

## CHAPTER 5: THE TRANSFER OF THE NINE DETAINEES FROM CAMP ABU NAJI TO THE DIVISIONAL TEMPORARY DETENTION FACILITY (DTDF) AT SHAIBAH ON 15 MAY 2004

**3.864** On 15 May 2004, after being held overnight at Camp Abu Naji, the nine detainees were transferred to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah Logistics Base.

**3.865** It appears that the formal decision to send these nine detainees to the DTDF at Shaibah was taken by Captain Duncan Allen, Adjutant of the 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”). On the night of 14/15 May 2004, in addition to his other duties and responsibilities as Adjutant, Captain Allen also performed the function of the Battle Group Internment Review Officer (“BGIRO”) at Camp Abu Naji.<sup>4148</sup> This post is defined in Annex A to 1PWRR SOI 206 of 11 March 2004, as follows:

*“Ideally this appointment is filled by an Officer not below the rank of Capt, or a senior WO. The BGIRO is responsible for the whole post arrest operation. They are directly responsible to the CO for the safety and well being of the detainees, ensuring that the operation follows the relevant guidelines, and carries the responsibility of appraising the COS, SO2 Legal and SO2 G2 for the final decision as to whether a detainee is released or sent to the DTDF. This decision is also, however, taken under the advice of the tactical questioners.”<sup>4149</sup>*

**3.866** Captain Allen interpreted the role of BGIRO as requiring him to take responsibility for ensuring that the various procedures and processes, to which detainees were subject whilst they were being held at Camp Abu Naji, accorded with the relevant SOIs<sup>4150</sup> and the Geneva Conventions. He did not consider that this required his constant presence throughout.<sup>4151</sup>

**3.867** Captain Allen also understood that his role as BGIRO required him to provide a recommendation as to whether each detainee should be released or continue to be detained and, if so, the basis for that continued detention. He believed that the final decision as to the onward progress of the detainee in question was made at Brigade or Divisional level.<sup>4152</sup>

**3.868** All the evidence clearly indicated that Captain Allen made his recommendation about a detainee’s future progress after consultation with whoever had conducted the detainee’s tactical questioning. On 14/15 May 2004 this would have been M004. Captain Allen’s recollection was that he had obtained his information directly from the tactical questioner.<sup>4153</sup> 1PWRR’s Staff Support Assistant, Sergeant Martin Lane of the Adjutant General’s Corps, recalled that he normally acted as a conduit between the tactical questioner and Captain Allen.<sup>4154</sup>

**3.869** However, it appears that, this process of consultation, deliberation and recommendation was somewhat abbreviated on 14/15 May 2004, because of the circumstances in which the nine

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<sup>4148</sup> Captain Allen [136/162]

<sup>4149</sup> (MOD015804)

<sup>4150</sup> Standard Operating Instruction

<sup>4151</sup> Captain Allen [136/173-174]

<sup>4152</sup> Captain Allen [136/215-216]

<sup>4153</sup> Captain Allen [136/216]

<sup>4154</sup> Sergeant Lane [136/109/21-23]

detainees had been captured. As Sergeant Lane explained during his oral evidence to the Inquiry:

*“Basically, they were brought off straight off the ground, so there was no, um – there was no grey areas. They were going to go straight to Basrah [Shaibah] because of the nature of what had happened.”*<sup>4155</sup>

**3.870** MND(SE) SOI 390 of 25 March 2004 specified that certain documents (attached to SOI 390 as Annexes) required to be completed in respect of each detainee in order to record and implement the BGIRO’s recommendation concerning that detainee. It was the BGIRO’s responsibility to complete these documents. Thus on 14/15 May 2004 that responsibility was Captain Allen’s.<sup>4156</sup> In particular, SOI 390 provided that:

*“The Unit must also complete the Detention/Internment Record at **Annex J** as soon as the Battle Group Internment Review Officer (BG IRO) or appropriate officer has reviewed the case and the individual has been categorised.”*<sup>4157</sup>

**3.871** The Inquiry has received copies of the Detention/Internment Records for each of the nine detainees and Captain Allen’s signature appears at the bottom of pages J-2 and J-3 of each such record.<sup>4158</sup> Although Captain Allen could not specifically remember having signed these pages of the records in question, I am satisfied that there is no reason to doubt the accuracy of the recorded time of his having done so at 07:30 hours on 15 May 2004.<sup>4159</sup>

**3.872** At Figure 83 below is a copy of the second page of the Detention/Internment Record for Hamzah Joudah Faraj Almalje (detainee 772).

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<sup>4155</sup> Sergeant Lane [136/110/5-8]

<sup>4156</sup> (MOD042758)

<sup>4157</sup> Ibid.

<sup>4158</sup> Hamzah Joudah Faraj Almalje (detainee 772) (MOD043337-39), Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD043412-14), Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD043477-79), Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD043542-44), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (MOD043605-07), Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD043660-62), Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD043939-41), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD044000-02), Hussein Gubari Ali Al-Lami (detainee 780) (MOD044053-55)

<sup>4159</sup> Captain Allen (ASI023019) [116]

Figure 83: MOD043338

RESTRICTED -- REL MCFI

UK ISN  
US ISN

**INTERMENT/DETAINMENT RECORD**

Person assuming custody of prisoner	No: [Personal information]	Rank: [No]	Name: [C. Allen]
I have physically checked the prisoner and accept responsibility for his person. Signed: [Personal information] DTG: 15 05 04			

**DISPOSAL**

(1) Release	(2) Intern	(3) Detain pending transfer to IZ authorities
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EVENTS PRIOR TO INTERMENT  
Include searches, visits to the suspect, changes in Internment Officer etc

CAPULO      Decline      CONTACT      ON      CF

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Signature of Detention/Internment Review Officer/Appropriate Officer: [Personal information] DTG: 15 05 04 MAY 04

Continue on back page as necessary

1-2  
RESTRICTED -- REL MCFI

**3.873** It can be seen that this page in the Detention/Internment Record contains a section entitled “Disposal”. It appears to invite the person completing the document to identify, presumably by circling or by ticking, which one of the three possible options is to apply to that particular detainee, namely

- a. Release;
- b. Intern; or
- a. Detain pending transfer to IZ authorities.

