

CHAPTER 3: THE “BATTLE OF DANNY BOY”

1. Relevance of the Battle to the Terms of Reference

- 2.102** I am in no doubt that the Inquiry’s terms of reference require me to consider what happened during the ambush of British troops on 14 May 2004 by Iraqi insurgents and the resulting engagement known popularly as the “Battle of Danny Boy”.¹⁶⁶ However, it is equally clear that consideration of the battle is not without limit. In fact, the purpose for which a factual review of what happened during the battle – in particular insofar as the first part of the terms of reference is concerned (the allegation of unlawful killing at Camp Abu Naji) – is a relatively narrow one.
- 2.103** As indicated above, the original and central allegation is to the effect that 20 (or more) Iraqi citizens were unlawfully killed at Camp Abu Naji, following their capture and detention during the battle. As I have already observed,¹⁶⁷ the British military has always maintained that the Iraqis in question did not die at Camp Abu Naji, but had been killed in the course of the battle and their dead bodies taken back to the camp that evening for identification purposes, before being handed back to the Iraqi civilian authorities the following morning. That claim was disputed and remained so throughout the hearing of the evidence, until the concession made by the Iraqi Core Participants at the effective completion of the oral evidence on 20 March 2014 to which I have already referred.¹⁶⁸ The Inquiry therefore heard and considered a very substantial body of evidence that concerned issues relating to whether any or all of the deceased Iraqis had been killed in the course of the battle, or whether they were or could have been killed thereafter at Camp Abu Naji.
- 2.104** Notwithstanding the concession made by the Iraqi Core Participants on 20 March 2014 (Day 167 of the oral hearings),¹⁶⁹ I am satisfied that it remains both necessary and important that I set out my findings of fact and conclusions with regard to the questions raised in Issues 1-18 and 26-51 of the Inquiry’s List of Issues in some detail – those being the relevant issues. That will necessitate a review of the events of the Battle of Danny Boy.
- 2.105** As I have already observed,¹⁷⁰ what is important to the Inquiry’s discharge of its terms of reference and to its answers to the questions identified in the previous paragraph is whether any of the Iraqis in question were killed in the course of the battle before their dead bodies arrived at Camp Abu Naji and not whether their killing in the course of the battle was justified (or whether there was proper command and control of the soldiers that used force on the battlefield).
- 2.106** With that in mind, this part of the Report sets out a factual overview of the main events of the battle, to the extent that those events shed light on the timing and circumstances of the death of any of the Iraqis whose dead bodies were present at Camp Abu Naji on the evening and night of 14 May 2004, before being handed over to the Iraqi civilian authorities on 15 May 2004.

¹⁶⁶ As indicated at the outset of this Report (Part 1, Chapter 1, paragraph 1.2), the name is derived from the military code name for the permanent vehicle checkpoint, in the general vicinity of which the ambush of British troops and the resulting battle took place on 14 May 2004

¹⁶⁷ See Part 1, Chapter 1, paragraphs 1.3-1.4

¹⁶⁸ See Part 2, Chapter 1, paragraphs 2.6-2.10

¹⁶⁹ See Part 2, Chapter 1, paragraphs 2.6-2.10

¹⁷⁰ See Part 1, Chapter 2, paragraph 1.7

2.107 It soon became clear from the evidence that the general situation that prevailed in Al Majar al’Kabir on the morning of 14 May 2004 formed an important part of the background circumstances leading to the armed ambush of British forces on 14 May 2004, which then developed into the Battle of Danny Boy.

2. The general situation in Al Majar al’Kabir on 14 May 2004

2.108 In the days prior to 14 May 2004, US forces had been engaged in heavy fighting with insurgents loyal to the cleric Moqtada al-Sadr in the city of Al Najaf. This particular group of insurgents largely consisted of an organised and well-armed militia that invariably dressed mainly in black and was popularly known as “the Mahdi Army”. Al Najaf is located approximately 100 miles south of Baghdad. The city is home to the Imam Ali Mosque (and the Imam Ali shrine) which is considered one of Islam’s holiest places, particularly to Shi’ites, the Muslim sect that is predominant in Al Majar al’Kabir and the surrounding area. It appears that, at some stage during 13-14 May 2004, the dome of the Imam Ali Mosque was damaged in the course of that fighting.

The spreading of news of the damage to the Imam Ali Mosque

2.109 News of the unfolding events in Al Najaf spread quickly by way of television news reports and word of mouth. Initial broadcasts of the fighting in Al Najaf were aired on the evening of 13 May 2004.¹⁷¹ It is apparent that by the following day (i.e. 14 May 2004) television channels were continuing to follow the events in Al Najaf from as early as 07:00 hours¹⁷² or 08:00 hours.¹⁷³ At some point during the morning of 14 May 2004, news of the damage to the Imam Ali Mosque was televised. The news was typically interpreted by Iraqi witnesses to the Inquiry as constituting a report of an “*attack*” by US forces on the holy site.¹⁷⁴ Al Jazeera, Al Arabiya, Al Hurra Iraq, the BBC and Reuters were all identified in evidence as television channels that covered this breaking news story.¹⁷⁵ The extent of the coverage was reflected in the evidence of Mohammed Majid Mohammed Salih Al-Jafar (witness 134), when he said: “*The news of Najaf was spreading quickly and more and more TV channels were covering the events.*”¹⁷⁶

2.110 I am satisfied that a great many of the residents of Al Majar al’Kabir, including many of those who gave evidence to this Inquiry, learned of the damage to the dome of the Imam Ali Mosque through these broadcasts on 13-14 May 2004. I accept that a number of witnesses may not have watched these broadcasts; indeed some witnesses gave evidence that they did not have access to a television on that morning or simply did not watch television.¹⁷⁷ Generally speaking, however, it is perfectly clear that the news of the damage to the Imam

¹⁷¹ Luay Mohammed Zayir Al-Noori (witness 108) (ASI008553) [12]–[13]; [49/6/18-20]; NB – news was reported on 13 May of American troops fighting in Al Najaf. Luay Al-Noori stated that at 12:15 hours on 14 May, news was reported that the tomb of Imam Ali itself had been hit; (ASI008555) [21]. The timing of this report may explain why other witnesses, such as Ali Jaseeb Ghazi Al Muhammadawi (witness 65) (ASI007919) [22] and Mohammed Majid Mohammed Salih Al-Jafar (witness 134) (ASI008752) [10] recalled that the attack on the Imam Ali shrine was prior to 14th May 2004

¹⁷² Luay Mohammed Zayir Al-Noori (witness 108) (ASI008553) [14]–[15]

¹⁷³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/97/21]–[98/4]

¹⁷⁴ The word “*attack*” was used almost universally in the evidence of the Iraqi witnesses

¹⁷⁵ Naji Radhi Kahyoush Shazar Al-Grawi (read witness) (witness 39) states that he heard about the news on a Lebanese news channel (ASI006422-23) [9]

¹⁷⁶ Mohammed Majid Mohammed Salih Al-Jafar (witness 134) (ASI008752) [13]

¹⁷⁷ Bushra Saker Kathem (witness 26) [43/14/24-25]; Wisam Michael Kareem Al-Sweady (witness 183) [41/32/4-11]; Taghreed Abdel-Wahid Idan (witness 21) [28/61/24-25]; Zahra Resan Muhsin (witness 52) (ASI007874) [24]; Adil Khaz’al Jabratallah Al-Helfi (witness 141) [27/92/19-24]

Ali Mosque became the subject of considerable talk and discussion among the vast majority of the residents of Al Majar al’Kabir on the morning of 14 May 2004 and thereafter.¹⁷⁸

- 2.111** The rapid dissemination of the news in Al Majar al’Kabir and the widespread nature of the resulting talk and discussions were very apparent from the comments of a number of witnesses who gave evidence to the Inquiry. Thus, Mohammed Majid Mohammed Salih Al-Jafar (witness 134) stated: *“It was breaking news wherever you went and was a hot debate; people were talking about it everywhere.”*¹⁷⁹ This sentiment was echoed by Adel Saleh Majeed Al-Shawi (witness 81) who referred to it as *“...the talk of the hour.”*¹⁸⁰
- 2.112** The evidence given by two witnesses who were in Al Majar al’Kabir town centre on 14 May 2004 was particularly noteworthy. When asked what his response would be to the suggestion that somebody who lived in Al Majar al’Kabir at the time had not heard any mention of the attack on the Imam Ali Mosque on 14 May 2004, Ahmed Abbas Makhfe Al-Fartoosi (witness 91) replied: *“Either he went on the streets and heard about it, or on TV. No one didn’t know about it.”*¹⁸¹
- 2.113** When asked a similar question, Aqueel Abdul Abbas Jamol (witness 93) stated that: *“Everyone knew about it because even people who did not know about it and went about the street, they would have asked questions about people clustering and gathering. So everyone. Except for rare cases.”*¹⁸²
- 2.114** I have therefore come to the firm conclusion that, by a combination of television reporting and the passing of information by word of mouth, the vast majority of the population of Al Majar al’Kabir had learned, by late morning on 14 May 2004, that the Imam Ali Mosque in Al Najaf had been damaged and that the belief was that this was the result of the mosque having been attacked by the US military. That morning, it was very much the topic of the moment, almost to the exclusion of everything else. Thus, more or less everybody who was active and up and about in Al Majar al’Kabir that morning became fully aware of the shocking news concerning the apparent desecration of this very holy place.

Reaction to the news from Al Najaf

- 2.115** In my view, there was clear and compelling evidence about the extremely hostile reaction of the local population in Al Majar al’Kabir to the news about the damage to the Imam Ali Mosque in Al Najaf. People on the streets in Al Majar al’Kabir on 14 May 2004 were said to be *“really emotional. They were surprised. They were astonished.”*¹⁸³ Equally, they were noted as being *“very angry and very upset.”*¹⁸⁴ A significant number of the witnesses described the resulting widespread anger among the local community that morning in reaction to the damage to the mosque.¹⁸⁵
- 2.116** At the heart of that reaction was the deep reverence felt by all members of the local community towards the Imam Ali and a profound sense of grievance that his shrine had been threatened

¹⁷⁸ Salim Adday Mohaisen Al-Baidhani (witness 157) [46/82-84]; Hatem Abud Abed Hassan (witness 92) [24/83/5-10]

¹⁷⁹ Mohammed Majid Mohammed Salih Al-Jafar (witness 134) (ASI008752) [10]

¹⁸⁰ Adel Saleh Majeed Al-Shawi (witness 81) (PIL000199) [18]

¹⁸¹ Ahmed Abbas Makhfe Al-Fartoosi (witness 91) [40/30/19-20]

¹⁸² Aqueel Abdul Abbas Jamol (witness 93) [51/43/20-23]

¹⁸³ Oudah Rashak Zora Al-Elayawi (witness 101) [52/78/11-12]

¹⁸⁴ Aqueel Abdul Abbas Jamol (witness 93) [51/9/24]

¹⁸⁵ Jafar Nasser Hussain Al Bahadli (witness 82) [25/38-39]; Aqeel Abdul Abbas Jamol (witness 93) [51/8-9]; (ASI008466) [16]; Hatem Abud Abed Hassan (witness 92) [24/89]; [24/94]; Mohammed Majid Mohammed Salih Al-Jafar (witness 134) [47/57]; Oudah Rashak Zora Al-Elayawi (witness 101) [52/79]; Adel Saleh Majeed Al-Shawi (witness 81) [53/51/17-21]

and apparently desecrated by the fighting. These feelings were eloquently expressed in the evidence of Nasser Ali Husain Ali-Doughaan (witness 77), which I am sure encapsulated the views of most of Al Majar al’Kabir’s residents at the time, as follows:

*“We are Shia. We are Shia. We like the family of the Prophet, all of the twelve imams, and because I love Imam Ali I had this tattoo before 1976. It has been now more than 35 years that I have this tattoo. And we always called the name of Imam Ali, even when a mother is delivering she would call his name... Each person would have a tattoo for Imam Ali... because we call their names and we call for their intercession in the eternal life.”*¹⁸⁶

2.117 Many other Inquiry witnesses attested to the importance of Imam Ali to Shi’ite Muslims¹⁸⁷ and some recalled their own powerful emotional reaction to the news about the events at Al Najaf.¹⁸⁸

2.118 I am satisfied from the evidence that I heard that news of the damage to the Imam Ali Mosque provoked very considerable anger and outrage in the community in Al Majar al’Kabir. Whilst I note Khuder Karim Ashour Al-Sweady’s (witness 1) observation¹⁸⁹ that Al Najaf was some distance from Al Majar al’Kabir, this does not alter my view that the local community in the town would have taken considerable interest in the events in Al Najaf and would have been greatly angered by the damage to the Imam Ali Mosque and the apparent desecration of this very holy site. As one witness, Ahmed Abbas Makhfe Al-Fartoosi (witness 91) stated, people reacted to the news because of *“the value of the Imam Ali for the people...because people love the Imam Ali and the dome was hit.”*¹⁹⁰

2.119 The close link with Al Najaf and its profound spiritual importance to the local community of Al Majar al’Kabir and the surrounding area is further illustrated by the fact that each of the young men killed in the events with which the Inquiry is concerned was taken to Al Najaf to be buried.

2.120 I also heard evidence from a number of witnesses who were working in Al Majar al’Kabir on 14 May 2004 and who described seeing considerable unrest in the town arising from prevalent feelings of anger and outrage at the recent events in Al Najaf. A detailed and, in my view credible, account of this unrest was provided by Luay Mohammed Zayir Al-Noori (witness 108). Luay Al-Noori worked in a photographic studio located on the main road through Al Majar al’Kabir. He told me that, whilst on his way to work that morning, he noticed that the streets were busier than usual and that he overheard people discussing the events in Al Najaf. He described how he left his work, saw that a significant crowd had gathered and then joined a spontaneous demonstration against the events in Al Najaf. It was Luay Al-Noori’s evidence that between 1,000 and 3,000 people took part in the demonstration. Luay Al-Noori stated that the demonstrators set off in the direction of Al Suaida square, with the intention of blocking Route 6.¹⁹¹ Al Suaida square appears to be a description of the area around the

¹⁸⁶ Nasser Ali Husain Ali-Doughaan (witness 77) [38/84/3-14]

¹⁸⁷ See, for example, Mohammed Majid Mohammed Salih Al-Jafar (witness 134) who stated that “people [were] upset with what happened. Considering that Imam Ali is a very precious person, a very precious man for the Shi’ite, and in terms of sacredness, in terms of importance and holiness, he comes second after the Prophet Muhammed.” [47/57/10-14]

¹⁸⁸ Hatem Abud Abed Hassan (witness 92) [24/108]; Luay Mohammed Zayir Al-Noori (witness 108) [49/79/20-23]

¹⁸⁹ Khuder Karim Ashour Al-Sweady (witness 1) (PIL000624) [24]

¹⁹⁰ Ahmed Abbas Makhfe Al-Fartoosi (witness 91) [40/32/9-25]

¹⁹¹ Luay Mohammed Zayir Al-Noori (witness 108) (ASI008555-56) [22]–[24]; [49/13-14]

junction between the road from Al Majar al’Kabir and Route 6, which was also the location of the permanent vehicle checkpoint (“VCP”) known among the military as “Danny Boy”.¹⁹²

2.121 Luay Al-Noori’s (witness 108) evidence of the unrest in Al Majar al’Kabir is broadly supported by a group of witnesses who described what they saw whilst working at Al Majar al’Kabir hospital on 14 May 2004¹⁹³ or nearby.¹⁹⁴ With the exception of one witness,¹⁹⁵ all of those who stated that they saw members of the demonstration march to Al Suaida square, considered the common aim of the march to be to block Route 6.¹⁹⁶

A “Call to Arms”

2.122 Evidence given to the Inquiry by both Iraqi and military witnesses suggests that the subject of the events in Al Najaf was raised during Friday prayers at the mosque in Al Majar al’Kabir on the morning of 14 May 2004. No witness to the Inquiry gave evidence that he or she had actually attended prayers at the mosque on that occasion. However, both Salim Adday Mohaisen Al-Baidhani (witness 157)¹⁹⁷ and Adel Saleh Majeed Al-Shawi (witness 81)¹⁹⁸ gave evidence of conversations that they had had with people who had attended Friday prayers in the Al Majar al’Kabir mosque that morning. Both reported having been told that the subject of the events in Al Najaf had been raised at Friday prayers. In his statement for the judicial review proceedings (MOD022532),¹⁹⁹ Lieutenant Colonel Matthew Maer, the Commanding Officer of 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”) at the relevant time, stated: *“That morning the Imam of Majar al-Kabir... stated during prayers at the Sadr mosque that the Imam Ali Mosque in Najaf had been attacked. I think he, or the media, said that it had been bombed by the US.”*

2.123 Some military witnesses, as well as some documents produced by the military,²⁰⁰ went further, suggesting that the Imam had incited a violent response to the events in Al Najaf. The military accounts generally described the events at the mosque in Al Majar al’Kabir that morning as a *“Call to Arms”*. Thus, Lieutenant Colonel Maer’s Judicial Review statement continued as follows: *“The Imam called for the young men of Majar al-Kabir to take up arms and attack Coalition Forces.”*²⁰¹

2.124 Iraqi witnesses, in their evidence to the Inquiry, consistently denied any awareness of a *“Call to Arms”* from the Al Majar al’Kabir mosque. One witness, Abdel Amir Ja’fer Sorwat Al Asma’a’ili (witness 57) described the suggestion that a *“Call to Arms”* had been given by the mosque as *“highly unbelievable”* and stated that to do such a thing would be *“totally against Muslim law and way [sic] of behaving.”*²⁰²

¹⁹² Luay Mohammed Zayir Al-Noori (witness 108) exhibited a photograph of Al Suaida square as LMZA/1 (ASI009004) which is clearly the same location as the Danny Boy checkpoint

¹⁹³ Jafar Nasser Hussain Al Bahadli (witness 82) [25/38-39]; [25/50]; Salim Adday Mohaisen Al-Baidhani (witness 157) [46/86-88]; Hatem Abud Abed Hassan (witness 92) [24/82-83]; Aqueel Abdul Abbas Jamol (witness 93) [51/10-11]; Adel Saleh Majeed Al-Shawi (witness 81) [53/51-53]

¹⁹⁴ Mohammed Majid Mohammed Salih Al-Jafar (witness 134) [47/57-61]

¹⁹⁵ Adel Saleh Majeed Al-Shawi (witness 81) [53/52/20-23]

¹⁹⁶ Luay Mohammed Zayir Al-Noori (witness 108) (ASI008556) [27]; [49/16/7]-[17/5]; Mohammed Majid Mohammed Salih Al-Jafar (witness 134) (ASI008753) [16]; Salim Adday Mohaisen Al-Baidhani (witness 157) [46/87]; Aqueel Abdul Abbas Jamol (witness 93) [51/10/13-21]

¹⁹⁷ Salim Adday Mohaisen Al-Baidhani (witness 157) [46/84/1-10]

¹⁹⁸ Adel Saleh Majeed Al-Shawi (witness 81) [53/82/19-23]

¹⁹⁹ Lieutenant Colonel Maer (ASI023591) [20]

²⁰⁰ (MOD048094)

²⁰¹ Lieutenant Colonel Maer (MOD022532) [10]

²⁰² Abdel Amir Ja’fer Sorwat Al Asma’a’ili (witness 57) (ASI007885) [20]; NB – this witness was not called to give oral evidence

2.125 The Inquiry also heard evidence regarding Friday prayers conducted on 14 May 2004 in the Office of the Martyr Al Sayyid Al Sadr (“the OMS”) in Al Amarah, which was known to have links with the Mahdi Army.²⁰³ A detailed account of those prayers can be found in a UK-specific Intelligence summary, originating from within Multi-National Division (South-East) (“MND(SE)”)²⁰⁴ dated 16 May 2004. This document reported that:

*“On 14 May 04, Friday Prayers were given from the Office of the Martyr SADR (OMS) in AL ’AMARAH, MAYSAN Province by Farkhar AL-QUZINI, an envoy from the OMS in AL NAJAF. AL-QUZINI instructed the large crowd that Iraqi Police Service (IPS) personnel working with British patrols would also be targets of anti-CF attacks.”*²⁰⁵

2.126 I also heard evidence that some residents of Al Majar al’Kabir may have travelled to Friday prayers in Al Amarah on 14 May 2004. Thus, Abdel Amir Ja’afer Sorwat Al Asma’ailli (witness 57) gave the following evidence about the actions of his son Atheer Abdelameer Ja’far Sarout Al-Shweili (deceased 19) that morning: *“He left to go and pray at the Mosque in Al Amarah. Friday is a special day of prayer so those who can travel to the Mosque in Al Amarah do so.”*²⁰⁶

2.127 Another young man killed in the engagement on 14 May 2004, Ali Mawat Muhammad Ghudheib Al-Mozani (deceased 8), also appears to have attended Friday prayers at the mosque in Al Amarah. This suggestion appears in the written evidence of Hazeem Kareem Jasem (witness 128)²⁰⁷ and Sami Ibrahim Al-Lami (witness 132).²⁰⁸ The former witness attended the Friday Prayers in Al Amarah with the late (referenced as Alawi) Ali Al-Mozani. He described them as following a standard pattern with a political speech followed by a religious speech. I note that Hazeem Jasem’s evidence was that he could not recall any mention being made of the attack on the Imam Ali Mosque during these Friday prayers or speeches. However, I do not consider it plausible that such an extremely important event would have been overlooked in the political speech that took place that day.

2.128 Having regard to all the evidence I have heard, seen and read I have come to the firm conclusion that, whether or not it is appropriate to describe it as a “Call to Arms”, on the morning of 14 May 2004 a number of individuals hostile to Coalition forces did incite a violent response to the events in Al Najaf. In my view, it is very likely that this incitement to violence against the Coalition forces took place that morning during Friday prayers at one or all of the following main locations, the mosque in Al Majar al’Kabir, the OMS in Al Amarah and the mosque in Al Amarah.

The response to the “Call to Arms”

2.129 A number of witnesses to the Inquiry gave evidence about how events unfolded in Al Majar al’Kabir on 14 May 2004. In my view, their evidence clearly showed that, for many people in Al Majar al’Kabir that morning, the response to the news from Al Najaf went far beyond feelings of anger and a mere intention to carry out an appropriate peaceful demonstration in protest at what had happened.

2.130 Luay Mohammed Zayir Al-Noori (witness 108), although claiming to be unarmed himself, stated that he saw people carrying Kalashnikovs among the demonstrators whom he saw

²⁰³ See, for example, Khuder Karim Ashour Al-Sweady (witness 1) (PIL001347) [7]

²⁰⁴ (MND(SE)) was a British commanded military division responsible for security in the south-east of Iraq from 2003-2009

²⁰⁵ (MOD043234)

²⁰⁶ Abdel Amir Ja’afer Sorwat Al Asma’ailli (witness 57) (ASI007885) [22]

²⁰⁷ Hazeem Kareem Jasem (witness 128) (ASI008679) [11]

²⁰⁸ Sami Ibrahim Al-Lami (witness 132) (ASI010581) [21]–[23]

protesting against the events in Al Najaf.²⁰⁹ He also described a change in the atmosphere, or at least in his perception of the atmosphere, after he joined the demonstration. Luay Al-Noori described hearing references to “*sacrifice*” in chants²¹⁰ and demonstrators reciting the “*Shahad*” otherwise known as the “prayer on the martyrs” (‘martyr’s prayer’).²¹¹ From this, Luay Al-Noori understandably inferred that some demonstrators were anticipating imminent death and so he justifiably feared that serious violence might result if the demonstrators were to encounter British troops. Word also appears to have reached the demonstrators that British troops were in the process of leaving Camp Abu Naji and that they were heading towards the demonstration. In light of the concerns which Luay Al-Noori had by this time, he and a number of others left the area. However, others remained.²¹²

2.131 Luay Al-Noori (witness 108) described those who remained as willing to “*sacrifice themselves for the Imam.*”²¹³ According to Luay Al-Noori, the remaining “*demonstrators*” numbered approximately 100 and some were armed with Kalashnikov rifles and wearing chest rigs or webbing. Luay Al-Noori said that some of those who remained were wearing black, either to show their membership of the Mahdi Army or as part of their commemoration of the events in Al Najaf. Luay Al-Noori also described seeing Ali Mawat Muhammad Ghudheib Al-Mozani (deceased 8) at the demonstration, armed with a Kalashnikov. Ali Al-Mozani was thus identified by Luay Al-Noori as being among the group who remained and who were willing to sacrifice themselves for the Imam Ali.

2.132 Other witnesses to the Inquiry confirmed that they had seen men, in or around Al Majar al’Kabir that morning, armed with rifles.²¹⁴ Although these witnesses suggested that the carrying of such weapons was perfectly normal in that part of Iraq at the time,²¹⁵ there was evidence that the armed men on 14 May were acting in an unusual manner.²¹⁶ Some witnesses had also learned that the armed men were going to confront the British forces²¹⁷ and accepted that it was possible that the armed men were intending to set up an ambush.²¹⁸

2.133 I am not persuaded by the suggestion²¹⁹ that any attack in reaction to the events in Al Najaf would have been directed solely against American, as opposed to British, troops. In my view, it was perfectly clear from the evidence that I heard that the serious unrest in Al Majar al’Kabir on 14 May 2004 was directly linked to the course of events in Al Najaf and the apparent desecration of the holy shrine. Furthermore, a number of witnesses to the Inquiry gave direct evidence that, in the minds of many, the distinction between British and American forces was unclear²²⁰ and that any reaction was likely to have been against the occupying forces (i.e. the Coalition forces) in general.²²¹

²⁰⁹ Luay Mohammed Zayir Al-Noori (witness 108) [49/17]

²¹⁰ Luay Mohammed Zayir Al-Noori (witness 108) [49/16/19-22]

²¹¹ Luay Mohammed Zayir Al-Noori (witness 108) [49/80-82]

²¹² Luay Mohammed Zayir Al-Noori (witness 108) [49/19-20]

²¹³ Luay Mohammed Zayir Al-Noori (witness 108) (ASI008558) [34]; [49/20]

²¹⁴ Aqueel Abdul Abbas Jamol (witness 93) (ASI008467) [20]; Jafar Nasser Hussain Al Bahadli (witness 82) [25/38]; Hatem Abud Abed Hassan (witness 92) [24/82-83]

²¹⁵ See, for example, Aqueel Abdul Abbas Jamol (witness 93) [51/10-11]; Hatem Abud Abed Hassan (witness 92) [25/23/18-19]

²¹⁶ Jafar Nasser Hussain Al Bahadli (witness 82) [25/51/11-21]

²¹⁷ Luay Mohammed Zayir Al-Noori (witness 108) [49/83/4-11]; Hatem Abud Abed Hassan (witness 92) [24/83/1-10]

²¹⁸ Hatem Abud Abed Hassan (witness 92) [24/95/6-8]

²¹⁹ Kamil Mowat Mohammed Al-Mozani (witness 30) [30/79/2-20]; Khuder Karim Ashour Al-Sweady (witness 1) (PIL000624) [24]; Oudah Rashak Zora Al-Elayawi (witness 101) [52/81/25]-[82/8]

²²⁰ See, for example, Aqueel Abdul Abbas Jamol (witness 93) [51/8/4-18]; Ahmed Abbas Makhfe Al-Fartoosi (witness 91) [40/30/21]-[31/3]

²²¹ Jafar Nasser Hussain Al Bahadli (witness 82) [25/92/21]-[93/8]

- 2.134** I am therefore satisfied from the evidence which I have heard, read and seen that, by early afternoon on 14 May 2004, various individuals within Al Majar al’Kabir and/or Al Amarah had incited a significant armed response to the recent events in Al Najaf. I am also satisfied that a large number of the community had taken to the streets of Al Majar al’Kabir in order to protest about the same events. The extent to which the ensuing demonstration was a direct response to the incitement or was a spontaneous expression of disquiet is, of course, unclear. However, it seems to me to be likely that some people in Al Majar al’Kabir joined the demonstration with the peaceful objective of obstructing Route 6 by way of protest. It is possible that this was the predominant purpose of many, if not most, of those who joined the demonstration.
- 2.135** Inevitably, given the confused and confusing nature of the general situation at the time, there was a certain amount of conflicting evidence in relation to the size and constitution of the demonstration, and the precise location of those men who were seen to be armed. Nonetheless, I am satisfied that a significant number of those who attended the demonstration did go on to play an active part in the ambush of British forces on Route 6 later that day. I consider it to be highly probable that these individuals proceeded to join up with the various groups of armed men, many if not most of whom were members of the Mahdi Army, who undoubtedly left Al Majar al’Kabir throughout the afternoon of the 14 May 2004, whilst the demonstration was occurring, and who had planned and were intending to carry out such an ambush.
- 2.136** I am entirely satisfied that collectively these armed men (both those who left Al Majar al’Kabir with the sole intention of attacking British forces, and those who joined them from the demonstration) then proceeded to launch the armed ambush at various points along Route 6 which precipitated the fiercely contested and bloody engagement known as the Battle of Danny Boy.
- 2.137** From all the evidence I have heard, read and seen, I am also satisfied that amongst those armed men were the 28 Iraqi men who were killed in the fighting and whose details appear in Figure 1 above.²²² Also amongst the armed men were the nine detainees, who were later captured and detained by British troops at various locations on the battlefield. Furthermore, I am satisfied from all the evidence that it is very likely that the nine detainees took part in the ambush and the resulting battle as actual members or volunteer supporters of the Mahdi Army. It is convenient at this stage in the Report to state briefly my reasons for having come to that important conclusion.

The role of the nine Iraqi detainees in general

- 2.138** Each of the nine Iraqi detainees with whom this Inquiry is concerned was captured during the course of the Battle of Danny Boy on 14 May 2004. Each of the nine detainees came from Al Majar al’Kabir. Each was captured by British troops on the battlefield. I shall deal in more detail with the circumstances relating to the capture and detention of each detainee later in this Report. At this stage it suffices to say that each sought to give an innocent explanation for his admitted presence in the vicinity of the ambush on Route 6 on 14 May 2004. In summary, eight of the detainees claimed to have gone to the area in order to graze livestock or to engage in other forms of agricultural activity.²²³ The remaining detainee, Hussein Fadhil Abbas

²²² See Part 2, Chapter 1, paragraph 2.21; i.e. all except Ahmed Kareem Al-Garry (ASI 24) and Mowafaq Abdulzahra Alijouhi Aluboudi (ASI 26)

²²³ Further detail of each detainee’s explanation is given later in this Report when dealing with the circumstances of their respective capture and detention by British troops

Al-Behadili (detainee 778), claimed to have been in the area of the ambush in order to buy about 40 litres of yoghurt for a neighbour’s wedding (MOD006692).²²⁴

2.139 However, I have come to the firm conclusion that the explanation offered by each of the nine detainees for his presence at the scene of the battle was false and that each told deliberate lies when putting forward such an explanation in both his written accounts and his oral evidence.

2.140 Having regard to the evidence I have heard, read and seen, I am satisfied that each of the nine detainees went willingly to the scene of the engagement and that it is very likely that each did so as a member of or volunteer in the Mahdi Army. Each did so for the sole purpose of participating in the planned ambush of and armed attack on British troops that day and each then proceeded to play an active part in that ambush and attack. I have come to these conclusions for a number of reasons. In addition to the implausible assertion by most of the detainees of being unaware of any attack on the Imam Ali mosque in Al Najaf²²⁵ and the equally implausible assertion by each of the detainees that he had been completely unaware of any unrest in Al Majar al’Kabir on the morning of 14 May 2004, the significant internal inconsistencies in each detainee’s own account with regard to his movements prior to and during the engagement strongly suggested that the account in question was substantially false. Also and in particular, the location and circumstances of each detainee’s capture and detention on the battlefield, as described in evidence by the British soldiers involved in his capture, evidence which I am entirely satisfied was credible, truthful and reliable, clearly established that each detainee’s “innocent” explanation for his presence on the battlefield was entirely false. I will consider each of these latter two matters in greater detail at appropriate stages later in this Report.

2.141 Furthermore, very late in the Inquiry process, disclosure of a small number of documents took place that included one apparently originating from the Office of the Martyr Al Sayyed Al Sadr (Quds) (“the OMS”) in Al Majar al’Kabir, the local branch office of the OMS in Al Najaf. This particular and very significant document lists the names and other details of the nine detainees (“the OMS detainee list”). It is clear that, at all material times, there was a link between the OMS and the Mahdi Army.²²⁶ In view of the importance and significance of this document, I deal with the general circumstances and nature of its late receipt by the Inquiry in the paragraphs that follow. At this stage it suffices to say that the contents and nature of the OMS detainee list greatly reinforces and substantially confirms the conclusion that I have reached above, namely that each of the nine detainees participated actively in the ambush of, and attack, upon British troops that took place on 14 May 2004 and that it is very likely that each did so as a member of or volunteer in the Mahdi Army.

The “List of Detainees’ Names for the British Occupying Forces”

2.142 The Office of the Martyr Al Sayyed Al Sadr (“the OMS”) detainee list is entitled “*List of the names of the detainees held by the British occupation forces with details*”.

2.143 The author of the OMS detainee list is stated to be:

“The Representative

Office of the Martyr Al Sayyed Al Sadr (Quds)

Al Majar Al Kabeer” [sic]

²²⁴ This is a statement for the judicial review proceedings but it is endorsed for this Inquiry at (ASI001033) [10]; [18/5-6]

²²⁵ It may have been the case that Hamzah Joudah Faraj Almalje (detainee 772) was one of those who did not know

²²⁶ See, for example, Khuder Karim Ashour Al-Sweady (witness 1) (PIL001347) [7]-[8]

2.144 On its face, the document demonstrates an obvious connection between each of the nine detainees and the OMS, an organisation known to have links with the Mahdi Army and one that was openly hostile to Coalition forces in Iraq in May 2004. It is clear that the nine detainees were all known to the OMS. The document lists seven of the nine detainees as members of named “*Platoons*”. The other two former detainees are listed as “*Volunteers*”. The evidence disclosed to the Inquiry provides little information regarding these “*Platoons*”, although each appears to bear the name of a prominent historical/Islamic figure. There is also a correlation between the “*Platoons*” to which the former detainees are linked in this document, and the districts of Al Majar al’Kabir in which they lived. I consider that it is extremely likely that the “*Platoons*” referred to were military style units of some sort in the Mahdi Army and the expression “*Volunteer*” is a reference to that particular detainee’s current status in the same organisation.

2.145 Leigh Day is the firm of solicitors acting on behalf of a number of Iraqi citizens, including many of the Iraqi Core Participants, in respect of civil claims that have been made against the MoD arising out of the events of 14-15 May 2004, as summarised by the senior partner, Martyn Jeremy Day, in paragraphs one to three of his witness statement dated 18 October 2013, as follows:

“1. ...My firm acts on behalf of a number of Iraqi citizens in civil claims being made against the Ministry of Defence arising from an incident on 14 May 2004 in the area of Majar Al Kabir. We were first instructed by clients in this matter in September 2007

2. Letters of Claim in respect of the civil claims were served on the Treasury Solicitor on 2 November 2007, 4 February 2008 and 14 January 2009 respectively. Not much has happened in relation to the claims...and they have been stayed pending the outcome of the Al Sweady Inquiry (“ASI”).

3. From July 2010 to December 2011 employees from my firm assisted the ASI in obtaining witness statements from our clients and other Iraqi witnesses for use in the Inquiry. On occasion, staff from the ASI requested us to provide them with specific documents if in our possession, which we duly did.”²²⁷

2.146 In August 2013, the Inquiry received disclosure of a number of photographs from the solicitors Leigh Day which were relevant to the terms of reference. This prompted the Inquiry to write to Leigh Day on 16 August, reminding the firm of the terms of reference: “*We should be grateful if you could please confirm by Friday 30 August 2013 whether Leigh Day & Co [sic] holds any other material which is potentially relevant to our Terms of Reference...and, if so, to disclose the material by the same date.*”

2.147 On 19 August 2013, Leigh Day invited Inquiry staff to view material in the firm’s possession in order to identify any potentially relevant items. This inspection took place on 28 August 2013. The inspection resulted in the disclosure of five documents. Three documents were withheld from the Inquiry during this inspection because Leigh Day sought to take advice on whether they attracted litigation privilege.²²⁸

²²⁷ Martyn Day (ASI025481) [1]-[3]

²²⁸ Martyn Day (ASI025482) [5]-[7]

2.148 These documents were eventually disclosed to the Inquiry by email on 27 September 2013.²²⁹ The documents were titled:

- a. “List of Martyrs”;
- b. “Handwritten notes produced by Khudur [sic] Al-Sweady”;
- a. “List of Detainees’ Names for British Occupying Forces” (i.e. “the OMS detainee list”).

2.149 Each of the documents attached to the email comprised Arabic text, along with what the covering email described as “our rough English translations” of that text. The “List of Detainees’ Names for British Occupying Forces” in its original Arabic script is shown below.

Figure 3: (ASI023571)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

ممثلية
مكتب السيد الشهيد الصدر (قدس)
في المجر الكبير

قائمة بأسماء الاسرى لدى قوات الاحتلال البريطانية مع التفاصيل

ت	الاسم القائل واللقب	التولد	اسم السرية	الحالة الزوجية	عدد الاطفال	المهنة
١	كاظم عباس البهائي	١٩٧٨	انصار الزهراء	متزوج	اثنان	كاشف
٢	عباس عبد علي المحمداوي	١٩٧١	ابا الفضل العباس	متزوج	اربعة اطفال	معلم
٣	حمزة جوده المالكي	١٩٨٥	انصار الزهراء	اعزب	لا يوجد	معلم
٤	حسين فاضل البهائي	١٩٨٤	ابا الفضل العباس	اعزب	=	معلم
٥	ابراهيم كطان الاسماعيلي	١٩٨١	مؤمل الصدر	اعزب	=	طالب
٦	مهدي جاسبه البهائي	١٩٨٥	متطسوع	اعزب	=	كاشف
٧	عبيد عبد الرضا	١٩٧٩	متطسوع	اعزب	=	كاشف
٨	حسين جابر الامي	١٩٧٩	ابا الفضل العباس	اعزب	=	كاشف
٩	احمد جبر الفريجي	١٩٨٢	ابا الفضل العباس	اعزب	لا يوجد	كاشف

ممثلية
مكتب السيد الشهيد الصدر (قدس)
في المجر الكبير

2.150 The Inquiry subsequently learned that the “rough translation” provided was, in fact, a typed copy of a pre-existing handwritten translation. An employee of Leigh Day had found both the Arabic original and the handwritten translation of the document during a review of the material on 26 August 2013. The same employee had typed up what is said to be a copy of the original handwritten translation and then discarded the handwritten version as confidential waste.²³⁰ The original handwritten translation was thereby lost and has never been disclosed

²²⁹ By this date the Inquiry had completed hearing all the evidence from the Iraqi witnesses and the experts and had just started on the 4th week of the evidence from military witnesses

²³⁰ Anna Crowther (ASI024702-03) [40]–[43]

to the Inquiry. Any possibility that the original handwritten translation may have helped in establishing the provenance of the Arabic original was lost with it.

2.151 The Inquiry then proceeded to secure its own translation of the Office of the Martyr Al Sayyed Al Sadr (“the OMS”) detainee list, as follows.

Figure 4: (ASI023419)

In the name of Allah the merciful and the compassionate

The Representative
Office of the martyr Al Sayyed Al Sadr (Quds)
Al Majar Al Kabeer

Issue
Date

List of the names of the detainees held by the British occupation forces
with details

No	Name	DOB	Platoon	Status	Children	Occupation
1	Kazem Abbas Albahadli	1978	Ansar Al Zahraa (Victors of Al Zahraa) *	Married	two	Labourer
2	Abbaas Abd Ali Al Muhammadawi	1971	Aba'l Fadhel Alabbaas	Married	four	Labourer
3	Hamza Jouda Al Malki	1985	Ansar Al Zahraa (Victors of Al Zahraa)	Single	None	Labourer
4	Husain Fadhel Albahadli	1984	Aba'l Fadhel Alabbaas	Single	None	Labourer
5	Ibrahim Kattan Alismaeeli	1981	Mu'ammal Al Sadr	Single	None	Labourer
6	Mahdi Jasseb Al Bahadli	1985	Volunteer	Single	None	Student
7	Atiyya Abderridha	1979	Volunteer	Single	None	Labourer
8	Husain Jabbaar Al Lami	1979	Aba'l Fadhel Alabbaas	Single	None	Labourer
9	Ahmad Jabr Al Freiji	1982	Aba'l Fadhel Alabbaas	Single	None	Labourer

The Representative
Office of the Martyr Al Sayyed Al Sadr (Quds)
Al Majar Al Kabeer

* Ansar Al Zahraa (translated as: Victors of Al Zaharra) Al Zahraa being the daughter of prophet Muhammad

2.152 As can be seen from the image above, the OMS detainee list refers to each of the nine detainees who gave evidence to the Inquiry (and only to them),²³¹ provides biographical information which is broadly accurate in respect of each and associates each with a “Platoon”. Seven of the detainees are associated with a named “Platoon”, whilst two of them are each described as a “Volunteer”.

²³¹ A copy of the OMS detainee list was sent to each of the nine detainees on 19 November 2013 for comment. They all accepted in the supplemental witness statements produced that the OMS detainee list referred to them by name, although all sought to highlight the fact that all or part of their names had been spelt incorrectly: See Hamzah Joudah Faraj Almalje (detainee 772) (PIL001320) [4]; Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL001366) [4]; Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL001325) [4]; Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL001330) [4]; Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL001295) [4]; Ahmed Jabbar Hammood Al-Furajji (detainee 777) (PIL001360) [4]; Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL001308) [4]; Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL001314) [4]; Hussein Gubari Ali Al-Lami (detainee 780) (PIL001302) [4]

- 2.153** Upon receipt of this document, the Inquiry took a number of steps to gain further evidence about how it ought to be interpreted and its provenance. The Inquiry first requested statements from Martyn Day of Leigh Day and Phil Shiner of Public Interest Lawyers, under rule 9 of the Inquiry Rules 2006. Pursuant to the same rule, the Inquiry sought additional statements from each of the nine detainees, Khuder Karim Ashour Al-Sweady (witness 1) and Assad Mozan Khalait Al-Kaabi (witness 78) regarding their knowledge of the OMS detainee list and their evidence as to the truth of its contents.
- 2.154** Finally, a further statement was sought from Martyn Day of Leigh Day, along with statements of some of his colleagues and others who had worked with or on behalf of Leigh Day, whom the Inquiry considered might be able to give evidence regarding the provenance and disclosure of the OMS detainee list.
- 2.155** On the basis of those statements, I am satisfied that I am able to make a number of important findings of fact in relation to the OMS detainee list with a high degree of confidence.
- 2.156** It appears that Leigh Day first came into possession of the OMS detainee list during, or as a result of, a visit by Leigh Day staff to Damascus in September 2007. Although there was no record of the document on an index of documents in the possession of Leigh Day, produced on 29 August 2007, there is a record of it on an index prepared on 10 September 2007, a short time after the conclusion of the trip.²³² It will be recalled that the judicial review proceedings in this matter were issued in the High Court by Public Interest Lawyers on 17 October 2007, just over a month later.²³³
- 2.157** Staff from Leigh Day met a number of Iraqi men in Damascus during this trip, including two witnesses to this Inquiry, Khuder Karim Ashour Al-Sweady (witness 1) and Assad Mozan Khalait Al-Kaabi (witness 78).²³⁴ In my view, it is highly unlikely that any of the other Iraqi men who attended Damascus during this trip, but who were not witnesses to this Inquiry, were the source of the OMS document.
- 2.158** However, in their supplemental witness statements to the Inquiry, both dated 7 March 2014, Khuder Al-Sweady (witness 1)²³⁵ and Assad Al-Kaabi (witness 78)²³⁶ each deny having been the source of the document in question. In this regard, I simply do not accept that both can be correct. In my view, it is clear that one or other of these men must have given the document to Leigh Day during this trip to Damascus in September 2007.
- 2.159** In my view, the source of the document was almost certainly Khuder Karim Ashour Al-Sweady (witness 1). I come to that conclusion for a number of reasons. First, Khuder Al-Sweady admitted that he was the source of the other two documents disclosed to the Inquiry on 27 September 2013 and that he gave them to Leigh Day on the trip to Damascus in 2007.²³⁷ Second, members of staff at Leigh Day appear to have concluded that Khuder Al-Sweady was the source of the document and expressed this view as to its provenance in an email to a solicitor at Public Interest Lawyers on 28 August 2013.²³⁸ Third, Anna Jennifer Crowther of Leigh Day confirmed that Khuder Al-Sweady became a regular source of disclosure to the firm in the months and years that followed that trip.²³⁹ It is for these principal reasons that I am

²³² Anna Crowther (ASI024693) [12]–[13]

²³³ See Part 1, Chapter 1, paragraph 1.1 above

²³⁴ Anna Crowther (ASI024695) [17]

²³⁵ Khuder Karim Ashour Al-Sweady (witness 1) (PIL001345-46) [3]

²³⁶ Assad Mozan Khalait Al-Kaabi (witness 78) (PIL001337) [3]

²³⁷ Khuder Karim Ashour Al-Sweady (witness 1) (PIL001349) [13]; (PIL001352) [23]

²³⁸ (ASI025304)

²³⁹ Anna Crowther (ASI024697) [25]

satisfied that the source of the OMS detainee list was, in fact, Khuder Karim Ashour Al-Sweady and that he gave the document to Leigh Day in Damascus in 2007 (possibly inadvertently, as explained below).

2.160 Regrettably, in light of the absence of any further information regarding the origin of this document in Khuder Al-Sweady's (witness 1) statement or elsewhere, any findings with regard to its production must be expressed with a degree of uncertainty, although I am satisfied that they are correct on the balance of probabilities.

2.161 Khuder Al-Sweady (witness 1) gave evidence with regard to his role as a representative of the people of Al Majar al'Kabir, including concerning the various meetings that he had with representatives of the Coalition forces in 2004-2005.²⁴⁰ It is evident from the notes of those meetings that were disclosed to Leigh Day by Khuder Al-Sweady, those notes being subsequently disclosed to the Inquiry and referred to in paragraph 2.144 above, that the status and welfare of men detained by British forces were discussed in some detail.²⁴¹

2.162 As it seems to me, a very likely explanation for the existence and purpose of the OMS detainee list is that it was produced by a Representative of the Office of the Martyr Al Sayyed Al Sadr (Quds), in order to better inform Khuder Al-Sweady (witness 1), probably on a confidential basis, about the actual roles and relevant circumstances of the nine detainees for the purposes of the various meetings he was to and did have with representatives of the British forces following upon the Danny Boy incident. I note, in particular, that discussions took place (albeit on a date which cannot be discerned) for the release of "*prisoners from the Al Sadr factions*" and that Khuder Al-Sweady was present during such discussions.²⁴² In my view, it is very likely that the OMS detainee list was created for the purposes of such matters as those discussions.

2.163 A further unfortunate feature of the evidence given to the Inquiry about this matter is that nobody has provided positive evidence about how the OMS detainee list came to be handed to Leigh Day in Damascus in 2007. It is clear that Khuder Al-Sweady (witness 1) handed over the "List of Martyrs"²⁴³ and "Handwritten notes produced by Khudur [sic] Al-Sweady" on that occasion.²⁴⁴ Given the nature and contents of the OMS detainee list, it seems to me to be very likely that Khuder Al-Sweady inadvertently and unwittingly handed it over at the same time as he provided Leigh Day with the other two categories of documents. It is even possible that Khuder Al-Sweady was unaware by this time that he was still in possession of the document, many years having passed since the document served a practical purpose for him, and that it had somehow become mixed in or included with the other documents.

2.164 Having regard to the obvious and apparent significance of the OMS detainee list and as part of its enquiries into the general circumstances relating to its late receipt by the Inquiry, each of the nine detainees, together with Khuder Karim Ashour Al-Sweady (witness 1) and Assad Mozan Khalait Al-Kaabi (witness 78), were afforded an opportunity to offer an explanation for the OMS detainee list in their supplemental witness statements. In the event, no explanation was offered by any of those individuals, save for a bald denial of knowledge of its history and the truth of its contents.

²⁴⁰ Khuder Karim Ashour Al-Sweady (witness 1) (PIL001349-51) [13]–[22]

²⁴¹ See, for example, (ASI023411)

²⁴² Ibid.

²⁴³ Khuder Karim Ashour Al-Sweady (witness 1) (PIL001352) [23]

²⁴⁴ Khuder Karim Ashour Al-Sweady (witness 1) (PIL001349) [13]

- 2.165** In their Closing Submissions, those representing the Iraqi Core Participants²⁴⁵ offered two interpretations for the contents of the document. Neither of these interpretations was drawn from evidence given by any of their clients but were derived from submissions about the context in which the document might have been drafted. I have given careful consideration to these possible interpretations, but have come to the firm conclusion that I cannot accept either interpretation. The same reasoning undermines both of the interpretations offered.
- 2.166** Both interpretations presuppose that the OMS deliberately and artificially “*adopted*” the nine detainees by untruthfully naming them as associates. In the first interpretation it was suggested that they did so to protect the welfare of the detainees and in the second interpretation to elevate the esteem in which the OMS was held in the local community. Both interpretations are highly speculative. Had either been accurate interpretations, it seems likely that, at least some of the clients of those who proposed those interpretations would have been able to give positive evidence to support them.
- 2.167** Furthermore, and fundamentally fatal to those submissions, no explanation was offered as to why the OMS would fabricate membership (with designated “*Platoons*”) for seven of the detainees, whilst describing each of the other two as a “*Volunteer*”. The creation of an artificial distinction between seven detainees and the remaining two would have risked undermining the very purpose for which the OMS was said to have been developing this fiction. In my view, the suggestion in the submissions that the OMS detainee list was produced to portray an elaborate fiction is incapable of belief and is wholly unsupported by evidence.
- 2.168** In light of my rejection of these alternative interpretations, I see no reason for not interpreting the document at its face value. I am thus satisfied that its contents are an accurate reflection of the true factual position relating to these nine detainees. In my view, the document is clear evidence that the Office of the Martyr Al Sayyed Al Sadr (Quds) (“the OMS”) recognised and acknowledged that each of the nine detainees was an associate or supporter of that organisation. Four of the detainees, namely Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), Hussein Fadhil Abbas Al-Behadili (detainee 778), Hussein Gubari Ali Al-Lami (detainee 780) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777) were acknowledged to belong to the “Aba’l Fadhel Alabbaas Platoon”. Two of the detainees, namely Kadhim Abbas Lafta Al-Behadili (detainee 775) and Hamzah Joudah Faraj Almalje (detainee 772) were stated to be members of the “Ansar Al Zahraa Platoon”. Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was acknowledged to be a member of the “Mu’ammal Al Sadr Platoon”. Given the known links between the OMS and the Mahdi Army militia, I have no doubt that the ‘platoons’ in question were military style units within that militia (i.e. the Mahdi Army).
- 2.169** The remaining two detainees, Mahdi Jasim Abdullah Al-Behadili (detainee 773) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) were not assigned in the OMS detainee list to any named “*Platoon*”; instead each was described as a “*Volunteer*”. In the light of the evidence given to this Inquiry as a whole, I am satisfied that the most likely explanation for these entries is that neither was actually permanently attached to any named “*Platoon*” in the Mahdi Army prior to 14 May 2004. In my view, the wording of the document strongly suggests that these two detainees took part in the ambush by virtue of an *ad hoc* or ‘voluntary’ association with the insurgency and/or the Mahdi Army militia that day.

²⁴⁵ ICP Closing Submissions (781) [2775]

Conclusions with regard to the general situation in Al Majar al’Kabir on 14 May 2004

- 2.170** For the reasons set out above, I am satisfied that news of the events in Al Najaf were widely known in Al Majar al’Kabir by early afternoon on 14 May 2004 at the latest. It is clear that these events generated considerable anger among the residents of the town. I am also satisfied that these events were exploited by various individuals in Al Majar al’Kabir and/or the neighbouring town of Al Amarah, who sought to incite a violent response against Coalition forces. One result of this news and the ensuing anger and incitement was the ambush which started the Battle of Danny Boy; an ambush that it is very likely was largely planned and executed by the Mahdi Army militia. I am also completely satisfied that the Iraqis who were killed in the resulting battle and the nine Iraqi men who were detained on the battlefield were present at the scene as active participants in this ambush and almost certainly as members of or volunteers in the Mahdi Army.
- 2.171** I am less certain about the relationship between the armed ambush and the demonstration witnessed by a number of individuals in the centre of Al Majar al’Kabir that day. I am satisfied that some active participants in the ambush were also at the scene of the demonstration. It is likely that, whilst some individuals set out on the demonstration with peaceful objectives, others joined the gathering with the sole objective of launching an ambush. It is also likely that some members of the demonstration abandoned their initially peaceful objective and joined in the armed ambush. Finally, it is my view that some individuals may have responded directly to the incitement and headed straight to the site of the ambush, without ever joining the demonstration.

3. The start of the engagement on 14 May 2004: Major Adam Griffiths and his Rover Group are ambushed on Route 6

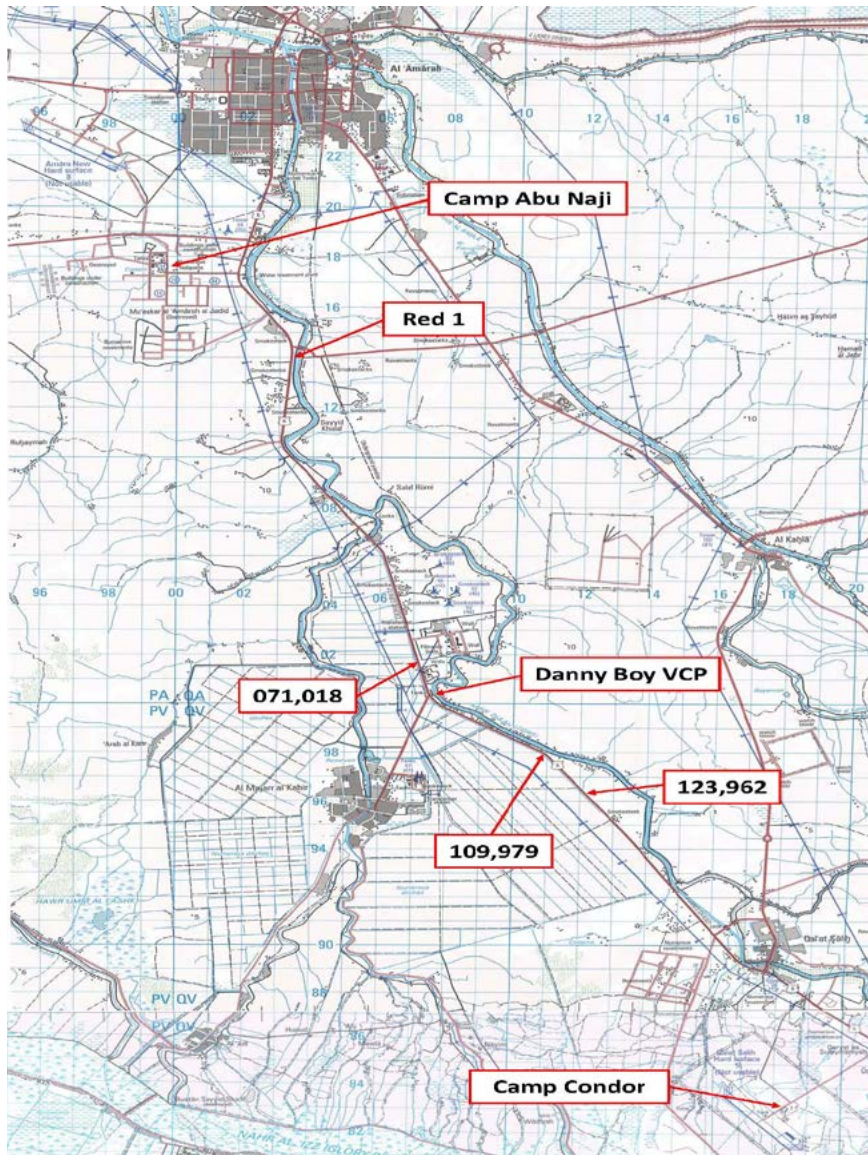
- 2.172** On the morning of 14 May 2004 Major Adam Griffiths, the Officer Commanding B Company, 1st Battalion of the Argyll and Sutherland Highlanders (“1A&SH”), left Camp Abu Naji and travelled south along Route 6 to Camp Condor to visit soldiers from 1A&SH who were stationed there at the time. He was accompanied by his Rover Group, a unit of seven who were tasked to provide protection for Major Griffiths whilst he carried out patrols and other duties. On 14 May 2004, Major Griffiths’ Rover group travelled in two armoured Snatch Land Rovers, call signs Y0A and Y33A.²⁴⁶
- 2.173** At approximately 16:15 hours,²⁴⁷ the Rover Group left Camp Condor in order to return to Camp Abu Naji. Major Griffiths was the vehicle commander of Call sign Y0A, the lead vehicle driven by Lance Corporal Richard Harrower, who was also the signaller for Major Griffiths’ vehicle and thus responsible for communicating and receiving instructions by radio. In the rear of Y0A were Private Brian Johnstone and Corporal Billy Kozar, providing top cover. Lance Corporal James Gadsby (who was not part of Major Griffiths’ Rover Group) was carried in this vehicle as a rear passenger, because he was due to attend a medical appointment at Camp Abu Naji.

²⁴⁶ A “call sign” is a combination of letters and figures used by the military to identify a communications station, an organisation, or an individual on a radio net. A station which requires communication with one or more other stations on a net does so by using the allotted call signs. In this instance, the expression refers to the identifying call signs of the individual Warriors and Challenger tanks. In military parlance, an individual unit like a Warrior is often simply referred to as a “call sign”

²⁴⁷ Major Griffiths [60/15/11-14]; (ASIO18485) [47]; NB – the Rover Group appears to have visited the Iraqi Civil Defence Corps (“ICDC”) camp after 16:15 hours, before eventually leaving for Route 6 after 16:36 hours [60/15-16]; [60/54]

- 2.174** Colour Sergeant John McNab commanded the following Land Rover (call sign Y33A), which was driven by Private Craig McMeeken, with Colour Sergeant Colin Wilson and Lance Corporal David Boyd providing top cover. Corporal Kristen Garner, who also was not actually part of the Rover Group, was carried in this vehicle as a passenger in the rear. The Land Rovers did not have any mounted weapons and therefore the only weapon available to the soldiers in these vehicles was the individual SA80 rifle that each soldier carried as a matter of course.²⁴⁸
- 2.175** The Rover Group travelled north along Route 6, which was the military code name for the main dual carriageway linking Basra and Al Amarah. The relevant locations in the vicinity of Route 6 with which this part of the Report is concerned is shown below as Figure 5.

Figure 5: (ASI23625)



²⁴⁸ Major Griffiths [60/57/19-25]

- 2.176** There had been a number of incidents involving British troops along Route 6 in the months prior to 14 May 2004. In the course of his evidence, Major Griffiths described the general position in the following terms: “...[we] were wary of this route, we had experienced our fair share of incidents on the route, ambushes, protests, IEDs, accidents, and we knew the pinchpoints and where we were likely to be attacked.”²⁴⁹
- 2.177** Despite this security threat, Major Griffiths, amongst others,²⁵⁰ said that he was not aware of any increased security risk on 14 May 2004 and had not been alerted to any intelligence reports that raised the possibility of a planned insurgent attack or ambush on Route 6.²⁵¹
- 2.178** In summary, the account given by the members of Major Griffiths’ Rover Group who gave their evidence to the Inquiry in person was to the effect that, after having left Camp Condor on 14 May 2004 to return to Camp Abu Naji, they were attacked on three separate occasions during their northwards journey along Route 6. At each of these three engagements the Rover Group was faced with significant incoming fire from armed Iraqi insurgents and on each occasion they had returned fire. In the event, they managed to drive successfully through each of the contacts and eventually made their way to Camp Abu Naji without sustaining any casualties.
- 2.179** Unsurprisingly, the individual accounts of these three contacts,²⁵² as given in evidence by the various members of the Rover Group, were not always in complete agreement with regard to the precise detail of each of the three contacts. However, I have no hesitation in stating that I am completely satisfied that each such witness gave evidence to the best of his or her recollection and that each endeavoured to give a truthful and accurate account of what actually occurred.
- 2.180** Members of the Rover Group made their first written statements several months after 14 May 2004²⁵³ at a time when their detailed recollection of what happened may have already started to fade. In any event, each of the three contacts lasted only a few minutes, perhaps even just seconds.²⁵⁴ It was the first time that Major Griffiths’ Rover Group had been obliged to return fire²⁵⁵ and I have no doubt that precise details of the contacts will have become somewhat confused or misremembered owing to the intensity, danger and pace of the incidents themselves. The positioning and different roles of the various Rover Group members in their vehicles may well also account for some of the apparent differences in what each observed and recalled.

²⁴⁹ Major Griffiths [60/10/10-14]

²⁵⁰ See, for example, Lance Corporal Gadsby (ASI015151) [21]; Corporal Kozar (a read witness) stated that they received a briefing prior to leaving Camp Condor, which had taken place in the “*intelligence room*”, informing them that the risk of being shot or blown up was very high (ASI011024) [29]. It is unclear if Corporal Kozar is referring to a general briefing or one in relation to a specific threat on 14 May 2004. His evidence is corroborated by Colour Sergeant McNab (another read witness) who notes in his contact report (ASI007274) [13] that a briefing occurred on leaving Camp Condor – however he states that there was nothing to suggest a specific threat that day

²⁵¹ Major Griffiths (ASI018484) [44]

²⁵² The military invariably refer to an individual armed engagement as a “contact”; the expression being used as both a noun or a verb as required

²⁵³ All of the Rover Group made statements to the Royal Military Police (“RMP”) on 24-26 August 2004, except for Colour Sergeant McNab who made his later on 1 October 2004.

²⁵⁴ Lance Corporal Gadsby (ASI015153) [32]; Major Griffiths (ASI018488-89) [55]

²⁵⁵ Major Griffiths (ASI018473) [11]

2.181 As well as the oral and written evidence of the witnesses themselves, I was greatly assisted by the following documentary evidence, which supplemented the recollection of those who gave evidence:

- a. The various log books that were maintained in the Operations Room at Camp Abu Naji in which a contemporaneous record of most of the communications received from the Rover Group was kept during (in particular) the period 16:10 hours-20:05 hours²⁵⁶ on 14 May 2004;
- b. The Contact report written by Major Griffiths as Officer Commanding B Company on the evening of 14 May 2004 (“the Contact report”);²⁵⁷
- c. A detailed written narrative of the contacts, prepared by Major Griffiths in the weeks following 14 May 2004 (known as “the Danny Boy Incident Document” and/or “the DBI document”).²⁵⁸ According to Major Griffiths, the DBI document was one that he formulated after he had obtained a wider understanding of what had actually taken place as a result of various discussions that he had with colleagues about the events of 14 May 2004.²⁵⁹

2.182 I now turn to give a more detailed account of each of the three contacts involving Major Griffiths’ Rover Group on its journey north from Camp Condor to Camp Abu Naji on the afternoon of 14 May 2004.

The First Contact – location

2.183 The first contact took place shortly after the convoy had driven through the small town or village of Qal’at Salih on its way north to Camp Abu Naji. The witnesses were in general agreement that this first contact took place at a location that was a relatively short distance south of the Danny Boy vehicle checkpoint (“VCP”) itself.²⁶⁰

2.184 Major Adam Griffiths said that he tried to contact the Operations Room at Camp Abu Naji whilst in the vicinity of the first contact and recalled that he was able to do so using his vehicle’s radio systems.²⁶¹ However, Major Griffiths went on to say that he was unsure whether his original radio message had been received by the Operations Room at Camp Abu Naji and that he had therefore made contact again using his military issue mobile telephone. When Major Griffiths succeeded in making contact with Camp Abu Naji via his mobile telephone, he was actually located somewhat north²⁶² of the first contact ambush site, at a point on Route 6 where the Rover Group had pulled over and had halted briefly to check for vehicle damage and injuries, after having driven through the contact.²⁶³

²⁵⁶ (MOD019785); (MOD039934); (MOD040188)

²⁵⁷ (MOD026860)

²⁵⁸ (ASI006945)

²⁵⁹ Major Griffiths (ASI018480) [33]

²⁶⁰ Major Griffiths (ASI018487-88) [53]; Colour Sergeant Wilson (ASI016805) [28] [37]; Lance Corporal Gadsby (ASI015153) [29] [43]; NB – it should be noted that Lance Corporal Boyd (ASI013390) [18] stated that the contact took place after the Danny Boy VCP; in my view he is likely to have mistaken the Danny Boy VCP with the one at Qal’at Salih: see the evidence of Corporal Garner (ASI017910) [38] in relation to this

²⁶¹ Major Griffiths (ASI018489) [58]

²⁶² Most of the Rover Group suggest that they pulled over approximately 500 metres north of the first ambush; the two relevant grid references place the respective locations of the contact and the point at which the Rover Group pulled over as being about two kilometres apart – as to which, see para 2.257

²⁶³ Major Griffiths [60/29/18-19]; (ASI018490) [59]

- 2.185** The watch-keeper's log at Camp Abu Naji records a message that had been received from Major Griffiths in which he reported that his Rover Group had been contacted. The entry in question is timed at 16:47 hours and the grid reference was given as 109.979.²⁶⁴
- 2.186** Lieutenant Tom Millward was the duty watch-keeper in the Operations Room at Camp Abu Naji on 14 May 2004 who recorded that message from Major Griffiths in the log. He stated that this entry represented the first message received from Major Griffiths that afternoon and confirmed that the message had been given over the telephone. He also said that he did not think that he had received any radio messages from Major Griffiths' Rover Group on 14 May 2004.²⁶⁵
- 2.187** I therefore consider that it is very likely that the grid reference recorded in the watch-keeper's log results from the second occasion that Major Griffiths endeavoured to communicate with Camp Abu Naji (i.e. the communication he made by mobile phone) and that it was, in fact, the first message actually received and recorded by the Operations Room at Camp Abu Naji. That entry in the log also appears to record a grid reference for the location from which the message was sent, rather than for the actual location where the first contact had taken place.
- 2.188** I am satisfied that this particular conclusion accords with Major Griffiths' own recollection of where the first contact actually did take place. The Contact report, written by Major Griffiths on the evening of 14 May 2004,²⁶⁶ records the grid reference for the location of the first contact as "QV 123.962".²⁶⁷ This location is approximately two kilometres south of the grid reference given by Major Griffiths to the Operations Room at Camp Abu Naji by means of his mobile telephone, thus supporting the suggestion that the entry in the watch-keeper's log refers to a location somewhat north of the first contact point.
- 2.189** As can be seen from the map (inserted as figure 5 above) the grid reference recalled by Major Griffiths on the evening of 14 May 2004 in his Contact report, marks a location in the vicinity of a brickwork factory and smoke stacks (located to the east of Route 6). The general nature of the area of the first contact is also shown in the following photographs of Route 6 which show the smokestacks to the east (Figure 6) and the landscape further along Route 6, just south of the location of the first engagement (Figures 7 and 8). All three photographs are taken from an aerial perspective from the east side of Route 6 facing west.

²⁶⁴ (MOD019785)

²⁶⁵ Lieutenant Millward [111/128]; (ASI020578-79) [48]-[49]

²⁶⁶ (MOD026860)

²⁶⁷ (MOD018965)

Figure 6: (ASI006506)



Figure 7: (ASI006503)



Figure 8: (ASI0066501)



2.190 I am satisfied that this particular location also accords with the Rover Group’s recollection of the area where the first contact took place. Thus, Major Griffiths recalled seeing disused brickworks at the point of the first contact²⁶⁸ and Colour Sergeant Colin Wilson recalled seeing two smoke stacks to the right hand side of the road (i.e. to the east) during the course of the first contact.²⁶⁹ It is also perhaps worth noting that Major Griffiths recalled having been able to get through to Camp Condor during the first contact and providing a grid reference.²⁷⁰ However, the Inquiry was not provided with nor was it able to obtain a record of the entries in any radio log maintained at Camp Condor during the relevant period in order to confirm any grid reference that had been given contemporaneously.

The First Contact – summary details of what occurred

2.191 All the members of the Rover Group gave consistent evidence that, during this first contact, they had come under small arms fire from a number of insurgents positioned to the west of Route 6. They were unanimous in their recollection that the first shots were fired by the insurgents. I accept that this was indeed the case. These were the opening shots in a carefully planned and large-scale ambush of British troops that went on to develop into the Battle of Danny Boy. Understandably, there was some uncertainty as to the actual number of insurgents involved in the first contact. Estimates ranged from between two or three²⁷¹ to 30.²⁷² Major Adam Griffiths’ Contact report, which records the collective memory of the Rover Group,²⁷³ states that ten to 14 armed insurgents were involved in the first contact.²⁷⁴ In my view, it is

²⁶⁸ Major Griffiths (ASI018487) [53]

²⁶⁹ Colour Sergeant Colin Wilson (ASI016805) [28]

²⁷⁰ Major Griffiths (ASI018489) [58]

²⁷¹ Major Griffiths (ASI018488) [54]

²⁷² Lance Corporal Boyd (ASI013391) [20]

²⁷³ Major Griffiths [60/18/8-24]

²⁷⁴ (MOD026860)

likely that those particular figures give a fairly accurate picture of the scale of the numbers involved in this first contact.

- 2.192** Once under fire from the insurgents, Major Griffiths gave the order to return fire. None of the witnesses who gave oral evidence to the Inquiry was able to state conclusively that any of the return fire actually hit any of the insurgents,²⁷⁵ but accepted that this might have been the case.²⁷⁶
- 2.193** I emphasise that I am entirely satisfied by the evidence that the British soldiers only fired back at insurgents who were actually engaged in firing at the Rover Group convoy as part of the ambush. In her witness statement, Corporal Kristin Garner recalled having seeing one gunman flinch and expressed the view that either she, or another from her vehicle, may have hit him.²⁷⁷ For his part, Major Griffiths recorded in the Contact report that, along with his vehicle’s top cover, he had observed at least two gunmen falling down.²⁷⁸ The “Danny Boy Incident” (“DBI”) document, written by Major Griffiths a few weeks after 14 May 2004, implies that up to five enemies were shot and records Major Griffiths as having seen two enemies “*crumple*” and Colour Sergeant John McNab’s vehicle as having dealt “*with another three*.”²⁷⁹
- 2.194** It therefore seems to me very likely that some casualties, possibly some fatalities, were sustained by the Iraqi insurgents during this first contact. There was evidence clearly indicating that Rahma Abdelkareem Al-Hashimi (deceased 29) was shot during this particular engagement and that, as a result, he had suffered a serious and ultimately fatal bullet wound to the abdomen/stomach.²⁸⁰ In my view, the soldiers’ descriptions of this initial contact and how they reacted to the incoming fire, which accounts I am satisfied were both credible and truthful, make it clear that they only returned fire at Iraqi men who were seen to be actively engaged in firing at the British convoy. I am therefore satisfied that, despite his age and occupation, it is very likely that Rahma Al-Hashimi (deceased 29) was an active participant in the ambush and I reject evidence to the contrary effect.
- 2.195** Rahma Al-Hashimi (deceased 29) was taken to the Al Majar al’Kabir hospital during the afternoon of 14 May 2004 and given urgent medical treatment. There was an attempt to transfer him to the Al Sadr hospital for surgical treatment, but the attempt was unsuccessful due to the heavy firing that was by then taking place in the vicinity of the Danny Boy vehicle checkpoint (“VCP”), rendering the ambulance’s further progress impossible.²⁸¹ He was therefore returned to the Al Majar al’Kabir hospital for further medical treatment and died of his injuries a few days later.²⁸²
- 2.196** The Iraqi witnesses, who saw Rahma Al-Hashimi (deceased 29) at the hospital on 14 May 2004, placed his arrival at the hospital at some time in the afternoon, between 15:00 hours²⁸³

²⁷⁵ Lance Corporal Gadsby (ASI015155) [39]; Major Griffiths (ASI018495) [69]; Corporal Boyd (ASI013392) [24]-[25]

²⁷⁶ See, for example, Colour Sergeant Wilson [83/134/7-11]

²⁷⁷ Corporal Garner (read witness) (ASI017910-11) [41]

²⁷⁸ (MOD026860); This was echoed in Major Griffiths’ Royal Military Police (“RMP”) witness statement where he stated that he saw “*two to three gunmen*” who he believed had been shot (MOD018823)

²⁷⁹ (ASI006947); See also Major Griffiths (ASI018489) [56]

²⁸⁰ See Chapter 2, paragraphs 2.42-2.48 above

²⁸¹ Ali Abed Eitheyyib (witness 79) (ASI008863) [31]; (ASI009976)

²⁸² (MOD027704); Death Certificate records indicate the time of death at 13:00 hours on 19 May 2004

²⁸³ Ali Abed Eitheyyib (witness 79) [44/21/1-11]; Assad Mozan Khalait Al-Kaabi (witness 78) [6/59/2-11]

and 16:30 hours.²⁸⁴ I stress that I am entirely satisfied that there was no earlier incident that day, involving any exchange of fire with or by British troops on Route 6 in the vicinity of Qal'at Salih and the Danny Boy VCP, that took place before the first contact on Major Griffiths' Rover Group occurred. Given that it is likely that the first contact on the Rover Group was at some point between 16:36 hours and 16:47 hours,²⁸⁵ Rahma Al-Hashimi (deceased 29) cannot have arrived at the hospital at Al Majar al'Kabir until after this. However, despite the likelihood that their estimates of the timing of his arrival were somewhat too early, it was generally accepted by the Iraqi witnesses that Rahma Al-Hashimi (deceased 29) was in fact the first casualty of 14 May 2004 to arrive at the Al Majar al'Kabir hospital.²⁸⁶ I am therefore satisfied that it is very likely that he was shot during the first of the three contacts with Major Griffiths' Rover Group, as opposed to either of the main battles which took place later still, and from which casualties were not recovered until much later in the evening.²⁸⁷

2.197 This particular conclusion also receives some support from the evidence with regard to where Rahma Al-Hashimi (deceased 29) was actually found after he had been shot. Ali Abed Eitheyyib (witness 79) gave evidence about a conversation that he had with one of the relatives who had travelled with Rahma Al-Hashimi (deceased 29) in the ambulance to Al Majar al'Kabir hospital. Ali Eitheyyib said that (amongst other things) he was told that Rahma Al-Hashimi (deceased 29) had been found lying in the road after having been shot and that this had happened on the main road near Qal'at Salih.²⁸⁸

The Second Contact – location and summary details of what occurred

2.198 Major Adam Griffiths stated that he had tried to communicate with Camp Abu Naji on several occasions after the first contact had taken place.²⁸⁹ However, there are no entries in the radio logs detailing the locations of the further two contacts on the Rover Group that occurred during the continuation of their journey back to Camp Abu Naji on 14 May 2004. Nevertheless, members of the Rover Group were able to recall that the second of those contacts had taken place in the immediate vicinity of the Danny Boy VCP itself, either just on the approach to it, or just after their convoy had driven through it.²⁹⁰

2.199 According to Major Griffiths, his Rover Group was engaged by approximately 15-20 gunmen during this second contact.²⁹¹ Colour Sergeant Colin Wilson stated that there were between seven and eight insurgents,²⁹² whilst the Contact report records a "...platoon size...patrol of the [enemy]..."²⁹³ (Major Griffiths confirmed that a platoon averages 30 men).²⁹⁴ The evidence was that the gunmen fired on the Rover Group from the west side of Route 6 and that they

²⁸⁴ Khuder Karim Ashour Al-Sweady (witness 1) [21/8/17-21]; Hatem Abud Abed Hassan (witness 92) states that Rahma Al-Hashimi was brought in after he heard firing at about 15:00-16:00 hours [24/83-84]; Aqueel Abdul Abbas Jamol (witness 93) simply said it was "in the afternoon" [51/46/19-22]

²⁸⁵ The Rover Group appeared to still be at the Iraqi Civil Defence Corps ("ICDC") Camp at 16:36 hours (MOD040278); The first report of the contact was received at 16:47 hours (MOD019785)

²⁸⁶ See, for example, Hatem Abud Abed Hassan (witness 92) [24/83/25]-[84/1]; NB – deceased is referred to as "Ruhma"

²⁸⁷ See, for example, Ali Abed Eitheyyib (witness 79) [44/32/25]-[33/10]; [44/37-38]

²⁸⁸ Ali Abed Eitheyyib (witness 79) (ASI008861-62) [27]

²⁸⁹ Major Griffiths (ASI018496-98) [71] [78]

²⁹⁰ Major Griffiths (ASI018494) [67]; Colour Sergeant Wilson (ASI016807-08) [37]-[39]; Lance Corporal Gadsby [60/95/1-10]; NB – as already noted, Lance Corporal Boyd recalled being fired upon as the Rover Group drove through the Danny Boy VCP, but believed this to be the first contact they encountered [61/132/3-21]

²⁹¹ Major Griffiths (ASI018494) [67]

²⁹² Colour Sergeant Wilson (ASI016808) [38]; NB – although at [83/134/3-4] he says he cannot say how many insurgents he saw

²⁹³ (MOD026860)

²⁹⁴ Major Griffiths (ASI018494) [67]; NB – see also the DBI document which reports 20-30 gunmen (ASI006945)

were armed with a variety of weapons including AK47s and rocket-propelled grenades (“RPGs”).²⁹⁵

2.200 Most of the Rover Group fired their weapons in response to the incoming fire from the insurgents. None of the military witnesses was able to confirm whether any of the insurgents had been shot or injured as a result of this return of fire,²⁹⁶ although this must be a real possibility, given the “*substantial amount [of fire]*” used by the Rover Group in an effort to force the enemy “*into cover*”.²⁹⁷

The Third Contact – location and summary details of what occurred

2.201 The third contact involving Major Adam Griffiths’ Rover Group happened very shortly after the second one, with witnesses placing it “*immediately after*” passing through the first assault at the Danny Boy VCP,²⁹⁸ no more than 500 metres further along the road.²⁹⁹ Major Griffiths recorded the relevant grid reference in his Contact report as QA 071018, a point just north of the Danny Boy VCP itself.³⁰⁰

2.202 It appears that Major Griffiths was the first to see the insurgents responsible for the third contact. He recalled that there were five to six men at a bund line to the west side of Route 6 about 200-300 meters directly ahead of the Rover Group.³⁰¹ Other members of the Rover Group appear to have seen substantially more insurgents – between eight³⁰² and 30.³⁰³

2.203 There is evidence to suggest that some of the insurgents were killed by the British return of fire during this particular engagement. The Contact report records six Iraqi men (who were seen to be firing a projectile) receiving hits to the body. They were not seen to get up.³⁰⁴ The Danny Boy Incident (“DBI”) document states that the six men were setting up an improvised explosive device (“IED”) of some sort and that they “*...went down under the weight of fire*.”³⁰⁵ However, this was not something Major Griffiths personally recalled, but was based on information he had gained from speaking to members of the Rover Group that evening.³⁰⁶

2.204 Lance Corporal James Gadsby remembered firing single shots with his SA80 rifle through the back door of his vehicle. According to his account he saw one insurgent, dressed in a white dishdash and wearing a red and white shemagh, who was aiming a rocket-propelled grenade at the vehicles. Lance Corporal Gadsby fired a number of shots at this man and observed him fall over, as a result of which he lost sight of him. He considered it to be likely that he had hit the man, but was not sure if the shots had killed him.³⁰⁷ It seems unlikely that this particular insurgent was one of those described by Major Griffiths, because Lance Corporal Gadsby

²⁹⁵ Ibid; See also Colour Sergeant Wilson (ASI016807-08) [38]; Lance Corporal Gadsby (ASI015155) [38]-[39]; Lance Corporal Boyd (ASI013392) [25]

²⁹⁶ Major Griffiths (ASI018495) [69]; Lance Corporal Gadsby (ASI015155-56) [40]; Colour Sergeant Wilson [83/134/9-11]; Lance Corporal Boyd [61/133/10-13]

²⁹⁷ Major Griffiths (ASI018494-95) [68]

²⁹⁸ Major Griffiths (ASI018496) [72]

²⁹⁹ See Lance Corporal Gadsby (ASI015156-57) [44]-[45]; Colour Sergeant Wilson [83/134/18-22]

³⁰⁰ (MOD026860)

³⁰¹ Major Griffiths [60/24]

³⁰² Colour Sergeant Wilson (ASI016809-10) [43]

³⁰³ Lance Corporal Boyd says he saw 20-30 gunmen (ASI013393) [27]; Lance Corporal Gadsby estimated there to be approximately 20 gunmen (ASI015156) [44]

³⁰⁴ (MOD026860)

³⁰⁵ (ASI006948)

³⁰⁶ Major Griffiths (ASI018497-98) [76]

³⁰⁷ Lance Corporal Gadsby [60/96]; (ASI015157) [46]

does not suggest that this particular Iraqi was working as part of a team of six, or that he was involved in setting up an IED.

2.205 In his witness statement to the Inquiry, Private Brian Johnstone stated that he is confident in his recollection that he hit an insurgent during this particular contact. According to Private Johnstone, he saw blood coming out of the Iraqi man's chest as the man ducked for cover, although he could not be sure whether he was injured or killed. Private Johnstone stated that this particular man was located to the right of Route 6 (i.e. the east) and was firing a weapon at him.³⁰⁸ For that reason, it seems that this particular insurgent cannot be one of those who were described by Major Griffiths or Lance Corporal Gadsby.

The return of Major Griffiths' Rover Group to Camp Abu Naji

2.206 After successfully pushing through the third contact without stopping, Major Adam Griffiths' convoy continued on its way to Camp Abu Naji. They stopped briefly to survey the situation near the village of Ataq (which Major Griffiths thought might be a possible further ambush point), but which they subsequently passed through without incident. When they were approximately two kilometres south of Camp Abu Naji, they came across two Warrior AIFVs³⁰⁹ that were blocking the road.³¹⁰ The call signs of these two vehicles were W21 and W22. They formed a multiple³¹¹ commanded by Sergeant Christopher Broome of 1PWRR, who had been deployed from Camp Abu Naji in order to set up a temporary vehicle checkpoint at a location about two kilometres south of Camp Abu Naji, known to the military as "Red 1".³¹² After speaking to Sergeant Broome briefly, Major Griffiths and the Rover Group completed their return journey to Camp Abu Naji without further incident, arriving there at around about 17:30 hours.³¹³

Evidence of an organised series of ambushes

2.207 In my view, the evidence from the members of Major Adam Griffiths' Rover Group clearly established that each of the three ambushes on the Rover Group was initiated by a significant number of Iraqi insurgents who acted together and who opened and maintained fire on the British soldiers in a clearly coordinated manner. The firing was purposeful and planned and the insurgents appeared to be working in concert with a shared aim to launch and maintain a deadly attack on the British convoy. This is clearly evidenced by the fact that the insurgents were often assembled in one or more cohesive groups³¹⁴ and appeared to be working together to launch and fire weapons.³¹⁵ At each of the contacts, the insurgents were well organised and positioned in good firing positions, such as behind bund lines.³¹⁶ The location of the second contact, at the Danny Boy VCP, is likely to have been chosen because any passing vehicle had no choice but to slow down in order to pass through, thus providing the insurgents with a tactical advantage. Having regard to all the evidence, I have no doubt that the object of each such attack was to inflict as much damage and to kill and/or injure as many British troops as possible.

³⁰⁸ Private Johnson (read witness) (ASI014973) [49]

³⁰⁹ Armoured Infantry Fighting Vehicles

³¹⁰ Major Griffiths [60/53-55]; (ASI018498-99) [79]–[80]

³¹¹ A "multiple" is the military term for a team of two or more call signs

³¹² Sergeant Broome (ASI022314) [30]

³¹³ An entry in the log places Major Griffiths' Land Rover YOA at Red 1 at 17:01hrs and in his Royal Military Police ("RMP") statement Major Griffiths puts the time of his arrival back at Camp Abu Naji at "some time...approximately 1730hrs to 1740hrs." (MOD018825)

³¹⁴ See, for example, Colour Sergeant Wilson [83/133-134]; Major Griffiths [60/27-28]

³¹⁵ See, for example, Major Griffiths [60/24-25]

³¹⁶ See, for example, Major Griffiths [60/18]; Colour Sergeant Wilson (ASI016807-09) [38] [43]

- 2.208** There were several witnesses who attested to the presence of a broken down car at the side of the road, at the location of contact 1. Next to the car stood a number of Iraqis waving to get the attention of the Rover Group. All of those who observed this incident stated that the contact started just after the convoy had driven past the car,³¹⁷ suggesting that the two events were not coincidental. Colour Sergeant John McNab stated that his training had taught him that the enemy used such tactics as this in order to launch an ambush.³¹⁸
- 2.209** The number and variety of weapons used by the insurgents is also indicative of the fact that the ambushes were highly organised. The Rover Group observed the presence of AK47 rifles and rocket-propelled grenades at each of the three contact points,³¹⁹ and there was also evidence of improvised explosive devices at the latter two contacts.³²⁰ The insurgents also had RPG launchers and there was some suggestion that a flat bed truck was used at the second contact from which to launch RPGs.³²¹ This range of weaponry indicates that the ambush was focused and determined; with the emphasis being on launching a surprise attack using as many weapons as possible and in order to cause the utmost damage and injury.
- 2.210** Lance Corporal James Gadsby recalled that the gunmen at the second contact gave the appearance of being in the process of preparing for an attack, but being not quite in position when the Rover Group actually arrived.³²² Whilst this clearly demonstrates that the insurgents were acting as a cohesive force in taking preparatory steps to launch an attack, it also appears to reveal a certain lack of readiness. It is possible that, as suggested by Lance Corporal Gadsby, the insurgents at this particular contact had been taken by surprise when the Rover Group arrived and were thus forced to launch their ambush prematurely. Another possibility is that, whilst the main group of insurgents were already in place to launch the ambush, some additional men were in the process of joining the main group in a somewhat disorganised manner.
- 2.211** I cannot say whether the insurgents involved in each of the ambushes had any specific knowledge or intelligence concerning which army vehicles were going to use Route 6 on 14 May 2004, or whether it was simply assumed that some British military vehicles would be likely to travel down Route 6 at some stage, because they so frequently did. However, I am absolutely satisfied from all the evidence that the insurgents were lying in wait for British military vehicles to pass that afternoon. As Lance Corporal David Boyd remarked, the men at Contact 1 appeared to have “...set themselves up to ambush the convoy.”³²³
- 2.212** It is not clear whether any of the three Iraqi ambush groups received any warning or advance notice about when the British vehicles might arrive. However, there was some evidence to suggest that the three ambushes were not only individually organised, but were coordinated with one another. This evidence tended to suggest that the ambushers at the three contacts shared not only a joint purpose but also a common modus operandi.

³¹⁷ Colour Sergeant McNab (read witness) (ASI013068) [45] [48]; Corporal Kozar (ASI011025) [31]; Private McMeeken (ASI009621-22) [20]

³¹⁸ Colour Sergeant McNab (ASI013068) [48]; (ASI007274) [16]

³¹⁹ See, for example, Colour Sergeant Wilson (ASI016806) [30]; Lance Corporal Boyd (ASI013392) [25]; Lance Corporal Gadsby (ASI015156-57) [45]-[46]

³²⁰ Major Griffiths [60/24]; (ASI018494-96) [67] [72]

³²¹ Major Griffiths [60/19-21]; NB – he stated that there may have been an innocent explanation for the presence of the flat bed trucks (trade), but his supposition that they were being used to launch RPGs is based on what others told him. A first hand recollection that the trucks were used to launch RPGs from can be found in the statement of Private McMeeken (read witness) (ASI009623) [25]

³²² Lance Corporal Gadsby (ASI015155) [38]; See also the read witness account(s) of Private McMeeken (ASI009623) [25]; Corporal Kozar (ASI011026) [35]

³²³ Lance Corporal Boyd (ASI03391) [21]

Evidence of coordination

2.213 Major Adam Griffiths stated that he felt that the three ambushes were all part of a carefully coordinated attack on British forces. He gave the following evidence:

“If it had just been one, the first ambush, I would have put it down to previous incidents, you know, possibly tribal, having a go at coalition forces. But because there were subsequent ambushes in very close proximity – and in combination I subsequently found out that Camp Abu Naji was mortared at about the same time – I felt that there was a coordinated response. Similarly, the incident, the second ambush, just north of Danny Boy, there was – quite clearly those men were working together. And also from talking to my own soldiers, it was more coordinated than we had seen previously.... I think there were three separate incidents which actually was one coordinated event. You know, I am not sure they had doctrinal ways of doing things, but it certainly would have been two cut off ambushes with one main.”³²⁴

2.214 Colour Sergeant Colin Wilson agreed with Major Griffiths’ assessment, saying that it appeared to him at the time that the three contacts bore all the hall-marks of a planned ambush – the killing group being the centre group, and the other two groups acting as cut-offs.³²⁵ In my view, it is likely that those involved in carrying out the three contacts had been in communication with each other, at least to the extent of choosing their respective ambush positions. It is extremely unlikely that the three groups of insurgents had placed themselves, in similar numbers, at various points along Route 6 by coincidence. There is no doubt that the ambushers shared a common purpose, but I am unable to say how sophisticated any coordination between the groups was. Nor am I able to say whether or to what extent the three separate groups communicated with one another during the course of or after the ambushes.

2.215 However, I am entirely satisfied that those who took up arms against the Rover Group on 14 May 2004 had pre-planned the attacks to a substantial extent. The insurgents were deliberately armed and strategically positioned in order to open fire on the Rover Group as soon as it approached. I am not able to identify precisely who planned and perhaps coordinated these ambushes, although I believe that it is very likely that the local organisers/leaders of the Mahdi Army militia were largely responsible for carrying out and/or precipitating this particular insurgency. I am also satisfied that the participants were young men from Al Majar al’Kabir who had armed themselves or had been deliberately armed by others for the purpose of the ambush. As already indicated,³²⁶ it is likely that at least some of these men had taken part in the earlier demonstration, or had been present in Al Majar al’Kabir earlier that day.

Location of the Rover Group ambushes and the subsequent battles

2.216 In my view it is clear that the first ambush on the Rover Group took place at the same location, or extremely close to the location, where the Southern Battle subsequently took place. This was confirmed in evidence by a number of military witnesses³²⁷ and is evident from the geographical descriptions provided for both engagements.³²⁸ I believe this is not coincidental.

³²⁴ Major Griffiths [60/27-28]

³²⁵ Colour Sergeant Wilson [83/175]; NB – his evidence is further supported by Private Johnstone (a read witness) who states that his impression was that the ambush was well prepared and that the militiamen (at contact 1) were in defensive positions and appeared to be waiting for the convoy to drive past (ASI014970) [37]

³²⁶ See paragraph 2.140 above

³²⁷ See, for example, Lieutenant Passmore (ASI016104) [35]

³²⁸ See, for example, Major Griffiths (ASI018487-88) [53]; Colour Sergeant Wilson (ASI016805) [28]; Corporal Gidalla (ASI011691) [28]

I have come to the conclusion that it is very likely that the Iraqi men who took part in the first ambush upon the Rover Group were the same men who were subsequently involved in the Southern Battle, although it is also likely that they were joined by additional men in the intervening period between the two engagements.

2.217 It should be noted that, although the first contact and the Southern Battle took place in the same general area, the insurgents involved in each of these two contacts were actually positioned on different sides of the Route 6. During the first ambush on Major Adam Griffiths’ Rover Group, the armed insurgents were positioned to the west of Route 6, whereas those who were involved in the Southern Battle were positioned to the east.³²⁹ There are a number of plausible explanations as to why this was the case; it is possible that the gunmen perceived the east side as a more appropriate terrain for fighting or they may have decided to change position to add to or preserve the element of surprise. In any event, I am satisfied that it is very likely that the same men were involved in both contacts and that, therefore, a significant number had crossed Route 6 to the east side at some stage after the initial ambush.³³⁰

The Detainees’ involvement in the three ambushes on Major Griffiths’ Rover Group

2.218 In his oral evidence, Hamzah Joudah Faraj Almalje (detainee 772) said that before the battle started he had been in the area where the sugar cane grows, close to Qal’at Salih, on the other side of the road from the disused army building.³³¹ As is explained later in this Report, the disused army building to which Hamzah Almalje referred is the central location of the Southern Battle. Its grid reference is QV 123,962 which, as discussed above,³³² is the same grid reference as that given by Major Adam Griffiths as the location of the first ambush on his Rover Group.

2.219 In evidence, Hamzah Almalje (detainee 772) accepted that he had been in this location for some time prior to the commencement of the Southern Battle. He said that he first saw two armoured military vehicles on the Basra road. There was no firing at that time and so he hid his Kalashnikov rifle, because he did not know if the British would allow him to carry a weapon and he wanted to save himself trouble.³³³ He went on to say that, sometime later, he heard the sound of firing from about three kilometres away at the check-point.³³⁴ He claimed that, sometime later still, he saw further military vehicles, some travelling from Al Amarah and another group coming from the direction of Basra. He said that firing was then exchanged between these vehicles and various locations.

2.220 It seems to me to be likely that the first two vehicles Hamzah Almalje (detainee 772) claims to have seen that day were Major Griffiths’ Rover Group vehicles, with the subsequent firing heard by him coming from the direction of the Danny Boy VCP, being the sound of the second and third ambushes being carried out on the Rover Group. If Hamzah Almalje did see the Rover Group passing along Route 6 his evidence that he did not witness any firing at this point cannot be true, not least because he places himself in the exact location where a substantial exchange of fire undoubtedly took place between the Rover Group and the Iraqi insurgents, as described above. Moreover, it was his evidence that he was to the west of Route 6, precisely

³²⁹ See, for example, Lieutenant Dormer (ASI013702) [48]

³³⁰ As Hamzah Joudah Faraj Almalje (detainee 772) appears to have done; See paragraph 2.221

³³¹ Hamzah Joudah Faraj Almalje (detainee 772) [19/66-67]; [19/92]

³³² See paragraph 2.188 above

³³³ Hamzah Joudah Faraj Almalje (detainee 772) [19/69]; [20/1-3]

³³⁴ Hamzah Joudah Faraj Almalje (detainee 772) [19/69]; (PIL000681) [18]

where the members of the Rover Group confirmed that the insurgents were positioned³³⁵ when the British convoy was attacked.

2.221 Even if the vehicles referred to by Hamzah Almalje (detainee 772) were not in fact the Rover Group vehicles, I am satisfied that he must have been present at a time when they did drive past whilst being attacked by the Iraqi insurgents. In evidence, Hamzah Almalje accepted that he was captured along Route 6 in the vicinity of the derelict building, although (as I explain later) I am satisfied that he was on the east side of Route 6 by the time he was actually captured. He also accepted that he had been at the fields for some time and did not try to suggest that he had recently arrived there, at a time when the first ambush may have already taken place.

2.222 Having regard to all the evidence, I am satisfied that Hamzah Almalje (detainee 772) was present at, and an active participant in, the first ambush carried out on Major Griffiths' Rover Group. In my view, Hamzah Almalje's evidence that he did not witness any firing when the Rover Group passed was an untruthful attempt to distance himself not only from what he saw, but from the part he played, both in the first ambush of Major Griffiths' Rover Group and in the subsequent major engagement that was the Southern Battle component of the overall Battle of Danny Boy.

2.223 Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) also gave evidence which suggests that he saw Major Griffiths' Rover Group driving along Route 6, north of the Danny Boy VCP on 14 May 2004 and that he witnessed either or both the second and third contacts on the Rover Group that day. He stated that whilst at his farm, which he said was to the west of Route 6 and north of the Danny Boy VCP,³³⁶ he saw ten to 15 masked men arrive in pick-up trucks. According to Abbas Al-Hameedawi the men had various weapons with them, including rocket-propelled grenades. Abbas Al-Hameedawi stated that British military vehicles then arrived and there was an exchange of fire. According to Abbas Al-Hameedawi, the gunmen remained after the military vehicles had left and he then carried on farming. He went on to state that a battle had taken place later, when some tanks arrived from Camp Abu Naji.³³⁷

2.224 In his oral evidence, Abbas Al-Hameedawi (detainee 776) explained that the masked men "*stood in the way*" of the military vehicles. He claimed to have heard firing but could not say who it was coming from.³³⁸ This was a substantial retraction of the account he had given previously in his written statements, where he stated that he had seen the British "*fired upon*"³³⁹ by the gunmen who were armed with various weapons and that he had seen the gunmen "*attack*" the British army jeeps.³⁴⁰

2.225 In my view, Abbas Al-Hameedawi's (detainee 776) explanation as to why he happened to be in the immediate vicinity of the ambush on Major Griffiths' Rover Group and why he stayed after seeing masked gunmen firing at British vehicles was completely untrue. Rather, I consider that it is very likely that he took an active part in either the second or third ambush of Major Griffiths' Rover Group. In any event, for reasons that I explain later, I am completely satisfied that Abbas Al-Hameedawi was not engaged in farming that day. He was one of the armed Iraqi insurgents actively engaged in the planned ambush and attack on British troops

³³⁵ See, for example, Major Griffiths (ASI018487-88) [53]; Lance Corporal Gadsby (ASI015153) [30]

³³⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000861) [13]; (ASI003306)

³³⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/7-8]; (ASI000861-62) [17-20]; [27-28]; (PIL000002-03)

³³⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/7/21]

³³⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000002-03) [6]-[7]

³⁴⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000861) [19]

that developed into the Northern Battle component of the Battle of Danny Boy, during which he was captured and detained on the battlefield as a result.

- 2.226** Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) also gave evidence that he had witnessed the arrival of vehicles carrying men with weapons.³⁴¹ He stated that he had then seen two British Land Rovers travelling along Route 6 and they were fired upon by the men carrying weapons.³⁴² According to Atiyah Al-Baidhani (detainee 779), he hid when the shooting started.³⁴³
- 2.227** Having regard to the location where and the circumstances in which Atiyah Al-Baidhani (detainee 779) was later captured and detained by British soldiers that day (as to which, see later in this Report), it seems to me to be very likely that this was a highly selective and carefully tailored account of the second or third ambushes carried out on Major Griffiths’ Rover Group, intended to be consistent with Atiyah Al-Baidhani’s untrue assertion that he had not been involved in any insurgent attack on British troops. On the contrary, I am entirely satisfied that he was, in truth, one of the many armed Iraqi insurgents who were involved in carrying out the planned ambushes and attacks on British troops along Route 6 that took place that day.
- 2.228** Having regard to all the evidence, I consider that it is very likely that Atiyah Al-Baidhani (detainee 779) was actually an active participant in either the second or third ambush carried out on Major Griffiths’ Rover Group on 14 May 2004. On his own account, he singularly failed to provide any credible explanation as to why he did not leave the area after this incident (particularly as he stated that others had done so).³⁴⁴ It is also clear from the evidence concerning his later capture and detention by British soldiers (as well as the matters referred to in paragraphs 2.209 and 2.210), that he too was one of the armed Iraqi insurgents who had been actively engaged in the planned ambush and attack on British troops that developed into the Northern Battle component of the Battle of Danny Boy and that he was captured and detained on the battlefield as result.

Communications from Major Griffiths’ Rover Group during the three initial ambushes

- 2.229** As already indicated, Major Adam Griffiths and his Rover Group attempted to communicate with Camp Condor and Camp Abu Naji on a number of occasions throughout the three initial ambushes. In his evidence, Major Griffiths made it clear that the aim of those endeavours was not only to inform those at the respective camps as to what was actually happening as a matter of normal procedure, but it was also to ensure that no other British soldiers placed themselves at risk by travelling along Route 6 at the time.
- 2.230** However, despite Major Griffiths’ efforts to ensure that his order, to the effect that no other vehicles were to deploy, had been conveyed to and understood by those in an appropriate position to implement that order, it appears that no such order was ever actually received or recorded and/or properly appreciated.

³⁴¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/85/6]-[86/23]; (MOD003045); [9/106/18]-[108/15]; (MOD006669) [3]; [9/111/18]-[112/16]

³⁴² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/85/25]-[86/20]

³⁴³ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/86/21]-[87/1]; He had previously said that he sat down to watch (ASI000949) [19] but denied this in oral evidence [10/50/10]-[53/7]

³⁴⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/54-58]

2.231 As a result, platoons 6 and 7 of 1A&SH both deployed from Camp Condor with the aim of going to the rescue of Major Griffiths' Rover Group, who they believed was then pinned down under continuing incoming hostile fire and in need of urgent assistance. In the event, as they proceeded north along Route 6, platoons 6 and 7 were also ambushed in their turn by the insurgents. What then resulted was a period of heavy fighting which became known to the Inquiry as the Southern Battle, the details of which are explored in detail later in this Report and which forms one of the two main component elements of the overall Battle of Danny Boy. I now turn to consider the communications sent and received by Major Griffiths and his Rover Group prior to this engagement, with a view to explaining how it all came about.

Rover Group's means of communication on 14 May 2004

2.232 The Rover Group had access to personal role radios ("PRRs") which allowed them to communicate with one another whilst travelling in convoy. The PRRs were solely for use between the vehicles and/or individual members of the Rover Group and did not enable them to make direct contact with either Camp Abu Naji or Camp Condor.³⁴⁵

2.233 The main communication system available to Rover Group, which did allow them to make contact with both Camp Condor and Camp Abu Naji, was the High Frequency (HF) and Very High Frequency (VHF) radios fitted inside their Land Rovers. Major Griffiths was also personally equipped with a military issue mobile telephone which was effectively a secondary means of communication.³⁴⁶

2.234 At both Camp Condor and Camp Abu Naji, the HF and VHF radios were monitored by a watch-keeper, assisted by signallers, who recorded any communication in a logbook.³⁴⁷ Lieutenant Thomas Millward was the watch-keeper in the Operations Room at Camp Abu Naji on 14 May 2004. Lieutenant Millward stated that his role was to record the pertinent information received over the telephone and radios in the watch-keeper's log. There were no set criteria for deciding what information should be recorded and a degree of judgment on the part of the watch-keeper was required.³⁴⁸ As already indicated, the Inquiry was able to obtain the Camp Abu Naji watch-keeper's log, giving details of communications received by the Operations Room at Camp Abu Naji 14 May 2004.

The other radio logs maintained at Camp Abu Naji³⁴⁹

2.235 At Camp Abu Naji, the watch-keeper was also provided with information by signallers who worked alongside the watch-keeper in the Operations Room. The role of these signallers was to monitor radio communications and to record the messages and information into two further logbooks. The Operations Room at Camp Abu Naji was divided by a partition, with the signallers for B Company 1st Battalion, Argyll & Sutherland Highlanders ("1A&SH") located in one part and the signallers for 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") in the other.³⁵⁰

³⁴⁵ Major Griffiths (ASI018516) [130]

³⁴⁶ Major Griffiths [60/28/13-16]

³⁴⁷ Major Griffiths (ASI018517) [131]

³⁴⁸ Lieutenant Millward (ASI020575) [37]-[38]; See also Captain Curry (ASI016785) [23]

³⁴⁹ (MOD019785)

³⁵⁰ Lieutenant Millward produced a sketch plan of the Operations Room at Camp Abu Naji (ASI020593); Captain Curry also produced a sketch plan at (ASI016798)

2.236 The Operations Officer for 1PWRR on 14 May 2004 was Captain Charles Curry, whose role during any major operation was to oversee the watch-keeper and signallers in the Operations Room at Camp Abu Naji and to ensure that information was effectively passed between the units on the ground and up the chain of command.³⁵¹ The respective logs for each of the two sets of signallers at Camp Abu Naji were also provided to the Inquiry, i.e. the radio operator’s Log for 1A&SH³⁵² and the radio operator’s Log for 1PWRR.³⁵³ Altogether, the watch-keeper’s log and these two further logs were intended to provide a contemporaneous record of all radio and operational telephone communications received on 14 May 2004 by the Operations Room at Camp Abu Naji.

Other radio logs on 14 May 2004

2.237 In addition to the watch-keeper’s log and the 1A&SH and 1PWRR radio logs maintained in the Operations Room at Camp Abu Naji, the Inquiry was able to obtain the radio logs maintained on 14 May 2004 at: (i) the 1A&SH Headquarters Operation room at Basra Palace and (ii) the Brigade Operations Room based at Basra Palace where two further relevant logs were maintained – one being for 1 Mechanized Brigade (“1 Mech Bde”) log and the other being the Division Unit log.³⁵⁴ These logs recorded information from both Camp Abu Naji and Camp Condor which had been reported up the chain of command. As Major Griffiths explained: *“In this sort of incident it is all informed, so there will be a number of information streams passing up to the main headquarters to make sure they got through.”*³⁵⁵

2.238 The Inquiry also heard evidence that Lance Corporal Wells was listed on the rota as the radio operator at Camp Condor on 14 May 2004,³⁵⁶ although no logs from Camp Condor have actually been obtained by, or provided to, the Inquiry.

Quality of communications

2.239 It was repeatedly stated by military witnesses who gave live evidence to the Inquiry that the general quality of radio communications, in May 2004, was poor.³⁵⁷ Colour Sergeant Colin Wilson, a member of the Rover Group, told me that the communications equipment was extremely unreliable, stating *“to this day I recall that the radio signals were notoriously bad on route 6.”*³⁵⁸

2.240 Captain Matthew Douglas was based at Camp Abu Naji in 2004. Part of his role was to issue VHF radios to the Iraqi Police Service. He told the Inquiry that this provided him with a good understanding of the communications equipment and process. He recalled that the quality of the VHF and HF radios was generally poor and that those who used them encountered a number of problems:³⁵⁹ i.e. (i) the HF radios were difficult to use whilst a vehicle was moving, (ii) despite VHF radios having a range of approximately 35 kilometres, their performance was variable (Captain Douglas understood that this was due to the intense heat) and (iii) there

³⁵¹ Captain Curry (ASI016779-80) [8]

³⁵² (MOD040188-92)

³⁵³ (MOD018935-64)

³⁵⁴ (ASI007156-75); (MOD019792-98)

³⁵⁵ Major Griffiths [60/28/20]-[29/1]

³⁵⁶ Lieutenant Passmore (ASI016146) [183]

³⁵⁷ See, for example, Corporal Gidalla (ASI011707) [87]; Captain Curry (ASI016786) [30]; Lieutenant Passmore (ASI016146) [182]

³⁵⁸ Colour Sergeant Wilson (ASI016805) [29]

³⁵⁹ Captain Douglas (ASI019616) [18]

was a known black spot on route 6 past Danny Boy (i.e. south of Danny Boy VCP), where it was almost impossible to communicate by radio.³⁶⁰

2.241 I also heard evidence which suggested that the quality of communications was dependent upon the distance of the vehicles on the ground from the respective military camps. Camp Abu Naji, for example, had difficulty in contacting vehicles once they were south of the Danny Boy VCP, because they became out of range.³⁶¹

The Rover Group's actual communications on 14 May 2004

2.242 As I have already indicated, Major Adam Griffiths told the Inquiry that he had endeavoured to make contact with both Camp Abu Naji and Camp Condor at various times throughout the Rover Group's progress through the ambushes along Route 6 that day. Also, at a time shortly after the first contact, 6 and 7 platoons of 1A&AH deployed from Camp Condor in response to a radio or telephone communication giving information of the ambush on Major Griffiths' Rover Group. I set out the details of that deployment and the subsequent actions of 6 and 7 platoons later in this Report.

2.243 It is not possible to work out the precise timings of each of the three contacts on Major Griffiths' Rover Group from the entries in the various logs. What follows is my analysis of the order and manner in which the relevant events of those initial ambushes unfolded, as derived from my interpretation of the various entries in the logs, taken together with the evidence given to the Inquiry by Major Griffiths about the communications he, and his Rover Group, attempted to and did make on 14 May 2004.

Records of Rover Group Communications on 14 May 2004

2.244 The first relevant log entry was recorded by the signaller for 1A&SH in the Operations Room at Camp Abu Naji at 16:36 hours, as shown in the extract from the radio log as set out below. It reads as follows: "YOA is still at ICDC camp K R-1."³⁶²

1635	Y40	C20	Radio ch k NH -1-
1635	V33A	Y40	Radio ch k NH -1-
1636	Y40	C20	confirm not time you left we loc k 1530 hrs k R -1-
1636	^{C20} 1637	Y40	you is still at ICDC camp k R -1-
1648	Y21A	C20	Radio ch k ok k ok

2.245 This particular message was sent to the Operations Room at Camp Abu Naji from call sign Y40, which I understand to be the call sign for Camp Condor.³⁶³ The message clearly suggests that, at 16:36 hours that day, the Rover Group had not yet started on their journey north along route 6. Major Adam Griffiths agreed with this interpretation and noted that he must have visited the Iraqi Civil Defence Corps ("ICDC") camp before leaving for his return journey to Camp Abu Naji.³⁶⁴

³⁶⁰ See also Major Griffiths (ASI018517) [132]

³⁶¹ Captain Curry (ASI016786) [30]

³⁶² (MOD040278)

³⁶³ See Private Sullivan (read witness) (ASI017242); NB – one of the signallers for 1A&SH

³⁶⁴ Major Griffiths [60/16/1-17]

2.246 As I have already indicated, Major Griffiths recalled that the first communication, made by either himself or by Lance Corporal Richard Harrower after leaving Camp Condor, was during the initial contact when one of them sent a Contact report over the HF and VHF radios.

2.247 Major Griffiths recalled that he did not receive a response from Camp Abu Naji and so did not know whether they were aware that his Rover Group had been contacted. He therefore used his mobile telephone to speak to the Operations Room at Camp Abu Naji,³⁶⁵ when his Rover Group pulled up some two kilometres north of the initial ambush location. Speaking to Camp Abu Naji by mobile telephone involved calling a number in Whitehall in order to be patched through to the Operations Room at Camp Abu Naji. Major Griffiths told me that he reported what had happened in that call and informed Camp Abu Naji that he was pushing on north to Camp Abu Naji. He also asked for a VCP to be set up to the south of Qal’at Salih to ensure that Coalition forces soldiers did not enter the ambush zone.³⁶⁶

2.248 The first entry in one of the Camp Abu Naji logs after the Rover Group had left Camp Condor appears at 16:47hrs, as set out in the extract from the watch-keeper’s log shown below. It reads as follows: “Contact at 109.979 Small arms + RPG, now Observing.”³⁶⁷

016	1650	INFO		ARMOURD G RE DEPLOYED TO RED 7			T.M.
017	1647 1647		BCOT	CONTACT AT 109 979 SMALL ARMS + RPG, NOW OBSERVING.			T.M.
018	1656	ø	BCOT	ROCKET + RPG AMB			

2.249 This particular entry in the watch-keeper’s log was recorded by Lieutenant Tom Millward who, as I have already indicated, said that to the best of his recollection the log entry represented a communication from Major Griffiths and that he believed it to have been made by mobile telephone as opposed to radio.³⁶⁸ He explained that his memory of the terms of the communications from Major Griffiths on 14 May 2004 clearly demonstrated that the Major was communicating via telephone, thus: “I remember him referring to himself as OC B Company. You would never do that over a radio net.”³⁶⁹ The timing of the entry obviously suggests that the Rover Group had been contacted by the insurgents within eleven minutes of having left Camp Condor.

2.250 As explained earlier in this Report, the grid reference provided to Camp Abu Naji in this communication indicated that Major Griffiths had made this particular report at a time when he was actually somewhat north of the initial contact point. I am therefore satisfied that this log entry is the result of Major Griffiths’ second attempt to make contact with Camp Abu Naji, made just after the first ambush had taken place near Qal’at Salih. It follows that Major Griffiths’ initial attempt at radio communication was not received by the signallers at Camp Abu Naji. As explained above, this may well have been because the vehicles were then at a point south of the Danny Boy VCP and therefore in a radio “black spot” and/or out of range.³⁷⁰

³⁶⁵ Major Griffiths [60/29/18-22]; Major Griffiths recalls speaking to the “Operations Officer” Captain Curry (ASIO18490-91) [60] who does not now recall the events of 14 May 2004 (ASIO16788) [36]–[37]; However, Lieutenant Millward (watch-keeper) does recall speaking to Major Griffiths via telephone [111/128]

³⁶⁶ Major Griffiths (ASIO18490-91) [60]

³⁶⁷ (MOD019785)

³⁶⁸ Lieutenant Millward [111/122-123]

³⁶⁹ Lieutenant Millward [111/128]

³⁷⁰ See paragraphs 2.239 – 2.240 above

- 2.251** Although Camp Abu Naji does not appear to have heard Major Griffiths' initial Contact report, it seems that the Operations Room at Camp Condor may have done so. In his witness statement, Major Griffiths said that he remembered being able to get through to the Operations Room at Camp Condor at some point during or shortly after the initial ambush. By the time Major Griffiths gave evidence to the Inquiry, he stated that he was not certain what communications had actually got through but that he believed from the evidence he had been shown that elements of the initial Contact report had been received by Camp Condor.³⁷¹
- 2.252** The fact that Camp Condor did receive an early radio message about the first ambush is clearly demonstrated by the rapid action of 6 and 7 platoons of 1A&SH in deploying from Camp Condor in order to go to the assistance of Major Griffiths and his Rover Group. Lieutenant William Passmore told me that he was informed by the watch-keeper at Camp Condor that Major Griffiths' Rover Group convoy had been contacted. He said that he had discussed this with Second Lieutenant James Dormer and that they had decided to deploy in support.³⁷² Lieutenant Passmore's evidence accorded with Lieutenant Dormer's recollection of events.³⁷³ Major Griffiths recalled speaking to his platoon commanders later on 14 May 2004 and that they had confirmed that the Operations Room at Camp Condor had received his first Contact report and that they had deployed in support as a result.³⁷⁴
- 2.253** From the available evidence, it is not possible to determine the precise time at which the radio message reporting the first ambush was received by Camp Condor. On the basis of Major Griffiths' evidence, it is likely to have been received when the Rover Group were driving through the initial contact or shortly thereafter, when they had pulled up some two kilometres north.
- 2.254** Both Lieutenant Passmore and Lieutenant Dormer also said that they had been given a grid reference by the Camp Condor Operations Room when the first Contact report was received. In the absence of any log entries recorded at Camp Condor, I am not able to say whether a specific grid reference was given or whether an approximate location of the contact was provided by the watch-keeper as his best estimate, based on the information he had received in the Contact report.
- 2.255** In my view, it is likely that the grid reference given to the commanders of 6 and 7 platoons 1A&SH actually related to the location of the Rover Group once they had cleared the initial ambush. It is unlikely that they were given the grid reference for the precise location of the first ambush, because there is no evidence of any such information in any of the logs maintained at Camp Abu Naji, with whom the Operations Room at Camp Condor might reasonably have been expected to share it.
- 2.256** However, it is clear that the radio message received by the Operations Room at Camp Condor did relate to the first ambush on the Rover Group (as opposed to one of the two later contacts in the immediate vicinity of the Danny Boy VCP), because Lieutenant Passmore recalled that the Southern Battle in which platoons 6 and 7 of 1A&SH became embroiled (as to which, see later in this Report) actually took place in the same approximate location as the grid reference with which they had been provided by the Operations Room at Camp Condor.³⁷⁵ In fact the first time that the specific grid reference for the first contact appears is in Major

³⁷¹ Major Griffiths [60/28/20]-[29/8]

³⁷² Lieutenant Passmore (ASI016105) [37]

³⁷³ Lieutenant Dormer (ASI013698) [35]

³⁷⁴ Major Griffiths (ASI018501) [86]

³⁷⁵ Lieutenant Passmore (ASI016104) [35]

Griffiths’ Contact report, written on the evening of 14 May 2004, once the Rover Group had returned to Camp Abu Naji.³⁷⁶

2.257 Shortly after the first Contact report relating to the Rover Group was made in the watch-keeper’s log at 16:47 hours,³⁷⁷ a series of consecutive entries was made in the radio log maintained by the signaller for 1A&SH in the Operations Room at Camp Abu Naji at 16:50 hours and 16:59 hours. As can be seen from the extract from the log set out below, those entries read as follows;

“Contact w-i-

Y41 and Y30A

On route to GD 109 979

Contact Mortar”³⁷⁸

1636	C20 1637	Y40		you is still at ICDC Camp k r - (-		
1648	Y21A	C20		radio ch k ok k ok		
1650	C20	Y21A		Contact w-i-		
				Y41 + Y30A		
1659				on route to GD 109 979		
1659				Contact mortar		
	C20	Y40		ASK FOR CITREP BUT NO		

2.258 This sequence of log entries is recorded as having been addressed to “C20”, which was the call sign used in the Operations Room at Camp Abu Naji for signallers from 1A&SH.³⁷⁹ It is recorded as being received from call sign “Y21A2” which, as Major Griffiths confirmed in his Contact report, was the identifying call sign for his driver and signaller, Lance Corporal Richard Harrower.³⁸⁰

2.259 According to Corporal Christopher Muir (a signaller at Camp Abu Naji and a read witness), these entries in the log are a record of the contact on 6 and 7 platoons 1A&SH, following their deployment from Camp Condor and whilst they were still en route to the location where the first ambush on Major Griffiths’ Rover Group had taken place.³⁸¹

2.260 However, there are a number of problems with this particular interpretation. First, Corporal Muir was also of the opinion that the words “Contact mortar” formed an integral part of the overall message. I consider this to be unlikely; not only does it appear to be separately timed at 16:59 hours, it also seems to me to be far more likely that this last line in the sequence of entries is distinct from the earlier part and is a separate reference to the mortar attack on Camp Abu Naji that happened to be taking place at about the same time as the ambushes on the Rover Group.³⁸²

³⁷⁶ (MOD026860)

³⁷⁷ See paragraph 2.244 above

³⁷⁸ (MOD040278)

³⁷⁹ Private Sullivan exhibit (ASI017242)

³⁸⁰ See (MOD026860); Confirmed by Private Sullivan at (ASI017242) who states that it was the identifying call sign for the Corporal of the OC of B Company.

³⁸¹ Corporal Muir (ASI024483) [33]

³⁸² Captain Curry (ASI016788) [36]

- 2.261** Second, it simply cannot be the case that 6 and 7 platoons were contacted along Route 6 just three minutes after the Rover Group had reported the initial ambush at 16:47 hours. It seems to me that the interval of time is far too short, even allowing for some discrepancy between times recorded in the logs because of the different sources from which times were derived.³⁸³ Furthermore, as will become apparent from the more detailed account of the Southern Battle given later in this Report, 6 and 7 Platoons actually arrived at the point of ambush separately and the first signals that they made to the Operations Room at Camp Abu Naji were made some time after they had been first contacted.³⁸⁴ I am therefore satisfied that it is highly unlikely that platoons 6 and 7 1A&SH were contacted along route 6 as early as 16:50 hours on 14 May 2004.
- 2.262** Third, and perhaps most important of all, this particular series of messages is recorded as having been sent by Lance Corporal Harrower, who was Major Griffiths' driver and signaller. However, there is no evidence to suggest that he either would or could have known about any deployment of or contact on platoons 6 and 7 1A&SH at this stage. In my view, a far more likely interpretation of this series of entries is that the first line records a message received from Lance Corporal Harrower reporting that the Rover Group had been contacted. This is shown in the wording of the first part of this message, i.e. the words "contact w-i" (shorthand for "contact wait out").³⁸⁵ In my view, in the next two lines of this particular log entry the signaller has simply recorded the fact that platoons 6 and 7 1A&SH had deployed or were about to and were on their way to the grid reference in question, but without having inserted the time that he made that part of the entry.
- 2.263** The next relevant entry in the logs was recorded in the watch-keeper's log by Lieutenant Millward at 16:56 hours. It is again from "B Coy" and reads as follows: "*Rocket + RPG attack*".³⁸⁶ I am satisfied that this log entry is a Contact report that Major Griffiths made by telephone after the Rover Group had been contacted for the second time.³⁸⁷
- 2.264** Major Griffiths also recalled that he had spoken to Camp Abu Naji again during the third contact on the Rover Group. He said that, on this occasion, he had been told to push on through to Camp Abu Naji.³⁸⁸ The penultimate relevant log entry that relates to the Rover Group appears to be a partial record of this exchange, as follows: "*3 contacts route Condor*".³⁸⁹ This log entry is again recorded as from "B Coy" and thus indicates an incoming message from the Rover Group, reporting that they had now been contacted three times whilst en route from Camp Condor. The message was recorded at 17:01 hours, just five minutes after the previous message had been received in relation to the second contact on the Rover Group. This corresponds with the Rover Group evidence that the third contact had taken place almost straight after the second.³⁹⁰

³⁸³ Lieutenant Millward stated that he used his wristwatch to record the time in the logs, or the clock on the wall in the Operations Room [111/116/1-9]; Private McLelland (signaller for 1A&SH) says he would use the same (the clock or Lieutenant Millward's watch) (ASI021603) [36]; Sergeant Muir (signaller for 1A&SH) (ASI024482) [28g] said that he would use the clock on the wall

³⁸⁴ See, for example, Lieutenant Passmore (ASI016111) [57]–[58]

³⁸⁵ See Lieutenant Millward (ASI020574) [35]

³⁸⁶ (MOD019785)

³⁸⁷ Major Griffiths (ASI018492) [63]

³⁸⁸ Major Griffiths (ASI018498) [78]; Major Griffiths recalls on this occasion that he spoke to the Operations officer Captain Curry (the log entry is recorded by Lieutenant Millward)

³⁸⁹ (MOD019785)

³⁹⁰ See, for example, Colour Sergeant Wilson [83/134/18-22]; Lance Corporal Gadsby (ASI015156) [43]–[44]

- 2.265** The watch-keeper’s log indicates that the Rover Group had arrived at a location known as “Red 1” by 17:05 hours.³⁹¹ This accords with Major Griffiths recollection that he had managed to contact Camp Abu Naji by using Sergeant Christopher Broome’s headset radio.³⁹²
- 2.266** As shown below, a further entry at 17:10 hours states as follows; “Y33A – Past Danny Boy. Road lined with armed men and RPG’s. Y33A en route to Abu Naji. 1 x vehicle requires assistance.”³⁹³

Serial	Time	To	From	Event	Action	Initials
023	1710	KO	Y33A	Y33A – PAST DANNY BOY ROAD LINED WITH ARMED MEN & RPGS. Y33A en route to ABU NAJI. 1 x VEHICLE REQUI- RES ASSISTANCE		TM

- 2.267** This appears to be a further message received from the Rover Group whilst they were at Red 1. Mention of a vehicle requiring assistance is likely to refer to the fact that Major Griffiths recalled that Colour Sergeant John McNab’s vehicle briefly broke down as they left Red 1.³⁹⁴

The Order by Major Griffiths that nobody should deploy

- 2.268** Major Adam Griffiths gave evidence that, in the course of his communications with the Operation rooms at both Camp Abu Naji and Camp Condor, he had repeatedly made the point that no-one was to deploy in support of him. He said that he had made this abundantly clear during his initial telephone communication to the Operations Room at Camp Abu Naji.³⁹⁵
- 2.269** However, as I have already indicated, the relevant log entry as recorded by Lieutenant Tom Millward³⁹⁶ makes no reference to any order or request by Major Griffiths to the effect that no-one should deploy in support of him. Lieutenant Millward did not recall ever receiving such an order and said that he believed that he would have recorded it in the log book if he had done so.³⁹⁷
- 2.270** Similarly, Major Griffiths also said that he was sure that, when communicating with the Operations Room at Camp Condor, he had stressed that no-one was to deploy in support of the Rover Group. He said that he was very clear about this and that the reason he gave such an order was that the Rover Group was not in any immediate danger (having at this point pushed through the contact) and he did not want to put others at unnecessary risk.³⁹⁸
- 2.271** I see no reason to doubt that Major Griffiths did seek to order that nobody should deploy in order to provide the Rover Group with assistance and support. I am equally satisfied that nobody in either of the Operations Rooms at Camp Abu Naji and Camp Condor was actually aware that any such order had been given.

³⁹¹ (MOD019785)

³⁹² [60/53/22]-[54/7]; NB – Sergeant Broome stated that he could not have used his radio because it was not working, but he may have used the radio of someone else [86/111]. The log does not assist as to which call sign the order had come from, only stating that the entry is for “info only”

³⁹³ (MOD019786)

³⁹⁴ Major Griffiths (ASIO18499) [81]

³⁹⁵ Major Griffiths (ASIO18489-90) [58]

³⁹⁶ See paragraphs 2.247 – 2.248 above and (MOD019785)

³⁹⁷ Lieutenant Millward [111/124/1-10]

³⁹⁸ Major Griffiths (ASIO18489) [58]

- 2.272** Major Griffiths said that he had managed to make contact with Camp Abu Naji on number of occasions and that he had repeated the order not to deploy on at least two separate occasions.³⁹⁹ Although the 1st Battalion, Argyll & Sutherland Highlanders (“1A&SH”) signaller’s log at Camp Abu Naji recorded that 6 and 7 platoons 1A&SH had deployed at 16:50 hours,⁴⁰⁰ Major Griffiths did not believe he had been informed that this had occurred, despite having spoken to Camp Abu Naji at least twice thereafter. It is perhaps surprising that this repeated order/instruction from Major Griffiths does not appear to have been received and/or understood to be such by any watch-keeper or signaller at either Camp Abu Naji or Camp Condor, although the poor communications on 14 May 2004 may help to explain this state of affairs. The brevity of the log entries may also indicate that the momentum and complexity of the developing situation were rapidly increasing, all of which may have contributed to the fact that Major Griffiths’ efforts to communicate his order did not, in the event, come to the attention of anybody in either Operations Room who was in a position to record and/or to implement them.
- 2.273** In the event, Major Griffiths became aware that 6 and 7 platoons had actually deployed in support of him once he got to Camp Abu Naji.⁴⁰¹ When asked in oral evidence whether he knew why his order not to deploy had not been obeyed, Major Griffiths replied as follows (apparently implying that his order had been ignored): *“Yes. The OC gets into trouble, the boys will bounce out.”* However, he then accepted that he had not actually discussed with anyone why his order had not been carried out and went on to confirm that he did not know whether the order had in fact been passed to Camp Condor at all.⁴⁰²
- 2.274** For his part, Lieutenant James Dormer suggested that he would have strongly considered ignoring an order not to deploy if he had felt that Major Griffiths was trying to protect them at risk to himself.⁴⁰³ However he maintained that he did not know of the order at the time of deployment and stated that he only heard of it subsequently.⁴⁰⁴
- 2.275** Sergeant Paul Kelly also said that he had not been told by the watch-keeper at Camp Condor about any order not to deploy and went on to state that he did not hear about any such order later. He said he had been told about the order not to deploy by his lawyers before giving evidence to the Inquiry and that it had come as a complete surprise to him. Sergeant Kelly also told me that he if he had known of any such order, he would not have deployed. He rejected the suggestion of there being any misplaced loyalty, thus:

“Q. ...if you had been told that Griffiths had instructed or ordered that nobody should come and help him and reinforce him, what would your attitude have been?”

A. Stay where we are, sir.

Q. Right.

A. We wouldn’t have gone.

³⁹⁹ Major Griffiths (ASI018489-90) [58] [60]

⁴⁰⁰ (MOD040278)

⁴⁰¹ Major Griffiths [60/30/2-10]; (ASI018501) [86]

⁴⁰² Major Griffiths [60/30/11-23]; NB – his answer that he did not know if Camp Condor had been informed of the order appears to be in contradiction of his evidence that he made such explicitly clear to Camp Condor (ASI018489-90) [58]. However his evidence at [60/28-29] seems to confirm that he did not know what communications had actually been received by Camp Condor at that stage, even though he had endeavoured to send clear messages

⁴⁰³ Lieutenant Dormer [72/35/8-24]

⁴⁰⁴ Lieutenant Dormer [72/35/21-25]

Q. Because it’s an order from the major?

A. Yes, sir.

Q. There would have been no misplaced loyalty to the commanding officer?

A. No sir. If he – if he said that – to stay where we are, obviously he wouldn’t have needed us.”⁴⁰⁵

2.276 In my view, the evidence I have heard from the members of 6 and 7 platoons 1A&SH made it abundantly clear that, at all material times, they were entirely unaware of any order having been given by Major Griffiths to the effect that nobody was to deploy to assist or support the Rover Group.⁴⁰⁶ I am entirely satisfied that 6 and 7 platoons 1A&SH deployed from Camp Condor on the afternoon of 14 May 2004 at about 16:50 hours with the sole aim of providing support and assistance to Major Griffiths and his Rover Group. They were acting under the misapprehension that the Rover Group had been pinned down by armed insurgents, had not managed to clear the ambush area and were in serious and mortal danger.⁴⁰⁷ Lieutenant William Passmore and Lieutenant Dormer then made an immediate decision to deploy based on the situation as they understood it to be at the time. As it seems to me, on the limited information available to them, it was an entirely understandable and sensible decision. However, it was a decision that was to result directly in the fierce and intense “Southern Battle” and thus, in turn, to lead to the overall “Battle of Danny Boy”.

4. The Southern Battle

6 and 7 Platoons of 1A&SH deploy from Camp Condor

2.277 As already indicated⁴⁰⁸ 6 and 7 Platoons of 1st Battalion, Argyll & Sutherland Highlanders (“1A&SH”) were based at Camp Condor on the afternoon of 14 May 2004. Their platoon commanders were respectively Lieutenant James Dormer and Lieutenant William Passmore. Lieutenant Dormer recalled that Major Adam Griffiths had visited the camp that day, before leaving in the late afternoon to return to Camp Abu Naji. His evidence, with which Lieutenant Passmore was in broad agreement,⁴⁰⁹ continued as follows:

“Approximately ten minutes after Maj Griffiths left, I was near the Ops Room when a runner came from the Ops Room to say that Maj Griffiths’ convoy had been contacted. I went into the Ops Room with Lt Passmore and spoke to one of the signallers [possibly Lance Corporal Wells]⁴¹⁰...The Platoon Sergeants were in the Ops Room too. We were informed that there had been a contact and, given the grid reference that had been provided, we assumed that the contact involved Maj Griffith’s [sic] convoy as we were aware that Maj Griffiths was travelling on Route 6 back to CAN. Other than informing us of the contact, no other information was passed to us at this stage which informed any decisions that I made later that day.”⁴¹¹

⁴⁰⁵ Sergeant Kelly [64/30-32]

⁴⁰⁶ See, for example, Lieutenant Dormer [72/35/3-7]

⁴⁰⁷ See, for example, Sergeant S. Henderson (ASI013551-52) [35]; Lieutenant Dormer [72/35/3-7]; Corporal Gidalla [67/7/2-9]; Lieutenant Passmore (ASI016104-05) [35]-[37]

⁴⁰⁸ See paragraph 2.277 above

⁴⁰⁹ Lieutenant Passmore (ASI016105) [37]

⁴¹⁰ See Sergeant Kelly (ASI017325) [31]

⁴¹¹ Lieutenant Dormer (ASI013697) [33]

2.278 As soon as Lieutenant Passmore and Lieutenant Dormer had made the decision that vehicles and men from 6 and 7 Platoons should deploy to assist Major Griffiths,⁴¹² Lieutenant Dormer gave the order for 7 Platoon to “stand to”⁴¹³ and Sergeant Paul Kelly did the same in relation to 6 Platoon.⁴¹⁴ In the event, the deployment was somewhat *ad hoc*. As Sergeant Stuart Henderson explained:

*“At Condor there was not a Quick Reaction Force (“QRF”) on standby in the sense of there being a designated group of people set aside for this purpose in a state of readiness. Instead the Platoon Commanders or Sergeants (or whoever was available at this time) would have to respond to emergency situations by getting our own men together from those who were at camp. The personnel in my Platoon were aware this was expected of them, even though it was an ad hoc arrangement.”*⁴¹⁵

2.279 As a result the men of 6 and 7 Platoons 1A&SH deployed from Camp Condor in a total of six Land Rovers. Members of 6 Platoon travelled in three of the vehicles (two unarmoured soft-skinned “Wolf” Land Rovers and one armoured “Snatch” Land Rover). The members of 7 Platoon travelled in the three other vehicles, all of which were unarmoured soft-skinned “Wolf” Land Rovers. The various Land Rovers were commanded and manned as follows:

6 Platoon

Vehicle 1 – Unarmoured “Wolf” Land Rover	
Vehicle Commander:	Lieutenant William Passmore
Driver:	Private Paul Baker
Others:	Private Christopher Dodd Private Duncan Aston

Vehicle 2 – Armoured “Snatch” Land Rover	
Vehicle Commander:	Sergeant Paul Kelly
Driver:	Private Richard Hobbs
Others	Private Sean Marney Private James Lawrence Private Steven Wells

Vehicle 3 – Unarmoured “Wolf” Land Rover	
Vehicle Commander:	Corporal Lee Gidalla
Driver:	Private Robert Schwar
Others:	Lance Corporal Mark Keegan Private Scott Barlow

⁴¹² Lieutenant Passmore (ASI016105) [37]; Lieutenant Dormer (ASI013698) [35]

⁴¹³ Lieutenant Dormer (ASI013698) [35]

⁴¹⁴ Sergeant Kelly (ASI017325) [32]

⁴¹⁵ Sergeant S. Henderson (ASI013552) [36]

7 Platoon

Vehicle 1 – Unarmoured “Wolf” Land Rover	
Vehicle Commander:	Lieutenant James Dormer
Driver:	Lance Corporal William Currie
Others:	Private Joseph Connelly Private John Smith Private Alan McDonald Private Graham Dewar

Vehicle 2 – Unarmoured “Wolf” Land Rover	
Vehicle Commander:	Sergeant Stuart Henderson
Driver:	Private Robert Anderson
Others:	Corporal Brian Nicol Private Barrie Reid

Vehicle 3 – Unarmoured “Wolf” Land Rover	
Vehicle Commander:	Corporal William Rankin
Driver:	Private Richard Fieldman
Others:	Private James Smullen Private Kristopher Henderson

2.280 One result of the rather *ad hoc* nature of the deployment seems to have been that there is a marked inconsistency in the call signs attributed to each vehicle in the contemporaneous documentation, in the accounts of the various witnesses and even in the Closing Submissions of the Core Participants. Consequently, if it is necessary to refer to any of the various 1A&SH vehicles involved in the Southern Battle in the course of this Report I will do so in a descriptive manner, rather than by call sign, in order to avoid any confusion.

