

The Report of the Al Sweady Inquiry

Volume II

Sir Thayne Forbes

December 2014

The Report of the Al Sweady Inquiry – Volume II



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Sir Thayne Forbes

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Part 3: Allegations of ill-treatment at CAMP ABU NAJI

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Chapter 2: The processing of the detainees at Camp Abu Naji

**Chapter 3: The Tactical Questioning of the nine detainees at Camp Abu Naji on
the night of 14-15 May 2004**

Chapter 4: Overnight detention at Camp Abu Naji

**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**

PART 3: ALLEGATIONS OF ILL TREATMENT AT CAMP ABU NAJI

CHAPTER 1: THE ARRIVAL OF THE DETAINEES AT CAMP ABU NAJI

1. The arrival of the nine detainees at Camp Abu Naji on 14 May 2004

- 3.1** Formerly an Iraqi Army camp, Camp Abu Naji was taken over by the British Army and became its largest base in Maysan province. It was situated on the west side of Route 6, just south of Al Amarah, and to the north of the Danny Boy vehicle checkpoint ("VCP"). The town of Al Majar al'Kabir was about 20 kilometres south of Camp Abu Naji.
- 3.2** The approach to Camp Abu Naji was immediately recognisable because of the large arches that were situated on the approach road to the camp.³¹⁹⁴
- 3.3** This well-known feature was known as "the Golden Arches" by soldiers based at Camp Abu Naji, because of their resemblance to the familiar logo of a well-known chain of fast-food restaurants.³¹⁹⁵ The arches were actually some distance from the camp's main entrance, which was approximately another 700 metres further down the approach road to the camp.³¹⁹⁶ The following photograph depicts the view from Route 6 facing towards the arched entrance to Camp Abu Naji:

³¹⁹⁴ Hayder Faisal Manea Al-Salman (witness 144) (ASI008114) [48]

³¹⁹⁵ Captain Turner (ASI017619–20) [155]; Corporal J. Wilson (MOD019088); Private Sugden (ASI010493) [53]

³¹⁹⁶ Ibid.

Figure 77: extract taken from ASI008204 – Video taken by Khuder Karim Ashour Al-Sweady (witness 1)



- 3.4** The entrance to the camp itself was controlled by two barriers and a guarded sangar tower.³¹⁹⁷ The following image, taken on Private Stuart Taylor's camera, shows the front gate at Camp Abu Naji and the sangar.

³¹⁹⁷ Majid Ali Hussein Al-Mulla (witness 167) (ASI008607) [22]

Figure 78: MOD037835

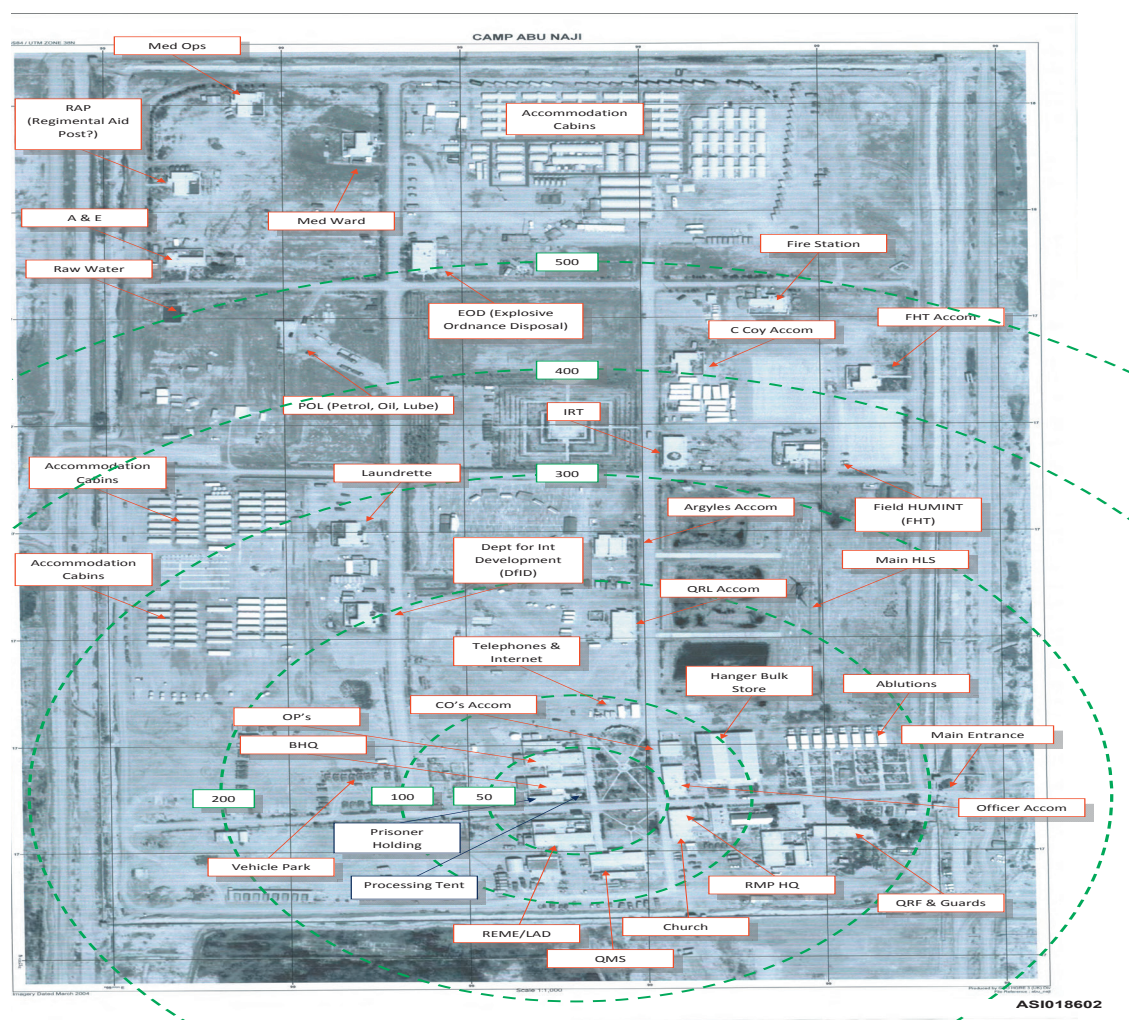


3.5 Camp Abu Naji was a large rectangular compound, and at its peak, was home for up to 1500 soldiers.³¹⁹⁸ It had originally been the camp for the Iraqi Army 4th Corps under the Saddam Hussein regime,³¹⁹⁹ before being taken over by the British. The photograph which appears below as figure 79, taken in March 2003, depicts the whole of Camp Abu Naji from the air. The key buildings and areas have been marked for ease of reference in order to represent the layout understood to have existed in May 2004. The main entrance to Camp Abu Naji can be seen at the bottom right of the photograph.

³¹⁹⁸ Lieutenant Colonel Maer (MOD022378) [4]

³¹⁹⁹ See, for example, Ahmed Abbas Makhfe Al-Fartoosi (witness 91) (ASI008447) [59]; Ghazi Talib Janjoon Algham (witness 145) (ASI008490) [39]; Salim Adday Mohaisen Al-Baidhani (ASI008837) (witness 157) [71]

Figure 79: ASI018602



The prisoner handling compound at Camp Abu Naji

3.6 Detainees taken to Camp Abu Naji were held in a small compound (“the prisoner handling compound”). In May 2004 this was located next to the Battalion Headquarters Building (“BHQ Building”). Lance Corporal Kirk Williamson explained that the prisoner handling compound was intended to provide a short term holding area for detainees brought to Camp Abu Naji as prisoners of the Coalition forces. The compound was created around a defunct shower block, located at the south end of the BHQ Building³²⁰⁰ adjacent to the Battle Group Administration Office.³²⁰¹ The facilities were very basic and intended only as temporary accommodation for a small number of prisoners for a very limited period of time, before they were appropriately relocated.³²⁰² For this reason, the compound was not suitable or used for any prolonged period of detention. Nor was it intended to accommodate large numbers of prisoners. The basic nature of the arrangements, as detailed in the paragraphs that follow, reflected those limitations.

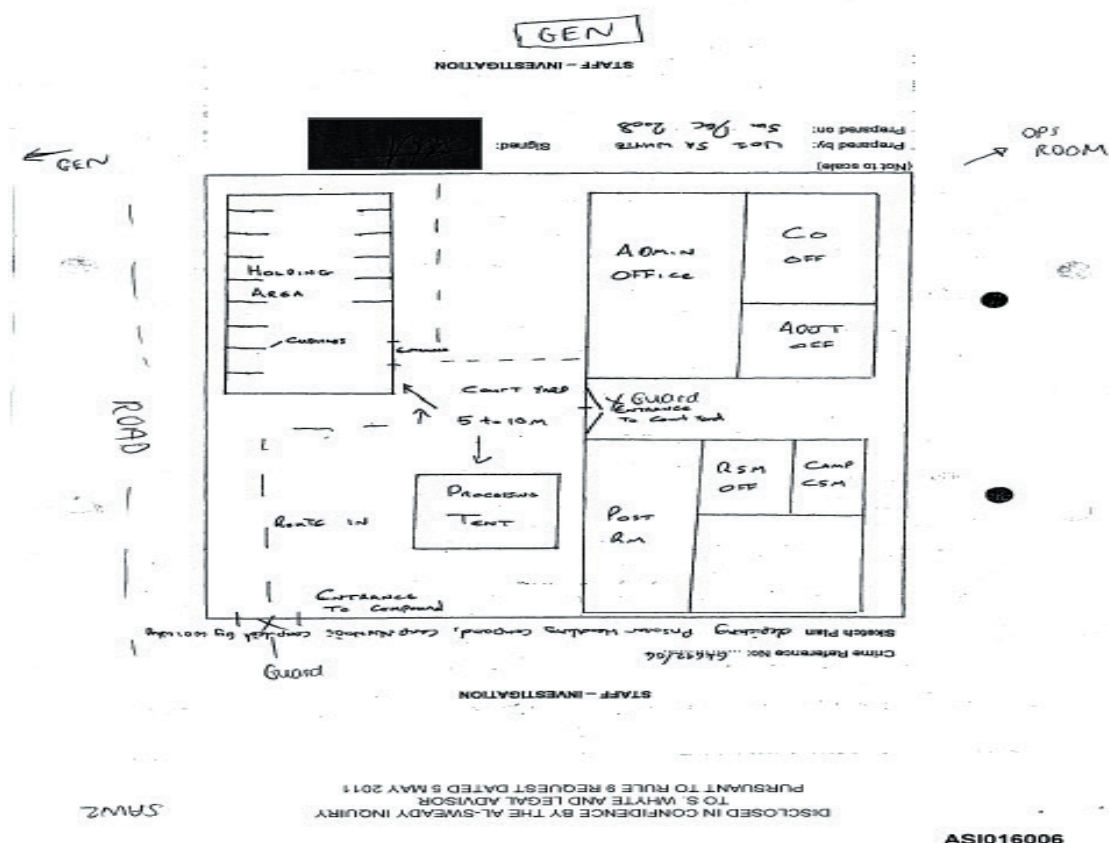
³²⁰⁰ Sergeant McKee (MOD004526)

³²⁰¹ Lieutenant Colonel Maer (MOD022539) [54]

³²⁰² Lance Corporal Williamson (ASI024862-64) [20]–[27]

- 3.7** Entry to the prisoner handling compound was by one of two entrances. Often the compound was empty and, when that was the case, soldiers could and did pass freely through it on foot. However, when detainees were present in the compound, both of the entrances were secured by armed guards and passage into or through the compound was controlled as a result.³²⁰³ The first entrance into the compound was from the BHQ building itself ("entrance 1").³²⁰⁴ The second entrance was off the main road into Camp Abu Naji ("entrance 2"). Entrance 2 gave access to the prisoner holding compound along a path into an open air courtyard.³²⁰⁵
- 3.8** The area immediately inside the overall compound was divided by a hessian sheet on a wire. On one side of the hessian sheet was a courtyard area, in which there was a tent³²⁰⁶ used for both processing and tactical questioning of detainees ("the processing tent") and an old disused shower block that was used to accommodate the detainees ("the prisoner holding area": see below). On the other side of the hessian sheet was an area in which off-duty guards could relax. The compound was surrounded by an eight foot high wall on three sides, the other side consisting of the BHQ building. There were also a number of portaloos lavatories for the detainees to use.³²⁰⁷ These were situated just outside entrance 2 to the compound. The following sketch plan, drawn by WO1 Shaun Whyte, shows the general layout of the prisoner handling compound on 14 May 2004:

Figure 80: ASI016006



³²⁰³ Corporal Everett (MOD020169); Corporal Marshall (ASI011083) [40]

³²⁰⁴ M004 (ASI02263) [33]

³²⁰⁵ See, for example, Figure 80 ASI016006

³²⁰⁶ The tent is estimated to have been around 12 square feet; NB – see paragraph 3.13

³²⁰⁷ Lance Corporal Williamson [166/91-95]; (ASI024863) [23]

The Prisoner Holding Area

- 3.9** Within the prisoner handling compound was a disused shower block. The shower block was used to accommodate detainees whilst they were being held in the prisoner handling compound.³²⁰⁸ It consisted of a brick building with a roof and measured approximately 20 metres by 10 metres.³²⁰⁹ Corporal John Everett confirmed that there were approximately 14 former shower cubicles in the facility,³²¹⁰ each of which had tiled walls and a concrete floor and measured about two metres by two metres. These were utilised as single person cells. Entry to each cubicle was by means of a doorway, although the doors themselves were no longer attached. Corporal Everett said that there were three such cubicles to the left of the shower block entrance and 11 cubicles on the wall opposite the entrance, spread along the length of the wall. To the right of the doorway was an open area with a bench.³²¹¹
- 3.10** According to Corporal James Randall and Private Adam Gray, not all the cubicles in the shower block were necessarily permanent. They remembered that temporary cubicles were sometimes constructed in the shower block when needed, by standing six foot by three foot tables on end, so that they formed six foot high temporary cubicles.³²¹²
- 3.11** Within each cubicle was a chair that was positioned facing the wall. There were no shower heads or taps in the shower block and no running water. There was however a supply of bottled water by the entrance.³²¹³
- 3.12** The following sketch plan drawn by Corporal Everett, gives a general idea of the layout of prisoner holding area in the old shower block:³²¹⁴

³²⁰⁸ WO2 Cornhill (ASI013358) [59]

³²⁰⁹ Sergeant McKee (MOD004526)

³²¹⁰ Corporal Everett (MOD020169); NB – WO1 Whyte estimated 15 cubicles (ASI015977) [80] and WO2 Cornhill said there were about 10 (ASI013358) [59]

³²¹¹ Corporal Everett (ASI009391) [97]; Lance Corporal Bond (ASI011522) [26]; NB – the layout and number of cells broadly agreed with the recollection of other witnesses. See, for example, Sergeant J. King (ASI010322) [47] who recalled up to 10 cells and Lance Corporal Williamson who recalled that the cells were partitioned by sheets of hessian [166/93/2-6]

³²¹² Corporal Randall (ASI009752) [34]; Private Gray (ASI011371) [27]–[29]

³²¹³ Lance Corporal Bond (ASI011522-23) [26]; Staff Sergeant Gutcher [122/55]; [122/45]

³²¹⁴ See also, Corporal Everett (MOD022812)

Figure 81: MOD016077

inner_view [https://v5.lextranet.net/lcs/customDB/omni/inner_view.lcs?session_key=a8cc-546685b3-17e4430-bfce-b580-b31c-b886-55e49831objectID=2003Page 1 of 1]
ASI SUBJECT TO CONFIDENTIALITY UNDERTAKING

61

RESTRICTED - INVESTIGATION

Annex to
Investigation Summary of RMP
Dated :

SKETCH PLAN OF: ASR1 (RESPECTED STAGING AND STAGING)
INTERVIEWING) At AMANAH, MAJIDAN, BCP 660

INDEX

1 = ENTRANCE TO ASR1 AREA

2 = PROCESSING TENT

3 = PRISONER HOLDING CELLS - 14 IN TOTAL

4 = ENTRANCE TO MAIN HQ BUILDING

5 = TROOP CHANGING

6 = GARDEN AREA

7 = TURRET

(Not to scale)

Prepared by: CPL EVERTT J. NAME Signed: Personal Information

Prepared on: 23 SEP 04

RESTRICTED - INVESTIGATION

MOD016077

The Processing Tent

3.13 The processing and tactical questioning of the detainees took place in an army tent, which measured 12 square feet.³²¹⁵ The tent was positioned about three to 10 metres from the entrance to the old shower block where the detainees were held.³²¹⁶ The tent was sealed

³²¹⁵ WO2 Cornhill [115/29/21-23]

³²¹⁶ Sergeant McKee (ASI014659) [39]; M004 (ASI022263) [35]; WO1 Whyte (ASI015978) [84];

at one end and the windows were closed. Light was provided from battery operated strip lights.³²¹⁷

Command structure and procedure for detainee handling at Camp Abu Naji³²¹⁸

3.14 The Regimental Sergeant Major (“RSM”) for 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”) was WO1 Shaun Whyte. One of his roles in May 2004 was to oversee prisoner handling at Camp Abu Naji. In that capacity, his main responsibilities were to ensure that security was properly maintained while detainees were present in the prisoner handling compound and to decide who was to perform the various tasks that needed to be carried out during the entire prisoner handling process.³²¹⁹ As it happens, WO1 Whyte was not on duty on 14 May 2004, although it appears that he was present at Camp Abu Naji and that he did have some limited involvement with the detainees that evening. It was WO2 Darran Cornhill, the “Camp” Sergeant Major (“CSM”) who assumed overall responsibility for prisoner handling on this occasion. WO2 Cornhill explained that, although he was in overall charge of the holding compound on 14 May 2004, he had delegated the task of guarding the detainees to Staff Sergeant David Gutcher, the commander of the guards in the prisoner holding compound that evening, because WO2 Cornhill regarded his specific role to be to that of processing the detainees.³²²⁰

The Rover Group Guards

3.15 The Provost Sergeant³²²¹ was Sergeant Julian King. He was present and on duty on 14 May 2004. During his oral evidence to the Inquiry, Sergeant King confirmed that he was in charge of the Rover Group soldiers³²²² who were primarily responsible for providing the guards who controlled the entrances to the prisoner handling compound. On occasion, the Rover Group soldiers would also assist in actual prisoner handling duties. However, when more man power was needed, the Light Aid Detachment (“LAD”), which formed part of the Royal Electrical and Mechanical Engineers (“REME”) attached to 1PWRR, provided the soldiers required to act as guards/escorts and to deal generally with specific prisoner handling duties in and around the prisoner handling compound (“the LAD guards”).³²²³

3.16 On 14 May 2004, a team of soldiers from the Rover Group, under the command of Sergeant King, were assembled for duty as usual. However, it appears that they did not assist directly in prisoner handling duties on this particular occasion.

3.17 Sergeant King believed that the LAD guards assisted with the unloading, escorting and guarding of the nine detainees on 14 May 2004.³²²⁴ This recollection was echoed by the Rover Group personnel who acted as the guards of the entrances to the prisoner handling compound on

³²¹⁷ Corporal Everett (MOD020169)

³²¹⁸ This section briefly outlines the relevant 1PWRR command structure in order to make clear that there was essentially a dual guard force on duty on 14 May 2004. There were many submissions (in particular in the ICP written Closing Submissions (553) [1784] onwards) concerning the relevant command structure and thus who had responsibility for the detainees at what stage, in particular with regard to the requirements of “SOI 390”, which is not explored at this stage, but will be dealt with later in this Report

³²¹⁹ WO1 Whyte (ASI015955) [13]

³²²⁰ WO2 Cornhill (ASI013354) [7]–[9]; (ASI013364) [81]

³²²¹ The Provost Sergeant’s role is the non-commissioned officer in charge of the regimental police, responsible to the Regimental Sergeant Major for the maintenance of good order and military discipline

³²²² Part of the Commanding Officer’s Rover Group

³²²³ Sergeant King [113/66/16-20]; (ASI010329) [68]

³²²⁴ Sergeant King (ASI010326) [60]; [113/130/4-8]

14/15 May 2004.³²²⁵ They also recalled that they had guarded the entrances and that it had been the LAD guards who had escorted the detainees into the compound and who had dealt with them while they were held there overnight.³²²⁶

The “LAD” guards

- 3.18** Staff Sergeant David Gutcher was the senior non-commissioned officer (“SNCO”) of the Light Aid Detachment (“LAD”) guards who were on duty on 14 May 2004. One of Staff Sergeant Gutcher’s overall responsibilities was that of prisoner handler,³²²⁷ which required him to oversee the treatment and welfare of any detainees held in the prisoner handling compound after they had been brought back to Camp Abu Naji.³²²⁸ He explained that, in addition to the Rover Group team, there were three prisoner handling teams at Camp Abu Naji who all came from different units within the LAD. Staff Sergeant Gutcher confirmed that one of these teams had been called on to carry out the prisoner handling duties in respect of the nine detainees on 14 May 2004.³²²⁹
- 3.19** When his Rover Group personnel were acting as the escorts, Sergeant Julian King would generally oversee the unloading of detainees from their transport, but when this task was carried out by the LAD guards, they would normally be supervised by Staff Sergeant Gutcher.³²³⁰ However, although the LAD guards were responsible for the unloading and subsequent prisoner handling of the nine detainees on 14 May 2004, it appears that it was actually Sergeant King who supervised the unloading of the detainees on this occasion.³²³¹ Staff Sergeant Gutcher had not been involved in the actual unloading of the nine detainees from the Warriors, because he had been stationed inside the prisoner handling compound at the time.³²³² On 14 May 2004, it appears that Staff Sergeant Gutcher took over responsibility for the nine detainees once they were inside the prisoner handling compound, where he had direct responsibility for the LAD guards.³²³³ WO2 Darran Cornhill confirmed that he had delegated the job of guarding/escorting the nine detainees to Staff Sergeant Gutcher, and that he did not deal with this aspect of prisoner handling himself on 14 May 2004.³²³⁴
- 3.20** In his written Inquiry statement, Staff Sergeant Gutcher explained the procedure that was followed when the arrival of detainees at Camp Abu Naji was expected. A prisoner handling pack would be obtained that contained a prisoner handling file and various items of equipment that could be issued to the prisoner handling team.³²³⁵ Once the detainees had arrived at the entrance to the prisoner handling compound, two members of the prisoner handling team would take custody of each detainee and then escort that detainee to one of the cubicles in the prisoner holding area, where he would then be seated on the chair provided in the cubicle.³²³⁶

³²²⁵ See, for example, Private Grist (ASI009471) [73]; Private Jacobs (ASI018299) [20]

³²²⁶ See, for example, Lance Corporal Rider (ASI009825) [31]; Private Gray (ASI011373) [34] [36] [38]

³²²⁷ Staff Sergeant Gutcher (ASI012948) [10]

³²²⁸ Staff Sergeant Gutcher [122/8-9]

³²²⁹ The responsibility for heading the Prisoner Handling Teams was shared between Staff Sergeant Gutcher, Staff Sergeant Hill and Lance Corporal Edwards, although it was Staff Sergeant Gutcher who was on duty on 14 May 2004 (ASI012959) [56]-[57]

³²³⁰ Sergeant King [113/66/16-20]; (ASI010329) [68]

³²³¹ Sergeant King (ASI010326) [60]; [113/69-70]; [113/128/19-25]

³²³² Staff Sergeant Gutcher (ASI012960) [63]

³²³³ Staff Sergeant Gutcher [122/10/3-6]

³²³⁴ WO2 Cornhill (ASI013364) [81]

³²³⁵ Staff Sergeant Gutcher (ASI012957) [48]-[49]; NB – including plasticuffs, blacked out goggles, latex gloves and wooden batons

³²³⁶ Staff Sergeant Gutcher (ASI012960) [63]

2. Summary of the military evidence regarding the detainees' arrival at Camp Abu Naji

Arrival of Hamzah Joudah Faraj Almalje (detainee 772)

As explained earlier in this Report, Hamzah Joudah Faraj Almalje (detainee 772) travelled back to Camp Abu Naji in the Warrior W33. The following message from W33, as recorded in the 1PWRR radio log, indicates that W33 arrived at Camp Abu Naji at approximately 20:50 hours on 14 May 2004:

*"My c/s outside front gate completely broken down & RPG lodged in side. Request ATO My POW & cas both taken into camp."*³²³⁷

- 3.21** Sergeant David Perfect, the vehicle commander of W33, accepted in oral evidence that he was responsible for Hamzah Almalje's welfare whilst he was in the rear of his Warrior.³²³⁸ Sergeant Perfect recalled that, when they stopped at the main gate to Camp Abu Naji that evening, he had moved Hamzah Almalje out of the back of the Warrior, by holding onto his arm and leading him out. He remembered that Hamzah Almalje had appeared tired but unharmed. According to Sergeant Perfect, Hamzah Almalje was passive and compliant at all times and did not resist being moved out of the Warrior, although he had wriggled a bit as he got down from the vehicle.³²³⁹ Sergeant Perfect said that he had checked that Hamzah Almalje was alright and that he sought both to reassure him and to get him to calm down.³²⁴⁰
- 3.22** Private Scott Hoolin recalled that Sergeant Perfect had put his hand under Hamzah Almalje's armpit in order to raise him from where he had been seated on the floor of the vehicle. According to Private Hoolin, Hamzah Almalje's legs were wobbly as he stood up and he assumed that this was because they had *"gone to sleep."*³²⁴¹
- 3.23** There was some confusion about who had actually taken Hamzah Almalje to the prisoner handling compound, after he had dismounted from the Warrior AIFV, although nothing of consequence turns on this issue. According to Sergeant Perfect, he escorted Hamzah Almalje over to the main gate where he handed Hamzah Almalje over to a sentry guard and a female captain.³²⁴² Private Hoolin also remembered that Sergeant Perfect had taken charge of Hamzah Almalje as he was moved from the vehicle, whilst he had remained with Private Eric Danquah in order to remove the soldiers' day sacks from the Warrior.³²⁴³
- 3.24** However, Private Danquah stated that he helped Sergeant Perfect escort Hamzah Almalje to the Camp Abu Naji main entrance.³²⁴⁴ According to Private Danquah, from there he escorted Hamzah Almalje with another soldier to the prisoner handling compound itself. Private Danquah remembered that Hamzah Almalje had been cooperative and had walked voluntarily,

³²³⁷ (MOD018958); NB – the final sentence of this entry means *"Request Ammunition Technical Officer (i.e. bomb disposal) My Prisoner of War and casualty both taken into camp."* The timing of the entry accorded with Sergeant Perfect's recollection of the time of W33's arrival at Camp Abu Naji that evening (ASI015741) [97]

³²³⁸ Sergeant Perfect [76/35/11-16]

³²³⁹ Sergeant Perfect (ASI015739) [91]

³²⁴⁰ Sergeant Perfect (ASI015740) [93]

³²⁴¹ Private Hoolin (ASI009568) [81]

³²⁴² Private Hoolin (ASI015740) [94]

³²⁴³ Private Hoolin (ASI009568-69) [82]-[84]; NB – Private Hoolin had recalled in his statement to the RMP that Sergeant Perfect and Lance Corporal M. Scott had taken control of the detainee on arrival at Camp Abu Naji (MOD019414). Lance Corporal M. Scott stated in both his RMP witness statement (MOD015629) and his statement to the Inquiry that he had not personally escorted the detainee (ASI016214) [91]-[92]

³²⁴⁴ Private Danquah (ASI023485) [63]; NB – he had also recalled this in his statement to the RMP (MOD011888)

whilst he (Private Danquah) held him under one of his arms. According to Private Danquah, the other soldier walked in front of them and did not provide any direct physical assistance. In his written Inquiry statement, Private Danquah said that Hamzah Almalje repeatedly asked for water but, because there was none immediately available, he had told him that he would be able to have some water when they arrived at their destination. However, Private Danquah did not think that Hamzah Almalje had understood him, because he had spoken in English.³²⁴⁵ Private Danquah was unable to recall this particular detail when he came to give his oral evidence to the Inquiry.³²⁴⁶

- 3.25** At the prisoner handling compound, it is likely that Hamzah Almalje was actually handed over directly to Sergeant Julian King, the Provost Sergeant,³²⁴⁷ although Sergeant King could not specifically remember this having happened.

Arrival of W21: 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)

- 3.26** As I have already mentioned,³²⁴⁸ four of the nine detainees travelled back to Camp Abu Naji in the back of the Warrior AIFV, W21, commanded by Corporal Jokatama Tagica. These four detainees were: 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). The Prisoner Information Sheets for each of these detainees record that they all arrived at the prisoner handling compound at about 20:55 hours.³²⁴⁹ According to the Prisoner Information Sheet for Hamzah Joudah Faraj Almalje, it appears that he also arrived at the compound at this time.³²⁵⁰ Although Hamzah Almalje actually arrived at the compound on foot, it is clear from the relevant radio log entries that W21 and W33 (the Warrior in which Hamzah Almalje had been transported) had travelled back to Camp Abu Naji together.³²⁵¹
- 3.27** The soldiers who travelled with the four detainees in W21 recalled that they handed over the detainees outside the prisoner handling compound. However, there were differing recollections as to whom the detainees were actually handed over. According to Corporal Tagica, the prisoners had been handed over to Sergeant Julian King, the Provost Sergeant, and his team.³²⁵² Private Navitalai Ratawake also remembered that it had been Sergeant King's team who received the detainees.³²⁵³ However, Lance Corporal Kevin Wright recalled that it had been WO1 Shaun Whyte and Lance Corporal Mark Rider who received the four detainees.³²⁵⁴
- 3.28** In the statement that he provided to the Royal Military Police ("RMP") in July 2004, Private Kevin Campbell, the driver of W21, said that there had been about seven or eight detainees in the rear of his Warrior and that, after they had arrived, they were lined up outside the

³²⁴⁵ Private Danquah (ASI023486) [63]–[64]; [90/259/20-25]

³²⁴⁶ Private Danquah [90/229/20]–[230/8]

³²⁴⁷ Private Danquah [90/229/12-14]

³²⁴⁸ See paragraph 2.975

³²⁴⁹ (MOD024469–76)

³²⁵⁰ (MOD024467)

³²⁵¹ (ASI022149)

³²⁵² Corporal Tagica (ASI019575) [90]–[94]

³²⁵³ Private Ratawake (ASI014526) [45]

³²⁵⁴ Lance Corporal Wright [94/164–169]; (ASI011611) [139-140]

Warrior under the supervision of Lance Corporal Wright.³²⁵⁵ Private Campbell repeated this detail in his written Inquiry statement,³²⁵⁶ but was unable to remember it when he came to give his oral evidence to the Inquiry.³²⁵⁷ In fact, I have no doubt that he was mistaken in this particular recollection. There were never more than five detainees present outside the prisoner handling compound at any one time during the evening of 14 May 2004; i.e. Hamzah Almalje (detainee 772) and the four detainees from W21, who had arrived at about 20:55 hours. In fact the four other detainees, who travelled back to Camp Abu Naji in W32 that evening, did not arrive at the prisoner handling compound until about an hour later, as detailed below.³²⁵⁸

- 3.29** I am satisfied that, once they arrived outside the entrance to the prisoner handling compound, the four detainees were helped out of W21 by soldiers from the vehicle, who then handed them over to the Light Aid Detachment (“LAD”) guards. Corporal Tagica recalled that the detainees were guided out by the arm. He stated that they were treated fairly and not pushed or dragged.³²⁵⁹ In his written Inquiry statement, Corporal Tagica described what happened, in the following terms:

“I got out of the Warrior and opened the door at the rear of the Warrior. Pte. Tatawaqa then got out and we helped the detainees out of the Warrior one by one and handed them over to Sgt King and his team. The detainees were just guided out by holding their arm as before. There was no pushing, dragging or striking of the detainees. They were treated fairly. ...

We would take the detainees over one by one and hand them to Sgt King. He and his team took them into a small compound about 10 to 15m from the Ops Room, which had a doorway covered with a hessian material. Once the detainees went through this doorway we could not see them any more and this was the last I had to do with them.”³²⁶⁰

- 3.30** When giving his oral evidence to the Inquiry, Corporal Tagica said that he had moved the detainees out of W21 with the assistance of Private Ratawake, who was W21’s gunner. He said that they had led the detainees to the rear door of the vehicle and had then passed them out to the waiting guards.³²⁶¹ For his part, Private Ratawake did not recall having helped Corporal Tagica with that particular task. He recalled having remained in W21’s turret, while the detainees were being unloaded from his vehicle.³²⁶² However, by the time Private Ratawake came to give his oral evidence to the Inquiry, his memory of what had actually happened had faded and he was no longer able to remember having seen the three or four detainees to whom he had referred in his earlier written Inquiry statement.³²⁶³ In fact, I think it likely that Corporal Tagica was actually assisted by Private Tatawaqa, who had travelled back to Camp Abu Naji as a dismount in W21³²⁶⁴ and to whom Corporal Tagica had originally referred in his written Inquiry statement, as quoted in the previous paragraph. It seems to me likely that Corporal Tagica had confused the two.

³²⁵⁵ Private Campbell (MOD019450)

³²⁵⁶ Private Campbell (ASI013116) [63]

³²⁵⁷ Private Campbell [89/31-32]

³²⁵⁸ See para 3.32

³²⁵⁹ Corporal Tagica (ASI019575) [90]-[95]

³²⁶⁰ Ibid.

³²⁶¹ Corporal Tagica [88/49-50]

³²⁶² Private Ratawake (ASI014525-26) [45]

³²⁶³ Private Ratawake [89/80-82]; (ASI014526) [45]

³²⁶⁴ See paras 2.973 to 2.976 above

- 3.31** Lance Corporal Wright also recalled that he had helped to unload one of the detainees from W21, by helping him to manage the step down from the rear of the vehicle, after which he had handed the detainee over to the waiting guards. He described the unloading as having been carried out in a “controlled” manner.³²⁶⁵

The arrival of W32: Ahmed Jabbar Hammood Al-Furaiji (detainee 777), Hussein Fadhil Abbas Al-Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780)

- 3.32** W32 was the second Warrior AIFV to arrive at the prisoner handling compound at Camp Abu Naji during the late evening of 14 May 2004. W32 was commanded by Sergeant Craig Brodie and it arrived at about 21:55 hours, approximately one hour after W21.³²⁶⁶ In the rear of W32 were the remaining 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 Ali Al-Lami (detainee 780).
- 3.33** As was the case of the dismounts who had travelled in W21, the soldiers who had travelled in the rear of W32³²⁶⁷ remembered that Sergeant Julian King and his team had taken charge of the four detainees, after they had been unloaded from W32 outside the prisoner handling compound that evening. Lance Corporal Brian Wood confirmed that they had handed over the four detainees to Sergeant King. He described how they had helped the detainees out of the Warrior by holding their elbows in order to help them step down from the rear of the vehicle.³²⁶⁸ Although Privates Alipate Korovou and Jayme Bishop were unable to recall the precise details of how the detainees were unloaded, they did remember that the detainees were received by Sergeant King and his team.³²⁶⁹ For his part, Corporal Mark Byles remembered that it had been the Provost Staff who had unloaded the detainees.³²⁷⁰

Military evidence concerning the movement of the nine detainees from the Warriors into the prisoner handling compound at Camp Abu Naji

- 3.34** Although the nine detainees arrived in two distinct batches, about an hour apart, it seems likely that at least some of the soldiers who escorted them into the prisoner handling compound were the same on both occasions. The soldiers who gave evidence to the Inquiry that they had done so on 14 May 2004 were, for the most part, unable to identify which detainees they had actually escorted into the prisoner handling compound that evening. What follows is therefore a summary of the evidence of the guards who remembered having escorted detainees on the evening of 14 May 2004, indicating where it has been possible to identify which guards escorted which detainees.
- 3.35** Sergeant Julian King explained that he opened the rear door of the Warrior AIFV and that each detainee was then unloaded by a pair of Light Aid Detachment (“LAD”) guards. Although Sergeant King did not actually follow the guards and the detainees into the compound, he confirmed that it was standard practice for each detainee to be taken straight to the prisoner holding area, where he would be seated on the chair in one of the cubicles.³²⁷¹

³²⁶⁵ Lance Corporal Wright [94/167-169]; (ASI011611) [139]-[140]

³²⁶⁶ (MOD024477-84)

³²⁶⁷ Lance Corporal Wood, Private Korovou and Private Bishop: see paras 2.973 to 2.976 above

³²⁶⁸ Lance Corporal Wood (ASI020748) [107]

³²⁶⁹ Private Korovou (ASI011419) [90]; Private Bishop (ASI017549) [60]

³²⁷⁰ Corporal Byles [84/41/4-10]

³²⁷¹ Sergeant King (ASI010327-28) [63]-[66]

- 3.36** As summarised in the preceding paragraphs of this Report, the Warrior dismounts helped most, if not all, of the detainees to get out of the rear of the vehicle. The detainees were cuffed and blindfolded at the time and therefore needed help in order to dismount safely from the vehicle. Corporal Stuart Bowden remembered that the dismount soldiers from the Warriors had helped the detainees to get out of the vehicles. According to Corporal Bowden, the soldiers had had done so firmly, but had not pushed or shoved the detainees in the process. He said that the detainees in question were submissive and that therefore no force had been necessary.³²⁷²
- 3.37** Craftsman Matthew Morris recalled that the detainees he had seen that evening had been very tense and that it had therefore been difficult to get them out of the Warriors. According to Craftsman Morris, it had been necessary for one detainee to be lifted out of the vehicle by one of the dismount soldiers, although he said that the detainee had not been “*flung out or kicked out.*”³²⁷³
- 3.38** It seems likely that the LAD guards helped the dismount soldiers get the detainees out of the back of the Warriors. Sergeant King recalled that the detainees were guided out, with one guard holding their hands and the other with his hands resting on their shoulders.³²⁷⁴ Sergeant Samuel McKee said that he had got into one of the Warriors in order to help unload the detainees. He described how he had taken hold of a detainee by the arms and had then lifted him out of the vehicle. As he explained, this was not done as an act of gratuitous violence, but in order to help the detainee get out of the Warrior safely and to manage the step at the rear of the vehicle while doing so.³²⁷⁵ Corporal Andrew Nicholls also remembered that there was a two foot drop from the rear of the Warrior to the ground and that the detainee he was escorting therefore had to be lifted under the arms in order to get him out of the vehicle.³²⁷⁶
- 3.39** Corporal Bowden also recalled that the detainees were guided out of Warrior by the arms and lifted to their feet, but no force was used. He did not recall any of the detainees resisting in any way.³²⁷⁷
- 3.40** Corporal Nicholls remembered how a detainee, in the rear of one of the Warrior AIFVs, had been pushed and pulled to the rear door of the vehicle by the dismount soldiers. According to Corporal Nicholls the soldiers had then pulled the detainee up onto his feet, in order to get him to leave the vehicle. Corporal Nicholls went on to explain that the reason for this was that the detainees were unable to see what was happening and thus needed to be pushed towards the rear of the Warrior and pulled to their feet if necessary.³²⁷⁸

Military evidence with regard to the manner of escorting the detainees into the prisoner handling compound

- 3.41** Once a detainee had been unloaded from the Warrior, a pair of Light Aid Detachment (“LAD”) guards then escorted him into the prisoner handling compound and over to the prisoner holding area (i.e. the disused shower block), where he was then seated on a chair in one of the cubicles. The military witnesses described that during this process there would be a soldier on each side of the detainee who would guide the detainee into the compound

³²⁷² Corporal Bowden (ASI010607) [26]

³²⁷³ Craftsman Morris (ASI010883) [41]

³²⁷⁴ Sergeant J. King (ASI010326) [59]; (ASI010327) [63]

³²⁷⁵ Sergeant McKee [124/157-159]; [124/61]; [121/171]

³²⁷⁶ Corporal Nicholls [124/34/6-10]

³²⁷⁷ Corporal Bowden [120/169-171]

³²⁷⁸ Corporal Nicholls (ASI011451) [37]; [124/28]

and over to the holding area by his arms.³²⁷⁹ As Lance Corporal Richard Garner described in his oral evidence to the Inquiry, the detainees were “*pushed*” in the direction of travel, but without undue force. What he said was this:

“Q. What sort of force would you use to get them to walk?”

A. It would more or less be the force of me walking forward while they weren’t, if that makes sense. So while you are holding them, if you wanted them to walk forward you would start walking forward and therefore push them, and then they would generally start walking.

Q. When you say “push”, your hands would in fact remain in the same place that you have already described?

A. Yes.

Q. Armpit and forearm?

*A. Yes.”*³²⁸⁰

3.42 According to Sergeant McKee, the detainees were moved fairly and firmly.³²⁸¹ He described how the detainees were moved “*with a sense of urgency*” and at “*military pace*”, because the intention was to move them in an efficient manner in order to get the job done.³²⁸² Most of the military witnesses, who recalled having escorted the detainees, agreed that they had been escorted in this way – at a pace quicker than a walk,³²⁸³ but not at running speed.³²⁸⁴

3.43 In the statement that he made to the Royal Military Police (“RMP”) in December 2008, Lance Corporal Mark Rider gave a general description of how detainees were escorted, as follows:

*“We literally force marched them to where we wanted to go and by this I mean we moved quickly by keeping hold of them firmly and pushed and forced the direction we needed them to go. By pushing I do not mean that they were freestanding with no support and were pushed over by one of the team and allowed to fall, this never happened ... but purely to get them from A-B quickly and with some urgency.”*³²⁸⁵

3.44 In his oral evidence to the Inquiry, Lance Corporal Rider explained that the methods used to escort the detainees on 14 May 2004 were likely to have been as described in the passage quoted in the preceding paragraph. He went on to say that the manner in which detainees were moved resulted in “*quite forced, rigid movements*” and explained that the detainees were “*forced*”, in that they had no choice in the manner in which they were moved or to where.³²⁸⁶

3.45 According to Lance Corporal Garner, the detainees were mostly compliant. However, he recalled that, on one occasion, it had been necessary for a detainee to be dragged along, because he refused to walk. Lance Corporal Garner was unsure if this incident actually occurred

³²⁷⁹ Sergeant McKee (ASI014657–58) [34]–[37]; Lance Corporal Edwards (ASI011779–80) [42]; [129/118/14–21]; Corporal Bowden (ASI010608) [30]; Corporal Nicholls (ASI011452) [38]; [124/35]

³²⁸⁰ Lance Corporal Garner [131/125/2–12]

³²⁸¹ Sergeant McKee [124/157–159]; [124/61]; [121/171]

³²⁸² Sergeant McKee [124/135]

³²⁸³ Corporal Nicholls [124/35]

³²⁸⁴ Corporal M. Taylor [129/37–38]; Lance Corporal Edwards [129/123–124]

³²⁸⁵ Lance Corporal Rider (MOD002307)

³²⁸⁶ Lance Corporal Rider [100/131–133]

on 14 May 2004. In his oral evidence to the Inquiry, Lance Corporal Garner described how the detainee in question had not supported his own weight, so that his feet had dragged behind his body with his toes on the ground.³²⁸⁷ He later said this incident might have occurred on the way from the shower block to the processing tent, but that he could not be certain when it had actually happened.³²⁸⁸

- 3.46** According to Craftsman Matthew Morris, some of the detainees were too scared to walk properly. He said that, in effect, a detainee in that condition had to be carried into the prisoner handling compound and then into the holding area by himself and another guard.³²⁸⁹ In the course of his oral evidence to the Inquiry, Craftsman Morris described the scene in the following terms:

*“I was hoping he’d walk. We sort of tried to get him to put his feet on the ground, but if you can imagine someone riding a bike, they are sort of – he was sort of like in the – in that kind of position and just frightened and just wouldn’t walk as a normal person would walk.”*³²⁹⁰

- 3.47** Corporal John Everett recalled having been present at an oral briefing, possibly given by WO2 Darran Cornhill (although he could not be sure) to approximately eight to 10 soldiers, while they were waiting for the detainees to arrive on 14 May 2004. Corporal Everett said that the briefing had included a reference to need to maintain the “*shock of capture*”.³²⁹¹ Corporal Everett explained to me his understanding of the term “*shock of capture*”, in the following terms:

*“I believe I had heard it in the context of when enemy troops come in off the field. Having been detained at the point of capture, they are in a state of shock, naturally, and it was a case of moving the prisoners in a robust manner to maintain that state of shock that they would have.”*³²⁹²

- 3.48** In the course of his oral evidence to the Inquiry, Corporal Everett explained what he believed to be the purpose of maintaining the “*shock of capture*”, as follows:

“Q. What was the purpose of maintaining the prisoners’ state of shock?”

A. That I don’t know.

Q. What did you understand the purpose to be? Why was it necessary to keep the prisoners shocked?”

A. I would only assume it was to keep some confusion.

Q. For what end?”

A. For the purposes of tactical questioning at a later date.

Q. Was that generally understood to be the case?”

³²⁸⁷ Lance Corporal Garner (ASI009442-43) [28]–[30]; [131/125/17]–[126/13]

³²⁸⁸ Lance Corporal Garner [131/144/8-16]

³²⁸⁹ Craftsman Morris (ASI010883) [41]–[42]

³²⁹⁰ Craftsman Morris [133/176/22]–[177/2]

³²⁹¹ Corporal Everett (ASI009385-86) [74]–[75]

³²⁹² Corporal Everett [117/93/9-14]

A. *That was my understanding, yes.*³²⁹³

- 3.49** Corporal Everett explained that, in practical terms, “*maintaining the shock of capture*” meant moving the detainees in a robust way, in order to keep them in a state of shock. He explained that he understood this to mean that the guards could grip the detainees fairly tightly, so as to limit their ability to struggle, but not so as to harm them physically in any way. He described such treatment as being more physical than simply guiding the detainees, but not as rough as pushing or pulling them.³²⁹⁴
- 3.50** For his part, WO2 Cornhill neither recalled having given such a briefing nor of having seen any such instructions carried into effect. According to WO2 Cornhill, detainees would be moved with the minimum amount of force necessary.³²⁹⁵ Lance Corporal Gordon Higson remembered that there had been a briefing, but he did not recall any specific reference being made to the shock of capture. Lance Corporal Higson had made reference to that expression in the statement he made to the RMP in September 2004. However, in his oral evidence to the Inquiry, he explained that it was not a phrase or policy with which he had been familiar at the time and that he therefore believed it had been suggested to him by the person who had interviewed him for the purpose of taking his statement.³²⁹⁶
- 3.51** In his oral evidence to the Inquiry, Corporal Jeremy Edgar agreed with Corporal Everett’s assertion that there had been a purpose to the guards’ manner of moving the detainees quickly. According to Corporal Edgar, the detainees were moved at what he described as a quick march, almost a jog, and that this was done in order “*to keep them disorientated.*”³²⁹⁷
- 3.52** In a statement that he made to the RMP in November 2008, Lance Corporal Andrew Tongue also noted that he had been under instructions to move the detainees quickly and carefully.³²⁹⁸ However, when he came to give his oral evidence to the Inquiry, he was unable to remember having moved the detainees quickly or having been under any instructions to do so.³²⁹⁹
- 3.53** A number of military witnesses believed that moving the detainees quickly was a matter of common sense and entirely consistent with the need to maintain security and to work efficiently. Thus, Sergeant Martin Lane recalled that the detainees had been moved as quickly as possible, but that this had not been to disorientate them. According to Sergeant Lane, it was simply done that way for logistics and security reasons, in order to get the detainees seated and properly under guard.³³⁰⁰ Corporal Michael Taylor also believed that the detainees were moved quickly, at a speed that he described as the speed at which most soldiers moved. He said that he had not been given any instruction to hustle or rush the prisoners along the

³²⁹³ Corporal Everett [117/93/15-25]

³²⁹⁴ Corporal Everett (ASI009386) [75]

³²⁹⁵ WO2 Cornhill [115/63]

³²⁹⁶ Lance Corporal Higson [118/40-43]

³²⁹⁷ Corporal Edgar [128/48/15]

³²⁹⁸ Lance Corporal Tongue (MOD004539–40)

³²⁹⁹ Lance Corporal Tongue [134/138-139]

³³⁰⁰ Sergeant Lane [136/73-75]

way, nor had he been told to alter the manner in which the detainees were moved, either before or after they had been questioned.³³⁰¹

Military evidence relating to specific allegations and incidents during the arrival of the nine detainees at Camp Abu Naji on 14 May 2004

- 3.54** In his oral evidence to the Inquiry, Sergeant Martin Lane described the guards who were awaiting the arrival of the detainees as “*pumped up*”. He went on to explain that this meant excitable but not aggressive and he agreed with the suggestion that they were over-excited.³³⁰² He also remembered how one of the detainees he was escorting had scuffed his foot on the ground, due to the pace at which he was being moved. Sergeant Lane said that this had caused Sergeant Julian King to tell him and the other escorting guard to slow down or to “*calm it down*”, so that the detainee could maintain his footing.³³⁰³
- 3.55** In his oral evidence to the Inquiry, Corporal Stuart Bowden agreed that some of the “*younger lads*” might have been excitable, but went on to describe them as being “*childlike*” and “*giggling*” rather than aggressive.³³⁰⁴
- 3.56** In the witness statement that he made to the Royal Military Police (“RMP”) in July 2004, Sergeant Craig Brodie said that he noticed that a few of the escorts were getting excited and nervous about prisoner handling and that, as a result, the Provost Sergeant, Sergeant King, had been obliged to take steps to calm them down. He said that he remembered that it was considered necessary for one of the escorts to be moved to another duty, although Sergeant Brodie went on to observe that none of the detainees had actually been mistreated in any way.³³⁰⁵
- 3.57** When recalling this particular incident in his written Inquiry statement, Sergeant Brodie said that he did not believe that the soldier had actually done anything wrong. As he saw it, the soldier had been doing no more than he was supposed to do, namely he was “*maintaining the shock of capture*”. He described this as ensuring that the detainees were subdued and compliant by being verbally forceful and keeping them in a disorientated state as much as possible. Sergeant Brodie went on to say that, in fact, the soldier had not been moved to another duty, but had taken a step back and then got on with the task in hand.³³⁰⁶
- 3.58** In his oral evidence to the Inquiry, Sergeant Brodie said that he understood that “*maintaining the shock of capture*” could include shouting at detainees and, where necessary, actions that involved “*a balanced measure of force*.”³³⁰⁷ He agreed that the purpose of maintaining the shock of capture was to prevent detainees from gathering their thoughts, regrouping and planning an escape or becoming fractious during handling and to keep them disorientated.³³⁰⁸
- 3.59** For his part, Sergeant King did not remember having had to calm down any of the escorts on 14 May 2004. He did not think that the detainees had been moved at an excessively fast pace and said that they had not been dragged.³³⁰⁹ Although he could no longer recall the occasion

³³⁰¹ Corporal M. Taylor [129/84-85]

³³⁰² Sergeant Lane [136/73-75]

³³⁰³ Sergeant Lane [136/82-83]

³³⁰⁴ Corporal Bowden [120/171]

³³⁰⁵ Sergeant Brodie (MOD018976)

³³⁰⁶ Sergeant Brodie (ASI009194-95) [81]–[86]

³³⁰⁷ Sergeant Brodie [79/68-70]

³³⁰⁸ Sergeant Brodie [79/103-104]

³³⁰⁹ Sergeant King [113/136-138]

in detail, he had previously thought that the guards were nervous about the detainees and careful about what they did.³³¹⁰ Although he was familiar with the term “*shock of capture*”, Sergeant King said that he did not believe that any form of robust or quick escorting of the detainees had been carried out with a view to maintaining the shock of capture.³³¹¹

Military evidence about one of the detainees having been shaken on arrival at Camp Abu Naji 14 May 2004

3.60 Colour Sergeant Graham King was the gunner in Major James Coote’s Warrior, WOB, which had been involved in the latter stages of the Northern Battle on 14 May 2004.³³¹² Colour Sergeant King had travelled back to Camp Abu Naji in WOB and had pulled up briefly outside the prisoner handling compound, in order to drop off Major Coote (who was O/C C Company 1st Battalion, Princess of Wales’ Royal Regiment [“1PWRR”]) at the Battalion Headquarters Building (“BHQ”), so that he could brief the various senior officers about the events of the battle.³³¹³ WOB was not actually carrying any detainees at the time and Colour Sergeant King played no part in the unloading of the detainees.³³¹⁴ However, Colour Sergeant King remembered how he had seen some detainees being unloaded from a Warrior AIFV that had halted just ahead of his vehicle. He went on to describe how one Light Aid Detachment (“LAD”) guard had grabbed a detainee by the scruff of the neck and had shaken him once. Colour Sergeant King said that the gunner from the Warrior in question, who had dismounted from his vehicle in order to open its rear door, had been standing right beside the detainee at the time and had shouted at the soldier to calm down. According to Colour Sergeant King, the LAD guard had then stopped shaking the detainee and had escorted him towards the “*detention centre*.”³³¹⁵ He went on to say that he felt that this had been due to over-exuberance on the part of the LAD guard and that it had not been done in a deliberate attempt to hurt the detainee. The incident had been defused in seconds and it had not caused him any concern.³³¹⁶

Military evidence about one of the detainees having been punched on arrival at Camp Abu Naji on 14 May 2004

3.61 Major Richard ‘Toby’ Walch recalled that, at some point after the arrival of the detainees on 14 May 2004, he had spoken with WO1 Shaun Whyte. During that conversation, WO1 Whyte had told him that one of the soldiers had punched a detainee in the head or face with a single punch on his arrival back at Camp Abu Naji that evening. The soldier in question had been from the Battle Group and not from the prisoner handling team. Major Walch said that he was informed that the soldier had been reprimanded and removed from the area after this assault and that he therefore did not feel that any further action was necessary.³³¹⁷

3.62 When WO1 Whyte provided a statement to the Royal Military Police (“RMP”) in 2008, he was unable to recall having heard about an incident in which a detainee was punched by a soldier on arrival at Camp Abu Naji. He did not believe that he had any cause to speak to anyone about such an incident and stated that he was not made aware of it.³³¹⁸

³³¹⁰ Sergeant King [113/148-149]

³³¹¹ Sergeant King [113/89-90]

³³¹² Colour Sergeant King (ASI010774-75) [9]

³³¹³ Colour Sergeant King (ASI010809) [129]

³³¹⁴ Ibid.

³³¹⁵ Colour Sergeant King (ASI010809-10) [132]

³³¹⁶ Colour Sergeant King (ASI010810) [133]; [96/116-117]

³³¹⁷ Major Walch (ASI021680-82) [104]–[106]

³³¹⁸ WO1 Whyte (MOD024070)

- 3.63** Sergeant Julian King, who had been present throughout the unloading of the detainees at Camp Abu Naji on 14 May 2004, was asked about this allegation in his oral evidence to the Inquiry. He said that he was completely unaware of any such incident having occurred. He did not recall having seen a detainee punched during the unloading process and he therefore did not believe that it had actually happened at all.³³¹⁹

Military evidence with regard to placement of the detainees inside the cubicles in the prisoner holding area at Camp Abu Naji on 14 May 2004

- 3.64** The military witnesses all agreed that the detainees had been taken straight from the Warriors to the cubicles in the prisoner holding area, where they were each seated on a chair facing towards the back wall of the cubicle. Sergeant Julian King stated that the detainees were “*gently encouraged*” to sit and/or made aware that there was a chair for them to sit on.³³²⁰ Sergeant Martin Lane explained that they would get the detainees to sit in a brisk and efficient manner, describing the process in the following terms:

“... And no, we weren’t nice and – tapping him to put him down. It was a case of you bring him down and push him down on to the seat.”³³²¹

3. Summary of the detainees’ evidence with regard to their arrival at Camp Abu Naji

- 3.65** The nine detainees made a number of allegations of ill-treatment with regard to how they were dealt with by British soldiers, when being taken out of the Warriors and escorted to the prisoner holding area after their arrival at Camp Abu Naji on 14 May 2004. Their evidence and allegations in relation to that particular period are summarised in the paragraphs that follow.

Hamzah Joudah Faraj Almalje (detainee 772)

- 3.66** Hamzah Joudah Faraj Almalje (detainee 772) recalled that he had been seated on one of the back seats in the Warrior during the journey back to Camp Abu Naji on 14 May 2004. He claimed that, upon arrival at Camp Abu Naji, he had been pulled from the seat and pushed towards the rear of the vehicle. He said that this had been done in a manner that was firm, but not violent. He went on to claim that, after having been taken out of the Warrior, he was then walked quickly in a manner that was painful for his injured leg.³³²²

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

- 3.67** Mahdi Jasim Abdullah Al-Behadili (detainee 773) claimed that he had been dragged out of the Warrior violently.³³²³ He said that he was then moved through some corridors for a matter of minutes and that, as the soldiers took him along the corridors, they had banged his head against the wall, causing him to become unconscious.³³²⁴ Mahdi Al-Behadili was unable to

³³¹⁹ Sergeant King [113/175-176]

³³²⁰ Sergeant King (ASI010328) [65]; [113/149]

³³²¹ Sergeant Lane [136/83/22-25]

³³²² Hamzah Joudah Faraj Almalje (detainee 772) (PIL000686) [32]

³³²³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/16/5-9]

³³²⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000782) [28]; [8/16/10]–[16/25]

say how many times he had been hit on the head in this way.³³²⁵ He claimed that this had been done quite deliberately, because one of the soldiers had taken hold of his neck and had pushed him against the wall. He said that he had then been taken to sit on a small metal chair.³³²⁶

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

- 3.68** Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) recalled that, after having arrived at Camp Abu Naji, he had been dragged towards a lavatory where he had been “*left on a chair*”.³³²⁷

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 3.69** Kadhim Abbas Lafta Al-Behadili (detainee 775) said that, upon arrival at Camp Abu Naji, he had been taken out of the vehicle by some soldiers, who then made him sit on the ground by pressing on his shoulders. He said that he was seated in a flat area, which he thought must have been in the open air, because he could feel the wind. He claimed that the soldiers then picked him up under the armpits, raised him from the ground and ran so fast with him that he had to lift his feet off the ground, because he was unable to keep up with them. He recalled having been made to go left and then right very quickly. He later claimed to have been turned round and round, until he was dizzy. He said that he was then taken to a place where he was made to sit on a chair which was tilted forward.³³²⁸

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.70** Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) said that he had still been blindfolded and plasticcuffed upon arrival at Camp Abu Naji on 14 May 2004. He stated that the soldiers had taken him somewhere that appeared to have once been a lavatory, where they had seated him on a chair.³³²⁹

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

- 3.71** Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said that, towards the end of his journey back to Camp Abu Naji on 14 May 2004, it felt like the Warrior he was travelling in was going round in circles in an attempt to disorientate him.³³³⁰
- 3.72** Ahmed Al-Furaiji made several allegations about how he was unloaded from the Warrior, after his arrival at Camp Abu Naji on 14 May 2004. He claimed to have been pushed and tripped as he was being taken out of the Warrior, causing him to fall down hard and very painfully on his face.³³³¹
- 3.73** In his first written Inquiry statement, made in 2010, Ahmed Al-Furaiji alleged that he had then been kicked on the right knee by one of the soldiers and confirmed that it was “*definitely a*

³³²⁵ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000782) [28]; He had previously stated that his head was banged against the wall on two occasions (ASI001117) [39]

³³²⁶ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000782) [28]–[29]; [8/17/1-10]

³³²⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/14]

³³²⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/92/21]–[94/3]; (PIL000723-24) [33]–[35]

³³²⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/15]

³³³⁰ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000315) [70]

³³³¹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006531) [12]; (PIL000315) [70]

*kick.*³³³² However, he had not mentioned this particular assault in his earlier Judicial Review statement made in 2008.

- 3.74** In his first written Inquiry statement, Ahmed Al-Furaiji (detainee 777) went on to claim that, while he was being escorted into the prisoner handling compound, two soldiers had got hold of him by the scruff of the neck and banged his head against a brick wall with such force he had been rendered unconscious.³³³³ In his Judicial Review statement Ahmed Al-Furaiji said that he must have had water poured over him subsequently because, when he regained consciousness, he was wet and seated on a chair in an old lavatory.³³³⁴

Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.75** In his written Inquiry statement made in July 2010, Hussein Fadhil Abbas Al-Behadili (detainee 778) said that he had been taken from the Warrior with a soldier on either side of him. As he was walked he was hit against two walls. He was then made to sit on an iron chair.³³³⁵ In a written statement that he made in October 2007, he had claimed to have been tied to the chair.³³³⁶ However, in his oral evidence to the Inquiry, Hussein Al-Behadili confirmed that he had been cuffed to the rear, but not actually tied to the chair.³³³⁷

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 3.76** In his Judicial Review statement, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) said that the Warrior “*seemed to be going round in circles as if to confuse us*” on the journey back to Camp Abu Naji.³³³⁸ He believed that the journey back to Camp Abu Naji had taken far longer than it ought to have done.³³³⁹
- 3.77** In his written Inquiry statement, Atiyah Al Baidhani said that, upon arrival at Camp Abu Naji, two people had taken hold of him by the collar of his t-shirt and had pulled him out of the vehicle. He said that he knelt on the ground for a few moments, during which time he was punched on his back and face, because the soldiers noticed that his blindfold had become loosened. Atiyah Al-Baidhani said that he was then dragged along quickly, while still being punched.³³⁴⁰ In his Judicial Review statement, he also said that the soldiers had tried deliberately to disorientate him as they had dragged him along, by moving him in different directions and by making him bend and sit down on the way.³³⁴¹

Hussein Gubari Ali Al-Lami (detainee 780)

- 3.78** In his Judicial Review statement and his first Inquiry statement, Hussein Gubari Ali Al-Lami (detainee 780) recalled that he had been removed from the Warrior “*roughly*” and

³³³² Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000882) [43]

³³³³ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000882) [43]-[44]

³³³⁴ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006532) [12]

³³³⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001038) [27]

³³³⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD027169)

³³³⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/66]

³³³⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006674) [16]

³³³⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000182) [85]

³³⁴⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000183) [88]; (MOD006674) [16]

³³⁴¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006674)

“frogmarched” to an iron chair.³³⁴² In his second written Inquiry statement, Hussein Al-Lami described this as being dragged while being held under the arms.³³⁴³

- 3.79** Hussein Al-Lami said that he was then forced to sit down in a cubicle, and that his head was banged against the walls of the cubicle in the process. He claimed that he was then hit and punched a number of times.³³⁴⁴

4. Conclusions in relation to the arrival and unloading of the detainees at Camp Abu Naji on 14 May 2004

Disembarking the detainees from the Warriors

- 3.80** It is clear from the evidence I have seen, read and heard that the detainees were understandably very frightened and confused when they arrived at Camp Abu Naji on the evening of 14 May 2004.³³⁴⁵ It seems to me very likely that they would have been hesitant about getting out of Warriors in the prevailing circumstances. In any event, they required assistance to disembark from the vehicles, because they were blindfolded and plasticcuffed at the time.

- 3.81** Apart from the specific findings of fact that I detail in the paragraphs that follow, I am satisfied that the detainees were handled in an appropriate manner while being disembarked from the Warriors on 14 May 2004 at Camp Abu Naji. I accept the truth and accuracy of the evidence of the soldiers who described how the detainees had been helped out of the Warriors with the minimum force necessary. Inevitably, this task required a certain amount of physical effort, given that the detainees had to be manoeuvred to the door of the Warrior and then supported, whilst negotiating safely the two foot drop to the ground from the rear of the vehicle.³³⁴⁶

Escorting the detainees to the prisoner holding area and “maintaining the shock of capture”

- 3.82** It is clear that there was a practice of escorting detainees in a robust and firm manner upon arrival at Camp Abu Naji. On 14 May 2004, each of the nine detainees was escorted into the prisoner holding area at a quick pace, although not at a speed or in a manner which was as fast as a jog or a run. I accept that this was partly due to reasons of security and efficiency.

- 3.83** However, I am also satisfied that many of the soldiers involved in the process of handling detainees at Camp Abu Naji were aware that one of the reasons for escorting detainees in a brisk and robust manner was to maintain the shock of capture. In my view, it is likely that Corporal Everett was correct in his recollection that a specific briefing to that effect was given on 14 May 2004 in anticipation of the arrival of the nine detainees that evening. Many of the military witnesses suggested that it was perfectly normal practice for some sort of briefing to be given to the prisoner handling team when the arrival of detainees was expected.³³⁴⁷ I therefore find that it is likely that the Light Aid Detachment (“LAD”) guards were instructed to move the detainees in a brisk and robust manner on 14 May 2004. One of the reasons for

³³⁴² Ibid.

³³⁴³ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000410) [51]; (MOD006636) [9]

³³⁴⁴ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000410) [52]

³³⁴⁵ See, for example, Craftsman Morris (ASI010883) [41]–[42]; [133/213/14-21]; [133/172/23-24]

³³⁴⁶ Corporal Nicholls [124/34/9-10]

³³⁴⁷ See, for example, Staff Sergeant Gutchner [122/105]

that instruction, whether stated explicitly to the guards or not, was to ensure that the shock of capture was maintained.

- 3.84** I am quite satisfied that the LAD guards were not given any instruction that went beyond that summarised in the previous paragraph or that encouraged or authorised them to use any form of additional physical force or violence against the detainees. I accept the evidence of Corporal John Everett, who recalled that moving detainees abruptly and firmly was the limit of what was permitted to maintain the shock of capture.³³⁴⁸ I am therefore satisfied that the LAD guards fully understood that they were not to subject the detainees to any form of ill-treatment.
- 3.85** I am also quite certain that the detainees were not moved at a pace that was deliberately intended to be uncomfortable or painful. Whilst the speed at which the detainees were moved was intended to maintain the shock of capture, it was not intended to cause or exacerbate any injury.
- 3.86** I am also satisfied that the detainees were not deliberately zigzagged in a manner that was intended to disorientate them, nor were they walked in a circular manner designed to maintain the shock of capture. There was no suggestion in the military evidence that such practices were ever taught, instructed or discussed. Furthermore, a number of the military witnesses gave evidence that the pathway along the detainees were walked from the Warriors to the prisoner holding area was not wide enough for deliberate zigzagging to have occurred.³³⁴⁹ However, I accept that it may be the case that the path, taken by each detainee and his escorts from the Warrior to a cubicle in the prisoner holding area, did inadvertently have a disorientating effect on the detainees, particularly since they were blindfolded and plasticcuffed at the time. As Lance Corporal Raymond Edwards pointed out, the path taken did involve navigating a “dog leg”³³⁵⁰ and it may be that this had the effect of disorientating the detainees and thus helping to maintain the shock of capture. If that is so, I am satisfied that such was not an intended consequence of using that particular route between Warrior and prisoner holding area.

Escorting the detainees from Warrior to Prisoner Holding Area – specific allegations and incidents

- 3.87** I do not doubt the truth and accuracy of Sergeant Craig Brodie’s evidence about the incident in which a soldier had become very excited and had, at least to some extent, lost his self control and shouted at a detainee whilst he was being unloaded from a Warrior on the evening of 14 May 2004 at Camp Abu Naji. However, I am not persuaded that Sergeant Brodie was correct in his conclusion that the soldier in question could have acted as he did in order to maintain the shock of capture. It seems clear that the Light Aid Detachment (“LAD”) guards had not been specifically instructed to shout at the detainees in order to maintain the shock of capture.³³⁵¹ Although I accept that shouting may have sometimes been used by the LAD guards, for reasons such as preventing the detainees from talking amongst themselves, the incident described by Sergeant Brodie does not appear to be an example of that. In the event, I am satisfied that what Sergeant Brodie witnessed was an incident in which the soldier in question clearly lost his self control, as a result of becoming over-excited in the heat of the moment, and then acted inappropriately as a result.

³³⁴⁸ Corporal Everett [117/137/22-25]

³³⁴⁹ Sergeant J. King [113/139-140]; [113/169-171]; Sergeant McKee [124/71]

³³⁵⁰ Lance Corporal Edwards [129/122/22-24]

³³⁵¹ NB – Sergeant Brodie believed that training permitted shouting to maintain the shock of capture [79/68/14-16]

- 3.88** I also accept the evidence of Colour Sergeant Graham King who recalled how one of the LAD guards had taken a detainee by the scruff of the neck and shaken him once. I also accept that he was probably correct in assuming that this had been an act of over exuberance on the part of the guard, rather than a serious attempt to hurt the detainee or to inflict any deliberate injury on him.³³⁵² I am therefore satisfied that, although the soldier in question was wrong to have acted as he did, it is very unlikely that he caused any form of physical injury or significant pain to the detainee as a result, although it might well have been very frightening for the detainee in question.
- 3.89** I also accept the evidence of Major Richard ‘Toby’ Walch, who recalled having had a conversation with WO1 Shaun Whyte in which he was told that one of the dismount soldiers had punched a detainee in the head or face with a single punch, while he was being unloaded from the military vehicle. However, I am unable to exclude the possibility that Major Walch was mistaken in attributing the conversation in question to the events of 14 May 2004, as opposed to some other occasion, particularly having regard to the fact that his first statement about what happened that day was not given until four years later, in 2008. It is apparent that Major Walch’s memory of this event was entirely based upon what he had been told at the time, rather than being an account of what he had himself seen or observed. Furthermore, WO1 Whyte had not been present when the nine detainees were unloaded at Camp Abu Naji on 14 May 2004, and none of the military witnesses who were present during the unloading of the nine detainees that evening remembered any such incident. I am therefore unable to come to any further conclusions of fact about this incident, other than to say that Major Walch did have such a conversation at some stage with WO1 Whyte and that, to the extent the conversation referred to an actual incident that had taken place, it is clear that the soldier in question had been wrong to act as he did.
- 3.90** I have also considered the possibility that these two incidents of misconduct by British soldiers, one as observed by Colour Sergeant G. King on 14 May 2004 and the other as recounted to Major Walch by WO1 Whyte, were actually both the same incident and that Major Walch was either misinformed as to what had happened or had come to misremember the incident as he was told it.³³⁵³ Of these two possibilities, I consider the former to be the more likely. Neither Major Walch nor WO1 Whyte had actually personally witnessed any such incident on the 14 May 2004. It is therefore possible that, by the time that a report of the incident observed by Colour Sergeant King had reached WO1 Whyte, the action of the soldier in seizing the detainee by the scruff of the neck and shaking him, as described by Colour Sergeant King, had become described as a punch or blow to the head of the detainee. It is possible that the incident was then described to Major Walch in that way.
- 3.91** With these conclusions of fact in mind, I now turn to consider the various allegations made by the nine detainees about how they were treated by the British soldiers, while being unloaded from the Warriors and escorted into the prisoner holding area at Camp Abu Naji on 14 May 2004. In the paragraphs that follow, I set out my conclusions of fact with regard to each such allegation.

Hamzah Joudah Faraj Almalje (detainee 772)

- 3.92** I accept that Hamzah Joudah Faraj Almalje’s (detainee 772) account of having been walked quickly after having been taken out of the Warrior is likely to be true. As I have stated above, the detainees were moved in a robust manner and at a brisk pace. I accept that it is likely

³³⁵² Colour Sergeant King (ASI010809-10) [130]-[133]; [96/116-117]

³³⁵³ Major Walch [143/135/5-9]

that this some caused pain to Hamzah Almalje's injured leg. I doubt if the LAD guards were actually aware of his injury. However that may be, I am satisfied that Hamzah Almalje was not moved at a pace that was deliberately intended to cause him unnecessary pain or discomfort or to exacerbate his injury.

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

- 3.93** Mahdi Jasim Abdullah Al-Behadili (detainee 773) alleged that he had been dragged violently out of the Warrior. However, I am quite satisfied that Mahdi Al-Behadili was not dragged or handled in a violent manner as he claimed. I do accept that it is likely that he was handled firmly, in order to help him to disembark safely from the rear of the Warrior and on to the ground outside. A certain amount of physical force was used in order to achieve this, but no more than seemed necessary to the soldiers involved. No doubt Mahdi Al-Behadili was reluctant to get out, but no gratuitous violence was used to remove him from the vehicle.
- 3.94** Mahdi Al-Behadili also alleged that he was hit against the walls of a corridor while he was being escorted to the cubicle in the prisoner holding area. He claimed that this had been done deliberately. However, Mahdi Al-Behadili's various accounts about what had actually happened were inconsistent. In his first written Inquiry statement, made in July 2010,³³⁵⁴ Mahdi Al-Behadili did not mention having lost consciousness. He simply said that he had felt very dizzy. In his second written Inquiry statement, made in January 2013, Mahdi Al-Behadili claimed that he did not know if the banging of his head against the wall had caused him to lose consciousness.³³⁵⁵ However, during his oral evidence to the Inquiry, he asserted that he had lost consciousness during the journey from the vehicle to the cubicle.³³⁵⁶
- 3.95** In my view these inconsistencies were indicative of an attempt by Mahdi Al-Behadili to exaggerate this particular aspect of his handling at Camp Abu Naji. Although he was moved briskly and firmly into the prisoner holding area from the Warrior, it is very unlikely that Mahdi Al-Behadili banged his head against any wall, given that he was flanked by two escorting soldiers. I do not believe that Mahdi Al-Behadili was deliberately knocked against the walls at this stage, nor do I accept his evidence that he was rendered unconscious by any such incident. In my view this is a deliberately false allegation.

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

- 3.96** Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) claimed that he had been "dragged" towards a lavatory and left on a chair. However, as stated above, I am satisfied that none of the detainees were forcibly dragged along, although they were moved in a firm and robust manner. In fact, Corporal Stuart Bowden actually remembered having escorted Ibrahim Al-Ismaeeli to the prisoner holding area on 14 May 2004, because he remembered that he had been limping as result of an injury to his foot. Corporal Bowden explained that he had walked at a normal walking pace, but noticed that the injury appeared to slow Ibrahim Al-Ismaeeli down.³³⁵⁷ It seems to me to be likely that Ibrahim Al-Ismaeeli was in considerable discomfort because of the injury to his foot. However, I accept Corporal Bowden's evidence that he and the other escorting guard did not drag Ibrahim Al-Ismaeeli along, nor did they

³³⁵⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001117) [39]

³³⁵⁵ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000782) [28]

³³⁵⁶ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/59/1]–[61/1]

³³⁵⁷ Corporal Bowden [120/172-175]

move him at a pace that was intended to cause him any avoidable or additional pain or discomfort.

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 3.97** There was no evidence that corroborated Kadhim Abbas Lafta Al-Behadili's (detainee 775) assertion that he had been made to sit on the ground outside, after he had been removed from the Warrior. In any event, this does not appear to have formed any part of a complaint by Kadhim Al-Behadili of ill-treatment by the British soldiers. As I have already indicated, I accept that Kadhim Al-Behadili may have been escorted to his cubicle in the prisoner holding area in a firm and brisk manner. Although I do not believe that he was moved at a running pace, I accept that Kadhim Al-Behadili's perception of the pace at which he was moved may have been influenced by the fact that he was blindfolded, handcuffed and, no doubt, disorientated at the time.
- 3.98** In my view, Kadhim Al-Behadili's account of having lifted his feet off the ground as he was escorted, because he felt unable to keep up with the soldiers, makes it possible that he was the detainee to whom Lance Corporal Richard Garner referred, when he described how one detainee had to be dragged, because he would not walk. Another possibility is that Kadhim Al-Behadili was the detainee that Craftsman Matthew Morris recalled as being too scared to walk properly and who had to be carried as a result.³³⁵⁸
- 3.99** So far as concerns Kadhim Al-Behadili's account of having been made to go left and right very quickly, as he was being escorted to the prisoner holding area, it seems to me likely that he was describing the route of the path that took him from the Warrior to the cubicle in the prisoner holding area. I do not believe that he was deliberately moved in a zigzagging motion, nor that this was being done in deliberate fulfilment of any policy to maintain the shock of capture.

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.100** Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) did not make any complaint of ill-treatment about the way he had been escorted from the Warrior to the cubicle in the prisoner holding area. Corporal Daniel Marshall remembered that he and Lance Corporal Jeremy Edgar had escorted Abbas Al-Hameedawi to the prisoner holding area.³³⁵⁹ Corporal Marshall said that they had guided him out of the Warrior and had then walked him at a gentle pace, probably slower than a walking pace.³³⁶⁰

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

- 3.101** Ahmed Jabbar Hammood Al-Furaiji (detainee 777) claimed that he felt that the Warrior in which he was travelling had gone round in circles in an attempt to disorientate him. This was echoed by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779), who claimed that, during the journey back to Camp Abu Naji, the Warrior had "*seemed to be going round in circles as if to confuse us*". Atiyah Al-Baidhani also said that he believed that the journey back took far longer than it ought to have done.

³³⁵⁸ As explained above, Sergeant Lane also recalled that one of the detainees they moved scuffed his foot on the floor due to the pace at which he was moved. Sergeant King told them to slow down or "*calm it down*" so that the detainee could get his footing

³³⁵⁹ Lance Corporal Edgar did not recall assisting in the unloading (ASI020372) [35]

³³⁶⁰ Corporal Marshall [130/20/24-25]; (ASI011080-81) [33]-[35]

3.102 In their written Closing Submissions, those representing the Iraqi Core Participants suggested that this had been part of a deliberate attempt to disorientate the detainees in order to “*maintain the shock of capture.*” It was also submitted that it is likely that this was part of an entrenched and accepted practice at Camp Abu Naji.³³⁶¹

3.103 In his written Inquiry statement, Corporal John Everett said that he had a vague recollection of having been told that on 14 May 2004, three detainees had been driven around on the order of WO2 Darran Cornhill, because the processing team was not yet ready for them. However, when he came to give his oral evidence to the Inquiry, Corporal Everett was unable to confirm that he had correctly remembered such an order.³³⁶²

3.104 There was further evidence about detainees having been driven around Camp Abu Naji in order to disorientate them, although none of that evidence related specifically to 14 May 2004. Thus, Lance Corporal Nicholas Collins described how detainees would:

*“Sometimes remain in the vehicle, which was driven to the rear of the HQ building to maintain the shock of capture. They would do this until the processing team were ready for them.”*³³⁶³

3.105 Lance Corporal Raymond Edwards said that he learnt that it was “*...usual practice to drive detainees around camp on their way to the questioning room.*” He described how he had spoken to someone who told him that it was done to disorientate the detainees, so they didn’t know the inside of the camp.³³⁶⁴ Staff Sergeant Denis Hill also recalled that there had been occasions when detainees were brought into the camp would be driven around for approximately thirty minutes in order to disorientate them.³³⁶⁵

3.106 As I have already indicated, I am satisfied that the nine detainees arrived at the prisoner handling compound at Camp Abu Naji on 14 May 2004 in two Warriors, the second of which contained both Ahmed Jabbar Hammood Al-Furaiji (detainee 777) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779), together with two other detainees, and that they arrived at about 21:55 hours.³³⁶⁶ The soldiers who travelled in that Warrior did not recall that the Warrior had been driven around before it arrived at the prisoner handling compound and halted there to unload the detainees.

3.107 I do not doubt Corporal Everett’s honesty and integrity as a witness to the Inquiry. However, given the clear military evidence that all the detainees were, in fact, driven straight to the prisoner handling compound on 14 May 2004, I am satisfied that Corporal Everett was mistaken in attributing what he was told, about three detainees having been driven around the camp, to the events of 14 May 2004.

3.108 There were two other detainees in the Warrior with Ahmed Sayyid Abdulridha Al-Furaiji (detainee 777) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779), neither of whom alleged that they had been driven around Camp Abu Naji. None of the detainees suggested that the Warrior had stopped in order to unload two of them, before continuing to drive the other two around the camp. I am therefore entirely satisfied that neither Ahmed Al-Furaiji nor Atiyah Al-Baidhani was driven around the camp in any way which was intended to maintain the shock of capture.

³³⁶¹ ICP written Closing Submissions (482) [1621]

³³⁶² Corporal Everett (ASI009397) [129]; [117/164-166]

³³⁶³ Lance Corporal Collins (MOD004698); [128/98-99]

³³⁶⁴ Lance Corporal Edwards (ASI011787) [62]; [129/161-162]

³³⁶⁵ Staff Sergeant Hill (ASI016171) [40]

³³⁶⁶ See para 3.26 above

- 3.109** It may be that there was an incident involving detainees being driven around the camp on a different occasion, or that whoever told Corporal Everett that this had happened on 14 May 2004 was mistaken. The evidence of Staff Sergeant Hill and Lance Corporals Collins and Edwards does not assist in relation to the events of 14 May 2004, given that none of those witnesses specifically alleged that the detainees had been driven around camp on that particular date. However I am unable to rule out the possibility that at some time or other, detainees were driven around the camp prior to processing. If this was done, I am unable to state whether this was done with a view to maintaining the shock of capture or for some other reason.
- 3.110** Notwithstanding this, I accept that it is very likely that Ahmed Jabbar Hammood Al-Furaiji felt very unsettled, frightened and confused in the rear of the Warrior. These emotions would have been heightened by the fact that he was completely unable to see the direction in which he was travelling. Although I do not believe that either he or Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) was actually intentionally driven around in order to disorientate them, I do not doubt that they genuinely believed that to have been the case.
- 3.111** Ahmed Al-Furaiji also alleged that he had been pushed and tripped as he was taken out of the Warrior at Camp Abu Naji, causing him to fall down hard on his face on the ground. He went on to claim that he had then been kicked by one of the soldiers on the right knee and had confirmed that it was “*definitely a kick.*”³³⁶⁷ He had not mentioned this later assault in his earlier 2008 Judicial Review statement.
- 3.112** I accept that it is possible that Ahmed Al-Furaiji fell as he got down from the rear of the Warrior, particularly since there was a significant drop from the rear of the Warrior to the ground and Ahmed Al-Furaiji was blindfolded and handcuffed at the time. He would not have been able to see and thus could easily have lost his footing and unable to break his fall. If he did fall, it was an accident, as was any collision with a soldier’s foot that may have happened as a result. I am entirely satisfied that he was not deliberately kicked as he alleged.
- 3.113** Ahmed Al-Furaiji further alleged that, whilst he was being escorted inside the prisoner handling compound, two soldiers got hold of him by the scruff of the neck and banged his head against a brick wall with such force that he was rendered unconscious. Again, I accept that Ahmed Al-Furaiji was moved through the prisoner handling compound in a firm and robust manner. However, as I have made clear from my conclusions at paragraph 3.559 Ahmed Al-Furaiji was not deliberately grabbed and his head then banged against a wall. I am equally sure that he was not rendered unconscious as a result. These allegations are false and deliberately so.

Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.114** Hussein Fadhil Abbas Al-Behadili (detainee 778) alleged that, as he was moved from the Warrior into the prisoner holding area, he was hit against two walls. I do not believe that Hussein Al-Behadili was deliberately hit against the walls as he was moved between the Warrior and the cubicle in the disused shower block. It is possible that he accidentally bumped into a wall, given that the path down which he was led was narrow and the ground was uneven.³³⁶⁸ However, it is likely that he had an escorting soldier on either side of him,

³³⁶⁷ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000882) [43]

³³⁶⁸ See, for example, Lance Corporal Garner [131/127/20]–[128/4]

so I think it very unlikely that he did actually bump against any wall. In any event, if such an incident did occur it was accidental and extremely trivial.

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 3.115** I have already dealt with Atiyah Sayyid Abdulridha Al-Baidhani's (detainee 779) allegation of having been driven around in a disorientating manner.
- 3.116** Atiyah Al-Baidhani also claimed that, when he got out of the Warrior, he was punched on his back and face, because the soldiers noticed that his blindfold had become loosened. Atiyah Al-Baidhani made a further allegation of having been punched while he was dragged along. However, I do not believe his evidence with regard to either of these allegations. It is possible that his blindfold was re-tied after he had disembarked from the Warrior, but I do not believe that he was subjected to any deliberate assault. I have no doubt that this was a deliberately false allegation.
- 3.117** Atiyah Al-Baidhani also claimed that the soldiers tried to disorientate him deliberately, as they dragged him along, by moving him in different directions and by making him bend and sit down on the way.³³⁶⁹ For the reasons stated above, I am sure that Atiyah Baidhani was not dragged, although it is likely that he was moved at a brisk pace. Although he may have gained the impression that he was being moved in different directions, this was due to the fact that he was being moved along a narrow path with tight bends. I do not accept that he was made to bend or sit down along the way.

Hussein Gubari Ali Al-Lami (detainee 780)

- 3.118** Hussein Gubari Ali Al-Lami claimed that he had been roughly removed from the Warrior and "*frogmarched*" to an iron chair, by being held under the arms and dragged there. However, I do not accept that he was removed from the Warrior "*roughly*", or that he was dragged to the prisoner holding area. A certain amount of physical force was used to remove him safely from the Warrior and he was escorted to the cubicle in the prisoner holding area in a robust and brisk fashion. I am sure that he was very fearful and apprehensive at the time and reluctant to get out of the Warrior. No doubt his senses were greatly heightened as a result and this may well have influenced his perception of how he was moved from the Warrior to the prisoner holding area at Camp Abu Naji on 14 May 2004.
- 3.119** It is possible that Hussein Al-Lami banged his head against the wall of the cubicle in the prisoner holding area, as he was being seated on the chair there. If that did happen, it was an accident and did not cause any significant injury or pain. The size of the cubicle was small and, no doubt, it was difficult to manoeuvre Hussein Al-Lami into a position where he was seated on the chair facing the rear wall of the cubicle.
- 3.120** So far as concerns Hussein Al-Lami's claim to have been punched by the guards, I am satisfied that this allegation is quite untrue. I am quite sure that if any such incident had occurred, it would have been noticed and reported. In my view, this was a deliberately false allegation.
- 3.121** The processing of the detainees is dealt with later in this Report. At this stage, it suffices to say that each detainee was taken to the processing tent in turn, commencing with Hamzah Joudah Faraj Almalje (detainee 772).³³⁷⁰ The processing procedure started less than 10 minutes after

³³⁶⁹ Atiyah Sayyid Abdulridha Al-Baidhani's (detainee 779) (MOD006674) [16]

³³⁷⁰ The numbering of the nine detainees, from 772 to 780, indicates the order in which they were actually processed at Camp Abu Naji on 14 May 2004

Hamzah Almalje's arrival at the prisoner handling compound on 14 May 2004.³³⁷¹ It follows that some detainees had to wait to be processed for longer than others. The detainees have made a number of allegations of ill-treatment by the British soldiers, whilst they were in their individual cubicles in the prisoner holding area that night. In many instances, it is not possible to say whether the allegations in question relate to a time before, or after, the detainees' processing and subsequent tactical questioning. I have no doubt that all the detainees were very frightened and apprehensive at the time. They were also very tired and probably more than a little confused about what was actually happening to them. Unsurprisingly in those circumstances, the detainees were often unsure at what stage of their detention at Camp Abu Naji the various matters about which they complain had actually occurred. The allegations made by each of them, with regard to their detention at Camp Abu Naji during 14 and 15 May 2004, are therefore dealt with in a subsequent chapter of this Report that deals specifically with the treatment of the detainees overnight on 14 and 15 May 2004 at Camp Abu Naji.

³³⁷¹ Hamzah Joudah Faraj Almalje (detainee 772) (MOD024467)

CHAPTER 2: THE PROCESSING OF THE DETAINEES AT CAMP ABU NAJI

1. The processing of detainees at Camp Abu Naji

3.122 Shortly after the detainees arrived at Camp Abu Naji, a procedure was followed in respect of each of them that has been invariably referred to as “Processing” throughout this Inquiry. For convenience, I have continued to use the same term in this Report to describe this particular procedure at Camp Abu Naji and, subsequently, at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah.

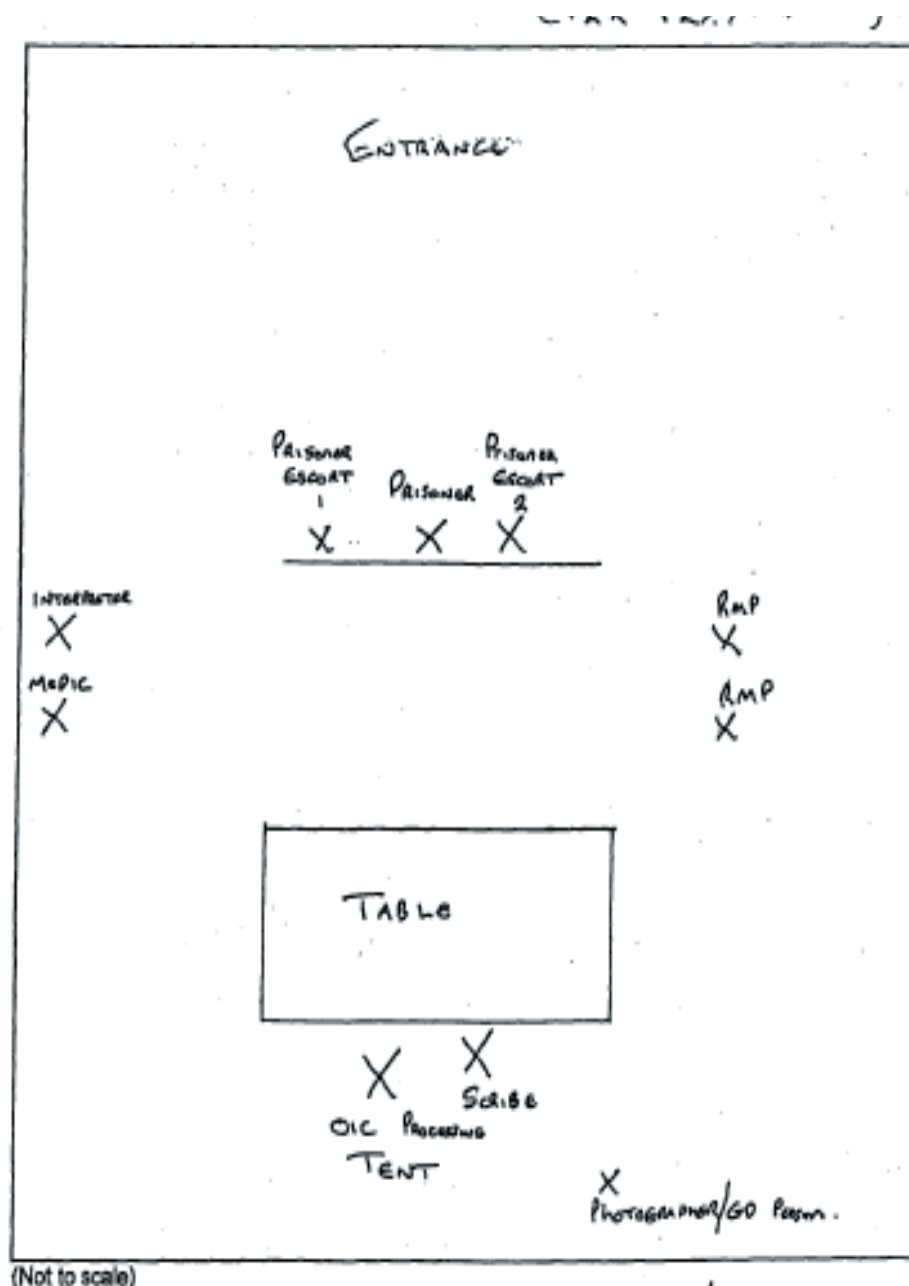
3.123 Processing appears to have served a number of purposes with regard to the detention of these and other Iraqi men by the British military authorities. Those purposes included the following:

- a. making a record of the names and basic biographical information of each detainee;
- b. making a record of the clothing/possessions of each detainee;
- c. explaining to each detainee the reasons for his detention;
- d. photographing each detainee; and
- e. carrying out a medical examination of each detainee and, where necessary, treating or arranging for the treatment of any detainee who required it.

3.124 At Camp Abu Naji, the processing of detainees was carried out in a 12 foot by 12 foot tent, located approximately 10 metres from the shower block that functioned as a cell block in which the detainees were held whilst at Camp Abu Naji.³³⁷² When he gave a statement to the Royal Military Police (“RMP”) in 2008, the 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”) Regimental Sergeant Major, WO1 Shaun Whyte, produced a sketch showing the layout of the processing tent and the location of the various individuals involved in the processing. This sketch is reproduced below as Figure 82. I am satisfied that it accurately depicts the layout and occupants of the processing tent on 14 May 2004.

³³⁷² See detail on the layout of Camp Abu Naji at paragraphs 3.6 to 3.13

Figure 82: MOD009241



3.125 Having regard to the evidence which I have seen, heard and read, in the paragraphs that follow I set out the details of the various individuals who carried out the various roles identified in WO1 Whyte's sketch on 14 May 2004.

3.126 The Officer in Charge ("O/C") of processing on 14 May 2004 was WO2 Darran Cornhill.³³⁷³ WO2 Cornhill was the "Camp" Sergeant Major ("CSM") at Camp Abu Naji at the time.³³⁷⁴ During 1PWRR's tour, responsibility for taking charge of processing was shared on a rota system between WO2 Cornhill, WO2 Wayne Sibthorpe and WO1 Whyte.³³⁷⁵ WO1 Whyte attended the processing of at least some of the detainees on 14 May 2004. However, I am satisfied that he attended merely as an observer on 14 May 2004 and that WO2 Cornhill was in charge of processing throughout.

³³⁷³ WO2 Cornhill (ASI013364) [81]

³³⁷⁴ WO2 Cornhill (ASI013345) [7]

³³⁷⁵ WO1 Whyte (ASI015956) [14]

3.127 The “scribe” on 14 May 2004 was Sergeant Martin Lane. Sergeant Lane was responsible for completing the paperwork generated by the processing of each of the detainees. This involved noting down the answers given by each of the detainees to the questions that WO2 Cornhill asked them and recording them on the pro forma Internment/Detainment Records.³³⁷⁶

3.128 The “medic” on 14 May 2004 was Corporal Shaun Carroll, a Class 1 Regimental Medical Assistant (“RMA”).³³⁷⁷

3.129 WO1 Whyte noted the presence of two members of the RMP on his sketch. On 14 May 2004, they were Corporal John Everett and Lance Corporal Gordon Higson. In his written Inquiry statement, Corporal Everett explained that their role was:

“...to conduct the searches of each detainee and to restrain them as necessary should they be non-compliant.”³³⁷⁸

3.130 Three different soldiers remembered having been the photographer during processing on 14 May 2004, namely Corporal Shaun Wildgoose, Lance Corporal Nicholas Collins and Sergeant Philip Gidley.³³⁷⁹ This is somewhat surprising. Although unlikely, it is possible that each of these witnesses photographed some of the detainees that evening. I am unable to say with any certainty which of them did, in fact, take the photographs in question. However, I am satisfied that nothing of any significance turns on the actual identity of the photographer.

3.131 There was also some inconsistency in the evidence with regard to the identity of the interpreter who had been present in the tent during the processing of these detainees on 14 May 2004. Some witnesses recalled that the interpreter had been female,³³⁸⁰ whilst others recalled that the interpreter had been male.³³⁸¹ In the event, I am satisfied that the interpreter throughout the entire processing of the detainees on 14 May 2004 was a man, M013, who I considered to be a truthful and reliable witness. M013 was convincingly emphatic in his evidence that he had been the interpreter in the processing tent for the whole of the processing of the nine detainees on the evening of 14 May 2004. During his oral evidence to the Inquiry, M013 was directed to paragraph 23 of his written Inquiry statement, in which he had said this:

“I was the interpreter during the processing of all 9 detainees who arrived on 14 May [2004] and no other interpreters participated in the processing sessions.”

M013 responded to the questions he was then asked about this paragraph, as follows:

“Q. Right. Paragraph 23, we’ve touched on this already. You were the interpreter during the processing of all nine [detainees]. How are you so sure that you were present for all nine?”

A. I am 100 per cent sure because when ... the processing started, I was there.

Q. Yes.

A. And when it finished I was there.

Q. Okay.

³³⁷⁶ Sergeant Lane (ASI020029-30) [32]

³³⁷⁷ Corporal Carroll (ASI016076-77) [110]

³³⁷⁸ Corporal Everett (ASI009401) [146.6]

³³⁷⁹ Corporal Wildgoose [123/43-44]; Lance Corporal Collins [128/129-130]; Sergeant Gidley [114/9]

³³⁸⁰ See, for example, WO2 Cornhill [115/82/24-25]; Corporal Carroll [116/38/3-4]

³³⁸¹ See, for example, Corporal Bowden [120/203/9-10]; Private Johnston [123/153/11-12]

*A. Simple as that, yes.*³³⁸²

3.132 The soldiers who acted as escorting guards differed from detainee to detainee. Based on the photographs that were taken during the processing of the nine detainees, it would appear that they were escorted to and from the processing tent by the following soldiers:

- a. Hamzah Almalje: detainee 772 – not known;³³⁸³
- b. Mahdi Al-Behadili: detainee 773 – escorted by Lance Corporal Christopher Vince³³⁸⁴ and Sergeant Samuel McKee;³³⁸⁵
- c. Ibrahim Al-Ismaeli: detainee 774 – escorted by Corporal Stuart Bowden³³⁸⁶ and Private Matthew Morris;³³⁸⁷
- d. Kadhim Al-Behadili: detainee 775 – escorted by Corporal Daniel Marshall³³⁸⁸ and Corporal Jeremy Edgar;³³⁸⁹
- e. Abbas Al-Hameedawi: detainee 776 – escorted by Lance Corporal Raymond Edwards³³⁹⁰ and Lance Corporal Richard Garner;³³⁹¹
- f. Ahmed Al-Puraiji: detainee 777 – escorted by Corporal Michael Taylor³³⁹² and Lance Corporal Andrew Tongue;³³⁹³
- g. Hussein Al-Behadili: detainee 778 – not known;³³⁹⁴
- h. Atiyah Al-Baidhani: detainee 779 – escorted by Lance Corporal Andrew Tongue³³⁹⁵ and Corporal Jeremy Edgar;³³⁹⁶ and
- i. Hussein Al-Lami: detainee 780 – escorted by Corporal Andrew Nicholls³³⁹⁷ and Corporal Daniel Marshall.³³⁹⁸

3.133 In addition to the men identified on WO1 Whyte's sketch, I am satisfied that Staff Sergeant David Gutcher was also present during the processing of the nine detainees on the evening of 14 May 2004. Staff Sergeant Gutcher was in command of the Prisoner Handling Team, including the escorts. His role was to instruct his men to bring the individual detainees to and from the tent for processing as required.³³⁹⁹

³³⁸² M013 [137/25]

³³⁸³ No photograph is available

³³⁸⁴ Lance Corporal Vince (ASI009937) [70]

³³⁸⁵ Sergeant McKee (ASI014660) [41]

³³⁸⁶ Corporal Bowden (ASI010614) [49]

³³⁸⁷ Private Morris (ASI010887) [58]

³³⁸⁸ Corporal Marshall (ASI011087) [54]

³³⁸⁹ Corporal Edgar (ASI020377) [54]

³³⁹⁰ Lance Corporal Edwards (ASI011785) [59]

³³⁹¹ Lance Corporal Garner (ASI009441) [23]

³³⁹² Corporal M. Taylor (ASI018110) [52]

³³⁹³ Lance Corporal Tongue (ASI015571) [25]

³³⁹⁴ No photograph is available

³³⁹⁵ Lance Corporal Tongue (ASI015571) [25]

³³⁹⁶ Corporal Edgar (ASI020377) [54]

³³⁹⁷ Corporal Nicholls (ASI011455) [48]

³³⁹⁸ Corporal Marshall (ASI011088) [60]

³³⁹⁹ Staff Sergeant Gutcher (ASI012969) [102]

3.134 The time at which each detainee was taken for processing was recorded on the Prisoner Information Sheets for each detainee. Based on those records, I am satisfied that each of the detainees went through the processing procedure on 14 May 2004 at the following times:

- a. Hamzah Joudah Faraj Almalje (detainee 772) – 21:03 hours – 21:10 hours;³⁴⁰⁰
- b. Mahdi Jasim Abdullah Al-Behadili (detainee 773) – 21:16 hours – 21:23 hours;³⁴⁰¹
- c. Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) – 21:25 hours – 21:35 hours;³⁴⁰²
- d. Kadhim Abbas Lafta Al-Behadili (detainee 775) – 21:50 hours – 21:58 hours;³⁴⁰³
- e. Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) – 21:58 hours – until some time just after 22:02 hours;^{3404, 3405}
- f. Ahmed Jabbar Hammood Al-Furaiji (detainee 777) – 22:37 hours – 22:48 hours;³⁴⁰⁶
- g. Hussein Fadhil Abbas Al-Behadili (detainee 778) – 22:51 hours – 22:59 hours;³⁴⁰⁷
- h. Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) – 23:06 hours – 23:16 hours;³⁴⁰⁸ and
- i. Hussein Gubari Ali Al-Lami (detainee 780) – 23:20 hours – 23:27 hours.³⁴⁰⁹

3.135 The following four principal tasks were completed during processing on the evening of 14 May 2004:

- a. the name and personal details of each detainee were taken;
- b. each detainee and his clothes were searched;
- c. each detainee was medically examined; and
- d. each detainee was photographed.

In the paragraphs that follow, I summarise the way in which each of these various tasks were actually carried out on 14 May 2004.

The taking of personal details of the nine detainees

3.136 In his written Inquiry statement, WO2 Daran Cornhill described the way in which this particular task was carried out, as follows:

“...I would ask the detainee a series of questions such as their name, date of birth and tribal name. The interpreter would then ask the question in Arabic and feed back the response given by the detainee. I would write down their answers on a laminated piece of card with a marker for identification purposes. The photographs of the detainees provided by the Inquiry [MOD032672 to MOD032676] show pictures of the detainees

³⁴⁰⁰ (MOD024467)

³⁴⁰¹ (MOD024469)

³⁴⁰² (MOD024471)

³⁴⁰³ (MOD024473)

³⁴⁰⁴ The recorded time on the Prisoner Information Sheet is missing a digit

³⁴⁰⁵ (MOD024475)

³⁴⁰⁶ (MOD024477)

³⁴⁰⁷ (MOD024479)

³⁴⁰⁸ (MOD024481)

³⁴⁰⁹ (MOD024483)

*holding up the laminated card, and I can confirm that the card they are holding is the one on which I wrote their details.*³⁴¹⁰

3.137 After this had been done, WO2 Cornhill read to each detainee the first section of the Apprehension Notice, Annex I to SOI³⁴¹¹ 390.³⁴¹² This informed the detainee why had he had been detained and why he was viewed as a threat to Coalition Forces.³⁴¹³ Each detainee was then asked to read the remainder of the Apprehension Notice and to sign it.³⁴¹⁴ This ensured that the detainee in question was aware of his right to inform somebody of his whereabouts. The Inquiry has obtained copies of the Apprehension Notices signed by the nine detainees during their processing at Camp Abu Naji on 14 May 2004.³⁴¹⁵

3.138 WO2 Cornhill observed that, on occasions, detainees would protest their innocence at this stage, but that any such denials or other comments were not recorded.³⁴¹⁶

The searches and medical examination of the nine detainees

3.139 The next two stages of processing, namely the searching and the medical examination of each detainee, are dealt with together in the paragraphs that follow.

3.140 Each detainee was first asked to remove his clothes. It would appear that the majority of the nine detainees complied with this instruction, although with reluctance and because they had given way to the inevitable.³⁴¹⁷ However, three of the detainees, namely Mahdi Jasim Abdullah Al-Behadili (detainee 773), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777) each alleged that he had been forcibly stripped of all or some of his clothing in the processing tent.

3.141 In his second Inquiry statement, Mahdi Al-Behadili (detainee 773) described what had happened to him, as follows:

*"I was told to take of [sic] my clothes but I refused. The interrogator kept on shouting at me and I continued to refuse to take off my clothes as it was disrespectful to my beliefs to be naked in front of these people and would have caused me great humiliation. The interrogator then ordered the soldiers to take off my clothes. I realised that it was more sensible for me not to resist even though I would be humiliated and so I let them take off my clothes."*³⁴¹⁸

3.142 In his Judicial Review statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) gave a description of what had occurred in his case, in the following terms:

"Then the interrogator ordered the soldiers to strip me without my consent. I was stripped of my shirt. While they were taking off my shirt they cut my plasticuffs. I

³⁴¹⁰ WO2 Cornhill (ASI013365) [85]

³⁴¹¹ Standard Operating Instruction

³⁴¹² (MOD039462-63)

³⁴¹³ WO2 Cornhill (ASI013365) [86]

³⁴¹⁴ Ibid.

³⁴¹⁵ See, for example, for Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD043483)

³⁴¹⁶ WO2 Cornhill (ASI013366) [87]

³⁴¹⁷ See, for example, Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000366) [25]; Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000184) [90]; Hussein Gubari Ali Al-Lami (detainee 780) and paragraph 3.147

³⁴¹⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000784) [37]

tried to keep my trousers on by holding them but they stripped me naked and then photographed me while I was made to hold a piece of paper in front of me.”³⁴¹⁹

3.143 Abbas Al-Hameedawi repeated this allegation in his third written Inquiry statement. However, he did go on to say that he had been allowed to put his clothes back on before his photograph was taken.³⁴²⁰

3.144 For his part, in his first written Inquiry statement Ahmed Jabbar Hammood Al-Furaiji (detainee 777) described what had occurred in the following terms:

“I was instructed to remove my clothes. I did so with the exception of my underwear which I refused to take off. These were forcibly removed by the two soldiers that had brought me to the tent.”³⁴²¹

3.145 There was also some military evidence with regard to the forcible stripping of one of the detainees during processing on 14 May 2004, mainly from Corporal John Everett, who was one of the two Royal Military Police (“RMP”) soldiers present in the tent. In the course of his oral evidence to the Inquiry, Corporal Everett said that, at the start of the processing he had briefed the other soldiers that, if any of detainees resisted, they should step aside and allow him and the other RMP soldier present, Lance Corporal Gordon Higson, to take over.³⁴²²

3.146 In his written Inquiry statement, Corporal Everett gave the following account of how he and Lance Corporal Higson had forcibly stripped one of the detainees during the processing procedure on 14 May 2004. Corporal Everett believed that the detainee in question was Hussein Fadhil Abbas Al-Behadili (detainee 778), and he described what happened in the following terms:

“I do remember a little bit more about this detainee as I recall him to be the most non-compliant of the nine. I recall that this detainee refused to remove any clothing other than his shirt and that one of the guards intervened (I cannot recall whether he was ordered to intervene or not) and started to forcibly remove detainee 7’s [i.e. detainee 778’s] trousers, but again he refused to comply and struggled against the guard. As I had instructed earlier that day, the guards then took a step back (I cannot recall whether I instructed them to or whether they simply asked me to intervene), and Lance Corporal Higson and I stepped forward and each took one arm of the detainee and forced him to the floor. We both put the detainee into an arm lock behind his back, and with him in this position we were able to remove his clothing and once that had been done we stood him up and released him from the arm lock.”³⁴²³

3.147 However, Hussein Al-Behadili’s (detainee 778) own evidence was that, whilst he had found the process of taking off his clothes in front of others to be humiliating and had initially resisted it, in the event he had bowed to the inevitable and had removed his clothes himself.³⁴²⁴ I am therefore satisfied that, if Corporal Everett was describing an incident that had actually occurred during the processing of the nine detainees on 14 May 2004, he must have been mistaken as to the identity of the detainee involved.

³⁴¹⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000006) [16]

³⁴²⁰ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000477) [99]

³⁴²¹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000883) [50]

³⁴²² Corporal Everett [117/106]

³⁴²³ Corporal Everett (ASI009407)

³⁴²⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000366) [25]

3.148 It is noteworthy that none of the three detainees, who claimed to have been forcibly stripped during processing on 14 May 2004, suggested that the soldiers involved had used anything like the level of force that Corporal Everett described in his evidence. Furthermore, there was little support for Corporal Everett's account in the evidence of the other soldiers who had been present during the processing of the detainees on 14 May 2004, at least insofar Corporal Everett described how a detainee had been forced down on to the floor in order to remove his clothes. Such support as there was, for Corporal Everett's description of the forcible removal of one of the detainee's clothing on that occasion, is to be found in the evidence of the other Royal Military Police ("RMP") soldier present in the processing tent on 14 May 2004, Lance Corporal Higson.

3.149 In the original version of his written Inquiry statement, Lance Corporal Higson gave the following account of how one of the detainees had been forcibly stripped of his clothing during processing on 14 May 2004:

"I think that on 14 May 2004 one of the detainees refused to remove his clothes. I think he indicated his resistance by shrugging his shoulders and saying in Arabic that he did not want to remove his clothes. I do not speak Arabic, and what he said was translated into English by the interpreter. In response to this, the detainee's clothes were pulled off him by one or two military personnel. I cannot recall whether Cpl Everett or the guards removed his clothes, but I expect it would have been Cpl Everett in accordance with his instruction that the RMP would take over if the detainees refused to comply (as noted in my October 2008 RMP statement [MOD014016]). I do not think I was involved in removing the detainee's clothes, but I observed it happening. I think it unlikely that I was involved as I was responsible for completing the property receipt logs."³⁴²⁵

*The detainee did not flail about or otherwise physically resist. No excessive force was used and the detainee did not struggle or go down to the floor. His clothes were simply removed."*³⁴²⁶ [emphasis added]

3.150 However, when he came to give his oral evidence to the Inquiry, Lance Corporal Higson notified me that he wished to amend his original written Inquiry statement. He sought to replace the words underlined in the passage quoted above with the following:

*"I initially did not have any recollection of having assisted in undressing this detainee, nor did I recall whether John Everett was involved. However, having seen John's written evidence I now think it likely that both he and I assisted in removing the detainee's clothes and that in the process of doing so, we forced him to the floor."*³⁴²⁷

3.151 It is evident that Lance Corporal Higson's revised recollection was, by his own admission, heavily influenced by the fact that he had recently read the written evidence of Corporal Everett. Accordingly, I do not consider that Lance Corporal Higson's evidence provides any significant corroboration of Corporal Everett's account, particularly with regard to the description of the detainee being forced to the floor in order to be stripped.

3.152 Having regard to the evidence as a whole, I have come to the conclusion that it is likely that Mahdi Al-Behadili (detainee 773), Abbas Al-Hameedawi (detainee 776) and Ahmed Al-Furaiji (detainee 777) had all or some of their clothing forcibly removed during processing on 14 May 2004. Furthermore, I am satisfied that this was done in a manner akin to that described by

³⁴²⁵ Underlining added

³⁴²⁶ Lance Corporal Higson (ASI017196) [90]-[91]

³⁴²⁷ Lance Corporal Higson (ASI017196); [118/12/13]

those detainees themselves, rather than in the manner described by Corporal Everett. In my view, either Corporal Everett exaggerated what happened to some extent or, which I consider to be more likely, he has confused it with an incident that took place during the processing of a different detainee on some other date.

- 3.153** There were two main reasons why the detainees were asked to remove their clothing during processing, although not all the witnesses mentioned both reasons when giving evidence to the Inquiry. The clearest account of the reasons for requiring detainees to take off their clothing during processing was provided by Corporal Everett in his oral evidence to the Inquiry, as follows:

“The purpose of the strip-search was not solely for the medical examination. It was also to ensure a full search and examination of each individual was conducted, so there was nothing that could either harm them, us or aid their escape or could be evidence of an offence that was committed out on the ground.”³⁴²⁸

- 3.154** In my view, the two matters identified by Corporal Everett do provide obvious and sound reasons for requiring each detainee to remove his clothing at an appropriate stage and in appropriate circumstances during the processing procedure. It is also clear from the evidence, about what was done during the time each detainee was unclothed, that both reasons did apply in the case of the nine detainees on the evening of 14 May 2004. I draw no adverse conclusions from the fact that not all the military witnesses mentioned both reasons or from the fact that some of the witnesses considered that satisfying those reasons did not make it necessary for a detainee to be completely naked. I also have no hesitation in rejecting any suggestion that the detainees were deliberately forced to strip in order to humiliate them or as part of some process of “conditioning” or “softening up”.

- 3.155** Nevertheless, a number of the detainees described how they had, in fact, felt greatly humiliated and demeaned by having to remove all their clothes and/or by having had them forcibly removed during processing on 14 May 2004. I have no doubt that they did experience such feelings at the time and that the feelings were entirely understandable in the circumstances.

- 3.156** Thus, in his second written Inquiry statement, Mahdi Al-Behadili (detainee 773) graphically described how he felt after his clothes had been removed, as follows:

“I was left naked for about five minutes as the doctor examined me. I was so humiliated that I started crying.”³⁴²⁹

- 3.157** In his second written Inquiry statement, Ahmed Al-Furaiji (detainee 777) gave the following dramatic description of having experienced very similar feelings and emotions after he had been stripped of his underwear by the soldiers:

“I was stood in this place naked. I kept my head down and I could not look up when I was talked to. I tried to explain that this was not culturally acceptable. I was very humiliated, embarrassed and offended because of this situation. I felt very demeaned by this situation.”³⁴³⁰

³⁴²⁸ Corporal Everett [117/197/14-20]

³⁴²⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000784) [37]

³⁴³⁰ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000317) [76]

- 3.158** In his second written Inquiry statement, Atiyah Al-Baidhani (detainee 779) described his feelings in the following terms:

*"They watched me while I undressed. It is hard to describe how I felt at that time. It was a complete insult and humiliation. It distresses me to think about it now and makes me angry."*³⁴³¹

- 3.159** I have no doubt that these feelings were fully shared by Abbas Al-Hameedawi (detainee 776). However, I am satisfied that his actual account of the matter included a number of false details that not only exaggerated what had occurred but also introduced an element of deliberate and malicious ill-treatment by the soldiers in the processing tent. In his oral evidence to the Inquiry, Abbas Al-Hameedawi described how he had been forcibly stripped and then went on to say this:

*"And when that was done, they asked me to turn around, a complete round, and they forced me to do that, the soldiers did, while they were ridiculing and laughing at me because I was naked. They were laughing at my being naked."*³⁴³²

- 3.160** There was nothing in the evidence of the various military witnesses, who were present during processing on 14 May 2004, which provides any confirmation of or support for this particular passage in Abbas Al-Hameedawi's evidence. However, when the interpreter, M013, gave his oral evidence to the Inquiry, the following exchange took place, when he was questioned by Counsel to the Inquiry:

"Q. Whilst they were naked, was anything unpleasant, belittling or sarcastic said to them?"

A. Not to them. I can remember one incident where a soldier made a silly comment, but, um, I can't say that it is related to this day and these detainees.

Q. No. What was the silly comment?"

A. Um, laughing, made a silly comment about the size of one detainee's testicle, I think, yes.

Q. Did you translate that to the detainee?"

*A. No. No, of course not, no."*³⁴³³

- 3.161** As M013 was at pains to point out, there is no reason to assume that this particular incident actually took place during the processing of the nine detainees on 14 May 2004. In any event, M013's candid and credible description of the individual soldier's objectionable behaviour fell some way short of the sort of concerted and deliberate humiliation that Abbas Al-Hameedawi claims to have suffered at the hands of a number of soldiers. The fact that M013 recalled this evidence, but made no mention of having seen ill-treatment such as that described by Abbas Al-Hameedawi, leads me to conclude that it did not actually occur. In my view, conduct of this sort would have been at odds with the brisk and businesslike atmosphere that I am satisfied prevailed in the tent during the processing of the nine detainees on 14 May 2004.

³⁴³¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000184) [90]

³⁴³² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/18/1-5]

³⁴³³ M013 [137/33/4-13]

3.162 Notwithstanding my conclusion, that requiring detainees to remove their clothing during processing was based on sound reasons,³⁴³⁴ and the fact that the soldiers present at the time did not taunt or deliberately seek to humiliate the detainees,³⁴³⁵ I accept that most, if not all, of the detainees did feel greatly humiliated by being required to strip and/or by being forcibly stripped naked during processing. I suspect that most men, if subjected to such treatment, would experience very similar feelings. However, I heard credible evidence from a number of sources that such an experience would have been particularly humiliating for an Iraqi Muslim man³⁴³⁶ and I have no doubt that such is indeed the case.

3.163 WO2 Darran Cornhill and WO1 Shaun Whyte each told me that he was unaware that the procedure would have caused any additional humiliation for an Iraqi Muslim man.³⁴³⁷ Whilst I have no reason to doubt the fundamental honesty and integrity of either witness, it seems to me that both ought to have had a better awareness of the particular sensitivities of the situation when Iraqi Muslim men were involved. During the course of his oral evidence, M013 made it clear that he was fully aware of the obvious injury to cultural sensitivities that would be involved in requiring the detainees, all of whom were Muslims, to remove all their clothes in the presence of strangers. What M013 said was this:

“Q. Were you aware of Muslim sensitivities about appearing naked other than in front of family members?”

A. Of course. Yes.

Q. Did you ever mention those sensitivities to the processing officer?”

A. Not that I’m aware of, no.

Q. No. Paragraph 36, you say generally they were reluctant to remove their clothing?”

A. Yes, correct.

Q. Did you think that was because of their sensitivity about being naked in front of people who were not members of their family?”

A. I have to admit, normally detainees would strip down to their underwear. It was always the last piece of clothing that was the issue. Um, and I think anyone would be reluctant to remove their clothes in front of a tent full of people that they don’t know.”³⁴³⁸

3.164 I do not criticise M013 for not having taken any steps to draw the attention of either WO2 Cornhill or WO1 Whyte to his concerns about the cultural sensitivities involved in requiring an Iraqi Muslim man to strip naked in the crowded Processing tent. However, in my view, M013’s evidence makes it clear that the cultural sensitivities involved should have been readily apparent to those in command of processing at Camp Abu Naji, because of their previous experience in processing Iraqi Muslim men, if for no other reason. The fact that both admitted to having been wholly unaware of any such cultural sensitivities in the case of Iraqi Muslim men, clearly suggests that neither had ever given any real consideration to the

³⁴³⁴ See paragraph 3.154 above

³⁴³⁵ See paragraph 3.161 above

³⁴³⁶ See, for example, Hussein Gubari Ali Al-Lami (detainee 780) [11/12/20-25]; Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000784) [37]

³⁴³⁷ WO2 Cornhill [115/84/14-24]; WO1 Whyte [106/95/4-8]

³⁴³⁸ M013 [137/30/24]-[31/15]

likely emotional impact that requiring an Iraqi Muslim man to strip naked in front of strangers would actually have on him.

- 3.165** Although the humiliation involved in requiring them to strip naked during processing was not deliberately or maliciously inflicted on the nine detainees, I am satisfied that their sense of humiliation was actually exacerbated in each case by the unsatisfactory procedure that was followed at the time.
- 3.166** In my view, the first unsatisfactory feature of the procedure, which was adopted during the processing of the nine detainees on 14 May 2004, was the failure to offer or provide any form of adequate privacy for the detainees while their clothes were removed and while they were being medically examined naked. The detainees were made to remove their clothes and were medically examined naked in the centre of a 12 foot by 12 foot tent, without any attempt being made to provide them with any form of screening or other means of preserving their modesty. As a result, each of the detainees was rendered completely naked in front of every soldier who happened to be present in the processing tent at the time. This appears to have been up to as many as nine military personnel. In my view, appropriate steps should have been taken, by the provision of screens or some such, so that each detainee was afforded some degree of privacy whilst his clothes were removed and whilst he was naked. However, as I have already stated, there was no such provision.
- 3.167** As I have already indicated,³⁴³⁹ there was some, though not consistent, evidence that the military personnel in the processing tent may have included a female interpreter for some, if not all, of the time. Although I am satisfied that such was not the case during the processing of the nine detainees on 14 May 2004, for the reasons already stated,³⁴⁴⁰ I have no doubt that it did occur on some of the other occasions when a detainee or detainees were processed at Camp Abu Naji during 1st Battalion, Princess of Wales' Royal Regiment's ("1PWRR") tour in 2004. On any such occasion, I have no doubt that the presence of a female interpreter would have greatly increased any feelings of anxiety or humiliation that a detainee was experiencing at the time.
- 3.168** Some of the military witnesses, such as WO2 Cornhill and Corporal Shaun Carroll, suggested that the female interpreter would have looked away, whilst a detainee's medical examination was being carried out.³⁴⁴¹ I very much doubt if this would have done anything whatsoever to alleviate the detainee's feelings of anxiety and humiliation at the time. It merely serves to highlight the fact that those in charge of the processing procedure did have some awareness of the sensitivities of the situation, but that their way of dealing with it was purely nominal and wholly lacking in any real empathy. In my view, this was a wholly inadequate and unsatisfactory response to such recognition as they did have of the need to afford some degree of privacy to the detainee in question.
- 3.169** Secondly, it seems to me that the inevitable anxiety and sense of humiliation that was felt by each detainee might have been mitigated to some extent if he had been given an adequate explanation as to why it was necessary to him to remove his clothes. Thus, it seems to me possible that some reassurance might have been provided to each detainee, if he had been told that the removal of his clothes would help the medic carry out a thorough physical examination in order to safeguard his medical well-being.

³⁴³⁹ See paragraph 3.131 above

³⁴⁴⁰ Ibid.

³⁴⁴¹ WO2 Cornhill (ASI013366) [88]; Corporal Carroll (ASI016072) [92]

- 3.170** The evidence as to whether any such explanation was ever given was rather patchy. Corporal Carroll's evidence was that the detainees were told why they were being asked to strip by the interpreter.³⁴⁴² However, the interpreter who was present during the processing of the nine detainees on 14 May 2004, M013, said *"I cannot recall specifically explaining why they had to undress."*³⁴⁴³ In all the circumstances, therefore, it seems to me that no real or adequate explanation was actually given to any detainee on 14 May 2004, beyond being told to remove his clothes and also being told he would be examined by a doctor. Although M013 recalled in oral evidence saying *"Remove clothing now and the doctor will examine you"*, he went on to observe that he did not remember it being given as a reason for the clothing to be removed.
- 3.171** In my view, appropriate steps should have been taken to ensure that each detainee fully understood why he was being told to remove his clothes. This could have been done by preparing a simple but clear explanatory message, which could then have been read carefully to each detainee before being asked to remove his clothing. It seems to me possible that such a message might have gone some way towards reassuring the detainee in question and might have mitigated his sense of humiliation at being naked, particularly if combined with adequate provision for undressing and being medically examined in conditions of reasonable privacy. However, I am satisfied that no such explanatory message was ever prepared or used.
- 3.172** Finally, the way in which some of the detainees were forcibly stripped of their clothes during processing on 14 May 2004 would have undoubtedly added to the sense of humiliation that these detainees felt. As I have already observed, a simple and clear explanatory message might have obviated the need for forcible stripping, particularly if coupled with the provision of adequate screening and a degree of privacy. However, instead of taking reasonable and considerate steps such as these, those in charge of the processing procedure quickly resorted to the use of force in order to remove the detainees' clothing. In my view, this was far from being a satisfactory way of dealing with a particularly sensitive issue.
- 3.173** As I have already indicated,³⁴⁴⁴ I am satisfied that there were sound reasons for requiring each detainee to remove his clothing at an appropriate stage during the processing of the nine detainees on 14 May 2004. However, it seems to me that the manner and circumstances, in which this requirement was actually put into effect, did amount to a form of ill-treatment, when the various unsatisfactory features of the procedure actually adopted to achieve that end, as set out above, are considered as a whole.
- 3.174** Whilst each detainee was naked, his clothes were searched by Corporal Everett and Lance Corporal Higson. Corporal Everett described the searching process as follows:

*"Our search of the clothing involved going through each item of clothing to check for any possessions, particularly for any weapons the detainee may have been in possession of. Usually the possessions included money and occasionally jewellery, and the items taken from the detainees would be placed into a black bag by Lance Corporal Higson and myself, and a tag would be placed on the bag to correspond with the ID tag placed around the neck of the detainee when he arrived at the cells. Once the clothing was searched, it was placed back on the detainee, save for the outer clothing, which would then be placed in the plastic bag."*³⁴⁴⁵

³⁴⁴² Corporal Carroll (ASI016070) [83]

³⁴⁴³ M013 (ASI023630) [35]

³⁴⁴⁴ See paragraph 3.154 above

³⁴⁴⁵ Corporal Everett (ASI009403-04) [156]

3.175 Lance Corporal Higson then produced property receipt logs that recorded the items removed from each of the nine detainees during processing on 14 May 2004.³⁴⁴⁶ Lance Corporal Higson used the form found at Annex E to SOI³⁴⁴⁷ 390 to log these items at the time.³⁴⁴⁸ I am completely satisfied that Lance Corporal Higson completed the log accurately in each case. Accordingly, based on the logs that have been disclosed to the Inquiry, I am satisfied that the following items were removed from each of the detainees, as detailed below.

Hamzah Joudah Faraj Almalje (detainee 772)

3.176 The search process resulted in the recovery of the following items of clothing from Hamzah Joudah Faraj Almalje (detainee 772):

- a. one pair of black trousers,
- b. one black robe and
- c. one black undergarment.³⁴⁴⁹

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.177 The search process resulted in the recovery of the following items from Mahdi Jasim Abdullah Al-Behadili (detainee 773):

- a. one pair of grey trousers,
- b. one grey checked shirt,
- c. one blood-stained white top,
- d. one dark blue t-shirt,
- e. two 50 Dinar notes and
- f. one set of religious beads.³⁴⁵⁰

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.178 The search process resulted in the recovery of the following items from Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774):

- a. one pair of black trousers,
- b. one long-sleeved black top,
- c. one black t-shirt,
- d. five 1,000 Dinar notes and
- e. one small silver lighter.³⁴⁵¹

³⁴⁴⁶ Lance Corporal Higson (ASI017199) [102]

³⁴⁴⁷ Standard Operating Instruction

³⁴⁴⁸ Lance Corporal Higson (ASI017199-01) [102] – [103]

³⁴⁴⁹ (MOD024251)

³⁴⁵⁰ (MOD024257)

³⁴⁵¹ (MOD024265)

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.179 The search process resulted in the recovery of the following items from Kadhim Abbas Lafta Al-Behadili (detainee 775):

- a. one pair of white trousers,
- b. one blue checked shirt,
- c. one white t-shirt,
- d. one “Ablux” gold watch,
- e. four 250 Dinar notes,
- f. one pair of white under-trousers,
- g. one pair of blue underpants and
- h. one gold-coloured ring.³⁴⁵²

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.180 The search process resulted in the recovery of the following items from Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776):

- a. one pair of black trousers,
- b. one black top,
- c. one white t-shirt and
- d. one gold-coloured ring.³⁴⁵³

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.181 The search process resulted in the recovery of the following items from Ahmed Jabbar Hammood Al-Furaiji (detainee 777):

- a. one pair of grey trousers,
- b. one pair of black slip-on shoes,
- c. one grey/blue tracksuit top apparently marked with the word “Monter”,
- d. one black t-shirt,
- e. one [illegible] undergarment,
- f. one pair of brown socks,
- g. two 1,000 Dinar notes, seven 250 Dinar notes and
- h. two “invitation” cards.³⁴⁵⁴

³⁴⁵² (MOD024273)

³⁴⁵³ (MOD024281)

³⁴⁵⁴ (MOD024289)

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.182 The search process resulted in the recovery of the following items from Hussein Fadhil Abbas Al-Behadili (detainee 778):

- a. one pair of black trousers,
- b. one brown checked shirt,
- c. one pair of white trainers,
- d. one white-coloured ring,
- e. one gold-coloured ring and
- f. one blue undergarment.³⁴⁵⁵

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.183 The search process resulted in the removal of the following items from Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779):

- a. one white t-shirt,
- b. one pair of black trousers,
- c. one ring, one watch 'QMAX',
- d. one black shirt,
- e. one white undergarment and
- f. three 250 Dinar notes.³⁴⁵⁶

Hussein Gubari Ali Al-Lami (detainee 780)

3.184 The search process resulted in the removal of the following items from Hussein Gubari Ali Al-Lami (detainee 780):

- a. one white t-shirt and
- b. one pair of green three-quarter length shorts.³⁴⁵⁷

3.185 While Corporal Everett and Lance Corporal Higson were carrying out their tasks of searching and recording each detainee's clothing and effects, Corporal Shaun Carroll carried out a medical examination of the detainee in question.³⁴⁵⁸

3.186 Two policy documents have a bearing upon the medical examinations that were conducted by Corporal Carroll during the processing of the nine detainees on 14 May 2004 at Camp Abu Naji. The first is Annex G to HQ MND (SE) SOI 390, a Divisional level document (hereafter

³⁴⁵⁵ (MOD024297)

³⁴⁵⁶ (MOD024305)

³⁴⁵⁷ (MOD024313)

³⁴⁵⁸ Corporal Carroll (ASI016079) [120]

“SOI 390”). The version of SOI 390 that was in force on 14 May 2004 is dated 25 March 2004. Section 4 of Annex G to SOI 390 was in the following terms:

“TQ [Tactical Questioning] can not be undertaken without the internee first being examined by a suitably qualified Medic. This should be at the first practical opportunity and the following must occur:

The MO [Medical Officer] is to sign a fit for detention and questioning form.

Any medical attention that is required should be administered. If necessary, the internee should be removed to local medical facilities.

If any detainee is found to be unfit for detention or questioning then they are to be removed to a safe place until such time as they are fit for questioning.

It is important to note the timeliness of the information is critical and if the period of recovery should extend past a point when any intelligence gained is of no tactical value the internee should be released or transported to the [Divisional Temporary Detention Facility] DTDF.”³⁴⁵⁹

3.187 The second relevant policy document is the 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”) SOI 207 of 11 March 2004 (hereafter “SOI 207”). This document provided as follows:

“Suspects must be examined by a Doctor before TQ can commence. The first examination must be complete as soon as is practical. Subsequent reviews must occur at the 3, 6 and 12 hour point after initial arrest. The MO is to sign a fit for detention and questioning form, any suspect being unfit for questioning should receive the necessary treatment from qualified medical staff.”³⁴⁶⁰

3.188 It can be seen that both SOIs³⁴⁶¹ required 1PWRR’s Medical Officer, who happened to be Captain Kevin Bailey on 14 May 2004, to sign a “fit for detention and questioning form” before any tactical questioning (“TQ”) took place. However, the two SOIs differ with regard to the identity of the person who is to carry out the medical examination of each detainee. In Annex G to Division’s SOI 390 that role falls to a “suitably qualified medic”, whilst 1PWRR’s SOI 207 provides that a detainee must be examined by “a Doctor”.

3.189 It should be noted that Sir William Gage expressed reservation, in the Baha Mousa Report with regard to a medical professional declaring a detainee fit for detention and questioning because of possible ethical problems involved in making such a declaration. I have put this aspect of the Baha Mousa Report to one side for the purpose of considering the extent to which the medical examinations on 14 May 2004 complied with the relevant SOIs as they were at that time. However, it is clear to me, as discussed further in the Recommendations section of this Report, that insofar as there were unsatisfactory parts of this procedure that ought properly to be addressed, any appropriate form for future use would need to be expressed in a way that complies with the observations and recommendation of Sir William Gage in the Baha Mousa Report.³⁴⁶²

³⁴⁵⁹ (MOD046754)

³⁴⁶⁰ (MOD015807)

³⁴⁶¹ Standard Operating Instruction

³⁴⁶² Report of the Baha Mousa Inquiry (Volume III) [Part XVII]

3.190 At the start of 1PWRR's tour, Captain Bailey was solely responsible for performing the medical examinations of detainees during processing. Accordingly and unsurprisingly, it appears that the requirements of 1PWRR's SOI 207 in this regard were being followed to the letter at first. However, Captain Bailey fairly quickly discovered that he did not have capacity to perform this role in addition to all his other medical duties. Accordingly, he sought and obtained permission from Brigade for the medical examinations of detainees during processing to be carried out by any Class 1 medic.³⁴⁶³ It was for this reason that the medical examinations of the nine detainees, during their processing on 14 May 2004, were performed by Corporal Carroll. In any event, quite apart from the fact that Brigade had authorised this departure from the requirements of 1PWRR's SOI 207 by granting the permission sought earlier by Captain Bailey, it seems to me that it probably would have been in order for Corporal Carroll to carry out the medical examinations, because he would have been acting fully in accordance with the then current requirements of a higher ranking policy document, namely Annex G to Division's SOI 390.

3.191 In fact, Annex G to SOI 390 was amended a short time after the nine detainees with whom this Inquiry is concerned had passed through Camp Abu Naji. The 24 May 2004 version of Annex G was amended to include the following additional provision, Section 5:

"It would be quite impractical to require that every person MND(SE) detains, no matter for how short a period, must be examined by a MO. A balance needs to be struck.

a. Whenever any person who has been detained by MND(SE) is brought to a fixed MND(SE) location for any period of time then that person should be examined by a Medical Officer (MO) at the earliest opportunity and a record made by that MO to confirm or otherwise whether the detained person has any injuries. If such a person is transferred to the DTDF they will be subject to a further medical examination at the DTDF.

b. Whenever any person is detained by MND(SE), no matter how temporarily, and there is any evidence whatsoever to suggest that the detained person has sustained physical injury either immediately before or during their apprehension then that person must be examined by an MO at the earliest opportunity in order that a record of those injuries be made.

*c. MOs are reminded that where they find any injuries on a detained person which give rise to a suggestion that the injuries may have been obtained as a result of physical mistreatment or excessive force by MND(SE) forces then it is incumbent on the MO to report his concerns to the chain of command with a view to the matter being investigated. Such investigations are not witch-hunts but an essential part of MND(SE) forces preserving the moral high-ground and initiative by countering malicious or false allegations of improper conduct by MND(SE). If we have done no wrong then such investigations will go some way to proving it."*³⁴⁶⁴

3.192 The 24 May 2004 amended version of Annex G to SOI 390 therefore introduced a requirement that detainees were to be medically examined, even in circumstances when tactical questioning was not envisaged. Furthermore, the 24 May 2004 amended version provided that the medical examination conducted in anticipation of tactical questioning was to be

³⁴⁶³ Corporal Carroll (ASI016068) [70]; Captain Bailey [105/61/14]-[62/23]

³⁴⁶⁴ (MOD042775-76)

conducted by a “*suitably qualified MO*” rather than the “*suitably qualified medic*” for which provision had been made in the 25 March 2004 version.³⁴⁶⁵

- 3.193** It therefore seems to me that Corporal Carroll was properly authorised to conduct the medical examinations of the nine detainees during their processing at Camp Abu Naji on 14 May 2004. I reach that conclusion because Brigade had given 1PWRR effective permission for him to do so, in response to Captain Bailey’s earlier request, and because Corporal Carroll was a “*suitably qualified Medic*” within the terms of the 25 March 2004 version of Annex G to Division’s SOI 390 in any event. In my view, the latter aspect of the matter was not retrospectively affected by the subsequent policy changes that were carried into effect by the 24 May 2004 amended version of Division’s SOI 390.
- 3.194** As it happened, Corporal Carroll was unable to recall the specific medical examinations that he conducted during the processing of the nine detainees on 14 May 2004. However, he assumed that he had followed his usual procedure³⁴⁶⁶ and I am therefore satisfied that what follows is an accurate description of the procedure followed on 14 May 2004.
- 3.195** Corporal Carroll explained that he would first conduct a visual examination of the detainee while naked, in order to identify any visible physical injuries.³⁴⁶⁷
- 3.196** Once he had completed his visual examination of the detainee, Corporal Carroll would ask him, through the interpreter, to adopt what he described as a “*normal anatomical position*”.³⁴⁶⁸ This involved the detainee standing with his legs, fingers and toes spread and his arms raised, facing forwards. Corporal Carroll explained that this was done so that he could check all parts of the body for injuries that might otherwise have been concealed.³⁴⁶⁹
- 3.197** Corporal Carroll explained that it was his normal practice to touch a detainee only if the detainee in question had an obvious injury to his body that required treatment. In such circumstances, Corporal Carroll would explain to the detainee, through the interpreter, that he was going to touch the detainee and he would also explain the treatment he was going to administer to the injury in question.³⁴⁷⁰ He went on to explain that one exception to his usual practice was when a detainee had long hair that might be concealing an injury. In such circumstances, Corporal Carroll said that he would approach the detainee and run his hands over his head to check for blood.³⁴⁷¹
- 3.198** Any detainee who was uninjured was allowed to put his clothes back on at this stage.³⁴⁷² Any detainee who required treatment was left naked whilst the medical treatment was conducted, in order to avoid any contamination from dirty clothing.³⁴⁷³ Corporal Carroll explained that he would treat any injuries that he found on the detainee’s body, but that he would not ask the detainee how he had received such an injury.³⁴⁷⁴
- 3.199** While he was conducting the medical examination in question, Corporal Carroll would ask the detainee questions about his medical history. He would also ask if he had any current medical

³⁴⁶⁵ (MOD042776)

³⁴⁶⁶ Corporal Carroll (ASI016079) [121]

³⁴⁶⁷ Corporal Carroll (ASI016070) [81]

³⁴⁶⁸ Corporal Carroll (ASI016070) [84]

³⁴⁶⁹ Ibid.

³⁴⁷⁰ Corporal Carroll (ASI016071) [85]

³⁴⁷¹ Ibid.

³⁴⁷² Corporal Carroll (ASI016071) [87]

³⁴⁷³ Corporal Carroll (ASI016071) [86]

³⁴⁷⁴ Corporal Carroll (ASI016071) [88]

complaints or conditions, if he was in pain, if he took any medication – and, if so, what – and if he had any present medical requirements.³⁴⁷⁵

3.200 Once he had completed his medical examination of the detainee in question, Corporal Carroll would complete a written “Prisoner Medical Report.” On 14 May 2004, Corporal Carroll completed such a record for each of the nine detainees. On each Prisoner Medical Report, Corporal Carroll noted the detainee’s name, date of birth, any visible injuries, any treatment administered to the detainee and any relevant details about the detainee’s medical history.³⁴⁷⁶

3.201 Corporal Carroll also contributed where necessary to the Prisoner Information Sheets for the detainees. Prisoner Information Sheets were filled out by Staff Sergeant David Gutcher, who was in charge of the Prisoner Handling Team. He noted down injuries identified by and reported to him by Corporal Carroll, during the course of his medical examination. Once the medical examinations of the detainees had been completed, Corporal Carroll signed the Prisoner Information Sheets, alongside the entries recording the results of the medical examinations, and Staff Sergeant David Gutcher countersigned.³⁴⁷⁷

3.202 In addition, the “scribe”, Sergeant Martin Lane, noted any injuries that he had seen on the Internment/Detainment Records produced for each of the detainees.³⁴⁷⁸ The notes he made on these documents represented observations that he made directly of the detainees concurrently with the medical examinations being conducted by Corporal Carroll.³⁴⁷⁹

3.203 Considering the Prisoner Medical Reports for each of the nine detainees, their Prisoner Information Sheets and the notes added to the Internment/Detainment Records, it appears that Corporal Carroll’s medical examination identified the following injuries in respect of each:

Hamzah Joudah Faraj Almalje (detainee 772)

Prisoner Medical Report (MOD043336)

- Large laceration to the left side of his head.
- Wound to the upper right leg.
- A bloody nose.

Prisoner Information Sheet (MOD024467)

- Cut to head and upper left thigh.

Internment/Detainment Record (MOD043337)

- Cut to head/Cut to left leg

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

Prisoner Medical Report (MOD043411)

- Fit. Nil injuries.

³⁴⁷⁵ Corporal Carroll (ASI016072) [94]

³⁴⁷⁶ Corporal Carroll (ASI016072-73) [95]-[96]

³⁴⁷⁷ Staff Sergeant Gutcher (ASI012973) [123]

³⁴⁷⁸ See, for example, (MOD024246)

³⁴⁷⁹ Sergeant Lane [136/79-81]

Prisoner Information Sheet (MOD024469)

- No comments.

Internment/Detainment Record (MOD043412)

- Nil

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)*Prisoner Medical Report (MOD043476)*

- Injury to right foot. GSW³⁴⁸⁰ cleaned no exit. Dressed.
- GSW right leg. Lateral aspect knee. Wound cleaned. Dressed. Graze.
- GSW upper right thigh. Cleaned. Dressed. Graze

Prisoner Information Sheet (MOD024471)

- Three gunshot grazes to right leg and foot. Dressed at same time.

Internment/Detainment Record (MOD043477)

- 3 x gunshot wounds to right leg. Wound to right foot.

Kadhim Abbas Lafta Al-Behadili (detainee 775)*Prisoner Medical Report (MOD043541)*

- Small laceration to left side of the face in [illegible] line. Wound glued.

Prisoner Information Sheet (MOD024473)

- Small cut to LH³⁴⁸¹ face (glued).

Internment/Detainment Record (MOD043542)

- Nil

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)*Prisoner Medical Report (MOD043604)*

- Fit. Nil injuries.

Prisoner Information Sheet (MOD024475)

- No comments.

Internment/Detainment Record (MOD043605)

- Nil

³⁴⁸⁰ Gun shot wound

³⁴⁸¹ Left hand

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

Prisoner Medical Report (MOD043659)

- Small graze to right knee. Cleaned.

Prisoner Information Sheet (MOD024477)

- Cut below right knee (cleaned).

Internment/Detainment Record (MOD043660)

- Graze to right knee

Hussein Fadhil Abbas Al-Behadili (detainee 778)

Prisoner Medical Report (MOD043938)

- Nil injuries. Fit.

Prisoner Information Sheet (MOD024479)

- No comments.

Internment/Detainment Record (MOD043939)

- Nil

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

Prisoner Medical Report (MOD043999)

- Nil injury.

Prisoner Information Sheet (MOD024481)

- Cleaned face.

Internment/Detainment Record (MOD044000)

- Nil

Hussein Gubari Ali Al-Lami (detainee 780)

Prisoner Medical Report (MOD044052)

- Small piece of shrapnel removed from the left side of face, just in front of ear.
- Graze to the left side of face around eye area. Nil other injuries.

Prisoner Information Sheet (MOD024483)

- No comments/Shrapnel removed left side face.

Internment/Detainment Record (MOD044053)

- Nil

3.204 In their written Closing Submissions, those representing the Iraqi Core Participants made the following submission with regard to the way in which Corporal Carroll carried out his medical examinations of the nine detainees on 14 May 2004:

*“His conduct of the initial and later medical examinations of these detainees was cursory and unprofessional. They can only have lasted a minute or so...”*³⁴⁸²

3.205 Whilst I acknowledge that the medical examinations conducted by Corporal Carroll on 14 May 2004 were brief, I do not consider that they were so cursory or otherwise inadequate as to merit a general criticism of being unprofessional. In my view, the procedure that Corporal Carroll followed was adequate to identify such evident injuries as the detainees had at the time of processing. The procedure also sought to identify any existing medical complaint that was not manifested by visible external injuries. Finally, the procedure sufficed to obtain details from the detainee himself of any pre-existing medical condition that might pose a threat to or was likely to cause an immediate deterioration in the detainee’s health.

3.206 I am satisfied that, in the case of the nine detainees that he examined on 14 May 2004, Corporal Carroll identified virtually all their evident injuries. It seems to me that such injuries as he did fail to note, as identified by those representing the Iraqi Core Participants in their written Closing Submissions at paragraphs [2167]-[2170], are all very trivial and of little, if any, significance.

3.207 However, it does seem to me that Corporal Carroll’s treatment of the injuries he found on Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), in particular the gunshot wound to his right foot, was less than satisfactory in the circumstances. During the course of his oral evidence to the Inquiry, Corporal Carroll accepted that the Prisoner Medical Report, which he had produced in respect of Ibrahim Al-Ismaeeli, clearly showed that he had identified two gunshot grazes to Ibrahim Al-Ismaeeli’s right leg and a third penetrating gunshot wound to his right foot.³⁴⁸³ The same report showed that the treatment given by Corporal Carroll was to clean and dress each of the wounds, including the wound to the foot.³⁴⁸⁴

3.208 In spite of having identified these significant injuries, during his oral evidence to the Inquiry Corporal Carroll admitted that he had not considered referring Ibrahim Al-Ismaeeli to a doctor.³⁴⁸⁵ This was less than adequate treatment, particularly of the penetrating gunshot wound to Ibrahim Al-Ismaeeli’s right foot. In my view, Ibrahim Al-Ismaeeli required in-patient treatment of this particular gunshot wound, more obviously so because there was no sign of an exit wound. I am satisfied that merely to clean and dress such a wound in such circumstances was insufficient, particularly having regard to the likely presence of a foreign body, possible infection and Ibrahim Al-Ismaeeli’s continued pain and discomfort.³⁴⁸⁶

³⁴⁸² ICP Closing Submissions (641) [2165]

³⁴⁸³ Corporal Carroll [116/72]; and see paragraph 3.203 above

³⁴⁸⁴ See paragraph 3.203 above

³⁴⁸⁵ Corporal Carroll [116/72]

³⁴⁸⁶ During oral evidence [166/187] Wing Commander Gora Pathak, a consultant orthopaedic surgeon who subsequently examined Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) commented that the cleaning and dressing of this wound was successful as infection did not subsequently develop. Whilst I have no doubt that Wing Commander Pathak gave accurate evidence and thus that no infection resulted from Corporal Carroll’s lack of further treatment, it does not alter my finding that merely cleaning and dressing the wound was insufficient at that stage, particularly since it was likely that there would have been pain and discomfort and the possibility of infection from the continued presence of a foreign body in the foot

3.209 Medical facilities were actually available at Camp Abu Naji, which could and should have been used to treat Ibrahim Al-Ismaeeli that evening. In his written Inquiry statement Captain Bailey described the layout of the medical centre at Camp Abu Naji in the following terms:

“Next to the RAP³⁴⁸⁷ was the A&E³⁴⁸⁸ department, where casualties were treated. The A&E department contained two resuscitation bays and medical supplies such as bandages and antibiotics. The resuscitation bays were used to stabilise seriously injured casualties before they were taken by helicopter to the Field Hospital at Shaibah.”³⁴⁸⁹

3.210 It is therefore clear that medical facilities did exist at Camp Abu Naji that could have been used for providing Ibrahim Al-Ismaeeli with appropriate medical treatment for his gunshot wounds, in particular the wound to his right foot. I am not aware of any reason why those facilities could not have been used to provide the necessary medical treatment for Ibrahim Al-Ismaeeli’s wounds that evening.

3.211 It seems to me likely that the reason why Ibrahim Al-Ismaeeli did not receive adequate medical treatment for his wounds on the evening of 14 May 2004 was that Corporal Carroll significantly underestimated the seriousness of Ibrahim Al-Ismaeeli’s injury to his right foot. Although his oral evidence was not wholly consistent on this point, Corporal Carroll suggested that the wound had seemed to him to have the appearance of a track across the skin rather than of a significant penetrating wound.³⁴⁹⁰

3.212 However, it is clear from the notes of the x-ray examination subsequently taken at the Field Hospital in Shaibah on 16 May 2004, that Ibrahim Al-Ismaeeli had a shrapnel wound to his right foot and an undisplaced fracture of the right second metatarsal. The x-ray also revealed that he had:

“Powdery fragments over the base of the base of the metatarsal and also occasionally scattered throughout the foot.”³⁴⁹¹

3.213 Of course, it would be unrealistic to expect Corporal Carroll to have made such a detailed diagnosis during the sort of medical examination that he was required to carry out during processing, particularly since he did not have the benefit an x-ray photograph of the wound to Ibrahim Al-Ismaeeli’s right foot. Nevertheless, it seems to me that the fact that it was obviously a penetrating gunshot wound with no exit wound should have been sufficient to make Corporal Carroll aware that Ibrahim Al-Ismaeeli was likely to need urgent medical treatment.

3.214 In the event, I am satisfied that this particular shortcoming, in the medical treatment that was afforded to Ibrahim Al-Ismaeeli on the evening of the 14 May 2004, was not the result of any deliberate decision on the part of Corporal Carroll or anybody else to withhold necessary medical treatment from Ibrahim Al-Ismaeeli. Rather, it was due to Corporal Carroll’s failure to give proper consideration to whether the wound to Ibrahim Al-Ismaeeli’s right foot was sufficiently serious as to require further immediate medical treatment.

3.215 Both Annex G to Division’s SOI 390 and 1PWRR’s SOI 207 require a “fit for detention and questioning form” to be signed at the conclusion of the medical examination.³⁴⁹² Surprisingly,

³⁴⁸⁷ Regimental Aid Post

³⁴⁸⁸ Accident and Emergency

³⁴⁸⁹ Captain Bailey (ASI015270-71) [21]

³⁴⁹⁰ Corporal Carroll [116/69/18-25]

³⁴⁹¹ Wing Commander Pathak (ASI021432) [19]; (MOD032857); (MOD032873)

³⁴⁹² See paragraphs 3.186 and 3.187 above

it appears that no such standard form existed in May 2004. That deficiency notwithstanding, I am satisfied that both SOIs required the person conducting the medical examination to confirm whether each detainee was fit for both detention and questioning.

3.216 The approach that Corporal Carroll took to this requirement on 14 May 2004 was undoubtedly haphazard and unsatisfactory. On the Prisoner Medical Reports of five of the detainees, Corporal Carroll explicitly wrote “fit”.³⁴⁹³ On the Prisoner Medical Reports of the other four, he did not.³⁴⁹⁴ In fact, all nine detainees were subsequently detained and all were subjected to tactical questioning at Camp Abu Naji that night.

3.217 I am satisfied that Corporal Carroll did not intend to draw any distinction between those detainees in respect of whom he recorded the word “fit” and those in respect of whom he did not. During his oral evidence to the Inquiry, Corporal Carroll confirmed that he had intended to write “fit” on the Prisoner Medical Reports for all the detainees. I accept that such was the case. He described it as an “oversight” on his part that he had missed the word off the other four.³⁴⁹⁵ Again I am satisfied that this was so.

3.218 Accepting, as I do, that Corporal Carroll intended to declare each of the nine detainees to be “fit” on 14 May 2004, the question remains as to what it was he was declaring them to be “fit” for. As I have already stated, the policy documents governing this procedure required the medical examiner to declare the detainees fit for both detention and questioning.

3.219 During his oral evidence to the Inquiry, Corporal Carroll gave the following answers to questions asked by Counsel to the Inquiry:

“Q. Did you believe this these men – all nine of them – were fit to be questioned?”

A. Yes.

Q. Did you believe that these men – all nine of them – were fit to be tactically questioned?”

A. I don’t know. I didn’t do their medicals for tactical questioning.

Q. If you had known that they were to be tactically questioned, would you have approached the medical in a different way?”

A. Yes. The RMO would have done it.

Q. Major Bailey? [sic] ‘Captain Bailey’?”

A. Yes.

Q. Was that part of the authorisation which he told you he had obtained from Brigade?”

A. Yes, I believe so.”³⁴⁹⁶

3.220 Although it is surprising that Corporal Carroll did not realise that, very shortly after processing, the nine detainees were to be subjected to tactical questioning at Camp Abu Naji that evening, I am not persuaded that he was being deliberately untruthful about the matter. I am satisfied that Corporal Carroll was essentially a truthful witness. He had conducted the

³⁴⁹³ (MOD043411); (MOD043604); (MOD043938); (MOD043541); (MOD043336)

³⁴⁹⁴ (MOD043475); (MOD043659); (MOD043999); (MOD044052)

³⁴⁹⁵ Corporal Carroll [116/50-51]

³⁴⁹⁶ Corporal Carroll [116/94/21]-[95/8]

medical examinations on the basis of assessing whether the detainees were fit for detention. He assumed that this meant that they were also fit for questioning in a general sense, but that he believed that Captain Kevin Bailey would have had to conduct the medical examinations, if the detainees were to be tactically questioned.

3.221 In my view, there was a general failure on the part of those in charge of the medical staff based at Camp Abu Naji at the time, to apply properly the policy requirement that detainees should be certified fit for both detention and questioning. It appears that no attempt was made by any medical examiner or anybody else, either on 14 May 2004 or at any other date, to distinguish between these two different but necessary requirements of the certification process. The result was that there was considerable uncertainty about what it was that the medical examiner was actually required to certify.

3.222 This can be clearly seen in the evidence of 1PWRR's Medical Officer, Captain Bailey. In his written Inquiry statement, Captain Bailey said this:

*"At the 2009 Judicial Review proceedings [ASI005373] I was asked: 'The detainees that were at the camp on that night [14/15 May 2004], they all had to be certified, did they not, as being fit for interrogation by doctors?' to which I replied: 'That was a normal procedure, my Lord'. I was also asked 'Was that one of the functions that you performed', to which I replied 'I performed it on occasions but my Medical Sergeant [Cpl Carroll] was also capable of performing that duty'. I then went on to describe performing 'prisoner checks, medical checks'. On reflection, I should have made clear when giving my evidence that, although it was normal procedure to carry out initial medical examinations of detainees, at no point was I declaring or certifying a detainee fit for any form of questioning which may have had an effect on their physical or mental health. As a doctor, I was not required to certify detainees as being fit for interrogation."*³⁴⁹⁷

3.223 During his oral evidence to the Inquiry, Captain Bailey said that it was understood that, by declaring the nine detainees to be fit for detention, this would have inevitably led to their being tactically questioned without further ado. In my view, this obvious failure on the part of the medical staff, to distinguish between the need to certify each detainee as fit for detention and the need to certify each as fit for questioning and then to give separate consideration to each such requirement of the certification process, as the relevant policy documents plainly demanded, was both unsatisfactory and not satisfactorily explained.

3.224 In his oral evidence to the Inquiry, Corporal Carroll said that he believed that all nine detainees were, in fact, fit to be questioned.³⁴⁹⁸ However, having regard to my foregoing conclusions, I am far from sure that such was the case on the evening of 14 May 2004, at least so far as concerns tactical questioning. In any event, it seems to me that Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was not fit to be subjected to tactical questioning until after he had received the necessary in-patient treatment for the wound to his right foot.

The photographing of the nine detainees

3.225 There is no doubt that photographs were taken of the majority of the nine detainees during their processing on 14 May 2004 at Camp Abu Naji. The Inquiry has been provided with copies of the photographs taken of seven of the nine detainees.³⁴⁹⁹ The two, in respect of

³⁴⁹⁷ Captain Bailey (ASI015295-96) [121]

³⁴⁹⁸ Corporal Carroll [116/94/18-20]

³⁴⁹⁹ These photos have been included in Dr Payne-James' report at Appendix 9

whom no photographs taken at Camp Abu Naji on 14 May 2004 have been disclosed, are Hamzah Joudah Faraj Almalje (detainee 772) and Hussein Fadhil Abbas Al-Behadili (detainee 778).³⁵⁰⁰

- 3.226** It seems to me very likely that photographs were also taken of these two detainees during their processing on 14 May 2004 at Camp Abu Naji. Thus, on the Prisoner Information Sheet for Hussein Al-Behadili (detainee 778), there is a record of his photograph having been retaken at 23:04 hours.³⁵⁰¹ Extensive searches to locate copies of these missing photographs have proved to be unsuccessful. However, I have no reason to infer that these photographs are not available for any improper reason.
- 3.227** Corporal Shaun Carroll³⁵⁰² and WO2 Darran Cornhill³⁵⁰³ both suggested that the photograph of each detainee was taken after his medical examination had been completed. I am satisfied that this is correct and, in any event, it is clear from each of the photographs that have been disclosed to the Inquiry that each detainee was fully clothed at the time his photograph was taken.

2. Allegations made by the detainees during processing

- 3.228** In addition to the matters that I have already dealt with in the preceding paragraphs of this section of the Report, a number of the detainees made specific allegations of ill-treatment during their processing at Camp Abu Naji on 14 May 2004. These specific allegations are concerned with the following four matters:

- a. the escorting procedure to and from processing;
- b. the requirement to stand during processing;
- c. assaults during processing; and
- d. the presence and use of a firearm during processing.

- 3.229** By reference to each of the four matters identified above, in the paragraphs that follow I will deal in turn with such allegations of ill-treatment as any of the nine detainees claim to have suffered during their processing at Camp Abu Naji on 14 May 2004.

The escorting procedure to and from processing

- 3.230** Two detainees made specific allegations of ill-treatment with regard to the way in which they were taken to and from processing. They were Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780).

- 3.231** In his first written Inquiry statement, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) said this:

*“On the way to and from the interrogation tent, when I was taken for this medical examination, I was continually hit on the head by the soldiers escorting me. They were forcing me to walk in a zig-zag. I feel they were trying to disorientate me. It worked. It made me dizzy.”*³⁵⁰⁴

³⁵⁰⁰ (MOD032672-76)

³⁵⁰¹ (MOD024479)

³⁵⁰² Corporal Carroll (ASI016072) [93]

³⁵⁰³ WO2 Cornhill (ASI013366) [89]

³⁵⁰⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000953) [44]

- 3.232** In his second written Inquiry statement, Atiyah Sayyid Abdulridha Al-Baidhani maintained this allegation and added the following:

*"I cannot explain the horror I felt at those beatings. I did not know if I could survive. Whenever I would be taken to or come from the interrogations I feared for my life."*³⁵⁰⁵

- 3.233** Lance Corporal Andrew Tongue and Corporal Jeremy Edgar were the two soldiers who escorted Atiyah Al-Baidhani (detainee 779) to the tent for processing on 14 May 2004.

- 3.234** In his written Inquiry statement, Lance Corporal Tongue gave a detailed account of the way in which he had escorted detainees to the processing tent on 14 May 2004, as follows:

*"When I escorted detainees to the processing tent, I would enter the holding area with the other detainee handler and one of us would go into the cubicle where the detainee was. I do not think it was big enough for both detainee handlers to enter. When I did this I would say 'wagout'³⁵⁰⁶ to the detainee and would help him stand by supporting him on the arm and under his armpit. I would then move the chair to one side and walk him out of the cubicle and the other escort would then take his other arm and we would both guide him...It was only a short distance from the detainee holding area to the tent. I would estimate that it was approximately five to ten metres."*³⁵⁰⁷

- 3.235** Somewhat later in his written Inquiry statement, Lance Corporal Tongue continued as follows:

*"I do remember that detainees were quite hesitant when walking with us and that we had to move them along (which is why I could have said to the RMP that they had to be coaxed) but they did not need to be carried – we just walked with them holding onto their arms and they had to move with us. I would describe this as being a bit like when you have to guide a drunk person somewhere. They would move with you but you have to keep a good hold of them to keep them going. We held them firmly but I do not think we hurt them when doing this – no detainee expressed any pain or discomfort. We did not drag any detainee to the tent. As detainees wore blacked-out goggles and plasticuffs we had to hold them in this way to make sure they did not stumble. At no time did I ever use excessive force in escorting a detainee and I did not see anyone else do so either."*³⁵⁰⁸

- 3.236** For his part, in his written Inquiry statement Corporal Edgar offered a slightly different description of the escorting procedure, as follows:

*"The detainee was quick marched, almost a jog, to the tent, a distance of no more than 15 feet from the entrance to the detention area. Each prisoner was always accompanied by two handlers. I believe that the reason that the detainees were moved at a quick march was to ensure that any struggling on their part was kept to a minimum as it didn't allow any time for them to react. The route from the detention area to the processing tent was very straight with no deviations. On reflection I remember being careful not to stub the toes of one of the detainees that I was handling as he did not have any footwear on."*³⁵⁰⁹

³⁵⁰⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000184-85) [92]

³⁵⁰⁶ It is believed that this word is similar to the colloquial Arabic word for "stand up"

³⁵⁰⁷ Lance Corporal Tongue (ASI015584) [71]

³⁵⁰⁸ Lance Corporal Tongue (ASI015584-85) [73]

³⁵⁰⁹ Corporal Edgar (ASI020376) [51]

3.237 During their oral evidence to the Inquiry, both Corporal Edgar and Lance Corporal Tongue denied that any detainee was moved in a zigzag fashion in order to disorientate them.³⁵¹⁰

3.238 In his Judicial Review statement, Hussein Gubari Ali Al-Lami (detainee 780) gave the following description of the manner in which he had been escorted to the processing tent at Camp Abu Naji on 14 May 2004:

“Two soldiers came and lifted me off the chair and walked me to another place. As I was pulled along I was being knocked into the walls.”³⁵¹¹

3.239 Hussein Al-Lami did not repeat this particular allegation in either of his written Inquiry statements.

3.240 Corporal Andrew Nicholls and Corporal Daniel Marshall were the two soldiers who escorted Hussein Al-Lami to the processing tent on 14 May 2004.

3.241 In his written Inquiry statement, Corporal Nicholls gave the following description of how he believed Hussein Al-Lami would have been escorted to the processing tent on 14 May 2004:

“We walked either side of him, holding onto his arms to guide him along, due to the uneven path and also the step, and the fact that he still had goggles and plasticuffs on. The path was narrow and there was not enough room for the three of us to walk shoulder to shoulder, so at least one of us (possibly both of us) had to drop slightly behind the detainee so we could fit down the path. This was how we always escorted detainees and although I do not recall escorting this detainee to the processing tent, we did nothing different on 14 May 2004. The tent was only 10 metres from the cubicle.”³⁵¹²

3.242 For his part, Corporal Marshall described the procedure that he had been trained to follow when escorting detainees and confirmed that he had followed this policy when he had escorted Hussein Al-Lami on 14 May 2004, thus:³⁵¹³

“He³⁵¹⁴ stated that when walking with detainees, we should guide them with one hand on their upper arm and the other on their lower back. Guards should also try not to speak with each other in the presence of prisoners. Prisoners should always be escorted by two soldiers; one at either side. He also stated that there should be no bullying or hitting and that the prisoners should be treated with care.”³⁵¹⁵

3.243 Hussein Al-Lami’s allegations were put to Corporal Nicholls and Corporal Marshall during their oral evidence to the Inquiry. Both denied having seen and/or having been involved in any such ill-treatment as that alleged by Hussein Al-Lami.³⁵¹⁶ I am satisfied that, in doing so, each told the truth. There is no substance in this particular allegation by Hussein Al-Lami.

3.244 Having carefully considered the evidence of the detainees and that of all the soldiers who described having escorted any of the nine detainees to the processing tent at Camp Abu Naji on 14 May 2004, I am satisfied that the manner, in which the nine detainees were escorted

³⁵¹⁰ Corporal Edgar [128/58/9-11]; Lance Corporal Tongue [134/148/16-19]

³⁵¹¹ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006637) [11]

³⁵¹² Corporal Nicholls (ASI011456) [50]

³⁵¹³ Corporal Marshall (ASI011088) [60]

³⁵¹⁴ “He” is a representative of the RMP whose name Corporal Marshall cannot now recall

³⁵¹⁵ Corporal Marshall (ASI011074) [12]

³⁵¹⁶ Corporal Nicholls [124/39]; Corporal Marshall [130/21]

to the processing tent on the evening in question, can be summarised as follows. Each of the nine detainees, including Atiyah Al-Baidhani (detainee 779) and Hussein Al-Lami (detainee 780), were moved quickly, firmly and robustly from the shower cubicles/cells (where they were being held at the time) to the tent for processing. A similar procedure was used to return them to the shower block holding cells after their processing was complete.

- 3.245** I am satisfied that the detainees were neither weaved nor zigzagged as they were being escorted to or from the processing tent on the evening in question. Nor was anything done, during the process of escorting the detainees to and from the processing tent that evening, that was deliberately designed to disorientate the detainees or to maintain the shock of capture. I accept that the firm and robust escorting style might have had the effect of disorientating the detainees somewhat, because their sight was restricted at the time, and that this would have had the effect of maintaining the shock of capture to some extent.
- 3.246** I therefore have no doubt that the allegations of assault by British soldiers, while escorting Atiyah Al-Baidhani (detainee 779) and Hussein Al-Lami (detainee 780) at Camp Abu Naji on 14/15 May 2004, as summarised above, were deliberate lies on the part of both Atiyah Al-Baidhani and Hussein Al-Lami, intended to give substance of their allegations of ill-treatment by the British military.

The requirement to stand during processing

- 3.247** Hamzah Joudah Faraj Almalje (detainee 772) alleged that he had been ill-treated because he had been to stand throughout the entire “processing” procedure on 14 May 2004, despite the fact that he had suffering from a leg injury.³⁵¹⁷
- 3.248** WO2 Darran Cornhill confirmed that all the detainees were required to stand during processing and that a chair was not generally provided for detainees. However, he also stressed in his oral evidence, that none of the detainees had indicated that they needed a seat.³⁵¹⁸ I accept WO2 Cornhill’s evidence about the matter and, therefore, that Hamzah Almalje did not actually indicate during his processing that he needed a seat. Had he done so, I think it likely that a seat would have been provided or, at least, that the request would have been properly considered.
- 3.249** I accept that Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) had a serious injury to his right foot. During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli claimed to have asked for a seat during the processing procedure.³⁵¹⁹ However, I am not persuaded that he actually did so. It seems to me likely that, if Ibrahim Al-Ismaeeli had asked to sit down, a seat would have been provided for him. Nevertheless, given the nature of his injury, it seems to me that he should have been offered a seat. However, as I have already indicated,³⁵²⁰ Corporal Carroll underestimated the extent of that injury, when he saw it during the course of his medical examination of Ibrahim Al-Ismaeeli. Accordingly, even though he should have been offered one, I am satisfied that Ibrahim Al-Ismaeeli was not deliberately denied a seat in order to exacerbate his suffering at the time.

³⁵¹⁷ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000687-88) [33]; [20/77/19-22]

³⁵¹⁸ WO2 Cornhill [115/66]

³⁵¹⁹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/58]

³⁵²⁰ See paragraphs 3.211

Assaults during processing

- 3.250** One of the nine detainees, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) alleged that he had been physically assaulted during processing on the 14 May 2004 at Camp Abu Naji. In his first written Inquiry statement, Ibrahim Al-Ismaeeli said that he had been hit on the back and on the mouth because he was moaning in pain.³⁵²¹
- 3.251** Ibrahim Al-Ismaeeli seemed to have some difficulty in distinguishing the processing procedure from his subsequent trip to the same tent for tactical questioning. Nevertheless, it appears that he maintained this particular allegation during the course of his oral evidence to the Inquiry.³⁵²²
- 3.252** In the event, I am satisfied that this allegation was quite untrue. There was nothing that lent any substance to or confirmed this allegation in the credible and reliable evidence of the large number of soldiers who were present at the time, including many of senior rank. Furthermore, this particular allegation appears to be entirely at odds with the brisk and businesslike atmosphere that undoubtedly prevailed during the processing of the nine detainees that evening.

The presence and use of a firearm during processing

- 3.253** Two of the detainees alleged that they had been threatened by a firearm during their processing at Camp Abu Naji on 14 May 2004. Ahmed Jabbar Hammood Al-Furaiji (detainee 777) also had some difficulty in distinguishing the processing procedure from tactical questioning. Nevertheless, he made the following allegation in his first written Inquiry statement, in an apparent reference to his processing on 14 May 2004 at Camp Abu Naji:

*“During the interrogation the main interrogator kept playing with the pistol. He did so in a menacing way. He did not point or fire it at me. I felt threatened by it throughout the entire interrogation.”*³⁵²³

- 3.254** Ahmed Al-Furaiji maintained this particular allegation in his second written Inquiry statement and emphasised that the pistol in question had been on the table and not in the soldier’s holster.³⁵²⁴ As I have already indicated, although he travelled to London in April 2013 in order to give oral evidence to the Inquiry, Ahmed Al-Furaiji became unwell and was only able to confirm the truth of his written Inquiry statements.³⁵²⁵ However, he gave that confirmation on oath in public in the Inquiry Hearing room. I am therefore in no doubt that Ahmed Al-Furaiji thereby deliberately and knowingly confirmed the truth of his various allegations of ill-treatment on oath.
- 3.255** For his part, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) went further. During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli said that the interrogator had fired his weapon into the floor under his (Ibrahim Al-Ismaeeli’s) leg.³⁵²⁶
- 3.256** I am entirely satisfied that no shots were fired during the processing of the nine detainees on 14 May 2004. Again, none of the soldiers present in the processing tent reported having seen or heard any such incident that evening, nor did any other military witness. Such an

³⁵²¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001070) [52]

³⁵²² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/80]; [17/58]

³⁵²³ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000883) [56]

³⁵²⁴ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000318-19); (ASI000875)

³⁵²⁵ (ASI000875); (PIL000289)

³⁵²⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/18/5-11]; [16/83/3-10]

incident would have been highly memorable, extremely dangerous and a very serious breach of military discipline. It would almost certainly have attracted an immediate reaction from soldiers both inside and outside the tent, for obvious security reasons. Yet there was no evidence from any soldier, who had been present in Camp Abu Naji that evening, that he had seen or heard any shots being fired inside the camp. I have no doubt that had any shots been fired inside Camp Abu Naji that evening, there would have been some evidence from the military witnesses that such an incident had occurred. I simply do not accept that such an event would have gone unnoticed and/or unreported.

- 3.257** In his both his written Inquiry statement and in his oral evidence to the Inquiry, WO1 Shaun Whyte said that, as the officer in charge of the processing and prisoner handling, he would carry a pistol in a holster in order “...to signify that he was in command in accordance with Middle Eastern customs.”³⁵²⁷ WO1 Whyte also believed that WO2 Cornhill adopted the same practice, when acting as the officer commanding processing and prisoner handling, which had been the case on 14 May 2004. However, I am satisfied that WO2 Whyte was mistaken about that because, in the course of his oral evidence to the Inquiry, WO2 Cornhill confirmed that he did not have a pistol with him in the processing tent that evening at all.³⁵²⁸ I accept WO2 Cornhill’s evidence to that effect and have no doubt that he did not have a pistol with him at any stage during the processing of the nine detainees on 14 May 2004 at Camp Abu Naji.
- 3.258** Accordingly, I have no doubt that these allegations by Ahmed Al-Furaiji (detainee 777) and Ibrahim Al-Ismaeeli (detainee 774) were completely untrue. In my view, in putting forward these particular allegations, each of them told calculated and deliberate lies and, what is more, they did so on oath.

³⁵²⁷ WO1 Whyte (ASI015967) [52]; [106/86]

³⁵²⁸ WO2 Cornhill [115/51-53]

CHAPTER 3: THE TACTICAL QUESTIONING OF THE NINE DETAINEES AT CAMP ABU NAJI ON THE NIGHT OF 14/15 MAY 2004

3.259 During the period in which they were detained at Camp Abu Naji, each of the nine detainees was subjected to a process known as Tactical Questioning. The purpose of tactical questioning was, at the time, set out at paragraph 1 of Annex G to Division's SOI³⁵²⁹ 390, in the following terms:

*"The aim of Tactical Questioning (TQ) is to extract time sensitive tactical intelligence from an internee or to establish if an internee requires interrogation in the Divisional Temporary Detention Facility (DTDF)."*³⁵³⁰

3.260 The times at which each of the nine detainees was tactically questioned and the duration of each session can be ascertained from the Prisoner Information Sheets and the reports produced of their tactical questioning. The recorded timings were as follows:

Hamzah Joudah Faraj Almalje (detainee 772)

Prisoner Information Sheet (MOD024467) – 00:10 hours – 00:20 hours

Tactical Questioning Report (MOD040955) – 23:59 hours – 00:15 hours

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

Prisoner Information Sheet (MOD024469) – 00:22 hours – 00:33 hours

Tactical Questioning Report (MOD040958) – 00:20 hours – 00:30 hours

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

Prisoner Information Sheet (MOD024471) – 00:35 hours – 00:45 hours

Tactical Questioning Report (MOD040961) – 00:32 hours – 00:49 hours

Kadhim Abbas Lafta Al-Behadili (detainee 775)

Prisoner Information Sheet (MOD024473) – 00:50 hours – 01:03 hours

Tactical Questioning Report (MOD040964) – 00:49 hours – 01:01 hours

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

Prisoner Information Sheet (MOD024475) – 01:07 hours – 01:17 hours

³⁵²⁹ Standard Operating Instruction

³⁵³⁰ (MOD048401)

Tactical Questioning Report (MOD040967) – 01:07 hours – 01:15 hours

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

Prisoner Information Sheet (MOD024477) – 01:20 hours – 01:28 hours

Tactical Questioning Report (MOD040595) – 01:18 hours – 01:28 hours

Hussein Fadhil Abbas Al-Behadili (detainee 778)

Prisoner Information Sheet (MOD024479) – 01:31 hours – 01:45 hours

Tactical Questioning Report (MOD046238) – 01:18 hours – 01:28 hours³⁵³¹

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

Prisoner Information Sheet (MOD024481) – 01:46 hours – 01:59 hours

Tactical Questioning Report (MOD040598) – 01:46 hours – 01:57 hours

Hussein Gubari Ali Al-Lami (detainee 780)

Prisoner Information Sheet (MOD024483) – 02:02 hours – 02:16 hours

Tactical Questioning Report (MOD040601) – 02:00 hours – 02:15 hours

- 3.261** The tactical questioning of the nine detainees at Camp Abu Naji, on the night of 14-15 May 2004, was conducted by a soldier who has been allocated the cipher M004. Having regard to the length and detail of this Report's consideration of his tactical questioning of the nine detainees that night, in the paragraphs that follow I have set out some introductory details about M004 and how he came to be the one who actually carried out the tactical questioning of these particular detainees.
- 3.262** M004 joined the army in 1983. At the start of his career he was involved in infantry operations. However, between 1997 and 2008, he became involved in various operational military intelligence roles.³⁵³² During this period, he deployed to Iraq twice. The first such deployment was between August 2003 and November 2003. The second deployment, and the deployment relevant to the matters discussed in this Report, was between 20 April 2004 and 7 July 2004.³⁵³³
- 3.263** M004 deployed to Iraq on the second occasion as part of the Field HUMINT³⁵³⁴ Team ("FHT") based at Camp Abu Naji.³⁵³⁵ He held the rank of Colour Sergeant and reported directly to the Officer Commanding FHT, an individual given the cipher M001 by this Inquiry.³⁵³⁶
- 3.264** During this particular tour, M001 volunteered M004 to assist the 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") Battlegroup based at Camp Abu Naji with the tactical

³⁵³¹ These timings must be an error, apparently a mistaken transposition of the times during which Ahmed Jabbar Hammood Al-Furaiji (detainee 777) was tactically questioned

³⁵³² M004 (ASI022254) [4]

³⁵³³ M004 (ASI022254) [5]

³⁵³⁴ HUMINT – 'Human Intelligence'

³⁵³⁵ M004 (ASI022254) [7]

³⁵³⁶ M004 (ASI022255) [7]–[10]

questioning of captured prisoners. When performing this task, M004 reported to the 1PWRR Intelligence Officer, Captain James Rands.³⁵³⁷

- 3.265** Immediately prior to his second deployment to Iraq, M004 undertook a course in Prisoner Handling and Tactical Questioning (the “PH and TQ” course), conducted by F Branch at Chicksands. This was a five day course and, having completed it, M004 was considered to be qualified to undertake tactical questioning.³⁵³⁸

1. The training received by M004

- 3.266** In his Inquiry statement, M004 provided considerable detail about the manner in which he had been trained.

- 3.267** First, he described having been taught a range of different questioning techniques, including the use of open, closed and compound questions. These were designed to teach tactical questioners to extract the basic information required for building an intelligence picture.³⁵³⁹

- 3.268** Second, M004 described having been taught how to use a method known as the “tree of knowledge” and time lines in order to develop lines of questioning.³⁵⁴⁰

- 3.269** Third, M004 described the training he had received on questioning techniques, as follows:

“The questioning techniques included shouting and screaming (which is also known as ‘harsh’), showing empathy and befriending (‘friendly’), firm and logical questioning without emotion (‘firm/logical’) and good cop/bad cop (also known as ‘Mutt and Jeff’). One exercise required me to go into a room and shout and scream at a teddy bear (who was playing the role of a detainee) and another to go into the room and be empathetic and attempt to befriend the detainee. I was given briefing instructions before entering the room and I understood that the purpose of these exercises was to establish whether I was capable or [sic] shouting at someone and empathising with them.”³⁵⁴¹

- 3.270** Fourth, M004 described how he had been taught the “...bridge, carrot, stick (‘BCS’) approach”, in the following terms:

“In practice this translates to giving a detainee a way out of his detention (the bridge), suggesting how the detainee can obtain this (the carrot) and the outcome of not taking this option (the stick). An example of this approach is recorded in the reports that have been disclosed to me by the Inquiry; see for example, MOD040956 where it states, ‘the subject was given the BCS. If he tells us all he knows we can try to keep him out of prison and repatriate him to his family quicker’.”³⁵⁴²

- 3.271** Fifth, M004 described a “wheat and chaff exercise”, the aim of which is to identify any individual with high-quality intelligence from a number of detained ill-informed combatants.³⁵⁴³

³⁵³⁷ M004 (ASI022255-56) [11]

³⁵³⁸ M004 (ASI022256) [12]–[13]

³⁵³⁹ M004 (ASI022256-57) [14]

³⁵⁴⁰ Ibid.

³⁵⁴¹ M004 (ASI022257) [15]

³⁵⁴² M004 (ASI022257) [16]

³⁵⁴³ M004 (ASI022257) [17]

- 3.272** Sixth, M004 recalled that there had been a brief discussion of the relevant Geneva Conventions and STANAGs (Standard NATO agreements). According to M004, due to the short duration of the course, participants were expected to read these documents in their own time. However, he recalled, that he had been taught to “...*treat all prisoners as we would like to be treated ourselves if we were captured.*”³⁵⁴⁴
- 3.273** Seventh, M004 recalled having been specifically taught that he could not physically touch a detainee at any stage during the process of tactical questioning. He recalled that guards were permitted to touch detainees while escorting them and also that an exception was made when it was necessary to stop a detainee from causing harm to himself or the soldiers nearby. In such circumstances, only enough force as was necessary to counter that possible harm was permitted. According to M004, he was taught that he could stand as close as he wished to a detainee during a tactical questioning session. M004 explained that this was to enable him to get into the “*personal space*” of the detainee being questioned, so as to emphasise that the questioner was in complete control of the situation.³⁵⁴⁵
- 3.274** Eighth and finally, M004 described having been taught a technique known as “*dislocation of expectation*” or “*conditioning*”. In order to illustrate what he meant, M004 gave an example of a blindfolded detainee being left in the centre of the room and the tactical questioner then tapping on the desk with his fingers, whilst whistling or making loud breathing sounds. The result would be that the detainee did not know what to expect was going to happen to him. M004 understood that the conditioning process continued from the point of capture right up to the time that a detainee was actually tactically questioned.³⁵⁴⁶
- 3.275** The Inquiry also heard evidence from a witness who was given the cipher, M033. M033 was a former trainer in tactical questioning. He gave evidence about the sort of training that a tactical questioner in the position of M004 could be expected to have received. M033 set out five key principles of that training.
- 3.276** The first key principle was that the use of physical violence against a detainee was prohibited.³⁵⁴⁷
- 3.277** The second key principle was that physical contact between the questioner and the detainee was not permitted, except in certain limited circumstances, which M033 described as follows:
- “The Inquiry has asked me about the physical contact permitted between the questioner and the detainee. The only physical contact permitted is that necessary to conduct a pat down search if this has not already been done. Also, if during the interrogation, a detainee becomes compliant (meaning that they are willing to provide information), a questioner may use an empathetic touch to consolidate the rapport-building process. Additionally, physical contact may be made in exceptional circumstances, such as in self defence. Where self-defence is necessary, no more force should be used than is necessary to bring the detainee under control. Physical contact may also be necessary if a prisoner becomes physically unwell or if there is a medical issue that needs to be attended to.”*³⁵⁴⁸
- 3.278** It is apparent that the permissible technique of invading a detainee’s personal space, so as to make him feel uncomfortable, might bring the tactical questioner close to acting in a

³⁵⁴⁴ M004 (ASI022258) [20]

³⁵⁴⁵ M004 (ASI022259) [21]–[22]

³⁵⁴⁶ M004 (ASI022259-60) [23]–[24]

³⁵⁴⁷ M033 (ASI024576) [27]; [161/146]

³⁵⁴⁸ M033 (ASI024580) [38]

manner that transgressed this second key principle.³⁵⁴⁹ Thus, during his oral evidence to the Inquiry, M033 was specifically asked whether blowing on the back of a detainee's neck was permissible. In reply, M033 said that it was not something that tactical questioners were ever trained to do and he considered it somewhat odd, but he knew of no reason why such a practice might be prohibited.³⁵⁵⁰

3.279 The third key principle was that threats to detainees were not permitted. In his written Inquiry statement, M033 gave the following detailed evidence of the prohibition on threatening detainees:

*"Students were taught that threats to, or any violence directed at, the CPERS³⁵⁵¹ was not permitted. If during the practical exercises students misused or misapplied the approaches taught to them, for example by using threatening behaviour or throwing chairs around the room, the fact that this was unacceptable was highlighted to them. All of these exercises were observed by instructors on Close [sic] Circuit Television ('CCTV') and recorded on video so that the recording could be used to highlight areas for improvement to the students."*³⁵⁵²

3.280 Two aspects of this key principle require more detailed consideration.

3.281 First, with regard to M033's example of a student throwing chairs around the room, there is a marked contrast between M033's characterisation of that behaviour as unacceptable and/or threatening behaviour by the student/trainee, that required to be highlighted as such by the "PH and TQ" course instructors, and M004's evidence about his understanding of the training he had received with regard to such behaviour. Thus, in the written statement that he gave to the Royal Military Police ("RMP") in November 2008, M004 said this:

*"I did not deem this excessive or out of my remit as a TQer,³⁵⁵³ as I actually remember that one of the students on my PH TQ Course in one of his scenarios threw a chair in the de-briefing cell in front of his subject across the room and that was deemed perfectly fine by the DS [Directing Staff]."*³⁵⁵⁴

3.282 I have no doubt that, during his training at Chicksands, M004 did gain the impression that to throw a chair across the room in the presence of the subject was acceptable behaviour on the part of the tactical questioner and that it did not constitute an unacceptable threat to the subject. I also have no doubt that this impression was the exact opposite of what the course instructors should have ensured that the students learnt from such an example. I entirely accept M033's evidence that the course instructors should have highlighted this as an example of unacceptable and/or threatening behaviour on the part of the student tactical questioner. Unfortunately, the lesson learnt by M004 was completely the wrong one. The fact that he was left with the clear impression that this was acceptable behaviour by a tactical questioner, and that he went on to model at least some of his own behaviour accordingly, strongly suggests that the training he received was not as carefully and clearly conducted as it should have been.

