

The Report of the Al Sweady Inquiry

Executive Summary

Sir Thayne Forbes

December 2014

The Report of the Al Sweady Inquiry

Executive Summary

Sir Thayne Forbes

Presented to Parliament pursuant to Section 26 of the Inquiries Act 2005

Ordered by the House of Commons to be printed on 17 December 2014



© Crown copyright 2014

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Print ISBN 9781474112819

Web ISBN 9781474112826

ID 27111422 12/14

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

SUMMARY OF FINDINGS

Introduction

1. On 14 May 2004 armed Iraqi insurgents ambushed vehicles belonging to the Argyll and Sutherland Highlanders ("A&SH") near a permanent vehicle check point known to the military by its code name of "Danny Boy". This was situated some 5km north-east of the small town of Al Majar al'Kabir, on the main road between Basra and Al Amarah in Iraq (designated "Route 6" by the British Military) and at the junction with the road leading to Al Majar al'Kabir. A fierce battle followed which involved not only the Argyll and Sutherland Highlanders but also soldiers from the 1st Battalion of the Princess of Wales's Royal Regiment ("1PWRR"). It resulted in many Iraqis being killed and a small number of British soldiers being wounded. Although the battle was diffuse in nature, it was broadly divisible into two main areas one of which was north of the Danny Boy Vehicle Checkpoint ("the Northern Battle") and the other being south of the Danny Boy Vehicle Checkpoint ("the Southern Battle"). The engagement viewed as a whole, became popularly known as the "*The Battle of Danny Boy*" and is referred to as such in my Report.
2. Ordinarily, enemy dead would have been left on the battlefield. However, as the fighting drew to an end, an order was given to the British soldiers on the battlefield that was intended to result in the identification of the Iraqi dead to see if there was amongst them an individual who was suspected of having been involved in the murder of six Royal Military Police ("RMP") in Al Majar al'Kabir in 2003. In the result, that order was implemented by the British soldiers collecting from the battlefield the bodies of 20 dead Iraqis, who had been killed in the fighting, and transporting them back to the nearby British Military base at Camp Abu Naji for the purpose of identification. The bodies of a number of other Iraqis killed in the fighting were not recovered but were left where they had fallen. In addition to the 20 deceased, nine live Iraqis were also taken prisoner and taken back to Camp Abu Naji on 14 May 2004.
3. The nine live Iraqis were detained overnight at Camp Abu Naji and, the following day, transferred to the Divisional Temporary Detention Facility ("DTDF") at Shaibah, where they were detained for just over four months before being handed over to the Iraqi Criminal Justice System. The bodies of the dead Iraqis which had been collected from the battlefield were handed over to the local Iraqi population on the 15 May 2004. The condition of the dead bodies caused much upset to their families.
4. Rumours began to circulate in Al Majar al'Kabir that not all of the 20 dead Iraqi had died on the battlefield and that a number of them had been murdered by British soldiers after having been taken alive to Camp Abu Naji. It was also said that, after their arrival at Camp Abu Naji, a number of the live Iraqis had been tortured or ill-treated and/or had been unlawfully detained. In particular it was said that Hamid Mez'el Kareem A'shour Al-Sweady (deceased 3) was one of those killed at Camp Abu Naji either on 14 May 2004 or on 15 May 2004 before his body and that of the other dead Iraqis were handed back to the local Iraqi civilian authorities.
5. Those allegations led to the issue of a Claim Form in the High Court of Justice, Queen's Bench Division, Administrative Court ("the Administrative Court"). In proceedings for judicial review ("the Judicial Review proceedings") Khuder Karim Ashour Al-Sweady (witness 1) alleged that his nephew Hamid Al Sweady was one of a number of Iraqi nationals said to have been unlawfully killed whilst in the custody of British troops at Camp Abu Naji between 14 and 15 May 2004. In the same proceedings five further Iraqi nationals, Hussein Fadhil Abbas Al Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779), Hussein

Gubari Ali Al-Lami (detainee 778), Mahdi Jasim Abdullah Al-Behadili (detainee 773) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777) alleged that they were ill-treated by British Forces in breach of their human rights whilst in custody at Camp Abu Naji and when subsequently detained at Shaibah. The six Iraqi nationals applied to the Administrative Court in respect of an alleged failure by the Secretary of State for Defence to conduct an independent inquiry into their allegations, to accept liability for the deaths of the deceased Iraqis and for the ill-treatment and unlawful detention of the five detainees and to pay compensation.

6. The Judicial Review hearings took place in 2009. After a number of hearings, in April, May, July and August of that year, the Secretary of State for Defence conceded that inadequacies in the disclosure process were such that it would prevent the Court from making a satisfactory ruling on the case. That concession was made in a letter from the Secretary of State to the Court dated 3 July 2009.
7. In the light of that concession on 10 July 2009 the Administrative Court postponed the proceedings until such time as a proper investigation into the allegations had concluded.
8. In a written statement to the House of Commons given on Wednesday 25 November 2009, the then Secretary of State, the Rt. Hon. Bob Ainsworth MP, announced that there would be a Public Inquiry into the allegations that Iraqi nationals were detained after a fire-fight with British soldiers in Iraq in 2004 and unlawfully killed at a British camp (i.e. Camp Abu Naji) and that others had been mistreated at that Camp and later at Shaibah.
9. This Inquiry was formally established under the Inquiries Act 2005 on 29 November 2009. The Inquiry's Terms of Reference are expressed as follows:

"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 14th and 15th May 2004, and (2) the ill-treatment of 5 Iraqi nationals detained at Camp Abu Naji and subsequently at the Divisional Temporary Detention Facility at Shaibah Logistics Base between 14th May and 23rd September 2004, taking account of the investigations which have already taken place and made recommendation."

10. However, because there were four other Iraqi nationals detained at the same time as the five named in the Claim Form, I decided that any allegations made by those other four should also be investigated. Their names are Hamzah Joudah Faraj Almalje (detainee 772), Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), Kadhim Abass Lafta Al-Behadili (detainee 775) and Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776).
11. The Inquiry's Terms of Reference neither permit nor require an investigation into the legality of the use of force on the battlefield (nor of the command and control of soldiers who used such force), but it was important to the Inquiry's proper discharge of its Terms of Reference to investigate and decide whether, as a fact, any of the 20 dead Iraqis had been killed in the course of the battle, before they reached Camp Abu Naji. Put shortly, if, as was claimed by the military, any or all of the 20 dead Iraqi citizens who were handed over to the Iraqi civilian authorities on 15 May 2004 were killed in the course of the Battle of Danny Boy, they could have been neither abused nor killed at Camp Abu Naji. Thus, I decided that it was necessary for me to examine the broad circumstances of the battle, the conduct and actions of the soldiers and the Iraqis involved in it and the manner and cause of death of any Iraqis killed in the course of the battle.

The purpose and approach of this Summary

12. This Summary is not a substitute for the full Report. Nor is it a summary of all that I have considered and reviewed. It is designed to set out relatively briefly my findings and conclusions. Full reference to the evidence which I have heard and read is in the Report itself. Broadly, this Summary follows the order of the Report.
13. This Summary is intended to be relatively brief. If and to the extent that its brevity causes any actual or perceived distinction in meaning from that in the full Report, it is in the Report that my intended findings and conclusions are found. Where criticism is made of individuals, reference should be made to the full text of the criticism in the Report.
14. The Inquiry heard evidence for a total of 169 days over a period of 44 weeks. I heard oral evidence from a total of 282 witnesses; 56 Iraqi witnesses, 4 experts and 222 military witnesses. In addition the witness statements of an additional 328 witnesses (47 Iraqi, 271 military and 10 miscellaneous) were also read by the Inquiry.

Background

15. In May 2004 the four Southern Provinces of Iraq, Al Muthanna, Maysan, Al Basrah and Dhi Qar were under the British command of the Multi-National Division (South East) ("MND (SE)"), whose headquarters were Basra Palace in Basra Province. The 1PWRR with attachments from 1A&SH was responsible for operations in Maysan Province, which included Camp Abu Naji, Camp Condor, the nearby towns of Al Amarah and Al Majar al'Kabir along with a substantial section of Route 6. Camp Abu Naji was the main British Army base in the area located 5km south of Al Amarah, whilst Camp Condor was a smaller base located approximately 35km to the south of Camp Abu Naji. The two camps were linked by Route 6, the main highway from Al Amarah in the north to Basra in the south. Al Majar al'Kabir was located to the west of Route 6 approximately half-way between Camp Abu Naji and Camp Condor. The town lies less than three miles from where British Army Forces were attacked on 14 May 2004.
16. The security situation in Maysan Province, whilst at times volatile, had been fairly stable prior to April 2004. However, after that date the situation had deteriorated. On a daily basis areas of the Maysan Province would be placed out of bounds to Coalition Forces due to the threat of attack or an actual attack being carried out on Coalition Forces. Al Majar al'Kabir had become a virtual no-go area for Coalition Forces following the killing of six British RMP soldiers in June 2003. On that occasion six members of the RMP had been murdered by an Iraqi mob. They had been at a police station in Al Majar al'Kabir as part of their role to train local police officers. On the morning of 24 June 2003 soldiers from 1st Battalion the Parachute Regiment ("1PARA") had engaged a hostile crowd in the town. As the Parachute Regiment withdrew, the crowd advanced on the police station. By midday the six Redcaps were dead, having been shot and beaten inside the police station.
17. A known member of the local militia was strongly suspected of involvement in the killings. Several operations were conducted by the Coalition Forces with the intention of his capture. He was known by the code name of "Bravo 1".
18. During pre-deployment training it was anticipated that the role of the British Military was to assist with the eventual handover of power and functions of governance to the emerging Iraqi civilian authorities. However by the time the 1PWRR and the 1A&SH arrived in April 2004 the security situation was far worse than expected. In fact there were frequent armed attacks on Coalition Forces with two strong peaks in April – June and August 2004. A post-

operational report by 1st Battalion, Princess of Wales's Regiment reported over 850 contacts, 250 rocket or mortar attacks and close to 40 casualties during that period.

19. That was the context for the events of 14 and 15 May which I consider in the Report. The context for the Inquiry and its work is explained in the next paragraph.
20. The original and central allegation in the Judicial Review proceedings was to the effect that 20 (or more) Iraqi citizens were unlawfully killed at Camp Abu Naji, following their capture and detention during the battle on 14 May 2004. The British Military has always maintained that the Iraqis in question did not die at Camp Abu Naji, but had been killed in the course of the battle and their dead bodies taken back to the Camp that evening for identification purposes, before being handed back to the Iraqi civilian authorities the following afternoon. That claim was disputed and remained so throughout the hearing of the evidence, until the concession made by Leading Counsel for the Iraqi Core Participants at the effective completion of the oral evidence on 20 March 2014, during the course of which he said this: *"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 Camp Abu Naji"*. He also said *"We think it right to make clear that we will not be submitting that there is any evidence of such mistreatment between the arrival of the bodies outside the Medical Centre on 14 May 2004 and their return to the Iraqi authorities on 15 May 2004."*
21. That concession was made after the Inquiry had heard a very substantial body of evidence concerning issues relating to whether any or all of the deceased Iraqis had been killed in the course of the battle, or whether they were or could have been killed thereafter at Camp Abu Naji. Notwithstanding the concession made by the Iraqi Core Participants made on 20 March 2014, it remains both necessary and important that I set out my findings of fact and my conclusions; that requires a review of the events of the Battle of Danny Boy.

Identifying those alleged to have been unlawfully killed at Camp Abu Naji

22. The first part of the Terms of Reference requires the Inquiry 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..."*
23. There was a stark dispute between the Iraqi and military evidence with regard to the first part of the Terms of Reference. The Iraqi witnesses originally claimed that the evidence demonstrated that there had been an unspecified number of live Iraqi men taken into Camp Abu Naji by the British Military on 14 May 2004 who were subsequently handed back to their families dead the next day, the inescapable conclusion being that they had been unlawfully killed by the British Military in the Camp during the intervening period.
24. Broadly stated, the British Military contended that the evidence clearly established that a total of 20 Iraqi dead had been recovered from the overall area of the Battle on 14 May 2004 as well as nine live Iraqi detainees with the entirety of the deceased being killed in the course of the fighting. As a result, all 20 of those deceased were taken back to Camp Abu Naji on 14 May 2004 for the purposes of identification and the dead bodies were then handed back to the Iraqi civilian authorities on 15 May 2004.
25. By the concession made on 20 May 2014 on behalf of the Iraqi Core Participants it was accepted, having regard to the huge amount of oral and documentary evidence that had been heard and considered by the Inquiry, that the central allegation could not be made good.

26. Nevertheless, it remains necessary and of the utmost importance that I should set out my conclusions as to what happened on the 14/15 May 2004.
27. It was always common ground that on 15 May 2004, a number of bodies of deceased Iraqis had been handed over to the local population by the British Military at the gates of Camp Abu Naji, but the evidence available to the Inquiry at its outset disclosed a lack of agreement, even about the number and identities of the bodies handed back. It was, therefore, essential as a first step, for the Inquiry to try to identify each person who had been killed on 14/15 May 2004 and thereafter to establish which bodies were at Camp Abu Naji during the 24 hour period in question. Clearly those who died as a result of the events of those two days, but whose bodies had never entered Camp Abu Naji could not have been unlawfully killed there.
28. The Inquiry gathered together all the death certificates provided to it relating to the Iraqi deaths which had been collated as part of the previous Royal Military Police investigation. The Inquiry also took steps to obtain copies of those death certificates independently of the RMP material, including procuring copies from Iraqi witnesses who provided statements to the Inquiry, and by contacting hospitals and local authorities in Al Majar al'Kabir and the surrounding area to confirm the identities of those whose deaths were recorded on 14/15 May 2004.
29. In total, the Inquiry obtained death certificates for 29 individuals. Additionally, there was evidence amongst the RMP investigation materials citing one further Iraqi deceased. Although the Inquiry did not have a death certificate for that person, his name was added to the list for investigation.
30. In the body of the Report, there is a table listing each deceased and the causes of death shown on the certificates.
31. Of those 30 names, two were excluded from further investigation because one had died in circumstances that had nothing to do with the events of the 14/15 May 2004 and the second had died in April 2004.
32. A document was received from a journalist, David Monaghan, which contained 25 photographs of men said to have been killed on 14/15 May 2004. Each of those names corresponds to one of the names on the Inquiry's list of 28 dead, although three on the Inquiry's list of 28 were missing. The poster has been used by relatives of the dead and other Iraqi witnesses to assist in making identifications of those who died on 14/15 May 2004.
33. Additionally, the Inquiry sought to establish which of those individuals were shown in the photographs of dead Iraqis which had been taken at Camp Abu Naji on the evening of 14 May 2004 by Captain James Rands. The result of the exercise was that the Inquiry was able to identify all of the men shown in Captain Rands' photographs and to link each of them to individuals on the Inquiry's list of deceased Iraqis.
34. David Monaghan also provided the Inquiry with DVDs containing video footage taken on 15 May 2004 which depicts the collection of the deceased Iraqis from Camp Abu Naji that date, starting shortly after they left Camp Abu Naji and ending when the bodies were at the Al Sadr Hospital in Al Amarah.

Evidence concerning those who died in the Battle of Danny Boy but who did not enter Camp Abu Naji on 14/15 May 2004

35. Having identified the 20 men shown in Captain Rands' photographs, there still remained eight names on the Inquiry's list of deceased who were said to have died on or as a direct result of the events of the 14/15 May 2004.
36. It is apparent that some of the Iraqis who had been killed in the Battle were collected from the scene of the engagement by relatives, by other residents of Al Majar al'Kabir and, in some cases, by medical assistants from the Al Majar al'Kabir Hospital.
37. Having heard, seen and read all the evidence, I am satisfied that each of the eight individuals whose details are set out in the body of the Report died as a direct result of the battle that occurred on 14 May 2004 and were taken straight from the Battlefield in the manner summarised in the previous paragraph. None of them went or were taken to Camp Abu Naji at any stage. In the event, that conclusion was entirely uncontroversial.
38. Having regard to the state of the evidence concerning those eight individuals as outlined by Mr Acton Davis QC in his Opening Statement as Lead Counsel to the Inquiry, on 11 March 2013, I gave a direction that the Inquiry, the Core Participants and the Treasury Solicitor should thereafter proceed on the basis that in fact those eight deceased Iraqis had died on the Battlefield and that their bodies had not been taken back to Camp Abu Naji. I further directed that any party who objected to that approach should lodge written submissions, giving reasons why it was suggested that any of the eight individuals did not die on the Battlefield and/or had been taken back to Camp Abu Naji, by close of business on 15 March 2013. None of the parties lodged any objection. It thus became clear that everybody accepted that the 8 individuals in question had all died as a direct result of the battle and that none of them had been taken back to Camp Abu Naji at any stage.

The general situation in Al Majar al'Kabir on 14 May 2004

39. In the days prior to 14 May 2004, US Forces had been engaged in heavy fighting with insurgents loyal to the cleric Moqtada al-Sadr in the city of Al Najaf. This particular group of insurgents largely consisted of an organised and well-armed militia that invariably dressed in black and was popularly known as "*the Mahdi Army*". The city is home to the Imam Ali Mosque and with it the Imam Ali Shrine which is considered one of Islam's holiest places, particularly to Shi'ites, the Muslim sect that is predominant in Al Majar al'Kabir and the surrounding area. Unfortunately, it appears that at some stage during 13/14 May 2004 the dome of that mosque was damaged in the course of that fighting.
40. News of that spread to Al Majar al'Kabir. Thus, by late morning on 14 May 2004 the vast majority of the population of Al Majar al'Kabir had learned that the mosque in Al Najaf had been damaged. The belief was that this was the result of the mosque having been attacked by the US Military. That caused widespread anger among the local community in Al Majar al'Kabir. Moreover it is very likely that incitement to violence against the Coalition Forces took place on the morning of 14 May 2004 during Friday Prayers at amongst other places, the mosque in Al Majar al'Kabir.
41. By the early afternoon on 14 May 2004 various individuals within Al Majar al'Kabir and/or Al Amarah had incited a significant armed response to the recent events in Al Najaf. A large number of the community had taken to the streets of Al Majar al'Kabir in order to protest about those events.

42. Thus a demonstration occurred in response to the events in Al Najaf. The demonstrators possibly set off toward the Danny Boy VCP with the intention of blocking Route 6. Whilst some of the people in Al Majar al'Kabir joined the demonstration with the peaceful objective of obstructing Route 6 by way of protest, a significant number of those who attended went on to play an active part in the planned ambush of British Forces on Route 6 later that day. The peaceful demonstrators were joined by various groups of armed men, many if not most of whom were members of the Mahdi Army. They had planned and were intending to carry out such an ambush.
43. I am entirely satisfied that the armed men who left Al Majar al'Kabir with the sole intention of attacking British Forces, (and those who joined them from the demonstration) proceeded to launch the armed ambush at various points along Route 6 which precipitated the fiercely contested and bloody engagement known as the Battle of Danny Boy.
44. I am satisfied that amongst those armed men were the 28 men who were killed in the fighting and whose names appear in the Report. Also amongst the armed men were the nine detainees who were later captured and detained by British troops at various locations on the battlefield. It is very likely that the nine detainees took part in the ambush and the resulting battle as actual members or volunteer supporters of the Mahdi Army.
45. Each of the nine detainees sought to give an innocent explanation for his admitted presence in the vicinity of the ambush on Route 6 on 14 May 2004. However I am satisfied that each of the nine detainees went willingly to the scene of the engagement and that it is very likely that each did so as a member of or volunteer in the Mahdi Army. Each did so for the sole purpose of participating in the planned ambush of and armed attack on British troops that day and each then proceeded to play an active part in that ambush and attack. The explanation offered by each of the nine detainees for his presence at the scene of the battle was false. Each of them told deliberate lies when putting forward such an explanation in both his written account and in the case of eight of the nine detainees, the account given in his oral evidence to the Inquiry.
46. I am reinforced in that conclusion by a document which was disclosed to the Inquiry on 27 September 2013 which apparently originated from the Office of the Martyr Al Sayyed al Sadr (Quds) ("the OMS") in Al Majar al'Kabir the local branch office of the OMS . It lists the names and other details of the nine detainees. The OMS is an organisation known to have close links with the Mahdi Army and one that was openly hostile to Coalition Forces in Iraq in May 2004. It is clear from the document that the nine detainees were all known to the OMS. The document lists seven of the former detainees as members of named "*platoons*". The other two former detainees are listed as "*volunteers*". It is highly likely that the "*platoons*" were military units in the Mahdi Army and the expression "*volunteer*" is a reference to that particular detainee's current status in the Mahdi Army.
47. It would appear that the OMS detainee list came into possession of Messrs Leigh Day, the solicitors acting on behalf of a number of Iraqi citizens, including many of the Iraqi Core Participants, in respect of civil claims that had been made against the MoD arising out of the events of 14 and 15 May 2004. On the evidence it is likely that Leigh Day came into possession of the OMS detainee list in Damascus in September 2007 when there was a meeting between staff from Leigh Day and a number of Iraqi nationals including Khuder Karim Ashour Al Sweady (witness 1), the uncle of Hamid Al Sweady (deceased 3). In my view the source of the document was almost certainly Khuder Al Sweady.
48. I have concluded that the very likely explanation for the existence and purpose of the OMS detainee list is that it was produced by a representative of the Office of the Martyr Al Sayyed

al Sadr (Quds) in order to inform Khuder Al Sweady about the actual roles and relevant circumstances of the nine detainees for the purposes of the various meetings he was to, and did, have with representatives of the British Forces following the Danny Boy incident.

49. That document, on its face, is clear evidence that the Office of the Martyr Al Sayyed al Sadr (Quds) recognised and acknowledged that each of the nine detainees was an associate or supporter of that organisation and a member of the Mahdi Army at the relevant time.

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

50. On the morning of 14 May 2004 Major Adam Griffiths, the Officer Commanding (“OC”), B Company (“B Coy”), 1st Battalion Argyll and Sutherland Highlanders (“1A&SH”) left Camp Abu Naji and travelled south along Route 6 to Camp Condor to visit soldiers from 1A&SH who were stationed there. He was accompanied by his Rover Group, a unit of seven men who were tasked to provide protection for Major Griffiths whilst he carried out patrols and other duties. On 14 May 2004 Major Griffiths’ Rover Group travelled in two armoured Snatch Land Rovers, call signs Y0A and Y33A.
51. They left Camp Condor to return to Camp Abu Naji at approximately 16:15 hours. They travelled north along Route 6. As they made that journey they were attacked on three separate occasions during their northwards journey along Route 6. At each of these three engagements, the Rover Group was faced with significant incoming fire from armed Iraqi insurgents and on each occasion they returned fire. In the event they managed to drive successfully through each of the contacts and eventually made their way to Camp Abu Naji without sustaining any casualties.
52. The evidence from the members of Major Griffiths’ Rover Group clearly established that each of the three ambushes on the Rover Group was initiated by a significant number of Iraqi insurgents who acted together and who opened and maintained fire on the British soldiers in a clearly co-ordinated manner. The firing was purposeful and planned. The insurgents appeared to be working in concert with a shared aim to launch and maintain a deadly attack on the British convoy. The insurgents were often assembled in one or more cohesive groups and appeared to be working together to launch and fire weapons. At each of the contacts the insurgents were well organised and positioned in good firing positions, such as behind Bund (“built up natural defence”) lines. The location of the second contact at the Danny Boy Vehicle Checkpoint is likely to have been chosen because any passing vehicle had no choice but to slow down in order to pass through, thus providing the insurgents with a tactical advantage. Having regard to all the evidence, I have no doubt that the object of each such attack was to inflict as much damage and to kill and/or injure as many British troops as possible. It is very likely that Hamzah Joudah Faraj Almalje (detainee 772), Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) were amongst the many armed Iraqi insurgents and were active participants in one or other of the three ambushes carried out on Major Griffiths’ Rover Group on 14 May 2004.
53. Major Griffiths and his Rover Group attempted to communicate with Camp Condor and Camp Abu Naji on a number of occasions throughout the three initial ambushes. In his evidence, Major Griffiths made it clear that the aim of those endeavours was not only to inform those at the respective camps as to what was actually happening as a matter of normal procedure but was also to ensure that no other British soldiers placed themselves at risk by travelling along Route 6.

54. However, despite Major Griffiths' efforts to ensure that his order, to the effect that no other vehicles were to deploy, had been conveyed to and understood by those in an appropriate position to implement that order, it appears that no such order was ever actually received or recorded and/or properly appreciated.
55. As a result, 6 and 7 Platoons of the 1A&SH both deployed from Camp Condor with the aim of going to the rescue of Major Griffiths' Rover Group, which they believed was then pinned down under continuing incoming hostile fire and in need of urgent assistance. In the event, as they proceeded north along Route 6, 6 and 7 Platoons were also ambushed in their turn by the insurgents. What then resulted was a period of heavy fighting which became known to the Inquiry as the Southern Battle and which forms one of the two main component elements of the overall Battle of Danny Boy.

The Southern Battle

56. On learning that Major Griffiths' convoy had been contacted, Lieutenants James Passmore and James Dormer decided that vehicles and men from 6 and 7 Platoons should deploy to assist Major Griffiths. They deployed in a total of six Land Rovers, five of which were unarmoured "Wolf" Land Rovers and the other was an armoured "Snatch" Land Rover.
57. The Southern Battle took place in the same general locality as the first ambush on the Rover Group and appears to have involved the same insurgents.

