

The Report of the Baha Mousa Inquiry

The Rt Hon Sir William Gage
(Chairman)

Volume I

The Baha Mousa Public Inquiry Report

Chairman: Sir William Gage

Volume I

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Part I

Introduction

Chapter 1: Background

- 1.1 At about 21.40hrs on 15 September 2003, Baha Mousa, an Iraqi citizen, stopped breathing. At the time he was in the centre room of the Temporary Detention Facility (the TDF) at BG Main (the Headquarters of 1 QLR Battlegroup) in Basra having been detained the previous day. He was removed to the Regimental Aid Post (RAP) where attempts were made to resuscitate him. However, those attempts failed and at 22.05hrs he was pronounced dead. A subsequent post mortem examination of his body found that he had sustained 93 different surface injuries. The death certificate, dated 22 September 2003, recorded the cause of death as “*cardiorespiratory arrest*”.
- 1.2 But for Baha Mousa’s death it is possible that the events with which this Inquiry has been concerned would never have seen the light of day. There was a subsequent Court Martial of seven men from 1 Queen’s Lancashire Regiment (1 QLR) which occupied four months spread over the end of 2006 and the beginning of 2007. The Judge Advocate, Mr Justice McKinnon, made clear that some soldiers who had abused the Detainees had not been charged with offences “...*because there is no evidence against them as a result of a more or less obvious closing of ranks*”.¹ It is at least possible that if Baha Mousa had survived and not died, the incident giving rise to his injuries would quickly have been forgotten or at least provided no more than a footnote in any history of the post-war occupation of Iraq by British forces.
- 1.3 As it was, his death set in motion a chain of events which led to Court Martial proceedings being instituted against the seven men from 1 QLR; civil proceedings for damages for injuries sustained by all of the men detained with Baha Mousa on 14 September 2003; successful judicial review proceedings instituted on behalf of relatives of Baha Mousa seeking a public inquiry into his death; and finally, the setting up in August 2008 of this Public Inquiry under the Inquiries Act 2005.
- 1.4 The Inquiry’s terms of reference were:

“To investigate and report on the circumstances surrounding the death of Baha Mousa and the treatment of those detained with him, taking account of the investigations which have already taken place, in particular where responsibility lay for approving the practice of conditioning detainees by any members of the 1st Battalion the Queen’s Lancashire Regiment in Iraq in 2003, and to make recommendations.”

- 1.5 It will be seen that the terms of reference were restricted to the incident which led to the death of Baha Mousa and the responsibility for the use by members of 1 QLR of the practice of conditioning detainees. I have not been asked to examine any other incidents where the practice of conditioning detainees may have been used; nor any other incidents involving allegations of ill-treatment of detainees. I have adhered to these terms of reference and have only investigated other satellite incidents where they appear to throw light on the issues with which I am directly concerned.

¹ CM 79/22/19-23

- 1.6** Following the Inquiry being set up, I was fortunate to be able to secure the services of very experienced Counsel to act as Counsel to the Inquiry, a very experienced Solicitor and an equally experienced Secretary. In chronological order of appointment they were, Duncan Henderson, Solicitor to the Inquiry, Lee Hughes, Secretary to the Inquiry, Gerard Elias QC, Leading Counsel to the Inquiry, Nicholas Moss, First Junior Counsel to the Inquiry, and Patrick Halliday, Second Junior Counsel to the Inquiry. This team formed a powerful nucleus for the legal and administrative activities necessary for the Inquiry. In turn they gathered together staff on the legal side to assist the Solicitor and on the administrative side to assist the Secretary. When Duncan Henderson sadly resigned on health grounds in December 2009, the post of Solicitor to the Inquiry was held in turn by Sara Carnegie, Sophie Eloquin and finally Martin Smith, all of whom made a very significant contribution. To all of them and their staff I owe a huge debt of gratitude for their skill, industry, unfailing courtesy and cheerfulness throughout what has been a thorough and arduous Inquiry.
- 1.7** I also express my gratitude to the legal representatives and advisers of all Core Participants for their spirit of cooperation throughout the Inquiry. This helped considerably to ensure the smooth running of the proceedings.

The Inquiry's tasks

- 1.8** The Inquiry's investigative task has been very substantial. The Inquiry inspected many thousands of documents, assessing for each document its relevance to the terms of reference. Of these, the Inquiry assessed over 10,600 documents which passed the relevance threshold. The majority of these had to go through a process of assessment for redactions for national security, personal safety, privacy and other grounds as well as the insertion of ciphers for witnesses granted anonymity, before being disclosed to Core Participants. Documents referred to during the course of evidence have been published on the Inquiry's website.
- 1.9** The Inquiry obtained statements from 388 witnesses. Having set up a hearing centre with its attendant information technology, 277 witnesses were called to give oral evidence over the course of 115 sittings days. The statements of the remaining 111 witnesses were read into the Inquiry's transcript. Most witnesses attended in person to give their evidence. On occasions, on grounds of health or in the interests of those serving or living abroad, evidence was taken by live video link.
- 1.10** By the terms of reference the Inquiry has been set three tasks. The first task has been to investigate the details of the detention, handling, treatment and questioning of Baha Mousa and those detained with him. In carrying out this task I have sought to establish what happened to Baha Mousa and the nine other men detained with him during that detention; and the extent, if any, of the ill-treatment or abuse of him and those detained with him. Insofar as these men were ill-treated or abused the Inquiry has endeavoured to determine who was responsible for such ill-treatment or abuse and who knew what happened.
- 1.11** The second task was to examine the extent to which so-called "conditioning techniques" were used on Baha Mousa and others detained with him. If any such techniques were used, and I find they were, the Inquiry has sought to determine the origin of these techniques and whether anyone in authority approved, sanctioned or condoned the use of them. This has involved consideration of the history of conditioning techniques,

in particular hooding and stress positions; and training, guidance and orders given to soldiers of 1 QLR and some others in relation to their handling of civilians detained by them.

- 1.12** The Inquiry's third task has been to consider what changes, if any, have been made in practice and training since the death of Baha Mousa and what lessons should be learned from what happened to him. I have gone on to consider and make recommendations about remedying any continuing deficiencies in the system which still exist.
- 1.13** In order to meet these tasks, I divided the Inquiry into four modules, as explained in my opening statement:

“Module 1: The History

I propose to examine the history of the use of what has been labelled “conditioning techniques”. This will entail consideration of the Government, Ministry of Defence and Army approaches to such techniques from the time of internment in Northern Ireland in the early 1970s up to and including March 2003 – the date of the invasion of Iraq.

Module 2: Baha Mousa and the other detainees

I propose to examine the circumstances of their arrest and subsequent detention and seek to ascertain what happened to them and who was involved.

Module 3: Training and the chain of command

In this Module, I propose to examine what training and guidance was given and what orders were issued to those involved in the detention, and to follow the chain of command upwards in relation to these matters.

Module 4: The future

I propose to consider what has happened since 2003 in relation to conditioning techniques and to examine any appropriate recommendations for the future. I shall give consideration to holding a seminar type hearing as part of this Module.”²

Op Telic and the role of 1 QLR in outline

- 1.14** Following the Gulf War in 1991 the United Nations imposed conditions on Iraq which sought to remove the threat to neighbouring countries posed by Saddam Hussein's regime. In the years which followed international concern grew over what was considered to be the evasion, obstruction and minimal disclosure by the Iraqi regime in respect of chemical munitions. On 29 January 2002 President Bush referred to the regimes of Iran, Iraq and North Korea as an “axis of evil”. By this President Bush meant that each was responsible for sponsoring terror and producing weapons of mass destruction.
- 1.15** In September 2002, the British Government published a dossier detailing Iraq's illegal weapons holdings and their potential for use. Military contingency planning had already been underway for some months but was intensified from this time onwards. In the months before March 2003, whilst diplomatic activity continued, both the United States and the United Kingdom progressively deployed forces in the Middle East. On 18 March 2003 Parliament approved “all means necessary” to ensure the elimination

² Chairman's opening statement, 15 October 2008, paragraph 10

of Iraq's weapons of mass destruction. On 19 March 2003, following an ultimatum given by President Bush to Saddam Hussein which was not complied with, attacks were launched on regime associated targets in Iraq. The land offensive started on the following day. The British military effort was code-named Operation Telic (Op Telic).

- 1.16** It is neither appropriate nor necessary in this Report to provide further details of the events which led up to the war, itself. Since this Inquiry was set up the Iraq Inquiry has been convened and has been carrying out its own investigations. That Inquiry has a much wider remit than this Inquiry in relation to the events leading up to the start of Op Telic, the war and the aftermath of the war. It suffices for me to state that the warfighting phase of the operation is generally taken to have ceased when on 1 May 2003, in a speech made aboard USS Abraham Lincoln, President Bush declared the end of decisive combat operations. For the remainder of 2003, including the time of Baha Mousa's detention, coalition forces were in occupation of Iraq with the UK being the lead nation in the south-east of the country.
- 1.17** I address the command structure in a little more detail later in this Part of the Report but it is helpful to put 1 QLR's role into some initial perspective. 1 QLR was one of the Battlegroups for Op Telic 2 that made up 19 Mechanised Brigade (19 Mech Bde). For Op Telic 2, 19 Mech Bde was the only British Brigade serving in Iraq. The Brigade Commander was Brig William Moore. Other troop contributing nations had provided troops for operations in south east Iraq alongside the British Forces. Together with 19 Mech Bde they came under the command of the Multi National Division (South East) (MND(SE)). As its name suggests, this was a multinational formation headquarters but its main constituent was 3 (UK) Armoured Division (3 (UK) Div) and it was led by their General Officer Commanding, Maj Gen Graeme Lamb.
- 1.18** 1 QLR left the United Kingdom on 15 and 16 June and after a short period of acclimatisation in Kuwait arrived in Iraq on 24 June. On 27 June it took over from 1 Black Watch (BW) who had come to the end of their tour on Op Telic 1.³ 1 QLR assumed the responsibility for central Basra.
- 1.19** 1 QLR had its Headquarters, BG Main in the former headquarters of the Ba'ath Party. The headquarters company, Helles Company (HQ Company) were situated there. Burma Company (B Company) was also situated at BG Main. Anzio Company (A Company) was located at Camp Stephen and Corunna Company (C Company) at the Old State Building. Somme Company (S Company) was established at Basra Palace formerly the home of the member of the Saddam regime known as "Chemical Ali". Basra Palace was also the location of 19 Mech Bde Headquarters.
- 1.20** 1 QLR's task of controlling central Basra was an extremely complex and dangerous one. The battalion was augmented with a small mix of personnel from other parts of the British Army to form 1 QLR Battlegroup. The Battlegroup consisted of 620 soldiers, of whom only 420 were "bayonets".⁴ Basra is approximately 150 square kilometres in size and at that time had a population in the region of 1.3 million people.
- 1.21** At the time of their arrival in Basra, 1 QLR found that the infrastructure in the City had disintegrated. There was no effective police or judicial system. Looting and other criminal activities were rife. There was a constant danger of insurgent activity. The situation rapidly descended into extreme confusion and danger. The local population,

³ MOD030935

⁴ Mendonça BMI01106, paragraph 46

whilst happy that Saddam Hussein had gone, were very unhappy with the disruption and the failure to remedy it quickly.

- 1.22** The task required the Battlegroup to work, with few exceptions, eighteen to twenty hours a day in stifling heat with daytime temperatures of 57°C to 59°C and night-time temperatures between 40°C to 43°C.

Operation Salerno and the detention of the Detainees

- 1.23** On 12 September 2003, 1 QLR was ordered to take part in a three hour targeted search of hotels in four districts of Basra, Operation Salerno (Op Salerno).⁵ The aims included to identify a number of individuals who were suspected of being Former Regime Loyalists (FRLs). In addition, the hotels were to be searched for persons who might have been, or were, assisting FRLs. The operation was to be a “soft knock” as opposed to a “hard knock” operation.
- 1.24** On 14 September 2003, Op Salerno was carried out. In the course of it the Hotel Ibn Al Haitham (the Hotel) was searched by soldiers from A Company, who were members of Lt Craig Rodgers’ Multiple (the Rodgers’ Multiple). The search started at 06.00hrs. In the course of the search the soldiers discovered a number of weapons, radio equipment, mobile telephones, false identity documents and some ammunition. During the search one of the three hotel’s co-owners, C001, fled the scene. He was not detained either then or later. The decision was taken to detain the Hotel’s other workers and owners as suspected FRLs. Seven men in the hotel were arrested. Amongst these men was Baha Mousa, the hotel receptionist, aged 26. In due course six of the men including Baha Mousa were transported to BG Main, where they were received into the TDF at about 10.40hrs. The seventh man, D003, went with soldiers to the home of C001’s father and brother, D006 and D005. They too were detained. All three men were transported first to Camp Stephen. D003, and later D005 and D006, were then taken on to the TDF. D003 arrived at the TDF at about 12.00hrs and the other two at about 14.00hrs. Subsequently, in the late evening, one further man, D007, was detained and transported to the TDF arriving at approximately 22.00hrs. D007 had no connection with the Hotel.
- 1.25** The men were detained in the TDF until transfer to the Theatre Internment Facility (TIF) on the morning of Tuesday 16 September, in total nearly 48 hours for some of the Detainees. In the course of their detention, they were hooded with hessian sandbags for lengthy periods of time and made to assume stress positions. All were questioned by a tactical questioner with a view to potential intelligence being obtained from them. The Detainees were initially guarded by two men from Colour Sergeant Hollender’s Multiple and later by those from the Rodgers’ Multiple. Initially the guards were instructed by Cpl Donald Payne, a member of the Provost Section of 1 QLR. There can be no doubt that in the course of this detention the Detainees were assaulted by a soldier or soldiers, resulting in injuries being inflicted on them.
- 1.26** On the night of 15 September 2003, during the course of what Payne described as a struggle between himself, Pte Aaron Cooper and Baha Mousa, Baha Mousa stopped breathing. Capt Derek Keilloh, the Regimental Medical Officer (RMO) was informed. He arrived at the TDF and immediately started giving Baha Mousa mouth to mouth resuscitation. This brought about no improvement in Baha Mousa’s condition and he

⁵ MOD030882

was transferred to the RAP. Further CPR was instituted but was unsuccessful and at 22.05hrs Baha Mousa was pronounced dead.

1.27 The inevitable consequence was a Special Investigation Branch (SIB) investigation and a post mortem. The post mortem was carried out by Dr Ian Hill, a Home Office accredited pathologist, on 21 September 2003. Initially, Hill gave the cause of death as ligature strangulation. Subsequently he changed this to postural asphyxiation. The difference, he explained, was dependant on the correct factual description of what occurred in the struggle. In addition he found 93 separate surface injuries on Baha Mousa's body.

1.28 Hill also examined some of the other Detainees who exhibited evidence of injuries sustained during the course of their detention. They had been transferred to the TIF on Tuesday, 16 September 2003. Save for injuries to one of the Detainees, these injuries were neither as numerous nor as serious as the injuries sustained by Baha Mousa, although some of the injuries were nevertheless significant. The Detainees also suffered varying levels of psychiatric injury as a result of their mistreatment.

The Court Martial and the setting up of the Inquiry

1.29 The SIB investigation ended in Court Martial proceedings being brought against seven members of 1 QLR. They were Pte Wayne Crowcroft, SSgt Mark Davies (a tactical questioner), Pte Darren Fallon, Lt Col Jorge Mendonça, Payne, Maj Michael Peebles (the Battlegroup Internment Review Officer, (BGIRO)) and Cpl Kelvin Stacey. They were charged as follows:⁶

Crowcroft	Inhuman treatment of a person protected under the Fourth Geneva Convention
Davies	Negligently performing a duty
Fallon	Inhuman treatment of a person protected under the Fourth Geneva Convention
Mendonça	Negligently performing a duty
Payne	Manslaughter; inhuman treatment of a person protected under the Fourth Geneva Convention; perverting the course of justice
Peebles	Negligently performing a duty
Stacey	Assault occasioning actual bodily harm or in the alternative, battery

1.30 On 14 February 2007, at the close of the prosecution case, the Judge-Advocate ruled that Mendonça, Crowcroft and Fallon had no case to answer and the charges against them were dismissed. Likewise, the remaining charge of battery against Stacey was dismissed. The charges of manslaughter and perverting the course of justice against Payne were also dismissed.⁷ At the outset of the trial he had pleaded guilty to the charge of inhuman treatment. On 13 March 2007, Peebles and Davies were found not

⁶ MOD013405

⁷ CM 79/1/4-51/23

guilty by the Court and discharged.⁸ On the 30 of April 2007 Payne was sentenced to twelve months imprisonment, dismissed from the Army and reduced to the ranks.⁹

- 1.31** Following the conclusion of the Court Martial proceedings the Ministry of Defence (MoD) instituted an Inquiry into events in Iraq including the abuse and deaths of a number of Iraqis. This Inquiry was conducted by Robert Aitken. His report is dated 25 January 2008.¹⁰ However, by the time Aitken published his report, Col Daoud Mousa, Baha Mousa's father, had instituted judicial review proceedings seeking a public inquiry. This claim was one of six claims which reached the House of Lords. The decision of the House of Lords, reported as *R (Al Skeini and others) v Secretary of State for Defence (The Redress Trust and others intervening)* [2008] 1 AC 153 was published in June 2007. As a result of an agreement reached between the claimant and the Secretary of State, the Secretary of State agreed to direct that a public inquiry into the death of Baha Mousa be held.
- 1.32** On 2 August 2008 the Secretary of State for Defence set up this public inquiry and appointed me its Chairman. The Terms of Reference of the Inquiry are as stated above.
- 1.33** Before turning to the next Chapter of this Report there is a comment which I desire to make at the outset. For the whole of the time this Inquiry has taken, a fierce war has been conducted in Afghanistan involving soldiers in the British Army and other national forces. In addition combat operations continued in Iraq for the early part of the Inquiry. Hardly a week has gone past without some reference in the media to the death or serious injury of members of the British Armed Services. I have been acutely conscious of the additional pain and stress which this Inquiry has put on members of the Armed Forces and the MoD. At times it has not been pleasant to listen to grave allegations of misconduct being made against military personnel. However, as Gerard Elias QC put it when making his Opening Statement:

"...it's perhaps appropriate at this stage to reiterate what you [the Chairman] said in your opening statements to this Inquiry last October ...:

"It is also right that we do not forget the loss of life of British servicemen in Iraq in 2003 and thereafter."

So we remember this because it points up the sacrifice made by so many in the cause of the Iraq campaign, whatever its rights or wrongs and, in this context, highlights the risk of those sacrifices being undermined by the knowledge that an Iraq detainee was abused -- if that be the case -- and died whilst in the hands of British soldiers. Such an event can act as a rallying cry for extremists with all the pressures that that puts on those men and women still on active service. To be seen to be dealing with such allegations in a comprehensive and fair way may not of itself heal the wounds, but perhaps it does go some way to provide reassurance, both to those who may have been wronged and to those who have nothing to fear from the truth. That is why, sir, we say it's important that this Inquiry takes place."¹¹

- 1.34** To which I add, when writing this Report, I have been very conscious that criticisms made may seem to some, not only those in the Armed Services, particularly ungrateful and insensitive when set against the sacrifices and bravery of the vast majority. It

⁸ CM 93/3/10-14

⁹ CM 94/67/7-13

¹⁰ MOD041542

¹¹ Opening BMI 1/7/17-8/14

must be stressed that the faults of some should not tarnish the image and reputation of the many.

- 1.35** Further, it must also not be forgotten that in the combat phase of Op Telic and afterwards during the occupation of Iraq by coalition forces many thousands of civilian Iraqis lost their lives. As the evidence of the Detainees demonstrated, Iraqis of all ages and from all sections of society suffered great upheavals in their lives and many hardships during Op Telic.

Chapter 2: Conditioning and the Five Techniques

- 1.36** The terms of reference specifically refer to the practice of conditioning. Conditioning is a term which was used to describe the treatment of military and civilian personnel detained before they were interrogated. When a prisoner of war or a civilian was detained it was believed that most if not all would be in a condition described as the “shock of capture”. This is taken to indicate general anxiety by a detained person about what may happen to him or her. For some years intelligence personnel and others who have sought information from such individuals endeavoured to use the anxiety generated by the shock of capture to assist in obtaining information from them. It was believed that vulnerability arising from the shock of capture assisted in the process of interrogation. Conditioning is a generic term to describe the techniques used to prolong, maintain or enhance the shock of capture.
- 1.37** Following the Second World War insurrections occurred in a number of different parts of the world and in Northern Ireland which necessitated the deployment of the Armed Services to keep the peace. Whatever may have happened in the intelligence gathering process during the Second World War, post war anxieties began to surface in respect of the way in which intelligence was obtained from civilians. This in turn spawned a number of Inquiries. They were firstly, the Bowen Inquiry in 1966 into procedures current in Aden “... for the arrest, interrogation and detention of persons suspected of terrorist activities”. Secondly, the Compton Inquiry and Report in 1971 into allegations of brutality towards those interned in Northern Ireland in 1971. Thirdly, the Parker Inquiry which reported in 1972 and which looked more broadly at the future use of the techniques considered by the Compton Inquiry. Both the Compton and Parker Reports considered the techniques of wall postures, hooding, noise, deprivation of sleep, and deprivation of food and water. These five methods of treatment came to be known as “the five techniques”.
- 1.38** The Parker Report was presented to Parliament in March 1972. The members of the committee, the authors of the Report, were divided and produced a Majority and Minority Report. The majority were prepared, in certain circumstances, to countenance the use of the five techniques provided safeguards were in place. The Minority Report concluded that the techniques were illegal under domestic law and likely to be illegal by the domestic law of any place in which the British Forces might consider their use.
- 1.39** After some internal debate, on 2 March 1972, the Prime Minister, Rt. Hon. Edward Heath MP, announced in the House of Commons:¹²

“The government, having reviewed the whole matter with great care and with particular reference to any future operations, have decided that the techniques which the Committee examined will not be used in the future as an aid to interrogation.”

The Prime Minister’s statement continued:

¹² PLT000812-13

"I must make it plain that interrogation in depth will continue but these techniques will not be used. It is important that interrogation should continue. The statement that I have made covers all future circumstances. If a government did decide – on whatever grounds I would not like to foresee – that additional techniques were required for interrogation, then I think that, on the advice which is given in both the majority and the minority reports, and subject to any cases before the courts at the moment, they would probably have to come to the House and ask for the powers to do it."

I deal with this historical context in more detail in Part IV.

1.40 Against this background the Inquiry has sought to investigate and provide answers to why during the course of their detention the Detainees were subjected to one or more of these techniques. In order to attempt to provide an answer to these questions the Inquiry has investigated and traced directives and orders which provide some clue as to the origin of these techniques and whether or not they were sanctioned; if so when, and if not were they nevertheless used without authority. I shall deal with this part of the Inquiry and set out my conclusions on it later in this Report.

1.41 At this stage it is only necessary to note that in this task the Inquiry has been concerned principally, but not exclusively, with two of the five techniques, namely hooding and stress positions. Hooding of the Detainees in the TDF between 14 and 16 September 2003 involved hessian sandbags being placed over their heads. Some of the Detainees had two sandbags, or even three, placed over their heads.

1.42 Stress positions involved the Detainees being forced to adopt different positions which when held for any length of time became painful, extremely uncomfortable and exhausting to maintain. Initially the most common stress position which they were made to adopt was the 'ski position'. As its name implies, it involved the Detainee standing with his back to the wall, arms handcuffed and outstretched, and knees bent. Later, the Detainees were made to sit or squat with hands handcuffed and arms outstretched.

1.43 I should add that the terms conditioning and stress positions have been the subject of much evidence and some debate in the course of the Inquiry. It seems clear that they are open to different interpretations and meant different things to different witnesses.

1.44 So far as stress positions are concerned, in my view these are best described as:

"Any physical posture which a captured person is deliberately required to maintain will be a stress position if it becomes painful, extremely uncomfortable or exhausting to maintain."¹³

1.45 As regards conditioning, the term is an unfortunately ambiguous one. It can and has been used to refer to methods of maintaining the shock of capture that are perfectly lawful and legitimate. An example is ensuring that guards do not fraternise with prisoners of war or offer them cigarettes or similar comforts. But the term can also be used to denote coercive techniques, including the five techniques, which are unlawful or otherwise inappropriate.

¹³ BMI 107/105/9-12

Chapter 3: The Command Structure

- 1.46** Before embarking on the detailed evidence which the Inquiry heard, it is sensible to explain so far as is relevant the command structure of the Armed Forces. As is well known the Services are organised on a hierarchical basis of command and formations. The Secretary of State and the Chief of the Defence Staff (CDS) are based in the MoD Main Building in Whitehall. In this building the politicians and civil servants co-exist with the CDS, the individual heads of each Service and their respective staffs.
- 1.47** Beneath the CDS was the Permanent Joint Headquarters (PJHQ) situated at Northwood. This command structure was headed by the Chief of Joint Operations. At the time of Op Telic until 23 July 2004, the Chief of Joint Operations (CJO) was Lt Gen Sir John Reith. His staff consisted of two deputies whose areas of responsibility were split into Operations (DCJO Ops) and Operation Support (DCJO Sp); and six Assistant Chiefs of Staff, each responsible for one of nine branches of responsibility:
- J1 Personnel Division
 - J2 Operational Intelligence
 - J3 Current Operations
 - J4 Logistics/Medical
 - J5 Crisis and Deliberate Planning
 - J6 Communications
 - J7 Joint Training
 - J8 Finance and Human Resources
 - J9 Policy, Legal, Presentation.
- 1.48** I set out these nine branches here because, with variations, they are mirrored throughout the hierarchy of formations at Headquarters level. Below the major headquarters, more usually there are only five or six branches.
- 1.49** At the time of Op Telic, PJHQ commanded operations not only in Iraq but also in Afghanistan, Bosnia, Kosovo, Sierra Leone and the United Kingdom and the United Kingdom's contributions to a number of separate United Nations operations.
- 1.50** Below PJHQ, solely for the purpose of the warfighting phase of Op Telic, was the National Contingent Command (NCC) with a staff also divided into similar branches. It was commanded by Air Marshal Brian Burrige. The NCC was based in Qatar. On 8 May, once the warfighting phase of Op Telic 1 had ended, the NCC relinquished command and was subsumed back into the PJHQ at Northwood.
- 1.51** The NCC commanded Air, Land, Maritime and Joint Force Logistics components. The land contingent was 1 (UK) Armoured Division (1 (UK) Div) commanded by Maj Gen Robin Brims. He was succeeded on around 12 May 2003 by Maj Gen Peter Wall. Once Basra was taken, the divisional headquarters were located at Basra Airport. When the NCC was withdrawn after the warfighting phase, 1 (UK) Div was commanded directly by Reith as the CJO at PJHQ. 1 (UK) Div commanded three British Brigades. One of these was 7 Armoured Brigade which included 1 BW.