**3.874** There is nothing on any of the Detention/Internment Records for the nine detainees to indicate which of those three options for disposal of the detainee in question had been selected. In his written Inquiry statement, Captain Allen commented on this omission, as follows:

*“I note that I have not completed the box to indicate what was to become of the Danny Boy detainees and I should have written down or circled ‘2. Interned’. I do not know why I did not do so in this case.”<sup>4160</sup>*

<sup>4160</sup> Captain Allen (ASI023020) [118]

- 3.875** Below the “Disposal” section in the Detention/Internment Records, is a section entitled “Events prior to internment”. Within that section, the person completing the document is asked to “Include searches, visits to the suspect, changes in Internment Officer etc”. However, on each of the Detention/Internment Records for the nine detainees, all that was written in this section were the following words: “Captured during contact on CF”.<sup>4161</sup>
- 3.876** During his oral evidence to the Inquiry, Captain Allen did not seem to consider that this brief statement was inadequate in the circumstances, although he did agree that it was not on all fours with the sort of information that the wording of the section appeared to require.<sup>4162</sup>
- 3.877** In my view, it is unfortunate that more care was not taken over the completion of this important documentation. However, in the event, I do not believe that any adverse consequences actually resulted from the somewhat slapdash approach that was taken. It seems that the circumstances in which the nine detainees were captured on 14 May 2004 were such that, from the very outset, all relevant personnel at Camp Abu Naji knew full well that the nine detainees would inevitably all be sent on to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah, once their tactical questioning had been completed. It seems that it was this certainty about what was to happen that led to less care being taken over the formalities than should have been the case.
- 3.878** There was very little detail in the evidence presented to the Inquiry about how the transfer of the nine detainees from Camp Abu Naji to the DTDF at Shaibah on 15 May 2004 was actually organised. MND(SE) SOI 390 of 25 March 2004 specified the procedure to be followed when conducting the transfer, thus:

*“The transportation, security and welfare of apprehended persons prior to transfer to the DTDF is the responsibility of the apprehending unit. Apprehended persons are to be transferred to the DTDF **within 14 hours** of capture, or as soon as possible thereafter. The BGIRO or appropriate officer is to notify the UK Military Provost Staff (MPS) at the DTDF of the number of personnel being transferred and the expected time of arrival. The DTDF is open 24 hours for the receipt of internees, however as much notice as possible of transfers must be given to the MPS.”*<sup>4163</sup>

- 3.879** It seems to me to be clear from this provision in SOI 390 that the responsibility for organising the transfer fell, at least in part, on Captain Allen. This was confirmed by Captain Allen in his written Inquiry statement, as follows:

*“Due to the lapse of time, I do not now recall the transfer of the Danny Boy internees to the DTDF. I expect that I was involved in organising it as this was one of my roles, and I have been shown [MOD047342] which is an email sent by me confirming the transfer was going to take place. I do not now recall sending this email. However as I have set out above, it was usual for me to send an email confirming the transfer of detainees to the DTDF and this is an example of such an email. I would have ensured that transport and resources were in place to facilitate the transfer, although I would not have participated in the transfer itself. I do not now recall who specifically was involved in the transfer. LAD normally provided guard detail for the transfers and I have no reason to believe that they did not assist on this occasion.”*<sup>4164</sup>

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<sup>4161</sup> Coalition Forces

<sup>4162</sup> Captain Allen [136/231-232]

<sup>4163</sup> (MOD042758)

<sup>4164</sup> Captain Allen (ASI023021) [122]

**3.880** Although he was unable to remember the specific details relating to the transfer of the nine detainees to the DTDF, I am quite satisfied that Captain Allen did take the necessary steps to effect their transfer on 15 May 2004. This included Captain Allen notifying the Military Provost Staff (“MPS”) of the number of detainees being transferred to the DTDF on 15 May 2004 by his email of the same date timed at 08:53 hours. In the paragraphs that follow, I will set out what is known about how that transfer actually took place that day.

**3.881** At around midday on 15 May 2004, each of the nine detainees was given a final medical examination at Camp Abu Naji by Corporal Shaun Carroll.<sup>4165</sup> Once this examination was complete, Sergeant Martin Lane took responsibility for taking the detainees from the prisoner holding area at Camp Abu Naji to the camp helicopter landing site (“the helipad”). Sergeant Lane organised a number of guards from the Royal Electrical Mechanical Engineers (“REME”) Light Aid Detachment (“LAD”) and the Rover Group to assist with the process.<sup>4166</sup>

**3.882** In his written Inquiry statement, Sergeant Lane described how the detainees were escorted to the helipad, as follows:

*“We assembled in the detainee processing area, everyone equipped with body armour, helmet, SA80 rifle, 300 rounds of ammunition and an overnight bag, which was standard procedure when moving detainees to Shaibah. Some of the Rover Group personnel arrived outside the processing area in two Land Rovers. These are the only vehicles I can recall seeing at the time that were used to transport the detainees to the helipad. I cannot recall how the detainees were brought out from the detainee holding area, but there was one guard (REME or Rover Group) per detainee. The detainees were wearing goggles and were plasticuffed to their front. They also had their personal possessions brought with them in a black plastic bag, along with all the paperwork generated in respect of them the previous day.”<sup>4167</sup>*

**3.883** A soldier given the cipher, M021 by this Inquiry was one of the men who escorted the detainees from the prisoner holding area to the helipad on 15 May 2004. In his written Inquiry statement, M021 described how he had been in the prisoner holding area, guarding the detainees, when he was approached by a senior non-Commissioned officer (possibly Sergeant Lane) and instructed to assist in moving the detainees to the helipad.<sup>4168</sup> M021 described how each detainee had then been moved from the prisoner holding area by two escorting guards. He described how there would be one guard on each side of the detainee, with one hand under the detainee’s armpit and the other hand on his shoulder.<sup>4169</sup>

**3.884** M021 actually escorted the last of the nine detainees from the prisoner holding area, who happened to be Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776).<sup>4170</sup> In his written Inquiry statement, M021 gave the following detailed description of how this was carried out:

*“I walked into the cubicle with my co-handler. I stood to the left of the detainee, and the other guard stood to his right. I put one hand under his left armpit and my other hand on his left arm. My co-handler did the same with the detainee’s right armpit and right arm. As far as I can recall this was how the other guards had held the detainees when they were escorted out of the holding area. I and my co-handler then started to*

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<sup>4165</sup> Corporal Carroll had no recollection of performing these medical examinations, however, he had no reason to doubt that the Prisoner Information Sheets for each of the detainees was accurate in suggesting that he did; (ASI016081) [129]

<sup>4166</sup> Sergeant Lane (ASI020053) [113]

<sup>4167</sup> Sergeant Lane (ASI020053-54) [114]

<sup>4168</sup> M021 (ASI021245) [28]

<sup>4169</sup> M021 (ASI021245) [29]

<sup>4170</sup> M021 (ASI021246) [30]



*lift the detainee up. As we did this, he stood up by himself. We did not lift him up out of his chair. We made sure that he was okay and could stand up. I hooked the chair with my foot and moved it out of the way. I cannot recall if I or the other guard said anything, but we exchanged a cursory nod and then walked the detainee out of the cubicle side-ways. My co-handler walked out first, then the detainee and finally me. My co-handler and I then moved the detainee out of the holding area. The corridor outside the cubicle was not wide enough for three men to walk abreast, so I moved slightly in front of the detainee, with my co-handler slightly behind him.”<sup>4171</sup>*

**3.885** M021 recalled how he had loaded Abbas Al-Hameedawi into a Land Rover, in which the other detainees had already been loaded. He said that, after Abbas Al-Hameedawi had been loaded into the vehicle, his feet and lower legs had remained over the top of the open tailgate.<sup>4172</sup> M021 then continued as follows:

*“I then got into the Land Rover and stood on either side of the detainee, holding on to the roll bar. I cannot recall whether or not my co-handler got in and accompanied us to the HLS. The detainee seemed scared when the Land Rover’s engine was started, so I gently put my knee against his chest to indicate that I would stop him falling out of the Land Rover. I called out to the vehicle commander to be careful as I was holding on the roll bar. He acknowledged my request.”<sup>4173</sup>*