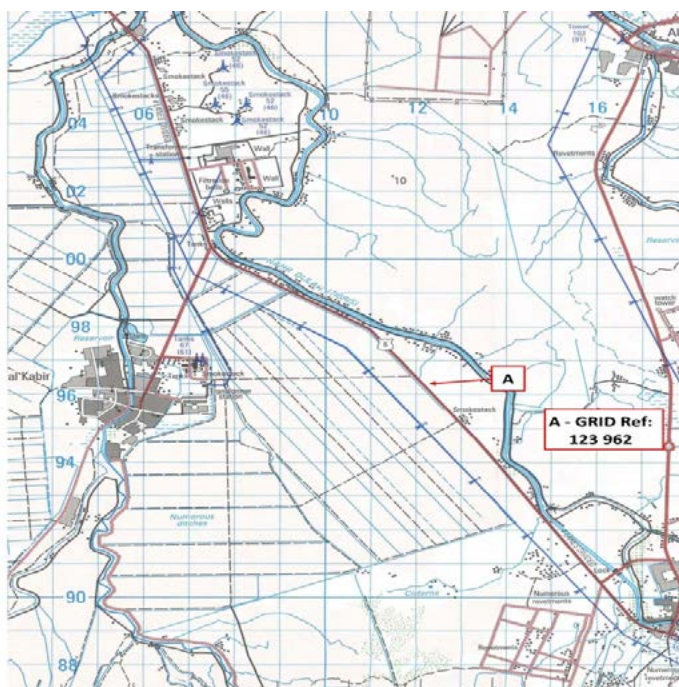
2.281 As detailed below, the main events of the Southern Battle itself were largely centred on an area of open ground to the east of Route 6, between Qal’at Salih and the Danny Boy VCP. In the next section of this Report I describe the topography of this particular locality and follow that with an account of the combat phase of the battle and the parts played in that engagement by the various members of 7 Platoon and 6 Platoon in turn (7 Platoon being the first of the two platoons to be engaged). I then go on to address a number of relevant events that occurred at the end of the active stage of the Southern Battle engagement and which involved members of both platoons.

The location of the Southern Battle

2.282 From the evidence of witnesses, taken together with the Inquiry’s own analysis of all the available relevant information, I am satisfied that the Southern Battle took place in an area approximately six kilometres south east of the Danny Boy VCP at a location adjacent to and on the east side of Route 6, in the general vicinity of the grid reference marked A on the map in Figure 9 (ASIO25630) below, which is the grid reference recorded by Major Griffiths in his

Contact report as the location of the first ambush on his Rover Group.⁴¹⁶ As I have already observed,⁴¹⁷ I am satisfied that the Southern Battle actually took place in the same general locality as the first ambush on the Rover Group and involved the same insurgents.

Figure 9: ASI025630



2.283 At this particular location, the carriageway of Route 6 is and was at the time somewhat elevated above the surrounding land.⁴¹⁸ As a result, the land on either side of the road to the east and west was at the time significantly lower than the road itself. The fields to the west of Route 6 were fields under cultivation or were at least suitable for the grazing of livestock. Thus Riyadh Abdulzahra Ati Al-Mozani (witness 197) described the land to the west of Route 6 in this general area, at a point he marked on the exhibit RAA/2,⁴¹⁹ in the following terms: *“This field was previously worked by the former regime for sugar cane but since the fall of the regime it has been used by cattle grazers, farmers and fishermen. It is a large field distributed into smaller farms and used by many families.”*⁴²⁰

2.284 This particular description was confirmed by a number of other Iraqi witnesses.⁴²¹ The general farmland nature of this area to the west of Route 6 can clearly be seen at the top of the aerial photograph of the area in question that appears below as Figure 10 (ASI001218).⁴²²

⁴¹⁶ See para 2.188 above

⁴¹⁷ See paras 2.216 – 2.217

⁴¹⁸ See, for example, Private Schwar (ASI018416-17) [41]

⁴¹⁹ (PIL000541)

⁴²⁰ Riyadh Abdulzahra Ati Al-Mozani (witness 197) (PIL000526) [9]

⁴²¹ See, for example, Razzaq Azeed Maabad Al-Amshani (witness 199) at RAM/2 (PIL001019); [30/10-11]; Yousef Ouda Baday Al-Baltani (witness 41) (ASI007859-60) [8]-[9]; Mahud Jihaijeh Dawood Al Mozani (witness 60) at MJDA/2 (ASI007414); Bareq Mohammed Hussein Al-Khalifa (witness 245) at BMHA/2 (PIL000890)

⁴²² This photograph was found by Inquiry staff among a collection of aerial photographs stored at the Royal Military Police (“RMP”) Special Investigation Branch (“SIB”) headquarters at Bulford. The next seven photographs in this part of the Report are part of a series taken by the Inquiry’s Agent in late 2011 or early 2012 depicting the general area of the Southern Battle and its main features. It is accepted that these photographs show the area of the Southern Battle and its principal features more or less as it was in 2004

Figure 10: ASI001218



2.285 In contrast, the land immediately to the east of Route 6 in this general area appears to have been wholly unsuitable at the time for the grazing of livestock or similar agricultural activity, as was accepted by a number of Iraqi witnesses to the Inquiry.⁴²³ The generally dry and arid state of the area to the east of Route 6 in this locality is also very evident from the following photographs of the area in question (Figures 11 and 12 – ASI011343 and ASI011349):

⁴²³ See, for example, Riyadh Abdulzahra Ati Al-Mozani (witness 197) [36/13/11-18]

Figure 11: ASI011343



Figure 12: ASI011349



- 2.286** In my view, it is clear that the largely agricultural land to the west of Route 6 in this locality was quite distinct in nature from the area where the main action in the Southern Battle actually took place. The two areas were separated by Route 6 itself. Not only was the road elevated and flanked with steep sides, it was also a busy road with a significant flow of traffic at most times, described by the Iraqi Core Participants as a “...main highway linking Basra, Amarah and MAK. It will inevitably have been a busy conduit for passing trade between the three largest towns in the region.”⁴²⁴
- 2.287** In my view, at the time when the events with which this Inquiry is concerned, it is highly unlikely that anybody in the area immediately to the west of Route 6 carrying out work of an agricultural nature would have had cause to cross to the east side of Route 6 as part of, or in the course of, that agricultural work. The photographs of the area to the east of Route 6 in this locality clearly demonstrate a broadly flat and arid landscape, largely devoid of topographical features. As Lieutenant James Dormer commented, the area “...looked like pictures of the surface of the moon.”⁴²⁵
- 2.288** The most prominent feature in this area was a fairly large derelict building. A number of witnesses have suggested that this building was once a brick factory.⁴²⁶ Whatever function the building once served, it is clear that by May 2004 it had been disused for some time. The building did not have a roof and at least some of the walls of the building were incomplete or had collapsed. It was generally and rightly described by military witnesses at the Southern Battle as “*derelict*”. The generally derelict nature of this building and the barren and arid nature of its immediate surroundings are well illustrated in the following photographs (Figures 13 to 15).

⁴²⁴ ICP Closing Submissions (254) [889a]

⁴²⁵ Lieutenant Dormer (ASI013701) [46]

⁴²⁶ See, for example, Yousef Ouda Baday Al-Baltani (witness 41) [32/18-20]; [32/52-53]; (ASI007860-61) [14]

Figure 13: ASI011348



Figure 14: ASI011351



Figure 15: ASI011353



- 2.289** Evidence as to the dimensions of this large derelict building varied. At the upper end, Sergeant Stuart Henderson estimated the size of the building at around 100x20 metres.⁴²⁷ Corporal Brian Nicol estimated the dimensions to be about 20x10 metres.⁴²⁸ Private Joseph Connelly suggested it was 30x30 metres.⁴²⁹ Lieutenant William Passmore offered an estimate of 50-60 metres for the length of the building.⁴³⁰ However, nothing turns on the precise dimensions of this building. It suffices to say that, as the above photographs clearly show, this particular building was the derelict remains of what had once been a fairly large concrete or masonry one-storey building that was substantially longer than it was wide (hereafter “the large derelict building”).
- 2.290** Approximately 20-30 metres to the southeast of the large derelict building was another derelict building.⁴³¹ This particular building was much smaller in size than the other, perhaps no bigger than a garden shed⁴³² (hereafter “the small derelict building”). Another significant feature in the immediate landscape to the east of Route 6 was a U-shaped “tank ditch” (hereafter “the Southern Tank Ditch”), as illustrated by the photographs that appear below as figures 16 and 17 (ASI011345 and ASI011346). The military witnesses used various terms to describe this feature. The expression “*berm*” was a term frequently used to describe it and features similar to it. Sergeant Henderson helpfully described “*berms*” in general as follows, with an additional comment about the Southern Tank Ditch in particular:

⁴²⁷ Sergeant Henderson (ASI013554) [42]

⁴²⁸ Corporal Nicol [70/87]; (ASI010125) [24]

⁴²⁹ Private Connelly (MOD004643)

⁴³⁰ Lieutenant Passmore (ASI016112) [63]

⁴³¹ Private Connelly (ASI017802-03) [29]; Sergeant Henderson [61/14]; (ASI013554) [43]; Lance Corporal Currie (ASI013206) [45]

⁴³² Lance Corporal Currie (ASI013206) [45]

“Tank berms are mounds of earth which have been pushed up by a bulldozer or a digger. The tank berms are mechanically built up for a tank to use as a defensive position. The open end of the ‘U’ was to the East.”⁴³³

Figure 16: ASI011345



⁴³³ Sergeant Henderson (ASI013554) [45]

Figure 17: ASI011346



- 2.291** None of the witnesses suggested that the Southern Tank Ditch had been created in the days immediately leading up to 14 May 2004 or that it had been produced specifically to assist with the ambush which took place on that day. In their Opening Submissions,⁴³⁴ the military witnesses represented by TSol suggested that the tank ditch may have been a remnant from the Gulf War of 1990-1991 or even the earlier Iran-Iraq War. I accept that this may well have been the case.
- 2.292** The walls or sides of the Southern Tank Ditch were consistently estimated to be around one metre⁴³⁵ or four feet⁴³⁶ in height. Evidence as to the precise location of the Southern Tank Ditch within the battlefield varied. In broad terms, it appears that it was located between the large derelict building and Route 6.⁴³⁷
- 2.293** The land around the two derelict buildings and the Southern Tank Ditch was also marked by a large number of smaller depressions, ditches and mounds which provided ample scope for cover during the fighting. One depression in particular was the focus of some significant fighting during the Southern Battle and was identified by some witnesses as another tank ditch of approximately the same size and description as the Southern Tank Ditch.⁴³⁸ This second tank ditch was located somewhat to the north of the Southern Tank Ditch.
- 2.294** There was also a mud or earth bank situated approximately 200-300 metres to the north of the derelict buildings which ran at right angles and thus perpendicular to the eastern side of Route 6. Military witnesses consistently referred to this bank as a “bund line”, apparently

⁴³⁴ [16/43]

⁴³⁵ See, for example, Lieutenant Passmore (ASI016112) [62]

⁴³⁶ See, for example, Private Lawrence (MOD018880)

⁴³⁷ Lieutenant Dormer at JD/1 (ASI013736); Sergeant Henderson (ASI013554) [45]; Sergeant Kelly (ASI017328) [40]; Corporal Lee Gidalla at LG/2 (ASI011714)

⁴³⁸ See, for example, Sergeant Kelly (ASI017328) [40]

an expression derived from the acronym for “*built up natural defence*”.⁴³⁹ This is hereafter referred to as “the Perpendicular Bund Line”.

2.295 To the north of the Perpendicular Bund Line were a number of other ditches or depressions.⁴⁴⁰ There was also a further mud bank, or “bund line” which ran parallel to Route 6 and was situated between the two tank ditches and the road itself. Estimates as to the distance between this particular bund line and Route 6 ranged from 20-70 metres from Route 6 and for the distance between the bund line and the Southern Tank Ditch estimates varied between 5-25 metres.⁴⁴¹ These variations are probably explicable, at least to some extent, by the position along the bund line of the witness giving the estimate in question. Hereafter I shall refer to this particular bund line as “the Parallel Bund Line”.

The ambush of 7 Platoon and the initial fighting

2.296 The three Land Rovers belonging to 7 Platoon were the first of the two groups of Land Rovers to arrive in the area of what became the scene of the Southern Battle.⁴⁴² As they reached a point on Route 6 about six kilometres south east of the Danny Boy VCP, the 7 Platoon vehicles were subjected to significant incoming small arms fire from armed insurgents who were located in ground to the east of Route 6. Although the insurgents’ fire was now coming from the land to the east of Route 6, the location of the ambushed Land Rovers on Route 6 appears to have been almost identical to that of Major Adam Griffiths’ Rover Group when it had first come under insurgency fire from the west of Route 6.⁴⁴³

2.297 Despite having deployed in the expectation that an armed engagement was probable, the incoming fire appears to have taken 7 Platoon somewhat by surprise at the time,⁴⁴⁴ so much so that Lieutenant James Dormer understandably described the situation as an “*ambush*”.⁴⁴⁵ In fact, this attack on 7 Platoon signalled the opening of the Southern Battle and thus of the overall Battle of Danny Boy.

2.298 It seems to me that the entry in the B Company 1st Battalion, Argyll & Sutherland Highlanders (“1A&SH”) radio log at 16:50 hours⁴⁴⁶ offers an obvious explanation for this apparent sense of surprise on the part of 7 Platoon. It is clear from the log entry that those who deployed from Camp Condor believed that they were heading to grid reference QV 109,979, where they expected to find Major Adam Griffiths and his Rover Group under attack. However, in the event, 7 Platoon was first contacted about two kilometres before they reached this point on Route 6 and thus quite a lot sooner than expected.

2.299 Lieutenant James Dormer described the immediate response of 7 Platoon to the incoming fire as follows: “*When ambushed, the SOP⁴⁴⁷ is to get out of the ‘killing zone’ i.e. the area in which the enemy firing is focused. The 7 Platoon vehicles therefore drove north along Route 6 for approximately another 200-400 metres before stopping on the road.*”⁴⁴⁸

⁴³⁹ Sergeant Henderson (ASI013554) [44]

⁴⁴⁰ Sergeant Rankin (ASI019427-28) [33]

⁴⁴¹ See Corporal Gidalla at LG/2 (ASI011714); Sergeant Kelly (ASI017328) [40]; Private Hobbs (ASI009528) [19]; Private Schwarz (ASI018418) [46]–[47]

⁴⁴² About six kilometres south east of Danny Boy VCP (see para 2.282 above)

⁴⁴³ See paras 2.216 – 2.217

⁴⁴⁴ See, for example, Sergeant Henderson (ASI013553) [41]

⁴⁴⁵ Lieutenant Dormer [72/36/9]

⁴⁴⁶ (MOD040278)

⁴⁴⁷ Standard Operating Procedure

⁴⁴⁸ Lieutenant Dormer (ASI013701) [44]

2.300 In his evidence, Sergeant Stuart Henderson suggested that the convoy stopped a much shorter distance along the road, perhaps nearer to 50-100 metres.⁴⁴⁹ However, although nothing of significance turns on it, I think that Lieutenant Dormer’s estimate of the distance travelled before the 7 Platoon convoy stopped is the more likely to be correct. It seems to me very likely that, after coming under fire, the 7 Platoon vehicles would have continued to travel at least far enough to get as clear as possible of the area of greatest immediate danger. Lieutenant Dormer’s estimate of 200-400 metres would appear to be barely sufficient to have taken the vehicles out of this danger zone and Sergeant S. Henderson’s estimate would seem to be clearly insufficient.

2.301 It was Sergeant Henderson, in the lead vehicle, who took responsibility for bringing the 7 Platoon convoy to a halt.⁴⁵⁰ He explained the basis on which he took the decision to stop as follows:

“It was my decision to stop at this point. I did not discuss this decision with anyone else because everything happened too quickly. It was clear to me we had to stop because we needed to deal with this contact first before we could achieve our aim of reaching and assisting Maj Griffiths’ vehicle group. If we had continued there would have been nothing to prevent the enemy from attacking other passing coalition forces vehicles.”⁴⁵¹

2.302 A few seconds after their Land Rovers came to a halt, 7 Platoon “debussed” (to use the military expression). The decision to debus followed as a natural consequence of the decision to stop. Sergeant Henderson, who gave the appropriate order to do so,⁴⁵² described the vehicles as “targets” and stressed the importance of putting some distance between the soldiers and the vehicles. In fact, the members of 7 Platoon would have debussed once the vehicles came to a halt as a matter of course, given that the convoy evidently remained under fire.⁴⁵³ According to Lieutenant Dormer, before debussing he used the High Frequency (“HF”) radio in his vehicle to inform Camp Abu Naji and Camp Condor of the contact.⁴⁵⁴

2.303 Once out of the vehicles, members of 7 Platoon took up a defensive position along the Perpendicular Bund Line. Neither Lieutenant Dormer nor Sergeant Henderson recalled having ordered the men to take up this position but it seems very likely that one or other of them gave such an order.

The fighting at the Perpendicular Bund Line

2.304 Once the defensive position at the Perpendicular Bund Line had been established, Lieutenant James Dormer took stock and began to give appropriate orders for directing 7 Platoon’s further actions. His first task was to attempt to identify enemy fire positions. He identified approximately 15 enemy gunmen, positioned around 300 metres from the Perpendicular Bund Line and concentrated in an area just to the northeast of the large derelict building.⁴⁵⁵ Lieutenant Dormer described the enemy as “wearing different shades of dark-coloured clothes that were similar to pyjamas.”⁴⁵⁶

⁴⁴⁹ Sergeant S. Henderson (ASI013556) [48]

⁴⁵⁰ Sergeant S. Henderson (ASI013556) [48]

⁴⁵¹ Sergeant S. Henderson (ASI013556) [50]

⁴⁵² Sergeant S. Henderson (ASI013556) [48]

⁴⁵³ See Lieutenant Dormer (ASI013701-02) [47]

⁴⁵⁴ Lieutenant Dormer (ASI013701) [44]

⁴⁵⁵ Lieutenant Dormer (ASI013702) [48]-[49]

⁴⁵⁶ Lieutenant Dormer (ASI013702) [49]

2.305 From the Perpendicular Bund Line, soldiers from 7 Platoon engaged the enemy, fire orders being given by Corporals Brian Nicol and William Rankin. There was a degree of uncertainty in the evidence with regard to the actual effect of the military fire. Thus, neither Lieutenant Dormer⁴⁵⁷ nor Sergeant Henderson,⁴⁵⁸ both of whom had a good overview of what was taking place, was able to state with any degree of certainty that any of the enemy gunmen were actually killed by the fire from 7 Platoon at this stage.

2.306 However, Private Joseph Connelly said that he did observe a dead body at this location and provided the following description: *“The body was male and was slumped over a trench. He was wearing a white dish dash and a black and white headdress. He was directly in front of me, approximately 100 metres away from this position, and to the right of the larger derelict building.”*⁴⁵⁹

2.307 Corporal Rankin similarly described seeing two enemy gunmen killed at this stage in the battle. These enemy gunmen were engaged as they ran from a position to the west of the large derelict building to a position approximately 100 metres south of Corporal Rankin’s position at the Perpendicular Bund Line.⁴⁶⁰ According to his evidence:

*“Both men were armed with AK47 rifles, which they were firing in my direction. One of the men was wearing a light blue top, white trousers and a red and white checked turban. I do not recall what the other was wearing. I do not recall anything else about their appearance. Using the rocks as cover, I aimed my SA80 rifle and returned fire as did the rest of my Section. The men fell to the ground. I do not know on which part of their bodies they were hit. I do not know if the men were hit by my rounds and/or by rounds from the other soldiers at my location.”*⁴⁶¹

2.308 This account by Corporal Rankin was largely corroborated by Private John Smith, except that it was Private Smith’s recollection that only one of the two men had been killed, whilst the other managed to run away into the large derelict building when he came under fire.⁴⁶²

2.309 Lieutenant Dormer then came to the conclusion that the circumstances were such that members of his platoon needed to move forward from their position at the Perpendicular Bund Line in order to engage the enemy more effectively. In preparation for carrying that decision into effect, he and Sergeant Henderson split the members of the platoon into three separate sections. One section was thereafter led by Lieutenant Dormer, one by Sergeant Henderson and one by Corporal Rankin.⁴⁶³

2.310 Corporal Rankin’s section remained at the Perpendicular Bund Line, providing covering fire with a General Purpose Machine Gun (“GPMG”).⁴⁶⁴ The sections led by Lieutenant Dormer and Sergeant Henderson advanced southwards towards the enemy using a *“fire and manoeuvre”* procedure, described as *“pepper-potting”*.⁴⁶⁵ In the event, Private Kristopher Henderson stumbled on the uneven ground as he advanced and stabbed the barrel of his rifle into the

⁴⁵⁷ Lieutenant Dormer (ASI013702) [49]–[50]

⁴⁵⁸ Sergeant Henderson (ASI013558) [57]

⁴⁵⁹ Private Connelly (ASI017805) [36]

⁴⁶⁰ Corporal Rankin (ASI019428) [35]

⁴⁶¹ Ibid.

⁴⁶² Private Smith (ASI017296) [42]

⁴⁶³ Lieutenant Dormer (ASI013702-03) [50]

⁴⁶⁴ Lieutenant Dormer (ASI013703) [51]

⁴⁶⁵ See, for example, Sergeant Henderson (ASI013559) [59]

ground. This made his weapon inoperable and forced him to retire back to the Perpendicular Bund Line in order to clear it.⁴⁶⁶

2.311 As the soldiers of 7 Platoon advanced, a small number of enemy gunmen took flight in an easterly direction. As they fled, the enemy gunmen fired at the members of 7 Platoon and the soldiers returned fire. Lieutenant Dormer saw some of the gunmen fall to the ground and he thought it possible that some had been killed in the process. Unfortunately, Lieutenant Dormer was unable to provide a description of the gunmen he thought may have been killed or any precision as to their number. His best estimate in evidence was that about four to five gunmen were involved.⁴⁶⁷

2.312 Lieutenant Dormer’s evidence regarding the possible deaths of these enemy gunmen was corroborated, at least in part, by other 7 Platoon soldiers present at the time. Thus, Private Kristopher Henderson gave a description of events that was strikingly similar to the one described by Lieutenant Dormer, albeit at a slightly different stage of the chronology:

“A second man tried to run in an easterly direction through our fire while armed, possibly with an AK variant rifle. I cannot recall what he was wearing. He was approximately 100m away I aimed and fired at him, and I saw him fall down. A third armed man also tried to cross open ground. I cannot describe him or what he was wearing. I saw him fall, though I cannot remember if I aimed and/or shot at him. I also fired at other men, all of whom were armed and some of whom were firing as they ran. I cannot recall if any of these men fell.”⁴⁶⁸

2.313 It is not surprising that the soldiers who were involved in these events gave somewhat differing accounts with regard to the detail of what happened that day. I am quite sure that each soldier sought to give as truthful and honest an account as he could when giving evidence. Inevitably, there were differences in the various accounts given by the witnesses of such fast-moving, confused and dangerous events, all of which had occurred about nine years previously. Consequently, it is not possible to say precisely how many Iraqi gunmen were killed in the open ground to the south of the Perpendicular Bund Line during this particular passage of arms, although it is very likely that up to four were killed in this general area during this stage of the battle.

2.314 I am entirely satisfied that all the Iraqi men killed in the open ground to the south of the Perpendicular Bund Line were armed and had been taking an active and hostile part in the attack that had been launched on the British troops. I base this conclusion largely on the following two main aspects of the evidence.

2.315 First, despite the differences in the various accounts given by the soldiers of the circumstances of the deaths of these particular Iraqi men, the soldiers’ evidence was entirely consistent, credible and detailed with regard to the extent to which the Iraqi men were seen to be armed and fully engaged in the battle. I have no hesitation in accepting the truth of that aspect of their evidence.

2.316 Second, as is evident from the photographs set out above, the general topography of the area in which the Southern Battle took place clearly and fundamentally undermines many of the reasons put forward by some of the Iraqi witnesses as an innocent explanation for their presence at this particular location at the time.

⁴⁶⁶ Private Henderson (ASI011659) [35]; Sergeant S. Henderson (ASI013559) [59]

⁴⁶⁷ Lieutenant Dormer (ASI013704) [55]

⁴⁶⁸ Private Henderson (ASI011659) [33]

- 2.317** Those representing the Iraq Core Participants included a number of paragraphs in their written Closing Submissions in which they put forward various reasons why it was said to be possible, or indeed likely, that a significant number of Iraqi civilians had happened to be “innocently” present on or in the immediate vicinity of the battlefield during the actual battle itself for reasons other than as armed insurgents willingly taking part in an armed attack on British forces.⁴⁶⁹ However, it seems to me that none of the reasons put forward in those submissions can provide a credible “innocent” explanation for the presence of any Iraqi man in the open ground to the south of the Perpendicular Bund Line at this particular time and in the circumstances described in evidence by the soldiers of 7 Platoon.
- 2.318** The actual area in which the Southern Battle took place was, at the time, wholly unsuitable for agriculture in its current state and was separated from the agricultural land to the west by a busy, elevated highway. I simply do not accept the suggestion that any Iraqi man killed during the course of the Southern Battle in this area of open ground on the eastern side of Route 6 was in that location at that particular time for any reasons connected with agriculture. I am satisfied that each Iraqi was there as an active and willing participant in the armed ambush of British troops on Route 6 that day and that he was killed in the course of, and by reason of, his participation in that ambush and the resulting battle.
- 2.319** I note that some military witnesses stated that there was a village located some distance away to the east of the scene of the Southern Battle.⁴⁷⁰ I therefore accept that, on various occasions other than during the late afternoon of 14 May 2004, Iraqi civilians might have passed through the general area in which the Southern Battle took place on the way to or from this village for entirely legitimate and lawful reasons. Nonetheless, I stress that I am completely satisfied that none of the men killed in the open ground to the south of the Perpendicular Bund Line or involved in the exchange of fire with the men of 7 Platoon on the afternoon of 14 May 2004 had been passing through the area in such a fashion on that particular occasion.
- 2.320** During the course of this Inquiry I heard and read a very substantial body of evidence which clearly established that, in the late afternoon of 14 May 2004, this location to the east of Route 6 was the scene of a large, organised and coordinated armed ambush on British troops carried out by a significant number of armed Iraqi insurgents. That ambush plainly resulted in a fierce and bloody battle between the insurgents and the British, with a prolonged and heavy exchange of fire. It seems highly unlikely that any unarmed Iraqi civilian could have unwittingly walked into the scene of such an ambush. At the very least, any such civilian would have been aware of the extreme danger of the situation as soon as the insurgents first opened fire at the 7 Platoon vehicles, using their rifles and RPGs. In all probability, any such civilian would have been aware long before then and would have had ample time in which to get clear of the danger area, long before the Iraqi men were shot and killed in the open ground to the south of the Perpendicular Bund Line.

The capture of the derelict buildings

- 2.321** In their advance from the Perpendicular Bund Line, the section led by Sergeant Stuart Henderson, consisting of Lance Corporal William Currie and Private Joseph Connelly, went first to the smaller of the two derelict buildings which were situated about 200-300 metres south from their original defensive position at the Perpendicular Bund Line.⁴⁷¹ They discovered

⁴⁶⁹ ICP Closing Submissions (251) [883]–[890]

⁴⁷⁰ See, for example, Corporal Rankin (ASI019427) [33]

⁴⁷¹ See paragraphs 2.287 – 2.290 above

that the small derelict building contained no enemy gunmen or other form of threat. Having cleared that building, Sergeant Henderson and Lance Corporal Currie then moved forwards to the large derelict building, whilst Private Connelly provided cover.

2.322 On arrival at the large derelict building, the soldiers encountered and captured a young Iraqi man nearby. I am completely satisfied that this young Iraqi was Hamzah Joudah Faraj Almalje (detainee 772) and that this was the place where he was captured and detained. Various soldiers were able to identify Hamzah Almalje as the detainee they had captured⁴⁷² and Hamzah Almalje himself accepted that he had been taken prisoner in the general area of the Southern Battle, although he claimed to have been captured on the western side of Route 6, rather than on the eastern side. In any event, Hamzah Almalje accepted that he had been captured in a location that was entirely separate from that where the other detainees were captured during the Battle of Danny Boy.⁴⁷³

2.323 I am also sure that Hamzah Almalje (detainee 772) was the only Iraqi who was captured alive and detained in the area and course of the Southern Battle. Almost all the military witnesses agreed that such was the case. However, two of the soldiers who had been present at the Southern Battle, namely Private James Smullen and Private Robert Schwar, did give some limited evidence to the effect that more than one Iraqi had actually been detained alive during the Southern Battle. I now turn to consider that evidence.

2.324 Private Schwar originally provided a statement to the Royal Military Police on 26 August 2004. In that statement he said that he remembered having seen an Iraqi man detained in a building. Later in the same statement he referred to a detainee who was lying on his front whilst being guarded in a tank ditch.⁴⁷⁴ One possible conclusion that could be drawn from these two apparently distinct observations by the witness was that Private Schwar had seen two different detainees. In his witness statement to the Inquiry, Private Schwar dealt with this possible interpretation, as follows: *“In my RMP statement, it reads as if there were possibly two detainees: one in the building and in the tank ditch. However, I think that it is likely that this was the same detainee who had been moved to the tank ditch.”*⁴⁷⁵

2.325 During his oral evidence, Private Schwar accepted that he was unable to say with any confidence that it was *“likely”* he had seen the same detainee on two occasions; he simply was unable to say whether it was the same detainee or not.⁴⁷⁶ He had *“[only] caught a glimpse”* of the detainee he saw in the ditch,⁴⁷⁷ and therefore was unable to compare the two events.

2.326 For my part, I am quite satisfied that Private Schwar had, in fact, witnessed the same detainee on two separate occasions. No other military witness (with the exception of Private Smullen, addressed below) saw any other Iraqi man, other than Hamzah Almalje, who had been detained alive during the Southern Battle. It also appears to be the case that, at various stages during his detention on the battlefield, Hamzah Almalje had been held in both a building and a ditch,⁴⁷⁸ which would explain how Private Schwar came to see him in both these locations. Furthermore, the contemporaneous radio log entries relating to the Southern Battle consistently refer to the capture of only one detainee.⁴⁷⁹

⁴⁷² See, for example, Private Connelly [66/17/3-21]

⁴⁷³ Hamzah Joudah Faraj Almalje (detainee 772) [20/8/24-25]

⁴⁷⁴ Private Schwar (MOD019499-00)

⁴⁷⁵ Private Schwar (ASI018427) [79]

⁴⁷⁶ Private Schwar [68/29]

⁴⁷⁷ Private Schwar [68/26/5-12]

⁴⁷⁸ Evidence suggests that Hamzah Almalje (detainee 772) was held temporarily at a “bund line” whilst awaiting the arrival of a vehicle to transport him back to Camp Abu Naji, see for example, Private Dodd (ASI011051) [58] and paragraph 2.590 below

⁴⁷⁹ See (ASI007161); (MOD039938)

- 2.327** In his witness statement to the Inquiry, Private Smullen recalled having detained an Iraqi man on the battlefield after he had jumped out of a ditch in front of him. Private Smullen said that he had then escorted this prisoner to one of the vehicles, where he assumed he was to be taken back to Camp Abu Naji.⁴⁸⁰
- 2.328** Unfortunately, Private Smullen was unable to give oral evidence to the Inquiry for health reasons and so this account was not explored in questioning. However, Lieutenant James Dormer did tell me that he believed Private Smullen had become confused on this point, because he (Lieutenant Dormer) was certain that *“there was only ever one prisoner.”*⁴⁸¹
- 2.329** I agree with Lieutenant Dormer. Private Smullen’s account in relation to this particular matter is wholly inconsistent with the recollection of other military witnesses who had been with him throughout the engagement, in particular Private John Smith, who had remained close to Private Smullen throughout the battle and who had absolutely no recollection of this event at all.⁴⁸² I am therefore satisfied that Private Smullen is mistaken in his memory of this particular matter and am certain that Hamzah Almalje (detainee 772) was the only Iraqi to have been captured and detained at the site of the Southern Battle.
- 2.330** Before I turn to deal with the reasons for Hamzah Almalje’s presence on the battlefield and the details of his capture, initial detention and subsequent handling, it is convenient to deal first with how events developed back at the Perpendicular Bund Line, followed by an account of the other main events of the combat stage of the Southern Battle.

Events to the North and West of the Perpendicular Bund Line and the vehicles on Route 6

- 2.331** As I have already stated, Corporal William Rankin’s section had remained at the Perpendicular Bund Line in order to provide covering fire for the two sections of 7 Platoon soldiers, led respectively by Lieutenant James Dormer and Sergeant Stuart Henderson, as they advanced south in the general direction of the derelict buildings. Corporal Rankin’s section then found itself under hostile fire from the north and west of their position. This enemy fire was thus coming from an area in the opposite direction from that in which the two sections led by Lieutenant Dormer and Sergeant Henderson had gone.
- 2.332** Lieutenant Dormer, who had actually returned to the Perpendicular Bund Line in the closing stages of the Southern Battle (see below), gave evidence about what he had been told about the current situation when he got back there, as follows:

*“When I got back to the ditch, one of the Privates (I cannot remember who) told me that he believed that shots were being fired at them from approximately 200 to 300 metres behind their position. This was the opposite side of Route 6 to the contact and was in the direction of the Danny Boy VCP.”*⁴⁸³

- 2.333** Lieutenant Dormer then went on to state what he was himself able to make out as the most likely source of this hostile fire. He gave the following description of what he could see:

⁴⁸⁰ Private Smullen (ASI022791-92) [57]–[61]

⁴⁸¹ Lieutenant Dormer [72/65/17-20]

⁴⁸² Private Smith [71/24/6-10]

⁴⁸³ Lieutenant Dormer (ASI013710) [75]

“I identified an enemy position consisting of approximately five or six Iraqis in the area of a stationary black saloon car on the opposite side of the road to the contact. This enemy position was approximately 300m from us.”⁴⁸⁴

2.334 Lieutenant Dormer recalled that he and his men returned fire but he was unsure whether any of the Iraqi men were killed as a result.⁴⁸⁵ Corporal Rankin also recalled seeing a black vehicle in the same general location, with enemy gunmen in its vicinity. He described what took place somewhat differently, as follows:

“I ordered Pte Smullen to return fire with the GPMG, which he did. The car caught fire; there was smoke and a weak explosion. I am not certain what caused the explosion, although it might have been the petrol tank catching light. I did not see what happened to the men.”⁴⁸⁶

2.335 Corporal Rankin then went on to describe how a white pick-up truck came along Route 6 from the north and stopped near the black car.⁴⁸⁷ He continued:

“I saw a man pick up approximately four or five bodies from near the black car and put them in the truck. No shots were fired in his direction. I do not know if these were the men who I had seen get out of the car. I did not see the man get out of the pick-up truck although I cannot imagine where else he had come from. He was aged approximately 50 years old and had a grey beard and a head-dress. I do not recall seeing anyone else with him. I have a vague memory of the truck driving away to the north although I cannot be certain of this.”⁴⁸⁸

2.336 Private John Smith also described how he also saw a pick-up truck on Route 6 from his position at the Perpendicular Bund Line. However, his account does differ markedly from that given by Corporal Rankin. Private Smith said this:

“I do recall that [sic] whilst behind the bund line, seeing a Hilux pick-up truck stop about 200 metres away on Route 6. It had been travelling north, towards our position. Initially, nobody in the vehicle moved so my attention reverted to the derelict building and the insurgents scattered in the vicinity. However, it quickly became apparent that we were receiving fire from the direction of that vehicle. My RMP statement indicates that ‘a couple of minutes’ passed before we came under contact from the direction of the vehicle. Looking through my sight, I could see that there were two Iraqis who were intermittently appearing above and to the side of the bonnet, which they were using as protection, and firing what appeared to be AK47s in our direction. I engaged these insurgents, firing individual aimed shots, and managed to shoot one of them in the torso. He subsequently slumped onto the bonnet of the vehicle. I did not see where the second man went. I cannot provide any more detail regarding these Iraqis’ appearance.”⁴⁸⁹

2.337 Private Smith then described how he saw a different red pick-up truck arrive at the scene of the engagement. He said that he saw an occupant of the red pick-up truck collect the body of a man from the bonnet of the other vehicle and take it away in the red vehicle.⁴⁹⁰ Lieutenant

⁴⁸⁴ Lieutenant Dormer (ASI013710) [76]

⁴⁸⁵ Lieutenant Dormer (ASI013711) [78]–[79]

⁴⁸⁶ Corporal Rankin (ASI019432-33) [51]; [81/144-145]

⁴⁸⁷ Corporal Rankin (ASI019433) [52]

⁴⁸⁸ Corporal Rankin (ASI019433) [53]

⁴⁸⁹ Private Smith (ASI017298) [50]; [71/28-31]

⁴⁹⁰ Private Smith (ASI017299) [52]; [71/33-34]

Dormer's account of the concluding stages of this incident was different again. According to Lieutenant Dormer, the gunmen he had seen firing from beside the black saloon were taken away (apparently alive) by the white pick-up truck.⁴⁹¹ Obviously, both vehicles were controlled and/or used by the insurgents.

2.338 Finally, Private Kristopher Henderson also observed a broadly similar incident whilst he was in position at the Perpendicular Bund Line, which he described as follows:

*"At some point whilst I was at this position, I saw a Toyota Corolla facing south on the road about 300m away to the north. It had orange sides and a white middle. I saw a man get out, though I cannot now remember what he looked like, what he was wearing or whether he was armed. I did not fire at him, though I could see him being engaged by someone due to the splash marks where the bullets were hitting the ground. The direction of fire suggested that it could have been from Coalition personnel. At this time my group was firing, but I cannot remember what direction the group was firing in. I did not see the Iraqi get hit. He hid behind the vehicle."*⁴⁹²

2.339 In my opinion, it is clear that the soldiers from 7 Platoon, who had remained at the Perpendicular Bund Line, were fired on by a number of armed insurgent gunmen who had taken cover behind or very close to a couple of vehicles that they positioned at various stages about 200-300 metres north on Route 6. Not only is this evident from the evidence of the 7 Platoon soldiers in question when considered as a whole, it is corroborated (at least as to the presence of the insurgents' vehicles) by the evidence of Corporal Jonathan Green, who arrived at the scene of the Southern Battle at the end of the exchanges of fire in the Warrior AIFV,⁴⁹³ call sign W31.⁴⁹⁴ I am therefore also satisfied that this incident formed part of the overall series of coordinated armed ambushes on British troops that day.

2.340 As I have already indicated, the various accounts given by the soldiers of 7 Platoon of this particular episode in the Southern Battle reveal a number of marked differences in detail. As it seems to me, such differences are understandable and unsurprising, given the considerable distance at which each of the soldiers witnessed the events in question, the prevailing circumstances and the period of time that has elapsed between those events and the giving of evidence to this Inquiry. However, it does mean that my conclusions of fact, as to what actually took place with regard to this particular exchange of fire with the insurgents and their vehicles on Route 6, are somewhat limited in nature.

2.341 Taking the evidence as a whole, it is likely that at least one Iraqi man was killed or wounded in the vicinity of the insurgents' vehicles. It is not possible to say whether any more were killed or to provide any description of any such fatality. Given that no other witness made any reference to one of the insurgents' vehicles exploding as a result of Private James Smullen's fire, it seems likely that Corporal William Rankin's account to that effect may have involved an element of exaggeration about what actually occurred. As for other differences in detail in the various witnesses' accounts, as I have already indicated I am satisfied that they are readily explained by a combination of obvious factors such as the distance from which the witnesses viewed the events in question, the confused, dangerous and fast-moving nature of the prevailing circumstances and the time which had elapsed since the events in question occurred.

⁴⁹¹ Lieutenant Dormer (ASI013713) [84]–[85]; [72/82-84]

⁴⁹² Private K. Henderson (ASI011662) [43]

⁴⁹³ Armoured Infantry Fighting Vehicle

⁴⁹⁴ Corporal Green [77/39-44]

- 2.342** However, I am entirely satisfied that, any Iraqi man who was killed in the vicinity of the insurgents’ vehicles on route 6 was at the scene of the Southern Battle as an active and willing participant in the armed ambush on British troops that day. I accept the evidence of the soldiers of 7 Platoon, who were involved in the exchange of fire with the insurgents at this position, and who consistently stated that the Iraqi men they engaged were armed, were firing at them and presented a deadly threat to the British troops at the Perpendicular Bund Line and elsewhere.
- 2.343** There was also evidence that these 7 Platoon soldiers had observed some other Iraqi men from this position who, in contrast to those in the immediate vicinity of the insurgents’ vehicles, were not considered to be active participants in the armed engagement and so were not fired on by the British soldiers. Corporal Rankin described two such “innocent” bystanders,⁴⁹⁵ and Private Smith appears to have corroborated one of these sightings.⁴⁹⁶
- 2.344** Finally, in relation to the exchange of fire with the insurgents who were in the immediate vicinity of these particular vehicles on Route 6, it is convenient to deal with the submission made on behalf of the Iraqi Core Participants that the driver of one of the vehicles observed by the 7 Platoon soldiers at the Perpendicular Bund Line might have been Hassan Radhi Khafeef Al-Keemy Al-Aosi (deceased 9).⁴⁹⁷ I am satisfied that there is no substance in that particular submission.
- 2.345** There is no doubt that the dead body of Hassan Al-Aosi (deceased 9) was, at the conclusion of the Southern Battle, taken back to Camp Abu Naji where he was later photographed by Captain James Rands.⁴⁹⁸ Later in this Report I give a detailed account of the circumstances in which the body of Hassan Al-Aosi and those of other deceased Iraqis came to be collected from the battlefield and taken to Camp Abu Naji. At this stage, it suffices to say that none of the evidence with regard to the collection and transport of the Iraqi deceased provides any support for the suggestion that the driver of one of the insurgents’ vehicles had been collected from where he had fallen on Route 6 and then taken to Camp Abu Naji as one of the Iraqi deceased. As it seems to me, it follows that Hassan Al-Aosi cannot have been the driver of any of the insurgents’ vehicles described by soldiers from 7 Platoon.

Further Insurgency fire from other ditches to the north

- 2.346** Those soldiers of 7 Platoon who had remained at the Perpendicular Bund Line also became involved in an exchange of fire with more enemy gunmen who were located to the north of their position and east of Route 6. Corporal William Rankin described them as being approximately 150-200 metres to the north, taking cover in large ditches. Corporal Rankin estimated that there were between 50 and 100 enemy gunmen in this location.⁴⁹⁹ He continued:

“We returned fire at the enemy in the ditches with our SA80 rifles. I also gave fire control orders to my Section, meaning that I looked for the enemy positions and gave my men a range in metres and direction. I saw some enemy fall near the front (i.e. south) of their position and some enemy fall near the road. I do not know if they fell as a result of my shots or those of the other soldiers who were at my location, or for some other reason.”⁵⁰⁰

⁴⁹⁵ Corporal Rankin [81/139-143]

⁴⁹⁶ Private Smith [71/73]

⁴⁹⁷ ICP Closing Submissions (228) [814]–[829]

⁴⁹⁸ (ASI000481)

⁴⁹⁹ Corporal Rankin (ASI019431) [43]

⁵⁰⁰ Corporal Rankin (ASI019431) [44]

2.347 Corporal Rankin's account of this incident was partially corroborated by Private James Smullen, although Private Smullen was unaware whether any enemy fighters had been killed and offered a considerably more conservative estimate as to their number.⁵⁰¹ Again, in my opinion, Corporal Rankin's account of this event may have been somewhat exaggerated. Nevertheless, I am satisfied that a significant exchange of fire did take place between the 7 Platoon soldiers who had remained at the Perpendicular Bund Line and a number of enemy gunmen who were located in ground to the north of the 7 Platoon position.

2.348 However, it is not possible to state with any degree of certainty that any Iraqi men were actually killed during this exchange of fire. Certainly, any Iraqi who was killed in this particular engagement does not appear to have been amongst those collected from the battlefield and taken back to Camp Abu Naji. However, there is some evidence to suggest that Muhammad Abdul-Hussein Al-Jeezani (deceased 30) may have been one of the Iraqis who were involved in this particular engagement. Muhammad Al-Jeezani was shot and injured on 14 May 2004. He was then found by a resident from a nearby village known as "Umat-Aranib" and taken to hospital for treatment.⁵⁰² Muhammad Al-Jeezani eventually died from his injuries on 9 November 2006.⁵⁰³

2.349 Written evidence was provided by Kathim Abdul-Hussein Hashim Al-Jeezani (witness 179), with regard to the location where his late brother, Muhammad, had been found. He described a conversation which he had with his late brother in the days after the battle:

*"Muhammad Abdul-Hussein Al-Jeezani said he had been found close to a water channel that ran through the sugarcane field, about 500 (five hundred) to 600 (six hundred) metres into the field from the main Basra-to-Baghdad road. It was near to the brick factory, about 5 (five) to 6 (six) kilometres from Seiedar, and from there to Al-Majar would be 10 (ten) to 11 (eleven) kilometres further. Muhammad Abdul-Hussein Al-Jeezani was found in the direction of Basra, close to the battle but slightly away from where the main battle took place."*⁵⁰⁴

2.350 Although there are some similarities between the location described in the above passage and the location where the men of 7 Platoon described engaging enemy gunmen to the north of their position, it seems to me that there is insufficient evidence to justify reaching any firm conclusion that Muhammad Al-Jeezani (deceased 30) had been shot by the soldiers of 7 Platoon who were positioned at the Perpendicular Bund Line when firing to the north of that position.

6 Platoon arrive at the scene and come under hostile fire

2.351 In the meantime, the three Land Rovers of 6 Platoon had also arrived at the scene of the Southern Battle. They had left Camp Condor shortly after the vehicles from 7 Platoon and thus had arrived in the area of the ambush a short time later. As I have already indicated⁵⁰⁵ the lead vehicle for 6 Platoon was commanded by Lieutenant James Passmore, the second vehicle was commanded by Corporal Lee Gidalla and the last vehicle was commanded by Sergeant Paul Kelly.⁵⁰⁶ Lieutenant Passmore and Corporal Gidalla travelled in soft-skinned Land Rovers and Sergeant Kelly travelled in a Snatch Land Rover. At the time of their deployment, all the men

⁵⁰¹ Private Smullen (ASI017494-95) [51]–[52]

⁵⁰² Kathim Abdul-Hussein Hashim Al-Jeezani (witness 179) (PIL001245) [44]

⁵⁰³ Kathim Abdul-Hussein Hashim Al-Jeezani (witness 179) (PIL001256) [70]

⁵⁰⁴ Kathim Abdul-Hussein Hashim Al-Jeezani (witness 179) (PIL001245) [45]

⁵⁰⁵ See paragraph 2.279 above

⁵⁰⁶ Lieutenant Passmore (ASI016106) [41]; Sergeant Kelly (ASI017327) [36]; Corporal Gidalla (ASI011690) [27]

in these vehicles understood their purpose was to find and assist Major Adam Griffiths and his Rover Group.

- 2.352** When the 6 Platoon convoy arrived at the position on Route 6 adjacent to the large derelict building, Lieutenant Passmore observed at least one abandoned Land Rover.⁵⁰⁷ As his vehicle slowed, apparently due to a belief that they had found location of Major Griffiths’ Rover Group, Lieutenant Passmore saw an Iraqi man approximately 50 metres to the east, carrying an AK47 Kalashnikov rifle. At the same time, the 6 Platoon convoy encountered considerable incoming fire from a number of enemy gunmen positioned to the east side of Route 6. Two vehicles in the convoy (those commanded by Lieutenant Passmore and Sergeant Kelly respectively) experienced narrow escapes from incoming rocket-propelled grenades.⁵⁰⁸
- 2.353** Lieutenant Passmore ordered the driver of his vehicle, Private Paul Baker, to drive off Route 6 and down the bank to the west of the road in order to take cover from the firing. Private Robert Schwar, as a result of a combination of instinct and an order given by Corporal Gidalla, also drove down the same bank, albeit some distance to the south of Lieutenant Passmore’s vehicle.⁵⁰⁹ For his part, Sergeant Kelly ordered Private Richard Hobbs to stop his vehicle on the road in order to warn any nearby civilian vehicles of the danger.⁵¹⁰
- 2.354** The occupants of all three vehicles dismounted. Lieutenant Passmore’s section was positioned to the north of the other two when they dismounted. In evidence, Lieutenant Passmore described how he could see some of the 7 Platoon soldiers across the road,⁵¹¹ Sergeant Kelly’s section on the same side of the road approximately 100 metres to the south and around 15–30 enemy insurgents approximately 80 metres away on the east side of Route 6.⁵¹²
- 2.355** Lieutenant Passmore and his section exchanged fire with the enemy gunmen to the east of Route 6.⁵¹³ Understandably, none of the military witnesses could state with any certainty whether any enemy were killed during this exchange of fire. I accept their evidence that the uneven nature of the terrain and the need to maintain their own cover made it impossible to know whether any enemy gunmen were actually hit or merely ducking down back into cover.
- 2.356** Sergeant Kelly’s section also encountered heavy incoming fire from the east of Route 6. Sergeant Kelly identified one enemy gunman in particular who was located behind a mound of earth. Sergeant Kelly ordered Private Hobbs to fire a 40 millimetre grenade using an underslung grenade launcher (“UGL”). This grenade landed broadly where it was aimed and may have killed that fighter, though Sergeant Kelly was unable to say for certain.⁵¹⁴
- 2.357** Corporal Gidalla’s section also initially took cover to the west of Route 6, after dismounting from their Land Rover.⁵¹⁵ Private Schwar suggested that the section initially took cover to the west of Route 6, for a period of up to five minutes.⁵¹⁶ This may be something of an

⁵⁰⁷ One of the 7 Platoon vehicles

⁵⁰⁸ Lieutenant Passmore (ASI016108) [47]; Sergeant Kelly (ASI017329) [42]; NB – whilst the driver of Sergeant Kelly’s vehicle, Private Hobbs, saw an RPG passing across the bonnet of his vehicle (ASI009529) [21] Private Baker, the driver of Lieutenant Passmore’s vehicle did not (ASI009118-20) [27]-[31]

⁵⁰⁹ Corporal Gidalla (ASI011691) [29]; Private Schwar (ASI018416-17) [41]

⁵¹⁰ Sergeant Kelly (ASI017328) [42]

⁵¹¹ Lieutenant Passmore referred in his statement to 5 Platoon at various times. I am satisfied that each such occasion was a reference to the platoon commanded by Lieutenant Dormer, known to the Inquiry as 7 Platoon

⁵¹² Lieutenant Passmore (ASI016109) [50]–[51]

⁵¹³ Lieutenant Passmore (ASI016109-10) [53]–[54]

⁵¹⁴ (ASI017329) [44]

⁵¹⁵ Corporal Gidalla [67/11-12]

⁵¹⁶ Private Schwar (ASI018417) [44]–[45]

overestimate by Private Schwar because it is evident that Corporal Gidalla's section was the first of the three sections from 6 Platoon to cross to the east side of Route 6.⁵¹⁷

2.358 Corporal Gidalla identified four enemy insurgents to the east of Route 6. These insurgents fired upon his section using automatic fire. Corporal Gidalla's section returned fire at these particular insurgents as the soldiers crossed the road in their general direction. Corporal Gidalla was unable to describe these men, except for the fact that they were all wearing dish-dashes. He saw all four insurgents fall and suspected that they had been killed by fire from his section. This suspicion was confirmed when he later saw these particular men lying dead in the open ground between the large derelict building and Route 6.⁵¹⁸

2.359 There are some striking similarities between this event and an incident described by soldiers from 7 Platoon who said that they had observed Iraqi men running from west to east across open ground to the south of their position at the Perpendicular Bund Line. It seems to me to be very likely that the men of both 6 and 7 Platoon were describing the same incident but viewed from a different perspective.

Consolidation of 6 Platoon's position

2.360 Lieutenant William Passmore took the decision to unite the three separate sections of 6 Platoon into one group. His first step was to take his section along the ditch on the west side of Route 6 to join up with Sergeant Paul Kelly's section which was situated further south.⁵¹⁹ Sergeant Kelly similarly moved his section along the ditch to the north and they met somewhere in the middle.⁵²⁰ Sergeant Kelly told Lieutenant Passmore that Corporal Lee Gidalla's section was isolated and had killed a number of enemy fighters.⁵²¹

2.361 From this new location, Lieutenant Passmore was able to see clearly the position of Corporal Gidalla's section to the east of Route 6 for the first time. He described their position as an "*isolated mud bank*" immediately to the west of the Southern Tank Ditch.⁵²² I am satisfied that this "*mud bank*" was the Parallel Bund Line. Lieutenant Passmore was able to contact Corporal Gidalla using a personal role radio ("PRR") and Corporal Gidalla expressed concern to his platoon commander about the situation in which his section found itself.⁵²³

2.362 Lieutenant Passmore's section was the first to cross the road in support of Corporal Gidalla's section. Nobody from Lieutenant Passmore's section fired as they crossed. Sergeant Kelly's men remained on the west of Route 6 providing the necessary suppressive fire as Lieutenant Passmore's section made its move.⁵²⁴ As he was crossing the road, Lieutenant Passmore noticed the bodies of two or three of the men killed by Corporal Gidalla's section a few minutes previously. He observed that the bodies were lying slightly apart from one another, but in a manner which suggested they had once been together at the scene of the engagement.⁵²⁵

2.363 Corporal Gidalla's section and Lieutenant Passmore's section were thereby united at the Parallel Bund Line. By this time, enemy fighters were concentrated in the Southern Tank Ditch and the area around the large derelict building. The men engaged these enemy fighters and

⁵¹⁷ See Lieutenant Passmore (ASI016110) [55]–[56]; Sergeant Kelly (ASI017330) [47]

⁵¹⁸ Corporal Gidalla [67/13-15]; (ASI011714)

⁵¹⁹ Lieutenant Passmore (ASI016110) [55]

⁵²⁰ Sergeant Kelly (ASI017330) [47]

⁵²¹ Lieutenant Passmore (ASI016110) [55]

⁵²² Lieutenant Passmore (ASI016110) [56]

⁵²³ Lieutenant Passmore (ASI016110-11) [56]; Corporal Gidalla (ASI011694) [38]

⁵²⁴ Lieutenant Passmore (ASI016111-12) [59]

⁵²⁵ Lieutenant Passmore [74/12-13]

provided suppressive fire to allow Sergeant Kelly’s section to cross the road.⁵²⁶ It is unclear whether any Iraqis were actually killed by this fire. In the event, Sergeant Kelly was able to move most of his section across the road, apparently without incident.⁵²⁷

2.364 However, two of Sergeant Kelly’s section, Privates Sean Marney and Steven Wells, remained on the west side of Route 6. The circumstances in which these two soldiers came to remain at that position were the subject of specific questions and submissions. Although of limited significance in the overall chronology of the main events of the Southern Battle, I have decided to give specific consideration to this aspect of the matter because of the possible inferences that might be drawn from it concerning the conduct of 6 Platoon as a whole.

The Sergeant Kelly “Order”

2.365 In late 2004, Sergeant Paul Kelly drafted two “Accounts”, in which he gave a broad description of his various actions on 14 May 2004. When giving evidence, Sergeant Kelly described these “Accounts” in the following terms:

“I would like to make it absolutely clear that the Accounts were not intended to be simple factual narratives of what occurred. I wrote them both with the intention of writing and publishing a book dealing with my experiences in Iraq. While the Accounts are broadly accurate, I embellished and altered certain facts in order to make my book a more interesting and exciting account of what happened. It was my desire to attract a publisher and sell as many copies of my book as I could and so, in certain places, I used ‘artistic licence’ to make the book a more attractive read.”⁵²⁸

2.366 In one of his “Accounts” (“the Untitled Account”) Sergeant Kelly described the movement of his section across Route 6 and then continued:

“I left Pte Wells armed with a GPMG and Pte Aston on the western side, to cover south in case re-enforcements of insurgents came from the towns in the south with orders to ‘kill anyone that came up Route 6 and passed our Snatch on the road.’”⁵²⁹

2.367 In his Inquiry witness statement, Sergeant Kelly stated that this particular “reference” might have been added to his account in order to make the incident “sound more exciting”.⁵³⁰ However, in the same statement he stopped short of an outright denial of having given such an order. Instead, he said: “I am confident that I did not order Pte Wells to ‘kill anyone’ who came up the road” and added “I doubt that I would have said that as it was not a proper order to give a soldier.”⁵³¹ However, Sergeant Kelly then added the following caveat: “If I did use the words contained in the Untitled Account then I did not mean them literally and I would not have expected Pte Wells to have taken them literally either as he was a trained soldier and was familiar with the Rules of Engagement.”⁵³²

2.368 In his oral evidence, Sergeant Kelly confidently asserted that he had not given any such order to Private Steven Wells and that his claim to have done so in his “Untitled Account” constituted an embellishment of that account.⁵³³ In fact, for reasons which I elaborate below,

⁵²⁶ Lieutenant Passmore (ASI016113) [66]–[67]

⁵²⁷ Sergeant Kelly (ASI017330) [47]–[49]

⁵²⁸ Sergeant Kelly (ASI017373-74) [227]

⁵²⁹ Sergeant Kelly (ASI007032)

⁵³⁰ Sergeant Kelly (ASI017378) [242]

⁵³¹ Ibid.

⁵³² Ibid.

⁵³³ Sergeant Kelly [64/38-39]; [64/99-103]

I am satisfied that no such order was given by Sergeant Kelly, nor any order which could have been interpreted in such a way. I have to say that Sergeant Kelly's characterisation of his claim to have given such an order, as stated in his "Untitled Account", as an "embellishment" is not a particularly helpful way of describing the inclusion of something that (as it seems to me) goes further than a mere example of "artistic licence". However, the fact that I regard its original inclusion in the "Untitled Account" as irresponsible and its later justification as an "embellishment" wholly unsatisfactory, does not prevent me from coming to the conclusion, as I do, that Sergeant Kelly did not in fact give any such order that day or at all.

2.369 The soldier most immediately involved, Private Steven Wells, firmly and, in my view, credibly denied having been given such an order by Sergeant Kelly.⁵³⁴ Although there was some uncertainty as to the precise identities of those members of Sergeant Kelly's section who had remained on the west side of Route 6, all the evidence was consistent in stating that Private Wells was one of those who did remain on that side of the road. In my view, it is inconceivable that Private Wells could have been given such an extraordinary order by Sergeant Kelly and then simply have forgotten it. I accept that he was telling the truth when he said in evidence that he had been given no such order.

2.370 The evidence of Sergeant Kelly and Private Wells was confirmed by that of Private Sean Marney. He recalled being asked by Sergeant Kelly to guard the perimeters of the contact area, but did not recall being ordered to kill anyone who came up Route 6 and proceeded past 6 Platoon's Snatch Land Rover. Furthermore, Private Marney explained that, whilst Sergeant Kelly was "a very loud character, a very stern person..." he (Marney) would not have followed such an order even if it had been given, because it would have been outside the Rules of Engagement.⁵³⁵

2.371 Lieutenant Passmore also gave evidence that he was in the vicinity of Sergeant Kelly at the time such an order would have to have been given. He too denied hearing Sergeant Kelly give such an order and he suggested that the soldiers to whom Sergeant Kelly would have given the order were too far away for a conversation of the sort described to have occurred in any event.⁵³⁶

2.372 Finally, in my view, I am satisfied that it would have been entirely out of character for Sergeant Kelly to have given such an order. A significant number of witnesses gave entirely credible evidence that Sergeant Kelly was a thoroughly professional soldier, renowned for his strict enforcement of discipline within his platoon.⁵³⁷ In my view, it would have been completely out of character for Sergeant Kelly to have given such an order, which was manifestly contrary to the Rules of Engagement, whilst engaged in carrying out his military duties. A suggestion that he gave such an order, and in such a casual, almost flippant, manner, is simply not credible. I am completely satisfied that no such order was given to Private Wells or, for that matter, to either Privates Marney or Duncan Aston.

2.373 Finally on this particular matter and for the avoidance of doubt, there was no evidence that any member of 6 Platoon took any form of action whatsoever that suggested they had been carrying out an order to kill anybody who happened to drive up Route 6 past the 6 Platoon Snatch Land Rover.

⁵³⁴ Private Wells [66/176-177]

⁵³⁵ Private Marney [73/69]

⁵³⁶ Lieutenant Passmore [74/17-18]

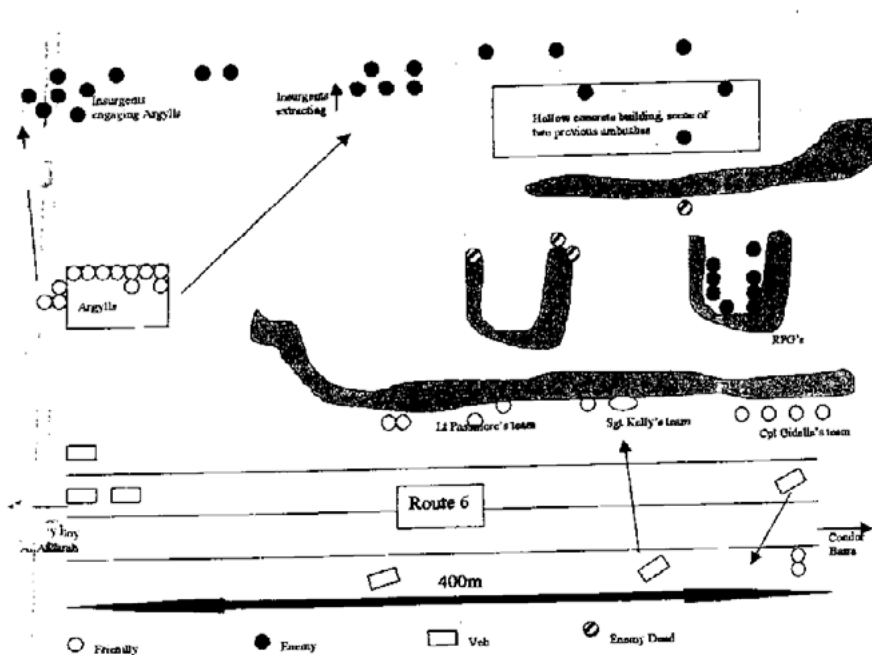
⁵³⁷ See, for example, Private Wells [66/171]; Private Schwar [68/85-86]; Private Lawrence [68/118-120]; Private Marney [73/78]

6 Platoon in action at the Parallel Bund Line on the east side of Route 6

2.374 Having crossed Route 6 from west to east, the members of 6 Platoon, with the exception of Privates Sean Marney and Steven Wells (who had remained on the west side of the road), then took cover at the Parallel Bund Line. Whilst at the Parallel Bund Line, the soldiers from 6 Platoon became involved in heavy fighting with the armed insurgents. The focus of 6 Platoon’s fire at this stage was on the Southern Tank Ditch and the large derelict building.⁵³⁸

2.375 Sergeant Paul Kelly accurately and helpfully identified the positions of his section, along with those of Corporal Lee Gidalla and Lieutenant William Passmore on the following sketch (Figure 18 – ASI006954). This particular sketch was originally prepared to assist in the production of *Condor Blues*, a book authored by Mark Nicol narrating the actions of British forces in Iraq in 2004, drawn from contemporaneous documentation and interviews with soldiers who had served in Iraq.

Figure 18: ASI006954



2.376 A number of significant events occurred during this particular period of the Southern Battle, whilst the majority of 6 Platoon was in position at the Parallel Bund Line and exchanging fire with the Iraqi insurgents in the Southern Tank Ditch. Inevitably, some of the military witnesses could not remember the exact order in which these various events took place and others differed in their accounts as to the order in which the events in question actually occurred. Again, in my view, these uncertainties and differences are the unsurprising result of the significant period of time that has elapsed since these fast-moving, dangerous and confused events took place as well as the general circumstances in which they occurred. As it happens, I am perfectly satisfied that nothing of any consequence turns on any need to determine the precise order in which these events occurred. Accordingly, I will identify the relevant events and provide as detailed a description of each of them as the evidence permits. The events in question, listed in no particular order, were as follows:

⁵³⁸ Sergeant Kelly (ASI017330) [48]

- a. The use by Private Scott Barlow of a General Purpose Machine Gun (“GPMG”) to engage enemy fighters in the Southern Tank Ditch;
- b. The grenade attack against 6 Platoon which injured Lance Corporal Mark Keegan;
- c. 6 Platoon concerns that ammunition was running low;
- d. The attempt by Private James Lawrence to assault the Southern Tank Ditch;
- e. The arrival of vehicles from the Household Cavalry Regiment (“HCR”);
- f. The throwing of a phosphorous grenade by Corporal Lee Gidalla; and
- g. The incidence of incoming enemy mortar fire.

Private Scott Barlow and the GPMG

2.377 Both Sergeant Paul Kelly⁵³⁹ and Lieutenant William Passmore⁵⁴⁰ described ordering Private Scott Barlow to fire at the Southern Tank Ditch using his General Purpose Machine Gun (“GPMG”).⁵⁴¹ The order given was to fire just below the top of the earth mound surrounding the ditch in an attempt to hit the enemy taking cover behind the mound. The military commanders hoped that the GPMG, a more powerful weapon than the SA80 rifle, would penetrate through the earth mound. This was, therefore, proposed as a means of countering the enemy threat from the tank ditch from a distance.⁵⁴²

2.378 Private Barlow carried out this order but it did not succeed in eliminating the threat coming from this position. It is possible that some enemy fighters were killed or injured as a result of this firing, but certainly not all those who had taken cover in the Southern Tank Ditch. This may have been because the rounds did not actually penetrate right through the earth mound, but it is not possible to come to any firm conclusion about the actual effect of this GPMG fire. What is clear is that the enemy gunmen in the Southern Tank Ditch continued to maintain their fire on the 6 Platoon men who were positioned behind the Parallel Bund Line.

The grenade attack against 6 Platoon

2.379 The soldiers from 6 Platoon described how a number of grenades were thrown into their position by enemy insurgents. One such grenade landed between Private James Lawrence and Lance Corporal Keegan, injuring them both.⁵⁴³ Some shrapnel from the grenade struck and injured Private Lawrence’s hand, although it did not render him *hors de combat*.⁵⁴⁴ However, Lance Corporal Keegan suffered a more serious injury to his groin that left him in considerable pain and discomfort. Fortunately, the injury did not cause significant blood loss to Lance Corporal Keegan and the injury was not immediately life-threatening.⁵⁴⁵

2.380 Private Christopher Dodd, the platoon medic, hurried over to attend to Lance Corporal Keegan. He applied a dressing to Lance Corporal Keegan’s wound and gave him initial medical treatment at the Parallel Bund Line. Later, once the fighting had subsided, Private Dodd escorted Lance Corporal Keegan to the large derelict building. From this point onwards,

⁵³⁹ Sergeant Kelly (ASI017333) [60]

⁵⁴⁰ Lieutenant Passmore (ASI016119) [85]

⁵⁴¹ The most likely explanation is that both Lieutenant Passmore and Sergeant Kelly were involved in the decision and the dissemination of the order

⁵⁴² Lieutenant Passmore (ASI016119) [85]

⁵⁴³ Lance Corporal Keegan (ASI018074) [65]–[66]

⁵⁴⁴ Private Lawrence [68/100-101]

⁵⁴⁵ Private Dodd (ASI011048) [47]

Private Dodd ceased to be involved in the active combat aspect of the Southern Battle and the main focus of his actions shifted almost entirely to the treatment of Lance Corporal Keegan. The injury to his groin also prevented Lance Corporal Keegan from taking any further part in the active fighting.⁵⁴⁶

6 Platoon ammunition running low

2.381 There was a genuine concern among the section commanders of 6 Platoon that their ammunition was running low whilst they were at the Parallel Bund Line.⁵⁴⁷ As a short term measure, Sergeant Paul Kelly issued a general order to the platoon to fire only single, aimed shots, rather than bursts of automatic fire.⁵⁴⁸ Nevertheless, there was a feeling that the platoon was involved in a contact for which it did not have adequate ammunition. It is very likely that this perception influenced a number of the decisions which the 6 Platoon section commanders took whilst in this position at the Parallel Bund Line.

Private James Lawrence’s attack on the Southern Tank Ditch

2.382 The most significant consequence of the concerns over the limited amounts of available ammunition was that a decision was taken to launch an assault on the enemy in the Southern Tank Ditch. Corporal Lee Gidalla took responsibility for this decision and he recalled tasking Private James Lawrence to assist.⁵⁴⁹

2.383 Again, there is some understandable confusion about what happened next. Private Lawrence recalled that Sergeant Kelly initially objected to his (Private Lawrence’s) involvement in the proposed assault as he was already injured from the earlier grenade attack, but that Corporal Gidalla had disagreed with Sergeant Kelly.⁵⁵⁰ This suggests that this particular assault occurred after the grenade attack on the platoon.

2.384 Sergeant Kelly did not remember having raised any such objection to Private Lawrence’s involvement, but did suggest that some sort of misunderstanding may have occurred. According to Sergeant Kelly, he had given a “thumbs up” signal to Corporal Gidalla and Private Lawrence as a means of inquiring into their welfare and that this signal appeared to have been understood by them as an instruction that they should proceed with the proposed assault on the tank ditch.⁵⁵¹

2.385 Private Lawrence and Corporal Gidalla then advanced eastwards from the Parallel Bund Line towards the enemy gunmen’s position in the Southern Tank Ditch. Corporal Gidalla and the rest of 6 Platoon then provided suppressive fire as Private Lawrence advanced right up to the earth mound that surrounded the Southern Tank Ditch.⁵⁵² During his oral evidence, Private Lawrence was shown the following excerpt, apparently recording an account he gave to a journalist from the News of the World:

“My corporal, Lee Gidalla, told me to switch my SA80 to automatic and attack the bunker. I was terrified. When you assault a bunker with no grenades and less than 10 bullets it’s a 95 per cent death rate.

⁵⁴⁶ Private Dodd (ASI011049) [48]

⁵⁴⁷ Corporal Gidalla (ASI011696) [43], Sergeant Kelly (ASI017333) [59]

⁵⁴⁸ Ibid.

⁵⁴⁹ Corporal Gidalla (ASI011696) [43]; Private Lawrence [68/103-4]

⁵⁵⁰ Private Lawrence [68/100-102]; (ASI022225) [30]

⁵⁵¹ Sergeant Kelly (ASI017338) [77]

⁵⁵² Private Lawrence (ASI022225) [30]

But I was furious too, and that helped block the danger out of my mind as I charged in first. I was over the mound and sprinting towards the ambushers, lurching into the bunker, shouting and spraying bullets into the Iraqis inside.

About five dropped straight away, and Cpl Gidalla was in there right after me shooting at the six others still alive.

Some were just kids – maybe 12 or 13 years old. They were being commanded by a guy in his mid-30s shouting in Arabic.

*I hate to say it, but at that second I didn't give a f*** who they were or how old they are [sic]. They were trying to kill me and it was a matter of raw survival.”⁵⁵³*

2.386 Vivid as this description of what happened may be, it is clear that any assessment of the accuracy of its detail should be approached with a significant degree of caution. Although, when giving his evidence, Private Lawrence described the account as “largely true” and did not identify any single aspect of it which was untrue, he did infer that a certain gloss had been placed on his words in order to help sell newspapers.⁵⁵⁴ In his evidence, Private Lawrence gave the following somewhat different and, in my view, much more credible account of what occurred:

“I advanced toward the bunker and up it. It was sand and I lost my footing as [sic] climbing up the bunker. As I reached the top of the bunker I was shot at. It was clear to me at the time that they were trying to kill me.

I remember one of the shots going through the finger hole on the rifle and another shot actually hit the hand guard. The force of that shot knocked me backwards onto the sand on the side of the bunker. After that, I retreated back off the bunker.”⁵⁵⁵

2.387 Private Lawrence’s evidence, therefore, was to the effect that he did not actually fire any shots prior to his rifle being hit by enemy fire. This is consistent with Corporal Gidalla’s description of the event⁵⁵⁶ and is supported by the evidence of both Private Paul Baker⁵⁵⁷ and Private Robert Schwar.⁵⁵⁸ Although, in his statement to the Royal Military Police, Lieutenant William Passmore described Private Lawrence as having fired into the tank ditch during his assault,⁵⁵⁹ Lieutenant Passmore could not recall the incident by the time he gave evidence to the Inquiry.⁵⁶⁰ Private Duncan Aston did give evidence that Private Lawrence had fired a number of rounds with his weapon on an automatic setting into the ditch.⁵⁶¹ However, for reasons set out in greater detail later in this Report, I have come to the conclusion that Private Aston was not a reliable witness of the events that took place on the battlefield that day and his evidence with regard to this particular matter is not correct.

2.388 Private Lawrence described engaging with two enemy gunmen after the assault on the tank ditch.⁵⁶² I am satisfied that this “engagement” is not a reference to any of the events which

⁵⁵³ Private Lawrence (ASI001950)

⁵⁵⁴ Private Lawrence [68/102-103]

⁵⁵⁵ Private Lawrence (ASI022225) [31]–[32]

⁵⁵⁶ Corporal Gidalla (ASI011696) [44]

⁵⁵⁷ Private Baker (ASI009122) [42]

⁵⁵⁸ Private Schwar (ASI018421) [57]

⁵⁵⁹ Lieutenant Passmore (MOD004650)

⁵⁶⁰ Lieutenant Passmore (ASI016118) [82]

⁵⁶¹ Private Aston [62/46-47]

⁵⁶² Private Lawrence (ASI012225) [33]

took place during the assault itself. It is evident from a number of accounts, including that of Private Lawrence himself, that his weapon was badly damaged when it was hit by fire from the tank ditch during his attempted assault. The damage was sufficient to render the weapon inoperable and made it necessary for Private Lawrence to swap his weapon with that of Private Christopher Dodd.⁵⁶³

2.389 For these reasons, I have come to the conclusion that no Iraqi gunmen were actually killed or injured by Private Lawrence during his attempted assault on the Southern Tank Ditch.

The arrival of the Household Cavalry Regiment (HCR)

2.390 Concurrently with the start of the Southern Battle, a multiple consisting of three Wolf Land Rovers (call signs L30, L50 and L51) belonging to 3 Troop, A Squadron, Household Cavalry Regiment (“HCR”) commanded by Lieutenant Henry Floyd was travelling north from Basrah to Camp Abu Naji along Route 6. Just north of the town of Qal’at Salih, the convoy came under hostile fire from small arms and rocket-propelled grenades.⁵⁶⁴ The location of this particular ambush was some distance south of the Southern Battle and illustrates the scale of the ambushes which had been set up against British forces on 14 May 2004.

2.391 The HCR convoy returned fire but did not stop. Its commander, Lieutenant Floyd, was unaware whether any of the fire from his convoy had hit or killed any enemy gunmen⁵⁶⁵ and there was no evidence that suggested that any Iraqis had been killed during this particular brief contact.

2.392 After stopping briefly to check for casualties, the HCR convoy continued along Route 6. Lieutenant Floyd was unaware at this time of any other contacts having taken place that day. In particular, he was unaware that his convoy was driving towards the location of the Southern Battle. This was probably caused or contributed to by the widespread communication difficulties that were being experienced in that area on the afternoon of 14 May 2004.⁵⁶⁶

2.393 When the HCR convoy reached a point on Route 6 that was opposite the brick factory, Lieutenant Floyd saw Sergeant Paul Kelly’s Land Rover parked in the middle of the road. Within a very short time, the HCR convoy was also subject to heavy incoming AK47 fire from the eastern side of the road and they saw a British soldier standing in a deep ditch to the west of Route 6 waving for them to stop.⁵⁶⁷ The soldier who beckoned them to stop was, almost certainly, Private Sean Marney.⁵⁶⁸

2.394 The HCR convoy accordingly drove into the ditch to the west of Route 6 and the soldiers dismounted.⁵⁶⁹ Lieutenant William Passmore noticed the HCR convoy approaching and he ran over to the position where their vehicles had stopped. After a brief discussion between the two officers, HCR provided 6 Platoon with additional ammunition and agreed to provide cover to the west of Route 6. Lieutenant Floyd also agreed to make the necessary signals to secure the evacuation of the 6 Platoon casualties and to obtain reinforcements. Lieutenant Passmore then returned to the Parallel Bund Line on the eastern side of Route 6.⁵⁷⁰

⁵⁶³ Private Dodd (ASI011049) [48]

⁵⁶⁴ Lieutenant Floyd (ASI014392) [29]

⁵⁶⁵ Lieutenant Floyd (ASI014392-93) [29]-[30]

⁵⁶⁶ Lieutenant Floyd (ASI014393) [30]

⁵⁶⁷ Lieutenant Floyd [75/12-13]; (ASI014393) [31]

⁵⁶⁸ Private Marney (ASI022392) [41]

⁵⁶⁹ Lieutenant Floyd (ASI014393) [31]

⁵⁷⁰ Lieutenant Floyd (ASI014393-94) [31]-[32]; Lieutenant Passmore (ASI016115-17) [73]-[77]

The phosphorous grenade thrown by Corporal Lee Gidalla

2.395 At some stage, Corporal Lee Gidalla threw a white phosphorous grenade to the rear of the enemy position in the Southern Tank Ditch.⁵⁷¹ The grenade appears to have been given to Corporal Gidalla by Sergeant Paul Kelly.⁵⁷² Sergeant Kelly believed that the decision to throw the grenade was Corporal Gidalla's. However, it appears that Corporal Gidalla was carrying out an order given by Lieutenant William Passmore.⁵⁷³ The purpose of throwing the grenade seems to have been to obscure the sight of and disorientate the enemy gunmen and to mark their position for the benefit of the soldiers from 7 Platoon.⁵⁷⁴

2.396 The grenade itself did not injure any of the enemy gunmen. Although both Lieutenant Passmore and Corporal Gidalla confirmed that such a grenade had the capacity to burn individuals who were close to it upon detonation, both stressed that the grenade had been thrown to the rear of the Southern Tank Ditch, at a sufficient distance from the enemy gunmen to avoid injury.⁵⁷⁵

Enemy Mortar fire

2.397 A number of the 6 Platoon and Household Cavalry Regiment ("HCR") witnesses described coming under mortar fire.⁵⁷⁶ However, there was no evidence that any military personnel were killed or injured as a result of this mortar fire.

The second and successful assault on the Southern Tank Ditch

2.398 Throughout the early stages of the Southern Battle and as described in the preceding paragraphs of this Report, the soldiers of 6 Platoon and 7 Platoon were respectively positioned in different locations on the battlefield and each platoon had become involved in separate and distinct exchanges of fire with different groups of enemy gunmen. At some point during this period in the battle, Sergeant Stuart Henderson of 7 Platoon realised that there was a serious risk that members of 6 Platoon might inadvertently fire upon the members of 7 Platoon who had, by that time, arrived at a point near the large derelict building and were thus located just to the northwest of the Southern Tank Ditch, where enemy gunmen were still engaged in an exchange of fire with 6 Platoon. Because he was unable to contact 6 Platoon by using his personal role radio ("PRR"), Sergeant Henderson decided to cross the open ground to the southeast so as to join up with 6 Platoon at the Parallel Bund Line in order to make contact in person.⁵⁷⁷

2.399 By the time Sergeant Henderson succeeded in making contact with 6 Platoon in this manner, the enemy fire was largely confined to the Southern Tank Ditch between Route 6 and the large derelict building. Sergeant Henderson told Sergeant Paul Kelly where the men of 7 Platoon were located and steps were taken to direct 6 Platoon's fire towards the enemy gunmen in the tank ditch and away from 7 Platoon's position. After having made this personal contact with 6 Platoon, Sergeant Henderson returned to the larger derelict building in the same way that he had come.⁵⁷⁸

⁵⁷¹ Corporal Gidalla [67/37-38]

⁵⁷² Sergeant Kelly (ASI017337) [74]

⁵⁷³ Ibid; Lieutenant Passmore (ASI016118) [81]

⁵⁷⁴ Lieutenant Passmore [74/18]; Corporal Gidalla [67/37-38]

⁵⁷⁵ Ibid.

⁵⁷⁶ See, for example, Lieutenant Passmore (ASI016120-21) [88]–[90]; Sergeant Kelly (ASI017335) [66]; Corporal Gidalla (ASI011695) [41]; Lieutenant Floyd (ASI014396) [36]

⁵⁷⁷ Sergeant Henderson (ASI013564) [76]; see also, Lieutenant Dormer (ASI013709) [72]–[73]

⁵⁷⁸ Ibid.

- 2.400** Once he was back at the large derelict building, Sergeant Henderson was contacted by Lieutenant William Passmore via his PRR. Lieutenant Passmore informed Sergeant Henderson that Warrior AIFVs were being deployed in their support. However, either at the same time or by a somewhat later message, Sergeant Henderson was also informed that the Warriors had been delayed by an enemy contact in the vicinity of the Danny Boy VCP.⁵⁷⁹
- 2.401** Because of increasing concerns that 7 Platoon was also running short of ammunition and in view of the news that the Warrior AIFVs had been delayed, Sergeant Henderson and Corporal Brian Nicol decided to carry out an assault on the enemy gunmen’s position in the Southern Tank Ditch. It appears that Lieutenant James Dormer was not a party to the discussion during which this plan was formulated.⁵⁸⁰ In fact, it seems very likely that Lieutenant Dormer had already returned to Corporal William Rankin’s position at the Perpendicular Bund Line by the time this discussion took place.⁵⁸¹
- 2.402** Sergeant Henderson and Corporal Nicol left the large derelict building through a hole in the wall which might once have been a window. They approached the Southern Tank Ditch from the east using natural contours in the ground as cover. Corporal Nicol positioned himself behind a sand bank which represented the last feasible area of cover before the tank ditch itself. From this position, Corporal Nicol provided covering fire for Sergeant Henderson as he advanced across the open ground to the ditch. Soldiers from 6 Platoon provided suppressive fire from the west of the tank ditch. According to Sergeant Henderson, the enemy gunmen in the tank ditch were unaware of his approach.⁵⁸²
- 2.403** After checking the magazine in his weapon and adjusting the setting to automatic, Sergeant Henderson stormed into the Southern Tank Ditch. He was immediately confronted by two Iraqi men, who were about 12 inches or so from the end of his rifle barrel. The Iraqi men were kneeling and were holding AK47 rifles. Neither man was actually firing when Sergeant Henderson first saw them. However, Sergeant Henderson immediately opened fire and both men fell, apparently dead.⁵⁸³
- 2.404** By the time he gave evidence to the Inquiry, Sergeant Henderson was unable to describe these men. He adopted the account given in his Royal Military Police (“RMP”) statement⁵⁸⁴ where he described one as *“an Arabic male wearing a white top”* and the other as *“an older, larger Arabic male wearing a dark coloured top.”* Corporal Nicol was also unable to describe either of these gunmen in his evidence to the Inquiry.⁵⁸⁵
- 2.405** Behind the first two gunmen, Sergeant Henderson saw another group of gunmen at the other end of the tank ditch, approximately 50 feet away. The second group were also armed and Sergeant Henderson fired at them, again with his weapon on automatic until he ran out of ammunition. At this point, Corporal Nicol arrived beside him and continued to fire at these men, whilst Sergeant Henderson threw himself down at the side of the tank ditch in order to take cover.⁵⁸⁶
- 2.406** I am satisfied that when they had finished firing at the gunmen, Sergeant Henderson and Corporal Nicol both believed that the two gunmen at the entrance to the tank ditch and

⁵⁷⁹ Sergeant Henderson (ASI013564) [78]

⁵⁸⁰ Sergeant Henderson (ASI013565) [82]

⁵⁸¹ Lieutenant Dormer (ASI013712) [81]

⁵⁸² Sergeant Henderson (ASI013566) [83]–[86]

⁵⁸³ Sergeant Henderson (ASI013566-67) [88]

⁵⁸⁴ Sergeant Henderson (MOD018837)

⁵⁸⁵ Corporal Nicol (ASI010131) [55]

⁵⁸⁶ Sergeant Henderson (ASI013567-68) [89]–[91]; Corporal Nicol (ASI010131) [52]

the gunmen at the opposite end were all dead. However, neither Sergeant Henderson nor Corporal Nicol took any positive steps to confirm that all the Iraqi gunmen in the Southern Tank Ditch were dead. Although they each genuinely believed that the gunmen were all dead, this belief was solely based on a visual impression. As a result, Sergeant Henderson shouted words to the effect that the “*position was clear*”⁵⁸⁷ a shout that was heard by some, but not all, of the soldiers in the area at the time.

The Re-Org – initial stages

2.407 The actions taken by Sergeant Stuart Henderson and Corporal Brian Nicol in the Southern Tank Ditch effectively brought to an end the main combat phase of the Southern Battle and it was thus an appropriate moment for the soldiers to embark upon a “*Re-Org*”⁵⁸⁸ (a military term derived from a contraction of the word ‘Reorganisation’), in accordance with normal military practice.⁵⁸⁹ Following a brief discussion, Sergeants Kelly and Henderson first went to search the body of an Iraqi man, who was described as wearing chest webbing, who happened to be lying by another tank ditch. Sergeant Henderson, following a standard military procedure for checking and searching a dead body,⁵⁹⁰ jumped onto the body in a movement described by some witnesses as akin to a “*belly flop*”.⁵⁹¹ From this position lying on the body, he rolled it over whilst Sergeant Kelly provided cover. Both men described how a grenade then rolled away from under the body. Fortunately, the pin remained in the grenade and neither soldier was injured.⁵⁹²

2.408 Following this incident, Sergeant Kelly became concerned that the Re-Org should not proceed further without taking additional steps to ensure that the area was safe. He and Sergeant Henderson therefore tasked their men to set up an “*all-round defence*”, a procedure whereby the soldiers formed a defensive circle around the place in which the Re-Org was to take place. The men of 7 Platoon covered the area to the east of the Re-Org and those of 6 Platoon covered the area to the west.⁵⁹³

2.409 There were differences in the recollection of witnesses as to the precise order in which events occurred during the Re-Org. Again, I find this unsurprising, given the time that has elapsed since, the prevailing circumstances at the time and the confused, very dangerous and fast moving events which each witness had just experienced before the Re-Org actually took place.

2.410 The Re-Org was coordinated by Sergeant Henderson in respect of 7 Platoon and by Sergeant Kelly in respect of 6 Platoon. Both men described taking charge of the process⁵⁹⁴ and Lieutenant James Dormer confirmed that the Re-Org was, as a matter of procedure, primarily the responsibility of the Platoon Sergeant.⁵⁹⁵

⁵⁸⁷ Sergeant Henderson (ASI013568) [92]

⁵⁸⁸ Sergeant Henderson (ASI013569) [94]

⁵⁸⁹ A Re-Org is a standard military procedure, the purpose of which is essentially fourfold: (i) to protect the unit against possible counterattack, (ii) to redistribute manpower, weapons and ammunition, (iii) to treat and evacuate casualties and (iv) to carry out a search of the position currently held; see MoD Reference Portal

⁵⁹⁰ Sergeant Henderson (ASI013550) [28]; (ASI013571) [102]; Sergeant Kelly (ASI017340) [85]

⁵⁹¹ See, for example, Private Baker [69/36]; Private Marney [73/30]

⁵⁹² Sergeant Kelly (ASI017340) [85]–[86]; Sergeant Henderson (ASI013571) [102]

⁵⁹³ Sergeant Kelly (ASI017341) [89]–[90]

⁵⁹⁴ Sergeant Henderson (ASI013569) [94]; Sergeant Kelly (ASI017341) [91]

⁵⁹⁵ Lieutenant Dormer (ASI013714) [87]

2.411 In the initial stages of the Re-Org, Sergeant Henderson focused on tasking Corporal Nicol to check the ammunition quantities of his platoon⁵⁹⁶ whilst, for his part, Sergeant Kelly was concerned that the Iraqi dead should be searched and stripped of their weapons and ammunition.⁵⁹⁷

The Southern Tank Ditch during the Re-Org

2.412 During the Re-Org, Sergeant Paul Kelly went to the Southern Tank Ditch, the scene of heavy fighting during the main combat phase of the Southern Battle. When he gave his evidence, Sergeant Kelly said that he thought he went to the tank ditch alone. It is possible that Sergeant Kelly was mistaken in this particular recollection, because I am satisfied that Lieutenant Passmore followed him a short while later, although it is not clear from the evidence whether they were particularly near each other at the time.⁵⁹⁸

2.413 According to Lieutenant William Passmore, Sergeant Stuart Henderson and Corporal Brian Nicol were also present in the tank ditch at the same time.⁵⁹⁹ However, although I am completely satisfied that Lieutenant Passmore was an essentially honest and truthful witness, I have come to the conclusion that he was mistaken about this particular matter because, it is clear from their evidence that Sergeant Henderson and Corporal Nicol were both engaged in other tasks at the time and that neither went back to the Southern Tank Ditch after having carried out their successful assault. The most likely explanation for Lieutenant Passmore’s error in this respect is that he wrongly believed that he and Sergeant Kelly had gone straight to the Southern Tank Ditch immediately after it had been assaulted by Sergeant Henderson and Corporal Nicol. In fact, it is clear from the evidence of both Sergeant Kelly and Sergeant Henderson, that a number of other events had taken place during the intervening period.

2.414 What then occurred in the Southern Tank Ditch, as described by Lieutenant Passmore and Sergeant Kelly in their evidence to this Inquiry and in the evidence of other soldiers, became the subject of extensive questioning, lengthy submissions from Core Participants and a number of articles in the Press. I therefore propose to set out the evidence and my conclusions in respect of these events in some detail.

Lieutenant William Passmore’s account

2.415 Lieutenant William Passmore said that, on first entering the Southern Tank Ditch, he saw:

“...approximately half a dozen bodies and they were a twisted mass, all contorted around each other. Most of the bodies were lying on top of each other in the central area between the two berms but some were slumped in a corner on the south berm.”⁶⁰⁰

2.416 It was very evident from Lieutenant Passmore’s written and oral evidence to the Inquiry that he had found this sight deeply distressing. He was unable to provide a detailed description of any of the bodies which he saw, except to comment that the condition of the bodies was such that it seemed to him that they simply could not have been alive.⁶⁰¹ He also gave a description of the scene that indicated that each of the apparently dead men had been armed, as follows:

⁵⁹⁶ Sergeant Henderson (ASI013569) [96]

⁵⁹⁷ Sergeant Kelly (ASI017341) [92]

⁵⁹⁸ Sergeant Kelly (ASI017342) [95]; Lieutenant Passmore (ASI016124) [99]

⁵⁹⁹ Ibid.

⁶⁰⁰ Lieutenant Passmore (ASI016124) [99]

⁶⁰¹ Lieutenant Passmore [74/22]

*"I also saw several weapons, including at least six Kalashnikov variants and at least one RPG (both the launcher and the warhead). These weapons were in the hands of the enemy, underneath the bodies where they had fallen, or near to them. There was at least one weapon per body."*⁶⁰²

2.417 According to Lieutenant Passmore, what happened next was something that he described for the first time in the course of both his written and oral evidence to the Inquiry. He described his recollection of this event as "very distressing" and went on to say:

*"I have previously tried to bury the memory of what happened as I found it so upsetting, but I have also found myself thinking back to it unintentionally. As a result and while I have tried to be as accurate as I can be, I cannot be sure of the detail. Much of my memory of it is confused and uncertain..."*⁶⁰³

2.418 As it seems to me, notwithstanding Lieutenant Passmore's own expressed reservations as to the accuracy of his memory of what happened, it is important to set out his account of this event in full, as follows:

*"As I stood in the ditch I saw the fingers of one of the bodies twitching and moving as if the individual was still alive. All I recall is that he was lying on his back, his head was to my left and his feet to my right, and that he was partially obscured, either by another body or a bit of clothing. At least one weapon, I cannot recall what, was within his reach. In the split second that I had to react, I considered that this man was a threat to me and to others. From approximately two metres away, I fired a couple of short bursts (probably between two and four rounds in each burst) at the man. I believe I hit him in the torso area."*⁶⁰⁴

2.419 Before considering what actually happened during this particular incident, it is important to deal with Lieutenant Passmore's own perception of the situation in which he had found himself. His written and oral evidence made clear that he perceived a threat to himself and his men.⁶⁰⁵ Having seen and heard Lieutenant Passmore give evidence about this and other matters, I am satisfied that he was clearly telling the truth about this particular aspect of events.

2.420 Private Paul Baker described Lieutenant Passmore as "...a nice man, a decent man."⁶⁰⁶ I observed nothing in the course of Lieutenant Passmore's oral evidence that gave me any cause to doubt the accuracy of this assessment. When describing his actions in the Southern Tank Ditch, Lieutenant Passmore became visibly and genuinely distressed. In my view, he was plainly telling the truth and became deeply upset in the process.

2.421 However, in their closing written submissions, those representing the Iraqi Core Participants argued as follows:

*"We submit that such an instinctive and justified act cannot provide a reason for his concealment of his actions including lying to the High Court: nor for his distressed demeanour in the witness box."*⁶⁰⁷

⁶⁰² Lieutenant Passmore (ASI016124) [100]

⁶⁰³ Lieutenant Passmore (ASI016124) [101]

⁶⁰⁴ Lieutenant Passmore (ASI016124-25) [102]

⁶⁰⁵ *Ibid*; [74/24]

⁶⁰⁶ Private Baker [69/84/18]

⁶⁰⁷ ICP Closing Submissions [83] (315)

The Iraqi Core Participants then followed up that submission by making the suggestion that there *“must be something more serious about his own conduct or that of others which he witnessed.”*⁶⁰⁸

2.422 I am not persuaded by those submissions which, in my view, singularly fail to take any account of the powerful, persuasive and entirely credible explanation that was offered by Lieutenant Passmore during the course of his oral evidence, as follows:

*“I would never know, and that’s what upsets me. I would never know if that was the movements of a dying man or an injured man, or whether it was someone that was going to do something to attack us. And that will live with me and I will never know that.”*⁶⁰⁹

2.423 In this passage of his evidence, Lieutenant Passmore gave a candid and, as it seems to me, entirely credible explanation for his manifest and genuine distress in the witness box. In my view, there is simply no basis upon which it can be properly inferred from his distress that Lieutenant Passmore had either been a witness of or had himself carried out some other serious (and presumably discreditable) conduct in addition to those matters about which he had given evidence. In the event, I am completely satisfied that Lieutenant Passmore neither witnessed nor himself carried out any such serious misconduct at the time or at all.

2.424 As it seems to me, Lieutenant Passmore’s explanation also goes to the very heart of his reasons for his failure to mention this matter, both when he made his Royal Military Police (“RMP”) statement and when he later made a statement for use in the Judicial Review proceedings, with a consequent failure to tell the truth to the Administrative Court in the latter statement, failures on his part that he readily acknowledged during his oral evidence to the Inquiry.⁶¹⁰ Somewhat paradoxically, Lieutenant Passmore’s ready and frank acceptance of his having lied to the Administrative Court in his Judicial Review witness statement, because he had *“just wanted it to go away”*,⁶¹¹ strongly reinforces my firm conclusion that, by the time he gave evidence to this Inquiry, Lieutenant Passmore had decided to tell the plain unvarnished truth to the best of his recollection and that he then proceeded to do just that. In the event, I am entirely satisfied that Lieutenant Passmore told me the whole truth about what had happened and what he had done.

2.425 However, on the evidence that I have heard, it is not possible to come to any firm conclusion of fact as to the actual effect of what Lieutenant Passmore did in the Southern Tank Ditch. It is possible that what Lieutenant Passmore saw was some involuntary muscular twitching of a body that was already dead. It is also possible (although less likely, as it seems to me) that he saw the last muscular movements of a person in the final moments of life. In the event, although I do not believe that there was actually any real threat to the safety or lives of the soldiers in the area as he perceived there to be, I am completely satisfied that Lieutenant Passmore honestly and genuinely believed that there was such a threat, when he acted as he did. As it seems to me, this perception was probably partly due to a natural reaction on his part to the dangerous and highly stressful situation in which he found himself and partly to the shock he had just experienced at the *“horrendous”*⁶¹² sight of the bodies piled up inside the tank ditch.

⁶⁰⁸ ICP Closing Submissions [86] (327)

⁶⁰⁹ Lieutenant Passmore [74/73/20-24]

⁶¹⁰ Lieutenant Passmore [74/71-73]

⁶¹¹ Lieutenant Passmore [74/73]

⁶¹² Lieutenant Passmore (ASI016124) [99]

Sergeant Paul Kelly's account

2.426 Sergeant Paul Kelly also became involved in an incident in the Southern Tank Ditch during the Re-Org, as a result of which he had opened fire with his rifle. I also set out Sergeant Kelly's account of this incident in full, as follows:

*"I entered the berm at the north western corner...The first thing I saw there were two prone enemies lying on the floor, next to the corner at which I stood. As I rounded the corner I saw two other men standing at the eastern end of the berm...The two standing men were next to a pile of about four or five enemies that were also at the end of the berm. I do not think the group of four of [sic] five were all lying on the floor and some may have been propped up against the berm walls. I think that all the men that I saw in the berm (including the first two prone bodies I saw on entering), had rifles on them or close by them. The two standing men were facing each other as I entered but the one on my right then turned towards me lifting an AK47 which he began to aim in my direction. The other man also held an AK47 but I do not recall if he had started to raise it towards me. As soon as the first man raised his weapon, realising the danger I faced, I raised my own rifle, which I had been carrying in both hands with the barrel pointed to the ground, and fired in a sweeping motion as I did so. My rifle was, as usual, set on automatic firing mode. I did not have the safety catch on. I was an experienced soldier and confident in my rifle handling skills so I only used the safety when travelling. In any event I would not expect my Platoon to have put their safety catches on at this time as we did not know if the area was safe and we could still hear firing coming from the direction of Danny Boy. I think that I swept along the line of enemy that I could see and then back again, firing continuously. I think that I fired a full magazine, which would have been 28 rounds. I expect that my shots hit the pile of four or five as well as the two standing men. I am not sure if I hit the two prone enemy nearest to me. I saw the two men who had been standing fall. I then ran back around the corner."*⁶¹³

2.427 A very similar incident was described by another witness to the Inquiry, Private Duncan Aston. In their Closing Submissions, Counsel for the Iraqi Core Participants submitted that Private Aston's account gave credence to the evidence that a shooting incident had taken place in the Southern Tank Trench. However, it was also submitted that I should prefer Private Aston's account of the incident to the extent that it was in conflict with Sergeant Kelly's account.⁶¹⁴

2.428 Private Aston first described being tasked with Private Paul Baker to go to the Southern Tank Ditch to remove weapons from the gunmen and to make them safe. Private Aston said that he stood at the end of the ditch whilst Private Baker went into the ditch to search the bodies and collect the weapons. The intention was that Private Baker would place the weapons next to Private Aston, who would then make them safe.⁶¹⁵

2.429 Private Aston said that he had noticed that two of the bodies were twitching and thought that they were perhaps in the last stages of life, such that they were beyond the point where first aid might have had any prospect of success. Private Aston also recalled that the twitching of the bodies made Private Baker "queasy" and that Private James Lawrence had therefore come across to relieve him of the task of searching the bodies and collecting the weapons.⁶¹⁶ Private Aston's account of what then happened, so far as it concerned Sergeant Kelly, was as follows:

⁶¹³ Sergeant Kelly (ASI017342-43) [96]

⁶¹⁴ ICP Closing Submissions [76] (299)–(353)

⁶¹⁵ Private Aston (ASI015055) [122]

⁶¹⁶ Private Aston (ASI015055-56) [123]–[125]

“After what seemed like a few minutes, I remember that Sgt Kelly approached the ditch 1. He was looking very angry, I think it was still the emotion of the fire-fight that made him angry.

I cannot now recall whether Sgt Kelly was shouting or saying anything. Sgt Kelly then tried to fire at the one of the gunmen, who I have described were twitching with his SA80 rifle. I believe they were still twitching but nothing else about their condition had changed from the description I gave earlier. However, Sgt Kelly’s rifle made a “click” sound and did not fire. He then threw his rifle to the ground and said words to the effect of “give me your weapon”. Throwing a rifle on the floor is not a wise thing to do but Sgt Kelly seemed worked up. He had been injured earlier in the tour when he was shot in the finger and he had returned to Iraq after a spell in the UK a lot angrier than he had been before.

I had my weapon on a strap and I had to un-strap it over my head to pass him the rifle. I assumed he wanted my rifle to try firing again at one of the twitching bodies. I do not feel that I could have not given him the rifle. He was my platoon sergeant, he asked for my rifle and I gave it.

Given my earlier difficulties with the weapon, I was quite surprised that the weapon fired on automatic. He put a full magazine of bullets into both bodies that had been but he also fired into the bodies of the other dead gunmen in the ditch. The bodies of the two twitching gunmen stopped twitching. There was no other reaction from the bodies, they did not make any other noise, they just stopped twitching.”⁶¹⁷

- 2.430** In their closing written submissions, Sergeant Kelly’s legal representatives stopped short of suggesting that Private Aston had told lies when giving evidence to the Inquiry about this matter. Instead they described his evidence as “unreliable” and submitted that it ought to be “disregarded.”⁶¹⁸
- 2.431** I entirely agree that there is no basis upon which I could properly conclude that Private Aston gave a deliberately false account about this matter in his evidence to the Inquiry. However, insofar as his account differs from that of Sergeant Kelly, I am satisfied that Sergeant Kelly’s account is to be preferred. This is because, as it seems to me, Private Aston’s account of Sergeant Kelly’s actions is, in a number of critical respects, wholly unsupported by and/or in conflict with the evidence of other military witnesses and involves a number of assertions which, in the context of the evidence as a whole, are highly improbable. I shall now deal with each of those various aspects of Private Aston’s evidence in turn.
- 2.432** The first difficulty with Private Aston’s account is that it differed in a number of important respects from the evidence of both Private Paul Baker and Private Lawrence. Private Baker corroborated Private Aston insofar as he agreed that the two men had been tasked to search the bodies in the tank ditch. Private Baker also recalled having seen bodies twitching in the Southern Tank Ditch and, consistent with the evidence of Private Aston, he recalled finding this sight troubling.⁶¹⁹
- 2.433** However, Private Baker’s account differed significantly from that of Private Aston when he described his own reaction to the sight of the twitching. What he said was this:

⁶¹⁷ Private Aston (ASI015056-57) [126]–[129]

⁶¹⁸ TSol Closing Submissions [93] (216)

⁶¹⁹ Private Baker (ASI009125) [51]–[55]

"I asked Pte Aston to fire at this body to make him stop twitching as I really did not want to search him while he was still twitching.

*Pte Aston refused to do this and said that I would just have to get on with it as he was already dead."*⁶²⁰

2.434 A further difference from the account given by Private Aston was that Private Baker maintained that he had actually carried on with the task of searching the bodies himself. Private Baker made no mention of having to be replaced in that role by Private Lawrence.⁶²¹ This aspect of Private Baker's account was corroborated by that of Private Lawrence, who did not recall having been involved in the searching of bodies in the Southern Tank Ditch at all. Private Lawrence stated that his task had been to provide an all-round defence while the bodies in the ditch were being searched and I accept that this was indeed the case. The fact that Private Lawrence's role was entirely separate and distinct from that of carrying out a search of the bodies in the tank ditch is well illustrated by his manifest difficulty in recalling the identity of Private Aston's companion who (according to Private Lawrence) had helped Private Aston to perform that task.⁶²²

2.435 Second, Private Aston's account of this event described Sergeant Kelly as having acted in a manner that appears to have been entirely out of character. Major Adam Griffiths⁶²³ and Private Robert Schwar⁶²⁴ both praised Sergeant Kelly's professionalism as a soldier. Private Lawrence made clear in evidence that he simply did not think that Sergeant Kelly would have fired at the Iraqi bodies in the manner suggested by Private Aston. It was also clear from his evidence that Private Lawrence based this confident assertion on his experience of having served under Sergeant Kelly.⁶²⁵

2.436 One aspect of Private Aston's account of how Sergeant Kelly had behaved occasioned particular surprise among the soldiers of 6 Platoon soldiers who gave evidence. They all found it very hard to accept that Sergeant Kelly would have thrown his weapon to the ground as Private Aston alleged. Thus, when this part of the allegation was put to Private Lawrence during oral evidence, he responded as follows:

*"it's like a cardinal sin, you, know if you do that. I mean that guy was – no, he would never dream of – it's just not something that – one, it's never something that's done anyway, and two, I wouldn't expect that, for someone like Paul Kelly to do that."*⁶²⁶

2.437 To his credit, Private Aston suggested that the behaviour on the part of Sergeant Kelly which he was alleging was highly unprofessional conduct and entirely out of character.⁶²⁷ However, Private Aston sought to explain this by referring to the fact that, according to Private Aston, Sergeant Kelly had *"seemed a bit upset at the time."*⁶²⁸ A somewhat similar explanation was suggested by those who represented the Iraqi Core Participants in their Closing Submissions, although they focused instead on Sergeant Kelly's admitted angry state.⁶²⁹

⁶²⁰ Private Baker (ASI009125-26) [55]–[56]

⁶²¹ Private Baker (ASI009126) [59]

⁶²² Private Lawrence (ASI022229) [54]–[55]

⁶²³ Major Griffiths [60/49]

⁶²⁴ Private Schwar [68/85-86]

⁶²⁵ Private Lawrence [68/120]

⁶²⁶ Private Lawrence [68/152/11-16]

⁶²⁷ Private Aston [62/100], [62/147]

⁶²⁸ Private Aston [62/101/5-6]; [62/147]

⁶²⁹ ICP Closing Submissions (87) [333]

- 2.438** In my view, these observations, about Sergeant Kelly’s mood or possible emotional state at the time, fall well short of explaining why an experienced and distinguished Platoon Commander, rightly renowned as a firm disciplinarian, would have acted in such a thoroughly unprofessional and reckless manner. Additionally, I accept as true Sergeant Kelly’s evidence that he had a sling attached to his weapon that effectively prevented him from throwing it to the ground and also his compelling evidence about the importance of using a sling while carrying a weapon by reference to what had happened in a previous incident during his tour.⁶³⁰ In my view, this evidence also significantly undermines the credibility of Private Aston’s allegation that Sergeant Kelly had thrown his rifle to the ground during the incident in question.
- 2.439** Third, there is a very unlikely and completely unexplained feature of Private Aston’s allegation that Sergeant Kelly decided to and did use his (Private Aston’s) weapon to fire into the bodies instead of his (Sergeant Kelly’s) own. There are three aspects of this particular feature of Private Aston’s account which were not adequately explained and which rendered it inherently very unlikely.
- 2.440** The first such aspect is Private Aston’s evidence that Sergeant Kelly’s weapon malfunctioned when he arrived at the tank ditch. When Sergeant Kelly was questioned about this in oral evidence, he stated that he had never experienced his weapon jamming or failing to fire. He described the condition in which he kept his rifle as “*spotless*.”⁶³¹ Whilst making some allowance for a degree of exaggeration, I am satisfied that this assertion by Sergeant Kelly was, broadly speaking, a perfectly true one. Thus, I also accept Sergeant Kelly’s evidence that it was his practice to load only 28 rounds into a magazine, rather than the maximum capacity of 30, specifically in order to guard against the risk of his weapon jamming.⁶³²
- 2.441** The second troubling aspect of Private Aston’s account was the unexpected and unexplained improvement in the condition of his own weapon. Private Aston described how his own weapon had malfunctioned when he first dismounted from the Land Rover. He explained that he had then performed a “*forward assist*” procedure that enabled him to fire single shots, but that his rifle had still remained incapable of automatic fire.⁶³³ Indeed, Private Aston said that it was this inability to fire his weapon on automatic that had been the reason why he was unable to carry out the attack on the Southern Tank Ditch which had ultimately been performed by Private Lawrence.⁶³⁴
- 2.442** However, on Private Aston’s account, it had been this same malfunctioning rifle that Sergeant Kelly had used to open fire in the Southern Tank Ditch, by which time it had inexplicably regained the capability to fire on an automatic setting. Again, to his credit, Private Aston admitted that this had come as a surprise to him,⁶³⁵ but it nevertheless remained unexplained.
- 2.443** The third troubling aspect of this feature of Private Aston’s account was his allegation that Sergeant Kelly had fired a full magazine of bullets into the bodies using his (Private Aston’s) rifle. On Private Aston’s own account, he had fired a number of shots during the course of the engagement, prior to what he claimed had occurred in the Southern Tank Ditch. At no stage did he describe having reloaded his rifle, nor did he offer any explanation as to how Sergeant Kelly was nevertheless able to fire a full magazine of bullets into the bodies.

⁶³⁰ Sergeant Kelly [64/125]

⁶³¹ Sergeant Kelly [64/126/15]

⁶³² Sergeant Kelly (ASI017331) [53]

⁶³³ Private Aston [62/21]

⁶³⁴ Private Aston [62/45]

⁶³⁵ Private Aston [62/100]

- 2.444** Finally, to the extent that it departs from the account given by Sergeant Kelly, Private Aston's account of this incident was not corroborated by the evidence of any other witness. Although Private Aston said that Private Lawrence had been present and had witnessed Sergeant Kelly's actions,⁶³⁶ both Private Lawrence and Private Baker⁶³⁷ gave credible evidence to the effect that Private Lawrence had not been present and had not witnessed any such incident.
- 2.445** Although many of Private Aston's inaccurate assertions are not easily explained as simple mistakes, I am not prepared to find that he deliberately lied in his account about what he claimed to have happened in the Southern Tank Ditch. Nevertheless, I have come to the firm conclusion that his uncorroborated account does contain too many troubling features, as indicated above, for it to be preferred to Sergeant Kelly's version of what actually occurred.
- 2.446** I am satisfied that Sergeant Kelly's account of his recollection of what actually happened was both candid and honest. I have no doubt that he was a truthful witness and that he endeavoured to give a truthful and accurate account. I also accept that it was Sergeant Kelly's perception at the time that, as he described in evidence, he found himself faced with two armed men standing in the Southern Tank Ditch. I also accept that he then formed the view that these two men posed an immediate threat to his life. I am satisfied that it was for this reason that he opened fire as he did.
- 2.447** However, whilst I am sure that Sergeant Kelly did give an honest and truthful account in evidence of his recollection of what had happened and of his perception of the unexpected threat he believed he had suddenly encountered in the Southern Tank Ditch, it seems to me that there is considerable uncertainty about the reality of the situation with which he was actually confronted when he entered the ditch.
- 2.448** One possibility is that what Sergeant Kelly saw, and thought were two live gunmen, were actually two dead bodies, slumped against the side of the tank ditch in manner that gave the appearance of standing when first seen. I accept that this possibility involves something of a departure from the scene as described by Sergeant Kelly in his evidence. However, when considered in the context of the extremely dangerous and demanding circumstances then prevailing, it seems to me to be at least within the bounds of possibility that, in the stress of the moment, such a mistake could be made and that this might then explain Sergeant Kelly's perception of what he faced and his subsequent action in opening fire.
- 2.449** Another possibility (and, in my view, the more likely one) is that Sergeant Kelly's perception of events matched the reality. In my view, there is a real possibility on the evidence given to this Inquiry that Sergeant Kelly did actually encounter two living and armed gunmen in the ditch, as he said he did. Although the question of how those two men could have come to be in the tank ditch, after it had just been assaulted and "cleared" by Sergeant Stuart Henderson and Corporal Brian Nicol,⁶³⁸ can only be addressed speculatively, in my view it is worth considering the two possible answers suggested by Sergeant Kelly's legal representatives in their Closing Submissions.⁶³⁹
- 2.450** The first such suggestion, namely that the two insurgents might have slipped into the Southern Tank Ditch from another location after the assault by Sergeant Henderson and Corporal Nicol is, in my view, unlikely. In order for the two gunmen to have reached the tank

⁶³⁶ Private Aston [62/104]

⁶³⁷ See above paragraph 2.234

⁶³⁸ See paragraphs 2.398 – 2.406 above

⁶³⁹ TSol Closing Submissions [95] (221)

ditch as suggested, they would have had to cross open ground and would undoubtedly have been noticed by at least some of the military witnesses present.

2.451 It seems to me that the second suggested answer, to the effect that the gunmen might have actually survived the original assault by Sergeant Henderson and Corporal Brian Nicol, is of greater merit. As those representing the Iraqi Core Participants accepted in their Closing Submissions,⁶⁴⁰ the Southern Tank Ditch had been “*imperfectly cleared*” by Sergeant Henderson and Corporal Nicol. In my view, this is to understate the reality of the situation at the time and it places too much reliance on the declaration of “*all clear*”.

2.452 Thus, in the course of his oral evidence to the Inquiry, Sergeant Henderson was asked about the conclusion of his assault on the tank ditch and he responded as follows:

“Q. Are you able to say whether, when you fired your weapon at each of the men in that ditch, they were killed as a result of the firing?”

A. No, I’m not.

Q. By the time you and Corporal Nicol had concluded your assault on the tank ditch, so far as you were concerned, was there anybody in the ditch who remained alive?”

A. I couldn’t be sure. I couldn’t be sure.

Q. Would you have ceased your assault on the tank ditch if there were armed men in the ditch who remained alive?”

*A. No, I wouldn’t have done, no”.*⁶⁴¹

2.453 This passage in the evidence highlights the extent to which Sergeant Henderson was able to confirm that all the live gunmen, who had been present in the Southern Tank Ditch at the time, were actually killed in the assault. Entirely understandably, Sergeant Henderson said that he believed that every enemy gunman had been killed. I accept that Sergeant Henderson and Corporal Nicol would not have concluded the assault and declared the tank ditch to be “*all clear*” if either of them had any reason to believe that some of the gunmen might have survived the assault. Nevertheless, it is equally clear from the evidence of both Sergeant Henderson and Corporal Nicol that no active steps were actually taken to confirm that each of the men in the tank ditch was indeed dead.

2.454 Having regard to all the evidence, in particular that given by both Sergeant Henderson and Corporal Nicol, I have come to the conclusion that there is a real possibility that the two gunmen, who Sergeant Kelly recalled having encountered in the tank ditch, did survive the main assault and, in my view, this is most likely what actually did occur that afternoon. If that was indeed the case, I should emphasise that the fact that Sergeant Henderson and Corporal Nicol must therefore have failed to notice that either of these gunmen had survived the assault does not imply any criticism of their manner of conducting the assault itself. Indeed, as was suggested in the written Closing Submissions filed on behalf of their legal representatives,⁶⁴² the most likely explanation is that the two gunmen in question had “*played dead*” in the immediate aftermath of the assault.

⁶⁴⁰ ICP Closing Submissions [79] (311)

⁶⁴¹ Sergeant Henderson [61/71/7-17]

⁶⁴² TSol Closing Submissions [95] (221)

The Sergeant Kelly and Lieutenant Passmore incidents compared

2.455 It is obvious that the incidents during which Lieutenant William Passmore and Sergeant Paul Kelly came to fire their weapons in the Southern Tank Ditch bear some striking similarities. Those similarities are such that those representing the Ministry of Defence (“MoD”) suggested in closing⁶⁴³ that Private Duncan Aston was actually recalling Lieutenant Passmore’s actions and had mistakenly attributed them to Sergeant Kelly in evidence.

2.456 Significantly, neither Lieutenant Passmore nor Sergeant Kelly remembered the other having opened fire in the Southern Tank Ditch. In view of my conclusion that both did, in fact, open fire, it must be the case that these two bursts of gunfire happened at different times. As I have set out previously, there was considerable confusion in the evidence regarding the sequence of events during the Re-Org. No single witness was able to testify about both incidents and therefore about the order in which they occurred. However, on the balance of probabilities, it seems to me that the incident involving Sergeant Kelly happened before that involving Lieutenant Passmore. If Lieutenant Passmore had entered the Southern Tank Ditch before the incident involving Sergeant Kelly had occurred, it seems likely that he too would have noticed the two gunmen in question, either alive or slumped in an upright position against the wall of the tank ditch.

The third shooting incident during the Re-Org, involving Corporal Lee Gidalla

2.457 There was evidence of a third incident of shooting during the Re-Org,⁶⁴⁴ this time involving Corporal Lee Gidalla. Both Private James Lawrence and Corporal Gidalla gave evidence about this particular incident. However, although I am satisfied that they are both describing the same event, there are a number of important differences in their accounts of what happened. Private Lawrence’s evidence in his written Inquiry statement was as follows: *“I saw a body away from the ditch but it was not moving. I asked Lee Gidalla if the body was dead. He did not reply but just fired a single shot into the body.”*⁶⁴⁵

2.458 When Private Lawrence’s witness statement was shown to Corporal Gidalla, he produced a supplementary witness statement. In it Corporal Gidalla denied the conduct attributed to him by Private Lawrence, but went on to offer the following account of what he claimed had actually occurred:

“...I recall seeing an Iraqi, in what appeared to be a crouching position, propped against the corner of a mound...

*I thought I saw him move from the corner of my eye, only very slightly, and possibly as a result of falling or slumping downwards. I assumed he was dead and his body was gradually flopping to the ground. However, he was facing away from me, and as I was not sure that he was dead, I wanted to make sure that, in the event he was alive, he knew I was aware of his presence and that he would be shot if he attempted to attack. For this reason I fired a warning shot to the side of him. I did not aim at the Iraqi himself and I did not hit him. I did not notice any further movement from the Iraqi and I did not fire any further shots.”*⁶⁴⁶

⁶⁴³ MoD Closing Submissions [46] (112)

⁶⁴⁴ Standard military term derived from a contraction of the word “Reorganisation”

⁶⁴⁵ Private Lawrence (ASI022229) [54]

⁶⁴⁶ Corporal Gidalla (ASI023257-58) [10]–[11]

- 2.459** I accept the account given by Corporal Gidalla as a truthful and accurate one. There was much common ground in the accounts given by Private Lawrence and Corporal Gidalla. Both agree that Corporal Gidalla fired his weapon and both described forming the view that the Iraqi man posed a threat.
- 2.460** Private Lawrence felt threatened⁶⁴⁷ because the body was isolated from the others which had already been collected and grouped.⁶⁴⁸ By contrast, Corporal Gidalla reported seeing the body move.⁶⁴⁹ In fact, it seems to me that Corporal Gidalla’s perception of that apparent movement may well have been mistaken. In my view, both he and Private Lawrence saw the same thing, namely the prone body of an Iraqi man who had, in fact, just been killed during the fighting. However, I am quite satisfied that the possible threat posed by the prone body, as perceived by both soldiers at the time, was the same, was genuinely felt and explained what then happened.
- 2.461** I accept that Private Lawrence called out to Corporal Gidalla in an attempt to draw attention to the prone Iraqi man. However, as it happens, Corporal Gidalla did not hear this warning, but had already noticed the prone Iraqi man himself. This is the reason why Corporal Gidalla made no mention in his evidence of having been given any warning and also why Private Lawrence said that Corporal Gidalla gave no verbal acknowledgement or response to his warning.
- 2.462** The only substantial discrepancy between the respective accounts of Private Lawrence and Corporal Gidalla is with regard to whether Corporal Gidalla’s shot struck the prone body or not. In the event, I am satisfied that Corporal Gidalla’s evidence that he fired a single warning shot near the body without hitting it was both truthful and accurate. I reach that conclusion for two main reasons. Firstly, the fact that Corporal Gidalla was in a far better position than Private Lawrence to see that his shot had actually struck the ground, that having been his intention. Secondly, during his oral evidence Private Lawrence himself accepted that Corporal Gidalla’s account of what had happened might well be true. He made this perfectly clear when questioned by counsel for the majority of the other military witnesses (Private Lawrence was actually unrepresented), as follows:

“Q. Now I want to ask you about the incident with Mr Gidalla. Now Mr Gidalla gave evidence last week. He said that he did indeed fire a shot towards a body that he wasn’t sure whether was alive or dead. He says he didn’t hit the body. He fired into the ground or mound of earth next to the body. Are you prepared to accept that he might be telling the truth about that?”

A. I’d accept that. Yes, yes, quite possible.”⁶⁵⁰

- 2.463** It seems to me that the most likely explanation for Private Lawrence’s evidence that Corporal Gidalla’s shot had actually struck the prone Iraqi body is that he based this part of his account of the incident on what he had assumed to be the case at the time, having just witnessed the very brief and dramatic event in question. In fact, the assumption was wrong and resulted in this particular inaccuracy in Private Lawrence’s otherwise truthful account.

⁶⁴⁷ Private Lawrence [68/121/22-24]

⁶⁴⁸ Private Lawrence [68/134]

⁶⁴⁹ Corporal Gidalla [67/23]

⁶⁵⁰ Private Lawrence [68/150/14-20]

2.464 A number of military witnesses said that they could not recall having heard the sound of any gunfire from the vicinity of the Southern Tank Ditch during the Re-Org.⁶⁵¹ Sergeant Henderson recalled hearing only one burst of gunfire.⁶⁵² Despite my finding that there had actually been three bursts of gunfire as described above, I see no reason to doubt the honesty and truthfulness of those witnesses as a result. In my view, the failure of these witnesses to recall these particular bursts of gunfire during the Re-Org, was most likely a result of the lack of any clear moment of distinction between the combat phase of the Southern Battle and the conduct of the actual Re-Org itself.⁶⁵³ I am satisfied that this particular uncertainty would have made it very difficult for any soldier to recall with any degree of confidence whether they had heard any such firing during the Re-Org or, if so, on how many occasions.

The arrival of the Warrior Armoured Infantry Fighting Vehicles (“AIFVs”)

2.465 During the course of the engagement, Lieutenant William Passmore managed to make contact with Major Adam Griffiths via a satellite telephone. During that communication, Lieutenant Passmore provided a situation report and requested reinforcements.⁶⁵⁴ As a result of this request, Warrior AIFVs were deployed from Camp Abu Naji in order to go to the assistance of the soldiers engaged in the Southern Battle. As will become apparent later in this Report, this deployment was to lead directly to the occurrence of the Northern Battle component of the overall Battle of Danny Boy.

2.466 So far as concerns the Southern Battle, two of the Warriors AIFVs are of particular relevance: namely call signs W33, commanded by Sergeant David Perfect, and W31, commanded by Corporal Jonathan Green. Although both these two Warriors AIFVs did succeed in getting to the scene of the Southern Battle, both were significantly delayed as a result of becoming involved in an armed engagement with insurgents to the north of the Danny Boy VCP.⁶⁵⁵ I will set out the details of that particular engagement and other events of the Northern Battle later in this Report.

2.467 In the event, by the time W31 and W33 did eventually arrive at the location of the Southern Battle, the combat phase of the battle was pretty well over. Corporal Green observed that the 6 and 7 Platoon soldiers “*looked like they were carrying out an all-round defence*” when his W31 arrived at the scene.⁶⁵⁶ This was corroborated by Lieutenant Passmore.⁶⁵⁷

2.468 For his part, the commander of W33, Sergeant Perfect, recalled having engaged an enemy position using a Minimi light machine-gun on his arrival at the Southern Battle, apparently following information given to him by Lieutenant Passmore.⁶⁵⁸ However, this account was not corroborated by Lieutenant Passmore or the gunner of W33, Lance Corporal Marcus Scott, and is probably incorrect. It is more likely that Sergeant Perfect’s recollection of this exchange of fire is a mistaken reference to an earlier exchange of fire that had taken place that afternoon but before W33 succeeded in reaching the scene of the Southern Battle. However, nothing of any consequence turns on this probable inaccuracy.

⁶⁵¹ See, for example, Private Marney [73/75/1-12]; Private Connelly [66/59/13]-[60/2]; Lieutenant Dormer [72/102/9]-[103/6]; Lance Corporal Currie [83/113/12]-[114-2]

⁶⁵² Sergeant Henderson [61/74/10-24]

⁶⁵³ See, for example, the difficulty Lieutenant Dormer had distinguishing the combat phase of the Southern Battle from the Re-Org [72/103-105]

⁶⁵⁴ Lieutenant Passmore [74/28/7-12]

⁶⁵⁵ Corporal Green (ASI017766 –70) [33]-[48]; Sergeant Perfect (ASI015723–24) [46]-[48]

⁶⁵⁶ Corporal Green (ASI017771) [48]

⁶⁵⁷ Lieutenant Passmore (ASI016131) [122]-[123]

⁶⁵⁸ Sergeant Perfect (ASI015730-31) [67]-[70]

2.469 In the event, W31 and W33 did take part in two important events at the scene of the Southern Battle. First, the injured 6 Platoon soldier, Lance Corporal Mark Keegan, was loaded into W33. This was described by Private Scott Hoolin, a dismount soldier in the rear of that particular Warrior, as follows:

“I then saw a soldier walking towards the back of the Warrior, holding his groin. I assumed that he was the casualty...Another soldier also got in with him and I assumed that he was a medic as he was with the injured soldier. I have subsequently found out... that his name was Chris Dodd.”⁶⁵⁹

2.470 Second, W33 was also used to transport the captured Iraqi man, Hamzah Joudah Faraj Almalje (detainee 772) back to Camp Abu Naji.

2.471 I now turn to deal with Hamzah Almalje’s (detainee 772) reasons for his presence on the battlefield, the circumstances relating to his capture, detention and handling by British soldiers and his allegations of ill-treatment and/or assault on the battlefield and whilst being transported back to Camp Abu Naji.

Hamzah Joudah Faraj Almalje (detainee 772) and the circumstances of his capture

2.472 Sergeant Stuart Henderson, Lance Corporal William Currie and Private Joseph Connelly were the first soldiers to encounter Hamzah Joudah Faraj Almalje (detainee 772) during the Southern Battle. Each of them gave evidence that Hamzah Almalje was in possession of a Kalashnikov rifle and a significant quantity of ammunition when they first came upon him in the immediate vicinity of the large derelict building, after they had advanced south from the Perpendicular Bund Line.⁶⁶⁰

2.473 Private Connelly said that, when he first saw Hamzah Almalje, he had an AK47 rifle on the ground in front of him which had been stripped down into at least two pieces. According to Private Connelly, Hamzah Almalje was *“working on the rifle and it looked like he was trying to clear a blockage.”*⁶⁶¹ Lance Corporal Currie also stated that Hamzah Almalje had an AK47 rifle. According to Lance Corporal Currie, the AK47 was in two parts on Hamzah Almalje’s lap when they first came across him. Lance Corporal Currie said that Hamzah Almalje appeared to be trying to put the weapon back together and recalled that, when Hamzah Almalje saw him, he had held out his hands and showed that the weapon was in two parts by displaying one part of the rifle in each hand.⁶⁶²

2.474 For his part, Sergeant Henderson recalled seeing an AK47 rifle to the left hand side of Hamzah Almalje, who was crouching on the ground next to it. Sergeant Henderson did not specifically see Hamzah Almalje handling the rifle, but nonetheless recalled that it appeared to have been dismantled.⁶⁶³

2.475 Lieutenant James Dormer also told the Inquiry that he had seen Hamzah Almalje’s weapon in *“a number of pieces.”*⁶⁶⁴ He recalled a conversation that he had had with Lance Corporal Currie and Private Connelly in the large derelict building, during which they told him that

⁶⁵⁹ Private Hoolin (ASI009562) [54]

⁶⁶⁰ See paragraph 2.321-2.322 above

⁶⁶¹ Private Connelly (MOD017236); (ASI017806) [40]; [66/14-15]; [66/73]

⁶⁶² Lance Corporal Currie [83/22]; [83/26]; [83/102]; (ASI013207) [48]-[49]

⁶⁶³ Sergeant Henderson [61/30-31]; (ASI013560) [61]

⁶⁶⁴ Lieutenant Dormer [72/49-50]

the detainee (i.e. Hamzah Almalje) had been taking his weapon apart when they had first encountered him.⁶⁶⁵

2.476 All three soldiers, who were present when Hamzah Almalje was first captured and detained, referred to the fact that there had been some ammunition alongside his rifle. Sergeant Henderson recalled having seen ammunition magazines on the ground next to Hamzah Almalje.⁶⁶⁶ Private Connelly told the Royal Military Police in his 2004 statement that there had been “*several magazines*” adjacent to Hamzah Almalje, although he was unable to remember that particular detail when he came to give evidence to the Inquiry.⁶⁶⁷ During his oral evidence, Lance Corporal Currie was able to recall that there had been some ammunition with the rifle, although he could not remember how many magazines there were.⁶⁶⁸ However, in his previous statement, made to the RMP on 14 May 2004, Lance Corporal Currie said that there had been one half-full magazine and three full magazines with the rifle.⁶⁶⁹

2.477 Lance Corporal Currie also recalled that there had been chest rigging on the ground next to Hamzah Almalje,⁶⁷⁰ a matter to which he made reference in the brief statement he had made on 14 May 2004.⁶⁷¹ He also told me that he had recovered the chest rigging, rifle and ammunition and passed them all to Private Christopher Dodd.⁶⁷²

2.478 Private Dodd remembered having been handed an AK47, which he understood to have been recovered from either one of the enemy dead or from the detainee (although he mistakenly believed that he had been handed it by Private Scott Barlow). He could not remember anything further about the circumstances in which he came to receive this AK47, although did recall that it had been taken from him later at Camp Abu Naji.⁶⁷³ In his Inquiry witness statement, Private Dodd made no mention of having been handed any chest rigging with the AK47.⁶⁷⁴

2.479 Neither Private Connelly nor Sergeant Henderson remembered having seen any chest rigging when they first encountered Hamzah Almalje. However, Sergeant Paul Kelly did remember seeing chest webbing near Hamzah Almalje. When Sergeant Kelly gave oral evidence to the Inquiry he said that he believed he had seen it on the ground next to the detainee⁶⁷⁵ and that he was not sure whether the detainee had been wearing the chest webbing, as he had appeared to suggest when he provided a statement to the Royal Military Police in 2004.⁶⁷⁶

2.480 All three soldiers, who had been involved in the capture and initial detention of Hamzah Almalje, were firmly of the opinion that the circumstances in which they had found Hamzah Almalje made it clear that he was present at the scene of the Southern Battle as an active armed insurgent. Thus, Private Connelly said that he did not believe there could be any reason for Hamzah Almalje’s presence at the Southern Battle, other than that he had been taking an active part in the ambush of the British troops. His response to questions about the circumstances in which Hamzah Almalje had been detained clearly show that he firmly believed Hamzah Almalje to have been one of the armed insurgents, as follows:

⁶⁶⁵ Ibid.

⁶⁶⁶ Sergeant Henderson [61/31/1-6]

⁶⁶⁷ Private Connelly [66/13/1-7]

⁶⁶⁸ Lance Corporal Currie [83/38/12-14]

⁶⁶⁹ Lance Corporal Currie (MOD016213); [83/39-40]

⁶⁷⁰ Lance Corporal Currie [83/38]

⁶⁷¹ (MOD016213)

⁶⁷² Lance Corporal Currie [83/48]

⁶⁷³ Private Dodd (ASI011056) [81]; (ASI011064) [119]

⁶⁷⁴ He does not appear to have been asked about this in oral evidence

⁶⁷⁵ Sergeant Kelly [64/65]; (ASI017345) [104]

⁶⁷⁶ Sergeant Kelly (MOD019325)

Q. And you say he was working on an AK47?

A. Yes, sir.

Q. Can you think of any reason for him to be doing that, apart from getting it ready to shoot at you again?

A. That was the only reason, sir.

Q. That’s why, is it, you say he was one of the men who had been firing at you?

*A. Yes, sir.*⁶⁷⁷

2.481 For his part, Hamzah Almalje told me that he had been on the western side of Route 6, on the opposite side of the road to the disused army building (i.e. the large derelict building), before the battle started.⁶⁷⁸ Hamzah Almalje said that he had remained in this same area until he was eventually captured and detained by British soldiers.⁶⁷⁹ He disagreed with the evidence of the military witnesses who claimed that they had captured and detained him on the same side of the road as the large derelict building (i.e. on the eastern side of Route 6), near the building itself.⁶⁸⁰

2.482 When asked to account for his presence in the general location of the Southern Battle, Hamzah Almalje said that he had gone there in order to graze his family’s cattle.⁶⁸¹ However, the military witnesses present at the Southern Battle were unanimous in their recollection that there were no cattle in the immediate vicinity of the battle,⁶⁸² even though Hamzah Almalje maintained that the cattle had been “*not far*” from him when he was captured.⁶⁸³ Hamzah Almalje also claimed that there had been three Iraqi girls near him when he had first arrived at the fields and that they had still been there when he was captured and detained.⁶⁸⁴ In fact, I am quite satisfied that there were no girls there at the time. This was merely one of a number of untrue assertions made by Hamzah Almalje in order to lend some credence to the false account that he put forward to explain how he came to be present at the scene of the Southern Battle.

2.483 As I have already indicated above,⁶⁸⁵ it appears that Hamzah Almalje had been on the west side of Route 6 when Major Adam Griffiths’ Rover Group drove past and that he had participated in the initial ambush of the Rover Group. On his own account, Hamzah Almalje described having stayed in that area, notwithstanding the significant firing that he had witnessed and the (presumably) continued presence of armed insurgents in his immediate vicinity. It seems to me highly unlikely that an innocent grazer of cattle would have continued to remain in the area in such circumstances. In fact, it seems that Hamzah Almalje then intentionally crossed the road to the eastern side of Route 6. I am satisfied that he did so in company with and as one of the armed insurgents whose purpose was to continue and/or maintain their enterprise of carrying out an armed ambush on British troops.

