

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]

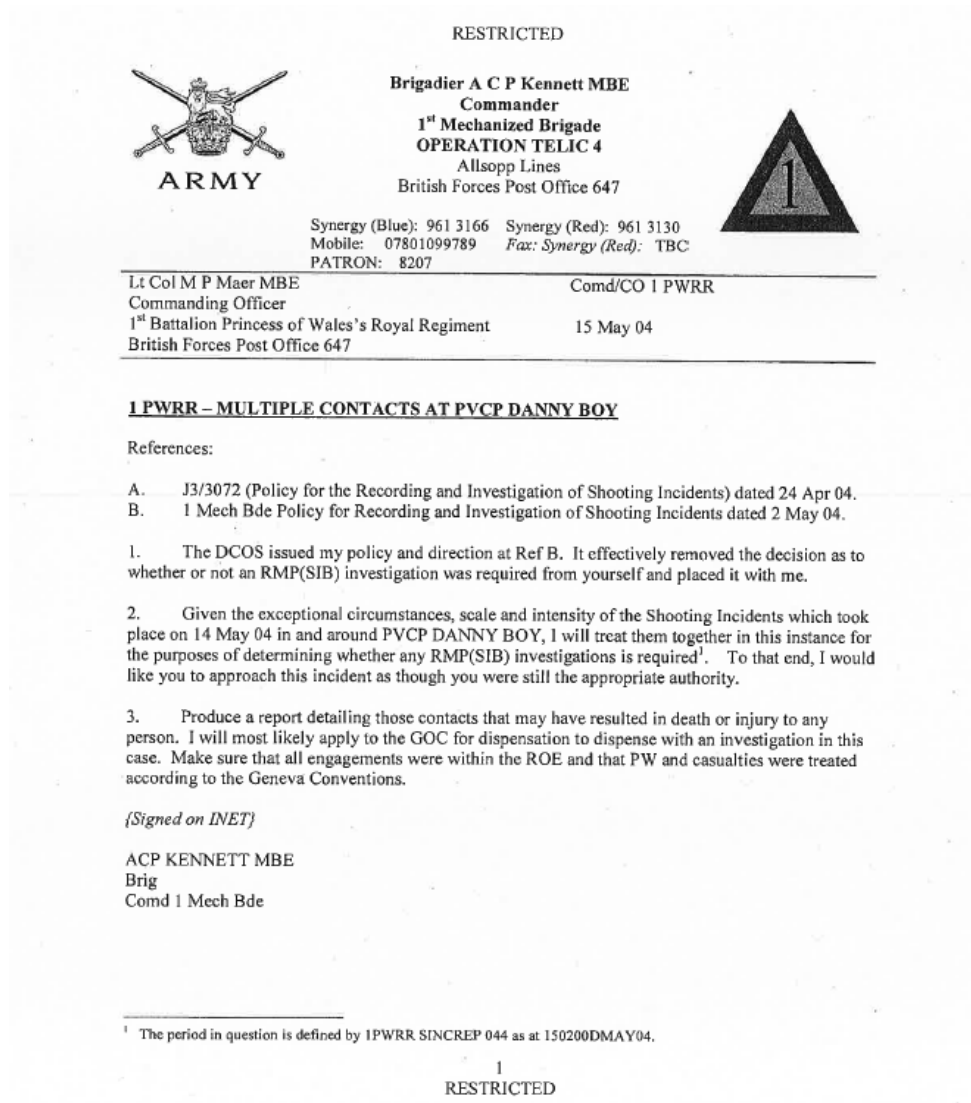
⁵⁰⁷⁸ Sergeant Grant (ASI021834) [23]

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 CCRI 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 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 Iraqi 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]