³⁵⁴⁹ M033 [161/18]

³⁵⁵⁰ M033 [161/74]; [161/135-136]

³⁵⁵¹ Captured Persons

³⁵⁵² M033 (ASI024576) [27]

³⁵⁵³ I.e. to hit the table very hard once with a metal tent peg, soon after the detainee had been brought into the tent and whilst he was still blindfolded

³⁵⁵⁴ M004 (MOD002068)

- 3.283** Second, the question as to what type of conduct was considered to constitute an impermissible threat to a detainee requires further examination. During the course of both his written and oral evidence to the Inquiry, M033 gave a number of hypothetical examples of various types of behaviour or conduct by a questioner during a notional tactical questioning session. In respect of each such example, M033 indicated whether he considered it to constitute a threat to the detainee and was therefore an unacceptable transgression of the third key principle that he had identified.
- 3.284** Thus, M033 expressed the view that throwing any object at a detainee would be unacceptable, but that throwing a paper cup onto the floor in frustration would be acceptable.³⁵⁵⁵ Similarly, M033 stated that the use of insulting language was acceptable and that a statement that might be perceived as threatening was also permissible, provided it was actually a statement of fact and not used as a threat.³⁵⁵⁶
- 3.285** For my part, I found it impossible to identify any clear or logical basis for the various distinctions drawn by M033 in his evidence, when determining whether something done or said constituted an unacceptable threat or (in the case of something said) merely a statement of fact. Whilst these distinctions were not investigated in evidence, I am concerned about how any student could be sure about what was and what was not permitted, with regard to this third key principle, beyond the specific examples actually presented to him or her during training.
- 3.286** The fourth key principle of the tactical questioning training, as set out in the evidence of M033, was that the use of stress positions and the deprivation of food and sleep were all prohibited.³⁵⁵⁷ M033 clarified the scope of the prohibition on sleep deprivation as meaning a requirement that each detainee should be allowed eight hours' sleep during a 24 hour period, of which four hours had to be consecutive. However, according to M033, there was no requirement that a detainee had to be allowed to sleep before being tactically questioned.³⁵⁵⁸
- 3.287** The fifth key principle identified by M033 was that the tactical questioner was permitted to have the subject brought into a session blindfolded and then for steps to be taken in relation to that detainee in order to arouse in him a sense of unease.³⁵⁵⁹ M033 also confirmed that it was permissible, as part of this process, for the tactical questioner to use loud noises to create a short, sharp shock in order to focus the subject's attention and to make him aware of his predicament.³⁵⁶⁰ He explained that, although it was permissible to shout at the subject from behind whilst doing so, it was not permissible to shout directly into the subject's ear.³⁵⁶¹
- 3.288** In the statement that he made to the RMP in September 2008, M033 also stated that "*scare tactics*" were impermissible.³⁵⁶² It therefore seems that, at least as far as M033 was concerned, the training of tactical questioners drew a distinction between a "*short, sharp shock*" and a "*scare tactic*". However, during the course of his oral evidence to the Inquiry, M033 said this: "*I think it would be extremely difficult to identify a dividing line between those two.*"³⁵⁶³

³⁵⁵⁵ M033 (ASI024584) [46]

³⁵⁵⁶ M033 [161/36]; [161/24]

³⁵⁵⁷ M033 [161/27]

³⁵⁵⁸ M033 [161/146/22]-[147/4]

³⁵⁵⁹ M033 [161/135]

³⁵⁶⁰ M033 [161/136/3-9]

³⁵⁶¹ M033 [161/46/19]-[47/3]

³⁵⁶² M033 (MOD021641)

³⁵⁶³ M033 [161/44/22-23]

- 3.289** I am quite sure that M033 was right about that. Again, whilst I accept that I have not actually seen precisely how M004 was trained, I have great difficulty understanding how, in practice, a student in his position could reasonably be expected to understand properly the distinction between a permissible short, sharp shock and an impermissible scare tactic – if there is one, which I doubt.
- 3.290** Apart from the specific matters to which I have drawn attention above, there was much common ground in the evidence of M033 and M004 about the training actually given to student tactical questioners. I have no doubt that the evidence of both M033 and M004 was truthful. I am therefore satisfied that the training M004 actually received in order to become qualified as a tactical questioner was as summarised in the foregoing paragraphs of this Report.

2. The admitted conduct of M004

- 3.291** In his written Inquiry statement, M004 said that he could not specifically recall the tactical questioning sessions that he conducted in respect of the nine detainees captured on 14 May 2004. Nevertheless, he had no reason to believe that there had been any departure from the procedure that he normally followed.³⁵⁶⁴ In the statement that M004 gave to the Royal Military Police (“RMP”) in November 2008 and in both his written and oral evidence to the Inquiry, M004 gave a very detailed and candid account of the normal procedure that he followed when conducting tactical questioning sessions. M004 also said that he had conducted tactical questioning sessions for about six other detainees prior to 14 May 2004.³⁵⁶⁵
- 3.292** M004 explained that he was normally informed by the Officer Commanding the Field HUMINT Team when the Battalion had captured a prisoner or prisoners and his assistance was required. M004 would then go to the Battalion Headquarters, where he would receive a briefing from the Intelligence Officer (Captain James Rands) about what had happened and what to expect.³⁵⁶⁶
- 3.293** M004 said that he would then contact the RMP. They would provide him with further detail about the circumstances of the arrest and about any items found in the possession of the detainee/s, when arrested, which might be relevant to his tactical questioning.³⁵⁶⁷
- 3.294** M004 would also consider whether anything of relevance to his tactical questioning had come to light during the processing of the detainee/s in question. In his written Inquiry statement, M004 gave examples of this sort of information, such as whether a detainee did not like noise or that he had become distressed when talking about his family.³⁵⁶⁸ During his oral evidence to the Inquiry, M004 seemed to suggest that he would not necessarily have any real opportunity to make use of this sort of information himself, but that he would take steps to pass the information in question on to the Joint Forward Interrogation Team (“JFIT”).³⁵⁶⁹
- 3.295** M004 recognised there was a requirement for detainees to be medically examined prior to the commencement of a tactical questioning session. He confirmed that he relied upon

³⁵⁶⁴ M004 (ASI022275) [74]

³⁵⁶⁵ M004 (ASI022265) [41]

³⁵⁶⁶ M004 (ASI022265) [42]

³⁵⁶⁷ M004 (ASI022265) [43]

³⁵⁶⁸ M004 (ASI022266) [45]

³⁵⁶⁹ M004 [127/88]

the Adjutant General's Corps Sergeant, Sergeant Martin Lane, for confirmation that this examination had been carried out.³⁵⁷⁰

- 3.296** M004 then described how members of the guard force would bring the detainee, who was to be tactically questioned, from his individual shower cubicle in the prisoner holding area to the tent in which the tactical questioning session would take place, as follows:

*"There would normally be two guards who would escort the detainee into the tent. This would be done by each guard holding one of the detainees' [sic] arms at the elbow. It was important at this stage that the dislocation of expectation was maintained and therefore the guards would not generally speak to the detainee. The guards would leave the detainee standing in front of me on the other side of the desk, leave the tent and close the tent flap behind them."*³⁵⁷¹

- 3.297** Once the guards had removed themselves and gone outside, the detainee would be left standing blindfolded in the tent in silence for a short time. Apart from the detainee, only M004 and the interpreter would be present.

- 3.298** On 14 May 2004, the interpreter for the first five tactical questioning sessions was an individual who was given the cipher M013 by the Inquiry. M013 was therefore the interpreter for the tactical questioning sessions of Hamzah Joudah Faraj Almalje (detainee 772), 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).

- 3.299** It had been intended that M013 would act as the interpreter for the tactical questioning sessions of all nine detainees on 14/15 May 2004. However, after having completed five such sessions, M013 became "*mentally exhausted*" and was unable to complete the remainder.³⁵⁷² In the event, the Inquiry has been unable to establish who actually acted as the interpreter for the tactical questioning of Ahmed Jabbar Hammood Al-Furaiji (detainee 777), Hussein Fadhil Abbas Al-Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780), despite having made considerable effort to do so.

- 3.300** M004 described how, at the very beginning of the tactical questioning session, he would break the silence by sometimes drumming his fingers on the table and/or by whistling. He would then approach the detainee in silence and walk around him, blowing on the back of his neck whilst doing so. At this stage, the detainee was still blindfolded and handcuffed. In his oral evidence to the Inquiry, M004 described what he did at this very early stage of the session, in the following terms:

*"I would always walk round, always blow on the back of the neck, sometimes drum fingers, sometimes whistle."*³⁵⁷³

- 3.301** In his written Inquiry statement, M004 then went on to say what he did next, as follows:

"After I had walked around the detainee and when there was no other noise, I would hit the tent peg on the table in the centre of the tent to startle the detainee and ensure that he was fully focussed [sic] on the questions that were about to be asked. I used

³⁵⁷⁰ M004 (ASI022266) [46]

³⁵⁷¹ M004 (ASI022267) [48]

³⁵⁷² M013 [137/25/13-19]

³⁵⁷³ M004 [127/52/9-11]

this technique at the start of (I would estimate) nine out of ten tactical questioning sessions as I found it to be particularly useful in getting detainees to concentrate on the questioning.”³⁵⁷⁴

3.302 During his oral evidence to the Inquiry, the interpreter, M013, described his own reaction to M004’s use of the tent peg in this manner, as follows:

“Q. You describe it as a tent peg in your paragraph 73, top of page 24, [ASI023641].

A. Tent peg, yes.

Q. Did any of the other TQ’ers use an implement like that?

A. Not that I can remember, no.

Q. And he used to bang it on the table, didn’t he?

A. Correct.

Q. And did he warn you before he did it?

A. He would tell me if – yes. Before we went in, you know, “I’m going to shout, bang loud and make a lot of noise”, yes.

Q. Did you see the detainee flinch or jump when that happened?

A. As did I, yes.

Q. As did you, both of you flinched and jumped?

A. Yes, yes.

Q. Why did you flinch?

A. It’s a very sharp, loud noise.

Q. Yes.

A. It’s a natural reaction.

Q. Even though you knew it was coming, it still shocked you?

A. I didn’t know at exactly what point he would decide to just pick it up and bang it. It was – it was generally, usually, a shock, yes. It made me jump.”³⁵⁷⁵

3.303 Next, M004 would stand directly in front of the detainee in question and remove his plasticuffs. Having done so, he would rub the detainee’s wrists for a few seconds, in case the plasticuffs had been applied too tightly and had thus affected the detainee’s circulation. M004 would then remove the detainee’s blindfold.³⁵⁷⁶ Once the detainee’s plasticuffs and blindfold had been removed, he was given a chair to sit on.³⁵⁷⁷

³⁵⁷⁴ M004 (ASI022269) [53]

³⁵⁷⁵ M013 [137/43/9]-[44/8]

³⁵⁷⁶ M004 (ASI022269) [54]

³⁵⁷⁷ M004 (ASI022269) [55]

- 3.304** From this position, M004 would begin to question the detainee. In doing so, he utilised the various questioning techniques that he had been taught during training. In his written Inquiry statement, he described how he would go about this, in the following terms:

“The technique that I would adopt would depend on how effective I was at getting information from the detainee. If for example, one technique worked and the detainee was content to talk to me, I would not need to try another. However, if one technique was not working, I might try another technique to see if it had a different effect. Very occasionally, if the detainee was not willing to talk, or I felt that I was not getting his full attention, I would again use the technique of striking a tent peg on a table for a second time. Before doing so I would gesture to the interpreter that I was planning to do this, both so that the interpreter did not get a surprise and so he could observe the reaction from the detainee. I would then stand up from my chair and walk around the detainee again while the interpreter instructed the detainee to keep looking forward (rather than watching me walk around). I did not even look at my interpreter as I walked. When I reached the table at the back of the tent, behind the detainee, I would hit the tent peg loudly on it. Hitting the table with the tent peg was, as I understood it, the maximum limit of what I was permitted to do in questioning sessions to manage the dislocation of expectation. I would not use the tent peg on more than two occasions in the one session however as it would lose its effect.”³⁵⁷⁸

- 3.305** In his written Inquiry statement, the interpreter, M013, described how M004’s conduct of his tactical questioning sessions had appeared to him, as follows:

“M004 conducted the sessions with a mix of verbal and non-verbal communication. I recall he would stand then sit and sometimes walk around. At times he would get up close to the detainee, by which I mean he would decrease the space between himself and the detainee and stand very close to him, including moving his face close, although I never saw him touch a detainee. During the interview M004 had a wooden tent peg (which was about a foot long, of the type used to pin a guy rope to the ground) that he might bang on the table, but again I never saw him touch anyone with it. Other than removing the detainees’ goggles and plasticuffs I never saw M004 have any physical contact with the detainees. In my RMP statement I indicated that detainees were allowed to sit if they were co-operative; however I cannot now recall if they sat or stood during the sessions. I remained seated throughout the session.”³⁵⁷⁹

- 3.306** During his oral evidence to the Inquiry, M013 suggested that other tactical questioners for whom he had acted as interpreter were calmer than M004. He also remembered M004 having told detainees: “if you don’t cooperate, you will go away for a very long time; I don’t know when you will see your family again.” M013 said that he could not recall any other tactical questioners who made statements such as that. M013 also recalled how M004 had been the only tactical questioner who used to bang on the table, blow on the necks of the detainees and shout over their shoulders and in their ear.³⁵⁸⁰

- 3.307** M004 described all detainees as being “extremely distressed” when they first arrived in the tent for their tactical questioning sessions. He also accepted that some detainees, particularly the younger ones, had remained distressed throughout the entire session.³⁵⁸¹

³⁵⁷⁸ M004 (ASI022269-70) [56]

³⁵⁷⁹ M013 (ASI023640-41) [73]

³⁵⁸⁰ M013 [137/41-43]

³⁵⁸¹ M004 [127/180-181]

- 3.308** In his written Inquiry statement, the interpreter, M013, was able to recall the substance of some of the questions that the nine detainees were asked on the 14/15 May 2004, as follows:

“The questions that night/morning concentrated on gathering information about the contact and how it was organised. The detainees were asked questions about the call to arms, in particular where the call came from. The detainees were also asked how they got into the contact. They were asked for names of others involved, their own involvement and about their capture. They were also probed about their previous military history.”³⁵⁸²

- 3.309** For his part, M004 had a fairly limited recollection of the substance of his questioning. In his written Inquiry statement, he said this:

“I recall that I was merely trying to find out who within the community had issued the order and was the brains behind the operation to attack the coalition forces. My overall impression of the nine detainees was they seemed shocked and disorientated. They cooperated in their tactical questioning sessions but they could provide very little information of intelligence value.”³⁵⁸³

- 3.310** At the conclusion of each tactical questioning session, M004 would ask the detainee whether he had anything further that he wished to say. Once M004 was sure that there was no further information to be obtained, he replaced the detainee’s plasticuffs and blindfold and then called for a guard to take the detainee back to the prisoner holding area.³⁵⁸⁴

- 3.311** M004 took notes during the course of the each tactical questioning session. These notes were used to produce reports of the tactical questioning sessions. Once the reports were written, M004 either shredded or burned any notes that he had taken.³⁵⁸⁵ M004’s reports of his tactical questioning of the nine detainees on the 14/15 May 2004 have all been disclosed to the Inquiry.³⁵⁸⁶

- 3.312** M004 described how he had written his reports of the tactical questioning sessions on the Field HUMINT Team (“FHT”) computer, had saved them onto a secure memory stick and had then handed the memory stick to Captain Rands.³⁵⁸⁷

3. The nine detainees’ perception of the Tactical Questioning carried out at Camp Abu Naji on 14/15 May 2004

- 3.313** As I have already indicated,³⁵⁸⁸ many of the nine detainees had difficulty in distinguishing between the trips they made to the tent for processing and those that were for the purpose of tactical questioning. Inevitably, this sometimes made it rather difficult to identify a particular detainee’s perception of the tactical questioning to which he had been subjected that night. In the paragraphs that follow, I have summarised as best I can those parts of the detainees’ evidence that appear to refer to their tactical questioning sessions at Camp Abu Naji on 14/15 May 2004. Later in the Chapter, I will deal with specific allegations of ill-treatment

³⁵⁸² M013 (ASI023640) [73]

³⁵⁸³ M004 (ASI022278) [82]

³⁵⁸⁴ M004 (ASI022271) [59]

³⁵⁸⁵ M004 (ASI022272) [62]

³⁵⁸⁶ MOD040955; MOD040958; MOD040961; MOD040964; MOD040967; MOD040595; MOD046238; MOD040598; MOD040601

³⁵⁸⁷ M004 (ASI022272) [63]

³⁵⁸⁸ See paras 3.251 and 3.255

made by the detainees that relate to their tactical questioning and which go further than M004's own admitted conduct.

Hamzah Joudah Faraj Almalje (detainee 772)

3.314 In his Inquiry statement, Hamzah Joudah Faraj Almalje (detainee 772) gave the following account of what he described as several different interrogations at Camp Abu Naji:

*"The interrogator stood up and screamed at me. He was about a metre away. He began shouting continually and at first I was not able to say anything. He was shouting something like 'why did you do this', 'we helped you get rid of Saddam Hussein' and 'what did we do to you'. At some stage he was sitting down and once or twice banged the table hard with a piece of wood but I cannot remember how often this occurred. He did not hit me or point the stick at me but he made comments like 'tell us who sent you and what was your purpose'. He also said something like 'tell us or you'll go to a British prison or we will kill you'. I was very scared and expected to be attacked or killed."*³⁵⁸⁹

3.315 During his oral evidence to the Inquiry, Hamzah Almalje added the following:

*"I was afraid. I expected the worst to happen, to kill us, to kill me. Imprison us, leave us in prison. We expected everything to happen."*³⁵⁹⁰

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.316 In his first written Inquiry statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) gave the following account:

*"The interrogator was shouting at me and telling me I was lying. He was holding the tent peg as if to hit me. It was close to me, he was angry and I was scared he was going to hit me. I thought he was going to torture me. I was not hit at any time during this interrogation."*³⁵⁹¹

3.317 Mahdi Al-Behadili elaborated upon this account in his second written Inquiry statement, as follows:

*"He [M004] was seated mostly but when he got angry, he would come up to me and circle me. He had a metal rod in his hand which I thought he might hit me with although he did not. He did not lift the rod to me but the impression that he gave was that he would hit me at any moment if I did not cooperate. I was cowering in front of him. The closest he got to me was about a metre away. He did not insult me and did not threaten me explicitly. It was his aggressive manner and the way he questioned me that made me feel nervous and afraid."*³⁵⁹²

³⁵⁸⁹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000688) [34]

³⁵⁹⁰ Hamzah Joudah Faraj Almalje (detainee 772) [20/79/16-18]

³⁵⁹¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [59]

³⁵⁹² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000787) [44]

3.318 Mahdi Al-Behadili repeated the substance of this perception of his tactical questioning session in his oral evidence to the Inquiry.³⁵⁹³

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.319 In his Judicial Review statement, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) gave the following account of his perception of the tactical questioning session:

*“The interrogator then started swearing at me, shouting and was very angry. It felt like my day of judgment. The pain, worry and fear I had was intense and I was worried for my family at home. I was so angry with what had happened to me...I thought I would be taken away to be executed right away.”*³⁵⁹⁴

3.320 It was not entirely clear from Ibrahim Al-Ismaeeli’s oral evidence to the Inquiry whether he continued to maintain what he had said in his Judicial Review statement. However, he did not explicitly retract it.³⁵⁹⁵

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.321 Kadhim Abbas Lafta Al-Behadili’s (detainee 775) perception of his tactical questioning session was succinctly summarised in his written Inquiry statement in the following words: *“I felt I was psychologically and physically tortured.”*³⁵⁹⁶

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.322 To some extent, during the course of both his written and oral evidence to the Inquiry about being tactical questioned at Camp Abu Naji on 14/15 May 2004, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) gave the impression that M004’s approach to questioning had not unduly perturbed him. His perception seems to be best summed up in the following answer that he gave during his oral evidence to the Inquiry:

*“As I told you, he was angry. He was – if he could – probably he could hit me in that time if he wanted. No one can tell him ‘no’. But if he can stand up from his desk and turn to my face – okay, like our discussion now, we are doing something nice, a question and answer. But if somebody wanted to be angry and stand there and do something, probably he can do. At that time I was imagining that probably he will hit me, he will force me to say something I can – I don’t say it.”*³⁵⁹⁷

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.323 In his first written Inquiry statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) described how his processing and tactical questioning had both occurred during a single trip to the processing tent. In that statement, Ahmed Al-Furaiji said this:

³⁵⁹³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/21]

³⁵⁹⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013955) [21]

³⁵⁹⁵ See, for example, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/21-22]

³⁵⁹⁶ Kadhim Abbas Lafta Al-Behadili’s (detainee 775) (PIL000727) [44]

³⁵⁹⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/52/24]-[53/8]

*"I was told that if I did not confess I would be killed or spend the rest of my life in prison. I was terrified but had nothing to confess to."*³⁵⁹⁸

- 3.324** In his second written Inquiry statement, Ahmed Al-Furaiji said that his tactical questioning session had been *"like a psychological war."*³⁵⁹⁹

Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.325** In his second written Inquiry statement, Hussein Fadhil Abbas Al-Behadili (detainee 778) summarised his perception of his tactical questioning session in the following terms:

*"I was not hit in the interrogation at Camp Abu Naji, but I was shouted at repeatedly. The persons shouting at me were close to me, but I do not know how near exactly as I was blindfolded. I was fearful in this situation as I was unsure what they were going to do to me. The interrogator kept calling me a liar, when he asked me about people in Majar Al-Kabir and I told him that I didn't know them. The interrogation was a very frightening experience. I didn't know what would happen to me."*³⁶⁰⁰

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 3.326** Atiyah Sayyid Abdulridha Al-Baidhani's (detainee 779) perception of the tactical questioning session is encapsulated in the following comment that he made in his second written Inquiry statement, namely that: *"...I just wanted to get out as quickly as I could. I wanted to get out alive."*³⁶⁰¹

Hussein Gubari Ali Al-Lami (detainee 780)

- 3.327** In his second written Inquiry statement, Hussein Gubari Ali Al-Lami (detainee 780) gave an account of his tactical questioning session that included allegations which went much further than the conduct admitted by M004. However, Hussein Al-Lami did describe how he had felt during his tactical questioning, as follows:

*"At this moment, I was sure I was going to be executed. I began to scream and shout. I was screaming at a very high volume that I was innocent and that I did not know why they had brought me here. The interpreter started saying I needed to be calm and that I was innocent and they would release me. I was allowed to leave shortly afterwards. I cannot say how long this interrogation lasted as the whole experience was so traumatic."*³⁶⁰²

- 3.328** As it seems to me, there is one particular theme that is common to the detainees' various accounts of the tactical questioning to which they were subjected at Camp Abu Naji on 14/15 May 2004. This was the sense of uncertainty, great trepidation and apprehension that they all felt about what lay in store for them. Some feared imminent physical assault, while others described a fear of being executed or of indefinite detention and separation from their families.

³⁵⁹⁸ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000884) [57]

³⁵⁹⁹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000319) [82]

³⁶⁰⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000367) [28]

³⁶⁰¹ Atiyah Sayyid Abdulridha Al-Baidhani's (detainee 779) (PIL000185) [96]

³⁶⁰² Hussein Gubari Ali Al-Lami (detainee 780) (PIL000413) [59]

3.329 There is a striking similarity between these feelings on the part of the nine detainees and what M004 described in his written Inquiry statement as a “*dislocation of expectation*”.³⁶⁰³ It would thus appear that M004’s conduct did succeed in keeping the detainees in a state of confusion and “*out of their comfort zone*”. I am satisfied that, during their tactical questioning sessions the nine detainees genuinely did not know what was going to happen to them and that this created in all of them a very heightened emotional and fearful state of mind.

4. Findings in relation to M004’s admitted conduct

3.330 Some of the features of the tactical questioning, as carried out by M004 at Camp Abu Naji on the night of 14/15 May 2004, were not in dispute. Essentially, these were the various features or aspects of the way he conducted the tactical questioning sessions that night, about which M004 himself gave evidence and which were also reflected or described in the accounts given by the nine detainees. In the paragraphs that follow I will deal with these various features or aspects of the way M004 conducted the tactical questioning that night, under the following five headings:

- a. the use of sight restriction;
- b. the invasion of the personal space of the detainees;
- c. the use of the tent peg;
- d. shouting; and
- e. the application of the Bridge, Carrot, Stick technique (“BCS”).

3.331 In considering the propriety of M004’s conduct under these five headings, two provisions of international law must be considered at the outset.

3.332 The first is Article 3, common to all Geneva Conventions of 1949, and generally known as “*Common Article 3*”. This provides that:

“Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely...”

3.333 The second relevant provision is Article 17 of the 1949 Third Geneva Convention. This provides that:

“No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted or exposed to any unpleasant or disadvantageous treatment of any kind.”

3.334 Guidance as to the interpretation of these provisions was recently provided by the Court of Appeal in the case of *R (Haidar Ali Hussein) v Secretary of State for Defence* [2014] EWCA Civ 1087 (“*Hussein v SSD*”). In the course of his judgment in that case, Lloyd Jones LJ said this:

“So far as inhumane treatment and unpleasant or disadvantageous behaviour are concerned, there must be a minimum threshold of seriousness before these standards can be infringed...Questioning of captured persons is permitted. That of itself is likely to

³⁶⁰³ M004 (ASI022259-60) [23]–[24]

*be an “unpleasant” experience in one sense as there can be no objection to questioning which is determined, uncompromising and relentless.”*³⁶⁰⁴

- 3.335** It seems to me that Articles 3 and 17 of the Geneva Convention and the guidance provided by the Court of Appeal in *Hussein v. SSD* provide an appropriate framework and standard against which to consider M004’s conduct of the tactical questioning of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004.

The use of sight restriction

- 3.336** In his written Inquiry statement, M004 confirmed that the detainees would have arrived for their tactical questioning sessions with their sight restricted, although he could not actually remember precisely how this had been done. M004 described how he would remove the detainee’s sight restriction at an early stage in the tactical questioning session.³⁶⁰⁵ However, it was clear that he did not do this until after he had taken certain preliminary steps, including walking around the detainee, blowing on his neck and striking the tent peg on the table.³⁶⁰⁶

- 3.337** In his written Inquiry statement, M004 said that the purpose of restricting the sight of the detainees was as follows:

*“I believe the purpose of restricting the detainee’s eyesight was to ensure that before they reached the tent, they could not see the Orderly Room (which was visible in a gap from the ablutions area). Restricting someone’s sight when moving them around the camp also played a useful part in conditioning a prisoner.”*³⁶⁰⁷

- 3.338** The Baha Mousa Inquiry gave much consideration to the question of what use could be made of sight deprivation in the lead up to and during tactical questioning. In his report published on 8 September 2011 (“the Baha Mousa Report”), Sir William Gage expressed the view that the use of sight deprivation as an “interrogation technique” was prohibited by Part 1 of the “Joint Intelligence Committee Directive on Interrogation by the Armed forces in Internal Security Operations” of June 1972 (“the 1972 JIC Directive”).³⁶⁰⁸ I agree with that conclusion. Furthermore, although it is clearly limited to internal security operations, as opposed to all military operations, it appears that the 1972 JIC Directive was nevertheless not subject to any geographical limitation.³⁶⁰⁹

- 3.339** I am satisfied that M004 delayed the removal of each detainee’s sight restriction, until he had carried out certain preparatory steps in the lead up to his questioning of that detainee. Although this continued sight deprivation was only for a short time, I have no doubt that M004 deliberately employed it in order to make his imminent questioning of the detainee that much more effective and, to that extent, it was an integral part of his overall approach to the task in hand. Thus, it seems to me that M004 was clearly using sight deprivation as an interrogation technique. It therefore appears that this particular aspect of his conduct was in contravention of the provisions of the 1972 JIC Directive.

- 3.340** Having regard to M004’s evidence as a whole, I have no doubt that he was a candid and truthful witness, whose approach to his work was both conscientious and diligent. M004 had

³⁶⁰⁴ *R (Haidar Ali Hussein) v Secretary of State for Defence* [2014] EWCA Civ 1087 at [60]

³⁶⁰⁵ M004 (ASI022278) [84]

³⁶⁰⁶ M004 [127/203]; [127/209]

³⁶⁰⁷ M004 (ASI022268-69) [52]

³⁶⁰⁸ Report of the Baha Mousa Inquiry (volume II) [4.115] (5)

³⁶⁰⁹ Report of the Baha Mousa Inquiry (volume II) Chapters 5/6

no difficulty recalling his training at some detail, despite the many years that have elapsed since he received it. It is clear that M004 took his training very seriously. I am sure that M004 left the detainees' sight restrictions in place to the extent that he did, because he understood it to be conduct that was permitted by his training. This would strongly suggest that this aspect of his training had been both inadequate and unsatisfactory.

3.341 Sir William Gage recognised some inadequacies in the training which tactical questioners such as M004 would have received at the time. In the Baha Mousa Report, Sir William said this:

*"... the evidence in Modules 2 and 3 of this Inquiry shows that it is all too easy for operational security reasons to give rise to the routine use of sight deprivation."*³⁶¹⁰

3.342 Sir William then continued, as follows:

"I consider that the following five principles need to be consistently spelt out in the joint doctrine and subordinate doctrine and instructions:

- 1) where practicable the need to deprive CPERS of their sight should be avoided in the first place by common sense steps such as appropriate design and layout of facilities, the planning of operations, choice of routes, and covering up of equipment;*
- 2) even if it is impracticable to avoid CPERS seeing facilities or equipment in the first place, there must be a genuine sensitivity about the facilities or equipment before sight deprivation can be justified;*
- 3) where sight deprivation does take place it must only be for as long as is strictly necessary;*
- 4) sight deprivation should not become routine; it must always be capable of being justified by the operational circumstances on the ground; and*
- 5) when sight deprivation is used, the fact that it has been used should as soon as practicable be noted in a simple brief record giving the date/time/duration/circumstances/justification for its use."*³⁶¹¹

3.343 This became Recommendation 10 in Sir William's Report. I understand that this recommendation has been implemented.³⁶¹² As a result, I do not consider there to be a need to make any further recommendations of my own about this particular matter.

The invasion of the detainees' personal space

3.344 M004 described the four steps that he took in quick succession at the start of a normal tactical questioning session. The first was a period of silence. The second would involve drumming his fingers on the table. The third involved whistling and the fourth involved walking around the detainee and blowing gently on the back of the detainee's neck. In the event, M004 could not be certain that he drummed his fingers or whistled when he tactically questioned the nine detainees with whom this Inquiry is concerned. He was certain that he would have blown on their necks as described and in any event, the procedure set out was indicative of

³⁶¹⁰ Report of the Baha Mousa Inquiry (volume III) [16.95]

³⁶¹¹ Report of the Baha Mousa Inquiry (volume III) [16.96]

³⁶¹² Ministerial Statement of Mr Mark Francois MP dated 27 March 2014

a practice that he might well have followed. M004 confirmed that the detainees would have been deprived of sight and handcuffed throughout this period of time.³⁶¹³

- 3.345** During his oral evidence to the Inquiry, M004 was asked what he hoped to achieve by blowing on the back of the detainee's neck. In reply, he said this:

"Basically, as I understand it, you are inside their personal space and he can feel your presence there just by blowing on the back of the neck. So you are not physically touching them.

*The reason I did it is because on my course it was done to me and it was remarkably effective. You just didn't know what was happening. You knew someone was there behind you in your dead space, and it worked."*³⁶¹⁴

- 3.346** I have no hesitation in concluding that, as a result of the training that he had received, M004 honestly believed that it was acceptable to use this technique during a tactical questioning session (i.e. blowing gently on the back of the blindfolded detainee's neck, whilst walking round him in silence). M004 went on to describe the control that the use of this particular technique gave him over the detainee in question and how it helped in obtaining the answers he sought.³⁶¹⁵ For his part, M033 confirmed that this technique was not inconsistent with the training that tactical questioners would have received in early 2004.³⁶¹⁶

- 3.347** Nevertheless, it seems to me that the way in which this technique was actually employed in relation to these nine detainees, during their tactical questioning sessions on 14/15 May 2004, did amount to a form of ill-treatment.

- 3.348** During his oral evidence to the Inquiry, M004 was at pains to point out the disorientating impact of this particular technique.³⁶¹⁷ I have no doubt that this reflects M004's main, if not his only, reason for using it as he did.

- 3.349** M004 felt unable to comment on the suggestion that the technique might have made the detainee feel sexually at risk.³⁶¹⁸ However, I am quite satisfied that the technique did not have that particular effect on the detainees with whom this Inquiry is concerned, because none of them suggested that it did.

- 3.350** Nevertheless, I am satisfied that the effect that this technique did have on the detainees went far beyond creating a mere sense of disorientation. Each detainee was already very frightened and apprehensive about what was going to happen to him; he was blindfolded and did not know where he was; no doubt he was tired and hungry; and he had been left to stand alone in silence in a strange place. I have no doubt that M004's use of this technique in such circumstances would have seemed full of menace to the detainee on the receiving end. I am quite sure that the detainee would have been intimidated by it. It would have heightened his existing anxiety considerably and might well have led him to fear that he was about to be subjected to some form of physical violence. In those circumstances, I am satisfied that

³⁶¹³ M004 [127/51-55]

³⁶¹⁴ M004 [127/52/25]-[53/7]

³⁶¹⁵ M004 [127/54-55]

³⁶¹⁶ M033 [161/135-136]

³⁶¹⁷ M004 [127/55]

³⁶¹⁸ M004 [127/55]

M004's conduct in slowly walking around the blindfolded detainee in silence and blowing gently on the back of his neck amounted to a form of ill-treatment.

The use of the tent peg

3.351 Quite apart from the use of the tent peg to bang on the table, which I come to next, those representing the Iraqi Core Participants contended, in their written Closing Submissions, that the mere presence of the tent peg in the tent during tactical questioning was a breach of the military's own standards of conduct.³⁶¹⁹ I was referred in particular to the following passage taken from Joint Warfare Publication ("JWP") 1-10 relating to tactical questioning:

*"No physical or mental pressure, nor any other form of coercion may be exerted on a [prisoner of war] in order induce him to answer questions. [He] may not be threatened, insulted or suffer any disadvantage as a result of [having] to answer questions."*³⁶²⁰

3.352 Those representing the Iraqi Core Participants submitted as follows:

*"Having any object which could be perceived as a weapon, such as a metal tent peg, in his possession at all [was inconsistent with the standards set in JWP 1-10]: if it cannot be seen by the detainee, what is the point? If it can be seen, it plainly may have an intimidating effect."*³⁶²¹

3.353 During his oral evidence to the Inquiry, M004 made clear that it had not been his intention to make a detainee think that he was about to be hit with the tent peg. Nevertheless, he readily accepted that *"self-induced pressure"* might have led a detainee to that conclusion.³⁶²² However, whilst I acknowledge the force of the submissions made on behalf of the Iraqi Core Participants, I doubt whether M004's mere possession of the tent peg, without anything more, would amount to ill-treatment. In the event, it seems to me that the point can properly remain moot, because of the clear conclusions that I have reached with regard to the actual use to which the tent peg was put by M004.

3.354 M004 has always made it clear that he used the tent peg to bang on the table during his tactical questioning sessions. To his credit, he has never sought to deny having done so. In his written Inquiry statement, M004 described how he would use the tent peg in this way at the start of the session: *"...to startle the detainee and ensure that he was fully focussed [sic] on the questions that were about to be asked."*³⁶²³ During his oral evidence to the Inquiry, M004 added the following: *"The purpose was to unsettle them, to make them feel overwhelmed."*³⁶²⁴ Of course, at this stage in the session the detainee was still blindfolded and so would hear the sound of the blow, but would not be able to see what had caused it.

3.355 M004 also confirmed that he would sometimes use the tent peg later in the session if required, as follows:

*"Very occasionally, if the detainee was not willing to talk, or I felt I was not getting his full attention, I would again use the technique of striking a tent peg on the table for a second time."*³⁶²⁵

³⁶¹⁹ ICP Closing Submissions (536) [1764]-[1765]

³⁶²⁰ (MOD037884)

³⁶²¹ ICP Closing Submissions (536) [1764]-[1765]

³⁶²² M004 [127/63/15-18]

³⁶²³ M004 (ASI022269) [53]

³⁶²⁴ M004 [127/63/13-14]

³⁶²⁵ M004 (ASI022269-70) [56]

- 3.356** A number of witnesses confirmed the obvious fact that the blow on the table with the tent peg made a loud, sharp noise.³⁶²⁶ I have no doubt the blindfolded detainee would have been very startled by this sudden loud noise. Furthermore, I am quite sure that the noise would have considerably heightened the detainee's existing sense of anxiety and fear. In short, it would have really scared and overwhelmed him. This was precisely what M004 intended and, during his oral evidence to the Inquiry, he very candidly admitted that such was indeed the case.³⁶²⁷
- 3.357** It is clear that M004 took these steps because he believed that they would help to ensure that the maximum possible useful intelligence was obtained from the tactical questioning session. M004 described how he believed that the publicity given to the Abu Ghraib scandal had emboldened detainees. M004 said that it had made detainees realise that soldiers would be punished if they mistreated detainees during tactical questioning sessions. Detainees had therefore become less apprehensive about the process. M004 claimed to have developed the technique of using the tent peg to bang on the table at the start of a session, in order to counteract this new found confidence to some extent.³⁶²⁸
- 3.358** On the basis of this evidence, I am satisfied that the technique of striking the tent peg on the table in the manner described, did amount to a form of ill-treatment. It was a technique designed to scare the detainee and clearly involved an obvious risk of putting the detainee in immediate fear of physical violence. It was thus conduct that was contrary to the provisions of Common Article 3 and Article 17 of the 1949 Third Geneva Convention, because it effectively amounted to a threat.
- 3.359** Even if such conduct did not generate an immediate fear of physical assault in a particular individual case, I am quite sure that it would have startled and scared all or virtually all detainees who were subjected to it. In my view, it would therefore amount to "*unpleasant or disadvantageous treatment*", within the terms of Article 17, in any event. Furthermore, it seems to me very likely that the effect of such conduct on the detainee in question would meet the "*minimum threshold of seriousness*" to which Lord Justice Lloyd Jones referred in *Hussein v SSD* (supra).
- 3.360** In his Inquiry statement, M004 explained that the use of the tent peg in this manner was not something that he had been taught in training.³⁶²⁹ However, he went on to say that, at the time he conducted the tactical questioning sessions in 2004, he believed his that his use of the tent peg in the manner described was a permissible technique. He said this:
- "I did not at the time deem using the tent peg in this way excessive or outside my remit as a tactical questioner. In fact, I can recall on my course that a student had thrown a chair across the room in front of the detainee he was questioning and that this was permitted."*³⁶³⁰
- 3.361** As I have already indicated,³⁶³¹ M033 explained that to throw a chair across the room in the presence of the subject was an example of impermissible behaviour by a tactical questioner and should have been highlighted as such by the course instructors.³⁶³² Although M004 was a truthful and honest witness, clearly he had misunderstood this particular aspect of

³⁶²⁶ See, for example, M013 [137/44]; Sergeant Lane [136/15]; M004 [127/66]

³⁶²⁷ M004 [127/63]; [127/187-188]

³⁶²⁸ M004 [127/56-61]

³⁶²⁹ M004 (ASI022288) [129]

³⁶³⁰ M004 (ASI022288) [128]; See also (MOD002068)

³⁶³¹ See paragraph 3.279 above

³⁶³² M033 (ASI024576) [27]

his training, because I am satisfied that M033's evidence about the matter is correct. The throwing of a chair in the presence of the subject should have been highlighted, during M004's training, as an example of inappropriate conduct by the questioner. However, as I have already indicated,³⁶³³ M004 was somehow left with the clear impression that this was permissible conduct by a tactical questioner, although he understood it to be the limit of what was acceptable in order to "*manage the dislocation of expectation*".³⁶³⁴ I do not doubt M004's bona fides. It therefore seems very likely that this misunderstanding on his part was the result of some shortcomings or lack of clarity in the training that he had received.

- 3.362** Unfortunately, it appears that, from time to time, M004 then used this particular example as a yardstick against which to determine the permissibility or otherwise of any improvised technique for maintaining the "*dislocation of expectation*" in a detainee, such as the way in which he admitted having used the tent peg during his tactical questioning sessions at Camp Abu Naji on the night of 14/15 May 2004. Accordingly, as a result of what appears to have been the inadequacy of his training, M004 genuinely believed that his use of the tent peg in the manner he described was permissible, whereas in reality it constituted a threat to the detainee and was thus behaviour that transgressed the third key principle identified by M033.³⁶³⁵ In my view, it therefore amounted to a form of ill-treatment of the nine detainees during their tactical questioning at Camp Abu Naji on the night of 14/15 May 2004.

Shouting

- 3.363** It is evident that shouting at detainees was a feature of M004's technique, when conducting a tactical questioning session. In particular, M004 recalled screaming and shouting over the left shoulders and into the left ears of the detainees as part of his softening up routine at the very beginning of the session. Thereafter, M004 would consider which of the various questioning styles in which he had been trained best suited the individual being questioned.³⁶³⁶
- 3.364** So far as concerns the shouting at the beginning of the session, M004 frankly admitted that this was part of his method of intimidating and scaring the detainee, in order to assist in the acquisition of intelligence. In my view, to shout and scream at a detainee at close quarters would have had a very similar effect on the subject as that of using the tent peg to bang on the table. For the same reasons that I have already given in respect of M004's use of the tent peg, I am satisfied that his technique of shouting and screaming at each of the nine detainee at close quarters at the outset of the tactical questioning sessions at Camp Abu Naji on 14/15 May 2004 was a form of ill-treatment.
- 3.365** In the light of the evidence given by both M004 and M033 about the training given to tactical questioners, I am satisfied that, when shouting at the detainees at the start of the session, M004 acted entirely in accordance with the training he had received, apart from the following one discrete issue. It is clear from M033's evidence that M004 should also have been trained that it was not permissible to shout directly into a detainee's ear.³⁶³⁷ However, M004 candidly admitted having done so and I am satisfied that he had gained the impression from his training that this was, in fact, a permissible technique.³⁶³⁸ I do not doubt that this was a genuine misunderstanding on his part. Again, it would appear that M004's misunderstanding

³⁶³³ See paragraph 3.282 above

³⁶³⁴ M004 (ASI022269-70) [56]

³⁶³⁵ See paragraph 3.279 above

³⁶³⁶ M004 [127/65]

³⁶³⁷ M033 [161/46-47]

³⁶³⁸ M004 [127/34-35]

was the result of inadequacy or lack of clarity in the training that he had undergone in order to qualify as a tactical questioner in the first place.

- 3.366** M004 also confirmed that, once the session began, he would use one or more of the range of questioning techniques that he had learned during his training.³⁶³⁹ One of those techniques was known as the harsh technique or “*harshing*”. During his oral evidence to the Inquiry, M004 described the harsh technique in the following terms:

*“Different TQ’ers would do it in different ways, as I have mentioned before. I’m not a big screamer and shouter because my voice goes hoarse very quickly, so I would use more sarcasm, cutting remarks, that way. But other people would shout and scream. Some people were extremely good at it.”*³⁶⁴⁰

- 3.367** In the course of his judgment in the Divisional Court in *Hussein v SSD*,³⁶⁴¹ Mr Justice Collins gave the following very helpful and comprehensive description of the harsh technique, as a method of interrogation:

*“The harsh technique included the following elements which could be deployed as the questioner considered necessary. The shouting could be as loud as possible. There could be what was described as uncontrolled fury, shouting with cold menace and then developing, the questioner’s voice and actions showing psychotic tendencies, and there could be personal abuse. Other techniques were described as cynical derision and malicious humiliation, involving personal attacks on the detainee’s physical and mental attitudes and capabilities. He could be taunted and goaded as an attack on his pride and ego and to make him feel insecure. Finally, he could be confused by high speed questioning, interrupting his answers, perhaps misquoting his replies.”*³⁶⁴²

- 3.368** It is evident that the harsh technique embraces a wide range of different styles. However, I accept M004’s evidence that he tended to use the more cynical or sarcastic styles, rather than the explicitly aggressive shouting styles (apart from at the very outset of the session). I also accept the evidence of the interpreter, M013, that M004 did not resort to using personal insults when employing the harsh technique in his questioning of the detainees.³⁶⁴³

- 3.369** In the Baha Mousa Report, Sir William Gage expressed some serious concerns about the appropriateness of harshing as a questioning technique. Sir William commented that:

*“I consider that it is not appropriate for me to appear to make any kind of ruling as the legality of the harsh approach. This is an issue which may arise for consideration in individual litigation and the question of whether particular conduct on any given occasion was lawful or not would be fact sensitive.”*³⁶⁴⁴

- 3.370** He continued:

*“...the harsh approach at the very least comes close to the edge of what is legally permissible in the treatment of CPERS.”*³⁶⁴⁵

³⁶³⁹ M004 (ASI022269-70) [56]

³⁶⁴⁰ M004 [127/35/12-17]

³⁶⁴¹ [2013] EWHC 95 (Admin)

³⁶⁴² [2013] EWHC 95 (Admin) at [7]

³⁶⁴³ M004 [137/42/19-21]

³⁶⁴⁴ Report of the Baha Mousa Inquiry (volume III) [16.176]

³⁶⁴⁵ Report of the Baha Mousa Inquiry (volume III) [16.181]

- 3.371** I entirely agree with these comments by Sir William. It seems to me that a very broad range of conduct is included within the overall scope of the concept of the harsh technique. It therefore seems to me that it would be inappropriate to conclude that, if the harsh technique is used during the tactical questioning of a detainee, this means *ipso facto* that that detainee has been ill-treated. However, I am satisfied that, if the tactical questioner were to use the harsh technique in questioning a detainee, he would always run a very real risk of ill-treating the detainee in question by so doing.
- 3.372** Beyond his initial “softening up” of each detainee, I am not able to say to precisely what type of harsh technique M004 actually used, when questioning the nine detainees at Camp Abu Naji on the night of 14/15 May 2004, and to what extent he used it in each case. M004 genuinely had a very limited recollection of the specific tactical questioning sessions of the detainees in question. However, judging from the evidence of the detainees themselves, I consider it very likely that M004 did use the harsh technique when questioning each of them, at least to some extent. It is also likely that M004’s harsh technique did not make use of personal insults and was mainly conducted in the cynical and sarcastic styles. Although it is not possible for me to say whether, when considered in isolation, the “*harshing*” actually used by M004 in any particular case that night did amount to ill-treatment of the detainee in question, I am satisfied that it was an integral part of an overall process of tactical questioning that, when considered as a whole, did amount to a form of ill-treatment, for the reasons already given with regard to its various constituent elements.
- 3.373** In the Baha Mousa Report, Sir William Gage made a number of recommendations with regard to the harsh technique. Of particular relevance is Recommendation 23:

“The harsh approach should no longer have a place in tactical questioning. The MoD should forbid tactical questioners from using what is currently known as the harsh approach and this should be made clear in the tactical questioning policy and in all relevant training materials.”

- 3.374** I agree with Sir William’s decision to make that particular Recommendation and I also agree with the terms in which he expressed it. However, shortly before the Baha Mousa Report was published, the Ministry of Defence withdrew the harsh technique from use and replaced it with a technique entitled “*Challenging Direct*”. This new approach has itself been recently considered by the Court of Appeal in *Hussein v SSD* (supra). Accordingly, I am satisfied that it would not be appropriate for me to make any recommendations as a result of my conclusions with regard to this particular aspect of the treatment of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004.

The application of the Bridge, Carrot, Stick technique (“BCS”)

- 3.375** At the start of this Chapter, I set out M004’s account of his training on the Bridge, Carrot, Stick technique, generally known by the acronym “BCS”.³⁶⁴⁶ Based on the reports that M004 produced with regard to his tactical questioning of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004, it appears that he used the BCS technique in each case.³⁶⁴⁷

³⁶⁴⁶ See, for example, M004 (ASI022257) [16]

³⁶⁴⁷ (MOD040956), (MOD040959), (MOD040962), (MOD040965), (MOD040968), (MOD040596), (MOD046239), (MOD040599), (MOD040602)

- 3.376** In the written statement that he made to the Royal Military Police (“RMP”) in November 2008, M004 suggested that, as part of his use of the BCS technique that night, he might have made the following type of statement to a detainee during his tactical questioning session:

“If you don’t tell me the truth your wife will be told that you are going to prison and she won’t see you for a very long time.”

- 3.377** During his oral evidence to the Inquiry, M004 was unable to remember whether he had actually used this particular phraseology that night, but he acknowledged that it was very similar to the sort of language he would have used.³⁶⁴⁸ Thus, M004 accepted that he would have incorporated some reference to the detainee’s family, as follows:

“Yes, if I knew any of the background, I would certainly mention family because that’s a big motivator.”³⁶⁴⁹

- 3.378** In the Baha Mousa Report, Sir William Gage considered the following form of words, which apparently formed part of the training received by tactical questioners:

“If you DO NOT answer my questions to my satisfaction, who is going to look after your wife and children if you are in British custody?”

- 3.379** Having previously declared an alternative form of words to be too close to a threat, and therefore possibly prohibited by Article 17 of the 1949 Third Geneva Convention, Sir William made the following observation about this particular form of words:

“Whether it should or should not be used is less clear-cut. Opinions may differ but I consider it would be unwise to use it.”³⁶⁵⁰

- 3.380** Without any clear evidence as to the precise form of words used by M004, it is not possible to say whether, when considered in isolation, his use of the BCS did actually constitute ill-treatment of any of the nine detainees that night. However, it seems to me that, to make reference to a detainee’s family, when using the BCS technique during tactical questioning, does involve running a serious risk of breaching Article 17 of the 1949 Third Geneva Convention. Drawing a detainee’s attention to the possible adverse consequences for his family, if the detainee were to fail to answer the questions, is likely to have a significant emotional impact on the detainee in question, particularly given his likely state of apprehension and fear at the time. This alone might well transform such a comment from being a statement of fact into the making of a threat.

- 3.381** I am satisfied that M004’s use of the BCS, when conducting his tactical questioning of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004, was entirely consistent with his understanding of what was permissible in the light of the training he had received.³⁶⁵¹ However, the problems involved in its use by the questioner were well illustrated by the following exchanges between Counsel and M033. During his oral evidence to the Inquiry, M033 was asked to comment on whether the following expression would be an appropriate form of words to use as part of the BCS technique:

“If you don’t tell us the truth, you are never going to see your family again.”³⁶⁵²

³⁶⁴⁸ M004 [127/83-84]

³⁶⁴⁹ M004 [127/84/11-12]

³⁶⁵⁰ Report of the Baha Mousa Inquiry (volume III) [16.385]

³⁶⁵¹ M004 [127/84]

³⁶⁵² M033 [161/24]

3.382 M033's response demonstrated not only a good understanding of the limits on questioning set out in Article 17 of the 1949 Third Geneva Convention, but it also exposed the very real problem facing the questioner in striking the right balance, because M033 said this:

*"If you are using it as a threat to the captured person, then no. If you are stating fact, then yes. This is the consequence of your action or inaction, would be legitimate. To use it as a threat to hang over somebody wouldn't be."*³⁶⁵³

3.383 In my view, the difficulty in training questioners to apply the BCS effectively, whilst also enabling them to avoid infringing Article 17 of the Geneva Convention, is all too obvious. I therefore consider it likely that M004's use of the BCS that night may, at times, have amounted to an impermissible threat. In the event that it did, it seems to me that this was due to the way in which M004 had been trained, rather than to any personal fault on his part. In any event, as with M004's use of the harsh technique, M004's use of the BCS technique, when tactically questioning the nine detainees that night, was an integral part of an overall process of tactical questioning that, when considered as a whole, did amount to a form of ill-treatment for the reasons already given with regard to its various constituent elements.

3.384 In the course of his oral evidence to the Inquiry M033 said that he thought the BCS technique had been removed from the training given to tactical questioners in about 2008/2009. He believed that the reason for its removal was, unsurprisingly, that the "stick" element of BCS was considered too close to constituting a threat.³⁶⁵⁴ In a letter to the Inquiry dated 8 September 2014, the Ministry of Defence ("MoD") confirmed M033's belief that the BCS technique has been removed from the training given to tactical questioners was indeed correct.³⁶⁵⁵

5. The detainees' allegations of other forms of ill-treatment during Tactical Questioning at Camp Abu Naji on the night of 14/15 May 2004

3.385 In addition to those matters which M004 admitted and which I have considered in the foregoing paragraphs of this Report, some of the detainees claimed to have suffered other forms of ill-treatment during their tactical questioning at Camp Abu Naji on the night of the 14/15 May 2004. In the paragraphs that follow, I will deal with these various allegations under the following four headings:

- a. physical assaults by the tactical questioner;
- b. the making of direct threats to kill;
- c. the firing of shots; and
- d. the throwing of items by the tactical questioner

Physical assaults by the tactical questioner

3.386 Three detainees, namely Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

³⁶⁵³ Ibid.

³⁶⁵⁴ M033 [161/70-71]

³⁶⁵⁵ See MoD letter to ASI dated 8 September 2014 (MOD05413-MOD054164). It is for this reason that no recommendation will be made about this aspect of training

alleged that they were physically assaulted during their tactical questioning sessions at Camp Abu Naji on 14/15 May 2004.

3.387 In October 2008, Mahdi Al-Behadili was interviewed by Arlen Harris of the BBC. The Inquiry has been provided with a transcript and recording of that interview.³⁶⁵⁶ During the interview, Mahdi Al-Behadili alleged that he had been hit five or six times with a wooden stick about a metre in length at the start of his tactical questioning session.³⁶⁵⁷

3.388 However, Mahdi Al-Behadili gave a different account about this in his evidence to the Inquiry. In both his written Inquiry statements, Mahdi Al-Behadili said that he was not actually hit with the stick, but that he felt threatened because of the way in which the questioner had held the stick.³⁶⁵⁸ During his oral evidence to the Inquiry, Mahdi Al-Behadili again said that he had not actually been hit with the stick during his tactical questioning session.³⁶⁵⁹ In effect, therefore, Mahdi Al-Behadili did not maintain the original allegation. When asked to explain why he had told the BBC that he was assaulted in this way, Mahdi Al-Behadili said that he might have told them this by mistake, because “[he] was tired”.³⁶⁶⁰

3.389 In my view, this explanation was simply untrue. I do not accept that such a mistake could possibly have been the result of tiredness. On the contrary, I have no doubt that Mahdi Al-Behadili deliberately lied about the matter during his 2008 interview with the BBC.

3.390 In his first written Inquiry statement, Ibrahim Al-Ismaeeli alleged that he had been assaulted both by being punched and by being struck with a rod or stick during his tactical questioning session that night.³⁶⁶¹ Ibrahim Al-Ismaeeli’s account of his tactical questioning session was difficult to follow during his oral evidence to the Inquiry.³⁶⁶² However, I have assumed that his intention was to maintain this particular allegation.

3.391 When he gave his Judicial Review statement, Atiyah Al-Baidhani made the following allegation about his tactical questioning session at Camp Abu Naji that night:

*“Then the officer held a heavy lead water pipe in his hand. It was about two and a half feet long. The officer started to beat me with the bar. This man hit me 3 or 4 times on my back and sides. I threw myself on the floor to avoid the blows. The other soldiers then started to kick me all over my body. There were countless blows.”*³⁶⁶³

3.392 In his first written Inquiry statement, Atiyah Al-Baidhani made a similar allegation, as follows:

*“The officer was taking the lead in the questioning and became angry with me. He stood up and with the pipe beat me on my legs and body from the stomach downwards. He was beating me and I fell to the floor. I was fainting.”*³⁶⁶⁴

3.393 In his second written Inquiry statement, Atiyah Al-Baidhani repeated this allegation and, as he had done in his Judicial Review statement, he claimed to have been kicked and beaten

³⁶⁵⁶ (ASI003696)

³⁶⁵⁷ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI003708)

³⁶⁵⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [59]; (PIL000787) [44]

³⁶⁵⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/62/23-24]

³⁶⁶⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/68]

³⁶⁶¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001071) [55]

³⁶⁶² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/22]

³⁶⁶³ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006676-77) [22]

³⁶⁶⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000954) [47]

after he had fallen to the floor.³⁶⁶⁵ Atiyah Al-Baidhani also maintained this allegation when he gave his oral evidence to the Inquiry.³⁶⁶⁶

- 3.394** M004 categorically denied ever having physically assaulted any detainee during any tactical questioning session that he conducted.³⁶⁶⁷ I have no doubt that he spoke the truth. His denial was both emphatic and credible. As I have already indicated, I found M004 to be a candid and truthful witness, whose evidence I believed.³⁶⁶⁸ M013 was also a truthful witness and he was adamant that he had never seen any physical violence used during any tactical questioning session in which he had acted as the interpreter.³⁶⁶⁹ Although M013 was not present during Atiyah Al-Baidhani's tactical questioning session that night, I am satisfied that his answer was indicative of the way in which the sessions were generally conducted by M004 and had been conducted that night in respect of the first five detainees for whom M013 did act as the interpreter.³⁶⁷⁰
- 3.395** In contrast to the credible and convincing evidence given by both M004 and M013, I found the evidence of each of the three detainees about these alleged assaults to be wholly unconvincing and I did not believe them. Mahdi Al-Behadili effectively withdrew the original allegation and Ibrahim Al-Ismaeeli's evidence lacked any real coherence. Although Atiyah Al-Baidhani's evidence was consistent and clear, some of the details were inconsistent with what is known about how the tactical questioning sessions were actually conducted at Camp Abu Naji that night. Thus, Atiyah Al-Baidhani claimed that the assaults had taken place some appreciable time into the session and after he had already been asked a number of questions.³⁶⁷¹ However, it is clear that by that stage in the process only M004 and M013 would actually have been present in the tent with Atiyah Al-Baidhani, although Atiyah Al-Baidhani's account clearly suggests that a number of different soldiers had joined in the assaults inflicted upon him.
- 3.396** For these reasons, I have no doubt Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) all deliberately lied about having been assaulted during their tactical questioning sessions at Camp Abu Naji on the night of 14/15 May 2004. I am quite sure that no such assaults took place that night.

The making of direct threats to kill

- 3.397** Two of the nine detainees, namely Hamzah Joudah Faraj Almalje (detainee 772) and Hussein Gubari Ali Al-Lami (detainee 780), each alleged that the soldier conducting the tactical questioning at Camp Abu Naji on night of 14/15 May 2004 had made a direct threat to kill him.
- 3.398** Hamzah Almalje was one of the detainees who seemed to have difficulty in distinguishing the processing procedure from the tactical questioning session. In his written Inquiry statement, Hamzah Almalje said that in one of his trips to the tent he had been told something like: *"tell us who sent you and what was your purpose...tell us or you'll go to a British prison or we will kill you"*.³⁶⁷²

³⁶⁶⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000185) [94]

³⁶⁶⁶ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/98-99]

³⁶⁶⁷ M004 (ASI022280-82) [90]-[101]

³⁶⁶⁸ See paragraph 3.401 above

³⁶⁶⁹ M013 [137/58]

³⁶⁷⁰ See paragraph 3.298 above

³⁶⁷¹ Atiya Sayyid Abdulridha Al-Baidhani (detainee 779) [9/98]

³⁶⁷² Hamzah Joudah Faraj Almalje (detainee 772) (PIL000688) [34]

- 3.399** Hamzah Almalje also alleged that, during another trip to the tent, he had been told that if he did not stand they would shoot him.³⁶⁷³ However, when he gave his oral evidence to the Inquiry, Hamzah Almalje appeared to withdraw this second allegation, saying that he could no longer remember it.³⁶⁷⁴
- 3.400** In his Judicial Review statement, Hussein Al-Lami (detainee 780) said that the interrogators had told him that, if he did not confess, they would do “*serious things*” to him.³⁶⁷⁵ In his first written Inquiry statement Hussein Al-Lami clarified that the expression “*serious things*” meant his execution.³⁶⁷⁶
- 3.401** However, M004 emphatically denied ever having threatened to execute anybody³⁶⁷⁷ and I believe him. As I have already indicated, I have no doubt that M004 was a candid and truthful witness. Whilst I accept that the nine detainees might well have perceived some of the statements, made to them by M004 during their tactical questioning that night, as threats I have no hesitation in concluding that M004 did not make any threat to kill or to execute any of them. I am sure that M004 made no such threat that night or at all. I am equally sure that, in alleging that they had been subjected to such threats at Camp Abu Naji that night, both Hamzah Joudah Faraj Almalje (detainee 772) and Hussein Gubari Ali Al-Lami (detainee 780) deliberately lied.

The firing of shots

- 3.402** Two of the nine detainees, namely Hussein Fadhil Abbas Al-Behadili (detainee 778) and Hussein Gubari Ali Al-Lami (detainee 780) each gave evidence that shots had been fired during the course of his tactical questioning session at Camp Abu Naji on the night of 14/15 May 2004.
- 3.403** In his first written Inquiry statement, Hussein Al-Behadili (detainee 778) described how shots had been fired during his tactical questioning session that night, as follows:

*“There were two gunshots, they were close to me, he was provoking me, I felt that he would point the gun or rifle at me at any time and shoot me. The soldier was getting upset and screaming, the interpreter was translating. I heard the two shots strike the floor close to me, the floor was solid, it was not earth but it was not concrete so the bullet could penetrate the ground. The shots were loud and not muffled, I believe that his intention was to intimidate me; they were trying to pressure us to confess to anything. The shots came from the direction of the front of me I cannot be exact but they were close.”*³⁶⁷⁸

- 3.404** Hussein Al-Behadili maintained this allegation in his second written Inquiry statement and went on to explain that had not known that there was a gun present before he heard the shots.³⁶⁷⁹ He said that he had been blindfolded at the time and could not see the shots actually being fired.³⁶⁸⁰

³⁶⁷³ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000690) [41]

³⁶⁷⁴ Hamzah Joudah Faraj Almalje (detainee 772) [20/80]

³⁶⁷⁵ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006638) [17]

³⁶⁷⁶ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004811) [63]

³⁶⁷⁷ M004 (ASI022283) [103]

³⁶⁷⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001041) [39]

³⁶⁷⁹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000367) [29]

³⁶⁸⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001041) [38]

- 3.405** The same type of allegation was made by Hussein Al-Lami (detainee 780). He also claimed to have been blindfolded at the time.³⁶⁸¹ In his first written Inquiry statement, Hussein Al-Lami described how the questioner had taken out his gun and cocked it. He then said that two shots had been fired in his direction.³⁶⁸² Hussein Al-Lami repeated this allegation in his second written Inquiry statement and also during the course of his oral evidence to the Inquiry.³⁶⁸³
- 3.406** In his written Inquiry statement, M004 said that when he was tactically questioning detainees, no weapons were allowed and nobody carried a pistol into the tent.³⁶⁸⁴ When he gave his oral evidence to the Inquiry, M004 emphatically denied ever having fired a shot during any tactical questioning session that he had conducted. He added that news that somebody had fired a weapon in the tactical questioning tent would have spread rapidly throughout the camp and would have had widespread implications.³⁶⁸⁵ I have no doubt that his evidence was true. I am sure that no shots were fired during the tactical questioning of the detainees at Camp Abu Naji on the night of 14/15 May 2004.
- 3.407** I have given consideration to whether either Hussein Al-Behadili or Hussein Al-Lami might have mistaken the noise of the tent peg striking the table for the sound of a gunshot. M004 himself considered that the sounds might be similar.³⁶⁸⁶ On the other hand, Sergeant Lane did not think that the sound of a tent peg being banged on a table could be confused with a gunshot.³⁶⁸⁷
- 3.408** Having regard to the fact that they were blindfolded and in a very anxious and apprehensive state at the time, it seems to me possible that the detainees in question might initially have thought the noise of the tent peg striking the table was a gunshot. However, I am equally satisfied that, once their blindfolds were removed, they would have quickly realised that no gun had actually been fired. They would have seen the tent peg. There was no gun to be seen and there was no evidence that one had been discharged (e.g. there was no smell of a weapon having been fired). On any view, the sound of the tent peg hitting the table could not have been confused with the sound of bullets hitting the ground nearby. Accordingly, to the extent that Hussein Fadhil Abbas Al-Behadili (detainee 778) and Hussein Gubari Ali Al-Lami (detainee 780) each claimed to have been shot at during their tactical questioning at Camp Abu Naji on the night of 14/15 May 2004, I have no doubt that they deliberately lied. I am sure that no such shots were fired and that each of them knew that perfectly well.

The throwing of items

- 3.409** Three of the detainees, namely Kadhim Abbas Lafta Al-Behadili (detainee 775), Ahmed Jabbar Hammood Al-Furaiji (detainee 777) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) each described how something had been thrown at him during his tactical questioning at Camp Abu Naji on the night of 14/15 May 2004.
- 3.410** In his written Inquiry statement, Kadhim Al-Behadili described how a baton (perhaps a reference to the tent peg) had been thrown at him. Kadhim Al-Behadili said that he had anticipated this might happen and so he had been able to avoid it.³⁶⁸⁸

³⁶⁸¹ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004811) [63]; [11/75]

³⁶⁸² Hussein Gubari Ali Al-Lami (detainee 780) (ASI004811) [64]

³⁶⁸³ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000413) [59]; [11/15]; [12/22]

³⁶⁸⁴ M004 (ASI022281) [94]

³⁶⁸⁵ M004 [127/203-204]

³⁶⁸⁶ M004 [127/176]

³⁶⁸⁷ Sergeant Lane [136/105]

³⁶⁸⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000727) [43]

- 3.411** In his first written Inquiry statement, Ahmed Al-Furaiji claimed that the interrogator had become very angry during the tactical questioning session and had thrown a steel mug at him. Ahmed Al-Furaiji's said that the mug had missed and had hit a tent pole behind him.³⁶⁸⁹
- 3.412** Atiyah Al-Baidhani consistently described having seen a glass containing red liquid during his tactical questioning session. Atiyah Al-Baidhani claimed that, during the course of the session, the interrogator had thrown the glass at him which missed and smashed against a tent pole behind him.³⁶⁹⁰
- 3.413** In his written Inquiry statement, M004 said that he did not have any cup or mug in his possession during any of the tactical questioning sessions.³⁶⁹¹ I have no doubt that his evidence about this was truthful. For this reason, I am satisfied that the allegations made by Ahmed Jabbar Hamood Al-Furaiji (detainee 777) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) were deliberate falsehoods.
- 3.414** I am similarly quite sure that M004 did not throw a baton or the tent peg or any other item at Kadhim Abbas Lafta Al-Behadili (detainee 775). Such an action would have been entirely inconsistent with the way in which M004 credibly described the way in which the tactical questioning sessions were conducted on the night of 14/15 May 2004. I have no doubt that this allegation was also a deliberate falsehood by Kadhim Al-Behadili, because no such incident occurred, as he knew full well.

The use made of Tactical Questioning reports as evidence

- 3.415** M004 produced a written report of his tactical questioning sessions of each of the nine detainees at Camp Abu Naji on the night of the 14/15 May 2004. The general format of the reports was the same for each of the nine detainees. Each report consisted of three pages. The first page was devoted to biographical information about the detainee in question. The second page dealt with the administrative details concerning that particular session. This included the identities of the questioner and the interpreter and the time and place of the session. The third page of the report was split into five sections, as follows:
- a. Background to Interrogation
 - b. Interrogation
 - c. Information Gained
 - d. Additional Information
 - e. Recommendations
- 3.416** The Background to Interrogation section set out briefly the military account of the capture of each detainee. The Interrogation section set out the questioning techniques used, along with a brief comment about the appearance of the detainee and any practical difficulties faced during the session. The Information Gained section was generally brief and focused on the purpose of the session and sometimes reiterated the practical difficulties encountered. In the Additional Information section, there was a summary of the information purportedly given by the detainee during the session. The Recommendation section reported that the Bridge, Carrot, Stick ("BCS") technique had been applied to each of the detainees and recommended in each case that the detainee be sent to the Joint Forward Interrogation Team ("JFIT").

³⁶⁸⁹ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (ASI000883) [55]

³⁶⁹⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006676) [21]–[22]; (ASI000954) [46]; [9/98]

³⁶⁹¹ M004 (ASI022282) [97]

- 3.417** Copies of the reports relating to the tactical questioning of the nine detainees at Camp Abu Naji on the night of the 14/15 May 2004 have been disclosed to the Inquiry. Those copy reports have been disclosed to the legal representatives of the Core Participants in full. They were also provided to the nine detainees to enable them to comment on the contents in both their oral and written evidence. Where appropriate, the copy reports have also been disclosed publicly on the Inquiry's website, although some redactions have been made to certain passages in the reports in accordance with the Inquiry's protocol on the Redaction of Documents and other Evidence provided to the Inquiry by the ("MoD") Ministry of Defence.
- 3.418** As I have already indicated,³⁶⁹² prior to the commencement of the Inquiry's oral hearings, those representing the Iraqi Core Participants submitted that the use to which these reports could be put when making my findings of fact was limited. In short, it was submitted that I should not treat those aspects of the reports, which purport to record the information given by each detainee during his tactical questioning session, as admissible evidence of a previous account of the facts as given by that particular detainee.
- 3.419** At an earlier stage of this Report, I referred to this particular submission and indicated that, for the reasons stated and as a matter of general principle, I would ignore the entire contents of these reports, insofar as they purported to record any factual or other information provided by any of the detainees, irrespective of any submissions regarding the admissibility of that material.³⁶⁹³ However, I also went on to make it clear that I would nevertheless 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.³⁶⁹⁴
- 3.420** It remains my view that it is not necessary for me to make any finding as to the admissibility of the contentious aspects of these reports of the tactical questioning of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004. However, as I indicated earlier that I would,³⁶⁹⁵ I have made a number of findings in the preceding paragraphs of this part of my Report concerning the circumstances and manner in which the tactical questioning sessions in question were actually conducted. In some of those findings, I have indicated that the conduct in question amounted to a form of ill-treatment, as did the entire process of tactical questioning that night, when considered as a whole.³⁶⁹⁶ Those findings reinforce my view that it was not appropriate to have regard to any part of the contents of the tactical questioning reports as evidence of previous accounts of the facts as given by the detainees.

6. The detainees' allegations of having heard and seen the sounds and signs of torture and execution being carried out at Camp Abu Naji during 14/15 May 2004

- 3.421** At this stage in my Report it is convenient to deal with allegations of the utmost seriousness that have been made by eight of the nine detainees about certain events that they claim to have occurred whilst they were detained at Camp Abu Naji during the 14/15 May 2004. At some stage in their evidence, eight of the nine detainees (Hamzah Joudah Faraj Almalje

³⁶⁹² See paragraphs 2.1037 – 2.1048

³⁶⁹³ See paragraph 2.1048

³⁶⁹⁴ Ibid.

³⁶⁹⁵ Ibid.

³⁶⁹⁶ In its letter to the Inquiry dated 20 November 2014, the Ministry of Defence made it clear that the latest versions of the policies on Tactical Questioning and on Interrogation were published in May 2012 and would prevent similar incidents happening now. I have no reason to doubt the accuracy and reliability of that assertion.

[detainee 772] was the exception) described sights and sounds that all eight of them said had led them to conclude that Iraqi men were being tortured and/or executed nearby at Camp Abu Naji on the night of 14/15 May 2004.

3.422 I have no doubt that these particular claims and assertions made by these eight detainees contributed significantly to the rumours and stories that Iraqis were tortured and unlawfully killed at Camp Abu Naji overnight on 14/15 May 2004. Those stories and rumours still persist today. However, as I have described earlier in this Report, at the conclusion of the oral evidence in this Inquiry, those representing the Iraqi Core Participants very properly conceded the central allegation of unlawful killing at Camp Abu Naji on the night of 14/15 May 2004 could not be made good.³⁶⁹⁷ In this section of my Report, I will summarise the evidence given by each of the detainees about this aspect of the matter and then set out my conclusions of fact about that evidence.

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.423 When he made his Judicial Review statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) described an event that he claimed had occurred at the end of the night, possibly just after sunrise, in the following terms:

*"After some time I heard footsteps and thuds and thought there may be 3 to 4 soldiers in the area. Suddenly without warning there was a terrible scream from a person behind me and to my right. The scream went on and on. I could hear a word being shouted that I did not understand at the time, I have since learnt what 'Shurru' means. This person was screaming as if in absolute agony and then there would be a pause and then a repeat of the same scream. This went on for some time. I do not know how long. After some time the screaming stopped. It was followed by the sound of buckets and water being thrown and then the sound of mopping. At this time I was crying."*³⁶⁹⁸

3.424 In his first written Inquiry statement, Mahdi Al-Behadili's account of this event had changed somewhat, as follows:

*"There was no other noise which I found disturbing except at one stage I heard someone screaming. This was followed by two to three gunshots. After the gunshots it went quiet again, I thought someone had been executed."*³⁶⁹⁹

3.425 In his second written Inquiry statement, Mahdi Al-Behadili said this:

*"The screaming and washing incident that I explain in my Judicial Review at paragraph 15 seems to confuse two separate incidents. The last period of screaming I heard was before I went in for the second period of interrogation in the tent. I did also hear washing but this was sometime in the morning I believe, quite a long time after the interrogation had ended. There was no screaming involved in this incident, just the sound of water being thrown on the ground and then someone cleaning."*³⁷⁰⁰

3.426 Mahdi Al-Behadili's oral evidence to the Inquiry did little to clarify this already inconsistent evidence. On the first day of his oral evidence Mahdi Al-Behadili said that he had heard three

³⁶⁹⁷ See paragraph 2.6

³⁶⁹⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006492) [15]

³⁶⁹⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [62]

³⁷⁰⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000788) [46]

to four gunshots while he was at Camp Abu Naji³⁷⁰¹ that night, but that he did not think they were the sounds of executions taking place.³⁷⁰²

3.427 On his second day of his oral evidence, Mahdi Al-Behadili appeared to change his mind and said that he did believe that people were being executed when he heard the gunshots.³⁷⁰³

3.428 Finally, in his oral evidence to the Inquiry, Mahdi Al-Behadili confirmed that, despite the way in which his Judicial Review statement was expressed, he had seen nothing suspicious or unpleasant in the sounds of cleaning or mopping that he heard that night.³⁷⁰⁴

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.429 In his first written Inquiry statement, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) gave the following account of an event that he said occurred shortly after Camp Abu Naji had been attacked with mortars and grenades on the night of 14/15 May 2004:

“After the attack finished I could still hear Iraqi voices in pain, it was then that I heard the gunshots, the water and mopping that I describe in my earlier statement. To clarify exactly what I heard, it was three or four gunshots, spaced about a minute apart followed by the sound of washing with water and dragging noises between each gunshot. I could not see anything at all under my glasses. I could smell blood but I was still covered in blood; I could not say if there was any such smell coming from anywhere else, or from the water. I could not feel any water at my feet because the cubicle I was in I believe had a step at the doorway which would have prevented it running in. The gunshots started about fifteen minutes after the mortar attack finished.”³⁷⁰⁵

3.430 In that passage of his first written Inquiry statement, Ibrahim Al-Ismaeeli was referring to his Judicial Review statement, in which he first made this particular allegation. In his Judicial Review statement, Ibrahim Al-Ismaeeli confirmed that he had assumed from these sounds that people were being executed nearby.³⁷⁰⁶ Ibrahim Al-Ismaeeli maintained this allegation when he gave his oral evidence to the Inquiry.³⁷⁰⁷

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.431 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili (detainee 775) made the following similar allegation:

“Approximately 5 (five) minutes after I had been put in the toilet cubicle I heard the sound of someone screaming in pain. The sound stopped abruptly and then a few moments later I heard the sound of something being dragged along the floor. This was followed by the splashing of water and sounds of mopping. I heard this many times over, though I am unable to now recall how many times. I also thought that I could smell blood. I cannot exactly say why I thought it was blood but I may have associated the terrible sounds I heard with the splashing of water and mopping and believed that

³⁷⁰¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/23/23]

³⁷⁰² Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/69/23-24]

³⁷⁰³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [9/9/12-15]

³⁷⁰⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/74/15-21]

³⁷⁰⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001073) [60]

³⁷⁰⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013954) [20]

³⁷⁰⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/18-19]

blood was being washed away. The sounds of screaming were different each time I heard them. There was crying and screaming.

Sometimes the sounds of the water splashing and mopping would continue through the screaming. I could not be sure what was happening. The sounds of screaming were coming from different areas. I was terrified because I thought people were being badly beaten and tortured. I thought that the beating must have stopped when the screaming stopped abruptly.”³⁷⁰⁸

- 3.432** Kadhim Al-Behadili repeated this allegation when he gave his oral evidence to the Inquiry.³⁷⁰⁹ However, he also made it clear during his oral evidence that he had not heard any gunshots, whilst he was detained at Camp Abu Naji on the 14/15 May 2004.³⁷¹⁰

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.433** The evidence of Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) with regard to this particular allegation has varied in the various accounts that he has given about it. In his Judicial Review statement, Abbas Al-Hameedawi gave the following description of an event that he claimed occurred shortly after he had been placed in the cubicle in the prisoner holding area:

“After about 5 minutes had passed I heard the thuds of heavy footsteps coming in. Then I heard the sound of a chair falling and what sounded like something heavy being dragged along the floor. The next sound I heard was that of screaming and shouting in pain. I also heard British voices shouting and screaming. I heard these sounds from behind me. This was repeated 4 or 5 times, that is, the sound of loud thuds, a chair falling, the sound of dragging and then screams and shouts of pain. Each time this lasted about 2 or 3 minutes. There was about a 10-15 minute break between each of these events. I thought that by the sounds of the screams that people were being beaten and punched but nothing worse. I thought that the same would happen to me. I heard the sound of chairs being put back upright but could not hear the sounds of any people being returned.”³⁷¹¹

- 3.434** In his third written Inquiry statement, Abbas Al-Hameedawi sought to add some further significant detail to the account that he had given in his Judicial Review statement, as follows:

“I have described in paragraph 12 (twelve) of my JR witness statement dated 13 October 2008 and in paragraph 14 (fourteen) of my JR witness statement dated 14 October 2008, of the sounds of chairs falling and sounds of something heavy being dragged along the floor. I thought that soldiers must have been dragging people off chairs by their legs and that I was hearing the sound of a chair falling because of this. I understood the dragging sound along the floor to be a person being dragged along to be tortured. I was so afraid that at any moment it would be my turn to be taken away.”³⁷¹²

- 3.435** However, when he gave his oral evidence to the Inquiry, Abbas Al-Hameedawi disavowed this particular passage from his third written Inquiry statement, claiming that he simply had

³⁷⁰⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000724) [36]–[37]

³⁷⁰⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/94-95]

³⁷¹⁰ Kadhim Abbas Lafta Al-Behadili (detainee 775) [13/74/8-15]

³⁷¹¹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000005) [14]

³⁷¹² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000475) [93]

not said it when his Inquiry statement was taken.³⁷¹³ From his oral evidence to the Inquiry, it appears that Abbas Al-Hameedawi claimed to have heard the sounds of Iraqis moaning in pain at the same time as the noise of chairs being dragged along the floor, but that he did not hear any gunshots associated with this.³⁷¹⁴ It also appears that, in his oral evidence to the Inquiry, Abbas Al-Hameedawi no longer maintained that he had heard any screaming, as alleged in his Judicial Review statement. Thus, during his oral evidence, Abbas Al-Hameedawi said this:

*"I can't say exactly if I heard screaming. In that time it was a generator working in the background and the noise was really loud and it was a big generator so far as I can tell. I was really noisy, you know. Even somebody shout at you, you don't really hear proper. That's why I couldn't hear proper noises or clear noises."*³⁷¹⁵

- 3.436** During his oral evidence, Abbas Al-Hameedawi said that, after his tactical questioning session, he had heard the sound of water and mopping.³⁷¹⁶ However, it was not clear how he had been able to hear this, but had not been able to say whether he had heard any screaming, because of the noise made by the generator.

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

- 3.437** In his Judicial Review statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) alleged that he had heard the following sounds of torture and killing, whilst he was detained at Camp Abu Naji on the 14/15 May 2004:

"The room was filled with these sounds. Then I also began to make out the sounds of a choking noise as if someone was being strangled. I think I then heard a second sound which was similar of someone choking or being strangled. All of these sounds became mixed together and were coming from behind me. As the sounds went on the volume in the room of all these sounds mixed up got louder. The screaming went on and on. It sounded to me that people were being tortured. I had never heard such sounds before. At no point whilst this was going on did I hear any voices either Iraqi or English. I did not hear anyone cry out for mercy or for this treatment to stop. I was without sight and did not know what was happening. I was certain I was about to be tortured or executed or both. At some point whilst this was going on I said the Shahada prayer. The sound of moaning and screaming mixed with the occasional choking sound went on for about 15 minutes.

*Then all of a sudden the room went quiet. I sat in the dark and waited. I felt certain I was to be the next. As I sat I began to smell blood. As I work on a farm I know the smell of animal blood and this was not animal blood. Then I heard water being splashed on the floor and I heard the sound of mopping. I felt water hit the back of my trousers. I do not know whether that was from the splashing or from the mopping or both. Then I could smell something sweet and perfumed. It may have been disinfectant."*³⁷¹⁷

³⁷¹³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/91-93]

³⁷¹⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/16]; [14/64]

³⁷¹⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/53/14-20]

³⁷¹⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/20/3-4]

³⁷¹⁷ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006724-25) [21]–[22]

3.438 This particular description in Ahmed Al-Furaiji's Judicial Review statement had been preceded by his claim to have heard the sounds of Iraqi voices moaning and a "*terrible, ear-piercing scream*."³⁷¹⁸

3.439 However, in his first written Inquiry statement, Ahmed Al-Furaiji merely said this:

*"I have been asked what noise I could hear. I heard a generator and also the sound of other people making a variety of strange noises, shouting and screaming as if they were being tortured. I could hear nothing being said in Arabic. I could hear British soldiers talking."*³⁷¹⁹

3.440 In his second written Inquiry statement, Ahmed Al-Furaiji made it clear that the details given in his Judicial Review statement had been correct.³⁷²⁰

3.441 As I have already indicated, for health reasons Ahmed Al-Furaiji was unable to give oral evidence to the Inquiry, beyond confirming on oath that the contents of his written Inquiry statements were true.

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.442 In his Judicial Review statement, Hussein Fadhil Abbas Al-Behadili (detainee 778) made the following allegation:

*"Whilst I was in the toilet cubicle I heard a number of other Iraqis being mistreated. I could hear the chairs collapsing on the floor and it sounded as if this was because the soldiers were forcefully abusing people."*³⁷²¹

3.443 In the same statement, Hussein Al-Behadili then went on to describe the following additional series of incidents:

"About an hour after the second interrogation a terrifying sequence of events occurred. A group of soldiers rushed into the toilet area shouting and behaving in an aggressive and terrifying manner. They were not speaking or shouting to the Iraqis because they were shouting in English. Whatever they were shouting made no sense to me and I was terrified and felt very nervous. I then heard the terrible sound of someone being choked or strangled. This sound was really loud and unmistakable. Almost immediately afterwards there were 4 to 5 shots fired in the room and I thought that they were being fired in different directions. I would say that the shots were being fired very deliberately with the interval between each shot being about one second.

*As an ex-soldier I think that, given the small area involved, the gun or guns must have been used with a silencer because otherwise I would have expected the sound to have been deafening."*³⁷²²

3.444 In his first written Inquiry statement, Hussein Al-Behadili appeared to combine this sequence of events into one single event, as follows:

³⁷¹⁸ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (MOD006724) [20]

³⁷¹⁹ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (ASI000884) [62]

³⁷²⁰ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (PIL000320) [83]–[85]

³⁷²¹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006700-01) [27]

³⁷²² Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006701) [28]–[29]

“About half an hour after the second interrogation I heard a group of soldiers come running in. I knew they were running because I heard their boots. They came in shouting and screaming, then I hear voices; it sounded as if Iraqi people were being beaten; I then heard shots being fired. I heard the sound of a person in real pain, and a noise being made which sounded like someone being strangled or being shot at, I could not tell what the exact sound was it was like the last sound as a person makes before they die.

There were four or five single shots; one after each other, within seconds of each other. They were muffled or quietened in some way; however I believe they were in the same building. I didn’t know whether people were being intimidated or being killed, I didn’t know if I might also be killed, I started to pray.”³⁷²³

- 3.445** Hussein Al-Behadili also claimed to have heard something being dragged, to have smelt blood and then to have heard the sound of water or liquid being poured.³⁷²⁴ In his first written Inquiry statement, Hussein Al-Behadili added the following detail:

“The dragging sounded as if something was being dragged once or twice. The sound of the water was close to me as if someone was cleaning up and I could hear the sound of a mop. From underneath my glasses by my nose I saw water running into the cubicle where I was and down the slope towards the toilet, the toilet was white and I could see the colour of the liquid; it looked like water mixed with blood, not 100% red but mixed with water I saw it clearly.”³⁷²⁵

- 3.446** During his oral evidence to the Inquiry, Hussein Al-Behadili said that he could not be sure whether he had heard the shooting after the first interrogation (processing) or after the second interrogation (tactical questioning).³⁷²⁶

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 3.447** In his Judicial Review statement, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) gave the following description of what he claimed had occurred just before dawn, whilst he was detained in the cubicle in the prisoner holding area at Camp Abu Naji on the night of 14/15 May 2004:

“I must have fallen asleep at some point as the next thing I knew I was woken by water starting to flow across my feet. It was very cold. I looked down and saw red coloured water on the floor. I could smell blood. I can also remember bird-song which meant it was just before dawn. I remember that there were also a lot of flies around my face but what woke me fully was the sound of someone screaming seemingly in excruciating pain. I heard a chair being pulled and then another person screaming and then another chair being pulled. I did not hear the sound of any bullets. Each time someone screamed a chair was being pulled and then I could hear water splashing. I saw the water and it was coloured red. Again I could smell blood. I think this sequence of events happened 3 times with a 2 or 3 minute gap between each one. I felt that this was an execution process. I could hear quite a lot of soldiers speaking loudly in English to each other. There was a lot of movement of soldiers going to and fro.”³⁷²⁷

³⁷²³ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001042) [43]-[44]

³⁷²⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001043) [45]; [18/23]

³⁷²⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001043) [46]

³⁷²⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/74/15-23]

³⁷²⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD047161-62) [25]

3.448 Atiyah Al-Baidhani maintained this allegation in his first written Inquiry statement. However, in that account he said that the events in question had occurred shortly after his tactical questioning session, rather than early in the morning.³⁷²⁸ It is to be noted that Atiyah Al-Baidhani's evidence did not include any allegation that shots had been fired at any stage that night.

Hussein Gubari Ali Al-Lami (detainee 780)

3.449 In his Judicial Review statement, Hussein Gubari Ali Al-Lami (detainee 780) said this:

"Approximately 30 minutes had passed since I had been given the water and biscuits when about 6 or 7 soldiers approached. They were about 2 metres away from me and behind me to my right. I recall that they were talking loudly and shouting in an agitated manner. I heard a very loud scream from about 2 metres behind my right shoulder. The scream came without warning and, once it started, the same person was screaming and screaming for a long period of time, maybe as long as 15 minutes. It was a series of screams of a person who appeared to be in excruciating pain. They were not screams of terror but more of pain. The first person I recall was shouting for their family, their mother and father. After about 15 minutes the scream went up and up both in volume and scale. The scream then began to subside and fade away and then there was only silence.

*This was followed by the pouring of water and the sound of buckets or something like that and I heard a chair being dragged. I smelt blood and heard the sound of mopping. Then I smelt perfumed disinfectant and could no longer smell blood."*³⁷²⁹

3.450 In the same statement, Hussein Al-Lami said that this sequence of events had been repeated on a further seven occasions. He added that he did not hear any sounds to suggest that people were being punched, nor had he heard any shots being fired.³⁷³⁰ He also expressed the opinion that: *"It was the sound of a person being tortured in some horrible way and then executed."*³⁷³¹

3.451 This particular allegation was repeated in Hussein Al-Lami's first written Inquiry statement. In that statement, Hussein Al-Lami said that this sequence of events had occurred about 30 minutes before sunrise on 15 May 2004.³⁷³²

3.452 Hussein Al-Lami maintained this allegation during his oral evidence to the Inquiry, although he mistakenly suggested that the sequence occurred on five separate occasions rather than a total of eight.³⁷³³

Conclusions with regard to the detainees' evidence of having heard and seen the sounds and signs of "torture" and "execution" at Camp Abu Naji on the night of the 14/15 May 2004

3.453 In my view, it is appropriate to consider the evidence of the detainees as a whole, when coming to my conclusions about this particular group of allegations. As it seems to me, there

³⁷²⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000954-55) [49]-[51]

³⁷²⁹ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006640) [22]-[23]

³⁷³⁰ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006641) [25]

³⁷³¹ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006640) [23]

³⁷³² Hussein Gubari Ali Al-Lami (detainee 780) (ASI004812-13) [69]-[73]

³⁷³³ Hussein Gubari Ali Al-Lami (detainee 780) [11/17-18]

are two main reasons for this. The first is that there is a great deal of similarity in the various accounts that were given by each of the eight detainees who actually made these allegations. The second is that, according to each of these detainees, the events in question all took place within close proximity of the other detainees. Accordingly, if the eight detainees were giving truthful and accurate accounts of their experiences that night, it would be necessary for me to make appropriate findings of fact as to what event or sequence of events had given rise to the perceptions that the detainees all described in their evidence.

3.454 Having reviewed the evidence in question and taken the helpful written Closing Submissions of the Core Participants into account, it seems to me that there are four possible explanations for this body of evidence.

3.455 The first possibility is that the eight detainees accurately described seeing and hearing the effects of Iraqi men being tortured and/or executed nearby. The second possibility is that, whilst no Iraqi men were actually tortured or executed that night, the military personnel at Camp Abu Naji behaved in such a way as to cause or allow the detainees to believe that Iraqi men were being tortured or executed nearby. The third possibility is that the detainees saw and heard a sequence of incidental and innocent events and mistakenly concluded that Iraqi men were being tortured and executed that night. The fourth and final possibility is that the allegations were deliberate falsehoods by the detainees who made them. In the paragraphs that follow, I deal with each of these possibilities in turn.

The first possibility

3.456 I can eliminate the first possibility very quickly. I repeat the concession made on behalf of the Iraqi Core Participants by Patrick O'Connor QC at the conclusion of the oral evidence:

*"The Iraqi Core Participants will not submit that, on the balance of probabilities, live Iraqis captured during the course of the battle on 14 May 2004, died or were killed at CAN."*³⁷³⁴

3.457 In my view, this concession appropriately reflected the huge body of evidence that, as I set out in the previous Section of this Report, established beyond doubt that a total of 20 bodies of dead Iraqis had been recovered from the battlefield on the 14 May 2004 and that, on the same day, a total of nine live Iraqi men had been detained on the same battlefield. The 20 dead bodies and the nine live detainees were then transported back to Camp Abu Naji that day. On 15 May 2004, the same 20 dead bodies were handed over to the local community by the British military and the same nine live detainees were sent to the Divisional Temporary Detention Facility ("DTDF") at Shaibah.

3.458 I have seen, heard or read nothing whatsoever that gives me any reason to believe or suspect any other Iraqi men, not taken from the battlefield, were present overnight in Camp Abu Naji in the prisoner handling area or its immediate vicinity on 14/15 May 2004.

3.459 I am thus sure that there is no possibility that what the eight detainees claim to have seen and heard that night were the sounds and/or signs of torture or executions that were actually taking place nearby that night.

³⁷³⁴ Patrick O'Connor QC [167/204/20-23]

The second possibility

3.460 This second possibility is put forward in some detail, in their written Closing Submissions, by those representing the Iraqi Core Participants.³⁷³⁵ In summary, it is suggested that the detainees were deliberately exposed to sights and sounds in the prisoner handling area, during their detention at Camp Abu Naji and whilst being processed and tactically questioned that night, with a view to making them believe that Iraqi men were being tortured and/or executed nearby.

3.461 An important element in that submission was the suggestion that the sound of the tent peg striking the table during the tactical questioning sessions would have been heard in the prisoner holding area. It was therefore contended that, because the detainees had seen a firearm earlier during processing, they might have thought that the sounds they heard included muffled or distant gunshots.

3.462 However, I have no hesitation in rejecting this particular submission and I do so for three main reasons.

3.463 First, for the reasons given earlier in this Report, when I dealt with the processing of the detainees at Camp Abu Naji on the night of 14 May 2004,³⁷³⁶ I am satisfied that none of the detainees actually saw any firearm during processing that night.

3.464 Second, during his oral evidence to the Inquiry, M004 was asked whether the detainees in the shower block might possibly have thought that the sound of the tent peg being banged on the table was, in fact, a muffled gunshot. In response, M004 said this:

“No, that’s the first time I’ve actually considered that. It’s entirely feasible, but it didn’t cross my mind. That wasn’t the intent.”³⁷³⁷

3.465 I have no doubt that M004’s answer was entirely truthful. Accordingly, his use of the tent peg, to bang on the table during tactical questioning, clearly did not form any part of a broader and more elaborate objective of creating the illusion of executions being carried out.

3.466 Third, of the eight detainees who made allegations of having seen and heard the signs and sounds of Iraqi men being tortured and/or executed nearby that night, only two (Ibrahim Gattan Hasan Al-Ismaeeli [detainee 774] and Hussein Fadhil Abbas Al-Behadili [detainee 778]) claimed to have heard gunshots being fired as part of that process.

3.467 For these reasons, I am quite sure that the detainees were not deliberately subjected to the signs and sounds of mock torture and/or executions by the British military that night.

The third possibility

3.468 The third possibility is that the detainees saw and heard a number of incidental sights and sounds whilst they were detained at Camp Abu Naji on the night of 14/15 May 2004 and, due to their heightened state of anxiety, mistakenly assumed that people were being tortured and/or executed nearby.

³⁷³⁵ ICP Closing Submissions (549) [1775]-[1783]

³⁷³⁶ See paras 3.253–3.258 above

³⁷³⁷ M004 [127/176/8-10]

- 3.469** In their evidence, as summarised above, the detainees said that they had heard and/or seen the following main sights and sounds of the torture and executions that they claimed to believe were being carried out nearby:
- a. the sound of moaning;
 - b. the sound of dragging;
 - c. the sound of bangs;
 - d. the smell of blood and the sight of blood stained water;
 - e. the sound or feel of water being poured and the sound of mopping;
 - f. the smell of chemical products; and
 - g. the sound of screams.
- 3.470** Each of these various matters can be explained in a way that has nothing to do with torture or executions, by simply having regard to the prevailing circumstances at the time. Many of these “innocent” explanations are also apparent from the evidence given to this Inquiry.
- 3.471** First, there was a considerable amount of evidence to suggest that some of the nine detainees spoke or called out to each other during the time they were detained in the prisoner holding area that night.³⁷³⁸ It is also apparent that some of the detainees were injured at that time and that they were all frightened and apprehensive. In such circumstances, it seems to me very likely that some of them might well have been moaning in pain or despair that night.
- 3.472** Second, the sounds of dragging described by the detainees might well have been caused by one of other detainees being taken from his seat in the cubicle to the tent for processing or tactical questioning.
- 3.473** Third, I accept that, whatever might have been M004’s intention, the sounds of the tent peg being struck on the table might well have been heard by the detainees in the prisoner holding area. This possibility was accepted by both M004 and M013.³⁷³⁹ As I set out earlier in this Chapter, there was a difference of opinion between M004 and Sergeant Martin Lane about whether the sound of the tent peg being struck might have been confused with a gunshot.³⁷⁴⁰ Nevertheless I am satisfied that some detainees might possibly have mistaken the sound for a muffled or distant gunshot.
- 3.474** Fourth, I accept that some of the detainees might have smelt blood. Some of the detainees were wounded as a result of their participation in the Battle of Danny Boy. In the case of Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), it seems possible that he had bled sufficiently for him, and possibly the detainees near him, to have detected the smell of blood.
- 3.475** Fifth, the descriptions of hearing water being poured, of hearing the sounds of mopping, of smelling chemical products and of seeing stained water (possibly coloured by both chemicals and/or dirt) all seem to be straight-forward descriptions of various aspects of an overall process of cleaning the prisoner holding area. However, there is a conspicuous absence of any record in either the military witness evidence or the documentary records to suggest that the shower block was actually mopped/cleaned in this way overnight on 14/15 May 2004. The state of the military evidence on the matter was accurately summarised by those

³⁷³⁸ Part 3, Chapter 4: Overnight Detention at Camp Abu Naji

³⁷³⁹ M004 [127/175/18-20]; M013 [137/44/6-14]

³⁷⁴⁰ M004 [127/176/4-11]; Sergeant Lane [136/105/11-12]

instructed by TSol on behalf of most of the soldiers in their written Closing Submissions, as follows:

*"There is, for example, no credible evidence before the Inquiry that the floor of the shower block was mopped in the early hours of 15 May, whether to clean away large quantities of blood or at all. The Inquiry has taken evidence from every guard on duty that night, and the others in the vicinity. It has considered the detailed contemporaneous documentation that was produced at CAN concerning what was done concerning the detainees. There is nothing to suggest mopping, or that there was a substantial quantity of blood on the floor of the shower block (as opposed to the possibility that there may have been a few drops)."*³⁷⁴¹

3.476 Whilst I accept the general thrust of that submission and agree that it accurately reflects the state of the evidence, I feel that I cannot rule out the possibility that the floor of the prisoner holding area was mopped with water containing some form of chemical product in the early hours of 15 May 2004. It seems to me that such a possibility is far from fanciful, given that it is likely that the block would have become dirty overnight. It seems to me entirely possible that something as mundane as mopping the floor might have slipped the memories of the guards who were on duty at the time and was not recorded in any contemporary documentation.

3.477 As for the sounds of screams, when he was interviewed by the Royal Military Police in November 2008, M004 rejected the possibility that the allegations related to screaming by any of the detainees being tactically questioned by him that night. However, he went on to suggest that the detainees might have been recalling screaming by M004 himself.³⁷⁴² It seems to me that this is a possible explanation for the screams/shouts that the detainees claimed to have heard that night.

3.478 However, the mere fact that the detainees could have seen and heard incidental sights and sounds at Camp Abu Naji that night that were consistent with those they described in their evidence, is not enough. In order that this third possibility should actually provide the real explanation for the detainees' claims to have seen and heard what they thought to be the signs and sounds of torture and execution being carried out that night, it is necessary that the detainees in question should have honestly believed that to have been the case, both at the time and subsequently.

3.479 In their written Closing Submissions, those instructed by TSol on behalf of most of the soldiers submitted that no such finding can be made, as follows:

*"The evidence given by the detainees as to what they saw, heard and smelt in the shower block at CAN cannot be explained away by misunderstanding on the part of disorientated witnesses suffering from the shock of capture, and whose minds may have been playing tricks on them. In particular, and in case this might be suggested by PIL, it cannot be explained by the sound of a tent peg striking a table in a nearby tent."*³⁷⁴³

3.480 Having considered the evidence which I have seen, heard and read as a whole I broadly agree with this submission. It also seems to me that, for the third possibility to offer an adequate explanation for this body of evidence, there would need to have been an almost complete

³⁷⁴¹ TSol Closing Submissions (36) [85]

³⁷⁴² (MOD045426)

³⁷⁴³ TSol Closing Submissions (35) [83]

failure on the part of all eight detainees to apply any form of hindsight or *ex post facto* reasoning to their experiences that night.

- 3.481** In particular, by the time the detainees had themselves been both processed and tactically questioned, each of them would have appreciated that the sounds of chairs dragging were simply the sounds of other detainees being taken to be processed or tactical questioned. Similarly, by that stage they would each have realised that the muffled bangs were not gunshots but were the sounds of a tent peg striking a table.
- 3.482** I accept that, in a heightened state of anxiety, some of the detainees might well have feared the worst, when they saw and heard any or all of the various matters that I have detailed in the preceding paragraphs. However, I do not accept that, by the time they came to give evidence to the Inquiry, any of them continued honestly to believe that they had seen and heard the signs and sounds of the torture and/or execution of their fellow detainees or of other Iraqis at Camp Abu Naji that night. Nevertheless, each of the eight detainees persisted in making their allegations to that effect. In my view, each of them did so dishonestly and in the full knowledge that the allegations were false.

The fourth possibility

- 3.483** Having regard to the foregoing, I am left in no doubt that the fourth possible explanation is the correct explanation for this body of evidence by these eight detainees. I am quite sure that, by the time they came to give their evidence to the Inquiry, each of them gave evidence in support of allegations that they knew by then to be entirely false. They therefore each consciously and deliberately lied.
- 3.484** Furthermore, having regard to how much the evidence of these eight detainees had in common, it appears likely that their various falsehoods are the product of active collusion between them and possibly between them and one or more third parties intent on discrediting the British forces as much as possible.
- 3.485** Perhaps the clearest evidence that these false allegations are the product of collusion can be seen in the areas in which the evidence of these detainees actually differed. The detainees gave different evidence about the way in which the Iraqi men were said to have been executed, different evidence about the number of men actually killed and different evidence about the time at which the executions occurred that night. However, despite these considerable differences, seven of the eight detainees, the exception being Abbas Al-Hameedawi (detainee 776), came to the same conclusion, namely that Iraqi men had been executed nearby by the British that night. In my view, this strongly suggests that they had colluded about the central aspect of the allegation, namely that they had heard and seen the sounds and signs of Iraqi men being executed that night, but had not managed to agree or remember a suitable narrative about how and when those executions had actually taken place.
- 3.486** In my view, this conclusion has a substantial adverse impact on the credibility of these particular witnesses. It demonstrates a truly lamentable approach on the part of each of them to the giving of evidence, including evidence on oath, and it shows each of them to be a person who is willing to go to considerable lengths in order to bolster false allegations of criminal conduct of the most serious kind on the part of the British forces.

CHAPTER 4: OVERNIGHT DETENTION AT CAMP ABU NAJI

1. Command structure and the governing policy

3.487 As I have already indicated, the appropriate management and treatment of detainees was governed by Standard Operating Instructions (“SIOs”) that had been issued at Divisional, Brigade and Battle Group levels, namely the Divisional SOI 390, Brigade SOI 218 and the 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”) SOIs 206 and 207.

3.488 SOI 390 was a policy guidance document which was “...in essence, the rule book for prisoner handling in Iraq”.³⁷⁴⁴ The purpose of SOI 390 was to ensure that detainees were handled in a lawful manner. SOI 390 had been updated shortly before 14 May 2004, on 25 March 2004. It included a number of annexes that provided guidance on all aspects of prisoner handling, including matters such as processing, tactical questioning and onward transfer to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah.

3.489 In addition to SOI 390, there were a number of Battle Group SOIs in force on 14 May 2004 which related to prisoner handling, including 1PWRR SOI 206³⁷⁴⁵ which related to prisoner handling, and 1PWRR SOI 207³⁷⁴⁶ which related to tactical questioning. These were the Battle Group’s immediate point of reference for all matters relating to detainees. The SOIs were intended to function as instructions, rather than orders, and sought to reflect best practice.

3.490 There were also Brigade SOIs, such as SOI 218, which related to prisoner handling.³⁷⁴⁷ As 1PWRR’s adjutant, Captain Duncan Allen, explained:

*“There were usually three levels of SOIs on any subject (Divisional, Brigade and Battle Group) and the idea was that the information in the Divisional and Brigade SOIs would be incorporated into the Battle Group version so that we did not need to refer to multiple sources to address any particular issues that came up.”*³⁷⁴⁸

3.491 According to 1PWRR SOI 206 (Annex A), the responsibility for the detainees whilst they were held in the prisoner handling compound fell to a number of personnel.³⁷⁴⁹ At the top of the chain of command were the Officer Commanding and the Battle Group Internment Review Officer (“BGIRO”). The BGIRO was responsible for the entire post-arrest procedure with regard to detainees.

3.492 As I have already indicated,³⁷⁵⁰ Captain Duncan Allen was the adjutant of 1PWRR at the time and part of his role involved acting as the BGIRO, which meant having overall responsibility for detainee internment at Camp Abu Naji. In Captain Allen’s absence, the role of BGIRO was covered by Captain James Rands.³⁷⁵¹ As Captain Allen explained, he did not have a practical hands-on role with the detainees, but ensured that the procedures worked well and that those who did have a hands-on role knew what they were doing and were properly supervised. As he recalled, “I knew that I had to ensure that the systems in place at CAN were up to

³⁷⁴⁴ Captain Mynors (ASI024886) [7]

³⁷⁴⁵ (MOD015804)

³⁷⁴⁶ (MOD015807)

³⁷⁴⁷ (MOD038961)

³⁷⁴⁸ Captain Allen (ASI022997) [44]

³⁷⁴⁹ (MOD015804)

³⁷⁵⁰ See para 3.490

³⁷⁵¹ Captain Allen (ASI022985) [7]

*scratch and in accordance with the established policies and guidance at the time.*³⁷⁵² Captain Allen confirmed that WO1 Shaun Whyte and WO2 Darran Cornhill were delegated the task of managing the actual handling of the detainees who were brought to Camp Abu Naji.³⁷⁵³

- 3.493** 1PWRR SOI 206 (Annex A) also stated that the BGIRO was to be directly responsible to the Commanding Officer. As the Regimental Sergeant Major, WO1 Shaun Whyte was ultimately the officer in charge of the prisoner handling compound. As he explained in his oral evidence to the Inquiry, this meant that he was ordinarily in charge of the detainees from the time of their arrival at Camp Abu Naji until their departure.³⁷⁵⁴ As I have already explained,³⁷⁵⁵ WO1 Whyte was not actually on duty on 14 May 2004, but he did confirm that he had visited the prisoner handling compound that night in his capacity as the Regimental Sergeant Major, acting as an “*extra pair of eyes*.”³⁷⁵⁶
- 3.494** On 14 May 2004, it so happened that WO2 Darran Cornhill was the officer in charge of the prisoner handling compound. He was therefore in overall charge of the handling and processing of the nine detainees.³⁷⁵⁷ According to Divisional SOI 390, WO2 Cornhill was the “Detainee Control Post Warrant Officer” (“DCPWO”) on 14 May 2004.³⁷⁵⁸ This meant that he also had responsibility for directing those in charge of the holding area in the movement of the detainees between the prisoner holding area and the processing/tactical questioning tent. It was thus WO2 Cornhill who had the immediate overall responsibility for the nine detainees during their stay in the prisoner holding area during the night of the 14/15 May 2004.
- 3.495** However, as I indicated earlier,³⁷⁵⁹ on the night of 14/15 May 2004 WO2 Cornhill had concentrated on what he considered to be his principal role, namely the processing of the detainees. WO2 Cornhill explained that he had delegated the responsibility of guarding the detainees in the prisoner holding area to Staff Sergeant David Gutcher that night.³⁷⁶⁰ In his oral evidence to the Inquiry, WO2 Cornhill said that he had felt that he no longer retained responsibility for the detainees once they had been processed. He believed that, thereafter, responsibility for the detainees had been transferred to Staff Sergeant Gutcher.³⁷⁶¹
- 3.496** Staff Sergeant Gutcher was the prisoner holding area non-commissioned officer (“NCO”) on the night of 14/15 May 2004. According to 1PWRR SOI 206 (Annex A), he was therefore responsible for the welfare of the detainees in the prisoner holding area and for detailing guards to move detainees as directed by the DCPWO (i.e. WO2 Cornhill).³⁷⁶² However, in his oral evidence to the Inquiry, Staff Sergeant Gutcher accepted that he had been effectively left unsupervised and in sole charge of the detainees, after he had assisted with their processing that night.³⁷⁶³
- 3.497** Despite WO2 Cornhill’s belief that, once he completed processing the nine detainees at Camp Abu Naji on 14 May 2004, he had transferred all responsibility for them to Staff Sergeant Gutcher, it is clear that he did, in fact, continue to have overall responsibility for the detainees

³⁷⁵² Captain Allen (ASI022987) [14]

³⁷⁵³ Captain Allen (ASI022988) [15]

³⁷⁵⁴ WO1 Whyte [106/10/11-13]

³⁷⁵⁵ See Part 3, Chapter 2: the Processing of the Detainees at Camp Abu Naji

³⁷⁵⁶ WO1 Whyte [106/40/8-9]

³⁷⁵⁷ WO1 Whyte [106/40-41]

³⁷⁵⁸ (MOD015804)

³⁷⁵⁹ See Part 3, Chapter 2: the Processing of the Detainees at Camp Abu Naji

³⁷⁶⁰ WO2 Cornhill (ASI013364) [81]

³⁷⁶¹ WO2 Cornhill [115/17-20]

³⁷⁶² (MOD015804)

³⁷⁶³ Staff Sergeant Gutcher [122/12/10-17]

on the night of 14/15 May 2004 in his capacity as the DCPWO. The fact that he believed otherwise strongly suggests that insufficient thought had been given to ensuring that there was a proper understanding of who actually was in overall charge of the detainees' welfare whilst they were held in the prisoner holding area that night. However, I accept Staff Sergeant Gutcher's evidence that, so far as he was concerned, he had taken over the responsibility for the prisoner holding area and the detainees' welfare in WO2 Cornhill's absence,³⁷⁶⁴ although this clearly did not reflect the provisions of the relevant SOIs and appears to have been an entirely ad hoc arrangement.

- 3.498** Another unsatisfactory aspect of the arrangements for prisoner handling at Camp Abu Naji, during the relevant period, was that neither Staff Sergeant Gutcher (as the prisoner holding area NCO) nor WO1 Whyte (as the Officer i/c Prisoner Handling) had undergone any type of formal training in prisoner handling.³⁷⁶⁵ WO1 Whyte did not receive any specific pre-deployment training of this sort, nor does it appear that WO2 Cornhill received any such training. The only "training" WO1 Whyte received in prisoner handling was in the form of a "walk through, talk through" by his predecessor in the course of the handover.³⁷⁶⁶ In fact, Divisional SOI 390 (At Annex G) specifically provides that the guard forces should have been instructed by a Prisoner Handling Instructor who had undergone relevant training:

*"...the guard forces should have been instructed by a prisoner handling instructor who has taken a course of qualification in prisoner handling and TQ and in the correct manner of holding and moving internees through the TQ centre. Such instruction is to occur prior to the operation and/or will be conducted as part of routine training procedures."*³⁷⁶⁷

- 3.499** The nine detainees were held in the prisoner holding area from the time of their arrival on 14 May 2004 (some of the detainees having arrived at 20:55 hours and others at 21:55 hours) until their departure on 15 May 2004. Apart from the time that they attended the processing tent for processing or for tactical questioning, the detainees remained in the prisoner holding area throughout the entire period that they were held at Camp Abu Naji.

- 3.500** The detainees have made a number of allegations relating to their overnight detention at Camp Abu Naji during 14/15 May 2004. Some of these were direct allegations of ill-treatment in the form of both physical and verbal assaults, whilst others were instances of omissions and failures to look after the detainees' welfare properly. The order in which I have dealt with these allegations does not necessarily reflect the chronological order in which the incidents may have occurred. Unsurprisingly in the circumstances, the order and timing of many of the incidents are uncertain and the detainees were often unable to be precise with regard to matters such as the timing and the order in which the alleged events occurred. I have considered these various allegations and other potential forms of ill-treatment under the following eleven headings:

- Allegation 1 – The detainees were ill-treated in the way they were escorted by the guards.

³⁷⁶⁴ Staff Sergeant Gutcher [122/9-10]

³⁷⁶⁵ In its letter to the Inquiry dated 20 November 2014, the Ministry of Defence made it clear that the latest version of Joint Doctrine Publication 1-10 *Captured Persons (CPERS)* was published on October 2011. This Doctrine would prevent similar incidents happening now. The Ministry of Defence went on to point out that the assurance regime has also been greatly enhanced. The detention facilities in theatre are now run by a professional cadre of personnel (principally drawn from the Military Provost Staff, and reinforced by the Royal Military Police). These have been scrutinised both by internal inspections by the Provost Marshal (every six months) and the Army Inspector (in July 2010 and October 2012) and by external inspections by the International Committee of the Red Cross. I have no reason to doubt the accuracy and reliability of that assertion.

³⁷⁶⁶ Staff Sergeant Gutcher [122/25/8-14]; WO1 Whyte [106/36-40]

³⁷⁶⁷ (MOD046755)

- Allegation 2 – The detainees were prevented from talking which was enforced by verbal or physical assaults.
- Allegation 3 – The detainees were not given an adequate supply of water.
- Allegation 4 – The guard force used the giving of water as an opportunity to carry out physical assaults on the detainees.
- Allegation 5 – The detainees were not given an adequate supply of food.
- Allegation 6 – The detainees were deliberately deprived of sleep. The detainees were made to stay awake and subjected to physical assaults.
- Allegation 7 – The detainees were deprived of their sight for prolonged periods.
- Allegation 8 – The lavatory arrangements were inadequate.
- Allegation 9 – The detainees were ill-treated during medical examinations.
- Allegation 10 – The detainees were deliberately plasticcuffed too tightly and so as to cause pain.
- Potential ill-treatment 11 – The detainees were subjected to “static” or “white” noise from a radio.

3.501 In the paragraphs that follow, I deal with each of these allegations in turn.

2. Allegation – the detainees were ill-treated in the way they were escorted by the guards

3.502 The detainees were escorted to and from processing and tactical questioning by the guards on duty in the prisoner handling compound. While the detainees were held in the prisoner holding area at Camp Abu Naji on 14/15 May 2004 and with the exception of their arrival and departure, the only other occasions that the guards escorted them anywhere else was when they were escorted to the lavatories.

3.503 The detainees made a number of allegations concerning the way in which they were escorted while they were held at Camp Abu Naji during 14/15 May 2004. In essence, the allegations of ill-treatment involved two particular aspects of the escorting procedure: first, that the detainees were moved in an excessively robust manner, including being deliberately disorientated, in order to maintain the shock of capture; and second, that the detainees were subjected to direct physical assaults by the guards whilst they were being escorted.

Military Evidence

3.504 The escorting of detainees within the prisoner handling compound was governed by Annex G of the Divisional SOI 390, which stipulated as follows:

“Movement between the holding area and TQ rooms is to be controlled by two guards, under the instruction of an NCO. Instruction should be given to these guards as part of the TQ stand up procedure prior to the operation.”³⁷⁶⁸

³⁷⁶⁸ (MOD003688)

3.505 In his oral evidence to the Inquiry, WO1 Shaun Whyte said that the detainees would be moved quickly, but not so fast that they would trip or injure themselves. He emphasised that the detainees were not dragged or knocked into walls. In his opinion, moving the detainees quickly was simply a matter of efficiency. WO1 Whyte put it this way:

“... you wouldn’t move them slowly. That’s – it was just part and parcel. You would move them quickly. When you got to a step, you would – or an obstacle, you would make sure they were aware of it so they could step over them.”³⁷⁶⁹

3.506 The majority of the military witnesses said that, while in the prisoner handling compound, they escorted the detainees in much the same way as they had done when the detainees first arrived at Camp Abu Naji on 14 May 2004.³⁷⁷⁰ Thus, Corporal Jeremy Edgar remembered having escorted two of the detainees to the processing tent that night and explained: “We will have used force, reasonable force, to lift him from his sitting position and then marched him quickly to the processing tent.”³⁷⁷¹ He went on to describe the pace as a “quick march, almost a jog”, which he believed was designed to keep the detainees disorientated, as he explained in answer to Counsel’s questions:³⁷⁷²

“Q. Why didn’t you just tell him to stand up and let him stand up? Why did you use force to lift him?”

A. It’s my belief that we had to ensure that the detainees knew that we were in charge and that, by doing so, we were effectively telling them that we were in charge.

Q. So rather than saying “Stand up”, you would take them from under the arms and just lift them up?

A. And say “Stand up” at the same time.

Q. And that was to keep them disorientated or under your control?

A. Certainly to keep them compliant with our wishes, yes.”³⁷⁷³

3.507 Lance Corporal Andrew Tongue described the pace at which detainees were moved to the tent as “quick walking...we moved briefly, quickly.”³⁷⁷⁴ He denied that they had carried or dragged any of the detainees.³⁷⁷⁵

3.508 In his oral evidence to the Inquiry, Corporal Michael Taylor said that the detainees would be moved swiftly and at a fast pace, but not running. He believed that he had been instructed to move the detainees at that speed. He stressed that the detainees were not moved in a zigzag fashion, nor were they spun around while being moved.³⁷⁷⁶

3.509 Lance Corporal David Errington said that he believed that he moved detainees at a fairly fast pace that night, because he had been told to do so in the initial brief by Staff Sergeant David Gutcher.³⁷⁷⁷

³⁷⁶⁹ WO1 Whyte [106/84/18-22]

³⁷⁷⁰ See, for example, Corporal M. Taylor [129/54/11-13]; Lance Corporal Edwards [129/149/4-8]

³⁷⁷¹ Corporal Edgar [128/45/23-25]

³⁷⁷² Corporal Edgar (ASI020376) [51]; [128/48/12-13]

³⁷⁷³ Corporal Edgar [128/46/4-14]

³⁷⁷⁴ Lance Corporal Tongue [134/141/2-4]

³⁷⁷⁵ Lance Corporal Tongue (ASI015584-85) [73]; [134/142-146]; [134/148/16-19]

³⁷⁷⁶ Corporal M. Taylor (ASI018104) [37]; [129/54/14-25]

³⁷⁷⁷ Lance Corporal Errington [125/57/15-22]; [125/38/18-20]

3.510 For his part, Staff Sergeant Gutchter explained that the detainees were moved “robustly” so that they could be interviewed and taken out of the processing tent as quickly as possible. In his oral evidence to the Inquiry, he put it in this way:

“As far as I can recall, I believe that the robust handling at this point was not used as a scare tactic, just to speed up the momentum to get [them]...through the [process]... as quick as possible.”³⁷⁷⁸

3.511 Lance Corporal David Bond said that he had been told “...to place one hand under their armpit, lift them out of the chair or assist them in getting up out of the chair, a guard on either side and walk straight to the – to the tent.”³⁷⁷⁹ He recalled that, on one occasion at the processing tent “the RSM [i.e. WO1 Whyte] told [him] and the other escort that the detainee was not cooperating and to take him back to the detainee holding area ‘pretty sharpish if you know what I mean’”. He said that he took it to mean that the detainee was to be taken back to the detainee holding area quickly, but not assaulted in any way.³⁷⁸⁰

3.512 In all but two cases (Hamzah Almalje [detainee 772] and Hussein Al-Behadili [detainee 778]), the Inquiry has been able to identify which soldiers escorted each detainee to and from processing, mainly from the photographs of the detainees with their escorting guards that were taken during processing. However, it has not been possible to identify the soldiers who escorted each detainee to tactical questioning, because their names were not recorded in the Prisoner Information Sheets, there are no relevant photographs and the escorting guards were not necessarily the same as those who had escorted the detainees to be processed. Accordingly, to the extent possible, in the paragraphs that follow I deal with the evidence of the soldiers who are known to have escorted one or other of the nine detainees present in the prisoner holding area at Camp Abu Naji during 14/15 May 2004.

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.513 Mahdi Jasim Abdullah Al-Behadili (detainee 773) was escorted to and from processing by Lance Corporal Christopher Vince³⁷⁸¹ and Sergeant Samuel McKee.³⁷⁸²

3.514 Lance Corporal Vince recalled having escorted Mahdi Al-Behadili to the processing tent with one other guard. He did not think either of them had shouted at him. Lance Corporal Vince said that Mahdi Al-Behadili had been wearing blacked out goggles, but was not zigzagged or walked at speed, nor was he banged into any walls. Lance Corporal Vince said that he did not think that Mahdi Al-Behadili had stumbled, unless it had been on the step at the entrance to the prisoner holding area.³⁷⁸³

3.515 Sergeant McKee recalled having escorted Mahdi Al-Behadili to the processing tent that night. He said that they had not walked him in a zigzag fashion, nor had they shouted at him or banged him along the way. However, Sergeant McKee did confirm that Mahdi Al-Behadili had been walked in a brisk manner.³⁷⁸⁴

³⁷⁷⁸ Staff Sergeant Gutchter (MOD004516); [122/33]

³⁷⁷⁹ Lance Corporal Bond [120/80/9-12]

³⁷⁸⁰ Lance Corporal Bond (ASI011534) [56]; [120/121-122]

³⁷⁸¹ Lance Corporal Vince (ASI009937) [70]

³⁷⁸² Sergeant McKee (ASI014660) [41]

³⁷⁸³ Lance Corporal Vince [119/35/20]-[36/3]

³⁷⁸⁴ Sergeant McKee [124/189-190]

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.516 Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was escorted to and from processing by Corporal Stuart Bowden³⁷⁸⁵ and Craftsman Matthew Morris.³⁷⁸⁶

3.517 Corporal Bowden remembered that he and Craftsman Morris had escorted Ibrahim Al-Ismaeeli to the tent for processing that night. He said that they had moved him at his own pace. He had not been zigzagged, nor did he fall into a wall. In his oral evidence to the Inquiry, Corporal Bowden recalled that, at some point, he had accidentally stepped on Ibrahim Al-Ismaeeli's injured foot. What Corporal Bowden said was this:

*"I don't know if I stumbled or mistimed my steps, and, you know, he was a bit quicker than I thought. But I just accidentally stood on his foot. There was no malice or intention in it whatsoever."*³⁷⁸⁷

3.518 Corporal Bowden said that Ibrahim Al-Ismaeeli had made a noise, as he reacted to the pain caused to his injured foot by the accident, so they had paused for a moment, while everybody regained their footing.³⁷⁸⁸

3.519 It was Craftsman Morris' recollection that Ibrahim Al-Ismaeeli had to be half carried, because he kept his injured foot raised off the ground. Craftsman Morris said that he had held Ibrahim Al-Ismaeeli, with one hand under his armpit and the other on his wrist, and escorted him at a "brisk walking pace." Craftsman Morris also remembered an incident that occurred on the way back from the processing tent, that he described in the following terms:

*"I remember nearly tripping. I can't remember him standing on his foot, but I do remember he almost made me trip or made me stumble because he was, like, holding his foot either forward or backwards."*³⁷⁸⁹

3.520 Lance Corporal Andrew Tongue also recalled an incident that occurred when he had escorted a detainee that night, in which he had accidentally trodden on the detainee's foot. He said that he had been taking care when escorting the detainee, but that he had caught his shoulder on the doorway into the prisoner holding area, which had caused him to stumble onto the detainee's foot. He said that he had been concerned that he might have hurt the detainee, but that the detainee had not made any sound.³⁷⁹⁰ In a statement that he made to the Royal Military Police³⁷⁹¹ ("RMP") Lance Corporal Tongue said that he had trodden on the detainee's right foot. In his oral evidence to the Inquiry, Lance Corporal Tongue said that he was confident he had trodden on the detainee's left foot.³⁷⁹² It is to be noted that the latter was Ibrahim Al-Ismaeeli's uninjured foot.

³⁷⁸⁵ Corporal Bowden (ASI010614) [49]

³⁷⁸⁶ Craftsman Morris (ASI010887) [58]

³⁷⁸⁷ Corporal Bowden [120/201/1-4]

³⁷⁸⁸ Corporal Bowden [120/200-202]; (ASI010612) [45]

³⁷⁸⁹ Craftsman Morris [133/183/12-15]; [133/186/5-8]; [133/187/21-24]; (ASI010884) [46]

³⁷⁹⁰ Lance Corporal Tongue [134/188-189]

³⁷⁹¹ Lance Corporal Tongue (MOD004542)

³⁷⁹² Lance Corporal Tongue [134/511-13]

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 3.521** Kadhim Abbas Lafta Al-Behadili (detainee 775) was escorted to and from processing by Corporal Daniel Marshall³⁷⁹³ and Corporal Jeremy Edgar.³⁷⁹⁴
- 3.522** Corporal Marshall recalled that he had taken Kadhim Al-Behadili to the tent for processing. They had walked at a steady pace, not at speed or in a zigzag manner. According to Corporal Marshall, Kadhim Al-Behadili was “guided to where he needed to go.”³⁷⁹⁵
- 3.523** Lance Corporal Edgar said that, at the same time as saying “stand up”, they had used reasonable force to lift Kadhim Al-Behadili from the chair upon which he was sitting and had then marched him quickly to the processing tent. Lance Corporal Edgar said that they had acted in this manner, so that the detainees knew who was in charge and in order to keep them compliant. He also said that the detainees were marched quickly to keep them disorientated. However, Lance Corporal Edgar denied that the detainee had banged into anything on the way to the tent.³⁷⁹⁶
- 3.524** In his oral evidence to the Inquiry, Corporal John Everett described how he had witnessed an incident that night in which a detainee, who he now believes to have been Kadhim Al-Behadili, refused to walk from the cells to the processing tent. The detainee made himself into a dead weight and therefore had to be moved by two soldiers holding him under the armpits at chest height. Corporal Everett said that he saw one of the guards stumble into a wall, causing all three to fall forwards. Corporal Everett did not think they hit the ground, but he was unsure whether the detainee had banged into the wall as well.³⁷⁹⁷ He confirmed that this was how he now remembered the incident, although in his various Royal Military Police (“RMP”) statements and his written Inquiry statement he had implied that the detainee did hit the wall.³⁷⁹⁸

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.525** Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) was escorted to and from processing by Lance Corporal Raymond Edwards³⁷⁹⁹ and Lance Corporal Richard Garner.³⁸⁰⁰
- 3.526** Lance Corporal Edwards explained that two guards would be selected to take each detainee to the tent. He said that nothing was said to the detainees, other than to tell them to “stand up”. According to Lance Corporal Edwards, detainees were taken to the processing tent at a swift pace.³⁸⁰¹
- 3.527** For his part, Lance Corporal Garner could not actually recall having escorted Abbas Al-Hameedawi to the processing tent that night, but stated that the detainees were escorted to the tent in the same way as they were escorted from the vehicles to the prisoner holding

³⁷⁹³ Corporal Marshall (ASI011088) [57]

³⁷⁹⁴ Corporal Edgar (ASI020377) [54]

³⁷⁹⁵ Corporal Marshall [130/31/25]-[32/2]

³⁷⁹⁶ Lance Corporal Edgar [128/46-48]

³⁷⁹⁷ Corporal Everett [117/144-151]; (ASI009400) [142]-[143]

³⁷⁹⁸ Corporal Everett (ASI009411) [91]; [117/191]; NB – in their written Closing Submissions, those representing the Iraqi Core Participants suggest that Corporal Everett may have misidentified the detainee in question, because he had previously described the detainee as being “quite large” and that therefore it is more likely to have been either Abbas Abd Abdulridha Al-Hameedawi (detainee 776), Hussein Fadhil Abbas Al-Behadili (detainee 778) or Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (494) [1645]

³⁷⁹⁹ Lance Corporal Edwards (ASI011785) [59]

³⁸⁰⁰ Lance Corporal Garner (ASI009441) [23]

³⁸⁰¹ Lance Corporal Edwards [129/148-150]

area. According to Lance Corporal Garner, the detainees were moved at a normal pace and were not pushed into walls or assaulted while being moved.³⁸⁰²

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

- 3.528** Ahmed Jabbar Hammood Al-Furaiji (detainee 777) was escorted to and from processing by Corporal Michael Taylor³⁸⁰³ and Lance Corporal Andrew Tongue.³⁸⁰⁴
- 3.529** Corporal M. Taylor stated that Ahmed Al-Furaiji was told to stand in Arabic, and then helped up. The chair was removed and he was walked to the processing tent. According to Corporal M. Taylor, Ahmed Al-Furaiji was moved to the tent in the same manner and at the same speed (a fast walking pace) as when he had been moved to the prisoner holding area initially. Corporal M. Taylor said that Ahmed Al-Furaiji had been moved at that pace because they were told to do it like that.³⁸⁰⁵
- 3.530** For his part, Lance Corporal Tongue said that each detainee had been escorted at normal walking pace, although he was a fast walker and it might have seemed fast to the detainee, who was blindfolded and handcuffed at the time.³⁸⁰⁶ Lance Corporal Tongue said that he had not shouted at the detainee or banged him into any walls whilst escorting him.³⁸⁰⁷

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 3.531** Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) was escorted to and from processing by Lance Corporal Andrew Tongue³⁸⁰⁸ and Corporal Jeremy Edgar.³⁸⁰⁹
- 3.532** Corporal Edgar recalled that Atiyah Al-Baidhani struggled a little bit, either on the way to or coming back from processing. He said that Atiyah Al-Baidhani had locked his body and so they had had to use a little more physical force in order to move him. According to Corporal Edgar, Atiyah Baidhani had resisted, by pulling away from them. Although he could not remember the precise details, Corporal Edgar said that he would have got him up from the chair, seized him under the arm and walked him to the tent at a pace akin to a jog.³⁸¹⁰
- 3.533** As I have already stated, Lance Corporal Tongue said that each detainee had been escorted at normal walking pace, although he was a fast walker and it might have seemed fast to the detainee, who was blindfolded and handcuffed at the time. Lance Corporal Tongue said that he had not shouted at the detainee or banged him into any walls whilst escorting him.³⁸¹¹

Hussein Gubari Ali Al-Lami (detainee 780)

- 3.534** Hussein Gubari Ali Al-Lami (detainee 780) was escorted to and from processing by Corporal Andrew Nicholls³⁸¹² and Corporal Daniel Marshall.³⁸¹³

³⁸⁰² Lance Corporal Garner [131/143]

³⁸⁰³ Corporal M. Taylor (ASI018110) [52]

³⁸⁰⁴ Lance Corporal Tongue (ASI015571) [25]

³⁸⁰⁵ Corporal M. Taylor [129/54/19]

³⁸⁰⁶ Lance Corporal Tongue [134/141/7-16]

³⁸⁰⁷ Lance Corporal Tongue [134/138/21]–[142/18]; [134/170-171]

³⁸⁰⁸ Lance Corporal Tongue (ASI015571) [25]

³⁸⁰⁹ Corporal Edgar (ASI020377) [54]

³⁸¹⁰ Corporal Edgar [128/51-55]

³⁸¹¹ Lance Corporal Tongue [134/138/21]–[142/18]; [134/170-171]

³⁸¹² Corporal Nicholls (ASI011455) [48]

³⁸¹³ Corporal Marshall (ASI011088) [60]

3.535 Corporal Marshall said that he had taken Hussein Al-Lami to the tent for processing. He confirmed that the escorting of a detainee to be processed and to be tactically questioned was generally done in exactly the same way. There was no zigzagging or banging into walls.³⁸¹⁴

3.536 For his part, Corporal Nicholls said that Hussein Al-Lami had been escorted at a quick pace, the same as that used when they had first arrived. Corporal Nicholls described how one guard would go into the cubicle in the prisoner holding area, put his hand under the detainee's armpit, lift him up to indicate he needed to stand and tell him to stand in Arabic. He said that the chair would then be moved out of the way and the detainee would be turned round and escorted out of the cubicle. Both guards would then take hold of the detainee and escort him to the processing tent. Corporal Nicholls said that, in Hussein Al-Lami's case this had all gone ahead without incident and that Hussein Al-Lami had been completely compliant throughout.³⁸¹⁵

The Detainees' accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

3.537 In his 2013 written Inquiry statement, Hamzah Joudah Faraj Almalje (detainee 772) alleged that he had been picked up under the armpits by two guards without warning and then taken to his first "interrogation". He claimed that he had been lifted off the ground at the time³⁸¹⁶ and that he had been carried out of the room afterwards in the same way as he had been taken there.³⁸¹⁷

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.538 In his 2010 first written Inquiry statement to the Inquiry, Mahdi Jasim Abdullah Al-Behadili (detainee 773) confirmed that he had not been assaulted in any way by the soldiers who had escorted him to processing³⁸¹⁸ or to tactical questioning³⁸¹⁹ or back from tactical questioning.³⁸²⁰

3.539 In his second written Inquiry statement, made in January 2013, Mahdi Al-Behadili gave the following account of how he had been escorted to processing:

*"I was taken out of the room by two soldiers who lifted me up from the chair, their hands under my arms. I was lifted up and, as the soldiers were tall, my feet did not really touch the floor. I was carried with my feet off the ground. The soldiers were rough with me but I was not hit against the wall or struck by either of them."*³⁸²¹

3.540 Mahdi Al-Behadili confirmed that he had not been hit or ill-treated on the way back from processing³⁸²² but claimed that he had later been half-carried, half-dragged back to the same "interrogation" tent.³⁸²³

³⁸¹⁴ Corporal Marshall [130/37-41]

³⁸¹⁵ Corporal Nicholls [124/68-69]

³⁸¹⁶ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000687) [33]

³⁸¹⁷ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000689) [38]

³⁸¹⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001117) [44]

³⁸¹⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001118) [54]

³⁸²⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [60]

³⁸²¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000783) [31]

³⁸²² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000785-86) [40]

³⁸²³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000787) [44]

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.541 In his 2008 Judicial Review statement, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) claimed that he had been dragged to a tent from his cubicle in the prisoner holding area, because he could not walk.³⁸²⁴ In his first written Inquiry statement, dated 26 July 2010, he confirmed that he had been dragged to the tent on the way to his “first interrogation.”³⁸²⁵

3.542 In his second written Inquiry statement, made on 23 November 2012, Ibrahim Al-Ismaeeli said that two large soldiers had stood either side of him holding his arms and bending his head forward. He said that he had his right leg (i.e. the leg with the injured foot) stretched out in front of him and that he had been trying to lift his foot off the ground.³⁸²⁶

3.543 In his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli said this:

“I went back [to the interrogation room] rather in pain, because they would take me there running and bring me back running.”³⁸²⁷

3.544 During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli was asked about the evidence of the two soldiers who recalled having accidentally trodden on a detainee’s foot. In response, Ibrahim Al-Ismaeeli said that he did remember that his foot had been hurt on more than one occasion and went on to say that he was sure it had not been accidental, as follows:

“They were two days of suffering. It wasn’t accidental. How can it be accidental? How can I be sitting like this and one would hit me and then we say this was accidental? How come? It could be accidental if it was all dark or somebody very old passing by. Not a well-trained and skilled soldier hitting somebody and then saying ‘I apologise’.”³⁸²⁸

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.545 In his Judicial Review witness statement, made in October 2008, Kadhim Abbas Lafta Al-Behadili (detainee 775) alleged that he had been “lifted” off his chair and taken to a tent. Along the way he had been “pulled along” and “knocked into walls.”³⁸²⁹ On the way back he had been “walked” along, but had been “constantly thrown against walls.” He claimed that, once back in the cubicle in the prisoner holding area, he had been violently thrown against the wall and that hit his head twice as a result.³⁸³⁰ He went on to allege that he had then been pulled to his feet again and that the soldiers had spun him around about four times in order to disorientate him.³⁸³¹

3.546 In his written Inquiry statement, made in January 2013, Kadhim Al-Behadili said that, at some point, he had been taken off his chair in the cubicle and:

“They ran with me for a while and I lifted my feet as I had done when I was taken prisoner to prevent being dragged along the floor. They were weaving left and right as they ran.”³⁸³²

³⁸²⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013954) [19]

³⁸²⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001070) [52]

³⁸²⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000434) [23]

³⁸²⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/84/22-23]

³⁸²⁸ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/64/19-25]

³⁸²⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD006637) [11]

³⁸³⁰ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD006638) [15]-[16]

³⁸³¹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD006639) [19]

³⁸³² Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000726) [42]

- 3.547** In his oral evidence to the Inquiry, Kadhim Al-Behadili gave this general description of how the detainees were handled by the guards at Camp Abu Naji during 14/15 May 2004:

*"...every now and then, they would take you. They would take you and make you turn around until you are dizzy. They would grab you and then make you turn around."*³⁸³³

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.548** In his 2008 Judicial Review statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) said this:

*"Suddenly I was dragged up out of the chair which fell over. This was a shock to me. I was dragged out of the cubicle and slapped on the back of the head as I was taken..."*³⁸³⁴

- 3.549** In his first written Inquiry statement, made in 2010, Abbas Al-Hameedawi explained that:

*"When being moved from one place to another by the soldiers, they always moved quickly, I could not keep up with them and that movement drained all the energy from me."*³⁸³⁵

- 3.550** In his oral evidence to the Inquiry, Abbas Al-Hameedawi said that the guards had taken him to the tent in a "hurry."³⁸³⁶ He went on to say this:

*"It was – it was dragging and then they slapped and then they – it's like dragging me, if you wanted to put it that way, if you wanted to catch something and it's not easy to catch, so you just hit and catch in the same time. So I – put it that way, it is a hit and catch at the same time and a snatch as well, and then he starts saying 'Go, go, go, go.'"*³⁸³⁷

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

- 3.551** In his first written Inquiry statement Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said this:

*"I was taken from the cell to the interrogation tent on only one occasion. The soldiers that escorted me to and from the tent handled me roughly [but] did not really harm me at any stage. They walked me in zig-zags to the interrogation tent."*³⁸³⁸

Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.552** In his Judicial Review statements, Hussein Fadhil Abbas Al-Behadili (detainee 778) said that he had been lifted up by his arms and banged against the walls as he was pushed along whilst being taken to and from processing.³⁸³⁹

- 3.553** In his first written Inquiry statement, Hussein Al-Behadili confirmed this allegation and said that *"...after a period of time on the chair, two soldiers came, stood me up, and drew the chair*

³⁸³³ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/98/17-20]

³⁸³⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000006) [16]

³⁸³⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004770) [39]

³⁸³⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/17/5]

³⁸³⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/46/16-22]

³⁸³⁸ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000882) [48]

³⁸³⁹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006557) [26]; (MOD006698) [21]; (MOD006699) [23]

out from behind me. They dragged me out of the cubicle, and took me, hitting me against the walls as they did so.”³⁸⁴⁰ He said that he had been treated in the same manner when he was taken to the tent for a second time, as follows:

*“Just before my second interrogation I heard the soldier come rushing in, they were shouting ‘go, go, go’. They made me stand up and removed the chair, I was taken again and the same thing happened during this journey with being hit against the walls.”*³⁸⁴¹

3.554 In his second written Inquiry statement, Hussein Al-Behadili described how he had been “dragged and bashed against the walls.” He claimed that this had occurred every time he was taken away from or brought back to the prisoner holding area. He said that it appeared to him that the guards would take different routes when escorting him.³⁸⁴²

3.555 In his oral evidence to the Inquiry, Hussein Al-Behadili elaborated further, in response to Counsel’s questions, as follows:

“Q. Was this just a slight contact or was it hard?”

A. It was hard and they were shouting at the same time, shouts I couldn’t understand.

Q. You have described being moved in a zigzag, not in a straight line. Is that what happened?”

*A. Yes. They were forcing me to walk in a zigzag manner.”*³⁸⁴³

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.556 I have already dealt with the allegations made by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779), with regard to how he was treated when being escorted in the prisoner handling compound in that part of this Report that deals with the processing of the detainees at Camp Abu Naji on 14/15 May 2004.³⁸⁴⁴ However, it should be noted that he repeated the allegations in his oral evidence to the Inquiry.³⁸⁴⁵

Hussein Gubari Ali Al-Lami (detainee 780)

3.557 An allegation with regard to how he had been escorted in the prisoner handling compound, made by Hussein Gubari Ali Al-Lami (detainee 780) in his Judicial Review statement, has also already been dealt with in that part of this Report that deals with the processing of the detainees that night.³⁸⁴⁶ That particular allegation was as follows:

“Two soldiers came and lifted me off the chair and walked me to another place. As I was pulled along I was being knocked into the walls.”

³⁸⁴⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001038) [30]

³⁸⁴¹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001040) [37]

³⁸⁴² Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000365-66) [23]

³⁸⁴³ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/48/11-16]

³⁸⁴⁴ See paras 3.245–3.246

³⁸⁴⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/94]

³⁸⁴⁶ See paras 3.245–3.246

3.558 However, Hussein Al-Lami also alleged that he had been “*dragged under my armpits to a tent*”³⁸⁴⁷ and that at the end of an interrogation he had been “*...spun around 3 or 4 times to disorientate [him]*” before he had been taken back to his cell in the prisoner holding area.³⁸⁴⁸

Conclusions

3.559 As stated earlier in this Report,³⁸⁴⁹ it is clear that the detainees were escorted into the prisoner holding area in a robust and firm manner when they first arrived at Camp Abu Naji on the 14 May 2004. I am satisfied that the same robust and firm manner was also used when the detainees were escorted to and from the processing tent later that night. I am equally satisfied that the escorting guards were well aware that they were not permitted to assault or ill-treat the detainees in any way while carrying out their duties. Having regard to the totality of the evidence, I am quite sure that none of the detainees were deliberately zigzagged or spun around in a manner that was intended to disorientate them. I am equally sure that none of the detainees had his head deliberately banged against any wall at any stage during 14/15 May 2004.

3.560 I now turn to consider the specific allegations made by each of the detainees about how they were treated when being escorted to and from the processing tent at Camp Abu Naji on the 14/15 May 2004.

Specific allegations by Hamzah Joudah Faraj Almalje (detainee 772)

3.561 It is unclear which soldiers escorted Hamzah Joudah Faraj Almalje (detainee 772) to be processed and tactically questioned. However, I am satisfied that Hamzah Almalje would have been escorted in a firm and robust manner. It is also possible that he was pulled along to some extent and/or half-carried, in order to overcome resistance on his part. Thus, there was evidence that, on some occasions, detainees would have to be “*held up and more carried*” when they refused to move.³⁸⁵⁰

Specific allegation by Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.562 I accept that Mahdi Jasim Abdullah Al-Behadili’s (detainee 773) description of how he had been escorted in the prisoner handling compound was broadly accurate, although he was not actually carried and he was not treated roughly. He was moved in a firm and robust manner and was not subjected to any deliberate ill-treatment. To the extent that he suggested otherwise, he exaggerated what occurred, possibly as a result of having been blindfolded and handcuffed at the time.

Specific allegations by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.563 I am satisfied that Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was escorted at a brisk pace, although the soldiers did not actually run with him. Ibrahim Al-Ismaeeli described how he had put one leg out in front of him as he tried to lift his injured foot off the ground. Craftsman Morris also recalled that Ibrahim Al-Ismaeeli had kept his injured foot off the ground and that he had had to be half-carried as a result. I therefore accept Ibrahim Al-Ismaeeli’s evidence that he felt as if he was being “*dragged*”, a sensation to which his blindfolded and handcuffed

³⁸⁴⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000410) [54]

³⁸⁴⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI004811) [61]; [11/15]

³⁸⁴⁹ See para 3.82

³⁸⁵⁰ Corporal Everett [117/136/19-22]

state no doubt contributed. However, I am satisfied that this was only done because of the way in which he was holding out his leg and the resulting difficulty the escorts had in moving him. I have no doubt that the extent to which Ibrahim Al-Ismaeeli was half-carried or “dragged” while being escorted that night was entirely a matter of expediency and not an act of deliberate ill-treatment.

- 3.564** Both Lance Corporal Andrew Tongue and Corporal Stuart Bowden recalled having accidentally trodden on a detainee’s foot whilst escorting him in the prisoner handling compound at Camp Abu Naji on 14/15 May 2004. Corporal Bowden actually remembered that he had accidentally trodden on Ibrahim Al-Ismaeeli’s injured foot at some point while he escorted him to and from being processed. If the detainee on whose foot Lance Corporal Tongue trod was also Ibrahim Al-Ismaeeli, it must have been occurred when Lance Corporal Tongue escorted him later to his tactical questioning session, because he did not escort him to or from processing like Corporal Bowden.
- 3.565** In any event, I am sure that the incident was entirely accidental in both cases and that there was no deliberate intention on the part of either soldier to ill-treat or deliberately assault the detainee in question. Ibrahim Al-Ismaeeli made no complaint, in either of his written Inquiry statements, that a soldier had deliberately trodden on his injured foot while escorting him in the prisoner handling compound at Camp Abu Naji that night, although he did make such an allegation when asked about the soldiers’ accounts during his oral evidence to the Inquiry.³⁸⁵¹ The fact that he therefore seems to have had no real independent recollection of any such incident strongly suggests that he either did not notice it or that he did not regard it as deliberate at the time.

Specific allegations by Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 3.566** Kadhim Abbas Lafta Al-Behadili (detainee 775) alleged that the guards had banged him into walls and had weaved left and right as they ran with him. He said that he had to take his feet off the ground to avoid being dragged.
- 3.567** Both Lance Corporal Jeremy Edgar and Corporal Daniel Marshall, who escorted Kadhim Al-Behadili to and from processing at Camp Abu Naji on 14/15 May 2004, remembered that he had been escorted without incident. I am satisfied that he was moved at a quick pace and in a firm and robust manner. However, he was not taken to the processing tent at a run, although it may have seemed so to Kadhim Al-Behadili in his handcuffed and blindfolded state. I am also satisfied that Kadhim Al-Behadili was not deliberately knocked into walls or moved in a zigzag manner.
- 3.568** Corporal John Everett recalled an incident in which one of the detainees, who he believed to be Kadhim Al-Behadili, had been accidentally banged against a wall. He recalled that this had been because the detainee in question had refused to walk and that a certain amount of force had therefore been required to move him. Neither Lance Corporal Edgar nor Corporal Marshall recalled this having happened that night. However, the incident might have occurred when they were not acting as Kadhim Al-Behadili’s escorts, such as when he had been taken to be tactically questioned. In any event, I accept Corporal Everett’s evidence and am satisfied that Kadhim Al-Behadili may have accidentally banged against a wall as a result of the difficulty the guards had in moving him. If this incident did occur, I am entirely satisfied that this was accidental, as explained by Corporal Everett, and that there was no intention to ill-treat or to cause Kadhim Al-Behadili any injury or harm.

³⁸⁵¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/63-64]

Specific allegations by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.569** I am entirely satisfied that Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) would have been moved in a robust and firm manner. I do not accept that he was dragged, but I am satisfied that he would have been moved quickly. I also accept that, in his blindfolded and handcuffed state, it might well have felt to Abbas Al-Hameedawi that he was being “dragged” in a hurry.
- 3.570** I do not accept that Abbas Al-Hameedawi was slapped at any point as he was taken from the chair to the tent. This detail was a deliberately false embellishment, intended to lend support to his allegation of having been ill-treated.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

- 3.571** I accept the evidence of Corporal Michael Taylor and Lance Corporal Andrew Tongue who recalled that they had escorted Ahmed Jabbar Hammood Al-Furaiji (detainee 777) in an appropriate manner. Ahmed Al-Furaiji was not deliberately walked in a zigzag manner, although I accept that, in his handcuffed and blindfolded state, he may have felt disorientated by the escorting process.

Specific allegations by Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.572** Hussein Fadhil Abbas Al-Behadili (detainee 778) alleged that he had been made to move in a zigzag manner. He claimed to have been dragged along and deliberately banged into the walls. I have no doubt that, if he did bang against a wall at any point, it was accidental and not a deliberate act of ill-treatment. He was not taken to the tent in a zigzag manner, nor was he dragged there, although I accept that it is very likely that he felt disorientated while being escorted, because he was handcuffed and blindfolded at the time and thus he may have felt as if he was being dragged or taken in a zigzag manner. Furthermore, I am satisfied that Hussein Al-Behadili would have been escorted in the same way as the other detainees, namely in a firm and robust manner and at a quick and purposeful pace.

Specific allegations by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 3.573** As I have indicated above, my conclusions with regard to the way in which Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) was escorted in the prisoner handling compound that night, have already been dealt with in that part of this Report that deals with the processing of the detainees at Camp Abu Naji on 14/15 May 2004.³⁸⁵²

Hussein Gubari Ali Al-Lami (detainee 780)

- 3.574** As I have indicated above, my conclusions with regard to the way in which Hussein Gubari Ali Al-Lami (detainee 780) was escorted in the prisoner handling compound that night, have already been dealt with in that part of this Report that deals with the processing of the detainees. So far as concerns his additional allegations of having been spun around to disorientate him and dragged to the processing tent, I accept that he may have been disorientated to some extent and that he felt as if he were being dragged because he was handcuffed and blindfolded

³⁸⁵² See paras 3.245–3.246

at the time. However, I am quite sure that he was not deliberately spun round, nor was he actually dragged.

3. Allegation 2 – The detainees were prevented from talking to one another which was enforced by verbal and physical assaults

Military evidence

3.575 In his oral evidence to the Inquiry, Staff Sergeant David Gutcher said that there was a general rule that the detainees were not permitted to talk to one another whilst they were detained in the prisoner handling compound.³⁸⁵³

3.576 In his oral evidence to the Inquiry, Lance Corporal David Bond suggested the reason that the detainees were prevented from talking to one another was:

“So that they couldn’t conclude any story between each other why they were in the area of the contact. For intelligence reasons, really, just to remain silent and so that they couldn’t – or plans to escape, or anything like that.”³⁸⁵⁴

3.577 In his oral evidence, Captain Duncan Allen suggested that the rationale behind preventing the detainees from talking was linked to the idea of separating the detainees in order to maintain the shock of capture. Captain Allen put it in these terms:

“I think it’s – for my – my interpretation was to – to conduct an efficient process in order to move to the TQ’ing, so that there was less time for the detainees to think about what they had done and either fabricate a story or collude with any others that they were detained with by understanding that they were there, or seeing them. So the important thing is an efficient process and separating the detainees in – primarily.”³⁸⁵⁵

3.578 Lance Corporal Nicholas Collins also explained that after their arrival, detainees would be kept in a state of shock in order to prevent them from escaping and to keep them disorientated. He recalled that not allowing the detainees to speak to one another would be part of that process and would ensure that the detainees did not “collaborate a story.”³⁸⁵⁶

3.579 In his oral evidence, Staff Sergeant Gutcher said that the no-talking policy would be enforced by the prisoner handling team who would tell the detainees to “shut up” if they did try to talk.³⁸⁵⁷ The guards who gave evidence to the Inquiry confirmed that they were aware that the detainees were prohibited from communicating with one another and that the guards were responsible for enforcing this order.³⁸⁵⁸

3.580 Some of the guards recalled that they had been given specific instructions on 14 May 2004 to ensure that the detainees did not communicate. For his part, Lance Corporal David Bond remembered that the prisoner handling guards were given a briefing in which they were

³⁸⁵³ Staff Sergeant Gutcher [122/89-90]

³⁸⁵⁴ Lance Corporal Bond [120/33/9-13]

³⁸⁵⁵ Captain Allen [136/190/8-15]

³⁸⁵⁶ Lance Corporal Collins [128/91/13]; [128/90-91]; NB – see also the evidence of Craftsman Johnston who accepted that part of the reason for not allowing the detainees to talk was to keep them in a sense of isolation [123/167/2-6]

³⁸⁵⁷ Staff Sergeant Gutcher [122/89-91]

³⁸⁵⁸ See, for example, Sergeant McKee [124/225]

instructed to ensure that the detainees remained in their seats and did not talk to one another.³⁸⁵⁹ Lance Corporal Richard Garner also recalled that the guards were given a briefing in which they were told that the detainees were not permitted to talk to one another.³⁸⁶⁰

- 3.581** Staff Sergeant Gutchner did not actually recall any talking between the detainees having taken place on the night of 14/15 May 2004.³⁸⁶¹ There were also a number of other witnesses who could not remember the detainees having talked to one another that night.³⁸⁶²
- 3.582** Other witnesses did recall some attempts by the detainees to communicate with each other. Thus, Lance Corporal Andrew Tongue said that he would use the Arabic word “*ishkut*” if he wanted a detainee to be quiet.³⁸⁶³ Many witnesses, including Corporal Andrew Nicholls, recalled that the detainees would be told to be quiet by using the appropriate Arabic word if necessary.³⁸⁶⁴
- 3.583** Others recalled that the guards told the detainees to be quiet by using English words. Lance Corporal Bond was able to recall that some of the detainees spoke in Arabic whilst they were in cubicles. He said that the soldiers had answered them in English and told them to “*shush and stop talking, be quiet.*”³⁸⁶⁵ Craftsman Jason Marks also remembered that he had told the detainees to be quiet in English.³⁸⁶⁶
- 3.584** Staff Sergeant Gutchner told me that the order to maintain silence would be enforced by word of mouth. He denied that the guards had used any other means to quieten the detainees, such as hitting them or shouting at them.³⁸⁶⁷ Sergeant Martin Lane said that he could not actually remember, but he did consider it possible that the guards would shout when reinforcing an order to maintain silence. However, Sergeant Lane confirmed that no physical violence was used to enforce the order.³⁸⁶⁸
- 3.585** For his part, Lance Corporal Bond said that physical action was not permissible to enforce the order of silence.³⁸⁶⁹ Corporal Stuart Bowden described using a raised voice to enforce this order, but said that he did not swear at the detainees. He also said that, in some circumstances, he would place his hand on a detainee’s shoulder and gently tap it at the same time as telling him to be quiet. He denied that he, or any other guard, had ever hit any of the detainees or used any form of physical force to enforce the order. In his oral evidence to the Inquiry, Corporal Bowden recalled that there had been one detainee who had to be repeatedly told to be quiet that night. He accepted that this had been frustrating but said that he did not get angry as a result.³⁸⁷⁰
- 3.586** In his oral evidence to the Inquiry, Lance Corporal David Errington said that he would stand behind a detainee when he told him to be quiet. He said would tell the detainees to be quiet

³⁸⁵⁹ Lance Corporal Bond [120/18-19]

³⁸⁶⁰ Lance Corporal Garner (ASI009440) [22]

³⁸⁶¹ Staff Sergeant Gutchner [122/89-91]

³⁸⁶² See, for example, Private Grist [131/69]; Corporal Nicholls [124/40/15]-[41/2]

³⁸⁶³ Lance Corporal Tongue (ASI015579) [57]

³⁸⁶⁴ Corporal Nicholls [40/15-22]; NB – see also Sergeant Lane [136/84/10-16]; Lance Corporal Edwards [129/167-168]; Corporal Randall (ASI009757) [53]

³⁸⁶⁵ Lance Corporal Bond [120/72-74]; [120/73/25]

³⁸⁶⁶ Craftsman Marks [126/19]

³⁸⁶⁷ Staff Sergeant Gutchner [122/89-91]

³⁸⁶⁸ Sergeant Lane [136/99-100]

³⁸⁶⁹ Lance Corporal Bond [120/33/14-19]

³⁸⁷⁰ Corporal Bowden [120/185-189]

in a loud voice, but not by shouting at them. Lance Corporal Errington said that he had not made any form of physical contact with the detainees in order to enforce silence.³⁸⁷¹

- 3.587** However, in his oral evidence, Lance Corporal Nicholas Collins suggested that if a detainee disobeyed an order to be quiet it would be permissible to use some physical force in order to reinforce the command, for example by pushing down on the detainee's shoulders whilst telling him to be quiet.³⁸⁷²

The Detainees' accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

- 3.588** Hamzah Joudah Faraj Almalje (detainee 772) claimed that a closed plastic water bottle had been put to his mouth when he tried to speak to another detainee. He understood that gesture to be an instruction to tell him to be quiet.³⁸⁷³ In the course of his oral evidence to the Inquiry, Hamzah Almalje said this:

*"...then somebody came and brought an empty bottle and he push it through my mouth. So I understand that gesture to say I need to shut up and not talk again."*³⁸⁷⁴

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

- 3.589** Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) alleged that, when he was moaning in pain, some of the guards swore at him, shouting things like "*Fuck you*" and "*Shut up.*" He also claimed that, in response to his moaning, the guards hit him in the mouth.³⁸⁷⁵

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 3.590** Kadhim Abbas Lafta Al-Behadili (detainee 775) claimed that the soldiers would shout words such as "*fuck you*" and "*shut up*" many times, whilst he was seated in the cubicle in the prisoner holding area. He said that the soldiers spoke very loudly when speaking to one another and that they sounded angry. He said that he had found the swearing directed at him to be very humiliating.³⁸⁷⁶

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.591** In his Judicial Review statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) claimed that, whilst he was seated in the cubicle in the prisoner holding area, a soldier had slapped him when he shouted out for "*Haydar*", i.e. Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2).³⁸⁷⁷ He does not appear to have repeated this particular allegation in any of his later Inquiry statements and did not appear to maintain this particular allegation. Moreover, in his oral evidence to the Inquiry, Abbas Al-Hameedawi said that he could not remember if he had called out for Haydar Al-Lami, while he was in the Prisoner Holding Area at Camp Abu Naji on the night of 14/15 May 2004. He went on to say that he had not been

³⁸⁷¹ Lance Corporal Errington [125/27-28]

³⁸⁷² Lance Corporal Collins [128/91-92]

³⁸⁷³ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000686-87) [30]; [19/74]; [20/76/22-25]

³⁸⁷⁴ Hamzah Joudah Faraj Almalje (detainee 772) [20/17/17-20]

³⁸⁷⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001070) [51]; (MOD032734-35)

³⁸⁷⁶ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000726) [41]

³⁸⁷⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000006) [17]

beaten at Camp Abu Naji that night, except on once occasion when a soldier had hit him with a water bottle when he asked for water.

Allegation 2: Conclusions

3.592 I accept that the guards were instructed to prevent the detainees from talking to one another whilst they were in the prisoner handling area. The main reason for this seems to have been that given by Captain Duncan Allen, namely that it was felt necessary to ensure that the detainees were not given an opportunity to discuss the details of their detention with one another. Another possible reason, and certainly a consequence, was that enforcing silence amongst the detainees helped to maintain the shock of capture by keeping them in a state of isolation.

3.593 It is clear that the guards who were on duty on the night of 14/15 May 2004 believed it was permissible to stop the detainees from talking with one another by telling them to be quiet or to “shut up”, in either English or Arabic. It seems to me very likely that, when doing so, the guards would often use a somewhat raised voice and, on occasion, they would shout in order to reinforce the instruction to keep quiet.

3.594 It is less clear whether physical contact was ever used to emphasise or enforce the order to maintain silence. Although the majority of witnesses denied using or seeing any form of physical contact, I accept the evidence of Corporal Stuart Bowden and Lance Corporal Nicholas Collins that the order to remain silent was emphasised or enforced at times by pressure on the detainee’s shoulder. However, I am completely satisfied that, when this was done, it did not involve the detainee in question being subjected to any significant physical violence.

3.595 A consequence of the fact that the detainees were prevented from talking to one another was that it could be difficult for them to make it clear that they were actually asking for such things as water, medical treatment or to go to the lavatory. Corporal Nicholls explained that most of the detainees would speak English in order to get the attention of the guards for such purposes. However, he accepted that if they did not do so, they might not have been able to make their needs known to the guards, as is apparent from the following exchanges during his oral evidence to the Inquiry:

“Q. So if a detainee started to talk, he would be told to stop?”

A. It depends what he was trying to say. If he was calling us, saying ‘Mister, Mister’, then, like, he’s talking to us, not to another detainee.

Q. But if a detainee was talking in Arabic, you wouldn’t know what he was saying, would you?

A. All the detainees, when they got our attention, no matter which day it was, called ‘Mister’.

Q. Were they told that they could shout ‘Mister’ to get your attention?

A. No, it was just a general thing.

Q. So if a detainee did not know to call ‘Mister’, there would be no way of getting your attention?

*A. Possibly not, no.*³⁸⁷⁸

- 3.596** For his part, Craftsman Jason Marks believed that, if a detainee did have a specific request, he would have been able to communicate that fact by means of gesticulation. However, he also accepted that there could still have been a failure in communication, as follows:

“Q. So your evidence just a moment ago that they could gesticulate, was that a sort of a guess, or an assumption?”

A. I have a vague memory of that happening, but it’s –it’s very vague.

Q. It is certainly possible, isn’t it, staff sergeant, that a detainee could ask to go to the toilet, he could hear the response “be quiet”, and understand – whether mistakenly or not – that he wasn’t allowed to go?

*A. That’s possible.*³⁸⁷⁹

- 3.597** As it seems to me, not all the guards drew any distinction between the instruction that they were not to allow the detainees to communicate with one another and an instruction that detainees were not to be allowed to speak at all. Thus, in his written Inquiry statement to the Inquiry, Corporal James Randall said that he had understood the instruction to be that the detainees were not allowed to talk at all, although he had assumed that the reasoning behind the instruction was to prevent the detainees from communicating with one another.³⁸⁸⁰

- 3.598** Lance Corporal David Errington recalled an instruction not to allow the detainees to communicate with one another. However, in his oral evidence to the Inquiry, he explained that, in practical terms, this meant not allowing the detainees to speak at all. Accordingly, when Lance Corporal Errington heard a detainee make any sound at all, including when praying to himself, he would tell him to be quiet.³⁸⁸¹ Lance Corporal Christopher Vince also told me that he had been instructed to keep the detainees quiet and that he would not necessarily have been able to tell the difference between a detainee who was trying to communicate with others, and a detainee who was actually praying to himself.³⁸⁸²

- 3.599** There were no interpreters present in the prisoner holding area as a matter of course, although interpreters were present during processing and tactical questioning. Although the services of an interpreter could be provided in the prisoner holding area when needed, it appears that in practice a detainee had to rely on his own ability to use some English, or perhaps gestures, to make the guards aware that he had a request to make. It is likely that, in the event, some genuine requests for assistance were misconstrued as attempts to communicate with other detainees and thus were simply silenced, rather than responded to in an appropriate way.

Specific allegation by Hamzah Joudah Faraj Almalje (detainee 772)

- 3.600** Although it is possible that Hamzah Joudah Faraj Almalje (detainee 772) had a plastic water bottle put to his mouth when he tried to speak to another detainee, I consider that it is unlikely that this was an instruction to him to be quiet. It seems to me to be much more likely that Hamzah Almalje was actually being offered a drink of water, particularly given the fact

³⁸⁷⁸ Corporal Nicholls [124/98/1-15]

³⁸⁷⁹ Craftsman Marks [126/60/14-23]

³⁸⁸⁰ Corporal Randall (ASI009757) [53]

³⁸⁸¹ Lance Corporal Errington [125/27-28]

³⁸⁸² Lance Corporal Vince [119/47-48]

that Hamzah Almalje did not recall this gesture being accompanied by any verbal instruction to keep quiet.

Specific allegations by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.601 I accept Ibrahim Gattan Hasan Al-Ismaeeli's (detainee 774) evidence that some of the guards told him to "Shut up". I also accept that this may have been in response to a situation in which Ibrahim Al-Ismaeeli was actually moaning in pain, given that some of the soldiers believed that it was their duty to maintain silence, in order to ensure that the detainees did not attempt to talk or communicate. It may well be the case that Ibrahim Al-Ismaeeli was also sworn at on occasion, in conjunction with an instruction that he was to remain quiet.

3.602 So far as concerns Ibrahim Al-Ismaeeli's (detainee 774) allegation that he was physically assaulted by being hit in the mouth, I am satisfied that this particular allegation is untrue and was a lie. I am quite sure that none of the guards reinforced the order to be quiet by hitting Ibrahim Al-Ismaeeli in this way or at all. If any such incident had occurred, I am satisfied that it would have been noticed and reported.

Specific allegation by Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.603 I accept the evidence of Kadhim Abbas Lafta Al-Behadili (detainee 775) that the soldiers would shout words such as "shut up", whilst he was seated in the cubicle that night, in order to ensure that the detainees did not communicate with each other. I also accept that some of the guards would also swear when doing so. I accept that this was unnecessary and that Kadhim Al-Behadili found it to be offensive.

Specific allegation by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.604 In the event, Abbas Al-Hammedawi (detainee 776) appeared to have made only one allegation of having been hit whilst he was in the Prisoner Holding Area at Camp Abu Naji on 14/15 May 2004, as detailed in paragraph 3.591 above. That allegation is dealt with separately in paragraph 3.667 of this report.

4. Allegation 3 – The detainees were not given an adequate supply of water

Military evidence

3.605 The provision of water to detainees is expressly governed by international law. Article 89 of the Fourth 1949 Geneva Convention states "*Sufficient drinking water shall be supplied to internees.*"³⁸⁸³ Furthermore Common Article 3 of the 1949 Geneva Conventions provides as follows:

"Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely..."

³⁸⁸³ Persons protected by this Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals (nationals of a State which is not bound by the Convention are not protected by it)

3.606 Guidelines on the provision of water to detainees were given in the Divisional SOI 390 which, in the same vein as Article 89, stated “Food and water are to be provided as necessary.”³⁸⁸⁴

3.607 In the 1st Battalion Princess of Wales’ Royal Regiment (“1PWRR”) SOI 207 more specific instructions were given as to how water was to be provided. That document made specific provision with regard to the frequency with which water was to be provided to detainees. It instructed that the following “*must be adhered to in all TQ operations.*”³⁸⁸⁵

“a. Water to be made available on arrival

b. Water to be made available hourly thereafter, and more frequently if required.”

3.608 The Prisoner Information Sheets record that water was provided for each of the detainees upon arrival.³⁸⁸⁶ The Prisoner Information Sheets then go on to record that water was provided thereafter at the following times:

- a. on return to the cells from tactical questioning (between 00:20 hours and 02:16 hours);
- b. at 03:00 hours when the detainees were given biscuits; and
- c. between 06:18 hours and 06:25 hours when the detainees were again given biscuits.³⁸⁸⁷

3.609 Staff Sergeant David Gutter confirmed that he had specifically directed that the detainees were to be given water upon their arrival at Camp Abu Naji on 14 May 2004.³⁸⁸⁸ Many of the military witnesses recalled that each detainee was offered and/or provided with water on arrival at the prisoner handling compound at Camp Abu Naji prior to being processed.³⁸⁸⁹

3.610 In his oral evidence to the Inquiry, Lance Corporal David Bond said that the guards had been briefed that the detainees were to have a constant supply of water.³⁸⁹⁰ Others, including Corporal Michael Taylor, had a similar recollection.³⁸⁹¹ None of the military witnesses who gave evidence to the Inquiry believed that it was permissible to withhold water from the detainees for any reason, whilst they were detained in the prisoner holding area.

3.611 In his oral evidence to the Inquiry, Corporal Stuart Bowden accepted that it was possible that some of the detainees had not been given water prior to having been processed that night.³⁸⁹² Corporal Andrew Nicholls also recalled that the detainees were not always given water before processing, unless they specifically requested it, because of the quick turn-round time between their arrival and being processed.³⁸⁹³ Corporal Nicholls put it in this way:

“Q. So you have a recollection of water bottles being in the shower cubicles when they arrived -

A. Yes.

Q. – but it not being identified to them until after they were processed?

³⁸⁸⁴ (MOD003674)

³⁸⁸⁵ (MOD015808) [10]

³⁸⁸⁶ (MOD033658-75)

³⁸⁸⁷ (MOD024467-84)

³⁸⁸⁸ Staff Sergeant Gutter [122/79-80]; (ASI012961)[66],

³⁸⁸⁹ See, for example, Lance Corporal Tongue [134/161]; Sergeant McKee [124/173-174]

³⁸⁹⁰ Lance Corporal Bond [120/106/15]

³⁸⁹¹ Corporal M. Taylor [129/21/20-21]

³⁸⁹² Corporal Bowden [120/191/10-15]

³⁸⁹³ Corporal Nicholls [124/46/20]–[47/6]; (ASI011454) [46]

A. From what I recall, yes.

Q. Why was that?

A. I'm not sure.

Q. Was it a policy: don't tell them about the water until after they have been processed?

A. No, because it was a quick turn-around from them going into the cubicle and then going for processing."

3.612 In his oral evidence, Staff Sergeant Gutcher said that biscuits and water were set out on a table in the prisoner holding area for distribution to the detainees.³⁸⁹⁴ A bottle of water would be kept in the cubicle with the detainee for him to drink from and was replaced if it ran out.³⁸⁹⁵

3.613 As to the frequency at which the detainees were given water after their arrival in the prisoner holding area, in his oral evidence to the Inquiry Staff Sergeant Gutcher said that the detainees would have been offered water by the prisoner handling guards at various times throughout the night, although was unable to remember how frequently that would have happened.³⁸⁹⁶

3.614 Staff Sergeant Gutcher and Sergeant Samuel McKee were responsible for filling in the Prisoner Information Sheets on the night of 14/15 May 2004. Occurrences such as the provision of food, water, medical treatment and lavatory visits would all have been recorded on these sheets.³⁸⁹⁷ As Sergeant McKee explained, he and Staff Sergeant Gutcher would sign off the sheets as confirmation of what had taken place, but they would not necessarily have taken part or overseen the recorded matter itself.³⁸⁹⁸ It also appears that other than when either Staff Sergeant Gutcher or Sergeant McKee had actually requested or seen water being given to the detainees (such as on arrival or when the detainees were provided with food and water), any other occasions when the detainees were given water by the guards would not actually have been recorded in the Prisoner Information Sheets.

3.615 Many of the guards remembered having given the detainees water whenever they requested it, but accepted that they would not actually ask the detainees if they required more water. Private Marc Kendall recalled that some of the detainees had requested water by asking for it in English.³⁸⁹⁹ In his oral evidence to the Inquiry, Lance Corporal Christopher Vince said that he would not actively inquire whether the detainees required water, except on arrival when they would be offered water. It was his recollection that, thereafter, the detainees would indicate when they required some water.³⁹⁰⁰ For his part, Craftsman Michael Johnston recalled that the detainees were provided with as much water as they required as and when they requested it.³⁹⁰¹

3.616 In his oral evidence to the Inquiry, M021, who was one of the guards who escorted the nine detainees from Camp Abu Naji to Shaibah in due course, said that when he went on duty

³⁸⁹⁴ Staff Sergeant Gutcher [122/51]

³⁸⁹⁵ Staff Sergeant Gutcher (ASI012975) [135]; [122/52-55]; Craftsman Marks [126/42]; Sergeant Lane (ASI020038) [63]

³⁸⁹⁶ Staff Sergeant Gutcher [122/19/21-23]

³⁸⁹⁷ See, for example (MOD045606), (MOD024471), (MOD045614)

³⁸⁹⁸ Sergeant McKee (ASI014664) [56]; [124/180-181]

³⁸⁹⁹ Private Kendall [131/200]

³⁹⁰⁰ Lance Corporal Vince [119/20/7]

³⁹⁰¹ Craftsman Johnston [123/143/3-11]; (ASI019673) [26]

during the night of the 14/15 May 2004 he had been verbally instructed not to give the detainees any water if they asked for it because they had already been given some.³⁹⁰²

- 3.617** Some of the guards that night remembered having been more active in providing the detainees with water. Thus, in his oral evidence to the Inquiry, Craftsman Jason Marks said this:

*“...I think from memory we would always, as part of the detainee guard duties, go walking up and down and keeping an eye on them, we would check to see their water level. So if their bottle was empty, we would give them another one.”*³⁹⁰³

- 3.618** Craftsman Matthew Morris had a vague recollection of checking whether the detainees required water “every once in a while”. However, he said that he assumed this to be the case, because he was unable to recall having been given specific orders to give the detainees water whilst he was on duty.³⁹⁰⁴

- 3.619** For his part, Sergeant McKee recalled that a bottle of water had been placed between each detainee’s ankles or knees so that he knew it was there to drink from if he needed it.³⁹⁰⁵ Others, like Sergeant Lane, recalled that the water bottle would be kept in the cubicle, but in a place such as under the chair in the cubicle.³⁹⁰⁶ Staff Sergeant Gutcher confirmed that, although water would be kept in the cubicles with the detainees, they would have been unable to help themselves to it because the fact that they were blindfolded would have meant that they were unable to see where the bottle was actually located.³⁹⁰⁷

- 3.620** Private Adam Gray remembered having visited the prisoner holding area at some stage during the night of 14/15 May 2004, whilst the detainees were seated in the cubicles. He said that he believed he had given water to all the detainees who were present. He said that he had handed the bottles to the detainees himself and stated that, by this time, the detainees were neither handcuffed nor blindfolded. According to Private Gray, each detainee had either taken the bottle of water or, if he declined, Private Gray placed the bottle next to him on the floor.³⁹⁰⁸

The Detainees’ accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

- 3.621** Hamzah Joudah Faraj Almalje (detainee 772) claimed that he had not been given water upon arrival at Camp Abu Naji on 14 May 2004. Despite being shown the entry on the Prisoner Information Sheets that indicated that he had been given water on arrival, he still maintained that he could not remember having been given water at this stage of his detention.³⁹⁰⁹

³⁹⁰² M021 [135/130/13-16]

³⁹⁰³ Craftsman Marks [126/42/17-21]

³⁹⁰⁴ Craftsman Morris [133/218/24]; (ASI010889) [64]

³⁹⁰⁵ Sergeant McKee [124/174/1-8]

³⁹⁰⁶ Sergeant Lane [136/51-52]

³⁹⁰⁷ Staff Sergeant Gutcher [122/53/5-7]

³⁹⁰⁸ Private Gray believed that this was prior to 06:00 hours but he was certain that Corporal Carroll was there at the same time – Corporal Carroll is recorded from the Prisoner Information Sheets as being present at 06:00 hours; Private Gray [117/61-63]

³⁹⁰⁹ Hamzah Joudah Faraj Almalje (detainee 772) [20/47-48]

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.622 In his oral evidence to the Inquiry, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) told the Inquiry in his evidence that he had not been given any water when he arrived at Camp Abu Naji, and that it was only after he had returned from the processing tent that he had actually been given any water.³⁹¹⁰

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.623 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) claimed that, apart from one occasion when water had been offered to him, he had not asked for, nor did he receive any more water until the morning of 15 May 2004.³⁹¹¹

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.624 Hussein Fadhil Abbas Al-Behadili (detainee 778) said that he had not been provided with enough water whilst he was held at Camp Abu Naji during 14/15 May 2004. According to Hussein Al-Behadili he had not been given water at any stage other than on one occasion when water had been squeezed into his mouth. He claimed that he had been forced to drink drips of his own sweat, because he was so thirsty, and that he had “*found it suffocating not being able to drink in the extreme heat.*”³⁹¹² Hussein Al-Behadili said that, as a result, when he arrived at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah on 15 May 2004, he had been “*badly in need of water.*”³⁹¹³ As he went on to explain:

*“Several times we asked for water, I asked for water, just a drop of water I needed because I was not able to swallow even my saliva at that time...I was blindfolded and sweat fell down from my forehead and I was trying hard to lick the drops of sweat into my mouth in order to wet my mouth. To that extent I was thirsty and I asked for water and after a while – maybe after the first interrogation or maybe before – they brought water.”*³⁹¹⁴

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.625 In his written Inquiry statement, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) said that, apart from one occasion when water had been forced down his throat, he had not been provided with any water whilst he was detained in the cubicle in the prisoner holding area at Camp Abu Naji on 14/15 May 2004.³⁹¹⁵

³⁹¹⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/14-15]

³⁹¹¹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000316) [74]

³⁹¹² Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000369) [36]; (MOD006560) [34]

³⁹¹³ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/76/11-13]

³⁹¹⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/49/4-13]

³⁹¹⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000955) [53]

3.626 In his earlier Judicial Review statement, Atiyah Al-Baidhani (detainee 779) claimed that on one occasion the soldiers had poured water from a bottle onto his head. He said that he was so thirsty that he had licked the drops of water that were falling down his face.³⁹¹⁶

Allegation 3: Conclusions

3.627 I am satisfied that the general policy was that the detainees were to be provided with water as soon as they were first seated in the cubicles in the prisoner holding area. I do not believe that there was any instruction to withhold water from the detainees at any time. It is clear that a supply of bottled water was brought to the prisoner holding area for the use of the detainees that night. I am satisfied that the guards were fully aware that the detainees were to be provided with bottled water from that available supply.

3.628 As it seems to me, the guard force was not made aware of any policy or given any instruction about how often they were to provide the detainees with water. It does not appear that any specific instructions were given to the guards with regard to the frequency at which the detainees were to be offered water. The requirement that water was to be provided hourly, as stipulated in 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") Standard Operating Procedure ("SOP") 207, was not adhered to. It seems to me very likely that the guards were completely unaware of this particular requirement in any event.

3.629 It does appear that water was offered to the detainees during both processing and tactical questioning. Water was also provided on the two occasions that the detainees were provided with biscuits during the night of 14/15 May 2004. Thus, both Kadhim Abbas Lafta Al-Behadili (detainee 775) and Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) remembered that they had been offered water at the same time as they were offered biscuits to eat that night.³⁹¹⁷

3.630 Apart from those specific occasions, it appears that the detainees were expected to ask for water if they needed it, although there was no formal procedure for making such a request. Accordingly, it is apparent that the detainees had difficulty in making any request for water heard and understood by the guards. This difficulty was exacerbated by the fact that no interpreter was immediately available in the prisoner handling area³⁹¹⁸ and it is likely that the strict operation of the no-talking policy meant that that there were occasions when a detainee requesting water was simply told to be quiet. Furthermore, although the guards did take steps to place a bottle of water in each detainee's cubicle, the fact that the detainee was blindfolded meant that it was very likely that the detainee was both unaware of the availability of the water and of its location in the cubicle.

3.631 Accordingly, although I am entirely satisfied that the guards fully understood that the detainees were to be provided with water and that water was not to be withheld from them, it is possible that some of the detainees were not actually provided with sufficient water during the night of 14/15 May 2004, either because they failed to request it or because their requests for water were not understood by the guards at the time.

Specific allegations by Hamzah Joudah Faraj Almalje (detainee 772) and Ibrahim Gattan Hasan

³⁹¹⁶ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006677) [24]

³⁹¹⁷ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000730-31) [58]; Abbas Abd Abdulridha Al-Hameedawi (detainee 776) (ASI000865) [58]

³⁹¹⁸ Staff Sergeant Gutcher [122/19/10-15]

Al-Ismaeeli (detainee 774)

3.632 In relation to the allegations made by Hamzah Joudah Faraj Almalje (detainee 772) and Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) that they had not been given any water upon arrival at Camp Abu Naji, I accept that it is possible that this did happen. It seems to me likely the reason for this omission was that they were both processed very soon after their arrival. However, I am satisfied that any such omission was an oversight. It was not the result of any deliberate refusal to provide water and it was not part of any wider policy of withholding water from the detainees.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.633 I accept that Ahmed Jabbar Hammood Al-Furaiji (detainee 777) may not have been offered water whilst he was held in the cubicle overnight at Camp Abu Naji on 14/15 May 2004, apart from the water offered during processing, tactical questioning and when he was offered biscuits on two occasions that night. In any event, in his written Inquiry statement, Ahmed Al-Furaiji accepted that he had not actually made any further request for water.

Specific allegation by Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.634 Hussein Fadhil Abbas Al-Behadili (detainee 778) said that he did not have enough water to drink at Camp Abu Naji that night and that he became extremely thirsty. Hussein Behadili also alleged that he had asked for water but his requests had gone unanswered. Although I do not believe that water was deliberately withheld from Hussein Al-Behadili, I accept that it may not have been made readily available to him, because his requests for water may have not been heard or understood by the guards.

Specific allegation by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.635 I accept Atiyah Sayyid Abdulridha Al-Baidhani's (detainee 779) evidence that he had been thirsty whilst held at Camp Abu Naji on the night of 14/15 May 2004, although I do not believe that water was deliberately withheld from him. Atiyah Al-Baidhani's further allegations that he had water forced down his throat and poured onto his head, are dealt with later in this report.