⁶⁷⁷ Private Connelly [66/73/5-12]

⁶⁷⁸ Hamzah Joudah Faraj Almalje (detainee 772) [19/66-67]; [19/92]

⁶⁷⁹ Hamzah Joudah Faraj Almalje (detainee 772) [19/85-86]

⁶⁸⁰ Hamzah Joudah Faraj Almalje (detainee 772) [19/92-93]

⁶⁸¹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000680-82) [13-21]

⁶⁸² See, for example, Sergeant Kelly [64/89/22]-[90/7]

⁶⁸³ Hamzah Joudah Faraj Almalje (detainee 772) [20/33/7-9]

⁶⁸⁴ Ibid; [19/68/8-14]

⁶⁸⁵ See Part 2, Chapter 3, paragraphs 2.218-2.222

- 2.484** Hamzah Almalje accepted that he had been in possession of an AK47 Kalashnikov rifle that day. He said that it belonged to his family. He claimed that the rifle was for protection and to prevent thieves from stealing his cattle.⁶⁸⁶ Hamzah Almalje denied having had any advance knowledge of the ambush⁶⁸⁷ and said that he “*was not expecting it.*”⁶⁸⁸ He said that, when the gunfire started, he had laid down and hidden in a dried-out waterway. He told me that he had discarded his Kalashnikov and dropped it about one to one and a half metres away, his normal behaviour whenever he saw British military vehicles. He said that his reason for this practice was that he did not know if the British would allow him to carry weapons and he wanted to save himself trouble.⁶⁸⁹
- 2.485** Hamzah Almalje denied that he had been holding his Kalashnikov rifle or clearing a blockage when he was actually captured by the British soldiers.⁶⁹⁰ He maintained that the rifle had remained where he had discarded it and that he had not made any attempts to dismantle or to fire it. He said that he had only been in possession of a single magazine of bullets (18 bullets in total⁶⁹¹) and did not have any spare ammunition with his rifle.⁶⁹² He denied wearing, or having, any chest rigging.⁶⁹³

Inconsistencies in Hamzah Joudah Faraj Almalje’s accounts

- 2.486** By the time Hamzah Joudah Faraj Almalje (detainee 772) gave his oral evidence to the Inquiry, he had already given a number of accounts of the events relating to his presence on the battlefield, namely when he was interviewed by the Royal Military Police on 26 July 2004,⁶⁹⁴ as recorded at the time and transcribed later, and in his two written Inquiry statements dated 18 January 2013.⁶⁹⁵
- 2.487** In my view, the various significant differences between these accounts themselves and between them and his oral evidence to the Inquiry, clearly suggest that Hamzah Almalje did not tell the truth about how he had come to be present at the scene of the Southern Battle. I do not propose to identify all such inconsistencies in this Report, but in the paragraphs that follow I will refer some of the more significant ones.
- 2.488** In his interview with the Royal Military Police Hamzah Almalje gave various accounts about what he had done when the firing first started. At one stage he said that he had hidden behind a wall when the firing started: “*Yes, I hid behind a wall, I mean there was some construction of a camp there from before.*”⁶⁹⁶ He then went on to confirm that he had “*sought refuge behind that construction.*”⁶⁹⁷ However, he appeared to contradict that account later in the same interview, stating that when the battle started he had lain/sat down “*in the street*”⁶⁹⁸ and on another occasion he asserted that he had “*laid down in the river.*”⁶⁹⁹

⁶⁸⁶ Hamzah Joudah Faraj Almalje (detainee 772) [19/67-8]

⁶⁸⁷ Hamzah Joudah Faraj Almalje (detainee 772) [20/31]

⁶⁸⁸ Hamzah Joudah Faraj Almalje (detainee 772) [20/3/16-17]

⁶⁸⁹ Hamzah Joudah Faraj Almalje (detainee 772) [19/69-70]; [20/4]; [20/32]

⁶⁹⁰ Hamzah Joudah Faraj Almalje (detainee 772) [20/5]; [20/41]; [20/32]

⁶⁹¹ NB – in his previous account to the RMP he had estimated 30 bullets (MOD002904)

⁶⁹² Hamzah Joudah Faraj Almalje (detainee 772) [20/32]

⁶⁹³ Hamzah Joudah Faraj Almalje (detainee 772) [20/36]

⁶⁹⁴ Hamzah Joudah Faraj Almalje (detainee 772) (MOD002898); (MOD002914); (MOD044607)

⁶⁹⁵ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000675); (PIL000803)

⁶⁹⁶ Hamzah Joudah Faraj Almalje (detainee 772) (MOD044608)

⁶⁹⁷ Hamzah Joudah Faraj Almalje (detainee 772) (MOD044611)

⁶⁹⁸ Hamzah Joudah Faraj Almalje (detainee 772) (MOD002909); (MOD002916); (MOD044607)

⁶⁹⁹ Hamzah Joudah Faraj Almalje (detainee 772) (MOD002901)

- 2.489** In his written Inquiry statements Hamzah Almalje stated that, when the fighting started, he had hidden in a “ditch” or “river” designed for irrigation and had remained there until captured.⁷⁰⁰ He did not describe hiding behind a wall or construction at any point and placed himself on the opposite (i.e. the western) side of the road from the large derelict building (which was on the eastern side of Route 6).⁷⁰¹ Further, in his Inquiry witness statements Hamzah Almalje made no mention of having been in the “street” or “road” at any point prior to the battle.
- 2.490** In his oral evidence, Hamzah Almalje repeated the evidence given in his written Inquiry statements and continued to place himself on the opposite side of the road to the derelict building.⁷⁰² He said that it was not correct to say that he had been hiding behind a wall at any point and that, in fact, he had been hiding in a small river⁷⁰³ (previously referred to in his evidence as a “dried waterway”).⁷⁰⁴ He denied having told the Royal Military Police that he had lain down in the street.⁷⁰⁵ When questioned on these differences in his various accounts, Hamzah Almalje said that he could not remember telling the Royal Military Police that he had hidden behind a wall or construction. He went on to say: *“I told them, I hid myself in a small river, but they asked me if that building was in front of me or opposite the road in front of me and I said ‘yes’.”*⁷⁰⁶
- 2.491** In my view, Hamzah Almalje was quite unable to give a convincing explanation for these obvious and significant discrepancies. As it seems to me, the reason for this is that, having told the Royal Military Police that he had hidden behind the derelict building (which was on the eastern side of route 6), he later tried to distance himself from the fighting by constructing an account which placed him on the opposite side of the road (i.e. on the western side) at the time of his capture. As it happens, his various references to having been in the “street” or “road” prior to the battle itself may lend some support to the suggestion that he had crossed Route 6 at some point after the initial ambush on Major Griffiths’ Rover Group and before the commencement of the main Southern Battle.⁷⁰⁷
- 2.492** Hamzah Almalje also gave varying accounts about what he had observed of the actual battle itself. In his earliest account to the Royal Military Police he gave a detailed description of having seen armed men, dressed in black, attacking British military vehicles. He said that there were about 25 such armed men, who had arrived in two pick-up trucks.⁷⁰⁸ In his written Inquiry statements he indicated that he could not see who had been firing at whom⁷⁰⁹ and failed to give any detail about the armed insurgents. In his oral evidence to the Inquiry, he said that he could not remember if he had told the Royal Military Police about the armed men or not, but that he could no longer recall any such detail. He also went on to claim that he had been approximately one kilometre from the main engagement and had been unable to see what was happening properly.⁷¹⁰ Again, I am sure that the reason for these obvious differences was that Hamzah Almalje was seeking to distance himself from his earlier

⁷⁰⁰ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000682-83) [20]

⁷⁰¹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000682) [19]-[20]

⁷⁰² Hamzah Joudah Faraj Almalje (detainee 772) [20/41]

⁷⁰³ Hamzah Joudah Faraj Almalje (detainee 772) (MOD044607-08); [19/96]

⁷⁰⁴ Hamzah Joudah Faraj Almalje (detainee 772) [19/70]

⁷⁰⁵ Hamzah Joudah Faraj Almalje (detainee 772) [19/93-4]

⁷⁰⁶ Hamzah Joudah Faraj Almalje (detainee 772) [19/96/16-19]

⁷⁰⁷ The evidence summarised earlier in this Report relating to the ambush of the Rover Group suggests that insurgents were on the west side of Route 6 when they fired upon the Rover Group, but must have moved to the east side thereafter

⁷⁰⁸ Hamzah Joudah Faraj Almalje (detainee 772) (MOD002911)

⁷⁰⁹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000681) [18]

⁷¹⁰ Hamzah Joudah Faraj Almalje (detainee 772) [19/99]

account in an attempt to reinforce his untruthful assertion that he had not been involved in the Southern Battle in any way at all.

2.493 The last important inconsistency to which I propose to refer relates to Hamzah Almalje's evidence about where his rifle was when he was actually captured. As explained above, Hamzah Almalje told me in his oral evidence that he had discarded his weapon when he first became aware of the British military in the area and that he had not retrieved it before he was captured. However, when interviewed by the Royal Military Police, he twice said that he had been sitting with his rifle in his lap when he was arrested.⁷¹¹ Hamzah Almalje was unable to offer any explanation for this manifest and significant difference, simply repeating that he could not remember having said any such thing to the Royal Military Police.⁷¹² In the event, I am entirely satisfied that he sought to retract this detail in his earlier account because it no longer fitted with his newly constructed and false version of the facts.

Conclusions with regard to the reasons for the presence of Hamzah Joudah Faraj Almalje on the battlefield

2.494 Quite apart from the foregoing obvious inconsistencies in his various accounts of what had happened, Hamzah Joudah Faraj Almalje's account of his actions and circumstances, when first captured by the British soldiers during the Southern Battle, is very much at odds with the military evidence about his capture and arrest, on almost all material aspects. As it seems to me, there are the following four main areas of significant difference:

- a. Whether Hamzah Almalje was captured and detained near the large derelict building or on the other and west side of Route 6;
- b. Whether Hamzah Almalje was holding his rifle and/or was engaged in clearing a blockage in it or whether the rifle was on the ground about one and a half metres away from him;
- c. Whether his rifle was dismantled or in one piece and;
- d. Whether Hamzah Almalje was in possession of a significant quantity of extra ammunition for his rifle.

2.495 It can be seen that I have not included the disputed issue of whether Hamzah Almalje was in possession of chest webbing when captured. This is because the military evidence was not entirely in agreement on this issue,⁷¹³ although I am sure that each of the soldiers involved gave evidence about this to the best of his recollection. However, as it seems to me, the military witnesses did give clear and consistent evidence about each of the four issues outlined in the preceding paragraph and I have come to the firm conclusion that their evidence on these various issues was both truthful and reliable.

2.496 I accept the evidence of the military witnesses that Hamzah Almalje was in fact captured and initially detained in the immediate vicinity of the large derelict building on the eastern side of Route 6. I am satisfied that he was not there for any innocent purpose. He was there because he had been one of the armed insurgents who had opened fire on the British from the eastern side of Route 6. The large derelict building played a significant part in the battle and was a feature from which significant hostile fire had been directed against the British troops, particularly in the early stages of the battle.

⁷¹¹ Hamzah Joudah Faraj Almalje (detainee 772) (MOD002914); (MOD002916)

⁷¹² Hamzah Joudah Faraj Almalje (detainee 772) [20/5-6]

⁷¹³ See paragraph 2.479 above

- 2.497** Various military witnesses gave credible evidence about this, including Private John Smith who stated that the British had directed fire at the large derelict building because that was where significant enemy fire was coming from.⁷¹⁴ This was also confirmed by Private Joseph Connelly who said that Hamzah Almalje had been detained by a mound of earth near the large derelict building, from which enemy fire had been coming earlier.⁷¹⁵ Private Sean Marney also recalled having seen Iraqi gunmen in and around the large derelict building, in particular one person who had been firing through a small square window of that building in the early stages of the battle, prior to Hamzah Almalje having been detained.⁷¹⁶
- 2.498** The fact that I have come to the firm conclusion that the military evidence, with regard to the place and circumstances of Hamzah Almalje’s capture and initial detention, was both reliable and true leads inevitably to the equally firm conclusion that Hamzah Almalje’s account was untruthful, as indicated by the four areas of significant difference enumerated above. Furthermore, I do not consider that it is possible to explain the significant differences between his account and those of the military witnesses as being the result of either a mistake or confusion on his part. I do not accept the submission, made on behalf of the Iraqi Core Participants, that Hamzah Almalje’s recollection of his place and circumstances of arrest may have been severely affected by his state of shock and concussion.⁷¹⁷
- 2.499** On the contrary, I am quite sure that Hamzah Almalje deliberately told lies about these matters. He did so in an attempt to distance himself from the active part that he had played in the armed ambush of British troops and the resulting battle. This is clearly shown by the fact that Hamzah Almalje intentionally and dishonestly strove to distance himself from any evidence that tended to inculcate him as one of the active armed insurgents.
- 2.500** Thus, although in truth Hamzah Almalje had been captured and detained by the large derelict building on the eastern side of Route 6 in an area that was at the time wholly unsuitable for any form of farming or agricultural activity,⁷¹⁸ he falsely and untruthfully stated that he had been on the other and western side of the road when he was captured. This lie also served to put him at some distance from the battle itself, rather than in the midst of it. I am satisfied that Hamzah Almalje deliberately lied about having been on the western side of Route 6 when captured, and not having crossed to or having been on the eastern side at any point, in order to add credibility to his untruthful assertion that he had been present in the general area of the battle for entirely innocent reasons.
- 2.501** Each of the three other significant differences that result from Hamzah Almalje’s lies about the circumstances of his arrest and initial detention⁷¹⁹ can be explained in the same way. Thus, Hamzah Almalje deliberately distanced himself from his rifle by a metre or two and denied that it had been disassembled, knowing that the evidence that he had been engaged in clearing a blockage would strongly suggest that he had just been recently firing it at British troops. The fact that he had extra ammunition would also be a clear indication that he had armed himself in order to play an active role in the fighting and clearly Hamzah Almalje wished to disassociate himself from any such evidence. However, as I have already indicated, I am completely satisfied that the place and circumstances of Hamzah Almalje’s capture and initial detention, as credibly described by the soldiers involved, clearly demonstrate that

⁷¹⁴ Private Smith [71/7-9]

⁷¹⁵ Private Connelly [66/72/16-23]

⁷¹⁶ Private Marney [73/15]

⁷¹⁷ ICP Closing Submissions (69) [271]

⁷¹⁸ See paragraphs 2.285 and 2.318

⁷¹⁹ See paragraph 2.494 above

Hamzah Almalje was an active and willing participant in the armed ambush and attack that was carried out on British soldiers by Iraqi insurgents on 14 May 2004.

2.502 It was submitted on behalf of the Iraqi Core Participants that the fact that Hamzah Almalje had been captured alone on the battlefield indicated that his presence there had been innocent; otherwise he would have made good his escape with the other insurgents. It was submitted that *“only a determined and very foolhardy militant would be engaged in trying to fix a rifle at this time.”*⁷²⁰ However, I am not persuaded by these submissions. For the reasons indicated above, I am quite sure that Hamzah Almalje had no reason for being at the location of the Southern Battle on 14 May 2004, other than that he had been one of the armed insurgents who took part in the ambush of British troops and the resulting battle. In my view, it is inconceivable that Hamzah Almalje had become caught up in the fighting as an innocent bystander, not least because he was caught “red-handed” and in possession of a rifle which he had been in the process of clearing at the time of his capture.

Guilty Presence and credibility

2.503 In the written Closing Submissions made on behalf of the Iraqi Core Participants, I was addressed at length with regard to the relevance of any finding I might make concerning the reasons for the presence of Hamzah Joudah Faraj Almalje (detainee 772) and the other detainees on the battlefield. Central to those submissions was the contention that any conclusion that the detainees (or any others) were participants in the ambushes/attacks on British forces that day is *“in many respects”* irrelevant to the Inquiry’s determination of the detainees’ allegations of subsequent ill-treatment by the British military. It was suggested that, to the extent that it had any relevance at all, a finding that the detainees (or any others) had actually been involved in the ambushes/attacks only went to the issue of credibility, i.e.: *“whether the witness has given an honest account, or whether the witness is an individual that cares for principle and truth, or whether the witness might have a motive to make false allegations against British forces.”*⁷²¹

2.504 It was further submitted that there were perfectly legitimate reasons why some or all of the detainees might have been reluctant to give evidence that implicated them in the attack on the British Army and that fairness requires that the detainees’ evidence should be considered in a manner that takes proper account of that reluctance.⁷²²

2.505 However, I am completely satisfied that my firm conclusion, that each of the detainees did deliberately lie about his involvement in the ambushes/attacks on British troops on 14 May 2004, does have an inevitable bearing on my assessment of each detainee’s credibility on other matters. As it seems to me, the fact that each detainee falsely denied having been involved in any way in the ambushes/battle in question and that each maintained and repeated that false denial on oath is a matter I can and should take into account when determining the truth of their evidence on other matters. In short, their untruthful evidence as to the reasons for their presence on the battlefield impacts upon their credibility and the reliability of their evidence as a whole. However, this does not mean that I should automatically assume that each has lied about every aspect of his subsequent treatment at the hands of the British military. The effect of those lies on the credibility of each detainee is simply one factor to be taken properly into account when determining the truth of each of the allegations of ill-treatment and the other matters about which he has given evidence.

⁷²⁰ ICP Closing Submissions (71) [284]

⁷²¹ ICP Closing Submissions (243) [860]

⁷²² ICP Closing Submissions (244) [864]-[879]

Hamzah Joudah Faraj Almalje (detainee 772): Allegations of assault

2.506 Hamzah Joudah Faraj Almalje told me that he had been assaulted by British soldiers on a number of occasions from the point of his capture until his arrival at Camp Abu Naji. The nature of these assaults varied in their degree of severity. As I have already indicated earlier in the Report, the terms of reference are specifically limited to the allegations of ill-treatment at Camp Abu Naji and subsequently at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah. However, the manner and extent of any injury sustained by Hamzah Almalje, either on the actual battlefield or whilst being transported to Camp Abu Naji, is clearly relevant because any such injury cannot have been the result of any ill-treatment at either Camp Abu Naji or the DTDF at Shaibah.

2.507 What therefore follows is an account of Hamzah Almalje’s capture and detention on the battlefield and my conclusions with regard to each of the allegations of his having been assaulted by British soldiers on the battlefield or whilst being transported back to Camp Abu Naji. I have also considered what injuries Hamzah Almalje suffered prior to his arrival at Camp Abu Naji by reference to when and (where possible) how those injuries were sustained. For ease of reference, I have divided the allegations of assault into the following four distinct sub-issues:

- a. Sub-issue 1 – allegations of assault at the point of capture;
- b. Sub-issue 2 – allegations of assault in the large derelict building;
- c. Sub-issue 3 – allegations of assault during transfer to the Warrior AIFV W33; and
- d. Sub-issue 4 – allegations of assault in the Warrior AIFV, W33, whilst being transported to Camp Abu Naji.

Sub-issue 1: Allegations of assault at the point of capture

2.508 As already indicated, Sergeant Stuart Henderson, Lance Corporal William Currie and Private Joseph Connelly were the 7 Platoon soldiers involved in the initial capture and detention of Hamzah Joudah Faraj Almalje (detainee 772).

2.509 Sergeant Henderson, Lance Corporal Currie and Private Connelly all recall having advanced first to the small derelict building, which was nearby and to the east of the large derelict building. They had then checked that this building was clear of gunmen or any other threat.⁷²³ Having done so, all three soldiers had then advanced to the large derelict building, where they found Hamzah Almalje. Sergeant Henderson and Lance Corporal Currie recalled that, having advanced directly from the small derelict building to the large one, they had discovered Hamzah Almalje located outside the large derelict building, just round its south eastern corner.⁷²⁴ Private Connelly also recalled advancing to the south side of the large derelict building. However, it was his recollection that Hamzah Almalje was found outside the south western corner of the building, just in front of a large mound of earth.⁷²⁵

2.510 Private Connelly said that as soon as he saw the detainee in front of the earth mound he had alerted Sergeant Henderson and Lance Corporal Currie. According to Private Connelly,

⁷²³ See, for example, Sergeant Henderson (ASI013560) [61]

⁷²⁴ Sergeant Henderson [61/27/5-25]; [61/37]; (ASI013560) [61]; Lance Corporal Currie [83/21/3-23]; (ASI013207) [48]-[49]; (ASI013210) [60]. In his written Inquiry statement, Lance Corporal Currie also appeared to suggest that they had advanced to the north side of the large derelict building first (point G on his map at ASI013232) (ASI013207) [48]. However in his oral evidence he seemed to depart from this by saying that he took the same route (directly to the south side) as Sergeant Henderson described [83/21]

⁷²⁵ Private Connelly (ASI017806) [39]-[40]; (ASI017833)

Sergeant Henderson and Lance Corporal Currie had been the first to reach Hamzah Almalje, with him following shortly behind. According to Lance Corporal Currie, he and Private Connelly had advanced towards the large derelict building, whilst Sergeant Henderson followed.⁷²⁶ In his written Inquiry statement, Sergeant Henderson recalled that he had been at the front, with Private Connelly and Lance Corporal Currie behind him, providing cover.⁷²⁷ He was less sure about this in oral evidence, stating that he could not remember exactly where the other soldiers had been.⁷²⁸ However, it is clear from their evidence that, whatever the precise order in which they approached Hamzah Almalje, the three soldiers all reached him more or less together, within seconds of each other, and found him just outside the large derelict building.

2.511 I have already described the circumstances in which Hamzah Almalje was found.⁷²⁹ In short, all three soldiers described Hamzah Almalje as being in possession of a stripped down AK47 rifle, ammunition and possibly chest rigging. He was described as crouching⁷³⁰ or sitting⁷³¹ with his rifle.

2.512 Sergeant Henderson said that, upon seeing the soldiers, Hamzah Almalje shouted and waved his hands above his head in a manner that Sergeant Henderson understood to be one of surrender.⁷³² Lance Corporal Currie recalled something similar, with Hamzah Almalje holding out his hands and showing his rifle to be in two parts, with one part in each hand.⁷³³ Lance Corporal Currie also accepted that Hamzah Almalje's action in doing this could have been a gesture of surrender.⁷³⁴ It seems that both Sergeant Henderson and Lance Corporal Currie were pointing their weapons at Hamzah Almalje at this stage.⁷³⁵

2.513 In his written Inquiry statement, Sergeant Henderson recalled having approached Hamzah Almalje and then pulling him to one side by his shoulder. He said that he initially told Lance Corporal Currie to take control of Hamzah Almalje, but that Private Connelly had subsequently taken charge of him and that he and Hamzah Almalje had taken cover in a tank berm, whilst the large derelict building was cleared.⁷³⁶ In his oral evidence, Sergeant Henderson confirmed this sequence of events, although he was less clear about whether he had pulled Hamzah Almalje by his shoulder, stating that he could not be "100% sure" that he had done so.⁷³⁷ Sergeant Henderson told me that Hamzah Almalje was compliant at the point of capture.⁷³⁸ He said that the only physical contact with Hamzah Almalje that he observed was when Private Connelly took hold of his shirt or arm in order to guide him to the safety of the tank berm. Sergeant Henderson said that he did not remember Hamzah Almalje's hands being restrained when this was done.⁷³⁹

2.514 Lance Corporal Currie and Private Connelly both gave accounts that differed somewhat from that of Sergeant Henderson. They both recalled that it was Private Connelly who had first

⁷²⁶ Lance Corporal Currie (ASI013207) [48]

⁷²⁷ Sergeant Henderson (ASI013560) [64]

⁷²⁸ Sergeant Henderson [61/28-29]

⁷²⁹ See paragraphs 2.472 – 2.485 above

⁷³⁰ Private Connelly (ASI017806) [40]; Sergeant Henderson [61/30/17-18]

⁷³¹ Lance Corporal Currie [83/22/11-25]

⁷³² Sergeant Henderson [61/30-31]; (ASI013560) [62]

⁷³³ Lance Corporal Currie [83/22]; [83/26]; [83/102]; (ASI013207) [48]-[49]

⁷³⁴ Lance Corporal Currie [83/102/8-14]; (ASI013207) [49]

⁷³⁵ Sergeant Henderson (ASI013560) [62]; Private Connelly (ASI017807) [42]; Lance Corporal Currie (ASI013207) [50]; NB – Lance Corporal Currie does not mention Sergeant S. Henderson pointing his gun at the detainee

⁷³⁶ Sergeant Henderson (ASI013561) [65]-[66]

⁷³⁷ Sergeant Henderson [61/34/1-7]

⁷³⁸ Sergeant Henderson [61/35/19-22]

⁷³⁹ Sergeant Henderson [61/39/15-20]

made physical contact with Hamzah Almalje. Neither Private Connelly nor Lance Corporal Currie recalled Sergeant Henderson having handled Hamzah Almalje physically.⁷⁴⁰ In his written Inquiry statement, Private Connelly gave the following account of the actual capture of Hamzah Almalje: *“I slung my rifle around my back and grabbed hold of the detainee by his left arm and forced him down to the floor by pushing him to the ground with my hand between his shoulder blades.”*⁷⁴¹

- 2.515** Private Connelly recalled that, as he pushed him down, Hamzah Almalje had struck his face on the ground, although this was not deliberate. I accept that this was so. Private Connelly said that he had been holding Hamzah Almalje’s hands as he pushed him and thus that Hamzah Almalje had been unable to stop himself going down.⁷⁴² I have little doubt that the circumstances were such that Hamzah Almalje’s face struck the ground with some degree of force, sufficient to cause at least some injury to his face. Private Connelly also described how Hamzah Almalje had resisted whilst being detained, as follows: *“The detainee resisted by trying to turn around but I was able to manoeuvre him into position face down on the ground. As I did this, he struck his face on the ground. This was not done on purpose and it occurred during the struggle.”*⁷⁴³
- 2.516** In his earlier Royal Military Police statement, Private Connelly had described the detainee as *“thrashing around and trying to get to his feet.”* Private Connelly went on to state that, in order to prevent this, he had knelt on Hamzah Almalje’s back until he had succeeded in tying his hands with a piece material ripped from Hamzah Almalje’s t-shirt.⁷⁴⁴ Private Connelly confirmed the accuracy of this account in the course of his oral evidence to the Inquiry⁷⁴⁵ and I accept the truth of that account.
- 2.517** For his part, Lance Corporal Currie stated that he had pointed his rifle at Hamzah Almalje and had shouted *“get down, get down”*. He had then witnessed Private Connelly move forward and detain Hamzah Almalje. He could not remember exactly how Private Connelly had carried out the detention, but he recalled that Hamzah Almalje had ended up lying face down on the ground.⁷⁴⁶ Lance Corporal Currie stated that he had assisted in restraining Hamzah Almalje’s hands, using a piece of his t-shirt.⁷⁴⁷ In his written Inquiry statement Lance Corporal Currie noted that Hamzah Almalje had been *“struggling around”* and that he had *“appeared angry”*.⁷⁴⁸ In his oral evidence to the Inquiry, Lance Corporal Currie confirmed that Hamzah Almalje had resisted when Private Connelly initially tried to push him down. He said that Hamzah Almalje had struggled and that he *“didn’t want to do what we asked him.”*⁷⁴⁹
- 2.518** According to both Lance Corporal Currie and Private Connelly, Hamzah Almalje was then moved directly into the large derelict building. Neither of them agreed with Sergeant Henderson that, prior to this happening, Hamzah Almalje had been taken to the comparative safety of a tank berm.⁷⁵⁰

⁷⁴⁰ Private Connelly [66/11/1-2]; Lance Corporal Currie [83/27-28]

⁷⁴¹ Private Connelly (ASI017807) [43]

⁷⁴² Private Connelly [66/27-28]

⁷⁴³ Private Connelly (ASI017807) [43]

⁷⁴⁴ Private Connelly (MOD004644)

⁷⁴⁵ Private Connelly [66/21]

⁷⁴⁶ Lance Corporal Currie [83/28]

⁷⁴⁷ Lance Corporal Currie [83/29/1-10]

⁷⁴⁸ Lance Corporal Currie [83/32/12-13]; (ASI013208) [54]

⁷⁴⁹ Lance Corporal Currie [83/104/21-24]

⁷⁵⁰ Lance Corporal Currie [83/55/1-5]; Private Connelly [66/12/5-16]

Hamzah Joudah Faraj Almalje's account of his capture

2.519 During his oral evidence Hamzah Almalje gave the following account of his initial capture: *"Four came upon me in the beginning. One – in all there were four. The first one hit me on my face, on my nose. When I was hit like that, I tried to run, but four other soldiers – four soldiers came and started to beat me."*⁷⁵¹

2.520 Hamzah Almalje said that the soldiers had approached him after having disembarked from an armoured vehicle. He rejected the suggestion that they had approached him on foot.⁷⁵² He was unable to describe any of the soldiers, except to say that he believed the soldier who had hit his face was a black soldier, and that he believed the other soldiers to be white.⁷⁵³ Hamzah Almalje said that the black soldier hit his face with his foot or leg⁷⁵⁴ and that he had been struck on the eye and the nose.⁷⁵⁵ He described having been beaten by the soldiers, saying that they had kicked him in his chest, stomach and face. He believed that one of the kicks must have hit his right hand, because his right little finger has been swollen since that day. He said that the kicking was carried out with sufficient force to have knocked him back into the ditch in which he claimed to have been crouching/sitting when he was first captured.⁷⁵⁶

2.521 According to Hamzah Almalje, the soldiers had then taken him out of the ditch and had made him kneel on the ground, where they had handcuffed him with his hands behind his back, using plastic handcuffs. He said that one of the soldiers proceeded to place either a knee or a foot in his back, his hands were pulled behind his head and his face was then pushed down on to the ground.⁷⁵⁷ According to Hamzah Almalje, he was thereafter taken to an area of ground which was damp and salty and near to a vehicle.⁷⁵⁸ He then went make a number of further allegations of ill-treatment by soldiers, whilst he was detained on the battlefield, which I will deal with below.

Conclusions about the initial capture of Hamzah Almalje (detainee 772)

2.522 It is abundantly clear from the evidence that I have seen, read and heard that there were no black soldiers present when Hamzah Joudah Faraj Almalje was initially captured and detained. However, during his oral evidence, Hamzah Almalje was adamant that he had been assaulted by a black soldier and refused to accept that he might have been mistaken.⁷⁵⁹ Notably, he had made no mention of a black soldier having been present, in his account of what had happened during his capture by British soldiers when he was interviewed by the Royal Military Police in July 2004. In fact, in the course of that interview, he had stated that he had been arrested by three white soldiers.⁷⁶⁰ In his oral evidence to the Inquiry, he disputed having said that during the interview and insisted that he had told the Royal Military Police about the black soldier and that he must have been misunderstood.⁷⁶¹ I do not believe that to have been the case.

2.523 Those representing the Iraqi Core Participants accepted that it was unlikely that a black soldier had actually been involved in the capture of Hamzah Almalje, but submitted that there was

⁷⁵¹ Hamzah Joudah Faraj Almalje (detainee 772) [19/71/18-21]

⁷⁵² Hamzah Joudah Faraj Almalje (detainee 772) [20/42/14-19]

⁷⁵³ Hamzah Joudah Faraj Almalje (detainee 772) [20/7/5-8]

⁷⁵⁴ Hamzah Joudah Faraj Almalje (detainee 772) [19/71-72]

⁷⁵⁵ Hamzah Joudah Faraj Almalje (detainee 772) [20/41/23]; (PIL000683) [23]

⁷⁵⁶ Hamzah Joudah Faraj Almalje (detainee 772) [20/12-13]; [20/71-72]; (PIL000684) [23]

⁷⁵⁷ Hamzah Joudah Faraj Almalje (detainee 772) [20/72]; (PIL000684) [24]

⁷⁵⁸ Ibid.

⁷⁵⁹ Hamzah Joudah Faraj Almalje (detainee 772) [20/43]

⁷⁶⁰ Hamzah Joudah Faraj Almalje (detainee 772) (MOD002917)

⁷⁶¹ Hamzah Joudah Faraj Almalje (detainee 772) [20/6-8]

a “credible trigger” for Hamzah Almalje’s current recollection of a black soldier having been present, namely that his memory had become contaminated by various factors over time.⁷⁶² Thus, Hamzah Almalje had told the Inquiry on a number of occasions that, whilst at court in Baghdad, he had seen a black soldier attending court as a witness and that he had repeatedly linked that soldier to the circumstances of his own capture.⁷⁶³ It was further submitted that Hamzah Almalje’s memory might have become confused as a result of discussions with the other detainees at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah about the circumstances of their arrest in which a black soldier had been present. It was also pointed out that, in the course of his oral evidence, Hamzah Almalje had accepted that it was “most likely” that he had spoken with the other detainees in Shaibah about their arrest.⁷⁶⁴

- 2.524** In fact, there was only one black soldier at the scene of the Southern Battle. He was one of those who arrived in the Warrior AIFV at the end of the combat phase of the Southern Battle. Therefore, I am satisfied that he was not involved in any way with the capture and detention of Hamzah Almalje or with the handling of him whilst detained on the Battlefield.
- 2.525** Although it is possible that Hamzah Almalje caught a glimpse of a black soldier at some stage after his initial detention, I do not accept that this particular aspect of Hamzah Almalje’s account was the consequence of some confusion on his part as a result of having seen a black soldier at some point on 14-15 May 2004, either on the way to or at Camp Abu Naji, or at some later date in the Court in Baghdad. As it seems to me, the fact that he completely omitted this significant detail and said something entirely different when interviewed by the Royal Military Police in July 2004, indicates that he later decided to alter his account to add this particular detail. I have no doubt that he decided to do so in an effort to lend substance and credibility to his overall account, including his account of having been assaulted at the point of capture. In my view, it is very likely that he deliberately decided to add this false detail, after having spoken with the other detainees at the DTDF at Shaibah, in the belief that it would bolster his credibility by giving the impression of consistency across all their accounts.
- 2.526** In the event, I do not believe that Hamzah Almalje was assaulted at the point of capture in the manner he alleged. I have come to that conclusion for two main reasons.
- 2.527** First, there was nothing in the accounts given by Sergeant Stephen Henderson, Lance Corporal William Charles Currie or Private Joseph Connelly to suggest that there had been any physical contact with Hamzah Almalje prior to the initial act of placing him under restraint. I am entirely satisfied that their evidence was truthful in this particular respect.
- 2.528** Second, Hamzah Almalje’s own accounts of having been assaulted at the point of capture were inconsistent. Thus, during his interview by Royal Military Police in 2004, Hamzah Almalje made no allegation of having been initially kicked in the chest, stomach or hand/finger. In his later account, Hamzah Almalje claimed that he had been made to kneel on the ground and had then been handcuffed with either a knee or foot in his back. He said that whilst this was happening, a soldier had pulled his hands behind his head and pushed his face down on the ground. In the event, I am satisfied that this particular account is actually Hamzah Almalje’s version of what had happened when he was initially restrained by Private Connelly and, to

⁷⁶² PIL Closing Submissions (69) [274]

⁷⁶³ Hamzah Joudah Faraj Almalje [20/8/4-5]; [20/8/9-11]; [20/8/16]-[9/17]

⁷⁶⁴ Hamzah Joudah Faraj Almalje (detainee 772) [20/9/11-17]; See also the evidence of Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) who stated that he had spoken to the other detainees at Shaibah about being assaulted by a black soldier [15/2/19-21]

the extent Hamzah Almalje's account differs from that of Private Connelly, I am satisfied that Private Connelly's version is the correct one.

2.529 So far as concerns the capture of Hamzah Almalje, I consider that the accounts given by Lance Corporal Currie and Private Connelly provide a more accurate description of what actually happened than that put forward by Sergeant Henderson. The accounts of Lance Corporal Currie and Private Connelly are substantially consistent in their description of how Hamzah Almalje was restrained and by whom. Furthermore, in their initial statements to the Royal Military Police in 2004 both soldiers confirmed that it was Private Connelly who had forced Hamzah Almalje to the ground in order to restrain him.⁷⁶⁵ I accept that, in acting as he did, Private Connelly used no more force than he considered necessary and appropriate in order to restrain Hamzah Almalje. Although there are some minor and unsurprising differences of detail between the accounts of Private Connelly and Lance Corporal Currie, I accept that the substance of their evidence about what happened is true.

2.530 In my view, Sergeant Henderson was mistaken in his account of what happened, most probably because the initial capture only lasted a few seconds or minutes at most, did not involve him directly and occurred at a time when there was a great deal happening in the immediate vicinity. It may also be the case that, although he was present when the detainee was first found, Sergeant Henderson left the immediate scene before Hamzah Almalje had been fully restrained, in order to clear the large derelict building.⁷⁶⁶ That this may be so is indicated by the fact that he did not recall having seen any hand restraints being applied⁷⁶⁷ and was unable to recall any specific details about the initial physical contact with Hamzah Almalje.

2.531 I deal with the nature and extent of any injuries that were sustained by Hamzah Almalje at the point of capture at a later stage in this Report.

Sub-issue 2 – Allegations of assault in the derelict building

2.532 Lance Corporal Charles Currie stated that it was he who led Hamzah Joudah Faraj Almalje (detainee 772) to the large derelict building, guiding him by the shoulder as he did so. Once there, he had transferred the custody of Hamzah Almalje to Private Joseph Connelly, who then instructed him to sit down in the corner facing the wall.⁷⁶⁸ For his part, Private Connelly recalled having given Hamzah Almalje a cursory pat down to check for weapons and then having assisted him to his feet by putting his hand under his armpit. According to Private Connelly, Hamzah Almalje was compliant and allowed himself to be guided to the large derelict building. Private Connelly said that he believed he had then told Hamzah Almalje to kneel or sit⁷⁶⁹ facing the wall at the south eastern corner of the large derelict building.⁷⁷⁰ I am satisfied that both Lance Corporal Currie and Private Connelly were involved in the process of taking Hamzah Almalje into the large derelict building and that, once inside, it was Private Connelly who assumed the immediate responsibility for Hamzah Almalje's custody.

2.533 As I have already indicated, it was Sergeant Stuart Henderson's mistaken recollection that Hamzah Almalje had been taken to a tank ditch whilst the large derelict building was cleared. However, in his oral evidence, Sergeant Henderson confirmed that, although he believed that

⁷⁶⁵ Lance Corporal Currie (MOD013259); Private Connelly (MOD004644)

⁷⁶⁶ Private Connelly [66/21/23]-[22/19]; Lance Corporal Currie (ASI017808) [46]; Sergeant S. Henderson [61/118/6]-[119/21]

⁷⁶⁷ Sergeant Henderson [61/117-118]

⁷⁶⁸ Lance Corporal Currie [83/41]; [83/44]; (ASI013210) [60]

⁷⁶⁹ Private Connelly [66/34/12-22]

⁷⁷⁰ Private Connelly (ASI017809) [48]-[50]; (ASI017833)

he had given an order for that to be done, he had not actually seen it happen.⁷⁷¹ In any event, Sergeant Henderson recalled that Hamzah Almalje had been moved into the large derelict building, once it had been cleared,⁷⁷² and that he had seen Private Connelly holding Hamzah Almalje by either his shirt or arm.⁷⁷³

2.534 It was generally agreed by the military witnesses that Private Connelly had been given the responsibility for custody of Hamzah Almalje soon after his capture. It is very likely that Private Connelly was given this responsibility at a very early stage, either by Sergeant Henderson⁷⁷⁴ and/or by Lieutenant Dormer, who recalled having seen Lance Corporal Currie and Private Connelly with Hamzah Almalje soon after he had been captured and whilst he was still lying on the ground.⁷⁷⁵

2.535 In his oral evidence, Lieutenant James Dormer said that he had put Private Connelly in charge of Hamzah Almalje, saying something to the effect of *“you’re in charge of the prisoner, make sure nothing happens to him.”*⁷⁷⁶ Lieutenant Dormer went on to explain his reasons for giving Private Connelly this particular order, as follows:

“...to assign Connelly the responsibility, the role, of being in charge of the prisoner...I wanted to give one specific soldier the direct responsibility of looking after the prisoner and, firstly and most importantly, making sure he wasn’t a danger to anyone around him, but, secondly, bearing in mind that we are, at this point, perhaps 15 metres, maybe less, from the active enemy position, from where they are firing at us, there is a lot of – there’s a lot of bullets flying around, we are very much at the front forward end of this contact, and I wanted him to make sure that the prisoner was appropriately protected and wasn’t shot by either his own side or by any of the PWRR soldiers on the other side of the position or any of my soldiers coming round the corner and suddenly being confronted by an Iraqi.”

2.536 However, Lieutenant Dormer was also questioned about the following account that he had purportedly given to the author of “Condor Blues”, which stated: *“Connelly was riding a wave of adrenaline and getting rough with the prisoner. James grabbed the Jock by the shoulders and said, ‘That [fucking] prisoner is your responsibility. Understand? He stays alive!’”*⁷⁷⁷

2.537 Lieutenant Dormer agreed that he had said something *“along the lines”* of that quote, but believed the author to have used artistic licence to fill in the gaps. Importantly, Lieutenant Dormer was at pains to emphasise that he had not seen Private Connelly *“getting rough”* with Hamzah Almalje at any stage and that he believed Private Connelly to have acted appropriately at all times, dealing with Hamzah Almalje in a *“fair and robust”* manner.⁷⁷⁸

2.538 Furthermore, in explaining to me why he had chosen to give Private Connelly the responsibility for supervising Hamzah Almalje’s custody on the battlefield, Lieutenant Dormer stated:

“...Connelly was one of my best soldiers. He was a very sensible level-headed young man and that’s always in the back of your mind as an officer. When you are kind of handing out tasks, you want to make sure that they are done by the right people and

⁷⁷¹ Sergeant Henderson (ASI013561-62) [67]

⁷⁷² Sergeant Henderson (ASI013563) [71]

⁷⁷³ Sergeant Henderson (ASI013561) [66]

⁷⁷⁴ Private Connelly (ASI017808) [46]; Sergeant Henderson (ASI013561) [66]

⁷⁷⁵ Lieutenant Dormer (ASI013706-07) [63] [66]

⁷⁷⁶ Lieutenant Dormer [72/56/14-25] – [72/57/1-8]

⁷⁷⁷ (ASI006960)

⁷⁷⁸ Lieutenant Dormer [72/58-60]

*Connelly was – not only was he on the scene, but he was also a guy I trusted to do a job like that.*⁷⁷⁹

- 2.539** Private Connelly did not recall having been given an order by Lieutenant Dormer instructing him to make sure that nothing happened to the detainee, although accepted that he could have been. However, he denied that he would have been given any such order in the terms indicated in “Condor Blues”. He also stressed that the allegation of him “*getting rough*” with the detainee was totally false and I accept his evidence to that effect.
- 2.540** However, Private Connelly did recall that Lieutenant Dormer had requested that he take Hamzah Almalje to the opposite, north western, side of the large derelict building.⁷⁸⁰ According to Private Connelly, he had remained with Hamzah Almalje throughout the time he was detained in the large derelict building, although he said that he was never entirely alone in the building with Hamzah Almalje and that there had always been a person of higher rank in the building as well.⁷⁸¹
- 2.541** In the event, both Sergeant Henderson and Lieutenant Dormer, who had originally been present, left the large derelict building at an early stage in the course of carrying out other battlefield tasks.⁷⁸² Sergeant Henderson confirmed that when Hamzah Almalje had been first captured and detained, members of 6 Platoon were still engaged in a fire fight with the insurgents and were thus not present in the building at that stage.⁷⁸³ He said that he left the building in order to make contact with 6 Platoon, but had returned to the north west of the building shortly thereafter in an attempt to try and get a better line of fire on the insurgents who were still continuing to engage the soldiers on the battlefield.⁷⁸⁴
- 2.542** Corporal Brian Nicol and Private Robert Anderson entered the large derelict building soon after the capture of Hamzah Almalje, whilst the fighting was still going on. Corporal Nicol did not remain in the building for long before he left to take part in the assault on the Southern Tank Ditch with Sergeant Henderson.⁷⁸⁵ Lance Corporal Currie also left at this stage in order to provide covering fire for the assault.⁷⁸⁶ Private Anderson said that he remained in the building, because he was involved in covering the flanks in order to protect those in the large derelict building.⁷⁸⁷
- 2.543** According to Corporal Nicol, he returned to the large derelict building for a brief period, shortly after having carried out the successful assault on the Southern Tank Ditch with Sergeant Henderson. Corporal Nicol said that, when he did so, Lance Corporal Mark Keegan and Private Christopher Dodd were present in the building.⁷⁸⁸ It appears that Sergeant Henderson was also present in the large derelict building again at this stage, although he did not remember having seen Lance Corporal Keegan there at the time.⁷⁸⁹

⁷⁷⁹ Lieutenant Dormer [72/57/20]–[58/1]

⁷⁸⁰ Private Connelly [66/35-36]; Lieutenant Dormer did not in fact recall giving that order. The fact that the detainee was moved to the north western corner was confirmed by a number of witnesses including Corporal Nicol who gave evidence that when he arrived in the building he saw the detainee at the north western corner, kneeling on the floor (ASI010126-27) [32], and Private Anderson who saw the detainee at the north edge of the building [71/101]

⁷⁸¹ Private Connelly [66/41/13-15]

⁷⁸² See, for example, Lieutenant Dormer (ASI013709) [73]-[74]; (ASI013712) [82]

⁷⁸³ Sergeant Henderson (ASI013562) [70]

⁷⁸⁴ Sergeant Henderson (ASI013564-65) [76]-[79]

⁷⁸⁵ Corporal Nicol (ASI010129-30) [47]

⁷⁸⁶ Lance Corporal Currie (ASI013212) [67]

⁷⁸⁷ Private Anderson (ASI010941) [56]-[57]

⁷⁸⁸ Corporal Nicol (ASI010132) [56]

⁷⁸⁹ Sergeant Henderson (ASI013563) [73]; Private Dodd (ASI011049) [50]

- 2.544** Lance Corporal Mark Keegan had sustained an injury to his groin during the early part of the battle, when a grenade had detonated close to him as mentioned at paragraph 2.379 above. He was initially treated by Private Dodd, the 6 Platoon medic, at the Parallel Bund Line where he had been injured. After the fire fight had come to an end, following the successful assault of the Southern Tank Ditch, Private Dodd helped Lance Corporal Keegan into the large derelict building.⁷⁹⁰ According to Private Dodd, he supported Lance Corporal Keegan whilst he walked into the building, entering through a small window.⁷⁹¹ Lance Corporal Keegan remembered having been carried into the building over Private Dodd’s shoulder and described the process as very painful.⁷⁹² For his part, Private Robert Schwar recalled that it was he who had carried Lance Corporal Keegan into the derelict building, entering through the window and accompanied by Private Dodd.⁷⁹³
- 2.545** As I have already indicated, after the active combat phase of the battle effectively came to an end (i.e. after the successful assault on the Southern Tank Ditch), the soldiers of 6 and 7 Platoons had embarked upon the Re-Org. A number of the soldiers gave evidence that they entered the large derelict building at about this time, which also appears to have been about the time that Lance Corporal Keegan and Private Dodd entered the building.
- 2.546** Lieutenant Dormer said that the soldiers gathered at the top (i.e. the end of) the large derelict building for what he believed to be a Re-Org.⁷⁹⁴ Sergeant Kelly explained that everybody gathered in the building for safety and shelter and in case they were mortared again.⁷⁹⁵ This was confirmed by Private Schwar, who recalled that they had gathered in the building in order to take cover from mortars.⁷⁹⁶ Sergeant Kelly also remembered having given an order for Hamzah Almalje to be moved to the north side of the building, near Lance Corporal Keegan and Private Dodd, in order that he could be moved easily out of the building and into a Warrior AIFV at a later stage.⁷⁹⁷
- 2.547** Private Schwar had not been in the building long, but recalled seeing a prisoner being guarded before he received an order to take up a defensive position as part of the Re-Org.⁷⁹⁸ Privates Scott Barlow, Barrie Reid, Duncan Aston and Richard Hobbs all remembered having been in the large derelict building at some stage after the active combat phase and at about the time of the Re-Org.⁷⁹⁹
- 2.548** Private Connelly was the only military witness who appears to have remained with Hamzah Almalje throughout the entire period of his detention in the large derelict building. He told me that he did not see any incidents of assault or abuse during the time he had been guarding Hamzah Almalje.⁸⁰⁰ I accept that his evidence to that effect was truthful. Most of the military witnesses agreed with Private Connelly and confirmed that Hamzah Almalje had not been assaulted or abused in any way whilst in the large derelict building. However, there were a small number of military witnesses who gave conflicting evidence, claiming that

⁷⁹⁰ Private Dodd (ASI011049) [49]; Lance Corporal Keegan (ASI018075) [72-75]

⁷⁹¹ Private Dodd [65/38]

⁷⁹² Lance Corporal Keegan (ASI018075) [74]

⁷⁹³ Private Schwar (ASI018422) [60]

⁷⁹⁴ Lieutenant Dormer (ASI013714) [87]

⁷⁹⁵ Sergeant Kelly [64/67/2-6]

⁷⁹⁶ Private Schwar [68/71-72]

⁷⁹⁷ Sergeant Kelly [64/66]; (ASI017344-45) [105]; Although the evidence suggests that the detainee was already at the north western corner of the building, it may well be that he was moved slightly in preparation for being taken out of the building

⁷⁹⁸ Private Schwar [68/15/16]-[17/6]; (ASI018422-24) [59]-[67]

⁷⁹⁹ Private Barlow [72/139]; Private Reid (ASI019948) [39]; Private Hobbs[95/158-59]; (ASI009531) [29]; Private Aston (ASI015049-50) [93]-[97]

⁸⁰⁰ Private Connelly [66/19]

Hamzah Almalje had been subject to both verbal and physical abuse at various times during his detention in the large derelict building. I summarise that evidence in the paragraphs that follow.

The account of Private Robert Anderson

2.549 Private Robert Anderson recalled that Hamzaj Joudah Faraj Almalje (detainee 772) was already present when he entered the large derelict building. He had not witnessed Hamzah Almalje's capture, nor did he know anything about the circumstances of it. Private Anderson said that, throughout the time he was in the large derelict building, he had been located approximately ten metres from where Hamzah Almalje was kneeling, which was in the northern corner of the building. Private Anderson said that he definitely remembered having seen Private Joseph Connelly with Hamzah Almalje at some point and stated that there had been many other soldiers coming in and out of the building.⁸⁰¹

2.550 Private Anderson said that, whilst he was in the large derelict building, he had seen the following incidents take place:

- a. A number of soldiers had shouted and sworn at Hamzah Almalje. Private Anderson admitted that he had participated in this shouting and swearing himself. He was unable to remember exactly what he had shouted but it said that it would have been something along the lines of *"you f'ing scum"*. He described the shouting as verbally aggressive, but emotional rather than angry. He said that there had been nothing about it that had caused him any concern.⁸⁰²
- b. A soldier, who he had seen standing next to Hamzah Almalje, had placed a hand on the top of his shoulders in order to prevent him from getting up. Private Anderson described the soldier's hand as resting on Hamzah Almalje's shoulders and not exerting any pressure.⁸⁰³ When he was shown and questioned about his written Inquiry statement, in which he had described Hamzah Almalje as being *"forcibly held down,"*⁸⁰⁴ he gave the following answer:

*"...imagine if you were crossing the road with a dog and you had the dog sitting at the side of the road. You would have your hand there, with a slight force just so they know you are there. That's what I meant by that."*⁸⁰⁵
- c. One or more men had pushed Hamzah Almalje, using one handed shoves in order to do so.⁸⁰⁶
- d. On one occasion, Hamzah Almalje had been *"cuffed"* around the ear by a soldier. Private Anderson described this as *"a clip round the ear"*, a form of open handed slap inflicted with little force. He described it as being as if the soldier had been trying to get Hamzah Almalje's attention, rather than subjecting him to a physical threat.⁸⁰⁷

⁸⁰¹ Private Anderson [71/101/20-25]

⁸⁰² Private Anderson [71/109/15-16]; [71/117-121]

⁸⁰³ Private Anderson [71/108]

⁸⁰⁴ Private Anderson (ASI010942) [58]

⁸⁰⁵ Private Anderson [71/123/16-19]

⁸⁰⁶ Private Anderson [71/122]

⁸⁰⁷ Private Anderson [71/167]

2.551 Private Anderson said that he had not seen anyone punch or kick Hamzah Almalje.⁸⁰⁸ However, he did say that he remembered that Hamzah Almalje had been crying or whimpering at some point.⁸⁰⁹

The account of Private Duncan Aston

2.552 Private Duncan Aston gave evidence that he had entered the large derelict building after having been ordered to move from his position in one of the ditches. This had been at a late stage of the battle, just prior to the order to collect the weapons and the dead.⁸¹⁰ He said that he was unable to recall the exact reason for going into the large derelict building, but believed it to be in order to check injuries and ammunition as well as to take a break. Whilst in the building he recalled having seen Privates Steven Wells and Scott Barlow enter the building. In his written Inquiry statement, Private Aston recalled having seen them enter with a detainee (i.e. Hamzah Joudah Faraj Almalje), who they then accompanied to a wall at the back of the building where the detainee either sat or squatted on the ground.⁸¹¹ In his oral evidence, Private Aston was less sure about the precise course of events, but accepted this previous recollection as accurate.⁸¹² He did not recall the detainee’s hands being restrained at this stage.⁸¹³

2.553 Private Aston made a number of allegations about how Privates Wells and Barlow then treated the detainee they had brought into the large derelict building. In summary, Private Aston told me that he had seen the following behaviour:

- a. Private Wells and Private Barlow had both shouted at the detainee with raised voices. Private Aston said that they were shouting and were angry, although he was unable to recollect precisely what they had said or shouted.⁸¹⁴
- b. Private Aston said that both Privates Wells and Barlow had engaged in striking the detainee. He described how both had punched and kicked the detainee to the face, shins and ribs. He said that the blows were not very hard and did not involve the use of maximum force. However, Private Aston said that the blows were sufficient to cause some, albeit not serious injury. Thus, when the detainee’s head was struck, it had been with enough force to cause his head to move. Private Aston said that it was more like “*bullying than huge violence*”.⁸¹⁵ In his oral evidence, Private Aston confirmed that he had seen Private Barlow inflict punches and slaps to the top of the detainee’s head in addition to kicks. He also said that Private Wells appeared to have been less inclined to get involved, but had joined in with pushing and shaking the detainee. He said that Private Wells had also hit the detainee on the head and tapped him on the side of the thigh and shin.⁸¹⁶

2.554 Private Aston claimed that Private James Lawrence had also participated in the assaults on the detainee, having joined in the violence about a minute after Privates Wells and Barlow had begun it. So far as concerns Private Lawrence, Private Aston made the following allegations:

- a. Private Lawrence had shouted at the detainee in an intimidating manner;

⁸⁰⁸ Private Anderson [71/126]

⁸⁰⁹ Private Anderson [71/109/9-10]

⁸¹⁰ Private Aston (ASI015048-49) [87] [91]-[93]

⁸¹¹ Private Aston (ASI015049-50) [93]-[97]

⁸¹² Private Aston [62/68-9]

⁸¹³ Private Aston (ASI015051) [100] [102]

⁸¹⁴ Private Aston [62/79]

⁸¹⁵ Private Aston [62/78]; (ASI015052) [106]

⁸¹⁶ Private Aston [62/79-80]

- b. Private Lawrence had kicked the detainee in the shin two or three times; and
- c. Private Lawrence had pushed the detainee's head back against the wall, with sufficient force to move the detainee's head but not enough to cause any serious injury. Like the abuse by Privates Wells and Barlow, Private Aston described this as more *"bullying than an all-out attack."*⁸¹⁷

2.555 Private Aston said that the detainee had appeared miserable and dazed. He said that the detainee did not scream out with pain and, in fact, had remained silent throughout the time the blows were inflicted upon him. Private Aston said that the detainee did not protect or defend himself in any way. According to Private Aston, the soldiers appeared to be goading the detainee. He said that the entire incident, involving all three soldiers, had lasted only a matter of seconds or a few minutes at most.⁸¹⁸

The account given by Hamzah Joudah Faraj Almalje (detainee 772) about his treatment after capture and prior to being moved to the Warrior W33

2.556 As described above, Hamzah Joudah Faraj Almalje said that he had been assaulted by four soldiers just prior to and during his original capture, stating that they had kicked him in the chest, stomach, face and hand/finger. He said that these blows had been inflicted before he had been handcuffed.⁸¹⁹ He had then gone on to describe how he had been made to kneel and how his face had been forced to the ground whilst he was being handcuffed. I have already considered these allegations when dealing with what occurred at the point of capture.⁸²⁰ However, they are repeated as part of a summary of all the assaults that Hamzah Almalje alleged he had been subjected to prior to being placed in the Warrior AIFV W33, in order to be transported to Camp Abu Naji.

2.557 Although he was able to describe the various assaults he alleged had taken place at the point of his capture and initial detention as summarised above, Hamzah Almalje did not remember having been made to sit down or kneel facing or near a wall in a derelict building at any stage. Notably, Hamzah Almalje did not recall having been in a derelict building at all⁸²¹ and made no allegations of having been assaulted at any time whilst being detained inside any such building. His evidence is therefore extremely difficult, if not impossible, to reconcile with that of the military witnesses. In particular, Hamzah Almalje made no allegation of having been assaulted in the manner and circumstances described by either Private Robert Anderson or Private Duncan Aston. I therefore turn to summarise Hamzah Almalje's account of such further assaults as he claims to have suffered after his initial capture, whilst in detention on the battlefield and before being placed in W33.

2.558 According to Hamzah Almalje, after having been handcuffed by the soldiers who had captured him, he had been lifted to his feet and taken to an area of ground which was damp and salty and near a vehicle.⁸²² In his oral evidence, he described the area as a *"little pond which stank"* where he was made to stand, half-sitting without touching the ground with his legs crossed. He said that it was at some point after this that he had been blindfolded with a piece of his torn shirt.⁸²³

⁸¹⁷ Private Aston [62/82]; (ASI015052-53) [109]-[110]

⁸¹⁸ Private Aston [62/83-84]; (ASI015053) [113]-[114]

⁸¹⁹ Hamzah Joudah Faraj Almalje (detainee 772) [20/12-13]; [20/72]; (PIL000684) [23]-[24]

⁸²⁰ See Sub-issue 1, paragraphs 2.522 – 2.531 above

⁸²¹ Hamzah Joudah Faraj Almalje (detainee 772) [20/42/6-13]

⁸²² Hamzah Joudah Faraj Almalje (detainee 772) (PIL000684) [24]

⁸²³ Hamzah Joudah Faraj Almalje (detainee 772) [19/72-73]; [20/73]

2.559 According to Hamzah Almalje, whilst he was half-seated in the manner described above, he made a small movement like stretching out a hand, whereupon a soldier threw three stones or rocks at him.⁸²⁴ Although it appears that Hamzah Almalje had initially stated to the Royal Military Police that the rocks had been handheld when he was hit with them,⁸²⁵ in his oral evidence to the Inquiry he made it clear that his allegation was that the soldier had thrown rocks at him.⁸²⁶

Conclusions with regard to the allegations made by Private Robert Anderson

2.560 When Private Robert Anderson gave a witness statement to the Royal Military Police (“RMP”) in 2004 he made no mention of any of the matters relating to the ill-treatment of the detainee (i.e. Hamzah Joudah Faraj Hamzah Almalje – detainee 772) that he made in his evidence to this Inquiry. That said, it is clear that Private Anderson did not have any obvious reason or motive for giving an untruthful account in his Inquiry evidence about what he claimed to have observed being done to the detainee in the large derelict building. As it seems to me, it is very unlikely that Private Anderson’s evidence about the matter was deliberately untruthful. Whether it was accurate and reliable is another matter entirely.

2.561 During the questioning of Private Anderson, the following two possible explanations for his omission of these allegations from his original RMP statement were put to him, namely:

- a. That he had deliberately failed to tell the RMP the truth about what had happened because he felt, or was directly put, under pressure from the soldiers involved not to reveal what had happened, something that Private Anderson denied in evidence;⁸²⁷ and
- b. That he was mistaken about the matters he claimed to have seen, perhaps because of the amount of time which had since elapsed or because he had confused the events in question with something that had actually occurred on another occasion.

2.562 However, during the course of his oral evidence to the Inquiry, Private Anderson gave another explanation, namely: *“It was that insignificant, I wouldn’t have even thought about reporting it.”*⁸²⁸ When questioned as to why he had not mentioned that the detainee had been shoved and slapped his statement to the Royal Military Police, he said that it had not registered with him as being either dangerous or a form of ill-treatment, because it actually amounted to so little.⁸²⁹

2.563 I consider it very likely that Private Anderson did originally fail to make any report of what he now claims to have seen because the matter had not seemed to him to be particularly serious at the time. That being the case, how reliable is the account that he gave in evidence to the Inquiry (albeit an account that was not deliberately false) having regard to the lapse of time since the events in question and the prevailing circumstances at the time?

2.564 In assessing the reliability of Private Anderson’s account, I have taken into account the fact that his version of events gained very little, if any, support from the accounts of the other witnesses who were present in the derelict building at the time. As it seems to me, of critical importance is the fact that Private Anderson’s account of what happened received absolutely no support at all from the account of Hamzah Almalje himself. Hamzah Almalje was the

⁸²⁴ Hamzah Joudah Faraj Almalje (detainee 772) [19/73-74]

⁸²⁵ Hamzah Joudah Faraj Almalje (detainee 772) (MOD002922)

⁸²⁶ Hamzah Joudah Faraj Almalje (detainee 772) [19/73], [20/10], [20/14]

⁸²⁷ Private Anderson [71/129/9-12]

⁸²⁸ Private Anderson [71/168/12-14]

⁸²⁹ Private Anderson [71/127-128]

only Iraqi who was captured and detained during the Southern Battle.⁸³⁰ As I have made clear, there is nothing in Hamzah Almalje's own account of the assaults, to which he claimed to have been subjected on the battlefield, which provides any support at all for Private Anderson's allegations that he had seen the detainee being pushed, given a cuff around the ear or shouted and sworn at by various soldiers whilst inside the large derelict building.⁸³¹ Obviously this strongly suggests that no such assaults or abuse did in fact take place or that, to the extent that Hamzah Almalje had been physically handled and/or spoken to by soldiers in the large derelict building, the soldiers' conduct was not perceived to amount to an assault or verbal abuse by Hamzah Almalje himself.

2.565 Furthermore, with the exception of Private Duncan Aston and Lance Corporal Mark Keegan, whose evidence I deal with below, none of the other military witnesses appear to have seen anything capable of providing support for Private Anderson's account. In my view, Private Anderson's evidence to the Inquiry about the way the detainee was treated whilst in the large derelict building was not an accurate account of what actually happened. In reaching this conclusion, I also have had regard to the fact that, as he made clear in evidence, Private Anderson had been actively covering the flanks and therefore had been mainly concentrating on looking out of the building in a south easterly direction at the time. As a result, there were long periods when he did not observe the detainee, who in any event was behind him.⁸³² Private Anderson was also unable to recollect many details of the incidents in question, for example which soldiers had actually approached the detainee.⁸³³ He also accepted that it was possible that he has become confused in his memory as to what had actually happened.⁸³⁴

2.566 In my view, it is very likely that Private Anderson's evidence about these matters was simply an exaggerated account of behaviour that was, in fact, simply part and parcel of Hamzah Almalje's general handling by the British soldiers at the time. As described by Lieutenant James Dormer, it is likely that this handling was "*firm and robust*".⁸³⁵ It is noteworthy that the only physical contact described by Private Anderson was a limited amount of pushing and an open handed slap to the detainee's ear, which Private Anderson perceived to be little more than a way of securing the detainee's attention. On a number of occasions during his evidence, Private Anderson emphasised that the behaviour he had seen gave him no reason to feel concerned at the time and that those involved in it appeared to have acted without any intention of causing any actual physical harm to the detainee. Accordingly, it may well be that others failed to notice or remember such conduct for the same reasons, given that it only involved conduct that was not intended to and did not inflict any deliberate or significant physical violence on the detainee.

2.567 It is very likely that some soldiers did shout and/or swear at Hamzah Almalje. Indeed, Private Anderson accepted that he had himself sworn at the detainee and it is therefore very likely to have happened to some extent. Again, it is probable that this behaviour went largely unnoticed and unremarked at the time, given the prevailing circumstances. Indeed, it is very likely that Hamzah Almalje either did not understand or hear any such swearing or that he was either unaware of it or of it being directed at him and, for some or all of those reasons, made no allegation that he had been subjected to any such verbal abuse.

⁸³⁰ See paragraphs 2.321 – 2.326 above

⁸³¹ See paragraphs 2.555 – 2.558 above

⁸³² Private Anderson [71/174-75]; (ASI010941) [57]

⁸³³ Private Anderson [71/116/22-24]

⁸³⁴ Private Anderson [71/173/3-10]

⁸³⁵ Lieutenant Dormer [72/59/23]–[60/17]

2.568 I am therefore satisfied that Private Anderson did not, in fact, witness any soldiers’ treatment of Hamzah Almalje in the large derelict building that went beyond, at most, some occasional swearing and shouting, together with a certain amount of firm and robust physical handling, all of which took place in the context of an ongoing battle and the heightened emotional state of the soldiers involved. However, very importantly, Hamzah Almalje apparently did not himself perceive the conduct in question as amounting to assaults or verbal abuse at the time or to have involved any conduct sufficiently serious as to justify its inclusion in his allegations of ill-treatment by British soldiers. In my view, it is clear that nothing actually observed by Private Anderson was sufficiently serious to amount to the sort of ill-treatment that is envisaged by the terms of reference.

The soldiers identified in the allegations made by Private Duncan Aston

2.569 The allegations made by Private Duncan Aston identified Privates Steven Wells, Scott Barlow and James Lawrence as having assaulted Hamzah Joudah Faraj Almalje (detainee 772). It is therefore necessary to refer to the evidence of each of those soldiers and their responses to Private Aston’s allegations.

Private Steven Wells’ account

2.570 Private Steven Wells said he was not aware that a prisoner had been captured during the battle itself or in its immediate aftermath. He was in fact “*positive*” in his recollection that he had not entered the large derelict building at any stage during the battle, and did not even get close to the perimeter of the building. His evidence was that he had remained near the 6 Platoon’s vehicles in order to provide rear cover and had advanced from that position only when he later drove the vehicles closer to the dead bodies.⁸³⁶

2.571 Private Wells’ account was largely confirmed by the soldiers who had remained with him on the battlefield. Private Sean Marney recalled having been ordered by Sergeant Paul Kelly to work with Private Wells and watch the perimeters.⁸³⁷ He did not recall or see Private Wells entering the large derelict building and he did not enter it either.⁸³⁸ Sergeant Kelly was the only witness who suggested otherwise, indicating that he believed Private Wells had been in the large derelict building at one stage.⁸³⁹ However, in his oral evidence he clarified this by stating that he did not believe Private Wells had ever been in the vicinity of the detainee and that he had remained on the outskirts of the south side of the building.⁸⁴⁰

2.572 For his part, Private Wells did not remember having seen Private Aston at any stage during the engagement.⁸⁴¹ He denied having had any contact with the detainee who he did not remember having seen at all. He told me that Private Aston’s allegations of mistreatment of the detainee were “*complete fantasy*”.⁸⁴²

⁸³⁶ Private Wells [66/109-113]; (ASI020460) [85]-[87]; (ASI020459) [83]; See also (ASI020469) in which Private Wells has circled the point at which he was closest to the derelict building

⁸³⁷ Private Marney [73/21/15]–[22/11]

⁸³⁸ Private Marney [73/54-55]

⁸³⁹ Sergeant Kelly (ASI017345) [107]

⁸⁴⁰ Sergeant Kelly [64/68/20]–[69/15]; Private Wells [66/110-111]

⁸⁴¹ Private Wells [66/139]

⁸⁴² Private Wells [66/142-145]; (ASI020467) [138]

Private Scott Barlow's account

- 2.573** Private Scott Barlow accepted that he had entered the large derelict building. He recalled that the detainee had been in the north west of the building and was seated on the floor.⁸⁴³ He described his sighting of the detainee as a “*quick encounter*”, clarifying that by saying that he had only seen him for a “*split second*”.⁸⁴⁴ Private Barlow denied having taken part in any assault on the detainee as described by Private Aston and said that he had not seen either Private Steven Wells or Private James Lawrence near the detainee at any stage.⁸⁴⁵
- 2.574** None of the military witnesses contradicted Private Barlow's account. All witnesses who were asked about the matter positively confirmed that they had not seen Private Barlow in the large derelict building at any time.⁸⁴⁶

Private James Lawrence's account

- 2.575** Private James Lawrence made no mention of the detainee in the statement that he made to the Royal Military Police given in August 2004, thus implying that he had not had any contact with him.⁸⁴⁷ He confirmed that to be the case when he made his written Inquiry statement, in which he positively stated that he neither detained nor saw any Iraqi being detained on 14 May 2004.⁸⁴⁸ In his oral evidence to the Inquiry he was less sure about whether he had actually seen the detainee on the battlefield at some stage. He said that he had understood that a young Iraqi man had been detained and placed in a Warrior, but that he was not sure if he had got to know this from his own direct knowledge or from some subsequent discussions with others. He denied that he had any form of contact with the detainee or that he had assaulted him in any way.⁸⁴⁹ He also denied having entered a large derelict building, indicating that he could not recall there being a derelict building at all; he could only remember a small mud hut.⁸⁵⁰
- 2.576** None of the witnesses who had entered the large derelict building or who had had any contact with the detainee said that they had seen Private Lawrence in the large derelict building at any time. Corporal Lee Gidalla, to whom Private Lawrence had stayed close throughout the engagement, told me that he had not entered the large derelict building but that, as a section commander, he would have entered it in order to find out what was going on if he had heard any shouting or any other form of disturbance coming from the building.⁸⁵¹
- 2.577** Private Lawrence also said that he would not have had time or the opportunity to go into the derelict building and assault the detainee, given the nature of the battle and the fact that he had been injured. He told me:

“I mean I was injured and I just don't see it. I don't see how it could possibly even have gone on that long, the way I see it. The way I saw it is that when we'd picked up the bodies, we put them on the Land Rover and then we got out of there. This was supposed to happen when? Because I just – no, it's not true whatsoever.”⁸⁵²

⁸⁴³ Private Barlow [72/139/20]–[140/24]

⁸⁴⁴ Private Barlow [72/142/5]; [72/150/5]

⁸⁴⁵ Private Barlow [72/147/4]–[148/7]

⁸⁴⁶ See, for example, Sergeant Kelly [61/51/17-20]; See also, Corporal Gidalla [67/47/12-19]

⁸⁴⁷ Private Lawrence (MOD018879-82)

⁸⁴⁸ Private Lawrence (ASI022227) [46]

⁸⁴⁹ Private Lawrence [68/104/22]–[107/17]; [68/142/9]–[144/15]; [68/112-113]

⁸⁵⁰ Private Lawrence (ASI022232) [70]

⁸⁵¹ Corporal Gidalla [67/48]

⁸⁵² Private Lawrence [68/113/11-17]

Conclusions on the allegations made by Private Duncan Aston

2.578 As indicated above, Private Duncan Aston’s allegations were vehemently denied by Privates Steven Wells, Scott Barlow and James Lawrence. In my view, all those latter three soldiers gave credible and consistent accounts in evidence in support of their emphatic denials that they had been involved in any form of assault on the detainee or that they had had any form of contact with the detainee whatsoever. I believe that their evidence was the truth.

2.579 In his initial statement to the Royal Military Police, Private Aston made no allegations of assault on the detainee. Private Aston explained that he had deliberately omitted making reference to any such assaults because:

“...At the time I didn’t want to grass my friends up, to be fair. I wasn’t – I didn’t feel that was the right thing to do. But at the time, I was, we just come back from an operational tour and I didn’t want to kind of put a damper on something so, you know, quite proud to have done at the end of the day. I didn’t want to get them in trouble at all... If they had found out that I had grassed them in then I wouldn’t have been very popular at all then, and it is, you don’t really want to end up getting bullied in an environment like that. So I kind of was, like, keeping myself safe at the expense of the detainee getting treated poorly. I just didn’t want to get them in trouble at all at the time.”⁸⁵³

2.580 Private Aston denied that he had had any personal motive for making the allegations against Privates Wells, Barlow and Lawrence. He said that:

“They were friends at the end of the day. I had no reason to get them in trouble. I have no malicious reasons behind wanting to get them in trouble, I’m not here to point fingers at anyone or make the army look bad. It is just the things that happened, and in the Inquiry I have had to tell exactly what happened and what I can remember.”⁸⁵⁴

2.581 For his part, Private Barlow said that he was unaware of any issues between himself and Private Aston or of any issues involving Private Aston and other members of the platoon. He said that he did not know of any reason why Private Aston would have made the allegations about him if they were not true.⁸⁵⁵ This was repeated by Private Wells, who said that he did not know why Private Aston had made the allegations that he had.⁸⁵⁶ Private Lawrence said that he could only guess why Private Aston had made these “*entirely false allegations*” against him. He accepted that they had been friends at the time. In seeking to find an answer for Private Aston’s conduct, Private Lawrence hazarded the following guess, whilst making it clear that he did not know if there was any truth in it or not:

“I mean, he was tasked to assault the bunker before I was and Lee Gidalla asked him to do it, but he wouldn’t do it. So then I was tasked to do it. Now if that – if there’s some sort of cowardice of it in that – and for any of it, if you are asking me the question, then that’s my answer.”⁸⁵⁷

2.582 In their written Closing Submissions on behalf of most of the military witnesses, TSol suggested another possible reason to explain why Private Aston may have made up false allegations about his three fellow soldiers.⁸⁵⁸ They pointed to the evidence which suggested that Private

⁸⁵³ Private Aston [62/55-56]

⁸⁵⁴ Private Aston [62/58/1-7]

⁸⁵⁵ Private Barlow [72/117/6–20]; [72/165/25]–[166/10]; (ASI018839) [5]

⁸⁵⁶ Private Wells [66/137/15]–[138/25]

⁸⁵⁷ Private Lawrence [68/146/2–18]

⁸⁵⁸ TSol Closing Submissions (74) [169]

Aston had been the subject of some teasing within the platoon. Private Barlow admitted that Private Aston was perceived to be not very good at soldiering. He said that Private Aston was treated with less respect than the other soldiers and was thought of as “*the weakest link*”.⁸⁵⁹ Private Baker went on to describe Private Aston as “*the runt of the litter*”, who was often the butt of jokes.⁸⁶⁰

2.583 Although I do not consider that any of this material serves to persuade me that Private Aston made deliberately false allegations of assault of the detainee against Privates Wells, Barlow and Lawrence, the remarkable fact is that none of Private Aston’s allegations was confirmed and/or supported in any way by anything that Hamzah Almalje himself told me. As I have already made clear, Hamzah Almalje made no allegation that he had suffered any such assaults or abuse in the large derelict building by any of these three soldiers or, indeed, by any other soldiers. That fact and the fact that, as it seems to me, the emphatic denials of Privates Wells, Barlow and Lawrence were completely credible and truthful, lead me to the firm conclusion that the allegations of assault made by Private Aston are incorrect. In the event, therefore, I am satisfied that there were no such assaults.

2.584 I am not able to explain how it is that Private Aston came to make these allegations against Privates Wells, Barlow and Lawrence, although it is possible that Private Aston’s memory has simply played tricks on him. He made no mention of these matters in his statement to Royal Military Police in 2004. The first time that he made these allegations was many years later, at a time when his memory of these and other events would have certainly diminished and possibly have become more than a little confused. That his memory of what did happen that day is fallible was clearly demonstrated by his claim to have seen Privates Wells and Barlow bring the detainee into the large derelict building in the first place.⁸⁶¹ That was plainly incorrect and simply did not happen, as is clear from my account of how Hamzah Almalje actually did come to be in the large derelict building.⁸⁶² It is also possible that, just as Private Robert Anderson may have done, Private Aston saw Hamzah Almalje being handled in a “*firm and robust*” manner by some of the soldiers and has subsequently greatly exaggerated the gravity of what he saw and erroneously attributed the conduct in question to Privates Wells, Barlow and Lawrence.

Sub-issue 3 – Allegations of assault during transfer to the Warrior W33

2.585 As is clear from the foregoing, Hamzah Joudah Faraj Almalje (detainee 772) made no allegations of having been assaulted whilst inside the large derelict building and, in fact, did not recall having been in a derelict building at all.⁸⁶³ Apart from his allegations of being assaulted at the point of capture and whilst being initially restrained, Hamzah Almalje made only one further allegation of assault in relation to the period of his detention on the battlefield. As I have already indicated, that allegation related to an incident in which Hamzah Almalje claimed that, whilst he had been semi-seated in an area he described as “*a little pond which stank*”, a soldier or soldiers had thrown three stones or rocks at him.⁸⁶⁴ It is therefore clear that this allegation relates to an incident that was said to have occurred in a location outside the large derelict building and before Hamzah Almalje was actually placed in W33 for transport to Camp Abu Naji.

⁸⁵⁹ Private Barlow [72/177/15]

⁸⁶⁰ Private Baker [69/83/9-18]

⁸⁶¹ Private Aston [62/69/9-15]

⁸⁶² See Paragraph 2.532 above

⁸⁶³ Hamzah Joudah Faraj Almalje (detainee 772) [20/42/6-13]

⁸⁶⁴ Hamzah Joudah Faraj Almalje (detainee 772) [20/14]

Military accounts of Hamzah Almalje’s transfer to W33

- 2.586** As I have already indicated,⁸⁶⁵ two Warrior AIFVs (call signs W31 and W33) arrived at the scene of the Southern Battle just as the main engagement was coming to an end, at about the time that the Re-Org was taking place. The Warriors were expected at the Southern Battle, but had been delayed en route as the result of being attacked by insurgents whilst on the way.⁸⁶⁶ It was one of these Warriors, W33, which eventually transported Hamzah Joudah Faraj Almalje and Lance Corporal Mark Keegan back to Camp Abu Naji. It was, of course, necessary for both Lance Corporal Keegan and Hamzah Almalje to leave the large derelict building in order to be able to get into W33.
- 2.587** There was a certain amount of conflict in the evidence with regard to Hamzah Almalje’s precise movements between leaving the large derelict building, where he had been in the custody of Private Joseph Connelly, and his being placed in W33 for transportation to Camp Abu Naji. I have therefore endeavoured to set out the various accounts of how matters proceeded, indicating my findings as to the order and substance of the relevant events where necessary.
- 2.588** It is clear that Private Christopher Dodd played a prominent part in escorting Hamzah Almalje from the large derelict building. He recalled that he had remained in the large derelict building with Lance Corporal Keegan whilst waiting for the Warriors to arrive. He said that when the Warriors eventually did arrive he had been ordered to assist Lance Corporal Keegan to one of the Warriors. According to Private Dodd, once he had done this he returned for the detainee, who had already left the derelict building and was waiting behind a bund line.⁸⁶⁷ It seems very likely that this was a reference to the Parallel Bund Line.
- 2.589** Although it was Private Dodd’s evidence to the Inquiry that Lance Corporal Keegan was already in the Warrior by the time he returned to the bund line for the detainee, in the statement he made to the Royal Military Police in 2004 Private Dodd said that there had been a stage when he was behind the bund line with both Lance Corporal Keegan and the detainee, who was about 11 metres in front of him.⁸⁶⁸ This version of what happened was confirmed by Lance Corporal Keegan, who recalled having been taken out of the large derelict building and then being at the bund line with the detainee, who was about 40-50 metres away, waiting for the Warriors to arrive.⁸⁶⁹ Lance Corporal Keegan stated that he had been placed in a Warrior after a while and that the detainee had been put in the same vehicle shortly after that.⁸⁷⁰ Sergeant Paul Kelly also gave evidence that he had seen Lance Corporal Keegan and the detainee at the bund line about five to ten metres apart.⁸⁷¹
- 2.590** A number of witnesses confirmed that they had seen the detainee at a bund line or in some sort of depression in the ground, at some stage after the fighting had come to an end. Private Paul Baker stated that he had seen the detainee outside the large derelict building “*on a bank*” to the east of the bund line.⁸⁷² He said that this had been before he searched the enemy dead and after the shooting had ceased. Private Sean Marney also recalled having seen the detainee in a “*dip in the ground*”, guarded by two soldiers.⁸⁷³ This was corroborated by Private Robert Schwar who saw the detainee in a tank ditch within walking distance of the

⁸⁶⁵ See paragraphs 2.465 – 2.470 above

⁸⁶⁶ Sergeant S. Henderson (ASI013564) [78]

⁸⁶⁷ Private Dodd [65/52-3]

⁸⁶⁸ Private Dodd (MOD005857)

⁸⁶⁹ Lance Corporal Keegan (ASI018078) [88]

⁸⁷⁰ Lance Corporal Keegan (ASI018079) [96]-[97]

⁸⁷¹ Sergeant Paul Kelly (ASI017350-51) [131]-[134]

⁸⁷² Private Paul Baker (ASI009128) [71]-[73]; (ASI009140)

⁸⁷³ Private Sean Marney (ASI022394) [48]

large derelict building, guarded by two or three soldiers. He believed that the detainee had been kneeling on the ground when he saw him.⁸⁷⁴ Sergeant Paul Kelly also recalled having seen the detainee in a “dug out”.⁸⁷⁵

2.591 Private Marney originally recalled that Private James Lawrence had been with the detainee at the bund line, but by the time he gave oral evidence he was no longer sure that he had seen Private Lawrence with the detainee at all.⁸⁷⁶ For his part, Private Lawrence said in his written evidence that he had not been involved with the detainee at all on 14 May 2004 and had not escorted him to the bund line.⁸⁷⁷ I accept his evidence to that effect and am satisfied that Private Marney’s original recollection was mistaken.

2.592 There was some evidence to suggest that one or more soldiers, in addition to Private Dodd, had been present with Hamzah Almalje whilst he was being held at a bund line outside the large derelict building. Again, it seems to me very likely that the bund line referred to was the Parallel Bund Line. Privates Schwar and Marney recalled Hamzah Almalje being guarded by two or more soldiers from 7 Platoon.⁸⁷⁸ Lance Corporal Keegan and Private Paul Baker both recalled a soldier from 7 Platoon guarding the detainee.⁸⁷⁹

2.593 With the exception of Lance Corporal Keegan, all the military witnesses who described having escorted Hamzah Almalje or having seen him at the bund line outside the large derelict building told me that they had not see him assaulted in any way. However, as indicated earlier in this Report, Hamzah Almalje did make one allegation of assault which appears to relate to the time when he was held at the Parallel Bund Line, in which he stated that a soldier or soldiers had thrown rocks at his head.⁸⁸⁰ Before dealing with Hamzah Almalje’s evidence about this particular matter, I turn to consider the evidence of Lance Corporal Keegan, who alleged that he had seen various soldiers assault and ill-treat the detainee (i.e. Hamzah Almalje), including assaults/ill-treatment that had occurred at or near the bund line.

Lance Corporal Mark Keegan’s allegations of assaults on Hamzah Almalje

2.594 At various times after the Battle of Danny Boy, Lance Corporal Mark Keegan made a number of statements in which he alleged that Hamzah Joudah Faraj Almalje (detainee 772) had been assaulted and ill-treated by British soldiers whilst he had been detained on the battlefield. The substance of these allegations varied in each account that Lance Corporal Keegan gave of them. The final version of events that Lance Corporal Keegan gave in evidence to the Inquiry largely consisted of a substantial retraction of his earlier accounts. In the paragraphs that follow I have summarised each of the allegations made by Lance Corporal Keegan. It is to be noted that a number of the original allegations made by Lance Corporal Keegan appear to relate to events both inside and outside the large derelict building. However, for convenience, I have dealt with all the allegations made by Lance Corporal Keegan in this part of my Report (i.e. as part of Sub-issue three), although some of the allegations may relate to earlier periods of Hamzah Almalje’s detention (i.e. to the events dealt with in Sub-issues one and two).

⁸⁷⁴ Private Schwar [68/32-34]; (ASI018427) [78]; Corporal Gidalla also claimed to have seen the detainee being escorted out of the building under the guard of two escorts (ASI011698) [52]

⁸⁷⁵ Sergeant Paul Kelly [64/93/18]-[94/9]; (ASI017350) [132]

⁸⁷⁶ Private Marney [73/5/15-22]

⁸⁷⁷ Private Lawrence (ASI022227) [46]

⁸⁷⁸ Private Schwar [68/32-34]; (ASI018427) [78]; Private Marney (ASI022394) [48]

⁸⁷⁹ Lance Corporal Keegan (ASI018078) [88]; Private Baker (ASI009128) [71]-[73]

⁸⁸⁰ See paragraphs 2.558 – 2.559 and 2.566 above

- 2.595** The first account that Lance Corporal Keegan provided was to the Royal Military Police on 26 August 2004. In that statement he made no mention of having witnessed any form of abusive behaviour by British soldiers towards a detainee on the battlefield.⁸⁸¹
- 2.596** His next account was given on 22 November 2007 to the journalist John Sweeney, who interviewed him for the well known BBC current affairs programme “Panorama”. During the course of that interview (“the Panorama interview”), Lance Corporal Keegan made a number of allegations of ill-treatment by British soldiers of the detainee (i.e. Hamzah Almalje – detainee 772) on the battlefield, as follows:⁸⁸²
- a. Lance Corporal Keegan recalled that when the detainee was first captured, “*all the blokes were running past and punching him in the head*”. He said that the medic had been one of the soldiers who hit the detainee around the head when the detainee had asked for water;
 - b. He claimed that the soldiers were calling the detainee “*all the names under the sun*.” Lance Corporal Keegan believed that this was a way of the soldiers showing their anger;
 - c. Lance Corporal Keegan said that the detainee had been put in a massive ditch which was filled with water, although not very deep. He claimed to have seen the detainee nearly get drowned as a result;
 - d. He said that the detainee had been on his knees and that he had kept crying out. However, when he did so the soldiers knocked him to the floor. According to Lance Corporal Keegan the soldiers would then “*leave him for a bit until he started squirming and then lift him up again until he started moaning again*”;
 - e. Lance Corporal Keegan said that he thought the soldiers were trying to teach the detainee a lesson. He claimed to have seen the detainee have “*massive*” rocks thrown at his head by some of the soldiers; and
 - f. He said that the detainee’s head was covered with a sandbag.
- 2.597** It was not clear from the account which he gave to Mr Sweeney precisely where on the battlefield Lance Corporal Keegan was alleging that these events had taken place, although earlier in the interview he recalled that, after he had been injured, he had been taken to the “*bombed out building*” with the medic. He implied that the detainee was also present in the building with a soldier who had been given the task of looking after him. He went on to state that after these events, he had been taken back across open ground to the area where he had originally suffered his injury, in order to await the arrival of the Warriors.⁸⁸³
- 2.598** Lance Corporal Keegan gave a further account in the statement that he made to the Special Investigation Branch (“SIB”) of the Royal Military Police on 10 April 2008. In that account, he stated that he had only seen one actual physical assault on the detainee, namely when a rock was thrown at him.⁸⁸⁴ On this occasion, Lance Corporal Keegan’s account of the treatment of the detainee captured on the battlefield was as follows:
- a. Lance Corporal Keegan said that, whilst he was waiting at the bund line for the Warriors to arrive, there were two or three “*Jocks*”⁸⁸⁵ nearby with the detainee. The soldiers were

⁸⁸¹ Lance Corporal Keegan (MOD018902-04)

⁸⁸² Lance Corporal Keegan (ASI000533-35)

⁸⁸³ Lance Corporal Keegan (ASI000529)

⁸⁸⁴ Lance Corporal Keegan (MOD033718)

⁸⁸⁵ In the Army, Scottish soldiers are invariably referred to as “Jocks”. 7 Platoon were members of a renowned Scottish regiment, The Argyll and Sutherland Highlanders, and thus were referred to as “Jocks”

all seated, with the detainee kneeling in front of them. He said that the detainee had asked for water and at least one of the soldiers threw a stone at the detainee's head in response. He did not know the identities of the soldiers involved because he could only see their backs. He was "*pretty certain*" that the stone had hit the detainee on the head. He described the ditch in which the detainee was kneeling as a "*little puddle*";⁸⁸⁶

- b. According to Lance Corporal Keegan, the detainee's head was covered with a sandbag;⁸⁸⁷
- c. He said that the detainee had been crying or shouting out for water and that he thought the detainee had used the English word "*water*" when doing so.⁸⁸⁸

2.599 On 4 January 2013, Lance Corporal Keegan provided a further account in his written Inquiry statement. In that statement he said that he had first become aware of the detainee when he was taken to the derelict building. He said that he had caught a glimpse of the detainee and had remained near him. However, he believed that the detainee might have been on the other side of the wall from where he was. He went on to state that he had no recollection of how the detainee was being treated at the time and that, in fact, he had been unable to see him at this stage.⁸⁸⁹

2.600 In his written Inquiry statement, Lance Corporal Keegan went on to say that he had seen the detainee again subsequently, whilst he was near the bund line waiting for the Warrior AIFV. He said that the detainee was in a nearby ditch at the time, but he did not believe that the detainee had been pushed into water or nearly drowned. He stated that he did not recall the detainee being hit by any soldiers, nor could he recall if the detainee had been hit by a rock, but described the position in the following terms:⁸⁹⁰

- a. The detainee had a sandbag over his head while he was in the ditch, although this had not been the case while he had been in the large derelict building;
- b. The detainee had been crying out and a soldier had been shouting in response. However, he no longer remembered (as he had stated in earlier accounts) that there were three soldiers there and went on to say that he now recalled only one.

2.601 When Lance Corporal Keegan gave oral evidence to the Inquiry, he could not remember if the detainee was inside or outside the large derelict building or how far away he was when he had first caught sight of him.⁸⁹¹ He could not remember if the detainee had a sandbag on his head when he first saw him and accepted that he might have assumed that to be the case because he believed that the troops did not have any other means of blindfolding people. He was unsure, but thought that the detainee had been sandbagged when he saw him on the second occasion at the bund line.⁸⁹²

2.602 In his oral evidence, Lance Corporal Keegan went on to say that he had seen the detainee again subsequently, whilst waiting at the bund line. He recalled having heard a soldier shout at the detainee. He said that the detainee had been crying out in Arabic, although he was not sure why this was.⁸⁹³ He did not recall whether the "*Jock*" soldier had thrown a stone at

⁸⁸⁶ Lance Corporal Keegan (MOD033712-13); (MOD033716); (MOD033717); (MOD033751)

⁸⁸⁷ Lance Corporal Keegan (MOD033712)

⁸⁸⁸ Lance Corporal Keegan (MOD033716); (MOD033722)

⁸⁸⁹ Lance Corporal Keegan (ASI018075-76) [75]-[76]

⁸⁹⁰ Lance Corporal Keegan (ASI018078-10) [87]-[93]

⁸⁹¹ Lance Corporal Keegan [75/139/6]-[140/16]

⁸⁹² Lance Corporal Keegan [75/141/12]-[142/6]

⁸⁹³ Lance Corporal Keegan [75/140/24]-[141/11]

the detainee⁸⁹⁴ and could not remember whether he had seen any members of the “Jock” regiment ill-treating the detainee at any stage.⁸⁹⁵

Conclusions with regard to the allegations made by Lance Corporal Mark Keegan

- 2.603** In the course of Closing Submissions made on behalf of most of the military witnesses, it was suggested that the account given by Lance Corporal Mark Keegan to the Royal Military Police in 2004 was the most reliable one, given that it had been made at a time when events were freshest in his mind.⁸⁹⁶ In addition, Lance Corporal Keegan had accepted in his oral evidence that this account might be the most accurate one⁸⁹⁷ and had not put forward any reason why that initial account should be doubted, whilst at the same time casting doubt on the accuracy of all of his later accounts. Furthermore he accepted that there had been no good reason for not speaking out about the allegations at the time that his Royal Military Police statement was taken.⁸⁹⁸
- 2.604** However, on behalf of the Iraqi Core Participants, it was suggested that the most reliable account was the one Lance Corporal Keegan had given to the BBC for the Panorama programme, in which he had made a large number of allegations. It was submitted that Lance Corporal Keegan had told the truth in that interview, but had then resiled from that truthful account, perhaps due to some form of pressure being exerted on him.⁸⁹⁹ It was suggested that this was demonstrated by Lance Corporal Keegan’s deliberately obstructive oral evidence in which he had insisted that he could not now remember what had happened on the battlefield and was unable to recall any of the events in question.
- 2.605** In assessing Lance Corporal Keegan’s evidence, I have considered whether I am able to rely upon any of his accounts as truthful. In his oral evidence, he repeatedly suggested that the version of events given in his Panorama interview was inaccurate. He seemed to vacillate between two reasons for the inaccuracies in that interview; (i) that he had given an exaggerated account of what he saw and (ii) that he had invented the allegations of assault entirely, as follows: *“Well, I can’t remember much happening anyway and I just made some stories up and exaggerated more on them.”*⁹⁰⁰
- 2.606** Lance Corporal Keegan’s motive for having invented or exaggerated these allegations during his Panorama interview was explored with him in questioning, as follows:

“Q. You made those allegations whilst you were being interviewed in the comfort of your mother-in-law’s house?”

A. Yes.

Q. Hoping or expecting that you would be paid for it?”

A. Yes.

Q. Do you think it might be the case that you thought: the better story I make, the more likely I am to be paid?”

⁸⁹⁴ Lance Corporal Keegan [75/100/15]–[102/15]

⁸⁹⁵ Lance Corporal Keegan [75/118/25]–[120/1]

⁸⁹⁶ TSol Closing Submissions (70) [162]

⁸⁹⁷ Lance Corporal Keegan [75/161/15-18]

⁸⁹⁸ Lance Corporal Keegan [75/160/23]–[163/1]

⁸⁹⁹ ICP Closing Submissions at (43) [163]–[182]

⁹⁰⁰ Lance Corporal Keegan [75/94/23]–[97/21]; [75/97/9-10]

A. *Maybe so, yes.*

Q. *And did you, to use a modern expression "sex it up a bit" to make it sound like a better story?*

A. *Yes, I think I did, yes.*⁹⁰¹

2.607 In fact, Lance Corporal Keegan was paid very little for his Panorama interview, he had not been promised payment prior to giving the interview and he accepted the suggestion that a false story about brave deeds would have earned him just as much publicity and money.⁹⁰²

2.608 I have also considered the alternative suggestion that Lance Corporal Keegan's motive for inventing a false account of what happened was that he was feeling resentful and abandoned by the Army and had indicated to the BBC that he felt as though the Army had "*forgotten*" him and had failed to provide him with any help since leaving the Services.⁹⁰³

2.609 So far as concerns his later statement, given to the Royal Military Police Special Investigation Branch ("SIB") in 2008, Lance Corporal Keegan agreed that he had continued to repeat some of his earlier allegations, because he had felt unable to withdraw the whole of his earlier account, as follows:

"Q. Did you find yourself then in the situation where you felt you couldn't backtrack entirely from what you'd said on television when you were speaking to the SIB?"

A. *Yes, I think so, yes.*

Q. So that you were having to confirm to the SIB things you had said to the BBC whether or not they were true?"

A. *I think so.*⁹⁰⁴

2.610 Importantly, when he was asked which parts of his accounts had been the subject of exaggeration and which parts were true, Lance Corporal Keegan repeatedly stated that he could not now remember what the truth actually was, as follows:⁹⁰⁵ "*I've given so many accounts and statements and thought about this for a long, long time, that I don't believe what is true and what is not.*"⁹⁰⁶

2.611 Whatever Lance Corporal Keegan's motives may have been, I have come to the firm conclusion that his account to the BBC in his Panorama interview was largely untrue. His decision to give an exaggerated and untruthful account of ill-treatment of the detainee to the BBC is probably explained (at least in part) by the fact that he was seeking to again the attention of the interviewer. I also believe that his invariable approach to the making of a statement is to vary and tailor his account so as to provide the one most likely to be of immediate appeal to the receiving audience. As it seems to me, this is well illustrated by his account of the alleged ill-treatment of Hamzah Joudah Faraj Almalje that he gave during his Panorama interview. In my view, the account given in that interview was largely fictional and was, in substance, a

⁹⁰¹ Lance Corporal Keegan [75/162/5-16]

⁹⁰² Lance Corporal Keegan [75/168-9]

⁹⁰³ Lance Corporal Keegan (ASI000541)

⁹⁰⁴ Lance Corporal Keegan [75/162/20]-[163/1]

⁹⁰⁵ See, for example, Lance Corporal Keegan [75/100/24]-[101/8]; [75/126/2-5]; [75/132/6]; [75/159/14-25]; Lance Corporal Keegan [75/167-168]

⁹⁰⁶ Lance Corporal Keegan [75/88/21-24]

sensationalised fantasy on his part, designed to have a significant and dramatic impact on any audience that heard it.

- 2.612** I am therefore satisfied that Lance Corporal Keegan’s evidence with regard to his allegations of ill-treatment of Hamzah Almalje on the battlefield was both unreliable and untruthful. With the possible exception of his 2004 RMP statement (where the subject was not raised at all), I do not believe that Lance Corporal Keegan sought to tell the truth about these matters in any of the accounts that he gave, including the account given to me under oath. I therefore reject the suggestion that I am able to rely on any of his previous accounts as being truthful or accurate evidence as to how Hamzah Almalje was treated on the battlefield on 14 May 2004.
- 2.613** In reaching this conclusion I have considered not only Lance Corporal Keegan’s demeanour when giving his evidence to me, but also the fact that many areas of his evidence cannot be reconciled with the evidence given by other military witnesses. In fact, the only witness who accepted any of Lance Corporal Keegan’s allegations as partially accurate was Private Aston,⁹⁰⁷ whose evidence, as indicated above, I also regard as unreliable.⁹⁰⁸ All of the other military witnesses who were asked about Lance Corporal Keegan’s allegations specifically and credibly denied having seen any of the incidents of ill-treatment that he had variously alleged to have taken place.⁹⁰⁹
- 2.614** In my view, Lance Corporal Keegan’s evidence was so thoroughly unreliable that I am quite unable to accept any of it as truthful, at least so far as concerns any matter of substance.

The evidence of Hamzah Joudah Faraj Almalje (detainee 772)

- 2.615** As recounted above, Hamzah Joudah Faraj Almalje made the following allegations which appear to relate to his treatment whilst being detained on the battlefield after capture, but before being placed in any vehicle:
- a. He was taken to an area of ground which was damp and salty, near to a vehicle, which he described as a “*little pond which stank,*” where he was made to stay, half-sitting without touching the ground and with his legs crossed;⁹¹⁰ and
 - b. When he made a small movement, something like stretching out his hand, a soldier or soldiers had thrown three stones or rocks at him.⁹¹¹
- 2.616** As indicated above, there was some evidence from the military witnesses that suggested that Hamzah Almalje did spend a short time at a bund line (very likely the Parallel Bund Line) whilst awaiting the arrival of the Warrior AIFVs. It was Hamzah Almalje’s evidence to the Inquiry that he had been made to sit in a small pond. He confirmed that the pond to which he referred had a lot of dirty water in it.⁹¹²
- 2.617** The only evidence capable of supporting the assertion made by Hamzah Almalje that he was held in a small pond was from Private Scott Barlow, who recalled that there was some boggy ground with pooled water between the road and the bund line.⁹¹³ This area would appear to

⁹⁰⁷ Private Aston [62/88-89]

⁹⁰⁸ See Paragraphs 2.578 – 2.584 above

⁹⁰⁹ See, for example, Private Anderson [71/134/18]–[137/3]; Private Dodd (ASI011066-69) [134]–[147]; Private Connelly [66/49-50]; Sergeant Kelly (ASI017365–66) [206]–[210]

⁹¹⁰ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000684) [24]; [19/72-73]

⁹¹¹ Hamzah Joudah Faraj Almalje (detainee 772) [19/73-74]

⁹¹² Hamzah Joudah Faraj Almalje (detainee 772) [20/10/15-18]; [20/13/22-24]

⁹¹³ Private Barlow [72/133/20]–[134/19]; (ASI012318)

have been in the same approximate location as that where the military witnesses stated that Hamzah Almalje was held prior to him being loaded into the Warrior W33.⁹¹⁴

2.618 However, those witnesses who specifically recalled seeing Hamzah Almalje in a ditch/depression near the bund line also told the Inquiry that they did not see any water in the area where they saw Hamzah Almalje detained.⁹¹⁵ In fact, Hamzah Almalje made no mention of the presence of water when he was interviewed by the Royal Military Police in May 2004. The only time he referred to water in that interview was when he stated that he had laid down in the river to hide, just before the battle had begun. In his oral evidence, Hamzah Almalje confirmed that the area where he had laid down was in fact a “*dried waterway*.”⁹¹⁶ In his written Inquiry statement, Hamzah Almalje referred to that area as “*damp and very salty*”, asserting that the area had “*largely dried out*.”⁹¹⁷

2.619 It seems clear that Hamzah Almalje was held in a depression or ditch for a short period of time after he had been taken out of the large derelict building. However, Hamzah Almalje’s original account of that area being largely dried out is completely at odds with his later evidence to the effect that it had been filled with lots of pooled water. Having regard to these obvious contradictions and to the fact that this aspect of Hamzah Almalje’s account was contradicted by all the witnesses who saw him at this stage in his detention on the battlefield, I do not believe that Hamzah Almalje was detained in a pool of water whilst awaiting the arrival of the Warrior AIFVs.

2.620 Hamzah Almalje’s assertion that soldiers had thrown rocks or stones at him, was not corroborated by the evidence of any of those soldiers who escorted Hamzah Almalje on the battlefield, or who saw him detained at the time he was held at a bund line (apart from Lance Corporal Keegan, whose evidence I have rejected for the reasons explained above). I am satisfied that any such behaviour would have been noticed, had it occurred, and I accept the evidence of Sergeant Paul Kelly that if he had become aware of such conduct, he would have dealt with the offending soldier or soldiers at the time and would then have reported it up the chain of command.⁹¹⁸ I have come to the firm conclusion that no such incident occurred in fact and that Hamzah Almalje’s allegation to that effect was false.

The transfer of Hamzah Almalje from the bund line to the Warrior W33

2.621 Private Christopher Dodd was sure that it had been he who had taken the detainee from the bund line to the Warrior W33, but accepted that someone else must have escorted the detainee to the bund line from the large derelict building and remained with him until Private Dodd collected him for transfer to W33.⁹¹⁹

⁹¹⁴ See, for example, the sketch plan drawn by Private Baker (ASI009140) placing the detainee between the derelict building and Route 6

⁹¹⁵ See, for example, Private Marney [73/79/17-18]; Private Schwar [68/33/17-18]

⁹¹⁶ Hamzah Joudah Faraj Almalje (detainee 772) [19/70/12]

⁹¹⁷ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000684) [24]

⁹¹⁸ Sergeant Paul Kelly [64/128]

⁹¹⁹ Private Dodd [65/52-53]; (ASI011052) [61]–[63]

- 2.622** Sergeant Paul Kelly recalled having escorted the detainee (i.e. Hamzah Joudah Faraj Almalje – detainee 772) at some stage, but was unsure whether he had escorted the detainee from the building to the bund line or from the bund line to W33. His recollection at the time of giving his oral evidence was that he had moved both the detainee and Lance Corporal Keegan from “a dugout” to the waiting Warrior.⁹²⁰ As it seems to me, Sergeant Kelly is likely to have had some involvement in escorting Hamzah Almalje. It appears likely that he gave the instruction for Hamzah Almalje to be taken to the Warrior.⁹²¹ However I believe him to be mistaken in his recollection of having personally escorted both Lance Corporal Mark Keegan and Hamzah Almalje to the Warrior. Thus, Sergeant Kelly did not remember Private Dodd being present at the time and did not think that Private Dodd had got into the Warrior with the detainee.⁹²² Given that he was plainly wrong about that, I have come to the conclusion that Private Dodd’s account of Hamzah Almalje’s transfer to the Warrior is more likely to be the correct one.
- 2.623** Private Dodd’s account was also corroborated largely by Private Joseph Connelly, who appears to have been present throughout almost the whole of Hamzah Almalje’s detention on the battlefield. Private Connelly told me that he had been involved in escorting Hamzah Almalje to the Warrior. He said that he had escorted the detainee out of the derelict building himself and had then taken him to Private Dodd, who was standing somewhere out in the open. Private Connelly said that he and Private Dodd had then escorted the detainee to the Warrior, with each of them holding one of the detainee’s arms. According to Private Connelly, he had left Hamzah Almalje in the custody of Private Dodd only after they arrived at the Warrior.⁹²³ Although I am satisfied that Private Connelly did have some involvement with escorting Hamzah Almalje to the Warrior, I believe he may be mistaken in his recollection of having escorted him all the way to the Warrior. Thus, Private Connelly did not recall having seen Lance Corporal Keegan in, or being moved from, the large derelict building at any stage⁹²⁴ and it is clear that Lance Corporal Keegan was moved to the same Warrior as Hamzah Almalje, although I am not able to say by whom.⁹²⁵
- 2.624** The Warrior AIFV, W33, into which Hamzah Almalje was placed for transport back to Camp Abu Naji, was commanded by Sergeant David Perfect. He confirmed that it was his vehicle which had received both the casualty, Lance Corporal Keegan, and the detainee, Hamzah Almalje. He was not confident as to the order in which they had got into his vehicle, but he believed that the detainee had been the first to get in. He was not able to recall who had escorted the detainee into the rear of the vehicle.⁹²⁶
- 2.625** Privates Eric Danquah and Scott Hoolin were the W33 dismounts. They told me that they had been in the rear compartment of the vehicle when Lance Corporal Keegan and the detainee got in. Private Hoolin was seated in the back of W33 when it stopped at the scene of the Southern Battle. According to Private Hoolin, Lance Corporal Keegan had been the first to arrive and get into the vehicle. He told me that he believed that the medic, Private Dodd, had also got in with him and that the detainee had got into the vehicle after that. He said that the detainee had been escorted to the Warrior by one soldier (not Private Dodd) who was holding him by the upper arm.⁹²⁷

⁹²⁰ Sergeant Kelly [64/93/25]–[94/20]; (ASI017350) [132]

⁹²¹ Sergeant Kelly (ASI017351) [134]–[135]

⁹²² Sergeant Kelly (ASI017352) [139]

⁹²³ Private Connelly ASI017812) [58]–[59]

⁹²⁴ Private Connelly [66/49]

⁹²⁵ Lance Corporal Keegan (ASI018079) [95]

⁹²⁶ Sergeant Perfect (ASI015733) [72] [74]; (ASI015731) [68]

⁹²⁷ Private Hoolin [82/106-107]

- 2.626** In his written Inquiry statement, Private Danquah recalled that the casualty (i.e. Lance Corporal Keegan) had arrived at the Warrior together with the detainee and a soldier who was escorting both of them. According to Private Danquah, all three of them got into the vehicle together.⁹²⁸ In his oral evidence, Private Danquah confirmed that Private Dodd had been the soldier who was with Lance Corporal Keegan. He said that they both got into W33 first and the detainee got in after. He was unable to recall if there had been any escorting soldiers with the detainee, but recalled that he had got in the vehicle at the same time as Lance Corporal Keegan and Private Dodd.⁹²⁹
- 2.627** It is evident that there is a certain amount of confusion in the evidence with regard to the precise circumstances leading up to Hamzah Almalje being placed in W33 and those who were involved in that process. I am not able to say for sure exactly which soldiers were actually present when Hamzah Almalje was placed into the Warrior. I accept Private Dodd's evidence that he assisted in the process, not least because it is clear from the evidence of others that he had been in the immediate vicinity of W33 at the relevant time. It may well be the case that Hamzah Almalje was also assisted into W33 by others, including Lieutenant Passmore who was positioned near the Warrior at the time and who told me that he had blindfolded Hamzah Almalje before he was actually placed in the Warrior.
- 2.628** In their Closing Submissions, those representing the Iraqi Core Participants contended that the collective inability on the part of the military witnesses to give a clear account of these various matters was an indication that assaults had actually taken place during this period, including whilst Hamzah Almalje (detainee 772) had been held at the bund line.⁹³⁰
- 2.629** However, I do not believe that the various differences in the accounts given about these events by the military witnesses are in any way an indication of a plan, decision or intention on the part of the military witnesses to conceal instances of assault or ill-treatment by soldiers on Hamzah Almalje. In my view, the fact that there were a number of differences in the various accounts about what took place is perfectly understandable, given that the soldiers in question were trying to recall what had happened and what they had done many years ago at the conclusion of a fast-moving, dangerous and confused period of significant armed conflict. In my view, in all the circumstances, it is not surprising and not in the least bit sinister that there is confusion in the various accounts about precisely what happened when Hamzah Almalje was transferred from the large derelict building to the Warrior AIFV. I am perfectly satisfied that all the military witnesses who gave evidence about how that had been carried out did so to the best of their recollection.

Lieutenant Passmore's evidence

- 2.630** Lieutenant William Passmore told me that he had been present outside W33 when the detainee (i.e. Hamzah Joudah Faraj Almalje – detainee 772) arrived at its rear doors. He said that he had made the decision that the detainee should travel back to Camp Abu Naji in Sergeant David Perfect's Warrior, W33. He told me that his reasons for making that decision were that Sergeant Perfect's vehicle was closer than the other Warrior and that Sergeant Perfect was the more senior of the two Warrior commanders.⁹³¹
- 2.631** He also told me that he decided to blindfold the detainee in order to prevent him from seeing sensitive equipment in the back of the Warrior. He said that he had proceeded to use

⁹²⁸ Private Danquah (ASI023482) [44]

⁹²⁹ Private Danquah [90/197-198]

⁹³⁰ ICP Closing Submissions (36) [129]-[143]

⁹³¹ Lieutenant Passmore (ASI016132) [128]

his penknife to remove part of the detainee’s t-shirt which he had then used to blindfold him.⁹³² According to Lieutenant Passmore, the detainee had said “*No, sir*” when he did this. Lieutenant Passmore believed that this was because the detainee was worried that he was going to hurt him with his penknife.⁹³³ He could not recall if he had put the detainee in the Warrior himself or whether he had passed him to someone else to place him in the Warrior.⁹³⁴

2.632 Lieutenant Passmore’s evidence that Hamzah Almalje had been blindfolded with a piece of his t-shirt was confirmed by Hamzah Almalje’s own evidence, although he recalled it as having occurred at a somewhat earlier stage of his detention, whilst he was being held in a depression in the ground near the “*little pond that stank*”.⁹³⁵ Hamzah Almalje did not appear to remember a knife being used to cut his t-shirt, he referred instead to a soldier “*ripping*” his t-shirt and using it as a blindfold. He also stated in evidence that, shortly afterwards, goggles were placed on his eyes, presumably over, or in place of, the ripped t-shirt.⁹³⁶ However, I see no reason to disbelieve Lieutenant Passmore’s evidence that he had used a knife in order to cut a piece of material from the detainee’s t-shirt for use as a blindfold before Hamzah Almalje was placed in W33.

2.633 As indicated above, one of Lance Corporal Keegan’s allegations was that Hamzah Almalje’s head had been covered with a sandbag during the latter part of his detention on the battlefield. In his written Inquiry statement, Sergeant Paul Kelly also said that he thought that a sandbag had been used to blindfold the detainee.⁹³⁷ However, I have come to the firm conclusion that this is not correct, not least because Hamzah Almalje made no such allegation himself (and, nor did any of the other military witnesses) and went on to state emphatically in evidence that the soldiers had not put any bag on his head.⁹³⁸ I am therefore satisfied that Hamzah Almalje was not blindfolded by having a sandbag placed over his head at any point during his detention.

2.634 In the course of their written Closing Submissions, those representing the Iraqi Core Participants contended that Lieutenant Passmore’s manifest distress whilst giving evidence suggested that he had, in fact, seen and witnessed some deeply upsetting incident, such as the detainee being assaulted with rocks before being placed in W33, and was consciously or unconsciously suppressing that knowledge.⁹³⁹

2.635 I have no hesitation in rejecting that submission. As I have already indicated earlier in this Report, I found Lieutenant Passmore to be a truthful witness who showed genuine distress when giving his evidence to me.⁹⁴⁰ I am satisfied that his distress was caused by his present recollection of the nature and circumstances of the events which he had experienced and in which he had been involved during the Southern Battle. I am also sure that Lieutenant Passmore had decided to and did tell me the whole truth about what he had seen and done during that battle on 14 May 2004. I do not believe that he concealed any matter of significance when doing so. It was obvious that Lieutenant Passmore still experiences genuine distress at the memory of many aspects of the overall experience that he underwent that day. Thus, when recalling his involvement with the detainee he was, in my view, clearly upset

⁹³² Lieutenant Passmore [74/37/16-25]; [74/43-44]; (ASI016132) [129]

⁹³³ Lieutenant Passmore [74/43/22]–[44/18]

⁹³⁴ Lieutenant Passmore [74/42/5-13]

⁹³⁵ Hamzah Joudah Faraj Almalje (detainee 772) [20/73/7-9]; [20/11/7-11]

⁹³⁶ Hamzah Joudah Faraj Almalje (detainee 772) [19/73-74]; [20/11]; [20/54]

⁹³⁷ Sergeant Kelly (ASI017350) [133]

⁹³⁸ Hamzah Joudah Faraj Almalje (detainee 772) [20/54/23-24]

⁹³⁹ ICP Closing Submissions (48) [183]–[188]

⁹⁴⁰ See paragraphs 2.420 – 2.424 above

at the apparent reaction of the detainee to what he was doing, as the following passage in his evidence shows:

Q. And as you moved toward him to cut his T-shirt with your pen knife, in order to blindfold him –

A. That's right, sir, yes.

Q. – he said, "No, sir"?

A. Yes.

Q. In English?

A. Yes.

Q. And you assumed that he was worried that you were going to hurt him with your pen knife?

A. That's what I thought, yes.

Q. Do you have any reason to think or to fear – are you all right?

A. Yes.

Q. Okay. Do you have any reason to fear that he had been maltreated before you cut his shirt with your pen knife?

A. No, sir. But it upset me the fact that when I took a pen knife out, that was his reaction.

Q. Yes.

A. But then, why wouldn't that be his reaction, you know?

Q. Yes, I understand.⁹⁴¹

Evidence of other incidents involving Hamzah Almalje (detainee 772) while being moved from the large derelict building to the Warrior, W33

2.636 Although the evidence of the majority of military witnesses suggested that Hamzah Joudah Faraj Almalje was moved from the large derelict building to W33 without incident, Privates Christopher Dodd and Scott Hoolin did refer to a couple of events which they said took place whilst Hamzah Almalje was being moved to the Warrior. I have therefore set out the evidence in relation to these two incidents below.

Private Dodd's account of Hamzah Almalje's fall on the way to the Warrior W33

2.637 Private Christopher Dodd said that he had held Hamzah Joudah Faraj Almalje's right arm with his left hand as he walked him over the bund line to the Warrior. He told me that, as they were going over the bund line, Hamzah Almalje lost his footing and this had caused Private Dodd to stumble and fall. Because Private Dodd did not want to let go of Hamzah Almalje,

⁹⁴¹ Lieutenant Passmore [74/43/22]–[44/18]

he had ended up pulling the detainee over with him and fell with the detainee landing on top of him. Private Dodd said that he had fallen on his (right) hand and had still been holding his weapon at the time.⁹⁴² According to Private Dodd, he swore at the detainee and told him to get up. He did not consider his actions to have involved any particularly aggressive use of force.⁹⁴³

2.638 After they got up, Private Dodd shook the detainee to get a firm grip of him and to let him know that they were not messing around. In his first Royal Military Police statement, Private Dodd stated that the detainee had been trying to break free.⁹⁴⁴ However, in his evidence to the Inquiry he said that he no longer remembered that to be the case, although it was possible that he had forgotten it. Private Dodd told me that he simply could not now remember if the detainee had been trying to break free or whether he had merely lost his footing.⁹⁴⁵

2.639 Private Dodd stated that he continued to hold the detainee by the arm, in the same manner as before. Private Dodd then walked the detainee up the slope by the side of the road to W33, where he guided the detainee to the back of the vehicle and, because the detainee was blindfolded, helped him to step up into the rear compartment.⁹⁴⁶

Account of Staff Sergeant John Grant RMP (SIB)

2.640 Staff Sergeant John Grant told me that on the evening of 14 May 2004, Private Christopher Dodd came to speak to him at Camp Abu Naji. Private Dodd told him that he had pushed a detainee too hard when placing him inside the vehicle and that the detainee had fallen over as a result. Staff Sergeant Grant recalled that Private Dodd had seemed shocked and “*was incoherent at times because he was so upset.*”⁹⁴⁷ After listening to Private Dodd’s account, Staff Sergeant Grant decided that the matter did not warrant any further investigation, because he considered that Private Dodd’s actions had not involved the use of any more force than was necessary.⁹⁴⁸ However, he recorded the conversation in his pocket notebook.⁹⁴⁹ It may well have been this conversation which prompted the Royal Military Police to take a statement from Private Dodd on 22 May 2004 about any dealings he had had with the prisoners.⁹⁵⁰

2.641 Private Dodd accepted in his evidence that he must have gone to see Staff Sergeant Grant, but had no actual recollection of having done so.⁹⁵¹

2.642 Sergeant Grant also recalled that a Senior Non-Commissioned Officer (“NCO”), whom he believed to have been Private Dodd’s section sergeant, had discussed the matter with him. According to Staff Sergeant Grant, the sergeant had been concerned for the welfare of Private Dodd and thought that he should see the Regimental Medical Officer (“RMO”).⁹⁵² For his part, Sergeant Kelly had no recollection of having spoken to Staff Sergeant Grant on the evening of 14 May 2004. He said that he would have spoken to Private Dodd on the evening of 14 May

⁹⁴² Private Dodd [65/55-56]

⁹⁴³ Private Dodd [65/62-63]

⁹⁴⁴ Private Dodd (MOD005857)

⁹⁴⁵ Private Dodd [65/93/12-14]

⁹⁴⁶ Private Dodd (ASI011052) [63]

⁹⁴⁷ Staff Sergeant Grant [109/145/20-21]

⁹⁴⁸ Staff Sergeant Grant (ASI021838-39) [34]

⁹⁴⁹ Staff Sergeant Grant (MOD018123)

⁹⁵⁰ Private Dodd (MOD005857-58)

⁹⁵¹ Private Dodd [65/65/21]-[66/5]

⁹⁵² Staff Sergeant Grant [109/151/19]-[152/22]; (ASI021838) [33]

during the informal debrief of the platoon and that Private Dodd had not said anything about having reported himself to the Royal Military Police.⁹⁵³

Private Dodd's injuries

- 2.643** Private Christopher Dodd recalled having sustained two injuries on 14 May 2004. When Private Dodd made his statement to the Royal Military Police (“RMP”) on 22 May 2004, he told them that he had hurt his right hand when the detainee fell on it. In his written Inquiry statement, Private Dodd stated that the fall had caused his hand to swell.⁹⁵⁴ He confirmed in evidence that the injury to his (right) hand had been caused when he used it to break his fall and that he fell with the weight of all his own kit and the detainee on top of him. He said that the injury was to the back of his right hand.⁹⁵⁵ This particular injury was apparently recorded in an email sent by Major Adam Griffiths on 15 May 2004, in which he noted that Private Dodd had a badly bruised hand.⁹⁵⁶
- 2.644** Private Dodd also told me that the following day he had noticed that he had some small splinters in his left hand caused by the same grenade that had exploded and injured Lance Corporal Mark Keegan.⁹⁵⁷ However, he made no mention of any injury to his left hand caused by an exploding grenade in either his Royal Military Police statements or his written Inquiry statement. He said that this was because it was a superficial wound, had not warranted any medical attention and was a petty wound when compared with the injuries suffered by others in the battle and, more generally, during the tour. He pointed out that the shards of shrapnel were so tiny that he had not even noticed them until the day after the battle.⁹⁵⁸
- 2.645** Sergeant Paul Kelly told me that he knew that Private Dodd had suffered shrapnel injuries to his hand, although he was not sure whether he had learned about it whilst on the battlefield or later on that day.⁹⁵⁹ He said that he was sure that the Private Dodd’s hand injury was caused by shrapnel. Sergeant Kelly also said that he had not heard anything on the evening of 14 May to suggest that Private Dodd had actually hurt his hand whilst escorting a detainee. For his part, Private Dodd was sure that he had not told Sergeant Kelly anything about the grenade injury, nor had he shown it to him that evening. Private Dodd believed that if Sergeant Kelly did see any injury that evening, it must have been the injury that he suffered when moving the prisoner.⁹⁶⁰

Conclusions with regard to Private Dodd's evidence

- 2.646** On behalf of the Iraqi Core Participants it was submitted that the circumstances relating to Private Christopher Dodd’s “*self-reporting*”, together with the inconsistent accounts about his hand injuries and whether the detainee had been trying to escape or not, indicated that something much more serious than merely tripping and falling with the detainee had actually occurred. It was suggested that Private Dodd must have been covering up for having done something “*wrong and shameful*” to the detainee, although it was not suggested exactly what that misconduct might have been.⁹⁶¹

⁹⁵³ Sergeant Kelly [64/59/8]–[61/10]; [64/61/11]–[62/21]

⁹⁵⁴ Private Dodd (ASI011052) [61]

⁹⁵⁵ Private Dodd [65/57-58]; (ASI011052)

⁹⁵⁶ (MOD048012)

⁹⁵⁷ Private Dodd [65/34]; [65/58-59]

⁹⁵⁸ Private Dodd [65/59-60]

⁹⁵⁹ Sergeant Kelly [64/55/14]–[57/10]

⁹⁶⁰ Private Dodd [65/34-35]

⁹⁶¹ ICP Closing Submissions (40) [148]–[163]

2.647 It is apparent that Private Dodd did speak to Staff Sergeant John Grant about his handling of the detainee on 14 May 2004. Staff Sergeant Grant had a clear recollection of the event and I see no reason to doubt his memory of it. As Staff Sergeant Grant recalled, Private Dodd reported that he felt he had pushed the detainee a little too hard when he was getting him into the vehicle. Having considered what he had been told by Private Dodd, Staff Sergeant Grant came to the conclusion that there was nothing that warranted any further action on his part. He gave his reasons for that decision, as follows:

“He was a young soldier and he had been involved in a ferocious exchange. He was not concerned with his own well-being but that of the enemy. He relayed an account of a push into a vehicle which resulted in the individual falling as he resisted, and I did not consider that what I had been told justified further investigation at that time. As far as I was concerned from his brief description of the events, he had used necessary force to place a detainee into a vehicle.”⁹⁶²

2.648 It is apparent that Private Dodd’s admitted conduct did not give rise to any feeling of concern on the part of Staff Sergeant Grant. I accept that it is likely that Private Dodd’s distress at the time was simply a reaction to the events of the day, as suggested by Private Dodd himself,⁹⁶³ although it may be that he was also concerned that the detainee may have come to some harm whilst in his care. In my view, it is likely that the incident about which Private Dodd spoke to Staff Sergeant Grant is the same incident as that which he described in evidence to the Inquiry and that the incident itself was an accident. The fact that Hamzah Almalje himself did not make any complaint at all about such an incident is a clear indication that this was an unintentional and very minor incident indeed.

2.649 I am satisfied that there is no substance in the submission that Private Dodd gave varying accounts of what happened in an attempt to cover up some more serious misconduct on his part. In my view, the general nature of the incident, as related to Staff Sergeant Grant, is essentially the same as the one that Private Dodd described to the Royal Military Police and to the Inquiry thereafter. Although some of the detail in his later account differed from that which he told Staff Sergeant Grant, such as the possible reason for Hamzah Almalje having tripped and precisely where it occurred, I do not believe that this creates a significant inconsistency – the substance remains much the same.

2.650 Furthermore, Private Dodd had no reason to understate what had happened when he reported the matter to Staff Sergeant Grant that evening. The reason he spoke to Staff Sergeant Grant was that he was distressed and wanted to talk about what had happened when he had been dealing with the detainee on the battlefield. In the circumstances, I consider it more likely than not that Private Dodd intended to be and was candid in his account to Staff Sergeant Grant about what had happened. In the event, Staff Sergeant Grant’s decision that no further action on his part was required is the clearest possible indication that he was satisfied there had been nothing remiss in the manner of Private Dodd’s handling of the detainee.

2.651 Similarly, I am satisfied that Private Dodd did not give incompatible accounts with regard to the injuries he sustained. He reported to the Royal Military Police that he had landed on his hand and had hurt it when he fell. He later explained the details of the resulting injury in his written Inquiry statement. I accept his evidence that he did not think it necessary to discuss the very minor shrapnel injury he had suffered to his left hand and that he had only

⁹⁶² Staff Sergeant Grant (ASI021838-39) [34]

⁹⁶³ Private Dodd [65/62/21-24]

mentioned it in his evidence to the Inquiry because that was the first time it had been raised, having been mentioned in Sergeant Paul Kelly's witness statement.⁹⁶⁴

2.652 It follows that I am satisfied that Private Dodd did sustain an injury to his right hand in the manner described by him in evidence, namely when he tripped and fell to the ground whilst escorting Hamzah Almalje to the Warrior. Furthermore, I am satisfied that there is nothing to suggest that Private Dodd deliberately ill-treated Hamzah Almalje in any way when escorting him to and placing him in W33.

Private Scott Hoolin's evidence

2.653 Private Scott Hoolin stated that, as the detainee (Hamzah Joudah Faraj Almalje – detainee 772) was escorted into the Warrior, his chest and the front of his face had struck the door of the Warrior. According to Private Hoolin, the escorting soldier was still holding the detainee's arm, but the soldier had been looking in a different direction whilst talking to someone else, with the result that the detainee had collided with the door. Private Hoolin did not think it was a deliberate act because there was no force involved. He thought that it had happened because the soldier was not looking where he was going at the time; he could see that the soldier's head was turned and he believed it to have been an accident. He did not think that the detainee had sustained any injuries as a result of this incident.⁹⁶⁵

2.654 In his written Inquiry statement to the Inquiry, Private Hoolin suggested that the escorting soldier had simply "*lost concentration*".⁹⁶⁶ When asked why he had later said in his evidence that he remembered having seen the escorting soldier looking in a different direction, Private Hoolin said that he saw no real difference between the two versions, it was merely a matter of wording.⁹⁶⁷

Conclusions in relation to Private Hoolin's evidence

2.655 When he made a statement to the Royal Military Police on 30 June 2004, Private Soctt Hoolin made no mention of having seen the detainee collide with the rear door of the Warrior. It seems likely that he was asked about the detainee at this stage, because his Royal Military Police statement includes his recollection that the detainee had been collected from the Southern Battle.⁹⁶⁸ When asked about this omission, Private Hoolin was unable to say why he had not mentioned it, but suggested that perhaps he had not considered it to be relevant.⁹⁶⁹

2.656 Private Hoolin told me that he had "*no idea*" as to the identity of the soldier who had been escorting the detainee when he walked into the rear door of the Warrior; he had never seen him before.⁹⁷⁰ However, it was clear that, according to Private Hoolin, the escorting soldier was not Private Christopher Dodd. According to Private Hoolin, the medic (who he later found out was called Private Dodd) was a different person and had not been escorting the detainee at the time.⁹⁷¹ Accordingly, it is not possible to reconcile Private Hoolin's evidence with either Private Dodd's account of having fallen over with the detainee before reaching the Warrior, or with the Staff Sergeant John Grant's recollection of having been told that Private Dodd had

⁹⁶⁴ Private Dodd [65/56-59]

⁹⁶⁵ Private Hoolin [82/106-10]

⁹⁶⁶ Private Hoolin (ASI009563) [57]

⁹⁶⁷ Private Hoolin [82/141-142]

⁹⁶⁸ Private Hoolin (MOD019414)

⁹⁶⁹ Private Hoolin [82/110-11]

⁹⁷⁰ Private Hoolin [82/107/12-13]

⁹⁷¹ Private Hoolin [82/103]

pushed the detainee a little too hard as he got into the Warrior. Private Hoolin’s account of this incident is therefore not corroborated by any of the military witnesses who were present at the time, including Private Eric Danquah who was inside the Warrior with Private Hoolin when Hamzah Joudah Faraj Almalje arrived and who saw no such incident.⁹⁷²

2.657 Most importantly, Hamzah Almalje did not make any complaint about or recall any such incident at all. This strongly suggests that no such incident took place and that Private Hoolin must have been mistaken about it or has confused it with something that occurred on another occasion. As it seems to me, it is likely that the latter is the case.

The evidence of Hamzah Joudah Faraj Almalje (detainee 772)

2.658 Hamzah Joudah Faraj Almalje did not make any allegation of assault or ill-treatment whilst being moved to the Warrior from the area of the “*little pond which stank*”. He did not recall any incident such as that described by Private Christopher Dodd, of falling over on the way to the Warrior and being sworn at and shaken by Private Dodd, nor did he recall having been allowed to collide with the rear door of the Warrior, as described by Private Scott Hoolin.

2.659 Hamzah Almalje did remember that he had been taken to the Warrior by two soldiers. He said that he had been picked up by them and moved in such a way that his feet did not touch the ground. He did not expand further upon this and seemed to accept that it was just part of a general process of handling him in order to get him to the Warrior. He was unable to remember any details about how he arrived at or was placed in the vehicle.⁹⁷³

2.660 According to Private Dodd, he had walked Hamzah Almalje to the Warrior by guiding him with his left hand with which he held Hamzah Almalje’s right arm.⁹⁷⁴ Sergeant Paul Kelly also claimed to have walked Hamzah Almalje to the Warrior and to have guided him by hand.⁹⁷⁵ As stated above, I accept that Hamzah Almalje fell whilst being moved to W33, as described by Private Dodd, although I am unable to say why Hamzah Almalje was unable recall this incident. There was no other evidence to suggest that Hamzah Almalje was actually lifted off of the ground at any point, as he described in his evidence. In any event, I am satisfied that Hamzah Almalje was not handled in an inappropriate manner whilst being moved from the battlefield into the Warrior for transport to Camp Abu Naji.

Sub-issue 4: Allegations of assault whilst in the Warrior (W22) during the journey back to Camp Abu Naji on 14 May 2004

2.661 There were five people who travelled in the rear compartment of W33 while it made its journey back to Camp Abu Naji.⁹⁷⁶ As already indicated, Privates Eric Danquah and Scott Hoolin were the W33 dismounts. They had remained inside the vehicle throughout the entire time it was present at the scene of the Southern Battle. They were joined for the journey back to Camp Abu Naji by Hamzah Joudah Faraj Almalje (detainee 772), Private Christopher Dodd and the casualty, Lance Corporal Mark Keegan. The vehicle was commanded by Sergeant David Perfect, who was positioned in the turret of the vehicle along with the gunner, Private John Williams. The driver of W33 was Lance Corporal Marcus Scott.

⁹⁷² Private Danquah (ASI023482) [44]

⁹⁷³ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000685) [30]

⁹⁷⁴ Private Dodd [65/56/3-5]

⁹⁷⁵ Sergeant Kelly [64/94/21-25]; (ASI017351) [136]

⁹⁷⁶ Lance Corporal Keegan had originally stated that there were eight people in the back of the Warrior (MOD033727). However, in his evidence to the Inquiry he said that there were two or three dismounts in the rear [75/194/11-13]

2.662 W31 and W33 left the location of the Southern Battle in convoy. On the way back to Camp Abu Naji, they were involved in a further contact in the immediate vicinity of the Danny Boy VCP, the details of which are set out later in this Report. This, together with a mechanical problem which meant that W33 could only use reverse gears, significantly delayed the journey back to Camp Abu Naji. Sergeant Perfect estimated that they spent approximately 90 minutes at the Danny Boy VCP, before being able to continue on their way back to Camp Abu Naji. Private Danquah said that it felt as though the journey “took forever”.⁹⁷⁷ In all likelihood Hamzah Almalje and the accompanying soldiers spent approximately an hour and a half to two hours in the rear of the Warrior after having left the scene of the Southern Battle before eventually arriving back at Camp Abu Naji.⁹⁷⁸

2.663 The evidence about where each individual was seated in the rear of W33 was somewhat conflicting. The rear compartment of the type of Warrior in which they travelled back to Camp Abu Naji is shown in the photograph below. The photograph is taken from the rear of the Warrior, facing towards its front:

Figure 19: MOD033864

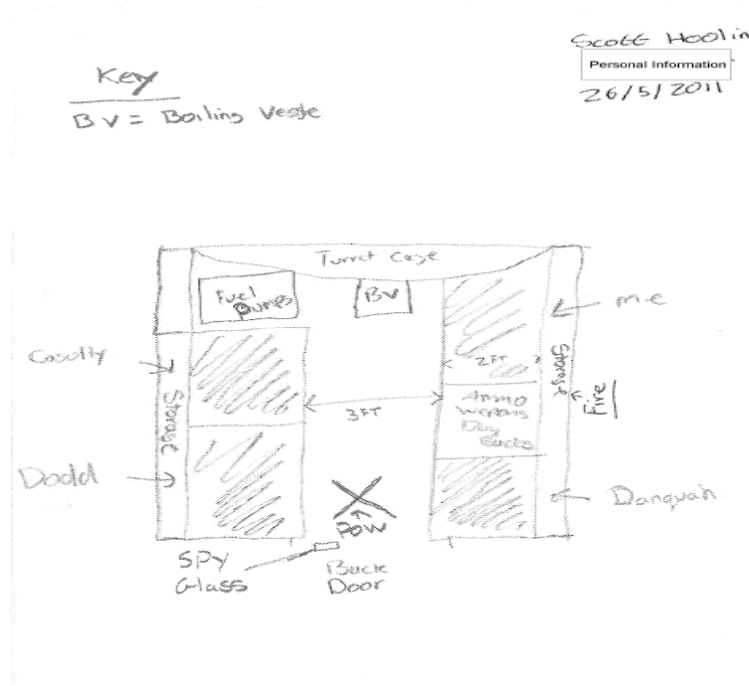


⁹⁷⁷ Private Danquah [90/264/21-24]

⁹⁷⁸ Sergeant Perfect (AS1015738) [87]; See also the relevant log entries: It looks as though W33 left the location of the Southern Battle and was already engaged at Danny Boy VCP at approximately 19:10hrs (MOD018935). They were extracting by 19:47hrs (MOD019785-89); (MOD018935) and arrived back at Camp Abu Naji at approximately 20:50hrs (MOD018958)

2.664 Private Hoolin also provided the Inquiry with a sketch plan of his recollection of where everyone had been seated, as follows:

Figure 20: ASI009575



2.665 It is almost common ground that Lance Corporal Keegan and Private Dodd were seated together on one side of the Warrior,⁹⁷⁹ although Private Dangoah believed that Private Dodd was nearest to the front of the vehicle.⁹⁸⁰ It was also generally agreed that Private Dangoah was seated on the bench seat opposite them.