- 1.52** Later in Op Telic 1, and reflecting the expanded number of nations involved in the post-warfighting coalition, the MND(SE) was created. 1 (UK) Div was its largest contingent but MND(SE) included staff officers from other troop contributing nations. The Division's area of operations was expanded from two provinces (Basra and Maysan) to four (Basra, Maysan, Al Muthanna and Dhi Qar). This was the position at the end of Op Telic 1.
- 1.53** As Op Telic 1 came to an end, the formations and units in theatre handed over to the new forces arriving to relieve them. The handovers conducted in this "Relief in Place" were staggered to avoid all levels of the chain of command changing at the same time.
- 1.54** The Battlegroups handed over first. 1 QLR, as already noted, took over responsibility for central Basra from 1 BW on 27 June 2003. In turn, 19 Mech Bde took over from 7 Armd Bde on 4 July 2003. Finally, between 10 and 12 July, 3 (UK) Div took over from 1 (UK) Div becoming in their place the leading element within MND(SE) for Op Telic 2.
- 1.55** Simplified diagrams showing the command structure at the start of Op Telic 1 and Op Telic 2 can be found at the end of this introduction.
- 1.56** Finally, I come back to 1 QLR. As already stated, it consisted of five companies. I have already set out the locations of each of the companies, together with BG Main.
- 1.57** At this stage it is unnecessary to identify all the other Commanding Officers, Company Commanders, officers and men in the majority of the units to which I have referred. I shall introduce them as and when the roles they played become relevant in the narrative of the events with which the Inquiry is concerned. At present, it is only necessary to identify the principal officers and men of 1 QLR at the time of Op Telic 2. Throughout Op Telic 2 the Commanding Officer was Lt Col Jorge Mendonça. His second in command (2IC) was Maj Steven Bostock until mid-August 2003. Bostock was then succeeded by Maj Chris Suss-Francksen. The Adjutant throughout the tour was Capt Mark Moutarde and the Regimental Sergeant Major, WO1 George Briscoe. The Officer Commanding A Company was Maj Paul Davis until mid-August, when he was succeeded by Maj Richard Englefield. B Company's Officer Commanding was throughout the tour Maj John Lighten. Maj Mark Kenyon was Officer Commanding C Company for the whole tour, as was Maj Edward Hemesley Officer Commanding S Company. I have already mentioned Peebles, the BGIRO at the relevant time; an important post which I shall explain later in the Report together with tactical questioning.

Chapter 4: The Operational Context

The deteriorating situation in Op Telic 2

- 1.58** It would appear to be common ground that any expectation that the warfighting phase would give way to a peacekeeping operation, where the local population were essentially friendly and co-operative, quickly dissolved.
- 1.59** True it is that there was a “honeymoon” period when the apparent relief of being rid of a tyrannical government saw expression in popular gratitude towards the invading forces. Initially, the arrival of British Forces in the region was greeted with enthusiasm. Col Daoud Mousa, when asked about his attitude to the arrival of British soldiers in Basra, said:

“This was something to my delight. We welcomed the troops. We gave them flowers. They were walking about everywhere in the markets quite free of any concern. That was in light of the good relationship between the people of Basra and the British troops. During that time there were three football matches ... The public were there and they were clapping for them when they scored a goal, whenever they scored a goal, and the people were rejoicing for their presence because they got them rid of the injustice of Saddam. We had thought that we would be enjoying a lot of good after their arrival.”¹⁴

- 1.60** Unfortunately this honeymoon period lasted for only a short period. Within weeks it was apparent that sentiment was turning sharply against the occupying troops.
- 1.61** I have already described the task which 1 QLR was required to undertake and the conditions it faced. Reith gave a graphic description of conditions in Iraq at the time of Op Telic 1 and 2. He said that the British Forces were surprised at the poor state Basra was in when they reached the city. Saddam Hussein’s regime had made little investment in the city. Virtually no repairs had been made to the infrastructure. Only the Sunni population had power. None of the Shias had power of any sort. The marshes had been drained in order to force out the marsh Arabs. As a consequence the Sweetwater Canal, which provided most of the fresh water for Basra, had become a putrid canal. Most of the Shia population were living in squalor. The civil administration had disintegrated. The police and the courts had ceased to function. After the brief honeymoon period, insurrection began to mount. Reith attributed much of the upsurge in insurgency to neighbouring groups from Iran and the infiltration of Al Qaeda.¹⁵ All these difficulties were confirmed by other witnesses.
- 1.62** I need not elaborate on the evidence describing the problems which such a situation inevitably threw up. They are neatly encapsulated in the final submissions of the Detainees:

“...the prospect of civil unrest was very real – not simply because of infrastructural damage and the absence of basic amenities but also because de-Baathification removed a potential middle class leadership inside Iraqi civil society that could act as a buffer between the occupying forces and the rest of the civilian population.”¹⁶

¹⁴ Daoud Mousa BMI 10/8/2-14

¹⁵ Reith BMI 94/153/23-155/25

¹⁶ SUB002534, paragraph 36

1.63 Mendonça was but one of many witnesses who spoke of the growing instances of public disorder fuelled by the lack of food, basic utilities and money, the rise of looting and the breakdown of law and order.¹⁷ I heard evidence also of the wide availability of weapons to the civilian population with the dangers that this obviously posed for the military. In addition, I was informed of the growing threat both from FRLs and an increasing insurgency problem which capitalised on the civil unrest. As Counsel for the Treasury Solicitor put it in their closing submissions:

*“...by August UK forces started to face massive civilian unrest, and open hostility on the streets. Whereas before it had been possible to move around Basra and the provinces relatively easily, the increasing frequency of direct attacks to kill coalition forces, including through the use of IEDs ... rocket propelled grenades, mortars etc., meant that travelling increasingly became extremely dangerous, and required much greater planning and protection. With greater unrest came further crime, as some sought to profit from, and deepen the instability”.*¹⁸

1.64 In the light of the evidence I have heard, I have no doubt that but for the briefest of periods after the warfighting phase, the situation faced by commanders and troops on the ground was uniformly hostile and unpredictable. Brig William Moore, the Brigade Commander of 19 Mech Bde, confirmed in evidence what he had said in his statement to the Inquiry: *“Iraq is the most volatile and violent place in which I have ever served.”*¹⁹

1.65 Accordingly, I unhesitatingly accept that the hostility of the situation encountered by soldiers on the ground as well as the violence and threat of violence routinely offered to them, added enormously to the daily tensions of life in Basra for the army at all levels, and most particularly for those soldiers at the operational front line.

The Tempo of Operations

1.66 Many witnesses spoke of the considerable workload which they had to undertake. Col Andrew Cowling, Deputy Chief of Staff 1 (UK) Div, told me that he was getting about four hours sleep a night. He said that, of his 32 years in the army, the period he spent in Iraq was:

*“The six months and within the six months the war-fighting phase were the hardest period of soldiering that I conducted throughout my 32 years of soldiering. The pace was frenetic, remorseless and punishing and we – simply put, we worked until we dropped.”*²⁰

1.67 Maj George Waters, SO2 J2, 1 (UK) Div, was probably articulating the thoughts of many when he told me that despite working twenty hours a day for a prolonged period his workload was *“...probably greater than I could really cope with”*.²¹ He added that he was subsequently given a period of leave to recover from this situation.

1.68 The frenetic pace was not limited to those in theatre. Rachel Quick, one of the senior lawyers at PJHQ, described receiving *“... something like 100 e-mails an hour”*.²²

¹⁷ Mendonça BMI 59/8/4-9/13

¹⁸ SUB001379, paragraph 308

¹⁹ Moore BMI06956, paragraph 50

²⁰ Cowling BMI 70/30/10-14

²¹ Waters BMI 71/89/12-13

²² Quick BMI 92/37/18-19

- 1.69** Capt Charles Burbridge, SO3 G3 Ops at 19 Mech Bde, described his work in the following terms:

The atmosphere within the G3 staff cell was very frenetic. We were operating at our absolute capacity. The small staff cell of six watchkeepers and myself and my assistant were having to deal with a diverse and often completely unrelated series of events throughout the course of the day and the night. We wouldn't be able to predict what was going to happen for the next sort of 20 minutes.”²³

- 1.70** At Battlegroup level, as already stated, Mendonça said everyone was working eighteen to twenty hours a day. Capt Sean Cronin, the intelligence officer at the start of the tour, described his work as being of “...*extremely high tempo, not least because I was the only person in the Int Cell who had actually been trained for the work I was doing*”. He worked on average an eighteen hour day, possibly a little longer. He said his working schedule was similar to other staff at Battlegroup Headquarters.²⁴
- 1.71** I also accept the evidence I have heard that the situation drove the tempo of operations. Quite apart from the aspects of security and civilian unrest which I have already touched upon, Capt Michael Elliott, 1 QLR's Ops Officer until August 2003, in evidence (mirrored by many others) gave a picture of the tempo of life:

“... if I could just expand on the tempo. The city had deteriorated so that daily riots were not uncommon. At the time of my handover, I recall that for the week or so before the handover, there had been a chronic fuel shortage within the city and that demanded direct intervention by the battlegroups.

So we had call signs at the refinery and we were escorting all petrol tankers throughout the city from the refinery and we were also trying to judge which petrol stations had the biggest potential to spark a riot, trying to determine which had stores in, which didn't, determining opening and closing hours, trying to identify who the owners were and quell the riots that were in place.

Linked to this, training the local police force, trying to maintain security more generally, and then, superimposed onto all of this daily activity, an intelligence request or report from brigade would be introduced that would demand, usually overnight, perhaps a lift operation by one, two or even all four companies concurrently.”²⁵

- 1.72** To cope with this, sixteen, eighteen and twenty hour working days were the norm for many, if not most. Again, Elliott's evidence of his daily tour of duty in Iraq as an Ops Officer was typical of many:

“...12 hours would be a good day. ... I would try to get out of the ops room as best I could to maintain my sanity, if nothing else, and be fresh, but more often than not the only escape would be to the cookhouse, certainly in the early part of the tour. I then had a landline across the swimming pool to my balcony which would ring far too often and would usually result in me having to go to the ops room.

Q. How many hours of the day would you spend within the ops room, do you think, on average?

A. 12 to 16, I would imagine.”²⁶

²³ Burbridge BMI 79/75/20-76/2

²⁴ Cronin BMI 58/39/21-41/10

²⁵ Elliott BMI 58/200/25-201/21

²⁶ Elliott BMI 58/198/15-25

- 1.73** Capt Gareth Seeds, who succeeded Elliott as 1 QLR's Ops Officer for the second half of the tour, said that when he visited the TDF on the night of Baha Mousa's death he had had no sleep for 48 hours. He added that going without sleep occurred often, the longest period being about four days.²⁷
- 1.74** 2nd Lt Kevan Callaghan, B Company G5 Officer and Watchkeeper, said in answer to a question on his workload:

"It was very, very, very busy If I was performing [as] watchkeeper overnight, sometimes I worked 30 hours straight".²⁸

- 1.75** There can be no doubt that all units engaged in Op Telic 1 and 2 undertook extremely onerous workloads and those in theatre faced difficult, complex, stressful and dangerous conditions in extreme heat.
- 1.76** In these circumstances, I bear in mind that it is perhaps inevitable that fatigue as well as the simple pressures of time may have affected the quality and/or accuracy of work, or aspects of it, from time to time and that, for example, orders might necessarily have been given orally where in less pressurised circumstances they may have been given or reinforced in writing.

The Age, Experience and Training of Soldiers

- 1.77** It is apparent that many of the "front line" soldiers, such as those, for example, making up the Rodgers' Multiple, were in their late teens and early twenties. Even the junior officers on Op Telic 2 were young men in their early twenties who had for the most part only recently graduated from Sandhurst with no real operational experience before Iraq.
- 1.78** As regards what was required in Iraq, the effect of this seems to have been twofold. Firstly, young soldiers required a firm lead and example, particularly where their training and experience may have been insufficient to meet the demands of a situation they faced in the field. Secondly, junior officers may have naturally called upon the experience, and relied upon the guidance of senior Non-Commissioned Officers (NCOs).
- 1.79** The Commander of 7 Platoon, B Company, was 2nd Lt Michael Peel who was just 22 years when he deployed to Iraq. He was eighteen months commissioned and had no military operational experience. His Platoon Sergeant was Sgt Michael Potter, a soldier with eighteen years' experience who had enlisted at sixteen years of age. In answer to a question I asked, Peel said of Potter:

"... in terms of his experience I would often let him take the lead in certain elements of training purely on the basis that he was in a better position to give it and he would be respected more by the soldiers due to his experience."²⁹

- 1.80** He went on to say that he regarded his relationship with Potter "as a partnership" although he was the senior partner.³⁰

²⁷ Seeds BMI 46/495/22-496/2

²⁸ Callaghan BMI 55/11/1-4

²⁹ Peel BMI 48/237/16-20

³⁰ Peel BMI 48/237/25-238/4

- 1.81** There was evidence, which I accept, that there was little or no training offered to soldiers dealing with the handling of civilian prisoners as opposed to prisoners of war. However, I do not lose sight of the fact that almost every soldier who gave evidence agreed that the basic requirement to treat prisoners of whatever category “humanely” was at the forefront of all training on prisoner handling.
- 1.82** I am not insensitive to the pressures applied to young men who were simultaneously assailed on many sides by the difficulties of soldiering in Iraq at this time. I have accordingly borne the youth and inexperience of many of the Inquiry’s witnesses in mind, in particular where they may have faced inappropriate conduct by those older or more senior in rank. But this factor only goes so far. As was recognised by all Core Participants, it cannot excuse violent and inhumane conduct of the kind that all soldiers must have known was wrong.

The Environment

- 1.83** If the tempo and tensions of Army life were a serious issue for all serving in Iraq, it is clear that the constantly high temperatures were another major factor. I was told that July and August were the hottest time of year and that day-time temperatures ranging from the high forties to above 60 degrees were commonplace.
- 1.84** Despite the most rigorous of regimes to combat the problem of the heat, as Dr Oliver Bartels, Keilloh’s predecessor as RMO was to tell me, heat was the main enemy. He said in evidence:

“Yes, one of my jobs as medical officer is to brief the commanding officer on matters which affect health and, despite our best efforts, we had over 100 soldiers during the period of time I was there who required treatment of some form or another for heat injury, be it just a cool area and a drip of IV fluid or casevac’d into hospital.”³¹

Mendonça described the heat in the following terms:

“I cannot begin to describe what it feels like to be in 58 degrees centigrade. When we turned up in Kuwait, I think it was 45 and I felt like I had walked into an oven. So it was very hot.”³²

- 1.85** Acclimatisation was difficult and such air conditioning as existed, and I accept that was very limited, was inevitably subject to the fluctuations of available power.
- 1.86** The closing submission by Counsel for the Treasury Solicitor’s clients reflected points made by several Core Participants and witnesses in this regard:

“The extreme heat had significant effects on British Soldiers, physically and mentally. For UK soldiers who were not used to it, the high temperatures in Iraq, in particular while patrolling in full combat gear and body armour or in closed-down armoured vehicles without air-conditioning, was physically very demanding indeed.”³³

- 1.87** The effect of the heat, the dust, the lack of air conditioning, I accept, impacted upon everything the soldiers were required to do. Not only must it have been a mentally gruelling and energy sapping daily enemy, its effects, and in particular the loss of men permanently or temporarily from their allotted roles, threw still more work on

³¹ Bartels BMI 52/153/10-16

³² Mendonça BMI 59/10/1-4

³³ SUB001268, paragraph 65

a diminishing number. I accept also, that the heat problem will only have served to exacerbate the problems raised by the frenetic tempo of operations.

Planning Pressures and Background Resources

1.88 Rt. Hon. Adam Ingram MP, at the time Minister for the Armed Forces (Min AF), described the quick end to the warfighting phase of Op Telic as a “catastrophic success”. He said it led to the rapid collapse of the apparatus of the State, a problem referred to by others as the collapse of the infrastructure and dealt with earlier in this section of the Report.³⁴

1.89 He frankly admitted that because of a failure by government to deliver resources, the military were having to undertake roles not normally within their remit. Moore put it equally starkly:

“In my view there was a failure across government to support what we were doing in Iraq.”³⁵

1.90 He had made the point equally forcefully in a letter written to Lamb, dated 15 August 2003, in which he complained of lack of support for Op Telic 2 and added that soldiers were required to bear:

“...the load of this [i.e. other government departments] inactivity; covering cracks, doing more than is expected of them and trying to turn their considerable skills to other areas. It is our soldiers who bear the brunt of the Iraqi frustrations – they are the face of the coalition – and they are being held responsible for something that is outside their competencies and their remit.”³⁶

1.91 It is no part of my remit to comment upon the reasons for, or the lack or otherwise, of resources applied generally to the tasks in hand in Iraq. However, from a factual perspective, there is no doubt that the reduction in the number of available soldiers as Op Telic 2 progressed, as well as the substantial reduction in the number members of the Royal Military Police (RMP) available, will have added to the problems and tensions affecting the Army at all levels.

1.92 One example of a lack of forward planning and/or of resources was the fact that the facilities available to hold civilian prisoners at 1 QLR’s BG Main were, as I describe elsewhere, patently unsuitable. In the result I am not persuaded that this was a factor which played any significant part in the assaults which took place but it is beyond doubt the case that a better run, more secure facility, would have afforded greater protection from casual assault than was in fact the case for Baha Mousa and the other Detainees.

Specific Incidents

1.93 A significant part of the background context of the events that this Inquiry has investigated is of course the impact on soldiers of the violent deaths of some of their colleagues. The deaths of six members of the RMP, attached to 1 PARA, on 24th June 2003, the death of three RMP members of 150 Provost Company on 23 August

³⁴ Ingram BMI 97/71/9-17

³⁵ Moore BMI 99/18/9-10

³⁶ BMI06976

2003, and the death of Capt Dai Jones of 1 QLR on 14 August 2003 were incidents which plainly had a marked effect upon most soldiers serving in Iraq at the time.

- 1.94** On 24 June 2003, during Op Telic 1, six RMP soldiers were undertaking liaison duties at an Iraqi police station in Al Majarr Al Kabir. Arising out of circumstances of significant public unrest, the police station was attacked and tragically the six RMP soldiers were murdered. These deaths have been the subject of separate investigations, including by inquests held in the UK.
- 1.95** Furthermore, during Op Telic 2 and more closely and immediately touching on the experience of soldiers within 1 QLR, other UK soldiers were brutally killed in the month before the events of 14 to 16 September 2003.
- 1.96** On 23 August 2003 Maj Matthew Titchener (OC 150 Provost Coy), CSM Colin Wall (150 Provost Coy) and Cpl Dewi Pritchard (also 150 Provost Coy) were killed by insurgents in what was effectively a “drive-by shooting”.³⁷ Cpl Claire Vogel told me that she was initially designated to be a driver for one of the vehicles in a two vehicle convoy of RMP soldiers delivering weapons to the Iraqi police in Al Amarah, outside Basra. A last minute alternative tasking meant that Vogel was not in the convoy. But she spoke to colleagues immediately after the incident. The RMP vehicles came under fire from a red pick-up truck which pulled across the road in front of the convoy. One vehicle was then hit by a grenade which caused it to crash, hitting a civilian pedestrian and killing the three RMP soldiers.³⁸ It is notable that this event occurred near to BG Main, 1 QLR’s main site; it was described as “outside our camp” by Mendonça.³⁹
- 1.97** Just over one week before that, on 14 August 2003, Capt Dai Jones, of C Company 1 QLR was murdered. The Inquiry was informed by a number of witnesses of the shocking circumstances of Jones’ death. An injured person was due to be transported from 1 QLR BG Main to the British Military Hospital at Shaibah. Jones was travelling with this individual in a marked ambulance which was blown-up by an improvised explosive device.⁴⁰
- 1.98** The natural sense of loss at the death of Jones was compounded by his standing both within 1 QLR and indeed amongst those sections of the population in Basra with whom he associated. Jones was a popular officer.⁴¹ His replacement, Capt Christopher Good, described how he had been very well respected in Basra including by mosque leaders.⁴²
- 1.99** A number of soldiers told me that although there may have been bitterness and upset soldiers had to get on with their work and lives. Peebles was not alone in suggesting that both incidents had a tangible effect “...I would say the morale was affected more by the death of Dai Jones, but it did have an effect, yes.”⁴³
- 1.100** The effects were felt by at least some of the soldiers who came into contact with Baha Mousa and the other Op Salerno Detainees. Cpl David Schofield had been led by Jones in the G5 Unit of 1 QLR. He described the effect on the men in 1 QLR who

³⁷ Moore BMI06957, paragraph 54; Moore MOD005894, paragraph 22

³⁸ Vogel BMI00688, paragraphs 39-41

³⁹ Mendonça BMI01113, paragraph 56

⁴⁰ Mayo BMI00247, paragraph 17; Moore BMI06957, paragraph 54; Moore MOD000599

⁴¹ Liggins BMI 19/4/6-15; Mayo BMI00247, paragraph 17; Moore BMI06967, paragraph 100

⁴² Good BMI00114, paragraph 13

⁴³ Peebles BMI 40/94/24-95/1

knew Jones as “*Upset, saddened by his loss – that’s my personal experience of it and those that would have discussed the loss of Dai Jones – bitterness from others.*”⁴⁴

1.101 Apart from the question of the effect of these terrible incidents upon morale, questions have been raised before me as to the extent to which if at all, they gave rise to feelings of revenge on the part of the soldiers who participated in the attacks upon Baha Mousa and the other Detainees. I have dealt with the evidence which relates to this elsewhere in the Report. Suffice it for me to say here that, again, any violence induced by such feelings would self evidently be contrary to all training and discipline and obviously negate the “humane treatment” message at the forefront of all prisoner handling training.

General

1.102 Whilst taking account of these factors which define the operational context in which the events with which I am concerned occurred, I agree with and readily accept a conclusion of the MoD which, whilst it was fashioned to deal with issues of resources and planning, has a wider significance across all the other factors which I have been considering in this Part of the Report:

“...war will always make enormous demands on the soldiers who fight them and will test their stamina to the limit. Having regard to these truths, the MOD suggests that what is fundamental is not the availability of professional prisoner handlers but whether British soldiers live up to the core values and standards of the British army and comply with their duty, rammed home in training, to treat prisoners with humanity.”⁴⁵

⁴⁴ Schofield BMI 18/175/4-6

⁴⁵ SUB001120, paragraph 6

Chapter 5: Power to Detain and Intern

- 1.103** During the events with which this Inquiry was concerned, British Forces had a power to deprive civilians in Iraq of their liberty. This power derived from two sources. Firstly, British Forces could intern a civilian if it was necessary for imperative grounds of security, consistent with Articles 42, 43 and 78 of the Fourth Geneva Convention. Secondly, as part of the occupying power's duty to maintain public order and safety, British Forces could detain civilians who were suspected of committing criminal activities. Initially, in the early stages of Op Telic 1, those suspected of committing criminal offences would be handed to the RMP. Thereafter, much work was undertaken to facilitate the restoration of a functioning Iraqi judiciary and police force. From 1 June 2003, the Iraqi civilian legal organisations were responsible for the detention of criminals. Thus from June 2003, suspected criminals detained by British Forces would normally be handed over to the Iraqi police unless they posed a security threat to coalition forces.
- 1.104** The power to detain civilians temporarily was reflected in the Rules of Engagement for British Forces. Serial 680 B(1) of the Rules of Engagement provided that: "*Temporary detention of persons posing a threat to Coalition Forces or elements under UK protection or otherwise interfering with or threatening the Coalition mission is permitted*".⁴⁶ Committing a criminal offence was regarded as interfering with or threatening the coalition mission.⁴⁷
- 1.105** In order to understand 1 QLR's role in the detention, tactical questioning and internment of Iraqi civilians, it is necessary to understand the distinction made by the coalition forces between "*internees*" and "*detainees*". An "*internee*" was a civilian who had been assessed as a threat to coalition forces. Coalition policy was that such persons could be interned, subject to periodical reviews. A "*detainee*", on the other hand, was someone who was temporarily imprisoned, but who had not, or had not yet, been assessed as representing a threat to coalition forces. As part of its policing function, 1 QLR would detain those suspected of criminal activity who did not pose any threat to coalition forces; such people were labelled as "*detainees*". Additionally, 1 QLR might arrest someone who was subsequently assessed as a threat to coalition forces, and who was subsequently interned. But until that assessment took place, the person was properly referred to as a "*detainee*".
- 1.106** For the avoidance of doubt, 1 QLR was not dealing with prisoners of war during Op Telic 2, as the warfighting phase of Op Telic had ended before 1 QLR's deployment to Iraq.
- 1.107** In practice, 1 QLR might detain and intern civilians in two distinct types of situation.
- 1.108** Firstly, it might conduct a "*pre-planned lift operation*". In such a case, specific targets for internment would be identified in a "*target pack*". A lift operation would then take place, during which the suspect would be detained. The suspect would then be taken to BG Main where it would be the job of the BGIRO to determine whether the suspect was indeed a threat to coalition forces. The BGIRO is not a normal post within a British Army Battlegroup. It was introduced by an order issued at the very end of Op Telic 1, which came into effect at the start of Op Telic 2.

⁴⁶ The serial is quoted in a number of the Inquiry's documents, see for example MOD017286-7

⁴⁷ See, for example, Annex A to 1 (UK) Div FRAGO 79 of 3 April 2003, MOD030980

- 1.109** Secondly, an arrest could take place reactively to an incident on the ground. If a detainee from such an incident was assessed to be involved in simple criminal activity then the detainee would be handed over to the Iraqi police. If the detainee was assessed to be a threat to coalition forces then, as with a pre-planned lift operation, the BGIRO could decide to transfer the prisoner to the TIF at Um Qasr.
- 1.110** The BGIRO's role in determining whether someone should be interned meant that suspects were questioned at BG Main. This was called "*tactical questioning*", and was conducted by people who were specially trained to do it. If, after tactical questioning, the BGIRO decided that the suspect should be interned, then he would be transferred to the TIF, usually under escort by the arresting Battlegroup.
- 1.111** Much of what I have set out above can be gleaned from a crucial order issued by 1 (UK) Div on 26 June 2003, entitled FRAGO 29.⁴⁸ This order gave Battlegroups a much greater role than previously in assessing whether detainees should be interned. I discuss this and other orders in Part IX of this Report. I should add that in my judgment the exact status of the Detainees arrested in Op Salerno is not relevant to the issues investigated by the Inquiry. Whatever their status, they should not have been subjected to the mistreatment which I find was inflicted on them individually and collectively.

The journey time from BG Main to the TIF

- 1.112** It was the responsibility of the Battlegroup which had conducted the arrest to transfer suspects who were to be interned to the TIF at Um Qasr. In the case of 1 QLR, located at BG Main in central Basra, the TIF was situated some 70 kilometres south east. The Inquiry has heard slightly different evidence about the time it would ordinarily take to transport internees from BG Main to the TIF, ranging from 50 minutes⁴⁹ to two hours⁵⁰ to between two to four hours.⁵¹
- 1.113** The Provost Sgt for 1 QLR, Sgt Paul Smith described the transfer as being complicated by the necessity to vary the route taken in order to thwart potential insurgent attacks on the convoy; a threat that increased as the tour progressed.⁵² The transfer would be carried out by a convoy consisting of the truck to transport the internees together with escort vehicles providing security, and between eight to fourteen soldiers might be required to fulfil this task.⁵³ In the case of the Op Salerno Detainees the available evidence indicates that the journey to Um Qasr on 16 September 2003 took between four to five hours, with a delay on route as a result of a mechanical problem with one of the vehicles.⁵⁴

⁴⁸ MOD016186

⁴⁹ Sgt Paul Smith MOD000215

⁵⁰ Coleman CM 41/129/11-13; Rodgers MOD000231

⁵¹ Sgt Paul Smith BMI 44/99/13-17

⁵² Sgt Paul Smith BMI 44/96/12-97/22

⁵³ Peebles BMI02715, paragraph 28

⁵⁴ Simmons BMI 24/63/3-10; Rodgers MOD000231

Chapter 6: Standard of Proof

1.114 Before the end of the evidence, I heard submissions on the standard of proof which I should adopt in reaching my findings of fact. My ruling on this issue was made on 7 May 2010. It is published on the Inquiry's website. My conclusions are set out in the final paragraph of the ruling:

"For the reasons which I have endeavoured to explain I have concluded that it is right for me to approach my task by initially adopting the civil standard of proof in relation to findings of facts, but indicating where appropriate where I am sure of a finding. As I have said, I shall record the level of satisfaction which I find established in relation to any finding of fact. Thus, I shall state where necessary that I find a fact proved on the balance of probabilities or to a higher standard where appropriate. I do not think it will be necessary expressly to refer to expressions such as "inherent improbabilities" or the "bare" balance of probabilities."

