Ford: No. I receive a readout from officials who attend the public meetings of the Policing Board, but I do not receive the Policing Board minutes.

Mr McCartney: So, on your first day of briefing, say, 12 April 2010, which coincided with a briefing of the Policing Board to say that there was an on-the-run scheme, none of your officials thought to say: "By the way, the Policing Board has informed us this week that there is an on-the-run scheme. None of us know anything about it because we have just transferred over."

Mr Ford: I did not receive any briefing on the existence of the scheme.

Mr McCartney: Do you feel that you were badly briefed by your officials at the time? This was in the public domain at a Policing Board meeting. You have said that there is a read-across to inform you of what is going on at the Policing Board, but you were not informed of this at that time.

Mr Ford: I am not aware that the issue was at the Policing Board since devolution took place.

Mr McCartney: I think that it was at the board in April 2010, and you became Minister on 12 April. So it is pretty close. Perhaps the date was 7 April, and you took office on 12 April. So I am sure that your officials would have been mindful of what the Policing Board said at that meeting. The minutes would not have been published for about a week or two afterwards. It certainly would have been in the minutes of the next meeting, in May.

Mr Ford: Well, I was not briefed on it.

Mr McCartney: Do you accept that that is a mistake on the part of your officials? I am sure that, if something comes up in the Policing Board this month, people will bring it to your attention. I am sure that they bring some things to your attention that are not very important, but not to bring this to your attention —

Mr Ford: I think that the Department is busy enough and that I get only the important things. However, that was not brought to my attention.

Mr McCartney: And this is not important?

Mr Ford: It is clearly considered to be important now. It was not brought to my attention at the time.

Mr McCartney: Is there any legal position whereby if you feel that you are now dealing with an issue in the past and there are papers from then that you feel you should read, you can have access to such papers?

Mr Ford: In a sense, it is the point that I have just made about the letters requested by the Prison Service. In those circumstances, I would have to seek the agreement of the Northern Ireland Office to have access to their papers relating to the pre-devolution period. That is what I have done in that particular case.

Mr McCartney: And the NIO could give you them?

Mr Ford: It is for the NIO to decide whether to release them.

Mr McCartney: Has this revelation led you to consider other issues that we have dealt with as a Committee, for which perhaps information was not given to you because it was from the pre-devolution period? One such issue, in particular, is the allegation that the terms of reference for the Police Ombudsman were changed in the pre-devolution period. Your inquiry, led by Tony McCusker, said that he could not delve into those papers because they are pre-devolution. Does that leave you in a position whereby you can now answer that question? Are there papers saying that there was interference?

Mr Ford: What would be my role if there had been interference pre-devolution? The first question is whether I would have access to such papers. Secondly, what would be my role in that? My role is to try to get the arrangements right for the ombudsman at the present time rather than to delve into what happened under direct rule. The correct route for that would be through the Select Committee on Northern Ireland Affairs at Westminster.

Mr McCartney: The Justice Committee has a role in ensuring that there was no interference in appointments to a public office. We were told that it was a pre-devolution matter and is not something that we can inquire into. This —

Mr Ford: I am sorry. It is my understanding that it would have to be referred to the Select Committee.

Mr McCartney: I know that that is your understanding, but you have told us that, because of the Prison Service, you can now ask — quite rightly — that if the Prison Service —

This is one of the things that I find strange in all this. Nobody seemed to know about this, but the Prison Service seemed to be able to find out about it. Have you asked the Prison Service how it was informed about the on-the-run scheme?

Mr Ford: The issue for the Prison Service has to be that, even though the Prison Service is now part of the DOJ, it was then part of the NIO. That is why I have to find out whether the NIO will release that information to me. I believe that I only have that specific interest because the Prison Service is part of the DOJ. That is different from issues such as the ombudsman, which is an arm's-length body.

Mr McCartney: Will you be asking the Prison Service who informed it?

Mr Ford: I am asking Secretary of State to release to me the information that the Prison Service had prior to devolution to ensure that the Prison Service runs properly today. That is my role. It is a different issue because it is a part of the Department from another arm's-length body.

Mr McCartney: But, at the point of devolution, do you not think that perhaps the Prison Service could have said that it had been part of the on-the-runs scheme, and if it gets a request that it might have to — ?

Mr Ford: No. I do not think it could have, because it was, at that stage, carrying out functions on behalf of the NIO. Indeed, it still carries out some functions on behalf of the NIO to which I am not privy.

Mr McCartney: However, there would be a protocol to inform you that it is doing that.