**3.886** M021 recalled having been spotted by the Quartermaster and initially rebuked for his conduct, although the Quartermaster subsequently withdrew his rebuke as soon as he realised what M021 was doing and why.<sup>4174</sup>

**3.887** Sergeant Samuel McKee was also involved in the escorting of the detainees from the prisoner holding area to the helipad on 15 May 2004, although Sergeant McKee’s recollection of the actual process was more limited than that of M021.<sup>4175</sup> Lance Corporal David Bond also gave evidence about escorting some detainees from the prisoner holding area to a Land Rover that day, although it appears that he did not travel with them in the vehicle.<sup>4176</sup>

**3.888** WO1 Keith Potter, the Air Operations Officer at Camp Abu Naji, was already at the helipad on 15 May 2004.<sup>4177</sup> WO1 Potter was already there because he had been notified that morning that some British soldiers needed to be flown to Shaibah.<sup>4178</sup> WO1 Potter had met the soldiers in question at the Helipad and, after having spoken to them, learnt that they had been involved in the handling of the bodies of dead Iraqis from the Battle of Danny Boy on 14 May 2004 and were going to the hospital at Shaibah for injections.<sup>4179</sup> At that stage, WO1 Potter was unaware that any detainees were also due to be transported to Shaibah.<sup>4180</sup>

**3.889** Whilst he was talking to the soldiers, WO1 Potter became aware of the detainees being escorted to the helipad in single-file along one of Camp Abu Naji’s internal roads. WO1 Potter recalled how the soldiers who were waiting to be transported to Shaibah had recognised the detainees and had become upset at the prospect of having to share a helicopter with them.

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<sup>4171</sup> M021 (ASI021246) [31]

<sup>4172</sup> M021 (ASI021247) [33]

<sup>4173</sup> Ibid.

<sup>4174</sup> M021 (ASI021247) [34]

<sup>4175</sup> Sergeant McKee (ASI014668-69) [73]

<sup>4176</sup> Lance Corporal Bond (ASI011536) [59]-[60]

<sup>4177</sup> WO1 Potter (ASI017843) [5]

<sup>4178</sup> WO1 Potter (ASI017854) [47]

<sup>4179</sup> Ibid.

<sup>4180</sup> WO1 Potter [133/111/2-4]

WO1 Potter said that he had asked one of the soldiers, who was a junior non-commissioned officer, to calm the others down.<sup>4181</sup> WO1 Potter was confident that this action successfully defused the situation.<sup>4182</sup>

**3.890** According to WO1 Potter, the soldier who appeared to be in charge of the detainees then informed him that the detainees and their escorts needed to travel to Shaibah in the Chinook helicopter that was waiting to depart. WO1 Potter then amended the “heliquet form”<sup>4183</sup> accordingly.<sup>4184</sup> WO1 Potter also warned the soldier in charge of the escorts that there would be other soldiers from the battle on the aircraft who might be upset by these arrangements.<sup>4185</sup>

**3.891** The soldiers who were going to Shaibah for their injections boarded the Chinook first. They were then followed onto the aircraft by the detainees and their escorts.<sup>4186</sup>

**3.892** M021 described how he had escorted Abbas Abd Ali Al-Hameedawi (detainee 776) off the Land Rover first. In his written Inquiry statement, M021 again provided a detailed description of how he did this, as follows:

*“I got off the Land Rover first. I then moved my detainee with another guard (I cannot recall which one) along the footpath to the Chinook at a walking pace that I would describe as ‘purposeful’ (it was not a brisk pace). The other detainees were led towards the Chinook behind me, and I did not see how they were moved. The back of the Chinook was empty when I got there. We slowed down a bit, and the detainee got into the helicopter without tripping over the tailgate. We moved him towards one of the seats, which lined both sides of the helicopter. We put a little pressure on his shoulders to indicate that he should sit down, and he would also have been able to feel the seat against the back of his knees. He sat down and we put his seatbelt on. We then sat down either side of him.”<sup>4187</sup>*

**3.893** In his written Inquiry statement, Sergeant McKee described the way in which the detainees were handcuffed for the journey, as they were being loaded onto the Chinook, as follows:

*“I recall that as we were getting onto the Chinook helicopter, one of the RAF flight crew said that the detainees needed to be cuffed behind their backs for the flight rather than cuffed in front of their bodies. I inferred that this was for safety reasons because the flight crew thought it would be more difficult for detainees to act violently towards personnel if their hands were restrained behind their backs...I myself did not feel that the detainees should be restrained behind their backs but considered that we all needed to accept what the flight crew required, for safety purposes.”<sup>4188</sup>*

**3.894** During his oral evidence to the Inquiry, Sergeant McKee explained that the Loadmaster was in overall charge of the flight arrangements and his decision about such matters was final. Nevertheless, Sergeant McKee recognised that handcuffing them to the rear, would have made the detainees uncomfortable during the flight.<sup>4189</sup>

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<sup>4181</sup> WO1 Potter (ASI017855) [48]; [133/112-113]

<sup>4182</sup> WO1 Potter [133/113-114]

<sup>4183</sup> A form for requisitioning a helicopter; The Inquiry was unable to obtain a copy from the MoD

<sup>4184</sup> WO1 Potter (ASI017855-56) [50]

<sup>4185</sup> Ibid.

<sup>4186</sup> WO1 Potter (ASI017856-57) [51]-[52]

<sup>4187</sup> M021 (ASI021248) [37]

<sup>4188</sup> Sergeant McKee (ASI014669-70) [75]

<sup>4189</sup> Sergeant McKee [124/199-200]

**3.895** It seems to me that detainees/prisoners should normally be handcuffed to the front rather than to the rear while being moved.<sup>4190</sup> However, I have no reason to believe that the Loadmaster's decision and instructions were based on any considerations other than what he deemed necessary and appropriate for the purposes of the detainees being transported in the aircraft for which he had responsibility. I also accept that those in charge of the detainees were obliged to comply with those instructions, despite the fact that the detainees were bound to suffer some degree of discomfort during the flight as a result.

**3.896** In the absence of the "heliquet" form, the Inquiry cannot be sure that it has established the identities of all those who accompanied the nine detainees on the flight to Shaibah on 15 May 2004. In their oral evidence to the Inquiry, M021 and Sergeant McKee both described how they had performed the role of escorts during the flight. Private Ricardo McKenzie also gave a statement to the Royal Military Police ("RMP") in 2008 about his role as an escort on the flight. However, Private McKenzie was unable to provide any evidence directly to the Inquiry for health reasons.