The ambush of 7 Platoon and the initial fighting

58. The three "Wolf" Land Rovers belonging to 7 Platoon were the first of the two groups of Land Rovers to arrive in the area of what became the scene of the Southern Battle. As they reached a point on Route 6 about 6km south-east of Danny Boy Vehicle Checkpoint the 7 Platoon vehicles were subjected to significant incoming small arms fire from armed insurgents who were located in ground to the east of Route 6. Although the insurgents' fire was now coming from the land to the east of Route 6, the location of the ambushed Land Rovers on Route 6 appears to have been almost identical to that of Major Adam Griffiths' Rover Group when it had first come under insurgency fire from the west of Route 6.
59. A few seconds after their Land Rovers came to a halt, 7 Platoon debussed. A fire-fight ensued in consequence of which some Iraqi gunmen were killed. Others made good their escape. The Iraqi gunmen who were killed during this stage of the battle were all armed and had been taking an active and hostile part in the attack that had been launched on the British troops.
60. One section of 7 Platoon advanced towards and reached two derelict buildings. In the immediate vicinity of the larger of the two buildings they encountered and captured a young Iraqi man: Hamzah Joudah Faraj Almalje (detainee 772). He was the only Iraqi who was captured alive and detained in the area during the course of the Southern Battle.
61. Meanwhile others members of 7 Platoon had remained in the position where they debussed. They found themselves under hostile fire from the north and west of their position. They were fired on by a number of armed insurgent gunmen who had taken cover behind or very close to a couple of vehicles which they had positioned at various stages about 200m – 300m north on Route 6. That incident formed part of the overall series of co-ordinated armed ambushes on British troops that day.

62. It is likely that at least one Iraqi man was killed or wounded in the vicinity of those vehicles. If so, the dead man was an active and willing participant in the armed ambush. Those who were firing on the British troops presented a deadly threat to the troops.

Further insurgency fire from other ditches to the north

63. The same soldiers became involved in an exchange of fire with more enemy gunmen who were located to the north of their position and east of Route 6. It is not possible to state with any degree of certainty whether any Iraqi men were killed during this exchange of fire.

6 Platoon arrive at the scene and come under hostile fire

64. In the meantime the three Land Rovers of 6 Platoon (one “Snatch” and two “Wolf”) had also arrived at the scene of the Southern Battle. They encountered considerable incoming fire from a number of enemy gunmen positioned to the east side of Route 6. It is uncertain whether any enemy were killed during the resulting exchange of fire.

6 Platoon in action at the parallel Bund line on the east side of Route 6

65. Having crossed Route 6 from west to east, members of 6 Platoon took cover behind a ground feature referred to as the parallel Bund line. Whilst there, they became involved in heavy fighting with the armed insurgents. During the course of that fight a number of grenades were thrown into 6 Platoon’s position by enemy insurgents. One of them landed between Private James Lawrence and Lance Corporal Mark Keegan, injuring them both.
66. There was concern among the Section Commanders of 6 Platoon that their ammunition was running low. Consequentially it was decided to launch an assault on the enemy positioned in a ground feature referred to as the Southern Tank Ditch; however no Iraqi gunmen were killed or injured during that first assault on the Southern Tank Ditch.

The arrival of the Household Cavalry Regiment

67. Concurrently with the start of the Southern Battle, a multiple belonging to 3 Troop, A Squadron, Household Cavalry Regiment (“HCR”), was travelling north from Basra to Camp Abu Naji along Route 6. Just north of the town of Qal’at Salih, the convoy came under hostile fire from small arms and RPGs. The location of this particular ambush was some distance south of the Southern Battle and illustrates the scale of the ambushes which had been set up against British Forces on 14 May 2004.
68. The convoy returned fire but did not stop. There is no evidence that any Iraqi was killed during that brief contact. The convoy continued along Route 6 until they saw members of 6 Platoon. The convoy provided 6 Platoon with additional ammunition and agreed to provide cover to the west of Route 6.
69. There was evidence that at this stage the British troops were coming under mortar fire.

The second and successful assault on the Southern Tank Ditch and the Re-Org

- 70.** It was learned that Warrior AIFVs¹ were being deployed in support of the British troops but were delayed. Because of that and because of increasing concerns that both 6 and 7 Platoons were running short of ammunition, it was decided to carry out an assault on the enemy gunmen's position in the Southern Tank Ditch. The ditch was assaulted by two 7 Platoon soldiers who believed, based solely on visual impression, that they had killed all the gunmen in the Southern Tank Ditch.
- 71.** That action effectively brought to an end the main combat phase of the Southern Battle and was thus an appropriate moment for the soldiers to embark upon a re-org. During the re-org² Lieutenant William Passmore and Sergeant Paul Kelly both had occasion to go to the Southern Tank Ditch and were there involved in two separate shooting incidents. It is likely that the incident involving Sergeant Kelly happened before that involving Lieutenant Passmore and that neither was aware of the incident involving the other. In the event, I am satisfied that the accounts given by both Sergeant Kelly and Lieutenant Passmore were truthful.
- 72.** Sergeant Kelly described how he had found himself faced with two armed men standing in the Southern Tank Ditch, one of whom turned towards him lifting an AK47 which he began to aim in the direction of Sergeant Kelly. Sergeant Kelly's rifle was set on automatic firing mode. He swept along the line of enemy that he could see and back again, firing continuously. He may have hit those who were already killed: additionally he saw the two men who had been standing fall to the ground. It is likely that these two men had "*played dead*" when the Southern Tank Ditch had been assaulted successfully earlier.
- 73.** Lieutenant Passmore had also opened fire when he had entered the Southern Ditch a little later, because he had seen the fingers of one of the bodies twitching and moving within reach of a weapon. He had therefore opened fire, because he believed the man represented a threat. Lieutenant Passmore found the recollection of this incident deeply distressing. He had endeavoured to suppress the memory of what he had done, even to the extent of not having told the truth about the matter when he had made his witness statement to the Administrative Court in the Judicial Review proceedings. It was not until he gave his evidence to the Inquiry that he felt able to tell the truth about what he had done. I am satisfied that his evidence to the Inquiry was, in the event, both candid and credible. To his credit, he told the truth about the matter, despite the fact that this meant having to admit to lying to the Administrative Court.
- 74.** There was evidence of a third incident of shooting during the re-org when Corporal Lee Gidalla believed that he saw an Iraqi, in what appeared to be a crouching position, propped against the corner of a mound. He was uncertain whether the man was dead or alive but wanted to make sure that in the event that the man was alive he knew that Corporal Gidalla was aware of his presence and would be shot if he attempted to attack. Thus, he fired a warning shot to the side of the Iraqi: he did not aim at the Iraqi and did not hit him. He noticed no further movement from the Iraqi.
- 75.** Warrior AIFVs were deployed from Camp Abu Naji in order to go to the assistance of the soldiers engaged in the Southern Battle. They were delayed as a result of becoming involved in an armed engagement with insurgents to the north of the Danny Boy Vehicle Checkpoint.

¹ Armoured Infantry Fighting Vehicles

² A Re-Org is a standard military procedure, the purpose of which is essentially fourfold: (i) to protect the unit against possible counterattack, (ii) to redistribute manpower, weapons and ammunition, (iii) to treat and evacuate casualties and (iv) to carry out a search of the position currently held; see MoD Reference Portal

That was the Northern Battle component of the overall Battle of Danny Boy. However by the time the Warriors arrived at the location of the Southern Battle, the combat phase of the Southern Battle was almost over.

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

- 76.** I accept the military evidence that Hamzah Almalje (detainee 772) was in possession of a Kalashnikov rifle and a significant quantity of ammunition when they first came upon him in the immediate vicinity of the large derelict building. Hamzah Almalje said that he had gone to the location in order to graze his family's cattle, that he had been in possession of an AK-47 Kalashnikov which he said was for protection and to protect thieves from stealing his cattle.
- 77.** Hamzah Almalje did not tell the truth about how he had come to be present at the scene of the Southern Battle. I find that Hamzah Almalje was in the immediate vicinity of the large derelict building on the Eastern side on Route 6 when he was captured and initially detained. He was not there for any innocent purpose. He was there because he had been one of the armed insurgents who had opened fire on the British from the Eastern side of Route 6. That large derelict building played a significant part in the battle and was a feature from which significant hostile fire had been directed against the British Troops, particularly in the early stages of the battle.
- 78.** I am quite sure that Hamzah Almalje deliberately told lies about his participation in these matters. He did so in an attempt to distance himself from the active part that he had played in the armed ambush of British troops and the resulting battle.

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

- 79.** The allegations of assault made by Hamzah Almalje (detainee 772) can be divided into four distinct sub-issues:
- Sub-issue 1 – Allegations of assault at the point of capture;
 - Sub-issue 2 – Allegations of assault in the large derelict building;
 - Sub-issue 3 – Allegations of assault during transfer to the Warrior W33; and
 - Sub-issue 4 – Allegations of assault in the Warrior AIFV, W33 whilst being transported to Camp Abu Naji.

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

- 80.** I do not believe that Hamzah Almalje was assaulted at the point of capture in the manner he alleged.

Sub-issue 2: Allegations of assault in the large derelict building

- 81.** Privates Robert Anderson and Duncan Aston made a number of allegations concerning the treatment of Hamzah Almalje whilst he was in the large derelict building.
- 82.** Those allegations are not correct, there were no such assaults. It is very likely that Private Anderson simply exaggerated the firm and robust manner in which Hamzah Almalje was handled by the soldiers at the time. Although I do not consider that Private Aston made deliberately false allegations of assault, his account is not supported in any way by any of

Hamzah Almalje's (detainee 772) own evidence. In the Report I provide a list of possible explanations for Private Aston's evidence.

Sub-issue 3: Allegations of assault during transfer to the Warrior W33

83. Lance Corporal Mark Keegan made a number of statements at various times after the Battle of Danny Boy in which he alleged that Hamzah Almalje (detainee 772) had been assaulted and ill-treated by British soldiers. The substance of those allegations varied in each account that the Lance Corporal Keegan gave of them.
84. I do not believe that Lance Corporal Keegan sought to tell the truth about these matters in any of the accounts that he gave, including the account given to me under oath. I am quite unable to accept any of his evidence as truthful, at least so far as it concerns any matter of substance.
85. Hamzah Almalje himself made allegations which relate to his treatment whilst being detained on the battlefield after capture, but before being placed in any vehicle.
86. There was also some military evidence concerning Private Christopher Dodd's conduct. However, I am satisfied that there is nothing to suggest that Private Dodd deliberately ill-treated Hamzah Almalje in any way when escorting him to and placing him in W33.
87. I do not believe that any of Hamzah Almalje's allegations of ill-treatment by British soldiers whilst detained on the battlefield after capture, but before being placed in any vehicle, are true.
88. I am satisfied that Hamzah Almalje was not handled in an inappropriate manner whilst being moved from the battlefield into the Warrior for transport to Camp Abu Naji.

Sub-issue 4: Allegations of assault whilst in the Warrior – Journey back to Camp in W33

89. I am satisfied Hamzah Almalje (detainee 772) asked for water during the journey back to Camp Abu Naji but was refused water. That is because there was no further water in the Warrior because its supply had been used to extinguish the fire which had broken out earlier that day in the back of the Warrior.
90. I also accept that Hamzah Almalje was shouted and sworn at by some, if not all, of the soldiers in the rear of the Warrior when refusing his requests for water.
91. However, I do not accept the evidence from Lance Corporal Mark Keegan that Hamzah Almalje was hit with the butt of a rifle whilst in the rear of the Warrior. Nor do I accept Private Eric Danquah's evidence that Hamzah Almalje was hit with a wooden baton whilst in the rear of the Warrior.
92. It is clear, both from the photographs taken of Hamzah Almalje and from his medical records that he had sustained a number of injuries by the time he arrived at Camp Abu Naji on 14 May 2004.
93. I am satisfied that the injuries sustained by Hamzah Almalje had occurred during the course of the struggle that took place whilst he was being restrained at the point of capture.

The Northern Battle

94. What is known collectively as “the Northern Battle” was a series of further engagements between armed insurgents and British Troops on Route 6 between the Danny Boy Vehicle Checkpoint and the village of Ataq, just south of Camp Abu Naji. Whilst the Northern Battle occurred north of and in a separate location from the Southern Battle (although fairly close to it) the two Battles are inextricably linked. The Northern Battle occurred as a direct consequence of the Southern Battle and each Battle formed part of the overall carefully organised and co-ordinated ambush of British Troops along Route 6 that was planned and carried out by armed Iraqi insurgents on 14 May 2004.
95. A total of 12 call signs were directly involved in the Northern Battle, namely 10 Warrior AIFVs from C Company, 1PWRR, and two Challenger 2 Main Battle Tanks (“MBTs”) deployed from A Squadron, Queen’s Royal Lancers (“QLR”).
96. During the afternoon of 14 May 2004, Sergeant David Perfect heard a number of communications on the Battle Group Radio net which made it clear that soldiers from 6 and 7 Platoons, 1A&SH, were involved in serious fighting with armed insurgents (i.e. the Southern Battle).
97. In consequence, two Warriors, W33 and W31 left Camp Abu Naji to assist, if necessary. There was some uncertainty about the precise location to which they were travelling.
98. Coincidentally, in consequence of Camp Abu Naji having been subjected to a mortar/missile attack, two Warriors from 8 Platoon, C Coy, 1PWRR, W21 and W22, were ordered to deploy southwards from Camp Abu Naji to a position on Route 6 identified on a military spot maps in use at the time as “Red 1”. Those two Warriors were ordered to set up a temporary vehicle checkpoint (popularly known as “a Rat-Trap”) at Red 1, the object of which was to stop and search vehicles travelling along Route 6, in the hope of catching those responsible for having attacked the Camp.
99. W33 and W31 drove through Red 1, apparently without stopping on their journey south to assist the soldiers of 1A&SH. Shortly after those Warriors had passed through Red 1, the Battle Group Operations Room at Camp Abu Naji also directed W22 and W21 to head south in order to assist the 1A&SH soldiers.
100. W22 and W21 caught up with W33 and W31 on the road. So the four Warriors continued their journey south along Route 6 in something resembling a four vehicle convoy.

The First Contact in the Northern Battle

101. The convoy of four Warriors were ambushed at a position on Route 6 located approximately where the road passed a building known as the Pepsi Factory. It was the same general location as that where Major Adam Griffiths and his Rover Group had been subjected to their third ambush on their journey north to Camp Abu Naji earlier that afternoon.
102. The lead Warrior in the four vehicle convoy, W33, was commanded by Sergeant David Perfect. The Warrior was struck by small arm rounds and a rocket propelled grenade (“RPG”) which did not explode.
103. Sergeant Perfect described intense firing coming from enemy gunmen who were in scattered positions to the west of Route 6. W22 and W21 also came under attack. W31 had made slower progress down Route 6.

The Opening Stages of the Northern Battle

- 104.** Sergeant Perfect described seeing a number of individuals using the bund line as cover. They were firing what looked like AK47 rifles and some had RPG launchers. He fired single aimed shots and hit two of them in the head/upper torso. It is very likely that he either killed or seriously wounded those two men.
- 105.** Remembering that W33 had deployed in order to find and assist 1A&SH who were still under fire further south, he gave the order for W33 to continue travelling south towards the Danny Boy Vehicle Checkpoint. On reaching that checkpoint, he was unable to locate the soldiers (who were yet further south) and he was unable to make contact with Camp Abu Naji by radio. Thus, he turned north again in order to return to the vicinity of the Pepsi Factory. As it began its journey from the Danny Boy Checkpoint back towards the Pepsi Factory, W33 was struck by another RPG which penetrated and lodged in its armour but did not detonate. It started a fire which produced a great deal of smoke and fumes. It knocked unconscious one of the dismount soldiers in W33.
- 106.** In the meantime, W21 was ambushed about 500m north of the Danny Boy Vehicle Checkpoint. W21 received heavy incoming fire from AK47s and RPGs fired from the west of Route 6.
- 107.** Almost simultaneously, W22 encountered incoming RPG and small arms fire from the west of Route 6. W22 was a little behind W21, about 200-300m north of the Pepsi Factory.
- 108.** Both Warriors remained more or less at or close to the point at which they had been ambushed during the early stages of the Northern Battle, although W22 took up position on the ground to the west in order to give supporting fire to the soldiers who had by then dismounted from their vehicle.
- 109.** Both Warriors engaged the enemy positions.

The arrival of W30 and W32

- 110.** W30 and W32 arrived at the scene of the Northern Battle some time after the first four Warriors, whilst the exchange of fire was continuing. There were a number of enemy gunmen who were heavily armed with assault rifles and rocket-propelled grenades. There is an estimate that there were between 20 and 30 enemy fighters just to the west of Route 6.

W33 and W31 depart the scene of the Northern Battle and resume their mission to go to the assistance of the soldiers south of Danny Boy

- 111.** Sergeant Perfect learned over the radio that the soldiers of 1A&SH were, in fact, located some distance to the south of Danny Boy. W33 and W31 met on Route 6 and drove through the Danny Boy VCP. As they did so, they came under heavy enemy fire. In due course, they arrived at the scene of the Southern Battle during its final stages.

The dismounts from W22 are deployed

- 112.** At an early stage of the Northern Battle, the dismounts in W22 were ordered to leave the vehicle. A regular feature of the reporting of the Northern Battle, both in the internal military reporting and in the national press, has been the focus on the alleged use of bayonets by dismounted soldiers. In the event, I am satisfied that none of the dismounts from W22 did fix bayonets that day.

The dismounts from W30 are also deployed

- 113.** Shortly after W30 had arrived at the scene of the engagement, the dismounts left the vehicle. They joined up with the dismounts from W22. Corporal Mark Byles fixed his bayonet as he deployed. The five dismounts from W22 and W30 engaged the enemy gunmen. It is not possible to come to any firm conclusion as to whether any Iraqi gunmen were killed during this particular exchange of fire.

The assault on Trench 1 (a ground feature to the west of Route 6, somewhat to the north of the “Pepsi Factory”)

- 114.** The estimates of the enemy strength in Trench 1 range from about six to eight up to as many as 10 to 20 men. It is more likely that the enemy strength in this position was closer to the lower estimates than to the higher. As the dismounts approached Trench 1, a small number of enemy gunmen were seen fleeing to the south. In the event, the majority of gunmen from this position were either killed or captured.
- 115.** On arriving at Trench 1, the British soldiers encountered, captured and detained four Iraqi gunmen. I am satisfied that those gunmen were Mahdi Jasim Abdullah Al-Behadili (detainee 773), Kadhim Abbas Lafta Al-Behadili (detainee 775), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780).
- 116.** By the time that the W30 and W22 dismounts arrived in Trench 1, a number of Iraqi gunmen had been killed. They all had died as a result of gunshot and/or shrapnel wounds inflicted before any of the British soldiers entered Trench 1. It has been reported that the assault on Trench 1 was a “*bayonet charge*”. I am satisfied that there was no bayonet charge. At no stage did any soldier use a bayonet deliberately to kill or disable any enemy fighter during the assault on and capture of Trench 1.
- 117.** Shortly after the dismounts had captured the four detainees in Trench 1, Sergeant Christopher Broome dismounted from Warrior W22 and found the W22 dismounts in Trench 1. On arrival he saw the four detainees, each of whom was lying face down on the ground, and three dead Iraqi men. He noticed some bottles of rifle oil and, told me, that this together with the weaponry, the extra ammunition and the other items of military equipment that he saw when he arrived at the position, led him to conclude that the enemy gunmen had come prepared for a long engagement. That is entirely in keeping with my firm conclusion that the Battle of Danny Boy was the result of a large, well-organised and co-ordinated ambush on British Forces by armed Iraqi Insurgents.
- 118.** A number of photographs taken on the Battlefield on 14 May 2004 were disclosed to the Inquiry which appear to show the scene in and very close to Trench 1, a very short time after the four detainees were captured. The four Iraqi men, who appear in four of the photographs, are the four detainees whose names I have already mentioned.
- 119.** Some of the photographs, which show soldiers striking various poses with the captured detainees, are singularly tasteless. I am satisfied that they were plainly taken as “*trophies*” to celebrate the successful assault on Trench 1, the capture of the four detainees and the soldiers’ triumphant domination of a defeated enemy. It is not clear how the decision to take the photographs came about or who had made that decision. However, in my view, the decision was entirely inappropriate, ill-judged and demeaning.

120. Whilst they were dealing with the four prisoners in Trench 1, the dismounts from W22 and W30 experienced incoming enemy fire from south of their position. One of the insurgents who were responsible for that incoming enemy fire was shot and killed.
121. Two Challenger 2 Main Battle Tanks D90 and D92 were deployed to assist the call signs already on the ground. On arrival at the scene of the engagement, both tanks engaged enemy gunmen.
122. Warriors W0B and W0C were in Al-Amarah on the afternoon of 14 May 2004. On hearing of the battle, the Officers commanding those Warriors sought and obtained clearance from the Operations Room at Camp Abu Naji to go to the assistance of those already engaged in the battle. They then headed south to the engagement.
123. Warriors W12 and W13 were also ordered by the Operations Room at Camp Abu Naji to head towards the scene of the Northern Battle.
124. All four Warriors arrived at the scene of the Northern Battle at more or less the same time.
125. W0C and W0B parked close to each other whereas W12 and W13 proceeded to the Southern end of the Northern battlefield.
126. The dismounts of W12 left their vehicle. Several of them reported seeing Iraqi men some distance from their position who were armed. However, no incoming fire was received and none of the dismounts returned fire.
127. The soldiers who had remained in W12 saw a group of enemy gunmen, who may have been the same as those seen by the dismounts, and who were carrying rifles and tubes in satchels on their backs.
128. WO2 David Falconer dismounted from his Warrior and gave an order that the prisoners be brought to a collection point adjacent to his Warrior, W0C. That was with the intention of ensuring that the prisoners would be located in a safe place, sheltered from incoming fire.
129. The dismounts from W21 joined forces with the dismounts from W32 in the Storm Drain, a ground feature just to the west of and parallel with Route 6. They were split into two groups. One of the groups advanced in a westerly direction. An Iraqi man was fired at and fell. On entering Trench 2 (a ground feature to the west of Route 6 and about 150 to 250 metres south of Trench 1), two dead Iraqi bodies were found. It is very likely that they had been killed in the fighting.
130. Corporal Mark Byles engaged a group of enemy gunmen who were on the west edge of the Storm Drain, south of Trench 1. He then advanced in a southerly direction, moving along the Storm Drain until he met up with the dismounts from W21 and W32.

Searching the Bodies in the Storm Drain Position, an enemy position on the western edge of the Storm Drain and between Trenches 1 and 2

131. Two of the dismounts from W21 and W32, Private Sakiusa Tamani and Private Shaun Sullivan, were ordered to check the bodies in the Storm Drain. They checked a total of four bodies. Two were found to be dead, one was alive but badly injured and one was found to be alive and uninjured.

- 132.** The first man they searched was dead and was wearing a chest rig. He was clearly an armed insurgent who had been actively engaged in the attack on British Forces. The third man they searched was also dead. The second Iraqi man had a serious wound to his chest with an exit wound to his back. He was still alive. His name was Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2). The fourth man was described as “*playing dead*” but was, in fact, alive and uninjured. That man was Hussein Fadhil Abbas Al-Behadili (detainee 778).
- 133.** Hussein Al-Behadili was loaded into the rear of W30 which then reversed up to the collection point next to W0C. Haydar Al-Lami was carried to the collection point by Private Shaun Sullivan.
- 134.** The four detainees from Trench 1 were escorted to the collection point near W0C. That task was overseen by Sergeant Christopher Broome and was most likely performed by Corporal Byles, Private Maciou Tatawaqa, Private Lloydan Beggs and Private Anthony Rushforth. At the collection point itself, Lance Corporal Phillip Muir (now known as French) and (somewhat later) Private Carl Pritchard had the responsibility for guarding the group of four detainees who had been captured in Trench 1.
- 135.** In due course, Haydar Hatar Al-Lami was also brought over to the collection point. It was noticed that he had a large open wound high up on his back on the rear right shoulder blade from which air from his lung or lungs appeared to be escaping. Considerable efforts were made to give him urgent and appropriate medical treatment. A chest seal was applied, fluids were provided intravenously and oxygen was given. Unfortunately, these efforts proved unsuccessful and Haydar Al-Lami died on the battlefield after, approximately, 45 minutes treatment.
- 136.** That evening, as the Northern Battle was drawing to a close, the commanders on the ground received an order to collect the bodies of the Iraqi men who had died during the contact. The genesis of, and rationale for, the order is addressed in a separate section. Some bodies were loaded into W30.
- 137.** WO2 David Falconer gave instructions to the dismounts in his immediate vicinity to collect the bodies of the dead Iraqi men who could be seen nearby in Trench 1. After that, WO2 Falconer decided that it was necessary to conduct a re-org, effectively bringing the combat phase of the Northern Battle to a conclusion. He decided to check that the area was fully secure. He wanted to go over the ground again to make sure it was clear of enemy and to look for weapons and dead.
- 138.** He and Lance Corporal Brian Wood headed west along Trench 1. They came under incoming fire. That incoming fire was from two gunmen. WO2 Falconer and Lance Corporal Wood advanced towards them in a “*fire manoeuvre*” in which each soldier took it in turns to advance as the other provided covering fire.
- 139.** The firing from the gunmen ceased. The two soldiers continued their advance and reached the enemy position. There were two Iraqi men lying on the ground with AK47 rifles and magazines of ammunition. There might also have been an RPG launcher and some grenades.
- 140.** WO2 Falconer and Lance Corporal Wood continued to advance west along Trench 1. They came under a further burst of incoming fire. There was an exchange of fire after which the incoming fire ceased. On arriving at the second enemy position, they found the bodies of two armed gunmen.