Mr Ford: Yes, but —

Mr McCartney: If someone applies to go into the supervised wings, or if there is a recall of a licence on the grounds of British national security, the NIO does not do that in a vacuum. It informs you of that, I assume.

Mr Ford: In answer to your question about admissions to separated houses, that is done when the Prison Service updates me on the number of people whom I am managing in separated conditions. However, I have no role in that admission; I am told only after people have been admitted.

Mr McCartney: However, you are made aware of it. There is a protocol.

Mr Ford: There is a protocol, but the information that you are seeking comes under the protocol of information passing from one Minister to another as Departments and parties change.

Mr McCartney: My point is that the Prison Service was aware of it. The big claim is that nobody knew about it, but someone must have told the Prison Service, "By the way, there is a scheme here that people can apply to". The Prison Service must have informed people that it was possible to do that.

Mr Ford: The problem is that I do not know what the Prison Service's role was at the time; I am still trying to get that information.

Mr McCartney: Will you inform us of that when you receive it, where possible?

Mr Ford: My role is to keep the Committee as informed as I can of things that are my responsibility. The NIO may choose to share information on an entirely confidential basis, so I cannot give you a guarantee at this point.

Mr McCartney: Have you been in touch with or appraised of British Attorney General Dominic Grieve's view of the status of the letters?

Mr Ford: Only in so far as I have read the House of Commons Hansard report when he made a statement.

Mr McCartney: So that is the only information that you have.

Mr Ford: I have had no direct contact with the Attorney General for England and Wales.

Mr McCartney: And you have sought no meeting with the Public Prosecution Service to satisfy yourself that it did everything —

Mr Ford: No, because I have no role in the governance or oversight of the PPS.

Mr McCartney: However, to satisfy yourself so that when people ask how you feel about it, you can say that you have spoken to people and, although you might disagree with what went before, are reassured that a, b, c and d happened.

Mr Ford: No, because I have no role in the oversight of the PPS. The Assembly still has not agreed that for the Attorney General even.

Mr McCartney: Have you read the Hansard report of yesterday's NI Affairs Committee?

Mr Ford: No, I have seen only the media reports and clips.

Mr McCartney: Would it surprise you that a serving police officer, having been asked to do something that he considered illegal, unconstitutional and an attempt to prevent the course of justice, would not take appropriate action against the person who asked him to do it?

Mr Ford: You are asking me to go on the basis of media reports —

Mr McCartney: It is more than a media report.

Mr Ford: If you are asking me whether I expect that, in 2014, police officers who are concerned about somebody asking them to pervert the course of justice should do something about it, then yes.

Mr McCartney: Thank you.

Mr A Maginness: A proposition is being put abroad by political commentators and some politicians that everybody had known about the scheme for some years; that even if they did not know the specifics, they should have known that there was a scheme, because the clues were there and you could have looked at all the clues, joined them up, and, voila, you had the scheme. What is your reaction to that?

Mr Ford: I simply do not know whether, if somebody had been following up every thread of information, they might have put everything together and joined up the dots. I certainly did not have the information to enable the dots to be joined up. For example, I am informed that some information was given to the Policing Board. At the time, I was not on the Policing Board and had no party colleagues on the Policing Board. That is the issue. There may have been smatterings of information, here and there, but there was no coherent statement. In fact, the only coherent statement was made by the Secretary of State when the legislation proposed at Westminster fell, saying that there is no scheme. Working on the presumption that Ministers do not tell lies to the legislature, that seemed a fairly clear-cut statement.

Mr A Maginness: You say that you are here not just as Minister of Justice but have another hat as leader of the Alliance Party. Had you any indication from government sources, as the leader of the Alliance Party as well as Minister?

Mr Ford: I had no indication whether or not I was wearing any hat at any time.

Mr A Maginness: So the administrative scheme that was outlined came to you as a surprise.

Mr Ford: Exactly.

Mr A Maginness: Another proposition, put forward by the former Secretary of State, Peter Hain, was that although this approach to OTRs was not terribly nice or savoury, it was necessary to maintain the peace process. Have you any observation to make on that?

Mr Ford: That is the kind of issue that will be well teased out by the House of Commons Select Committee. The same individual appears to have claimed almost personal responsibility for the peace process when, as far as I am aware, he was not Secretary of State at the time of the ceasefires, the Good Friday Agreement or for some years afterwards.

Mr Dickson: This sorry tale leaves a group of people still aggrieved, bewildered and distressed. As Justice Minister, what plans do you have to deal with the legacy of the past, and how can we deliver for the bereaved who continue to suffer from that legacy and from the damage of these and other revelations?