5. Allegation 4 – The guard force used the giving of water as an opportunity to carry out physical assaults on the detainees

Military evidence

3.636 Staff Sergeant Gutcher explained that, prior to processing, it was likely that the detainees' hands had been restrained behind their backs. He said that he therefore told the guards to offer up the bottles of water to the detainees' lips in order to let them drink.³⁹¹⁹ He said that, once the detainee had been processed, a bottle of water would be placed in his hands (which by then had been secured in front of the body) and the guard would tip the bottle so that the detainee could drink from it.³⁹²⁰

³⁹¹⁹ Staff Sergeant Gutcher [122/79-80]; (ASI012961)[66]; (ASI012975) [135]

³⁹²⁰ Staff Sergeant Gutcher (ASI012975) [135]

- 3.637** Private Liam Grist also recalled having seen guards tilting bottles of water into detainees' mouths, at a stage when their hands were restrained to the front and thus when they were unable to hold the bottles themselves.³⁹²¹
- 3.638** In the statement that he gave to the Royal Military Police ("RMP"), Corporal Stuart Bowden recalled having helped a detainee to drink water by pouring some into his mouth and that this had occurred prior to processing.³⁹²² During his oral evidence to the Inquiry, Corporal Bowden broadly agreed with this account, saying that he had held an opened bottle of water to the detainee's mouth, so that he could take a sip or two of water from it. However, he appeared to reject the suggestion that he had actually poured the water into the detainee's mouth.³⁹²³
- 3.639** Craftsman Jason Marks remembered that bottles of water would be placed in the detainees' hands, when they were plasticcuffed to the front. He said that the screw caps would be loosened and the detainees' goggles raised so that they could see the bottle. He did not recall any circumstance in which the guards would assist the detainee in drinking from the bottle.³⁹²⁴ Corporal Andrew Nicholls had a similar recollection of lifting the detainees' goggles so that they were able to see the bottles of water in their hands,³⁹²⁵ as did a number of other witnesses.³⁹²⁶
- 3.640** Sergeant Samuel McKee recalled that the each detainee was given a bottle of water in his hands so that he could quench his thirst himself, with another bottle being placed between his ankles or knees. When he came to give his oral evidence to the Inquiry, he was unable to remember whether each detainee was given one bottle or two.³⁹²⁷ Corporal Jeremy Edgar similarly recalled that a bottle of mineral water would be placed in the detainee's hands for him to drink from himself.³⁹²⁸
- 3.641** Corporal Daniel Marshall recalled in oral evidence that when the detainees were plasticcuffed to the front, a bottle of water with an unscrewed top would be placed in their hands. He said that the detainees were blindfolded at the time, but could drink from the bottles themselves, although he recalled that they tended to wait until the guards had walked away before they did so.³⁹²⁹

The evidence of Corporal Jeffery MacDonald

- 3.642** At the outset of his oral evidence to the Inquiry, Corporal Jeffery MacDonald said that he wished to add a further paragraph to his written Inquiry statement, in which he gave an account of two particular incidents that had occurred when he gave water to two of the detainees upon their arrival at Camp Abu Naji on the evening of 14 May 2004, as follows:

"(1) I now recall, when giving water to one of the detainees, some of that water came out of his mouth. He gurgled. I removed the bottle and gave him some more, which he drank. I did not squeeze the bottle. I did not see water coming out of his nose. He did not choke.

³⁹²¹ Private Grist [131/48]

³⁹²² Corporal Bowden (MOD004553); [120/190]

³⁹²³ Corporal Bowden [120/190-191]

³⁹²⁴ Craftsman Marks [126/43]

³⁹²⁵ Corporal Nicholls [124/44-45]

³⁹²⁶ Lance Corporal Tongue [134/161]; Corporal M. Taylor [129/49]; Lance Corporal Edwards [129/133-134]

³⁹²⁷ Sergeant McKee [124/173-174]

³⁹²⁸ Corporal Edgar [128/37/6-16]

³⁹²⁹ Corporal Marshall [130/22-23]

(2) I remember, when giving water to a second detainee, that I tripped over his feet and presented the water bottle to his mouth faster than I had intended. When I removed the bottle, I saw a little blood on his lip. I do not know if this was caused by the bottle or if it was pre-existing. I did not mention this before because I was only asked about the specific allegations and I did not think these incidents were relevant.”³⁹³⁰

3.643 Corporal MacDonald also described how he had assisted the detainees to drink the water from the bottles by “*tipping a quantity of water into their mouth.*”³⁹³¹ He said that he tipped the water into each detainee’s mouth and did not force it in. According to Corporal MacDonald the detainee gulped and gagged on the water to some extent, but no water actually came out of his nose.³⁹³²

3.644 In relation to the first incident outlined above, Corporal MacDonald said that the detainee had gurgled after he had poured the water into his mouth. He explained that he thought that this was the result of a misjudgment on his part,³⁹³³ as follows:

“either he couldn’t drink it as quick as I was pouring it in or I was pouring it in maybe too quick –the flow of it was a bit too quick for him to swallow and it came out of his mouth.”³⁹³⁴

3.645 In relation to the second incident, Corporal MacDonald explained that the water bottle had made contact with the detainee’s mouth more quickly than he had intended. He emphasised that this had not been deliberate on his part. Corporal MacDonald said that he might also have poured too much water into the detainee’s mouth and so he withdrew the bottle to allow him a chance to swallow. Corporal MacDonald believed that the incident may have caused a minor “*paper-cut*” type injury, but nothing as serious as a split lip.³⁹³⁵

The evidence of Lance Corporal David Bond

3.646 Lance Corporal David Bond said that at some point during the evening of 14 May 2004, he noticed that flies had started to gather near a wound on the head of one of the detainees. In the course of his oral evidence to the Inquiry, Lance Corporal Bond explained how he had therefore poured water over the detainee’s head, in order to clean the wound and remove the flies, as follows:

“Q. Can you explain why you took the decision to pour water on his head?

A. Because the flies were gathering in his wound. Be it all hygienic, I would guess it was for compassionate reasons, to try to clean it, remove the flies.

Q. How much water did you pour on to the head wound?

A. Enough to – for the flies to fly off. I didn’t – it wasn’t the contents of a full bottle. It was enough for him to remove the flies, and as soon as they flew off I stopped.”

3.647 Lance Corporal Bond explained that the surplus water ran down the detainee’s back and did not go over his face. He said that he did not observe any reaction on the part of the detainee,

³⁹³⁰ Corporal MacDonald [134/7/1-13]

³⁹³¹ Corporal MacDonald [134/37/5]

³⁹³² Corporal MacDonald [134/40]; [134/88]

³⁹³³ Corporal MacDonald [134/71]

³⁹³⁴ Corporal MacDonald [134/39/12-15]

³⁹³⁵ Corporal MacDonald [134/42-48]; [134/72]

although he accepted that the detainee was wearing blacked out goggles at the time and therefore would not have been expecting it to happen.³⁹³⁶ Lance Corporal Bond recalled that, as he was pouring the water, WO1 Shaun Whyte had been standing behind him and had nodded his head, apparently in approval at the action being taken by Lance Corporal Bond.³⁹³⁷

The Detainees' accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

3.648 Hamzah Joudah Faraj Almalje (detainee 772) said that, when he asked for water, the soldiers had hit him on the head with a water bottle. He later clarified that he had asked for water twice and was then hit with a water bottle, but was not given any water.³⁹³⁸

3.649 Hamzah Almalje also claimed that, after he had been interviewed that evening, he had been given water by having it poured over his head, so that he had to tip back his head in order to drink it.³⁹³⁹

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.650 According to Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), on one occasion the top of the bottle of water was forced into his mouth, so that he choked and was unable to drink any of the water.³⁹⁴⁰

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.651 Abbas Abd Ali Al-Hameedawi (detainee 776) claimed that when he asked for water that night he had been sworn at (words such as “*shut up*” and “*fucking*” were used) and he had been hit over the head with a water bottle.³⁹⁴¹ A soldier then squeezed a bottle of water into his mouth so violently that water had surged through his mouth and come out of his nose. He said that this had made him feel as though he was suffocating.³⁹⁴²

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.652 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) alleged that when he asked for water, a bottle had been offered up to his mouth by a soldier who then struck the end of the bottle and caused a split to the inside of his lower lip.³⁹⁴³ Ahmed Al-Furaiji stated that he had been holding the bottle when this happened and that, although the soldier had indicated that he should once more try to drink, he did not want to in case the same thing happened again. He claimed that he had therefore dropped the bottle.³⁹⁴⁴

³⁹³⁶ Lance Corporal Bond [120/65/13]–[69/12]

³⁹³⁷ Lance Corporal Bond [120/69/13]–[70/10]

³⁹³⁸ Hamzah Joudah Faraj Almalje (detainee 772) [19/74]; [20/47]

³⁹³⁹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000690) [39]

³⁹⁴⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001070) [51]

³⁹⁴¹ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/16]; [15/45]; (ASI000864) [52]

³⁹⁴² Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/66]; (ASI000864-65) [53]; (PIL000006) [15]

³⁹⁴³ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000882) [45]

³⁹⁴⁴ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000316) [74]

Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.653** Hussein Fadhil Abbas Al-Behadili (detainee 778) alleged that, when he arrived at Camp Abu Naji on 14 May 2004, he had been extremely thirsty. He claimed that when the soldiers gave him some water, the bottle was squeezed so that water was forced out of his nose, nearly choking him.³⁹⁴⁵ In his oral evidence to the Inquiry, Hussein Al-Behadili said this:

“I very much wish they didn’t bring that water and force it in that way into our mouth. It was a moment of near death and eventually it ended up without me drinking anything.”³⁹⁴⁶

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 3.654** Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) alleged that, while he was seated in the cubicle in the prisoner holding area that night, he had been hit over the head with a water bottle on a number of occasions, although he could not remember how many times it had happened.³⁹⁴⁷

- 3.655** Atiyah Al-Baidhani also alleged that, on a separate occasion, a soldier had held a bottle of water to his mouth and that, when he tried to take a drink from it, the soldier squeezed the bottle and caused the water to go down his throat in such a way as to make him believe he was going to choke.³⁹⁴⁸ In the course of his oral evidence to the Inquiry, Atiyah Al-Baidhani described what happened in the following terms:

“It was one time and they just squeezed. It was the last time and I was not really sure if it is water or not and I was just taking my mouth away off it and then he brought that bottle – he put it in my mouth and he squeeze it. And then afterwards the water came from my nose.”³⁹⁴⁹

- 3.656** In his earlier Judicial Review statement, Atiyah Al-Baidhani (detainee 779) said that, on one occasion that night, the guards had started to pour water from a bottle onto his head.³⁹⁵⁰

Hussein Gubari Ali Al-Lami (detainee 780)

- 3.657** In his first written Inquiry statement, Hussein Gubari Ali Al-Lami (detainee 780) claimed that, after he had been taken to a cubicle at Camp Abu Naji, a soldier had come and hit him on the head with what felt like a large water bottle. He said that the soldiers had been speaking English, but that he did not know what they were saying. After this, a bottle had been placed at his mouth. However, he did not want to drink from it, because he thought it was alcohol. According to Hussein Al-Lami, the bottle was then squeezed, so that water squirted into his mouth and choked him as it came out of his nose. Hussein Al-Lami told me that he felt that this was deliberate rather than accidental³⁹⁵¹ and that, as a result, a soldier had slapped him across the back of his head.³⁹⁵²

³⁹⁴⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001040) [36]; (PIL000369) [36]; (MOD006560) [32]

³⁹⁴⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/49/15-18]

³⁹⁴⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/65/14]–[66/10]

³⁹⁴⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/15-17]; (MOD006674) [16]; (ASI000953) [41]

³⁹⁴⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/16/18-23]

³⁹⁵⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006677) [24]

³⁹⁵¹ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004808) [51]; [11/63/5-9]

³⁹⁵² Hussein Gubari Ali Al-Lami (detainee 780) (PIL000410) [53]

3.658 In his earlier Judicial Review statement, Hussein Al-Lami also claimed that the contents of a bottle of water had been poured over his head and he had been slapped by a soldier, whilst he was seated in the cubicle in the prisoner holding area at Camp Abu Naji on the morning of 15 May 2004.³⁹⁵³ Hussein Al-Lami does not appear to have repeated this particular allegation in any of his later Inquiry statements although, during his oral evidence, he did claim that a soldier had hit him on the head with a water bottle on the morning of 15 May 2004.³⁹⁵⁴

3.659 In the course of his oral evidence to the Inquiry, Hussein Al-Lami also said this:

*“...I didn’t mention that when I was in the toilet [clearly a reference to the cubicle in the prisoner holding area] and I was so thirsty, one brought a big bottle of water, pushed it into my mouth and squeezed it. I refused then because I thought it was alcohol, but while refusing to drink, water came down my nose. Then when I tasted the water, found out that it was water, then I drank because I was so thirsty.”*³⁹⁵⁵

3.660 Hussein Al-Lami made a further allegation that at some point, whilst he was held in the cubicle in the prisoner holding area during 14/15 May 2004, he was punched by one of the guards. I have already considered this allegation when considering Hussein Al-Lami’s arrival at Camp Abu Naji, although there was some confusion as to whether this particular incident was said to have happened before or after he had been processed that night.³⁹⁵⁶ In his 2008 Judicial Review statement, Hussein Al-Lami alleged that his head had been hit against the wall while he was being seated in the cubicle and that this had occurred after he had been processed.³⁹⁵⁷ In his first written Inquiry statement, Hussein Al-Lami said that his head had been hit against the walls of the cubicle as he was first being seated in the cubicle, prior to processing.³⁹⁵⁸ In his second written Inquiry statement, made in November 2012, Hussein Al-Lami repeated the allegation that his head had been deliberately hit against the walls of the cubicle as he was first being placed in it. He also went on to say that he had been punched by the guarding soldiers at the same time.³⁹⁵⁹

Allegation 4: Conclusions

3.661 There does not appear to have been a set procedure for providing the detainees with water whilst they were being held at Camp Abu Naji overnight on 14/15 May 2004. As Corporal Jeffery MacDonald explained, the guards had not been given specific instructions about how and when the detainees were to be provided with water and that the guards therefore acted as the circumstances seemed to require.³⁹⁶⁰ For that reason, common sense suggested that the detainees should be allowed to drink from the bottles themselves, if they were able to. Similarly, when the detainees were unable to hold the bottles themselves (e.g. when their hands were secured behind their backs), the guards would sometimes help them to drink from the bottle in an appropriate fashion.

³⁹⁵³ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006642) [27]

³⁹⁵⁴ Hussein Gubari Ali Al-Lami (detainee 780) [12/26/10]

³⁹⁵⁵ Hussein Gubari Ali Al-Lami (detainee 780) [11/16/11-17]

³⁹⁵⁶ See paragraphs 3.119 – 3.121

³⁹⁵⁷ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006638) [16]

³⁹⁵⁸ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004808) [49]

³⁹⁵⁹ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000410) [52]; [11/10]

³⁹⁶⁰ Corporal McDonald [134/25]

The evidence of Corporal Jeffery MacDonald

3.662 In his evidence to the Inquiry, Corporal Jeffery MacDonald described what had happened on two of the occasions when he had helped a detainee to drink from a bottle of water that night. It seems likely that both incidents took place after the detainees had arrived at Camp Abu Naji and prior to the detainees in question being processed. I accept that Corporal MacDonald gave truthful and accurate evidence about these two incidents. In effect, Corporal MacDonald accepted that he might have poured water into a detainee's mouth rather too quickly and that, on another occasion, he might have accidentally caused a very minor injury to a detainee's lip, when trying to help him drink from a bottle. I accept his explanation for not having referred to these two incidents in his original written Inquiry statement. In my view, the fact that he volunteered details of the two incidents at the very beginning of his oral evidence clearly demonstrates his genuine willingness and desire to assist the Inquiry.

The evidence of Lance Corporal David Bond

3.663 I accept Lance Corporal David Bond's evidence that he poured some water on one of the detainees in order to drive away flies that had gathered near or around a wound on his head. I also accept that he genuinely believed that he was acting in the detainee's best interests when he did this, because he poured only as much water as he thought necessary to clear the flies and cleanse the wound.

Specific allegations by Hamzah Joudah Faraj Almalje (detainee 772)

3.664 Hamzah Joudah Faraj Almalje (detainee 772) recalled an occasion in which he claimed that water had been poured over his head. It seems to me very likely that this was the same incident as that described by Lance Corporal David Bond, in which he admitted having poured water onto one of the detainee's heads in order to clean a wound. Hamzah Almalje also said that when it happened, he had tipped his head back in order to drink the water, because he was thirsty. Lance Corporal Bond did not actually recall that the detainee had leant back to allow water to enter his mouth.³⁹⁶¹ However, I have no doubt that the incident described by Lance Corporal Bond was actually an act of compassion on his part and did not amount to deliberate ill-treatment. I also accept that Hamzah Almalje may well not have appreciated that such was the soldier's intention when he poured water on his head.

3.665 Hamzah Almalje (detainee 772) also recalled an incident in which he had been hit on the head with a bottle of water. I do not feel able to rule out the possibility that there was such an incident, although I believe that it is very unlikely. If it did occur, I am quite sure that was contrary to the general behaviour of the guards that night. Hamzah Almalje also claimed that he had not been given any water when this particular incident happened. If there was such an incident, it seems to me very likely that his request for water was misinterpreted as an attempt to talk to other detainees. I do not believe that he was deliberately denied water. However, he might have been told to be quiet and perhaps struck with a water bottle in order to reinforce this. If it happened, I do not believe that any significant violence or injury would have been involved and it is not possible to say who would have been responsible for having behaved in this way, other than that it would have been one of the guards.

³⁹⁶¹ Lance Corporal Bond [120/114/24]–[115/22]

Specific allegation by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.666 Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) alleged that the top of a water bottle had been forced into his mouth, so that he choked and was unable to drink. It seems to me very likely that Ibrahim Al-Ismaeeli was describing one of the occasions when the guards helped detainees to drink from the bottles of water. I do not believe that the top of the bottle was actually forced into Ibrahim Al-Ismaeeli's mouth, although it may have felt as if it was. Nor do I believe that he was deliberately choked, although I accept it is possible that the water was inadvertently poured too quickly into his mouth, as described by Corporal Jeffery MacDonald. If this did happen, I am quite sure that it was accidental and was not an act of deliberate ill-treatment.

Specific allegations by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.667 Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) also alleged that a soldier squeezed a bottle in such a way as to cause water to surge through his mouth and come down his nose. I accept that it is possible that water might have been poured into his mouth rather too quickly. If this did happen, I am quite sure that it was as a result of a soldier trying to help Abbas Al-Hameedawi to have a drink of water, as explained above. It would not have been a deliberate act of ill-treatment. Although Abbas Al-Hameedawi went on to claim that the bottle had been held to his mouth in such a way that he was unable to get any water,³⁹⁶² I do not believe that this was so. If the incident happened, it was during a genuine attempt by the soldier concerned to give water to Abbas Al-Hameedawi and the soldier in question would not have done anything to frustrate that on purpose. Furthermore, I do not believe that any water was deliberately forced down his nose as a result. I am sure that these two latter details were untrue embellishments, intended to support Abbas Al-Hameedawi's claim to have been deliberately ill-treated.

3.668 Abbas Al-Hameedawi also alleged that, when he had asked for water, he was sworn at and was hit over the head with a water bottle. As with the similar allegation made by Hamzah Joudah Faraj Almalje (detainee 772), I do not feel able to rule out the possibility that there was such an incident, although I think that it is very unlikely. If it did happen, it was out of keeping with the general behaviour of the guards that night and very likely happened as the result of a misguided enforcement of the no-talking rule. The incident would not have involved any significant violence or injury and it is not possible to say who would have actually been responsible, other than that it would have been one of the guards.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.669 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said that a bottle had been placed against his mouth by a soldier, who then struck the end of the bottle and caused a split to the inside of his lower lip. It seems to me to be very likely that this was the same incident as the second of the two incidents described by Corporal Jeffery MacDonald. As I have already indicated, I accept the truth and accuracy of Corporal MacDonald's evidence about this incident. Corporal MacDonald did not strike the end of the bottle. This was a deliberately untrue embellishment by Ahmed Al-Furaiji. The incident was an accident and, if any injury was caused, it was extremely trivial. No similar injury was recorded during Ahmed Al-Furaiji's medical examinations at the Divisional Temporary Detention Facility ("DTDF") at Shaibah on

³⁹⁶² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000864) [53]

15 May 2004.³⁹⁶³ Accordingly, if any injury had been caused, it was so slight that it was not really noticeable.

Specific allegation by Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.670 Hussein Fadhil Abbas Al-Behadili (detainee 778) also claimed that a soldier had squeezed a bottle of water in such a way as to force water down his nose and nearly choke him. In my view, this allegation relates to an occasion when Hussein Al-Behadili was given water by one of the guards that night. I accept that Hussein Al-Behadili was blindfolded at the time and could not see the water being poured into his mouth. I also accept that the water might have been poured rather too quickly. If this did happen, it was an accident and was not a deliberate act of ill-treatment. Furthermore, I am quite sure that the water was not poured into his mouth in such a way as to force it down Hussein Al-Behadili's nose. I have no doubt that this particular detail was a deliberately false embellishment, intended to strengthen the suggestion that he had been ill-treated.

Specific allegations by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.671 The allegation made by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) that he had been hit over the head with a water bottle on a number of occasions, is similar in substance to the allegations to like effect made by Hamzah Joudah Faraj Almalje (detainee 772) and Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), considered above. Again, I am unable to rule out entirely the possibility that this may have occurred, although it is very unlikely. If it did happen, it likely to have been the result of a misguided enforcement of the no-talking rule. No significant violence or injury was involved and it is not possible to say who would have been responsible for behaving in such a manner, which was not typical of the general behaviour of the guards that night.

3.672 On a separate occasion, Atiyah Al-Baidhani claimed that a soldier had held a bottle of water to his mouth and that, when he tried to drink from it, the soldier had squeezed the bottle and caused the water to go down his nose in such a way as to make him think that he was going to choke. As I have already indicated in relation to the very similar allegations made by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), Abbas Al-Hameedawi (detainee 776) and Hussein Fadhil Abbas Al-Behadili (detainee 778), I am sure that, if this did occur, it was an accident and the result of a soldier attempting to help him to have a drink of water. It was not a deliberate act of ill-treatment. Atiyah Al-Baidhani's allegation that water was forced down his nose was a deliberately false embellishment of his account of how he was treated that night.

3.673 I do not believe Atiyah Al-Baidhani's claim that the guards poured water over his head. In fact he did not repeat that allegation in his later witness statements, because it was clearly false. He also alleged that, apart from the one occasion on which water was forced down his throat (as explained above), he had not been given any food or water at all that night.³⁹⁶⁴ I have no doubt that that this particular allegation was also untrue and deliberately so, as shown by the Prisoner Information Sheet relating to him.³⁹⁶⁵

³⁹⁶³ See, for example, (MOD024481); Corporal Carroll (ASI016088) [161]; (MOD043681)

³⁹⁶⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000955) [53]

³⁹⁶⁵ (MOD024481)

Specific allegations by Hussein Gubari Ali Al-Lami (detainee 780)

- 3.674** Hussein Gubari Ali Al-Lami (detainee 780) alleged that he had been hit on the head with a water bottle, that on another occasion a water bottle had been squeezed so that water squirted into his mouth and choked him as it came out of his nose, that water had been poured over his head and that a soldier had slapped him.
- 3.675** Whilst I accept that it is possible that Hussein Al-Lami was hit with a water bottle, as the result of some misguided enforcement of the no-talking rule, I consider it to be unlikely. If it did happen, it did not involve any significant violence or injury and was not typical of the general quality of the guards' behaviour that night.
- 3.676** Similarly, I accept that it is possible that water might have been poured into his mouth too quickly but, if so, it was not intentional and was not an act of deliberate ill-treatment. I do not believe that he was slapped or hit across the back of the head after he had been offered water or at all. Nor do I believe that water was forced down his nose as he alleged, at any stage. I am quite sure that these were false embellishments, intended to suggest that he had been subjected to deliberate ill-treatment.
- 3.677** I am equally sure that Hussein Al-Lami was not punched by soldiers at any stage (including after he had been processed) nor did they deliberately bang his head against the walls of the cubicle. I have no doubt that this part of his evidence was also false and deliberately so.

6. Allegation 5 – The detainees were not given an adequate supply of food

Military evidence

- 3.678** The provision of food is expressly governed by Article 89 of the Fourth 1949 Geneva Convention³⁹⁶⁶ which states “Daily food rations for internees shall be sufficient in quantity...”
- 3.679** The relevant provision in the Divisional Standard Operating Instruction (“SOI”) 390 was simple and straightforward and stated that “Food and water are to be provided as necessary”.³⁹⁶⁷ However, the 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”) SOI 207 went further and set time limits by which detainees were to be fed. SOI 207 provided as follows:³⁹⁶⁸

a) “A meal should be provided six hours after arrival at the TQ location

b) A meal should be provided 12 hours after arrival at the TQ location”.

- 3.680** The “Points to Note” section of the Prisoner Information Sheets also stipulated that detainees were to be fed every six hours.³⁹⁶⁹ In fact, the Prisoner Information Sheets for the nine detainees recorded that they had been given biscuits on two occasions. Each such sheet recorded that, at 03:00 hours on 15 May 2004, the nine detainees had been given “3x biscuit” and then, between 06:18 hours and 06:25 hours on the same day, they had again been provided with

³⁹⁶⁶ Persons protected by this Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals (nationals of a State which is not bound by the Convention are not protected by it)

³⁹⁶⁷ (MOD003674)

³⁹⁶⁸ (MOD015808) [10]

³⁹⁶⁹ (MOD024467–84)

biscuits.³⁹⁷⁰ The detention log maintained at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah recorded that the nine detainees were next given food at 17:31 hours on 15 May 2004.³⁹⁷¹ Accordingly, it is clear that over the first 24 hours or so of their captivity, the only food provided to the nine detainees was two small quantities of biscuits.

- 3.681** Staff Sergeant David Gutcher confirmed in his oral evidence that water and biscuits had been put out during the setting up process, before the detainees arrived, and therefore would have been available as soon as they arrived in the prisoner handling compound on 14 May 2004.³⁹⁷² However, he was unable to explain why the detainees had not actually been given any biscuits until 03:00 hours on the 15 May 2004. Nor was he able to say whether this was because the tactical questioning of the nine detainees had not been completed until 03:00 hours on 15 May. Staff Sergeant Gutcher was unable to confirm whether there had been deliberate decision not to feed any of the detainees until they had all been tactically questioned.³⁹⁷³ However, he rejected the suggestion that he had intentionally kept the detainees in a state of hunger or that he would have deliberately refused them food if they had asked.³⁹⁷⁴
- 3.682** Staff Sergeant Gutcher accepted that it had been his responsibility to ensure that the detainees were given food, although Sergeant Samuel McKee would have been responsible in his absence. Staff Sergeant Gutcher thought it likely therefore that the detainees would have only been provided with some biscuits, following an instruction to that effect by one or other of them. In the course of his oral evidence to the Inquiry, he said this:

“Q. Was it your role to instruct the giving of biscuits?”

A. Me or my 2IC.

Q. All right. So the men wouldn’t have given biscuits without an order from you?”

A. Possibly. I can’t remember.

Q. Well, I’m asking you. You were there; I wasn’t. Would the men have given them a biscuit without an order from you or not? You were in charge.

A. Not when I was in charge of the guys, ie 03.00. If I was in the tent and they gave them biscuits and it wasn’t recorded on there – it may have happened. I can’t remember.

Q. So the probability is that biscuits were not given without an order from you?”

A. Yes, that’s correct.

Q. Why, Mr Gutcher, did you give the order to give a biscuit only after the last man had been TQ’d?”

A. Don’t know.”³⁹⁷⁵

- 3.683** Sergeant McKee said in his oral evidence that he did not believe there had been a conscious decision not to feed the detainees earlier that night, but thought that the provision of biscuits

³⁹⁷⁰ (MOD033658–75)

³⁹⁷¹ (MOD040072)

³⁹⁷² Staff Sergeant Gutcher [122/49-51]

³⁹⁷³ Ibid.

³⁹⁷⁴ Staff Sergeant Gutcher [122/109]

³⁹⁷⁵ Staff Sergeant Gutcher [122/50/3-20]

at 03:00 hours might have been the first available opportunity to do so.³⁹⁷⁶ Similarly WO2 Darran Cornhill did not think that there had been any deliberate decision not to feed the detainees earlier.³⁹⁷⁷

- 3.684** Staff Sergeant Gutchter accepted that the detainees had not been provided with a hot meal at any stage while they were held at Camp Abu Naji during 14/15 May 2004. He did not recall any occasion when the guards would leave the compound for a meal themselves, nor did he believe that the guards had ever brought hot food back from the cookhouse for the detainees in the prisoner holding area at Camp Abu Naji.³⁹⁷⁸
- 3.685** However, Sergeant McKee claimed that he could recall an occasion when breakfast had been brought from the cookhouse for the detainees, at the same time that the guards had been provided with their breakfast. However, he said that it was unlikely that this had happened on 14/15 May 2004, because the Prisoner Information Sheets had no record of the detainees having been provided with breakfast that morning. Sergeant McKee was unable to say why it had not been done on this particular occasion.³⁹⁷⁹
- 3.686** Many of the military witnesses recalled that it was standard practice for detainees to be fed at the same time as the soldiers. Thus, in his written Inquiry statement, Lance Corporal John Peskett said that it was standard practice for detainees to be fed at the normal mealtimes and that, if detainees were held overnight, they would be provided with a cooked breakfast in the morning.³⁹⁸⁰
- 3.687** Lance Corporal Raymond Edwards stated that the normal practice was for detainees to be provided with meals at meal times, i.e. at the standard times at which the soldiers ate their food.³⁹⁸¹ Corporal Andrew Nicholls also recalled that the general practice was to get food from the cookhouse for the detainees. He therefore believed that this would have been done on 14/15 May 2004, because it had happened on other occasions when detainees were held at Camp Abu Naji.³⁹⁸²
- 3.688** Sergeant Julian King also believed that detainees would have been fed with food from the cookhouse and recalled occasions which detainees were given hot food.³⁹⁸³
- 3.689** Corporal Daniel Marshall said that, generally speaking, the soldiers would visit the cookhouse in pairs, if they were guarding detainees at a meal time. He recalled that the soldiers would have already eaten, by the time the nine detainees arrived at the prisoner handling compound on 14 May 2004, although he believed that they would have gone to breakfast as usual the following morning.³⁹⁸⁴
- 3.690** Lance Corporal Christopher Vince also believed that detainees would receive meals at the same time as the guards. He recalled that the evening meal would have been provided for the soldiers at approximately 17:00 hours until 18:30 hours and that breakfast would have been somewhere between 06:00 hours until 08:00 hours. He therefore would not have expected the detainees to be fed on the evening of 14 May 2004, because they would have arrived

³⁹⁷⁶ Sergeant McKee [124/209/3-6]

³⁹⁷⁷ WO2 Cornhill [115/70]

³⁹⁷⁸ Staff Sergeant Gutchter [122/50-51]

³⁹⁷⁹ Sergeant McKee [124/179-181]

³⁹⁸⁰ Lance Corporal Peskett (ASI015207) [52]

³⁹⁸¹ Lance Corporal Edwards [129/186]

³⁹⁸² Corporal Nicholls [124/64]

³⁹⁸³ Sergeant King [113/165-166]

³⁹⁸⁴ Lance Corporal Vince [130/46]

after the evening meal time. However, he would have expected them to be given breakfast on the morning of 15 May 2004. Lance Corporal Vince said that this would have been done by the guards bringing back breakfast from the cookhouse for the detainees.³⁹⁸⁵

- 3.691** Sergeant Martin Lane, said that he believed the detainees were fed on 14/15 May 2004, contrary to what is recorded in the Prisoner Information Sheets. Sergeant Lane said that containers of food had been brought into the prisoner handling compound that night, although he was unable to say whether it was the detainees or the guards who ate the food. He said that he believed the food had been intended for the detainees. During the course of his oral evidence to the Inquiry, he said this:

“Q. Why did you say that you believed that they received a meal –

A. Because I –

Q. – rather than you saw some containers arrive?

A. Yes, I believed they were being fed from them. That was the idea.

Q. Why do you believe they were being fed from them?

*A. Because – because we had the duty of care to ensure they were fed because they were staying with us overnight.”*³⁹⁸⁶

- 3.692** Sergeant Lane recalled that the food had come at some stage after the detainees had arrived in the prisoner handling compound and before 03:00 hours on the 15 May 2004. He said that he was “positive” that food had been brought. However, it is clear from all the evidence that Sergeant Lane was mistaken about this. It is possible that he was confusing the events of 14/15 May 2004, with regard to the provision of food, with the events of another occasion. He accepted that an important aspect of his responsibilities on 14 May 2004 was to ensure that the detainees were properly fed.³⁹⁸⁷

- 3.693** Corporal Jeremy Edgar also remembered that the detainees had been fed on 14 May 2004. He believed that they had been given a meal consisting of lamb and peas.³⁹⁸⁸ Similarly, when he made his written Inquiry statement, Craftsman Michael Johnston recalled that the detainees had been given a meal, which they ate whilst they were still plasticuffed and blindfolded. According to Craftsman Johnston, the meal had consisted of some sort of curry with rice. However, when he gave his oral evidence to the Inquiry, Craftsman Johnston said that he did not have a clear memory of what happened and that he believed he might have actually been referring to a different occasion when detainees had been brought back to Camp Abu Naji.³⁹⁸⁹

- 3.694** Many of the military witnesses remembered having provided the detainees with biscuits, as recorded in the Prisoner Information Sheets. Thus, Corporal MacDonald recalled that biscuits would be given to detainees by putting them into their mouths.³⁹⁹⁰ For his part, Lance Corporal Andrew Tongue recalled that the biscuits would be placed in the detainees’ hands.³⁹⁹¹ According to Craftsman Michael Johnston, the biscuits were placed in the detainees’ hands

³⁹⁸⁵ Lance Corporal Vince [119/17-18]; [119/57]

³⁹⁸⁶ Sergeant Lane [136/115-118]

³⁹⁸⁷ Sergeant Lane 136/116-117]

³⁹⁸⁸ Corporal Edgar [128/62/19-25]

³⁹⁸⁹ Craftsman Johnston [123/136-139]

³⁹⁹⁰ Corporal MacDonald [134/24-25]

³⁹⁹¹ Lance Corporal Tongue [134/167/9-14]

while they were still blindfolded. He said that some of the detainees would eat the biscuits, but others would not.³⁹⁹²

The Detainees' accounts and specific allegations

3.695 None of the detainees recalled having been given a hot meal at any point during their detention at Camp Abu Naji on 14/15 May 2004. Most of the detainees remembered that they had been provided with some biscuits at some point during the night. Of the nine detainees, the following three detainees made specific allegations with regard to the inadequate provision of food that night.

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.696 Mahdi Jasim Abdullah Al-Behadili (detainee 773) said that he had not been given any food at all during the time that he was held at Camp Abu Naji on 14/15 May 2004.³⁹⁹³

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.697 Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) recalled that he had been woken at some point during the night and provided with water and a biscuit. Later he had felt hungry and had asked for some food. According to Abbas Al-Hameedawi, an interpreter had come over and said to him: "*you are annoying them, they have given you food.*" Abbas Al-Hameedawi went on to say that he had not been provided with anything further to eat.³⁹⁹⁴

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.698 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said that he had suffered from both hunger and pain while he was detained at Camp Abu Naji. He said that, at some point he had asked the guards for food but was only given two biscuits to eat and nothing else.³⁹⁹⁵

Allegation 5: Conclusions

3.699 I am satisfied that that none of the nine detainees were provided with any form of food until 03:00 hours on 15 May 2004, when they were each provided with a small number of biscuits, as recorded in the Prisoner Information Sheets. Although Corporal Jeffery MacDonald recalled that he had given the detainees some biscuits before they went to the processing tent that night,³⁹⁹⁶ I have no doubt that he was mistaken about that. However, I am sure that his mistake is simply a result of the passage of time since the events in question occurred.

3.700 Given that biscuits appear to have been available for distribution from the time of the detainees' arrival at the prisoner handling compound at Camp Abu Naji on the evening of 14 May 2004, it seems to me likely that a deliberate decision was taken, by those in charge of prisoner handling, not to give the detainees any food until their tactical questioning had been completed, although it is possible that it was simply overlooked. Whatever the reason for the delay, I consider it to be unsatisfactory that the detainees were not offered any biscuits until 03:00 hours, some five to six hours after they arrived at the prisoner handling compound.

³⁹⁹² Craftsman Johnston [123/163-164]

³⁹⁹³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001120) [64]; [8/24/4-6]

³⁹⁹⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000865) [58]-[59]

³⁹⁹⁵ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000319) [82]

³⁹⁹⁶ Corporal MacDonald [134/66-67]

- 3.701** Furthermore, I have no doubt that the detainees were not given any hot food or any form of meal, whilst they were held at Camp Abu Naji during the 14/15 May 2004. As it seems to me, to give the detainees only a small number of biscuits cannot be sensibly regarded as amounting to the provision of a meal in the ordinary sense of that word. The witnesses who remembered that a hot meal had been provided were mistaken about it, most likely because they confused the 14/15 May 2004 with some other occasion on which detainees had been held at Camp Abu Naji.
- 3.702** In my view, the detainees should have been provided with a meal at the appropriate mealtime. In fact, it appears that this is what normally happened. Given that the detainees arrived well after the evening mealtime, it is perhaps understandable that they were not provided with a full meal during the late evening and night of 14 May 2004. However, I am satisfied that the detainees should have been provided with a meal on the morning of 15 May 2004 and I have not heard any acceptable explanation as to why that did not happen.
- 3.703** Despite being aware that he had a responsibility for the detainees being properly fed, it is clear that Sergeant Martin Lane did not take sufficient measures to ensure that the detainees were provided with a meal whilst they were held at Camp Abu Naji on 14/15 May 2004. Even if food was delivered to the prisoner handling compound, as he claimed it was, Sergeant Lane did nothing to make sure that the food was actually given to the detainees that night or the following morning.
- 3.704** Although Staff Sergeant David Gutchter said that he did not believe that detainees were ever provided with a hot meal during their detention, I am quite sure that this was not the case. It is clear from the evidence that hot food was provided to detainees held at Camp Abu Naji on other occasions. In any event, the provision of a small quantity of biscuits on only two occasions during 14/15 May 2004, as recorded in the Prisoner Information Sheets, was wholly inadequate and no substitute for a meal at an appropriate time.
- 3.705** It is clear that those in charge of prisoner handling on the night of 14/15 May 2004, simply did not comply with the relevant provisions of the 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") SOI 207, which effectively stipulated that detainees were to be given a meal at six hourly intervals. Despite Sergeant Lane's evidence that he had given instructions for the detainees to be provided with hot food, there was a joint failure by those in charge to ensure that this was properly carried out. That neither Staff Sergeant Gutchter nor Sergeant Samuel McKee gave any consideration to the need to provide the detainees with a meal at an appropriate time was extremely unsatisfactory. I have no doubt that the overall failure to provide the detainees with adequate and/or sufficient food or meals at any stage during their detention at Camp Abu Naji on 14/15 May 2004 could amount to a form of ill-treatment. If so, I am satisfied that this was the result of imperfect administration and not a deliberate form of ill-treatment.
- 3.706** In the paragraphs that follow, I deal with the specific allegations made by some of the detainees.

Specific allegation by Mahdi Jasim Abdullah Al-Behadili (detainee 773)

- 3.707** I am satisfied that Mahdi Jasim Abdullah Al-Behadili (detainee 773) was actually given biscuits at the times recorded in the Prisoner Information Sheets. However, I accept that it may well be the case that he could not remember this when he gave evidence to the Inquiry or that he did not actually eat the biscuits offered to him at the time.

Specific allegation by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.708 I accept that Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) might have asked for something to eat, but was not provided with anything as a result. I am quite sure that no interpreter spoke to him in the way that he claimed. As has been made clear in other parts of this Report,³⁹⁹⁷ interpreters were not generally active and/or present in the Prisoner Holding Area during the night of 14/15 May 2004. I believe this latter detail to be a deliberately false embellishment of his allegation on the part of Abbas Al-Hameedawi.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.709 I am satisfied that Ahmed Jabbar Hammood Al-Furaiji (detainee 777) may have asked for some food and was then given some biscuits. It seems to me very likely that this was one of the distributions of biscuits as recorded on the Prisoner Information Sheets. I also accept that he was not offered a more substantial meal and thus was likely to have been hungry.

7. Allegation 6 – The detainees were deliberately deprived of sleep. The detainees were made to stay awake and subjected to physical assaults.

3.710 Sleep deprivation was one of five prohibited techniques considered in the case of *Ireland v. the United Kingdom* (Case No. 5310/71), which concluded that, in certain circumstances, sleep deprivation could amount to “*torture or inhuman or degrading treatment or punishment*” in breach of Article 3 of the European Convention on Human Rights (“ECHR”).

Military evidence

3.711 WO1 Shaun Whyte said that, in order to assist the process of tactical questioning, the guards had been instructed not to allow any of the detainees to fall asleep before they had been tactically questioned. However, the detainees were permitted to sleep after their tactical questioning had taken place.³⁹⁹⁸ WO1 Whyte explained the purpose behind keeping the detainees awake, as follows:

*“It was to keep them alert and aware so we can get them in to the TQ people to make sure that they – you know, they can answer the questions properly. There is a thing called, you know – they have been caught, it’s a bit of a shock of capture. They needed to keep them awake, and after that they could relax, once they had been tactically questioned.”*³⁹⁹⁹

3.712 WO1 Whyte accepted that keeping the detainees awake and maintaining the shock of capture was not something he had learnt from any training or had derived from any of the SOIs.⁴⁰⁰⁰ It is clear that preventing detainees from sleeping, as a means of maintaining the shock of capture (or for any other reason), is not included in any of the relevant SOIs. As WO1 Whyte explained, he considered it to be a matter of “*common sense*” that the detainees should be kept awake until they had been tactically questioned. WO1 Whyte accepted that he had probably given the order for the detainees to be kept awake.⁴⁰⁰¹ However, he did not believe

³⁹⁹⁷ See paragraph 3.599

³⁹⁹⁸ WO1 Whyte [106/73-74]

³⁹⁹⁹ WO1 Whyte [106/74/24]–[75/5]

⁴⁰⁰⁰ Standard Operating Instructions

⁴⁰⁰¹ WO1 Whyte [106/75-77]

that the detainees had been subjected to any form of sleep deprivation as a result, given that they would have only been prevented from sleeping for a short period of time.⁴⁰⁰²

- 3.713** WO2 Darran Cornhill, who happened to be on duty in place of WO1 Whyte on 14 May 2004, did not recall there having been any decision made not to allow the detainees to sleep until they had been tactically questioned. In his oral evidence to the Inquiry, WO2 Cornhill said this:

*"I would like to think they would have been allowed to sleep at any time. I'm not aware of any instruction to say you are not allowed to sleep until after the tactical questioning."*⁴⁰⁰³

- 3.714** Staff Sergeant David Gutcher said that he was unaware of any policy that prevented the detainees from sleeping at any time, including prior to processing or tactical questioning. However, in the third witness statement that he made to the Royal Military Police ("RMP"), he had said that once the detainees had been processed, they were allowed to rest and to fall asleep.⁴⁰⁰⁴ During his oral evidence to the Inquiry, it was suggested that this implied that detainees were temporarily deprived of sleep, until processing had taken place. However, Staff Sergeant Gutcher explained that what he meant was that the detainees would have had hardly any opportunity to sleep prior to processing, but that they were not actively prevented from doing so.⁴⁰⁰⁵

- 3.715** Staff Sergeant Gutcher's second in command that night, Sergeant Samuel McKee, also stated that he had not heard of any policy that prevented detainees from sleeping at any stage, whether before or after tactical questioning.⁴⁰⁰⁶

- 3.716** Sergeant Julian King also said that he believed that detainees were not prevented from sleeping prior to tactical questioning. However, during his oral evidence to the Inquiry, he also suggested that the detainees would not have slept prior to processing, because prisoner holding area would have been too busy for the detainees to have fallen asleep in.⁴⁰⁰⁷

- 3.717** For the most part, the guards who had been on duty in the prisoner handling compound at Camp Abu Naji on 14 May 2004 did not recall having been given any order to wake the detainees up. It appears that most of them thought that the detainees were permitted to sleep at all times.⁴⁰⁰⁸ Thus, in the course of his oral evidence to the Inquiry, Lance Corporal Raymond Edwards said this:

*"When I was on the roster to do the duty, walking up and down, sir, I would let them sleep. I don't know about the other detainee handlers, but if they were asleep, they were asleep. Unless they were needed for anything else, you would just let them sleep. It is easier to look after a sleeping person."*⁴⁰⁰⁹

- 3.718** However, in his witness statement to the Inquiry, Lance Corporal John Peskett said that, when he had been on guard duty in the prisoner holding area at Camp Abu Naji, he was instructed

⁴⁰⁰² WO1 Whyte [106/145-146]; NB – WO1 Whyte said that he did consider preventing a detainee from sleeping all night as sleep deprivation and agreed it was merely a "matter of degree"

⁴⁰⁰³ WO2 Cornhill [115/68/23]–[69/1]

⁴⁰⁰⁴ Staff Sergeant Gutcher (MOD004517)

⁴⁰⁰⁵ Staff Sergeant Gutcher [122/46-47]

⁴⁰⁰⁶ Sergeant McKee [124/187]

⁴⁰⁰⁷ Sergeant King [113/155]; [113/164-5]

⁴⁰⁰⁸ See, for example, Corporal Marshall [130/43]; Corporal M. Taylor [129/53]

⁴⁰⁰⁹ Lance Corporal Edwards [129/181/1-7]

to ensure that the detainees stayed awake. He said that, in general, he would wake a detainee up by telling him to wake up and by shaking his shoulder, if necessary. Lance Corporal Peskett said that he believed that he was required to wake the detainees up, whenever he saw them sleeping, and that he believed that the other detainee handlers also did this.⁴⁰¹⁰

- 3.719** WO1 Whyte had a similar recollection about how the order to keep the detainees awake would be enforced. In the course of his oral evidence to the Inquiry, he said this:

*“If the guy looked like he was falling sleep, he would have been just shaken to say ‘wake up’.”*⁴⁰¹¹

- 3.720** Some of the military witnesses recalled that, although detainees would be allowed to sleep, they would be moved and thus often woken up, if it appeared that they were in danger of falling off their seat in the cubicle. Thus, in his oral evidence to the Inquiry, Staff Sergeant Gutcher said that the detainees would be allowed to sleep, but they would be moved if there was a risk that they might fall off their chair and sustain an injury, as follows:

*“The only time prisoner handlers would move them, if they felt that they were slouching forward and may fall off the chair and injure themselves.”*⁴⁰¹²

- 3.721** According to Lance Corporal David Bond, detainees were permitted to sleep at any time. However, he also recalled that a detainee would be moved if it appeared that he was going to fall off his seat and injure himself. Lance Corporal Bond put it in the following terms:

*“I don’t believe we was told to sit them up, but just, um, if they were going to fall off their seat and hurt themselves in a position where they were going to fall off, I would right them. But we wasn’t specifically told to either not let them sleep or not right them if they were going to fall off. We just – as if anyone would prevent someone from hurting themselves. You would right them if they was going to fall off.”*⁴⁰¹³

- 3.722** Similarly, during his oral evidence to the Inquiry, Corporal Stuart Bowden described how one of the detainees had appeared to be sliding off his chair. So he had stood behind him, placed his arms underneath his armpits and then lifted him up back onto the chair. He accepted that, in doing so, he might have woken the detainee, but said that had not been his intention.⁴⁰¹⁴ Somewhat surprisingly, both Sergeant Martin Lane and Private Adam Gray said that, on 14 May 2004, camp beds had been available in the prisoner holding area cubicles for the detainees to sleep on.⁴⁰¹⁵

- 3.723** In his oral evidence to the Inquiry, Sergeant Samuel McKee said that it would have been difficult for the detainees to have slept, because they had to sit on folding metal chairs, which would have made it too uncomfortable to sleep properly. However, he did not believe that the detainees would have been deliberately woken up if they had managed to fall asleep, nor were they forced to maintain an upright position if they were slumped in the chairs.⁴⁰¹⁶

- 3.724** Others military witnesses confirmed that they were not aware of any order that the detainees were to maintain an upright position and that they were not allowed to slump in their chairs.

⁴⁰¹⁰ Lance Corporal Peskett (ASI015206) [49]

⁴⁰¹¹ WO1 Whyte [106/78/5-6]

⁴⁰¹² Staff Sergeant Gutcher [122/46/14-17]

⁴⁰¹³ Lance Corporal Bond [120/44/23]–[45/5]

⁴⁰¹⁴ Corporal Bowden [120/184-185]

⁴⁰¹⁵ Sergeant Lane [136/134]; Private Gray [117/26-28]

⁴⁰¹⁶ Sergeant McKee [124/211-212]

The witnesses said that if they had seen a detainee slumped in his chair, they would have left him in that position, undisturbed.⁴⁰¹⁷

The Detainees' accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

3.725 Hamzah Joudah Faraj Almalje (detainee 772) said that he had fallen onto the ground two or three times, whilst he was in the cubicle in the prisoner holding area at Camp Abu Naji on the 14/15 May 2004. He explained that he had wanted to sit on the ground, because his leg was hurting him. However, each time he tried to do so, the guards had pulled him back on to the chair by taking hold of his neck.⁴⁰¹⁸

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.726 Mahdi Jasim Abdullah Al-Behadili (detainee 773) alleged that he had been hit on the head while seated in the cubicle, when his blindfold had come loose.⁴⁰¹⁹ He further alleged that, when he had tried to go to sleep, he was hit by the guarding soldiers, who were deliberately keeping him awake.⁴⁰²⁰

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.727 Kadhim Abbas Lafta Al-Behadili (detainee 775) recalled how water had been splashed against his face, when he lowered his head in exhaustion. He said that his face had also been forcibly lifted, to show that he was to maintain an upright position. According to Kadhim Al-Behadili, the position the guards required him to maintain was uncomfortable and hard to sustain. He claimed that the guards would move him back into that position, by putting a hand under his chin, if he slouched.⁴⁰²¹

3.728 According to Kadhim Al-Behadili, at some point he had been hit on both sides of his face and around his ears with the palm of a hand. He explained that what had happened was that he had been struck on the side of his face and then struck again on the other cheek.⁴⁰²²

3.729 In his oral evidence to the Inquiry, Kadhim Al-Behadili said that, every now and again, a soldier would come and hit him in the face and on the head. He also claimed that the soldiers would pull his chair away from under him.⁴⁰²³

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.730 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) claimed that, when he started to fall asleep, he would be woken up by soldiers who slapped him on the head or hit him with a water bottle.⁴⁰²⁴

⁴⁰¹⁷ See, for example, Lance Corporal Williamson [166/136/8-10]; Corporal Nicholls [124/91/17-19]; Craftsman Johnston [123/167/18-25]

⁴⁰¹⁸ Hamzah Joudah Faraj Almalje (detainee 772) [20/76]; (PIL000690) [38]

⁴⁰¹⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000782) [29]

⁴⁰²⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [61]; (MOD006491) [12]

⁴⁰²¹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000725) [39]

⁴⁰²² Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000725) [38]–[39]

⁴⁰²³ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/95]

⁴⁰²⁴ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000317) [75]; (PIL000319) [82]; (ASI000884) [61]

Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.731** Hussein Fadhil Abbas Al-Behadili (detainee 778) alleged that, if he tried to move from his position on the chair in the cubicle, he was grabbed from behind by his hair and made to face forwards.⁴⁰²⁵ He described how he was treated, prior to being processed, in the following terms:

*“They would lift my head up from my hair so that I straighten up like this. Once I tried, tired and in fear, my head fell down, immediately they – immediately the soldier lifted me up from my hair and ordered me to stay straight all the time we were there.”*⁴⁰²⁶

Hussein Gubari Ali Al-Lami (detainee 780)

- 3.732** Hussein Gubari Ali Al-Lami (detainee 780) alleged that, every time he moved his head while seated in the cubicle, a soldier would hit him with a large plastic bottle filled with water.⁴⁰²⁷

Allegation 6: Conclusions

- 3.733** The evidence of WO1 Shaun Whyte suggests that the detainees were deliberately kept awake, prior to undergoing tactical questioning on 14/15 May 2004. Any order to enforce this decision came from WO1 Whyte, who accepted that he believed that it was a matter of common sense to do so. It is possible that others may have been unaware of such an order, including the tactical questioner that night. M004, who carried out the tactical questioning of the nine detainees at Camp Abu Naji on 14/15 May 2004, was asked whether the detainees would be sleep deprived prior to tactical questioning and confirmed that no such order had come from him.⁴⁰²⁸
- 3.734** In his oral evidence to the Inquiry, M004 also said that he considered there to be little advantage in depriving the detainees of sleep prior to tactical questioning, particularly given the short amount of time during which they would have been prevented from sleeping.⁴⁰²⁹
- 3.735** The Prisoner Information Sheets indicate that about three to four hours elapsed after arrival at the prisoner handling compound, before each detainee was tactically questioned on 14/15 May 2004. Therefore, if the detainees were kept awake until they had been tactically questioned, they would have been kept awake throughout this period. This would also mean that they were kept awake until very late that night.
- 3.736** In the event, I am satisfied that the detainees were kept awake until they had been tactically questioned that night, although they were allowed to sleep after that. In my view, it was wholly inappropriate to prevent the detainees from sleeping for such a reason and until such a late hour. I am satisfied that such a practice was wrong in principle and amounted to a form of ill-treatment.
- 3.737** Having regard to the totality of the evidence, I am quite sure that the detainees were not provided with camp beds on 14/15 May 2004. The witnesses who believed that camp beds had been available that night were mistaken, probably confusing the events of 14/15 May 2004 with some other occasion. In fact, I have no doubt that the detainees remained seated

⁴⁰²⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001038) [28]; (MOD006697-98)

⁴⁰²⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/48/25]–[49/4]

⁴⁰²⁷ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006637) [10]

⁴⁰²⁸ M004 [127/38/5-8]

⁴⁰²⁹ M004 [127/138-140]

on chairs in their cubicles, for the whole of the time that they remained in the prisoner holding area. Many of the guards had to take action during the night, to prevent a detainee from falling off his chair onto the floor, particularly when asleep. When this occurred, it is likely that the detainee in question was made to sit up and was thus awoken from his sleep.

- 3.738** I accept the evidence of Lance Corporal David Bond, who explained that he only intervened if he thought there was a safety risk and that, for most of the time, the detainees were simply left to sleep undisturbed, as follows:

“Q. If they simply nodded their head down and were fairly secure in the chair but were resting, would you have done anything about that?”

No. One of my prisoners did sleep for – at one point by placing his head forward, and he was left, because he didn’t present any risk of injury to himself or anything else.”⁴⁰³⁰

- 3.739** I am satisfied that the detainees were not required, as a matter of course, to remain in a completely upright position, whilst seated in their cubicles in the prisoner holding area, nor do I believe that there was any policy or practice requiring them to do so. However, I have no doubt that it would have been very uncomfortable to be seated on a metal fold-up chair for an extended period of time and it is also very likely that the detainees were woken up on a number of occasions, when being saved from slipping off the chair whilst asleep. Lance Corporal Bond’s oral evidence to the Inquiry suggests that it did not take much to make him pull a sleeping detainee back onto his seat, as follows:

“Q. For the detainees that you were stopping from slumping over, did it appear to you that they were finding it difficult to sit upright, or uncomfortable?”

A. Not really. But they were sleeping at one point with their head, if you can imagine, leaning to one side or leaning forward, but as soon as their body arched over to one side, either side, that’s when I intervened to sit them up to prevent them from injuring themselves by falling off the chair.”⁴⁰³¹

- 3.740** I now turn to consider the specific allegations made by the detainees with regard to their claims to have been prevented from sleeping and to have been made to sit in an upright position.

Specific allegation by Hamzah Joudah Faraj Almalje (detainee 772)

- 3.741** I accept the evidence of Hamzah Joudah Faraj Almalje (detainee 772), who explained that he had wanted to sit on the floor, but that each time he attempted to do so, the guards had pulled him back on to his chair.

- 3.742** I am satisfied that it was the guards’ understanding that detainees were to remain seated on the chair in their cubicles at all times. However, Corporal Andrew Nicholls recalled one detainee (probably not Hamzah Almalje) who kept trying to get off his chair and onto the floor. Corporal Nicholls said that initially they had moved the detainee back onto his chair, although eventually they had left him on the floor after having moved him repeatedly.⁴⁰³²

⁴⁰³⁰ Lance Corporal Bond [120/128/13-19]

⁴⁰³¹ Lance Corporal Bond [120/118/4-12]

⁴⁰³² Corporal Nicholls (ASI011458-59) [60]

Lance Corporal Mark Rider also explained that he believed that the correct thing to do in such circumstances was to put a detainee, who tried to lie on the floor, back on his chair.⁴⁰³³

Specific allegation by Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.743 I do not accept that Mahdi Jasim Abdullah Al-Behadili (detainee 773) was hit on the head when his blindfold came loose, although I accept that his blindfold may have needed some adjustment at some stage.⁴⁰³⁴ I am unable to rule out the possibility that he may have been struck by the guards, when they were trying to keep him awake. If this did occur, it was before his tactical questioning that night, after which Mahdi Al-Behadili would have been allowed to sleep. However, it seems to me much more likely that Mahdi Al-Behadili was shaken to keep him awake, rather than hit. If he was hit, this would have been done in order to wake him and would not have involved any significant force or caused any injury.

Specific allegations by Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.744 It is possible that Kadhim Abbas Lafta Al-Behadili (detainee 775) did have some water splashed against his face when he lowered his head. If this did occur, it was because the guards thought he was falling asleep and were trying to keep him awake until he was tactically questioned. For the same reason, it is possible that he was struck on the face and ears. If so, very little force was used and no injury was caused. The intention would have been to prevent him from sleeping. Any such incident would have occurred before he was tactically questioned, after which he would have been allowed to sleep. However, I do not believe that the soldiers pulled his chair away from under him or that they hit him arbitrarily as they walked past. I am quite sure that these two details were deliberately false embellishments, intended to lend force to the suggestion that he had been ill-treated.

3.745 It is possible that Kadhim Al-Behadili's face was lifted by a soldier to indicate that he should remain in a more upright position. If this did occur, I am satisfied that it was done in order to prevent him from sleeping (in the period before tactical questioning) or from falling off his chair. It was not done simply to ensure that he was seated in an upright and deliberately uncomfortable position.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.746 It is possible that Ahmed Jabbar Hammood Al-Furaiji (detainee 777) was struck on the head with a hand or with a water bottle in order to keep him awake. If this did occur, it would have been prior to him being tactically questioned and in order to keep him awake, rather than as an act of gratuitous violence. In any event, no significant force was involved and no injury was caused.

Specific allegation by Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.747 I accept Hussein Fadhil Abbas Al-Behadili's (detainee 778) evidence that, from time to time, his head was lifted and he was ordered to sit up and face forwards. Again, I am satisfied that the guards did this to ensure that he remained awake prior to tactical questioning or to prevent him from falling off his chair. However, I do not believe that his hair would have been

⁴⁰³³ Lance Corporal Rider [100/164-165]

⁴⁰³⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) was blindfolded with blacked-out goggles from a very early stage of his detention at Camp Abu Naji, even if he had arrived there initially wearing a temporary blindfold

grabbed as he alleged. I am sure this was a deliberately false embellishment, intended to lend force to his allegation that he had been ill-treated.

Specific allegation by Hussein Gubari Ali Al-Lami (detainee 780)

3.748 I am satisfied that, if Hussein Gubari Ali Al-Lami (detainee 780) was hit at any stage, it was only because one of the soldiers was attempting to keep him awake prior to tactical questioning or to ensure that he was not falling off his chair. Although it is possible that he may have been struck for the same reason, little force was involved and no injury was caused. I do not believe that he was hit with a full water bottle, or that he was hit for any other reason. I am sure that these details were untrue embellishments, intended to lend force to the suggestion that he had been ill-treated.

8. Allegation 7 – The detainees were deprived of their sight for prolonged periods

Military evidence

3.749 Staff Sergeant David Gutcher recalled that, when the detainees first arrived at the prisoner handling compound at Camp Abu Naji on 14 May 2004, they were plasticcuffed to the rear and were already wearing large ski goggles with black masking tape applied across the front (“blackened out goggles”).⁴⁰³⁵ Private Adam Gray and Lance Corporal Christopher Vince also believed that the detainees they saw were wearing blacked out goggles as they got out of the Warriors.⁴⁰³⁶

3.750 For his part, Sergeant Martin Lane remembered that some of the detainees had arrived at Camp Abu Naji with improvised blindfolds and with their hands plasticcuffed to the rear. He recalled that it had been during the processing procedure that the detainees were re-cuffed to the front and had their improvised blindfolds replaced with blacked out goggles.⁴⁰³⁷ WO1 Shaun Whyte confirmed that detainees would arrive at Camp Abu Naji wearing improvised blindfolds, which were replaced with blacked out goggles when they arrived. However, he was unable to recall if this took place prior to processing or in the processing tent itself.⁴⁰³⁸

3.751 It was generally agreed that after they had arrived at Camp Abu Naji on 14 May 2004, the nine detainees remained deprived of their sight for the whole time that they were held in individual cubicles in the prisoner holding area and during their transfer to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah on 15 May 2004. The only time their blindfolds/blackened out goggles were removed was during processing and when they were subject to tactical questioning.

3.752 The deprivation of sight of detainees was governed by Annex G of the Divisional SOI 390, as follows:

“Internees are not to be hooded during the TQ process, however the Geneva Convention allows for internees to be blindfolded when in a military sensitive area. Such blindfolding shall cease as soon as the reason for the blindfolding ceases to exist.”⁴⁰³⁹

⁴⁰³⁵ Staff Sergeant Gutcher (ASI012960) [64]

⁴⁰³⁶ Private Gray [117/37]; Lance Corporal Vince [119/42-43]

⁴⁰³⁷ Sergeant Lane [136/46-49]

⁴⁰³⁸ WO1 Whyte (ASI015962) [36]

⁴⁰³⁹ (MOD046754-56)

- 3.753** The 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") SOI 207 repeated this instruction, as follows:

*"Annex C to MQ MNDSE SOI 390 refers to the Geneva Convention when allowing suspects to be blindfolded when in military sensitive areas. Should suspects require blindfolding, goggles with the lenses covered by black tape are to be used."*⁴⁰⁴⁰

- 3.754** In his oral evidence to the Inquiry, WO1 Whyte confirmed that he had been fully aware of the instruction in SOI 390, but that he had decided to adopt a practice, that could be construed as a departure from its terms, based on safety concerns. What he said was this:

*"When I arrived in Iraq at Camp Abu Naji, I was concerned that the holding area we had wasn't a holding area as was set out when the writing of 390 was done, ie the holding area didn't have locked doors, it didn't have secure facilities. And therefore, I took the decision that individuals, when they come in, should have goggles put on to their – to restrict their eye – their sight."*⁴⁰⁴¹

- 3.755** During his oral evidence, WO1 Whyte also maintained that sight deprivation was necessary when the detainees were escorted anywhere for security purposes. When asked why it was necessary for the detainees to be deprived of their sight while they were seated in the prisoner holding area in individual cubicles facing a wall, WO1 Whyte replied that it "...assisted the control of them." He then went on to explain as follows:

*"...if there was any gap in their sight vision and that, they could see through it. But if they was staring at the wall, then that's fair enough. Or they could turn their head."*⁴⁰⁴²

- 3.756** In his oral evidence to the Inquiry, Captain James Rands said that he also believed that the reason for blindfolding the detainees was for purposes of security. What he said was this:

*"[Blindfolding] is more about security...with nine of them in a relatively small space, blindfolding them stopped them from cooperating and doing anything stupid, like going for one of the guards. We only had a relatively small area to hold them in, so it made sense to keep them blindfolded...One of the key things that we needed to do was just keep them calm and, you know, prevent them from doing anything stupid that could injure themselves or one of our guys. So keeping them blindfolded made sense."*⁴⁰⁴³

- 3.757** For his part, Captain Rands did not believe that there had been any conscious decision about when or how detainees were to be sight restricted. It was his recollection that 1PWRR had simply followed the procedure and practice of the previous Battle Group and had not given the matter any separate consideration themselves, as he explained when questioned by Counsel during his oral evidence to the Inquiry:

"Q. Yes. So are we to understand, then, that to an extent the practice of blindfolding and plasticuffing was simply following blindly, if you like, that which the previous battlegroup had done?"

A. Um, I think that's actually pretty fair, sir. We did carry on with what the previous battlegroup had – had done. I don't think anyone thought to question it at the time.

⁴⁰⁴⁰ (MOD015808)

⁴⁰⁴¹ WO1 Whyte [106/34/10-16]

⁴⁰⁴² WO1 Whyte [106/83/12-17]

⁴⁰⁴³ Captain Rands [110/20/12]-[21/7]

Q. Was the blindfolding and fisticuffing⁴⁰⁴⁴ [sic] done on your specific instructions or with your passive approval?

A. I don't recall, but I think passive approval is probably more accurate, sir."⁴⁰⁴⁵

3.758 WO2 Darran Cornhill also believed that the detainees had been blindfolded in order to ensure that they did not take in any intelligence about their surroundings.⁴⁰⁴⁶

3.759 Sergeant Martin Lane believed the reason for sight deprivation of the detainees was for the purposes of security, and not in order to maintain the shock of capture. What he said was this:

*"It's nothing to do with disorientating. We get them out of the way of the people of the camp because it is none of the camp's business and we don't want to make a big thing of them being there. And it is – yeah, it is more of a security thing. Get them in there, get them housed and sat down. That way they can be guarded correctly and properly, they are all in one location."*⁴⁰⁴⁷

3.760 Lance Corporal David Bond also assumed that the use of blacked out goggles was to ensure that the detainees did not gain any intelligence about their surroundings. He said that he believed it to be reasonable for them to have been deprived of their sight for that reason.⁴⁰⁴⁸

3.761 Sergeant Julian King also believed that the justification for the use of sight restriction was for reasons of security. Although he did not have any direct dealings with the detainees after they had been taken into the prisoner handling compound, he said that he believed that detainees would have their goggles removed once there was no longer any threat to security. During his oral evidence to the Inquiry, he said this:

"A. As far as I can remember, once it had all settled down – obviously I can't comment as I can't remember because I wasn't in there – but quite often, if we had a couple of detainees, the goggles would come off completely for all of them. It's – once everything settles down and there is no problem, unmask the lot of them."

Q. It is just a question of assessing risk at the particular time; is that right?

A. Yes."⁴⁰⁴⁹

3.762 Captain Duncan Allen explained that security would have been one reason to blindfold the detainees and was probably the primary purpose. However he said that he believed that the separation of detainees, either through placing them in separate cubicles or by blindfolding them, was also carried out in order to maintain the shock of capture. As he understood it, part of the reason they would be sight deprived was to ensure that they did not communicate

⁴⁰⁴⁴ This was orally corrected during the hearings to read "plasticuffing"

⁴⁰⁴⁵ Captain Rands [110/21/18]–[110/22/4]

⁴⁰⁴⁶ WO2 Cornhill [115/56/3-7]

⁴⁰⁴⁷ Sergeant Lane [136/75/7-13]

⁴⁰⁴⁸ Lance Corporal Bond [120/128-130]

⁴⁰⁴⁹ Sergeant King [113/179/15-24]

with, or see one another “so they felt that they were on their own.” He went on to explain what he meant, as follows:

“Q. Was the blindfolding, or the restriction of sight, acknowledged to be a part – a deliberate part – of the preparing of the detainees for tactical questioning, or was it just a helpful coincidental by-product of the operational security reason?”

A. In terms of preparation, in a benign way to prevent that, particularly if they were all in the – the holding area with inside the ablutions, because they were all in there and I think if they had the blindfolds off, they would that recognise other – other detainees were in there as well. And, again, to prevent that ability to communicate with each other.”⁴⁰⁵⁰

- 3.763** For his part, Lance Corporal Gordon Higson said that detainees were deprived of their sight for safety and security reasons, although he accepted that there would be no security purpose in blindfolding a detainee who was in a cubicle staring at all wall. However he believed that had the detainees not been sight deprived, they might have been able to see how many guards there were and where the exits were situated, if they turned their head.⁴⁰⁵¹ Lance Corporal Higson also said that keeping the detainees sight deprived could have been done to disorientate the detainees, as follows:

“Q. Do you think there might have been another purpose to wearing the goggles, or requiring them to wear the goggles, namely to keep them disorientated and confused?”

A. At the time I wouldn’t have thought, but subsequently to it, obviously I believe that that’s possibly what – the reason.”⁴⁰⁵²

- 3.764** For his part, Corporal John Everett said that the detainees would always be sight deprived, even when seated in the cubicles. He believed that the primary reason for sight deprivation was for security purposes – in order that the detainees did not gain any intelligence about their surroundings. He accepted that they would not have been able to gain any intelligence from facing a cubicle wall and assumed that the continuing use of sight restriction had something to do with preparing them for tactical questioning, although had not been specifically told this.⁴⁰⁵³
- 3.765** Corporal Jeremy Edgar said that he understood that detainees had to be treated in a certain way, in order to ensure that they were in the best condition for tactical questioning. He understood that they should be deprived of sight for this purpose, in order to keep them disorientated. He confirmed that this was not something he had been specifically taught, but believed that it was common sense that that such would be the case.⁴⁰⁵⁴

Allegation 7: Conclusions

- 3.766** Some, if not all, of the detainees arrived at the prisoner handling compound wearing blacked out goggles. Any detainees that arrived at Camp Abu Naji with temporary blindfolds had these replaced with blacked out goggles. The detainees also had their hands re-tied from the

⁴⁰⁵⁰ Captain Allen [136/193-196]; [196/11-22]

⁴⁰⁵¹ Lance Corporal Higson [118/22]; [118/139]

⁴⁰⁵² Lance Corporal Higson [118/103/6-11]

⁴⁰⁵³ Corporal Everett [117/185-186]

⁴⁰⁵⁴ Corporal Edgar [128/17-18]; [128/71-72]

rear to the front. It is not entirely clear at exactly what stage this occurred, although it is likely that it happened either just before or during processing.⁴⁰⁵⁵

- 3.767** I have no doubt that the nine detainees remained deprived of their sight by the use of blacked out goggles during the whole period of their detention at Camp Abu Naji during 14/15 May 2004, although their goggles were temporarily and briefly removed during both processing and tactical questioning.
- 3.768** As discussed above, the Divisional SOI 390 stipulated that it was permissible to restrict the sight of detainees when they were in “*military sensitive areas*.” As it seems to me, the intention behind this particular instruction is to ensure that detainees are only deprived of sight in circumstances where there is a security risk or where it is likely that they may see or observe something of a militarily sensitive nature.
- 3.769** Many of the military witnesses recalled that the reason for blindfolding the detainees was for “security” or “operational security” purposes, which they explained meant not permitting the detainees to see their surroundings, in case they obtained some sensitive information as a result or they tried to escape.
- 3.770** WO1 Shaun Whyte said that, although he was aware of the relevant provision in SOI 390, he had decided to restrict the sight of all detainees as soon as they entered the prisoner handling compound. He accepted this might be construed as a departure from the provisions of SOI 390, but claimed that he had based his decision on safety concerns. He said that the prisoner handling compound was not the sort of secure area that the provisions of SOI 390 envisaged.
- 3.771** In my view, WO1 Whyte’s explanation amounted to a concern on his part that, unless they were blindfolded from the moment they arrived in the insufficiently secure prisoner handling compound at Camp Abu Naji, detainees might be able to acquire sensitive information or to plan and execute an escape.⁴⁰⁵⁶ Thus, I am satisfied that the essential reason for WO1 Whyte’s decision, to have detainees blindfolded from the outset, was for purposes of security, as was the case with other military witnesses. In effect, WO1 Whyte regarded the entire prisoner handling compound as a “*military sensitive area*”, as described in SOI 390, and therefore felt that it was appropriate to restrict the sight of the detainees for the whole of the time they were held there.
- 3.772** However, I have no doubt that there was another purpose to be served by depriving the detainees of their sight, as was frankly acknowledged by 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”) adjutant, Captain Duncan Allen. Restriction of the detainees’ sight ensured that they remained unaware of their surroundings and therefore helped to maintain the shock of capture. It also ensured that the detainees remained unaware of their fellow detainees and kept them in a state of isolation, which also helped to maintain the shock of capture.
- 3.773** Although it might not have been the main reason for restricting the detainees’ sight, I have no doubt that it was an important factor and that many of the soldiers were perfectly well aware of this additional purpose in keeping the detainees sight deprived. I am also satisfied that the use of sight deprivation solely for such a purpose was impermissible. The permissible reasons for sight deprivation were considered by Sir William Gage in the Baha Mousa Inquiry. The subsequent Baha Mousa Report made a recommendation that the governing guidance document for detainee handling should make it absolutely clear that sight deprivation

⁴⁰⁵⁵ See the conclusions expressed in relation to Allegation 10 at paras 3.841 – 3.842 below

⁴⁰⁵⁶ I accept that maintaining the shock of capture played no part in WO1 Whyte’s reasoning [106/111]

should not be used as a means of segregating captured persons in order to prevent them communicating with each other.⁴⁰⁵⁷

- 3.774** Many of the military witnesses, including WO1 Whyte, explained that even when the detainees were seated facing the wall in the cubicles in the prisoner holding area, there was still a security threat that meant that sight restriction was permissible. The security threat was said to be the fact that detainees would be able to see how many guards there were and the layout of the compound, thus enabling detainees to consider and plan an escape.
- 3.775** I am not persuaded that there was any real security threat, once the detainees were seated in individual cubicles within the prisoner holding area. The detainees were each seated facing the wall opposite the entrance to the cubicle. I do not believe that they would have been able to see very much, if anything, of the layout of the prisoner holding area. The detainees were guarded by at least one soldier, with other soldiers nearby, and they were handcuffed. In my view, the risk of escape would have been negligible. In truth, there was no security risk, once the detainees were seated in their cubicles. It was therefore no longer permissible for their sight to be restricted, because it was not permissible to restrict the detainees' sight solely for the remaining additional purpose of maintaining the shock of capture. In my view, the blacked out goggles should have been removed as soon as each detainee was seated in the cubicle.
- 3.776** It seems to me to be clear that insufficient thought was given, by those in charge of prisoner handling at Camp Abu Naji during the relevant period, to the circumstances in which it was permissible for detainees to be sight deprived. Whilst I accept WO1 Whyte's evidence that he considered there to be security concerns, I do not believe that sufficient consideration was given overall to the nature, substance or duration of those concerns. In fact, I have no doubt that Captain James Rands was substantially correct when he said that there had been little more than a "*passive approval*" of the practices and procedures of the previous Battle Group. As it seems to me, in reality the precise circumstances in which it was permissible to restrict the sight of detainees were never properly considered and certainly not implemented.⁴⁰⁵⁸
- 3.777** The Baha Mousa Inquiry gave detailed and careful consideration to the circumstances in which the sight deprivation of detainees was permissible. In the Baha Mousa report, Sir William Gage expressed the view that there was routine use of sight deprivation and that it was "*all too easy*" to justify the use of sight deprivation for reasons of operational security.⁴⁰⁵⁹ Sir William went on to make five recommendations regarding the use of sight restriction which have subsequently been implemented by the Ministry of Defence ("MoD"), as follows:

"(1) where practicable the need to deprive CPERS⁴⁰⁶⁰ of their sight should be avoided in the first place by common sense steps such as appropriate design and layout of facilities, the planning of operations, choice of routes, and covering up equipment;

(2) even if it is impracticable to avoid CPERS seeing facilities or equipment in the first place, there must be a genuine sensitivity about the facilities or equipment before sight deprivation can be justified;

⁴⁰⁵⁷ Report of the Baha Mousa Inquiry (Volume III) [16.105]–[16.107]; NB – recommendation 13

⁴⁰⁵⁸ This criticism applies to both Captain Allen and WO1 Whyte as actually in charge. For his part, Captain Rands also told me that he undertook the role of BGIRO (see paragraph 3.492 above) and, having accepted that he knew about the use of sight deprivation and had passively approved this (see paragraph 3.757 above), he too is criticised for this failure

⁴⁰⁵⁹ Report of the Baha Mousa Inquiry (Volume III) [16.95]

⁴⁰⁶⁰ Captured Persons

(3) when sight deprivation does take place it must only be for as long as is strictly necessary;

(4) sight deprivation should not become routine; it must always be capable of being justified by the operational circumstances on the ground; and

(5) when sight deprivation is used, the fact that it has been used should as soon as practicable be noted in a simple brief record giving the date/time/duration/circumstances/justification for its use.”⁴⁰⁶¹

3.778 Although these recommendations had not been made at the time, let alone officially implemented, I am satisfied that good practice should have meant that points such as those raised in each of these recommendations were actually considered and/or implemented in relation to detainees held at Camp Abu Naji generally and on 14/15 May 2004 in particular. However, it is clear that insufficient consideration was given to whether there was any need to deprive the detainees of their sight whilst in the cubicles, or whether other appropriate steps could be taken to eliminate any security risks. I have no doubt that the use of blacked out goggles to deprive detainees of their sight whilst held at Camp Abu Naji had become entirely a matter of routine by 14 May 2004. In my view, this was wrong in principle and completely unacceptable.

3.779 I am therefore satisfied that the almost continual deprivation of the detainees’ sight at Camp Abu Naji during 14/15 May 2004 was very unsatisfactory and amounted to a form of ill-treatment.

3.780 The deprivation of sight also gave rise to some of obvious communication difficulties that have been explored elsewhere in this part of the Report.⁴⁰⁶²

9. Allegation 8 – The lavatory arrangements were inadequate

3.781 The Prisoner Information Sheets record that all nine detainees were taken to the lavatory on 15 May 2004. They were taken on two occasions and in the same order as their detainee numbers. They were first taken between 03:41 hours and 04:12 hours on 15 May 2004 and then again between 08:10 hours and 08:15 hours the same morning.⁴⁰⁶³

3.782 In his oral evidence to the Inquiry, Sergeant Samuel McKee said that, although he had been the one who countersigned the record of the lavatory visits in the Prisoner Information Sheets that night, it would have been the guards, acting in pairs, who actually escorted each detainee to and from the lavatory.⁴⁰⁶⁴

3.783 Staff Sergeant David Gutcher also remembered that it would have been the guards who escorted the detainees to the lavatory. He said that the detainees had been taken to the lavatory at intervals, although could not recall how frequently this was done. He also thought that there had been occasions, other than the set times, when a detainee would request to go to the lavatory and would be allowed to do so. According to Staff Sergeant Gutcher, there were occasions when a detainee would wet himself before the guards were aware that he

⁴⁰⁶¹ Report of the Baha Mousa Inquiry (Volume III) [16.96]

⁴⁰⁶² See paragraphs 3.620, 3.630, 3.670

⁴⁰⁶³ (MOD033658–75)

⁴⁰⁶⁴ Sergeant McKee [124/184-186]

needed the lavatory, because the detainee had been unable to make his request for the lavatory known to or understood by the guards at the time.⁴⁰⁶⁵

- 3.784** None of the military witnesses remembered there having been any form of restriction on when the detainees were allowed to use the lavatory, although Lance Corporal Nicholas Collins believed that the detainees were not allowed to use the lavatory until after they had been processed, in case they had anything hidden on their person.⁴⁰⁶⁶
- 3.785** Many of the military witnesses believed that the detainees had been able to go to the lavatory upon request and that they did not have to wait to be taken at set times. According to Lance Corporal Andrew Tongue, the detainees could go to the lavatory whenever they wanted and there was no shift or rota system for lavatory visits. As far as he was aware, it was for the detainee to decide whether he wished to go to the lavatory and not the guard.⁴⁰⁶⁷ Sergeant Martin Lane also said that the detainees were able to go to the lavatory whenever they wanted. He also said that he did not believe that detainees were ever taken to the lavatory in shifts.⁴⁰⁶⁸
- 3.786** Lance Corporal Raymond Edwards believed that detainees could go to the lavatory whenever they asked. He did not recall them having been taken in shifts. However, he thought that, if all the detainees were taken to the lavatory one after the other, this might have been at Staff Sergeant Gutcher's suggestion if the detainees had not been to the lavatory for an appreciable period of time.⁴⁰⁶⁹
- 3.787** Lance Corporal David Errington also believed that detainees would be taken to the lavatory on request and that they did not have to wait until the guards decided to take them.⁴⁰⁷⁰
- 3.788** In his oral evidence to the Inquiry, Craftsman Matthew Morris said that he had been given a briefing inside the prisoner handling compound on the first occasion that he had performed guarding duties. He said that, during the briefing, he had been told to escort detainees to the lavatory on request. However, he also remembered that there were occasions when he had been specifically instructed to take detainees to the lavatory at certain times, although he was unable to confirm whether such had been the case on 14 May 2004. Craftsman Morris also recalled that an interpreter was available in the area to help the guards understand what the detainees wanted and that the detainees would usually use gestures to indicate that they needed to go to the lavatory. Craftsman Morris said this:

"Q. How were you to go about understanding if a detainee needed the toilet, say if he didn't speak any English?

*A. There was an interpreter there and, essentially, you know, they sort of made it obvious that they needed to go to the toilet, like a small child would do, you know. You know, like sort of bounce – you know, sort of move about as if they needed the toilet, if you like."*⁴⁰⁷¹

- 3.789** Craftsman Jason Marks could not remember how detainees would make it known that they needed to use the lavatory, but thought that they would gesticulate in some way. He accepted

⁴⁰⁶⁵ Staff Sergeant Gutcher (ASI012976) [137]; [122/91-92]

⁴⁰⁶⁶ Lance Corporal Collins [128/140]

⁴⁰⁶⁷ Lance Corporal Tongue [134/160-161]; [134/191]

⁴⁰⁶⁸ Sergeant Lane [136/118-119]

⁴⁰⁶⁹ Lance Corporal Edwards [129/144-145]

⁴⁰⁷⁰ Lance Corporal Errington [125/66]

⁴⁰⁷¹ Craftsman Morris [133/139/17]–[141/10]; [133/219-220]; [133/234-235]

that a detainee might not have been able to make himself understood properly and that he might have been told to be quiet in response to his request to go to the lavatory.⁴⁰⁷²

- 3.790** For his part, Corporal Stuart Bowden said that he knew a few words in Arabic, including the word for lavatory. He said that he would listen out for it. He also said that the detainees could make their intentions clear by the use of pointing and sign language.⁴⁰⁷³ However, he accepted that, on occasion, a detainee might have had difficulty in making it clear that he needed to use the lavatory. During his oral evidence to the Inquiry, he said this in response to Counsel's questions:

"Q. So if the detainee needed to communicate, for example, that they were in pain or they required the toilet, they had to do so without the assistance of an interpreter; is that right?"

A. Yes.

Q. If the detainees did speak in Arabic, they were being told to be quiet or to shut up; is that right?"

A. That's correct yes.

Q. How did you know that a detainee that was shouting out or speaking wasn't trying to communicate that they required assistance of some kind?"

*A. We didn't."*⁴⁰⁷⁴

- 3.791** In his witness statement to the Inquiry, the interpreter M013 said that he had visited the prisoner holding area on the evening of the 14 May 2004, because one detainee had been shouting. It turned out that the detainee needed the lavatory. Once M013 had translated what the detainee was saying so that the guards understood, the detainee was then taken to the lavatory.⁴⁰⁷⁵

- 3.792** In his oral evidence to the Inquiry, Corporal Daniel Marshall said that a detainee would sometimes not ask to go to the lavatory, but would simply urinate in the cubicle he was in. Corporal Marshall said that this would be done quite deliberately.⁴⁰⁷⁶

- 3.793** Staff Sergeant David Gutcher said that, although he did not personally escort detainees to the lavatories, he believed that the guards would leave the detainee in the lavatory, whilst they waited outside. According to Staff Sergeant Gutcher, the detainee would still be handcuffed to the front of his body, but he was unsure whether the detainee would remain blindfolded whilst using the lavatory.⁴⁰⁷⁷

⁴⁰⁷² Craftsman Marks [126/60]

⁴⁰⁷³ Corporal Bowden [120/230-231]

⁴⁰⁷⁴ Corporal Bowden [120/193/23]-[194/9]

⁴⁰⁷⁵ M013 (ASI023648) [100]

⁴⁰⁷⁶ Corporal Marshall [130/54-55]; [130/65]

⁴⁰⁷⁷ Staff Sergeant Gutcher (ASI012976) [137]

3.794 Corporal James Randall stated that, in general, detainees were allowed to use the lavatory without assistance, although the door to the lavatory would remain open.⁴⁰⁷⁸

The Detainees' accounts and specific allegations

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.795 In his first written Inquiry statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) said that he had been allowed to go to the lavatory and that his handcuffs were removed to allow him to do so.⁴⁰⁷⁹ In his second written Inquiry statement, Mahdi Al-Behadili said that he had been taken to the lavatory by two soldiers, who lifted his blindfold to allow him to urinate.⁴⁰⁸⁰ However, in his oral evidence to the Inquiry, Mahdi Al-Behadili said that he had not been allowed to go to the lavatory at all.⁴⁰⁸¹

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.796 In his first written Inquiry statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) said that he had only been allowed to go to the lavatory on one occasion.⁴⁰⁸² He claimed to have shouted to the guards repeatedly that he needed to go to the lavatory. He was made to stand in the corner for 10-15 minutes, then he was taken to a yard and told to go to the lavatory, but he had been unable to go. At the time he was made to kneel and was handcuffed.⁴⁰⁸³ In his second witness statement to the Inquiry, he said that he made a second request for the lavatory which was refused by the guards who had told him to “*shut up*.”⁴⁰⁸⁴

3.797 In his oral evidence to the Inquiry, Abbas Al-Hameedawi said that he could not be sure if he had been taken to the lavatory once or twice that night. He said this, in response to Counsel's questions:

“Q. And how many times do you recall you were taken to use the lavatory?”

*A. I think it was once I wanted to go to the toilet and once to the shower, and once I told them, you know, ‘I need to go to the loo’, and they just left me and they took ages.”*⁴⁰⁸⁵

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.798 In his 2008 Judicial Review statement, Hussein Fadhil Abbas Al-Behadili (detainee 778) said that he had asked to go to the lavatory, but that his requests were refused on approximately three occasions. He said that he had been allowed to go to the lavatory on one occasion. He had been handcuffed, so soldiers were required to pull down his trousers and undergarments

⁴⁰⁷⁸ Corporal Randall (ASI009759) [60]

⁴⁰⁷⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001120) [65]

⁴⁰⁸⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000787) [45]

⁴⁰⁸¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/24/7-9]

⁴⁰⁸² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000865) [54]; (ASI000866) [61]

⁴⁰⁸³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000865) [59]

⁴⁰⁸⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004770) [40]

⁴⁰⁸⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/69/11-16]

and pull them back up for him when he was finished. He said that he had found this to be extremely humiliating.⁴⁰⁸⁶ In his oral evidence to the Inquiry, he said this:

“Before they took us to the helicopter, we asked for a toilet and they got us to a makeshift toilet. And when I was there and while handcuffed – I had to use the toilet handcuffed – my – he unzipped my trousers and then zipped it back again.”⁴⁰⁸⁷

3.799 In his second Judicial Review statement, Hussein Al-Behadili also alleged that he had heard an interpreter tell an Iraqi “no toilets” in response to an Iraqi who had shouted “toilets please.”⁴⁰⁸⁸

Allegation 8: Conclusions

3.800 It is clear that, as indicated by the entries in the Prisoner Information Sheets, there was a routine for taking the detainees to the lavatory at set times while they were held at Camp Abu Naji during 14/15 May 2004. In addition to those set times, the detainees could request to be taken to the lavatory at any time, as a number of the military witnesses recalled in their evidence. However, it appears that separate unscheduled trips such as those were not recorded in the Prisoner Information Sheets, although they should have been.

3.801 The fact that no interpreter was present in the prisoner holding area as a matter of course made it difficult for a detainee to make it known that he needed to go to the lavatory. Many of the military witnesses who gave evidence to the Inquiry acknowledged the difficulty that a detainee faced in making himself heard and understood, when asking to go to the lavatory. It is very likely that the strict enforcement of the no-talking policy did make it more difficult for the detainees to communicate their needs to the guards. However, it is also apparent that when a detainee did succeed in making it known that he needed to go to the lavatory, he would have been taken. I do not believe that any of the detainees were deliberately and consciously prevented from going to the lavatory.

3.802 There does not appear to have been any set procedure as to how the practicalities of a trip to the lavatory were to be managed, although it seems that the guards sometimes lifted blindfolds and loosened or removed handcuffs temporarily, when the detainees used the lavatory. Thus, a number of the detainees, who actually made no complaint about the lavatory arrangements, described how their blindfolds had been temporarily raised, so that they were able to use the lavatory unassisted.⁴⁰⁸⁹

Specific allegation by Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.803 I am quite sure that Mahdi Jasim Abdullah Al-Behadili (detainee 773) was not deliberately prevented from going to the lavatory. He deliberately lied in his oral evidence in alleging that this had happened. In fact, he had made it clear in his two written Inquiry statements that he had been taken to the lavatory and that his blindfold and handcuffs had been removed, so that he had been able to use the lavatory unassisted. I am perfectly satisfied that this was what had happened in reality.

⁴⁰⁸⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006560) [35]

⁴⁰⁸⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/23/17-21]

⁴⁰⁸⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006703) [33]

⁴⁰⁸⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000731) [59]; Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD005346) [19]; (ASI013955) [23]

Specific allegations by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.804** Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) suggested that he had been only allowed to go to the lavatory on one occasion. I am satisfied that he was mistaken about this and am satisfied that he would have been taken on at least two occasions, at the times and as recorded in the Prisoner Information Sheets. I accept that he asked to go to the lavatory at other times that night and I also accept that it is possible that he was simply told to “*shut up*” on one such occasion. If this did happen, it was because the guards believed that he was trying to talk to other detainees and did not appreciate that he was actually asking to be taken to the lavatory.
- 3.805** I very much doubt if Abbas Al-Hameedawi was ever required to stand in a corner for 10-15 minutes at any time that night, before being taken to a yard and told to go to the lavatory. Nevertheless, given that there was a set procedure for taking all the detainees to the lavatory in order and at one time, I am unable to rule out the possibility that Abbas Al-Hameedawi may have had to stand and wait for his turn to use the lavatory. However, if that did happen, it seems to me very unlikely that he had to stand and wait for as long as 10 to 15 minutes (although it may have seemed like it to him at the time). In any event, I am quite sure that it would have been happenstance, rather than some form of deliberate ill-treatment by the guards.

Specific allegation by Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.806** I accept that it is possible that Hussein Fadhil Abbas Al-Behadili (detainee 778) may have had his requests for the lavatory refused on several occasions. If this did happen, it was not done with the deliberate intention of preventing him from going to the lavatory, but because the guards either did not hear or did not understand what he wanted.
- 3.807** I accept that it is possible that Hussein Al-Behadili remained handcuffed when he was taken to the lavatory and that this meant that soldiers had to pull down his trousers and undergarments and pull them back up for him. As I have already indicated, I am satisfied that there does not appear to have been a set procedure about how the practicalities of going to the lavatory were to be managed. In some cases, a detainee’s cuffs were loosened or removed, in other cases the detainee’s cuffs remained in place. If this did happen, I am quite sure that it was not because the guards deliberately intended to humiliate or embarrass Hussein Al-Behadili. It was done to assist him. However, I readily accept that the experience would have been both embarrassing and humiliating for Hussein Al-Behadili. It was a wholly unsatisfactory practice that could and should have been avoided by an appropriate procedure for managing the practicalities of lavatory visits by detainees in a satisfactory manner.⁴⁰⁹⁰ In my view, those who were in charge of ensuring that appropriate procedures were in place for dealing with such matters should have devised such a procedure and/or taken steps to ensure that the guards were fully aware of it and put it into practice.⁴⁰⁹¹
- 3.808** I do not believe Hussein Al-Behadili’s evidence that he had heard an interpreter tell an Iraqi “*no toilets*” in response to an Iraqi shouting “*toilets please.*” No other detainee made such an allegation and I am quite sure that, if a detainee did request to go to the lavatory in this manner, his request would not have been consciously and deliberately refused. I am sure that

⁴⁰⁹⁰ Hamzah Joudah Faraj Almalje (detainee 772) also recalled having being taken to the lavatory and placed on it although did not expand on whether this meant that the guards assisted him with his clothing (PIL000691) [44]

⁴⁰⁹¹ In my view those responsible for ensuring that there were proper procedures in place for dealing with such matters were Captain Allen and WO1 Whyte

this was a deliberate lie by Hussein Al-Behadili that was intended to support the allegations that the detainees had been ill-treated at Camp Abu Naji that night.

10. Allegation 9 – The detainees were ill-treated during medical examinations

Military evidence

- 3.809** After they had been processed, the nine detainees all received medical checks at three-hourly intervals. According to the Prisoner Information Sheets these occurred at approximately 00:01 hours, 03:10 hours, 06:06 hours, 12:10 hours and 09:00 hours on 15 May 2004.⁴⁰⁹² The Prisoner Information Sheets stipulated that detainees should be seen by a doctor every three hours after their initial medical check.
- 3.810** It was Corporal Shaun Carroll who carried out the medical checks at 00:01 hours, 03:10 hours and 06:06 hours. He said that he had followed the same procedure on each occasion. He explained that he walked down the middle of the prisoner holding area with an interpreter and asked each detainee if he had any problems. He recalled that the detainees were asleep at the time and that the interpreter had to wake them in order to ask if they had any problems.⁴⁰⁹³
- 3.811** The two medical checks at 09:00 hours and 12:10 hours were carried out by the 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") Regimental Medical Officer ("RMO"), Captain Kevin Bailey. He said that the purpose of the medical checks was to ensure that any injuries, which had been identified in the initial medical examination, were not worsening and that the detainees still remained in a healthy state. He explained that these later checks were relatively cursory and that an interpreter would have been on hand to ask the detainees if they had any medical problems.⁴⁰⁹⁴
- 3.812** In addition to the routine three-hourly medical checks, there were two specific medical interventions during the night of 14/15 May 2004. First, after he had been processed, Hamzah Joudah Faraj Almalje (detainee 772) was seen in the prisoner holding area by Corporal Carroll at 21:37 hours on 14 May 2004. Corporal Carroll believed that he had then changed Hamzah Almalje's dressings.⁴⁰⁹⁵ Corporal Carroll noted that Hamzah Almalje had been processed between 21:03 hours and 21:10 hours. However, because he did not believe that this gave sufficient time for Hamzah Almalje's wound to be treated and redressed during his processing, Corporal Carroll thought it likely that he had taken Hamzah Almalje back to his cubicle to dress the wound, before returning him to the tent to finish his processing. However, he was quite unable to say why the relevant Prisoner Information Sheet did not record any such prisoner movement and accepted that the details in the Prisoner Information Sheet were likely to be correct.⁴⁰⁹⁶
- 3.813** Second, Private Malcolm Shotton administered medication to Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) at 02:21 hours on 15 May 2004. Private Shotton said that he had volunteered to treat Ibrahim Al-Ismaeeli, after having been told by Corporal Shaun Carroll that the detainee needed some medication administered to him: namely co-codamol and

⁴⁰⁹² (MOD033658-75)

⁴⁰⁹³ Corporal Carroll [116/97/19]–[99/5]

⁴⁰⁹⁴ Captain Bailey (ASI015298) [130]

⁴⁰⁹⁵ Corporal Carroll (ASI016082) [138]

⁴⁰⁹⁶ Corporal Carroll [116/44-47]

diclofenac. Private Shotton assumed that the medication in question had been prescribed by a doctor, because he believed it to be prescription only medication.⁴⁰⁹⁷

- 3.814** Private Shotton said that he had gone to the prisoner holding area and checked that the correct medication was available and in date. He then went to see Ibrahim Al-Ismaeeli with one of the guards. Private Shotton described how they had then lifted the detainee to his feet while he was speaking in Arabic and also saying something that sounded like “pain” in English.
- 3.815** According to Private Shotton, the guard then opened the detainee’s mouth, by using his hands to apply pressure to his chin and to either side of his mouth. Once the detainee’s mouth had been opened in this fashion, Private Shotton put the pills into his mouth and then gave him water in order to swallow them.
- 3.816** According to Private Shotton, Ibrahim Al-Ismaeeli had been reluctant to open his mouth and Private Shotton thought that this might have been because he believed he was being poisoned. Ibrahim Al-Ismaeeli was wearing blacked out goggles at the time.⁴⁰⁹⁸ In a written statement that he gave to the Royal Military Police (“RMP”) in March 2008, Private Shotton said that he had been the one who had opened the detainee’s mouth,⁴⁰⁹⁹ but in a second statement to the RMP in December 2008, he stated that it had been a guard who had done so.⁴¹⁰⁰
- 3.817** None of the soldiers, who had been guarding the detainees at the time, were able to recall this incident. Staff Sergeant David Gutter said that every time a medic visited the prisoner holding area, the visit would be recorded in the Prisoner Information Sheets. He said that he was unable to recall where he had been when Ibrahim Al-Ismaeeli was given medication on 15 May 2004 or how it had come about that it was decided he needed the medication in the first place.⁴¹⁰¹
- 3.818** Corporal Carroll accepted that he must have authorised Private Shotton to give the painkillers to Ibrahim Al-Ismaeeli, because Private Shotton did not have the authority to dispense/prescribe the medication himself. Corporal Carroll could not remember how he had come to know that the Ibrahim Al-Ismaeeli was in sufficient pain to make the painkillers necessary.⁴¹⁰² Corporal Carroll said that he assumed that Private Shotton had taken the medication to the prisoner holding area himself, because did not think that he (Corporal Carroll) had taken the medication to the prisoner holding area and simply left it there. Corporal Carroll said he was sure that, when he had checked the detainees at 00:01 hours that night, he had asked Ibrahim Al-Ismaeeli, through the interpreter, if he was in pain and he had answered “No.”
- 3.819** Corporal Carroll said that he would only have prescribed the medication for Ibrahim Al-Ismaeeli because he asked for it, although he was unsure how he had come to know that Ibrahim Al-Ismaeeli needed the pain-relief medication, given that when he had checked at 00:01 hours that night, he had not required any such medication. Corporal Carroll emphatically denied that he had withheld pain relief from Ibrahim Al-Ismaeeli for any reason and made it abundantly clear that he regarded such conduct to be unethical.⁴¹⁰³

⁴⁰⁹⁷ Private Shotton [109/40-42]

⁴⁰⁹⁸ Private Shotton [109/44-45]; [109/57-62]

⁴⁰⁹⁹ Private Shotton (MOD019713)

⁴¹⁰⁰ Private Shotton (MOD023904)

⁴¹⁰¹ Staff Sergeant Gutter[122/61-67]

⁴¹⁰² Corporal Carroll [116/74/4]-[80/1]

⁴¹⁰³ Corporal Carroll [116/112-118]

- 3.820** In his written Inquiry statement, Craftsman Steven Hetherington recalled there having been a detainee with a leg wound seated in one of the cubicles in the prisoner holding area that night. He made no further comment about that particular detainee in the original version of his Inquiry statement, other than to say that he did not see him being given any medical treatment.⁴¹⁰⁴ However, at the outset of his oral evidence to the Inquiry, he amended his original Inquiry statement to add that he remembered how he had seen a guard “*putting a finger in a wound of sorts*” that night. Craftsman Hetherington went on to say that he had been concerned when he saw this happen, but had not questioned why it was being done, nor did he report it. He went on to say that it had struck him at the time as something that should not be happening. Craftsman Hetherington said that he could not be sure whether it had been a guard or the medic who had acted like this, but that he thought that he had done it to be smart and to act the “*big man*”. Craftsman Hetherington said that he believed it had been done to cause deliberate pain to the detainee in question.⁴¹⁰⁵
- 3.821** If such an incident actually did occur at Camp Abu Naji on the night of 14/15 May 2004, it seems likely that that detainee would have been Ibrahim Al-Ismaeeli (detainee 774), given that Craftsman Hetherington recalled that the detainee in question had a leg wound.

The Detainees’ accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

- 3.822** Although Hamzah Joudah Faraj Almalje (detainee 772) was unable to remember whether he had had his dressing changed that night, he did recall that a doctor had bandaged his leg at some stage. According to Hamzah Almalje, the bandage had not been tight enough and had become loose later on. He was unable to remember whether his leg was dressed during his first or second “*interrogation*” or whether the bandage had been changed at any point.⁴¹⁰⁶ He remembered that, at some stage, he had told the “*interrogator*” that he had pains in his stomach and that he needed to go to the lavatory. He said that he had been taken to the lavatory, but he had lost the bandage on his leg and he had lost his trousers, so that when he came out of the lavatory he was only in his underpants.⁴¹⁰⁷

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

- 3.823** Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) did not recall having been given any painkilling drugs, while he was held at Camp Abu Naji on 14/15 May 2004. He said that he had been tired and in shock and could only remember the pain. However, he said that he did remember that the guards had given him a biscuit and some water that night. He said that the soldiers had held his cheeks and inserted the bottle in his mouth in order to give him the water.⁴¹⁰⁸ Later in his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli appeared to accept that a soldier did try to put something in his mouth by holding it open.⁴¹⁰⁹

⁴¹⁰⁴ Craftsman Hetherington (ASI022944) [47]; [126/134-135]

⁴¹⁰⁵ Craftsman Hetherington [126/130-133]; [126/163/7-11]

⁴¹⁰⁶ Hamzah Joudah Faraj Almalje (detainee 772) [20/18-19]

⁴¹⁰⁷ Hamzah Joudah Faraj Almalje (detainee 772) [19/80/2-7]

⁴¹⁰⁸ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/17-18]

⁴¹⁰⁹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/52]

3.824 Ibrahim Al-Ismaeeli also alleged that, whilst he had been seated in the cubicle in the prisoner holding area, one of the soldiers had trampled on his leg that night.⁴¹¹⁰

Allegation 9: Conclusions

Hamzah Joudah Faraj Almalje (detainee 772)

3.825 I accept that Hamzah Joudah Faraj Almalje (detainee 772) may be correct in saying that the bandage on his leg became loose and had to be re-dressed. For his part, Corporal Carroll was unable to recall clearly why it was that he had dressed Hamzah Almalje's injury about half an hour after he had been processed. It seems to me very likely that the reason was that the bandage he had applied during the processing medical examination had become loose and that he had to reapply it shortly after Hamzah Almalje had been returned to the prisoner holding area. In any event, I am satisfied that Hamzah Almalje was given appropriate medical care and not subjected to any form of ill-treatment at the time.

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.826 The circumstances in which Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) came to be given painkilling medication at 02:21 hours on 15 May 2004 are not clear. I accept that the medic, Corporal Shaun Carroll, was responsible for the decision to prescribe the medication in question. However, Corporal Carroll had carried out a medical check at 00:01 hours and said that Ibrahim Al-Ismaeeli did not require painkillers then. On that basis, it appears that Corporal Carroll took the decision to medicate him at some time after that particular medical check, but before he carried out a further check at 03:10 hours that night.

3.827 Corporal Carroll said that he would only have prescribed the medication in question if Ibrahim Al-Ismaeeli had asked for pain relief. However, he went on to say that he could not have seen Ibrahim Al-Ismaeeli after 00:01 hours and before he was actually given the tablets at 02:21 hours that night, otherwise it would have been recorded in the Prisoner Information Sheets.⁴¹¹¹ Furthermore, according to Private Malcolm Shotton the medication in question was already in the prisoner holding area when he arrived at 02:21 hours and yet Corporal Carroll did not think that he had brought them there. During his oral evidence, Private Shotton said that he thought painkillers had been given to Ibrahim Al-Ismaeeli earlier that night.⁴¹¹² If so, it is possible that the medication in question was a repeat or follow-up prescription of an earlier and unrecorded prescription.

3.828 On behalf of the Iraqi Core Participants, it was submitted that pain relief medication had been deliberately withheld from Ibrahim Al-Ismaeeli until tactical questioning had been completed.⁴¹¹³ This suggestion was emphatically denied by Corporal Carroll and I accept his evidence that he did not take a conscious decision to withhold medical treatment until after tactical questioning.

3.829 So far as concerns the manner in which the medication in question was actually administered to Ibrahim Al-Ismaeeli that night, it is clear that insufficient steps were taken to ensure that Ibrahim Al-Ismaeeli was not medicated against his will. When he was given the medication, the only steps taken to inform him about what was happening had been to tell him in English

⁴¹¹⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/14]

⁴¹¹¹ Corporal Carroll [116/79]

⁴¹¹² Private Shotton [109/41]

⁴¹¹³ See ICP written Closing Submissions at (647) [2189] onwards

that pain relief was being given. In my view, that was wholly unsatisfactory. I can see no good reason why an interpreter had not been called to assist, so that Ibrahim Al-Ismaeeli could properly understand what was intended and his informed consent obtained. His blacked goggles should have been lifted, so that he could see the pills in question and properly understand what was happening. If measures such as these had been taken, it is very likely that Ibrahim Al-Ismaeeli would have cooperated fully, because he was obviously in pain,⁴¹¹⁴ as a number of the soldiers who guarded or saw him in the prisoner holding area that night remembered.⁴¹¹⁵

3.830 As it was, Ibrahim Al-Ismaeeli was effectively forcibly medicated against his will. I accept Private Shotton's evidence that he had not previously administered medication to a detainee in the prisoner handling area and that he therefore did not know the correct procedure for doing so. In my view, it was wholly unsatisfactory that this task should have been carried out by a soldier who was, in effect, unqualified to do it properly. I accept that Private Shotton believed his job to be simply that of administering the medication, as opposed to carrying out any medical checks or discussing the medication with Ibrahim Al-Ismaeeli himself. Nevertheless, measures should have been taken to ensure that Ibrahim Al-Ismaeeli fully understood what was happening. I have no doubt that appropriate steps should have been taken before Private Shotton's attendance to ensure that Ibrahim Al-Ismaeeli was fully aware of what was happening and that he consented to the procedure. As it seems to me, these various shortcomings were the responsibility of those in charge of the medical procedures at Camp Abu Naji that night.

3.831 I am therefore satisfied that the manner in which Ibrahim Al-Ismaeeli (detainee 774) was medicated at 02:21 hours on 15 May 2004 may have amounted to a form of ill-treatment. However I am also satisfied that it was more a case of poor practice, rather than deliberate ill-treatment and, in any event, that it did not have any significant adverse consequences for Ibrahim Al-Ismaeeli himself.

3.832 I am satisfied that Craftsman Steven Hetherington's evidence was essentially truthful and accurate. I therefore accept that he was able to remember an occasion in which a soldier touched a detainee's leg wound that night. It seems likely that the detainee in question was Ibrahim Al-Ismaeeli (detainee 774). Craftsman Hetherington accepted that his memory of events that night was unclear and that the soldier may have been a medic. It seems to me likely, therefore, that what he actually observed was Ibrahim Al-Ismaeeli being medically examined and/or given medical treatment that night and that he has somewhat misinterpreted what he saw. There was no sinister intent and it was not an act of ill-treatment.

3.833 I am sure that the incident described by Ibrahim Al-Ismaeeli was not the same as the one recalled by Craftsman Hetherington. Ibrahim Al-Ismaeeli alleged that a soldier had trampled on his injured leg, whereas Craftsman Hetherington recalled that a soldier had put his finger in or on a detainee's leg wound. I am quite sure that the incident described by Ibrahim Al-

⁴¹¹⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/65]

⁴¹¹⁵ See, for example, Lance Corporal Vince (ASI009928) [48]

Ismaeeli did not happen at all. I have no doubt that this was a deliberate falsehood on his part, intended to lend substance to his claims of ill-treatment at Camp Abu Naji that night.

11. Allegation 10 – The detainees were deliberately plasticuffed too tightly so as to cause pain

Military evidence

- 3.834** Many of the witnesses recalled that the detainees had arrived at Camp Abu Naji on 14 May 2004 with plasticuffs applied to their rear,⁴¹¹⁶ although some of the witnesses, such as Colour Sergeant Graham King, recalled that some of the detainees had plasticuffs applied to their front.⁴¹¹⁷
- 3.835** WO1 Shaun Whyte explained that detainees were usually plasticuffed to the rear when they arrived at Camp Abu Naji. He considered this to be acceptable for security reasons for the short period required to transport the detainees from the point of capture.⁴¹¹⁸ WO1 Whyte confirmed that it was standard procedure for detainees to be plasticuffed to the front whilst detained at Camp Abu Naji.⁴¹¹⁹
- 3.836** According to Staff Sergeant David Gutcher, detainees would be cuffed to the rear when they were first brought to the processing tent. He said that the plasticuffs would be removed and each detainee re-cuffed to the front after he had been processed.⁴¹²⁰
- 3.837** Some of the guards remembered that the detainees already had their hands plasticuffed to the front when they were seated in the cubicles in the prisoner holding area before they were processed.⁴¹²¹

The Detainees' accounts and specific allegations

- 3.838** Many of the detainees did not make any specific complaint about how they were plasticuffed at Camp Abu Naji that night. All the detainees confirmed that they had remained plasticuffed throughout their detention at Camp Abu Naji and while they were seated in the cubicles after processing, they had been plasticuffed to the front.

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 3.839** Kadhim Abbas Lafta Al-Behadili (detainee 775) said that he had been repeatedly cuffed and un-cuffed before processing that night. He said that this had caused him a lot of unbearable pain, as follows:

"They cuffed me to the front and pulled the plasticuffs incredibly tight and then cut them off and cuffed me to the rear and then to the front again, repeatedly."

⁴¹¹⁶ See, for example, Corporal Bowden [120/190]

⁴¹¹⁷ Colour Sergeant G. King (ASI010809) [131]; See also Lance Corporal Tongue [134/131/12-14]

⁴¹¹⁸ WO1 Whyte (ASI015975) [77]

⁴¹¹⁹ WO1 Whyte (ASI015962) [35]; See also, Lance Corporal Bond [120/11/14-15]; Private Marc Kendall [131/181/18-25]

⁴¹²⁰ Staff Sergeant Gutcher (ASI012969) [102]

⁴¹²¹ See, for example, Corporal Marshall [130/22]

- 3.840** Kadhim Al-Behadili (detainee 775) said that he believed that this had been quite deliberate and claimed that *“the soldiers seemed to be seeing how tightly they could cuff my wrists together.”*⁴¹²²

Allegation 10: Conclusions

- 3.841** The military evidence was not entirely consistent about when the detainees had their wrists cuffed and un-cuffed at Camp Abu Naji during 14/15 May 2004. It seems clear that the detainees were un-cuffed during processing and were re-cuffed to the front thereafter. The detainees may also have been re-cuffed at some stage after they had been taken to the cubicles and before processing, most likely at the stage that they were first offered water in the prisoner holding area. Thus, Mahdi Jasim Abdullah Al-Behadili (detainee 773) remembered that he had his hands re-cuffed to the front before processing took place.⁴¹²³
- 3.842** If Kadhim Abbas Lafta Al-Behadili (detainee 775) did have his wrists re-cuffed prior to processing, I am satisfied that this was done in order to comply with protocol that the detainees should be cuffed to the front. There may have been, at this stage, some over tightening of his cuffs, but if this occurred I am satisfied that it was not deliberate. In any event, it would have been remedied once the cuffs were removed and later replaced during processing. I am sure that he was not cuffed and recuffed repeatedly. This was a deliberately false embellishment on his part, intended to lend substance to his claims of ill-treatment at Camp Abu Naji that night.

12. Potential ill-treatment 11 – The detainees were subjected to “static” or “white” noise from a radio

- 3.843** Corporal John Everett recalled that there was a radio in the prisoner holding area which was deliberately mistuned. He believed that it was present and playing a static noise when the detainees arrived on 14 May 2004. He had previously stated that it continued to play throughout their stay,⁴¹²⁴ but in his oral evidence to the Inquiry he said that he had turned it off as soon as he noticed it. He described the sound as loud enough to block out background noise, but no louder.⁴¹²⁵ Corporal Everett explained that he believed its purpose was to prevent the detainees from overhearing anything said or discussed by the guards. What he said was this:

*“I considered it being, at the time, used as a tool to block out the whispering of the guards while they were going about their duties.”*⁴¹²⁶

- 3.844** Lance Corporal David Bond also remembered having heard the sound of an untuned radio that was in the prisoner handling compound on 14 May 2004 and went on to say this:

*“I remember being in there and it was on. I don’t know if it was being tuned, or – it wasn’t playing music, it was like in between stations.”*⁴¹²⁷

- 3.845** Corporal Stuart Bowden also remembered the radio in the prisoner holding area, but was unable to recall if it had been on the whole time he was present on 14 May 2004. He said

⁴¹²² Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000726) [41]

⁴¹²³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL00082) [30]

⁴¹²⁴ Corporal Everett (MOD020178)

⁴¹²⁵ Corporal Everett [117/175-179]

⁴¹²⁶ Corporal Everett [117/176/6-8]

⁴¹²⁷ Lance Corporal Bond [120/76/14-15]

that it had made a static noise for a minute or two, after which someone had turned it off. According to Corporal Bowden, it had not been very loud and he did not know why it had been switched on in the first place.⁴¹²⁸

- 3.846** Sergeant Samuel McKee also remembered the presence of a radio in the prisoner holding area on 14 May 2004, which had been tuned “*off-station*.” He said that there was an occasion when he had switched a radio off, but he was unable to confirm whether that had been on 14 May 2004 or on some other occasion.⁴¹²⁹ In his oral evidence to the Inquiry, Sergeant McKee explained that the radio had been placed there and played “*off-station*” for the following reason:

*“It was off-station for a reason. It was there to create noise and it was to mask people in case anyone could hear – because it was so close to the Battalion Headquarters and if anyone had have – if there had have been comings and goings or discussions or anyone talking, it was there so that it would be loud enough to mask anything so that the detainees wouldn’t be able to hear it.”*⁴¹³⁰

- 3.847** In his oral evidence to the Inquiry, Lance Corporal David Errington said that there had been a radio adjacent to the cubicles in the prisoner holding area, which was used to play untuned “*static*” noise on 14 May 2004. As he understood it, the purpose of the radio was to ensure that the detainees did not hear the sounds of the camp or the guards. He went on to say that it was also to prevent the detainees from communicating with or hearing one another. He said that he had not been told that this was so, but that he considered it to be the obvious reason.⁴¹³¹

- 3.848** Similarly, Lance Corporal Christopher Vince remembered that an untuned radio had been there on 14 May 2004. He also thought that its purpose was to prevent detainees from communicating with one another or from overhearing anything.⁴¹³² Craftsman Matthew Morris recalled that a radio had been present on 14 May 2004. He assumed its purpose was to prevent detainees from overhearing sensitive information from the HQ building.⁴¹³³

- 3.849** A number of other military witnesses remembered the presence of a radio in the prisoner handling compound, but were unable to say whether it was present or switched on during 14/15 May 2004.⁴¹³⁴ Lance Corporal Raymond Edwards recalled a radio, but was unable to say definitely whether it had been present on 14/15 May 2004.⁴¹³⁵ He recalled that the radio would be tuned off-station so that emitted “*white noise*” or “*static*”. He believed that it had been put there to prevent the detainees from hearing what the guards were saying.⁴¹³⁶

- 3.850** Sergeant Martin Lane also remembered that there had been a radio in the prisoner holding area, which had been deliberately tuned off-station, so that it made a hissing, crackling noise. He said that it was quite loud. He believed that its purpose was to mask the sound of talking

⁴¹²⁸ Corporal Bowden [120/192-193]

⁴¹²⁹ Sergeant McKee [124/142-149]

⁴¹³⁰ Sergeant McKee [124/142/20]-[143/2]

⁴¹³¹ Lance Corporal Errington [125/31-33]

⁴¹³² Lance Corporal Vince [119/32/22]-[33/15]; (ASI009927) [45]

⁴¹³³ Craftsman Morris [133/157-159]; (ASI010878) [25]

⁴¹³⁴ Lance Corporal Tongue [134/114-115]; NB – he did not remember the radio being used to play “*white noise*”, but stated that he recalled it playing British forces Broadcasting Services during the day; Craftsman Marks [126/29]; [126/63]; Lance Corporal Peskett (ASI015206) [50]

⁴¹³⁵ Lance Corporal Edwards [129/189]

⁴¹³⁶ Lance Corporal Edwards [129/108-109]

or vehicle movement. However, according to Sergeant Lane, the radio was definitely not there on 14/15 May 2004, because it had either been removed or broken by then.⁴¹³⁷

3.851 A number of the guards did not recall the presence of a radio in the prisoner handling compound at all.⁴¹³⁸ Thus, Corporal Andrew Nicholls told me that he did not recall a radio ever being present in the prisoner handling compound.⁴¹³⁹

3.852 Sergeant Samuel McKee said that he believed the radio would have been put there originally on the orders of either WO1 Shaun Whyte or WO2 Darran Cornhill.⁴¹⁴⁰ In his oral evidence to the Inquiry, Lance Corporal Raymond Edwards said that he believed that it was the Regimental Sergeant Major (“RSM”) (i.e. WO1 Whyte) who would have been responsible for placing the radio in the prisoner handling compound.⁴¹⁴¹

3.853 However, WO1 Shaun Whyte said that he had never heard or seen a radio in the prisoner handling compound and that he would not have permitted there to be one.⁴¹⁴² Similarly, WO2 Darran Cornhill said that he was unaware of there having been any radio in the prisoner handling compound.⁴¹⁴³

3.854 Staff Sergeant David Gutter said that he had no recollection of there having been any sort of noise from a radio in the prisoner handling compound at Camp Abu Naji and was unable to remember whether or not there had actually been a radio there.⁴¹⁴⁴

3.855 In his oral evidence to the Inquiry, Captain Duncan Allen said that he did not recall there having been a radio in the prisoner handling compound. He explained that he did not authorise the use of one, nor was he aware that one was ever used. In response to Counsel’s questions, he said this:

“Q. If there was a radio and it played white noise in the area of the ablutions block, what would your reaction be to that?”

A. It would be unusual. I don’t think that was – that was necessary. Unless it was there to – to drown out any noise coming from the outside in terms of, you know, operational security.

Q. Do you remember that ever being discussed?”

A. No, I don’t – I don’t recall any discussion on that.”⁴¹⁴⁵

⁴¹³⁷ Sergeant Lane [136/44-45]

⁴¹³⁸ Corporal Marshall [130/43/6-10]; Corporal M. Taylor [129/52/14-17]; Corporal MacDonald [134/32/23-25]; Corporal Edgar [128/42/8-17]; Private Grist [131/84/20-21]; Lance Corporal Rider [100/143/10-14]

⁴¹³⁹ Corporal Nicholls [124/43-44]

⁴¹⁴⁰ Sergeant McKee (ASI014663) [54]; [124/149]

⁴¹⁴¹ Lance Corporal Edwards [129/109-110]

⁴¹⁴² WO1 Whyte [106/105]

⁴¹⁴³ WO2 Cornhill [115/96]

⁴¹⁴⁴ Staff Sergeant Gutter [122/44/22-24]; (ASI012974) [128]

⁴¹⁴⁵ Captain Allen [136/248/7-15]

Potential ill-treatment 11: Conclusions

- 3.856** None of the nine detainees made any allegations about a radio having been played while they were held in the cubicles in the prisoner handling compound at Camp Abu Naji during 14/15 May 2004. In fact, none of the detainees remarked on the presence of a radio at all.⁴¹⁴⁶
- 3.857** Having regard to the totality of the evidence, I am satisfied that the static noise from a radio was played from time to time in the prisoner handling compound, and that this is likely to have included occasions on which detainees were present in the prisoner holding area. I am satisfied that, on such occasions, the radio was tuned “*off-station*,” so that it played static or “*white*” noise. It is very likely that the purpose of this was to ensure that conversations were not overheard, either those between guards, from the processing tent or from the HQ Building. I have not heard any evidence to suggest that the radio was set to play static noise for any other reason and it appears to have occurred in a somewhat *ad hoc* and informal fashion. It also seems to be the case that it was never a formally authorised practice.
- 3.858** I am unable to conclude with any certainty whether an untuned radio was actually played in the prisoner holding area on 14/15 May 2004, although it seems to be unlikely. It may be that those witnesses who recalled this having happened that night were confusing it with other occasions when it did occur. In any event, if an untuned radio was played on 14/15 May 2004, it is clear that it did not give rise to any concern on the part of any of the nine detainees who were held in the prisoner holding area that night. This may have been because the radio was played at such a low volume that it went unnoticed or because it was switched off very soon after the detainees arrived, as suggested by Corporal Everett and Sergeant McKee. I am therefore satisfied that, if the radio was played at all that night, it did not amount to any form of ill-treatment of the detainees as a result.
- 3.859** Although, on the facts, there was no actual ill-treatment of the detainees by any use of an untuned radio in the prisoner holding area on the night of 14/15 May 2004, it is nevertheless worth mentioning that the use of an untuned radio in order to increase the noise in the prisoner handling compound at any time, even for security purposes, was neither an appropriate nor a permissible practice. Thus, in the Report of the Baha Mousa Inquiry, Sir William Gage included a recommendation that prisoner handling guidance should make it clear that, when strictly necessary, ear defenders should be used to prevent captured persons from overhearing sensitive information.⁴¹⁴⁷

13. Overall Conclusions with regard to the overnight detention of the detainees at Camp Abu Naji during 14/15 May 2004

- 3.860** As detailed above, there were a number of respects in which the handling of the detainees at Camp Abu Naji during 14/15 May 2004 was less than satisfactory. It seems clear to me that insufficient thought had been given to some important aspects of detainee handling, such as the use of blacked out goggles and whether it was an appropriate or proper practice for them to be worn for prolonged periods.
- 3.861** Additionally, there was no formal or satisfactory method whereby detainees could make their requests or concerns known. I make no criticism of the decision to prevent the detainees from talking with another, which I am satisfied was enforced for good reason. However, with

⁴¹⁴⁶ The only remotely similar recollection was from Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) who stated that one of the guards listened to music on headphones [16/95]

⁴¹⁴⁷ Report of the Baha Mousa Inquiry (volume III) [16.72]–[16.83]

the benefit of hindsight, it is clear that this policy, coupled with the fact that an interpreter was not present or used whilst the detainees were held in the Prisoner Holding Area, led to an unsatisfactory situation in which the detainees were not always able to make their requests or concerns known. Thus simple requests, such as asking for water or to use the lavatory, were often misunderstood or ignored.

3.862 Furthermore, many of the actual ways in which detainee handling was carried out at Camp Abu Naji during the relevant period had been adopted or developed on a somewhat *ad hoc* basis. This meant that some unacceptable practices had developed over time. The use of a radio to produce “white noise” in the prisoner holding area and the prevention of sleep until the completion of tactical questioning are examples.

3.863 The lack of guidance in some key areas also resulted in some significantly sub-standard treatment, in particular the failure to provide a meal at any stage and the practice of keeping the detainees blindfolded throughout the entire period of their detention at Camp Abu Naji. The latter unsatisfactory state of affairs was also compounded by the general perception that “the shock of capture” could be maintained by adopting such a practice.

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.⁴¹⁴⁸ 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.”⁴¹⁴⁹

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 SOIs⁴¹⁵⁰ and the Geneva Conventions. He did not consider that this required his constant presence throughout.⁴¹⁵¹

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.⁴¹⁵²

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.⁴¹⁵³ 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.⁴¹⁵⁴

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

⁴¹⁴⁸ Captain Allen [136/162]

⁴¹⁴⁹ (MOD015804)

⁴¹⁵⁰ Standard Operating Instruction

⁴¹⁵¹ Captain Allen [136/173-174]

⁴¹⁵² Captain Allen [136/215-216]

⁴¹⁵³ Captain Allen [136/216]

⁴¹⁵⁴ 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.”*⁴¹⁵⁵

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.⁴¹⁵⁶ 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.”*⁴¹⁵⁷

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.⁴¹⁵⁸ 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 2004.⁴¹⁵⁹

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).

⁴¹⁵⁵ Sergeant Lane [136/110/5-8]

⁴¹⁵⁶ (MOD042758)

⁴¹⁵⁷ Ibid.

⁴¹⁵⁸ 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)

⁴¹⁵⁹ Captain Allen (ASI023019) [116]

Figure 83: MOD043338

RESTRICTED -- REL MCFI

INTERNMENT/DETAINMENT RECORD			
UK ISN US ISN	No. Personal information	Rank: <i>W2</i>	Name: <i>CDN AUS</i>
Person assuming custody of prisoner	I have physically changed the prisoner and accept responsibility for his person. Signed: Personal information <i>DTC: JL 2100 MAY 04</i>		
DISPOSAL			
(1) Release	(2) Intern	(3) Detain pending transfer to IZ authorities	
EVENTS PRIOR TO INTERNMENT <small>Include searches, visits to the suspect, changes in Internment Officer etc</small>			
<i>CAPITULO Deline Contract on CF</i>			
Signature of Detention/Internment Review Officer/Appropriate Officer <i>DDTG 1501300 MAY 04</i> Personal information <i>72 APR 2004</i>			

Continue on back page as necessary

J - 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.”*⁴¹⁶⁰

⁴¹⁶⁰ 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*”.⁴¹⁶¹
- 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.⁴¹⁶²
- 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.”*⁴¹⁶³

- 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.”*⁴¹⁶⁴

⁴¹⁶¹ Coalition Forces

⁴¹⁶² Captain Allen [136/231-232]

⁴¹⁶³ (MOD042758)

⁴¹⁶⁴ 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.⁴¹⁶⁵ 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.⁴¹⁶⁶
- 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 plasticcuffed 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.”⁴¹⁶⁷

- 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.⁴¹⁶⁸ 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.⁴¹⁶⁹
- 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).⁴¹⁷⁰ 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

⁴¹⁶⁵ 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]

⁴¹⁶⁶ Sergeant Lane (ASI020053) [113]

⁴¹⁶⁷ Sergeant Lane (ASI020053-54) [114]

⁴¹⁶⁸ M021 (ASI021245) [28]

⁴¹⁶⁹ M021 (ASI021245) [29]

⁴¹⁷⁰ 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.”⁴¹⁷¹

- 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.⁴¹⁷² 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.”⁴¹⁷³

- 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.⁴¹⁷⁴

- 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 M021.⁴¹⁷⁵ 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.⁴¹⁷⁶

- 3.888** WO1 Keith Potter, the Air Operations Officer at Camp Abu Naji, was already at the helipad on 15 May 2004.⁴¹⁷⁷ WO1 Potter was already there because he had been notified that morning that some British soldiers needed to be flown to Shaibah.⁴¹⁷⁸ 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.⁴¹⁷⁹ At that stage, WO1 Potter was unaware that any detainees were also due to be transported to Shaibah.⁴¹⁸⁰

- 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.

⁴¹⁷¹ M021 (ASI021246) [31]

⁴¹⁷² M021 (ASI021247) [33]

⁴¹⁷³ Ibid.

⁴¹⁷⁴ M021 (ASI021247) [34]

⁴¹⁷⁵ Sergeant McKee (ASI014668-69) [73]

⁴¹⁷⁶ Lance Corporal Bond (ASI011536) [59]-[60]

⁴¹⁷⁷ WO1 Potter (ASI017843) [5]

⁴¹⁷⁸ WO1 Potter (ASI017854) [47]

⁴¹⁷⁹ Ibid.

⁴¹⁸⁰ 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.⁴¹⁸¹ WO1 Potter was confident that this action successfully defused the situation.⁴¹⁸²

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”⁴¹⁸³ accordingly.⁴¹⁸⁴ 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.⁴¹⁸⁵

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.⁴¹⁸⁶

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.”⁴¹⁸⁷

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.”⁴¹⁸⁸

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.⁴¹⁸⁹

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

⁴¹⁸² WO1 Potter [133/113-114]

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

⁴¹⁸⁴ WO1 Potter (ASI017855-56) [50]

⁴¹⁸⁵ Ibid.

⁴¹⁸⁶ WO1 Potter (ASI017856-57) [51]-[52]

⁴¹⁸⁷ M021 (ASI021248) [37]

⁴¹⁸⁸ Sergeant McKee (ASI014669-70) [75]

⁴¹⁸⁹ 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.⁴¹⁹⁰ 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.⁴¹⁹¹ 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."*⁴¹⁹²

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.⁴¹⁹³

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.⁴¹⁹⁴ However, Corporal McKenna said that he had been armed with a sidearm and that the escorting guards carried SA80 rifles.⁴¹⁹⁵ 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

⁴¹⁹⁰ Sergeant Perfect [76/7]

⁴¹⁹¹ Corporal Ryan (ASI019261) [40]

⁴¹⁹² Ibid.

⁴¹⁹³ Sergeant Lane (ASI020053) [112]

⁴¹⁹⁴ Corporal Ryan (ASI019262) [44]

⁴¹⁹⁵ Corporal McKenna (ASI013637) [50]

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

- 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 DTDF as it was standard operating procedure for the detainees to be given a medical examination during processing."*⁴¹⁹⁷

- 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.⁴¹⁹⁸ 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.⁴¹⁹⁹

- 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."*⁴²⁰⁰

- 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 McKenna⁴²⁰¹ and Sergeant Lane,⁴²⁰² 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."⁴²⁰³ 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.⁴²⁰⁴ I therefore have no doubt that this particular allegation of ill-treatment was a deliberate lie on the part of Mahdi Al-Behadili.

⁴¹⁹⁶ Corporal Ryan (ASI019263) [46]

⁴¹⁹⁷ Corporal Ryan (ASI019263) [47]

⁴¹⁹⁸ Ibid.

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

⁴²⁰⁰ Corporal Ryan (ASI019263) [48]

⁴²⁰¹ Corporal McKenna (ASI013638) [53]

⁴²⁰² Sergeant Lane (ASI020055) [117]

⁴²⁰³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006493) [18]

⁴²⁰⁴ 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.⁴²⁰⁵ It was Corporal McKenna's recollection that the Chinook was too noisy to allow conversation to take place during the flight in any event.⁴²⁰⁶
- 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.⁴²⁰⁷ Corporal McKenna estimated that the actual flight took 45 to 50 minutes, apparently excluding the time taken to load and disembark.⁴²⁰⁸ Sergeant Lane estimated that the flight lasted approximately an hour, including a stop "*en route*."⁴²⁰⁹ For his part, Abbas Abd Ali Al-Hameedawi (detainee 776) thought that the journey lasted no more than 30-40 minutes.⁴²¹⁰
- 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.⁴²¹¹ 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.⁴²¹² 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.⁴²¹³

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.

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

⁴²⁰⁶ Corporal McKenna (ASI013638) [54]

⁴²⁰⁷ Corporal Ryan (ASI019265-66) [53]

⁴²⁰⁸ Corporal McKenna (ASI013639) [56]

⁴²⁰⁹ Sergeant Lane (ASI020055) [118]

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

⁴²¹¹ (MOD024484)

⁴²¹² Ibid.

⁴²¹³ 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.”*⁴²¹⁴

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.⁴²¹⁵ 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.⁴²¹⁶

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.⁴²¹⁷ 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.⁴²¹⁸

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.⁴²¹⁹ 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.⁴²²⁰

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.⁴²²¹

⁴²¹⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001120) [68]

⁴²¹⁵ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000788) [48]

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

⁴²¹⁷ Corporal Ryan [133/47]

⁴²¹⁸ Corporal Ryan [133/48]

⁴²¹⁹ Corporal Ryan [133/50]

⁴²²⁰ Corporal Ryan [133/51]

⁴²²¹ M021 [135/160-162]

- 3.916** Corporal Ryan said that, apart from the incident involving Abbas Al-Hameedawi to which I have just referred,⁴²²² 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*”⁴²²³ 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.⁴²²⁴ 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.⁴²²⁵ 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.⁴²²⁶

⁴²²² See paragraph 3.914 above

⁴²²³ Corporal Ryan (ASI019265) [51]

⁴²²⁴ Corporal McKenna (ASI013641) [65]

⁴²²⁵ M021 [135/163/8-11]

⁴²²⁶ 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.”⁴²²⁷

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.”⁴²²⁸

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.⁴²²⁹

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.⁴²³⁰

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.”⁴²³¹

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.”⁴²³²

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

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

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

⁴²³⁰ Corporal Ryan (ASI019265) [52]

⁴²³¹ Corporal McKenna (ASI013639) [56]

⁴²³² 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."*⁴²³³

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."*⁴²³⁴

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"*⁴²³⁵

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.⁴²³⁶

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."*⁴²³⁷

⁴²³³ ICP Closing Submissions (656) [2225]

⁴²³⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006493) [18]

⁴²³⁵ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000788) [49]

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

⁴²³⁷ 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.⁴²³⁸

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.”*⁴²³⁹

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.”*⁴²⁴⁰

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.⁴²⁴¹

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.⁴²⁴²

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.⁴²⁴³ 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.⁴²⁴⁴

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.⁴²⁴⁵ 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 2004.⁴²⁴⁶ Sergeant Anderson recalled how he had been waiting at the helicopter landing area when the helicopter landed that day.⁴²⁴⁷ 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,

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

⁴²³⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006679) [30]

⁴²⁴⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000956) [54]

⁴²⁴¹ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004815) [83]

⁴²⁴² Sergeant McKee [124/202]

⁴²⁴³ Corporal McKenna [130/129]

⁴²⁴⁴ Sergeant Lane [136/123-124]

⁴²⁴⁵ Corporal Ryan [133/55-56]

⁴²⁴⁶ Sergeant Anderson (ASI014794) [134]

⁴²⁴⁷ 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.⁴²⁴⁸

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."*⁴²⁴⁹

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.⁴²⁵⁰

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

⁴²⁴⁸ Sergeant Anderson [139/105]

⁴²⁴⁹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013956) [25]

⁴²⁵⁰ 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.⁴²⁵¹ Hussein Al-Behadili maintained this allegation when he gave his oral evidence to the Inquiry.⁴²⁵²

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.⁴²⁵³ 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.⁴²⁵⁴

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.⁴²⁵⁵

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."*⁴²⁵⁶

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

⁴²⁵¹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006704) [37]

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

⁴²⁵³ (MOD043962)

⁴²⁵⁴ Ibid.

⁴²⁵⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000384) [109]

⁴²⁵⁶ 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 2004.⁴²⁵⁷ 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.⁴²⁵⁸ 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.”*⁴²⁵⁹

3.956 However, Hussein Fadhil Abbas Al-Behadili (detainee 778) recalled that he had been given water during the transfer.⁴²⁶⁰ 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.”*⁴²⁶¹

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

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

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

⁴²⁵⁹ M021 (ASI021247) [35]

⁴²⁶⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001044) [49]

⁴²⁶¹ 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.⁴²⁶²

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.⁴²⁶³

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...”*⁴²⁶⁴

3.964 The submissions went on to emphasise the fact that it was unlikely that any of the detainees had ever flown before⁴²⁶⁵ 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?”*⁴²⁶⁶

⁴²⁶² 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

⁴²⁶³ See footnote 4291

⁴²⁶⁴ ICP Closing Submissions (652) [2207a]

⁴²⁶⁵ ICP Closing Submissions (653) [2213]

⁴²⁶⁶ 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.⁴²⁶⁷ 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.⁴²⁶⁸
- 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.

⁴²⁶⁷ See footnote 4291

⁴²⁶⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000733) [66]

Part 4: Allegations of ill-treatment at Shaibah

Chapter 1: Introduction to the Divisional Temporary Detention Facility (DTDF)

Chapter 2: Processing at the DTDF at Shaibah

Chapter 3: Detention at the Joint Forward Interrogation Team (JFIT) compound

Chapter 4: Detention at the DTDF compound

PART 4: ALLEGATIONS OF ILL TREATMENT AT SHAIBAH

CHAPTER 1: INTRODUCTION TO THE DIVISIONAL TEMPORARY DETENTION FACILITY (DTDF)

1. The Divisional Temporary Detention Facility

- 4.1** On 15 May 2004, the detainees arrived at the Divisional Temporary Detention Facility at Shaibah Logistics Base (“DTDF”). Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), Kadhim Abbas Lafta Al-Behadili (detainee 775), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780) remained there for a little over 4 months, until 21 September 2004 when they were transferred to Iraqi custody. Two days later, on 23 September 2004, Hamzah Joudah Faraj Almalje (detainee 772), Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ahmed Jabbar Hammood Al-Furaiji (detainee 777) and Hussein Fadhil Abass Al-Behadili (detainee 778) were also transferred to Iraqi custody.
- 4.2** The DTDF was set up to house detainees who were being held without charge as they were considered to be a threat to Coalition Forces in Iraq. The DTDF received detainees from all Coalition Forces within the particular area of operations.⁴²⁶⁹
- 4.3** In either late March or early April 2004, 1st Battalion, The Royal Highland Fusiliers (“1RHF”) took over the operation of the DTDF from 2nd Battalion, The Parachute Regiment (“2PARA”). Major David Richmond, the Officer Commanding B Company 1RHF, told the Inquiry that he adopted an Operational Directive from 2PARA. Major Richmond said he transferred the content of the Operational Directive to 1RHF headed paper, replaced the references to 2PARA with references to 1RHF, and signed the Operational Directive on 4 April 2004.⁴²⁷⁰ Paragraph 1 of the Operational Directive set out an introduction to the DTDF as follows:

“The UK is an Occupying Power in Iraq pursuant to United Nation [sic] Security Council Resolutions 1483 and 1511. In accordance with the powers granted to an Occupying Power under international law and specifically Geneva Convention IV the UK exercises the power to intern individuals when it is considered necessary for imperative reasons of security. The other Troop Contributing Nations (TCNs) comprising MND(SE) do not consider themselves to be Occupying Powers and accordingly do not intern individuals. In accordance with the memorandum of understanding (MOU) between the UK and the other TCNs the UK will accept detained persons who have fallen into the hands of another MND(SE) TCN, and will be responsible for maintaining and safeguarding all such individuals whose custody has been transferred to them. The UK has a legal liability to ensure that detainees and internees are apprehended, handled and processed in accordance with the relevant provisions of the Hague Rules and Geneva Conventions and protocols and that all troops comply with the obligations imposed by them. These obligations are detailed in this directive and in MND(SE) Standard Operating Instruction (SOI) 390. Acting in accordance with the procedures in these documents and pursuant to the advice of the Military Provost Staff (MPS) and MND(SE) Legal Branch will ensure

⁴²⁶⁹ Major Richmond (ASI022461) [9]

⁴²⁷⁰ Major Richmond (ASI022460) [5-7]; (ASI022473) [43]

*compliance with the UK's legal obligations. To fulfill [sic] these obligations a Divisional Temporary Detention Facility (DTDF) has been established within Shaibah Logistic Base (SLB). Both specialist and non-specialist armed forces personnel will man this facility. 1RHF will provide the non-specialist element. Internment and the handling and treatment of internees is a sensitive area, which carries significant legal and political risks. Failure to implement procedures correctly, or abuse of position of authority, will lead to criminal investigation and disciplinary action as well as significant harm to Coalition and UK interests. Such obligations and sensitivities make running the DTDF a significant practical and moral challenge for 1RHF."*⁴²⁷¹

- 4.4** Paragraph 3 of the Operational Directive set out the mission statement for the DTDF. It reads as follows:

*"1RHF is to manage a Divisional Temporary Detention Facility that is secure, humane and run in accordance with the UK's obligations under International Law, UK national law and the European Convention on Human Rights (ECHR) in order to contribute to Coalition Force efforts to improve the security situation within Iraq."*⁴²⁷²

Location of the DTDF

- 4.5** The DTDF was located within the Shaibah Logistics Base approximately 15km to the southwest of Basrah City. Basrah itself is some 150km to the south of Al Amarah.
- 4.6** The Inquiry obtained aerial photographs of the location. The photograph below shows Al Amarah and Basrah.

Figure 84: ASI018604

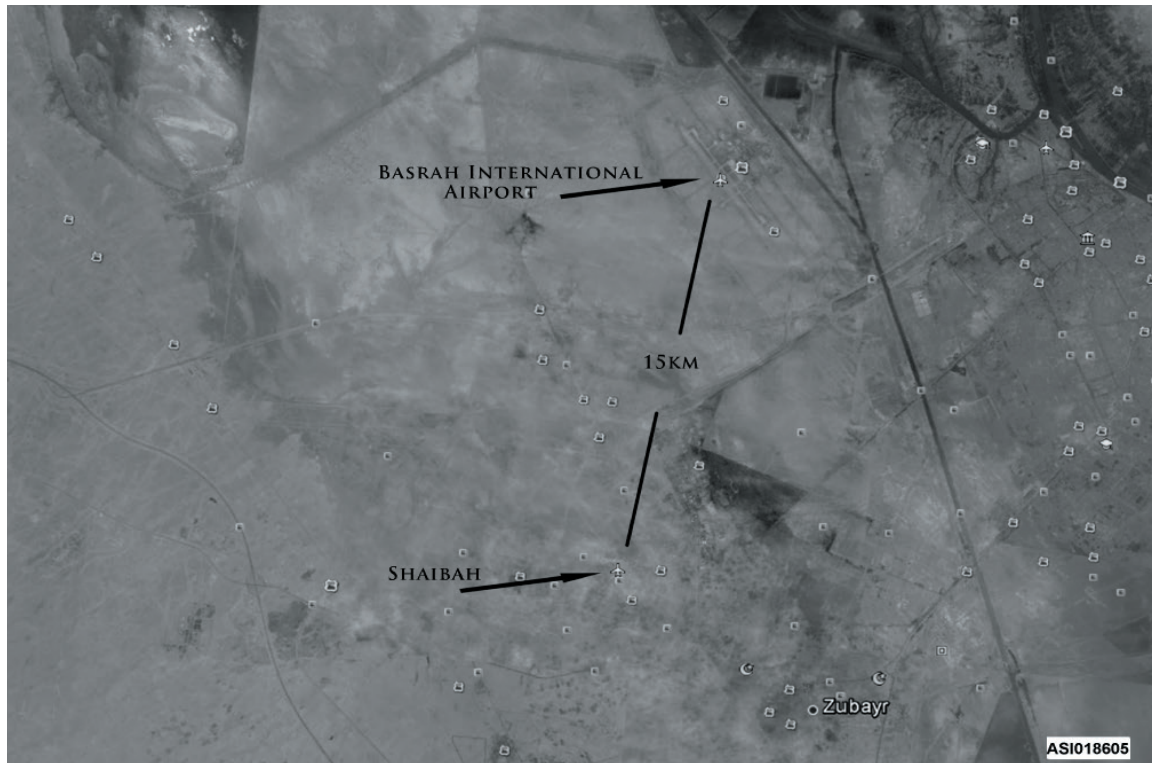


⁴²⁷¹ (MOD045625)

⁴²⁷² (MOD045626)

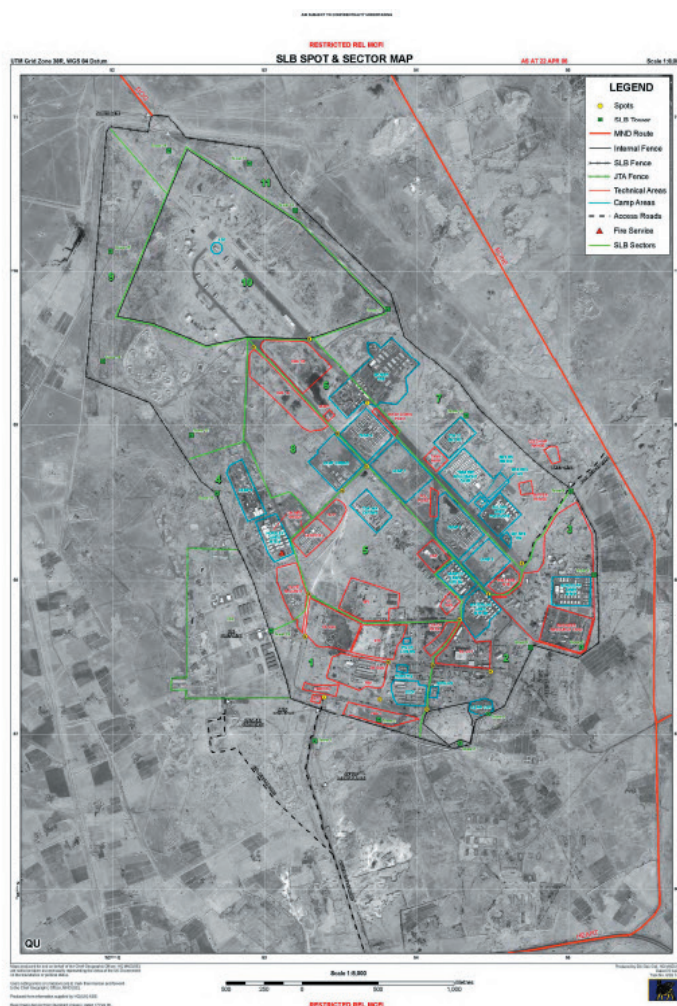
The photograph below shows Basrah International Airport and the Shaibah airstrip.

Figure 85: ASI018605



- 4.7** Shaibah was the site of RAF Shaibah from 1920 until 1956, at which point it was handed over to the Iraqi Air Force. From the time of the invasion of Iraq in 2003 until 2007, Shaibah was the site of Multi-National Division (South East) (“MND(SE)”) / Coalition Forces’ Logistics Base. Whilst in operation, it was home to British, Czech, Danish and Norwegian forces. In 2007 the Shaibah Logistics Base (referred to as “Shaibah” throughout this Report) was handed over to the Iraqi Army. Shaibah was the size of a small town, with some 10,000 to 15,000 military personnel based there.
- 4.8** Shaibah was divided into a number of sectors. The most helpful plan of Shaibah that the Inquiry obtained from the Ministry of Defence is dated 22 April 2006. The plan suggests that by that date there were 10 sectors. The DTF was within the first sector at the foot of the plan (outlined in blue).

Figure 86: MOD048271



Layout of the DTDF

- 4.9** The Inquiry obtained two documents which assist with understanding the layout and orientation of the DTDF. The first is an undated PowerPoint presentation prepared by HQ Provost Marshall (Army) (“HQ PM(A)”), seemingly intended as orientation for the Military Provost Staff (MPS).⁴²⁷³ The second is a report as to the infrastructure and layout of the DTDF, prepared in order to aid in the construction of a new facility in Basrah, dated 28 February 2006.⁴²⁷⁴
- 4.10** The DTDF was a relatively large compound. It was located approximately 1km from the Main Gate of Shaibah. It was surrounded by a perimeter fence, and a number of guards’ towers, known as sangars. There were a variety of buildings within the compound, including: (i) a room used both as an operations room and reception area; (ii) a visits hall; (iii) a medical centre; (iv) a compound housing the Joint Forward Interrogation Team (“JFIT”); and (v) accommodation for detainees.

⁴²⁷³ (MOD034789)-(MOD034780)

⁴²⁷⁴ (MOD045995)-(MOD046010)

4.11 The photograph below shows the general layout and position of the DTDF:

Figure 87: MOD034780



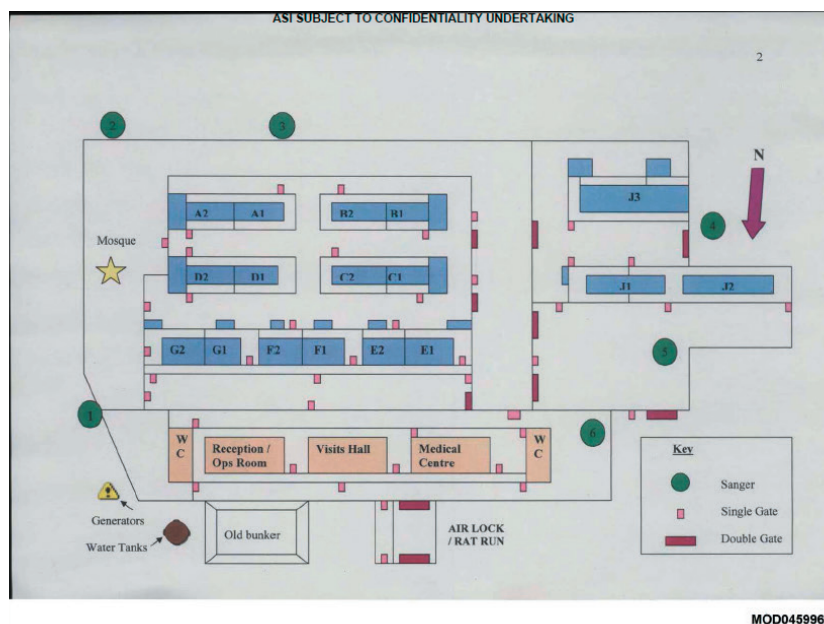
4.12 As can be seen, the compound was roughly rectangular in shape; there was a road to the East of the compound (in the above photograph west is at the top, north to the right); there were a number of sangars on the borders of the compound; and there was a Mosque at the Eastern border of the compound. M052 told the Inquiry that during his tour from April to September 2004, the military was trying to open a Mosque at the back of the DTDF.⁴²⁷⁵ However, Corporal James Green told the Inquiry that during his tour beginning in July 2004, the Mosque was still unused.⁴²⁷⁶

⁴²⁷⁵ M052 [145/215/1]; (ASI019996) [3]

⁴²⁷⁶ Corporal Green [132/95/6]; (ASI019192) [3]

- 4.13** The following plan attributes functions to some of the most significant buildings in the compound:

Figure 88: MOD045996

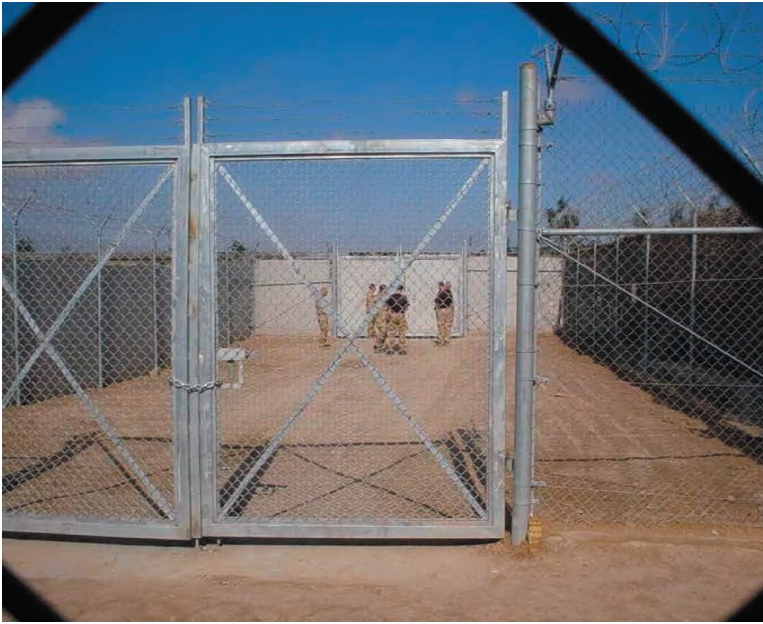


- 4.14** The plan indicates that there were six sangars. Each is depicted by a green dot on the plan. Four were outside the DTDF compound and two within it. The entrance to the DTDF compound is shown at the foot of the plan, described on the plan as “air lock/rat run”. The accommodation blocks are marked A, B, C, D, E, F and G. The main buildings in the JFIT compound are marked J1, J2 and J3.

Entrances

- 4.15** There were two main entrances to the DTDF: one vehicular and one pedestrian. Both entrances operated an “airlock” system, meaning that there was a gate at either end of a corridor, and a requirement that one gate remained closed while the other was open.
- 4.16** The vehicular airlock was the main vehicle entrance to the DTDF and was used, for example, to bring visitors into the compound by coach on visit days.

Figure 89: MOD034783



- 4.17** The pedestrian entrance was to the left of the vehicular entrance, as viewed by somebody entering the compound. Major David Richmond explained that the pedestrian entrance was manned by an armed sentry.⁴²⁷⁷ WO2 David Parrott told the Inquiry that weapons were not permitted inside the DTDF, so Battle Group soldiers entering the DTDF would leave their weapons in the airlock.⁴²⁷⁸ Those who worked routinely within the DTDF would leave their firearms in secured weapons racks, as set out in the Operational Directive, dated 4 April 2004: *“The internal guard force and others operating within the inner compound will not routinely carry firearms. Weapons for these personnel will be held in secured weapon racks with a key held in the ops room. They will instead be armed with Asp or batons.”*⁴²⁷⁹ At Annex E, the Operational Directive further stated that *“personnel working routinely inside the DTDF are to secure their weapons in weapons racks located within the DTDF Ops Room. These weapons racks are to be locked at all times.”*⁴²⁸⁰

⁴²⁷⁷ Major Richmond (ASI022523) [187]

⁴²⁷⁸ WO2 Parrott (ASI020292) [105]; ASI020272 [31]

⁴²⁷⁹ (MOD045633) [30]

⁴²⁸⁰ (MOD0456530)

Figure 90: MOD034784



Fences

- 4.18** The perimeter fence to the DTDF compound was approximately 500m in length. The fence itself was covered with a hessian material to provide a screen.

Figure 91: MOD046001



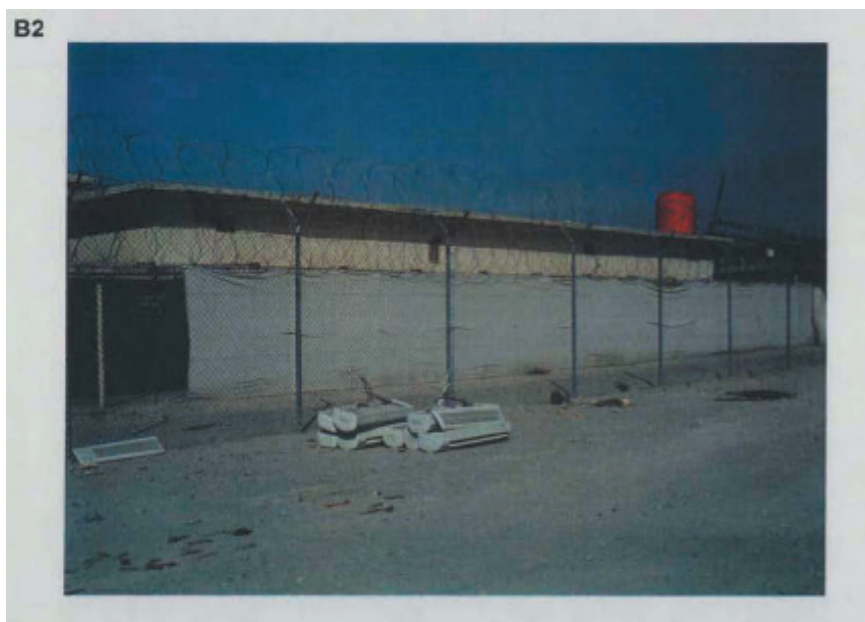
- 4.19** There were a large number of internal security fences within the DTDF, shown on the plan set out at paragraph 4.13 above. Generally these were not covered with screening.

Figure 92: MOD046003



- 4.20** The exceptions were internal fences around the room used for operations and as a reception area, and the internal fences around the JFIT compound, which were screened from view.

Figure 93: MOD046003



Accommodation

- 4.21** In the DTDF, detainees were housed in barrack room style accommodation. There were eventually seven blocks lettered A to G.

Figure 94: MOD034794



- 4.22** The seven accommodation blocks were of two types. Four of them were approximately 12 x 6 meters; and three were approximately 9 x 6 meters. They were brick built flat roofed structures. The larger blocks could accommodate up to 30 detainees.
- 4.23** Sergeant John Johnson told the Inquiry that the three accommodation blocks (marked E, F and G on the above photograph) nearest to the administration area were generally left unused. He said this was because those blocks had a clear view of the administration area.⁴²⁸¹
- 4.24** The blocks marked A, B, C and D were themselves split into two individual cell areas, with each accommodation block being given a letter thus: A1 and A2; B1 and B2; C1 and C2; D1 and D2.
- 4.25** Each block was surrounded by a veranda enclosed by a wire fence. Each accommodation block was fitted with air conditioning and had several windows on the external wall.⁴²⁸²

⁴²⁸¹ Sergeant Johnson (ASI014454)

⁴²⁸² WO2 Parrott (ASI020277) [49]

Figure 95: MOD046004



- 4.26** Inside the accommodation block there were no beds or any other furniture. Detainees were issued with roll mats, sleeping bags, blankets and pillows. Major David Richmond told the Inquiry that the detainees chose to sleep on the floor. He said that if they had wanted beds then beds would have been provided for them.⁴²⁸³ The undated PowerPoint presentation referred to at paragraph 4.9 above included a photograph of the inside of a cellblock.

Figure 96: MOD034795



- 4.27** The room where the detainees slept had an inner lockable door. Past that door was a vestibule containing two sinks, a shower and a lavatory.

⁴²⁸³ Major Richmond (ASI022495-96) [106]

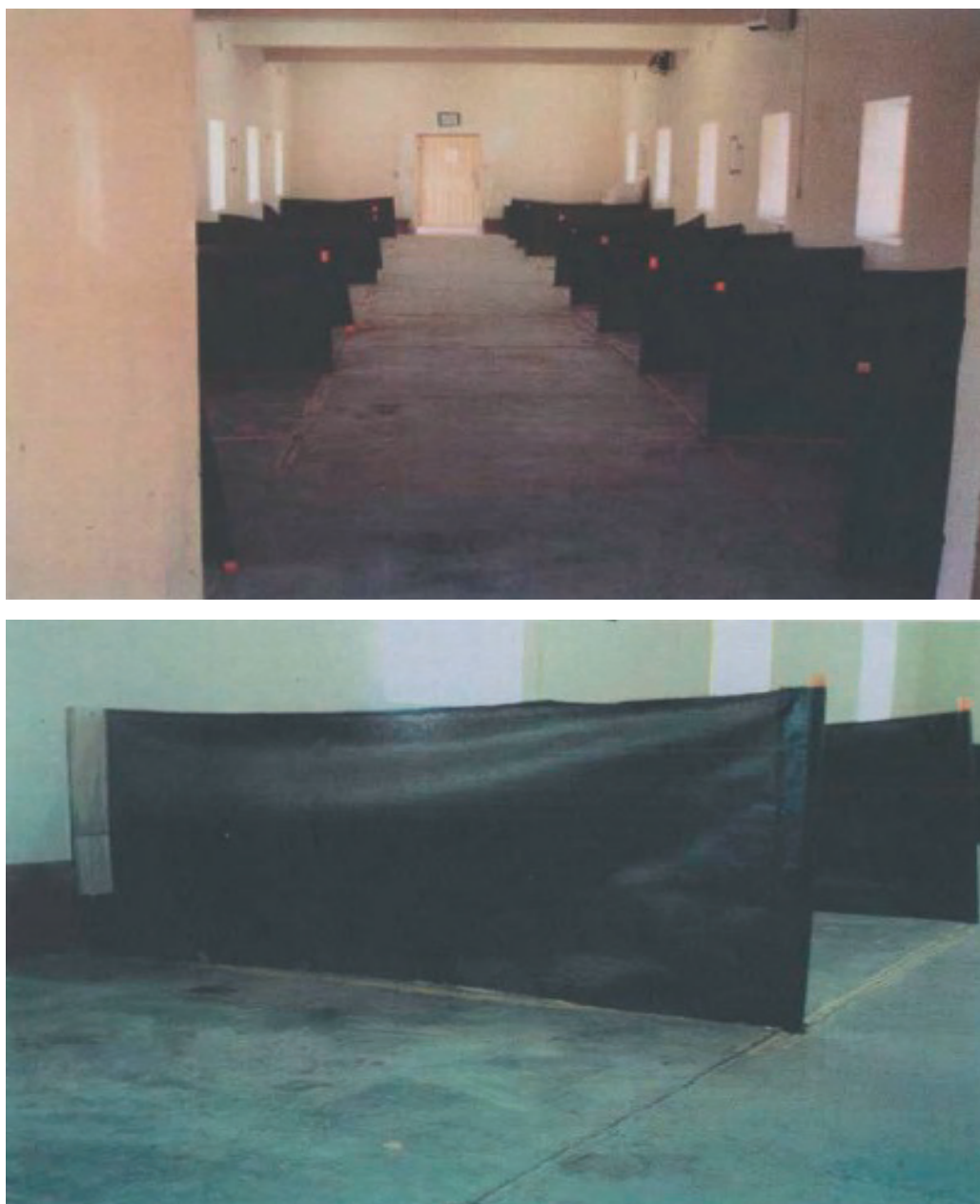
Figure 97: MOD046005



Visits Hall

- 4.28** Visits were conducted in a large hall approximately 20 x 6 meters, equipped with air conditioning, lighting, windows and doors at both ends of the room. Screens were in place to provide some privacy between families.

Figure 98: MOD046007



Medical Centre

- 4.29** There were three medical facilities at Shaibah. The first was the Field Hospital, which was a full British Military Hospital located approximately 5 to 10 minutes drive from the DTDF.⁴²⁸⁴ The second was the Medical Centre at Shaibah. This was also known as the Regimental Aid Post (“RAP”) and was located approximately 10 to 15 minutes walk from the DTDF. The third was the Medical Centre inside the DTDF compound.
- 4.30** During 1RHF’s tour at the DTDF, Major David Winfield, the Regimental Medical Officer (“RMO”) for 1RHF, was based at the RAP in Shaibah. A rotation of medical staff from the RAP would provide a continuous medical presence at the DTDF Medical Centre. Major Winfield had been issued with a mobile telephone and was on call so he could be contacted as required. He would then either give advice by telephone or attend in person.

⁴²⁸⁴ Major Winfield (ASI019049) [5]

- 4.31** On 12 July 2004, 40 Commando (“40 Cdo”) took over the operation of the DTDF. Major Anthony De Reya, the Officer Commanding 40 Cdo, told the Inquiry that his RMO, Surgeon Lieutenant Craig Renshaw, was based at the Field Hospital, but regularly came to the DTDF and was on call if needed. If Surgeon Lieutenant Renshaw was otherwise engaged, another RMO would cover. As with 1RHF, 40 Cdo operated a rotation of Medical Assistants to provide 24 hour medical coverage at the DTDF.⁴²⁸⁵
- 4.32** On arrival at the DTDF, the detainees were given an initial medical examination. Those examinations took place in the Medical Centre inside the DTDF compound. Major Winfield explained that the building was a long, narrow building with two internal walls. Each internal wall had a doorway, but no door. The medics were based in the first area of the building. Major Winfield was based in the second area of the buildings. The third area contained examination couches and a teaching area. The detainees’ medical records were kept in filing cabinets in either the first or second area.⁴²⁸⁶

Exercise Area

- 4.33** The exercise area is shown in Figure 94 above as the rectangular area between the accommodation blocks E, F and G and the reception and visits hall. The exercise area contained an area for volleyball, football and basketball. As I set out later in this report at paragraph 4.439, the inquiry heard evidence from various guards, including Marine Burford and Corporal Green that soldiers and internees would sometimes play volleyball and football together in the exercise area.

Reception / Operations Room

- 4.34** The area marked “Reception / Ops Room” on the plan was variously known as the processing office or the initial reception area. All internees would be processed here on arrival at the DTDF.
- 4.35** Sergeant William Anderson was the Provost Sergeant during his tour from March 2004 until mid-July 2004.⁴²⁸⁷ He produced a sketch plan of the reception and operations building. WO2 David Parrott was second-in-command at the DTDF during his tour from April 2004 to August 2004.⁴²⁸⁸ He also produced a sketch plan of the reception area. Although not to scale, these plans provide a useful guide to the layout of the building.

⁴²⁸⁵ Major De Reya (ASI018929) [56]

⁴²⁸⁶ Major Winfield (ASI019057-58) [39-40]

⁴²⁸⁷ Sergeant Anderson (ASI014760) [4-5]

⁴²⁸⁸ WO2 Parrott (ASI020263) [3]; (ASI020271) [28]

Figure 99: MOD024679

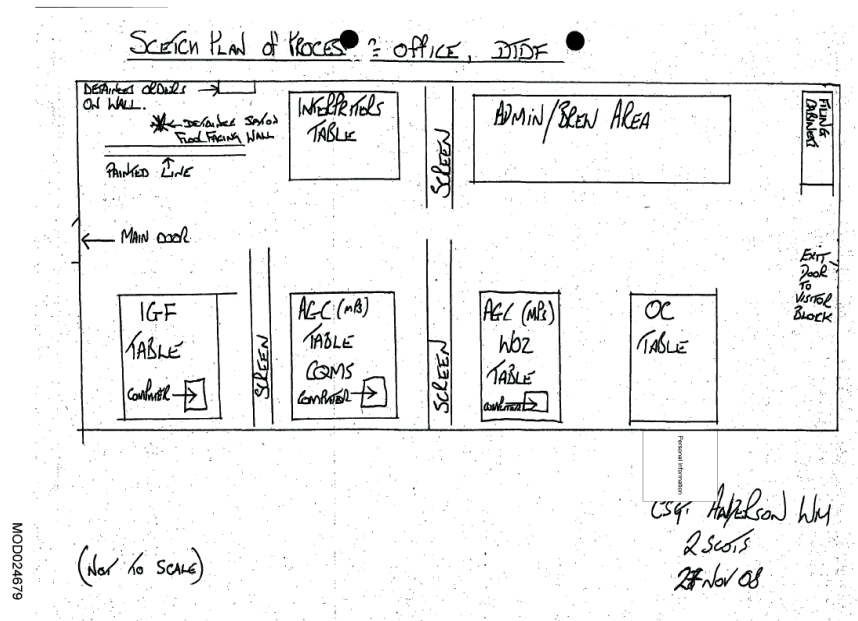
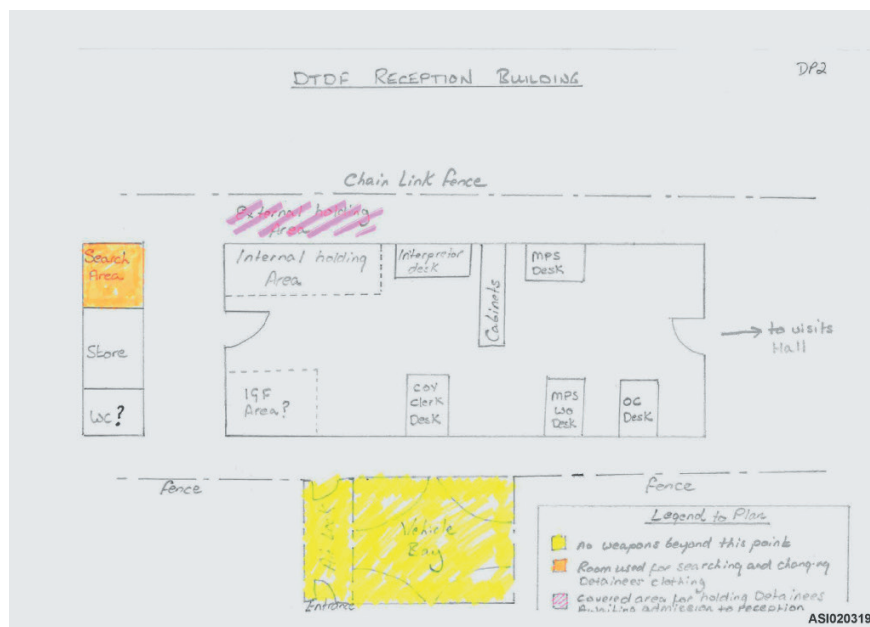


Figure 100: ASI020319



4.36 Major David Richmond told the Inquiry that the wall in the top left corner of the plans displayed a notice in Arabic with an English translation that set out the rules for detainees in the Dtdf.⁴²⁸⁹ I set out details of that notice later in this report at paragraph 4.78.

2. Joint Forward Interrogation Team (JFIT)

4.37 The Joint Forward Interrogation Team ("JFIT") at the Dtdf was set up in December 2003, when M003 arrived at Shaibah Logistics Base ("SLB").

⁴²⁸⁹ Major Richmond (ASI022505-06) [133]

- 4.38** An Operational Directive for the JFIT was issued on 31 May 2004. Paragraph 1 set out an introduction to the JFIT:

“The Joint Interrogation Team (JFIT) is the only facility to provide this HUMINT capability within the MND (SE) AO. As such the JFIT are responsible for interrogating all Internees captured by Troop Contributing Nations (TCNs) and UK Troops within the four southern provinces under UK control. The UK is an Occupying Power in Iraq pursuant to United Nation Security Council Resolutions 1483 and 1511. In accordance with the powers granted to an Occupying Power under international law and specifically Geneva Convention IV the UK exercises the power to intern and interrogate individuals when it is considered necessary for imperative reason of security. The other TCNs are not considered to be Occupying Powers and accordingly do not intern or interrogate individuals. In accordance with the Memorandum of Understanding (MOU) between the UK and the other TCNs the UK will accept Internees within the Divisional Temporary Detention Facility (DTDF) who have been captured by another MND (SE) TCN. The UK has a legal liability to ensure that Internees are interrogated in accordance with the relevant provisions of The Hague Rules and Geneva Conventions and protocols and that all troops comply with the obligations imposed by them. These obligations are detailed in this directive and in MND (SE) Standard Operating Instruction (SOI) 390. Acting in accordance with the procedures in these documents and pursuant to the advice of J2X and MND (SE) Legal Branch will ensure compliance with the UK’s legal obligations. Internment and the handling and treatment of internees is a sensitive area, which carries significant legal and political risks. Failure to implement procedures correctly, or abuse of position of authority, will lead to criminal investigation and disciplinary action as well as significant harm to Coalition and UK interests. Such obligations and sensitivities make running the JFIT a significant and moral challenge for Force MI company.”⁴²⁹⁰

- 4.39** The purpose of the JFIT was set out at paragraph 3 of the Operational Directive:

“The JFIT is to provide an interrogation capability within MND (SE) AO in order to extract intelligence from captured enemy forces in support of the GOC’s decision making process.”⁴²⁹¹

Location of the JFIT

- 4.40** The JFIT compound was located within the perimeter of the DTDF. The compound was separated from the rest of the DTDF by a security fence, which was itself screened with hessian. There were two main entrances into the JFIT compound: one from the DTDF; the other was a separate entrance that went directly into the JFIT without the need to enter the DTDF first.
- 4.41** Access to the JFIT compound was strictly controlled. The JFIT Operational Directive of 31 May 2004 made this clear: *“The JFIT is a highly sensitive area. A list of those entitled to routine access is at Annex F. Foreign nationals may only enter the JFIT in order to visit persons interned by their forces. They will be entitled to a guided tour of the facility and a brief on DTDF/JFIT routine. No other personnel are to be granted permission to enter the JFIT without the approval of the OC or Ops Offr of the JFIT.”⁴²⁹²*

⁴²⁹⁰ (MOD046796)

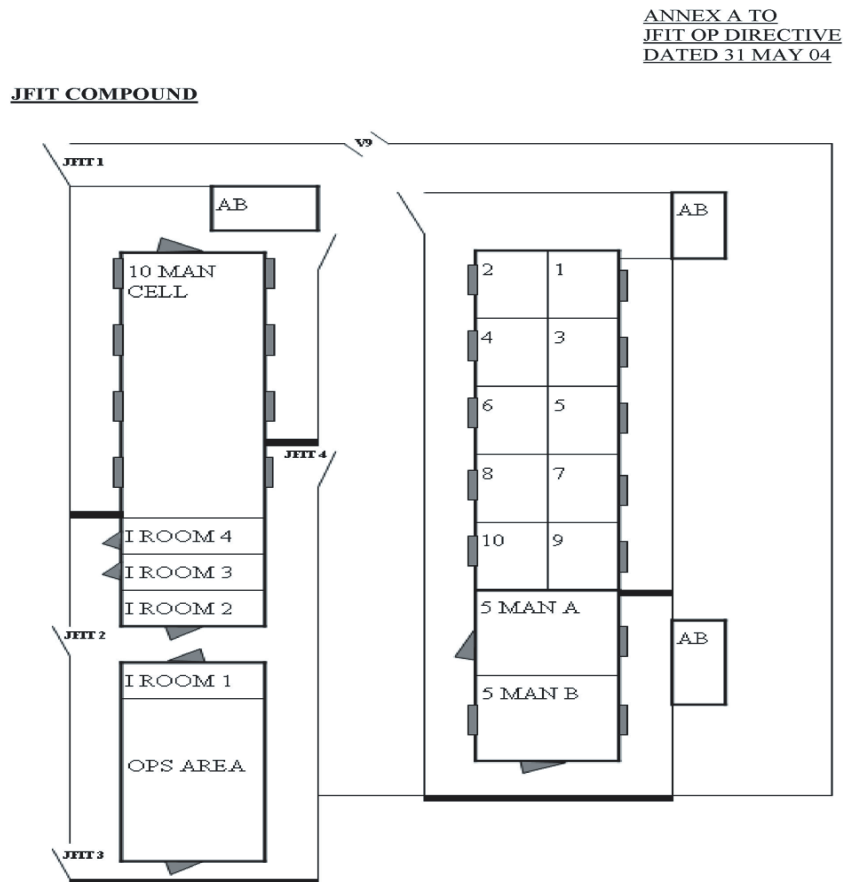
⁴²⁹¹ (MOD046797)

⁴²⁹² (MOD046799)

Layout of the JFIT compound

- 4.42** The JFIT facility had capacity to hold up to 30 detainees at any one time. The compound consisted of: one cell large enough for 10 men; two cells large enough for 5 men; ten single cells; three ablution blocks; four interrogation rooms; and one operations room. A plan of the JFIT compound is set out in Annex A to the JFIT Operational Directive dated 31 May 2004.

Figure 101: MOD046808



MOD046808

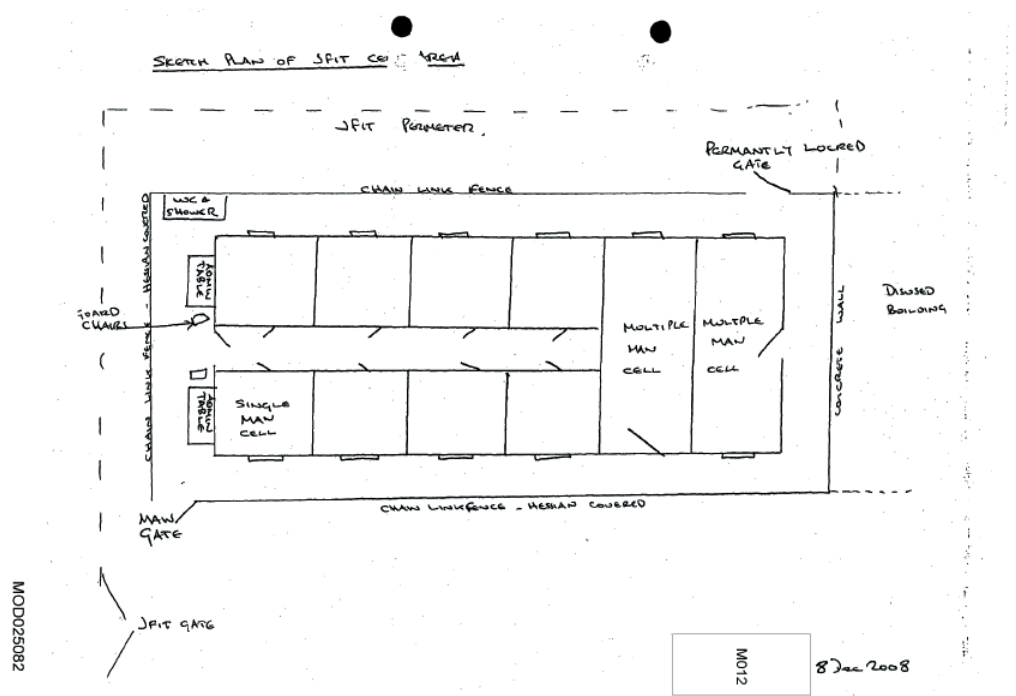
- 4.43** The plan appears to be inaccurate insofar as it does not show any doors to the single cells. The inquiry has obtained an undated photograph of the JFIT cells. The photograph shows that the plan is also inaccurate insofar as it does not include the corridor running between the single cells, with doors entering into the single cells from the corridor.

Figure 102: MOD046584



4.44 The corridor was described by various witnesses including, for example, M003⁴²⁹³ and Fusilier Sevanaia Ratunaceva⁴²⁹⁴. It was also included in various sketch plans drawn by witnesses who worked in the JFIT compound. By way of example, a sketch plan produced by M012, an interpreter, is included below.

Figure 103: MOD025082



⁴²⁹³ M003 (ASI024605) [44]

4294 Fusiler Ratunaceva (ASI020899) [27]

- 4.45** The above plan indicates that there was a guards' area at the end of the corridor, in the approximate location from where the photograph set out at paragraph 4.43 was taken.

3. Operation of the DTDF

- 4.46** Staff at the DTDF were organised into various elements to achieve the 'mission' referred to at paragraph 4.4 above. Those elements were described at paragraph 5 of the Operational Directive for the DTDF, dated 4 April 2004, as follows:

*"Scheme of Manoeuvre. [...]DTDF Coy Gp will fulfill [sic] command and administrative functions. The DTDF guard force will be divided into 2 elements; external and internal. External guards including a QRF, with primary responsibility to prevent internee escape, will be provided by the DTDF Coy Group. The internal guard force will act as the interface with internees, managing discipline and the regime within the compound. Internal guard personnel will be drawn from specially trained elements of DTDF Coy Gp, supported by attached MPS specialists. Military Working Dogs (MWD) permanently attached to the DTDF will support both internal and external guard forces as necessary. The Jt Forward Interrogation Team (JFIT) will operate within the perimeter of the DTDF and will be assisted by the guard force as necessary. At all times the operation of the DTDF is to accord with the procedures in this directive, SOI 390, DTDF SOPs and the UK's obligations under International Law, UK national law and the ECHR."*⁴²⁹⁵

- 4.47** As is set out above, staff at the DTDF included an Internal Guard Force ("IGF") and an External Guard Force ("EGF"). The IGF were responsible for guard duties in the main DTDF compound. General guard duties in the JFIT facility were carried out by the EGF.

Command Structure

- 4.48** When the detainees arrived at the DTDF, Major David Richmond was the Officer Commanding ("OC") and he was also OC at B Company, 1st Battalion, Royal Highland Fusiliers ("1RHF"). Major Richmond had been in post since late March or early April 2004. Major Richmond told the Inquiry that, in practice, he dedicated himself almost exclusively to the task of running the DTDF.⁴²⁹⁶ Major Richmond was supported by Military Provost Service ("MPS") staff, and particularly by WO2 David Parrott who was the second-in-command at the DTDF during the relevant period.⁴²⁹⁷
- 4.49** The medical personnel, the IGF and the EGF/JFIT guards all fell within Major Richmond's chain of command.
- 4.50** In his evidence to the Inquiry, Major Richmond emphasised that he fully appreciated the importance of the role of 1RHF at the DTDF. In his words: *"I thought the eyes of the world would be upon us and we needed to make sure the DTDF operated in a professional, efficient and responsible way and that the internees would be treated with dignity and respect. I put internee welfare at the forefront of this. My philosophy was that if one internee was mistreated under my care then I had failed."*⁴²⁹⁸

⁴²⁹⁵ (MOD045626)

⁴²⁹⁶ Major Richmond (ASI022461) [7]

⁴²⁹⁷ Major Richmond (ASI022460-61) [5]–[8]

⁴²⁹⁸ Major Richmond (ASI022462) [11]

4.51 In his evidence to the Inquiry, Major Richmond described the process by which soldiers were selected to work directly with detainees as part of the Internal Guard Force (“IGF”). Major Richmond briefed the Company Commanders on the nature of the work and he asked them to nominate soldiers who were, as he put it in his evidence, *“mature (in mind, not necessarily in age) and measured in how they acted so that they would address the job of working with internees seriously”*. Those soldiers were then put through a pre-deployment training package delivered by the Military Provost Staff, which was tailored to their prospective role in the IGF.⁴²⁹⁹ Whilst in theatre, the IGF undertook further training. The training was complemented by written guidance and by a period of shadowing the in-post DTDF staff during the handover from the 2nd Battalion, The Parachute Regiment (“2 PARA”) who were in-post before the 1RHF.⁴³⁰⁰

4.52 On 12 July 2004, following a two week handover period Major Anthony De Reya, the OC of Command Company, 40 Commando (“40 Cdo”) took over from Major Richmond as OC of the DTDF.⁴³⁰¹ In his Inquiry statement, Major De Reya explained how soldiers from 40 Cdo were selected to form the IGF:

“I was involved in the selection of those in the IGF (with the exception of those personnel drawn directly from the MPS) and had a personal veto on anyone who I did not think had the maturity or intelligence to fulfil this difficult role. I never had cause to use this. I selected the personnel after consultations with the other Company Commanders from 40 Cdo RM and based upon their temperament.

The selection took place a few weeks before we were deployed. It was important to select people who would be suited to treating detainees with the appropriate levels of respect. The attributes I considered important, in addition to the maturity and intelligence referred to above, were patience, respect and professionalism.”

4.53 When the detainees arrived at the DTDF, the OC of the JFIT was M003, who had been in that post since December 2003. The JFIT interrogators fell within M003’s chain of command.

4. Policy Documents and Guidance

4.54 There were four main sources of policy that were extant at the DTDF and the JFIT during the relevant period:

- a. DTDF Standard Operating Procedures (“SOPs”)
- b. DTDF Standard Operating Instructions (“SOIs”)
- c. DTDF Operational Directives
- d. JFIT Operational Directive
- e. JFIT Standard Operating Procedures (“SOPs”)

DTDF Standard Operating Procedures (“SOPs”)

4.55 When Major Richmond arrived at the DTDF, Standing Operating Procedures (“SOPs”) were already in force, namely the *Standard Operating Procedures Divisional Temporary Detention*

⁴²⁹⁹ Major Richmond (ASI022462) [10]

⁴³⁰⁰ Major Richmond (ASI022465-66) [18]–[21]

⁴³⁰¹ Major De Reya (ASI018909) [4]

*Facility Shaibah Logistics Base Southern Iraq.*⁴³⁰² The document sets out 23 separate SOPs. When Major Richmond took up his post at the DTDF, he checked the SOPs and signed them so that they applied to 1RHF and those working under Major Richmond's command.