- 141.** Thereafter, Lance Corporal Wood and WO2 Falconer advanced further west along Trench 1 before encountering yet another enemy position. WO2 Falconer noticed the barrel of an AK variant rifle poking through a bush. He fired into the bush. He walked round the bush to find two insurgents dead on the floor.
- 142.** That was the last contact which took place in Trench 1 during the Northern Battle.
- 143.** As WO2 Falconer and Lance Corporal Wood proceeded to advance west along Trench 1 they were followed a short distance by soldiers who collected the bodies which they could find, loaded them into W22 and returned to the collection point near WOC. At the collection point, they were unloaded from W22. As the bodies were being unloaded, it was discovered that one of them was alive. That man was Ibrahim Gattan Hassan Al-Ismaeeli (detainee 774). He was one of men whom WO2 Falconer had found after he walked round the bush in the last contact which took place in Trench 1 during the Northern Battle.
- 144.** As Lance Corporal Wood and WO2 Falconer headed back east along Trench 1 towards Route 6, they found two more insurgents who surrendered to WO2 Falconer. They were Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777). They were escorted from the point of their arrest to the collection point next to WOC.
- 145.** At the collection point WO2 Falconer counted the groups of bodies and the groups of detainees. He found that there were eight dead bodies and live detainees. The eight live detainees were:
- Mahdi Jasim Abdullah Al-Behadili (detainee 773)
- Ibrahim Gattan Hassan Al-Ismaeeli (detainee 774)
- Kadhim Abbas Lafta Al-Behadili (detainee 775)
- Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)
- Ahmed Jabbar Hammood Al-Furaiji (detainee 777)
- Hussein Fadhil Abbas Al-Behadili (detainee 778)
- Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)
- Hussein Gubari Ali Al-Lami (detainee 780)
- 146.** The first four of those detainees were loaded into W21 for transport back to Camp Abu Naji. The other four detainees were loaded into W32 for the same reason.
- 147.** The bodies of the eight deceased men at the collection point were all loaded together into the rear of W22 in which they were transported back to Camp Abu Naji.
- 148.** In relation to the treatment of the eight detainees, I am satisfied that physical force was used by the soldiers during the initial capture and detention of the four insurgents in Trench 1. I also accept that those who used force did so in order to overcome the resistance being offered by the detainees themselves and because of the perceived need to subdue and gain control of them quickly and firmly for the safety of all concerned.

- 149.** Thereafter, the four detainees were moved quickly and firmly from Trench 1 to the collection point near WOC and the soldiers involved in that process exercised a significant degree of direct physical control over the detainees whilst that was taking place.
- 150.** The manner of loading of the detainees into the Warriors was smooth and uneventful.

The capture and handling of Mahdi Jasim Abdullah Al-Behadili (detainee 773), Kadhim Abbas Lafta Al-Behadili (detainee 775), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780)

- 151.** Each of the four captured in Trench 1 attempted to give an innocent explanation for his presence on the battlefield. In general terms, the explanation was that they were there for purposes to do with agriculture. In each case the detainee in question deliberately lied when providing his explanation.
- 152.** Each of the soldiers who gave evidence to the Inquiry about the successful assault on Trench 1 on 14 May 2004 endeavoured to give a truthful and accurate account of what happened during that incident. The soldiers worked together to launch a carefully planned attack on Trench 1 and they did so in order to counter the significant threat from enemy fire that they then faced.
- 153.** All the soldiers involved in the assault on Trench 1 were firmly of the view that each of the four detainees whom they captured and detained in that position had just been actively engaged in the fierce attack on British Troops and had been using Trench 1 as cover for that purpose. I have no doubt that the soldiers were entirely correct to come to that conclusion. I reject the explanations given by each of the four detainees as deliberate lies.
- 154.** Each of the four detainees, to whom I have just referred to as having been captured in Trench 1 on 14 May 2004, made allegations of ill-treatment from the time of their capture on the battlefield until they arrived at Camp Abu Naji. I consider them all in some detail in the Report itself. Broadly, I reject those allegations. I do not accept that there was any deliberate ill-treatment of those four detainees between the time of their capture on the battlefield until they arrived at Camp Abu Naji. Whilst some force may have been used against them whilst being brought under control and restrained during capture, there was no deliberate ill-treatment. It is possible that some of them may have had handcuffs applied too tightly, but in no case was it done deliberately.

The capture and handling of Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 155.** Hussein Al-Behadili (detainee 778) was captured in the Storm Drain Position by soldiers who had initially thought he was dead. He too gave an innocent reason for his presence at the scene. In his case, it was to buy 40 litres of yoghurt for a wedding.
- 156.** I have no doubt that Hussein Al-Behadili was present at the site of the Northern Battle as a willing and active participant in the armed ambush of British Troops on Route 6 that was planned and carried out by Iraqi insurgents on 14 May 2004.
- 157.** I have no doubt that Hussein Al-Behadili also lied in the account that he gave of his arrest by British soldiers on 14th May 2004. The most significant lies that Hussein Al-Behadili told during this part of his evidence concerns his description of what happened to Hamid Mez'el Kareem A'shour Al-Sweady (deceased 3) that day.

- 158.** It is apparent that, at various times, Hussein Al-Behadili made clear and unequivocal assertions to the effect that both Hamid Al-Sweady and Haydar Al-Lami had still been alive long after Hussein Al-Behadili had been captured by the British on 14 May 2004. Those assertions undoubtedly played a part in the persistence of the completely false allegations that Iraqi men, who had been detained alive by the British on 14 May 2004, were subsequently unlawfully killed at Camp Abu Naji.
- 159.** It is plain that these assertions by Hussein Al-Behadili were entirely false. Hamid Al-Sweady had been killed outright, whilst fighting at the Storm Drain position. Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 3) had been gravely wounded, whilst fighting at the Storm Drain position, and succumbed to his injuries beside Route 6 despite the medical treatment given by Lance Corporal Philip Muir. Both these men, like Hussein Al-Behadili himself, had been willing and active participants in the carefully planned attack on British Forces that had been carried out by armed Iraqi insurgents on 14 May 2004.
- 160.** There was unchallenged expert evidence from Mr Clive Evans, a Senior Forensic Consultant, that the man who had been photographed while his body was being carried by two soldiers on the Northern battlefield was Hamid Al-Sweady. This important photograph appears as Figure 55 at page 346 of the Report. The photograph's Inquiry reference is ASI011939. It was taken at about 18:59 hours local time on 14 May 2004 on the camera owned by Private Stuart Taylor, the driver of W22. Moreover, Khuder Al-Sweady (witness 1) told me that he was "70%" sure that the man who can be seen being carried in the photograph was his nephew Hamid Al-Sweady.
- 161.** There was expert evidence from a Forensic Pathologist, Dr Peter Jerreat, that although there was a possibility that Hamid Al-Sweady might have been alive but deeply comatose when the photograph was taken, the most likely explanation was that the person in the photograph was dead. In the event, I am sure that Hamid Al-Sweady was already dead by the time the photograph was taken.
- 162.** In my view, Hussein Al-Behadili (detainee 778) told a number of significant, deliberate and calculated lies.
- 163.** Hussein Al-Behadili also made a number of allegations concerning ill-treatment by British soldiers from the time of his capture on the battlefield until he arrived at Camp Abu-Naji. However, I am sure that he was not deliberately ill-treated.

The capture and handling of Ibrahim Gattan Hassan Al-Ismaeeli (detainee 774)

- 164.** Ibrahim Gattan Hassan Al-Ismaeeli (detainee 774) also claimed that he had been at the scene of the Northern Battle in order to carry out agricultural work. But I have no doubt that he was present on the Northern Battlefield on 14 May 2004 as a willing and active participant in the carefully planned armed ambush of British Forces by Iraqi insurgents that day. I found the substance of Ibrahim Al-Ismaeeli's various accounts to amount to little more than a pack of lies, even when given on oath.
- 165.** Ibrahim Al-Ismaeeli also made a number of allegations of ill-treatment by British soldiers from the time of his capture on the battlefield until he arrived at Camp Abu Naji. I reject those allegations. There was no deliberate ill-treatment of him.
- 166.** Overall, I conclude that Ibrahim Al-Ismaeeli (detainee 774) adopted a lamentable approach to giving evidence. At each stage he has shown himself willing to tell deliberate and calculated

lies motivated both by the desire to absolve himself from any blame and to implicate British Troops so as to exact retribution for perceived injustices at the wider conflict in Iraq.

The capture and handling of Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

- 167.** Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777) were the two insurgent gunmen who surrendered to WO2 Falconer on the afternoon of 14 May 2004 shortly after he had completed a sweep of Trench 1.
- 168.** Abbas Al-Hameedawi said that he had been present on the battlefield because he had been engaged in carrying out various agricultural duties.
- 169.** Ahmed Al-Furaiji made witness statements and travelled to the United Kingdom, but was unfit to give detailed evidence to the Inquiry. However, he was able to take the oath in public at the Inquiry Hearing Room and he then confirmed the truth of the two written statements that he had already prepared for the purpose of giving evidence to the Inquiry. He said that he too had been at the battlefield for agricultural reasons.
- 170.** I have no doubt that both these two detainees were present at the scene of the Northern Battle on 14 May 2004 as willing and active participants in the carefully planned armed ambush of British Forces that was carried out by Iraqi insurgents. Neither gave a truthful account of the reasons for his presence on the battlefield and the circumstances of his capture. They were both heavily armed at the point of capture and they were together. Both men were there as part of a large force of insurgents who were intent upon carrying out an ambush and attack. I am sure that both actively participated in the ambush and the resulting battle. Once they realised that most, if not all, of their fellow insurgents in that area were either dead or captured and that there was a significant number of British Troops nearby, they surrendered to the nearest soldiers.
- 171.** Abbas Al-Hameedawi (detainee 776) made a number of allegations of ill-treatment by British soldiers from the time of his capture until he arrived at Camp Abu Naji.
- 172.** However, I am sure that he was not deliberately ill-treated by the British soldiers.
- 173.** Ahmed Al-Furaiji (detainee 777) also made a number of allegations of ill-treatment by British soldiers from the time of his capture until he arrived at Camp Abu Naji.
- 174.** Again, I am sure that he was not deliberately ill-treated by the British soldiers.

The journey back to Camp Abu Naji from the Southern Battlefield

- 175.** The two Warrior AIFVs call signs W31 and W33 left the location of the Southern Battle in convoy with the Land Rovers from 6 and 7 Platoons 1A&SH and the Household Cavalry Regiment in order to return to Camp Abu Naji. They were fired upon after they had travelled about 300m along the road, when they were near the Danny Boy Vehicle Checkpoint. The two Warriors came to a halt in the immediate vicinity of the Danny Boy Vehicle Checkpoint and the soldiers in the Land Rovers dismounted from their vehicles taking up defensive positions on the west side of Route 6, near the Danny Boy Vehicle Checkpoint. They took cover and provided suppressing fire.

176. The enemy fire came from a large group of insurgents, perhaps 20 or 30 in number who had taken up various positions on the west side of Route 6 and near the Danny Boy VCP. They were using Bund lines for cover. It is clear that there were a large number of insurgents in the immediate vicinity of the Danny Boy Vehicle Checkpoint who had travelled there in a number of different types of vehicles.
177. A number of medical staff who worked at the Al Majar al’Kabir Hospital said that they had driven in or been present in ambulances that had travelled to the relevant area at some point during the afternoon of 14th May 2004. Some said that they had been fired on by British Troops whilst in an ambulance that day.
178. One of the soldiers described the appearance of an ambulance which had stopped to allow a number of armed insurgents to get out of the back. Because the vehicle had given the appearance of an ambulance, the British had not fired at it as it approached. However, once the armed insurgents had revealed themselves by getting out at the back, the nearest soldiers had opened fire because they considered it was a legitimate target.
179. Ali Abed Eitheyyib (witness 79) gave evidence to the effect that he was an ambulance driver and that his ambulance had been genuinely engaged in its medical role throughout the day. I accept that his ambulance was not the apparent “ambulance” that was used to transport insurgents and to which I have just referred.
180. Ali Eitheyyib said that sometimes firing had been in his general direction. He was unable to say whether firing had been deliberately aimed at his vehicle.
181. I am satisfied that none of the British Troops deliberately directed any of their gunfire specifically at the ambulance driven by Ali Eitheyyib or at any other vehicle that was genuinely operating as an ambulance.
182. A short time after they had dismounted from their Land Rovers, the dismounts were ordered to get back into their vehicles and to continue their journey back towards Camp Abu Naji. W31 and W33 were instructed to remain in place and hold the checkpoint.
183. Warriors W31 and W33 were told that support was on its way in the form of Challenger 2 MBTs. Whilst awaiting the arrival of the promised support, both W31 and W33 continued to exchange fire with the nearby insurgent gunmen. After holding the position for some time, they were joined by a Challenger 2 MBT, call sign D90 and another Warrior AIFV W30.
184. The gun battle continued. The Challenger 2 MBT, D90 laid down suppressive fire on the insurgents, using its coaxial chain gun for that purpose.
185. As the firing began to die down, Warriors W31 and W33 were ordered to withdraw from contact and travel back to Camp Abu Naji. In the event, W33 had to travel in reverse gear because of various mechanical problems that had been caused by the unexploded RPG that was still embedded in its rear left-hand side. The two Warriors travelled back to Camp Abu Naji in convoy.
186. The Challenger 2 MBT D90 and the Warrior AIFV W30 remained at The Danny Boy Vehicle Checkpoint exchanging fire with the insurgents. Eventually, they too were ordered to withdraw and to make their way back to Camp Abu Naji. They did so.

Miscellaneous matters relating generally to the Battle of Danny Boy

187. The Battle of Danny Boy was a significant event for the local Iraqi population. The scale and nature of the Battle, together with the fact that both dead bodies and live detainees had been taken back to Camp Abu Naji by British soldiers meant that rumours, stories and speculation began to spread. Thus, there are a number of miscellaneous matters relating to the circumstances of the Battle, some of which were factually correct to the extent indicated in the Report and others that were no more than the product of rumour and suspicion.

The conversation overheard by Lance Corporal Philip Muir at a later date

188. In his written Inquiry statement, Lance Corporal Philip Muir (now French) described how, at a later date, he had overheard a conversation between two Private soldiers at Camp Abu Naji. According to Lance Corporal Muir, the gist of what he overheard was to the effect that one of the soldiers told the other that an enemy had put his hands in the air during the Battle of Danny Boy but that the soldier had shot him anyway. He said that he was so concerned about what he had overheard that he spoke to the Padre who advised him to speak to Major James Coote which he then did.

189. Major Coote, when giving evidence, said that he could not recall having had any such conversation with Lance Corporal Muir, but that if it did take place, he would have reported it up the chain of command. There is no evidence that any such report was made by Major Coote.

190. I think that Lance Corporal Muir may have been mistaken about whether he actually did report the matter to Major Coote or at least about the way in which he recounted the matter to Major Coote, if he did. I have no doubt that if Lance Corporal Muir had reported the matter to Major Coote in a manner that suggested that there might be some truth in what he had overheard, Major Coote would have reported the matter up the chain of command. In fact, he appears not to have done so.

191. I am satisfied that whether he reported it or not, Lance Corporal Muir did overhear part of a conversation between two soldiers at Camp Abu Naji at some date after the Battle of Danny Boy had taken place. It may be that he misheard or misunderstood the fragment of conversation, that the conversation was about another incident altogether or that the soldier in question was merely bragging untruthfully. Nothing in the evidence which I have heard, read and seen about the events of 14 May 2004 give me any cause to believe that any such incident might have occurred during the Battle of Danny Boy. It seems to me very unlikely that there was any truth in what Lance Corporal Muir overheard. It seems to me likely that what he overheard was some idle and untruthful bragging by the soldiers in question.

The presence of "Innocent" civilians on or near the Battlefield on 14 May 2004

192. I have no doubt that the Iraqis who were detained or killed during the course of the Northern and Southern battles were armed Insurgents who had willingly and deliberately participated in the armed ambush and attack on British Forces along Route 6 on 14 May 2004. In addition, there were a large number of Iraqis who had been involved in the armed ambush and the ensuing battles, who were not killed or detained by the British Army that day.

193. The Inquiry also heard evidence which suggested that there had been a number of civilian Iraqis present in the general vicinity of the Northern Battle. I accept that evidence. However, I am quite sure from all the evidence that I have heard, seen and read that none of those

civilians were inadvertently caught up in the fighting or had been fired at or injured in any way by British Forces that day.

The presence of aircraft in the airspace over or near the Battle of Danny Boy

- 194.** On the evidence which I have read, seen and heard, I am satisfied that there was a Lynx helicopter flight from Basra to Camp Abu Naji on 14 May 2004 which would have taken it very close to the general area of the Northern Battle.
- 195.** A Phoenix “drone” was also deployed at 20:19 hours on 14 May 2004 in order to monitor the area around the Battle.
- 196.** I further accept that there was a Puma 3 helicopter flight over the scene of the Northern Battle and/or the Danny Boy VCP on 14 May 2004. I accept oral evidence that it occurred during the early stages of the Northern Battle in the vicinity of the Danny Boy VCP.
- 197.** It seems to be likely that an Immediate Response Team (“IRT”), which was a helicopter team, at Camp Abu Naji was put on standby to deal with casualties. In the event, it was decided that they were not needed and thus it is unlikely that the helicopter (a Chinook) was ever airborne, although it may have been flown from Basra to Camp Abu Naji in order to be on standby for the purpose of dealing with casualties. If that did occur, the helicopter is likely to have taken a flight path that took it close to the scene of the battle.
- 198.** Some of the Iraqi witnesses describe seeing aircraft, one described a helicopter firing rockets, another firing what were described as “*lightning disks*”, a third described seeing a helicopter dropping objects of different colours on the ground on the same day. Another referred to an aeroplane throwing out papers which had words written in Arabic.
- 199.** I am quite sure that no objects or weapons were fired from any aircraft flying over or in the vicinity of the Battlefield on 14 May 2004.

Allegations with regard to the use of dogs by British Forces on the Battlefield on 14 May 2004

- 200.** Some Iraqi witnesses described seeing dogs on the Battlefield accompanying British soldiers.
- 201.** I am quite sure that no dogs were used by the British Forces during the Battle of Danny Boy on 14 May 2004.

Allegations that microbiological/chemical weapons were used by the British

- 202.** Khuder Al-Sweady (witness 1) alleged in his first written Inquiry Statement and in an interview which he gave to the BBC in December 2007 that British Forces had used microbiological/chemical weapons on the Battlefield. He persisted in maintaining that allegation during the course of his oral evidence to the Inquiry.
- 203.** I have no doubt that his allegations of the use of microbiological and chemical weapons by British Forces are completely untrue. In my view, Khuder Al-Sweady made these very serious allegations recklessly and without any foundation or proper evidential basis. These particular allegations speak volumes about that witness’ readiness to make very serious and wholly unfounded allegations about the conduct of British Forces generally and to do so without any regard for the truth. I have no doubt that he felt justified in making such allegations, because

of his wider and wholly unreasonable conviction that the British Forces were in Iraq simply to commit crime.

Evidence of sightings of detainees and deceased while still alive on the battlefield on 14 May 2004

- 204.** A number of Iraqi witnesses gave evidence of seeing those were in fact killed on the battlefield alive and in some cases being ill-treated by British soldiers, including Hamid Mez'el Kareem A'shour Al-Sweady (deceased 3). One allegation was that another Iraqi man was taken prisoner and then tied to the front of a vehicle, with his arms outstretched like a cross. (Hassan Radhi Khafeef Al-Keemy Al-Aosi (deceased 9)) I disbelieve all that evidence. The dead body of Hassan Al-Aosi was one of those collected from the Southern Battlefield on 14 May 2004 after he taken part in the ambush on British Forces and been killed in the Southern Battle. And I have no doubt as explained elsewhere in this Summary and more fully in the body of the Report that Hamid Al-Sweady was one of the armed insurgents who had been killed in the Northern Battle having attacked the British forces from the Storm Drain position. All those who gave evidence to the effect that he was detained alive were giving evidence which consisted of a series of elaborate and deliberate lies intended to support the false allegation that Iraqi men, who had been detained alive on the battlefield that day had subsequently been unlawfully killed at Camp Abu Naji on 14/15 May 2004.

The recovery of weapons and ammunition from the detainees and/or the dead bodies on the Southern and the Northern Battlefields on 14 May 2004

- 205.** All nine detainees were found with or near various weapons and ammunition when they were captured by British soldiers during the Battle of Danny Boy on 14 May 2004. The British soldiers also found weapons and ammunition on or near the bodies of the various Iraqi men who had died during the battle and whose bodies lay on both the Southern and Northern Battlefields.

The collection of weaponry from the Southern Battlefield

- 206.** A number of the soldiers who were engaged in the Southern Battle described how they had been instructed to search the enemy dead and to collect their weapons and ammunition. It seems that all the weapons and ammunitions were collected up and loaded into the back of a vehicle or vehicles, apart from one RPG that was left behind because the warhead had already been fitted and thus was too dangerous to take back. No attempt was made to link any particular weapon with any particular body at that stage and the weaponry was simply collected and piled up.
- 207.** Additionally, the AK47 that had been found in the possession of Hamzah Joudah Faraj Almalje (detainee 772) was also taken back to Camp Abu Naji.

The collection of weaponry from the Northern Battlefield

- 208.** Similarly, a large quantity of weapons and ammunitions was collected from the dead bodies and from the detainees on the Northern Battlefield on 14 May 2004 and taken back to Camp Abu Naji. In the prevailing circumstances, it was impracticable and unsafe to bag and tag the weapons, thus no attempt was made to link the weapons to the bodies they had been taken from and/or found near the detainees.

The handover of the captured weaponry at Camp Abu Naji on 14 May 2004

- 209.** It appears that most (if not all) of the weapons from the Southern Battlefield were conveyed back to Camp Abu Naji in the same Land Rovers as the dead bodies from the Southern Battlefield.
- 210.** On arrival at Camp Abu Naji, the captured weapons were cleared and made safe outside the Medical Centre. All the captured weapons were eventually taken to the Military Police Station at Camp Abu Naji where a number of Royal Military Police (“RMP”) were thereafter involved in their handling and storage.
- 211.** The RMP photographed the captured weapons that evening in accordance with standard procedure. Details of each captured weapon were also recorded in a register. That job was done by Corporal Adam Ridley. He recorded a total of 31 separate captured weapons, including AK47s, AKSs, G3 Rifles, RPGs and an RPK. There were also items of ancillary equipment, such as webbing and chest rigs.
- 212.** Corporal Ridley also explained that he had written out a label for each of the captured weapons, with a description of the weapon and its serial number and that he had then attached the label to the weapon in question.
- 213.** Thereafter, the labelled weapons were placed in one of the ISO containers close to the RMP Ops Room which was routinely used for the storage of captured and/or seized weapons.
- 214.** As part of the RMP investigation, Sergeant Jason Kendall arranged for the weapons which had been captured during the Battle of Danny Boy to be recovered and formally assigned numbers/references. That occurred between 28 June 2004 and 22 July 2004. Additionally, the weapons were photographed again.
- 215.** No comparison exercise was carried out to link fingerprint and/or DNA evidence from the detainees and/or dead bodies with equivalent evidence from the weaponry.
- 216.** In 2006, it was determined that the weapons in question did not constitute criminal property. It was decided to transfer the weapons to the Special Investigation Branch (“SIB”) property store from where they were later taken to the Confiscated Weapon Cell for disposal. That transfer took place on 6 August 2006.

Overview of the movement of the dead Iraqi bodies

The order to collect the bodies of the dead insurgents

- 217.** 1 Mechanized Brigade (the “Brigade”) was the Brigade responsible for the Provinces of Maysan and Basra. It was commanded by Brigadier Andrew Kennett. He was supported by a team which included his Chief of Staff, Major Jonathan Biggart, the Deputy Chief of Staff, Major Simon Hutchings and the Operations Officer, Captain Neal Croft. Together, they were responsible to the General Officer Commanding (“GOC”), Multi-National Division (South-East), who in May 2004 was Major General Andrew Stewart.
- 218.** As the Brigade Commander, Brigadier Kennett had operational control over the Brigade, a task which was then delegated to the various Commanders down the chain of command within the four Battle Groups that made up the Brigade. One of those Battle Groups was 1PWRR, of which Lieutenant Colonel Matthew Maer was the Commanding Officer and Major

Richard Toby Walch was the Chief of Staff. It was in 1PWRR's area of operations that the Battle of Danny Boy took place on 14 May 2004.