1.115 I add to the above that where in this Report I use such expressions as "I am sure" or "I have no doubt" I will have found a fact to the criminal standard. When I state simply "I find" the standard of proof will have been the ordinary civil standard of proof, namely the balance of probabilities. Where it is obvious that I have found a fact but have not used the words "I am sure" or "I find", the standard will have been the civil standard. All other expressions, such as an expression of "suspicion" will not be a finding of fact, but will indicate my state of mind in respect of the issue being considered.

Chapter 7: References, Ranks and Acronyms

- 1.116** Finally in this introduction, I should briefly explain the conventions I have applied in referring to witnesses and their roles, to documents and to transcripts of evidence.
- 1.117** So as to make the chain of command more understandable, I have generally referred to witnesses by the rank they held at the time of the material events. For the sake of brevity, once I have referred to a witness in a Part of the Report, I have tended to use only the witness' surname in subsequent references in that Part. In both cases, I mean no disrespect to any of the witnesses involved. At the end of this Introduction, I have sought to list all the Inquiry's witnesses with their ranks at the time, and (where known to the Inquiry) their last or current rank.
- 1.118** For documentary evidence and for witness statements, every page of evidence was given a "*Unique Reference Number*" (URN), three letters followed by a number, e.g. "*MOD000466*". Throughout this report, I refer to the URN for the documents I have cited. All the documents referred to this Report should be available on the Inquiry's website. In the electronic version of the Report, the references are hyperlinked.
- 1.119** For transcripts of oral evidence, I use the preface "*CM*" to refer to the transcript from the Court Martial; and the preface "*BMI*" to refer to the transcript from the Inquiry's own hearings. This preface is then followed by two or three numbers: the day, the page and (where appropriate) the line. For example, BMI 32/45/22 would refer to line 22 on page 45 of day 32 of the Inquiry's transcript. I usually also preface the reference with the name of the relevant witness.
- 1.120** I have used the expression "Rodgers' Multiple" as a convenient shorthand to describe the G10A multiple of A Company 1 QLR, commanded by Lt Craig Rodgers. I have likewise referred to the "Hollender Multiple" to refer to the Multiple usually commanded by CSgt Christopher Hollender. Findings relating to individuals within the "Rodgers' Multiple" or "Hollender Multiple" do not imply findings relating to Rodgers or Hollender themselves unless that is explicitly stated.
- 1.121** Also for convenience and brevity I have referred to Anzio, Burma, Corunna, Somme and Helles Companies of 1 QLR as A, B, C, S and HQ Companies respectively.
- 1.122** I generally refer to the Op Salerno "*Detainees*" with a capitalised first letter so as to distinguish them from other detainees in general who are mentioned in the Report.
- 1.123** Within formation headquarters, the prefix "J" is used to denote Joint Force branches, such as J2 Intelligence (see paragraph 46 above). Where the headquarters are a single service headquarters, the prefix G is used, such as G2 Intelligence. Accordingly, I have used G throughout in referring to Brigade branches and J when referring to the National Contingent Headquarters. Practice at Divisional level appears to have varied. The MoD has indicated that MND(SE) was a Joint Service Headquarters so that the prefix J is technically correct. Earlier, in Op Telic 1, 1 (UK) Div staff officers often referred to their branches with the prefix G. For ease of reference and consistency, I have generally described the Divisional level branches with the prefix J, unless directly quoting from a witness' statement or transcript.

1.124 Attached to this introduction, are the following reference aids:

- (1) Table of Inquiry Witnesses;
- (2) Op Telic 1 simplified chain of command diagram;
- (3) Op Telic 2 simplified chain of command diagram;
- (4) Glossary.

Table of Inquiry Witnesses

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Adams	Peter	Called		Capt
Ainley	John	Called	Capt	Capt (No longer serving)
Aitken	Brian John	Read	Capt	Capt (No longer serving)
Akiwumi	Helena	Called		
Aktash	Ali	Called	LCpl	LCpl (No longer serving)
Allibone	Christopher John	Called	Pte	Pte (No longer serving)
Allkins	Colin	Called		
Altree	Andrew Keith	Read	Pte	Cpl
Andrew	Mark	Called	Pte	Pte (No longer serving)
Appleby	Thomas Lee	Called	Pte	LCpl (No longer serving)
Armstrong	Kevin James	Called	Pte	LCpl (No longer serving)
Armstrong	Mark	Read	Capt	Capt (No longer serving)
Armstrong	Michael A C	Read	Pte	Cpl (No longer serving)
Aspinall	Gareth	Called	Pte	Pte (No longer serving)
Ayling	Nicholas	Called		
Baillie	Phillip Francis	Called	Lt Col	Lt Col (No longer serving)
Baker	Paul Leslie	Called	Maj	Maj
Bamber	Lee Donald	Read	Pte	Pte (No longer serving)
Bancroft	Jordan	Read	Pte	LCpl
Bannister	Marc	Called	SSgt	Capt

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Barber	Gareth Robert	Called	Capt	Maj
Barlow	Paul	Read	LCpl	Cpl
Barnett	Charles Matthew John	Called	Lt Col	Lt Col
Barrons	Richard	Called	Col	Maj Gen
Bartels	Oliver James Michael (Dr)	Called	Capt	Maj
Baxter	Stephen John	Called	LCpl	LCpl (No longer serving)
Beaumont	Peter	Called	Capt	Maj
Beeforth	Anya Wendy	Read	Sgt	SSgt
Bellingham	Matthew	Read	Pte	Pte (No longer serving)
Bentham	Peter	Called	Pte	Cpl
Bestwick	Michael	Called		Lt Col
Betteridge	Martin Richard	Called	LBdr	LBdr (No longer serving)
Billington	Christopher	Called	LCpl	LCpl
Binns	Graham John	Called	Brig	Maj Gen
Bland	Lee	Read	Sgt	WO2
Bostock	Steven	Called	Maj	Lt Col
Bowman	Andrew	Called	Cpl	Sgt
Boyce	Michael	Called	Admiral	Admiral The Lord (No longer serving)
Bradshaw	Adrian John	Called	Brig	Maj Gen
Briggs	Benjamin	Read	LCpl	Sgt
Brimms	Robin Vaughan	Called	Maj Gen	Lt Gen (No longer serving)
Briscoe	George H	Called	WO1	Capt
Bromley	Andrew James	Called	LCpl	LCpl (No longer serving)
Brookes	Russell	Read	LCpl	Sgt
Brooks	Karl	Read	Sgt	SSgt
Brown	David	Called	Sgt	Sgt (No longer serving)
Brown	Neil	Called	Capt RN	Cdre RN (No longer serving)
Bruce	David	Called	WO1	Maj

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Brzezinski	Robert Raymont	Called	LCpl	LCpl (No longer serving)
Bullough	David Thomas	Read	Pte	Pte (No longer serving)
Burbridge	Charles	Called	Capt	Maj
Burridge	Brian	Called	Air Marshal	Air Marshal (No longer serving)
Burton	Barry	Called		
Butlin	Alex Philip	Read	Sgt	Sgt (No longer serving)
Callaghan	Kevan	Called	2Lt	Maj
Carmichael	Ewen B	Called	Col	Brig
Carnegie	Sara	Read		
Cavanagh	Philip Andrew	Read	Pte	Pte (No longer serving)
Channer	Nicholas	Called	Maj	Lt Col
Chappell	Andrew	Read	Pte	LCpl
Cheney	Adam Paul	Read	LCpl	Cpl (No longer serving)
Cholerton	Simon, Dr	Called		
Christie	David	Called	Maj	Maj (No longer serving)
Clapham	Nicholas	Called	Lt Col	Col
Clements	Richard	Called	Maj	Lt Col
Clifton	Russell	Called	Maj	Maj (No longer serving)
Cole-Mackintosh	Richard Charles	Read	Maj	Lt Col
Coleman	Christopher Paul	Read	Capt	Maj
Colley	Charles Robert	Called	Sgt	Sgt (No longer serving)
Collier	Jon	Read		
Connolly	Mark	Read		
Conway	Michael	Called	Lt Col	Lt Col
Cooper	Aaron Paul Anthony	Called	Pte	Pte (No longer serving)
Cooper	Adam John	Read	Sgt	Sgt
Cooper	Sherrie	Read	SSgt	SSgt
Copsey	Leonard	Called		Flt Lt

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Corcoran	Rhett Gerard	Called	Maj	Maj
Cowan	James Michael	Read	Lt Col	Brig
Cowling	Andrew Philip	Called	Col	Brig (No longer serving)
Crane	Jack (Prof)	Read		
Crawford	Euan	Called	Lt	Capt
Cronin	Shaun	Called	Capt	Maj
Crosbie	Michael	Called	2Lt	Lt (No longer serving)
Crowcroft	Wayne Ashley	Called	Pte	Cpl
Crump	Peter	Read	CSgt	WO2 (No longer serving)
Cunningham	Carl	Read	LCpl	LCpl (No longer serving)
D001		Called		
D002		Called		
D003		Called		
D004		Called		
D005		Called		
D006		Called		
Davies	Gavin Rhys	Called	Maj	Lt Col
Davies	Mark L.D.	Called	SSgt	WO2
Davis	Paul Vernon	Called	Maj	Maj (No longer serving)
Dawson	Andrew Paul 'Dodge'	Read	Cpl	Cpl (No longer serving)
Dickinson (nee Trowell)	Shantha Catherina	Read	Lt	Capt
Dickson	Professor Sidney Brice	Called		
Douglas	John William James	Called	Cpl	Cpl
Drakefield	John	Read	Pte	Pte (No longer serving)
Driver	Paul	Read	Capt	Maj
Duncan	Ewan Robert	Called	Lt Col	Lt Col (No longer serving)
Eaton	Hugh Ralph Aird	Called	Maj	Lt Col (No longer serving)
Edkins	Mark	Called	Maj	Lt Col

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Elliott	Michael Jonathan	Called	Capt	Maj
Ellis	Daniel	Called	Pte	Pte (No longer serving)
Ellis-Davies	Sian	Called	Capt	Maj
Eloquin	Sophie	Read		
Englefield	Richard J	Called	Maj	Lt Col
Evans	Bryan	Read		Gp Capt
Evans	Catherine	Called		
Evans	Robert Jeremy	Read		
Fallon	Darren R	Called	Pte	Kgn
Fearon	David John	Called	Pte	LCpl
Felton	Liam Douglas Frederick	Called	Pte	Pte (No longer serving)
Fenton	Edward Anthony	Called	Maj	Lt Col
Fielder	Stephen	Read	Maj	Maj (No longer serving)
Flint	Clark	Read	Maj	Maj (No longer serving)
Floyd	Victor	Read	Pte	Pte (No longer serving)
Forster-Knight OBE	Edward Oliver	Called	Lt Col	Brig
Foster	Ian Godfrey	Read	Pte	Pte
Fraser	Anthony	Called	Maj	Maj (No longer serving)
French	Andrew	Called	Cpl (A/Sgt)	SSgt (No longer serving)
French	Joseph (Joe)	Called	Air Marshal	Air Chief Marshal Sir (No longer serving)
Frend	David Peter	Called	Maj	Lt Col
Fry	Robert	Called	Lt Gen	Lt Gen
Fulford-Talbot	James	Read	Maj	Maj (No longer serving)
Gallacher	Stephen	Called	Sgt	Sgt (No longer serving)
Gammage	Richard	Called	Gp Capt	Air Cdre
Garraway	Charles	Called	Col	Col (No longer serving)

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Giblin	Michael	Called	LCpl	LCpl
Gibson	Ian	Called		
Good	Christopher David	Called	Capt	Maj
Gosling	Michael	Read	Pte	Pte (No longer serving)
Goulding	Ian John	Called	Cpl (A/Sgt)	Sgt
Graham	Lee	Called	Pte	LCpl (No longer serving)
Graham	Nicholas	Read	Pte	Pte
Graley	Stephen	Called	Capt	Maj (No longer serving)
Green	Barry	Called	Lt Col	Col
Green	Martin	Read	Sqn Ldr	Sqn Ldr
Gregory	Jonathan	Called	LCpl	Sgt
Griffin	Ciaran	Read	Lt Col	Lt Col
Griffiths	Wyn	Read	Maj	Lt Col
Grist	Joseph	Called	LCpl	Pte (No longer serving)
Grogan	Antony	Read	Capt	Maj
Hall	Andrew Oliver	Called		Gp Capt
Hamnett	Toby	Read	Capt	Maj
Harkins	Robert	Read		
Hartley	Jeremy Cox	Read	Maj	Lt Col
Hartley	Mike	Called	LCpl	Cpl
Haseldine	Andrew	Called	Capt	Maj
Hemesley	Edward James	Called	Maj	Maj
Hemming	Martin	Called		
Henderson	Tam	Called	WO1	Capt (No longer serving)
Heron	Christopher	Called	Capt	Lt Col
Hill	Gareth	Called	Pte	Pte
Hill	Ian (Dr)	Called		
Hill	Michael	Called	Col	Col (No longer serving)
Hoffman	Phillip	Read	Sgt	SSgt
Hollender	Christopher Dean Kent	Called	CSgt	CSgt (No longer serving)
Hollins	Rupert	Called		Capt
Homer	David St John	Read	Col	Brig

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Hoon	Geoff	Called		
Howarth	Paul	Read	LCpl	Sgt
Hughes	Andrew	Called		Surg Capt
Hughes	Scott James	Called	SAC	SAC
Hunt	David Malcolm	Called	Capt	Maj (No longer serving)
Hunt	Jonathan Frank	Called	Pte	Pte (No longer serving)
Huxley	Joel	Called	CSgt	WO2
Ingram	Adam	Called		
Ingram	Douglas John	Called	Lt	Capt
Jackson	Mike	Called	Gen Sir	Gen Sir (No longer serving)
Jaggard-Hawkins	Ian	Read	Maj	Lt Col
James	Deryk	Called		
Jay	Daren Edward	Called	WO2	WO2 (No longer serving)
Johnson	David	Called		
Johnson	Richard	Called		
Jones	David Ian	Read	Lt	Maj
Jones	Graham Andrew	Called	LCpl	LCpl (No longer serving)
Keilloh	Derek	Called	Capt	Maj (No longer serving)
Kendrick	Simon	Called	LCpl	Cpl
Kenny	Damien	Called	Pte	Pte (No longer serving)
Kenyon	Mark Peter	Read	Maj	Lt Col
Kerley	Maxwell	Read	Brig	Brig (No longer serving)
Kerrigan	Steven James	Called	Cpl	Sgt
Kett	Robert	Called	Col	Brig (No longer serving)
King	Joshua Michael	Read	Lt	Capt
King	Oliver	Called	Capt	Maj
Kistruck	Stuart	Called		
Knight	Edward Francis	Called	Pte	LCpl
Lamb	Graeme	Called	Maj Gen	Lt Gen
Lamb	Jeffrey	Called	CSgt	WO2

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Landon	Jim	Called	Maj	Lt Col
Langley	Richard	Called		Wg Cdr
Lawrence	Andrew	Called	Cpl	Cpl
Le Feurve	Andrew	Called	Capt	Maj
Le Fevre	Graham Robert	Called	Lt Col	Col
Le Gry	Barry	Read	Col	Brig
Lee	Calvin Mark	Called	Capt	Maj
Lee	Johnathan David	Called	Pte	Pte
Leonard		Called		Flt Lt
Liggins	Dean Matthew	Called	LCpl	Sgt
Lighten	John	Called	Maj	Maj
Lillywhite	Louis Patrick	Called	Maj Gen	Lt Gen (No longer serving)
Livesey	Robert William	Called	CSgt	CSgt (No longer serving)
Loader	Clive	Read	AVM	ACM (No longer serving)
Logan	Paul	Read	Sgt RM	WO2 (No longer serving)
Longfellow	Peter	Read	Cpl	Cpl
MacDonald	Alasdair	Read	SSgt	WO2
MacFarlane	Stuart Mickel	Called	Capt	Capt (No longer serving)
Maciejewski	Justin	Called	Maj	Brig
Mackenzie	Stuart	Called	Pte	Pte (No longer serving)
MacKinnon	Neil	Called	Sgt	Sgt (No longer serving)
MacMillan	Michael Archibold	Read	Pte	Pte (No longer serving)
Madden	Peter James	Called	Capt (Rev)	Capt (No longer serving)
Maggs	Stephen John	Read	WO2	WO2 (No longer serving)
Maguire	Michael John	Read		Col
Maitham Al Waz	Ahmed	Called		
Marriott	Patrick	Called	Col	Maj Gen
Martin	Jason	Read	Cpl	Cpl (No longer serving)

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Martin	Sean	Called		
Mason	Andrew	Called	Lt Col	Col
Mason	Tim	Called		Wg Cdr
Matairi	Ahmad Taha Musa	Called		
Maycock	Chris	Called	CSgt	Capt
Mayo	Charles Edward Armstrong	Read	Maj	Maj
McCleary	Ian	Read	WO2	WO2 (No longer serving)
McKendrick	Andrew	Called		Wg Cdr
McLaughlin	John	Called	WO2	WO2 (No longer serving)
McNally	Raymond	Read	Pte	LCpl
McNeil	Rufus	Called	Maj	Col
Medhurst-Cocksworth	Christopher	Called	Capt	Maj
Mendonça	Jorge E	Called	Lt Col	Col (No longer serving)
Mercer	Nicholas	Called	Lt Col	Lt Col
Milroy; Prof	Christopher	Read		
Mitchell	Miles	Called	Capt	Maj (No longer serving)
Moore	William H	Called	Brig	Maj Gen
Morris	Robert	Read	Maj	Maj
Mousa	Daoud	Called		
Moutarde	Mark John	Called	Capt	Maj (No longer serving)
Munns	Christopher	Called	Cdre	Cdre (No longer serving)
Murdoch	Andrew	Called		Cdr
Murray-Playfair	James	Called	Lt Col	Lt Col
Mylchreest	James David	Read	LCpl	Cpl (No longer serving)
Nathanson	Vivienne (Professor)	Called		
O-001		Called		
O-002		Read		
O'Brien	Robert	Read	Cpl	Cpl (No longer serving)

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
O'Gorman	Sean	Called		Lt Col
Ord	Nicolas	Called	Capt	Maj
Osborne	Richard	Called	Capt	Capt
Owers	Dame Anne	Called		
Palmer	Gary Robert	Read	Sgt	Sgt (No longer serving)
Parker	Christopher John	Called	Maj	Lt Col (No longer serving)
Parry	Noel Spencer	Called	WO2	Capt
Paterson	Roderick Hamilton	Called	WO2	WO2
Payne	Donald	Called	Cpl	Cpl (No longer serving)
Payne-James	Dr Jason	Called		
Pearce	Antony	Read	Capt	Maj
Pedersen*	Lars	Read		Capt
Pedley	Nicholas	Read	Lt Col	Col
Peebles	Michael E	Called	Maj	Maj
Peel	Michael	Called	2nd Lt	Capt
Percy	Mark	Called	Capt	Maj (No longer serving)
Philp	Angus	Read	Capt	Maj
Pilling	Stephen Mark	Read	Lt	Lt (No longer serving)
Pinchen	Gary Mark	Called	Capt	Maj
Plant	Samuel Joseph	Read	Maj	Lt Col
Pledger	David	Read		Cdr
Poole	Ian	Read	Maj	Lt Col
Porter	Michael	Called	Sgt	WO2
Potter	Michael Andrew	Called	Sgt	CSgt (No longer serving)
Purdy	Robert	Called	Col	Brig
Quegan	Peter Edward	Called	Maj	Maj
Quick; OBE	Rachel	Called		
Radbourne	Bruce	Called	Maj	Maj
Raeburn	Abbe	Read	LCpl	Bdr
Rawstrone	Brian	Read	Pte	Pte
Reader	Garry Paul	Called	Pte	Pte (No longer serving)

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Redfearn	Adrian P	Called	LCpl	Cpl
Reith	John	Called	Lt Gen	Gen
Richards	Lee	Called	Fus	Fus (No longer serving)
Riddell-Webster	Mike	Called	Lt Col	Brig
Ridgway	Andrew	Called	Lt Gen	Lt Gen
Riley	Anthony M	Called	Pte	Pte (No longer serving)
Riley	James	Called	LCpl	LCpl (No longer serving)
Riley	William Neil	Called	2nd Lt	Capt
Roberts	Prof Sir Adam	Called		
Roberts	Christopher Mark	Called	SSgt	WO1
Robinson; MBE	Mark	Called	Maj	Maj
Rodgers	Craig Gerard	Called	Lt	Capt (No longer serving)
Rose	Vivien	Called		
Royce	Antony Alexander Daniel	Called	Maj	Maj
Royle	Daniel	Read	Pte	Pte
Rudd	Arthur	Read	Pte	Pte
Ryan	Benedict Dennis Casper	Read	Capt	Maj
S001		Called	Maj	Lt Col (No longer serving)
S002		Called	Lt Col	Lt Col
S004		Called	Capt	Capt
S009		Called	Col	Col (No longer serving)
S011		Called	Capt	Capt (No longer serving)
S012		Called	Capt	Maj
S014		Called	Capt	Lt Col
S015		Called	Maj	Maj
S016		Called	Capt	Capt (A/Maj) (No longer serving)
S017		Called	Capt	Capt

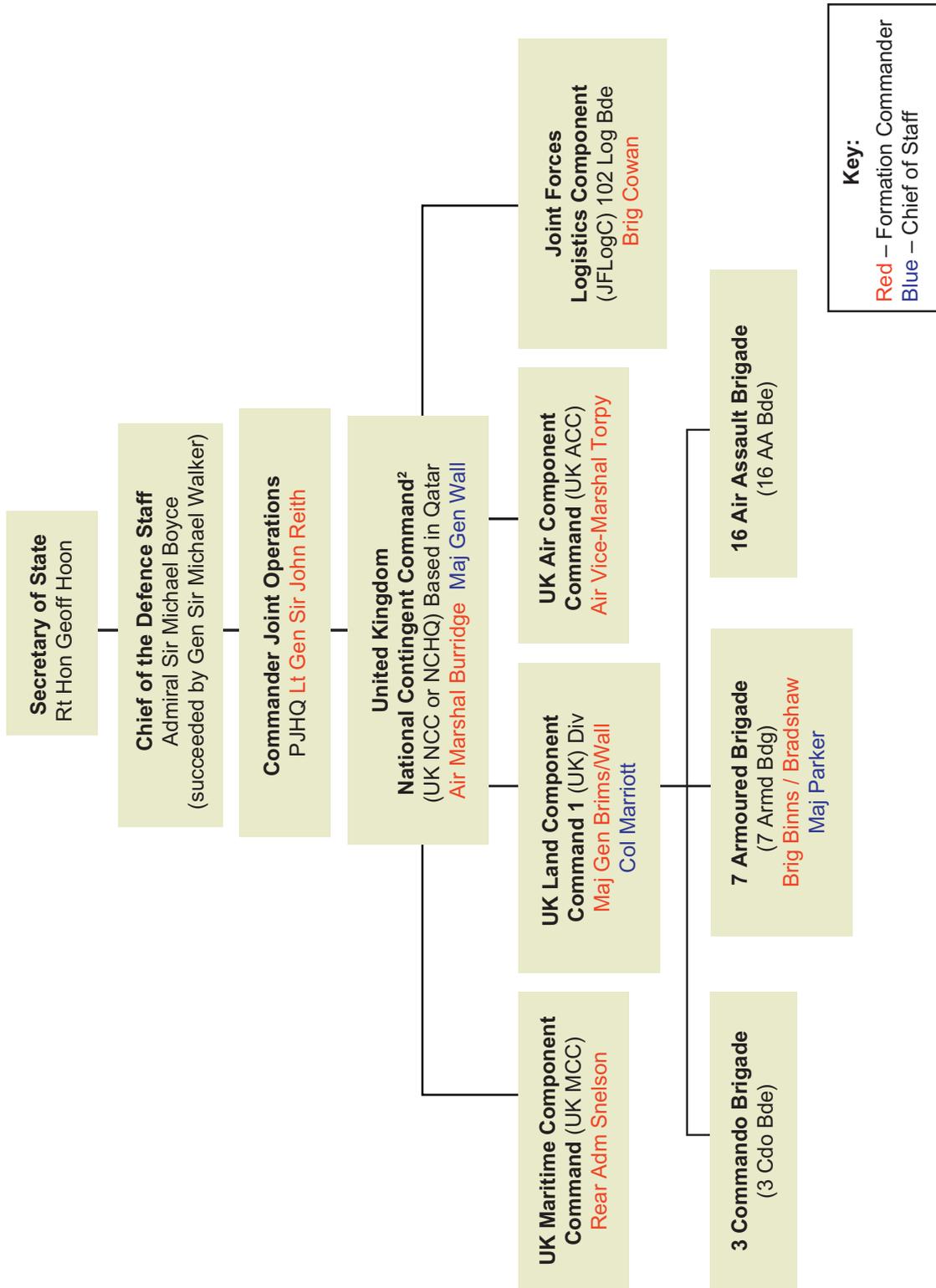
SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
S018		Called	Lt Cdr	Lt Cdr (No longer serving)
S034		Called		
S035		Read	WO2	Capt (A/Maj) (No longer serving)
S037		Called	Pte	Pte (No longer serving)
S038		Called	WO2	WO2 (No longer serving)
S040		Called	Lt Cdr	Lt Cdr (No longer serving)
S045		Read	Lt Col	Lt Col (No longer serving)
S046		Called	Lt Col	Lt Col (No longer serving)
S047		Called	Capt	Maj
S048		Called	Cpl	Cpl (No longer serving)
S049		Called	Maj	Maj (No longer serving)
S056		Called	Maj	Maj
S059		Called	Lt Cdr	Lt Cdr
S062		Called	Lt Col	Lt Col
S065		Read	Lt Col	Lt Col (No longer serving)
S066		Read	Lt Col	Col
S067		Called		Lt Col
S068		Called	Capt	Capt
S069		Called	Col	Col
Saxton	Stephen	Called	Cpl (A/Sgt)	Kgn
Schofield	David Anthony	Called	Cpl	Cpl (No longer serving)
Seaman	John Edward	Called	Capt	Capt (No longer serving)
Seeds	Garath	Called	Capt	Maj (No longer serving)
Shakeshaft	Stuart	Read	Pte	Pte (No longer serving)
Shaw	Dean Andrew	Read	Pte	LCpl
Shaw	Dr Eric Gorgon	Read		
Simmons	Kenneth	Called	Cpl	CSgt

SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Slicker	Craig	Called	Pte	LCpl
Smith	Christopher Andrew	Read	Cpl	CSgt (No longer serving)
Smith	Daniel Stephen	Read	Cpl	Pte (No longer serving)
Smith (or Kennedy-Smith)	Luke	Called	Sgt	Sgt (No longer serving)
Smith	Paul Edward	Called	Sgt	Sgt (No longer serving)
Smulski	Ray Andrew	Called	Sgt	Sgt (No longer serving)
Smyth	Mark	Read	Pte	
Stables	Thomas William	Called	Cpl	Cpl
Stacey	Kelvin L	Called	Cpl	CSgt
Stephoe	Rupert	Called	Maj	Maj (No longer serving)
Stewart	James Duncan	Called		Sqn Ldr
Stirland	Paul V	Called	Pte	Cpl
Stokes	Terence	Called	Bdr	Bdr (No longer serving)
Stout	Chris	Called	Cpl	Sgt
Strong	Gareth	Read	LCpl	LCpl (No longer serving)
Strong	Peter Alwyn	Read	Pte	Pte (No longer serving)
Suss-Francksen	Chris	Called	Maj	Maj (No longer serving)
Swarbrick	Garth David	Read	LCpl	LCpl (No longer serving)
Sweeney	Alan Kyle	Called	Capt	Maj
Thomas	Jonathan Paul (previously believed Neil)	Called	Sgt	Sgt (No longer serving)
Thompson	Neil A	Read	SSgt	WO1
Tillotson	Neil	Called	Sgt	WO2
Tomkinson	Peter Carl	Called	WO2	Capt
Tooke	Miles	Called		
Topping	Ian	Called	WO2	WO2
Trousdell	Sir Philip	Called	Lt Gen Sir	Lt Gen Sir (No longer serving)