**3.897** Two soldiers from the RMP, namely Corporal Keith Ryan and Corporal Anthony McKenna also travelled in the Chinook that day. Corporal Ryan described their role during the transfer as that of "observers" as well as couriers for the documentation relating to the detainees and their handover.<sup>4191</sup> Corporal Ryan also added the following:

*"The guards/escorts were responsible for the transfer and the welfare of the detainees and we were there to observe. I did not expect there to be any mistreatment of the detainees on the transfer but I understood that if I saw anything happen that should not be happening that I should step in and stop it."*<sup>4192</sup>

**3.898** On 15 May 2004, Sergeant Lane also requested that he be allowed to accompany the detainees on the flight to Shaibah as he was interested in seeing the procedure that was followed when detainees left Camp Abu Naji.<sup>4193</sup>

**3.899** Corporal Ryan's recollection was that the escorts travelled unarmed. He thought it likely that both he and Corporal McKenna had been armed with a 9mm handgun or, more likely, his SA80 personal rifle.<sup>4194</sup> However, Corporal McKenna said that he had been armed with a sidearm and that the escorting guards carried SA80 rifles.<sup>4195</sup> Given their role as guards, it seems to me very likely that the escorts were armed with their SA80 personal rifles, although nothing of consequence turns on this particular issue.

**3.900** In his written Inquiry statement, Corporal Ryan described how one of the detainees, whom he believed to have been Abbas Al-Hameedawi (detainee 776), appeared to behave in a somewhat uncooperative fashion, as follows:

*"I recall that as he was being escorted onto the Chinook it appeared he required holding more firmly than the others as he would not walk in the direction he was being guided by his escorts. He did not appear to be unwell and instead it seemed that he was doing this on purpose. The guards did not react to this and carried on guiding him*

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<sup>4190</sup> Sergeant Perfect [76/7]

<sup>4191</sup> Corporal Ryan (ASI019261) [40]

<sup>4192</sup> Ibid.

<sup>4193</sup> Sergeant Lane (ASI020053) [112]

<sup>4194</sup> Corporal Ryan (ASI019262) [44]

<sup>4195</sup> Corporal McKenna (ASI013637) [50]



*in the same fashion described above. I do not know whether anyone else said anything to him at this stage*<sup>4196</sup>

**3.901** Corporal Ryan also recalled that Ahmed Jabbar Hammood Al-Furaiji (detainee 777) had complained about having banged his foot or lower leg on the tailgate of the Chinook as he was boarding the aircraft, thus:

*“I did not hear the detainee complain verbally to anyone, but I understood what had happened because I saw the detainee gesturing towards his leg or foot and the guards looking down towards his feet. I saw an abrasion. I do not recall the detainee appearing to be in significant pain. He did not appear to be seriously injured and I remember thinking that the graze/scratch could be dealt with once we arrived at the DTF as it was standard operating procedure for the detainees to be given a medical examination during processing.”*<sup>4197</sup>

**3.902** Corporal Ryan said that this particular incident had happened “*despite the best efforts of the escorts*” and that it was clear that it had been an accident.<sup>4198</sup> Corporal Ryan’s assessment of the incident appears to be confirmed by the fact that Ahmed Al-Furaiji (detainee 777) made no complaint about the incident himself.<sup>4199</sup>

**3.903** In his written Inquiry statement, Corporal Ryan gave some details of the layout of the Chinook and how the detainees and escorts were positioned within the aircraft during the flight that day, as follows:

*“The interior of the Chinook was lined with canvas seats running down both the left and right sides of the helicopter. The middle passage was left clear for storage. The detainees sat on the seats between escorts so that the formation was escort – detainee – escort – escort – detainee – escort and so on. I sat at the end of the row near to the front of the Chinook close to the pilot. I had a good view of those sitting across from me but not as clear a view of those sitting on the same side as me. I do not recall where the Corporal [Corporal McKenna] sat. I do not recall any passengers on the flight wearing seatbelts.”*<sup>4200</sup>

**3.904** In fact, it would appear from M021’s evidence, to which I have referred above at paragraph 3.892, and the evidence of both Corporal McKenna<sup>4201</sup> and Sergeant Lane,<sup>4202</sup> that the detainees did wear seatbelts during the flight. Apart from this particular detail, I am satisfied that Corporal Ryan gave an accurate account of how the detainees and escorts were seated during the flight to Shaibah that day. I therefore reject the evidence given by Mahdi Jasim Abdullah Al-Behadili (detainee 773) in his Judicial Review statement that he had been “*forced to lie on the floor of the plane throughout the flight.*”<sup>4203</sup> In fact, in his first written Inquiry statement, Mahdi Al-Behadili gave a description of himself as seated across the width of the helicopter and facing the front.<sup>4204</sup> I therefore have no doubt that this particular allegation of ill-treatment was a deliberate lie on the part of Mahdi Al-Behadili.

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<sup>4196</sup> Corporal Ryan (ASI019263) [46]

<sup>4197</sup> Corporal Ryan (ASI019263) [47]

<sup>4198</sup> Ibid.

<sup>4199</sup> Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006725) [24]; (PIL000321) [87]

<sup>4200</sup> Corporal Ryan (ASI019263) [48]

<sup>4201</sup> Corporal McKenna (ASI013638) [53]

<sup>4202</sup> Sergeant Lane (ASI020055) [117]

<sup>4203</sup> Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006493) [18]

<sup>4204</sup> Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001120) [68]

- 3.905** The military witnesses were broadly in agreement that there was no interpreter present on the aircraft during the flight to Shaibah.<sup>4205</sup> It was Corporal McKenna's recollection that the Chinook was too noisy to allow conversation to take place during the flight in any event.<sup>4206</sup>
- 3.906** There were a number of estimates as to how long the flight to Shaibah actually took. Corporal Ryan estimated that the entire journey, including loading and disembarkation took about two hours.<sup>4207</sup> Corporal McKenna estimated that the actual flight took 45 to 50 minutes, apparently excluding the time taken to load and disembark.<sup>4208</sup> Sergeant Lane estimated that the flight lasted approximately an hour, including a stop "*en route*."<sup>4209</sup> For his part, Abbas Abd Ali Al-Hameedawi (detainee 776) thought that the journey lasted no more than 30-40 minutes.<sup>4210</sup>
- 3.907** The state of the evidence is such that I am unable to say precisely how long the flight actually lasted. However, based on the Prisoner Information Sheets for each of the nine detainees, it is clear that the final medical check for the last of the detainees at Camp Abu Naji was conducted at 12:17 hours.<sup>4211</sup> The same documents reveal that all the detainees were received by the ciphered soldier, M010, at the DTDF at Shaibah just over two hours later, at 14:30 hours.<sup>4212</sup> This seems to me to be broadly in keeping with the various time estimates to which I have referred above.
- 3.908** On arrival at Shaibah, the nine detainees were taken into the DTDF in a military ambulance.<sup>4213</sup>

## **1. Allegations of ill-treatment made by the detainees with regard to their transfer from Camp Abu Naji to the DTDF at Shaibah on 15 May 2004**

- 3.909** A number of the detainees alleged that they were ill-treated in various ways by the British soldiers, whilst they were being transferred from Camp Abu Naji to the Divisional Temporary Detention Facility ("DTDF") at Shaibah on 15 May 2004. Broadly speaking, these allegations fall into six main categories, as follows:
- a. that they were assaulted inside the helicopter;
  - b. that they were roughly or negligently handled as they were taken out of the helicopter;
  - c. that they were made to stand outside the helicopter for a prolonged period;
  - d. that they were physically assaulted outside the helicopter;
  - e. that they were roughly handled when loaded into a vehicle; and
  - f. that they were denied water.