2.666 Hamzah Almalje was blindfolded when he was guided into W33 and therefore was unable to see inside the vehicle. However, he did recall that he had been “pushed into a seat” when he was placed in the rear of the Warrior.⁹⁸¹ In this he differed from Private Hoolin whose recollection was, as illustrated in his sketch plan above, that Hamzah Almalje was made to kneel at the rear of the Warrior, between the two bench seats.⁹⁸² Private Dodd and Lance Corporal Keegan also both recalled that to be the case.⁹⁸³

2.667 However, Private Dangoah agreed with Hamzah Almalje’s evidence that he was seated on one of the seats. According to Private Dangoah, he sat next to Hamzah Almalje in the Warrior. Sergeant Perfect also believed that Hamzah Almalje had been placed on one of the seats in the rear of the vehicle.⁹⁸⁴

2.668 It is not possible to be certain about precisely where Hamzah Almalje was placed inside the vehicle. However, it is clear that the journey back to Camp Abu Naji was a long and uncomfortable one for everybody in the rear compartment of the Warrior. Hamzah Almalje made no complaint about having being made to kneel on the floor of the vehicle and I think that it is very unlikely that he was made to do so against his will. Certainly he was not made to

⁹⁷⁹ Lance Corporal Keegan [75/194]

⁹⁸⁰ Private Dangoah [90/196-197]

⁹⁸¹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000685) [30]

⁹⁸² Private Hoolin [82/118]

⁹⁸³ Private Dodd [65/68]; Lance Corporal Keegan [75/194]

⁹⁸⁴ Private Dangoah [90/200-209]; [90/250]; Sergeant Perfect [76/74]

kneel on the floor as some form of physical punishment or deliberate ill-treatment. If he did kneel on the floor at any stage, it is likely that the reason for that was as suggested by Private Hoolin, namely to enable Lance Corporal Keegan to spread out more because of his injury, thus leaving insufficient room for Hamzah Almalje on any of the seats.⁹⁸⁵

2.669 Private Hoolin recalled that the piece of cloth, that had been used to restrain Hamzah Almalje's wrists, was replaced by plasticuffs before the Warrior set off. He was unable to recall who did this, but said that the detainee's hands were plasticuffed to the front at this stage.⁹⁸⁶ Sergeant Perfect and Private Danquah also recalled the detainee being plasticuffed to the front of his body whilst he was in the Warrior.⁹⁸⁷

Incidents in the rear of the Warrior W33

Provision of food/water

2.670 Sergeant David Perfect confirmed that, once Hamza Joudah Faraj Almalje (detainee 772) had been placed in W33, the detainee became his responsibility until being handed over to the appropriate authority on arrival at Camp Abu Naji.⁹⁸⁸ However, from his position in the turret, Sergeant Perfect was unable to see or hear what was actually happening in the rear compartment of his Warrior. He could communicate with his dismounts by radio, by pressing a button to speak over the intercom, or they were able to attract his attention by tapping his leg.⁹⁸⁹

2.671 Despite the fact he was not positioned in the rear compartment of the Warrior, Sergeant Perfect said that he had taken steps to ensure that Hamzah Almalje was provided with water on two separate occasions during the journey back to Camp Abu Naji. The first occasion was when Hamzah Almalje was loaded into the vehicle and the second time was when the convoy halted at the Danny Boy VCP. He said that he had seen Hamzah Almalje drinking water on the first occasion, when he ducked down from the turret. However, on the second occasion he had given an order for the detainee to be provided with more water, but did not see whether the order had actually been carried out.⁹⁹⁰ Sergeant Perfect also told me that he had passed down some chocolate to Private Eric Danquah to give to the detainee.⁹⁹¹

2.672 Private Scott Hoolin said that he did not give the detainee any water and did not recall anyone else doing so.⁹⁹² However, he did remember the detainee asking for water, saying "*mister, mister, water, water,*" and that the soldiers' response had been to shout "*no.*" Private Hoolin said that the detainee had nevertheless persisted in asking for water.⁹⁹³

2.673 Private Danquah also recalled the detainee saying "*mister, mister*" and, because the detainee was exhausted and sweating at the time, Private Danquah understood him to be asking for water. According to Private Danquah and Lance Corporal Mark Keegan, Private Christopher Dodd had responded by telling the detainee to "*shut the fuck up*" in loud voices. Private Danquah went on to confirm that the detainee had not been provided with any water.⁹⁹⁴

⁹⁸⁵ Private Hoolin [82/120]

⁹⁸⁶ Private Hoolin [82/116-117]

⁹⁸⁷ Sergeant Perfect [76/33]; Private Danquah [90/199]

⁹⁸⁸ Sergeant Perfect [76/35/12-16]

⁹⁸⁹ Sergeant Perfect [76/40-41]

⁹⁹⁰ Sergeant Perfect [76/75]; [76/39-40]; (ASI015733) [72]; (ASI015738) [89]

⁹⁹¹ Ibid.

⁹⁹² Private Hoolin [82/122]

⁹⁹³ Private Hoolin [82/123]; [82/126]

⁹⁹⁴ Private Danquah (ASI023484) [55]; [90/211]; [90/221-222]

- 2.674** In his written Inquiry statement, Lance Corporal Keegan said that the detainee had shouted out in a high pitched voice at various times, asking for water.⁹⁹⁵ A number of people had shouted back “*no, fuck off*” every time he did so. In his oral evidence, Lance Corporal Keegan was less clear about what exactly he had seen or heard, but still believed that Hamzah Almalje might well have asked for water.⁹⁹⁶
- 2.675** Private Dodd said that he had no recollection of Hamzah Almalje asking for water at any stage, nor of him being given any.⁹⁹⁷

Physical assaults on Hamzah Almalje (detainee 772)

- 2.676** Private Christopher Dodd said that there had been some limited physical contact with Hamzah Joudah Faraj Almalje during the journey. He accepted that, on a couple of occasions, he had pushed the top half of Hamzah Almalje’s body and head back down into the space where he was kneeling. Private Dodd said that he had done this because Hamzah Almalje had been wriggling about at the time, probably because he was uncomfortable. Private Dodd thought that he had sworn at Hamzah Almalje and shouted at him in English to keep still. He said that Hamzah Almalje’s head had not come into contact with the floor when he pushed him down. He thought that it was possible that the detainee had said something like “*mister, mister*” and that his response would have been to tell the detainee to shut up.⁹⁹⁸
- 2.677** Physical contact of a more serious nature with the detainee was alleged by Lance Corporal Mark Keegan. In his written Inquiry statement he claimed that someone had hit the detainee with a rifle butt. He may have suggested earlier that it had been Private Dodd who had struck the detainee in this fashion,⁹⁹⁹ but at the time of giving his oral evidence was unable to say if this was correct or not.¹⁰⁰⁰ During his oral evidence to the Inquiry, Lance Corporal Keegan stated that he could not now recall having seen the detainee being hit with a rifle butt at all.¹⁰⁰¹
- 2.678** Private Eric Danquah also recalled the detainee having been hit during the journey back to Camp Abu Naji. He told me that when the detainee had asked for some water, Lance Corporal Keegan responded by hitting him on the head with a wooden baton. This had quietened the detainee for a while, but then he had resumed speaking. According to Private Danquah, Lance Corporal Keegan then struck the detainee again with the wooden baton to keep him quiet and, at that point, Private Dodd had joined in. Private Danquah was not sure if Private Dodd used the same baton or where the blows had landed on the detainee’s body. Private Danquah estimated that Lance Corporal Keegan had struck the detainee in this fashion between three and five times. He could not recall how many times Private Dodd had struck the detainee. He said that the blows had the effect of quietening the detainee down.¹⁰⁰²

⁹⁹⁵ Lance Corporal Keegan (ASI018080-81) [103]–[104]

⁹⁹⁶ Lance Corporal Keegan [75/148]

⁹⁹⁷ Private Dodd [65/72/14-17]; (ASI011054) [73]–[74]

⁹⁹⁸ Ibid.

⁹⁹⁹ Lance Corporal Keegan (MOD033749)

¹⁰⁰⁰ Lance Corporal Keegan [75/128-131]; NB – it is unclear whether Lance Corporal Keegan was in fact referring to the incident in the back of the AIFV Warrior, or whether he was referring to the incident on the battlefield where he alleged that Private Dodd hit the detainee with a rock

¹⁰⁰¹ Lance Corporal Keegan [75/88-90]

¹⁰⁰² Private Danquah [90/211-216]

Conclusions in relation to events in the back of the Warrior

Provision of food/water

- 2.679** I am satisfied that Hamzah Joudah Faraj Almalje (detainee 772) did ask for water during the journey back to Camp Abu Naji. Several of the military witnesses recalled him having done so and each recalled the manner in which he had requested the water in similar terms.
- 2.680** I am also satisfied that Hamzah Almalje was refused water each time that he asked for it. According to Private Scott Hoolin, Hamzah Almalje was refused water because they did not have any water to give him.¹⁰⁰³ Private Eric Danquah explained that they did not have any water, either for themselves or for the detainee, because their supply of water had been used to extinguish the fire which had broken out earlier that day in the back of the Warrior.¹⁰⁰⁴ I am satisfied that this was indeed the case and that there was simply no longer any water available in W33 at the time.
- 2.681** Although Sergeant David Perfect said that he had seen water being given to the detainee at the beginning of the journey, I believe him to have been mistaken about that. It may well be the case that he directed that water was to be given to the detainee, but I accept the evidence that there was no water actually available at the time.
- 2.682** Nor do I think that Sergeant Perfect gave Hamzah Almalje some chocolate during the journey back to Camp Abu Naji, despite Sergeant Perfect's claim to have done so. None of the other witnesses recalled this having occurred and I believe that Sergeant Perfect was again mistaken in his belief that this had happened. However, I do not accept the suggestion that Sergeant Perfect was dramatising or exaggerating his evidence in order to shield either himself or the other soldiers from blame for some form of ill-treatment of the detainee.¹⁰⁰⁵ Sergeant Perfect struck me as a decent man who tried to give a truthful account of what had happened a long time ago. As it seems to me, the most likely explanation is that he simply confused what happened on that occasion with some other incident in which he had been involved.
- 2.683** It was Private Hoolin's opinion that, even if water had been available in the Warrior, he would not have given any to the detainee at that stage. Equally, he would have been surprised if he had been asked to give the detainee chocolate. As he understood it, the provision of comforts such as cigarettes, chocolate and water was prohibited, because it would make a detainee "*relaxed before they get processed.*"¹⁰⁰⁶ However, notwithstanding Private Hoolin's evidence, I am satisfied that this was not a case of Hamzah Almalje having been refused water during the journey back to Camp Abu Naji, even though water was available: I am sure that he was not given any water for the sole reason that there was in fact none to give him.¹⁰⁰⁷
- 2.684** However, I am satisfied that Hamzah Almalje was shouted and sworn at by some, if not all, of the soldiers in the rear of the Warrior when refusing his requests for water. It was also clear from the evidence that Hamzah Almalje was sworn at on a number of occasions during the

¹⁰⁰³ Private Scott Hoolin [82/123/8-16]

¹⁰⁰⁴ Private Danquah [90/187]

¹⁰⁰⁵ ICP Closing Submissions (62) [240] onwards

¹⁰⁰⁶ Private Hoolin [82/123/17]-[24/2]

¹⁰⁰⁷ ICP Closing Submissions (66) [259] onwards which link this evidence with training material for the handling of POWs in an interrogation facility (MOD047095) and general observations about maintaining the shock of capture

journey.¹⁰⁰⁸ For example, Private Christopher Dodd admitted that he believed he had sworn at the detainee because he was fidgeting.¹⁰⁰⁹

Physical assaults on Hamzah Almalje

2.685 As I have already indicated, Private Christopher Dodd admitted that he had pushed Hamzah Joudah Faraj Almalje down into the space in which he was kneeling on a couple of occasions. He said that he had done so because Hamzah Almalje was wriggling. Hamzah Almalje did not recall kneeling on the floor of the Warrior and did not describe being pushed in any way whilst in the rear of the vehicle. It is very likely that Private Dodd was mistaken, given that his account is not corroborated by either Hamzah Almalje himself or by any of the other soldiers present in the back of the Warrior. However, it may be that at some stage during the journey Private Dodd needed to ensure that Hamzah Almalje remained still and I accept his evidence that, if he did push down on Hamzah Almalje’s shoulders, he did so only to prevent Hamzah Almalje from wriggling or standing up.

2.686 I do not accept Lance Corporal Mark Keegan’s evidence that Hamzah Almalje was hit with the butt of a rifle whilst in the rear of the Warrior. Hamzah Almalje did not suggest that any such assault had taken place (although he did claim to have been struck on the head with a plastic water bottle) and, as I have already indicated, Lance Corporal Keegan was not a credible witness. As was invariably the case with Lance Corporal Keegan, his evidence about this particular incident varied significantly over time. He failed to mention the incident at all in his initial interview with the Royal Military Police (“RMP”)¹⁰¹⁰ and was unable to give any explanation for that omission.¹⁰¹¹ In his interview with the RMP Special Investigation Branch (“SIB”) on 10 April 2008, Lance Corporal Keegan said that he initially believed that Private Dodd might have been the person responsible for hitting Hamzah Almalje, but was no longer sure if it had been him or one of the dismounts.¹⁰¹² The allegation was denied by Private Dodd.¹⁰¹³ In his written Inquiry statement, Lance Corporal Keegan said that he was unsure who had hit the detainee with the rifle butt, but maintained that the incident had happened.¹⁰¹⁴ Finally, in his evidence to me, he said that he could no longer remember the detainee being hit by a rifle butt at all.¹⁰¹⁵ The variations in his accounts are such that I am unable to rely upon any of them as reliable or truthful evidence.

2.687 I also do not accept Private Eric Danquah’s evidence that Hamzah Almalje was hit with a wooden baton whilst in the rear of the Warrior. Again, no such assault was alleged by Hamzah Almalje (apart from the allegation of having been struck on the head with a plastic water bottle) and I set out my other reasons for rejecting Private Danquah’s evidence about this matter in the paragraphs that follow.

2.688 First, Private Danquah’s evidence was not supported by Private Scott Hoolin who, according to Private Danquah, had also witnessed Hamzah Almalje being hit with the wooden baton and had shared a look with Private Danquah as if to question what was going on.¹⁰¹⁶ However,

¹⁰⁰⁸ MOD concede in their Closing Submissions that swearing at Hamzah Almalje (detainee 772) in this way amounted to a breach of the “very high standards” expected and required of soldiers in that environment. See MOD Closing Submissions at page 6, paragraph 10

¹⁰⁰⁹ Private Dodd [65/70-71]; (ASI011054) [73]-[74]

¹⁰¹⁰ Lance Corporal Keegan (MOD018902-04)

¹⁰¹¹ Lance Corporal Keegan [75/87-88]

¹⁰¹² Lance Corporal Keegan (MOD033728)

¹⁰¹³ Private Dodd [65/67-70]

¹⁰¹⁴ Lance Corporal Keegan (MOD033728); (ASI018081) [104]

¹⁰¹⁵ Lance Corporal Keegan [75/88-90]

¹⁰¹⁶ Private Danquah [90/212-215]

Private Hoolin told me that he did not see the detainee being hit with a baton and remembered the detainee being positioned on the floor, rather than on the seat next to Private Danquah as he suggested.¹⁰¹⁷ However, Private Hoolin did confirm that he did not remember much about the journey and did not pay much attention.¹⁰¹⁸ He said that he might have been asleep for some of the time,¹⁰¹⁹ partly as a result of having been knocked unconscious earlier, when a rocket-propelled grenade had hit the side of the Warrior. He explained how he had felt on the journey back to Camp Abu Naji, as follows: *"I was quite disorientated. I had a banging headache, I was partially deaf in my ears. Just feeling rough, to be honest, sir."*¹⁰²⁰

2.689 Second, Private Danquah did not make any allegation about Hamzah Almalje having been hit with a wooden baton when he gave his initial statement to the Royal Military Police in July 2004. Not only did that statement not contain any such allegation, it positively asserted that Hamzah Almalje had not been assaulted at all, thus: *"no person laid a finger on him."*¹⁰²¹ I am not persuaded that Private Danquah might have forgotten to tell the Royal Military Police about what he had seen, or that they had failed to ask him about how the detainee was treated,¹⁰²² or that the Royal Military Police had incorrectly recorded a statement to the effect that nobody had laid a finger on the detainee.¹⁰²³

2.690 Third, there was no evidence which supported Private Danquah's claim that wooden batons were actually carried in the rear of W33 on this occasion.¹⁰²⁴ That strongly suggests that the events described by Private Danquah could not have happened. It is not possible to say precisely why Private Danquah gave erroneous evidence. However, I do not believe that he deliberately lied about the matter. It seems likely that he must have confused it with some other incident that had taken place on another occasion.

Hamzah Joudah Faraj Almalje's allegations of ill-mistreatment during the journey back to Camp Abu Naji in W33

2.691 Hamzah Joudah Faraj Almalje (detainee 772) told me that he had asked for water on two occasions whilst he was in the back of the Warrior. He said that he had asked in English and, when he did so, he was hit across the head with what felt like a plastic water bottle. He said that he had not been given any water.¹⁰²⁵

2.692 I accept Hamzah Almalje's evidence that he had asked for water whilst in the back of the Warrior and that his request was refused. However, as I have indicated earlier in this Report,¹⁰²⁶ I am satisfied that the reason for this refusal was that there was no water available to give him. Although he was shouted and sworn at when he was refused water, I am satisfied that he was not actually struck on the head with a full or partly full bottle of water. There were no bottles of water available that could have been used for such a purpose. However, I cannot rule out the possibility that he was struck with an empty plastic bottle in order to emphasise that no water was available. If this did occur I am quite satisfied that it would have been a trivial blow and would not have been done in order to inflict either discomfort or pain.

¹⁰¹⁷ Private Hoolin [82/128-130]

¹⁰¹⁸ Private Hoolin [82/116]

¹⁰¹⁹ Private Hoolin [82/155-156]

¹⁰²⁰ Private Hoolin [82/155/8-10]

¹⁰²¹ Private Danquah (MOD011888)

¹⁰²² Private Danquah [90/224-227]

¹⁰²³ Private Danquah [90/255-257]

¹⁰²⁴ Lance Corporal Keegan [75/193]; Private Hoolin [82/129-130]; Private Dodd [65/72]

¹⁰²⁵ Hamzah Joudah Faraj Almalje (detainee 772) [19/74]; [20/46-47]; [20/76]

¹⁰²⁶ See paragraph 2.680 above

The injuries suffered by Hamzah Almalje (detainee 772)

2.693 It is clear, both from the photographs taken of Hamzah Joudah Faraj Almalje (detainee 772) and from his medical records, that he had sustained a number of injuries by the time he eventually arrived at Camp Abu Naji on 14 May 2004. The general nature and extent of those injuries were also recorded during the medical examinations that he subsequently underwent at Camp Abu Naji and the Divisional Temporary Detention Facility (“DTDF”) at Shaibah on 14 and 15 May 2004.

2.694 Corporal Shaun Carroll undertook a medical examination of Hamzah Almalje at Camp Abu Naji on the evening of 14 May 2004. The Prisoner Medical Report he completed in respect of Hamzah Almalje duly recorded the following injuries:¹⁰²⁷

- a. a Large laceration to the left side of the head;
- b. a wound to the upper left leg; and
- c. a bloody nose.

2.695 On the following day (15 May 2004), Hamzah Almalje was given a further medical examination by Major (Dr) David Winfield, upon his arrival at the DTDF at Shaibah. Dr Winfield recorded the following injuries:¹⁰²⁸

- a. a small abrasion above the left eye;
- b. swelling and bruising to the left cheek, the bridge of the nose and the right eye;
- c. superficial abrasions to the left shoulder; and
- d. two superficial abrasions to the left thigh.

¹⁰²⁷ (MOD043336)

¹⁰²⁸ (MOD043360)

2.696 Hamzah Almalje was also photographed at the DTFD at Shaibah on 15 May 2004. Those photographs are shown below as Figures 21 and 22.

Figure 21: MOD048732



Figure 22: MOD048733



The Inquiry also obtained the medical records for Hamzah Almalje that cover the entire period that he was detained at the DTFD at Shaibah¹⁰²⁹ as well as the medical report that was prepared upon his release from the DTFD into the custody of the Iraqi authorities on 23 September 2004.¹⁰³⁰

¹⁰²⁹ (MOD043351-64)

¹⁰³⁰ (MOD043390-95)

- 2.697** Hamzah Almalje told me that the injury to his left thigh had been caused when he was shot on the battlefield. He described how the bullet had missed the bone and had left both an entry and an exit wound.¹⁰³¹ According to Hamzah Almalje, he had sustained this injury when the initial firing started and before he was captured. He said that it had happened as he had stood up to run away. He was not sure whether he was hit by a bullet fired from an Iraqi or from a British weapon.¹⁰³² I am entirely satisfied that he suffered this particular injury during the period he was actively involved in the ambush and before he was captured and detained by the British soldiers.
- 2.698** So far as concerns the injuries to his face, namely the laceration to his head, his bloody nose and the bruising to his eyes, Hamzah Almalje said that these had been caused when he was beaten by soldiers, including when he was struck by rocks.¹⁰³³ He told the Royal Military Police (“RMP”) that his head had been bandaged for 11-12 days,¹⁰³⁴ although told me that he could not remember having said that.¹⁰³⁵ He did however tell me that it had taken him over a month to recover from his swollen eye.¹⁰³⁶
- 2.699** As I have indicated above,¹⁰³⁷ I do not believe that Hamzah Almalje was hit with rocks at any stage during his detention on the battlefield, nor that he was kicked and beaten at the point of capture.
- 2.700** In my view the injuries sustained by Hamzah Almalje to his head, face and left shoulder, as recorded above, are entirely consistent with the type and degree of force used by Private Joseph Connelly, when he subdued and restrained Hamzah Almalje at the point of capture.¹⁰³⁸ In his first RMP statement, Private Connelly stated that he had been obliged to use force to restrain Hamzah Almalje.¹⁰³⁹ He gave evidence to the Inquiry that Hamzah Almalje “*went down head first*” as a result of being pushed forward whilst being restrained. Private Connelly had hold of his arms as Hamzah Almalje fell forward, so he had no means of protecting himself as he went down on the ground face first.¹⁰⁴⁰ I am satisfied that he went down on to rough and hard ground with a sufficient degree of force as to cause injury to his face and head. Whilst Hamzah Almalje was face down on the ground, Private Connelly held him down, by pressing in the middle of his back, and used force to control him because he was “*thrashing around*.”¹⁰⁴¹ Private Connelly believed that the bloody nose was likely to have been caused when Hamzah Almalje’s face hit the ground during this struggle.¹⁰⁴² I am satisfied that such was indeed the case. I also consider it very likely that the laceration to the side of Hamzah Almalje’s head and the abrasions to his left shoulder were inflicted during the overall struggle to subdue and restrain him, although Private Connelly himself did not think that to be the case, so far as concerns the laceration.¹⁰⁴³ In fact, understandably, Private Connelly was unable to say precisely what injuries Hamzah Almalje did suffer during this struggle,

¹⁰³¹ Hamzah Joudah Faraj Almalje (detainee 772) [19/103-106]

¹⁰³² Hamzah Joudah Faraj Almalje (detainee 772) [19/70]; [19/103-104]; [20/39]; [20/44]

¹⁰³³ Hamzah Joudah Faraj Almalje (detainee 772) [20/44-45]

¹⁰³⁴ Hamzah Joudah Faraj Almalje (detainee 772) (MOD002916)

¹⁰³⁵ Hamzah Joudah Faraj Almalje (detainee 772) [20/46]

¹⁰³⁶ Hamzah Joudah Faraj Almalje (detainee 772) [20/15-16]

¹⁰³⁷ See paragraph 2.620 above

¹⁰³⁸ See paragraphs 2.515 – 2.516 above

¹⁰³⁹ Private Connelly (MOD017235-37)

¹⁰⁴⁰ Private Connelly [66/27-28]

¹⁰⁴¹ Private Connelly [66/31/11]

¹⁰⁴² Private Connelly [66/27-28]

¹⁰⁴³ Private Connelly [66/28]

explaining the situation in these terms: “*There was a lot going on, sir, so you weren’t paying overly an amount of attention to it.*”¹⁰⁴⁴

2.701 The photographs of Hamzah Almalje that were taken on 15 May 2004 clearly show significant traces of mud or dirt on Hamzah Almalje’s face. I am satisfied Hamzah Almalje came by this mud or dirt on his face whilst he was being forcibly restrained by Private Connelly and whilst struggling with his face down on the ground. I do not accept the suggestion made by those representing the Iraqi Core Participants¹⁰⁴⁵ that the mud/dirt on Hamzah Almalje’s face is an indication that he had been held in an area with pooled water. The ground on the battlefield was generally a type of dried “*sandy mud.*”¹⁰⁴⁶ There was clear evidence that Hamzah Almalje was dirty and sweaty whilst on the battlefield and in the Warrior¹⁰⁴⁷ and this would have caused dusty earth to stick to and dry on his face. Private James Anderson, who saw Hamzah Almalje in the large derelict building after he had been captured, recalled that he appeared to be “*dirty and sweaty*” at that stage and noticed that dust was sticking to people’s faces because of sweat.¹⁰⁴⁸

2.702 I am satisfied that Hamzah Almalje sustained his bloody nose, the bruising to his face (i.e. to his left cheek, the bridge of his nose and his eyes), the abrasions to his left shoulder and the laceration to the left side of his head during the course of the struggle that took place whilst he was being forcibly restrained by Private Connelly at the point of capture. It follows that he would have already suffered all these injuries at the very outset of his detention on the battlefield and before he was transported to Camp Abu Naji in W33.

2.703 Some of the military witnesses gave evidence of having seen signs of injuries to Hamzah Almalje whilst on the battlefield. Lieutenant James Dormer recalled that he had seen Hamzah Almalje in the large derelict building, shortly after his capture, and noticed that he had a red mark, which he described as looking like “*someone who walked into a door.*” Lieutenant Dormer said that to characterise what he saw as an injury would be to go a bit far; in his view, it was more of an “*abrasion or a scrape.*”¹⁰⁴⁹ Private Barrie Reid also recalled having seen a mark on the right side of Hamzah Almalje’s face, but was unable to say whether it was bruising or dirt or a combination of the two.¹⁰⁵⁰

2.704 A significant number of the military witnesses said that Hamzah Almalje did not show any visible sign of injury when they saw him on the battlefield that day.¹⁰⁵¹ However, I do not accept the suggestion that those witnesses were being deliberately untruthful when giving evidence to that effect.¹⁰⁵² I believe that there are a number of good reasons why they may not have noticed the injuries which Hamzah Almalje had actually suffered by then, as I explain in the paragraphs that follow.

2.705 First, it is clear that Hamzah Almalje was in a significantly dirty and unkempt state by the time he was captured and detained. Lieutenant William Passmore, who did not recall having

¹⁰⁴⁴ Private Connelly [66/30/5-6]

¹⁰⁴⁵ ICP Closing Submissions (52) [194]

¹⁰⁴⁶ See, for example, Lance Corporal Currie [83/18/14]

¹⁰⁴⁷ Private Danquah [90/199/15]–[222/1]

¹⁰⁴⁸ Private Anderson [71/113/16-25]

¹⁰⁴⁹ Lieutenant Dormer [72/44-45]; [72/48]

¹⁰⁵⁰ Private Reid [70/33-34]

¹⁰⁵¹ See, for example, Lance Corporal Currie [83/62/12-14]; Sergeant Perfect [76/33/19]–[34/2]; Sergeant S. Henderson [61/61/19-25]; Private Aston [62/75/18-21]; Dodd [65/41/12-17]; Sergeant Kelly [64/74]; Private Marney [73/53/3-7]; Private Hoolin [82/116/5-7]; Lieutenant Passmore [74/37]

¹⁰⁵² See ICP Closing Submissions at (67) [262] onwards

seen any specific injuries to Hamzah Almalje, noted that he had appeared “*dishevelled*.”¹⁰⁵³ Sergeant David Perfect agreed, saying: “*he was dirty, sir, as you would expect from a man who had been in that kind of situation.*”¹⁰⁵⁴ Their evidence was consistent with that of Private Barrie Reid, who said that Hamzah Almalje may have been bruised or perhaps just covered in dirt, it was difficult to tell. Furthermore, a number of the military witnesses, who did not recall having seen any actual injuries, accepted that the photographs of Hamzah Almalje¹⁰⁵⁵ were consistent with their recollection of his appearance on the battlefield that day.¹⁰⁵⁶

- 2.706** Second, I am satisfied that many of the soldiers who saw Hamzah Almalje only did so very fleetingly and did not notice any injuries he may have had at the time. They did not examine or inspect him closely and his injuries were not such as to be immediately obvious. Furthermore, some of Hamzah Almalje’s injuries (which were described as “*superficial*”) consisted mainly of “*swelling*” and “*bruising*” and may well not have been apparent until later.
- 2.707** Third, many of the witnesses had just been involved in heavy fighting and had seen, or had been in contact with, a significant number of dead bodies, many of whom had clearly sustained significant injuries. That being so and given the generally fast-moving, dangerous and confused circumstances of the battle, I do not find it in the least surprising that many of the military witnesses simply did not notice the relatively slight injuries that Hamzah Almalje had actually suffered by then.
- 2.708** Fourth, Hamzah Almalje’s medical records do not provide any support for his claim to have been kicked in the chest and stomach at the point of capture or that he suffered any injury to his finger as alleged.¹⁰⁵⁷ I am satisfied that this clearly confirms my firm conclusion that he was not assaulted or mistreated on the battlefield or in W33 as he alleged. The injuries that he undoubtedly suffered that day were caused either during the ambush (in the case of the injury to his left thigh) or during the course of the struggle that took place when Private Connelly first restrained and detained him. It follows that I am entirely satisfied that, following his initial restraint and detention, Hamzah Almalje suffered no further physical injury whilst detained on the battlefield or on the subsequent journey back to Camp Abu Naji in W33.

5. The Northern Battle

Introduction

- 2.709** In this next section of my Report I set out an account of what happened during a series of further engagements between armed insurgents and British troops that took place on 14 May 2004 along Route 6, between the Danny Boy VCP and the village of Ataq, just south of Camp Abu Naji. During the course of this Inquiry, this series of engagements became known collectively as “the Northern Battle”. As I have already indicated, the Northern Battle was the second main component in what later became popularly known as the Battle of Danny Boy and, for convenience, I have continued to use this title for the purposes of this Report.
- 2.710** However, it is important to stress at the outset that, whilst the Northern Battle occurred north of and in a separate location from the Southern Battle (although fairly close to it), the two “battles” are inextricably linked. As will become readily apparent, the Northern Battle occurred as a direct consequence of the Southern Battle and each “battle” formed part of the

¹⁰⁵³ Lieutenant Passmore [74/37/2-10]

¹⁰⁵⁴ Sergeant Perfect [76/86/23-24]

¹⁰⁵⁵ Figures 13 and 14 (MOD048732) and (MOD048733) above

¹⁰⁵⁶ See, for example, Sergeant Perfect [76/49-50]

¹⁰⁵⁷ Hamzah Joudah Faraj Almalje (detainee 772) [20/12/20-25]

overall carefully organised and coordinated ambush of British troops along Route 6 that was planned and carried out by armed Iraqi insurgents on the 14 May 2004.

Military personnel involved

2.711 A total of twelve call signs were directly involved in the Northern Battle on 14 May 2004, namely ten Warrior AIFVs from C Company, 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") and two Challenger 2 Main Battle Tanks deployed from A Squadron, Queen's Royal Lancers ("QRL"). In the tables below, I set out the various military personnel who were involved in the Northern Battle, by reference to the known call signs for the vehicles in which they deployed that day.

W33 (Warrior AIFV – 9 Platoon, C Company, 1PWRR)	
Vehicle Commander	Sergeant David Perfect
Driver	Lance Corporal Marcus Scott
Gunner	Private John Williams
Dismounts	Private Eric Danquah Private Scott Hoolin

W31 (Warrior AIFV – 9 Platoon, C Company, 1PWRR)	
Vehicle Commander	Corporal Jonathan Green
Driver	Private Darren Reynolds
Gunner	Private Hans Pedersen
Dismounts	Private Leslie Cooper Private Carlos Graham Private Stanley Kacunisawana

W30 (Warrior AIFV – 9 Platoon, C Company, 1PWRR)	
Vehicle Commander	Lieutenant Benjamin Plenge
Driver	Private Osea Nayasi
Gunner	Lance Corporal Peter Butler
Dismounts	Corporal Mark Byles Private Lloydan Beggs

W32 (Warrior AIFV – 9 Platoon, C Company, 1PWRR)	
Vehicle Commander	Sergeant Craig Brodie
Driver	Private Gavin Lumley
Gunner	Private Vakacegu Bennion
Dismounts	Private Jayme Bishop Private Alipate Korovou Private Joseph Hartnell

W21 (Warrior AIFV – 8 Platoon, C Company, 1PWRR)	
Vehicle Commander	Corporal Jokatama Tagica
Driver	Private Kevin Campbell
Gunner	Private Navitalai Ratawake
Dismounts	Lance Corporal Kevin Wright Private Shaun Sullivan Private Sakiusa Tamani

W22 (Warrior AIFV – 8 Platoon, C Company, 1PWRR)	
Vehicle Commander	Sergeant Christopher Broome
Driver	Private Stuart Taylor
Gunner	Private John Fowler
Dismounts	Lance Corporal Brian Wood Private Anthony Rushforth Private Maciou Tatawaqa

W12 (Warrior AIFV – 7 Platoon, C Company, 1PWRR)	
Vehicle Commander	Corporal John Davison
Driver	Darrell Kew
Gunner	Private Kenny Hills
Dismounts	Sergeant Ian Page Corporal Robert Raynsford Private Bradley Mihell Private Poate Sikitanaivalu

W13 (Warrior AIFV – 7 Platoon, C Company, 1PWRR)	
Vehicle Commander	Lance Corporal Paul Laird
Driver	Private Maxian Lewis
Gunner	Private Andrew Hoare
Dismounts	Corporal Richard Edwards Lance Corporal Kris Stammers Private Kawesi Holland Private Adriaan Bosch Private Ismeli Radrodro

W0B (Warrior AIFV – Company Tactical Command Group, C Company, 1PWRR)	
Vehicle Commander	Major James Coote (<i>OC – C Company, 1PWRR</i>)
Driver	Lance Corporal Damon Rides
Gunner	Colour Sergeant Graham King
Radio Operator	Lance Corporal Simon Skinner

W0C (Warrior AIFV – Company Tactical Command Group, C Company, 1PWRR)	
Vehicle Commander	Warrant Officer Second Class David Falconer (<i>CSM – C Company, 1PWRR</i>)
Driver	Private Andrew Crawshaw
Gunner	Corporal Duncan Andrews
Dismounts	Captain Marcus Butlin (<i>2iC – C Company, 1PWRR</i>) Lance Corporal Philip Muir (now French) (<i>medic</i>) Private Carl Pritchard (<i>signaller</i>)

D90 (Challenger 2 Main Battle Tank – A Sqn, QRL)	
Vehicle Commander	Captain David Strong
Driver	Trooper Wayne Smith
Loader	Corporal Darryl Bishop
Gunner	Trooper Kirt Davies

D92 (Challenger 2 Main Battle Tank – A Sqn, QRL)	
Vehicle Commander	Corporal Mark Newton
Driver	Trooper Paul Martin
Loader	Lance Corporal Daniel Wilkinson
Gunner	Trooper Lee Jones

The deployment of the Warrior AIFVs of 9 Platoon C Company 1PWRR

- 2.712** Friday 14 May 2004 was meant to be a rest day for the soldiers of 9 Platoon, C Company, 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”).¹⁰⁵⁸ They spent that afternoon training, conducting drills and maintaining their vehicles.¹⁰⁵⁹
- 2.713** However, 9 Platoon had also been allocated the role of secondary Quick Reaction Force (“2QRF”) for that day.¹⁰⁶⁰ During the afternoon, Camp Abu Naji was subjected to attack by mortars and/or missiles. This attack prompted Sergeant David Perfect to go to his Warrior AIFV, call sign W33, in order to listen to the radio communications on the Battlegroup radio net. As a result, Sergeant Perfect heard a number of communications that made it clear that soldiers from 6 and 7 Platoons, 1st Battalion, the Argyll & Sutherland Highlanders (“1A&SH”), were involved in serious fighting with armed insurgents – a contact that we now know to have been the Southern Battle.¹⁰⁶¹
- 2.714** Warriors W33 (commanded by Sergeant Perfect) and W31 (commanded by Corporal Jonathan Green) were paired as a multiple and W30 (commanded by Lieutenant William Plenge) and W32 (commanded by Sergeant Craig Brodie) were paired as another multiple.¹⁰⁶² Having regard to the radio communications he had just heard, Sergeant Perfect ordered the crews of W33 and W31 to “*form up*” and also ordered Corporal Mark Byles to do the same in relation to W30,¹⁰⁶³ since its commander, Lieutenant Benjamin Plenge, was not near at hand.
- 2.715** W33 and W31 both then moved from the tank park to a position near the main gate at Camp Abu Naji. From the nearby Quick Reaction Force (“QRF”) room,¹⁰⁶⁴ Sergeant Perfect contacted the 1PWRR Second-in-Command (“2i/c”), Major Richard “Toby” Walch, who was in command in the Operations Room at Camp Abu Naji at the time, and informed him that these two Warrior AIFVs were ready to assist the 1A&SH soldiers if required.¹⁰⁶⁵
- 2.716** Major Walch, who was also the Battlegroup Chief of Staff at the time, gave the order for these two Warriors to deploy and the vehicles then left Camp Abu Naji, with W33 travelling slightly ahead of W31.¹⁰⁶⁶ The relevant entries in the radio logs suggest that this exchange between Sergeant Perfect and Major Walch took place between 17:06hrs and some time shortly after 17:15hrs.¹⁰⁶⁷
- 2.717** Both Sergeant Perfect (commanding W33) and Corporal Green (commanding W31) understood that they were required to assist a British casualty, but there was some uncertainty about the precise location to which they were travelling. It was Sergeant Perfect’s understanding that the 1A&SH soldiers were engaged “*in the vicinity of Danny Boy*” whilst Corporal Green believed that they were located “*just south of Danny Boy*”.¹⁰⁶⁸
- 2.718** Lieutenant Plenge also said that he had become aware of the contact “*at Danny Boy*” and that he had then taken charge of assembling the crews of Warriors W30 and W32, before being

¹⁰⁵⁸ Sergeant Perfect (ASI015718) [33]

¹⁰⁵⁹ Ibid; Lieutenant Plenge (ASI009725) [26]; Sergeant Brodie (ASI009180) [16]

¹⁰⁶⁰ Corporal Green (ASI017764) [26]

¹⁰⁶¹ Sergeant Perfect (ASI015718-19) [33] – [34]

¹⁰⁶² Corporal Green [77/11]; Sergeant Perfect (ASI015719) [35]; Sergeant Brodie [79/8-9]; Lieutenant Plenge (ASI009726) [28]–[30]

¹⁰⁶³ Sergeant Perfect (ASI015719) [35]

¹⁰⁶⁴ The QRF room was situated to the left of the main entrance of Camp Abu Naji (ASI018602)

¹⁰⁶⁵ Sergeant Perfect (ASI015719) [36]–[37]

¹⁰⁶⁶ Sergeant Perfect (ASI015719–20) [37]; Major Walch (ASI021667) [66]

¹⁰⁶⁷ (ASI022144–45)

¹⁰⁶⁸ Sergeant Perfect (ASI015718) [34]; Corporal Green (ASI017764-65) [28]

ordered by the Battlegroup Operations Room at Camp Abu Naji to proceed to “Red 1”¹⁰⁶⁹ and thereafter deciding to move further south.¹⁰⁷⁰ However, it is clear from all the evidence that W30 and W32 were not ready to deploy from Camp Abu Naji until some time after W33 and W31.¹⁰⁷¹

8 Platoon – the Quick Reaction Force (“QRF”)

- 2.719** As it happens, on 14 May 2004 the role of primary Quick Reaction Force (“QRF”) was being performed by the soldiers of 8 Platoon C Company, 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”). As a result, when Camp Abu Naji was subjected to a mortar/missile attack during the course of the day, the 8 Platoon Warriors, W21 and W22, were ordered to deploy southwards from Camp Abu Naji to a position on Route 6 identified on the military spot maps in use at the time as “Red 1”. W21 and W22 were ordered to set up a temporary “*vehicle check-point*” (popularly known as “a rat-trap”) at this location, the object of which was to stop and search vehicles travelling along Route 6, in the hope of catching those responsible for having attacked the camp.¹⁰⁷²
- 2.720** As I indicated earlier in this Report, it was at this location (i.e. “Red 1”) that Major Adam Griffiths encountered the soldiers from W21 and W22, after he and his Rover Group had successfully driven through the initial ambushes and were making their way back to Camp Abu Naji.¹⁰⁷³
- 2.721** The photograph at Figure 23 shows the scene at Red 1 whilst this particular temporary vehicle checkpoint was being enforced on 14 May 2004. Red 1 is also shown on the following map at Figure 24.

¹⁰⁶⁹ See paragraph 2.714 above

¹⁰⁷⁰ Lieutenant Plenge (ASI009725-26) [27]; (MOD019370); corroborated by Sergeant Brodie (ASI009180) [17]

¹⁰⁷¹ See paragraph 2.764 below and Lieutenant Plenge (ASI009726) [28]

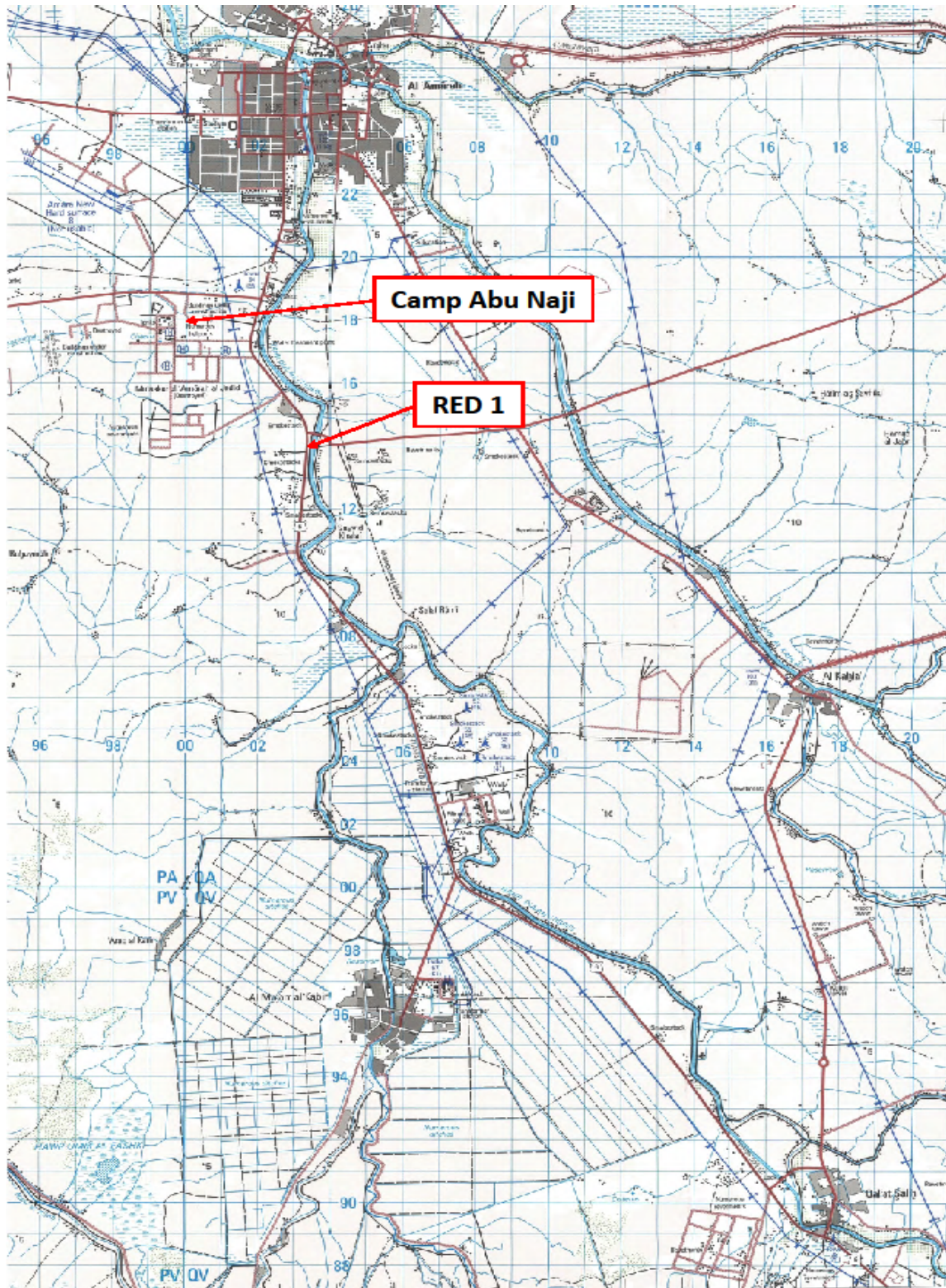
¹⁰⁷² Sergeant Broome (ASI022314) [30]

¹⁰⁷³ See paragraph 2.206 above

Figure 23: ASI012468



Figure 24: ASI025632



The journey south along Route 6

- 2.722** So it was that W33 and W31 drove through Red 1, apparently without stopping, on their journey south to assist the 1st Battalion of the Argyll and Sutherland Highlanders (“1A&SH”) soldiers. A short time after these Warriors had passed through Red 1, the Battlegroup Operations Room at Camp Abu Naji also directed W22 and W21 to head south in order to assist the 1A&SH soldiers. For his part, Major Adam Griffiths took the opportunity to brief Sergeant Christopher Broome (commanding W22) with regard to the scale and location of the ambush sites that he and his Rover Group had encountered when driving north.¹⁰⁷⁴ Warriors W22 and W21 then left Red 1 and headed south along Route 6, with the object of rendering their additional assistance in support of the 1A&SH soldiers.¹⁰⁷⁵
- 2.723** In the event, due to a technical fault that had not been apparent at the time of deployment, W31 travelled markedly slower than W33. As a result, after passing Red 1, W31 was overtaken by W22 and W21.¹⁰⁷⁶ The Warriors then continued their journey south along Route 6 in something resembling a four vehicle convoy. W33 and W31 travelled along the left hand (east) carriageway and W21 and W22 travelled on the right hand (west) carriageway.¹⁰⁷⁷
- 2.724** The convoy of Warriors first came under fire at about the point where Route 6 passed a structure generally referred to during the Inquiry as the “Pepsi factory.” I will describe the nature and extent of the various contacts which make up the Northern Battle in more detail later in this Report. However, before doing so I will provide some detail about the general topography of the location and site of the Northern Battle.

The topography of the Northern Battlefield

- 2.725** The southernmost point on the Northern Battlefield was the Danny Boy VCP. This was situated at a junction between Route 6 and a road heading to the town of Al Majar al’Kabir and can be clearly seen in the following photographs at Figures 25 and 26.¹⁰⁷⁸

¹⁰⁷⁴ Sergeant Broome had some difficulty recalling the precise chronology of these events. In his statement to the Royal Military Police, he suggested that Major Griffiths was beside him when he was tasked to head south. By contrast his recollection when he made his Inquiry statement was that he was tasked a short while after he related Major Griffiths’ brief to the Ops Room

¹⁰⁷⁵ Sergeant Broome (ASI022316) [38]

¹⁰⁷⁶ Corporal Green [77/16-17]; (ASI017765-66) [32]

¹⁰⁷⁷ Sergeant Broome [86/113]

¹⁰⁷⁸ These and other photographs in this section of the report were taken at sometime after May 2004: it was generally accepted that they accurately illustrated the nature of the landscape and relevant features of the Northern Battlefield as it was in May 2004

Figure 25: MOD034400

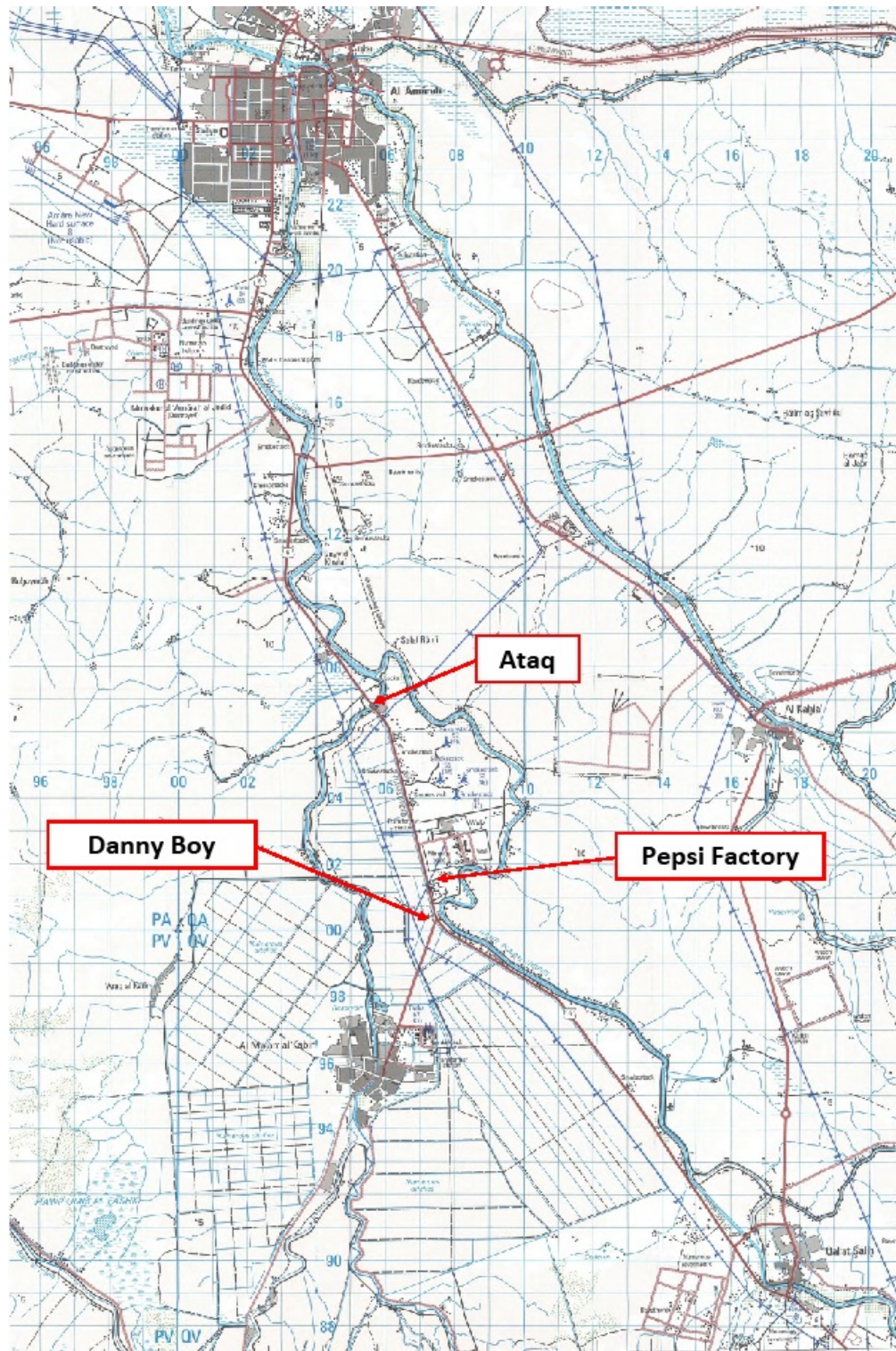


Figure 26: ASI001208



2.726 Around three to four kilometres north of the Danny Boy VCP there was a bridge over a tributary of the River Tigris at a village called Ataq. The various engagements that comprise the Northern Battle all took place between the Danny Boy VCP and the bridge at Ataq.

Figure 27: ASI025633



2.727 Between the Danny Boy VCP and the bridge at Ataq was the large industrial building complex, which as I have said, was referred to as “the Pepsi factory”. It was located to the east side of Route 6 and is shown at Figure 28.

Figure 28: ASI001206



2.728 Opposite the Pepsi factory, to the west of Route 6, was an area of flat farmland. The farmland was criss-crossed by a sequence of tracks, ditches and irrigation canals which ran at right angles to one another. This area can be clearly seen at the top part of the aerial photograph shown at Figure 29 below. The “Pepsi factory” is also shown in the lower part of this photograph, with Route 6 passing between the two.

Figure 29: ASI006482



2.729 There were three features in particular that played a prominent role in the events which unfolded during the Northern Battle.

2.730 The first of those features was “Trench 1”, located to the north of the Pepsi factory and on the west side of Route 6. It was a dry ditch, or perhaps a sequence of ditches, which ran at right angles to Route 6.

2.731 The second feature was “Trench 2”, located approximately 150-250 metres to the south of Trench 1 and still somewhat north of the Pepsi factory. It ran parallel to Trench 1 and at right angles to Route 6. Trench 2 was similar in size to Trench 1, but was filled with water at the time. In fact, Trench 2 appears to have been an irrigation canal and is shown in the photograph at Figure 30 below.

Figure 30: ASI018573



2.732 The third feature was a large concrete ditch that ran parallel to Route 6 itself. This ditch was around six feet deep and 10 feet wide. It had steep sides and may well have functioned as a storm drain, though it did not contain water on 14 May 2004. This is hereafter referred to as “the Storm Drain” and is shown in the following photograph at Figure 31.

Figure 31: ASI021860



2.733 The location of each of these three features is marked on the aerial photograph at Figure 32 below.

Figure 32: ASI025634



The first contact in the Northern Battle

- 2.734** The first four Warriors to arrive at the scene of the Northern Battle were ambushed at a position on Route 6 located approximately where the road passed the Pepsi factory. This was in the same general location as that where Major Adam Griffiths and his Rover Group had been subjected to the third ambush on their journey north to Camp Abu Naji earlier that afternoon.
- 2.735** The lead Warrior in the four vehicle convoy, W33 (commanded by Sergeant David Perfect), was the first to encounter incoming fire from the armed insurgents. This occurred shortly after W33 had passed the Pepsi factory and was heading south on Route 6. W33’s position was then approximately 500 metres north of the Danny Boy VCP.¹⁰⁷⁹ The firing came from the west side of Route 6.¹⁰⁸⁰ Sergeant Perfect had his head and shoulders outside the turret at the time. He heard the sound of small arm rounds striking the armour of W33 and so immediately withdrew into the turret of the Warrior. The vehicle was then hit by a rocket-propelled grenade which did not explode and did not cause any significant damage.¹⁰⁸¹
- 2.736** Sergeant Perfect ordered W33 to be brought to a halt in the middle of the carriageway and Private John Williams rotated the turret to the west so that the crew could observe the enemy positions through the optical sights on the vehicle.¹⁰⁸²
- 2.737** Sergeant Perfect could see three main enemy positions and some scattered individual positions. The main positions had the appearance of naturally formed defensive bunkers and were located between 50 and 200 metres from the road. In particular, Sergeant Perfect observed a number of enemy gunmen in scattered positions within the Storm Drain, using its sides as cover.¹⁰⁸³ Sergeant Perfect described “*intense*” firing coming from the enemy gunmen, who were “*popping up*” from positions of cover.¹⁰⁸⁴
- 2.738** The armed insurgents also attacked W22 (commanded by Sergeant Christopher Broome) and W21 (commanded by Corporal Jokatama Tagica) as they arrived in the vicinity of the Pepsi factory.¹⁰⁸⁵ Again the firing came from enemy gunmen to the west of Route 6 who were firing small arms and RPGs from positions of cover to the west of Route 6.¹⁰⁸⁶
- 2.739** Because of its slower rate of travel, W31 (commanded by Corporal Jonathan Green) had been substantially behind the other three Warriors at the start of the engagement. Corporal Green described hearing over the radio that the other vehicles had been attacked and then being directed towards the enemy by W22 when he eventually arrived level with that Warrior.¹⁰⁸⁷

The opening stages of the Northern Battle

- 2.740** In W33, the gunner, Private John Williams, opened fire on the enemy positions, using the Warrior’s 7.62mm coaxial Hughes chain gun in order to do so. However, after he had fired approximately 20 rounds, the chain gun jammed and became inoperable. Private Williams then switched to the vehicle’s 30mm Rarden cannon and fired a small number of bursts

¹⁰⁷⁹ Sergeant Perfect [76/18-19]

¹⁰⁸⁰ Sergeant Perfect (ASI015721) [41]; NB – the opposite side of the road from the Pepsi factory

¹⁰⁸¹ Ibid.

¹⁰⁸² Sergeant Perfect (ASI015721-22) [43]

¹⁰⁸³ Ibid.

¹⁰⁸⁴ Ibid.

¹⁰⁸⁵ Corporal Tagica (ASI019561) [22]; Sergeant Broome (ASI022318) [43]

¹⁰⁸⁶ Sergeant Broome (ASI022318-19) [43]–[44]; Corporal Tagica (ASI019562) [24]

¹⁰⁸⁷ Corporal Green (ASI017766) [33]–[34]

before this weapon also jammed. Private Williams then set about trying to repair the two faulty weapons systems.¹⁰⁸⁸

2.741 In the meantime, Sergeant Perfect ordered the W33 dismounts, Privates Scott Hoolin and Eric Danquah to open the mortar hatches in the rear of the Warrior and to engage the enemy by using their individual weapons, a Minimi light machine gun in the case of Private Hoolin and a Light Support Weapon in the case of Private Danquah.¹⁰⁸⁹ For his part, Sergeant Perfect reopened the turret hatch and opened fire on the insurgents with his SA80 rifle. The focus of his fire seems to have been the enemy gunmen located in the Storm Drain. In his written Inquiry statement, Sergeant Perfect gave the following account of what he did and observed at that stage:

“I used my SUSAT sight (which magnifies the image by four) and identified a number of individuals using the bund line as cover. I could see their heads and shoulders and they appeared to be wearing the pyjama type suits worn by the locals. They were firing what looked like AK47 rifles and some of them had RPG launchers. I took my time and fired single aimed shots. I hit two of them in the head/upper torso region. Both men fell back behind the bund line and I could not see them again.”¹⁰⁹⁰

2.742 I am satisfied that Sergeant Perfect’s account of this particular exchange of fire was entirely credible and is very likely to be factually accurate. Sergeant Perfect was an experienced and reliable soldier. I accept that his shots were carefully aimed and that he was able to see that he had hit two Iraqi men in the head or upper torso. In my view, it is very likely that Sergeant Perfect either killed or seriously wounded these two men as a result. I also accept the truth of Sergeant Perfect’s evidence that these gunmen were firing their weapons at the time and that they were actively participating in a major armed ambush and attack on British troops.

2.743 However, Sergeant Perfect was very aware that W33 had deployed in order to find and assist the 1st Battalion, Argyll & Sutherland Highlanders (“1A&SH”) soldiers who were still under fire further south. Accordingly, he gave the order for W33 to continue travelling south towards the Danny Boy VCP.¹⁰⁹¹

2.744 On reaching the Danny Boy VCP, W33 discovered that communication by radio was impossible. W33 did not encounter any enemy gunmen in the immediate vicinity of the Danny Boy VCP. However Sergeant Perfect was unable to locate the 1A&SH soldiers (who were, of course, yet further south) and was also unable to contact Camp Abu Naji by radio in order to obtain further information about where the 1A&SH soldiers actually were. In those circumstances, W33 turned north again in order to return to the vicinity of the Pepsi factory.¹⁰⁹² However, as detailed later in this Report,¹⁰⁹³ W33 did subsequently turn south again, in company with W31, and (as indicated earlier) eventually succeeded in locating the soldiers of 1A&SH at about the time the Southern Battle was coming to the end of its combat phase.¹⁰⁹⁴

¹⁰⁸⁸ Sergeant Perfect (ASI015722) [44]

¹⁰⁸⁹ Sergeant Perfect (ASI015723) [46]; Private Hoolin (ASI009557) [35]; although Private Danquah recalled returning fire with his SA80 rifle [90/174/1-18]

¹⁰⁹⁰ (ASI015723) [46]

¹⁰⁹¹ Sergeant Perfect (ASI015723) [47]

¹⁰⁹² Sergeant Perfect (ASI015724) [48]–[49]

¹⁰⁹³ Paragraphs 2.774 – 2.779

¹⁰⁹⁴ Paragraph 2.467

W33 is struck by a Rocket-propelled Grenade (“RPG”)

2.745 As W33 began its journey from the Danny Boy VCP back in the direction of the Pepsi factory, it was struck by a rocket-propelled grenade which penetrated and lodged in its armour, but did not detonate. However, this missile strike did start a fire in the rear of W33, which in turn caused a great deal of smoke and fumes in the dismount compartment.¹⁰⁹⁵ The external effect of this RPG strike can be seen in the image below at Figure 33. This image was provided to the Inquiry by WO2 David Falconer, although he was unable to confirm who took the photograph or precisely when it was taken.¹⁰⁹⁶

Figure 33: ASI020253



2.746 Private Danquah and Private Hoolin, both of whom were located in the rear of W33 when it was hit by this particular RPG, gave evidence about the terrifying nature and effect of its impact at the time. In his written Inquiry statement, Private Danquah provided the following dramatic account of what happened:

“At first it was just a loud explosion but we knew it was an RPG. The impact knocked me and Hoolin to the floor. Hoolin was unconscious and I tried to wake him up. The RPG caused a fire to break out inside the vehicle. We eventually put it out but the back of the Warrior was filled with smoke and powder from the extinguisher.”¹⁰⁹⁷

2.747 In his oral evidence, Private Danquah told me that, at first, he feared that Private Hoolin had been killed by the explosion.¹⁰⁹⁸ This was corroborated by the evidence of both Sergeant Perfect¹⁰⁹⁹ and Private Hoolin, who said:

“There was then an almighty flash and an explosion. I could feel burning on my face and could smell cordite and I was flung backwards.

The next thing that I remember was coming round. I had been flung backwards and knocked unconscious, and had slid down into the Warrior. Pte Danquah was screaming that I had been shot and that I was dead. I remember hearing him shout “Hoolin’s

¹⁰⁹⁵ Sergeant Perfect (ASI015724) [50]

¹⁰⁹⁶ WO2 Falconer (ASI020237) [172]

¹⁰⁹⁷ Private Danquah (ASI023479) [30]

¹⁰⁹⁸ Private Danquah [90/186/18-25]

¹⁰⁹⁹ Sergeant Perfect [76/28/9-11]

dead” and he was shaking me. I have no idea how long I was unconscious for. When I came round, my ears were ringing, I could see stars and I was very disorientated.”¹¹⁰⁰

2.748 This particular RPG strike was also recorded and entered in the radio logs disclosed to the Inquiry.¹¹⁰¹

The other Warriors become involved in the Northern Battle

2.749 In the meantime, the second Warrior AIFV to have become actively involved in the Northern Battle appears to have been W21 (commanded by Corporal Jokatama Tagica). When W21 reached a position about 500 metres north of the Danny Boy VCP (although, in fact, somewhat to the north of where W33 had been first contacted) it too was ambushed. W21 received heavy incoming fire from AK47s and rocket-propelled grenades fired from the west of Route 6.¹¹⁰² Corporal Tagica said that he noticed a large water-filled irrigation ditch running perpendicular to the road at the location where his vehicle was first ambushed.¹¹⁰³ Based on that description and the aerial photographs of the area, I am satisfied that W21 was first ambushed as it came to a halt adjacent to Trench 2.

2.750 Almost simultaneously with the ambush on W21, W22 (commanded by Sergeant Christopher Broome) also encountered incoming RPG and small arms fire from the west of Route 6. W22 was a little behind W21 at this point, located around 200-300m north of the Pepsi factory.¹¹⁰⁴

2.751 Understandably, given the general circumstances and the passage of time, there was a certain amount of confusion in the evidence of the commanders of W21 and W22, concerning the detail of their respective responses to this incoming fire.

2.752 According to Corporal Tagica, when W22 arrived at the scene Sergeant Broome suggested that both Warriors should withdraw from the immediate vicinity of the ambush. Corporal Tagica recalled that he refused to withdraw, because he felt that his Warrior was perfectly capable of countering and defeating the threat. Corporal Tagica explained his reasons for doing so, as follows:

“I refused, not because I disobeyed his orders, because I realise [sic] what is the point of withdrawing when we have the full potential of everything with us. We have armoured vehicles, we have weapon system, and to me it’s – I would say you are like a coward withdrawing from that kind of situation when you have the potential capability of dealing with that situation yourself, sir.”¹¹⁰⁵

2.753 However, Sergeant Broome did not recall having had this particular discussion with Corporal Tagica. In fact, Sergeant Broome’s recollection of their immediate response to the ambush was somewhat confused. Thus, in his written accounts given prior to his involvement with this Inquiry, Sergeant Broome recalled that his Warrior had reversed out of the killing area.¹¹⁰⁶ In contrast, his written Inquiry statement suggested that it had been Corporal Tagica’s Warrior that had reversed out of the killing area.¹¹⁰⁷

¹¹⁰⁰ Private Hoolin (ASI009558) [39]–[40]

¹¹⁰¹ (ASI022145)

¹¹⁰² Corporal Tagica [88/9-11]

¹¹⁰³ Corporal Tagica [88/16-17]

¹¹⁰⁴ Sergeant Broome (ASI022318) [43]

¹¹⁰⁵ Corporal Tagica [88/13/7]–[14/7]

¹¹⁰⁶ Sergeant Broome (MOD043790); (MOD012118)

¹¹⁰⁷ Sergeant Broome (ASI022319) [46]

- 2.754** I have no doubt that a discussion did take place between Corporal Tagica and Sergeant Broome about the situation in which they found themselves when their Warriors first arrived at the scene of the ambush. It seems to me that the most likely explanation for the differences in how they remembered what took place, is that the principal subject of their discussion was whether they should withdraw or manoeuvre away from the immediate “killing area” or danger zone, where the threat from incoming fire was the greatest. It seems to me likely that Corporal Tagica’s belief that Sergeant Broome was proposing a complete withdrawal from the battle was either due to his having misunderstood what was being suggested at the time (i.e. that they should withdraw from the immediate killing area) or was the result of his having misremembered the precise nature of the discussion, due to the passage of time since it occurred.
- 2.755** In the event, during the early stages of the Northern Battle, both W22 and W21 remained more or less at, or close to, the point at which they had been ambushed initially. W21 was positioned more or less adjacent to Trench 2 and W22 was positioned somewhat north of W21, close to Trench 1. However, whilst W21 remained in that same position for more or less the entire battle, W22 drove across the Storm Drain after a while and took up position on the ground to the west, in order to give supporting fire to its dismounts who had by then deployed from the vehicle.¹¹⁰⁸
- 2.756** In W21, Corporal Tagica ordered the gunner, Private Navitalai Ratawake to engage the enemy position using the vehicle’s chain gun. The insurgent gunmen were using Trench 2 for cover, emerging from that cover to fire, before disappearing back into cover again.¹¹⁰⁹ Corporal Tagica described the combat tactics of the enemy fighters as “very good”,¹¹¹⁰ an observation that once more reflects the organised and coordinated nature of the overall ambush.
- 2.757** A short while later and apparently whilst still in the same position, the chain gun on W21 suffered a stoppage. Corporal Tagica ordered Private Ratawake to clear the stoppage and he (Corporal Tagica) opened the turret hatch on the Warrior in order to engage the enemy with his SA80 rifle. As this was happening, the driver Private Kevin Campbell “jockeyed” the vehicle backwards and forwards, a tactic that was intended keep the vehicle in motion and thus reduce the risk of it being hit by enemy fire.¹¹¹¹
- 2.758** Corporal Tagica recalled shooting an enemy gunman whilst W21 was at this position, as follows:
- “...I think I hit one enemy fighter. I hit him as he was running from right to left across my line of vision. He was behind a bund line, and I could see him intermittently as he went in and out of cover. I hit him on the left side of his torso and did not see him again. I was about 150m to 200m away. I cannot describe him very accurately and can only remember that he wore black and was of Iraqi appearance.”¹¹¹²*
- 2.759** I accept Corporal Tagica’s evidence about what he described happening and that he believed that he shot and killed an Iraqi man during this exchange of fire. In my view, it is not possible to come to any settled conclusion with regard to the identity of this Iraqi man, the precise location at which he was shot or whether Corporal Tagica actually did kill him. However, I am

¹¹⁰⁸ Sergeant Perfect (ASI022321) [53]-[54]

¹¹⁰⁹ Corporal Tagica (ASI019562) [24]

¹¹¹⁰ Corporal Tagica [88/14]

¹¹¹¹ Corporal Tagica [88/15/13-23]; (ASI019562) [25]

¹¹¹² Corporal Tagica (ASI019562) [25]

entirely satisfied that, whether Corporal Tagica's shot hit him or not, the Iraqi in question had been taking an active and hostile part in the attack on British troops at the time.

- 2.760** The insurgents then subjected W21 to a further period of RPG fire. As a result, Corporal Tagica closed the hatch and withdrew into the turret. An RPG actually did hit W21, but did not cause any significant damage. In the meantime, Private Ratawake succeeded in clearing the stoppage in the chain gun and thereafter W21 returned fire, using this particular weapon system in order to do so.¹¹¹³
- 2.761** Meanwhile, whilst W22 was still in its initial position to the east of the Storm Drain, its gunner Private John Fowler reported on the radio that he had seen enemy gunmen to the west of Route 6 and had engaged them with the chain gun.¹¹¹⁴ Sergeant Broome said that he had identified a position around 300–500 metres to the south west of his Warrior, from which the enemy fire seemed to be coming. Private Fowler continued to engage this position, using both the chain gun and the Rarden cannon.¹¹¹⁵ However, it is unlikely that Private Fowler's fire actually killed any of the Iraqi gunmen. Sergeant Broome described this period of fire as "*suppressive*", rather than having been aimed at any targets in particular.¹¹¹⁶ W22 was then also struck by an RPG, which caused a temporary loss of power.¹¹¹⁷
- 2.762** At this stage in the battle, W31 was the furthest north of the four Warriors. From the turret of his vehicle, Corporal Green saw insurgents to the south west, located behind a "*bund line*" which he described as running perpendicular to Route 6. In my view, this was almost certainly Trench 1. W31 also encountered incoming fire from this position, including small arms and RPGs.¹¹¹⁸ Again, the enemy gunmen were seen to emerge from their defensive positions, to open fire and then to return to cover.¹¹¹⁹
- 2.763** By this time, Corporal Green was actually performing a dual role of both vehicle commander and gunner in W31.¹¹²⁰ He returned fire at the enemy position, using his vehicle's chain gun. However, this proved to be ineffective, since the weapon was unable to penetrate the earthwork of the bund line. Corporal Green therefore switched to the 30mm Rarden cannon and fired on the same position using this weapon,¹¹²¹ whilst "*jockeying*" his Warrior backwards and forwards as he did so.¹¹²² By now, on any view of the situation, the Northern Battle had developed into a significant and fiercely fought firefight between the ambushed British soldiers on Route 6 and a large number of well armed and organised Iraqi insurgents, who were engaging the British from various positions of cover to the west of the road.

The arrival of W30 and W32

- 2.764** W30 (commanded by Lieutenant Benjamin Plenge) and W32 (commanded by Sergeant Craig Brodie) arrived at the scene of the Northern Battle some time after the first four Warrior AIFVs and whilst the exchange of fire described above was still ongoing.¹¹²³ Although Lieutenant

¹¹¹³ Corporal Tagica (ASI019562) [25]-[27]

¹¹¹⁴ Sergeant Broome (ASI022319-20) [47]

¹¹¹⁵ Sergeant Broome (ASI022320) [48]

¹¹¹⁶ Ibid.

¹¹¹⁷ Sergeant Broome [86/114/1-11]

¹¹¹⁸ Corporal Green (ASI017766) [34]

¹¹¹⁹ Corporal Green (ASI017767) [35]

¹¹²⁰ Corporal Green (ASI017765) [30]

¹¹²¹ Corporal Green (ASI017767) [36]

¹¹²² Corporal Green [77/21/15-24]

¹¹²³ See, for example, Sergeant Brodie (ASI009184) [37]; Broome (ASI022321) [50]

Plenge could not recall the order in which the two vehicles travelled,¹¹²⁴ it appears that the vehicle he commanded, W30, was ahead of W32.¹¹²⁵

2.765 In his statement to the Royal Military Police dated 1 July 2004, Lieutenant Plenge provided the following account of his arrival at the scene of the Northern Battle:

“In the area just north of the Pepsi factory, I saw W22 and W21, both other Warrior callsigns, engaging an enemy to the west of the road. W22 was orientated in a southerly position. All I could say was that W21 was further south, facing waste [sic – west] or south-west. At this stage, I pulled in fairly close and orientated myself the same way as W22, he then gave a target indication over the radio net.”¹¹²⁶

2.766 By the time he came to give evidence to the Inquiry, Lieutenant Plenge was unable to recall these precise details. However, this aspect of his earlier 2004 Royal Military Police statement was corroborated by the evidence of Sergeant Christopher Broome, commanding W22, and I am satisfied that it is an accurate account of what happened.¹¹²⁷

2.767 In his 2004 statement to the Royal Military Police, Lieutenant Plenge also described the gunner of W30 (Lance Corporal Peter Butler) engaging an enemy gunman, as follows:

“At this time, my gunner engaged a lone gunman in the stream, south west of my position. I could clearly see this person with a long barrelled gun, possibly an AK 47, and he had been firing in our general direction. My gunner used his 7.62 mm chain gun. I could see the rounds hitting the area, as 1 in every 4 rounds was a tracer. Those rounds I could see hitting the area. I can say without any shadow of doubt that I saw at least one round hit the person in the right hand side of his body.”¹¹²⁸

2.768 By the time he gave his written Inquiry statement, Lieutenant Plenge was unable to remember whether an enemy gunman had actually been hit by any of these rounds fired by Lance Corporal Butler. However, he pointed out that, at the time, the enemy gunman in question had been “several hundred metres away from [him].”¹¹²⁹ For his part, when referring to the same incident in his written Inquiry statement, Lance Corporal Butler stated that he was confident that he had not actually killed any of the insurgents when he opened fire.¹¹³⁰

2.769 Although there is a possibility that Lance Corporal Butler’s fire did kill an insurgent gunman, the state of the evidence is such that it is not possible to express any settled conclusion about the matter with any degree of confidence. The target person was some considerable distance away. In the event, Lieutenant Plenge was unable to state positively in his evidence to the Inquiry that any of the shots had actually hit the target and, in his written evidence, Lance Corporal Butler specifically denied having hit anybody when he fired. In those circumstances and despite Lieutenant Plenge’s original account in his 2004 Royal Military Police statement, I consider it unlikely that any Iraq was actually killed by Lance Corporal Butler’s fire.

2.770 The reference to a stream in Lieutenant Plenge’s original 2004 Royal Military Police statement and his estimate of the distance to the target gunman suggests that the gunman in question

¹¹²⁴ Lieutenant Plenge (ASI009727) [31]

¹¹²⁵ Sergeant Brodie (ASI009180) [18]; Private Lumley (ASI017147) [37]

¹¹²⁶ Lieutenant Plenge (MOD019370)

¹¹²⁷ Sergeant Broome (ASI022321) [50]

¹¹²⁸ Lieutenant Plenge (MOD019370)

¹¹²⁹ Lieutenant Plenge (ASI009727-28) [35]

¹¹³⁰ Lance Corporal Butler (ASI018272) [51]; NB – Lance corporal Butler was not called to give evidence at this Inquiry

was either in, or was close to, Trench 2 and that W30 had been firing in a southerly direction when Lance Corporal Butler engaged him.¹¹³¹

2.771 In his evidence, Sergeant Brodie described how W32 had halted adjacent to an irrigation channel that ran perpendicular to Route 6. He said that the channel was filled with water. I am therefore satisfied that W32 came to a halt next to Trench 2.¹¹³² On the basis of the detailed and helpful sketch that Sergeant Brodie provided to the Inquiry,¹¹³³ I am satisfied that W32 stopped at a position slightly to the north of W21 but some distance to the south of W22 and W30.

2.772 From this position in W32, facing west, Sergeant Brodie identified a number of enemy gunmen, who were heavily armed with assault rifles and rocket-propelled grenades, and W32 was subject to heavy incoming fire from these enemy positions.¹¹³⁴ Although Sergeant Brodie's recollection has dimmed somewhat over time, he estimated that he saw between 20 and 30 enemy fighters in this particular area to the west of Route 6.¹¹³⁵

2.773 After W32 had moved into position, Sergeant Brodie ordered his gunner, Private Vakacegu Bennion, to engage the enemy gunmen with the vehicle's chain gun. However, this chain gun also failed¹¹³⁶ and the enemy gunmen were too close for W32's main armament (i.e. the Rarden cannon) to be brought to bear. Sergeant Brodie, therefore, opened the turret hatch and provided suppressive fire with his SA80 rifle. After a short time, he lost sight of the enemy gunmen he was firing at and formed the view that they had "gone to ground".¹¹³⁷ Sergeant Brodie was unable to tell whether he had actually hit any enemy fighters when he opened fire at this stage.¹¹³⁸ Again, whilst I cannot rule out the possibility of a gunman having been killed by Sergeant Brodie's fire, I am satisfied that the fire was suppressive in nature and that it is thus unlikely that anybody was killed as a result.

W33 and W31 depart the scene of the Northern Battle and resume their mission to go to the assistance of the soldiers of 1A&SH south of Danny Boy VCP

2.774 During W33's journey from Danny Boy VCP back to the Pepsi factory, Sergeant David Perfect had attempted to make radio contact with Corporal Jonathan Green in W31, but only succeeded in communicating with Sergeant Christopher Broome in W22. As a result, Sergeant Broome was able to pass on to Sergeant Perfect the important information he had gained from Major Adam Griffiths back at Red 1, namely that the soldiers from 1st Battalion, Argyll & Sutherland Highlanders ("1A&SH") were in fact located some distance to the south of the Danny Boy VCP.¹¹³⁹

2.775 There are a number of radio log entries that suggest that, from time to time, the various call signs on the ground were being reminded that their principal mission still remained the provision of assistance to the 1A&SH soldiers engaged in the Southern Battle.

¹¹³¹ See also sketch plan drawn for the RMP (MOD019375)

¹¹³² Sergeant Brodie [79/14-16]

¹¹³³ Sergeant Brodie (ASI009201)

¹¹³⁴ Sergeant Brodie [79/19/5-17]

¹¹³⁵ Sergeant Brodie [79/20/12]-[21/6]

¹¹³⁶ Sergeant Brodie [79/22/23]-[23/5]

¹¹³⁷ Sergeant Brodie [79/25-27]

¹¹³⁸ Sergeant Brodie [79/31/21]-[32/8]

¹¹³⁹ Sergeant Perfect (ASI015727) [57]-[58]

- 2.776** Thus, at 17:55 hours the radio operator’s log for 1PWRR recorded the following message from the Operations Room at Camp Abu Naji to W22: “Relay to W, D90 coming push S to Y c/s down 4K South of Danny Boy”.¹¹⁴⁰ This message was sent to Sergeant Broome’s W22 and clearly required him to relay the information to the other Warrior call signs at the Northern Battle that a Challenger 2 Main Battle Tank, call sign D90, was heading to their location and that they (or some of them) should head south to assist the 1A&SH call signs located four kilometres south of the Danny Boy VCP.
- 2.777** This message was then followed at 17:58 hours by an entry in the same log that reads as follows: “D90 & W c/s Y c/s 4k Danny Boy under mortar push forward to relieve”.¹¹⁴¹ Although it is not possible to say from the log entry who actually sent this message or to whom it was addressed, it clearly had the same general purpose, namely to ensure that the Warrior call signs did not lose sight of their mission, which was to assist the 1A&SH soldiers involved in the Southern Battle.
- 2.778** When W33 arrived back at the area adjacent to the Pepsi factory Sergeant Perfect saw that three other Warriors were engaged in firing at enemy positions to the west of Route 6. However, W33 did not remain at this location for long. Sergeant Perfect radioed Corporal Green and ordered him to follow W33 south, in order to resume their efforts to locate the soldiers from 1A&SH.¹¹⁴²
- 2.779** When Corporal Green received this particular order from Sergeant Perfect, his Warrior W31 was located some distance to the north of Sergeant Perfect’s W33.¹¹⁴³ Corporal Green therefore ordered his driver, Private Darren Reynolds to head south to meet up with W33. This meant that W31 had to drive into the area where the battle was at its most intense.¹¹⁴⁴ Almost immediately, W31 encountered heavy incoming fire from rifles and rocket-propelled grenades from Trench 1 and Corporal Green returned fire, using W31’s chain gun in order to do so.¹¹⁴⁵
- 2.780** W31 then continued to proceed further south along Route 6, in the direction of the Danny Boy VCP. In his written Inquiry statement, Corporal Green described what happened next in some detail, as follows:

“We then moved further south and reached a point on Route 6 adjacent to the east/west bund line behind which the insurgents had been taking cover. The insurgents were to my west at this time. In my 2004 statement, I describe instructing Pte Reynolds to turn W31 so that I could look along the enemy side of the bund line. I think this is correct and that the Warrior stopped at this point...I then observed the insurgents behind the bund line through the Warrior gun sights. In my 2004 statement, I said that there were between ten and 13 gunmen but I cannot recall exactly how many there were now. My recollection now is that there were a lot of insurgents in this position and possibly even more than the maximum estimate of 13 I referred to in my earlier statement. From what I could see through the sights, the insurgents were all male and ranged in age from late teens to early 40s. I cannot remember what any of them looked like. Most and possibly all of them were wearing a shemagh, or similar local wear, around their faces. They did not all have the same type of clothes and I can recall

¹¹⁴⁰ (ASI022145); NB – original format (MOD018935)

¹¹⁴¹ Ibid.

¹¹⁴² Sergeant Perfect (ASI015728) [59]; Corporal Green [77/31/23]-[32/8]

¹¹⁴³ Corporal Green (ASI017767) [37]-[38]; [77/26/6-13]

¹¹⁴⁴ Corporal Green (ASI017768) [39]

¹¹⁴⁵ Ibid.

*some wore dark clothing whereas others wore light clothing. All of the insurgents were armed and the weapons included AK47 rifles, RPG launchers and grenades and there were some heavy machine guns. I would estimate that I was approximately 500-600 metres away.*¹¹⁴⁶

2.781 When giving his oral evidence to the Inquiry, Corporal Green was uncertain whether W31 returned fire at this point. However, he was confident that the account he gave to the Royal Military Police in 2004 accurately stated his belief that he had hit three of the gunmen in this position.¹¹⁴⁷

2.782 In my view, it is not possible to come to any firm conclusion about whether any Iraqi gunmen were killed by any fire from W31 at this particular stage. In his oral evidence to the Inquiry, Corporal Green could not even recall whether W31 had actually opened fire at this point and, in his Royal Military Police statement, he had not referred to any other evidential support for his belief that he had hit three enemy fighters.¹¹⁴⁸ It is therefore not possible to say whether any Iraqi gunmen were killed by W31's fire at this stage although it is a possibility, if W31 actually did open fire.

2.783 W31 eventually succeeded in meeting up with W33 on Route 6 and the two Warriors then formed a convoy and headed south. They left the area of the Pepsi factory and, as they did so, a further enemy position began to fire at them. This particular enemy position was to the east of Route 6 and was located in the grounds of the Pepsi factory itself. Sergeant Perfect assumed, though he could not directly recall doing so, that he would have informed the other vehicle commanders in the vicinity of this new position.¹¹⁴⁹

2.784 W33 and W31 moved through the Danny Boy VCP using a "pepper pot movement" in which each Warrior took it in turn to halt and provide covering fire whilst the other moved forwards. In W33, Sergeant Perfect provided the covering fire by using a Minimi light machine gun fired from the turret hatch.¹¹⁵⁰

2.785 In his written Inquiry statement, Sergeant Perfect gave the following vivid and dramatic evidence about his attitude of mind at the time and what he was thinking as the two Warriors determinedly made their way through the Danny Boy VCP under fire:

*"I did not expect to survive the journey back through Danny Boy. I thought the weight of enemy fire was too great for me to make it through a second time. I can recall discussing with the dismounts who should replace me in the turret if I was killed."*¹¹⁵¹

2.786 It is possible that Sergeant Perfect killed a single enemy gunman while W33 and W31 were travelling south, just after having passed through the Danny Boy VCP. In his written Inquiry statement, Sergeant Perfect described what happened, as follows:

"As we passed about 200 metres south from the checkpoint I saw a lone RPG man stand up from his position in cover and fire a grenade at us. He was on the west side of the road about 30 metres away. He had black hair and was wearing a white pyjama suit. The grenade did not hit either Warrior. I immediately returned fire, aiming three

¹¹⁴⁶ Corporal Green (ASI017768) [40]; [77/28-30]

¹¹⁴⁷ Corporal Green [77/30/5-12]; (MOD016587)

¹¹⁴⁸ Corporal Green (MOD016587)

¹¹⁴⁹ Sergeant Perfect (ASI015728) [60]

¹¹⁵⁰ Sergeant Perfect (ASI015728) [62]

¹¹⁵¹ Sergeant Perfect (ASI015729) [63]

to five rounds from the Minimi at him. I think I hit him and he dropped out of sight and I did not see him again.”¹¹⁵²

- 2.787** Again, it is not possible to conclude with any certainty that Sergeant Perfect did, in fact, kill this gunman during this particular exchange of fire. Sergeant Perfect himself thought that he had hit the gunman, basing his belief on the fact that the man had then dropped out of sight. Accordingly, whilst it is possible that the gunman was killed by Sergeant Perfect’s fire, it seems to me equally possible that he was merely dropping back into cover.
- 2.788** Based on my assessment of Sergeant Perfect’s evidence as a whole, I am satisfied that this account represented an honest recollection of what Sergeant Perfect saw and did at the time. Accordingly, if an Iraqi man was killed in this exchange of fire, I am satisfied that he was shot during the course of his active participation in the ambush of British troops.
- 2.789** The remainder of W33’s and W31’s journey south along Route 6 was relatively uneventful.¹¹⁵³ In due course, they arrived at the scene of the Southern Battle during its final stages, as I have already described in an earlier section of this Report.¹¹⁵⁴

The dismounts from W22 are deployed

- 2.790** At an early stage of the Northern Battle, Sergeant Christopher Broome had ordered the dismounts in W22 to leave the vehicle. Whilst there were some understandable differences in recollection about precisely when Sergeant Broome gave this order, it seems to me likely that the dismounts deployed prior to the arrival of W30 and W32 and whilst W22 was still in its initial position on Route 6, to the east of the Storm Drain. In his written Inquiry statement, Sergeant Broome said that he had given the order prior to the arrival of those two Warriors¹¹⁵⁵ and Lieutenant Benjamin Plenge appears to have noticed the W22 dismounts when he arrived at the scene in W30.¹¹⁵⁶
- 2.791** Sergeant Broome gave the order to dismount shortly after W22 had been struck by a rocket-propelled grenade (“RPG”).¹¹⁵⁷ In his oral evidence to the Inquiry, Sergeant Broome explained that his main reason for giving that order had been his consideration for the safety of his dismounts, as follows:

“Because of the velocity of fire and we didn’t know what was going on – you only have limited view in the Warrior – I told Corporal Wood he needs to get out and go to a big drainage ditch on the right-hand side which would afford him cover. The way I viewed it at that time, sir, I’m just sitting there in a big metal box and everyone is having a bit of a cavvy (?) at me. And because we are stationary and we can’t move, we are just increasing the chance of getting casualties.

So the SOP¹¹⁵⁸ is to get your guys out, get them into cover, away from that big metal box which was being shot at by rounds and RPGs, and that was the reason to get them out; not to do anything else.”¹¹⁵⁹

¹¹⁵² Sergeant Perfect (ASI015729) [64]

¹¹⁵³ Sergeant Perfect (ASI015729) [65]; Corporal Green (ASI017770) [46]

¹¹⁵⁴ See paragraphs 2.467 – 2.470 above

¹¹⁵⁵ Sergeant Broome (ASI022321) [50]-[51]

¹¹⁵⁶ Lieutenant Plenge (ASI009727) [34]

¹¹⁵⁷ See paragraph 2.761 above

¹¹⁵⁸ Standard Operating Procedure

¹¹⁵⁹ Sergeant Broome [86/114/13-25]

2.792 The soldiers who dismounted from the rear of W22 were Lance Corporal Brian Wood, Private Maciou Tatawaqa and Private Anthony Rushforth. Lance Corporal Wood recalled that the Warrior was encountering heavy incoming enemy fire at the time. Sergeant Broome pointed out a location to the dismounts where they would be able to take cover and W22 provided covering fire with the vehicle's chain gun and Rarden cannon in order to enable them to reach it.¹¹⁶⁰

The fixing of bayonets

2.793 A regular feature of the reporting of the Northern Battle, both in the internal military reporting and in the press, has been the focus on the alleged use of bayonets by dismounted soldiers.

2.794 A number of soldiers gave evidence that it was either standard practice or a matter for the judgment of the individual dismount commander for bayonets to be fixed in circumstances similar to those that faced the dismounts from W22 on 14 May 2004.¹¹⁶¹

2.795 In fact, I am satisfied that none of the dismounts from W22 did fix bayonets that day. Lance Corporal Brian Wood did not do so because his SA80 rifle was fitted with an Underslung Grenade Launcher and was thus incapable of having a bayonet fixed to it.¹¹⁶² Similarly, Private Maciou Tatawaqa was unable to fix a bayonet because he was carrying a Light Support Weapon.¹¹⁶³ For his part, Private Rushforth recalled that his bayonet had remained stored in his day sack for the duration of the tour and was not fixed during the Northern Battle.¹¹⁶⁴

The dismounts from W30 are also deployed

2.796 Shortly after W30 had arrived at the scene of the engagement, Corporal Mark Byles, in the rear of the Warrior, managed to attract the attention of the vehicle commander, Lieutenant Benjamin Plenge, in an effort to receive orders to dismount from the vehicle. In response to this prompting, Lieutenant Plenge ordered Corporal Byles and Private Lloydan Beggs to dismount from W30 in support of the dismounts from W22.¹¹⁶⁵

2.797 Having deployed from the rear of their vehicle, the dismounts from W30 joined up with the dismounts from W22 and took up a defensive position behind a ditch somewhat to the north of Trench 1.¹¹⁶⁶ Corporal Byles fixed his bayonet as he deployed. He did so thinking that he was following a standard practice and in the erroneous belief that the other dismounts had done the same, though he accepted that he had not ordered anybody to do so.¹¹⁶⁷ From this position, the five dismounts from W22 and W30 engaged the enemy gunmen who were located in Trench 1.¹¹⁶⁸

¹¹⁶⁰ Lance Corporal Wood (ASI020728) [33]

¹¹⁶¹ Sergeant Broome [86/119/3]-[122/15]; Lance Corporal Simon Skinner [95/128/4-21]; Lance Corporal Kevin Wright [94/68/20]-[71/25]; Lance Corporal Wood [92/31/21]-[32/20]

¹¹⁶² Lance Corporal Wood [92/31/20]-[32/1]

¹¹⁶³ Private Tatawaqa [92/134/24]-[35/2]

¹¹⁶⁴ Private Rushforth [91/127/1-21]

¹¹⁶⁵ Lieutenant Plenge [85/16/16]-[17/8]; Corporal Byles [84/158/6-15]

¹¹⁶⁶ Corporal Byles (ASI021880) [23]

¹¹⁶⁷ Corporal Byles (ASI021881) [25]; partially corroborated by Private Beggs [78/100/11]-[102/10]

¹¹⁶⁸ Private Beggs [78/103]; Corporal Byles [84/84-87]; Lance Corporal Wood [92/25]

2.798 In his oral evidence to the Inquiry, Lance Corporal Brian Wood gave the following description of the intensity of the British soldiers’ fire from this initial position:

“The three of us returned fire in an attempt to suppress the enemy position. This is a tactic to try and get the upper hand in a fire fight to move to the next stage of advancing towards the enemy position. Of the ammunition that I used on 14 May 2004, I used the majority of it in this position. However, I think it likely that I fired less than Pte Tatawaka [sic] and Pte Rushforth as my role was to tactically plan our next move whilst they provided suppressing fire. I do not know how many rounds they fired, but I would estimate that they would have used between two to six magazines each during this time.”¹¹⁶⁹

2.799 The evidence is such that it is not possible to come to any firm conclusion as to whether any Iraqi gunmen were killed during this particular exchange of fire. However, given the intensity of fire by British soldiers and their accounts of what they subsequently found when they eventually captured Trench 1, there is a possibility that some Iraqi gun men were killed in Trench 1 at this stage in the battle.

Fire support for the dismounts from the Warriors

2.800 W30 remained on Route 6 and fired towards Trench 1 in support of the dismounts, using its chain gun at first, until it jammed, and then using its main armament to do so. Lieutenant Benjamin Plenge described the fire from W30 as “*suppressing depth*” by which he meant that the Warrior fired behind and to the side of the enemy position in order to keep the gunmen in the same location and in cover.¹¹⁷⁰ W22 also provided fire support for the dismounts with chain gun and cannon. Sergeant Christopher Broome similarly described this as “*suppressing fire*” and explained that he was initially concerned that his inability to locate his dismounts could lead to a “*blue on blue*”.¹¹⁷¹ As a result, at this stage he limited W22’s fire to parts of the battlefield where the dismounts could not have reached.¹¹⁷² However, after a while and once Private Stuart Taylor had managed to restart W22’s engine, Sergeant Broome ordered him to drive W22 across the Storm Drain and take up position on ground to the west, in order to get closer to the enemy positions and to provide a more effective supporting fire for his dismounts.¹¹⁷³

2.801 Again, the evidence is such that it is not possible to say for sure whether any Iraqi men were actually killed as a result of this fire from the two Warriors, which was largely suppressive in nature. However, having regard to the evidence of the dismounts about what they found on their arrival at Trench 1, I recognise that there is a real possibility that some Iraqi gunmen were killed as a result of the firing by W30 and W22 at this stage in the battle.

The assault on Trench 1 – the accounts of the soldiers involved

2.802 Once Corporal Mark Byles and Lance Corporal Brian Wood had joined forces and were able to communicate with one another, they decided to advance towards the enemy position

¹¹⁶⁹ Lance Corporal Wood (ASI020730) [40]

¹¹⁷⁰ Lieutenant Plenge [85/20/1-17]

¹¹⁷¹ In military parlance “Blue” signifies friendly and “Red” signifies hostile forces. “Blue on Blue” signifies a casualty or casualties inflicted on friendly forces

¹¹⁷² Sergeant Broome [86/129-131]

¹¹⁷³ Sergeant Broome (ASI022321) [53]

in Trench 1.¹¹⁷⁴ Their plan was to approach Trench 1 by stealth in order to take the enemy fighters in that position by surprise.¹¹⁷⁵

2.803 The five dismounts then separated back into their original sections, with Lance Corporal Wood taking command of Privates Maciou Tatawaqa and Anthony Rushforth and Corporal Byles taking charge of Private Lloydan Beggs. The two sections then advanced in a “*pepper pot formation*”, with each section advancing in turn as the other provided covering fire.¹¹⁷⁶

2.804 The estimates of the enemy strength in Trench 1 ranged from about six to eight¹¹⁷⁷ up to as many as 10 to 20 men.¹¹⁷⁸ In my view, it is more likely that the enemy strength in this position was closer to the lower estimates than to the higher. As the dismounts approached Trench 1, a small number of enemy gunmen were seen abandoning the position and fleeing to the south.¹¹⁷⁹ However, no more than a handful of gunmen escaped in this fashion. I am satisfied that, in the event, the majority of gunmen in this position were subsequently killed or captured by the British soldiers, as described below.

2.805 Lance Corporal Wood’s section was the first to arrive at Trench 1. Corporal Byles and Private Beggs were slightly behind them and to their right at this stage.¹¹⁸⁰ Private Tatawaqa lay on the ground providing covering fire whilst Private Rushforth and Lance Corporal Wood assaulted and entered Trench 1.¹¹⁸¹

2.806 On arriving at Trench 1, the British soldiers encountered, captured and detained four Iraqi gunmen. I am satisfied that these particular detainees were, in fact, Mahdi Jasim Abdullah Al-Behadili (detainee 773), Kadhim Abbas Lafta Al-Behadili (detainee 775), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780). I will set out the details of each detainee’s account of what happened when dealing with their allegations with regard to their treatment by the British soldiers later in this Report. What now follows is a brief summary of the military evidence concerning the assault on Trench 1.

2.807 Lance Corporal Wood gave a graphic description of the assault on Trench 1, in the following terms:

“When I reached the trench there was still four enemy combatants within it. One of them was shouting in Arabic. He had his hands in the air and continued to shout. I shouted back at him something along the lines of ‘put your fucking hands up’. I am not certain what positions the enemy were in but I think the one shouting was standing up and the other three may have been lying down on the ground.”¹¹⁸²

2.808 Lance Corporal Wood first approached the gunman who happened to be standing. In his oral evidence to the Inquiry, Lance Corporal Wood gave the following account of how he apprehended this man:

“I think at that point I had a verbal exchange with him. I put my – I had my right hand on my weapon system and then I put my hand on his shoulder because – we had come

¹¹⁷⁴ Corporal Byles [84/91]; Lance Corporal Wood [92/24]; (ASI020731-32) [44]-[46]

¹¹⁷⁵ Lance Corporal Wood (ASI020732) [46]

¹¹⁷⁶ *Ibid*; Private Beggs (ASI017983) [40]

¹¹⁷⁷ Lance Corporal Wood [92/25/23]

¹¹⁷⁸ Private Tatawaqa [92/139/1]; Private Rushforth [91/132/3-8]

¹¹⁷⁹ Lance Corporal Wood [92/27-28]

¹¹⁸⁰ Private Tatawaqa [92/140-141]; Private Beggs (ASI017984) [41]

¹¹⁸¹ Private Tatawaqa [92/140-141]; Lance Corporal Wood [92/28-29]; cf Private Rushforth [91/136-137]

¹¹⁸² Lance Corporal Wood (ASI020733) [49]; [92/36]

under an engagement. Whether it was our Warriors started to fire or we started to come under contact again, I just heard an engagement. So my own – my safety and the POWs, I then basically wrestled him to the ground, as in my left hand on his right shoulder, put him to the ground out of that contact situation.”¹¹⁸³

2.809 Understandably, Lance Corporal Wood’s attention was largely taken up with his capture and detention of this particular detainee. Accordingly, he was not in a position to give a detailed account of the capture and detention of the other three gunmen.¹¹⁸⁴ However, Private Rushforth had also been present and was able to give evidence about what happened in Trench 1, although the details of his account have changed somewhat over time.

2.810 On 27 May 2004, Private Rushforth gave the following account of these events to the Royal Military Police:

“Whilst there, I identified two males of Iraqi appearance lying on the floor of a field adjacent to route 6. I initially believed the males to be dead, however at shouting at them, realised they were alive. They raised their arms and hands above their heads, indicating they wanted to surrender. With me, or certainly in the vicinity at the time was Cpl Byles, LCpl Wood, Pte Beggs and Tatawacka [sic].”¹¹⁸⁵

2.811 In his original signed written Inquiry statement, Private Rushforth provided the following account of the capture of Trench 1:

“While advancing forward, after approximately 500 metres in total, I crawled up to the side of a ditch. There were two insurgents lying inside a shell scrape, which was concealed by the ditch. I initially thought they were dead, but as I was not certain, I shouted at them to see if they reacted. I cannot remember what I shouted at them. The two insurgents raised their hands to surrender. I crawled back to my team and told LCpl Wood. He called Pte Tatawaka by shouting to him...All three of us went over into the ditch. Pte Tatawaka went first...As we approached them, the two insurgents stood up and left their weapons on the ground, indicating they were surrendering.

There was another shell scrape approximately 4 or 5 metres to the left of the first shell scrape (closer to the road). From our position, we could see that there were another two insurgents in the second shell scrape. They were lying still but they were alive.”¹¹⁸⁶

2.812 However, when Private Rushforth was first asked about the assault on Trench 1 during his oral evidence to the Inquiry, he gave the following account:

“We stopped short still (?) in our belt buckles in the lull of the trench. As I crawled up, up to the bund line, to see if I could see where the enemy were – were, just to the left of me, literally the other side of the bund line, there lay three to four enemy, sir..

I come [sic] back down the bund line. I let Lance Corporal Wood know and then the three of us went over the bund line...

...the Iraqis more or less stood up and surrendered, weapons on the ground, hands in the air, surrendering gestures. Lance Corporal Wood then directed them to get back

¹¹⁸³ Lance Corporal Wood [92/37/14-22]

¹¹⁸⁴ Lance Corporal Wood [92/40/10-22]

¹¹⁸⁵ Private Rushforth (MOD019476)

¹¹⁸⁶ Private Rushforth (ASI014354) [57]–[58]

on the floor, because there was still firing going on, you know, back into their ground of the trench.”¹¹⁸⁷

2.813 Private Rushforth then asked for a substantial amendment to be made to his original written Inquiry statement with regard to his account of the capture of Trench 1. He asked for paragraphs [57] and [58] of his statement, as quoted in paragraph 2.812 above, to be replaced with the following:

“When advancing forward after approximately 400 metres in total, I crawled up to the side of a bund line. I saw over the top a number, perhaps three to four, of insurgents lying the other side of the bund line. I pulled myself back down and spoke to Lance Corporal Wood. He called Private Tatawaqa. All three of us went up over the bund line. The insurgents stood up. Lance Corporal Wood directed the Iraqis to lay down and they did, leaving their weapons on the ground.

My recollection now is we discovered two more insurgents in an adjacent hollow, but I am uncertain of the total number of detainees we took.”¹¹⁸⁸

2.814 I am satisfied that Private Rushforth used his best efforts to give an accurate and truthful account in evidence about what happened that day. As it seems to me, the various events that took place during the assault on and capture of Trench 1 were clearly very dramatic, confused and fast-moving, as well as fraught with immediate and very real danger to the lives of all concerned. I have no doubt that the evident difficulties, which Private Rushforth experienced in remembering accurately what happened during the assault on Trench 1, were due to factors such as these.

2.815 In the event, Lance Corporal Wood’s account of what happened during the assault on and capture of Trench 1 was largely corroborated by Private Tatawaqa’s account, as follows:

“When LCpl Wood and Pte Rushforth arrived at the ditch, the enemy had stopped firing. LCpl Wood, Pte Rushforth and I did not fire our weapons during this stage. LCpl Wood and Pte Rushforth went over the top (there was a mound of earth just before the ditch which they had to get over) and pointed their rifles at the enemy.

A couple of minutes after the assault was over I was signalled by LCpl Wood and approached the ditch. I can remember seeing a number of men lying on the ground on their bellies. I do not remember specifically how many there were, but I note that my first RMP statement (MOD012173) says there were four live Iraqi men. I have no reason to doubt the accuracy of this.”¹¹⁸⁹

2.816 Private Tatawaqa recalled having seen two dead Iraqi men when he arrived in Trench 1. The two bodies were close together and located approximately 10 metres from where the detainees were captured.¹¹⁹⁰ However, Lance Corporal Wood did not see these particular bodies.¹¹⁹¹ I will deal with issues relating to the men killed during the Northern Battle in more detail later in this Report. At this stage, it suffices to say that I am satisfied that there were at least two bodies of deceased Iraqi men in Trench 1 when the British soldiers first entered

¹¹⁸⁷ Private Rushforth [91/136/17]-[137/8]

¹¹⁸⁸ Private Rushforth (ASI023491-92)

¹¹⁸⁹ Private Tatawaqa (ASI018012) [34]-[35]; NB – he maintained this account in his oral evidence [92/136-145]

¹¹⁹⁰ Private Tatawaqa [92/162/23]-[163/17]; Sergeant Broome [86/137]

¹¹⁹¹ Lance Corporal Wood [92/33]

it. It seems to me likely that Lance Corporal Wood failed to notice these bodies because his attention was largely taken up with capturing and detaining the prisoner described above.¹¹⁹²

2.817 Corporal Byles and Private Beggs joined Lance Corporal Wood and his section in Trench 1 a short time later. Corporal Byles offered his own vivid description of the assault on Trench 1, albeit from a somewhat different perspective from that of Lance Corporal Wood.

2.818 Corporal Byles first gave a statement to the Royal Military Police on 25 May 2004. In that statement he described the assault on Trench 1 in the following terms:

“I ran up to a drainage ditch where we had received fire from and looked over and down to it.

I could see in the ditch two Iraqi men one of the men was obviously very young I would say about 15 years old, he was wearing a grey and black vertically striped shirt. I cannot recall what the other one looked like or what he was wearing. I do recall, however, that each of the men were [sic] wearing chest webbing.

Both men were busily trying to load weapons with ammunition and there were various weapons lying around their feet. The men were not looking at me as they were preparing, so I was able to jump in the ditch next to them.”¹¹⁹³

2.819 Corporal Byles sought to clarify this aspect of his evidence in a further statement that he made to the Royal Military Police on 17 August 2004, as follows:

“I want to clarify that when I entered the ditch that it was very confusing. The two Iraqi men were pointing and waving their weapons around. My men were also in the ditch and needed commanding and finally we started to receive fire from a third position in depth.”¹¹⁹⁴

2.820 On 26 March 2005, Corporal Byles gave a witness statement in the course of other legal proceedings, in which described the same incident in the following terms:

“The enemy were in a big, long drainage ditch and it was only when I was about a metre away from the drainage ditch that I could actually hear the enemy talking and preparing weapons. Myself and the other Lance Corporal once ready, then sprung up and identified the biggest threat to us which was neutralised by bursts of automatic fire. This threat consisted of about ten militia, wearing chest rigs (or ammunition belts), carrying various weapons. Some were preparing them and pointing them towards us, and some had been dropped and the persons crawling away. I killed the people who were pointing weapons at me with my ‘S.A.’ 80 assault rifle. I killed two militia and my colleague killed several. Then I used brute force to separate militia men from their weapons, such as kicking and punching. I had no way of speaking their language, I was alone in that trench for about a minute before my team mates came in behind me.”¹¹⁹⁵

2.821 In the months that followed the Battle of Danny Boy, a number of national newspapers published accounts of what had happened during the battle, in which Corporal Byles’ recollection of the assault on Trench 1 was also quoted.

¹¹⁹² See paragraph 2.809 above

¹¹⁹³ Corporal Byles (MOD019271)

¹¹⁹⁴ Corporal Byles (MOD019378)

¹¹⁹⁵ Corporal Byles (ASI022810-11)

2.822 On 11 July 2004, the Sunday Times printed an article with the headline, *“British soldiers tell of heroics in textbook attack”*, by Stephen Grey. The article included the following passage, which included purported quotes from an account given by Corporal Byles:

“I could see some dead bodies and eight blokes, some scrambling for their weapons. I’ve never seen such a look of fear in anyone’s eyes before. I’m over six feet, I was covered in sweat, angry, red in the face, charging in with a bayonet and screaming my head off. You would be scared too.”

Three Iraqis further ahead opened fire and Byles shot two with his rifle. ‘There was a lot of aggression and a lot of hand-to-hand fighting. It wasn’t a pleasant scene,’ he said ‘Some did get cut with the blades of the bayonet as we tumbled around, but in the end they surrendered and were controlled.’”¹¹⁹⁶

2.823 Corporal Byles was also quoted as the source of an article by Tom Newton Dunn in the Sun, published on 8 December 2004, with the headline, *“Iraq hero in line for bravery award”*. This article contained the following passage:

“As another Warrior provided covering fire, the men put fresh magazines on their rifles, scrambled over a muddy mound and sprayed the 60ft-long Iraqi trench. As they stormed the ditch, Cpl Byles saw around a dozen rebels brandishing weapons. He said: ‘The look on their faces was utter shock when five heavily-armed men jumped in on them’”¹¹⁹⁷

2.824 On 18 March 2005, The Telegraph published an article by Michael Smith entitled, *“I bayoneted people. It was me or them.”* This article contained the following passage:

“Cpl Mark Byles...said ‘The look on their faces was utter shock. They were under the impression we were going to lie in our ditch, shoot from a distance and they would run away.’

‘I slashed people, rifle-butted them. I was punching and kicking. It was either me or them. It didn’t seem real. Anybody can pull a trigger from a distance, but we got up close and personal.’”¹¹⁹⁸

2.825 Finally, the citation for Corporal Byles’ decoration for bravery (he was awarded the Military Cross) also contained an account of the assault on Trench 1. The citation does not purport to record Corporal Byles’ own words and was based on a report drafted by Lieutenant Benjamin Plenge.¹¹⁹⁹ The relevant passage in the citation is in the following terms:

“Corporal Byles was quick to identify the enemy positions that posed the greatest threat and issued Quick Battle Orders for the assault. He assessed that the only way to assault the positions was frontally due to the lie of the ground and the necessity to maintain visual contact with the armoured vehicles supporting him. They crossed the ground by utilising fire and manoeuvre until they came within ten metres of the position at which point Corporal Byles gave the order to fix bayonets as they started to work as pairs to break into the position. Automatic fire [was] used to clear the 20 metre long trench.”¹²⁰⁰

¹¹⁹⁶ (ASI001373)

¹¹⁹⁷ (ASI001374)

¹¹⁹⁸ (ASI001233)

¹¹⁹⁹ Corporal Byles [84/110-112]; (MOD043789)

¹²⁰⁰ (MOD048411)

- 2.826** With those previous statements, quotations from newspaper articles and the citation in mind, I turn to the account that Corporal Byles gave to me. In his oral evidence, Corporal Byles said that the account that he gave to the Royal Military Police on 25 May 2004, as clarified by his statement of 17 August 2004, was accurate.¹²⁰¹ Corporal Byles also confirmed that he had detained two men in Trench 1, rather than three as suggested in his written Inquiry statement.¹²⁰² In his oral evidence to the Inquiry, Corporal Byles also said that, whilst taking the enemy position in Trench 1, he had struck the enemy gunmen with his fists and the back of his rifle, but that no firing had actually taken place inside Trench 1 as the position was being taken, although he had used automatic fire from just outside the trench before leaping into it.¹²⁰³ It seems to me likely that this account was much closer to the truth of what actually happened than the more lurid and dramatic accounts given in the various articles and reports referred to above.
- 2.827** In his oral evidence to the Inquiry, Corporal Byles was unable to recall whether he had actually killed any Iraqi men whilst capturing the enemy position in Trench 1, but was content to accept that his previous statement for the other legal proceedings¹²⁰⁴ was accurate in suggesting that he did.¹²⁰⁵
- 2.828** Corporal Byles confirmed that the quotations attributed to him in the article in the Sunday Times referred to above were accurate and that some Iraqi men were cut with his bayonet as he wrestled with them in Trench 1, though he did not accept that the Sun article was accurate in suggesting that he “*slashed*” these men with his bayonet.¹²⁰⁶ Corporal Byles said that The Sunday Times article was inaccurate in its account of the number of enemy gunmen that he encountered in Trench 1.¹²⁰⁷ Corporal Byles also stated that his statement, which had been prepared for the other legal proceedings, was wrong in suggesting that he was alone in Trench 1 for a minute or so before the other dismounts arrived. According to Corporal Byles, it had been a matter of seconds, perhaps 30 seconds at the most.¹²⁰⁸
- 2.829** Private Beggs seems to have been some distance behind Corporal Byles and approximately 50 metres to the right of Lance Corporal Wood’s section when the first soldiers entered Trench 1 and captured the four detainees. Private Beggs confirmed in oral evidence that he had no actual memory of detainees being captured.¹²⁰⁹ It appears that the following passage in his written Inquiry statement describes his recollection of the assault on Trench 1:

“At some point during our advance I heard the sounds of firing, I think both friendly and enemy, and shouting, coming from our left. The nearest men in LCpl Wood’s group were always about 50 metres away from us so I could not see clearly what they were doing. I did not watch to see what was happening. I was more concerned with watching what was happening in front of me because we were still receiving incoming firing from that direction.”¹²¹⁰

¹²⁰¹ Corporal Byles [84/102-104]

¹²⁰² Corporal Byles [84/105]; (ASI021882) [34]

¹²⁰³ Corporal Byles [84/108-114]

¹²⁰⁴ (ASI022810)

¹²⁰⁵ Corporal Byles [84/114-115]

¹²⁰⁶ Corporal Byles [84/116/1]-[117/8]

¹²⁰⁷ Corporal Byles [84/123/8-25]

¹²⁰⁸ Corporal Byles [84/127/6-15]

¹²⁰⁹ Private Beggs [78/112]

¹²¹⁰ Private Beggs (ASI017987) [54]

Conclusions with regard to the assault on Trench 1

- 2.830** I am satisfied that, when giving evidence to the Inquiry, each of the British soldiers who were involved in the successful assault on and capture of Trench 1 on 14 May 2004 genuinely endeavoured to give an accurate account of what had actually happened during that assault. I am equally satisfied that each soldier honestly tried, to the best of his ability, to give an account that was both reliable and factually accurate. However, given the prevailing circumstances and the time that has elapsed since these dramatic events occurred, inevitably there were differences in the accounts given by the soldiers concerned and some of those differences were significant.
- 2.831** Some of the apparent differences in the accounts of the various soldiers can probably be explained by the different perspective which each soldier had on the events in question and the part he played in them. However, there are undoubtedly some significant factual mistakes in the accounts of at least some of the witnesses. It seems to me likely that these errors have been caused by an understandable deterioration in each soldier's memory as a result of the long period of time that has elapsed since the events actually occurred and the fast-moving, confused and extremely dangerous circumstances in which everything happened. Bearing all this in mind, I have carefully considered all the evidence which I have seen, heard and read about the assault on and capture of Trench 1 and what follows is my view of the most likely way in which these events unfolded and took place.
- 2.832** It is apparent that the dismounts approached Trench 1 from the north in two groups. Lance Corporal Brian Wood, Private Anthony Rushforth and Private Maciou Tatawaqa's group was located to the east of Corporal Mark Byles and Private Lloydan Beggs' group, and was thus nearer to Route 6. It seems likely that Lance Corporal Wood's group reached Trench 1 slightly in advance of Corporal Byles' group.
- 2.833** By the time the two groups had completed their advance, an unknown number of Iraqi insurgents had been killed in Trench 1. It is impossible to say with any certainty how many Iraqis had been killed. Nor is it possible to say for certain how many were killed by fire from either or both of the Warriors (W30 and W22) or by fire from the dismounts prior to their advance or by fire from the dismounts during their advance or by a combination of these possibilities. In any event, I am satisfied that a number of Iraqi gunmen had been killed by the time the W30 and W22 dismounts arrived in Trench 1 and that it is likely that two of them had been shot and killed by Corporal Byles.
- 2.834** For reasons which I explore in more detail later in this Report, when I come to consider the injuries that were found on their bodies,¹²¹¹ I am satisfied that all the Iraqi insurgents who had been killed in Trench 1 by this time, had died as a result of gunshot and/or shrapnel wounds inflicted before any of the British soldiers entered Trench 1. I am satisfied that none of the dismounts actually fired their weapons once they entered Trench 1, although bursts of automatic fire had been used right up to the moment that the soldiers entered the trench.¹²¹² I am also equally satisfied that none of the Iraqi gunmen were killed as a result of what might be described as "point-blank firing" or "hand to hand combat" in Trench 1 itself.
- 2.835** It inevitably follows from these conclusions of fact on my part, that I am satisfied that most if not all of the articles/reports, purporting to give an account of the soldiers' assault on Trench 1 that day, contain a number of significant exaggerations and mistakes. Of these exaggerations, it seems to me that one of the most significant is the description of the assault as a "*bayonet*

¹²¹¹ Part 2 Chapter 4

¹²¹² See, for example, Corporal Byles [84/111]

charge”. This particular exaggeration has become one of the enduring myths surrounding the Battle of Danny Boy and I am satisfied that it simply did not take place.

- 2.836** Only one of the five dismounts actually fixed a bayonet prior to the assault on Trench 1. That dismount was Corporal Byles. At most, on Corporal Byles’ account, there was some possibility that an Iraqi man may have been accidentally cut by his bayonet during the capture of Trench 1,¹²¹³ although it is worth noting that none of the detainees made any complaint of that having happened to him. I am satisfied that any suggestion in the various articles/reports of the assault on and capture of Trench 1 that the enemy position had been taken as a result of an organised “*bayonet charge*”, in the sense of dismounted infantry soldiers using fixed bayonets as the principal weapon of attack on the enemy, is wholly misleading and factually incorrect. At no stage did any soldier actually use a bayonet deliberately to kill or disable any enemy fighter during the assault on and capture of Trench 1.
- 2.837** I am satisfied that Lance Corporal Wood and his team entered Trench 1 much closer to where the four detainees were located than Corporal Byles and Private Beggs. Lance Corporal Wood and Private Rushforth entered Trench 1 before Private Tatawaqa and I am therefore satisfied that the first soldiers to encounter the four detainees in Trench 1 were, in fact, Lance Corporal Wood and Private Rushforth.
- 2.838** There were varying accounts with regard to the position of each of the detainees in relation to one another. However, I am satisfied that the four detainees were all in the same general location in Trench 1 and were separated from one another by no more than a few metres. Lance Corporal Wood and Private Rushforth were joined in Trench 1 a very short time later by the remaining dismounts, namely Corporal Byles, Private Beggs and Private Tatawaqa. In the fast moving events that then followed as the four detainees were captured, each of the dismounts from W22 and W30 played a direct part in the capture and detention of the four detainees, at least to some extent. I will go into the detail of what actually happened during their capture and detention later in this Report.¹²¹⁴ At this stage it suffices to say that I am satisfied that both Lance Corporal Wood and Corporal Byles used physical force in order to achieve the effective restraint of the detainees that they captured. I am also satisfied that, in the process of subduing the detainees that he captured, Corporal Byles hit them with his fists and with his rifle.

Sergeant Broome dismounts from W22

- 2.839** Shortly after the dismounts had captured the four detainees in Trench 1, Sergeant Christopher Broome left the turret and dismounted from W22,¹²¹⁵ which was on the western side of the Storm Drain by that stage.¹²¹⁶ Sergeant Broome explained that, although it was a breach of normal procedure to leave his Warrior without an NCO¹²¹⁷ to take command, he had nevertheless decided to do so because it had been some time since he had last seen his dismounts and he wished to take command of them on the ground. Although, Sergeant Broome had not known exactly where the W22 dismounts were located he quickly succeeded in finding them in Trench 1.¹²¹⁸

¹²¹³ Corporal Byles [84/174]

¹²¹⁴ See paragraphs 2.979 – 2.999

¹²¹⁵ Sergeant Broome (ASI022323) [57]; [86/132]

¹²¹⁶ See paragraph 2.800

¹²¹⁷ Non-commissioned Officer

¹²¹⁸ Sergeant Broome [86/131–132]

- 2.840** When he arrived at Trench 1, Sergeant Broome saw the four detainees, each of whom was lying face down on the ground. Sergeant Broome also saw two dead Iraqis in the trench and another dead Iraqi man approximately 75 metres west of this position.¹²¹⁹ Sergeant Broome noticed some bottles of rifle oil in Trench 1 and explained that this, together with the weaponry, the extra ammunition and the other items of military equipment that he saw when he arrived at the position, led him to conclude that the enemy gunmen had come prepared for a long engagement.¹²²⁰ I am satisfied that what Sergeant Broome observed when he arrived in Trench 1 is entirely in keeping with my firm conclusion that the Battle of Danny Boy was the result of a large, well-organised and coordinated ambush on British forces by armed Iraqi insurgents.
- 2.841** Sergeant Broome said that he then instructed Private John Fowler in W22 to inform the Operations Room at Camp Abu Naji by radio that four prisoners had been taken and that there were three enemy dead. Private Fowler also inquired when a soldier of more senior rank could be expected to arrive in order to deal with the prisoners¹²²¹ and was informed that Major James Coote and Company Sergeant Major David Falconer (hereafter “WO2 Falconer”) were on their way to the scene. Private Stuart Taylor, the driver of W22, then passed this information on to Sergeant Broome.¹²²²
- 2.842** Since he was not in visual or radio contact with Major Coote or WO2 Falconer, Sergeant Broome left Lance Corporal Brian Wood guarding the prisoners and enemy weapons and made his way on foot to Route 6 in order to give appropriate directions to Major Coote and WO2 Falconer when they arrived at the scene.¹²²³

Photographic evidence of the capture of prisoners in Trench 1

- 2.843** A number of photographs taken on the battlefield on 14 May 2004 were disclosed to the Inquiry and appear to show the scene in, and very close, to Trench 1 a very short time after the four detainees were captured.

¹²¹⁹ Sergeant Broome [86/136–137]

¹²²⁰ Sergeant Broome [86/134–136]

¹²²¹ Sergeant Broome (ASI022327) [68]; However, this communication does not appear as an entry in any of the radio logs disclosed to the Inquiry

¹²²² Sergeant Broome (ASI022329) [74]

¹²²³ Sergeant Broome (ASI022329) [75]

Figure 34: ASI011925



Figure 35: ASI011924



Figure 36: ASI012480



Figure 37: ASI012479¹²²⁴



¹²²⁴ The facial image of Corporal Byles has been pixelated in accordance with an undertaking given by the Inquiry on 21 October 2013

Figure 38: ASI011929



Figure 39: ASI011928



Figure 40: ASI012476



Figure 41: ASI012475



2.844 Careful and detailed analysis undertaken by the Inquiry has established that each of these photographs was taken by a camera owned by Private Stuart Taylor, the driver of W22, between 18:26 hours and 18:36 hours on 14 May 2004.¹²²⁵ Private Taylor’s recollection of the photographs was somewhat uncertain when he gave his statement to the Inquiry. Private Taylor confirmed that he was the photographer who had taken photographs ASI011924, ASI011925, ASI011929 and ASI011928 but said that he only had a “*vague recollection*” of

¹²²⁵ Michael Moore (ASI022177-84)

taking the other photographs shown above.¹²²⁶ Private Taylor was unable to give oral evidence for health reasons and so this aspect of his account was not tested through questioning. In the event, I am satisfied that nothing of significance turns on establishing the precise identity of the person who took those particular photographs. However, I am able to make a number of important findings of fact based on what can be seen in the photographs.

2.845 First, I am satisfied that the four Iraqi men who appear in four of the above photographs (i.e. ASI012480, ASI012479, ASI012476 and ASI012475) are the same in each photograph and can be identified as:

- a. Mahdi Jasim Abdullah Al-Behadili (detainee 773);
- b. Kadhim Abbas Lafta Al-Behadili (detainee 775);
- c. Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779); and
- b. Hussein Gubari Ali Al-Lami (detainee 780)

2.846 Each of these men was identified from the photographs as a result of work done by the Inquiry Analyst, Mr Michael Moore. Mr Moore was able to do this mainly by comparing the clothing shown in the photographs with the clothing which each detainee was documented as wearing on arrival at Camp Abu Naji later the same day.¹²²⁷

2.847 Furthermore, Mahdi Jasim Abdullah Al-Behadili (detainee 773),¹²²⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775)¹²²⁹ and Hussein Gubari Ali Al-Lami (detainee 780)¹²³⁰ each positively identified himself in these photographs. Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) denied that he appeared in any of the photographs, although his denials were somewhat equivocal.¹²³¹ However, those representing the Iraqi Core Participants realistically accepted that there was no proper basis for contesting the Inquiry’s identification analysis, including that of Atiyah Al-Baidhani, as they made clear in the following passage of their written Closing Submissions:

“...we accept that taking into account the points of identification, and also on analysis of the appearance of other detainees and deceased in order to consider who else the individual shown might be, then the case for the suggested identification in the photographs of Atiyah Al-Baidhani is a strong one. We therefore do not seek to contest the Inquiry’s analysis of the identification of the individuals pictured.”¹²³²

2.848 For these reasons, I am satisfied that the above photographs show the scene in and very close to Trench 1 in the immediate aftermath of the capture and detention of Mahdi Jasim Abdullah Al-Behadili (detainee 773), Kadhim Abbas Lafta Al-Behadili (detainee 775), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780).

2.849 Second, the photographs clearly corroborate the evidence of the arresting soldiers that the detainees in Trench 1 were armed at the point of capture. In the photograph ASI011928, a number of rifles, rocket-propelled grenade (“RPG”) launchers and ammunition are clearly visible. Analysis undertaken by the Inquiry demonstrates that this photograph was taken less than a minute after the photograph ASI012476, less than a minute before the photograph

¹²²⁶ Private Taylor (ASI020151-52) [32]–[36]

¹²²⁷ Michael Moore (ASI022446-54)

¹²²⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/34/2–12]

¹²²⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) [13/10/20]–[11/2]

¹²³⁰ Hussein Gubari Ali Al-Lami (detainee 780) [11/43/2–10]

¹²³¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/121/19]–[122/13]; [10/75/21]–[76/16]

¹²³² ICP Closing Submissions (141) [514]

ASI012479, and was taken using the same camera.¹²³³ It is clear to me, therefore, that the weapons which can be seen in ASI011928 must have been located very near to the location at which the four detainees were captured.

2.850 Third, it is evident that each of the four detainees was blindfolded, had his hands tied behind his back and was made to lie face down on the floor of Trench 1, a short time after capture. The decision to blindfold the detainees and to tie their hands behind their backs was taken by Sergeant Christopher Broome. He was uncertain whether he personally secured their wrists and blindfolded the men or whether he ordered one of the dismounts to do it.¹²³⁴

2.851 In his oral evidence, Private Maciou Tatawaqa recalled having been involved in the process of tying the hands of at least one of the detainees.¹²³⁵ I think it is likely that both Sergeant Broome and Private Tatawaqa, and possibly others, were involved in the process of tying hands and blindfolding the four detainees. I have no doubt that the soldiers in Trench 1 would have regarded it as a matter of considerable importance that the four detainees should be restrained effectively at the earliest opportunity. In my view, it is very likely that a number of soldiers became involved, in order to complete the task as quickly as possible.

2.852 Fourth, it is evident that a number of the soldiers posed for photographs to be taken of themselves with the four captured detainees in Trench 1. A large number of the military witnesses who gave evidence to me were asked to look at the apparently posed photographs to see if they were able to identify the soldiers seen in the images.

2.853 I turn to deal first with photograph ASI012480. Lance Corporal Brian Wood identified himself as the seated soldier on the left side of the image, drinking from a water bottle.¹²³⁶ Private Lloydan Beggs identified himself as the black soldier facing the camera in the centre of the image, wearing both a watch and a helmet.¹²³⁷ Sergeant Broome identified himself as the soldier standing, facing away from the camera with his thumb raised.¹²³⁸ Private Tatawaqa identified himself as the soldier seated to the right of the image holding (though not drinking from) a water bottle.¹²³⁹

2.854 The only soldier visible in ASI012480 in respect of whom there was any uncertainty as to identity is the soldier second from the left, crouched down facing the camera. Sergeant Broome, Lance Corporal Wood and Private Tatawaqa all identified this man as Private Anthony Rushforth.¹²⁴⁰

2.855 However, Private Rushforth said that he did not recognise himself in this photograph. He suggested that the man others had identified as him was, in fact, Private Stuart Taylor. Private Rushforth showed me a tattoo on his left forearm, which he said that he had in 2004 and suggested that the soldier in ASI012480 did not appear to have such a tattoo.¹²⁴¹

2.856 In the event, I am satisfied that the soldier crouched down second from the left in ASI012480 is Private Rushforth, notwithstanding the evidence that he gave to the contrary effect, given

¹²³³ Michael Moore (ASI022177-84)

¹²³⁴ Sergeant Broome [86/143–144]; (ASI022326) [65]

¹²³⁵ Private Tatawaqa [92/148]

¹²³⁶ Lance Corporal Wood [92/58–59]

¹²³⁷ Private Beggs [78/119–120]

¹²³⁸ Sergeant Broome [86/149]

¹²³⁹ Private Tatawaqa [92/170]

¹²⁴⁰ Sergeant Broome [86/149]; Lance Corporal Wood [92/58–59]; Private Tatawaqa [92/170]

¹²⁴¹ Private Rushforth [91/168–169]

perhaps out of a desire to distance himself from the circumstances of the scene shown in the photograph.

- 2.857** A similar exercise was undertaken in evidence in order to identify the soldiers shown in photograph ASI012479. Corporal Byles identified himself on the far left of the image.¹²⁴² Lance Corporal Wood identified himself as the man second from the left of the image.¹²⁴³ Sergeant Broome identified himself as the man with goggles visible on the front of his helmet.¹²⁴⁴ Private Tatawaqa identified himself as the man on the right of the image with the water bottle (and raising his thumb).¹²⁴⁵
- 2.858** Finally, I turn to deal with photograph ASI012476. None of the military witnesses identified himself as the soldier who can be seen holding the rifle in this photograph. Those representing the Iraqi Core Participants suggested in their written Closing Submissions that the pattern of camouflage on the sleeve of this soldier matched that on the sleeve of Corporal Byles in ASI012479.¹²⁴⁶ During his oral evidence to the Inquiry, Corporal Byles was unable to say whether he was, in fact, the soldier shown in ASI012476.¹²⁴⁷
- 2.859** In the event, I have come to the firm conclusion that I am not able to identify the soldier holding the rifle in ASI012476. In my view, there are simply not enough identifying features visible in the photograph to enable me to conclude with any confidence that the soldier is indeed Corporal Byles and there was no oral evidence that remedied that deficiency.
- 2.860** However, I am satisfied that the soldier can be seen apparently pressing the barrel of his rifle into the back of one of the detained Iraqis, namely Kadhim Abbas Lafta Al-Behadili (detainee 775).
- 2.861** In their Closing Submissions, those representing the Ministry of Defence accepted that the taking of photographs such as these of the four detainees was “*at least on one interpretation... inappropriate.*”¹²⁴⁸ This view was echoed by those in command of the soldiers involved. Thus Major Coote gave evidence that he was “*less than impressed when [he] realised that that photograph [sic] had been taken.*”¹²⁴⁹ WO2 Falconer also agreed that the taking of photographs of the detainees in this way was an example of his soldiers “*doing something wrong.*”¹²⁵⁰
- 2.862** Those representing the Iraqi Core Participants went further in their written Closing Submissions. Describing the images as “*trophy photographs*”¹²⁵¹ (not an inappropriate description, in the circumstances), they drew my attention in particular to photograph ASI012476 and suggested that for the detainee with the rifle pressed into his back “*it must have been terrifying.*”¹²⁵² They then went on to submit that the photographs in question were “*indicative...of mistreatment of these men on capture and subsequently.*”¹²⁵³
- 2.863** I accept that the photograph, ASI012476 may show ill-treatment of Kadhim Abbas Lafta Al-Behadili (detainee 775). Thus, it is possible that what is actually depicted in this photograph

¹²⁴² Corporal Byles [84/133–134]

¹²⁴³ Lance Corporal Wood [92/57–58]

¹²⁴⁴ Sergeant Broome [86/148]

¹²⁴⁵ Private Tatawaqa [92/169]

¹²⁴⁶ ICP Closing Submissions (121) [451]

¹²⁴⁷ Corporal Byles [84/129/17–24]; [84/156/25]–[157/23]

¹²⁴⁸ MOD Closing Submissions [10d]

¹²⁴⁹ Major Coote [87/93/14–17]

¹²⁵⁰ WO2 Falconer [146/125]

¹²⁵¹ ICP Closing Submissions (121) [450]

¹²⁵² ICP Closing Submissions (121) [451]

¹²⁵³ ICP Closing Submissions (122) [452]

is a soldier making or realistically simulating a threat to shoot Kadhim Al-Behadili, whilst he was unarmed, restrained and essentially defenceless. If that is what the photograph does actually show, I am satisfied that such a threat, whether real or simulated, would amount to ill-treatment of Kadhim Al-Behadili, whether he was aware of it or not. In my view, such ill-treatment would be all the more serious if Kadhim Al-Behadili was or became aware that a rifle was actually being pressed into his back.

2.864 However, I do not consider that the scene depicted in the photograph is determinative ipso facto of whether this detainee was actually being ill-treated at the time the photograph was taken. In particular, I have considered the account Kadhim Al-Behadili (detainee 775) gave of his treatment at this location. Whilst he made a number of other allegations, at no stage did he describe any actual or pretended threat to shoot him or of having had a rifle pressed into his back in the manner apparently shown in photograph ASI012476.¹²⁵⁴ If Kadhim Al-Behadili had actually been aware at the time that he was being threatened with a rifle in this fashion, I can think of no reason why he would not have referred to such an incident in his evidence to me.

2.865 Given that there is no reference to any such incident in Kadhim Al-Behadili's (detainee 775) account of how he was treated after being captured in Trench 1, it seems to me that there are only two feasible explanations for that omission. The first possibility is that the scene depicted in the photograph, ASI012476 is not of Kadhim Al-Behadili actually being threatened with a rifle, but is (for example) a picture of a soldier striking a tasteless pose of triumphant domination over a captured enemy. The second possibility is that Kadhim Al-Behadili was actually being threatened, but that he was unaware of the threat being made. On balance, I consider the former to be more likely than the latter.

2.866 On any view, the photographs above, which show soldiers striking various poses with the captured detainees, are singularly tasteless. I am satisfied that they were plainly taken as "*trophies*" to celebrate the successful assault on Trench 1, the capture of the four detainees and the soldiers' triumphant domination of a defeated enemy. It is not clear how the decision to take the photographs came about or who made that decision. However, in my view the decision was entirely inappropriate, ill-judged and demeaning.