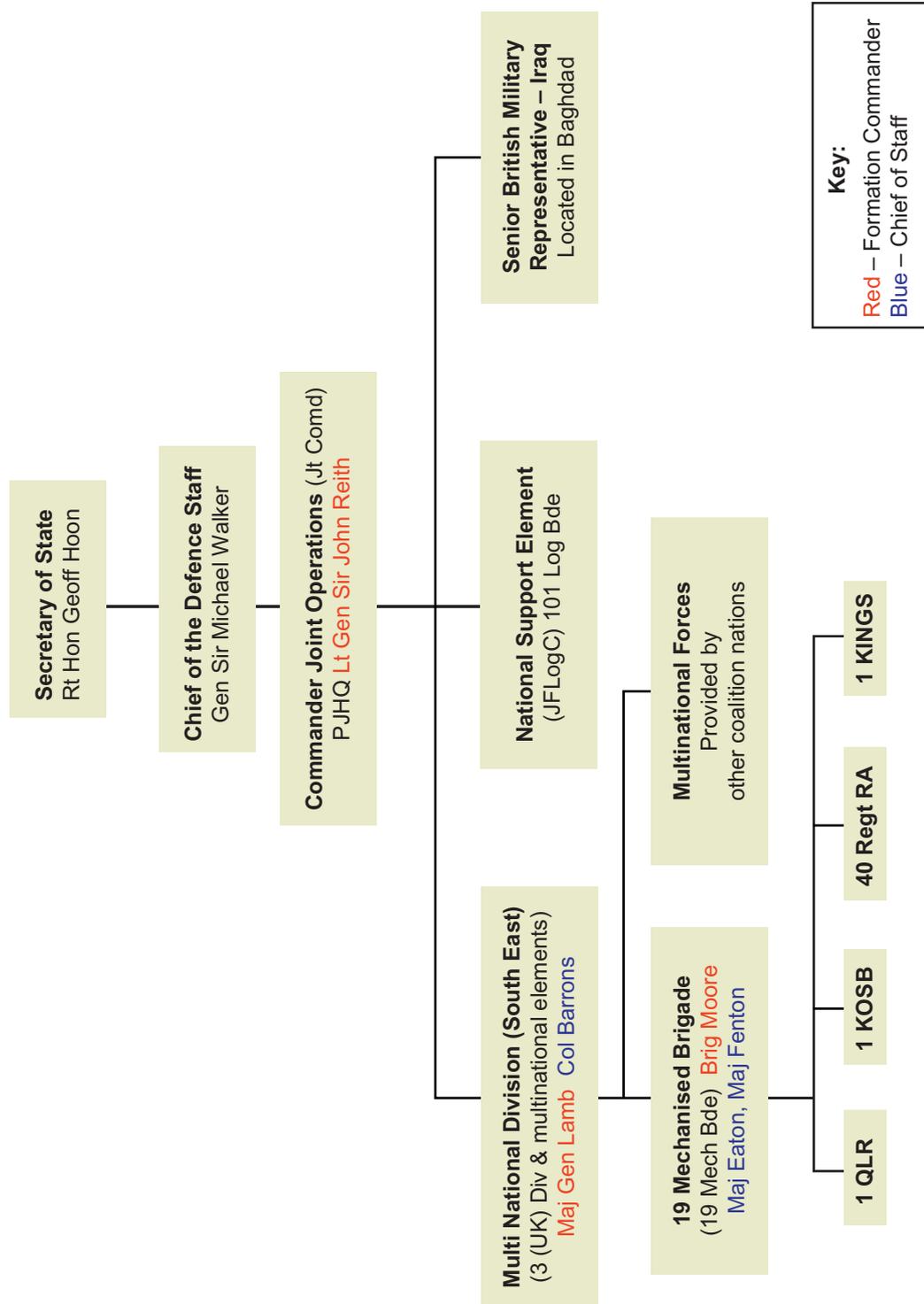
SURNAME	FIRST NAME	CALLED / READ	RANK 2003	RANK NOW / FINAL RANK
Urey	Paul Anthony	Called	WO2	WO2
Vassallo	David John	Read	Lt Col	Col
Vernon	Christopher Hilary	Called	Col	Col
Vincent	Travis	Called	Maj	Maj (No longer serving)
Vogel	Claire	Called	Cpl	Cpl
Wakefield	James	Read	Capt	Capt (No longer serving)
Walker	David	Read	Pte	Pte (No longer serving)
Walker	Michael	Called	Gen Sir	Gen Sir (No longer serving)
Wall	Peter	Called	Maj Gen	Maj Gen
Wardle	Russell	Read	Capt	Brig
Warren	Robert William	Called	Lt Col	Col
Waters	George	Called	Maj	Lt Col
Wesson	Nicholas Robert	Called	Sgt	Sgt
West	Richard C A	Called	Maj	Lt Col (No longer serving)
Weston	Alan	Called	WO2	WO2 (No longer serving)
Whitehead	Michael John	Read	Capt	Capt
Whiting	Mark	Called	SSgt	SSgt (No longer serving)
Wilcock	Anthony	Called		Air Cdre
Wilding	Stephen	Called	Sgt	WO2
Williamson	Michael	Called	Capt	Maj
Willis	Ian	Read	Cpl	CSgt
Willman	Antony Sean	Read	Lt Col	Lt Col (No longer serving)
Wilson	George Clark	Read	Maj	Lt Col
Wilson	Neil B	Called	Capt	Maj (No longer serving)
Wilson	Simon Sinclair	Called	Maj	Lt Col
Winstanley	Stephen	Called	Cpl	SSgt
Winstanley	Steven Paul	Called	Pte	Pte (No longer serving)

* is a member of the Danish army.

Op Telic 1 Simplified Chain of Command Diagram



Op Telic 2 Simplified Chain of Command Diagram



Glossary of Terms and Acronyms

1 Black Watch	One of the British Battlegroups for Op Telic 1. 1 QLR took over from them for Op Telic 2
1 (UK) Div	1 st (UK) Armoured Division. The British Division involved in Op Telic 1. 3 (UK) Div's predecessor in theatre
19 Mech Brigade	19 Mechanised Brigade. The British Brigade under 3 (UK) Div / MND(SE) for OP Telic 2. 1 QLR was one of its Battlegroups
3 (UK) Div	3 (UK) Armoured Division. The British Division involved in Op Telic 2. Its staff formed the largest part of the Multi National Division (South East). 19 Mech Bde was under its command
7 Armd Brigade	7 Armoured Brigade. One of the three Brigades under command of 1 (UK) Div for Op Telic 1. 19 Mech Bde's predecessor in theatre

A

AFM	Army Field Manual
ALS	Army Legal Services
AOR	Area of Responsibility
AP	Allied Publication

B

Bde	Brigade
BG	Battlegroup (formed around an infantry battalion or armoured regiment, which is usually commanded by a Lieutenant Colonel)
BG Main	Battlegroup Main Headquarters, scene of the detention
BGIRO	Battlegroup Internment Review Officer
BN	Battalion
Bucca, Camp	Site of the TIF: Theatre Internment Facility
BW	Black Watch

C

C2	Command and Control
CAC	Conduct After Capture
CDI	Chief of Defence Intelligence
CDS	Chief of the Defence Staff

CENTURION, Op	Operation on Monday 15 Sept put forward as a reason why 14 hour time limit was breached by so much, as it involved large numbers of 1 QLR in arrest ops in Basra hotels
CF	Coalition Forces
CGS	Chief of the General Staff
CIMIC	Civilian and Military Cooperation
CJO	Chief of Joint Operations
CJTF	Combined Joint Task Force
CO	Commanding Officer
COIN	Counter Insurgency
COMBRITFOR	Commander British Forces
CONOPS	Concept of Operation
COS	Chief of Staff
COY	Company
CPERS	Captured Personnel
CSM	Company Sergeant Major

D

DIS	Defence Intelligence Staff
DISC	Defence Intelligence and Security Centre
DOC	Director of Operational Capability
DP	Displaced Person
DSF	Director Special Forces
DTG	Date Time Group eg. 1030 GMT on 20th April 2007 written as 201030Z APR 07 where Z = Zulu = GMT

E

EN	Enemy
ETA	Estimated Time of Arrival
ETD	Estimated Time of Departure

F

FHT	Field HUMINT Team
FIBUA	Fighting in Built-Up Areas
FRAGO	Fragmentary Order
FRL	Former Regime Loyalist

G

Garamsche	Local tribe
GOC	General Officer Commanding
GR	Grid Reference (Map reference)

H

Herrick, Op	Operations in Afghanistan
HQ	Headquarters
HUMINT	Human Intelligence
HVT	High Value Target

I

IAF	Iraqi Armed Forces
IAW	In accordance with
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
INT	Intelligence
INTEL	Intelligence
INTREP	Intelligence Report
INTSUM	Intelligence Summary
IO	Intelligence Officer
IOT	In Order To
IP	Iraqi Police
IS	Internal Security – or Information Systems
ISF	Iraqi Security Force
ISTAR	Intelligence, Surveillance, Target Acquisition and Reconnaissance
IZ	Iraqi (when referring to persons)
IZA	Iraqi Army
IZP	Iraqi Police

J

J2	Joint Intelligence Staff
JF	Joint Force
JFHQ	Joint Force Headquarters
JFIT	Joint Forward (sometimes Field) Interrogation Team
JSIO	Joint Services Intelligence Organisation
JSP	Joint Services Publication

JT COMD	Joint Commander
JWP	Joint Warfare Publication

K

KOSB	King's Own Scottish Borderers
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L

LO	Liaison Officer
LOAC	Law of Armed Conflict
LCC	Land Component Commander

M

MATTS	Military Annual Training Tests
MCTC	Military Corrective Training Centre
ME	Main Effort
MND	Multi National Division
MND(SE)	Multi National Division (South East)
MoD	Ministry of Defence
MoJ	Ministry of Justice
MOU	Memorandum of Understanding
MP	Military Police
MPGS	Military Provost Guard Service
MPS	Military Provost Staff
Multiple	Sub-unit within a platoon

N

NATO	North Atlantic Treaty Organisation
NCC	National Contingent Command
NCO	Non-Commissioned Officer
NCHQ or NCC HQ	National Contingent (Command) Headquarters (Based in Qatar)
NI	Northern Ireland

O

OLB	Operational Law Branch
Ops	Operations
OOTW	Operations Other Than War

OPCOM	Operational Command
OPCON	Operational Control
OPSEC	Operational Security

P

PJHQ	Permanent Joint Headquarters
POLAD	Policy Advisor (sometimes rendered as Political Advisor)
PW / POW	Prisoner Of War
PWHO	Prisoner of War Handling Organisation

Q

QLR	Queen's Lancashire Regiment
QM	Quartermaster
QRF	Quick Reaction Force

R

RA	Royal Artillery
RAP	Regimental Aid Post
RIP	Relief In Place
RMAS	Royal Military Academy Sandhurst
RMO	Regimental Medical Officer
RMP	Royal Military Police
ROE	Rules Of Engagement
RSM	Regimental Sergeant Major
RSOI	Reception, Staging, Onward Movement and Integration
R to I	Resistance to Interrogation

S

SALERNO, Op	Op Salerno – name of the Op to raid hotels for insurgents on 14 Sep 03
SERE	Survive, Evade, Resist, Extract
SF	Special Forces
SIB	Special Investigation Branch
SINCREP	Significant Incident Report
SITREP	Situation Report
SME	Subject Matter Expert
SNCO	Senior Non-Commissioned Officer
SOF (SF)	Special Operations Forces (Special Forces)

SOI	Standard Operating Instruction
SOP	Standard Operating Procedure
STANAG	NATO Standardisation Agreement
Stephen, Camp	Camp Stephen – Base for A Company 1 QLR

T

TACOM	Tactical Command
TACON	Tactical Control
TDF	Temporary Detention Facility
TF	Task Force
Telic, Op	Operations in Iraq
THF	Theatre Holding Facility
TIF	Theatre Internment Facility
TOR	Terms Of Reference
TQ / TQer	Tactical Questioning / Tactical Questioner
TTT	Train The Trainer

U

UN	United Nations
UNCAT	United Nations Convention Against Torture
UQ	Um Qasr
US	United States

V

VCDS	Vice Chief of the Defence Staff
VIN	Vehicle Identification Number
VRN	Vehicle Registration Number

W

WMD	Weapons of Mass Destruction
WO	Warrant Officer

Part II

The Events of 14 to 16 September 2003

Chapter 1: Introduction

My Approach

- 2.1** This Part of the Report discusses the evidence the Inquiry heard of the events of 14 to 16 September 2003, my findings of what happened to the Detainees during this short period of time, my conclusions on who was responsible for what all Core Participants concede was the shameful treatment of the Detainees at the hands of soldiers in 1 Queen's Lancashire Regiment (1 QLR), and, so far as possible, my conclusions on the reasons for this episode. This exercise involves a consideration and evaluation of evidence of a large number of witnesses. It is necessarily a complicated process, because although there is little significant dispute about what in general terms happened to the Detainees, there are areas, particularly the responsibility of individual soldiers and officers, where there are sharp conflicts in the evidence. In those circumstances it is important for me to describe the approach that I have adopted when making my findings of fact.
- 2.2** A number of factors need to be noted. Firstly, in an effort to encourage soldiers to speak freely about these events, at an early stage I solicited and obtained from the Attorney-General an undertaking that evidence given by an individual witness could not be used against that same witness in any subsequent prosecution. The final terms of the Attorney-General's undertaking were published on the Inquiry's website attached to my first Directions Hearing Rulings dated 6 January 2009. The undertaking was worded as follows:

"an undertaking in respect of any person who provides evidence to the Inquiry relating to a matter within its terms of reference, including oral evidence, any written statement, any written statement made preparatory to giving evidence, and any document or information produced to the Inquiry.

1. No evidence a person may give before the Inquiry, will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), save in such proceedings as are referred to in paragraph 2 herein:

2. Paragraph 1 does not apply to:

(i) A prosecution (whether for a civil offence or a military offence) where the person is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or

(ii) Proceedings where the person is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence

3. *Where any such evidence is provided to the Inquiry by a person, it is further undertaken that, as against that person, no criminal proceedings shall be brought (or continued) in reliance upon evidence which is itself the product of an investigation commenced as a result of the provision by that person of such evidence.*"

- 2.3** I also obtained undertakings from the Permanent Under Secretary of State at the MoD, the Commander in Chief Fleet, the Army's Chief of the General Staff and the Chief of the Air Staff that administrative action would not be taken against witnesses who came forward to the Inquiry with relevant information, in respect of any previous failure to provide that information, or for previously providing false information.
- 2.4** In this way I hoped that it would be possible to breach the "*more or less obvious closing of ranks*" referred to by the Judge Advocate (Mr Justice McKinnon) at the Court Martial.¹ This closing of ranks has often been referred to in the press as the "*wall of silence*". To some extent this was successful and the evidence of some soldiers went a great deal further than hitherto. However, I have concluded that a number, not all, continued to hide behind oft-repeated phrases such as "*I can't remember*" or "*I did not see anything untoward*". This was, to say the least, regrettable and cannot be excused or justified.
- 2.5** Where soldiers did give evidence contradicting earlier witness statements or sworn evidence at the Court Martial, understandably they were criticised by Counsel for some of the Core Participants on the basis that, having lied previously, their evidence to the Inquiry could not be relied upon. In my judgment such evidence has to be seen in the context of the Attorney-General's undertaking. In assessing such evidence I have taken into account the effect which the undertaking may have had when determining such a witness's credibility.
- 2.6** Secondly, the events of that period occurred over seven years ago. This will inevitably have had an effect of dimming memories and confusing recollections. The Detainees have been heavily criticised in submissions made by Counsel for Core Participants for the fact that their witness statements and their oral evidence contained internal inconsistencies as well as inconsistencies with their fellow Detainees. These criticisms were fairly made and I recognise and take into account their force when assessing the evidence of individual Detainees and other witnesses of whose evidence such a criticism is made. However, I also take into account that, given the treatment of the Detainees and the circumstances of their detention, it is entirely understandable that their memories have dimmed and may have become distorted. Similarly, I have taken account of the fact that soldiers' memories of the material events may also have dimmed with the passage of time, especially as the events occurred during a busy and stressful tour. However, in a number of cases, I have concluded that soldiers' claims that they were unable to remember were false.
- 2.7** Thirdly, some of the soldiers have been identified by Detainees in circumstances which call for great care being exercised before a conclusion can be reached on the accuracy of the identification.
- 2.8** Fourthly, and importantly, a number of soldiers have implicated other soldiers in acts of violence and brutality. Again, I recognise that in assessing their evidence there is a need for me to ensure that I have taken into account that they may have

¹ See McKinnon J's ruling at the close of the prosecution's case at CM 79/22/11-23

an axe to grind against the person who is the subject of the allegation and may also be motivated by a desire to blame others in order to exculpate or excuse their own conduct.

- 2.9** Fifthly, as stated in Part I Chapter 6, on 7 May 2010 I ruled that I would adopt a variable standard of proof when making my findings of fact. Throughout this Part, and the other Parts of the Report, my findings of fact are expressed on this basis. Where I find a fact and the basis upon which I find that fact is not expressly stated, the finding will have been on the balance of probabilities.
- 2.10** Sixthly, many of the witnesses to the events of 14 to 16 September 2003 have now each produced many accounts of these events. Some were interviewed under caution by the Special Investigation Branch (SIB) of the Royal Military Police (RMP); many provided a signed statement or a number of signed statements to the SIB; many gave oral evidence at the Court Martial; almost all provided a new witness statement to the Inquiry; and of those, the most important witnesses gave oral evidence to the Inquiry. I have taken all of these accounts into consideration when analysing what happened between 14 and 16 September 2003. Notwithstanding this, in the case of many witnesses I have found it sensible to rely in the first instance on the witnesses' oral evidence to me. There are two main advantages to this. Firstly, I can better assess witnesses' oral evidence to me than their other accounts, since I had the benefit of observing them giving their oral evidence. Secondly, many witnesses have altered their accounts, and it is proper that I should set out what they are now saying occurred. Of course, in any particular case where I perceive that there is some good reason to refer to a witness's earlier accounts, I have done so.
- 2.11** Finally, I have not resolved all of the very large number of conflicts in the evidence. In many places I have found it either unnecessary or impossible to do so. I have sought to reach findings on all of the issues which seem to me most relevant.

Chapter 2: The Arrests at Hotel Ibn Al Haitham

2.12 On 14 September 2003, members of 1 QLR arrested seven Iraqi civilians at Hotel Ibn Al Haitham ('the Hotel') in Basra. This Chapter describes the circumstances of these arrests. The operation during which these arrests took place was named "Op Salerno".

Op Salerno

2.13 On 24 June 2003 six RMP soldiers were murdered at Al Amarah. On 14 August 2003 Captain Dai Jones, a very popular 1 QLR officer, was killed by a remotely detonated roadside bomb when travelling in a marked ambulance. On 23 August 2003, three more RMP soldiers were shot dead in Basra. I have commented on these events in Part I Chapter 4 and will make further reference to them later in the Report.

2.14 The order for Op Salerno was promulgated on 12 September 2003 as 1 QLR FRAGO² Op Salerno. Op Salerno was prompted by intelligence to the effect that hotels within particular districts in Basra were being used as bases by anti-coalition forces. British forces had received intelligence that the Hotel Haitham, in particular, had been used by Saddam Hussein's security and intelligence agents around the time of the invasion.³ It is not possible for me to assess the quality of that intelligence; it may have come from an unreliable source.

2.15 The main aim of the operation was the identification and arrest of specific named individuals whom the coalition forces had identified as "former regime loyalists", known as "FRLs". The expressed intent of the order was:

*"To tgt criminal, Geramsha and terrorist activity in the AL ASHSHAR, MANAWI ALBASHA, AL MAHRAQAH and AL BARADI LYAH districts by the use of hotel searches, soft knocks and rummages in co-operation with the IZP."*⁴

2.16 The basic plan was described in the same order under the heading SOM (Scheme of Manoeuvre). It read:

"The BG will conduct a simultaneous 3-hour targeted search of 4 districts of Basra. The Op will see a co-ordinated launching of 4 Coys from base locations into the AL ASHSHAR, MANAWI ALBASHA, AL MAHRAQAH, AL MANAWI and AL BARADI LYAH districts. ANZIO will conduct searches of 3 target locs, BURMA will conduct searches of 4 target locs, CORUNNA will conduct a search of 1 tgt loc and SOMME will search 2 target locs ... Once TGT searches are completed coys will switch emphasis to their nominated areas of

² "FRAGO" is a military abbreviation for "Fragmentary Order". A "fragmentary order" is an order which makes changes to an existing "operations order". In Iraq, FRAGOs were often used to launch discrete, individual operations.

³ MOD030796; see also MOD030874. There was some dispute as to whether, before Op Salerno, British forces had additional intelligence to the effect that a vehicle similar to the one used in the attack on the RMP on 23 August 2003 had been seen outside the Hotel, and that armed men had been seen at the Hotel at the time of the attack. A Brigade level document entitled "INTSUM 197", dated 15 September 2003, stated that such intelligence did exist before Op Salerno: MOD048540. The same text was repeated in a Division level document on the same day: INTSUM 237 at MOD030536. For various reasons, the Detainees' legal representatives took issue with this: see the Detainees' closing submissions at SUB002166, paragraphs 25-30. A response on behalf of the TSol witnesses appears at SUB002809, paragraphs 46-51. I do not find it necessary to resolve this dispute.

⁴ MOD030882

Int interest by undertaking soft knocks and where applicable scrutinising hotel registers IOT focus the searches on to possible areas of Int interest. All search C/S's will be withdrawn at 140900DSEPT03 unless involved with an ongoing incident.”⁵

2.17 The order also contained the following directions:

“The gathering of intelligence therefore lies with the search troops.”⁶

2.18 and:

“Actions on arrest. Any pax detained as a result of criminal activity will be handed over to the IZ police for processing; those arrested for terrorist offences will be dealt with by the CF military system. Arrested pax are to be transported within Coys own means. Requests for external agencies are to be made through MAIN at the earliest opportunity.”⁷

2.19 The search of the Hotel was designated to be carried out by a “multiple” (a sub-unit of a platoon consisting of about 15 or so men) which was itself part of 1 QLR’s A Company. The company commander of A Company was Maj Richard Englefield. Lt Craig Rodgers was a platoon commander in that company. His platoon was divided into two multiples, one of which, the multiple with the radio call-sign G10A, he commanded. For obvious reasons it has come to be known as the “Rodgers Multiple”.⁸

2.20 In accordance with common practice, soldiers taking part in the operation received an oral briefing about it. These briefings were given in “O groups”, an Army term in which “O” stands for “orders”. There were contradictions in the witness evidence both as to who gave these briefings; and as to whether or not they included any suggestion that those being targeted in the operation had been involved in the murders of the RMP or Dai Jones. In light of these contradictions, I have found it neither necessary nor possible to resolve this particular issue.

The Raiding Party

2.21 The search of the Hotel was carried out primarily by the Rodgers Multiple. A Company Commander, Englefield, was briefed on the operation by 1 QLR’s Commanding Officer, Col Jorge Mendonça, on 12 September 2003. He in turn briefed the multiple commanders on the evening of 13 September 2003. The Rodgers Multiple, in addition to Rodgers, consisted of Pte Christopher Allibone (21 years of age at the time), Pte Thomas Appleby (18), Pte Gareth Aspinall (19), Pte Peter Bentham (33), Pte Aaron Cooper (22), Cpl John Douglas (a driver attached to the Multiple) (42), Pte David Fearon (20), Pte Lee Graham (18), Pte Jonathan Hunt (21), Pte Damian Kenny (18), Pte Stuart MacKenzie (25), Pte Gary Reader (20), LCpl Adrian Redfearn (second in command of the Multiple) (20), Fus Lee Richards (another driver) (19) and Pte Paul Stirland (20). The Inquiry received statements and heard oral evidence from all of these men.

⁵ Ibid.

⁶ Ibid.

⁷ MOD030883

⁸ The expression has been used as a convenient short hand to describe the G10A multiple. Findings relating to individuals within the “Rodgers Multiple” do not imply findings relating to Craig Rodgers unless that is explicitly stated.

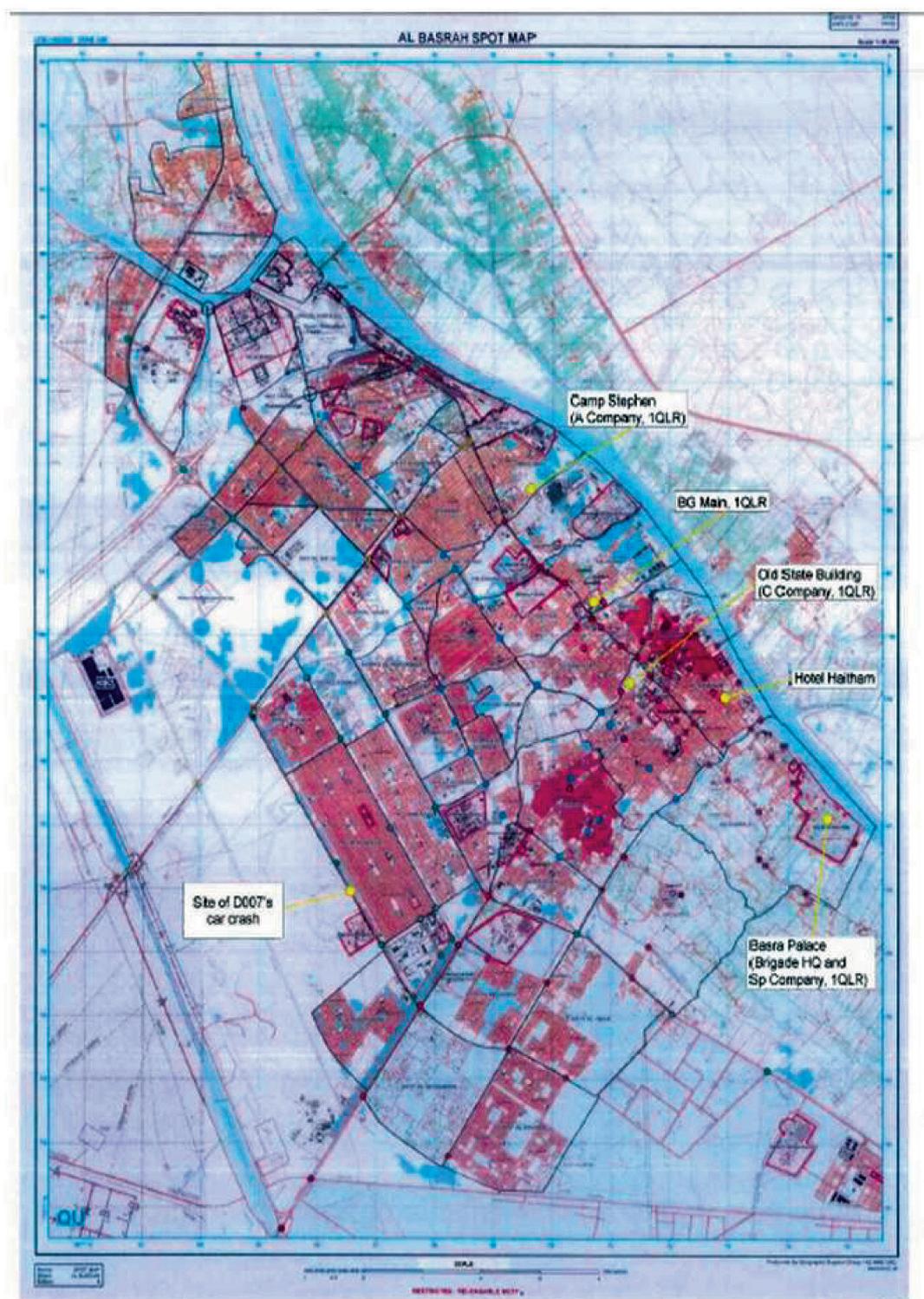
- 2.22** The Rodgers Multiple was also known as “*The Grim Reapers*”. This sobriquet apparently arose from unrelated engagements with FRLs and was said to be because the Rodgers Multiple was the first multiple to be responsible for the death of one of the enemy.⁹ I accept that it is tempting to read more into this name than is appropriate. It may very well be an example of the dark humour of combat soldiers. Nevertheless, in my opinion it gives some indication of the way members of the Rodgers Multiple saw themselves as belonging to a tight-knit tough unit.
- 2.23** The Hollender Multiple was also a part of A Company. It provided perimeter security around the Hotel while the Rodgers Multiple searched inside. It was normally commanded by CSgt Christopher Hollender, but at the time he was acting as Company Sergeant Major (CSM) of A Company in the absence of its regular CSM. The other members of the Multiple were Pte Andrew Altree (21), Pte Lee Bamber (27), Pte Adam Broadbent (21), Pte Wayne Crowcroft (18), LCpl Carl Cunningham (33), Cpl Andrew Dawson (39), Pte Darren Fallon (20), Pte Gareth Hill (20), Pte Michael MacMillan (20), Pte Peter Strong (34), LCpl Stephen Woods (21), Pte Johnathan Lee (20) and Cpl Gavin Stacey (26). The latter commanded the Multiple in the absence of Hollender. The Inquiry has received witness statements from all of these men and heard oral evidence from all save for Altree, Bamber, Broadbent, Cunningham, Dawson, MacMillan and Strong. The witness statements of those who did not give oral evidence were read into the transcript of the Inquiry’s hearings.
- 2.24** As part of A Company, both multiples were based at Camp Stephen. The Rodgers Multiple was responsible for searching the Hotel and arresting the Detainees. The Hollender Multiple provided perimeter security.