Mr Ford: I said in my opening statement that my concern was for the bereaved and other victims who are left with this dreadful feeling. For me, it reinforces the vital need to do something to join up an approach. I am aware of the political differences in this room, and around the Executive table, about how we deal with the past. Some of the proposals made during the Haass talks for an historical inquiries unit to deal with these things in a more comprehensive and joined-up way might provide a better-measured result for the difficulties for victims of the past than what we have currently.

There is a need to get that joining up done. There are other issues that the talks were intended to address. There is a vital need to ensure that we get the best possible mechanisms, given the difficulties being seen by the Historical Enquiries Team, the legacy work of the ombudsman and the difficulties even in the number of inquests waiting. There is a need to provide something better for victims by getting a joined-up system.

The Chairperson: Just to bottom out the legal advice that you will not tell us about, can you tell us when you asked for it?

Mr Ford: I cannot give you a straight answer off the top of my head, but it was at a relatively early stage after issues became public.

The Chairperson: We do not know what questions you asked, but I assume that the most basic — whether or not this was devolved — was one of them. However, you said in a statement on 20 February:

"It is not a devolved matter".

Mr Ford: I believe that a devolved matter, in the sense that we would understand it in the Executive, the Department of Justice and the Assembly, is a matter that was transferred on 12 April 2010.

The Chairperson: You went on to say:

"and as long as I am the Minister of Justice, there will be no such scheme within the Department".

Mr Ford: I believe that I said similar words this afternoon at least once.

The Chairperson: However, if you do not have the powers, it is an easy statement to make.

Mr Ford: My understanding of the operation of the scheme was that letters were passed, at least at the final point, back to the applicants, if that is the right term, by Northern Ireland Office civil servants. What I can say is that no civil servant in the DOJ would write any such letter.

The Chairperson: But they could not write any such letter if the power does not exist. It would be illegal for them to write a letter if it has not been transferred.

Mr Ford: You appear to have identified both belt and braces, Chair.

The Chairperson: Yes, I know, but we have danced around the head of a pin to try to get to the bottom of whether or not, as Justice Minister, you believe that it is part of your justice remit and within your control to deal with on-the-runs. I am still not clear whether you are clear that you have that power. Do you have responsibility for dealing with on-the-runs?

Mr Ford: It is unsurprising that you are not clear, given that the Secretary of State has said, "This is devolved. No, actually, it is not. Well, we devolved it in 2012, but we didn't tell anybody at the time", and a variety of other confusing bits of information. What is clear to me is that, regardless of whether or not there is power, there will be no such scheme in the devolved sphere while I am Minister of Justice.

The Chairperson: It is important to establish whether the power is with you. When did that power reside with you? What was the mechanism for that power to reside with you?

Mr Ford: I believe that it could have resided with me only had it been transferred to me; clearly it was not.

The Chairperson: That still does not tell me. You say that there will be no scheme, but, again, of course you will say that if you do not have the power, but if you need to say it, I assume that you have the power, but you are making it clear that there will not be such a scheme under your watch.

Mr Ford: I do not believe that I have the power, but, if I do, I most certainly will not be using it. Does that satisfy you?

The Chairperson: That is a bit more clear. Do you feel that the Public Prosecution Service and the PSNI — both of which have been devolved, and, as you rightly point out, the PPS is somewhat a law unto itself — could be continuing with the scheme without having to report to you as Minister of Justice?

Mr Ford: The Public Prosecution Service does not report to me, and the PSNI does not report to me on operational issues.

The Chairperson: So they could be continuing with the scheme, but we do not know, ultimately, who signs off on it, because you will not do it as Minister and Theresa Villiers will not do it as Secretary of State. However, there seems to be a cosy relationship with the English Attorney General, who had oversight of what the PPS in Northern Ireland was doing. How can we be sure that the scheme has ended, except for having to take the word of a Secretary of State who never told us about it in the first place?

Mr Ford: That is a very good question, but I fear that you may need to ask the Secretary of State.

The Chairperson: OK. Minister, I appreciate your speaking to us on that. We will deal briefly with Desertcreat. We have a detailed letter from you, and thank you for that, that covers historical issues. My main concern — I seek your assurance on this — is that the programme board, which has been responsible for overseeing it, has changed, certainly from those who were at the last meeting. None of the officials at our last meeting was there previously, so it seems that you have a whole new team on the programme board, because Judith Gillespie has now gone and Alistair Finlay is here, but the other officials have also changed from the relevant Departments. What assessment have you made of the current programme board to make sure that the project is delivered and that we have no more failures?