- 4.56** The SOPs set out the minimum guarding levels; that is the standards of guarding and custodial care given to detainees. In his Inquiry statement, Major Richmond said that any personnel who came into the DTDF to work were given the SOPs to read. He said the IGF were required to read the SOPs and copies were kept in the administration area at the DTDF.⁴³⁰³
- 4.57** SOP 1 gives an indication of what was expected of staff at the DTDF. It is titled '*Duties of the Internal Guard Personnel*', and it reads as follows:

"GENERAL

You are responsible for the security, safety and welfare of all internees under your supervision. You are also responsible for monitoring their behaviour. You are to apply discipline with common sense, humanity and impartiality, with due consideration to age, gender, mental state and cultural differences. Your personal turnout, conduct, bearing, self-discipline and inter-personal skills are to be of the highest order. You are to endeavour to foster a positive attitude between staff and internees, whilst striving for the best possible outcome in everything you do within the DTDF. Remember that the best lesson you can give is to lead by example. Double standards and inconsistencies in treatment of internees will lose you respect and will inevitably undermine your ability to carry out your duties effectively. You are not to judge internees and they should all be treated fairly. All staff at all levels must deal with all issues with clarity and in a level-headed manner and must not allow negative thoughts or personal feelings to affect their judgement."

- 4.58** In his evidence to the Inquiry, Major Richmond emphasised that the principles outlined above were not an ideal to be worked towards. Rather they were the expected minimum standard of conduct for all members of staff who worked within the DTDF.⁴³⁰⁴

DTDF Standard Operating Instructions ("SOIs")

- 4.59** The SOIs contained policies relating to handling and processing detainees. They outlined detention procedures and they included various forms to be completed in relation to internment.
- 4.60** HQ Multi-National Division (South East) ("HQ MND (SE)") SOI 390, dated 25 March 2004, set out the *Policy for Apprehending, Handling and Processing of Detainees and Internees*.⁴³⁰⁵ On 28 June 2004, the UK ceased to be an occupying power in Iraq. On 1 July 2004, MND (SE) SOI 390 was replaced with HQ MND (SE) 392, which set out the *Policy for Handling and Processing of Internees*.⁴³⁰⁶ Unlike SOI 390, SOI 392 did not deal with criminal detainees. The other significant change in SOI 392 concerned detainees' entitlement to legal assistance and the internment review procedure.

⁴³⁰² (MOD042709)

⁴³⁰³ Major Richmond (ASI022470) [32]–[33]

⁴³⁰⁴ Major Richmond (ASI022471) [35]

⁴³⁰⁵ (MOD042755)

⁴³⁰⁶ (MOD046144)

- 4.61** In his Inquiry statement, Major Richmond explained that the SOIs could be accessed by any staff in the DTF to check procedure. However, Major Richmond could not recall whether he required all staff to read the SOIs, as the relevant detail was transposed into the SOPs and the Operational Directives.⁴³⁰⁷

Operational Directives for the DTF

- 4.62** The earliest Operational Directive in force during the relevant period was dated 4 April 2004.⁴³⁰⁸ It was titled *Operational Directive – Divisional Temporary Detention Facility*. Major Richmond had inherited it from his predecessor at the DTF and had re-issued it so as to apply to the 1RHF. It was updated on 28 June 2004 by Major Richmond,⁴³⁰⁹ and again on 13 July 2004 by Major Richmond’s successor, Major De Reya.⁴³¹⁰

- 4.63** The stated purpose of the Operational Directive, outlined in Section 1 of each edition, was as follows:

“The direction outlined below provides a framework for the operation of the DTF. It does not aspire to cover every eventuality but rather seeks to lay down generic principles, responsibilities and procedures. MPS personnel have developed detailed SOPs for the internal guard force. Adherence to this direction will be critical to the successful working of the facility.”⁴³¹¹

- 4.64** Paragraph 14 of each edition dealt with “Inappropriate Activity in Close Proximity to the DTF”. It reads as follows:

“Close proximity to the DTF is forbidden for all non-DTF personnel. Internees are protected persons and are entitled to respect for their persons, their honour, their family rights, their religious conventions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Any activity inconsistent with these principles and the smooth running of the DTF is forbidden. Examples of forbidden activity are the photographing (except for official purposes) or verbal taunting of internees by any person. Any person acting in a manner contrary to these rights is to be removed by the external guard/QRF. Details of offenders are to be taken and the incident reported to their parent unit for disciplinary action.”⁴³¹²

- 4.65** Paragraph 22(b) of the 4 April 2004 edition of the Operational Directive sets out “Minimum Standards of Treatment”. It reads as follows:

“At all times, internees are to be treated in accordance with the standards laid down by International and national laws. As a minimum, the following standards are to be strictly adhered to;

1. Internees are to be treated at all times fairly, humanely, with respect for his or her personal dignity and without discrimination based on race, colour, sex, religion, political belief or any other similar criteria.

⁴³⁰⁷ Major Richmond (ASI022472) [39]

⁴³⁰⁸ (MOD045625)

⁴³⁰⁹ (MOD044784)

⁴³¹⁰ (MOD043213)

⁴³¹¹ (MOD045625-26); (MOD044784); (MOD043213)

⁴³¹² (MOD045628); (MOD044787); (MOD043216)

- 2. The use or threat of physical violence, mental torture, corporal punishment against the internees is prohibited.*
- 3. The use of hooding and stress positions is prohibited.*
- 4. Internees shall not be subjected to verbal humiliation or abuse or any other form of humiliating or degrading treatment.*
- 5. Internees are to be protected from danger and the elements.*
- 6. Internees are not to be kept in direct sunlight for long periods or denied protection from the cold.*
- 7. Medical care is to be provided if required.*
- 8. Food and water are to be provided as necessary, having regard to any national, ethnic or religious requirements.*
- 9. Internees shall not be subjected to public curiosity. Photographing the internees, except for the purposes of initial registration, is prohibited.*
- 10. Internees shall be permitted to practice their religious beliefs without interference.*
- 11. Female internees shall be accommodated separately from males and shall only be searched by a female searcher.*
- 12. Juveniles (under 15) are to be segregated from other internees unless to do so would impose solitary confinement on the individual.*
- 13. Internees shall be permitted to send and receive letters and to receive regular and frequent visits.*
- 14. Intellectual, recreational and educational pursuits by internees shall be encouraged.*
- 15. Where possible, internees shall be accommodated according to their nationality, language and customs. Members of the same family should be accommodated together wherever possible. The accommodation shall be maintained to ensure sufficient protection from the climate.*
- 16. It is a command responsibility to ensure that all internees are treated in accordance with these principles.*

Disciplinary action will be taken against those failing to comply with the above standards of International and national law. This includes both those who abrogate their command responsibility and those who mistreat internees.”⁴³¹³

- 4.66** The 28 June 2004 and 13 July 2004 editions of the Operational Directive amended Paragraph 22(b)(12) to extend the description of a juvenile to persons “under 18”, rather than only those “under 15”.⁴³¹⁴

⁴³¹³ (MOD045630-31)

⁴³¹⁴ (MOD044791); (MOD043219)

- 4.67** The Operational Directive was kept in the administration office with the other guidance documents. It was intended to be available to staff whenever they needed to refresh their memory as to the procedures outlined within it.⁴³¹⁵

Operational Directive for the JFIT

- 4.68** Prior to the arrival of M003 in December 2003, there was no JFIT facility at Shaibah. After M003 arrived to take up post as the OC of the new JFIT facility, he began drafting an Operational Directive for the new facility.⁴³¹⁶ He completed that document, titled *Operational Directive – Joint Forward Interrogation Team*, on 31 May 2004.⁴³¹⁷ M003 recalled that prior to completion of the Operational Directive, if staff were uncertain of their responsibilities they could refer directly to a copy of the Geneva Conventions that was held in the JFIT operations area.⁴³¹⁸

- 4.69** The DTDF Operational Directive, dated 4 April 2004, also referred to the JFIT facility. Paragraph 20 was titled “Arrangements for Internees within JFIT”. It read as follows:

*“In principle internees held within JFIT are to be treated no differently to those in the main DTDF population. They are entitled to all the rights accorded to other internees within the DTDF (including exercise) with the exception of visits (see para 19). They are not entitled to the privileges granted to other internees (radios, board games, reading material (except Koran)). To maximise opportunity for J2 exploitation, they are routinely segregated and prevented from communication with one another.”*⁴³¹⁹

- 4.70** The wording set out above was repeated in paragraph 16 of the JFIT Operational Directive when it was issued on 31 May 2014.

- 4.71** In his evidence, M003 explained that the Operational Directive he drafted, although dated 31 May 2004, in fact codified the procedures that had been developed and put into practice prior to that date. In his evidence, he indicated that most, if not all, were followed long before these detainees arrived at the JFIT.⁴³²⁰

- 4.72** At paragraph 19, the Operational Directive for the JFIT set out the “Minimum Standards of Treatment” for detainees. It broadly reflected the equivalent paragraph in the Operational directive for the DTDF, set out at paragraph 4.65 above. It read as follows:

“At all times, internees are to be treated in accordance with the standards laid down by International and national laws. As a minimum, the following standards are to be strictly adhered to;

1. Internees are to be treated at all times fairly, humanely, with respect for his or her personal dignity and without discrimination based on race, colour, sex, religion, political belief or any other similar criteria.

2. The use or threat of physical violence, mental torture, and corporal punishment against the internees is prohibited.

3. The use of hooding and stress positions is prohibited.

⁴³¹⁵ Major Richmond (ASI022474) [44]

⁴³¹⁶ M003 (ASI024596) [14]

⁴³¹⁷ (MOD046796)

⁴³¹⁸ M003 (ASI024597) [16]

⁴³¹⁹ (MOD045630)

⁴³²⁰ M003 (ASI024597) [15]

4. *Internees shall not be subjected to verbal humiliation or abuse or any other form of humiliating or degrading treatment.*
5. *Internees are to be protected from danger and the elements.*
6. *Internees are not to be kept in direct sunlight for long periods or denied protection from the cold.*
7. *Medical care is to be provided if required.*
8. *Food and water are to be provided as necessary, having regard to any national, ethnic or religious requirements.*
9. *Internees shall not be subjected to public curiosity. Photographing the internees, except for the purposes of initial registration, is prohibited.*
10. *Internees shall be permitted to practice their religious beliefs without interference.*
11. *Female internees shall be accommodated separately from males and shall only be searched by a female searcher.*
12. *Juveniles (under 18) are to be segregated from other internees unless to do so would impose solitary confinement on the individual. They are allowed to be questioned over the age of 15. Any younger than 15 they are not permitted to be interned.*
13. *It is a command responsibility to ensure that all internees are treated in accordance with these principles.*

*Disciplinary action will be taken against those failing to comply with the above standards of International and national law. This includes both those who abrogate their command responsibility and those who mistreat internees.*⁴³²¹

4.73 As can be seen from the above, the minimum standards set out in the Operational Directive for the JFIT differed from those relating to the general DTDF population in the following relevant respects:

- a. A juvenile was defined from the outset as a person aged under 18, rather than under 15. Detainees over the age of 15 were allowed to be questioned.
- b. Detainees in the JFIT were not permitted to send and receive letters and visits.
- c. Detainees in the JFIT were not encouraged to pursue intellectual, recreational and educational pursuits.
- d. Detainees in the JFIT were not accommodated according to their nationality, language and customs. There was no presumption that members of the same family would be accommodated together.

⁴³²¹ (MOD045631)

JFIT Standard Operating Procedures (“SOPs”)

4.74 The JFIT Operational Directive included a number of Standard Operating Procedures (“SOPs”) attached in the Annexes. Annex B contained SOPs titled “JFIT SOPs – OPERATIONS”.⁴³²² Annex C contained SOPs titled “JFIT SOPs – INTERROGATOR”.⁴³²³

4.75 JFIT Operations SOP 18 is headed “Conditioning Internees”. It reads as follows:

“Internees held in the JFIT and DTDF are not subject to any form of conditioning, with the confinement in the JFIT being the only physical pressure they are subjected to. They are not blindfolded or hand-cuffed from when they enter the DTDF. They will often have lost the shock of capture by the time they enter the JFIT. Their restrictions during their [words redacted under code 6⁴³²⁴] in JFIT disallow visits, cigarettes and communal exercise. Unfortunately it is suspected that they already know they are most likely only going to spend [words redacted under code 6] in the JFIT which adds to their unwillingness to talk.”⁴³²⁵

4.76 The pertinent SOPs relating specifically to interrogations are set out later in this report at Part 4, Chapter 3: Detention at the Joint Forward Interrogation Team Compound.

⁴³²² (MOD046809)

⁴³²³ (MOD046815)

⁴³²⁴ For an explanation of the redaction codes see Part 1: Introduction, paragraph 1.82

⁴³²⁵ (MOD046812-13)

CHAPTER 2: PROCESSING AT THE DTDF AT SHAIBAH

4.77 When they arrived at the DTDF on Saturday 15 May 2004⁴³²⁶, the detainees were taken through an admission procedure. That procedure was described variously as “processing” or “in-processing” by those who operated the DTDF. In May 2004, the admission procedure was set out in Standard Operating Procedure No. 4, the terms of which were as follows:

“ADMISSION PROCEDURE

GENERAL

- 1. Check that all committal documentation [...] is correctly completed and signed by the Battle Group Internment Review Officer (BGIRO) or other Appropriate Officer. If in any doubt seek advice from the MPS CSM or SO3 ALS MND(SE).*
 - 2. If the internee has any visible signs of injury or appears to be in particularly poor health or is complaining of pain, then he/she must be seen by the DTDF MO [Medical Officer] as soon as possible and deemed fit for detention. If unfit for detention and the MO has advised hospitalisation, then the MPS Duty Officer must be informed as soon as possible regardless of the time of day or night.*
 - 3. All internees are to be thoroughly searched on admission in accordance with DTDF SOP No 10.*
 - 4. All jewellery (with the exception of a wedding ring) is to be removed together with all other personal property and clothing. The only items that an internee is allowed to keep are religious articles and cigarettes. Reading material may subsequently be allowed subject to strict censorship by a DTDF interpreter and only then on the authority of the Internal Guard Commander.*
 - 5. Record details of all property in the detention register. The property will subsequently be secured in the DTDF property store.*
 - 6. Allocate a tag number and attach the ISN identification wristband to the internee. Then complete the admission questionnaire with the assistance of an interpreter and also allow the internee to fill out and sign the MND(SE) Reason for Internment Documentation. Then enter all relevant details on the AP3 RYAN Data Capture System, including a digital photograph of the internee. The internee must also be allowed to complete an International Committee of the Red Cross (ICRC) Capture Card in order to inform his/her family of his/her whereabouts.*
- NB: In the event of receiving a detainee (criminal) then fingerprints and DNA may also be required. However, before doing so, advice should be sought from SO3 ALS MND(SE).*
- 7. Brief the internee in accordance with the DTDF SOP No 5 and allay any fears he/she may have regarding their stay at the DTDF.*
 - 8. Add the internee’s details to the main nominal roll, allocate a room to the internee and then complete the Main Bed Board and change the DTDF figures.*

⁴³²⁶ (MOD003161)

9. The internee is then to be issued with essential hygiene items and bedding (and cigarettes if appropriate) and then escorted to his/her accommodation and secured.”⁴³²⁷

4.78 In the subparagraphs that follow I give an overview of the procedure that the nine detainees were taken through after they arrived at the DTF on 15 May 2004. The overview is intended to give a general picture of how matters proceeded, although the precise sequence of events may not have been exactly the same for each detainee.⁴³²⁸

- a. The detainees were brought to the administration building identified in the following photograph:

Figure 104: MOD034787



- b. When the detainees reached the administration building their blacked out goggles were removed so their sight was no longer restricted.⁴³²⁹
- c. Initially, up to four detainees were admitted into the administration building itself. They were instructed to sit on the floor facing a wall, next to a line marked on the ground. The following photograph of the reception area in the administration building was extracted from a PowerPoint presentation prepared by HQ Provost Marshal (Army). The photograph is undated so it may not be an entirely accurate representation of how the reception area appeared in May 2004, but I am satisfied that it is broadly correct.

⁴³²⁷ (MOD042714)

⁴³²⁸ Major Richmond (ASI022504-09) [133]–[145]; (ASI022522-27) [183]–[199]; WO2 Parrott (ASI020290-97) [99]–[124]

⁴³²⁹ Major Richmond (ASI022505)

Figure 105: MOD034788



- d. The wall, in front of which the detainees were seated in the reception area, displayed a notice in Arabic with an English translation. The notice set out the rules that detainees had to abide by in the DTDF.⁴³³⁰ Those rules were as follows:⁴³³¹

- “1. You are now an internee of the British Coalition Forces in Iraq. You will be held and treated fairly and humanely in accordance with the rules of the Geneva Conventions of 1949 and International Humanitarian Law.*
- 2. Any written orders which are published within this facility are to be obeyed at all times.*
- 3. All verbal and non-verbal orders issued by British Staff are to be obeyed.*
- 4. Any internee who does not comply with legitimate orders will face disciplinary action.*
- 5. On receiving the command, all internees are to move to the rear of their accommodation room, away from any gates or doors.*
- 6. Internees are not to deliberately damage any furniture, fixtures or fittings within the Internment Facility. If they do then they will face disciplinary action.*
- 7. Internees are expected to behave with self-discipline and to show respect to staff. Staff will treat the internees with respect in return.*
- 8. If you have any legitimate requests or complaints, then you are to inform a member of staff of your problem and the matter will be addressed.*

⁴³³⁰ Major Richmond (ASI022480) [57]

⁴³³¹ (MOD042716)

9. You are to remain clothed at all times whilst in the general population within the Internment Facility.

10. You are to keep yourself, your belongings and sleeping area, clean and tidy at all times.

11. Verbal abuse, unruly behaviour or the threat or use of physical force or violence against staff or any other internee will not be tolerated. Disciplinary action will be taken against any offenders of this rule.

12. Your personal valuables will be held safely during your time here and returned to you upon your release or transfer from the DTDF.

13. You are allowed to receive family visits on Thursdays, Fridays or Saturdays during your time here. The ICRC will inform your relatives/close friends of your internment and arrangements can then be made for them to visit you, if you so wish."

- e. Due to limitation of space inside the administration building, the remaining detainees were initially instructed to wait in a shaded walkway immediately outside the administration building.⁴³³²
- f. Once inside the administration building, the detainees' plasticuffs were removed with scissors.⁴³³³
- g. Detainees were taken individually to a private side room where they were subject to a pat-down search. They were then asked to remove their clothing.⁴³³⁴
- h. Following the search, the detainees were provided with blue boiler suits to wear. At a later date, following representations made by the detainee population, the procedure was changed so that detainees were provided with dish dashes rather than boiler suits.⁴³³⁵
- i. The detainees were then taken individually to a desk in the administration building where they were asked, through an interpreter, to provide basic information which was recorded both in a paper file and on an electronic database known as the AP3 RYAN system.⁴³³⁶
- j. Detainees' clothing and personal possession were logged, bagged and removed to storage to be returned to the detainees when they left the DTDF. Detainees were asked to sign property receipts.⁴³³⁷
- k. Detainees were asked to either sign or make a thumb print on the paper file to verify that the information they had provided was accurate.⁴³³⁸

⁴³³² Major Richmond (ASI022524) [189]

⁴³³³ Major Richmond (ASI022524) [188]

⁴³³⁴ WO2 Parrott (ASI020291-92) [103]

⁴³³⁵ Major Richmond (ASI022506) [139]

⁴³³⁶ M010 (ASI019367-68) [35]

⁴³³⁷ M010 (ASI019369-70) [39]

⁴³³⁸ M010 (ASI019370-71) [41]

- I. Two photographs were then taken of each detainee’s face; one from the front and one from the side. The Inquiry was provided with copies of the photographs taken of the nine detainees on 15 May 2004. They are as follows:

Figure 106: MOD048732 and MOD048733 (Hamzah Joudah Faraj Almalje (Detainee 772))



MOD048732



MOD048733

Figure 107: MOD048734 and MOD048735 (Mahdi Jasim Abdullah Al-Behadili (Detainee 773))



MOD048734



MOD048735

Figure 108: MOD048736 and MOD048737 (Ibrahim Al-Ismaeeli (Detainee 774))



MOD048736



MOD048737

Figure 109: MOD048738 and MOD048739 (Kadhim Al-Behadili (Detainee 775))



MOD048738



MOD048739

Figure 110: MOD048740 and MOD048741 (Abbas Al-Hameedawi (Detainee 776))



MOD048740



MOD048741

Figure 111: MOD048742 and MOD048743 (Ahmed Jabbar Hammoud Al-Furaiji (Detainee 777))



MOD048742



MOD048743

Figure 112: MOD048744 and MOD048745 (Hussein Fadhil Abbas Al-Behadili (Detainee 778))



MOD048744



MOD048745

Figure 113: MOD048746 and MOD048747 (Atiyah Sayyid Abdulridha Al-Baidhani (Detainee 779))



MOD048746



MOD048747

Figure 114: MOD048748 and MOD048749 (Hussein Gubari Ali Al-Lami (Detainee 780))



MOD048748



MOD048749

An identity card was then printed, which included the front view photograph of the detainee taken during processing. This identity card was given to the detainee to keep on his person.⁴³³⁹

- m. Detainees were then taken to the Medical Centre in the DTF compound for a medical examination, which involved them removing their boiler suits so they could be examined.⁴³⁴⁰
- n. An Initial Medical form was completed during the examination.
- o. The detainees were issued with bedding, clothing, toiletries and a copy of the Koran.⁴³⁴¹
- p. The detainees were then escorted to the JFIT compound.⁴³⁴²

⁴³³⁹ M004 (ASI019371) [43]

⁴³⁴⁰ Major Richmond (ASI022508-09) [144]

⁴³⁴¹ M010 (ASI019374) [48]

⁴³⁴² WO2 Parrott (ASI020295) [115]

- 4.79** In his written Inquiry statement, Major David Richmond, the Officer Commanding (“OC”) the DTDF in May 2004, said that he had sought to ensure that processing was conducted in a calm and efficient manner. In my view, Major Richmond was an impressive witness and I have no doubt that his evidence was both truthful and accurate. Major Richmond continued as follows:

“I appreciated that internees may have been scared or nervous on arrival and the staff (and interpreters) spoke to them in a civilised manner. Internees were not shouted at and were spoken to politely.”⁴³⁴³

- 4.80** Major Richmond described the open plan area, where the processing was conducted, in the following terms:

“In-Processing took place in the open plan administration area in full view of numerous individuals. Doors were kept open and the only actions which took place behind closed doors were interactions between internees and medics (as this is by its nature a private matter) and even then interpreters and guards would be present. [...] I made sure that the MPS⁴³⁴⁴ teamed up with the IGF⁴³⁴⁵ for all duties. On no occasion that I can recall did the IGF deal with internees in the absence of a member of the MPS. I thought this would assist the IGF in carrying out their duties correctly and also ensured an additional level of transparency.”⁴³⁴⁶

- 4.81** Major Richmond explained that WO2 David Parrott, M010, and a number of other MPS staff and clerks also had desks in the administration area.⁴³⁴⁷ Major Richmond said that he had been present at his desk, approximately 30ft away from where the processing took place, when the nine detainees arrived and were taken through the admission procedure on 15 May 2004.⁴³⁴⁸ He recalled that the detainees had been dusty and dishevelled and that they had appeared to be shocked or frightened. He noticed that some of them had minor bruising and grazing on their heads and faces and that one had a small burn mark on his arm, which Major Richmond thought was consistent with the detainee having leant on a hot casing from expended ammunition. Major Richmond said that he did not recall any of the detainees being in obvious pain.⁴³⁴⁹ He said that one detainee had soiled himself, so he had been taken to a side room and provided with wipes and a set of fresh clothes. Major Richmond emphasised that the detainee in question had been treated sympathetically.⁴³⁵⁰

1. The detainees’ allegations of ill-treatment upon arrival at the DTDF at Shaibah on 15 May 2004

- 4.82** The detainees made a number of allegations about ill-treatment they claimed to have suffered immediately after their arrival at the DTDF at Shaibah on 15 May 2004 and during the processing procedure that was carried out there once they arrived. In the paragraphs

⁴³⁴³ Major Richmond (ASI022505) [135]

⁴³⁴⁴ Military Provost Staff

⁴³⁴⁵ Internal Guard Force

⁴³⁴⁶ Major Richmond (ASI022481-82) [62]

⁴³⁴⁷ Major Richmond (ASI022489) [84]

⁴³⁴⁸ Major Richmond (ASI022524) [188]

⁴³⁴⁹ Major Richmond (ASI022525) [191]

⁴³⁵⁰ Major Richmond (ASI022526) [194]

that follow, I set out the details of those various allegations and my conclusions about them in turn, under the following seven headings:

- a. the use of stress positions;
- b. the actions taken to maintain the shock of capture;
- c. the denial of water;
- d. the pretence that they had been brought to Abu Ghraib;
- e. the use of sound effects suggestive of torture;
- f. the lack of privacy whilst unclothed; and
- g. the inadequacy of the initial medical examinations.

The use of stress positions

- 4.83** In his evidence to the Inquiry, Mahdi Jasim Abdullah Al-Behadili (detainee 773) said that he had been forced to sit on his knees with his forehead against the wall and his buttocks resting on his heels. He said that he had been facing a wall with his hands on his knees and that he had been uncuffed at the time. He said that his knees soon became painful, so he had tried to adjust his position. He claimed that a soldier had then come and grabbed him by the hair and forced him back into the same crouched position. He said that, out of the corner of his eye, he could see that the soldiers were also forcing other detainees to adopt the same crouched position.⁴³⁵¹ He claimed that the soldiers also stepped on his feet and on other detainees’ feet if they tried to alter their position.⁴³⁵²
- 4.84** WO2 David Parrott was a member of the Military Provost Staff (“MPS”), who had deployed to Iraq from the Military Corrective Training Centre in Colchester. His role was that of custodial advisor to Major Richmond.⁴³⁵³ WO2 Parrott said that the detainees were seated on the floor and not forced to kneel. He went on to say that the soldiers did not step on the detainees’ feet.⁴³⁵⁴
- 4.85** Sergeant William Anderson, the Provost Sergeant, said that the detainees were made to sit, not kneel. They were not required to adopt any particular sitting position; it was up to them to decide precisely how they would sit.⁴³⁵⁵
- 4.86** Major Richmond said he would have been furious if he had witnessed anyone abusing any detainee in the manner alleged by Mahdi Al-Behadili. Major Richmond said that he would have intervened immediately, relieved them of their duties and reported them “up the chain of command and to the Royal Military Police.”⁴³⁵⁶
- 4.87** M010’s role was to process the detainees when they first arrived at the DTDF.⁴³⁵⁷ M010 was on duty on 15 May 2004.⁴³⁵⁸ She explained that detainees often chose to squat in front of the wall. She said that was their individual choice to do so and it was the cultural norm in Iraq. She

⁴³⁵¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006494) [21]; (PIL000789) [50]; [8/79-81]

⁴³⁵² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001121) [72]

⁴³⁵³ WO2 Parrott (ASI020263) [3-4]

⁴³⁵⁴ WO2 Parrott (ASI020300-01) [129a]

⁴³⁵⁵ Sergeant Anderson [139/81/7]

⁴³⁵⁶ Major Richmond (ASI022557) [295]

⁴³⁵⁷ M010 (ASI019354) [6]

⁴³⁵⁸ M010 (ASI019358) [15]

did not recall any detainee being made to kneel.⁴³⁵⁹ Unfortunately, M010 was not prepared to give oral evidence to the Inquiry and did not put forward any satisfactory reason for being unwilling to do so. Whilst this reflected an unsatisfactory attitude to the Inquiry process on her part, I have no reason to doubt the general accuracy of her written Inquiry statement.

Conclusion

- 4.88** I am satisfied that Mahdi Jasim Abdullah Al-Behadili (detainee 773) was instructed to face the wall, but I am quite sure that neither he nor any of the other detainees were forced into and/or kept in a kneeling position as he alleged, nor did the guards deliberately trample on their feet. These were deliberately false embellishments of Mahdi Al-Behadili's evidence that were intended to support his allegations of ill-treatment. If Mahdi Al-Behadili did kneel, it was because he chose to do so. I accept that the detainees were allowed to sit, squat or kneel as they felt most comfortable. I am quite sure that no detainee was forced to adopt an uncomfortable position, while waiting to be processed, and that Mahdi Al-Behadili deliberately lied when he alleged that they were.

The actions taken to maintain the shock of capture

- 4.89** Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ahmed Jabbar Hammood Al-Furaiji (detainee 777) and Hussein Gubari Ali Al-Lami (detainee 780) all alleged that they had been roughly handled in various ways during processing at the DTDF at Shaibah. In closing, those representing the Iraqi Core Participants submitted that the detainees had been handled in this fashion in order to maintain the shock of capture.⁴³⁶⁰
- 4.90** Mahdi Jasim Abdullah Al-Behadili explained that he had had to wait inside the reception area in a crouched position. He said that he had looked towards Ibrahim Al-Ismaeeli (detainee 774) and noticed that he had an injured leg. Mahdi Al-Behadili alleged that a soldier had then come towards him, hit him hard on the head with the back of his hand and told him to face the wall.⁴³⁶¹ Mahdi Al-Behadili also said that a soldier had punched him in the back several times when he went to help Ibrahim Al-Ismaeeli walk to the JFIT compound later, after processing had been completed.⁴³⁶²
- 4.91** Ahmed Jabbar Hammood Al-Furaiji alleged that that, at one point during processing at the DTDF and while he was sitting cross-legged on the floor, a soldier had come over to him and grabbed him roughly by the collar of his clothing in order to stand him up and move him to another room.⁴³⁶³
- 4.92** In his Judicial Review statement, Hussein Gubari Ali Al-Lami claimed to have been beaten by a guard when he tried to look around inside the reception area at the DTDF.⁴³⁶⁴
- 4.93** WO2 David Parrott said that the staff in the reception area had processed the detainees as quickly and efficiently as possible on 15 May 2004. He said there had been no shouting or abuse during the processing of the detainees that day. WO2 Parrott went on to acknowledge

⁴³⁵⁹ M010 (ASI021750) [16]

⁴³⁶⁰ ICP Closing Submissions, para.2231(a)

⁴³⁶¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001121) [73]; MOD006494 [21];

⁴³⁶² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000790) [53]; [8/81-82]; [9/21/18]

⁴³⁶³ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000321) [87]

⁴³⁶⁴ Hussein Gubari Ali Al-Lami (detainee 780) (MOD027929) [32]

that it was his belief that one consequence of processing the detainees quickly was that it helped to maintain the shock of capture.⁴³⁶⁵

- 4.94** Sergeant William Anderson said the detainees had not been permitted to turn around, while they were sitting facing the wall. He said this had been explained to the detainees by using interpreters and that it was enforced by hand gestures and the clicking of fingers if the detainees did try to turn round.⁴³⁶⁶
- 4.95** Major Richmond said that he had been present in the open plan reception area throughout the processing of the detainees at the DTDF on 15 May 2004 and that he would have noticed if anyone had acted in the manner alleged by the detainees. He emphasised that it was not something he would have forgotten and he said that he had not witnessed any abuse or ill-treatment of the detainees during their processing at the DTDF on 15 May 2004.⁴³⁶⁷ In the course of his oral evidence to the Inquiry, Major Richmond said that the processing had been carried out swiftly, in order to move the detainees through to a secure part of the compound and away from the administrative staff. He said that the manner in which the procedure was conducted was intended to make detainees feel that they had been brought to a place where they would be looked after and would be safe. Major Richmond acknowledged that the processing procedure at the DTDF also ensured that nothing occurred during processing that would undermine the efforts of those who would be seeking to gain intelligence from the detainees who went directly from there to the JFIT compound.⁴³⁶⁸
- 4.96** Major Richmond was asked whether some of the things done in the course of processing at the DTDF might have had the effect of maintaining the shock of capture. However, he explained that none of the procedures followed during processing at the DTDF had been designed or carried out with any such purpose in mind. Major Richmond stressed that he had seen nothing in the processing procedure at the DTDF, either in the case of the nine detainees or any other detainees, which had struck him as having been designed to maintain the shock of capture. He emphasised that the processing procedures were there to ensure that the detainees were accepted into the DTDF as smoothly as possible and that this was the sole purpose of processing.⁴³⁶⁹

Conclusions

- 4.97** Not all the military witnesses involved in processing detainees at the DTDF were familiar with the term “shock of capture”. However, some of the witnesses had heard the term and they understood the concept to some extent. Thus, Sergeant William Anderson said that he understood the shock of capture meant keeping the detainees disoriented, so that they did not know what was going to happen to them until they were actually told. He said that he recalled that the shock of capture was to be maintained by moving detainees quickly and firmly up until the time they were processed.⁴³⁷⁰ However, he went on to say that nothing had actually been done during processing in order to maintain the shock of capture.⁴³⁷¹
- 4.98** As it seems to me, Sergeant Anderson’s evidence clearly showed that, although some soldiers had an inkling of what was meant by the concept of “the shock of capture”, there was a

⁴³⁶⁵ WO2 Parrott (ASI020298) [125d]; [141/13/1]-[141/19/8]; [141/100/18]-[141/103/1]; [141/108/10]-[141/110/17]

⁴³⁶⁶ Sergeant Anderson [139/83/10]

⁴³⁶⁷ Major Richmond (ASI022558) [299]

⁴³⁶⁸ Major Richmond [155/59/14]

⁴³⁶⁹ Major Richmond [155/60/14]

⁴³⁷⁰ Sergeant Anderson (ASI014779) [80-81]; [139/30/16]

⁴³⁷¹ Sergeant Anderson [139/32/13]

significant lack of any real understanding about what its purpose actually was. I am quite sure that Sergeant Anderson did not believe it was necessary to take any steps to maintain the shock of capture during processing at the DTDF. I am equally sure that there was no intention, on the part of those in charge of the processing of detainees at the DTDF, that any part of the procedure was for the purpose of preparing or conditioning a detainee for interrogation by the JFIT.

4.99 I am further satisfied that the detainees were not deliberately treated roughly as they were moved around during processing. They were moved quickly, efficiently and firmly. The detainees' various allegations of assault, as set out above, were deliberate lies intended to support their claims to have been ill-treated during their processing at the DTDF.

4.100 I am also satisfied that there was no deliberate policy or practice at the DTDF of conducting the processing of detainees in any manner intended or designed to maintain the shock of capture, so as to condition the detainees for interrogation. However, there was a general appreciation of the need to process the detainees swiftly so they could be moved on to the JFIT or into the main prisoner population in the DTDF. I accept that the processing procedures in question may thus have had the effect of maintaining the shock of capture to some limited extent, but they had not been intended, designed or put into practice in order to have that effect.

The denial of water

4.101 Mahdi Jasim Abdullah Al-Behadili (detainee 773), Abbas Abd Abdulridha Al-Hameedawi (detainee 776) and Hussein Fadhil Abbas Al-Behadili (detainee 778) all alleged that they had been denied water during processing at the DTDF on 15 May 2004.

4.102 Mahdi Jasim Abdullah Al-Behadili claimed that when he had asked for water during processing, he was told to "shut up".⁴³⁷²

4.103 In his written Inquiry statements, Abbas Abd Ali Abdulridha Al-Hameedawi alleged that when he was sitting on the floor facing the wall in the reception area, he had asked a soldier for some water. He said that the soldier brought over a bottle of water, but when Abbas Al-Hameedawi had reached out to take the bottle the guard would not give it to him. Abbas Al-Hameedawi claimed that the soldier had then opened the bottle and poured the water on the floor in front of him. Abbas Al-Hameedawi said that, as a result, he had broken down and cried. He said that the soldier had then offered him another bottle of water, but he had refused it, because he could not take any further humiliation.⁴³⁷³ However, in his oral evidence to the Inquiry, Abbas Al-Hameedawi said that the soldier had poured the water on the ground after another detainee had asked for it. Abbas Al-Hameedawi said that he had begun to cry loudly, because he felt that the soldier's act had been an assault on all the detainees, not just on the detainee who had asked for the water.⁴³⁷⁴

4.104 Hussein Fadhil Abbas Al-Behadili claimed that after he had arrived at the DTDF on 15 May 2004 and was facing the wall during processing, he had asked a soldier for some water. He alleged that the soldier had opened a bottle and thrown the water on the floor, instead of giving it to the detainees.⁴³⁷⁵

⁴³⁷² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001121) [71]

⁴³⁷³ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) (ASI004771) [44]; (PIL000009) [25]

⁴³⁷⁴ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [15/54-55]

⁴³⁷⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000370) [40]; [18/24/14]

- 4.105** Sergeant William Anderson said that bottled water would be provided to detainees during processing if they asked for it. He said that he could not specifically recall whether any of the nine detainees had requested water during processing at the DTF on 15 May 2004. During the course of his oral evidence to the Inquiry, he said that he had not seen anybody pour water on the floor in front of a detainee after the detainee had asked for water.⁴³⁷⁶
- 4.106** WO2 David Parrott was asked about the allegations made by Abbas Al-Hameedawi and Hussein Al-Behadili that water had been poured on the floor during processing that day. He said that detainees were provided with water if they requested it. He denied that water had been poured on the floor in front of any detainee during processing.⁴³⁷⁷ Major Richmond was also asked about these allegations and said that he would not have allowed any of his staff to have behaved in such a fashion.⁴³⁷⁸

Conclusion

- 4.107** I am satisfied that no water was poured on the ground in front of any detainee during the admission and processing procedure at the DTF on 15 May 2004. These allegations by Abbas Abd Ali Abdulridha Al-Hameedawi and Hussein Fadhil Abass Al-Behadili are completely untrue and deliberately so. They were made in order to support their claims to have been ill-treated and are entirely false. I accept that it is possible that Mahdi Jasim Abdullah Al-Behadili was told to “shut up” during processing on 15 May 2004. However, if this did happen, it would have been to prevent him talking and not to deny him water.

The pretence that the detainees had been brought to Abu Ghraib

- 4.108** Mahdi Jasim Abdullah Al-Behadili (detainee 773) gave evidence that, when he was providing his name and date of birth during the admission procedure at the DTF on 15 May 2004, he had asked an interpreter where he was. According to Mahdi Al-Behadili, the interpreter replied that he was in Abu Ghraib.⁴³⁷⁹ By May 2004, the international press had given extensive coverage to the many examples of serious abuse and ill-treatment that had been perpetrated on detainees at the U.S. Army-run prison at Abu Ghraib. However, Mahdi Al-Behadili went on to say that he had not necessarily believed that he was actually in Abu Ghraib prison, because he could see lots of British soldiers around him, whereas he knew that Abu Ghraib was run by the Americans.⁴³⁸⁰
- 4.109** This particular allegation was not made by any of the other detainees.
- 4.110** During his oral evidence to the Inquiry, Sergeant Anderson stated that the interpreters at the DTF were trustworthy. He said that did not think that any of the interpreters would have told the detainees that they were at Abu Ghraib and went on to say that he considered the interpreters to have been compassionate in nature.⁴³⁸¹ I have no doubt that Sergeant Anderson’s evidence was both truthful and accurate.

⁴³⁷⁶ Sergeant Anderson [139/89]

⁴³⁷⁷ WO2 Parrott (ASI020329-00); [129]

⁴³⁷⁸ Major Richmond (ASI022558); [296-297]

⁴³⁷⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000790) [52]

⁴³⁸⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000790) [52]

⁴³⁸¹ Sergeant Anderson [139/93/15]-[94/2]

4.111 This allegation was put to M005, M030, M029 and M012 when they gave oral evidence. Each of them gave consistent and powerful denials. I have no doubt that each of them gave honest evidence about this matter.⁴³⁸²

Conclusion

4.112 I am therefore quite sure that no instruction was given to any interpreter to tell detainees that they had arrived at Abu Ghraib and I am equally sure that no interpreter would have said such a thing on his or her own initiative. Not only would those in charge of prisoner handling at the DTFD not have tolerated such conduct, but to have acted in such a manner would have been entirely out of character for an interpreter at the DTFD at the time. I have no doubt that this allegation was a deliberately false one, intended to support Mahdi Al-Behadili's claims to have been ill-treated while in the custody of the British Army.

The use of sound effects suggestive of torture

4.113 Mahdi Jasim Abdullah Al-Behadili (detainee 773), Hussein Fadhil Abbas Al-Behadili (detainee 778) and Hussein Gubari Ali Al-Lami (detainee 780) all alleged that they had they had heard recordings of torture being played while they were being taken through the admission and processing procedure at the DTFD on 15 May 2004. The six other detainees made no mention of having heard any such sounds or noises during their processing that day.

4.114 In his 2008 Judicial Review statement, Mahdi Jasim Abdullah Al-Behadili said that he had heard screams from a room next to the reception area. He said that after a while he had noticed that the screams did not stop, so he then thought that a tape or CD was being played in order to scare the detainees.⁴³⁸³ In his first written Inquiry statement, Mahdi Al-Behadili said that he had spoken to the other detainees later and realised that none of them had been tortured. He said that it was then that he realised that the screams had not been real and that possibly a CD had been played to frighten them. He claimed that, after each person had been taken into the other room, he had heard shouting and crying. However, when he was taken through into the other room, he had been given new clothes to change into. He said that he had then realised that the noises must have come from a tape machine that was being played to scare the detainees.⁴³⁸⁴ During his oral evidence to the Inquiry, Mahdi Al-Behadili's account of this incident was the same as that given in his second Inquiry statement.⁴³⁸⁵

4.115 In his first written Inquiry statement, Hussein Fadhil Abbas Al-Behadili alleged that he had heard terrifying voices when he was given a new set of clothing at the DTFD on 15 May 2004.⁴³⁸⁶ During his written and oral evidence to the Inquiry, Hussein Al-Behadili said the detainees were taken in one by one and then they heard the sounds of torture so he thought that when he was taken into the room he would be tortured.⁴³⁸⁷

4.116 In his written Inquiry statement, Hussein Gubari Ali Al-Lami alleged that the detainees had been taken out of the reception area one by one during processing at the DTFD on 15 May 2004. He went on to say that, immediately after each detainee was taken out of the reception area, he had heard the sounds of the detainee crying as if he was being tortured. Hussein Al-Lami said that after a while, he realised that the same sounds kept being repeated, as if a

⁴³⁸² M005 [164/262]; M030 [167/47]; M029 [156/195-196]; M012 [153/49]

⁴³⁸³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006494) [20]

⁴³⁸⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000790) [52]

⁴³⁸⁵ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/80/9]

⁴³⁸⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001044) [50]

⁴³⁸⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001122) [79]; [18/25/4]

tape was being played just to scare the detainees. He said that when he listened carefully, he could tell it was a recording because certain background noises that had been picked up on the tape kept being repeated.⁴³⁸⁸

- 4.117** Major David Richmond said that he did not hear any screaming during the admission and processing procedure at the DTDF on 14 May 2004.⁴³⁸⁹ As I have already indicated, Major Richmond was an impressive, honest and reliable witness. I accept that his evidence was both truthful and accurate.
- 4.118** WO2 David Parrott also said that he did not hear any recording of screaming or shouting being played during the admission and processing procedure that day.⁴³⁹⁰ WO2 Parrott was also a truthful and reliable witness and I accept that his evidence was both truthful and accurate.
- 4.119** M010 said that she did not remember having heard any noise, at any time during processing at the DTDF, that had sounded like someone shouting or screaming, either in person or on a recording. She said the DTDF was a professional place and she would not have been able to concentrate and do her work if there had been such noises.⁴³⁹¹ I accept her evidence as both truthful and accurate.
- 4.120** During his oral evidence to the Inquiry, Sergeant William Anderson said that he did not hear any noises of screams and shouts. He said that no recording had been played during processing at the DTDF in order to intimidate the detainees.⁴³⁹² I accept that his evidence was both truthful and accurate.

Conclusion

- 4.121** I have no doubt that the allegations that recordings of screams/shouts suggestive of torture had been played during the admission and processing of the detainees at the DTDF on 15 May 2004, are entirely untrue. I am quite sure that Mahdi Jasim Abdullah Al-Behadili, Hussein Fadhil Abass Al-Behadili and Hussein Gubari Ali Al-Lami all deliberately lied when they alleged that a recording of the apparent sounds of torture had been played during the admission and processing procedure at the DTDF on 15 May 2004. In my view, they told these lies in a deliberate attempt to bolster their claims to have been ill-treated whilst in the custody of the British Army.

The lack of privacy whilst unclothed

- 4.122** During the admission and processing of the nine detainees at the DTDF on 15 May 2004, they were all subjected to a security search, required to change their clothing and given a medical examination. As part of each of these procedures, it was necessary for the detainees to remove their clothing.⁴³⁹³
- 4.123** In his second written Inquiry statement, Kadhim Abbas Lafta Al-Behadili (detainee 775), described how he had been told to change into a blue boiler suit, as follows:

⁴³⁸⁸ Hussein Gubari Ali Al-Lami (detainee 780) (MOD027929) [33]

⁴³⁸⁹ Major Richmond [155/69/21]

⁴³⁹⁰ WO2 Parrott [141/90/19]

⁴³⁹¹ M010 (ASI021750) [17]

⁴³⁹² Sergeant Anderson [139/89/18]

⁴³⁹³ WO2 Parrott [141/47]

*"I was [...] led to another room, which was smaller with a curtained area. I was given a blue overall and told to change out of my clothes. It was not a private area and there were other soldiers in the same room. I felt ashamed and humiliated that I was not given privacy to undress. Along with the blue overall I was given a pair of slippers. I got changed and I was taken back into the room I had come from."*⁴³⁹⁴

- 4.124** In his second written Inquiry statement, Hussein Gubari Ali Al-Lami (detainee 780) said that he had been examined by a female doctor and was then told put on new clothes, as follows:

*"I recall this examination being undertaken by a female doctor [...] I don't recall being asked about my previous medical problems, nor whether I needed medications for allergies. I was simply told to stand up and put on different clothes."*⁴³⁹⁵

- 4.125** The Standard Operating Procedures ("SOPs") in force on 15 May 2004 contained guidance on how searches were to be conducted. The relevant guidance was set out in SOP 10, which included both "core standards" and specific guidance on conducting "strip searches", and was in the following terms:

"CORE STANDARDS

3. Searches should be conducted in as seemingly and sensitive a manner as is consistent with discovering anything concealed.
4. No person should be stripped and searched in the sight of anyone who is not involved in the search.
5. No person should be stripped and searched in the sight or presence of person of the opposite sex, irrespective of age or status."⁴³⁹⁶

"STRIP SEARCHES

8. A strip search will be carried out under the following circumstances:

- a. On initial reception and registration.

[...]

9. A strip search should normally take place in a location that provides complete privacy for the internee and staff conducting the search. When a room is being searched then the internee will be strip searched in the ablution area of that room.

10. Two members of staff of the same sex as the prisoner must carry out the search to ensure thoroughness of search and protection against allegations of impropriety.

11. Strip searching must be done with humanity and respecting the dignity of the person being searched at all times. Staff must remain professional at all times and should not deliberately belittle the internee in any way.

12. An internee should never be totally undressed and naked during a strip search. The search should be conducted in stages i.e. top half first then bottom half, or vice versa."⁴³⁹⁷

- 4.126** During his oral evidence to the Inquiry, Sergeant William Anderson stressed that the searches at the DTFD were undertaken in accordance with SOP 10. He explained that searches had

⁴³⁹⁴ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000735) [71]

⁴³⁹⁵ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000399) [20-21]

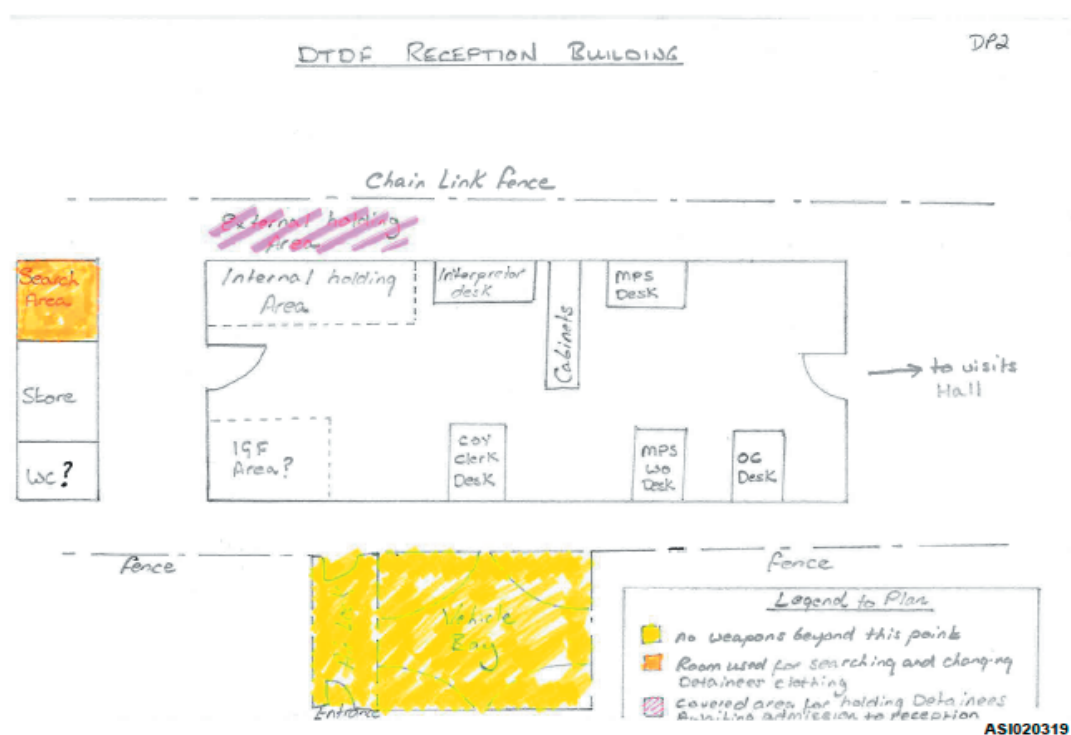
⁴³⁹⁶ MOD042722

⁴³⁹⁷ MOD042723

previously taken place in an ablutions block, but that by May 2004 they were carried out in a store room. Sergeant William Anderson insisted that the only personnel who were present during the searches were a searcher and an interpreter, who would both be of the same gender as the detainee. Sergeant Anderson explained that the searches were carried out in two stages (top half of the body, followed by the bottom half or vice versa), so that the detainee was never completely naked at any point.⁴³⁹⁸ I accept Sergeant Anderson's evidence as both truthful and accurate.

- 4.127** WO2 David Parrott produced a sketch plan that showed the area where the searches took place, highlighted in orange. The sketch plan is produced below.

Figure 115: ASI020319



- 4.128** In his written Inquiry statement, Major David Richmond explained that the medical examinations took place in a private room, not the reception area in the administration building. He said that the medical examination did involve the detainee removing his clothing, but that the medical staff was careful not to offend local customs by involving any females in the medical examinations.⁴³⁹⁹ Again, I accept that Major Richmond's evidence was both truthful and accurate.
- 4.129** In May 2004, Major David Winfield was the Regimental Medical Officer ("RMO") for the 1st Battalion Royal Highland Fusiliers ("1RHF") and was based at the Shaibah Logistics Base, which included the DTDF.⁴⁴⁰⁰ In his capacity as RMO for the 1RHF, Major Winfield was also responsible for the medical care of detainees held at the DTDF and the JFIT during the relevant period. This included the conduct of the detainees' initial medical examinations, when they first arrived at the DTDF.⁴⁴⁰¹ Major Winfield actually conducted part of the initial medical

⁴³⁹⁸ Sergeant Anderson [139/44/3] – [49/7]

⁴³⁹⁹ Major Richmond (ASI022508) [143]

⁴⁴⁰⁰ Major Winfield (ASI019048-49) [5]

⁴⁴⁰¹ Major Winfield (ASI019049) [7]

examinations of each detainee himself.⁴⁴⁰² The other part of the initial medical examination was conducted by the medics in Major Winfield's medical team. The medics recorded medical observations of each detainee, before Major Winfield actually saw him for his part of the examination.⁴⁴⁰³ During his part of the medical examination, Major Winfield would ask the detainee in question to undress down to his underwear.⁴⁴⁰⁴

4.130 Major Winfield said that there had been one female medic on his team, namely Lance Corporal Bronwyn Davis, whose surname in May 2004 was Pickup.⁴⁴⁰⁵ Lance Corporal Davis conducted the first part of the initial medical examinations for each of the nine detainees, except Hamzah Joudah Faraj Almalje (detainee 772) and Abbas Abd Abdulridha Al-Hameedawi (detainee 776).⁴⁴⁰⁶ In her written Inquiry statement, Lance Corporal Davis said that the detainees had remained fully clothed throughout her part of the examination, which was limited to taking and/or recording such matters as each detainee's blood pressure, pulse rate, temperature and previous medical history.⁴⁴⁰⁷ She also said that, as a female medic, her role within the DTDF was limited. Thus, for example, she was never present when detainees had to be undressed and she never went into the detainee cells area. She confirmed that, if a medic was required to go into the cells (for example, to administer routine medication) then it would always be one of her male colleagues who would attend.⁴⁴⁰⁸ In her oral evidence to the Inquiry, Lance Corporal Davis also explained that detainees would be taken elsewhere in order to provide a urine sample and that she would not enter Major Winfield's cubical whilst he was carrying out a medical examination.⁴⁴⁰⁹

4.131 M030, a female JFIT interpreter, said she did not interpret during the initial medical examinations. However, she said that she would occasionally assist with interpreting during other later medical examinations, after a detainee had been admitted into the DTDF. During her oral evidence to the Inquiry, M030 said that the doctor would sometimes ask the detainee, through her, to sit on the bed and (for example) either remove his shirt or take his trousers off, as required.⁴⁴¹⁰

Conclusion

4.132 I am satisfied that on the whole, and given the prevailing circumstances at the time, the detainees were provided with sufficient privacy while they were unclothed during the admission and processing procedure at the DTDF on 15 May 2004. No female soldier or interpreter was present or in sight of the detainees at any time while they were unclothed during the processing that day. Although a female interpreter was sometimes present when detainees removed items of clothing during subsequent medical examinations, none of the nine detainees complained that this had actually occurred to any of them at any later medical examination.

⁴⁴⁰² Ibid

⁴⁴⁰³ Major Winfield (ASI019051) [14]

⁴⁴⁰⁴ Major Winfield (ASI019062) [55]

⁴⁴⁰⁵ Major Winfield (ASI019050) [10]

⁴⁴⁰⁶ Lance Corporal Davis (ASI023511) [60]

⁴⁴⁰⁷ Lance Corporal Davis (ASI023512) [66]

⁴⁴⁰⁸ Lance Corporal Davis (ASI023503) [25]

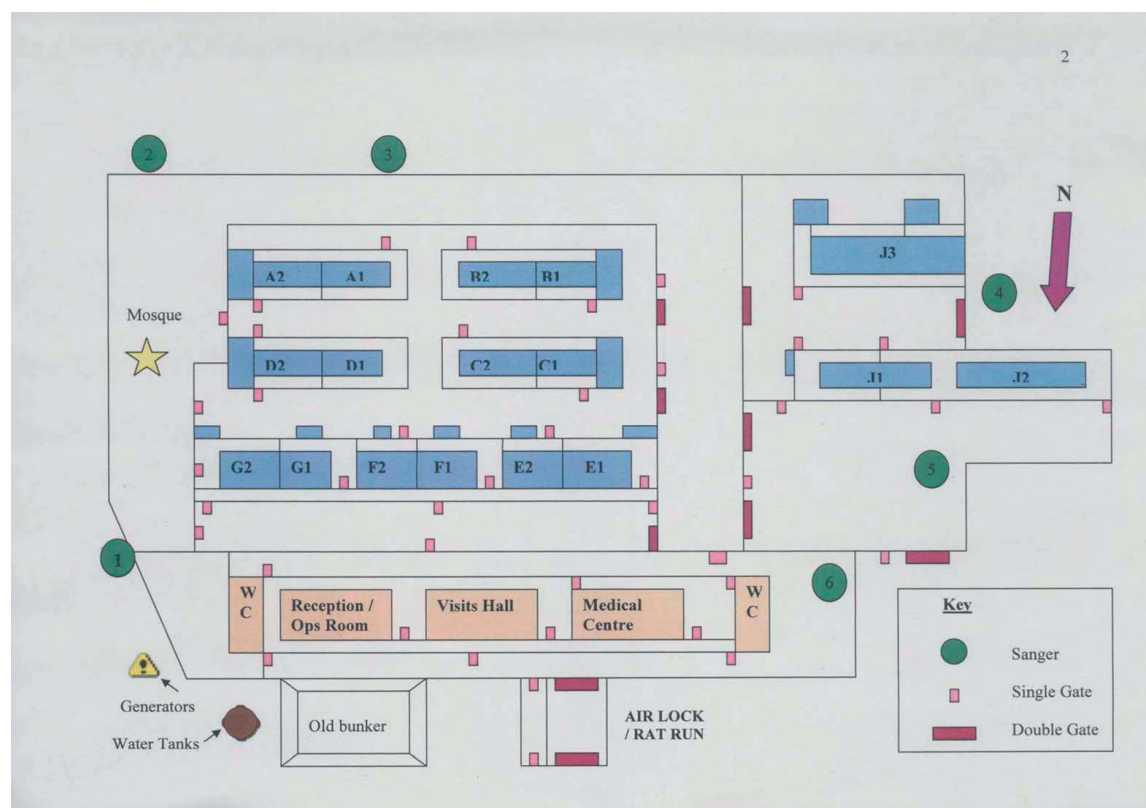
⁴⁴⁰⁹ Lance Corporal Davis [145/75/6]

⁴⁴¹⁰ M030 [167/64/25] – [65/19]

The inadequacy of the initial medical examinations

4.133 The Regimental Medical Officer ("RMO"), Major David Winfield, was not present inside the reception area when the detainees were processed on 15 May 2004.⁴⁴¹¹ He conducted the initial medical examinations of the detainees in the Medical Centre,⁴⁴¹² which was a building inside the DTF compound, as shown on the following plan.

Figure 116: MOD045996



4.134 Major Winfield explained in his written Inquiry statement that the Medical Centre was a long, narrow building with two internal walls. Each internal wall had a doorway, but no door. This meant that, in effect, the building was divided into three areas. Major Winfield explained that the medics were based in the first area of the building, Major Winfield was based in the second area and the third area contained examination couches and a teaching area. Major Winfield said that the detainees' medical records were kept in filing cabinets in either the first or second area. The medical kit contained the usual equipment that would be found in a GP's surgery, including an otoscope (used to examine the ear), a stethoscope, blood-pressure cuffs, weighing scales, painkillers and simple medication such as antibiotics, intravenous drips and dressings.⁴⁴¹³

4.135 In his written Inquiry statement, Major Winfield said the purpose of the initial medical examination was to identify any existing physical or mental health problems, so that the detainee could be treated appropriately, and to assess if the detainee was medically fit enough to be detained at the DTF.⁴⁴¹⁴ He explained that he would ask the detainees, through the interpreter, whether they had any injuries. He also said that he would personally observe

⁴⁴¹¹ Major Winfield (ASI019059) [43]

⁴⁴¹² Major Winfield [144/9/11-24]

⁴⁴¹³ Major Winfield (ASI019057-58) [39-40]

⁴⁴¹⁴ Major Winfield (ASI019059) [45]

any obvious injuries as a result of his own visual examination.⁴⁴¹⁵ In his oral evidence to the Inquiry, Major Winfield explained that he only ever certified detainees as fit or unfit for “detention”, rather than for “interrogation”.⁴⁴¹⁶

4.136 In an earlier Part of this Report,⁴⁴¹⁷ I observed that the policy governing Major Winfield’s examination, namely Annex G to MND(SE) SOI 390 required him to “*sign a fit for detention and questioning form*”. Accordingly, insofar as Major Winfield failed to consider whether the detainees were fit for questioning as well as detention, he departed from the governing policy. It appears that Major Winfield was unaware of the relevant policy requirements at the time. This lack of knowledge on his part was unfortunate. For the same reasons as I set out in relation to my assessments of Corporal Carroll and Captain Bailey at Camp Abu Naji, I find this state of affairs unsatisfactory.⁴⁴¹⁸

4.137 It is clear from the terms of an email dated 15 May 2004 and timed at 16:23 hours from Major David Richmond, the Officer Commanding the DTDF, to Lieutenant Colonel David Wakefield, Commander Legal and others (but not including Major Winfield), that Major Winfield had been asked to document carefully all the wounds, bruises and marks on the nine detainees who had been admitted to the DTDF on 15 May 2004.⁴⁴¹⁹ Major Winfield was asked about this email during his oral evidence. In reply he said that, although he did not specifically recall Major Richmond having made such a request, he was confident that Major Richmond would have approached him and emphasised the importance of carefully noting the wounds, bruises and marks on these detainees in particular, given what was written in the email.⁴⁴²⁰

4.138 The DTDF Initial Medical forms were completed during the initial medical examination of each detainee, in order to record the results of that examination.⁴⁴²¹ The medical examination itself was divided into two parts. The first part involved a medic carrying out and recording the results of certain routine medical procedures and/or matters, including the detainee’s blood pressure, pulse, temperature and respiration rate.⁴⁴²² After the medic had conducted his or her part of the medical examination, the guards would escort the detainee into Major Winfield’s cubicle. The second part of the medical examination consisted of Major Winfield’s own observations and a record of the results of his personal examination of the detainee in question. The guards did not remain in the room while Major Winfield carried out his examination of the detainee, although an interpreter did remain and would be present throughout the examination.⁴⁴²³

4.139 The Inquiry obtained a medical opinion from a forensic physician, Dr Jason Payne-James, to assist with the assessment of the initial medical examinations carried out at the DTDF. Dr Payne-James’ report is ASI025368 and is dated 11 April 2014. The report is attached as Appendix 9 to this Report. In the paragraphs that follow, I deal with the initial medical examination of each of the nine detainees in turn. I should stress that I have not had regard to Dr Payne-James’ opinion as expert evidence about the appropriate standard of care which the detainees should have received. This is a matter which I consider to be outside my Terms

⁴⁴¹⁵ Major Winfield (ASI019063) [56]

⁴⁴¹⁶ Major Winfield [144/26/23]

⁴⁴¹⁷ See paragraph 3.216

⁴⁴¹⁸ As to the manner in which Major Winfield ought to have stated the findings at which he arrived following each of the medical examinations, I have noted the observations of Sir William Gage in his Report on the Baha Mousa Inquiry (16.235 – 16.237) and his Recommendation 29

⁴⁴¹⁹ (MOD045020)

⁴⁴²⁰ Major Winfield [144/77-78]

⁴⁴²¹ Major Winfield (ASI019059) [46]

⁴⁴²² Major Winfield (ASI023507) [49]

⁴⁴²³ Major Winfield (ASI019060-61) [49-50]

of Reference.⁴⁴²⁴ Instead, I have used Dr Payne-James’ evidence in order to enable me to make findings regarding the clinical consequences of Major Winfield’s examinations on 15 May 2004 and to answer some specific clinical questions arising from Major Winfield’s evidence. I accept that the circumstances in which Major Winfield was working at the time may not be the same as those taken into account by Dr Payne-James.

Hamzah Joudah Faraj Almalje (detainee 772)

4.140 Hamzah Joudah Faraj Almalje (detainee 772) could not remember whether he had been medically examined on admission to the DTF at Shaibah on 15 May 2004.⁴⁴²⁵

4.141 The DTF Initial Medical form for Hamzah Almalje recorded the following injuries:⁴⁴²⁶

- a. Small abrasion above the left eye;
- b. Swelling, bruising on left cheek and bridge of the nose and right eye;
- c. Superficial abrasions to the left shoulder; and
- d. 2 superficial abrasions to the left thigh.

4.142 Hamzah Almalje was assessed as “*fit for detention*”.⁴⁴²⁷

4.143 The Initial Medical form does not record either of the following: (i) a large laceration to the left side of Hamzah Almalje’s head, or (ii) a bloody nose. These two injuries had both been noted by the medic, Corporal Shaun Carroll, when he had examined Hamzah Almalje the previous day at Camp Abu Naji.⁴⁴²⁸

4.144 During his oral evidence to the Inquiry, Major Winfield was asked why he had not recorded the “*large laceration*” to Hamzah Almalje’s head. In reply, Major Winfield said that he had not conducted a “*top to toe*” examination, so the injury might not have been apparent to him, particularly if it had already been cleaned and dressed. Major Winfield said that the head would be no more a priority area for examination than any other part of the body. He said he did not specifically examine the head of each detainee. He did not run his fingers through the detainees’ hair.⁴⁴²⁹

4.145 It can be seen that the photograph of Hamzah Joudah Faraj Almalje, taken during the admission and processing procedure at the DTF on 15 May 2004, appears to show what might be dried blood on the detainee’s face under and around the left side of his nose.

⁴⁴²⁴ As I made clear in paragraph 4.272 later in this Report, I accept that it forms no part of my role in this Inquiry to decide whether a medical professional provided treatment that fell below the standard of a responsible body of similarly qualified professionals.

⁴⁴²⁵ Hamzah Joudah Faraj Almalje (detainee 772) [20/22/5]

⁴⁴²⁶ (MOD043360); Major Winfield (ASI019073) [97]

⁴⁴²⁷ (MOD043359)

⁴⁴²⁸ (MOD024252)

⁴⁴²⁹ Major Winfield [144/83/9]; [144/153/3]

Figure 117: MOD048732



MOD048732

- 4.146** Major Winfield said that, if he had seen blood around the detainee's nose when examining him, he would not necessarily have documented it separately from the swelling and bruising to the bridge of the nose that he did record. He said the fact that the injury had caused the nose to bleed was not clinically significant. He also said that he was not sure whether the blood would have been present when he saw the detainee, because the medic might have cleaned it up during the first part of the examination. However he accepted that, given that one of the JFIT team, M005, had seen the blood the following morning; it was unlikely that the blood had actually been cleaned up by a medic.⁴⁴³⁰
- 4.147** During the course of his oral evidence, Major Winfield was shown the JFIT interrogation report relating to Hamzah Almalje, which gave details of his apparent condition on the morning of 16 May 2004.⁴⁴³¹ He was also questioned about the subsequent medical records concerning Hamzah Almalje from 16 to 21 May 2004.⁴⁴³² Major Winfield said that, taking all that information into account, he would now assess Hamzah Almalje as being "unfit for interrogation" on 16 May 2004, but "fit for interrogation" on 21 May 2004.⁴⁴³³
- 4.148** Dr Payne-James was asked to comment on Major Winfield's assertion that the head merits no more attention than any other part of the body. In his report, Dr Payne-James said this:

*"if the head has been subject to impact trauma there are specific conditions that may need to be excluded or monitored. Impacts (which may be indicated by bruising, lacerations, grazes/abrasions) may result in brain damage, the effects of which may not be immediately obvious. Documentation of the history (including any loss of consciousness) nature of the impact and the nature of the injury may modify subsequent management in terms of observation required."*⁴⁴³⁴

⁴⁴³⁰ Major Winfield [144/89-90]

⁴⁴³¹ (MOD040908)

⁴⁴³² (MOD043351)

⁴⁴³³ Major Winfield [144/93-111]

⁴⁴³⁴ Dr Payne-James (ASI025432) [1108]

- 4.149** Dr Payne-James was also asked to comment on Major Winfield’s assertion that he had not erred in failing to record or note the presence of blood under the swollen and bruised nose of a patient and in not doing anything to cleanse or wipe the blood away. In his report, Dr Payne-James said this:

*“blood in association with a nose injury could reflect a fractured nose. Cleaning of an area of blood may be required to determine the source of the blood. Examination of the nose (by palpitation) and by examining in the nostrils will assist in determining whether a nasal fracture is present and requires reduction, or any complication such as septal haematoma which may require treatment.”*⁴⁴³⁵

Conclusions with regard to Hamzah Joudah Faraj Almalje (detainee 772)

- 4.150** Having heard Major Winfield give evidence, I am satisfied that he was not dishonest, although he did give me the distinct impression of being somewhat dismissive in his attitude to the welfare of the detainees on 15 May 2004. In my view, Major Winfield showed very little sympathy for the detainees as patients. For the avoidance of doubt, I formed the view when Major Winfield gave evidence that he was somewhat dismissive of the welfare of the detainees and the examinations themselves were carried out in a manner which reflected that approach. It seemed to me that, so far as the detainees were concerned, it was very much a case of Major Winfield going through the motions of a cursory and perfunctory medical examination, rather than giving them the careful attention of a caring doctor. In my view, that was a less than satisfactory approach to his duties. In the event, the result of this unsatisfactory approach was that, in the case of Hamzah Joudah Faraj Almalje (detainee 772), Major Winfield failed to notice or take sufficient account of a significant head wound that Hamzah Almalje had suffered and he failed to clean away blood associated with an injured nose, the injury to which was also insufficiently examined by him. However, there is no evidence that Hamzah Almalje had actually suffered a significant injury to his nose that went undetected or that there were any other adverse consequences to his health and well-being as a result of this unsatisfactory approach.

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

- 4.151** Mahdi Jasim Abdullah Al-Behadili (detainee 773) did not remember whether he had been medically examined on admission to the DTF at Shaibah on 15 May 2004.⁴⁴³⁶
- 4.152** The DTF Initial Medical form for Mahdi Al-Behadili recorded the following:⁴⁴³⁷
- a. Light bruising and swelling of the nose;
 - b. No other injuries.
- 4.153** Mahdi Al-Behadili was assessed as “fit for detention”.⁴⁴³⁸
- 4.154** During his oral evidence to the Inquiry, Dr Winfield said bruising and swelling could be a symptom of a broken nose, amongst other things. However, he went on to explain that it is often not possible to confirm clinically whether the nose is actually broken, even with an

⁴⁴³⁵ Dr Payne-James (ASI025432) [1109]

⁴⁴³⁶ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000791) [56]

⁴⁴³⁷ (MOD043435); Major Winfield (ASI019074) [101]

⁴⁴³⁸ (MOD043434)

x-ray. He said that, if the nose was actually broken, the routine medical treatment would be no different.⁴⁴³⁹

- 4.155** It can be seen that the photograph of the Mahdi Jasim Abdullah Al-Behadili (detainee 773), taken during the admission and processing procedure at the DTDF on 15 May 2004, appears to show what might be a small amount of dried blood under his left nostril.

Figure 118: MOD048734



MOD048734

- 4.156** Major Winfield said that if it was blood, it was fair to assume that it came from the nose injury. He said that he had recorded the actual injury, so there was no need to make a separate record the presence of dried blood.⁴⁴⁴⁰
- 4.157** Dr Payne-James was asked to comment on Dr Winfield's assertion that there had been no point in trying to confirm whether the nose was actually broken or in recording the presence of blood under the nose. In his report, Dr Payne-James said this:

*"Palpitation of the nose can determine if fracture is present. If there is displacement of nasal bone (which need not cause midline deviation) then this may require surgical reduction. Additionally complications such a septal haematoma may be missed. X-ray may be delayed for a week until swelling has reduced. Recording blood and its apparent source may be relevant with regard to the causation and location of injury."*⁴⁴⁴¹

Conclusions with regard to Mahdi Jasim Abdullah Al-Behadili (detainee 773)

- 4.158** In paragraph 4.150, I have indicated my reasons for concluding that Major Winfield's general approach to the initial medical examinations of the detainees on 15 May 2004 was less than satisfactory. In the event, the result of this unsatisfactory approach was that, in the case of Mahdi Jasim Abdullah Al-Behadili (detainee 773), he failed to cleanse and/or properly examine his injured nose. This was unsatisfactory as it was evident that Major Winfield had observed that his nose was bruised and swollen. In the circumstances, this led to a failure to examine

⁴⁴³⁹ Major Winfield [144/117-118]

⁴⁴⁴⁰ Major Winfield [144/154-155]

⁴⁴⁴¹ Dr Payne-James (ASIO25433) [1112]

what might have been a broken nose and a resulting failure to diagnose or treat this injury. In the event, there is no evidence that Mahdi Al-Behadili had actually suffered a significant injury to his nose that went undetected.

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

4.159 In a written statement made for the Judicial Review proceedings and dated 13 October 2008, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) gave the following account of what had happened when he was taken for a medical examination on his arrival at the DTDf on 15 May 2004:

“The doctor took off my uniform and saw that my leg was injured. He just bandaged it up, he didn’t clean it the wound let alone examine it. He asked me if I was in pain and I replied that I was in agony, but he didn’t give me any painkillers.”⁴⁴⁴²

4.160 In his first written Inquiry statement dated 26 July 2010, Ibrahim Al-Ismaeeli claimed that when he was medically examined at the DTDf on 15 May 2004, the doctor had been female. Ibrahim Al-Ismaeeli said that she had used “Dettol” on his wounds and had bandaged them.⁴⁴⁴³

4.161 In his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli said that he had been seen by a “bandage nurse” and not by a doctor. He explained that a bandage nurse is somebody who carries out the treatment prescribed by a doctor. He said some Dettol had been applied to his leg and that it had been bandaged.⁴⁴⁴⁴ He said that he had told the bandage nurse, through the interpreter, that he could not sleep because of the pain, but that the bandage nurse had not given him any painkillers. Ibrahim Al-Ismaeeli said he had not been able to stand on his right leg and he had not been able to walk normally.⁴⁴⁴⁵

4.162 The DTDf Initial Medical form for Ibrahim Al-Ismaeeli recorded the following injuries:⁴⁴⁴⁶

- a. Superficial abrasions to the stomach and left elbow;
- b. Superficial abrasions to right thigh;
- c. Slightly deeper wound to the lateral aspect of the right knee;
- d. Wound to the dorsal aspect of the right foot, which had overlying swelling and tenderness; no obvious entry wound.

4.163 Major Winfield also wrote the following entry on the DTDf Initial Medical form,:

“Clean + dress wounds

For XRay right foot – exclude #, retained FB

FIT FOR DETENTION”⁴⁴⁴⁷

4.164 Major Winfield also noted that the detainee was “limping” and that he assessed him as “fit for detention”.⁴⁴⁴⁸

4.165 On the morning of 16 May 2004, approximately 18 hours after the initial medical examination at the DTDf had taken place, Ibrahim Al-Ismaeeli was transferred to the Field Hospital at

⁴⁴⁴² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013956) [26]

⁴⁴⁴³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001074) [64]

⁴⁴⁴⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/24]

⁴⁴⁴⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/54-55]

⁴⁴⁴⁶ (MOD043507); Major David Winfield (ASI019075-76) [107]

⁴⁴⁴⁷ The penultimate line in the entry means “Send patient to have right foot xrayed to exclude fracture and retained foreign body”

⁴⁴⁴⁸ (MOD043506)

Shaibah.⁴⁴⁴⁹ In the early afternoon, Wing Commander Gora Pathak, a consultant orthopaedic surgeon, examined Ibrahim Al-Ismaeeli and diagnosed shrapnel wounds to the right foot and right knee and an undisplaced fracture of the right foot. He classified Ibrahim Al-Ismaeeli as a “walking wounded” P3 (Priority 3) casualty. In effect, this meant that Ibrahim Al-Ismaeeli could wait 24 hours or more before receiving the appropriate surgical treatment.⁴⁴⁵⁰ In the event, Ibrahim Al-Ismaeeli subsequently spent 10 days at the Field Hospital, where he underwent two operations on his right foot on 17 and 20 May 2004.⁴⁴⁵¹

4.166 In his written Inquiry statement, Major Winfield said that if Ibrahim Al-Ismaeeli had said that he was in agony or significant pain, he would have taken action and provided him with appropriate pain relief.⁴⁴⁵² He said that, following the initial medical examination, the plan was for Ibrahim Al-Ismaeeli’s foot wound to be cleaned and dressed and for him to be referred for an x-ray. Major Winfield explained that the purpose of the x-ray was to exclude a fracture or the presence of foreign bodies in the wound.⁴⁴⁵³

4.167 Major Winfield said that it had been his opinion at the time, that Ibrahim Al-Ismaeeli’s injuries were not life threatening and that the x-ray did not need to be done immediately.⁴⁴⁵⁴ He went on to say that he could not remember why he had not requested that Ibrahim Al-Ismaeeli be admitted to the Field Hospital on 15 May 2004. He said that he thought it had been because the injuries were not life or limb threatening, and also because Major Winfield needed to arrange the logistics of the transfer with Major Richmond and the Field Hospital.⁴⁴⁵⁵ Major Winfield said that he had never previously needed to refer a detainee to the Field Hospital and that he therefore had no experience or knowledge of the logistics involved.⁴⁴⁵⁶ Major Winfield confirmed that, as it happened, he had escorted Ibrahim Al-Ismaeeli to the Field Hospital on the morning of 16 May 2004.⁴⁴⁵⁷

4.168 In his oral evidence to the Inquiry, Major Winfield accepted that Ibrahim Al-Ismaeeli appeared to be in pain when he was examined on 15 May 2004. Major Winfield also accepted that there was no record that he had prescribed either painkillers or anti-inflammatory medication for Ibrahim Al-Ismaeeli and that he would expect such a record to exist if he had actually prescribed such medication.⁴⁴⁵⁸ Major Winfield said the medics were capable of prescribing low level analgesics and that the prescribing of such medication did not actually have to be done by him. Ibrahim Al-Ismaeeli said that, when he had been in a cell in the JFIT compound, he had been offered a cup of medicine, but had refused to drink it. In his oral evidence, Major Winfield accepted that it was possible that it had been him who had offered the medication to Ibrahim Al-Ismaeeli in his JFIT cell, but that he had refused it.⁴⁴⁵⁹

4.169 Based on what the x-ray subsequently showed, Major Winfield said that it was likely that Ibrahim Al-Ismaeeli had been in significant pain on 15 May 2004.⁴⁴⁶⁰ Furthermore, having regard to what was later shown in the x-ray, Major Winfield also agreed that there had been

⁴⁴⁴⁹ (MOD032855)

⁴⁴⁵⁰ (MOD032857); Wing Commander Pathak [166/169-71]

⁴⁴⁵¹ Major Winfield (ASI019095) [185-188]

⁴⁴⁵² Major Winfield (ASI019077-78) [110]

⁴⁴⁵³ Major Winfield (ASI019076) [109]

⁴⁴⁵⁴ Major Winfield (ASI019077) [111]

⁴⁴⁵⁵ Major Winfield (ASI019094) [181]

⁴⁴⁵⁶ Major Winfield (ASI019094) [182]

⁴⁴⁵⁷ Major Winfield (ASI019095) [184]

⁴⁴⁵⁸ Major Winfield [144/122-126]

⁴⁴⁵⁹ Major Winfield [144/167/14]

⁴⁴⁶⁰ Major Winfield [144/126-127]

a real risk of infection,⁴⁴⁶¹ nevertheless he accepted that he had not prescribed any antibiotics for Ibrahim Al-Ismaeeli at the time. However, Major Winfield went on to say that he was not convinced that he had made any mistake in his treatment of Ibrahim Al-Ismaeeli on 15 May 2004 and that he was not sure it would have made any difference if he had referred him to the Field Hospital immediately.⁴⁴⁶²

- 4.170** Dr Payne-James was asked to comment on Major Winfield’s assertion that he was not in error in failing to refer Ibrahim Al-Ismaeeli to the Field Hospital for an immediate x-ray to his wounded foot and for waiting another 18 hours before having done so. In his report, Dr Payne-James said this:

*“in light of the limping, swelling and tenderness, which in the context of the patient could be consistent with a fracture, there would be no medical reason for delay. The management options (eg non-weight bearing) could not appropriately be determined until a diagnosis was made (even in the absence of considering a foreign body – which he had, in any case, done).”*⁴⁴⁶³

Conclusions with regard Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

- 4.171** I have no doubt that Ibrahim Al-Ismaeeli (detainee 774) was not subjected to a medical examination by a female doctor, nor was he treated only by a “bandage nurse” in the way that he claimed, although he was seen by the female medic, Lance Corporal Bronwyn Davis, for the first part of the examination (see below). In these respects, Ibrahim Al-Ismaeeli told deliberate lies in order to bolster his account of having been ill-treated by the British Army. In fact, the first part of his initial medical examination (recording such matters as blood pressure etc.) was conducted by the female medic, Lance Corporal Bronwyn Davis, as described above.⁴⁴⁶⁴ However, Lance Corporal Davis did not carry out any form of physical examination or medical treatment of Ibrahim Al-Ismaeeli. The second part of Ibrahim Al-Ismaeeli’s initial medical examination (which involved the actual physical medical examination) was undoubtedly conducted by the RMO, Major David Winfield.

- 4.172** In paragraph 4.150 above, I have already indicated my reasons for concluding that Major Winfield’s general approach to the initial medical examinations of the detainees on 15 May 2004 was less than satisfactory. In the event, the result of this unsatisfactory attitude and approach was that Major Winfield did not make an adequate assessment of the seriousness of Ibrahim Al-Ismaeeli’s wounded foot, he did not treat it adequately at the time and he did not refer him to the Field Hospital with sufficient promptness. One obvious consequence of these failures was that Ibrahim Al-Ismaeeli continued to suffer pain and discomfort for longer than he should have done.

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 4.173** In his second written Inquiry statement, Kadhim Abbas Lafta Al-Behadili (detainee 775) described his initial medication examination at the DTDf on 15 May 2004, in the following terms:

“At some point I was taken to another room. I entered the room and a man introduced himself as a doctor. He had an interpreter stood next to him. He said he was a doctor with a job to do and his job was nothing to do with the British soldiers. He asked if I was

⁴⁴⁶¹ Major Winfield [144/128]

⁴⁴⁶² Major Winfield [144/134/1]

⁴⁴⁶³ Dr Payne-James (ASI025433) [1113]

⁴⁴⁶⁴ See paragraphs 4.129, 4.130 and 4.138 above

feeling pain anywhere. I informed him that my stomach, back, shoulder, knees and head were in pain. He did not ask me why they were painful or what happened to me. He examined me briefly and I recall he used a stethoscope to listen to my chest and back. Finally he said that there was nothing wrong with me. I felt angry at this because a doctor would know to ask questions and not dismiss a person who said that they were in pain. I cannot recall whether he even looked at the cut near my left eyebrow."⁴⁴⁶⁵

4.174 In his oral evidence to the Inquiry, Kadhim Al-Behadili said that he had told the doctor about his injuries. He said the doctor asked him if he had any pain and that he had gestured to the place where he was injured. However, Kadhim Al-Behadili said he could not recall actually telling the doctor that his knees were bloodied and swollen. He confirmed that he did not tell the doctor that his wrists were sore from the plasticuffs.⁴⁴⁶⁶

4.175 The DTDF Initial Medical form for Kadhim Al-Behadili recorded the following injury:⁴⁴⁶⁷

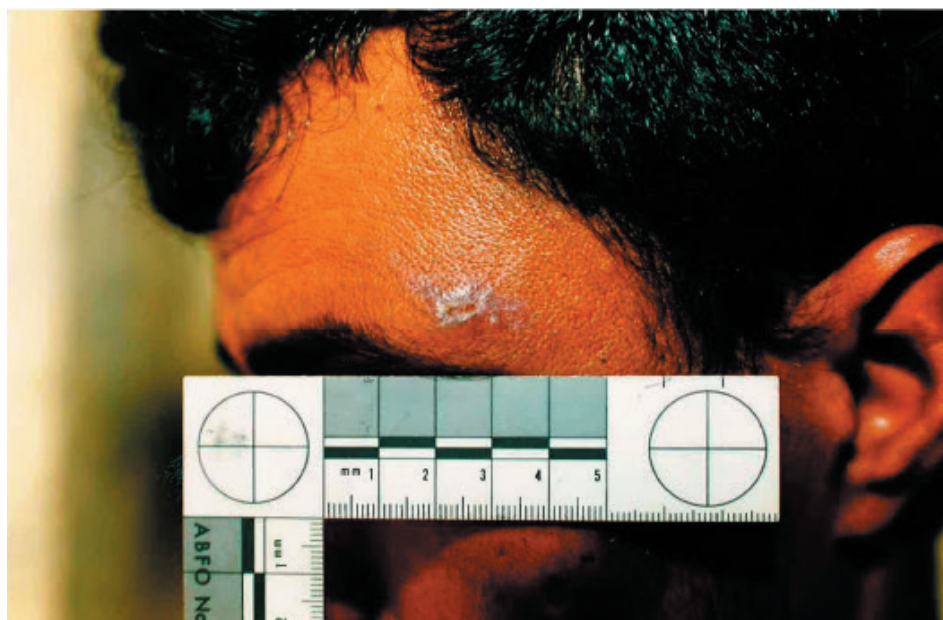
a. Very superficial abrasions to the left shoulder blade.

4.176 Kadhim Al-Behadili was assessed as "*fit for detention*".⁴⁴⁶⁸

4.177 The DTDF Initial Medical form does not record the following injuries: (i) a small laceration to the left side of the face; (ii) bruising and swelling under Kadhim Al-Behadili's eye; and (iii) marks to Kadhim Al-Behadili's wrists and forearms.

4.178 The small laceration to the left side of Kadhim Al-Behadili's face was recorded during Corporal Shaun Carroll's medical examination on 15 May 2004 at Camp Abu Naji, as follows: "*small laceration to (L) side face in eye line, wound glued*".⁴⁴⁶⁹ The healing injury can be seen in a photograph taken by the Royal Military Police on 25 May 2004, 10 days after the initial medical examination (see figure 119).

Figure 119: MOD034440



⁴⁴⁶⁵ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000736) [73]

⁴⁴⁶⁶ Kadhim Abbas Lafta Al-Behadili (detainee 775) 13/31

⁴⁴⁶⁷ (MOD043564); Major Winfield (ASI019078) [115]

⁴⁴⁶⁸ (MOD043563)

⁴⁴⁶⁹ (MOD024274)

The photograph taken of Kadhim Al-Behadili during his processing at the DTDF on 15 May 2004 appears to show bruising and swelling under his right eye (see figure 120 below).

Figure 120: MOD048738



MOD048738

The marks to the detainee’s wrists and forearms can be seen in other photographs taken by the RMP on 25 May 2004 (see figures 121 and 122 below).

Figure 121: MOD034441



Figure 122: MOD034442



- 4.179** Major Winfield said he might not have thought the small laceration beside the detainee's left eye was a significant enough injury to record. He also accepted that he might have overlooked it at the time. Given that he had recorded superficial abrasions to Kadhim Al-Behadili's shoulder blade, he accepted that the likelihood was that he had not seen the injury and thus did not record it.⁴⁴⁷⁰
- 4.180** When he looked at the photograph taken of Kadhim Al-Behadili during processing at the DTDF on 15 May 2004, Major Winfield said he was able to see what appeared to be bruising on the right eye. When asked why he had not recorded that injury on the DTDF Initial Medical form, Major Winfield said that it was either that he had not seen it or that he had forgotten to record it after having seen it.⁴⁴⁷¹
- 4.181** Major Winfield was also shown the Royal Military Police ("RMP") photographs of Kadhim Al-Behadili's wrists and forearms, taken 10 days after his initial medical examination on 15 May 2004. Major Winfield said that if those marks had been present during his examination, he ought to have recorded them. However, Major Winfield said that any bruising caused by handcuffs might not have been apparent when he had examined Kadhim Al-Behadili, because bruising may take some time to appear.⁴⁴⁷² However, whilst that may be so, it seems to me that in this particular case, it is possible that Major Winfield may have failed to notice and/or record the visible marks of bruising/scarring on Kadhim Al-Behadili's wrists and forearms.

Conclusions with regard to Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 4.182** In paragraph 4.150 above, I have indicated my reasons for concluding that Major Winfield's general approach to the initial medical examinations of the detainees on 15 May 2004 was less than satisfactory. In the event, the result of this unsatisfactory approach was that, in the case of Kadhim Abbas Lafta Al-Behadili (detainee 775), Major Winfield failed to notice and/or record a number of visible injuries, as detailed above. In the event, there is no evidence to suggest that any of these injuries required further treatment or that the health and/or well-

⁴⁴⁷⁰ Major Winfield [144/136-137]

⁴⁴⁷¹ Major Winfield [144/138/12]

⁴⁴⁷² Major Winfield [144/139-140]

being of Kadhim Al-Behadili was materially affected by Major Winfield’s failure to notice and/or record these minor injuries.

Abbas Abd Abdulridha Al-Hameedawi (detainee 776)

4.183 In his first written Inquiry statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) said that, during his initial medical examination at the DTDF on 15 May 2004, he had been unable to explain to the doctor how the injury to his shoulder had occurred because there was no interpreter present.⁴⁴⁷³

4.184 In his second written Inquiry statement, Abbas Al-Hameedawi described his initial medical examination at the DTDF on 15 May 2004 in the following terms:

“I was then taken to another room where I spoke to a medical officer. This room was approximately 50 (fifty) meters away. All nine detainees were taken together, escorted by four soldiers. We were stood in a queue and went into see the medical officer in turn. When I entered the room I noticed there was a desk and shelves on the wall with medication on them. I also noticed some medical equipment but I cannot now recall what type of equipment. There was also a narrow bed with a curtain that could be drawn to screen off this area. I was in this room with the male medical officer, an interpreter and two soldiers. [...]”

I was asked my name, date of birth and asked if I had any chronic diseases. The medical officer asked me if I was injured. I asked what do you mean by injured, do you mean gunshots. He replied any sort of wounds and cuts. I started to show the medical officer the injuries I had sustained when taken prisoner by the soldiers. He did not physically examine me. He was sitting behind his desk and at no point did he tend to any of my injuries. He did not appear to be a professional doctor as he remained behind his desk. I was fully clothed during the time I spoke with him. I unzipped the top of my detention clothing to show him the shoulder injury I had sustained. He did not ask me anything about my injury and I did not want to tell him how I had received it. I did not mention it as I was afraid as 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.

I also took my arm out of my clothing to show him the injury to the back of my left arm. [...] I showed the medical officer the injury and took my arm out of the sleeve of the clothing I was wearing. He did not ask how it had happened [sic] and I did not tell him or any other medical staff at Al-Shaibah. The pain to my arm lasted for about a week only.

I also sustained other injuries when I was taken prisoner on 14 May 2004 including a kick to my head [...]. However, this injury was covered by my hair and I did not mention this to the medical officer and it would not have been visible to him. I also received scratches on my legs and knees [...] however these were not as painful and were not bleeding. I did not report or show the medical officer these injuries [...]. The injury I sustained to my head caused me pain for approximately 2 weeks but I did not mention it to any medical staff as I did not want to discuss what had caused the injury.”⁴⁴⁷⁴

4.185 Abbas Al-Hameedawi also described his initial medical examination at the DTDF in his oral evidence to the Inquiry. He said it was not a precise or accurate examination.⁴⁴⁷⁵ It did not

⁴⁴⁷³ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) (ASI000866) [68]

⁴⁴⁷⁴ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) (PIL000449) [13-16]

⁴⁴⁷⁵ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/22]

involve a machine or laboratory tests and no blood or urine samples were tested. He said that he had been asked whether he had diabetes, high blood pressure or any serious illness.⁴⁴⁷⁶ He described the examination as “*theoretical*” rather than “*practical*”. Abbas Al-Hameedawi said that a medical examination should involve a doctor touching his body and asking him questions.⁴⁴⁷⁷ Abbas Al-Hameedawi said that he had pointed out his injuries to the person conducting the medical examination, but had not told him how they happened.⁴⁴⁷⁸ Abbas Al-Hameedawi claimed that this was not because he had been afraid to do so, it was just that the doctor was careless and that he did not seem to be interested.⁴⁴⁷⁹ Abbas Al-Hameedawi accepted that the body sketch on the DTDF Initial Medical form accurately recorded his injuries at the time, except that the injuries were not “*superficial*” but were “*big*” injuries.⁴⁴⁸⁰ He said the person who treated him on arrival may have been a doctor, but he was not human. The injury to his left shoulder had been bleeding at the time, but it was neither treated nor washed;⁴⁴⁸¹ in fact, nobody had treated any of his wounds.⁴⁴⁸²

4.186 The DTDF Initial Medical form for Abbas Al-Hameedawi recorded that he had the following injuries:⁴⁴⁸³

- a. Superficial abrasions to the left shoulder;
- b. Superficial abrasions to the left elbow.

4.187 Abbas Al-Hameedawi was assessed as “*fit for detention*”.⁴⁴⁸⁴

4.188 In his written Inquiry statement, Major Winfield said that, as his notes clearly indicated, he did carry out the usual cardiovascular, respiratory and abdominal checks, contrary to Abbas Al-Hameedawi’s assertion that the doctor had not physically examined him. Major Winfield went on to say that Abbas Al-Hameedawi was also wrong to suggest that he had kept his trousers on during the examination. According to Major Winfield, all the detainees had been required to undress for the purposes of the initial medical examination⁴⁴⁸⁵ and, furthermore, there would have been an interpreter present throughout each such examination.⁴⁴⁸⁶ I accept that Major Winfield’s evidence about these matters was both truthful and accurate.

Conclusions with regard to Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

4.189 In paragraph 4.150, I have indicated my reasons for concluding that Major Winfield’s general approach to the initial medical examinations of the detainees on 15 May 2004 was less than satisfactory. In the event, the result of this unsatisfactory approach was that Abbas Al-Hameedawi was probably justified in complaining that the doctor had not seemed interested. It may also explain why Major Winfield apparently did nothing to clean or treat the abrasions to Abbas Al-Hameedawi’s left shoulder and elbow. Had Major Winfield adopted a more satisfactory approach to his examination of Abbas Al-Hameedawi, I would at least have expected him to clean these abrasions. However, there was no evidence to suggest that

⁴⁴⁷⁶ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/23]

⁴⁴⁷⁷ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/72]

⁴⁴⁷⁸ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/23]

⁴⁴⁷⁹ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/78]

⁴⁴⁸⁰ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/73-74]

⁴⁴⁸¹ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/73]; [14/80]; [14/81]

⁴⁴⁸² Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [15/17]

⁴⁴⁸³ (MOD043628); Major Winfield (ASI019079) [121]

⁴⁴⁸⁴ (MOD043627)

⁴⁴⁸⁵ Major Winfield (ASI019079-80) [122]

⁴⁴⁸⁶ Major Winfield (ASI019080) [124]

the health and/or well-being of Abbas Al-Hameedawi suffered any adverse consequences as a result. I have no doubt that Major Winfield did carry out the usual checks, that Abbas Al-Hameedawi was required to undress for the examination, that an interpreter was present throughout his medical examination by Major Winfield and that his injuries were accurately recorded and described. To the extent that Abbas Al-Hameedawi suggested otherwise, he deliberately lied in order to lend support to his claim to have been ill-treated by the British Army.

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

4.190 In his Judicial Review statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said that, during his initial medical examination at the DTDF, he had been made to remove all his clothing, including his underwear. He claimed that the doctor had asked him how the injury to his knee had happened and that he had told the doctor that he was tortured at Camp Abu Naji.⁴⁴⁸⁷ Ahmed Al-Furaiji went on to say that the doctor had cleaned his knee injury and had put a plaster on it.⁴⁴⁸⁸

4.191 In his second written Inquiry statement, Ahmed Al-Furaiji said that, during his initial medical examination at the DTDF on 15 May 2004, he had been weighed and that his pulse, blood pressure and temperature had all been measured. He said that the medic had listened to his chest with a stethoscope. He also remembered that his abdomen had been checked. He said he did not provide a urine sample, nor was a blood sample taken. He could not recall having received any medication at the end of the examination.⁴⁴⁸⁹ He said that the injury to his knee had been more than just an “abrasion”. He claimed that it was a serious injury that had bled a lot, although it did not require stitches. He said he had also sustained a wound to his head, which had not been noted on the body diagram. He said that he did not recall having been asked about that particular wound or whether he had mentioned it to the doctor.⁴⁴⁹⁰

4.192 The DTDF Initial Medical form for Ahmed Al-Furaiji recorded the following injury:⁴⁴⁹¹

- a. Abrasion to the right knee

4.193 Ahmed Al-Furaiji was assessed as “fit for detention”.⁴⁴⁹²

Conclusions with regard to Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

4.194 I do not believe that Ahmed Al-Furaiji had a wound to his head that went unnoticed. I believe this to have been a lie, intended to support his claims to have been ill-treated by the British Army. I am also quite sure that the injury to his right knee was correctly described as an abrasion. To the extent Ahmed Al-Furaiji suggested otherwise, I am sure that he lied for the same reason as above. In paragraph 4.150 above, I have indicated my reasons for concluding that Major Winfield’s general approach to the initial medical examinations of the detainees that day was less than satisfactory. I am satisfied that, in Ahmed Al-Furaiji’s case, this unsatisfactory approach did not give rise to any significant shortcomings in Major Winfield’s initial medical examination.

⁴⁴⁸⁷ See paragraphs 3.112 – 3.113

⁴⁴⁸⁸ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006536) [26]

⁴⁴⁸⁹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000298-99) [24]

⁴⁴⁹⁰ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000299) [25]

⁴⁴⁹¹ (MOD043682); Major Winfield (ASIO19081) [128]

⁴⁴⁹² (MOD043681)

Hussein Fadhil Abbas Al-Behadili (detainee 778)

4.195 In his Judicial Review statement, Hussein Fadhil Abass Al-Behadili (detainee 778) described his initial medical examination at the DTDF on 15 May 2004 in the following terms:

*“I was [...] examined by a doctor while wearing only my underwear. The examination by the doctor was very brief, lasting only about 5 minutes. He listened to my lungs with a stethoscope and I was asked if I had asthma, diabetes or any other medical conditions. I do suffer from breathing difficulties [...] and so I told the doctor that I suffered from asthma. Even so, I was not given any medication. He then asked me to describe whether I had any injuries or pain. I was still very afraid at that point and I thought that if I mentioned that I was hurting from my handcuffs I would be punished and detained for even longer, so I didn’t say anything. The examination was so quick that I don’t think he had time to even see my bruised wrists.”*⁴⁴⁹³

4.196 In his oral evidence to the Inquiry, Hussein Al-Behadili recalled that he had been examined by a doctor.⁴⁴⁹⁴ He also said that he had lied to the doctor by claiming that he suffered from chronic asthma. He said that he had done so because he did not want to suffer any further torture.⁴⁴⁹⁵

4.197 The DTDF Initial Medical form for Hussein Al-Behadili recorded that he had sustained the following injuries:⁴⁴⁹⁶

- a. Superficial abrasions to both elbows;
- b. Superficial abrasions to lower arms;
- c. Small graze to the back.

4.198 The same form also recorded that Hussein Al-Behadili had a possible history of asthma and that he used an inhaler.⁴⁴⁹⁷

4.199 Hussein Al-Behadili was assessed as “fit for detention”.⁴⁴⁹⁸

4.200 In his written Inquiry statement, Major Winfield said he would have seen Hussein Al-Behadili’s wrists, because the notes record that he had seen injuries to Hussein Al-Behadili’s lower arms. Major Winfield added that any bruising to the wrists might not have been visible when he examined Hussein Al-Behadili on 15 May 2004, because there can sometimes be a period of delay before the bruising becomes apparent.⁴⁴⁹⁹

Conclusions with regard to Hussein Fadhil Abbas Al-Behadili (detainee 778)

4.201 I think it highly unlikely that Hussein Fadhil Abass Al-Behadili (detainee 778) had significant bruising to his wrists that went unnoticed when he underwent his initial medical examination at the DTDF on 15 May 2004. I am sure that, at the very least, his significant injuries were accurately recorded and described by Major Winfield at the time. To the extent that Hussein Al-Behadili suggested otherwise, I find that he exaggerated his evidence as to his injuries in

⁴⁴⁹³ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006562-63) [39]

⁴⁴⁹⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/25]

⁴⁴⁹⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/57]

⁴⁴⁹⁶ (MOD043962); Major Winfield (ASI019081-82) [132]

⁴⁴⁹⁷ (MOD043961); Major Wakefield (ASI019081) [130]

⁴⁴⁹⁸ (MOD043961)

⁴⁴⁹⁹ Major Wakefield (ASI019082) [134]

order to support his claims to have been ill-treated by the British Army. In paragraph 4.150 above, I have indicated my reasons for concluding that Major Winfield’s general approach to the initial medical examinations of the detainees that day was less than satisfactory. I am satisfied that, in Hussein Al-Behadili’s case, this unsatisfactory approach did not give rise to any significant shortcomings in Major Winfield’s initial medical examination. However, Major Winfield appears to have observed but not treated some abrasions and a graze to Hussein Al-Behadili. Again, if Major Winfield had adopted a more satisfactory approach to this examination it might be expected, simply as a matter of common sense, that he would at least have cleaned these injuries. I am satisfied, however, that these abrasions were superficial and this graze was small. Accordingly, I do not consider that any significant discomfort or adverse consequences would have resulted from this apparent failure by Major Winfield.

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 4.202** In his Judicial Review statement, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) described the medical examination that he had undergone upon arrival at the DTDF on 15 May 2004. He said he had been seen by a male doctor who wrote down his weight, listened to his lungs with a stethoscope and measured his blood pressure. The doctor had also appeared to note down his injuries, although Atiyah Al-Baidhani did not see what he had written. Atiyah Al-Baidhani said that his main injuries at the time had been a swollen right eye, a damaged jaw which stopped him speaking properly, scratches all over his hands and legs and cut lips. Atiyah Al-Baidhani said that the doctor had not asked him any questions about his general health. He also claimed that he had been suffering from some breathing difficulties at the time and that he found it hard to sit down. He said that he was only wearing underwear when he was examined.⁴⁵⁰⁰
- 4.203** In his written Inquiry statement, Atiyah Al-Baidhani claimed that the only questions the medic had asked him had been about his name and date of birth. He said that this had been done through the interpreter. Although the DTDF Initial Medical form purports to record that he had no allergies and was not on any form of medication, Atiyah Al-Baidhani said that he had not been asked any questions about these matters during the examination. He said that he did not provide a urine sample.⁴⁵⁰¹ He said that he had told the interpreter about the injury to his jaw, which was excruciatingly painful, and that the medic had examined his jaw. He said he was given painkillers the following day, which helped to alleviate the pain. Atiyah Al-Baidhani said that, at the time of making his statement in March 2012, the pain from his jaw still kept him awake at night and that it drove him crazy. Atiyah Al-Baidhani also said that, during the medical examination, the doctor had not examined a wound that he had sustained to his head. However, Atiyah Al-Baidhani accepted that he had not mentioned that particular wound to the doctor at the time.⁴⁵⁰²
- 4.204** During his oral evidence to the Inquiry, Atiyah Al-Baidhani claimed that, at the time he was medically examined at the DTDF on 15 May 2004, his face was swollen. His hands were also swollen as the result of tight handcuffs. Atiyah Al-Baidhani claimed that he had many injuries at the time, but that he could not remember them all.⁴⁵⁰³ He also said that he could not remember whether he told the doctor that he had been bruised from the beatings he had

⁴⁵⁰⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006679) [32-33]

⁴⁵⁰¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000160) [11]

⁴⁵⁰² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000160-62) [12-15]

⁴⁵⁰³ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/101-102]

sustained at Camp Abu Naji,⁴⁵⁰⁴ nor could he recall whether he had told the doctor about the injury to his jaw.⁴⁵⁰⁵

4.205 The DTDF Initial Medical form for Atiyah Sayyid Abdulridha Al-Baidhani recorded that he had sustained the following injuries:⁴⁵⁰⁶

- a. Bruising and swelling to the right (or possibly the left) cheek;
- b. Superficial abrasions to the face;
- c. Superficial grazes to both elbows and the right shoulder.

4.206 Atiyah Al-Baidhani was assessed as “*fit for detention*”.⁴⁵⁰⁷

4.207 On the DTDF Initial Medical form, Major Winfield had written “*Bruising + swelling (L) cheek*”. However, on the body diagram the arrow pointed to the right cheek.⁴⁵⁰⁸ In his written Inquiry statement, Major Winfield stated that this meant there had been bruising to both cheeks,⁴⁵⁰⁹ but in his oral evidence to the Inquiry, he said that it probably meant that the bruising was to Atiyah Al-Baidhani’s right cheek.⁴⁵¹⁰

4.208 In his written Inquiry statement, Major Winfield accepted that Atiyah Al-Baidhani might well not have been given any treatment for his injuries, because no treatment had been recorded on the DTDF Initial Medical form. Major Winfield said that this was probably because no treatment had actually been required for the injuries that he had observed.⁴⁵¹¹ I accept that it is very likely that such was the case.

4.209 Major Winfield said that the injuries recorded on the DTDF Initial Medical form corresponded well with the injuries that that could be seen in the photograph of Atiyah Al-Baidhani that had been taken during processing at the DTDF on 15 May 2004.⁴⁵¹²

Conclusions with regard to Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

4.210 I am satisfied that the DTDF Initial Medical Form accurately records and describes the injuries that were present on Atiyah Al-Baidhani’s body when he was medically examined at the DTDF on 15 May 2004. I do not believe that he was suffering from the degree of pain that he claimed, nor was it as long lasting or in need of immediate medical treatment as he suggested. I am also satisfied that the various matters relating to Atiyah Al-Baidhani’s general health, that are recorded in the form, were the result of his answers to the questions that he was asked and/or the examination that was carried out by the medic and/or Major Winfield at the time. To the extent that Atiyah Al-Baidhani suggested that his injuries were more serious, more extensive, more long lasting and more painful (requiring immediate treatment) than as recorded by Major Winfield at the time, I have no doubt that he lied in order to support his claims to have been ill-treated by the British Army.

⁴⁵⁰⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/21]

⁴⁵⁰⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/31-32]

⁴⁵⁰⁶ (MOD044022); Major Winfield (ASI019082) [137]; [144/140-141]

⁴⁵⁰⁷ (MOD044021)

⁴⁵⁰⁸ (MOD044022)

⁴⁵⁰⁹ Major Winfield (ASI019082-83) [137]

⁴⁵¹⁰ Major Winfield [144/140-141]

⁴⁵¹¹ Major Winfield (ASI019083) [139]

⁴⁵¹² Major Winfield [144/142/4]

4.211 I have indicated my reasons for concluding that Major Winfield’s general approach to the initial medical examinations of the detainees that day was less than satisfactory. However, I am satisfied that, in Atiyah Al-Baidhani’s case, this unsatisfactory approach did not give rise to any significant shortcomings in Major Winfield’s initial examination. However, it may well be that the abrasions and grazes which Major Winfield observed might have been cleaned if he had taken a more satisfactory approach to this examination. Nevertheless, I am satisfied that no significant adverse consequences resulted from this for Atiyah Al-Baidhani.

Hussein Gubari Ali Al-Lami (detainee 780)

4.212 In his Judicial Review statement, Hussein Gubari Ali Al-Lami (detainee 780) said that, at the time of his initial medical examination at the DTDF on 15 May 2004, his worst injury was under his left ear, where he had been hit with a rifle. He claimed that it was still extremely sore and painful. He also said that he must have had blood on his face from the beatings he had received. He said that he could not feel his feet and legs, because they had been kicked so violently.⁴⁵¹³

4.213 In his second written Inquiry statement, Hussein Al-Lami said that he had been examined by a female doctor, who had only examined his ear and throat. He said that he had not been seen by a male doctor⁴⁵¹⁴ and that he was not been asked whether he had any injuries.⁴⁵¹⁵ He also alleged that he had not been asked about his previous medical problems or whether he needed medication for any allergies. He said that he could not remember any of the tests described on the DTDF Initial Medical having been carried out in his case, nor did anybody test his abdomen. Hussein Al-Lami claimed to have been bleeding and bruised all over his body. He said that one very obvious injury that had not been noted on the DTDF Initial Medical form was that his wrists had been swollen, tender and bruised from wearing handcuffs. He said that the toenail had been ripped off his big toe and that the injury was bleeding at the time. Hussein Al-Lami complained that the general attitude of the doctors at the time made it clear that they did not take his health concerns seriously.⁴⁵¹⁶ Hussein Al-Lami claimed that there was a wound behind his left ear. He said that it was approximately 1.5 centimetres long and quite deep and that it had been treated at Camp Abu Naji.⁴⁵¹⁷ Hussein Al-Lami went on to say that he had been given no treatment or antiseptic for his injuries.⁴⁵¹⁸

4.214 In his oral evidence to the Inquiry, Hussein Al-Lami said that that he was sure that he had been examined by a female doctor.⁴⁵¹⁹ He said that he could remember having seen her drawing on the Initial Medical form.⁴⁵²⁰ He said that he had removed his clothes, but had kept his shorts on.⁴⁵²¹ He claimed that he could not remember details of the examination.⁴⁵²² He also alleged that he had very painful signs of kicking all over his body, his legs, his back and his side.⁴⁵²³

⁴⁵¹³ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006644) [36]

⁴⁵¹⁴ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000399) [20]

⁴⁵¹⁵ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004818) [93]

⁴⁵¹⁶ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000399-00) [21]

⁴⁵¹⁷ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000400) [22]

⁴⁵¹⁸ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004818) [93]

⁴⁵¹⁹ Hussein Gubari Ali Al-Lami (detainee 780) [11/85/11]

⁴⁵²⁰ Hussein Gubari Ali Al-Lami (detainee 780) [12/64/17]

⁴⁵²¹ Hussein Gubari Ali Al-Lami (detainee 780) [12/69/10]

⁴⁵²² Hussein Gubari Ali Al-Lami (detainee 780) [11/85/21]

⁴⁵²³ Hussein Gubari Ali Al-Lami (detainee 780) [12/69/21]

4.215 The DTDF Initial Medical form for Hussein Al-Lami recorded the following injuries:⁴⁵²⁴

- a. Superficial abrasion to the left cheek
- b. Small abrasion to the left large toe.

4.216 Hussein Al-Lami was assessed as “*fit for detention*”.⁴⁵²⁵

4.217 However, it is clear that the DTDF Initial Medical form did not record a small shrapnel injury to the left side of Hussein Al-Lami’s face, just in front of his left ear. That particular injury had been recorded during his medical examination the previous day at Camp Abu Naji. Corporal Shaun Carroll recorded that he had removed a small piece of shrapnel from the left side of Hussein Al-Lami’s face, just in front of the ear. He had also recorded a graze to the left side of the face around the eye area.⁴⁵²⁶

4.218 In his written Inquiry statement, Major Winfield said that Hussein Al-Lami had been wrong to suggest that he had only examined Hussein Al-Lami’s ear and throat, because he had carried out the usual cardiovascular, respiratory and abdominal checks, as indicated by the DTDF Initial Medical form.⁴⁵²⁷ Major Winfield also suggested that, if Hussein Al-Lami’s toenail had been missing and it had looked like a recent injury, he would have recorded it differently on the DTDF Initial Medical form. He said that, in itself, a missing toenail is not necessarily a medical complaint.⁴⁵²⁸ Major Winfield confirmed that no medical treatment or follow-up treatment had been recorded on the Initial Medical form, so that it was likely that none had been provided at the time, probably because none was required.⁴⁵²⁹ Major Winfield accepted that the medical notes indicated that a medic had prescribed Co-codamol, a painkiller, to Hussein Al-Lami when he was in the JFIT compound.⁴⁵³⁰ I accept that Major Winfield’s evidence about the nature and extent of Hussein Al-Lami’s medical examination, the general nature of the injuries that were present on his body (with the two minor exceptions noted above) and the fact that he carried out the medical examination in question was both truthful and accurate.

4.219 In his oral evidence to the Inquiry, Major Winfield said he was satisfied that the injury to Hussein Al-Lami’s left cheek, that he had noted on the DTDF Initial Medical form, corresponded well with the injury that is apparent in the photograph of Hussein Al-Lami, that had been taken during his processing at the DTDF on 15 May 2004.⁴⁵³¹ I accept that this was so.

Conclusions with regard to Hussein Gubari Ali Al-Lami (detainee 780)

4.220 I am quite sure that, apart from the small shrapnel wound near Hussein Al-Lami’s left ear and the nearby graze, the injuries present on Hussein Al-Lami’s body when he was medically examined by Major Winfield at the DTDF on 15 May 2004, were accurately recorded and described on the DTDF Initial Medical form. To the extent that Hussein Al-Lami claimed to have suffered additional, more extensive and more serious injuries than those recorded in the DTDF Initial Medical form, together with the two minor additional injuries noted by Corporal Carroll the previous day, he deliberately lied in order to support his claims to have

⁴⁵²⁴ (MOD044075); Major Winfield (ASI019083-84) [142]

⁴⁵²⁵ (MOD044074)

⁴⁵²⁶ (MOD024314)

⁴⁵²⁷ Major Winfield (ASI019084) [143]

⁴⁵²⁸ Major Winfield (ASI019084) [144]

⁴⁵²⁹ Major Winfield (ASI019084) [145]

⁴⁵³⁰ Major Winfield (ASI019084) [146]

⁴⁵³¹ (MOD048748)

been ill-treated by the British Army. He also lied about the restricted nature of the medical examination and about having been examined by a female doctor for the same reason.

- 4.221** In paragraph 4.150 above, I have indicated my reasons for concluding that Major Winfield’s general approach to the initial medical examinations of the detainees that day was less than satisfactory. In the event, the result of this unsatisfactory approach was that, in the case of Hussein Al-Lami, Major Winfield failed to notice or take account of the small shrapnel wound by Hussein Al-Lami’s left ear and the nearby graze, both of which had been noted by Corporal Shaun Carroll the day before. However, it seems to me unlikely that Hussein Al-Lami was actually in need of any further immediate medical treatment at the time of his medical examination on 15 May 2004. In those circumstances, I am satisfied that Hussein Al-Lami did not suffer any significant adverse consequences as a result of these shortcomings on the part of Major Winfield.

2. Failure to take proper account of the medical histories of the detainees

- 4.222** In his written Inquiry statement, Major Winfield said that during the initial medical examinations that he carried out at the DTDf on 15 May 2004, he had not asked the detainees about how they had sustained their various injuries. He said that this had been because he wanted to keep their medical treatment separate from the circumstances of their arrest and detention.⁴⁵³²

- 4.223** Dr Payne-James was asked to comment on this assertion by Major Winfield. In his report, he said this:

*“it is appropriate to ask about the cause of a particular injury as part of routine history taking. The possible cause of the injury may influence what the possible diagnoses or range of complications or underlying issues may need to be considered.”*⁴⁵³³

- 4.224** Major Winfield also said that, when treating Iraqi detainees, the medical team had to rely much more on objective measures, such as clinical observations, rather than upon the often exaggerated and over-dramatic behaviour and claims of a detainee about his medical condition. He said this is because different cultures treat medical complaints differently; something he described as “*transcultural medicine*”.⁴⁵³⁴

- 4.225** Dr Payne-James was also asked to comment on this particular assertion. In his report, he said this:

*“Dr Winfield is correct to place substantial reliance on objective recordings (by which I am assuming he means clinical observations) but this would be in the context of an appropriate history. I am unclear as to what influence he is suggesting that ‘having regard to ‘transcultural medicine’ would have on his diagnosis and management plan.”*⁴⁵³⁵

- 4.226** Major Winfield also said that, at the time he conducted the Initial Medical Examinations on 15 May 2004, he had not seen any previous medical records relating to the detainees, nor had he seen any record of the medication that had been given to the detainees previously. He

⁴⁵³² Major Winfield (ASI019063) [56]; [141-142]; [144/35]

⁴⁵³³ Dr Payne-James (ASI025431) [1106]

⁴⁵³⁴ Major Winfield [144/106-107]

⁴⁵³⁵ Dr Payne-James (ASI025432) [1111]

admitted that he had not asked to be provided with such records and went on to say that he was not sure that it would have made much difference if he had seen the previous records, because he made his own assessment.⁴⁵³⁶

4.227 Dr Payne-James was asked to comment on that assertion. He said:

*“generally if it is known that other medical documentation exists then it is appropriate to review it. Whether or not it is available does not detract from the need to undertake a full history and examination.”*⁴⁵³⁷

Conclusion with regard to the failure to take proper account of the medical histories of the detainees on 15 May 2004

4.228 In paragraph 4.150 above, I have indicated my reasons for concluding that Major Winfield’s general approach to the initial medical examinations of the detainees on 15 May 2004 was unsatisfactory. In the light of the observations of Dr Payne-James, whose evidence I accept, it seems to me that one unfortunate consequence of this unsatisfactory approach on the part of Major Winfield was that he did not take proper account of the medical histories of the detainees on 15 May 2004. In particular it might have been more appropriate of him to investigate with each detainee the manner in which that detainee came by each injury noticed by Major Winfield. It seems to me that it would have been possible to do this and still maintain a separation between medical investigation and consideration of the circumstances in which the detainee came to be arrested and detained. In the event, I do not believe that any of the detainees suffered any significant adverse consequences as a result.

⁴⁵³⁶ Major Winfield [144/44]

⁴⁵³⁷ Dr Payne-James (ASI025431) [1107]

CHAPTER 3: DETENTION AT THE JOINT FORWARD INTERROGATION TEAM (JFIT) COMPOUND

4.229 On 15 May 2004, the nine detainees arrived at a compound within the DTDF operated by the Joint Forward Interrogation Team (“JFIT”). The location and layout of the compound is described in Chapter 1: Introduction to the DTDF.

4.230 The Incident Log, referred to at para 4.231 below, indicates that Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) remained in the JFIT compound for one night before he was moved to the Field Hospital on the morning of 16 May 2004.⁴⁵³⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), Ahmed Jabbar Hammood Al-Furaiji (detainee 777), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780) remained in the JFIT compound for six days, until 21 May 2004.⁴⁵³⁹ Hamzah Joudah Faraj Almalje (detainee 772), Kadhim Abbas Lafta Al-Behadili (detainee 775) and Hussein Fadhil Abass Al-Behadili (detainee 778) remained there for a further night, until 22 May 2004.⁴⁵⁴⁰

1. Arrival at the JFIT Compound and cell allocation

4.231 The JFIT guards maintained an Incident Log, which was kept on the guards’ desk inside the JFIT compound.⁴⁵⁴¹ Lance Corporal James Higgins, a guard in the JFIT compound, explained a “Radio Operator’s Log” was used for the sake of convenience as there was no other item of stationery specifically designed to record the movements and handling of detainees.⁴⁵⁴²

4.232 The incident log is described at paragraph 13 of the JFIT Operational Directive, dated 31 May 2004:

“A JFIT incident log is to be maintained by the Duty Officer. Details of all incidents and activity (both routine and non routine) are to be entered. This log will form an important record of activity within the JFIT. Information contained within this log may be used at a later date during any inquiry or criminal investigation. As such the log must be treated as a legal document and be filled out fully, diligently and immediately. It is not to be written up in slow time from notes taken separately. If necessary, timeliness and accuracy should take priority over appearance.”⁴⁵⁴³

4.233 The Incident Log was generally well maintained, although some gaps in the record are apparent. One of those gaps, which is unfortunate, relates to the arrival of the nine detainees. The log records that Hamzah Joudah Faraj Almalje (detainee 772), Mahdi Jasim Abdullah Al-Behadili (detainee 773) and Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) arrived at the JFIT compound at 16:02 hours on Saturday, 15 May 2004. Mahdi Jasim Abdullah Al-Behadili (detainee 773) and Ibrahim Al-Ismaeeli were placed into a shared cell, whilst Hamzah Almalje placed into a single occupancy cell. The log further records that Hussein Fadhil Abass Al-Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780) arrived at 17:06 hours. Hussein Al-Behadili was also placed into the shared cell, whilst Atiyah Al-Baidhani and Hussein Al-Lami were each placed into

⁴⁵³⁸ (MOD040077)

⁴⁵³⁹ (MOD040119)

⁴⁵⁴⁰ (MOD040122)

⁴⁵⁴¹ (MOD040061)

⁴⁵⁴² Lance Corporal Higgins (ASI014430) [52]

⁴⁵⁴³ (MOD046800)

single cells.⁴⁵⁴⁴ The log does not appear to record the arrival of the detainees; Kadhim Abbas Lafta Al-Behadili (detainee 775), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777). However, Ahmed Al-Furaiji does appear in the log at 17:36 hours, when he is shown as being escorted to the lavatory.⁴⁵⁴⁵

2. Accommodation in the JFIT compound

Cells

- 4.234** The evidence from the detainees, and in particular from Mahdi Al-Behadili⁴⁵⁴⁶ and Hussein Al-Behadili⁴⁵⁴⁷, indicates that a shared cell was used to accommodate five detainees together, namely Mahdi Al-Behadili, Ibrahim Al-Ismaeeli, Kadhim Al-Behadili, Ahmed Al-Furaiji and Hussein Al-Behadili. Kadhim Al-Behadili gave evidence that following an interrogation, he was placed into a different cell for one night with a detainee who is not connected to this Inquiry.⁴⁵⁴⁸ One of the guards, Fusilier Mark Galbraith, estimated the shared cell to be 24 feet long by 18 feet wide.⁴⁵⁴⁹ Kadhim Al-Behadili estimated the proportions to be rather more generous, at 11 meters long by 5 meters wide.⁴⁵⁵⁰
- 4.235** The single occupancy cells used to accommodate Hamzah Almalje, Abbas Al-Hameedawi, Atiyah Al-Baidhani and Hussein Al-Lami were significantly smaller. Hussein Al-Lami estimated that his cell was only 1.5 meters long by 1 meter wide.⁴⁵⁵¹ I am more confident in the JFIT guards' estimation of the size of the single cells, if only because the guards spent longer in the facility and they are broadly consistent with each other. For example, Fusilier Galbraith described the single cells as being 10 feet long by 8 feet wide.⁴⁵⁵² Corporal Ronnie Hughes confirmed that all single cells were the same size, which he estimated to be 10 feet long by 6 feet wide.⁴⁵⁵³ Lance Corporal Thomas Campbell estimated the single cells to be approximately the length of a single bed and the width of two single beds.⁴⁵⁵⁴
- 4.236** M003, the Officer Commanding ("OC") JFIT, described the cells as being constructed of brick with a plaster roof. Each cell had a metal door with bolt locks. Within the door was a small window with a slide hatch.⁴⁵⁵⁵ The single cells had a small Perspex window covered on the outside with mesh. There was air conditioning in the cell area, although M003 could not recall whether that was inside the cells or in the corridors. Inside the cells, detainees had a roll mat bed, a prayer mat, blankets, toiletries, and a copy of the Koran.⁴⁵⁵⁶ The plan attached to the JFIT Operation Directive indicates that the shared cells also had at least one window each.⁴⁵⁵⁷

⁴⁵⁴⁴ (MOD040072)

⁴⁵⁴⁵ (MOD040072)

⁴⁵⁴⁶ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001122) [80]

⁴⁵⁴⁷ Hussein Fadhil Abass Al-Behadili (detainee 778) (MOD006705) [42]

⁴⁵⁴⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000738) [80]

⁴⁵⁴⁹ Fusilier Galbraith (ASI015372) [16]

⁴⁵⁵⁰ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000737-38) [77]

⁴⁵⁵¹ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004819) [97]

⁴⁵⁵² Fusilier Galbraith (ASI015372) [15]

⁴⁵⁵³ Corporal Hughes (ASI014594-95) [30]

⁴⁵⁵⁴ Lance Corporal (ASI020515) [28]

⁴⁵⁵⁵ Photograph of JFIT cells: Figure 113 (MOD046584)

⁴⁵⁵⁶ M003 (ASI024605) [44]

⁴⁵⁵⁷ (MOD046808)

Figure 123: MOD046584



4.237 Although the cells in the JFIT compound were very basic, I am satisfied that they were adequate in the circumstances. They allowed some natural light to enter into the cells during daylight hours and they were used to accommodate the detainees for a limited period.

Food and Meals

4.238 The detainees were provided with meals three times a day at regular intervals in the JFIT compound. Sergeant Stuart McIndoe, an orderly officer, explained that the food delivered to the JFIT compound for the detainees complied with both their religious and cultural requirements.⁴⁵⁵⁸ Corporal Malcolm Neil, a guard, explained that the meals were served in polystyrene containers to the detainees in their cells.⁴⁵⁵⁹ No detainee has suggested to the Inquiry that the food was inappropriate.

4.239 M002, a JFIT interrogator, explained to the Inquiry that if a detainee was in an interrogation session when a meal arrived, the meal would be set aside in the detainee's cell. The meals for the interrogator and interpreter would be brought in by other members of the JFIT staff. The interrogation would normally (although not invariably) then be broken off so that both the JFIT staff and the detainee could eat.⁴⁵⁶⁰

4.240 Guards in the JFIT compound provided the detainees with bottled water on demand. Corporal Neil explained that detainees would knock on their cell door to attract the attention of the

⁴⁵⁵⁸ Sergeant McIndoe (ASI020498) [31]

⁴⁵⁵⁹ Corporal Neil (ASI024285) [30]

⁴⁵⁶⁰ M002 [156/92/23]

guards. If a detainee did not know the English word for “water” they would use hand gestures to indicate to the guards what they wanted.⁴⁵⁶¹

- 4.241** In his oral evidence to the Inquiry, M003 emphasised that the detainees were permitted as much water as they wanted:

“... there was a massive abundance of water. You have to remember, they – the internees – part of their culture, they wash with fresh water. So there were literally bottles and bottles of it stacked within the DTDF. They never had a shortage of water. There was always, always unopened bottles that they were given whenever they wanted to drink.”⁴⁵⁶²

- 4.242** No detainee has suggested to the Inquiry that they were not provided with sufficient water in their cells at the JFIT compound.

Washing and lavatory facilities

- 4.243** The detainees’ cells contained neither lavatories nor washing facilities. When a detainee needed to use the lavatory, it was necessary for a guard to escort the detainee from his cell to a nearby ablutions block.

- 4.244** In their evidence to the Inquiry four detainees, namely Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), Hussein Fadhil Abass Al-Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780), alleged that their access to lavatory facilities was restricted while they were held in the JFIT compound. I summarise below the nature of the limitation alleged by each detainee.

- 4.245** Abbas Al-Hameedawi alleged that he was only allowed out of his cell to use the lavatory after each meal⁴⁵⁶³ and not at all at night time unless specific authority was granted from a senior officer.⁴⁵⁶⁴

- 4.246** Hussein Al-Behadili alleged that he would be taken out of his shared cell to use the lavatory three times a day; morning, afternoon and evening. He said that at any other time, the guards would ignore the detainees if they asked to be taken to the lavatory.⁴⁵⁶⁵

- 4.247** Atiyah Al-Baidhani alleged that he was allowed out of his cell three times a day; morning, afternoon and evening, for five minutes each time. In that time he was either allowed to go to the lavatory or have a quick shower. He said he was not allowed to go to the lavatory outside of these times. He said he suffered pain as a result of not being permitted to use the lavatory when he needed it.

- 4.248** Hussein Al-Lami said that on the morning of the 17 May 2004 he asked to use the lavatory and shower. Five minutes later the guards escorted him to the ablutions block where they allowed him only three minutes to wash.

- 4.249** The Incident Log⁴⁵⁶⁶ records when detainees were escorted to the lavatory. It shows both the time they left their cell and the time they returned. It indicates that detainees Abbas Al-

⁴⁵⁶¹ Corporal Neil (ASI024285) [31]

⁴⁵⁶² M003 [158/190-191]

⁴⁵⁶³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000867) [70]

⁴⁵⁶⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004772) [49]

⁴⁵⁶⁵ Hussein Fadhil Abass Al-Behadili (detainee 778) (MOD006562-63) [43]; [19/55/23]

⁴⁵⁶⁶ (MOD040061)

Hameedawi , Hussein Al-Behadili, Atiyah Al-Baidhani and Hussein Al-Lami were escorted to the ablutions block at the following times:

Abbas Abd Ali Abdulridha Al-Hameedawi (Detainee 776):

15 May: 18:53-19:02 hours;
 16 May: 08:17-08:23, 12:29-12:50, 16:24-16:30, 19:16-19:23;
 17 May: 08:16-08:20, 12:16-12:17, 15:08-15:09, 19:43-19:48;
 18 May: 05:42-05:47, 08:10-08:11, 09:45-09:48, 12:21-12:31, 15:07-15:10, 19:16-19:20, 20:47-20:49;
 19 May: 04:40-04:43, 08:06-08:09, 09:03-09:43, 09:50-10:00, 12:49-12:51, 17:02-17:07, 19:32-19:36, 22:10-22:13;
 20 May: 01:13-01:17, 07:05-07:15, 08:25-08:29, 10:02-10:06, 12:13-12:17, 14:37-14:45, 17:31-17:35, 17:42-17:46;
 21 May: 07:45-07:50, 08:25-08:32, 10:06-10:11, 12:09-12:14, 17:44-17:49, 19:18-19:21.

Hussein Fadhil Abass Al-Behadili (Detainee 778):

15 May: 17:39-17:42;
 16 May: 20:09-20:11;
 17 May: 07:56-08:01, 15:31-15:36;
 18 May: 07:19-07:27, 10:22-10:23, 16:46-16:50, 20:02-20:02, 22:15-22:20;
 19 May: 05:55-05:59, 14:16-14:20, 16:54-16:58, 20:23-20:30;
 20 May: 07:59-08:06, 11:21-11:24, 13:41-13:44, 21:20-21:21;
 21 May: 13:53-14:10, 22:45-22:55;
 22 May: 06:40-06:46, 08:50-[no return time is recorded].

Atiyah Sayyid Abdulridha Al-Baidhani (Detainee 779):

15 May: 18:14-18:18;
 16 May: 06:22-[no return time recorded], 12:50-13:00, 16:53-16:57, 20:39-20:43;
 17 May: 06:55-07:07, 10:02-10:07, 18:53-19:02;
 18 May: 06:30-06:38, 09:50-09:56, 12:58-13:05, 18:58-19:06;
 19 May: 05:59-06:04, 09:17-09:18, 14:21-14:25, 17:12-17:19;
 20 May: 08:40-08:49, 15:27-15:30;
 21 May: 06:09-06:16, 12:32-12:33, 16:10-16:17, 17:50-17:54, 19:26-19:28.

Hussein Gubari Ali Al-Lami (Detainee 780):

15 May: 18:07-18:10, 19:04-19:06, 20:40-20:45;
16 May: 06:59-07:00, 08:51-08:57, 13:05-13:10, 16:41-16:50, 19:46-19:50;
17 May: 06:41-06:48, 09:52-09:59, 17:27-[no return time recorded], 19:37-19:42;
18 May: 05:32-05:40, 07:55-08:00, 12:14-12:20, 15:19-15:22, 17:42-17:48, 20:49-20:50;
19 May: 04:30-04:33, 08:00-08:05, 15:56-16:00, 17:47-17:52, 20:56-21:05;
20 May: 04:42-04:44, 07:48-07:52, 09:07-09:10, 11:12-11:15, 13:15-13:20, 15:32-15:37, 17:17-17:30, 18:22-18:25, 21:12-21:13;
21 May: 06:46-06:50, 08:00-08:02, 09:31-09:33, 12:04-12:06, 13:45-13:46, 16:58-17:01, 17:41-17:43.

4.250 Hamzah Joudah Faraj Almalje (detainee 772) also stated in his evidence that initially he had difficulty in getting the guards to take him to the lavatory. He said that when he called the guards they wanted him to state his detainee number, but he did not understand. As a result there was a delay. An interpreter subsequently explained to him that he had to say “seven seven two”. When he understood that, he was taken to the lavatory more promptly.⁴⁵⁶⁷

4.251 Fusilier Sevanaia Ratunaceva was on duty as a guard in the JFIT compound when the detainees arrived there. In his evidence to the Inquiry, Fusilier Ratunaceva denied that detainees would only be escorted to the lavatory at times that suited the guards. He said the detainees were allowed to use the lavatory whenever they wanted. The detainees would knock on their cell door to attract the guards’ attention. A guard would then escort the detainee to the lavatory. Fusilier Ratunaceva explained that detainees had to be escorted individually. Therefore, if several detainees wanted to use the lavatory at the same, they may have to wait for their turn.⁴⁵⁶⁸

4.252 Corporal Malcolm Neil told the Inquiry that some detainees were able to speak English well enough to make it clear to the guards what they wanted. Other detainees used gestures to indicate that they wanted to go to the lavatory, although Corporal Neil could not recall the specific gestures they used.⁴⁵⁶⁹

4.253 I am satisfied that the Incident Log accurately records the detainees’ access to the ablutions block. I find that there was no deliberate denial of access to the lavatory. All genuine requests were granted, although Hamzah Almalje may have encountered some initial difficulty in making himself understood. I do not believe that those detainees whose evidence is controverted by the Incident Log were deliberately lying in their evidence. The difference may be one of perception, and in Abbas Al-Hameedawi’s and Atiyah Al-Baidhani’s cases, an element of exaggeration.

Exercise

4.254 The JFIT compound contained an outdoor exercise yard located between the building housing the single cells and five-man cells and the building housing the 10-man cell and

⁴⁵⁶⁷ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000694) [55]; [20/20]

⁴⁵⁶⁸ Fusilier Ratunaceva [150/14/20]; [150/34]

⁴⁵⁶⁹ Corporal Neil (ASI024285) [31]

three interrogation rooms. The JFIT Operational Directive recognised at paragraph 16 that detainees in the JFIT compound were entitled to exercise:

*“In principle internees held within JFIT are to be treated no differently to those in the main DTDF population. They are entitled to all the rights accorded to other internees within the DTDF (including exercise) [...]”*⁴⁵⁷⁰

- 4.255** JFIT Operations SOP 18 confirmed that the detainees’ entitlement to exercise in the JFIT compound was limited insofar as the detainees were not entitled to exercise communally:

*“[...] Their restrictions during their [...] in JFIT disallow visits, cigarettes and communal exercise. [...]”*⁴⁵⁷¹

- 4.256** In his written evidence to the Inquiry, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) stated that he had no fresh air while he was held in the single cell at the JFIT compound.⁴⁵⁷² In his oral evidence, Abbas Al-Hameedawi repeated that none of the detainees were allowed to go outside except to use the lavatory.⁴⁵⁷³

- 4.257** The Incident Log⁴⁵⁷⁴ records that during their time in the JFIT compound, Hussein Fadhil Abass Al-Behadili (detainee 778) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) were never taken out of their cells specifically for exercise. Hamzah Joudah Faraj Almalje (detainee 772), who was unwell throughout his time in the JFIT compound, was taken out for exercise on only one occasion on 19 May 2004. Mahdi Jasim Abdullah Al-Behadili (detainee 773) was exercised only once on 20 May 2004 for a period of 4 minutes. Kadhim Abbas Lafta Al-Behadili (detainee 775) was exercised only once on 20 May 2004 for a period of 5 minutes. According to the log, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) was exercised four days in a row from 17 to 20 May 2004, usually for approximately 10 minutes with one longer period of 19 minutes. When Abbas Al-Hameedawi was questioned about the record in the log, he disputed its accuracy and stated he was never taken for exercise.⁴⁵⁷⁵ However, I have no doubt that the log entries accurately record both the number and duration of the four occasions when Abbas Al-Hameedawi was permitted to exercise. In denying that he had ever been allowed to exercise, Abbas Al-Hameedawi deliberately lied in order to lend substance to his allegations of ill-treatment by the British military. Ahmed Jabbar Hammood Al-Furaiji (detainee 777) was only exercised once on 20 May 2004 for a period of five minutes. Hussein Gubari Ali Al-Lami (detainee 780) was exercised on three occasions for short periods of time.

- 4.258** In his oral evidence to the Inquiry, Lance Corporal James Higgins said that if the detainees “chapped on the cell door” and they wanted access to the open area for exercise, then they would be permitted to exercise. He said there was no rota in place to ensure the detainees were exercised on a regular basis. If the detainees wanted exercise, they would point to outside. Lance Corporal Higgins said no such request was ever refused.⁴⁵⁷⁶

- 4.259** Fusilier Brien Strathern said in oral evidence that the detainees were entitled to access the exercise yard if they wanted to. However the onus was on the detainees to request access; exercise would not be offered as a matter of routine. Fusilier Strathern said the detainees

⁴⁵⁷⁰ (MOD046800)

⁴⁵⁷¹ (MOD046812)

⁴⁵⁷² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000867) [70]

⁴⁵⁷³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/33/5]

⁴⁵⁷⁴ (MOD040061)

⁴⁵⁷⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/33/11]

⁴⁵⁷⁶ Lance Corporal Higgins [159/83-84]

knew the exercise yard was there and they knew they could use the exercise yard if they wanted to.⁴⁵⁷⁷

4.260 Corporal Ronald Hughes said in his oral evidence that the detainees in JFIT were given exercise.⁴⁵⁷⁸ He could not recall whether the exercise was given on the detainees' demand, or whether the guards were required to give the detainees exercise.⁴⁵⁷⁹

4.261 Undoubtedly, it is very unsatisfactory that the detainees received little or no exercise during their time in the JFIT compound. However, I am satisfied that the limited amount of exercise they received was not the result of any form of deliberate ill-treatment. Rather, it was the result of inadequate facilities at the JFIT compound. The operation of the JFIT compound was focused on preventing communication between the detainees and ensuring detainees were readily available for interrogation. It may be that the situation was exacerbated by the realisation among those who operated the JFIT compound that the detainees would only remain there for a relatively short period before being moved to the main DTDF compound, where they would receive ample exercise.⁴⁵⁸⁰

Medical Care

Hamzah Joudah Faraj Almalje (detainee 772)

4.262 As I indicated earlier in my report, the initial medical examination of Hamzah Almalje on 15 May 2004 did not identify a large laceration to his head, which had been noted by Corporal Shaun Carroll the previous day at Camp Abu Naji.⁴⁵⁸¹ In his oral evidence, Major Winfield agreed that a patient with such an injury should be observed for possible concussion symptoms.⁴⁵⁸²

4.263 Hamzah Almalje's medical records indicate that on 16 May 2004, he complained of stomach pain, however he was lying back with his feet up smiling. The detainee reported that he had the pain for three days prior to his arrest. He said he had not eaten since being detained and would not tell the interpreter about his symptoms. He was advised about eating and drinking and was to be reviewed in one day if not better.⁴⁵⁸³

4.264 Later that same day, Hamzah Almalje complained of vomiting and stomach pain. The notes records that the JFIT interpreter had seen him vomit blood. On examination he did not look particularly unwell. His temperature was 36.9, blood pressure 134/74, pulse 74 and oxygen saturation 100 percent. There was a very small amount of blood mixed with saliva on the walkway. Various puddles of bile were seen. The patient was referred to the Regimental Medical Officer, Major David Winfield.⁴⁵⁸⁴

⁴⁵⁷⁷ Fusilier Strathern [158/111/11]; [158/141/12]

⁴⁵⁷⁸ Corporal Hughes [140/10/1]; [140/33/11]

⁴⁵⁷⁹ Corporal Hughes [140/55/3]

⁴⁵⁸⁰ In its letter to the Inquiry dated 20 November 2014, the Ministry of Defence made it clear that the latest version of Joint Doctrine Publication 1-10 *Captured Persons (CPERS)* was published on October 2011. This Doctrine would prevent similar incidents happening now. The Ministry of Defence went on to point out that the assurance regime has also been greatly enhanced. The detention facilities in theatre are now run by a professional cadre of personnel (principally drawn from the Military Provost Staff, and reinforced by the Royal Military Police). These have been scrutinised both by internal inspections by the Provost Marshal (every six months) and the Army Inspector (in July 2010 and October 2012) and by external inspections by the International Committee of the Red Cross. I have no reason to doubt the accuracy and reliability of that assertion.

⁴⁵⁸¹ (MOD043360); Major Winfield (ASI019073) [97]

⁴⁵⁸² Major Winfield [144/98/5]

⁴⁵⁸³ (MOD043360); Major Winfield [144/98-99]

⁴⁵⁸⁴ (MOD043360); Major Winfield [144/99]

- 4.265** On 18 May 2004, the medical records indicate that Hamzah Almalje complained again of vomiting and stomach pains. The medics were called because the detainee was being sick in his cell. The patient had been vomiting all day and had not eaten. Major Winfield advised the detainee should be given Stemetil injections, an anti-nausea medication.⁴⁵⁸⁵
- 4.266** The medical notes record that later on 18 May 2004, Hamzah Almalje complained again of stomach pain and vomiting. He asked to see the medic. The detainee had vomited and urinated over himself in the cell. He had not been to the lavatory for at least 24 hours. He was refusing to eat as it made him ill. He was taken to the Medical Centre to see Major Winfield. The notes indicate the detainee looked ill and reported pain in the abdomen in the umbilical area. Measurements were taken. An 18 gauge cannula was inserted into his left antecubital fossa. Hartmann's solution was up and running through. Major Winfield instructed reassurance, 15 minute observations, to keep the detainee for 30 minutes and then return him to the cell with advice on eating and drinking.⁴⁵⁸⁶
- 4.267** A retrospective entry in the medical notes for 18 May 2004 indicates there was a conflicting story insofar as the guard said Hamzah Almalje had vomited once and was not eating and the detainee's bowels had not opened since yesterday. Whereas the detainee reported that he was vomiting profusely and had not eaten for six days because it made him feel ill. He denied any diarrhoea. He was normally fit and well, tolerating water, no previous medical problems. On examination he was slightly dehydrated. His blood pressure, pulse, oxygen saturation and blood sugar were measured. Major Winfield listened to the detainee's chest and stomach. The detainee's abdomen was soft, no obvious tenderness, no masses, bowel sounds were present. The treatment plan was intravenous fluids and monitor progress. The detainee felt improved and was discharged back to JFIT.⁴⁵⁸⁷
- 4.268** The medical records for 21 May 2004, indicate Hamzah Almalje was complaining of a sore head, stomach and back. Medics were called to JFIT. Initially the detainee said he was passing blood in his stools, and then he changed his mind and said there was no per rectum bleeding. He had pain in his stomach, still not eating, not drinking much water. He was advised that he could not receive medication on an empty stomach. He was also advised on fluid intake.⁴⁵⁸⁸
- 4.269** In his first statement to the Inquiry, Hamzah Almalje said he had the impression that at first his complaints were not considered to be real and only after a period of time were they treated seriously. He denied that he was smiling when visited, unless it was because he was pleased to see a medical professional, or that he refused to tell the interpreter his symptoms.⁴⁵⁸⁹
- 4.270** In his oral evidence, Major Winfield said a young, otherwise healthy young man with no apparent significant past medical history who suffered from a week or so of intermittent vomiting and headache would be lucky to receive on the National Health Service ("NHS") the same level of treatment that Hamzah Almalje received at the DTF.⁴⁵⁹⁰
- 4.271** Dr Jason Payne-James, a forensic physician, was asked to comment on the assertion that Hamzah Almalje would have been fortunate to receive the same level of treatment on the NHS. He said:

⁴⁵⁸⁵ (MOD043361); Major Winfield [144/99-100]

⁴⁵⁸⁶ (MOD043361); Major Winfield [144/100-101]

⁴⁵⁸⁷ (MOD043362)

⁴⁵⁸⁸ (MOD043362)

⁴⁵⁸⁹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000697)

⁴⁵⁹⁰ Major Winfield [144/166/3]

*"I believe that an undiagnosed 8 day episode of intermittent headache and vomiting would generally precipitate referral to hospital for assessment and possible admission, and additional tests in order to make a diagnosis, even in the presence of normal blood pressure, pulse, temperature and oxygen saturation. I would be very surprised if anyone administered intravenous fluids to such a patient in a primary care setting."*⁴⁵⁹¹

4.272 Counsel for the Iraqi Core Participants in their Closing Submissions (see for example paragraphs 2482-2614) made a sustained and detailed attack on Major Winfield. I am limited by my Terms of Reference which is to "investigate and report on the allegations.....of ill-treatment" at the DTDf. Although I have indicated in Chapter 2 of Part 4 of this Report,⁴⁵⁹² that I found Major Winfield's approach to the medical examinations that he carried out during Processing to have been less than satisfactory, I accept, as argued by Counsel for the Treasury Solicitor, (at paragraph 850 of their Written Closing Submissions) that it forms no part of my role in this Inquiry to decide whether a medical professional provided treatment that fell below the standard of a responsible body of similarly qualified professionals.⁴⁵⁹³ Accordingly, I make no findings in response to the submissions made by the Iraqi Core Participants regarding whether Major Winfield's care fell below an appropriate standard.

Detainee Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

4.273 Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) spent one night in the JFIT compound before he was transferred to the Field Hospital.

4.274 Ibrahim Al-Ismaeeli said his leg began to turn blue whilst he was in the JFIT cell. He said he may have been offered a small cup of medicine but he refused to drink it. He said he could not speak because he was in so much pain and he remained in his cell until Sunday or Monday when some people from the Red Cross came. He said he was then taken into hospital.⁴⁵⁹⁴ Kadhim Abbas Lafta Al-Behadili (detainee 775) said that Ibrahim Al-Ismaeeli was moaning and screaming in pain and his leg was bleeding. He said soldiers came into the cell to give the detainees a meal. They saw that Ibrahim Al-Ismaeeli was in pain but they did nothing.⁴⁵⁹⁵

4.275 In his Judicial Review statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said that he asked Ibrahim Al-Ismaeeli what had happened to him. Ibrahim Al-Ismaeeli told him he had been shot by a British soldier and he had been refused medical treatment so far. Ahmed Al-Furaiji said he asked for a doctor, although he could not speak English. The guard refused, shouting that they would have to wait. Later that day another soldier came to the cell and said they would bring the doctor the next morning.⁴⁵⁹⁶

4.276 Lance Corporal James Higgins was on guard duty in the JFIT compound on the night of 15 May 2004, beginning at 20:25 hours.⁴⁵⁹⁷ He said he did not recall being told about a

⁴⁵⁹¹ Dr Payne-James (ASI025432) [1110]

⁴⁵⁹² See paragraph 4.150

⁴⁵⁹³ Bolam v. Friern Hospital Management Committee [1957] 1 WLR 582: The House of Lords formulated the appropriate test in the following words "a medical professional is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art ... Putting it the other way round, a man is not negligent if he is acting in accordance with such a practice, merely because there is a body of opinion who would take a contrary view."

⁴⁵⁹⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001074) [65]

⁴⁵⁹⁵ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000738) [78]

⁴⁵⁹⁶ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006536-37) [28-29]

⁴⁵⁹⁷ (MOD040074)

detainee with possible gunshot wounds to his leg.⁴⁵⁹⁸ Neither did he recall there being lots of calls for attention to the multi-occupancy cell, nor did he ignore such calls.⁴⁵⁹⁹

4.277 Fusilier Brien Strathern was also on guard duty in the JFIT compound on the night of 15 May 2004.⁴⁶⁰⁰ He told the Inquiry that he did not recall seeing a detainee with abrasions, gunshot wounds, or shrapnel wounds to his right leg and foot. Neither did he recall the detainees in the multiple occupancy cell requesting a medic, nor did he recall them making a lot of noise to try and get his attention that night. He denied that he had ignored detainees who were trying to request a medic.⁴⁶⁰¹

4.278 Fusilier Raymond Hutchinson came on guard duty at JFIT on the morning of 16 May 2004.⁴⁶⁰² Fusilier Hutchinson told the Inquiry that he did not recall seeing a detainee with a gunshot or shrapnel wound to his leg.⁴⁶⁰³

4.279 As set out below, the Incident Log and medical records indicate that Ibrahim Gattan Hasan Al-Ismaeeli left the JFIT compound at 09:55 hours on 16 May 2004 and was admitted into the Field Hospital at 10:50 hours. The Incident Log records that the International Committee of the Red Cross visited the JFIT compound at 16:28 hours on 17 May 2004, eighteen hours after Ibrahim Al-Ismaeeli was transferred to the Field Hospital. I therefore have no doubt that Ibrahim Al-Ismaeeli deliberately lied in alleging that he had stayed in his cell until some people from the Red Cross had come. He did so in order to lend substance to his claim to have been ill-treated by the British Military.

4.280 The Incident Log sets out the following chronology in respect of Ibrahim Al-Ismaeeli:

- a. At 16:02 hours on 15 May 2004, Ibrahim Al-Ismaeeli arrived in the JFIT compound.⁴⁶⁰⁴
- b. At 17:31 hours, the detainees were given a meal.⁴⁶⁰⁵
- c. At 17:49 hours, Ibrahim Al-Ismaeeli was taken to the lavatory.⁴⁶⁰⁶
- d. At 20:02 hours, Major Richmond toured the JFIT compound with a group of Dutch visitors. In his evidence, Major Richmond said he would almost certainly have looked in on the detainee cells during his tour. If he had seen Ibrahim Al-Ismaeeli was in pain, he would have ensured he was attended to.⁴⁶⁰⁷
- e. At 07:25 hours on 16 May 2004, the detainees were given a meal.⁴⁶⁰⁸
- f. At 08:18 hours, all detainees were given water.⁴⁶⁰⁹
- g. Between 09:04 and 09:20 hours, photographs were taken of the detainees' injuries.⁴⁶¹⁰
- h. At 09:55 hours, Ibrahim Al-Ismaeeli was sent for an x-ray.⁴⁶¹¹

⁴⁵⁹⁸ Lance Corporal Higgins [159/126/20]

⁴⁵⁹⁹ Lance Corporal Higgins [159/127/1-25]

⁴⁶⁰⁰ (MOD040074)

⁴⁶⁰¹ Fusilier Strathern [158/97-99]

⁴⁶⁰² (MOD040076); Fusilier Hutchinson [159/43-44]

⁴⁶⁰³ Fusilier Hutchinson [159/48/2]

⁴⁶⁰⁴ (MOD040072)

⁴⁶⁰⁵ (MOD040072)

⁴⁶⁰⁶ (MOD040073)

⁴⁶⁰⁷ Major Richmond [155/150-151]

⁴⁶⁰⁸ (MOD040076)

⁴⁶⁰⁹ (MOD040076)

⁴⁶¹⁰ (MOD040077)

⁴⁶¹¹ (MOD040077)

- i. Regular checks were made on the detainees throughout the period set out above.⁴⁶¹²
- 4.281** Sergeant Raymond Mepsted gave evidence that when he came on duty on the morning of 16 May 2004 and delivered a meal to the detainees, he noticed the injury to Ibrahim Al-Ismaeeli's foot. The injury was no longer bleeding, but it was swollen. Sergeant Mepsted took photographs of the injury. He recalled that he later saw those photographs on the detainee's AP3 Ryan electronic record, however the Ministry of Defence have informed the Inquiry that they are currently unable to locate those photographs. Sergeant Mepsted informed M010 about the injury and arranged for Ibrahim Al-Ismaeeli to be admitted to the Field Hospital.⁴⁶¹³
- 4.282** The Field Hospital Casualty Card indicates that Ibrahim Al-Ismaeeli arrived at the Field Hospital at 10:50 hours on 16 May 2004.⁴⁶¹⁴ He was seen by Dr Wright at 11:00 hours.⁴⁶¹⁵ At 11:40 hours, Ibrahim Al-Ismaeeli was referred for a surgical opinion.⁴⁶¹⁶ He was examined by Captain Eardley who recommended that his knee should be x-rayed.⁴⁶¹⁷
- 4.283** Wing Commander Gora Pathak, a consultant orthopaedic surgeon, examined Ibrahim Al-Ismaeeli at the Field Hospital some time after 13:40 hours, by which time the wound had been cleaned and Ibrahim Al-Ismaeeli had been started on intravenous antibiotics. Wing Commander Pathak diagnosed shrapnel wounds to Ibrahim Al-Ismaeeli's right foot and right knee, and an undisplaced fracture of the right foot. He classified Ibrahim Al-Ismaeeli as a "walking wounded" P3 (Priority 3) casualty. That meant Ibrahim Al-Ismaeeli could wait 24 hours or more before receiving surgical treatment.⁴⁶¹⁸
- 4.284** As I have set out earlier (in Chapter 2 of Part 4), the medical examination Major David Winfield conducted during initial processing did not indicate that Ibrahim Al-Ismaeeli required urgent medical attention.⁴⁶¹⁹ The significant nature of Ibrahim Al-Ismaeeli's injury was first noticed early on 16 May 2004 in the JFIT compound and appropriate action was then taken reasonably promptly, as set out above. When Ibrahim Al-Ismaeeli arrived at the Field Hospital, he received prompt and efficient treatment.

Photographs of Detainees' Injuries

- 4.285** The Incident Log contains the following entry at 09:04 hours on 16 May 2004: "MPS arrive to take photos of injuries of Internees 772, 773, 774, 775, 776, 777, 778, 779, 780". At 09:20 hours, the log records that the "MPS depart".⁴⁶²⁰
- 4.286** This record is consistent with an email that Major David Richmond sent to Lieutenant Colonel David Wakefield and others the previous afternoon, on 15 May 2004 at 16:23 hours. In the email, Major Richmond wrote:

"1. We are currently in-processing 9 new arrivals following the fire fight at Al Amarah yesterday. They have the appearance of men who have had a serious fight, all appear shocked (and, no doubt, wishing they hadn't fired the first shot!) and some have

⁴⁶¹² (MOD040072-77)

⁴⁶¹³ Sergeant Mepsted (ASI011832-34) [93-97]

⁴⁶¹⁴ (MOD032932); Wing Commander Gora Pathak [166/162/22]

⁴⁶¹⁵ (MOD032933)

⁴⁶¹⁶ (MOD032934)

⁴⁶¹⁷ (MOD032856)

⁴⁶¹⁸ (MOD032857); Wing Commander Gora Pathak [166/206/9]

⁴⁶¹⁹ (MOD043507); Major Winfield (ASI019077) [111]

⁴⁶²⁰ (MOD040077)

miscellaneous wounds. I have asked the RMO and MPS WO to ensure that all their wounds, bruises and marks are meticulously documented and that front and rear view photos are taken of each of them to ensure that we have a clear record of their condition on arrival.

2. I hasten to add that none of the injuries appear to be inconsistent with the circumstances surrounding their arrest. My concern is that the bruises will still be visible when these men later move into the main compound, where there is potential for rumour and false/malicious allegation to abound, especially with some of our regular DTDF agitators continuing to look for opportunities to exploit the current international outcry about abuses of internees.”⁴⁶²¹

4.287 WO2 David Parrott recalled having a conversation with Major David Richmond about taking photographs to record the detainees’ injuries upon arrival at the DTDF.⁴⁶²² WO2 Parrott said the reference in the Incident Log to “MPS” was likely to refer to his unit, the Military Provost Staff.⁴⁶²³ WO2 Parrott said the camera in the processing area would not have been used because it was attached to a computer.⁴⁶²⁴ He recalled that they sourced another camera from their stores.⁴⁶²⁵ When he was asked about the email from Major Richmond and the record in the Incident Log, WO2 Parrott said he had no doubt photographs were taken of the detainees’ injuries.⁴⁶²⁶

4.288 I am satisfied that on the morning of 16 May 2004, photographs were taken in the JFIT compound to record the detainees’ injuries. The photographs were taken as a precaution in case the British Forces were required to refute an allegation that the detainees sustained those injuries whilst interned at the DTDF. The Inquiry has been unable to locate those photographs.

Allegations of Sleep Deprivation

4.289 In their evidence six detainees said they were deliberately deprived of sleep while they were held in the JFIT compound. The sleep deprivation was allegedly orchestrated by two means, as detailed below: First, Mahdi Jasim Abdullah Al-Behadili (detainee 773), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), Ahmed Jabbar Hammood Al-Furaiji (detainee 777), Hussein Fadhil Abass Al-Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780) said they were kept awake by the guards banging on their cell doors throughout the night; Second, detainees Abbas Al-Hameedawi and Atiyah Al-Baidhani further complained that the guards played loud music at night time.

4.290 Mahdi Al-Behadili said the guards would deliberately keep the detainees awake by making a lot of noise and by taking it in turns to kick the cell doors with their heavy boots. The soldiers would look through the hatch in the cell door and if they thought the detainees were sleeping they would try to wake the detainees by shouting and banging on the cell doors. This happened every hour or every half an hour throughout the night for about one week.⁴⁶²⁷

⁴⁶²¹ (MOD045020)

⁴⁶²² WO2 Parrott [141/82/25]

⁴⁶²³ WO2 Parrott [141/87/22]

⁴⁶²⁴ WO2 Parrott [141/83/20]

⁴⁶²⁵ WO2 Parrott [141/85/1]

⁴⁶²⁶ WO2 Parrott [141/88/9]

⁴⁶²⁷ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006496) [31]; (PIL000792) [58]; (ASI001123) [84]; [8/28/2]

- 4.291** Abbas Al-Hameedawi said some of the guards would annoy the detainees by thumping on the cells doors and shouting at night. It would happen once a night. Abbas Al-Hameedawi thought it was done deliberately to prevent the detainees from sleeping.⁴⁶²⁸ He also said the guards would play loud music at night, which he thought was part of the psychological torture he said the detainees were subjected to.⁴⁶²⁹
- 4.292** Ahmed Al-Furaiji said the guards would look to see when the detainees were sleeping and then they would bang on the cell doors to wake up the detainees. He estimated that he did not sleep for more than one hour at a time while he was held in the JFIT compound.⁴⁶³⁰
- 4.293** Hussein Al-Behadili said that throughout the night the guards would bash on the cell doors and ask the detainees to shout out their prisoner numbers. He said the guards would also enter the cells with the excuse of checking the numbers of the detainees. The detainees did not understand what the soldiers were saying. The soldiers would shout and get angry. Hussein Al-Behadili said he was exhausted but he was not allowed to sleep. Sometimes he became hysterical.⁴⁶³¹
- 4.294** Atiyah Al-Baidhani said the guards would shout and bang on the cell doors constantly.⁴⁶³² He also said the guards played very loud disco music during the night. He said the music was also played during the day, but at night it would really be turned up.⁴⁶³³
- 4.295** Hussein Al-Lami said that the guards continually deprived him of sleep while he was held in the JFIT compound. Every time the detainees tried to sleep, a guard would bang on their cell doors and tell them to stand up and shout out their prisoner numbers.⁴⁶³⁴
- 4.296** Kadhim Al-Behadili gave evidence that was, on its face, inconsistent with the allegations set out above. Kadhim Al-Behadili was in a shared cell with Mahdi Al-Behadili, Ibrahim Al-Ismaeeli (for one night), Ahmed Al-Furaiji and Hussein Al-Behadili. He said that after the guards served the detainees a meal on 15 May 2004, the detainees fell asleep. He did not remember any attempt by the guards to prevent the detainees sleeping, aside from the fact that they would knock on the cell doors when they served meals to the detainees.⁴⁶³⁵ He later said the detainees spent a lot of time sleeping. He was asked whether the detainees spoke to each other in the JFIT cells. He said, *"I was sleeping. We were sleeping all the time. How would I be talking? We spent all the time sleeping."*⁴⁶³⁶
- 4.297** Hamzah Almalje also gave an account in his written Inquiry statement which was inconsistent with the allegations set out above. He said the JFIT compound seemed to be a quiet place and he heard little noise.⁴⁶³⁷

⁴⁶²⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000867) [70]; (PIL000451) [18]

⁴⁶²⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/85-86]; [15/34-35]

⁴⁶³⁰ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006538) [35]; (PIL000324) [95]

⁴⁶³¹ Hussein Fadhil Abass Al-Behadili (detainee 778) (MOD006563) [43]; (PIL000371) [43] [60]; [19/55/21]

⁴⁶³² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000956-57) [60]; (PIL000171) [50] & [53]

⁴⁶³³ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006682) [44]; (ASI000956) [60]

⁴⁶³⁴ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004820) [102]; (ASI004824) [118]; [12/28/11]

⁴⁶³⁵ Kadhim Abbas Lafta Al-Behadili (detainee 775) [13/31-32]

⁴⁶³⁶ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [13/53/13]

⁴⁶³⁷ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000693) [53]

Detainee checks at night time

- 4.298** The Incident Log indicates that checks were made on detainees at frequent intervals, sometimes every 15 or 30 minutes, throughout the night.⁴⁶³⁸ The checks were recorded with the words “block in order”. I am satisfied that the record in the Incident Log accurately reflects the frequency of the checks.
- 4.299** As one would expect given the time that has passed since these incidents took place, there was some variation in the guards’ recollections as to the detail of the night time checks. However, they were consistent in their recollections that there was no policy to deliberately disturb the detainees’ sleep. In his evidence to the Inquiry, Fusilier Francis Thom said the detainees were permitted to sleep whenever they wanted, except when they were either needed for interrogation or when meals were served.⁴⁶³⁹
- 4.300** Fusilier Sevanaia Ratunaceva recalled that during the night, the guards would patrol the corridor and open the hatches to check on the detainees. Fusilier Ratunaceva’s recollection was that guards would switch on the cell light briefly so they could see the detainee. He said there was no policy to deliberately disturb the detainees’ sleep.⁴⁶⁴⁰
- 4.301** Lance Corporal Thomas Campbell recalled that when he conducted night time checks, he would look through the cell door hatches to check that each detainee was present in his cell and that he was breathing. Lance Corporal Campbell recalled that it was light enough to observe the detainee through the hatch. If it was not obvious that a particular detainee was breathing by the rise and fall of his chest, he would enter the cell to check more closely. Lance Corporal Campbell said that the sound of opening the cell door would usually wake up the detainees and he would leave the cell once satisfied that the detainee was breathing. He said he did not wake the detainees deliberately.⁴⁶⁴¹
- 4.302** Fusilier Joseph Grimley said that he would enter the detainees’ cells with an electric torch at night time. During the day, he would ask the detainees to stand and recite their prison number when conducting checks, but he did not do that at night time.⁴⁶⁴²
- 4.303** Fusilier Brien Strathern’s recollection of the night time checks was unclear. He said he would occasionally enter the detainees’ cells at night, but not every time he conducted a check. He said he may have kicked the door before he entered the cell.⁴⁶⁴³
- 4.304** Corporal Malcolm Neil, explained that the detainees in JFIT could sleep whenever they wanted to. He said it was possible that the regular 15 minute checks may have disturbed their sleep, as the door and peep-hole cover were made of metal. However, the checks were carried out as quietly as possible, and Corporal Neil could not recall the detainees being woken up when he made a regular check.⁴⁶⁴⁴
- 4.305** I am satisfied that there was no policy to knock on the cell doors with the intention of keeping prisoners awake. I cannot rule out the possibility that, occasionally, a soldier may have knocked on or kicked at the cell door at night in order to attract a prisoner’s attention and that the prisoner in question was woken and/or disturbed as a result. If that happened, I am satisfied

⁴⁶³⁸ (MOD040061)⁴⁶³⁹ Fusilier Thom [151/19/3]⁴⁶⁴⁰ Fusilier Ratunaceva (ASI020902) [37]⁴⁶⁴¹ Lance Corporal Thomas (ASI020520) [49-50]⁴⁶⁴² Fusilier Grimley (ASI015239) [52-53]⁴⁶⁴³ Fusilier Strathern [158/102-103]⁴⁶⁴⁴ Corporal Neil (ASI024286) [35]

that it was part of the process of checking the welfare of the detainees and the security of the compound. However, despite the perception of some of the detainees to the contrary effect, I am satisfied that there was no deliberate attempt to deprive any of them of sleep.

Music

- 4.306** The Inquiry heard evidence that some guards would listen to a radio whilst on duty. Others would watch DVDs.
- 4.307** One of the JFIT interpreters, M030, recalled that some guards would listen to music. She recalled that a detainee complained to her about being disturbed by the music. She said that when she acted as duty officer, she would check on the detainees at night time. On several occasions, she had to tell the guards to turn their music down. She would have reported this up the chain of command.⁴⁶⁴⁵
- 4.308** M018 was Second-in-Command at the JFIT while the detainees were held there. He recalled hearing about a complaint from detainees about the guards playing music or chatting loudly at night.⁴⁶⁴⁶ M003, the Officer Commanding, also recalled the complaint about guards playing music too loudly.⁴⁶⁴⁷
- 4.309** One of the JFIT guards, Fusilier Mark Galbraith, said they were not permitted to take personal possessions into the JFIT. The only exception was that they were permitted a radio or DVD player on night duty. Fusilier Galbraith did not have a radio or DVD player himself.⁴⁶⁴⁸
- 4.310** Lance Corporal James Higgins said he had a DVD player that he would occasionally use while on night duty, but it would not have been very loud.⁴⁶⁴⁹
- 4.311** Other than detainees Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779), no other detainee has mentioned hearing music at night time whilst they were detained in the JFIT compound.
- 4.312** It is possible that detainees Abbas Al-Hameedawi and Atiyah Al-Baidhani were disturbed by music from the guards' radio at night time. The evidence indicates that some guards may have played music to entertain themselves whilst working through the night. However, I am satisfied that the guards did not play the music to deliberately disturb the detainees sleep. If detainees Abbas Al-Hameedawi and Atiyah Al-Baidhani were disturbed as a result of the music, it was because the guards had acted thoughtlessly and inconsiderately. However, it was entirely unintentional.

3. Interrogations

- 4.313** As I explain below, the British Armed Forces makes a distinction between an "interrogation" and a "debrief". However, for convenience in this section of my Report, I use the term "interview" from time to time to refer collectively to the formal questioning that was undertaken in respect of these detainees by the JFIT irrespective of whether the questioning was conducted as an interrogation or as a debrief.

⁴⁶⁴⁵ M030 (ASI023672) [67]; [167/75/5]

⁴⁶⁴⁶ M018 [168/52/2]

⁴⁶⁴⁷ M003 (ASI024606) [49]

⁴⁶⁴⁸ Fusilier Galbraith (ASI015371) [12]

⁴⁶⁴⁹ Lance Corporal Higgins (ASI014424) [27]; [148/34/22]

- 4.314** M002, a qualified interrogator, explained that the purpose of a JFIT interrogation is to help build an accurate intelligence picture:

“The specific aim of an interrogation was to determine whether it was likely that a detainee represented a threat, or had knowledge of a threat to coalition forces or indeed had just committed a crime which may affect Coalition Forces.”⁴⁶⁵⁰

- 4.315** Indeed, that explanation echoes the purpose set out in the JFIT Standard Operating Procedures issued on 31 May 2004:

Interrogator SOP 1:

“1. Introduction. The Operational Mission of the Interrogator within the JFIT is to facilitate the production of intelligence for the GOC⁴⁶⁵¹ within the AOR⁴⁶⁵². The Interrogator interfaces with an unwilling subject, extracting information and responding to RFIs⁴⁶⁵³, which are processed into intelligence, fundamentally contributing to the decision making process of the GOC. The extraction of information by the Interrogator will directly enhance the effectiveness of the J2 effort, assisting with the dissemination of intelligence received by all Units within the AOR. The information which the Interrogator extracts will contribute to the production of further Ops within the AOR and supports the Intelligence Cycle.”

- 4.316** M006, a qualified debriefer, explained his understanding of a “debrief”:

“Debriefing is the interviewing of willing and cooperative detainees in an attempt to corroborate any information already obtained through tactical questioning and to gather as much further information as possible about them and the circumstances of their capture. By ‘willing and cooperative’ I do not necessarily mean detainees who were innocent of all wrongdoing and who gave truthful accounts, but detainees who were willing to talk to us.”⁴⁶⁵⁴

- 4.317** Each of the nine detainees except Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was interviewed in the JFIT compound. I set out at below a chronology of the interviews. Ibrahim Al-Ismaeeli was not interviewed by the JFIT as he was transferred to the Field Hospital before the interviews began on 16 May 2004.

16 May 2004:

Detainee	Time	Interviewer	Interpreter
772	10:00-10:20 ⁴⁶⁵⁵	M005	M030
779	10:35-11:50 ⁴⁶⁵⁶	M005	M030
776	11:30-12:30 ⁴⁶⁵⁷	M002	M029
772	15:15-16:35 ⁴⁶⁵⁸	M005	M030

⁴⁶⁵⁰ M005 (ASI023373) [15]

⁴⁶⁵¹ General Officer Commanding

⁴⁶⁵² Area of Responsibility

⁴⁶⁵³ Requests for Information

⁴⁶⁵⁴ M006 (ASI018761-62) [4-5]

⁴⁶⁵⁵ (MOD040902)

⁴⁶⁵⁶ (MOD040940)

⁴⁶⁵⁷ (MOD040920)

⁴⁶⁵⁸ (MOD040902)

775	17:25-18:55 ⁴⁶⁵⁹	M002	M030
	20:30-21:55 ⁴⁶⁶⁰	M002	M012

17 May 2004:

Detainee	Time	Interviewer	Interpreter
778	09:00-10:30 ⁴⁶⁶¹	M006	M029
773	11:00-12:15 ⁴⁶⁶²	M002	M029

19 May 2004:

Detainee	Time	Interviewer	Interpreter
777	10:55-11:50 ⁴⁶⁶³	M006	M012
780	13:45-14:50 ⁴⁶⁶⁴	M006	M012

21 May 2004:

Detainee	Time	Interviewer	Interpreter
778	10:30-11:55 ⁴⁶⁶⁵	M007	M012
775	11:20-12:00 ⁴⁶⁶⁶	M002	M030
778	12:25-13:30 ⁴⁶⁶⁷	M007	M012
775	15:50-16:20 ⁴⁶⁶⁸	M002	M012
772	16:50-18:20 ⁴⁶⁶⁹	M005	M030

4.318 At the conclusion of each interview, the interviewer would prepare an interrogation report, which would record the details of the interview. The interpreter would also review the report. Any notes taken during the interview would be destroyed securely after the report had been prepared.⁴⁶⁷⁰

Training

4.319 In May 2004, the JFIT had to cope with a number of impediments to their effective operation. One was the limited training that some members of the JFIT had received. In his evidence, M003 said he had raised concerns about training with the higher command at the beginning of his tour. He later received a visit from a team headed by a Colonel. M003 said that at the conclusion of the visit, he was left with the distinct impression that his concerns had been addressed and he should do his best with the resources available to him.⁴⁶⁷¹

4.320 Another impediment was the limited ability of the JFIT interpreters to understand and interpret the Arabic language, particularly in the local Iraqi dialect. One of the interpreters,

⁴⁶⁵⁹ (MOD046224)

⁴⁶⁶⁰ (MOD046224)

⁴⁶⁶¹ (MOD046232)

⁴⁶⁶² (MOD002604)

⁴⁶⁶³ (MOD040925)

⁴⁶⁶⁴ (MOD040946)

⁴⁶⁶⁵ (MOD040931)

⁴⁶⁶⁶ (MOD040917)

⁴⁶⁶⁷ (MOD020931)

⁴⁶⁶⁸ (MOD040917)

⁴⁶⁶⁹ (MOD040909)

⁴⁶⁷⁰ M003 (ASI024614-15) [76]

⁴⁶⁷¹ M003 (ASI024599) [23]

M029, explained that the interpreters had to make frequent use of a bilingual dictionary during interviews.⁴⁶⁷² Some detainees also commented in their evidence that they found it difficult to communicate with the JFIT interpreters.⁴⁶⁷³

4.321 By May 2004, members of the JFIT had received varying levels of interrogation training. Only three members of the JFIT were qualified interrogators, namely M018 (Second-in-Command at the JFIT),⁴⁶⁷⁴ M005⁴⁶⁷⁵ and M002.⁴⁶⁷⁶ Two other members of the team, M006⁴⁶⁷⁷ and M007,⁴⁶⁷⁸ were also required to question detainees, although they were only qualified to debrief rather than to interrogate. The Officer Commanding the JFIT, M003, had received training in tactical questioning and debriefing, but not in interrogation.⁴⁶⁷⁹

4.322 M006, a qualified debriefer, explained the difference between tactical questioning, interrogation and debriefing:

“Tactical questioning is a term used to describe obtaining basic information from detainees very shortly after their initial detention. [...] Interrogation is the questioning of unwilling and uncooperative detainees in order to obtain intelligence. [...] Debriefing is the interviewing of willing and cooperative detainees in an attempt to corroborate any information already obtained through tactical questioning and to gather as much further information as possible about them and the circumstances of their capture. By ‘willing and cooperative’ I do not necessarily mean detainees who were innocent of all wrongdoing and who gave truthful accounts, but detainees who were willing to talk to us.”⁴⁶⁸⁰

4.323 Although M006 and M007 were only qualified to debrief willing and cooperative detainees, the JFIT Standard Operating Procedures (“SOPs”) indicate that all detainees were assumed to be “unwilling subjects”.⁴⁶⁸¹

4.324 In his evidence to the Inquiry, M006 said that by May 2004 he had been conducting regular interviews with detainees for nearly six months, so he was quite experienced and fairly comfortable with the task.⁴⁶⁸²

4.325 M007, also a qualified debriefer, said that strictly speaking the interviews that she conducted were “debriefs” rather than “interrogations” as she only applied the techniques on which she had been trained.⁴⁶⁸³

4.326 By reference to the Terms of Reference and the List of Issues circulated in respect of the Terms of Reference, it is irrelevant whether or not the interviews with the detainees were carried out by those who were trained to debrief or those who were trained to interrogate. The salient issue is whether or not there was ill-treatment.

⁴⁶⁷² M029 [156/187-189]

⁴⁶⁷³ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000694-95) [60]; Hussein Gubari Ali Al-Lami (detainee 780) [12/74/21]; Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/56/20]; Hussein Fadhil Abass Al-Behadili (detainee 778) [18/37-38] [19/55/8]

⁴⁶⁷⁴ M018 (ASI024941) [9]

⁴⁶⁷⁵ M005 (ASI021212) [10]

⁴⁶⁷⁶ M002 (ASI023370) [6]

⁴⁶⁷⁷ M006 (ASI018761) [3]

⁴⁶⁷⁸ M007 (ASI019329) [5]

⁴⁶⁷⁹ M003 (ASI024595) [7]

⁴⁶⁸⁰ M006 (ASI018761) [4-5]

⁴⁶⁸¹ (MOD046813) [19]

⁴⁶⁸² M006 (ASI018762) [8]

⁴⁶⁸³ M007 (ASI019331) [14]

Interrogation policy and procedure

4.327 On 31 May 2004, shortly after the nine detainees were transferred to the main DTDF compound, M003 issued a number of Standard Operating Procedures (“SOPs”) for the JFIT. They were annexed to the Operational Directive.⁴⁶⁸⁴ Annex B was titled “JFIT SOPs – OPERATIONS”.⁴⁶⁸⁵ Annex C was titled “JFIT SOPs – INTERROGATOR”.⁴⁶⁸⁶ Both annexes contain a number of SOPs that are pertinent to the JFIT interrogations with which this Inquiry is concerned. As I indicated earlier in this Report, the author of the SOPs, M003, was not a qualified interrogator. However, the JFIT staff did include a number of qualified interrogators such as M002. In his evidence to the Inquiry, M002 said he did not recall having seen the SOPs when he worked within the JFIT. He indicated that in his opinion, some of the approaches set out in the SOPs would not have been effective. In particular, M002 disagreed with the following suggestions that: Arabs are a difficult race to question; that the only way to win in the interrogation room is to outwit the detainee; that interrogators should convince detainees that they would be there for a very long time unless they tell the truth; and that interrogators should try to trick detainees into making an admission.⁴⁶⁸⁷

4.328 In the paragraphs which follow, I set out the material provisions from within the Operations SOPs.

4.329 Operations SOP 19: Interrogation approaches

19. “All internees are unwilling subjects. Given the constraints on the JFIT this makes information and intelligence difficult to gather. Arabs are a difficult race to question. They often require closed questions to pin down an answer. They will frequently play on the language ability of the interpreter and deflect the interrogator’s questions. Games of ‘We know you are involved’ – ‘no I’m not’ ensue and the interrogator benefits from maximum information on the Internee and having confidence in the MX.⁴⁶⁸⁸ The only way to win in the interrogation room is to out-wit the Internee. This can be achieved through convincing them that they will stay here for a very long time unless they tell the truth, tricking them into admission and playing Internees off one another. The post-Op analysis adds volumes to these stages of interrogation.”⁴⁶⁸⁹

4.330 Operations SOP 20 and 21: Stages of interrogation

21. “All Internees are screened as soon as possible after their arrival and their background information has been collated. A maximum of 90 minutes should be spent on a screening interrogation where the aim is to confirm the Internee’s identity, gather some biographical information, military background, and links to the former Regime and establish the events around their arrest. The interrogator should always be neutral in the screening and be on the look out for drop-out information, but not DLP it unless it is vital intelligence. This should be highlighted in the report and followed-up in subsequent interrogations.”

22. “Once all screeners have been completed it is the Ops Officer’s job to construct the plan of attack. The Ops Officer needs to prioritise and select those who warrant further interrogation, on what areas and in which manner. Approaches used in the I

⁴⁶⁸⁴ (MOD046796)

⁴⁶⁸⁵ (MOD046809)

⁴⁶⁸⁶ (MOD046815)

⁴⁶⁸⁷ M002 [156/58-61]; (MOD046813) [19]

⁴⁶⁸⁸ Military Intelligence Report

⁴⁶⁸⁹ (MOD046813)

Rooms after the screener can be neutral, friendly, firm or harsh and are often taken from the previous recommendation. From the experience of both TELIC 2 and 3 harsh approaches do not achieve that which a Long I⁴⁶⁹⁰ trained interrogator might expect, but merely shuts the Internee up further. Firm and harsh approaches are only effective to close down a subject and control an Internee's waffling or deflection. The best tool the interrogator has in the I Rooms is the power to keep the Internee in isolation not seeing his family and their ability to out-wit the Internee. These can both be exploited very effectively.”⁴⁶⁹¹

4.331 Operations SOP 24: MX and Interrogation Reports

24. “During the back-brief the Ops Officer and interrogator should discuss recommendations and identify areas that need to be pursued in subsequent interrogations. The interpreter should also be fully involved in this to aid the interrogator, especially with Arabic names and places, also performing a proof read before the interrogator passes their report to the Ops Officer.”⁴⁶⁹²

4.332 Interrogator SOP 10: Prior to Interrogation

10. “Switch the air conditioning units on in the I Rooms. It is advised that they are switched off during the Interrogation, because they make too much noise and the information from the Internee is inaudible.”⁴⁶⁹³

4.333 Interrogator SOP 12, 18, 19: Prior to entering the I room

12. “Make sure you remove watches, rank slides and any weapons i.e. leatherman or penknives.”

18. “Ensure that there is a guard in the JFIT corridor before starting an interrogation, and that he has plenty of water/coffee etc. to make sure he is alert in the high temperatures, where the heat, boredom and dehydration can be very soporific.”

19. “Ensure that you set up the I room how you want it. If you are going to be moving around a lot do not sit behind a table. Make sure your Interpreter can follow your movements if you are going to invade the Internees body space. Getting into the personal space of an Iraqi male makes them feel incredibly uncomfortable – again review Arabic culture.”⁴⁶⁹⁴

4.334 Interrogator SOP 23, 24, 27, 28, 30, 31, 34, 35, 36, 40, 45: The interrogation

23. “At all times abide by the Geneva Convention; a handbook is available in the Ops Room.”

24. “The Interrogator will receive direction from the Ops Officer prior to the interrogation, but during a screener (initial interrogation) the Interrogator should be neutral, unless they feel the need to change the approach, using a firmer method with the Internee. Each interrogation is different, value your own judgement when assessing your approach and use your instincts. How will I achieve my aim most effectively?”

⁴⁶⁹⁰ Long Interrogation

⁴⁶⁹¹ (MOD046813)

⁴⁶⁹² (MOD046814)

⁴⁶⁹³ (MOD046816)

⁴⁶⁹⁴ (MOD046816-7)

27. "Remember that you are in charge in the I room. Do not let the Interpreter and the Internee get caught up in conversation that you are not controlling. It is easy to become a third person. Use the room to your advantage, make sure the Internee is directly in front of the Interrogator so that they clearly understand that you are the person directing the interrogation, that you determine the questions and you are the authority in the I room."

28. "Ensure that the Interpreter mirrors your tone of voice. If they do not, the effect will be lost. It is easy to get frustrated in the I rooms, do not let the Interpreter direct the Interrogation, they should never raise their voice or smile unless the Interrogators have deemed this a necessity. Keep an eye on your interpreter's body language for if they look bored and are finding the interrogation a chore, it will only be a matter of time before the Internee does the same. Likewise monitor yourself as well and do not be afraid to terminate or take a break from the interrogation if you or your interpreter are struggling; it is better to keep control of the room and therefore your Internee, than to keep fighting a losing battle, you can always go back in with him when you are ready. If there is a break down in the relationship between the Interrogator and the Interpreter, the Internee will use this to their full advantage and the Interrogator will lose all credibility."

30. "Make the best use of your ability to play one Internee off against another. Tell lies to try to make one Internee feel that he is being 'set-up' by another. Manipulate each Internee as best you see fit to suit your own ends. Do not worry about upsetting them."

31. "Iraqis are emotional and will cry if they think that you will feel sorry for them. Do not feel sorry for Internees!"

34. "Use any ploys you feel will work. Be whoever you want to be e.g. the Boss, Officer etc. They will not know who you are. Never wear your rank slides in the I room and never refer to first names between the Interrogator and Interpreter."

35. "Internees can be given water and cigarettes if you think that this will make them more likely to talk or if they are being helpful. However, you can always use this to your advantage, many Internees smoke. Always have a packet of cigarettes available in the I room, if the Interrogator smokes, use this to your advantage when questioning the Internee. If the Internee smokes, he will often ask for a cigarette, it is up to you whether they deserve one or not, or you can use the tobacco as a 'carrot.'"