- 219.** As explained by Brigadier Kennett, the various commanders below him in the chain of command were afforded a large degree of discretion in how they carried out their delegated tasks, a style of command known as "Mission Command". Stated in general terms, the underlying principle of "Mission Command" is that the senior officer makes plain his own overall objectives and intentions and then leaves it to those lower in the chain of command to interpret and carry them out in the most appropriate manner in the prevailing circumstances. Thus, the senior officer makes his intent clear, but does not specify precisely how that intent is to be carried out on the ground.
- 220.** During the afternoon of 14 May 2004, Brigadier Kennett was informed by Captain Croft that a battle was taking place near the Danny Boy VCP. Brigadier Kennett then spoke to Major Allan Costley who was the Brigade's Senior Intelligence Officer. Major Costley suggested that those who were behind this attack on British troops could well be the same as those who had been involved in the murder of six Royal Military Policemen in Al Majar al'Kabir in June 2003. The investigation into those deaths was a high priority for Brigade. It was also a matter that had been raised at the highest levels within the UK Government. Brigadier Kennett had been given the task of apprehending those who were suspected of being responsible for the murder of the six Royal Military Policemen. One of the suspects believed to have been involved in the murder was Naseer Zachra Abd Rufeiq, known to the military witnesses by the code name "Bravo 1". On 14 May 2004, it was thought that Bravo 1 might have been involved in the battle at the Danny Boy VCP. It was therefore considered to be very important to establish whether Bravo 1 was, in fact, amongst the insurgents who had been killed in the course of that battle.
- 221.** As that conversation developed, it was decided that there was a need to identify dead insurgents and that the Battle Group involved should be given that task. The general objective of seeking to identify the dead insurgents was endorsed by Brigadier Kennett.
- 222.** Major Biggart spoke to the Brigade Operations Room so that the instruction to identify the dead was passed on to the Battle Group involved in the battle (i.e. 1PWRR). In his oral evidence to the Inquiry Major Biggart said that he believed that the substance of the instruction which he gave for onward transmission to the Battle Group was that the dead insurgents were to be identified and that he had accompanied that instruction with a suggestion that the best way of achieving that objective would probably be to photograph them.
- 223.** I am satisfied that the original order or instruction from Brigade to 1PWRR Battle Group was that the dead insurgents were to be identified. It is very likely that the original order included a direction or suggestion that this could be best achieved by photographing the bodies. However, I am also satisfied that the original order did not include any specific instructions as to where or with what equipment the photographs were to be taken. In particular, the place where the photographs were to be taken was not specified.
- 224.** Unfortunately, none of the logs maintained by Brigade or by the Battle Group have any record that the original order or instruction to identify/photograph the dead was passed on to the 1PWRR Battle Group at Camp Abu Naji. It is unfortunate, but perhaps not altogether surprising that in the circumstances the need to make a record of the original order in one or other of the logs was overlooked. The overall situation was very serious and complex. Events were unfolding at a fast pace.

- 225.** During his oral evidence to the Inquiry, Major Walch said that he was sure that he had received a clear and direct order to collect the dead from the battlefield. I accept that evidence. It therefore seems to me that, in the period between the transmission of Brigade's original order to 1PWRR Operations Room (that the dead were to be identified) and the instruction to collect the dead that Major Walch received somewhat later, there had been some further discussion about how and where the original order was to be implemented. I do not believe that the mutation of the original order, from being one requiring the identification of the dead bodies to being one requiring the collection of the dead bodies from the battlefield, was due to any misunderstanding or miscommunication between Brigade and the Battle Group. Rather, it was the result of a process of working out how best to achieve the objective of the original order in the circumstances then prevailing on the ground. The Battle Group proposed to deal with the identification task which had been given to it by taking the dead bodies back to Camp Abu Naji in order for them to be identified because it was believed by the Battle Group Operations Room that there were no cameras available on the battlefield. Brigade's approval was sought for that probably because of the very unusual nature of the proposed method of implementing the original order. Nevertheless, the outcome was broadly illustrative of the concept of "Mission Command" because the intent of those higher up the chain of command was appropriately implemented by a method determined by those on the ground. In effect the Battle Group implemented Brigade's intent, as expressed in the original order, by carrying out that order in a manner that was considered to be practicable in the prevailing circumstances.
- 226.** It is now apparent that a few soldiers did have personal cameras with them on the battlefield, although it would seem that not all the soldiers at the battle were aware of them. It seems to me to be more than likely that those soldiers who were involved in discussing the practicality of taking photographs on the battlefield were not aware of the limited number of personal cameras on the battlefield.
- 227.** Major James Coote (the Officer Commanding ("OC"), C Company 1PWRR) recalled having received instructions over the radio, from the Operations Room at Camp Abu Naji, to bring back the Iraqi dead to Camp Abu Naji. He said he was not happy about the order because he did not see the point of it and he was concerned for the safety of the men. He queried the order by making contact with the Operations Room at Camp Abu Naji via satellite telephone. It seems to me likely that Major Coote queried the order to collect the dead at some stage after that particular course of action had been approved by Brigade, rather than at some earlier stage in the discussions about the practicalities of carrying out the original order and before the order had actually crystallised into its mutated form of being an order to collect the dead from the battlefield.
- 228.** Major Coote passed the order on to WO2 David Falconer, who recalled having received and implemented it. Major Coote then passed the message to all other Warrior call signs over the radio net.
- 229.** I have no doubt, that when they collected the bodies of dead insurgents from the battlefields of both the southern and northern battles, the soldiers on the ground were carrying out a specific order to collect the dead. It was an unusual order.
- 230.** During his oral evidence to the Inquiry, Brigadier Kennett confirmed that he took full responsibility for the fact that dead bodies had been collected from the battlefield. He also recalled how he had spoken with others after 14 May 2004 and how he had made a general apology in which he expressed his regret for the fact that the order to collect the dead had been distressing for everybody involved. However he made it clear in his evidence that the

apology did not amount to an acceptance by him that the decision to collect the dead bodies had been wrong. He did not accept that the order had been the result of any form of mistake or misunderstanding. I accept that to be correct. I am satisfied that Brigadier Kennett made that apology because he honestly and decently recognised that, as the Brigade Commander, he was accountable for the order and for the fact that he had earlier given instructions for the dead to be identified. Brigadier Kennett was both a truthful and impressive witness who fully accepted the responsibilities that went with his rank and position and who sought to give frank and honest answers with regard to what he could remember about how the order in question had come about.

- 231.** Consideration of the operational merits or otherwise of the order is not within the Inquiry's Terms of Reference. However, I accept that both Brigadier Kennett and Major Biggart believed that the order was both justified and appropriate, both at the time it was given and with the benefit of hindsight.
- 232.** It is clear that the order to collect the dead from the battlefield had both immediate and long-term consequences. One of the main consequences of the order was very unfortunate. There is no doubt that all the soldiers who handled the dead bodies found the task to be extremely distressing and upsetting and one that had a profound and lasting effect on them. All the military witnesses who were involved with the collection and/or handling of the dead bodies described the significant and long-term emotional effect that it had on them.
- 233.** The other main consequence of the order and the one of most immediate significance to the subject-matter of this Inquiry was that it left the British Forces very exposed to allegations that Iraqi men had been murdered, tortured and mutilated in Camp Abu Naji overnight on 14 May 2004. This was a consequence which, although not foreseen at the time, turned out to be of great importance in causing the proliferation and the provision of apparent substance to the rapidly disseminated rumours and stories of murder, torture and mutilation that began to circulate in the local community almost immediately after the Battle of Danny Boy.
- 234.** The order to collect the dead from the battlefield and take them back to Camp Abu Naji to be identified, gave rise to and provided momentum for the rumours and allegations of mutilation, torture and murder that were very soon circulating amongst the local Iraqi population and have continued until today.

The collection of the dead Iraqi bodies by British Soldiers and their transport back to Camp Abu Naji on 14 May 2004

- 235.** The order to collect the bodies of the Iraqi men killed during the battle at Danny Boy was received at the site of the Southern Battle by Lieutenant William Passmore during a call on a satellite telephone to Major Adam Griffiths. Lieutenant Passmore then passed on the order to Sergeants Paul Kelly and Stuart Henderson. It appears that the two Platoon Sergeants took responsibility for its implementation.
- 236.** A total of 12 bodies of dead Iraqi men were recovered from the Southern Battlefield by the British Military on 14 May 2004. It seems to me very likely that eight of those bodies were found in the Southern Tank ditch and that four were found in the open ground between the derelict buildings and Route 6.
- 237.** Before any dead body was moved from where it lay on the Battlefield, the body was searched by the British soldiers. It is alleged by Private Duncan Aston, that Private Steven Wells stamped

on the head of one of the dead bodies. Having heard all the evidence, I have come to the firm conclusion that Private Wells did not deliberately stamp on the head of a deceased Iraqi.

- 238.** Three Land Rovers were brought closer to the scene of the engagement. The bodies were carried over to the Land Rovers and lifted into the backs of two of the vehicles. That was a particularly unpleasant task. I am satisfied that, to the extent the prevailing circumstances permitted, the soldiers treated the dead bodies with appropriate care and respect when collecting and carrying them on the Battlefield that day. Nevertheless, despite the care taken by the soldiers in carrying out this particular difficult and unpleasant task, inevitably the process itself involved an inherent risk of causing some intentional further damage to the bodies. Some of the bodies were swung into the rear of the vehicle as part of an overall process of loading them as quickly and efficiently as possible. That was because of the difficult and dangerous circumstances then prevailing. It was not an indication that the bodies were being treated with any lack of respect by the soldiers who were carrying out the job.
- 239.** Then the soldiers had to return to Camp Abu Naji in the same vehicles as those used for transporting the dead insurgents. It was necessary to provide top cover because the convoy of vehicles from the Southern Battlefield had to travel through an area of considerable enemy activity and was subjected to a significant amount of hostile fire during the return journey.
- 240.** The provision of top cover necessitated at least some of the soldiers standing on some of the bodies for some of the time.
- 241.** It is probable that some of the dead Iraqi bodies suffered further damage as a result of being stood upon by some of the soldiers in this way. It seems to me likely that the extent of any existing wounds or fractures could well have been exacerbated by a body having been stood on, particularly over a period of time and whilst the vehicle was in motion. Furthermore, it also seems very likely that the soldiers' boots would have left marks and imprints on the bodies. However, I have no doubt that any such additional damage caused to the bodies in this way was not deliberate and was not the result of any disrespectful treatment. It was entirely due to force of circumstances.
- 242.** I am satisfied that the dead Iraqi bodies from the Southern Battlefield arrived at Camp Abu Naji at or about 19:15 hours on 14 May 2004. The Land Rovers, loaded with the dead Iraqi bodies, were driven to the Medical Centre. All twelve dead Iraqi bodies from the Southern Battlefield were driven to and unloaded in front of the A&E Building. I think it likely that two Land Rovers arrived there with four dead bodies in one and eight dead bodies in the other. Those twelve dead Iraqi bodies were joined by a further eight bodies which had been recovered by the British Soldiers from the Northern Battlefield. Those further eight bodies arrived at the A&E Building in a single Warrior later the same evening. I deal subsequently with the arrival of the further eight bodies from the Northern Battlefield.
- 243.** Captain John Turner was the commander of the Medical Troop, supporting 1PWRR. He and Corporal William McLeish both climbed inside the vehicles and conducted a cursory check to ensure that the bodies were dead.
- 244.** Unsurprisingly, the Inquiry was provided with a number of different accounts by the various witnesses about how the dead bodies were unloaded that evening.
- 245.** It seems to me very likely that some of the dead bodies were moved twice as part of the unloading process: first being placed just a few metres from the A&E Building and then moved to the rear of the A&E Building where they were placed next to one another in a line.

- 246.** After a grenade had fallen from one of the bodies, there was a check on the bodies to ensure that there were no further explosives present.
- 247.** I am quite sure that none of the soldiers who were involved in unloading the dead from the Land Rovers that evening deliberately inflicted any further damage on the bodies. There was a certain amount of vigorous or robust handling involved in the process of unloading the bodies, such as tugging and pulling in order to manoeuvre them out of Land Rovers. It is possible that accidental further damage may have been caused to the bodies during that process.
- 248.** The arrival of the Warrior W22 containing a further eight dead Iraqi bodies from the Northern Battlefield occurred two hours after the arrival of the Land Rovers containing the bodies from the Southern Battlefield. The rear door of the Warrior was stuck so Private Stuart Taylor volunteered to crawl through the interior of the vehicle in order to open the rear door from the inside. That must have been a very unpleasant and distressing experience, involving as it did, the crawling over eight badly injured dead bodies in semi-darkness. One of the bodies had assumed a position which made it appear as if it was sitting in the vehicle. That was probably the result of the body having been jolted about during the journey, rather than because it had been deliberately placed in such a posture. For a moment, Private Taylor genuinely thought that the body was still alive and that belief undoubtedly increased his already considerable distress.
- 249.** Once the bodies had been unloaded from the Warrior, Captain Turner said that he had checked them for signs of life in much the same way as he had done before. There was a search of the bodies before they were carried round to the rear of the A&E Building.
- 250.** Two Doctors dealt with the dead bodies once they had been unloaded from the Land Rovers and the Warrior AIFV that evening. Captain Kevin Bailey was the Regimental Medical Officer (“RMO”) for 1PWRR. He dealt with the twelve dead Iraqi bodies from the Southern Battlefield, whilst Major Kevin Burgess, the Senior Medical Officer (“SMO”) at Camp Abu Naji dealt with the remaining eight dead Iraqi bodies from the Northern Battlefield.
- 251.** Captain Bailey explained that he understood his role had been to confirm the bodies were dead not formally to certify them as dead. Captain Bailey confirmed that he had completed an FMed5³ form for each Iraqi body that he confirmed was dead that evening. He was unable to say what had happened to the forms in question.
- 252.** Major Burgess said that he remembered having completed an FMED5 form for each body, which was tucked into the body’s clothing at that stage and that the form was later placed in the body bag.
- 253.** Given the wholly unprecedented nature of what happened that evening, it is not surprising to me that there was no established procedure for dealing with the dead Iraqi bodies in the circumstances. I am, therefore, satisfied that there is no appropriate basis for criticising the shortcomings of the ad hoc manner in which matters proceeded that evening.
- 254.** Captain Francis Myatt, the Padre, described how he had tried to ensure that the dead bodies were presented in a dignified manner and so as to give the appearance of being at rest.
- 255.** Captain James Rands was the Battle Group Intelligence Officer (“IO”) for 1PWRR. It was his understanding that the reason for bringing the dead bodies back to Camp Abu Naji that

³ MoD form used to record medical examinations

evening, had been to ascertain whether Bravo 1 was amongst the dead and that he was to check the dead bodies to see whether that was, indeed, so. He said that he had not been instructed to photograph the bodies but it had seemed to him to be the appropriate thing to do in the circumstances. He did so with his own personal camera. He then returned to the Intelligence Cell, where he downloaded the photographs of the dead onto his personal laptop. He then returned to the Medical Centre to photograph the second batch of dead bodies.

- 256.** The Inquiry was provided with a total of 57 photographs that had been taken by Captain Rands of the dead Iraqi bodies on the evening of 14 May 2004. The Inquiry Analyst considered those photographs, examining the metadata and other evidence in order to determine the time at which the photographs were taken, the order in which they were taken and the positions in which the bodies had been lying in relation to each other.
- 257.** The Inquiry Analyst concluded that the photographs were taken in two distinct batches. The local times between which the first batch of photographs was taken on 14 May 2004 were 19:39 hours to 20:06 hours. The second batch of photographs was taken between 22:11 hours to 22:16 hours on the same day. These times were consistent with the evidence, as summarised above, that the 12 dead Iraqi bodies from the Southern Battlefield had arrived about 19:15 hours and that the other eight dead Iraqi bodies from the Northern Battlefield had arrived about 21:30 hours to 22:00 hours on the same day. I have no doubt that the photograph timings are accurate and that they were not altered retrospectively.
- 258.** Captain Rands said that he had quickly realised that Bravo 1 was not amongst the dead, but that he had nevertheless photographed all the bodies because he thought that the photographs would provide useful intelligence information. He went on to say that he had a vague recollection of having sent electronic copies of the photographs to Field HUMINT⁴ Team, to the Commanding Officer, to Brigade Intelligence and to Basra Palace.
- 259.** It was decided that after the bodies had been checked by Captain Bailey and Major Burgess and photographed by Captain Rands, they should be placed in body bags before being moved into the refrigerated ISO container for storage overnight.
- 260.** Captain Michael McDonald, the Quartermaster, explained that he had counted the dead Iraqi bodies whilst they were still lined up outside the A&E Building and before they were moved into the ISO container for overnight storage. He said that he was “*certain*” that there had been a total of 20 dead bodies. I have no doubt that his evidence that was both truthful and accurate.
- 261.** Having heard and read all the evidence, it is clear to me that the bodies were handled with care and respect whilst being placed into the body bags and then put into the ISO container.

The handover of the bodies to the Iraqi Community on 15 May 2004

- 262.** On the evening of 14 May 2004, Lieutenant Colonel Maer contacted the Iraqi Provincial Chief of Police, Abu Maythem, either through an interpreter or perhaps another person who worked for the Coalition Provisional Authority at the time. Lieutenant Colonel Maer was unable to recall the details of the conversation, but its purpose was to arrange the handover of the 20 dead bodies to the local Iraqi community the next day. Although he could not specifically recall doing so, Lieutenant Colonel Maer was confident that he would have told Abu Maythem the number of bodies that were to be handed over. Abbas Jawad Atiyah

⁴ Human Intelligence

Al-Saedi (witness 102), the manager of the Emergency Department at Al-Sadr Hospital in Amarah said that he had been contacted by a policeman with the rank of Major from the Maysan Police Directorate at about 15:00 hours to 15.30 hours on 14 May 2004 who asked for an ambulance to collect injured people at Camp Abu Naji.

- 263.** There was evidence from the staff at Al-Sadr Hospital to the effect that, during the afternoon of 14 May 2004, they had been informed that there were injured people to be collected from Camp Abu Naji. Some of the ambulance staff at Al-Sadr Hospital said that upon arriving at Camp Abu Naji that evening, they had been told that there were injured people for them to collect but that they had not yet arrived at the Camp Abu Naji. They also described how they had returned to Al-Sadr Hospital later than evening without having collected any injured or dead Iraqis. They described how they had returned to Al-Sadr Hospital after Camp Abu Naji had come under mortar fire that evening.
- 264.** I have no doubt that the accounts given by these ambulance staff from Al-Sadr Hospital, about their unsuccessful visit to Camp Abu Naji on the evening of 14 May 2004, had a significant impact upon the local community. I am sure that it made a major contribution to the local community's commonly held belief and conclusion that Iraqi men had been detained alive by the British Military on 14 May 2004 and had subsequently been unlawfully killed at Camp Abu Naji overnight on 14/15 May 2004.
- 265.** The information given to the ambulance staff from Al-Sadr Hospital with regard to the anticipated arrival of injured Iraqis, was plainly inaccurate. There was little or no evidence about how such a misunderstanding could have occurred.
- 266.** Further, three other Iraqi witnesses provided written and oral evidence to the Inquiry about how they had also gone to Camp Abu Naji on the evening of 14 May 2004. That visit was not connected in any way to the circumstances that gave rise to the visit of the ambulance staff from Al-Sadr Hospital.
- 267.** I am prepared to accept that those three further witnesses did go to Camp Abu Naji on the evening of 14 May 2004. However, their evidence as to the firing of warning shots and about having seen detainees within the camp that evening is false. I have no doubt that the deliberate lies about how a significant number of detainees had been seen alive within Camp Abu Naji that evening contributed to and helped perpetuate the rumours and false allegations that detainees had been unlawfully killed at Camp Abu Naji overnight.
- 268.** During the Senior Officers' first meeting of the day, it was decided that the dead Iraqi bodies would be handed back to the Iraqi community at the "*Golden Arches*", a well known location just outside the entrance to Camp Abu Naji.
- 269.** Before being handed back to the Iraqi community, the bodies were wrapped in sheets and blood samples were taken from them. That was because concern had been expressed that the soldiers might have become infected with Hepatitis B as a result of exposure to blood from the dead Iraqi bodies the previous day.
- 270.** Initially, the procedure adopted to take the blood was to insert a long needle into the heart. That is known as "*heart stabbing*". When that procedure proved to be unsuccessful, Major Kevin Burgess and Captain Claire Royston took samples from the blood and bodily fluids that had collected in the body bags overnight.

- 271.** I accept that it is possible that the heart stabbing procedure left marks on the bodies and that, if seen by relatives of the deceased or other members of the Iraqi community, that may well have caused some suspicion and uncertainty as to what had caused the marks.
- 272.** Once the bodies were wrapped and the samples taken, the bodies were replaced in their body bags and returned to the ISO container which had served as a temporary mortuary.
- 273.** At some stage during the morning of 15 May 2004, appropriate notice of the arrangements for the handover of the dead bodies to the local Iraqi community was given by the British Military Authorities at Camp Abu Naji.
- 274.** Initially, it was clear to everybody concerned that there were a number of dead Iraqi bodies to be collected from Camp Abu Naji that day. However, in the period that followed, the general understanding of the situation by the local Iraqi community appears to have become confused. That confusion was to have a significant impact on the events that followed.
- 275.** A number of different members of staff at the Al Majar al’Kabir hospital came to believe or assume that there were injured people to be collected. It is not clear from the evidence how it was that the message and/or information had become confused. In their written Closing Submissions, those representing the Iraqi Core Participants suggested that senior figures within the local community might have attempted to suppress news of the dead bodies at Camp Abu Naji, in order to prevent further unrest. I accept that this is a possibility, but it is speculation. In any event, I am satisfied that the confusion was the result of genuine misunderstanding or misapprehension on the part of the Iraqis concerned. It is evident, that among the large number of medics, managers and ambulance drivers from the of Al Majar al’Kabir and the Al-Sadr Hospitals, there were some who were aware that they were to collect dead bodies from Camp Abu Naji, but there were also many others who believed that they were to collect injured or wounded people.
- 276.** The bodies were removed from the refrigerated ISO containers onto the back of a Bedford truck. WO2 Graham Moger gave clear and consistent evidence that he had carefully counted 20 dead bodies as they were removed from the ISO container that morning. That particular part of his evidence made an important contribution to the overall body of evidence that established that no Iraqi detainees were unlawfully killed at Camp Abu Naji overnight on 14/15 May 2004, because it is absolutely clear that the same number of bodies was present in the container on the morning of the 15 May 2004 as had been placed in that container the previous night.
- 277.** Once the dead bodies were all loaded into the Bedford truck, it was driven out of Camp Abu Naji to the rendezvous point by The Golden Arches. It travelled in a convoy with personnel from the Quartermaster’s department providing protection.
- 278.** Two members of the Iraqi community who were present at the handover made allegations that British soldiers had displayed a lack of respect towards members of the Iraqi community and/or had ill-treated the dead bodies during the handover process. Having heard and seen the Iraqi witnesses and the military witnesses, I have no doubt that the evidence of the military witnesses about how the handover of the dead bodies had been conducted was both truthful and accurate. I am quite sure that the soldiers involved in the handover process did nothing deliberate to antagonise any member of the Iraqi community present and that they handled the bodies in an appropriate and respectful manner. I am sure that none of the dead bodies were intentionally trampled on or thrown out of the vehicles as is suggested by some Iraqi witnesses.

- 279.** Once the 20 dead bodies had been handed over by the British, they were loaded into a convoy of Iraqi ambulances. The intended destination was the Al Majar al’Kabir Hospital. However, on their way down Route 6, the convoy encountered Dr Adel Saleh Majeed Al-Shawi (witness 81) who stopped the convoy and redirected them to the Al-Sadr Hospital in Al Amarah. That is because, as he explained, he had thought to himself that they could be dealing with a massacre, and that the bodies required forensic examination. He said that it was clear that the deaths occurred in suspicious and controversial circumstances and that it was very important that the correct procedures were followed.
- 280.** Once the bodies arrived at the Al-Sadr Hospital, members of staff from that hospital and from the Al Majar al’Kabir Hospital started to unload the bodies from the ambulances and to take them into the refrigerators in the Hospital’s Forensic Department.
- 281.** The Inquiry has seen video recorded footage of the moment at which the bodies arrived at the Al-Sadr Hospital. It contains both video and audio recordings. It includes the comments and observations of those who were present when the bodies arrived at the hospital.
- 282.** Those video/audio recordings clearly demonstrate the genuine, if mistaken, opinion of those who were there at the time. The records clearly show that even before the bodies had been properly examined, conclusions were being reached about how some of the deceased has sustained their injuries. I have little doubt that these initial conclusions heavily influenced those that were expressed later after the bodies had been examined in greater detail.
- 283.** Some attempt was made to conduct forensic examination of some of the bodies: that seems to have been abandoned when the already tense atmosphere worsened. That was because the Chief of Police of Al Majar al’Kabir was killed by a shot to the head just outside the hospital.
- 284.** It was decided that it was impossible to continue with any further examination of the bodies at Al-Sadr hospital that day. The ambulances were called back and the bodies were loaded into the rear of the vehicle and taken to Al Majar al’Kabir Hospital.
- 285.** The process of transfer was evidently disorganised, and was conducted in an ad hoc and rushed manner. It involved the dead bodies being loaded and unloaded on several occasions and carried by a large number of people in very crowded and emotional conditions. In those circumstances, and given the injuries that the bodies had already sustained, it is possible that further damage was inadvertently caused to the bodies whilst they were at Al-Sadr Hospital in Amarah and while thereafter being transferred to Al Majar al’Kabir hospital.
- 286.** Once at the Al Majar al’Kabir Hospital, the bodies were examined by Dr Adel Al-Shawi and Dr Jafar Nasser Hussain Al-Bahadli (witness 82).
- 287.** After the examinations were completed at the Al Majar al’Kabir Hospital, the bodies were returned to their relatives. A number of the relatives conducted their own examination of the bodies when they first received them and a number conducted more detailed examinations of the bodies when they washed them prior to burial.
- 288.** Ultimately, the bodies of each of the men killed during the Battle of Danny Boy were taken by their families to be buried in the cemetery at Al Najaf.
- 289.** Issues 7, 8, 35, 48 and 51 of the Inquiry’s List of Issues require me to make detailed findings in relation to the bodies, their injuries and the causes of death. I set out the answers to those

Issues in some detail in the body of the Report. I do not add to this Executive Summary by repeating the findings.