The Hotel

- 2.25** The Hotel Ibn Al Haitham opened for business in 1982. The sole owner of the business between 1982 and 2001 was D006. In 2001 the location of the Hotel moved from the central market area to Independence Road, in the Ashshar area of Basra (see figure 1). The name of the Hotel remained unchanged but at that time D006 took in Ahmad Taha Mousa Matairi as a partner in the business. D006’s son, C001, also became involved in running the business.

⁹ MacKenzie CM 32/154/14-22

Figure 1: Map of Basra



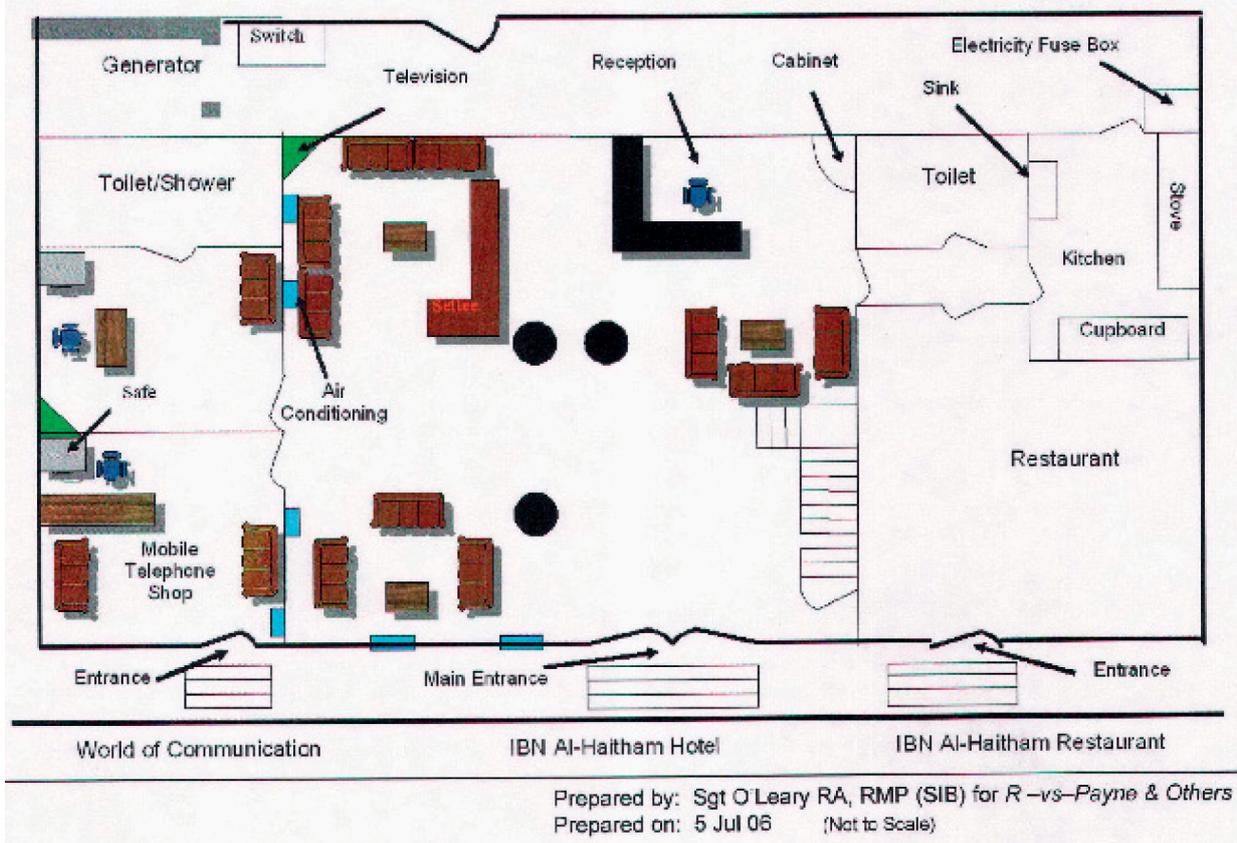
2.26 The evidence suggests that C001 was in charge of the telecommunications shop which was situated at the front of the Hotel, with its own separate entrance (see figure 2 in which it is labelled the mobile telephone shop). Little is known about C001. Early in the raid on the Hotel he escaped. When asked in evidence if he knew where his son, C001, was, D006 said he was in Jordan.¹⁰ It has not proved possible for the Inquiry to contact him, despite considerable efforts to do so. The

¹⁰ D006 BMI 13/86/1-10

Inquiry Team was told by solicitors for D006 that the mobile number D006 had for C001 was no longer working.

Figure 2: Sketch plan of the Hotel

Sketch plan of the IBN Al-Haitham Hotel, ground floor



The Detainees

- 2.27** D001 was employed in the Hotel as a cleaner and part-time guard. He had completed schooling up to elementary level. Between 1975 and 1978 he did military service. He was re-conscripted into the Army during the Iran-Iraq War between 1980 and 1988. He shared his guard duties with D002.¹¹
- 2.28** D002 was the Hotel's night watchman. His main duty was to guard the car park at the front of the Hotel. In the course of his and D001's duties both had access to two or three Kalashnikov rifles which were owned by the Hotel and left at the reception desk when not being used.¹² D002 had served in the Army throughout the Iran-Iraq War. D002's wife was pregnant at the time of the raid on the Hotel. The child was born about two or three months after his arrest but died five days later. D002 believes the child's death was due to the distress suffered by his wife in the final stages of her pregnancy when he was detained. He had started work at the Hotel just after the fall of Saddam Hussein.¹³

¹¹ D001 BMI01986-7, paragraphs 2-4

¹² D002 BMI 14/5/10-14/6/19; D002 BMI01948, paragraph 3

¹³ D002 BMI01947-8, paragraphs 2-3

- 2.29** D003 had been the Hotel restaurant manager since May 2003. He had avoided serving in the Army under Saddam Hussein by prolonging his education. He had graduated from the Technical Institute of Basra. He and his father were the main breadwinners of an extended family. He sometimes found it convenient to sleep at the Hotel if he finished working late.¹⁴
- 2.30** D004, with Kifah Matairi, was responsible for maintaining the generator at the Hotel. The generator provided air conditioning at the Hotel, a facility which at the time was scarce. For this reason D004 was on call for 24 hours each day, which resulted in him often staying at the Hotel. At the outset of the war he had fled to Syria so as to avoid conscription into the Army. He returned and had been working at the Hotel for about one and a half months.¹⁵
- 2.31** Kifah Matairi was the Hotel electrician.¹⁶ He was Ahmad Matairi's brother. He had begun work as a full-time electrician at the Hotel in December 2002. As part of his duties he switched on the generator at night and turned it off at 03.00hrs. He slept at the Hotel whenever there was a vacant room. He was a married man with six children and looked older than his age.¹⁷ He came to be nicknamed "*Grandad*" by the soldiers who guarded him at Battlegroup Main Headquarters (BG Main).¹⁸ Sadly, he died as a result of an unrelated accident two years after this event.¹⁹
- 2.32** Ahmad Taha Mousa Matairi was the co-owner of the Hotel with D006. Ahmad Matairi was a successful businessman whose businesses had done well since the end of the Saddam Hussein regime. He was called into the Hotel on the day of the arrests by his brother Kifah who asked him to bring keys to the Hotel safe. The keys were to enable the soldiers to get into the safe without damaging it.²⁰
- 2.33** I have mentioned D006 briefly already. He was not present at the Hotel during the raid. His family is Shi'a Muslim. He was opposed to Saddam Hussein's regime. His nephew had been executed by the regime in the 1980s. He was a successful businessman. At the time of his arrest his health was poor; he suffered from hardened arteries and was on regular medication.²¹
- 2.34** In addition to C001, D006 had another son, D005. D005 was also absent from the Hotel during the raid. When he was not at school he assisted his brother in running the telecommunications shop.²²
- 2.35** Ahmed Maitham²³ was unconnected with the Hotel and knew none of those who were detained with him. He was arrested later in the day in circumstances which I shall describe below. His family was well known in the local community. He had

¹⁴ D003 BMI 11/48/10-16; D003 BMI02367-8, paragraphs 2-4

¹⁵ D004 BMI02023-4, paragraph 3

¹⁶ Kifah Matairi MOD000050

¹⁷ Ahmad Matairi BMI02254, paragraph 2; Ahmad Matairi BMI02255-6, paragraph 6; Kifah Matairi PIL000659a

¹⁸ Aspinall MOD000122; Betteridge MOD000087; Hughes MOD000074; Riley MOD000094

¹⁹ Ahmad Matairi BMI 12/51/12-14

²⁰ Ahmad Matairi BMI02254-7, paragraphs 2-12

²¹ D006 BMI 13/58/12-60/24; D006 BMI02132-3, paragraphs 2-3

²² D005 BMI 17/3/22-17/4/7; D006 BMI02133, paragraph 4

²³ During the early stages of the Inquiry's proceedings there was an anonymity order in respect of Maitham which meant that his name was, at that stage, "*ciphered*" as D007. In many places in the evidence he is still referred to as D007. Any reference to D007 in the Report is therefore a reference to Maitham.

been conscripted into the Army prior to the first Gulf War. In 1994 he was imprisoned because he was suspected (wrongly he said) of subversion against the regime.²⁴

2.36 Most of the Detainees (although not D005) explained that they were delighted when the Saddam Hussein regime was overthrown by the invasion. They welcomed British troops into Basra.²⁵

2.37 Baha Mousa, the son of Col Daoud Mousa, was the night receptionist at the Hotel. He was 26 years old at the time of his death. His wife had died in February 2003, less than a month before the invasion. She and Baha Mousa had two young children for whom, following her death, Baha Mousa was left to care on his own. Baha Mousa's brother, Walla, had died at the end of 2002 after a failed operation. He also had two sons for whom Baha Mousa, as guardian, cared together with his own children.²⁶

2.38 Baha Mousa had only started work at the Hotel about two weeks before he was arrested. It was one of three jobs which he carried out in order to be able to support his extended family.²⁷

2.39 Col Mousa told the Inquiry that the family were Shi'a and had a long-standing history which made them delighted to see the fall of Saddam. Col Mousa himself had served for 24 years in the police before being dismissed in 1991 because he, together with other Shi'a officials, was blamed for not quelling the Shi'a intifada that occurred in the wake of the first Gulf War. Col Mousa said that the coming of the British to Basra was for him "*my delight*" which, along with others, including Baha Mousa, he welcomed.²⁸

2.40 This is a convenient moment to pause and state my conclusions and impressions in relation to Col Mousa. He was the first person to give oral evidence to the Inquiry. He was an impressive witness. He gave evidence in a dignified and courteous manner, and, in my view, without exaggeration. He was clearly distressed when giving evidence about the death of his son. His evidence was not in dispute in any major respect and I have no difficulty in finding that his recollection of the events with which he was concerned was both truthful and accurate. I should add that he was the driving force behind the litigation which led to the Inquiry. He attended the Inquiry on virtually every day of the evidence from the start on 23 September 2009 until the Christmas break on 16 December 2009. He returned in July 2010 to hear the four days of final submissions made to the Inquiry. At all times he conducted himself impeccably.

The Raid and Discovery of Weapons

2.41 The raid on the Hotel started at approximately 06.00hrs. During the later stages of the raid, the Brigade Commander, Brig William Moore, was present observing from the roof of the Hotel. Mendonça and his TAC group, the group of men which accompanied him on patrol around Basra, were in the vicinity but not in the building.

²⁴ Maitham BMI02074-5, paragraph 3; SUB002184, paragraph 51

²⁵ D003 BMI 10/62/12-16; D004 BMI 18/11/1-9; D006 BMI 13/59/19-60/9; Maitham BMI 13/43/25-44/4; Ahmad Matairi BMI 12/50/4-23

²⁶ Daoud Mousa BMI02220-3, paragraphs 2-10

²⁷ Daoud Mousa BMI02222-3, paragraph 10

²⁸ Daoud Mousa BMI 10/6/21-8/15; MOD016108

- 2.42** The following facts are not substantially in dispute. According to the 1 QLR Watchkeeper's log, at 06.06hrs the Rodgers Multiple located the Hotel.²⁹ Once in the Hotel they conducted a room by room search of the premises and identified those present, dividing them into two groups: staff and guests. All of the guests were in due course released. Staff present consisted initially of C001, D001, D002, D003, D004, Kifah Matairi and Baha Mousa. They were assembled by the soldiers in the reception area of the Hotel.
- 2.43** In the course of the search of the Hotel premises, three Kalashnikov rifles were initially found in the reception area. The soldiers then searched the telecommunications shop run by C001 (see figure 2 above) which contained a safe which they were unable to access. According to a statement given by Redfearn two days after the raid, the shop contained a submachine gun, a pistol, ammunition and a large quantity of Iraqi dinars, as well as radio equipment.³⁰ Another safe, also locked, was found in the Hotel office. The door from the Hotel office into the adjacent toilet was locked. Upon forcing entry into this toilet, the soldiers found a substantial stash of weaponry, including a submachine gun, Soviet combat uniform, binoculars and grenades.³¹
- 2.44** Some of the soldiers, amongst them Fearon, then forced open the safe in the telecommunications shop, using an iron bar. Inside they found a pistol, ammunition and a quantity of dinar, the Iraqi currency.
- 2.45** In all, the items of interest included the following:³²
- a quantity of money;
 - three Kalashnikov assault rifles and two Beretta 9mm sub-machine guns;
 - two pistols;
 - two grenades, without fuses;
 - a satellite phone;
 - military clothing;
 - a respirator;
 - three identification cards for an organisation called "*Titan Systems Corporation (Operational Analysis & Training Group)*" (a US firm which supplied interpreters to the US Department of Defence), for D005, D006 and a third person, which were subsequently found to be fake; and
 - photographs of C001, D001, D002, D003 and D004 (and possibly Baha Mousa) posing with some of the weapons.³³
- 2.46** Photographs of some of these weapons and some cash, taken in the locked toilet adjacent to the office, appear at figure 3.

²⁹ MOD016518

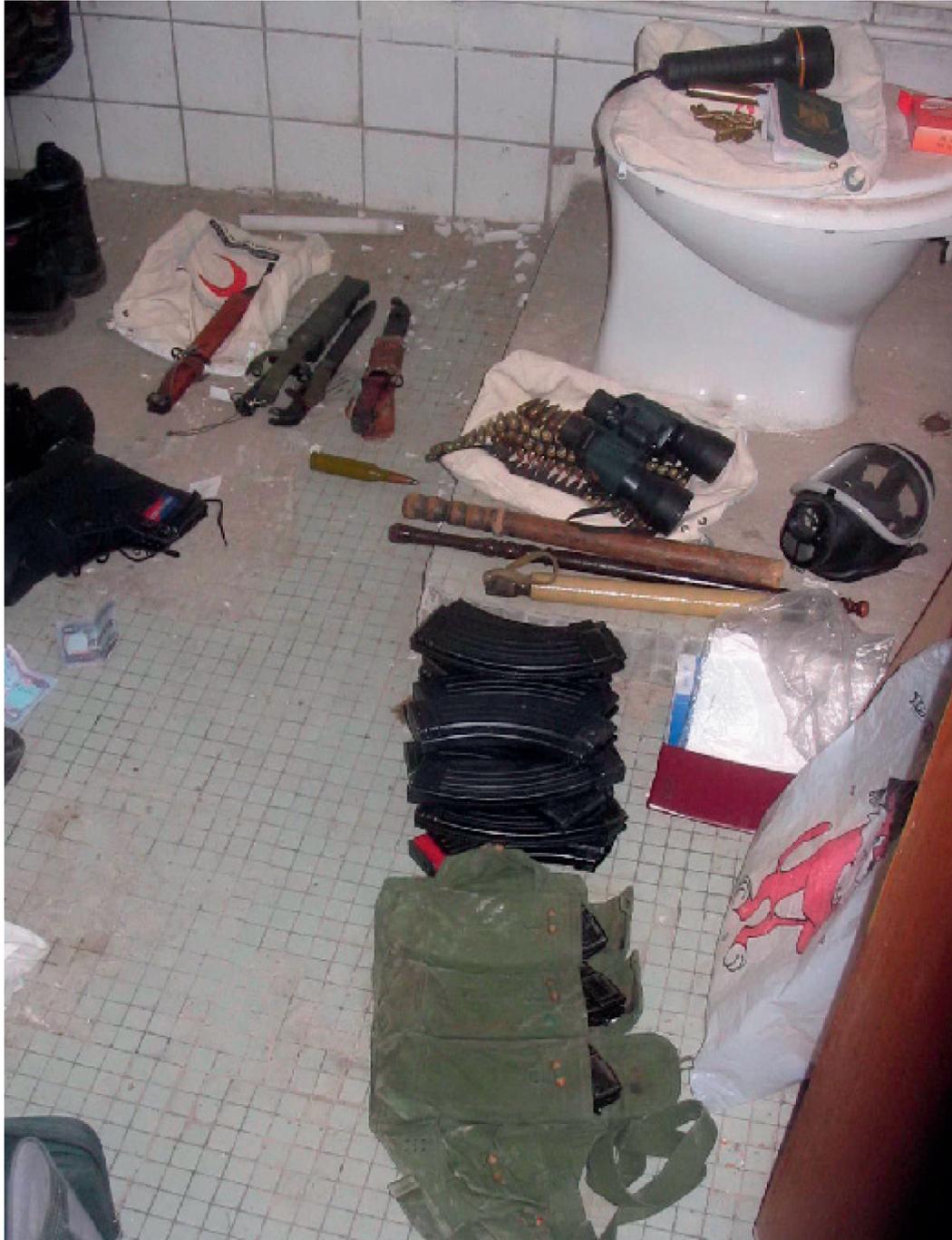
³⁰ Redfearn MOD015785-8

³¹ Ibid.

³² Lists of the items found appear in the Ammunition Technical Officer's report at MOD012586 and SSgt Davies' tactical questioning report at MOD030813-4

³³ The photographs have not survived in a useable form. Very poor copies appear at MOD030817-8 and MOD030830. D001, D002, D003 and D004 nonetheless accept that they appear in the photographs: D004 BMI 18/9/23-10/12; D001 BMI01989, paragraph 12; D002 BMI01948-9, paragraph 6; D003 BMI02370, paragraphs 10-12. They do not remember Baha Mousa appearing in the photographs, but SSgt Davies' tactical questioning report apparently claims that he did (MOD030818).

Figure 3: Photographs of weaponry and cash found at the Hotel





2.47 Whereas the three Kalashnikov rifles found in the reception area might, as some of the Detainees maintained, be attributed to a natural desire by the proprietors to protect the Hotel staff and guests from attack in times when there were security problems in Basra, the discovery of the items in the toilet cannot be so easily explained.

- 2.48** In evidence the Detainees either professed to have no knowledge of the weapons and items found in the toilet or said that they belonged to C001. D003 said C001 liked to own guns. He had money and was able to buy them.³⁴ D005 said he did not know the identity cards were false. C001 had told him they were licences for the weapons.³⁵ Both he and D006 said they were aware of the guns and that C001 collected them as a hobby.³⁶
- 2.49** D001 said that he had no knowledge of the items found in the toilet. He said the door of the toilet was locked and the key kept by C001.³⁷ Confirmation of this evidence came from Ahmad Matairi, who said that C001 always locked the door and kept the key. He had no knowledge of the items found in the toilet.³⁸ D002 denied ever seeing any weapons at the Hotel apart from the rifles used by the guards. When asked about the photographs of him and others posing with some of the weapons, he said he had been asleep at the time.³⁹ D004 accepted that he had been aware of weapons other than the rifles kept at reception. He said that C001 was fond of them, and that he bought and sold weapons.⁴⁰ The Detainees who feature in the photographs with some of the weapons said that the photographs were taken whilst they were “*fooling around*” and that this was normal.⁴¹
- 2.50** When I state my conclusions in relation to the Hotel raid, below, I set out my finding as to the significance of these weapons.

The Theft

- 2.51** There is no dispute that Fearon stole some of the money kept in the safe in the telecommunications shop. He was seen to do so by Baha Mousa’s father, Col Mousa, who had arrived outside the Hotel to pick up his son at approximately 08.00hrs, and was watching events through a window. Col Mousa in fact said that he saw three or four soldiers stealing money from the safe.⁴² In addition, Ahmad Matairi said he saw two or three soldiers taking money and putting it into their pockets.⁴³ The soldiers were able to open the other safe, in the Hotel office, when Ahmad Matairi fetched the key.
- 2.52** Having seen the theft, Col Mousa went into the Hotel to report to an officer what he had seen. Inside the Hotel he asked to see an officer and was referred to one whom he described as “*Lieutenant Mike*”. In fact this was Lt Michael Crosbie, the A Company Intelligence Officer. Crosbie invited Col Mousa to write down what he had seen. This he did on a piece of paper handed to him by Crosbie, which he returned, having completed a short statement in Arabic. According to Col Mousa, Crosbie called over Fearon, searched him and found the money.⁴⁴ Fearon was ordered out of the Hotel and in due course dealt with by the acting CSM, Hollender.

³⁴ D003 BMI 10/67/3-16

³⁵ D005 BMI02306-7, paragraph 14

³⁶ D005 BMI02306, paragraph 12; D006 BMI02133-4, paragraphs 6-7

³⁷ D001 BMI 12/6/12-7/9

³⁸ Ahmad Matairi BMI 12/53/8-55/1

³⁹ D002 BMI 14/6/2-8/4

⁴⁰ D004 BMI 18/8/2-18

⁴¹ D001 BMI01989, paragraph 12; D003 BMI02370, paragraph 12

⁴² Daoud Mousa BMI 10/12/17-14/7

⁴³ Ahmad Matairi BMI 12/60/16-19

⁴⁴ Daoud Mousa BMI 10/14/17-19/6

As a punishment he was ordered to fill 250 sandbags;⁴⁵ it might be thought a lenient sentence. Following this incident Fearon became known as “*Dinar Dave*”.⁴⁶

- 2.53** On the piece of paper which he gave to Col Mousa, Crosbie wrote his name. Col Mousa said Crosbie gave him his telephone number as a contact number; Col Mousa wrote this on the piece of paper in Arabic. He said that Crosbie told him his son would be released within two hours and if this did not happen he could call him at this number.⁴⁷

The Detainees’ Evidence about their Treatment at the Hotel

- 2.54** The Detainees said that initially the soldiers treated them reasonably. However, two things happened which appeared to cause the soldiers’ attitude towards them to harden. The first was the discovery of the weapons and other paraphernalia to which I have referred above. The second was the escape of C001. At some stage during the course of the search of the Hotel C001 managed to escape without this being noticed. Following these two events all parties accept that the Detainees were made to lie face down on the floor of the reception area.
- 2.55** It is not possible to say precisely at what time the Detainees were made to lie on the floor of the Hotel. The 1 QLR Battlegroup Net Radio Operator’s log records that at 07.05hrs a message went to all call-signs (each unit of soldiers was assigned a “*call-sign*” for the purposes of radio communications) “... *to be on look out for this person*”.⁴⁸ This must be a reference to C001’s escape. It follows that it is probable that at about that time the Detainees were made to lie on the floor.
- 2.56** Once on the floor, although the Detainees’ versions of what happened to them vary, there are common threads in their description of their treatment at the hands of the soldiers guarding them. D001, in evidence, confirming what he had said in his witness statement for the civil claim,⁴⁹ (but not his SIB witness statement),⁵⁰ said that the guarding soldiers walked over their backs.⁵¹ D002, as a result of subsequently suffering severe Post Traumatic Stress Disorder (PTSD), was unable to give oral evidence to the Inquiry in any detail about what had happened to him. However, in three witness statements⁵² and in his evidence at the Court Martial,⁵³ he said that a soldier had stood on his back as he lay on the floor. Kifah Matairi, in a witness statement made to the SIB, said that he saw Baha Mousa being repeatedly kicked while lying on the floor of the Hotel lobby by a soldier referred to by other soldiers as “*Boss*”.⁵⁴ Ahmad Matairi said in evidence to the Inquiry⁵⁵ and in various previous witness statements,⁵⁶ but not the first one which he made to the SIB,⁵⁷ that he was

⁴⁵ Fearon BMI 14/25/18-27/13; Hollender BMI 51/24/11-25/15

⁴⁶ Pte Lee Graham BMI 26/12/1-17; Mackenzie BMI01037-8, paragraph 40

⁴⁷ Daoud Mousa BMI 10/20/1-22/17; Daoud Mousa BMI 10/48/17-22; MOD012036

⁴⁸ MOD016570

⁴⁹ D001 PIL000182-3, paragraphs 15-19

⁵⁰ D001 MOD000011

⁵¹ D001 BMI 12/9/23-10/10

⁵² D002 MOD000025; D002 MOD000030; D002 PIL000154, paragraph 13

⁵³ D002 CM 14/15/15-16/2

⁵⁴ Kifah Matairi MOD000051

⁵⁵ Ahmad Matairi BMI 12/61/1-8

⁵⁶ Ahmad Matairi MOD000745; Ahmad Mosah (Matairi) PIL000217, paragraph 22

⁵⁷ Ahmad Matairi MOD000033

kicked by a soldier but it caused him no injury. He believed the kick was to humiliate him rather than hurt him. D004 has consistently said that he saw a soldier stamp on Baha Mousa's head, causing Baha Mousa to cry out.⁵⁸

2.57 Whilst at the Hotel the Detainees said that they were subjected to degrading and humiliating treatment in the Hotel toilets (those on the right hand side of the plan at figure 2). D001 in his original SIB statement appeared to suggest that he and other Detainees were taken to the toilet and had toilet water flushed over them.⁵⁹ However, in subsequent statements⁶⁰ and in evidence at the Court Martial⁶¹ and to the Inquiry,⁶² he said that toilet water was flushed over two other Detainees but not him. D002 in the third of three statements made to the SIB⁶³ but not in the first two⁶⁴ maintained that he had been forced to sit on a toilet and had water flushed over him. D003 in the first three accounts he gave to the SIB said he had been taken to the toilets but made no mention of water being flushed over him.⁶⁵ In an interview with an agent for his solicitor⁶⁶ and in an interview for Panorama⁶⁷ he said dirty water was flushed over him and others. In his Inquiry witness statement he described being taken with others to the toilets, saying that it was insulting to be there, but said that he was not badly treated when he was in there.⁶⁸ In evidence at the Inquiry he asserted that water was flushed over him and others, including Baha Mousa.⁶⁹

2.58 D004 made no mention in his initial statements to the SIB⁷⁰ and his evidence at the Court Martial⁷¹ of any physical ill-treatment in the Hotel toilets, although he did say that he and others were kept in the bathroom for about two hours. In his civil claim⁷² and in his statement⁷³ and evidence to the Inquiry,⁷⁴ he said he was taken to the toilet where he and two other Detainees were subjected to verbal abuse, spat upon and had water flushed over them.