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<sup>4205</sup> Corporal Ryan (ASI019264) [49]; Sergeant Lane (ASI020055) [118]; Corporal McKenna (ASI013638) [54]

<sup>4206</sup> Corporal McKenna (ASI013638) [54]

<sup>4207</sup> Corporal Ryan (ASI019265-66) [53]

<sup>4208</sup> Corporal McKenna (ASI013639) [56]

<sup>4209</sup> Sergeant Lane (ASI020055) [118]

<sup>4210</sup> Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000009) [24]

<sup>4211</sup> (MOD024484)

<sup>4212</sup> Ibid.

<sup>4213</sup> Sergeant Anderson (ASI014794-95) [135]

**3.910** In the paragraphs that follow, I deal with each of these various categories and state my conclusions of fact in relation to each in turn.

### Assaults within the helicopter

**3.911** Mahdi Jasim Abdullah Al-Behadili (detainee 773) consistently alleged that he had been assaulted inside the helicopter during the flight to Shaibah that day. In his first written Inquiry statement, Mahdi Al-Behadili said this:

*“I was seated across the width of the helicopter, facing the front. I had a soldier on either side of me. If I started to fall asleep during this journey, one of the soldiers would punch me in the head. It felt like it was with a clenched fist.”*<sup>4214</sup>

**3.912** This allegation was repeated in Mahdi Al-Behadili’s second written Inquiry statement, except that he there described it as a slap rather than a punch.<sup>4215</sup> During his oral evidence to the Inquiry, Mahdi Al-Behadili suggested that it was more like a slap than a punch, though he said that he was unable to remember all the details of the incident.<sup>4216</sup>

**3.913** In his oral evidence to the Inquiry, Corporal Ryan described how the detainees were treated during the flight to Shaibah on 15 May 2004. Corporal Ryan said that he had been seated almost opposite Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) in the Chinook. According to Corporal Ryan, Abbas Al-Hameedawi had behaved in an obstructive manner on a number of occasions during the flight. Corporal Ryan said that he had seen Abbas Al-Hameedawi “*lolling about*”, falling on his escort and slumping forwards despite being told not to. Corporal Ryan described how he had seen the escorting guards push Abbas Al-Hameedawi back into his seat on a number of occasions with their hands.<sup>4217</sup> He described the amount of force used by the guards for that purpose as “*minimal and reasonable*”. However, he made it clear that he had nevertheless kept an eye on the situation.<sup>4218</sup>

**3.914** Corporal Ryan also noticed that the escorting guards were becoming increasingly frustrated by Abbas Al-Hameedawi’s behaviour, to the point where one of them had used his elbow to push Abbas Al-Hameedawi back into his seat. According to Corporal Ryan, the guard in question had used the back of his upper arm to push Abbas Al-Hameedawi back into his seat, rather than the actual point of his elbow. Although Corporal Ryan still felt that the amount of force used by the guard had been minimal, he considered that it did represent an escalation in the way that the guards were dealing with the situation.<sup>4219</sup> Corporal Ryan recalled that, as a result of coming to that conclusion, he had said something to the guard like “*that’s enough*” and that he had then seen no recurrence of the incident.<sup>4220</sup>

**3.915** M021 confirmed that he had escorted Abbas Al-Hameedawi during the flight to Shaibah that day. M021 confirmed that Abbas Al-Hameedawi had slumped forwards at times during the flight and he described how he had had to use his hands to grasp Abbas Al-Hameedawi’s shoulders in order to pull him back into his seat. However, M021 did not remember having used his elbow to push Abbas Al-Hameedawi back into his seat.<sup>4221</sup>

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<sup>4214</sup> Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001120) [68]

<sup>4215</sup> Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000788) [48]

<sup>4216</sup> Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/77]

<sup>4217</sup> Corporal Ryan [133/47]

<sup>4218</sup> Corporal Ryan [133/48]

<sup>4219</sup> Corporal Ryan [133/50]

<sup>4220</sup> Corporal Ryan [133/51]

<sup>4221</sup> M021 [135/160-162]

- 3.916** Corporal Ryan said that, apart from the incident involving Abbas Al-Hameedawi to which I have just referred,<sup>4222</sup> he had seen no other incidents, during the flight to Shaibah that day, that had caused him any concern or required any intervention by him. He was also clear that he had not seen anything that he considered to be “*mistreatment*”<sup>4223</sup> of the detainees during the flight that day. In my view, Corporal Ryan was a truthful and honest witness and I believe him.
- 3.917** Corporal McKenna, who was an equally credible witness, was similarly adamant that he had not seen any assaults or ill-treatment of the detainees during the flight to Shaibah that day.<sup>4224</sup> I also believe him.
- 3.918** Having considered all the evidence, I have come to the firm conclusion that Mahdi Al-Behadili has either fabricated, or at the very least grossly exaggerated, his account of how he was treated during the flight to Shaibah on 15 May 2004. I accept that it is possible that one of his escorting guards may have nudged or tapped him to keep him awake during the flight. However, I do not accept that Mahdi Al-Behadili was subjected to any serious or gratuitous violence during the flight. Had anything of that sort happened I have no doubt that either Corporal Ryan, Corporal McKenna or Sergeant Lane would have noticed it, dealt with it at the time and then given an account of it in his evidence to the Inquiry.
- 3.919** I am satisfied that Corporal Ryan gave a truthful and accurate account of what he saw in relation to Abbas Al-Hameedawi and the steps that he took in order to deal with the situation. I also found M021 to be a truthful and credible witness. Accordingly, I am satisfied that an escorting guard did use his upper arm, with his elbow bent, in order to push Abbas Al-Hameedawi back into his seat as Corporal Ryan described. However, it seems to me to be very likely that the soldier who did this was not M021, but the other escorting guard. In any event, no significant force was used, no injury, pain or discomfort was caused and the only reason for doing it was to push Abbas Al Hameedawi back into his seat for his own good. The incident did not involve any gratuitous violence. The fact that Abbas Al-Hameedawi made no mention of this particular incident in his evidence to the Inquiry confirms that the incident did not trouble him in any way and that it was essentially a very trivial affair.
- 3.920** For the avoidance of doubt, I am quite satisfied that those escorting Abbas Al-Hameedawi were rightly concerned to ensure that he was sitting back into his seat for his own safety and comfort during the flight. As M021 pointed out during his oral evidence to the Inquiry, Abbas Al-Hameedawi’s seatbelt would have cut into his stomach while he was slumped forward.<sup>4225</sup> For all the foregoing reasons, I have no doubt that this particular incident did not constitute any form of ill-treatment as envisaged by the Terms of Reference.