- 290.** The nature and extent of the injuries sustained by the deceased Iraqi men were relevant to the Inquiry's Terms of Reference in two main respects.
- 291.** First, the nature of the injuries provides compelling evidence about how the men in question came to die. Stated in broad terms, evidence of bullet and shrapnel wounds to the bodies of the deceased would tend to support the claim made by the military that the deceased had been killed in the course of the Battle of Danny Boy. Similarly, evidence of injuries or wounds to the deceased (particularly ones that might have caused death) that do not appear to be injuries/wounds of a type likely to have been caused in the battle, might lend support to the allegation that those deceased had been killed otherwise than during the battle itself.
- 292.** Second, allegations and rumours of the torture of captured Iraqis and the mutilation of their dead bodies, as well as allegations of unlawful killing had begun to circulate almost as soon as the bodies of the 20 deceased Iraqis were handed over by the British Military to the local community on 15 May 2004. Thus, the Judicial Review proceedings which were the genesis of this Inquiry also included allegations that the deceased Iraqi men had been tortured prior to death and/or mutilated after death in addition to the allegations of lawful killing.
- 293.** Accordingly, as the position was when the Inquiry began its work, it was necessary for this Inquiry to carry out a detailed consideration of the nature and extent of the injuries on the bodies of the deceased Iraqis, in order to determine whether these provided any support for the allegations of torture, mutilation and unlawful killing.
- 294.** The Inquiry took a number of different steps and measures in order to ensure that it obtained as much evidence as possible of the injuries actually sustained by each of the deceased Iraqi men.
- 295.** First, the Inquiry obtained disclosure of the death certificates that had been produced for each of the deceased Iraqi men. Those certificates purported to record the cause or causes of death of each of the men and were available in both English and the original Arabic.
- 296.** Second, the Inquiry obtained disclosure of the photographs of the dead Iraqi bodies that had been taken by Captain James Rands on the evening of 14 May 2004 at Camp Abu Naji. It is possible to make out a number of different injuries on the bodies of the deceased Iraqi men depicted in those photographs.
- 297.** Third, the Inquiry obtained written and oral evidence from the various Iraqi medical professionals who had dealt with the bodies of the dead Iraqis after they had been handed over to the local community by the British Military on 15 May 2004.
- 298.** Fourth, the Inquiry obtained written and oral evidence from the various Iraqi medical professionals who had conducted post-mortem examinations of the dead bodies after they were handed over.
- 299.** Fifth, the Inquiry obtained written and oral evidence from the relatives of the deceased Iraqi men who had handled the dead bodies after they had been handed over on the 15 May 2004.
- 300.** Finally, the Inquiry obtained written and oral evidence from three expert witnesses based in the United Kingdom.

- 301.** However, in the light of the concession made on behalf of the Iraqi Core Participants on 20 March 2014, at the conclusion of the Inquiry's oral hearing, it is unnecessary to identify every injury present on each of the bodies of the deceased Iraqi men, and then to decide whether each such injury was caused ante or post-mortem, and in the case of each ante-mortem injury to determine whether it had been sustained during the course of the battle or whether it was deliberately inflicted on the man after capture. But for that concession, in respect of each post-mortem injury, I would then have had to determine whether the injury had been sustained as a result of deliberate mutilation by British soldiers or whether it had been caused unintentionally in the course of handling and transportation of the bodies.
- 302.** I have no doubt that the concession made on behalf of the Iraqi Core Participants on 20 March 2014, that the bodies of the dead Iraqi men were not mistreated at any stage between their arrival outside the Medical Centre at Camp Abu Naji on 14 May 2004 and their handover to the local Iraqi community on 15 May 2004 properly reflected the totality of the evidence about the matter. I am completely sure that none of the bodies of the deceased Iraqi men were mutilated or mistreated by the British in any way between the arrival of those bodies at the Medical Centre on the evening of 14 May 2004 and their eventual handover to the local Iraqi community on 15 May 2004.
- 303.** It seems to me to be clear also that any man who was actually killed during the Battle of Danny Boy had not been tortured by British soldiers prior to his death. I have heard no evidence whatsoever to suggest that any Iraqi man had been in the custody of British troops, before being released or escaping, then joining in the battle against the British troops and then being killed.
- 304.** I have no doubt that each of the 28 deceased Iraqi men who were killed by British soldiers as a result of the fighting on 14 May 2004 was an active and willing participant in the ambush. They were all killed as a result of British fire on the battlefield during the Battle. None of those men were tortured prior to their death in battle.
- 305.** Having regard to all the evidence which I have seen, read and heard I am quite sure that none of the bodies of the 20 deceased Iraqi men which were recovered from the battlefield on 14 May 2004 were deliberately mutilated between the death of the Iraqi men in question and the time at which their dead bodies arrived at the Medical Centre in Camp Abu Naji on the same day.
- 306.** In relation to each of the deceased, I set out in the Report the evidence which I have seen, read and heard about their injuries. I then make a number of general findings with regard to the evidence relating to the deceased in general.
- 307.** I have already made it plain that I have reached the following important and firm conclusions of fact, namely that none of the deceased Iraqi men were unlawfully killed at Camp Abu Naji on 14/15 May 2004, that none were tortured there and that none of the dead bodies were mutilated or deliberately mistreated by the British Military at any time after they had been found and collected on the Battlefield and before being handed over to the local Iraqi community on 15 May 2004. However, it is clear that a significant amount of the evidence, about the condition of the dead bodies, the nature of the injuries said to have been found upon them and the alleged causes of their deaths, is in apparent conflict with those conclusions of fact. The conflicting evidence is almost entirely to be found in the contents of the death certificates, the evidence of those who completed and issued the death certificates and the evidence of family and friends of the deceased.

The death certificates

- 308.** There are entries in the death certificates for some of the Iraqi deceased that are plainly inaccurate and untrue. Some of the death certificates contain observations to the effect that the body of the deceased showed signs of torture, beatings and mutilation. As I have already made plain, none of the Iraqi deceased with whom this Inquiry is concerned had been tortured, beaten or mutilated.
- 309.** It is clear from all the evidence that the overall circumstances in which the death certificates for the bodies were completed and issued at Al Majar al'Kabir Hospital on 15 May 2004 were highly charged emotionally and very confused. Although it is not possible to be categorical about it, I think that there is a possibility that some of the death certificates were completed and issued without the body having been examined by either of the doctors present that day.
- 310.** It is clear that both Dr Adel Saleh Majeed Al-Shawi (witness 81) and Dr Jafar Nasser Hussain Al-Bahadli (witness 82) contributed to the contents of the death certificates and that each of the certificates were signed by Dr Adel Al-Shawi.
- 311.** During the course of his oral evidence to the Inquiry, Dr Adel Al-Shawi said that, even before he had examined the dead bodies that day, he had already heard evidence to the effect that the British had not been ambushed, but had opened fire on a peaceful demonstration in reprisal for the killing of the six Royal Military Policemen who had been killed in Al Majar al'Kabir the previous year. Whilst listening to this part of the evidence, it was plain to me that Dr Adel Al-Shawi firmly believed that to have been the case, both at the time and even now.
- 312.** I have no doubt that, at the time he examined the dead bodies on 15 May 2004 and issued the death certificates in question, Dr Adel Al-Shawi was utterly convinced that the dead Iraqis were the innocent victims of an act of reprisal and vengeance by the British for the murder of the six Royal Military Policemen in Al Majar al'Kabir the year before. I have no doubt that this attitude on his part significantly affected the way in which he recorded the injuries that he observed on the bodies of the deceased and it seriously distorted his professional judgment and his objectivity.
- 313.** In their oral evidence to the Inquiry, both Dr Adel Al-Shawi and Dr Jafar Al-Bahadli readily accepted that they were not forensic pathologists. But that does not provide an adequate explanation or justification for the inclusion of inaccurate and/or false records of torture in the death certificates. Based on all the evidence that I have seen, heard and read, I have come to the firm conclusion that both doctors were so caught up in the emotional turmoil and hostility to the British Military then prevailing, that they both failed to apply the professionally rigorous and objective judgment that they should have done. Instead, they recklessly and irresponsibly recorded findings of torture on some of the death certificates, without any proper or objective scientific basis for doing so.
- 314.** I have no doubt that the references to torture and mutilation on the death certificates made a significant contribution to the perpetuation of the false allegations of torture and unlawful killing that persists to this day and which gave rise to this Inquiry. In my view, by their irresponsible and reckless behaviour, as detailed above, both Dr Adel Al-Shawi and Dr Jafar Al-Bahadli must bear some responsibility for that state of affairs.

The evidence of the relatives

- 315.** The Inquiry received a considerable amount of written and oral evidence from the relatives of the young men killed on 14 May 2004 about the injuries that had been sustained by their loved ones. Many of those witnesses described how they believed that their loved ones had been unlawfully killed, prior to death and their bodies mutilated after death.
- 316.** Most, if not all of the Iraqi witnesses could not understand what possible reason there could have been for collecting dead bodies from the Battlefield and then taking them back to Camp Abu Naji before handing them over to the Iraqi community the following morning. That inevitably led to the belief that the dead Iraqi men had been captured alive and had subsequently been unlawfully killed. Rumours to that effect became widespread in the locality very rapidly and, combined with a lack of understanding about the effect of modern weaponry and shrapnel, would have had a significant impact on how the injuries on the dead bodies were viewed and interpreted by the grief-stricken families.
- 317.** For the most part, I am satisfied that the relatives gave honest and accurate evidence about the specific injuries that they observed on the dead bodies of their loved ones. On occasions, evidence of some of those witnesses was at odds with what can be seen in the photographs taken by Captain James Rands or was in conflict with the evidence of other eye witnesses. On other occasions, I felt that the evidence of some of the witnesses tended towards exaggeration. I do not consider it necessary to go into the details of these shortcomings.

Camp Abu Naji

The arrival of the detainees on the evening of 14 May 2004

- 318.** Formerly an Iraqi 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. The town of Al Majar al'Kabir was about 20km south of Camp Abu Naji.
- 319.** In May 2004, detainees taken to Camp Abu Naji were held in a small compound ("the Prisoner Handling Compound") located next to the Battalion Headquarters Building. It 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. The facilities were basic and intended as temporary accommodation for a small number of prisoners for a very limited period of time before they were appropriately relocated. There were, approximately, 14 shower cubicles in the facility, each of which had tiled walls and a concrete floor and measured about 2m x 2m. They were utilised as single person cells. They were without doors.
- 320.** Within each cubicle was a chair that was positioned facing the wall. There were no showerheads or taps in the shower block and no running water. There was a supply of bottled water by the entrance.
- 321.** The processing and tactical questioning of the detainees took place in an Army tent which was about 12 foot square. It was positioned 5 – 10m from the entrance to the old shower block where the detainees were held.
- 322.** Hamzah Joudah Faraj Almalje (detainee 772) travelled back to Camp Abu Naji in W33. He was unloaded out of the Warrior and handed over the Provost Sergeant, Sergeant Julian King.

- 323.** In W21 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). They too were handed over to the guards.
- 324.** In W32 were Ahmed Jabbar Hammood Al-Furaiji (detainee 777), Hussain Fadhil Abass Al-Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780). W32 arrived at Camp Abu Naji about one hour after W21. Again, the detainees were unloaded and handed over to Sergeant King.
- 325.** Once a detainee had been unloaded, he was escorted into the Prisoner Handling Compound and into the Prisoner Holding Area (i.e. the disused shower block) where he was seated on a chair in one of the cubicles.
- 326.** The military evidence was to the effect that the detainees were moved quickly and firmly.
- 327.** 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.
- 328.** It is clear from the evidence which 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. It seems to me very likely that they would have been hesitant about getting out of the Warriors in the prevailing circumstances. In the event they required assistance to disembark from the vehicles, because they were both blindfolded and plasticuffed.
- 329.** Apart from the specific findings of fact which I make in the Report, I am satisfied that the detainees were handled in an appropriate manner whilst 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.
- 330.** I accept the evidence of Sergeant Craig Brodie that one soldier became very excited, 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.
- 331.** I also accept the evidence of Colour Sergeant Graham King who recalled that one of the guards had taken a detainee by the scruff of the neck and shaken him once. That was an act of over exuberance rather than a serious attempt to hurt the detainee or to inflict any deliberate injury. I also accept the evidence that Major Toby Walch gave concerning 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 whilst he was being unloaded from the military vehicle. That, of course, is hearsay, rather than direct evidence from Major Walch about what he saw. Moreover, 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. His statement about what happened that day was not given until 2008.
- 332.** In the Report, I consider each of the allegations made by each of the detainees. I conclude that there was no deliberate ill-treatment of any of the detainees when being taken out of the Warriors and escorted to the Prisoner Holding Area.

The Processing of the detainees at Camp Abu Naji

- 333.** Shortly after the detainees arrived at the Prisoner Holding Area 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.
- 334.** 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.
- 335.** The Officer in Charge (“OIC”) of processing on 14 May 2004 was WO2 Darren Cornhill. WO1 Shaun 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 and that WO2 Cornhill was in charge of processing throughout.
- 336.** The scribe, or note taker, on 14 May 2004 was Sergeant Martin Lane. He 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 and then recording them on the pro-forma Internment/Detainment records.
- 337.** The Medic was Corporal Shaun Carroll, a Class 1 Regimental Medical Assistant (“RMA”).
- 338.** There were two members of the Royal Military Police (“RMP”) present during processing; their role was to conduct the searches of each detainee and to restrain them as necessary, should they be non-compliant.
- 339.** There was a photographer, although the evidence is unclear as to his name.
- 340.** There is some inconsistency in the evidence with regard to the identity of the Interpreter. I am satisfied that the Interpreter throughout the entire processing of the detainees on 14 May 2004 was M013, whom I consider to be a truthful and reliable witness.
- 341.** The soldiers who acted as escorting guards varied from detainee to detainee.
- 342.** The time at which each detainee was taken for processing was recorded on the individual Prisoner Information Sheet that was provided for each detainee.
- 343.** The following four principal tasks were completed during processing on the evening on 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.

344. During the searches and medical examinations of the detainees, each detainee was asked to remove his clothes. Three of the detainees alleged that they had been forcibly stripped of all or some of his clothing in the processing tent. There was also some military evidence with regard to the forcible stripping of one of the detainees.
345. Having regard to the evidence as a whole, I have come to the conclusion that it is likely that Mahdi Jasim Abdullah Al-Behadili (detainee 773), Abbas Ali Abdulridha Al-Hameedawi (detainee 776) and Ahmed Jabbar Hammood Al-Furaiji (detainee 777) had all or some of their clothing forcibly removed during processing.
346. The purpose of the strip search was not solely for the medical examination: it was also to ensure that a full search and examination of each individual was conducted so there was nothing that could either do harm, be used to aid their escape or could be evidence of an offence.
347. Those purposes 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. I 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 processes of “*conditioning*” or “*softening up*”.
348. 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. I have no doubt that they did experience such feelings at the time. I have heard credible evidence from a number of sources that such an experience would have been particularly humiliating for an Iraqi Muslim man and I have no doubt that such is, indeed, the case.
349. WO2 Cornhill and WO1 Whyte each told me that he was unaware that the procedure would have caused additional humiliation for any Iraqi man. The cultural sensitivities 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 humiliation involved in requiring the detainees to strip naked during processing was not deliberately or maliciously inflicted but their sense of humiliation was exacerbated by the unsatisfactory procedure.
350. 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. They were made to remove their clothes and were medically examined in the centre of a 12 x 12 foot tent without any 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 that time.
351. More appropriate steps should have been taken to ensure that each detainee understood why he was being told to remove his clothes. That might have gone some way towards reassuring him and might have mitigated his sense of humiliation at being naked.
352. In the result, it seems to me that the manner and circumstances in which the requirement for each detainee to remove his clothes was put into effect did amount to a form of ill-treatment when the various unsatisfactory features of the whole procedure actually adopted to achieve that end, as set out in the Report, are considered as a whole.

- 353.** Whilst the tasks of searching and recording each detainee's clothing and effects was carried out, Corporal Shaun Carroll carried out a medical examination.
- 354.** Although there was some controversy over the issue during the hearings, it 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.
- 355.** Corporal Carroll explained that he would first conduct a visual examination, then carry out a physical examination whilst the detainee stood with his legs, fingers and toes spread and his arms raised facing forward. 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. One exception to the usual practice was if a detainee had long hair that might conceal an injury. In such circumstances, he would approach the detainee and run his hands over his head to check for blood.
- 356.** Corporal Carroll said that he would treat any injuries that he found on the detainee's body but he would not ask the detainee how he received such an injury. He would ask questions about the medical history and whether the detainee had any present medical requirements. Then Corporal Carroll would then complete a written Prisoner Medical Report. There was one for each of the nine detainees. He also contributed, where necessary, to the Prisoner Information Sheets.
- 357.** The scribe, Sergeant Martin Lane, noted any injuries that he had seen on the Internment/Detainment Records produced for each of the detainees. Reference should be made to the Prisoner Medical Reports, the Prisoner Information Sheets and the notes added to the Internment/Detainment Records for what was identified.
- 358.** In the case of the nine detainees that he examined on 14 May 2004, Corporal Carroll identified virtually all their evident injuries. However, his treatment of the injuries he found on Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was less than satisfactory in the circumstances. Although he had identified two gunshot grazes to Ibrahim Al-Ismaeeli's right leg and a third penetrating gunshot wound to his right foot, he did not consider referring the detainee to a doctor. Instead, he cleaned and dressed each of the wounds.
- 359.** Medical facilities were available at Camp Abu Naji which could and should have been used to treat Ibrahim Al-Ismaeeli on the evening of 14 May 2004. What seems to me to be significant is that Ibrahim Al-Ismaeeli had suffered a penetrating gunshot wound to his right foot, with no sign of an exit wound. That should have been sufficient to make Corporal Carroll aware that Ibrahim Al-Ismaeeli was likely to need urgent medical attention.
- 360.** It is clear from the notes of the x-ray examination subsequently taken at the Field Hospital at Shaibah Logistics Base on 16 May 2004 that Ibrahim Al-Ismaeeli actually had 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 metatarsal and also occasionally scattered throughout the foot"*.
- 361.** I am satisfied that this shortcoming in the medical treatment was not the result of any deliberate decision on the part of Corporal Carroll or anybody else to withhold necessary medical treatment. Rather, it was due to Corporal Carroll's failure to give proper consideration as to whether the wound to Ibrahim Al-Ismaeeli's right foot was sufficiently serious as to require further immediate attention.

- 362.** Both Annex G to MND(SE) SOI⁵ 390 and 1PWRR's SOI 207 require a "*Fit for Detention and Questioning Form*" to be signed at the conclusion of the medical examination. No such standard form existed in May 2004. However, on the Prisoner Medical Reports of five of the detainees, Corporal Carroll wrote the single word "*Fit*". On the Prisoner Medical Reports of the other four, he did not do so. In fact, all nine detainees were detained and were subjected to tactical questioning at Camp Abu Naji that night. That approach was haphazard and unsatisfactory.
- 363.** Corporal Carroll's explanation was that it was an "*oversight*" on his part that he had omitted the word "*Fit*" from four Prisoner Medical Reports. I accept that explanation.
- 364.** It was also clear from his evidence that Corporal Carroll did not realise that very shortly after processing, the nine detainees were to be subject to tactical questioning. He conducted the medical examinations on the basis of assessing whether the detainees were fit for detention. He assumed this meant that they were also fit for questioning in a general sense, but he believed that Captain Kevin Bailey would have had to conduct further medical examinations, if tactical questioning was to take place.
- 365.** There was thus a general failure on the part of the medical staff based at Camp Abu Naji to apply properly the policy requirements that detainees should be certified fit for both detention and questioning.
- 366.** That failure was also apparent from the evidence of the Medical Officer, Captain Bailey.
- 367.** In fact, it seems to me that Ibrahim 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.
- 368.** Photographs were taken of each detainee after the medical examination had been completed. In fact, the Inquiry has been provided with copies of photographs taken of seven detainees. Extensive searches to locate copies of the missing photographs of the two other detainees have proven to be unsuccessful. However, I have no reason to believe that the photographs are not available for any improper reasons.
- 369.** A number of detainees made specific allegations of ill-treatment during their processing at Camp Abu Naji on 14 May 2004. Apart from those matters specifically identified in paragraphs 326 to 349 above, I have rejected the various allegations made by the detainees with regard to their treatment during Processing in the Report. I am satisfied that, whilst the detainees were moved quickly, firmly and robustly from the shower cubicles/cells to the tent for Processing and then after Processing to return them to their shower block holding cell, there was no deliberate ill-treatment of any of the detainees whilst that occurred.

The Tactical Questioning of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004

- 370.** During the period in which they were detained at Camp Abu Naji, each of the nine detainees were subject 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 MND(SE) SOI 390 in the following terms:

⁵ Standard Operating Instructions

“The aim of tactical questioning (TQ) is to extract time sensitive tactical intelligence from an internee or to establish if any internee requires interrogation in the Divisional Temporary Detention Facility) (“DTDF”)

- 371.** 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 at their Tactical Questioning.
- 372.** 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. He had received training in Prisoner Handling and Tactical Questioning.
- 373.** I have some concerns about the training which he received. For example, I have no doubt that during his training, M004 gained 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. But I also have no doubt that this impression was the exact opposite of what the course instructors should have ensured that the students learned from such an example. Unfortunately, the lesson learned 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.
- 374.** Second, the question as to what type of conduct was considered to constitute an impermissible threat to a detainee requires further consideration. 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.
- 375.** 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. Similarly, he 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 a threat.
- 376.** 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, beyond the specific examples actually presented to him or her during training.
- 377.** Third, I have difficulty in understanding how, in practice, a student on a Tactical Questioning course 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.
- 378.** M004 said that he could not specifically recall the tactical questioning sessions which 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 which he usually followed.

- 379.** M004's normal procedure included the following:
- (i) After the escorts left the tent, the detainee would be left standing blindfolded in the tent in silence for a short time. Only M004 and the interpreter would be present;
 - (ii) Then M004 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 round him, blowing on the back of his neck whilst doing so;
 - (iii) Then he used a metal tent peg to bang suddenly on the table in the centre of the tent in order to startle the detainee;
 - (iv) Next, M004 would stand in front of the detainee, remove his plasticuffs and then remove the blindfold. Plasticuffs and blindfold removed, the detainee was given a chair to sit on;
 - (v) Thereafter, the questioning started.
- 380.** Each of the detainees gave an account of what they felt. There is one particular theme which 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 or being executed or of indefinite detention and separation from their families.
- 381.** I am satisfied that during their tactical questioning sessions, the nine detainees genuinely did not know what was going to happen to them and this created in all of them a very heightened emotional and fearful state of mind.
- 382.** There were five features or aspects of the way M004 conducted the tactical questioning that night which were also reflected or described in the accounts given by the nine detainees. They are:
- 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")

The use of sight restriction

- 383.** In respect of his use of sight restriction, 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, as summarised above. 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 JIC⁶ Directive on Interrogation by the Armed Forces in Internal Security Operations.

The invasion of the personal space of the detainee

384. I have no doubt that M004 honestly believed that it was acceptable to blow gently on the back of the blindfolded detainee's neck whilst walking round him in silence but it amounted to a form of ill-treatment. 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. 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. In all the circumstances, I am satisfied that 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

385. 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 involve 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.

386. I accept that 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 thus 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

387. 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, save that he should have appreciated from his training that it was not permissible to shout directly into a detainee's ear. I do not doubt that this was a genuine misunderstanding on his part.

388. Shouting was part of the technique known as the harsh technique or "*harshing*". The harsh technique embraces a wide range of different styles. 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).

389. The harshing technique was considered by Sir William Gage in the Baha Mousa Report, where he recommended at Recommendation 23 that:

"The harsh approach should no longer have a place in tactical questioning".

The Ministry of Defence withdrew the harsh technique from use shortly before the publication of the Baha Mousa Report.

⁶ Joint Intelligence Committee

390. I consider it very likely that M004 used the harsh technique when questioning each of the detainees, at least to some extent. 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. Although 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.

The application of the Bridge, Carrot, Stick technique

391. The technique is known by the acronym “BCS”.

392. M004 described that he had been taught the technique 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).”

393. During his oral evidence to the Inquiry, M004 was unable to remember what phraseology he used but he acknowledged that it was very similar to the sort of statement he had mentioned to the RMP in November 2004, namely:

“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.”

394. 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.

395. 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. 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.

396. In a letter to the Inquiry dated 8 September 2014, the MOD has said that the BCS technique has been removed from the training given to tactical questioners.

397. Additionally, the detainees made a number of allegations of other forms of ill-treatment. I reject them all. Those who made the allegations deliberately lied in each case.

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

- 398.** Furthermore, there were allegations of the utmost seriousness that were made by eight of the nine detainees. During the course of their evidence, eight of the nine detainees (Hamzah Joudah Faraj Almalje (detainee 772) was the exception) described sights and sounds that they said had led them to conclude that Iraqi men were being beaten and/or tortured and/or executed nearby at Camp Abu Naji on the night of the 14/15 May 2004.
- 399.** 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 persist today. However, as I have described earlier, at the conclusion of the oral evidence in this Inquiry, those representing the Iraqi Core Participants very properly conceded that the central allegation of unlawful killing at Camp Abu Naji on the night of 14/15 May 2004 could not be made good.
- 400.** Whilst I accept that in a heightened state of anxiety, some of the detainees might well have feared the worst, 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 sights, 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 allegation were false. Each of them therefore, consciously and deliberately lied.
- 401.** Furthermore, having regard to how much of the evidence of these eight detainees was 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.
- 402.** 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.

Overnight detention at Camp Abu Naji during 14/15 May 2004

Command Structure and the Governing Policy

- 403.** The management and treatment of detainees were governed by Standard Operating Instructions that had been issued at Divisional, Brigade and Battle Group levels, namely the MND(SE) SOI 390, 1Mech Bde SOI 218 and 1PWRR SOIs 206 and 207.
- 404.** MND(SE) SOI 390 was a policy guidance document which was the rule book for prisoner handling in Iraq. It had been updated on 25 March 2004. It included a number of annexes which provided guidance on all aspects of prisoner handling, including matters such as processing, tactical questioning and onward transfer to the DTDF at Shaibah.
- 405.** In addition to MND(SE) SOI 390, there were a number of Battle Group SOIs in force on 14 May 2004 which related to prisoner-handling, including 1PWRR SOI 206 which related to prisoner handling and 1PWRR SOI 207 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.