2.59 Ahmad Matairi in evidence to the Inquiry said that all the Detainees were taken to the toilets. In a previous SIB witness statement⁷⁵ and in his Court Martial evidence⁷⁶ he had described water being flushed over all of them, or at least over the floor where they were standing. However, in evidence to the Inquiry, he said that only D002 had water flushed over him. He said that he and Kifah Matairi were kicked while in the toilet.⁷⁷

⁵⁸ D004 BMI 18/13/21-14/10; D004 BMI02026, paragraph 14; D004 MOD000002

⁵⁹ D001 MOD000012

⁶⁰ D001 BMI01991, paragraphs 18-19; D001 PIL000182, paragraph 17

⁶¹ D001 CM 15/57/12-58/13

⁶² D001 BMI 12/10/12-11/16

⁶³ D002 MOD000748

⁶⁴ D002 MOD000025; D002 MOD000030

⁶⁵ D003 MOD000059; D003 MOD000066; D003 MOD000732

⁶⁶ PIL000603

⁶⁷ NCP000191

⁶⁸ D003 BMI02376, paragraph 30

⁶⁹ D003 BMI 10/73/7-74/17

⁷⁰ D004 MOD000003; D004 MOD000008; D004 MOD000735

⁷¹ D004 CM 17/15/-16

⁷² D004 PIL000111, paragraphs 13-14

⁷³ D004 BMI02027-8, paragraphs 15-17

⁷⁴ D004 BMI 18/14/13-15/21

⁷⁵ Ahmad Matairi MOD000033

⁷⁶ Ahmad Matairi CM 10/62/13-64/4

⁷⁷ Ahmad Matairi BMI 12/61/12-62/8

2.60 Finally, Kifah Matairi made two separate statements to the SIB. In one of these statements he said that he, D002, D003 and Baha Mousa were placed in a toilet cubicle and had water flushed over the floor where they were standing and one soldier stood on his knee.⁷⁸ In his civil claim he said that he was kicked and beaten and that a soldier stood on his head while one other Detainee had toilet water flushed over him.⁷⁹

The Soldiers' Evidence about Events at the Hotel

2.61 The Inquiry has sought to identify all the soldiers who were inside the Hotel during the raid. Amongst others, the following accepted that at some stage they were present, and gave evidence about what they saw and did in the Hotel: Englefield, Rodgers, Redfearn, Aspinall, Pte Cooper, Hunt, MacKenzie, Reader, Stacey, Crosbie, Fearon, Lt Douglas Ingram (the A Company Crime Officer), Pte Lee and Allibone.

2.62 None of the soldier witnesses, save Englefield, Pte Lee, Allibone and Stacey, admitted seeing any ill-treatment of the Detainees when they were in the reception area.

2.63 Stacey said that he saw a soldier put his foot on a Detainee to force him back on the ground when the Detainees were lying in the reception area of the Hotel.⁸⁰

2.64 Englefield said he saw three material incidents. Firstly, he said that when the Detainees were lying on the floor of the reception area he saw one of them, he believed, rise and lunge at Redfearn. Redfearn's reaction was to strike the man on the leg with something which he was unable to identify. He accepted that in his Inquiry witness statement he had said that what Redfearn had used to strike the man was something long and blunt, either a weapon or a stick. He felt that Redfearn had "...complied with the rules on the minimum use of force".⁸¹

2.65 Redfearn made no mention of this incident in any of his witness statements. It was not put to him when he gave evidence and he offered to provide a further witness statement to the Inquiry denying the incident.⁸² I have not thought it necessary to require him to do so. His denial of such an incident is encompassed in his oral evidence that he was not aware of any assault upon the Detainees at the Hotel.⁸³

2.66 Secondly, Englefield said he saw a different Detainee try to get up from the floor, and a soldier place his foot in the small of the Detainee's back to push him back down to the ground. He felt that this too was a proportionate use of force.⁸⁴

2.67 Thirdly, Englefield said that he saw another Detainee with a minor facial injury. He spoke to a soldier about this and was told that the injury had been incurred when the Detainee was pushed to the floor, an explanation which he accepted. He agreed that he did not mention any of these three incidents when he made a statement to the SIB dated 20 October 2003. He explained that he had not been asked about them and at that time did not remember these incidents.⁸⁵

⁷⁸ Kifah Matairi MOD000052

⁷⁹ Kifah Matairi PIL000391, paragraph 5

⁸⁰ Stacey BMI 21/142/4-143/9

⁸¹ Englefield BMI 65/55-57

⁸² SUB003084

⁸³ Redfearn BMI 30/147/22-148/20

⁸⁴ Englefield BMI 65/57/21-58/6

⁸⁵ Englefield BMI 65/58/10-60/18; Englefield MOD000250

- 2.68** Allibone, who was guarding the entrance to the Hotel, said in his evidence to the Inquiry, that he had a “*vague memory*” of a soldier stepping on one of the Detainees but he was unable to say whether it was deliberate or accidental.⁸⁶
- 2.69** In his original statement to the SIB, Pte Lee said that, whilst the Detainees were lying on the Hotel floor, he saw Rodgers kick one of them.⁸⁷ He recounted this at the Court Martial, saying that other soldiers may also have kicked Detainees, but that he could not identify them.⁸⁸ However, in his evidence to the Inquiry he said he could no longer remember the Rodgers kick, although he said that he would have told the truth to the SIB.⁸⁹
- 2.70** Rodgers said that he had seen no mistreatment of the Detainees by any soldier. He denied Pte Lee’s allegation against him. He pointed out that the Company Commander, the Commanding Officer and his TAC group, of whom the Regimental Sergeant Major (RSM) was a member, were present at various times in the Hotel. Additionally, the Brigade Commander was in the area although not in the Hotel. He said, in effect, it would be madness for any soldier to have assaulted a Detainee.⁹⁰
- 2.71** None of the witnesses, save Aspinall, MacKenzie and Crosbie, had any recollection of any of the Detainees being placed in the toilets. Aspinall, MacKenzie and Crosbie remembered seeing some Detainees in the toilets but denied seeing any ill-treatment of them.⁹¹ Rodgers, in evidence to the Inquiry, accepted that he saw Detainees being moved into the kitchen but denied any of them were put in the toilets.⁹² However, in an SIB statement dated 12 October 2010⁹³ and his Inquiry statement⁹⁴ he described the room as an empty room with a disused or dry toilet. He said in his SIB statement that the purpose of moving them there was to allow them to be watched and to search the lobby.
- 2.72** Aspinall said he remembered seeing some of the Detainees in the toilet area. He thought they were put there to separate them. He was unable to say how long they were there and he saw no mistreatment of them when they were there. He accepted that he had made no mention of this in his SIB statement of October 2003. He said this was because he may not have been asked about it.⁹⁵
- 2.73** MacKenzie, in his original SIB statement⁹⁶ and subsequent statements as well as in evidence to the Inquiry, remembered that the Detainees were put in the toilets. In evidence to the Inquiry he said they were sitting or crouching but not standing. He said that the purpose of moving there was to remove them from sight of the road.⁹⁷
- 2.74** Crosbie saw Detainees in the toilet area. He said the Detainees were in cubicles in the toilet area and were guarded by soldiers. He denied speaking to D003 in the

⁸⁶ Allibone BMI 24/185/24-186/21

⁸⁷ Pte Johnathan Lee MOD000261

⁸⁸ CM 50/8/22-10/19

⁸⁹ Pte Johnathan Lee BMI 18/111/25-112/22

⁹⁰ Rodgers BMI 30/22/12-23/5; Rodgers BMI01840, paragraphs 86-87

⁹¹ Aspinall BMI 28/25/16-26/20; Crosbie BMI 19/175/22-177/1; MacKenzie BMI 29/141/11-142/15

⁹² Rodgers BMI 30/23/6-20

⁹³ Rodgers MOD000218

⁹⁴ Rodgers BMI01840, paragraph 86

⁹⁵ Aspinall BMI 28/25/16-27/1

⁹⁶ MacKenzie MOD000111

⁹⁷ MacKenzie BMI 29/141/11-24; Mackenzie BMI 29/212/2-13

toilets as D003 alleged. He said that he had spoken to him in the restaurant with a group of other Detainees and arranged for D003 to direct him to C001's house.⁹⁸

Conclusions on Events at the Hotel

The significance of the weapons

- 2.75** The cache of weapons and other items which the soldiers found at the Hotel justified the suspicions which they raised in the minds of those in charge of the raid. In particular, the grenades, in themselves, were sufficient to justify the arrest of the staff in the Hotel. In my opinion, in the circumstances there can be no valid criticism of the decision to arrest the Detainees who were in the Hotel at that time.
- 2.76** The difficulty with the denials of knowledge of the weapons and other paraphernalia for D001, D002, D003 and D004 is that they were identified in group photographs showing them with some of the weapons. Their explanations for the photographs were, to say the least, improbable and I therefore find that these four Detainees did know about at least some of the weapons.
- 2.77** Nevertheless, having seen them give evidence in the witness box and learned of their backgrounds and biographical history, I regard it as highly unlikely that the Detainees were involved in any insurgent or terrorist activity. In my view their knowledge of the existence of the weapons and other paraphernalia is not sufficient to lead to such an inference. Further, it is in my opinion understandable in the circumstances that they should have denied knowledge of the existence of the weapons. I do not regard such denials as damaging their credibility on other issues to any real extent.
- 2.78** I have not heard C001's explanation for the weapons, but in my opinion it is far more likely that responsibility for these items lies with him, hence his escape and flight from Iraq.
- 2.79** As to the specific related issue of whether the Detainees had anything to do with the RMP murders on 23 August 2003, in my judgment there is absolutely no reliable evidence that they had anything whatsoever to do with this incident.⁹⁹ It is worthy of note here that in its final submissions the MoD acknowledged that there was no evidence to implicate any of the Detainees in the death of any British personnel.¹⁰⁰

Assaults in the reception area and the toilets

- 2.80** I recognise that, in some respects, the Detainees' versions of the events in the Hotel have been inconsistent and confused. I have also borne in mind the risk that the Detainees may have exaggerated the abuse they suffered in order to bolster their claims for compensation in private law proceedings against the MoD. However, having observed them giving evidence I am quite satisfied that they were in general doing their best to tell the truth. In addition, as will appear from my findings in

⁹⁸ Crosbie BMI 19/177/4-179/70

⁹⁹ SSgt Mark Davies, who tactically questioned the Detainees at BG Main, was constrained to accept that, whilst there may have been grounds for treating the Detainees as suspicious, there was no real evidence that the Detainees had in fact been involved in the RMP murders: SSgt Mark Davies BMI 42/50/6-19

¹⁰⁰ SUB001019, paragraph 11

respect of subsequent allegations of abuse and ill-treatment, there is evidence which supports subsequent allegations made by the Detainees. In my opinion this reflects favourably on their credit in respect of these allegations, and by the same token unfavourably on the credit of some of those soldiers who were involved in the subsequent incidents.

- 2.81** Although not all of the statements and evidence provided by the Detainees are consistent either with each others' accounts or even with other accounts given by the same Detainee, in respect of these allegations, there are two common themes, namely of being kicked whilst lying on the floor in the Hotel and of ill-treatment in the toilets.
- 2.82** I accept that it would appear to have been foolhardy for soldiers to mistreat Detainees when the Brigade Commander and their Commanding Officer were in the area. But it is not without significance that their presence did not inhibit Fearon from stealing money.
- 2.83** As far as the allegations of being kicked whilst lying on the floor of the reception area are concerned, I find that there were some low-level assaults on some of the Detainees. This evidence is supported by Stacey's admission that he saw a soldier put a foot on the head of one of the Detainees.
- 2.84** Englefield witnessed at least some of these incidents but only Redfearn was identified by him. Englefield knew Redfearn and in my view he cannot have been mistaken in his identification of him. But I doubt that his evidence about these incidents reflects the full extent of what he saw. I also doubt his conclusion that on each occasion no more than reasonable force was used. In the context of the evidence of the Detainees I suspect that Englefield has sought to minimise these incidents and that what he saw were examples of unjustified minor assaults on Detainees. It seems to me possible that because he had seen assaults on Detainees by soldiers from his company he omitted these incidents from his SIB statements and interview. However, there is in my opinion insufficient evidence to justify a positive finding that what Englefield saw did amount to minor assaults. For this reason, on the basis of Englefield's evidence I make no finding that Redfearn was involved in an unjustified assault on a Detainee in the Hotel as described by Englefield.
- 2.85** In all the circumstances I find that those Detainees who say they were kicked when lying on the floor of the reception area of the Hotel did suffer some ill-treatment. However, such abuse was minor in character and quite different from their subsequent treatment at BG Main.
- 2.86** As to the allegations concerning the toilets, the Detainees have plainly not concocted the fact that they were taken to the toilets. It is clear from the evidence of Crosbie, Aspinall and MacKenzie, whose evidence on this point I accept, that some but possibly not all of the Detainees were taken to the toilets. In my opinion the likely explanation for this was, as the Detainees asserted, that they were taken there to humiliate them. In my view it is unlikely that they were placed there so that other areas of the Hotel could be searched or put there to be separated from other Detainees.
- 2.87** It is less certain whether or not toilet water was flushed over the Detainees and whether or not they were assaulted in the toilet area. The evidence of individual Detainees on this issue is very confused. The variations between what individual

Detainees initially said on this issue and what was said by them in subsequent witness statements and in oral evidence to the Inquiry are not easy to reconcile.

- 2.88** Overall, however, I am persuaded, for the reasons set out below, that toilet water was flushed over at least some of the Detainees. Allegations of abuse in the toilets were made by different Detainees, including Kifah Matairi, in their initial SIB statements, when it was highly unlikely that Kifah Matairi and the others had influenced each others' accounts. D001 alleged that toilet water was flushed over the Detainees' clothing in a statement dated 22 September 2003.¹⁰¹ Ahmad Matairi made the same allegation in a statement dated 24 September 2003.¹⁰² Kifah Matairi made the same allegation in his first statement, dated 10 October 2003.¹⁰³ On 10 October 2003, Kifah Matairi was still physically separated from the other detainees. He was still in hospital at BMH Shaibah,¹⁰⁴ whereas the other Detainees were being held at the Theatre Internment Facility (TIF) at Umm Qasr. But there was some contact between Kifah Matairi and other Detainees in the meantime. For example, D001 and D002 visited BMH Shaibah at one point and spoke briefly to Kifah Matairi. Similarly, the Detainees did of course travel together from BG Main to the TIF on 16 September.¹⁰⁵ However, contact between Kifah Matairi and the others must have been very limited at this time. In my judgment, it is therefore very unlikely that these separate accounts of toilet water being flushed over the Detainees were the result of Kifah Matairi and the others influencing each others' accounts.
- 2.89** However, beyond finding that toilet water was flushed over at least some of the Detainees, I am unable to reach any further findings about what abuse did or did not occur in the toilets. The Detainees' evidence is insufficiently clear for me to do so.

Who was responsible for the ill-treatment and abuse at the Hotel?

- 2.90** Apart from Rodgers, and possibly Redfearn, none of those members of the Rodgers Multiple who were present in the Hotel have been identified as behaving improperly in any way. None of the soldiers, save for Stacey and Allibone, confessed to any knowledge of the mistreatment and abuse which I find took place. But, in my judgment, some if not all of them must at the very least have known about the abuse and some must have taken part in it.
- 2.91** I discount two men identified as being present in the Hotel from having taken part in the abuse and probably, at the time, from any knowledge of what occurred. These men are Fearon and Ingram. Fearon can be discounted because his undistinguished part in the raid ended when he was ordered out of the Hotel, having stolen money from the safe, before the time when the toilet incident is alleged to have taken place. Ingram, the A Company Crime Officer, had been summoned to the Hotel by Rodgers on the discovery of the weapons. His focus would have been on interviewing guests and assessing the value of the items found in the Hotel.¹⁰⁶ For this reason I am prepared to accept that he was unaware of any abuse of the Detainees.

¹⁰¹ D001 MOD000012

¹⁰² Ahmad Matairi MOD000033

¹⁰³ Kifah Matairi MOD000052

¹⁰⁴ MOD015919; MOD015920; MOD015922. These documents show that Kifah Matairi was still in hospital at least as late as 17 November 2003.

¹⁰⁵ D006 PIL000329, paragraph 36

¹⁰⁶ Lt Douglas Ingram BMI 17/150/14-154/16

- 2.92** Crosbie, as the A company Intelligence Officer, would also have been focused on intelligence gathering. But in his case he accepted he had contact with the Detainees and he saw them in the toilets. He denied that he had any knowledge which might have led him to conclude that putting the Detainees in the toilets would be humiliating and insulting. I judge him at the time to have been a young and somewhat naïve officer and I am prepared to accept that explanation. As to the other abuse I am also prepared to acquit him of any knowledge it.
- 2.93** Of the other soldiers who were present, it is difficult to exclude the multiple commander, Rodgers, and those in command of the teams within the multiple, of knowledge of the abuse. The team commanders appear to have been Aspinall, Redfearn and Fearon.¹⁰⁷ If they did not take part in it, I strongly suspect that Rodgers, Aspinall and Redfearn must have had some knowledge of what was occurring. Fearon, on the other hand, had been removed from the Hotel at a comparatively early stage.
- 2.94** As to Pte Lee's allegation that Rodgers kicked a Detainee in the lobby area, I give my assessment of the quality of Lee as a witness later in this Part of the Report (see Chapter 8). In summary, I find that Lee was endeavouring to give the Inquiry truthful and accurate evidence, but that, for reasons set out below, it is sensible to search for evidence which supports his evidence before accepting it. In respect of Lee's allegation against Rodgers it was suggested to Lee that he did not like Rodgers. Lee agreed and said the feeling was mutual.¹⁰⁸ With the above in mind, and also bearing in mind that Lee can no longer remember the incident, in my opinion his evidence is not sufficient on which to base a finding that Rodgers kicked a Detainee at the Hotel. Save for Kifah Matairi's reference to kicks on Baha Mousa by a man identified as "Boss" there is no other evidence to identify Rodgers as one of those who kicked a detainee. "Boss" could be a reference to any other officer present at this time. It would therefore in my opinion be unsafe to find that Rodgers did kick one of the Detainees in the Hotel.
- 2.95** A number of the above soldiers I found to be unsatisfactory witnesses, as I shall record in detail when dealing with the allegations of abuse at BG Main. But the fact that they are unsatisfactory witnesses is not a substitute for evidence that they did participate in the abuse which took place at the Hotel.
- 2.96** The plain fact is that none has been identified by the Detainees as taking part in the abuse.
- 2.97** Some of the Detainees gave descriptions of a soldier, not necessarily the same one in each case, who took part in this abuse. The descriptions, however, are vague, consisting, for example, of statements that the soldier was muscular or had a tattoo on his arm.¹⁰⁹ Such descriptions may not be entirely accurate and could apply to any of a large number of soldiers making up the Rodgers Multiple.
- 2.98** In the circumstances, in my judgment, it would be unfair and impossible to single out any particular soldier as having taken part in the abuse or being aware of it. As with the multiple and team commanders, save Fearon, I strongly suspect a number were aware that it was being carried out but it is impossible to identify them.

¹⁰⁷ Appleby BMI 25/11/13-21; Aspinall BMI 28/4/20-6/15; Fearon BMI 14/13/15-14/10; Redfearn BMI 30/139/18-23; Rodgers BMI 30/4/15-24; Rodgers BMI 30/37/3-10

¹⁰⁸ Pte Johnathan Lee BMI 18/11/17-20

¹⁰⁹ Ahmad Matairi BMI02259, paragraph 19

Transfer of the Detainees from the Hotel to BG Main

2.99 At approximately 10.00hrs, six Detainees (D001, D002, D004, Baha Mousa, Kifah and Ahmad Matairi) were taken out of the Hotel and placed on a DAF truck, the decision having been made that they should be taken to 1 QLR's headquarters, known as BG Main, for "*tactical questioning*". The logs which precede this move are illuminating.

2.100 According to the Battlegroup Watchkeeper's log, at 09.50hrs the A Company Operations Room sent a message to the BG Main Operations Room, stating, under "Event":

"... J10A [the Officer Commanding A Company, Englefield] reports TV camera at A1 [the Hotel]. About to move 8 pax [persons]. Request direction on method of move. To BG Main."¹¹⁰

2.101 The noted "Action" to take reads: "*Plasticuffs but no sandbags*".¹¹¹

2.102 This log entry must be read together with the equivalent entry (apparently recording the same exchange of messages) on the Battlegroup net radio log, which stated:

"10A has... T.V. camera in his loc, he needs to remove another party do we do it normaly or gently."¹¹²

2.103 The same discussion is logged slightly differently in the A Company Watchkeeper's log. At some point between 09.34hrs and 09.48hrs, A Company asked:

"Due to presence of media how do you wish us to proceed with prisoner handling."¹¹³

At 09.48hrs, the reply from BG Main is logged as, "*Our normal methods bar sandbagging*".¹¹⁴

2.104 In evidence Englefield said that "*normally or gently*" was not his own terminology, but that of the signaller in the A Company Operations Room. He said that "*normally*" would refer to normal "SOPs" (standard operating procedures), which may or may not include "*hooding*" (i.e. placing a hessian sandbag over the prisoner's head). He denied that "*normally*", as opposed to "*gently*", meant rough handling.¹¹⁵

2.105 Brig Moore said that he was not listening on the Battlegroup net and so was unaware of these radio transmissions. In any event, he explained, and I accept, that he had many other things to do that day and left the Hotel before the lift operation had been completed, arriving at Brigade Headquarters at 08.00hrs. He heard none of the above messages.¹¹⁶

2.106 There can be no doubt that when the time came to move the Detainees from the Hotel a crowd had gathered outside, including a contingent of local media with a

¹¹⁰ MOD016524

¹¹¹ Ibid.

¹¹² MOD016571

¹¹³ MOD016789

¹¹⁴ Ibid.

¹¹⁵ Englefield BMI 65/61/13-64/7

¹¹⁶ Moore BMI 99/67/7-71/5

TV camera. Hollender, in his Inquiry statement,¹¹⁷ remembered the presence of the local media, as did Rodgers in his SIB statement dated 30 June 2005.¹¹⁸

2.107 Very late in the course of the Inquiry's proceedings, video footage was disclosed by Associated Press Television News.¹¹⁹ The footage shows some of the Detainees being escorted from the Hotel into an Army truck. They are unhooded. It also appears to show soldiers handling some of the weapons found at the Hotel. They are not wearing gloves.

2.108 Rodgers, in his SIB statements of October 2003¹²⁰ and June 2005,¹²¹ stated that Englefield told him that Mendonça had ordered the Detainees to be hooded for their transfer to BG Main and to be removed from the Hotel in a forceful way as a demonstration to the crowd. In his Inquiry statement, Rodgers stated that:

*"... the suggestion was that we provide a show of force however on a mission command basis both the CO [sic – it appears that this should have read "OC", i.e. Englefield not Mendonça] and I agreed that the situation on the ground required a more subdued approach."*¹²²

2.109 Mendonça vehemently denied that they had any such conversation.¹²³ However, whatever conversation Englefield, Rodgers and Mendonça may have had, the use of "*normally*" as opposed to "*gently*" in the log suggests that on previous operations detained Iraqis had been handled robustly. As I shall explain later, such treatment would in my opinion fit with Mendonça's approach to Battlegroup operations but not to prisoner handling. Moreover, the 09.48hrs message from BG Main implies it was standard practice for 1 QLR to "*sandbag*" or hood detainees.

¹¹⁷ Hollender BMI00645, paragraph 54

¹¹⁸ Rodgers MOD000227

¹¹⁹ NCP001258

¹²⁰ Rodgers MOD000218-9

¹²¹ Rodgers MOD000227

¹²² Rodgers BMI01840-1, paragraph 91

¹²³ Mendonça BMI 59/100/14-101/15

Chapter 3: The arrest of D006 and D005 and their Initial Detention at Camp Stephen

D003 and the Party Going to D006's House

- 2.110** As already stated, D006 was a part owner of the Hotel and the father of D005 and C001. C001 having escaped from the Hotel, it was reasonable that those involved in the raid on the Hotel would want to find and interview him. D003 said that an officer came to him with an interpreter. At the time he was, he believed, in the toilet. He was asked if he knew C001 and where he lived. He indicated that he did know where C001 lived and he agreed to take the officer to see C001's house. The officer was Crosbie, although D003 did not identify him. Crosbie's recollection is that he questioned the Detainees in the restaurant, and not in the toilet (see paragraph 2.74). D003 stated that Crosbie said in return he would try to secure D003's release. D003 went with Crosbie and other soldiers in a vehicle to see C001's house.¹²⁴
- 2.111** Accompanying Crosbie and D003 were members of the multiple with the call-sign "G30B" from A Company, including Corporal Craig Lawrence, Lance Corporals Robert Brzezinski and Joseph Grist, and Privates Michael Armstrong, Joe Jordan, Stuart Shakeshaft and David Walker.¹²⁵

The arrest

- 2.112** At the house D003 remained in the vehicle.¹²⁶ Meanwhile the soldiers forced their way in, smashing the gate and front door. D005 said that inside the house the soldiers smashed and broke some of the furniture.¹²⁷ He and his father were arrested. D006 said that they were made to lie on the ground outside, with soldiers' feet on their necks.¹²⁸ However, he did not mention this in his original SIB statement¹²⁹ and D005 said that nothing improper happened to him and his father at their house.¹³⁰ In my view there is insufficient evidence to find that there was any physical mistreatment of D005 and D006 at their house but I accept some furniture was broken and smashed.
- 2.113** A number of the soldiers said that force was used to break in and apprehend the two men, due to the fact that this was a "hard knock" operation.¹³¹ Lawrence accepted that the raid comprised an element of force. He described seeing D005 with an AK 47 rifle in his hands. He said he told D005 to drop the weapon.¹³² Walker, on the other hand, described apprehending D005 on the first floor of the house. He did not say D005 was holding a weapon although he said D005 did initially struggle a bit. He

¹²⁴ D003 BMI 10/76/9-79/11; Crosbie BMI 19/177/4-179/7; D003 BMI02377-8, paragraphs 32-35

¹²⁵ Crosbie BMI 19/180/13-19. Crosbie confirmed he was accompanied by the G30B multiple, MOD015905 Grist signed a statement on 15 September 2003 confirming that those named here were present.