36. "Remember that just because the Internee is not giving you the answers you want to hear, it does not mean that they are lying. Information can be lost in translation, always be flexible. Assess the Internee's response, if you feel that he is trying to be helpful, but you are not receiving the answers to the questions; phrase them in a different way. If the Interrogator feels that the Internee is being deliberately difficult, you can apply more pressure."

40. "Never make any promises. You can lie as much as you like, you can always say maybe, possibly etc. but never PROMISE anything."

45. "If at any time you need to leave the I room and the Internee is to remain, make sure the guard comes in to keep an eye on him. You can actually monitor the Internee

from the office, while you are out of the I room – monitoring his body language could prove to be very useful.”⁴⁶⁹⁵

- 4.335** Some of the language used in the SOPs is highly regrettable and wholly ill-conceived. There is a significant risk that the SOPs could have been interpreted by staff working in the JFIT as authorising conduct which contravenes provisions of international law, in particular Article 17 of the Third Geneva Convention 1949.⁴⁶⁹⁶
- 4.336** Responsibility for this language must lie with M003. When he gave oral evidence, M003 explained that he personally drafted the majority of the JFIT Operational Directive and the annexed SOPs. Where he tasked others to draft annexes, he confirmed that he edited their drafts.⁴⁶⁹⁷ Whilst this represented a clear and regrettable failing on the part of M003, for the reasons which I will set out in the paragraphs which follow, it does not appear that this language led to any actual ill-treatment of the eight detainees with whom this Inquiry is concerned who were interrogated during their detention in the JFIT compound.

Interrogation rooms

- 4.337** The JFIT compound contained four interrogation rooms, known as “I rooms”. M002 estimated that two interrogation rooms were approximately 7 metres long by 3 metres wide and the other two rooms were 7 metres long by 4 metres wide.⁴⁶⁹⁸
- 4.338** One interrogation room close to M003’s office was set up as a soft room, which was intended to provide a comfortable environment. The soft room contained soft furnishings including a couch, armchairs, a rug, and coffee table.⁴⁶⁹⁹ The three other interrogation rooms were more basic. They contained a desk and three chairs; one each for the interrogator, interpreter and detainee. They had windows covered with hessian. They also had air conditioning.⁴⁷⁰⁰ Interrogator SOP 10 advised interrogators to switch on the air conditioners prior to an interrogation to cool the room down, and then to turn them off during the interrogation because they are noisy.⁴⁷⁰¹
- 4.339** The interrogation rooms also contained a video camera on a tripod. The video camera had a built in microphone.⁴⁷⁰² The video cameras were not hidden from view. They transmitted a live feed to a monitor set up in M003’s office. M003, M018 and other members of the team could watch interrogations on screens. In practice, only a small proportion of the interviews were followed from M003’s office.⁴⁷⁰³ M002 recalled that efforts had been made to set the system up so they could record the interrogations, but they experienced technical problems which prevented the system from being able to record. Those problems were not resolved during M002’s tours in Iraq.⁴⁷⁰⁴

⁴⁶⁹⁵ (MOD046817-9)

⁴⁶⁹⁶ Of particular concern in this regard are “Operations SOP 19” (MOD046813), “Interrogator SOP 19” (MOD046817), “Interrogator SOP 30” (MOD046818), “Interrogator SOP 31” (MOD046818), “Interrogator SOP 35” (MOD046818), “Interrogator SOP 40” (MOD046819).

⁴⁶⁹⁷ M003 [158/160]

⁴⁶⁹⁸ M002 (ASI023379) [42]

⁴⁶⁹⁹ M007 [154/31/3]; M003 (ASI024613) [72]; M029 [156/189/13]

⁴⁷⁰⁰ M003 (ASI024614) [73]

⁴⁷⁰¹ (MOD046816)

⁴⁷⁰² M002 (ASI023379) [44]

⁴⁷⁰³ M003 (ASI024614) [74]

⁴⁷⁰⁴ M002 [156/83/20]

4.340 All the interviews relevant to this Inquiry took place in one of the three ordinary interrogation rooms, rather than the soft room. M002 explained that the interrogator would decide how to set up the interrogation room prior to each session.⁴⁷⁰⁵ Often the table would be placed between the interrogator and the detainee.⁴⁷⁰⁶

4.341 Interrogators SOP 18 reminds interrogators to ensure there is a guard in the JFIT corridor before starting an interrogation.⁴⁷⁰⁷ The interrogators were all in agreement that a guard would remain seated outside the interrogation rooms while a detainee was being questioned.⁴⁷⁰⁸ The guards' recollections differed as to whether they would remain outside the room or return to the guards' desk. For example, Fusilier Allan McClure said that after a guard had taken a detainee to the interview room, the guard would wait around the corner or back at the guard area until the interview was finished.⁴⁷⁰⁹ Corporal Ronald Hughes said it was possible that the fusiliers had to sit outside an interview room, but he did not recall that happening.⁴⁷¹⁰ Fusilier Raymond Hutchinson said he did not recall ever being left on his own during guard duty while another guard waited outside an interview room.⁴⁷¹¹ Whereas Lance Corporal James Higgins said he recalled that a guard would wait outside the interview room while detainees were interviewed. Fusiliers Brien Strathern⁴⁷¹² and Francis Thom⁴⁷¹³ also recalled that they were instructed to wait outside the interview room.

Hamzah Joudah Faraj Almalje (detainee 772)

4.342 On 16 May 2004, Hamzah Joudah Faraj Almalje (detainee 772) was interviewed for 20 minutes between 10:00 and 10:20 hours and for 1 hour and 20 minutes between 15:15 and 16:35 hours.⁴⁷¹⁴ On 21 May 2004, he was interviewed again for 1 hour 30 minutes from 16:50-18:20 hours.⁴⁷¹⁵ On each occasion, the interrogator was M005, a qualified interrogator, and the interpreter was M030.

4.343 The first interrogation session was cut short. The interrogation report states that Hamzah Almalje *"appeared to be in great pain and unable to stay upright. During his first session he had to be taken out and back to his cell. When he recovered he was brought back and he was more alert but still looked concussed. Although he was difficult to understand he answered all questions put to him. As time wore on he became more confused [...] He was answering yes to all the questions regardless. [...] due to his injuries he appears to be confused and unable to maintain a straight forward conversation for too long. Once he is rested, he should be spoken to again."*⁴⁷¹⁶

4.344 The Incident Log records that following the first interrogation session, at 10:23 hours, Hamzah Almalje was returned to his cell and he required a medic. The Incident Log records that at 10:30 hours a medic arrived, checked Hamzah Almalje and then left.⁴⁷¹⁷ From

⁴⁷⁰⁵ M002 [156/40/4]

⁴⁷⁰⁶ M002 [156/39/14]

⁴⁷⁰⁷ (MOD046817)

⁴⁷⁰⁸ M002 [156/66/18]

⁴⁷⁰⁹ Fusilier McClure [150/61/1]

⁴⁷¹⁰ Corporal Hughes [140/28/22]

⁴⁷¹¹ Fusilier Hutchinson [159/35/15]

⁴⁷¹² Fusilier Strathern [158/117/17]

⁴⁷¹³ Fusilier Thom [151/70/6]

⁴⁷¹⁴ See paragraph 4.317

⁴⁷¹⁵ See paragraph 4.317

⁴⁷¹⁶ (MOD040907-8)

⁴⁷¹⁷ (MOD040077)

13:40-13:42 hours, Hamzah Almalje was taken to the lavatory.⁴⁷¹⁸ The Incident Log records that at 15:09 hours, Hamzah Almalje was requested by JFIT.⁴⁷¹⁹ He was returned to his cell at 16:40 hours.⁴⁷²⁰ At 17:58 hours, after the second interrogation session, Hamzah Almalje was sick and refusing to eat.⁴⁷²¹ At 18:08 hours, he was attended to by the duty medic.⁴⁷²² The medical records indicate that the medic spoke to the Regimental Medical Officer, Major David Winfield, who advised a Stemetil injection.⁴⁷²³ In his evidence to the Inquiry, Major Winfield explained that Stemetil is an anti-nausea medication.⁴⁷²⁴ The references to vomiting continue in the medical notes until 23 May 2004. Then on 24 May 2004 the notes record that the patient still had a headache, but was not vomiting. He looked considerably better and a lot more alert. He said the medication made him feel better.⁴⁷²⁵

4.345 The interrogation report for 21 May 2004 records that the *“Internee appeared again to be in pain and unable to stay upright for long. He answered all questions without hesitation but was very difficult to understand. It did not appear to be a ploy to avoid answering questions; it was more because of his simple upbringing. All questions had to be kept simple and to the point.”*⁴⁷²⁶

4.346 In her evidence to the Inquiry, M005 recalled that her first impression of Hamzah Almalje was that he seemed very frightened. When he was first presented for interrogation, he was dirty and had dried blood covering his face.⁴⁷²⁷ He sat sideways and hunched forward in the chair that was provided for him. M005 assessed that Hamzah Almalje was not ready to be interrogated. She asked the guards to take Hamzah Almalje back to his cell and clean him up before the interrogation continued.⁴⁷²⁸ In her oral evidence, M005 said that when she used the word *“concussed”* in her report, she must have meant *“confused”*.⁴⁷²⁹

4.347 The interpreter, M030, could not recall the interrogations of Hamzah Almalje. She said the comment in the interrogation report that the detainee *“was very difficult to understand”* was probably her assessment, which she communicated to the interrogator.⁴⁷³⁰

4.348 In his first statement to the Inquiry, Hamzah Almalje said that neither M005 nor M030 shouted at him during the interrogation. He was not threatened. Nor was he aware of the interrogator or interpreter becoming angry at any stage. He recalled that during one session he was told to go and get cleaned up because he had vomited over his clothes. He also recalled that he was slumped forward in his chair because his stomach was hurting.⁴⁷³¹ In his oral evidence, Hamzah Almalje said that at Shaibah there was *“no pressure at all, only talking person to person”*.⁴⁷³² He said *“I can assure you no one touched me. No one talked to me at all in a bad way.”*⁴⁷³³ It was suggested to Hamzah Almalje that he was looked after at Shaibah. He replied

⁴⁷¹⁸ (MOD040078)

⁴⁷¹⁹ (MOD040079)

⁴⁷²⁰ (MOD040079)

⁴⁷²¹ (MOD040079)

⁴⁷²² (MOD040080)

⁴⁷²³ (MOD043361)

⁴⁷²⁴ Major Winfield [144/100/10]

⁴⁷²⁵ (MOD043363)

⁴⁷²⁶ (MOD040913)

⁴⁷²⁷ M005 (ASI021225) [63]

⁴⁷²⁸ M005 (ASI021225) [63]; (ASI021227) [70]

⁴⁷²⁹ M005 [164/233/11]

⁴⁷³⁰ M030 (ASI023669) [52]

⁴⁷³¹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000695) [60]

⁴⁷³² Hamzah Joudah Faraj Almalje (detainee 772) [19/81/24]

⁴⁷³³ Hamzah Joudah Faraj Almalje (detainee 772) [20/19/22]

*"Yes, yes, yes, yes. They were nice."*⁴⁷³⁴ He confirmed that he was suffering with stomach problems at the time of his interrogation, which he said continued to affect him for about a month.⁴⁷³⁵

4.349 Hamzah Almalje said that he was told at some stage during interrogation that if he helped the interrogator, the interrogator would help him; if not, he would remain in prison.⁴⁷³⁶ It may be that given the passage of time since these events occurred, Hamzah Almalje had become confused with something that was said to him during the tactical questioning session at Camp Abu Naji.

4.350 With the assistance of the Incident Log,⁴⁷³⁷ Fusilier Mark Galbraith recalled that he had escorted Hamzah Almalje and Kadhim Abbas Lafta Al-Behadili (detainee 775) to their interrogations sessions on 21 May 2004. He said he heard a burst of shouting, probably a male voice, coming from inside the room that Hamzah Almalje was in. He recalled the hearing words *"I'm fucking talking to you"* and *"look at me!"* followed by a quiet male interpreter's voice.⁴⁷³⁸ In fact, both the interrogator and interpreter in Hamzah Almalje's sessions were female. I am satisfied that Fusilier Galbraith was mistaken in his recollection. That is no criticism of the Fusilier: he probably did hear shouting coming from an interrogation room, but it was not an interrogation involving Hamzah Almalje.

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

4.351 On 17 May 2004, Mahdi Jasim Abdullah Al-Behadili (detainee 773) was interviewed for 1 hour and 15 minutes between 11:00 and 12:15 hours.⁴⁷³⁹ The interrogator was M002, a qualified interrogator, and the interpreter was M029.⁴⁷⁴⁰

4.352 It appears that Mahdi Al-Behadili may have been under 18 years of age on 15 May 2004. The Inquiry has received a copy of Mahdi Al-Behadili's passport, which records that he was born on 19 October 1986.⁴⁷⁴¹ During the administrative part of the admission procedure, his date of birth was recorded as 1 September 1986.⁴⁷⁴² On the Initial Medical form, his date of birth is recorded as 1 July 1986.⁴⁷⁴³ According to the other Initial Medical forms, Hamzah Almalje, Kadhim Abbas Lafta Al-Behadili (detainee 775), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), Ahmed Jabbar Hammood Al-Furaiji (detainee 777), Hussein Fadhil Abass Al-Behadili (detainee 778) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) were also recorded as having their birthday on 1 July. When Major David Winfield was asked about the dates of birth on the Initial Medical forms, he said that many Iraqis did not know the day and month they were born. Therefore, it appears 1 July was entered as a default date if the patient did not know his actual date of birth.⁴⁷⁴⁴ Lance Corporal Bronwyn Davis, a medic on Major Winfield's team, also told the Inquiry that because most of the detainees were unable to tell the medics their birthday, the medics had been instructed to record them as the middle of the year.⁴⁷⁴⁵ If the date on the passport is correct, then Mahdi Al-Behadili would have been

⁴⁷³⁴ Hamzah Joudah Faraj Almalje (detainee 772) [19/50/24]

⁴⁷³⁵ Hamzah Joudah Faraj Almalje (detainee 772) [20/83/12]

⁴⁷³⁶ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000696) [63]

⁴⁷³⁷ (MOD040117)

⁴⁷³⁸ Fusilier Galbraith (ASI015387) [74]

⁴⁷³⁹ See paragraph 4.317

⁴⁷⁴⁰ (MOD002604)

⁴⁷⁴¹ (PIL000801)

⁴⁷⁴² (MOD043427)

⁴⁷⁴³ (MOD043434)

⁴⁷⁴⁴ Major Winfield [144/112/12]

⁴⁷⁴⁵ Lance Corporal Davis [145/79/23]

approximately 5 months short of his eighteenth birthday. If the date recorded during the first part of the processing is correct, then Mahdi Al-Behadili would have been approximately 3½ months short of his eighteenth birthday when he arrived at the DTDF. If the date on the Initial Medical form is correct, he would have been 7 weeks short of his eighteenth birthday. Therefore, if any of the available dates are accurate, it appears that Mahdi Al-Behadili was under 18 years of age when he arrived at the DTDF.

- 4.353** Paragraph 19 (12) of the JFIT Operational Directive dated 31 May 2004 indicates that juveniles under 18 must be segregated from other prisoners unless to do so would impose solitary confinement on the individual. It further indicated that they are allowed to be questioned provided they are over the age of 15.⁴⁷⁴⁶ Mahdi Al-Behadili was in fact placed in a shared cell, so it would appear the Operational Directive was complied with. From a practical perspective, it appears Mahdi Al-Behadili was treated in the same way as the other eight detainees he was interned with.
- 4.354** In his evidence to the Inquiry, Mahdi Al-Behadili said the JFIT interrogator acted in an angry and aggressive manner throughout the interrogation.⁴⁷⁴⁷ He said the interrogation was conducted in fear and amid shouting. He said that the interrogator did not come physically close to him.⁴⁷⁴⁸
- 4.355** The interrogation report from 17 May 2004 indicates that a *“neutral to firm admin approach”* was used throughout the interrogation.⁴⁷⁴⁹ The interrogator, M002, said that indicated he adopted an approach that was neither overly friendly nor confrontational, but business like and focused on process and administrative information such as the detainee’s personal details.⁴⁷⁵⁰
- 4.356** When explaining the various approaches to an interrogation, M002 explained that there were situations when an interrogator would raise his voice, for example to express his apparent frustration. He said that is something he would do when adopting a *“firm to strong”* approach.⁴⁷⁵¹ However, when M002 was asked if he used angry or aggressive questioning when interrogating Mahdi Al-Behadili, he said it was not that kind of interrogation. He described Mahdi Al-Behadili as *“quite a compliant little chap, answering questions. [...] He was just pretty normal.”* M002 continued, *“I wasn’t angry with the guy and wouldn’t even portray that because it was a neutral firm approach. I am in there to get the basic information, set the scene, work out what is going on.”*⁴⁷⁵²
- 4.357** The interpreter, M029, could not recall this specific interrogation. However, she indicated that a *“neutral to firm approach”* meant the interrogation would be carried out in a *“matter of fact”* manner.⁴⁷⁵³
- 4.358** I have no doubt that the evidence of M002, which is supported by the interrogation record, was both truthful and accurate. I have no doubt that Mahdi Al-Behadili deliberately lied when describing the interrogation as one conducted in fear and amid shouting. He did so in order to lend substance to his allegations of ill-treatment at the hands of the British Military.

⁴⁷⁴⁶ (MOD046801)

⁴⁷⁴⁷ Mahdi Jasim Abdullah Al-Behadili (detainee 773) PIL000793 [60-61]; [9/67/5]

⁴⁷⁴⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [9/67-68]

⁴⁷⁴⁹ (MOD002607)

⁴⁷⁵⁰ M002 (ASI023383) [59]

⁴⁷⁵¹ M002 [156/102/24]

⁴⁷⁵² M002 [156/125/13-24]

⁴⁷⁵³ M029 [156/210/22]

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 4.359** On 16 May 2004, Kadhim Abbas Lafta Al-Behadili (detainee 775) was interviewed for 1 hour and 30 minutes between 17:25 and 18:55 hours,⁴⁷⁵⁴ and for 1 hour and 25 minutes between 20:30 and 21:55 hours.⁴⁷⁵⁵ The guards' Incident Log records that Kadhim Al-Behadili was returned to his cell between the two interrogation sessions.⁴⁷⁵⁶ On 21 May 2004, he was interviewed for 40 minutes between 11:20 and 12:00 hours, and for 30 minutes between 15:50 and 16:20 hours. The guards' Incident Log records that the detainee was returned to his cell between the two interviews.⁴⁷⁵⁷ The interrogator on each occasion was M002, a qualified interrogator. The interpreting work was shared between M030 and M012.
- 4.360** In his written evidence, Kadhim Al-Behadili said he was made to stand throughout all the interrogations.⁴⁷⁵⁸ However, in his oral evidence Kadhim Al-Behadili said the interrogator would stand him up, turn him around and then sit him back down again.⁴⁷⁵⁹ He said the interrogator stood close to him and told him not to move.⁴⁷⁶⁰ He said the interrogator yelled at him constantly, causing spit to hit his face. He said the interrogator kept pushing him in the stomach and pushed his face and body into the detainee's face and body so they were touching. He said the interrogator pushed him backwards towards the wall and then dragged him back to the centre of the room before pushing him back to the wall again, going back and forth. He said the interrogator would yell "*look at me!*" and then when the detainee did look at the interrogator he would shout "*what are you looking at?*" He said the interrogator called him an idiot many times. Kadhim Al-Behadili said he had the impression that the interrogator had nearly "*slaughtered*" him during the interrogation.⁴⁷⁶¹
- 4.361** In his interview with the RMP on 24 May 2004, Kadhim Al-Behadili described an incident where he was pushed in the head. He was asked to clarify whether that happened at Al-Amarah or where the interview was taking place, namely the DTDF. He replied: "*No, in Al-Amarah... No beating here.*"⁴⁷⁶² In oral evidence, Kadhim Al-Behadili confirmed that there was no beating in the DTDF, including the JFIT compound. He said that what did happen was that the interrogator put his face towards the detainee's face, pushed him towards the wall, stood him up, turned him around, and sat him back down again, but that was not *beating*.⁴⁷⁶³
- 4.362** The interrogation report for 16 May 2004 indicates that during the first session a "neutral to firm" approach was used, rising to a "*firm to strong*" approach in the second session. The report further commented that the detainee "*does not like to be in close proximity to the interrogator and shies away at the first hints of anger. His emotion trigger is his family*".⁴⁷⁶⁴ The interrogation report for 21 May 2004, records the detainee's name, "*Khazhim 'Abbas Lafta Khafee Al-Bahaadlee*", although it erroneously records his number as 776.⁴⁷⁶⁵ The Incident Log confirms that JFIT requested "775" at 11:12 hours, and he returned to his cell at 12:00 hours.⁴⁷⁶⁶ "775" was requested again at 15:53 hours, and was returned to his cell

⁴⁷⁵⁴ See paragraph 4.317

⁴⁷⁵⁵ See paragraph 4.317

⁴⁷⁵⁶ (MOD040080)

⁴⁷⁵⁷ (MOD040117)

⁴⁷⁵⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000746) [113]

⁴⁷⁵⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) [13/29/13]

⁴⁷⁶⁰ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/103/7]

⁴⁷⁶¹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000747) [117]; [13/93/15]

⁴⁷⁶² (MOD032734)

⁴⁷⁶³ Kadhim Abbas Lafta Al-Behadili [13/29]

⁴⁷⁶⁴ (MOD040918)

⁴⁷⁶⁵ (MOD040916)

⁴⁷⁶⁶ (MOD040115-6)

at 16:26 hours.⁴⁷⁶⁷ The interrogation report indicates that a “neutral to firm” approach was used throughout the interrogations that day. It also states that “*the Internee was forthcoming with general information [...] He is fully aware of the severity of the situation in which he has placed himself, but does not seem to be fully reconciled with the consequences*”.⁴⁷⁶⁸

- 4.363** In his oral evidence, M002 explained how he would usually approach the first interrogation of a new prisoner, as follows:

“For the first interrogation, normally the individual will be standing up in the room if you are not already there. I tended, from memory – I would have the chap in the room, then I would follow in afterwards, then close the door. He would start in a standing position. I would ask him a couple of questions, whether I’m seated or standing at that point – normally I would sit down at that point just for my convenience – ask him the questions, “Are you okay?”, “Are you English?”, “Yes, fine”, “Your name is ...”, and then basically sit the guy down.

If you are doing neutral, you might as well sit him down. If he’s being argumentative with you or he’s not being friendly to you or being helpful in any way, stand him a little bit longer, but eventually just sit him down. But none of these characters were that way inclined. We just sat them down.”⁴⁷⁶⁹

- 4.364** M002 recalled that the interrogation room was set up with three chairs and a table. The interrogator sat at the table with the interpreter sitting to his right, as usual.⁴⁷⁷⁰ He said his general approach to interrogating Kadhim Al-Behadili was the same as for the other detainees he questioned. The first part of the interrogation was conducted in a “neutral to firm” manner, as recorded in the interrogation report.⁴⁷⁷¹ In his oral evidence, M002 was asked to explain what that meant. He said:

“Again, back to what I said earlier on neutral to firm. Neutral, “I need the information”; firm, “I’m not going to be here as your best mate, let’s get this over and done with as quickly and painlessly as possible”, by being straight with the guy. I’m not there to be his best friend. We’re there to work together to get what we need.”⁴⁷⁷²

- 4.365** The interrogation was split into two parts with a break in between. Given the timings on the report, M002 thought the reason for the break was to allow the detainee, the interrogator and interpreter an opportunity to eat and to recharge, and to enable M002 to review how the interrogation was going.⁴⁷⁷³ M002 recalled that the detainee was being cooperative during the first session.⁴⁷⁷⁴

- 4.366** With reference to the interrogation report⁴⁷⁷⁵, M002 recalled that the second half of the interrogation on 21 May 2004 was conducted in a “firm to strong” manner. He said that involved a shorter, sharper questioning style, with an emphasis on the seriousness of the situation and the consequences of not cooperating. It was explained to the detainee that he needed to answer M002’s questions so that he did not remain in detention, as a coalition

⁴⁷⁶⁷ (MOD040117)

⁴⁷⁶⁸ (MOD046229)

⁴⁷⁶⁹ M002 [156/78/22]-[78/13]

⁴⁷⁷⁰ M002 (ASI023385) [68]

⁴⁷⁷¹ M002 (ASI023385) [68]; (MOD046229) [13]

⁴⁷⁷² M002 [156/97/15]

⁴⁷⁷³ M002 (ASI023385) [68-69]

⁴⁷⁷⁴ M002 [156/93/12]

⁴⁷⁷⁵ (MOD040918) [5]

threat, for a long time, or be handed over the Iraqi police. M002 said it was possible that he would have raised his voice and adopted an angry tone whilst questioning the detainee. M002 believed he changed his approach because the detainee had changed his story and was being far less forthcoming and responsive than during the first half of the interrogation.⁴⁷⁷⁶

4.367 M002 was asked what he meant when he said in the report that the detainee “*was fully aware of the severity of the situation in which he has placed himself, but does not seem to be fully reconciled with the consequences.*” M002 explained that he meant the detainee was apparently involved in an attack on coalition forces but did not appreciate that he would inevitably be passed on to the Iraqi Police Service.⁴⁷⁷⁷

4.368 M002 was asked what he meant when he wrote in the interrogation report that the detainee “*does not like to be in close proximity to the interrogator and shies away at the first hint of anger*”. He explained that proximity is relative to the detainee’s sense of personal space at that moment. If the detainee’s sensitivities are heightened, an interrogator can be in his personal space at 3 or 4 feet away. The interrogator only has to break into that space by a tiny amount and the person will naturally move, for example by leaning back in his chair or, if he was standing, by taking a step backwards. Interrogators are trained to watch and evaluate a detainee’s body language.⁴⁷⁷⁸

4.369 In his written evidence, M002 explained what he meant when he wrote in the report, “*His emotion trigger is his family*”. M002 said he would ask the detainee about how his family would feel about what he had done, and how they would be coping in his absence. He recalled that when the detainee was asked about his family he became very upset.⁴⁷⁷⁹ In oral evidence, M002 said the detainee may have cried or he may have just welled up, or it might be that his bottom lip quivered.⁴⁷⁸⁰ M002 said he would not deliberately try to upset a detainee by asking about his family because that would put a wall up with the detainee.⁴⁷⁸¹

4.370 M002 responded to the specific allegations made by Kadhim Al-Behadili. He said that Kadhim Al-Behadili was probably sitting during the interrogation because it appeared from the interrogation report that he was providing information willingly.⁴⁷⁸² M002 said that during the second part of the interrogation on 16 May 2004, he may have shouted or raised his voice and he may have moved around the room.⁴⁷⁸³ M002 denied that he pushed or even touched any detainee. He said he would not have held the detainee against a wall.⁴⁷⁸⁴ He denied that he yelled at the detainee causing saliva and spit to hit the detainee’s face.⁴⁷⁸⁵ He denied that his stomach ever touched Kadhim Al-Behadili⁴⁷⁸⁶ or that he pushed the detainee back to the wall with his stomach.⁴⁷⁸⁷ He said he would never touch a detainee unless the detainee offered out his hand to shake at the end of a session.⁴⁷⁸⁸

⁴⁷⁷⁶ M002 (ASI023386) [71-72]

⁴⁷⁷⁷ M002 [156/98/3]

⁴⁷⁷⁸ M002 [156/104-105]; (ASI023386-87) [73]

⁴⁷⁷⁹ M004 (ASI023387) [74]

⁴⁷⁸⁰ M004 [156/111/20]

⁴⁷⁸¹ M004 [156/109]

⁴⁷⁸² M004 (ASI023388) [79]

⁴⁷⁸³ M004 [156/107/8]

⁴⁷⁸⁴ M004 [156/107/23]; [156/112/17]

⁴⁷⁸⁵ M004 [156/157/22]

⁴⁷⁸⁶ M004 [156/112/21]

⁴⁷⁸⁷ M004 [156/158/4]

⁴⁷⁸⁸ M004 [156/69/3]

- 4.371** M012 was the interpreter for the second part of the interrogation on 16 May 2004 when the interrogation report indicates a “*strong to firm*” approach was used.⁴⁷⁸⁹ M012 could not recall whether Kadhim Al-Behadili stood during some or all of the session, although the use of the term “*strong approach*” suggested to her that the detainee possibly stood during the part of the session where that approach was used.⁴⁷⁹⁰ M012 said the reference in the report to “*hints of anger*” were likely to mean that the interrogator acted as though he was at the beginning of an argument. A step forward might have been taken, for instance.⁴⁷⁹¹ She did not recall the interrogator shouting at the detainee so that saliva landed on the detainee’s face.⁴⁷⁹² She said that M002 might have unintentionally touched stomach to stomach with Kadhim Al-Behadili because at that time M002 was a portly man who had quite a large stomach.⁴⁷⁹³
- 4.372** I have no doubt that the evidence of M002 and M012 was both truthful and accurate. I am, therefore, sure that Kadhim Al-Behadili’s account of his interrogations by M002 contained a significant degree of exaggeration on his part, intended to mislead the Inquiry into believing that the interrogations were conducted in a highly aggressive and violent manner, which simply was not the case.

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 4.373** On 16 May 2004, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) was interviewed for 1 hour between 11:30 and 12:30 hours.⁴⁷⁹⁴ The interrogator was M002, a qualified interrogator.⁴⁷⁹⁵ The interpreter was M029.
- 4.374** In his evidence to the Inquiry, Abbas Al-Hameedawi said that the interrogation was calm at times but the interrogator became angry and aggressive. He said he was standing throughout the first interrogation and was tired from standing.⁴⁷⁹⁶ In his oral evidence, Abbas Al-Hameedawi said he was made to stand in the corner of the room and the interrogator came towards him using a hard voice.⁴⁷⁹⁷ He said the interrogator got very angry and shouted at him. He said the interrogator yelled at him and called him a liar.⁴⁷⁹⁸ He said the interrogator came very close to him as though he was going to hit him.⁴⁷⁹⁹
- 4.375** The interrogation report indicates that the interrogator adopted a “*neutral to firm*” approach throughout the interrogation. The reports further noted that “*the Internee was confident and forthcoming with general information.*”⁴⁸⁰⁰
- 4.376** The interrogator, M002, recalled that this detainee was a policeman. M002 said he adopted the “*neutral to firm*” approach, which was standard for a first interrogation. I have already set out M002’s explanation of the “*neutral to firm*” approach at paragraph 4.363 above. M002 was asked about the specific allegations made by Abbas Al-Hameedawi. M002 did not believe that he shouted or raised his voice whilst questioning Abbas Al-Hameedawi as that would not be consistent with the neutral to firm approach he recorded in the interrogation report.

⁴⁷⁸⁹ (MOD040918) [5]

⁴⁷⁹⁰ M012 (ASI019301) [74]; [153/71/20]

⁴⁷⁹¹ M012 (ASI019301) [75]

⁴⁷⁹² M012 [153/73/7]

⁴⁷⁹³ M012 [153/73/13]; [153/128/18]

⁴⁷⁹⁴ See paragraph 4.317

⁴⁷⁹⁵ M002 (ASI023370) [6]

⁴⁷⁹⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004774) [56]

⁴⁷⁹⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/56/13]

⁴⁷⁹⁸ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000456) [33-34]

⁴⁷⁹⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004773) [54]; [14/24]

⁴⁸⁰⁰ (MOD040924)

M002 said he did not get angry and he was confident that he did not get close to the detainee as if he was about to hit him.⁴⁸⁰¹ M002 said he could not recall whether Abbas Al-Hameedawi was sitting or standing during the interrogation. However, he thought Abbas Al-Hameedawi was probably sitting as it was a first interrogation and it appeared from the interrogation report that the detainee was providing information willingly.⁴⁸⁰²

4.377 The interpreter, M029, said that she did not recall the interrogator shouting at Abbas Al-Hameedawi or getting close to him. She said those interrogations were usually conducted in a matter of fact way. It would be unusual for an initial interrogation to escalate to shouting and getting close to a detainee, although it was possible that would happen. Given that the interrogation report indicates the detainee was forthcoming with information, M029 thought it was unlikely that M002 shouted.⁴⁸⁰³

4.378 I have no doubt that M002 and M029 gave both truthful and accurate evidence to the Inquiry. I am, therefore, sure that Abbas Al-Hameedawi's account of his interrogation by M002 contained a significant degree of exaggeration on his part, intended to mislead the Inquiry into believing that the interrogation was conducted in a far more aggressive and threatening manner than was actually the case.

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

4.379 On 19 May 2004, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) was interviewed for 55 minutes between 10:55 and 11:50 hours.⁴⁸⁰⁴ The interviewer was M006, a qualified debriefer. The interpreter was M012.

4.380 In his written evidence to the Inquiry, Ahmed Al-Furaiji said the interrogator did not yell or lose control of himself, but he did tell the detainee to confess otherwise he would spend his life in prison.⁴⁸⁰⁵ In his Judicial Review statement, Ahmed Al-Furaiji said the soldiers sat him on a chair and gave him a glass of water and a cigarette.⁴⁸⁰⁶

4.381 The interrogation report states that the detainee *"was cooperative throughout the interrogation and seemed keen to protest his innocence at all times. He did not hesitate to study or correct maps and diagrams used to aid explanation."*⁴⁸⁰⁷

4.382 M006 said that as far as he could recall, this was a very standard style of interview. He asked the detainee for personal details and for his understanding of why he had been arrested. He then went back over the answers and probed the detainee for more details.⁴⁸⁰⁸ M006 recalled that the detainee was relatively talkative. Although he seemed a bit scared and shocked, the detainee answered all the questions and seemed keen to give his side of the story.⁴⁸⁰⁹ When asked about the detainee's suggestion that he was told to confess or spend his life in prison, M006 said he possibly would tell the detainees that they might spend a long time in prison and not see their families, but that was simply a statement of fact.⁴⁸¹⁰

⁴⁸⁰¹ M002 (ASI023387-88) [78]; [156/118/7]

⁴⁸⁰² M002 (ASI023388) [79]

⁴⁸⁰³ M029 (ASI018826) [52]

⁴⁸⁰⁴ See paragraph 4.317

⁴⁸⁰⁵ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000323) [94]

⁴⁸⁰⁶ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006537) [31]

⁴⁸⁰⁷ (MOD040929)

⁴⁸⁰⁸ M006 (ASI018777) [71]

⁴⁸⁰⁹ M006 (ASI018778) [77]

⁴⁸¹⁰ M006 [157/51/6]

- 4.383** The interpreter, M012, said the detainee probably was told he was lying. He might also have been told that the JFIT team could not help him if he did not tell them the truth.⁴⁸¹¹
- 4.384** I have no doubt that both M006 and M012 gave truthful and accurate evidence to the Inquiry. There is a possibility that it may have been pointed out to Ahmed Al-Furaiji that he was at risk of being detained for some time and thus separated from his family. If this was said by either M006 or M012 it was intended as a statement of fact, and in both the context and manner in which it was said,⁴⁸¹² can be reasonably considered to be such.

Hussein Fadhil Abass Al-Behadili (detainee 778)

- 4.385** Hussein Fadhil Abass Al-Behadili (detainee 778) was interviewed on 17 May 2004. There is some discrepancy between the times recorded on the interrogation report and the times shown in the guards' Incident Log.⁴⁸¹³ In any event, the interview lasted somewhere between 1 hour 15 minutes and 1 hour 30 minutes, and it finished by approximately 10:30 hours. The interviewer was M006, a qualified debriefer. The interpreter was M029. On 21 May 2004, Hussein Al-Behadili was interviewed for 1 hour and 25 minutes between 10:30 and 11:55 hours, and for 1 hour and 5 minutes between 12:25 and 13:30 hours.⁴⁸¹⁴ There is no record in the Incident Log to show that the detainee was returned to his cell between interviews.⁴⁸¹⁵ The interviewer was M007, a qualified debriefer. The interpreter was M012.
- 4.386** In his evidence to the Inquiry, Hussein Al-Behadili said he was punched and kicked as he was escorted to the interview session with the JFIT.⁴⁸¹⁶ He said that during the interview, he was told to confess or he would not see his family again and would die in prison. He said the interviewer banged on the desk and acted in a furious manner, shouted in the detainee's face.⁴⁸¹⁷ He said he was not given any water, and was made to stand throughout all the interviews.⁴⁸¹⁸ He said he was made to stand for at least two hours with his feet apart and his hands behind his back in the corner of the room with a heater directed towards him.⁴⁸¹⁹ He said a soldier guarded him in the corner of the room while the interviewer left the room. When he tried to move his foot the soldier kicked his feet to keep them apart and ordered him not to move.⁴⁸²⁰ He said he felt faint and nearly collapsed.⁴⁸²¹
- 4.387** The interrogation report from 17 May 2004 states that the detainee *"seemed to be withholding information [...]. He appeared nervous and did not react well to being shown pictures of the casualties. He has a strong accent which can make translation difficult."*⁴⁸²² The interrogation report for the 21 May 2004 states the detainee was interviewed in a *"neutral"* manner, occasionally rising to a *"firm approach to apply pressure when he was evasive"*. It also stated that the detainee *"occasionally avoided answering questions. [...] He was unemotional and generally calm throughout the interrogation."*⁴⁸²³

⁴⁸¹¹ M012 (ASI019301) [78]

⁴⁸¹² As to which please see my fuller analysis on the conduct of the JFIT interviews. See paragraphs 4.406 – 4.409

⁴⁸¹³ (MOD040084-5)

⁴⁸¹⁴ See paragraph 4.317

⁴⁸¹⁵ (MOD040116)

⁴⁸¹⁶ Hussein Fadhil Abass Al-Behadili (detainee 778) (PIL000371) [44]; (ASI001045) [53]

⁴⁸¹⁷ Hussein Fadhil Abass Al-Behadili (detainee 778) (MOD006564) [47]; (PIL000371) [45]; [18/27/14]; [19/57/5]

⁴⁸¹⁸ Hussein Fadhil Abass Al-Behadili (detainee 778) (PIL000372) [48]

⁴⁸¹⁹ Hussein Fadhil Abass Al-Behadili (detainee 778) (PIL000372) [47]; (ASI001046) [56]; [18/27/14]; [19/58-59]

⁴⁸²⁰ Hussein Fadhil Abass Al-Behadili (detainee 778) [18/27-28]

⁴⁸²¹ Hussein Fadhil Abass Al-Behadili (detainee 778) PIL000372 [47]

⁴⁸²² (MOD046235)

⁴⁸²³ (MOD040938)

- 4.388** M006 said the interview with Hussein Al-Behadili on 17 May 2004 was a very standard, unremarkable interview. He said the detainee seemed quite young and scared but was talkative and willing to answer questions.⁴⁸²⁴ M006 said that if the detainee was punched and kicked as he was escorted to the interview room, M006 probably would have heard it happen and also seen signs of it having just happened when the detainee entered the room. M006 recalled nothing of that nature.⁴⁸²⁵ He told the Inquiry that it was possible that Hussein Al-Behadili stood during the interview, although he could not remember. The detainee would have been allowed to sit if he had asked. M006 thought the detainee probably had a bottle of water available on the table or on the floor next to him. In any event, if he had asked for water his request would not have been refused.⁴⁸²⁶ M006 did not think he got close to the detainee; it would have been difficult for him to take notes if he was standing up. He would occasionally walk around the table if he wanted to show some material to the detainee, but that was not intended to scare them. There were also occasions when M006 would shout at a detainee if they were not paying attention, but he said he would never shout in their face; the table would always be between them.⁴⁸²⁷
- 4.389** The first interpreter, M029, could not recall Hussein Al-Behadili specifically. However, she said that if a detainee was punched and kicked by guards who were escorting the detainee to an interview, she thought she would have heard it and remembered it as they would wait with the door open for the detainee to be brought into the room.⁴⁸²⁸
- 4.390** M007 told the Inquiry that on 21 May 2004, Hussein Al-Behadili was interrogated in a neutral manner, occasionally rising to a firm approach to apply pressure when he was evasive. She said that meant she would have used a level tone occasionally raising her voice when he was evasive, but not to a shout. Her body language would generally have been neutral.⁴⁸²⁹ M007 said that during the interrogation, she had memories of both her and the detainee sitting down and both standing up. However, she had no recollection of making a detainee stand for any significant period of time. As it was prohibited to put anyone in a stress position, she would not have given such an order. It was not some form of conditioning technique. She may have turned the air conditioner on during the break, but that would have been to cool the room down, not increase the temperature.⁴⁸³⁰ M012 said it was unlikely that the detainee was left to stand for half an hour. She did not recall any detainee being left to stand for half an hour.⁴⁸³¹ M007 denied that she told the detainee that if he did not confess he would not be able to see his family and would remain in prison for a long time.⁴⁸³² She explained that she would sometimes tell detainees that if they provided information that helped to show that they were not involved in the incident that led to their detention, and that evidence could be corroborated, then they could be released from Shaibah.⁴⁸³³
- 4.391** The second interpreter, M012, said in her oral evidence that she could recall that on occasions an interrogator would slap his hand very lightly on the table to emphasise a point or make it clear that an answer was inaccurate.⁴⁸³⁴ M012 said in her written evidence that it was possible that the detainee was left standing in the 30 minute break between interrogations while he

⁴⁸²⁴ M006 (ASI018779) [81]

⁴⁸²⁵ M006 (ASI018779-80) [84]

⁴⁸²⁶ M006 (ASI018780) [85]

⁴⁸²⁷ M006 (ASI018780) [86]

⁴⁸²⁸ M029 (ASI018827) [55]

⁴⁸²⁹ M007 (ASI019346) [66]

⁴⁸³⁰ M007 (ASI019344) [60]; (ASI019347) [72-74]; [154/54/12]; [154/61/10]

⁴⁸³¹ M012 [153/84/21]

⁴⁸³² M007 (ASI019348) [75]

⁴⁸³³ M007 (ASI019339) [41]

⁴⁸³⁴ M012 [153/96/3]

was left in the interrogation room with a guard, Although she did not recall the guard being directed to make the detainee stand.⁴⁸³⁵ She thought the break was probably either for lunch or to put the air conditioning on in the room.⁴⁸³⁶ M012 said she did not know the Arabic word for “confess” and she was never asked to interpret anything along the lines of “confess to this allegation or ...”. The emphasis was always on telling the truth. She said that she may have told the detainee that he was at risk of going to prison for a long time and he may not see his family again.⁴⁸³⁷

- 4.392** I have no doubt that M006, M029, M007 and M012 all gave both truthful and accurate evidence to the Inquiry. Hussein Al-Behadili deliberately lied when he told the Inquiry that the escorts assaulted him, and that he was made to stand in a painful position for a lengthy period of time, and that he was questioned in an aggressive manner on 17 and 21 May 2004. He did so in order to lend substance to his allegations of ill-treatment at the hands of the British military. If Hussein Al-Behadili was told that he might be released if he provided information that showed he had not been involved in the incident, I am satisfied that this was intended as a statement of fact and can reasonably be considered to be such in both the context and manner in which it was said. If Hussein Al-Behadili understood that to be a threat to the effect he would die in prison if he did not confess, he was plainly mistaken.

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 4.393** On 16 May 2004, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) was interviewed for 1 hour and 15 minutes between 10:35 and 11:50 hours.⁴⁸³⁸ The interviewer was M005, a qualified interrogator. The interpreter was M030.

- 4.394** In his evidence to the Inquiry, Atiyah Al-Baidhani said he was dragged from his cell by a guard. As he was escorted to the interrogation room, he said the guard punched him and pushed him into the walls and then into the interrogation room. The guard then pushed him against a wall in the interrogation room.⁴⁸³⁹ He said that during the first interrogation he was made to face the wall. Occasionally he would be told to turn and face the interviewers, and then he would be told to turn back and face the wall.⁴⁸⁴⁰ The first time he was turned around, the interpreter walked over to him and physically turned him around to face the desk. After that, the interpreter would just shout at him to turn around.⁴⁸⁴¹ He said that if the interviewer got angry, she would come within 12 inches of his face and shout at him.⁴⁸⁴² He said he was told to sign a confession otherwise he would remain in prison forever⁴⁸⁴³ or would remain in Shaibah for many years.⁴⁸⁴⁴ He said he was made to stand throughout.⁴⁸⁴⁵

- 4.395** The interrogation report from 16 May 2004 indicates that a “neutral” approach was adopted throughout the interview. It further recorded that the detainee “*maintained good eye contact and answered all questions clearly and without hesitation. When questioned about the attack he very conveniently said he could not understand the interpreter and was finding it difficult*

⁴⁸³⁵ M012 (ASI019303) [82]

⁴⁸³⁶ M012 (ASI019302) [79]

⁴⁸³⁷ M012 (ASI019303) [85]

⁴⁸³⁸ See paragraph 4.317

⁴⁸³⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000171) [49-50]; (PIL000173) [56]

⁴⁸⁴⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000172) [53]

⁴⁸⁴¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000174-75) [56]

⁴⁸⁴² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000175) [61]

⁴⁸⁴³ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006681) [40]

⁴⁸⁴⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000174-75) [60]

⁴⁸⁴⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006681) [40]

*to hear because he had a sore left ear. He complained a couple of times of being very tired and kept yawning.*⁴⁸⁴⁶

4.396 M005 said all her interrogations at the JFIT were conducted in a neutral manner and the detainee always sat down.⁴⁸⁴⁷ She said it was possible that Atiyah Al-Baidhani thought she was shouting because she does naturally raise her voice when she speaks. However, if she had intentionally shouted, she would have recorded that in her report.⁴⁸⁴⁸ She said it was ridiculous to suggest that she came within 12 inches of Atiyah Al-Baidhani's face and shouted at him.⁴⁸⁴⁹ M005 denied that the detainee was made to face the wall.⁴⁸⁵⁰ M005 denied the detainee was asked to sign a confession and says that in any event, they had nothing for him to sign.⁴⁸⁵¹ M005 was asked to comment on the detainee's allegation that he was dragged from his cell, assaulted whilst being escorted to the interrogation room, and then pushed into a wall when he entered the interrogation room. M005 said she did not see any of those incidents occur. She would have been very surprised if they did occur and she would have expected the detainee to mention it to her during the interview, particularly as the detainee did complain of being tired.⁴⁸⁵²

4.397 The interpreter, M030, said she did not recall a detainee ever being made to stand for longer than was necessary at the beginning of an interrogation.⁴⁸⁵³ She also said in her oral evidence that she did not recall Atiyah Al-Baidhani being made to stand for an hour facing a wall.⁴⁸⁵⁴ M030 said it is unlikely that M005 got very close to Atiyah Al-Baidhani because M005 and M030 were quite small women. She did not remember them being within 12 inches of a detainee's face.⁴⁸⁵⁵ M030 said she did not remember any detainee ever being told that if he did not sign a confession he would be in prison forever.⁴⁸⁵⁶

4.398 I have no doubt that both M005 and M030 gave truthful and accurate evidence to the Inquiry. Atiyah Al-Baidhani lied when he alleged that he was assaulted when he was escorted to and from his interrogations. I am satisfied that, if such assaults had taken place, either M005, M030 or likely both would have been aware of them. Atiyah Al-Baidhani also lied when he alleged that he was told to sign a confession otherwise he would remain in prison forever. This did not happen. The remainder of Atiyah Al-Baidhani's account of his interrogation contained a significant degree of exaggeration on his part, intended to mislead the Inquiry into believing that the interrogation was conducted in a highly aggressive manner. This simply was not the case. Atiyah Al-Baidhani lied and exaggerated in this fashion in order to lend substance to his allegations of ill-treatment at the hands of the British military.

Hussein Gubari Ali Al-Lami (detainee 780)

4.399 On 19 May 2004, Hussein Gubari Ali Al-Lami (detainee 780) was interviewed for 1 hour and 5 minutes between 13:45 and 14:50 hours.⁴⁸⁵⁷ The interviewer was M006, a qualified debriefer. The interpreter was M012.

⁴⁸⁴⁶ (MOD040944)

⁴⁸⁴⁷ M005 [164/227/21]

⁴⁸⁴⁸ M005 (ASI021231) [87]

⁴⁸⁴⁹ M005 (ASI021231) [87]

⁴⁸⁵⁰ M005 [164/260/23]

⁴⁸⁵¹ M005 (ASI021231) [87]

⁴⁸⁵² M005 (ASI021231) [86]

⁴⁸⁵³ M030 [167/87/22]

⁴⁸⁵⁴ M030 [167/61/10]

⁴⁸⁵⁵ M030 (ASI023670) [59]

⁴⁸⁵⁶ M030 (ASI0236700) [59]

⁴⁸⁵⁷ See para 4.316

- 4.400** In his evidence to the Inquiry, Hussein Al-Lami said that at the beginning of the session the interviewer took a handgun out of his holster and placed it on the table. He said he was told to confess or he would remain in prison for a long time, and he was he told that if he provided information he might be released sooner. He said the interviewer acted aggressively and shouted at him. He said the interviewer tried to attack him at one point but was stopped by the interpreter. He said the interviewer picked up the gun from the table and was shouting at him. At that point the guards entered the room and the interviewer sent them back out.⁴⁸⁵⁸
- 4.401** The interviewer, M006, said the allegation about a gun was nonsense; He never had a handgun in Iraq and weapons were strictly prohibited in the JFIT. He said it would have been dangerous to take a gun into an interrogation because it might be used against the interrogator.⁴⁸⁵⁹ He explained that the practice at the JFIT was to leave almost any item behind in M003's office before conducting an interrogation, including multi-tools, pocket knives, keys and watches.⁴⁸⁶⁰ M006 said that he would not use the word "*confess*" although he might have called Hussein Al-Lami a liar in an effort to get to the truth.⁴⁸⁶¹ He also said that he possibly would tell detainees that they might spend a long time in prison and not see their families, but that was simply a statement of fact.⁴⁸⁶² M006 said he never acted as if he was about to attack Hussein Al-Lami.⁴⁸⁶³
- 4.402** The interpreter, M012, said she never saw a weapon in an interrogation room.⁴⁸⁶⁴ M012 said she did not know the Arabic word for "*confess*" and she was never instructed to interpret anything to that effect. The emphasis was always on telling the truth. However, Hussein Al-Lami may have been told that he was a risk of going to prison for a very long time.⁴⁸⁶⁵ M012 said it was highly unlikely that M006 got to Hussein Al-Lami's face or acted aggressively.⁴⁸⁶⁶ She said it was not possible that Hussein Al-Lami thought he was going to be attacked.⁴⁸⁶⁷
- 4.403** Paragraph 25 of the JFIT Operational Directive dated 31 May 2004 is headed "*Weapons*". It states:

*"[...] Weapons for the JFIT personnel will be held in secured ISO container in weapon racks. The ISO key is to be held in the ops room. Weapons will not be brought within the JFIT. [...]"*⁴⁸⁶⁸

- 4.404** The JFIT Operational Directive also includes an Annex J, titled "*JFIT SOPs – Weapons, Ammunition and Morphine*". Annex J includes the following:

*"All weapons must be kept in the armoury, the ISO container facing the JFIT gates, and in line of Sight of the Tower 5. This ISO should be locked with two security approved Abloy padlocks which is the minimum level of security required. [...] Weapons are signed in an out of the armoury when required."*⁴⁸⁶⁹

⁴⁸⁵⁸ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004822) [111-112]; (PIL000395) [6]; (PIL000396) [9]

⁴⁸⁵⁹ M006 (ASI018781) [91]

⁴⁸⁶⁰ M006 (ASI018766) [23]

⁴⁸⁶¹ M006 [157/69/5]

⁴⁸⁶² M006 [157/51/6]

⁴⁸⁶³ M006 [157/75/24-[76/2]

⁴⁸⁶⁴ M012 [153/94/5]

⁴⁸⁶⁵ M012 (ASI019304) [89]

⁴⁸⁶⁶ M013 [153/91/25]

⁴⁸⁶⁷ M013 [153/92/5]

⁴⁸⁶⁸ (MOD046803)

⁴⁸⁶⁹ (MOD046873)

4.405 I have no doubt that both M006 and M012 gave truthful and accurate evidence to the Inquiry. The allegation Hussein Al-Lami made about a handgun is incapable of belief. It was fabricated by Hussein Al-Lami. Hussein Al-Lami also lied when he described M006 attempting to attack him and being restrained by M012. Both lies were told with the intention to mislead the Inquiry into believing that the interrogations were conducted in a highly aggressive and violent manner. This simply was not the case. I accept that the questioning may have been direct in its nature and even that Hussein Al-Lami might have been called a liar. However, whilst Hussein Al-Lami might have been told that if he provided information he might be released sooner, I am satisfied that he was not told to confess. This too was a fabrication on his part designed to substantiate his allegations of ill-treatment by representing the interviews as oppressive.

A comparison of the conduct and content of the interrogations conducted in the JFIT at Shaibah with the tactical questioning sessions conducted at Camp Abu Naji overnight on 14/15 May 2004

4.406 In the preceding paragraphs of this Report I set out the available evidence relating to the interrogations of each of the eight detainees who were interrogated during their time at the JFIT. Where appropriate, I set out my findings as to the manner in which each of those interrogations was conducted. When considered collectively, it is apparent to me that the interrogations conducted in the JFIT bore little resemblance to the tactical questioning sessions which were conducted at Camp Abu Naji overnight on 14/15 May 2004.

4.407 As I have already stated,⁴⁸⁷⁰ a number of the incidents which occurred when the detainees were tactically questioned, as well as the process as a whole, amounted to a form of ill-treatment. By contrast, I am satisfied that no ill-treatment occurred when the detainees were interrogated in the JFIT compound. Each of the interrogators and interpreters who gave evidence about these interrogations described a largely business-like procedure which was not aggressive or threatening towards the detainees. The ‘harsh’ technique was not used during the interrogation of any of the eight detainees with whom this Inquiry is concerned and who were interrogated at the JFIT.

4.408 I found the following passage in the oral evidence of M003 to be both truthful and accurate. It gives a general picture of how the detainees with whom this Inquiry is concerned were treated in their JFIT interviews. M003 was asked if the resource limitations experienced by his team in May 2004 had any adverse consequences for the detainees. He answered:

“A. The consequence was beneficial for the internees. The nine individuals in question — I have to absolutely make this clear: we were under a massive pressure from the whole of the Brigade to extract information or intelligence that potentially could be a secondary attack, there could be weapons out there that were about to be used on an attack tomorrow, next hour, next minute. And these individuals had been caught red handed in an ambush site firing weapons at our soldiers. They had information. And that information potentially could have saved life. And I had all this pressure from the Brigade to get that information.

Now, unfortunately, we didn’t have all the trained individuals, we didn’t have the amount of forensic that we needed. We couldn’t do very much. And a lot of them were medically unfit. So it was — it was pretty limited, and when you know that these individuals have been caught in this type of event, situation, attack, incident it was — it was pretty demoralising.

⁴⁸⁷⁰ See paragraph 3.420

Q. Did that pressure and demoralisation, and no doubt frustration, in having people in front of you who have been caught red handed ever translate into those asking the questions transgressing beyond what was permissible?

A. No, absolutely not. It was the other way round: it was almost defeat.”

4.409 Accordingly, and as specifically identified in relation to each of the detainees who were interviewed in JFIT at Shaibah, I am satisfied that these interviews were not at all like the threatening and oppressive tactical questioning sessions which they had experienced at Camp Abu Naji.

4. Visit from the International Committee of the Red Cross

4.410 On 17 and 18 May 2004, the JFIT received visitors from the International Committee of the Red Cross (“ICRC”). M003 explained that this was a routine visit to allow representatives from the ICRC to speak to the detainees. The ICRC visits occurred according to the ICRC’s own schedule.⁴⁸⁷¹ The guards’ Incident Log records that the ICRC arrived at 16:28 hours on 17 May 2004. The record in the Incident Log indicates that representatives from the ICRC spoke to all the detainees relevant to this Inquiry, except Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779). In his written evidence, Atiyah Al-Baidhani recalled that he was visited by the Red Cross.⁴⁸⁷² It is quite possible that the Incident Log simply failed to record the visit.

4.411 Over the two days of the ICRC visit, the JFIT suspended interviews in order to facilitate the visit and enable the ICRC access to the detainees.⁴⁸⁷³ M003 told the Inquiry that the ICRC was content with the running of the JFIT.⁴⁸⁷⁴ I am satisfied that the JFIT did not intend to conceal ill-treatment from the ICRC.

4.412 The Report produced by the ICRC following this visit included a section devoted to the detainees captured following what was described as the “MAJAR AL KABIR FIREFIGHT”.⁴⁸⁷⁵ I am satisfied that the following matters included in the ICRC Report relate to the detainees with whom this Inquiry is concerned:

“The ICRC had reason to believe that the internees from Majar Al Kabir had been ill-treated, subsequent to their capture. The medical observations made by the ICRC were compatible with the allegations made.

Of the nine internees present in the DTDF from this incident, five had been captured in the vicinity of the battle and four had been captured during the fighting. Three of these internees, who were captured mid-May alleged that they had been punched and kicked immediately after capture when they were already handcuffed or restrained. All three had traumatic injuries in different parts of the body and had been repetitively injured in the head, especially in the face. In two cases the lesions were prominent in one side of the face, which was compatible with the allegation that they were already restrained when they were beaten. They refused to allow the ICRC to cite their identities.

⁴⁸⁷¹ M003 (ASI024622-23) [102]

⁴⁸⁷² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000956) [58]

⁴⁸⁷³ M003 (ASI024623) [104]

⁴⁸⁷⁴ M003 (ASI024624) [107]

⁴⁸⁷⁵ (MOD032560)

The allegations of ill treatment of the internees were supported by the physical findings. The fact that the same unit captured the three internees in the same place, date and time further supported the allegation.

The ICRC suggested that, in general, any case suspected of being ill treated should be documented and reported to the competent body for further investigation and that the victims of ill treatment should be informed about the right to file a complaint and the right to compensation.

The ICRC recommended establishing a system by which any cases of ill-treatment, suspected or definite, documented by the DTDF doctor can be easily reported for an investigation. It was also stressed that it was the responsibility of the Authorities to determine if this incident had been an isolated event or if it was part of a widespread and systematic behaviour.

The Authorities took note of these allegations and informed the ICRC that they would be included into the ongoing investigation into the Majar Al Kabir incident. They also informed the ICRC that standing orders already existed for cases to be automatically investigated and that doctors had the obligation to report suspicions of ill treatment. A reminder of these orders would be issued.

4.413 In a later Chapter of this Report, I will explain how these complaints recorded by the ICRC precipitated an investigation by the Royal Military Police.⁴⁸⁷⁶ Furthermore, all the allegations to which the ICRC referred in the passage quoted above have been subject to detailed consideration by this Inquiry and dealt with in this Report.

5. Family Visits

4.414 Paragraph 15 of the JFIT Operational Directive made it clear that detainees were not permitted to receive visitors while they remained in the JFIT compound as this would hamper the JFIT's ability to extract intelligence.⁴⁸⁷⁷ However, a SITREP dated 18 May 2004 indicates that, as an exception to the rule, an "extraordinary" visit was being planned for the detainees' relatives to visit the detainees.⁴⁸⁷⁸

4.415 In his evidence to the Inquiry, M003 explained that the extraordinary visit was authorised to address rumours which had begun to circulate in Al Amarah that the survivors of the contact had been murdered or abused at Camp Abu Naji.⁴⁸⁷⁹ However, the Incident Log contains no record of those visits in fact taking place before the detainees were moved to the main DTDF compound on 21 and 22 May 2004.⁴⁸⁸⁰

⁴⁸⁷⁶ See Part 5, Chapter 1

⁴⁸⁷⁷ (MOD046800) [15]

⁴⁸⁷⁸ (MOD041647)

⁴⁸⁷⁹ M003 (ASI024622) [99]

⁴⁸⁸⁰ (MOD040061)

CHAPTER 4: DETENTION AT THE DTDF COMPOUND

1. Conditions in the DTDF

- 4.416** With the exception of Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) who was transferred initially to the Field Hospital,⁴⁸⁸¹ when the other eight detainees left the Joint Forward Interrogation Team (“JFIT”) compound, they were transferred to join the main detainee population at the Divisional Temporary Detention Facility (“DTDF”).⁴⁸⁸² The layout of the DTDF is described in the Introduction to this Part of the report. As I indicated at paragraph [4.27] of the introduction, each accommodation block included a vestibule containing two sinks, a shower and a lavatory. The detainees’ access to those facilities was entirely unrestricted. Each cell block also had air-conditioning.
- 4.417** Various witness also recalled that the detainees had radios in their cells. For example, Sergeant John Johnson said in his Inquiry statement that the detainees were given radios to help them with daily prayer times. He said there were approximately two or three radios per cell. The detainees were allowed to listen to whatever they wanted on the radios, but they would often listen to the forces radio which played Western music. He said the detainees went through an enormous amount of batteries for the radios.⁴⁸⁸³
- 4.418** Sergeant Raymond Mepsted said in his written Inquiry statement that each cell was initially issued with one radio. However that caused arguments between detainees about what to play, so the cells were issued with more radios per cell.⁴⁸⁸⁴ In his oral evidence, Sergeant Mepsted said he was sure the detainees’ cells had radios in them because he was responsible for providing the radios and the batteries.⁴⁸⁸⁵
- 4.419** Sergeant Ivan Sharplin also recalled in both his written Inquiry statement⁴⁸⁸⁶ and his oral evidence⁴⁸⁸⁷ that the detainees were issued with at least one radio in every cell.
- 4.420** I am satisfied that Sergeant Johnson, Sergeant Mepsted and Sergeant Sharplin have accurately recalled that the detainees were issued with radios in their cells.
- 4.421** The detainees remained in the DTDF for a little over four months until they were transferred to the Iraqi criminal justice system. Ibrahim Al-Ismaeeli, Kadhim Abbas Lafta Al-Behadili (detainee 775), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780) were transferred on 21 September 2004. Hamzah Joudah Faraj Almalje (detainee 772), Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ahmed Jabbar Hammood Al-Furaiji (detainee 777) and Hussein Fadhil Abass Al-Behadili (detainee 778) were transferred on 23 September 2004.⁴⁸⁸⁸
- 4.422** Approximately two months after the detainees arrived at the DTDF, the operation of the facility was handed over from 1st Battalion Royal Highland Fusiliers (“1RHF”) to 40 Commando (“40 Cdo”) Royal Marines. When the detainees arrived at the DTDF, Major David Richmond of 1RHF was the Officer Commanding the DTDF. On 15 June 2004, Major Anthony De Reya

⁴⁸⁸¹ (MOD032932)

⁴⁸⁸² (MOD040119); (MOD040122)

⁴⁸⁸³ Sergeant Johnson (ASI014464) [61]

⁴⁸⁸⁴ Sergeant Mepsted (ASI011819) [43]

⁴⁸⁸⁵ Sergeant Mepsted [164/156/23]

⁴⁸⁸⁶ Sergeant Sharplin (ASI009861-62) [52]

⁴⁸⁸⁷ Sergeant Sharplin [162/143]

⁴⁸⁸⁸ (MOD044225)

of 40 Cdo was deployed to Iraq and began a two-week Reception Staging and Onward Intergration ("RSOI") course. That course was followed by a two-week handover by Major Richmond. On 12 July 2004, Major De Reya took over from Major Richmond as the Officer Commanding the DTDF.⁴⁸⁸⁹

4.423 The Military Provost Staff ("MPS") personnel also changed during the time the detainees were held at the DTDF. Major De Reya explained that the MPS personnel did not change at the same time as the non-specialist personnel; their handover came later. This was in order to ensure that there remained a high level of knowledge and consistency in the way the DTDF was run.⁴⁸⁹⁰

4.424 A note of the day-to-day operation of the DTDF was kept in the Daily Occurrence Book, which was kept in the administration area. The Daily Occurrence Book was reviewed every day by the Officer Commanding the DTDF and the Duty Officer.⁴⁸⁹¹

4.425 Both Major Richmond and Major De Reya told the Inquiry that while they were in post at the DTDF, they were very much aware of the recently reported scandal at the Abu Ghraib internment facility run by US Coalition Forces. Major Richmond and Major De Reya said they understood that the DTDF would be under particular scrutiny as a result of that scandal. Major Richmond said:

*"The treatment of internees by elements of the US Coalition Forces who took part in widespread abuse of Iraqi internees was a disgrace and the fallout of the debacle continued throughout my time at the DTDF. It only served to reinforce my commitment that internees would be afforded the highest possible standard of care whilst at the DTDF and I was adamant that the same mistakes and lack of leadership would not be repeated under my command".*⁴⁸⁹²

4.426 Major De Reya said:

*"I knew there was no margin for error. I would have to be firm but fair in my treatment of the detainees and ensure that my men understood and complied with the relevant procedures. I also knew the facility was being monitored by the ICRC [International Committee of the Red Cross]".*⁴⁸⁹³

4.427 One member of the Internal Guard Force ("IGF"), Marine Jon Hussey, said it was made very clear to those who would come into contact with the detainees that they were to be well treated:

*"I recall clearly from my training that the detainees were to be treated as nicely as possible and it was made clear that any harm that came to any detainee at the hands of a soldier could result in the end of a soldier's career."*⁴⁸⁹⁴

⁴⁸⁸⁹ Major De Reya (ASI018909) [4]

⁴⁸⁹⁰ Major De Reya (ASI018911-12) [11]

⁴⁸⁹¹ Major Richmond (ASI022486) [74-75]

⁴⁸⁹² Major Richmond (ASI022464) [16]

⁴⁸⁹³ Major De Reya (ASI018911) [10]

⁴⁸⁹⁴ Marine Hussey (ASI017742) [16]

Food and Water

Water

- 4.428** Major David Richmond said in his written Inquiry statement that detainees were “given bottled water which was available to them at all times in the accommodation blocks. The water came in large 1.5l bottles and there [sic] were given numerous bottles for use in the block which were replenished before they ran out.”⁴⁸⁹⁵
- 4.429** Marine Daniel Burford, a member of the Internal Guard Force (“IGF”), told the Inquiry that the detainees were provided with the same bottled water that the soldiers drank. Every morning, the guards would collect some detainees from each accommodation block to collect boxes of water and a large urn of sweet tea, known as “chai”.⁴⁸⁹⁶ Major De Reya explained the detainees were each allocated four litres of water a day but they were also provided with additional water whenever they asked for it.⁴⁸⁹⁷

Food

- 4.430** Major David Richmond said in his written Inquiry statement that “internees were provided with three meals a day and this was provided to them in the accommodation blocks. The food was cooked off-site by contractors who had been specially appointed to provide food for the internees. It was not the same food that was given to the soldiers at the DTDF and Shaibah. The internees’ food was Halal and prepared in accordance with their religious and dietary requirements. They were given chai tea at meal times.”⁴⁸⁹⁸
- 4.431** Marine Burford told the Inquiry the detainees were provided with three hot meals at regular intervals throughout the day, every day. During Ramadan, the timing of the meals was changed to suit the detainees.⁴⁸⁹⁹ Major De Reya explained that the food was prepared by a firm of independent caterers. The personnel at the DTDF ate the same food as the detainees. The food was prepared in accordance with cultural and religious practices. Major De Reya said the food was of a high standard; however when he began his tour the food consisted of a lot of curries and other spicy foods that the detainees did not like. The menu was subsequently changed to suit the palates of the detainees.⁴⁹⁰⁰ In SITREPs dated 18 and 20 August 2004, Major De Reya recorded that the detainees were very happy with the food provided.⁴⁹⁰¹
- 4.432** Corporal James Green, a member of the IGF, told the Inquiry that the meals were delivered to the DTDF in pre-packaged boxes placed inside large black bags. The guards would take the meals to the detainee accommodation area. Corporal Green said that if the detainees needed more food they could ask for it and it would be provided.⁴⁹⁰² Major De Reya said that in addition to the hot meals, the detainees were provided with bread and fruit.⁴⁹⁰³

⁴⁸⁹⁵ Major Richmond (ASI022510) [148]

⁴⁸⁹⁶ Marine Burford (ASI016835) [39]

⁴⁸⁹⁷ Major De Reya (ASI018942) [100]

⁴⁸⁹⁸ Major Richmond (ASI022510) [148]

⁴⁸⁹⁹ Marine Burford (ASI016836) [40]

⁴⁹⁰⁰ Major De Reya (ASI018941-42) [100]

⁴⁹⁰¹ Major De Reya (ASI018941-42) [100]; (MOD020635); (MOD038411)

⁴⁹⁰² Corporal Green (ASI019197) [25]

⁴⁹⁰³ Major De Reya (ASI018941) [101]

Gifts of food from visitors

4.433 The detainees were also permitted to receive gifts of food, such as homemade bread, cakes, sweets, fruit, and drinks from their visitors.⁴⁹⁰⁴ The detainees would store these items in the accommodation blocks. However, the food would spoil and attract insects inside the accommodation blocks. This meant the accommodation blocks had to be fumigated on a regular and frequent basis. For this reason, Major De Reya decided eventually that detainees would no longer be allowed to keep food in the accommodation blocks.⁴⁹⁰⁵ In his written evidence to the Inquiry, Hamzah Joudah Faraj Almalje (detainee 772) referred to the insects and the fumigation:

*“I have only minor complaints about the treatment in the main compound and those principally relate to the numerous cockroaches which were everywhere despite the use of chemical sprays.”*⁴⁹⁰⁶

4.434 The gifts of food items from visitors also caused some security concerns at the DTDF. Marine Hussey recalled that contraband items were smuggled into the DTDF inside items such as cakes.⁴⁹⁰⁷ Therefore, food items passed to detainees by their visitors were checked to ensure they did not contain any hidden contraband items.⁴⁹⁰⁸

Hunger strike

4.435 On 16 and 17 August, some of the detainees at the DTDF refused to eat the meals that were provided to them.⁴⁹⁰⁹ A SITREP records that on 16 August, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) and Hussein Fadhil Abass Al-Behadili (detainee 778) refused their meals, saying they wanted to be released immediately.⁴⁹¹⁰

4.436 Major De Reya recalled that this protest also involved some detainees refusing to take their medication, and detainees wearing t-shirts with the slogan “*We Want Freedom*” written in English. The same slogan was also written on the walls inside the accommodation blocks. Major De Reya said the detainees’ food was left in the accommodation areas in case the detainees changed their minds and wished to eat. Major De Reya said that, in his view, the protest arose because the detainees were frustrated and disappointed at seeing others released from the DTDF while they remained in detention with uncertainty as to when it would end. The protest did not appear to be against the quality or nature of the food that was provided to detainees.⁴⁹¹¹

4.437 Major De Reya recalled that one unspecified detainee complained because he gained weight during his time at the DTDF.⁴⁹¹² An inspection of the medical examination forms that were completed, both on the detainees’ arrival at the DTDF and again on their departure, reveals that the nine detainees each put on weight during the period of their incarceration: Hamzah Joudah Faraj Almalje (detainee 772) gained 10kg;⁴⁹¹³ Mahdi Jasim Abdullah Al-Behadili

⁴⁹⁰⁴ Marine Burford (ASI016836) [42]

⁴⁹⁰⁵ Major De Reya (ASI018940) [97]; (MOD039738)

⁴⁹⁰⁶ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000699) [69]

⁴⁹⁰⁷ Marine Hussey (ASI017754) [59]

⁴⁹⁰⁸ Corporal Green (ASI019197-98) [28]

⁴⁹⁰⁹ Major De Reya (ASI018946) [112]

⁴⁹¹⁰ (MOD004061)

⁴⁹¹¹ Major De Reya (ASI018946) [112-115]

⁴⁹¹² Major De Reya (ASI018948-49) [118]

⁴⁹¹³ (MOD043359); (MOD043394)

(detainee 773) gained 9kg;⁴⁹¹⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) gained 5kg;⁴⁹¹⁵ Kadhim Abbas Lafta Al-Behadili (detainee 775) gained 14kg;⁴⁹¹⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) gained 10kg;⁴⁹¹⁷ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) gained 9kg;⁴⁹¹⁸ Hussein Fadhil Abass Al-Behadili (detainee 778) gained 13kg;⁴⁹¹⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) gained 11kg;⁴⁹²⁰ and Hussein Gubari Ali Al-Lami (detainee 780) gained 9kg.⁴⁹²¹

Exercise

4.438 Every day, the detainees were offered the opportunity to exercise outdoors. Sergeant John Johnson recalled that the detainees were allowed at least one and a half hours of outdoor exercise each day, although they often received longer.⁴⁹²² Sergeant Ivan Sharplin told the Inquiry the detainees were permitted approximately one hour of exercise in the morning and one hour in the afternoon or early evening.⁴⁹²³ As they entered the summer season, the weather became very hot in the afternoon so the detainees would decide not to go outside. The DTDF staff responded by moving the exercise to the early evening, when the air outside was cooler.⁴⁹²⁴

4.439 In the exercise yard, detainees were provided with hair clippers so they could cut each other's hair. The guards handed out the clippers during the exercise period and then they counted them back in afterwards. When they were collected back, the guards checked the clippers to ensure the razor blades had not been removed.⁴⁹²⁵

4.440 The exercise area appears to have contained a volleyball court, a football pitch and an area for basketball.⁴⁹²⁶ Marine Burford said part of the exercise yard was shaded.⁴⁹²⁷ Various guards, including Marine Burford and Corporal Green, said the guards would play volleyball and football with the detainees.⁴⁹²⁸ In his written evidence, Sergeant Sharplin said:

*"[...] detainees used to use the opportunity at recreation times to play football or volleyball against the IGF [Internal Guard Force]. The atmosphere was positive with a lot of camaraderie between the two factions. Often the IGF and the detainees would mix up the teams so that they were playing alongside each other."*⁴⁹²⁹

4.441 Sergeant Sharplin and Sergeant Raymond Mepsted recalled that Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) particularly enjoyed playing football and he was given the nickname of "Ronaldo" after a well known Brazilian footballer.⁴⁹³⁰

⁴⁹¹⁴ (MOD043434); (MOD043472)

⁴⁹¹⁵ (MOD043506); (MOD043536)

⁴⁹¹⁶ (MOD043563); (MOD043599)

⁴⁹¹⁷ (MOD043627); (MOD043654)

⁴⁹¹⁸ (MOD043681); (MOD043714)

⁴⁹¹⁹ (MOD043961); (MOD043994)

⁴⁹²⁰ (MOD044021); (MOD044047)

⁴⁹²¹ (MOD044074); (MOD044103)

⁴⁹²² Sergeant Johnson (ASI014463) [58]

⁴⁹²³ Sergeant Sharplin (ASI009852) [27]

⁴⁹²⁴ Sergeant Sharplin (ASI009858-59) [42]

⁴⁹²⁵ Sgt Sharplin (ASI009861) [51]

⁴⁹²⁶ Major De Reya (ASI018942) [102]

⁴⁹²⁷ Marine Burford (ASI016833) [30]

⁴⁹²⁸ Marine Burford (ASI016833) [32]; Corporal Green [132/40/14]

⁴⁹²⁹ Sgt Sharplin (ASI009861) [51]

⁴⁹³⁰ Sgt Sharplin (ASI009874) [104]; Sgt Mepsted (ASI011836) [109]

4.442 In his statement to the Inquiry dated 23 November 2012, Abbas Al-Hameedawi said that one day when he wanted to get some fresh air and asked if he could be allowed to go into the courtyard to exercise, he was not given permission to do so.⁴⁹³¹ In an earlier statement, dated 25 July 2010, Abbas Al-Hameedawi said that the detainees were allowed 1 hour of exercise every day.⁴⁹³²

4.443 I am satisfied that the detainees in the main compound at the DTDF were given adequate opportunity to exercise and take in fresh air. The complaint made by Abbas Al-Hameedawi concerning one incident does not detract from the general impression of a well-run and fair regime.

Prayer

4.444 The detainees were provided with prayer mats and copies of the Koran.⁴⁹³³ In his evidence to the Inquiry, Marine Burford explained that the detainees were made aware of the direction of Mecca and they prayed inside their accommodation blocks.⁴⁹³⁴

4.445 In his statement to the Administrative Court in the Judicial Review proceedings, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) made the following allegation regarding the treatment of the detainees in general during prayer:

*"I felt that the English soldiers at Al Shu'aibi were really insulting to us. For instance, we made one of the detainees in our cell a "muezzin" who would make the calls to prayer every day. When he would start his call the soldiers would mock and insult us and insult our God. This would happen often; it was clear that the soldiers were taking advantage of their position by acting as if they were superior to us."*⁴⁹³⁵

4.446 This allegation was consistently and credibly denied by those witnesses who worked in the DTDF.⁴⁹³⁶ I have no doubt that this evidence was both truthful and accurate. I am quite sure that there was no actual occasion when guards deliberately mocked the detainees whilst they prayed, as alleged by Atiyah Al-Baidhani. It is possible that the detainees' worship generated a degree of curiosity among the guards and I cannot rule out the possibility that, the guards' curiosity was manifested in such a way as to be misinterpreted by Atiyah Al-Baidhani as disrespect or perhaps even an insult.

2. Visits

4.447 Paragraph 19 of the DTDF Operational Directive dated 4 April 2004 sets out the policy for the detainees to receive welfare visits:

"GV IV [Geneva Convention 4] lays down the right of internees to receive regular welfare visits from family. Within the DTDF such visits take place on the morning of Thu, Fri and Sat of each week. Detailed MND (SE) policy is at Annex D. The following overarching principles apply:

a. Visits are a right and can therefore only be denied in exceptional circumstances.

⁴⁹³¹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000465) [64]

⁴⁹³² Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000867) [71]

⁴⁹³³ Sgt Sharplin (ASI009862-63) [52]; M003 (ASI024605) [44]; Fusilier Davis (ASI025126) [61]; Fusilier Strathern (ASI0228590) [37]

⁴⁹³⁴ Marine Burford (ASI016837) [44]

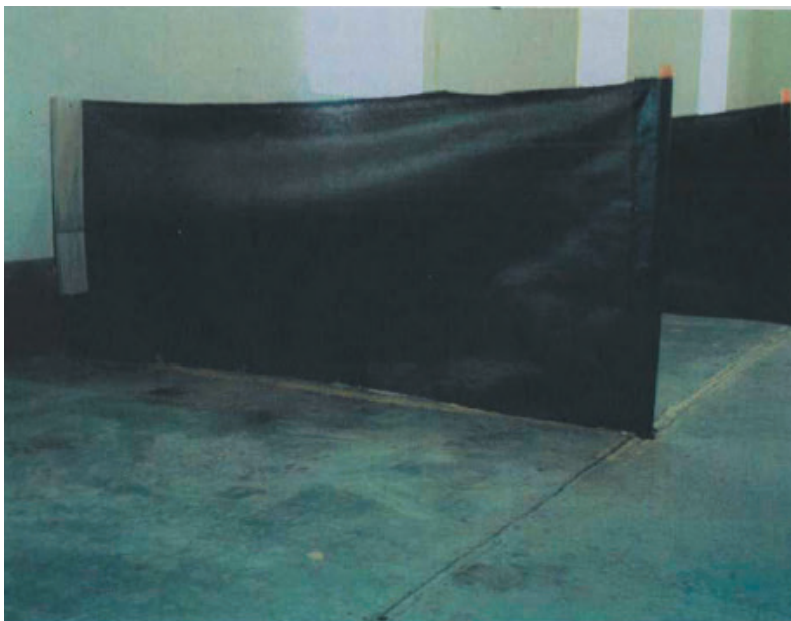
⁴⁹³⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD047168) [51]

⁴⁹³⁶ See e.g. Major De Reya [160/26-27]; Sergeant Sharplin [162/142]; Sergeant Mepsted [164/160-161]

- b. Whenever possible internees should be able to receive at least one visit per week.*
- c. Visiting groups can consist of up to 4 adults and 4 children.*
- d. Visits can be cancelled without notice on the grounds of security. Likewise individual visitors can be turned away should it be felt that they represent security threat.*
- e. Upon arrival internees may be withheld visits for up to 2 weeks whilst being questioned within the JFIT. In exceptional circumstances OC JFIT may apply to COS MND (SE) for an extension to this time period.”⁴⁹³⁷*

4.448 Visits took place in the air conditioned hall shown in the following photographs:⁴⁹³⁸

Figure 124: MOD046007



⁴⁹³⁷ (MOD045629)

⁴⁹³⁸ Major De Reya (ASI018931) [63]

4.449 Sergeant Sharplin explained how visits were conducted:

“Visitors would be bussed into the main gate at Shaibah, which we called the “golden arches”. There we understood that they would be checked for weapons outside of the camp around 100 meters further along the road. Once visitors had been searched, they were put back onto the bus and brought to the DTDF. The outer door to the Airlock would then be opened, and within the Airlock visitors would be searched again. Once they had been searched they were brought through the facility to the visiting hall.

Whilst the visitors were being searched, the detainees who were receiving visits were collected from their cells. We would check their ID cards to ensure that they matched with the records that we had and also check that we had the right number of detainees with us. We would take them from the cells to the visiting hall where they would be issued with orange tape. Detainees would always have to wear an orange sash during visits for the purposes of identification. Once all of the detainees were sitting down we would authorise those in the Airlock to allow the visitors through to the visiting hall.

[...] generally I cannot recall there ever being more than three or four visitors per detainee. We would allow visitors one hour and during the visiting there would be three or four members of the IGF monitoring the process. We used to keep a supply of fruit in the Ops room and this would be handed out to children to keep them happy. Visitors would usually bring small amounts of food such as melons for the detainees. Once 55 minutes had elapsed we would blow a whistle which provided the detainees with five minutes in which they could say their goodbyes.

The detainees would then be asked to stand up and taken out via the door to the Ops Room. We would count the detainees and check their ID cards. We would also check the items they had been given by visitors and also carry out a pat down search before we led them back into the compound. We would then authorise the visitors to leave and the Quick Reaction Force (“QRF”), who were based outside of the DTDF compound, would take them back to the “golden arches”.

The visiting room was then checked and usually we would ask one of the detainees who had just received a visit to make sure that it was clean.”⁴⁹³⁹

4.450 Sergeant Johnson told the Inquiry that sometimes, those who had previously been detained at the DTDF would return to visit others, but would also socialise with members of the IGF:

“I feel that it is testament to the quality of welfare that we provided that many ex-detainees used to come back on visiting days to see the staff and share a cup of Chai with us. They would attend on the pretence of visiting a current detainee and then spend the entire time chatting to the staff. This exemplifies the relationship that the staff tried to develop with the detainees.”⁴⁹⁴⁰

4.451 An entry in the Daily Occurrence Book for 7 August 2004 records that during a visit that day, Marine Paul Kavanagh observed items being passed between detainees and visitors. The detainees were subsequently searched. Ahmed Jabbar Hammood Al-Furaiji (detainee 777) was found to have money hidden inside his knee bandage and Hussein Fadhil Abass Al-

⁴⁹³⁹ Sergeant Sharplin (ASI009870) [86-90]

⁴⁹⁴⁰ Sergeant Johnson (ASI014465) [65]

Behadili (detainee 778) was found to have money inside his trouser pocket.⁴⁹⁴¹ I record that incident for the sake of completeness but make no other finding in respect of it.

3. Medical

4.452 The Regimental Medical Officer (“RMO”) oversaw the primary medical care of detainees at the DTDF. A rotation of Regimental Medical Assistants (“medics”) provided a 24-hour medical presence at the DTDF.⁴⁹⁴² Broadly speaking, a medic is a soldier who had received some medical training.⁴⁹⁴³ The medics were the first point of contact when detainees had any medical complaints in the DTDF. This included a daily sick parade for detainees, dealing with any medical emergencies and administering simple medication such as painkillers for toothaches or headaches, and tablets for diarrhoea.⁴⁹⁴⁴

4.453 If a detainee presented with a dental problem, an appointment would be made with the Dental Centre at the Field Hospital. Appointments were made on a priority basis.⁴⁹⁴⁵

4.454 Medical records were kept for each detainee, which I address individually below:

Hamzah Joudah Faraj Almalje (detainee 772)

4.455 The medical records indicate that Hamzah Joudah Faraj Almalje (detainee 772) was seen on eight occasions in the JFIT compound and on seven occasions between 4 August and 26 August 2004 in the main DTDF compound. The visits related to medical complaints including, stomach pain, vomiting, dehydration, headache, stomach and back, earache, and itchiness.⁴⁹⁴⁶

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

4.456 In his written evidence to the Inquiry, Mahdi Jasim Abdullah Al-Behadili (detainee 773) claimed he was assaulted whilst being escorted to see the dentist. I address that allegation below at paragraphs 4.530 – 4.536.

4.457 The medical records indicate that on 6 June 2004, Mahdi Al-Behadili was referred to the dentist, and on 30 July he was seen regarding a complaint of abdominal pain.⁴⁹⁴⁷ The Daily Occurrence Book indicates that on 15 June 2004, Mahdi Al-Behadili was escorted to the Dental Centre.⁴⁹⁴⁸ It also records that on 31 July 2004 at 01:33 hours, Mahdi Al-Behadili felt unwell and the medics had been instructed not to provide any medication and to monitor the detainee overnight.⁴⁹⁴⁹

⁴⁹⁴¹ (MOD004033)

⁴⁹⁴² Major Winfield (ASI019049) [7]

⁴⁹⁴³ Major Winfield (ASI019050) [11]

⁴⁹⁴⁴ Major Winfield (ASI019051) [14]

⁴⁹⁴⁵ Corporal Tough (ASI021456) [51]

⁴⁹⁴⁶ (MOD043354-MOD043364)

⁴⁹⁴⁷ (MOD043429-MOD043435); Major Fielding (ASI019398) [20]-[25]

⁴⁹⁴⁸ (MOD003894)

⁴⁹⁴⁹ Surgeon Lieutenant Westerman (ASI024116) [27]; (MOD004012)

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

- 4.458** On 16 May 2004, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was admitted to the Field Hospital in relation to a shrapnel injury to his foot and knee.⁴⁹⁵⁰ He was discharged to the DTF on 27 May 2004 with his leg in a cast.⁴⁹⁵¹ He was provided with a crutch.⁴⁹⁵² Wing Commander Pathak, the consultant orthopaedic and trauma surgeon, said that although Ibrahim Al-Ismaeeli insisted on holding his crutch in the wrong hand, he was fit to be discharged on 27 May 2004.⁴⁹⁵³
- 4.459** On 2 June 2004, Ibrahim Al-Ismaeeli's sutures were removed and his cast was replaced with a scotch cast, which was lighter and harder wearing than his previous cast. Ibrahim Al-Ismaeeli was finally discharged from Wing Commander Gora Pathak's care on 17 June 2004. Wing Commander Pathak commented that Ibrahim Al-Ismaeeli made a very quick recovery.⁴⁹⁵⁴
- 4.460** The medical records for Ibrahim Al-Ismaeeli indicate that he was seen on 22 occasions between 6 June 2004 and 28 August 2004 for various medical complaints including, indigestion, insomnia, headache, stomach pain and throat pain.⁴⁹⁵⁵
- 4.461** On 28 June 2004, the medical records indicate that Ibrahim Al-Ismaeeli's crutches were removed because he was seen to be playing football and he was walking unaided without difficulty.⁴⁹⁵⁶
- 4.462** On 16 July 2004, Ibrahim Al-Ismaeeli reported that he was having trouble sleeping and he asked for sleeping tablets. The Medical Officer who saw him, Surgeon Lieutenant Richard Westerman, gave evidence in his written Inquiry statement, which I accept as being true, that he declined to prescribe sleeping tablets as they might have impaired Ibrahim Al-Ismaeeli's consciousness and cognition whilst detained and affected his judgment thereafter.⁴⁹⁵⁷
- 4.463** Between 30 July and 4 August 2004, Ibrahim Al-Ismaeeli had an appendectomy at the Field Hospital. Following the operation, he was prescribed paracetamol four times a day for three days.⁴⁹⁵⁸
- 4.464** Ibrahim Al-Ismaeeli also received daily dressings for the wound on his right knee.⁴⁹⁵⁹ Surgeon Lieutenant Westerman said he visited Ibrahim Al-Ismaeeli in his cell every couple of days to review and change the dressing. It became apparent that Ibrahim Al-Ismaeeli was scratching the scar, which had re-opened and caused a superficial infection. Surgeon Lieutenant Westerman saw lots of scratch marks around the scar, so he decided to use zinc oxide tape on the dressing which made it "tamper proof". The wound then began to heal properly.⁴⁹⁶⁰

⁴⁹⁵⁰ (MOD032932); Wing Commander Pathak [166/162/22]

⁴⁹⁵¹ (MOD032864); Wing Commander Pathak (ASI021435-36) [30]; (MOD016417)

⁴⁹⁵² Wing Commander Pathak (ASI021435-36) [30]; (MOD016417)

⁴⁹⁵³ Wing Commander Pathak (ASI021435-36) [30]

⁴⁹⁵⁴ Wing Commander Pathak (ASI021436) [32]

⁴⁹⁵⁵ (MOD043495)-(MOD043508)

⁴⁹⁵⁶ (MOD043507)

⁴⁹⁵⁷ Surgeon Lieutenant Westerman (ASI024116) [29]

⁴⁹⁵⁸ Surgeon Lieutenant Westerman (ASI024117) [34]; (MOD043496)

⁴⁹⁵⁹ Surgeon Lieutenant Westerman (ASI024118) [35]

⁴⁹⁶⁰ Surgeon Lieutenant Westerman (ASI024118) [35]

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 4.465** The medical records indicate that Kadhim Abbas Lafta Al-Behadili (detainee 775) was seen on six occasions between 3 July and 26 August 2004.⁴⁹⁶¹
- 4.466** On 3 July 2004, Kadhim Al-Behadili reported having a headache and chest pain, which was worse when he smoked. He was examined and given advice about giving up smoking.⁴⁹⁶²
- 4.467** On 6 August 2004, the medical records indicate Kadhim Al-Behadili was treated for a wart on his foot.⁴⁹⁶³
- 4.468** On 13 August 2004, Kadhim Al-Behadili was seen twice because he reported having stomach pain and vomiting. He was seen again later the same day and said the pain had disappeared. On 14 August 2004, he was seen again and he confirmed that the pain had not returned.⁴⁹⁶⁴
- 4.469** On 26 August 2004, a medic applied cream to the wart on Kadhim Al-Behadili's foot.⁴⁹⁶⁵
- 4.470** In his evidence to the Inquiry, Kadhim Al-Behadili disputed the accuracy of parts of the medical records. In particular, he said he had not been advised to stop smoking and he had to remove the wart himself, using a piece of plastic. I am satisfied that the medical records are accurate: it is inherently unlikely that matters such as those to which I have just referred would be deliberately recorded inaccurately. To the extent that he suggested otherwise, Kadhim Al-Behadili is wrong, perhaps as a result of the passage of time.

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 4.471** The medical records indicate that Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) was seen on ten occasions between 24 May and 19 August 2004. The visits related to various medical complaints including, toothache, back pain, and headache.⁴⁹⁶⁶
- 4.472** The records also indicate that Abbas Al-Hameedawi was treated for a wart on his toe,⁴⁹⁶⁷ which was noted again on his release medical examination.⁴⁹⁶⁸ In his written evidence, Abbas Al-Hameedawi said the records are incorrect as he never complained about having such a problem and was never treated for a wart. He further denied that he received a medical examination on release.⁴⁹⁶⁹
- 4.473** I am satisfied that Abbas Al-Hameedawi did receive a medical examination shortly before he was transferred out of the DTDF⁴⁹⁷⁰ and that he was treated for a wart. The detainee is mistaken in his recollection, but he is not deliberately lying.

⁴⁹⁶¹ (MOD043559)-(MOD043564)

⁴⁹⁶² (MOD043564)

⁴⁹⁶³ (MOD043558)

⁴⁹⁶⁴ (MOD043558)-(MOD043559)

⁴⁹⁶⁵ (MOD043559)

⁴⁹⁶⁶ (MOD043621)-(MOD043628)

⁴⁹⁶⁷ (MOD043621)-(MOD043628)

⁴⁹⁶⁸ (MOD043655)

⁴⁹⁶⁹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000453) [25-27]

⁴⁹⁷⁰ (MOD043654)

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

4.474 In his written evidence, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said a guard refused to grant him access to a doctor on one occasion.⁴⁹⁷¹ I address that allegation below, at paragraphs 4.520 – 4.530.

4.475 The medical records indicate that Ahmed Al-Furaiji was seen on ten separate occasions between 23 June and 14 July 2004 in relation to various medical complaints including toothache, back pain, knee pain, headache, cough, and pain around his eye.⁴⁹⁷²

Hussein Fadhil Abass Al-Behadili (detainee 778)

4.476 The medical records indicate that Hussein Fadhil Abass Al-Behadili (detainee 778) was seen on fourteen occasions between 16 July and 22 August 2004 in relation to various medical complaints including, an upset stomach, itchiness, a graze to his left knee sustained whilst playing volleyball, back pain, pain in his abdomen, a rash, toothache, insect bite and a wart.⁴⁹⁷³

4.477 In his written Inquiry statement, Hussein Al-Behadili recalled that he sustained an injury whilst playing volleyball.⁴⁹⁷⁴

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

4.478 The medical records indicate that Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) was seen on six occasions between 26 June and 28 August 2004 in relation to various medical complaints including headache, leg pain, dry skin, a bruised leg sustained having tripped in the shower and jaw pain.⁴⁹⁷⁵

Hussein Gubari Ali Al-Lami (detainee 780)

4.479 The medical records indicate that Hussein Gubari Ali Al-Lami (detainee 780) was seen on one occasion in the JFIT compound and on eight occasions between 31 May 2004 and 17 September 2004 in the DTDF. The visits were for various medical complaints including, general aches and pains, insect bite, pain in the abdomen, cough, toothache and dry skin.⁴⁹⁷⁶

4. Divisional Internment Review Committee

4.480 In his written evidence, Major David Richmond said that the detainees were aware that their cases would be reviewed by the Divisional Internment Review Committee (“DIRC”).⁴⁹⁷⁷

4.481 DIRC meetings took place on a weekly basis at Divisional Headquarters in Basra. The DIRC met to discuss whether detainees should remain in detention or be released. The Officer Commanding the DTDF was required to attend those meetings, although only so that he could assist by reporting on how the detainees were behaving in the DTDF and what contact they were having with other detainees and visitors. The Officer Commanding the DTDF was

⁴⁹⁷¹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000885) [68]; (PIL000324-25) [97-98]

⁴⁹⁷² (MOD043676)-(MOD043682)

⁴⁹⁷³ (MOD043956)-(MOD043965)

⁴⁹⁷⁴ Hussein Fadhil Abass Al-Behadili (detainee 778) (PIL000384) [109]

⁴⁹⁷⁵ (MOD044016)-(MOD044022)

⁴⁹⁷⁶ (MOD044069)-(MOD044075)

⁴⁹⁷⁷ Major Richmond (ASI022514) [157]

not part of the decision making procedure.⁴⁹⁷⁸ At the end of the meeting, recommendations in respect of each detainee discussed would be put forward, via the committee chairperson, to the General Officer Commanding (“GOC”).⁴⁹⁷⁹ Those recommendations would be either to release the detainee, or to transfer him to the Iraqi justice system, or continue detention.⁴⁹⁸⁰

4.482 The DIRC met on 17 May 2004, two days after the detainees arrived at the DTDF. The DIRC first reviewed their internment at that meeting.⁴⁹⁸¹ The nine detainees were reviewed again at DIRC meetings on 8 June 2004,⁴⁹⁸² 22 June 2004,⁴⁹⁸³ 6 July 2004,⁴⁹⁸⁴ 27 July 2004,⁴⁹⁸⁵ 10 August 2004,⁴⁹⁸⁶ 31 August 2004,⁴⁹⁸⁷ and 13 September 2004.⁴⁹⁸⁸

4.483 After each meeting, the relevant detainees would be informed verbally of the recommendation following the review.⁴⁹⁸⁹ Major Anthony De Reya said that after the detainees had been informed verbally, they were later provided with a Notice of Internment (“NIR”), which set out the decision and some reasons. If detention was to be maintained, the detainee would also be provided with a document titled “*Authorisation of Continued Internment*”.⁴⁹⁹⁰

4.484 On 7 September 2004, authorisation was granted to transfer the nine detainees from the DTDF to the Iraqi criminal justice system.⁴⁹⁹¹ The operation to transfer the detainees was then planned, and the transfers took place on 21 and 23 September 2004.⁴⁹⁹²

5. Complaints procedure

4.485 Both Major David Richmond and Major Anthony De Reya would undertake a daily walk-round of the DTDF during their tenures as Officer Commanding the DTDF. Major Richmond explained how he would conduct the walk-round:

“I did this without a guard escort and was usually only accompanied by an interpreter. Sometimes I took W02 Parrott with me. I wanted the internees to have direct access to me and to be able to feel that they could speak to me about what was concerning or troubling them. I was aware that Iraqi society was rigidly hierarchical and Iraqis generally (and the internees were no different in this respect) held their elders in great respect as they did anyone who was in a position of authority (and this respect was afforded whether the individual concerned merited it or not). With this in mind, I thought they would speak to me about issues which they would not necessarily speak to the guards about. I wanted internees to see me as a person they could approach, who would listen to them, and who, most importantly, would attempt to deal with

⁴⁹⁷⁸ Major Richmond (ASI022546) [251]

⁴⁹⁷⁹ Major De Reya (ASI018951) [127]; (ASI018914) [16]

⁴⁹⁸⁰ Major De Reya (ASI018951) [127]

⁴⁹⁸¹ (MOD020771); Major Richmond (ASI022546) [253]

⁴⁹⁸² (MOD039725)

⁴⁹⁸³ (MOD041629)

⁴⁹⁸⁴ (MOD041635)

⁴⁹⁸⁵ (MOD041640)

⁴⁹⁸⁶ (MOD039731)

⁴⁹⁸⁷ (MOD018345)

⁴⁹⁸⁸ (MOD018349)

⁴⁹⁸⁹ Major Richmond (ASI022548) [259]

⁴⁹⁹⁰ Major De Reya (ASI018952) [130]

⁴⁹⁹¹ Major De Reya (ASI018966) [172]; (MOD020774)

⁴⁹⁹² (MOD044225); Major De Reya (ASI018966-70) [173]–[187]

their concerns. I was acutely aware that an unhappy internee population was a lot harder to manage and control than one that was content."⁴⁹⁹³

4.486 Major De Reya also explained how he would conduct the walk-rounds:

*"I would conduct "walk-arounds" of the DTDF a few times per day in order to observe the behaviour of the military personnel and detainees. [...] During the walk-arounds detainees could talk to me (via an interpreter) to inform me of any concerns or problems. I would check the logs maintained at the DTDF to see what events had been recorded. I would also rely upon the MPS and guard commanders to update me verbally."*⁴⁹⁹⁴

4.487 Major Richmond said that during his walk-round, he would have informal conversations with the detainees to help him gauge their mood and to deal with any welfare issues.⁴⁹⁹⁵ An example of a walk-round recorded in the Daily Occurrence Book on 23 April is as follows:

"Commandant's Daily Walkround

685 requested paper & a pen and to speak to an interpreter

[According to the "Action Taken" column, Major Richmond referred this issue to the duty MPS Senior NCO]

707 complained of a headache

689 complained of a sore knee

479 asked to see the medic

[According to the "Action Taken" column, Major Richmond referred the above issues to a medic]

692 asked for paper and a pen to write to his college to ask for his study book to be brought to the DTDF

*[According to the "Action Taken" column, Major Richmond referred this to the duty MPS Senior NCO]"*⁴⁹⁹⁶

4.488 In his written evidence to the Inquiry, Hussein Gubari Ali Al-Lami (detainee 780) gave an example of an occasion when he made a complaint during the walk-round:

*"The reason I was moved into the same room as Hamza was that I had complained to the Major in charge of prison that we wanted to have the smokers in one room and non smokers in another."*⁴⁹⁹⁷

4.489 Major Richmond and Major De Reya also held a less frequent "Commandant's Audience", which was a more formal meeting with an elder nominated from each accommodation block.

⁴⁹⁹³ (MOD003727)

⁴⁹⁹⁴ Major De Reya (ASI018916-17) [22]

⁴⁹⁹⁵ Major Richmond (ASI022482-83) [64]

⁴⁹⁹⁶ (MOD003742)

⁴⁹⁹⁷ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004825) [124]

The meetings would take place in the visits room.⁴⁹⁹⁸ Major Richmond explained the purpose of the Commandant's Audience as follows:

"[T]his was an opportunity for the cell representatives to air any grievances with me eg their treatment by the staff, the quality of the food, etc and for me to discuss issues of detainee behaviour or potential changes to DTDF routine. This way I remained aware of running issues in the DTDF and I always felt that the detainees were frank and felt able to discuss their issues freely with me. A summary of the discussions at these meetings was always entered into the Daily Occurrence Book and was also sent separately to the S01 Legal [Lt Col Wakefield] at Division HQ".⁴⁹⁹⁹

4.490 Major De Reya also described how he conducted the Commandant's Audience:

"I met with small groups of detainees in an informal meeting which I referred to as the "Commandant's Audience". These were an opportunity for detainees to speak to me (via an interpreter) away from the other detainees, in a neutral setting (I used the visitors' area). The detainees could and did raise any issues that they wanted. Normally there would be two or three detainees attending. There was no regular pattern for holding an audience; usually the detainees would request it and I would set aside some time to meet with them. I would have expected, given the openness of the detainees generally, that they would highlight any issues they were having with any of the guards or with each other, during this time. [...] However, there were occasions in the audiences (and during walk-arounds) when the detainees used them to raise matters that were out of my hands, such as the decision to continue to intern them [...] Having looked through all of the Sitreps disclosed to me, I note that I mention these audiences less frequently after July 2004, this was not a conscious decision and should not be taken to suggest that such discussions had stopped. If anything, it suggests that they were so commonplace that I no longer considered it to be noteworthy. These audiences were ongoing."⁵⁰⁰⁰

4.491 Notes were taken at the Commandant's Audience, and afterwards the meeting was written up in the Daily Occurrence Book. The notes for 13 June 2004 record that at the meeting that day, detainees Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) asked about their review. Major Richmond made a note of the action taken: "776 + 779 = 25 Jun. The remainder are to be told that we await the outcome of their reviews. Duty MPS SNCO to inform the internees tonight."⁵⁰⁰¹

4.492 In the SITREP dated 22 May 2004,⁵⁰⁰² there is a record of complaints made by Hamzah Joudah Faraj Almalje (detainee 772) and Kadhim Abbas Lafta Al-Behadili (detainee 775) regarding their treatment on arrest. This was the day they were transferred from the JFIT compounds to the main DTDF compound. The complaint is also recorded in the Daily Occurrence Book on 22 May 2004, timed at 18:15 hours. The entry reads: "772 complained of feeling unwell. 772 also complained of being beaten by his arresting unit but said that he did not wish to make a complaint". The report records that Major Richmond advised Hamzah Almalje to commit his complaint to writing and it would be followed up appropriately. Kadhim Al-Behadili's complaint is recorded in the same entry: "775 claims to have been beaten by the arresting

⁴⁹⁹⁸ Major Richmond (ASI022485) [70]

⁴⁹⁹⁹ Major Richmond (ASI022485) [70]

⁵⁰⁰⁰ Major De Reya (ASI018917) [23]

⁵⁰⁰¹ (MOD003890)

⁵⁰⁰² (MOD040900)

*unit". The action taken is recorded as follows: "Advised to commit this complaint to paper and it would then be fully investigated."*⁵⁰⁰³

4.493 Major Richmond said that detainees were provided with papers and pencils to record their complaints. Illiterate detainees were able to dictate their complaints to an interpreter or a fellow detainee.⁵⁰⁰⁴

4.494 In his written evidence to the Inquiry, Hamzah Almalje said he did not put his complaint into writing as Major Richmond had asked him to. He said he could not do this and he was discouraged.⁵⁰⁰⁵

4.495 Kadhim Al-Behadili did put his complaint in writing.⁵⁰⁰⁶ In his written evidence, Kadhim Al-Behadili explained how he had come to make the written complaint:

*"When I was moved to the bigger cell in the general compound other people detained there saw me and said that I should not be afraid and that I should make a complaint about the way the British soldiers had treated me. [...] Those who suggested I should complain had been in Al-Shaibah for a longer period than I. [...] My writing is not neat so I asked someone if they could write the letter for me on my behalf. I told them what to write in the letter. The letter was not written by any of the other detainees I had been taken prisoner with on 14 May 2004 but by another person detained in Al-Shaibah."*⁵⁰⁰⁷

4.496 The written complaint Kadhim Al-Behadili submitted on 22 May 2004 reads as follows:

"To the British Commandant,

I'm No.775 Kaadum Abaas Lafta, they arrested me in 14/5/2004 in Maisaan on the main road of Al-'Amaara to Basrah and I am shepherd, at that time there is a clash happened between the British forces and other people I don't know them, and they saw me, took me torture me and beated me. They are three soldiers hit me on my head so, I want to see a doctor to check me and I know you will not accept what the British soldiers did with me

With thanks

775 Kaadum Abaas Lafta

*22/5/2004."*⁵⁰⁰⁸

4.497 In his written evidence, Kadhim Al-Behadili said the Arabic original also stated *"I mentioned nonsense and I do not remember anything"* and *"I want to see a doctor to check on my legs. I am asking you hereby for justice to be done as Britain is a great country"* but that did not appear in the English translation.⁵⁰⁰⁹

4.498 On 23 May 2004, Major Richmond referred the complaint to the Provost Marshal, Lieutenant Colonel Sally Purnell, and copied it to SO3 ("Staff Officer Three") Legal.⁵⁰¹⁰ The Royal Military

⁵⁰⁰³ (MOD003833)

⁵⁰⁰⁴ Major Richmond (ASI022535) [221]

⁵⁰⁰⁵ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000698) [68]

⁵⁰⁰⁶ (MOD016404)

⁵⁰⁰⁷ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000749) [123]

⁵⁰⁰⁸ (MOD016404)

⁵⁰⁰⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000748) [122]

⁵⁰¹⁰ Major Richmond (ASI022536-37) [224]

Police (“RMP”) then commenced an investigation into the complaint. The following day, on 24 May 2004, the RMP interviewed Kadhim Al-Behadili.⁵⁰¹¹

4.499 On 26 July 2004,⁵⁰¹² the RMP interviewed detainees Hamzah Almalje (detainee 772),⁵⁰¹³ Mahdi Jasim Abdullah Al-Behadili (detainee 773),⁵⁰¹⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774),⁵⁰¹⁵ Kadhim Al-Behadili (detainee 775)⁵⁰¹⁶ and Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)⁵⁰¹⁷ in connection with the ‘*shooting incident*’ investigation. On 27 July 2004,⁵⁰¹⁸ the RMP interviewed detainees Ahmed Jabbar Hammood Al-Furaiji (detainee 777),⁵⁰¹⁹ Hussein Fadhil Abass Al-Behadili (detainee 778),⁵⁰²⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)⁵⁰²¹ and Hussein Gubari Ali Al-Lami (detainee 780) in connection with the ‘*shooting incident*’ investigation.⁵⁰²²

6. Allegations

4.500 In their evidence, the detainees made a number of allegations about the treatment they received at the DTDF. I deal with the most significant incidents below.

The Litter Incident (Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774))

4.501 Four detainees, namely Hamzah Almalje, Ibrahim Al-Ismaeeli, Kadhim Al-Behadili and Atiyah Al-Baidhani have described an incident involving Ibrahim Al-Ismaeeli. Broadly speaking, they claimed that Ibrahim Al-Ismaeeli was asked to pick up some litter and he refused. Ibrahim Al-Ismaeeli and Atiyah Al-Baidhani alleged that the guard then assaulted Ibrahim Al-Ismaeeli. I set out their individual accounts below:

4.502 Ibrahim Al-Ismaeeli said in his written evidence:

“In Shaibah I was treated really badly by one guard, I was still sick at the time and using two walking sticks. Sometimes when we were allowed out in the fresh air he made me collect garbage, once I refused, we quarrelled, he abused me and he hit me. I hit him with my walking stick, I recall he had an iron stick on his waist, he was about to hit me with it but I pulled my head back, at this time the inmates grabbed him and put him against the wire fencing, I was dragged into a cell. I can only describe the guard who hit me as short, a bit fat, he had tattoos on one arm and a Jewish star tattooed on his other arm.”⁵⁰²³

4.503 Kadhim Al-Behadili described this incident in his written evidence:

“I had no reason to make any complaint about any soldier during my time in the general compound. However, I recall that a soldier asked one of the detainees I was taken prisoner with, Ibrahim Gattan Hassan, to do some cleaning. Ibrahim had a very

⁵⁰¹¹ (MOD032727)

⁵⁰¹² (MOD003998)

⁵⁰¹³ (MOD002898)

⁵⁰¹⁴ (MOD002923)

⁵⁰¹⁵ (MOD002943)

⁵⁰¹⁶ (MOD002978)

⁵⁰¹⁷ (MOD032572)

⁵⁰¹⁸ (MOD004002)

⁵⁰¹⁹ (MOD030771)

⁵⁰²⁰ (MOD003019)

⁵⁰²¹ (MOD003041)

⁵⁰²² (MOD003062)

⁵⁰²³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001076) [73]

*severe leg injury and could not walk very well. The soldier insisted that he had to clean. However, we said that we would do the cleaning. I cannot recall when this was and I cannot describe the soldier who was demanding that Ibrahim should clean.*⁵⁰²⁴

- 4.504** Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) also described the incident in his written evidence as follows:

*"There was litter on the ground and someone I now know to be Ibrahim Kattan Hassan was told to pick it up. He said he would not do so as this was not his responsibility. The soldier that was dealing with him started to kick and punch him. The soldier that was responsible for doing this was the one I mentioned in my previous statement as having a 'Star of David' tattoo on one of his upper arms on the outside of the bicep. It was blue in colour."*⁵⁰²⁵

- 4.505** Hamzah Joudah Faraj Almalje (detainee 772) said in his written evidence that he heard about this incident from somebody else:

*"I remember being told about one incident when Ibrahim had returned from hospital and was asked by a guard to sweep up some cigarette ends and refused. There was evidently some sort of disagreement and I think Ahmed Jabbar [Detainee 777] and Ibrhin [sic] Gattan [Detainee 774] were transferred to solitary confinement as a result. I did not see the incident however which occurred when I was asleep."*⁵⁰²⁶

- 4.506** It seems to be likely that this incident is recorded in the Daily Occurrence Book on 8 August 2004 at 8:15 hours. The entry was made by Corporal Green and reads as follows:

*"IGF entered the compound so that the internees could clean the cells and areas. 774 refused to sweep and tried to return to his cell. The IGF blocked his way and 774 then started getting irate and pushing the IGF, whereupon he was pushed back and told to sweep. 634 then came out to calm 774 and swept up."*⁵⁰²⁷

- 4.507** I have no doubt that Ibrahim Al-Ismaeeli was not subjected to any form of serious and violent assault by the guard during the course of this incident. In particular, I am sure that he was not kicked or punched as Atiyah Al-Baidhani alleged. In making that allegation, Atiyah Al-Baidhani deliberately lied in order to lend substance to his allegations that detainees were ill-treated by the British military.

- 4.508** Ibrahim Al-Ismaeeli's medical records indicate that his crutches were taken away from him on 28 June 2004 when he was seen to be playing football, some six weeks prior to this incident:

*"crutches removed after detainee caught playing football: pt [patient] walking fine without crutches, however not happy."*⁵⁰²⁸

- 4.509** On 25 July 2004, Ibrahim Al-Ismaeeli and Ahmed Jabbar Hammood Al-Furaiji (detainee 777) spent one night in solitary confinement at the JFIT compound. The incident is recorded in the Daily Occurrence Book. It relates to a separate incident involving a fight between the two detainees. Sergeant John Johnson's entry reads as follows:

⁵⁰²⁴ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000753) [135]

⁵⁰²⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000957) [63]

⁵⁰²⁶ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000699) [69]

⁵⁰²⁷ (MOD004036)

⁵⁰²⁸ (MOD043507)

*"I was informed by Tower 3 that a fight had broken out in cell B2. When I arrived at cell B2, there was a lot of pushing and shouting going on. I quickly found out who was involved and separated them from the other internee and each other! On questioning 777 + 774 they both said the fight was over lighters. I decided that I could not trust them not to fight again and that they may disrupt the rest of cell B2 once more. I then placed both 777 + 774 in single cells in JFIT."*⁵⁰²⁹

- 4.510** The medical records indicate that on 1 August 2004, Ibrahim Al-Ismaeeli was admitted to the Field Hospital where he had an appendectomy. On 4 August 2004, he returned to the DTDF compound. On 5, 6 and 7 August 2004, he was prescribed paracetamol because he reported having pain around the wound.⁵⁰³⁰
- 4.511** In his written evidence, Major De Reya said the Internal Guard Force were not armed whilst carrying out their duties. Only the Military Provost Staff ("MPS") carried batons inside the DTDF.⁵⁰³¹ Sergeant Ivan Sharplin said he carried an extendable baton whilst on duty inside the DTDF, however this would be hidden in his pocket rather than on display.⁵⁰³² In his oral evidence, Sergeant Sharplin said the MPS were not issued with the pouches that would allow them to carry the batons on their belts.⁵⁰³³
- 4.512** The Daily Occurrence Book records that the staff on duty at the time of the incident were: MPS Sergeant Sharplin; Corporal James Green; Marine Jonathan Hussey; Marine Paul Kavanagh; and Marine Daniel Burford.⁵⁰³⁴
- 4.513** In his oral evidence, Sergeant Sharplin said he did not recall the incident on 8 August 2004. He said did not think that he witnessed the incident as he would remember it if he had seen it, and he would have made the entry in the Daily Occurrence Book himself.⁵⁰³⁵
- 4.514** In his written Inquiry statement, Corporal Green said he recalled this incident, but not the name of the guard involved. He said it was a very short incident.⁵⁰³⁶ In his oral evidence Corporal Green said he had a vague recollection of the incident, but he could not recall who the guard was. He said it was unlikely that Sergeant Sharplin was present when the incident occurred. He described the incident as a "*flash in the pan*".⁵⁰³⁷ He recalled that the detainee had pushed the guard in the chest repeatedly whilst walking forward. In response, the guard pushed the detainee once in the chest. Corporal Green said he thought the guard's response was proportionate; he did not think it would have been appropriate for the guard not to react in any way to being pushed in the chest by Ibrahim Al-Ismaeeli. Corporal Green recalled that one of the other detainees came out to calm Ibrahim Al-Ismaeeli. The other detainee picked up the brush himself and began sweeping.⁵⁰³⁸
- 4.515** Marine Hussey did not refer to this incident in his written Inquiry Statement and did not give oral evidence to the Inquiry.⁵⁰³⁹

⁵⁰²⁹ (MOD003997)

⁵⁰³⁰ (MOD043496)-(MOD043497)

⁵⁰³¹ Major De Reya (ASI018935) [77]

⁵⁰³² Sergeant Sharplin (ASI009860-61) [49]

⁵⁰³³ Sergeant Sharplin [162/133/15]

⁵⁰³⁴ (MOD004036)

⁵⁰³⁵ Sergeant Sharplin [162/146-148]

⁵⁰³⁶ Corporal Green (ASI019202-03) [46]

⁵⁰³⁷ Corporal Green [132/60/15]

⁵⁰³⁸ Corporal Green [132/55-62]

⁵⁰³⁹ Marine Hussey (ASI017737)

- 4.516** Marine Kavanagh said in his oral evidence that he did not remember the incident, which made him think he was not involved. He said that in August 2004, he was probably shorter than his fellow IGF guards but he certainly could not have been described as fat.⁵⁰⁴⁰
- 4.517** Marine Burford also said in his oral evidence that he had no recollection of the incident.⁵⁰⁴¹
- 4.518** In their evidence, Sergeant Sharplin,⁵⁰⁴² Corporal Green,⁵⁰⁴³ Marine Hussey,⁵⁰⁴⁴ Marine Kavanagh,⁵⁰⁴⁵ and Marine Burford⁵⁰⁴⁶ all denied having a Star of David tattoo on their arms. They all also said they did not recall any other IGF guard having such a tattoo.
- 4.519** I am satisfied that Ibrahim Al-Ismaeeli no longer had crutches when this incident took place on 8 August 2004; however he may still have been experiencing some pain or discomfort following his appendectomy. I am also satisfied that Ibrahim Al-Ismaeeli refused the request to sweep the floor and he pushed a member of the IGF in the area of his chest and that the guard reacted by pushing Ibrahim Al-Ismaeeli once in the chest to prevent the detainee from pushing him further. Ibrahim Al-Ismaeeli's account of this incident is thus a gross exaggeration of the reality. I make no criticism of the guard who acted reasonably to prevent a further assault on him. Ibrahim Al-Ismaeeli should not have pushed him in the area of his chest. Ibrahim Al-Ismaeeli's exaggeration of what occurred is so extreme that it is clear he was trying to mislead the Inquiry into believing that he had been ill-treated by the soldier in question. This simply was not the case.

The door incident (Ahmed Jabbar Hammood Al-Furaiji (detainee 777))

- 4.520** In his written evidence, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said he was once refused access to the doctor and was then made to sit outside in the hot sun where he was abused by a group of soldiers. I have set out his written accounts below:

*"I have been asked to describe any of the soldiers that assaulted me at al Shaibah. One was a British or Israeli soldier of medium build with a bald head. This soldier refused to let me see a doctor, put me in the hot sunshine for extended periods and told me to shut up. I would not recognise this soldier or anyone else that mistreated me during my detention. I was told that this soldier was Israeli by a soldier called Ivan."*⁵⁰⁴⁷

*"On one occasion I remember I was feeling exhausted and had a headache. I called the guard and said "doctor". The man I describe [in the earlier excerpt] said I had to wait. Eventually he took me outside and I was shown where to sit. It was midday and the sun was burning hot. I was told to wait under the sun even though I felt unwell. I believe the soldier did this to me on purpose. Then the soldier brought four or five other soldiers who all surrounded me. They were yelling at me saying words that were extremely unpleasant. I cannot repeat their words because it is not in my nature to use such words. They held their batons in their hands as if to threaten me with a beating."*⁵⁰⁴⁸

⁵⁰⁴⁰ Marine Kavanagh [166/55-61]

⁵⁰⁴¹ Marine Burford [159/186-194]

⁵⁰⁴² Sergeant Sharplin [162/153]

⁵⁰⁴³ Corporal Green [132/65-66]

⁵⁰⁴⁴ Marine Hussey (ASI017753) [55]

⁵⁰⁴⁵ Marine Kavanagh [166/60-67]

⁵⁰⁴⁶ Marine Burford [159/194]

⁵⁰⁴⁷ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000885) [68]

⁵⁰⁴⁸ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000324) [97]

- 4.521** This incident appears to be recorded in the Daily Occurrence Book on 5 September 2004 at 09:50 hours. Marine Kavanagh made the entry, which reads as follows:

“777 requested to see the doctor because of an [sic] headache. When he was brought out of the cell he was moaning about something. The doctor was present at the time standing by the razor box in the compound, when the doctor asked him to come into the sickbay he refused and wanted to go back to the cells, so I took him back and opened the door, as he walked in he pushed the door on me, so instead of it hitting me I pushed it back onto his arms

*Actions: Witnessed by Sergeant Johnson to 777 who is now seeing doctor in sickbay. REF: headache”.*⁵⁰⁴⁹

- 4.522** The entry is followed with a note in different handwriting:

*“Note: should not be responding to these sorts of issues. Marine Kavanagh spoken to by Sergeant Johnson MPS”.*⁵⁰⁵⁰

- 4.523** The Daily Occurrence Book records that the following soldiers were on duty when this incident occurred: Corporal Green; Marine Kavanagh; Marine Hussey and Marine Burford.⁵⁰⁵¹

- 4.524** Corporal Green told the Inquiry that he did not witness the incident and was not otherwise aware of it.⁵⁰⁵²

- 4.525** Marine Hussey did not refer to this incident in his written Inquiry statement and he did not give oral evidence to the Inquiry.⁵⁰⁵³

- 4.526** Marine Burford vaguely recalled this incident but he was not sure if he was present himself or whether he heard about it from somebody else.⁵⁰⁵⁴

- 4.527** Marine Kavanagh said he did have some recollection of this incident. He said he could no longer recall what Ahmed Al-Furaiji was complaining about when he was brought out of the cell. He said the “razor box” was a reference to a yellow “sharps box” in which razor blades were stored for distribution. The box was kept outside the office, which appears to be a reference to the where the reception and Medical Centre were located.⁵⁰⁵⁵ Marine Kavanagh said he could recall pushing back the door onto the detainee’s arm, but that was to prevent the door from hitting him.⁵⁰⁵⁶ He recalled he was spoken to by Sergeant Johnson, and he was also pulled aside by Major De Reya who reprimanded him for this incident.⁵⁰⁵⁷ Marine Kavanagh denied leaving anybody outside in the sun. He also said he never witnessed guards standing around a detainee in the sun, shouting abuse and intimidating the detainee with their batons.⁵⁰⁵⁸

⁵⁰⁴⁹ (MOD004114)

⁵⁰⁵⁰ (MOD004114)

⁵⁰⁵¹ (MOD004113)

⁵⁰⁵² Corporal Green [132/70-72]

⁵⁰⁵³ (ASI017737)

⁵⁰⁵⁴ Marine Burford [159/197-202]

⁵⁰⁵⁵ Marine Kavanagh (ASI018243) [67]; (MOD045996)

⁵⁰⁵⁶ Marine Kavanagh (ASI018243) [67]

⁵⁰⁵⁷ Marine Kavanagh (ASI018243) [68]

⁵⁰⁵⁸ Marine Kavanagh (ASI018243) [69]; [166/63-69]

4.528 Sergeant Johnson described this incident in his written evidence:

“This was around 9am and took place between the recreational and cell area. Marine Kavanagh was walking behind Detainee number 777 when words, that I was unable to hear, were exchanged. The detainee forcefully pushed the door behind him and at Marine Kavanagh. Marine Kavanagh shoved it back and the door hit the detainees’ [sic] right hand. The hand did not get trapped and there was no blood. I do not think it caused even a minor injury. The Paramedic took a look at the hand and confirmed that there was nothing wrong. I witnessed the incident as I was in the vicinity, and there would also have been at least three other IGF personnel present, although I cannot recall who. I immediately told Marine Kavanagh that he should rise above any provocation and he has got to overcome that kind of behaviour and remain professional at all times. I recall saying to him “you need to grow up”. It was, however, an instinctive reaction of Marine Kavanagh, who was subsequently verbally reprimanded by me, as recorded. [...]

I reported the incident to WO2 Parrott.”⁵⁰⁵⁹

4.529 Major De Reya also recalled this incident in his written evidence:

“I have an independent memory that Marine Kavanagh was spoken to about this incident, and from my review of the DOB I can see that it was Sergeant Johnson who did this. Sergeant Johnson warned him about getting into a situation where a detainee could push a door on him. The approach of the IGF was to always remove opportunities for tempers to flare and certainly not to respond. Marine Kavanagh was taken to task for this. The concern was that a guard had managed to get himself into a situation where he could be attacked and jeopardise his own safety and perhaps that of others. This was seen as a training issue, it was necessary to remind Marine Kavanagh of the need to maintain distance, control and professionalism. Although the atmosphere at the DTDF was good, the guards had to remain alert and aware of the circumstances, particularly because they were outnumbered by the detainees.

I do not recall whether I specifically followed up with Marine Kavanagh, but this incident was taken seriously as it was important to defuse any potential tensions within the DTDF. I am confident that this matter was dealt with appropriately at the time.”⁵⁰⁶⁰

4.530 I am satisfied that Ahmed Al-Furaiji was not denied access to medical care. I am further satisfied that Ahmed Al-Furaiji was not made to sit outside in the sun, and he was not surrounded by a group of guards threatening him with batons as he alleges. Ahmed Al-Furaiji’s account of this incident is a gross exaggeration of the reality, intended to mislead the Inquiry into concluding that he had been ill-treated. I am satisfied that the entry in the Daily Occurrence Book accurately records what did happen. Ahmed Al-Furaiji pushed a door towards Marine Kavanagh who responded by pushing the door back, causing the door to hit Ahmed Al-Furaiji’s right arm. Ahmed Al-Furaiji was medically examined shortly thereafter. Marine Kavanagh was reprimanded for his conduct, both by Sergeant Sharplin and by Major De Reya, which was, in effect, an over reaction to an act of provocation on the part of Ahmed Al-Furaiji.

⁵⁰⁵⁹ Sergeant Johnson (ASI014484-85) [133]-[134]

⁵⁰⁶⁰ Major De Reya (ASI018963) [162-163]

The Dentist Incident (Mahdi Jasim Abdullah Al-Behadili (detainee 773))

- 4.531** In his Judicial Review statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) described an occasion when he claimed he was assaulted whilst being escorted to the dentist:

"I was generally treated alright after I was moved to the bigger cell. However, I recall one occasion when I was badly beaten, when I had asked for a dentist. I was taken to a dentist about one week after I had asked to go. I was collected from my cell and my eyes were covered. On the way I was beaten on my back with sticks and metal rods, which was very painful. They used a special weapon like a truncheon to beat my thighs and back. The beating lasted for about 15 minutes until we reached a car. I was then driven to a separate section of the prison to see the dentist. I tried to find out who was beating me by looking through the gaps in their fingers, however, I could tell that they were playing with me and the soldier would just move from side to side so that I couldn't see him. I didn't recognise him. At the dentist they gave me some medicine as they were unable to pull out my tooth. The medicine did help. I was not beaten on the way back to my cell".⁵⁰⁶¹

- 4.532** In his written evidence to the Inquiry, Mahdi Al-Behadili described the incident again:

"Whilst detained at Shaibah I had a toothache and needed to see a dentist. On the way to the visit to the dentist I was taken with another detainee called Awdeh. I was handcuffed and blindfolded. Whilst being escorted to the dentist I was struck on the back causing redness. In a previous statement in 2008 I said I had been struck with a stick, metal bar or special weapon. This is an assumption made by me; although I never actually saw such instruments, I said this because of the severity of the marks that were on my body. These were not permanent and I was never medically examined in relation to them".⁵⁰⁶²

"I requested to see the dentist because I had a problem with one of my teeth. Myself and another detainee were taken by car. We were blindfolded as we were taken to and from the dentist. As we were going towards the car to travel to the dentist, I was hit by one of the soldiers on one or two separate occasions. I was hit to my back. I do not why I was hit [sic] and cannot recall that I had done anything wrong. It seemed unprovoked. The blows were painful but fortunately no lasting damage was done and I did not suffer any permanent injury".⁵⁰⁶³

- 4.533** Mahdi Al-Behadili's medical records indicate that on 6 June 2004 he was referred to the dentist.⁵⁰⁶⁴ The Daily Occurrence Book indicates that Mahdi Al-Behadili and another detainee were escorted to the Dental Centre by the Quick Reaction Force ("QRF") at 09:15 hours on 15 June 2004.⁵⁰⁶⁵

- 4.534** Major David Richmond addressed this allegation in his written evidence to the Inquiry. He confirmed that he had never heard about any such incident. He said that if any detainee had returned from the Field Hospital showing signs of a severe beating, he would have expected the incident to have been reported to him and he would have carried out a full investigation

⁵⁰⁶¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006501) [50]

⁵⁰⁶² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001123) [86]

⁵⁰⁶³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000795) [66]

⁵⁰⁶⁴ (MOD043435)

⁵⁰⁶⁵ (MOD003894)

and brought in the RMP. Major Richmond said he also would have expected the detainee to complain to him during his next walk-round.⁵⁰⁶⁶

4.535 The Daily Occurrence Book indicates that Major Richmond conducted a walk-round at 18:00 hours on 15 June 2004. The notes indicate that fifteen detainees spoke to Major Richmond about various matters, but there is no note of any complaint made by Mahdi Al-Behadili.⁵⁰⁶⁷

4.536 The report of the Release Medical examination indicates that on 22 September 2004, Mahdi Al-Behadili had “no cuts or bruises” on his body.⁵⁰⁶⁸ That report is of limited assistance on this issue, given that the examination took place some three months after the alleged assault.

4.537 In the event, I am satisfied that Mahdi Al-Behadili’s allegation is a fabrication.

Alleged misrepresentations regarding transfer

4.538 On 21 and 23 September 2004, the detainees were transferred out of the DTDF.⁵⁰⁶⁹ They were handed over to the Iraqi criminal justice system. Before they left the DTDF, each detainee was given a medical examination. The results of the examination were recorded on forms that were identical to the Initial Medical forms, except that the title had been amended.⁵⁰⁷⁰

4.539 In preparation for the transfer, Major Anthony De Reya organised rehearsals for the guards who would act as escorts. During the rehearsals, the guards practised how to move a person who was wearing both handcuffs and blackout goggles so that they could understand the risks of the individual falling and how best to assist them during transfers to and from the vehicles and aircraft. During the rehearsals, a soldier played the part of the handcuffed and blindfolded detainee.⁵⁰⁷¹

4.540 In their written evidence to the Inquiry, Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), Hussein Fadhil Abass Al-Behadili (detainee 778) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) said that when they were transferred out of the DTDF, they were under the impression that they would be released, rather than transferred to the Iraqi authorities. I set out their separate accounts below.

4.541 Mahdi Al-Behadili said in his written evidence that somebody the other soldiers called “Major” lied to him by saying he would be released.⁵⁰⁷²

4.542 Ibrahim Al-Ismaeeli said in his written evidence that he was told he was going on the “Happy Bus”:

“I remained at Shu’aiba detention centre for 4 months, and 20 days. Suddenly, one day I was told that I going to be released and that I would soon be with my family. I was told that I’d be going on the “Happy Bus.” They gave me a paper to sign just before

⁵⁰⁶⁶ Major Richmond (ASI022560-61) [307]

⁵⁰⁶⁷ (MOD003895)

⁵⁰⁶⁸ (MOD043473)

⁵⁰⁶⁹ (MOD044225)

⁵⁰⁷⁰ (MOD043394); (MOD043472); (MOD043536); (MOD043599); (MOD043654); (MOD043714); (MOD043994); (MOD044047)

⁵⁰⁷¹ Major De Reya (ASI018967) [176]

⁵⁰⁷² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001123) [87]

*being transferred from the prison. I signed it as I did not want to delay my transfer, but I do not know what it was. They didn't give me my personal belongings there.*⁵⁰⁷³

4.543 Abbas Al-Hameedawi said in his written evidence that he was told he would be released:

*"I recall before sunset on 20 September 2004 that my name was called along with Ibrahim, Kadhim, Madhi Jasim and Hussein Jabari Ali. There may have been others but I cannot recall who else. We were taken to a room in the same detention centre where they put us all together. We spent the night in this separate room. In the morning they said we were going to be released and sent home. We ate breakfast and soldiers brought us the clothes we were wearing when we were taken prisoner on 14 May 2004. [...]"*⁵⁰⁷⁴

4.544 Hussein Al-Behadili said in his Judicial Review statement that the detainees' were told they were going on the "Happy Bus":

*"On being transferred, we were told that we would be going home on the "Happy Bus". I was so relieved that I was finally being released, but this turned out to be a lie. I was very afraid and confused about where I was being taken as no one would tell us directly. The British soldiers still told us that we were on the "Happy Bus" now, but this certainly wasn't the case. Instead of being taken home, I was taken by bus with others to Basra Airport and then flown to Bagdad."*⁵⁰⁷⁵

4.545 Atiyah Al-Baidhani also said he thought he would be released:

*"When I thought I was going to be released on 21 September I was given the items listed on [the Internee Property Sheet]. I did not care that the black shirt was included, even though it was not mine. I just thought I was going to be released and see my family. I would have signed anything".*⁵⁰⁷⁶

4.546 It appears that the term "Happy Bus" was familiar to the soldiers who operated the DTF. On 15 September 2004, Major De Reya used the term in an email he sent to Capt Harry Mynors and Major Moorhouse regarding the detainees' pending transfer:

*"[...] good, a date at last: let's get on with it, although bearing in mind the fact that 4 of the Al Amarahs will be separated from the others and waiting for the Happy Bus, we will probably have to get the ICRC to promise not to mention where they are going the day after they speak with them on the 22nd."*⁵⁰⁷⁷

4.547 In his written evidence, Major De Reya explained that the term "Happy Bus" was used by the detainees to refer to release from detention.⁵⁰⁷⁸ Major De Reya said the detainees were not told that they were being transferred to Iraqi custody, but simply that they were being moved. Major De Reya said he did not tell the detainees they were being released and he did not believe they were told that by anybody else. Those who were involved in the transfer were instructed not to say anything to the detainees other than that they were being moved.

⁵⁰⁷³ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) ASI013960 [37]

⁵⁰⁷⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000454) [28]

⁵⁰⁷⁵ Hussein Fadhil Abass Al-Behadili (detainee 778) (MOD006567) [61]

⁵⁰⁷⁶ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000165) [26]

⁵⁰⁷⁷ (MOD044236)

⁵⁰⁷⁸ Major De Reya (ASI018968) [180]

To the best of Major De Reya's knowledge, the detainees were not told that they were being released.⁵⁰⁷⁹

- 4.548** The evidence indicates that the detainees were not told that they were being transferred to Iraqi custody. Some detainees may have formed the impression that they were being released. The escorts did not seek to correct that impression. I am satisfied that the instruction from Major De Reya to the escorts was that they should simply tell the detainees that they were being moved without specifying the destination. If there had been a conscious decision to misinform the detainees what was to occur, that would have been a matter for criticism, but I accept that was not the case.

⁵⁰⁷⁹ Major De Reya (ASI018968) [179]

Part 5: Matters outside the chronology

Chapter 1: The Royal Military Police Investigation

Chapter 2: Recommendations

Chapter 3: In Conclusion

PART 5: MATTERS OUTSIDE THE CHRONOLOGY

CHAPTER 1: THE ROYAL MILITARY POLICE INVESTIGATION

- 5.1** The events with which this Inquiry is concerned have been the subject of two separate investigations by the Royal Military Police (“RMP”) in 2004 and 2008. The approach which this Inquiry has taken in relation to these investigations was set out in the List of Issues on 17 September 2010:

“The Inquiry’s Terms of Reference do not require it to carry out a review of the investigations conducted by the Royal Military Police (“RMP”) and the Inquiry has no present intention to do so. However, it had been suggested that the RMP was prevented from conducting a prompt, and full investigation, because it was known that such an investigation would uncover misconduct by soldiers. If that suggestion is supported by evidence, then it may suggest contemporaneous knowledge of misconduct by soldiers – a matter relevant to the Inquiry’s Terms of Reference. Similarly, the timing of the complaints made by detainees may be relevant to determining their reliability.”⁵⁰⁷²

- 5.2** To reflect that, no examination was undertaken of the 2008 investigation. I decided, however, that it was necessary for me to take written evidence from some members of the RMP who worked on the 2004 investigation. I have carefully considered the statements of all those witnesses: a number of them also gave oral evidence to me and I have also considered that evidence carefully.
- 5.3** I do not consider it necessary for me to recount much of that evidence in this Report. Instead, in the paragraphs which follow, I set out the steps which were taken as part of the investigation in 2004 and then consider the two matters identified in the List of Issues to which I have referred above. Those are the extent to which the Battle Group obstructed the investigation and the extent to which the detainees made their complaints about their treatment to the RMP during the investigation.

1. The chronology of the 2004 investigation

- 5.4** The 2004 Royal Military Police (“RMP”) investigation into the events with which this Inquiry is concerned was conducted by 61 Section, Special Investigation Branch (“SIB”). In May 2004, the Officer Commanding 61 Section, SIB was Captain Lucy Bowen.⁵⁰⁷³ Captain Bowen recalled being instructed by Lieutenant Colonel Sally Purnell to conduct an investigation into these events on 19 May 2004. Captain Bowen considered this to be when the investigation formally commenced.⁵⁰⁷⁴ From the evidence which I have seen, heard and read a number of important events occurred before that date.
- 5.5** SIB was aware of the Battle of Danny Boy as early as the evening of 14 May 2004. Sergeant John Grant was a member of 61 Section, SIB and on 14 May 2004 was based at Camp Abu Naji.⁵⁰⁷⁵ On the evening of 14 May 2004, Sergeant Grant was in the RMP Ops Room at Camp

⁵⁰⁷² www.alsweadyinquiry.org/linkedfiles/alsweadyinquiry/key_documents/100917alsweadyinquiry-amendedlistofissues.pdf

⁵⁰⁷³ Captain Bowen (ASI018720) [3]

⁵⁰⁷⁴ Captain Bowen (ASI018740) [74]

⁵⁰⁷⁵ Sergeant Grant (ASI021829-30) [4]

Abu Naji when he received a call from Corporal William McLeish. During oral evidence, Sergeant Grant said:

*"The initial information was relayed from him that a number of deceased from the battlefield had been returned into Camp Abu Naji and that they were — there were bodies present outside the medical reception station at that point."*⁵⁰⁷⁶

5.6 Sergeant Grant described what he did next in his written Inquiry statement as follows:

*"Having received this telephone call from my brother-in-law I immediately set off for the medical reception station...in order to determine what was going on and whether SIB needed to get involved. I did not do this on anyone's orders; it was with a view to reporting back to my superiors and obtaining instructions."*⁵⁰⁷⁷

5.7 On arrival at the Medical Centre, Sergeant Grant concluded that this was a serious matter which he could not address alone. He said:

*"At this point I did not want to become involved in what was going on until I had spoken to my superiors. As a shooting incident had occurred, I knew that there would be a subsequent investigation as this was the practice in such circumstances. The Shooting Incident Report (SIR) had not been produced at this time. All personnel involved with the incident would be spoken to at some point, but this was not an investigation that needed to be actioned immediately by me. I wanted to speak to my superiors mainly in order to take instruction on the removal of dead insurgents from the ground and into CAN, although I also intended to take the opportunity to notify them of the fire-fight itself."*⁵⁰⁷⁸

5.8 After a short time at the Medical Centre, Sergeant Grant arrived back at the RMP Ops Room at Camp Abu Naji. On arrival, Sergeant Grant was notified by others that there were live detainees at the camp.⁵⁰⁷⁹ Sergeant Grant then called Captain Bowen to tell her what he knew. His recollection of this call was as follows:

*"I immediately called Captain Bowen to inform her of the unusual events that had occurred and to ask her if I should begin an investigation. No serious crime had occurred as far as I knew, but I felt that the arrival of the bodies should formally be recorded in some way. She told me that she would consider the matter and get back to me. My understanding was that she was intending to seek advice from her superiors."*⁵⁰⁸⁰

5.9 Captain Bowen recalled the telephone conversation with Sergeant Grant. However, she had a very limited recollection of the details of the call and no significant steps were taken in response to it⁵⁰⁸¹ by her.

5.10 Brigadier Andrew Kennett sent a note to Lieutenant Matthew Maer on 15 May 2004. The note is reproduced below as Figure 125.

⁵⁰⁷⁶ Sergeant Grant [109/106]

⁵⁰⁷⁷ Sergeant Grant (ASI021834) [22]

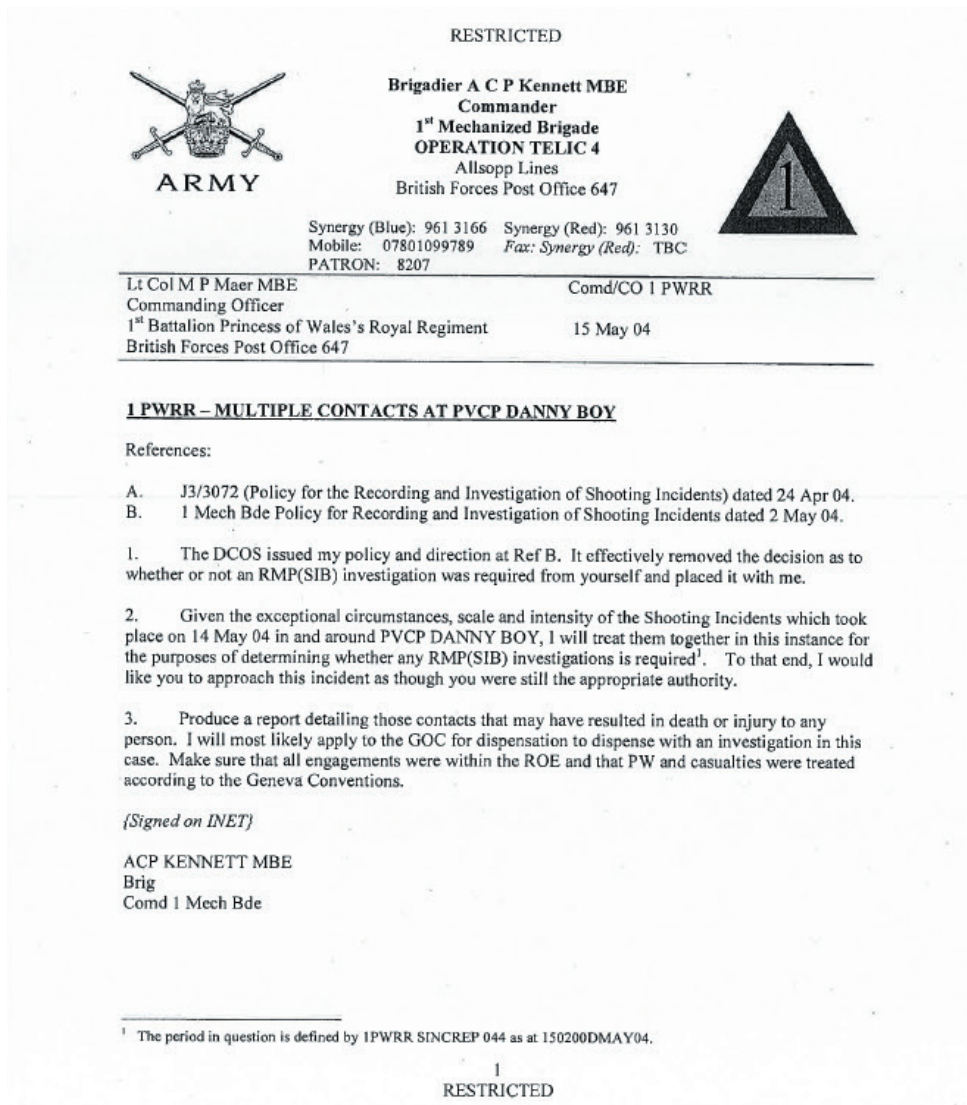
⁵⁰⁷⁸ Sergeant Grant (ASI021834) [23]

⁵⁰⁷⁹ Sergeant Grant (ASI021836) [29]

⁵⁰⁸⁰ Ibid.

⁵⁰⁸¹ Captain Bowen (ASI018737) [61]

Figure 125: ASI022630



- 5.11 That document was drafted by Major Simon Hutchings on the instruction of Brigadier Kennett.⁵⁰⁸² Major Hutchings described the purpose of the note in the following terms:

*"I drafted this to direct the Battle Group to conduct a full review of the whole incident, and reach a conclusion on whether, in their view, an investigation would serve any useful purpose. This would be the subject of legal advice and review by the Bde Comd before any decision was made on whether the view expressed by the Battle Group as to the value of the investigation was going to be supported."*⁵⁰⁸³

- 5.12 That note suggests that the need for the incidents to be investigated by the RMP and the policy governing the commencement of such investigations were in the mind of Brigadier Kennett on 15 May 2004.
- 5.13 The policy governing the commencement of investigations by the RMP(SIB) was "J3/3072 Policy for the Recording and Investigation of Shooting Incidents" and the version which was in force on 14 May 2004 must have been the version dated 24 April 2004 (hereafter "the

⁵⁰⁸² Major Hutchings (ASI022613) [36]

⁵⁰⁸³ Major Hutchings (ASI022614) [36]

24 April 2004 Shooting Incident Policy”). So far as is material, the 24 April Shooting Incident Policy reads:⁵⁰⁸⁴

“A Shooting Incident is defined as: “An incident where shots are fired by UK forces resulting in the death or injury of any person”. This definition does not include incident where warning shots (which do not result in death or injury) are the only shots fired.

All Shooting Incidents must be reported to J3 Ops MND(SE) through the chain of command as soon as possible, with a serious incident report (SINCREP) submitted outlining the facts of the incident in accordance with operational reporting requirements. The fact that the Incident has been reported to, or otherwise come to the notice of, the chain of command does not relieve the CO of responsibility to report the incident to RMP without delay in accordance with Reference B.

Following any Shooting Incident the presumption shall be in favour of the policy contained in Reference B being followed (i.e. that all serious incidents, which would include any Shooting Incident, should automatically be investigated by RMP(SIB)). Only in circumstances where, with the benefit of legal advice and on the information immediately available to him, Comd 1 Mech Bde⁵⁰⁸⁵ determines within 24 hours of a Shooting Incident that on the balance of probabilities a RMP(SIB) investigation would serve no useful purpose, may the RMP(SIB) investigation be dispensed with. Any such determination by Comd 1 Mech Bde must be notified immediately to MND(SE) and recorded in writing. Guidance on the content of such a record of determination to dispense with a RMP(SIB) enquiry is at Annex A. The determination must be forwarded, together with a copy of the legal advice and all papers upon which the determination was based, to J3 Ops MND(SE) without delay.

It will almost invariably be the CO of a soldier involved in a Shooting Incident who draws to Comd 1 Mech Bde’s attention that the incident is one where dispensing with a RMP(SIB) investigation may be appropriate. It is imperative that in making such a determination to dispense with an immediate RMP(SIB) investigation neither the CO nor Comd 1 Mech Bde nor anyone else in the chain of command does anything which might amount to a dismissal, stay or condonation of any possible disciplinary action against the soldier involved in the Shooting Incident. The reason for this is to ensure that if additional evidence comes to light that justifies an RMP(SIB) investigation, disciplinary proceedings under Military Law are not precluded.”

- 5.14** The Battle of Danny Boy constituted a Shooting Incident within the terms of the 24 April 2004 Shooting Incident Policy. Shots were fired by UK forces during the battle and those shots caused the death of a number of Iraqi men.
- 5.15** That created a presumption that the Battle of Danny Boy would be investigated by the RMP (SIB). That presumption was rebuttable in the event that Commander 1st Mechanised Brigade (Brigadier Kennett) determined within 24 hours that, on the balance of probabilities and after taking legal advice, an investigation would serve no useful purpose.
- 5.16** In light of that Major Hutchings, on behalf of Brigadier Kennett wrote to Lieutenant Colonel Matthew Maer seeking a report on the events. That note also warned Lieutenant Colonel Maer

⁵⁰⁸⁴ (MOD002513-14)

⁵⁰⁸⁵ Commander 1st Mechanised Brigade

that Brigadier Kennett was minded to apply for a dispensation in respect of an investigation into the Battle of Danny Boy.⁵⁰⁸⁶

- 5.17** In his written evidence, Major Hutchings stressed that the warning was not intended to influence Lieutenant Colonel Maer in the production of his report:

“In accordance with the policy it is clear that the Bde Comd made the decision as to whether to dispense with the investigation, but that this was subject to review by the GOC who could overrule the view of the Bde Comd if he felt that circumstances dictated it. In stating in the minute the ‘likely actions’ of the Bde Comd, this in no way pre-judged the outcome of the unit investigation, rather it was, by then, a reflection of the inability of the RMP/SIB to fulfil their mandate given the frequency and complexity of incidents of this nature.”⁵⁰⁸⁷

- 5.18** The final aspect of this explanation reflected a view held by a number of witnesses that the RMP were overburdened by investigations. Many witnesses also described a burden on the Battle Group soldiers who were required regularly to provide statements to the RMP as part of these investigations.

- 5.19** In his written Inquiry statement, Brigadier Kennett said:

“The shooting investigation policy changed during the tour. Initially the policy was that all incidents in which a person, be they Coalition Forces or Iraqi, was injured or killed (or thought to be injured or killed) would be investigated by the RMP(SIB). This policy was based in the shooting incident investigation procedure followed in Northern Ireland. However, as has been well documented..... the security situation on the tour deteriorated from the initial calm after the defeat of Saddam during the previous TELIC Operation. For the majority of our tour, we faced daily contacts and engagements across the Bde area of operations. Maysan was a particularly volatile province. The result of this was that under the ‘investigate all incidents’ policy, the investigative capacity of the Division was inundated with investigation referrals.

The pressure on the RMP(SIB) to investigate resulted in delays in investigations and with interviewing the soldiers concerned. The RMP(SIB) were hampered by the sheer volume of shooting incidents they were required to investigate and this was made more difficult by logistical problems such as an inability to hold and examine the ground where incidents took place (as this was too dangerous) and difficulties in RMP(SIB) travelling (as they required air transport and force protection). We simply could not find sufficient investigators or generate the military capability necessary for all concurrent tasks. There was also a problem with troops being required on operational duties and the RMP(SIB) would sometimes have to wait days until troops returned to base before interviewing them. We had to plan to get everyone in the same, safe place and make sure the witness has the right rest and support.”⁵⁰⁸⁸

- 5.20** Lieutenant Colonel Maer in his written Inquiry statement said:

“The shooting policy changed whilst I was in theatre, not long after the Danny Boy incident. At some point before that change, I became aware of the conversation that led to it. The conversation was at the highest levels and the question being asked was whether or not the existing policy of having an investigation for every shooting

⁵⁰⁸⁶ (ASI022630)

⁵⁰⁸⁷ Major Hutchings (ASI022630) [37]

⁵⁰⁸⁸ Brigadier Kennett (ASI024032-33) [63]-[64]

*incident (which was modelled on the conflict in Northern Ireland) was appropriate for the situation we were facing in Iraq. There were times when my Warriors were being attacked 3 to 4 times a day and the soldiers were having to respond to many investigations. This took a lot of time and there was a feeling that the system was breaking down.”*⁵⁰⁸⁹

- 5.21** Those views were shared at a senior level by the RMP. Lieutenant Colonel Sally Purnell was the Force Provost Marshal for the duration of Op TELIC 4. She was the most senior member of the RMP in Iraqi in May 2004.⁵⁰⁹⁰ In her written Inquiry statement, Lieutenant Colonel Purnell said:

*“My recollection is that the shooting incident policy on Op TELIC IV appeared to have been designed for a much slower operational environment in which engagements were less common. However, the high level of insurgency meant that armed engagements were commonplace, and it became apparent at an early stage in my tour that what was supposed to be a small part of 61 Section’s work was in reality an unmanageably large burden in terms of time and resources.”*⁵⁰⁹¹

- 5.22** Between 15 May 2004 and 17 May 2004, Captain Bowen came to understand that Brigadier Kennett was contemplating a dispensation with the requirement for an investigation. That is clear from an entry which Captain Bowen included in her Case File Diary for 17 May 2004.⁵⁰⁹² The circumstances in which this came about are unclear because Captain Bowen’s recollection is limited.⁵⁰⁹³

- 5.23** Lieutenant Colonel Purnell had a meeting with Brigadier Kennett over that period. She recalled that the meeting was prompted by annoyance on the part of Brigadier Kennett that an investigation had occurred without him being informed. Her recollection was set out in her written Inquiry statement:

*“Soon after the call I received a visit from the Brigade DCOS, Major Hutchings, who said that the Bde Comd wanted to see me, and I went to his office at Bde HQ to talk to him. Again, the conversation was a very brief exchange and I do not recall any detail of what was said. I do remember, however, that Brig Kennett was also unhappy not to have been informed. I recall us discussing the fact that he and the DCOS believed that the shooting incident policy was unworkable and needed to be revised. I think Brig Kennett or the DCOS said that the policy was going to be changed and in essence I recall Brig Kennett saying that he was considering dispensing with the need for an investigation into the engagement at Danny Boy and was waiting for a full report from the CO of the Battle Group. I think I said that I would advise the SIB not to investigate the shooting incident aspect pending a review of the policy. I do not know whether the Bde Comd at any stage sought or received legal advice in relation to the issue of dispensing with the need for a shooting incident investigation in relation to the Danny Boy incident, and I had no further input in relation to the issue of dispensation.”*⁵⁰⁹⁴

⁵⁰⁸⁹ Lieutenant Colonel Maer (ASI023601) [55]

⁵⁰⁹⁰ Lieutenant Colonel Purnell (ASI022901) [3]

⁵⁰⁹¹ Lieutenant Colonel Purnell (ASI022907) [21]

⁵⁰⁹² (MOD035918)

⁵⁰⁹³ Captain Bowen (ASI018738) [68]

⁵⁰⁹⁴ Lieutenant Colonel Purnell (ASI022911) [33]

- 5.24** The next significant event was a conversation which took place between Captain Bowen and Lieutenant Colonel Purnell. It is recorded in Captain Bowen's Case File Diary for 19 May 2004:

*"Rec'd direction from PM that Danny Boy is to be investigated in its entirety. Considerable press interest in this incident. Also, international red cross are suggesting that following their visit to the DTDF those who are detained there following their arrest are alleging ill-treatment at the time of their arrest by CF. Facts should be established."*⁵⁰⁹⁵

- 5.25** Captain Bowen recalled receiving this direction from Lieutenant Colonel Purnell.⁵⁰⁹⁶ When she gave oral evidence, she offered an interpretation of what was meant by investigating the matter *"in its entirety"*:

*"Something slightly more broad than a shooting incident, really but to establish whether the rules of engagement had been applied properly, the nature of the battle, how people came to be detained in the first place – the whole incident."*⁵⁰⁹⁷

- 5.26** It is clear from both Captain Bowen's written Inquiry statement and the extract from the Case File Diary to which I have referred above, that by now the RMP were also seeking to investigate allegations of ill-treatment which were made by some of the detainees to the International Committee of the Red Cross during their visit.⁵⁰⁹⁸

- 5.27** As a result, an SIB investigation was formally set up with the title *"Attempted Murder of Coalition Forces"* and the Central Criminal Records and Intelligence Office ("CCRIO") reference number, 64692/04.⁵⁰⁹⁹ Captain Bowen was immediately concerned about how her investigation would proceed given what she knew of the debate at Brigade HQ about whether to apply for dispensation. These concerns were recorded in her Case File Diary as follows:

*"Spoke with DCOS in order to ask that he speak with the unit to get them to assist with enquiries. He is still not happy about this. He says that he is not aware that we are to investigate this incident and further stated that the Bde Comd hasn't made his decision. I informed him that that was irrelevant – the Comd has 24 hrs to stop an investigation, not to prevent it from starting in the first place. DCOS wouldn't agree, without the Bde Co-operation, PWRR will not cooperate and release troops for interview. Potential problem. Info'd PM of this."*⁵¹⁰⁰

- 5.28** On 20 May 2004, Captain Bowen sent an email to Lieutenant Colonel Purnell seeking guidance on how she should proceed.⁵¹⁰¹ The email is reproduced below as Figure 126.

⁵⁰⁹⁵ (MOD035918)

⁵⁰⁹⁶ Captain Bowen (ASI018740) [74]

⁵⁰⁹⁷ Captain Bowen [164/31]

⁵⁰⁹⁸ Captain Bowen (ASI018740) [75]

⁵⁰⁹⁹ Captain Bowen (ASI018740) [76]

⁵¹⁰⁰ (MOD035918)

⁵¹⁰¹ Captain Bowen (ASI018741) [78]

Figure 126: MOD034398

E Mail Dated Thu 20/05/2004 14:34
Capt Bowen (SIB)
PM and Comd Legal

Ma'am and Sir,

Can I please have some guidance as to what is happening with the shooting policy in Al Amarah. It is becoming increasingly difficult to conduct investigations up there and I am not really sure how we are adhering to the policy at present. I understand the Bde Comd has a period of time to make his decision about whether he wants to dispense with his investigation, and in order for him to do that, he must be informed of the facts by the unit. But where does this fit in with the shooting policy if I am not even allowed to investigate until he makes that decision? My understanding is that an investigation should be commenced anyway, and then closed if the Bde Comd decides to dispense with the investigation.

That would be perfect for low level incidents, but is wholly inappropriate in Al Amarah. It is incredibly difficult to conduct investigations up there as the unit will not permit this until the Bde Comd has directed that it is with his consent, which he won't give until he has been informed of all of the facts.

So, we end up in the position we are in now, where I am likely to be told to investigate the incidents at Danny Boy, the battle group are of the belief that it is purely the prisoner handling that is going to be investigated, and I got the impression I am to investigate the whole incident.

Also, I am unclear in relation to the incident involving SPECTRE during Op Waterloo. I was told by DCOS yesterday, that I would be tasked to investigate that incident, yet when I spoke to CO 1 PWRR, he told me that I wasn't and that it had been discussed between himself, the Bde Comd and the GOC. As I understand it from Nick Simpson, the report produced by the CO, relating to Op Waterloo will be passed up Div for a decision to be made. I am assuming therefore that I am not to start an investigation into any matters relating to Op Waterloo until receiving direction from Div.

I hope this makes sense, and feel that the confusion comes when Brigade task me to conduct investigations and place caveats on what I can or can't do. I am fully aware of the difficulties faced by the Battle group in Al Amarah, but I am not sure how to progress with investigations up there. I want to be able to do the best we can, and don't feel that we are able to achieve that at the moment.

Regards,
Lucy

Capt Lucy A Bowen
OC 61 Section SIB RMP

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5.29 That same day, Captain Bowen and Lieutenant Colonel Purnell met to discuss the concerns which she had raised. Captain Bowen's recollection of this meeting, as expressed in her written Inquiry statement, was that it was decided the aspect of the investigation relating to the allegations of ill-treatment of the live detainees should continue, although the investigation of the Shooting Incident should be paused.⁵¹⁰² As I will explain later in this Chapter, Lieutenant Colonel Maer had not completed his report on the incident and would not do so until 12 June 2004.

5.30 Following that meeting, the investigation into the allegations of ill-treatment began. Four members of the RMP arrived at Camp Abu Naji to begin taking statements. They were WO2 Paul Terry, Staff Sergeant David Tucker, Staff Sergeant Nicola Stewart and Staff Sergeant Irving Webb. Three of those gave evidence to me about their role.

5.31 In his written Inquiry statement, WO2 Terry said:

"I flew to CAN and spoke to Lt Col MAER to inform him of the nature of the enquiry and sought his cooperation in facilitating the inquiry by making his staff available for interview; he was cooperative in this respect. I then deployed Sgts Tucker, Stewart and

⁵¹⁰² Captain Bowen (ASI018741) [79]

Webb to carry out the investigations. Following that my role reverted to managing the enquiry and generally overseeing its progress.”⁵¹⁰³

5.32 Staff Sergeant Richards’ recollection was:

“I do not remember being told about allegations of detainee abuse during my initial briefing before I deployed to CAN, but I remember being told later that such allegations had been made and that when we took statements in the Danny Boy investigation we should cover the soldiers’ dealings with detainees and how they had been treated. I do not remember being told the nature of the allegations. I do not remember who briefed me, or when or where, but having considered the entry in the case file diary [MOD021582] I believe that Sgt Tucker would have briefed me after we had arrived at CAN on 21 May. Specifically, I remember being told that we should ask soldiers at CAN whether they had had any dealings with detainees or whether they saw detainees. If so, we should ask how detainees had been transported and how they had been treated at CAN.

I do not remember hearing that allegations of abuse had been made by the Red Cross and I do not remember being told before I deployed to CAN whether the detainees had made allegations of abuse through the Red Cross or whether the Red Cross had made the allegations themselves. I only remember being told some time after I went to CAN that an unspecified humanitarian organisation had made inspections of the detention facility at Shaibah and had made allegations of prisoner abuse. I cannot remember specific allegations of mistreatment, but I remember it was suggested that there were allegations against British soldiers who were involved in the battle of Danny Boy that there had been abuse of prisoners following the contact and at CAN on 14 May. I do not remember whether it was alleged that all or some detainees were mistreated.”⁵¹⁰⁴

5.33 When he gave oral evidence, Staff Sergeant Webb said that he thought he was investigating the treatment of the detainees both on the battlefield and at Camp Abu Naji.⁵¹⁰⁵

5.34 It was clear from the evidence of those members of the RMP who deployed to Camp Abu Naji on 21 May 2004 that their focus was on taking statements from the soldiers and not to speak to the detainees.⁵¹⁰⁶ Captain Bowen allocated a fresh CCRIO reference number, 64695/04, to the investigation into allegations of ill-treatment.

5.35 In an apparently unrelated development, one of the detainees, Kadhim Abbas Lafta Al-Behadili (detainee 775), by now at the DTDF at Shaibah, wrote a letter addressed “to the British Commandant”, alleging that he was assaulted at the point of his capture.⁵¹⁰⁷

5.36 In response to the complaint, Staff Sergeant Andrew Southerton went to the Divisional Temporary Detention Facility (“DTDF”) to speak to Kadhim Al-Behadili (detainee 775). Staff Sergeant Southerton had a fairly limited recollection of the interview.⁵¹⁰⁸ However, I have had the opportunity to review a complete transcript of it.⁵¹⁰⁹

⁵¹⁰³ WO2 Terry (ASI001154) [34]

⁵¹⁰⁴ Staff Sergeant Stewart (ASI020856-57) [57]-[58]

⁵¹⁰⁵ Staff Sergeant Webb [149/127-128]

⁵¹⁰⁶ Staff Sergeant Webb [149/129-130]; WO2 Terry [163/103-104]

⁵¹⁰⁷ (MOD043591)

⁵¹⁰⁸ Staff Sergeant Southerton (ASI022757) [42]

⁵¹⁰⁹ (MOD032727)

5.37 In that interview, Kadhim Al-Behadili alleged that, at the point of capture, he was verbally abused, beaten up and stamped on.⁵¹¹⁰ He also described some rough handling as he was loaded into and out of the armoured vehicle for the journey back to Camp Abu Naji.⁵¹¹¹ He also alleged that he was assaulted when he arrived in his cell at Camp Abu Naji.⁵¹¹² It is thus evident that, at least at the start of the interview, Kadhim Al-Behadili took the opportunity to make complaints about his treatment to Staff Sergeant Southerton.

5.38 However, the interview ended with a *volte-face* on the part of Kadhim Al-Behadili. The transcript recorded that the detainee wished to withdraw his complaint against the soldiers who assaulted him and also that he wanted to withdraw a “confession” which he made.⁵¹¹³

5.39 Staff Sergeant Southerton recalled that change of mind in his written Inquiry statement:

“I recall that during the interview the detainee said that he did not want to complain about the assaults, and had written the letter because he wanted to withdraw the confession he had made previously. I note that when I asked about what had happened after he was taken from the battlefield the detainee said (as reported by the interpreter) that “because he was afraid...to be beaten more...because he suffers a lot of beating... he was...saying a lot of things (but) he did not mean.” I assumed that he was referring to a confession he had made following his detention, I do not know at what stage.

I do not recall being told anything more about the nature of his confession and I do not think I asked. I do not recall the detainee explaining what the connection was between his making the complaint and wishing to withdraw the confession, and I do not know why he said what he did. I did not understand the detainee’s comment about wishing to withdraw the confession as having any bearing on the truth of his allegation that he had been assaulted. I told the detainee during the interview [MOD032737] that the complaint would be investigated regardless of his motivation for making it.”⁵¹¹⁴

5.40 It appears that Staff Sergeant Southerton did consider Kadhim Al-Behadili’s complaint in that at the conclusion of the interview he photographed his injuries.⁵¹¹⁵ Staff Sergeant Southerton could not recall playing any part in the ongoing investigation of the complaints made by Kadhim Al-Behadili but he suspected he would have passed on what he had learned to WO2 Terry.⁵¹¹⁶

5.41 On 12 June 2004, Lieutenant Colonel Matthew Maer produced his report. He had been asked to do so by Major Simon Hutchings on behalf of Brigadier Andrew Kennett on 15 May 2004. So far as is material, Lieutenant Colonel Maer’s report found as follows:

“...to the best of my knowledge all engagements conducted within this incident fall within the direction issued for Phase 4 ROE [Rules of Engagement]. It is understood that where any doubt regarding the application of the ROE is found then the RMP(SIB) are required to initiate an investigation...”

Having considered Enclosures 1-2 [SINCREP no PWRR044 as at 150200DMAY04 and Danny Boy Contact MEL 14 May 2004] and having spoken to BG personnel directly involved in the operation I am satisfied that in each situation the use of force was

⁵¹¹⁰ (MOD032729)

⁵¹¹¹ (MOD032733)

⁵¹¹² (MOD032734)

⁵¹¹³ (MOD032736-37)

⁵¹¹⁴ Staff Sergeant Southerton (ASI022758) [46]-[47]

⁵¹¹⁵ Staff Sergeant Southerton (ASI022759) [50]

⁵¹¹⁶ Staff Sergeant Southerton (ASI022759-60) [52]-[54]

justified. In particular it should be noted that prisoners were taken, were treated properly and every effort was made to render assistance to a seriously wounded enemy.

Following the incident enemy dead (20) and captured (9) were removed to Camp Abu Naji. From there, enemy prisoners were handed to the DTDF where allegations of ill-treatment have been made. The bodies were retained at Abu Naji until 15 May when they were returned to their families. Allegations have since been made that the bodies were mutilated. Although I believe that these allegations are vexatious I have requested that the SIB(RMP) carry out an investigation into this aspect of the incident...

On the facts currently available to me I recommend that there is no requirement for additional or further investigation of this incident by the RMP(SIB)."⁵¹¹⁷

5.42 In his written Inquiry statement, Lieutenant Colonel Maer told me that he had very little knowledge of the contents of this report. He suggested that it was likely drafted by Captain Duncan Allen and that he merely signed it off.⁵¹¹⁸

5.43 Captain Bowen recalled that the first she became aware of Lieutenant Colonel Maer's report was at a meeting on 19 June 2004 with Lieutenant Colonel Purnell and Lieutenant Colonel David Wakefield. Captain Bowen set out her recollection of this meeting in her written Inquiry statement:

"It was at that meeting that I was made aware, for what I believe was the first time, of allegations of mutilation of Iraqi dead. I recall an allegation being mentioned by someone present that someone had been shot in the head through the eye and another had their head crushed in a vehicle door. The details surrounding these incidents were scarce and I was not clear as to their origin or accuracy.

In the course of the meeting on 19 June 2004 I was shown on computer a copy of a document produced by 1PWRR which stated that the SIB had been asked to investigate the allegations of mutilations. I was shocked, because I was confident this was not the case. I was also concerned that I had not been shown the document until a week after it had been written. I contacted everyone in my team on 19 June to ask whether they had been tasked to investigate allegations of mutilation. They confirmed that no one had communicated such a tasking to them."⁵¹¹⁹

5.44 It is difficult to reconcile Captain Bowen's evidence with what was written by Captain Allen for Lieutenant Colonel Maer, and signed off by Lieutenant Colonel Maer. I am quite satisfied that Captain Bowen was telling me the truth and, in particular, that she was shocked by seeing the document for the first time on 19 June 2004. She was unaware that any such request had been made. It must follow that no such request was made despite the content of the report signed by Lieutenant Colonel Maer. The explanation is probably that when Captain Allen drafted the report he thought or assumed that such a request had been made. He expected Lieutenant Colonel Maer to make any necessary amendments. The reason that Lieutenant Colonel Maer did not do so is because he merely signed it off with little knowledge of the contents. That is unfortunate, but given the demands on his time at that stage, not a matter of criticism. However, it does explain the inconsistent evidence.

5.45 As a result of this meeting on 19 June 2004, it was decided that the investigation into the shooting incident should go ahead. The investigation into the allegations of mutilation should

⁵¹¹⁷ (MOD026831)

⁵¹¹⁸ Lieutenant Colonel Maer (ASI023602) [61]

⁵¹¹⁹ Captain Bowen (ASI018744-45) [91]-[92]

also commence and those into the allegations of mistreatment made by the detainees should continue.⁵¹²⁰

5.46 The next event which it is necessary for me to include is that on 26 and 27 July 2004, the detainees were interviewed. Five detainees were interviewed by Sergeant Jason Kendall and four were interviewed by Staff Sergeant Southerton. It appears that those interviewers had different perceptions of purpose of those interviews.

5.47 Sergeant Kendall's oral evidence was:

"Q. All right. What was the purpose of doing that?"

A. The purpose of that was to get their version of events about the contact, and nothing more.

Q. If, during the course of that interview, a detainee had told you that soldier X had stuck a knife into his throat, what would you have done?"

A. Um, from – I assume I would have reported it up the chain of command. Because I was aware that there was an investigation into detainee abuse which had been completed, I assumed it would have been covered by that investigation.

Q. All right. So the purpose of the interviews with the nine detainees was to get their version of what happened during the contact?"

A. Yes, sir. To give them a chance to tell us how they got arrested on Danny Boy, or at Danny Boy.

Q. Yes. And nothing more than that?"

*A. Nothing more than that, sir."*⁵¹²¹

5.48 Staff Sergeant Southerton said:

*"I believe the direction was to obtain an account from the individuals with regards to the events on the day that they were detained and their treatment by HM Forces following from that."*⁵¹²²

5.49 Staff Sergeant Southerton did not consider that there was any particular practical distinction to be drawn between the investigation of the Shooting Incident and the investigation into the allegations of ill-treatment. He explained:

*"I was aware at that point that there had been a major contact in the Al-Amarah area and they had been detained as part of that process. But with regards to their evidence, I interviewed them as a witness with regards to the incident. So, I double – or both, I would suspect, sir. They may well have provided witness evidence to the events that day, but also what I was led to believe was that they also had complaints about how they had been treated post their detention."*⁵¹²³

⁵¹²⁰ Captain Bowen (ASI018746) [94]

⁵¹²¹ Sergeant Kendall [154/172]

⁵¹²² Staff Sergeant Southerton [163/31]

⁵¹²³ Staff Sergeant Southerton [163/31-32]

5.50 It is not surprising, given the context and the pressures on all concerned, that there is a difference in recollection.

5.51 The matters to which I have referred in the paragraphs above provide sufficient detail regarding the 2004 RMP investigation for me to consider what appear to me to be the two main ways in which the 2004 RMP investigation is relevant. Those are whether the investigation was obstructed or frustrated by Brigade or the Battle Group and whether the detainees were given an adequate opportunity to complain about their treatment during this investigation. I will consider each of these matters in turn in the paragraphs which follow.

2. Was the investigation obstructed?

5.52 The allegation that the 2004 Royal Military Police (“RMP”) investigation was intentionally obstructed or frustrated comes from two sources. First, the subjective perception of some of those who were conducting the investigation. Second, an objective overview of the chronology of the investigation.

5.53 A number of the witnesses who gave evidence about their role in the RMP in 2004 described a perception that their work was being obstructed or frustrated by soldiers within the Battle Group. This seems to have started from as early as the evening of 14 May 2004. In her written Inquiry statement, Captain Lucy Bowen described speaking to Sergeant John Grant at Camp Abu Naji on that evening. Captain Bowen told me:

*“It may have been during one of these conversations that Sergeant Grant informed me that dead Iraqis had been brought to CAN, or it may have been in a subsequent conversation. I recall being informed at some stage, I do not know when, that he had tried to take photographs of the dead Iraqis but had not been able to do so. I cannot recall anything further about our discussions in relation to this issue, and I do not recall whether Sergeant Grant said why he had wanted to take pictures or why he had not been able to do so.”*⁵¹²⁴

5.54 WO2 Terry gave similar evidence:

*“I subsequently became aware from Sgt Grant that he had been told to stay away and that he was not required to assist. I do not recall specific conversations with Captain Bowen about this but I do know that she was aware of this instruction.”*⁵¹²⁵

5.55 It is not clear how Captain Bowen and WO2 Terry came to believe that Sergeant Grant was obstructed when he attempted to take photographs or otherwise assist the Battle Group on the evening of 14 May 2004. Nevertheless, I am satisfied that they were wrong. That is clear from Sergeant Grant’s own evidence to me. He described seeing Captain James Rands (though he did not directly name him) with a camera that evening and formed the view that Captain Rands intended to photograph the bodies which had been brought back. He said:

“I did not speak to him or offer to assist him as I was on my way back to report the matter and ask my superiors if I should get involved. Until I was instructed to begin an investigation, I did not feel I should start recording the bodies, although I believed that making a record was the right thing to do. I was not aware if photographs were taken

⁵¹²⁴ Captain Bowen (ASI018737) [61]

⁵¹²⁵ WO2 Terry (ASI001153) [28]

or, if they were, whether they were taken by this Int Offr or someone else. I did not take any photographs.”⁵¹²⁶

- 5.56** It is likely that Sergeant Grant, given the training which, in his evidence to me,⁵¹²⁷ he described receiving, could have provided practical and beneficial assistance to Captain Rands when he photographed the bodies. That assistance might well have improved the quality of the photographs which were produced and might have provided the RMP with useful evidence for its investigation once it started. However, I do not find that Sergeant Grant was obstructed. In fact, I am sure that he took the decision not to get involved in the work being done by Captain Rands that evening.
- 5.57** As to the second source of the suggestion of obstruction, it would appear that the progress of the 2004 RMP investigation was initially slow. It started with the protracted debate which took place regarding whether Brigadier Kennett should apply for a dispensation to prevent the matter being investigated pursuant to the 24 April 2004 Shooting Incident Policy.
- 5.58** I have set out in the paragraphs above the key events which took place pursuant to that debate and I do not repeat them. What emerged from the evidence which I have seen, heard and read is that Captain Bowen, in particular, was frustrated by the debate. In her written Inquiry statement, she said:

“So far as I can recall I was not informed of what the basis of the dispensation application was in this case. I did not agree with the decision to apply for a dispensation, because the scale of the incident was such that I did not think that a report by the Battle Group would be sufficient to address what had taken place. I was aware that there had been fatalities which I felt ought to be investigated, and the fact that the bodies had been brought back to CAN was sufficiently unusual that I thought the circumstances in which this occurred ought to be considered.”⁵¹²⁸

- 5.59** Captain Bowen elaborated on her opinion in oral evidence. She explained to me that her interpretation of the dispensation provisions in the 24 April 2004 Shooting Incident Policy was that they operated so as to allow the Brigade Commander to halt an investigation but could not be used to prevent an investigation from being initiated in the first place.⁵¹²⁹
- 5.60** Captain Bowen felt that the senior officers within Brigade interpreted the provisions as meaning that no investigation could take place whilst they were considering whether or not to apply for dispensation. Captain Bowen described the practical effect of this difference in interpretation :

“Q. Therefore, you thought you should start it, and if you were subsequently told to stop it, so be it, but you should start it?

A. Yes, yes.

Q. Did you start it?

A. No. We raised an investigation number, but I can’t recall what further work we did at that point in that first 24 hours because, as I explained, the norm for the Brigade was to assume that we weren’t investigating until the dispensation had been resolved

⁵¹²⁶ Sergeant Grant (ASI021835) [25]

⁵¹²⁷ Sergeant Grant (ASI021830-32) [8]-[13]

⁵¹²⁸ Captain Bowen (ASI018739) [70]

⁵¹²⁹ Captain Bowen [164/24-25]

and, therefore, we would have had limited lines of inquiry that we could have followed because we wouldn't have been able to speak to any witnesses. They wouldn't have made anybody available.

Q. Because a closed door was put in your face?

A. Yes.

Q. Whatever your view, the Brigade had decided that, pending the outcome of the application for dispensation, there would be no investigation?

A. Yes.

Q. It is a cliché, but the door was slammed in your face?

*A. Yes*⁵¹³⁰

5.61 Mindful of the limitations which I have placed upon the extent to which I should examine the 2004 RMP investigation, it does not seem to me necessary nor appropriate to examine in any detail the impact which the dispensation debate had on the final outcome of the investigation. Instead, the focus of the subsequent paragraphs is on the decision-making process of the senior officers in the Battle Group and at Brigade.

5.62 The senior officers identified the large volume of investigations and the security situation as relevant to the practicability of any investigation.

5.63 Brigadier Kennett gave a thorough and detailed account of his thinking in relation to the RMP investigation in the days following 15 May 2004. He said:

*"I never wanted to dispense with any investigations at all. I wanted the policy to be that every single shooting incident would be investigated. The question was who it would be investigated by."*⁵¹³¹

5.64 He explained the reason for his consideration of an application for a dispensation:

*"Because I wanted an investigation to be done because he couldn't start – nobody could start an investigation if the SIB were going to do it. And if we were to wait for the SIB, because there were no more resources available in theatre or in the UK, we would have been waiting for months, by which time there would be no information to gather. So what was in my mind was that we needed to gather as much information as quickly as possible before memories or any other circumstances obfuscated the matter."*⁵¹³²

5.65 Two points arise out of that evidence. First, SIB was able to deploy four senior non-commissioned officers to Camp Abu Naji to investigate the allegations of ill-treatment on the part of the detainees. Accordingly, whilst Brigadier Kennett was echoing the sentiments of many other witnesses that that the SIB was stretched at that time by the number of investigations, I do not think it correct to suggest that the matter could not have been investigated for many months.

5.66 Second, as Brigadier Kennett accepted during oral evidence, the options which he was considering did not sit easily within the framework created by the 24 April 2004 Shooting

⁵¹³⁰ Captain Bowen [164/25-26]

⁵¹³¹ Brigadier Kennett [121/172]

⁵¹³² Brigadier Kennett [121/173]

Incident Policy.⁵¹³³ In particular, that policy clearly envisaged all investigations into Shooting Incidents being conducted by the RMP (SIB). Furthermore, a clear time period of 24 hours was specified in which the Brigade Commander was to come to a decision on whether to apply for dispensation. Brigadier Kennett's actions, therefore, represented a departure from the 24 April 2004 Shooting Incident Policy.

5.67 I do not criticise Brigadier Kennett for these departures. It emerged from the evidence which I have seen, heard and read that, even by May 2004, the 24 April 2004 Shooting Incident Policy was widely viewed as being unfit for purpose and was beginning to break down in practice.

5.68 That this was so was clearly recognised by Lieutenant Colonel Purnell, as follows:

*"I recall the difficulties with the operation of the policy became increasingly evident from my discussions...with Captain Bowen. I began liaising with Lieutenant Colonel Wakefield, who was Comd Legal for MND(SE) until mid-June 2004, about the possibility of having the policy reviewed in light of the operational situation we were facing...I have also seen an email from Lt Col Maer (who was the 1PWRR Battle Group's CO) to Capt Bowen, which was forwarded to me on 24 May 2004 [MOD045036] and which demonstrates that the policy was considered to be impractical by the 1PWRR Battle Group. The volume of engagements meant that their personnel were often involved in several investigations simultaneously, which had detrimental effects on the soldiers' levels of fatigue and on the Battle Group's operational capacity. I recall that the other Battle Groups had similar concerns, as did the Bde Comd and DCOS."*⁵¹³⁴

5.69 Colonel Philip McEvoy, described by Lieutenant Colonel Purnell as an "operational expert from the Army Legal Services" came to Iraq in June 2004 and reported on the 24 April 2004 Shooting Incident Policy. In his written evidence to this Inquiry, Colonel McEvoy was particularly critical of the 24 hour deadline which the 24 April 2004 Shooting Incident Policy imposed on the Brigade Commander when considering dispensing with the need for an investigation:

*"According to the police, decisions on dispensation were supposed to be made within 24 hours of an incident occurring, based on the SINCREP provided by the unit of the soldier involved, together with legal advice from the Bde lawyers. However, whilst a decision in that time frame was viable in circumstances where a single soldier fired a limited number of rounds at an identifiable enemy, it was not practically possible for sufficient information to be provided to enable a decision to be made within 24 hours when larger numbers of individuals were involved or where there were other complicating factors. Consequently I am aware that in practice it was often not possible to adhere to the 24 hour deadline."*⁵¹³⁵

5.70 It is clear that all regarded the then current Shooting Incident Investigation Policy as unworkable in theatre. I accept that it was unworkable in the conditions in that part of Iraq with which this Inquiry is concerned in May 2004. I accept the evidence from Lieutenant Colonel Purnell and Colonel McEvoy which I have mentioned above. However, the need for such a policy is clear: it is to ensure a speedy investigation in order to protect the interests of both the British military and the enemy. It must be effective to achieve that aim and practically workable. I return to this topic in the Recommendations section of this Report.

⁵¹³³ Brigadier Kennett [121/172]

⁵¹³⁴ Lieutenant Colonel Purnell (ASI022907-08) [22]

⁵¹³⁵ Colonel McEvoy (ASI025166) [11]

5.71 I have no hesitation in finding that the delays in the commencement of the 2004 RMP investigation were entirely the result of a genuine concern about the volume of investigations which were already ongoing at the time of Battle of Danny Boy. I have seen no evidence that anybody at Brigade or the Battle Group sought to delay the commencement of the RMP investigation as a result of a desire to cover up actual or anticipated wrongdoing.

5.72 The final matter for me to consider in relation to the question of obstruction is the conduct of the soldiers and officers within the Battle Group in their dealings with the investigators from the RMP. Early statements made by Captain Bowen and WO2 Terry suggested that they had problems with their relationships with the Battle Group when they investigated these incidents.