- 406.** There were also Brigade SOIs, such as 1 Mech Bde SOI 218, which related to prisoner-handling.
- 407.** 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. At the top of the chain of command were the Officer Commanding ("OC") and the Battle Group Internment Review Officer ("BGIRO"). The BGIRO was responsible for the entire post-arrest procedure with regard to detainees.
- 408.** 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. WO1 Shaun Whyte and WO2 Darren Cornhill were delegated the task of managing the actual handling of the detainees who were brought to Camp Abu Naji.
- 409.** 1PWRR SOI 206 (Annex A) also provided that the BGIRO was to be directly responsible to the Commanding Officer. As the Regimental Sergeant Major ("RSM"), WO1 Shaun Whyte was generally the officer in immediate charge of the Prisoner Handling Compound. In fact he was not on duty on 14 May 2004, but said that he had visited the Prisoner Handling Compound that night in his capacity as the acting RSM, as he put it, as an *"extra pair of eyes"*.
- 410.** On 14 May 2004 WO2 Darren Cornhill was the Warrant Officer in charge of the Prisoner Handling Compound. He was therefore in overall charge of the handling and processing of the nine detainees. According to MND(SE) SOI 390 WO2 Cornhill was the "Detainee Control Post Warrant Officer" ("DCPWO") on 14 May 2004. This meant that he 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.
- 411.** However, 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. He explained that he had delegated the responsibility of guarding the detainees in the Prisoner Holding Area to Staff Sergeant David Gutcher that night. 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.
- 412.** Staff Sergeant Gutcher was the Prisoner Holding Area 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). 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.
- 413.** Despite the belief held by WO2 Cornhill that, once he had 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 them 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 the absence of WO2 Cornhill, although this clearly did not reflect the provisions of the relevant SOIs, and appears to have been an entirely *ad hoc* arrangement.

- 414.** Another unsatisfactory aspect of the arrangements for prisoner-handling at Camp Abu Naji during the relevant period was that neither Staff Sergeant Gutcher nor WO1 Whyte nor WO2 Cornhill had undergone any type of formal training in prisoner-handling.
- 415.** 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.

Allegations of ill-treatment during the overnight detention

- 416.** In the Report I consider the various allegations and other potential forms of ill-treatment under 11 headings:

- | | |
|-----------------------------|---|
| Allegation 1: | The detainees were ill-treated in the way they were escorted by the guards. |
| 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 subject to physical assault. |
| 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 plasticuffed too tightly and so as to cause pain. |
| Potential ill-treatment 11: | The detainees were subjected to "static" or "white" noise from a radio. |

Allegation 1: The detainees were ill-treated in the way they were escorted by the guards

417. 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, 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 lavatory.
418. The detainees made a number of allegations concerning the way in which they were escorted whilst they were held at Camp Abu Naji during 14/15 May 2004.
419. 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 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/Tactical Questioning 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 whilst carrying out their duties. Having regard to the totality of the evidence, I am quite sure that none of the detainees were deliberately zig-zagged 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.

Allegation 2: The detainees were prevented from talking to one another which was enforced by verbal and physical assaults

420. In his oral evidence to the Inquiry, Staff Sergeant 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.
421. I accept that the guards were instructed to prevent the detainees from talking to one another whilst they were in the Prisoner Handling Compound. The main reason for this seems to have been that given by Captain 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.
422. 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.
423. 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 Bowden and Lance Corporal Collins that the order to remain silent was emphasised or enforced at times by pressure on a 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 physical violence.
424. 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 use the lavatory. It seems to me that 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 they be not allowed to speak at all.

- 425.** There were no interpreters present in the Prisoner Holding Area as a matter of course, although interpreters were present during processing and tactical questioning. 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.

Allegation 3: The detainees were not given an adequate supply of water

- 426.** The provision of water to detainees is expressly governed by international law. Article 89 of the Fourth Geneva Convention (1949) states “*Sufficient drinking water shall be supplied to internees*”.

- 427.** Additionally, Common Article 3 of that Convention requires that persons placed *hors de combat* by detention shall in all circumstances be treated humanely.

- 428.** MND(SE) SOI 390 makes similar provision to Article 89 in that it provides that “*food and water are to be provided as necessary*”.

- 429.** The 1PWRR SOI 207 gives specific instructions as to how water was to be provided. It stipulated that the following:

“must be adhered to in all TQ operations:

(a) Water to be made available on arrival.

(b) Water to be made available hourly thereafter, and more frequently if required.”

- 430.** The Prisoner Information Sheets record that water was provided for each of the detainees upon arrival and thereafter on return to the cells from tactical questioning between 00:20 hours and 02:16 hours, 03:00 hours when the detainees were given biscuits; and between 06:18 hours and 06:25 hours when the detainees were again given biscuits.

- 431.** 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 bottles of 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 water from that available supply.

- 432.** 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 1PWRR SOI 207, was not adhered to. It seems to me very likely that the guards were completely unaware of this particular requirement in any event.

- 433.** 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.

434. Apart from these 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 Area and it is likely that the strict operation of the no-talking policy meant 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.
435. 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.
436. There was no deliberate refusal to provide water. There was no wider policy of withholding water from the detainees.

Allegation 4: The guard force used the giving of water as an opportunity to carry out physical assaults on the detainees

437. There does not appear to have been a set procedure for providing the detainees with water whilst they were held at Camp Abu Naji overnight on 14/15 May 2004. The guards had not been given specific instructions as to how and when the detainees were to be provided with water and the guards therefore acted as circumstances seemed to require.
438. In his evidence to the Inquiry, Corporal Jeffrey McDonald described what had happened on two of the occasions when he had helped a detainee to drink from a bottle of water that night. I accept that evidence. In effect, he 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.
439. I also accept the evidence from Lance Corporal David Bond that he poured some water on the head of one of the detainees in order to drive away flies that had gathered near or around a wound on his head. I accept that he genuinely believed that he was acting in the detainee's best interest when he did so, because he poured only as much water as he thought necessary to clear the flies and cleanse the wound.
440. I am unable to rule out the possibility that there were incidents when a detainee or detainees were sworn at and/or hit over the head with a water bottle.
441. If there were such incidents it seems to me very likely that that is because requests for water were misinterpreted as an attempt to talk to other detainees. Thus the blow on the head with a water bottle very likely happened as the result of a misguided enforcement of the no-talking rule. No significant violence or injury would have been involved. It is not possible to say who would have been responsible for having behaved in that way, other than that it would have been one of the guards.

442. Generally, I do not accept the allegations made by the detainees, save to the extent that I accept what is said by Corporal McDonald and Lance Corporal Bond and my findings above in relation to the possible occasions of detainees being hit over the head with a bottle of water.

Allegation 5: The detainees were not given an adequate supply of food

443. The provision of food is governed by Article 89 of the Fourth Geneva Convention (1949) which states *“Daily food rations for internees shall be sufficient in quantity ...”*

444. The relevant provision in the MND(SE) SOI 390 stated: *“Food and water are to be provided as necessary”*.

445. The 1PWRR SOI 207 provided:

“A. A meal should be provided 6 hours after arrival at the TQ location.

B. A meal should be provided 12 hours after arrival at the TQ location.”

446. The *“Points to Note”* section of the Prisoner Information Sheets also said that detainees were to be fed every 6 hours. In fact, the Prisoner Information Sheets for the nine detainees recorded that they were given biscuits on two occasions, namely at 03.00 hours on 15 May 2004 and between 06:16 hours and 06:25 hours the same day. The Detention Log maintained at the DTDF at Shaibah recorded that the nine detainees were next given food at 17:31 hours on 15 May 2004. Thus, it is clear that over the first 24 hours or so of their captivity, the only food provided to the nine detainees consisted of two small quantities of biscuits.

447. Staff Sergeant David Gutcher accepted that it had been his responsibility to ensure that the detainees were given food although in his absence Sergeant Samuel McKee would have been responsible. He was unable to explain why the detainees had not been given any biscuits until 03:00 hours on 15 May 2004. Nor was he able to say whether this was because the tactical questioning of the detainees had not been completed until that hour. He was unable to confirm whether there had been a deliberate decision not to feed any of the detainees until they had been tactically questioned. He rejected the suggestion that he had intentionally kept them in a state of hunger or that he would have deliberately refused them food if they had asked.

448. Many of the military witnesses recalled that it was standard practice for detainees to be fed at the same time as the soldiers.

449. I am satisfied that none of the nine detainees were provided with any form of food until 03:00 hours on 15 May 2004 when they were provided with a small number of biscuits as recorded in the Prisoner Information Sheets.

450. 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 that delay, I consider the fact of it to be unsatisfactory.

451. 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.

452. The detainees should have been provided with a meal at the appropriate mealtime. That is what normally happens. 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 they 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 occur.

- 453.** Despite being aware that he had a responsibility for the detainees being 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. Even if food was delivered to the Prisoner Handling Compound, as he claimed, Sergeant Lane did nothing to make sure that the food was actually given to the detainees that night or the following morning.
- 454.** The provision of a small quantity of biscuits on two occasions during 14/15 May 2004 was wholly inadequate and no substitute for a meal at an appropriate time.
- 455.** 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 1PWRR SOI 207 which stipulated that detainees were to be given a meal at six hourly intervals. Neither Staff Sergeant Gutcher nor Sergeant McKee gave any consideration to the need to provide the detainees with a meal at an appropriate time and that was extremely unsatisfactory. I have no doubt that the overall failure to provide the detainees with adequate and/or sufficient food or meal(s) 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.

Allegation 6: The detainees were deliberately deprived of sleep. The detainees were made to stay awake and subject to physical assault

- 456.** 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.
- 457.** 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. He confirmed that no such order had emanated from him.
- 458.** 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 the tactical questioning, particularly given the short amount of time during which they would have been prevented from sleeping.
- 459.** 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. Therefore, if the detainees were kept awake until they had been tactically questioned, they would have been kept awake throughout that period. That would mean that they were kept awake until very late at night.
- 460.** In any event I am quite satisfied that the detainees were kept awake until they had been tactically questioned that night, although they were allowed to sleep after the tactical questioning was completed. 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.

- 461.** The detainees were not provided with camp beds. They remained seated 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 awakened from his sleep.
- 462.** 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 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. I accept that if a detainee tried to sit or sleep on the floor he was pulled back onto his chair.
- 463.** I accept that a detainee had some water splashed against his face when he lowered his head, another was tapped on the head with a hand or a water bottle, a third had his head lifted and was ordered to sit up and face forward and a fourth was tapped lightly. In each case that occurred because the guards were trying to keep that detainee awake until he was tactically questioned.

Allegation 7: The detainees were deprived of their sight for prolonged periods

- 464.** 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”.

- 465.** The 1PWRR SOI 207 repeated that instruction:

“Annex C to MQ MNDSE SOI 390 [sic] 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”.

- 466.** In his oral evidence to the Inquiry WO1 Shaun Whyte confirmed that he had been fully aware of SOI 390 but that he had decided to adopt a practice that he accepted could be construed as a departure from its terms, based on safety concerns.
- 467.** In 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 whilst 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 went on to explain:

“If there was any gap in their sight vision and that, they could see through it. But if they were staring at the wall, then that’s fair enough. Or they could turn their head”.

468. Captain James Rands in his evidence to the Inquiry, said that he believed that the reason for blindfolding was for the purposes of security. It was his recollection that 1PWRR had simply followed the procedure and practice of the previous Battle Group.
469. Other military witnesses spoke of security as being the reason to blindfold the detainees.
470. The Adjutant to 1PWRR, Captain Duncan Allen, acknowledged that restriction of the detainees' sight ensured that they remained unaware of their surroundings and 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.
471. 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 those replaced with blacked-out goggles.
472. 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.
473. Whilst the need to maintain security was given for that deprivation of sight, I have no doubt that there was another purpose, as was frankly acknowledged by the Adjutant of 1PWRR, Captain Duncan Allen. Restriction of sight ensured that the detainees remained unaware of their surroundings and helped maintain the shock of capture. Whilst that may not have been the main reason, it was an important factor. Many of the soldiers were perfectly well aware of this additional purpose.
474. I am 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. His Report made a recommendation that the governing Guidance Document for Detainee Handling should make it absolutely clear that sight deprivation should not be used as a means of segregating captured persons in order to prevent them communicating with each other.
475. 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 the 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.
476. There was no real security threat once the detainees were seated in individual cubicles within the Prisoner Holding Area: of that I am persuaded. 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. The risk of escape was 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 solely for the remaining additional purpose of maintaining the shock of capture. The blacked-out goggles should have been removed as soon as each detainee was seated in the cubicle.

- 477.** 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. I have no doubt that Captain Rands was substantially correct when he said that 1PWRR had simply followed the practice and procedure of the previous Battle Group. In reality the precise circumstances in which it was permissible to restrict the sight of detainees were never properly considered and certainly not implemented.
- 478.** Sir William Gage in the Baha Mousa Report made five recommendations regarding the use of sight restriction which have subsequently been implemented by the Ministry of Defence.
- 479.** Those recommendations had not been made at the time let alone officially implemented. But I am satisfied that good practice should have meant that the matters raised in those recommendations were actually considered and/or implemented in relation to the detainees held at Camp Abu Naji generally and on 14/15 May 2004 in particular. 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. That was wrong in principle and completely unacceptable.
- 480.** I am satisfied that the almost continuous 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.

Allegation 8: The lavatory arrangements were inadequate

- 481.** 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 again between 08:10 hours and 08:15 hours the same morning.
- 482.** None of the military witnesses remembered there having been any form of restriction on when the detainees were allowed to use a 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.
- 483.** It is clear that there was a routine for taking the detainees to the lavatory at set times whilst they were held at Camp Abu Naji. In addition to those set times the detainees could request to be taken to the lavatory at any time, as a number of military witnesses recalled in their evidence. It appears that separate unscheduled trips such as those were not recorded in the Prisoner Information Sheets although they should have been.
- 484.** 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 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 made it more difficult for the detainees to communicate their needs. 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.
- 485.** There does not appear to have been any separate 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 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. The consequence of the absence of any set procedure as to the practicalities was that it is possible, as one detainee alleged, that he remained handcuffed so that the soldiers had to pull down his trousers, under-garments and pull them back up for him. If that did happen it was not because the guards deliberately intended to humiliate or embarrass that detainee. It was done to assist him. However I readily accept that the experience would have been embarrassing and humiliating for that detainee. 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. Those who were in charge of prisoner handling at Camp Abu Naji 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.

Allegation 9: The detainees were ill-treated during medical examinations

- 486.** After they had been processed the nine detainees all received medical checks at 3-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. The Prisoner Information Sheets stipulated that detainees should be seen by a doctor every 3 hours after their initial medical check. Of the allegations made by the detainees, the allegation made by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) causes concern. With that one exception, I am satisfied that appropriate medical care was given and there was no ill-treatment.
- 487.** One of the allegations made by Ibrahim Al-Ismaeeli is to the effect that insufficient steps were taken to ensure that he was not medicated against his will. When he was given the medication, the only steps taken to inform him about what was happening was to tell him in English that pain relief was being given. That was wholly unsatisfactory. I can see no reason why an interpreter had not been called to assist. His blacked-out goggles should have been lifted so that he could see the pills in question and properly understand what was happening. If measures such as those had been taken, it is very likely that Ibrahim Al-Ismaeeli would have co-operated fully because he was obviously in pain, as a number of the soldiers who guarded or saw him in the Prisoner Holding Area that night remembered.
- 488.** As it was, Ibrahim Al-Ismaeeli was effectively forcibly medicated against his will. I accept Private Malcolm Shotton's evidence that he had not previously administered medication to a detainee in the Prisoner Handling Compound and that he therefore did not know the correct procedure for doing so. 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 have no doubt that appropriate steps should have been taken to ensure that Ibrahim Al-Ismaeeli fully understood 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 prison handling and the medical procedures at Camp Abu Naji that night. It is also of concern that Staff Sergeant Gutcher as the Prisoner Holding Area SNCO⁷ did not have a better understanding or control of this process.
- 489.** I am therefore satisfied that the manner in which Ibrahim Al-Ismaeeli 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 that detainee.

⁷ Senior Non Commissioned Officer

490. With that one exception I reject the allegation made by some of the detainees that they were ill-treated during medical examination.

Allegation 10: The detainees were deliberately plasticuffed too tightly and so as to cause pain

491. Many of the military witnesses recalled that the detainees had arrived at Camp Abu Naji on 14 May 2004 with plasticuffs applied, although there was disagreement whether the plasticuffs were applied to the front or the rear.
492. 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 whilst they were seated in their cubicles after processing, they had been plasticuffed to the front.
493. One of the detainees said that he had been repeatedly cuffed and un-cuffed before processing that night. He said that he had thereby been caused a lot of unbearable pain.
494. As to that, I am sure that that detainee was not cuffed and re-cuffed repeatedly. If there was any re-cuffing, it was in order to comply with protocol that the detainees should be cuffed to the front. If there was any over-tightening of cuffs, it was not deliberate.

Potential ill-treatment 11: The detainees were subjected to "static" or "white" noise from a radio.

495. There was some military evidence that there was a radio in the Prisoner Holding Area which was untuned and thus made a static noise.
496. None of the nine detainees made any allegations about a radio having been played whilst they were held in the cubicles. None of the detainees remarked on the presence of a radio at all.⁸
497. I am satisfied that 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, or from the processing tent or from the HQ building. It seems to have occurred in a somewhat *ad hoc* and informal fashion. It seems to be the case that it was not a formally authorised practice. I am unable to conclude with any certainty whether an untuned radio was played in the Prisoner Holding Area on 14/15 May 2004, although it seems unlikely. If an untuned radio was played, it is clear that it did not give rise to any concern on the part of any of the nine detainees who were there that night. Therefore, if it was played at all that night, it did not amount to any form of ill-treatment.
498. The use of an untuned radio in order to increase the noise in the Prisoner Handling Compound, even for security purposes was neither an appropriate nor a permissible practice. Thus, in the Baha Mousa Report, Sir William Gage included a recommendation that Prisoner Handling Guidance should make it clear that when necessary, ear defenders should be used to prevent captured persons from overhearing sensitive information.

⁸ Although Ibrahim Al-Ismaeeli (detainee 774) stated that the guards listened to music on headphones.

Overall conclusions with regard to the overnight detention of the detainees at Camp Abu Naji during 14/15 May 2004

- 499.** 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 is 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. Additionally there was no formal or satisfactory method whereby detainees could make their requests or concerns known.
- 500.** 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, the rigid enforcement of the no-talking rule and the prevention of sleep until the completion of tactical questioning are examples.
- 501.** The lack of guidance in some key areas together with a general perception that the “*shock of capture*” should be maintained, also resulted in some significantly sub-standard treatment, in particular the failure to provide a proper 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.

The Transfer of the Nine Detainees from Camp Abu Naji to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah on 15 May 2004

- 502.** 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.
- 503.** It appears that the formal decision to send these nine detainees to the DTDF was taken by Captain Duncan Allen, the 1PWRR Adjutant.
- 504.** The Detention/Internment Record for each detainee contains a section entitled “*Disposal*”. It appears to invite the person completing the document to identify, presumably by circling, which one of the three possible options is to apply to that particular detainee, namely:
- a. Release;
 - b. Intern;
 - c. Detain pending transfer to IZ authorities.
- 505.** 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.
- 506.** Captain Allen’s evidence was that he did not know why he did not complete that box.
- 507.** That seems to me to represent a somewhat slap-dash approach, but I do not believe that any adverse consequences resulted. It seems that the circumstances in which the nine detainees were captured on 14 May 2004 were such that, from the very outset, all the relevant personnel at Camp Abu Naji knew full well that the nine detainees would inevitably all be sent to the DTDF at Shaibah, once their Tactical Questioning had been completed. 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.

- 508.** 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. That 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 (“HLS”). He organised a number of guards to assist with the process.
- 509.** The Brigade Air Liaison Officer (“BALO”) at Camp Abu Naji, WO1 Keith Potter, was already at the HLS on 15 May 2004. He was there because he had been notified that morning that some British soldiers needed to be flown to Shaibah. WO1 Potter had met the soldiers in question at the HLS and, having spoken to them, learned 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. At that stage, WO1 Potter was unaware that any detainees were also due to be transported to Shaibah.
- 510.** Whilst he was talking to the soldiers, WO1 Potter became aware of the detainees being escorted to the HLS in single file along one of Camp Abu Naji’s internal road. 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. WO1 Potter said that he had asked one of the soldiers, who was a Junior Non-Commissioned Officer (“JNCO”) to calm the others down. WO1 Potter was confident that this action had successfully defused the situation.
- 511.** The soldiers who were going to Shaibah for their injections boarded the Chinook helicopter first. They were then followed onto the aircraft by the detainees and their escorts.
- 512.** The detainees got into the helicopter, were encouraged to sit down through the application of pressure on their shoulders, and a seatbelt was put on each of them. Each had a guard either side of him.
- 513.** Each detainee was handcuffed behind his back. I have no reason to believe that the decision to handcuff the detainees to the rear was based on any consideration other than what was deemed to be necessary and appropriate for the purposes of the detainees being transported in the aircraft.
- 514.** One of the detainees (Mahdi Jasim Abdullah Al-Behadili (detainee 773)) claimed that he was forced to lie on the floor of the plane throughout the flight. I have no doubt that this allegation was a deliberate lie.
- 515.** On arrival at Shaibah, the nine detainees were taken into the DTFD in a military ambulance.
- 516.** A number of the detainees allege that they were ill-treated in various ways by the British soldiers whilst they were being transferred from Camp Abu Naji to the DTFD at Shaibah on 15 May 2004.
- 517.** I am satisfied that there was no deliberate ill-treatment by the British soldiers during the transfer.
- 518.** Nevertheless, it is clear that some aspects of the arrangements for the transfer of the nine detainees were less than satisfactory. In particular, the fact that WO1 Potter was unaware that the nine detainees were to be transferred by helicopter to Shaibah 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. That problem could have been avoided altogether with more careful planning.

- 519.** Inadequate thought and planning also led to a lack of sufficient water being available for the escorts and detainees during the journey to the DTF that day. It also led to a delay in the transport of some of the detainees to the DTF 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.
- 520.** Last, 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. However, there were no adverse consequences as a result of the failure to do so, except that the more nervous detainees might have gained some reassurance from such a process. I very much doubt whether this failure had any adverse consequences.

The Shaibah Logistics Base (“Shaibah”)

Introduction to the Divisional Temporary Detention Facility (DTDF) at Shaibah

- 521.** On 15 May 2004, the detainees arrived at the DTF at Shaibah. 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 just over four 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.
- 522.** The DTF 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 DTF received detainees from all Coalition Forces within the particular area of operations.
- 523.** It is clear from paragraph 3 of the DTF Operational Directive issued on 4 July 2004, that it was to be a *“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.
- 524.** The DTF was located within Shaibah approximately 15km to the south west of Basra City. Basra itself is some 150km to the south of Al Amarah.
- 525.** The DTF 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 numbers 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 a 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.

Entrances

- 526.** 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 whilst the other was open.
- 527.** Soldiers were required to leave weapons and multi-tools in the airlock and were not permitted to take them into the DTDF.
- 528.** The perimeter fence to the DTDF Compound was approximately 500m in length. The fence was covered with a hessian material to provide a screen.

Accommodation

- 529.** The detainees were housed in barrack room style accommodation. There were eventually eight blocks, lettered A–G. The accommodation blocks were of two types. Four of them were approximately 12m x 6m and four were approximately 9m x 6m. They were brick built flat roof structures. The larger blocks could accommodate up to 30 detainees.
- 530.** In May 2004, only Blocks A, B, C and D were in use. They 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.
- 531.** Each block was surrounded by a veranda enclosed by a wire fence. Each accommodation block had several windows on the external wall, which were barred but allowed in light. Around the same period that the nine detainees were held at the DTDF, the windows were fitted with clear Perspex and air-conditioning was installed.
- 532.** There were no beds or any other furniture. Detainees were issued with roll mats, sleeping bags, blankets and pillows. They slept on the floor, which was understood to be their preference.
- 533.** 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.

Visits Hall

- 534.** Visits were conducted in a large hall measuring approximate 20m x 60m, equipped with air-conditioning, lighting, windows and doors at both ends of the room. Screens were in place to provide some privacy as between families.

Medical Centre

- 535.** There were three medical facilities at Shaibah. The first was the Field Hospital, which was a full British Military Hospital located approximately 5–10 minutes drive from the DTDF. The second was the Medical Centre at Shaibah. This was also known as “*The Regimental Aid Post (“RAP”)*” and was located approximately 10–15 minutes’ walk from the DTDF. The third was the Medical Centre inside the DTDF Compound.

536. Major David Winfield, the Regimental Medical Officer for 1st Battalion the Royal Highland Fusiliers (“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 compound. He 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.
537. 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.

Exercise Area

538. The Exercise Area was the rectangular area between Accommodation Blocks E, F, and G and the Reception and Visits Hall. It contained a volley ball net. There was also a football pitch on a separate area of land in the centre of the four occupied accommodation blocks.