### Rough/negligent handling as the detainees were removed from the helicopter

- 3.921** Although he had made no mention of this particular incident in his Judicial Review statement, in his two written Inquiry statements, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) did make an allegation of rough or negligent handling as he was removed from the helicopter.<sup>4226</sup>

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<sup>4222</sup> See paragraph 3.914 above

<sup>4223</sup> Corporal Ryan (ASI019265) [51]

<sup>4224</sup> Corporal McKenna (ASI013641) [65]

<sup>4225</sup> M021 [135/163/8-11]

<sup>4226</sup> Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000009) [25]

**3.922** In his first written Inquiry statement, Abbas Al-Hameedawi said this:

*“On arrival at Al-Shaiba, when we landed I was pushed out of the open door of the helicopter and fell to the floor, a distance of just under 1 metre. As I was blindfolded I didn’t know where to put my feet. I was also handcuffed at this stage, I think to the front. I sustained a minor injury to my left knee and it also affected my earlier shoulder injury.”<sup>4227</sup>*

**3.923** Abbas Al-Hameedawi also mentioned this incident in his second written Inquiry statement and provided some additional detail, as follows:

*“I was escorted out of the helicopter by two soldiers. They each seized an arm and took me down from the helicopter. One soldier was going faster than the other and I slipped and fell over. One soldier was forced to let go of me whilst the other retained his grip on me. The translation in my previous statements is incorrect. I was not pushed out of the helicopter, I was unsteady on my feet and fell over. Nobody deliberately pushed me. The omission of this incident in one of the statements is an oversight.”<sup>4228</sup>*

**3.924** In oral evidence to the Inquiry, Abbas Al-Hameedawi maintained that he had not been deliberately pushed out of the aircraft, but claimed that the accident had occurred because the soldiers were trying to remove him from the aircraft too quickly.<sup>4229</sup>

**3.925** In his written Inquiry statement, Corporal Ryan did not comment at any great length on the way in which the detainees had been unloaded from the helicopter on arrival at Shaibah. However, he did recall that Abbas Al-Hameedawi had been somewhat obstructive and uncooperative during the process of getting out of the helicopter.<sup>4230</sup>

**3.926** In his written Inquiry statement, Corporal McKenna did provide some details of how the detainees were unloaded from the Chinook on arrival at Shaibah on 15 May 2004, although he made no mention of any incident involving Abbas Al-Hameedawi. What Corporal McKenna said was this:

*“We arrived at the Landing Site within the perimeter of the Base. I was one of the first passengers off the helicopter and I observed the detainees being escorted out of it by their accompanying soldiers still wearing goggles and plasticuffs. Their movement by the soldiers was the same as that described above; the soldiers handled them firmly with each soldier placing a hand on each arm or shoulder to indicate which way to move forward.”<sup>4231</sup>*

**3.927** In their written Closing Submissions, those representing the Iraqi Core Participants indicated that they sought the following finding of fact:

*“Abbas Al-Hameedawi was not escorted from the helicopter with sufficient care to stop him falling and injuring himself.”<sup>4232</sup>*

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<sup>4227</sup> Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000866) [65]

<sup>4228</sup> Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004770-71) [42]

<sup>4229</sup> Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/70]

<sup>4230</sup> Corporal Ryan (ASI019265) [52]

<sup>4231</sup> Corporal McKenna (ASI013639) [56]

<sup>4232</sup> ICP Closing Submissions (652) [2207c]



**3.928** They then went on to elaborate, as follows:

*"It was entirely dependent upon the escorts to ensure he was safely taken from the helicopter. They failed to [do] that and he was injured."*<sup>4233</sup>

**3.929** I accept that Abbas Al-Hameedawi may have fallen to the ground as he disembarked from the Chinook. It is possible that Corporal McKenna simply failed to notice it or has forgotten it with the passage of time. However, I am quite satisfied that, if he did so, it was a complete accident, as Abbas Al-Hameedawi himself has now come very close to accepting. I am not persuaded that any such fall was the result of any lack of proper care on the part of the soldiers who were escorting him. On the contrary, I have no doubt that Abbas Al-Hameedawi was obstructive and uncooperative throughout the transfer from Camp Abu Naji to the DTDF. It seems to me to be very likely that any fall that he may have suffered when disembarking from the helicopter at Shaibah that day was largely, if not wholly, the result of his own generally obstructive behaviour. This obstructiveness would, in significant part, have contributed to this accident. It, therefore, goes without saying that this did not constitute ill-treatment as envisaged by the Terms of Reference.

### Being made to wait outside the aircraft

**3.930** A number of the detainees described an uncomfortable and unpleasant waiting period outside in the open, after the helicopter had landed at Shaibah on the 15 May 2004.

**3.931** In his Judicial Review statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) said this:

*"On leaving the plane I was left outside in the sun for approximately one hour. The sun was hot and I was dehydrated by this point."*<sup>4234</sup>

**3.932** Although Mahdi Al-Behadili maintained this allegation in his written Inquiry statements, he reduced his time estimate considerably, as follows:

*"After landing we were taken out of the helicopter and placed, face down on the ground. My hands were cuffed behind my back. I couldn't tell how many people were with me but was aware that I was now not alone. I was on the ground for more than 15 (fifteen) minutes. I remember it being really hot and we were in direct sunlight"*<sup>4235</sup>

**3.933** During his oral evidence to the Inquiry, Mahdi Al-Behadili said that he could not be certain how long he had been left in the sun.<sup>4236</sup>

**3.934** A similar allegation was made by Kadhim Abbas Lafta Al-Behadili (detainee 775) in his written Inquiry statement, as follows:

*"I was then forced to sit on the ground by the soldiers pushing down on my shoulders. I was still blindfolded and cuffed to the rear. The ground was very hot from the sun and it was painful to sit on. I cannot recall how long I was sat there for."*<sup>4237</sup>

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<sup>4233</sup> ICP Closing Submissions (656) [2225]

<sup>4234</sup> Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006493) [18]

<sup>4235</sup> Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000788) [49]

<sup>4236</sup> Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/77-78]

<sup>4237</sup> Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000733-34) [67]

**3.935** In his Judicial Review statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) described how he had been made to kneel on the ground with his head bent for approximately 10 minutes, after he had been moved out of the helicopter at Shaibah.<sup>4238</sup>

**3.936** Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) also made a similar allegation in his Judicial Review statement, as follows:

*“Once the plane landed I was lifted up under my arms by soldiers on either side who forced me to sit on the ground. I then waited for about 15 minutes just sitting in the sun before a vehicle arrived and I was driven to another detention centre.”*<sup>4239</sup>

**3.937** Atiyah Al-Baidhani repeated this allegation in his first written Inquiry statement, in the following terms:

*“I was taken to Al Shaibah by helicopter and when we arrived I was roughly handled and forced [to] sit down on the floor in the intense sunshine. I don’t know for sure but I think this was a reasonably short time.”*<sup>4240</sup>

**3.938** Finally, Hussein Gubari Ali Al-Lami (detainee 780) described how he had to squat down on a dirt road for approximately 15 minutes after the helicopter had landed at Shaibah.<sup>4241</sup>

**3.939** There is some support for these allegations in the evidence of the military witnesses who were present that day. Sergeant Samuel McKee recalled a delay of between 20 to 30 minutes between the time the helicopter landed and the arrival of a vehicle to take the detainees from the landing area to the Divisional Temporary Detention Facility (“DTDF”) itself. Sergeant McKee recalled that the detainees had been required to wait outside in the sun during that period of time.<sup>4242</sup>