5.73 In her statement to the RMP in 2008, Captain Bowen said:

“The relationship with the Brigade and the Battle Groups was difficult. I had to deal personally with the Deputy Chief of Staff (DCOS) at the Brigade and found him obstructive to the extent that I had to ask the FPM to intervene on numerous occasions. The DCOS insisted that I was not to contact the Battle Groups direct without his knowledge, but this was both impractical and inappropriate. He also directed that the Battle Groups were not to release witnesses to the SIB unless he had cleared it first. In Al Amarah, it was hard to deal with the PWRR battle group...The PWRR were under such a fast tempo of operations that getting statements recorded from them and conducting enquiries was very difficult and often required intervention direct from me to the CO of the PWRR to emphasise the need to facilitate my sections [sic] enquiries. Towards the end of the tour, however, I felt that the CO was more willing to assist with our enquiries.”⁵¹³⁶

5.74 Consistently, WO2 Terry said to the RMP in 2008:

“The interaction between ourselves and the Battle Groups was also a matter of constant difficulty. Capt Bowen and in her absence myself were constantly ‘doing battle’ with the DCOS at Brigade and the unit COs. There was a reluctance to allow SIB access to troops on the ground, briefings on what to say taking place before SIB could get statements and general resistance around every corner. It seemed to me that the involvement of the PM only ever had a limited effect which is why we felt the need to fight our own battles with the chain of command. Irrespective of what was said from above, on the ground the commanders had autonomy and readily exercised this prerogative. Some of the resistance we were sensitive to however. The soldiers in Al Amarah in particular were engaged in a constant rotation of fire fights, eat, sleep and engage in more fire fights.”⁵¹³⁷

5.75 The impression given by that evidence of the relationship between Command and SIB is regrettable but understandable in the circumstances. Much of the focus of questioning during oral evidence was on an order given by Major James Coote on 19 May 2004. This order was in a document which contained directions on a range of different matters. Paragraph 27 of that document reads:

“There will be a number of investigations carried out. No-one is to talk to the police until briefed by me. They are all to have an officer or SNCO present if they wish and

⁵¹³⁶ Captain Bowen (MOD002195)

⁵¹³⁷ WO2 Terry (MOD013807)

*are to be honest. There is nothing to hide – we are simply ensuring that nothing comes back to haunt us in a few months time.”*⁵¹³⁸

- 5.76** For the reasons which I will set out in the paragraphs which follow, I am sure that neither the tensions observed by Captain Bowen and WO2 Terry, nor the order from Major Coote were indicative of a concerted and deliberate policy by the Brigade or the Battle Group to obstruct the investigation or to prevent the Royal Military Police (SIB) from discovering evidence of wrong-doing.
- 5.77** First, I am satisfied that the tensions noted by Captain Bowen and WO2 Terry were not confined to the investigation of the Battle of Danny Boy and were caused by the general tempo of operations in that region of Iraq at that time. Both facts were recognised in the evidence of Captain Bowen and WO2 Terry⁵¹³⁹ and are in any event an understandable consequence of my findings above concerning the 24 April 2004 Shooting Incident Policy.
- 5.78** Second, I am satisfied that Major Coote’s order was not, and would not have been interpreted as, a direction to obstruct the Royal Military Police investigation. In his written Inquiry statement, Major Coote gave a detailed explanation for the order. I found that explanation to be honest and sensible and I set it out here in full:⁵¹⁴⁰

“I gave the order “no one is to talk to the police until briefed by me” because there had been a bit of friction between the RMP and other soldiers in the past. A number of soldiers who had been interviewed by the RMP in the course of their investigations into previous shooting incidents had found the process somewhat intimidating and confusing. As a result, I did not want subsequent investigations to upset my soldiers.

The next sentence explains the briefing I intended to give my soldiers (“They are all to have an officer or SNCO present if they wish and are to be honest”). I wanted to ensure that all my men knew they could be accompanied by a senior NCO or officer to such interviews if they wished. I also wanted to emphasise to them that they should be open and honest about what they had witnessed. As the following sentence indicates, I saw this as an opportunity to make sure a full account of what happened was put into the public domain at the earliest opportunity (“there is nothing to hide – we are simply ensuring that nothing comes back to haunt us in a few months time”). I think that all the soldiers who were at Danny Boy were interviewed by the RMP, but I do not recall how many soldiers this was. I think CSM Falconer dealt with the organisation of this. I do not now recall speaking to any of the soldiers before they gave evidence.

The reference to “nothing coming back to haunt us” was based on the fact I already knew there had been allegations about mutilation of bodies (as I explain below). I did not know there had been, or could be, any further allegations at that stage.

In sum, my intention was to ensure that a full and accurate account of the events of that day was made available from the outset.”

- 5.79** I consider this to be an accurate record of Major Coote’s subjective intentions when giving the order, I am also quite certain that no soldier receiving it would have interpreted it as an instruction that he or she should obstruct the Royal Military Police (SIB) in the course of their investigations.

⁵¹³⁸ (MOD043788)

⁵¹³⁹ Captain Bowen [164/12-15]; WO2 Terry [163/79-80]

⁵¹⁴⁰ Major Coote (ASI018656) [60]-[63]

- 5.80** In fact, those who deployed to Camp Abu Naji from the SIB on 21 May 2004 generally found the Battle Group to be cooperative.⁵¹⁴¹
- 5.81** For all of these reasons, I am entirely satisfied that no attempts were made to actively obstruct the progress of the Royal Military Police investigation in 2004 and or to prevent that investigation from discovering any actual or anticipated wrongdoing.

3. The opportunity for the detainees to complain

- 5.82** I propose to deal shortly with the final aspect for which the 2004 Royal Military Police investigation is relevant. In the preceding Parts of this Report I have set out a very considerable number of allegations made by each of the detainees. I am satisfied that, in respect of the vast majority of those allegations, I saw, heard and read sufficient evidence to determine readily their veracity. In a number of cases, I have found that the allegations were fabricated by the detainees. None of those findings of fabrication relied solely on an observation that a detainee had failed to make that allegation to the Royal Military Police when they were interviewed in July 2004. As a result, the second justification for including the 2004 Royal Military Police investigation in the promulgated List of Issues has largely fallen away.
- 5.83** As I outlined earlier in this Chapter, Sergeant Kendall and Staff Sergeant Southerton had a different understanding or recollection of the purpose of the interviews with the detainees in July 2004. Having considered the full recordings and transcripts of the interviews conducted by each of these officers, I am satisfied that this disparity had no practical impact upon the interviews which they conducted or on the opportunity which the detainees they interviewed had to make complaints. This can in part be assessed by examining whether or not each of detainees chose to raise any complaints during their interviews.
- 5.84** Sergeant Kendall conducted interviews with Hamzah Joudah Faraj Almalje (detainee 772), 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).⁵¹⁴² From that group, both Hamzah Joudah Faraj Almalje (detainee 772)⁵¹⁴³ and Kadhim Abbas Lafta Al-Behadili (detainee 775)⁵¹⁴⁴ made complaints regarding their treatment by the British soldiers at the point of capture. No complaints relating to this period were made by the other three.
- 5.85** Staff Sergeant Southerton conducted interviews with Ahmed Jabbar Hammoud Al-Furaiji (detainee 777), Hussein Fadhil Abbas Al-Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780).⁵¹⁴⁵ From that group, Ahmed Jabbar Hammoud Al-Furaiji (detainee 777),⁵¹⁴⁶ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)⁵¹⁴⁷ and Hussein Gubari Ali Al-Lami (detainee 780)⁵¹⁴⁸ all raised complaints regarding their treatment by the British soldiers at the point of capture. Hussein Fadhil Abbas Al-Behadili (detainee 778) did not make any complaint relating to this period.
- 5.86** It is evident that some detainees felt able to make complaints to Sergeant Kendall, whilst others chose not to. Similarly, some detainees felt able to make complaints to Staff Sergeant

⁵¹⁴¹ See, for example, Staff Sergeant Webb [149/153-156]

⁵¹⁴² Sergeant Kendall (ASI024091) [108]

⁵¹⁴³ (MOD002902); (MOD002916-17)

⁵¹⁴⁴ (MOD002991-92); (MOD002996)

⁵¹⁴⁵ Staff Sergeant Southerton (ASI022764) [75]

⁵¹⁴⁶ (MOD030789); NB – at (MOD030792) he expressed the view that pursuing such a complaint would be futile

⁵¹⁴⁷ (MOD003057)

⁵¹⁴⁸ (MOD003077)

Southerton, whilst others chose not to. It seems to me that identity of the interviewer had no discernible impact on the opportunity for a detainee to complain.

5.87 I accept that the interviews conducted by neither Sergeant Kendall nor Staff Sergeant Southerton set out to probe the treatment which the detainees had received subsequent to their detention in anywhere near the level of detail afforded by the subsequent interviews which produced their written Inquiry statements. Nevertheless, I am satisfied that those interviews offered an adequate opportunity for the detainees at least to raise the more serious allegations which they went on to make.

5.88 The four detainees who made no complaint to the Royal Military Police in July 2004 about their treatment on capture were given an opportunity to explain to me why they did not take this opportunity to raise allegations which they made subsequently.

5.89 In his written Inquiry statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) said this:

*"I was interviewed by the Royal Military Police and the Red Cross. I have described what happened during these visits in a previous statement but cannot explain why I didn't tell the Royal Military Police about my injury to my nose."*⁵¹⁴⁹

5.90 During his oral evidence to the Inquiry Mahdi Al-Behadili gave a different reason for failing to make that allegation to the Royal Military Police:

*"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."*⁵¹⁵⁰

5.91 No adequate explanation was offered for these different accounts. In any event, on neither occasion did Mahdi Al-Behadili suggest that it had anything to do with the manner in which the interview was conducted.

5.92 In his second written Inquiry statement, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) gave the following explanation for certain omissions from his Royal Military Police interview:

*"In addition although I understood that the investigation was into the behaviour of British Troops my questioners were British soldiers and I suspected that this statement was a trick. As a result of this fear and treatment I wanted to get the interview completed as soon as possible and gave limited and untrue answers regarding the involvement of the soldiers."*⁵¹⁵¹

5.93 This explanation is at odds with the fact that Ibrahim Gattan Hasan Al-Ismaeeli was content to make a false allegation to the Royal Military Police that soldiers stole money from him.⁵¹⁵²

⁵¹⁴⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001123) [85]

⁵¹⁵⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/56-57]

⁵¹⁵¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000429) [8]

⁵¹⁵² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/6-10]

- 5.94** In his third written Inquiry statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) offered the following explanation for his failure to make certain allegations to the Royal Military Police in his July 2004 interview:

“I was anxious and scared to make any criticisms of the British soldiers in front of the RMP who I also knew were from the British army. I thought I would risk harm to myself if I claimed that the soldiers mistreated me.”⁵¹⁵³

- 5.95** It was unclear to me whether Abbas Al-Hameedawi maintained this explanation when he gave oral evidence. Instead he answered, *“I don’t remember”* to the majority of questions he was asked about this topic.⁵¹⁵⁴

- 5.96** In his first Inquiry statement, Hussein Fadhil Abbas Al-Behadili (detainee 778) described his interview with the Royal Military Police in 2004 as follows:

“I didn’t know the purpose of the interview but I knew that it was different to the others because I was not handcuffed and I just walked normally to the interview. I felt under no pressure or threat during this interview, but there was no proper interpreter, I had difficulty in making myself understood. I do now recall that the interview was with the military police. I have been asked why my account in this interview differs from my earlier statement.”⁵¹⁵⁵

- 5.97** In his second written Inquiry statement, Hussein Al-Behadili (detainee 778) offered an alternative description:

“At paragraph 61 of my first Inquiry statement I describe an interview with the Royal Military Police that took place at Shaibah. Although it states that I felt under no pressure or threat, this is not accurate. I knew that the people interviewing me were soldiers, so it wasn’t like a normal interview. I didn’t know the purpose of the interview and thought what I said might be used against me. Their treatment was better than the British soldiers. It wasn’t violent because they were filming, but I was a prisoner in a British prison, and they were British soldiers, so I was suspicious about why I was being asked these questions and was unsure what would happen if I refused to answer them. I could not talk freely. I didn’t know what would happen in my future. And I had no confidence in the translator. I didn’t understand what the translator was saying.”⁵¹⁵⁶

- 5.98** I have carefully considered these various explanations offered by the detainees. I am not persuaded that those explanations demonstrate any consistent inadequacy in the conduct of the interviews. I am also mindful of the fact that some detainees evidently felt able to make complaints to the same Royal Military Police interviewers.

- 5.99** Accordingly, and though not essential to any of my findings elsewhere in this Report, I am satisfied that the Royal Military Police interviews in July 2004 offered an adequate opportunity for the detainees to make at least the more serious allegations against British troops. Whilst I recognise that the Royal Military Police interviews did not offer as clear an opportunity as those subsequently available to them, when for example they gave statements in the presence of or to English Solicitors, I see no basis, within my Terms of Reference, upon which to criticise the Royal Military Police for the manner in which their interviews were conducted.

⁵¹⁵³ Abbas Abd Ali Abdulridha Al-Hameedawi Detainee (776) (PIL000469) [75]

⁵¹⁵⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/48-53]

⁵¹⁵⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001047) [61]

⁵¹⁵⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000373) [52]

CHAPTER 2: RECOMMENDATIONS

5.100 The Inquiry's terms of reference are to "*investigate and to report...and to make recommendations*". This section of my Report deals with the latter requirement.

5.101 I acknowledge the work carried out by Sir William Gage in his Report on the death of Baha Mousa. In particular, he has already covered many of the areas in which I would have had to consider making recommendations in this Inquiry. Sir William made a total of 73 Recommendations. Initially, the Ministry of Defence ("MoD") decided to implement all but one of them (i.e. Recommendation 23, dealing with the interrogation technique known as "harshing").⁵¹⁵⁷ Of those, Recommendations 5, 7 (in part, viz. deprivation of food and drink), 11, 12, 13, 14, 15, 17, 18, 22, 23, 24, 25, 26, 27, 29, 30, 33, 36, 40, 42, 43, 44, 57, 59, 62, 66, 67 might well have formed part of the recommendations at the conclusion of the Al-Sweady Report. The others are concerned with subject matter that falls outside my terms of reference. However, I was also informed by letter dated 8th July 2014, from Dr Ben Sanders of the MoD to the Inquiry Solicitor, that the MoD continues to carry out reviews of investigations into wrongdoing, arising from military operations overseas, and to correct any wider or systemic issues that could otherwise lead to a recurrence of such incidents. The results of the reviews carried out to date have been published online at <https://www.gov.uk/government/publications/review-of-systemic-issues-arising-from-military-operations-overseas>. I am assured that further updates will follow, probably annually.

5.102 In my view, it would be a disproportionate exercise to re-consider that which has already been considered and implemented, or is being implemented. Moreover it is clear from the letter from Dr Sanders, mentioned in the preceding paragraph, that the MoD continues to have regard to the need to implement the Baha Mousa Inquiry recommendations.

5.103 In the event, there are three main areas in which I believe it is appropriate for me to make recommendations. The first area concerns the collection of, storage and ability to search documents and other records, in whatever form they may be. The second area concerns the Shooting Incident Policy. The third area concerns the need to have an accurate contemporaneous record of the circumstances of a prisoner's detention. I have also identified a further four areas where I have concluded that there were shortcomings in the MoD's existing practices and procedures.

1. Documents

5.104 The context is that the genesis of the Al-Sweady Inquiry was the Secretary of State's recognition in his letter to the Administrative Court, dated 3 July 2009, that the searches for documents carried out on his behalf had not been effective (see paragraph 1.5 of the Introduction to this Report). That concession led directly to the Order of the Court on 10th July 2009 that there should be an investigation into the allegations of unlawful killing and ill-treatment (see paragraph 1.6 of the Introduction to this Report).

5.105 As is clear from the Introduction (Part One) of this Report, the work of this Inquiry has been complicated and delayed to a significant degree by the difficulties it has encountered in locating and obtaining relevant documentation and electronically stored data.

⁵¹⁵⁷ By letter dated 31 March 2014, the MoD informed me that this recommendation had not been adopted "for operational reasons". However, shortly before the Baha Mousa Report was published, the MoD had in fact withdrawn the harsh technique from use and replaced it with a technique entitled "Challenging Direct". This new approach has itself been recently considered by the Court of Appeal in *Hussein v SSD* (supra). See paragraphs 3.373 – 3.374)

5.106 I refer also to the witness statement of Dr. Ben Sanders, dated 4 April 2014 (ASI025194-01), in which he detailed the efforts made by the Ministry of Defence (“MoD”) to respond to the requests from the Inquiry for documents and other records. I refer in particular to paragraph 14 of that statement and the shortfalls there described, together with his explanation that *“IT systems returned to the UK were generally cleansed of data”*. However, I am aware that in response to a freedom of information request from Rights Watch (UK) of 11 July 2013, the MoD modified that paragraph in Dr Sanders witness statement as follows:

“the above mentioned statement does not accurately reflect MOD policy in 2004. Material deemed worthy of preservation was printed off and incorporated into the (hardcopy) operational/corporate record, in accordance with Joint Service Publication 441: Defence Records Management Manual (JSP 441) and the Land Component Handbook. In addition, while some servers were cleansed of data and redeployed, an electronic archive capability had been put in place.

The policy continues to evolve as the type and amount of data changes over time. Records are now recovered from theatre at regular intervals, so that they can be retrieved to support appropriate activities.”⁵¹⁵⁸

5.107 In paragraph 19 of the statement, Dr Sanders confirmed that the majority of the MoD’s hard copy records are held *“...[in] many thousands of boxes holding a variety of records which are not readily searchable.”* At paragraph 24 he explained that there is no record of how the Prisoners of War material, that was eventually located, had actually arrived at its place of storage or from whence it had come. Furthermore, there is no written manifest detailing the contents of the storage boxes in question. At paragraph 26, Dr Sanders explained that the Central Health Records Library does not hold medical records for all those who were detained in Iraq, only such records as were sent to them. The consequence of the above is that, as Dr. Sanders recognised at paragraph 30 of his statement, where searches have failed to locate materials sought by the Inquiry, those *“...materials, if they ever existed, have either been misplaced or have not been preserved.”*

5.108 I regard this state of affairs as deeply unsatisfactory. I make plain that I do not consider it likely that there is or has been any document or other material, which has not been made available to me, that would have altered my view of the facts in any material particular. However, it is highly regrettable that a Government Department cannot give an assurance that all relevant material has been found and disclosed. The inability to do so may understandably damage public confidence in the Inquiry process. Moreover that inability may result in the need to make another concession in the future such as that which was made by the MoD to the Administrative Court (on 3 July 2009) in the judicial review proceedings that gave rise to this Inquiry. If it had not been necessary to make that concession in the judicial review proceedings, there might well have been no need to hold the Al-Sweady Inquiry, with all its attendant costs and expenditure.

5.109 In any event, such was the concern within the Inquiry about the possibility of destruction of documentary records/information by the MoD that the Inquiry wrote to the MoD on 2 September 2011, in order to express that concern. I am glad to say that in response the MoD issued a Defence Instruction Notice through its Directorate of Judicial Engagement Policy (“DJEP”), which reminded all recipients of the requirement not to destroy any information relevant to the Inquiry’s terms of reference. But that should not have been necessary. There should not be routine destruction of documents/information that may be relevant to a judicial or similar Inquiry and/or some other form of appropriate legal investigation.

⁵¹⁵⁸ MoD response of 7 August 2003 to Rights Watch (UK)

5.110 Thus, there are the following two main themes to my concern:

- the transfer from theatre of records and their collation and retention; and
- the need to ensure that the routine destruction of records, which may be relevant, does not take place.

5.111 By Written Submissions dated 15 April 2014, Rights Watch (UK) urged me to make strong recommendations concerning the need for the MoD to have in place robust policies and practices concerning data collection that are properly followed and implemented. I am broadly sympathetic to that approach as a matter of general principle. The difficulty is that over 10 years have passed since the events, with which this Inquiry is concerned, actually took place. Furthermore, in response to a request under the Freedom of Information Act by Rights Watch (UK), the MoD has provided a number of documents that reflect the policies and practices that have been or are to be adopted, including Version 3 of the Defence Records Management Manual, dated 2007 (5th attachment). In that version there is reference to the Corporate Memory Guidance leaflet entitled *“Your records are your defence.”* Also, in the Operational Record Keeping (7th attachment) document, dated October 2005, the final page summary section clearly states that *“the rigorous keeping of an operational record will provide valuable protection for commanders and soldiers against false or malicious allegations.”*

5.112 The upshot is that it appears that there have been some important developments in policy and practice with regard to record keeping since 2004 and that much of what Rights Watch (UK) seeks may already be in place.

5.113 In its Written Closing Reply Submissions, dated 30 April 2014, the MoD said this:

“It is understood that Rights Watch (UK) invite the Chairman to undertake an investigation into the Ministry of Defence’s systems for recording and retaining information. It is respectfully submitted that such an investigation is inappropriate and would fall outside the Terms of Reference. It is entirely within the Inquiry’s Terms of Reference to collate the information that is necessary to carry out the investigations necessary to determine the allegations of unlawful killing and ill-treatment. That is precisely what the Inquiry has done. The Inquiry has secured expert evidence to assess whether any material has been improperly deleted. Again, that is entirely within the Inquiry’s Terms of Reference. It is, however, submitted that it is (several steps) beyond the Terms of Reference to embark on a free-standing investigation into the (huge) topic of the management of information. The Ministry of Defence does not for a moment suggest that its systems are perfect. They are not. However, it is respectfully submitted that it is not the function of this Inquiry to address that issue.”⁵¹⁵⁹

5.114 I stress that I do not propose to carry out such an investigation. I prefer to frame my recommendation as one that *“consideration be given by the Ministry of Defence”*. If the outcome of that consideration is that the twin mischiefs that I have identified in paragraph 5.110 above have already been remedied, that will be an end to the matter. However if and to the extent they have not been remedied, it is to be hoped that appropriate steps will be taken to remedy those deficiencies, as part of the outcome of that process of consideration.

5.115 By letter dated 18 August 2014 the Solicitor to the Inquiry informed Core Participants that I was considering making a recommendation in the following terms:

⁵¹⁵⁹ MoD Written Closing Reply Submissions (24) [72]

“Consideration should be given to the establishment of a policy by the Ministry of Defence to ensure that all documents or other material, including electronic material, are retrieved from theatre and elsewhere at the conclusion of an operation, listed and stored in secure accommodation for a period of at least 30 years and all searches of that material recorded, so that the Department is able to say what material is available and its location, and if the need arises, to confirm in litigation or to a Public Inquiry that it has complied with its obligation to disclose relevant material.”

- 5.116** By letter dated 5 September 2014, I received a response from the MoD, who provided me with information regarding current practices. They accepted that they had been slow to recognise that a more comprehensive approach to operational record keeping was required than had been previously envisaged. Nonetheless, they informed me of a number of key changes that had been implemented in relation to the MoD’s record keeping policy.
- 5.117** In 2011, a requirement to repatriate and retain all records created in theatre was incorporated into *“JSP (Joint Service Publication) 441 Defence Records Management Policy and Procedures”*.⁵¹⁶⁰ That requirement creates a 15 year retention policy from the date of creation for all operational information created in overseas theatres, unless there are outstanding legal proceedings in which case the information is to be retained for the duration of those proceedings.
- 5.118** There is a further requirement in JSP 441 in relation to Key Operational Records (a subset of operational information for use in historical operational analysis). This requirement makes provision for the Single Service and Joint Key Operational Records to be transferred to the National Archives for permanent preservation once national security and personal sensitivities no longer apply.
- 5.119** The MoD went on to explain that the 15 year retention policy was adopted to comply with two obligations:
- a. the Civil Procedure Rules, which require that information is retained only for as long as there is a *“reasonable prospect”* of litigation being brought; and
 - b. the Public Records Act 1958 (as amended by the Constitutional Reform and Governance Act 2010),⁵¹⁶¹ which reduced the period after which records should be released to the public from 30 years to 20 years. Information can only be retained beyond that point with the agreement of the Lord Chancellor, if they are required for administrative purposes or if there is a *“special reason”* to retain them.
- 5.120** In relation to the proposed recommendation that all documents (which include all relevant electronic records) are listed and stored in secure accommodation and that searches of that material are recorded, the MoD provided me with the information summarised in the following subparagraphs.
- a. Hardcopy material is currently returned from theatre and stored by TNT but there are no procedures for this to be catalogued in any way. For electronic documents, deployed IT systems have been wide ranging and are thus complex to archive centrally. IT systems in long-lasting theatres of operations are known to reach capacity and are susceptible to

⁵¹⁶⁰ In their letter dated 5 September 2004 the MoD referred to all *“records created in theatre”* but JSP 441 itself refers to *“all operational information.”* It is assumed that these terms are interchangeable. If not, this should be clarified and the ambiguity resolved

⁵¹⁶¹ In their letter dated 5 September 2014, the MoD referred to the Public Records Act 1967 which had in fact introduced the 30 year retention policy

data loss. However, the MoD has expressed an intention and/or aspiration of seeking to ensure the preservation of electronic records in a more proactive way.

- b. The logistical challenges associated with the recovery of vast quantities of electronic and hardcopy information from an operational situation means that it is impossible to store that information all in one place. Although the MoD is getting closer to achieving centralised storage of such information, through shared information management systems, the MoD made it clear that multiple archives will continue to exist for the foreseeable future.
- c. At the moment, search instructions create a comprehensive record of each such search process. However, these searches are not themselves currently compiled into a searchable database. Moreover, there is no database of Digital Archive System searches (although a subsequent search for the same term will highlight the previous search).

5.121 The MoD has assured me that it has taken robust steps to prevent the further destruction of records that may be relevant to litigation. The steps taken so far have been threefold, as follows:

- a. Preservation Orders were issued in relation to individual cases that had come before the courts;
- b. in April 2013 DJEP sponsored “*Document and Material Retention and Preservation – Iraq and Afghanistan Operational Theatres*” which required immediate action to be taken to preserve all documents and other materials related to operations in Iraq and Afghanistan and which might be relevant to future litigation; and
- c. in July 2014 the MoD’s Head of Information, Strategy, Policy and Process wrote to remind each of the Commands⁵¹⁶² that the above requirement remains extant in relation to Iraq and Afghanistan and to advise that a similar requirement in respect of Northern Ireland would be formalised.

5.122 By letter dated 29 September 2014 the Iraqi Core Participants responded to my proposed recommendation. In brief, they considered that there were a number of deficiencies in the MoD’s current policy on document/record retention and invited me to recommend a minimum retention period of 30 years. Although I do not propose to set out their submissions in full, I refer to the following particular aspects of those submissions.

- a. The amendment to the Public Records Act 1958, still allows for retention beyond the 20 year period, where there is a special reason for doing so. There are likely to be circumstances where a longer retention period is likely to be appropriate in the case of military documentation/records. When the Lord Chancellor notified Parliament of this change in a Written Ministerial Statement of 13 July 2012, he confirmed that its purpose was to “*provide greater openness and accountability, strengthening democracy through more timely public scrutiny of government policy and decision making.*”
- b. Whilst the Civil Procedure Rules create an obligation to preserve information/documents for as long as there is a reasonable prospect of litigation, they do not impose any requirement that the information/documents in question should be subsequently destroyed. In the case of military documents/records, there are circumstances in which

⁵¹⁶² In this context the word ‘commands’ refers to the various component parts of the MoD. The distribution list on the last page of that document indicates that it went to each of the three services which at various times have been referred to as the Front Line Commands, to Joint Forces Command (JFC), to Head Office and Corporate Services (HOCS), to Defence Equipment and Support (DE&S), and to the Defence Infrastructure Organisation (DIO)

the MoD may need to preserve those documents/records, even after the period in which a reasonable prospect of litigation has expired

- c. The enhanced retention procedure, as outlined by the MoD, when dealing with “*Key Operational Records*,” deals with retention of documents (including electronic records) for different purposes⁵¹⁶³ than that of ensuring that all relevant documentary information is preserved for any future litigation/Inquiry or other investigative process. The enhanced retention procedure with regard to Key Operational Records therefore does not obviate the need to have an adequate retention period for all relevant documentation that may be required for the purposes of future litigation/investigation.

5.123 I have taken the information provided to me by the MoD and the Written Submissions by the Iraqi Core Participants fully into account. Although I am satisfied that significant steps have already been taken by the MoD, with regard to both the retention and cataloguing of information/records from theatre, it is my view that further measures need to be introduced and/or implemented in order to ensure that all relevant documentary information/records (including electronic records) are properly stored in such a way that they can be identified and searched if necessary. Although I do not intend to analyse the management systems already in place by the MoD, there is an obvious current deficiency in that there does not appear to be any present system for cataloguing hard copy information obtained from theatre. Furthermore, JSP 441 does not seem to address the issue of potential data loss amongst electronic IT systems, which the MoD recognised in their response to me was a matter of concern. These two obvious deficiencies should not be regarded as necessarily exhaustive.

5.124 Having regard to all the foregoing and being very aware that military operations and/or activities are a very special area, where allegations of possible misconduct, atrocities and/or malpractice may take a very long time to emerge, out of an abundance of caution I remain of the view that all documentary information/records (including electronic records) should be stored in secure accommodation for a minimum period of 30 years.

5.125 It therefore remains the case that I make the following recommendation (**Recommendation 1**):

“Consideration should be given to the establishment of a policy by the Ministry of Defence to ensure that all documents or other material, including electronic material, are retrieved from theatre and elsewhere at the conclusion of an operation, catalogued and stored in secure accommodation for a period of at least 30 years and all searches of that material recorded, so that the Department is able to say what material is available and its location, and if the need arises, to confirm in litigation or to a Public Inquiry that it has complied with the obligation to disclose relevant material.”

5.126 In a letter dated 13 October 2014, the Inquiry informed the MoD that I was considering extending this recommendation to include two other areas. The MoD was given the opportunity to provide me with any information by way of assistance in relation to these further areas. In fact, the substance of both had been raised as areas of concern by the Iraqi Core Participants in their initial response to my proposal in relation to Recommendation 1, as outlined above. In the paragraphs that follow, I deal with those two additional areas of concern. In the event, as appears below, I have decided that it is more satisfactory to deal

⁵¹⁶³ As confirmed in MoD’s letter to the Inquiry Solicitor dated 23 September 2014, the purpose of the enhanced retention procedure is to “provide a body of information that can be used for historical operational analysis to support MoD decision making, the development of operational capability and lessons processes as well as providing a basis for much of the record [sic] required to assist legal activity involving the Department.”

with these two additional areas by making two further recommendations (Recommendations 2 and 3, below), rather than by extending Recommendation 1, as originally proposed.

Recording and retention of recordings of interrogations and tactical questioning

- 5.127** In a letter dated 13 October 2014 the Solicitor to the Inquiry informed the Ministry of Defence (“MoD”) that I was considering expanding Recommendation 1 in order to include a requirement that consideration be given to the making of digital video and audio recordings of both interrogation and tactical questioning and that such recordings should be preserved. It had become clear to me during the course of the Inquiry that the recording of both the tactical questioning and the interrogation sessions of the detainees would have been invaluable in providing an accurate record as to how those procedures had actually been carried out and what had actually been said and done during those sessions. The conduct and content of such sessions were highly contentious and as it seems to me, are always likely to be a controversial aspect of operations. The need for tactical questioning and interrogation sessions to be recorded was also raised by the Iraqi Core Participants in their letter dated 29 September 2014.
- 5.128** By letter dated 16 October 2014, the MoD provided the Inquiry with further information relating to this particular matter. The MoD accepted that the Standard Operating Procedure for the Joint Forward Interrogation Team (“JFIT”) in May 2004 had stipulated that the interrogation and search sessions were to be videoed and then retained for archive purposes (and labelled appropriately). However, the MoD also recognised that equipment failures at Shaibah Logistics Base meant that interrogation sessions, including the interrogations of the detainees with whom this inquiry is concerned, had not actually been recorded.
- 5.129** The current MoD policy for interrogation,⁵¹⁶⁴ dated 16 May 2012, contains an express requirement for interrogation sessions to be audio and video recorded and for these recordings to be retained. An Interrogation Controller is to monitor the process and the policy states that an Intelligence Exploitation Facility is to have “*appropriate resilience measures, such as portable cameras and microphones.*” In the event that both the main and the resilience systems fail, interrogations should only proceed where it is operationally essential and the continuation of such interrogations has been approved by the theatre J2X(I).⁵¹⁶⁵ It should also be noted that it appears that, when only the video recording system does not function, the policy is to allow interrogation to proceed on the basis of an audio recording only as a temporary measure.⁵¹⁶⁶
- 5.130** However, the current policy governing tactical questioning⁵¹⁶⁷ does not contain any requirement that tactical questioning sessions should be recorded. The MoD explained that the reason for this is that it would be impractical to place audio and video equipment into the numerous facilities in which tactical questioning is conducted.
- 5.131** Although the recording of interrogations is now clearly governed by policy, it seems to me that insufficient consideration has been given to assessing how the necessary resources for recording tactical questioning sessions could be made available in temporary holding facilities.

⁵¹⁶⁴ Provided to the Inquiry as (MOD-02-0015062-A) marked “Secret.” It has therefore not been disclosed to CPs or uploaded on to Lextranet. The provisions referred to above are limited to those accurately recited in MoD’s letter of 16 October 2014

⁵¹⁶⁵ J2X is a staff element subordinate to the J2 (Intelligence and Security Branch of a Headquarters). J2X is the primary advisor on HUMINT and Counter Intelligence and is the focal point for all HUMINT and Counter Intelligence activities within a Joint Task Force (“JTF”), such as MND(SE). J2X(I) is a further subordinate within J2X and deals specifically with interrogation operations

⁵¹⁶⁶ (MOD045164-87)

⁵¹⁶⁷ Provided to the Inquiry as (MOD-02-0015061-A) marked “Secret.” It has therefore not been disclosed to CPs or uploaded on to Lextranet

Whilst routine recording may not always be practical, given the likely *ad hoc* nature of some temporary holding facilities, it seems to me that the fact that appropriate resilience measures are available for recording interrogation sessions strongly suggests that similar arrangements could be taken to record tactical questioning sessions. I am therefore satisfied that further thought should be given to the implementation of guidelines for best practice in arranging for the recording of tactical questioning sessions wherever possible.

5.132 I can see no good reason why the recordings of such sessions should not be subject to the same rules of preservation and retention as other forms of information/records. Indeed, the MoD made it clear in its letter dated 16 October 2014, that such recordings would be covered by the relevant provisions of JSP 441. That being the case, it is curious to see that the MoD policy on Defence HUMINT Data Management, dated 25 October 2013, states that all audio-visual recordings of Interrogations are to be retained for “*at least ten years*” at PJHQ.⁵¹⁶⁸ I therefore invite the MoD to review the instruction given in the Defence HUMINT Data Management Manual on this particular point and to amend the retention period accordingly.

5.133 It is clear that any such recordings of interrogations/tactical questioning should be treated in a manner consistent with MoD policies on data retention and that such recordings should not be used for any improper purposes, such as in training sessions.⁵¹⁶⁹ I therefore consider that a recommendation in the following terms is appropriate (**Recommendation 2**):

“Digital video and audio recordings should be made of both interrogation and tactical questioning sessions. Such recordings should be retrieved from theatre, catalogued and stored in the same way and for the same period of time as the other documents/records to which reference is made in Recommendation 1”.

Dating and archiving of training documents

5.134 During the course of the Inquiry, it became necessary to review the training course materials relating to the Prisoner Handling and Tactical Questioning Course undertaken by M004. It soon became apparent that the Ministry of Defence (“MoD”) was unable to date some of the course material that was provided to the Inquiry. It was, of course, necessary to establish the date of the course material, in order to determine whether it was in force or existence at the relevant time. The fact that the material in question was undated meant that the Inquiry had to estimate the date of the material from reviewing the metadata of the documents provided. This was clearly an unsatisfactory state of affairs, which could and should have been avoided by ensuring that the training material was properly dated and stored/retained in such a way as to make it easily searchable by date.

5.135 By letter dated 18 August 2014, the Solicitor to the Inquiry informed the MoD that it was considering a recommendation that training documents produced by the MoD should be both dated and archived. In the event, the response from the MoD did not take the matter any further.

5.136 I can see no good reason why all material relating to training courses should not be dated and properly archived. This would allow the date or dates, when the training material in question was composed and then brought into use, to be determined without difficulty. For the same

⁵¹⁶⁸ See (MOD045164-87)

⁵¹⁶⁹ There was a suggestion in the oral evidence (see M002 [156/88]) that to do so might amount to a contravention of the 1949 Geneva Conventions. Note also that MOD-02-0015060-A states at (17) that audio visual recordings of interrogation sessions may be utilised for review or as an aid to future interrogations. It seems to me that this should be modified to ensure that any such use is unobjectionable or (preferably) that it should be deleted altogether, particularly the latter part

reasons and purposes, consideration should also be given to the need to retain and archive suitably any such training material that is no longer in use.

5.137 As it seems to me, all such training material should be subject to the same retention time periods as those specified by JSP 441, and could be archived in the same way (with the date clearly recorded).

5.138 Having regard to all the foregoing, I make the following recommendation (**Recommendation 3**):

“All training material should be dated, appropriately retained and archived in such a way that it can easily be established when the training material was composed, when it came into force and the period during which it remained in force.”

2. The Shooting Incident Investigation Policy

5.139 In paragraph 5.70 above I set out what happened in relation to the policy and my conclusions. As I explain, it is clear to me that all regarded the then current policy as unworkable in theatre, and indeed I accept that it was unworkable in the conditions as they were in that part of Iraq in 2004. The result of this was that the commencement of the 2004 Royal Military Police (“RMP”) investigation was delayed. That is deeply unsatisfactory. The need for such a policy is clear: it is to ensure a speedy investigation in order to protect the interests of both the British Military and the then enemy. Therefore, it must be effective to achieve that aim and it must also be workable in practice.

5.140 By letter dated 18 August 2014 the Solicitor to the Inquiry informed Core Participants that I was considering making a recommendation in the following terms:

“Consideration should be given to the drafting of a Shooting Incident Policy which is practically achievable in Theatre and which enables the ascertainment of the relevant facts leading up to, during and consequent upon the Shooting Incident by an independent body such as the Royal Military Police within a time limited but reasonable period after the Shooting Incident.”

5.141 On 5 September 2014, I received a response from the Ministry of Defence (“MoD”). In essence, I was informed that the introduction of the Armed Forces Act 2006 had fundamentally overhauled the Service Justice System by the introduction of two key changes:

- a. Imposing a statutory obligation on commanding officers to refer allegations of certain serious offences⁵¹⁷⁰ to the Service Police.
- b. Removing the Service Police’s ability to discontinue investigations into such incidents without prior consultation with the Service Prosecuting Authority.

5.142 In line with this, in February 2006, a standard operating instruction (SOI J3-16 – “*The Reporting, recording, review and investigation of shooting incidents that have, or may have, resulted in death or injury*”) has been drafted and implemented in relation to Operation Herrick (British operations in Afghanistan). The latest version of that instruction (issued in October 2012), requires that a serious incident report (“SINCREP”) be produced in respect of every Incident where shots or munitions employed by UK conventional forces are known to have resulted in death or injury. The SINCREP details the type of evidence and information that should be

⁵¹⁷⁰ Schedule 2 Armed Forces Act 2006

collated and also gives instruction to the Commanding Officer in relation to whether further investigation is required and gives the following guidance:

- a. The Commanding Officer is permitted to take no further action in the event that he considers that only positively identified enemy forces have been killed or injured and there are no grounds to suggest that civilians may have been killed or injured as a result of the action of UK forces (or that there has been a breach of law or the rules of engagement).
- b. The Commanding Officer must initiate a Shooting Incident Review in circumstances where it appears that civilians may have been killed or injured by UK Forces (or those operating under UK command) but where information suggests that they acted lawfully in accordance with the Rules of Engagement.
- c. In all other circumstances, the Commanding Officer must inform the Service Police within 24 hours. In some circumstances where a Shooting Incident Review has taken place, the incident will be referred to the Service Police for investigation.

5.143 SOI J3-16 also places time limits on the Shooting Incident Review which is to be completed within 48 hours and forwarded to the relevant Higher Authority within 14 days of completion. Before a proposal not to conduct any further investigation is authorised, the Force Provost Marshall must be consulted. Contrary to the views of the Higher Authority, they are able to decide that the matter is in fact to be subject to investigation.

5.144 On 29 September 2014 I also received submissions in relation to this recommendation from the Iraqi Core Participants. Their primary concern centred round the fact that any Shooting Incident Policy was required to comply with Article 2 European Convention on Human Rights; the protection of the right to life. In brief, it was submitted to me that the current policy as contained in SOI J3-16, was deficient in a number of areas, principally because of the significant decision making power afforded to the Commanding Officer who lacks independence and impartiality:

- a. It is inappropriate and against the notion of independence that the Commanding Officer is permitted to take no further action without further scrutiny (in the limited circumstances explained in 6.41(a) above). Moreover, the information on which the Commanding Officer makes such a decision is provided entirely by the unit involved and therefore operates without impartiality in placing reliance on reporting by potentially culpable units.
- b. The time frame for review (two days for the Shooting Incident Review) and a further 14 days for review by a Higher Authority had the potential to frustrate a prompt investigation thereafter by the independent Service Police.
- c. The Higher Authority and the Force Provost Marshall are reliant upon investigative steps completed by the Commanding Officer (who lacks independence).
- d. Where a Service Police investigation is necessary, many of the witnesses/suspects will have already given an account in an investigation which lacked independence and thus was not compliant with human rights obligations requiring an independent review.
- e. The officer conducting a Shooting Incident Review may have already played a part in the incident subject of the review.

5.145 I have taken these submissions into account. I have also carefully considered the judgment of the European Court of Human Rights ("ECHR") in *Al-Skeini v United Kingdom* Application No. 5571/06 [2011], which considered the relevant Shooting Incident Policy in place in

Iraq in 2003. In 2003, policy dictated that all shooting incidents were reported (by means of a SINCREP). After this there would be an investigation into the incident by the Soldier's Commanding Officer or the Company Commander. Thereafter there was no requirement to initiate an investigation if the Commanding Officer/Company Commander were satisfied that the soldier had acted lawfully within the Rules of Engagement. However, if they were unsatisfied or had insufficient information, they were required to initiate an SIB (Special Investigation Branch) investigation. Whilst this Shooting Incident Policy was reviewed and replaced on 24 April 2004, the fundamental principles outlined by the Grand Chamber in *Al-Skeini v United Kingdom* Application No. 5571/06 [2011] are, in my view, of particular relevance, as follows:

- a. It was particularly important for the investigating authority to be operationally independent. Those investigations which remained entirely within the military chain of command and were limited to taking statements from the soldiers involved fell short of the requirements of Article 2 ECHR. The SIB in 2003 was not operationally independent since in the first instance, investigations were reported to the Commanding Officer who had the authority to decide whether the SIB should be called in to investigate.
- b. It was essential that the military witnesses, and particularly the alleged perpetrators, were questioned by an expert and fully independent investigator, and that this was to be done as soon as possible.

5.146 I have not heard argument on the issue and it may be that my preliminary impression is entirely wrong. However, whilst the Shooting Incident Policy has clearly been reviewed and amended since 24 April 2004 (the policy with which this Inquiry is concerned), as it seems to me, some of the fundamental deficiencies with that policy are yet to be fully considered.

5.147 First, one of the main deficiencies with the policy as it was in 2004, was the concern as to whether the RMP(SIB) investigation should begin immediately, regardless of any separate decision that may be made to dispense with such an investigation at a later date. As the policy now operates (as per SOI J3-16), the Service Police are to be notified of a shooting incident within 24 hours in certain circumstances.⁵¹⁷¹ However, the Commanding Officer is allowed to dispense with the need for the matter to be referred to the Service Police in limited circumstances, and is given 48 hours to conduct a Shooting Incident Review, with the Higher Authority being given a further 14 days for review thereafter. This means that if an investigation is launched thereafter, there will be substantial delay before the Service Police are involved.

5.148 Second, the current policy affords the Commanding Officer discretion not to inform the Service Police where there is no known breach of law or of the rules of engagement. This appears to be at odds with the notion of “operational independence” as discussed in *Al-Skeini v United Kingdom* Application No. 5571/06 [2011]. I repeat that in expressing that view, I do so without the benefit of argument, in particular argument from the MoD.

5.149 I therefore make the following recommendation (**Recommendation 4**) that:

“A Shooting Incident Policy should be drafted which is achievable in practice in Theatre, which is compliant with Article 2 of the ECHR and which enables the ascertainment of the relevant facts leading up to, during and consequent upon the

⁵¹⁷¹ Those circumstances are whenever there is information that indicates that there has been a breach of law, a breach of the Rules of Engagement, action which has or may have resulted in death/injury to friendly forces and in other circumstances if the Commanding Officer deems it appropriate

Shooting Incident by an independent body such as the Royal Military Police within a time limited but reasonable period after the Shooting Incident.”

3. Arrest Records

5.150 In Part two, paragraphs 2.472 – 2.502 of the Report, I deal with the circumstances relating to the capture of Hamzah Joudah Faraj Almalje (detainee 772) on the Southern Battlefield on 14 May 2004. In fact, Hamzah Almalje was the only live detainee captured during the Southern Battle. However, as is apparent from Part three of the Report, the documentation prepared in respect of Hamzah Almalje at Camp Abu Naji on 14 May 2004 draws no distinction between the circumstances of his capture and those relating to the capture of the other eight live detainees during the Northern Battle the same day. The result is that the documentation relating to Hamzah Almalje appears to suggest that it was WO2 David Falconer who had detained him that day, whereas it is beyond doubt that WO2 Falconer was at least eight kilometres from where Hamzah Almalje was actually captured. In truth, as is clear from the Report, WO2 Falconer had nothing whatsoever to do with the capture of Hamzah Almalje on 14 May 2004.

5.151 In my view, in order that a satisfactory evidential chain can be maintained and that the circumstances of any prisoner’s detention can be accurately established, any soldier who detains a prisoner should be responsible for the completion of a suitable note, recording the date, time, circumstances and location of the detention in question. That note should be completed as soon as possible after the prisoner’s detention and then handed to the officer in charge of the prisoner handling area, at the same time as the prisoner is handed over. The officer in charge of the prisoner handling area should himself then make a note of any obvious physical injuries to the detainee on arrival at the prisoner handling area and obtain, from the soldier responsible for the detention of the prisoner, an explanation as to how the injury/injuries in question occurred. That explanation should be recorded and signed by both the soldier who detained the prisoner and the officer in charge of the prisoner handling area.

5.152 Accordingly, by letter dated 18 August 2014, the Solicitor to the Inquiry informed the Core Participants that I was considering making a recommendation in the following terms:

“Consideration should be given to implementing procedures to ensure that there is an accurate contemporaneous record of the circumstances of detention of a prisoner and his general physical condition on arrival at a prisoner handling area together with an explanation from the soldier responsible for the detention of the individual of any obvious physical injuries suffered by the detainee.”

5.153 By letter dated 5 September 2014, I received a response from the MoD in relation to this particular proposed recommendation. I was informed that the policy with regard to the handling and treatment of captured persons had been thoroughly overhauled since 2004. The current policy in relation to the treatment of captured persons (“CPERS”) during military operations is now JDP 1-10 “Prisoners of War, Internees and Detainees.” This was first introduced in May 2006 and replaced JDN 2/05 “Prisoners of War, Internees and Detainees” and JWP 1-10 “Prisoners of War Handling” (which had been published in June 2005 and March 2001 respectively). It is now mandatory that certain documentation, as detailed below, must be completed in respect of each detainee.⁵¹⁷² Failure to comply with the requirements of JDP 1-10 will be investigated and can lead to criminal prosecution. Furthermore, Chapters seven

⁵¹⁷² i.e. (i) The Prisoner of War Capture Tag, (ii) The Initial Capture Report, (iii) The Detail of Capture Report and (iv) the Record of Captivity

and nine of the forthcoming third edition of JDP 1-10 contain detailed guidance that is of particular relevance to this particular recommendation.

(i) The Prisoner of War Capture Tag

- 5.154** At the point of capture or as soon as possible thereafter, the Prisoner of War Capture tag is to be filled in by the capturing unit. It requires certain information to be recorded, including the circumstances in which the captured person was apprehended and the physical condition of the captured person at the time. Part B of the tag (which includes the above information) is then passed to the personnel escorting the captured person to the holding facility.

(ii) The Initial Capture Report and (iii) the Detail of Capture Record

- 5.155** In addition to the Prisoner of War Capture tag, the Initial Capture Report and the Detail of Capture Record must also be completed by the capturing unit and then retained by the escort until the captured person is handed over. The Detail of Capture Record includes an instruction to provide written details of the capture of the detainee in question, any injuries that he has suffered and an explanation of how such injuries occurred.

(iv) The Record of Captivity

- 5.156** Upon handover of the captured person at the Unit Holding Area, the personnel at the Holding Area are required to ensure that the above forms have been completed. Additionally, they are required to complete a Record of Captivity Form, which then accompanies the captured person into the holding facility itself. That form includes appropriate provision for recording any concerns that a captured person may have about the nature of his treatment prior to arrival.
- 5.157** I also received a response from the Iraqi Core Participants, both in relation to the proposed recommendation and the Ministry of Defence (“MoD”) response to that proposal. The Iraqi Core Participants invited me to consider recommending that a detailed record of all injuries should be made during the initial medical process at the unit holding area, going further than that apparently required by the Detail of Capture Record. The Iraqi Core Participants also invited me to consider recommending that Service Police officers should make a photographic record of any injuries, upon the detainee’s arrival at the unit holding area.
- 5.158** Having considered the information provided by the MoD and the submissions by the Iraqi Core Participants, I am of the view that a recommendation is still appropriate. My principal reason for making this particular recommendation is to ensure that appropriate consideration has been given to what can be done in order to establish a satisfactory procedure for ensuring that any injuries that have been suffered by captured persons are properly recorded and explained at the time, not least so that any allegations of ill-treatment whilst in British custody can be properly investigated. In my view, a contemporaneous photographic record, made in conjunction with a detailed medical examination, would go a long way towards achieving this aim. I can see no obvious or compelling reason for not routinely photographing all injuries at the stage when each detainee is first examined by a Medical Officer after arrival at a detention holding facility. I therefore make the following recommendation (**Recommendation 5**):

“Appropriate procedures should be introduced to ensure that there is an accurate and detailed contemporaneous record of the circumstances relating to the original capture/detention of a prisoner and his general physical condition (including an

appropriate photographic record) on arrival at the prisoner handling area together with an explanation from the soldier responsible for the detention of the individual of any obvious physical injuries suffered by the detainee in question”.

4. Areas of deficiency for further consideration by the Ministry of Defence

5.159 In the course this Report I have noted a number of areas where I have come to the conclusion that certain existing practices were unsatisfactory and/or deficient. In letters dated 13 October 2014 and 15 October 2014, the Inquiry raised these concerns with the Ministry of Defence (“MoD”).

5.160 For the reasons set out below, I feel it is necessary to make further recommendations that each of these various areas of deficiency be considered by the MoD with a view to improvement. In fact, the MoD informed the Inquiry, by letter dated 16 October 2014, that the latest version of JDP 1-10 *“Prisoners of War, Internees and Detainees,”* which was due for publication at the end of October 2014, may be delayed to enable any recommendations made by the Inquiry and accepted by the MoD to be acted upon promptly.

Notice of Rights

5.161 Shortly after their arrival at Camp Abu Naji, all the detainees underwent an admission procedure called *“Processing”*, as discussed in Part Three, Chapter Two of this Report. As part of this process, the detainees were each informed of the reason for their detention by means of an *“Apprehension Notice,”* which each detainee was asked to read and sign at the time. Given that the detainees were only to be held at Camp Abu Naji for a short period of time (its custodial role being that of a temporary holding facility), the Processing procedure was a brief affair and the detainees were not given any further information about the facility in which they were to be held or the general nature of the treatment they could expect to receive.

5.162 Upon transfer to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah, the detainees underwent a second and more thorough admission process, during which they were given a briefing.⁵¹⁷³ Notably, that briefing contained the following notification:

*“You are now an internee of the British Coalition Forces in Iraq. You will be held and treated fairly and humanely in accordance with the rules of the Geneva Conventions of 1949 and International Humanitarian Law.”*⁵¹⁷⁴

5.163 The purpose of the briefing at the DTDF at Shaibah, as was explained in the policy relevant at the time, was to allay any fears that the detainees might have had about how they would be treated whilst they were detained there. A notice in Arabic, with an English translation, was also displayed on the wall in the reception area of the Administration building at the DTDF. That notice also informed the detainees that they would be treated fairly and humanely in accordance with the rules of the Geneva Conventions of 1949 and International Humanitarian Law.

5.164 As it seems to me, informing the detainees that their human rights would be properly respected during the period of their detention was an entirely sensible and appropriate

⁵¹⁷³ See Part 4, Chapter 1

⁵¹⁷⁴ (MOD042716)

matter to have been included in the admission briefing at the DTF at Shaibah. Thus, it seems to me that the failure to provide the detainees with a “*Notice of Rights*”, upon their arrival at Camp Abu Naji on 14 May 2004, was unsatisfactory. In their letter dated 29 September 2014, the Iraqi Core Participants raised a similar concern and invited me to consider making an appropriate recommendation to deal with the matter.

5.165 On 13 October 2014, the Solicitor to the Inquiry wrote to the MoD in order to inform the MoD that I was considering making a recommendation that consideration should be given to providing detainees with an appropriate “*Notice of Rights*”, which should be standardised across all holding facilities. The Notice of Rights should inform detainees, upon admission to any detention facility, of the reasons why they were being detained and should expressly inform them that their human rights would be protected and respected.

5.166 In its response, dated 16 October 2014, the MoD confirmed that the latest edition of JDP 1-10 (at Chapter 10, section II) provides that, upon admission to a CPERS holding facility⁵¹⁷⁵ all captured persons are to be provided with written information and a verbal briefing about the regulations covering their treatment and all matters that are necessary to enable them to understand their rights and obligations. However, the Guidance on Standing Orders for captured persons which apply to CPERS facilities,⁵¹⁷⁶ states that the following information is to be provided to captured persons:⁵¹⁷⁷

- a. A copy of the Geneva Conventions/applicable law is to be displayed and made available to all CPERS in a language that they understand.
- b. All CPERS are to be provided with a verbal brief on the contents of the Geneva Conventions/applicable law, as part of their in-processing.
- c. Those CPERS who are unable to read are to be provided with assistance to ensure that they understand their rights and entitlements.

5.167 Whilst JDP 1-10 contains a stipulation that CPERS are to be informed of their rights, including those arising under the 1949 Geneva Conventions, it does not make any express reference to the terms in which the information in question is to be imparted to the CPERS, whether by use of a standardised script or otherwise, nor does it deal with the provision of any explanation of the CPERS’ obligations whilst detained. However, by letter dated 17 October 2014, the MoD informed me that, on arrival at the Theatre Holding Facility at Bastion, CPERS were currently given an admission brief that provided them with (inter alia) a detailed explanation of their rights and obligations in carefully expressed terms, that commenced as follows:

“You are currently being held by British Forces. Whilst held you will be treated fairly and humanely in accordance with International Law and the Geneva Conventions. British Soldiers will treat you with respect and in return you are expected to do the same. You are expected to obey the rules of this facility and you are to immediately comply with all orders given to you. The Geneva Conventions are a set of books that set out minimum standards of treatment for captured persons detained; a copy is available in your language should you wish to see it. ...”

5.168 Accordingly, whilst it is apparent that the current edition of JDP 1-10 envisages that detainees should be provided with a notice of their rights, it does not expand upon what is required

^{5175A} CPERS holding facility is defined at [623] of JDP 1-10 as ‘a facility which is of an established nature and designed to hold larger numbers of CPERS for extended periods of time.’

⁵¹⁷⁶ A CPERS facility is defined at [206] of JDP 1-10 as ‘any facility where a CPERS is held in captivity whether temporarily or permanently including unit holding areas, collection points and CPERS holding facilities.’

⁵¹⁷⁷ JDP 1-10 at Annex 2A

during the verbal brief “on the contents of the Geneva Conventions/applicable law”, nor does it appear to deal with the detainees’ obligations whilst detained. In any event, as is clear from the preceding two paragraphs, not all the requirements of JDP 1-10, such as Chapter 10 section II of JDP 1-10 stated above, apply to short term holding areas. In my view, this particular matter should be dealt with in a way that ensures a proper understanding by all CPERS of the general nature of both their rights and obligations, preferably by the appropriate use of a standardised form of words, along the lines of the notification/explanation of their rights and obligations that is given to CPERS in the “Admission Brief to Detainees”, currently used at the Theatre Holding Facility at Bastion in October 2014 and quoted in part above. This should be explained to all CPERS across all holding facilities, including temporary holding areas. I therefore make the following recommendation (**Recommendation 6**):

“All detainees should be clearly informed of their rights and obligations as soon as is practicable upon arrival at any detention facility. As a minimum this should include informing the detainee as to the reason(s) for his detention and explaining, in clear and basic terms, that his human rights will be protected and respected”.

Strip Searching

5.169 As I concluded in Part 3 of this Report,⁵¹⁷⁸ a number of the detainees had their clothes removed during their initial processing at Camp Abu Naji. Although I accept that there were sound reasons for requiring the detainees to remove their clothes and that the soldiers present at the time did not taunt or deliberately seek to humiliate the detainees, it is understandable that the detainees did feel very humiliated by the process. This was particularly so given that the detainees were Iraqi Muslim men. The likely emotional impact that requiring an Iraqi Muslim man to strip naked in front of strangers would actually have had was not given sufficient thought, nor was it adequately provided for in the relevant governing policy. As it was, I believe the policy in 2004 to have been deficient in a number of ways:

- a. There were no provisions in place to ensure that screens or some such were provided, so that each detainee was afforded some degree of privacy whilst his clothes were removed and whilst he was wholly and partly naked. Moreover, there were a large number of personnel unnecessarily in the room whilst the detainees were undressed and on occasions other than 14 May 2004, some of those personnel were women.
- b. No adequate explanation was given to the detainees as to why it was necessary for them to remove their clothes. If such an explanation had been given it might, in some instances, have obviated the need to resort to a forcible strip search of the detainees in question. In the event, recourse was had to forcible strip searching far too readily during Processing at Camp Abu Naji on 14 May 2004.

5.170 By letter dated 29 September 2014, the Iraqi Core Participants invited me to make a recommendation with regard to strip searching. In addition to asserting that detainees should be notified of the reasons for being strip searched, they suggested the following:

- a. proper records should be kept of the purpose and authorisation of any strip search; separate authorisation should be required where a detainee has to be forcibly strip searched (and such a procedure should only be used in very limited circumstances);

⁵¹⁷⁸ Part 3, chapter 2

- b. detainees should not have all their clothing removed at the same time, except in very limited circumstances where there is an obvious need, e.g. for certain medical reasons, such as to the proper examination of an injury;
- c. any strip search should take place in front of the minimum number of people necessary, should be carried out by persons of the same gender (unless none is available) and, where possible, a screen should be used to shield the prisoner from as many as possible of those attending; and specific instruction and training should be given that makes it clear that strip searching for improper purposes is prohibited.

5.171 On 15 October 2014, the Solicitor to the Inquiry wrote to the MoD and stated that I was considering making a recommendation with regard to the strip-searching of CPERS at a detention holding facility and, in particular, that:

- a. before any clothing is removed from a detainee, (s)he should be given a careful explanation as to why it was necessary and the CPERS' cooperation should be requested;
- b. any search should take place in the presence of the minimum number of people necessary;
- c. those present should be the same gender as the detainee, unless completely unavoidable; and
- d. a screen should be used to shield the detainee from as many as possible of those actually attending.

5.172 In their response dated 16 October 2014, the MoD informed me that JDP 1-10 does not specifically make reference to the type of strip searches referred to above. It does however recognise that at the point of capture, any searches should be conducted by a person of the same gender, unless absolutely unavoidable, and that the need for the search should be explained.⁵¹⁷⁹ It also provides that if an intimate search is required at the unit holding area, the reason for this should be explained to the detainee and should be authorised by the Force Provost Marshal.⁵¹⁸⁰

5.173 Having seen and considered the proposed recommendation, it appears that the Provost Marshal (Army's) staff have recommended that the following paragraph be inserted into the new edition of JDP 1-10:

"913. Strip-searches. *Strip-searches constitute the removal of CPERS clothing layer to the skin. Therefore such a search should not be conducted at the point of capture but may be required at semi permanent locations such as a Unit Holding Areas or theatre CPERS facilities, where dedicated CPERS personnel will be operating. The process and reasons for conducting a Strip-search must be covered within theatre Standing Operating Procedures (SOPs). Strip-searches will only be carried out:*

- a. After the reason for the search has been explained (an interpreter may be required) to the CPERS. The CPERS cooperation should be requested. [The fact of explanation of reasons and co-operation / non co-operation / requirement to use must be recorded].*
- b. There must be a minimum of two search personnel of the same sex of the CPERS to conduct the search. Strip-searches by any personnel of a different sex to that of the CPERS must be authorised in advance by the Force Provost Marshal (FPM). More*

⁵¹⁷⁹ See JDP 1-10 Chapter 7, section III

⁵¹⁸⁰ See JDP 1-10 Chapter 7, section IV

than 2 search personnel may be utilised to assist the search only if it is necessary to use force to conduct a strip-search.

- c. The search should be conducted in a location where privacy from persons not conducting the search can be afforded; screening from non search personnel may be required to afford additional privacy.*
- d. The CPERS should never be fully naked; above the waist and below the waist clothing should be removed separately.*
- e. The use of force to remove clothing should be seen as a last resort, and only when strictly necessary and proportionate. A strip-search requiring the use of force must be authorised in advance by the FPM.*

5.174 It seems to me that the terms of the paragraph recommended for insertion in the new edition of JDP 1-10 does address satisfactorily all the areas of concern that I have identified with regard to this particular matter.⁵¹⁸¹ In my view, since the new edition of JDP 1-10 has not yet been published and the recommended insertion of the new paragraph has not yet been carried into effect, it seems to me that it is still necessary for me to make the recommendation in question.

5.175 I therefore make the following recommendation (**Recommendation 7**):

“Appropriate measures should be taken to ensure that minimum safeguards are in place where a detainee is to be strip searched. These include informing a detainee as to the necessity of the strip search and requesting his/her cooperation. Those conducting a strip search should always bear in mind the need to respect the detainee’s dignity, particularly having regard to any cultural sensitivities. Searches should be conducted by, and in front of, the minimum number of persons necessary and screens or other measures should be taken to shield the detainee from as many of those attending as possible. Those persons should be of the same gender as the detainee unless none are available”.

Provision of adequate facilities for interpretation

5.176 In Part 3 of this Report I have drawn attention to a number of shortcomings with regard to the ways in which the detainees were treated overnight at Camp Abu Naji on 14/15 May 2004. Common to those various shortcomings was the unavailability and/or the failure to make use of interpreters. There were obvious and significant language barriers, given that the detainees spoke few words of English and their guards knew little or no Arabic. The fact that there was not an interpreter present and available in either the prisoner handling compound or the prisoner holding area meant that it was difficult for the detainees to make themselves understood when (for example) making requests for medical attention, to use the lavatory or for the provision of drinking water. Coupled with a strict enforcement of the no talking policy, these language problems and the lack of an interpreter to assist meant that detainees’ requests were invariably met with orders to be quiet or, at the least, were simply not understood and thus went unanswered.⁵¹⁸²

⁵¹⁸¹ In particular, it would seem that this new insertion would apply to all types of holding facility as it refers to strip-searches at Unit Holding Areas and theatre CPERS facilities.

⁵¹⁸² See paragraph 3.599

5.177 There are two other areas of the Report in which I have expressed concern about the absence of available interpreters. First, it is clear that an interpreter was not always present on every occasion when a detainee was seen by medical staff. Thus, I heard evidence about how one of the detainees, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), had been given medication forcibly and without his consent having been obtained beforehand or at all.⁵¹⁸³ As I concluded earlier in this Report,⁵¹⁸⁴ I am quite sure that this could have been avoided had an interpreter been present to explain what was happening. Second, no interpreters were present during the detainees' transfer by helicopter on 15 May 2004 from Camp Abu Naji to the Shaibah Logistics Base.⁵¹⁸⁵ As it seems to me, it would have been best practice to have interpreters on hand in order to provide a basic safety briefing, to reassure them, to inform them about what was happening and to address any concerns they might have had during the journey (particularly the helicopter flight).

5.178 Furthermore, it was also clear from the evidence that there were some problems with interpretation at the Divisional Temporary Detention Facility ("DTDF"). As I stated earlier in this Report:

*"Another impediment was the limited ability of the JFIT interpreters to understand and interpret the Arabic language in the Iraqi dialect. One of the interpreters, Junior Technician M029 explained that the interpreters had to make frequent use of a bilingual dictionary during interviews. Some detainees also commented in their evidence that they found it difficult to communicate with the JFIT interpreters."*⁵¹⁸⁶

5.179 By letter dated 13 October 2014, the Solicitor to the Inquiry informed the Ministry of Defence ("MoD") that I was considering making a recommendation in the following terms:

"Consideration should be given to the undertaking of a review to ensure that a sufficient number of suitably trained interpreters are readily available and on hand during all aspects of prisoner detainee handling, including to give safety briefings prior to flight transfers, in prisoner holding areas to ensure that basic requests for water/food/toilet breaks are understood, and during the issuing of medication."

5.180 In the event, the response from the MoD in relation to this recommendation did not take the matter any further. In their letter dated 29 September 2014, the Iraqi Core Participants submitted that it was a matter for concern that the interpreters available during detention were inadequately trained and were not sufficiently proficient in carrying out interpretation to the requisite standard.

5.181 As it currently stands, the second edition of JDP 1-10 notes on various occasions that interpreters should be on hand, for example, in both long and short term holding facilities when the provisions of the Geneva Conventions are read to CPERS, in order to ensure that they understand them,⁵¹⁸⁷ and in long term facilities during medical examinations.⁵¹⁸⁸ JDP 1-10 also mentions "interpreter support" as an issue to consider when "planning for CPERS activities."⁵¹⁸⁹ The same section of JDP 1-10 also refers to the need for and use of interpreters, although apparently not for the specific purposes of processing and questioning, as follows:

⁵¹⁸³ See paragraph 3.830

⁵¹⁸⁴ See paragraph 3.829

⁵¹⁸⁵ See paragraphs 3.965 – 3.966

⁵¹⁸⁶ M029 [156/178-179]

⁵¹⁸⁷ See JDP 1-10, Chapter 2, Section I [207]

⁵¹⁸⁸ See JDP 1-10, Chapter 3, Section III [310] (m)

⁵¹⁸⁹ See JDP 1-10, Chapter 6, Section 1 [607] (g)

“Interpreters are often essential for the management and questioning of CPERS. Experience has shown that the best method for using interpreters during routine in/out-processing is to issue them with a script that they are to read to the CPERS, although this method will not be suitable on all occasions. All personnel that use interpreters are to ensure that they have been carefully briefed and understand their tasks. The potential for them to exceed or be short of their remit may have serious consequences for the gathering of intelligence and the management of CPERS, including the safety of the guard force. Interpreters may need to conceal their identity by the use of screens, dark glasses or face scarves.”

5.182 Furthermore, JDP 1-10 envisages that interpreters may be required at the point of capture.⁵¹⁹⁰ It also envisages that interpreters may be required upon the transporting and escorting of detainees,⁵¹⁹¹ including during air movement of detainees.⁵¹⁹²

5.183 The outline establishment for management and administrative staff for a long term holding facility, as contained in JDP 1-10,⁵¹⁹³ states that there should be two interpreters for up to 250 detainees. JDP 1-10 notes that interpreters are “essential” in a long term holding facility.⁵¹⁹⁴ It also states that there are to be “sufficient” interpreters available in the unit holding area.⁵¹⁹⁵

5.184 While the current edition of JDP 1-10 appears to cover most aspects of Prisoner Handling that might require the use of an interpreter, there appears to be no specific provision that deals with the need for and/or the use of interpreters to assist in the general handling of CPERS (as opposed to matters such as Tactical Questioning/Processing/Transfer etc). I am therefore of the view that a recommendation is required to ensure that there is adequate provision of available interpreters, at both long and short term detention facilities, to avoid the sort of problems during the general handling of CPERS as those identified in paragraph 5.176 above.

5.185 I therefore make the following recommendation (**Recommendation 8**):

“There should be an appropriate review of all current policy and procedures to ensure that a sufficient number of suitably trained interpreters are readily available and on hand during all aspects of prisoner detainee handling and at all holding units, including all forms of interrogation and questioning, during the issuing and provision of medication, the need to ensure that basic requests for water/food/lavatory breaks are properly understood in prisoner holding areas and to give safety briefings and to help deal with any problems prior to and/or during flight transfers.”

Fitness for interrogation

5.186 As is clear from Part 3, Chapter 2 of this Report, in May 2004, the relevant Standard Operating Instructions stipulated that a Medical Officer was to sign a “fit for detention and questioning form,” although no such standard form actually existed in May 2004. In fact, the Baha Mousa Inquiry gave detailed consideration to the issue of whether a healthcare professional could properly state that a detainee was fit for detention and questioning. Having considered the

⁵¹⁹⁰ See JDP 1-10, Chapter 7, Section I [705], [712]

⁵¹⁹¹ See JDP 1-10, Chapter 8, Section I [805](h)

⁵¹⁹² See JDP 1-10, Annex 8B

⁵¹⁹³ See JDP 1-10, Annex 6A (4)

⁵¹⁹⁴ See JDP 1-10, Chapter 10, Section III, [1015]

⁵¹⁹⁵ See JDP 1-10, Chapter 9, Section II [907] (e) JDP 1-10 defines the unit holding area at [618] as ‘the first point in the CPERS handling chain where detailed documentation of CPERS may begin.’

competing arguments, Sir William Gage expressed the following conclusion in the Baha Mousa Report:

“The medic may validly advise that someone is not fit for detention or questioning; alternatively, the medic may validly advise that no specific intervention different from the normal process is required. The practical effect of the latter course is the same as stating that someone is fit for detention...[and] the latter course avoids any breach of ethics...I think it would be prudent for military medics to take this approach, which has no practical disadvantages and which may avoid breaches of ethical duties.”⁵¹⁹⁶

5.187 Sir William Gage then went on to say this:

“I therefore conclude that Armed Forces medical personnel can and should be involved in providing advice that a CPERS is not fit for detention or questioning; alternatively, the medic may validly advise that no specific intervention different from the normal process is required in respect of that CPERS. They should not advise that a CPERS is fit for detention or fit for questioning.”⁵¹⁹⁷

5.188 For my part, my principal concern was that, as the position existed in May 2004, there was nowhere to record the outcome of any such medical examinations, whether expressed in the terms indicated as acceptable by Sir William Gage or otherwise. For this reason, the Ministry of Defence (“MoD”) were advised in a letter dated 15 October 2014, that:

“Consideration should be given to ensuring that appropriate forms are made available to allow a medical examiner to declare a detainee unfit for detention and tactical questioning and stating the reasons for that decision.”⁵¹⁹⁸

5.189 The MoD advised me that both their current policy on Tactical Questioning and Interrogation stated that a decision as to whether a detainee was unfit for questioning should be recorded on the captured person’s file and on medical form F Med 1026.⁵¹⁹⁹

5.190 That being so, I note that the F Med 1026 form does not have a specific place for this information to be recorded, nor does it explain, under the list entitled “*Purpose of the Examination*”, that one of the purposes is to consider whether the detainee is unfit to be detained or questioned.⁵²⁰⁰ Furthermore, there is currently no requirement for the reasons for such a decision to be recorded.

5.191 I therefore make the following recommendation (**Recommendation 9**):

“Appropriate forms should be made available to allow a medical examiner to declare a detainee unfit for detention and questioning. The decision as to whether a detainee has been declared unfit for detention and questioning should be readily apparent and the reasons for that decision should be recorded. Any conclusion to the contrary effect should be expressed in ethically acceptable terms”.

⁵¹⁹⁶ The Report of the Baha Mousa Inquiry (Volume III) [16.236]

⁵¹⁹⁷ The Report of the Baha Mousa Inquiry (Volume III) [16.235]–[16.237]

⁵¹⁹⁸ This should be read as indicating the need for forms that would allow the medical examiner to express any conclusions to the contrary effect in an ethically acceptable manner; see the Report of the Baha Mousa Inquiry (Volume III) [16.236]

⁵¹⁹⁹ This form is included at JDP 1-10 Annex 3A. Presumably the MoD have in mind the use of the acceptable form of wording identified by Sir William Gage in the Baha Musa Report to express any conclusion to the contrary effect

⁵²⁰⁰ Again, any contrary conclusion being expressed in ethically acceptable terms

CHAPTER 3: IN CONCLUSION

- 5.192** As I indicated at the outset of this Report,⁵²⁰¹ the allegations which this Public Inquiry was required to investigate in accordance with its terms of reference were of the most serious possible nature. They included allegations of multiple homicide/murder, torture, mutilation and conduct amounting to inhuman and/or degrading treatment, allegedly perpetrated by British military forces on Iraqi civilians during the summer of 2004.
- 5.193** In Part One of this Report, I described the detailed and exhaustive approach adopted by the Inquiry in carrying out its investigation of these very serious and highly damaging allegations. In Parts Two to Five inclusive of this Report, I have endeavoured to deal with every such allegation and have provided my reasoned conclusions in respect of each of them.
- 5.194** A very large number of allegations were made in the course of the many witness statements, days of oral hearings and the submissions by Core Participants. The total amount of oral, written, documentary and expert evidence considered by the Inquiry in carrying out its task of investigating these allegations was huge, as the Report itself makes clear.⁵²⁰²
- 5.195** Unsurprisingly, the task of evaluating all the evidence and submissions proved to be an extremely challenging one. It has taken me a great deal of time and much anxious thought. I have done my best to read, absorb and remind myself of all the relevant evidence in reaching my conclusions. I have been greatly assisted in that task by the well presented Oral Submissions put forward by the Core Participants and other parties and, in particular, by the careful and detailed written Closing Submissions that each put forward, all of which I have read and carefully considered. I have reached my conclusions only after having given full consideration to all the points made by Counsel in their submissions, both oral and written. Inevitably, in an Inquiry of this magnitude and complexity, it is not possible to refer to every point made on behalf of the Core Participants and other parties. However, I emphasise that I have made every possible effort to take all the evidence and all the submissions fully into account in reaching the conclusions that I have and I believe that I have succeeded in doing so.
- 5.196** So it is that, at various stages during this Report, I have come to the conclusion that the conduct of various individual soldiers and some of the procedures being followed by the British military in 2004 fell below the high standards normally to be expected of the British Army. In addition, on a number of other occasions, my findings went further. Thus, as I make clear at various stages of this Report, I have come to the conclusion that certain aspects of the way in which the nine Iraqi detainees, with whom this Inquiry is primarily concerned, were treated by the British military, during the time they were in British custody during 2004, amounted to actual or possible ill-treatment.
- 5.197** However, as I bring this Report to its conclusion, I believe that it is very important to put these adverse findings about the British military and some of its individual soldiers into their proper perspective, by viewing them in the context of the original allegations which the Inquiry was asked to consider.
- 5.198** As can be seen from the main body of this Report, I have come to the firm conclusion that the vast majority of the allegations made against the British military, which this Inquiry was required to investigate (including, without exception, all the most serious allegations), were wholly and entirely without merit or justification. Very many of those baseless allegations were the product of deliberate and calculated lies on the part of those who made them and

⁵²⁰¹ Paragraph 1.1 of Part One (Introduction) to this Report

⁵²⁰² Chapter 2, Part One (Introduction) to this Report

who then gave evidence to this Inquiry in order to support and perpetuate them. Other false allegations were the result of inappropriate and reckless speculation on the part of witnesses.

- 5.199** As is made clear in the body of the Report, I have also come to the firm conclusion that the approach of the detainees and that of a number of the other Iraqi witnesses, to the giving of their evidence, was both unprincipled in the extreme and wholly without regard for the truth. Such was the extent to which some of these witnesses told deliberate and calculated lies to this Inquiry, that I felt it necessary to indicate that such was the case, with regard to the evidence of certain individuals, as the Report actually progressed. This was done in order to enable the reader to understand fully the various conclusions that I had reached and to put them into an appropriate overall perspective.
- 5.200** In contrast and except where otherwise expressly stated, for the most part I was generally impressed by the way in which the military witnesses approached the giving of their evidence to this Inquiry. Some of them evidently found the process of giving evidence, including the need to recall the events with which this Inquiry was concerned, very difficult and distressing. Except where otherwise expressly stated, in general I found the military witnesses to be both truthful and reliable. For the most part, they used their best endeavours to recall details of events that had occurred nearly a decade previously. In such circumstances, some inaccuracies were inevitable and I have sought at all times to take account of the risk that their recollections, whilst honestly given, might be incorrect.
- 5.201** In the event, as I have already made abundantly clear, the work of this Inquiry has established beyond doubt that all the most serious allegations, made against the British soldiers involved in the Battle of Danny Boy and its aftermath and which have been hanging over those soldiers for the last 10 years, have been found to be wholly without foundation and entirely the product of deliberate lies, reckless speculation and ingrained hostility.
- 5.202** In my view, it is also worth emphasising, once more, that the events, with which this Inquiry was concerned, commenced with a deadly, planned and co-ordinated armed ambush of British troops on Route 6 on 14 May 2004. That ambush was carried out by a large number of heavily armed Iraqi insurgents, including the nine detainees, who were bent on inflicting as much death, injury and damage upon British forces as they could. Although my terms of reference do not permit me to investigate or comment upon the legality of the conduct of the British soldiers during the resulting battle, it does seem to me that the evidence clearly showed that the British soldiers responded to this deadly ambush with exemplary courage, resolution and professionalism.
- 5.203** Finally, I should mention that, on my behalf, the Inquiry sent warning letters pursuant to Rule 13 of the Inquiry Rules 2006 to 55 persons, who I considered may be subject to criticism in the Report. Those letters complied with the requirements of Rule 15 (1) (a)–(c) of the 2006 Rules. I am also satisfied that each recipient of such a warning letter was given a reasonable opportunity to respond to the warning letter in question.
- 5.204** In the event, the Inquiry received replies to each of the warning letters within the period specified for response.
- 5.205** Before completing my work on this Report, I read each of the replies that I received. I considered afresh all the evidence to which I was referred by the recipients of the warning letters, whether oral or written.
- 5.206** I do not propose to add to the length of this Report by mentioning separately that which I was asked to consider by the recipients of the warning letters. However, wherever criticism is

made in the Report of any person, I have considered afresh whether that criticism is justified, in the light of the response to the warning letter relating to the criticism in question. I am therefore satisfied that wherever a person is subject in the Report to explicit or significant criticism, that criticism is justified in the light of all that I have seen, read and heard in the course of this Inquiry.

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Appendix 1: Glossary of Terms and Acronyms

1 Mech Bde 1 Mechanised Brigade
2i/c Second in Command

A

ASI Al-Sweady Public Inquiry
A&SH Argyll and Sutherland Highlanders
AFV Armoured Fighting Vehicle
AIFV Armoured Infantry Fighting Vehicle
APC Armoured Personnel Carrier
ATO Ammunition Technical Officer
A&E Accident and Emergency
ACPO Association of Chief Police Officers

B

BG Battlegroup
BUND Built Up Natural Defence
BCS Bridge, Carrot, Stick
BHQ Battalion Headquarters
BBC British Broadcasting Cooperation
BGRIO Brigade Internment Review Officer
BALO Brigade Air Liaison Officer

C

CAN Camp Abu Naji
CP Core Participant
Coy Company
CF Coalition Forces
CO Commanding Officer
CSM Normally Company Sergeant Major, however, in Camp Abu Naji it was locally known as the Camp Sergeant Major
CCTV Closed Circuit Television
CPERS Captured Persons
COS Chief of Staff
CWC Confiscated Weapon Cell
CCRIO Central Criminal Records and Intelligence Office
CMSR Close Medical Supply Regiment
CPERS Captured Persons
Cdo Commando

D

DTDF Divisional Temporary Detention Facility
DJEP Directorate Judicial Engagement Policy
DAS DJEP Archive System
DWP Department for Works and Pensions
DBI Danny Boy Incident

DS	Directing Staff
DCPWO	Detainee Control Post Warrant Officer
DIRC	Divisional Internment Review Committee

E

ECHR	European Convention on Human Rights
EWHC	High Court of England and Wales
EGF	External Guard Force
EXIF	Exchangeable Image File Format

F

FDHC	Forensic Data Handling Capability
FHT	Field Human Intelligence Team
FPM	Force Provost Marshal
FCO	Foreign and Commonwealth Office

G

GPMG	General Purpose Machine Gun
GOC	General Officer Commanding

H

HMRC	Her Majesty's Revenue and Customs
HQ	Headquarters
HUMINT	Human Intelligence
HF	High Frequency
HCR	Household Cavalry Regiment
HLS	Helicopter Landing Site
HMCIP	Her Majesty's Chief Inspector of Prisons
HQ PM(A)	Headquarters Provost Marshal (Army)

I

IHAT	Iraq Historical Allegations Team
ICPs	Iraqi Core Participants
ICDC	Iraqi Civil Defence Corps
ICRC	International Committee of the Red Cross
IED	Improvised Explosive Device
IRT	Immediate Response Team
IO	Intelligence Officer
IGF	Internal Guard Force

J

JR	Judicial Review
JFIT	Joint Forward Interrogation Team
JIC	Joint Intelligence Committee
JSEOD	Joint Service Explosive Ordnance Disposal
JNCO	Junior Non Commissioned Officer
JWP	Joint Warfare Publication

K

KIA Killed in Action

L

LEC Locally Employed Civilian
 LSU Labour Support Unit
 LAD Light Aid Detachment

M

MOI Ministry of Interior (Iraq)
 MoD Ministry of Defence
 MPS Military Provost Staff
 MND (SE) Multi National Division (South East)
 MO Medical Officer
 MBT Main Battle Tank
 Med Troop Medical Troop

N

NCO Non Commissioned Officer
 NIR Notice of Internment

O

Op Operation
 OOB Out of Bounds
 OC Officer Commanding
 OMS Office of the Martyr Al Sayyed Sadr
 OPTAG Operational Training and Advisory Group
 OIC Officer in Charge

P

PWRR Princess of Wales Royal Regiment
 Persrep Personnel Report
 PJHQ Permanent Joint Headquarters
 PIL Public Interest Lawyers
 Pro Provost
 PRR Personal Role Radios
 PH Prisoner Handling
 POW Prisoner of War

Q

QRL Queens Royal Lancers
 QRF Quick Reaction Force
 QM Quartermaster

R

RMP	Royal Military Police
REME	Royal Electrical and Mechanical Engineers
RHF	Royal Highland Fusiliers
RPG	Rocket Propelled Grenade
Re-Org	Reorganisation
RMO	Regimental Medical Officer
RMA	Regimental Medical Assistant
RAP	Regimental Aid Post
RSM	Regimental Sergeant Major
RAF	Royal Air Force
RSOI	Reception Staging and Onward Integration

S

SIB	Special Investigation Branch
SLB	Shaibah Logistics Base
SPCB	Service Police Crime Bureau
Sqn	Squadron
SUSAT	Sight Unit Small Arms Trilux
SOI	Standard Operating Instruction
SNCO	Senior Non Commissioned Officer
STANAGS	NATO Standardisation Agreements
SSD	Secretary of State for Defence
SO2	Staff Officer 2
SMO	Senior Medical Officer
SINCREP	Serious Incident Report
SOP	Standard Operating Procedures

T

TSol	Treasury Solicitors Department
TQ	Tactical Questioning

U

UKBA	UK Border Agency
UGL	Underslung Grenade Launcher

V

VCP	Vehicle Check Point
VHF	Very High Frequency

W

WO	Warrant Officer (can be Class 1 and Class 2)
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Appendix 2: The searches at the Iraq Historical Allegations Team (IHAT)

SOFTWARE – Access Data Lab & ECA Viewer

1. The software used by the IHAT was supplied by 'Access Data', a software company specialising in computer forensics. 'Access Data Lab' forensically processes the data onto the FDHC. The software used by the Inquiry to view the processed data was initially AD LAB and later an interface to 'LAB' known as 'Early Case Assessment Viewer' or 'ECA'.
2. AD LAB provides various methods of searching a Case each with its own benefits. One such method is in 'Explorer mode'. AD LAB displays the directory structure of the Case as a hierarchical file system (that is, one in which files and directories are organized in a manner that resembles a tree). A directory contained inside another directory is called a subdirectory. In this way a file can be manually found, its location within the directory structure established and all surrounding documents reviewed.
3. Another method provided by the AD LAB interface is to examine documents by type via the 'Overview mode'. This renders it possible to differentiate files by specific file extensions allowing a review of for instance, just Word documents or spreadsheets. Email mode separates all emails allowing them to be reviewed by dates, if the embedded metadata has been recovered by AD LAB during the processing phase, including an overview of how many emails were sent (or received, if applicable) by day, month and year.
4. AD LAB also allows the review of all images as thumbnails in 'Graphic mode'. This mode excludes any document that does not meet the necessary requirements to be an image. Therefore files with the extension of jpg, gif, etc would be included while Word and Excel files would not. The main operating system files would not be included but the small icon files contained within an operating system would be. Adobe pdf documents are recognized as images. The list of what would be included and what excluded is vast and not for this report. Where a full size image was available the thumbnail image could be opened up to full size if required.
5. Utilising 'Email Mode' allows files to be examined by sub mode as categorised by AD LAB.
 - a. 'Email' which was then categorised down via various sub type of message or action i.e. appointment, contact or distribution list etc.
 - b. 'Email Status' identified emails by being sent, received replied or forwarded or whether attachments were included.
 - c. 'Email Archives' identified any pst (personal storage table) files or pab (personal address book) type files. These files are in effect storage areas normally found on a local machine as opposed to a server used to archive messages and calendar events as created by a user operating Microsoft Exchange programs.
 - d. 'Email Address' provided details of senders and recipients email addresses, domains and display names.
 - e. 'Email by Date' enabled the searching of emails by a specific sent or received date.

6. The most useful method of searching in AD LAB is via an Indexed search whereby a complex search string can be constructed with the addition of Boolean operators (AND, OR, NOT and NEAR) having the effect of limiting, widening or in other ways defining the parameters of the search. The results are displayed and can be sorted by type, size, date etc and then reviewed individually for relevance. Once the documents have been reviewed they can be labelled so any subsequent search will identify files already examined.
7. In some instances the result of searches provided very high numbers of documents and files being returned. When this occurred additional filtering was employed to eliminate irrelevant documents while ensuring a thorough search was still conducted. To this end the following was employed.
 - a. An additional filter was applied restricting the returned documents to have a modified date found within the documents embedded 'metadata', to be within a defined range. The date range applied was designed to encompass the period prior to the incident on 14 May 2004 and the release of the detainees from the DTDF to the Iraqi penal system, accordingly the date range applied was 01 May 2004 to 01 October 2004.
 - b. The filter was created utilising the modified date of a document which captures the last date and time a document was saved. The action of copying and moving documents between computers can have the effect of generating creation dates for documents and files that post date the modified date. As such utilising the creation date for a filter can provide misleading results.
 - c. As multiple filters could be applied simultaneously an additional filter was applied to ensure a search included in the results any document where no date was recorded within the metadata. An additional filter was also applied that eliminated any document where the 'logical size' recorded by AD LAB was empty indicating no actual data was available for inspection. All files have a physical and logical size, often the physical size is larger than the logical size due to the way data is stored on a hard drive. The logical size is the actual size of the data while the physical size is the space required on a hard drive to store the data.
 - d. The documents returned by the search were then reviewed by reference to aspects of those documents to form an initial view on potential relevance. The document title in many instances could provide sufficient indications as to what was contained within the body of the document. An example of this effect was while searching for emails where the name 'Curry' was included resulted in substantial returns regarding a 'curry club'. The document title if referencing operational documents such as Assessreps and Sincreps enabled the identification of duplicates which did not require examination.
 - e. Once a document was identified as requiring further examination it could be opened using various views. Natural view allowed the close scrutiny of a document's content in its native format i.e. as a complete word document. In text view the document could be examined without any formatting. This was often the main view utilised when a document was incomplete. Finally it was possible to examine the contents of a file or document in hexadecimal view providing sight into the raw data that constituted the file. This was necessary when a file was so badly corrupted or overwritten that natural or text view failed to show the files content.
8. AD LAB provides full audit capability creating a report during the download process providing details of the exhibits used to create the case along with the location of documents found within the reconstructed hard drives that made the RAID. It is also possible to create an event

log in Excel spreadsheet format, which captures all activity undertaken by the Inquiry staff during the search

Explanation of a RAID

9. The term RAID was first used by David Patterson, Garth A. Gibson, and Randy Katz at the University of California, Berkeley in 1987, standing for a redundant array of inexpensive disks. Industry RAID manufacturers interpreted the acronym as standing for a redundant array of independent disks. The term RAID is now used as a simple term to describe computer data storage schemes that divide and replicate data among multiple physical hard drives allowing the operating system to access the contained data as one single drive.
10. There are various types of RAID schemes. These are identified by the word RAID followed by a number for example RAID 0, RAID 1 etc. In 2004 the most cost effective and efficient system was RAID 5 which required a minimum of three separate hard drives to construct the RAID. Taking a RAID 5 as an example, if only a single drive from the RAID was now available, any data recovered would be incomplete; if two or more drives were available the data could be recovered intact.

Liverpool Case

11. Research identified the following hard drives that had constituted the Liverpool Server as used in Camp Abu Naji in 2004. Five were compiled as a RAID system acting as the 'exchange server' and was named 'Liverpool 1'. The remaining five hard drives were compiled as a separate RAID system acting as the 'file & print server'. This server was named 'Liverpool 2'. Each server had its own 'Internet Protocol' address (IP) indicating they were both connected to a network. By the time the Liverpool server was removed from Camp Abu Naji in June 2006 Liverpool 1 and 2 had increased in size to six drives comprising each RAID.
12. It was possible to identify and track each of the hard drives that constituted the Liverpool server through documentation found within the FDHC. These documents, while of value as research tools, have not been disclosed as part of the Inquiry process. In 2004 each of the hard drives that comprised Liverpool 1 and 2 were referenced on spreadsheets by individual unique reference numbers. Details were included of the role or purpose for each server providing support to the camp as storage or as the email, calendar and contact client for the military INET system.
13. By 2006, a separate spreadsheet highlighting computer assets at Camp Abu Naji identified the reference numbers had changed and were then classed as asset numbers. By April 2009 the asset numbers were listed alongside manufacturers hard drive reference numbers.

Liverpool 1 Drive 1 (IHAT JRY-68-C)

14. The first hard drive that constituted part of the RAID named as Liverpool 1 in 2004 was identified by a serial number (*****3/081). The drive was traced through documentation to being allocated an asset number in 2006 (*****6079) to a manufacturers reference number in 2009 (*****2F9M). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-68-C.

Liverpool 1 Drive 2 (IHAT JRY-68-A)

15. The next hard drive that constituted part of the RAID named as Liverpool 1 in 2004 was identified by a serial number (*****3/082). The drive was traced through documentation to being allocated an asset number in 2006 (****6024) to a manufacturers reference number in 2009 (*****1J2M). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-68-A.

Liverpool 1 Drive 3 (IHAT JRY-68-F)

16. The next hard drive that constituted part of the RAID named as Liverpool 1 in 2004 was identified by a serial number (*****3/083). The drive was traced through documentation to being allocated an asset number in 2006 (****6062) to a manufacturers reference number in 2009 (*****11SM). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-68-F.

Liverpool 1 Drive 4 (IHAT JRY-68-E)

17. The next hard drive that constituted part of the RAID named as Liverpool 1 in 2004 was identified by a serial number (*****3/084). The drive was traced through documentation to being allocated an asset number in 2006 (****6031) to a manufacturers reference number in 2009 (*****2FQM). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-68-E.

Liverpool 1 Drive 5 (IHAT JRY-68-B)

18. The last hard drive that constituted part of the RAID named as Liverpool 1 in 2004 was identified by a serial number (*****3/085). The drive was traced through documentation to being allocated an asset number in 2006 (****6055) to a manufacturers reference number in 2009 (*****0X3M). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-68-B.

Liverpool 2 Drive 1 (IHAT JRY-69-E)

19. The first hard drive that constituted part of the RAID named as Liverpool 2 in 2004 was identified by a serial number (*****3/086). The drive was traced through documentation to being allocated an asset number in 2006 (****6130) to a manufacturers reference number in 2009 (*****N1RM). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-69-E.

Liverpool 2 Drive 2 (IHAT JRY-69-C)

20. The next hard drive that constituted part of the RAID named as Liverpool 2 in 2004 was identified by a serial number (*****3/087). The drive was traced through documentation to being allocated an asset number in 2006 (****6123) to a manufacturers reference number in 2009 (*****1WYM). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-69-C.

Liverpool 2 Drive 3 (IHAT JRY-69-B)

21. The next hard drive that constituted part of the RAID named as Liverpool 2 in 2004 was identified by a serial number (*****3/088). The drive was traced through documentation to being allocated an asset number in 2006 (*****6109) to a manufacturers reference number in 2009 (*****265M). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-69-B.

Liverpool 2 Drive 4 (IHAT JRY-69-F)

22. The next hard drive that constituted part of the RAID named as Liverpool 2 in 2004 was identified by a serial number (*****3/089). The drive was traced through documentation to being allocated an asset number in 2006 (*****6116) to a manufacturers reference number in 2009 (*****2NKM). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-69-F.

Liverpool 2 Drive 5 (IHAT JRY-69-D)

23. The last hard drive that constituted part of the RAID named as Liverpool 2 in 2004 was identified by a serial number (*****3/090). The drive was traced through documentation to being allocated an asset number in 2006 (*****6093) to a manufacturers reference number in 2009 (*****5A24). Research identified the hard drive seized by IHAT was 36.4GB in size, was part of a RAID 5 and was referenced as exhibit JRY-69-D.
24. Examination of the Liverpool Case using Overview Mode⁵²¹⁰ identified that the case contained 180,000 word type documents, 9,000 spreadsheets, 8,000 databases, 56,000 emails, 220,000 images and nearly 300,000 unallocated items sat within 'slack/free space' indicating they had been previously been deleted and were occupying hard drive space that the filing system could utilise to store new documents, in effect overwrite. The remaining items consisted of 15,000 archive files from which the above files had been extracted, operating system files and folders and 560,000 items that AD Lab had been unable to categorise.
25. Searching for specific documents using an indexed search⁵²¹¹ resulted in locating a place holder for a deleted file (created by AD LAB) whereby only a footprint was left within the 'Master File Table' (MFT). This record indicated that the file had once existed along with its last location in the directory tree. Often no actual text or metadata (date/time etc) was recoverable. Occasionally a search would lead to a deleted file, where the MFT located the document title, but the remaining readable data was for a completely different document. It was therefore necessary to adjust the methodology whereby a combination of approaches was adopted.
26. This new approach entailed a mixture of Indexed and Explorer⁵²¹² searching. The Index search would take the ASI investigator to an area of the file directory which would then enable any other readable documents or place holders in the location to be examined. While not as focused as pure Index searching, the combination of these techniques ensured that potentially relevant file locations and their contents were reviewed for relevance. One such directory found within an Archive directory labelled 'PWRR File List' was examined in its entirety.

⁵²¹⁰ Paragraph 3

⁵²¹¹ Paragraph 6

⁵²¹² Paragraph 2

27. As AD LAB was able to differentiate files by type, all emails, graphics and multimedia files were manually searched and examined in their entirety. The majority of files identified as relevant were found either within unallocated space (hard drive storage that has been identified by the MFT as available to be written to), within a deleted archive folder for a member of Telic 6 or as pure text buried within large files. These large files were created by AD LAB from recovered data where the software was not able to determine a file type due to the state of the data. When documents etc were found within unallocated space AD LAB allocated the recovered data a title of 'carved' along with a unique reference number. Often the file would retain a file extension appropriate to the type of document e.g. carved [123456].doc.
28. Searching of the 56,000 email items was conducted utilising Email Mode.⁵²¹³ Examination of emails sent and received in May 2004 indicated nearly 5,000 items, but closer examination identified most were not actual emails but were in the majority, system generated files indicating either an 'oversized mail box' or the failure to send a message. Of the 35 items found to have been sent or received on the 14 May or the 92 items sent or received on the 15 May only the weather forecast for the day was of any relevance to the inquiry. No email traffic relating to the events subject to the Inquiry's terms of reference were found utilising this method.
29. Of note was the fact that between 14 April 2004 and 21 May 2004 no emails were replied to. Also from 25 April 2004 to 15 September 2004 only 41 emails were forwarded on from one recipient to another. These figures helped emphasise the apparent lack of email traffic on the Liverpool Server.
30. The Inquiry is in possession of both the AD LAB report and event log⁵²¹⁴ following the search of the Liverpool Case. From the event log the indexed search terms were extracted to a separate spreadsheet for later use.

Sensitive Case

31. The Sensitive Case was constructed from 27 separate exhibits seized by IHAT from Military Intelligence Units:

JP-4, JP-1,	MPG-1,	SLJ-29-391,	MPG-2,	SLJ-29-390,	JP-3,
SLJ-29-392,	SLJ-29-394,	SLJ-29-393,	SLJ-29-396,	SLJ-29-395,	SLJ-29-397,
SLJ-29-398,	SLJ-29-399,	SLJ-29-400,	SLJ-29-401,	SLJ-29-393,	SLJ-29-402,
NGT-11,	NGT-4,	NGT-5,	NGT-10,	NGT-8,	
NGT-6,	NGT-7,	NGT-9,			

32. The Sensitive case when examined in Overview mode, identified over 1 million Microsoft Office (Word, Excel, Access etc) type documents. There were over 2 million separate images. Both of these figures could be substantially reduced by the application of filters⁵²¹⁵ built into AD LAB which helped remove any known system files and duplicates from the final results. This reduced the documents down to 566,000 and the images to 424,000 that required some level of searching and subsequent review. Very few email related items were identifiable in Email mode, suggesting that none of the 27 exhibits used to create the case were part of an exchange server, but were used as storage areas. Fourteen of the exhibits were identifiable

⁵²¹³ Paragraph 5

⁵²¹⁴ Paragraph 8

⁵²¹⁵ Paragraph 7

by size as hard drives, while the remaining exhibits appeared to be a combination of CDs and DVDs.

33. The same approach was applied to the search and review of the Sensitive Case as for the Liverpool Case. Indexed searching, to first identify the location of potentially relevant material, was followed by searching all files within the directory and any sub directories thereby identified. As the indexed searches continually pointed to the same directories on a few exhibits it was decided that each of the 27 exhibits used to create the Sensitive Case would be examined separately to establish the type of material each contained. It was considered that this was the best method for minimising the risk of anything relevant being missed. All images and multimedia files were reviewed for relevance.
34. Due to software problems encountered during the searching it was not possible to record how many actual items were physically reviewed. However 86% of the documents identified as potentially relevant came from within a specific operational sub directory of exhibit MPG-2.001 while 41% of the identified images were recovered from the recycler directory (deleted area) of exhibit MPG-1(DD).001.
35. The Inquiry is in possession of the AD LAB report and event logs created following the search of the Sensitive Case.

Live Case

36. Examination of the Live Case in 'Email mode' identified 41,000 email related items which could be examined independently. Emails examined by date identified 573 sent in 2004 compared with 1504 in 2005. Closer examination of dates relevant to the Inquiry identified only one email being sent on 13 May 2004, none on 14 and 15 May and five on 16 May 2004. All were not relevant.
37. The transportation of large quantities of high level protectively marked material is strictly controlled. Due to the size of the data set (20GB) that was due to be created when downloading the 2,775 documents along with the accompanying AD LAB report it was established that burning to DVD did not provide sufficient capacity or security. Compliance with regulations required the Inquiry to source a suitably encrypted portable hard drive. This resulted in some delay.
38. The Inquiry is in possession of the AD LAB report and event logs created following the search of the Live Case.

Email Case

39. By this time it was only possible for two members of the Inquiry to utilise the FDHC for searching the Email Case. Also, the method of searching had changed as the tool used to search and review was the web based 'ECA' interface as opposed to AD LAB. This resulted in not being able to utilise Explorer mode but Indexed searching along with the examination of material by type was still available.
40. The approach to the search of the Email Case was to apply each of the terms supplied to IHAT on 7 February 2013 as a separate independent search. The documents returned by each search would then be reviewed and labelled either relevant or irrelevant accordingly. Using the web based interface with the application of in built filters enabled the review of the documents and files returned by a search to be undertaken while excluding any documents or

files already reviewed and labelled as irrelevant as a result of previous searches. Consequently the documents and files returned by each subsequent search diminished in size exponentially as more files were labelled.

41. The Inquiry is in possession of the AD LAB report and event logs created following the search of the Email Case.
42. The Email Address Case consisted of 2.9 million items including 13,000 images in 412GB of data. As with the original Email Case the approach to searching the case was to apply key word (Indexed) searching using each of the terms supplied to IHAT on 3 May 2013 as a separate independent search. The resulting documents returned by each search were then reviewed and labelled independently of the results of other searches. All 13,000 images were viewed.
43. The Inquiry is in possession of the AD LAB report and event logs created following the search of the Email Address Case.

Search for Hard Drives Fitted To Computers at Camp Abu Naji & Joint Forward Interrogation Team (JFIT) in 2004

44. Examination of documents resulting from the initial searches of the FDHC, identified specific documents that listed by unique reference numbers, 20 computer workstations deployed to Camp Abu Naji in 2004. Along with the reference number, each workstation was allocated a name ranging from 'LIV-0601' through to 'LIV-0620'⁵²¹⁶ Each workstation was deployed to a location within the camp i.e. 'Ops' or 'Briefing Room' etc and had its own Internet Protocol (IP) address indicating they were all connected to a network.
45. Further documents enabled very specific and targeted searching to be conducted across the available FDHC cases, utilising the asset names and various military and manufacturer serial numbers. It was possible to trace computer hard drives to specific points in time when the trail ended with their destruction, loss, storage or re deployment. Initially this task was restricted to the hard drives allocated to 'LIV-0601' to 'LIV-0620' but was later expanded to include additional workstations 'LIV-0622' to 'LIV-0630' as research established hard drives were occasionally moved between workstations.
46. Additional searching of material contained on the FDHC provided a document dated by the embedded metadata to June 2005. This document again listed the computer workstations identified as 'LIV-0601' to 'LIV-0620' but also included an additional seven INET workstations reference 'LIV-0622' to 'LIV-0630'.⁵²¹⁷ The reference 'LIV-0627' was assigned to two separate workstations within the document and may have been entered as such in error. Within this document in most cases the actual hard drive serial number as supplied by the drive manufacturer, is listed instead of the original unique reference number as noted in paragraph 13. The potential error in listing 'LIV-0627' twice is supported by an additional document dated June 2005, which lists the same asset serial number being allocated to different workstations. This type of error in recording equipment did not appear to be restricted to Camp Abu Naji assets, as errors were noted within documents listing equipment at other MND(SE) locations.

⁵²¹⁶ (MOD054151)

⁵²¹⁷ (MOD054147)

LIV-0601 (Destroyed)

47. In June 2004 LIV-0601 was deployed and used within the CAN Operations Room and was referenced by a separate workstation (****1LD7) and hard drive serial number (*****099). By June 2005 the workstation was being used by the Intelligence cell. The same workstation serial number (****1LD7) was applicable but the hard drive reference was replaced by the manufacturers hard drive reference number (****6229). By the end of November 2005 these two reference numbers were being included in documents along with a new asset reference number (*****5324). These three reference numbers were searched across the FDHC whereby it was established the hard drive was destroyed as a result of an operation implemented in 2009 to return all necessary equipment back to the UK from theatre.⁵²¹⁸ The destruction of the hard drive fitted to the workstation LIV-0601 in June 2004, took place outside of the UK in June 2009.

LIV-0602 (Destroyed)

48. In June 2004 LIV-0602 was deployed and used within the 'Comms Ops' and was referenced by separate workstation number (****1LD6) and hard drive serial number (*****097). In May 2005 workstation number (****1LD6) was shown as being LIV-0624 with a manufacturers hard drive serial number (*****21LTG) which was replaced in December 2005 after it failed. By June 2005 workstation LIV-0602 was identified by a serial number (*****1K7W) with a hard drive fitted referenced by the manufacturers serial number (*****103771). It was possible through later documents to potentially identify the hard drive fitted to the original workstation number (****1LD6) with a manufacturers reference of (*****103894). Research identified hard drive (*****103894) was destroyed in June 2009 along with the hard drive originally fitted to LIV-0601. Research identified hard drive (*****103771) was also destroyed at the same time as (*****103894).

LIV-0603 (Destroyed)

49. In June 2004 LIV-0603 was deployed and used within the G2 office and was referenced by a separate workstation (****40N4) and hard drive serial number (*****102). By June 2005 the workstation was being used by the planning cell. The same workstation serial number (****40N4) was applicable but the hard drive reference was replaced by the manufacturers hard drive reference number (****112352). By the end of November 2005 these two reference numbers were being included in documents along with a new asset reference number (*****5799). These three reference numbers were searched across the FDHC whereby it was established the hard drive was destroyed at the same time as LIV-0601 in June 2009.

LIV-0604 (Destroyed)

50. In June LIV-0604 was deployed and used in the Commanding Officers Adjutant's (CO Adj) office and was referenced by a separate workstation (****1LCG) and hard drive serial number (*****092). By June 2005 the workstation was being listed as used by the Adjutant. The same workstation serial number (****1LCG) was applicable but the hard drive reference was replaced by the manufacturers hard drive reference number (****103087). This hard drive was traced to returning to the UK in June 2009. Enquiries with the MOD identified the hard drive was destroyed.

⁵²¹⁸ (ASI025202) [17] 'Operation Brockdale'

LIV-0605 (Destroyed)

51. In June 2004 LIV-0605 was deployed and used within the Briefing Room and was referenced by a separate workstation (****31LCC) and hard drive serial number (*****107). By June 2005 the workstation was being used by the RAO (Regimental Administration Officer).⁵²¹⁹ The same workstation serial number (****31LCC) was applicable but the hard drive reference was replaced by the manufacturers hard drive reference number (****104948). In early 2006 the hard drive referenced by the manufacturers number (****104948) was recorded along with an asset number of (*****609) required re imaging. These four reference numbers were searched across the FDHC whereby it was established the hard drive was destroyed at the same time as LIV-0601 in June 2009.

LIV-0606 (Destroyed)

52. In June 2004 LIV-0606 was deployed and used in the Commanding Officers adjutant (CO Adj) office and was referenced by a separate workstation (****31LC5) and hard drive serial number (*****094). By June 2005 the workstation (****31LC5) had been re identified as LIV-0608 where it was recorded the system was 'unserviceable'. No further details were recorded that enabled any further research. LIV-0606 was by this time recorded as having a workstation reference (*****19Y4) and a manufacturers hard drive reference number (*****266003). This hard drive was traced to returning to the UK in June 2009. Enquiries with the MOD identified the hard drive was destroyed.

LIV-0607 (Lost)

53. In June 2004 LIV-0607 was deployed and used in 'Comms Ops' and was referenced by a separate workstation (****31LC7) and hard drive serial number (*****100). By October 2005 it was established that workstation (****31LC7) was fitted with a hard drive with the manufacturers reference number (****688HR). The computer was deployed in the 2IC Office. No further information could be established regarding LIV-0607 either at IHAT or with the MOD.

LIV-0608 (Lost)

54. In June 2004 LIV-0608 was identified as 'Base station and HDD awaiting shipping for repair. The hard drive had a separate reference number of (*****096). In June 2005 LIV-0608 was replaced by LIV-0606. No further information could be established regarding LIV-0608 either at IHAT or with the MOD.

LIV-0609 (Destroyed)

55. In June 2004 LIV-0609 was deployed and used in the 'Post Room' and was referenced by a separate workstation (****31LC9) and hard drive serial number (*****093). By June 2005 the location was identified as 'G9 Office' and the hard drive was now referenced by the manufacturers number (*****3103515). This hard drive was traced to returning to the UK in June 2009. Enquiries with the MOD identified the hard drive was destroyed.

⁵²¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/227048/acronyms_and_abbreviations_dec08.pdf

LIV-0610 (Destroyed)

56. In June 2004 LIV-0610 was deployed and used in the 'G2' office and was referenced by a separate workstation (****31LL3) and hard drive serial number (*****108). By June 2005 the location was identified as 'Plans' and the hard drive was now referenced by the manufacturers number (*****3103464). These three reference numbers were searched across the FDHC whereby it was established the hard drive was destroyed at the same time as LIV-0601 in June 2009.

LIV-0611 (IHAT JRY-39-A)

57. In June 2004 LIV-0611 was deployed and used in the 'Ops' office and was referenced by a separate workstation (****31LVW) and hard drive serial number (*****103). By June 2005 the location was identified as 'Ops Room' and the hard drive was now referenced by the manufacturers number (*****3106379). This hard drive was traced to returning to the UK in June 2009. Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-39-A. On 13 May 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

LIV-0612 (Destroyed)

58. In June 2004 LIV-0612 was deployed and used in the 'Ops' office and was referenced by a separate workstation (****31LRR) and hard drive serial number (*****106). By June 2005 the location was identified as 'INET Suite' and the hard drive was now referenced by the manufacturers number (*****46068). This hard drive was traced to returning to the UK in June 2009. Enquiries with the MOD identified the hard drive was destroyed.

LIV-0613 (Destroyed)

59. In June 2004 LIV-0613 was deployed and used in the 'RAO' office and was referenced by a separate workstation (****31LTB) and hard drive serial number (*****095). By June 2005 the location was identified as 'AJT' and the hard drive was now referenced by the manufacturers number (*****105326). The last available reference to this hard drive was dated September 2005 as an asset deployed to Camp Abu Naji. Enquiries with the MOD identified the hard drive was recorded as destroyed by 30 April 2007.

LIV-0614 (Destroyed)

60. In June 2004 LIV-0614 was deployed and used in the 'Ops' office and was referenced by a separate workstation (****31LTH) and hard drive serial number (*****105). By June 2005 the location was identified as the 'Int Cell' and the hard drive was now referenced by the manufacturers number (*****112449). This hard drive was traced to returning to the UK in June 2009. Enquiries with the MOD identified the hard drive was destroyed.

LIV-0615 (Destroyed)

61. In June 2004 LIV-0615 was deployed and used within the 'Ops' office and was referenced by a separate workstation (****31LCB) and hard drive serial number (*****109). By June 2005 the workstation was being used by the RAO. The same workstation serial number (****31LCB)

was applicable but the hard drive reference was replaced by the manufacturers hard drive reference number (****106509). These three reference numbers were searched across the FDHC whereby it was established the hard drive was destroyed at the same time as LIV-0601 in June 2009.

LIV-0616 (Destroyed)

62. In June 2004 LIV-0616 was deployed and used within the 'Ops' office and was referenced by a separate workstation (****31LT8) and hard drive serial number (*****104). By November 2005 (****31LT8) was associated to a hard drive referenced as (****5522) which in turn was associated to a manufacturers reference number (*****971987) by August 2006. All these reference numbers were searched across the FDHC whereby it was established the hard drive (*****971987) was destroyed at the same time as LIV-0601 in June 2009.

LIV-0617 (Lost)

63. In June 2004 LIV-0617 was deployed and used in the 'Air Ops' office and was referenced by a separate workstation (****31LTG) and hard drive serial number (*****101). By June 2005 the location had not changed although the hard drive serial number was different (****109). This number had been used in 2004 to identify LIV-0615. The last available reference to this hard drive was dated October 2005 as an asset deployed to Camp Abu Naji. Enquiries with the MOD identified the hard drive (****109) was re deployed to a system in Basra in October 2007. No further trace could be established after this date for either (*****101) or (****109).

LIV-0618 (Destroyed)

64. In June 2004 LIV-0618 was deployed and used within the 'CO' office and was referenced by a separate workstation (****31LT5) and hard drive serial number (*****098). By December 2005 (****31LT5) was associated to a hard drive referenced as (****5552) which in turn was associated to a manufacturers reference number (*****105436). All these reference numbers were searched across the FDHC whereby it was established the hard drive (*****105436) was destroyed at the same time as LIV-0601 in June 2009.

LIV-0619 (Destroyed)

65. In June 2004 LIV-0619 was deployed and used in the 'CSM' office and was referenced by a separate workstation (****31LT6) and hard drive serial number (*****091). By June 2005 the location remained the same and the hard drive was then referenced by the manufacturers number (*****103706). This hard drive was traced to returning to the UK in June 2009. Enquiries with the MOD identified the hard drive was destroyed.

LIV-0620 (Destroyed)

66. In June 2004 LIV-0620 was deployed and used within the 'Ops' office and was referenced by a separate workstation (****31LT3) and hard drive serial number (*****110). By June 2005 (****31LT3) was referenced to a manufacturers reference number (*****103535). All these reference numbers were searched across the FDHC whereby it was established the hard drive (*****103535) was destroyed at the same time as LIV-0601 in June 2009.

67. Research identified the increase of storage on the Liverpool server by March 2006 with the addition of six extra hard drives identified by the name 'Top Rack'.⁵²²⁰ Server spares with identifiable hard drives were also recorded within the documentation. Each identifiable asset serial number was searched through the FDHC in the attempt to locate the hard drives. Where the search provided a potential exhibit traced to IHAT as the final result, an explanation is provided. Hard drives which could not be traced through the available documentation will not be listed, although an additional 8 hard drives were identified and traced from Camp Abu Naji to returning to the UK following the closure of Operation Telic. Communication between the Inquiry and the MOD identified that all but 1 of the drives could be accounted for as being destroyed. The whereabouts of the remaining hard drive is not known.

Top Rack Drive 1 (IHAT JRY-119-J)

68. The first 'Top Rack' drive was identifiable by a unique asset number (*****6000). This drive was traced through a 2009 spreadsheet, which identified the above asset number being assigned to a 146GB INET hard drive loaded into bay 1 of the Liverpool MSA30 (HP Modular Smart Array 30) Server. This drive had a manufactures serial number (*****65HK). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-119-J. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

Top Rack Drive 2 (IHAT JRY-119-F)

69. Top Rack drive 2 was identifiable by a unique asset number (*****5966). This drive was traced through a 2009 spreadsheet, which identified the above asset number being assigned to a 146GB INET hard drive loaded into bay 2 of the Liverpool MSA30 (HP Modular Smart Array 30) Server. This drive had a manufactures serial number (*****5L1K). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-119-F. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

Top Rack Drive 3 (IHAT JRY-119-G)

70. Top Rack drive 3 was identifiable by a unique asset number (*****5959). This drive was traced through a 2009 spreadsheet, which identified the above asset number being assigned to a 146GB INET hard drive loaded into bay 3 of the Liverpool MSA30 (HP Modular Smart Array 30) Server. This drive had a manufactures serial number (*****621C). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-119-G. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

Top Rack Drive 4 (IHAT JRY-119-H)

71. Top Rack drive 4 was identifiable by a unique asset number (*****5942). This drive was traced through a 2009 spreadsheet, which identified the above asset number being assigned to a 146GB INET hard drive loaded into bay 4 of the Liverpool MSA30 (HP Modular Smart Array 30) Server. This drive had a manufactures serial number (*****61KM). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-119-H. On 07 June

⁵²²⁰ (MOD054152)

2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

Top Rack Drive 5 (Possibly IHAT JRY-42-C)

- 72.** Top Rack drive 5 was identifiable by a unique asset number (*****6770). This drive was traced through a 2009 spreadsheet, which identified the above asset number being assigned to a 146GB INET hard drive loaded into bay 5 of the Liverpool MSA30 (HP Modular Smart Array 30) Server. This drive had a manufactures serial number (*****7YV3). This drive was last recorded within documents found on the FDHC as booked into PJHQ on 8 May 2009. The manufacturers serial number (*****7YV3) is not recorded at IHAT but a similar reference number matching the same drive specification is recorded at IHAT as exhibit JRY-42-C. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

Top Rack Drive 6 (IHAT JRY-42-D)

- 73.** Top Rack drive 6 was identifiable by a unique asset number (*****5928). This drive was traced through a 2009 spreadsheet, which identified the above asset number being assigned to a 146GB INET hard drive loaded into bay 6 of the Liverpool MSA30 (HP Modular Smart Array 30) Server. This drive had a manufactures serial number (*****7N34). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-42-D. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

Server Spare 1 (IHAT JRY-76-F)

- 74.** The first 'Server Spare' drive was identifiable by a unique asset number (*****5928). This drive was traced through a 2009 spreadsheet, which identified the hard drive had a manufactures serial number (*****BS06). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-76-F. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

Server Spare 2 (IHAT JRY-143-G)

- 75.** The next 'Server Spare' drive was identifiable by a unique asset number (*****7005). This drive was traced through a 2009 spreadsheet, which identified the hard drive had a manufactures serial number (*****Q9NQ). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-143-G. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

Server Spare 3 (IHAT JRY-143-I)

- 76.** The last 'Server Spare' drive was identifiable by a unique asset number (*****6763). This drive was traced through a 2009 spreadsheet, which identified the hard drive had a manufactures serial number (*****7YGT). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-143-I. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

LIV-0630, Ops Room 4 (IHAT JRY-41-C)

77. The hard drive fitted to a workstation referenced by the title 'Ops Room 4' was identifiable by a unique asset number (*****5812). This drive was traced through a 2009 spreadsheet, which identified the hard drive had a manufactures serial number (*****2Z58). This number could be traced back to 2005 to being fitted to workstation LIV-0630 by changing the final 'Z' within the manufactures serial number from *****2Z58 to *****2258. Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-41-C.
78. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry. On 29 July 2013 the Inquiry was informed that JRY-41-C was damaged to the extent that IHAT were unable to extract any data from the drive. At that stage no time scales were available regarding the potential repair of the drive.

RAO Back (IHAT JRY-40-C)

79. The hard drive fitted to a workstation referenced by the title 'RAO Back' was identifiable by a unique asset number (*****5400). This drive was traced through a 2009 spreadsheet, which identified the hard drive had a manufactures serial number (*****2934). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-40-C.
80. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry. On 29 July 2013 the Inquiry was informed that JRY-40-C was damaged to the extent that IHAT were unable to extract any data from the drive. At that stage no time scales were available regarding the potential repair of the drive.
81. While conducting the above research an additional network system was identified as being deployed to Iraq and Camp Abu Naji in 2004. This system was recorded as the 'DII' or Defence Information Infrastructure. It was not possible with the available documentation, to establish exactly when the system became live in 2004, but as with the previous research it was felt if the hard drives could be located they should also be searched for any potentially relevant material. Research utilising the FDHC identified four separate hard drives that comprised the DII server. Each hard drive was identifiable by a manufactures serial number and asset number and as a result it was possible to establish that each of the hard drives was held as exhibits by IHAT.
82. The DII server for Camp Abu Naji was identified within spreadsheets by a unique asset number (*****PDC02). Research identified four separate hard drives that comprised the DII server. Each hard drive was identifiable by a manufactures serial number and asset number and as a result it was possible to establish that each of the hard drives had been seized by IHAT and are referenced as follows.

DII Server Disk 00 (IHAT JRY-216-C)

83. DII Server asset (*****PDC02) contained hard disk 00 asset (*****Z38H) seized by IHAT and referenced as exhibit JRY-216-C. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

DII Server Disk 01 (IHAT JRY-216-A)

- 84.** DII Server asset (*****PDC02) contained hard disk 01 asset (*****008VP) seized by IHAT and referenced as exhibit JRY-216-A. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

DII Server Disk 02 (IHAT JRY-214-B)

- 85.** DII Server asset (*****PDC02) contained hard disk 02 asset (*****Z1YE) seized by IHAT and referenced as exhibit JRY-214-B. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.

DII Server Disk 03 (IHAT JRY-216-E)

- 86.** DII Server asset (*****PDC02) contained hard disk 03 asset (*****YFM7) seized by IHAT and referenced as exhibit JRY-216-E. On 07 June 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.
- 87.** Research using the FDHC identified a JFIT stores register from 2004, which included 5 'Panasonic Toughbook' laptops and 6 INET terminals among its assets.⁵²²¹ The documentation provided reference numbers for four of the INET computers and their associated hard drives which enabled them to be traced through known FDHC documentation. The remaining two INET drives were recorded with partial reference numbers that did not ultimately provide a conclusion as to their final locations. Research established three of the JFIT INET terminals were destroyed in theatre, two were lost and one, JFIT INET SHB-1235 was traced to IHAT.

JFIT INET SHB-1235 (IHAT JRY-46-B)

- 88.** In May 2004 JFIT INET terminal identified as SHB-1235 was fitted with a hard drive identified with a unique manufacturers reference number (*****94TJV). Research identified the hard drive had been seized by IHAT and was referenced as exhibit JRY-46-B. On 22 May 2013 a request was made via DJEP for the exhibit to be made available for inspection by the Inquiry.
- 89.** On 29 July 2013 the Inquiry was informed that JRY-46-B was damaged to the extent that IHAT were unable to extract any data from the drive. At that stage no time scales were available regarding the potential repair of the drive.
- 90.** The 5 Panasonic Toughbook laptops were recorded within the JFIT stores register with a unique reference number. It was not possible to trace these items beyond December 2004 where they were included in a later copy of the JFIT stores register.
- 91.** While searching for computer systems for the JFIT, research identified two additional computer systems believed to have been deployed to the DTDF main office. Tracing these assets utilising the available reference numbers identified they were both destroyed in June 2009 prior to returning to the UK.

⁵²²¹ (MOD050954)

JRY-39-A

- 92.** Exhibit JRY-39-A was identified as LIV-0611.⁵²²² On examination it was established that the exhibit contained 76GB of data consisting of 77,800 items of which 46,000 were mainly small 'operating system' images. Initial searching identified 1PWRR documents as potentially relevant to the inquiry, but a search of the drive by indexed searching coupled with an examination of all images did not provide any documents that were not already held by the Inquiry.

Service Police Crime Bureau (SPCB)

JDB/1

- 93.** Exhibit JDB/1 was identified to the Inquiry as a hard disk drive seized by IHAT from a military intelligence unit. Following a request by the Inquiry and after obtaining authority from IHAT the hard drive had been repaired by SPCB on to their Forensic Server prior to the examination by the Inquiry. The drive had a visible directory structure that contained over 14 million items. Examination of the directory structure of the hard drive indicated the drive appeared to have been used as a storage area for the military unit. It was not possible to identify if the drive was deployed in theatre or in the UK. The only partition (storage area) was labelled as "Telic". Contained within this area were files ranging in date from 2003 to 2009. There were limited emails and those available appeared to be as a result of saving the email (and attachments where available) or stored within backed up pst files (archived email folders).
- 94.** Key word (Indexed) searching of the hard drive identified directories containing material of potential relevance to the Inquiry. One such directory was labelled 'J2X data'. This directory contained several sub directories one of which was titled 'Danny Boy'. Contained within the Danny Boy directory were nine further sub directories, one for each of the nine DB detainees. Each of the nine sub directories contained intelligence material. Another was labelled 'DIRCS' containing all Divisional Internment Review Committee documents including those relating to the DB Detainees.
- 95.** All 295,000 images contained within the exhibit were opened and viewed.
- 96.** As a result of the search of JDB/1, 212 files were identified as potentially relevant to the Inquiry. A decision was made to delay requesting the identified files until the completion of the search at SPCB when the results of all the searches conducted at SPCB would be requested in one go. Upon receipt of the 212 files a further review was conducted overseen by Counsel for the Inquiry. No new relevant documents were identified during this process emanating from exhibit JDB/1.
- 97.** The Inquiry is in possession of the AD LAB report and Event Logs associated to the search of exhibit JDB/1.

JDB/13

- 98.** Exhibit JDB/13 was identified as a hard disk drive seized by IHAT from a military intelligence unit. It had been repaired and processed by SPCB. The drive had a visible directory structure that contained over 61,000 items.

⁵²²² Paragraph 36

- 99.** A full examination was conducted comprising of key word (Indexed) searching accompanied by a manual search of directories (Explorer mode). All 10,000 images were opened and viewed. No documents relevant to the Inquiry were found.
- 100.** The Inquiry is in possession of the AD LAB report and Event Logs associated to the search of exhibit JDB/13.

JDB/14

- 101.** Exhibit JDB/14 was identified as a compact disk seized by IHAT from a military intelligence unit. It had been processed by SPCB. The drive had a visible directory structure that contained 729 items including 537 images.
- 102.** A full examination was conducted comprising of key word (Indexed) searching accompanied by a manual search of directories (Explorer mode). All 537 images were opened and viewed. No documents relevant to the Inquiry were found.
- 103.** The Inquiry is in possession of the AD LAB report and Event Logs associated to the search of exhibit JDB/14.

JRY-76-F

- 104.** Exhibit JRY/76F had been identified during the search for hard drives fitted to computer equipment located at CAN in 2004, potentially as a 'Liverpool Server Spare'. The drive did not require repair and was processed by SPCB. Once processed the drive was found to have been part of an unidentified 'RAID' and as such there was no visible directory structure. The exhibit contained over 145,000 items including 28,000 images contained within 52GB of data. It was possible to differentiate file/document types by use of the Overview mode.
- 105.** A full examination was conducted comprising of key word (Indexed) searching accompanied by a manual search of directories (Explorer mode). All 28,000 images were opened and viewed. 1 document potentially relevant to the Inquiry was found, this being an email chain dating from 2008. Upon receipt of the file a further review was conducted overseen by Counsel where upon the file was deemed irrelevant.
- 106.** The Inquiry is in possession of the AD LAB report and Event Logs associated to the search of exhibit JRY/76F.

JRY-143-G

- 107.** Exhibit JRY/143G had been identified during the search for hard drives fitted to computer equipment located at CAN in 2004, potentially as a 'Liverpool Server Spare'. The drive did not require repair and was processed by SPCB. Once processed the drive was found to have no visible directory structure. The exhibit consisted of 1,400 items totalling 140GB of data where each item was 100MB in size and consisted of either zeros '0' or random text. Overview mode did not supply any file/document types.
- 108.** Key word searches were conducted with no resulting documents being identified. The Inquiry is in possession of the Event Logs associated to the search of exhibit JRY/143G.

JRY-216-C

- 109.** Exhibit JRY/216C had been identified during the search for hard drives fitted to computer equipment located at CAN in 2004, potentially as part of the CAN 'DII Server'. The drive did not require repair and was processed by SPCB. Once processed the exhibit was believed to have possibly been part of an unidentified RAID. While there was no visible directory structure, Overview mode provided details of file/document types. The exhibit consisted of 102,000 items including 63,000 images totalling 75GB of data.
- 110.** Examination of the exhibit using key word (indexed) searches including viewing all 63,000 images identified the drive contained 1 document potentially relevant to the inquiry with the remainder being irrelevant. Upon receipt of the document at the Inquiry a further review overseen by Counsel deemed the document irrelevant. The Inquiry is in possession of the AD LAB report and Event Logs associated to the search of exhibit JRY/216C.

RMP Laptop Exhibit EH-110

- 111.** Once processed EH-110 was examined. It had an identifiable directory structure, as such could be searched in Explorer mode. The types of files/documents could be examined in Overview mode and specific files or documents could be found by applying key word (indexed) searches.
- 112.** The exhibit contained 214,000 items including 40,000 images within 160GB of data. A variety of searches were conducted over EH-110 whereby 7 documents were identified as potentially relevant to the Inquiry. All 40,000 images were viewed. Upon receipt of the documents at the Inquiry a further review overseen by Counsel deemed the documents irrelevant. The Inquiry is in possession of the AD LAB report and Event Logs associated to the search of exhibit EH-110

Damaged Exhibits – Partial Images

- 113.** All 12 drives within the case were searched. The 10 identified by the inquiry processed into the case were JRY-42-C, JRY-42-D, JRY-119-F, JRY-119-G, JRY-119-H, JRY-119-J, JRY-143-I, JRY214-B, JRY-216-A and JRY-216-E. The 2 extra drives were identified as JRY-41-B and JRY-119-I which did not contain any material of relevance to the Inquiry. The total data set for the entire case consisted of 708,000 items including 402,000 images in 1391GB of data.
- 114.** As this case was a compilation of recovered data, no directory tree was available and as such Explorer mode was not utilised to search the drives other than to establish the structure of the case. Document and file types could be established in Overview mode. Key word searches were applied across the entire case with all results being returned from 4 specific drives. These were JRY-119-F, JRY-119-G, JRY-119-H and JRY-119-J. These four drives had been identified during the process identified in paragraph 16 as being part of a system which in 2005 was given the name of 'Liverpool Top Rack'.
- 115.** As a result of searching the Partial Image Case including viewing all 402,000 images 43 items were identified as potentially relevant to the inquiry. Upon receipt of the documents at the Inquiry a further review overseen by Counsel deemed the documents irrelevant. The Inquiry is in possession of the AD LAB report and Event Logs associated to the search of the Partial Image Case.

- 116.** JDB/2, JDB/3, JDB/4 and JDB/6 were processed by SPCB into a single case identified as 'JDB2_3_4_6'. The case comprised 1,250,000 items in 2TB of data. It included 850,000 images. The majority of the recovered documents were from later Afghanistan operation Herrick. Emails were examined by dates which placed them in the date range of 2007 to 2011. Key word searches were conducted which only returned intelligence material already held by the Inquiry. A visual inspection of the images identified imagery from Afghanistan. It was decided that reviewing all 850,000 images was not proportionate considering the documents recovered did not fit the Inquiry's Terms of Reference. The Inquiry is in possession of the AD LAB report and Event Logs associated to the search of the JDB2_3_4_6 Case.

The Forensic Case

- 117.** By late June 2014 the Forensic Case consisted of approximately 42million individual files after processing had filtered all duplicate and system files. This was the most complete data set available at that time. A list of 138 individual search terms used and found productive in previous searches was sent to IHAT in order that a smaller case could be constructed and made available for the Inquiry to search.
- 118.** The list included the names of senior ranking military personnel from Al Amarah, Basra and the DTDF. The reference numbers of the detainees, the RMP investigation and the Phoenix flight from Al Amarah on the 14 May 2004. Role based email addresses were included as were locations and relevant regimental names and their variations.
- 119.** Examination and searching of the case was conducted utilising the web based interface, referenced at paragraph 29, as opposed to AD LAB. No hard drive directory structure was available but files could be searched and then filtered utilising various methods including date, type and size. The case consisted of mainly email related files (295,000), and MS Word type files (256,000). The remainder consisted of presentations, spreadsheets, multimedia, databases and images. There were only 4,000 images contained within the case. These were all examined.
- 120.** As previously each of the search terms used to create the case was applied as an individual search over the new case to extract a list of files to examine. Where high numbers of resultant files were returned, either filtering or the addition of Boolean terms was applied to make the review achievable.
- 121.** The Inquiry is in possession of the event log generated following the search of the Forensic Case.

Appendix 3: Witness List

Military Witnesses

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
(M001)		Read	Major	CAN – Other		
(M002)		Called	Lt	JFIT – Other		
(M003)		Called	Capt	JFIT – Other		
(M004)		Called	WO2	CAN – Other		
(M005)		Called	Lt Cdr	JFIT – Other		
(M006)		Called	Sgt	JFIT – Other		
(M007)		Called	LCpl	JFIT – Other		
(M008)		Read		JFIT – Other		
(M012)		Called	SSgt	JFIT – Other		
(M013)		Called		CAN – Other		
(M018)		Called	Lt	JFIT – Other		
(M019)		Read	WO2	JFIT – Other		
(M021)		Called	LCpl	CAN – Other		
(M022)		Read	Maj	CAN – Other		
(M023)		Read	CSgt	CAN – Other		
(M024)		Read	Cpl	CAN – Other		
(M025)		Called	Cpl	CAN – Other		
(M026)		Read	LCpl	CAN – Other		
(M029)		Called	Cpl	JFIT – Other		
(M030)		Called	Lt	JFIT – Other		
(M033)		Called		JFIT – Other		
(M037)		Read		CAN – Other		
(M045)		Read		CAN – Other		
(M046)		Read		CAN – Other		
(M049)		Read		JFIT – Other		
(M051)		Read		CAN – Other		
(M052)		Called		DTDF – Arrival		
(M053)		Read		CAN – Other		
(M054)		Read		CAN – Other		
(M056)		Read		DTDF – Other		
(M057)		Read		CAN – Other		
(M061)		Read		CAN – Other		
(M064)		Read		HQ – 1 Mech		
(M065)		Read		CAN – Other		
Alabaster	Mike	Read	Sqn Ldr	HQ – 1 Mech	Not Known	Still serving
Allen	Duncan Richard	Called	Major	CAN – HQ	Major	Still serving

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Ames	Darren	Read	Cpl	DTDF – Other	Sergeant	
Amey	Darren James	Read	Csgt	CAN – HQ	Colour Sergeant	
Anderson	Robert Hugh	Called	Pte	A&SH/1PWRR – Southern Contact	Private	
Anderson	William McIntosh	Called	CSgt	DTDF – Arrival	WO2	Still serving
Andrews	Duncan Joseph	Called	Cpl	1PWRR – Northern Contact	WO2	Still serving
Armour	James John	Read	Sgt	DTDF – Other	Sergeant	
Arnold	Brion	Read	Marine	DTDF – Other	Not Known	Still serving
Ashton	David	Read	WO2	CAN – Other	WO1	
Aston	Duncan Alexander	Called	Pte	A&SH/1PWRR – Southern Contact	Private	
Attrill	Christopher	Called	Cpl	CAN – Medical	Corporal	
Bailey	Kevin George Henry	Called	Capt	CAN – Medical	Major	Still serving
Baker	Paul Anthony	Called	Pte	A&SH/1PWRR – Southern Contact	Private	
Baker	Alyn	Read	Marine	DTDF – Other	Lance Corporal	
Baldwin	Thomas M	Read	Marine	DTDF – Other	Marine	
Barlow	Scott Philip	Called	Pte	A&SH/1PWRR – Southern Contact	Not Known	
Barrowcliff	Shaun	Read	LCpl	CAN – Other	Corporal	Still serving
Beggs	Lloydan Norris	Called	Pte	1PWRR – Northern Contact	Private	
Beharry	Johnson	Read	Pte	CAN – Other	Corporal	Still serving
Bennion	Nicholas	Read	Pte	1PWRR – Northern Contact	Private	
Benson	Andrew James	Read	LCpl	DTDF – Other	Corporal	Still serving
Berman	Peter	Called	Pte	CAN – HQ	Lance Corporal	
Bettison	Neil	Read	Ssgt	DTDF – Other	Sergeant	Still serving
Biggart	Jonathan Urie	Called	Major	HQ – 1 Mech	Not Known	Still serving
Billingsley	Peter	Read	Marine	DTDF – Other	Marine	
Bishop	Jayne Alexander	Called	Pte	1PWRR – Northern Contact	Private	
Bishop	Darryl John	Read	Cpl	QRL – North Battle	WO2	Still serving

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Blenkinsop	Darren	Read	Cpl	CAN – HQ	Not Known	Still serving
Bond	David	Called	LCpl	CAN – Guard	WO2	Still serving
Boon	Jonathon	Read	Tpr	QRL – Other	Trooper	
Booth	Simon David	Read	Sgt	RMP – SIB	Not Known	
Bowden	Raymond Edward	Called	Lt	CAN – Medical	Captain	Still serving
Bowden	William James	Read	2nd Lt	DTDF – Other	Captain	
Bowden	Stuart Stefan	Called	Cpl	CAN – Other	Sergeant	Still serving
Bowen	Lucy Ann	Called	Capt	RMP – SIB	Major	Still serving
Boyd	David John	Called	LCpl	A&SH – Rover Group	Sergeant	
Bradley	David	Read	Capt	CAN – RMP	Major	
Bradley	Ian James William	Read	Sgt	CAN – Other	Sergeant	
Brazier	Russell	Read	Cpl	CAN – HQ	Sergeant	
Bredin	Richard	Read	Sgt	CAN – Other	Sergeant	
Brodie	Craig Alexander	Called	Sgt	1PWRR – Northern Contact	WO2	
Broome	Christopher Mark	Called	Sgt	1PWRR – Northern Contact	WO2	
Brothwood	Philip John	Read	Major	HQ – 1 Mech	Major	Still serving
Brown	Warren David	Read	Tpr	HCR – Southern Contact	WO1	Still serving
Brown	Mark Allan	Read	SSgt	RMP – SIB	Not Known	
Buglass	Robert	Read	Sgt	DTDF – Other	WO1	Still serving
Bullivant	Stefan	Read	Sgt	DTDF – Other	Col	Still serving
Burch	Nicholas	Read	Lt	QRL – Other	Not Known	
Burford	Daniel	Called	Marine	DTDF – Other	Marine	
Burgess	Kevin Robert	Called	Major	CAN – Medical	Major	
Butler	Peter John Paul	Read	LCpl	1PWRR – Northern Contact	Sergeant	Still serving
Butler	Andrew	Read	Sgt	DTDF – Other	WO2	Still serving
Butlin	Marcus John	Called	Capt	1PWRR – Northern Contact	Major	Still serving
Byles	Mark Richard	Called	Cpl	1PWRR – Northern Contact	Not Known	
Byrne	John	Read	Sgt	DTDF – Other	WO2	Still serving
Cakebread	Lee	Read	LCpl	CAN – Other	Lance Corporal	
Callaghan	Stuart	Read	Able Rating	DTDF – Other	Leading Hand	Still serving
Camp	Phillip	Read	Marine	DTDF – Other	Sergeant	

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Campbell	Kevin	Called	Pte	1PWRR – Northern Contact	Private	
Campbell	Thomas	Called	LCpl	JFIT – Guard	Lance Corporal	
Carroll	Shaun Paul	Called	Cpl	CAN – Medical	Corporal	
Cartledge	Bernard	Read	LCpl	QRL – Other	Corporal	
Cartwright	James MacAuley	Read	Lt	JFIT – Guard	Not Known	
Chance	Glyn	Read	Cpl	CAN – Other	Not Known	
Clarke	Adrian David	Called	WO1	CAN – Guard	WO1	
Clutton	James	Read	Sgt	DTDF – Other	Col	Still serving
Cockroft	David	Read	Sgt	DTDF – Other	WO2	Still serving
Cole	Robert James	Read	Tpr	HCR – Southern Contact	Corporal	Still serving
Collie	David	Called	Sgt	CAN – RMP	WO2	
Collins	Nicholas	Called	Sgt	CAN – HQ	Sergeant	
Combie	Trevor	Read	Pte	CAN – Medical	Corporal	
Connelly	Joseph Thomas	Called	Pte	A&SH/1PWRR – Southern Contact	Lance Corporal	
Conroy	Christopher	Read	Capt	CAN – Other	Not Known	
Cooch	Robert	Called		CAN – Other	Private	
Cooper	Leslie	Read	Pte	1PWRR – Northern Contact	Not Known	
Cooper	Timothy	Read	Sgt	RMP – SIB	Not Known	
Coote	James Chevenix	Called	Major	1PWRR – Northern Contact	Lt Colonel	Still serving
Cornhill	Darran Ivor Mark	Called	WO2	CAN – HQ	WO2	
Costley	Allan	Read	Major	HQ – 1 Mech	Not Known	
Coward	Rupert James	Read	Major	QRL – Other	Lt Colonel	Still serving
Cowie	Jamie Sinclair	Read	Sgt	DTDF – MPS	Not Known	
Cox	Denise	Read	Capt	CAN – Medical	Captain	
Craddock	Adrian Robert	Called	QM	CAN – HQ	Captain	
Craigen	Peter	Read	Cpl	RMP – SIB	Not Known	Still serving
Crawshaw	Andrew Jason Clifford	Called	Pte	1PWRR – Northern Contact	Private	
Crews	Ian R	Called	Fusilier	DTDF – Other	Corporal	Still serving
Croft	Neal Simon	Read	Capt	HQ – 1 Mech	Not Known	
Crowley	Ben	Called	Pte	CAN – Medical	Lance Corporal	
Cruickshank	George	Read	Cpl	CAN – Other	Corporal	
Cryans	John	Called	Cpl	DTDF – Medical	Lance Corporal	

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Culver	Michael (Jonny)	Read	Lt Col	HQ – 1 Mech	Not Known	
Currie	William Farman McConville	Called	LCpl	A&SH/1PWRR – Southern Contact	Corporal	
Curry	Charles Alexander Kingsley	Called	Capt	CAN – Other	Major	
Dalton	Keith	Called	Pte	A&SH – Rover Group	Private	Still serving
Daly	Robert	Read	LCpl	CAN – Other	Sergeant	
Daly	Ian	Read	WO2	DTDF – Other	WO2	Still serving
Danquah	Eric Boateng	Called	Pte	1PWRR – Northern Contact	Private	
Dart	Rhiannon	Read	Capt	DTDF – Medical	Not Known	
Davies	Alan	Called	LCpl	CAN – RMP	Corporal	Still serving
Davies	Kirk	Read	Sgt	CAN – RMP	Captain	Still serving
Davies	Kirt	Read	Tpr	QRL – North Battle	Corporal	Still serving
Davis	Christopher	Read	Fusilier	DTDF – Other	Sergeant	Still serving
Davison	John William	Read	Cpl	1PWRR – Northern Contact	Not Known	
De Reya	Anthony	Called	Major	DTDF – OC	Colonel	Still serving
Dempster	Mark	Read	Sgt	RMP – SIB	Staff Sergeant	Still serving
Dewar	Graham	Read	Pte	A&SH/1PWRR – Southern Contact	Not Known	RMP stmt only
Dobson	Oliver	Read	Capt	CAN - Other	Major	
Dodd	Christopher Andrew	Called	Pte	A&SH/1PWRR – Southern Contact	Corporal	
Donachie	Sean	Read	Sgt	RMP - SIB	Not Known	Still serving
Dormer	James George	Called	Lt	A&SH/1PWRR – Southern Contact	Captain	
Douglas	Mathew Robert	Called	Capt	CAN – Other	Captain	
Douglas	Colin Andrew	Called	Pte	DTDF – Arrival	Lance Corporal	Still serving
Doyle	Simon John	Read	Capt	CAN – Other	Major	Still serving
Driscoll	James	Read	Major	CAN – Other	Not Known	
Drury	Paul Andrew	Called	Cpl	CAN – Other	Sergeant	
Dunbar	Robert	Called	Cpl	CAN – Other	Corporal	
Edgar	Jeremy Robert	Called	Cpl	CAN – Other	Corporal	
Edwards	Richard Lewis Andrew	Read	Cpl	1PWRR – Northern Contact	Colour Sergeant	Still serving

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Edwards	Raymond John Alan	Called	LCpl	CAN – Guard	WO2	Still serving
Edwards	Stephen	Read	SSgt	CAN – Other	WO2	
Eldridge	Neil	Called	Cpl	CAN – Other	Corporal	
Elsey	Darren Paul	Read	Capt	CAN – Other	Major	Still serving
Elvin	Stephen Charles	Read	Fusilier	JFIT – Guard	Lance Corporal	Still serving
Errington	David	Called	LCpl	CAN – Guard	WO2	Still serving
Evans	James Thomas Charles	Read	Sgt	CAN – Guard	Sergeant	Still serving
Everett	John	Called	LCpl	CAN – RMP	WO2	Still serving
Evison	Stuart	Read	Sgt	CAN – Other	Not Known	
Falconer	David Gordon	Called	Sgt Maj	1PWRR – Northern Contact	WO1	
Faulds	Robert	Read	Pte	CAN – Other	Not Known	
Field	Charles	Read	Major	CAN – Other	Major	Still serving
Fielding	Phillip	Read	Major	DTDF – Medical	Major	
Fieldman	Richard Paul	Read	Pte	A&SH/1PWRR – Southern Contact	Lance Corporal	
Findlay	Colin	Read	Brig	HQ – 1 Mech	Brigadier	Still serving
Finneran	Stewart	Called	LCpl	CAN – Medical	Not Known	
Fitzgerald	Kevin	Read	Sgt	CAN – Other	Not Known	
Fitzgibbon	Colin	Read	Pte	1PWRR – Northern Contact	Private	
Floyd	Henry James	Called	Lt	HCR – Southern Contact	Not Known	
Ford	Nicholas	Read	Marine	DTDF – Guard	Corporal	
Fordham	Crispin	Read	Lt	HQ – 1 Mech	Not Known	
Forsdick	Julian	Read	SCpl	HCR – Southern Contact	Corporal Of Horse	Still serving
Foster	Ian	Read	Capt	HQ – 1 Mech	Not Known	
Fowler	John Claude	Read	Pte	1PWRR – Northern Contact	Not Known	
Fuller	James	Read	Sgt	DTDF – Guard	Sergeant	Still serving
Fyfe	Hugh William Robert Muncie	Called	LCpl	DTDF – Arrival	Not Known	
Gadsby	James Charles Spears	Called	LCpl	A&SH – Rover Group	Sergeant	Still serving
Galbraith	Mark	Called	Fusilier	JFIT – Guard	Lance Corporal	Still serving
Gambling	Noel	Read	Sgt	DTDF – Guard	WO2	Still serving
Garner	Richard Paul	Called	Cpl	CAN – Guard	Corporal	

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Garner (or Pierson-Taylor)	Tracey Anne (now Kristen)	Read	Cpl	A&SH – Rover Group	WO2	Still serving
Gascoyne	Phillip	Called	LCpl	CAN – Medical	Corporal	Still serving
Gayle	Llewellyn	Called	Capt	CAN – Other	Captain	Still serving
Gidalla	Lee Stephen	Called	Cpl	A&SH/1PWRR – Southern Contact	Sergeant	Still serving
Gidley	Philip John	Called	LCpl	CAN – Other	Sergeant	Still serving
Gillon	Robert John Alexander Lewis	Read	LCpl	DTDF – Guard	Lance Corporal	
Girling	Matthew	Read	Marine	DTDF – Guard	Corporal	
Gledhill	Paul	Read	SSgt	RMP – SIB	Not Known	
Godfrey	Amyas	Read	Capt	Brigade HQ	Not Known	
Graham	Carlos	Read	Pte	1PWRR – Northern Contact	Not Known	
Grant	John Alexander	Called	Sgt	RMP – SIB	WO2	
Gray	Adam Justin	Called	Cpl	CAN – HQ	Corporal	Still serving
Green	Jonathan James	Called	Cpl	1PWRR – Northern Contact	Corporal	
Green	James	Called	Cpl	DTDF – Guard	Corporal	
Griffiths	Adam William Ace	Called	Major	A&SH – Rover Group	Colonel	Still serving
Griffiths	Toby	Called	LCpl	CAN – Medical	Sergeant	Still serving
Grimley	Joseph	Called	Fusilier	JFIT – Guard	Lance Corporal	Still serving
Grist	Liam	Called	Pte	CAN – Other	Private	
Gutcher	David James	Called	SSgt	CAN – Guard	WO2	
Hannigan	John	Read	LCpl	CAN – RMP	Lance Corporal	
Hanson	Andrew George	Read	LCpl	HCR – Southern Contact	Not Known	RMP stmt only
Harris	John	Read	Pte	CAN – Other	Not Known	
Harrower	Richard Steven	Read	LCpl	A&SH – Rover Group	Corporal	Still serving
Hartley	James	Read	LCpl	CAN – Other	Not Known	Still serving
Hartnell	Joseph Dominic	Called	Pte	1PWRR – Northern Contact	Private	
Hayes	Mark David	Read	SSgt	DTDF – Guard	WO2	
Henderson	Stuart Alexander	Called	Sgt	A&SH/1PWRR – Southern Contact	Sergeant	
Henderson	Kristopher	Called	Pte	A&SH/1PWRR – Southern Contact	Lance Corporal	
Hetherington	Steven	Called	Cfn	CAN – Guard	Craftsman	

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Hicks	Robin	Read	Lt	CAN – Other	Captain	Still serving
Higgins	James	Called	LCpl	JFIT – Guard	Corporal	Still serving
Higson	Gordon Alexander	Called	LCpl	CAN – RMP	Corporal	
Hill	Dennis Adrian	Read	Sgt	CAN – Guard	WO2	
Hills	Kenny John	Read	Pte	1PWRR – Northern Contact	Private	
Hilton	James	Read	Capt	DTDF – Guard	Captain	
Hoare	Andrew Thomas	Read	Pte	1PWRR – Northern Contact	Private	
Hobbs	Richard Charles	Called	Pte	A&SH/1PWRR – Southern Contact	Not Known	
Hole	John	Read	WO2	CAN – Other	Captain	
Holland	Kawesi Omatall	Read	Pte	1PWRR – Northern Contact	Private	
Hollingsworth	Richard	Read	Cfn	CAN – Guard	Craftsman	
Hoolin	Scott Nigel	Called	Pte	1PWRR – Northern Contact	Lance Corporal	
Hopkins	Jason	Read	LCpl	CAN – Other	Sergeant	
Horton	Mark	Called	Cpl	CAN – Other	Sergeant	Still serving
Hughes	Dave	Read	SSgt	CAN – Guard	WO2	
Hughes	Ronnie	Called	Cpl	JFIT – Guard	Colour Sergeant	
Hughes	Andrew	Read	Sgt	DTDF – Medical	Sergeant	
Hussey	Jonathan	Read	Marine	JFIT – Guard	Marine	
Hutchings	Simon	Called	Major	HQ – 1 Mech	Not Known	Still serving
Hutchison	Raymond	Called	Fusilier	JFIT – Guard	Fusilier	
Hutton	Thomas	Read	Fusilier	JFIT – Guard	Fusilier	
Imrie	David	Read	LCpl	JFIT – Guard	Corporal	Still serving
Jackson	Campbell	Read	Fusilier	JFIT – Guard	Fusilier	
Jacobs	Peter Llewellyn	Called	Pte	CAN – Guard	Private	
Jamieson	Helen	Read	Pte	CAN – Medical	Corporal	
Jamieson	Scott	Read	LMA	DTDF – Medical	Lieutenant	Still serving
Johnson	John	Called	Sgt	DTDF – Guard	Sergeant	
Johnston	Michael	Called	Cfn	CAN – Guard	Lance Corporal	
Johnston	James	Read	Lt Col	HQ – 1 Mech	Colonel	Still serving
Johnstone	Brian Alexander	Read	Pte	A&SH – Rover Group	Lance Corporal	
Jones	Lee Stephen	Read	Tpr	QRL – North Battle	Lance Corporal	

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Jones	Tudor	Read	Cpl	CAN – Guard	Corporal	
Kacunisawana	Stanley Makutu	Read	Pte	1PWRR – Northern Contact	Private	Still serving
Kavanagh	Paul	Called	Marine	DTDF – Guard	Marine	
Keegan	Mark Ian	Called	LCpl	A&SH/1PWRR – Southern Contact	Lance Corporal	
Kelly	Paul Joseph	Called	Sgt	A&SH/1PWRR – Southern Contact	Sergeant	
Kelly	Paul	Read	WO2	CAN – Other	WO2	Still serving
Kendall	Marc Thomas	Called	Pte	CAN – Guard	Private	
Kendall	Jason Richard	Called	Sgt	RMP – SIB	Not Known	
Kennett	Andrew	Called	Brig	HQ – 1 Mech	Maj General	
Kerr	Samuel Jonathan	Read	Pte	CAN – Other	WO2	
Kew	Darrel George William	Read	Pte	1PWRR – Northern Contact	Private	
King	Graham	Called	C/Sgt	1PWRR – Northern Contact	Col	
King	Julian James	Called	Sgt	CAN – Other	WO1	Still serving
Kirby	Justin	Read	Sgt	DTDF – Guard	WO2	Still serving
Korovou	Alipate	Called	Pte	1PWRR – Northern Contact	Lance Corporal	Still serving
Kozar	Billy	Read	Cpl	A&SH – Rover Group	WO2	Still serving
Laird	Paul William	Called	LCpl	1PWRR – Northern Contact	Corporal	Still serving
Lalablavu	Glanville	Read	Cpl	1PWRR – Northern Contact	Corporal	Still serving
Lane	Martin Stuart	Called	SSgt	CAN – Guard	WO2	
Lansberry	Stewart	Read	LCpl	CAN – Other	Sergeant	Still serving
Lawrence	james Alex	Called	Pte	A&SH/1PWRR – Southern Contact	Not Known	
Lee	Derek	Read	CSgt	CAN – Other	Colour Sergeant	Still serving
Lewis	Maxian	Read	Pte	1PWRR – Northern Contact	Corporal	Still serving
Lewis	David (Aled)	Called	LCpl	CAN – Other	Corporal	
Lumley	Gavin Anthony	Read	Pte	1PWRR – Northern Contact	Not Known	Still serving

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
MacDonald	Jeffrey	Called	Cpl	CAN – Other	Corporal	
MacIntosh	Alistair D	Read	LCpl	JFIT – Guard	Corporal	Still serving
Maer	Matthew Philip	Called	Lt Col	Brigade HQ	Brigadier	
Mains	Garry	Called	Cfn	CAN – Other	Craftsman	
Mair	Kenneth	Read	MA	DTDF – Medical	Leading Naval Nurse	Still serving
Marks	Jason	Called	LCpl	CAN – Guard	Sergeant	Still serving
Marney	Sean Lee	Called	Pte	A&SH/1PWRR – Southern Contact	Not Known	
Marshall	Daniel David	Called	Sgt	CAN – Guard	Staff Seargent	
Martin	Paul	Read	Tpr	QRL – North Battle	Corporal	Still serving
Martin	Andrew	Read	Cpl	CAN – Guard	Corporal	Still serving
McAll	Alan John	Read	Sgt	DTDF – Guard	Sergeant	
McAllister	Joe	Read	Pte	CAN – Other	Not Known	
McAuley	Ronald	Read	Capt	CAN – Other	Captain	
McBride	Thomas	Read	Cpl	DTDF – Medical	Sergeant	
McCann	Robert	Read	Fusilier	JFIT – Guard	Fusilier	
McClelland	Andrew	Read	Pte	CAN – Other	Private	
McClure	Allan	Called	Fusilier	JFIT – Guard	Fusilier	
McConnell (was Thomson)	Lorna	Called	Sgt	RMP – SIB	Flt Sergeant	Still serving
McDonald	Alan Harry	Read	Pte	A&SH/1PWRR – Southern Contact	Lance Corporal	
McDonald	Michael Rory	Called	Capt	CAN – Other	Captain	Still serving
McEvoy	Philip Dermot	Read	Brig	UK HQ	Not Known	
McFarland	Paul	Read	Pte	CAN – Medical	Lance Corporal	
McGuire	David	Called	Fusilier	JFIT – Guard	Corporal	
McIndoe	Stuart Richard	Called	Sgt	JFIT – Guard	WO2	
McKee	Samuel	Called	Sgt	CAN – Guard	Sergeant	
McKee	Ilsa	Read	Pte	CAN – Medical	Lance Corporal	
McKenna	Anthony	Called	Cpl	CAN – RMP	Corporal	Still serving
McKenzie	Ricardo Cavell	Read	LCpl	CAN – Other	Not Known	
McKinnon	Ross	Read	Fusilier	DTDF – Guard	Not Known	Still serving
McKnight	Sean	Called	Fusilier	JFIT – Guard	Corporal	Still serving
McLaren	Stuart	Read	Capt	DTDF – Guard	Captain	
McLean	Alan	Read	Sgt	RMP – SIB	Sergeant	
McLeish	William Robert	Called	Cpl	CAN – Medical	Staff	Still serving
McMeeken	Craig William	Read	Pte	A&SH – Rover Group	Corporal	Still serving

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
McNab	John Joseph	Read	CSgt	A&SH – Rover Group	Col	
Mepsted	Raymond John	Called	Sgt	DTDF – Guard	Lance Corporal	Still serving
Middleton	Darren J	Read	Marine	DTDF – Guard	Marine	
Mihell	Bradley James	Read	Pte	1PWRR – Northern Contact	Private	
Miles (neè Ashton)	Stacey Anne	Read	LCpl	CAN – Medical	Sergeant	
Miller	Andrew	Read	LCpl	CAN – Other	Sergeant	Still serving
Millerick	Frank	Read	LCpl	CAN – Other	Not Known	Still serving
Millward	Tom	Called	2nd Lt	CAN – Guard	Captain	
Mitchell	Russell	Called	Cpl	DTDF – Arrival	Sergeant	
Moger	Graham John	Called	WO2	CAN – Medical	RSM	Still serving
Montgomery	Robert Stuart	Read	2nd Lt	DTDF – Guard	Captain	Still serving
Mordawski	Jan	Read	Sgt	CAN – Other	Sergeant	
Morris	Matthew David	Called	LCpl	CAN – Guard	Corporal	
Morton	Richard David	Read	Pte	CAN – Other	Corporal	Still serving
Muir	Christopher	Read	Sgt	CAN – Other	Not Known	
Muir/French	Philip Lee	Called	LCpl	1PWRR – Northern Contact	Sergeant	Still serving
Musgrave	Richard Anthony	Called	Sgt	HCR – Southern Contact	Sgt	
Myatt	Francis Eric	Called	Capt	CAN – Other	Major	
Mynors	Harry	Read	Capt	HQ – 1 Mech	Lt Colonel	Still serving
Nayasi	Osea	Called	Pte	1PWRR – Northern Contact	Corporal	Still serving
Neil	Malcolm	Called	Cpl	JFIT – Guard	Colour Sergeant	Still serving
Neville	Phillip David	Read	WO2	RMP – SIB	Captain	
Nevitt	Nigel	Read	Sgt	RMP – SIB	Not Known	Still serving
Newman	Darren James	Called	LCpl	CAN – Other	Corporal	
Newton	Mark	Read	Cpl	QRL – North Battle	Corporal	
Nicholls	Andrew	Called	Cpl	CAN – Guard	Staff Sergeant	Still serving
Nicol	Brian Alexander	Called	Cpl	A&SH/1PWRR – Southern Contact	Col Sergeant	Still serving
Nield	Shaun	Read	Capt	CAN – Other	Lt Colonel	Still serving
Nordon	Jill	Read	Capt	CAN – Medical	Captain	
Orr	Darren	Read	Sgt	DTDF – Guard	Staff	
Osborne	John	Read	Capt	HQ – 1 Mech	Major	Still serving

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Otton	David James	Called	Pte	CAN – Medical	Corporal	Still serving
Page	Ian Keith	Read	Sgt	1PWRR – Northern Contact	WO2	Still serving
Palmer	Kristopher	Called	LCpl	CAN – Other	Sergeant	Still serving
Parker	David	Read	Fusilier	JFIT – Guard	Fusilier	
Parkinson	Charles	Read	Major	CAN – Other	Lt Colonel	
Parrott	David Shaun	Called	WO2	DTDF – Arrival	WO2	Still serving
Pashley	Judith	Read	Capt	CAN – Medical	Major	Still serving
Passmore	William James	Called	Lt	A&SH/1PWRR – Southern Contact	Major	
Paterson	Paul	Called	Sgt	RMP – SIB	Not Known	Still serving
Pathak	Gora	Called	Wg Cdr	DTDF – Medical	Wing Commander	Still serving
Patrick	Karl	Read	Sgt	HCR – Southern Contact	Sergeant	
Patrick	Adrian	Read	Capt	HQ – 1 Mech	Not Known	Still serving
Pears	Gareth	Read	Pte	CAN – Other	Private	
Pedersen	Hans	Read	Pte	1PWRR – Northern Contact	Lance Corporal	Still serving
Penrose	John Edward	Called	Cpl	CAN – Medical	Corporal	Still serving
Percival	Steven	Read	Pte	CAN – Other	Private	
Perfect	David Anthony Harrington	Called	Sgt	1PWRR – Northern Contact	Col Sergeant	Still serving
Peskett	John	Read	LCpl	CAN – Guard	Lance Corporal	
Philips	Russell	Called	Sgt	RMP – SIB	Not Known	
Pickering	David	Read	Major	UK HQ	Not Known	
Pickup (now Davis)	Bronwyn	Called	LCpl	DTDF – Arrival	Not Known	Still serving
Plenge	Benjamin Udo	Called	Lt	1PWRR – Northern Contact	Captain	
Pollard	Alvin	Read	Marine	DTDF – Guard	Corporal	Still serving
Poole	David John	Called	LCpl	DTDF – Arrival	Lance Corporal	
Porteous	Ewan	Called	LCpl	CAN – RMP	Not Known	
Potter	Keith	Called	WO1	CAN – Other	WO2	Still serving
Power	Sean	Read	Marine	DTDF – Guard	Marine	
Precious	Angus	Read	2nd Lt	DTDF – Guard	Major	Still serving
Preston	Amy Louise	Called	Pte	CAN – Medical	Not Known	Still serving
Pritchard	Carl Michael	Called	Pte	1PWRR – Northern Contact	Private	

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Pryme	Greg	Read	Sgt	DTDF – Guard	Sergeant	
Purnell	Sally Naomi	Called	Major	HQ – 1 Mech	Lt Colonel	
Qarau	Malakai Tabualawa	Read	Fusilier	DTDF – Guard	Fusilier	Still serving
Radrodro	Ismeli	Read	Pte	1PWRR – Northern Contact	Not Known	Still serving
Rafferty	James	Read	Fusilier	DTDF – Medical	Lance Corporal	Still serving
Randall	James	Read	Sgt	CAN – Guard	Sergeant	
Rands	James Edward	Called	Capt	CAN – Other	Major	Still serving
Rankin	William	Called	LCpl	A&SH/1PWRR – Southern Contact	Sergeant	Still serving
Ratawake	Navitalai	Called	Pte	1PWRR – Northern Contact	Lance Corporal	
Ratunaceva	Sevanaia	Called	Fusilier	JFIT – Guard	Corporal	Still serving
Raynsford	Robert George	Read	Cpl	1PWRR – Northern Contact	Colour Sergeant	Still serving
Reid	Barrie	Called	Pte	A&SH/1PWRR – Southern Contact	Corporal	
Reynolds	Darran	Read	Pte	1PWRR – Northern Contact	Private	
Richards (Stewart)	Nicola Clair	Called	Sgt	RMP – SIB	Not Known	Still serving
Richmond	David	Called	Major	DTDF – Arrival	Colonel	
Riddock	Stewart	Read	CSgt	CAN – Other	WO2	
Rider	Mark Lawrence	Called	Cpl	CAN – Other	Corporal	Still serving
Rides	Damon Matthew	Called	LCpl	1PWRR – Northern Contact	Lance Corporal	
Ridley	Adam	Read	Cpl	CAN – RMP	Staff Sergeant	Still serving
Roan	Alan	Read	Major	CAN – Other	Not Known	
Roberts	Shane	Called	WO2	CAN – Other	WO1	
Roberts	Laura Jayne	Read	LCpl	DTDF – Guard	Corporal	Still serving
Robertson	Andrew	Called	Fusilier	JFIT – Guard	Lance Corporal	
Robinson	Simon David	Called	LCpl	CAN – Medical	Lance Corporal	Still serving
Robinson	Daniel	Read	Cpl	CAN – Other	Corporal	
Royston	Claire Lizabeth	Called	Capt	CAN – Medical	Major	Still serving
Rushforth	Anthony Miles	Called	Pte	1PWRR – Northern Contact	Sergeant	

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Rutter	Wayne	Read	Pte	CAN – Medical	Not Known	
Ryan	Keith	Called	Cpl	CAN – RMP	Corporal	Still serving
Sandry (now Faithfull-Davies)	Elizabeth	Read	Capt	CAN – HQ	Major	Still serving
Schwar	Robert Anthony	Called	Pte	A&SH/1PWRR – Southern Contact	Not Known	
Scott	Carl William Joseph	Read	Tpr	HCR – Southern Contact	Trooper	
Scott	Marcus Neil	Read	LCpl	1PWRR – Northern Contact	Lance Corporal	Still serving
Scott	Justin	Read	Pte	CAN – HQ	Not Known	
Scott	Derek	Called	Fusilier	JFIT – Guard	Fusilier	
Scott	James	Read	Major	HQ – 1 Mech	Not Known	Still serving
Scrase	Morgan	Read	Sgt	CAN – Other	Colour Sergeant	
Sharplin	Ivan William	Called	Sgt	DTDF – Guard	Sergeant	
Shaw	James Christopher	Read	Tpr	HCR – Southern Contact	Trooper	
Shotton	Malcolm Peter	Called	Cpl	CAN – Medical	Not Known	
Sibthorpe	Wayne John	Read	QSMI	CAN – HQ	WO1	Still serving
Sikitanaivalu	Poate Uculoa Mata	Read	Pte	1PWRR – Northern Contact	Lance Corporal	Still serving
Simpson	Nicholas	Read	Major	HQ – 1 Mech	Colonel	Still serving
Sivieri	Stuart Roger	Read	Cpl	UK HQ	Not Known?	Still serving
Skinner	Simon Roy	Called	LCpl	1PWRR – Northern Contact	Lance Corporal	
Smith	John	Called	Pte	A&SH/1PWRR – Southern Contact	Corporal	Still serving
Smith	Wayne	Read	Tpr	QRL – North Battle	Not Known	
Smith	Christopher	Read	Tpr	CAN – Other	Lance Corporal	
Smith	Matthew	Read	CSgt	CAN – Other	Lance Corporal	
Smith	Darren	Read	MA	DTDF - Medical	Sergeant	
Smith	Graham David	Read	Capt	RMP - SIB	Not Known?	
Smullen (now Henderson)	James Stewart	Read	Pte	A&SH/1PWRR – Southern Contact	Lance Corporal	Still serving
Southerton	Andrew John	Called	Sgt	RMP – SIB	Not Known	Still serving
Spoor	Timothy	Read	Capt	DTDF – Other	Not Known	

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Stammers	Kris	Called	Cpl	1PWRR – Northern Contact	Corporal	
Stenning	Ian	Read	Lt Col	UK HQ	Not Known	
Stoddart	Robert	Called	Cpl	CAN – Other	Corporal	
Stone	Adam	Read	Marine	DTDF – Guard	Corporal	
Strathern	Brien	Called	Fusilier	JFIT – Guard	Lance Corporal	
Strong	David John	Read	Capt	QRL – North Battle	Major	Still serving
Suchet	Robert	Read	Capt	DTDF – Guard	Flag Lieutenant	
Sugden	Mark Leon	Called	Pte	CAN – Medical	Corporal	
Sullivan	Shaun Joseph	Called	Pte	1PWRR – Northern Contact	Private	
Sullivan	Iain	Read	Pte	CAN – Other	Not Known	Still serving
Sutton	Benjamin	Read	Tpr	CAN – Other	Not Known	
Sweny	Dominic	Read	Capt	CAN – HQ	Major	Still serving
Tagica	Jokatana	Called	Cpl	1PWRR – Northern Contact	Col Sergeant	Still serving
Tait	Steven	Called	Sgt	CAN – RMP	Not Known	
Tamani	Sakinsa Lagilagi	Called	Pte	1PWRR – Northern Contact	Private	
Tatawaqa	Maciou Ronaldo	Called	Pte	1PWRR – Northern Contact	Lance Corporal	
Taylor	Stuart William Stephen	Read	Pte	1PWRR – Northern Contact	Private	
Taylor	Michael Thomas	Called	Cpl	CAN – Guard	Corporal	
Taylor	Darron James	Read	Pte	CAN – Medical	Private	
Taylor	David	Read	Lt	DTDF – Guard	Captain	
Tennent	Geoffrey Andrew	Read	Sgt	HCR – Southern Contact	WO2	
Terry	Paul	Called	Sgt	RMP – SIB	WO1	
Thom	Tristan	Read	Sgt	CAN – Other	Staff Sergeant	Still serving
Thom	Francis G	Called	Fusilier	JFIT – Guard	Lance Corporal	
Thomas	David Gwyn	Called	LCpl	CAN – Medical	Sergeant	
Thompson	Ian	Read	Sgt	CAN – Medical	Sergeant	
Thomsett	Simon	Read	Major	CAN – HQ	Lt Colonel	Still serving
Tiqatabua	Jone	Read	Pte	JFIT – Guard	Corporal	Still serving
Todd	Donald	Read	LCpl	CAN – Other	Corporal	Still serving

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Tokaiqali	Anare	Called	Pte	DTDF – Arrival	Lance Corporal	
Tomlin	David	Read	Sgt	CAN – Other	WO2	Still serving
Tongue	Andrew Neil	Called	LCpl	CAN – Guard	Sergeant	Still serving
Tough	Wayne	Called	Cpl	DTDF – Guard	Corporal	
Tucker	David Barry	Read	Sgt	HCR – Southern Contact	Sergeant	Still serving
Tully	John	Read	Sgt	CAN – Medical	Sergeant	
Turagavou	Louiewai	Read	LCpl	CAN – Other	Sergeant	
Turner	Matthew	Read	Cfn	CAN – Guard	Cfn	
Turner	Richard	Read	Marine	DTDF – Guard	Marine	
Turner	John Edmond Patrick	Called	Capt	CAN – Medical	Major	Still serving
Tyler	James	Read	Cpl	DTDF – Guard	Colour Sergeant	
Vakaloloma	Mikaele	Read	LCpl	DTDF – Guard	Corporal	Still serving
Vere-Whiting	Charles	Called	Major	CAN – HQ	Lt Colonel	
Vince	Christopher Simon	Called	Cpl	CAN – Guard	Sergeant	Still serving
Vuetanatotoka	Rusiate	Read	LCpl	CAN – Other	Lance Corporal	
Wakefield	David	Read	Lt Col	HQ – 1 Mech	Not Known	Still serving
Walch	Richard Toby	Called	Major	CAN – Other	Lt Colonel	Still serving
Wallace	Adrian	Read	Pte	CAN – Other	Not Known	Still serving
Wallace	Jonathan	Read	Cfn	CAN – Other	Not Known	
Walmsley	Nicholas	Read	Sgt	DTDF – Guard	Colour	Still serving
Walsh	Mark Steven	Called	LCpl	CAN – Medical	Lance Corporal	
Walsh-Evans	Leslie	Called	Cpl	CAN – Medical	Corporal	
Walters	Paul	Read	Capt	CAN – Other	Not Known	Still serving
Webb	Irving	Called	Sgt	RMP – SIB	WO2	Still serving
Wells	Robert	Read	Capt	CAN – Other	Major	Still serving
Wells	Steven	Called	Pte	A&SH/1PWRR – Southern Contact	Lance Corporal	
Westerman	Richard	Called	Surg Lt	DTDF – Medical	Surgeon Lieutenant Commander	
Westwood	Richard	Read	Cpl	DTDF – Guard	Not Known	Still serving
Whyte	Shaun Alexander	Called	RSM	CAN – Other	WO1	Still serving
Wildgoose	Shaun Evan Boyne	Called	Cpl	CAN – Other	Corporal	Still serving
Wilkinson	Daniel James	Read	LCpl	QRL – North Battle	Corporal	Still serving

Surname	First name(s)	Called/ Read	Rank 2004	Role 2004	Rank Final	Note
Williams	John Paul Steven	Read	Pte	1PWRR – Northern Contact	Sergeant	Still serving
Williams	Frank	Read	Sgt	CAN – Other	Sergeant	Still serving
Williams	Gary	Read	Cpl	CAN – Other	Sergeant	
Williamson	Kirk Alexander	Called	LCpl	CAN – Other	Lance Corporal	
Wilson	Colin Stewart	Called	CSgt	A&SH – Rover Group	Col Sergeant	
Wilson	John	Read	Cpl	CAN – Medical	Corporal	
Wilson	William	Called	Pte	CAN – Medical	Corporal	Still serving
Wilson	Gareth	Called	LCpl	CAN – EOD	Staff Sergeant	
Wilson	Jamie Allan	Read	Cpl	CAN – RMP	Corporal	
Wilson	Mark Andrew	Called	Cpl	DTDF – Arrival	Sergeant	
Winfield	David Brian Thomas	Called	Major	DTDF – Arrival	Major	
Wood	Brian	Called	Cpl	1PWRR – Northern Contact	Colour Sergeant	
Wright	Kevin	Called	LCpl	1PWRR – Northern Contact	Lance Corporal	
Wyper	John William	Read	Cpl	DTDF – Guard	Colour Sergeant	Still serving
Yates	Christopher	Read	Lt	CAN – Other	Captain	
Zoumides	John	Called	Pte	CAN – Medi	Lance Corporal	

Iraqi Witnesses

Official Name	Variation 1	Variation 2	Variation 3	Witness No	Detainee No	Called/Read
Hamzah Joudah Faraj ALMALJE	Hamza Juda Faraj Lafta Al-Maalikey	Hamza Jawda Faraj Dirjaal	Hamzah Joudah Faraj Berchal Khudair Almalki	10	772	Called
Mahdi Jasim Abdullah AL-BEHADILI	Mahdi Jassim Abdullah	Mahdi Jasim Abdallah Husein Qntar Albahati	Mahdi Jasim Abdullah Al-Behadil	8	773	Called
Ibrahim Gattan Hasan AL-ISMAEELI	Ibrahim Kattan Hassan	Ibrahim Kedhan Hassan		11	774	Called
Kadhim Abbas Lafta AL-BEHADILI	Kazem Abbas Lefta			14	775	Called
Abbas Abd Ali Abdulridha AL-HAMEEDAWI	Abbas Al Riddah	Abbas Abed Ali Abed Al-Rida		13	776	Called
Ahmed Jabbar Hammood AL-FURAIJI	Ahmed Jabbar Ahmood	Ahmed Jabbar Hamoud Al-Furaiji		9	777	Called
Hussein Fadhil Abbas AL-BEHADILI	Hussain Fadhil Abass	Hussein Fadel Abbas		4	778	Called
Atiyah Sayyid Abdulridha AL-BAIDHANI	Atiya Sayid Abdul-Ridha	Atiya Sayid Abdulreza Baydani		5	779	Called
Hussein Gubari Ali AL-LAMI	Hussein Jabbari Ali	Hussein Jebari		7	780	Called
Dr Jafar NASSER	Jaafar Naser El Bhadly	Jafer Nasser Bahadli		82		Called
Hatem Abud Abed HASSAN	Hatem Abod Abd Hasan			92		Called
Mahud Jihaijeh Dawood AL-MOZANI				60		Called
Assad Mozan Khalait AL-KAABI	Assad Mozan			78		Called
Miz'al Karim Ashoor AL-SUWAI'DI	Wisam Michael Kareem Al-Sweady	Wisam Mishaal Kareem Al-Swaiedi		183		Called
Khuder Karim Ashour AL-SWEADY	Khuder Al Sweady			1		Called
Ali Ati Raheemah AL-MOZANI				119		Called
Jasem Khalloofi Khreibet Al Alyawi AL-JAMINDARI				19		Called
Taghreed Abdel-Wahe AL-BAHADLI	Taghreed Abdel Wahed Salman Al-Bahadli			21		Called

Official Name	Variation 1	Variation 2	Variation 3	Witness No	Detainee No	Called/ Read
Hatar Moutashar Zeidan Shamekhy AL-LAMI				17		Called
Adil Khaz'al Jabratallah AL-HELFI	Khaz'al Jabratallah Khalaf (Mulla Al-Helfi)	Adil Khazaal Jbratallah Al-Hilfi		141		Called
Kahz'al Jabratallah Khalad Mulla AL-HELFI				15		Called
Karem Yaseen Laheet Sneshsee AL-MOZANI				51		Called
Ahmed Mshatat KAZEM				49		Called
Bareq Mohammed Hussein AL-KHALIFA	Bareq Muhammed Hussain			245		Called
Yousef Ouda Baday AL-BALTANI	Yousef Ouda Baday			41		Called
Tahseen Ali Hatem AL-MOZANI				172		Called
Kamil Mowat Mohammed AL-MOZANI	Kamel Mawat Muhammad Ghudheib Al-Mozani			30		Called
Razzaq Azeez Maabad AL-AMSHANI	Rashak AL-AMSHANI			199		Called
Jabra Abdulah MOHSIN				174		Called
Al'a Hassoun Kahyoush Shazar AL-GRAWI				37		Called
Riyadh Abdulzahra Ati AL-MOZANI				197		Called
Zahra Resan MUHSIN	Zahra Al-Mousawi			52		Called
Saad Radhi Khafeef AL-KEEMY				33		Called
Qassim Ghelan Neema Sahn AL-MAJIDI				182		Called
Ahmed Abbas Makhfe AL-FARTOOSI	Ahmed Abbas Khafi			91		Called
Khalid Tayyeh Abdulhassan AL-ARJAWEE				169		Called

Official Name	Variation 1	Variation 2	Variation 3	Witness No	Detainee No	Called/ Read
Nasser Ali Husain AL-DOUGHAAN				77		Called
Ali Jaseeb Ghazi AL-MUHAMMADAWI	Hussain Jaseeb Ghazi Al Muhammadawi			65		Called
Sabrah Maryoosh HUSSEIN				28		Called
Bushra Sakher KATHEM	Bushra Saker Kathem Al-Amshani	Bushra Saker Katheem		26		Called
Abdul Wahed Salman Hafeth Jaber ALWUHAILI(Abu Imad FARTOOSI)				129		Called
Wisam Mishaal Kareem AL-SWEADY	Wisam Michael Kareem Al-Sweady			183		Called
Mohammed Majid Mohammed Salih AL-JAFAR				134		Called
Salim Adday Mohaisen AL-BAIDHANI	Salem Oday M'heisen			157		Called
Ali Dawas				166		Called
Abbas Jawad Atiyah AL-SAEDI				102		Called
Ali Abed EITHEYIB	Ali Abd Etheib Al-W'heili	Abu Salwan		79		Called
Aqueel Abdul Abbas JAMOL	Aqeel Abdul-Abbas Zamool			93		Called
Adnan Mashwal Msaed AL-FARTOOSI				138		Called
Luay Mohammed Zayir AL-NOORI	Louay Hashimy	Louay Mohammed Zair		108		Called
Adel Rahim Othair AL-ATABI				175		Called
Majid Ali Hussain AL-MULLA	Majid Ali Hussein			167		Called
Dr Adel Saleh Majeed AL-SHAWI	Adel Salih Majeed Al-Shawi	Adel Saleh Majeed Al-Shawy	Abdel Shawi	81		Called
Oudah Reshak Zora AL-ELAYAWI	Ouda Rishak Zoral Al Eleiwi			101		Called
Mohanad Abdadallah Obaid Khalifa AL-IBADI				100		Called
Asema Mijbas Saleh AL-SWEADY				3		Read

Official Name	Variation 1	Variation 2	Variation 3	Witness No	Detainee No	Called/ Read
Jum'a A'gla Albatbouti AL-MOZAN				23		Read
Khmeisa Jabbar Ne'meh AL-MAJIDI				44		Read
Najei Radhi Kahyoush Shazar AL-GRAWI	Naji Radhi Kahyoush Shazar Al-Grawi			39		Read
Bilal Rasem Jabbar Al-Ruhaima AL-EBADI				71		Read
Fatima Na'eem Kareem AL-METSHDAWI				66		Read
Mohammed Jubyir Swayid AL-SHUWAILI				64		Read
Samira Ghazi Al-Muhammadowi AL-KHALIFA				48		Read
Abdelzahra Atti				55		Read
Hayder Faisal Manea AL-SALWAN				144		Read
Hazem Kareem JASEM				128		Read
Mohammed Shnaishel HUSSEIN				196		Read
Nairooz Eesee Balbool AL- CHNANI				156		Read
Salman Oudah Zghair AL- MOHAMEDDAWI				246		Read
Hatem Lazim Mutlaq AL-BAHADILI				240		Read
Jabbar AL-SHUWAILI				242		Read
Abbas AL-BAIDHANI				71		Read
Maytham Lafta Jasim AL-FARTOOSI				80		Read
Husam Ghazi Mohson AL-MAGSOOSI				236		Read

Official Name	Variation 1	Variation 2	Variation 3	Witness No	Detainee No	Called/ Read
Mhaibes Hasan EESEE				161		Read
Chaseb Gheilan Ne'meh AL-MAJIDI				43		Read
Kareema Khmam Matar AL-LAMI				18		Read
Madeeha Balasem Jabr AL-SADDAWI				16		Read
Aziz Moa'bid Ali AL-AMSHANI				24		Read
Farha Jaaywel Saad MALIKI				68		Read
Kawthar Jebari Ali AL-LAMI				53		Read
Salim Malih Olewi AL-MALIKI				45		Read
Abdel Amir Ja'afer Sorwat AL-ASMA'AILI	Abdelameer Ja'far Sarout Al-Isma'ili			57		Read
Abdulimam Sultan Ali HUSSEIN				88		Read
Ghazi Talib Janjoon ALHGAM	Ghazi Talib Janjoon Alhajaam			145		Read
Chiali Salman Said AL-FARTOOSI				180		Read
Sami Ibrahim Bandar AL-LAMI	Sami Ibrahim			132		Read
Raham JABBOURI				235		Read
Alaa Dawood Alweiwi AL-MALKI				67		Read
Ali Kadhim Qwita AL-BANDA				165		Read
Sabeeh Chekhyor Hezam AL-DUBAISI				231		Read
Kathim Abdul-Hussein Hashim AL-JEEZANI				138		Read
Basheer Taumie Challob AL-HAMEEDAWI				188		Read
Hameed Amwns TUAMA				124		Read
Khairi AL-GAWWAM						Read
C001						Called
C002						Read

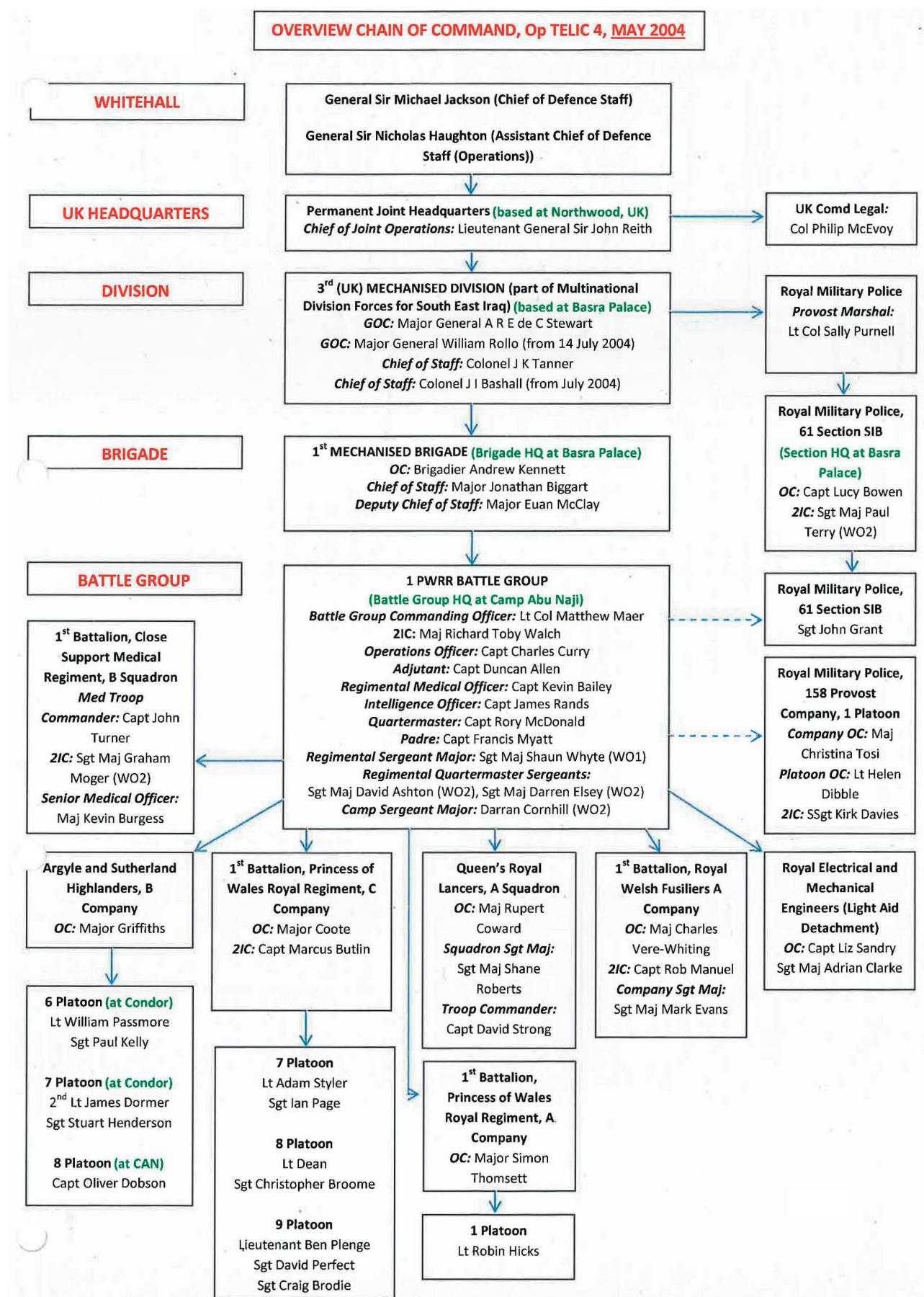
Appendix 3: Witness List

Official Name	Variation 1	Variation 2	Variation 3	Witness No	Detainee No	Called/Read
C003						Read
C004						Read
C005						Read
C006						Read
C007						Read
C008						Read

Miscellaneous Witnesses

Name	Role	Called/Read
P G Jerreat	Expert – Pathologist	Called
F A Tomei	Expert – Forensic Scientist – Firearms	Called
A P B Larkin	Expert – Forensic Scientist – Bloodstain	Called
C R Evans	Expert – Imagery Analysis	Called
Lisa Richardson	Legal – former solicitor at Public Interest Lawyers	Read
Rosalind Champion	Legal – former solicitor at Public Interest Lawyers	Read
Anna Crowther	Legal – Solicitor at Leigh Day	Read
Philip Shiner	Legal – Solicitor at Public Interest Lawyers	Read
Martyn Day	Legal – Solicitor at Leigh Day	Read
Sapna Malik	Legal – Solicitor at Leigh Day	Read
Shubbaa Srinivasan	Legal – Solicitor at Leigh Day	Read
Laila Alodaat	Former interpreter for Public Interest Lawyers	Read
Michael Moore	Analyst – Al Sweady Inquiry	Read
Benjamin Toby Sanders	Ministry of Defence	Read

Appendix 4: Operation Telic IV Chain Of Command



Appendix 5: List of Issues

List of Issues amended following the consideration of Representations from Core Participants 26 May 2010

Note added in respect of Part IV 17 September 2010

Issue I: The Battle of Danny Boy

The Battlefield

1. To identify the location, nature and duration of the battle.
2. To identify the military personnel involved, including their rank, name, date of birth, regiment and their locations on the battlefield.
3. To identify which British Army vehicles were involved, and their locations on the battlefield.
4. To identify which Iraqis were involved, their reasons for being in the vicinity of the Permanent Check Point on the afternoon of the 14th May 2004 and their locations on the battlefield.
5. To identify any weaponry seized from the battlefield by the British Army and whether subsequently any tests, and if so which, were performed on that weaponry and the results.
6. In relation to each Iraqi detained on 14th May 2004 were they (when put into vehicles):
 - a. Dead; or
 - b. Alive.