Firing by insurgents from the south of Trench 1

2.867 Whilst they were dealing with the four prisoners in Trench 1, the dismounts from W22 and W30 experienced incoming enemy fire from the south of their position.¹²⁵⁵ Lance Corporal Brian Wood recalled the Warriors on Route 6 returning fire and suppressing the position.¹²⁵⁶ For his part, Lieutenant Benjamin Plenge described how his Warrior, W30, also succeeded in crossing the Storm Drain and headed south on the open ground between Trench 1 and Trench 2. W30 stopped around 150 metres north of Trench 2, facing south, and then engaged the enemy fighters using the vehicle's chain gun.¹²⁵⁷

2.868 In his written Inquiry statement, Lieutenant Plenge described the enemy position as "*Position 2*".¹²⁵⁸ By reference to the sketch plan drawn by Lieutenant Plenge for the Royal Military Police in 2004,¹²⁵⁹ it appears that these enemy gunmen were actually positioned at the western edge

¹²⁵⁴ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000719) [20]

¹²⁵⁵ Lance Corporal Wood (ASI020734) [52]; Lieutenant Plenge (ASI009729) [39]

¹²⁵⁶ Ibid.

¹²⁵⁷ Lieutenant Plenge (ASI009729) [39]; [85/37]

¹²⁵⁸ Ibid.

¹²⁵⁹ Lieutenant Plenge (MOD019375)

of the Storm Drain, in between Trench 1 and Trench 2 (hereafter “the Storm Drain Position”). The chain gun on W30 then suffered a stoppage. This prompted Lieutenant Plenge to fire at the enemy fighters, using his SA80 rifle from the turret of the Warrior.¹²⁶⁰ Lieutenant Plenge described what then happened in the following terms:

“I remember killing one man in position 2, as this was the first time I recall knowingly killing someone using my rifle. I cannot describe him other than to say he wore baggy clothing, had dark hair and a dark skin tone and had a rifle that may have been an AK47. I think he was slim and not old.”¹²⁶¹

2.869 I am satisfied that Lieutenant Plenge’s account was accurate and that he did shoot and kill one of the insurgent gunmen located in the Storm Drain Position. Understandably, there was insufficient detail in Lieutenant Plenge’s account of the event to enable the Iraqi man who he killed to be identified. Nevertheless, I am satisfied that the gunman in question was killed by Lieutenant Plenge and that he had been an active participant in the attack on British troops. The gunman was armed at the time, almost certainly with an AK47 rifle, and was located in a position from which a considerable amount of fire had been and was being directed at British forces.

The arrival of the Challenger 2 Main Battle Tanks

2.870 In due course, two Challenger 2 Main Battle Tanks, D90 and D92, were deployed to assist those call signs already on the ground.¹²⁶² Initially, it appears that the Challengers were ordered to proceed to Red 1 and the radio log suggests that this order was given at around 17:38hrs.¹²⁶³

2.871 Captain David Strong (commanding D90) recalled that, in the course of their journey along Route 6, the two Challengers were directed to move to the vicinity of the Danny Boy VCP in order to assist with the security of Route 6 and to provide support to the infantry on the ground.¹²⁶⁴ There are no log entries that assist in establishing the time at which the Challengers actually arrived at the scene of the Northern Battle, but it appears that they were ordered to move south at around 17:53hrs.¹²⁶⁵

2.872 On arrival at the scene of the engagement, D92 parked to the north of the Warriors who were already there and D90 parked to the south. From this position, both Challengers initially just observed the situation.¹²⁶⁶

2.873 Although somewhat unclear as to the details, Captain Strong recalled that D90 then fired at a group of around eight to 10 insurgents located to the west of Route 6 and heading north at the time. According to Captain Strong, the insurgents went to ground as a result of this firing and disappeared from view behind a bund line.¹²⁶⁷ It is not possible to say whether anyone was actually killed by D90’s fire. However, it was Captain Strong’s clear recollection that the insurgents in this group were armed and were “displaying hostile intent”.¹²⁶⁸

¹²⁶⁰ Lieutenant Plenge (ASI009729) [40]

¹²⁶¹ Lieutenant Plenge (ASI009729) [41]

¹²⁶² Captain Strong (ASI010735) [26]–[28]; Corporal Newton (ASI010831) [34]–[36]

¹²⁶³ (ASI022145)

¹²⁶⁴ Captain Strong (ASI010736) [30]

¹²⁶⁵ (ASI022145)

¹²⁶⁶ Captain Strong (ASI010739–40) [45]

¹²⁶⁷ Captain Strong (ASI010740–41) [46]–[52]

¹²⁶⁸ Captain Strong (ASI010740) [46]

2.874 Corporal Mark Newton (commanding D92) also recalled engaging enemy gunmen to the west of Route 6.¹²⁶⁹ He too was unable to confirm whether any were killed as a result.

The arrival of the Warriors W0B, W0C, W12 and W13

2.875 On the afternoon of 14 May 2004, W0B (commanded by Major James Coote) and W0C (commanded by WO2 David Falconer) happened to be in Al Amarah providing assistance to a foot patrol from Y Company, 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") which had come under attack.¹²⁷⁰ Whilst in Al Amarah, the two Warriors learnt about the battle that was taking place in the vicinity of the Danny Boy VCP. As a result, Major Coote (commanding W0B and the OC C Company 1PWRR) sought and obtained clearance from the Operations Room at Camp Abu Naji for his multiple to go to the assistance of those already engaged in the battle. W0B and W0C then headed south to the engagement.¹²⁷¹ Unfortunately, there are no radio log entries that assist in establishing the time at which these two Warriors actually arrived at the scene of the Northern Battle.

2.876 However, the radio logs do record that, shortly after 18:00 hours, the Operations Room at Camp Abu Naji ordered the Warriors W12 (commanded by Corporal John Davison) and W13 (commanded by Lance Corporal Paul Laird) to head towards the scene of the Northern Battle,¹²⁷² although the logs do not indicate the time at which W12 and W13 actually arrived at the engagement. There is some evidence which suggests that they arrived at more or less the same time as W0B and W0C, most notably Sergeant Christopher Broome's evidence that he recalled Major Coote having arrived in one of a convoy of four Warriors.¹²⁷³

2.877 On arrival, Major Coote, in W0B, spoke to Lieutenant Benjamin Plenge over the radio and received a short briefing. Major Coote was unable to recall much of the detail of this briefing, apart from being informed that W33 and W31 had left the Northern Battle by this stage and were heading south.¹²⁷⁴ W0B then parked at a position on top of the eastern side of the Storm Drain. Major Coote realised that this position left his Warrior somewhat exposed to enemy fire, but it provided him with a good vantage point to oversee the engagement and it also allowed him to communicate by radio effectively with the Camp Abu Naji Operations Room.¹²⁷⁵ W0C parked on the same earthen bank as W0B and just to its south. WO2 Falconer said that W0C was positioned just to the south of Trench 1.¹²⁷⁶

2.878 W12 and W13 proceeded to the southern end of the Northern Battlefield, passing the other military vehicles which were engaged in the battle at the time. W12 then pulled off Route 6 onto a patch of ground facing west. W13 followed and parked alongside W12.¹²⁷⁷

2.879 Corporal Davison in W12 observed firing going on when he arrived at the scene of the Northern Battle, but he would not allow his vehicle to open fire without knowing where the British soldiers were located.¹²⁷⁸ Accordingly, W12 drove close to W21 to allow Corporal Davison

¹²⁶⁹ Corporal Newton (ASI010833) [43]

¹²⁷⁰ Major Coote [87/20]; (ASI018645) [22]–[24]

¹²⁷¹ Major Coote (ASI018645–46) [25]; see also WO2 Falconer (ASI020186–87) [38]–[39]

¹²⁷² (ASI022145)

¹²⁷³ Sergeant Broome (ASI022329–30) [77]–[78]; NB — this account is broadly corroborated by WO2 Falconer (ASI020190) [49]

¹²⁷⁴ Major Coote (ASI018646) [27]

¹²⁷⁵ Major Coote (ASI018647) [28]

¹²⁷⁶ WO2 Falconer (ASI020190) [49]; NB — WO2 Falconer's references to a "southern irrigation ditch" seems to correspond with what the Inquiry is referring to as Trench 1

¹²⁷⁷ Corporal Davison (ASI009298) [21]–[22]; Lance Corporal Laird (ASI018254) [34]

¹²⁷⁸ Corporal Davison (ASI009299) [23]

to communicate with Corporal Tagica.¹²⁷⁹ After this discussion between the two vehicle commanders, W12 and W13 moved into position just to the east of the Storm Drain.¹²⁸⁰ W13 was positioned just south of W12.¹²⁸¹

2.880 Once in position, the dismounts of W12 (Sergeant Ian Page, Corporal Robert Raynsford, Privates Bradley Mihell and Poate Sikitanaivalu) and W13 (Corporal Richard Edwards, Lance Corporal Kris Stammers, Privates Kawesi Holland, Adriaan Bosch and Ismeli Radrodro) left their vehicles and took up position in the Storm Drain facing west. These dismounts focused on observing their arcs of fire in order to detect any enemy threats.¹²⁸² Several of the dismounts reported seeing Iraqi men some distance from their position in the fields to the west.¹²⁸³ Some of the witnesses said that these Iraqi men were enemy gunmen and that they were armed. However, the evidence from the dismounts was consistently to the effect that they did not receive any incoming fire from these particular Iraqi men and that none of the dismounts had returned fire.¹²⁸⁴ I am satisfied that none of the dismounts from W12 or W13 actually did fire their weapons and that, therefore, no Iraqis were killed as a result of any action on the part of these dismounts.

2.881 The soldiers who had remained in W12 saw a group of enemy gunmen, possibly the same Iraqi men as those seen by the dismounts. Corporal Davison described these enemy gunmen as follows:

“I saw a group of six or seven enemy soldiers who were moving on the bund line to manoeuvre another attack from a different position. They were wearing dark clothing which was not western. I thought they were planning to carry out an attack because they were carrying rifles (AK47s) and tubes in satchels on their backs, which I took to be RPG 7 launchers and they were using their rifles to fire at friendly forces.”¹²⁸⁵

2.882 Corporal Davison instructed W12’s gunner, Private Kenny Hills, to engage these men and Private Hills opened fire with the vehicle’s chain gun.¹²⁸⁶ Neither Corporal Davison nor Private Hills was able to say whether any of the Iraqi men were killed or injured as a result.¹²⁸⁷ It is therefore not possible to say whether any of these gunmen were actually killed.

WO2 Falconer dismounts from WOC

2.883 WO2 David Falconer recalled that he initially dismounted his Warrior in order to speak to Sergeant Christopher Broome.¹²⁸⁸ He crossed the Storm Drain on foot and proceeded into the fields to the west of Route 6. Meanwhile his Warrior, WOC, remained on the road and continued firing over the heads of the dismounts in the direction of the enemy positions.¹²⁸⁹ Once WO2 Falconer reached him, Sergeant Broome provided him with a report of the prisoners taken and the enemy gunmen killed.¹²⁹⁰

¹²⁷⁹ Corporal Davison (ASI009299) [25]

¹²⁸⁰ Corporal Davison (ASI009300) [26]–[27]

¹²⁸¹ Corporal Davison (ASI009316)

¹²⁸² Sergeant Page (ASI009683) [41]

¹²⁸³ See, for example, Sergeant Page (ASI009683-84) [43]; Corporal Edwards (ASI009329) [44]; Lance Corporal Stammers [76/123–124]

¹²⁸⁴ Lance Corporal Stammers [76/124]; Sergeant Page (ASI009684) [48]

¹²⁸⁵ Corporal Davison (ASI009300) [29]

¹²⁸⁶ Corporal Davison (ASI009301) [30]; Private Hills (ASI011154) [41]–[42]

¹²⁸⁷ Ibid.

¹²⁸⁸ WO2 Falconer (ASI020190) [50]

¹²⁸⁹ WO2 Falconer (ASI020191) [51]

¹²⁹⁰ WO2 Falconer (ASI020191-92) [54]

2.884 WO2 Falconer ordered Sergeant Broome to bring all the prisoners over to a collection point adjacent to his Warrior, W0C. I am satisfied that the decision to take this action was made with the intention of ensuring that all the prisoners would be located in a safe place, sheltered from incoming fire.¹²⁹¹ WO2 Falconer then returned to W0C and ordered it to pull back from the bank on which it was parked, so that it could be positioned on the lower ground to the east side of the Storm Drain (i.e. the Route 6 side).¹²⁹²

The dismounts are deployed from W21 and W32

2.885 The two Warriors W21 and W32 had continued to remain at the side of Route 6 in the vicinity of Trench 2. Once the fighting died down and following some requests and prompts from Lance Corporal Kevin Wright, Corporal Jokatama Tagica ordered the soldiers in the rear of W21 to dismount.¹²⁹³ Lance Corporal Wright then led Privates Shaun Sullivan and Sakiusa Tamani into cover in the Storm Drain.¹²⁹⁴

2.886 On their arrival in the Storm Drain, the dismounts from W21 joined forces with Privates Joseph Hartnell, Jayme Bishop and Alipate Korovou, all of whom had dismounted from W32 a short time previously.¹²⁹⁵ Sergeant Craig Brodie (commanding W32) recalled that he had ordered his dismounts to leave the vehicle on instruction from the commanders of W22 (Sergeant Christopher Broome) and W30 (Lieutenant Benjamin Plenge).¹²⁹⁶ Private Hartnell recalled having been informed by Sergeant Brodie about an enemy position in some bushes approximately 100 metres in front of him and slightly to the left. Private Hartnell therefore engaged in some suppressive fire in the direction of that position, but it appeared that none of his shots hit anybody.¹²⁹⁷

2.887 Lance Corporal Wright then split the six dismounts, who were now together in the Storm Drain near Trench 2, into two groups. One group comprised Private Tamani, Private Sullivan and Private Korovou and the other consisted of Lance Corporal Wright, Private Hartnell and Private Bishop.¹²⁹⁸

2.888 Whilst still in the Storm Drain, Lance Corporal Wright identified an Iraqi man to his front. He was not actually holding a weapon, but was in position close to a mounted rocket-propelled grenade ("RPG"). Lance Corporal Wright fired at least three shots at this man and saw him fall, although he could not tell whether he had fallen as a result of having been shot or because he was dropping into cover.¹²⁹⁹

2.889 There is a possibility that Lance Corporal Wright did kill this Iraqi man when he fired at him, although I am unable to come to any conclusion more certain than that. It was Lance Corporal Wright's evidence that the Iraqi man in question appeared to be unarmed at the time. Nevertheless, the man was in the middle of the battlefield at the height of the engagement and he was in the immediate vicinity of a mounted RPG. I am therefore satisfied that he was, at the time, an active participant in the armed attack then being carried out on the British troops by Iraqi insurgents.

¹²⁹¹ WO2 Falconer (ASI020193) [58]; Sergeant Broome (ASI022330-31) [81]

¹²⁹² WO2 Falconer (ASI020193) [59]

¹²⁹³ Corporal Tagica (ASI019564) [33]; Lance Corporal Wright (ASI011593) [59]

¹²⁹⁴ Lance Corporal Wright (ASI011594) [63]

¹²⁹⁵ Lance Corporal Wright (ASI011595) [67]

¹²⁹⁶ Sergeant Brodie (ASI009187) [47]

¹²⁹⁷ Private Hartnell [85/101-102]

¹²⁹⁸ Lance Corporal Wright (ASI011596) [71]

¹²⁹⁹ Lance Corporal Wright (ASI011597) [75]

2.890 Lance Corporal Wright, Private Hartnell and Private Bishop then advanced in a westerly direction, directly away from Route 6, travelling parallel to and north of Trench 2 for approximately 40–50 metres. The intention of their advance had been to draw fire from the enemy position in Trench 2, but it did not have the desired effect.¹³⁰⁰ Having covered about 40–50 metres from the Storm Drain, Lance Corporal Wright then moved across to the bank of Trench 2. Having done so, he entered the trench in order to gain a better understanding of the general layout and to investigate the possibility of out-flanking the enemy gunmen located in that area. In the event, Lance Corporal Wright found Trench 2 contained stagnant water and was very muddy, so he withdrew from it.¹³⁰¹

2.891 While in this position, Lance Corporal Wright noticed what appeared to be two dead bodies. By the time he gave oral evidence to the Inquiry he had forgotten the details of this event, but he stood by the following account that he had provided in his written Inquiry statement:¹³⁰²

“When I got in the river, I could see two people lying on the river bank; these are marked on my sketch map that I drew at the time. They were about 50m away and were not moving. My assumption was that they were dead, but I cannot say this for certain as I did not go up to them. They were lying on top of the slightly raised ground next to the river. I cannot remember now what bank they were lying on.”¹³⁰³

2.892 I do not find it surprising that Lance Corporal Wright failed to recall the details of this event when he came to give his oral evidence to the Inquiry. It seems to me that lapses of memory of this nature are inevitable, given the passage of time since the events in question occurred. However, having regard to the detail given in his written Inquiry statement, I think it is very likely that Lance Corporal Wright did see two bodies on the bank and that he believed them to be dead. There is insufficient evidence to identify either of these bodies or to reach a firm conclusion that they were dead, although it is very likely that they were and that they had been killed in the fighting.

2.893 Lance Corporal Wright then rejoined his team and they withdrew back to the Storm Drain where they were reunited with the dismounts from W32.¹³⁰⁴

Corporal Byles’ account of engaging men to the south of Trench 1

2.894 When he gave his statement to the Royal Military Police in August 2004, Corporal Mark Byles described how he had engaged a group of Iraqi men in a position to the south of Trench 1, although he had made no mention of this event in his first statement to the RMP in May 2004. According to Corporal Byles’ August 2004 Royal Military Police statement, this incident happened after WO2 Falconer had dismounted from WOC and taken responsibility for the four detainees in Trench 1.¹³⁰⁵

2.895 Corporal Byles described how he had contemplated advancing, apparently in a southerly direction from Trench 1, in order to assist some of the other dismounted soldiers. His account then continued, as follows:

¹³⁰⁰ Lance Corporal Wright [94/77–78]

¹³⁰¹ Lance Corporal Wright [94/79/2–12]

¹³⁰² Lance Corporal Wright [94/80]

¹³⁰³ Lance Corporal Wright (ASI011599) [86]

¹³⁰⁴ Lance Corporal Wright [94/81]

¹³⁰⁵ Corporal Byles (MOD019378)

*“Opposite them [the dismounts] were 3 men who I initially believed were civilians. These men were on the reverse slope of the drainage ditch extending along the road. When I first observed them they were playing dead. When I first viewed them through my SUSAT I could not see any weapons. They were lying on their fronts very close together.”*¹³⁰⁶

2.896 During his oral evidence, Corporal Byles confirmed that this group of men were located at the position he had marked on the sketch plan which he drew for the RMP (MOD015679).¹³⁰⁷ This location appears to be consistent with the enemy gunmen being positioned on the western edge of the Storm Drain, south of Trench 1.

2.897 Corporal Byles described how he had observed these gunmen from time to time, whilst he was still in Trench 1 with the four detainees. He estimated that the men were around 120 metres away but, because the terrain was flat, he felt he had a good view of them.¹³⁰⁸ Corporal Byles’ account then went on to describe how he proceeded to engage these gunmen, as follows:

“I watched the man in the middle lean forward for a weapon. He moved in the direction away from the road. He picked an AK 47 up from the floor and brought it up into the alert position. He then looked to me that he was trying to cock it. I now realized that this man could have been a threat to me or more importantly the dismounts in the road so I fired two rounds at him.

*The first round missed him and the second hit him in the right temple. He then fell to the floor. Before firing I shouted to Pte Beggs for him to confirm that this man was enemy which he did.”*¹³⁰⁹

2.898 During his oral evidence to the Inquiry, Corporal Byles explained that he had sought this confirmation from Private Lloydan Beggs because the group of gunmen were some distance away and that he wanted to be certain that they were indeed enemy gunmen before he opened fire on them.¹³¹⁰ He described the man he killed as *“wearing a green chest rig over a grey or off white coloured top”*.¹³¹¹

2.899 Corporal Byles’ evidence was less clear with regard to the other two gunmen in the group. His evidence appears to be that he did kill a second man in this group of insurgents and that the third man had been killed at some stage before he first saw them.¹³¹²

2.900 It seems very likely that the group of insurgents to whom Corporal Byles was referring in this part of his evidence was the same group of gunmen who had been seen and engaged by Lieutenant Benjamin Plenge in the Storm Drain Position.¹³¹³ There is a striking similarity in the evidence of Lieutenant Plenge and Corporal Byles with regard to the location of this group of gunmen on the battlefield. It seems likely that the man Corporal Byles observed as already dead was the man who had just been shot and killed by Lieutenant Plenge.¹³¹⁴ I am also satisfied that Corporal Byles probably shot and killed, or at least believed he killed, one

¹³⁰⁶ Ibid.

¹³⁰⁷ Corporal Byles [84/140]

¹³⁰⁸ Ibid; (MOD019378)

¹³⁰⁹ Corporal Byles (MOD019378-79)

¹³¹⁰ Corporal Byles [84/142/5–11]

¹³¹¹ Corporal Byles (MOD019379); [84/144/5–14]

¹³¹² Corporal Byles [84/143–145]

¹³¹³ See paragraphs 2.868–2.869

¹³¹⁴ See paragraph 2.869

of the other gunmen in this group, but there is insufficient evidence to enable me to make a finding that he killed anybody else at this position.

2.901 Corporal Byles continued to advance in a southerly direction, eventually moving along the Storm Drain until he met up with the dismounts from W21 and W32.¹³¹⁵

Searching the bodies in the Storm Drain Position

2.902 Lieutenant Benjamin Plenge was able to see the dismounts from W21 and W32 taking up fire positions in the Storm Drain some distance to his south and facing west, adjacent to Trench 2. He tried to attract the attention of those dismounts as he wanted them to search the enemy position which he had just engaged.¹³¹⁶

2.903 When these attempts were unsuccessful, Lieutenant Plenge directed W30 to drive south and park next to this enemy position. From there, he used hand signals to beckon the dismounts, who were located a little further south, to come over to his position. Lieutenant Plenge recalled two dismounts coming over to his Warrior, covering the distance by walking along the Storm Drain.¹³¹⁷

2.904 The dismounts who approached W30 were Private Tamani¹³¹⁸ and Private Sullivan.¹³¹⁹ They proceeded to check the bodies, whilst Lieutenant Plenge provided cover from W30.¹³²⁰ The technique they used for checking the bodies was for Private Tamani to “*grab the clothing on the body and roll over on his side, taking the body with him*”¹³²¹ while Private Sullivan looked underneath the body from a safe distance as he did so.¹³²² The two dismounts checked a total of four bodies at this location. Two were found to be dead, one was alive, but badly injured, and one was found to be alive and uninjured.¹³²³ Private Sullivan provided a detailed description of each of these Iraqi men in the order in which he and Private Tamani dealt with them. He also gave an accurate and reliable account of the steps he took in relation to each man.

2.905 Private Sullivan said that the body of the first man they searched was “*clearly dead*”, with a large wound to his stomach that exposed his intestines. This particular man was wearing a British Army issue chest rig.¹³²⁴ I am satisfied that this particular Iraqi man was an armed insurgent who had been actively engaged in the attack on British forces.

2.906 The second Iraqi man had a serious wound to his chest, with an exit wound to his back. However, he was still alive at the time. Private Sullivan checked this man for booby traps and then applied handcuffs to him. Although the soldiers realised that this Iraqi man was seriously injured and that he required urgent medical attention, they nevertheless believed that it was vitally important to ensure that neither this man, nor any of the other bodies in the area, posed any form of continuing threat.¹³²⁵ With the benefit of hindsight, it was probably unnecessary to handcuff this particular man. In reality, his injuries were too serious for him

¹³¹⁵ Corporal Byles (MOD019379); corroborated by Private Bishop (ASI017544) [42] and Private Hartnell (ASI010293) [42]

¹³¹⁶ Lieutenant Plenge (ASI009729-30) [43]

¹³¹⁷ Lieutenant Plenge (ASI009730) [44]

¹³¹⁸ Private Tamani (ASI021390) [37]

¹³¹⁹ Private Sullivan (ASI015618) [65]–[67]

¹³²⁰ Lieutenant Plenge (ASI009730) [45]

¹³²¹ Private Sullivan (ASI015619) [69]

¹³²² Ibid.

¹³²³ Private Sullivan (ASI015619) [72]

¹³²⁴ Private Sullivan (ASI015620) [73]

¹³²⁵ Private Sullivan (ASI015620) [74]–[75]

to have posed any kind of threat to the soldiers. However, I am satisfied that the decision to handcuff him was perfectly understandable in the circumstances, as was the decision to check the other bodies before seeking to obtain medical attention for this injured man. In the event, I am satisfied that this particular injured man was Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (the man who ultimately became deceased 2).

2.907 The third Iraqi man was also clearly dead. Private Sullivan recalled that half of the back of his head was missing. As he was clearly dead, handcuffs were not applied to this man.¹³²⁶

2.908 The fourth man was described as “*playing dead*” but was, in fact, alive and uninjured. This became clear when the man opened his eyes and shouted in Arabic as Private Tamani turned him over and Private Sullivan tried to check his pulse.¹³²⁷ During his oral evidence, Private Sullivan was shown a photograph of Hussein Fadhil Abbas Al-Behadili (detainee 778), but was unable to confirm that he was the fourth man.¹³²⁸ Nevertheless, and based mainly on the fact that the point of capture of each of the other seven Iraqi men detained during the Northern Battle can be clearly established elsewhere on the battlefield, I am satisfied that this particular man was indeed Hussein Fadhil Abbas Al-Behadili (detainee 778).

2.909 Lieutenant Plenge and Private Sullivan agreed that the fourth man, whom I believe to be Hussein Fadhil Abbas Al-Behadili (detainee 778), was loaded into the rear of W30, which then reversed up to the collection point next to WOC.¹³²⁹ However, whilst Lieutenant Plenge recalled that the injured man, Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2), was also taken back to the collection point in W30, Private Sullivan recalled carrying this particular man to the collection point, using a “*fireman’s lift*” in order to do so.¹³³⁰

2.910 On balance, I think it is likely that the late Haydar Al-Lami (deceased 2) was carried to the collection point by Private Sullivan, as he claimed in his evidence. I am satisfied that Private Sullivan was a truthful witness and that he endeavoured to give an accurate account of what happened. As it seems to me, the memory of personally carrying an injured man on the battlefield is likely to have been a vivid one and thus not a mere flight of fancy on Private Sullivan’s part. Lieutenant Plenge’s different recollection can most likely be explained on the basis that it had been his personal intention that Haydar Al-Lami should be transported to the collection point in his Warrior and that he was unaware of it having been done otherwise.

The four detainees from Trench 1 are moved to the collection point near WOC

2.911 There was some inconsistency in the evidence with regard to which soldiers actually escorted the first group of detainees from Trench 1 to the collection point near WOC. Whilst WO2 David Falconer was confident that he had given the order for the four detainees to be taken to WOC,¹³³¹ he was equally confident that he had not been personally involved in escorting them to the collection point, nor did he know who had escorted them or how they had been escorted.¹³³²

¹³²⁶ Private Sullivan (ASI015621) [76]

¹³²⁷ Private Sullivan (ASI015621) [77]

¹³²⁸ Private Sullivan [97/129–130]

¹³²⁹ Lieutenant Plenge (ASI009732) [54]; Private Sullivan (ASI015621-22) [79]–[80]

¹³³⁰ Private Sullivan (ASI015622) [85]–[86]

¹³³¹ WO2 Falconer (ASI020193) [58]

¹³³² WO2 Falconer [146/51/7–20]

2.912 Sergeant Christopher Broome was uncertain whether he had been involved in escorting the four detainees to the collection point near W02 Falconer’s Warrior, WOC. This uncertainty was neatly and frankly encapsulated in his Inquiry statement, as follows:

“I have no recollection of being involved with moving the prisoners from the wadi to the Warrior by Route 6. However, I note that in my May 2004 statement I said ‘I moved the Iraqi men with the assistance of one other soldier. We moved them one by one with an arm under each arm and walked them to the location’ [MOD012122]. I have no reason to doubt my earlier account on this point but I note that in my interview notes with the RMP from May 2004 I just describe how the men were moved ‘Moved terrorists 1 by 1 with x2 people holding them by each arm walking them to Warriors this was under direction of the CSM’ [MOD042455] so I may not have done this myself.”¹³³³

2.913 Given that W02 Falconer had initially given Sergeant Broome the job of moving the four detainees from Trench 1 to the collection point near WOC, it is likely that he had some role in the movement of the detainees in due course. Sergeant Broome’s apparent uncertainty about what actually happened may well be explained on the basis that his involvement was supervisory rather than direct.

2.914 Private Maciou Tatawaqa recalled that he had been involved in the process of escorting the detainees from Trench 1 to the Warrior, and described the process as follows:

“I cannot recall who directly ordered us to escort the detainees to the Warriors. I can vaguely recall that we escorted all of the detainees mentioned above together as a group from the ditch towards the Warriors. I can recall that LCpl Wood, Pte Rushforth and I escorted the detainees to the Warriors with some other soldiers (I cannot recall who). The detainees walked with us to the vehicles but I cannot recall any details about how they were handled. I cannot recall if any force was needed to escort the detainees. I think that the distance from the ditch to the Warriors was approximately 200 metres.”¹³³⁴

2.915 I have no reason to doubt Private Tatawaqa’s account and am satisfied that he was involved in the transportation of the detainees from Trench 1 to the collection point. For his part, Private Anthony Rushforth denied having been involved in the movement of the detainees from Trench 1, although he vaguely recalled seeing it happening from a distance.¹³³⁵ Whilst I have no doubt that Private Rushforth sought to give an accurate account in evidence about what happened that day, his recollection of many of the day’s events is demonstrably inaccurate. I therefore think it is possible, indeed likely, that he was involved in the movement of the four detainees from Trench 1 to the collection point.

2.916 Private Lloydan Beggs recalled that the soldiers who were given the job of moving the detainees from Trench 1 to the collection point were Private Rushforth, Private Tatawaqa, Corporal Mark Byles and a soldier known as “JC”.¹³³⁶ This is likely to be reference to Private Fowler. Private Beggs denied being involved in moving the detainees and he also described watching it happen from a distance.¹³³⁷

¹³³³ Sergeant Broome (ASI022331) [82]

¹³³⁴ Private Tatawaqa (ASI018015) [48]

¹³³⁵ Private Rushforth [91/171/20–23]

¹³³⁶ Private Beggs (ASI017991) [70]

¹³³⁷ Private Beggs (ASI017992) [72]

- 2.917** Corporal Byles' evidence was that he neither participated in nor did he see the movement of the four detainees from Trench 1 to the collection point.¹³³⁸ Lance Corporal Brian Wood's evidence was that he was unable to recall the movement of the detainees from Trench 1 to the collection point.¹³³⁹
- 2.918** Again, I am satisfied that each of the soldiers tried to remember what actually happened to the best of his ability. The memory lapses that undoubtedly affected the evidence of a number of the soldiers were most likely the result of the passage of time since these events happened and the fast-moving, dangerous and confused circumstances in which the events in question occurred. It is perhaps significant that the movement of the four detainees to the collection point near WOC was something that took place between two much more dramatic events, namely the capture of Trench 1 itself and the collection of the dead bodies from Trench 1. In such circumstances, it is understandable that a number of the soldiers were unable to recall the details of a far less memorable incident, namely the four detainees being escorted from Trench 1 to the collection point near WOC.
- 2.919** As I have indicated above in paragraphs 2.884 and 2.913, it is likely that Sergeant Broome oversaw the process of moving the four detainees from Trench 1 to the collection point. It seems to me likely that, once WO2 Falconer decided to move the four detainees, every effort would have been made to do so as swiftly and efficiently as possible for reasons of safety and practicality. Thus it is likely that most if not all of the soldiers, who were present in Trench 1 and not engaged with other tasks, would have been involved in helping move the detainees to the collection point. For this reason, whilst only Private Tatawaqa recalled actually doing so, I think it likely that Corporal Byles, Private Tatawaqa, Private Beggs and Private Rushforth all helped to escort the four detainees from Trench 1 to the collection point near WOC.
- 2.920** Later in this Report I will address the detainees' allegations of ill-treatment by the soldiers whilst being escorted to and dropped off at the collection point next to WOC.¹³⁴⁰
- 2.921** At the collection point itself, WO2 Falconer gave Lance Corporal Philip Muir (now known as Philip French)¹³⁴¹ and (somewhat later) Private Carl Pritchard¹³⁴² the responsibility for guarding the group of four detainees who had been captured in Trench 1. As is evident from the photograph at Figure 42 below, the four detainees were guarded as they lay face down, with their hands plasticcuffed behind their backs and blindfolded with a fabric material. The soldier seen guarding them in the photograph is Lance Corporal Muir (now French), as Lance Corporal Muir himself confirmed in evidence.¹³⁴³

¹³³⁸ Corporal Byles [84/139/3–7]

¹³³⁹ Lance Corporal Wood (ASI020736-37) [61]–[64]

¹³⁴⁰ See paragraphs 2.978–2.1011

¹³⁴¹ WO2 Falconer (ASI020195) [63]; Lance Corporal Muir [80/212–214]

¹³⁴² WO2 Falconer (ASI020197) [68]; Private Pritchard [80/29]

¹³⁴³ Lance Corporal P. Muir [80/214/3–8]

Figure 42: ASI007043



The treatment of Haydar Hatar Al Lami (deceased 2) at the collection point

2.922 In due course, Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2) was also brought over to Lance Corporal Philip Muir at the collection point near WOC. In his written Inquiry statement, Lance Corporal Muir described how he first saw Haydar Al-Lami. He said that Haydar Al-Lami was upright, being lifted or half-carried by two soldiers (one of whom was WO2 Falconer) with his feet dragging along the ground.¹³⁴⁴ However, in his oral evidence, Lance Corporal Muir suggested that this might have been a mistake on his part and that he was there describing the first time he saw Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774).¹³⁴⁵

2.923 In spite of this uncertainty, Lance Corporal Muir’s account of the arrival of Haydar Al-Lami (deceased 2) was strikingly similar to the account provided by Private Carl Pritchard in his written Inquiry statement, as follows:

“I recall that he had been escorted to us by two soldiers, who I cannot recall, who practically carried him to us. The Iraqi man’s arms were wrapped around the shoulders of the two soldiers who were escorting him. Although his feet were touching the floor it did not look as though he could walk unaided. His weight was very much on the shoulders of the two men carrying him.”¹³⁴⁶

2.924 However, Private Pritchard was unable to remember this detail during his oral evidence and simply said “I don’t physically remember him arriving.”¹³⁴⁷

¹³⁴⁴ Lance Corporal Muir (ASI021123) [40]

¹³⁴⁵ Lance Corporal Muir [81/1–2]

¹³⁴⁶ Private Pritchard (ASI023134-35) [68]

¹³⁴⁷ Private Pritchard [80/92/17]

2.925 In his written Inquiry statement, WO2 David Falconer described how he first became aware of Haydar Al-Lami (deceased 2), as follows:

“One of the dismount soldiers, I do not recall who, informed me that one of the prisoners lying down on his front on the ground...was injured. The prisoners and I were next to my Warrior at the time. The man’s injuries were not obvious at first. I went over to the prisoner and I could not at first see where he was hurt. I then noticed his t-shirt moving on his back as if air was passing through it. I put my hand on the spot and felt a depression. One of the soldiers present, I do not recall who, ripped off the man’s t-shirt so that we could see what the problem was. He had a large open wound high up on his back on the rear right shoulder blade from which air from his lung or lungs appeared to be escaping. I placed my hand over the wound on his back in an effort to stop the air escaping and it was only then that the wound started to bleed. Before this, there was no obvious sign of bleeding and even after it began to bleed I do not recall much blood considering the size of the wound. The wound was bigger than my hand. It was at least six inches long, possibly an inch deep and two to three inches wide and was wider in the middle than at either end.”¹³⁴⁸

2.926 Lance Corporal P. Muir then took over the care of Haydar Al Lami (deceased 2).¹³⁴⁹ He provided the Inquiry with a sketch depicting the location and extent of Haydar Al-Lami’s injuries when he first saw him.¹³⁵⁰ This sketch shows two small entry wounds under the armpit of Haydar Al-Lami at the front and a large exit wound at the rear, adjacent to Haydar Al-Lami’s right shoulder blade.

2.927 Several witnesses described how Haydar Al-Lami (deceased 2) tried to resist the soldiers’ various ministrations. Private Shaun Sullivan described how Haydar Al-Lami struggled with him when he was first searched.¹³⁵¹ Lance Corporal Muir described Haydar Al-Lami as “flailing” while he was trying to treat him, adding “he was moving that much that I had actually put my rifle on the floor.”¹³⁵² Captain Marcus Butlin (2i/c¹³⁵³ C Company, 1st Battalion Princess of Wales’ Royal Regiment [“1PWRR”]) recalled Haydar Al-Lami “almost fighting [them]”¹³⁵⁴ and Private Pritchard recalled Haydar Al-Lami attempting to bite him.¹³⁵⁵ However, none of the soldiers displayed any animosity or anger towards Haydar Al-Lami as a result. On the contrary, those soldiers who were present while he was being given medical treatment attempted to reassure Haydar Al-Lami that they were acting in his best interests.¹³⁵⁶

2.928 In the event, considerable efforts were made to give Haydar Al-Lami (deceased 2) urgent and appropriate medical treatment. A chest seal was applied, fluids were provided intravenously and oxygen was given.¹³⁵⁷ Unfortunately, these efforts proved unsuccessful and Haydar Al-Lami died on the battlefield after approximately 45 minutes’ of treatment.¹³⁵⁸ In his written Inquiry statement, Captain Butlin provided the following moving account of the reaction of the soldiers to the death of Haydar Al-Lami:

¹³⁴⁸ WO2 Falconer (ASI020196) [66]

¹³⁴⁹ WO2 Falconer (ASI020197) [67]

¹³⁵⁰ Lance Corporal Muir (ASI021155); [81/3–6]

¹³⁵¹ Private Sullivan (ASI015620) [75]

¹³⁵² Lance Corporal Muir [81/12–13]

¹³⁵³ Second in Command

¹³⁵⁴ Lance Corporal Muir (ASI010452) [42]

¹³⁵⁵ Captain Marcus Butlin (ASI023136) [71]

¹³⁵⁶ See, for example, *ibid*; Captain Butlin (ASI010452) [42]

¹³⁵⁷ Lance Corporal Muir [81/76]

¹³⁵⁸ Captain Butlin (ASI010453) [45]; Haydar Hatar Mtashar Khayban Shamkhi Al-Lami was subsequently assigned the reference “Deceased 2” by the Inquiry: see Figure 1 Part 2 Chapter 1

“There was a pause while we paid our respects silently. I believe I said a little prayer in my head – I was aware of the links between Christianity and Islam in the past, and that no Muslim was present who could officiate.”¹³⁵⁹

The order to collect the dead

- 2.929** That evening, as the Northern Battle was drawing to a close, the commanders on the ground received an order to collect the bodies of the Iraqi men who had died during the contact. The genesis and rationale for this order is addressed later in this Report.¹³⁶⁰ The radio logs from 14 May 2004 indicate that the order was received at around 18:30hrs.¹³⁶¹
- 2.930** WO2 David Falconer recalled being told about the order by Major James Coote (referred to in his statement as “*the OC*”) when he was by the side of WOB.¹³⁶² Lieutenant Benjamin Plenge recalled hearing the order directly from Camp Abu Naji over the radio in W30.¹³⁶³

W30 and the collection of the dead

- 2.931** It appears that Lieutenant Benjamin Plenge in W30 was the first to take any steps to implement the order to collect the dead from the Northern Battlefield. In the statement that he gave to the Royal Military Police (“RMP”) on 1 July 2004, Lieutenant Plenge recalled going back to the Storm Drain Position and the dead bodies being loaded into his vehicle.¹³⁶⁴ However, in his written Inquiry statement, Lieutenant Plenge explained that he no longer remembered having gone back to this particular location, although he still had a general awareness that W30 had been used to transport dead bodies on the day.¹³⁶⁵
- 2.932** In his oral evidence Private Joseph Hartnell recalled loading the dead bodies into W30 and believed that he was assisted by Privates Jayme Bishop and Alipate Korovou.¹³⁶⁶ Lieutenant Plenge had remained in the turret of W30 and watched as the dead bodies were being loaded.¹³⁶⁷ For their part, both Private Korovou and Private Bishop recalled having loaded dead bodies into the rear of a Warrior. However, it is not clear from their evidence whether they were describing this same incident¹³⁶⁸ (i.e. loading dead bodies into W30 at the Storm Drain Position) and it is possible that they were referring to something that happened later.
- 2.933** According to Lieutenant Plenge, three dead bodies were transported in W30 from the Storm Drain Position to the collection point near WOC. For his part, Private Hartnell remembered there being three or four.¹³⁶⁹ In fact, for the reasons set out above, it is clear that neither is correct. I am satisfied that, by this stage, only two dead bodies remained at the Storm Drain Position, because Hussein Fadhil Abbas Al-Behadili (detainee 778) and Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2) had already been taken over to the collection point by Privates Shaun Sullivan and Sakiusa Tamani. It is clear that Private Korovou was correct

¹³⁵⁹ (ASI010453) [46]

¹³⁶⁰ See paragraphs 2.1748–2.1753

¹³⁶¹ (ASI022146)

¹³⁶² WO2 Falconer (ASI020199) [73]

¹³⁶³ Lieutenant Plenge (ASI009733) [55]

¹³⁶⁴ Lieutenant Plenge (MOD019372)

¹³⁶⁵ Lieutenant Plenge (ASI009733) [56]

¹³⁶⁶ Private Hartnell [85/112]

¹³⁶⁷ Lieutenant Plenge [85/54/15–22]

¹³⁶⁸ Private Bishop [82/26–31]; Private Korovou [84/27–28]

¹³⁶⁹ Lieutenant Plenge [85/53/2–14]; Private Hartnell [85/112/4]

when he stated in his written Inquiry statement that two bodies had been loaded into W30 at this stage.¹³⁷⁰

2.934 The loading of dead bodies into W30 at the Storm Drain Position was photographed by Private Stuart Taylor from the driver's seat in W22, as can be seen from Figure 43 below. In his oral evidence to the Inquiry, Lieutenant Plenge said that he was fairly confident that the vehicle depicted in this photograph was W30.¹³⁷¹

Figure 43: ASI011938



2.935 Private Hartnell could not recall exactly how the bodies were loaded into W30, though he did not agree with the suggestion that the bodies needed to be swung in order to get them inside the vehicle. On the contrary, Private Hartnell suggested that there was insufficient space to swing the bodies.¹³⁷²

WO2 Falconer in Trench 1

2.936 Initially, WO2 David Falconer gave instructions to the dismounts in his immediate vicinity to collect the bodies of the dead Iraqi men who could be seen nearby in Trench 1. WO2 Falconer was keen to limit the task to the dead bodies which were readily accessible. WO2 Falconer was unclear whether there might have been more dead bodies further to the west. However, he did not wish the dismounts to head too far afield at that stage. WO2 Falconer also gave directions that the bodies should be kept separate from the four detainees who were already at the collection point.¹³⁷³

¹³⁷⁰ Private Korovou (ASI011414) [64]

¹³⁷¹ Lieutenant Plenge [85/54/15]–[55/7]

¹³⁷² Private Hartnell [85/115/16–25]

¹³⁷³ WO2 Falconer (ASI020199-200) [74]

2.937 There was some inconsistency in the evidence with regard to the order in which subsequent events in or near Trench 1 took place. In particular, it is not clear whether any dead bodies had been collected from Trench 1 before WO2 Falconer and Lance Corporal Brian Wood carried out their “sweep” of the area, which I describe below. However, I am satisfied that nothing of significance turns on establishing the precise order of these events. Accordingly, what follows is a description of the events in question, in what I consider to be the most likely order that they took place, based on the evidence which I have seen, heard and read.

The ‘sweep’ conducted by WO2 Falconer and Lance Corporal Wood

2.938 At some stage after he had become aware of the order to collect the dead, WO2 David Falconer decided that it was necessary to conduct a Re-Org,¹³⁷⁴ effectively bringing the combat phase of the Northern Battle to a conclusion. From this point onwards, what was taking place was in effect a Re-Org of a similar nature to that which had taken place at the Southern Battle. However, as WO2 Falconer went on to explain:

“...I was concerned that the area was not fully secure and I needed to satisfy myself that there were no more insurgents in the area. I asked Sgt Broome where the engagement started as I wanted to go over the ground again to make sure it was clear of enemy and to look for weapons and dead.”¹³⁷⁵

2.939 Although WO2 Falconer made no mention of it in his own evidence, I am satisfied that Lance Corporal Brian Wood had also communicated to WO2 Falconer some concerns of his own about the possibility of further enemy in the immediate area.¹³⁷⁶

2.940 After briefing Major James Coote,¹³⁷⁷ WO2 Falconer joined up with Lance Corporal Wood and both men began to head west along Trench 1. WO2 Falconer walked along the inside of the ditch and Lance Corporal Wood walked beside him in the field on the north side of Trench 1. They advanced using a “*silent fire manoeuvre*”, which involved each soldier taking it in turn to provide cover whilst the other advanced, before switching roles, but without actually firing their weapons. Lance Corporal Wood and WO2 Falconer were not visible to each other all the time as they advanced, but they kept in constant verbal contact to ensure they kept pace with one another.¹³⁷⁸

2.941 After having advanced about 20 to 30 metres to the west, WO2 Falconer and Lance Corporal Wood encountered incoming fire. WO2 Falconer described seeing rounds striking the earth around him and both men fell to the ground in order to take cover.¹³⁷⁹ Hereafter, this incident is referred to as “Contact 1”.

2.942 WO2 Falconer identified the source of the incoming fire as an enemy position within Trench 1, about 30 to 40 metres ahead of them. WO2 Falconer described this enemy position in the following terms: “*I could see the heads and upper bodies of two insurgents. They looked filthy and muddy. They were both armed and their weapons were pointing directly at us.*”¹³⁸⁰

¹³⁷⁴ Re-Org is a standard military procedure, the purpose of which is essentially fourfold: (i) to protect the unit against possible counterattack, (ii) to redistribute manpower, weapons and ammunition, (iii) to treat and evacuate casualties and (iv) to carry out a search of the position currently held; see MoD Reference Portal

¹³⁷⁵ WO2 Falconer (ASI020201-02) [79]

¹³⁷⁶ Lance Corporal Wood [92/61/12–19]; (ASI020737) [63]

¹³⁷⁷ WO2 Falconer (ASI020202) [81]

¹³⁷⁸ WO2 Falconer (ASI020203) [83]

¹³⁷⁹ Ibid.

¹³⁸⁰ WO2 Falconer (ASI020204) [84]

- 2.943** I am satisfied that this description of the two gunmen by WO2 Falconer was an accurate one. I am also entirely satisfied that, as well as firing on WO2 Falconer and Lance Corporal Wood, these two gunmen had been taking an active and hostile part in the wider attack on British forces that day. WO2 Falconer returned fire at the two gunmen with single, aimed shots, but it is not clear whether Lance Corporal Wood also opened fire. It appears that neither of the gunmen was hit by WO2 Falconer's fire at this stage. The gunmen continued to fire as WO2 Falconer and Lance Corporal Wood advanced towards them in a "*fire manoeuvre*", in which each soldier took it in turns to advance as the other provided covering fire.¹³⁸¹
- 2.944** However, once WO2 Falconer got to within 20 metres of the enemy position, the firing from the gunmen ceased. Lance Corporal Wood and WO2 Falconer continued their advance and succeeded in reaching the enemy position. There, WO2 Falconer saw two Iraqi men lying on the ground. They were wearing "*black loose fitting robes*". He also saw two AK47 rifles and five or six magazines of ammunition. He thought there might also have been a rocket-propelled grenade launcher and some grenades there. In addition, WO2 Falconer recalled that the men either wore ammunition belts around their waists or that ammunition belts were located on the floor beside them.¹³⁸²
- 2.945** Although he could not remember what injuries he had seen on the gunmen, WO2 Falconer formed the view that they were both dead — although he did not take any steps to ensure that they were.¹³⁸³ In my view, it is very likely that both gunmen were indeed dead. In the statement that he made to the Royal Military Police in May 2004, WO2 Falconer suggested that he had removed the weapons from these bodies.¹³⁸⁴ However, by the time he came to give evidence to this Inquiry, WO2 Falconer could not remember having done this.¹³⁸⁵
- 2.946** WO2 Falconer then continued to advance further west along Trench 1. Again, he was accompanied by Lance Corporal Wood, who remained in the field on the northern side of Trench 1 as he also advanced west. After approximately 10 metres, they came under a further outburst of incoming fire. In the words of WO2 Falconer this was "*almost a repeat of the first contact*." Both soldiers again took cover.¹³⁸⁶ WO2 Falconer described what then happened, as follows:
- "I took cover and looked up and identified another enemy position in the southern irrigation ditch about 40 metres away. I used the SUSAT sight on my rifle and could see the heads and shoulders of another two armed insurgents. They were armed and their weapons were pointing directly at us. I aimed rapid single shots at the new position and while I do not recall if LCpl Wood did as well I expect that he would have done so."*¹³⁸⁷
- 2.947** Following this exchange of fire, the incoming fire from the enemy position ceased. Accordingly, WO2 Falconer and Lance Corporal Wood continued their advance. When they arrived at the enemy position, they discovered the bodies of two armed gunmen. However, by the time he came to give his written Inquiry statement, WO2 Falconer was unable to describe the weapons that he saw there.¹³⁸⁸ Hereafter, this incident is referred to as "Contact 2".

¹³⁸¹ Ibid; NB — Lance Corporal Wood was unable to recall this event in his oral evidence

¹³⁸² Ibid.

¹³⁸³ WO2 Falconer [146/60/3–24]

¹³⁸⁴ WO2 Falconer (MOD022449)

¹³⁸⁵ WO2 Falconer (ASI020204) [85]

¹³⁸⁶ WO2 Falconer (ASI020205) [86]

¹³⁸⁷ Ibid.

¹³⁸⁸ Ibid.

- 2.948** Again, I am satisfied that WO2 Falconer’s evidence about this incident (i.e. Contact 2) was both credible and accurate. I am also entirely satisfied that the two Iraqi gunmen with whom he exchanged fire during that incident were both armed and that they both were and had been taking an active and hostile part in the attack on British troops. In the event, WO2 Falconer and Lance Corporal did not stay at this particular enemy position in order to carry out any detailed checks to ensure that the two gunmen were actually dead. However, I am satisfied that they both believed that the gunmen had both been killed in the recent exchange of fire and, as it seems to me, it is very likely that this was indeed the case.
- 2.949** Following this second contact in Trench 1, Lance Corporal Wood and WO2 Falconer continued their advance west along Trench 1, searching for further enemy gunmen and using a “*silent fire manoeuvre*”. After advancing for another 10 to 20 metres, WO2 Falconer encountered another enemy position, as follows:

“...I observed movement to my left in my peripheral vision and noticed the barrel of an AK variant rifle poking through a bush. It was only about one metre away from me. I quickly switched my rifle to automatic and fired a burst into the bush. I considered my life to be at immediate risk and I did not wait for the enemy to open fire. I then walked round the bush to find two insurgents dead on the floor. I had shot one of them through the head at a point around his forehead or hairline. I recall that as I approached the body, there was a gush of blood from that injury, and his body was in spasm. I do not recall the injuries to the other dead man.”¹³⁸⁹

- 2.950** Hereafter, this incident is referred to as “Contact 3”. As it happens, this was the last contact that took place in Trench 1 during the Northern Battle.¹³⁹⁰

The collection of dead bodies from Trench 1

- 2.951** As WO2 David Falconer and Lance Corporal Brian Wood proceeded to advance west along Trench 1, they were followed at a short distance by Sergeant Christopher Broome, Private Maciou Tatawaqa, Private Anthony Rushforth and by the Warrior W22 itself. As they moved along Trench 1, the soldiers collected the bodies they could find, loaded them into W22 and returned them to the collection point near WOC.¹³⁹¹
- 2.952** Sergeant Broome described himself and Private Tatawaqa holding each end of the bodies as they loaded them into W22.¹³⁹² During his oral evidence he added the following:

“...I know why Dave Falconer asked me to do it. I’m not a particularly religious man, but as dignified as you can try and get a body into a Warrior, you have, unfortunately, go to do a swing. There is a lip — if this is the ground floor — sorry — if this is where the track is on the floor now, you now have a lip, so it is probably about a good 18 inches, maybe 2 foot, and you have to try and get the body within a square door. It is ideal for someone like us that is flexible to crouch and to lift our knees to get into the back of a Warrior, but for a body that doesn’t move, you have to close in together so now he’s an inverted V, and unfortunately you have to do a bit of a lift and swing. There’s really no other dignified way to get a body in there.”¹³⁹³

¹³⁸⁹ WO2 Falconer (ASI020205) [87]

¹³⁹⁰ WO2 Falconer (ASI020206) [90]

¹³⁹¹ Sergeant Broome [86/164–165]

¹³⁹² Sergeant Broome (ASI022333) [88]

¹³⁹³ Sergeant Broome [86/166/21]–[167/10]

2.953 After the dead bodies had been collected and placed in its rear compartment, W22 drove back to the collection point near WOC. At the collection point, the dead bodies were unloaded from W22 and placed on the ground.¹³⁹⁴

The dead bodies are checked: Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) is discovered

2.954 All the dead bodies that had been collected from the battlefield and brought to the collection point in either W30 or W22 were placed together on one side of WOC.¹³⁹⁵ Whether as a result of a check conducted on the bodies or as a result of a more casual observation, it soon became clear one of the apparently “dead bodies” was still alive. WO2 David Falconer recalled hearing a nearby soldier calling out something like “he’s alive”. Subsequently, he was told that the “dead body” had moved and that the person had made a noise when being moved. WO2 Falconer then instructed Lance Corporal Philip Muir (now French) to check this particular man for injuries.¹³⁹⁶

2.955 According to Lance Corporal Muir, the man was carried over to where he (Lance Corporal Muir) was located. Lance Corporal Muir then gave the following account of the medical treatment that he administered to the man:

“I had them lay him down on the ground face up. I do not think that he was restrained or had his sight restricted by any article. I can recall lifting his eyelids to check for signs of life. As far as I am aware this is the simplest and quickest way to tell if a person is faking death. It was very quickly that the man was alive. His eyes were moving in all directions.”¹³⁹⁷

2.956 Lance Corporal Muir continued as follows:

“The man was passive and scared but did not resist or struggle. I carried out a head to toe check for any signs of injury...I looked for obvious bleeds and there were none...

I can recall that the man had a single wound to one of his feet. It looked like a bullet that had entered from the top of his foot. I cannot recall there being an exit wound. I think the entry was compatible with the type of wound a 5.56mm bullet would cause. I cannot remember which foot was wounded. There was blood on it but it was not bleeding. I cleaned and dressed the wound with a field dressing.”¹³⁹⁸

2.957 Once Lance Corporal Muir had completed his medical treatment, the injured Iraqi man was placed with the other prisoners by the side of WOC.¹³⁹⁹

2.958 I am entirely satisfied that the injured Iraqi man who had initially been thought to be dead was Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774). I set out my main reasons for having reached that conclusion in the paragraphs that follow.

2.959 First, the injuries described by Lance Corporal Muir bear are strikingly similar to the injuries found on Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) when he was medically examined

¹³⁹⁴ Sergeant Broome (ASI022333) [89]

¹³⁹⁵ WO2 Falconer (ASI020214) [110]

¹³⁹⁶ WO2 Falconer (ASI020215-16) [112]

¹³⁹⁷ Lance Corporal P. Muir (ASI021131-32) [67]

¹³⁹⁸ Lance Corporal P. Muir (ASI021132) [68]–[69]

¹³⁹⁹ WO2 Falconer (ASI020216) [112]

later that day at Camp Abu Naji and subsequently at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah.¹⁴⁰⁰ No other detainees were found to have injuries matching those when they were also medically examined.

- 2.960** Second, Lance Corporal Muir confirmed in evidence that the man in photograph MOD048736 was the man with the wound to his foot that he had treated on the battlefield.¹⁴⁰¹ MOD048736 is a photograph of Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) which was taken at the DTDF at Shaibah.
- 2.961** Third, the action taken by Lance Corporal Muir, as summarised above, bears some semblance to the account given by Ibrahim Gattan Hasan Al-Ismaeeli about what had happened to him, although with some significant differences. In particular, Ibrahim Al-Ismaeeli described lying on his back amongst dead bodies and suggested that the soldiers might have concluded that he was dead. Ibrahim Al-Ismaeeli also described in his witness statement how various checks were carried out on him.¹⁴⁰² I will deal with the details of Ibrahim Al-Ismaeeli’s account later in this Report. At this stage, it suffices to say that I am completely satisfied that, in his account of what happened, Ibrahim Al-Ismaeeli was giving his version of the same events as those detailed by Lance Corporal Muir in his description of the medical treatment he had given on the battlefield to the man who had just been found to be alive and not dead.
- 2.962** I am also satisfied that the evidence which I have seen, heard and read enables to specify with confidence precisely where Ibrahim Al-Ismaeeli had been located on the battlefield when he was captured. In his written Inquiry statement, when describing what he had thought when he realised that Ibrahim Al-Ismaeeli was alive, WO2 Falconer said this: *“I thought at the time that this man was the second man I thought I had killed at the bush when I came across the third enemy position by the southern irrigation ditch.”*¹⁴⁰³
- 2.963** WO2 Falconer went on to explain that, by the time he came to give his oral evidence to the Inquiry, he no longer remembered these details.¹⁴⁰⁴ However, I am satisfied that WO2 Falconer’s initial impression was correct, mainly because it is corroborated in part by Ibrahim Al-Ismaeeli’s own account of what had happened to him.
- 2.964** First, Ibrahim Al-Ismaeeli described having been located in a *“dry irrigation canal or water course”*, which ran away from the road and into the fields.¹⁴⁰⁵ This appears to be a description of Trench 1. Second, Ibrahim Al-Ismaeeli said that he had taken cover in Trench 1 with another man, who he said was called Mohammed.¹⁴⁰⁶ Third, Ibrahim Al-Ismaeeli described having been approached by British soldiers, one of whom had opened fire, injuring him and killing Mohammed.¹⁴⁰⁷ Fourth, Ibrahim Al-Ismaeeli described how he had lost consciousness after the shooting and had then woken up inside a vehicle.¹⁴⁰⁸
- 2.965** I will address later in this Report the full account offered by Ibrahim Al-Ismaeeli about this event and the stark differences between some aspects of that account and the evidence of a number of military witnesses. At this stage, it suffices to say that I am satisfied that Ibrahim Al-Ismaeeli was describing the same event which featured in the evidence of WO2

¹⁴⁰⁰ Camp Abu Naji Prisoner Medical Report (MOD043476); DTDF Initial Medical Report (MOD043506)

¹⁴⁰¹ Lance Corporal P. Muir [81/22/25]–[23/8]

¹⁴⁰² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001068) [42]–[43]

¹⁴⁰³ WO2 Falconer (ASI020216) [112]

¹⁴⁰⁴ Ibid.

¹⁴⁰⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001064) [27]

¹⁴⁰⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001065) [32]

¹⁴⁰⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001065-67) [32]–[37]

¹⁴⁰⁸ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001067) [39]–[40]

Falconer and which I have described as “Contact 3” in the preceeding paragraphs above at 2.949–2.950.

The capture of Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

2.966 At the conclusion of Contact 3, Lance Corporal Brian Wood and WO2 David Falconer headed back east along Trench 1 towards Route 6. As he reached the area between Contact 1 and Contact 2, WO2 Falconer described seeing two further Iraqi gunmen:

“I spotted movement to my right (i.e. to the south) and saw two more insurgents. One was quite plump and the other was quite skinny. They were about five metres away. One of them was armed with an RPG launcher armed with a grenade and he wore canvas chest webbing carrying AK47 magazines. The other had an AK47 rifle and the same type of webbing carrying magazines. I cannot now recall which one had which weapon but I note in my Second RMP Statement that I said that prisoner 090776 (the plump insurgent) had the RPG and prisoner 090777 (the skinny insurgent) had the AK47, and I have no reason to doubt my earlier account...The plump insurgent was in his mid-thirties and the skinny man was younger.”¹⁴⁰⁹

2.967 During his oral evidence to the Inquiry, WO2 Falconer described how the men surrendered when they saw him: *“They made themselves visible as I was coming back down the gully, off to my right — stood up and dropped their weapons and put their hands up as I spun round and faced them with my weapon.”¹⁴¹⁰*

2.968 WO2 Falconer recalled that he was alone when he saw these men, at least with no other soldiers within 10 metres or so. As a result, WO2 Falconer felt somewhat isolated and at risk. He described a tense standoff between himself and these two armed men.¹⁴¹¹ WO2 Falconer called to Private Maciou Tatawaqa for assistance in detaining these two men. As it happens, Lance Corporal Wood was sufficiently nearby to be able to observe the arrest of the two men. He also described how the men surrendered and offered no resistance to capture.¹⁴¹²

2.969 In the statement that he made to the Royal Military Police in May 2004, Private Tatawaqa recalled having searched these two detainees before handcuffing and blindfolding them.¹⁴¹³ However, by the time he came to give his oral evidence to the Inquiry, Private Tatawaqa was unable to remember these details.¹⁴¹⁴ In his written Inquiry statement, WO2 Falconer gave the following account of the capture and detention of these particular two men:

“Pte Tatawaqa responded to my shout and approached the two men. I told him to remove the webbing from both men. I do not recall how he did this but I expect he did it by undoing the straps and sliding the webbing off them. I think Pte Tatawaqa placed the webbing on the floor next to the weapons but I do not know what became of them. In my RMP statement I describe Pte Tatawaqa and me forcing the two men to the ground and handcuffing them to the rear. I do not recall restraining their wrists out in the ditch. My current recollection is that we escorted them back to the Warriors without cuffs. However, my recollection may be wrong and what I said in my original statement may be right. I do remember that Pte Tatawaqa escorted the skinny insurgent, and I

¹⁴⁰⁹ WO2 Falconer (ASI020208) [94]

¹⁴¹⁰ WO2 Falconer [146/64/11–14]

¹⁴¹¹ WO2 Falconer [146/65/4–19]

¹⁴¹² Lance Corporal Wood [92/75/2–12]

¹⁴¹³ Private Tatawaqa (MOD019280)

¹⁴¹⁴ Private Tatawaqa [92/174–176]

*escorted the plump one, back to my Warrior. No sight restrictions were applied as I wanted the prisoners to be able to see as they had to get over some rough terrain...”*¹⁴¹⁵

- 2.970** Given the obvious risk that either or both of the two men might have tried to escape while being escorted, it seems to me highly likely that they were handcuffed at the point of capture. As for when they were blindfolded, I accept that WO2 Falconer’s careful and reasoned account is correct and have come to the firm conclusion that the two men were blindfolded after they had been escorted to the collection point rather than at the point of capture. It seems to me likely that Private Tatawaqa’s recollection about when the men were blindfolded confused what actually happened with what he had expected to happen.
- 2.971** The two detainees captured during this incident were Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777). Based on the photographs supplied by the Inquiry, WO2 Falconer was able to identify the “*plump*” insurgent as Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and the “*skinny*” insurgent as Ahmed Jabbar Hammood Al-Furaiji (detainee 777).¹⁴¹⁶ This identification evidence was not challenged by any witness or Core Participant and I am satisfied that it is accurate.
- 2.972** I am also satisfied that these two detainees were escorted from the point of their arrest to the collection point next to WOC by Private Tatawaqa and WO2 Falconer, the former escorting Ahmed Jabbar Hammood Al-Furaiji (detainee 777) and the latter escorting Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776). At a later stage of this Report, I will deal with the details of what happened whilst these two detainees were being escorted to the collection point and their allegations of ill-treatment during that process.

At the collection point

- 2.973** WO2 David Falconer recalled that the detainees and the dead bodies were all laid out on the ground next to WOC. Once they were all at this location, WO2 Falconer counted both groups and found that there were eight dead bodies¹⁴¹⁷ and eight live detainees.¹⁴¹⁸
- 2.974** Having regard to all the evidence and the analysis set out above, I am completely satisfied that the eight live detainees counted by WO2 Falconer at this location were as follows:
- Mahdi Jasim Abdullah Al-Behadili (detainee 773);
 - Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774);
 - Kadhim Abbas Lafta Al-Behadili (detainee 775);
 - Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776);
 - Ahmed Jabbar Hammood Al-Furaiji (detainee 777);
 - Hussein Fadhil Abbas Al-Behadili (detainee 778);
 - Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779);
 - Hussein Gubari Ali Al-Lami (detainee 780).
- 2.975** Four of the detainees, namely Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), Kadhim Abbas Lafta Al-Behadili (detainee 775) and Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) were loaded into W21, together with Lance Corporal Kevin Wright and Private Maciou Tatawaqa. The other four detainees, namely Ahmed Jabbar Hammood Al-Furaiji (detainee 777), Hussein Fadhil Abbas Al-Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari

¹⁴¹⁵ WO2 Falconer (ASI020209) [96]

¹⁴¹⁶ WO2 Falconer (ASI020229) [150]

¹⁴¹⁷ WO2 Falconer (ASI020216) [113]

¹⁴¹⁸ WO2 Falconer (ASI020218) [119]

Ali Al-Lami (detainee 780) were loaded into W32 along with Lance Corporal Brian Wood, Private Alipate Korovou and Private Jayme Bishop. Further details about the loading of these detainees into the Warriors, their transportation back to Camp Abu Naji and the detainees' allegations of ill-treatment by British soldiers are all addressed later in this Report.

2.976 The bodies of the eight deceased Iraqi men at the collection point were all loaded together into the rear of W22 in which they were transported back to Camp Abu Naji. The identification of each of these men, along with my conclusions as to where and when each of them was killed and the details of their loading and transportation to Camp Abu Naji are all addressed later in this Report.

Northern Battle: the capture and handling of the detainees on the battlefield and whilst being transported to Camp Abu Naji

2.977 As I have set out in the previous section of this Report, a total of eight Iraqi men were captured alive during the course of the Northern Battle. In this next part of the Report, I will examine in greater detail the circumstances in which these particular detainees were captured and the allegations which they have made concerning their treatment by British soldiers from the time they were first captured until their arrival at Camp Abu Naji during the evening of 14 May 2004.

The detainees who were captured in Trench 1: Mahdi Jasim Abdullah Al-Behadili (detainee 773), Kadhim Abbas Lafta Al-Behadili (detainee 775), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780)

2.978 I have already dealt with and made findings of fact concerning the manner and circumstances in which Trench 1 was assaulted by British soldiers on 14 May 2004.¹⁴¹⁹ In this part of my Report, I turn to consider in more detail the accounts, given by the various soldiers who were involved in that successful assault, about the circumstances in which they encountered the first four insurgents in Trench 1 and the manner in which they captured, detained and handled them thereafter on the battlefield.

Military accounts of the capture and presence on the battlefield of Mahdi Jasim Abdullah Al-Behadili (detainee 773), Kadhim Abbas Lafta Al-Behadili (detainee 775), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780)

2.979 As I have already indicated, the first two soldiers to come across these four insurgents were Lance Corporal Brian Wood and Private Anthony Rushforth.¹⁴²⁰ In his written Inquiry statement, Lance Corporal Wood described his first sighting of these men in the following terms:

“When I reached the trench there were still four enemy combatants within it. One of them was shouting in Arabic. He had his hands in the air and continued to shout. I shouted back at him something along the lines of ‘put your fucking hands up’. I am not certain what positions the enemy were in but I think the one shouting was standing up and the other three may have been lying on the ground.”¹⁴²¹

2.980 His account then continued, as follows:

¹⁴¹⁹ See paragraphs 2.830 to 2.838 above

¹⁴²⁰ See paragraph 2.837

¹⁴²¹ Lance Corporal Wood (ASI020733) [49]

“I think Pte Rushforth and I moved him away from the others to try and calm him down. The detainee was not moved out of the trench and remained with the others. He was only moved a few feet away from them. I cannot remember how we moved him. I think one of us may have taken him by the arm and got him to move. This happened very quickly and we came under fire again shortly afterwards.”¹⁴²²

- 2.981** It is evident from these excerpts from Lance Corporal Wood’s account that his recollection was that the four insurgents were more or less together in a group when he first entered Trench 1.
- 2.982** As explained earlier in this Report, Private Rushforth’s written Inquiry statement was subject to a late amendment concerning what he recalled having seen when he first entered Trench 1.¹⁴²³ In the amended statement, Private Rushforth’s evidence was that, when he looked into Trench 1, he saw a group of three to four insurgents lying together.¹⁴²⁴ In his original unamended Inquiry statement, Private Rushforth said that he had seen two pairs of insurgents in Trench 1, separated by a distance of about four to five metres.¹⁴²⁵
- 2.983** Private Maciou Tatawaqa was the next soldier to arrive in Trench 1. Like Private Rushforth, Private Tatawaqa described having seen a total of four insurgents in Trench 1, who were grouped in two pairs.¹⁴²⁶ Corporal Mark Byles and Private Lloydan Beggs entered Trench 1 next, at more or less the same time as Private Tatawaqa or very shortly after him. Private Beggs was unable to provide an account of the actual capture of the four insurgents. Corporal Byles’ evidence was that he had initially encountered two men when he first arrived in Trench 1.¹⁴²⁷
- 2.984** I am in no doubt that each of these military witnesses sought to give a truthful and accurate account of what happened when they assaulted and captured the enemy position in Trench 1. In my view, a fairly clear and consistent picture of what actually occurred that day does emerge when those accounts are considered as a whole.
- 2.985** I am satisfied that all four insurgents were in a group in Trench 1, with about four or five metres separating them. It also seems to be the case that the overall group of four consisted of two pairs, with one pair positioned somewhat further along Trench 1 than the other. The attention of Lance Corporal Wood and Private Rushforth was initially concentrated on the capture of one pair and the attention of Corporal Byles was focused on the capture of the other, which was probably the pair located somewhat further along Trench 1. It is not clear from the evidence which of the insurgents Private Beggs approached first. However, it is likely that Private Tatawaqa’s attention was initially directed at the two insurgents who were being captured by Lance Corporal Wood and Private Rushforth. As I explain later in this Report, it seems clear that Private Tatawaqa was actually responsible for getting control of and restraining one of these two particular men, namely Mahdi Jasim Abdullah Al-Behadili (detainee 773), whilst being covered by Private Rushforth.¹⁴²⁸
- 2.986** The soldiers, who had been involved in the successful assault on and capture of Trench 1, gave consistent evidence that they believed the four men they captured and detained had all been active and hostile participants in the attack on British troops. I have no doubt that such was indeed the case. At an earlier stage of this Report, I explained how, prior to the capture

¹⁴²² Lance Corporal Wood (ASI020733) [50]

¹⁴²³ See paragraph 2.813

¹⁴²⁴ Private Rushforth (ASI023491) [57]

¹⁴²⁵ Private Rushforth (ASI014354) [57]–[58]

¹⁴²⁶ Private Tatawaqa [92/142]

¹⁴²⁷ Corporal Byles [84/101–102]

¹⁴²⁸ See paragraphs 2.1107–2.1108

of these four men, Trench 1 had been the source of a great deal of small arms and rocket-propelled grenade fire directed at the British forces. In the paragraphs that follow, I set out the details of what the various soldiers saw and observed when they succeeded in capturing this particular enemy position.

2.987 During his oral evidence to the Inquiry, Lance Corporal Wood gave the following account in response to the questions of Counsel to the Inquiry:

“Q. What about weapons? Did any of them have weapons?”

A. They had weapons by their side. The person who stood up didn’t have a weapon.

Q. So there were weapons on the ground in relation to all four of them; is that right?

A. Yes, yes.

Q. What kind of weapons were they?

*A. AK47s, RPGs, and a PKM which is a machine gun.”*¹⁴²⁹

2.988 In his written Inquiry statement, Private Rushforth also gave clear and unequivocal evidence that the four insurgents had been armed, as follows:

*“The insurgents were carrying AK47 rifles and were wearing AK47 magazine holders containing rifle magazines at the point when they were detained. I note that my May RMP statement states that the detainees’ weapons were moved away from them. I recall seeing chest rigs and AK47 rifles on the ground away from them but I do not recall seeing the weapons being removed from them. I think it is possible that I missed this because I was observing my arcs, looking away ninety percent of the time.”*¹⁴³⁰

2.989 For his part, Private Tatawaqa recalled that all four gunmen had been wearing chest rigs and that he had seen a number of weapons lying on the ground beside them.¹⁴³¹ Corporal Byles also gave a vivid and detailed account of how the Iraqi men captured and detained in Trench 1 had been heavily armed, as follows:

*“The Iraqis I detained were armed. They were armed with AK47s, G3s, RPKs, PKMs and RPGs. I personally recovered an AK47, G3, RPK, RPG and one 60mm mortar. On the battlefield we found these same weapons. We collected them and made them safe after the battle. The recovered weapons were then placed in a Warrior.”*¹⁴³²

2.990 Sergeant Christopher Broome reported having seen a range of weapons in Trench 1 when he first arrived there.¹⁴³³ Furthermore, as he entered the trench, he noticed some additional material that caught his attention and caused him to make the following interesting observation:

*“On the parapet were bottles of rifle oil (not Coalition Force issue) which indicated to me that those who had been engaging from the position had come prepared for a lengthy engagement where a lot of ammunition would be used (meaning that rifles would need to be oiled to keep them cool and working).”*¹⁴³⁴

¹⁴²⁹ Lance Corporal Wood [92/34/22]–[35/4]

¹⁴³⁰ Private Rushforth (ASI014356) [65]

¹⁴³¹ Private Tatawaqa [92/143/6–13]

¹⁴³² Corporal Byles (ASI021883) [37]

¹⁴³³ Sergeant Broome (ASI022327) [67]

¹⁴³⁴ Sergeant Broome (ASI022324) [60]

2.991 It is clear that a certain amount of physical force was used to subdue and detain at least some of the four insurgents in Trench 1. During his oral evidence to the Inquiry, Lance Corporal Wood gave the following account of the way in which he dealt with one particular insurgent, when first detaining him:

“Q. So the prisoner that was stood up, what did you do in relation to him?”

A. I think at that point I had a verbal exchange with him. I put my — I had my right hand on my weapon system and then I put my hand on his shoulder because — we had come under an engagement. Whether it was our Warriors started to fire or we started to come under contact again, I just heard an engagement. So my own — my safety and the POWs, I then basically wrestled him to the ground, as in my left hand on his right shoulder, put him to the ground out of that contact situation.

Q. So you wrestled the first of them to the ground?

A. Yes.

Q. Did you strike him in any way?

A. No.

Q. Did you kick him in any way?

A. No.

Q. Did you use your weapon to strike him in any way?

A. No.”¹⁴³⁵

2.992 Private Rushforth’s evidence was somewhat inconsistent as to whether any force had been used by the soldiers when capturing the four insurgents in Trench 1. In a statement that he gave to the Royal Military Police dated 27 May 2004, Private Rushforth described the insurgents being “*immediately forced to the ground*”,¹⁴³⁶ which he went on to explain was “*to prevent them posing a further threat to us and for their own protection.*”¹⁴³⁷

2.993 However, when Private Rushforth was shown this passage during the making of his written Inquiry statement, he gave the following, somewhat different, account of how the four gunmen were dealt with:

“The four detainees go onto their fronts lying face down on the ground. My May RMP statement describes that the latter two insurgents were “immediately forced to the ground” and that I believed this may have been done by Pte Tatawaqa. I can no longer recall the manner in which the four detainees got into this position. I think that all four insurgents were ordered to lie down on the ground, but I do not recall who this order came from. I do not recall whether physical contact or hand gestures were used to reinforce this order but I do not remember any physical force being used.”¹⁴³⁸

¹⁴³⁵ Lance Corporal Wood [92/37/12]–[38/2]

¹⁴³⁶ Private Rushforth (MOD019477)

¹⁴³⁷ Ibid.

¹⁴³⁸ Private Rushforth (ASI014354-55) [60]

2.994 During his oral evidence, Private Rushforth repeatedly said that no force had been used by the soldiers during the initial detention of these four men in Trench 1.¹⁴³⁹ It also seems clear that Private Rushforth's conjecture in his Royal Military Police statement, that two of the men may have been forced to the ground by Private Tatawaqa, is incorrect. During his oral evidence, Private Tatawaqa was asked about when he first saw any of the insurgents in Trench 1 and he gave the following account:

"Q. So was the first time that you saw them when you stood up?"

A. Yes, sir.

Q. Did they have their hands in the air?"

A. No, sir.

Q. What were they are [sic] doing?"

A. They were laying on their bellies, sir, face down on the ground."¹⁴⁴⁰

2.995 I accept that Private Tatawaqa's evidence about this is likely to be correct, at least so far as concerns the insurgents upon whom his attention was mainly focused at that stage (i.e. the pair that had been or were in the process of being captured by Lance Corporal Wood and Private Rushforth).

2.996 Corporal Byles' evidence indicated that he had used a much greater degree of physical force in order to restrain the two insurgents that he encountered in Trench 1. In the statement that he gave to the Royal Military Police on 25 May 2004, Corporal Byles said this:

"Due to the situation and the fact that there was fire coming from other enemy positions, I had to be firm with these men for their safety as well as mine and that of my colleagues. So in the ditch I hit these men with my fists and with the back of my rifle to get them to surrender. Both men struggled with me until I was able to finally overpower them and get them to lie on the floor."¹⁴⁴¹

2.997 Corporal Byles confirmed this account when he gave his oral evidence to the Inquiry and added that he had also kicked the two men when capturing them as part of the process of subduing and gaining control of them.¹⁴⁴²

2.998 Accordingly, as is clear from the evidence of the soldiers involved, I am satisfied that physical force was used by the soldiers during the initial capture and detention of the four insurgents in Trench 1. I accept that, in their oral evidence to the Inquiry, both Lance Corporal Wood and Corporal Byles gave an accurate description of the amount and nature of the physical force used. I also accept that those who used force did so in order to overcome the resistance being offered by the detainees themselves and because of the perceived need to subdue and to gain control of them quickly and firmly for the safety of all concerned.

2.999 In his written Inquiry statement, Private Tatawaqa gave the following description of the procedure that they had been trained to follow and which the soldiers had used in relation to the four insurgents in Trench 1 that day:

"To restrain a detainee, I was taught to get on their back and use my body weight to restrain them, and then kneel down with one leg either side of the detainee and then

¹⁴³⁹ Private Rushforth [91/148/15–19]; [91/154/7]–[155/13]; [91/162/20]–[63/4]

¹⁴⁴⁰ Private Tatawaqa [92/142/11–18]

¹⁴⁴¹ Corporal Byles (MOD019271)

¹⁴⁴² Corporal Byles [84/123/6–7]

lie over them, but not so that they take your body weight. I was taught to then search them by patting them down over their clothes and then, using the position adopted, flip the detainee over to face my partner so that he can see underneath them to see if they are hiding anything (for example, if he was lying on any explosives). If he gave the all clear, I could then get the detainee’s hands together and restrain him using plasticuffs. Again I would check that I could fit my finger through the cuffs when applying them. I followed this process when restraining the detainees on 14 May 2004.”¹⁴⁴³

2.1000 It is clear from the photographs that were disclosed to the Inquiry, as shown and discussed at an earlier stage of this Report, that the four detainees in Trench 1 were then brought together and made to lie face down on the ground, whilst handcuffed and blindfolded. From this position, as already indicated, the four detainees were later moved to a collection point near WO2 David Falconer’s Warrior, WOC, which was positioned beside Route 6.¹⁴⁴⁴

2.1001 As I set out earlier in this Report, I am satisfied that the process by which these detainees were moved to the collection point by WOC was overseen by Sergeant Broome and probably involved Private Tatawaqa, Corporal Byles, Private Beggs and Private Rushforth or most of them.¹⁴⁴⁵

2.1002 In the statement that he made to the Royal Military Police on 22 May 2004, Sergeant Broome gave the following account of the movement of the detainees from Trench 1 to the collection point next to WOC:

“I moved the Iraqi men with the assistance of one other soldier. We moved them one by one with an arm under each arm and walked them to the location.”¹⁴⁴⁶

2.1003 By the time he made his written Inquiry statement, Sergeant Broome could not remember the details of how the detainees had been moved, although he had no reason to doubt the truth of his previous statement.¹⁴⁴⁷

2.1004 In his statement to the Royal Military Police, Private Rushforth said this:

“Upon his [WO2 Falconer’s] arrival the Iraqi males were carried and dragged over to WO2 Falconer’s Warrior. This was done by each individual being held under their arms and dragged. This was done as none of the prisoners would stand or walk unassisted on their own.”¹⁴⁴⁸

2.1005 When he gave his written Inquiry statement, Private Rushforth was unable to remember what had taken place and was unable to comment on how the detainees had been moved, save to say that he did not recall anything that amounted to ill-treatment of the men.¹⁴⁴⁹ In the statement he made to the RMP, Private Tatawaqa described the detainees having been “forcibly marched” to the collection point.¹⁴⁵⁰ However, in his oral evidence to the Inquiry, he was unable to remember if any force had been used.¹⁴⁵¹

¹⁴⁴³ Private Tatawaqa (ASI018013) [40]

¹⁴⁴⁴ See paragraphs 2.911–2.921

¹⁴⁴⁵ See paragraphs 2.911–2.921

¹⁴⁴⁶ Sergeant Broome (MOD012122)

¹⁴⁴⁷ Sergeant Broome (ASI022331) [82]

¹⁴⁴⁸ Private Rushforth (MOD019477)

¹⁴⁴⁹ Private Rushforth (ASI014357) [71]

¹⁴⁵⁰ Private Tatawaqa (MOD019280)

¹⁴⁵¹ Private Tatawaqa [92/165]; (ASI018015) [48]

2.1006 In his written Inquiry statement, Private Beggs gave the following account of what occurred:

*“The detainees were helped to their feet by being lifted under their arms and were moved quickly and firmly. In my RMP statement I said the detainees were moved in accordance with the training that I received during OPTAG training; by this I meant the detainees were not pushed or treated roughly.”*¹⁴⁵²

2.1007 In the statements that they made to the Royal Military Police, both Private John Fowler and Corporal Byles also said that the detainees were picked up and physically moved from Trench 1 to the collection point.¹⁴⁵³

2.1008 Having regard to the totality of the evidence about the matter, I am satisfied that the four detainees were moved quickly and firmly from Trench 1 to the collection point near WOC and that the soldiers involved in that process exercised a significant degree of direct physical control over the detainees whilst it was taking place. On balance, I think that the account given by Private Rushforth in his statement to the Royal Military Police is likely to be a reasonably accurate description of how the process was actually carried out.¹⁴⁵⁴

2.1009 It is clear from the photograph shown in the at Figure 42 (ASI007043) that, once they had been moved to the collection point near WOC, the four detainees were again made to lie face down, with their sight restricted by a blindfold and their hands tied behind their backs. In the statement that he made to the Royal Military Police, WO2 Falconer said that he had then given the following order:

*“Once the prisoners had been placed on the ground next to my Warrior they were guarded by Pte Pritchard, I instructed him that if they tried to look up or speak he was to push their heads or prevent them talking by telling them to shut up.”*¹⁴⁵⁵

2.1010 In his written Inquiry statement, WO2 Falconer sought to clarify what he had meant by this passage in his RMP statement and to explain the reasons why he might have given those instructions, as follows:

*“I do not recall giving these instructions to the guard. However, as I said this in my RMP Statement and as I have no reason to doubt the accuracy of that account on this point, I think it likely that this is what in fact I did say. I expect that I gave the instructions for similar reasons as set out above. We were short of manpower and in order to keep the prisoners under control I did not want them to know how few of us there were and how they were only guarded by one soldier. I remember seeing one of the prisoners raising his head and looking round and talking to the other prisoners in Arabic. Whilst he had a blindfold on, it was makeshift and loose and he may have been able to see. As we had no interpreters with us I could not tell them in Arabic to keep their heads down and be quiet so I expect that all I could think to do to stop these activities was to have the guard stop them looking up and tell them to shut up. I would not have wanted, and would not expect, the guard to use any great force when stopping a prisoner from looking up and I would not have wanted him to have pressed the prisoner’s head into the earth or cause him any injury. I am not certain but I have a feeling that I may have shown a guard how I wanted him to stop a prisoner looking up by putting my hand to one of the prisoners who was attempting to do this and pushing it back down.”*¹⁴⁵⁶

¹⁴⁵² Private Beggs (ASI017992) [71]

¹⁴⁵³ Private Fowler (MOD019475); Corporal Byles (MOD019272)

¹⁴⁵⁴ See paragraph 2.811

¹⁴⁵⁵ WO2 Falconer (MOD022447)

¹⁴⁵⁶ WO2 Falconer (ASI020197-98) [69]

2.1011 For his part, Private Carl Pritchard was unable to recall having been given this particular instruction by WO2 Falconer.¹⁴⁵⁷ However, I have no doubt that it was given and I accept WO2 Falconer’s evidence about what his reasons for giving it would have been and how he would have expected it to be implemented. As to why Private Pritchard was unable to recall the instruction, it seems to me likely that either WO2 Falconer was mistaken as to the identity of the person to whom he gave it or that, more likely and unsurprisingly, Private Pritchard has simply forgotten that he was given the instruction in question.

2.1012 As I set out earlier in this Report, the group of four detainees captured in Trench 1 were divided between two different Warrior AIFVs for the journey back to Camp Abu Naji. Mahdi Jasim Abdullah Al-Behadili (detainee 773) and Kadhim Abbas Lafta Al-Behadili (detainee 775) travelled in W21 whilst Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780) travelled in W32.

2.1013 A number of the military witnesses gave evidence in general terms about the manner in which the various detainees, who had been captured during the Northern Battle (including the four men captured in Trench 1), were loaded into the Warrior AIFVs in order to be transported to Camp Abu Naji.

2.1014 Corporal Jokatama Tagica believed that as many as five of the detainees had been loaded into his Warrior, W21, although it seems clear that it was not as many as that. In his written Inquiry statement, his evidence as to the manner in which the detainees were loaded into W21 was as follows:

“I recall that some other soldiers (though I cannot remember who for certain) brought them over to my Warrior one-by-one, to where I was stood at the rear of my Warrior. I then helped them into the Warrior. I guided them by putting my hand on their arm, just below the shoulder, and guiding them into the Warrior as it involved a step up. No force was used on them whatsoever.”¹⁴⁵⁸

2.1015 Lance Corporal Kevin Wright, without being able to identify to which Warrior AIFV he was referring, gave the following account of the process by which the detainees were loaded into the vehicle:

“I do recall CSM Falconer asking me to make sure that they got back to CAN safely. I assisted in loading one of the detainees into the back of a Warrior. As he was blindfolded, I did this by placing one hand on his back and one on his head when escorting him into the Warrior. There is a step to get into the Warrior and I lent the detainee forward so that he could feel the step in front of him pressing against his leg and then gently pushed him so he knew to get in...The detainees were loaded very carefully and I remember how organised it seemed to be to get everyone in.”¹⁴⁵⁹

2.1016 Private Alipate Korovou similarly described a smooth and uneventful process by which the detainees were loaded into one of the Warrior AIFVs, as follows:

“The process of loading the detainees on to the Warrior was relatively easy as far as I can remember. Pte Bishop stepped into the Warrior first in order to guide the detainee into it, and the detainee stepped up to get into the back. I continued to guide the detainee by his arm throughout this process. As I note above, the back of a Warrior is

¹⁴⁵⁷ Private Pritchard [80/84/12–25]

¹⁴⁵⁸ Corporal Tagica (ASI019569) [61]

¹⁴⁵⁹ Lance Corporal Wright (ASI011608-09) [127]

not particularly high so it was fairly simple for the detainee to get into the back. The same process was repeated with each detainee.”¹⁴⁶⁰

2.1017 Finally, WO2 Falconer gave the following evidence about what he saw of the loading process of the detainees into the Warrior AIFVs:

“I then saw some of the prisoners (I cannot recall how many) being escorted into the Warriors. Each one was guided inside by two soldiers leading them along by their arms. I do not recall how the soldiers made the prisoners aware of the step up into the Warrior but it is a low one so I do not think it would have presented them with any difficulty. I can recall the soldiers being careful that the prisoners did not bang their heads when entering the Warriors by placing a hand between the roof and the prisoner’s head and guiding them in.”¹⁴⁶¹

2.1018 Few noteworthy details appear in the accounts of the soldiers with regard to the journey back to Camp Abu Naji. In relation to the four detainees from Trench 1, the only significant evidence seems to be that of Lance Corporal Wright and Private Tatawaqa about some minor incidents that occurred in the rear of W21 during the journey.

2.1019 In his written Inquiry statement, Lance Corporal Wright said this:

“On the way back I could hear the detainees muttering and praying and I told them to be quiet. At the same time Pte Ratawaka [sic] gave one of them a slight shove so that he knew that I was talking to him as none of them could see us. It was only along the lines of an “I’m talking to you” type of poke. They were quiet after this.”¹⁴⁶²

2.1020 During his oral evidence to the Inquiry, Lance Corporal Wright made it clear that his reference to a “Ratawaka” was an error and he had been describing Private Tatawaqa.¹⁴⁶³ Lance Corporal Wright went on to confirm that this part of his statement was accurate and added that he too had physical contact with the detainees in the rear of W21, as follows:

“Q. Did you have any physical contact with them, so they would know you were speaking to them?

A. Yes.

Q. What physical contact was that?

A. Placing my hand on them so they knew that was the person I was speaking to.

Q. Whereabouts did you put your hand on their body?

A. On their chest.”¹⁴⁶⁴

2.1021 During oral evidence, Private Tatawaqa accepted that he might well have acted as Lance Corporal Wright said he did, although he had no memory of having done so.¹⁴⁶⁵

¹⁴⁶⁰ Private Korovou (ASI011417) [76]

¹⁴⁶¹ WO2 Falconer (ASI020218) [119]

¹⁴⁶² Lance Corporal Wright (ASI011609) [132]

¹⁴⁶³ Lance Corporal Wright [94/44/9–19]

¹⁴⁶⁴ Lance Corporal Wright [94/151/11–18]

¹⁴⁶⁵ Private Tatawaqa [92/188/21]–[189/13]

The explanation given by Mahdi Jasim Abdullah Al-Behadili (detainee 773) in order to account for his presence on the battlefield on 14 May 2004

2.1022 Mahdi Jasim Abdullah Al-Behadili (detainee 773) has given a number of accounts in which he sought to explain how he came to be present at the scene of the Northern Battle, all of which I have read and/or heard. Although there were a number of significant differences of detail in these accounts, with which I will deal later, Mahdi Al-Behadili consistently asserted in each account that he had been captured at or near his farm, where he had been at the time for the purposes of carrying out various mainly agricultural activities.

2.1023 In July 2004, in the first of these various accounts, Mahdi Al-Behadili told the Royal Military Police that he had been at the farm for the purpose of cutting grass for his cows.¹⁴⁶⁶

2.1024 In January 2008, Mahdi Al-Behadili (detainee 773) gave a statement to the Administrative Court for the purposes of the Judicial Review proceedings. In that statement he explained that he had been at the farm in order to “*irrigate the land*”.¹⁴⁶⁷ He went on in that statement to add some further detail of this irrigation work, as follows:

*“There is a canal near the farm and I opened the sluice gates to let out the water. I stayed there for some time as it takes time for the water to leave the canal and effectively irrigate the land.”*¹⁴⁶⁸

2.1025 In his first written Inquiry statement that he made in July 2010, Mahdi Al-Behadili said that he had been at the farm both to irrigate the land and to gather grass, although on this occasion he mentioned only a single cow.¹⁴⁶⁹ In the second written Inquiry statement that he made in January 2013, Mahdi Al-Behadili referred only to the irrigation task.¹⁴⁷⁰

2.1026 During his oral evidence to the Inquiry, Mahdi Al-Behadili initially suggested that his purpose in going to the farm on 14 May 2004 might have been to study.¹⁴⁷¹ Mahdi Al-Behadili explained the apparent inconsistencies in his various accounts on the basis that he had had a variety of reasons for going to the farm on the day in question.¹⁴⁷² He went on to make it clear that, although he had taken books with him to the farm in order to study, he did not actually have an opportunity to do so on 14 May 2004.¹⁴⁷³

2.1027 In his oral evidence to the Inquiry, Mahdi Al-Behadili was adamant that he had been alone at the farm and that he had only been in possession of a sickle whilst there, although he had left the sickle on the ground when he took cover.¹⁴⁷⁴

The account given by Mahdi Jasim Abdullah Al-Behadili (detainee 773) about how he came to be captured by the British soldiers on 14 May 2004

2.1028 Although he accepted that the terrain around his farm was flat and that the visibility had been good on 14 May 2004, Mahdi Jasim Abdullah Al-Behadili (detainee 773) maintained that he had not been aware of any armed Iraqi men in the area around him that day.¹⁴⁷⁵ On

¹⁴⁶⁶ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD002937)

¹⁴⁶⁷ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006488) [2]

¹⁴⁶⁸ Ibid.

¹⁴⁶⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001113) [13]

¹⁴⁷⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000777) [13]

¹⁴⁷¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/9–11]

¹⁴⁷² Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/29–33]

¹⁴⁷³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [9/1–2]

¹⁴⁷⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/31]

¹⁴⁷⁵ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [9/32–33]

the contrary, his evidence was that he first became aware of the battle, and the ambush that precipitated it, when he heard *“very strong firing.”*¹⁴⁷⁶ In his oral evidence to the Inquiry, Mahdi Al-Behadili said that he had thrown himself face down on the ground, when he heard the sound of firing. He claimed that he had not seen anything of the battle from that point on.¹⁴⁷⁷ However, in his second written Inquiry statement he said that he had lain with his back to the ground.¹⁴⁷⁸

2.1029 When he was interviewed in July 2004, Mahdi Al-Behadili told the Royal Military Police that he was unable to describe any of the soldiers who had arrested him.¹⁴⁷⁹ However, in the January 2008 statement that he made to the Administrative Court for the purposes of the Judicial Review proceedings, Mahdi Al-Behadili said this:

*“Then a black soldier approached me. He was tall and muscular. He was followed by a further two soldiers. These other two soldiers were white.”*¹⁴⁸⁰

2.1030 In his first written Inquiry statement of July 2010, Mahdi Al-Behadili maintained his account that he had been arrested by three soldiers and that one of the soldiers had been black.¹⁴⁸¹ In his second written Inquiry statement made in January 2013, Mahdi Al-Behadili gave the following account of his arrest which, for the first time, seemed to suggest that he had been arrested by two soldiers, rather than three:

*“I did not see who the voices belonged to until they were right on top of me. Two soldiers came towards me first, one came behind my head and the other circled around to my feet. They both aimed their guns at me and were shouting aggressively at me. I did not know what they were saying. I was still on my back lying down. I could not really see the soldier behind my head but I knew he was there. The other soldier in front of me was black, of heavy build and tall. He had a rifle.”*¹⁴⁸²

2.1031 During his oral evidence to the Inquiry, Mahdi Al-Behadili confirmed that he had been arrested by two soldiers, one of whom had been black. However, he added that there had been *“other soldiers in the vicinity”*.¹⁴⁸³ Mahdi Al-Behadili maintained in oral evidence that he had only seen the black soldier and that he could not describe the other soldiers who had been present at the time.¹⁴⁸⁴ However, he gave no explanation for having told the Administrative Court that he had seen two white soldiers. Similarly, he had no explanation for having expressed the belief in his second written Inquiry statement that the other soldiers in the vicinity had been white *“with no beards or facial hair.”*¹⁴⁸⁵

2.1032 Mahdi Al-Behadili made a number of allegations of ill-treatment by the soldiers who had been present when he was captured. I will deal with each of those allegations later in this Chapter.

¹⁴⁷⁶ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/11/13]

¹⁴⁷⁷ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/11/13–15]

¹⁴⁷⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000777) [14]

¹⁴⁷⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD002940)

¹⁴⁸⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006488) [3]

¹⁴⁸¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001115) [23]–[27]

¹⁴⁸² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000778) [17]

¹⁴⁸³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/47/19]

¹⁴⁸⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/47–50]

¹⁴⁸⁵ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000778) [18]

The explanation given by Kadhim Abbas Lafta Al-Behadili (detainee 775) in order to account for his presence on the battlefield on 14 May 2004

- 2.1033** In his oral evidence to the Inquiry, Kadhim Abbas Lafta Al-Behadili (detainee 775) said that he had left home at around 07:30 hours to 07:45 hours on the morning of 14 May 2004, in order to take his animals to graze in the farmland. Kadhim Al-Behadili stated that he had arrived at the farmland in question at approximately 10:00 hours.¹⁴⁸⁶ He confirmed that his herd of animals had comprised about 30-40 sheep, a cow and a buffalo and that the journey from his house to the fields was approximately five kilometres.¹⁴⁸⁷
- 2.1034** Kadhim Al-Behadili said that he had been alone at the farm. Although there had been a handful of people elsewhere in the fields, none of them had been close to him.¹⁴⁸⁸ Kadhim Al-Behadili claimed to have heard firing in the late afternoon, whereupon he had lain down near a ditch.¹⁴⁸⁹
- 2.1035** However, Kadhim Al-Behadili gave a very different account with regard to his presence on the battlefield when he was interviewed by the Royal Military Police (“RMP”) in July 2004. In that account, Kadhim Al-Behadili said that the sheep were being looked after by his brother in the fields that day and that he had been on his way to join them, when he had become caught up in the battle and arrested while still about a kilometre away from where the sheep were.¹⁴⁹⁰
- 2.1036** In addition to these accounts, I have read a report of the tactical questioning of Kadhim Al-Behadili at Camp Abu Naji,¹⁴⁹¹ as well as two reports of his interrogation by the Joint Forward Interrogation Team at Shaibah on 16 May 2004¹⁴⁹² and 21 May 2004.¹⁴⁹³ I recognise that those documents also purport to record various accounts of Kadhim Al-Behadili’s presence on the battlefield, which differ from those summarised above. It is therefore convenient, at this stage in my Report, to make clear the approach I have decided to adopt with regard to the various records of the tactical questioning and interrogation of the nine detainees with whom this Inquiry is concerned.
- 2.1037** In August 2013, those representing the Iraqi Core Participants provided detailed and helpful written submissions with regard to the use to which these records of the tactical questioning and interrogations could be put as evidence of an account previously given by each detainee. The thrust of those submissions was, in effect, that where there was a “*real risk*” that the questioning upon which those records were based was tainted by torture, oppression or inhuman or degrading treatment, the records should be inadmissible as evidence of the truth of what each detainee had said at the time.
- 2.1038** I made no finding as to the admissibility of these records prior to the commencement of the oral hearings. Accordingly, the records were disclosed to Core Participants and questions were put to a number of witnesses, including the detainees, by Inquiry Counsel and those who represented the Core Participants and the military witnesses, based on the contents of those records. The detainees were given the opportunity to comment on specific aspects of the accounts set out in those records. They were also given an opportunity to use these records to assist their recollection where appropriate and to comment on any discrepancies between the account in those records and any subsequent statements.

¹⁴⁸⁶ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/82–84]

¹⁴⁸⁷ Kadhim Abbas Lafta Al-Behadili (detainee 775) [13/73/1–7]; [13/70/15–22]

¹⁴⁸⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/84/15–17]

¹⁴⁸⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/84–85]

¹⁴⁹⁰ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD002983)

¹⁴⁹¹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD040963-65)

¹⁴⁹² Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD046224-30)

¹⁴⁹³ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD040916-19)

2.1039 Having completed the oral hearings and for the reasons set out below, it has become evident that it is not necessary for me to give a specific ruling as to the admissibility of the records of either the tactical questioning or the interrogations. Each of the nine detainees has given at least one Inquiry statement and some have given more than one. The detainees have given a range of other accounts, including (in the case of some of them) to the Royal Military Police and to the Administrative Court. All but one gave detailed oral evidence to me. As a result, I have seen, heard and read a considerable body of evidence from each of the detainees, explaining the reasons for his presence on the battlefield on 14 May 2004 and many other relevant matters, which is entirely separate from that contained in the records of their tactical questioning and interrogation.

2.1040 Quite apart from the submissions made by the Iraqi Core Participants and to which I have already referred, it seems to me that there are a number of good reasons why considerably less weight should be given to the evidential value of the records of both the tactical questioning and the interrogations of the detainees, when compared with the accounts they have given on other occasions and in different circumstances. In the paragraphs that follow, I set out what seem to me to be the three most obvious reasons for coming to that conclusion. I stress that these reasons should not be regarded as exhaustive.

2.1041 First, the detainees had no opportunity to review or sign the records of the tactical questioning or the interrogations. The records in question were produced by the tactical questioner or the interrogator based on their recollection and perhaps their interpretation of what the detainee had said during the course of the tactical questioning or interrogation.

2.1042 Second, it is clear that neither tactical questioning nor interrogation is a process designed to obtain a full and detailed record of the voluntary evidence of the prisoner in question, as would be the case if it were an interview to obtain a statement of a witness' evidence.

2.1043 In this context, I note the following summary of the aim of interrogation in a relevant military training document:

*"The aim of interrogation is to gain accurate and timely intelligence by the systematic extraction of information from selected prisoners."*¹⁴⁹⁴

2.1044 The same training document also described tactical questioning as:

*"The obtaining of information from unwilling prisoners, the value of which would deteriorate or be lost altogether if the questioning was delayed until a trained interrogator could be made available."*¹⁴⁹⁵

2.1045 It seems to me to be evident from these definitions that the essential purpose of both tactical questioning and interrogation is to obtain important intelligence and/or information from the prisoner as soon as possible, even in circumstances when the prisoner in question is not actually willing to provide it. In my view, generally speaking it would be very unsatisfactory, if not impossible, to regard the contents of any report, which results from such a process of questioning, as having the same or similar evidential value as a full and/or reliable factual account, voluntarily provided by the prisoner/witness in question.

2.1046 Third, I heard some evidence that called into serious question the quality of the interpretation of at least some of the interrogation sessions. Thus M029, who acted as an interpreter for some of the interrogations involving the detainees with whom this Inquiry is concerned,

¹⁴⁹⁴ (MOD047104)

¹⁴⁹⁵ Ibid.

admitted having limited linguistic skills in Arabic in May 2004 and having needed to make frequent use of a bilingual dictionary.¹⁴⁹⁶

2.1047 In addition to these three obvious reasons for giving very limited if any evidential weight to the records of the tactical questioning and interrogation of the detainees, each of the detainees has alleged that the conditions in which the tactical questioning sessions and/or the interrogations in question took place were oppressive. As will become apparent when I consider the circumstances relating to the tactical questioning and interrogations in question later in this Report, I am satisfied that there is some substance in those allegations, particularly with regard to the tactical questioning sessions. Quite apart from the detailed legal submissions provided by the Iraqi Core Participants, it is I think uncontroversial that accounts produced following oppressive questioning are of substantially less evidential value (if any) than those which are not.

2.1048 I have therefore decided to disregard completely and have thus ignored the entire contents of the reports of the tactical questioning and/or interrogation of all nine detainees, insofar as they purport to record any factual or other information provided by any of the detainees, in particular with regard to any apparent explanation for his presence on the battlefield. I have arrived at this decision as a matter of general principle and pursuant to the discretion conferred upon me by section 17(1) and (3) of the Inquiries Act 2005. The basis of my decision is the cumulative effect of the various factors that I have identified above which I am satisfied have greatly diminished, if not entirely eliminated, the evidential value of the records/reports in question. I have adopted the same approach with regard to all the answers the detainees gave when being asked questions about the contents of these various records/reports. However, later in this Report I will consider the details of both the circumstances and the manner in which the various tactical questioning and interrogation sessions were carried out, when dealing with the detainees’ allegations of ill-treatment during and as a result of such sessions.

The account given by Kadhim Abbas Lafta Al-Behadili (detainee 775) about how he came to be captured by the British soldiers on 14 May 2004

2.1049 In his oral evidence to the Inquiry, Kadhim Abbas Lafta Al-Behadili (detainee 775) said that he had first become aware of the battle when he heard some firing in the late afternoon, whilst attending the sheep he had taken to the fields to graze that morning. He said that he had laid face down on some flat ground near a ditch as a result. He was then approached by a soldier with an armoured military vehicle nearby. Kadhim Al-Behadili said that the soldier shouted at him and then blindfolded and handcuffed him as he lay on the ground. He said that he could hear that the soldier had then been joined by some other soldiers.¹⁴⁹⁷

2.1050 When he was interviewed by the Royal Military Police in July 2004, Kadhim Al-Behadili placed himself right at the centre of the battle with bullets passing all around him.¹⁴⁹⁸

¹⁴⁹⁶ M029 [156/187–189]

¹⁴⁹⁷ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/83–86]

¹⁴⁹⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD002987)

The explanation given by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) in order to account for his presence on the battlefield on 14 May 2004

2.1051 In both his written Inquiry statements,¹⁴⁹⁹ his statement to the Administrative Court in the Judicial Review proceedings in January 2008¹⁵⁰⁰ and in his interview with the Royal Military Police in July 2004,¹⁵⁰¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) consistently stated that he had been working in a bakery on the morning of 14 May 2004. However, when he gave his oral evidence to the Inquiry, Atiyah Al-Baidhani said that he could not remember whether he had worked in the bakery that morning.¹⁵⁰²

2.1052 Atiyah Al-Baidhani consistently maintained that the reason for his presence at the scene of the Northern Battle was that he had gone there in order to graze his brother's cows.¹⁵⁰³ In his first written Inquiry statement, Atiyah Al-Baidhani said that the farm which his brother used for grazing his cows was in the Al Saaida area between the Pepsi factory and Route 6, a location which would place the farm to the east of Route 6, although Atiyah Al-Baidhani was unable to confirm this by reference to any map because of his inability to read or write.¹⁵⁰⁴ However, in his second written Inquiry statement, Atiyah Al-Baidhani described how he had witnessed the battle from and had subsequently been captured in a position on the opposite side of Route 6 from the Pepsi factory, namely the west side. Atiyah Al-Baidhani did not give any reason for his presence on the opposite side of the road from the farm.¹⁵⁰⁵

2.1053 Atiyah Al-Baidhani's evidence with regard to the number of cows he had with him on 14 May 2004 was not consistent. When asked in oral evidence, Atiyah Al-Baidhani said that he thought that he had four cows with him.¹⁵⁰⁶ When he was interviewed by the Royal Military Police in July 2004, he said that he had had three cows.¹⁵⁰⁷ In his first written Inquiry statement he said that he had two cows to look after.¹⁵⁰⁸ In his oral evidence to the Inquiry, Atiyah Al-Baidhani's response to these inconsistencies was to say that he simply could not remember how many cows he had to look after that day.¹⁵⁰⁹

The account given by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) about how he came to be captured by the British soldiers on 14 May 2004

2.1054 In his oral evidence to the Inquiry, Atiyah Sayyid Abdulridha Al-Baidhani described how he had witnessed the start of the Northern Battle from a distance. He said that a number of vehicles had arrived in the area from the direction of Al Majar al'Kabir and that a number of Iraqi men had got out who were wearing uniforms and carrying weapons.¹⁵¹⁰

2.1055 However, Atiyah Al-Baidhani's various accounts about the precise detail of what he saw that day contained a number of significant inconsistencies. When he was interviewed by the Royal Military Police in July 2004, he said that he had seen one white pick-up truck containing four or five Iraqi men.¹⁵¹¹ In the written statement that he made for the purposes of the Judicial

¹⁴⁹⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000948) [9]; (PIL000177) [72]

¹⁵⁰⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD047153) [2]

¹⁵⁰¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD003042)

¹⁵⁰² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/84/8–10]

¹⁵⁰³ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/84/11–13]

¹⁵⁰⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000948) [13]

¹⁵⁰⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000178) [73]

¹⁵⁰⁶ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/48/16–18]

¹⁵⁰⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD003043)

¹⁵⁰⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000948) [12]

¹⁵⁰⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/48/19–24]

¹⁵¹⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/85]

¹⁵¹¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD003046)

Review proceedings in the Administrative Court, Atiyah Al-Baidhani said that he had seen four or five vehicles with up to ten men in each vehicle.¹⁵¹² Atiyah Al-Baidhani was unable to provide an adequate explanation for these obvious inconsistencies or to indicate which account actually represented his current recollection.¹⁵¹³

2.1056 Atiyah Al-Baidhani also described how he had seen two British Land Rovers travelling along Route 6. It seems to me very likely that these were the Land Rovers of Major Griffiths and his Rover Group. Atiyah Al-Baidhani said that he had seen the Iraqi men open fire at the Land Rovers.¹⁵¹⁴ He went on to claim that he had run away when the firing started and that he had then hidden in an irrigation ditch.¹⁵¹⁵

2.1057 Atiyah Al-Baidhani’s evidence about what he did once the firing had stopped was inconsistent. During his oral evidence to the Inquiry, he said that he had tried to look for his cows, but could not remember whether he had seen them.¹⁵¹⁶ However, in his second written Inquiry statement Atiyah Al-Baidhani described how he had found the cows and had then brought them back to his original hiding place.¹⁵¹⁷ Atiyah Al-Baidhani was unable to explain this inconsistency, nor was he able to say which account represented his current recollection.¹⁵¹⁸ According to Atiyah Al-Baidhani, when the firing resumed he hid once again. He did not recall seeing any British soldiers prior to his arrest.¹⁵¹⁹

2.1058 There also appeared to be some inconsistency in Atiyah Al-Baidhani’s evidence about the number of soldiers who had arrested him on the battlefield that day. When he was first asked about this during his oral evidence, Atiyah Al-Baidhani said that he had been arrested by two soldiers. However, in his written Inquiry statement he described how he had been “*approached by three British soldiers*”, one black and two white.¹⁵²⁰ Atiyah Al-Baidhani did not accept that there was any inconsistency between these two accounts and clarified the matter by explaining that he had been initially captured by two soldiers and that a third soldier had arrived on the scene shortly after.¹⁵²¹

The explanation given by Hussein Gubari Ali Al-Lami (detainee 780) in order to account for his presence on the battlefield on 14 May 2004

2.1059 Hussein Gubari Ali Al-Lami (detainee 780) gave consistent evidence that he had been present at the scene of the Northern Battle in order to cut grass for his cows.¹⁵²² However, Hussein Al-Lami’s evidence about whether he had been armed at the scene of the battle has undergone a number of important changes during the course of his various accounts of what happened that day.

2.1060 When he was interviewed by the Royal Military Police in July 2004, Hussein Al-Lami stated on four separate occasions that he had been armed with an AK47 rifle.¹⁵²³ However, in his

¹⁵¹² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD047153) [3]

¹⁵¹³ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/106–112]

¹⁵¹⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/85–86]

¹⁵¹⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/86–87]

¹⁵¹⁶ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/87]; [10/53]

¹⁵¹⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000179) [76]

¹⁵¹⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/70–71]

¹⁵¹⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/87/21–23]

¹⁵²⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000950) [24]

¹⁵²¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/112–114]

¹⁵²² Hussein Gubari Ali Al-Lami (detainee 780) [11/4/6–9]; [12/42–45]

¹⁵²³ Hussein Gubari Ali Al-Lami (detainee 780) (MOD003066-67); (MOD003072-73); (MOD003074-75); (MOD003078)

written Inquiry statement he put forward the following markedly different account of what he had in his possession that day:

“When I left home, my mother and father saw me leave and I took with me my scythe and a bag for carrying the grass that I would be cutting and cycled on my bicycle, which is black, to my family’s field. I was not carrying an AK47 or any other rifle with me when I left home.”¹⁵²⁴

2.1061 During his oral evidence, Hussein Al-Lami confirmed that the account he had given in his Inquiry statement was the correct one. He went on to give the following explanation for having told the Royal Military Police that he had been armed with an AK47 on 14 May 2004:

“I told them because I wanted to finish with them because they said a doctor was going to see me and this was not true. I wanted to finish with them so that I don’t — they don’t see me anymore or I don’t see them anymore.”¹⁵²⁵

The account given by Hussein Gubari Ali Al-Lami (detainee 780) about how he came to be captured by the British soldiers on 14 May 2004

2.1062 In his oral evidence to the Inquiry, Hussein Gubari Ali Al-Lami said that he had started to cut grass and, after a little while, he had heard gunshots. He said that he had seen some other local men in the area because it was the harvest season.¹⁵²⁶ According to Hussein Al-Lami he had then seen some British armoured vehicles on “the street” shooting randomly, in the sense that they did not seem to be firing at anything in particular. Hussein Al-Lami was unable to explain why the British vehicles had been firing. He said that he had not been firing at the British himself, nor was anybody else near him firing at the British.¹⁵²⁷

2.1063 Hussein Al-Lami said that he had become scared when the firing started and that he had hidden in the grass as a result. He told me that he did not see anything of the actual battle and, in particular, that he did not see any insurgents in the area, only farmers.¹⁵²⁸

2.1064 Hussein Al-Lami went on to say that he had seen a number of British soldiers coming towards him, including a tall black soldier, and that he had then stood up. Hussein Al-Lami said that he had been holding his sickle at the time, but that he had dropped it when he raised his hands in surrender.¹⁵²⁹

Conclusions of fact concerning the circumstances of and the reasons for their presence on the battlefield of Mahdi Jasim Abdullah Al-Behadili (detainee 773), Kadhim Abbas Lafta Al-Behadili (detainee 775), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780) and the circumstances of their capture and detention by British soldiers on 14 May 2004

2.1065 Each of the four men captured in Trench 1 gave separate accounts of their reasons for being present on the battlefield on 14 May 2004 and the circumstances of their capture that day, none of which made any reference to any of the other men in that particular group. In fact, as will become apparent from the paragraphs that follow, I am sure that each of the four

¹⁵²⁴ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004800) [16]

¹⁵²⁵ Hussein Gubari Ali Al-Lami (detainee 780) [11/27/7–11]

¹⁵²⁶ Hussein Gubari Ali Al-Lami (detainee 780) [11/4/16–20]

¹⁵²⁷ Hussein Gubari Ali Al-Lami (detainee 780) [11/5]; [12/38–39]

¹⁵²⁸ Hussein Gubari Ali Al-Lami (detainee 780) [11/38–42]

¹⁵²⁹ Hussein Gubari Ali Al-Lami (detainee 780) [11/5]; [11/6]; [12/17]

detainees was present on the battlefield as a willing and active participant in the carefully planned armed ambush of British forces by Iraqi insurgents on 14 May 2004, that each of them was a member of same group of insurgents who were amongst those carrying out the ambush that day and that each of them was captured by the same soldiers in the course of the same incident during the battle. Accordingly, my findings in relation to these issues for each of the four men are set out in this one sub-section of the Report.

2.1066 In an earlier section of this Report, I indicated that the location and circumstances of the capture and detention of the detainees on the battlefield on 14 May 2004 formed part of my reasons for concluding that each of the detainees had been an active and willing participant in the planned ambush of British soldiers that day.¹⁵³⁰ In the paragraphs that follow, I set out why I am sure that these circumstances clearly demonstrate that each of the four detainees captured in Trench 1 had been present at the scene in order to take an active and hostile part in the ambush of British troops and the subsequent Northern Battle that day. In summary:

- a. The evidence of the military witnesses consistently and credibly identified the location, at which the four detainees were captured, as a significant enemy position from which the British soldiers had very recently been subjected to heavy small arms and RPG fire;
- b. The evidence of the four detainees, with regard to their presence on the battlefield and their experience of the battle, was internally inconsistent and, at times, incapable of belief; and
- c. Photographic evidence disclosed to the Inquiry clearly corroborates the soldiers’ emphatic evidence that the four detainees had all been armed when they were found and captured in Trench 1.

Assessment of the evidence of the military witnesses with regard to the presence of the four detainees on the battlefield

2.1067 I am satisfied that each of the soldiers, who gave evidence to the Inquiry about the successful assault on Trench 1 on 14 May 2004, endeavoured to give a truthful and accurate account of what happened during that particular incident. I have no doubt that the soldiers worked together to launch a carefully planned attack on Trench 1 and that they did so in order to counter the significant threat from enemy fire that they then faced. All the military witnesses consistently described Trench 1 as a position from which they had received and were continuing to receive considerable incoming fire. I am sure that such was indeed the case. Based on the evidence of the soldiers involved in the assault on Trench 1, I am also sure that the four detainees were located together in Trench 1 and they were found to be at the very heart of this important enemy position.

2.1068 All the soldiers involved in the assault on Trench 1 were firmly of the view that each of the four detainees, who they captured and detained in that position, had just been actively engaged in the fierce attack on British troops and had been using Trench 1 as cover for that purpose. Having regard to all the evidence that I have seen, heard and read, I have no doubt that the soldiers were entirely correct to come to that particular conclusion.

¹⁵³⁰ See paragraph 2.140

Assessment of the evidence of the four detainees concerning the reasons for their presence on the battlefield on 14 May 2004

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

2.1069 I turn first to consider the evidence of Mahdi Jasim Abdullah Al-Behadili (detainee 773). As I have set out above, it was Mahdi Al-Behadili's evidence that his reasons for having been present at the scene of the battle on 14 May 2004 were entirely innocent.¹⁵³¹ However, he was unable to provide consistent evidence about what his reasons actually were, namely whether he had gone to the area to cut grass or to irrigate the land or to do some studying or for a combination of any or all of those reasons.

2.1070 I do not believe that uncertainties such as these were the result of any dimming of Mahdi Al-Behadili's memory due to the passage of time. I am sure that these uncertainties were entirely the result of Mahdi Al-Behadili's inept, dishonest and untruthful attempts to provide an innocent explanation for his presence on the battlefield on the various occasions that he was asked to give his reasons for being there.

2.1071 Furthermore, I am sure that Mahdi Al-Behadili's evidence, to the effect that he had not observed any armed Iraqi men near him or anything of the battle itself, was an untruthful and dishonest attempt on his part to lend substance to his false account of having been at the scene of the Northern Battle for entirely innocent reasons. In my view, this aspect of Mahdi Al-Behadili's evidence was wholly incredible. I am in no doubt that, as described above, on the 14 May 2004 a large, organised and coordinated armed ambush of British forces was launched by a significant number of Iraqi insurgents who were positioned in the area to the west of Route 6, an area that clearly included the place where Mahdi Al-Behadili was located that day. I cannot accept as true his evidence that he did not see any of the Iraqi insurgents as they arrived at the scene or as they attacked Major Griffiths' Rover group or (in particular) as they fired at the dismounts from W30 and W22 from their well organised position in Trench 1. It is beyond doubt that the dismounts from W30 and W22 were subjected to a considerable body of hostile fire from armed insurgents in Trench 1, who were positioned at, or extremely close to, the location where Mahdi Al-Behadili was actually captured and detained shortly afterwards.

2.1072 I am also satisfied that Mahdi Al-Behadili's evidence, that he had been in possession of a sickle when captured, was a deliberate falsehood. I am satisfied that he had been armed with and had been using one or other of the various firearms that were found in the immediate vicinity of the four detainees when they were first captured and detained in Trench 1 that day and which can be seen in the photographs set out above.¹⁵³²

2.1073 I do not criticise the inconsistency in Mahdi Al-Behadili's various accounts of the number and description of the soldiers who actually captured and detained him. As indicated above, it is clear that Mahdi Al-Behadili and the other detainees in Trench 1 were captured by a group of up to six soldiers of various descriptions who arrived at Trench 1 in stages. I readily accept that Mahdi Al-Behadili would have had difficulty in remembering and describing accurately the soldiers who captured and detained him that day.

Kadhim Abbas Lafta Al-Behadili (detainee 775)

2.1074 In my view, Kadhim Abbas Lafta Al-Behadili's (detainee 775) account of having herded 30–40 sheep, a cow and a buffalo a distance of approximately five kilometres from his home

¹⁵³¹ See paragraphs 2.1022–2.1027

¹⁵³² See Figures 34–41

to the fields to graze on 14 May 2004 was highly unlikely in itself. During his oral evidence to the Inquiry, Kadhim Al-Behadili was quite unable to explain adequately how he could have managed single-handed to keep and control this large and mixed group of livestock together for a journey of around two hours.¹⁵³³ In the event, I am in no doubt that this account was entirely false and that it was a deliberate lie, put forward in an attempt to conceal Kadhim Al-Behadili’s real reason for being at the scene of the battle on 14 May 2004, namely that he had been a willing and active participant in the ambush of British troops by Iraqi insurgents that day.

2.1075 Kadhim Al-Behadili also sought to bolster his false account by denying having observed any armed Iraqi men in the vicinity or having seen any details of the battle itself. Since I am sure that Kadhim Al-Behadili was captured in the same location as Mahdi Jasim Abdullah Al-Behadili (detainee 773),¹⁵³⁴ I find these denials incapable of belief for the same reasons as those set out above in relation to Mahdi Al-Behadili (detainee 773).¹⁵³⁵

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

2.1076 I have already pointed out above a number of significant inconsistencies in Atiyah Sayyid Abdulridha Al-Baidhani’s account of his reasons for being present at the scene of the engagement on 14 May 2004.¹⁵³⁶

2.1077 I accept that the inconsistency in Atiyah Al-Baidhani’s evidence with regard to the number of cows he had been tending and whether he had been working in the bakery on 14 May 2004 might be explained by the dimming of memory caused by the passage of time. However, I do not believe that Atiyah Al-Baidhani’s inconsistent evidence with regard to the location of the farm, where he said he was captured, can be explained in this way.

2.1078 In his first written Inquiry statement, Atiyah Al-Baidhani (detainee 779) clearly stated that the fields *“are situated between the Pepsi factory and Route 6.”*¹⁵³⁷ In his second written Inquiry statement, Atiyah Al-Baidhani spent a lot of time *“clarifying”* various aspects of his previous statements.¹⁵³⁸ However, nowhere in his second written Inquiry statement did Atiyah Al-Baidhani suggest that he had been wrong about the location of his farm, even though the aerial photographs of the area appeared to show clearly that there was no farmland between the Pepsi factory and Route 6.¹⁵³⁹ Instead, Atiyah Al-Baidhani said this:

*“I have been shown a [sic] aerial photograph of Route 6 (document reference ASI006479) and although the Pepsi factory has been pointed out to me I cannot accurately mark where I was with the cattle. The Pepsi factory would have been opposite and to my right as I looked across the main Al-Amarah — Basra road.”*¹⁵⁴⁰

2.1079 Far from clarifying his evidence, this particular passage in Atiyah Al-Baidhani’s second written Inquiry statement actually gives rise to a number of significant uncertainties with regard to his account about where he actually was and what he had been doing that day. Thus, was Atiyah Al-Baidhani suggesting that his first written Inquiry statement had been wrong and that his farm was in fact situated on the west of Route 6 or was it the case that Atiyah Al-Baidhani

¹⁵³³ Kadhim Abbas Lafta Al-Behadili (detainee 775) [13/70–74]

¹⁵³⁴ See paragraph 2.806

¹⁵³⁵ See paragraph 2.1071

¹⁵³⁶ See paragraph 2.228

¹⁵³⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000948) [12]; [9/84/16–18]

¹⁵³⁸ See, for example, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000176); NB — *et seq*

¹⁵³⁹ See, for example, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI001206)

¹⁵⁴⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000178) [73]

had been captured on the opposite side of Route 6 from his farm? If the latter was what happened, why had Atiyah Al-Baidhani been on the opposite side of the road from his farm?

2.1080 In the event, I am sure that there is one very good and obvious explanation that accounts for both Atiyah Al-Baidhani's apparent uncertainty with regard to the location of his farm and for the inconsistencies in his evidence concerning the number of cows he had been tending and whether he had worked in the bakery on the morning of 14 May 2004. I am in no doubt that the entirety of Atiyah Al-Baidhani's evidence concerning his reasons for being present on the battlefield on 14 May 2004 was a deliberate lie, designed to conceal the real reason why he had been there, namely as a willing and active participant in the armed ambush of British troops on Route 6 that day. On each occasion when Atiyah Al-Baidhani was asked to explain how he had come to be present on the battlefield that day, differences crept into the false narrative that he had created. In the event, these differences became readily apparent when his various accounts were considered together and the falsity of his explanation was exposed.

2.1081 Atiyah Al-Baidhani also described how he had seen the ambush of British Land Rovers driving along route 6 from a distance (almost certainly Major Griffiths and his Rover Group). Atiyah Al-Baidhani said that he had run away and hidden when the shooting started.¹⁵⁴¹ I have no hesitation in rejecting his evidence about the part he played in these events. I am entirely satisfied that Atiyah Al-Baidhani was actively involved in the earlier ambush of the British Land Rovers that were travelling north that day, as well as in the later Northern Battle itself.

2.1082 As in the case of Mahdi Jasim Abdullah Al-Behadili (detainee 773),¹⁵⁴² I do not criticise the inconsistencies in Atiyah Al-Baidhani's evidence concerning the number and description of the soldiers who captured and detained him on 14 May 2004. It is evident from my foregoing conclusions of fact that I am entirely satisfied that Atiyah Al-Baidhani and the other three live insurgents in Trench 1 were captured by a group of up to six soldiers of various descriptions who had arrived in Trench 1 in stages (although very close together). I readily accept that Atiyah Al-Baidhani would have had some difficulty in describing accurately the soldiers who had captured and detained him in the prevailing circumstances that day.

Hussein Gubari Ali Al-Lami (detainee 780)

2.1083 A significant feature of Hussein Gubari Ali Al-Lami's (detainee 780) various accounts about why he had been present on the battlefield on 14 May 2004 was the way in which he completely changed what he had to say about whether he had been armed that day. I am satisfied that true position as to whether Hussein Al-Lami was armed is as set out in his interview by the Royal Military Police in July 2004.¹⁵⁴³ In my view, Hussein Al-Lami's oral evidence to the Inquiry, explaining why he told the Royal Military Police that he had been armed with an AK47 rifle that day, is wholly incredible.¹⁵⁴⁴ I can see no reason why any possible misunderstanding about an opportunity to see a doctor should in any way affect the truth of the factual account Hussein Al-Lami was giving to the Royal Military Police who were interviewing him in 2004. I also fail to understand how his desire to bring the interview to an end more quickly could possibly motivate Hussein Al-Lami to state falsely, on several separate occasions during his Royal Military Police interview, that he had been armed with an AK47 on 14 May 2004.

2.1084 In the event, I have no doubt that, on 14 May 2004, Hussein Al-Lami was at the scene of the Northern Battle armed with an AK47. The reason that he was armed in this way was that he

¹⁵⁴¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/86–87]

¹⁵⁴² See paragraphs 2.1073

¹⁵⁴³ (MOD003062)

¹⁵⁴⁴ Hussein Gubari Ali Al-Lami's (detainee 780) [11/27]

was one of the armed insurgents who were intent upon ambushing the British military that day. The reason that Hussein Al-Lami gave, when he was interviewed by the RMP in 2004, for being armed with an automatic assault rifle (the AK47) that day was completely false and I have no hesitation in rejecting it. What Hussein Al-Lami said was this:

“Yes I had a weapon to defend myself, sometimes people come to take away my bicycle and sometimes people swear at me on the road.”¹⁵⁴⁵

2.1085 As I have already indicated in the previous paragraph, I am therefore sure that Hussein Al-Lami was not at the scene of the Northern Battle in order to cut grass but was at that location, armed with an AK47 rifle, as a willing and active participant in the planned ambush of British troops on Route 6 and thus in the subsequent Northern Battle on 14 May 2004.

2.1086 I also entirely reject Hussein Al-Lami’s assertion that neither he nor anybody near him had been engaged in firing at the British forces before he was captured. As I have already indicated, the military evidence (the truth of which I accept) consistently identified Trench 1, in which Hussein Al-Lami was captured in due course, as a significant enemy position from which the British troops had been subjected to prolonged heavy small-arms and rocket-propelled grenade fire.¹⁵⁴⁶

2.1087 However, I do accept Hussein Al-Lami’s (detainee 780) evidence that he was captured by a number of soldiers, one of whom was a tall black soldier. As I have set out above, Hussein Al-Lami and the other detainees in Trench 1 were actually captured by a group of up to six soldiers of various descriptions who arrived at Trench 1 in stages (although very close together) and that Private Maciou Tatawaqa was one of those soldiers.¹⁵⁴⁷ It seems very likely that the tall, black soldier who Hussein Al-Lami described was actually Private Tatawaqa. However, I do not accept that Hussein Al-Lami had been holding a sickle when or just before he was captured. None of the soldiers described having seen any of the insurgents in Trench 1 in possession of a sickle, something that I think would have been sufficiently memorable if it had really been the case. In the event, I am satisfied that Hussein Al-Lami also made up this particular detail in a vain attempt to bolster his false account of having been present at the scene in order to carry out agricultural work, rather than as an active participant in the ambush and subsequent Northern Battle.

The photographic evidence

2.1088 In an earlier section of this Report, I stated that the photograph ASI011928 corroborated the soldiers’ account that the four insurgents they captured in Trench 1 had been armed at the point of capture.¹⁵⁴⁸ In the paragraphs which follow, I set out in more detail the basis for this conclusion.

2.1089 In fact, I had considered three photographs, ASI012476, ASI011928 and ASI014279, when reaching this particular conclusion, all of which have been reproduced earlier in this Report.

2.1090 First, I turn to consider ASI012476.¹⁵⁴⁹ This photograph clearly shows the four detainees, who had been captured in Trench 1, lying face down a short while after having been captured. A number of the soldiers from W22 and W30 can be seen surrounding them. The Inquiry

¹⁵⁴⁵ Hussein Gubari Ali Al-Lami’s (detainee 780) [11/27/13–16]

¹⁵⁴⁶ See paragraph 2.779

¹⁵⁴⁷ See paragraphs 2.979–2.986

¹⁵⁴⁸ See paragraph 2.849

¹⁵⁴⁹ Figure 40

Analyst carefully examined the “EXIF” data for this photograph and was able to establish that the photograph had been taken at 18:35hrs local Iraqi time.¹⁵⁵⁰

2.1091 Second, I refer to ASI011928.¹⁵⁵¹ This photograph clearly shows a number of weapons systems, ammunition and associated equipment all lying on ground which is the same as or very similar to the ground on which the detainees can be seen to be lying in ASI012476. In this particular photograph there are at least four AK47 variant rifles, at least four magazines and ammunition for AK47 variant rifles, at least three chest rigs and at least two rocket-propelled grenade launchers. By carrying out the same type of calculations as those he conducted in respect of ASI012476, the Inquiry Analyst was able to establish that ASI011928 had been taken using the same camera as ASI012476 and had also been taken at 18:35 hours local Iraqi time, although after ASI012476 had been taken.¹⁵⁵²

2.1092 Finally, I turn to consider ASI012479.¹⁵⁵³ This is a photograph which shows Corporal Mark Byles, Lance Corporal Brian Wood, Sergeant Christopher Broome and Private Maciou Tatawaqa posing with the four detainees, apparently in a location identical or very similar to that shown in ASI012476. Again the Inquiry Analyst was able to establish that ASI012479 had been taken using the same camera as ASI012476 and ASI011928 and had also been taken at 18:35 hours local Iraqi time, although after ASI012476 and ASI011928 had been taken.¹⁵⁵⁴

2.1093 I am satisfied that the explanation for the “EXIF” data identified for each of these photographs is that the photographer, Private Stuart Taylor (the driver of W22), took all three photographs within a few seconds of each other and from more or less the same position each time. In the unlikely event that he had dismounted from the driver’s position in W22 before taking the photographs, it is clear that, at most, he took only a couple of steps in between taking each photograph. This enables me to be sure that the weapons photographed in ASI011928 are lying very close to where the four detainees can be seen to be lying in ASI012476 and ASI012479 and at the same time. When viewed in the context of all the surrounding evidence about these detainees and the reasons for their presence in Trench 1, I am in no doubt as to the truth of the soldiers’ evidence that these were weapons that they had seized from the four detainees when they captured and detained them in this position in Trench 1.

2.1094 As it seems to me, these photographs also corroborate the following detailed and truthful account given by Sergeant Broome concerning the weapons that had been found in Trench 1:

“There were a lot of enemy weapons within the wadi. I cannot recall everything that was present but I remember there was [sic] quite a few loaded AK47s, spare magazines, and at least two loaded RPG launchers...On entering the wadi, I immediately instructed the dismounts to turn the armed RPG launchers away from us and the Warriors to point in a safe direction. I do not remember who did this, but someone did. I told the dismounts (again I do not recall who) to pile the enemy weapons and ammunition together.”¹⁵⁵⁵

¹⁵⁵⁰ Michael Moore (ASI022177-84)

¹⁵⁵¹ Figure 39

¹⁵⁵² Michael Moore (ASI022177-84)

¹⁵⁵³ Figure 37

¹⁵⁵⁴ Michael Moore (ASI022177-84)

¹⁵⁵⁵ Sergeant Broome (ASI022327) [67]

Allegations of ill-treatment made by Mahdi Jasim Abdullah Al-Behadili (detainee 773)

2.1095 Having regard to the number of accounts offered by each of the four detainees who were captured in Trench 1 on 14 May 2004, I confess that I have had some difficulty in identifying a comprehensive list of the allegations of ill-treatment that each made in his evidence to me. However, with the considerable assistance of the written Closing Submissions of the Core Participants, I have identified the following seven allegations of ill-treatment by British soldiers that Mahdi Jasim Abdullah Al-Behadili (detainee 773) claims to have suffered from the time of his capture on the battlefield until he arrived at Camp Abu Naji:

- a. that at the point of capture, Mahdi Al-Behadili was hit on the nose by a black soldier, causing his nose to break and bleed;
- b. that Mahdi Al-Behadili’s wrists were bruised and marked as a result of handcuffs having been applied too tightly when he was first captured;
- c. that Mahdi Al-Behadili was kicked as he shifted position on the ground after he had been handcuffed;
- d. that Mahdi Al-Behadili fell and was dragged along with his back on the ground as he was being escorted from the point of capture to the Warrior AIFV;
- e. that Mahdi Al-Behadili was roughly handled as he was being loaded into the Warrior AIFV;
- f. that Mahdi Al-Behadili heard others in the Warrior AIFV with him suffering and moaning; and
- d. that Mahdi Al-Behadili heard soldiers singing songs which teased and mocked him whilst he was in the Warrior AIFV.