**3.940** Corporal Anthony McKenna also recalled that there had been a delay after landing at Shaibah that day, during which the detainees might have been made to sit on the ground outside.<sup>4243</sup> Sergeant Martin Lane similarly confirmed that the detainees would have been required to wait in the hot sunshine for a period of about 30 minutes.<sup>4244</sup>

**3.941** However, it was Corporal Keith Ryan’s recollection that the detainees had been loaded into vehicles without any delay, although he conceded that he could not be sure about this.<sup>4245</sup> As it seems to me, the most likely explanation for this difference in recollection is to be found in the evidence of Sergeant William Anderson, who drove the vehicle that was used to transport the detainees to the DTDF from the helicopter landing area on 15 May 2004.<sup>4246</sup> Sergeant Anderson recalled how he had been waiting at the helicopter landing area when the helicopter landed that day.<sup>4247</sup> However, he went on to say that it had not been possible to accommodate all the detainees in the vehicle at the same time. He therefore had to make two trips from the landing area in order to transport all the detainees to the DTDF. Accordingly, on the basis of Sergeant Anderson’s evidence, which I accept was both truthful and accurate,

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<sup>4238</sup> Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000009) [25]

<sup>4239</sup> Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006679) [30]

<sup>4240</sup> Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000956) [54]

<sup>4241</sup> Hussein Gubari Ali Al-Lami (detainee 780) (ASI004815) [83]

<sup>4242</sup> Sergeant McKee [124/202]

<sup>4243</sup> Corporal McKenna [130/129]

<sup>4244</sup> Sergeant Lane [136/123-124]

<sup>4245</sup> Corporal Ryan [133/55-56]

<sup>4246</sup> Sergeant Anderson (ASI014794) [134]

<sup>4247</sup> Sergeant Anderson [139/66]

it would have been necessary for some of the detainees to wait at the landing area, until he returned from having transported the first group of detainees to the DTDF.<sup>4248</sup>

**3.942** I am therefore satisfied that some of the detainees did have to wait for a period of about 20 to 30 minutes outside the helicopter after it had landed at Shaibah. I have no doubt that the weather was sunny and, due to the lack of shade, it would have been very hot. I find that this unsatisfactory situation could well have been avoided with appropriate planning. In my view, whoever was responsible for organising the transfer should have taken appropriate steps to ensure that there were a sufficient number of vehicles waiting at the landing site at Shaibah in order to transport all the detainees and escorts into the DTDF without any delay.

**3.943** However, I am quite satisfied that this situation arose entirely as a result of inadequate planning and preparation. It was not a case of deliberate ill-treatment, nor did it result from a wilful disregard for the welfare of the detainees. That this was so is clearly demonstrated by the fact that a significant number of soldiers were left in a similar position to that of the detainees that day, and for the same length of time.

**3.944** I am also satisfied that the period of time, during which the detainees were left in this position, was relatively short. I accept that the detainees in question would have suffered some discomfort during that period, but the experience did not cause any significant or lasting injury of any sort to any of them. Given my conclusions as to how it came about, I very much doubt if this unsatisfactory state of affairs was sufficiently serious enough to amount to the sort of ill-treatment that is envisaged by the Inquiry's terms of reference.

### Assaults outside the aircraft

**3.945** In his Judicial Review statement, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) alleged that he had been assaulted while he waited outside the helicopter, after it had landed, as follows:

*"When the helicopter landed, two soldiers again lifted me under my arms and put me on the ground outside. They tried to make me sit cross-legged, but I was in agony from the gunshot injury to my right knee and couldn't bend that leg properly – the soldiers kept hitting me and swearing at me to sit cross-legged, despite my clothes being covered in blood clearly indicating my injury."<sup>4249</sup>*

**3.946** In his written Inquiry statement, Sergeant Lane described having seen the detainees seated on the ground at the landing area at Shaibah that day, while they were waiting to be transported to the DTDF.<sup>4250</sup>

**3.947** I accept that it would have been painful for Ibrahim Al-Ismaeeli to have sat cross-legged, given the injuries he had suffered. Nevertheless, I am satisfied that Ibrahim Al-Ismaeeli's allegation that he had been hit and sworn at to force him to sit cross-legged is false and deliberately so. I do not accept that any of the escorting guards would have acted in such a way, in full view of Sergeant Lane, Corporal McKenna and, possibly, Corporal Ryan. I have no doubt that these non-commissioned officers all gave truthful and accurate evidence. None of them described

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<sup>4248</sup> Sergeant Anderson [139/105]

<sup>4249</sup> Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013956) [25]

<sup>4250</sup> Sergeant Lane (ASI020055) [119]

having seen any such incident that day. I am quite sure that this was the case because it simply did not happen.

### Rough handling when being loaded into the vehicle

**3.948** In his Judicial Review statement, Hussein Fadhil Abbas Al-Behadili (detainee 778) described how he had been thrown into a vehicle, when he arrived at Shaibah on 15 May 2004, and had injured his left knee as a result.<sup>4251</sup> Hussein Al-Behadili maintained this allegation when he gave his oral evidence to the Inquiry.<sup>4252</sup>

**3.949** However, no injury to Hussein Al-Behadili's left knee was identified when he was medically examined by Major David Winfield during the processing procedure at the Divisional Temporary Detention Facility ("DTDF") later that day.<sup>4253</sup> Although an injury to Hussein Al-Behadili's left knee was identified and treated two months later in July 2004, this was said to have been a graze sustained whilst playing volleyball.<sup>4254</sup>

**3.950** In his second written Inquiry statement, Hussein Al-Behadili confirmed that the injury caused by playing volleyball was quite separate from the injury allegedly caused by having been thrown into the vehicle on arrival at Shaibah on 15 May 2004. He also went on to say that he had not told Major Winfield about the injury to his knee when he was initially medically examined.<sup>4255</sup>

**3.951** In his written Inquiry statement, Corporal Ryan described the way in which the detainees had been loaded into the vehicle that was to transport them to the DTDF after they had disembarked from the helicopter on 15 May 2004. Corporal Ryan went on to say this:

*"I recall one detainee seemed to have some difficulty being guided into the Land Rover and slipped as the guards were assisting him and he may have fallen into the back although I am not certain of this. I do not recall him being injured as a result of this. I did not consider that I needed to take any steps in response to this, as I could see that the guards had guided the detainee in an appropriate manner and the slipping was accidental."*<sup>4256</sup>

**3.952** It seems to me possible that, in this part of his evidence, Corporal Ryan was describing how he had seen Hussein Al-Behadili being loaded into the vehicle at the landing area at Shaibah. If so, it appears that the process of loading Hussein Al-Behadili into the vehicle was not uneventful. However, whilst I accept that the detainees might well have been loaded into the vehicle in a firm and robust fashion, it is clear from Corporal Ryan's evidence that the escorting guards were not at fault when the detainee in question slipped. If the detainee who slipped was actually Hussein Al-Behadili, it was an accident. He was not thrown into the vehicle.

**3.953** In any event, I am satisfied that Hussein Al-Behadili did not suffer any injury as a result of this incident. If Hussein Al-Behadili had injured his knee in the manner he described, I am quite satisfied that Major Winfield would have seen and recorded the injury when he examined him a short time later that same day. Accordingly, I have no doubt that, if Hussein Al-Behadili

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<sup>4251</sup> Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006704) [37]

<sup>4252</sup> Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/56-57]

<sup>4253</sup> (MOD043962)

<sup>4254</sup> Ibid.