Dead Iraqis

7. In relation to each of the dead Iraqis whose body was collected from the battlefield by British soldiers on 14th May 2004, to identify:
 - a. His (or her) name and date of birth,
 - b. The time of death,
 - c. The place of death,
 - d. The manner and cause of death,
 - e. The name or description of the person who caused that death.
8. To resolve whether other Iraqis were killed on the battlefield but their bodies not collected from the battlefield by British soldiers. If so to state:
 - a. The number,
 - b. The names and dates of birth of each of them,
 - c. The time of death of each of them,

- d. The place of death of each of them,
- e. The manner and cause of death of each of them,
- f. The name or description of the person who caused each such death,
- g. What happened to each of their bodies.

The order to remove bodies from the battlefield

- 9. To identify any relevant order, policy, protocol, procedure or practice in relation to the removal of such bodies.
- 10. To establish by, how and to whom that order was disseminated.
- 11. To establish the purpose/rationale of the order.
- 12. To establish what, if any, consideration was given to taking photographs on the battlefield of the dead Iraqis.

The removal of dead Iraqis from the battlefield into vehicles

- 13. To establish what criteria were used to decide which bodies were to be removed and which were not.
- 14. To establish how the order to collect the dead and the criteria were relayed to the soldiers used to collect the dead.
- 15. To establish when, where and by whom each dead Iraqi was removed.
- 16. To identify which vehicles and personnel were involved in the transportation of the bodies.
- 17. To establish what injuries were observed at the time of removal into the vehicles in relation to each dead Iraqi removed from the battlefield.
- 18. To establish whether any further injuries were inflicted on the bodies during their transportation, and if so, the cause.

Live Iraqis

- 19. To establish how many live Iraqis were captured and detained on 14th May 2004 and their names and dates of birth.
- 20. To establish who (a) captured and (b) detained each live Iraqi.
- 21. To establish the full circumstances of the detention of each live Iraqi.
- 22. To establish in which vehicle or vehicles each live Iraqi was transported from the battlefield to Camp Abu Naji ("CAN") (in particular, how many Iraqis were in W21, W32 and WOC respectively).
- 23. To establish how each live Iraqi was treated
 - a. between being captured and the beginning of transportation to CAN; and

b. in the course of their transportation to CAN

and in particular to establish the identity of any Iraqis who died during transportation, the circumstances of any such death and the identity of any person or persons responsible.

- 24.** To establish whether, and if so when, any finger prints or DNA samples were taken from any live Iraqi captured and detained on 14th May 2004.

Issue II: At Camp Abu Naji: (i) arrival (ii) photographing, examination, certification and return of dead, and (iii) detention and treatment of living Iraqis

Arrival at Camp Abu Naji

- 25.** To establish where and at what time each live Iraqi arrived at CAN.
- 26.** To establish where and at what time each dead Iraqi arrived at CAN.

Photographing of the dead

- 27.** To establish whether there was there a relevant order, policy, protocol, procedure or practice in relation to the taking of photographs by Army personnel for Army purposes and, if so, its content.
- 28.** To establish the full circumstances and reasons that led to the taking of photographs of the deceased by the Army at CAN.
- 29.** To establish how those photographs of the deceased Iraqis were taken, processed, disseminated and stored (or, if no longer available, destroyed).
- 30.** To establish what other steps were taken or considered to aid identification of the deceased.
- 31.** To establish the name and personal details of each person shown in each of the 57 JPEG files that have been produced to the Inquiry.

Initial examination and certification of the dead

- 32.** To identify which medically qualified persons were present at CAN at the time of arrival of both live and dead Iraqis at CAN.
- 33.** To establish who examined each deceased Iraqi at CAN.
- 34.** To establish how, when and where each examination was carried out, and documented.
- 35.** To establish what injury or injuries each medically qualified person found on each deceased Iraqi.
- 36.** To establish whether death was certified and any provisional cause of death identified.
- 37.** To establish what document or documents were completed as a result of such examinations.

38. To establish what has become of those documents.

Return of the dead

39. To identify any regulations, relevant order, policy, protocol, procedure or practice of the British Army in relation to the return of non-coalition force dead bodies from combat zones.
40. To identify any procedure used by the Army for the return of the dead Iraqis to ensure the bodies were handed over appropriately.
41. To establish what guidance was given or sought over the issue of the handing over of the bodies.
42. To establish how the Army documented/recorded the handover of the deceased.
43. To establish the number of bodies of dead Iraqis which were returned on 15th May 2004.
44. To establish the name of each dead person returned on 15th May 2004.
45. To establish to whom each body was returned.
46. To establish where each body was subsequently taken.
47. To establish what subsequent examinations of the bodies of the deceased took place.
48. To establish what injury or injuries were found upon such examinations.
49. To establish what medical cause (or causes) of death were ascribed to each of the deceased and by whom.

Unlawful killing at Camp Abu Naji

50. To establish whether any live Iraqis captured in the course of the battle and detained at CAN died within the Facility. If so, to establish:
- The name and personal details of each such person;
 - The circumstances of the death of each such person (including the time and location of their death);
 - The identity of any person responsible for such death.

Cause of death

51. To establish, having regard to all of the evidence now available (including the photographic evidence), what was the medical cause (or causes) of death of each of the deceased Iraqis.

Detention and treatment of the living

52. To establish the physical condition of Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood on arrival at CAN and to identify which, if any of them, required medical treatment on arrival at CAN.
53. To establish what medical treatment they were in fact given, and by whom.

54. To identify who had custody of Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood throughout their stay at CAN.
55. To establish in what conditions Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood were kept whilst at CAN.
56. To establish how Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood were treated in the course of their questioning and generally whilst at CAN.
57. To establish whether any of Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood was mistreated in the course of their detention at CAN, and if they were, to identify who was responsible for that mistreatment.
58. To establish whether any of the so-called “conditioning techniques” was used in relation to Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood, and if so, who was responsible for their use.

Issue III: Detention and Treatment at the Shaibah Logistics Base

59. To establish the physical condition of Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood on arrival at Shaibah Logistics Base, and to identify which if any of them required medical treatment on arrival at Shaibah Logistics Base.
- 59A. To identify who had custody of Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood throughout their stay at Shaibah Logistics Base.
60. To establish what medical treatment they were in fact given, and by whom.
61. To establish the conditions in which Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood were kept whilst at Shaibah Logistics Base.
62. To establish how Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood were treated in the course of their questioning and generally whilst at Shaibah Logistics Base.
63. To establish whether any of Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood was mistreated in the course of their detention at Shaibah Logistics Base, and if so, who was responsible for that mistreatment.
64. To establish whether any of the so-called “conditioning techniques” was used in relation to Hussein Fadel Abass, Atiyah Sayid Abdelreza, Hussein Jabbari Ali, Mahdi Jassim Abdullah and Ahmad Jabbar Ahmood at Shaibah Logistics Base, and if so, who was responsible for their use.

Issue IV: The complaints of misconduct and the commencement of the RMP Investigation

The Inquiry's Terms of Reference do not require it to carry out a review of the investigations conducted by the Royal Military Police ("RMP") and the Inquiry has no present intention to do so. However, it has been suggested that the RMP was prevented from conducting a prompt, and full investigation, because it was known that such an investigation would uncover misconduct by soldiers. If that suggestion is supported by evidence, then it may suggest contemporaneous knowledge of misconduct by soldiers – a matter relevant to the Inquiry's Terms of Reference. Similarly, the timing of the complaints made by detainees may be relevant to determining their reliability. It is for reasons such as these that the following paragraphs have been included in the List of Issues. (Note added 17/09/10).

- 65.** To identify any relevant order, policy, protocol, procedure or practice in relation to the circumstances in which an investigation of a shooting incident should be commenced (and its content and effect).
- 66.** If there was such a policy, protocol, procedure or practice to establish whether or not it was followed.
- 67.** If it be the case that such a policy protocol, procedure or practice was not followed, to establish the reasons.
- 68.** To establish when the first complaints of misconduct were made, and by whom.
- 69.** To establish the content of those complaints.
- 70.** To identify to whom the complaints were addressed.
- 71.** To establish what action was taken on receipt of the complaints.
- 72.** To establish when the RMP commenced an investigation, and what was the purpose, and scope of that investigation at the point of its commencement.
- 73.** To discover what communications there were within the theatre of operations on 14 and 15 May 2004 and between the theatre of operations and the United Kingdom in relation to the events of 14 May 2004 and the allegations of unlawful killing, mutilation of bodies and mistreatment of detainees.
- 74.** To ascertain what contemporaneous documents should have been available for consideration during the course of any investigation, what documents have been made available and the explanation for any apparent shortcomings in the provision of documents.

Issue V: Recommendations

- 75.** To establish what recommendations are appropriate in light of the Inquiry's findings.

Jonathan Acton Davis QC

Jason Beer

Emma Gargitter

30th March 2010

26th May 2010

17th September 2010

Appendix 6: The Chairman's Key Rulings & Directions

1. Ruling regarding the terms of reference
2. Direction concerning the deceased who did not enter Camp Abu Naji
3. Ruling regarding James Lawrence E-mails
4. Ruling regarding the calling of military witnesses
5. Ruling on generic application for Protective Measures
6. Ruling on immunities following the 1st directions hearing
7. Ruling on legal issues relating to anonymity
8. Amended general restriction order (non-witnesses)
9. Note of guidance for general restriction order (witnesses)
10. Undertaking from the Lord Advocate 18 April 2011
11. Undertaking from the Director of Public Prosecutions for Northern Ireland dated 31 January 2011
12. Letter from the Attorney General's Office dated 18 January 2011
13. Letter from the Attorney General's Office dated 10 January 2011
14. Attorney General's Proposed Undertaking 10 November 2010

IN THE MATTER OF THE INQUIRIES ACT 2005

AND IN THE MATTER OF THE INQUIRY RULES 2006

THE AL SWEADY INQUIRY

RULING RE: TERMS OF REFERENCE

Introduction

1. Yesterday, on 11th March 2013, Leading Counsel for the Ministry of Defence (“the MoD”) made a submission to the effect that:
 - (1) The Inquiry is restricted by its terms of reference to investigating the *specific* allegations of ill-treatment made by the five claimants in the judicial review proceedings;
 - (2) Thus, the Inquiry may not investigate either (i) allegations of ill-treatment now made by the five claimants if they were not made in the judicial review proceedings or (ii) allegations of ill-treatment made by four men who were not claimants in the judicial review proceedings but who were captured, detained at CAN and then detained at the DTDF at the same time as the five men who were claimants in the judicial review proceedings, *unless* those allegations are relevant in either case to the specific allegations that were made by the five claimants in the judicial review proceedings;
 - (3) I should accordingly require the legal representatives of the Iraqi Core Participants (Public Interest Lawyers – “PIL”) to draw up a list of allegations that their clients make which they say should be investigated under the terms of reference (whether because they come directly within the terms of reference or because, although outside the terms of reference, they are relevant to matters that are within the terms of reference); that counsel to the inquiry should indicate which of those allegations they believe fall within the terms of reference and which allegations fall outside it but which are relevant to those allegations that fall within the terms of reference; the core participants can then indicate whether they agree or disagree with this approach; and in the event of disagreement, then I should rule on the issue.

2. Although the points are capable of being elided, it seems to me that there are two separate issues. The first is whether the Inquiry is restricted to investigating the *specific* allegations of ill-treatment made in the judicial review proceedings by the five claimants, or whether it is permitted to consider all of the allegations of ill-treatment that are now made by those five men. The second is whether the Inquiry is restricted to investigating the allegations of ill-treatment made by the five claimants, or whether it is permitted to consider the allegations of ill-treatment made by the four non-claimant detainees.

First issue

3. In my view the Inquiry is not restricted to investigating the *specific* allegations of ill-treatment made in the judicial review proceedings by the five claimants. Instead, I am permitted by my terms of reference to investigate and report on all of the allegations of ill-treatment that are now made by those five men.
4. There are three reasons for this.
5. The first is the terms of reference themselves. These require me “to investigate and report on the allegations made by the claimants in the judicial review proceedings against British soldiers of (1) unlawful killing at Camp Abu Naji on 14 and 15 May 2004, and (2) the ill-treatment of five Iraqi nationals detained at [CAN] and [the DTDF]” (my emphasis). Whilst the use of the definite article in the first part of these terms of reference (“the allegations”) might at first be thought to limit my investigation to only the specific allegations of ill-treatment made by the claimants in the judicial review proceedings, it is clear that is not so. This is because the terms of reference require me to investigate “the allegations...of...the ill-treatment of five Iraqi nationals”: these words require me to investigate the general allegation made by each of the claimants in the judicial review proceedings of the ill-treatment of five Iraqi nationals, not the specific way in which the general allegation of ill-treatment was put in the judicial review proceedings. In short, what I am required to investigate and report on are allegations that the five Iraqi nationals in the judicial review proceedings were ill-treated. Had the approach that the MoD now advocates been that which the Secretary of State for Defence wished, then no doubt he would have framed the terms of reference accordingly, perhaps along the lines of: “To investigate and report on whether five Iraqi nationals detained at [CAN] and [the DTDF] were ill-treated by British soldiers in the manner alleged by the Claimants in the judicial review proceedings”.

6. Second, in the judicial review proceedings the claimants *did* make general allegations of “abuse and mistreatment” at both CAN and the DTDF (see e.g. paragraphs 7(g) and 7(o) of the Amended Grounds) – even if the MoD was correct in its restrictive approach, then these generalised allegations fall to be investigated by me (and therefore permit, indeed require, an investigation of the specificity of the generalised allegations that is now given in the claimants’ Inquiry witness statements).
7. Third, if the MoD is correct in its proposed approach, then there would require to be detailed argument over the extent to which an allegation was or was not made by a claimant in the judicial review proceedings, the extent to which an allegation made by such a claimant is now the same as or different to the allegation that he made in the judicial review proceedings and / or whether it fell within the general allegations of “abuse and mistreatment”, and therefore the extent to which the allegation that he now makes is properly considered by me. So, for example, is an allegation now made by a claimant that he was hit on the right hand side of his face, whereas in the judicial review he alleged that he was hit on the left hand side of his face, an allegation that is within or outside my terms of reference? I would imagine that every sensible person would agree that the allegation being made was one of assault (a sub-category of ill-treatment), and therefore I am able to investigate and report on the allegation that the claimant now makes of being hit on the right hand side of his face (albeit, of course, the change in account *may* be relevant to an assessment of whether the allegation is made out).
8. For all of these reasons, I shall investigate and report on all of the allegations of ill-treatment made by those detainees that were claimants in the judicial review proceedings, whether they made such allegations at the time of the judicial review proceedings or subsequently.

Second Issue

9. It seems to me that there is a simple answer to the MoD’s apparent concern. That is that the four detainees who were not claimants in the judicial review were captured in the course of the same battle as those that were claimants, they were taken to CAN at the same time as those that were claimants, they were detained at CAN alongside those that were claimants, they were transferred to the DTDF with those that were claimants, were processed with those that were claimants, were detained and interrogated in the JFIT at the same time as those that were claimants, and were detained until September 2004 in the DTDF at the same as those that were claimants. In short, these 9 men were part of a group. In these circumstances, the evidence of the 4 non-claimants – *and* the allegations that they make – form part of the *res gestae* and are likely to be relevant to my consideration

of the allegations made by the 5 claimants in the judicial review proceedings. It is accordingly likely that not only will I hear their evidence about the events that they describe, including their own allegations of ill-treatment, but that I will find it necessary to report on those allegations as a necessary part of my duty to report on the allegations of ill-treatment made by the five detainees who were claimants in the judicial review proceedings. Certainly at this stage of the Inquiry (before any oral evidence from the Iraqi witnesses has been heard), and in the context of what is intended to be an entirely inquisitorial process, it would be entirely wrong for me to require the drawing of what amounts to an indictment and then to require the indictment to be severed so that some allegations of ill-treatment made by the 4 non-claimant detainees cannot be led in evidence.

Sir Thayne Forbes

12.3.13

IN THE MATTER OF THE INQUIRIES ACT 2005

AND IN THE MATTER OF THE INQUIRY RULES 2006

THE AL SWEADY INQUIRY

DIRECTIONS PURSUANT TO PARAGRAPHS 166 – 227 of COUNSEL TO THE
INQUIRY'S OPENING STATEMENT – EVIDENCE CONCERNING THOSE WHO DIED
BUT WHO DID NOT ENTER CAMP ABU NAJI ON 14-15 MAY 2004

1. The Inquiry, Core Participants and the Treasury Solicitor's Department shall hereafter work on the basis that the eight deceased Iraqis* died on the battlefield and their bodies were not taken to Camp Abu Naji.
2. Witnesses who give evidence in relation to the cause date and time, place manner and cause of the deaths of those eight Iraqi gentlemen and the movement of their bodies after their deaths, will not be called to give oral evidence to the Inquiry but will in due course be taken as read, unless they need to be called in relation to some other issue or issues with which this Inquiry is concerned.
3. I further direct that if any of the Core Participants wish to oppose this course of action or object to it, they should, by close of business on **Friday 15 March 2013**, make written submissions setting out in detail why it is suggested that any or all of those eight deceased Iraqis did not die on the battlefield and /or were taken to CAN.

Sir Thayne Forbes
11.3.13

- * ASI29 - Rahma Abdelkareem Al-Hashimi
ASI30 - Muhammad Abdelhussain Al-Jeezani
ASI13 - Muhammad Maleh Ghlewi Atiya Obeid Al- Malki
ASI21 - Majed Jubair Suweid Edayyem Al Shweili
ASI10 - Firas Radhi Kahyoush Shazar Al-Grawi
ASI25 - Nissan Rasem Jabbar Al- Abbadi Al-Ruhaimi
ASI19 - Atheer Abdelameer Ja'far Sarout Al- Shweii
ASI23- Ali Dawood Aleiwi Al-Malki

IN THE MATTER OF THE INQUIRIES ACT 2005

AND IN THE MATTER OF THE INQUIRY RULES 2006

THE AL SWEADY INQUIRY

RULING RE: MR JAMES LAWRENCE EMAILS

1. On 16 September of this year, Day 68 of this inquiry, the witness who was then giving evidence, Mr James Lawrence, undertook to produce copies of the email traffic which had passed between himself and Mr Paul Kelly, a witness who had given evidence on an earlier occasion to this Inquiry.
2. Mr Lawrence fulfilled his undertaking immediately. He provided copies of the emails in question to the Inquiry, and copies of those emails were provided by the Inquiry to the various core participants and to the Treasury Solicitor on 18 September.
3. It can be therefore seen that the matter was dealt with extremely promptly.
4. On 19 September, Public Interest Lawyers produced a note addressed to me in which they submitted inter alia that the messages sent by Paul Kelly to James Lawrence on 11 September 2013 were:
"... capable of falling within section 35(2)(a) and/or (b) of the 2005 Inquiries Act, and of constituting a criminal offence."
5. The note then, in effect, went on to enquire what, if any, action I was proposing to take in the light of the contents of that email traffic. Section 35(2) of the 2005 Act

provides as follows:

"(2) A person is guilty of an offence if during the course of an inquiry he does anything that is intended to have the effect of -

"(a) distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the inquiry panel, or

"(b) preventing any evidence, document or other thing from being given, produced or provided to the Inquiry panel, "or anything that he knows or believes is likely to have that effect."

6. For a number of reasons set out in the carefully composed and moderately expressed written note produced by Public Interest Lawyers, it was, as I have already indicated, submitted that there was reason to believe that an offence under section 35(2) may have been committed.
7. In the circumstances, I considered it appropriate to invite written submissions from both the Treasury Solicitor and from the Ministry of Defence on the matters raised by Public Interest Lawyers in their note. I received carefully expressed and very helpful written submissions from both those parties within seven days of my request.
8. I have considered all the written material placed before me very carefully. I have come to the conclusion that, in very broad terms, I agree with the views expressed by Mr Garnham QC in the written submissions prepared on behalf of the Treasury Solicitor.
9. In my view, the overall tone and content of the messages sent by Paul Kelly to James Lawrence appear to be ones of general reassurance and about the process of giving evidence to the Inquiry.
10. As things presently stand, I am not persuaded that the messages disclose any attempt on the part of Paul Kelly to discuss the substance of James Lawrence's evidence, or to distort, alter or inhibit Lawrence's evidence in any way.
11. However, that said, I will keep the matter under review in the sense that I am

prepared to reconsider the issues raised by this application in the light of my conclusions reached on all the evidence that I hear at this Inquiry. It seems to me that it will be then that I will be in a position to come to an appropriate conclusion with regard to these and any other exchanges between witnesses, as to whether any of those exchanges bear the sort of interpretation that Public Interest Lawyers have expressed concern about with regard to these particular exchanges.

12. In all the circumstances, therefore, I do not propose to take any further action at this stage.
13. I would, however, sound a note of caution. I accept that there is no legal reason preventing witnesses from communicating with each other or discussing in general the nature of the hearing which they are attending and matters such as that.
14. However, in an inquiry of this sort with some very highly charged issues that require determination by me in due course, it seems self-evident that witnesses should refrain from becoming involved in exchanges with each other which may be misconstrued by others who may come to read them in due course.
15. I say that only as a note of caution. I am not issuing any form of prohibition. However it seems to me that witnesses at this Inquiry would be well advised not to enter into any form of communication with each other about either their evidence or the nature, conduct and progress of the Inquiry.
16. As I say, I merely sound that note of caution. It should not be treated as in any way a suggestion that I have come to a conclusion that anything improper has occurred so far.

Sir Thayne Forbes

3.10.13

IN THE MATTER OF THE INQUIRIES ACT 2005

AND IN THE MATTER OF THE INQUIRY RULES 2006

THE AL SWEADY INQUIRY

RULING REGARDING THE CALLING OF MILITARY WITNESSES

1. On 4th June 2013 the Solicitor to the Inquiry sent to the Core Participants a list of military witnesses which Counsel to the Inquiry were considering calling to give oral evidence, along with a list of those military witnesses whose statements Counsel to the Inquiry were proposing should be read. The Core Participants were invited to make written representations on that list if they wished to; the Treasury Solicitor (TSol) and the Ministry of Defence (MOD) by Friday 28th June 2013, and Public Interest Lawyers (PIL) on behalf of the Iraqi Core Participants to make any representations and respond to the submissions made by TSol and the MOD by Friday 5th July 2013. At their request I granted PIL a partial extension until Wednesday 10th July.
2. I have received written submissions as follows:
 - (1) First, from TSol on behalf of the majority of the military witnesses, who propose that the Inquiry takes a ‘modular’ approach to the calling of military witness evidence, that is to call the evidence “topic-by-topic”. I am invited to take account of “the nature and quality” of the evidence I have heard so far, and to adopt this approach to avoid “*unnecessary cost*” in accordance with my obligations under s17(3) Inquiries Act 2005. The result would be to call far fewer military witnesses than are presently under consideration to be called.
 - (2) Second from the MOD, whose submissions are twofold. The MOD’s primary position is to agree with and adopt the submissions made by TSol. In the alternative, the MOD submits that many of those witnesses whom Counsel to the Inquiry are considering calling need not be called. I have received a list of those witnesses to which have been added comments from the MOD as to why they submit that the witnesses need not be called.

- (3) Third, from PIL on behalf of the Iraqi Core Participants, who initially made their submissions in sections, addressing various groups of military witnesses, both on the battlefield and at the DTDF. For the most part those submissions are limited to asserting that Counsel to the Inquiry should consider calling a number of the witnesses who it is proposed should have their statements read. I have also seen a letter from PIL to the Solicitor to the Inquiry, dated 5th July 2013, in which are set out a number of 'global observations' about which witnesses should and should not be called. The written submissions contain a request that, should the Inquiry be minded not to call any of those "identified as giving live evidence" [sic – in fact, as the list itself made plain, it was a list of those whom Counsel the Inquiry were *considering* calling], a further opportunity should be afforded to the Iraqi Core Participants to make submissions as to whether or not a witness should be called. On 8th and 9th July 2013 PIL submitted further lists of military witnesses along with their comments on whether particular witnesses should be called. On 10th July 2013 2 further sets of submissions were received. The first responds to the submissions of the MoD and TSol on their "modular" approach (to which they have appended a list of names). The second seeks a moratorium of at least 2 months before the military evidence be heard in the absence of the electronic material from the IHAT databases.
3. TSol and the MoD have been asked for their written responses to the application for a moratorium. Once those are received I will consider them and produce a Ruling on that application. Nothing in this Ruling is or should be taken as any indication of my attitude to that application. I will consider it on its merits at the end of July. However I am anxious that the current Ruling is not delayed pending my consideration of that application because if I refuse that application, I do not want any delay on my part to prejudice the parties' preparations for September.

Preliminary Observations

4. I have considered all of the written representations carefully and am grateful to the Core Participants for their assistance. I do not consider it necessary to hear oral submissions on this topic.
5. For the reasons set out below, I am not minded to adopt the 'modular' approach suggested by TSol, and supported by the MOD. It is my view that that approach is too restrictive to allow me fully to discharge my Terms of Reference, and it is not required in order to ensure that unnecessary cost is avoided. I do not accept the implication apparent in the submissions received from TSol that in order to avoid unnecessary cost I must do only that which I consider "necessary" to fulfil my Terms of Reference; it seems to me that there may be witnesses from whom I consider it

desirable to hear, and, so long as a proportionate approach is taken, the cost of calling those witnesses will not be “unnecessary” within the meaning of s17(3) Inquiries Act 2005.

6. I have given very careful consideration to the approach suggested in the alternative by the MOD. I am persuaded that, in part, it is appropriate to adopt the reasoning set out in the MOD’s written submissions such that the number of military witnesses to be called to give oral evidence will be fewer than appeared on the ‘consider calling’ list that was circulated on 4th June 2013. I note, however, that the reasoning set out in the MOD’s comments on individual witnesses does not always coincide with the reasoning set out in the main body of their written submissions. I have therefore instructed that each of those comments be considered, and each witness on the list be reconsidered individually, and that a new version of the ‘composite list’ first circulated on 4th June 2013 be prepared in accordance with the reasoning that I am prepared to adopt, as set out in more detail below. In the preparation of that “composite list” the Inquiry will also take into account the comments made by the Iraqi Core Participants in the list of names received from them on 10th July 2013. The new list will be circulated following the promulgation of this ruling. In this ruling I confine myself to setting out a number of broad propositions on which decisions will be based when that list is compiled, and when any future decisions are taken concerning which witnesses should be called.
7. It was unfortunate that the written submissions made on behalf of the Iraqi Core Participants failed to address fully the submissions made by TSol and the MOD. The timetable set down for the making of written submissions was intended to allow PIL time to respond to those submissions. When the first of PIL’s written submissions were received – on 1st July and on 5th July 2013 – the Solicitor to the Inquiry wrote to PIL requesting a response to the substance of the submissions made by TSol and the MOD. The Inquiry received the letter of 5th July 2013 containing ‘global observations’ by way of response. The Inquiry then received, on 8th and 9th July 2013, comments from PIL on whether individual battlefield and DTDF witnesses should be called. The submissions received on 10th July 2013 still do not address in terms the submissions made on behalf of the other Core Participants save in relation to the “modular” approach.
8. In preparing this ruling I have considered the written submissions and in particular the ‘global observations’ set out in PIL’s letter of 5th July. I agree in part with those observations.
9. Although the list of military witnesses to be called will be kept under review, this was intended as the main opportunity for Core Participants to make submissions as to

the calling of those witnesses whose names appear on the composite list circulated on 4th June 2013. I was disappointed that the representations received from PIL called for an opportunity to make further submissions, rather than making those submissions now.

10. Those assisting the Iraqi Core Participants will be all too well aware – having themselves provided the Inquiry with extensive and very helpful assistance over the past few months in relation to the calling of Iraqi witnesses – that in order to ensure the smooth and efficient running of oral hearings whilst large numbers of witnesses are called, it is necessary to make arrangements for the attendance of those witnesses a reasonable time in advance. The receipt of further submissions as the time for the calling of military witnesses draws near has the potential significantly to disrupt the progress of the Inquiry, and thereby to lead to the incurring of unnecessary cost. That is a factor that I will have to take into account should further submissions be made at a later stage, although in the light of the list of names served on 10th July 2013 it may be that there has been a reconsideration of that approach.
11. The submissions made by PIL concerning individual witnesses who might be called rather than have their statements read will be taken into account by those reviewing and amending the composite list at my request. I address the 'global observations' below.

TSol's suggestion of a 'modular' approach

12. Although TSol's submissions (at paragraph 6) state that I am not being invited to make any final determinations of fact, it seems to me that that is a necessary implication of the approach TSol proposes. Indeed, the submissions made at paragraphs 8-15 invite such a conclusion:

"When the whole body of Iraqi evidence on the allegations of murder [sic] is considered, it becomes clear that there is no concrete evidential basis which could substantiate the allegations".
(paragraph 15)

13. In other words, it is suggested that I might come to the conclusion at this stage that the evidence I have heard concerning the allegations of unlawful killing at CAN is so unreliable as to be unworthy of further consideration, and therefore to relieve me from further investigating the first half of this Inquiry's Terms of Reference. As it seems to me, this is to all intents co-extensive with the sort of 'half time' or *Galbraith*¹ submission that TSol concede at paragraph 16 is not appropriate in the context of

¹ R v Galbraith (George Charles) [1982] 1 W.L.R. 1039

inquisitorial – as opposed to adversarial – proceedings, such as this Inquiry. I agree with the proposition that such a submission is ill-suited to inquisitorial proceedings.

14. That being so, I am not prepared to proceed on the basis proposed by TSol for the calling of military witness evidence. To do so would be to consider and accept, in all but name, a submission of ‘no case to answer’ of the sort commonly made in adversarial criminal proceedings, to which there are parties, and in particular a prosecutor who (in the majority of cases) bears the burden of proving his case ‘beyond reasonable doubt’. My role in this Inquiry is markedly dissimilar to that of a jury in a criminal case. I am not charged with deciding whether I am sure to the criminal standard of any particular allegations, but to conduct a thorough investigation and consider all relevant evidence before coming to conclusions about what happened in accordance with my Terms of Reference. That does not mean that I am required to hear oral evidence from every individual with some evidence of relevance to the Terms of Reference, but it does mean, in my view, that I should not exclude hearing from a particular witness based only on an assessment of the reliability of evidence I have heard so far. In the light of that conclusion I do not need to add to length of this Ruling by setting out in extenso what is said by the Iraqi Core Participants in response to that submission.
15. That conclusion should not be taken to mean that I intend to ignore the nature and quality of the evidence that has thus far been heard when deciding which witnesses should be called. I do not exclude the possibility that, in deciding which witnesses I should hear from, the extent to which evidence heard thus far may have caused certain issues to assume a greater or lesser degree of relevance or importance to the Terms of Reference may be taken into account. It is also likely to be a factor relevant to the extent and nature of evidence that I consider should be explored with particular military witnesses. But I do consider it appropriate to approach with caution a request that involves reaching conclusions on the evidence before all of the evidence has been heard.
16. Having rejected the ‘modular approach’ I do not consider it necessary to address in this ruling the submissions made by TSol as to the possible modules that could be used and the witnesses that should be called as part of those modules. I note, however, that a comparison of the lists submitted by TSol indicating who they consider should be called under the modular approach with the list submitted by the MOD as to who they consider should be called, reveals significant differences. Of a total of 53 witnesses who TSol propose should be called, the MOD submits that 22 need not be called at all, even taking a more expansive approach. In my view this tends to support the view that adopting a restrictive approach to the calling of military

witnesses is unlikely to ensure that evidence of relevance to my Terms of Reference is adequately and properly explored during oral hearings.

17. Before moving on to deal with the other submissions received, I note that the MOD's primary position was to support the submissions made by TSol. I therefore necessarily reject the MOD's primary submission also. I address the MOD's secondary submission below.

Submissions received from PIL – the 'global observations'

18. By letter of 5th July 2013 PIL made the following 'global observations' as to which witnesses should be called from the battlefield and DTDF groups.
19. First, in relation to the battlefield, PIL submit that I need not hear from witnesses who "only give broad evidence as to the battle". I agree. As rehearsed previously, the circumstances of the battle are not encompassed within the Terms of Reference of this Inquiry. They are relevant only insofar as they may shed light on the time and place at which the Iraqi dead, who were handed over at CAN on 15 May 2004, actually died and the treatment of the live detainees.
20. I therefore disagree with point 2(ii) of PIL's observations that it is necessary to call witnesses who "exchanged fire with Iraqis whether or not any deaths were seen to result". The simple fact that fire was exchanged, and the circumstances in which soldiers fired their weapons, is firmly outside the Terms of Reference of this Inquiry. These topics need not be explored in oral evidence.
21. I also disagree that it is necessary to call every witness who can give some evidence in relation to the number of bodies seen (point 2(iv)). There are witnesses who were present at the time and place of the battle whose observations of the Iraqi dead were fleeting and/or made from a significant distance. Most such witnesses are unable to assist with regard to questions as to the overall number of dead said to have been recovered from the battlefield or the identities of those who died on the battlefield. These are "battlefield" issues the resolution of which should assist me in determining whether the men handed back dead on 15 May 2004 actually died at CAN or before they arrived there. I am therefore not persuaded that every witness who observed Iraqi dead on the battlefield, however briefly or incompletely, need be called to give oral evidence. That is not to say that I will ignore what is said in their written statements, but it does not seem to me necessary to explore the evidence further by questioning in every case.

22. Second, in relation to the DTDF; I am not presently persuaded that a lack of opportunity to receive legal advice or the release procedure, in particular the use of the term ‘happy bus’, are issues that are central to the fulfilment of my Terms of Reference. However, I need not – and do not – make any final finding as to their relevance or significance at this stage because it seems to me that very few of the witnesses at the DTDF are in a position to give evidence about such matters, and those witnesses are likely to be called under one of the other headings set out in PIL’s letter in any event. I agree with the remaining observations made by PIL as to which witnesses from the DTDF should be called to give oral evidence.
23. As set out above, it is unnecessary to rehearse what is said on behalf of the Iraqi Core Participants in respect of the “modular” approach”.

Submissions from the MOD

24. I address here the secondary submission made by the MOD having already rejected TSol’s proposal, which the MOD supported, that the Inquiry adopt a ‘modular approach’. As explained above, the annotated composite military witness list provided by the MOD will be taken into account in accordance with this ruling when the composite list is amended by my legal team.
25. By way of general submission the MOD assert that time spent on military witness evidence, and on different component parts of that evidence, should bear a proportionate relationship to the time spent on the evidence from the Iraqi witnesses, and on the importance, seriousness and complexity of the issues. I agree. However, it is incorrect to say that only a relatively small proportion of the Iraqi witnesses identified were called to give evidence – the Inquiry obtained written statements from 96 Iraqi witnesses, of whom 61 were scheduled to give oral evidence. The Inquiry has identified 521 military witnesses to date, of whom around half were listed as under consideration to be called to give oral evidence on the first composite list circulated on 4th June 2013.
26. The MOD further submits that
- “Where a number of witnesses give very similar evidence from a very similar perspective on a particular issue, it may not normally be necessary to call all of the witnesses (or more than 1 or 2 of them) to give the same evidence.” (paragraph 8)
27. I do not accept that this ought to be the decisive factor in respect of any witness. There may be areas of the evidence of relatively limited significance where such a principle might be applied in order to ensure that the approach to the calling of

witnesses remains proportionate. But in respect of any significant issue, it seems to me that all witnesses who are able to give relevant evidence should be considered regardless of whether others can give the same or similar evidence.

28. Insofar as the MOD's submissions address the three main groups of witnesses:

Battlefield

29. I do not agree with the suggestion that those "who are able to give evidence about the broad circumstances of the battle" should be called. As I set out above in relation to an opposite suggestion from PIL, the broad circumstances of the battle are not the subject of the Terms of Reference of this Inquiry.

30. Nor do I agree with the assertion that the issue of whether detainees sustained injuries during the battle or following their detention no longer arises based on evidence given by the detainees themselves. Whilst I accept that the scope for those injuries having been caused at CAN has to a significant extent been limited by some of the evidence from some of the detainees, it does not follow that there is no longer any issue in relation to their injuries for me to consider and reach conclusions about in due course (for example, the extent to which they appeared to be injured at the time of their arrival at CAN to the soldiers who detained them and the adequacy of the medical attention/treatment afforded to them on their arrival at that camp). Further, as I set out in some detail in relation to the submissions received from TSol, I am not prepared to form conclusions on the evidence before all the evidence has been heard. I am therefore minded to hear from all the soldiers who were directly involved in detaining and handling the nine known live detainees on 14 May 2004 prior to their arrival at CAN.

CAN

31. The Inquiry has obtained a large number of statements from witnesses who were at CAN on 14 May 2004 but who took no direct or active role in relation to the handling of either the detainees or the Iraqi dead. I agree that it is not necessary to call every individual who happened to be at CAN during the period 14-15 May 2004, and in particular those in this category.

32. There are similarly a significant number of witnesses who were at CAN that night who have little or no recollection of events. I do not propose that their lack of recollection be treated as a decisive factor when considering whether they should be called. There are witnesses who were clearly involved in, for example, handling the detainees, based on contemporaneous records and/or photographs, who have stated that they have no particular recollection of the events of 14-15 May 2004 or the detainees. In my view the fact that they were there – and therefore likely to be the

subject of or a witness to the misconduct alleged by the detainees – means that it is important that they be called to give oral evidence, notwithstanding their stated lack of recollection.

33. As to the witnesses who handled the Iraqi dead at CAN, I do not propose that every individual who took any part in this process should be called to give evidence, but equally I do not accept the MOD's proposition that none of the witnesses who assisted in unloading corpses need be called. I set out below what I consider to be the appropriate approach to these witnesses.

JFIT/DTDF

34. The MOD is correct to assert that I will wish to establish the facts about what took place in the JFIT in respect of the nine known live detainees. To that end, I intend that all those who were involved in interrogating the detainees should be called to give oral evidence, as well as those who can be identified as having taken part in guarding them during their time in the JFIT. A significant number of allegations of mistreatment have been made relating to this period, which should be thoroughly investigated.
35. There is a similarly high incidence of allegations made concerning the arrival of the detainees at the DTDF on 15 May 2004 and their initial processing. Again, I intend that those who took a direct part in this process and/or a supervisory role on the day should be called to give oral evidence so that those allegations can be properly explored.
36. As for the remainder of the time spent at the DTDF by these nine detainees it is the case the number and, for the most part, seriousness of the allegations made is limited. I am therefore content that for the majority of witnesses working at the DTDF during the relevant time period reading their statements will be sufficient to enable me to fulfil my Terms of Reference. Where allegations of mistreatment have been made however, I intend that any witness who may be the subject of or a witness to that alleged mistreatment should be called to allow the allegations to be fully explored.

Approach to the calling of military witnesses

37. To the extent that I accept in part submissions made by the MOD, and some of the 'general observations' made by PIL, I have instructed my legal team to review the composite list of witnesses issued on 4th June 2013 and make amendments accordingly. In that task they will also take into account the comments made in the list of witnesses from Mr O'Connor QC on 10th July 2013. Drawing together the

submissions I have accepted and rejected they will apply the following general principles, all of which should be regarded as presumptions that may be displaced should the evidence of a particular witness require that he be called/read notwithstanding the general principle. However, I emphasise that the list will remain under review.

38. Battlefield witnesses should generally be called where they (i) were directly involved in the capture of a detainee, or (ii) observed the capture or handling of a detainee, or (iii) were directly involved in the collection and loading into vehicles of Iraqi dead or (iv) are otherwise able to comment upon the overall number of dead loaded into vehicles and/or their identities or injuries.
39. Witnesses at CAN should generally be called where they (i) were (or might reasonably be expected to have been) directly involved in the handling/treatment of a detainee or detainees, or (ii) observed the handling/treatment of a detainee or detainees, or (iii) had a supervisory role in relation to the handling/treatment of detainees on 14-15 May 2004 (or should have performed such a role), or (iv) handled the dead that were at CAN on 14-15 May 2004 (save where they played only a very minor role and are unable to speak to the injuries or identities of those handled), or (v) played a significant role in the handing over of the dead on 15 May 2004, or (vi) can be considered as having a senior and/or supervisory role at CAN in general and were involved in the events of 14-15 May 2004 which are the subject of the Terms of Reference.
40. JFIT & DTDF witnesses: should generally be called where they (i) took part in the processing of the nine detainees when they arrived at the DTDF on 15 May 2004 (including in a supervisory role), or (ii) were involved in the interrogation and/or detention of the detainees in the JFIT (including in a supervisory role), or (iii) played a supervisory role within the DTDF (i.e. those in charge), or (iv) can reasonably be identified as the subject of or a witness to allegations of mistreatment made more generally at the DTDF.

Sir Thayne Forbes
Chairman, Al Sweady Inquiry

15th July 2013

IN THE MATTER OF THE INQUIRIES ACT 2005

AND IN THE MATTER OF THE INQUIRY RULES 2006

THE AL SWEADY INQUIRY

RULING ON GENERIC APPLICATION FOR PROTECTIVE MEASURES

1. This is my ruling in relation to the application made by the Treasury Solicitors that I should determine applications for protective measures for witnesses¹ on a generic, as opposed to individual, basis.
2. On 19th July 2010 I distributed a ruling in relation to the legal issues that arose in relation to applications for protective measures (“the Ruling”). The Ruling followed the delivery of extensive written submissions and oral submissions made by Counsel at the First Directions Hearing on 21st June 2010. The Ruling specifically concerned:
 - (1) the legal test to be applied, and the considerations that are relevant, in relation to any application for protective measures that relies on Articles 2 or 3 of the European Convention on Human Rights (“the ECHR”);
 - (2) the legal test to be applied, and the considerations that are relevant, in relation to any application that asserts that there is a risk of death or injury, but where Articles 2 or 3 of the ECHR are not relied on (the so-called “Common Law test”);

¹ Which, in *general* terms, means permitting them to be known in the Inquiry and give evidence by way of cipher and / or to give oral evidence from behind a screen.

- (3) the legal test to be applied, and the considerations that are relevant, in relation to any application that relies on Article 8 of the ECHR (hereafter “the Article 8 test”); and
 - (4) the legal test to be applied, and the considerations that are relevant, in relation to so-called “public interest” applications for protective measures (hereafter “the Public Interest test”).
3. I refer to, but do not repeat here, the decisions that I made in relation to these four issues.
4. On 17th March 2011 the Solicitor to the Inquiry wrote to the legal representatives of Core Participants², and to the Treasury Solicitors³, in the following terms:

The Inquiry has to date identified between 400-500 present or former military personnel, or present or former civilian employees of the Ministry of Defence, who may be witnesses. Of these we have so far been able to locate approximately 180, and we may now have contact details for a further 60. No applications for protective measures have as yet been received. The potential factors involved, and the issues arising in relation to protective measures may delay progress by the Inquiry.

The Chairman wishes to avoid delay wherever possible and in seeking to do this he has decided to invite by way of closed written submissions, the assistance of the Treasury Solicitor, PIL and the Secretary of State for the purposes of enabling him to reach an understanding of what factors you consider he should have in mind when considering protective measures for witnesses falling within the above category. You may disregard for these purposes applications founded on public interest grounds which are relatively well developed. The Chairman considers it would be very helpful if these closed written submissions covered the following:

(A) Representations as to the Articles of the European Convention on Human Rights which should be considered and why. It may be that Articles 2, 3, 6, 8 and 10 all require consideration.

² Namely to (i) Public Interest Lawyers, who represent some of those persons detained as a result of the Battle of Danny Boy on 14th May 2004, the relatives of some of those persons who either died in the course of the Battle of Danny Boy or at Camp Abu Naji (where and how they died is one of the central issues in the Inquiry), and certain witnesses; and (ii) to the Ministry of Defence's Directorate of Judicial Engagement.

³ The Treasury Solicitor represents former or serving soldiers who are or may be witnesses in the Inquiry. Although these former or serving soldiers have not been designated as Core Participants pursuant to the Inquiry Rules 2006, the Inquiry has treated them in the same way as those who have been so designated.

(B) whether it would be appropriate to have an Inquiry Protocol for generic applications by soldiers or former soldiers for a certain level of protective measures.

(C) if so the criteria to be applied and

(D) the level of protective measures which would follow, if those criteria are met.

The Chairman is aware that some information which may be contained in these submissions may itself be highly sensitive and hence he invites them in closed form. He requests that you please highlight any information contained within your submissions which you consider should be protected from further disclosure. He will regard such highlighted information as being subject to a duty of confidentiality, provided the essential elements of such a duty existing are met. He reserves the right to disclose it, should circumstances be such that the public interest in its disclosure outweighs any private interest in its non-disclosure. Such a decision would only be reached following consultation with the provider of the particular information and any other identified person with a proper interest in the information remaining private. You should also highlight any information which falls to be protected from public disclosure as a matter of law and indicate (perhaps by footnote and key) the reason why. These closed written submissions may be followed by a closed oral hearing, should the Chairman consider this necessary. The Chairman requests your submissions by 4.30 p.m. on Wednesday 20 April 2011. This letter is written without prejudice to the exercise by the Chairman of his discretion in the consideration of any application, or protective measure, he may consider appropriate to put in place.

5. By written submissions dated 20th April 2011 Public Interest Lawyers (“PIL”) responded to the Inquiry’s letter.

3. ...On behalf of the Complainants it is submitted that only applications actually received by the Inquiry should fall for consideration. Generic applications should be discouraged, with the consequence that each individual application should fall for consideration on its own merit. Protective Measures should only be considered appropriate for any individual witness who is able to establish proper grounds justifying such measures.
4. Accordingly, it would be inappropriate for the Inquiry to adopt a Protocol in anticipation of generic applications by soldiers or former soldiers for a certain level of Protective Measures.
15. ...Consideration of a generic application for Protective Measures for a group of witnesses before the Inquiry would be antithetical to the guidance already provided and set out in the Ruling.
16. In relation to any application based on either Article 2 and 3 of the ECHR, the Ruling provides that a ‘rigorous and objective assessment of the totality of the relevant information’ must be carried out in determining whether a ‘real and immediate’ risk threshold has been met for ‘the witness in question’.⁹

17. Notwithstanding any generic risk assessment, before Protective Measures are granted there will need to be (i) consideration of whether the generic assessment provides evidence of a 'real and immediate' risk to any potential witness, 'low' and 'moderate' risk of attack is unlikely to cross the 'real and immediate' threshold, (ii) each individual witness relying upon the generic risk assessment will need to satisfy the Chairman that they properly fall within the category of person identified as at risk in the generic assessment, and (iii) any generic risk assessment is likely to be but one aspect of the assessment of the risk faced by the witness concerned.
18. In relation to point (iii), the Complainants submit that the Chairman should also take into account, individually for each witness, the following (non-exhaustive) factors when assessing risk:
 - a. The degree to which preventative measures to reduce or remove the risk have been and/or could be taken by the witness;
 - b. The extent to which the name/image of the witness is already in the public domain and if yes to what extent and in what connection;
 - c. Whether the witness has given evidence unprotected in any other capacity, if yes whether any adverse consequences were suffered as a result;
 - d. Whether the witness has for any other reason already been subject to any previous threats or attacks, and if yes the nature and seriousness of those attacks and the reason for them;
 - e. The likelihood of anyone posing a threat to the witness already knowing the witness by name or image;
 - f. The broad nature of the evidence the witness is likely to give, and the likely level of publicity which will be given to that evidence;
 - g. The past, current and future deployments and/or occupations of the witness;
 - h. The area in which the witness works and lives.
19. In relation to any application for Protective Measures based on common law principles, the Ruling makes clear that the common law requires fairness to the 'individual witness in all the circumstances of the case'. 'How the balance is struck in individual cases will, of course, be fact specific': applying *Re A and others (Nelson Witnesses)*.
20. The detailed guidance provided by Girvan LJ in *Re A and others (Nelson Witnesses)* is illustrative of how and why individual assessments are required. Para. 29(viii) and (ix) show why each witness needs separate and individual consideration. The extent to which any individual witness' evidence is 'contentious' or the 'tendency on the part of the witness to be dishonest' are obviously factors to be taken into consideration and could justify open and public scrutiny in cross-examination. Thus, the character of the witness and the nature of their evidence will need to be taken into account when considering any application for Protective Measures. This can plainly only be done on an individual basis.
21. For the above reasons, it is submitted that generic applications for Protective Measures will be inappropriate. Generic risk assessments may, in some cases, be properly relied upon by an individual as part of their individual application for Protective Measures, but such generic risk

assessments must be considered as being only part of the overall picture. Many other factors will potentially be at play.

6. By written submissions dated 20th April 2011 the Ministry of Defence responded to the Inquiry's request. By their submissions, the MoD suggested that representations regarding the approach to be taken to application for protective measures based on private interest grounds are more appropriately advanced by the Treasury Solicitor's Office (and for that reasons did not advance submissions in relation to point A in the Inquiry's letter. The MoD did, however, "tentatively offer" views in relation to points B to D reflecting its vicarious interest as the current or former employer of this group of witnesses and by way of assistance to the Inquiry. So far as is relevant, these submissions stated as follows:

3. **Point B:** The MoD acknowledges that it would be an unusual step to produce an Inquiry Protocol for generic applications by military witnesses for a certain level of protective measures but agrees in principle with the suggestion if it would aid the Chairman in considering applications. It is respectfully suggested that any protocol should take into account both what is sensitive about the evidence and its relevance to the Inquiry's Terms of Reference. This is because the need for protective measures will depend not just on the particular circumstances of the individual witness, but also on the evidence that the witness is being asked to provide: for example a witness who happened to be involved in sensitive work at some point in their career might not require protective measures if the sensitive aspects of the witness' work are irrelevant to the issues before the Inquiry and the witness is not asked to provide evidence about that work.

4. **Point C:** The MoD is grateful to the Inquiry for providing fictitious Rule 9 requests by way of example of the sorts of questions that may be addressed to military witnesses. These were requested to assist the MoD's understanding of the ambit of the evidence that is being sought by the Inquiry. Without knowing the potential factors alluded to in the Inquiry's letter of 17 March, consideration of the R9 requests read in conjunction with the generic threat assessments for potential witnesses to the Inquiry leads the MoD to offer the following observations and suggestions that may be of assistance to the Inquiry:

- (i) Evidence relating to involvement in other military engagements. It is likely that many of the witnesses will have served on previous operations including in the Balkans and Northern Ireland and there may be specific security risks associated with disclosure of the details of those deployments.

In a small number of cases, it could also result in witnesses having to disclose service of a sensitive nature that would not

otherwise have been in the ambit of the Inquiry's Terms of Reference.

- (ii) Evidence relating to previous arrest or detention following military engagement.
 - (iii) Evidence relating to other tours during Operation Telic. Some witnesses may have undertaken sensitive work as part of another deployment during Operation Telic.
 - (iv) Evidence relating to interrogation training. Some witnesses who were trained interrogators did not deploy in that role. Unless the individual relied on this training in their evidence, it would not otherwise be released in public.
 - (v) Evidence that publicly identifies a witness as having killed Iraqi(s) or having mutilated or mistreated bodies post mortem. Such questions could place individuals more at risk if they publicly admit to such action.
5. MoD respectfully submits that the question types outlined above will elicit evidence that is likely to precipitate a significant number of applications for protective measures on private interest grounds by military witnesses. This will correspondingly increase the administrative burden on the Inquiry. In the interests of reducing applications for protective measures which might not otherwise be necessary, the MoD respectfully invites the Inquiry to give consideration to whether, if questions on the background of individual witnesses (particularly of the type identified at 4(i) to 4(iv) above) are necessary as part of the initial Rule 9 requests, the information could be provided in a separate annex with the draft statement. Should the Inquiry consider the information to be evidence, the witness would then have the option to indicate whether or not they wished to make an application for protective measures. It is considered that redacting the information from signed witness statements represents an imperfect solution as it would draw attention to aspects of a witness's military service or training that were of a sensitive nature, thereby potentially putting them at greater risk.

7. By written submissions dated 20th April 2011, the Treasury Solicitors also responded to the Inquiry's request. So far as is relevant, they submitted as follows:

- 14. In principle, it would be appropriate to have an Inquiry Protocol for generic applications by soldiers or former soldiers for a certain level of protective measure. This suggestion is to be welcomed.
- 15. It is anticipated that there will be classes of witnesses that are capable of identification and that would be capable of being dealt with by way of a protocol for generic applications. There is merit in having a generic protocol where certain classes or groups of military witnesses are identified and face identical or broadly similar risks to their rights under

Articles 2 or 3, or where a group of witnesses faces the same unjustified interference with their rights under Article 8 (for example, where they face a detriment to their professional lives or careers or there is a risk of significant damage to their reputations). One example of such a group which appears to be capable of being identified and for which a generic application may be capable of being made is the class of Intelligence Officers. Another group may be those officers involved in Tactical Questioning.

16. For those witnesses, it would be sensible for the applications for protective measures to be considered as a class, rather than individually. This is mutually beneficial as it prevents TSol from having to make multiple applications for protective measures on the same basis for witnesses who are affected by identical or similar considerations. In turn, it prevents the Inquiry from repeatedly having to apply the same principles in carrying out the same evaluation of risk in relation to Articles 2 or 3, or in carrying out the same balancing exercise in relation to Article 8 on a large number of occasions. Given that the Inquiry has identified close to 500 military witnesses, any method of streamlining the process of applications for protective measures is to be welcomed, subject to the following observations:
 - a. The existence of a generic protocol or the ability to make an application for protective measures on behalf of an identified class of witnesses does not preclude and indeed cannot replace the assessment of risk in each individual case. For example, the fact that an application has been made for reporting restrictions for a class of witnesses does not preclude or predetermine an application for a higher level of protective measures (such as evidential restrictions) by an individual whose particular circumstances merit greater protection if he meets the tests under Articles 2 and/or 3 as set out above.
 - b. The existence of a generic protocol for classes of witnesses does not affect the right of individual witnesses, including those who do not fall into an identified class, to make applications for protective measures under the existing Protective Measures Protocol (as amended on 6 September 2010) by which any Core Participant or other person concerned in the Inquiry could apply for protective measures or non-disclosure of any information beyond that identified in the Restriction Order of 3 August 2010.

8. However, when the Treasury Solicitors turned to the criteria that might be applied to such generic applications, the submissions continued:

17. Whilst there is virtue in generic applications by classes of military witnesses and a protocol for such generic applications, it is respectfully submitted that it is impossible and undesirable at this stage of the proceedings to set out the criteria to be applied in either identifying those classes of witnesses or in dealing with the generic applications. Such an exercise would be premature for the following reasons:
 - a. The current allegations made by the claimants in the Al Sweady judicial review proceedings are of (1) unlawful killing at Camp

Abu Naji ("CAN") on 14 and 15 May 2004, and (2) ill-treatment of five Iraqi nationals at CAN and subsequently at Shaibah Logistics Base between 14 May and 23 September 2004. However, the Inquiry has already obtained 43 witness statements from Iraqi nationals and is scheduled to interview a further 40 Iraqi nationals. The nature and scope of the allegations that the military witnesses face are currently unclear. It is only following disclosure of the Iraqi evidence that it will be possible to take a final view about any applications for protective measures on the basis of specific allegations that may be made against individuals or classes of military witnesses.

- b. The identities of the Iraqi nationals who will give evidence at the Inquiry is not known, nor is it known how their participation in the Inquiry will be secured, i.e. whether they will be present at the Inquiry or there will be live streaming of the evidence instead.
 - c. There is currently no specific threat assessment available for classes of witnesses. There is only a generic threat assessment.
 - d. Of the 470 military witnesses, just over 60 have been interviewed. It is essential that a significant number of these witnesses is interviewed and is able to give instructions as to the level of risk faced on an individual level before any assessment can be made as to whether there are common principles that can be identified and applied to classes of witnesses in order to justify generic applications by classes of military witnesses.
18. Therefore although it is envisaged that generic applications may be made for classes of military witnesses in due course, it is too early to provide a clear or definitive list of the classes of witnesses for whom applications for protective measures may be made and the criteria that should be applied. Any submissions on those matters could only be generic in nature, would be formulated in the abstract and would be of little assistance to the Inquiry at this stage.
19. The precise formulation of the classes of witnesses, the levels of protective measures appropriate for each identified class, and the applicable criteria will only be possible once the allegations that are being levelled against the military witnesses are made clear and once instructions on appropriate protective measures applications have been obtained from a sizeable number of individual witnesses.

9. Counsel to the Inquiry made the following submissions in relation to the Treasury Solicitor's submission that applications for protective measures should be determined on a generic basis:

1. In light of active opposition from those representing the Iraqi complainants, and the practical obstacles raised by TSol, which would to a great extent undermine the usefulness of the process, Counsel to the Inquiry do not submit that the Chairman should invite applications for protective measures on a generic basis.

2. However, insofar as the submissions made by TSol tend to suggest that military witnesses will not be able to make any applications for protective measures until disclosure has been made of the Iraqi evidence, the submissions of TSol are not accepted.
3. Inquiry Counsel submit that applications for protective measures on behalf of individual soldiers can and should be made as soon as possible for the following reasons:
 - a. First, individual military witnesses do not need to know the substance of specific allegations that may be made against them in order to be in a position to submit an application for protective measures. Should that be the case, no applications could be made until all of the Iraqi witnesses had concluded their evidence.
 - b. The military witnesses are aware of the general nature of the allegations being made by virtue of the Inquiry's Terms of Reference. Military witnesses should proceed on the basis that they may be the subject of such allegations:

'...(1) unlawful killing at Camp Abu Naji on 14 and 15 May 2004, and (2) the ill-treatment of five Iraqi nationals detained at Camp Abu Naji and subsequently at the divisional temporary detention facility at Shaibah Logistics Base between 14 May and 23 September 2004...'
 - c. On the basis of the evidence so far received by the Inquiry, allegations made by the Iraqi complainants and witnesses in respect of which an identification of one or more individual soldiers has been made (by description), are few and far between. To delay the submission of an application for protective measures until after all specific allegations made against an applicant become known would, in these circumstances, be to delay such a submission until the occurrence of an event that is, on the basis of past experience, unlikely to occur.
 - d. Insofar as individual soldiers have been identified by Iraqi complainants and witnesses as having been involved in, or having witnessed, alleged misconduct, such allegations have been included in soldiers' Rule 9 requests for written statements. Therefore those military witnesses most likely to be identified as the subject of the allegations contained within the Inquiry's Terms of Reference will be on notice of those allegations from the time they receive a Rule 9 request from the Inquiry.
4. Counsel to the Inquiry accept that, following disclosure of the Iraqi evidence, military witnesses should nonetheless be provided with a reasonable opportunity to *renew* applications for protective measures, should that be considered necessary in light of the material disclosed, and in particular in light of any specific allegations that may be made within that material. In the intervening period the interests of military witnesses in this regard can be fully protected by the provision of renewed undertakings by Core Participants to prevent onward disclosure of Inquiry material until such time as witnesses have had the opportunity to consider their position in respect of renewed applications.

5. I set aside time at the Inquiry's Third Direction Hearing on 11th May 2011 at which further submissions in relation to the issue of generic applications for protective measures could be made. At that Third Directions Hearing, however, Leading Counsel to the Inquiry summarised the position that had then been reached as follows:

Mr O'Connor, on behalf of his clients, is firmly against any suggestion of protective measures being considered on a generic basis. The Treasury Solicitor professes not to be firmly against them, but puts in their path a number of practical obstacles. The only purpose in suggesting a generic approach to protective measures was to save the Inquiry time and resources. If experienced lawyers are of the view that they are impracticable, we accept that view. But when criticisms are made of the speed of the Inquiry work, this was an attempt to save the expenditure of what hopefully will be unnecessary time and expense.

6. Leading Counsel for those represented by the Treasury Solicitor said as follows in relation to this issue:

On the question of restrictive measures applications, we, of course, accept what [Leading Counsel to the Inquiry] has said and what you have indicated in that regard. It may well be that as these applications are made, there has developed sufficient familiarity on both sides as to enable the matters to be streamlined. But if we may say respectfully, what [Leading Counsel to the Inquiry] has said thus far seems sensible.

7. Accordingly, I agreed at the Third Directions Hearing not to further pursue the issue of applications for protective measures being made and determined on a generic basis.
8. On 20th May 2011, consistent with the outcome of the Third Directions Hearing, the Solicitor to the Inquiry wrote to the Treasury Solicitor requiring that any applications for protective measures made on behalf of clients that the Treasury Solicitor represented should be made by the close of business on 3rd June 2011.
9. By letter dated 3rd June 2011 the Treasury Solicitor replied to the Inquiry's request and raised a number of discrete issues, as follows:

- (1) The letter referred to concerns that the Treasury Solicitor had about some outstanding issues, namely (i) concern that witnesses had expressed that their evidence may be broadcast to the detainees (and a request was made that the Inquiry should confirm what arrangements would be made to enable the detainees and the families of the deceased to follow the proceedings), (ii) concern that witnesses had expressed as to the nature of the allegations being made by the Iraqis – it was said that, until the Inquiry disclosed the witness statements of the Iraqis, the Treasury Solicitor did not feel able to take final instructions from witnesses who have raised such concerns (I note that this is a reprisal of the point previously made by the Treasury Solicitor, rejected in clear terms by Counsel to the Inquiry, and not pursued at the Third Directions Hearing), and (iii) the extent to which the Inquiry would require the sensitive career history of a witness to be included in a statement (such histories presently being included in a separate document). The Treasury Solicitor stated that they were instructed not to make an application for protective measures in respect of a list of clients who they set out in their letter (there were 85 clients on the list) if the details of their sensitive career history was not to be included in their witness statement. If it was to be included, then they reserved the right to review the position.
- (2) The letter identified a small number of witnesses (at that stage, 7 in number) who were clients of the Treasury Solicitor in respect of which the MoD intended to make an application for protective measures in the public interest by 10th June 2011.
- (3) A number of witnesses were also identified for whom the Treasury Solicitor had instructions to make applications for protective measures (at that stage, only 7 in number), but in respect of whom it was also stated that “Unfortunately we are not in a position to lodge these application today, due primarily with [sic] the difficulties in having these applications signed, however we anticipate lodging three applications for varying protective measures next week”.

- (4) The letter also went on to specify that in respect of the remainder of the witnesses represented by the Treasury Solicitor, it had not been possible to take instructions as to whether they wished to apply for protective measures.
10. In June 2011 the Treasury Solicitor made individual applications for full protective measures (*viz* for anonymity and screening) on behalf of 3 witnesses. Those applications were re-submitted in July 2011, followed by a further such application made on behalf of a 4th witness in October 2011.
11. On 10th June 2011 the MoD made individual applications for full protective measures (*viz* for anonymity and screening) on behalf of 9 witnesses. These applications were based on public interest grounds. Since that time the MoD has made a further applications for screening for 4 witnesses and has notified the Inquiry that of its intention to make a further 25 applications (albeit 1 such notification was subsequently abandoned; and 10 of the witnesses in respect of which notifications were given are not witnesses from whom the Inquiry has sought information or evidence). It follows that of the 39 applications notified or made, there are 28 outstanding.
12. On 3rd September 2011 the Treasury Solicitor sent the present application, described as a *Generic Application for Protective Measures*, to the Inquiry.
13. The application is made under s19, alternatively s17, of the 2005 Act on behalf of the following classes of witnesses:
- (1) Those who used weapons against the Iraqis;
 - (2) Those who killed or injured Iraqis;
 - (3) Those who applied any physical force to Iraqis;
 - (4) Those who detained Iraqis;
 - (5) Those who escorted or guarded Iraqi detainees;
 - (6) Those who processed or handled Iraqi detainees;

- (7) Those who questioned Iraqi detainees;
- (8) Those who provided medical treatment to Iraqis;
- (9) Those who handled, moved or examined dead bodies; and
- (10) Those who are alleged to fall within any of these classes.

14. A list of the witnesses who are said by the Treasury Solicitor to fall within one or more of the categories set out above is annexed to the application – this gives their names and which category or categories they were said to fall within. There are 55 names on the annex and therefore 55 applications to be granted protective measures on a generic basis. Significantly, of the 55 applicants, 31 of them were amongst the names set out in the Treasury Solicitor’s letter of 3rd June 2011 - i.e. those whom the Inquiry was informed were not applying for protective measures).

15. The applicants seek the following protective measures:

- a. An order that his evidence be given under cipher and that he be known only by that cipher in all his dealings with the Inquiry; and / or
- b. An order that he give evidence behind a screen so that:
 - (i) Only the Chairman, counsel to the Inquiry, Inquiry staff and his own legal representatives can see his face; or
 - (ii) Only the Chairman, counsel to the Inquiry, Inquiry staff and legal representatives of core participants can see his face;
 - (iii) Only the Chairman, counsel to the Inquiry, Inquiry staff, core participants and his legal representatives can see his face; and / or
- c. An order restricting publication of his name;
- d. An order restricting publication of any image of the witness or any description of his appearance;
- e. An order restricting publication of his past and / or current occupation;
- f. An order restricting publication of the personal and / or professional address of the witness;
- g. An order restricting publication of the names, addresses, image or descriptions of the witness’s immediate family.

16. I note that, although the application clearly seeks the protective measures set out in paragraphs c. – g., it does not state which of the measures in paragraphs a. and b. are sought in relation to each applicant, or whether both measures are sought in relation to each applicant (see the use of the words “and / or” at the end of paragraphs a. and b.).

17. The application states that it is made on the basis that, unless the orders sought are granted, “(a) there would be a present and continuing risk of death or bodily injury to the witness, contrary to the Inquiry’s obligations under Articles 2 and / or 3; or (b) the witness would be exposed, wrongly and unfairly, to a risk of harm and / or would fear that he was at risk of such harm to the fear [*sic*] contrary to the Inquiry’s obligations under common law; or (c) there would be a disproportionate breach of the witness’s Article 8 rights”.
18. The application does not state which of these three legal bases are said to apply to each of the 55 applicants. This is in my view significant. As I explain below, the specific legal test that is found to be satisfied in the particular case of an individual applicant is very important in determining the nature and extent of the protective measures that ought to be applied to him/her. I further note that, in the case of some of the individual applications referred to in paragraph 10 above, the applications do not claim that there would be a present and continuing risk of death or bodily injury to the witness, contrary to the Inquiry’s obligations under Articles 2 and / or 3, if the protective measures sought were not granted – indeed, some of the applicants expressly accept that it cannot be argued that, in their case, these tests are satisfied. Those individual applicants are nonetheless amongst the 55 applicants who now seek the imposition of protective measures on a generic basis, in part on the basis that those tests *are* satisfied.
19. The application suggests that the applicants would each face similar risks should they be identified publicly as having been directly involved in the military engagement on 14th May 2004 and / or the subsequent handling of detained and / or deceased Iraqis and that, accordingly, the generic application seeks to avoid the costs associated with having to make multiple applications for protective measures on the same basis for witnesses who are affected by identical or similar considerations [6]. The application notes that it is not suggested that the generic application precludes separate or individual applications being made [7]. The application then proceeds to set out the legal basis for it [8-10] and to rehearse the

relevant legal tests that require to be applied in applications for protective measures [11-13] (my approach to these legal tests was of course set out in my ruling of 21st June 2010). The application then seeks to argue, by reference to the facts, that all of the bases (i.e. under Arts. 2 and 3, under the common law, and under Art.8) are satisfied in the case of all of the 55 applicants.

20. The Inquiry considered it important that other Core Participants in the Inquiry had the opportunity to make written (and, if necessary, oral) submissions on the application, in particular the propriety of approaching the issue of protective measures on a generic basis, by reference to the class or classes into which an applicant was alleged to fall. In order to be able to disclose the *Generic Application for Protective Measures* to all of the other Core Participants, however, it was necessary to disclose it to intelligence agencies first so that they could satisfy themselves that information emanating from them, and which was included in the application, could properly be so disclosed.
21. The Inquiry received a reply from the intelligence agencies on 13th January 2012 that some information in the *Generic Application for Protective Measures* required to be removed before it could be disclosed to other Core Participants. That information was communicated to the Treasury Solicitor who on 23rd January 2012 re-submitted the *Generic Application for Protective Measures* with that information removed.
22. On 25th January 2012 the Inquiry distributed the *Generic Application for Protective Measures* to the MoD and to PIL and requested written submissions in reply to be made by 16th February 2012.
23. By written submissions dated 15th February 2012 PIL argued that generic applications for protective measures should be discouraged, because (in summary): (i) such an application does not allow for the necessarily detailed and balanced assessment required for each individual application to be carried out, (ii)

the generic approach would be antithetical to the guidance that I had already given in my ruling of 21st June 2010, and (iii) an important aspect of a public inquiry is to ensure public accountability – this purpose might be frustrated if wide ranging protective measures were to be granted to a large number of applicants on a generic basis.

24. By letter dated 13th February 2012 the MOD informed the Inquiry that it did not intend to file any written submissions.

25. PIL's written submissions were distributed to the Treasury Solicitor (and to the MOD), who responded by written submissions dated 22nd February 2012. These submissions suggested that the Inquiry must seek to balance four overlapping and sometimes conflicting concerns, namely (i) the importance of creating an atmosphere in which witnesses feel safe and confident in coming forwards to give evidence, (ii) the need for public accountability, (iii) the Inquiry's common law and statutory duties to act fairly, and (iv) the Inquiry's statutory duty to avoid unnecessary cost. The Treasury Solicitor argued that, were the last of these four elements absent (i.e. where, in an ideal world, cost was not an issue), then anxious scrutiny could be given to each and every witness's specific concerns when assessing his application for any specific measures. However, cost is an issue - as recognised by the Inquiry in adopting a general rule applicable to all witnesses that personal information such as private addresses and telephone numbers will not be disclosed without good reason. In these circumstances, it was argued that the approach that the Inquiry had taken to the disclosure of personal information as capable of wider application. The Treasury Solicitor sought to argue that its approach did not include any element of consideration of the individual circumstances of each applicant. The Treasury Solicitor then sought to argue that PIL were wrong to seek to draw an analogy between this Inquiry and the Baha Mousa Inquiry, and that the better analogy was with the Bloody Sunday Inquiry (which, it was said, had approached the issue of applications for protective measures on a generic basis, albeit recognising that in individual cases the generic

approach did *not* apply). The Treasury Solicitor then made additional submissions as to what it said the effect of the decision of the Supreme Court in *Rabone v Pennine NHS Foundation trust* [2012] UKSC 2 had on the applicable test on what constitutes a “real and immediate” risk under Art.2 ECHR.

26. Given the issues raised in the Treasury Solicitor’s reply submissions, they were again distributed by the Inquiry to the Core Participants. On 20th March 2012 PIL replied to those submissions in writing. PIL argued that the Treasury Solicitor’s reply submissions raised three new issues, namely: (i) the impact of cost and the need to consider whether systems can be adopted that allow for a more efficient process; (ii) an attempt to compare the Al-Sweady Inquiry with the Bloody Sunday Inquiry, and (iii) the impact of *Rabone* on the “real and immediate” test.
27. Having given the matter careful consideration, I have come to the firm conclusion that it is neither appropriate nor necessary for me to make any order pursuant to this particular generic application. Accordingly, my order on the application is that there shall be No Order on the *Generic Application for Protective Measures dated 3rd September 2011*. There are eight main reasons for my having reached that conclusion. I set out those reasons in the paragraphs that follow.
28. First, were I to determine the application on the material that the Treasury Solicitor has presented to me, I would be unable properly to determine it, and certainly unable to determine it in favour of all of the applicants. This plainly has the potential to cause unfairness and injustice to the applicants, or to some of them – *viz* certain individuals amongst the cohort of 55 who would, if their individual circumstances were examined in detail, be deserving of the grant of protective measures, but who would not be granted such measures because they were being considered as part of a large and mixed group of applicants.
29. Second, in my judgment the authorities make it abundantly clear that applications for protective measures of the kind sought here require to be considered by reference to the individual circumstances of each applicant – see, for example, *Re*

Officer L [2007] 1 WLR 2135 at [20] and [22] and *Re A and others (Nelson Witnesses)* [2009] NICA 6 [17] – [24]. It may be, for example, that when I come to determine individual applications I shall have to bear in mind *inter alia* (by way of a non-exhaustive list): the extent to which the identity of an applicant, and his association with the events under consideration, is already in the public domain (including where the applicant has himself revealed such identity and association by the publication of articles, journals or books); the extent to which the applicant has previously given evidence openly about these or other similar events, the effect of which is to reveal his identity or association with such events; the extent to which adverse consequences have already occurred because of such publications or open evidence-giving (or otherwise); the home and professional addresses of an applicant and the extent to which that puts them at risk; the past, current and future occupation(s), and deployments, of an applicant; and the nature and extent of allegations made against an applicant.

30. Third, approaching the issue of applications for protective measures on a generic basis would be inconsistent with the approach that I identified in my ruling of 21st June 2010 – see [26] in particular.
31. Fourth, and as I have alluded to above, the *Generic Application for Protective Measures* does not, by its nature, make it clear which legal basis or bases each of the 55 applicants claims to be satisfied in their case. Instead, it suggests that two or three of the bases are satisfied, without specifying which basis or bases applies in each individual's case (see paragraph 4 of the *Generic Application for Protective Measures* and the use of “and / or” between paragraphs 4a and 4b and the use of “or” between paragraphs 4b and 4c). It may be the case, therefore, that some of the applicants claim that they Art.2/3 ECHR test is satisfied, whilst others of them only claim that the Art.8 test is satisfied. Yet the approach that I would take to their application would vary according to which basis on which it was put - so, by way of example only, I would not carry out a balancing exercise if I took the view that the Art.2/3 ECHR test was met in the case of an individual applicant (he would

be granted the measures sought that were necessary to see to prevent or minimise the risk that I had identified to exist from materialising), whereas I would carry out such an exercise in the case of the common law basis or the Art.8 basis.

32. Fifth, and relatedly, as I have already noted above, some of those witnesses who have made individual applications have expressly stated in the body of their applications that they accept that the Art.2/3 test for granting protective measures is not satisfied in their cases. Yet they are now included within a group of people who – as a group – claim that those tests *are* satisfied.

33. Sixth, as I have noted above, the *Generic Application for Protective Measures* is unspecific as to what protective measure or measures is sought in the case of each applicant (in particular it does not distinguish in the case of each applicant whether anonymity *and* screening is sought; or whether anonymity *or* screening is sought (and, in such a case, which of them)). Yet the nature of the measure sought, and the extent to which it would interfere with the obligation under s18 of the 2005 Act to take such steps as I considers reasonable to secure that members of the public (including reporters) are able to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry, are likely to be highly material considerations in deciding – where a balancing exercise falls to be performed – whether to grant an application for protective measures (and, if so, the nature of the protective measure to be applied).

34. Seventh, although I have regard to the duty under s17(3) of the 2005 Act that the applicants draw my attention to, it is important to note that that s17(3) provide in full as follows: “In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)” (emphasis added). Two important points emerge: (i) I must act with fairness – as I have explained above, it would not be fair to anyone to determine these applications on a generic basis; and (ii) the obligation is to avoid *unnecessary* -

although I recognise that determining each application individually will involve additional cost, in my judgment that is an entirely necessary cost.

35. Eighth, as noted above, a high number of the group of 55 applicants who seek protective measures under the *Generic Application for Protective Measures*, some 31 witnesses, have previously advised the Inquiry through the Treasury Solicitor that they do not apply for any protective measures. This change in approach plainly requires to be further investigated and is an additional reason why I cannot accede to the application presently made to me.

36. In the circumstances, the Inquiry will continue to process the individual applications for protective measures that it has received. I should stress that no-one is prejudiced in any way by my decision with regard to the Generic Application in question – the individual applicants for protective measures will each have their applications determined on their individual merits. Last, it has not been necessary, in order to determine the issue before me, to resolve the differences between PIL and the Treasury Solicitor over whether the Baha Mousa Inquiry or the Bloody Sunday Inquiry is the better comparator to this Inquiry, nor the impact that *Rabone* had on the Art.2 test, as neither issue assisted me in determining the correct approach to take to the question of whether applications could be determined generically or needed to be determined individually. It may be necessary to address the former issue in individual rulings; the latter issue will be addressed in my rulings on individual applications.

Sir Thayne Forbes

25.5.12

Al Sweady Inquiry

**RULING ON GENERIC LEGAL ISSUES RELATING TO IMMUNITIES AND
RELATED UNDERTAKINGS FOLLOWING THE FIRST DIRECTIONS
HEARING ON 21ST JUNE 2010**

Introduction

1. At a directions hearing on 21 June 2010 I heard submissions from the Treasury Solicitor (TSol), Public Interest Lawyers (PIL) and the Ministry of Defence (MoD) on generic legal issues with regard to two matters, namely:
 - (i) Applications for anonymity and other protective measures; and
 - (ii) Immunities and related undertakings.
2. Having heard those submissions, I indicated that I would take time to consider the submissions in relation to those matters and would in due course promulgate rulings in writing. This is my ruling with regard to the generic legal issues concerning the second of those matters, namely Immunities and related Undertakings. The first matter, i.e. applications for anonymity and other protective measures, is the subject of a separate ruling.

Background

3. In summary, this Inquiry arises out of allegations that, following a fire-fight between British soldiers and insurgents in Iraq in May 2004, a number of Iraqi nationals who had been consequently detained by British troops were unlawfully killed at a British Army camp and that others were mistreated at that camp and later at a detention facility.
4. On 25 November 2009 the then Secretary of State for Defence announced that there would be a public inquiry into the allegations. I was invited to chair the Public Inquiry. The Inquiry's Terms of Reference are:

To investigate and report on the allegations made by the claimants in the Al-Sweady judicial review proceedings against British soldiers of (1) unlawful killing at Camp Abu Naji on 14 and 15 May 2004, and (2) the ill-treatment of five Iraqi nationals detained at Camp Abu Naji and subsequently at the divisional temporary detention facility at Shaibah Logistics Base between 14 May and 23

September 2004, taking account of the investigations which have already taken place, and to make recommendations.

Immunities and Undertakings

5. I readily accept that a primary obligation of this Inquiry is to carry out a full and thorough investigation of the allegations summarised within the Terms of Reference. In order to fulfil that obligation, it is plainly necessary to make such proper and appropriate provision as ensures that witnesses are not constrained from giving a full and frank account in giving their evidence and in providing documents and/or information to the Inquiry. At an early stage, I decided that, as a matter of general principle, it was neither necessary nor in the public interest that I should seek some form of general immunity against prosecution for witnesses to the Inquiry in order to achieve that objective. However, I did form the view that I should seek appropriate undertakings to protect witnesses from the risk of their evidence or information being used against them in criminal proceedings and, possibly, in administrative or disciplinary procedures falling short of criminal proceedings. As it seemed to me, such a provision would properly serve to achieve the full and frank accounts from witnesses that the Inquiry requires. Accordingly, on 11 May 2010 the Inquiry Solicitor wrote to TSol, PIL and MoD, informing them of my proposed approach to such undertakings, and inviting representations on the nature and extent of any undertakings that I should seek in relation to the subsequent use of evidence, documents and/or information given by any person to the Inquiry.
6. The letter set out the form of undertaking I was then minded to seek from the Attorney-General, namely:

An undertaking in respect of any person who provides evidence to the Inquiry that no evidence he or she may give before the Inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence, nor any document or information produced by that person to the Inquiry, will be used in evidence against him or her in any criminal proceedings (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), except:

- (a) A prosecution (whether for a civil or a military offence) where he or she is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or
- (b) In proceedings where he or she is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit that offence.

7. The parties to whom the letter was addressed were invited to answer the following questions:
 - (i) Do you agree that the Chairman should seek such an undertaking?
 - (ii) If so, why?
 - (iii) If not, why not?
 - (iv) Do you suggest that an undertaking of a different kind ought to be sought from the Attorney-General (and, if so, what form of words do you suggest and why)?
 - (v) In particular, do you suggest that the undertaking set out above should be extended to prevent the use of the evidence etc of a witness *in the investigation* of an offence, as well as in evidence in any future proceedings (and, if so, why)?
 - (vi) Do you agree that it is sufficient to seek such an undertaking from the Attorney-General, and not all from the Director of Public Prosecutions (and, if not, why not)?
8. The letter also asked the parties to indicate whether they would suggest seeking an undertaking from the MoD in relation to the subsequent use of evidence, documents and/or information given by any person to the Inquiry. If so, they were asked to indicate in what form, why and from whom; if not, they were asked to indicate why not.
9. Finally the three parties were asked whether they suggested any other undertaking should be sought, and if so, in what form, why and from whom.
10. Written responses were received from all three parties; having considered those responses carefully I asked the parties to produce written skeleton arguments addressing the following issues:
 - (i) Whether I should seek an undertaking from the Attorney General in the form sought by Sir William Gage in the Baha Mousa inquiry and set out in Annex A to his ruling of 6 January 2009 (as suggested by TSol). In particular, assistance was sought on the following points:
 - i. Does the privilege against self-incrimination extend to evidence which may inform towards the case which the prosecution may wish to establish and the material upon which the prosecution may wish to rely in deciding whether to prosecute?

- ii. What are the relevant considerations for this Inquiry in relation to whether such an undertaking should be sought?

(ii) Whether I should seek an undertaking from the MoD in the form sought by Sir William Gage in the Baha Mousa Inquiry and set out in Annexes C-F of his Ruling of 6 January 2009 (as suggested by TSol). Particular assistance was sought in relation to identifying relevant considerations that I ought to take into account in deciding whether to seek such an undertaking.

11. Before setting out the representations made by each party and my rulings upon them, I set out the relevant statutory provisions and legal principles, which are not in dispute.

Statutory Provisions

12. The Inquiry's approach to evidence and procedure is governed by section 17 of the Inquiries Act 2005 ("the 2005 Act"), the material terms of which are as follows:

"17 Evidence and procedure

- (1) Subject to any provision of this Act or of the rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.
- (2) ...
- (3) In making any decision as to the procedure of conduct of an inquiry the chairman must act with fairness and also with the need to avoid any unnecessary cost (whether to public funds or to witnesses or others)."

13. Section 21 of the 2005 Act provides powers to a chairman to require production of evidence. Its material parts are as follows:

"21 Powers of chairman to require production of evidence etc

- (1) The chairman of an Inquiry may by notice require a person to attend at a time and place stated in the notice –
 - (a) to give evidence
 - (b) to produce any documents in his custody or under his control that relate to a matter in question at the inquiry;

- (c) to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.
- (2) ...
- (3) ...
- (4) A claim by a person that –
 - (a) he is unable to comply with a notice under this section;
 - (b) it is not reasonable in all the circumstances to require him to comply with such a notice is to be determined by the chairman of the inquiry, who may revoke or vary the notice on that ground.
- (5) In deciding whether to revoke or vary a notice on the ground mentioned in subsection 4(b), the chairman must consider the public interest in the information in question being obtained by the inquiry, having regard to the likely importance of the information.”

14. Section 22 of the 2005 Act preserves the right of a witness to refuse to give evidence or produce documents which may incriminate him. It reads as follows:

“22 Privileged information etc

- (1) A person may not under section 21 be required to give, produce or provide any evidence or document if –
 - (a) he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in the relevant part of the United Kingdom, or
 - (b) the requirement would be incompatible with a Community obligation.
- (2) ...”

Ruling on the Written and Oral Representations

15. I now turn to deal with each of the issues identified in paragraph 10 above.

16. **First Issue: Self Incrimination.** It is common ground that the undertaking provided by the Attorney General to Sir William Gage in the Baha Mousa Inquiry as set out in Annex A to his ruling of 6th January 2009 is concerned with the issue of self incrimination and is expressed in the following terms (my emphasis):

“1 No evidence a person may give before the Inquiry, will be used in evidence against that person in any criminal proceedings *or for the purpose of deciding whether to bring such proceedings* (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), save in such proceedings as are referred to in paragraph 2 herein:

2. Paragraph 1 does not apply to:

(i) A prosecution (whether for a civil offence or a military offence) where the person is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or

(ii) Proceedings where the person is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence.

3. Where any such evidence is provided to the Inquiry by a person, it is further undertaken that, as against that person, no criminal proceedings shall be brought (or continued) in reliance upon evidence which is itself the product of an investigation commenced as a result of the provision by that person of such evidence.”

17. It is therefore apparent that the undertaking relating to self incrimination provided to Sir William Gage in the Baha Mousa Inquiry by the Attorney General (“the AG/BMI undertaking”) goes further than that originally proposed for this Inquiry (as set out in paragraph 6 above) in the following important respects:

- (i) Paragraph 1 of the AG/BMI undertaking includes words that prohibit the use of the evidence in question for the purpose of deciding whether to bring criminal proceedings against the witness (see the highlighted words); and
- (ii) Paragraph 3 of the AG/BMI undertaking (also highlighted by me) is an additional provision which ensures that evidence produced by any investigation commenced as a result of a witness's evidence to the Inquiry cannot be used to bring criminal proceedings against that witness.

18. It is therefore clear that, when compared with the form of undertaking as originally proposed in the letter of 11th May 2010, the AG/BMI undertaking can properly be described as an extended undertaking and I will hereafter, from time to time, refer to it as such.
19. As it seems to me, an important initial question that requires to be answered is whether the AG/BMI undertaking, as well as being an extended undertaking (when compared with that originally proposed), has the effect of giving wider protection to the witness than would otherwise be afforded to him by his reliance upon the privilege against self-incrimination – or whether it is, in effect, co-extensive with it.
20. It is common ground that the privilege against self incrimination was given statutory force in relation to civil proceedings by virtue of section 14 of the Civil Evidence Act 1968 (“the 1968 Act”). Section 14 is declaratory of the position at common law (see, for example, the decision of the Court of Appeal in *Blunt v Park Lane Hotel Ltd* [1942] 2 KB 252 at 257) and, so far as relevant, provides as follows (as amended):

“14 Privilege against incrimination of self or spouse or civil partner

- (1) The right of a person in any legal proceedings other than criminal proceedings to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence or for the recovery of a penalty ...
 - (a) shall apply only as regards criminal offences under the law of any part of the United Kingdom and penalties provided for by such law; ...”

21. As indicated above, the principles contained in section 14 of the 1968 Act have been duly incorporated into the Inquiry process by means of section 22 of the 2005 Act which, so far as material, is in the following terms (quoted above in paragraph 14, but repeated for convenience):

“22 Privileged information etc

- (1) A person may not ... be required to give, produce or provide any evidence or document if –
 - (a) he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in the relevant part of the United Kingdom, or
 - (b) the requirement would be incompatible with a Community obligation.
- (2) ...”

22. It is also common ground between the parties that the scope of the privilege against self-incrimination, as formulated under the common law and enacted in section 14 of the 1968 Act is sufficiently broad to encompass: (i) evidence which may inform towards the case which the prosecution may wish to establish and (ii) material upon which the prosecution may wish to rely in deciding whether to prosecute. Having considered the relevant authorities as outlined below, I am satisfied that this is correct. Thus, in *Rank Film Distributors Ltd v Video Information Centre* [1982] AC 380, Lord Wilberforce stated the relevant principles in the following terms (see page 443):

“... whatever direct use may or may not be made of information given, or material disclosed, under the compulsory process of the court, it must not be overlooked that, quite apart from that, its provision or disclosure may set in train a process which may lead to incrimination or may lead to the discovery of real evidence of an incriminating character. In the present case, this cannot be discounted as unlikely: it is not only a possible but probably the intended result. The party from whom disclosure is asked is entitled, on established law, to be protected from these consequences.”

23. In the course of his judgment in *Sociedade Nacional de Combustiveis de Angola UEE v Lundqvist* [1991] 2 QB 310, Beldam LJ stated the position in relation to section 14 of the 1968 Act in the following terms (see page 324):

“It is significant that Parliament referred to a “tendency to expose” and to proceedings and not merely to conviction. Thus, in my judgment, it is sufficient to support a claim to privilege against self-incrimination that the answers sought might lead to a line of inquiry which would or might form a significant step in the chain of evidence required for a prosecution.”

24. In the course of his judgment in *Den Norske Bank ASA v Anonatos* [1999] QB 271, Waller LJ summarised the principles governing what is meant by the privilege against self-incrimination, as follows (see page 289):

“Thus, it is not simply the risk of prosecution. A witness is entitled to claim the privilege in relation to any piece of information or evidence on which the prosecution might wish to rely in establishing guilt. And, as it seems to me, it also applies to any piece of information or evidence on which the prosecution would wish to rely in making its decision whether to prosecute or not.”

25. Finally, in *Saunders v United Kingdom* (1996) EHRR 313, the European Court of Human Rights (“the ECtHR”) made it clear that the privilege against self-

incrimination, which was said to form part of the concept of fairness enshrined in Article 6 of the ECHR, extended beyond evidence that was directly incriminating. At paragraphs 70-71 of its judgment in that case the ECtHR said this:

“70. ... However, the Government have emphasised, before the Court, that nothing said by the applicant in the course of the interviews was self-incriminating and that he had merely given exculpatory answers or answers which, if true, would serve to confirm his defence. In their submission only statements which are self-incriminating could fall within the privilege against self-incrimination.

71. The Court does not accept the Government’s premise on this point since some of the applicant’s answers were in fact of an incriminating nature in the sense that they contained admissions to knowledge of information which tended to incriminate him ... In any event, bearing in mind the concept of fairness in Article 6 ... , the right not to incriminate oneself cannot reasonably be confined to statements of admission or wrongdoing or to remarks which are directly incriminating. Testimony obtained under compulsion which appears on its face to be of a non-incriminating nature – such as exculpatory remarks or mere information on questions of fact – may later be deployed in criminal proceedings in support of the prosecution case, for example to contradict or cast doubt upon other statements of the accused or evidence given by him during the trial or to otherwise undermine his credibility. Where the credibility of an accused must be assessed by a jury the use of such testimony may be especially harmful. It follows that what is of the essence in this context is the use to which evidence obtained under compulsion is put in the course of a criminal trial.”

26. Accordingly, on behalf of TSol Mr Sheldon submitted that it was apparent from the foregoing analysis that a witness will be able to invoke the privilege against self-incrimination, not only in respect of evidence that might be regarded as directly incriminating of that witness, but also in respect of evidence that might subsequently be used to his detriment in the course of subsequent criminal proceedings. Having regard to the principles expressed in the authorities to which I refer in the previous paragraph, I agree with that submission. I also agree with Mr Sheldon’s further observation that the scope of a witness’s right not to answer questions or to produce documents in reliance upon the privilege against self-incrimination is therefore very wide indeed.

27. I am therefore satisfied that, although the AG/BMI undertaking does go wider than the undertaking originally proposed in the letter of 11th May 2010 and is thus, in that sense, an extended form of undertaking, it is clear from its terms that it does not go wider than the scope of the privilege against self-incrimination. In my view, the AG/BMI form of undertaking gives protection to the witness that is, to

all intents, co-extensive with the protection that would otherwise be afforded to that witness by the wide scope of the privilege against self incrimination.

28. On behalf of the MoD, Mr Johnson suggested that it had not yet been demonstrated that an undertaking in the extended terms of the AG/BMI undertaking was actually necessary in the circumstances of this Inquiry. However, he went on to make clear that there was no objection in principle to my seeking such an undertaking if I considered it appropriate.
29. On behalf of PIL, Mr O'Connor QC pointed out that paragraphs 4.5-4.7 of the current CPS Code for Crown Prosecutors make it clear that only admissible evidence may be taken into account when deciding whether to prosecute a prospective defendant. He suggested that this rendered unnecessary any extension to the undertaking as originally proposed in the letter of 10th May 2010. He also questioned whether any such extension to the undertaking would actually enhance the Inquiry's fact finding role. He suggested that it would not and went on to submit that it would, instead, have the effect of imposing an unnecessary constraint upon the taking of appropriate measures for ensuring proper accountability in respect of any established infringement of Article 2 and/or Article 3 (hereafter "Article 2 or 3 accountability") on the part of the witness in question. It was therefore Mr O'Connor's submission that I should not seek an undertaking in the extended form of the AG/BMI undertaking.
30. Mr Sheldon submitted (correctly in my view) that the effect of the analysis set out in paragraphs 22 to 26 above is to demonstrate that the scope of the original proposed undertaking as set out in the letter of 11th May 2010 is not sufficiently wide to provide protection to witnesses to the Inquiry against self-incrimination that is equivalent to that afforded by principles of the common law and by sections 14 and 22 respectively of the 1968 and 2005 Acts. He pointed out that, in particular, the original proposed undertaking clearly does not provide any protection to a witness in respect of either of the following: (i) use by the prosecuting authority of evidence given by the witness to the Inquiry in deciding whether to bring a prosecution against that witness and (ii) a prosecution of the witness based on evidence obtained during an investigation commenced as a result of evidence provided to the Inquiry by that witness.
31. It was Mr Sheldon's uncontroversial submission that the primary obligation of the Inquiry is to ensure that it conducts a full and thorough investigation within its Terms of Reference. I have no hesitation in accepting that this is so. He then

submitted that, unless the scope of the proposed undertaking is extended so as to provide the witness appropriate protection in respect of the two matters to which I have referred in the previous paragraph, there will be a real risk that a witness's willingness to co-operate with the important work of the Inquiry will be tempered by a justifiable concern that, by giving evidence, he will expose himself to a risk of prosecution. Such a witness would then be likely to invoke his privilege against self-incrimination, with the result that the Inquiry would then be deprived of the information (possibly of a critical nature) that could, and would otherwise, have been provided by the witness. As a result, the Inquiry's ability to conduct a full and thorough investigation would clearly be impaired, possibly to a significant degree. I agree with those submissions and, for my part, do not accept that such a witness could realistically be expected to accept (even if it were the case – which I doubt) that an appropriate application of the CPS Code for Crown Prosecutors, taken in conjunction with the terms of an undertaking as originally proposed in the letter of 11th May 2010, would provide him with protection against prosecution equivalent to that provided by the full extent of the privilege against self-incrimination.

32. Mr Sheldon therefore submitted that I should seek an undertaking from the Attorney General in the same terms as that provided to Sir William Gage in the Baha Mousa Inquiry, as set out in Annex A to his ruling of 6th January 2009. It was his submission that such an undertaking would be, in effect, co-extensive with the privilege against self-incrimination and that thus a witness could be confident that, in giving his evidence to the Inquiry, he would not be losing the benefit of the protection against prosecution that would otherwise be afforded to him by the privilege against self-incrimination. In short, the Inquiry would have the benefit of receiving relevant information from the witness, in circumstances where the witness still remains protected against the risk of that information being used against him by the prosecuting authorities, the protection being afforded by the undertaking instead of the privilege against self incrimination. By this means, the Inquiry will be able to receive information from a witness that (as seems very likely) would not otherwise be provided, because of the witness's right to invoke the privilege against self-incrimination in respect of that information.
33. I agree with Mr Sheldon's submissions as summarised in the previous paragraph. Accordingly, for those reasons, I am satisfied that I should seek an undertaking from the Attorney General in the same terms as that provided to Sir William Gage in the Baha Mousa Inquiry as set out in Annex A to his ruling of 6th January 2009.

34. Second Issue: Administrative or Disciplinary Action. The undertakings provided to Sir William Gage in the Baha Mousa Inquiry by the Permanent Under-Secretary of State for the MoD and the various Heads of the Armed Services, as set out in Annexes C to F of his ruling of 6th January 2009, are concerned with the issue of possible administrative or disciplinary action, falling short of criminal proceedings, being taken against witnesses. The general nature and wording of those undertakings is clear from the terms of the undertaking given by Sir Bill Jeffrey KCB on behalf of the MoD by letter dated 19th December 2008, as follows:

“When we spoke last week you indicated your belief that an undertaking in respect of possible administrative or disciplinary action against witnesses will assist you to fulfil your terms of reference.

In recognition of this, I give the following undertaking:

If written or oral evidence given to the Inquiry by a witness who is a former or current MoD civil servant may tend to indicate that:

- (1) the same witness previously failed to disclose misconduct by himself or some other person, or
- (2) the same witness gave false information on a previous occasion in relation to such misconduct,

then I undertake that the MoD will not use the evidence of that witness to the Inquiry in any disciplinary proceedings against that witness where the nature of the misconduct alleged is the failure to give a full, proper or truthful account on that previous occasion.

I enclose similar undertaking from the Commander-in-Chief Fleet, on behalf of the Chief of the Naval Staff, for the Royal Navy, the Chief of the General Staff for the Army and the Chief of the Air Staff for the Royal Air Force.”

35. Although Mr O'Connor accepted that an undertaking in these terms, which is limited to administrative action in respect of a witness's failure to give a full or truthful account on a previous occasion, did not give rise to any concerns with regard to Article 2 or 3 accountability, both he and Mr Johnson submitted that no such undertaking should be sought by this Inquiry. In essence, they advanced the following two reasons in support of that submission, namely (i) that the privilege against self-incrimination does not extend to administrative sanctions that fall short of criminal proceedings and (ii) that, in contrast to the Baha Mousa Inquiry, there has been no previous formal occasion such as a Court Martial upon which

any potential witness has been obliged to give an honest account of his own misconduct.

36. Mr Sheldon readily accepted that the privilege against self-incrimination does not extend to the type of administrative action and or disciplinary procedures that are the subject matter of this form of undertaking. However, he pointed out the limited nature of the misconduct that would be covered by the undertaking (i.e. failure to give a full or proper account on an earlier occasion). He submitted (correctly, in my view) that, although there has been no Court Martial in this case, that did not mean that there had been no obligation on the part of a witness to give an honest account when required to do so on an earlier occasion (e.g. during the 2004 and 2008 Royal Military Police investigations). He stressed that the limited nature of the undertaking would not restrict the authorities from holding accountable by disciplinary or administrative proceedings those who had been guilty of any wrongdoing or misconduct revealed by the witness's evidence. In this he was plainly correct and there was no submission to the contrary effect by counsel for either of the other two parties. Mr Sheldon then emphasised again that the Inquiry's primary obligation is to investigate fully the allegations within the Terms of Reference. He submitted that this form of undertaking would make a contribution to the proper fulfilment of that obligation – in short, that witnesses would be more likely to give truthful and complete evidence if their evidence was protected from use in disciplinary proceedings against them, albeit in the very limited way envisaged. This, he contended, should be the decisive factor. I agree.
37. Accordingly, I am wholly satisfied that Mr Sheldon's submissions on this issue are correct. For those reasons and like Sir William Gage (see paragraph 35 of his ruling of the 6th January 2009), I have come to the conclusion that it would be appropriate for me to seek the same limited form of undertaking as that sought by Sir William and with which he was provided by Sir Bill Jeffrey KCB and each of the various Heads of the Armed Services: see Annexes C to F to Sir William's ruling of 6th January 2009.
38. Once again, I would like to express my gratitude to all counsel for their very helpful written and oral submissions on the above issues.

Sir Thayne Forbes

Sir Thayne Forbes,

Chairman, Al-Sweady Inquiry, 27th July 2010

Al Sweady Inquiry

APPLICATIONS FOR ANONYMITY AND OTHER PROTECTIVE MEASURES: RULING ON GENERIC LEGAL ISSUES FOLLOWING THE FIRST DIRECTIONS HEARING ON 21ST JUNE 2010

Introduction

1. At a directions hearing on 21 June 2010 I heard submissions from the Treasury Solicitor (TSol), Public Interest Lawyers (PIL) and the Ministry of Defence (MoD) on generic legal issues with regard to two matters, namely:
 - (i) Applications for anonymity and other protective measures; and
 - (ii) Immunities and related undertakings.
2. Having heard those submissions, I indicated that I would take time to consider the submissions in relation to those matters and would in due course promulgate rulings in writing. This is my ruling with regard to the generic legal issues relating to Anonymity and other Protective Measures.

Background

3. In summary, this Inquiry arises out of allegations that, following a fire-fight between British soldiers and insurgents in Iraq in May 2004, a number of Iraqi nationals who had been consequently detained by British troops were unlawfully killed at a British Army camp and that others were mistreated at that camp and later at a detention facility.
4. On 25 November 2009 the then Secretary of State for Defence announced that there would be a public inquiry into the allegations. I was invited to chair the Public Inquiry. The Inquiry's Terms of Reference are:

To investigate and report on the allegations made by the claimants in the Al-Sweady judicial review proceedings against British soldiers of (1) unlawful killing at Camp Abu Naji on 14 and 15 May 2004, and (2) the ill-treatment of five Iraqi nationals detained at Camp Abu Naji and subsequently at the divisional temporary detention facility at Shaibah Logistics Base between 14 May and 23 September 2004, taking account of the investigations which have already taken place, and to make recommendations.

Anonymity and other protective measures

5. At the Preliminary Hearing on 9 March 2010 I made an opening statement in which I indicated that, having regard to s18 of the Inquiries Act 2005, the Inquiry's proceedings would be conducted in public and in an open and transparent manner.
6. Accordingly, as a general rule, all witness statements and other documents considered relevant by the Inquiry will be distributed to Core Participants and other persons concerned in the Inquiry, referred to in the Inquiry's public hearings and thereafter published on the Inquiry's website.
7. On 11 May 2010 the Solicitor to the Inquiry wrote to the parties named in paragraph 1 above, informing them of my intended approach to applications for anonymity and other protective measures for witnesses, including the procedure I intended to adopt in relation to applications for such measures.
8. The letter also invited the parties to make written submissions in relation to the law I should apply when deciding applications for anonymity or other protective measures. In particular, I asked that submissions should address four issues:
 - (1) What is the legal test to be applied, and what considerations are relevant, in relation to any application that relies on Articles 2 or 3 of the European Convention on Human Rights ("the ECHR")? Hereafter I will refer to this as "the Articles 2 and 3 test".
 - (2) What is the legal test to be applied, and what considerations are relevant, in relation to any application that asserts that there is a risk of death or injury, but where Articles 2 or 3 of the ECHR are not relied on (the so-called "Common Law test")? Hereafter I will refer to this as "the Common Law test".
 - (3) What is the legal test to be applied, and what considerations are relevant, in relation to any application that relies on Article 8 of the ECHR (hereafter "the Article 8 test")?
 - (4) What is the legal test to be applied, and what considerations are relevant, in relation to so-called "public interest" applications for protective measures (hereafter "the Public Interest test")?
9. Written submissions were received from all three parties named in paragraph 1 above. Having considered the written representations made, it was clear that there were two main sub-issues between the parties and upon which oral submissions were required:

- (1) First, in paragraph 14 of its skeleton argument TSol submitted that, when determining an application for anonymity based on Articles 2 and/or 3 of the ECHR, the Inquiry must ask itself: 'Does a rigorous and objective assessment of the totality of the relevant information available to the Inquiry reveal reasonable grounds for believing (or a real risk) that, if anonymity is not granted, the witness will face a real and immediate risk of death or bodily injury?' – I invited submissions on whether this was correct.
 - (2) Second, whether it is part of the Common Law test that, once it has been found that an applicant's subjective fears are based on reasonable grounds, there must be a compelling justification for naming the applicant (i.e. was *In re A and others* [2009] NICA 6 wrongly decided)?
10. It was upon those two sub-issues that counsel for the three parties made oral representations at the Directions Hearing on 21 June 2010.
 11. Before setting out the specific representations made by each party in relation to the four issues identified in paragraph 8 above and my rulings upon them, I set out the relevant statutory background, which is not in dispute.

Statutory Provisions

12. The Inquiry is set up under s1 of the Inquiries Act 2005 ("the 2005 Act"). It is being conducted by me as Chairman, without other members. It was set up on 25 November 2009 with terms of reference as set out above.
13. Section 18 of the 2005 Act provides for public access to proceedings and information and, so far as material, is in the following terms:

18 Public access to inquiry proceedings and information

- (1) Subject to any restrictions imposed by a notice or order under section 19, the chairman must take such steps as he considers reasonable to secure that members of the public (including reporters) are able –
 - (a) To attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;
 - (b) To obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel...
14. Section 19 of the 2005 Act provides for restrictions to be placed on the public access guaranteed by s18 of the Act. The relevant terms of s19 are as follows:

19 Restrictions on public access etc

- (1) Restrictions may, in accordance with this section, be imposed on –
 - (a) ...
 - (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry...
- (2) Restrictions may be imposed in either or both of the following ways
 - (a) ...
 - (b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.
- (3) A restriction ... order must specify only such restrictions –
 - (a) ...
 - (b) as the ... chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
- (4) Those matters are –
 - (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
 - (b) any risk of harm or damage that could have been avoided or reduced by any such restriction;
 - (c) any conditions as to confidentiality, subject to which a person acquired information that he is to give, or has given, to the inquiry;
 - (d) the extent to which not imposing any particular restriction would be likely –
 - (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
 - (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).
- (5) In subsection (4)(b) “harm or damage” includes in particular -
 - (a) death or injury;
 - (b) damage to national security or international relations
 - (c) ...”

Ruling on the Written and Oral Representations relating to Anonymity and other Protective Measures.

15. I stress that the Inquiry procedure is inquisitorial and not adversarial. Therefore, even where there is agreement between counsel for all parties, it is not appropriate for me to simply accept the agreed position. I have to be satisfied that, within the statutory framework, what is being proposed is appropriate. For convenience, in this ruling I will refer to all forms of protective measures by the single term “anonymity” and I will address in turn each of the four issues set out in paragraph 8 and, where it arises, each of the related sub-issues identified in paragraph 9.

16. **First issue: The Articles 2 and 3 test.** I accept that it is clear that, as a public authority, the chairman of an inquiry such as the present has an obligation to act compatibly with Convention Rights, including those enshrined in Articles 2, 3 and 8 of the ECHR: see section 6 of the Human Rights Act 1998. Furthermore, as is clear from their terms and as has often been emphasised in the relevant case law, Article 2 (the right to life) and Article 3 (the right to freedom from torture or inhuman or degrading treatment) are both fundamental rights and neither is subject to any form of qualification.
17. It is common ground that the decision of the European Court of Human Rights (“the ECtHR”) in *Osman v UK* (1998) 29 EHRR 245 (“*Osman*”) clearly establishes that Article 2 covers not only the negative obligation not to take the life of another person but that it also imposes on contracting states a positive obligation to take certain steps towards the prevention of loss of life at the hands of others than the state, as well as stating what must be established in order to prove a violation on the part of the authorities of that positive obligation, as follows (see paragraphs 115 and 116 of the judgment in *Osman*):

“115. The court notes that the first sentence of article 2(1) enjoins the state not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It is common ground that the state’s obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the court that article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. The scope of this obligation is a matter of dispute between the parties.

116. In the opinion of the Court, where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person (see paragraph 115 above), it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.”

18. The significance of *Osman*, as a definitive statement of the relevant Strasbourg jurisprudence, is expressly recognised in *In re Officer L* (2007) UKHL 36 and [2007] 1 WLR 2135 (“*Re Officer L*”), the leading domestic decision on the appropriate legal test to be applied under Article 2. Again, it is clear from both their written and oral submissions that this is common ground between the parties. In the course of his speech in *Re Officer L*, Lord Carswell stated the relevant principles in the following terms (see paragraphs 19 and 20):

“19. The right to life is simply and briefly expressed in the first sentence of article 2 of the Convention: “Everyone’s right to life shall be protected by law.” As the Strasbourg jurisprudence has laid down, this covers not only the negative obligation, not to take the life of another person, but imposes on contracting states a positive obligation, to take certain steps towards the prevention of loss of life at the hands of others than the state. The locus classicus of this doctrine is *Osman v United Kingdom* (2000) ...

...

20. Two matters have become clear in the subsequent development of the case law. First, this positive obligation arises only when the risk is “real and immediate”. The wording of this test has been the subject of some critical discussion, but its meaning has been aptly summarised in Northern Ireland by Weatherup J in *Re W’s Application* (2004) NIQB 67, where he said that:

“... a real risk is one that is objectively verified and an immediate risk is one that is present and continuing.”

It is in my opinion clear that the criterion is and should be one that is not readily satisfied: in other words the threshold is high. There was a suggestion in paragraph 28 of the judgment of the court in *R (A and others) v Lord Saville of Newdigate* (2002) 1WLR 1249, 1261 (also known as the *Widgery Soldiers* case, to distinguish it from the earlier case with a very similar title) that a lower degree would engage article 2 when the risk is attendant upon some action that an authority is contemplating putting into effect itself. ... but I do not think that this suggestion is well founded. In my opinion the standard is constant and not variable with the type of act in contemplation, and is not easily reached. Moreover, the requirement that the fear has to be real means that it must be objectively well-founded. In this respect the approach adopted by Morgan J was capable of causing confusion when he held that the tribunal should have commenced by assessing the subjective nature of the fears entertained by the applicants for anonymity before going on to assess the extent to which those fears were objectively justified. That is a valid approach when considering the common law test, but in assessing the existence of a real and immediate risk for the purposes of article 2 the issue does not depend on the subjective concerns of the applicant, but on the reality of the existence of the risk.

21. Secondly, there is a reflection of the principle of proportionality, striking a fair balance between the general rights of the community and the personal rights of the individual, to be found in the degree of stringency imposed upon the state authorities in the level of precautions which they have to take to avoid being in

breach of article 2. As the ECtHR stated in paragraph 116 of *Osman*, the applicant has to show that the authorities failed to do all that was reasonably to be expected of them to avoid the risk to life. The standard accordingly is based on reasonableness, which brings in consideration of the circumstances of the case, the ease or difficulty of taking precautions and the resources available. In this way the state is not expected to undertake an unduly burdensome obligation: it is not obliged to satisfy an absolute standard requiring the risk to be averted, regardless of all other considerations ...”

19. Accordingly, as was effectively submitted by counsel for each of the parties, I am satisfied that the appropriate legal principles/test to be applied in respect of an application for anonymity based on Article 2, can be summarised as follows.

- (i) Article 2 covers not only the negative obligation not to take the life of another, but it also imposes upon contracting states a “positive obligation” to take certain steps towards the prevention of loss of life at the hands of others than the state: see *Osman* at paragraphs 115 to 116.
- (ii) This positive obligation arises only where the risk is “*real and immediate*”, i.e. “*a real risk is one that is objectively verified and an immediate risk is one that is present and continuing*”: see *Re Officer L* at paragraph 20 (approving Weatherup J in *Re W’s Application*, supra).
- (iii) The threshold required to engage the positive obligation is high, the standard and the fear must be objectively well-founded: see *re Officer L* at paragraph 20.
- (iv) The case law pursuant to Article 2 reflects the principle of proportionality; i.e. the degree of stringency imposed as to the level of precaution required to avoid a breach of Article 2 reflects the need to strike a fair balance between the general rights of the community and the personal rights of the individual: see *Re Officer L* at paragraph 21.

20. As I have already observed (see paragraph 16 above), it is common ground that Articles 2 and 3 are both fundamental rights and are not subject to any form of qualification. It is also common ground that, as well as carrying the negative obligation not to torture or subject an individual to inhuman or degrading treatment, Article 3 also imposes upon a contracting state a positive obligation to take reasonable and effective measures to prevent an individual from being subject to such treatment contrary to Article 3 of which the authorities of that state are, or ought to be, aware. Applying the reasoning of the ECtHR in *Osman* with regard to Article 2 (see paragraph 17 above) to the terms of Article 3, I am satisfied that this is so and none of the counsel for the parties suggested otherwise. I therefore also accept the submission made by counsel for each of the parties that the test of applicability for Article 3 is the same as that described by Lord Carswell in respect of Article 2 (suitably adapted to reflect also the terms of Article 3), namely that of a real and immediate risk to life or to an individual’s freedom from torture, cruel

and inhuman or degrading conduct: see also paragraphs 16 and 17 of the Open Ruling (Second Directions Hearing) by Sir William Gage in the Baha Mousa Public Inquiry, dated 5th February 2009, with which I agree.

21. Accordingly, in my view the appropriate legal principles/test applicable to an application for anonymity based on Article 3 can be summarised as follows.

- (i) In order for the threat to be “*real and immediate*” so as to engage Article 3, it must be “*objectively verified*” and “*present and continuing*”: see *Re W’s Application*.
- (ii) The threshold required to engage the positive obligation is high. The standard is constant and the fear must be objectively well-founded.
- (iii) The principle of proportionality is reflected in the degree of stringency imposed with regard to the level of precaution required to avoid a breach of Article 3 which reflects the need to strike a fair balance between the general rights of the community and the personal rights of the individual.

22. However, as indicated in paragraph 9(1) above, paragraphs 13 and 14 of TSol’s skeleton argument are in the following terms:

“13. In *R (A) v Lord Saville* [2000] 1 WLR 1855 Lord Woolf, when considering the common-law approach to be applied in cases where the evidence fell short of establishing “real and immediate” risk, held that the common-law jurisdiction to order anonymity would be engaged in a case where the fears of the individual concerned were “based on reasonable grounds” (1877B-C). There would be no justification for setting a higher threshold in an Article 2/3 case than in a case falling short of real and immediate risk.

14. It follows that when determining each application for anonymity based on articles 2 and/or 3, the Inquiry must ask itself the following question: does a rigorous and objective assessment of the totality of the relevant information available to the Inquiry reveal reasonable grounds for fearing (or a real risk) that, if anonymity is not granted, the witness will face a real and immediate risk of death or bodily injury?”

23. This apparent elision of the legal test to be applied in the case of an application for anonymity based on Article 2 and/or 3 with that applicable to an application based on common law principles resulted in the first sub-issue identified in paragraph 9(1) above and was the subject of detailed submissions in paragraph 19 of the MoD’s written skeleton argument which merit being quoted in full, as follows:

“19. The MoD respectfully submits that the test proposed by the Treasury Solicitor at paragraphs 13 and 14 of their skeleton argument is not correct in its entirety. The MoD submits that it is erroneous to import into the test for an anonymity application under Article 2 or 3 of the European Convention on Human Rights (“the Convention”) a requirement of “*reasonable grounds*” as opposed to “*real risk*”. This is because:

- (i) No authority has been cited to support the modification of the conventional approach to the threshold test in Articles 2 and 3 which has been authoritatively stated on a number of occasions;
- (ii) The interrelationship between an anonymity application based on Article 2 of the Convention and the common law test for anonymity was analysed extensively by Lord Carswell in *Re Officer L* ... Nowhere in that decision was it suggested that it would be appropriate to import into the Article 2 analysis the (clearly more generous) threshold test applicable in the common law context;
- (iii) On the contrary, Lord Carswell in *Re Officer L* at paragraph 20 adopted, in relation to the positive obligation, the summary given by Weatherup J in *In re W's Application* ... at paragraph 17 that:

“a real risk is one that is objectively verified and an immediate risk is one that is present and continuing”.

Lord Carswell added (also at paragraph 20) that:

“the criterion is and should be one that is not readily satisfied: in other words, the threshold is high.”

- (iv) The Strasbourg Court jurisprudence as to the test to be applied under Articles 2 and 3 is well established. No separate or modified test is applied in relation to anonymity applications and there is no principled reason for doing so. There is no basis for importing into the statutory test under Articles 2 and 3 principles that are applicable to common law applications for anonymity, and there is no requirement or objective justification for the two legal bases for anonymity applications to be aligned. Whilst it may, in certain contexts, be appropriate to develop the common law in alignment with the Convention, it is not permissible to modify the Convention jurisprudence so as to harmonise it with the common law ...
- (v) So the fact that it may be appropriate in a particular case, in accordance with the observations of Lord Carswell in *Re Officer L* at paragraphs 27-29, to conduct a common law balancing exercise having regard to Article 2 considerations does not undermine the integrity of the well-established test for establishing a prospective breach of Article 2 (or 3) of the Convention.”

24. In the course of his oral submissions on behalf of TSol, Mr Sheldon suggested that paragraphs 13 and 14 of his skeleton argument may have been misinterpreted. He argued that there had been no elision of the common law legal test with that applicable to applications for anonymity based on Articles 2 and 3 and accepted that, for the purposes of Articles 2 and 3, the nature of the risk that must be established is a “*real and immediate risk*”. Mr Sheldon went on to submit that paragraphs 13 and 14 of his skeleton argument were actually concerned with the evidential threshold that must be surmounted in order to establish such a risk. In effect, it was his submission that “reasonable grounds” is the appropriate test for that purpose, because there is no obvious reason why a lower evidential threshold

should be set in respect of the common law test with regard to a risk that falls short of real and immediate than the more serious risk that would engage Article 2 or 3.

25. Notwithstanding Mr Sheldon's assertion that paragraph 14 of his skeleton argument is only concerned with defining the appropriate evidential threshold for establishing a "*real and immediate risk*", it is clear that his formulation does have the effect of importing into the legal test applicable to an application for anonymity based on Article 2 and/or 3, terminology that is expressly derived from the legal test applicable to an application based on common law principles – principles that are "*distinct and in some respects different from those which govern a decision made in respect of an article 2 risk*": see Lord Carswell's speech in *Re Officer L* at paragraph 22 (see paragraph 27 below). In my view, given the clear statements of principle to be found in the judgments in both *Osman* and *Re Officer L*, such an approach is not only unnecessary but wrong for the reasons expressed by Mr Johnson on behalf of the MoD (see paragraph 23 above) and, in effect, supported by Mr O'Connor QC on behalf of PIL.

26. Accordingly, I am satisfied that the legal principles/test applicable to an application for anonymity based on Article 2 and/or 3 are as summarised in paragraphs 19 and 21 above. Expressed in one sentence, the test that must be satisfied for such an application to succeed is whether a rigorous and objective assessment of the totality of the relevant information available to the Inquiry has established as well-founded a present and continuing risk to the witness in question of death or bodily injury if the anonymity sought is not granted.

27. **Second issue: The Common Law test.** As counsel for each of the parties submitted, if the Article 2/3 test of real and immediate risk is not met, then the question of whether anonymity should be granted on common law principles will arise. That there are both Article 2/3 and common law grounds for granting anonymity to a witness in a public inquiry was explained by Lord Carswell in *Re Officer L* at paragraph 29 of his speech, as follows:

"... I suggest that the exercise to be carried out by the tribunal faced with a request of anonymity should be the application of the common law test, with an excursion, if the facts require it, into the territory of article 2. Such an excursion would only be necessary if the tribunal found that, viewed objectively, a risk to the witness's life would be created or materially increased if they gave evidence without anonymity. If so, it should decide whether that increased risk would amount to a real and immediate risk to life. If it would, then the tribunal would ordinarily have little difficulty in determining that it would be reasonable in all the circumstances to give the witnesses a degree of anonymity. That would then

conclude the exercise, for that anonymity would be required by article 2 and it would be unnecessary for the tribunal to give further consideration to the matter. If there would not be a real and immediate threat to the witness's life, then article 2 would drop out of consideration and the tribunal would continue to decide the matter as one governed by the common law principles. In coming to that decision the existence of subjective fears can be taken into account, on the basis which I earlier discussed (see paragraph 22)."

28. It is not disputed that the common law principles relating to witness anonymity derive from a tribunal's common law duty of fairness and that subjective fears can be taken into account, even if not well founded. In paragraph 22 of his speech in *Re Officer L*, Lord Carswell stated the relevant principles in the following terms:

"22. The principles which apply to a tribunal's common law duty of fairness towards the persons whom it proposes to call to give evidence before it are distinct and in some respects different from those which govern a decision made in respect of an article 2 risk. They entail consideration of concerns other than the risk to life, although as the Court of Appeal said in paragraph 8 of its judgment in the *Widery Soldiers* case, an allegation of unfairness which involves a risk to the lives of witnesses is pre-eminently one that the court must consider with the most anxious scrutiny. Subjective fears, even if not well founded, can be taken into account, as the Court of Appeal said in the earlier case of *R v Lord Saville of Newdigate, ex p A* (2000) 1 WLR 1855. It is unfair and wrong that witnesses should be avoidably subjected to fears arising from giving evidence, the more so if that has an adverse impact on their health. It is possible to envisage a range of other matters which would make for unfairness in relation of witnesses. Whether it is necessary to require witnesses to give evidence without anonymity is to be determined, as the tribunal correctly apprehended, by balancing a number of factors which need to be weighed in order to reach a determination."

29. However, it was Mr Sheldon's submission that in cases where there are reasonable grounds for the belief that giving evidence without anonymity would give rise to an increased risk to the witness's life, albeit of a degree insufficient to meet the Article 2/3 requirement of a "*real and immediate risk*", the test to be applied is as set out in the judgment of Lord Woolf in *R (A) v Lord Saville* (supra), as follows (see paragraph 68.5 of the judgment):

"... in our judgment the right approach here once it is accepted that the fears of the soldiers are based on reasonable grounds should be to ask is there any compelling justification for naming the soldiers, the evidence being that this would increase the risk."

30. Accordingly, Mr Sheldon submitted that in any case where the evidence shows that there are reasonable grounds for believing that naming the individual witness

“*would increase the risk*” to his life, the common law requires that there must be a compelling justification for naming the witness in question (i.e. for refusing his application for anonymity). Mr Sheldon contended that nothing said by the House of Lords in *Re Officer L* casts any doubt on the applicability of the test articulated by Lord Woolf in *R (A) v Lord Saville* and, for good measure, he pointed out that Lord Woolf was one of the Appellate Committee in *Re Officer L*. Mr Sheldon went on to submit that, insofar as the Court of Appeal in Northern Ireland held otherwise in the case of *In the Matter of an Application by A and others (Nelson Witnesses) for Judicial Review* [(2009) NICA 6 (“*Re A and Others (Nelson Witnesses)*”)] (see below), it was wrong to do so. It is this submission that has given rise to the second sub-issue identified in paragraph 9(2) above.

31. Referring to the judgment of Lord Woolf in *R (A) v Lord Saville*, at paragraph 24 of his judgment in *Re A and Others (Nelson Witnesses)*, Kerr LCJ said this:

“24. ... I have concluded that Lord Woolf did not propound a rule intended to be of general application to the effect that where a risk to life arose, compelling justification was required before a claim for anonymity of witnesses could be refused. Put simply, the context here is different. Whereas in *ex parte A* the decision might well have infringed the applicants’ rights under article 2, in the present case it has been determined that this does not arise. I am of the view that a risk falling short of that required to activate article 2 of ECHR falls to be assessed simply as one of a number of factors in an even-handed evaluation of competing interests rather than as a matter which requires to be offset by compelling justification.”

32. In paragraph 1 of his judgment (page 16) in *Re A and Others (Nelson Witnesses)*, Higgins LJ agreed with the judgment of Kerr LCJ. For his part, Girvan LJ said this at paragraph 23 (page 32):

“23. What the common law requires is fairness to the individual witness in all the relevant circumstances of the individual case. The determination of what is fair requires the carrying out of a balancing exercise. The nature of such an exercise necessarily requires putting into the scales the arguments and factors favouring the granting or withholding of anonymity. The passage from Lord Woolf should not be read as stating a broad overriding principle that the common law duty of fairness in any case where a claimed risk to life and subject fears arise requires that anonymity should be granted in the absence of compelling reasons. How the balance is struck in individual cases will, of course, be fact specific. Where there is a risk to the life of a witness the extent of the risk is a highly relevant factor to be put into the scales. Common sense and humanity would lead to the conclusion that the greater the risk the more persuasive the case for anonymity and the more the court would have to be persuaded that the countervailing factors are even more persuasive so as to lead to a refusal of anonymity or, in the words of Lord Woolf, there would have to be some compelling reason for refusing anonymity.”

It is to be noted that in paragraphs 29 to 31 (pages 34 to 36) of his judgment, Girvan LJ gives detailed guidance as to how the required balancing exercise should be carried out in determining an application for witness anonymity based on common law principles.

33. For their part, Mr O'Connor QC and Mr Johnson both submitted that the judgment of the Northern Ireland Court of Appeal in *Re A and Others (Nelson Witnesses)* was correct in concluding that the observations of Lord Woolf in *R (A) v Lord Saville*, upon which Mr Sheldon relied, should not be read as propounding a principle of general application to the effect that, where a risk to life arose, compelling justification was required before a claim for anonymity of witnesses could be refused. I agree with that submission for the reasons advanced by Mr Johnson: see paragraph 20 of his skeleton argument, which is in the following terms:

“20. The MoD submits that the Court of Appeal in Northern Ireland in *In re A and others* was correct in holding that the observations of Lord Woolf in *R (A) v Lord Saville of Newdigate* ... (at paragraph 68(5)) were not of general application. The following matters are relevant:

- (i) The pronouncement by Lord Woolf at paragraph 68(5) of *R (A) v Lord Saville of Newdigate* falls to be analysed in its proper context. The context was that at paragraphs 67 to 69. Lord Woolf explained his conclusions by reference to the facts of the particular case and it does not appear that in doing so, he was purporting to lay down any principle of general application.
- (ii) In *Re Officer L*, Lord Carswell (at paragraphs 22 and 27-29) analysed at length the common law principles to be applied to an application for anonymity. He did not refer to the observations of Lord Woolf at paragraph 68(5) as representing the principles generally governing such applications, nor, as Girvan LJ observed at paragraph 21 of *In re A and others* did he purport to state any novel proposition on this issue.
- (iii) Finally, as Girvan LJ identified in *In re A and others* (at paragraph 23) the conclusions as to the effect do not in any event detract in practical terms from the scope of the common law test. ...”

34. Accordingly, I am firmly of the opinion that Lord Woolf was not purporting to state a principle of general application in paragraph 68.5 of his judgment in *R (A) v Lord Saville*, as suggested by Mr Sheldon. I respectfully agree with the conclusions of the Northern Ireland Court of Appeal in *In re A and Others (Nelson Witnesses)*, in particular paragraph 24 of the judgment of Kerr LCJ and paragraph 23 of the judgment of Girvan LJ. I am therefore satisfied that the legal test applicable to an application for anonymity based on common law principles is as stated by Lord Carswell in paragraph 22 of his speech in *Re Officer L* and as stated by Girvan LJ in paragraph 23 of his judgment in *In re A and Others (Nelson Witnesses)*. Furthermore, in paragraphs 29 to 31 of that judgment, Girvan LJ has

given detailed guidance as to the relevant considerations and factors that need to be taken into account when carrying out the required balancing exercise.

35. **Third issue: the Article 8 test.** There was no dispute between the parties with regard to this particular issue. The relevant legal test can therefore be stated in very brief terms.

36. Article 8 of the ECHR provides that:

- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2. There shall be no interference by a public authority with the exercise of this right, except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

37. I accept that the Inquiry must not act in a way which is incompatible with the Article 8 rights of the witness concerned. If it proposes to act in a way that interferes with the witness’s rights under Article 8(1), that interference must be justified on one or more of the grounds identified in Article 8(2).

38. As Mr Sheldon observed, it follows that the test to be applied in respect of an application for evidential restrictions based on Article 8 is as follows:

- (i) Absent the order, would the Inquiry’s act of calling the witness and/or disclosure of his name/appearance/address/current position etc amount to an interference with his Article 8(1) rights? Relevant to the determination of that question are the type of considerations identified in paragraph 36 of Mr Sheldon’s skeleton argument, which I adopt but do not repeat.
- (ii) If interference with Article 8(1) is demonstrated, is that interference:
 - (a) necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of the health or morals, or for the protection of the rights and freedoms of others; and
 - (b) proportionate in all the circumstances, including taking into account (for example) the right of the press and others under Article 10 of the ECHR to receive and impart information?

39. **Fourth Issue: the Public Interest test.** Again there is no dispute as to the relevant legal principles/test to be applied. The considerations relevant to a public interest application for protective measures under s19 of the 2005 Act are set out in sub-section (4): see paragraph 14 above and repeated for convenience, as follows:

“(4) Those matters are –

- (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
- (b) any risk of harm or damage that could be avoided or reduced by any such restriction;
- (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;
- (d) the extent to which not imposing any particular restriction would be likely –
 - (i) to cause delay or to impair the efficiency or effectiveness of the inquiry; or
 - (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).”

40. As Mr Johnson observed, the relevant public interest ground relied on in any particular application may vary from application to application. Those representing individuals will be directly concerned with their safety, as will the MoD in a vicarious capacity in respect of service personnel. Furthermore, as Mr Johnson pointed out, the MoD has a distinct and direct interest in protecting national security (see s19(5)(b) of the 2005 Act, quoted in paragraph 14 above). I therefore accept, for example, that protective measures will be justified on public interest grounds where disclosure of the witness's identity or appearance would cause real harm to national security. As Mr Johnson pointed out, this consideration is likely to be engaged, for example, in the cases of soldiers who serve in special units or who are engaged in other sensitive work, such as the gathering or exploitation of intelligence.

41. I am grateful to all counsel for their very helpful written and oral submissions on all the above issues.

Sir Thayne Forbes

Sir Thayne Forbes,
Chairman, Al Sweady Inquiry,
19th July 2010

AL-SWEADY INQUIRY

RESTRICTION ORDER

General Protective Measure – Non-Witnesses

(Amended 28 September 2012)

The Restriction Order of 21st February 2011 concerning General Protective Measures **IS HEREBY AMENDED** as follows and **IT IS ORDERED** that until further order:

1. This order is further to the order of 3rd August 2010 made in relation to the redaction of the personal information of witnesses and binds all natural and legal persons (whether acting by themselves or by their servants or agents or howsoever).
2. Personal information of individuals other than witnesses will not be disclosed and will be redacted by the Inquiry from documents unless such information is – exceptionally – relevant to the discharge by the Inquiry of its Terms of Reference.
3. **Names of service personnel not related to the Terms of Reference of this Inquiry will generally not be redacted. Where the name of a member of service personnel who is not related to the Terms of Reference of this Inquiry appears in a context that gives rise to some apparent sensitivity, also unrelated to the Terms of Reference of this Inquiry, the name of that person may, at the discretion of the Chairman, be redacted.**
4. **Names of civilians not related to the Terms of Reference of this Inquiry will generally be redacted.**
5. Personal information **of individuals other than witnesses** includes (but is not limited to):
 - a. A person's name, **subject to the terms of paragraphs 3 and 4 above;**
 - b. A private address;
 - c. A business or work address;
 - d. A telephone number;

- e. A fax number;
 - f. An email address;
 - g. The service number of a member of the military;
 - h. Any other information which may identify where a person currently resides.
6. Any person affected by the restrictions set out in paragraphs 2 **to** 5 above may apply to the Chairman to vary this order.

Dated this 28th day of September 2012

Sir Thayne Forbes
Inquiry Chairman

AL-SWEADY INQUIRY

NOTE of GUIDANCE

RESTRICTION ORDER

General Protective Measure - All Witnesses

1. This note is intended to provide guidance on how the Chairman will interpret a central aspect of the application of the Restriction Order dated 3rd August 2010, namely who the Chairman considers to be a 'witness' in terms of that order. The Inquiry has progressed over a period of two years since the date the Restriction Order of 3rd August 2010 was issued. The Chairman considers it beneficial to core participants, witnesses, recognised legal representatives, and his staff to provide this guidance to ensure the effective running of the Inquiry.
2. In terms of the application of the Restriction Order for General Protective Measures for All Witnesses:
 - a. an individual will be considered a 'witness' if that individual was deemed by the Chairman as a person from whom he proposes to take evidence and thus was sent correspondence pursuant to Rule 9 of the Inquiry Rules 2006; and
 - b. an individual who was sent correspondence only of a preliminary nature, or to aid the Chairman in deciding whether that individual was a person from whom he proposes to take evidence, will not be considered a 'witness'.

Dated this 28th day of September 2012

Sir Thayne Forbes
Inquiry Chairman

Crown Office and Procurator Fiscal Service

Crown Office, 25 Chambers Street, Edinburgh, EH1 1LA



Mr John A Dunn, Deputy Crown Agent

**THE AL SWEADY INQUIRY
RECEIVED**

20 APR 2011

Jillian Glass
Solicitor to the Al-Sweady Inquiry
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Tel: 0131 226 2626
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Fax: 0844 561 4070

Your ref:
Our ref:

18 April 2011

Dear Ms Glass

The Al-Sweady Inquiry

Thank you for your correspondence in respect of the above addressed to the Lord Advocate, and to my office. I am grateful to you for sharing the correspondence dated 18 January 2011 from the offices of the Attorney General, outlining the undertaking which he provided to the Chairman to the Inquiry, in conjunction with the explanatory letter from Kristin Jones dated 10 January 2011, which have been considered by the Crown Office and Procurator Fiscal Service (COPFS).

I can confirm, on behalf of the Lord Advocate, that the Lord Advocate is content to provide an undertaking, as requested, to assist the Inquiry to fulfil its terms of reference. The Lord Advocate has agreed that, having regard to the explanatory letter of 10 January 2011 from Kristin Jones, the undertaking will be in the same form as that provided by the Attorney General, save for the reference to military proceedings which falls out with her jurisdiction.

The undertaking which the Lord Advocate proposes to give is as follows:

This is an undertaking in respect of any person who provides evidence to the Inquiry relating to a matter within its terms of reference. "Evidence" includes oral evidence, any written statement made by that person preparatory to giving evidence to the Inquiry or during the course of his or her testimony to the Inquiry, and any document or information produced to the Inquiry solely by that person.

No evidence a person may give before the Inquiry, nor any evidence as defined above, will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings against that person, save that this undertaking does not apply to:

- (a) *A prosecution where the person is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or*
- (b) *Proceedings where the person is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence.*

It is further undertaken that in any criminal proceedings brought, or in any decision as to whether to bring such proceedings, against any person who provides evidence, as defined



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above, to the Inquiry, no reliance will be placed upon evidence which is obtained during an investigation as a result of the provision by that person of evidence to the Inquiry. This undertaking does not preclude the use of information and/or evidence identified independently of the evidence provided by that person to the Inquiry.

I agree that this letter may be circulated to all interested parties and published on the Inquiry website.

I hope that this is helpful

Yours sincerely



John A. Dunn
Deputy Crown Agent



www.copfs.gov.uk





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Deputy Director

Jillian Glass
Solicitor to the Al-Sweady Inquiry
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31 January 2011

Dear Ms Glass

AL-SWEADY PUBLIC INQUIRY

I have seen the letter to you dated 18th January from Kevin McGinty of the Attorney General's Office in London in which he set out the terms of the undertaking agreed to by the Attorney General for England and Wales and the Director of Public Prosecution. I have also seen the letter to you of 10th January from Kristin Jones.

On behalf of the Director of Public Prosecutions for Northern Ireland I agree that an undertaking in precisely the same terms as agreed in that correspondence will apply in respect of prosecutions that fall to be conducted in Northern Ireland.

I agree that this letter may be circulated to all interested parties and published on the Inquiry website.

Yours sincerely

A handwritten signature in dark ink, appearing to read "R A Kitson".

R A Kitson
Acting Deputy Director



20 Victoria Street
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SW1H 0NF

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020 7271 2412

18th January 2011

Dear Solicitor,

THE AL-SWEADY INQUIRY

I write further to your letter of 12th January and the discussions between the parties and the Chairman of the Inquiry that took place on 12th January. The Attorney General, with the agreement of the Director of Public Prosecutions, has agreed that an amended undertaking may be provided. The final version of the undertaking is as follows:

This is an undertaking in respect of any person who provides evidence to the Inquiry relating to a matter within its terms of reference. "Evidence" includes oral evidence, any written statement made by that person preparatory to giving evidence to the Inquiry or during the course of his or her testimony to the Inquiry, and any document or information produced to the Inquiry solely by that person.

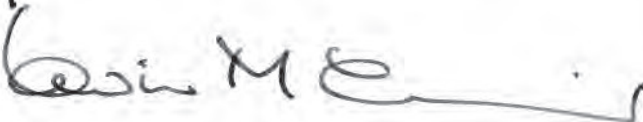
"No evidence a person may give before the Inquiry, nor any evidence as defined above, will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings against that person (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), save that this undertaking does not apply to:

(a) A prosecution (whether for a civil offence or a military offence) where the person is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or

(b) Proceedings where the person is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence.

It is further undertaken that in any criminal proceedings brought, or in any decision as to whether to bring such proceedings, against any person who provides evidence, as defined above, to the Inquiry, no reliance will be placed upon evidence which is obtained during an investigation as a result of the provision by that person of evidence to the Inquiry. This undertaking does not preclude the use of information and/or evidence identified independently of the evidence provided by that person to the Inquiry.

This undertaking should be read in conjunction with the letter of explanation from Kristin Jones to you dated 10th January.

Yours sincerely,


Kevin McGinty
kevin.mcginity@attorneygeneral.gsi.gov.uk



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Kristin.Jones@attorneygeneral.gsi.gov.uk

10 January 2011

Dear Jillian,

The Attorney General is grateful for the invitation from Sir Thayne to attend through counsel at the hearing on Wednesday at which time the exact scope of the undertaking given by him will be considered. However, he hopes that this explanation renders attendance by counsel unnecessary. He is happy that this letter should be seen as an explanatory addendum to the undertaking and may be published. It has also been copied to the Treasury Solicitor's Department and to the Crown Prosecution Service.

The Attorney General recognises that no person who gives evidence to the Inquiry should be placed at a disadvantage by so doing. In setting up an Inquiry, Government has determined that the importance of getting to the truth of the matter inquired into is such that individuals should be encouraged to give full and frank evidence to the Inquiry, even if the ability to consider prosecutions arising from the matter inquired into is thereby restricted. For that reason it is an essential element in any undertaking that witnesses' rights in respect of self incrimination are protected. However, it is also important to recognise a person should not be unfairly protected from the risk of prosecution, if there is sufficient evidence available independently of the evidence given by that person to bring such a prosecution. Giving evidence to an Inquiry should not provide an immunity from prosecution.

It is the view of the Attorney General that the undertaking as given achieves that balance, protecting the witnesses rights against self-incrimination but allowing for the prosecution of that individual if evidence to support that prosecution is given independently of that person's evidence.

The following explanation may assist:

Where any evidence, as defined by the undertaking, is provided to the Inquiry by a person "A", it is undertaken that, as against "A", no criminal proceedings shall be brought (or continued) in reliance upon any evidence which is itself the product of an investigation commenced as a result of the provision by "A" of evidence to the Inquiry. An investigation into "A" may, however, be started or may continue on the basis of evidence or information provided by any other person or from any other source (or from the product of such information or evidence), even if the evidence or information is in identical terms to the evidence given by "A" to the Inquiry.

I hope this is of assistance.

A handwritten signature in black ink, appearing to read 'Kristin Jones', written in a cursive style.

KRISTIN JONES

RT HON DOMINIC GRIEVE QC MP



AGO

Attorney General's Office

Attorney General

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The Chairman
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10 November 2010

Dear Sir Thayne,

On 20 August 2010 you sought an undertaking from me as to the future use of evidence given to the Inquiry in any future prosecutions. I am grateful to you for setting out in such clear terms the reasons for seeking an undertaking. I have consulted with the Director of Public Prosecutions and the Director for Service Prosecutions.

In granting an undertaking I have to bear in mind two considerations. The first is the public interest in allowing the Inquiry to fulfil its tasks or get to the bottom of what happened. The second consideration is the public interest in ensuring that prosecutions are brought against those who have committed some offence. In practice this means that I should leave the extent of any undertaking to that which is necessary to assist the Inquiry to fulfil its terms of reference whilst protecting, as far as possible, the position of the Director of Public Prosecutions. For that reason I have limited the terms of the undertaking to protect witnesses from self incrimination and what may follow.

I propose to grant an undertaking in the following terms:

"This is an undertaking in respect of any person who provides evidence to the Inquiry relating to a matter within its terms of reference. "Evidence" includes oral evidence, any written statement made by that person preparatory to giving evidence to the Inquiry or during the course of his or her testimony to the Inquiry, and any document or information produced to the Inquiry solely by that person.

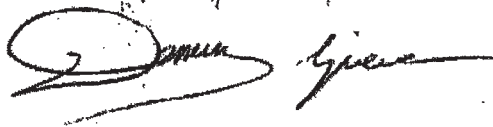
"No evidence a person may give before the Inquiry, nor any evidence as defined above, will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings against that person (including any proceedings for an

offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), save that this undertaking does not apply to:

- (a) A prosecution (whether for a civil offence or a military offence) where the person is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or*
- (b) Proceedings where the person is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence*
- (c) Where any evidence, as defined above, is provided to the Inquiry by a person, it is further undertaken, that, as against that person, no criminal proceedings shall be brought (or continued) in reliance upon any evidence which is itself the product of an investigation commenced solely as a result of the provision by that person of evidence to the Inquiry*

I am happy for this to be published on your web site.

Yours sincerely



RT HON DOMINIC GRIEVE QC MP

Appendix 7: List Of Recommendations

Recommendation 1	Consideration should be given to the establishment of a policy by the Ministry of Defence to ensure that all documents or other material, including electronic material, are retrieved from theatre and elsewhere at the conclusion of an operation, catalogued and stored in secure accommodation for a period of at least 30 years and all searches of that material recorded, so that the Department is able to say what material is available and its location, and if the need arises, to confirm in litigation or to a Public Inquiry that it has complied with its obligation to disclose relevant material.
Recommendation 2	Digital video and audio recordings should be made of both interrogation and tactical questioning sessions. Such recordings should be retrieved from theatre, catalogued and stored in the same way and for the same period of time as the other documents/ records to which reference is made in Recommendation 1.
Recommendation 3	All training material should be dated, appropriately retained and archived in such a way that it can easily be established when the training material was composed, when it came into force and the period during which it remained in force.
Recommendation 4	A Shooting Incident Policy should be drafted which is practically achievable in practice in Theatre, which is compliant with Article 2 of the ECHR and which enables the ascertainment of the relevant facts leading up to, during and consequent upon the Shooting Incident by an independent body such as the Royal Military Police within a time limited but reasonable period after the Shooting Incident.
Recommendation 5	Appropriate procedures should be introduced to ensure that there is an accurate and detailed contemporaneous record of the circumstances relating to the original capture/detention of a prisoner and his general physical condition (including an appropriate photographic record) on arrival at the prisoner handling area together with an explanation from the soldier responsible for the detention of the individual of any obvious physical injuries suffered by the detainee in question.
Recommendation 6	All detainees should be clearly informed of their rights and obligations as soon as is practicable upon arrival at any detention facility. As a minimum this should include informing the detainee as to the reason(s) for his detention and explaining, in clear and basic terms, that his human rights will be protected and respected.

Recommendation 7	Appropriate measures should be taken to ensure that minimum safeguards are in place where a detainee is to be strip searched. These include informing a detainee as to the necessity of the strip search and requesting his/her cooperation. Those conducting a strip search should always bear in mind the need to respect the detainee's dignity, particularly having regard to any cultural sensitivities. Searches should be conducted by, and in front of, the minimum number of persons necessary and screens or other measures should be taken to shield the detainee from as many of those attending as possible. Those persons should be of the same gender as the detainee unless none are available.
Recommendation 8	There should be an appropriate review of all current policy and procedures to ensure that a sufficient number of suitably trained interpreters are readily available and on hand during all aspects of prisoner detainee handling and at all holding units, including all forms of interrogation and questioning, including during the issuing and provision of medication, the need to ensure that basic requests for water/food/lavatory breaks are properly understood in prisoner holding areas and to give safety briefings and to help deal with any problems prior to and/or during flight transfers.
Recommendation 9	Appropriate forms should be made available to allow a medical examiner to declare a detainee unfit for detention and questioning. The decision as to whether a detainee has been declared unfit for detention and questioning should be readily apparent and the reasons for that decision should be recorded. Any conclusion to the contrary effect should be expressed in ethically acceptable terms.

Appendix 8: Report of C R Evans

Due to their graphical content all images have been redacted as being unsuitable for publication

Instructed By:

Reference: Al-Sweady Inquiry

**Report
of
C R Evans**

November 2012

INTRODUCTION

1. I am a Senior Forensic Consultant in the Video Laboratory at Diligence BSB Forensic. I received training in imagery analysis at various stages of my military career in the Royal Air Force. In 1987 I attended the Joint School of Photographic Interpretation (JSPI) and qualified as a Photographic Interpreters Assistant. In 1990 I returned to JSPI and qualified as an Imagery Analyst, serving subsequently in that capacity at the Joint Air Reconnaissance Intelligence Centre (JARIC), RAF Brampton, which involved comparison and contrast of various objects utilising optical, electro-optical, infrared and radar imagery. In January 1996 I was appointed an instructor at JSPI, instructing various aspects of imagery analysis. From June 1998 to March 2010 I completed further tours of duty in the role of imagery analyst in the UK and the Middle East, as well as completing a further tour as a senior instructor at JSPI.
2. On completion of my RAF service In April 2010, I joined BSB Forensic where I am employed as a Senior Consultant in Imagery Analysis.
3. I have provided expertise and forensic support pertaining to image/facial comparison in a number of criminal cases, for the prosecution and defence, and I have given expert evidence at the Central Criminal Court and other Crown Courts.

INSTRUCTION

4. On the 25th February 2011, I received the following items from Mr Stephen Kinchington acting on behalf of the Al-Sweady Enquiry:

Exhibit:	Description:
Copy of DR 183	1 x DVD
Copy of DCM/5	1 x DVD
Copy of DCM/6	1 x DVD
Copy of MBM/5	1 x Hardcopy folder of images

5. On the 9th March 2011, I received the following items from Mr Roy Clarke acting on behalf of the Al-Sweady Enquiry:

Exhibit:	Description:
Copy of DCM/8	1 x DVD
"Third DVD"	1 x DVD

6. I have been informed by Mr. Kinchington that these items relate to allegations of unlawful killing at Camp Abu Naji in Iraq on 14 and 15 May 2004.

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7. I have been instructed by Mr Kinchington to correlate a number of bodies seen in the various photographic and video exhibits. To aid the analysis, I was supplied with briefing documents ("Summary of DCM/5, DCM/6, DCM/8 & Third DVD) which provide explanatory notes on the video recordings, together with timings and designations of 'Bodies' and 'KIAs' (Killed in Action). This report was originally dated 26th May 2011 and has been re-issued to incorporate changes to the video counter times shown at Annex B. The analysis and conclusions presented in the original report remain unchanged.

COMMENT

8. Video severely limits the smallest detail that can be determined and is expressed as the system resolution. It means that 'small' picture information is just not captured in the video image. Poor imaging can limit the opportunity to detect a significant difference, which would allow items or people to be positively differentiated. In any comparison between people or objects a single significant difference between two objects outweighs any number of similarities between them.
9. Digital CCTV systems have an added problem in that they rely on image compression. The type of compression varies depending upon the methods adopted by the manufacturer of the CCTV system. The net effect of compression is that fine detail is often poorly resolved, an object can be treated differently each time it is imaged by the system and artefacts can be introduced to the image by the recording system.

EXAMINATION OF EXHIBITS

10. DCM/5 contains fair quality, colour, digital imagery recorded from a single hand-held camera. There is time and date information associated with the imagery indicating that it was recorded on the 15th of May 2004. I viewed and reviewed the imagery in real time and frame-by-frame, and selected a number of images for illustrative purposes. I subsequently caused those images to be produced as prints that are numbered 0124V11/1-10, and which are at Appendix A.
11. DCM/6 contains fair quality, colour, digital imagery recorded from a single hand-held camera. There is date information associated with some sections of the footage indicating that it was recorded on the 15th of May 2004. I viewed and reviewed the imagery in real time and frame-by-frame, and selected a number of images for illustrative purposes. I subsequently caused those images to be produced as prints that are numbered 0124V11/11-26, and which are also at Appendix A.
12. DCM/8 contains fair quality, colour, digital imagery recorded from a single hand-held camera. There is no time and date information either superimposed

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Lab Ref: 0124V11

or associated with this imagery. I viewed and reviewed the imagery in real time and frame-by-frame, and selected a number of images for illustrative purposes. I subsequently caused those images to be produced as prints that are numbered 0124V11/27-29, and which are also at Appendix A.

13. The disk referred to as 'Third DVD' contains fair quality, colour, digital imagery recorded from a single hand-held camera. There is no time and date information either superimposed or associated with this imagery. I viewed and reviewed the imagery in real time and frame-by-frame, and selected a number of images for illustrative purposes. I subsequently caused those images to be produced as prints that are numbered 0124V11/30-37, and which are also at Appendix A.
14. Copy of MBM/5 is an album containing 57 colour photographs, generally of good quality although some are poorly focussed.
15. Copy of DR183 is a disk containing 57 electronic, JPEG, files of the photographs contained in Exhibit MBM/5. I downloaded these files to my computer to aid the analysis.

ANALYSIS

16. It is important to note that my opinion is based on the examination of all the images available to me; the images in the body of this report are only intended to be illustrative. These illustrations may be of a lesser quality than when the images are viewed on high-resolution display monitors, such as those that I have utilized during my examination.
17. The general approach to the analysis is to utilize all available imagery information, such as facial characteristics, clothing, accessories, wounds blood distribution and any associated factors, to determine the correlation of bodies between imagery exhibits.
18. In the absence of date/time data, all timings in this report refer to the playback software's time-lapse counter.
19. It is my understanding, from the briefing documents, that the case revolves around a total of 20 bodies, which are designated as KIA 1- 20. The various imagery exhibits portray a total of 37 bodies, a number of which may be repeat recordings of the same body. These bodies have been designated as Bodies 1-37. The table at Appendix B shows which bodies are shown in which imagery exhibit, together with the counter times of the portrayal, the relevant print number and the final assessment of which KIA the body may be.
20. In some cases, compelling evidence in the form of a combination of significant and singular consistencies between two bodies being compared (such as

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distinctive jewellery, clothing and blood distribution), may preclude the need for detailed facial comparison. Having viewed and reviewed all relevant imagery exhibits, I am able to correlate the KIAs to Bodies as outlined below.

KIA 1 - Possible Correlation with Body 16

21. The imagery of Body 16 lacks fine-feature detail and is limited to a partial view of the right side of the man's face. Within the limitations of the imagery, Body 16 appears to present a darker skin tone in the area of the right infra orbital crease (Annotation A, Figure 1) which is broadly consistent with the corresponding area on KIA 1. The presentation of Body 16's moustache and beard also appears to be broadly consistent with that of KIA 1. I note that the imagery of Body 16 appears to present the corner of a light-toned garment (Annotation B, Figure 1) which possibly correlates with the white shirt seen to be worn by KIA 1.
22. Whilst the comparison of KIA 1 with Body 16 has highlighted a limited number of broad similarities, it is appropriate to note an apparent difference in the set of the two men's teeth. The imagery of Body 16 appears to present a gap in the upper row of teeth (Annotation C, Figure 1) whereas the image of KIA 1 presents a comparatively even row of teeth.

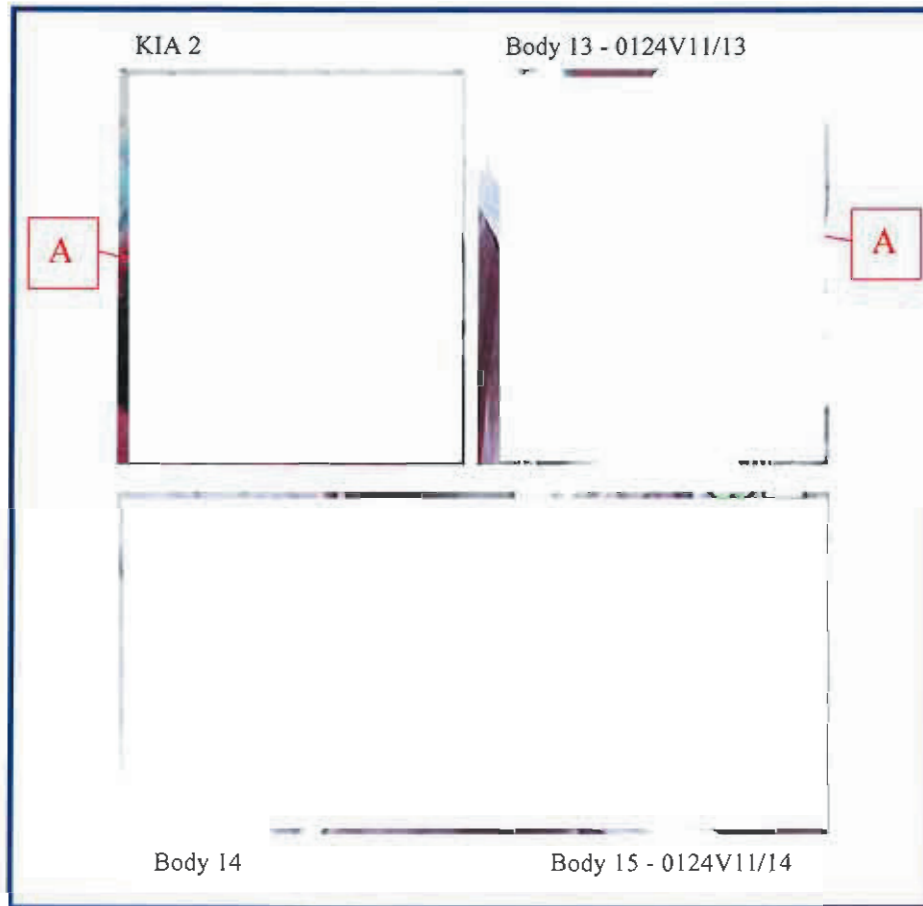
**Fig. 1**

23. Apart from the possible correlation with Body 16, I have found no other possible matches for KIA 1.

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KIA 2 - Bodies 13, 15 and Possibly 36.

24. The imagery of Body 13 is limited to a partial view of the left side of the man's face. Within the limitations of the imagery, the eyebrow, moustache and beard of Body 13 are entirely consistent with those of KIA 2. I also note that the left cheek of Body 13 presents a blood distribution pattern (Annotation A, Figure 2) that is strikingly consistent with that presented on KIA 2. The imagery of Body 15 (imaged alongside Body 14) is clearly a wider shot of Body 13.

**Fig. 2**

25. The imagery of Body 36 lacks fine-feature detail and provides a limited view of facial features. The possible correlation between Body 36 and KIA 2 is limited to similarities in terms of hair length and the apparent shape of the eyebrows, moustache and beard (See Figure 3).

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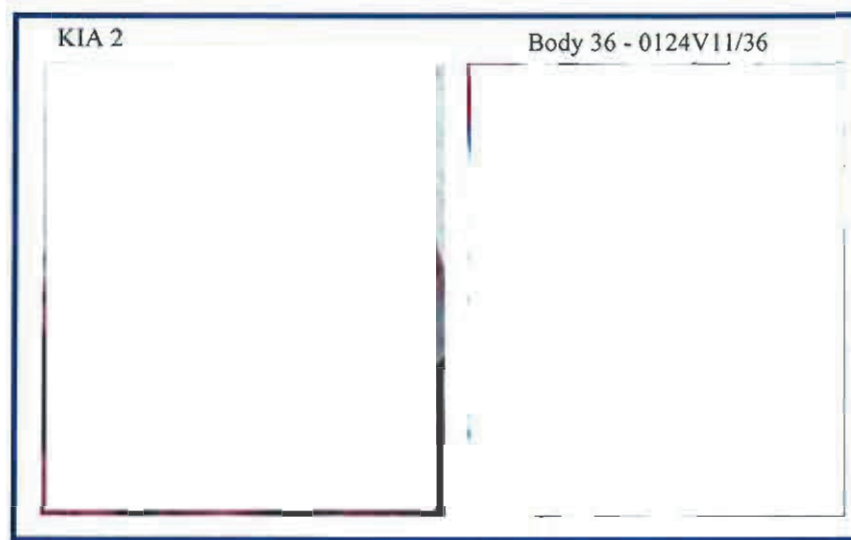


Fig. 3

KIA 3 - Bodies 1, 3, 9, 28/29 and 33.

26. The correlation of KIA 3 with Bodies 1, 3, 9, 28/29 and 33 is based on a comparison of both facial features and clothing. KIA 3 exhibits a significant trauma to the right eye (Annotation A, Figure 4) that is consistent with that presented on Bodies 3, 28/29 & 33. Further correlation is provided by blood distribution patterns near the left eye (Annotation B, Figure 4) and the chin (Annotation C, Figure 4).

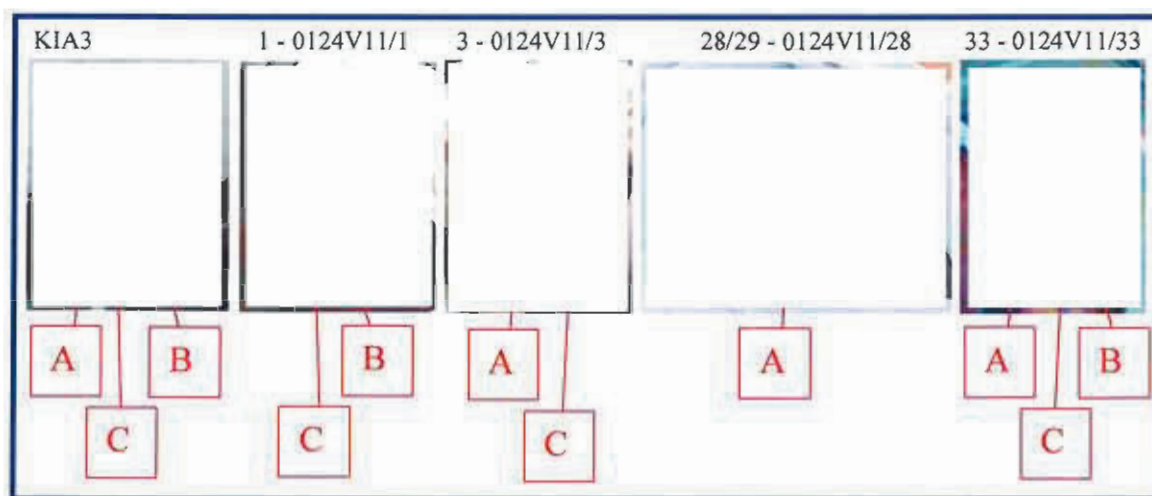


Fig. 4

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27. KIA 3 is seen to wear dark-toned trousers that exhibit an elasticated waistband (Annotation A, Figure 5), a dark-toned outer top (Annotation B, Figure 5) and a white inner top that exhibits a central blood stain (Annotation C, Figure 5). These features are entirely consistent with those presented on the imagery of Body 9.

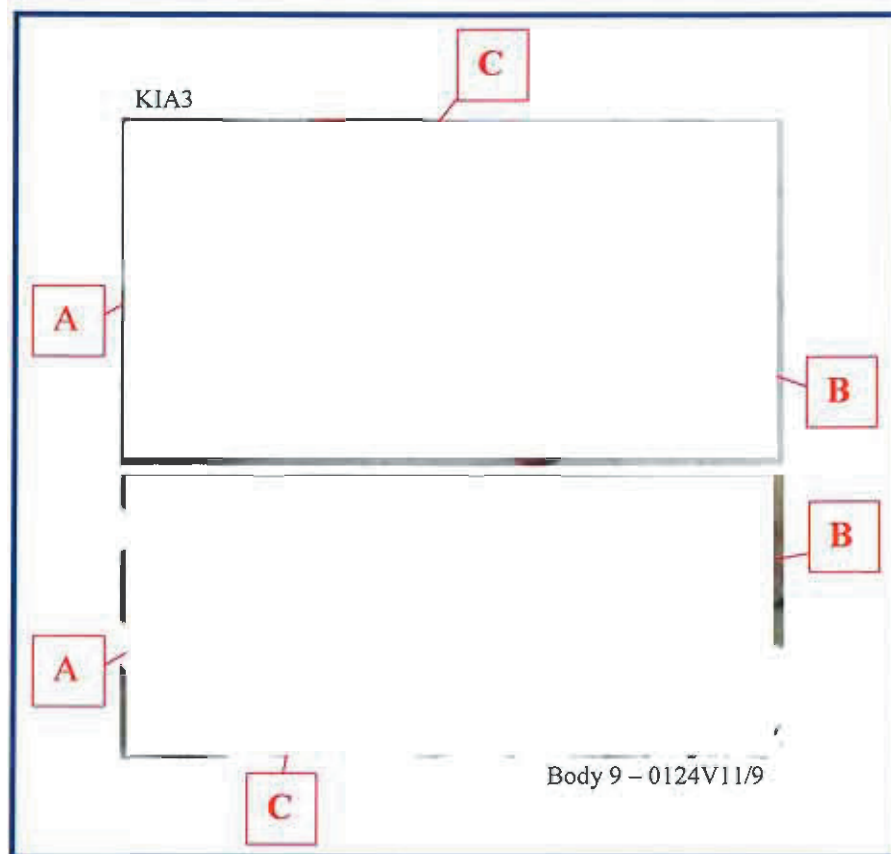


Fig. 5

KIA 4.

28. The analysis has provided no correlation for KIA 4.

KIA 5 - Body 31.

29. The correlation of KIA 5 with Body 31 is based on a comparison of both facial features and clothing. Body 31 exhibits thick, dark-toned eyebrows that are moderately arched and taper towards the lateral aspect (Annotation A, Figure 6). In this respect they are consistent with the eyebrows of KIA 5. Further correlation is provided by blood distribution patterns on the left side of the mouth (Annotation B, Figure 6) and above the left eye (Annotation C, Figure 6).

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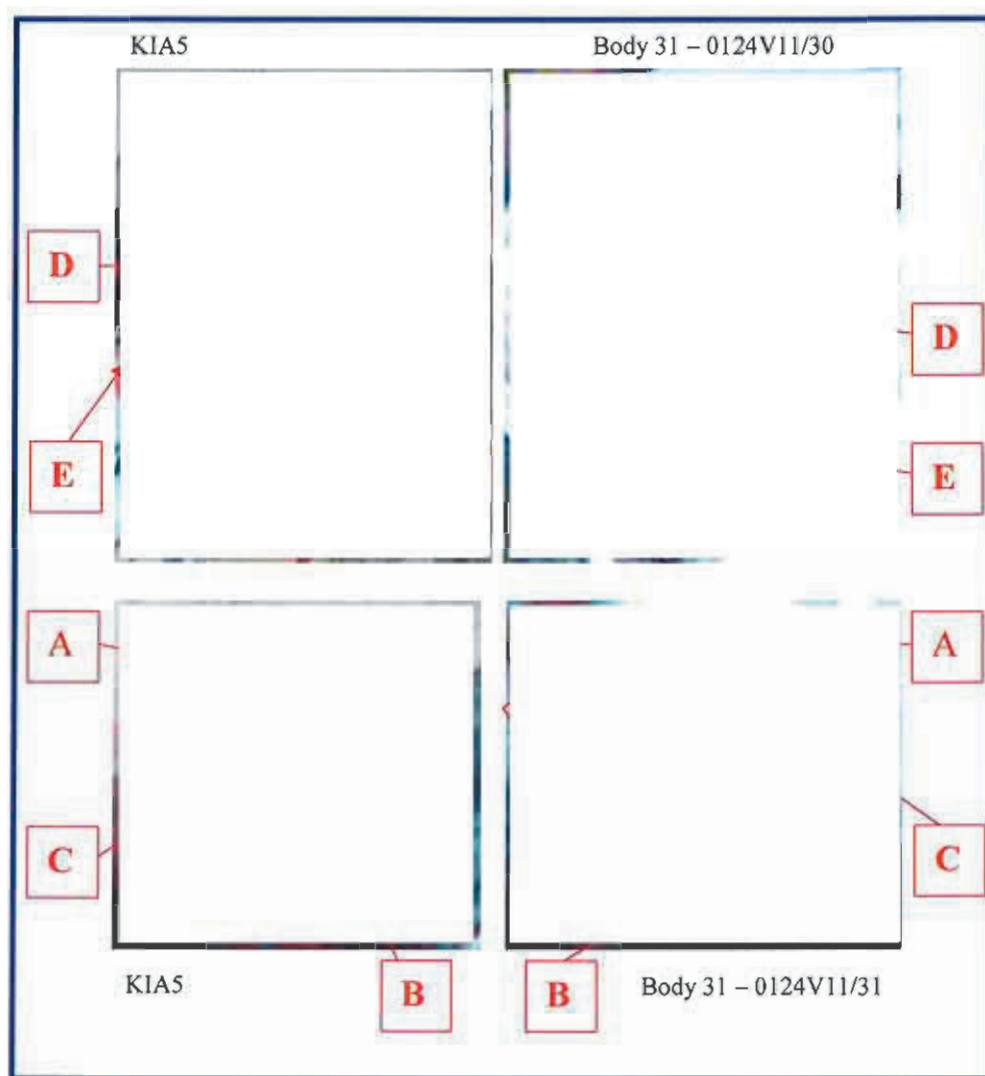


Fig. 6

30. KIA 5 is seen to wear a dark-toned outer top (Annotation D, Figure 6) and a white inner top that features red lettering (Annotation E, Figure 6). These features are entirely consistent with those presented on the imagery of Body 31.

KIA 6 - Possible Correlation with Bodies 12 & 14.

31. The imagery of Bodies 12 & 14 lacks fine-feature detail and is limited to a partial view of the left side of the man's face. Within the limitations of the imagery, the moustache and beard of Bodies 12 & 14 appear to be consistent with those of KIA 6. I also note that Body 12 presents a mark on the left side of his nose (Annotation A, Figure 7) that, within the limitations of the imagery, appears to be consistent with that presented on the face of KIA 6. The imagery of Body 14 (imaged alongside Body 15) is clearly a wider shot of Body 12.

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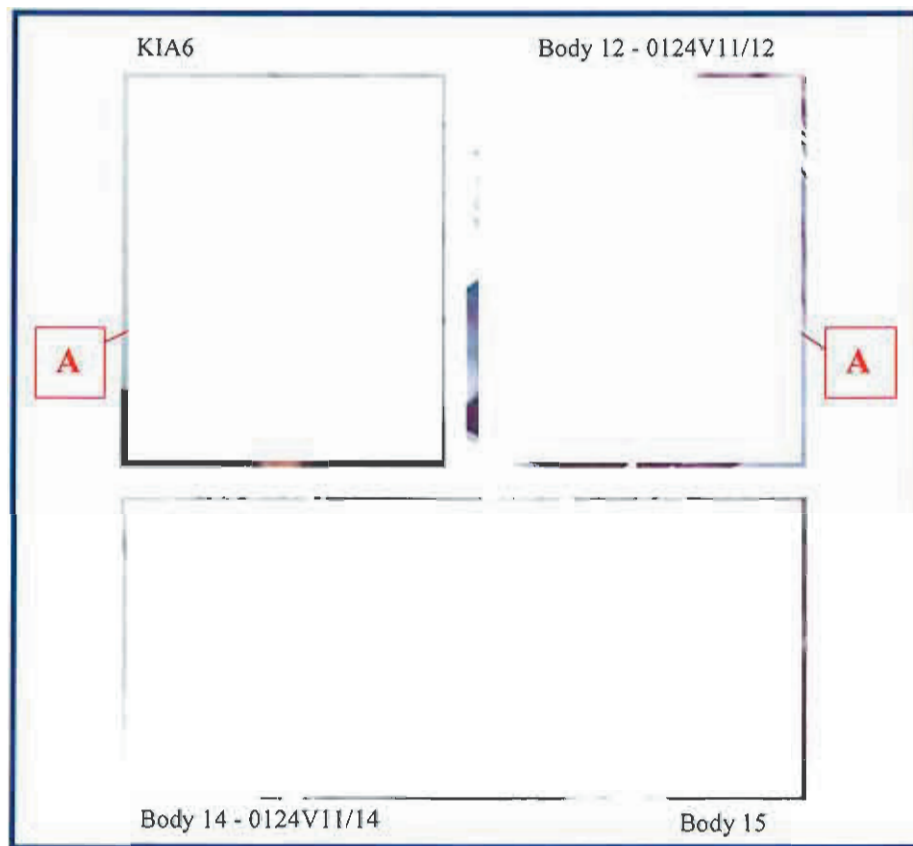


Fig. 7

KIA 7.

32. The analysis has provided no correlation for KIA 7.

KIA 8 - Bodies 4, 25 & 32.

33. The correlation of KIA 8 with Bodies 4, 25 & 32 is based on a comparison of both facial features and clothing. Body 32 exhibits thick, dark-toned eyebrows that appear moderately arched and taper towards the lateral aspect (Annotation A, Figure 8) and a thin, dark-toned moustache (Annotation B, Figure 8). In these respects they are consistent with the corresponding features of KIA 8. I note that the imagery of Body 32 presents a button at the corner of a collarless shirt (Annotation C, Figure 8) which appears to be consistent with that seen to be worn by KIA 8.

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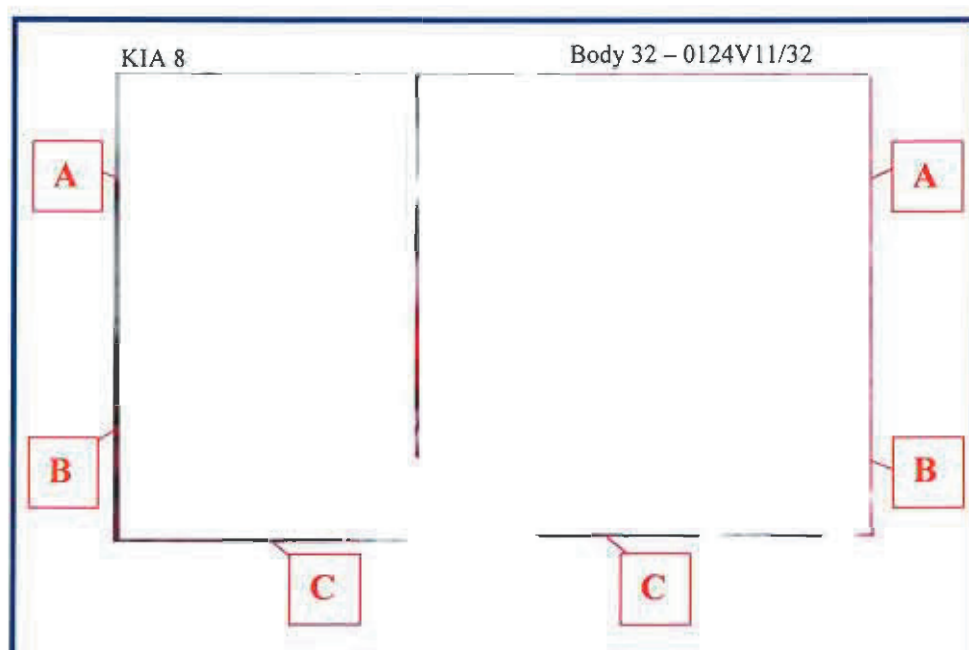


Fig. 8

34. The noses of Body 4 and Body 25 present as angular with a relatively straight appearance to the nasal rims (Annotation D, Figure 9) which appears to be consistent with the nose of KIA 8. Further correlation is provided by a blood distribution pattern in the area of Body 4's chin (Annotation E, Figure 9) which is also consistent with that seen on KIA 8.

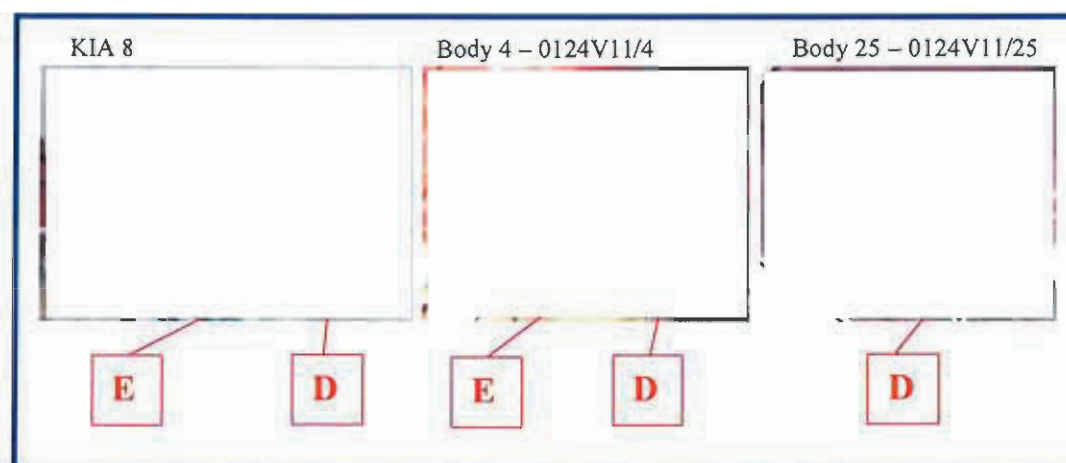


Fig. 9

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KIA 9 - Possible Correlation with Body 17.

35. Body 17 appears on the imagery contained in Exhibit DCM/6. The summary of DCM/6 lists Body 17 as being "*Previously identified*" as KIA9. As the image of KIA 9 does not provide a view of any facial features, the possible correlation of KIA 9 with Body 17 can only be based on the apparent similarity in terms of the dense, dark-toned beard (See Figure 10).



Fig. 10

KIA 10 - Body 19.

36. The correlation of KIA 10 with Body 19 is based on a comparison of blood distribution patterns. The imagery of Body 19 exhibits blood distribution patterns above the left eye (Annotation A, Figure 11), on the right cheek (Annotation B, Figure 11) and on the left cheek (Annotation C, Figure 11) that are entirely consistent with those seen on the corresponding areas of KIA 10's face.



Fig. 11

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KIA 11.

37. The analysis has provided no correlation for KIA 11.

KIA 12 - Body 35.

38. The correlation of KIA 12 with Body 35 is based on a comparison of both facial features and blood distribution patterns. The nose of Body 35 exhibits relatively wide alae and a rounded appearance to the nostril rims (Annotation A, Figure 12). In this respect Body 35's nose is wholly consistent with that of KIA 12. Further correlation is provided by blood distribution patterns above the right eye (Annotation B, Figure 12) and to the side of the left eye (Annotation C, Figure 12).

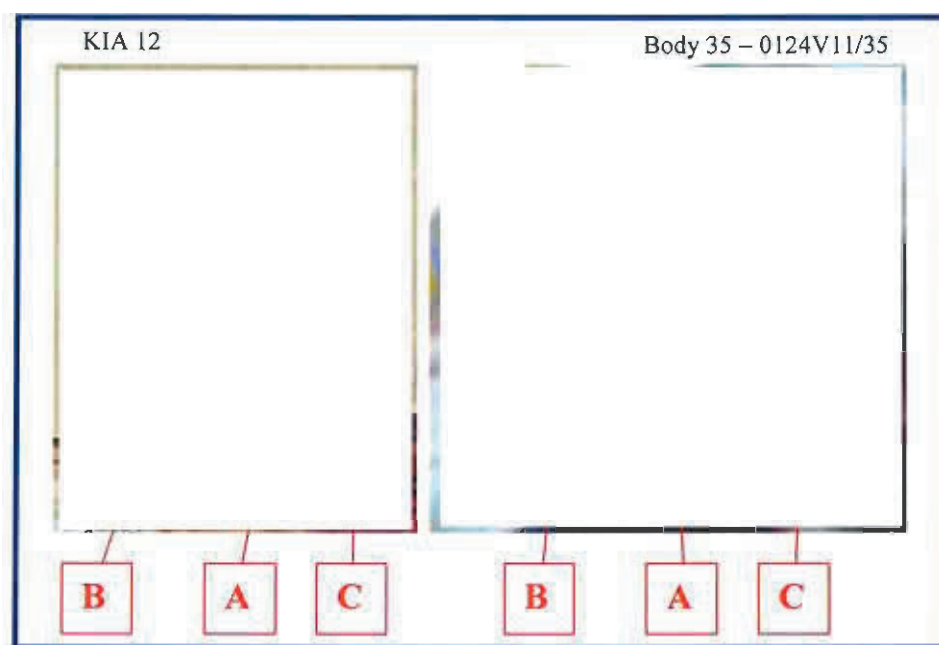


Fig. 12

KIA 13 - Bodies 5, 8, 26, 27 & 30.