Reception/Operations Room

539. The initial Reception Area was where the internees were processed upon arrival at the DTDF.

Joint Forward Interrogation Team (“JFIT”)

540. The Joint Forward Interrogation Team (“JFIT”) at the DTDF was set up in September 2003.
541. Its purpose was set out in paragraph 3 of the JFIT Operational Directive issued on 31 May 2004:

“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”

542. The JFIT Compound was located within the perimeter of the DTDF. It was separated from the rest of the DTDF by a security fence which was itself screened with hessian. Access to the JFIT Compound was strictly controlled.
543. The JFIT facility had the capacity to hold up to 30 detainees at any one time. The Compound consisted of: one cell large enough for ten men; two cells large enough for five men, ten single cells; three ablution blocks, four interrogation rooms and one Operations Room. The Officer Commanding (“OC”) of the JFIT during the time the detainees were held there was M003.
544. A corridor ran between the single cells with doors entering into the single cells from the corridor. There was a Guards Area with a desk at the end of the corridor.
545. Staff at the DTDF included an internal guard force (“IGF”) and an external guard force (“EGF”). The IGF was responsible for guard duties in the main DTDF Compound. General guard duties in the JFIT facility were carried out by the EGF.
546. When the nine detainees arrived at the DTDF, Major David Richmond was the OC at the DTDF. He dedicated himself almost exclusively to the task of running the DTDF. He was supported by Military Provost Service (“MPS”) staff, particularly by WO2 David Parrott.
547. The medical personnel, the IGF and the EGF all fell within Major Richmond’s chain of command.

- 548.** On 12 July 2004, following a two week handover period, Major Anthony De Reya, the OC, Command Company, 40 Commando, took over from Major Richmond as OC of the DTDF.

Policy documents and guidance

- 549.** There were five main sources of policy 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 Directives;
 - e. JFIT Standard Operating Procedures (SOPs).
- 550.** The DTDF SOPs set out the minimum guarding levels, i.e. the standards of guarding and custodial care to be provided for detainees. They were already in force when Major Richmond arrived at the DTDF.
- 551.** SOP 1 is entitled “*Duties of the Internal Guard Personnel*”. The following is an extract:

“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.

...

You are not to judge Internees and they should all be treated fairly.”

- 552.** DTDF 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.
- 553.** The earliest Operational Directive in force during the relevant period was dated 4 April 2004. It was entitled “*Operational Directive – Divisional Temporary Detention Facility*”. Major Richmond had inherited it from his predecessor and had reissued it so it applied to the 1 RHF. It was updated on 28 June 2004 by Major Richmond and, again, on 13 July 2004 by Major Richmond’s successor, Major De Reya.
- 554.** Paragraph 22(b) of the 4 April edition of the DTDF Operational Directive sets out “*Minimum Standards of Treatment*”. It provided, for example:

“Internees are to be treated at all time fairly, humanely, with respect for his or her personal dignity...

The use or threat of physical violence, mental torture, corporal punishment against the Internees is prohibited.

The use of hooding and stress positions is prohibited...

Medical care is to be provided if required. ...

Juveniles (under 15) are to be segregated from other Internees unless to do so would impose solitary confinement on the individual...

Intellectual, recreational and educational pursuits by Internees shall be encouraged."

- 555.** The Operational Directive for the JFIT was drafted by Captain M003 after he arrived to take up the post as OC of the new JFIT facility in December 2003. He completed that document entitled "*Operational Directive – Joint Forward Interrogation Team*" on 31 May 2004.
- 556.** In his evidence, M003 explained that the Operational Directive which he drafted, although dated 31 May 2004, codified the procedures that had been developed and put into practice prior to that date. He indicated that most, if not all, were followed long before the nine detainees arrived at the JFIT.
- 557.** The JFIT Operational Directive set out in the Minimum Standards of Treatment for Detainees broadly reflected the equivalent paragraph in the Operational Directive for the DTDF set out at paragraph 34 above.
- 558.** The JFIT Operational Directive included a number of SOPs attached in the annexes.
- 559.** The relevant SOPs relating specifically to interrogation are dealt with later.

Processing at the DTDF

- 560.** When they arrived at the DTDF on Saturday 15 May 2004, 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
- 561.** An overview of that procedure which is intended to give a general picture is as follows. The precise sequence of events may not have been exactly the same for each detainee.
- (i) The detainees were brought to the Administration Building.
 - (ii) On arrival at the Administration Building their blacked-out goggles were removed.
 - (iii) On admission into the Administration Building, they were instructed to sit on the floor facing a wall, next to a line marked on the ground.
 - (iv) The wall displayed a notice in Arabic with an English translation. The notice set out the rules by which the detainees had to abide in the DTDF.
 - (v) Due to limitation of space in the Administration Building the remaining detainees were initially instructed to wait in a shaded walkway immediately outside.
 - (vi) Once inside the building the plasticuffs were removed with scissors.
 - (vii) Detainees were taken individually to a private side-room where they were subject to a pat-down search. Then they were asked to remove their clothing.
 - (viii) They were provided with blue boiler suits to wear. At a later date, following representations made by the detainee population, they were provided with dish-dashes rather than boiler suits.

- (ix) The detainees were then taken individually to a desk in the 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.
- (x) Their clothing and personal possessions 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.
- (xi) Detainees were asked to either sign or make a thumbprint on the paper file to verify that the information which they had provided was correct.
- (xii) Two photographs were taken of each detainee's face, one from the front and one from the side.
- (xiii) An identity card was printed, which included the front view photograph. That card was given to the detainee to keep on his person.
- (xiv) The detainees were taken to the Medical Centre for a medical examination, which involved them removing their boiler suits so they could be examined.
- (xv) An initial medical form was completed during the examination.
- (xvi) The detainees were issued with bedding, clothing, toiletries and a copy of the Quran.
- (xvii) The detainees were then escorted to the JFIT Compound.

The detainees' allegations of ill-treatment upon arrival on 15 May 2004

- 562.** The detainees made a number of allegations about ill-treatment they claim to have suffered immediately after their arrival and during the Processing procedure. They fall under 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 sound of sound effects suggestive of torture;
 - f. The lack of privacy whilst unclothed; and
 - g. The inadequacy of the initial medical examination.

The use of stress positions

- 563.** One detainee complained that he was forced to sit on his knees with his forehead against the wall and his buttocks resting on his heels. I am satisfied that he 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. 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.

The actions taken to maintain a shock of capture

564. Three detainees alleged that they had been roughly handled in various ways during Processing. 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.
565. I am 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 were deliberate lies.
566. I am 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.
567. There was no deliberate policy or practice at the DTDF of conducting the processing of detainees in a manner intended or designed to maintain the shock of capture so as to condition the detainees for interrogation. There was a general appreciation of the need to process the detainees swiftly so that they could be moved on to the JFIT or into the main prisoner population. That may have had the effect of maintaining the shock of capture to some limited extent but the procedures had not been intended, designed or put into practice in order to have that effect.

The denial of water

568. Three detainees alleged that they had been denied water during processing. In particular two said that when they asked for water it had been thrown or poured on the floor instead of being given to them.
569. I am satisfied that that allegation is untrue. It may be that a third detainee was told to "shut up" during processing but if that did happen it would have been to prevent him from talking and not to deny him water.

The pretence that the detainees had been brought to Abu Ghraib

570. One detainee said that an interpreter told him that he was in Abu Ghraib.
571. I am quite sure that no instruction was given to any interpreter to tell detainees that they had arrived at Abu Ghraib. I am equally sure that no interpreter would have said such a thing on his or her own initiative. That allegation was deliberately false.

The use of sound effects suggestive of torture

572. Three detainees alleged that they had heard recordings of torture being played whilst they were being taken through the Admission and Processing procedure.
573. I have no doubt that those allegations are entirely untrue. They were deliberate lies.

The lack of privacy whilst unclothed

574. Two detainees complained of a lack of privacy when being required to change into their blue boiler suit. In particular one complained that he had been examined by a female doctor and was required to change his clothes in front of her.

- 575.** The Standard Operating Procedures 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 required privacy.
- 576.** I am satisfied that on the whole and given the prevailing circumstances at the time the detainees were provided with sufficient privacy whilst they were unclothed during the Admission and Processing procedure. No female soldier or interpreter was present or in sight of the detainees at any time whilst 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 complained that this had actually occurred to any of them at any later medical examination.

The inadequacy of the initial medical examinations

- 577.** The Regimental Medical Officer (“RMO”), Major David Winfield, conducted the initial medical examinations of the detainees in the Medical Centre which was a building inside the DTF Compound.
- 578.** Major Winfield said that 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 assess if the detainee was sufficiently medically fit to be detained at the DTF.
- 579.** In his oral evidence, Major Winfield said that he was confident that he would have been approached by Major Richmond, the OC, DTF, and that the importance of carefully noting the wounds, bruises and marks on a detainee would have been emphasised to him.
- 580.** Having heard Major Winfield give evidence, I am satisfied that although not dishonest, he was somewhat dismissive in his attitude to the welfare of the detainees on 15 May 2004. He showed very little sympathy for the detainees as patients. 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.
- 581.** The result of that unsatisfactory approach was that Major Winfield did not notice or take sufficient account of a significant head wound that Hamzah Joudah Faraj Almalje (detainee 772) had suffered and that he did not clean away blood associated with an injured nose. In relation to Mahdi Jasim Abdullah Al-Behadili (detainee 773), the result of the unsatisfactory approach which I have mentioned was that Major Winfield did not cleanse and/or properly examine that detainee’s injured nose. In fact, neither of these two detainees suffered any adverse consequences as a result of these shortcomings in Major Winfield’s approach. In the case of Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), the result of Major Winfield’s less than satisfactory approach was that he did not make an adequate assessment of the seriousness of Ibrahim Al-Ismaeeli’s wounded right foot, that he did not treat it adequately and that he did not refer him to the Field Hospital with sufficient promptness. Thus, Ibrahim Al-Ismaeeli continued to suffer pain and discomfort for longer than he should have done. In the case of Kadhim Abbas Lafta Al-Behadili (detainee 775), the result of Major Winfield’s unsatisfactory approach was that he did not notice and/or record a small laceration to the left side of that particular detainee’s face, bruising and swelling to the detainee’s eye and perhaps some marks to his wrist and forearm. In the case of Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), the result of Major Winfield’s unsatisfactory approach was that he did nothing to clean or treat the abrasions to the detainee’s left shoulder and elbow. The detainee also complained that the doctor had not seemed interested. Again, neither of

these two detainees suffered any adverse consequences as a result of these shortcomings on the part of Major Winfield. He was probably justified in that complaint. In the case of Ahmed Jabbar Hammood Al-Furaiji (detainee 777), Major Winfield's unsatisfactory approach did not give rise to any shortcomings. That is also true of the examination of Hussein Fadhil Abbas Al-Behadili (detainee 778), and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779). In the case of Hussein Gubari Ali Al-Lami (detainee 780), the result of the unsatisfactory approach was that Major Winfield failed to notice or take account of the small shrapnel wound by the detainee's left ear and the nearby graze. However, the detainee did not suffer any significant adverse consequences because it is unlikely that he was in need of any further immediate medical treatment.

- 582.** A further consequence of the unsatisfactory approach on the part of Major Winfield is that he did not take a proper account of the medical histories of the detainees. However I do not believe that any of the detainees suffered any significant adverse consequences as a result.
- 583.** Broadly, I am satisfied Major Winfield's overall conduct of the medical examinations was less than satisfactory for the reasons summarised above.

Detention at the Joint Forward Interrogation Team (JFIT) Compound

- 584.** After having been processed on 15 May 2004, the nine detainees were escorted to the compound within the DTFD operated by the Joint Forward Interrogation Team ("JFIT")
- 585.** The Incident Log indicates that Ibrahim Al-Ismaeeli (detainee 774) remained in the JFIT Compound for one night, before being moved to the Field Hospital on the morning of 16 May 2004. Mahdi Al-Behadili (detainee 773), Abbas Al-Hameedawi (detainee 776), Ahmed Al-Furaiji (detainee 777), Atiyah Al-Baidhani (detainee 779) and Hussein Al-Lami (detainee 780) remained in the JFIT Compound for six days until 21 May 2004. Hamzah Almalje (detainee 772), Kadhim Al-Behadili (detainee 775) and Hussein Al-Behadili (detainee 778) remained there for a further night until 22 May 2004.
- 586.** The JFIT guards maintained an Incident Log which was kept on the guard's desk inside the JFIT Compound. It was intended that details of all incidents and activity (both routine and non-routine) were to be entered into that log.
- 587.** Generally, the Incident Log was well maintained although some gaps are apparent. One of those gaps, which is unfortunate, relates to the arrival of the nine detainees. The log records that Hamzah Almalje, Mahdi Al-Behadili and Ibrahim Al-Ismaeeli arrived at the JFIT Compound at 16:02 hours on Saturday 15 May 2004. Mahdi Al-Behadili and Ibrahim Al-Ismaeeli were placed in a shared cell and Hamzah Almalje was placed in a single occupancy cell. The Log also records that Hussein Al-Behadili, Atiyah Al-Baidhani and Hussein Al-Lami arrived at 17:06 hours. Hussein Al-Behadili was placed in the shared cell; Atiyah Al-Baidhani and Hussein Al-Lami were each placed in a single cell. The log does not appear to record the arrival of Kadhim Al-Behadili, Abbas Al-Hameedawi and Ahmed Al-Furaiji, although the latter does appear in the Log at 17:36 hours on 15 May 2004, when he is shown as being escorted to the lavatory.
- 588.** The shared cells were approximately 25ft long by 18ft wide. The single cells were approximately 10 ft long by 6ft to 8ft wide. Each cell had a metal door with bolt locks. Within the door was a small window with a slide hatch. The single cells had a small Perspex window covered on the outside with mesh. There was air-conditioning in the cell area. Inside the cells, detainees had a roll mat bed, a prayer mat, blankets, toiletries and a copy of the Quran.

- 589.** The cells were very basic, but I am satisfied that they were adequate in the circumstances.
- 590.** The detainees were provided with meals three times a day. No detainee has suggested to the Inquiry that the food was inappropriate.
- 591.** Bottled water was provided on demand. No detainee has suggested to the Inquiry that they were not provided with sufficient water in their cells at the JFIT Compound.
- 592.** 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 the nearby ablutions block.
- 593.** The Incident Log records when detainees were escorted to the lavatory. It shows both the time the detainees left their cell and the time they returned. I am satisfied that the Incident Log accurately records the detainees' access to the ablutions block. There was no deliberate denial of access to the lavatories.
- 594.** 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 three interrogation rooms. The JFIT Operational Directive recognised at paragraph 16 that detainees in the JFIT Compound were entitled to exercise.
- 595.** JFIT Operations SOP 18 provided that the detainees' entitlement to exercise was limited insofar as they were not entitled to exercise communally.
- 596.** In fact, as appears from the Incident Log, the detainees received in some cases little and in others no exercise at all. That is very unsatisfactory. However, it was not the result of any form of deliberate ill-treatment.

Medical care in the JFIT Compound

- 597.** As detailed in the Report, there is evidence that the medical care and treatment of Hamzah Joudah Faraj Almalje (detainee 772), when he was in the JFIT Compound, was less than satisfactory. However, whether the treatment was so unsatisfactory as to amount to professional negligence is outside my Terms of Reference and I therefore express no opinion on that issue.
- 598.** Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was transferred to the Field Hospital on 16 May 2004. There he received prompt and efficient treatment.
- 599.** Photographs in the JFIT Compound were taken to record the detainees' injuries on the morning of 16 May 2004. The photographs were taken as a precaution in case the British Forces were required to refute an allegation that the detainees sustained injuries whilst interned at the DTDF. In the event, the Inquiry has been unable to locate those photographs.

Allegations of sleep deprivation while in the JFIT Compound

- 600.** In their evidence, six of the detainees said that they were deliberately deprived of sleep while they were being held in the JFIT Compound. The sleep deprivation was allegedly orchestrated by the guards. Six detainees said that they were kept awake by the guards banging on their cell doors throughout the night and two of the same six further complained that the guards played loud music at night.

601. I am satisfied that there was no policy of knocking 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 disturbed as a result. If that occurred, I am satisfied that it was part of the process of checking the welfare of the detainees and the security of the compound. There was no deliberate attempt to deprive the detainees of sleep while they were in the JFIT Compound.
602. The Inquiry heard evidence that some guards would listen to a radio whilst on duty in the JFIT Compound. Others would watch DVDs.
603. It is possible that two of the detainees 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 disturb deliberately the detainees' sleep. If those two detainees were disturbed as a result of the music, it was because the guards had acted thoughtlessly and inconsiderately. However, it was entirely unintentional.

Questioning in the JFIT

604. The British Armed Forces draw a distinction between an "interrogation" and a "debrief".
605. The aim of an interrogation is to determine whether it was likely that a detainee represented a threat, or had knowledge of a threat to Coalition Forces or had committed a crime which might affect Coalition Forces.
606. A debrief is the interview of a willing and co-operative detainee in an attempt to corroborate information already obtained through Tactical Questioning and to gather as much further information as possible about them and their circumstances of capture. "Willing and co-operative" does not connote innocence of all wrongdoing but refers to detainees who were willing to talk. Each of the detainees except Ibrahim Al-Ismaeeli (detainee 774), who had been transferred to the Field Hospital before the interrogations began, was interviewed over a four day period between 16 to 21 May 2004. Kadhim Al-Behadili (detainee 775) was interviewed as many as four times, whilst others were only interviewed once. Full details of the times and dates of each detainee's interviews/interrogations in JFIT are set out in the Report.
607. Some of the interviewers were trained to debrief, others were trained to interrogate. I regard the training given to the individual interviewer as being irrelevant to my Terms of Reference. The salient issue is whether or not there was ill-treatment of any of the detainees during their interviews/interrogations in the JFIT.
608. M003 issued a number of Standard Operating Procedures for JFIT. They were issued on 31 May 2004, shortly after the nine detainees were transferred to the main DTDF Compound.
609. 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.
610. 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. Whilst this represented a clear and regrettable failing on the part of M003, 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.

- 611.** The JFIT Compound contained four interrogation rooms known as “*l rooms*”. Two were approximately 2m by 3m and the other two were approximately 7m by 4m. One was set up as a soft room. It was intended to provide a comfortable environment. It had soft furnishings including a couch, armchairs, a rug and a coffee table. The other rooms were more basic. They contained a desk and three chairs. The windows were covered with hessian. There was air-conditioning but because the air-conditioners were noisy they were switched on before an interrogation but switched off during the interrogation. The interrogation rooms contained a video camera on a tripod with a built-in microphone. They transmitted a live feed set-up to the monitor set-up in M003’s office.
- 612.** All of the interviews relevant to this Inquiry took place in one of the three ordinary interrogation rooms, rather than the soft room.
- 613.** A guard was present outside the interrogation rooms whilst questioning occurred.
- 614.** Hamzah Almalje (detainee 772) made no complaint about the actual manner of his three interrogations that took place on 16 and 21 May 2004. He said that he was not touched, that no-one spoke to him in a bad way and that he was looked after whilst he was at Shaibah.
- 615.** Mahdi Al-Behadili (detainee 773) complained that the JFIT interrogator had acted in an angry and aggressive manner throughout his single interrogation on 17 May 2004. He said that the interrogation was conducted in fear and amid shouting.
- 616.** I find that that Mahdi Al-Behadili’s allegation that his interrogation had been conducted “*amid fear and shouting*” was a deliberate lie intended to lend substance to his allegations of ill-treatment.
- 617.** Kadhim Al-Behadili (detainee 775) alleged that, during his four interrogations on 16 and 21 May 2004, he had been yelled at by the interrogator, causing spit to hit his face. He claimed that he was pushed in the stomach by the interrogator and that interrogator pushed his face and body into the detainee’s face and body so that they were touching. He said that he was pushed backwards towards the wall and that he was called an idiot many times. He said that the interrogator had nearly slaughtered him during the interrogations.
- 618.** I have no doubt that Kadhim Al-Behadili’s account of his interrogations in the JFIT contained a significant degree of exaggeration intended to mislead the Inquiry into believing that interrogations were conducted in a highly aggressive and violent manner, which was simply not the case.
- 619.** Abbas Al-Hameedawi (detainee 776) complained that the interrogator became angry and aggressive during his single interrogation on 16 May 2004, that he was standing throughout the interrogation, that the interrogator yelled at him and called him a liar and that the interrogator came very close to him as though he was going to hit him.
- 620.** Having heard the military evidence from those present, I am sure that Abbas Al-Hameedawi’s account of his interrogation contained a significant degree of exaggeration intended to mislead the Inquiry into believing that his interrogation was conducted in a far more aggressive and threatening manner than was actually the case.

- 621.** Ahmed Al-Furaiji (detainee 777) said that there was no yelling or loss of control by the interrogator during his single interrogation on 19 May 2004, but that the interrogator did tell him to “confess” otherwise he would spend his life in prison.
- 622.** I have no doubt that Ahmed Al-Furaiji was not threatened in this way. There is a possibility that it may have been pointed out to him that he was at risk of being detained for some time and thus separated from his family.
- 623.** Hussein Al-Behadili (detainee 778) was interviewed on three occasions on 17 and 21 May 2004. He said that he was punched and kicked as he was escorted to the first interview session. He claimed that he had been told to confess during his interrogation or he would not see his family again and that he would die in prison. Hussein Al-Behadili said that the interrogator had banged on his desk and shouted in a furious manner and that he had shouted in the detainee’s face. Hussein Al-Behadili claimed that he was not given any water and that he had been made to stand throughout the interviews. A heater was directed towards him. Whilst the interviewer left the room, he was left standing with his feet apart. When he tried to move his feet the guard kicked his feet to keep them apart.
- 624.** Having heard the military evidence, which was both truthful and accurate, I have no doubt that Hussein Al-Behadili (detainee 778) deliberately lied when he told the Inquiry that the escorts had assaulted him, that he had been made to stand in a painful position for a lengthy period of time and that he had been questioned in a highly aggressive manner. He did so in order to lend substance to his allegations of ill-treatment at the hands of the British Military.
- 625.** Atiyah Al-Baidhani (detainee 779) alleged that he had been dragged from his cell to be taken to the interrogation room for his single interview/interrogation on 16 May 2004. He said that, on the way the guard had punched him and pushed him into walls and then into the interrogation room. He claimed that the guard had pushed him against a wall in the interrogation room and that he had been made to face the wall. According to Atiyah Al-Baidhani, the interrogator had become angry and had shouted at him from close to his face. He said that he was made to stand throughout and that he had been told to sign a confession or remain in prison or in Shaibah for many years.
- 626.** Having heard the military evidence, which I accept was both truthful and accurate, I am sure that the detainee’s account of his interrogation was a combination of gross exaggeration and deliberate lies, intended to mislead the Inquiry into believing that the interrogation had been conducted in a highly aggressive manner and intended to lend substance to his allegations of ill-treatment at the hands of the British Military.
- 627.** Hussein Al-Lami (detainee 780) claimed that, at the beginning of his single interview/interrogation, that took place on 19 May 2004, the interrogator had taken a hand gun out of his holster and placed it on the table. Hussein Al-Lami alleged that the interrogator had acted aggressively and had shouted at him. He alleged that the interrogator had tried to attack him at one point, but had been stopped by the interpreter. According to Hussein Al-Lami, the interrogator had picked up the gun from the table and had shouted at him. At that stage, the guards had entered the room and the interrogator had sent them back out.
- 628.** Having heard the military evidence, which I accept was both truthful and accurate, I am satisfied that Hussein Al-Lami’s evidence to the Inquiry involved both deliberate lies and gross exaggeration, intended to mislead the Inquiry into believing that the interrogation was conducted in a highly aggressive manner, which was simply not the case. In particular, Hussein

Al-Lami's allegation about the interrogator's possession and use of a hand gun is incapable of belief.

- 629.** I am satisfied that the interviews/interrogations of the detainees, that were carried out at the JFIT in Shaibah between 16 and 21 May 2004, were not at all like the threatening and oppressive tactical questioning sessions that they had experienced at Camp Abu Naji on the night of 14/15 May 2004.
- 630.** On 17/18 May 2004 the JFIT received visitors from the International Committee of the Red Cross ("ICRC"). Over the two days of the visit the JFIT suspended interviews in order to facilitate the visit and enable the ICRC access to the detainees. I am sure that, in doing so, there was no intent to conceal any ill-treatment. The Report produced by the ICRC following this visit noted that three of the detainees with whom this Inquiry is concerned alleged that they had been ill-treated subsequent to their capture. Those allegations have been fully considered by this Inquiry and dealt with in its Report.

Detention at the Divisional Temporary Detention Facility Compound ("DTDF")

Conditions in the DTDF

- 631.** With the exception of Ibrahim Al-Ismaeeli (detainee 774), who was transferred initially to the Field Hospital, when the other eight detainees left the JFIT Compound they were transferred to join the main detainee population at the DTDF. Each accommodation block included a vestibule with two sinks, a shower and a lavatory. Access to those facilities was entirely unrestricted. Each cell block also had air-conditioning. Each cell had approximately two or three radios.
- 632.** The detainees remained in the DTDF for just over four months, until they were transferred to the Iraqi Criminal Justice System. Ibrahim Al-Ismaeeli (detainee 774), Kadhim Al-Behadili (detainee 775), Abbas Al-Hameedawi (detainee 776), Atiyah Al-Baidhani (detainee 779) and Hussein Al-Lami (detainee 780) were transferred on 21 September 2004. Hamzah Almalje (detainee 772), Mahdi Al-Behadili (detainee 773), Ahmed Al-Furaiji (detainee 777) and Hussein Al-Behadili (detainee 778) were transferred on 23 September 2004.
- 633.** When the detainees first arrived at the DTDF, Major David Richmond of 1 RHF was the Officer Commanding the DTDF. On 12 July 2004 Major De Reya of 40 Commando Royal Marines took over from Major Richmond as Officer Commanding.
- 634.** A note of the day to day operation of the DTDF was kept in the Daily Occurrence Book. That book was reviewed every day by the Officer Commanding and the Duty Officer.
- 635.** Both Major Richmond and Major De Reya told the Inquiry that they were well aware of the recently-reported scandal at the Abu Ghraib Internment Facility run by US Coalition Forces and understood that they would be under particular scrutiny in consequence.
- 636.** Bottled water was available at all times.
- 637.** The detainees were provided with three hot meals a day prepared by a firm of independent caterers. The DTDF personnel were provided with the same food as the detainees. The detainees were also provided with bread and fruit. Major De Reya recorded in SITREPs that the detainees were very happy with the food provided to them.