2.1096 In the paragraphs that follow, I will deal with each of these allegations in turn.

Allegation (a) — the alleged assault of Mahdi Al-Behadili (detainee 773) by the black soldier at the point of capture

2.1097 During his oral evidence to the Inquiry, Mahdi Jasim Abdullah Al-Behadili (detainee 773) gave the following evidence about his capture when questioned by Counsel to the Inquiry:¹⁵⁵⁶

“Q. Did one of the soldiers do anything to you?”

A. The one in front of me was black in colour. He hit me on the nose and broke my nose.

Q. When you say he hit you, was it a slap across the nose or was it a punch?”

A. He punched me.

Q. What effect did that have upon your nose?”

A. My nose broke and it has been broken since then.

Q. Did it bleed, Mr Al-Behadili?”

A. A lot of blood.”

¹⁵⁵⁶ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/12/19]–[13/3]

2.1098 Mahdi Al-Behadili (detainee 773) went on to explain that his broken nose had been diagnosed when he went to hospital for an x-ray about a year or more after he had been eventually released from custody.¹⁵⁵⁷

2.1099 This account which Mahdi Al-Behadili (detainee 773) gave to the Inquiry represented a significant departure from the account he had given when he was interviewed by the Royal Military Police in July 2004. In that interview, Mahdi Al-Behadili had been asked about the manner in which he was arrested. His response was short, but absolutely clear, as follows: *“They were not violent with me, they were good with me.”*¹⁵⁵⁸

2.1100 During his oral evidence to the Inquiry, Mahdi Al-Behadili was asked to explain why he had told the Royal Military Police that the arresting soldiers were not violent. His response was as follows:

*“While I was in the prison, when I saw the Iraqis with me, they asked me, if I am going to be interrogated, if they asked you about how the behaviour, how they dealt with you, the soldiers, don’t say anything bad because they are going to get you back and start, you know, hitting you and doing stuff to you.”*¹⁵⁵⁹

2.1101 However, this particular explanation was not the same as that given by Mahdi Al-Behadili when he was asked the same question during the preparation of his first written Inquiry statement. In that statement, Mahdi Al-Behadili said that he did not know why he had not told the Royal Military Police about the injury to his nose.¹⁵⁶⁰ During his oral evidence to the Inquiry, Mahdi Al-Behadili was asked why he did not mention in his first Inquiry statement that he had been afraid of the Royal Military Police. He responded as follows:

*“Yes, I did. I did confirm it and highlight it in the last statement I gave in Beirut, and I told the interpreter at the time. She was a woman and I told her, ‘This is not right, and this needs to be corrected’. And the translator, the interpreter, she was Lebanese and she wasn’t really understanding me fully with my accent and my dialogues. And I think they didn’t correct it and I thought it had been corrected.”*¹⁵⁶¹

2.1102 I find this particular answer difficult to understand. One possible interpretation is that Mahdi Al-Behadili was suggesting that he had attempted unsuccessfully to amend his first written Inquiry statement when it was read back to him, prior to signing it.

2.1103 However, the entire interview process, during which Mahdi Al-Behadili’s first written Inquiry statement was produced, had been both video and audio recorded. I have had the opportunity of reviewing the recording of Mahdi Al-Behadili’s statement being read back to him. For my part, I could see nothing in the recording that supports Mahdi Al-Behadili’s evidence that there had been some communication difficulty between him and the interpreter. On the contrary, it is perfectly clear that considerable steps were taken by the interviewers who took the statement to ensure that Mahdi Al-Behadili did understand and agree with its contents as it was read back to him.

2.1104 Mahdi Al-Behadili was accompanied by his own qualified legal representative throughout the entire interview process relating to the first written Inquiry statement. No relevant objection or concern was expressed by that representative at any stage. Furthermore, Mahdi

¹⁵⁵⁷ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/55/4–8]

¹⁵⁵⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD002934)

¹⁵⁵⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/56/22]–[57/2]

¹⁵⁶⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001123) [85]

¹⁵⁶¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [9/40/21]–[41/3]

Al-Behadili also took the opportunity offered by the interviewers to make a number of minor corrections to his first Inquiry statement. Those corrections are readily apparent on the face of the statement and Mahdi Al-Behadili had no obvious difficulty in communicating with the interpreter when making those corrections. I saw no evidence on the recording that Mahdi Al-Behadili had ever attempted to correct paragraph 85 of his first written Inquiry statement. Accordingly, I am satisfied that, if his answer quoted above¹⁵⁶² was indeed a reference to difficulties that he claimed to have experienced with the interpreter during the preparation of his first written Inquiry statement, it was not true.

2.1105 However, since both his written Inquiry statements had been prepared in Beirut, it is possible that, in his answer quoted above, Mahdi Al-Behadili had been describing difficulties of interpretation during the production of his second written Inquiry statement, which was prepared under the sole supervision of his own legal representatives.¹⁵⁶³ In that statement, Mahdi Al-Behadili described its purpose as being *“to provide information in addition to that contained in, and further clarification of, my first witness statement...”*¹⁵⁶⁴ Nowhere in Mahdi Al-Behadili’s second written Inquiry statement did he make any attempt to clarify or correct paragraph [85] of his first written Inquiry statement, although many other aspects of his evidence were expanded upon and/or clarified. No video or audio recording was made of the production of Mahdi Al-Behadili’s second Inquiry statement. I am thus unable to carry out any review of this interview myself. However, it is important to stress that the interpreter used for the production of Mahdi Al-Behadili’s second written Inquiry statement was arranged by his own legal representatives and not by the Inquiry. Accordingly, if the answer quoted above was a reference to difficulties with the interpreter that Mahdi Al-Behadili claimed to have experienced during the preparation of his second written Inquiry statement, I am again satisfied that it was untrue.

2.1106 In the event, I do not believe Mahdi Al-Behadili’s explanation for not having told the Royal Military Police about the assault he claimed to have suffered at the point of capture, when he was interviewed by the Royal Military Police in July 2004.¹⁵⁶⁵ I therefore do not accept his evidence that he feared reprisals if he were to have made any complaints of ill-treatment to the Royal Military Police during that interview.

2.1107 For reasons which I have set out earlier in this Report,¹⁵⁶⁶ the black soldier described by Mahdi Al-Behadili is very likely to have been Private Maciou Tatawaqa. Private Tatawaqa made no mention in his evidence of having punched Mahdi Al-Behadili, or indeed any of the detainees who were captured in Trench 1. Neither did any of the other soldiers, who had been present in Trench 1 and who gave evidence to me, describe having seen Private Tatawaqa punch any of the detainees.

2.1108 However, in his written Inquiry statement, Private Tatawaqa did admit that he had used a certain amount of physical force in order to subdue one of the detainees in Trench 1. It is likely that this detainee was, in fact, Mahdi Al-Behadili. Although Private Tatawaqa’s account of how he subdued that detainee does not contain any specific admission of having struck the detainee in the face during the ensuing struggle, I think that this may possibly have occurred,

¹⁵⁶² See paragraph 2.1101

¹⁵⁶³ See paragraph 1.103

¹⁵⁶⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000772)

¹⁵⁶⁵ See paragraph 2.1100

¹⁵⁶⁶ See paragraph 2.1087

during the course of what was obviously a fairly violent struggle. What Private Tatawaqa said about it was as follows:

*"I note that in my first RMP statement [MOD012173] I mention that one of the detainees became violent with me. I will explain this more fully here. As I got on his back to begin to search him he started to hit out at me with his elbows and hands. He was shouting in Arabic (I did not understand what he was saying) and trying to stop me from searching him. In response to this, I applied more of my weight onto him and Pte Rushforth assisted me by coming closer and showing his weapon."*¹⁵⁶⁷

2.1109 I have also taken into account the following evidence of Colour Sergeant Graham King of C Company 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR"), which may possibly relate to this particular allegation:

"A few days after the events of Danny Boy, I was sitting in my accommodation talking to Sgt Maj Falconer when a young soldier from Fiji (whose name I cannot recall) came up to Sgt Maj Falconer and said that he had something to report. He said that he had hit one of the Iraqis on 14 May at the battlefield that we had fought on.

*Sgt Maj Falconer asked him to describe what happened. He explained that he was moving from ditch to ditch on the battlefield. As he entered one of the ditches, an Iraqi gunman, who was already in the ditch, pointed his rifle at him with the intention of shooting and killing him. The soldier said that before he could shoot at him, he hit the Iraqi gunman in the head with his fist. He said that he did not do anything to the man after this point."*¹⁵⁶⁸

2.1110 When he was medically examined at Camp Abu Naji by Corporal Shaun Carroll, Mahdi Al-Behadili (detainee 773) was found to be *"Fit, nil injuries."*¹⁵⁶⁹ During the medical examination at the Divisional Temporary Detention Facility ("DTDF") at Shaibah, Major David Winfield identified *"slight bruising + swelling of nose."*¹⁵⁷⁰ In neither of these medical examinations was Mahdi Al-Behadili's nose actually diagnosed as being broken.

2.1111 Photographs were taken of Mahdi Al-Behadili (detainee 773) when he arrived at the DTDF at Shaibah. These photographs are shown at Figure 44 on the following page.

¹⁵⁶⁷ Private Tatawaqa (ASI018014) [46]

¹⁵⁶⁸ Colour Sergeant G. King (ASI010813) [47]–[48]

¹⁵⁶⁹ Corporal Shaun Carroll (MOD043411)

¹⁵⁷⁰ Major Winfield (MOD043435)

Figure 44: MOD048734



Figure 45: MOD048735



2.1112 I accept that these photographs do appear to show some minor swelling to Mahdi Al-Behadili’s nose, but there is no apparent significant deviation or misalignment of the nasal septum. During oral evidence, Major Winfield was shown these photographs and informed of Mahdi Al-Behadili’s claim that his nose had been broken. Based on

the photographs and his recollection of the medical examination which he conducted at the DTF at Shaibah, Major Winfield was able to rule out the possibility that Mahdi Al-Behadili had had a “*badly broken*” nose. However, Major Winfield did confirm that he had not specifically examined Mahdi Al-Behadili’s nose at the time of the medical examination and so was unable to exclude the possibility of a minor fracture.¹⁵⁷¹ I will return to this matter later in this Report when I come to consider in more depth the medical examinations conducted by Corporal Carroll and Major Winfield on 14 and 15 May 2004 respectively.

2.1113 Having regard to all the evidence, I am satisfied that the likelihood is that Mahdi Al-Behadili did sustain a minor fracture to his nose at the point of capture. I see no reason for concluding Mahdi Al-Behadili was not telling the truth when he told me that the fracture had been confirmed by an x-ray taken a year or so after he had been released from detention.¹⁵⁷² I have therefore come to the conclusion that it is likely that Mahdi Al-Behadili suffered a minor fracture to his nose at the point of capture.

2.1114 As to how the injury came to be caused, there is a stark discrepancy between Mahdi Al-Behadili’s account and that given by Private Tatawaqa. I have come to the conclusion that I prefer the general thrust of Private Tatawaqa’s account. I am satisfied that Private Tatawaqa told the truth when he described how one of the detainees (i.e. Mahdi Al-Behadili (detainee 773) had shouted, struggled and lashed out and how Private Tatawaqa had needed to apply physical force in order to subdue him and bring him under control.¹⁵⁷³

2.1115 However, I think that it likely that Private Tatawaqa had to use somewhat more force to subdue Mahdi Al-Behadili (detainee 773) than he described in his evidence. Private Tatawaqa’s use of force may have involved striking Mahdi Al-Behadili’s face with his hand or fist or causing his face to come into contact with the ground with some violence. I think that it is likely that Mahdi Al-Behadili suffered the minor fracture of his nose during the course of this struggle to subdue and to gain control of him. For the avoidance of doubt, I do not accept Mahdi Al-Behadili’s account of having been pulled up and gratuitously punched by a black soldier. If such an assault had taken place, I am satisfied that Mahdi Al-Behadili would have mentioned it when interviewed by the Royal Military Police in July 2004.

2.1116 In my view, it is likely Private Tatawaqa was the young Fijian soldier who spoke to Sergeant Major David Falconer a few days after 14 May 2004, as Colour Sergeant King described in evidence. It seems to me likely that Colour Sergeant King’s evidence about what he could remember Private Tatawaqa saying on that occasion was, in fact, a compressed and not entirely accurate description of Private Tatawaqa’s initial encounter with one of the gunmen in Trench 1 (i.e. Mahdi Al-Behadili – detainee 773) and his subsequent violent struggle to subdue and gain control of him on the ground whilst detaining him. As it seems to me, the most likely explanation for the differences, between Colour Sergeant King’s recollected version of the events in question and the reality of what actually happened as described in the preceding paragraphs of this Report, is (at least to some extent) that Colour Sergeant King’s recollection of precisely what was said by Private Tatawaqa at the time is not now entirely accurate. I stress that I am satisfied that Colour Sergeant King sought to give a truthful and accurate account of what had been said. However, given the passage of time and the fact that Colour Sergeant King was endeavouring to recall what had been said in a conversation that he overheard quite a few years ago, in my view it is not surprising that his recollection contained some inaccuracies.

¹⁵⁷¹ Major Winfield [144/116–119]

¹⁵⁷² Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/55]

¹⁵⁷³ Private Tatawaqa [92/147]

Allegation (b) — the over-tight application of handcuffs to Mahdi Al-Behadili (detainee 773)

2.1117 In his second Inquiry statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) described the injuries he had when he was medically examined:

“I also would have had bruised and marked wrists from where I was handcuffed. As explained, this would have been obvious to the Doctor as he walked around me and looked at me even at the distance he was at.”¹⁵⁷⁴

2.1118 No injuries to Mahdi Al-Behadili’s wrists were actually identified when he was medically examined at Camp Abu Naji¹⁵⁷⁵ or at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah.¹⁵⁷⁶ Similarly, Mahdi Al-Behadili failed to mention anything in his first written Inquiry statement about handcuffs having been applied with excessive tightness.

2.1119 There was some evidence from the military witnesses that plasticuffs might initially have been applied too tightly to the wrists of at least some of the four detainees captured in Trench 1, possibly including Mahdi Al-Behadili. Thus, Private Carl Pritchard, Lance Corporal Philip Muir (now Philip French) and Captain Marcus Butlin all gave evidence that, at the collection point near WOC, they had checked on the tightness of the handcuffs of the men detained in Trench 1. Each of the witnesses suggested that, at least in respect of some of the detainees, the plasticuffs had been applied too tightly and that they were required either to loosen the cuffs in question or to cut them off and to apply fresh plasticuffs.¹⁵⁷⁷

2.1120 I accept that it is possible that the plasticuffs used to secure Mahdi Al-Behadili’s wrists were initially applied too tightly and that, as a result, they caused him discomfort and possibly some minor bruising. However, I am equally satisfied that this was not been done deliberately, that no serious injury was caused as a result and that the plasticuffs were not left in an excessively tight condition for a prolonged period of time before being loosened and reapplied correctly. The limited extent to which this allegation has been established is apparent from the fact that neither Corporal Shaun Carroll nor Major David Winfield identified any injuries to Mahdi Al-Behadili’s wrists. Whilst I am unable to rule out the possibility that both Corporal Carroll and Major Winfield both missed some small signs of bruising on Mahdi Al-Behadili’s wrists, I do not accept that both would have missed signs of significant injury. Accordingly, I am satisfied that the application of handcuffs did not cause anything greater than trivial injury to Mahdi Al-Behadili’s wrists. In any event, I am entirely satisfied that, if Mahdi Al-Behadili’s hands had been cuffed too tightly when he was first captured, this would have been remedied by the action taken by Private Pritchard, Lance Corporal Muir or Captain Butlin, once Mahdi Al-Behadili had been moved to the collection point near WOC.

Allegation (c) – that Mahdi Al-Behadili (detainee 773) was kicked as he shifted position on the ground

2.1121 Mahdi Jasim Abdullah Al-Behadili made this allegation for the first time in his second written Inquiry statement, as follows:

“I recall shifting in this position as it was not comfortable. However when I did, I was kicked. This was not recorded in my initial Inquiry statement. These were full blows to my body as the soldiers kicked me. I was kicked more than twice but cannot recall

¹⁵⁷⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000785) [38]

¹⁵⁷⁵ (MOD043411)

¹⁵⁷⁶ (MOD043435)

¹⁵⁷⁷ Private Pritchard [80/101–110]; Lance Corporal Muir [80/234–235]; Captain Butlin [93/35–38]

exactly how many times I was kicked or where on my body. It felt like all over. I could not see the soldiers from where I was to see who was kicking me.”¹⁵⁷⁸

2.1122 No injuries were identified during Mahdi Al-Behadili’s medical examination on arrival at Camp Abu Naji¹⁵⁷⁹ or at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah,¹⁵⁸⁰ which could be attributed to his having been kicked in this fashion.

2.1123 Those representing the Iraqi Core Participants submitted that the effects of such kicks would not necessarily have been evident on visual examination.¹⁵⁸¹ I do not agree with that submission. Mahdi Al-Behadili emphasised in his evidence that he had sustained “full blows” from soldiers who were undoubtedly wearing military boots. In my opinion it is highly likely that Mahdi Al-Behadili would have sustained some visible bruising or (at the very least) significant reddening of the skin if he had been kicked in the manner he alleged. In my view, and having regard to the allegation that he was kicked all over his body, it is very likely that such injuries would have been conspicuous and apparent to any observer.

2.1124 I am also satisfied that, if Mahdi Al-Behadili had suffered conspicuous injuries all over his body from having been kicked as he alleged, those injuries would have been noted by either Corporal Shaun Carroll or Major David Winfield during one of the medical examinations carried out on 14 and 15 May 2004. It is difficult to see how such injuries could have been missed during both examinations. Accordingly, it seems to me that Mahdi Al-Behadili has either not told the truth about being kicked in this fashion or that he has greatly exaggerated the severity what actually happened, which may have been more in the nature of what I describe in the next paragraph of this Report.

2.1125 I cannot rule out the possibility that, from time to time after he had been captured and detained, Mahdi Al-Behadili was discouraged from shifting his position on the ground by soldiers using their feet to emphasise that he was not to move about. However, to the extent that any such action by the soldiers can be described as kicking, it was far from being the type of savage assault that Mahdi Al-Behadili described in his evidence to me.

Allegation (d) – that Mahdi Al-Behadili (detainee 773) fell and was dragged as he was escorted from the point of capture to the Warrior

2.1126 At the start of his oral evidence to the Inquiry, Mahdi Jasim Abdullah Al-Behadili described the manner in which he was moved from where he had been captured in Trench 1 to the collection point near WOC, as follows:

“A. After they walked me around I fell in a dry waterway, dried up waterway.

Q. Did you suffer any injury when you fell in the dried up waterway?

A. Yes. When I fell in that area both soldiers grabbed me and dragged me along.

Q. Do you recall whether you were dragged with your face towards the ground or with your back towards the ground?

A. With my back on the ground.”¹⁵⁸²

¹⁵⁷⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000779) [20]

¹⁵⁷⁹ (MOD043411)

¹⁵⁸⁰ (MOD043435)

¹⁵⁸¹ ICP Closing Submissions (111) [410]

¹⁵⁸² Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/14/10–18]

2.1127 Mahdi Al-Behadili claimed that this dragging had caused his back to scrape along ground and that he had sustained cuts and bruises as a result.¹⁵⁸³ Again, the reports of the medical examinations, which were conducted at both Camp Abu Naji¹⁵⁸⁴ and the Divisional Temporary Detention Facility (“DTDF”) at Shaibah¹⁵⁸⁵ on 14 and 15 May 2004, do not record any of the injuries which Mahdi Al-Behadili claimed had been caused by having been dragged along the ground in this fashion.

2.1128 Those representing the Iraqi Core Participants implied, although apparently with some diffidence, that these cuts and bruises must have been overlooked as a result of “*inadequacies*” in the medical examinations.¹⁵⁸⁶ However, if Mahdi Al-Behadili had sustained scratches, cuts and bruises to his back as a result of having been dragged along the ground as he described, those injuries would have been conspicuous and I do not accept that any such injuries would have been overlooked in both medical examinations.

2.1129 I am therefore satisfied that, by the time Mahdi Al-Behadili was medically examined at Camp Abu Naji and the DTDF at Shaibah on 14 and 15 May 2004, he did not have any visible injuries to his back that had been caused by his having been dragged along the ground as he alleged. Accordingly, whilst I cannot rule out the possibility that Mahdi Al-Behadili did fall while he was being moved from the point of capture to the collection point near WOC, I do not accept that Mahdi Al-Behadili was dragged along the ground in such a way as to sustain cuts and bruises to his back as a result. I am therefore satisfied that this allegation is either untrue (which I consider to be most likely) or is a gross exaggeration of what happened when Mahdi Al-Behadili fell while being moved.

Allegation (e) — that Mahdi Al-Behadili (detainee 773) was roughly-handled as he was loaded into the Warrior AIFV

2.1130 In his second written Inquiry statement, Mahdi Jasim Abdullah Al-Behadili described how he was loaded into a Warrior AIFV as follows:

“I was then put in a vehicle by the soldiers. Again, two soldiers grabbed me either side of me in an aggressive way and pushed me into the vehicle. I fell forward on to my front with my face towards the floor of the vehicle.”¹⁵⁸⁷

2.1131 However, a number of the military witnesses stressed that, on the contrary, considerable care had been taken as the detainees were being loaded into the Warriors for transport back to Camp Abu Naji. Thus, WO2 David Falconer described the loading of the detainees into the Warriors in the following terms:

“Each one was guided inside by two soldiers leading them along by their arms. I do not recall how the soldiers made the prisoners aware of the step up into the Warrior but it is a low one so I do not think it would have presented them with any difficulty. I can recall the soldiers being careful that the prisoners did not bang their heads when entering the Warriors by placing a hand between the roof and the prisoner’s head and guiding them in.”¹⁵⁸⁸

¹⁵⁸³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000780) [22]; [9/19/5–13]

¹⁵⁸⁴ (MOD043411)

¹⁵⁸⁵ (MOD043435)

¹⁵⁸⁶ ICP Closing Submissions (111) [410]

¹⁵⁸⁷ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000780) [24]

¹⁵⁸⁸ WO2 David Falconer (ASI020218) [119]

2.1132 For his part, Lance Corporal Kevin Wright described the loading of the detainees into the Warriors as follows:

*"I do recall CSM Falconer asking me to make sure that they got back to CAN safely. I assisted in loading one of the detainees into the back of a Warrior. As he was blindfolded, I did this by placing one hand on his back and one on his head when escorting him into the Warrior. There is a step to get into the Warrior and I lent the detainee forward so that he could feel the step in front of him pressing against his leg and then gently pushed him so he knew to get in."*¹⁵⁸⁹

2.1133 However, in his written Inquiry statement, the 1PWRR Padre, Captain Francis Myatt, described a conversation he recalled that he had with Lance Corporal Philip Muir (now Philip French) a few days after the Battle of Danny Boy, as follows:

*"He [Lance Corporal Muir] said that at the end of the engagement he had seen detainees being moved into Warriors. He described how they were initially sitting down on the ground and how they were then stood up and walked into the rear of a Warrior. He said that one of the detainees appeared to refuse to move and a soldier slapped him on the head and then bundled him into the Warrior."*¹⁵⁹⁰

2.1134 I am satisfied that the evidence of WO2 Falconer and Lance Corporal Wright was an accurate and convincing description of the manner in which the detainees were loaded into the Warriors. I accept that the task of loading blindfolded and handcuffed detainees into the rear compartment of a Warrior AIFV would not have been without its difficulties, particularly in the circumstances then prevailing. Having regard to the circumstances in which the process took place, I think it likely that the detainees (who were, of course, unwilling and probably fearful at the time) were loaded into the vehicles in a *"firm and robust manner"*.¹⁵⁹¹ In my view, this *"firm and robust manner"* may well have extended to the soldiers' use of their hands to indicate that detainees should keep their heads down as they got into the rear of the vehicles. In such a highly-charged atmosphere, where the primary objective was to load the detainees with a significant degree of urgency, a perceived need to adopt such a firm and robust approach in carrying out that task was probably inevitable. However, there was nothing in the evidence which I have seen, heard and read which gives me cause to believe that any of the detainees was loaded into a Warrior that day in a manner that might be described as involving deliberate or violent ill-treatment or physical abuse. Furthermore, I am satisfied that none of the detainees was loaded in such a way as to cause deliberate physical injury.

2.1135 I accept that Captain Myatt's evidence, to which I have just referred,¹⁵⁹² was truthful and I think it is likely that it was Lance Corporal Muir to whom he spoke on that occasion.¹⁵⁹³ Nevertheless, Captain Myatt's evidence does not lead me to doubt my findings set out in the preceding paragraph of this Report. In my view, it is likely that what Captain Myatt was told a few days after the battle was a somewhat exaggerated account of the type of firm and robust handling that I have described above, rather than a description of an actual incident of deliberate physical abuse.

¹⁵⁸⁹ Captain Myatt (ASI011608) [127]

¹⁵⁹⁰ Captain Myatt (ASI017106-07) [115]

¹⁵⁹¹ WO2 David Falconer [146/100]

¹⁵⁹² See paragraph 2.1133

¹⁵⁹³ However, for his part, Lance Corporal Muir did not recall this conversation with Captain Myatt and suggested that Captain Myatt might have been confused as to the identity of the soldier with whom he spoke [81/47/15–23]

2.1136 Finally, I address the impact of this finding on my assessment of Mahdi Jasim Abdullah Al-Behadili’s own evidence about the loading process. In their written Closing Submissions, those representing the Iraqi Core Participants submitted as follows:

“...even if not all the detainees were treated in the manner described by the Padre, the level of disorientation and shock will inevitably influence the way in which the treatment is experienced and retold. That is important in considering credibility. To a scared, blindfolded, and cuffed detainee, sharp movements may well feel as if he is being thrown around, but to a soldier at the tail end of a battle appear ‘reasonable’.”¹⁵⁹⁴

2.1137 In my view, there is considerable force in this particular submission. As I have already indicated,¹⁵⁹⁵ I accept that a degree of force would inevitably have been involved as the result of the perceived need for a firm and robust loading process. Similarly, due to the prevailing circumstances at the time, I strongly suspect that the actual loading process was conducted with little immediate regard being given to the undoubtedly unwilling and fearful state of the various detainees. Accordingly, whilst I am satisfied that Mahdi Al-Behadili was not deliberately ill-treated during this process, I do not suggest that he did not tell the truth or even that he exaggerated his account of what happened. I accept that it is likely that, given the prevailing circumstances at the time, Mahdi Al-Behadili genuinely perceived the manner in which he was loaded into the vehicle as being “aggressive”.

Allegation (f) – that Mahdi Al-Behadili (detainee 773) heard others in the Warrior AIFV with him suffering and moaning

2.1138 In his second Inquiry statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) said that there had been four or five other detainees in the same vehicle as him. He then went on to say this:

“I can remember people seemed to be moaning, as if they were suffering. More than one person was moaning but I could not say how many different voices I could hear moaning.”¹⁵⁹⁶

2.1139 I can address this aspect of Mahdi Al-Behadili’s evidence relatively quickly. I am satisfied that it is likely that Mahdi Al-Behadili did hear the sounds of moaning in the vehicle. As I set out earlier in this Report, Mahdi Al-Behadili had been loaded into the rear of W21 with Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774). By this stage, Ibrahim Al-Ismaeeli had sustained a wound to his foot, caused by either a bullet or some shrapnel that had hit him during the battle. It goes without saying that Ibrahim Al-Ismaeeli would, at the very least, have been suffering considerable pain and discomfort as a result. It is therefore very likely that, whilst they were both in the rear of W21, Mahdi Al-Behadili did hear the sounds of Ibrahim Al-Ismaeeli’s suffering and moaning as a result of the injuries he had sustained during the battle.

2.1140 I note that it was Mahdi Al-Behadili’s evidence that there had been more than one person in the rear of the vehicle who was moaning. Again, it is likely that one of the other detainees, who had been loaded into W21 for transport back to Camp Abu Naji, may have moaned or expressed discomfort at some stage during the journey. Accordingly, whilst I am satisfied that Mahdi Al-Behadili was telling the truth about this aspect of his evidence, I see no reason for concluding, as a result, that anybody was actually being ill-treated or physically abused in the rear of W21 during the journey.

¹⁵⁹⁴ ICP Closing Submissions (189) [670]

¹⁵⁹⁵ See paragraph 2.1134

¹⁵⁹⁶ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000781) [24]

Allegation (g) – that Mahdi Al-Behadili (detainee 773) heard soldiers singing songs which teased and mocked him whilst he was in the Warrior AIFV

2.1141 This particular allegation was set out in full by Mahdi Jasim Abdullah Al-Behadili in his second written Inquiry statement, as follows:

“As I explained at paragraph 34 of my initial Inquiry statement, the soldiers started singing a song about Britain which had a chorus something like something like [sic] ‘Oh Britain, oh Britain’. I did not clarify that I think it was two voices singing. The voices sounded like they were near to me perhaps seated behind me. It seemed like they were singing to tease and mock us.”¹⁵⁹⁷

2.1142 Neither Lance Corporal Kevin Wright not Private Maciou Tatawaqa, who were both present in the rear of W21 with Mahdi Al-Behadili the whole time, made any mention of songs having been sung on the journey back to Camp Abu Naji. However, I cannot rule out the possibility that there was some singing on the way back. If there was some singing, I think it very likely that it was due to the soldiers’ feelings of release from the tensions of battle or was merely a way of passing the time. I can see no proper basis for Mahdi Al-Behadili’s assertion that this was done in order to mock or tease the detainees. However, I cannot rule out the possibility that this was how it had appeared to Mahdi Al-Behadili at the time, given the prevailing circumstances. As it seems to me, it is very likely that any singing that did take place during the journey would have seemed to have been a very trivial matter to both Lance Corporal Wright and Private Tatawaqa. It is therefore not surprising that neither mentioned such an occurrence, if it actually did take place.

Allegations of ill-treatment made by Kadhim Abbas Lafta Al-Behadili (detainee 775)

2.1143 I have identified the following eleven allegations made by Kadhim Abbas Lafta Al-Behadili (detainee 775), concerning the ill-treatment by British soldiers that he claims to have suffered from the time of his capture on the battlefield until he arrived at Camp Abu Naji:

- a. that at the point of capture, a soldier placed a hand on Kadhim Al-Behadili’s neck and pushed his head hard into the ground;
- b. that Kadhim Al-Behadili’s wrists were handcuffed excessively tightly when he was first captured;
- c. that Kadhim Al-Behadili was dragged along the ground for four to five metres once he had been handcuffed and blindfolded;
- d. that, whilst he was in a dirt “frisco” (i.e. a local name for a ditch¹⁵⁹⁸), soldiers stepped on Kadhim Al-Behadili’s feet and knees;
- e. that, whilst he was in a dirt “frisco”, Kadhim Al-Behadili was hit from time to time;
- f. that, after being taken to a cement canal, Kadhim Al-Behadili was hit two or three times with the butt of a rifle and that he bled and felt dizzy as a result;
- g. that Kadhim Al-Behadili’s blindfold covered his mouth in such a way that he was uncomfortable;
- h. that Kadhim Al-Behadili was picked up by two soldiers and thrown into a Warrior AIFV;
- i. that Kadhim Al-Behadili was manhandled onto the bench of the Warrior AIFV.
- j. that Kadhim Al-Behadili was mocked by the soldiers in the Warrior AIFV; and
- e. that a soldier in the Warrior AIFV shouted in Kadhim Al-Behadili’s ear.

¹⁵⁹⁷ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000781) [25]

¹⁵⁹⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/88/7-18]

2.1144 As I have already done in respect of the allegations made by Mahdi Jasim Abdullah Al-Behadili (detainee 773) above, I will deal in turn with each of the allegations made by Kadhim Al-Behadili (detainee 775) in the paragraphs that follow.

Allegation (a) — that Kadhim Al-Behadili (detainee 775) had his head pushed hard into the ground by a soldier at the point of capture

2.1145 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili gave the following account of this particular alleged assault that he claims to have suffered when he was first captured:

“He reached me and from behind he pushed my head extremely hard onto the ground with his hand on my neck. At that moment I thought I was going to be killed.”¹⁵⁹⁹

2.1146 I have already dealt in some detail with the military accounts of the capture of the group of four detainees in Trench 1, of whom Kadhim Al-Behadili was one,¹⁶⁰⁰ and I do not repeat those here. I note that there is some similarity between the description of this incident, as given by Kadhim Al-Behadili, and the account given by Private Maciou Tatawaqa of how he restrained one of the detainees in Trench 1.¹⁶⁰¹ However, as I have already explained, I am satisfied that the detainee who was restrained by Private Tatawaqa was, in fact, Mahdi Jasim Abdullah Al-Behadili (detainee 773),¹⁶⁰² who recalled having been captured by a black soldier,¹⁶⁰³ whereas Kadhim Al-Behadili was unable to describe the soldier who had captured him, because *“they all appear similar to [him]”*.¹⁶⁰⁴ It seems to me that if the soldier who had captured him had been black, Kadhim Al-Behadili would have remembered that fact – just as Mahdi Al-Behadili did.

2.1147 However, as it seems to me, it is likely that Kadhim Al-Behadili did have his head pushed into the ground when he was first captured in Trench 1 by one of the British soldiers other than Private Tatawaqa, who was probably fully engaged in dealing with Mahdi Al-Behadili (detainee 773) at the time. It is evident from the photographs analysed above¹⁶⁰⁵ that Kadhim Al-Behadili did spend a period of time lying face down on the ground. However, it seems to me likely that this particular allegation of having his face pushed into the ground relates to the way in which Kadhim Al-Behadili was initially subdued and restrained on the ground by one of the soldiers, when Trench 1 was first assaulted and captured. Accordingly, I am satisfied that this was not an example of an act of gratuitous and deliberate ill-treatment, but was what the soldier in question considered to be necessary at the time in order to gain full and immediate control of a potentially dangerous prisoner.

2.1148 There is nothing to suggest that Kadhim Al-Behadili suffered any significant injury as a result of this particular incident. I am therefore satisfied that Kadhim Al-Behadili’s evidence, to the effect that his head had been pushed *“extremely hard”*¹⁶⁰⁶ into the ground, involved a certain amount of exaggeration on his part, although I do not think that he did so in a deliberate effort to bolster the effect of his evidence. I consider it more likely that this element of exaggeration is a consequence of his heightened senses at the time and the way in which he has come to remember what must undoubtedly have been a very dramatic and terrifying incident.

¹⁵⁹⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000718) [19]

¹⁶⁰⁰ See paragraphs 2.802–2.838

¹⁶⁰¹ Private Tatawaqa (ASI018014) [46]; NB – see paragraph 132

¹⁶⁰² Ibid.

¹⁶⁰³ See paragraph 2.1031

¹⁶⁰⁴ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000718)[18]

¹⁶⁰⁵ See paragraphs 2.843–2.866

¹⁶⁰⁶ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000718) [19]

2.1149 Similarly, I see no reason to doubt Kadhim Al-Behadili's evidence that he had believed at the time he was captured that he was about to be killed. It seems to me that Kadhim Al-Behadili's belief, that such was the case, was entirely the result of his perception of the circumstances in which he found himself, combined with his own pre-conceived and erroneous ideas of the likely consequence of being taken prisoner on a battlefield. For the avoidance of doubt, I am completely sure that Kadhim Al-Behadili's belief, that he was about to be killed while he was being captured, did not arise as the result of any deliberate act or conduct on the part of any soldier that was designed or intended to generate such a belief.

Allegation (b) — that the handcuffs applied to the wrists of Kadhim Al-Behadili (detainee 775) when first captured were over-tightened

2.1150 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili gave the following account of how he was handcuffed when first captured:

“The plasticuffs that he had been put on [sic] were extremely tight and I felt my hands and lower arms beginning to pulse and swell. I was moaning in pain.”¹⁶⁰⁷

2.1151 On 24 May 2004, the Royal Military Police photographed Kadhim Al-Behadili's wrists. These photographs are shown at Figures 46 to 48 in the following images. In his evidence to the Inquiry, Kadhim Al-Behadili stated that these photographs showed the injuries that had been caused to his wrists by the “over tightened” plasticuffs.¹⁶⁰⁸

Figure 46: MOD034441



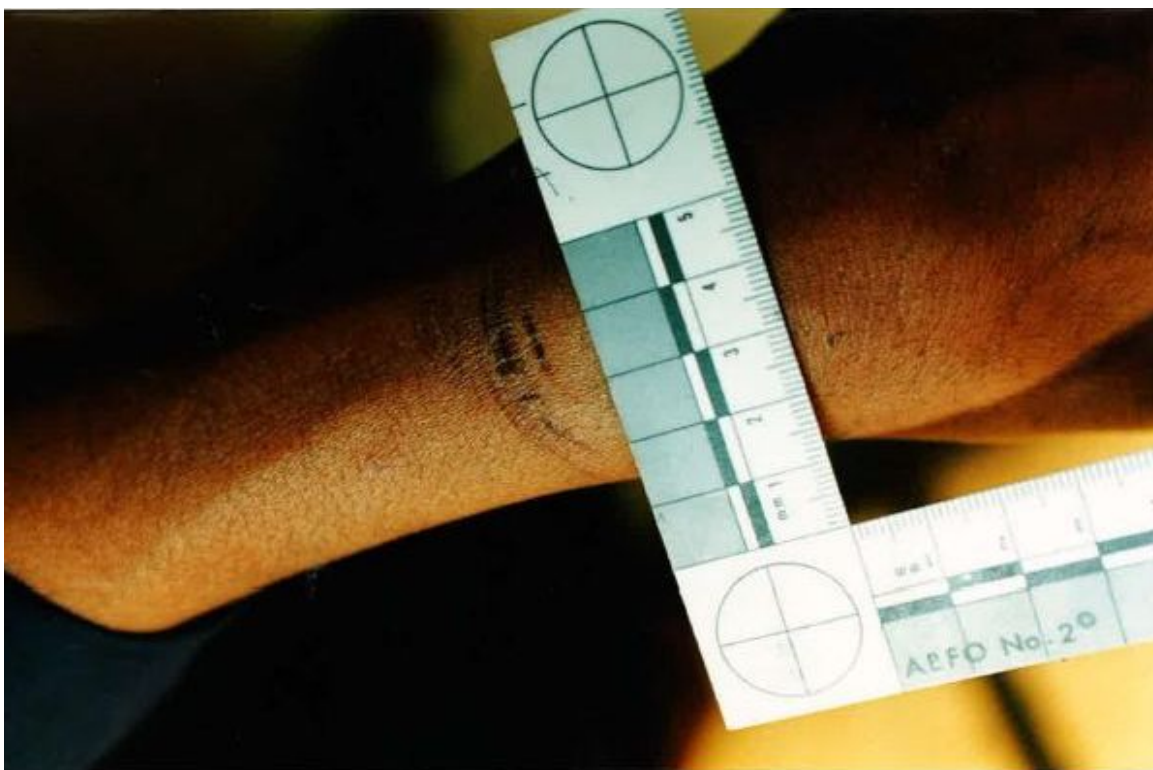
¹⁶⁰⁷ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000718) [19]

¹⁶⁰⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000751) [130]

Figure 47: MOD034442



Figure 48: MOD034443



2.1152 This allegation is, in many respects, similar to the allegation of an over-tight application of plasticuffs at the point of capture that was made by Mahdi Jasim Abdullah Al-Behadili

(detainee 773),¹⁶⁰⁹ which I have dealt with earlier in this Report.¹⁶¹⁰ It seems to me that the same military evidence and reasoning apply with equal force to this allegation by Kadhim Al-Behadili as they did to that of Mahdi Al-Behadili (detainee 773) and my conclusions are the same.

2.1153 I accept that it is possible that plasticuffs were applied too tightly to Kadhim Al-Behadili's wrists when he was first captured and that they caused discomfort and possibly some minor bruising as a result. I am also satisfied that this was not done deliberately, that no serious injury was caused as a result and that the over-tight plasticuffs did not remain on Kadhim Al-Behadili's wrists for a prolonged period of time before being loosened and reapplied correctly. I accept that one of the photographs taken by the Royal Military Police on 24 May 2004, namely photograph MOD034443 in Figure 48, may show some marks that have been caused by the application of over-tight plasticuffs. However, I am considerably less convinced that the apparent white scarring to be seen in photographs MOD034441 and MOD034442 (shown at Figures 46 and 47 above) was actually caused by the application of over-tight plasticuffs on the battlefield.

2.1154 In any event, I am entirely satisfied that, if Kadhim Al-Behadili's hands were cuffed too tightly at the point of capture, this would have been remedied by either Private Carl Pritchard, Lance Corporal Philip Muir (now Philip French) or Captain Marcus Butlin, once Kadhim Al-Behadili had been moved to the collection point near WOC.

Allegation (c) – that Kadhim Al-Behadili (detainee 775) was dragged along the ground face down for four or five metres after he had been handcuffed and blindfolded

2.1155 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili gave the following account of this particular allegation of ill-treatment:

*"It felt as though one of the soldiers grabbed both my ankles and I was dragged approximately 4 (four) or 5 (five) metres. This hurt my chest, face and shoulder and it felt as though I was bleeding from my shoulder. I tried to lift my head off the ground as much as I could but I could not avoid my face hitting the ground. Again, I moaned in pain. The ground was rough and thorny. The earth is raised at the edge of the ditch and I was dragged over this until I was lying across the bottom of the ditch with my head on the upper side of the ditch."*¹⁶¹¹

2.1156 There is nothing in the evidence of any of the soldiers who were present in Trench 1 when Kadhim Al-Behadili was captured to support his allegation that he was dragged along by his ankles at some stage shortly after his capture on 14 May 2004.

2.1157 In the event, I find the main substance of this allegation to be incapable of belief. I accept that, soon after having been captured in Trench 1, the four detainees were each moved a short distance along the ditch and positioned so that they were lying face down on the ground beside one another when the posed photographs with the soldiers were taken.¹⁶¹² However, I simply do not believe that Kadhim Al-Behadili was dragged four or five metres by his ankles across rough and thorny ground with his face on the ground as he has alleged.

¹⁶⁰⁹ See paragraphs 2.1117–2.1120

¹⁶¹⁰ See paragraphs 2.1117–2.1120

¹⁶¹¹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000719) [21]

¹⁶¹² See Figure 37

2.1158 I have carefully considered the photograph taken of Kadhim Al-Behadili (detainee 775) on his arrival at the Divisional Temporary Detention Facility (“DTDF”) on 15 May 2004, the day after that to which this allegation relates. This photograph is shown below at Figure 49 on the following page.

Figure 49: MOD048738



2.1159 In my view, if Kadhim Al-Behadili (detainee 775) had actually been dragged by his ankles face down along “*rough and thorny*” ground in the manner he alleged, I am satisfied that he would have suffered far greater and more serious injury, particularly to his face, than can be seen in the above photograph. It seems to me that Kadhim Al-Behadili’s evidence relating to this allegation cannot be explained as mere exaggeration of the dramatic circumstances that surrounded his capture and detention by the British soldiers. I am satisfied that this particular allegation was simply untrue.

Allegation (d) – that soldiers stepped on his feet and knees while Kadhim Al-Behadili (detainee 775) was in a dirt ‘frisco’

2.1160 On two separate occasions in his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili described how soldiers stepped on the backs of his knees, a process which he described as “*incredibly painful*”.¹⁶¹³ In his oral evidence to the Inquiry, Kadhim Al-Behadili also alleged that soldiers had stepped on his knees and feet whilst he was in the dirt “*frisco*”.¹⁶¹⁴ Kadhim Al-Behadili also explained that “*frisco*” was a word used locally to describe a ditch. I am satisfied that the “*frisco*” to which Kadhim Al-Behadili referred in his evidence was, in fact, Trench 1.

¹⁶¹³ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000719) [20] [22]

¹⁶¹⁴ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/88/15-24]

- 2.1161** There is nothing in the evidence of the soldiers who were present in Trench 1, when Kadhim Al-Behadili was captured, to support his allegation that any soldier, whether deliberately or otherwise, stepped on backs of Kadhim Al-Behadili's knees or feet.
- 2.1162** Although I am satisfied that the various soldiers who gave evidence about this matter endeavoured to give an accurate and truthful account of what happened that day, I cannot rule out the possibility that, at some stage after his capture, one or more of the soldiers may have stepped on Kadhim Al-Behadili's feet or the backs of his knees whilst he was lying face down in Trench 1.
- 2.1163** However, I am satisfied that, if this did happen at all, it was not the result of any deliberate act on the part of the soldier involved. It is much more likely that any such incident was the result of the urgency and speed with which the soldiers had to move and act in the prevailing circumstances at the time. In turn, this may have led to some inadvertent, perhaps even clumsy, stepping on Kadhim Al-Behadili's feet or knees. I am therefore satisfied that any such incident was entirely accidental, did not cause any real injury to Kadhim Al-Behadili and was not such as to amount to the sort of ill-treatment that is envisaged by the terms of reference.
- 2.1164** Furthermore, I am satisfied that if any such incident did occur, its essentially trivial and unintentional nature is clearly demonstrated by the fact that the soldiers, who were in Trench 1 that day, either did not notice or have subsequently forgotten it.

Allegation (e) – that Kadhim Al-Behadili (detainee 775) was hit from time to time whilst he was in the dirt 'frisco'

- 2.1165** In his oral evidence to the Inquiry, Kadhim Abbas Lafta Al-Behadili described how he had been hit by soldiers on several occasions after he had been captured, but whilst he was still positioned in Trench 1.¹⁶¹⁵
- 2.1166** None of the military witnesses who were present at the time gave evidence of having seen Kadhim Al-Behadili being hit as alleged. All the soldiers, to whom this allegation was put, consistently denied it.¹⁶¹⁶
- 2.1167** However, although I am satisfied that Kadhim Al-Behadili was not subjected to any gratuitous assaults while under restraint in Trench 1, I cannot rule out the possibility that Kadhim Al-Behadili was hit during the process of being initially captured and restrained by the British soldiers. It seems clear that some force was used to gain control of and/or restrain some of the detainees during the process of capturing and detaining them, particularly if or when any tried to resist and/or break away.¹⁶¹⁷
- 2.1168** Again, I refer to the photographs taken of Kadhim Al-Behadili when he arrived at the Divisional Temporary Detention Facility ("DTDF") at Shaibah on 15 May 2004 and the records of his medical examination at that facility and at Camp Abu Naji. In my view, if Kadhim Al-Behadili had received any blows during the process of being captured and restrained, any such incident must have been of a relatively minor nature, otherwise the medical records¹⁶¹⁸ and the photographs would have evidenced more serious injuries than they do.

¹⁶¹⁵ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/87-88]

¹⁶¹⁶ See, for example, Private Korovou [84/38/5-7]; Private Beggs [78/116/19]–[117/5]

¹⁶¹⁷ See, for example, the circumstances relating to the capture and detention of Mahdi Jasim Abdullah Al-Behadili (detainee 773) by Private Tatawaqa as described in paragraphs 2.998–2.999

¹⁶¹⁸ The examination by Corporal Carroll at CAN on 14 May 2004 (MOD043541) and the examination by Major Winfiled at Shaibah on 15 May 2004 (MOD043556)

2.1169 Accordingly, to the extent that I accept that it is possible that Kadhim Al-Behadili was hit whilst in Trench 1, any such blows were of relatively minor nature and were only inflicted during the process of restraining and gaining control of him whilst he was being captured and detained in the first place. As I have already indicated above in paragraph 2.1167, I am satisfied that Kadhim Al-Behadili was not subjected to any gratuitous assaults in Trench 1 after he had been captured and restrained.

Allegation (f) – that after Kadhim Al-Behadili (detainee 775) was taken to a cement canal he had been hit with the butt of a rifle

2.1170 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili made the following allegation:

“I was then hit hard on my head. I could not be sure if I was being hit with the butt of a rifle or some other object. I was hit hard 2 (two) or 3 (three) times. I know that I was bleeding after that as I could feel the wetness of blood. I started to feel very dizzy and almost felt as though I might lose consciousness.”¹⁶¹⁹

2.1171 None of the military witnesses, who were present at the time, mentioned any incident similar to that described in this particular allegation. When this allegation was put to the military witnesses, they consistently denied it.¹⁶²⁰

2.1172 Those representing the Iraqi Core Participants suggested that Corporal Shaun Carroll’s findings, when he medically examined Kadhim Al-Behadili at Camp Abu Naji on 14 May 2004, supported this allegation.¹⁶²¹ The handwriting on the Prisoner Medical Report which Corporal Carroll completed for Kadhim Al-Behadili¹⁶²² is somewhat difficult to decipher. However, it appears that Corporal Carroll identified a laceration to the left side of Kadhim Al-Behadili’s face, which he then glued.¹⁶²³ Those representing the Iraqi Core Participants submitted, without elaboration, that this apparent injury was consistent with Al-Behadili having been struck with a rifle or other hard object.¹⁶²⁴

2.1173 Although I accept that the injury described by Corporal Carroll in Kadhim Al-Behadili’s Prisoner Medical Report is the same as the injury photographed by the Royal Military Police on 24 May 2004,¹⁶²⁵ I am not persuaded that it provides any corroboration for the allegation in question, which I am satisfied is untrue. In the paragraphs that follow, I set out my reasons for having come to that conclusion.

2.1174 First, having reviewed the transcript of the interview which Kadhim Al-Behadili gave to the Royal Military Police in May 2004, during which two photographs were taken of the injury to the side of his face,¹⁶²⁶ it is clear that Kadhim Al-Behadili himself identified the cause of this particular injury as the fact that he had been punched, not that he had been struck by a rifle butt or some other hard object.

2.1175 Second, Kadhim Al-Behadili claimed to have been struck two to three times with a rifle butt (or some other hard object) with such force that blood was drawn and he was left feeling

¹⁶¹⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000720) [25]

¹⁶²⁰ See, for example, Private Pritchard [80/63]; Sergeant Broome [86/168]; Major Coote [87/83]; Lance Corporal Wood [92/80]; Private Tatawaqa [92/178]

¹⁶²¹ ICP Closing Submissions (112) [413]

¹⁶²² (MOD043541)

¹⁶²³ Corporal Carroll [116/80-82]

¹⁶²⁴ ICP Closing Submissions (112) [413]

¹⁶²⁵ (MOD034439); (MOD034440)

¹⁶²⁶ (MOD032727–38)

dizzy as a result. I simply do not accept that such can have been the case, without Kadhim Al-Behadili having suffered a considerably more serious injury than that described in the two medical reports and to be seen in the photographs that were taken shortly afterwards. In the event, I am satisfied that, if this particular injury had not actually been caused by Kadhim Al-Behadili's own actions on the battlefield,¹⁶²⁷ it was caused during a physical struggle to subdue and gain control of him during his initial capture and restraint by the British soldiers. It was not caused by a blow from a rifle or some other hard object.

2.1176 I do not consider this to be a case of mere exaggeration on Kadhim Al-Behadili's part. On the contrary, I am quite satisfied that Kadhim Al-Behadili acted quite deliberately in not telling the truth when making this particular allegation.

Allegation (g) – that the material used to blindfold Kadhim Al-Behadili (detainee 775) covered his nose and mouth and made it difficult to breathe

2.1177 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili (detainee 775) said this about the blindfold that had been placed over his eyes soon after he was captured:

"...I recall that the material used to blindfold me was down around my nose and mouth and I was finding it hard to breath [sic] properly. I started moving my head violently to try and clear the obstruction. I assumed that there was at least one soldier in the vehicle but nobody helped me. I could hear the sounds of laughter and I thought that they were laughing at me. Eventually someone, who I assume was the soldier, moved the material a little so I could breathe easier. Before this I felt as though I was going to suffocate."¹⁶²⁸

2.1178 I can deal with this allegation without exploring in any detail the military evidence relating to it. It was common ground the blindfold used to restrict Kadhim Al-Behadili's sight was improvised from some form of cloth material that had been available to the arresting soldiers at the time. I accept that, by the time he came to be in the back of the Warrior, some part of the blindfold had ended up covering Kadhim Al-Behadili's mouth and nose to some extent and thus made it more difficult to breathe properly, although any such breathing problems may well have been contributed to by his own state of anxiety about the predicament in which he found himself.

2.1179 In the event, I am satisfied that particular problem was not the result of any deliberate act on the part of the soldier who applied the blindfold in the first place. In my view, it is very likely that the problem was the result of some accidental shift in the position of the blindfold, such as might result from the blindfold having been applied in a hurry or because of some slippage in a blindfold that had been improvised from a rather over large piece of material. In my view, this conclusion is given some support by Kadhim Al-Behadili's own evidence that, when a nearby soldier became aware that Kadhim Al-Behadili's blindfold was causing him discomfort, he took steps to adjust the blindfold and alleviate his discomfort.¹⁶²⁹

¹⁶²⁷ See paragraphs 221–222

¹⁶²⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000722) [29]

¹⁶²⁹ Ibid.

Allegation (h) – that Kadhim Al-Behadili (detainee 775) was picked up by two soldiers and thrown into the Warrior

2.1180 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili gave the following account of how he was loaded into the Warrior AIFV:

“I was then lifted off the ground by soldiers. It felt as though there were 2 (two) soldiers doing this. I was lifted and thrown inside a vehicle. I recall lying inside the vehicle, which I presumed must have been a tank or some type of armoured vehicle as I had seen them on the main road before I was taken prisoner by the British soldiers. I remained on the floor of the vehicle for a few moments and I felt another person against me.”¹⁶³⁰

2.1181 I have set out in some detail above my findings regarding how each of the detainees, including Kadhim Al-Behadili, was loaded into the Warrior AIFV.¹⁶³¹ I repeat here only the summary of my findings, namely that, as they were loaded into the Warriors, the detainees were handled firmly, robustly and probably without immediate regard for their unwilling and fearful state.

2.1182 I do not accept Kadhim Al-Behadili’s account of having been picked up and thrown into the back of the Warrior. In my view, this was not a mere exaggeration of the firm and robust handling that actually took place, but was a deliberate lie on the part of Kadhim Al-Behadili.

Allegation (i) – that Kadhim Al-Behadili (detainee 775) was manhandled onto the bench of the Warrior

2.1183 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili claimed that, once he was in the Warrior he was *“at some point...manhandled and sat on a seat or bench.”*¹⁶³²

2.1184 I have, for completeness, included this as an allegation of ill-treatment made by Kadhim Al-Behadili (detainee 775). In short, I am satisfied that this aspect of Kadhim Al-Behadili’s account was merely a description of the firm and robust way in which he had been loaded into the Warrior AIFV. I have set out fully my findings regarding this loading process already in this Report in paragraphs 2.1134-2.1137.

Allegation (j) – that Kadhim Al-Behadili (detainee 775) was mocked by soldiers in the rear of the Warrior AIFV

2.1185 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili described how the following incident occurred in the Warrior AIFV at the start of the journey back to Camp Abu Naji:

“The vehicle moved off at some point and I recall that a soldier repeatedly poked me in the shoulder and said ‘British good, British good’ and singing while poking me.”¹⁶³³

2.1186 There is some obvious overlap between this allegation and the allegation, made by Mahdi Jasim Abdullah Al-Behadili (detainee 773), that soldiers in the rear of the Warrior AIFV had sung songs which mocked and teased him. Both Mahdi Al-Behadili (detainee 773) and Kadhim Al-Behadili (detainee 775) travelled back to Camp Abu Naji in the same Warrior AIFV, W21. It therefore seems likely that the detainees were both describing the same incident in their evidence to the Inquiry.

¹⁶³⁰ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000721-22) [28]

¹⁶³¹ See paragraphs 2.1134-2.1137

¹⁶³² Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000722) [30]

¹⁶³³ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000722) [31]

2.1187 I repeat here the findings that I made earlier in this Report, when I dealt with the similar allegation made by Mahdi Al-Behadili (detainee 773).¹⁶³⁴ It seems entirely possible that there was some singing and discussion among the soldiers in the rear of W21 on the journey back to Camp Abu Naji. However, I am not persuaded that any such singing or discussion was deliberately intended to tease or mock any of the detainees in the vehicle.

Allegation (k) – that a soldier shouted in the ear of Al-Behadili (detainee 775) whilst he was in the rear of the Warrior AIFV heading back to Camp Abu Naji

2.1188 In his oral evidence to the Inquiry, Kadhim Abbas Lafta Al-Behadili was asked about the journey back to Camp Abu Naji in the rear of the Warrior AIFV. During that passage of questioning, Kadhim Al-Behadili appeared to make a fresh allegation, as follows:

“Q. Did you make any sound during the journey? Did you talk to anyone?”

A. I was in pain. I didn’t talk, but a soldier was shouting in my ear.

Q. Do you know what the soldier was shouting?”

A. He was calling ‘British’, ‘Go to British’, in my ear.”¹⁶³⁵

2.1189 It is entirely possible that, in this part of his oral evidence, Kadhim Al-Behadili (detainee 775) was simply repeating the allegation addressed in paragraphs 2.1185 to 2.1187 above, albeit with some differences in detail. However, it is also possible that this allegation refers to a separate incident. I cannot rule out the possibility that a soldier did shout something in Kadhim Al-Behadili’s ear whilst they were in the rear of the Warrior AIFV on the journey back to Camp Abu Naji. Even if some shouting did occur as alleged, it appears to have been relatively harmless in nature (i.e. it does not appear to have been either threatening or abusive). Furthermore, the noise levels in the rear of a Warrior while the engine is running are such that it is often necessary to raise one’s voice in order to be heard.¹⁶³⁶ All in all, therefore, it seems to me to have been a very trivial incident, if it happened at all, and I very much doubt if it was sufficiently serious to amount to or form part of the type of ill-treatment that is envisaged by the Terms of Reference.

Allegations of ill-treatment made by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

2.1190 I have identified the following six allegations of ill-treatment by British soldiers that Atiyah Sayyid Abdulridha Al-Baidhani claims to have suffered from the time he was first captured on the battlefield until he arrived at Camp Abu Naji:

- a. that Atiyah Al-Baidhani was kicked in the chest and stomach and punched twice to the left side of his jaw at the point of capture;
- b. that Atiyah Al-Baidhani was hit on the top of his head with a rifle, causing profuse bleeding;
- c. that the handcuffs applied to Atiyah Al-Baidhani’s wrists were excessively tightened;
- d. that Atiyah Al-Baidhani was stamped on and ill-treated at the collection point near WOC;

¹⁶³⁴ See paragraphs 2.1141–2.1142

¹⁶³⁵ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/92/11-14]

¹⁶³⁶ Lieutenant Plenge (AS1009730) [43]

- e. that Atiyah Al-Baidhani was shouted at and roughly handled as he was loaded into the Warrior AIFV; and
- f. that Atiyah Al-Baidhani was hit by two black soldiers whilst in the Warrior AIFV on the journey back to Camp Abu Naji.

2.1191 In the paragraphs that follow, I set out my conclusions of fact with regard to each of these allegations by Atiyah Al-Baidhani.

Allegation (a) – that Atiyah Al-Baidhani (detainee 779) was kicked and punched when he was captured on the battlefield on 14 May 2004

2.1192 In his first written Inquiry statement, Atiyah Sayyid Abdulridha Al-Baidhani made the following allegation about what happened when he was first captured on the battlefield:

“The black man kicked me in the chest and stomach. He was still holding his gun. I think he transferred the gun to his left hand. He then punched me twice on the left hand side of my jaw. As a result of these punches my jaw was distorted for the following ten or eleven days. Even now, over six years later, I am still troubled by it.”¹⁶³⁷

2.1193 In earlier paragraphs of this Report, I have summarised the soldiers’ evidence relating to the capture of the four detainees, including Atiyah Al-Baidhani (detainee 779), in Trench 1.¹⁶³⁸ This particular allegation was also put to the military witnesses who were present in Trench 1 at the time. They consistently denied having seen Atiyah Al-Baidhani being assaulted in the manner alleged.¹⁶³⁹

2.1194 Those representing the Iraqi Core Participants drew my attention¹⁶⁴⁰ to the photographs taken of Atiyah Al-Baidhani (detainee 779) at both Camp Abu Naji¹⁶⁴¹ and the Divisional Temporary Detention Facility (“DTDF”) at Shaibah¹⁶⁴² on 14 and 15 May 2004 respectively. These photographs are shown below at Figures 50 and 51. It was suggested that these photographs show swelling and deformation of Atiyah Al-Baidhani’s jaw, consistent with his account having been punched whilst being captured.

¹⁶³⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000950) [25]; NB – maintained in oral evidence [9/89]

¹⁶³⁸ See paragraph 2.806

¹⁶³⁹ See, for example, Corporal Byles [84/136/24]-[137/4]; Sergeant Broome [86/139/17-21]; Private Rushforth [91/162/5-10]; Lance Corporal Wood [92/43/20-24]; Private Tatawaqa [92/151/23]-[152/4]

¹⁶⁴⁰ ICP Closing Submissions (113) [421]-[422]

¹⁶⁴¹ (MOD032675)

¹⁶⁴² (MOD048746)

Figure 50: MOD032675 (second picture)

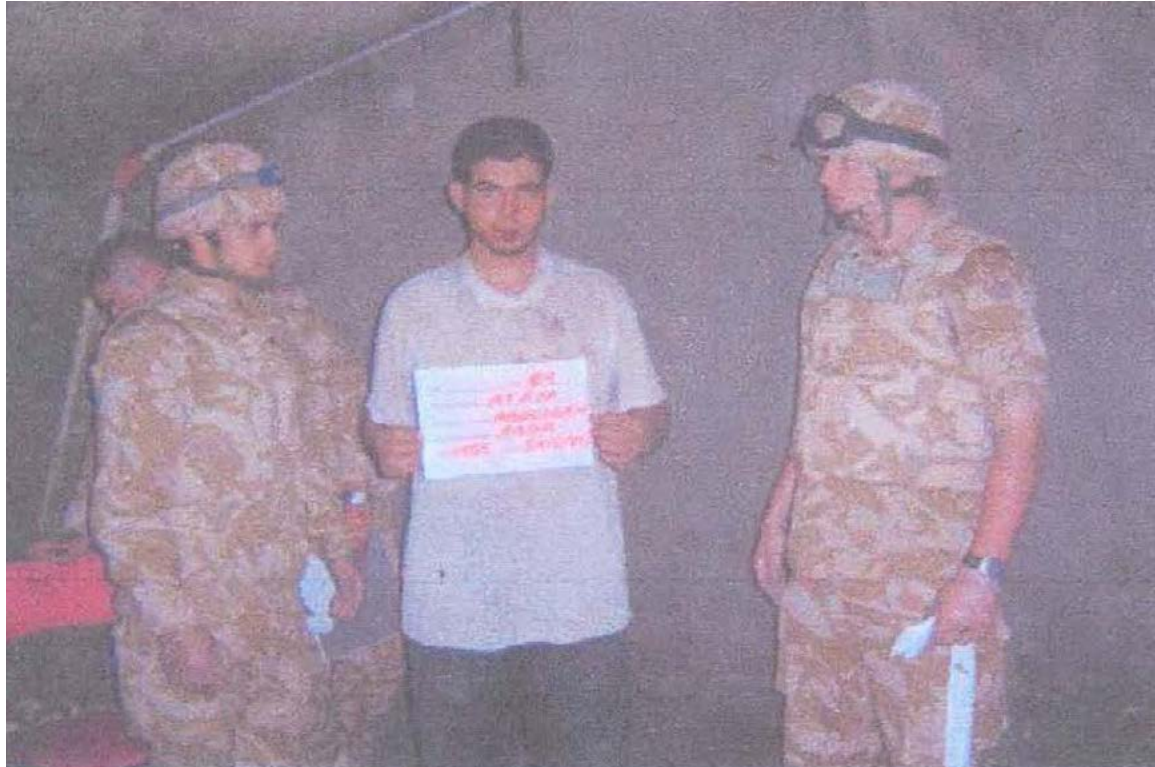


Figure 51: MOD048746



2.1195 I am not persuaded that these photographs do show the injuries that those representing the Iraqi Core Participants submit they do. In my view, the photograph taken at Camp Abu Naji¹⁶⁴³ is not clear enough to make out any injuries with any degree of confidence. Atiyah

¹⁶⁴³ (MOD032675)

Al-Baidhani appears to have been too far away from the camera when the photograph was taken and he does not appear in sharp focus in the image. I accept that the photograph taken at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah¹⁶⁴⁴ does appear to show some bruising to Atiyah Al-Baidhani’s face. As it seems to me, the injury to Atiyah Al-Baidhani’s face, that is shown in this photograph, appears to be in general keeping with the description provided by Major David Winfield in the medical record of the examination he carried out at Shaibah on 15 May 2004, namely that Atiyah Al-Baidhani had bruising and swelling to his cheek and “*superficial*” bruising to his face.¹⁶⁴⁵ However, I can detect no sign of any distortion to Atiyah Al-Baidhani’s jaw in the photograph.

2.1196 I note that the medical records concerning Atiyah Al-Baidhani maintained at the DTDF at Shaibah during the entire period of his detention there, include the following entry, made on 28 August 2004: “*Jaw pain. States he was hit by guard on capture. Tender. No deformity.*”¹⁶⁴⁶

2.1197 I am satisfied that the main thrust of Atiyah Al-Baidhani’s account of this incident is untrue or (at the very least) greatly exaggerated, certainly so far as concerns the alleged severity and violence of the incident in question. If Atiyah Al-Baidhani had really been punched twice on his jaw with such force that it continued to cause him discomfort six years later, it seems to me that the medical reports of Corporal Shaun Carroll and Major Winfield could be expected to have recorded some findings that were consistent with such a level of serious violence (e.g. deformation, significant swelling or even a fracture of the jaw) and that there would also have been some more obvious and visible signs of the effect of such a violent attack to be seen in the photographs shown above.

2.1198 As in the case of the other detainees, I accept that some force may have been used against Atiyah Al-Baidhani whilst he was being brought under control and restrained during capture, particularly if he had put up a struggle. Whilst it is possible that this use of force may explain the facial bruising that can be seen in the photographs taken of Atiyah Al-Baidhani and noted in the records of his medical examinations, it is also possible that some or all of these bruises and marks were sustained by Atiyah Al-Baidhani as a result of his own actions, while actively participating in the armed ambush of the British forces on 14 May 2004. In this context, I entirely agree with the following observations, made by those instructed by the Treasury Solicitor in their written Closing Submissions:

*“It is also to be anticipated that being involved in the battle, without protective headgear, body armour, military uniforms or apparent training, the insurgents would have sustained minor injuries incidental to their involvement through activities such as crawling over rough ground, diving into cover, and handling weapons systems, and may have sustained injuries from being hit by battlefield ammunition or shrapnel given their involvement in fighting the British. This could have included friendly fire injuries, as well as those weapons used by British forces to fight off the Iraqi ambush. Being handled in a firm way at the point of detention due to their resistance and the need to get them quickly into a safe position (both for their own protection and that of the British soldiers) may also have resulted in minor injuries such as bruises and cuts.”*¹⁶⁴⁷

2.1199 In my view, these observations do plausibly identify a number of possible ways in which the detainees might well have sustained minor injuries on the battlefield on 14 May 2004. Accordingly, as it seems to me, the mere presence of a minor injury (such as a small laceration/

¹⁶⁴⁴ (MOD048746)

¹⁶⁴⁵ (MOD044021-22)

¹⁶⁴⁶ (MOD044017)

¹⁶⁴⁷ TSol Closing Submissions (104) [242]

graze or a bruise) on a detainee at the time of and/or during the period immediately following his capture does not *ipso facto* give rise to any inference that he had been ill-treated and/or subjected to physical violence by the British troops.

2.1200 Accordingly, whilst I consider it possible, perhaps even likely, that force was used in order to gain control of and restrain Atiyah Al-Baidhani when he was captured in Trench 1 on the 14 May 2004, I do not regard it as anything more than a possibility that the injuries (or some of them), that can be seen in the photographs and were noted in the medical examinations, had been caused by such force as was used to effect Atiyah Al-Baidhani's capture on the battlefield that day.

Allegation (b) – that, Atiyah Al-Baidhani (detainee 779) was struck on the top of his head with a rifle, causing profuse bleeding, while being captured on the battlefield

2.1201 In his first written Inquiry statement, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) gave the following account of this particular allegation:

“The black soldier then hit me on the top left¹⁶⁴⁸ hand side of my head. I am not sure what part of the gun struck me. I suspect it was the muzzle as the resulting wound was quite small. Although the head wound was small, it bled profusely. Blood was streaming down my head, past my ear and down the side of my face. It was pouring with blood.”¹⁶⁴⁹ [emphasis added]

2.1202 However, Atiyah Al-Baidhani's description of this incident in his written statement to the English High Court in the judicial review proceedings was somewhat different, as follows:

“The black soldier jumped in the ditch and hit me hard in a downward motion on the right side of my head just above my ear with his rifle butt. It was a strong blow and led to a deep cut and blood started pouring down the right side of my face and over my right eye. I still have a scar on my head and that area of my face hurts if I bump it against anything.”¹⁶⁵⁰ [emphasis added]

2.1203 These differences in the two accounts (as highlighted above) were drawn to Atiyah Al-Baidhani's attention during the course of his oral evidence to the Inquiry. In response to questions put by Counsel to the Inquiry, Atiyah Al-Baidhani said that he was certain the blow had been to the left side of his head but that he could not recall whether he had been struck by the butt or the muzzle of the rifle. Atiyah Al-Baidhani also suggested that what he described as an “*error*” in his Judicial Review statement might have been the result of a mistake in interpretation.¹⁶⁵¹

2.1204 This particular allegation was put to the various military witnesses who had been present in Trench 1 at the time. They all consistently denied having seen Atiyah Al-Baidhani being assaulted in the manner alleged.¹⁶⁵²

2.1205 In the event, I am satisfied that Atiyah Al-Baidhani was not struck with a rifle as he alleged. During processing at Camp Abu Naji on the evening of 14 May 2004, Atiyah Al-Baidhani's

¹⁶⁴⁸ The ‘emphasis’, in relation to the underlining of certain words (“*top left*” etc), has been added to highlight the inconsistencies in Atiyah Al-Baidhani's two statements at paragraphs 2.1226 (AS1000950) [26] and 2.1227 (MOD047156) [10]

¹⁶⁴⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (AS1000950) [26]

¹⁶⁵⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD047156) [10]

¹⁶⁵¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/113-115]

¹⁶⁵² See, for example, Corporal Byles [84/136-137]; Sergeant Broome [86/139]; Private Rushforth [91/162]; Lance Corporal Wood [92/43]; Private Tatawaqa [92/151-152]

photograph was taken. He was wearing a white t-shirt at the time.¹⁶⁵³ I have no doubt that Atiyah Al-Baidhani was wearing that same t-shirt when he was captured on the battlefield earlier that day. There appears to be some slight discolouration on the left side of the t-shirt, which may possibly indicate the presence of a small amount of blood. Some specks of what appears to be blood can also be seen in the photograph of Atiyah Al-Baidhani’s shirt at ASI016095. However, in neither of these photographs is there any evidence of the sort of profuse bleeding that Atiyah Al-Baidhani claimed to have suffered as a result of this assault.

2.1206 Furthermore, the records of the medical examinations, conducted by Corporal Shaun Carroll¹⁶⁵⁴ and Major David Winfield¹⁶⁵⁵ on 14 and 15 May 2004 respectively, contain nothing to suggest that, when they examined him, Atiyah Al-Baidhani (detainee 779) had been suffering from a head wound that could have been caused by a blow with a rifle. I am therefore satisfied that this allegation is not true and that Atiyah Al-Baidhani deliberately lied when making it.

Allegation (c) – that when Atiyah Al-Baidhani (detainee 779) was first captured, the handcuffs applied to his hands were excessively tightened

2.1207 In Atiyah Sayyid Abdulridha Al-Baidhani’s first written Inquiry statement, dated 22 July 2010, he made this particular allegation in the following terms:

“The two white soldiers were standing, holding their guns. They handcuffed my hands behind me using plastic handcuffs. They put them on very tight, stopping the blood flow to my hands. The hand cuffs were on so tightly the marks could still be seen in 2008. They are not visible today but took years to heal.”¹⁶⁵⁶ [emphasis added]

2.1208 In his second written Inquiry statement, Atiyah Al-Baidhani sought to correct this particular highlighted passage in his first statement. He said that, as at the date of his second statement (i.e. 15 March 2012), the scar from the handcuffs remained.¹⁶⁵⁷ A photograph of Atiyah Al-Baidhani’s wrist was provided, in which an area of apparent scarring was identified. This photograph can be seen below at Figure 52.

¹⁶⁵³ (MOD032675)

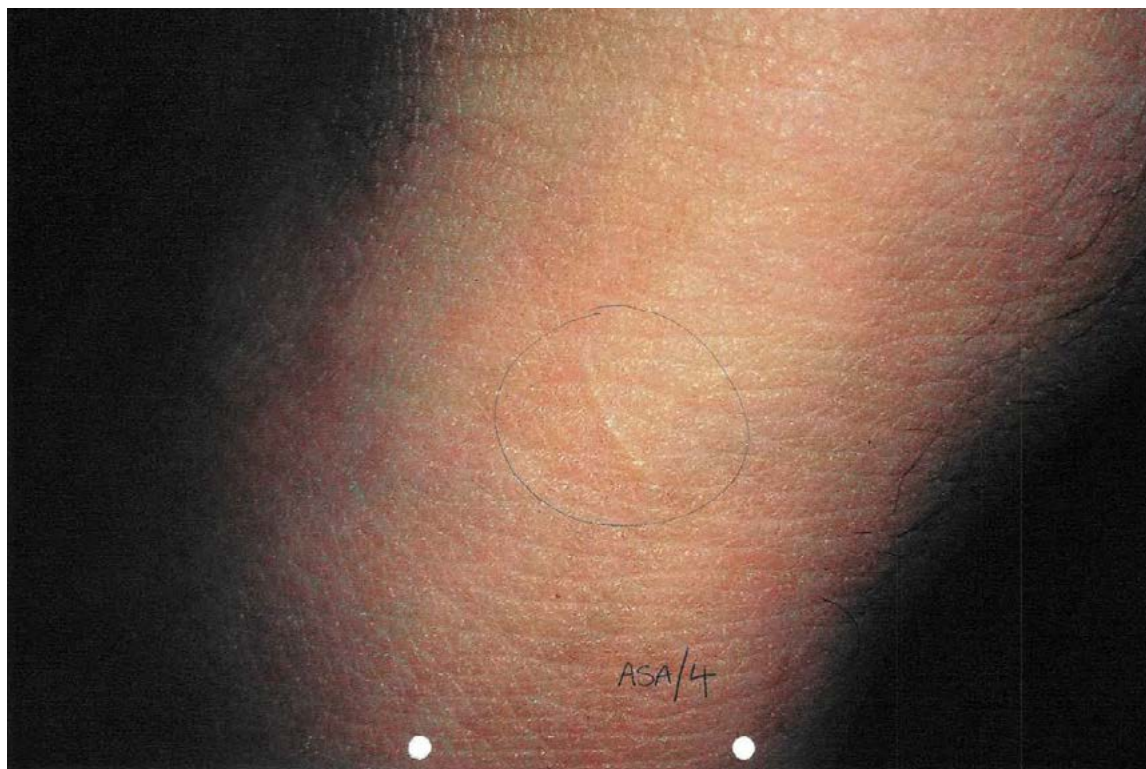
¹⁶⁵⁴ (MOD043999)

¹⁶⁵⁵ (MOD044022)

¹⁶⁵⁶ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000950-51) [27]

¹⁶⁵⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000176) [64]

Figure 52: PIL000192



2.1209 As I have already indicated with regard to others who were captured and detained in Trench 1 on 14 May 2004,¹⁶⁵⁸ it is possible that handcuffs may have been applied too tightly when Atiyah Al-Baidhani (detainee 779) was first captured in Trench 1. However, I am satisfied that if the handcuffs were applied too tightly in his case, it had not been done deliberately and the handcuffs were either loosened or replaced once he was moved to the collection point beside WOC.

2.1210 In my view, during the course of his evidence to the Inquiry, Atiyah Al-Baidhani conspicuously failed to explain adequately why, when he made his first Inquiry statement, he had stated that the marks from the handcuffs had healed and disappeared but that, by the time he came to give his second Inquiry statement, he had been able to both identify and to photograph a mark on his wrist said to have been caused by those over-tightened handcuffs.

2.1211 It is obvious that scars/marks of this nature do not reappear some years after they have healed and are no longer visible. Accordingly, either Atiyah Al-Baidhani made a mistake in his first statement, in saying that the scar had healed and was no longer visible when that was not the case, or the scar/mark identified by Atiyah Al-Baidhani in his second Inquiry statement and in the photograph had not been caused by the handcuffs at all. In my view, Atiyah Al-Baidhani was quite unable to explain how this particular inaccurate passage in his first Inquiry statement had come to be there. I have therefore come to the firm conclusion that the scar/mark photographed in PIL000192 was not caused by the handcuffs that had been used to secure Atiyah Al-Baidhani's wrists when he was first captured in Trench 1 on 14 May 2004.

2.1212 I have also come to the conclusion that Atiyah Al-Baidhani (detainee 779) deliberately did not tell the truth when he identified the photographed scar/mark on his wrist and told me that it had been caused by the over-tightened handcuffs. I am satisfied that he told this particular lie in order to exaggerate the extent and seriousness of his allegation that the handcuffs in question had been applied too tightly when he was first captured.

¹⁶⁵⁸ See paragraphs 2.1119–2.1120

Allegation (d) – that Atiyah Al-Baidhani (detainee 779) was stamped on and ill-treated at the collection point near WOC

2.1213 In his statement to the Administrative Court in the Judicial Review proceedings dated 14 October 2008, Atiyah Sayyid Abdulridha Al-Baidhani alleged that the black soldier who detained him had stamped on him whilst he was lying on the floor at the collection point near WOC.¹⁶⁵⁹ In his first written Inquiry statement, Atiyah Al-Baidhani said that, at this same location he had been kicked and held in position with the soles of a soldier’s shoes.¹⁶⁶⁰ Finally, in his second written Inquiry statement, Atiyah Al-Baidhani gave the following account of the way he was treated at the collection point:

“During the time I was face down on the floor I would occasionally turn my head to one side or the other as it was painful to keep facing the ground. If any of the soldiers saw me do this they would kick hard into the dirt by my face to make me face the ground again. When they did this gravel, dirt and sand would hit my face. I cannot recall how many times this happened to me. Like many of the matters I now explain in this statement, I was not asked to provide any of this detail for my first Inquiry statement. A soldier also used the sole of his boot and put this on my head and hold me there to make me face the ground. Even without much pressure from the soldier, the weight of his boot on my head felt heavy and pushed my face into the dirt. My head would be held under the soldier’s boot for a minute or two. Another soldier would stamp on my back to hold me down and in position.”¹⁶⁶¹

2.1214 In these three accounts, Atiyah Al-Baidhani described treatment of a broadly similar nature, with an increasing amount of detail in each successive account. It seems clear from the context in each account that the allegation relates to the period of time when Atiyah Al-Baidhani was lying face down on the ground at the collection point near WOC.

2.1215 A significant number of soldiers were present at and/or passed through the collection point near WOC during the time that Atiyah Al-Baidhani was there lying on the ground. None of the soldiers who gave evidence to the Inquiry said anything that could be understood to be any form of corroboration or confirmation of this particular allegation by Atiyah Al-Baidhani.

2.1216 I am satisfied that each of the various military witnesses endeavoured to give a truthful and accurate account of his actions and experiences at or in the vicinity of the collection point near WOC that day. I am therefore satisfied that Atiyah Al-Baidhani was not deliberately kicked or stamped on at the collection point as he claimed. Again, I have come to the conclusion that he did not tell the truth when making this particular allegation.

2.1217 I accept that Atiyah Al-Baidhani was made to lie face down on the ground at the collection point and I accept his evidence that this was uncomfortable.¹⁶⁶² However, I very much doubt if this can be said to have amounted to the sort of ill-treatment that is envisaged by the terms of reference. Atiyah Al-Baidhani had very recently been captured whilst taking an active and hostile part in the armed ambush of the British troops. The various steps that were taken by the soldiers in order to prevent Atiyah Al-Baidhani and the other detainees from escaping or continuing to pose a threat to the British forces seem to have been the obvious and sensible ones to take in the prevailing circumstances. As WO2 David Falconer explained in the following passage in his evidence:

¹⁶⁵⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006673) [14]:NB – it is clear from the context that Atiyah Al-Baidhani is referring to the collection point beside Route 6 near WOC in these various accounts of this particular allegation

¹⁶⁶⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000951) [29]

¹⁶⁶¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000180-81) [80]

¹⁶⁶² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006673) [14]

*"I expect that I gave the instructions for similar reasons as set out above. We were short of manpower and in order to keep the prisoners under control I did not want them to know how few of us there were and how they were only guarded by one soldier. I remember seeing one of the prisoners raising his head and looking round and talking to the other prisoners in Arabic. Whilst he had a blindfold on, it was makeshift and loose and he may have been able to see. As we had no interpreters with us I could not tell them in Arabic to keep their heads down and be quiet so I expect that all I could think to do to stop these activities was to have the guard stop them looking up and tell them to shut up."*¹⁶⁶³

Allegation (e) – that Atiyah Al-Baidhani (detainee 779) was shouted at and roughly handled when he was loaded into the Warrior AIFV

2.1218 In his first written Inquiry statement, Atiyah Sayyid Abdulridha Al-Baidhani gave the following account of how he had been loaded into the Warrior AIFV:

*"The soldiers pulled me up. Put my legs into the vehicle and they pushed me in. There was another soldier in the vehicle pulling me in. There were other people already in the vehicle and as I was getting in I was kneeling on them. I sat next to a box of water."*¹⁶⁶⁴

2.1219 Although not in direct conflict with his first Inquiry statement, it seems to me that the general tone of Atiyah Al-Baidhani's second written Inquiry statement was markedly different when describing the same event, as follows:

*"At paragraph 32 of my first Inquiry statement I describe how I was put into the APC. The soldiers made me stand facing the back of the APC. As I was cuffed to the rear he was grabbing me on the shoulders and shouting 'Up. Up. Up.'. I put my knee on the platform in the opening to the APC. Then the soldier pushed me hard towards the soldier inside the APC and he pulled me in and I continued to crawl on my knees along what felt like the bodies of other people. The soldier dragged me to my seat where I sat down. I was treated very roughly. During my interview on 20 July 2010 I said that I was 'harshly' put inside the APC and described this process but this was not recorded in the statement."*¹⁶⁶⁵

2.1220 As I have already indicated,¹⁶⁶⁶ it seems very likely that the method by which the detainees, including Atiyah Al-Baidhani, were loaded into the Warrior AIFV would have been firm, robust and without immediate regard being given to the unwilling and fearful state of the detainees. Insofar as Atiyah Al-Baidhani's second written Inquiry statement suggests any treatment of a harsher or more robust nature than that, I do not accept his evidence.

2.1221 Furthermore, as I have already indicated,¹⁶⁶⁷ it seems to me that there was a palpable change of emphasis in Atiyah Al-Baidhani's second written Inquiry statement, when he described the manner in which he had been loaded into the Warrior AIFV. On any reading of Atiyah Al-Baidhani's first Inquiry statement, his evidence was clearly to the effect that he had not been particularly ill-treated or handled roughly when he was loaded into the vehicle. However, in his second written Inquiry statement, Atiyah Al-Baidhani suggested that, although he had actually made it clear, during the interview for his first Inquiry statement, that he had been

¹⁶⁶³ WO2 David Falconer (ASI020197-98) [69]

¹⁶⁶⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000951) [32]

¹⁶⁶⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000181) [81]

¹⁶⁶⁶ See paragraph 2.1134

¹⁶⁶⁷ See paragraph 2.1219 above

handled “*harshly*” and had described how that had been the case, those details had simply been missed out of his first Inquiry statement.¹⁶⁶⁸

2.1222 In my view, this explanation is clearly very unsatisfactory and wholly unconvincing. I have carefully considered the video and audio recordings of Atiyah Al-Baidhani’s (detainee 779) interview for the production of his first Inquiry statement. There is no evidence of Atiyah Al-Baidhani having attempted to give further details of how he had been loaded into the Warrior AIFV, but which are not then included in the statement. Furthermore, there is no evidence or indication that Atiyah Al-Baidhani made any attempt to correct or expand upon this aspect of his evidence when his statement was read back to him for review at the end of the interview.

2.1223 I am satisfied that, in reality, Atiyah Al-Baidhani added a fresh allegation to his second Inquiry statement about how he had been “*very roughly*” and “*harshly*” ill-treated when being loaded into the Warrior AIFV. This fresh allegation was, in effect, a greatly exaggerated account of what I accept might have been firm and robust handling as he was loaded into the vehicle. In my view, Atiyah Al-Baidhani deliberately did not tell the truth when making this fresh allegation.

Allegation (f) — that Atiyah Al-Baidhani (detainee 779) was hit by two black soldiers in the Warrior AIFV on the journey back to Camp Abu Naji

2.1224 On a number of occasions in his evidence to the Inquiry and in previous accounts, Atiyah Sayyid Abdulridha Al-Baidhani has alleged that he was assaulted in the Warrior AIFV during the journey back to Camp Abu Naji, although there are some differences in the way he has described those alleged assaults.

2.1225 First, in his statement to the Administrative Court for the purposes of the Judicial Review proceedings, Atiyah Al-Baidhani said this:

“I asked someone who was sat next to me who he was and he replied that he was Ahmed Jabbar Hamoud Al-Furajji [detainee 777]. The black soldier hit me to make me be quiet.”¹⁶⁶⁹

2.1226 In his first written Inquiry statement, Atiyah Al-Baidhani gave the following account:

“During the journey my blindfold was coming loose. It was tightened by a soldier who punched me. I remember there was a soldier by the door and there was a black soldier in the vehicle also. I think this was a different soldier from the one who had initially detained me. He had a longer face. When I tried to move, the black soldier punched me.”¹⁶⁷⁰

2.1227 In his second written Inquiry statement, Atiyah Al-Baidhani described what happened in the following terms:

“Inside the APC there was a black soldier sat next to the rear door. There was another black soldier who was among us and he was stood up in the APC behind a gun. There was also a driver. As I explained in my first Inquiry statement, I saw this as my blindfold came loose. Whenever I moved the soldier standing up behind the gun would sit down

¹⁶⁶⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000181) [81]

¹⁶⁶⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006674) [15]

¹⁶⁷⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000952) [36]

*and punch me. I cannot recall how many times I was punched during the journey. I don't remember if anyone else was punched but when I was talking to Ahmed [Detainee 777], who was sat next to me as described in my first Inquiry statement at paragraph 32, the black soldier by the rear door of the APC said 'fuck you, shut up' many times and hit me hard with the end of his fist on the top of my left leg."*¹⁶⁷¹

2.1228 When these three statements are considered as a whole, it appears that Atiyah Al-Baidhani identified three separate occasions when he claimed to have been assaulted whilst being transported to Camp Abu Naji in the Warrior AIFV. He alleged that (i) he had been hit when he moved, (ii) that he had been hit when he tried to speak to Ahmed Jabbar Hammood Al-Furaiji (detainee 777) and (iii) that he had been hit when his blindfold slipped.

2.1229 During Atiyah Al-Baidhani's oral evidence, Counsel to the Inquiry attempted to determine whether these alleged assaults were separate events or whether there was some overlap between them. However, Atiyah Al-Baidhani's answers offered little if any clarification and the following one seems to be the best summary of Atiyah Al-Baidhani's recollection of the matter:

*"I'm telling you my memory is not in good shape and this is an old event. What I now remember I can mention. I might have said 'Yes' and after two weeks I might say 'No, I can't remember' because I lose my memory."*¹⁶⁷²

2.1230 As I have already indicated,¹⁶⁷³ I am satisfied that Atiyah Al-Baidhani was transported to Camp Abu Naji in W32. The soldiers who also made the journey in the rear compartment of that vehicle were Sergeant Craig Brodie, Lance Corporal Brian Wood, Private Jayme Bishop and Private Alipate Korovou. Lance Corporal Wood was adamant that no detainee had been assaulted in the rear of his Warrior.¹⁶⁷⁴ This view was echoed by Private Korovou.¹⁶⁷⁵

2.1231 I am satisfied that Atiyah Al-Baidhani was not assaulted in the Warrior AIFV during the journey back to Camp Abu Naji as he alleged or at all. I am satisfied that the evidence of the various soldiers, who had been present in the rear compartment of the same vehicle during that journey, was truthful and reliable. They all consistently denied that there had been any such assaults and I accept that such was the case.

2.1232 Furthermore, it seems to me that there was a clear and obvious tendency on the part of Atiyah Al-Baidhani to elaborate upon and to add further detail to the allegation each time he gave an account about what he claimed to have happened. An inevitable consequence of this tendency was that it became far from clear precisely what it was that he said had happened to him during the journey to Camp Abu Naji that day.

2.1233 This alone might have made it difficult to come any firm conclusion Atiyah Al-Baidhani had been assaulted in the rear of the Warrior AIFV on the journey to Camp Abu Naji. However, when considered in conjunction with the truthful and reliable evidence of the various soldiers who were present at the time, it provides additional support for my conclusion that Atiyah Al-Baidhani was not assaulted as alleged or at all.

2.1234 I have considered whether these evidential difficulties in Atiyah Al-Baidhani's (detainee 779) account were caused by a genuine dimming of his memory, given the passage of time, or

¹⁶⁷¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000181-82) [83]

¹⁶⁷² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/7/16-19]

¹⁶⁷³ See paragraph 2.1012

¹⁶⁷⁴ Lance Corporal Wood [92/91/11-15]

¹⁶⁷⁵ Private Korovou [84/52-53]

whether it was the result of deliberate dishonesty on his part. Having regard to the conclusions I have reached with regard to other allegations of ill-treatment by Atiyah Al-Baidhani,¹⁶⁷⁶ I think the latter is more likely. In his various accounts of this particular allegation of ill-treatment, Atiyah Al-Baidhani sought to add detail to what was a false account of having been assaulted in the rear of the Warrior AIFV during the journey to Camp Abu Naji that day. As it seems to me, when Atiyah Al-Baidhani was questioned by Counsel during his oral evidence to the Inquiry, this pattern of fabrication became so apparent that Atiyah Al-Baidhani felt obliged to make the further false assertion that his memory of the incident in question had failed almost entirely.

Allegations made by Hussein Gubari Ali Al-Lami (detainee 780)

2.1235 I have identified the following seven allegations of ill-treatment by British soldiers that Hussein Gubari Ali Al-Lami claims to have suffered from the time he was captured on the battlefield until he first arrived at Camp Abu Naji:

- a. that the plasticuffs applied to Hussein Al-Lami’s wrists when he was first captured were tightened excessively;
- b. that Hussein Al-Lami was kicked, punched and struck with a rifle when he was first captured, causing him to lose consciousness;
- c. that Hussein Al-Lami was dragged with his face and upper body touching the ground, causing him to graze his face and lose a toenail;
- d. that Hussein Al-Lami fell into a concrete canal whilst being moved from the point of capture to the collection point near WOC;
- e. that Hussein Al-Lami’s blindfold covered his nose and made it difficult for him to breathe;
- f. that Hussein Al-Lami was roughly handled when he was loaded into the Warrior AIFV; and
- g. that a sharp blade was placed against Hussein Al-Lami’s throat in the Warrior AIFV.

2.1236 In the paragraphs that follow, I set out my conclusions of fact in respect of each of these allegations.

Allegation (a) – that when Hussein Al-Lami (detainee 780) was first captured the handcuffs applied to his wrists were tightened excessively

2.1237 In his second written Inquiry statement, Hussein Gubari Ali Al-Lami gave the following account of being handcuffed when he was first captured on 14 May 2004:

“I was then bundled to the ground and put on my front. My hands were brought to my back and plasticuffs were put on and pulled tight until I could barely feel my hands.”¹⁶⁷⁷

2.1238 Having regard to the conclusions of fact that I have already reached with regard to the handcuffing of the detainees when they were first captured in Trench 1 on 14 May 2004,¹⁶⁷⁸ I am able to deal quickly with this particular allegation. I accept that it is possible that plasticuffs were applied too tightly to Hussein Al-Lami’s wrists when he was first captured. However, I am satisfied that if this did occur, it was not done deliberately, would not have caused any significant injury and would have been swiftly resolved once Hussein Al-Lami had

¹⁶⁷⁶ Paragraphs 2.1192–2.1223

¹⁶⁷⁷ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000407) [42]

¹⁶⁷⁸ See paragraphs 2.119–2.1120

been moved to the collection point near WOC by the handcuffs being loosened and reapplied correctly.

Allegation (b) – that Hussein Al-Lami (detainee 780) was kicked, punched and struck with a rifle when he was first captured

2.1239 In his second written Inquiry statement, Hussein Gubari Ali Al-Lami continued his account of how he had been captured in the following terms:

“The black soldier put his knee in my back. He pulled my head up from the ground by grabbing my hair at the forehead and straining my neck back. He then punched me five or six times to the face. The other soldiers watched at first, then joined in attacking me. They mostly kicked me to my body however one of them used the butt of their gun and hit me to my head. I cannot recall how many times I was hit as, by this time, I was starting to feel faint.”¹⁶⁷⁹

2.1240 This account was broadly consistent with how Hussein Al-Lami described his capture on the battlefield that day in his first written Inquiry statement, except that in the first statement Hussein Al-Lami said that he had lost consciousness completely and that he had been hit with the muzzle of the rifle (rather than the butt). During his oral evidence to the Inquiry, Hussein Al-Lami said that he had lost consciousness as a result of the blows on his head, but that he could not be sure whether he was struck by the butt or the muzzle of the rifle.¹⁶⁸⁰

2.1241 As I have set out above,¹⁶⁸¹ it is likely that the soldiers did use force in order to gain control of and to restrain the four insurgents who they found in Trench 1, including Hussein Al-Lami. However, nothing in the accounts of the various military witnesses, who were present in Trench 1 at the time, provides any corroboration or confirmation of Hussein Al-Lami’s account of having been subjected to such a series of serious, sustained and violent assaults by a number of soldiers, including having suffered a number of blows to his head with a rifle.

2.1242 Furthermore, there is nothing in the medical examinations of Hussein Al-Lami at Camp Abu Naji and the Divisional Temporary Detention Facility (“DTDF”) at Shaibah, carried out on 14 and 15 May 2004 respectively, or in any of the photographs of Hussein Al-Lami, taken in the days immediately following his capture, that corroborates or provides any support for his account of such a series of brutal and violent assaults.

2.1243 In his record of Hussein Al-Lami’s medical examination at Camp Abu Naji on 14 May 2004, Corporal Shaun Carroll noted that he had removed a small piece of shrapnel from just in front of Hussein Al-Lami’s left ear.¹⁶⁸² When Hussein Al-Lami was shown Corporal Carroll’s written record of the medical examination, his initial reaction was to challenge the description of the piece of shrapnel as “*small*”. According to Hussein Al-Lami, the piece of shrapnel had been “*very big*.”¹⁶⁸³ However, Hussein Al-Lami then changed his evidence almost immediately and claimed that Corporal Carroll had been inaccurately describing the removal of a torn piece of skin, which Hussein Al-Lami said had been torn when he was struck on the head while he was being captured.¹⁶⁸⁴

¹⁶⁷⁹ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000407)[42]

¹⁶⁸⁰ Hussein Gubari Ali Al-Lami (detainee 780) [11/6-7]; [11/50-55]

¹⁶⁸¹ See paragraph 2.998

¹⁶⁸² (MOD024314); Corporal Shaun Carroll (ASI016089) [162]

¹⁶⁸³ Hussein Gubari Ali Al-Lami (detainee 780) [11/59]

¹⁶⁸⁴ Ibid.

- 2.1244** I have no doubt that Corporal Carroll accurately recorded the removal of a small piece of shrapnel from the left side of Hussein Al-Lami’s face. Furthermore, I am sure that Hussein Al-Lami sustained this shrapnel wound in the course of his active and hostile participation in the armed attack on British troops on 14 May 2004 (i.e. during the Battle of Danny Boy).
- 2.1245** The only other injury recorded by Corporal Carroll was a graze to the left side of Hussein Al-Lami’s face. In his oral evidence, Hussein Al-Lami suggested that this graze was the result of having been dragged along the ground.¹⁶⁸⁵ It was not suggested that the graze could have been caused by the alleged assaults at the point of capture.
- 2.1246** Having regard to the foregoing, I am satisfied that there is nothing in the medical reports of either Corporal Carroll or Major David Winfield¹⁶⁸⁶ that provides any form of corroboration or support for Hussein Al-Lami’s allegation of having been subjected to such a series of violent assaults when he was first captured on the battlefield on 14 May 2004.
- 2.1247** Furthermore, in my view the contemporary photographs taken of Hussein Al-Lami (at Camp Abu Naji and the DTDF at Shaibah) do not provide any corroboration or support for this particular allegation of such a series of violent assaults.
- 2.1248** In their Closing Submissions, those representing the Iraqi Core Participants drew my attention to the photograph taken of Hussein Al-Lami (detainee 780) at Camp Abu Naji on 14 May 2004, as shown in Figure 53 below. It was suggested that some red colouration could be seen on his t-shirt and that this was possibly the result of bleeding caused by the alleged assaults.¹⁶⁸⁷

Figure 53: MOD032676



- 2.1249** However, I am not persuaded that what can be seen in the photograph is, in fact, blood staining. In my view, it is more likely that the white shirt had become damp and semi-

¹⁶⁸⁵ Hussein Gubari Ali Al-Lami (detainee 780) [11/56]; NB – the allegation of dragging is discussed later in this Report

¹⁶⁸⁶ For Major Winfield’s report see (MOD044075)

¹⁶⁸⁷ ICP Closing Submission (114) [429]

translucent, probably as a result of Hussein Al-Lami's own sweat. In any event, it seems to me that there is nothing in Hussein Al-Lami's own account, or in any of the other evidence, that could account for a blood stain covering virtually the whole of Hussein Al-Lami's t-shirt.

2.1250 Finally, I turn to consider the photograph taken of Hussein Al-Lami at the DTF at Shaibah on 15 May 2004, as shown in Figure 54 below. I accept that some discolouration, suggestive of a superficial injury to Hussein Al-Lami's left cheek, can be seen in that photograph. However, that is the only injury that I am able to identify in that photograph. As it seems to me, if there were any truth in Hussein Al-Lami's allegation of having been subjected to a series of sustained and violent assaults whilst being captured that day, I would have expected to see the visible signs of a number of significant injuries depicted in the photograph, but to all intents there are none.

Figure 54: MOD048748



2.1251 For the foregoing reasons, I have no doubt that Hussein Al-Lami (detainee 780) fabricated this particular allegation of having been subjected to a sustained, serious and violent series of assaults while being captured in Trench 1 on 14 May 2004. Whilst I accept that force may well have been used in order to gain control of and restrain Hussein Al-Lami during his capture by the British soldiers, particularly if he put up a struggle, his account went far beyond being merely an exaggerated account of that use of force. It was a deliberate lie.

Allegation (c) – that Hussein Al-Lami (detainee 780) was dragged with his face and upper body touching the ground, causing him to graze his face and to lose a toenail

2.1252 The most complete account of this particular allegation can be found in Hussein Gubari Ali Al-Lami's second written Inquiry statement, as follows:

"I came around again as I was dragged up off the floor. The extent to which I was injured during my transport to the road is not recorded in my initial Inquiry statement.

The soldiers began first to drag my body along the ground. Initially, this caused my face and upper body to drag along the ground leading to the cloth around my head becoming dislodged and also cutting and grazing my face, neck and chest. I was then half dragged to my feet but I was unable to support my own weight or walk and so two soldiers grabbed me under the armpits and dragged me along. My feet were touching the ground but I was not being walked; I was being pulled and dragged. My sandals fell off around this time and this is when my toenail was ripped off...”¹⁶⁸⁸

2.1253 Hussein Al-Lami was shown the photographs that were taken of him at Camp Abu Naji and the Divisional Temporary Detention Facility (“DTDF”), on 14 and 15 May 2004 respectively, and shown in Figures 53 and 54 above. As I have already indicated in paragraph 2.1250 above, in his oral evidence to the Inquiry Hussein Al-Lami said the marks shown on his left cheek in these photographs were grazes that had been caused by his having been dragged along the ground.¹⁶⁸⁹

2.1254 This grazing on Hussein Al-Lami’s left cheek was noted by both Corporal Shaun Carroll¹⁶⁹⁰ and Major David Winfield¹⁶⁹¹ when they examined Hussein Al-Lami. Although I accept that Hussein Al-Lami’s left cheek was grazed, I am sure that this was not caused by his having been dragged along the ground in the way that he alleged. If this was not caused by Hussein Al-Lami’s own actions on the battlefield that day,¹⁶⁹² it may have been caused by the force used in any struggle to subdue and gain control of him during his initial capture. In my view, if Hussein Al-Lami had been dragged across the rough ground which characterised the location in which he was captured, with his face and upper body touching the ground, he would undoubtedly have sustained injuries considerably more serious than those that can be seen in the photographs and were recorded in the medical examinations.

2.1255 Furthermore, when Major Winfield carried out Hussein Al-Lami’s initial medical at the DTDF at Shaibah on 15 May 2004, Hussein Al-Lami’s feet were included in his overall examination. I see no reason to doubt the thoroughness of this particular examination and the accuracy of the written record of what Major Winfield observed as a result. It is clear from his handwritten notes on the medical record of that examination, that the only injury that Major Winfield found in this area was a small abrasion to the large toe on Hussein Al-Lami’s left foot,¹⁶⁹³ the likely cause of which being one of the possibilities identified in the previous paragraph. I am therefore satisfied that Hussein Al-Lami did not lose any of his toenails as he claimed.

2.1256 Accordingly, I am sure that Hussein Al-Lami was not dragged violently along the ground after his capture in the manner he alleged. I accept that some degree of force may have been used, when moving Hussein Al-Lami robustly and firmly from where he had been captured to where he was photographed lying face down on the ground with the other three detainees in Trench 1. However, it would not be correct to characterise Hussein Al-Lami’s account merely as an exaggerated description of such a use of force by the soldiers that day. In my view, Hussein Al-Lami fabricated this account of violent dragging. It was a deliberate lie.

¹⁶⁸⁸ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000407-08) [43]

¹⁶⁸⁹ Hussein Gubari Ali Al-Lami (detainee 780) [11/56]

¹⁶⁹⁰ (MOD044052)

¹⁶⁹¹ (MOD044075)

¹⁶⁹² See paragraphs 2.1245–2.1246 above

¹⁶⁹³ (MOD044075)

Allegation (d) – that Hussein Al-Lami (detainee 780) fell into a concrete canal as he was being escorted to the collection point near WOC

2.1257 In his second written Inquiry statement, Hussein Gubari Ali Al-Lami gave the following account of this particular allegation:

“As I was dragged towards the road, I could barely lift my head so was not able to see much of what was going on around me. I remember that I was brought to a small canal which had no water in it. The soldiers tried to walk me through the canal but I could not walk properly and, as they left me unsupported, I fell down landing on my back. I do not know if I caused myself a specific injury at this point. I was so confused and dazed that I was unable to feel very much at this stage. I was picked up by the two soldiers who had been carrying me previously and was pulled on again.”¹⁶⁹⁴

2.1258 Hussein Al-Lami repeated this allegation in his oral evidence to the Inquiry.¹⁶⁹⁵ It seems clear that the waterless “canal” to which he made reference was, in fact, the Storm Drain.¹⁶⁹⁶

2.1259 When this allegation was put to the various military witnesses who had been present at the time, they consistently denied having seen any such incident.¹⁶⁹⁷

2.1260 Although it is possible that Hussein Al-Lami did fall, while crossing the Storm Drain, I consider it unlikely. It was not suggested that he had been deliberately pushed or tripped. If it had happened, I think one of other of the soldiers would have remembered and referred to it in evidence. It seems likely that Hussein Al-Lami included this essentially innocuous allegation in order to lend some credence to his false claim that he was dazed and confused as a result of the previous assaults he claimed to have suffered. In any event, I very much doubt whether this particular matter could possibly amount to the sort of ill-treatment that is envisaged by the terms of reference.

Allegation (e) – that the material used to blindfold Hussein Al-Lami (detainee 780) covered his nose and made it difficult to breathe

2.1261 During his oral evidence to the Inquiry, Hussein Gubari Ali Al-Lami said that the material with which he had been blindfolded covered his nose and restricted his breathing.¹⁶⁹⁸

2.1262 I am able to deal with this particular allegation quickly. It was common ground that the blindfold used to restrict Hussein Al-Lami’s sight had been improvised by the arresting soldiers from some form of cloth material that had been readily to hand at the time. I accept that it is possible that the blindfold may have slipped down or may have been applied hastily with the result that it ended up covering Hussein Al-Lami’s nose and interfering with his ability to breathe properly. However, I have no doubt that this was not done deliberately, nor did it cause any prolonged or significant discomfort or risk to Hussein Al-Lami. As in the case of Kadhim Abbas Lafta Al-Behadili (detainee 775),¹⁶⁹⁹ I have no doubt the blindfold would have been adjusted as soon as the problem was noticed. In those circumstances, I very much doubt whether this could possibly amount to the sort of ill-treatment that is envisaged by the terms of reference.

¹⁶⁹⁴ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000408) [44]

¹⁶⁹⁵ Hussein Gubari Ali Al-Lami (detainee 780) [12/47/10-24]

¹⁶⁹⁶ See ASI021860 in Figure 31 above

¹⁶⁹⁷ See, for example, Sergeant Broome [86/154/6-10]; Private Beggs [78/128/5-11]; Staff Sergeant Andrews [119/79/17-21]; Colour Sergeant King [96/101/9-12]

¹⁶⁹⁸ Hussein Gubari Ali Al-Lami (detainee 780) [12/48/15-21]

¹⁶⁹⁹ See paragraphs 2.1178–2.1179 above

Allegation (f) – that Hussein Al-Lami (detainee 780) was roughly handled as he was loaded into the Warrior AIFV

2.1263 In both his written Inquiry statements and in his oral evidence to the Inquiry, Hussein Al-Lami described having been forcibly thrown into the Warrior AIFV and then how others detainees had been thrown on top of him, causing him considerable discomfort as a result.¹⁷⁰⁰

2.1264 Again, having regard to the conclusions of fact that I have already reached and expressed in previous paragraphs of this Report,¹⁷⁰¹ I am able to deal with this allegation quickly. As I have already indicated, I think it very likely that the various detainees, including Hussein Al-Lami were loaded into the Warrior AIFVs in a firm and robust manner, without any immediate regard for their unwilling and fearful state at the time. It seems to me that, in the prevailing circumstances and given that the primary objective was to load the detainees with a degree of urgency, this was probably inevitable. However, I am quite satisfied that the way in which the detainees were loaded into the Warriors did not involve any gratuitous or significant physical violence on the part of the soldiers. Nor were any of the detainees loaded in such a way as to cause deliberate physical injury. I am quite sure that no detainees were thrown into the Warriors. In this particular allegation, Hussein Al-Lami has grossly exaggerated the effect of the soldiers’ robust and firm handling of the detainees, while loading them into the Warriors.

Allegation (g) – that Hussein Al-Lami (detainee 780) had a sharp blade held to his throat whenever he tried to speak in the Warrior AIFV

2.1265 In his oral evidence to the Inquiry and in his written Inquiry statements, Hussein Gubari Ali Al-Lami consistently alleged that, when he tried to speak inside the Warrior AIFV, a British soldier would hold a sharp blade to his neck and order him to be quiet.¹⁷⁰²

2.1266 There was some military evidence to support the suggestion that detainees had not been permitted to talk in the Warrior AIFV, during the journey Camp Abu Naji. In particular, in his oral evidence to the Inquiry, Lance Corporal Kevin Wright said this about the journey back to Camp Abu Naji:

“Q. When you heard them speaking in Arabic, did you make any attempt to make them be quiet or tell them to be quiet?”

A. Yes, I told them to shut up.

Q. Were those the words that you used?

A. Yes.

Q. Did you raise your voice at them?

A. Yes.

Q. Did you have any physical contact with them, so they would know you were speaking to them?

A. Yes.

¹⁷⁰⁰ Hussein Gubari Ali Al-Lami (detainee 780) [11/8/11-18]; (ASI004806-07) [43]-[45]; (PIL000408-09) [46]-[47]

¹⁷⁰¹ See paragraph 2.1134

¹⁷⁰² Hussein Gubari Ali Al-Lami (detainee 780) [11/8/23]-[9/10]; (ASI004807) [46]; (PIL000409) [48]-[49]

Q. What physical contact was that?

A. Placing my hand on them so they knew that was the person I was speaking to.

Q. Whereabouts did you put your hand on their body?

A. On their chest.

Q. Did you do that to all four of them individually?

A. No, I would only have done it to the four of them that were talking.

Q. Can you say now whether all four were talking or just some of them?

A. No, I can't.

Q. So if all four of them were talking, is it likely you put your hands on all four of them?

A. Yes, either myself or Tatawaqa.

Q. Did he do something similar to the detainees —

A. Yes.

Q. — when they spoke?

A. Yes.

Q. With what force did you put your hands on their chest?

A. No more force than to get somebody's attention."¹⁷⁰³

2.1267 Hussein Al-Lami and Lance Corporal Wright travelled from the battlefield to Camp Abu Naji in different vehicles on 14 May 2004. Hussein Al-Lami travelled in W32 and Lance Corporal Wright went in W21. However, I accept Lance Corporal Wright's evidence about the amount and type of force that was used to maintain silence on the part of the detainees in his vehicle and I think it is likely that a similar approach would have been used in W32. Obviously, Hussein Al-Lami's allegation involved a significantly more threatening type of force, involving the use of a bladed weapon.

2.1268 Four soldiers travelled back to Camp Abu Naji in the rear of W32 with Hussein Al-Lami. They were Sergeant Craig Brodie, Lance Corporal Brian Wood, Private Jayme Bishop and Private Alipate Korovou. None of those men reported seeing a blade held to the throat of any detainee. If this had happened as Hussein Al-Lami alleged, at least one of the soldiers would have seen it. Although the allegation was not put to any of them when they came to give oral evidence to the Inquiry, I think it very unlikely that it did actually occur. In my view, it is much more likely that this allegation was the product of Hussein Al-Lami's fevered imagination, due to his anxiety and fear at his predicament. Accordingly, I am satisfied that Hussein Al-Lami was not actually threatened with a sharp blade to his throat whilst he was in the rear of the Warrior AIFV.

¹⁷⁰³ Lance Corporal Wright [94/151/4]-[152/8]

The capture and handling of Hussein Fadhil Abbas Al-Behadili (detainee 778)

The military evidence relating to the capture and presence on the battlefield of Hussein Fadhil Abbas Al-Behadili (detainee 778)

2.1269 In an earlier part of this Report, I described how Hussein Fadhil Abbas Al-Behadili had been captured in the Storm Drain Position by soldiers who had initially thought he was dead.¹⁷⁰⁴ In the paragraphs that follow, I deal with this particular incident in more detail and come to a number of conclusions of fact with regard to the reasons for Hussein Al-Behadili’s presence on the battlefield.

2.1270 In his written Inquiry statement, Private Shaun Sullivan gave a detailed account of how he had searched four bodies in the Storm Drain position with Private Sakiusa Tamani. His account included the following passage with regard to his discovery of Hussein Al-Behadili:

“The fourth and final Iraqi we searched was lying on his front and was ‘playing dead’. I do remember this man. I knew he was alive because when Pte Tamani turned him over to search him, I checked his pulse to see whether he was dead, at which point the man opened his eyes and started to shout at us in Arabic.”¹⁷⁰⁵

2.1271 Private Tamani confirmed Private Sullivan’s account, although his account of the incident was less detailed than that of Private Sullivan, as follows:

“I also remember that one of them was not dead and when I got on his back, he sat up. My RMP statement says that he was lying on a rifle, but I do not recall this now. This man then surrendered, I do not remember how he surrendered.”¹⁷⁰⁶

2.1272 Lead Counsel to the Inquiry, Mr Acton Davis QC, made it clear in his opening statement that no military witness had been able to make a positive identification of the detainee who had been captured in the Storm Drain Position. However, he added that the only Iraqi man who was known to have been detained alive during the Northern Battle, but whose place of detention had not otherwise been identified by any of the military witnesses, was Hussein Al-Behadili (detainee 778). By a process of elimination, Mr Acton Davis went on to suggest that the Iraqi man who had been found alive at the Storm Drain Position must have been Hussein Al-Behadili.¹⁷⁰⁷

2.1273 No further evidence, as to the identity of the man found and captured at the Storm Drain Position, emerged during the course of the Inquiry’s oral hearings. In their Closing Submissions, those representing the Iraqi Core Participants accepted that the Counsel to the Inquiry’s identification of the man as Hussein Al-Behadili was correct¹⁷⁰⁸ – as did those instructed by the Treasury Solicitor.¹⁷⁰⁹ I can see no reason to doubt this identification myself and am sure that it was indeed correct.

2.1274 Earlier in this Report I described the place where Hussein Al-Behadili (detainee 778) was captured as “the Storm Drain Position”. I also outlined the evidence relating to a number of exchanges of fire between British soldiers and the armed insurgents who were located in that position. I propose to repeat some of that evidence in this part of my Report, in order to

¹⁷⁰⁴ See paragraph 2.908

¹⁷⁰⁵ Private Sullivan (ASI015621) [77]

¹⁷⁰⁶ Private Tamani (ASI021390) [37]

¹⁷⁰⁷ [2/52/21]-[53/1]; [3/26]

¹⁷⁰⁸ ICP Closing Submissions (178) [639]

¹⁷⁰⁹ TSol Closing Submissions (105) [245]

illustrate the military evidence with regard to the prevailing circumstances at that particular stage of the Northern Battle. Obviously, the same evidence has a bearing on the reason for Hussein Al-Behadili having been present on the battlefield on 14 May 2004 and to his involvement in the armed engagement that day.

2.1275 When W30, commanded by Lieutenant Benjamin Plenge, had first arrived at the scene of the Northern Battle, it had joined W21 and W22 in providing suppressing fire on the insurgents located in Trench 1 to the west of Route 6.¹⁷¹⁰

2.1276 In his written Inquiry statement, Lieutenant Plenge gave an account of how W30 had then come under fire from the Storm Drain Position and how he had acted in response. In that account, Lieutenant Plenge described the Storm Drain Position as “Position 2” and described what happened, as follows:

“Position 2 on the sketch plan [MOD019375] then became a source of more enemy fire, towards position 1. I have a distinct memory of W30, my Warrior, crossing the storm drain, as marked on the sketch plan. I recall this happening because I was concerned that the Warrior might be rolled when crossing the deep storm drain. It stopped facing south, about 150m north of position 2. At this point my RMP statement records that W30 engaged position 2 with chain gun fire, then suffered a stoppage.

I do not remember the stoppage happening, but I do recall shooting my SA80 from the turret, which I would only do if there was a stoppage on the chain gun. My rifle would be kept inside the open turret, on my right hand side. I picked up and fired the weapon using the single shot setting (the SA80 is semi-automatic). I fired more than 1 shot towards position 2 but cannot remember the precise number of rounds.”¹⁷¹¹

2.1277 In his written Inquiry statement, Private Osea Nayasi, the driver of W30, also gave an account of W30’s engagement of this particular enemy position on 14 May 2004. Although there are some differences of detail between the accounts of Lieutenant Plenge and Private Nayasi, I am satisfied that they were both describing how W30 engaged the insurgents who were located in the Storm Drain Position. What Private Nayasi said was this:

“I was then ordered by Lt Plenge to move the Warrior further from Route 6 and towards the enemy position. I think that this happened about 20 minutes after we arrived. I pulled the Warrior west up to the edge of the drainage ditch and stopped. We continued to observe the enemy position from here. I could see the two enemy again in the same position. This time I noticed that they had a rocket propelled grenade (“RPG”) launcher with grenade fitted and AK47 rifles and that they wore chest webbing. We continued to be under fire at this time from the position we were watching and we may have been targeted from other points but I do not recall seeing them. Although I remember seeing the RPG I cannot remember seeing or hearing any RPG grenades being fired. I think that my Warrior gunner fired the chain gun at the enemy position again from this new position. I do not recall seeing the enemy hit and they again went out of sight.

Lt Plenge then ordered me to take the Warrior into and through the drainage ditch towards the enemy position. I did this. I stopped approximately ten to 20 metres short of the position and I could see two bodies on the ground. Next to them was another man, who was alive and lying down.”¹⁷¹²

¹⁷¹⁰ See paragraph 2.800

¹⁷¹¹ Lieutenant Plenge (ASI009729) [39]–[40]

¹⁷¹² Private Nayasi (ASI018211-12) [48]–[49]

2.1278 As I have indicated earlier in this Report, it is likely that Corporal Mark Byles also engaged the Iraqi gunmen in the Storm Drain Position from his position in or close to Trench 1 and probably shot one of them.¹⁷¹³ He too described it as an enemy position.¹⁷¹⁴

2.1279 I accept the evidence of the military witnesses that the Storm Drain Position, where Hussein Al-Behadili (detainee 778) had been found and captured alive on 14 May 2004, was a significant enemy position. It was one of a number of enemy positions to the west of Route 6, from which Iraqi insurgents, who were directly involved in the carefully planned ambush that day, had been directing heavy and prolonged small arms and rocket-propelled grenade fire at the targeted British forces, before being put out of action by the British counter attack.

2.1280 As I have already described in the previous section of this Report,¹⁷¹⁵ after Hussein Al-Behadili had been found and captured alive in the Storm Drain Position he was placed in the rear of W30, which then reversed up to the collection point next to WOC.¹⁷¹⁶ At the collection point, Hussein Al-Behadili was unloaded from W30 and made to lie face down on the ground with the other detainees.

2.1281 In due course, Hussein Al-Behadili was loaded into W32, where he was guarded by Lance Corporal Brian Wood, Private Alipate Korovou and Private Jayme Bishop for the journey back to Camp Abu Naji.

The account given by Hussein Fadhil Abbas Al-Behadili (detainee 778) to explain his presence on the battlefield on 14 May 2004

2.1282 Hussein Fadhil Abbas Al-Behadili consistently claimed that he had been present at the scene of the Northern Battle in order to buy 40 litres of yoghurt (in two containers of 20 litres each) for a wedding. Hussein Al-Behadili’s oral evidence was that he had been unable to buy the yoghurt from the market in Al Majar al’Kabir that day and so he had gone to buy it from one of the kiosks that he said were to be found beside Route 6, near a paper factory in the Al Saida area.¹⁷¹⁷

The account given by Hussein Fadhil Abbas Al-Behadili (detainee 778) of the circumstances of his capture by British soldiers on 14 May 2004

2.1283 In his oral evidence to the Inquiry, Hussein Fadhil Abbas Al-Behadili gave a detailed account of what he said he had seen during the Northern Battle. Hussein Al-Behadili described how he had seen a convoy of three or four British armoured vehicles passing by and how, a short time later, he had heard shooting between the British troops and insurgents who were located in the farmland.¹⁷¹⁸ Hussein Al-Behadili said that he had been unable to identify the group who were firing at the British troops¹⁷¹⁹ and that, when he heard the shooting, he had hidden alone in the ditch.¹⁷²⁰ Hussein Al-Behadili went on to say that he could no longer see the British convoy from his position in the ditch.¹⁷²¹

¹⁷¹³ See paragraphs 2.894–2.901

¹⁷¹⁴ Ibid; Corporal Byles [84/141-142]

¹⁷¹⁵ See paragraph 2.909

¹⁷¹⁶ Lieutenant Plenge (ASI009732) [54]; Private Sullivan (ASI015621-22) [80]; Also X-ref

¹⁷¹⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/101/23]–[103/24]

¹⁷¹⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/6/22]–[7/16]

¹⁷¹⁹ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/98]

¹⁷²⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/7/11-14]

¹⁷²¹ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/8]

2.1284 Hussein Al-Behadili said that, when the shooting subsided, he could see an injured man nearby.¹⁷²² In both his oral evidence to the Inquiry and in his written Inquiry statements, Hussein Al-Behadili stated that he did not know the injured man, but that he had later discovered his name to be Hamid Mez’el Kareem A’shour Al-Sweady (identified by the Inquiry as Deceased 3).¹⁷²³ When he was interviewed by the Royal Military Police (“RMP”) on 27 July 2004, Hussein Al-Behadili did not mention having seen Hamid Al-Sweady at the scene. Instead, he said that he did not see anybody in the area that he knew.¹⁷²⁴ However, in an unsigned “Witness Statement” dated 14 October 2007, prepared by his legal representatives following an hour long telephone interview in Arabic, Hussein Al-Behadili said this:

“I saw Hamid Mizal Karim [i.e. Hamid Al-Sweady] not far from me and he looked injured. I knew him well before this incident as we were from our same small town. His family had a farm in this area and he used to come here regularly to revise for his final year exam in the secondary school.”¹⁷²⁵

2.1285 During his oral evidence to the Inquiry, Hussein Al-Behadili was asked about both his July 2004 account to the RMP and his unsigned statement of 14 October 2007. He explained that he did not tell the RMP about Hamid Al-Sweady (deceased 3) because he had wanted to focus the discussion exclusively on himself, so that the interview was a short one.¹⁷²⁶ So far as concerns his unsigned statement of 14 October 2007, Hussein Al-Behadili accepted that he had been interviewed on the telephone and appeared to suggest that the passage quoted in the preceding paragraph was a result of some form of miscommunication, perhaps due to a bad telephone connection. Although it is not entirely clear, Hussein Al-Behadili’s evidence seemed to be that he had been sent a copy of this statement after it had been prepared, but that he did not have time to read it.¹⁷²⁷

2.1286 In his oral evidence to the Inquiry, Hussein Al-Behadili said that he had gone over to the injured Hamid Al-Sweady (deceased 3), asked his name and noticed a gunshot wound to one of Hamid Al-Sweady’s legs.¹⁷²⁸ Hussein Al-Behadili described how he had bandaged Hamid Al-Sweady’s wound with a piece of fabric, possibly from a shirt or some trousers, in an attempt to stop the bleeding.¹⁷²⁹ Hussein Al-Behadili went on to say that, since the firing appeared to have stopped, he had initially tried to move Hamid Al-Sweady out of the ditch. However, the firing had started up again and so he had hidden back down in the ditch once more.¹⁷³⁰

2.1287 Hussein Al-Behadili then described how he had seen an ambulance on the main road and had tried to attract the attention of the driver so that Hamid Al-Sweady (deceased 3) could receive treatment.¹⁷³¹ According to Hussein Al-Behadili, he could not stand up completely to attract the attention of the ambulance because British troops were present in the area. He then went on to say that he and Hamid Al-Sweady had therefore lain back down in the ditch until they were found by the soldiers who had arrested him.¹⁷³²

¹⁷²² Ibid.

¹⁷²³ Ibid; and see also Figure 1

¹⁷²⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD003037)

¹⁷²⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD027169)

¹⁷²⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/47/2]-[48/6]

¹⁷²⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/48-51]

¹⁷²⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/8/11-25]

¹⁷²⁹ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/9/1-12]

¹⁷³⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/9/13]-[10/3]

¹⁷³¹ Ibid.

¹⁷³² Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/10/4-7]

2.1288 In his first written Inquiry statement, Hussein Al-Behadili did not provide a detailed account of his arrest on 14 May 2004. He merely said, “*I have already described how we were both arrested by the British soldiers and have nothing further to add about that.*”¹⁷³³ This appears to have been a reference to Hussein Al-Behadili’s first written witness statement, dated 23 January 2008, that he had provided to the Administrative Court for use in the Judicial Review proceedings (“the Judicial Review statement”).¹⁷³⁴ In his second written Inquiry statement, Hussein Al-Behadili was also content to rely on his Judicial Review witness statement, although he explained that the ambulance to which he referred had been in the vicinity of the junction where the Danny Boy VCP was located.¹⁷³⁵

2.1289 The account of his arrest on 14 May 2004, that Hussein Al-Behadili gave in his Judicial Review witness statement and which he had adopted in his written Inquiry statements, is markedly different from that which he gave in his oral evidence to the Inquiry, as follows:

*“As the firing had not started again I decided that it was safe enough to try to move Hamid out of the ditch. I stood up and Hamid leaned on my shoulder for support. I started to walk towards the ambulance and walked for a few metres away from the ditch. As I moved, an Armoured Personnel Carrier (“APC”) approached us. I continued to walk in the direction of the ambulance, even though I was being approached by the APC. I walked a few further metres and then four soldiers stepped out of the APC. I saw that they were British soldiers from the British flag on their uniforms. The soldiers pointed their weapons at us, shouted, and motioned for us both to lie down on the ground. I did not understand and so stayed standing but motionless. The soldiers were a few metres away from us and approaching. Four soldiers surrounded us and two of them hit us both with their rifle butts into our shoulders to force us onto the ground.”*¹⁷³⁶

The reason for the presence of Hussein Fadhil Abbas Al-Behadili (detainee 778) on the battlefield on 14 May 2004 and the circumstances of his capture by British soldiers that day

2.1290 I have no doubt that Hussein Fadhil Abbas Al-Behadili was present at the site of the Northern Battle as a willing and active participant in the armed ambush of British troops on Route 6 that was planned and carried out by Iraqi insurgents on 14 May 2004 in the vicinity of the Danny Boy VCP. I am also sure that Private Shaun Sullivan, one of the dismounts from W21, accurately and truthfully described the circumstances of Hussein Al-Behadili’s discovery and capture in the Storm Drain Position.¹⁷³⁷

2.1291 So far as concerns the reason for Hussein Al-Behadili’s presence on the battlefield, I entirely accept the truth and accuracy of the accounts given in evidence by the various military witnesses, who described the circumstances and location of Hussein Al-Behadili’s capture and detention on the battlefield on 14 May 2004. In stark contrast, I found Hussein Al-Behadili’s account of his reasons for being present on the battlefield that day to have been wholly incredible and a deliberate fabrication on his part.

2.1292 I have no doubt that Lieutenant Benjamin Plenge, Private Osea Nayasi and Corporal Mark Byles all truthfully and accurately described the Storm Drain Position as being one of a number of enemy positions on the battlefield that day, from which significant small arms and rocket-propelled grenade fire was directed at the British troops. I am entirely satisfied

¹⁷³³ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001035) [19]

¹⁷³⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006551)

¹⁷³⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000362) [9]

¹⁷³⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006552) [11]

¹⁷³⁷ See paragraphs 2.904–2.909

that British troops engaged this position in order to counter and neutralise the active enemy threat that it constituted.

2.1293 I am also sure that Hussein Al-Behadili was located at the heart of that particular enemy position on 14 May 2004 and was one of insurgents who ambushed and attacked the British troops from the cover that it provided. As Private Shaun Sullivan described in evidence, when he came to search the “bodies” in the Storm Drain Position:

“There were four bodies and Pte Tamani and I searched those bodies together. The bodies were lying between the Warrior and the bund line where we had taken cover following dismount. As I remember it, they were lying at the base of the bund line at the bottom of the slope. They were lying on sandy ground.”¹⁷³⁸

2.1294 During his oral evidence to the Inquiry, Private Sullivan was asked about the location of these bodies in relation to each other and replied as follows:

‘Q. Thinking about the location in which you saw them and their positions, those four bodies — call them “bodies” for now — did it look to you as though they had fallen there or they had been taken there and placed there?’

A. Fallen there.

Q. Were they all together in a close group or were they spread out

A. They were quite close.

Q. Can you give an idea of what distance there was between them?

A. Just a couple of feet, max.

Q. Between each of them?

A. Yeah, maximum.¹⁷³⁹

2.1295 In my view, Private Sullivan’s evidence was a vivid and credible description of a group of four men, who had been together at the Storm Drain Position whilst carrying out an armed attack on British troops. As I set out in the previous Chapter of this Report, two of the “bodies” were of men who were already dead by the time Private Sullivan first saw them¹⁷⁴⁰ and, as I make clear below, one of those was Hamid Mez’el Kareem A’shour Al-Sweady (deceased 3). Another of the “bodies” was Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2), who was gravely injured and who subsequently died.¹⁷⁴¹ The final member of the group of four was undoubtedly Hussein Al-Behadili (detainee 778).

2.1296 In contrast, I found Hussein Al-Behadili’s account of his reasons for being present on the battlefield that day to be wholly incapable of belief. In my view, quite apart from the fact that his account was unsupported by the evidence of any other witness, it was riddled with improbabilities and inconsistencies and was manifestly based on a series of deliberate falsehoods.

¹⁷³⁸ Private Sullivan (ASI015619) [71]

¹⁷³⁹ Private Sullivan [97/100/12-24]

¹⁷⁴⁰ See paragraphs 2.904–2.907

¹⁷⁴¹ See paragraphs 2.904–2.907

- 2.1297** Hussein Al-Behadili claimed to have taken a 14 kilometre round trip in order to buy 40 litres of yoghurt from a kiosk beside Route 6. It was Hussein Al-Behadili’s evidence that these particular kiosks sold yoghurt in a larger quantity and of a better quality than that which was available in the market in Al Majar al’Kabir where he lived.¹⁷⁴² Although very unlikely, this explanation was not, ipso facto, obviously untrue.
- 2.1298** Hussein Al-Behadili went on to describe how the kiosk, from which he had bought the yoghurt, had been located alongside Route 6, just across from the place where he was later captured by the British. However, there was nothing in any of the evidence that I have seen, heard and read to support the suggestion that there was a kiosk selling yogurt on the opposite side of Route 6 to the site of the Northern Battle on 14 May 2004 (or, indeed, any other sort of kiosk). On the contrary, a large number of military witnesses were asked if they had seen any stalls selling food by the side of Route 6 and the vast majority said that they had not.¹⁷⁴³
- 2.1299** Corporal Richard Musgrave did recall that there had been some stalls beside Route 6 which sold items such as soft drinks. However, he could not remember there having been any such stalls between the Danny Boy VCP and Camp Abu Naji. It was his recollection that these stalls were located on “*the outskirts of the main villages.*”¹⁷⁴⁴ In my view, the various military witnesses gave accurate and truthful evidence about this particular matter. I am therefore satisfied that there were no kiosks/stalls selling yoghurt alongside Route 6 close to or anywhere near where the Northern Battle took place on 14 May 2004.
- 2.1300** Central to his explanation for being present at the scene of the Northern Battle was Hussein Al-Behadili’s claim that he had been in possession of 40 litres of yoghurt at the time he was captured by the British. This particular detail underwent some changes during the course of Hussein Al-Behadili’s various accounts. When he was interviewed by the Royal Military Police in July 2004, Hussein Al-Behadili said that he had not yet bought the yoghurt when he was arrested.¹⁷⁴⁵ In his Judicial Review statement, Hussein Al-Behadili said that he had already bought 40 litres of yoghurt and had crossed Route 6 in order to hail a taxi home.¹⁷⁴⁶ This account was consistent with the one given in his first written Inquiry statement, in which Hussein Al-Behadili resolved any uncertainty about the matter, by confirming that he had taken the yoghurt with him when he crossed the road.¹⁷⁴⁷
- 2.1301** When he gave oral evidence to the Inquiry, Hussein Al-Behadili initially seemed to change his account to suggest that he had bought only 20 litres of yoghurt. However, when he was shown his previous statement, Hussein Al-Behadili quickly confirmed that he had indeed bought 40 litres.¹⁷⁴⁸ It seems to me that Hussein Al-Behadili’s claim to have purchased such a large quantity of yoghurt and to have carried it across this major road is more than somewhat unlikely. When questioned by Counsel for the Ministry of Defence, Hussein Al-Behadili did not deny that this quantity of yoghurt would have represented about two-thirds of his body weight,¹⁷⁴⁹ but went on to say:

¹⁷⁴² Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/43]

¹⁷⁴³ See, for example, Captain Gayle [104/32/8-14]; Lieutenant Floyd [75/7/3-11]; Lance Corporal Stammers [76/154/9-12]; Private Pritchard [80/45/21-24]; Private Ratawake [89/53/11-14]; Private Rushforth [91/215/9-14]

¹⁷⁴⁴ Corporal Musgrave [74/96/24-25]

¹⁷⁴⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD003030)

¹⁷⁴⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006692-93) [5]

¹⁷⁴⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001034) [16]

¹⁷⁴⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/103]

¹⁷⁴⁹ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/19]

“Yes, I confirm that we used to do that kind of heavy jobs. We used to carry heavy stuff, loading and unloading heavy stuff. This is the way of living.”¹⁷⁵⁰

- 2.1302** Quite apart from the implausibility of Hussein Al-Behadili’s claim to have purchased such a large quantity of yoghurt and to have carried it singlehanded across a busy road, none of the military witnesses who had been in the vicinity of the Storm Drain Position saw any yoghurt there at all – let alone a quantity as large as 40 litres.¹⁷⁵¹ As it seems to me, if there had been any yoghurt there, one or other of the soldiers would have noticed it and remarked upon such an unusual and unexpected sight.
- 2.1303** The fact is that there was no such yoghurt and Hussein Al-Behadili had not gone there to buy any. He had gone there as one of the armed insurgents bent upon carrying out a carefully planned ambush of British troops on Route 6 that day. I have no doubt that Hussein Al-Behadili told deliberate and calculated lies in order to provide an “innocent” explanation for his presence at the scene of the Northern Battle on 14 May 2004 and in order to conceal the real reason for his having been there, namely to take an active and hostile part in the attack on British forces that day.
- 2.1304** I have no doubt that Hussein Al-Behadili also lied in the account that he gave of his arrest by British soldiers on 14 May 2004. Some of the most significant lies that Hussein Al-Behadili told during this part of his evidence concerns his description of what happened to the late Hamid Mez’el Kareem A’shour Al-Sweady (deceased 3) that day.
- 2.1305** The circumstances in which Hamid Al-Sweady (deceased 3) came to die on 14 May 2004 are clearly of central importance to the terms of reference in their own right. However, my conclusions of fact, with regard to the actual circumstances in which Hamid Al-Sweady met his death that day, also have an obvious and profound impact upon the credibility of Hussein Al-Behadili (detainee 778) and a number of other witnesses to this Inquiry, because of the extent and calculated nature of the lies that are exposed as a result. Central to my conclusions of fact is the photograph which bears the Inquiry reference ASI011939 and is shown in Figure 55 below.¹⁷⁵²

¹⁷⁵⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/19/18-20]

¹⁷⁵¹ See, in particular, Lieutenant Plenge [85/66]; Private Sullivan [97/169]; [97/195-196]

¹⁷⁵² A small area of the original image has been pixellated in Figure 55 in order to minimise any distress that this image may cause

Figure 55: ASI011939



2.1306 Analysis of the Exchangable Image File Format (“EXIF”) data of this photograph indicates that it was taken at approximately 18:59 hours local time on 14 May 2004 using a camera belonging to Private Stuart Taylor.¹⁷⁵³

2.1307 This photograph ASI011939 was sent to Mr Clive Evans, a Senior Forensic Consultant in the Imagery Analysis Laboratory at Diligence Forensic Services, to see if he could assist in establishing the identity of the man whose body can be seen in the photograph, while being carried by two soldiers. Dr Evans carried out a careful comparison of the image of the man’s body, as depicted in ASI011939, with Captain James Rands’ photographs of the twenty Iraqi men, whose dead bodies had been transported from the battlefield to Camp Abu Naji on the evening of 14 May 2004 and to whom KIA numbers ranging from one to 20 had been attributed.¹⁷⁵⁴ It was Mr Evans’ firmly expressed (and unchallenged) opinion that the man, whose body can be seen in ASI011939, is the same man as the one whose dead body had been photographed by Captain Rands at Camp Abu Naji on 14 May 2004 and designated as KIA 13, i.e. Hamid Mez’el Kareem A’shour Al-Sweady (deceased 3).¹⁷⁵⁵ The photograph ASI011939 was also shown to Khuder Kareem Al-Sweady (witness 1), the uncle of Hamid Al-Sweady, during his oral evidence to the Inquiry. Khuder Al-Sweady said that he was “70 percent” sure that the man being carried was his nephew, Hamid Al-Sweady.¹⁷⁵⁶

2.1308 I have no doubt that photograph ASI011939 does indeed show Hamid Al-Sweady (deceased 3/KIA13) being carried by two soldiers. I am uncertain whether the photograph shows Hamid Al-Sweady actually being loaded into a Warrior AIFV or simply being carried past the open door of a Warrior AIFV, although I think the first possibility is the most likely. In my view,

¹⁷⁵³ Michael Moore (ASI022184)

¹⁷⁵⁴ See Figures 1 and 2

¹⁷⁵⁵ Evans (ASI012404-05) and see also Figure 2 for the correlation between the ASI numbering of the deceased and the Captain Rands KIA numbers

¹⁷⁵⁶ Khuder Karim Ashour Al-Sweady (witness 1) [21/101/2-8]

it is likely that the photograph shows Hamid Al-Sweady as his dead body was about to be loaded into W30, having been recovered from the Storm Drain Position, as described above in paragraphs 3.829 to 3.832 and depicted in Figure 43 (ASI011938).