39. The correlation of KIA 13 with Bodies 5, 8, 26, 27 & 30 is based on a comparison of facial features, blood distribution patterns, injuries and clothing. Bodies 5 & 26 exhibit blood distribution patterns below the right eye (Annotation A, Figure 13) that appear consistent with that seen on KIA13. Bodies 27 & 30 appear to present an injury to the forehead, just above the right eye (Annotation B, Figure 13). The position of this injury appears to be consistent with a possible injury to the forehead of KIA 13. KIA 13 is seen to wear a light green top (Annotation C, Figure 13) which, within the limitations of the imagery, appears to be consistent with the top worn by Bodies 8 & 26.

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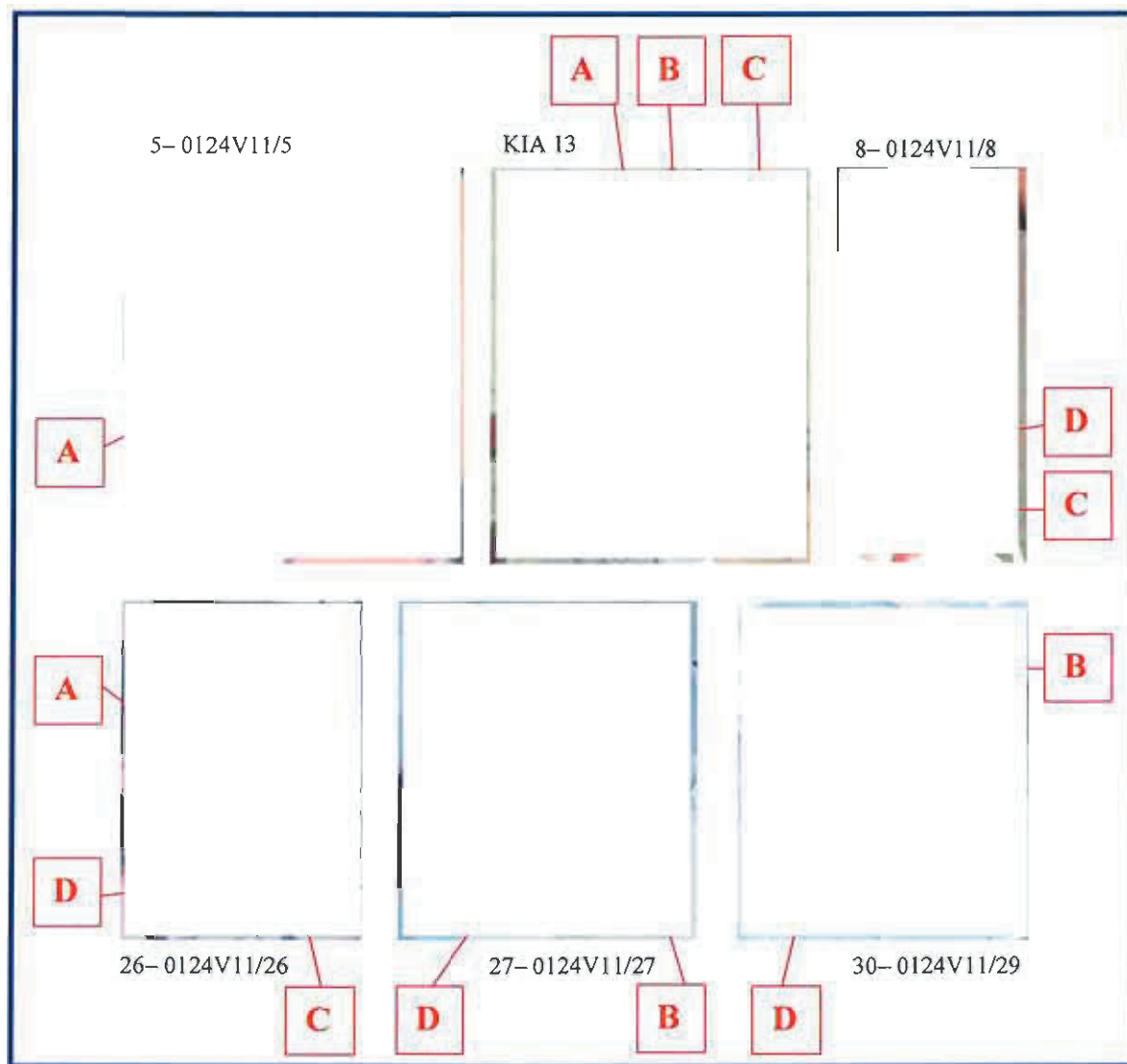


Fig. 13

40. A correlation between Bodies 8, 26, 27 & 30 is provided by a linear injury to the right side of the neck (Annotation D, Figure 13).

KIA 14.

41. The analysis has provided no correlation for KIA 14.

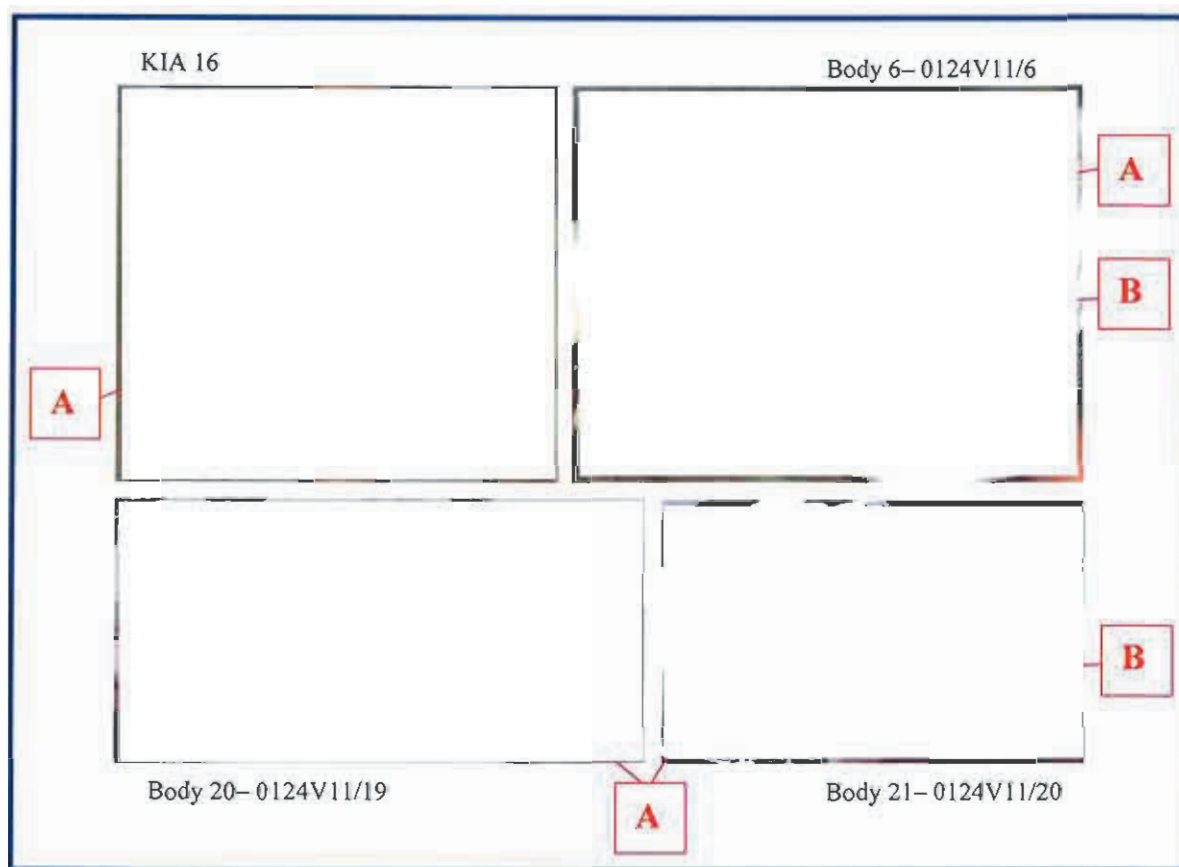
KIA 15.

42. The analysis has provided no correlation for KIA 15.

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KIA 16 – Possible Correlation with Bodies 6, 20 and 21.

43. The imagery of Bodies 6, 20 & 21 is limited to views of the torso only. In each case the body appears to wear a white, blood-stained top that is pushed up towards the chest (Annotation A, Figure 14) which, within the limitations of the imagery, appears to be broadly consistent with that worn by KIA 16.

**Fig. 14**

44. I note that the imagery of Bodies 6 & 21 exhibit marks on the right side of the torso (Annotation B, Figure 14) which are not presented on the image of KIA 16.

KIA 17 - Bodies 11& 18.

45. The correlation of KIA 17 with Bodies 11 & 18 is based on a comparison of blood distribution patterns. Bodies 11 & 18 exhibit blood distribution patterns on the lower lip (Annotation A, Figure 15) that appear wholly consistent with that seen on KIA17. Body 11 exhibits a blood distribution pattern above the right eye (Annotation B, Figure 15) which is also entirely consistent with that seen in the corresponding area of KIA 17.

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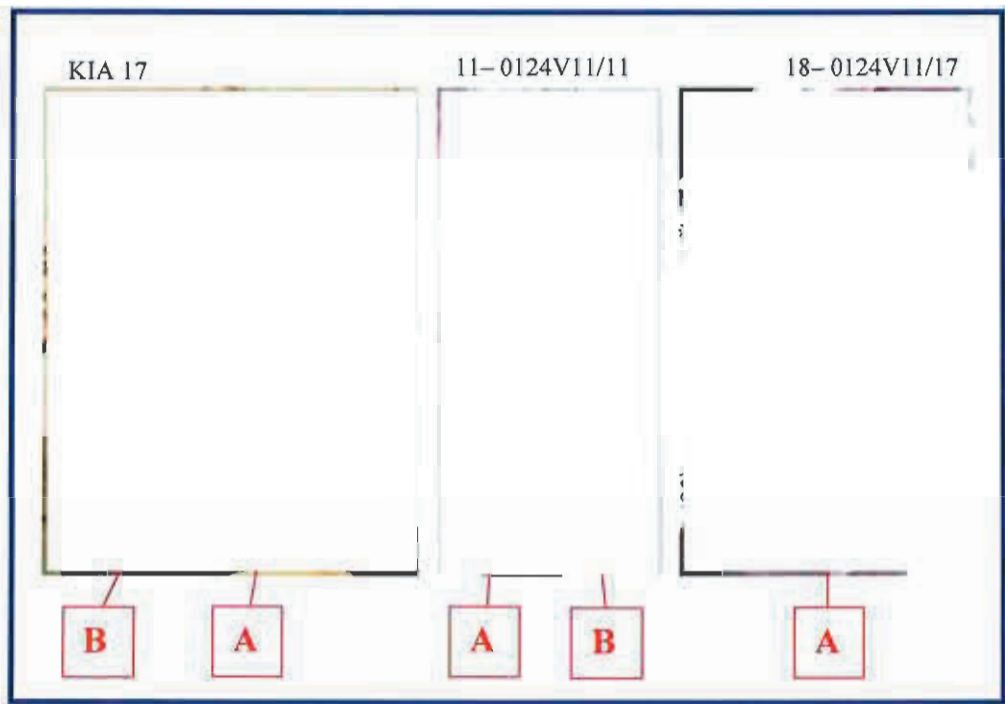


Fig. 15

KIA 18 - Possible Correlation with Body 34.

46. The imagery of Body 34 is limited to a partial view of the mouth and chin area. Within the limitations of the imagery, Body 34's chin exhibits a blood distribution pattern that appears to be broadly consistent with the corresponding area of KIA 18 (Annotation A, Figure 16).

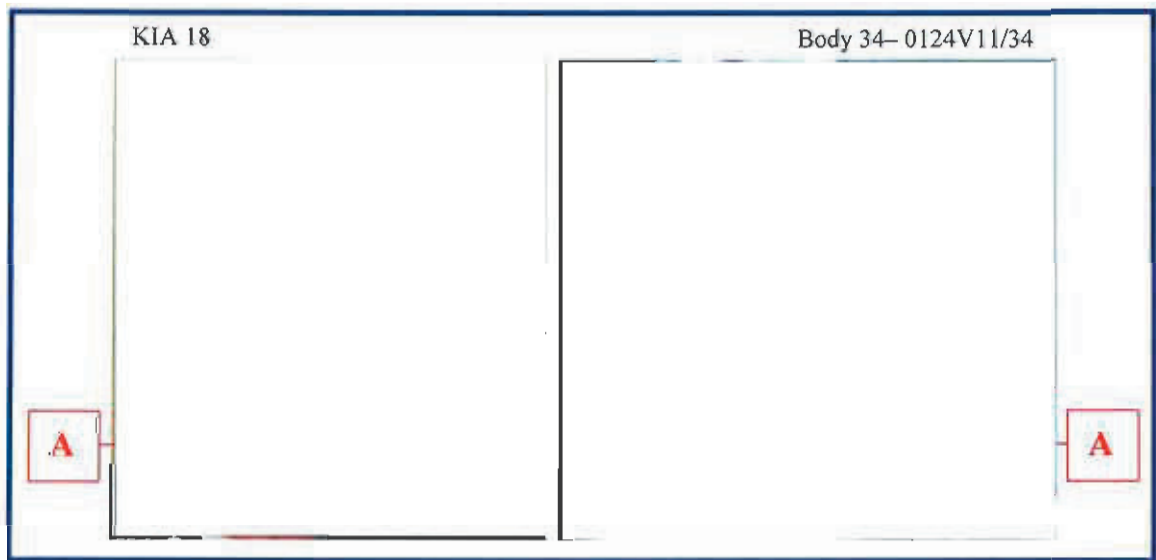
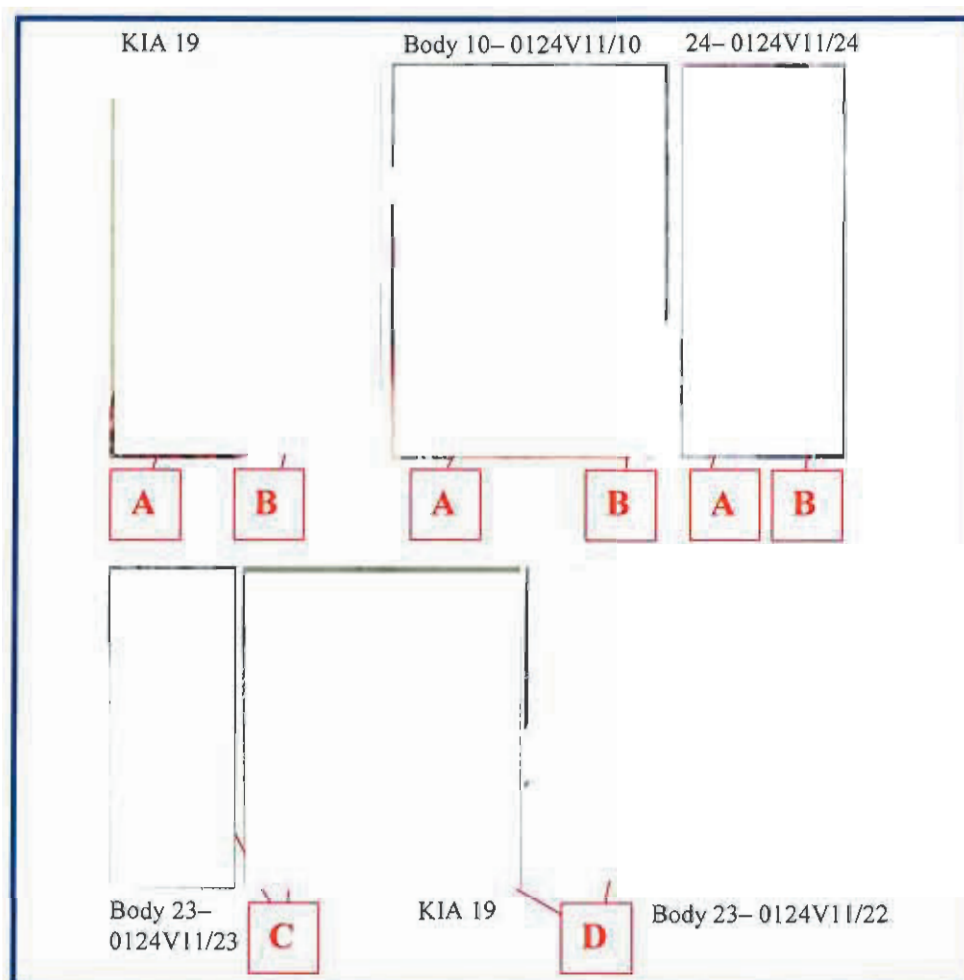


Fig. 16

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KIA 19 - Bodies 10, 23 and 24.

47. The correlation of KIA 19 with Bodies 10, 23 & 24 is based on a comparison of facial features, blood distribution patterns, injuries and clothing. Bodies 10 & 24 exhibit signs of trauma to the forehead (Annotation A, Figure 17) that appear wholly consistent with that seen on KIA19. The noses of Bodies 10 & 24 present a convex line to the dorsal ridge (Annotation B, Figure 17) with a rounded tip. In these respects the noses of Bodies 10 & 24 appear to be consistent with that of KIA 19. Body 23 is seen to wear a striped shirt (Annotation C, Figure 17) which, within the limitations of the imagery, appears to be consistent with the shirt worn by KIA 19.

**Fig. 17**

48. Further correlation between Body 23 and KIA 19 is provided by a linear blood distribution pattern on the left thigh of Body 23 (Annotation D, Figure 17) which is consistent with that seen in the corresponding area of KIA 19.

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KIA 20 – Bodies 2, 7 & 22.

49. The correlation of KIA 20 with Bodies 2, 7 & 22 is based on a comparison of injuries and clothing. KIA 20 exhibits a significant degree of trauma in the area running from the upper lip to the right cheek (Annotation A, Figure 18). In this respect, Bodies 2, 7 & 22 all appear to present injuries that are consistent with that seen on KIA20. Bodies 7 & 22 are seen to wear a light-toned, checked shirt (Annotation B, Figure 18) which, within the limitations of the imagery, appears to be consistent with the shirt worn by KIA 20.

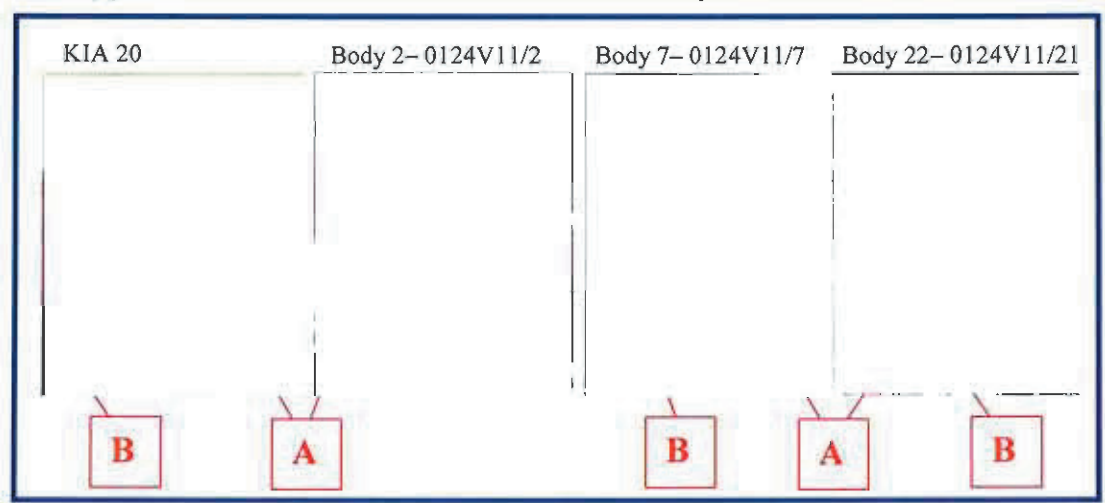


Fig. 18

Body 37.

50. The imagery of Body 37 lacks fine-feature detail and is limited to partial views of a bare upper torso and the top of a head (See Figure 19). Whilst the bare upper torso may suggest a possible correlation with the imagery of KIA 9, KIA 15 and Body 10, the lack of confirmatory detail is such that, in my opinion, Body 37 remains unidentified.



Fig. 19

CONCLUSIONS

51. In my opinion:

- a. KIA 1 is a possible correlation with Body 16.
- b. KIA 2 correlates with Bodies 13 & 15 and possibly correlates with Body 36.
- c. KIA 3 correlates with Bodies 1, 3, 9, 28/29 & 33.
- d. KIA 4 has no correlation.
- e. KIA 5 correlates with Body 31.
- f. KIA 6 is a possible correlation with Bodies 12 & 14.
- g. KIA 7 has no correlation.
- h. KIA 8 correlates with Bodies 4, 25 & 32.
- i. KIA 9 is a possible correlation with Body 17.
- j. KIA 10 correlates with Body 19.
- k. KIA 11 has no correlation.
- l. KIA 12 correlates with Body 35.
- m. KIA 13 correlates with Bodies 5, 8, 26, 27 & 30.
- n. KIA 14 has no correlation.
- o. KIA 15 has no correlation.
- p. KIA 16 is a possible correlation with Bodies 6, 20 & 21.
- q. KIA 17 correlates with Bodies 11 & 18.
- r. KIA 18 is a possible correlation with Body 34.
- s. KIA 19 correlates with Bodies 10, 23 & 24.
- t. KIA 20 correlates with Bodies 2, 7 & 22.
- u. Body 37 is unidentified.

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DECLARATION

1. **STATEMENT OF TRUTH:** This report is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.
2. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
3. I understand that my primary duty is to the Public Inquiry when preparing written reports and giving evidence and I have complied with that duty.
4. I believe my report to be accurate; it covers the issues raised by my instructions and reflects my views as an independent expert.
5. Where relevant my report includes any information of which I have knowledge, or of which I have been made aware, that might adversely affect the validity of my conclusions.
6. I have indicated any sources of information upon which I have relied in my report.
7. Those instructing me will be informed immediately, with written confirmation, if my existing report requires correction or qualification.
8. I understand that my report, subject to any corrections before swearing as to its veracity, will form the evidence to be given under oath.
9. I understand that an expert may assist any cross-examination on my report.
10. I confirm that I have not entered any arrangement whereby the amount or payment of my fees is in any way dependent on the outcome of the case.

Signed:

Date: *5th November 2012***November 2012**

Al-Sweady Inquiry

Lab Ref: 0124V11

November 2012

Appendix 9: Report by Dr Payne-James

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Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

Report for the Al-Sweady Public Inquiry

by

Jason Payne-James LLM MSc FRCS FFFLM FFSSoc DFM (GMC2651570)

at the request of

Nicola Enston

Solicitor to the Al-Sweady Public Inquiry

Finlaison House

15-17 Furnival Street

London EC4A 1AB

Dated: 11th April 2014

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Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

Qualifications & Experience

- 1 I am a registered medical practitioner in independent medical practice.
- 2 I am a specialist in forensic & legal medicine.
- 3 I am a forensic physician.
- 4 I have provided forensic and general medical services (primary care) for the Metropolitan Police Service and formerly the City of London Police as a self-employed medical practitioner for > 20 years.
- 5 I have assessed approximately 1500-2500 individuals in connection with police matters each year.
- 6 Approximately 90% of detainees seen are male, ~20% are under 18 and ~ 30% have a first language that is not English.
- 7 One of my roles is to provide primary healthcare to detainees in police custody.
- 8 This may include short-term detainees in police custody, but also sometimes longer-term remanded or convicted detainees, or those detained under prevention of terrorism legislation.
- 9 I frequently assess and attend remand and sentenced prisoners within the prison or other custodial settings at the request of police, solicitors and others.
- 10 The role includes such functions as the general medical care of patients with conditions such as diabetes, high blood pressure, epilepsy and asthma and symptoms such as chest pain, abdominal pain, temperatures, diarrhoea and vomiting.
- 11 The role includes the assessment of many individuals with drug, alcohol (including both intoxication and withdrawal), mental health problems and with histories of self-injurious behaviour.
- 12 The role includes the assessment, documentation and management (including referral to specialists) of those with injury.
- 13 The role includes provision of primary medical care to police personnel and victims of assault.
- 14 The role includes assessment and provision of care to those detained under the provisions of the Terrorist Act 2000.
- 15 The role includes the immediate assessment of those with acute behavioural disorder of unknown cause.
- 16 In addition I work with a nurse team who assess, treat and triage a number of patients within this setting.
- 17 I am editor of the Journal of Forensic & Legal Medicine.

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- 18 I was a member of the Board of the Faculty of Forensic & Legal Medicine of the Royal College of Physicians.
- 19 I was Vice-President (Forensic Medicine) of the Faculty from 2006-2010.
- 20 I am Honorary Senior Lecturer at Cameron Forensic Medical Sciences, Barts & the London School of Medicine & Dentistry.
- 21 I have undertaken research in various aspects of clinical forensic medicine, including healthcare of detainees, near missed in custody, assault and injury and drug and alcohol misuse.
- 22 I have a number of ongoing research studies related to healthcare in police custody, imaging of injury, incapacitant sprays, use of force and restraint.
- 23 I was a member of the Commissioner's Advisory Panel on forensic medical issues, for the Metropolitan Police Service and resigned from that Panel in 2008.
- 24 I was a Lead & Specialist Assessor for the Council for the Registration of Forensic Practitioners (which ceased function on 31st March 2009).
- 25 I teach and lecture to doctors and healthcare workers (at all levels), police officers, gaolers and others involved in the care and management of those in police custody.
- 26 I have lectured to IPCC investigators on the role of the forensic physician and other healthcare professionals on the care of detainees in custody.
- 27 I am co-author of the Faculty of Forensic & Legal Medicine's documents on management of head injury, medications management, irritant spray, Taser and choking in relation to police custody.
- 28 I have undertaken and published research in peer-reviewed publications on healthcare in custody and have undertaken collaborative research with (amongst others) the IPCC and the Metropolitan Police Service on near-misses in custody.
- 29 I have worked full-time in hospital in the following areas - surgery, orthopaedics, accident & emergency, gastroenterology and general medicine.
- 30 I qualified at the London Hospital Medical College.

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Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

- 31 I hold the following qualifications and diplomas: Bachelor of Medicine & Bachelor of Surgery; Fellow of the Royal Colleges of Surgeons of England & Fellow of the Royal College of Surgeons of Edinburgh; Fellow of the Faculty of Forensic & Legal Medicine; Fellow of the Forensic Science Society; Member of the Faculty of Pre-Hospital Care of the Royal College of Surgeons of Edinburgh; Master of Laws; Master of Science; Diploma of Forensic Medicine; Fellow of the Australasian College of Legal Medicine; European Community Specialist Certificate in Gastroenterology; on the GMC Register as a Specialist in Forensic & Legal Medicine; accredited Mediator.
- 32 I undertake a full program of continuing professional development and am appraised regularly.
- 33 I organise local audit meetings for healthcare professionals involved in detainee care.
- 34 I am external adviser to the National Crime Agency.
- 35 I was an Examiner for the Society of Apothecaries' 'Diploma in the Clinical & Forensic Aspects of Sexual Assault' from 2009-2012.
- 36 I held the David Jenkins Chair of Forensic & Legal Medicine of the Faculty of Forensic & Legal Medicine in 2008-9.
- 37 I was Honorary Senior Clinical Research Fellow in the Department of Gastroenterology & Nutrition, Central Middlesex Hospital, London.
- 38 I am co-author of the books 'Colour Guide: Forensic Medicine'. 'Symptoms and Signs of Substance Misuse', 'Symptoms and Signs' and 'Key Facts in Clinical Nutrition'.
- 39 I am co-editor of the books 'Medicolegal Essentials of Healthcare', 'Forensic Medicine: Clinical & Pathological Aspects' (for which I wrote the chapter on assault and injury) and 'Artificial Nutrition Support in Clinical Practice'.
- 40 I am contributor to the books 'Sexual Assault: Victimisation Across the Life Span - A Colour Atlas' and 'A Physician's Guide to Clinical Forensic Medicine'.
- 41 I am lead author of the 13th Edition of 'Simpson's Forensic Medicine'; co-author of the 'Oxford Handbook of Forensic Medicine' and co-editor of 'Current Practice in Forensic Medicine'.
- 42 In these I have variously written chapters on adult and child sexual assault and findings after such assault.
- 43 I am co-author of the IPCC publication 'Near Misses in Police Custody: a collaborative study with Forensic Medical Examiners in London'.

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Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

- 44 I am Editor-in-Chief of the Encyclopedia of Forensic & Legal Medicine for which I have written chapters including those on asphyxia, carbon monoxide poisoning, assault and injury, healthcare of detainees in custody, documentation of injury, substance misuse and crime, deliberate self harm, findings after sexual assault and deaths in custody. I have just been contracted as Editor-in-Chief for the next edition.
- 45 I was a member of the Forensic Medicine Committee of the British Medical Association.
- 46 I am a delegate to the European Council for Legal Medicine.
- 47 I provide expert opinions in the criminal courts for both prosecution and defence and other bodies in a number of areas including assault and injury causation, care and death in custody.
- 48 I have submitted written or given oral evidence in all courts up to and including the Court of Appeal on behalf of the Crown Prosecution Service, defence teams, coroners, the Service Prosecuting Authority, the Independent Police Complaints Commission, courts martial and other bodies.
- 49 I have undertaken reviews of clinical care for amongst others, the Prison Ombudsman for Northern Ireland, the Prison and Probation Ombudsman and provided written and oral evidence for the Baha Mousa Inquiry.
- 50 I am a director of Forensic Healthcare Services Ltd – a company involved in the provision of expert witnesses and forensic medicine training and which has the capability of providing training for healthcare professionals working in custody.
- 51 My full Curriculum Vitae is appended (Appendix I).

Background to Report

- 52 I have been asked by Nicola Enston, Solicitor to the Al-Sweady Public Inquiry to provide evidence for the Inquiry.
- 53 I understand the full terms of the Inquiry to be 'To investigate and report on the allegations made by the claimants in the Al-Sweady judicial review proceedings against British soldiers of (1) unlawful killing at Camp Abu Naji on 14 and 15 May 2004, and (2) the ill-treatment of five Iraqi nationals detained at Camp Abu Naji and subsequently at the divisional temporary detention facility at Shaibah Logistics Base between 14 May and 23 September 2004, taking account of the investigations which have already taken place, and to make recommendations.
- 54 With regard to my report I am given the following factual background:

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- 55 During the afternoon of 14 May 2004, British military Land Rovers were travelling north along a major road in Maysan Province, Iraq (Route 6). The intended destination of the vehicles was Camp Abu Naji (CAN), a British military base.
- 56 At a location a short distance south of a permanent vehicle checkpoint (PVCP), known in the military as 'Danny Boy', the vehicles were engaged with hostile fire from small arms (such as rifles) and rocket-propelled grenades (RPG). The vehicles drove through the PVCP and reached CAN, encountering further incoming fire at different locations during the journey.
- 57 This engagement was reported by the convoy and troops deployed both from CAN in the north and Camp Condor to the south of the engagement. A prolonged armed contact resulted which.....occurred in two distinct geographical locations; one to the south (the southern battle) and one to the north (the northern battle) of the PVCP.
- 58 One detainee was captured at the site of the southern battle and eight detainees were captured at the site of the northern battle. The detainees were all transported in British military vehicles to CAN.
- 59 Contemporaneous documentation suggesting that they arrived in two groups on or around 20.55 and 21.55 [14 5 2004].
- 60 One by one, all nine detainees were processed shortly after their arrival at CAN.
- 61 This processing included a medical examination conducted by Corporal Shaun Carroll, a Class 1 Regimental Medical Assistant (RMA) serving with the First Battalion, Princess of Wales's Royal Regiment (1PWRR).
- 62 The detainees all remained at CAN overnight before being transported to the Divisional Temporary Detention Facility (DTDF) operated by the British military at the Shaibah logistics base near Basrah.
- 63 The detainees arrived at the DTDF on the afternoon on 15 May 2004.
- 64 On arrival, each of the detainees was medically examined by Doctor David Winfield, the Regimental Medical Officer (RMO) for the First Battalion, Royal Highland Fusiliers (1RHF).
- 65 The Inquiry has received written evidence, and heard oral evidence from Dr Winfield who oversaw and was responsible for the primary care of detainees held at the DTDF (including whilst interred in the JFIT compound). Dr Winfield's witness statement dated 23 January 2013 records that the main part of his task was to carry out part of the initial examination of detainees when they first arrived at the DTDF but that he would also attend the DTDF to assist in their sick parade.

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66 In the light of evidence given by Dr Winfield on 12 February 2014 the Inquiry is seeking an expert report in relation to the general issues of the relevant professional medical standard that should have been applied to the conduct of the medical examinations that Dr Winfield conducted on 15 May 2004.

67 In this regard, the Inquiry is not aware of any written order or policy prescribing the manner in which initial medical examinations were to be conducted, although DTDF SOP NO 4, entitled, 'Admission Procedure,' sets out the duties of a medical officer on admission.

68 This was referred to during the course of the questioning of Dr Winfield

69 Paragraph 13 of Dr Winfield's statement states;

70 'I cannot recall if I gave the medics any instructions or guidance in relation to their duties at the DTDF. It is possible that I did not give any additional instructions as their duties at the DTDF were essentially the same as their duties at 1RHF's medical centre, the only difference being that one set of patients would be soldiers and the other would be detainees.'

71 To assist with the background and context to these instructions, also provided are pages 328 365 of Counsel to the Inquiry's Opening statement, entitled 'Chapter 5; Medical examinations and treatment'. This provides an overview of the details of the medical team at DTDF, the initial medical examinations at DTDF, together with a background of the allegations made by each of the detainees, their examination at CAN and an overview of what was recorded'.

72 In particular I have been asked to:

73 provide opinion on the appropriate professional standard that applied to the examinations conducted by Dr Winfield.

74 Additionally, to consider a number of issues raised during the course of Dr Winfield's evidence;

75 (1) Dr Winfield's evidence in relation to not asking a patient about the occasion/cause of any injury, when taking a history [144134- 37; and 1441160- 1]

76 (2) Dr Winfield's evidence in relation to not asking to see any previous medical documentation for the detainees: [144148- 49] ;

77 (3) Dr Winfield's evidence that the head merits no more attention than any other part of the body (including when there are facial injuries apparent) [144183] ;

78 (4) Dr Winfield's evidence that he was justified in not noting the presence of blood under the nose of a patient, and in not wiping it away (at page 92 he states, in response to a question that [we] were not responsible for their [i.e the detainees] hygiene) [144189- 92];

79 (5) Dr Winfield's evidence that Hamza Almalje (Detainee 090772) would have been lucky to receive the care that he did [between 15.5.04. and 24.5.04] on the NHS [1441165- 6];

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- 80 (6) Dr Winfield's evidence that it was right to place substantial reliance upon objective recordings, and to have regard to 'transcultural medicine', when assessing the apparent symptoms of Hamza Almalje (Detainee 090772) during this period [1441106- 7];
- 81 (7) Dr Winfield's evidence that there was no point in examining for a broken nose or recording blood under the nose [1441116- 119; and 154-155];
- 82 (8) Dr Winfield's evidence that he was justified in not referring Ibrahim Al Ismaeeli (Detainee 090774) to hospital for immediate x-ray to his wounded foot and waiting for another 16- 18 hours before doing so [1441132-134].?

Source Materials for the Report

- 83 For the purpose of producing this report I have seen or reviewed the following materials provided, accompanying my letter of instruction:
- 84 1) Extract from Counsel to the Inquiry's Opening statement
- 85 2) [Day 144/ 1 - 172] Transcript of Dr Winfield's oral evidence to the Inquiry
- 86 3) [Day 116/ 9 - 139] Transcript of Cpl Shaun Carroll's oral evidence to the Inquiry.
- 87 Statements:
- 88 1) ASI witness statement of Dr David Winfield dated 23 January 2013 (ASI019045)
- 89 2) Unsigned witness statement of Dr David Winfield provided to the Royal Military Police (RMP) (SIB) dated 10 June 2004 [MOD017258]
- 90 3) 9 further typed RMP statements dated 11 June 2004 as follows;
- 91 • RMP Witness Statement - MOD012415 .
- 92 • RMP Witness Statement - MOD012416 .
- 93 • RMP Witness Statement - MOD012417 .
- 94 • RMP Witness Statement - MOD012419 .
- 95 • RMP Witness Statement - MOD012420 .
- 96 • RMP Witness Statement - MOD012421.
- 97 • RMP Witness Statement - MOD012422.
- 98 • Draft RMP Witness Statement MOD012423
- 99 4) ASI witness statement of Cpl Shaun Carroll dated 29 May 2012 (ASI016052)
- 100 Photographs
- 101 1) Photographs [as print and digital best available copies] of each of the detainees taken 15 May 2004 [MOD032677]
- 102 2) Improved copies of PMD/1 [MOD032677 as follows;
- 103 • Photograph of Detainee 090772 - front MOD048732

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- 104 • Photograph of Detainee 090772 - side MOD048733
- 105 • Photograph of Detainee 090773 - front MOD048734
- 106 • Photograph of Detainee 090773 - side MOD048735
- 107 • Photograph of Detainee 090774 - front MOD048736
- 108 • Photograph of Detainee 090774 - side MOD048737
- 109 • Photograph of Detainee 090775 - front MOD048738
- 110 • Photograph of Detainee 090775 - side MOD048739 .
- 111 • Photograph of Detainee 090776 - front MOD048740
- 112 • Photograph of Detainee 090776 - side MOD048741
- 113 • Photograph of Detainee 090777 - front MOD048742
- 114 • Photograph of Detainee 090777 - side MOD048743
- 115 • Photograph of Detainee 090778 - front MOD048744
- 116 • Photograph of Detainee 090778 - side MOD048745
- 117 • Photograph of Detainee 090779 - front MOD048746
- 118 • Photograph of Detainee 090779 - side MOD048747
- 119 • Photograph of Detainee 090780 - front MOD048748
- 120 • Photograph of Detainee 090780 - side MOD048749
- 121 3) Photographs of detainees labelled PMD/3a [MOD032672] taken 14 May 2004; [I am informed that the Inquiry does not have photographs from two detainees - 772 and 778]
- 122 4) Photographs of injuries to 775 the Inquiry understands were taken at the DTDF by the RMP on 25 May 2004:
- 123 • Injury to right wrist [MOD034441 and MOD034442]
- 124 • Mark on left wrist [MOD034443]
- 125 • Injury to left temple [MOD034439 and MOD034440]
- 126 The following policy documents:
- 127 1) DTDF SOP NO 4 Admission Procedure: [MOD042709]
- 128 2) Operational Directive, Divisional Temporary Detention Facility, dated 4 April 2004 [MOD045625]
- 129 • paragraph 22 b sets out the minimum standards of treatment, and includes one line on medical - "medical care is to be provided if required";
- 130 • paragraph 33 sets out arrangements for medical treatment at the DTDF
- 131 • appendix 2 to annex C deals with what to do in the event of an internee injury
- 132 • Annex G to DTDF sets out medical related dangers at the DTDF

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- 133 3) JFIT operational directive dated 31 May 2004 [MOD046746] (N.B the Inquiry does not
have an earlier version)
- 134 • paragraph 19 - sets out minimum standards of treatment, and includes one line on
medical - "medical care is to be provided if required")
- 135 • paragraph 28- sets out arrangements for medical treatment at the DTDF, but nothing set
out in relation to initial medicals;
- 136 Relevant extracts from the Daily Occurrence Book (DOB) for the Divisional Temporary
Detention Facility [MOD003709]
- 137 Individual detainee records (DTDF medical records)
- 138 Not all the documents in the files are relevant to the role of Dr Winfield, but for completeness
the bundle for each detainee is provided and referred to the pages dealing with their
arrival and care after arrival;
- 139 772:
- 140 • DTDF Medical Record for 090772 [MOD043351 to MOD043364], including the "DTDF
Initial Medical" [MOD043359-60]
- 141 • Prisoner Medical Report completed at CAN by Corporal Carroll on 14 May 2004
[MOD043336]
- 142 773:
- 143 • DTDF Medical Record for 090773 [MOD043426-MOD043435], including the "DTDF
Initial Medical" [MOD043434-5]
- 144 • Prisoner Medical Report completed at CAN by Corporal Carroll on 14 May 2004
[MOD043411]
- 145 774:
- 146 • DTDF Medical Record for 090774 [MOD043492-MOD043512], including the "DTDF
Initial Medical" [MOD043506-7]
- 147 • Prisoner Medical Report completed at CAN by Corporal Carroll on 14 May 2004
[MOD043476]
- 148 775:
- 149 • DTDF Medical Record for 090775 [MOD043556-MOD043564], including the "DTDF
Initial Medical" [MOD043563-4]
- 150 • Prisoner Medical Report completed at CAN by Corporal Carroll on 14 May 2004
[MOD043541]
- 151 776:

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- 152 • DTDF Medical Record for 090776 [MOD043619- MOD043628], including the "DTDF
Initial Medical" [MOD043627-8]
- 153 • Prisoner Medical Report completed at CAN by Corporal Carroll on 14 May 2004
[MOD043604]
- 154 777 :
- 155 • DTDF Medical Record for 090777 [MOD043674-MOD043682], including the "DTDF
Initial Medical" [MOD043681-2]
- 156 • Prisoner Medical Report completed at CAN by Corporal Carroll on 14 May 2004
[MOD043659]
- 157 778:
- 158 • DTDF Medical Record for 090778 [MOD043953-MOD043965], including the "DTDF
Initial Medical" [MOD043961-2]
- 159 • Prisoner Medical Report completed at CAN by Corporal Carroll on 14 May 2004
[MOD043938]
- 160 779:
- 161 • DTDF Medical Record for 090779 [MOD044014-MOD044022], including the "DTDF
Initial Medical" [MOD044021-2]
- 162 • Prisoner Medical Report completed at CAN by Corporal Carroll on 14 May 2004
[MOD043999]
- 163 780:
- 164 • DTDF Medical Record for 090780 [MOD044067-MOD044075], including the "DTDF
Initial Medical" [MOD044074-5]
- 165 • Prisoner Medical Report completed at CAN by Corporal Carroll on 14 May 2004
[MOD044052]
- 166 Additional documents referred to during the course of oral evidence:
- 167 1) Extract from Radio Operator's Log - MOD040074
- 168 2) Extract from JFIT Interrogation Report (090772) MOD040906 -MOD040908
- 169 3) Extract from JFIT Interrogation Report (090772) MOD040913.

Accounts of Events

- 170 (I will only make reference to those matters which I consider relevant to my
instructions).
- 171 From 'Chapter 5: Medical examinations and treatment' I note:

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- 172 .1139 Maj Winfield was the RMO...based at 1RHF's Medical Centre at the SLB...also known as RAP...approximately 10-15 minutes walk from the DTDF...had its own medical centre
- 173 .1140 Maj Winfield oversaw, and was responsible for the primary care of detainees held at the DTDF....says that the main part of his task was to carry out part of the initial examination of detainees when they first arrived at DTDF...would also...assist in their sick parade
- 174 .1141 The medical team, headed by Maj Winfield, consisted of:
- 175 .Sgt McBride...Medical Sergeant and Regimental Medical Assistant 1
- 176 .Cpl Pickup...a female medic
- 177 .Cpl Tough...an RMA1
- 178 .Fus Davies...an RMA1
- 179 .Cpl Cryans...an RMA2
- 180 .Fus Rafferty..an RMA2
- 181 .Cpl Dempsey...an RMA3
- 182 .1142 According to Maj Winfield the medics main duties at the DTDF were to i) take observations of the detainees before he saw them as part of their initial medical examination and ii) be the first point of contact when the detainees had any medical problem in the DTDF
- 183 .1143 Maj Winfield states that the purpose of the medical examination was to identify any physical or mental health problems so that the detainee could be treated appropriately and to assess if the detainee was medically fit enough to be detained at the DTDF
- 184 .1144...described the medical examination consisted of two parts...first part, a medic would conduct observations on a detainee, probably with the assistance of an interpreter.....was not present at this part of the examination
- 185 .1145 After the first part of the examination, a guard would escort the detainee to Maj Winfield's room...guards were not present in the course of his examination....An interpreter was..present....Maj Winfield would be given the 'DTDF Initial Medical' form in respect of a detained, partially completed by the medic who had conducted observations....He was not given 'Prisoner Medical Reports' that has been created at CAN
- 186 .1146 Maj Winfield states that a medic...would be present during his examination of a detainee

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- 187 .would, through an interpreter, ask a detainee to sit down on a chair
- 188 .take a medical history
- 189 .record the detainee's response on s2 of the DTDF Initial Medical Form ('Medical problems including medication')
- 190 .ask the detained to undress down to their underwear
- 191 .then conduct a three part medical examination (the results of which he would record in s6 of the DTDF Initial Medical Form), namely:
- 192 1) Cardiovascular checks...take pulse and listen to their heart
- 193 2) Respiratory checks...check their respiratory rate and listen to their chests
- 194 3) Abdominal checks: with the detainee lying on their back, he would palpate the back and top of their abdomen to check that it was soft and not tender and to check that he could not feel masses and listen to bowel sounds
- 195 .1147...would ask the detainees if had any injuries - if so would they show him, and/or he would observe them if they were obvious. He would record all of the injuries on a body diagram. He would not ask detainees how any injuries observed had been caused
- 196 .1148...would then form a conclusion as to whether a detainee was fit for detention...as far as he can now [recall]...passed all detainees that he saw at the DTDF as fit
- 197 .Subsequent medical examination and treatment
- 198 .1149...when a detainee had a medical issue whilst they were being detained in the DTDF...they would sometimes report it to Maj Richmond...he would then report it to Maj Winfield or a medic
- 199 .more commonly, a 1RHF would inform him or a medic that a detained had a medical issues, in which case the detainee would be seen as soon as possible if the issue was urgent or on the next sick parade if it was not
- 200 .1150...sick parade was held in the DTDF...every morning by the medics...Maj Winfield, would usually assist
- 201 .1151 Maj Winfield states that, on occasions, he or the medics attended the JFIT compound to see a detainee (and, on other occasions, detainees were brought straight from the JFIT compound...)
- 202 .he and the medics did not routinely check on the detainees in the JFIT compound
- 203 .does not know how a detainee would raise a medical problem ...while...in the JFIT compound

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204 .1152...when it was not possible to treat a detainee in the DTDF they were referred to
the Field Hospital for further investigation and treatment....transfer...authorised by
him and Maj Richmond.

Accounts of Healthcare Personnel

205 From the transcript of Cpl Shaun Carroll's oral evidence I note [questions or
comments from Chairman or counsel in square parentheses]:
206 [you ran the regimental aid post at Abu Naji....your responsibilities were to deal
with when a soldier suffered from flu or needed a dressing changing or matters like
that]
207 .that was routine appointments...could deal with any other injuries that came in
208 .my staff would go across as well to assist in the A & E staff...depends on the
number of casualties that were coming in
209 .the RAP was more like a doctor's surgery....A & E , we were just there for routine
sick parade as well
210 [qualifications of the men working]
211 .I was a senior class I medic...think the others were class 2s
212 .there were doctors at the RAP
213 [broadly you saw yourselves at the RAP as a general practitioner's surgery in civvy
street]
214 .yes
215 [would you say you are essentially a first aider]
216 .bit more qualified than that
217 .we can prescribe, we could do basic treatments, suturing, chest drain and things like
that
218 .protocol we can work by. Each class had their own protocol
219 [where would we find that]
220 .in the battalion medical centre
221 .sprains to colds...whatever came through the door
222 [broken wrist]
223 .would go to the A & E
224 [lacerated head]
225 .depends on the size...and other complications..could deal with that at the RAP
226 [gunshot wound]

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- 227 .depends...more likely the A & E for referral by the doctor
- 228 [MOD016729...treated two detainees]
- 229 .first time I treated a detainee
- 230 [experience of battlefield injuries]
- 231 .limited
- 232 [Events of 14 May]
- 233 [you stopped helping after dealing with one body because you were told to go and deal with the prisoners]
- 234 .yes
- 235 [medical kit consisted of a crash kit...and an ambulance]
- 236 [detainees weren't there when you got there]
- 237 .no sir
- 238 [it was your primary role to certify whether or not they were fit for detention]
- 239 .yes
- 240 [has been suggested ...your role was to certify whether or not they were fit for processing]
- 241 .no
- 242 .just the normal procedure..they would come in and they had to have a detention medical
- 243 [did you know that they would be TQ'd later]
- 244 .no
- 245 .new they would be questioned but not TQ'd
- 246 [fitness for detention and nothing more]
- 247 .yes
- 248 [who gave you your instruction about your role?]
- 249 .Captain Bailey..my RMO
- 250 [treat an enemy combatant in the same you would treat any other patient]
- 251 .yes
- 252 [patient care would come ahead of military convenience]
- 253 .yes
- 254 [can you give an example of what you mean by a 'minor injury]
- 255 .graze or a minor laceration
- 256 [if it needed stitching..sent him off to A & E]
- 257 .yes

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- 258 .would escort him down ..explain to the doctor
- 259 [in principle, a gunshot wound...refer to the doctor at A & E]
- 260 [similarly a large laceration to the head]
- 261 .yes..my own judgement
- 262 [err on the side of caution]
- 263 .yes
- 264 [didn't send any of these detained to A & E or refer any of them to a doctor]
- 265 .yes
- 266 [in your judgement you thought you could treat them]
- 267 .yes
- 268 [any X-rays had to be done at Shaibah]
- 269 .yes
- 270 [paragraph 41...'On immediate arrival all prisoners are to be seen by the doctor'...Then they are seen every three hours until they leave Abu Naji..didn't cause you any difficulty...because you had been told by Captain Bailey that it had been cleared through Brigade]
- 271 .yes
- 272 [annex G to an SOI....25 March 2004....paragraph 4.....'TQ cannot be undertaken without the internee first being examined by a suitably qualified medic...at the first practical opportunity...following must occur....a) The MO is to sign a fit for detention and questioning form.....MOthat's a doctor]
- 273 [Al-Sweady statement....paragraph 70..and 71....you say 'I was authorised by Captain Bailey to carry out the medical examination...and complete the forms by myself...nothing...about it being authorised at Brigade level]
- 274 .I was told by Captain Bailey...he told me by Brigade
- 275 [always asked...about their medical history....whether they were in pain....if they had any medical requests...always offered water]
- 276 .yes
- 277 [keep any record of their answers]
- 278 .no
- 279 [might had been something that would have been helpful for those who followed that there was a record of that when they were first seen]
- 280 .yes
- 281 [wasn't what you were taught to do]

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282 .no

283 [always offered a chair]

284 .yes

285 [none of these detainees was offered a chair]

286 .that's correct...as far as I can remember

287 [774...had a gunshot wound to his foot and his leg]

288 .yes

289 [didn't offer him a chair]

290 .no

291 [any of them asked what they were doing out in the fields]

292 .can't recall

293 [purpose of them being stripped was for a medical examination]

294 .no..purpose of them being stripped was for their clothes to be searched...and whilst they were stripped I did my medical examination]

295 [the stripping was for the clothes to be searched]

296 .and a medical examination...Captain Bailey taught me

297 [ever recall any resistance at all]

298 .no

299 .no recollection

300 [completely compliant]

301 .yes

302 [if they resisted being touched, what did you do]

303 .none of them resisted

304 [was all the treatment...14 May...in the tent or back in the cells]

305 .most of it was done in the tent

306 .might've done one in the holding cell

307 [might have been naked in the tent for up to 10 or 15 minutes]

308 .yes

309 [towel or a small sheet could have been provided to protect their modesty]

310 .I suppose so

311 [interpreter..paragraph 92..she was standing in the corner]

312 .yes ...off to the side..behind

313 .couldn't tell you where she came from

314 [can you see...might have the effect of making him feel humiliated]

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315 .no sir

316 [should consent of the patient be obtained before the examination of him]

317 .as soon as they stripped I took that as consent...because they were explained they
were going to get searched and get a medical

318 [were they told that they didn't have to take their clothes off]

319 .I don't know

320 [were they told that they didn't have to agree to be examined]

321 .not as far as I'm aware

322 [should consent be obtained before treatment]

323 .they were told what was going to happen

324 .they were told by the interpreter

325 [were they told they could say 'no']

326 .I don't know

327 ['they were told that they were going to be medically examined'...might rather imply
that they weren't offered the option]

328 .yes

329 [what is the process...would last a minimum of 45 minutes]

330 .time they came into the tent..clothes to be searched, the medical...the sergeant major
or the RSM to ask their questions and then to go back out]

331 [would you agree that these 9 are recorded as being in the process tent for much less]

332 .I can't remember

333 [772.....suggests he was in the processing tent for 5 minutes]

334 [processing, the undressing, the redressing, the photograph must all have taken place
in 5 minutes]

335 .that's what it says

336 [773...920...and back in his cell by 923]

337 .I didn't write them times...done by the guard commander

338 [back to 772...taken to processing at 903, your medical at 905..back in his cell at 910]

339 .right...I didn't write the times...guard commander

340 [774...925 taken to tent...your medical at 930, back in his cell by 25 to 10]

341 .yes

342 [do you know why ..procedure was abbreviated from 45 minutes to 1 hour]

343 .no idea

344 [feel that you were under pressure]

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345 .no

346 [medical reports...one...example]

347 [your handwriting]

348 .yes

349 [column for the time of your examination...you didn't fill that in on any of these
forms...why not]

350 .I don't know

351 [774...don't say whether he is fit or unfit]

352 .an oversight

353 [777]

354 .same

355 [7870]

356 .same

357 [779...nil injury...don't say whether he is fit or otherwise]

358 [one explanation...where there were recorded injuries, but you were concerned
about whether or not they were fit for detention you decided that it was better not to
say...]

359 .no...oversight

360 .was under no pressure

361 [were you concerned about being complicit in the tactical questioning]

362 .no sir

363 [paragraph 96..I completed a prisoner medical report in relation to each detainee. I
recorded the detainee's name and date of birth...note of any visible injuries and any
relevant details about a detainee's medical history'...on none of the forms for these
nine is there any reference to a medical history]

364 .if they would have said to me that they had diabetes, epilepsy or something with the
heart or asthma, I would have recorded it; anything else...didn't record because it
was nothing relevant

365 [what is relevant]

366 .things like asthma, diabetes, heart murmurs, psychiatric, that sort of thing

367 [did you ask them]

368 [didn't ask about any particular things]

369 .would go through like a list

370 [and because they didn't say 'yes' you didn't record anything]

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371 .that's right

372 [you fill in the forms...as soon as you could after carrying out the examination]

373 .yes

374 [penultimate paragraph]

375 .I do not recall any of the detainees telling me how they obtained their injuries...just
assumed...due to being involved in the earlier firefright]

376 [why didn't you ask them]

377 .wasn't part of my job

378 [why didn't you ask these men]

379 .I don't know

380 [772....medical examination could can't have lasted more than a minute]

381 .correct...visual check

382 .'large laceration to [left] hand. Wound to upper [left] leg. Bloody nose...'.....what is
to the right of bloody nose'

383 .nil..means ...wasn't broken or anything..just blood

384 [why didn't you record dimensions of the laceration]

385 .oversight

386 [consider the possibility of concussion]

387 .yes...check his pupils with a pen-light

388 [why don't you record 'no evidence of concussion']

389 .don't know

390 [MOD048732....photograph...arrival at Al Shaibah....looks as though...bruising on
his left cheek...bridge of his nose]

391 .no

392 [abrasion above his left eye]

393 .no. All I can see is dirt

394 [statement of Mr Winfield...'[unkempt]...two superficial abrasions on left thigh,
some on left and right shoulder and one above his left eye. There was also swelling
and bruising over his left cheek, the bridge of his nose and his right eye'..you didn't
record those injuries at Abu Naji]

395 .didn't see them

396 [if you had seen them, would you have recorded them]

397 .yes

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- 398 [must it follow that when you examined him, he did not have the injuries which Mr
Winfield describes]
- 399 .they could have come out after....bruising takes time to appear...superficial
lacerations could have been the dirt...could have missed them
- 400 [if you treat a man's wounds would you expect to record that]
- 401 .yes
- 402 [why don't you record the application of dressings on the medical report]
- 403 .I don't know
- 404 [773...date of birth 1986...did you make any allowance for his age when you certified
him]
- 405 .no
- 406 [773...right arm hanging down...soldier seems to be holding his identification
card...why]
- 407 .no idea
- 408 [774...another medical which must have lasted a minute or so]
- 409 .yes
- 410 [medical report..'injury to the right foot....gunshot wound']
- 411 .cleaned ...no exit
- 412 ['gunshot wound right leg']
- 413 .yes
- 414 ['lateral aspect, knee wound cleaned, dressed, graze']
- 415 ['gunshot wound upper right thigh']
- 416 ['cleaned, dressed, graze']
- 417 .no I was making sure that there was no penetrating...more like a track across the
skin
- 418 [think that there might be a bullet lodged inside]
- 419 .not at all
- 420 [risk of infection]
- 421 .no..because I cleaned the wound
- 422 [medical report and there is only a mention of two grazes]
- 423 .not three
- 424 [if your notes are to go by, there were two grazes and one further injury which was
not a graze]
- 425 [consider referring him to a doctor]

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426 .no

427 [at Shaibah. 16 May... 'emergency admission via A & E with gunshot wound to right
foot....20 year old...admitted ..shrapnel...right foot and right...knee'..reference to
shrapnel being removed]

428 .at the time they were not that serious

429 [shrapnel]

430 .I didn't know at the time

431 .didn't think he warranted it

432 [you missed it]

433 .yes sir

434 [at 2.21 Private Shotton gave him some painkillers and anti-inflammatories]

435 .yes sir

436 [why wasn't he given those drugs earlier]

437 .he wasn't in pain

438 [is there a coincidence between food and painkillers only being given after the
questioning was over]

439 .I don't know. Not in my opinion

440 .he wasn't in discomfort at midnight

441 [an alternative construction is that you knew from 930 that he would need painkillers
but you wanted the questioning out of the way before he was allowed to have them]

442 .no...against patient protocol

443 [paragraph 15..your Al-Sweady statement... '...gunshot wounds would normally be
treated by medics on the ground and/or taken to A & E...774 had gunshot wounds]

444 .they were not gunshot wounds in my opinion

445 [another medical that lasted a minute]

446 .that's right

447 ['small laceration to left side of face in eye line, wound glued'..did you dress that]

448 .would have done sir

449 [why don't you record having dressed it...oversight]

450 .yes sir

451 [pressure]

452 .no

453 [776..'fit, nil injury'....Shaibah medical reports....sketch 'superficial
abrasions'...might you have missed that]

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454 .yes

455 .if I had seen it I would have recorded it

456 [778...another medical examination lasting a minute]

457 .yes

458 [nil injury....Shaibah...'superficial abrasion both elbows - lower arms, small graze on back]

459 .that would have been so superficial - I wouldn't have recorded them

460 [if you had seen them]

461 .yes

462 [assume that you didn't see them]

463 .yes

464 [779...photograph..6 do you think we can make out beneath his mouth, some blood]

465 .no

466 [you describe...No injury...Al Shaibah...'bruising, swelling on cheek' and 'superficial [something] on other side of face']

467 .bruising and swelling takes time to come out

468 .he cleaned his face so I could specifically check

469 [sure...he did not have those injuries]

470 .not 100% sure

471 [780..medical lasting a minute....you removed shrapnel]

472 [medical report...'small piece...shrapnel...removed from right side of face]

473 .left

474 ['just in front of ear...graze to...left side of face around eye'....how did you removed the shrapnel]

475 .forceps

476 .they were told I was going to take it out and dress it

477 [772...had a large laceration to his head...you weren't worried about that]

478 .No

479 [what did Mr Bailey say about stripping for the purposes of a medical examination]

480 .I can't remember

481 [he...told the Inquiry that there was no medical justification for these prisoners to be stripped naked]

482 .I could have done my medical while they are in their underwear

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483 [Inquiry statement [AD1016083]..paragrapj 141...'I do not recall examining the
detainees on 14-15 May]

484 .can remember a couple of things

485 [774...walked with difficulty]

486 .no he didn't

487 [taken to FHT for TQing....brought back to his cell at 216....five minutes later...first
record of a painkiller...what is your explanation]

488 .I can't explain

489 [you were asked about questions of consent to medical treatment...before...did you
explain through the interpreter what you were intending to do]

490 .yes told I told him I was going to check the body

491 [any of the detainees indicate they didn't want that to happen]

492 .no

493 [would you ask a British soldier to sign a consent form]

494 .no

495 [explicitly ask them whether they consented to you giving them painkillers or
dressing a wound]

496 .no

497 [would you take it from the absence of resistance and following and explanation that
they agreed to the process]

498 .yes

499 [wound to the foot..did you think there was a bullet or shrapnel or a pellet lodged in
the foot]

500 .not at all

501 [another part of the records from Shaibah...'right foot, overlying swelling and
tenderness, no obvious entry wound']

502 .exactly what I saw

503 [772...you have recorded a large laceration....Shaibah...two injuries marked to the
head..'small abrasion above left eye'...'swelling and bruising to the left cheek, bridge
of nose and right eye'. No mention of any large lacerations...any reason why that
might be]

504 .no idea

505 [possible...on cleaning and dressing...turned out not to be quite as large]

506 .yes .

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507 David Winfield states:

508 [10 6 2004]

509 .the examination at DTDF is in two parts

510 .initially a medic will carry out a standard set of observations including weight, blood
pressure, temperature, urine analysis and blood glucose

511 .following this I would conduct a full examination to identify any medical problems and
whether they are taking medication or not

512 .after this I carry out a cardiovascular, respiratory and abdominal examination to
determine whether they are fit for detention

513 .all of the information is recorded on a DTDF Initial Medical Form

514 .on this form I would also note any injuries that the internee had

515 .all medical history of the internee is recorded on a FMed965 and held on file at the DTDF

516 .all noted made regarding check ups, examinations and medical complaints are entered
into FMed965

517 .at the DTDF internees can report any medical problems by informing a guard.

518 From the transcript of Dr David Winfield's oral evidence I note [questions or comments
from Chairman or counsel in square parentheses]:

519 [witness statement...23 January 2013]

520 [GP...BMedSci...MRCGP]

521 [April and July 2004...based at Shaibah Logistics Base]

522 [major and the regimental medical officer]

523 [provision of medical care to soldiers...primary care service]

524 [secondary function....provision of primary care to those detainees that were
detained within the DTDF]

525 .DTDF took up more time than the soldiers

526 [two different medical centres...one for detainees within the DTDF and one at the
regimental aid post for soldiers]

527 [[MOD045634]..paragraph 33....operational directive...concerns medical
arrangements for detainees and for the guard force]

528 ['a five bed medical facility..within DTDF....for the treatment of detainees']

529 .cannot recall if it was 5

530 [people were either kept in the compound in the DTDF or the JFIT on the one hand
or were sent off to the field hospital on the other]

531 .broadly speaking

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- 532 [cases of serious or specialist illness or injuries amongst internees may necessitate
treatment in role 3 medical facilities]
- 533 .that's the hospital
- 534 [detainee's medical records would be kept in filing cabinets within the medical
facility within the DTDF]
- 535 .yes
- 536 [would you expect the medic to be called if a detainee in the JFIT needed to see a
medic]
- 537 .yes
- 538 [in total, the complement of staff was eight...and you led them]
- 539 [did you give any particular instructions or guidance to those seven staff as to the
system was to work within the DTDF medical facility]
- 540 .can't recall giving any specific guidance
- 541 [any particular instructions]
- 542 .no more than normal
- 543 [what was normal]
- 544 .back in Cyprus...daily basis...with the exception they're not detainees...business as
normal
- 545 [any guidance or instructions as to the differences that the new situation might
present]
- 546 .I'm confident I would have spoken to them..can't recall the specifics
- 547 .similar to...what...Major Richmond, would have done...sensitivities of the situation,
the sensitivities of dealing with the detainees, the need to be scrupulous, be careful
with documentation, to have a low threshold for discussing cases with me if they
were worried
- 548 .mindful of the difficulties of translation, of working through interpreters...if they
had concerns...to speak to me directly
- 549 [detainees rather than soldiers. How did that affect the approach to be taken]
- 550 .not sure it fundamentally did change the approach we had...treat individuals on the
basis of clinical need and clinical requirement
- 551 [principle that detainees should receive the same quality of treatment as a soldier or
any other patient]
- 552 .absolutely
- 553 .principle of the Geneva convention

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- 554 [was acted upon at all times]
- 555 .I believe so
- 556 [any specific training in relation to your duties as a RMO in relation to the provision of medical care to detainees]
- 557 [first army-specific medical training that you underwent was PGMP course]
- 558 .yes
- 559 [very little medical training in that]
- 560 [second part, there wasn't anything focuses, was there, on the treatment of detainees]
- 561 .don't recall anything specific
- 562 [training include any reference to those parts of the Geneva Convention that are specifically relevant to medical officers]
- 563 .can't recall
- 564 .know during my military career ...have had training on the Geneva Convention and how treatment is given on clinical needs rather than...on which side the combatants are on
- 565 [paragraph 34...statement....do not recall from your military of your medical training...any training on the medical treatment of detainees]
- 566 .I think that's correct
- 567 [and..'prior to my tour, the only medical care I had provided to persons in detention was to the British forces soldiers...referred to above]
- 568 .that's correct
- 569 [these are SOPs issued by Major Richmond...Can you recall whether you saw these]
- 570 .can't recall
- 571 [para 2..'if the internee has any visible signs of injury or appears to be in particularly poor health or is complaining of pain, then he/she must be seen by the DTF MO as soon as possible and deemed fit for detention. If unfit for detention and the MO has advised hospitalisation, then the MPS Day Officer must be informed as soon as possible regardless of day or night. Was that the system that was in place]
- 572 .essentially, yes
- 573 [wasn't it in fact, the case that all internees had a medical examination by you irrespective of whether they were in particularly poor health or complaining of pain]
- 574 .yes
- 575 [any obligation as to when]
- 576 .I was under the impression it was within 24 hours

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- 577 .in reality it happened almost as soon as they came in
- 578 [you say that you effectively relied on the forms that had been printed up and
provided to you as to the nature of the task you were required to undertake]
- 579 .yes
- 580 [was there an overarching policy dealing with specifically with care to be provided
to detainees by army medics and doctors]
- 581 .other than the Geneva Convention, not that I was aware of
- 582 [never certified any detainees as either fit or unfit for interrogation]
- 583 .no
- 584 [would you agree that without a detailed knowledge of the process that the detainee
is to undergo you will be unable properly to assess the implications of detention on
an individual]
- 585 .not sure that I would agree with that...most of us would be able to anticipate what
detention would be...in terms of a medical opinion...think that would have to be a
medical person]
- 586 .don't think I would have known the details of interrogation techniques
- 587 .decision on whether they were fit for detention was..was there any physical or
mental issues that meant they wouldn't be - or that they really need transfer to
hospital
- 588 [if..detention involved interrogation]
- 589 .I think it would influence the decision
- 590 [mild form of mental illness]
- 591 .you would take it into account..difficult to identify a minor mental health problem
- 592 [what would you say to the proposition that a doctor should have no involvement at
all in a decision on fitness for detention; a medical officer's role is to identify a
medical issue and not to comment on detention at all]
- 593 .not sure I know the answer to it
- 594 [your view on whether a medical officer's role is restricted to identifying medical
issues and treating them, rather than lending themselves to the custodial process and
making a decision on fitness for detention that has the consequence of permitting
someone to be interrogated.....Whose responsibility was it to decide whether a
detainee was fit to be interrogated]
- 595 .think that fell under the remit of fitness for detention
- 596 [what kind of injury or condition would render a detainee unfit for detention]

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597 .injury or condition that required them to transferred to hospital...huge amount of
injuries. There's an acute medical emergency, an acute surgical emergency...list is
endless]

598 [would you habitually ask if a detainee was in pain, in those terms, as part of your
medical examination]

599 .believe I would

600 .it's part of history-taking

601 [important to frame that question in as simple and direct manner as possible]

602 .yes

603 ['are you in pain']

604 .would have asked that as well

605 .could have asked both

606 .would normally treat the pain, or identify the case and treat

607 [would you ask the detainee what the cause of pain was]

608 .it depends

609 [wouldn't it be a normal question to ask the detainee's subjective view as to the cause
of the pain]

610 .not necessarily, no

611 [would you ask...what the cause of any injury was]

612 .I recall..made almost a conscious decision not to enquire about the background ...to
their injuries, because...I felt I wanted to stay medically separate and not feel I was
part of the..questioning

613 [wouldn't you agree ...could assist the doctor in diagnosis]

614 .in some circumstances, yes

615 .not sure I would specifically ask unless the information was volunteered

616 [if a soldier came in to see you...would ask a soldier...had caused their pain or
injury]

617 .not specifically, I think with an injury you would ask about an injury, yes. But..if
they came in saying 'I have a headache' you wouldn't say 'what's caused that
headache']

618 [If somebody said 'I have a pain in my knee' ...You would just stay silent]

619 .no, you would in those circumstances

620 [why wouldn't you pursue the cause of an injury with a detainee]

621 .I am not sure

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- 622 [did the detainee's age affect your assessment as to their fitness for detention]
- 623 .not that I recall
- 624 [in each of the first set of RMP statements...describe...detainee being examined by you within the first 24 hours of admission, Was that because you weren't able to give a time of examination]
- 625 .can't recall
- 626 [why was it that you didn't record the time of examination]
- 627 .can't recall
- 628 .I think I examined every detained who came in and it was well within the 24 hours, almost as soon as they arrived
- 629 [you say 'the internee needs to be accompanied by documentation to this effect. It this isn't with him, or if he had been examined by a foreign doctor a medical examination is always carried out']
- 630 .I'm not aware of any medical documents coming...I wasn't aware of any medical paperwork
- 631 [you didn't receive the previous medical records]
- 632 .don't recall getting them
- 633 [what about if a prisoner arrived with a dressing to a wound.....wouldn't you expect to see some documentation]
- 634 .don't recall that happening
- 635 .I am not sure it would have made a huge difference....having seen the CAN documents
- 636 [I think you know it's the case that the Camp Abu Naji documents in general terms record some injuries that you did not]
- 637 .yes
- 638 [but might they not have fulfilled at least that limited function...namely...medical record ...says 'large laceration to the left side of the head' you might think..'...I'll have a look at the left side of his head']
- 639 .agree that would have been very helpful
- 640 [not provided with Corporal Carroll's prisoner medical reports]
- 641 .don't recall seeing them at all until I received them for this inquiry
- 642 [did you not seen any signs of previous medical treatment on the detainees]
- 643 .can't recall

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- 644 [anything stopping you or a medic attending the JFIT perhaps regularly, daily as a
matter of routine]
- 645 .wouldn't have been a reason why...I couldn't go in there
- 646 [was there a reason for not carrying out a sick parade]
- 647 .think it was down to the detainees to raise medical problems with us
- 648 [if you had seen an injury on initial examination...would you ever...enter the JFIT
and check up on that detainee]
- 649 .depend on the circumstances
- 650 [what about somebody that had maybe two gunshot wounds and a shrapnel injury
to the lower body]
- 651 .remember examining the patient and they appears to me very minor wounds
- 652 .just very pleased I did send them to hospital the next day...they appeared fairly
superficial and fairly insignificant
- 653 [I think it is right you have no separate recollection of each individual detainee]
- 654 .broadly speaking
- 655 .think I would struggle to distinguish between the nine of what I did during the
examination
- 656 .recall the details of that wound on the right leg
- 657 [was your method first to ask the detainee first whether they had any injuries...so
two parts of it..one asking them if they had any injuries and another part examining
them to see if they had any injuries]
- 658 [if the detainee said that they had any injuries, would you immediately examine
those]
- 659 .or document it
- 660 [physical examination]
- 661 .speak to them first
- 662 .do a basic medical examination of their chest, their respiratory, their respiratory
cardiovascular system, their abdomen
- 663 .then would document..what I saw and found
- 664 [you said you would speak to them first]
- 665 .would have been asking...whether there was any previous medical problems,
whether they had an allergies, whether there was any sort of ongoing medical
problems
- 666 [whether they were in any pain]

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667 .may have asked that
668 [any injuries]
669 .that did come later on
670 [if a patient didn't mention an injury in a particular area of their body, that wouldn't
be a reason for not examining it]
671 .wouldn't examine something that didn't need examining
672 [would you be taking your key from your patient, or would you conduct a full top to
toe examination irrespective of what the patient said as to pain or injury]
673 .think what I recorded was injuries that were obvious to me
674 .or apparent to me
675 .injuries that the detainee raised with me
676 .fair to say I didn't do a top to toe, inch by inch full body forensic examination
677 [wouldn't look at his leg if he didn't tell me he had a leg injury]
678 .majority...visual inspection
679 .would have taken their top off and then they would have taken their bottoms off
680 .would have had underwear on
681 [both...removed at the same time, but with underwear on]
682 .cannot recall
683 [conducted with them on the couch]
684 .would get them to stand up, turn around and look at their back
685 [visual inspection was carried out with them on the couch or standing up]
686 .think it is both
687 [visual inspection is going on all the time]
688 .palpate his tummy
689 .ask if he had any injuries on his legs
690 [how did you compile your notes]
691 .suspect I would have written down as I went along
692 [directly to the form we have seen]
693 .I believe they went straight on to the form
694 .believe the body diagram is on the other side
695 [if you saw an injury, you would write it down]
696 .would endeavour to
697 [irrespective of severity]
698 .I don't think I can say that

ASI025399

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

699 .my take on a full forensic examination would you be, you know,
 photographs...every injury measured, photographed, recorded
 700 .think this was a fairly rough and ready overview of the physical condition of the
 detainees when they arrived
 701 [you would record all of the injuries that you saw on the form]
 702 .with the caveat...I wouldn't have recorded a tiny blemish, scratch
 703 [so why did you adopt the practice of only recording obvious and significant
 injuries]
 704 .I'm not sure I can say why I did that.
 705 [body diagram...of detainee 775]
 706 [you have recorded 'very superficial abrasions'..left scapula...are very superficial
 abrasions obvious and significant injuries]
 707 .if he had raised it to me I would have documented it
 708 [so should the qualification that we have introduced itself be the subject of
 qualification, namely 'unless the detainee raised the injury with me, in which case I
 would note it down even if it wasn't obvious and significant]
 709 [ever take any photographs of injuries]
 710 .no
 711 [email..423...15 May..from Major Richmond....'we are currently in-processing nine
 new arrivals following the firefight at Al-Amarah.....they have the appearance of
 men who have had a serious firefight, all appear shocked...some have miscellaneous
 wounds...I have asked the RMO...and MPS...to ensure that all their wounds, bruises
 and marks are meticulously documented and that front and rear view photos are
 taken of each of them to ensure that we have a clear record of their condition on
 arrival....My concern is that the bruises will still be visible when these men later
 move into the main compound...potential for rumour and false/malicious
 allegation]
 712 .don't recall him specifically asking that
 713 [772 - Hamzah Almalje ...cut to the head and upper left thigh...2137..dressings
 applied...two hours or so arrival at your place....received at the DTDF at
 1430...guard at Camp Abu Naji...saw a large wound to the head..poured water over
 it to get rid of flies...any doubt ...there was a large laceration]
 714 [body diagram that you completeddon't record any large laceration]
 715 [any explanation]

ASI025400

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

716 .one is that the one of the injuries I have noted there is what they said was a
laceration...if it was in the hairline...had been cleaned and dressed...can't see that
small abrasions above the left eye would equal a large laceration
717 .if there had been a dressing there, I would have looked under it
718 [MOD048732.....photograph...part of the reception processing]
719 .quality of photo...left cheek..bridge of his nose appears swelling
720 [small abrasion above the left eye]
721 .can't see that on the photo
722 .can see there's some redness just below the left eye
723 .possibly some swelling of the cheek
724 [swelling and bruising on the right eye]
725 .looks like have shaded sort of the inner..inner aspect of the right eye
726 .think I can see that within the quality of the photo
727 [if it was blood, what would you have done]
728 .probably not a huge amount
729 .looks like it has come from the nose
730 .which has got bruising and swelling
731 [Corporal Carroll...recorded this as being blood]
732 [any reason you didn't record the same]
733 .not sure there would have been a requirement to draw blood
734 [would it be important to show that it is not just a swollen nose...but the fact that it
has bled]
735 .not clinically significant no
736 [did you clean up his face]
737 .can't recall
738 .one of my medics might have
739 .may have cleaned himself up
740 [interrogator...detainee was particularly smelly and dirty..dried blood covering his
face]
741 [tend to suggest he was not cleaned up]
742 [would that be part of the normal process, medical examination and treatment, not to
clean up the consequences of injuries that detainee had suffered. To leave them
smelly, dirty, covered in blood and dirt]
743 .we weren't responsible for their hygiene

ASI025401

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

744 .when it was clinically indicated, as we saw with 774..wounds were cleaned and
dressed

745 [demeanour]

746 .can't recall the specifics

747 [if they were showing signs of difficulty communicating or signs of clinical
shock...think I would have noted that]

748 [record of interrogation.....internee appeared to be in great pain and unable to stay
upright...still looked concussed...as time wore on he became more confused...16
May]

749 .think I would have recorded it

750 [due to his injuries he appears to be confused and unable to maintain a
straightforward conversation]

751 [did the man appear to be confused because of his injuries]

752 .not that I recall

753 .I think if the interrogator or the guards had concerns about him, he would have
been seen by the medic again

754 [record of interrogation on 21 May.....'appeared to be in pain and unable to stay
upright for too long...difficult to understand'...were you informed]

755 .not that I recall

756 [if a medic notes an injury to a detainee after reception...would it be their duty to
make a note of it on the reception form]

757 .not necessarily

758 [where would they be required to make a note]

759 .put it as a new entry...on the medical record

760 [vomiting one of the symptoms of concussion]

761 .can be a sign of significant head injury

762 [loss of appetite]

763 .can be

764 [remaining entries about the condition of this patient between 16 and 24 May]

ASI025402

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

- 765 [Corporal Cryans...stomach pain...called to see JFIT to see..about the above problem....had this for three days...On examination...complains of stomach pain....lying back with his feet up smiling...hasn't ate since being detained here..wouldn't tell the interpreter anything about his symptoms...Rx....advised on [eating]/drinking...review in a day if no better.....Next entry...vomiting and stomach pain...Called to JFIT as interpreters saw him vomit blood...doesn't look particularly unwell...36.9..134/74..74 ..oxygen saturation 100%....Very small amount of blood mixed with saliva on walkway..various puddles of bile seen....18/05...patient has been vomiting all day, not ate...advise from RMO]
- 766 .Stemetil injections
- 767 [18 May..JFIT..detainee had vomited and urinated over himself in a cell..not been to toilet for 24 hours....Refusing to eat as it makes him ill. Guards and JFIT interpreter brought detainee..RMO already here]
- 768 .probably says 'looks ill'
- 769 [pain in...umbilical area...18 gauge cannula]
- 770 .antecubital fossa...Hartmanns solution up and running through...reassurance , 15 minutes obs
- 771 [your entry]
- 772 .conflicting story – guard says he has vomited x 1 and isn't eating...bowels not open since yesterday
- 773 .says vomiting profusely hasn't eaten for 6 days (makes him feel ill)
- 774 .denies any diarrhoea, normally fit and well, tolerating water, no previous medical problems
- 775 .slightly dehydrated....apyrexial....stated what his blood pressure, pulse and oxygen saturations are....his blood sugra..listened to his chest and his tummy
- 776 .abdomen soft, no obvious tenderness, no masses, bowel sounds present
- 777 .my impression was mild dehydration and the plan was for IV access and fluids
- 778 .monitor progress. Felt improved discharged back to JFIT..review SOS
- 779 [21 May...sore head, stomach and back....called to JFIT.initially said was passing blood in stools then changed mind...has pain in stomach...still not eating...not drinking much water..advised that he cannot receive medication on empty stomach....also advised on fluid intake]
- 780 [16 May during the day...before 1805...RMA2..have advised a reference to you. Then you haven't examined the patient]

ASI025403

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

781 .it doesn't appear I have
 782 [why not]
 783 .can't recall...suspect that Corporal Cryans would have spoken to me..would have
 had a discussion...would have given me all his observations he gave over the
 phone....would have asked whether he wanted me to see him...made a judgement
 784 [no entry...17 May..do you think this is a man that should have been followed up on
 17 May]
 785 .I think so with the benefit of hindsight
 786 [think this man ..should have been seen or at least monitored by a medic]
 787 .not sure he needs to see a doctor.....the clinical situation did improve...was being
 monitored by the guards]
 788 [would you have treated a British soldier in the same way]
 789 .I believe so
 790 [weren't told.....anything that the JFIT interrogator had seen]
 791 .not that I'm aware of
 792 [wold that have made a significant difference]
 793 .not sure I can answer that...found quite a lot of the detainees...prone to exaggerate
 or ham up their symptoms....medics would rely...using objective measure]
 794 [did that affect the way you treated all detainees]
 795 .I think it was what we would call transcultural medicine
 796 .have to rely much more on clinical observations, rather than the sometimes dramatic
 appearance of a detainee
 797 [what does transcultural medicine mean]
 798 .how different cultures treat medical complaints..differences between presentations
 between different culture
 799 [agree that the history of vomiting blood is serious]
 800 .depends on the context
 801 [history...came from the JFIT interpreters]
 802 .yes
 803 [22 May....your entry...the second half of it...from 'on examination']
 804 .yes
 805 [complaining of headache stomach pain...carried into ..centre after collapsed. Hasn't
 vomited. Says he's eating and drinking, but guard says he's not]
 806 [On examination...by you]

ASI025404

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

807 .says

808 .‘bright and alert’

809 .II-XII intact. Abdo soft, non-tender, no neck stiffness....tone, power. Reflexes...all
stable...Plan..advise food and fluids...Nil abnormal to find

810 .couldn’t clinically find anything wrong with him

811 [next day, 23 May...complaining of headache and vomiting..‘Called to cell by guards.
At that time could only walk with help, wouldn’t get up under [own] steam,
however managed to walk to medical centre’]

812 .managed to walk to...centre okay

813 .says he is constantly vomiting with severe headaches..Speech is slow but okay under
the right questions (ie do you want tablets) he looks lethargic and is constantly trying
to lie down...then talks about the blood pressure, pulse and oxygen stats, talks about
his temperature...Advised from RMO Stemetil and Co-codamol..to be put into a JFIT
cell for close observation, patient is happy with this’

814 [what does to be put into a JFIT for close observation mean]

815 .would have suspected that it would have been back into the cell and the guards to
keep a closer watch on him....probably more frequent that usual

816 [24 May...complaining of headaches...‘called to JFOT, as above consultation, third
time...headache, guards kept observation throughout the night, patient slept, no
vomiting...looks considerably better...a lot more alert....headache..possibly to not
taking fluids...says medication made him feel better...co-codamol]

817 .total of eight over [24] hours..advised on fluids and removed from observation

818 [would you say the detainee was fit or unfit to be interrogated on 16 May]

819 .based on the clinical observations....retrospectively...would probably say he was fit
...on the history ..suggest he was probably unfit for interrogation

820 .would probably say unfit

821 [by the 21 May]

822 .based on that we couldn’t find anything exact, then I would say he was fit for
interrogation

823 [series of the medical forms...772..773..774..775..776, 777, 778, 779...all 1
July...780...11 December]

824 [was there a practice of recording...1 July]

825 .had not noticed that before

826 [773...just short of 18...would that have affected your conduct in any way]

ASI025405

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

827 .no

828 [only injury you record...slight bruising and swelling of nose.....Photograph....some
redness along the left side of the nose]

829 .not that I would comment on...

830 [MOD048734]...any dark red at the bottom of the nose

831 .possibly with the eye of faith and you telling me

832 [if we go back to the processing photo at Camp Abu Naji MOD032673....do you see
an apparent mark on his left cheek at the level of his mouth]

833 .possibly I can see a mark

834 [do you know why you haven't recorded it]

835 .no

836 [is bruising and swelling of the nose a symptom of among other things, a broken
nose]

837 .it's not something you can clinically check for...not even an X-ray

838 [how is it confirmed]

839 [do you think this man had got a broken nose]

840 .clinically, no

841 .don't routinely x-ray a broke nose

842 .wouldn't normally write down 'no fracture'..because it is not something you can
confirm or refute

843 [774..Corporal Carroll...day before your examination...first an injury to the right
foot, a gunshot wound, cleaned, no exit and dressed....second injury....right
leg..lateral aspect of the knee..wound, cleaned, dressed....graze...thirdly, a gunshot
wound to the upper right thigh which he's cleaned and dressed ..also has the word
graze written after it]

844 .appears fair

845 [know...given some co-codamol and diclofenac...221...]

846 .looks like one time diclofenac sodium...medium dose painkiller...'treat gunshot
grazes to the right leg and foot

847 [we assume...medics at CAN assessed it was necessary for these wounds to be
treated with...moderately-dosed painkiller and an anti-inflammatory....and ...a
gunshot wound to the foot would be painful]

848 .you would anticipate it

849 [think you recorded this man as limping....agree...earlier medication...worn off]

ASI025406

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

850 .probably if it was twelve hours it would be starting to wear off
851 [ask him whether he was in pain]
852 .I don't recall...would hope I would have
853 [...injury to the right foot...'overlying swelling and tenderness']
854 [gesture or expression of pain..that..you would equate to tenderness]
855 .yes
856 [didn't prescribe any painkillers....any anti-inflammatories]
857 .haven't recorded that I did
858 [MOD032881...first admission to the field hospital]
859 .I took him up to the A & E department
860 [if the man was in pain...you would want the first dose....as soon as possible]
861 .that would be your aspiration
862 .and to have cleaned his wounds
863 [obvious to you that this man was in some significant pain]
864 .don't think so
865 [would be surprising if he wasn't]
866 .with hindsight...of knowing what the X-ray showed..didn't know that at the time
867 [prescribe him an antibiotic]
868 .no..don't routinely give antibiotics
869 [realistic risk of infection]
870 .with hindsight
871 [you put 'wound dorsal aspect of right foot, overlying swelling and tenderness, no obvious entry wound']
872 .recall the appearance not being overly alarming
873 ['superficial abrasions' to the right thigh...and...'slightly deeper wound to the lateral aspect of the right knee']
874 ['and superficial abrasions to the stomach and left elbow'...distinguishing between superficial wounds, slightly deeper wound and wounds]
875 .I am
876 [debridement operation on the foot ...two stages...17 and ...20 May]
877 [any evidence at all to suggest...pain relief ...before...hospital]
878 .no
879 [regret any aspect of your treatment of him]
880 .no, I'm jolly please I did send him to hospital...based it on my clinical findings

ASI025407

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

881 [why not send him up to hospital that night]
 882 .wasn't a clinical emergency..first time I had done it...had to speak to A & E to work
 out how we went about doing it
 883 .knowing now that there was a broken bone and retained foreign body..I am pleased
 I did send him
 884 [775...Camp Abu Naji ..'small laceration to the left side of the face in eye line. Wound
 glued'.....MOD034439...on 25 May...does that show a healing mark beside the left
 eye]
 885 .appears to
 886 [would you agree that this must have been apparent as the time of your initial
 examination]
 887 .can't say from this photo
 888 .suggests that it wasn't apparent to me..may have been an oversight
 889 [MOD048738]
 890 .light mark adjacent to the left eyebrow
 891 .some bruises on the right eye
 892 [don't you think you would have seen that]
 893 .possibly...either...oversight...or I forgot to write it
 894 [wrists...appears to be marks of restraint to the detainee's wrists...taken on 25 May]
 895 .could be marks of detention...not sure what the previous two are...could be old
 scars
 896 [if...present on 15 May..think you should have seen them and recorded them]
 897 .would hope I would have recorded marks I saw
 898 .simple oversight or them not being visible or obvious at the time
 899 .not sure that the handcuff marks would have been there...bruising can often appear
 some time afterwards
 900 [779...Corporal Carroll...recorded no injury...you have recorded bruises and
 swelling of the right cheek]
 901 .marked on the right cheek...also seem to have written left...not sure...I have put
 marks both sides
 902 .cannot recall whether I used a black pen for bruising and a red pen for abrasions
 903 [MOD048746.....bruises to the left cheek appear to be more evident]
 904 .think that picture corresponds with what I have drawn down here
 905 [did you ever ask detainees 'how did you come about those injuries']

ASI025408

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

- 906 .no
- 907 .should have asked meore
- 908 [780...Corporal Carroll...'small piece of shrapnel remove from left side of face just in front of ear...grazed to left side of face around...eye area. Nil other injury'...Your body diagram...superficial abrasion to the left cheek and a small abrasion to the left large toe...doesn't appear that you have spotted the injury...namely the shrapnel injury to the face in front of the left ear]
- 909 .I haven't commented on it
- 910 .could have been a very tiny wound
- 911 [MOF048748...agree that that shows quite an extensive abrasion across the left cheek]
- 912 .correlates quite well with the drawing I have made...this not being a forensic-type examination with measurements and photographs
- 913 [could you say that any of the injuries had been caused within the previous few minutes or hours as opposed to 24 hours earlier]
- 914 .I don't think I would be able to say that
- 915 [you wouldn't ordinarily run your fingers through the hair of a patient or a detainee]
- 916 .it wasn't an inch by inch top to toe examination
- 917 [if you record an injury like a cut to an arm which has a bit of bloodstaining adjacent to it, or an injury to the nose which happens to have a little bit of blood at the base of the nose, would you normally record the blood distribution....or just record the fact of the injury]
- 918 .record the fact of the injury
- 919 [purpose of this medical examination was to identify any existing physical or mental health problem and to assess if the detainee was medically fit for detention. Is that right]
- 920 [do you recall receiving any indication from anywhere that the initial assessment you carried out of detainees had a purpose other than identifying whether that detainee might require medical treatment]
- 921 .don't recall...
- 922 [do you recall ever being given to understand that the assessment you carried out had some sort of forensic function in the investigation allegations of abuse by detainees]
- 923 .no

ASI025409

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

924 [would it be fair to say...you approached this assessment when detainees arrived at DTDF as a doctor looking for symptoms, signs and history of clinical significance...in order to inform your decision as to whether or not treatment was required]

925 .yes

926 [772....notes from 16 May to 24 May indicate in a nutshell and eight-day course or thereabouts of intermittent vomiting with headache....nine sets of observations performed on this detainee during that eight day period...blood pressure, pulse, temperature and oxygen saturation....any abnormalities]

927 .not that I can recall

928 [how would you characterise the standard of care provided to a patient in a primary care setting with eight days of intermittent vomiting and headache nine separate consultations with a doctor or medic and nine sets of observations.....in an ordinary primary care setting, let's say the NHS a young, otherwise healthy young man with no apparent significant past medical history who has suffered from a week or so of intermittent vomiting and headache, would they expect to receive that level of medical intervention]

929 .think they would be lucky to on the NHS

930 [final consultation...appeared to get better following what I think can be summarised as fairly conservative treatment: some Stemetil, analgesics, advice on diet and fluid intake...and some Hartmann's solution....he appeared to be better]

931 .correct

932 [774...possibility he refused medication....would you force medication on a detainee in those circumstances]

933 .no

934 [if you did miss a few, is that anything more than oversight on your part]

935 .no.

Medical Records, Assessments and Images of Detainees 772-780

936 I will make reference only to those matters which appear relevant to my instructions.

937 If accounts are given in the medical records for how detainees sustained injuries I refer to them below.

938 Images are reproduced below - those with British soldiers are taken from Exhibit PMD/3a (it appears individually referred to in a series as MOD032673 onwards within oral evidence), the other are identified individually.

ASI025410

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

939 With the exception of the later images with scales these are of very poor quality being poorly reproduced (I have reproduced below from the digital files which I am informed are the best quality available), of poor detail, questionable focus, poor lighting and variable colour tones.

940 I have identified with arrows where there are obvious lesions (as opposed to possible photographic or reproduction artefact) that I am able to see within the limits of the images. I have not identified what appears to be dirt.

941 It is not possible to determine the natures of these lesions (eg red bruise vs simple skin reddening) from the images alone. Absence of arrows implies that from the images alone I cannot see an obvious abnormality.

942 In my opinion the general quality of the images is so poor that it would be wrong to use these for all but the most basic interpretation of where there may be abnormalities.

943 772 - Hamzah Almalje - MOD048732 - possible swelling of the nose - possible redness below the left eye:



944

945 772 - MOD048733

ASI025411

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James



946

947 DTDF Initial Medical records:

948 [090772..15 5 2004]

949 .weight 52kg, blood pressure 130/72, T 36.8

950 .Medical Officer's Comments

951 .HS I+II+0

952 .abdo soft non-tender, no masses, bowel sounds present

953 .fit for detention..unkempt and dishevelled

954 [body diagram completed]

955 [subsequent records]

956 .16 5 2004..refer to RMO

957 .16 5 2004..advice from RMO

958 .18 5 2004..stomach pain and vomiting...18 gauge cannula inserted

959 .18 5 2004 [Dr Winfield] written retrospectively..abdo soft

960 .21 5 2004 sore head stomach and back

961 .22 5 2004 [Dr Winfield] headache/stomach pain..abdo soft.

962 773

ASI025412

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James



963

964 773 - MOD048734



965

966 773 - MOD048735

ASI025413

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James



967

968 DTDF Initial Medical records:

969 [15 5 2004 090773]

970 .pulse rate 117

971 .respiratory rate 17

972 .no medical problems

973 .Medical Officer's Comments - Fit for detention.

974 774



975

976 774 - MOD048736

ASI025414

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James



977

978 774 – MOD048737.



979

980 DTDF Initial Medical records:

981 [15 5 2004 090774]

982 .? 2 gunshot wounds right thigh and right foot...Britfor troops carried out first aid

983 .no previous medical problems

984 .Medical Officer's Comments

985 .Limping

986 .clean and dress wounds

987 .for X-ray right foot exclude fracture, retained foreign body.

988 .

989 775

ASI025415

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James



990

991 775 - MOD048738

992



993

994 775 - MOD048739

ASI025416

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

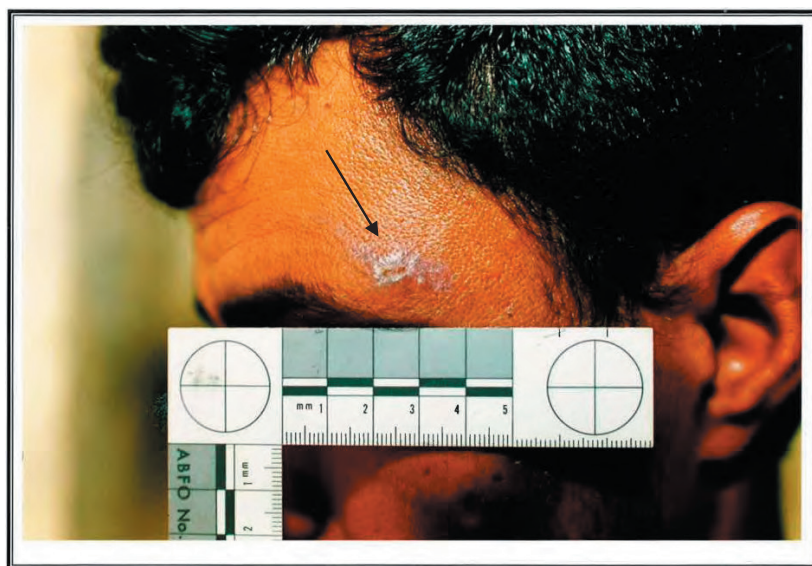


995

996 775 - MOD034441

997 The images below are taken with scales, properly lit and focussed. Dates and times taken need to be confirmed.

998 The image below appear to show respectively - an irregular ~ 2.5cm linear mark which may represent a healing scar with glue:



999

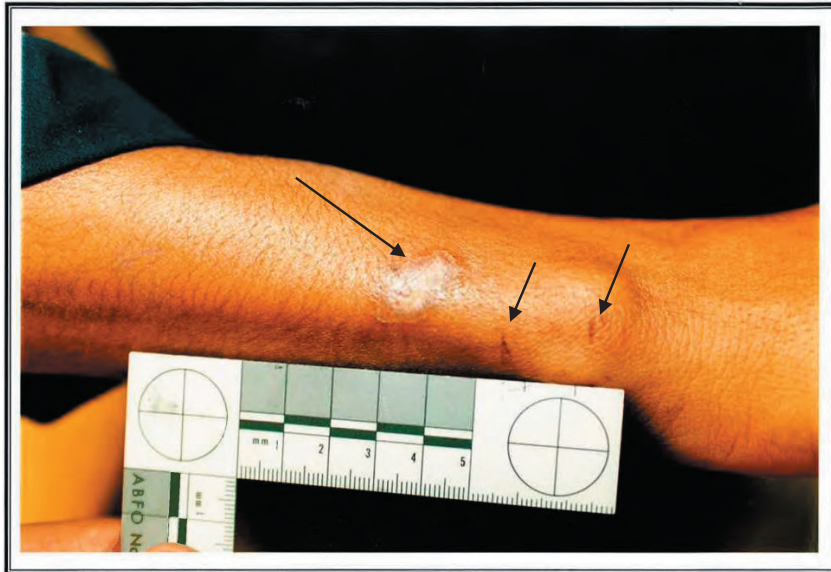
1000 775 - MOD034442

1001 The image below shows an ~ 2 x 1cm apparently healed area of loss of skin with additional linear scabbed abrasions to the right wrist area:

ASI025417

ASI: SECURITY CLASSIFICATION DOWNGRADED

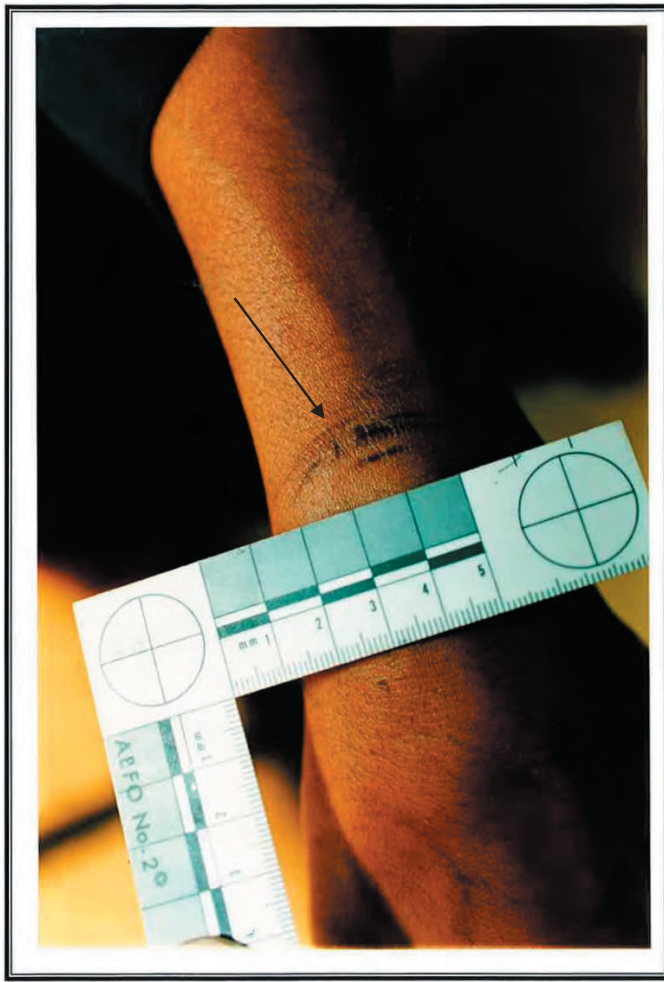
Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James



1002

1003 775 - MOD034443

1004 The image below appears to shows linear partial circumferential scabbed lesions to the wrist - I cannot determine which wrist:



1005

ASI025418

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James

1006 Dr Winfield states:

1007 [11 6 2004]

1008 .have been asked..by Sgt Phillips to check the medical records of internee 090775 who
has made a complaint about being beaten and having his neck stamped on during his
arrest

1009 .my initial examination....he had superficial abrasions to his left scapula

1010 .he did not have any further injuries

1011 .I can state that during my examination I record all injuries that I can see and as I
have not marked any other injuries then I can state that there were none.

1012 776



1013

1014 776 - MOD048740



1015

1016 776 - MOD048740

ASI025419

ASI: SECURITY CLASSIFICATION DOWNGRADED

Re Al-Sweady Public Inquiry - 11 4 2014 - JJ Payne-James



1017

1018 777



1019

1020 777 - MOD048742

ASI025420

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1022 777 - MOD048743



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1024 778 - MOD048744

ASI025421

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1026 778 - MOD048745



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1028 779



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1030 779 - MOD048746

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1032 779 - MOD048747



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1034 780



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1036 780 - MOD048748

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1039 780 - MOD048749



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1041 The Table below summarises aspects of examination brought up in Dr Winfield's oral evidence to the Inquiry, taken from information within the oral evidence:

Detainee	Camp Abu Naji	Corporal Carroll	Dr Winfield	Interrogator
772 Hamzah Almalje	Cut to his head Cut to his left leg	Large laceration to the left side of the head A wound to the upper left leg A bloody nose	Small abrasion above the left eye Swelling, bruising on the left cheek and the bridge of the nose and the right eye	Smelly and dirty..had dried blood covering his face....appeared to be in great pain and unable to stay upright..first session had to be taken out...looked concussed [16 May]..[21 May]..internee appeared to be in pain and

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				unable to stay upright for long
773 Mahdi Al Behadili			Slight bruising and swelling on the nose	
774		Injury to the right foot, a gunshot wound, cleaned, no exit and dressed Injury to the right leg, the lateral aspect of the knee: wound cleaned, dressed. Graze. GSW Gunshot wound to the upper right thigh. Cleaned and dressed. Graze.	Limping. Wound dorsal aspect of right foot, overlying swelling and tenderness, no obvious entry wound. Superficial abrasions right thigh. Slightly deeper wound to the lateral aspect of the right knee.	
775	Small laceration to the left side of the face in eye line. Wound glued.		Superficial abrasions to his left scapula.	
776			Superficial abrasion to his left shoulder and left elbow. No other injuries	
777			Abrasion to his right knee	
778			Superficial abrasions to both elbows and lower arms. Small grazes on his left scapula. No other injuries	
779		No injury	Bruises and swelling on the left cheek. Small abrasion on the face and small grazes on both elbows and right shoulder. Small graze on his left	

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			scapula. No other injuries.	
780		Small piece of shrapnel removed from left face just in front of ear. Graze to left side of face around eye area.	Small abrasion to the left cheek and a small abrasion to the left big toe.	

1042

Guideline In Place and Good Medical Practice

1043 A registered medical practitioner on the General Medical Council list of registered medical practitioners should abide by the General Medical Council's publication 'Good Medical Practice' .

1044 This is revised and updated every few years – the version in use at the relevant time was published in 2001 of which the most relevant parts to this report are quoted below which advises doctors on their duties. This guidance was withdrawn and replaced in 2006.

1045 Passages that appear relevant to my instructions from 'Good Medical Practice (2001)' are reproduced below:

1046 *.Good Medical Practice*

1047 *All patients are entitled to good standards of practice and care from their doctors. Essential elements of this are professional competence; good relationships with patients and colleagues; and observance of professional ethical obligations.*

1048 *Good clinical care*

1049 *Providing a good standard of practice and care*

1050 *Good clinical care must include:*

- *an adequate assessment of the patient's conditions, based on the history and symptoms and, if necessary, an appropriate examination;*
- *providing or arranging investigations or treatment where necessary;*
- *taking suitable and prompt action when necessary;*
- *referring the patient to another practitioner, when indicated.*
- *In providing care you must:*
- *recognise and work within the limits of your professional competence;*
- *be willing to consult colleagues;*

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- *be competent when making diagnoses and when giving or arranging treatment;*
- *keep clear, accurate, legible and contemporaneous patient records which report the relevant clinical findings, the decisions made, the information given to patients and any drugs or other treatment prescribed;*
- *keep colleagues well informed when sharing the care of patients;*
- *provide the necessary care to alleviate pain and distress whether or not curative treatment is possible;*
- *prescribe drugs or treatment, including repeat prescriptions, only where you have adequate knowledge of the patient's health and medical needs.*
- *You must not give or recommend to patients any investigation or treatment which you know is not in their best interests, nor withhold appropriate treatments or referral;*
- *report adverse drug reactions as required under the relevant reporting scheme, and co-operate with requests for information from organisations monitoring the public health;;*
- *make efficient use of the resources available to you.*

1051 *If you have good reason to think that your ability to treat patients safely is seriously compromised by inadequate premises, equipment, or other resources, you should put the matter right, if that is possible. In all other cases you should draw the matter to the attention of your Trust, or other employing or contracting body. You should record your concerns and the steps you have taken to try to resolve them.*

1052 *In making these disclosures you must follow our guidance Confidentiality:Protecting andProviding Information*

1053 *Decisions about access to medical care*

1054 *The investigations or treatment you provide or arrange must be based on your clinical judgement of patients' needs and the likely effectiveness of the treatment. You must not allow your views about patients' lifestyle, culture, beliefs, race, colour, gender, sexuality, disability, age, or social or economic status, to prejudice the treatment you provide or arrange. You must not refuse or delay treatment because you believe that patients' actions have contributed to their condition.*

1055 *If you feel that your beliefs might affect the advice or treatment you provide, you must explain this to patients, and tell them of their right to see another doctor.*

1056 *You must try to give priority to the investigation and treatment of patients on the basis of clinical need.*

1057 *You must not refuse to treat a patient because you may be putting yourself at risk. If patients pose a risk to your health or safety you should take reasonable steps to protect yourself before investigating their condition or providing treatment.*

1058 *Treatment in emergencies*

1059 *In an emergency, wherever it may arise, you must offer anyone at risk the assistance you could reasonably be expected to provide.*

1060 *Maintaining good medical practice*

1061 *Keeping up to date*

1062 *You must keep your knowledge and skills up to date throughout your working life. In particular, you should take part regularly in educational activities which maintain and further develop your competence and performance.*

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1063 *Some parts of medical practice are governed by law or are regulated by other statutory bodies. You must observe and keep up to date with the laws and statutory codes of practice which affect your work.*

1064 *Maintaining your performance*

1065 *You must work with colleagues to monitor and maintain the quality of the care you provide and maintain a high awareness of patient safety. In particular, you must:*

- *take part in regular and systematic medical and clinical audit, recording data honestly. Where necessary you must respond to the results of audit to improve your practice, for example by undertaking further training;*
- *respond constructively to the outcome of reviews, assessments or appraisals of your performance;*
- *take part in confidential enquiries and adverse event recognition and reporting to help reduce risk to patients.*

1066 *.....*

1067 *Relationships with patients*

1068 *Obtaining consent*

1069 *You must respect the right of patients to be fully involved in decisions about their care. Wherever possible, you must be satisfied, before you provide treatment or investigate a patient's condition, that the patient has understood what is proposed and why, any significant risks or side effects associated with it, and has given consent. You must follow the guidance in our booklet Seeking Patients' Consent: The Ethical Considerations.*

1070 *Respecting confidentiality*

1071 *You must treat information about patients as confidential. If in exceptional circumstances there are good reasons why you should pass on information without a patient's consent, or against a patient's wishes, you must follow our guidance Confidentiality: Protecting and Providing Information and be prepared to justify your decision to the patient, if appropriate, and to the GMC and the courts, if called on to do so.*

1072 *Maintaining trust*

1073 *Successful relationships between doctors and patients depend on trust. To establish and maintain that trust you must:*

- *be polite, considerate and truthful;*
- *respect patients' privacy and dignity;*
- *respect the right of patients to decline to take part in teaching or research and ensure that their refusal does not adversely affect your relationship with them;*
- *respect the right of patients to a second opinion;*
- *be readily accessible to patients and colleagues when you are on duty.*
- *You must not allow your personal relationships to undermine the trust which patients place in you. In particular, you must not use your professional position to establish or pursue a sexual or improper emotional relationship with a patient or someone close to them.*

1074 *Good Communication*

1075 *Good communication between patients and doctors is essential to effective care and relationships of trust. Good communication involves:*

- *listening to patients and respecting their views and beliefs;*

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- *giving patients the information they ask for or need about their condition, its treatment and prognosis, in a way they can understand, including, for any drug you prescribe, information about any serious side effects and, where appropriate, dosages;*
- *sharing information with patients' partners, close relatives or carers, if they ask you to do so, having first obtained the patient's consent. When patients cannot give consent, you should share the information which those close to the patient need or want to know, except where you have reason to believe that the patient would object if able to do so.*

1076 Working in teams

1077 *Healthcare is increasingly provided by multi-disciplinary teams. Working in a team does not change your personal accountability for your professional conduct and the care you provide. When working in a team, you must:*

- *respect the skills and contributions of your colleagues;*
- *maintain professional relationships with patients;*
- *communicate effectively with colleagues within and outside the team;*
- *make sure that your patients and colleagues understand your professional status and specialty, your role and responsibilities in the team and who is responsible for each aspect of patients' care;*
- *participate in regular reviews and audit of the standards and performance of the team, taking steps to remedy any deficiencies;*
- *be willing to deal openly and supportively with problems in the performance, conduct or health of team members.*

1078 Leading teams

1079 *If you lead a team, you must ensure that:*

- *medical team members meet the standards of conduct and care set in this guidance;*
- *any problems that might prevent colleagues from other professions following guidance from their own regulatory bodies are brought to your attention and addressed;*
- *all team members understand their personal and collective responsibility for the safety of patients, and for openly and honestly recording and discussing problems;*
- *each patient's care is properly co-ordinated and managed and that patients know who to contact if they have questions or concerns;*
- *arrangements are in place to provide cover at all times;*
- *regular reviews and audit of the standards and performance of the team are undertaken and any deficiencies are addressed;*
- *systems are in place for dealing supportively with problems in the performance, conduct or health of team members.*

1080 *.....*

1081 Delegation and referral

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- 1082 *Delegation involves asking a nurse, doctor, medical student or other health care worker to provide treatment or care on your behalf. When you delegate care or treatment you must be sure that the person to whom you delegate is competent to carry out the procedure or provide the therapy involved. You must always pass on enough information about the patient and the treatment needed. You will still be responsible for the overall management of the patient.*
- 1083 *Referral involves transferring some or all of the responsibility for the patient's care, usually temporarily and for a particular purpose, such as additional investigation, care or treatment, which falls outside your competence. Usually you will refer patients to another registered medical practitioner. If this is not the case, you must be satisfied that any health care professional to whom you refer a patient is accountable to a statutory regulatory body, and that a registered medical practitioner, usually a general practitioner, retains overall responsibility for the management of the patient.*

Comments

- 1084 Dr Winfield assessed 9 detainees on 15 5 2004.
- 1085 One of the detainees - 774 - was subsequently found to have a foot fracture and foreign body.
- 1086 Dr Winfield had raised this as a possibility on the DTDF Initial Medical form.
- 1087 The presence of a foreign body in the context seen may result in infection and thus diagnosis and treatment should be undertaken as a matter of urgency.
- 1088 Diagnosis would be confirmed by X-ray.
- 1089 There appears to be no medical reason for delay in referral.
- 1090 One of the detainees - 772 - was reported to have intermittent headache, vomiting and stomach pain, some of these symptoms apparently pre-dating detention.
- 1091 Dr Winfield examined the abdomen on Initial Medical.
- 1092 He then examined the abdomen apparently on the 18th and 22nd May.
- 1093 Observations (but not abdominal examination) were undertaken by RMAs 1 and 2.
- 1094 772 was administered intravenous Hartmann's solution.
- 1095 No diagnosis was made.
- 1096 I would expect persistent symptoms of headache and vomiting and stomach pain to be referred to an Emergency Department for further tests and possible observation, to identify or exclude infection or dehydration, prior to the administration of intravenous fluids.
- 1097 Injuries should be documented and described in written notes, supplemented by body diagrams if possible.
- 1098 The minimum information recorded should be, position, nature, and size of each injury.
- 1099 Photographic imagery can be used but needs to be appropriately undertaken.
- 1100 Dr Winfield states 'I can state that during my examination I record all injuries that I can see and as I have not marked any other injuries then I can state that there were none'.
- 1101 The medical records and photographic and other evidence suggests that Dr Winfield did not achieve what he stated above in relation to all the detainees.

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1102 The use of photographs in the absence of colour scales and rules to determine size, nature, colour or relative colour of injuries or possible injuries, is in my view, inappropriate as this renders images open to wrong interpretation, or to no interpretation at all as a recent collaborative study with the Metropolitan Police Service, the National Crime Agency and Barts and the London School of Medicine and Dentistry has shown (Payne-James JJ, Hawkins C, Bayliss S, Marsh N. Quality of photographic images for injury interpretation: room for improvement? Forensic Sci Med Pathol 2012 DOI 10.1007/s12024-012-9325-2).

Conclusions

1103 With respect to my instructions I make the following conclusions subject to the provision of additional evidence and subject to review of the information that I have requested in bold in the preceding report:

1104 provide opinion on the appropriate professional standard that applied to the examinations conducted by Dr Winfield - *Dr Winfield undertook medical assessments of a number of detainees. The evidence confirms that his examinations in some cases were inadequate, in that certain injuries were not recorded. It is important to seek accounts in the history for the cause of each injury as this may be relevant with regard to management and identification of complications.*

1105 Additionally, to consider a number of issues raised during the course of Dr Winfield's evidence;

1106 (1) Dr Winfield's evidence in relation to not asking a patient about the occasion/cause of any injury, when taking a history [144134- 37; and 1441160- 1] - *it is appropriate to ask about the cause of any particular injury as part of routine history taking. The possible cause of the injury may influence what the possible diagnoses or range of complications or underlying issues may need to be considered.*

1107 (2) Dr Winfield's evidence in relation to not asking to see any previous medical documentation for the detainees: [144148- 49] - *generally if it is known that other medical documentation exists then it is appropriate to review it. Whether or not it is available does not detract from the need to undertake a full history and examination.*

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- 1108 (3) Dr Winfield's evidence that the head merits no more attention than any other part of the body (including when there are facial injuries apparent) [144183] – *if the head has been subject to impact trauma there are specific conditions that may need to be excluded or monitored. Impacts (which may be indicated by bruising, lacerations, grazes/abrasions) may result in brain damage, the effects of which may not be immediately obvious. Documentation of the history (including any loss of consciousness) nature of the impact and the nature of the injury may modify subsequent management in terms of observation required*
- 1109 (4) Dr Winfield's evidence that he was justified in not noting the presence of blood under the nose of a patient, and in not wiping it away (at page 92 he states, in response to a question that [we] were not responsible for their [i.e the detainees] hygiene) [144189- 92] – *blood in association with a nose injury could reflect a fractured nose. Cleaning of an area of blood may be required to determine the source of the blood. Examination of the nose (by palpation) and by examining in the nostrils will assist in determining whether a nasal fracture is present and requires reduction, or any complication such as septal haematoma which may require treatment*
- 1110 (5) Dr Winfield's evidence that Hamza Almalje (Detainee 090772) would have been lucky to receive the care that he did [between 15.5.04. and 24.5.04] on the NHS [1441165- 6]: *I believe that an undiagnosed 8 day episode of intermittent headache and vomiting would generally precipitate referral to hospital for assessment and possible admission, and additional tests in order to make a diagnosis, even in the presence of normal blood pressure, pulse, temperature and oxygen saturation. I would be very surprised if anyone administered intravenous fluids to such a patient in a primary care setting*
- 1111 (6) Dr Winfield's evidence that it was right to place substantial reliance upon objective recordings, and to have regard to 'transcultural medicine', when assessing the apparent symptoms of Hamza Almalje (Detainee 090772) during this period [1441106- 7] – *Dr Winfield is correct to place substantial reliance on objective recordings (by which I am assuming he means clinical examination) but this would be in the context of an appropriate history. I am unclear as to what influence he is suggesting that 'having regard to 'transcultural medicine' would have on his diagnosis and management plan.*

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- 1112 (7) Dr Winfield's evidence that there was no point in examining for a broken nose or recording blood under the nose [1441116- 119; and 154-155] – *see answer to Q(4). Palpation of the nose can determine if fracture is present. If there is displacement of nasal bone (which need not cause midline deviation) then this may require surgical reduction. Additionally complications such a septal haematoma may be missed. X-ray may be delayed for a week until swelling has reduced. Recording blood and its apparent source may be relevant with regard to the causation and location of injury.*
- 1113 (8) Dr Winfield's evidence that he was justified in not referring Ibrahim Al Ismaeeli (Detainee 090774) to hospital for immediate x-ray to his wounded foot and waiting for another 16- 18 hours before doing so [1441132-134] – *in the light of the limping, swelling and tenderness, which in the context of the patient could be consistent with a fracture, there would be no medical reason for delay. The management options (eg non-weight bearing) could not appropriately be determined until a diagnosis was made (even in the absence of considering a foreign body – which he had, in case done).*

Statement of Truth

- 1114 I believe that the facts I have stated in this report are true and that the opinions I have expressed are correct.

Concluding Certificate

- 1115 I certify that
- a) within this report I have set out the substance of all material instructions whether written or oral, on the basis of which the report was written.
 - b) I have endeavoured in this report to include within this report those matters, which I have knowledge of or which I have been made aware that might adversely affect the validity of my opinion.
 - c) I will notify those instructing me immediately and confirm in writing if for any reason this report requires any correction or qualification.
 - d) I understand that:
 - i) It is my duty to help the court on the matters relevant to my experience and
 - ii) This duty overrides any obligation I may have to any person from whom I have received instructions or by whom I have been or will be paid
 - iii) I have complied with my above duty to the Court

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iv) I believe that the facts I have stated in this report are true and that the opinions I have expressed are correct.

Signed _____ Jason Payne-James

11th April 2014

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Appendix 10: Report by Professor Sommer

Al-Sweady Inquiry: Digital Forensic Report on Liverpool Server

Peter Sommer

Summary

I am asked to carry out a digital forensic examination of a computer system informally known as the Liverpool Server. The server is said to have been used by the Princess of Wales Royal Regiment (1 PWRR) during May 2004, the period with which the Al-Sweady Inquiry is concerned.

Prior to my involvement the Inquiry's investigators had carried out a series of examinations based largely on the search in electronic documents for keywords thought to be significant; they had also used a series of standard techniques for recovering deleted material. These examinations based on keyword searching are continuing. I am asked to carry out a more detailed review and in particular to look for unusual patterns of deletion, testing a hypothesis that certain records may have been deliberately deleted so as to thwart the activities of any subsequent inquiry. It is not part of my remit to duplicate the keyword searching exercises.

The conclusions I have been able to reach are rather more limited than I would have liked. Much of the detail of this Report is aimed at describing the various tests and procedures I have attempted to use.

The main reasons for the limited scope of my findings are:

1. Forensic examinations of computers produce their best results when it has been possible to seize and properly preserve the contents of the computers very

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shortly after the events of interest. Although data on computer storage media is surprisingly persistent, the longer the period between the events and the examination the greater the chance that important data has been over-written. I include some estimates about the overall capacity of the hard disk storage capacity and the extent to which it has been used and over-written.

2. Although the Inquiry is concerned with events in May 2004, 1 PWRR continued to use the computer system until October 2004. I have attempted to reconstruct its subsequent history. In October 2004 a handover took place to the Welsh Guards. It seems very likely that standard handover procedures involved the deletion of user accounts and files so that those relating to 1 PWRR were deleted. The Welsh Guards used the computer system throughout their six-month deployment until April 2005. Thereafter there were a further three handovers to units who each had six-month deployments and who each appear to have carried out a deletion of material relating to the previous units. The computer system was apparently decommissioned in September 2006 when the Iraq theatre closed. It appears that in mid-2010 hard disks relating to the Liverpool Server and very many others were collected and sent to the MoD Defence Archive System, the aim being to add to MoD's "collective memory" from which a wide variety of lessons and other research could be drawn. The disks were sent to PJHQ at Northwood Hills. As the aim was research and not criminal investigation no precautions or procedures to preserve the integrity of the disks in their then state were taken; some modification and over-writing of data took place. There were also other periods during which the computer was started up and disks were viewed. It was not until 2011 that the Royal Military Police carried out proper preservation via forensic disk imaging to produce the material that is available for me to examine.
3. What is left is a potentially compromised possible "crime scene" from which nevertheless some limited conclusions are possible. The methods used to carry out the deletions between unit tours have left some records of the names of files and folders, though often not their content. There are a series of ghosts of user accounts and files, references to their previous existence rather than anything more substantial. These "ghosts" are a function of how the data was deleted and

the way in which the computer's internal directory file records operate.

However, even where there are substantive files there may be doubts about when they were created, modified, or viewed.

4. The "Liverpool Server" is in fact two machines, Liverpool 1 and Liverpool 2, both configured to run a Microsoft product called Exchange. This consists of a "server" operating system (Windows Server), that is, one designed primarily to serve the needs of several individual users each with their own computer so that they have accounts, can share and distribute data and have centralised storage as the storage on their own machines. Another function is to provide links to the outside world including, if required, the Internet. Sitting on top of the server operating system is an additional product called Exchange Server which provides sophisticated email and other facilities. The combined product is in very wide use in businesses and organisations world-wide and can be configured in many different ways to suit local requirements. Many servers can be placed in what is called a "forest" of servers within a hierarchy where all are able to communicate with each other, following specific rules to do so. A particular feature is the ability to replicate data between individual attached computers and servers and servers between themselves.
5. I am asked merely to examine one pair of such servers. To my knowledge so far none of the individual computers/workstations used by 1 PWRR, almost certainly either HP/Compaq towers or laptops, that were "served" by Liverpool 1 and Liverpool 2 have been recovered or are available for examination. To my knowledge also, although it seems very likely that some of the data originated in Liverpool 1 and 2 will have been replicated to other servers and in particular to servers located at PJHQ Northwood Hills, none of this material has come to my attention. I make a recommendation that searches are carried out by the MoD to see if tower workstations, laptops and replicated material or back-ups thereof for the period of interest. I note that, according to a *INET System Management Manual* of September 2005 (section 12) a database of every asset in the INET system is supposed to have been held on the Unicenter ServicePlus Service Desk application on a server called Hertfordshire.

6. I have come across indications that there were routines to back-up the Liverpool Servers. However it appears that even in the best of circumstances data backed up in May 2004 would have been over-written by May/June 2005. The aim of the back-up routines was to recover from a computer disaster rather than to create a formal archive of activity. It also appears that the back-up equipment did not function well in the desert environment of Iraq. As a result no back-up material has come to light.
7. I have been asked to operate under “secret” conditions. Although no restraint has been placed on my access to the contents of the Liverpool Servers I have had to treat files on them as secret and then ask Al-Sweady Inquiry staff to negotiate with MoD to selectively downgrade them so that I could refer to them in this report. There have also been restrictions on the types of examination I could carry out. In normal circumstances where I am asked to report on the contents of the computer I am provided with a “forensic” image copy of the disk which I can then examine on my own equipment using such analytic tools as I deem most suitable; more-over I can conduct the work in my own time at my own regular premises. In this instance I was asked to examine the forensic disk images using equipment at the premises of the Iraq Historic Allegations Team (IHAT) at Trenchard Lines, Upavon, Wiltshire. The equipment was set up to use only one type of computer forensic analysis software, AccessData’s Forensic Tool Kit. The hardware was configured so that it was not possible to introduce further software; neither was it possible to download exhibits without going through an elaborate procedure. It is not for me to question MoD judgements about the need to keep secret details of its computer and communications infrastructure or of personnel and operations but I need to record the impact of these limitations on the extent of my investigation. The costs of examination have also been greater and the time taken to complete this Report much longer. Although I cannot say that there are obvious lines of investigation that I wished to pursue and was unable to do so, nevertheless it is possible that some-one with unrestricted access to the forensic disk images and no limitation on the range of forensic analysis tools deployed may reach more extensive findings than I have been able to.

But I have concluded that there is at this point and on the evidence available no obvious indication of deliberate deleting of key documents, emails and other files originated in May 2004, either at that time or subsequently.

Instructions

1. I am asked to carry out some investigations on a computer known as "the Liverpool Server". In particular my instructions from the Al-Sweady Inquiry are:
 - a. Provide us with a chronology of deletions and overwriting made:
 - Before 14th May 2004 (the date of the battle with which the Inquiry is concerned) to establish what had been normal practice in terms of deleting/overwriting;
 - Between 14th May 2004 and October 2004 (the period during which one the groups of soldiers we are investigating, the PWRR, was stationed at Camp Abu Naji) to establish whether normal practice changed; and
 - b. From October 2004 to August 2006 (when unrelated groups of soldiers were stationed at the Camp) to compare the practice of subsequent groups.
 - Identification of, and an informed view, on any abnormal deletion or overwriting from 14th May 2004 onwards on any items which might have been expected to have been identified by the Inquiry's searches.
2. These relate to issues 73 and 74 of the List of Issues identified by the Inquiry.
3. Many other computers located by the MoD and by the Inquiry are of interest to the Inquiry; these are the subject of what is called the "Sensitive Case". I am aware, at an anecdotal level, of some of the issues raised by the Sensitive Case. However, my instructions are limited to the "Liverpool Server"

Qualifications

4. I have been providing advice and expert evidence in relation to computers and computer-derived evidence since 1985. My instructions for criminal matters have included, among others, cases involving terrorism, large-scale software

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piracy, large scale international intrusions into computer systems, murder, fraud, obscene material, immigration offences, and the acquisition and distribution of collections of pictures of child sexual abuse. My instructions in civil proceedings have included claims of defamation, breach of contract, breach of confidence, passing off and Family Court matters. I have been instructed in South Africa in a matter alleging state corruption and in Australia in a dispute about the consequences of state regulatory action; I have also appeared before the Solicitors Regulatory Tribunal. I have recently been instructed by prosecutors in the Special Tribunal on the Lebanon sitting in the Hague and by the International Criminal Court in respect of charges against Uhuru Kenyatta.

5. I am currently a Visiting Professor at the Cyber Security Centre at de Montfort University and am also a Visiting Reader at the Open University Department of Computing and Mathematics where I am “course consultant”, that is the main author, for a MSc course module on Forensic Computing and Investigations. For 17 years I taught and researched information system security at the London School of Economics ending up as a Visiting Professor. Between 2002 and 2006 I was first External Evaluator and then External Examiner for the MSc course run by the Centre for Forensic Computing at the Defence Academy , Shrivenham (Cranfield University). I was Joint Lead Expert for the computing speciality within the scheme run by the Home Office-sponsored Council for the Registration of Forensic Practitioners (CRFP) until the Council’s closedown in March 2009. Since 2008 I have been on the Digital Forensics Specialist Group which advises the Forensic Science Regulator. I am on the editorial board of the journal *Digital Investigation*. (<http://www.journals.elsevier.com/digital-investigation/>).
6. I am the author of, among other things, *Directors and Corporate Advisors’ Guide to Digital Investigations* published by the Information Assurance Advisory Council and now in its third edition (www.iaac.org.uk) and co-author of the OECD study *Reducing Systemic Cyber Security Risk*.
7. A full CV is attached as PS-1.

Material Considered

8. I have been supplied with forensic disk images, described in more detail below, corresponding to the Liverpool 1 and Liverpool 2 servers. They had already been installed on equipment provided by IHAT and were viewed via the computer forensic analysis software suite AccessData Forensic Tool Kit, versions 3.4 and 4 (“FTK”).
9. I have had the benefit of extended conversations with Michael Moore, an investigator employed by the Al-Sweady Inquiry, and Jim Priddin, Royal Military Police, who was responsible for overseeing the forensic imaging of the original disks and carrying out some initial inquiries. I have compared what they have said with what I was able to observe from the disk images themselves. In some instances some of the information I have used comes into the category of hearsay, particularly in relation to the development of chronologies of events; I have included these elements where I believe them to be consistent with what I am able to determine for myself and where I hope they add clarity to Report; I have sought to flag these instances in this Report.
10. I have been provided with a series of interim reports created by Mike Moore and colleagues which describe their own examinations of the Liverpool Servers.
11. A few substantive documents, identified in more detail below, found on the servers appear to refer to how the servers and other relevant equipment were being managed and configured during 2004.

Arrangement of Report

12. As much of this report is concerned with a series of detailed examinations the form and nature of which are likely to be unfamiliar to most readers I have had to design a report format which provides necessary background explanations.

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Some of these will appear in the main narrative while others have been placed into Appendices.

13. I begin with an attempted reconstruction of how the two servers are likely to have been functioning during May 2004 and afterwards
14. I follow this up with another reconstruction, a history of what appears to have happened to the servers since 2004 and up to the point at which their contents were properly preserved so as to become the precise form in which they are available for examination today.
15. In Appendix 1 I describe the range of techniques available for examining and recovering data from computers, together with the terminology used. In Appendix 2 I describe in relevant outline what I have been able to gather about Army's computer services architecture based on Microsoft Exchange.
16. I report on what I have been able to gather about the history of Liverpool 1 and Liverpool 2 and in particular events after May 2004 up to the point where a safe forensic copy was made of them.
17. I then report on the tests I have run to establish patterns of usage such as might indicate deliberate deletion during May 2004 and immediately afterwards.
18. Finally I have some recommendations for further inquiry.

The role of Liverpool 1 and Liverpool 2.

19. I have not had access to central Ministry of Defence and Army explanations of how computers were used for communications and data storage in 2004 and afterwards but it is possible to infer a great deal for my purpose by looking at the configuration and contents of the disk images presented to me for examination. As referred to above at paragraph 11 a number of extant documents were found on the servers which are operational manuals, relate to training or are handover notes. I can add to these from my own knowledge of the core Microsoft products and the ways in which they are likely to have been deployed.

20. The Army based a great deal of what later came to be known as the Defence Information Infrastructure (DII) on a product called Microsoft Exchange. At the relevant time, when this part of the MoD system appears to have been called INET, it consisted of a hierarchy of mid-sized machines known as servers which, at the very local level, provided facilities to “serve” the needs of individual within individual units in terms of communications, messaging, emails, storage of documents and so on by acting as a hub. But these local servers were also able to communicate upwards and with each other. In more technical jargon, each server acted as a local domain controller but the servers together were operated as a single domain within a flat IP network. Users could access the overall system with the same username/password credentials irrespective of location. The actual facilities on each server consisted of an underlying operating system called Windows Server (at various times Window 2000 Server and Windows Server 2003) and on top of that an application called Exchange Server (also at various times in “2000” and “2003” versions). A system administrator would need to make some settings in the overall configuration in the underlying operating system and some in Exchange Server itself. For the purposes of this Report, where I refer to “Exchange Server” I mean the entire system. Appendix 2 gives more detail of the capabilities of the Exchange product and the many ways in which it can be configured.

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21. Connections between various forward-based servers, other such servers and servers at headquarters are likely to have relatively limited and slow. In a normal commercial environment, speed and quality of connections are seldom a problem as they can take place over physical lines and, with the protection of encryption, via the Internet. From the documentation I have seen, most of the connections would have been via satellite but with restricted speed capability.
22. At Camp Abu Naji it appears there were two such servers, referred to as Liverpool 1 and Liverpool 2. According to a INET Guide Document from 2003, this was a normal arrangement. They served the needs of between 25 and 35 workstations, towers, laptops and other devices.
23. According to a INET Guide Document from 2004, laptop and work stations would have used the operating system Windows 2000, Microsoft Office 2000, an Internet browser and a small number of utilities. Each laptop or work station was set up using a facility called “roaming profiles”, so that each authorised user could log in and see their own “desktop” on any connected terminal or laptop. Once they connected to the server users would also have seen what appeared to be additional disk drives: Drive U was for personal files, Drive S was for shared files, for all official work, while Drive P was a public file store, accessible to all users. Drive R was labelled “Registry” and was designed to hold all completed and finalised documents and important emails - it was managed by central Registry staff. (Note: this should not be confused with a hidden feature of modern Microsoft operating systems also called the Registry which holds system configuration details – ordinary users never see this). Users also had access to an Intranet (web-based service but only accessible within the military domain and not available to the world-wide Internet audience). The intranet apparently contained the latest internal bulletins, a notice board and other types of administrative information.
24. On the servers according to the forensic disk image I have been examining, in addition to folders one might associate with central system administration and operating system functions, there are major folder areas (a “folder” is Microsoft-speak for “directory”; each major folder holds a hierarchy of sub-

folders). “Public Files” (presumably files for general use with all those with accounts on the computer), “Shared Files” (possibly for material shared more widely with other servers), and “User Profiles” (where one can see the files and configuration details of those with accounts on the server) and “Liverpool Registry”, presumably completed and finalised documents. The “Shared Files” contain some details of “TELIC 7” and more files associated with “TELIC 8”. These are references to the last two units that used the server. Operation TELIC was the codename under which all of the UK’s military operations were conducted in Iraq. Every six months a new battlegroup consisting of many different regiments was deployed to the Iraq theatre. Each battlegroup was assigned the next “TELIC” number. For the purposes of the use of the Liverpool servers, TELIC 7 refers to the Scots Dragoon Guards and TELIC 8 to the Queen’s Royal Hussars; I understand from my instructions as well as date and time stamps on the computer that the latter used the server between April and September 2006. TELIC 8 is the most complete and presumably gives the clearest idea of what might have existed for each unit while it was active. The unit in place at the time with which the Inquiry is concerned, 1 PWRR, was part of TELIC 4 and is referred to as such on the Liverpool servers.

25. Each “User Profile” has an associated hierarchy of files. But much of the user data has been deleted so that what remains simply indicates that substantive files once existed. (Readers are referred to Appendix 1). Of the various User folders, including those where there is only a “ghost” left recoverable; approximately 80 appear to be based on the names of people. There are just under 20 accounts referring to “DivHq”. The vast majority, in excess of 450 consist of “ukbg” followed by a four-digit number. It is beyond my current remit to seek to identify who any of these account holders were but I could assist if so asked.

26. Further user accounts appear in a folder on the server called “Documents and Settings”. The most likely explanation is that these are people and entities with accounts directly on the server and hence able to take some action on the server (Windows Server 2000 or 2003) as opposed to the individuals in the “User

Profiles” who would have interacted only via the own laptops or towers. The roles of some of the users with direct accounts on the server can be inferred from their names: “Administrator.Liverpool1” is the main system administrator, “Adminstrator.PJHQUK” presumably is the controller of the entire domain of local unit-based servers, of which Liverpool is but one. The other accounts seem to be in the names of individuals.

27. Back up and Data Retention Policies According to a “DII/C Deployed and INET System Administration Course” dated February 2005 (section 3.3) and to be found on the Liverpool Server, a number of back-up arrangements should have been in place. These included “images” of the main system – which enabled rapid restoration of the complete state of the main operating system facilities; and back-ups of the data files. The aim was to be able to recover from a computer-related disaster. Also on the Liverpool Server were a series of instructions for specific items of back-up hardware and software. I will return to the implications of the back-up tapes later on, but the longest period for which back-up was supposed to be retained was 343 days (just under a year) so that even in the best of circumstances events recorded to tape in May 2004 would have been over-written in May/June 2005.

28. Replication An important feature of Exchange Server is the ability to replicate folders (directories) between different servers. Often such processes take place in the background. One reason is to provide an additional form of back-up but a more important one is to enable users on other servers to have instant access on their local machine to important data created elsewhere within the organisation. Please see Appendix 2 for more detail.

29. Relationship between Liverpool 1 and Liverpool 2 I have not so far been able to find any documentation which would enable me to reach a definitive conclusion why it was necessary to have two separate servers at the same location. As we will see the two servers may have had overlapping functions. There is hierarchy of folders on Liverpool 1 called “Liverpool 2 Backup” and containing “Home Directories”. But these do not appear to be full back-ups

carefully and routinely collected so that they could be part of a disaster recovery program.

Subsequent History of Liverpool 1 and Liverpool 2

30. The following is my current understanding of the way in which the hardware comprising the Liverpool Servers were deployed. I stress that this is anecdotal information, included here for convenience but not within my personal direct knowledge. The army unit which has fallen under suspicion – the Princess of Wales's Royal Regiment – appears on the servers as TELIC 4. Their use of the servers is said to have ended on 16 October 2004. They were replaced by the Welsh Guards, who appeared as TELIC 5, who used the server until April 2005 at which point they were replaced by the second Battalion Prince of Wales Regiment, referred to as TELIC 6, until October 2005. Thereafter the Scots Dragoon Guards were referred to as TELIC 7 between October 2005 and April 2006. Finally the Queen's Royal Hussars used the server between April and September 2006 are referred to as TELIC 8 at which point they were decommissioned from active service. However, as we will see, the server hardware was intact and usable for some time after that.
31. The Iraqi theatre closed in April 2009.
32. I understand on an anecdotal basis that in mid-2010 a decision was made to transfer large parts of the overall electronic data created during the Iraqi war to the Defence Archive System which, as the name implies, is an electronic archive of all important documents. The aim was to support the MoD's "corporate memory". I understand that the person in charge of this operation was called [REDACTED] I further understand that the methods used to create the archive did not deploy formal forensic methods to preserve the entire contents of hard disks but rather concentrated on creating copies of the contents of files thought to be of future value. In the course of creating these copies the

contents of hard disks (including those of interest to the inquiry) would have been and in fact were altered. I was also told that it is also possible that further user accounts were created in order to facilitate access to the substantive files.

33. Later I will describe my own examination of date and time stamps which show that the servers were indeed intact and in use at least until November 2008. (see paragraphs 71 ff below).

34. At some point after that it appears that the servers were decommissioned and the hardware split up.

35. Towards the end of 2010 the Royal Military Police (RMP) apparently decided that a series of then on-going investigations needed to be informed by what could be found in computer records and they decided to evaluate what was available. The technical team was led by Jim Priddin who arranged a meeting with [REDACTED] By that time I understand, and still on the basis of anecdotal evidence, large numbers of individual hard disks had been acquired from theatre and placed in storage.

36. In the end some 1728 hard disks were collected by RMP¹ so that their contents could be properly preserved and subject to forensic scrutiny. It is not clear to me how far they were able to rely on the Asset Database which, according a *INET System Management Manual* of September 2005 (section 12) should have contained “a comprehensive record of every component on the system including network items, and items in stores, out for repair, or scrapped. It provides such detail as Model, Manufacturer, Serial number, Location, Service Status, Installation date etc. and a log of all activities.”

37. Jim Priddin has said to me that once his team was in place proper “ACPO” guidelines for evidence handling and preservation were followed. Appendix I describes the data preservation procedures. From what I have been able to see for myself there is no reason to doubt that from February 2011 onwards proper handling and preservation procedures were indeed followed. Many if not all of

¹ This number may have increased as a result of activities by investigators since this report was researched

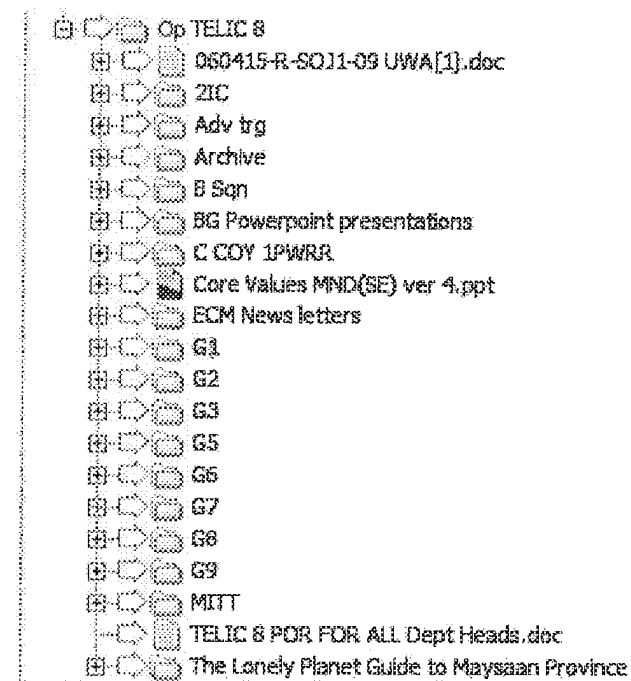
these hard disks have by now been installed for examination within a large forensic analysis system based at IHAT.

38. A particular problem was that a number of the hard disks had originated from servers such as Liverpool 1 and Liverpool 2 within which they had been made to work together in a RAID array. RAID arrays are used for two main reasons: to extend the storage capacity of a computer where no single physical hard disk would be sufficiently large; to increase performance speed. The RAIDs needed to be reconstructed. In a typical situation, and Liverpool 1 and Liverpool 2 fall into this category, each server would have associated with it 6 hard disks which needed to be arranged in the correct order. It is in fact obvious when the correct arrangement has been achieved as until that point the overall machine would be both unusable in practice and unviewable through specialist forensic analysis software². I understand that it took RMP some man 8000 hours during February and March 2011 to reconstruct the various RAIDs
39. RMP created a series of work records of forensic activity as they proceeded in documents called Blue Books. I have had an opportunity to see some of these records as they apply to JRY/68 and JRY/69, which are the evidence numbers given to Liverpool 1 and Liverpool 2 respectively. The records include photographs of the original hard disk and cover the procedures under which the individual hard disks were re-assembled back into their RAID configurations so that the "Liverpool Server" can be forensically analysed. The records indicate to me that the two servers were properly preserved in the state they were in February 2011. Based on my experience of ACPO handling and preservation guidelines, I can say that we have good continuity of evidence from that date. The resulting forensic disk images are what I have been examining for the purposes of this Report.

² In fact each disk in a RAID array contains "header" information which can be used to reconstruct the whole.

Handover Procedures

40. I have attempted to identify what was supposed to happen as each army unit – regiment - was replaced by a new one. I have not so far located any procedure manual which describes in detail how handover was supposed to take place or what arrangements were supposed to be made to back up folders and files. I have found some informal notes passed from unit to the next but these seem to be limited to referring to specific unresolved problems with particular items of hardware and software. The explanation below is based partly on anecdote and partly on my examination of the servers.
41. As represented on the server, each “TELIC” had specific hierarchies of folders of files covering its areas of activities as well as accounts for its users. Each “user” area also had within it a hierarchy of folders and files; some of these would have applied to any user of any Exchange system, others were specific to their roles.
42. Here, for example, are screengrabs of the folders associated with TELIC8, which was the last to use Liverpool11. The second screengrab is of the opened “G1” folder which appears in the first screengrab.



³ TELIC8 from LiverpoolC-top.jpg

44. The practice seems to have been that when a TELIC unit left, its hierarchy of files was deleted, using simple delete commands, no attempt being made to use secure deleting methods of the type that would thwart subsequent recovery. (The reader is referred at this point to the more detailed explanations in Appendix 1). Many older files would have been eventually lost through over-writing. However, because of the operation of the internal Master File Table (MFT) which keeps track of the location of files, although the substantive contents of the files may have been lost, there are often entries in the MFT which point to their having existed. It also seems likely that there was little rigour in the deletion exercise; the aim was less the desire to protect sensitive material from the eyes of the subsequent unit than to create space in which the new unit could mount its files. Indeed, I am not able to say, from the material I have seen, whether the deletion was carried out by a unit when it ended its tour or was carried out by the following unit at the beginning of its tour. One reason for my uncertainty is that Microsoft operating systems do not create specific records for when a deletion takes place.
45. As a result in the form in which the Liverpool Server is available for examination, we have reasonably full files for the activity of TELIC8 (Queen's Royal Hussars) but “ghosts” in the form of index entries that files existed for previous TELICs; the further back in history, one goes, the less complete these MFT index entries.
46. As it appears that deletion at the end of each TELIC's tour of duty was routine it is plainly going to be difficult to look at the “ghost” entries and determine if they were deliberately deleted as part of some cover up process as opposed to routinely deleted as part of a handover when 1PWRR were replaced by the Welsh Guards in October 2004. However because of the lack of rigour in the deletion process, some files from TELIC 4's tour do remain.
47. Deletion activity did not, from what I can tell, extend to email activity, a matter which I take up later at paragraph 79ff.

Examinations

48. I now turn to describing my own examinations.

Circumstances of Examination

49. When I was first instructed I was shown a copy of an agreement between the Inquiry and the MoD. I have been asked to operate under “secret” conditions. I was asked to examine the forensic disk images using equipment at the premises of the Iraq Historic Allegations Team (IHAT) at Trenchard Lines, Upavon, Wiltshire. The equipment was set up to use only one type of computer forensic analysis software, AccessData’s Forensic Tool Kit. The hardware was set up so that it was not possible to introduce further software; neither was it possible to download exhibits without going through an elaborate procedure. In normal circumstances where I am asked to report on the contents of the computer I am provided with a “forensic” image copy of the disk which I can then examine on my own equipment using such analytic tools as I deem most suitable; moreover I can conduct the work in my own time at my own regular premises.

50. AccessData’s Forensic Tool Kit is a comprehensive suite of tools for the analysis of disk images; I was already familiar with earlier versions of it. However, because of the rate of change in computer operating systems, applications and hardware, coupled with their great complexity, no forensic computing examiner is content simply to rely on just one product. Rival products include Encase and X-Ways; in addition there are many specialised single-purpose tools.

51. Although no restraint has been place on my access to the contents of the Liverpool Servers I have had to treat files on them as secret and then ask Al-Sweady Inquiry staff to negotiate with MoD to selectively downgrade them so that I could refer to them in this report. It is not for me to question MoD judgements about the need to keep secret details of its computer and communications infrastructure or of personnel but I need to record the impact

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of the limitations on my extent of investigation. The costs of examination have also been greater.

52. In all I attended Upavon over 9 days, 5 separate visits, on each occasion copying screenshots, copies of a limited number of substantive files and “exports” of various tables showing file names and associated date/time stamps and other data. This material was submitted to MoD for clearance.
53. Although I cannot say that there are obvious lines of investigation that I wished to pursue and was unable to do so, nevertheless it is possible that some-one with unrestricted access to the forensic disk images and no limitation on the range of forensic analysis tools deployed may reach more extensive findings than I have been able to.

Hardware, Storage Capacity

54. There are two machines, identified as JRY/68 and JRY/69 - Liverpool 1 and Liverpool 2. Each of the original machines, when reconstructed, consisted of some hardware containing five hard disks arranged in what is known as a RAID configuration. (In fact there were six hard disks associated with each server but only 5 were necessary to make the reconstruction; presumably the sixth hard disk was a spare). This arrangement of hard disks is quite commonly deployed either to increase the overall storage capacity, in order to speed up access to data or a combination of these. Back in 2002/3, when the servers were being installed, readily-available hard disk capacities were limited to 30-50GB. By 2013 such has been the improvement in disk technology that single hard disks of 2-3 TB (2000-3000GB) are available for under £100.
55. The five physical disks would almost certainly have appeared to the regular user viewing them via “Explorer” or “File Manager” as two disks, C: (by convention the first hard disk) and D: (the second hard disk). Each physical disk in the server had a capacity of 36.4GB, three were used to create the “C” drive and the remaining two became the “D” drive. This arrangement would conform to usual recommendations for setting up Microsoft Exchange. There

is constant background activity within that product, with different parts of the program calling on each other; the two-disk approach gives performance benefits.

56. The individual hard disks making up the array had been given arbitrary exhibit numbers – JRY/68 A, B, C, D, E, F but this is how they resolved themselves after reconstruction:

- Liverpool 1, Drive C: JRY/68/BEA
- Liverpool 1, Drive D: JRY68//CF
- Liverpool 2, Drive C: JRY/69/BED
- Liverpool 2, Drive D: JRY69/CF

57. The overall storage capacity of each server is thus 5 x 36.4 GB, around 180 GB. This is significant for the hope to be able to recover deleted data. (Please see the “Data Recovery” section in Appendix 1 for a fuller explanation). At various times between 2004 and 2006, the servers appear to have been operating quite close to full capacity. As a result, once data was formally deleted, the period for which it remained recoverable was quite short, as the sectors would have been over-written with new data.

58. The AccessData Forensic Tool Kit, when asked to establish overall hard disk storage capacities cannot easily do so in terms of historic circumstances. Because it is able to make use and present information about files that were on the disk even if they are no longer present, its reports of the amount of data stored on a hard disk can be misleading. This is what it reports:

Server	Drive (as it appears to the user)	Physical capacity	As Reported by FTK
Liverpool 1	Drive C: JRY/68/BEA	109 GB	117.7 GB 1184607 files
Liverpool 1	Drive D: JRY68//CF	73 GB	71.21 GB 167704 files
Liverpool 2	Drive C: JRY/69/BED	109 GB	161 GB

			772538 files
Liverpool 2	Drive D: JRY69/CF	73 GB	55.86 GB
			222.863 files

59. The main lesson to draw from these figures is that the hard disks had been substantially used since 2004 and up to the point at which they were forensically imaged in 2011. It is thus not surprising that very little in the way of the contents of substantive files extant in May 2004 but subsequently deleted can now be recovered.

Software Configuration

60. Both servers have a similar configuration and conform to Microsoft recommendations for setting up Exchange Server on top of Windows Server. That is to say, the RAID disk which appears as “C” holds mostly Windows Server files and application program files also and contains the user accounts of ordinary users within a folder
61. The RAID disk which appears as “D” contains a relatively small number of user accounts for those who will have responsibilities for system administration; these include, from their names, remote identities for various divisional headquarters – “divhq” plus an identifying number – and administrators based back in the United Kingdom.
62. **Liverpool 1 Drive C (JRY/68/BEA):** Aside from standard folders one would expect to see in any Exchange set-up, the main folders are
- Liverpool Public Files: This consists largely of deleted folders which have no content, for example “Camp Clearance map”, “FPS, and references to various Ops. (These are “ghosts”)
 - Liverpool Registry: This contains a folder for Easy CD Creator software (used for burning CDs)

- c. **Liverpool Shared Files:** This contains some extant folders of operational status, including references to TELIC 7 and TELIC 8. There are also some MX reports apparently related to TELIC 6. I understand that these extant files have already been viewed for content as part of the keyword search exercise and I have not carried out any further inquiries beyond noting their existence.
- d. There are a series of what I am assuming are “operational” folders with names such as “Mission Critical”. A hierarchy of folders for “Op TELIC 7” occupies some 1218 MB and contains some TELIC 6 documents including MX reports. I understand that these have been reviewed for content separately as part of the “keyword search” exercises. The earliest appears to date from December 2004, which is too late for this inquiry. There is also a hierarchy of folders for “Op TELIC8”.
- e. **Liverpool 2 Backup:** this contains deleted “Home” folders and as mentioned above at paragraph 29 above, does not seem to have been part of any regular disciplined back-up exercise.
- f. **User Profiles**
- g. In addition there are a number of folders holding source program files, presumably so that they could be installed or re-installed if needed

63. Liverpool 1 D (68CF): Aside from Server files and program files, approx. 30 users, presumably for Server, as opposed to Exchange. Event Logs for March-August 2006; Files with numbers.

64. Liverpool 2 C: (69BED): Aside from standard Exchange folders:

- a. Event logs for Liverpool 1 and Liverpool 2 March – August 2006
- b. Home Directories: 4905 MB
- c. Deleted “Archive” file

65. Liverpool 2 D: (69CF): Similar but not identical to the contents of the D: disk on Liverpool 1.

66. Both servers contain copies of source files to enable the installation or re-installation of key items of software, including items that might be needed on

the laptops and workstations “served” by Liverpool 1 and Liverpool 2. There is nothing *prima facie* sinister about this; if we recall that that Liverpool 1 and Liverpool 2 were in forward locations to which communications might be difficult, such local storage of software code would mean that repairs and changes could be effected quickly without waiting for the provision from the UK of installation disks, or using the long download times to fetch the files over a data communications link.

67. I also noted the presence of software to support back-up routines. These matched some of the documents found on the servers and which prescribed back-up procedures.
68. I did not find any software that might be used for “anti-forensic” purposes such as a secure deletion and the removal of file logs of activity.

Patterns of Usage

69. At the heart of my instructions is the requirement to look for abnormal patterns of usage and in particular abnormal deletions. As noted in paragraph 44 above, it appears that the routine practice at handover between successive units, TELICs, was to delete the user material of the previous unit. It is only because simple deletion methods were used, as opposed to more rigorous “secure” techniques, that it is possible to see any evidence of the activity of TELIC4 in 2004.
70. In addition, Microsoft Windows Server and Microsoft Exchange do not specifically record acts of deletion⁵, though it may be possible from surrounding circumstances to infer when deletion took place. Again, the reader is referred to the “data recovery” section of Appendix I.

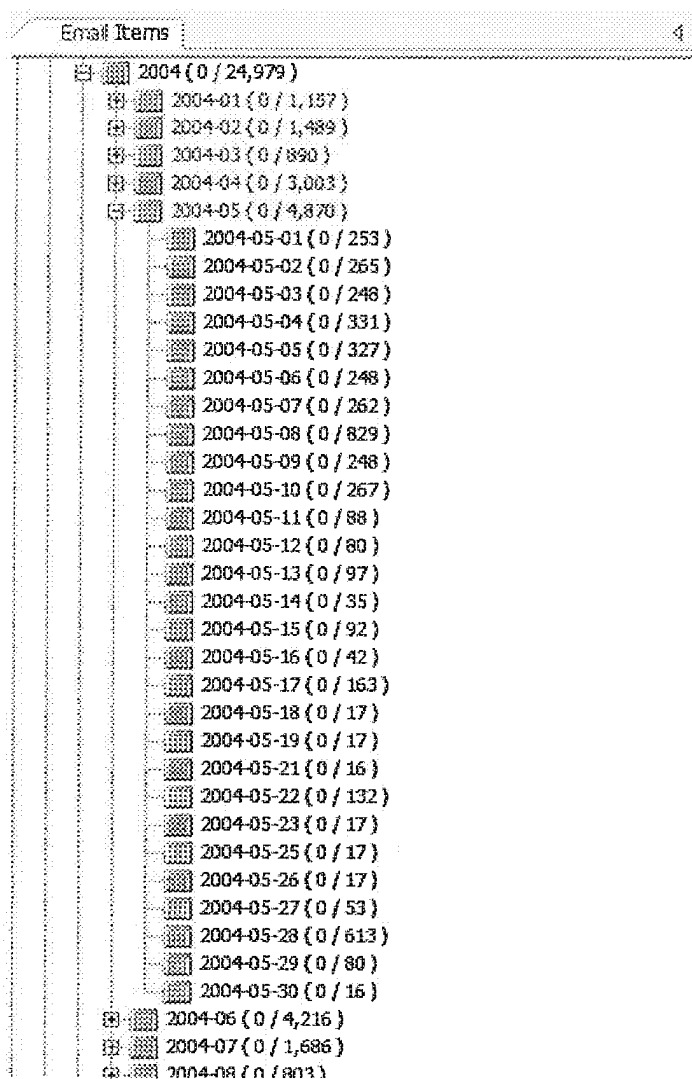
⁵ There is an exception to this, files which are sent to the “recycle bin” will carry dates when they were deleted; but the recycle bin is of finite size and older files are constantly being discarded

71. I decided to examine a series of date/time stamps on various folders and files to see if I could identify any anomalies. This is what I found:
72. The last date I could associate with TELIC operational activity was 16/08/2006.
73. There were some "File Created" activities on, among others, 20/06/2007; 17/07/2007; 23/01/2008; 30/05/2008; and between 25 and 28/11/2008
74. There were some "File Modified" activities, on, among others, : 08/01/2007; 06/03/2007 13/06/2007; 20/06/2007; 17/07/2007; 12/11/2007; 06/12/2007; 23/01/2008; 22/05/2008; 30/05/2008; 17/06/2008; 20/08/2008; and between 25 and 28/11/2008.
75. Activity on all of these dates implies that at this stage both Liverpool Servers were intact and functioning. At the very least on the dates above, one or other of the machines was started up and material viewed.
76. The most extensive activity took place between 25 and 28/11/2008 and further examination shows that much of it is attributable to some-one with the user account "[REDACTED] gbr"; a search of email traffic carried out with Al-Sweady investigator Mike Moore shows that the owner of this account was a Ken [REDACTED] Sutherland who was probably an engineer based at PJHQ. His activities seemed to involve the downloading of material, possibly source code files, from other servers. It is also possible that various files were deleted during this period as well, though the files I have identified as being possibly deleted seem to relate to files which had originally arrived on the server in March 2006, outside the period of interest to the Inquiry.
77. I stress that so far I have found that none of this activity after August 2006 gives ground for immediate suspicion. However there is clearly a gap in the narrative of what happened to the Liverpool Servers between that date and the point in February when RMP began evidence preservation.
78. I recommend, as first step, that Al Sweady investigators attempt to trace Ken Sutherland and ask him for explanations. These could, if necessary, be

reconciled with extant email evidence. Should it prove necessary I am willing to test Ken Sutherland's account of his activities against evidence on the server.

Records of Email activity

79. The software tool used for forensic analysis has been able to recover daily records of email activity on a monthly basis. The following screengrab shows activity, as reported by the forensic analysis tool, for May 2004:



6

80. But we can compare this with activity for adjacent periods:

⁶ Emailactivity_52004.jpg

April 2004

Email Items	
Submitted (0 / 813,170)	
other (0 / 567,669)	
2003 (0 / 2,407)	
2004 (0 / 24,979)	
2004-01 (0 / 1,157)	
2004-02 (0 / 1,489)	
2004-03 (0 / 890)	
2004-04 (0 / 3,003)	
2004-04-01 (0 / 25)	
2004-04-02 (0 / 792)	
2004-04-03 (0 / 72)	
2004-04-06 (0 / 55)	
2004-04-08 (0 / 31)	
2004-04-09 (0 / 55)	
2004-04-10 (0 / 31)	
2004-04-11 (0 / 15)	
2004-04-14 (0 / 229)	
2004-04-16 (0 / 17)	
2004-04-17 (0 / 55)	
2004-04-18 (0 / 17)	
2004-04-19 (0 / 90)	
2004-04-20 (0 / 34)	
2004-04-21 (0 / 17)	
2004-04-22 (0 / 81)	
2004-04-23 (0 / 224)	
2004-04-24 (0 / 81)	
2004-04-25 (0 / 23)	
2004-04-26 (0 / 40)	
2004-04-27 (0 / 109)	
2004-04-28 (0 / 254)	
2004-04-29 (0 / 495)	
2004-04-30 (0 / 251)	
2004-05 (0 / 4,870)	
2004-06 (0 / 4,216)	

June 2004

Email Items	
Email Status	
Email Archives	
Email by Date	
Submitted (0 / 813,170)	
other (0 / 567,669)	
2003 (0 / 2,407)	
2004 (0 / 24,979)	
2004-01 (0 / 1,157)	
2004-02 (0 / 1,489)	
2004-03 (0 / 890)	
2004-04 (0 / 3,003)	
2004-05 (0 / 4,870)	
2004-06 (0 / 4,216)	
2004-06-03 (0 / 14)	
2004-06-04 (0 / 55)	
2004-06-06 (0 / 187)	
2004-06-08 (0 / 45)	
2004-06-08 (0 / 18)	
2004-06-09 (0 / 16)	
2004-06-10 (0 / 309)	
2004-06-11 (0 / 83)	
2004-06-12 (0 / 649)	
2004-06-15 (0 / 640)	
2004-06-16 (0 / 424)	
2004-06-17 (0 / 1,690)	
2004-06-20 (0 / 16)	
2004-06-23 (0 / 17)	
2004-06-26 (0 / 29)	
2004-06-27 (0 / 14)	
2004-06-28 (0 / 16)	
2004-06-30 (0 / 4)	
2004-07 (0 / 1,696)	
2004-08 (0 / 303)	

7

⁷ Emailactivity_42004.jpg; Emailactivity_62004.jpg

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81. And also for how TELIC5 behaved at the end of 2004:

November 2004

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2004 (0 / 2,407)
2004-01 (0 / 1,157)
2004-02 (0 / 1,469)
2004-03 (0 / 890)
2004-04 (0 / 3,003)
2004-05 (0 / 4,870)
2004-06 (0 / 4,216)
2004-07 (0 / 1,686)
2004-08 (0 / 803)
2004-09 (0 / 83)
2004-10 (0 / 990)
2004-11 (0 / 3,306)
2004-11-01 (0 / 197)
2004-11-02 (0 / 141)
2004-11-03 (0 / 146)
2004-11-04 (0 / 74)
2004-11-05 (0 / 28)
2004-11-06 (0 / 14)
2004-11-07 (0 / 44)
2004-11-08 (0 / 119)
2004-11-09 (0 / 84)
2004-11-10 (0 / 9)
2004-11-11 (0 / 259)
2004-11-12 (0 / 110)
2004-11-13 (0 / 101)
2004-11-14 (0 / 134)
2004-11-15 (0 / 42)
2004-11-16 (0 / 522)
2004-11-17 (0 / 39)
2004-11-18 (0 / 76)
2004-11-19 (0 / 253)
2004-11-20 (0 / 52)
2004-11-21 (0 / 86)
2004-11-22 (0 / 68)
2004-11-23 (0 / 98)
2004-11-24 (0 / 18)
2004-11-25 (0 / 52)
2004-11-26 (0 / 89)
2004-11-27 (0 / 213)
2004-11-28 (0 / 59)
2004-11-29 (0 / 64)
2004-11-30 (0 / 113)
2004-12 (0 / 2,486)

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December 2004

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Email Items 4
2004-03 (0 / 988)
2004-04 (0 / 3,003)
2004-05 (0 / 4,870)
2004-06 (0 / 4,216)
2004-07 (0 / 1,686)
2004-08 (0 / 803)
2004-09 (0 / 83)
2004-10 (0 / 990)
2004-11 (0 / 3,306)
2004-12 (0 / 2,486)
2004-12-01 (0 / 58)
2004-12-02 (0 / 66)
2004-12-03 (0 / 84)
2004-12-04 (0 / 32)
2004-12-05 (0 / 182)
2004-12-06 (0 / 65)
2004-12-07 (0 / 80)
2004-12-08 (0 / 137)
2004-12-09 (0 / 65)
2004-12-10 (0 / 47)
2004-12-11 (0 / 95)
2004-12-12 (0 / 127)
2004-12-13 (0 / 116)
2004-12-14 (0 / 70)
2004-12-15 (0 / 245)
2004-12-16 (0 / 44)
2004-12-17 (0 / 171)
2004-12-18 (0 / 42)
2004-12-19 (0 / 75)
2004-12-20 (0 / 83)
2004-12-21 (0 / 62)
2004-12-22 (0 / 59)
2004-12-23 (0 / 102)
2004-12-24 (0 / 7)
2004-12-26 (0 / 27)
2004-12-27 (0 / 111)
2004-12-28 (0 / 66)
2004-12-29 (0 / 49)
2004-12-30 (0 / 38)
2004-12-31 (0 / 81)
2005 (0 / 50,324)
2006 (0 / 167,791)

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8

82. It will be seen that although email activity for 14 May 2004 is reported as low, when looked at overall patterns of email activity this lack is not obviously anomalous. I have captured further instances of monthly email activity which I can produce if required.

83. It may be that other investigators, from their wider knowledge of the circumstances, are able to provide explanations of patterns of monthly email activity which can vary from several hundred a day to figures in the low tens.

⁸ Emailactivity112004.jpg; Emailactivity122004.jpg

Event Logs

84. An important feature of Windows Server is the collection of logs of various system events. In a running system they are viewed via a facility called Event Viewer and the most important relate to the System, Security and Applications. Potentially these also can identify anomalous activity as well as crashes and conflicts. However, upon examination I was only able to identify event logs in any form for after March 2006.

Conclusions

85. I now return to the remit I have been asked to address:

a. Provide us with a chronology of deletions and overwriting made:

· Before 14th May 2004 (the date of the battle with which the Inquiry is concerned) to establish what had been normal practice in terms of deleting/overwriting;

· Between 14th May 2004 and October 2004 (the period during which one of the groups of soldiers we are investigating, the PWRR, was stationed at Camp Abu Naji) to establish whether normal practice changed; and

b. From October 2004 to August 2006 (when unrelated groups of soldiers were stationed at the Camp) to compare the practice of subsequent groups.

Identification of, and an informed view, on any abnormal deletion or overwriting from 14th May 2004 onwards on any items which might have been expected to have been identified by the Inquiry's searches.

86. There is no longer much evidence to make it possible to provide a chronology of deletions and overwritings because:

- The contents of the hard disks which made up the servers were not properly preserved until February 2011; however they had been in continuous use until September 2006 and in occasional use between September 2006 and February 2011
- Recovery of deleted material relies on the fact that the contents of a deleted file remain on the disk until such time as routine re-use of the sectors occupied by that file become over-written by newer files. The longer the period between when a file was deleted and the point at which recovery is attempted, the lower the chances of success. Once a file is deleted some entries in the computer's file index – Master File Table – may remain but not their content

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- For most practical purposes computers with Microsoft operating systems do not retain for any lengthy period a record of the date when a file is deleted; it is sometimes possible to infer the date of deletion from surrounding circumstances but again the longer the period between deletion and the attempt to reconstruct events the lower the chance of success,
- It was the policy on handover that the previous TELIC unit's files were deleted; 1PWRR was TELIC 4; the last was TELIC8 so that there were four routine deletions of unit files before the computers were properly preserved
- The total storage capacity of each server was 180 GB; each sector on the hard disk formerly occupied by 1PWRR files would have been over-written with new material simply as part of the routine use of the computers.
- Such files as remain from May 2004 on the servers are likely to be the result of deliberate decision or an incomplete global deletion action.

87. Documents found on the server show that there was a back-up policy, designed to enable recovery from a disaster. Documents also suggest that back-up hardware was likely to have been available at Camp Abu Naji. The longest period for which the back-up was held was 343 days. There is software on the server to facilitate the back-up. I am not aware that any back-up material exists

88. Facilities on the server show that there were user accounts for remote, top-level administrators. It seems high likely that copies of key files would have been replicated in several distant locations including PJHQ. Where emails and files were sent from TELIC4 during May 2004 it is reasonable to inquire whether copies exist at the locations of and in the computer records of, likely recipients. But such inquiries are outside my remit.

89. Liverpool 1 and Liverpool 2 were designed to "serve" a series of laptops and workstations at Camp Abu Naji. It would be worth investigating how many of these still exist and remain relatively unaltered and unused since May 2004;

forensic examination of any discovered may shed additional light on the electronic records of the events of 14 May 2004.

Recommendations

1. Attempt to locate the MoD's Asset Management System database and records for May 2004 as they applied to computer equipment deployed in activities in the Iraq theatre.
2. Conduct, in so far as this has not already been done, an investigation of what has happened to the laptops, towers and workstations in use at Camp Abu Naji in May 2004.
3. Attempt to identify and locate system administrators for the Liverpool Servers in May 2004; obtain statements about their activities and ask them to verify or contradict analyses made in this Report, particularly as they relate to document retention and inter-unit handover as this may shed more light on the ways in which the Servers were in fact used.
4. Attempt to identify and locate system administrators, presumably located at PJHQ, for the overall INET/DII system in May 2004; obtain statements about their activities and ask them to verify or contradict analyses made in this Report, particularly as they relate to document retention and inter-unit handover as this may shed more light on the ways in which the Servers were in fact used.
5. Conduct, in so far as this has not already been done, a search for copies of files and emails originated at Camp Abu Naji in May 2004 and which were replicated by the normal operation of Exchange Server to servers and computer resources located at PJHQ Northwood Hills.
6. Conduct, in so far as this has not already been done, a search for copies of files and emails originated at Camp Abu Naji in May 2004 and which were replicated by the normal operation of Exchange Server to other servers and computer resources which were part of INET/DII.
7. Obtain a statement from **Jim Ackland** who was apparently responsible for siphoning off information from hard disks in 2010 for the MoDs' Archive in order to have a fuller narrative of the processes involved and the state of the equipment at the time.

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8. Obtain a statement from Ken Sutherland about his activities in November 2008 in order discover his remit and to have a fuller narrative of the processes involved and the state of the equipment at the time.

Statement of truth

1. This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have willfully stated anything which I know to be false or do not believe to be true.
2. I confirm that I have made clear which facts and matters referred to in this statement are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
3. I understand that my primary duty is to the Public Inquiry when preparing written statements and giving evidence and I have complied with that duty.
4. I believe my statement to be accurate; it covers the issues raised by my instructions and reflects my views as an independent expert.
5. Where relevant my statement includes any information of which I have knowledge, or of which I have been made aware, that might adversely affect the validity of my conclusions.
6. I have indicated any sources of information upon which I have relied on in my statement.
7. Those instructing me will be informed immediately, with written confirmation, if my existing report requires correction or qualification.
8. I understand that my statement, subject to any corrections before swearing as to its veracity, will form the evidence to be given under oath.
9. I understand that an expert may assist any cross-examination on my report.

10. I confirm that I have not entered any arrangement whereby the amount or payment of my fees is in any way dependent on the outcome of the case.

Signed

A black rectangular box containing a handwritten signature in white ink. The signature appears to be "Peter Sommer".

Peter Sommer

21 June 2013

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Appendix 1: Primer on Computer Forensics and Data Recovery Methods and Terminology.

Basics

1. Computers do not by default create reliable audit trails of all activity on them. Some applications, for example those used in finance, may do so. But computer operating systems do create records of some activity, for example by placing time and date stamps on files, by logging certain events and by having ever-changing configuration files which reflect occasions when programs were added and modified. Computer forensics relies on the collective research of many examiners who have observed how operating systems and applications function and create records – and have been able to derive rules for, say, particular Microsoft products. The observations can then be incorporated into specialist analytic tools. But the results may be imperfect; this is why the findings of a computer forensic examination may be ambiguous.
2. Data in and around computers is highly volatile. Start a computer up and data is written to disk; during close down more data is written to disk. Open up a file directory (folder) and some date-and-time stamps may change. If there are picture files and you ask to see “thumbnails” in the directory – new files are created. Connect an external USB drive to a computer and open up its file directory - some date-and-time stamps will change; if it is the first time that USB device is being connected to that computer, alterations will occur in a normally-hidden part of the operating system called the registry. Open up a file itself and not only will date-and-time stamps change but it is entirely possible that in the background temporary files are being created and still further changes occurring on the hard disk.
3. Because data is constantly changing it is necessary to use special techniques to freeze the scene, to capture a snapshot of the state of a hard disk or file at a specific identified point in time. The process is called forensic disk imaging and usually requires specialist hardware to prevent the disk medium being written to during the process of acquisition. Software captures every sector of a

disk or other storage device, including those that appear to be unused or empty. This ensures that hidden files as well as the remnants of deleted files are available for examination. The result of the deployment of the specialist hardware and imaging software is an image file which can then be subject to analysis; copies can be made so that many can work on the same material simultaneously. It is an important feature of forensic imaging that the technician carry it out produces a detailed note of his actions, including precautions taken and any difficulties encountered.

4. Basic examination techniques that can be used include:
 - Keyword searching. This can include searching the entire contents of disk whether or not the words are located within an extant file. But words which are within databases, spreadsheets and specialist formats such as Adobe Acrobat may not always be located
 - Chronology and time-line building. One can list all file date and time stamps, or a sub-set, in order to show a sequence of events. But not all computer activity may be identified as dates may refer only to the most recent change, not to previous changes

Date and Time Stamps

5. Date and Time stamps are of immense value in any examination of computers and files originated from computers. But there are also many traps for the unwary and hasty.
6. The main uses are:
 - to develop a chronology of events in and around a computer
 - to help identify the author or last user of a file or transaction
 - to produce alibi or absence-of alibi evidence

7. Date and time stamps are frequently created within computers as they go about their business and are also recorded by devices external to a computer that is being examined.
8. The main stamps associated with each file found on a computer are:
 - **File created** the date and time at which the file was first created on this medium (it may have been created earlier on another disk and transferred to this disk by means of floppy, USB solid state disk or via download)
 - **Last written** the date and time at which the file was last modified. This can give rise to some apparent anomalies if a file was originated on one computer and then copied on to another. Thus: supposing I have on my computer a file I finished editing on 11 January 2001. If I now copy this file on to your computer on 24 November 2005, your computer will show for this file a “file created” date of 24 November 2005 but a “last written” date of 11 January 2001.
 - **Last accessed** the date at which the file was last “touched” by an application on this computer but not altered. “Touched” may mean the same as “viewed but not altered” but a program such as Windows Explorer and some antivirus programs will “touch” the file to the extent that the last accessed date is altered even though the file has not been viewed by anyone.
 - **Entry Modified** column, pertinent to NTFS (Windows NT, Windows 2000, and Windows XP) and Linux file-system files, refers to the pointer for the file-entry and the information that that pointer contains, such as the size of the file. If a file was changed but its size not altered, then the entry modified column would NOT change. However, if the file *size* has changed (from eight sectors to ten sectors, for example), then this column would change. The Entry Modified column is of relatively limited value when developing typical chronologies of events
9. The operating system does not record when a file was *deleted* unless the file is in the *Recycle Bin*

10. Some applications programs, including word-processors, may generate additional information. This is known as *metadata* and in Microsoft Word can be accessed via the “Properties” screens.
11. Log files and other files found on computers may use a variety of non-obvious notations for time – Unix time. The examiner must realise which is being used and then deploy a piece of software to convert into more familiar and useful notation.

Data Recovery

12. When a user wants to locate a file, he will do so via a program called “My Computer” or “Windows Explorer” or “File Manager” or something similar – these programs get their information from the part of the hard-disk which acts as the index. Files that can be located in this way are described as “normally visible”. Some operating systems, including those from Microsoft, by default hide away certain critical files so that the user does not inadvertently alter them. But options available in Windows Explorer can render these files visible to the user.
13. As is reasonably well known, when the user of a computer “deletes” a file on a hard-disk, or deleting occurs because of the routine operation of a particular program, the data which makes up the file is not in fact immediately deleted but changes are made in a special part of the hard-disk which maintains an index of the physical locations of all the files on the disk. Under the operating systems of interest in this case it is called the Master File Table (MFT). The programs “My Computer” or “Windows Explorer” or “File Manager” and similar get their information from the part of the hard-disk which acts as the index (the MFT).

14. A computer file in fact goes through several stages of “deletion” on a computer which uses the Windows family of operating systems: In the first instance the data remains physically on the hard-disk, but the entry for it disappears from the folder in which it had been and re-appears in another folder called the Recycle Bin. From here it can readily be recovered to its original location. When recovery takes place the date-and-time stamp information which Windows automatically records is also recovered. The Recycle Bin in essence a safety device against careless discarding of a file.
15. The Recycle Bin is of finite size and depending on circumstances, eventually removes files either because they are “old” or because the overall capacity is exceeded. The Recycle Bin keeps track of its contents by means of a normally hidden database file called INFO2. The INFO2 file can be recovered and analysed forensically.
16. Thereafter the data that makes up the deleted files is still on the disk and significant amounts of information about the file are still retained in the “index” part of the hard-disk. By using a software utility readily available from several manufacturers and sold on the High Street, it is possible to recover all the data, including the name) and associated date-and-time stamp information. Deleted files are normally found in the folders in which they were originally stored. But this is only possible provided that the disk sectors in which the data resides have not been over-written by subsequent activity. The period for which the deleted data is retained depends on the overall capacity of the hard disk and the space being taken up by the newer “live” files. Eventually the deleted files will become partially or wholly over-written and thus beyond recovery.
17. Sometimes the index, the MFT, may retain information about a file such as its name and the date data associated with it, but because some or all of the sectors in which the file was held have become overwritten, recovery of the contents of the file may be only partial, or not possible at all. This phenomenon can often be seen while using forensic analysis tools such as EnCase and AccessData FTK.

18. There is a further stage, when the “index” no longer retains any information about the physical location of the file. At the same time, information held in the directory about the time a file was created, or modified, or also viewed, is also lost. The data that is still on the disk is referred to as being in “unallocated space” or in “unallocated clusters” Recovery may still be possible but a different more specialist types of software utility are required.
19. They fall into three categories. The first is called “data carving”. This simply looks at everything on the hard-disk and seeks out either the unique file signature associated with a particular sort of file or simply looks for character sequences that are thought to be relatively unique to a document.
20. However when files are recovered by this method it is often not possible to recover its name, any of the associated date-and-time stamp information, or the original folder. Sometimes only fragments of files can be found. Most data carving software simply gives each file in a specific format an ascending number – the first file is called 1.gif, or 1.doc, 1.html, etc, the second becomes 2.gif etc. The absence of context may limit the number of inferences that can be made about a file, particularly if several people have had access to the computer.
21. A second method is to look for records of deleted folders and other deleted features of the MFT. Again, these can be located by looking for their characteristic signatures. But, having found the folders it may be possible to inspect their contents to see if there is information about files that were within those folders. This information may point to those files so that they can be recovered. If such recovery is possible then the *names* of the files and also *date and time* information may also be recoverable. This technique can be referred to informally as “recovering deleted folders”. However, as with the simpler data-carving techniques there is also likely to be a loss of *context* – it is not possible to recover the name of the folder or any dates associated with it, though one may be able to do so for the *contents* of the folders. The technique may also recover folders from an earlier installation of an operating system as opposed to the current one. As before, the absence of context may limit the

number of inferences that can be made about a file, particularly if several people have had access to the computer.

22. The software utilities to carry out the recovery of deleted folders technique have to be quite sophisticated. In the first instance they have to look for deleted records of folder and then interpret their contents. But the contents may point to locations on the hard-disk which are now occupied by quite different files, the original data having been over-written. Different utilities (and indeed subsequent versions of the same utility) may come to different conclusions, so that in all instances the program's immediate suggestions (for that is what they are) have to be tested by inspection of the recovered file which has to be manually assessed for completeness and consistency.
23. The third method relies on what is usually called "keyword searching" or "string searching". A program scans the entirety of a hard disk or other data storage medium looking for instances of words or strings which are relatively unique and might point to matters of interest. At each "hit", the *surrounding* material is examined manually and then captured as a potential exhibit. This method finds file fragments. However it only works when the file holds text, or recognisable words. Some file formats, for example PDFs, databases, and email archives do not hold words as straight-forward text.
24. When a disk is reformatted or a new operating system placed over an existing one, data associated with the previous installation is not deleted. Some of the disk sectors will be over-written by the new installation but others will remain until, during normal use, they too become over-written. Until then, the data in these sectors is not accessible by ordinary means to the regular computer user. That is because the MFT has been overwritten. But it can be searched for using the data-carving and folder recovery methods described above. This data too is referred to as being in "unallocated space".
25. The only point at which there is reliable information about when a file was deleted is when the file is still within the Recycle Bin, as the information is held within the INFO2 database file referred to above. It is sometimes possible to recover earlier versions of an INFO2 file and inspect it for details of files that

were in it – and this might include times of deletion. But apart from this, the date of deletion can only be guessed at: it will be some indeterminate time *after* the “last accessed” date.

Appendix 2: Microsoft Exchange: an Overview

1. Microsoft Exchange is a very widely used and complex product designed to support the functioning of organisations of all kinds and sizes. In particular it allows for complex messaging both between individuals within a specific configuration and, using the Internet email complete with attachments to the outside world. It also allows for extensive archiving of the activities of the organisation.
2. Individual personal computers (which may include laptops and other devices) are known as “clients” while the central computing facility is known as a “server”. A particular feature is that in a large set up there can be several servers arranged in what is sometimes referred to as a “forest”; there is often a hierarchy of such servers.
3. Where there are many such servers it is possible to arrange things so that a top-level server can carry out administrative tasks, including adding new programs and managing users and their specific levels of access, centrally. It is also possible to configure matters so that a server controlled remotely – a high-level user can sign in to a distant server and use it as though he was physically adjacent.
4. The product has gone through a number of versions; the ones likely to be of significance in this instance are Exchange Server 2000 and Exchange Server 2003. The full range of services is in fact delivered by a combination of two products Windows Server 2000 and the actual package called Exchange Server 2000. Windows Server 2000 is the fundamental operating system, the equivalent if you will of Windows XT or Windows 7 as used in personal computing, but with the difference the essential technical infrastructure for

large numbers of individual computers to “sign in” and have accounts on it.

“Exchange” provides additional sophistication including full scale email, web-serving, and conferencing.

5. Other functions include instant messaging and conferencing plus the ability to create considerable archives of documents which can either be stored for the sole use of their originator or can be widely shared.
6. A key feature is the ability to replicate data as between a personal computer and archives on the local server and also as between servers within the overall hierarchy. In one of the most popular protocols for email all emails created on an individual’s personal computer are kept in a synchronised copy on the local server.
7. One consequence of this is that, depending on the precise set up, if a user decides to delete an email on their personal computer and then goes to the “deleted” folder into which the deleted email will first go and then deletes the copy of the “deleted” email, that email will for all practical purposes also disappear from the respective archive on the server. (At that point it may be possible to use forensic techniques to recover the deleted email either on the laptop or on the server; but either of these would be a non-trivial exercise and would only be possible for a relatively short periods after the deletion took place).
8. Replication has many other uses; whole folders can be updated and synchronised between servers. One advantage is that replication provides back-up in the event that a server suffers a failure, but a more important one is that it enables individuals dispersed about an organisation with multiple servers to have instant local access to information which may have been created elsewhere on another, distant server. Such arrangements can be particularly valuable, as in military networks, where communication links may not be available or “up” all of the time.