638. Originally, detainees were permitted to receive gifts of food from visitors, but foodstuffs tended to attract pests when hoarded by the detainees. Thus Major De Reya decided that detainees would no longer be allowed to keep food in the accommodation block.
639. On 16 and 17 August 2004, some of the detainees had refused to eat food: that protest did not appear to be against the quality or nature of the food but more because detainees were frustrated and disappointed at seeing others released. An inspection of the medical examination forms reveals that each of the nine detainees actually put on weight during the four month period of their detention at the DTDF.
640. Every day the detainees were offered the opportunity to exercise outdoors. The exercise area contained a volley ball court, a football pitch and an area for basketball. There is a complaint from one detainee that he wanted fresh air, but was refused permission to go into the courtyard. I am satisfied that the detainees in the Main Compound at DTDF were given adequate opportunity to exercise. That sole complaint does not detract from the general impression of a well-run, compassionate and fair regime. Both Major Richmond and Major De Reya impressed me as being highly competent, thoughtful, fair-minded and compassionate in the manner in which they discharged their various responsibilities and duties during their time as OC the DTDF at Shaibah.
641. The detainees were provided with prayer mats and copies of the Quran. They were made aware of the direction of Mecca.
642. Visits took place in the air-conditioned hall.
643. The primary medical care of detainees at the DTDF was overseen by the Regimental Medical Officer. A rotation of Regimental Medical Assistants provided a 24 hour medical presence. They were the first point of contact when detainees had medical complaints. I have seen the medical records for each detainee. Detail is given in the main body of this Report. Each of the detainees was seen on a number of occasions by medical staff.
644. Review of the detainees' cases was conducted by the Divisional Internment Review Committee. Meetings of that Committee took place on a weekly basis at Divisional Headquarters in Basra. At the end of the meeting, recommendations in respect of each detainee discussed would be put forward to the General Officer Commanding ("GOC"). Those recommendations would be either to release the detainee, to transfer him to the Iraqi Criminal Justice system, or to continue detention. The cases of the nine detainees were considered on 17 May, 8 June, 22 June, 6 July, 27 July, 10 August, 31 August and 13 September 2004.
645. After each meeting the relevant detainees would be informed verbally of the recommendation following the review, although that was also confirmed in writing.
646. On 7 September 2004, authorisation was given to transfer the nine detainees from the DTDF to the Iraqi Criminal Justice System. The operation was planned: the transfers actually took place on 21 and 23 September 2004.
647. There were a number of opportunities for the detainees to make a complaint. Both Major Richmond and Major De Reya would undertake a daily walk-round of the DTDF during their tenures as Officer Commanding. Both Officers were accompanied by an interpreter on those walk-rounds. Informal conversations would take place with the detainees to help gauge their mood and deal with any welfare issues.

648. Additionally there was a less frequent Commandant's Audience which was a more formal meeting with an Elder nominated from each accommodation block. The meetings would take place in the Visits Room.
649. Notes were taken at the Commandant's Audience and afterwards the meeting was written up in the Daily Occurrence Book.
650. In the SITREP dated 22 May 2004 there is a record of complaints made by Hamzah Almalje (detainee 772) and Kadhim Al-Behadili (detainee 775) regarding their treatment on arrest. That was the day that they were transferred from the JFIT Compound to the Main DTDF Compound. Both were advised to commit their complaint to writing. Papers and pencils were provided. Illiterate detainees were able to dictate their complaints to an interpreter or to a fellow detainee.
651. Only Kadhim Al-Behadili (detainee 775) actually put his complaint in writing. That complaint was referred by Major Richmond to the Force Provost Marshal ("FPM"), Lieutenant Colonel Sally Purnell, and also copied to SO3 Legal. The Royal Military Police then commenced an investigation into the complaint. On 24 May 2004 the RMP interviewed Kadhim Al-Behadili, who was the one who had made the written complaint.
652. On 26 July 2004, the RMP interviewed Hamzah Almalje (detainees 772), Mahdi Al-Behadili (detainee 773), Ibrahim Al-Ismaeeli (detainee 774), Kadhim Al-Behadili (detainee 775) and Abbas Al-Hameedawi (detainee 776) in connection with the "*shooting incident*" investigation. On 27 July 2004 the RMP interviewed Ahmed Al-Furaiji (detainee 777), Hussein Al-Behadili (detainee 778), Atiyah Al-Baidhani (detainee 779) and Hussein Al-Lami (detainee 780) in connection with that investigation.
653. In their evidence the detainees made a limited number of allegations about the treatment which they received at the DTDF. They are as follows:

The litter incident

654. Four detainees, namely Hamzah Almalje (detainee 772), Ibrahim Al-Ismaeeli (detainee 774), Kadhim Al-Behadili (detainee 775) and Atiyah Al-Baidhani (detainee 779) described an incident involving Ibrahim Al-Ismaeeli (detainee 774). Broadly speaking they say that he was asked to pick up some litter and that he refused. Ibrahim Al-Ismaeeli and Atiyah Al-Baidhani both claimed that the guard then assaulted Ibrahim Al-Ismaeeli.
655. However, I am satisfied that the truth is that Ibrahim Al-Ismaeeli refused a request to sweep the floor. He had then repeatedly pushed a member of the IGF in the area of his chest and the guard had reacted by pushing Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) once in the chest, to prevent the detainee from continuing to push him. The account given by Ibrahim Al-Ismaeeli was thus a gross exaggeration of the reality, intended to mislead the Inquiry into believing that he had been ill-treated. In reality, the guard in question had acted as he did in order to prevent Ibrahim Al-Ismaeeli from continuing to assault him.

The door incident

656. In his written evidence Ahmed Al-Furaiji (detainee 777) said he was once refused access to the doctor and had been made to sit outside in a hot sun, where he was verbally abused and physically threatened by a group of soldiers.

657. The true nature of that incident appears to have been recorded in the Daily Occurrence Book on 5 September 2004 at 09:50 hours. Marine Paul 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 Sick Bay 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"

658. 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."

659. Having heard the military evidence, which I accept as truthful and accurate, I am satisfied that Ahmed Al-Furaiji (detainee 777) was not denied access to medical care. I am further satisfied that he was not made to sit outside in the sun and that he was not surrounded by a group of guards, who yelled abuse at him and threatened him with batons. Ahmed Al-Furaiji's account of this incident was a gross exaggeration of the reality, intended to mislead the Inquiry into believing that he had been ill-treated. I am satisfied that the entry in the Daily Occurrence Book accurately records what actually did happen. Ahmed Al-Furaiji had pushed a door towards Marine Kavanagh, who responded by pushing the door back, causing the door to hit the detainee's right arm. In fact, Ahmed Al-Furaiji was medically examined shortly thereafter. Marine Kavanagh was reprimanded for his conduct both by MPS 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.

The dentist incident

660. Mahdi Al-Behadili (detainee 773) described an occasion when he claimed he had been assaulted, whilst being escorted to the dentist.
661. In particular he alleged that he had been beaten on his back with sticks and metal rods and that a special weapon like a truncheon had been used to beat his thighs and back.
662. The detainee's medical records indicate that he was referred to the dentist on 6 June 2004 and 15 June 2004.
663. Major David Richmond said that if any detainee had returned from the Field Hospital showing signs of a severe beating, he would have expected that to have been reported to him. He conducted a walk-round on 15 June 2004. Fifteen detainees are recorded as having spoken to Major Richmond about various matters, but there is no note of any complaint having been made by Mahdi Al-Behadili (detainee 773) or by any others on his behalf.
664. I am satisfied that the allegation is a fabrication, intended to lend substance to a false allegation of ill-treatment at the hands of the British Military.

Alleged misrepresentations regarding transfer

665. Before transfer each detainee was given a medical examination.

- 666.** Mahdi Al-Behadili (detainee 773), Ibrahim Al-Ismaeeli (detainee 774), Abbas Al-Hameedawi (detainee 776), Hussein Al-Behadili (detainee 778) and Atiyah Al-Baidhani (detainee 779) said that they were given the impression that they were to be released rather than be transferred to the Iraqi Authorities. It was in this context that some of them referred to having been told that they were going on the “*Happy Bus*”.
- 667.** Major De Reya explained that the term “*Happy Bus*” was used by the detainees to refer to release from detention. He said that the detainees were not told that they were being transferred to Iraqi custody, but simply that they were being moved. Those who were involved in the transfer were instructed not to say anything to the detainees other than that they were being moved. To the best of Major De Reya’s knowledge, the detainees had not been told that they were being released.
- 668.** 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 of what was to occur, that would have been a matter for criticism. However, I am satisfied that such was not the case.

Matters outside the chronology

The Royal Military Police (“RMP”) Investigation

- 669.** The events with which this Inquiry is concerned have been the subject of two separate investigations by the RMP in 2004 and 2008.
- 670.** The Inquiry’s Terms of Reference do not require it to carry out a review of the investigations conducted by the RMP. 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 there was evidence to support that suggestion, it may suggest contemporaneous knowledge of misconduct by soldiers which would be relevant to the Inquiry’s Terms of Reference. Similarly, the timing of the complaints made by detainees may be relevant to determining their reliability.
- 671.** Thus, no examination was undertaken of the 2008 investigation. However, I decided that it was necessary for me to hear evidence from those members of the RMP who had worked on the 2004 investigation. The issues which concerned me were:
- (i) The extent to which the 2004 RMP investigation was actually obstructed by the Battle Group and the reasons for any such obstruction; and
 - (ii) The extent to which the detainees made any complaints about their treatment to the RMP during the 2004 investigation.

The chronology of the 2004 investigation

- 672.** The 2004 RMP investigation into the events with which this Inquiry is concerned was conducted by 61 Section, Special Investigation Branch (“SIB”). In May 2004, the OC 61 Section, SIB was

Captain Lucy Bowen. Her evidence was that she was instructed by Lieutenant Colonel Sally Purnell to conduct an investigation into the events of 14 May 2004 on 19 May 2004.

- 673.** In fact the SIB had been aware of the battle of Danny Boy as early as the evening of 14 May 2004, because a member of 61 Section SIB was based at Camp Abu Naji, Sergeant John Grant. He heard that a number of deceased from the battlefield had been brought back to the camp that evening. He went to the Medical Centre where the bodies were and decided to take instructions from his superiors, before taking any action.
- 674.** On returning from the Medical Centre to the RMP Operations Room at Camp Abu Naji, Sergeant Grant learned that there were also live detainees at the Camp. He telephoned Captain Bowen and understood from her that she would seek advice from her superiors.
- 675.** On 15 May 2004 Brigadier Andrew Kennett sent a note to Lieutenant Colonel Matthew Maer. The note was drafted by Major Simon Hutchings.
- 676.** The note arose because of the provisions of the current Shooting Incident Policy entitled *"J3/3072 Policy for the Recording and Investigation of Shooting Incidents"*.
- 677.** Under the policy, the Battle of Danny Boy constituted a Shooting Incident in that shots were fired by UK Forces during the battle and those shots had caused the death of a number of Iraqi men. That created a presumption under the policy that the Battle of Danny Boy would be investigated by the RMP (SIB). That presumption was rebuttable in the event that Commander 1 Mechanised Brigade ("Comd 1 Mech Bde") (i.e. Brigadier Kennett) determined within 24 hours that, on the balance of probabilities and after taking legal advice, an investigation would serve no useful purpose.
- 678.** Hence, Major Hutchings, on behalf of Brigadier Kennett, wrote to Lieutenant Colonel Maer and requested a report on the events of 14 May 2004. That note also warned Lieutenant Colonel Maer that Brigadier Kennett was minded to apply for a dispensation in respect of an investigation into the Battle of Danny Boy.
- 679.** The context was that there was a strong view at the time, as explained by a number of the military witnesses, that the RMP were seriously over-burdened by investigations. Many witnesses also described the burden on the Battle Group soldiers who were regularly being required to provide statements to the RMP as part of those investigations. Both Brigadier Kennett and Lieutenant Colonel Maer gave evidence to that effect to the Inquiry.
- 680.** Those views were shared at senior level by the Royal Military Police. Lieutenant Colonel Purnell was the Force Provost Marshal ("FPM") for the duration of OP TELIC 4. She gave evidence to the same effect.
- 681.** Between 15 May and 17 May 2004, Captain Bowen came to understand that Brigadier Kennett was contemplating a dispensation with the requirement for an investigation.
- 682.** Then, on 19 May 2004 Captain Bowen was directed that Danny Boy *"is to be investigated in its entirety"*. She explained that this had meant something slightly wider than a shooting incident *"...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"*.
- 683.** By the same date, 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 to the DTDF at Shaibah.

- 684.** In consequence, an SIB investigation was formally set up with the title *“Attempted Murder of Coalition Forces”* and given a CCRIO⁹ reference number. Given what Captain Bowen knew of the debate at Brigade HQ, about whether to apply for a dispensation, she sought guidance from above as to how she should proceed. When she met Lieutenant Colonel Purnell, they agreed that the aspect of the investigation relating to the allegations of ill-treatment of the live detainees should continue, but the investigation of the Shooting Incident should be paused. In fact Lieutenant Colonel Maer had not yet completed his report on the incident and would not do so until 12 June 2004.
- 685.** The investigation into the allegations of ill-treatment began. Four members of the RMP arrived at Camp Abu Naji to begin taking statements. It is clear from their evidence that their focus at that stage was on taking statements from the soldiers. They did not speak to the detainees. Captain Bowen allocated a fresh CCRIO reference number to the investigation into the ill-treatment.
- 686.** In an apparently unrelated development one of the detainees, Kadhim Al-Behadili (detainee 775), wrote a letter addressed *“To the British Commandant”* alleging that he had been assaulted at the point of capture.
- 687.** In response Staff Sergeant Andrew Southerton, a member of the RMP SIB, interviewed him at the DTDF. At the start of the interview, Kadhim Al-Behadili made allegations about his treatment, but at the end of the interview he said that he wished to withdraw his complaint and to withdraw a *“confession”* which he had made.
- 688.** On 12 June 2004 Lieutenant Colonel Maer produced his report. In that report he said this about the allegations of ill-treatment of the captured and mutilation of the dead *“although I believe that these allegations are vexatious I have requested that SIB (RMP) carry out an investigation into this aspect of the incident ...”*
- 689.** Although signed by Lieutenant Colonel Maer, it was drafted by another.
- 690.** At a meeting on 19 June 2004 with Lieutenant Colonel Purnell and Lieutenant Colonel David Wakefield, Captain Bowen first became aware of Lieutenant Colonel Maer’s report and its content. She said that she was *“shocked”*; that was the first time that she had heard of any allegations of the mutilation of dead. So far as she was aware neither she nor anyone on her team had been asked to investigate allegations of mutilation.
- 691.** The outcome of that meeting on 19 June 2004 was that it was decided that the investigation into the shooting incident should go ahead, that the investigation into the allegations of mutilation should commence and the allegations of ill-treatment made by the detainees should continue.
- 692.** On 26 and 27 July 2004 the nine detainees were interviewed by the RMP.

Was the investigation obstructed?

- 693.** The allegation that the 2004 RMP investigation was intentionally obstructed or frustrated comes from two sources. First, there is the subjective perception of some of those who were conducting the Investigation at the time. Second, there is the objective overview of the chronology of the Investigation.

⁹ Central Criminal Records and Intelligence Office

694. A number of 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. In particular it was suggested that a member of the SIB was prevented from taking photographs of the dead Iraqis. However, having heard the evidence I am satisfied that there was no such obstruction. In particular, the officer said to be obstructed, Sergeant Grant, made plain that he did not offer to photograph the bodies.
695. As to the second source of the suggestion of obstruction, it is clear that the progress of the 2004 RMP Investigation was, at least initially, slow. There was the protracted debate which took place with regard to whether Brigadier Kennett should apply for a dispensation, from the requirement that an investigation be carried out, pursuant to the then Shooting Incident Policy. That caused Captain Bowen frustration.
696. The senior officers identified the large volume of investigations and the security situation as relevant to the practicability of the investigation. The practical problem was that the Shooting Incident Policy envisaged all investigations into shooting incidents being investigated 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 dispensations. The actions taken by Brigadier Kennett represented a departure from the then Shooting Incident Policy.
697. However I do not criticise Brigadier Kennett for those departures. Even by May 2004 the Shooting Incident Policy was widely viewed as being unfit for purpose because the sheer volume of engagements meant that the Battle Group 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.
698. It is clear that all regarded the current Shooting Incident Policy as unworkable in theatre in the circumstances then prevailing. I accept that it was unworkable in the conditions in that part of Iraq with which this Inquiry is concerned in May 2004. 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 to be workable in practice. I return to this topic in the Recommendations Section of this Report.
699. I have no hesitation in finding that the undoubted 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 the 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 in order to cover up actual, possible or anticipated wrongdoing.
700. I accept that there was tension between the RMP and the Battle Group. The cause of that tension was the genuine concern felt within the Battle Group about the adverse effect on their personnel of the numerous investigations being undertaken at the time. I find that tension a matter for regret, but understandable in the circumstances then prevailing.
701. A written order was given by Major James Coote on 19 May 2004 which was the subject of much questioning. However I am satisfied that the order was not and would not have been interpreted as a direction to obstruct the Royal Military Police Investigation. I accept his evidence was that his intention *"was to ensure that a full and accurate account of the events of that day was made available from the outset"*.
702. I am sure that neither the tensions about which I heard in evidence nor that 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 RMP SIB from discovering evidence of

wrongdoing. In fact, those who deployed to Camp Abu Naji from the RMP SIB on 21 May 2004 generally found the Battle Group to be co-operative.

The opportunity for the detainees to complain

- 703.** In respect of a number of the allegations made by each of the detainees, I have found that they were fabricated. None of those findings of fabrication relied solely on the fact that a detainee had failed to make that allegation to the RMP when he was interviewed in July 2004. As a result, the second justification for including the 2004 RMP investigation in the promulgated List of Issues has largely fallen away.
- 704.** I accept that the interviews, conducted by the two RMP interviewers set out to probe the treatment which the detainees had received subsequent to their detention, were nowhere near as detailed as those that subsequently resulted in the detainees' written Inquiry statements. Nevertheless, I am satisfied that the RMP interviews did offer an adequate and obvious opportunity for the detainees to raise at least some of the more serious allegations that they went on to make subsequently.
- 705.** The four detainees who made no complaint to the RMP in July 2004 about their treatment or capture were given an opportunity to explain to the Inquiry why they did not take that opportunity to raise allegations which they made subsequently.
- 706.** I have carefully considered the various explanations offered by the detainees. I am not persuaded that those explanations demonstrate any real inadequacy in the way in which the RMP interviews were conducted. I am also mindful of the fact that some of the detainees evidently felt able to make complaints to the same interviewers from the Royal Military Police.
- 707.** Accordingly, and although not essential to any of my findings elsewhere in this Report, I am satisfied that the RMP interviews in July 2004 offered an adequate and obvious opportunity for the detainees to make at least their more serious allegations against British troops. I see no basis, within my Terms of Reference, upon which to criticise the RMP for the manner in which their interviews were conducted.

Recommendations

- 708.** In his Report on the death of Baha Mousa, Sir William Gage 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, all but one of which was accepted by the Ministry of Defence. As I make clear in the Report, I am satisfied that it would be a disproportionate exercise for me to reconsider that which has already been considered and implemented or is the course of being implemented. In the event, therefore, I have come to the conclusion that there are four main areas in which I believe that it is appropriate for me to make Recommendations. Those areas are:
- (i) The collection of, storage and ability to search documents and other records in whatever form they may be;
 - (ii) The Shooting Incident Policy;
 - (iii) The need to have an accurate contemporaneous record of the circumstances of a prisoner's detention; and

(iv) Various identified shortcomings in existing practices and procedures.

Documents

- 709.** The Al Sweady Inquiry was set up following a concession on behalf of the Secretary of State for Defence to the Administrative Court, on 3 July 2009, that the searches for documents carried out on his behalf had not been effective. Moreover the work of this Inquiry has been complicated and delayed to a significant degree by the difficulties which it has encountered in locating and obtaining relevant documentation and electronically stored data.
- 710.** Whilst it appears that there have been some important developments in policy and practice with regard to record-keeping since 2004, I have nevertheless identified a need to ensure that: (i) there is a satisfactory transfer, collation and retention of documents/records from theatre and (ii) that the routine destruction of documents/records, which may be relevant, does not take place.
- 711.** In the light of information provided to me by the MoD 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, but it may be 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. Similarly, it does not appear that there is at present any system for cataloguing hard copy information obtained from theatre. Nor does the issue of potential data loss amongst electronic IT systems appear to have been addressed.
- 712.** I therefore consider that a recommendation in the following terms is appropriate:

“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 1)

Recording and retention of records of interrogations and tactical questioning

- 713.** It became 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 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.
- 714.** Although the recording of interrogations is now 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. 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 made 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 whenever possible.

715. I can see no good reason why the recordings of such sessions should not be subject to the same rules of preservation and retention and as other forms of information/records.

716. I therefore consider that a recommendation in the following terms is appropriate:

“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 2)

Dating and archiving of training documents

717. During the course of the Inquiry, it became necessary to review the training course materials relating to Prisoner Handling and the Tactical Questioning Course undertaken by M004. It became apparent that the MoD was unable to date some of the course material which was provided to the Inquiry. That was clearly an unsatisfactory state of affairs, which could and should have been avoided by ensuring that training material was properly dated and stored/retained in such a way as to be easily searchable by date.

718. I can see no good reason why all material relating to training courses should not be dated and properly archived.

719. I therefore consider that a Recommendation in the following terms is appropriate:

“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 3)

The Shooting Incident Investigation Policy

720. In the Report itself I set out what happened in relation to the policy and my conclusion. It is clear to me that all regarded the then policy as unworkable in theatre. I accept that it was unworkable in the conditions as they were in that part of Iraq in 2004. The result was that the commencement of the 2004 Royal Military Police 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 be workable in practice in the circumstances then prevailing.

721. I understand that, in consequence of the Armed Forces Act 2006, two key changes have been made to the Service Justice System; however, whilst I have not heard argument on the issue, it seems to me that some of the fundamental deficiencies are yet to be considered fully, particularly in the light of the judgment in *Al-Skeini v United Kingdom* [2011].

722. I therefore consider that a Recommendation in the following terms is appropriate:

“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 Shooting Incident by an

independent body such as the Royal Military Police within a time limited but reasonable period after the Shooting Incident.” (Recommendation 4)

Arrest records

- 723.** In the body 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, he was the only live detainee captured during the Southern Battle. However, as is apparent from the body of the Report, the documentation prepared in respect of that detainee 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, whereas it is beyond doubt that WO2 Falconer was at least eight kilometres from where Hamzah Almalje was actually captured. The truth, as is clear from the Report, is that WO2 Falconer had nothing whatsoever to do with the capture of that particular detainee on 14 May 2004.
- 724.** I understand that, since 2004, the policy with regard to the handling and treatment of captured persons has been thoroughly overhauled. In particular, at the point of capture or as soon as possible thereafter, a Prisoner of War Capture Tag is to be filled in by the capturing unit. Moreover, an Initial Capture and a Detail of Capture Record must also be completed and retained by the escort until the captured person is handed over. Then, on handover of the captive at the Unit Holding Area, the personnel at that area are required to ensure that the above forms have been completed and to complete a Record of Captivity Form which accompanies the captive into the holding facility.
- 725.** I remain concerned to ensure that appropriate consideration has been given to what can be done to establish a satisfactory procedure for ensuring that any injuries that have been suffered by captives are properly recorded and explained at the time, not least so that any allegations of ill-treatment 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.
- 726.** I therefore consider that a recommendation in the following terms is appropriate:
- “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 5)***

Areas of deficiency for further consideration by the Ministry of Defence

- 727.** In the course of the Report I have set out a number of areas in which I have come to the conclusion that certain existing practices were unsatisfactory and/or deficient. In respect of those I make the following recommendations:
- “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 6)***

728. I consider that a recommendation in the following terms is appropriate:

“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 for the strip-search and requesting his/her co-operation. 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 a 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 7)

729. I consider that a recommendation in the following terms is appropriate:

“There should be an appropriate review of all current, relevant 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, 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.” (Recommendation 8)

730. I consider that a recommendation in the following terms is appropriate:

“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.” (Recommendation 9)

In conclusion

731. 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.

732. In Part One of the Report, I describe 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 the Report, I endeavour to deal with every such allegation and provide my reasoned conclusions in respect of each of them.

733. 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.¹⁰

734. 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

¹⁰ Chapter 2, Part One (Introduction)

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.

- 735.** So it is that, at various stages during the 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 the 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.
- 736.** However, 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.
- 737.** As can be seen from the main body of the 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 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.
- 738.** 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.
- 739.** 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.
- 740.** 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.

- 741.** 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.
- 742.** 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.
- 743.** In the event, the Inquiry received replies to each of the warning letters within the period specified for response.
- 744.** 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.
- 745.** I do not propose to add to the length of the 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.

ISBN 978-1-4741-1281-9



9 781474 112819