¹²⁶ D003 BMI02378, paragraph 34

¹²⁷ D005 BMI02308-10, paragraphs 18-24; D005 BMI02311, paragraph 27

¹²⁸ D006 BMI 13/63/23-64/2

¹²⁹ D006 MOD000040

¹³⁰ D005 BMI 17/7/17-21

¹³¹ Brzezinski BMI 37/97/12-99/3; Crosbie BMI 19/182/15-185/16; Grist MOD015905

¹³² Lawrence BMI 37/66/9-19

thought this was probably because D005 did not understand his commands.¹³³ In my view it is highly unlikely that D005 was holding an AK 47 rifle.

2.114 There was no sign of C001. After the two Detainees had been spread-eagled on the ground in the garage, in order to be searched, they were put into the vehicles.¹³⁴ Crosbie said that before leaving, he was given some medication by D006's wife, who explained that D006 had a heart problem.¹³⁵ All three Detainees (D003, D005 and D006) were then taken to Camp Stephen.¹³⁶ No complaint is made by D005 or D006 of ill-treatment on the journey to Camp Stephen.

2.115 D003 said in evidence to the Inquiry that on the return journey from the house he reminded Crosbie of his promise to release him as a reward for giving directions to the house. He said Crosbie's response was by implication to threaten him. Crosbie said, "...If you talk to me again, I'm not going to answer you, but I will let the soldier answer", pointing to a muscular soldier. D003 also said that on the return journey he was punched a glancing blow on his face by a soldier whom he described but did not identify. He thought the blow was a warning and it caused him no injury.¹³⁷ Crosbie denied that he had threatened D003 and denied that he had seen D003 being struck by a soldier.¹³⁸ However, D003 made these two allegations in his first SIB witness statement dated 22 September 2003.¹³⁹ It follows that he has been consistent on this aspect of his evidence. I find that in respect of this part of his evidence D003 was truthful and accurate and that he was threatened by Crosbie on the journey from the house and struck by a soldier. However, I cannot determine whether Crosbie was in a position to see a blow to D003's face. It would seem that they were in the same Saxon vehicle, but it is possible that Crosbie was not paying attention to what was going on and may have missed seeing what I find one of his soldiers did, namely strike D003 a glancing blow to the face.

Transfer to Camp Stephen and Events at Camp Stephen

2.116 The subsequent movements of D003, D005 and D006 are recorded in three log entries.

2.117 Firstly, an entry in the A Company Watchkeeper's log, timed at 11.42hrs, records a message from the A Company Operations Room to BG Main:

*"Ref man in white t. jeans blue the hard knock [illegible] his father and brother who have been invited here to aid with investigation and G30B is bringing the 7th pax to your location."*¹⁴⁰

This is plainly a reference to D005 and D006 being taken to Camp Stephen, and D003 being moved on to BG Main.

¹³³ Walker BMI02650-1, paragraphs 143-145

¹³⁴ Brzezinski BMI 37/100/7-22

¹³⁵ Crosbie BMI 19/183/14-184/8

¹³⁶ Crosbie 19/191/13-20

¹³⁷ D003 BMI 10/79/18-82/3

¹³⁸ Crosbie BMI 19/181/5-182/8

¹³⁹ D003 MOD000060-61

¹⁴⁰ MOD016790a. There is also a message in the BG Main Watchkeeper's log, timed at about 11.50hrs (the writing is unclear), which records the intention to transfer D003 to BG Main, but does not mention D005 and D006.

- 2.118** Secondly, the Battlegroup net radio log records the following message from A Company to BG Main at 11.51hrs:

“Ref msg, white T T-shirt and blue jeans escaped, hard knock discovered father and brother, brought to loc to loc son and 7th pax on route to your loc.”¹⁴¹

This accords with D003’s recollection that he remained at Camp Stephen only for a short time before being separated from D005 and D006, and moved on to BG Main.¹⁴²

- 2.119** Thirdly, at 13.43hrs the A Company Watchkeeper’s log recorded a message from A Company to BG Main, which read:

“G20B about to go to the rainbow task but first will drop off two more Detainees the brother and father of guy in white T shirt + blue jeans we lost earlier.”¹⁴³

It is therefore apparent that D005 and D006 were held at Camp Stephen for approximately two hours.

- 2.120** The evidence as to who was responsible for guarding D005 and D006 during these two hours at Camp Stephen is unclear. Grist, in a handwritten statement he made on 15 September 2003, appears to have said that they were left “*to the Ops cms [sic] care*”, but unfortunately the statement is not entirely legible.¹⁴⁴ However, he told the Inquiry that he now has no recollection of these events. He said that “*Ops team*” would have been a reference to the A Company officers.¹⁴⁵ When Crosbie was asked who guarded the Detainees at Camp Stephen, he said he did not know, and that he was in the operations room at this time. He said it may have been the arresting multiple (G30B) guarding them, or it may have been another one.¹⁴⁶ I would add that it is possible that the G20B multiple was guarding them, since this was the multiple which subsequently transported them to BG Main (see the log entries above). When shown Grist’s handwritten statement, and asked who the “*Ops team*” were, Crosbie said this would have been A Company’s operations room at Camp Stephen. This was normally commanded by the company commander (Englefield), but since he was on the ground at this time, the commander then would have been the second-in-command and A Company Operations Officer, Captain John Ainley.¹⁴⁷ Ainley said that he had no recollection of D005 and D006, or of them being placed under his command.¹⁴⁸

- 2.121** The issue of who was guarding D005 and D006 is of some importance because D005 alleged that he was mistreated at Camp Stephen. D005 alleged that he was made to roll his trousers up and kneel on sharp pebbles. In that position he was made to hold

¹⁴¹ MOD016572

¹⁴² D003 BMI02379-80, paragraphs 40-41

¹⁴³ MOD016792. There is a very similar message recorded in the BG Net Radio Operator’s log at 13.51hrs: MOD016024

¹⁴⁴ MOD015905

¹⁴⁵ Grist BMI 37/144/11-153/18

¹⁴⁶ Crosbie BMI 19/194/18-197/24. Crosbie had said in his Inquiry witness statement that it was the Hollender Multiple, G30A, which guarded D005 and D006 at Camp Stephen: Crosbie BMI03966, paragraph 25. However, plainly, this part of his witness statement was overtaken by what he said in oral evidence.

¹⁴⁷ Crosbie BMI 19/197/7-198/7

¹⁴⁸ Ainley BMI 38/85/20-88/10

his arms out in a stress position and then had his arms loaded with water bottles.¹⁴⁹ In his Inquiry statement he had made other allegations of mistreatment at Camp Stephen, namely that he was made to jump up and down until he collapsed, and that he was repeatedly kicked and punched,¹⁵⁰ but he did not repeat these in his oral evidence at the Inquiry when he was asked what mistreatment he had suffered.¹⁵¹ He had not mentioned the kneeling on pebbles and holding water bottles in his original SIB statement dated 21 September 2003. He did say that he was made to take off his shoes and was made to jump up and down until he collapsed. He had also said that he was made to hold his arms out.¹⁵²

2.122 D005 also alleged that on the journey from Camp Stephen to BG Main two soldiers kicked him in the back a few times and mocked him by making him rub his stomach and pat his head.¹⁵³

2.123 Crosbie thought that he had transported D003, D005 and D006 to BG Main together, which cannot be correct in the light of the log entries quoted above. However, he denied that he had anything to do with guarding D003, D005 and D006 at Camp Stephen. He said that he was unaware of any ill-treatment of D005 at Camp Stephen.¹⁵⁴ The other members of the arresting party either denied taking part in or being aware of any ill-treatment or abuse of D005 at Camp Stephen, or said they had no memory of D005 and D006.¹⁵⁵ Soldiers from other A Company multiples who appear to have arrived back at Camp Stephen before the departure of D005 and D006 also said that they had no recollection of D005 and D006 being detained there.¹⁵⁶

2.124 Crosbie was asked why he went to Camp Stephen and not directly to BG Main. He said he had a problem with his radio and went to Camp Stephen in order to report to the chain of command.¹⁵⁷ At Camp Stephen he went into the operations room where he would have spoken to Ainley.¹⁵⁸ Ainley said he had no recollection of Crosbie entering the operations room in order to put the Detainees in his care.¹⁵⁹ He was asked about the entry in the company radio log at about that time which stated that the Detainees had been "... *invited here [Camp Stephen] to aid with the investigation...*".¹⁶⁰ He said that this meant that they were being brought to Camp

¹⁴⁹ D005 BMI 17/10/1-14/12

¹⁵⁰ D005 BMI02315-6, paragraphs 40-44. In his original SIB statement he had described being made to jump up and down and having a fist pushed into the back of his neck, but not otherwise being punched and kicked (D005 MOD000017).

¹⁵¹ D005 BMI 17/14/12

¹⁵² D005 MOD000017

¹⁵³ D005 BMI 17/14/22-16/2

¹⁵⁴ Crosbie BMI 19/191/13-198/24

¹⁵⁵ Armstrong BMI00629-30, paragraphs 41-48; Brzezinski BMI 37/103/24-104/3; Grist BMI 37/149/22-151/15; Lawrence BMI 37/75/20-76/18; Shakeshaft BMI05381, paragraph 27; Walker BMI02653, paragraphs 157-158

¹⁵⁶ Stacey, part of the Hollender Multiple, who appears to have arrived back at Camp Stephen at 13:11hrs (see MOD016791), told the Inquiry that he had no recollection of D005 and D006 being detained at Camp Stephen (Stacey BMI 21/186/1-3). Similarly, Fearon, who was sent back to Camp Stephen following the theft, said he did not remember Detainees connected to the escaped suspect being brought to the camp (Fearon BMI 14/34/12-17).

¹⁵⁷ Crosbie BMI 19/186/24-187/20; Crosbie BMI 19/192/15-193/10

¹⁵⁸ Crosbie BMI 19/197/20-198/7

¹⁵⁹ Ainley BMI 38/87/25-88/4

¹⁶⁰ MOD016790a

Stephen to help the investigation, but it did not mean to be questioned at Camp Stephen itself.¹⁶¹

- 2.125** It is tempting to think that Crosbie's diversion to Camp Stephen with D003, D005 and D006 was to bring the two recently arrested Detainees for questioning at Camp Stephen. This would fit with the message recorded on the radio log. However, no questioning did take place. I am inclined to think that the abuse of D005 was committed by soliders into whose temporary charge he had been put, possibly with a view to him being questioned later. I do not believe there is any significance in the discrepancy between Crosbie's evidence of his visit to the operations room and Ainley's failure to recollect seeing Crosbie that day. This is the sort of mis-match of recollection that is understandable. It has been suggested on this issue that both Crosbie and Ainley have not told the truth and that the A Company logs have been drafted in a "*deliberately tactical*" manner in order to conceal the treatment of D005 and D006.¹⁶² I reject this submission, which in my judgment is not supported sufficiently by the evidence and relies more on speculation than fact.
- 2.126** As with the other Detainees, I believe that D005 and D006 were doing their best to give truthful and accurate evidence to the Inquiry, albeit from time to time in my view they were prone to exaggeration. There is no supporting evidence for D005's allegations of his ill-treatment at Camp Stephen and there are inconsistencies between his evidence and his earlier witness statements. However, I accept that he was at least made to remain with his arms out in a stress position for a lengthy period of time. I have some reservations about his allegation that he was kneeling on sharp pebbles and made to hold water bottles. If true, it is surprising that this allegation was not made in his first witness statement to the SIB which was made by him much closer in time to these events. For this reason I make no finding in respect of that allegation. Similarly, in view of the fact that he did not mention being kicked and beaten in his oral evidence to the Inquiry, I make no finding on that allegation.
- 2.127** I accept that on the way to BG Main from Camp Stephen, D005 was, as he said, kicked and taunted by soldiers. This allegation was made by him in his first SIB statement and is consistent with subsequent statements and his oral evidence to the Inquiry.

Who was Responsible for this Abuse?

- 2.128** I make no criticism of the conduct of the soldiers at D006's house. It may well have been unnecessarily heavy-handed but the fact that Crosbie's men were searching for a man who had escaped from premises in which a cache of dangerous weapons had been found is some justification for the hard knock. It also appears that both D005 and D006 were quite roughly manhandled although neither suffered any injuries.
- 2.129** The real issue, in respect of their arrest, is who was responsible for the treatment of D005 at Camp Stephen. All of the soldiers who took part in his arrest deny any knowledge of ill-treatment. Crosbie said he was in the operations room at Camp Stephen for the whole of the time that the two Detainees were there. Not surprisingly, neither D005 nor D006 was able to identify those responsible for the treatment of D005.

¹⁶¹ Ainley BMI 38/82/9-84/12

¹⁶² SUB002215-6, paragraph 111

- 2.130** Crosbie was a nervous witness and I have already commented that he was somewhat naive. I have also found, contrary to his denial, that he did threaten D003 either on the way to or at D006's house. One might expect him to have known who was responsible for the ill-treatment of D005, but on balance I accept that at the time he was in the operations room and unaware of what was happening.
- 2.131** As to the other members of the arresting party, again, one might expect them to have been the ones who guarded D005 and D006 at Camp Stephen, or at the very least to know who did. However, each denies being present and there is no evidence identifying any of them as taking part in this incident.
- 2.132** The multiple with the call-sign G20B transferred D005 and D006 from Camp Stephen to BG Main. Members of that multiple may also have been involved in guarding D005 at Camp Stephen, and it is almost certain that some members of that multiple were responsible for kicking and taunting D005 en route to BG Main. However, I have not heard any evidence which would enable me to discover whether in fact members of G20B guarded D005 at Camp Stephen, or to determine which individual or individuals within the multiple were responsible for abusing D005 en route to BG Main.
- 2.133** No one has come forward to inform the Inquiry who did carry out this mistreatment of D005. In the circumstances I am unable to make any finding as to who was responsible and any theory as to who was involved must be speculation. This is one area where the wall of silence remains in place.

Chapter 4: The Arrest of Maitham

- 2.134** In this Chapter I describe the circumstances in which the tenth Detainee, Maitham, was arrested and brought to BG Main. These events occurred during Sunday evening, and in dealing with them now, before addressing the treatment of the Detainees during the daytime on Sunday, I am taking them out of chronological order. I do so because it is convenient to deal with all of the Detainees' arrests before turning to their treatment at BG Main.
- 2.135** Shortly after 21.00hrs on the evening of 14 September, Sergeant Stephen Wilding's Multiple (part of B Company), when on patrol in Basra, spotted a white pick-up vehicle with a red stripe.¹⁶³ The Multiple was informed that a vehicle matching that description had been stolen.¹⁶⁴ The driver was Maitham. Maitham told Wilding, and said in evidence at the Inquiry, that the vehicle, which he said was a car, had been hijacked with him in it by some men whom he did not know. The car was then involved in an accident about ten to fifteen minutes before the soldiers arrived.¹⁶⁵
- 2.136** There was no dispute that the soldiers found in the vehicle three AK 47 rifles, a quantity of ammunition, balaclavas and some paperwork. Maitham's explanation for these items was that after the accident the hijackers fled, leaving these items behind in the vehicle. He said the hijackers made their escape in a getaway vehicle and left the scene. Maitham said that he had been injured by a blow to the right ear by one of the men who had hijacked his vehicle. He also provided an explanation for being entitled to drive the vehicle.¹⁶⁶
- 2.137** Wilding said that the vehicle showed no signs of having been involved in an accident and there was no obvious sign of any injury to Maitham. After reporting the incident to the Company operations room he was told to take Maitham to a police station. On arrival at the police station he received a further message to the effect that he should take Maitham to BG Main. Maitham was not hooded and travelled in the back of a Saxon, both to the police station and from the police station to BG Main. Wilding said he travelled in an open-topped Land Rover in front of the Saxon.¹⁶⁷
- 2.138** Maitham said in evidence that he was treated reasonably on the way to the police station. He said he was transported in the back of a Land Rover, rather than a Saxon. But at the police station, and subsequently during the journey from the police station to BG Main, the attitude of the soldiers changed and their treatment of him became rough. He said he was dragged by his shirt collar at the police station and then kicked by the soldiers when in transit to BG Main. The kicks were soft and did not hurt him.¹⁶⁸ This allegation differed from the one first made by him in his SIB statement in which he said he was kicked on the way to the police station and not during the journey to BG Main.¹⁶⁹

¹⁶³ An entry in the B Company Watchkeeper's log for 21.35hrs records the stopping of the vehicle and the discovery of weapons (MOD048557).

¹⁶⁴ Wilding BMI 20/21/22-22/19

¹⁶⁵ Maitham BMI 13/3/18-13/4

¹⁶⁶ Ibid.

¹⁶⁷ Wilding BMI 20/22/20-30/3

¹⁶⁸ Maitham BMI 13/13/6-15/18

¹⁶⁹ Maitham MOD000045-6

- 2.139** When the apparent inconsistency between his evidence to the Inquiry and his first SIB statement was put to him, Maitham said the first statement was incorrect.¹⁷⁰
- 2.140** It would appear that Maitham arrived at the temporary detention facility (TDF) at BG Main not long after 22.00hrs.¹⁷¹ He was put in the left hand room and he said that about half an hour later he was hooded, first by one hood and subsequently by two more. I will deal with the evidence of the alleged ill-treatment of him in Chapter 6.
- 2.141** Both Wilding and Lance Corporal Jonathan Gregory, the second in command of the Wilding Multiple, denied that Maitham was assaulted or ill-treated at any stage during the time he was in the custody of the multiple. Wilding said he always travelled in the Land Rover and Gregory in the Saxon. Both he and Gregory said Maitham was in the Saxon for each stage of the journey from the point of arrest to BG Main.¹⁷² There were no witness statements or evidence from other members of the Multiple.
- 2.142** Wilding, of course, was speaking only from his knowledge and experience of members of his Multiple. He was not in the same vehicle as Maitham. I found him to be a sensible and honest witness. He gave the impression that he was an authoritative and competent Non-Commissioned Officer (NCO). In my view, his knowledge of his Multiple was something on which I could rely. Gregory also, although not as impressive as Wilding, was a reasonable witness. I accept that Gregory was in the Saxon at all times when Maitham was being transported to the police station and then to BG Main. In my view Maitham was confused when he said he travelled in the Land Rover. In my opinion it is far more likely, and I find, that at all times he was transported in the Saxon. Further I accept Gregory's evidence when he asserted that Maitham was not kicked on the journey to BG main.
- 2.143** As to Maitham's evidence I found his description of how he came to have the weapons in the vehicle he was driving more than a little implausible. It is hard to believe that if hijackers had in their possession the weapons found in the vehicle they would not have removed them when they fled from the scene. I accept Wilding's evidence that he saw no damage to the vehicle nor was there any sign of injury to Maitham. In any event, where Maitham's evidence conflicts with that of Wilding and Gregory, I prefer the evidence of the latter two witnesses. Accordingly, I reject the allegation that Maitham makes of mistreatment in relation to his arrest and transfer to BG Main.
- 2.144** I should add that in expressing doubts about Maitham's explanation for the weapons and paraphernalia being in the vehicle I am not to be taken as finding that he was connected with insurgents.

¹⁷⁰ Maitham BMI 13/15/19-16/5

¹⁷¹ A log entry records the Wilding Multiple as having returned to camp at 22.05hrs (MOD048558).

¹⁷² Gregory BMI 37/39/2-41/20; Wilding BMI 20/28/11-29/24

Chapter 5: Arrival at the TDF

- 2.145** Six of the Detainees from the Hotel, D001, D002, D004, Kifah Matairi, Ahmad Matairi and Baha Mousa were transported by truck to BG Main, arriving at about 10.40hrs on 14 September 2003.¹⁷³ The BG Main Watchkeeper's log shows that a request for a tactical questioner had been made from the Hotel at 07.33hrs, and that this request had been passed to Brigade.¹⁷⁴ Although Ahmad Matairi said that he was hooded for the journey, the balance of the evidence indicates that none of the Detainees were hooded until after they arrived, but that instead they were all plasticcuffed.¹⁷⁵ They were accompanied by some of Hollender's Multiple, namely MacMillan, Broadbent, Pte Hill, Stacey, Crowcroft, Fallon and Pte Lee and some of the soldiers from Rodgers' Multiple, namely Bentham, Kenny, Allibone and MacKenzie.¹⁷⁶ On their arrival the Detainees were received by Cpl Donald Payne, a member of the Regimental Provost Staff, and were taken into a building known as the TDF.¹⁷⁷
- 2.146** The TDF was a rectangular one-storey building situated close to the disused swimming pool and the accommodation block (see figure 4 below). It had two doorways, one at each end of the building leading to rooms described in the Inquiry as the left-hand room and the right-hand room. The doorways did not have doors. (The photographs at figure 5 below were taken some time after the material events, by which time doors had evidently been attached). In the centre was a small room in which was situated a disused floor-level toilet. There was an internal interconnecting corridor running between the left- and right-hand rooms which passed through the centre room. The windows were blackened. Outside between the two doorways were situated portaloos (as in figure 5 below).

¹⁷³ The BG Main Watchkeeper's log records that at 9.50hrs their departure from the Hotel was imminent (MOD016524). The A Company Watchkeeper's log shows that, by 10.42hrs, they had arrived at BG Main (MOD016790).

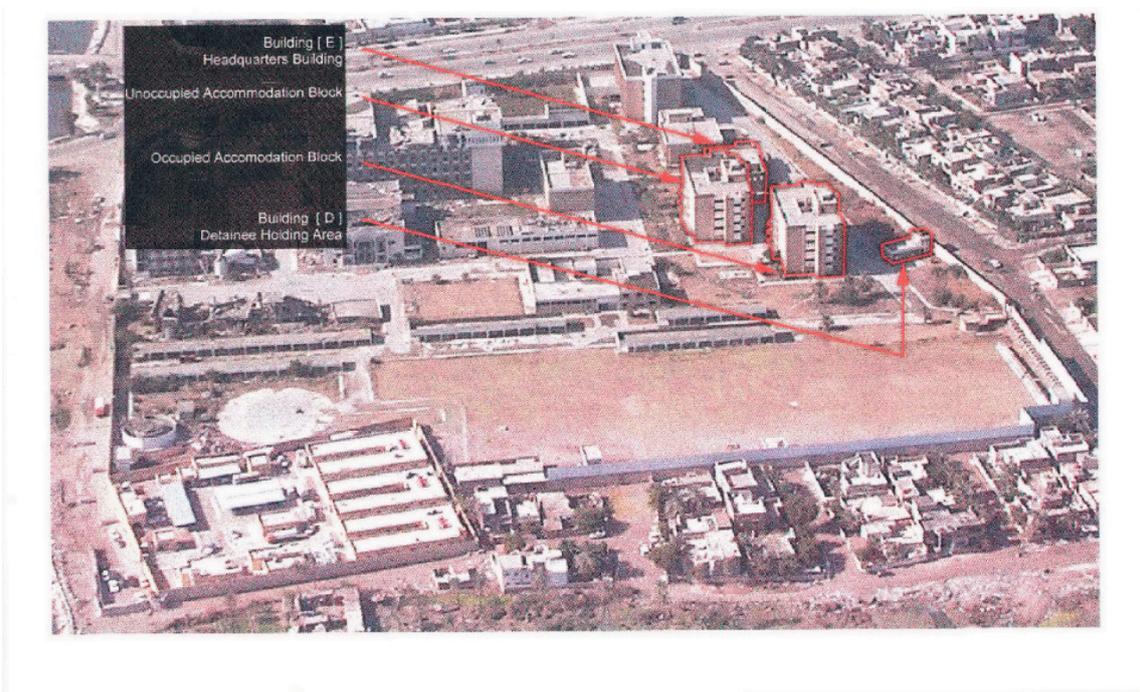
¹⁷⁴ MOD016520

¹⁷⁵ Ahmad Matairi BMI 12/62/9-63/20. Cf the evidence of most of the other Detainees; and the video footage provided by Associated Press, which shows some of the Detainees being led, unhooded, from the Hotel into a truck: NCP001258

¹⁷⁶ Crowcroft BMI 22/15/20-17/1; Pte Gareth Hill 16/138/21-139/19; Pte Johnathan Lee BMI 18/81/4-13; Stacey BMI 21/149/15-20; Broadbent MOD005057; Fallon MOD016333; Mackenzie MOD000111; MacMillan MOD001380

¹⁷⁷ Payne BMI 32/53/9-20

Figure 4: the layout of BG Main



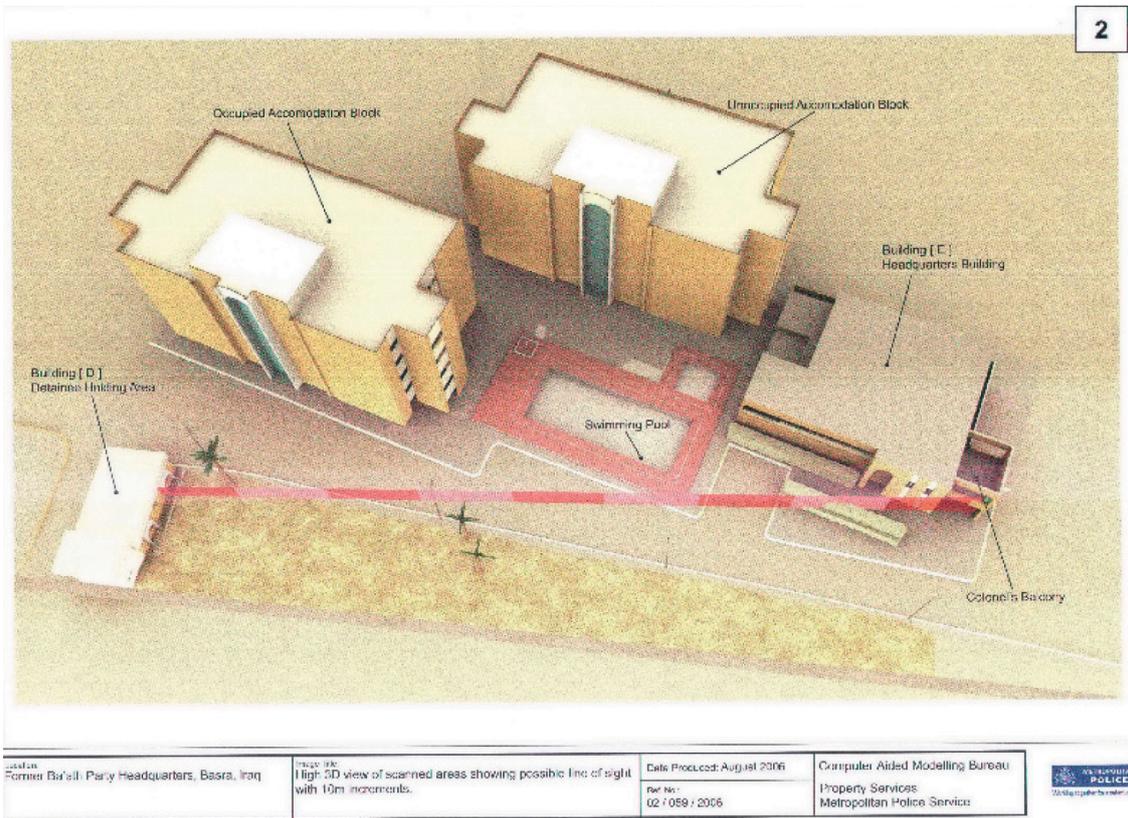
Location: Former Ba'ath Party Headquarters, Basra, Iraq