<sup>4255</sup> Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000384) [109]

<sup>4256</sup> Corporal Ryan (ASI019265) [52]

did slip and fall as he was being loaded into the back of the vehicle, he deliberately lied about how it came to happen and he deliberately lied about having been injured as a result.

## The denial of water

**3.954** Some of the detainees complained that they had not been given water during the transfer from Camp Abu Naji to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah.

**3.955** In his Judicial Review statement and in his first written Inquiry statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) described how he had been told to “*shut up*” when he asked for water during the flight and how he had become dehydrated by the time he arrived at Shaibah on 15 May 2004.<sup>4257</sup> Similarly, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) described how he had felt thirsty on arrival at Shaibah and had unsuccessfully asked for water.<sup>4258</sup> This was confirmed by M021 in his written Inquiry statement, as follows:

*“I remember that the overweight detainee [Abbas Al-Hameedawi] asked for water every few minutes. He was not given any water at this point. I do not know why this was the case, such as if we had been ordered not to give the detainees any water during the journey to Shaibah.”*<sup>4259</sup>

**3.956** However, Hussein Fadhil Abbas Al-Behadili (detainee 778) recalled that he had been given water during the transfer.<sup>4260</sup> Similarly, in his written Inquiry statement, Corporal McKenna specifically recalled that water had been given to the detainees during the transfer, as follows:

*“During the flight and subsequent transfer to the DTDF at Shaibah, the detainees were generally subdued although they responded when given water. Water in bottles was offered to the detainees on the flight to Shaibah although food was not provided. I personally offered water to the detainee who I think is detainee 090775...although it is possible that it could have been detainee 090774...As the detainee was wearing blacked out goggles I offered him water by placing the bottle to his lips and tilting it upwards.”*<sup>4261</sup>

**3.957** It would therefore seem from all the evidence that water was provided to some but not all of the detainees, in a somewhat ad hoc and rather unsatisfactory manner, during the transfer to the DTDF on 15 May 2004. Although water was evidently available to some of the detainees, it appears that there was insufficient water to provide enough for all nine detainees. This was particularly so during the period of delay that some of the detainees and escorts experienced, when waiting for transport to the DTDF, after the helicopter had landed at Shaibah on 15 May 2004. As a result, during the overall transfer from Camp Abu Naji to the DTDF, some of the detainees did suffer from a lack of water that should have been but was not provided when required.

**3.958** This unsatisfactory state of affairs could, and should, have been avoided by more careful planning on the part of those who were responsible for arranging the transfer of the detainees to the DTDF on 15 May 2004, in order to ensure that there was an adequate supply of water available for the entire journey. However, I am quite sure that this inadequacy in the supply of water to some of the detainees, during their transfer from Camp Abu Naji to the DTDF

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<sup>4257</sup> Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006493) [18]; (ASI001121) [71]

<sup>4258</sup> Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000009) [25]

<sup>4259</sup> M021 (ASI021247) [35]

<sup>4260</sup> Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001044) [49]

<sup>4261</sup> Corporal McKenna (ASI013638-39) [55]



at Shaibah on 15 May 2004, was the result of poor planning. It was not a case of deliberate ill-treatment.

## 2. General comments regarding the transfer

**3.959** It seems clear from the evidence that some aspects of the arrangements, for the transfer of the nine detainees from Camp Abu Naji to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah on 15 May 2004, were less than satisfactory.<sup>4262</sup>

**3.960** Thus, the Air Operations Officer at Camp Abu Naji, WO1 Keith Potter, appears to have been unaware that the nine detainees were to be transferred by helicopter to the DTDF at Shaibah on the morning of 15 May 2004. This led to an unsatisfactory state of affairs, in which the nine detainees ended up sharing the flight to Shaibah with soldiers who had been involved in the battle the previous day. In my view, it was to the credit of WO1 Potter and the other soldiers in command roles at the Camp Abu Naji helipad that morning that the obvious tension was quickly recognised and immediate steps taken to defuse the situation. However, the problem could have been avoided altogether with more careful planning.

**3.961** Inadequate thought and planning also led to a lack of sufficient water being available for the escorts and detainees during the journey to the DTDF that day. It also led to a delay in the transport of some of the detainees to the DTDF after their arrival at Shaibah. This resulted in some of the detainees and their escorting guards having to wait outside in the hot sun with no shade (and insufficient water) for an appreciable period of time. These problems could and should have been avoided with more thought and better planning.<sup>4263</sup>

**3.962** Nevertheless, I am satisfied that both Corporal Keith Ryan and Corporal Anthony McKenna were broadly correct in saying that no inappropriate behaviour towards or ill-treatment of the nine detainees actually occurred during the journey from Camp Abu Naji to the DTDF on 15 May 2004. It seems to me that the matters about which criticism has been made in this part of the Report were relatively minor and certainly did not involve any deliberate and/or significant ill-treatment of any of the detainees that day.

**3.963** Finally, in their written Closing Submissions, those representing the Iraqi Core Participants sought a finding in the following terms:

*“The prisoners’ safety was not sufficiently taken into account in that emergency procedures were not explained to them...”*<sup>4264</sup>

**3.964** The submissions went on to emphasise the fact that it was unlikely that any of the detainees had ever flown before<sup>4265</sup> and contended that:

*“For any prisoner not having travelled by air before, such safety instructions would have been all the more important. The presence of an interpreter on the flight was therefore necessary. How otherwise could sensible orders and instructions be given to the prisoners?”*<sup>4266</sup>

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<sup>4262</sup> The 1PWRR BGIRO, i.e. Captain Allen, had the responsibility for organising the transportation of the detainees to the DTDF and giving appropriate notice of numbers and time of arrival to the Military Provost Staff at the DTDF: see paragraphs 3.878 and 3.879 above and MND(SE) SOI 390, (MOD042758), and Captain Allen (ASI023021) [122]: the actual escorts were arranged by Sergeant Lane, see paragraph 3.882

<sup>4263</sup> See footnote 4291

<sup>4264</sup> ICP Closing Submissions (652) [2207a]

<sup>4265</sup> ICP Closing Submissions (653) [2213]

<sup>4266</sup> ICP Closing Submissions (654) [2214]

- 3.965** I am satisfied that there was no interpreter present on the flight that day, nor was any safety briefing actually given to the detainees.<sup>4267</sup> In fact, it appears that one of the detainees, Kadhim Abbas Lafta Al-Behadili (detainee 775), only discovered that he had made the journey in a helicopter that day, as the result of a subsequent discussion that he had had with the other detainees.<sup>4268</sup>
- 3.966** I accept that it would have been preferable for an interpreter to have been present on the flight and for at least a basic safety briefing to have been given to the detainees before the transfer flight took place. However, in the event, there were no adverse consequences as the result of the failure to do so, except that the more nervous detainees might have gained some reassurance from such a process. I therefore very much doubt whether this failure can be said to amount to any form of ill-treatment of the detainees.

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<sup>4267</sup> See footnote 4291

<sup>4268</sup> Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000733) [66]