Mr Ford: It is not my job to assess the programme board in that sense. I spoke to Alistair Finlay earlier today. It was the first opportunity that I had to catch up with him since the programme board meeting on Monday 31 March. He certainly appears to have taken a firm hand to move forward from the difficult position that we are in. Ultimately, of course, whatever the programme board decides will have to be signed off by the Minister of Health, Social Services and Public Safety and me and then by the Executive. There is a reasonably detailed understanding in both Departments now of the necessity to get the scheme right and to ensure that we make the plans for the college at Desertcreat succeed.

The Chairperson: With regard to the failure, which the programme board has laid firmly at the doorstep of the design team, Perkins and Will, has a decision been taken yet to pursue damages from that firm through the courts?

Mr Ford: It is not our action, so I cannot be 100% sure, but my understanding is that a decision has been taken to seek damages. As I say, that is my understanding; I cannot make an absolute statement.

Mr McGlone: Thanks very much indeed. I read your letter, Minister. It is good to see a strategy emerge. There has been a lot of reaction to this. The meet-the-buyer event in Cookstown raised huge expectations, only for people to be dropped in it by that firm. I do not know what sort of cynical exercise they were engaged in, but it damaged the project's credibility and the credibility of those who expected to see the project go through. However, despite all the negativity, I am sure that you see the necessity for the project to go ahead as soon as possible. As your Department is one of the funding Departments, can you assure us of a departmental commitment to see the project finished and on site at Desertcreat, please?

Mr Ford: The commitment is certainly there on the part of the Department of Justice. We have been committed to the project on behalf of both the Prison Service and the Police Service — an arm's-length body that has required decent training facilities for many years. Well, sorry, our predecessors were committed for many years, and we have been committed since April 2010. There is a need, and Desertcreat has been identified as the appropriate site. The issue now is to ensure that we get world-class training in a fit-for-purpose facility, which might be slightly less grand than what was originally planned, but which represents value for money for the taxpayer in difficult times, and, at the same time, provides value for the three services.

Mr McGlone: Is it the Department's view that the scheme should start as soon as possible in this calendar year?

Mr Ford: We need to be realistic about the timescale, and I set out something of the timescale in the letter. There is a couple of months' work in just looking at what the exact needs are. We have the select list of five firms or consortia that were through in the first place; it will be an opportunity for each of them to tender for the reduced contract. I hope that it would take a shorter time than otherwise anticipated, given that much of it will relate to work for which they have already done the pricing. We will move it as fast as we can.

Mr McGlone: Why are Fomento de Construcciones y Contratas (FCC) and Gilbert Ash being allowed — or invited, I should say — to retender, given that they got it so badly wrong and have essentially brought us to the present mess? Some of the crazy stuff that we were hearing about them quoting prices on 19 December 2013, and then coming back within nine or 10 weeks to say that their prices had gone up by 24% because they said that they were testing the suppliers and subcontractors. At the same time, those suppliers and subcontractors were telling people like me that they or the firms — or people, I should say — acting on their behalf were back round the market again telling them, "We have had your quote. Now, give us your other quote" — a lesser quote, in other words. They were out there driving the market down and, at the same time, coming back in and telling the project management board that prices were up 24%. Given the damaged credibility of that consortium in doing what it did and dashing people's hopes, I really do not understand the logic of their being re-invited, potentially, to make a mess of things, as they have done previously.

Mr Ford: I hear what you say. I cannot comment on the detail of what you say local potential suppliers are saying. My understanding is that, because a select list of five was established, it remains in play. Clearly, there will be issues to ensure that tenders are realistic —

Mr McGlone: And that they are credible.

Mr Ford: Realistic, credible and stuck to.

Mr McGlone: Yes. OK. Thanks for that, Minister.

Mr McCartney: Thank you very much. I was going to ask whether you got legal advice on this, but I know from the smile on your face that I would not get anywhere.

The last briefing that we got as part of this was comprehensive. I am not saying that you could predict this, but it was certainly one of the outcomes that were graphically spelt out. As part of the reappraisal, will the procurement process be examined to see how the mistakes — if there were mistakes — impacted on the over-projection of the budget?

Mr Ford: I think that the programme board is well under way on that.

Mr McCartney: OK. Thank you.

The Chairperson: There are no other questions. Minister, thank you for coming to the Committee. It is much appreciated.