2.1309 Photograph ASI011939 was also sent to Dr Peter Jerreat, a Home Office accredited Forensic Pathologist. In his written report to the Inquiry, Dr Jerreat described the photograph as follows:

“The appearance is entirely compatible with them carrying a deceased person or possibly a victim in a deep coma.

*Factors against him being alive would be the lack of any blood trail beneath the body being carried”.*¹⁷⁵⁷

2.1310 This was explored in more detail when Dr Jerreat gave his oral evidence to the Inquiry. Dr Jerreat explained the basis upon which he had concluded that the appearance of the body in the photograph was that of a dead person or someone in a deep coma, as follows:

*“The body appears completely limp. There’s no muscle tone there at all.”*¹⁷⁵⁸

He also explained the relevance of the absence of a blood trail underneath Hamid Al-Sweady’s (deceased 3) body in the photograph, as follows:

*“Yes, well we know there’s a wound that has been bleeding on the front right side and there doesn’t appear to be any blood trail beneath the body.”*¹⁷⁵⁹

2.1311 Later in his evidence, Dr Jerreat said this, in answer to questions put by Counsel for the Ministry of Defence:

“Q. ...if the body shown on the screen is still alive at this point, blood will of course be being pumped around the body.

A. Well, if he was still alive, but in shock, for example, such that he’s unconscious, there would still be some circulation and skin wounds would still be likely to secrete blood.

Q. So ignoring that point about the blood in the photograph, is it still your view that the absence of blood on the ground or the apparent absence of blood on the ground provides some limited support for the conclusion that the person shown has died?

*A. Well, that circulation has ceased completely.”*¹⁷⁶⁰

2.1312 Although Dr Jerreat rightly left open the possibility that Hamid Mez’el Kareem A’shour Al-Sweady (deceased 3) might still have been alive but deeply comatose when the photograph ASI011939 was taken, he made it clear that, because of the posture of the body and the fact that the person in question had visible injuries, it was his opinion that the most likely explanation was that the person in the photograph was dead at the time.¹⁷⁶¹

2.1313 I accept Dr Jerreat’s evidence with regard to Hamid Al-Sweady’s physical condition and likely state, when the photograph ASI011939 was taken of him being carried by two soldiers at

¹⁷⁵⁷ Dr Jerreat (ASI016659) [54.10]-[54.11]

¹⁷⁵⁸ Dr Jerreat [57/63/4-5]

¹⁷⁵⁹ Dr Jerreat [57/63/10-12]

¹⁷⁶⁰ Dr Jerreat [57/174/24]-[175/11]

¹⁷⁶¹ Dr Jerreat [57/65]

about 19:00hrs on the evening of 14 May 2004. I am therefore sure that Hamid Al-Sweady was already dead by the time this photograph was taken, particularly once Private Shaun Sullivan’s evidence, about what he had found when he searched the bodies in the Storm Drain Position, is also taken into account.¹⁷⁶²

2.1314 As I have already indicated, Hussein Fadhil Abbas Al-Behadili (detainee 778) was undoubtedly captured at the Storm Drain Position beside Route 6.¹⁷⁶³ I have no doubt that Hamid Al-Sweady (deceased 3) was one of the men described as “*clearly dead*” by Private Sullivan when he searched that position¹⁷⁶⁴ and was therefore one of the dead bodies who were then loaded into W30. Accordingly, Hussein Al-Behadili was clearly not telling the truth when he gave evidence that Hamid Al-Sweady (deceased 3) had still been alive when he was first captured and subsequently. I am sure that, when Private Sullivan searched his body in the Storm Drain Position that day, Hamid Al-Sweady was already dead.

2.1315 Furthermore, and by a parity of reasoning, Hamid Al-Sweady was not forced to run from the point of capture to the British armoured vehicle, as Hussein Al-Behadili alleged in his second Inquiry statement, thus:

“He [Hamid] was forced to run to that place along with me when the soldiers detained us...we were dragged there by the soldiers, one on each side. Hamid could barely walk.”¹⁷⁶⁵

2.1316 Nor is it possible for Hussein Al-Behadili to have had any form of conversation with either Hamid Al-Sweady or Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2) after he (Hussein Al-Behadili) had been captured by the British and as he claimed to have done. Hussein Al-Behadili even went so far as to fabricate a claim of having spoken to both these men while they were still alive and **after** they had been transported to Camp Abu Naji. Thus, in his Judicial Review statement, Hussein Al-Behadili gave the following account of events that he claimed to have taken place at Camp Abu Naji that evening:

“After a while I felt that the soldier who was guarding us had moved away. I had recognised both Haider and Hamid’s voices as they appeared to be close by but I do not recall a particular word or phrase that either said. At the point when I felt that I was alone I heard Hamid call out to me. He asked me if I was there and I confirmed I was. I asked what happened to him. He told me that his leg hurt. I then called out for Haider and asked him if he was there and how he was. Haider did not respond but I could hear him moaning. I recognised his voice.”¹⁷⁶⁶

2.1317 In the same statement, Hussein Al-Behadili then went on to describe what he did later at Camp Abu Naji, after he had been interrogated, as follows:

“I made regular efforts to keep in contact with Hamid and Haidar and I would call out to them whenever I sensed that the soldiers were not immediately present. I would ask them how they were doing and they would answer back. Both of them were in pain. These were just snatched conversations and, at this stage, Haidar never said what was the cause of his pain. Hamid on the other hand told me that his leg was agony.”¹⁷⁶⁷

¹⁷⁶² See paragraph 2.1295

¹⁷⁶³ See paragraph 2.1295

¹⁷⁶⁴ See paragraphs 2.904–2.908

¹⁷⁶⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000362) [10]

¹⁷⁶⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006555) [21]

¹⁷⁶⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006558) [27]

2.1318 Both these passages in his Judicial Review statement were expressly adopted by Hussein Al-Behadili in his second written Inquiry statement, as follows:

“Paragraph 29 of my first Inquiry statement says that I did not hear Hamid or Haidar’s voice during this period. However, I do recall that I spoke to both of them when I was at Camp Abu Naji...I have re-read paragraphs 21 and 27 of my 2008 statement, which record that I spoke to Hamid and called out to Haider before I was taken away for the first time, and that these exchanges continued after I was interrogated. I believe this account is the most accurate account that I can give of these exchanges.”¹⁷⁶⁸

2.1319 During his oral evidence to the Inquiry, Hussein Al-Behadili retracted much of this evidence. He said that he had not actually recognised the voice of either Hamid Al-Sweady (deceased 3) or Haydar Al-Lami (deceased 2) while at Camp Abu Naji. His evidence seemed to be that he had assumed that they were there and that the man who could be heard complaining of a leg injury was Hamid Al-Sweady (deceased 3) and that the man suffering from abdominal pain was Haydar Al-Lami (deceased 2).¹⁷⁶⁹

2.1320 I have come to the firm conclusion that Hussein Al-Behadili (detainee 778) was a thoroughly dishonest witness, who told many significant lies throughout his evidence.

2.1321 Thus it is apparent that, at various times, Hussein Al-Behadili made clear and unequivocal assertions to the effect that both Hamid Al-Sweady (deceased 3) and Haydar Al-Lami (deceased 2) had still been alive, long after Hussein Al-Behadili had been captured by the British on the 14 May 2004. Those assertions undoubtedly played a significant part in the persistence of the completely false allegations that Iraqi men, who had been detained alive by the British on 14 May 2004, were subsequently unlawfully killed at Camp Abu Naji.

2.1322 It is beyond doubt that these assertions by Hussein Al-Behadili were entirely false. Hamid Al-Sweady (deceased 3) had been killed outright, whilst fighting at the Storm Drain Position. Haydar Al-Lami (deceased 2) had been gravely wounded, whilst fighting at the Storm Drain Position, and succumbed to his injuries beside Route 6, despite the medical treatment given by Lance Corporal Philip Muir (now Philip French).¹⁷⁷⁰ Both of these men, like Hussein Al-Behadili himself, had been willing and active participants in the carefully planned attack on British forces that had been carried out by armed Iraqi insurgents on 14 May 2004.

2.1323 Furthermore, I have no doubt that Hussein Al-Behadili knew perfectly well that these assertions were untrue when he made them. The assertions were deliberate falsehoods on his part. Hussein Al-Behadili had been located in the Storm Drain Position with both Hamid Al-Sweady (deceased 3) and Haydar Al-Lami (deceased 2) and had been no more than a few feet away from them on 14 May 2004 when they were, respectively, shot and killed and seriously wounded during the battle. I am therefore sure that Hussein Al-Behadili would have been well aware of Hamid Al-Sweady’s death and Haydar Al-Lami’s ultimately-fatal wound when they occurred.

2.1324 I also have no doubt that Hussein Al-Behadili (detainee 778) knew perfectly well that he was not telling the truth when he said that soldiers had made Hamid Al-Sweady (deceased 3) run to the armoured vehicle from the point of capture. Furthermore, since Hussein Al-Behadili knew that Hamid Al-Sweady had been killed in the Storm Drain Position, he lied when he said he had heard Hamid’s voice later that day.

¹⁷⁶⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000365) [22]

¹⁷⁶⁹ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/25-46]

¹⁷⁷⁰ See paragraphs 2.922–2.928

2.1325 I have no doubt that Hussein Al-Behadili (detainee 778) told a number of other significant, deliberate and calculated lies. He lied about his presence on the battlefield and he lied about conversing with Hamid Al-Sweady (deceased 3) after capture. He also lied when he claimed to have spoken with Haydar Al-Lami (deceased 2) after he (Hussein Al-Behadili) had been captured.

Allegations of ill-treatment made by Hussein Fadhil Abbas Al-Behadili (detainee 778)

2.1326 I have identified the following eight allegations by Hussein Fadhil Abbas Al-Behadili (detainee 778), concerning the ill-treatment by British soldiers that he claims to have suffered from the time of his capture on the battlefield until he arrived at Camp Abu Naji:

- a. that, at the point of capture, he was hit with a rifle butt;
- b. that his wrists were handcuffed excessively tightly;
- c. that the soldiers who arrested him had dragged him to an armoured vehicle a short distance away;
- d. that he was tripped at the armoured vehicle;
- e. that he was trampled on beside the armoured vehicle;
- f. that the armoured vehicle was driven close to him at the first position in order to make him believe that it was going run over him;
- g. that he was struck while in the armoured vehicle that took him from the Storm Drain Position to the collection point near WOC; and
- h. that he was roughly handled when getting into or out of an armoured vehicle.

2.1327 In the paragraphs that follow, I will deal in turn with each of these allegations of ill-treatment made by Hussein Al-Behadili.

Allegation (a) – that Hussein Al-Behadili (detainee 778) was struck with a rifle butt at the point of capture

2.1328 In his Judicial Review statement, Hussein Fadhil Abbas Al-Behadili said this:

“The soldiers were a few metres away from us and approaching. Four soldiers surrounded us and two of them hit us both with their rifle butts into our shoulders to force us to the ground.”¹⁷⁷¹

2.1329 Hussein Al-Behadili adopted this account in both his written Inquiry statements and added no further detail.¹⁷⁷²

2.1330 However, it is not clear whether Hussein Al-Behadili maintained this particular allegation in his oral evidence to the Inquiry. When first describing the circumstances of his capture during his oral evidence, Hussein Al-Behadili made no mention of having been struck with a rifle butt.¹⁷⁷³ Later in his evidence, Hussein Al-Behadili was asked: “How did they beat you at the

¹⁷⁷¹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006552) [11]

¹⁷⁷² Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001035) [19]; (PIL000362) [9]

¹⁷⁷³ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/10]

time of your arrest?” In my view, it is difficult to reconcile Hussein Al-Behadili’s answer with the account that he had given in his Judicial Review statement. What he said was this:

“As I told you, when I get arrested, they start dragging me in a bad way — and then when they start — they start — when we start running, some of them — one of them, he put his leg in front of me and I was trampled, and I still remember, I think, I get hit once or twice in the butt of his gun.”¹⁷⁷⁴

2.1331 When Counsel to the Inquiry endeavoured to clarify precisely at what stage Hussein Al-Behadili claimed to have been hit with a rifle butt, Hussein Al-Behadili’s answer only served to add further uncertainty, as follows:

“I cannot remember the first one, but I remember just the one inside the armoured vehicle and towards — the butt of the weapon, and I cannot tell you about the first or the second one.”¹⁷⁷⁵

2.1332 The allegation was put to Private Shaun Sullivan during his oral evidence to the Inquiry and he denied having struck any of the men that he searched with his rifle butt.¹⁷⁷⁶ I have no doubt that he told the truth when denying this allegation, which I believe to have been a deliberate falsehood on the part of Hussein Al-Behadili.

Allegation (b) – that Hussein Al-Behadili’s (detainee 778) wrists were handcuffed excessively tightly

2.1333 In Judicial Review statement, Hussein Fadhil Abbas Al-Behadili said this:

“As soon as we were on the ground our hands were tied behind our backs using plasticuffs which were pulled very tight. Every time I moved my hands the cuffs became tighter.”¹⁷⁷⁷

2.1334 Hussein Al-Behadili went on to adopt this particular allegation in both of his written Inquiry statements.¹⁷⁷⁸

2.1335 When considering the similar allegation made by the four detainees who were captured in Trench 1, I came to the conclusion that it was possible that plasticuffs had been applied too tightly – but that this would not have been done deliberately, would not have caused serious injury and that the plasticuffs would not have been left excessively tight for a prolonged period.¹⁷⁷⁹ Whilst I recognise that Hussein Al-Behadili was handcuffed by different soldiers, I am satisfied that my conclusions with regard to the handcuffing of the detainees in Trench 1 apply with equal force to the allegation made by Hussein Al-Behadili.

2.1336 During the late afternoon of 14 May 2004, the Storm Drain Position (like Trench 1) was a dangerous place to be for both the soldiers and for Hussein Al-Behadili. It would undoubtedly have been very important for the soldiers to apply the handcuffs and to move themselves and Hussein Al-Behadili into a safe position as quickly as reasonably possible. It may well be the case that the plasticuffs were applied hastily and, as a result, too tightly. I am satisfied that this would not have been done deliberately in order to cause unnecessary pain and

¹⁷⁷⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/51/20-25]

¹⁷⁷⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/52/12-15]

¹⁷⁷⁶ Private Sullivan [97/130/4-16]; see also Private Tamani [98/77] *et seq*

¹⁷⁷⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006552) [12]

¹⁷⁷⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001035) [19]-[20]; (PIL000362) [9]

¹⁷⁷⁹ See paragraphs 2.1120, 2.1153, 2.1209, 2.1238

discomfort to Hussein Al-Behadili and that it would not have caused any significant injury. Furthermore, if the plasticuffs had been applied too tightly when Hussein Al-Behadili was first arrested, I am satisfied that this would have been noticed and remedied by either Private Carl Pritchard, Lance Corporal Philip Muir (now French) or Captain Marcus Butlin once Hussein Al-Behadili had been moved to the collection point near WOC.

Allegation (c) – that the arresting soldiers dragged Hussein Al-Behadili (detainee 778) to a nearby armoured vehicle

2.1337 At the beginning of his oral evidence to the Inquiry, Hussein Fadhil Abbas Al-Behadili gave the following account of the circumstances of his capture by the British soldiers:

“Q. Do you know where the soldiers came from? Did they come from a vehicle or were they on the road, walking?”

A. The armoured vehicle was not far from them when they came to us.

Q. When they first saw you, did they do anything to you, Mr Al-Bahati?

A. Yes, they were shouting at us and dragging us. I didn’t understand what they were saying.

Q. Did they do any violence to you?

A. Yes.

Q. What did they do to you?

A. I was younger, much younger than that. They dragged us, two of them, one from each side, and even I didn’t feel that my feet were touching the ground.

Q. Where did they drag you to?

A. To the armoured vehicle.”¹⁷⁸⁰

2.1338 Hussein Al-Behadili also made this allegation of having been dragged to an armoured vehicle by two soldiers in his second written Inquiry statement.¹⁷⁸¹ However, Hussein Al-Behadili described the incident somewhat differently in his Judicial Review statement, as follows:

“Then we were approached by two different soldiers who pulled us to our feet and made us run by physically holding our shoulders. They made us run to another point about 50 metres away.”¹⁷⁸²

2.1339 The credibility of Hussein Al-Behadili’s various accounts relating to this particularly allegation is clearly adversely affected by the fact that Hamid Al-Sweady (deceased 3) features prominently in them. Hussein Al-Behadili’s accounts of this incident are therefore tainted from the outset by a deliberate lie on his part.

2.1340 I accept that it is likely that Hussein Al-Behadili was moved robustly and firmly from the point of capture to W30. I also accept that it is likely that the soldiers who moved him would have

¹⁷⁸⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/10/8-23]

¹⁷⁸¹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000362) [10]

¹⁷⁸² Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006552-53) [12]

done so with little if any immediate regard for Hussein Al-Behadili's unwilling and fearful state of mind at the time. However, to the extent that Hussein Al-Behadili's allegation involves anything more forceful than this or implies that excessive force was deliberately and/or gratuitously used against him, I am satisfied that it is untrue.

Allegation (d) – that Hussein Al-Behadili (detainee 778) was deliberately tripped when he got to the armoured vehicle

2.1341 In a number of his written accounts and in his oral evidence to the Inquiry, Hussein Fadhil Abbas Al-Behadili claimed that, when he first arrived beside the armoured vehicle after he had been arrested, he was deliberately tripped by a soldier and fell forwards.¹⁷⁸³

2.1342 There was nothing in any of the military accounts to corroborate this particular allegation. Private Shaun Sullivan was unable to remember any of the details of how Hussein Al-Behadili had been moved from the point of capture to W30. However, he did recall that Hussein Al-Behadili had been compliant and that he did not struggle.

2.1343 I am satisfied that Private Sullivan was a reliable and truthful witness. Accordingly, I have no doubt that neither he nor any other soldier deliberately tripped Al-Behadili (detainee 778). I cannot rule out the possibility that Hussein Al-Behadili may have stumbled whilst being escorted firmly and robustly across rough ground. However, I am quite satisfied that this would not have been deliberate and would not have caused Al-Behadili to fall completely to the ground. To the extent Hussein Al-Behadili alleged that he was deliberately tripped that allegation is false.

Allegation (e) – that Hussein Al-Behadili (detainee 778) was trampled on as he lay beside the armoured vehicle

2.1344 Hussein Fadhil Abbas Al-Behadili made this allegation during his oral evidence to the Inquiry. He did so almost in passing and without offering any real detail.¹⁷⁸⁴ The implication was that, after he had been deliberately tripped over by the armoured vehicle, he was then stepped on by soldiers while he was lying on the ground.

2.1345 However, as I have already explained, I am satisfied that Hussein Al-Behadili was not tripped and did not fall to the ground beside W30. The process of moving him from the point of capture to W30 was uneventful and Hussein Al-Behadili was compliant throughout. I am therefore satisfied that Hussein Al-Behadili was not trampled on by any soldiers at this location.

Allegation (f) – that the armoured vehicle was driven close to Hussein Al-Behadili (detainee 778) in order to make him believe that it was going to run over him

2.1346 During his oral evidence to the Inquiry, Hussein Fadhil Abbas Al-Behadili (detainee 778) gave the following account of what happened when he was placed beside W30:

“They first left us on the ground with our faces down and then the armoured vehicle came near us, close to our heads, I think to terrorise us.”¹⁷⁸⁵

2.1347 Later in his oral evidence, he added this:

¹⁷⁸³ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/12/19-21]; (MOD006553) [12]; (PIL000362) [10]

¹⁷⁸⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/51-52]

¹⁷⁸⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/11/20-22]

“...and then they brought the armoured vehicle and that armoured vehicle was passing very close to our heads. I was imagining that, at any time, they would run us over.”¹⁷⁸⁶

2.1348 However, having regard to the evidence which I have seen, heard and read, I am quite sure that Lieutenant Benjamin Plenge did not, at any stage, deliberately drive W30 close to Hussein Al-Behadili so as to intimidate him or to generate a fear that he would be run over by the vehicle.

Allegation (g) – that Hussein Al-Behadili (detainee 778) was struck while he was in W30 and being taken from the Storm Drain Position to the collection point near WOC

2.1349 This particular allegation appears in the following passage of Hussein Fadhil Abbas Al-Behadili’s oral evidence to the Inquiry:

“I think, I get hit once or twice in the butt of his gun. One of the soldiers, he hit me once or twice inside the armoured vehicle. And this is – I think it was before I get out of the military vehicle...I think they hit me on the back of my shoulder.”¹⁷⁸⁷

2.1350 Hussein Al-Behadili also made this allegation in his Judicial Review statement, as follows:

“When I spoke though a soldier immediately shouted at me and hit me in the shoulder with his rifle butt. I understood from this that I was to be silent.”¹⁷⁸⁸

2.1351 Hussein Al-Behadili’s allegation was put to Private Shaun Sullivan when he gave his oral evidence to the Inquiry, but he could not remember actually having been in the Warrior AIFV¹⁷⁸⁹ with Hussein Al-Behadili. Similarly, Private Sakiusa Tamani was unable to provide any relevant evidence about this particular allegation.

2.1352 However, I am satisfied that this allegation is not true. As I have already made clear, I do not regard Hussein Al-Behadili as a reliable and truthful witness. In any event, the allegation was that Hussein Al-Behadili had been struck in order to prevent him from talking to others who were with him in W30 and it is clear that there were no other live Iraqi men in W30 with Hussein Al-Behadili during this short journey. As I set out above, I am satisfied that Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2) was taken from the Storm Drain Position to the collection point near WOC, using a fireman’s lift and was not transported in W30 at any stage.

Allegation (h) – that Hussein Al-Behadili (detainee 778) was roughly handled as he got into and out of the Warrior AIFV

2.1353 In both his first and second written Inquiry statements, Hussein Fadhil Abbas Al-Behadili described how he had been thrown into a Warrior AIFV.¹⁷⁹⁰ In his second Inquiry statement, Hussein Al-Behadili suggested that he may have cut his knee in the course of this rough handling.¹⁷⁹¹ It is not altogether clear at which stage this was said to have happened. In particular, it is not clear whether the allegation relates to when he was loaded into W30 at

¹⁷⁸⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/13/1-4]

¹⁷⁸⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/51/24]-[52/6]

¹⁷⁸⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006553) [14]

¹⁷⁸⁹ Armoured Infantry Fighting Vehicle

¹⁷⁹⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001037) [23]; (PIL000363) [15]

¹⁷⁹¹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000363) [15]

the Storm Drain Position or whether it occurred later, when he was loaded into W32 for the journey back to Camp Abu Naji.

2.1354 This allegation is obviously similar to allegations which were made by some of the detainees who were captured in or near Trench 1.¹⁷⁹² Most, if not all, of my conclusions with regard to those allegations and the way in which the detainees at the collection point near WOC (which would have included Hussein Al-Behadili – detainee 778) had been loaded into the Warriors, apply with equal force to this allegation by Hussein Al-Behadili, whether it relates to his being loaded into W30 or W32. As I have already said, it was likely that the detainees were loaded into the Warriors in a firm and robust manner, with little if any immediate regard to their undoubtedly unwilling and fearful state at the time. In such a highly-charged atmosphere, where the primary objective was to load the detainees with a significant degree of urgency, a perceived need to adopt such a firm and robust approach in carrying out that task was probably inevitable.

2.1355 However, there was nothing in the evidence that I have seen, heard and read which leads me to believe that any of the detainees were loaded into a Warrior that day in a manner that might be described as involving deliberate or violent ill-treatment or physical abuse. Furthermore, I am satisfied that none of the detainees was loaded in such a way to cause deliberate physical injury.

2.1356 Hussein Al-Behadili does not appear to have suffered any significant physical injury as a result of having been loaded into either of the Warrior AIFVs. When he was medically examined at Camp Abu Naji¹⁷⁹³ and the Divisional Temporary Detention Facility (“DTDF”) at Shaibah,¹⁷⁹⁴ no injury was identified to Hussein Al-Behadili’s knees. Major Winfield did identify superficial abrasions to Hussein Al-Behadili’s elbows and arms and a small graze to his back. I am satisfied, therefore, that if Hussein Al-Behadili had a cut knee as he alleged, it would have been noted during the course of that medical examination. Accordingly, it would appear that Hussein Al-Behadili’s allegation was a significant exaggeration of the firm and robust way in which he had been loaded into one or other of the two Warriors, W30 and W32. Furthermore, to the extent that he alleged that he was handled more roughly than that and that he suffered a cut knee as a result, that allegation was false and deliberately so.

The capture and handling of Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

Summary of the military evidence relating to the capture and presence on the battlefield of Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

2.1357 As I set out earlier in this Report, I am satisfied that Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was one of the gunmen engaged by WO2 David Falconer in “Contact 3”, during the “sweep” of Trench 1 carried out by himself and Lance Corporal Brian Wood in the late afternoon of 14 May 2004.¹⁷⁹⁵ After he had dismounted from WOC and succeeded in reaching the captured enemy position in Trench 1, WO2 Falconer had prudently decided to check the area further west, as he explained in his written Inquiry statement:

“As no soldiers had checked the area west of where we were I was not happy that we were secure and I decided to check the area myself accompanied by LCpl Wood.”¹⁷⁹⁶

¹⁷⁹² See paragraphs 2.1134, 2.1137, 2.1181, 2.1223

¹⁷⁹³ (MOD024282)

¹⁷⁹⁴ (MOD043962)

¹⁷⁹⁵ See paragraph 2.965

¹⁷⁹⁶ WO2 Falconer (ASI020202) [81]

2.1358 WO2 Falconer went on to describe how he and Lance Corporal Wood had then conducted a “sweep” of Trench 1 and how they had been involved in two exchanges of fire (Contacts 1 and 2), before having become involved in “Contact 3”, which he described in the following terms:

“My memory now is that we then continued along the irrigation ditch using a silent fire manoeuvre to see if there were more insurgents. After about ten to 20 metres I observed movement to my left in my peripheral vision and noticed the barrel of an AK variant rifle poking through a bush. It was only about one metre away from me. I quickly switched my rifle to automatic and fired a burst into the bush. I considered my life to be at immediate risk and I did not wait for the enemy to open fire. I then walked round the bush to find two insurgents dead on the floor. I had shot one of them through the head at a point around his forehead or hairline. I recall that as I approached the body, there was a gush of blood from that injury, and his body was in spasm. I do not recall the injuries to the other dead man. I moved the weapons away from the bodies.”¹⁷⁹⁷

2.1359 I have no doubt that WO2 Falconer opened fire during “Contact 3” because he believed that the two gunmen constituted an immediate threat to his life, as evidenced by the prevailing circumstances at the time and the fact that they were in cover and armed.

2.1360 It subsequently became clear that one of the two gunmen engaged by WO2 Falconer during Contact 3 had been wounded by his fire, but had survived. This man was Ibrahim Al-Ismaeeli (detainee 774). The fact that Ibrahim Al-Ismaeeli was still alive was only discovered after his apparently dead body had been moved from the location of “Contact 3” to the collection point beside WOC, together with a number of other bodies collected from Trench 1.¹⁷⁹⁸

2.1361 As I have already detailed at an earlier stage of this Report, once Ibrahim Al-Ismaeeli (detainee 774) was found to be alive, he received medical treatment from Lance Corporal Philip Muir (now Philip French).¹⁷⁹⁹

The account given by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) to explain his presence on the battlefield on 14 May 2004

2.1362 In his various accounts of the events of 14 May 2004, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) consistently claimed that he had been at the scene of the Northern Battle that day in order to carry out agricultural work and not as an active participant in the attack on British troops.

2.1363 In his Judicial Review statement to the Administrative Court, Ibrahim Al-Ismaeeli (detainee 774) said this:

“On 14 May 2004 at around 1.00pm I went to my family’s farmland by bicycle. I was wearing orange trousers and a white vest. All of my family were already there in the fields. My younger brother was with me as well as my cousin Hamza, who was about 26 years old at the time, my friend Mohammed and my little sister Huda, who was just 7 years old. It was harvest time and they were all there to help, with the exception of my sister who was too young to do so.”¹⁸⁰⁰

¹⁷⁹⁷ WO2 Falconer (ASI020205) [87]

¹⁷⁹⁸ See paragraphs 2.954–2.965

¹⁷⁹⁹ See paragraphs 2.954–2.965

¹⁸⁰⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013950) [7]

2.1364 Later in the same statement Ibrahim Al-Ismaeeli said that he had a scythe with him to cut the grass and that “Huda” had remained sitting in the field to look after their belongings whilst Ibrahim Al-Ismaeeli and the others cut grass and collected straw.

2.1365 There were two obvious differences between this account of his presence on the battlefield and the one that he gave when he was interviewed by the Royal Military Police (“RMP”) in July 2004. First, in his 2004 interview with the RMP he described “Mohammed” as his cousin rather than his friend.¹⁸⁰¹ Second, he told the RMP that he had been wearing a black shirt and a black pair of trousers at the farm.¹⁸⁰²

2.1366 When being interviewed for the purpose of his first written Inquiry statement, Ibrahim Al-Ismaeeli was asked about the discrepancy in these two previous accounts with regard to his description of the clothes he had been wearing that day. In response, Ibrahim Al-Ismaeeli said that, as far as he could recall, he had been wearing white trousers and an orange or red shirt.¹⁸⁰³ In his first written Inquiry statement, Ibrahim Al-Ismaeeli once more described Hamza as his cousin and Mohammed as his friend.¹⁸⁰⁴ However, in contrast with his Judicial Review statement, Ibrahim Al-Ismaeeli then went on to say that his brother, Bassim, had returned home as soon as Ibrahim Al-Ismaeeli arrived at the farm.¹⁸⁰⁵

2.1367 In his second written Inquiry statement, Ibrahim Al-Ismaeeli made a number of significant admissions with regard to the earlier statements that he had given. The first of these admissions was this:

“I must begin by confessing that certain of the contents of the statements which I have previously provided are untrue and I have set out below those inaccuracies.”¹⁸⁰⁶

2.1368 His second admission was as follows:

“I must make it clear that the lapse of time which has passed since the incident, as well as the nature of events occurring on 14 May 2004, now makes it difficult for me to remember details and the order in which things happened. In addition I think my memory of what occurred may be influenced by discussions which I have had with others over the years and the contents of documents which have been read to me since I made my first statement.”¹⁸⁰⁷

2.1369 Ibrahim Al-Ismaeeli’s third admission with regard to his earlier statements was expressed in the following terms:

‘Finally, I am poor at estimating distances and remembering times. What I set out below is events to the best of my knowledge.’¹⁸⁰⁸

2.1370 In his second written Inquiry statement, the central core of Ibrahim Al-Ismaeeli’s explanation for having present on the battlefield on 14 May 2004 remained that had been engaged in carrying out various agricultural tasks. However, there were two significant changes in the account given in his second written Inquiry statement, when compared with those given in

¹⁸⁰¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD002947)

¹⁸⁰² Ibid.

¹⁸⁰³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001061) [14]

¹⁸⁰⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001062) [19]

¹⁸⁰⁵ Ibid.

¹⁸⁰⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000423) [4]

¹⁸⁰⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000423) [5]

¹⁸⁰⁸ Ibid.

his earlier statements. First, Ibrahim Al-Ismaeeli noted what he had said in his first Inquiry statement with regard to what he had been wearing that day (i.e. white trousers and orange/red shirt) and then continued, as follows:

“This is not correct. I was wearing a black shirt and trousers which I would describe as dark coloured. I made this inaccurate comment as I was concerned as I felt that emphasis was being placed on black clothing as this could lead to me being thought to be involved as a member of the Mahdi Army. The basis of this fear was that in 2004 in my area of Southern Iraq the attitude of the British troops seemed to be that if a man was wearing black coloured clothes he was considered to be dangerous. I did not want people to class me as an insurgent even after all this time.”¹⁸⁰⁹

2.1371 Second, as will become evident when I outline his account of the battle itself, Ibrahim Al-Ismaeeli made a very significant change in what he had said previously with regard to his sister, Huda. In his second written Inquiry statement, Ibrahim Al-Ismaeeli said that Huda had actually left to go home with his brother, Bassim, soon after he (Ibrahim Al-Ismaeeli) had arrived at the farm.¹⁸¹⁰ He went on to give the following explanation for having previously suggested that she had remained at the farm: *“I maintained that Huda was at the scene as I wanted the police to feel sympathy for me.”¹⁸¹¹*

The account given by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) with regard to the circumstances of his capture by the British on 14 May 2004

2.1372 During his oral evidence to the Inquiry, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 744) described how he had seen two cars arrive in the vicinity of his farmland. According to Ibrahim Al-Ismaeeli, three or four men had alighted from this vehicle. Ibrahim Al-Ismaeeli said that he could not see if the men were carrying anything because they were too far away. He went on to say that second vehicle had then arrived, but this vehicle had been even further away. Accordingly, he had been unable to see whether anybody actually got out of the second vehicle.¹⁸¹²

2.1373 Ibrahim Al-Ismaeeli went on to describe how he had seen some British tanks arriving and how the firing had then started. He said that when this happened he, “Hamza” and “Mohammed” had hidden in a dry ditch. It seems to me very likely the dry ditch in question was actually Trench 1.¹⁸¹³

2.1374 Ibrahim Al-Ismaeeli described how he had then seen Hamza shot in the head. During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli said that Hamza had become unconscious as a result, but that he did not know whether he had actually died.¹⁸¹⁴ In his second written Inquiry statement, Ibrahim Al-Ismaeeli gave the following vivid account of the severity of Hamza’s injuries:

“At some stage Hamza was shot in the forehead from shots which were coming towards us but from the opposite direction from the original source of firing. Both Mohammed and I were crying and Mohammed then began to tear his clothes. I remember that

¹⁸⁰⁹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000430) [12]

¹⁸¹⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000428) [7]

¹⁸¹¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000429) [8]

¹⁸¹² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/7]; though later in his oral evidence, Ibrahim Al-Ismaeeli briefly stated that he had seen the occupants of the second vehicle hiding weapons [16/60-61]

¹⁸¹³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/8]

¹⁸¹⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/9]

*Mohammed took Hamza's head in his arms and a portion of what I took to be brain fell from his skull.*¹⁸¹⁵

2.1375 I have no doubt that Hamza was shot and killed during the Northern Battle, although the circumstances of his death were different from those described by Ibrahim Al-Ismaeeli. Hamza's full name was Hamza Malek Moalla Khaleefa Al-Isma'ili. He has been identified by the Inquiry as "Deceased 17" and appears as "KIA 19" in the photographs of the dead Iraqi men taken by Captain James Rands at Camp Abu Naji on the evening of 14 May 2004.¹⁸¹⁶

2.1376 According to Ibrahim Al-Ismaeeli, he and Mohammed had gone together to a different part of Trench 1. In his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli explained that he had moved there in order to ensure that the tanks did not run over him. He then went on to describe how one of the soldiers had deliberately fired at him and Mohammed as they lay helpless in the ditch, how Mohammed had been hit in the abdomen and how Ibrahim Al-Ismaeeli was himself shot in the leg.¹⁸¹⁷ Ibrahim Al-Ismaeeli then continued, as follows:

*"After that, one of the soldiers with a rifle, which he pointed at us, then he pointed it towards the sky and started shooting. There was a flash on my eyes, a flashing light. Then I was unconscious."*¹⁸¹⁸

2.1377 Before setting out the details of Ibrahim Al-Ismaeeli's evidence about what happened next, I will deal with four major discrepancies that are very apparent when a comparison is made between Ibrahim Al-Ismaeeli's oral evidence to the Inquiry about the actual battle and the circumstances of his capture by the British and his accounts of the same events in his previous statements. The four discrepancies relate to the following matters:

- a. whether Ibrahim Al-Ismaeeli (detainee 774) was armed and, if so, to what extent;
- b. the death of his friend/cousin Mohammed;
- c. the death of his sister Huda; and
- d. the description of the soldier who had shot at him and Mohammed.

(a) Whether Ibrahim Al-Ismaeeli (detainee 774) was armed and, if so, to what extent

2.1378 In each of his previous accounts and in his oral evidence to the Inquiry, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) admitted having been in possession of a Kalashnikov rifle on 14 May 2004. However, there were a number of significant inconsistencies in those previous accounts and in his oral evidence, when dealing with the subject of the rifle and his reasons for having had it with him.

2.1379 Ibrahim Al-Ismaeeli was inconsistent about where this rifle had been located that day. In his Judicial Review statement, Ibrahim Al-Ismaeeli said this:

*"I had a Kalashnikov with me lying by my feet in the ditch. I had 30 bullets in a magazine. While I was working it was near me on the ground."*¹⁸¹⁹

¹⁸¹⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000431) [15]

¹⁸¹⁶ See Figures 1 and 2

¹⁸¹⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/10/13-14]; (ASI001066) [36]

¹⁸¹⁸ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/10/16-19]

¹⁸¹⁹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013951) [11]

2.1380 However, in his first written Inquiry statement, Ibrahim Al-Ismaeeli (detainee 774) said this about his rifle:

“I had put it on the ground some distance away from me whilst I was working in the fields.”¹⁸²⁰

2.1381 During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli said that he had kept his rifle next to him underneath his legs that day.¹⁸²¹ However, he did not explain why he had said something different in his first written Inquiry statement.

2.1382 There were also inconsistencies in Ibrahim Al-Ismaeeli’s various accounts of his reasons for having had a rifle with him. In his Judicial Review statement, Ibrahim Al-Ismaeeli gave the following explanation for having been in possession of a rifle on 14 May 2004:

“Carrying a rifle in the fields is entirely normal. The area has lots of wild boar that attack the crops and so I have a rifle to kill the boar if I see them in or around the fields.”¹⁸²²

2.1383 However, previously, during his interview by the Royal Military Police (“RMP”) in July 2004, Ibrahim Al-Ismaeeli had said that he was carrying a rifle that day because members of his tribe/family were wanted by the Fureijat tribe, as the result of a dispute over some farmland near the “Ez” river.¹⁸²³

2.1384 During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli was asked why he had been carrying a rifle on 14 May 2004. His response was as follows:

“We carry a rifle all the time because we have cattle. You know, there are bandits in Iraq. There are so many of them there in Iraq. And also, on the other hand, we protect our own cattle against pigs, against beasts.”¹⁸²⁴

2.1385 When he was asked about his previous accounts, Ibrahim Al-Ismaeeli said that the explanation he had given to the RMP had been incorrect because he was afraid and that any differences in his Judicial Review statement were due to errors in translation.¹⁸²⁵

2.1386 Ibrahim Al-Ismaeeli (detainee 774) also gave inconsistent accounts with regard to the amount of ammunition that he had been in possession of that day. In July 2004, he told the RMP that he had had three magazines with him, each containing 30 bullets, and a further magazine containing 15 bullets.¹⁸²⁶ In his Judicial Review statement he said that he had had one magazine containing 30 bullets.¹⁸²⁷ In his second written Inquiry statement, Ibrahim Al-Ismaeeli said this:

“As I have described I had a Kalashnikov rifle with me. It had one magazine which as I have said hold [sic] 30 bullets but it was not fully loaded as I had shot some of its contents by firing in the air at a wedding shortly before. I had also fired it some days earlier at a boar. I expect that the magazine had about 10 or less bullets in it.”¹⁸²⁸

¹⁸²⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001064) [26]

¹⁸²¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/29]

¹⁸²² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013951) [11]

¹⁸²³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD002952-53)

¹⁸²⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/38/11-14]

¹⁸²⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/39]

¹⁸²⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD002949)

¹⁸²⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013951) [11]

¹⁸²⁸ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000431) [14]

2.1387 During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli stated that he had had one partially full magazine in his weapon and that he was unsure how many bullets were in it. However, he also went on to say the he had other magazines hidden elsewhere in a place near a river.¹⁸²⁹

(b) The death of his friend/cousin Mohammed

2.1388 There was a significant discrepancy in the descriptions of what happened to Mohammed, as between that given by Ibrahim Gattan Hasan Al-Ismaeeli in his interview with the Royal Military Police (“RMP”) in July 2004 and that given later in his Judicial Review statement. Thus Ibrahim Al-Ismaeeli told the RMP that Mohammed had “*died in my hands*”¹⁸³⁰ whilst later, in his Judicial Review statement, he said that when his family had visited him in the Divisional Temporary Detention Facility (“DTDF”) at Shaibah they had tried to conceal news of Mohammed’s death from him.¹⁸³¹

2.1389 When this particular inconsistency was explored with Ibrahim Al-Ismaeeli during his oral evidence to the Inquiry, he said that he had seen Mohammed get shot, but that he had not seen him die. He went on to say that he could not remember having told the RMP what the transcript of his interview clearly records him as having said.¹⁸³²

2.1390 It is clear that Mohammed was, in fact, Muhammed Nasser Al-Doughaan. He was shot and killed during the Northern Battle on 14 May 2004. He has been identified by the Inquiry as “Deceased 28” and appears as “KIA 18 “in the photographs of the dead Iraqi men taken by Captain James Rands at Camp Abu Naji on the evening of 14 May 2004.¹⁸³³

(c) The death of his sister Huda

2.1391 In his first written Inquiry statement, Ibrahim Gattan Hasan Al-Ismaeeli described how, when the shooting started, he had hidden in a dry irrigation channel with his friend, his cousin and his sister Huda.¹⁸³⁴ He continued:

*“The battle went on for around half an hour...I could not see where Huda was but I could hear her crying; I was unable to reach where she was because of the bullets it was too dangerous.”*¹⁸³⁵

2.1392 Later in the same statement, Ibrahim Al-Ismaeeli added this dramatic additional detail, in which he plainly inferred that Huda had been killed on the battlefield by the British soldiers:

*“I could still hear Huda screaming, she was about 10-15 metres away. I still could not get to her and so gestured to her to stay where she was, I may also have called out to stay where she was. The soldiers were approaching us. This was the last time I ever saw Huda.”*¹⁸³⁶

2.1393 As I explained above, when he gave his second written Inquiry statement, Ibrahim Al-Ismaeeli admitted that the account he had given in his first written Inquiry statement, with regard to his sister’s presence during the battle, was untrue. Instead, he claimed that his sister, Huda,

¹⁸²⁹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/41]

¹⁸³⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD002963)

¹⁸³¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013958) [32]

¹⁸³² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/66-68]

¹⁸³³ See Figures 1 and 2

¹⁸³⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001064) [27]

¹⁸³⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001065) [29]

¹⁸³⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001065) [31]

had left the farm to go home with his brother before the shooting actually started.¹⁸³⁷ In his second written Inquiry statement, Ibrahim Al-Ismaeeli sought to explain the reasons for his having given an untrue account of Huda’s presence during the battle in his first written Inquiry statement, as follows:

“I have described in my earlier statements how I heard Huda screaming during the shooting. This was not true. I made this statement when interviewed by the military police in Shaibah as I thought the authorities might feel sorry for me and let me go. I felt obliged to continue this untruth when I was interviewed. As I have mentioned I did not know Huda was dead until after my release. I am still unclear as to how she died as my family remain unwilling to talk about it. For the same reason I also falsely mentioned a girl screaming. I feel I should disclose that it was in my mind that I thought such comments would also encourage the police to make enquiries and perhaps get the soldiers in trouble. I was able to talk about Huda as I did not know then that she was dead and the other girl I mentioned was imaginary.”¹⁸³⁸

2.1394 However, a significant component in Ibrahim Al-Ismaeeli’s explanation, for having given this untrue account of Huda being present during the battle, was flatly contradicted by the transcript of his interview by the Royal Military Police (“RMP”) in July 2004 at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah. I have carefully read the full transcript of that interview.¹⁸³⁹ As a result, I am completely sure that Ibrahim Al-Ismaeeli made absolutely no mention of Huda having been present during the battle as he claimed to have done.

2.1395 During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli again sought to assert that Huda had died as a result of some form of action by British forces. However, he did so without specifying how her death had been caused and without identifying any evidence in support of such a serious allegation. What he said was this:

“She died because of them. I believe she died because of the British forces. It could have been a shock, a bullet, I’m not sure. I don’t know the details of what happened. Every time I touched on this, my family would close the subject.”¹⁸⁴⁰

2.1396 In their closing written submissions, those representing the Ministry of Defence (“MoD”) pointed out that Ibrahim Al-Ismaeeli’s allegation that Huda had been killed on the battlefield had also been included in a pre-action letter sent by Public Interest Lawyers to the MoD on 29 July 2011.¹⁸⁴¹ I have not been informed whether any proceedings have actually been issued in the matter following the pre-action letter.

(d) The description of the soldier who shot at Ibrahim Al-Ismaeeli (detainee 774) and Mohammed (deceased 28/KIA 18)

2.1397 There were a number of inconsistencies in Ibrahim Gattan Hasan Al-Ismaeeli’s various descriptions of the soldier who had fired at him and Muhammed Nasser Al-Doughaan (deceased 28) at the point of capture. At the beginning of his oral evidence to the Inquiry,

¹⁸³⁷ See paragraph 2.1371 above

¹⁸³⁸ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000432) [16]

¹⁸³⁹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD002947)

¹⁸⁴⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/4/16-21]

¹⁸⁴¹ MOD Closing Submissions (358) [1117]-[1118]

Ibrahim Al-Ismaeeli was asked if the soldier was black or white. He answered: *"I can't remember. I was confused, I really didn't pay attention to this."*¹⁸⁴²

2.1398 Later in his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli was asked again about the colour of the soldier who had shot at him. On this occasion, he said:

*"What I saw, he was a black man. He was a black man, but the others with him, the black man – the black man – he was just behind my head."*¹⁸⁴³

2.1399 However, this answer was at odds with what Ibrahim Al-Ismaeeli had said in his first written Inquiry statement, where he seemed certain that the soldier who fired at him had been white.¹⁸⁴⁴

Ibrahim Al-Ismaeeli (detainee 774) regains consciousness

2.1400 Having highlighted these four discrepancies in Ibrahim Gattan Hasan Al-Ismaeeli's account of his capture by the British on 14 May 2004, I now turn to deal with his evidence about what happened to him after he had regained consciousness.

2.1401 During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli described how, when he regained consciousness, he had found himself lying on the ground in an area that appears to bear some resemblance to the collection point near WOC.¹⁸⁴⁵ However, in his written Inquiry statement, Ibrahim Al-Ismaeeli gave an different account of the circumstances in which he first regained consciousness, albeit temporarily, as follows:

"The next thing that I recall was waking up having banged my head. I was inside a vehicle, I was on a metal floor, I felt blood coming from what I thought was my head. There was a lot of other blood not mine. I was looking into the open eyes of someone below me; I was inside what felt like a box. From the position I was in I could not sit up or move I was fixed in that position. I was squeezed in with other people and I don't know if they were alive or dead.

*I could not see any daylight at all; the only light was a reddish colour like a glow which was inside the vehicle. There were no soldiers inside the vehicle. I was only conscious for what seemed like moments before losing consciousness again."*¹⁸⁴⁶

2.1402 Although Ibrahim Al-Ismaeeli appeared to have forgotten or overlooked this temporary recovery of consciousness, by the time he came to give his oral evidence, his account of what he experienced when he did so is consistent with the military account of him being loaded into W22, together with other dead bodies, for transportation from Trench 1 to the collection point near WOC.¹⁸⁴⁷ I am sure that none of the soldiers at the scene knew that Ibrahim Al-Ismaeeli was actually alive and unconscious when he was loaded into W22 with the dead bodies from Trench 1. They believed him to be dead. Accordingly, the soldiers' action in loading Ibrahim Al-Ismaeeli into W22 with the dead bodies, for movement to the collection point near WOC, did not involve any deliberate ill-treatment on their part.

¹⁸⁴² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/11/1-2]

¹⁸⁴³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/46/18-20]

¹⁸⁴⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001065) [32]

¹⁸⁴⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/12-13]

¹⁸⁴⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001067-68) [40]-[41]

¹⁸⁴⁷ See paragraphs 2.951–2.965

2.1403 Ibrahim Al-Ismaeeli recalled how he had then been loaded into a military vehicle and taken to Camp Abu Naji. As I have already indicated earlier in this Report, this military vehicle was the Warrior AIFV W21 and the soldiers present were Lance Corporal Kevin Wright and Private Maciou Tatawaqa.¹⁸⁴⁸ I will deal with Ibrahim Al-Ismaeeli’s further allegations later in this Chapter.¹⁸⁴⁹

Conclusions of fact about the reasons for the presence of Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) on the battlefield on the 14 May 2004 and the circumstances of his capture by the British that day

2.1404 I have absolutely no doubt that Ibrahim Gattan Hasan Al-Ismaeeli was present on the Northern battlefield on 14 May 2004 as a willing and active participant in the carefully planned armed ambush of British forces by Iraqi insurgents that day. I have no doubt as to the truth and accuracy of the accounts given by the various military witnesses about the circumstances in which Ibrahim Al-Ismaeeli came to be found and captured on the battlefield. In contrast, for reasons that I summarise in the paragraphs that follow, it is no exaggeration to say that I found the substance of Ibrahim Al-Ismaeeli’s various accounts to amount to little more than a pack of lies, even when given on oath.

2.1405 As I have already indicated, I accept the truth and accuracy of WO2 David Falconer’s evidence about the circumstances in which he came to open fire during “Contact 3”,¹⁸⁵⁰ as a result of which Ibrahim Al-Ismaeeli was wounded and captured. It is clear from that account, that WO2 Falconer had succeeded in engaging and eliminating Ibrahim Al-Ismaeeli just as he was about to open fire from cover in his capacity as one of the armed insurgents involved in the ambush of British forces that day. It is very likely that Mohammed Nasser Al-Doughaan (deceased 28) was the other insurgent shot (and, as it happened, killed) by WO2 Falconer during Contact 3.

2.1406 In contrast, the significant discrepancies in and/or changes to Ibrahim Al-Ismaeeli’s account of the circumstances in which he came to be on the battlefield on 14 May 2004 are at times stark and defy innocent explanation.¹⁸⁵¹ Furthermore, none of the various explanations that Ibrahim Al-Ismaeeli put forward, in order to explain why he had a Kalashnikov rifle and a lot of ammunition with him that day, appear to me to be credible. In addition, Ibrahim Al-Ismaeeli’s repeated and unabashed lies, about his sister Huda having been present during the battle and impliedly killed by the British soldiers, inevitably have a significant and adverse effect on Ibrahim Al-Ismaeeli’s overall credibility. Finally, there is photographic evidence that clearly shows that Ibrahim Al-Ismaeeli’s friend and/or cousin, Mohammed Nasser Al-Doughaan (deceased 28/KIA 18), was also an active participant in the attack on British forces that day. He was not there to help out on the farm. Far from it. Like Ibrahim Al-Ismaeeli, Mohammed Al-Doughaan was clearly there as one of the armed Iraqi insurgents who were determined to carry out a carefully planned ambush of British forces as they travelled along Route 6.

2.1407 In my view, none of the first three matters, to which I have referred in the previous paragraph, requires any further elaboration. The final matter concerns a photograph of the late Mohammed Al-Doughaan (deceased 28/KIA 18), taken by Captain James Rands later that evening at Camp Abu Naji, when he photographed the bodies of the dead Iraqi men who had been transported from the battlefield. Due to its very graphic nature, I have not included this particular photograph in my Report, in order to avoid causing any distress. However, in

¹⁸⁴⁸ See paragraph 2.975

¹⁸⁴⁹ See from paragraph 2.1408

¹⁸⁵⁰ See paragraph 2.1359

¹⁸⁵¹ See paragraphs 2.1362–2.1371

the photograph, the late Mohammed Al-Doughaan can clearly be seen to be wearing the sort of black clothing that was commonly associated with the Mahdi Army and, perhaps more significantly, military-style chest webbing. In all his various accounts of the events of 14 May 2004, Ibrahim Al-Ismaeeli consistently maintained that he and the late Mohammed Al-Doughaan had been together during the period before as well as at the time of capture. In my view, this particular photograph provides compelling evidential support for my conclusion that they were both undoubtedly together at that location as willing and active participants in the armed ambush of British forces and the subsequent battle that took place that day.

Allegations made by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

2.1408 Ibrahim Gattan Hasan Al-Ismaeeli has given a number of accounts and, at times, they have been somewhat unclear as to precisely what his allegations of ill-treatment by the British military were. However, with the assistance of the written Closing Submissions of the Core Participants, I have identified the following seven allegations by Ibrahim Al-Ismaeeli concerning the ill-treatment by British soldiers that he claims to have suffered from the time of his capture on the battlefield until he arrived at Camp Abu Naji:

- a. that when he first fully regained consciousness after being captured, a soldier pointed an iron object with a laser in it into his eye;
- b. that a soldier put dirt in his mouth after he regained consciousness at the collection point near WOC;
- c. that a soldier stabbed one or more prone Iraqis;
- d. that photographs were taken at the collection point;
- e. that he was physically assaulted at the collection point;
- f. that, at some stage, he was dragged so as to cause him injury; and
- i. that soldiers stole money from him.

2.1409 In the paragraphs that follow, I will deal in turn with each of these allegations of ill-treatment made by Ibrahim Al-Ismaeeli.

Allegation (a) – that a soldier pointed an iron object with a laser in it in Ibrahim Al-Ismaeeli’s eye

2.1410 During his oral evidence to the Inquiry, Ibrahim Gattan Hasan Al-Ismaeeli was asked what had happened when he regained consciousness after his capture. He replied as follows:

“They brought an iron piece of something with a laser in it. The person pointed this towards my eye. I started shouting, saying words. Apparently he was wearing gloves.”¹⁸⁵²

2.1411 Ibrahim Al-Ismaeeli also made this particular allegation in a number of his previous statements. Thus, in his Judicial Review statement, he said this:

“The next thing I remember is that I was suddenly awoken with a start. I was lying on the floor without a blindfold or handcuffs. Two soldiers were holding me and someone had an instrument held against my skin just under my eye. Whatever had been done

¹⁸⁵² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/11/20-23]

to me had jolted me into consciousness. I felt a pain under my eye which continued for four days or so.”¹⁸⁵³

2.1412 Ibrahim Al-Ismaeeli repeated this allegation in his first written Inquiry statement, in the following terms:

“The next thing I remember I was outside the vehicle lying on my back on the ground. I was woken when what seemed to be some type of electrical device being placed in the corner of my eye. I woke up with a jump and screamed. The person who was holding the device was wearing gloves, they were like operation surgeon gloves, thin soft plastic...”

The thing that was put to my eye was like a laser, as long as a finger, it was electrical, when it was put to my eye all of my body shivered, it gave me an electric shock, it was only put to my eye once, he didn’t use it again.”¹⁸⁵⁴

2.1413 I have no doubt that it was Lance Corporal Philip Muir (now Philip French) who was the medic who examined Ibrahim Al-Ismaeeli at the collection point near WOC and who confirmed that he was alive and not dead. In his written Inquiry statement, Lance Corporal Muir described his first encounter with Ibrahim Al-Ismaeeli in the following terms:

“I can recall lifting his eyelids to check for signs of life. As far as I am aware this is the simplest and quickest way to tell if a person is faking death. It was very quickly apparent that the man was alive. His eyes were moving in all directions.”¹⁸⁵⁵

2.1414 During his oral evidence to the Inquiry, Lance Corporal Muir explained that he had lifted Ibrahim Al-Ismaeeli’s eyelids with his thumbs and went on to say: *“So I opened his eyes and obviously you could see he was petrified. His eyes were just everywhere”*.¹⁸⁵⁶

2.1415 I am completely satisfied that Lance Corporal Muir gave a truthful and accurate account of his examination of Ibrahim Al-Ismaeeli at the collection point near WOC on 14 May 2004. I am also sure that Ibrahim Al-Ismaeeli has exaggerated and dramatised the examination that Lance Corporal Muir carried out that day, so as to suggest that he had been subjected to some form of ill-treatment. In particular, I am sure that no electrical device was held to Ibrahim Al-Ismaeeli’s eye in order to check him for signs of life. No electric shock was administered to Ibrahim Al-Ismaeeli as he alleged or at all, nor was anything done to him that caused him pain for several days. I have no doubt that Ibrahim Al-Ismaeeli was fearful and suggestible at the time. However, this was the direct result of the predicament in which he found himself as a result of his own actions and was not deliberately exacerbated by any action on the part of any of the British soldiers.

Allegation (b) – that a soldier put dirt in Ibrahim Al-Ismaeeli’s (detainee 774) mouth

2.1416 Across his various accounts, Ibrahim Gattan Hasan Al-Ismaeeli consistently alleged that the soldier with the surgical gloves threw dirt into his mouth as he lay on the floor.¹⁸⁵⁷

2.1417 As I have identified above, Lance Corporal Muir was the man who opened Ibrahim Al-Ismaeeli’s eyes and checked him for signs of life. Lance Corporal Muir gave the following emphatic denial

¹⁸⁵³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013953) [16]

¹⁸⁵⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001068) [42] [44]

¹⁸⁵⁵ Lance Corporal Muir (ASI021132) [67]

¹⁸⁵⁶ Lance Corporal Muir [81/19/3-5]

¹⁸⁵⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/11/23-24]; (ASI013953) [16]; (ASI001068) [42]; (PIL000433) [20]

of this allegation during oral evidence: *“Absolutely not, no, and while he was under my care nobody would have done either.”*¹⁸⁵⁸

2.1418 In their Closing Submissions, those representing the Iraqi Core Participants stated that they did not seek a positive finding that Lance Corporal Muir intentionally put dirt into Ibrahim Al-Ismaeeli’s (detainee 774) mouth. They stated:

*“LCpl Muir disputes that he stuffed dirt in Ibrahim Al-Ismaeeli’s mouth (Day 81/24/5-8) and we accept that doing so would be inconsistent with the manner in which he provided care to the man with the sucking chest wound, and also to Ibrahim Al-Ismaeeli. In view of the concession above as to Ibrahim Al-Ismaeeli’s account we do not invite a finding that LCpl Muir stuffed dirt into his mouth.”*¹⁸⁵⁹

2.1419 I too have no hesitation in finding that Lance Corporal Muir did not intentionally put dirt into Ibrahim Al-Ismaeeli’s mouth. I agree that such an action would have been entirely out of keeping with the rest of Lance Corporal Muir’s actions on the day and I found Lance Corporal Muir’s denial to be entirely credible. Furthermore, since Ibrahim Al-Ismaeeli was consistent and emphatic in his identification of the soldier as being the same soldier who checked him for signs of life, I see no basis on which to find that any other soldier in the vicinity might have been responsible.

2.1420 Accordingly, only two explanations seem to me to be possible. Either Ibrahim Al-Ismaeeli (detainee 774) entirely fabricated the allegation and no dirt went into his mouth at all or some dirt went into Ibrahim Al-Ismaeeli’s mouth accidentally, during the course of restraining him. Either seems to me to be possible. It goes without saying that neither would constitute ill-treatment as envisaged by the terms of reference of this Inquiry.

Allegation (c) – that a soldier stabbed one or more prone Iraqis

2.1421 This allegation relates to the period of time shortly after Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) regained consciousness. When making his first Inquiry statement, Ibrahim Al-Ismaeeli drew a simple sketch showing him lying on the floor at the end of a line of four bodies.¹⁸⁶⁰ He labelled the other bodies one to three.

2.1422 He then gave the following account of what he saw and heard:

“The body next to me I have marked with a number 1, it made no sounds, he may have been dead or unconscious the next person I have marked number 2, was alive. He said something like, ‘I will die’, he was talking about himself. The next person along I have marked number 3, I heard him being stabbed, when I lifted my head I saw him being stabbed with a knife by a British soldier.

*When I lifted my head they beat me to make me look down again. While my head was lifted I saw the soldier using the knife, I heard the noise of the knife as it entered the body, the body made a sound like, ‘Uhhh’. The stabbing that I saw was to the chest upwards on the body. It was with a knife or a bayonet or some similar thing, it was only for seconds, I couldn’t focus properly. I thought that live people were being killed.”*¹⁸⁶¹

¹⁸⁵⁸ Lance Corporal Muir [81/24]

¹⁸⁵⁹ ICP Closing Submissions (162) [582]

¹⁸⁶⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI002376)

¹⁸⁶¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001069) [47]-[48]

2.1423 Despite the clear and unambiguous language used in this first statement, Ibrahim Al-Ismaeeli sought to retract part of this allegation in his second Inquiry statement, as follows:

“I have described at paragraph 48 of my Inquiry statement how I saw a soldier ‘using a knife’. Although I did not mean to say that I saw him stab someone this could be implied from the wording of my statement. What I recollect happening is while I lay face down I lifted my head and looked briefly to my left. I saw a soldier standing over a body holding something shiny in his hand. I could not identify this item as a knife but presumed this to be the case, or some type of bayonet. He leant over a body and I heard a sound which I have described and which sounded as if breath was coming out of a body.”¹⁸⁶²

2.1424 When he gave his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli said that he did not see anybody being stabbed, but merely heard sounds which sounded like somebody being stabbed and saw something which he thought might have been a knife.¹⁸⁶³

2.1425 There is nothing in the evidence of any of the military witnesses who were in the vicinity to corroborate this account. Nor did any of the other detainees who were in the area see or hear anything of this nature. I am entirely satisfied that no prone Iraqis, whether alive or dead, were stabbed by any British soldier at the collection point.

2.1426 This conclusion seems to have been anticipated by those representing the Iraqi Core Participants in their Closing Submissions. They argued, however, that Ibrahim Ismaeeli had a rational basis for this mistaken belief and thus my finding ought not to generate any adverse findings about his credibility.¹⁸⁶⁴ In particular, my attention was drawn to the evidence of some soldiers who had been present on the Southern Battlefield who said that they had used a knife to cut chest rigs from the bodies of Iraqis who had died. Those submissions argued that this practice might well have also taken place on the Northern Battlefield and that Ibrahim Al-Ismaeeli might have seen it and misinterpreted it as stabbing.

2.1427 I do not accept those submissions. First, no attempt was made as witnesses were questioned during oral evidence to identify whether chest rigs were cut from bodies on the Northern Battlefield. Nor was any attempt made to explore during questioning whether Ibrahim Al-Ismaeeli could have been so mistaken. Accordingly, the submissions proceed on a highly speculative basis.

2.1428 Second, the submissions somewhat overlook the manner in which Ibrahim Al-Ismaeeli (detainee 774) himself described the incident. In his first Inquiry statement, Ibrahim Al-Ismaeeli offered vivid detail of what he saw and heard. In his second statement and in oral evidence he drew back from some of those details, but offered no explanation for why those details had been included in his first statement. I consider Ibrahim Al-Ismaeeli’s approach to giving evidence about this incident to be thoroughly unsatisfactory.

2.1429 For these reasons, I do not accept that Ibrahim Al-Ismaeeli was mistakenly recollecting the process of cutting chest rigs from bodies. Far more likely, in my view, is that Ibrahim Al-Ismaeeli simply fabricated this incident as part of his broader objective of trying to get British soldiers into trouble.

¹⁸⁶² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000434) [21]

¹⁸⁶³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/92]

¹⁸⁶⁴ ICP Closing Submissions (831) [2931]-[2933]

2.1430 Towards the end of his oral evidence, Counsel instructed on behalf of the Treasury Solicitor directly put to Ibrahim Al-Ismaeeli that he had fabricated the allegation of stabbing. Ibrahim Al-Ismaeeli's answer was instructive, insofar as it appeared to show particular resentment towards British troops and offered a possible motive for the making of false allegations:

"Everything was true and right after I get released in 2006. I saw one CD to one of the martyrs, for martyr Hamza Al-Ismaeeli. I found one bullet and I saw another five bullets, and the flesh was just splashed around. It looked like a wild animal had just started eating him. And even the families, they couldn't recognise their bodies, and this has all been filmed, recorded, and we have them. They are all on CDs, on DVDs, and they are available.

*Even when they wanted to wash him before the burying, they felt so bad and so sorry and they couldn't bear looking to the body or prepare the washing and, as you know, we had so many bombs in Iraq similar to this and usually this is not happening when somebody killed another. Usually this has happened when there is [sic] bombs going on."*¹⁸⁶⁵

Allegation (d) – that photographs were taken at the collection point

2.1431 During his oral evidence to the Inquiry, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) described seeing flashes before he was blindfolded at the collection point and suggested that these may have been flashes from somebody taking photographs.¹⁸⁶⁶ Although not strictly an allegation, I discuss this briefly here.

2.1432 I have not seen any photographs which show Ibrahim Al-Ismaeeli lying on the floor at the collection point. It is evident, however that some photographs were taken at the Northern Battle and a number of these have been the subject of findings earlier in this Report. In particular, the photograph taken of Lance Corporal Muir with four detainees lying on the floor was taken at a location close to the location to which this allegation relates.

2.1433 Accordingly, it is possible that Ibrahim Al-Ismaeeli was accurately describing photographs being taken. Any such photos are likely to have been taken by soldiers seeking mementos of the events as I have seen, heard or read nothing to suggest that any 'official' photographs were taken at this location.

Allegation (e) – that Ibrahim Al-Ismaeeli (detainee 774) was physically assaulted at the collection point

2.1434 During oral evidence, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) alleged, in the following terms that he was assaulted as he lay on the ground at the collection point:

*"They hit me, by words, by hands. Mostly that pained me was the words, the 'fucking', and the 'shut up'. It was an inward kind of pain. This is the most important source of pain. After, I understood what 'shut up' and 'fuck you' means. That was a mistake. He did to us an injury."*¹⁸⁶⁷

2.1435 A similar allegation was made in Ibrahim Al-Ismaeeli's first Inquiry statement:

¹⁸⁶⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/33/15]–[34/6]

¹⁸⁶⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/13/8-10]

¹⁸⁶⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/48/15-20]

“Whenever I tried to look up they hit me and I was forced to lie back down. I was not blindfolded.”¹⁸⁶⁸

2.1436 It is possible that Ibrahim Al-Ismaeeli heard swearing as described at this location. It seems to me far from clear, however, that such swearing was directed at him. In any event, such swearing would seem at worst to represent a minor breach of discipline. It would certainly fall some way short of ill-treatment as envisaged by the terms of reference.

2.1437 As I have set out earlier in this Report I accept that the detainees were made to lie face down at the collection point. This was a sensible step, taken on the instruction of WO2 David Falconer to prevent the detainees, including Ibrahim Al-Ismaeeli from escaping and to prevent them from discovering the number and location of soldiers guarding them.

2.1438 I am satisfied that no more force than that outlined by WO2 Falconer was used against the detainees at this location. Insofar as Ibrahim Al-Ismaeeli has alleged gratuitous assaults at this location or the use of excessive force against him, I am satisfied that these represent exaggerations on his part and are not true.

Allegation (f) – that Ibrahim Al-Ismaeeli (detainee 774) was dragged such that he sustained injury

2.1439 During oral evidence, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was shown a photograph of himself taken when he was processed at Camp Abu Naji (MOD032673) on 14 May 2004 . He was asked to comment regarding an abrasion on his left cheek. He stated:

“That is a trace of a beating, or maybe that was the trace of the dragging. There was only a similar injury in my back. Abrasions were all over my body as a result of the dragging.”¹⁸⁶⁹

2.1440 I have been unable to identify exactly where in the chronology Ibrahim Al-Ismaeeli claims that this dragging occurred. Nevertheless, I address it here as an allegation made about an event as some point between his capture and his arrival at Camp Abu Naji.

2.1441 I have carefully considered the photograph, MOD032673. The quality of the photograph is such that I am unable to say with any certainty whether it shows an injury to Ibrahim Al-Ismaeeli’s left cheek. Significantly, the photograph, MOD048736, was taken on 15 May 2004 at the Divisional Temporary Detention Facility (“DTDF”). In that photograph, there is no visible injury to Ibrahim Al-Ismaeeli’s left cheek. Accordingly, any apparent marking seen on the photograph, MOD032673, must either have been a very minor injury which healed in less than 24 hours or some form of blemish on the photograph. In either case, it seems to me that it cannot have been an injury caused either by beating or by being dragged.

2.1442 I note also that, when Ibrahim Al-Ismaeeli was medically examined by both Corporal Shaun Carroll at Camp Abu Naji¹⁸⁷⁰ and Major David Winfield at the DTDF,¹⁸⁷¹ neither identified an injury to his right cheek. Major Winfield identified superficial abrasions to Ibrahim Al-Ismaeeli’s stomach, right thigh and left elbow, as well as a slightly deeper cut to his right knee.¹⁸⁷² It seems to me much more likely that these abrasions were sustained as a result of Ibrahim

¹⁸⁶⁸ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001069) [46]

¹⁸⁶⁹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/56/21-24]

¹⁸⁷⁰ (MOD043476)

¹⁸⁷¹ (MOD043507)

¹⁸⁷² Ibid.

Al-Ismaeeli's participation in the armed engagement with inadequate protective equipment rather than as a result of being dragged at an unspecified point by British troops.

2.1443 I am satisfied, therefore, that this allegation was fabricated by Ibrahim Al-Ismaeeli (detainee 774) as he gave his oral evidence.

Allegation (g) – that soldiers stole money from Ibrahim Al-Ismaeeli (detainee 774)

2.1444 Whilst Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was in custody at the Divisional Temporary Detention Facility ("DTDF") at Shaibah, he complained to the 'Commandant' that \$200 in cash had been taken from him by the soldiers who captured him.¹⁸⁷³ Ibrahim Al-Ismaeeli repeated this allegation to the Royal Military Police ("RMP") when he was interviewed in July 2004. On this occasion, he explicitly ruled out the possibility that the money had fallen out of his pocket on the battlefield.¹⁸⁷⁴

2.1445 This allegation was not made in Ibrahim Al-Ismaeeli's (detainee 774) accounts to the Administrative Court or his first Inquiry statement. He partially retracted the allegation in his second Inquiry statement as follows:

"When the dollars were not shown as included in my property my first thought was that it had been stolen by the soldiers who detained me on 14 May. I spoke about this to the other detainees and one said that if I put in a claim for the amount then I would be paid this sum. I agreed as I was angry about the loss of the dollars. The detainee who made the suggestion then wrote out the claim and I followed it up. The Inquiry will be aware that I raised this issue with the military police in interview on 26 July 2004. I recognise now that it is possible the money fell from my pocket before my detention (although unlikely as I think it was in a zip pocket) but there is a history of thefts by British troops while making arrests."¹⁸⁷⁵

2.1446 During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli went further in his retraction:

"Q. Can I deal, then, please, with the allegation of theft that you made against the British soldiers? You told the Royal Military Police that you had \$200 stolen from you by the British soldiers who captured you. Do you remember making that allegation?"

A. I remember saying that. My aim was to defame the British forces inside the prison in light of the atrocities we faced from them. So that's why we did what we did – I said what I said.

Q. Do I take it from that you accept that the allegation was untrue?"

A. The allegation was not true, but I don't read or write."¹⁸⁷⁶

2.1447 This again demonstrates a truly lamentable approach to the making of false allegations on the part of Ibrahim Al-Ismaeeli (detainee 774). He explained to me during oral evidence that he falsely made allegations of theft against British troops and allowed them to subsist by way of retribution for what he perceived to be injustices on the part of unspecified British troops. I have no hesitation in finding that no money was stolen from Ibrahim Al-Ismaeeli by the soldiers who arrested him.

¹⁸⁷³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD043525)

¹⁸⁷⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD002975-77)

¹⁸⁷⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000437-38) [34]

¹⁸⁷⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/6/10-20]

Some general observations about Ibrahim Gattan Hasan Al-Ismaeeli’s (detainee 774) evidence

- 2.1448** I wish to take this opportunity to reflect briefly upon the findings which I have made regarding Ibrahim Gattan Hasan Al-Ismaeeli’s evidence about his presence on the battlefield and the allegations which he made during and after his capture. I have found on a number of occasions that Ibrahim Al-Ismaeeli has told deliberate and calculated lies in relation to these matters.
- 2.1449** Those representing the Iraqi Core Participants provided measured and helpful Closing Submissions regarding Ibrahim Al-Ismaeeli in which they made a number of realistic concessions. Those submissions also invited a “*sympathetic reading*” of Ibrahim Al-Ismaeeli’s evidence as a result of the fact that many of the allegations relate to incidents which occurred shortly after he had witnessed the violent death of his cousin and shortly after he himself had sustained a painful injury.
- 2.1450** I have taken account of both of those facts when making the findings which I have above and accept that both would have impacted on the quality of his evidence in any event. Nevertheless, I simply do not accept that either fact can in any way explain, let alone justify, the falsehoods in his evidence which I have identified. On the contrary, I find that Ibrahim Al-Ismaeeli has adopted a lamentable approach to giving evidence about these matters. He has shown himself to be, willing at each stage to tell deliberate and calculated lies, motivated both by the desire to absolve himself from blame and to implicate British troops in wrongdoing, in order to exact retribution for perceived injustices at the wider conflict in Iraq.

The capture and handling of Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777)**Summary of the military evidence relating to the capture and presence on the battlefield of Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777)**

- 2.1451** As I set out previously in this Report, I am satisfied that Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777) were the two insurgent gunmen who surrendered to WO2 David Falconer on the afternoon of 14 May 2004, shortly after he had completed the sweep of Trench 1. In his written Inquiry statement, WO2 Falconer described how he had first encountered the two gunmen, as follows:

“...I spotted movement to my right (i.e. to the south) and saw two more insurgents. One was quite plump and the other was quite skinny. They were about five metres away. One of them was armed with an RPG launcher armed with a grenade and he wore canvas chest webbing carrying AK47 magazines. The other had an AK47 rifle and the same type of webbing carrying magazines. I cannot now recall which one had which weapon but I note in my Second RMP Statement that I said that prisoner 090776 (the plump insurgent) had the RPG and prisoner 090777 (the skinny insurgent) had the AK47, and I have no reason to doubt my earlier account...The plump insurgent was in his mid-thirties and the skinny man was younger.”¹⁸⁷⁷

- 2.1452** WO2 Falconer then went on to describe how the two men had surrendered to him, dropping their weapons as they did so. Lance Corporal Brian Wood and Private Maciou Tatawaqa had both been nearby at the time and had assisted in the capture and detention of the two men. Both agreed that the men had surrendered and were then escorted to the collection point

¹⁸⁷⁷ WO2 Falconer (ASI020208) [94]

near WOC. However, there were some understandable differences of detail in their individual accounts of the exact circumstances of the capture of the two insurgents. Unsurprisingly, all three soldiers explained that they now had some difficulty in recalling the precise details of the incident.¹⁸⁷⁸ However, it seems to me that, when their evidence is considered as a whole, a fairly clear picture of what actually happened does emerge, as I set out in the paragraphs that follow.

2.1453 WO2 Falconer had felt somewhat isolated when he first encountered the two insurgents. He therefore called to Private Tatawaqa for assistance.¹⁸⁷⁹ When Private Tatawaqa arrived at the scene, he searched the detainees and removed their chest webbing.¹⁸⁸⁰ In the statement that he gave to the Royal Military Police (“RMP”) Private Tatawaqa said that he had immediately handcuffed and blindfolded the men, before escorting them to the collection point beside WOC.¹⁸⁸¹ In his statement to the RMP, WO2 Falconer said that the two detainees had been handcuffed immediately. However, he was sure that the detainees had not been blindfolded before they were escorted to the collection point,¹⁸⁸² because he wanted them to be able to see where they were going as they crossed the rough ground.¹⁸⁸³

2.1454 All three military witnesses confirmed that both Abbas Al-Hameedawi and Ahmed Al-Furaiji had been heavily armed at the time. Thus WO2 Falconer described how Abbas Al-Hameedawi had been armed with a rocket-propelled grenade (“RPG”) launcher and had been carrying AK47 magazines in his chest webbing. WO2 Falconer said that Ahmed Al-Furaiji had been armed with an AK47 rifle and had also been carrying magazines in his chest webbing.¹⁸⁸⁴

2.1455 The military witnesses were similarly consistent in their description of the place where the two insurgents had surrendered as being in or very close to Trench 1. As I have already made clear, I have no doubt that Trench 1 was a position from which a great deal of hostile fire had been directed at British forces by the armed insurgents who had been involved in the planned ambush that they had carried out that day.

The account given by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) to explain his presence on the battlefield on 14 May 2004

2.1456 In his various accounts of the events of 14 May 2004, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) consistently stated that he had been present on the battlefield because he had been engaged in carrying out various agricultural activities. However, some of the details in his accounts were markedly different. These differences mainly concerned the following matters, which I will deal with in turn:

- a. the number of other Iraqis who had been present in the fields with Abbas Al-Hameedawi (detainee 776);
- b. the presence of “Abu Ali”;
- c. the presence of Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2);
- d. the presence of Atheer Abdelameer Ja’far Sarout Al-Shweili (deceased 19).

¹⁸⁷⁸ WO2 Falconer (ASI020209) [96]

¹⁸⁷⁹ WO2 Falconer [146/65]

¹⁸⁸⁰ WO2 Falconer (ASI020209) [96]; Private Tatawaqa (MOD019280)

¹⁸⁸¹ Private Tatawaqa (MOD019280)

¹⁸⁸² WO2 Falconer (ASI020209) [96]

¹⁸⁸³ Ibid.

¹⁸⁸⁴ WO2 Falconer (ASI020208) [94]

- e. the distance Abbas Al-Hameedawi had been from the scene of the battle; and
- j. the precise nature of the agricultural work he had been carrying out that day.

(a) The number of other Iraqis in the fields that day

2.1457 In his third written Inquiry statement, Abbas Abd Ali Abdulridha Al-Hameedawi gave the following account of what he had seen in the fields around him on 14 May 2004:

*“It was a normal day, everyone was working in their fields, everyone was busy. It was harvest time and therefore many people were in the fields. I would estimate around 20-30 people were there.”*¹⁸⁸⁵

2.1458 When he came to give his oral evidence to the Inquiry, Abbas Al-Hameedawi confirmed that there had been other farmers in the area, but he was unable to recall whether his estimate as to their numbers had been correct.

(b) The presence of “Abu Ali”

2.1459 When he was interviewed by the Royal Military Police (“RMP”) in July 2004, Abbas Al-Hameedawi (detainee 776) seemed to suggest that there had been a man in the fields nearby whose name was “Abu Ali”.¹⁸⁸⁶ In his first written Inquiry statement, Abbas Al-Hameedawi stated that he could not remember having mentioned this name to the RMP and that he did not recognise the name.¹⁸⁸⁷

2.1460 However, in his third written Inquiry statement, Abbas Al-Hameedawi said that he did not know Abu Ali personally, but that he did recognise the name.¹⁸⁸⁸ Finally, during his oral evidence to the Inquiry, Abbas Al-Hameedawi said that he did not know the name Abu Ali.¹⁸⁸⁹

(c) The presence of Haydar Hatar Al-Lami (deceased 2)

2.1461 When he was interviewed by the Royal Military Police (“RMP”) in July 2004, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) made no mention of Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2) having been present at the scene. In his Judicial Review statement, Abbas Al-Hameedawi described how he had discussed with Haydar Al-Lami what they should do, once the firing started. Abbas Al-Hameedawi said that he knew the late Haydar Al-Lami “well” from Majar al’Kabir.¹⁸⁹⁰

2.1462 In his first written Inquiry statement, Abbas Al-Hameedawi also described how he had spoken to the late Haydar Al-Lami (deceased 2), although on this occasion Abbas Al-Hameedawi explained that he did not know Haydar particularly well, but that he knew his family better.¹⁸⁹¹ Abbas Al-Hameedawi said that he had not mentioned the late Haydar Al-Lami to the RMP because he was dead and he had not wanted to be reminded of his death.¹⁸⁹²

¹⁸⁸⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000470) [78]

¹⁸⁸⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (MOD032580)

¹⁸⁸⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000862) [24]

¹⁸⁸⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000457) [37]

¹⁸⁸⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/29/5-7]

¹⁸⁹⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000003) [8]

¹⁸⁹¹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000861) [20]-[21]

¹⁸⁹² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000862) [24]

2.1463 Abbas Al-Hameedawi's oral evidence to the Inquiry about this matter was somewhat confused and confusing. Initially, he said that he had not seen anybody at the farm whose name he knew.¹⁸⁹³ Then, when he was asked why he had not mentioned Haydar Al-Lami (deceased 2) to the RMP when he had been interviewed by them in July 2004, he said that: "*They didn't ask me about them.*"¹⁸⁹⁴ Initially, Abbas Al-Hameedawi's oral evidence to the Inquiry was that he had spoken to Haydar Al-Lami after the shooting started.¹⁸⁹⁵ However, later in his oral evidence, Abbas Al-Hameedawi said "*I never spoke to Haydar*".¹⁸⁹⁶

(d) The presence of Atheer Abdul-Amir Al-Ismaeeli (deceased 19)

2.1464 Abbas Abd Ali Abdulridha Al-Hameedawi's (detainee 776) evidence with regard to the late Atheer Abdelameer Ja'far Sarout Al-Shweili (deceased 19) followed a similar pattern to that in relation to the late Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2).

2.1465 In his Judicial Review statement, Abbas Al-Hameedawi described how he had discussed what to do with Atheer Al-Shweili (deceased 19).¹⁸⁹⁷ Similarly, in his first written Inquiry statement, Abbas Al-Hameedawi described a 10 to 15 minute conversation with Atheer Al-Shweili and explained that he had not mentioned Atheer Al-Shweili to the Royal Military Police ("RMP"), when they had interviewed him in July 2004, because he had not wanted to be reminded of his death.¹⁸⁹⁸

2.1466 However, when he came to give his oral evidence to the Inquiry, Abbas Al-Hameedawi seemed to change this particular aspect of his evidence completely, as follows:

*"Yes, but I didn't know Atheer. He wasn't in any way near me in the farm and I wonder where they brought these words from."*¹⁸⁹⁹

2.1467 He then went on to say that he did not even know what Atheer Al-Shweili (deceased 19) actually looked like.¹⁹⁰⁰

(e) Abbas Al-Hameedawi's (detainee 776) distance from the scene of the fighting

2.1468 When he was interviewed by the Royal Military Police ("RMP") in July 2004, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) said that he had been about 1.5 kilometres from the battle.¹⁹⁰¹ In his Judicial Review statement, Abbas Al-Hameedawi estimated this distance to be about 500 metres.¹⁹⁰² Finally, in his oral evidence to the Inquiry, Abbas Al-Hameedawi said that he was unable to estimate the distance.¹⁹⁰³

(f) The nature of his agricultural tasks

2.1469 Whilst he was still being detained at the Divisional Temporary Detention Facility ("DTDF") at Shaibah, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) wrote to the camp

¹⁸⁹³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/6/14-15]

¹⁸⁹⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/31/21]

¹⁸⁹⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/30/22]-[31/2]

¹⁸⁹⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/102/14]

¹⁸⁹⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000003) [8]

¹⁸⁹⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000861-62) [20]-[24]

¹⁸⁹⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/32/9-11]

¹⁹⁰⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/11/1-4]

¹⁹⁰¹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (MOD032574)

¹⁹⁰² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000002) [6]

¹⁹⁰³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/35/8-14]

Commandant and said that he had been at the farm “*planting the wheat and barley*”.¹⁹⁰⁴ However, during his oral evidence to the Inquiry, he said that he had been harvesting his crops and not planting them. He was unable to explain why the wrong expression had been used in the letter.¹⁹⁰⁵

The account given by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) of the circumstances of his capture by British soldiers on 14 May 2004

2.1470 Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) described how he had been arrested after the main part of the battle had finished. He claimed that he had been arrested by three soldiers, namely one tall black soldier and two white soldiers. He said that the soldiers had found him hiding in a ditch.¹⁹⁰⁶

2.1471 During his oral evidence to the Inquiry, Abbas Al-Hameedawi said that he had not seen the soldiers approach him.¹⁹⁰⁷ However, this was in conflict with his Judicial Review statement, in which he said this:

*“A British armoured vehicle then came onto the dust track and travelled past me and then travelled along on a further dust track behind me. It stopped some distance from me and three soldiers got out of the vehicle and approached me. I had my head out of the ditch and I saw them coming. One soldier was pointing a rifle at me and another two soldiers came over to arrest me. The soldier who was pointing the rifle at me was a black man.”*¹⁹⁰⁸

2.1472 Abbas Al-Hameedawi denied that he had been found with a rocket-propelled grenade launcher and he denied that he had been with Ahmed Jabbar Hammood Al-Furaiji (detainee 777) when he was arrested. He claimed that he had been alone and that he had been holding a sickle when the soldiers found him.¹⁹⁰⁹

2.1473 Abbas Al-Hameedawi described how one of the soldiers had shouted at him and had gestured to him that he should stand up, get out of the ditch and then lie down on the ground.¹⁹¹⁰ In his third written Inquiry statement, Abbas Al-Hameedawi said that he had been handcuffed behind his back, before being pushed to the ground.¹⁹¹¹ However, at the beginning of his oral evidence to the Inquiry, Abbas Al-Hameedawi said that he had been handcuffed while he was lying on the ground. When this inconsistency was drawn to his attention, Abbas Al-Hameedawi confirmed that the account given in his third written Inquiry statement was correct. He said that he had been handcuffed before he was pushed to the ground and that as a result, he had been unable to use his hands to break his fall.¹⁹¹²

2.1474 Abbas Al-Hameedawi described how he had been blindfolded at the point of capture as soon as he was searched.¹⁹¹³ He also described having been escorted quickly from the point of

¹⁹⁰⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (MOD043642)

¹⁹⁰⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/25-26]

¹⁹⁰⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/10/20]-[11/10]

¹⁹⁰⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/50]

¹⁹⁰⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000004) [10]

¹⁹⁰⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/105/14-21]

¹⁹¹⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/11/11-17]

¹⁹¹¹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000471) [82]

¹⁹¹² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/42]

¹⁹¹³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/61-62]

capture to the collection point, with a soldier grabbing each side of him whilst doing so, and moving so fast that his feet could not keep up.¹⁹¹⁴

2.1475 I will set out the details of Abbas Al-Hameedawi's various allegations of ill-treatment, that he claims to have suffered at the hands of British soldiers when captured, and my conclusions with regard to each of them later in this Chapter.¹⁹¹⁵

The account given by Ahmed Jabbar Hammood Al-Furaiji (detainee 777) to explain his presence on the battlefield on 14 May 2004

2.1476 Over time, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) has made a number of statements in which he has given an account of the events with which this Inquiry is concerned. He also travelled to London in April 2013 in order to give oral evidence to the Inquiry. Unfortunately, when he arrived in the United Kingdom, Ahmed Al-Furaiji became unwell and was not fit enough to give detailed evidence to the Inquiry. However, he was able to take the oath in public at the Inquiry Hearing Room and he then confirmed the truth of the two written statements that he had already prepared for the purposes of giving evidence to the Inquiry.¹⁹¹⁶ I have therefore proceeded on the basis that Ahmed Al-Furaiji's two written Inquiry statements represent his current evidence about the events in question. I have noted any inconsistencies between the accounts given in those two statements and any of Ahmed Al-Furaiji's previous accounts, whilst recognising that his health problems prevented him from providing any explanation for or clarification of those inconsistencies.

2.1477 In his first written Inquiry statement, Ahmed Al-Furaiji said that he had taken a day off school on 14 May 2004. He described how he had left home with his sister at about 08:00 hours and had gone to the house of his friend and neighbour, Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2). Ahmed Al-Furaiji explained that he had been paying the late Haydar Al-Lami to help him cultivate and harvest his farmland and that he and his sister had gone to Haydar Al-Lami's house to pick him up for that reason.¹⁹¹⁷

2.1478 Ahmed Al-Furaiji (detainee 777) claimed that he and Haydar Al-Lami (deceased 2) had carried scythes to the farm that day, but said that they had not taken any guns with them. However, he accepted that he did keep a Kalashnikov rifle at home for the purpose of self-defence.¹⁹¹⁸ According to Ahmed Al-Furaiji, he had been wearing light grey trousers and a yellow and blue t-shirt on 14 May 2004.¹⁹¹⁹

2.1479 Ahmed Al-Furaiji (detainee 777) said that the three of them had remained in the field and had lunch together. According to Ahmed Al-Furaiji, his sister had returned home shortly after lunch, whilst he and the late Haydar Al-Lami (deceased 2) had carried on working at the farm. He said that he had then heard the first shots a short time later.¹⁹²⁰ However, this account differed from the account that he had given to the Royal Military Police ("RMP"), when they interviewed him in July 2004. In the account given to the RMP, Ahmed Al-Furaiji described how he had been alone at the farm on 14 May 2004.¹⁹²¹

¹⁹¹⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/12/2-6]

¹⁹¹⁵ From paragraph 2.1490

¹⁹¹⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [17/80-82]

¹⁹¹⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000877) [10]

¹⁹¹⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000877) [11]-[12]

¹⁹¹⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000877) [14]

¹⁹²⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000878) [17]-[18]

¹⁹²¹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (MOD030778)

The account given by Ahmed Jabbar Hammood Al-Furaiji (detainee 777) of the circumstances of his capture by British soldiers on 14 May 2004

2.1480 In his first written Inquiry statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) described how he had heard gunfire, but went on to say that he had been unable to tell where it was coming from or who was firing. He said that Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2) had become frightened and wanted to return home, but that he, Ahmed Al-Furaiji, had insisted that they carry on working.¹⁹²²

2.1481 Ahmed Al-Furaiji (detainee 777) said that the firing had become more intense and that four or five British armoured vehicles had then arrived.¹⁹²³ Ahmed Al-Furaiji described how the firing had become still more intense and claimed that he had seen a helicopter overhead.¹⁹²⁴ Ahmed Al-Furaiji said that he had then lain on the ground and that Haydar Al-Lami (deceased 2) had begun to crawl away. According to Ahmed Al-Furaiji, he then lost sight of Haydar Al-Lami, until he saw him later lying injured beside a military vehicle.¹⁹²⁵

2.1482 Ahmed Al-Furaiji said that, after he had been lying on the ground for about three to four hours, he saw some British soldiers coming from the direction of Route 6. According to Ahmed Al-Furaiji, the soldiers had been both in and walking beside armoured vehicles that were being used to cordon off the area.¹⁹²⁶ He then gave the following succinct account of how he was captured:

“Six infantry soldiers approach [sic] me. I was lying on the ground. One of the soldiers pointed his gun at my forehead. One soldier kicked me in the back and another kicked me in the head.”¹⁹²⁷

2.1483 Ahmed Al-Furaiji also confirmed that the following account,¹⁹²⁸ that he had given in his 2008 Judicial Review statement, was true:

“A number of soldiers approached. They were pointing their guns at me. One of them was a black soldier. He was muscular. I would say he was about 5 feet 8 inches tall. Also there was a tall white soldier. He was about 6 feet tall. He looked like a senior person. I say this because he was certainly older than the other soldiers. He was clean shaven and had neither a fat or thin face.

The soldiers were shouting at me. When they came close I raised my hands in surrender. They circled me and one of the soldiers kicked me with his boot in my back and I fell on my face. Another put his boot on the back of my head and ground my face into the earth. This caused my face to be cut. Another soldier hit me with a rifle butt on the right side of my temple. Blood began to flow over my face and over my clothes. They handcuffed me behind my back. I was not blindfolded.”¹⁹²⁹

¹⁹²² Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000878) [18]-[20]

¹⁹²³ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000878) [21]-[22]

¹⁹²⁴ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000878) [24]

¹⁹²⁵ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000879) [25]-[26]

¹⁹²⁶ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000879) [27]-[30]

¹⁹²⁷ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000879) [31]

¹⁹²⁸ Ibid.

¹⁹²⁹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006720) [6]-[7]

Conclusions of fact about the reasons for the presence of Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777) on the battlefield on 14 May 2004 and the circumstances of their capture by British soldiers that day

2.1484 I have no doubt that both Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777) were present at the scene of the Northern Battle on 14 May 2004 as willing and active participants in the carefully planned armed ambush of British forces that was carried out by Iraqi insurgents that day. Neither Abbas Al-Hameedawi nor Ahmed Al-Furaiji gave a truthful account of the reasons for his presence on the battlefield and the circumstances of his capture by British soldiers on 14 May 2004. In contrast, I have no doubt that the substance of the military evidence about these matters was both truthful and accurate, as detailed in the paragraphs that follow.

2.1485 First, I have no doubt that Abbas Al-Hameedawi and Ahmed Al-Furaiji were both heavily armed at the point of capture, as described in some detail by the military witnesses who had been involved in their capture. In his evidence, WO2 David Falconer went so far as to observe that Abbas Al-Hameedawi had been armed with a rocket-propelled grenade launcher and Ahmed Al-Furaiji with an AK47. I accept the truth and accuracy of that evidence. However, Abbas Al-Hameedawi and Ahmed Al-Furaiji each denied having been armed at the scene of the engagement. In doing so, each of them deliberately lied, in a vain attempt to conceal the fact of his actual participation in the armed ambush of British forces that day.¹⁹³⁰

2.1486 Second, I am satisfied that Abbas Al-Hameedawi and Ahmed Al-Furaiji were together when they were captured. The three military witnesses, who gave evidence about the capture of these two gunmen, consistently described finding them as a pair.¹⁹³¹ I accept the truth and accuracy of that evidence. In contrast, neither Abbas Al-Hameedawi nor Ahmed Al-Furaiji made any mention of the other having been present when he was captured. Instead, each claimed to have been entirely alone when captured. In doing so, each deliberately lied and, no doubt, each did so as part and parcel of his false account of having been present at the scene of the engagement in order to carry out various agricultural tasks. Abbas Al Hameedawi also sought to bolster this false account by lying about how far he had been from the fighting and about the presence of other farmers in the fields around him that day, including one called "Abu Ali" (in his 2004 RMP interview). I have no doubt that Abbas Al-Hameedawi was actively engaged in the ambush of the British troops on 14 May 2004 and I am sure that there were no farmers present in the area around trench 1, from a time well before the ambush actually started that day. Abbas Al-Hameedawi also lied when he claimed to have spoken to Haydar Al-Lami (deceased 2) and Atheer Al-Ismaeeli (deceased 19) that day. Again, he did so in order to bolster his false account of having been at the scene of the engagement in order to carry out various agricultural tasks.

2.1487 Similarly, I have do doubt that Ahmed Al-Furaiji deliberately lied about having gone to the farm with this sister and Haydar Al-Lami (deceased 2) on 14 May 2004 and that he and Haydar Al-Lami had worked together at the farm until the firing started. He told these lies in order to bolster his false account of having been at the scene of the engagement in order to carry out various agricultural tasks. In reality, Ahmed Al-Furaiji was there as an armed insurgent, in order to participate in the ambush of British troops planned for that day. Haydar Al-Lami was also involved in the same ambush, but was located elsewhere on the battlefield i.e. in the Storm Drain Position, where he was mortally wounded.¹⁹³²

¹⁹³⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/22]; Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000877) [11]

¹⁹³¹ WO2 Falconer (ASI020208) [94]; Private Tatawaqa (MOD019280); Lance Corporal Wood [92/75]

¹⁹³² See paragraph 2.906

2.1488 Third, the military witnesses all gave evidence that Abbas Al-Hameedawi and Ahmed Al-Furaiji had been captured in or close to a part of Trench 1, which had been the source of a considerable amount of the insurgent fire that had been directed at the British forces that day. However, Abbas Al-Hameedawi sought to distance himself from the fighting and variously estimated his distance from the battle as being from around 500m (in his Judicial Review statement¹⁹³³) to 1.5 kilometres (in the account that he gave to the Royal Military Police [“RMP”] in July 2004).¹⁹³⁴ This was a deliberate lie, obviously intended to place Abbas Al-Hameedawi as far as possible from the centre of the fighting. However, for his part, Ahmed Al-Furaiji claimed that, by the time he came to be captured, there had been some firing in his direction.¹⁹³⁵

2.1489 I have no doubt that, in reality, Abbas Al-Hameedawi and Ahmed Al-Furaiji were together in Trench 1 or in a position very close to it, during the planned ambush of and armed attack on British troops by Iraqi insurgents on 14 May 2004. They were there as part of a large force of insurgents who were intent upon carrying out that ambush and attack. I am sure that they both then actively participated in the ambush and the resulting battle. It seems to me likely that, once they realised that most, if not all, of their fellow insurgents in that area were either dead or captured or had made off and that there were a significant number of British troops nearby, they surrendered to the nearest soldiers. Those soldiers happened to be WO2 Falconer, Lance Corporal Brian Wood and Private Maciou Tatawaqa.

Allegations made by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

2.1490 Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) has given a number of accounts of the events of 14 May 2004. At times, his accounts have been somewhat inconsistent and/or unclear as to precisely what his allegations of ill-treatment by British soldiers were. However, with the assistance of the written Closing Submissions by the Core Participants, I have identified the following six allegations, concerning the ill-treatment by British soldiers that Abbas Al-Hameedawi claims to have suffered, from the time of his capture until he arrived at Camp Abu Naji:

- a. that he was kicked in the head by a black soldier at the point of capture;
- b. that he was struck with the butt of a rifle as he was taken from the point of capture to the collection point beside WOC;
- c. that he was dragged to the collection point at such a pace that he lost his footing and his feet dragged along the ground;
- d. that he was pushed to the ground at the point of capture and at the collection point;
- e. that he was slapped whilst in the Warrior AIFV when he asked for water; and
- k. that he could hear the sounds of moaning in the Warrior AIFV.

2.1491 In the paragraphs that follow, I will deal in turn with each of these allegations of ill-treatment made by Abbas Al-Hameedawi.

¹⁹³³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000002) [6]

¹⁹³⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (MOD032574)

¹⁹³⁵ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000878) [21]

Allegation (a) – that Abbas Al-Hameedawi (detainee 776) was kicked in the head by a black soldier at the point of capture

2.1492 In a number of different written accounts, Abbas Abd Ali Abdulridha Al-Hameedawi consistently described having been kicked in the head by a black soldier whilst being captured on 14 May 2004. In his Judicial Review statement, Abbas Al-Hameedawi said this:

“Whilst I was looking at the black soldier he came rushing over to me and straight away kicked me hard in the head. It was an extremely hard kick to my head – I was lying on my front with the right side of my face on the floor.”¹⁹³⁶

2.1493 In his first written Inquiry statement, Abbas Al-Hameedawi repeated the allegation and added the detail that he had been kicked on his left temple.¹⁹³⁷ In his second written Inquiry statement, Abbas Al-Hameedawi dealt with this aspect of the allegation in the following terms:

“I have been asked about the injury I sustained to my head following my arrest. I have previously described in detail my arrest but now wish to clear up some confusion about exactly where in the head I was kicked by one of the soldiers arresting me. It was on the top right side of my head, just on the hairline. He kicked my head with his right foot. It caused bruising. It left me dizzy and dazed but I did not lose consciousness. I was lying face down on the floor, handcuffed but not blindfolded when I was kicked. Confusion exists in my previous account as to where exactly on my head I was kicked, one account indicates the blow was to the left temple. I am adamant that the record in this statement is true and cannot account for the other descriptions indicating that I was kicked on the left hand side of my head. Perhaps this was an error in typing or translation.”¹⁹³⁸

2.1494 He went on to explain that the soldier who kicked him had run at him from a distance of around three metres and that he had drawn his foot back between 25 and 50 centimetres in the act of kicking.¹⁹³⁹

2.1495 Finally, in his third written Inquiry statement, Abbas Al-Hameedawi said this:

“In my second Inquiry witness statement at paragraph 23 (twenty-three) I confirm that when I was kicked by the soldier when arrested on the farm land and that I was struck on the right side of my head. I have reflected further on this while my previous witness statements have been read to me. While talking in depth of my arrest where I have provided more detail than previously. I now acknowledge that in my first Inquiry statement at paragraph 31 (thirty-one), where I state that I was struck on the left side of my head is correct. I was struck between the hairline and top of my head on the left hand side.”¹⁹⁴⁰

2.1496 During his oral evidence to the Inquiry, Abbas Al-Hameedawi maintained that he had been kicked on the left side of his head.¹⁹⁴¹

¹⁹³⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000004) [10]

¹⁹³⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000862) [31]

¹⁹³⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004765-66) [23]

¹⁹³⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004766) [26]

¹⁹⁴⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000467) [71]

¹⁹⁴¹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/54-55]

- 2.1497** I have no doubt that this allegation is untrue and have come to that conclusion for three main reasons, as detailed in the paragraphs that follow.
- 2.1498** First, in my view, Abbas Al-Hameedawi’s obvious difficulty in remembering which side of his head had actually been kicked in this fashion, was a clear indication that the allegation was an invention on his part. In each of his accounts, Abbas Al-Hameedawi was describing a very serious assault, of a nature that the victim would be likely to remember in some detail. I do not accept that Abbas Al-Hameedawi would have had any difficulty in remembering which side of his head had been kicked, if the allegation had been true.
- 2.1499** Second, there is no support for this particular allegation in either the photographic or the medical evidence relating to Abbas Al-Hameedawi. Neither Corporal Shaun Carroll at Camp Abu Naji¹⁹⁴² nor Major David Winfield at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah¹⁹⁴³ found that there was any injury to Abbas Al-Hameedawi’s head, when they examined him on 14 and 15 May 2004 respectively. In my view, it is inconceivable that both men would have failed to notice the sort of injury to Abbas Al-Hameedawi’s head that would have been the likely result of having been kicked hard with a military boot. There was no such injury to be seen, because there had been no such kick to the head.
- 2.1500** Furthermore, Abbas Al-Hameedawi’s photograph had been taken on his arrival at the DTDF at Shaibah on 15 May 2004. I have studied the photograph carefully and it is shown at Figure 56 below. In my view, if Abbas Al-Hameedawi really had been kicked hard in the head as alleged, at the very least there would have been some evidence of bruising and/or swelling to be seen that photograph, but there is none.

Figure 56: MOD048740



¹⁹⁴² (MOD043604)

¹⁹⁴³ (MOD043628)

2.1501 Third, Abbas Al-Hameedawi made no absolutely mention of this particular allegation, when he was interviewed by the Royal Military Police (“RMP”) in July 2004. On the contrary, Abbas Al-Hameedawi told the RMP that the arresting soldiers had not hurt or beaten him.¹⁹⁴⁴

Allegation (b) – that Abbas Al-Hameedawi (detainee 776) was struck with the butt of a rifle as he was taken from the point of capture to the collection point beside WOC

2.1502 In his 2008 Judicial Review statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) provided the following description of how he had been moved from where he was captured to the collection point near WOC:

“Then they picked me up by my arms and dragged me for about 500 metres to the armoured vehicle on route 06. During this time I was hit in the back of the left shoulder with a rifle butt.”¹⁹⁴⁵

2.1503 Abbas Al-Hameedawi repeated this particular allegation in his first written Inquiry statement in 2010, with the added detail that the blow or blows had caused an injury to his shoulder that had continued to trouble him up to the time he had signed the statement.¹⁹⁴⁶

2.1504 In his third written Inquiry statement, Abbas Al-Hameedawi explained that the allegation that he had been struck with a rifle butt, whilst being moved to the collection point near WOC, had been based on an assumption on his part to some extent, as follows:

“While being dragged along I felt a painful blow to the back of my left shoulder. It felt as though I had been hit by a heavy object and I thought I must have been struck with a rifle butt.”¹⁹⁴⁷

2.1505 Abbas Al-Hameedawi maintained this particular allegation during his oral evidence to the Inquiry.¹⁹⁴⁸

2.1506 In his third written Inquiry statement, Abbas Al-Hameedawi was adamant that the blow or blows from the rifle butt had caused an injury to his shoulder.¹⁹⁴⁹ When Abbas Al-Hameedawi’s third written Inquiry statement was taken and prepared, his legal representatives photographed an area of scarring on his shoulder.¹⁹⁵⁰ I have carefully considered the photograph, which is shown at Figure 57 below.

¹⁹⁴⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (MOD032583a)

¹⁹⁴⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000004) [10]

¹⁹⁴⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000863) [36]

¹⁹⁴⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000473) [86]

¹⁹⁴⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/12]

¹⁹⁴⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000452) [20]

¹⁹⁵⁰ (PIL000392)

Figure 57: PIL00392



2.1507 However, I do not accept that any sign of an injury, caused by a blow or blows from a blunt instrument such as a rifle butt, can be seen in the photograph in question. Whilst I accept that the photograph does appear to show some marks, in an area where the skin appears to have suffered some sort of abrasion, it does not seem to me that it has the appearance of marks or scars such as would be the likely result of a blow or blows inflicted by a blunt instrument.

2.1508 Neither Corporal Shaun Carroll at Camp Abu Naji,¹⁹⁵¹ nor Major David Winfield at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah,¹⁹⁵² found any injury to Abbas Al-Hameedawi’s (detainee 776) left shoulder that could be attributed to a blow from a rifle butt. Whilst Major Winfield did find some “*superficial abrasion*” in that area,¹⁹⁵³ it seems to me to be very unlikely that such an abrasion could have been caused by a blow from a rifle butt.

2.1509 According to Abbas Al-Hameedawi he drew Major Winfield’s attention to the injury to his left shoulder, during his medical examination DTDF at Shaibah on 15 May 2004. However, he did not tell Major Winfield how he had come to sustain this particular injury. In his third written Inquiry statement, Abbas Al-Hameedawi explained that his reason for not having told Major Winfield was as follows:

“I did not mention it as I was afraid and he was also in the military and I did not want to say that another soldier had beaten me, especially as other soldiers were in the room.”¹⁹⁵⁴

2.1510 However, during his oral evidence to the Inquiry, Abbas Al-Hameedawi put forward another reason for his reticence, as follows:

¹⁹⁵¹ (MOD043604)

¹⁹⁵² (MOD043628)

¹⁹⁵³ Ibid.

¹⁹⁵⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000449) [14]

*"It wasn't fear actually. He was not giving me any attention. He was just careless."*¹⁹⁵⁵

2.1511 In the event, I found Abbas Al-Hameedawi's evidence about this allegation to be thoroughly unsatisfactory. It is possible that Abbas Al-Hameedawi was struck or pushed from behind at some point, whilst being escorted from the point of capture to the collection point beside WOC.¹⁹⁵⁶ I am satisfied that any such blow or push would have been intended to keep him moving and would not have involved any significant violence. In the prevailing circumstances, it was important to move the prisoners quickly and efficiently to the comparative safety of the collection point. However, Abbas Al-Hameedawi was reluctant to move and did what he could to resist.¹⁹⁵⁷

2.1512 I am satisfied that, to the extent anything of this sort did occur whilst he was being moved to the collection point, Abbas Al-Hameedawi has considerably exaggerated what actually occurred. He also added the detail of having been struck with a rifle butt, without any proper basis for doing so. He wildly exaggerated the effect of any such physical contact, by falsely claiming that it had caused an injury that had persisted for six years after the incident. Furthermore, Abbas Al-Hameedawi was prepared to allow an entirely unrelated area of marking on his skin to be photographed and submitted to the Inquiry as evidence in support of that particular false claim.

Allegation (c) – that Abbas Al-Hameedawi (detainee 776) was dragged to the collection point at such a pace that he lost his footing and his feet dragged along the ground

2.1513 The details of this particular allegation were most clearly set out in Abbas Abd Ali Abdulridha Al-Hameedawi's third written Inquiry statement, as follows:

*"With a soldier on each side of me they ran me quickly in a direction. I could not tell where they were taking me as I was now blindfolded. They were going too fast and I could not keep up and my feet went from under me. They dragged me along the ground with my knees and the bottom of my legs and feet dragging behind me."*¹⁹⁵⁸

2.1514 As I have already indicated, I entirely accept that, given the prevailing circumstances, every effort would have been made to move Abbas Al-Hameedawi swiftly and without delay, from the point of capture to the comparative safety of the collection point near WOC. I have no doubt Abbas Al-Hameedawi was both unwilling and fearful at the time and that the escorting soldiers would have moved him firmly and robustly. Abbas Al-Hameedawi was not cooperative and did what he could to resist. The escorts and Abbas Al-Hameedawi would have had to cross rough and uneven ground, in order to get to the collection point near WOC, and it is certainly possible that he may have stumbled and that his feet were dragged along the ground at times.

2.1515 However, I am entirely satisfied that any such dragging of Abbas Al-Hameedawi's feet would have been intermittent and would not have been deliberately caused by any action on the part of the escorting soldiers. I very much doubt if it would have amounted to the sort of ill-treatment that is envisaged by the terms of reference.

¹⁹⁵⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/78/7-8]

¹⁹⁵⁶ Thus WO2 Falconer admitted that he had had to push Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) in order to make him move; WO2 Falconer (ASIO20209-10) [97] and paragraph 2.1514

¹⁹⁵⁷ Ibid.

¹⁹⁵⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000472) [86]

2.1516 Furthermore, it seems to me very likely that any dragging of Abbas Al-Hameedawi’s feet was caused almost entirely by his own unwillingness and his resistance to being moved by the soldiers. To the extent that Abbas Al-Hameedawi alleges that any dragging that took place was the result of deliberate ill-treatment on the part of the soldiers, the allegation was false and deliberately so. I accept the truth and accuracy of WO2 David Falconer’s description of Abbas Al-Hameedawi’s attitude and behaviour at the time, as follows:

“The plump insurgent was very reluctant to move. I had to place my hand between his shoulder blades and push him along to make him move. I had to do this all the way back. When we reached the culvert, I had to drag him down into it. He deliberately collapsed his legs when we were in it and sat down and would not move and I had to pick him up so that he was standing and push him across as I had done before. Once we reached the other side of the culvert the prisoner was still refusing to move, and I had to push him up the other side. As I have stated above, he was wearing flip flops, and one of these came off in the culvert. I left it where it was.”¹⁹⁵⁹

Allegation (d) – that Abbas Al-Hameedawi (detainee 776) was pushed to the ground at the point of capture and at the collection point near WOC

2.1517 In his third written Inquiry statement, Abbas Abd Ali Abdulridha Al-Hameedawi gave a description of how he had been pushed to the ground, both when he was first captured and when he arrived at the collection point near WOC.

2.1518 He first described what happened at the point of capture in the following terms:

“I was then pushed hard in the middle of my back and I fell to the floor hitting the right side of my face as I fell down. I somehow managed to prevent myself from hitting the ground too hard and did not sustain any injury to my face.”¹⁹⁶⁰

2.1519 He next described what happened when he arrived at the collection point near WOC, as follows:

“When I stopped I thought that I must be on the main road as I could hear vehicles passing by. As soon as I arrived at this location someone pushed down on my shoulder forcing me to the ground and then pushed me in the middle of my back and I fell again to the floor. Although I was forced to the floor it was not as rough as previously when I was first taken prisoner.”¹⁹⁶¹

2.1520 In the statement that he made to the Royal Military Police (“RMP”) on 22 May 2004, WO2 David Falconer described how Abbas Al-Hameedawi had been forced to the ground when first captured, handcuffed to the rear and then moved “quickly and firmly” to the collection point near WOC.¹⁹⁶²

2.1521 Private Carl Pritchard confirmed that he had been the soldier who made Abbas Al-Hameedawi lie on the ground at the collection point.¹⁹⁶³ During his oral evidence to the Inquiry, Private Pritchard described how he had made Abbas Al-Hameedawi lie down, as follows:

¹⁹⁵⁹ WO2 David Falconer (ASI020209-10) [97]

¹⁹⁶⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000471) [82]

¹⁹⁶¹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000473) [87]

¹⁹⁶² WO2 David Falconer (MOD022450)

¹⁹⁶³ Private Pritchard’s identification evidence of Abbas Al-Hameedawi (detainee 776) was a little unclear, however, when he was shown the photograph (MOD048740) he confirmed that this was the detainee to whom he was referring

“That manifested for me having my arm underneath his arm and me using my right knee to push the back of his left leg forward, in effect pushing his knee outwards to help him go down.”¹⁹⁶⁴

2.1522 Private Pritchard stressed that he had not applied much force to the back of Abbas Al-Hameedawi’s knee and that, once Abbas Al-Hameedawi realised that he was going to be made to lie on the ground, he had complied.¹⁹⁶⁵ Private Pritchard described the way in which Abbas Al-Hameedawi actually went down on to the ground in the following terms:

“He went down to his knees and then we lowered him the rest of the way. And then once the detainee was on his belly, as it shows in the picture,¹⁹⁶⁶ we crossed their legs.”¹⁹⁶⁷

2.1523 It is clear that Abbas Al-Hameedawi was made to lie on the ground both at the point of capture and at the collection point near WOC. I am also satisfied that Private Pritchard was the soldier involved in making Abbas Al-Hameedawi lie down at the collection point and that Private Pritchard gave a truthful and accurate description of how he achieved it.

2.1524 As I have already indicated,¹⁹⁶⁸ I am satisfied that the British soldiers (in particular WO2 Falconer) genuinely believed that, in the circumstances then prevailing, it was necessary for reasons of safety and security that the detainees (including Abbas Al-Hameedawi) should be moved quickly and firmly and, when stationary at the point of capture and/or at the collection point near WOC, that they should be made to lie face down on the ground. In addition, Abbas Al-Hameedawi did display a certain amount of reluctance and/or a lack of willingness to cooperate and it is likely that the soldiers involved in handling him felt that it was necessary to use a certain amount of force in order secure his compliance. However, I am quite satisfied that none of the force actually used was excessive in all the circumstances and that it was no more than was perceived to be necessary at the time.

Allegation (e) – that Abbas Al-Hameedawi (detainee 776) was slapped whilst inside a Warrior AIFV when he asked for water

2.1525 In his Judicial Review statement,¹⁹⁶⁹ Abbas Abd Ali Abdulridha Al-Hameedawi alleged that he had been repeatedly hit on the head with a water bottle, whilst being transported to Camp Abu Naji in the Warrior AIFV on 14 May 2004, as follows:

“After a while the vehicle moved off. During the journey a soldier hit me repeatedly on the top of my head with a water bottle. I could tell it was a water bottle from the sound it made.”¹⁹⁷⁰

2.1526 However, in his first written Inquiry statement, Abbas Al-Hameedawi changed his account, about what had happened inside the Warrior AIFV that day, and said this:

“I asked for water and said ‘mister, water?’ When I said this I was hit in the mouth with what felt like the back of someone’s hand, because I could feel the knuckles. I

¹⁹⁶⁴ Private Pritchard [80/75/9-12]

¹⁹⁶⁵ Private Pritchard [80/75/18]-[76/6]

¹⁹⁶⁶ A reference to (ASI007043)

¹⁹⁶⁷ Private Pritchard [80/76/8-11]

¹⁹⁶⁸ See paragraph 2.1511

¹⁹⁶⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (MOD006720) [7]

¹⁹⁷⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000005) [13]

sustained bruises to my mouth as a result of this blow. I heard the word ‘fucking’ twice. Nothing else happened whilst he were in the vehicle; I remained quiet as I was afraid.

My previous statement relates that I was hit on the head with a water bottle at this time but this in fact was at the camp.”¹⁹⁷¹

2.1527 In his second written Inquiry statement, Abbas Al-Hameedawi said that he believed that he had been hit with the back of a hand, but that he could not be sure because he had been blindfolded at the time.¹⁹⁷² In his third written Inquiry statement, Abbas Al-Hameedawi repeated the allegation and expressed some certainty about having been hit with the back of a hand.¹⁹⁷³ He maintained this allegation during his oral evidence to the Inquiry.¹⁹⁷⁴

2.1528 As I indicated earlier in this Report, Abbas Al-Hameedawi travelled back to Camp Abu Naji in W21 with Lance Corporal Kevin Wright and Private Maciou Tatawaqa.¹⁹⁷⁵ This allegation was put to both Lance Corporal Wright and Private Tatawaqa and both denied that anything of the sort had occurred during the journey.¹⁹⁷⁶ Lance Corporal Wright was adamant that no Iraqi in the rear of his Warrior had spoken any English at any time and that none of them had been able to make any gestures for water, because their hands were tied.¹⁹⁷⁷

2.1529 I am satisfied that the evidence of these military witnesses was both truthful and accurate. I am therefore satisfied Abbas Al-Hameedawi was not struck with either a water bottle or the back of a hand whilst being transported to Camp Abu Naji in the rear of W21 on 14 May 2004. I am satisfied that Abbas Al-Hameedawi did not tell the truth about this particular matter.

Allegation (f) – that Abbas Al-Hameedawi (detainee 776) heard the sounds of moaning inside the Warrior AIFV

2.1530 Abbas Abd Ali Abdulridha Al-Hameedawi consistently described having heard the sounds of moaning inside the Warrior AIFV, once he had been loaded into the vehicle.¹⁹⁷⁸ In his third written Inquiry statement, Abbas Al-Hameedawi suggested that the moaning might have come from Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2) but that he could not be certain that this was the case. In his third written Inquiry statement and during his oral evidence to the Inquiry, Abbas Al-Hameedawi also seemed to suggest that the person moaning had been complaining of stomach pains, rather than of pain elsewhere in his body.¹⁹⁷⁹

2.1531 In fact, there is no doubt that, if there were any sounds of moaning in the rear of W21 that day, they did not come from Hussein Al-Lami (deceased 2) because he was already dead by that stage. However, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) had also been loaded into W21 with Abbas Al-Hameedawi. Ibrahim Al-Ismaeeli had sustained a gunshot wound to his foot and it is possible, perhaps even likely, that he was moaning in pain from time to time. I also accept that it is possible that one the other detainees, who were in the vehicle at the time, may have been complaining of stomach pains. In any event, I am satisfied that any such moaning was not the result of any deliberate ill-treatment of the detainees by the British soldiers who were in the back of the Warrior with them.

¹⁹⁷¹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000864) [46]-[47]

¹⁹⁷² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004768) [35]

¹⁹⁷³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000474) [91]

¹⁹⁷⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/14]

¹⁹⁷⁵ See paragraph 2.975

¹⁹⁷⁶ Lance Corporal Wright [94/155/9-24]; Private Tatawaqa [92/189/10-13]

¹⁹⁷⁷ Ibid.

¹⁹⁷⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000005) [12]; (ASI004768) [33]; (PIL000473-74) [89]

¹⁹⁷⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/57/18-22]; (PIL000474) [89]

Allegations made by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

2.1532 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) has given a number of accounts of the events of 14 May 2004. At times, his accounts have been somewhat inconsistent and/or unclear as to precisely what his allegations of ill-treatment by British soldiers were. However, with the assistance of the written Closing Submissions of the Core Participants, I have identified the following nine allegations concerning the ill-treatment by British soldiers that Ahmed Al-Furaiji claims to have suffered, from the time of his capture until he arrived at Camp Abu Naji:

- a. that he was kicked to the ground at the point of capture;
- b. that a boot was put on the back of his head at the point of capture, pushing his face into the earth;
- c. that he was struck with a rifle butt at the point of capture;
- d. that he was beaten as he was taken from the point of capture to the collection point beside WOC;
- e. that he was kicked to the ground at the collection point;
- f. that soldiers stepped on his head and back at the collection point;
- g. that he was shouted at and beaten as he lay on the floor at the collection point;
- h. that he was thrown into a Warrior AIFV at the collection point; and
- i. that he was struck on the back of his head with the heel of a soldier's hand in the Warrior AIFV in order to keep him quiet.

2.1533 In the paragraphs that follow, I will deal in turn with each of these allegations of ill-treatment made by Ahmed Al-Furaiji (detainee 777).

Allegation (a) – that Ahmed Al-Furaiji (detainee 777) was kicked to the ground at the point of capture

2.1534 In his Judicial Review statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) made this allegation in the following terms:

*“The soldiers were shouting at me. When they came close I raised my hands in surrender. They circled me and one of the soldiers kicked me with his boot in my back and I fell on my face.”*¹⁹⁸⁰

2.1535 Ahmed Al-Furaiji repeated this allegation in his first written Inquiry statement, with the added detail that he had been arrested by six infantry soldiers.¹⁹⁸¹

2.1536 As I have already stated,¹⁹⁸² the soldiers who were present when Ahmed Al-Furaiji was captured on 14 May 2004 were WO2 David Falconer, Lance Brian Corporal Wood and Private Maciou Tatawaqa. Each of these soldiers was questioned about this particular allegation when they gave their oral evidence to the Inquiry and each denied having seen or having been involved in any such incident.¹⁹⁸³ I have no doubt that their evidence about this was both truthful and accurate.

¹⁹⁸⁰ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006720) [7]

¹⁹⁸¹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000879) [31]

¹⁹⁸² See paragraph 2.1452

¹⁹⁸³ WO2 Falconer [146/93/18-20]; Lance Corporal Wood [92/80/15-23]; Private Tatawaqa [92/177/20]-[178/2]

2.1537 In the statement that he made to the Royal Military Police (“RMP”) on 22 May 2004, WO2 Falconer did describe how Ahmed Al-Furaiji had been “*forced to the ground*” when he was captured.¹⁹⁸⁴ However, I am quite satisfied the force used to achieve that was no more than was perceived to be necessary at the time and, in any event, did not involve any of the soldiers in kicking Ahmed Al-Furaiji (detainee 777) in the back as alleged or at all. The allegation to that effect is simply not true.

Allegation (b) – that a boot was put on the back of Ahmed Al-Furaiji’s (detainee 777) head at the point of capture, pushing his face into the earth

2.1538 After having described in his Judicial Review statement how he had been kicked in the back at the point of capture, Ahmed Jabbar Hamood Al-Furaiji continued as follows:

“Another put his boot on the back of my head and ground my face into the earth. This caused my face to be cut.”¹⁹⁸⁵

2.1539 In his first written Inquiry statement, Ahmed Al-Furaiji described how a soldier had kicked him in the head, whilst at the same time confirming the account that he had given in his Judicial Review statement.¹⁹⁸⁶ Since Ahmed Al-Furaiji was unable to give detailed oral evidence to the Inquiry, it is not clear whether Ahmed Al-Furaiji was seeking to alter or to add to the original details of this allegation.

2.1540 In any event, I am not persuaded that this allegation is true. This allegation was put to each of the soldiers, who had been present when Ahmed Al-Furaiji was captured. Each denied having been involved in or having seen any incident of this sort at the time.¹⁹⁸⁷ I accept that each gave truthful and accurate evidence about the matter.

2.1541 Furthermore, in his Judicial Review statement, Ahmed Al-Furaiji claimed that his face had been cut as a result of this alleged ill-treatment and I would have certainly expected that to be the case, if his face had really been pushed into the dirt with a soldier’s boot. However, neither Corporal Shaun Carroll at Camp Abu Naji,¹⁹⁸⁸ nor Major David Winfield at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah¹⁹⁸⁹ found any cuts or other injuries to Ahmed Al-Furaiji’s face when he was medically examined on 14 and 15 May 2004.

¹⁹⁸⁴ WO2 Falconer (MOD022450); see also paragraph 69.

¹⁹⁸⁵ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (MOD006720) [7]

¹⁹⁸⁶ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (ASI000879) [31]

¹⁹⁸⁷ WO2 Falconer [146/99]; Lance Corporal Wood [92/80]; Private Tatawaqa [92/177-178]

¹⁹⁸⁸ (MOD043659)

¹⁹⁸⁹ (MOD043682)

2.1542 Finally, I have considered the photograph taken of Ahmed Al-Furaiji shortly after he arrived at the DTDF at Shaibah on 15 May 2004. This photograph can be seen below at Figure 58. Having carefully examined this photograph, I am quite unable to see anything that suggests that Ahmed Al-Furaiji may have had any cuts or other injuries to his face when he arrived at Shaibah on 15 May 2004.

Figure 58: MOD048742



2.1543 Having regard to the foregoing, I am satisfied that this particular allegation is not true.

Allegation (c) – that Ahmed Al-Furaiji (detainee 777) was struck with the butt of a rifle at the point of capture

2.1544 In his Judicial Review statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said that another soldier (i.e. not the soldier who had kicked him in the back or the soldier who had ground his face into the earth) had hit him with a rifle butt on the right side of his temple. He described how the blood had flowed over his face and over his clothes as a result of the injury caused by this blow.¹⁹⁹⁰

2.1545 Once more, I am completely satisfied that this allegation is untrue. The allegation was put to the soldiers who had been present when Ahmed Al-Furaiji was captured. Each soldier denied having been involved in or having seen any incident of this sort.¹⁹⁹¹ I am satisfied that each soldier's evidence to that effect was both truthful and accurate. There was no such incident.

¹⁹⁹⁰ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006720) [7]

¹⁹⁹¹ WO2 Falconer [146/99]; Lance Corporal Wood [92/80-81]; Private Tatawaqa [92/178]

2.1546 Furthermore, as I have already made clear,¹⁹⁹² neither Corporal Carroll at Camp Abu Naji,¹⁹⁹³ nor Major David Winfield at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah¹⁹⁹⁴ found any cuts or other injuries to Ahmed Al-Furaiji’s head, let alone the serious wound that Ahmed Al-Furaiji described.

2.1547 Finally, there is no support for Ahmed Al-Furaiji’s allegation in the photographic evidence produced to the Inquiry. There is no evidence of blood in the somewhat unclear photograph taken when Ahmed Al-Furaiji was processed at Camp Abu Naji.¹⁹⁹⁵ More significantly, there is no sign of any blood in the photograph of the t-shirt that Ahmed Al-Furaiji was wearing at the time of his capture on 14 May 2004.¹⁹⁹⁶ Although Ahmed Al-Furaiji suggested in his third written Inquiry statement that the blood staining might have been obscured by the folds of the garment and the casting of shadows, I do not accept that this is the case.¹⁹⁹⁷ On the contrary, I am satisfied that this particular photograph is clear evidence that Ahmed Al-Furaiji did not suffer the copious bleeding he claimed had resulted from a head wound caused by the blow from a rifle butt. This was because there had been no such blow and no such wound. The allegation is untrue.

Allegation (d) – that Ahmed Al-Furaiji (detainee 777) was beaten as he was taken from the point of capture to the collection point beside WOC

2.1548 In his Judicial Review statement, Ahmed Jabbar Hamood Al-Furaiji described the process, by which he had been moved from where he was captured to the collection point beside WOC, in the following terms:

“They took me to the APC by lifting me from the ground. My feet were not touching the floor. They would not let me look to either side and they pushed me forward and one of them kept my head facing forwards and down to the ground. At some point a soldier hit me on the back of my head. I was pushed in the direction of Route 6...”¹⁹⁹⁸

2.1549 In Ahmed Al-Furaiji’s first written Inquiry statement, this particular allegation was made in similar terms, as follows:

“I was forcibly taken to an armoured vehicle. Whilst the two soldiers were dragging me, they were beating me with their fists and hands as we went along.”¹⁹⁹⁹

2.1550 In his second written Inquiry statement, Ahmed Al-Furaiji added that he had been hit on the head, face, stomach, back and everywhere on his legs whilst being moved to the collection point near WOC.²⁰⁰⁰

2.1551 This particular allegation was also put to WO2 David Falconer, Lance Corporal Brian Wood and Private Maciou Tatawaqa. Each denied having been involved in or having seen any such ill-treatment.²⁰⁰¹ I am satisfied that their evidence to that effect was both truthful and accurate.

¹⁹⁹² See paragraph 2.1541 above

¹⁹⁹³ (MOD043659)

¹⁹⁹⁴ (MOD043682)

¹⁹⁹⁵ (MOD032675)

¹⁹⁹⁶ (MOD032696)

¹⁹⁹⁷ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000302) [33]

¹⁹⁹⁸ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (MOD006720-21) [8]

¹⁹⁹⁹ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (ASI000879-80) [32]

²⁰⁰⁰ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (PIL000311) [58]

²⁰⁰¹ WO2 Falconer [146/99]; Lance Corporal Wood [92/80]; Private Tatawaqa [92/178]

2.1552 Furthermore, there is nothing in the medical examinations of Ahmed Al-Furaiji (detainee 777) or in the photographs that were taken of him to support this allegation of having been beaten as he was being moved from the point of capture to the collection point near WOC. This is because this allegation is not true. Ahmed Al-Furaiji was not beaten by the soldiers who moved him from the point of capture to the collection point near WOC.

Allegation (e) – that Ahmed Al-Furaiji (detainee 777) was kicked to the ground at the collection point near WOC

2.1553 In his Judicial Review statement, Ahmed Jabbar Hamood Al-Furaiji described what happened when he arrived at the collection point near WOC, thus:

*“A soldier kicked me and I fell to the ground. He put his boot on my back and pressed down hard.”*²⁰⁰²

2.1554 Ahmed Al-Furaiji did not explicitly repeat this allegation in his first written Inquiry statement. Instead, he merely described being “*forced to lay [sic] on the ground*”.²⁰⁰³ However, in his second written Inquiry statement, Ahmed Al-Furaiji made it clear that he still maintained this particular allegation.²⁰⁰⁴

2.1555 When Ahmed Al-Furaiji’s allegation was put to Private Carl Pritchard during his oral evidence to the Inquiry, Private Pritchard told me that “*No detainees were treated unjustly*.”²⁰⁰⁵ I considered Private Pritchard to be an honest and careful witness. I am satisfied from his answer that he did not see any conduct similar to that alleged by Ahmed Al-Furaiji in his Judicial Review statement and in his second written Inquiry statement. If it had happened, Private Pritchard would have seen it.

2.1556 I am therefore satisfied that Ahmed Al-Furaiji was not kicked in the back in order to force him down on to the ground. To the extent Ahmed Al-Furaiji alleges that he was kicked to the ground, that allegation was false and is deliberately so. As I have already explained,²⁰⁰⁶ there was a perceived need to make detainees lie face down on the ground at the collection point near WOC for reasons of safety and security. Where necessary, some force was used by soldiers in order to achieve this quickly. I accept that there is a possibility that this may have occurred in Ahmed Al-Furaiji’s case. However, if some force was used it was not excessive and was no more than was considered to be necessary at the time.

Allegation (f) – that soldiers stepped on Ahmed Al-Furaiji’s (detainee 777) head and back at the collection point

2.1557 In his Judicial Review statement, Ahmed Jabbar Hamood Al-Furaiji said that the soldier who had kicked him down on to the ground had also “*...put his boot on my back and pressed down hard*.”²⁰⁰⁷ Although not explicitly made in Ahmed Al-Furaiji’s first written Inquiry statement,²⁰⁰⁸ he made it clear in his second written Inquiry statement that this allegation was still maintained.²⁰⁰⁹ In that particular statement, Ahmed Al-Furaiji said this:

²⁰⁰² Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (MOD006721) [10]

²⁰⁰³ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (ASI000880) [35]

²⁰⁰⁴ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (PIL000311) [59]

²⁰⁰⁵ Private Pritchard [80/81/16]

²⁰⁰⁶ See paragraphs 2.1009–2.1010

²⁰⁰⁷ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (MOD006721) [10]

²⁰⁰⁸ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (ASI000880) [35]

²⁰⁰⁹ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (PIL000311) [59]

“While I was on the ground soldiers would step on my head with their boots. A soldier would also step on my back, walk off, come back and step on my back again. This happened repeatedly during the time I was held by the APCs or tanks.”²⁰¹⁰

2.1558 This allegation was put to Private Carl Pritchard during his oral evidence to the Inquiry. He emphatically denied it and said *“It never happened.”*²⁰¹¹ As I have already made clear,²⁰¹² I found Private Pritchard to be a truthful witness and I am quite satisfied that his evidence with regard to this particular allegation was both truthful and accurate. Furthermore, there is nothing in either the medical or photographic evidence relating to Ahmed Al-Furaiji that provides any support for this particular allegation.²⁰¹³ For these reasons, I am satisfied that this allegation is also untrue.

Allegation (g) – that Ahmed Al-Furaiji (detainee 777) was shouted at and beaten as he lay on the floor at the collection point

2.1559 This allegation was not made in Ahmed Jabbar Hammood Al-Furaiji’s Judicial Review statement²⁰¹⁴ or in his first written Inquiry statement.²⁰¹⁵ However, in his second written Inquiry statement, Ahmed Al-Furaiji set out the following detailed allegation:

“There was a soldier shouting and beating me during the whole time I was lying on the ground. I was beaten with slaps and punches and kicks. Mostly on my back and the left shoulder particularly where I was hit with a rifle butt.”²⁰¹⁶

2.1560 It is not clear whether Ahmed Al-Furaiji was suggesting, in the final sentence of the passage quoted above, that he had been struck again with a rifle butt, in addition to the one he claimed to have suffered at the point of capture.²⁰¹⁷ However, for the purposes of this Report, I have treated it as a further allegation of being struck by a rifle butt.

2.1561 In his second written Inquiry statement, Ahmed Al-Furaiji then went on to describe in great detail some long-lasting injuries and symptoms that he claimed had been caused by this prolonged episode of beating.²⁰¹⁸ In addition, Ahmed Al-Furaiji produced a photograph that he claimed showed a scar on his left shoulder that had been caused by this beating.²⁰¹⁹ The photograph is shown below at Figure 59.

²⁰¹⁰ Ibid.

²⁰¹¹ Private Pritchard [80/81/21]

²⁰¹² See paragraph 2.1523 above

²⁰¹³ (MOD043659); (MOD043682); (MOD048742)

²⁰¹⁴ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006721) [10]

²⁰¹⁵ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000880) [35]

²⁰¹⁶ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000313) [64]

²⁰¹⁷ See paragraphs 2.1502–2.1512

²⁰¹⁸ Ibid.

²⁰¹⁹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000334)

Figure 59: PIL000334



2.1562 I have carefully considered this photograph, but it is of poor quality and I can see no proper basis for making any connection between such marks as are visible in the photograph with the events that Ahmed Al-Furaiji claims to have taken place at the collection point.

2.1563 In my view, it is much more significant that when Ahmed Al-Furaiji was medically examined by Corporal Shaun Carroll at Camp Abu Naji²⁰²⁰ and by Major David Winfield at the Divisional Temporary Detention Facility ("DTDF") at Shaibah on 14 and 15 May 2004 respectively,²⁰²¹ neither identified any injury to his shoulder. I simply do not accept that, if Ahmed Al-Furaiji had an injury to his shoulder, sufficiently serious to have caused pain, discomfort and scarring eight years later, that both would have failed to notice it and to record it.

2.1564 When this allegation was put to Private Carl Pritchard, he emphatically denied that it could have happened.²⁰²² I accept that his evidence to that effect was both truthful and accurate. Whilst it is possible that Ahmed Al-Furaiji may have heard some shouting by the soldiers at this location, the shouting was not necessarily directed at him. Having regard to Private Pritchard's emphatic denials, the late stage at which Ahmed Al-Furaiji made the allegation in question and the complete absence of any supporting medical evidence, I am perfectly satisfied that Ahmed Al-Furaiji was not physically assaulted at the collection point near WOC as alleged or at all. In my view, this particular allegation is untrue.

²⁰²⁰ (MOD043659)

²⁰²¹ (MOD043715)

²⁰²² Private Pritchard [80/81]

Allegation (h) – that Ahmed Al-Furaiji (detainee 777) was thrown into a Warrior AIFV at the collection point

2.1565 In his Judicial Review statement, Ahmed Jabbar Hammood Al-Furaiji provided the following description of how he had been loaded into the Warrior AIFV at the collection point:

“Then two soldiers lifted me and pushed me into an APC.

When I was put in the APC there was already someone lying on the floor. I was pushed onto him and he moaned in pain.”²⁰²³

2.1566 In Ahmed Al-Furaiji’s first written Inquiry statement, he put this allegation in slightly different terms, as follows:

“I was forcibly put into the armoured vehicle. I was aware that someone was lying on the floor of the vehicle. As I climbed over him he groaned as though he was in pain.”²⁰²⁴

2.1567 In his second written Inquiry statement, Ahmed Al-Furaiji said that his first written Inquiry statement was wrong and that he had not stepped over the Iraqi man on the floor, but had been thrown into the vehicle on top of him.²⁰²⁵ He then continued as follows:

“I was on top of the person I thought might have been Haidar and then a soldier came in and lifted me up and sat me down. He treated me roughly. I was held by the neck of my t-shirt and lifted up and pushed down to sit on the bench.”²⁰²⁶

2.1568 I have given findings earlier in my Report about the manner in which the detainees were loaded into the Warrior AIFVs at the collection point and the reasoning behind those findings.²⁰²⁷ It seems to me likely that the detainees were loaded in a firm and robust manner and probably without immediate regard for their unwilling and fearful state. The primary objective was to load the detainees with a significant degree of urgency. However, nothing in the evidence that I have seen, heard and read leads me to conclude that any of the detainees were loaded into the Warriors in a manner that might be described as unnecessarily rough or violent. Nor am I persuaded that any of them was loaded in such a way as to cause any deliberate physical injury. To the extent that Ahmed Al-Furaiji’s allegation suggests that he was treated in a rougher or more violent manner than this, I am satisfied that this allegation is also untrue.

Allegation (i) – that Ahmed Al-Furaiji (detainee 777) was struck on the back of his head with the heel of a soldier’s hand in the Warrior AIFV to keep him quiet

2.1569 In his Judicial Review statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) did not allege that he had been physically assaulted in the Warrior AIFV during the journey back to Camp Abu Naji. His only allegation was that a soldier had shouted at him and told him to “shut up”.²⁰²⁸

2.1570 In his first written Inquiry statement, Ahmed Al-Furaiji once more alleged that the soldier, who was seated to his left, had told him to “shut up”. However, he then went on to allege that

²⁰²³ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006721) [10]-[11]

²⁰²⁴ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000880) [38]

²⁰²⁵ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000314) [67]

²⁰²⁶ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000314) [68]

²⁰²⁷ See paragraph 2.1134

²⁰²⁸ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006721) [11]

the same soldier had hit him on the back of his head with the heel of his hand.²⁰²⁹ Although not explicitly repeated in Ahmed Al-Furaiji's second written Inquiry statement, it appears that he continued to maintain this allegation.

2.1571 Ahmed Al-Furaiji travelled back to Camp Abu Naji in the rear of W32, together with Lance Corporal Brian Wood, Private Alipate Korovou and Private Jayme Bishop. Lance Corporal Wood denied having seen any detainees being assaulted in the rear of his Warrior.²⁰³⁰ Ahmed Al-Furaiji's allegation was put to Private Korovou during his oral evidence and he denied having seen or having been involved in any such assault.²⁰³¹ Private Bishop also denied having seen or having been involved in any assault on any of the detainees in the rear of the Warrior during the journey back to Camp Abu Naji.²⁰³²

2.1572 I am satisfied that the evidence given by these soldiers was largely accurate. However, the lighting in the rear of the Warrior was very poor. If Ahmed Al-Furaiji (detainee 777) had been hit with the heel of a soldier's hand, as he alleged, I am not sure that the other soldiers would necessarily have seen it. The detainees were not allowed to speak to each other and it is possible that a soldier followed up an instruction to keep quiet by using his hand to emphasise the point and/or to make clear to whom it was addressed. However, if anything like this did occur I am quite satisfied that it would not have been done with any significant degree of violence. It would have been a trivial blow. The intention would have been to emphasise the instruction and/or to make clear to whom it was addressed and no more. It would not have been done in order to inflict either discomfort or pain as such. Furthermore, as I have already indicated, it is abundantly clear from the medical and photographic evidence that Ahmed Al-Furaiji did not sustain any injury as a result of any such blow, if indeed it did occur.

The journey back to Camp Abu Naji from the Southern Battlefield

2.1573 The two Warrior AIFVs, call signs W31 and W33, left the location of the Southern Battle in convoy with the Land Rovers from 6 and 7 Platoons 1st Battalion, Argyll & Sutherland Highlanders ("1A&SH") and the Household Cavalry Regiment ("the HCR"), at about 18:50 hours on 14 May 2004, in order to return to Camp Abu Naji. The respective vehicle commanders of W31 and W33, Corporal Jonathan Green and Sergeant David Perfect, both remembered that it was W31 that led the convoy of Land Rovers, whilst W33 took up a position at the rear.²⁰³³

2.1574 Sergeant Paul Kelly described how hostile fire was directed at the convoy soon after leaving the area of the Southern Battle, when they had travelled about 300 metres along the road. According to Sergeant Kelly, the enemy fire had come from one or two gunmen, who were positioned to the east of the convoy. The convoy did not return fire at this stage, but continued to press on towards Camp Abu Naji.²⁰³⁴

2.1575 As the convoy reached the immediate vicinity of the Danny Boy VCP they were fired upon again. I accept the evidence of Corporal Green, who recalled that the convoy was subjected to small arms and rocket-propelled grenade fire from the west of Route 6. When he rotated his turret towards the enemy fire, he saw a group of insurgents who were located between

²⁰²⁹ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (ASI000881) [41]

²⁰³⁰ Lance Corporal Wood [92/91]

²⁰³¹ Private Korovou [84/38]

²⁰³² Private Bishop [82/47]

²⁰³³ Corporal Green (ASI017771) [51]; Sergeant Perfect (ASI015734) [75]; [76/69-70]; Lieutenant Passmore (ASI016134) [136]

²⁰³⁴ Sergeant Kelly (ASI017354) [150]-[151]

the junction of Route 6 and the Majar al’Kabir road.²⁰³⁵ For his part, Sergeant Perfect recalled that small arms fire had come from the westerly direction of Majar al’Kabir.

2.1576 I also accept the evidence of Lieutenant William Passmore, the vehicle commander of one of the Land Rovers travelling in the convoy, who said that he believed that there had also been some sporadic less intense fire from the east, as well as the main body of fire from the west, that appeared to be coming from the direction of the fields either side of the Al Majar al’Kabir road.²⁰³⁶ He demonstrated the positioning of the insurgents, who were firing at the convoy from the west, on the photograph seen below (Figure 60 – ASI016158). As he explained in evidence, Route 6 is the road that can be seen running horizontally across the photograph. The road to Al Majar al’Kabir is shown coming in at an angle to Route 6, with the enemy positions marked as lines numbered “2” and “3” either side of that road. The line labelled “1” shows the positioning of the convoy.²⁰³⁷

Figure 60: ASI016158



2.1577 As a result of the incoming enemy fire, the two Warrior AIFVs came to a halt in the immediate vicinity of the Danny Boy VCP. As Sergeant Perfect explained in his oral evidence to the Inquiry:

“I have decided, as the platoon sergeant, that we have to hold Danny Boy. It is essential because it is our route supply. No one is holding it. So we’ve let the light call signs go through with the Argylls. I’m the only one in armoured call signs. So in my mind I have to hold it. I don’t need to be told to hold it. I hold it until we can get some more troops up, sir.”²⁰³⁸

²⁰³⁵ Corporal Green [77/52]; (ASI017771) [52]; See Exhibit JG/1 (ASI017785)

²⁰³⁶ Lieutenant Passmore (ASI016135) [139]

²⁰³⁷ Lieutenant Passmore (ASI016136) [142]

²⁰³⁸ Sergeant Perfect [76/38/14-21]

2.1578 According to Sergeant Perfect, the convoy of Land Rovers were able to push straight through the contact unscathed, whilst the two Warrior AIFVs remained in position and returned fire.²⁰³⁹ However, whilst that may well have been what Sergeant Perfect intended to happen at the time, it is clear from the evidence of the other soldiers in the convoy that Sergeant Perfect's current recollection is not correct about this aspect of the matter. As will become apparent, it appears that Sergeant Perfect's recollection relates to how matters developed somewhat later.

2.1579 I am satisfied that what actually happened was that the soldiers in the Land Rovers dismounted from their vehicles and, for the most part, took up defensive positions on the west side of route 6 near the Danny Boy VCP. The majority of the military witnesses remembered that this was done because the lead Warrior AIFV (W31) had come to a halt at the Danny Boy VCP chicane, effectively blocking the road, and that it was the standard operating procedure to dismount in such circumstances.²⁰⁴⁰ As Corporal Green explained:

*"The insurgent positions and the direction of fire of their weapons created an effective killing zone all across the area of the checkpoint. Rather than sitting in their Land Rovers which would be vulnerable to RPG fire, the Argylls dismounted from their vehicles and took up defensive positions on the west side of route 6."*²⁰⁴¹

2.1580 According to Corporal Green, his Warrior AIFV W31, had moved behind one of the Danny Boy VCP HESCO bastions (a defensive barrier made from a cellular wall of wire mesh filled with sand and dirt²⁰⁴²), that formed a traffic control chicane at the VCP, in order to take cover from the incoming RPGs.²⁰⁴³ It appears that it may have been this manoeuvre that caused the road to be blocked briefly. Some of the other vehicles in the convoy appear to have returned fire before the soldiers dismounted and took cover; thus Lieutenant Passmore recalled the top cover in his vehicle having exchanged fire with the enemy at this stage.²⁰⁴⁴

The soldiers take cover and return fire, after having dismounted from the Land Rovers in the vicinity of the Danny Boy VCP

2.1581 In accordance with the standard operating procedure, most of the soldiers from the Land Rovers dismounted from their vehicles and advanced to a bund line on the west side of Route 6, near the Danny Boy VCP. There they took cover and provided suppressing fire with their SA80s and underslung grenade launchers.²⁰⁴⁵

2.1582 However, Lieutenant Henry Floyd of the Household Cavalry Regiment ("HCR") described how he and a few other members of his multiple took cover behind their Land Rovers, which had halted on the road to the east of the central reservation. He said that the soldiers who had dismounted from his vehicle returned fire for about five minutes, but that he did not recall any insurgents having been hit as a result.²⁰⁴⁶ Sergeant Paul Kelly also said that he had not advanced to the bund line, because he was concerned that he was running low on

²⁰³⁹ Sergeant Perfect (ASI015734) [77]

²⁰⁴⁰ Lieutenant Passmore (ASI016137) [144]–[146]; Sergeant Kelly (ASI017356) [158]; Corporal Gidalla (ASI011704) [73]; Lieutenant Dormer (ASI013720) [110]; Private Kristopher Henderson said that the lead Warrior broke down at the chicane and thus blocked the way for the rest of the convoy (ASI011665) [53]–[54]. Although not the lead vehicle, W33 did in fact suffer a mechanical failure and had to reverse back to Camp Abu Naji in due course.

²⁰⁴¹ Corporal Green (ASI017772) [54]

²⁰⁴² See, for example, Private Henderson (ASI011665) [53]

²⁰⁴³ Corporal Green (ASI017772) [55]

²⁰⁴⁴ Lieutenant Passmore (ASI016135) [140]

²⁰⁴⁵ Corporal Gidalla (ASI011704) [74]; Lieutenant Dormer (ASI013721) [112]

²⁰⁴⁶ Lieutenant Floyd (ASI014399-400) [43]

ammunition. He described how he had dropped back to the eastern side of route 6 and had then taken cover behind a tree in the central reservation.²⁰⁴⁷

- 2.1583** Of the soldiers who did advance to the bund line, most directed their return fire at the source of the enemy fire. However, some of the soldiers described how they had acted cautiously when returning fire, because their ammunition was running low.²⁰⁴⁸ The majority of the soldiers remembered having engaged the enemy gunmen in this way, but could not recall any of the insurgents actually being hit by their return of fire.²⁰⁴⁹
- 2.1584** Private Duncan Aston recalled having aimed two or three shots towards three or four gunmen who were firing AK47s at his position. He was unable to say whether he had hit any of the gunmen, but he did not see them again after he had fired in their direction.²⁰⁵⁰ Lieutenant James Dormer recalled having seen a number of enemy drop down in the course of the exchange of fire, but was unable to say whether this had been because they were hit or because they were taking cover.²⁰⁵¹
- 2.1585** For his part, Lieutenant William Passmore did remember having hit two insurgents, who had advanced through the fields from the direction of Majar al’Kabir. He said that he had engaged two enemy gunmen, when he was returning fire that was coming from a position to the west of Route 6. He believed that he had hit both men in the region of the torso, although he was unable to say for certain whether he had killed either of them.²⁰⁵² He also said that Corporal Lee Gidalla had fired a grenade at a small group of enemy gunmen, who were firing at the British from behind the bushes and trees on the southern side of the Majar al’Kabir road. He described how the grenade had exploded in the middle of the group, but said that he did not recall having seen any enemy hit as a result.²⁰⁵³
- 2.1586** Whilst the soldiers, who had dismounted from their Land Rovers, were engaged in an exchange of fire with the enemy gunmen as described above, the soldiers in the two Warrior AIFVs had remained inside their vehicles. However, Corporal Jonathan Green described how he had engaged the enemy from W31 and had returned fire in the direction of the insurgents who were located to the west. He said that he had initially used W31’s chain gun and RARDEN cannon for this purpose, but that both had failed and so he had then used his personal rifle to engage the enemy gunmen.
- 2.1587** Corporal Green was unable to say whether he had hit any insurgents as a result of having returned fire in this way.²⁰⁵⁴ For his part, Sergeant David Perfect recalled how Corporal Green had exchanged fire with a number of enemy positions just south of the Danny Boy VCP. In the Post Operation Report that he wrote within a few days of 14 May 2004,²⁰⁵⁵ Sergeant Perfect estimated that five enemy gunmen had been killed during this exchange of fire. However, in his written Inquiry statement, Sergeant Perfect confirmed that he had not personally seen any of the enemy gunmen killed and that he believed that others would have provided him with this estimate of the number of enemy dead.²⁰⁵⁶

²⁰⁴⁷ Sergeant Kelly (ASI017356) [158]

²⁰⁴⁸ See, for example, Lieutenant Dormer (ASI013722) [117]; Sergeant S. Henderson (ASI013577) [126]

²⁰⁴⁹ Sergeant Kelly (ASI013577) [125]–[126]; Corporal Gidalla (ASI011704) [74]–[76]; Sergeant S. Henderson (ASI013577) [126]; Private Marney (ASI022398) [57]; Private Barlow (ASI012309) [60]; Private Reid (ASI019958) [74]

²⁰⁵⁰ Private Aston (ASI015066) [170]–[171]

²⁰⁵¹ Lieutenant Dormer (ASI013721) [114]

²⁰⁵² Lieutenant Passmore (ASI016139) [150]

²⁰⁵³ Lieutenant Passmore (ASI016139) [151]

²⁰⁵⁴ Corporal Green (ASI017772) [55]

²⁰⁵⁵ (MOD043400)

²⁰⁵⁶ Sergeant Perfect (ASI015735) [78]

2.1588 Sergeant Perfect also remembered having returned fire from his Warrior AIFV, W33. He described how he engaged two enemy gunmen who had been positioned to the north of the Majar al’Kabir road. He was unable to say whether he had hit anyone with his return of fire.²⁰⁵⁷ He also described how he had then engaged another three enemy positions to the north of the same road. However, he did not believe that he had hit any of them and recalled that Lance Corporal Marcus Scott, who was spotting for him, had said that the enemy were ducking his fire.²⁰⁵⁸

Description of the enemy and presence of ambulances

2.1589 I am satisfied that the military evidence of this enemy activity, as summarised above, was both truthful and generally accurate. The hostile fire directed at the British troops, who had been travelling north from the scene of the Southern Battle, appears to have come from a large number of Iraqi insurgents who had gathered near the Danny Boy VCP mainly in the area between the west of Route 6 and the Majar al’Kabir road. As Corporal Jonathan Green said, the enemy fire came from a large group of insurgents (perhaps 20 or 30) who had taken up various defensive positions and who were using bund lines for cover.²⁰⁵⁹ He described the overall position in the following terms:

“...there were scattered enemy around that area. There was [sic] lots of trench systems, of bund lines which they were using to move around the whole of that area.”²⁰⁶⁰

2.1590 Lieutenant William Passmore described how he had observed armed men fanning out across the area of the Majar al’Kabir road. According to Lieutenant Passmore, some of the insurgents went in the direction of trees and bushes on either side of the Majar al’Kabir road, whilst others went into the adjoining fields. He recalled how he had seen about twenty enemy gunmen to the south of the Majar al’Kabir road and about sixty insurgents overall.

2.1591 In his written Inquiry statement, Lieutenant James Dormer said that the insurgents had been in small groups, but that they appeared to be organised.²⁰⁶¹ Corporal Lee Gidalla recalled that the insurgents had appeared to be about 100-200 metres away from the dismounted soldiers. He said that the insurgents had seemed to be retreating from the Danny Boy VCP, but attacking the soldiers whilst retreating.²⁰⁶²

2.1592 Similarly, Sergeant David Perfect remembered a large crowd of gunmen having gathered on the outskirts of Majar al’Kabir. He estimated the crowd to have been 100 to 200 men strong.²⁰⁶³ For his part, Sergeant Paul Kelly estimated that there were between 50 to 100 armed men moving around to the west of the road (i.e. Route 6) in small groups.²⁰⁶⁴

2.1593 I accept that the general substance of this evidence is truthful and paints a broadly accurate picture of the overall situation facing the British forces in the immediate vicinity of the Danny Boy VCP at the time. It is also clear that a lot of the armed insurgents in the area had travelled there in a number of different types of vehicle. I accept Lieutenant Passmore’s evidence that

²⁰⁵⁷ Sergeant Perfect (ASI015734)[77]; NB – the Post Operation Report described him destroying two enemy positions, although he was unable to give any further details of this particular matter

²⁰⁵⁸ Sergeant Perfect (ASI015735) [80]

²⁰⁵⁹ Corporal Green (ASI017771-72) [52]; See also Sergeant S. Henderson (ASI013577) [125]

²⁰⁶⁰ Corporal Green [77/61/12-15]

²⁰⁶¹ Lieutenant Dormer (ASI013721) [112]–[113]; NB – see also the evidence of Sergeant Perfect who said that the insurgents were in at least 5 different firing positions (ASI015735) [80]

²⁰⁶² Corporal Gidalla (ASI01104-05) [75]–[77]; NB – see also Lieutenant Floyd (ASI014399) [42]

²⁰⁶³ Sergeant Perfect [76/52-53]; (ASI015736) [82]

²⁰⁶⁴ Sergeant Kelly (ASI017355) [155]; Lieutenant Dormer recalled “dozens of enemy” in various locations (ASI013720) [109]

a large number of the insurgents had joined the engagement, having been brought to the area in a variety of vehicles that included cars, tractors with trailers and at least one vehicle with the appearance of an ambulance. The vehicles had then driven away in the direction of Majar al’Kabir.²⁰⁶⁵ Corporal Mark Newton (one of the read witnesses) also saw gunmen arriving at the engagement in a white pick-up truck.²⁰⁶⁶

2.1594 There was some evidence that a vehicle with the appearance of an ambulance was fired at by British soldiers during this brief engagement. In his written Inquiry statement, Lieutenant James Dormer described how a vehicle with the appearance of an ambulance (a white van with an orange stripe) had driven down the main road from Majar al’Kabir and had then stopped to allow number of armed insurgents to get out of the back. Because the vehicle had given the appearance of an ambulance, the British had not fired at it as it approached. However, once the armed insurgents had revealed themselves by getting out of the back, the nearest soldiers had opened fire on it because, in the words of Lieutenant Dormer, it was then a “*legitimate target for fire.*”²⁰⁶⁷

2.1595 Lieutenant Dormer went on to describe how the armed men who had disembarked from the apparent “*ambulance*” had then jumped into some irrigation ditches. I have no doubt that his evidence about this incident was both truthful and accurate. Sergeant Paul Kelly also saw vehicles on the Majar al’Kabir road. He believed that one of the vehicles was a white van which may have been a civilian ambulance, although he thought he may have assumed this from discussion after the engagement in which he was told that an ambulance had come to drop off fighters and pick up injured men.²⁰⁶⁸

2.1596 A number of the medical staff, who worked at the Majar al’Kabir hospital and had been on duty on 14 May 2004, gave evidence to the Inquiry about the events of that day. Some of these witnesses described how they had driven, or had been present in, ambulances that had travelled to the Al Saaida area (i.e. the general area of the Danny Boy VCP) at some point during the afternoon of 14 May 2004. I will deal with the main substance of their evidence later in this Report. However, in the paragraphs that follow, I have summarised those parts of their evidence in which they described having been fired on by British troops whilst in an ambulance that day.

2.1597 Ali Abed Eitheyyib (witness 79) was an ambulance driver. He described the ambulance, which he had been driving on 14 May 2004, as a white Mercedes with a red stripe around it and a red crescent on both sides, with the words “*Urgent Ambulance*” in Arabic. Ali Eitheyyib said that the bonnet of the ambulance also had a red stripe and a red crescent, with the word “*Ambulance*” written in reverse on it.²⁰⁶⁹ I am satisfied that Ali Eitheyyib’s ambulance was genuinely engaged in its medical role throughout that day. It was not the apparent “*ambulance*” that was used to transport insurgents and to which I referred in paragraphs 2.1593 to 2.1595 above.

2.1598 Ali Eitheyyib (witness 79) described how, on each of the journeys that he made that day, he had heard and seen firing in the general area of Al-Saaida (i.e. the Danny Boy VCP). He said that sometimes the firing had been in his general direction.²⁰⁷⁰ During the course of his oral evidence to the Inquiry, Ali Eitheyyib confirmed that, on his second journey, he had driven his

²⁰⁶⁵ Lieutenant Passmore [74/55-56]; (ASI016138) [148]

²⁰⁶⁶ Corporal Newton (ASI010834) [45]

²⁰⁶⁷ Lieutenant Dormer (ASI013721-22) [115]-[117]

²⁰⁶⁸ Sergeant Kelly (ASI017356) [157]

²⁰⁶⁹ Ali Abed Eitheyyib (witness 79) (ASI008857) [12]; Ahmed Abbas Makhfe Al-Fartoosi (witness 91) (ASI008440) [28]

²⁰⁷⁰ Ali Abed Eitheyyib (witness 79) (ASI008858) [17]; (ASI008865) [37]

ambulance to the Al-Saaida area (i.e. near the Danny Boy VCP), but had been unable to get to the junction with Route 6 because of the firing. He therefore had to turn back and return to the Majar al'Kabir hospital. However, he was unable to say whether the firing had been deliberately aimed at his vehicle.²⁰⁷¹

2.1599 In his oral evidence to the Inquiry, Ahmed Abbas Makhfe Al-Fartoosi (witness 91) stated that he had been present in the ambulance with Ali Eitheyyib (witness 79) on one of the occasions when it attempted to pass through the Danny Boy VCP. He also recalled having driven from Majar al'Kabir towards the main Al Amarah road (i.e. Route 6) and how they had been forced to turn back before they reached the VCP because of the firing that was taking place approximately 300 to 500 metres in front of them.²⁰⁷² He agreed that he had not been able to see who was actually firing²⁰⁷³ and that he did not think the firing had been specifically aimed at them.²⁰⁷⁴

2.1600 There were a number of Iraqi witnesses who worked at the Majar al'Kabir hospital who said that, when Ali Eitheyyib (witness 79) returned to the hospital, he told them how he had been fired upon by British troops when he had tried to pass through the VCP.²⁰⁷⁵ It seems to me likely that this was a reference to Ali Eitheyyib's perception that the firing had been in his general direction, although not necessarily specifically aimed at his vehicle.²⁰⁷⁶ Either the witnesses had misremembered what he said or, as is more likely, he rather overdramatised his account, when describing to his colleagues at the hospital what he had just experienced.

2.1601 In the event, I am satisfied that none of the British troops deliberately directed any of their gunfire specifically at the ambulance driven by Ali Eitheyyib (witness 79) on 14 May 2004, as it travelled down the Al Majar al'Kabir road towards Route 6, or at any other vehicle that was genuinely operating as an ambulance. However, I accept that it is possible that some of the British gunfire, which was actually directed at the insurgents positioned to the west near the Majar al'Kabir road at the time, may have been fired consequently in the general direction of Ali Eitheyyib's ambulance as he tried to drive down that road towards Route 6.

The 1A&SH and HCR soldiers continue their journey back to Camp Abu Naji

2.1602 A short time after they had dismounted from their Land Rovers, while halted in the vicinity of the Danny Boy VCP, the 1st Battalion, Argyll & Sutherland Highlanders ("1A&SH") and Household Cavalry Regiment ("HCR") soldiers were ordered to get back into their vehicles and to continue their journey back towards Camp Abu Naji.²⁰⁷⁷

2.1603 By that time, Sergeant David Perfect's Warrior AIFV, W33, had moved just past the junction and had travelled a short distance along the Al Majar al'Kabir road.²⁰⁷⁸ The positioning of both the Warrior AIFVs at this stage is shown on the sketch plan that was provided by Corporal Jonathan Green and is set out below as figure 61.

²⁰⁷¹ Ali Abed Eitheyyib (witness 79) [44/21-23]

²⁰⁷² Ahmed Abbas Makhfe Al-Fartoosi (witness 91) [40/41-42]; [40/46]

²⁰⁷³ Ahmed Abbas Makhfe Al-Fartoosi (witness 91) [40/72/3-7]

²⁰⁷⁴ Ahmed Abbas Makhfe Al-Fartoosi (witness 91) [40/46/1-6]

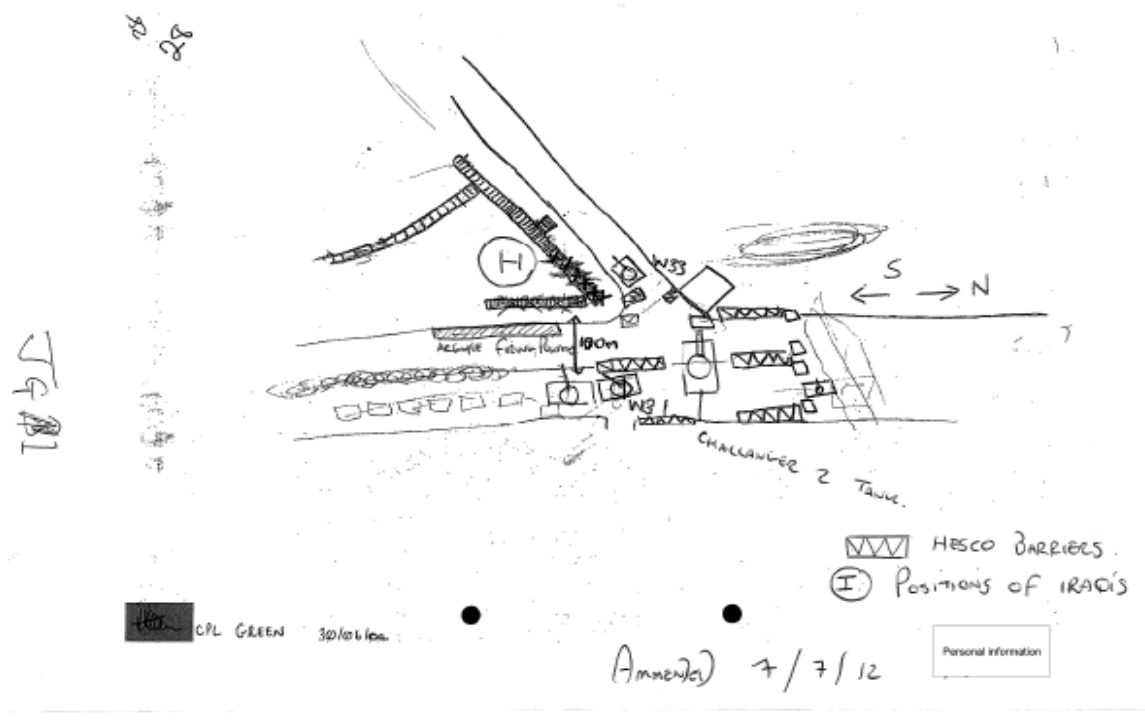
²⁰⁷⁵ Hatem Abud Abed Hassan (witness 92) (ASI008085) [28]; Aqeel Abdul Abbas Jamol (witness 93) (ASI008468) [25]

²⁰⁷⁶ See paragraph 2.1598 and 2.1599

²⁰⁷⁷ Sergeant Kelly (ASI017357) [162]; Lieutenant Floyd (ASI014400) [44]

²⁰⁷⁸ See, for example, Corporal Green [77/54-55]

Figure 61: ASI017785



2.1604 According to Lieutenant William Passmore, the Land Rovers were able to resume their journey back to Camp Abu Naji because Sergeant Perfect’s Warrior AIFV, which had been blocking Route 6, was moved out of the way.²⁰⁷⁹ Sergeant Stuart Henderson also recalled that a Warrior AIFV had been blocking the road and that Private Barrie Reid had asked it to move so that the Land Rovers could continue on their way.²⁰⁸⁰ Private Reid was unable to remember the exact order of events, but he did remember that the Warrior AIFV at the front of the convoy (i.e. Corporal Jonathan Green’s W31) had been blocking Route 6 and had been preventing their onward journey until it was moved.²⁰⁸¹ Sergeant Paul Kelly had also recalled having seen one of the 7 platoon soldiers shouting at a Warrior AIFV that was blocking the road to get out of the way.²⁰⁸²

2.1605 Corporal Lee Gidalla said that the order to continue to Camp Abu Naji had also been given because the soldiers, who had taken cover at the bund line, were running low on ammunition and it was felt that the two Warrior AIFVs had sufficient firepower to deal with the enemy.²⁰⁸³ Lieutenant James Dormer also agreed that the decision to extract²⁰⁸⁴ had been taken because they were running low on ammunition.²⁰⁸⁵

2.1606 W31 and W33 were therefore instructed to remain in place and to hold the Danny Boy VCP, so that the rest of the convoy could travel back to Camp Abu Naji. Sergeant Perfect described how he communicated with the Operations Room at Camp Abu Naji in order to organise this, and was told that a Challenger 2 Main Battle Tank was on its way to provide additional

²⁰⁷⁹ Lieutenant Passmore (ASI016139) [152]

²⁰⁸⁰ Sergeant S. Henderson (ASI013577) [127]

²⁰⁸¹ Private Reid (ASI019959) [76]-[77]

²⁰⁸² Sergeant Kelly (ASI017357) [162]

²⁰⁸³ Corporal Gidalla (ASI011705) [78]

²⁰⁸⁴ In military parlance “to extract” means to disengage and move away from the area of danger

²⁰⁸⁵ Lieutenant Dormer (ASI013722) [117]

support.²⁰⁸⁶ Corporal Green also recalled an order from the Operations room at Camp Abu Naji, in which they had been instructed to “*go firm*”, which he explained meant that they were to defend and retain their current position.²⁰⁸⁷ The two Warrior AIFVs thus remained in position and provided covering fire for the departure of the rest of the convoy.²⁰⁸⁸

The departure of the Land Rovers: the Challenger 2 Tank, D90, and the Warrior AIFV W30 arrive at the Danny Boy VCP to provide additional support for the Warrior AIFVs, W31 and W33

2.1607 Whilst awaiting the arrival of the promised support, both W31 and W33 continued to exchange fire with the nearby insurgent gunmen. Corporal Jonathan Green described how the insurgents took up firing positions from which to engage the British forces. In the statement that he made to the Royal Military Police (“RMP”) in 2004, Corporal Green recalled having fired his Rarden cannon at four insurgents that “*knocked them into the air.*”²⁰⁸⁹ When he made his written Inquiry statement in 2013, Corporal Green was unable to remember how many rounds he had fired at the time, but confirmed that one of the insurgents had been preparing to fire a rocket-propelled grenade at them.²⁰⁹⁰

2.1608 For his part, Sergeant David Perfect targeted enemy positions towards the west, along the Majar al’Kabir road.²⁰⁹¹ He remembered having exchanged fire with insurgent gunmen, who were in a ditch about 300 metres away, just before he was himself subjected to a mortar attack. Sergeant Perfect described how three mortar shells exploded near the Danny Boy VCP, followed by some incoming fire from the east. In the statement that he made to the RMP in 2004, Sergeant Perfect said that he had returned fire at this enemy position and believed that he had hit one of the insurgent gunmen. Although he was unable to remember this particular incident when he came to give his evidence to the Inquiry, Sergeant Perfect confirmed that he had no reason to doubt the accuracy of his earlier recollection.²⁰⁹²

2.1609 After W31 and W33 had been holding their position at the Danny Point VCP for a time,²⁰⁹³ they were joined by Challenger 2 Main Battle Tank, call sign D90, and another Warrior AIFV, W30, both of which had arrived to provide additional support. D90 was commanded by Captain David Strong and W30 was commanded by Lieutenant Benjamin Plenge.²⁰⁹⁴

2.1610 D90 took up a position at the centre of the checkpoint,²⁰⁹⁵ whilst W30 drove next to W33, allowing it to extract from the Majar al’Kabir road and to reverse back up to Route 6.²⁰⁹⁶ Lieutenant Plenge recalled that there had been heavy firing when they arrived at the Danny Boy VCP. He described how an RPG had been fired at his vehicle and his gunner had fired W30’s Rarden chain gun in response. He said that he did not know if any enemy gunmen were hit as a result of this particular return of fire.²⁰⁹⁷

²⁰⁸⁶ Sergeant Perfect (ASI015737) [86]

²⁰⁸⁷ Corporal Green (ASI017774) [60]

²⁰⁸⁸ Corporal Green (ASI017773) [56]

²⁰⁸⁹ Corporal Green (MOD016588)

²⁰⁹⁰ Corporal Green (ASI017773) [58]

²⁰⁹¹ Ibid.

²⁰⁹² Sergeant Perfect (ASI015737) [85]

²⁰⁹³ Corporal Green (ASI017774) [60]: NB – he estimates it to be between 90 minutes and two hours; Sergeant Perfect says they were present for about 90 minutes (ASI015738) [87]

²⁰⁹⁴ Lieutenant Plenge (ASI009735) [61]; (ASI010742) [55]

²⁰⁹⁵ Corporal Green (ASI017774) [60]; Captain Strong (ASI010764)

²⁰⁹⁶ Lieutenant Plenge (ASI009735) [61]

²⁰⁹⁷ Lieutenant Plenge (ASI009735) [63]

- 2.1611** The Challenger 2 Main Battle Tank, D90, also laid down suppressive fire on the insurgents, using its coaxial chain gun for that purpose.²⁰⁹⁸ After D90 had arrived at the checkpoint, Corporal Green made contact with it in order to give a warning that a flat bed truck could be seen in the direction of Majar al’Kabir that had a heavy machine gun or anti-aircraft gun positioned on the back of the vehicle. Corporal Green confirmed that D90 had opened fire in response to the threat posed by this particular vehicle, but he was unable to recall any further details.²⁰⁹⁹ At the same time, Corporal Green’s vehicle fired its chain gun at a lone insurgent, who was armed with an RPG and a rifle and who had been advancing upon Sergeant Perfect’s Warrior AIFV at the time. Corporal Green was unable to recall if he hit the insurgent or not.²¹⁰⁰
- 2.1612** Captain Strong recalled how Sergeant Perfect had been firing his minimi light machine gun from the turret of his vehicle. In the statement that he gave to the Royal Military Police (“RMP”) in 2004, Captain Strong said that Sergeant Perfect’s fire had been directed at an enemy insurgent, who had been crawling along a ditch, although he could no longer recall that particular detail when he came to make his written Inquiry statement.²¹⁰¹

W31 and W33 are ordered to withdraw and to return to Camp Abu Naji

- 2.1613** As the firing began to die down, the Warrior AIFVs, W31 and W33, were ordered to withdraw from the contact and to travel back to Camp Abu Naji.²¹⁰² In the event, W33 had to travel in reverse gear, because of various mechanical problems that had been caused by the unexploded RPG that was still embedded in its rear left hand side.²¹⁰³ The two Warrior AIFVs travelled back to Camp Abu Naji together in convoy.
- 2.1614** The Challenger 2 tank, D90, and the Warrior AIFV W30 remained at the Danny Boy VCP after W31 and W33 had left and they continued to be targeted by groups of insurgents. Captain Strong recalled how insurgents had fired RPGs at D90 and how he had returned fire with the tank’s coaxial chain gun.²¹⁰⁴ In the statement that he gave to the Royal Military Police (“RMP”) in 2004, Captain Strong described how one of the insurgents had stood up and aimed an RPG at him and how he had therefore returned fire at him. However, by the time he came to make his written Inquiry statement, Captain Strong was no longer able to recall the details of this particular incident.
- 2.1615** Eventually, D90 and W30 were also ordered to withdraw from the Danny Boy VCP and to make their way back to Camp Abu Naji.²¹⁰⁵ Captain Strong recalled that he was also instructed to act as the rear guard for the remainder of the Warrior AIFVs that were returning to Camp Abu Naji from the scene of the Northern Battle.²¹⁰⁶ The arrival of that convoy at Camp Abu Naji is dealt with later in this Report.

²⁰⁹⁸ Captain Strong (ASI010744) [62]

²⁰⁹⁹ Corporal Green [77/70-71]; (ASI017774) [62] – [63]

²¹⁰⁰ Corporal Green (ASI017775) [65]; Captain Strong (ASI010744) [64]

²¹⁰¹ Captain Strong (ASI010743) [58]

²¹⁰² (AS1022149)

²¹⁰³ Sergeant Perfect (ASI015740) [95]

²¹⁰⁴ Captain Strong (ASI010744) [62]–[63]

²¹⁰⁵ (AS1022149)

²¹⁰⁶ Captain Strong (ASI010746) [70]–[71];

6. Miscellaneous matters relating generally to the Battle of Danny Boy

2.1616 The Battle of Danny Boy was inevitably a very significant event for the local Iraqi population. The scale and nature of the battle, together with the fact that both dead bodies and live detainees had been taken back to Camp Abu Naji by the British soldiers, inevitably meant that very soon rumours, stories and speculation began to spread, particularly in Al Majar al’Kabir and the surrounding area. In the paragraphs that follow, I deal with a number of miscellaneous matters relating to the circumstances of the Battle of Danny Boy, some of which were factually correct to the extent indicated and others that were no more than the product of rumour and suspicion.

The conversation overheard by Lance Corporal Philip Muir

2.1617 In his written Inquiry statement, Lance Corporal Philip Muir (now French) described how, at a later date, he had overheard a conversation between two Private soldiers at Camp Abu Naji. According to Lance Corporal Muir, the gist of what he overheard was to the effect that one of the soldiers told the other that an enemy had put his hands in the air during the Battle of Danny Boy, but that the soldier had shot him anyway.²¹⁰⁷

2.1618 Lance Corporal Muir went on to say that he was very concerned about what he had overheard and that he had therefore spoken to the 1PWRR Padre, Captain Francis Myatt, about the matter. According to Lance Corporal Muir, Captain Myatt advised him to speak to Major James Coote, which Lance Corporal Muir then did. During his oral evidence, Lance Corporal Muir stressed that he was confident his recollection was accurate and went on to say that he was able to remember what had happened *“like it was yesterday, yes, 100 per cent.”*²¹⁰⁸

2.1619 Lance Corporal Muir said that he was unsure whether Major Coote had actually taken any action in the light of what he had reported. However, he had subsequently received some abusive messages online from a 1PWRR soldier, which he believed were related to the fact that he had reported the conversation in question.²¹⁰⁹ In his oral evidence to the Inquiry, Lance Corporal Muir described how he had telephoned Major Coote in the lead up to the Inquiry and went on to say that Major Coote had appeared to have no recollection of the matter.²¹¹⁰ For his part, during his oral evidence to the Inquiry, Major Coote confirmed that he could not recall having had any such conversation with Lance Corporal Muir, but that if it did take place, he would have reported it up the chain of command.²¹¹¹ In the event, there was no evidence that any such report had ever been made by Major Coote.

2.1620 In his oral evidence to the Inquiry, Lance Corporal Muir said that, not long before he gave evidence to the Inquiry, he had also telephoned Captain Myatt about the matter. Lance Corporal Muir said that he had asked Captain Myatt whether he was able to remember the occasion when he had spoken to him about the conversation he had overheard at Camp Abu Naji. According to Lance Corporal Muir, at first Captain Myatt did not remember the conversation but that, in a later telephone conversation, Lance Corporal Muir had been able to jog Captain Myatt’s memory, by recounting some of what had been said during the conversation in question, including what Captain Myatt had said to him about the cost of

²¹⁰⁷ Lance Corporal Muir (ASI021138) [95]

²¹⁰⁸ Lance Corporal Muir [81/49/23]

²¹⁰⁹ Lance Corporal Muir (ASI021138) [95]-[97]; [81/43-45]

²¹¹⁰ Lance Corporal Muir [81/48-49]

²¹¹¹ Major Coote [87/125]

conscience.²¹¹² For his part, during his oral evidence to the Inquiry, Captain Myatt said that he had no recollection whatsoever of having spoken to Lance Corporal Muir about a conversation that he had overheard.²¹¹³

2.1621 Despite the fact that Captain Myatt was unable to remember having had a conversation of the nature recalled by Lance Corporal Muir, I have no reason to doubt Lance Corporal Muir’s recollection that he spoke to Captain Myatt about what he had overheard. Since Captain Myatt’s reaction had been to refer Lance Corporal Muir to Major Coote, it is not surprising that he no longer had any recollection of the conversation in question.

2.1622 However, I think that Lance Corporal Muir may have been mistaken about whether he actually did report the matter to Major Coote or, at least, about the way in which he actually recounted the matter to Major Coote, if he did. I have no doubt that, if Lance Corporal Muir had reported the matter to Major Coote in a manner that suggested that there might be some truth in what he had overheard, Major Coote would have reported the matter up the chain of command. The fact that Major Coote appears not to have done so, strongly suggests that either Lance Corporal Muir is mistaken in his recollection about having spoken to Major Coote about the matter or that, if he did, the way in which he described the overheard conversation meant that Major Coote was entirely satisfied at the time that no further action was required. The fact that the latter possibility is very likely, if Lance Corporal Muir actually did bring the matter to Major Coote’s attention as he said, is clear from Lance Corporal Muir’s own evidence, because he accepted that he did not speak to the soldiers about what he overheard at the time, nor did he know if there was any truth in what he heard being said. As he made clear in his written Inquiry statement:

“I did not necessarily believe that what I was hearing was the truth. Some soldiers lie about what they did to impress colleagues.”²¹¹⁴

2.1623 In the event, I am satisfied that, whether he reported it or not, Lance Corporal Muir did overhear part of a conversation between two soldiers at Camp Abu Naji at some date after the Battle of Danny Boy had taken place. It may be the case that Lance Corporal Muir misheard or misunderstood the fragment of conversation that he overheard or that the conversation was about another incident altogether or that, as Lance Corporal Muir himself surmised and is most likely the case, the soldier in question was merely bragging untruthfully. In all the circumstances, I am unable to take this particular matter any further, other than to say that nothing in the evidence I have heard, read and seen about the events of 14 May 2004 gives me any cause to believe that any such an incident might have occurred during the Battle of Danny Boy. Accordingly, it seems to me very unlikely that there was any truth in what Lance Corporal Muir overheard; it seems to me likely that what he overheard was some idle and untruthful bragging by the soldier in question.

The presence of “innocent” civilians on or near the battlefield on 14 May 2004

2.1624 As I have stated earlier in this Report, I have no doubt that the Iraqis who were detained or killed during the course of the Northern and Southern battles, which together make up the Battle of Danny Boy, were armed insurgents who had willingly and deliberately participated in the armed ambush and attack on British Forces along Route 6 on 14 May 2004.²¹¹⁵ In addition,

²¹¹² Lance Corporal Muir [81/88-89]

²¹¹³ Captain Myatt [107/144]

²¹¹⁴ Lance Corporal Muir (ASI021138) [96]

²¹¹⁵ See paragraphs 2.138–2.141

there were a large number of Iraqis, who had been involved in the armed ambush and the ensuing battles, who were not killed or detained by British Forces that day.

2.1625 However, the Inquiry also heard evidence that suggested there had been a number of civilian Iraqis present in the general vicinity of the Northern Battle, who had not been armed and who had not taken any part in the battle itself. Thus, Private Scott Barlow recalled that, after leaving the scene of the Southern Battle, his vehicle had been subject to further attack by armed insurgents in the vicinity of the Danny Boy VCP. He went on to describe how, whilst his vehicle was stationary there, he had seen a lone woman standing in the middle of the road by the checkpoint. According to Private Barlow, she was angry and was shouting. He went on to state that he believed that she was a civilian and that she was not involved in the fighting.²¹¹⁶

2.1626 Private Barrie Reid, who had been at the Danny Boy VCP at the same time as Private Barlow on 14 May 2004, stated that he also vaguely recalled there having been some onlookers and went on to say that there had been at least one bystander, who was watching and who did not appear to be involved in the engagement itself.²¹¹⁷

2.1627 It seems to me to be likely that Privates Reid and Barlow are both correct in their recollection that there had been some non-involved Iraqi civilians present in the vicinity of the Danny Boy VCP, during the afternoon of 14 May 2004. Having regard to all the evidence, this seems to have been at about the time the Northern battle was actually drawing to its close. It appears that, by then, people had started to travel from Al Majar al'Kabir towards the Danny Boy VCP, at the junction with Route 6, perhaps to search for family members or friends or perhaps just to continue with their ordinary business. Thus, Major James Coote remembered that, by the time the Northern Battle Re-org took place, the volume of traffic travelling on Route 6 appeared to be relatively normal.²¹¹⁸

2.1628 However, despite there having been a number of unarmed and non-involved civilians present near the scene and in the vicinity of the Northern Battle, as it drew to a close on the afternoon of 14 May 2004, I am quite sure from all the evidence that I have heard, seen and read that none of these civilians were inadvertently caught up in the fighting or had been fired at or injured in any way by British Forces that day.

The presence of Aircraft in the airspace over or near the Battle of Danny Boy

Lynx helicopter flight from Basra to Camp Abu Naji on 14 May 2004

2.1629 A number of witnesses recalled the presence of aircraft over the Northern Battlefield. In fact, a number of soldiers, including Lieutenant Colonel Matthew Maer, had travelled back to Camp Abu Naji in a Lynx helicopter, after having attended a Brigade meeting in Basra on 14 May 2004. The Lynx helicopter had flown "*low and slow*" on its return journey, because it was not suited to high or hot flying conditions.²¹¹⁹ The Lynx helicopter had arrived back at Camp Abu Naji at about dusk²¹²⁰ on 14 May 2004 and appears to have followed a route that would have taken it very close to the general area of the Northern Battle.

²¹¹⁶ Private Barlow (ASI012310) [65]

²¹¹⁷ Private Reid (ASI019958) [73]

²¹¹⁸ Major Coote (ASI018652) [44]

²¹¹⁹ Lieutenant Colonel Maer [138/13]

²¹²⁰ Lieutenant Colonel Maer [138/13-14]

Record of the deployment of a Phoenix drone on 14 May 2004

2.1630 An operations Flight Report dated 14 May 2004, also indicates that a “Phoenix “drone”, an unmanned aerial video platform, had been deployed at 20:19 hours on 14 May 2004, in order to monitor the area around the battle. Footage retrieved from the video film, taken during that flight, show that its flight path had included part of Route 6 and the area around the Danny Boy VCP, before continuing on in the direction of Al Majar al’Kabir. The Phoenix was recovered at 22:55 hours on 14 May 2004.²¹²¹ The time of its deployment indicates that the Phoenix reached the vicinity of the Northern battle at a time when the main engagement had already finished and the military vehicles involved had already extracted back towards Camp Abu Naji. The ground operator of the Phoenix commented that it had been a “*Good flight AV performed well throughout*” and reported what had been achieved, as follows:

“Controlled principle launch. Task over contact point at check point Danny Boy and large crowd. Over MAK. Imagery good throughout mission.”

Record of a Puma 3 helicopter flight on 14 May 2004

2.1631 A Royal Air Force (“RAF”) Form 540, covering May 2004, records a Puma 3 helicopter as having provided top cover for a contact at the Danny Boy VCP at some point between 12.00 hours and 14.40 hours on 14 May 2004.²¹²² The form in question was one used by the RAF, stationed at Basra Air Base, to maintain a documentary record of any flights undertaken by their aircraft and crew. The RAF also carried out flights from other Forward Operating Bases, one of which was Camp Abu Naji. The form in question shows that the RAF had undertaken a number of flights in a Puma 3 Helicopter from the Forward Operating Base at Camp Abu Naji, between 13 May 2004 and 15 May 2004.²¹²³

2.1632 Puma helicopter pilot M053, a Flight Lieutenant with the RAF at Basra Air Base, recalled having flown a Puma HC1 helicopter (known as a Puma 3) above an engagement on the ground, where there were stationary Warriors and flatbed trucks driving up and down a road. M053 stated that his role had been to watch what was taking place, to listen to communications and to engage if necessary which, on this occasion, it had not been. He believed that this particular recollection related to the battle of Danny Boy on 14 May 2004, because it had been the only occasion in which he remembered having provided top cover for the troops below. However, he could not be absolutely certain that this was indeed the case.²¹²⁴

2.1633 M054 was another flight Lieutenant with the RAF. He confirmed that he had flown with M053 in the Puma 3 on 14 May 2004. He recalled an occasion in which he had flown over a distinctive Y shaped road junction, where ground troops were involved in a contact. M054 thought it “*quite likely*” that this recollection related to the flight recorded on 14 May 2004, given that support flights of that nature were uncommon.²¹²⁵ M054 was sure that they had not used their weapons at any stage and stated that he believed that the flight was purely observational. In total, the flight length was one hour and 15 minutes.²¹²⁶

2.1634 Major Coote did not recall having seen a Puma helicopter when he was present at the Northern Battle and said that he believed he would have remembered if he had seen one at

²¹²¹ (MOD036533)

²¹²² (MOD044146)

²¹²³ M054 (ASI023468) [14]

²¹²⁴ M053 (ASI022887) [16] – [18]

²¹²⁵ M054 (ASI023468) [16]

²¹²⁶ M054 (ASI023469) [17]

the time. However, he confirmed that he was not at the scene of the Northern Battle during the recorded hours of the Puma's flight that day.²¹²⁷ For his part, Major Walch recalled that air support, in the form of "top cover" provided by the RAF, had not been available on 14 May 2004.²¹²⁸

2.1635 It seems to me to be likely that a Puma 3 helicopter did fly over the scene of the Northern Battle and/or the Danny Boy VCP on 14 May 2004. Of course, if the RAF record is of the flight times is correct, then the flight in question would have taken place a couple of hours or so before the first engagement in which Major Griffiths' Rover Group had been involved and, thus, the Puma 3 would not have been overhead at any time while the Northern and Southern Battles were actually taking place.

2.1636 However, I see no reason to doubt the evidence of M053 and M054 and their description of what they had seen during their flight. I accept that it is likely that the flight in question took place on 14 May 2004 and, in my view, it is also likely that what they both described having seen during that flight was the early stages of the Northern Battle in the vicinity of the Danny Boy VCP. However, if that is so, it follows that the flight times for the Puma 3 on 14 May 2004 were not correctly recorded.

Record of a Chinook helicopter flight on 14 May 2004

2.1637 A Serious Incident Report ("SINCREP") produced by 1PWRR, dealing with the situation as at 15 May 2004, and forwarded to Brigade on 12 June 2004, contained a detailed report of the Battle of Danny Boy and included the following:

*"The IRT lifted and remained airborne IVO AN²¹²⁹ ready to react down south if required."*²¹³⁰

2.1638 Major Walch explained that "IRT" was a reference to the "Immediate Response Team", which was a helicopter team based in Basra that deployed for medical evacuations. However, he did not recall having seen an IRT helicopter around the battlefield on 14 May 2004.²¹³¹ Captain Curry stated that there was an IRT at Basra who they sometimes relied upon to extract casualties. He stated that he may have called for the IRT on 14 May 2004, although he noted that they did not appear to have been used or airborne over Danny Boy at any time on that day.²¹³² He suggested that if the IRT had been put on standby, they may have been bought up from Basra to Camp Abu Naji for that purpose.²¹³³

2.1639 The entry in the SINCREP does appear to confirm that the IRT had been located at Camp Abu Naji at the time, rather than at Basra, because it states that deployment was to be *southwards*, i.e. towards the Danny Boy VCP. Basra is located to the south of the Danny Boy VCP and therefore the direction of travel would have been northwards, if the IRT was deploying from Basra. Furthermore the expression "IVO AN" appears to stand for "In the Vicinity of Abu Naji".

²¹²⁷ Major Coote [87/60-61]

²¹²⁸ Major Walch (ASI021691) [130]

²¹²⁹ Meaning "In vicinity of Abu Naji"

²¹³⁰ (MOD026834)

²¹³¹ Major Walch (ASI021691) [129]

²¹³² Captain Curry (ASI016791) [41]

²¹³³ Captain Curry [135/45]

2.1640 Captain John Turner, the medical troop commander for 1PWRR, confirmed that he had a team of medics who formed an IRT. They were based at Camp Abu Naji and had been on standby for deployment by helicopter on 14 May 2004.²¹³⁴

2.1641 There are two log books that record entries which appear to relate to the IRT at Camp Abu Naji on 14 May 2004. The first is recorded in the CS Medical Squadron log (log keeper Beasley) at 18.25 hours and reads: “*IRT deployed to Al Amarah 2 x Cas P2’s*”²¹³⁵

2.1642 The second is recorded in the log for the UK Medical Group (Captain Kennie) at 18:26 hours and reads as follows:

*‘IRT on route to AA re 2 x cas zap no. KE 6363 – shrapnel to groin LO5324 – Inj to thigh’*²¹³⁶

2.1643 As it seems to me, it is likely that the IRT at Camp Abu Naji had been put on standby to deal with casualties on 14 May 2004, as Captain Turner recalled. In the event, it was decided that they were not needed and thus it is unlikely that the helicopter was actually ever airborne in order to evacuate casualties from the battlefield that day, although it may have had to be flown from Basra to Camp Abu Naji in order to be on standby for this purpose. If this did occur, the helicopter is likely to have taken a flight path that took it close to the scene of the battle.

Military evidence in relation to aircraft on the battlefield

2.1644 There were a number of military witnesses at the Northern Battle who recalled having seen a helicopter at some point during the engagement. It seems to me very likely that these witnesses were referring to the Lynx helicopter that was flying back from Basra with Lieutenant Colonel Maer on board on 14 May 2004. Thus, Lieutenant Henry Floyd recalled that there had been a Lynx helicopter flying overhead near the Danny Boy VCP.²¹³⁷ Others including Private Keith Dalton²¹³⁸, Captain Marcus Butlin²¹³⁹ and Major James Coote²¹⁴⁰ all recalled the presence of a Lynx helicopter near the battlefield.

2.1645 Colour Sergeant Graham King also recalled having seen a small helicopter in the vicinity of the battlefield on 14 May 2004. He said that he believed it to have been a Gazelle helicopter.²¹⁴¹ In my view, it is likely that he also saw the helicopter in which Lieutenant Colonel Maer was travelling back to Camp Abu Naji that day and that he was simply mistaken as to the type of helicopter that he saw.²¹⁴²

²¹³⁴ Captain Turner (ASI017605) [85]–[87]

²¹³⁵ (MOD036587) The abbreviation means “Two Casualties, level 2 seriousness, i.e. not life threatening, but requiring urgent medical attention”

²¹³⁶ (MOD036568)

²¹³⁷ Lieutenant Floyd [75/73–74]

²¹³⁸ Private Dalton [86/57]

²¹³⁹ Captain Butlin [93/55]

²¹⁴⁰ Major Coote [87/59–60]; [87/177–178]

²¹⁴¹ The Inquiry received a witness statement from Sergeant Gledhill, a member of the Royal Military Police who worked on the Danny Boy Investigation. He recalled that he had tried to obtain footage from an American Apache helicopter which had been in the vicinity of the engagement and which was thought by soldiers involved in the contact to have used its weaponry (ASI022598) [40]. His evidence was both inconclusive on the matter and conflicted with all of the other evidence from those military witnesses who were at the engagement on 14 May 2004. I am therefore satisfied that this evidence was almost certainly incorrect, possibly having been confused with an incident on another occasion.

²¹⁴² Colour Sergeant King [96/90 – 91]

Iraqi evidence in relation to aircraft on the battlefield

2.1646 A large number of the Iraqi witnesses recalled having seen a helicopter in the vicinity of the battlefield on 14 May 2004.²¹⁴³ It seems to me likely that these witnesses were referring to the Lynx helicopter in which Lieutenant Colonel Maer travelled back to Camp Abu Naji that day.

2.1647 However, a significant number of Iraqi witnesses also claimed to have seen a number of aircraft on 14 May 2004. Thus, Assad Mozan Khalait Al-Kaabi (witness 78) recalled that, after he left the hospital in which he worked at about 15:30 hours to 16:00 hours that day, he had heard three helicopters and the sound of aeroplanes.²¹⁴⁴

2.1648 Both Tahseen Ali Hatem Al-Mozani (witness 172) and Mohammed Majid Mohammed Salih Al-Jafar (witness 134) said that they had seen numerous military helicopters on 14 May 2004, at about the time the engagement had started.²¹⁴⁵ Dr Jafar Nasser Hussain Al-Bahadli (witness 82)²¹⁴⁶ and Oudah Reshak Zora Al-Elayawi (witness 101)²¹⁴⁷ recalled having heard the sound of helicopters at about the same time.

2.1649 However, I am satisfied that none of these witnesses actually saw or heard more than one helicopter at a time that day, although they may have seen or heard either the Puma performing top cover and/or the Lynx, as it passed overhead on its way back to Camp Abu Naji. It may be the case that these witnesses have simply misremembered the events of that day, or it may be that their memories had been affected by the rumours and/or stories about many helicopters being involved in the events of 14 May 2004 that were circulating in the area at the time. Thus, for example, when he spoke to fellow colleagues at the Al Majar al'Kabir hospital that day, Dr Adel Saleh Majeed Al-Shawi was told that numerous helicopters had been present during the events of 14 May 2004.²¹⁴⁸

2.1650 Khuder Al-Sweady (witness 1) said that, in addition to having seen four helicopters, he had also seen two fighter planes on 14 May 2004. He claimed that the helicopters had been firing "Lightning disks."²¹⁴⁹ The substance of this particular allegation was supported by Wisam Michal Kareem Al-Sweady (witness 183), who said that he had seen a helicopter dropping objects of different colours on the ground on the same day.²¹⁵⁰

2.1651 Al'a Hassoun Kahyoush Shazar Al-Grawi (witness 37) also gave an account of having seen an aircraft, which he believed to have been a helicopter, firing rockets on 14 May 2004.²¹⁵¹

2.1652 In his written Inquiry statement, Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169) recalled having seen a helicopter and a military plane on 14 May 2004. These particular aircraft were not firing anything and the military plane was quite far away and was flying in a circular

²¹⁴³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/10]; [14/36]; Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/10]; Kahz'al Jabratallah Khalad Mulla Al-Helfi (witness 15) [27/11-12]; Adil Khaz'al Jabratallah Al-Helfi (witness 141) [27/60]; Ali Abed Eitheyyib (witness 79) [44/30]; Aqeel Abdul Abbas Jamol (witness 93) [51/11]; Mohanad Abdadallah Obaid Khalifa Al-Ibadi (witness 100) [52/14], [52/37]; Oudah Reshak Zora Al-Elayawi (witness 101) [52/82]; [53/6]

²¹⁴⁴ Assad Mozan Khalait Al-Kaabi (witness 78) [6/81-83]

²¹⁴⁵ Tahseen Ali Hatem Al-Mozani (witness 172) [31/27-29]; [31/89]; Mohammed Majid Mohammed Salih Al-Jafar (witness 134) (47/103); (ASI008754) [24] - [25]

²¹⁴⁶ Jafar Nasser Hussain Al-Bahadli (witness 82) [25/40]; [25/52]

²¹⁴⁷ Oudah Reshak Zora Al-Elayawi (witness 101) [53/3]; [53/6]

²¹⁴⁸ Dr Adel Saleh Majeed Al-Shawi (PIL000199) [20]; [53/57]

²¹⁴⁹ Khuder Al-Sweady (witness 1) [22/1-2]

²¹⁵⁰ Wisam Michal Kareem Al-Sweady (witness 183) [41/13]; [41/15], [41/24-25]; [41/44-47]

²¹⁵¹ Al'a Hassoun Kahyoush Shazar Al-Grawi (witness 37) (ASI006335) [41]; [36/67]

pattern.²¹⁵² He said that he knew it was British, because the British were the only ones present in the area at that time. Later in the same statement, he said that while he had been at the road block opposite the paper factory that day, he had seen an aeroplane throwing out discs over the whole area, which had then set the crops ablaze.²¹⁵³ He also said that the plane had been throwing out papers which had words written in Arabic. He claimed to have collected one of the papers, although he was unable to recall what he had subsequently done with it.²¹⁵⁴

2.1653 Both Luay Mohammed Zayir Al-Noori (witness 108)²¹⁵⁵ and Qassim Ghelan Neema Sahn Al-Majidi (witness 182)²¹⁵⁶ recalled that a single fighter plane had been present at some point on 14 May 2004. Luay Al-Noori recalled that he had seen the plane or jet fighter after the demonstration had taken place in Al Majar al’Kabir. He said that it had been flying at a low altitude. However, neither witness claimed to have seen anything fired from or by the plane in question. In fact, there is no independent record, written or otherwise, of any war plane or fighter aircraft having been present over the battlefield on 14 May 2004, nor did any of the military witnesses confirm the presence of any such aircraft that day. I am therefore of the view that both these witnesses are mistaken in their recollection and have perhaps confused it with the events of another day.

2.1654 I am quite sure that no objects or weapons were fired from any aircraft flying over or in the vicinity of battlefield on 14 May 2004. These particular allegations were denied by the military witnesses who had been present on the battlefield or who had piloted/crewed the aircraft that were operational in the area that day²¹⁵⁷. Furthermore, they were not supported by most of the Iraqi witnesses who claimed to have seen aircraft on 14 May 2004.

2.1655 Furthermore, I do not accept that these allegations were the result of some form of mistake on the part of the Iraqi witnesses who claimed to have seen it happen that day. I have no doubt that Khuder Al-Sweady (witness 1) was deliberately untruthful when he gave evidence of having seen “lightning discs” being fired by helicopters on 14 May 2004. I am sure that he made this allegation as part of his general approach of seeking to discredit the British forces wherever possible, thereby seeking to add credence to the allegations of unlawful killing, mutilation and torture of Iraqi civilians by the British soldiers at Camp Abu Naji. I am also sure that Wisam Michal Kareem Al-Sweady (witness 183) and Al’a Hassoun Kahyoush Shazar Al-Grawi (witness 37) also deliberately made similar false allegations for the same purpose.

2.1656 That Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169) deliberately gave a false account of seeing laser discs being fired from a plane, is apparent from his inability to recall any real detail about the laser discs he claimed to have seen. His further account of having seen pieces of paper being thrown from a plane and having collected an example, is both unsubstantiated by any other witness and patently untrue. I also have no doubt that his purpose in telling these lies was to lend his support to the efforts made in evidence to discredit the British forces wherever possible.

²¹⁵² Khalid Tayyeh Abdulhassan Al-Arjarwee (witness 169) (ASI010352) [24]

²¹⁵³ Khalid Tayyeh Abdulhassan Al-Arjarwee (witness 169) (ASI010354) [30]

²¹⁵⁴ Ibid; Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169) [39/24-26]; [39/32-33]; [39/71]

²¹⁵⁵ Luay Mohammed Zayir Al-Noori (witness 108) (ASI008561) [49]; [49/27]; [49/35]

²¹⁵⁶ Qassim Ghelan Neema Sahn Al-Majidi (witness 182) [34/10]

²¹⁵⁷ See, for example, Major Coote [87/177/20]–[178/4]; WO1 Potter [133/90/17-23]; M053 (ASI022887) [17]; M054 (ASI023469) [17]

Allegations with regard to the use of dogs by British forces on the battlefield on 14 May 2004

2.1657 According to Wisam Michal Kareem Al-Sweady (witness 183), the British forces had German Shepherd dogs with them on the battlefield. He said that he had seen a number of dogs (at least three) on 14 May 2004. He stated that the dogs were accompanied by soldiers. According to Wisam Al-Sweady, some of the soldiers had detained Hamid Al-Sweady (deceased 3) and the dogs had been sniffing about Hamid Al-Sweady's legs, running between his legs and jumping up at him. They had been snarling, barking and growling as they did so.²¹⁵⁸ He denied that he could have been mistaken about this, because he specifically remembered having seen and heard the dogs.²¹⁵⁹

2.1658 Basheer Taumie Challob Al-Hameedawi (witness 188) also provided a written Inquiry statement in which he alleged that he had seen British soldiers with a dog on a leash on 14 May 2004. The dog had been barking and was very aggressive. Basheer Al-Hameedawi said that the dog went close to Hamid Al-Sweady (deceased 3), but did not touch him.²¹⁶⁰

2.1659 Kamil Mowat Al-Mozani (witness 30), the brother of Ali Mowat Al-Mozani (deceased 8), recalled how he had seen what was "quite similar to a dog bite" on the neck of the Ali Mowat Al-Mozani's body, when he washed it. In his oral evidence to the Inquiry Kamil Al Mozani said that he could not be certain whether the wound to his brother's body had been by a dog. What he said was: "I'm not sure that it was a dog bite. It looks like one."²¹⁶¹

2.1660 However, I am quite sure that no dogs were used by the British forces during the Battle of Danny Boy on 14 May 2004. Quite apart from the fact that none of the military witnesses confirmed that this had been the case, none of the nine detainees made any such allegation.²¹⁶² I therefore reject the evidence of Wisam Michal Kareem Al-Sweady (witness 183) and Basheer Taumie Challob Al-Hameedawi (witness 188), both of whom gave first-hand accounts of having seen one or more dogs being used by British forces that day. I have no doubt that this evidence was untrue and was part of a deliberate attempt to discredit the British forces. It should also be noted that to the extent these particular allegations alleged that Hamid Al-Sweady was alive at the time, that was also untrue and deliberately so.

2.1661 In relation to the evidence of Kamil Mowat Al-Mozani (witness 30), it seems to me that he is mistaken in his belief that the mark on his brother's body could have been attributable to a dog bite. It may well be that his judgement about this was clouded by the rumours which had surfaced by then about dogs having been present on the battlefield.

Allegations that microbiological/chemical weapons were used by the British

2.1662 In his first written Inquiry statement and in an interview that he gave to the BBC in December 2007, Khuder Al-Sweady (witness 1) repeatedly alleged that British Forces had used microbiological/chemical weapons on the battlefield.²¹⁶³ His main reasoning for this

²¹⁵⁸ Wisam Michal Kareem Al-Sweady (witness 183) (PIL001065)[32]–[34]

²¹⁵⁹ Wisam Michal Kareem Al-Sweady (witness 183) [41/18/4]–[19/3]; [41/45/17]–[47/7]; [41/63/6]–[67/9]

²¹⁶⁰ Basheer Taumie Challob Al-Hameedawi (witness 188) (PIL000902) [48-49]

²¹⁶¹ Kamil Mowat Al-Mozani (witness 30) [30/64/18–25]; [30/102/13–19]; [31/7/11–16]

²¹⁶² In an interview given in October 2008, Abbas Abd Ali Abdulridha Al-Hammedawi (detainee 776) stated that he could hear dogs at some point on 14 May 2004. It is not clear from his evidence where he stated he was when he heard this and accordingly I am unable to assess his evidence any further. I make no criticism of him in this regard but do not consider his evidence as corroboration for the allegation that there were dogs on the battlefield (ASI003788-89)

²¹⁶³ Khuder Al-Sweady (witness 1) (ASI001094) [39]

assertion appears to have been that he had witnessed a victim of the Battle of Danny Boy die a prolonged death from infection. What he said was this:

“I can reaffirm that there were developed and microbial weapons that were used because no-one who was injured has been able to be healed.”²¹⁶⁴

2.1663 During the course of his oral evidence to the Inquiry, Khuder Al-Sweady persisted in maintaining this particular allegation.²¹⁶⁵ He also claimed that one of the casualties of the Battle of Danny Boy – Muhammad Al-Jeezani – had shown signs of “chemical influence” and that tests that he, Khuder Al-Sweady, had carried out showed that Muhammad Al-Jeezani had both tuberculosis bacteria and pneumonia bacteria present in his body. However, he admitted that he had not collected any of the ammunition from the battlefield for testing.²¹⁶⁶

2.1664 I have no doubt that Khuder Al-Sweady’s allegations of the use of microbiological and chemical weapons by British forces are completely untrue. In my view, Khuder Al-Sweady made these very serious allegations recklessly and he did so without any foundation or proper evidential basis. All the military witnesses who were asked about this particular allegation unhesitatingly dismissed such allegations as being patently untrue.²¹⁶⁷

2.1665 In my view, these particular allegations speak volumes about Khuder Al-Sweady’s readiness to make very serious and wholly unfounded allegations about the conduct of British Forces generally and to do so without any regard for the truth. I have no doubt that he felt justified in making such allegations, because of his wider and wholly unreasonable conviction that the British Forces were in Iraq simply in order to commit crime. Thus, in the course of his oral evidence to the Inquiry, Khuder Al-Sweady said this:

“I am convinced that when the occupiers came I was convinced that they were there to commit crimes and not only on the 15th. This is what happened. ...”²¹⁶⁸

Iraqi evidence about the number of Iraqis who had been detained alive on the battlefield by the British on 14 May 2004

Assad Mozan Khalait Al-Kaabi (witness 78)

2.1666 On the afternoon of the 14 May 2004, Assad Mozan Khalait Al-Kaabi (witness 78) was working as a medical assistant at the hospital in Al Majar al’Kabir. He gave evidence that, during that afternoon, he had travelled in an ambulance with Ali Abed Eitheyyib (witness 79) in order to pick up casualties from the Battle of Danny Boy. According to Assad Al-Kaabi, they had driven through the Danny Point VCP until they reached a point about 100 metres from some British Military Vehicles that were stationary at the side of the side of the road.²¹⁶⁹ He described how he had got out of the ambulance and had then seen an injured Iraqi, who he later learnt was Haydar Hatar Al-Lami (deceased 2), who had a drip in his arm. Assad Al-Kaabi claimed that he was prevented from treating Haydar Al-Lami because a soldier had fired a warning shot to frighten them and to make the ambulance leave.²¹⁷⁰

²¹⁶⁴ Ibid.

²¹⁶⁵ Khuder Al-Sweady (witness 1) [21/95-98]; [22/11-13]; [22/31-32]

²¹⁶⁶ Khuder Al-Sweady (witness 1) [21/95]; [22/11-12]

²¹⁶⁷ Craftsman Morris [133/233/4-13]; Sergeant Brodie [79/126/20]–[127/8]

²¹⁶⁸ Khuder Al-Sweady (witness 1) [22/32-33]

²¹⁶⁹ Assad Mozan Khalait Al-Kaabi (witness 78) (PIL000344) [19]

²¹⁷⁰ Assad Mozan Khalait Al-Kaabi (witness 78) [7/19-24] – NB -this is echoed (in part) by Hussein Fadhil Abbas Al-Behadili (detainee 778) who recalled that an ambulance had arrived on the battlefield [18/9/22-25]

2.1667 Assad Al-Kaabi also said that he had seen more than 15 Iraqi men, who had been detained on the battlefield by the British that day. According to Assad Al-Kaabi, the men were plasticcuffed and some had t shirts over their heads.²¹⁷¹ When Assad Al-Kaabi gave a statement to the Royal Military Police (“RMP”) in 2005, he said that he did not know the identity of any of these men.²¹⁷² However, when he came to give evidence to the Inquiry he claimed to have been able to identify two of these men as Ali Mawat (deceased 8) and Hamid Al-Sweady (deceased 3). According to Assad Al-Kaabi, both had been alive and uninjured at the time.²¹⁷³ Assad Al-Kaabi explained that he did not provide this information to the RMP because he was fearful of the British military and also suggested that he had wanted to protect their relatives.²¹⁷⁴

Ali Abed Eitheyyib (witness 79)

2.1668 Assad Al-Kaabi’s account was contradicted by the evidence of Ali Abed Eitheyyib (witness 79), whose evidence about this I do accept. Ali Eitheyyib remembered having travelled in his ambulance with Assad Al-Kaabi on 14 May 2004. However, according to Ali Eitheyyib, they had stopped at the Danny Boy VCP, because it had been unsafe to proceed any further. Ali Eitheyyib recalled how he had got out of the ambulance with Assad Al-Kaabi, because of the intense firing that had been taking place at the time. According to Ali Eitheyyib, they had both remained there until the battle came to an end. He did not remember any British soldier having fired his weapon as they had approached, nor was he able to see anyone who had been detained on the battlefield.²¹⁷⁵

Ahmed Abbas Al-Fartoosi (witness 91)

2.1669 Ahmed Abbas Makhfe Al-Fartoosi (witness 91) also said that he had travelled in the ambulance with Ali Eitheyyib (witness 79) and Assad Al-Kaabi (witness 78) on at least one occasion on 14 May 2004. According to Ahmed Al-Fartoosi, they had turned around at the Danny Boy VCP, because they had been unable to continue any further. He did not remember having got out of the ambulance at all.²¹⁷⁶

2.1670 Although I accept that Assad Al-Kaabi was present in the ambulance driven by Ali Eitheyyib on 14 May 2004, I do not believe his evidence that they had proceeded northwards along Route 6 from the Danny Boy VCP towards the location of the Northern Battle Re-org that day. I do not believe Assad Al-Kaabi’s evidence that he had seen the detainees on the battlefield, as he described. I do not believe his evidence that he saw Ali Mawat (deceased 8) and/or Hamid Al-Sweady (deceased 3) alive and uninjured at the time. As I have made abundantly clear in other parts of this report, both Hamid Al-Sweady and Ali Mawat were killed on the battlefield in the course of the fighting and were never taken alive into the custody of the British military. His explanation as to why he had been unable to identify any of the detainees he claimed to have seen, when he was interviewed by the Royal Military Police (“RMP”) in 2005, but was nevertheless able to identify them later in his evidence to the Inquiry, was plainly untrue.

²¹⁷¹ In his earlier judicial review statement, Assad Mozan Khalait Al-Kaabi recalled that he had seen 30-35 men detained on the battlefield (MOD027146) [17]; but at the time of giving evidence to the Inquiry he said that he could no longer recall how many there were, but it was more than 15 [6/93]

²¹⁷² Assad Mozan Khalait Al-Kaabi (witness 78) (MOD025533); [6/97-99]

²¹⁷³ Assad Mozan Khalait Al-Kaabi (witness 78) [6/88-94]; [7/17-19]

²¹⁷⁴ Assad Mozan Khalait Al Kaabi (witness 78) [7/16]

²¹⁷⁵ Ali Abed Eitheyyib (witness 79) [44/30-32]; [44/35/14]

²¹⁷⁶ Ahmed Abbas Makhfe Al-Fartoosi (witness 91) [40/48]; Nb – Ali Abed Eitheyyib (witness 79) denied that Ahmed Al-Fartoosi was with him on any of the journeys on 14 May 2004 [44/34] but he was obviously mistaken about that, probably due to the passing of time

2.1671 I accept Ali Eitheyyib’s evidence that the ambulance in which Assad Al-Kaabi travelled that day had actually halted just short of the Danny Boy VCP, a long way from the location of the Northern Battle Re-org, because it was unsafe to proceed any further. Like Ali Eitheyyib, from that position Assad Al-Kaabi would have been quite unable to see any of the Iraqi men, who the British had detained on the battlefield. Furthermore, as I have already stated earlier in this Report²¹⁷⁷, by the time of the Northern Battle Re-org, both Ali Mawat (deceased 8) and Hamid Al-Sweady (deceased 3) were already dead, having been killed during the Northern Battle fighting. Their dead bodies were amongst those collected from the battlefield.²¹⁷⁸ At no stage was either of them detained alive and/or uninjured by the British that day.

2.1672 I do not accept the submissions advanced on behalf of Iraqi Core Participants, that Assad Al-Kaabi was either mistaken as to the identity of those he saw detained on the battlefield or was mistaken in thinking that Ali Mawat (deceased 8) and Hamid Al-Sweady (deceased 3) had still been alive when he saw them.²¹⁷⁹ I have no doubt that Assad Al-Kaabi told deliberate and calculated lies about these matters. He did so in order to lend substance and credence to the false allegations that Iraqi civilians had been unlawfully killed, tortured and mutilated by the British at Camp Abu Naji on the night of 14 to 15 May 2004. It was lies such as these that resulted in the persistence of these false allegations and in the widespread belief in their truth which still continues today.

Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169)

2.1673 Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169) also described how he had seen between 15-20 live detainees, who were being guarded by British soldiers in the Al Saida area,²¹⁸⁰ on the left hand side of the road by the junction to the Al Majar al’Kabir road, although he accepted that this number was an estimate.²¹⁸¹

2.1674 During his oral evidence to the Inquiry, Khalid Al-Arjawee (witness 169) said that there had been more than 30 British soldiers guarding the detainees at the time and that they had been pointing their guns at the detainees.²¹⁸² According to Khalid Al-Arjawee, some of the British soldiers were female. He said that they had been about 10 to 15 metres away from him and that he had clearly seen the bags over the heads of the detainees, some of whom were standing, whilst some were lying on the ground.

2.1675 In his oral evidence to the Inquiry, Khalid Al-Arjawee (witness 169) described how one of the British soldiers had placed his foot on a detainee’s head for over 10 minutes. He claimed that he had shouted at the soldier and had told him to remove his foot, which he then did. He then went on to say that he had done this through an interpreter, who had happened to be present at the scene.²¹⁸³

2.1676 During his oral evidence, Khalid Al-Arjawee (witness 169) went on to give a lengthy description of the events that followed. He said that he had spoken to the British soldiers, with the

²¹⁷⁷ See paragraph 2.1308

²¹⁷⁸ See paragraph 2.1308

²¹⁷⁹ See ICP written Closing Submissions at (227) [811]

²¹⁸⁰ This is the area around the junction between Route 6 and the road to Al Majar al’Kabir. It is thus the area where the Danny Boy VCP was located

²¹⁸¹ Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169) [39/36/24]; [39/71]; [40/15]

²¹⁸² In his written Inquiry statement he had estimated 10-15 soldiers (ASI010361) [45]

²¹⁸³ Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169) [39/36-41]

assistance of an interpreter, and went on to claim that one of the soldiers had tried to give him a watch, which he did not accept.²¹⁸⁴

2.1677 A number of military witnesses were asked whether they had been approached by any Iraqi civilians that day and all of them denied that this had happened. I have no doubt that their evidence to that effect was true.²¹⁸⁵

2.1678 Khalid Al-Arjawee also said that other Iraqis had been detained near the paper factory and between Qal'at and the Saida area, although he had only seen first-hand those who had been detained at the junction with the road to Al Majar al'Kabir. He said that, according to what people were saying (and he had no reason to disbelieve them) some people had been detained and then set free.²¹⁸⁶

2.1679 I accept that it is possible that Khalid Al-Arjawee may have driven down Route 6 at some point on 14 May 2004. However, I do not believe his evidence that he saw between 15-20 detainees being guarded by 30 or more soldiers by the junction with the Al Majar al'Kabir road, nor that one of those soldiers had had his foot on a detainee's head. His description of having seen the detainees with bags over their heads was also untrue, as was his evidence that he was given a watch by a British soldier. In my view, Khalid Al-Arjawee deliberately gave untruthful evidence about these matters, in order to lend general credence to the false allegations of unlawful killing, torture and mutilation by the British at Camp Abu Naji on the night of 14 and 15 May 2004. Again, it was lies like these that resulted in the persistence of these false allegations and in the widespread belief in their truth which still continues today.

Qassim Ghelan Neema Sahn Al-Majidi (witness 182)

2.1680 In his written Inquiry statement, Qassim Ghelan Neema Al-Majidi (witness 182) claimed to have seen 13 or 14 people detained in the farming area about 4 to 5 hundred metres short of the road junction at Al Saaida.²¹⁸⁷ He also suggested an additional two or three Iraqis had been brought to join the main group.²¹⁸⁸ During his oral evidence to the Inquiry, he estimated that there had been "*six, seven, eight, ten, twelve, I don't remember, but many*" detainees. He said that some of the detainees had been lying face down and that some had been lying on their backs. According to Qassim Al-Majidi, the detainees had been handcuffed behind their backs, although he had been unable to see what they had been handcuffed with.²¹⁸⁹ During his oral evidence, he described how the soldiers had dragged the Iraqi detainees to the vehicles, but went on to say that he had not seen an additional group of detainees join the main group.²¹⁹⁰ I accept that in this part of his evidence it is possible that Qassim Al-Majidi may have been describing the detainees at the Northern Battle collection point near WOC.

Ahmed Jabbar Hammood Al-Furaji (detainee 777)

2.1681 In his Judicial Review statement, Ahmed Al-Furaji claimed that he had seen more than seven Iraqis lying on the ground next to a military vehicle.²¹⁹¹ In his first written Inquiry statement, he estimated that he had seen about eight or nine detainees next to the armoured vehicle

²¹⁸⁴ Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169) [39/48 -50]

²¹⁸⁵ Eg Private Pritchard [80/44-45]

²¹⁸⁶ Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169) [39/71-72]

²¹⁸⁷ Qassim Ghelan Neema Sahn Al-Majidi (witness 182) (ASI008787-89) [15] [26]

²¹⁸⁸ Qassim Ghelan Neema Sahn Al-Majidi (witness 182) (ASI008789) [29]-[30]

²¹⁸⁹ Qassim Ghelan Neema Sahn Al-Majidi (witness 182) [34/11]

²¹⁹⁰ Qassim Ghelan Neema Sahn Al-Majidi (witness 182) [34/14]

²¹⁹¹ Ahmed Jabbar Hammood Al-Furaji (detainee 777) (MOD006531) [10]

to which he had been taken after he had been arrested.²¹⁹² However, in his second written Inquiry statement, Ahmed Al-Furaiji appeared to have modified these accounts, stating that he had in fact seen approximately 4 detainees at that time.²¹⁹³ I accept that in these parts of his evidence it is possible that Ahmed Al-Furaiji may have been describing the detainees at the Northern Battle collection point near WOC.

Salim Adday Mohaisen Al-Baidhani (witness 157)

2.1682 Salim Al-Baidhani (witness 157) was also on duty as an ambulance driver at Al Majar al’Kabir hospital on 14 May 2004. I deal with his evidence in more detail a little later in this Report.²¹⁹⁴ During his oral evidence to the Inquiry, he described how he had left his ambulance near the Danny Point VCP that afternoon and had eventually ended up in a position where he was able to see British troops and armoured vehicles on Route 6. According to Salim Al-Baidhani, they had been positioned some short distance north of the Danny Boy VCP, in the direction of Al Amarah. Salim Al-Baidhani went on to describe how he had then seen 3 or 4 Iraqi men who had obviously been detained by the British Forces, because there were British soldiers close to them and they were sitting down with their hands tied behind their backs on a dirt road next to the main road.²¹⁹⁵ I accept that, in this part of his oral evidence, it is possible that Salim Al-Baidhani may have been describing the detainees at the Northern Battle collection point near WOC.

Conclusions with regard to the number of detainees who had been detained alive by the British military on the battlefield on 14 May 2004

2.1683 As I have already explained in an earlier part of this Report,²¹⁹⁶ I am have no doubt that only nine detainees were actually detained alive by the British on the battlefield on 14 May 2004 (one on the Southern Battlefield and eight on the Northern Battlefield). I am sure that no other Iraqis were detained alive by the British on the battlefield that day and I am also sure that none of those who had been detained were released at any stage.

2.1684 Although Khalid Tayyeh Abdulhassan Al-Arjawee (witness 169) claimed to have seen a large group of Iraqis detained at the junction of Al Saaida, he lied about that. I am satisfied that no Iraqis were actually detained by the British in that particular area. In fact, as I have already explained, one of the detainees had been captured during the Southern Battle near the large derelict building and the other eight had been captured during the Northern Battle at the Storm Drain Position (one) and from in or very near Trench One (seven).²¹⁹⁷

Evidence of sightings of detainees and deceased while still alive on the battlefield on 14 May 2004

Evidence with regard to the capture of Hassan Radhi Khafeef Al-Keemy Al-Aosi (deceased 9) alive on the battlefield by the British military on 14 May 2004

2.1685 In the paragraphs that follow, I will deal with the evidence of those witnesses who claimed to have seen Hassan Al-Aosi (deceased 9) captured alive by the British military on 14 May 2004.

²¹⁹² Ahmed Jabbar Hammood Al-Furaji (detainee 777) (ASI000880) [36]

²¹⁹³ Ahmed Jabbar Hammood Al-Furaji (detainee 777) (PIL000312) [60]

²¹⁹⁴ See paragraphs 2.1690 to 2.1694 below

²¹⁹⁵ Salim Adday Mohaisen Al-Baidhani (detainee 157) [47/25-26]

²¹⁹⁶ See paragraphs 2.323 and 2.973–2.974

²¹⁹⁷ See paragraphs 2.322, 2.806 and 2.1269

Adnan Mushawai Saad Al-Fartoosi (witness 138)

2.1686 Adnan Al-Fartoosi (witness 138) claimed that, while he was travelling on Route 6 at around 12:00 hours on 14 May 2004, he had been overtaken by a white land cruiser driven by Hassan Radhi Khafeef Al-Keemy Al-Aosi (deceased 9). Adnan Al-Fartoosi said that the land cruiser had stopped at the British military checkpoint and that he had watched from a distance as Hassan Al-Aosi had been forcibly dragged from his vehicle by 2, 3 or 4 British soldiers. Adnan Al-Fartoosi said that Hassan Al-Aosi had been limping, trembling and resisting the soldiers at the time. He described what then happened, in the following terms:

Q. Did they take him [i.e. Hassan Al-Aosi] to their armoured vehicle?

A. No, not into their armoured vehicle. At some distance from the vehicle they were still fighting and that is when he fell down, and when he fell down I thought he had died.

Q. Did you hear anything when he fell down?

A. Gunshot. I thought that they had killed him, that he passed away.²¹⁹⁸

2.1687 Adnan Al-Fartoosi went on to describe how he had then seen two of the British soldiers lift Hassan Al-Aosi from the ground and tie him to a military armoured vehicle. According to Adnan Al-Fartoosi, the soldiers had tied Hassan Al-Aosi to the front of the armoured vehicle, with both his arms outstretched. He described how the armoured vehicle had then driven off in the opposite direction, with Hassan Al-Aosi still tied to the front and still alive, as follows:

Q. When they lifted him [i.e. Hassan Al-Aosi], was he still struggling?

No. No, no, after they were lifting him, he wasn't moving his legs. I assume he had injury to the leg.

Q. Did you think he was alive or dead?

A. No, because he was moving the neck and the head, I assume he was alive, because if he was dead he wouldn't have been moving the head and the arms.

Q. And where did they take him?

A. To the armoured vehicle.

Q. When they got him to the armoured vehicle, what did they do with him?

A. They tied him to it.

Q. Did they tie him to the front, or to the side, or to the back?

A. The front. The front of the vehicle. Because the front of the vehicle was towards us.²¹⁹⁹

Saad Radhi Khafeef Al-Keemy (witness 33)

2.1688 Saad Al-Keemy (witness 33) was the brother of Hassan Al-Aosi (deceased 9). During his oral evidence to the Inquiry, Saad Al-Keemy described how Adnan Al-Fartoosi (witness 138) had told him that he had seen the capture of Hassan Al-Aosi (deceased 9) by the British military

²¹⁹⁸ Adnan Mushawai Saad Al-Fartoosi (witness 138) [50/7-19]

²¹⁹⁹ Adnan Mushawai Saad Al-Fartoosi (witness 138) [50/20-21]

on 14 May 2004. As Saad Al-Keemy recalled it, Adnan Al-Fartoosi had told him that the British soldiers had taken Hassan Al-Aosi out of his taxi and had tied him to a vehicle in the shape of a cross, he had been shot in the leg and then put into a vehicle and taken away, injured but alive.²²⁰⁰ During his oral evidence to the Inquiry, Saad Al-Keemy confirmed that Adnan Al-Fartoosi had said that he had actually seen Hassan Al-Aosi shot in the leg from close by.²²⁰¹ However, in the course of his oral evidence, Adnan Al-Fartoosi denied that he had ever said that he had actually seen Hassan Al-Aosi get shot.²²⁰²

2.1689 According to Saad Al-Keemy (witness 33), in addition to Adnan Al-Fartoosi there had been a number of other people who, the following day, had told him that they had seen his brother detained alive by the British, although at the time he gave evidence in May 2013, he did not wish to provide the Inquiry with any details of these people.²²⁰³ However, he later provided the Inquiry with details of two people who he said had told him that they had seen his brother alive. One of those was Khairi Al-Gawwam (witness 253), whose evidence is discussed below. The other was Ali Abdelhusain Ghadhbaan, who had in fact died in July 2012.²²⁰⁴ It is to be noted that Saad Al-Keemy’s evidence about the circumstances of his brother’s alleged capture by the British soldiers on 14 May 2004 consisted entirely of what he had been told by others.

Salim Adday Mohaisen Al-Baidhani (witness 157)

2.1690 During his oral evidence to the Inquiry, Salim Al-Baidhani (witness 157) said that, on 14 May 2004, he had been working as an ambulance driver for the Al Majar al’Kabir hospital. He described how he had left the hospital in his ambulance with Aqeel Abdul Abbas that day, shortly after Ali Eitheyyib. He had driven down the road towards Route 6, but had been forced to stop short of the junction, because of the heavy firing that was then taking place. Salim Al-Baidhani said that he had seen Ali Eitheyyib’s ambulance halted ahead of him and that he could also see that the British soldiers had blocked the road. According to Salim Al-Baidhani, he had then driven to a safer place on some higher ground, where a crowd had gathered. He said that he had left his ambulance there and had proceeded on foot towards Qal’at Salih. He went on to describe how he had then seen a civilian land cruiser (white with a red stripe) being driven along Route 6 toward the British soldiers who had blocked the road. Salim Al-Baidhani said that the soldiers had stopped the vehicle and that a fight had then taken place between the driver and the soldiers, which he described as “*a fight using hands. They were clashing with hands.*”²²⁰⁵

2.1691 According to Salim Al-Baidhani, the soldiers had then taken the driver to a car (not an armoured vehicle), where he had heard shots being fired. After that, the driver (who he later learned was Hassan Al-Aosi, see below) had been made to sit on the ground in front of the car. Salim Al-Baidhani said that he did not think Hassan Al-Aosi had been injured when he was taken to the car and he confirmed that he had still been able to walk, after the shots had been fired.²²⁰⁶ Salim Al-Baidhani said that he had then made his way back to where he had left his ambulance, before proceeding across country in a north westerly direction to the point where he claimed that he had been able to see the small group of detainees, as described in paragraph 2.1682 above.

²²⁰⁰ Saad Radhi Khafeef Al-Keemy (witness 33) [34/85]; [35/10]

²²⁰¹ Saad Radhi Khafeef Al-Keemy (witness 33) [34/86]; [35/32];[35/10/6-19]

²²⁰² Adnan Mushawai Saad Al-Fartoosi (witness 138) [50/24]

²²⁰³ Saad Radhi Khafeef Al-Keemy (witness 33) [35/13/5]-[15/15]; See also (ASI006436) [27]

²²⁰⁴ (PIL001265)

²²⁰⁵ Salim Adday Mohaisen Al Baidhani (witness 157) [47/8-9]

²²⁰⁶ Salim Adday Mohaisen Al Baidhani (witness 157) (ASI008830) [38]; [47/13/24]-[14/6]

2.1692 Salim Al-Baidhani said that he later heard that the person who had been driving the land cruiser was Hassan Al-Aosi (deceased 9). He claimed to have learnt this from talk on the street, because “everybody was talking about the issue.” As he explained:

*Well, in the beginning I did not know that that person was Hassan Radhi. But later on when they described to me and when people told me that Hassan Radhi had a white Land Cruiser and they described to me the person, I told them I had seen that person yesterday.*²²⁰⁷

2.1693 In his oral evidence, Salim Al-Baidhani confirmed that he had not recognised the driver when he first saw him, although he said that he knew Hassan Al-Aosi well and would have recognised him if he saw him on the street.²²⁰⁸ He gave the following explanation for not having recognised Hassan Al-Aosi as the driver of the land cruiser on 14 May 2004:

*he was far from me at a long distance and he was wearing the head cover, the gutrah. And the situation was horrible back then, I wasn't able to recognise people. They were firing and the fields were on fire.*²²⁰⁹

2.1694 In his written Inquiry statement, Salim Al-Baidhani said that the driver's hands had been tied behind his back, after he had been captured by the British soldiers.²²¹⁰ However, in his oral evidence to the Inquiry, Salim Al-Baidhani claimed that, although he had not actually seen the driver being tied to the car, his arms had been stretched out from the sides of his body.²²¹¹ Salim Al-Baidhani said that he believed his description of Hassan Al-Aosi's arms having been outstretched to be a more accurate account of what he had actually seen. He went on to say that the passage of time had made him uncertain about the details.²²¹²

Muhammad Abdelhussain Al-Jeezani (deceased 30)

2.1695 Muhammad Abdelhussain Al-Jeezani (deceased 30), who was injured on 14 May 2004 but has since died,²²¹³ gave a video recorded interview to a journalist prior to his death, in which he stated that he had seen Hassan Al-Aosi (deceased 9) shot after wrestling with a British soldier. According to Muhammad Al-Jeezani, Hassan Al-Aosi had then been tied to the front of a military vehicle with a rope and executed.²²¹⁴

Khairi Al-Gawwam (witness 253)

2.1696 Khairi Al-Gawwam (witness 253) provided a written Inquiry statement, but was unable to give oral evidence due to ill health. In that statement, Khairi Al-Gawwam claimed that he had seen Hassan Al-Aosi (deceased 9) pressed up against the front of a vehicle, with his arms outstretched to each side like a cross. According to Khairi Al-Gawwam, Hassan Al-Aosi had been tied to the front of the vehicle. Khairi Al-Gawwam went on to say that he believed the vehicle had been driven with Hassan Al-Aosi tied to the front, before he actually saw him. Khairi Al-Gawwam said that Hassan Al-Aosi was distressed and was thrashing about, as if trying to break free. He claimed that he had heard Hassan Al-Aosi say “leave me, please leave me” in Arabic, over and over again. According to Khairi Al-Gawwam, the soldiers had

²²⁰⁷ Salim Adday Mohaisen Al Baidhani (witness 157) [47/13-14]; [43-44]

²²⁰⁸ Salim Adday Mohaisen Al Baidhani (witness 157) [47/43]

²²⁰⁹ Salim Adday Mohaisen Al Baidhani (witness 157) [47/43/11-14]

²²¹⁰ Salim Adday Mohaisen Al Baidhani (witness 157) (ASI008830) [38]

²²¹¹ Salim Adday Mohaisen Al Baidhani (witness 157) [47/14-17]

²²¹² Salim Adday Mohaisen Al Baidhani (witness 157) [47/14-17]; [47/44]

²²¹³ See Part 2, Chapter 2 paragraphs 2.12 to 2.14

²²¹⁴ Muhammad Abdelhussain Al-Jeezani (deceased 30) (ASI014017-18)

subsequently placed a bag over Hassan Al-Aosi’s head and had forced him to the rear of the vehicle.²²¹⁵

Conclusions with regard to the alleged sightings of Hassan Radhi Khafeef Al-Keemy Al-Aosi (deceased 9) being captured alive by British soldiers on the battlefield on 14 May 2004

2.1697 I do not believe the evidence of either Adnan Al-Fartoosi (witness 138) or Salim Al-Baidhani (witness 157) or Muhammad Al-Jeezani (witness 30) or Khairi Al-Gawwam (witness 253) to which I have referred and which I have summarised in the preceding paragraphs. Their evidence about Hassan Al-Aosi’s alleged capture was, in each case, a shameless tissue of lies without a vestige of truth. If those witnesses had been telling the truth, their evidence would have meant that Hassan Al-Aosi was still alive when detained by the British military on 14 May 2004 and that he had subsequently met his death whilst in British custody (almost immediately, according to Muhammad Al-Jeezani), because his dead body had been one of those handed over by the British military to the local Iraqi community on 15 May 2004. As for Saad Al-Keemy (witness 33), he was unable to give any direct evidence about the circumstances of his brother’s death and/or capture and merely repeated his recollection of what he had been told by others (rumours and deliberate falsehoods, as it happens).

2.1698 In fact, a significant number of military witnesses were asked about this allegation relating to Hassan Al-Aosi (deceased 9). All of them denied that there had been any such incident. I have no doubt that these denials were entirely truthful²²¹⁶. As I have already indicated earlier in this Report,²²¹⁷ I have no doubt that the dead body of Hassan Al-Aosi was one of those collected from the Southern Battlefield on 14 May 2004. The truth of the matter is that Hassan Al-Aosi was one of the armed insurgents who had ambushed British forces that afternoon and who had been killed in the resulting fighting during the Southern Battle, as described earlier in this Report. As I have already explained, it is very likely that he died in the vicinity of the derelict buildings or in or near the Southern Tank Ditch and that his body had been collected from where he had fallen.²²¹⁸ It follows that I am absolutely sure that Hassan Al-Aosi was not detained alive by British soldiers at any stage on 14 May 2004. I have no doubt that the evidence of Adnan Al-Fartoosi, Salim Al-Baidhani, Muhammad Al-Jeezani and Khairi Al-Gawwam consisted of a series of elaborate and deliberate lies, intended to support the false allegation that Iraqi men, who had been detained alive on the battlefield, had subsequently been unlawfully killed at Camp Abu Naji on 14/15 May 2004.

Evidence with regard to sightings of Hamid Mez’el Kareem A’shour Al-Sweady (deceased 3) being captured and/or detained alive by the British military on the battlefield on 14 May 2004

2.1699 In the paragraphs that follow, I will deal with the evidence of those witnesses who claimed to have seen Hamid Al-Sweady captured alive and/or detained alive by the British military on 14 May 2004.

Wisam Michal Kareem Al-Sweady (witness 183)

2.1700 In his oral evidence to the Inquiry, Wisam Al-Sweady (witness 183) claimed that, while hiding in the fields on 14 May 2004, he had heard Hamid Al-Sweady’s voice. Wisam Al-Sweady said that he had lifted his head up and had seen Hamid being detained alive by four or five British

²²¹⁵ Khairi Al-Gawwam (witness 253) (PIL001281–84) [28]–[39]

²²¹⁶ Lieutenant Passmore [74/130]; Lieutenant Dormer [72/86]; Sergeant Kelly [64/90]

²²¹⁷ See paragraph 2.345

²²¹⁸ See paragraph 2.2269

soldiers, who had dogs with them.²²¹⁹ Wisam Al-Sweady described how he had known that it was Hamid Al-Sweady and that he was alive at the time, as follows:

A. I saw Hameed. Because I know his voice, I can identify the voice.

Q. Could you see it was Hameed or do you say it was Hameed because you know his voice?

A. I heard his voice and I lifted up my head and I saw him.

Q. And what did you see?

*A. I saw Hameed detained.*²²²⁰

2.1701 At a later stage in his oral evidence, Wisam Al-Sweady that, although he had been able to recognise Hamid from his voice and appearance, he was unable to remember any real details about what Hamid Al-Sweady had been wearing at the time or whether he had been blindfolded. He claimed that Hamid Al-Sweady had been beaten by the soldiers who had detained him and went on to say that, although he had not actually seen Hamid Al-Sweady being beaten, he could hear it from the shouting.²²²¹

2.1702 During his oral evidence, Wisam Al-Sweady said that Hamid Al-Sweady was the only person he had seen being detained on the battlefield on 14 May 2004.²²²² However, when he was shown a note of the answers he had given earlier to questions asked by the Inquiry's agent, that seemed to suggest that he had seen a number of detainees that day,²²²³ Wisam Al-Sweady agreed that he had said that, but claimed to have been confused and not very focused when he did so.²²²⁴

2.1703 Wisam Al-Sweady also claimed to have told both Miz'al Karim Ashoor Al-Suwai'di and Asema Mijbas Saleh Al-Suwai'di (Hamid Al-Sweady's [deceased 3] parents) that he had seen Hamid Al-Sweady being detained on the battlefield that day. He said that he had told them at dinner time on 14 May 2004.²²²⁵ However, Miz'al Al-Sweady denied that Wisam Al-Sweady had done any such thing.²²²⁶

Bashee Taumie Challob Al-Hameedawi (witness 188)

2.1704 Bashee Taumie Challob Al-Hameedawi (witness 188) also provided a written Inquiry statement, in which he also claimed to have seen a dog close to Hamid Al-Sweady (deceased 3), who had been detained by British soldiers on the battlefield on 14 May 2004.²²²⁷ He described how he had seen Hamid Al-Sweady alive and apparently uninjured at the time, as follows:

The soldiers were talking and shouting but I do not know what they were saying. I did not see any soldiers hitting Hamid and he did not look like he was injured. Again,

²²¹⁹ Wisam Michal Kareem Al-Sweady (witness 183) [41/15-18] and see paragraph 2.1657 above

²²²⁰ Wisam Michal Kareem Al-Sweady (witness 183) [41/17/6-12]

²²²¹ Wisam Michal Kareem Al-Sweady (witness 183) [41/47-48]

²²²² Wisam Michal Kareem Al-Sweady (witness 183) [41/47]

²²²³ Wisam Michal Kareem Al-Sweady (witness 183) (ASI009366)

²²²⁴ Wisam Michal Kareem Al-Sweady (witness 183) [41/60-61]

²²²⁵ Wisam Michal Kareem Al-Sweady (witness 183) [41/23/18]-[24/25]

²²²⁶ Miz'al Karim Ashoor Al-Suwai'di [6/14]; Wisam Michal Kareem Al-Sweady (witness 183) [41/36-37]

²²²⁷ Bashee Taumie Challob Al-Hameedawi (witness 188) (PIL000902) and see paragraph 2.1658 above

however, I only raised my head very briefly. Hamid did not sound like he was in pain at any time; just frightened.

I put my head down again at this point and, when I looked up next, it was to see Hamid being taken away. I did not see the soldiers pull Hamid off the ground but I do recall that he was taken in the direction of the main road. I recall that there was at least one soldier holding on to him but there may have been a second. I cannot say for certain. Hamid was walking.”²²²⁸

Assad Mozan Khalait Al-Kaabi (witness 78)

2.1705 Assad Mozan Khalait Al-Kaabi (witness 78) claimed to have seen a number of people detained live on the battlefield, including Hamid Al-Sweady (deceased 3). I have already dealt with and rejected this aspect of Assad Al-Kaabi’s evidence in an earlier part of this section of the Report.²²²⁹

Hussein Fadhil Abbas Al-Behadili (detainee 778)

2.1706 As I have already made clear, Hussein Fadhil Abbas Al-Behadili (detainee 778) was detained by British soldiers at the Storm Drain Position, close to where the dead body of Hamid Al-Sweady was found.²²³⁰ I have also already dealt with and rejected his evidence about how Hamid Al-Sweady had been captured alive (although injured) by British soldiers on the battlefield on 14 May 2004.²²³¹

Conclusions with regard to the evidence about Hamid Mez’el Kareem A’shour Al-Sweady (deceased 3) having been captured and/or detained alive by the British military on the battlefield on 14 May 2004

2.1707 I do not believe the evidence of either Wisam Al-Sweady (witness 183) or Bashee Al-Hameedawi (witness 188), about having seen Hamid Al-Sweady detained alive on the battlefield on 14 May 2004, to which I have referred and which I have summarised in the preceding paragraphs. I have already rejected as untrue the evidence of Assad Al-Kaabi (witness 78) and Hussein Al-Behadili (detainee 778), who also both claimed to have seen Hamid Al-Sweady detained alive by British soldiers on the battlefield on 14 May 2004.²²³² In my view, the evidence of all those four witnesses about Hamid Al-Sweady’s alleged capture while still alive was, in each case, a shameless tissue of lies without a vestige of truth. If those witnesses had been telling the truth, their evidence would have meant that Hamid Al-Sweady was still alive when detained by the British military on 14 May 2004 and that he had subsequently met his death whilst in British custody, because his dead body had been one of those handed over by the British military to the local Iraqi community on 15 May 2004.

2.1708 However, as I have already explained earlier in this Report, I have no doubt that the dead body of Hamid Al-Sweady (deceased 3) was one of those recovered from the Northern Battlefield on 14 May 2004. Hamid Al-Sweady (deceased 3) was, in truth, one of the armed insurgents who had ambushed British forces that afternoon and who had been killed in the resulting fighting during the Northern Battle. As I have already explained, Hamid Al-Sweady was one of the insurgents who had attacked the British forces from the Storm Drain Position²²³³ and

²²²⁸ Bashee Taumie Challob Al-Hameedawi (witness 188) (PIL000902) [50]–[51]

²²²⁹ See paragraph 2.1672

²²³⁰ See paragraphs 2.1272–2.1273

²²³¹ See paragraphs 2.1322–2.1325

²²³² See paragraphs 2.1322–2.1325

²²³³ See paragraph 2.1322

it was there that he had met his death. It was Private Sullivan who found Hamid Al-Sweady's dead body in the Storm Drain Position²²³⁴ and there is a photograph of his dead body being carried by two British soldiers on the battlefield.²²³⁵

2.1709 It follows that I am absolutely sure that Hamid Al-Sweady was not detained alive by British soldiers at any stage on 14 May 2004. I have no doubt that the evidence of Wisam Al-Sweady, Bashee Al-Hameedawi, Assad Al-Kaabi and Hussein Al-Behadili, about having seen Hamid Al-Sweady detained alive by the British military on the battlefield that day, consisted of a series of elaborate and deliberate lies, intended to support the false allegation that Iraqi men, who had been detained alive on the battlefield that day, had subsequently been unlawfully killed at Camp Abu Naji on 14/15 May 2004.

Evidence with regard to sightings of Haydar Hatar Mtashar Al-Lami (deceased 2) on the battlefield on 14 May 2004

2.1710 In his first written Inquiry statement, Ahmed Jabbar Hammood Al-Furaji (detainee 777) claimed that Haydar Al-Lami (deceased 2) was a friend of his. He said that they had been together when the shooting started on 14 May 2004, although Haydar Al-Lami had later crawled away from him. According to Ahmed Al-Furaji, after he had been arrested and was being placed in a military vehicle, he had seen Haydar Al-Lami lying next to the vehicle with a drip inserted into one arm.²²³⁶ Despite having originally suggested that he thought that Haydar Al-Lami may have been put in the same vehicle as himself, because he had heard someone groan in pain and believed it to have been Haydar,²²³⁷ he later confirmed that he was not able to say whether Haydar Al-Lami had actually been placed in the vehicle alive at all.²²³⁸

2.1711 In his Judicial Review statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) said that, after he had been arrested on 14 May 2004 and while he was lying on his stomach on the road near an armoured vehicle, he had called out for Haydar [Al-Lami] and had heard him reply on two occasions.²²³⁹ However, during his oral evidence to the Inquiry, Abbas Al-Hameedawi said that, although he had heard an Iraqi man moaning in pain, he had not recognised his voice and that he did not think it had been Haydar Al-Lami. He said that, when he had called out for Haydar [Al-Lami], he had not received any reply.²²⁴⁰ Abbas Al-Hameedawi went on to claim that he had never said that Haydar Al-Lami had answered him when he called out, although he accepted that his Judicial Review statement had probably been read back to him after it had been prepared.²²⁴¹

2.1712 Hussein Gubari Ali Al-Lami (detainee 780) also said that he had heard the name "Haydar" mentioned, while he was in the back of the Warrior AIFV that day, but did not claim to have heard any response.²²⁴²

2.1713 In the event, I am satisfied that none of the evidence to which I have referred and which I have summarised above was inconsistent with the account given by the soldiers (in particular Lance Corporal Muir) who had treated Haydar Hatar Mtashar Al-Lami's wounds before he

²²³⁴ See paragraph 2.1314

²²³⁵ See Figure 55 (ASI011939)

²²³⁶ Ahmed Jabbar Hammood Al-Furaji (detainee 777) (ASI000877- 82) [10] [18]–[25] [37]–[38]

²²³⁷ Ahmed Jabbar Hammood Al-Furaji (detainee 777) (ASI000880) [38]

²²³⁸ Ahmed Jabbar Hammood Al-Furaji (detainee 777) (PIL000313) [65]–[66]

²²³⁹ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) (PIL000004) [11]

²²⁴⁰ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/14]; [14/57-58]; [15/58]

²²⁴¹ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [15/809]

²²⁴² Hussein Gubari Ali Al-Lami (detainee 780) [11/8/12-22]

died at the collection point near WOC on 14 May 2004.²²⁴³ As I have already made clear in this Report, I have no doubt that Haydar Al-Lami (deceased 2) was an armed insurgent who had participated in the ambush of British troops that day. He was mortally wounded in the fighting at the Storm Drain Position and died beside Route 6 shortly afterwards, while being treated for his wounds.²²⁴⁴ I am thus completely sure that Haydar Hatar Mtashar Al-Lami (deceased 2) was already dead before his dead body was taken back to Camp Abu Naji that evening.

The recovery of the weapons and munitions from the detainees and/or the dead bodies on the Southern and the Northern Battlefields on 14 May 2004

2.1714 As I have indicated earlier in this Report, all nine detainees were found with or near various weapons and ammunition, when they were captured by British soldiers during the Battle of Danny Boy on 14 May 2004. The British soldiers had also found weapons and ammunition on or near the bodies of the various Iraqi men who had died during the battle and whose bodies lay on both the Southern and Northern battlefields.

The collection of weaponry from the Southern Battlefield

2.1715 A number of the soldiers who were engaged in the Southern Battle described how they had been instructed to search the enemy dead and to collect their weapons and ammunition.²²⁴⁵ Thus, Private Robert Schwar recalled how he had collected AK47s and RPGs from the bodies. As he explained in his oral evidence to the Inquiry:

“Many of the bodies had a strap over each shoulder attached to their weapon and when removing their weapons, I carefully pulled the straps off them.”²²⁴⁶

2.1716 In his written Inquiry statement, Private Schwar described how he had collected the weapons from the dead bodies on the battlefield and had put them to one side in a pile outside the Southern Tank Ditch.²²⁴⁷ Afterwards, he had personally put the weapons into the back of his Land Rover, possibly with some help. Although he could not be sure that every single weapon he collected had been put into the back of his Land Rover, he believed that the vast majority had been.²²⁴⁸

2.1717 Lieutenant William Passmore confirmed that there had been a large number of weapons found with the dead Iraqi bodies on the Southern Battlefield (at least one weapon per body). According to Lieutenant Passmore, all the weapons and ammunition were collected up and loaded into the back of a vehicle or vehicles, apart from one RPG that was left behind because the warhead had already been fitted and thus it was too dangerous to take back.²²⁴⁹ Lieutenant Passmore confirmed that no attempt was made to link any particular weapon with any particular body at that stage and that the weaponry had simply been collected and piled up.²²⁵⁰

²²⁴³ See paragraphs 2.922–2.928

²²⁴⁴ See paragraphs 2.922–2.928

²²⁴⁵ See, for example, Sergeant S. Henderson (ASI013571) [102]–[103]; Private Aston (ASI015048) [87]

²²⁴⁶ Private Schwar (ASI018425) [69]; [68/61-62]

²²⁴⁷ Private Schwar (ASI018426) [73]

²²⁴⁸ Private Schwar [68/62/12]– [63/23]

²²⁴⁹ Apparently once the warhead has been fitted to an RPG, it can only be removed by firing the weapon

²²⁵⁰ Lieutenant Passmore [74/51/7]–[52/24]; (ASI016129) [116]

2.1718 In addition to the weapons that were found and collected from the dead bodies on the Southern Battlefield, the AK47 that had been found in the possession of Hamzah Almalje (detainee 772), when he was captured during the Southern Battle²²⁵¹, was also taken back to Camp Abu Naji.²²⁵²

2.1719 It seems that at least one of the vehicles from the Southern Battle, namely the Land Rover driven by Private Schwar, was used to transport the enemy weapons and ammunition, which had been recovered from the Southern Battlefield, back to Camp Abu Naji on 14 May 2004. Private Schwar recalled having driven his Land Rover near to the Southern Tank Ditch, where most of the dead Iraqi bodies were located. In his written Inquiry statement, he said that he vaguely recalled that *“the rear of the Land Rover I was in was loaded up with weapons.”*²²⁵³ During the course of his oral evidence to the Inquiry, Private Schwar confirmed that he had personally put the weapons into the back of his Land Rover.²²⁵⁴

2.1720 It was standard procedure to search the dead for weapons and ammunition. Corporal Lee Gidalla assisted in the recovery of the weapons and ammunition from the dead that day and also helped stockpile everything together. As he explained in his written Inquiry statement:

*“I cannot remember specifics now about what I recovered, but I do recall that there were AK47s and RPGs, plus I believe that there were IEDs found at the side of the road.... I do not recall finding any grenades, but I heard later that one had been found during the search of one of the bodies. I do not know what happened to these weapons after this.”*²²⁵⁵

The collection of weaponry from the Northern Battlefield

2.1721 WO2 David Falconer explained that a large quantity of weapons and ammunition had been collected from the dead bodies and from the detainees on the Northern Battlefield on 14 May 2004 and then taken back to Camp Abu Naji, as follows:

*“A number of recovered enemy weapons had been brought back to the area where my Warrior was. I have no idea now how many there were. I can recall seeing RPG launchers, AK47 rifles and a green G3 rifle. I recall being a little surprised by the number of G3 rifles that the insurgents had used as these were a better quality weapon than the AK47 which was the rifle commonly used in Iraq. Some of the weapons were placed in the back of my Warrior to be taken to CAN. I do not recall if all of them were or if some were placed in other vehicles. This haul did not constitute all the weapons that were on the battlefield and I think we left some where they were as it was not safe to spend time collecting them. Others, such a RPG launchers loaded with grenades and loose grenades, were not recovered as it would have been too dangerous to have these in our vehicles.”*²²⁵⁶

2.1722 As WO2 Falconer explained, ordinarily anything that was found, including weapons, would be bagged and taken with them:

²²⁵¹ See paragraphs 2.473–2.478

²²⁵² Private Currie (ASI013209) [55] Lieutenant Passmore recalled that Private Dodd carried the weapon at some point (ASI016129) [117]

²²⁵³ Private Schwar (ASI018428) [80]

²²⁵⁴ Private Schwar [68/63/11]

²²⁵⁵ Corporal Gidalla (ASI011701) [59]

²²⁵⁶ WO2 Falconer (ASI020220) [124]

“We were trained that if it was necessary to search a body on the battlefield, we should do so in pairs. One soldier provided cover while the other jumped on the body and rolled it over so that the first soldier could see if there was anything dangerous under it such as a grenade. When the first soldier gave the all clear, the second soldier would move any weapons away from the body and carry out a pat-down search to look for further weapons and intelligence material such as maps. If it was safe to do so, we were told to bag up anything that was found and bring it back to base and to report it up the chain of command. Weapons should have been tagged describing who found them, who they were taken from and the circumstances of this, for example if it was a vehicle search. Weapons would then be handed over to the Regimental Police.”²²⁵⁷

2.1723 However, WO2 Falconer said that, in the prevailing circumstances that day, it had been impractical to carry out such a detailed and careful procedure on 14 May 2004. In his oral evidence to the Inquiry, WO2 Falconer made it clear that he would have expected weapons and other items to be bagged and tagged in a planned operation, where it would be safe to do so, but not otherwise. As he explained in answer to Counsel’s questions:²²⁵⁸

“Q. So what I think you are there describing is that, in general terms, any weapon found on a body or a prisoner should be bagged and tagged?”

A. In a non — in conventional war, no. In a COIN operation or an insurgent-type operation, then I would say “yes” because it is potential evidence to help incriminate them and obviously lead to a conviction.

Q. So in what might be described as a Northern Ireland-type situation, perhaps

A. Yes.

Q. — what you are describing might apply, whereas in a contact Danny Boy situation it wouldn’t?

A. I wouldn’t risk the lives of any of my soldiers to send them out to pick up weapons and start tying tags and photographs of the people who hurt them whilst they were in direct contact — no, I would not.

Q. But if the circumstances are such that it is safe to tag, what would be recorded is the identity of the finder — the name of the soldier who found the evidence — from whom they were taken and the circumstances of seizure; is that accurate?

A. Correct, yes.

Q. But it was done where it was safe to do so?

A. Only when it was safe to do so. You wouldn’t risk life for a piece of evidence.”²²⁵⁹

For his part, Sergeant Christopher Broome said that it was standard procedure for weapons to be collected from the battlefield. The reason for doing so was to ensure that a detainee could not get hold of a weapon and also to make sure that weapons were not left lying around for others to pick up.²²⁶⁰ He went on to say that he was unable to remember whether they had

²²⁵⁷ WO2 Falconer (ASI020182) [24]

²²⁵⁸ Others such as Sergeant Webb agreed with this [149/153]

²²⁵⁹ WO2 Falconer [146/24/23]–[25/25]

²²⁶⁰ Sergeant Broome [86/152]

been expected to go further than simply collecting up the weapons and ammunition from the battlefield in May 2004. However, he did not believe that the procedure at the time had been so prescriptive as to require them to “bag and tag” all recovered weaponry. As Sergeant Broome explained in his oral evidence to the Inquiry:

“To be honest, sir, it’s quite a complicated task. All you can do really is just retrieve and collect the weapons or anything that looks like it is associated with weapons or anything that you perceive that is of some importance for intelligence. That goes back to the sergeant major’s vehicle and then from there it goes to the RMPs. What they do with it and how they deal with it is down to them.”²²⁶¹

2.1724 According to Sergeant Broome, the weaponry was collected in a bundle and no attempt was made to link the weapons to the bodies they had been taken from and/or found near.²²⁶² Many of the weapons collected by the British soldiers from the Northern Battlefield are shown in the following photographs ASI012474, ASI012477, ASI012478, ASI012488 and ASI012489, set out below in Figures 62 to 66.

Figure 62: ASI012474



²²⁶¹ Sergeant Broome [86/106]

²²⁶² Sergeant Broome [86/137]; [86/153]

Figure 63: ASI012477



Figure 64: ASI012478



Figure 65: ASI012488



ASI012488

Figure 66: ASI012489²²⁶³



²²⁶³ The facial image of the soldier in this photograph has been pixelated in accordance with an undertaking given by the Inquiry on 27 November 2014

2.1725 Sergeant Broome recalled that he and Lance Corporal Wood then proceeded to frisk the Iraqi detainees on the outside of their clothing to check for weapons:

“I found a loaded AK47 magazine in the pocket of one of them and added this to the pile of weapons and ammunition. I do not recall if I found anything else.”²²⁶⁴

2.1726 The identity of the vehicle or vehicles, in which the weaponry was placed for transport back to Camp Abu Naji from the Northern Battlefield, is not entirely clear. However, there are three photographs of captured weaponry in the back of a Warrior, apparently retrieved from the camera of Private Stuart Taylor, the driver of W22 during the Northern Battle.²²⁶⁵ Lance Corporal Philip Muir (now French) is present in one of these photographs and it is therefore clear that these are photographs taken of weapons that had been recovered from the Northern Battlefield. The photographs in question appear below as Figures 67 to 69:

Figure 67: MOD037827



²²⁶⁴ Sergeant Broome (ASI022327) [69]

²²⁶⁵ Sergeant Falconer believed that the photographs taken of the weapons in the Warrior were taken by Lance Corporal Muir (ASI020237) [172]. Lance Corporal Muir was also shown the photographs (referred to as exhibit pf/6:256 [MOD037826] and 258 [MOD037828] at [ASI021111]) and indicated that these were taken from Private Stuart Taylor’s photographs (ASI021134) [76]

Figure 68: MOD037826



Figure 69: MOD037828



2.1727 In his written Inquiry statement, Private Joseph Hartnell said that there had been a general instruction for weapons to be collected from the dead bodies on the Northern Battlefield and that he had himself collected at least one AK47, which he then piled with other weapons in one of the ditches close to the Warriors. He went on to explain:

“In my RMP statement, I note that I described that all of the weapons went into the rear of a Warrior. I am sure the Warrior was from my company but I do not know which one; it was definitely not my own. I now do not remember seeing the weapons being loaded into any of the vehicles, but I assume that they would have been taken back to CAN because, in accordance with our training, we would not have left them behind.”²²⁶⁶

2.1728 It appears that, while the dead bodies were being collected on the Northern Battlefield, other soldiers were collecting the captured weaponry at the same time. In his written Inquiry statement, Private Jayme Bishop described how he had cleared captured weapons that day, in order to ensure that they were safe and then went on to say:

“After clearing the weapons, I think that I and some other personnel were ordered to put the weapons into W32, and we did this. I do not recall who gave that order or who loaded the weapons into the Warrior with me.”²²⁶⁷

The handover of the captured weaponry at Camp Abu Naji on 14 May 2004

2.1729 It appears that, on the evening of 14 May 2004, most (if not all) of the weapons recovered from the Southern Battlefield were conveyed back to Camp Abu Naji in the same Land Rovers as the dead bodies from the Southern Battle. Thus, Lance Corporal Gareth Wilson, who helped to clear the dead bodies at the Medical Centre that evening²²⁶⁸, recalled how he and another soldier had cleared various weapons, including AK47s, which had arrived from the Southern Battlefield with the dead bodies.²²⁶⁹

2.1730 For his part, WO2 Craddock did not recall there having been any weapons with the dead bodies that he dealt with from the Warrior later the same evening (i.e. the twelve dead bodies brought back from the Northern Battlefield). He said this:

“I have no idea where, on this occasion, any recovered weapons went or who cleared and catalogued them.”²²⁷⁰

2.1731 During his oral evidence to the Inquiry, WO2 David Falconer said that he did not know what had happened to the captured weapons, after they arrived back at Camp Abu Naji that evening. However, he believed that they would ordinarily have been handed in to the guardroom and thereafter passed to the Royal Military Police (“RMP”).²²⁷¹

2.1732 It would therefore seem that the captured weapons, that had been put into the vehicles with the dead bodies for transport back to Camp Abu Naji on 14 May 2004, were cleared and made safe outside the Medical Centre the same evening. In any event, it is clear that all the captured weapons were eventually taken to the Military Police station at Camp Abu Naji, where a number of RMP were thereafter involved in their handling and storage. Thus, in his written Inquiry

²²⁶⁶ Private Hartnell (ASI010295) [50]

²²⁶⁷ Private Bishop (ASI017545) [46]

²²⁶⁸ Lance Corporal Wilson [93/116-117]

²²⁶⁹ Lance Corporal Wilson (ASI015796) [17]–[19]

²²⁷⁰ WO2 Craddock (ASI016720) [38]; [103/25/2-19]

²²⁷¹ WO2 Falconer [146/42]

statement, Lance Corporal John Hannigan said that a large number of weapons had been brought to the RMP station for logging that evening.²²⁷² Lance Corporal Alan Davies also recalled how the soldiers had brought the items to be bagged and tagged to the RMP station that evening.²²⁷³

2.1733 The various personnel, who were involved in handling the captured weaponry at the RMP station that evening, believed that the weapons would have already been unloaded and made safe.²²⁷⁴ So far as they were concerned, this would most probably have been done by the Ammunition Technical Officer (“ATO”), who would have inspected any incoming armaments to make sure they were safe, before they were then taken to the RMP station.²²⁷⁵

2.1734 However, although Corporal Adam Ridley had expected the weapons to have been made safe prior to their handover to the RMP on 14 May 2004, in his written Inquiry statement he described how they had nevertheless found two or three grenades in webbing pockets that evening and that it had been necessary to call the ATO to deal with them.²²⁷⁶

2.1735 The RMP duly photographed the captured weapons that evening²²⁷⁷, in accordance with standard procedure.²²⁷⁸ Details of each captured weapon were also recorded in a register.²²⁷⁹ In his written Inquiry statement, Lance Corporal Hannigan said that he believed he might have been the one who had photographed the captured weaponry on 14 May 2004.²²⁸⁰

2.1736 On the evening of 14 May 2004, the captured weapons register was filled in by Corporal Ridley. That particular evening, he recorded a total of 31 separate captured weapons, including AK47s, AKSs²²⁸¹, G3 Rifles²²⁸², RPGs and an RPK²²⁸³. There were also items of ancillary equipment such as webbing and chest rigs.

2.1737 During his oral evidence to the Inquiry, Sergeant John Grant explained the procedure that was followed in relation to captured and/or seized weapons, as follows:

“It’s basically we would make sure that it was photographed, that its serial numbers, et cetera, were recorded. If there was any apparent bloodstains, any fragmentation on them of bone, et cetera, you would expect that that would also be noted, which I did note myself when actually handling the weapons, with large amounts of blood actually still within the weapons and poured from them when I was actually handling them.”²²⁸⁴

2.1738 Sergeant Grant went on to explain that bagging and tagging meant properly packaging each weapon, putting it into a box and then labelling it.²²⁸⁵ In his written Inquiry statement, Corporal Ridley explained that he had written out a label for each of the captured weapons, with a description of the weapon and its serial number, and that he had then attached the label to the weapon in question.²²⁸⁶

²²⁷² Lance Corporal Hannigan (ASI024816) [48]

²²⁷³ Lance Corporal Davies (ASI022702) [25]–[26]

²²⁷⁴ Lance Corporal Hannigan (ASI024817) [54]

²²⁷⁵ See also Sergeant Grant [109/139]

²²⁷⁶ Corporal Ridley (ASI020163) [34]; Sergeant Grant also recalled this incident [109/140]

²²⁷⁷ See e.g. Sergeant Collie [102/52/18]–[55/3]

²²⁷⁸ (MOD032652–55); (MOD032657–64)

²²⁷⁹ (MOD046219)

²²⁸⁰ Lance Corporal Hannigan (ASI024817) [51]

²²⁸¹ The AKS is a short barrelled assault rifle variant of the AK47

²²⁸² The G3 is a Heckler and Koch magazine fed assault rifle

²²⁸³ An RPK is a long barrelled light support weapon variant of the AK47, usually with bipod support

²²⁸⁴ Sergeant Grant [109/139–140]

²²⁸⁵ Sergeant Grant [109/141]

²²⁸⁶ Corporal Ridley (ASI020163) [35]

2.1739 For his part, Corporal Ridley believed that the weapons would either be destroyed if they were useless, or serviced and repaired and retained at Camp Abu Naji for training purposes or provided to the local police forces for their use.²²⁸⁷

2.1740 According to Corporal Ridley, once all the captured weapons had been labelled, they were then placed in one of the ISO containers close to the RMP Ops Room, which was routinely used for the storage of captured and/or seized weapons. As Corporal Ridley explained:

*“The ISO container was kept locked, and the keys were stored in the RMP Ops Room. So far as I recall, I put the weapons into the ISO container loose. I may have been assisted by other RMPs, but I do not recall for certain.”*²²⁸⁸

2.1741 In his written Inquiry statement, Sergeant Paul Paterson said that there had been no central database for exhibits and that any evidential exhibits, including captured weapons, would be recorded in the personal notebook of whoever seized or received them. As he explained:

*“Each exhibit would be packaged and labelled before being stored. At CAN and at the Air Base exhibits were stored in ISO containers. At CAN I recall that the ISO containers were next to the police station. I cannot recall where the ISO containers were at the Air Base, or where we stood exhibits whilst we were based at Basra Palace.”*²²⁸⁹

2.1742 As part of the RMP investigation, Sergeant Jason Kendall arranged for the weapons, which had been captured during the Battle of Danny Boy, to be recovered and formally assigned exhibit numbers/references. So it was that, between 28th June 2004 and 22nd July 2004, Sergeant Kendall removed the “Danny Boy” weapons from the ISO container, where they had been stored, and then assigned exhibit numbers to each of them.²²⁹⁰ In addition, he photographed the weapons again.²²⁹¹ According to Sergeant Kendall, the enemy ammunition had also been stored in the same ISO container.²²⁹² He went on to confirm that he had not been responsible for making any of the decisions about what was to be done with the weapons and munitions seized during the Battle of Danny Boy. In particular, he had not taken part in any discussions about whether the weapons should be compared with the dead bodies for DNA purposes.²²⁹³

2.1743 Despite the fact that some of the military witnesses believed that fingerprint and DNA evidence had been sought from the detainees and/or from the dead bodies, for comparison with that obtained from the weaponry,²²⁹⁴ it seems clear that no such exercise was ever carried out.

2.1744 In 2006 it was determined that the weapons in question did not constitute criminal property and that it was therefore decided to transfer the weapons to the SIB²²⁹⁵ property store, from where it was later taken to the Confiscated Weapon Cell (“CWC”) for disposal.²²⁹⁶ It appears that this transfer actually took place on 6 August 2006.²²⁹⁷

²²⁸⁷ Corporal Ridley (ASI020162) [31]. See Sergeant Paterson (ASI020876) [32] who had a similar recollection

²²⁸⁸ Corporal Ridley (ASI020164) [37]

²²⁸⁹ Sergeant Paterson (ASI020876) [32]

²²⁹⁰ The analysis carried out by the Inquiry’s Analyst, Michael Moore, shows that the weapons as photographed by Sergeant Kendall were the same weapons as those photographed at Camp Abu Naji. However, Sergeant Kendall photographed a total of 32 weapons and it is clear that there was one RPG which was not photographed at the MPS in Camp Abu Naji that evening or at all

²²⁹¹ Sergeant Kendall(ASI024079) [68]; Photographs at (MOD033122); (MOD033387); (MOD033490); (MOD033507); (MOD033540); (MOD033548)

²²⁹² Sergeant Kendall(ASI024080) [71]

²²⁹³ Sergeant Kendall(ASI024079) [67]

²²⁹⁴ See, for example, Sergeant Southerton (ASI022767) [84]; [163/40-42] Sergeant Kendall (ASI024096) [125]

²²⁹⁵ Special Investigations Branch of the Royal Military Police

²²⁹⁶ See (MOD047069)

²²⁹⁷ See (MOD047067); (MOD047065)