Image title: Aerial photograph with scanned/ modelled buildings highlighted

Date Produced: August 2006
 Not No:

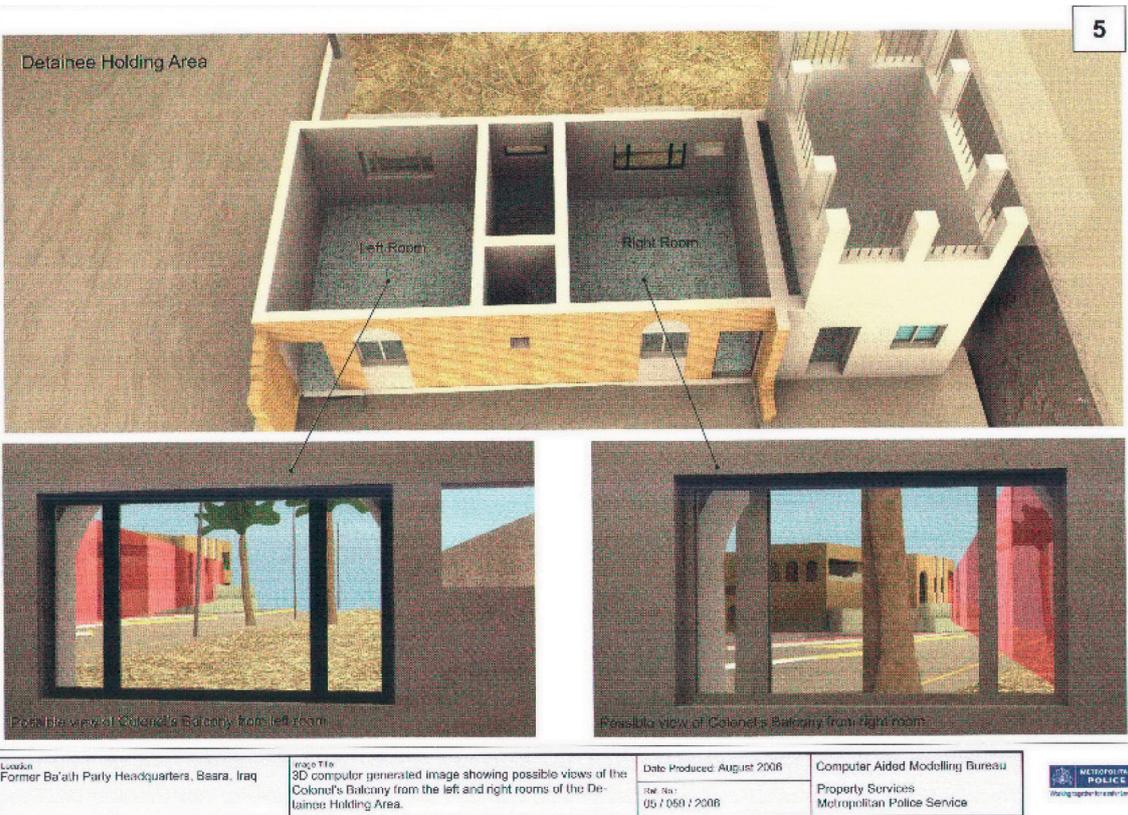
Computer Aided Modelling Bureau
 Property Services



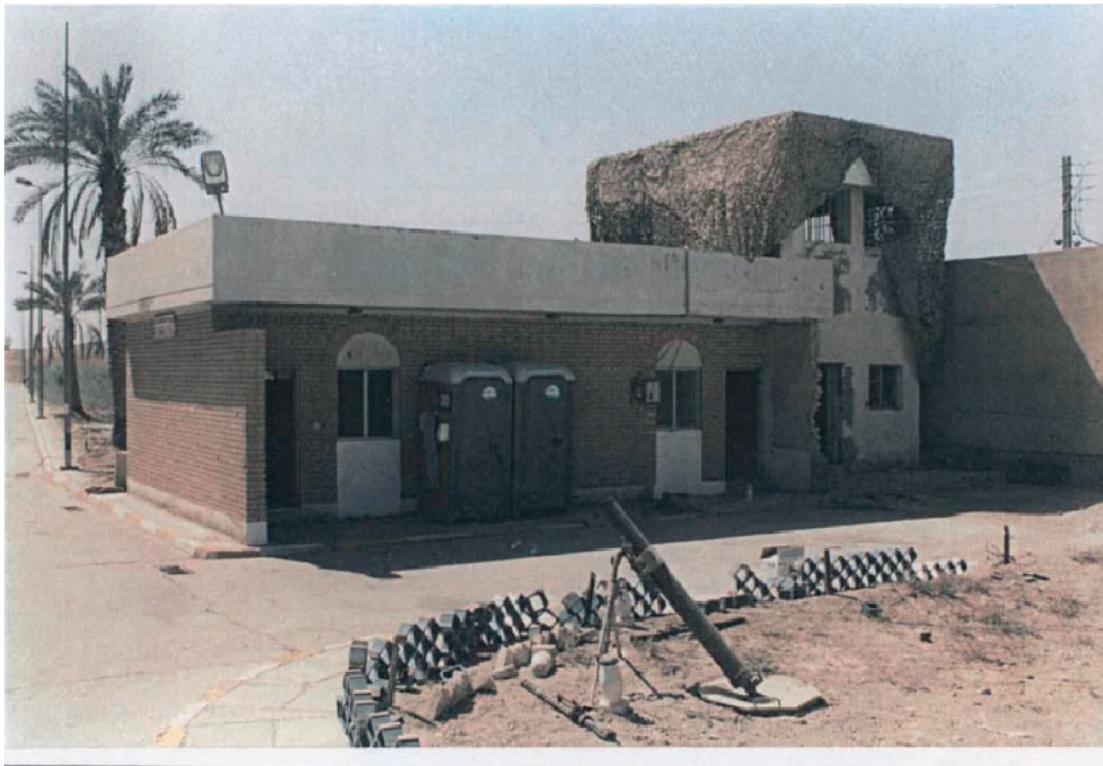


Location Former Ba'ath Party Headquarters, Basra, Iraq	Image Title High 3D view of scanned areas showing possible line of sight with 10m increments.	Date Produced: August 2006 Ref No: 02 / 059 / 2006	Computer Aided Modelling Bureau Property Services Metropolitan Police Service	
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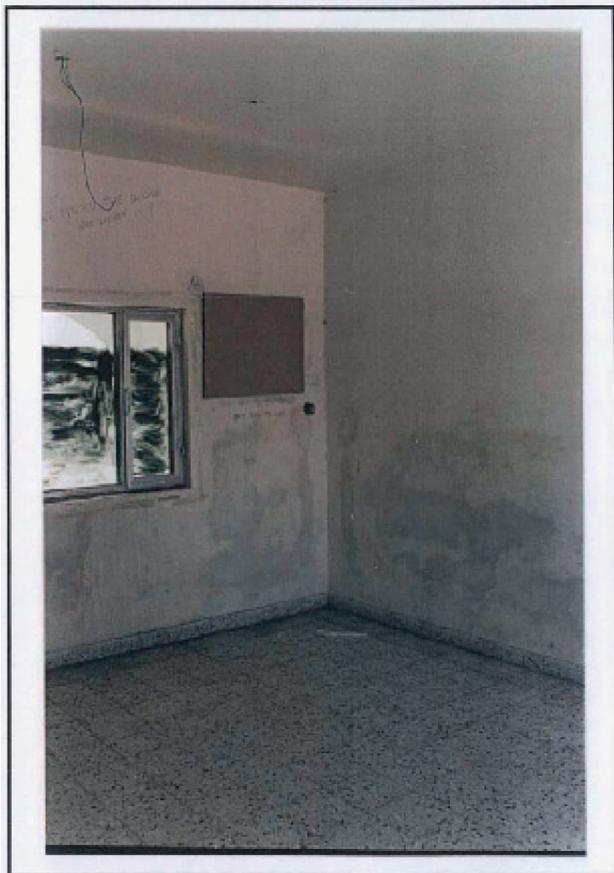
Figure 5: the TDF – photographs and plans



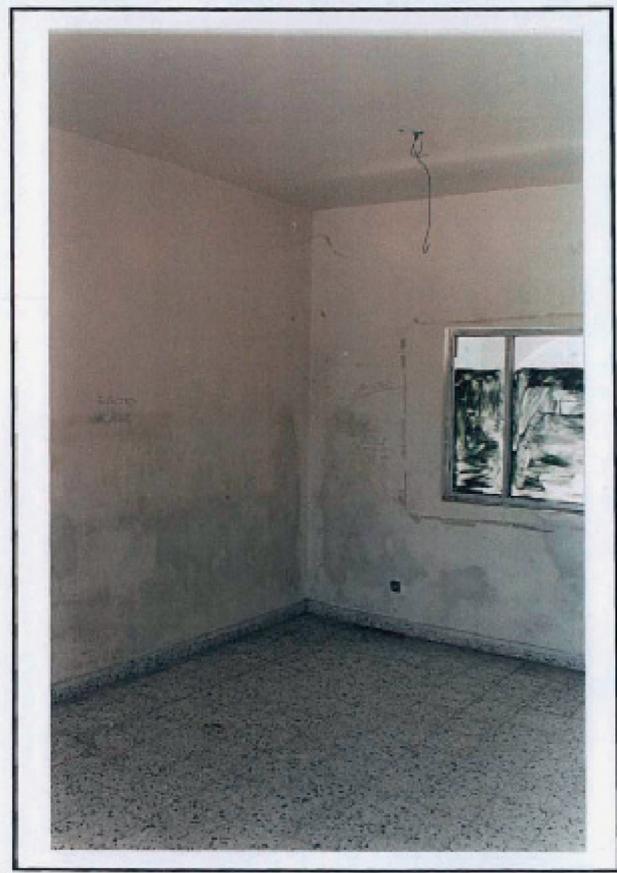
Location Former Ba'ath Party Headquarters, Basra, Iraq	Image Title 3D computer generated image showing possible views of the Colonel's Bakery from the left and right rooms of the Detainee Holding Area.	Date Produced: August 2006 Ref No: 05 / 059 / 2006	Computer Aided Modelling Bureau Property Services Metropolitan Police Service	
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1. ¼ View depicting exterior of detention facility.



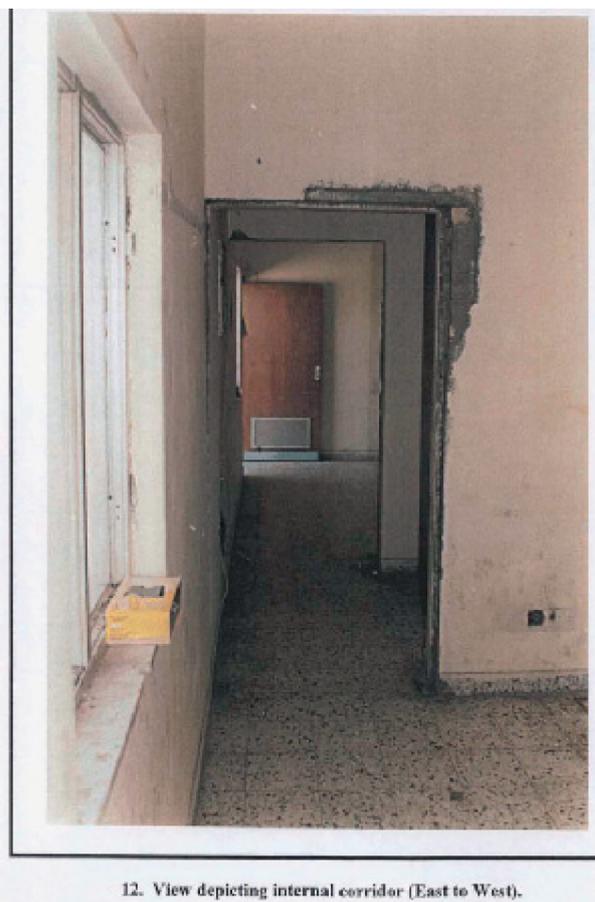
11. View depicting interior of right hand room.



10. View depicting interior of right hand room.



6. View depicting interior of centre room.



12. View depicting internal corridor (East to West).

2.147 The TDF was not properly equipped for holding prisoners for substantial periods of time. As with many of the buildings used by 1 QLR, there was no air conditioning, despite the intense heat. It contained no furniture and no beds.¹⁷⁸ It was undoubtedly uncomfortable and not conducive to rest or sleep. The absence of any doors meant that it was insecure.¹⁷⁹ This was problematic both because it was inapt for holding prisoners, and because passers-by had access to the prisoners.

2.148 I return to the issue of the TDF's inadequate facilities in Chapters 20 and 21 below.

¹⁷⁸ There was evidence from Payne that at some point during 1 QLR's tour Mendonça ordered the removal of beds from the TDF (Payne BMI01729, paragraph 48). There was also evidence that 1 QLR's Provost Sergeant, Sgt Paul Smith, objected to the removal of the beds (Maycock BMI 51/116/2-10; Maycock BMI06294-5, paragraph 39), although Smith did not mention this in his own evidence. However, Mendonça said that he did not recall being involved in any conversation about removing beds from the TDF and that he thought it unlikely that he was involved in this level of detail over detention procedures (Mendonça BMI 59/140/3-25).

¹⁷⁹ The Company Quartermaster Sergeant at BG Main, Colour Sergeant Joel Huxley, accepted that he should have been responsible for ensuring that the TDF was secure and that doors were attached to the doorways only after the death of Baha Mousa: Huxley BMI 23/9/13-16; Huxley BMI 23/14/3-8

Chapter 6: The Detainees' accounts of their treatment at BG Main

2.149 What follows is a summary of the Detainees' accounts of events at BG Main between 14 and 16 September 2003. Over the last seven years, the Detainees have each now given a number of accounts of what happened to them. There are some inconsistencies between their different accounts, both as between accounts from different Detainees and different accounts from the same Detainee. As I state below, when assessing their credibility, some level of inconsistency is only to be expected, due to the passage of time and the Detainees' disorientated state during their detention. In the section below, I focus only upon what seem to me the most important aspects of their evidence, and any especially important inconsistencies.

D001

2.150 D001's evidence of his treatment in the TDF is largely consistent throughout his witness statements made to the SIB shortly after the event, statements taken for civil proceedings, his Inquiry statement and his oral evidence to the Inquiry.

2.151 In essence, D001 said that he was hooded on arrival at the TDF and, starting almost immediately thereafter, he was subjected to physical abuse and mistreatment.¹⁸⁰ He found the experience of being hooded terrifying. He was afraid he might be beaten at any minute.¹⁸¹ He was forced to adopt a stress position by having his legs kicked apart.¹⁸² Beatings were administered regularly. He was kicked and his hood was rubbed in his face.¹⁸³ He said this conduct was continuous until the next day.¹⁸⁴

2.152 In his Inquiry witness statement, D001 said that he was not fed on the first day of his detention.¹⁸⁵ He remembered being kicked all over his body, particularly in his abdomen, and being punched in the face.¹⁸⁶ On the evening of the first day he was kicked or punched very hard,¹⁸⁷ and on the first night hit on the back of his neck.¹⁸⁸ On the second day he was kicked violently on the right side of the abdomen, causing him to fall.¹⁸⁹ That evening the beatings were more violent.¹⁹⁰ Save for one occasion when he was seen by a medic,¹⁹¹ and another when he was given breakfast on Monday morning,¹⁹² his hood, or hoods, were not removed until Tuesday morning, the day when the Detainees were transferred away from BG Main to a different detention facility.¹⁹³

¹⁸⁰ D001 BMI 12/13/25-16/19

¹⁸¹ D001 BMI 12/18/10-17

¹⁸² D001 BMI01993, paragraph 26

¹⁸³ D001 BMI 12/15/23-16/7

¹⁸⁴ D001 BMI 12/15/8-11

¹⁸⁵ D001 BMI01996, paragraph 38

¹⁸⁶ D001 BMI01993, paragraph 28

¹⁸⁷ D001 BMI01994-5, paragraph 33

¹⁸⁸ D001 BMI01996, paragraph 39

¹⁸⁹ D001 BMI01998, paragraph 47

¹⁹⁰ D001 BMI01999, paragraph 51

¹⁹¹ D001 BMI01994, paragraphs 30 and 31

¹⁹² D001 BMI01997, paragraph 41

¹⁹³ D001 BMI02000, paragraph 54

- 2.153** He described other incidents. In his Inquiry witness statement he referred to instances when the soldiers arranged the Detainees in a circle, kneeling and facing inwards. The soldiers would then go round the circle "... *hitting and kicking us in turn*". He said the soldiers appeared to be "... *playing us like musical instruments*".¹⁹⁴ In my view this was a clear reference to a procedure known as "*the choir*": an activity which involved each of the Detainees being assaulted in turn, so as to make each produce a noise. D001 said that he thought this also happened on the second day.¹⁹⁵
- 2.154** D001 also described an occasion when he was medically examined because his legs were shaking continuously, his heart pumping and his breathing hard.¹⁹⁶ In his Inquiry witness statement he said that a medic was called because he collapsed, but in oral evidence he said that he did not fall to the ground.¹⁹⁷ He described a man using a stethoscope to examine his chest. Once the examination was completed, the hood, which had been removed for the purpose of the examination, was replaced.¹⁹⁸ He said at that stage he was able to see, implying that previously he had been double hooded.¹⁹⁹ D001 said this incident occurred on the first day. However, it is difficult to marry up this evidence with the evidence of the medics. I accept D001's evidence that he was examined by a medic but the evidence is not sufficiently clear for me to determine precisely when on Sunday 14 September it occurred.
- 2.155** As to food and water, D001 stated that water was brought when the Detainees asked for it. However, the water was warm. Cold water was poured down their backs.²⁰⁰ Breakfast was brought to him, he thought, on the morning of the second day.²⁰¹
- 2.156** In his Inquiry witness statement, D001 said that an iron bar was used to strike the floor in order to prevent the Detainees from sleeping.²⁰² He also mentioned that on one of the days during the daytime he was questioned by a soldier. This must have been a reference to a tactical questioner. He made no allegations of ill-treatment by the tactical questioner. Whilst initially he said that he complained to the tactical questioner about mistreatment by the other soldiers,²⁰³ he retracted this later in his evidence.²⁰⁴ He said he was with the tactical questioner for only approximately ten minutes.²⁰⁵
- 2.157** On the morning of Tuesday, 16 September, in circumstances which I shall relate later in this Report, D001 and the other Detainees were transferred to the TIF, a facility for longer-term incarceration of internees at Um Qasr.

D002

- 2.158** D002 has suffered severe PTSD as a result of his arrest and detention at the TDF. It was always anticipated by his solicitors that giving evidence would, for him, be a

¹⁹⁴ D001 BMI01995, paragraph 34

¹⁹⁵ D001 BMI01995, paragraph 35

¹⁹⁶ D001 BMI 12/29/21-31/2

¹⁹⁷ D001 BMI 12/31/3-4; D001 BMI01994, paragraph 30

¹⁹⁸ D001 BMI 12/31/9-18

¹⁹⁹ D001 BMI 12/18/4-9

²⁰⁰ D001 BMI 12/23/25-24/2

²⁰¹ D001 BMI 12/23/9-18

²⁰² D001 BMI01996, paragraph 40

²⁰³ D001 BMI 12/29/1-9; D001 BMI01997, paragraph 45

²⁰⁴ D001 BMI 12/38/1-18; D001 BMI 12/45/2-16

²⁰⁵ D001 BMI 12/29/10-11

traumatic and difficult experience. The Inquiry made strenuous efforts to ensure that his anxieties, so far as possible, were alleviated. On 30 September 2009 he came to the Inquiry and was sworn. A psychiatrist was present and an interpreter sat with him. However, the experience proved too difficult for him. After answering a few questions, in the answer to one of which he confirmed the truth of his Inquiry witness statement, he broke down.²⁰⁶

2.159 A further effort was made to obtain oral evidence from D002. At all times, through his solicitor, he made it clear that he was anxious to co-operate with the Inquiry and to give evidence. On 12 October 2009 arrangements were made for him to give evidence from a neutral base in London via a video link. Unfortunately this also proved too much for him. He answered a few short questions and again broke down. No questions were asked of him by legal representatives for Core Participants.²⁰⁷ I have no doubt that his difficulty over giving evidence was entirely genuine and not feigned. No one sought to suggest otherwise. What follows is a summary of his various witness statements.

2.160 D002 described having three sacks placed over his head and his hands being untied at the back and re-tied at the front. He felt disorientated and was forced to stand with others in a circle. He was then required to bend his knees and stretch out his arms in front of him with his back against the wall. The soldiers physically forced him into this position. He can be seen in this position in the video to which I refer below. If he dropped his arms soldiers would administer blows to his upper body and kick him. After a time he would begin to collapse and a soldier would tighten the sandbag ties round his neck and pull him by these ties to his feet. He felt he was being strangled.²⁰⁸

2.161 D002 said that soldiers constantly shouted and he could hear groans of other Detainees who were being subjected to the same treatment. This went on for approximately two to three hours.²⁰⁹ Later he was forced to adopt a different stress position, sitting with his back to the wall and his arms stretched out in front of him, before being put back in the original stress position. If he dropped his arms he was kicked in the kidney region and on his body. He said that if he asked for water he was sometimes ignored. When water was given, his hoods were removed and hot water poured into his mouth and cold water poured over his head. He was never given enough to drink. At some point (he was not sure whether it was on the first day) he said he was brought food to eat but he could do no more than taste the food because he was in too much pain and fear. Further, he did not know whether the food was Halal.²¹⁰

2.162 He said he was only once permitted to use the toilet. It was a portaloo next to where he was being kept.²¹¹

2.163 He remembered the soldiers shouting at him.²¹² He found it difficult to breathe with hoods on²¹³ and he prayed in order to prepare himself for death, which he believed

²⁰⁶ D002 BMI 14/2/10-9/3

²⁰⁷ D002 BMI 20/1/5-12/17

²⁰⁸ D002 BMI01955, paragraphs 27-28

²⁰⁹ D002 BMI01955-6, paragraph 29

²¹⁰ D002 BMI 20/5/7-14; D002 BMI01956-7, paragraphs 32-34

²¹¹ D002 BMI01958, paragraph 38

²¹² D002 BMI 20/8/3-5

²¹³ D002 BMI 20/7/6-11; D002 BMI01957, paragraph 37

to be imminent.²¹⁴ He was unable to sleep during the evening because throughout he was told to maintain a stress position.²¹⁵

- 2.164** D002 said that at one stage he was taken into another room and questioned by an officer. No doubt this was a reference to a tactical questioner. In the same room there was in addition an interpreter and two soldiers. His hood was taken off and the questions lasted about ten to fifteen minutes. They mainly concerned his knowledge of C001. When the questioning ended he was re-hooded and dragged back to the room in which he had been before. On the way he was repeatedly hit on the head by the accompanying soldier and en route his trousers fell down.²¹⁶ CSgt Robert Livesey admitted punching D002 twice in the head when returning him to the TDF after he had been questioned but Livesey did not mention D002's trousers falling down.²¹⁷
- 2.165** On his return he was ordered to assume the sitting down stress position. One of the soldiers began hitting the floor with a metal pole shouting, "...no sleep, no sleep...". The same soldier hit him twice on the back while he was in the sitting stress position.²¹⁸
- 2.166** D002 said that on the second day he was subjected to the same treatment as before. Once he collapsed and soldiers took off one of his hoods. He was served food, he believed during the early afternoon, but again did not eat what was given to him.²¹⁹
- 2.167** That evening he collapsed and was punched in the mouth. He said that three of his teeth were broken.²²⁰ He made no mention of this incident in previous witness statements, nor in his evidence at the Court Martial. He had previously told an agent for his solicitors that his teeth had in fact been broken the previous night, when he was punched on his way back from tactical questioning.²²¹ When asked about this in his evidence to the Inquiry he said he had been too scared to mention this incident before.²²² No broken teeth were found when D002 subsequently underwent a medical examination. He also said he had suffered a "*split anus*",²²³ but there is no medical evidence to support this claim (see Chapter 7 below).
- 2.168** D002 identified Payne in a video identification parade.²²⁴ He said that Payne hit him twice with a metal bar.²²⁵
- 2.169** D002 remembered Baha Mousa being taken to another room on the second day. He could hear him screaming until there came a time when the screaming ceased. That night a soldier removed his hood and untied his hands. He said he saw D004

²¹⁴ D002 BMI01957, paragraph 36

²¹⁵ D002 BMI01958, paragraph 40

²¹⁶ D002 BMI01958-9, paragraphs 41-44

²¹⁷ Livesey BMI 39/73/9-16; Livesey BMI 39/80/23-81/4

²¹⁸ D002 BMI01959-60, paragraphs 45-46

²¹⁹ D002 BMI01961-2, paragraphs 48-50

²²⁰ D002 BMI01962-3, paragraph 53

²²¹ D002 PIL000649

²²² D002 BMI 20/9/6-10/10

²²³ D002 BMI01958, paragraph 39

²²⁴ D002 MOD000030

²²⁵ D002 BMI01960, paragraph 46; D002 BMI01962, paragraph 52

lying on the floor and being carried out on a stretcher. That evening he was allowed to sleep.²²⁶

2.170 On the morning of the third day he was given another meal which he did not eat. A young soldier taunted and insulted him. D002 said this lasted for about five minutes. On the same morning he was taken outside and made to run and "... *dance like Michael Jackson*" before being transferred to the TIF.²²⁷

2.171 He said that on three or four occasions during his detention the soldiers climbed on top of him and "*passed wind*" on him. On one occasion when he fell to the ground a number of soldiers sat on him all at the same time.²²⁸

D003

2.172 D003 was brought from Camp Stephen to the TDF after having directed Crosbie to C001's house. It is probable that he arrived at the TDF at about 12.00hrs: the 1 QLR BG Net Radio Operator's log records a message at 11.51hrs from the A Company operations room to BG Main which states:

*"Ref msg, white T-shirt and blue jeans escaped, hard knock discovered father and brother, brought to loc to loc son and 7th pax on route to your loc."*²²⁹

2.173 In evidence he said that he was taken into the right-hand room of the TDF and was able to see other Detainees in the room already handcuffed and hooded.²³⁰ He said he saw soldiers assaulting his colleagues on his arrival at the TDF.²³¹

2.174 He described being hooded at first with two sacks and later with three.²³² He said that the beating and ill-treatment started straight away. It continued throughout the day and night.²³³

2.175 D003 said he was struck to his sides and abdomen but never on his legs and feet. When he fell to the floor he was kicked, mostly on the sides of his body, in the area of his kidneys. In addition, he was struck with an aluminium bar taken from a window. He believed this happened on the final night.²³⁴

2.176 He described being put in stress positions. For the first two days he was made to stand up, separated from the wall and stretching his arms out in front of him. His hands became swollen from the plasticuffs, but when he complained the plasticuffs were tightened. If he dropped his hands he would be hit.²³⁵ He was unable to sleep throughout his time in the TDF because of the beatings.²³⁶

²²⁶ D002 BMI01963-4, paragraphs 54-56

²²⁷ D002 BMI01964-5, paragraphs 57-60

²²⁸ D002 BMI01958, paragraph 39

²²⁹ MOD016572

²³⁰ D003 BMI 10/96/15-97/20; D003 BMI02381, paragraph 45

²³¹ D003 BMI02381-2, paragraphs 45-46. Whilst in his statement he appeared to say that Payne was involved in this, in his oral evidence he stated that he was not sure whether Payne was present on the first day: D003 BMI 11/25/9-23

²³² D003 BMI 10/86/19-87/7; D003 BMI 10/92/13-18; D003 BMI 10/96/6-14

²³³ D003 BMI 10/86/2-5; D003 BMI 10/100/10-102/9

²³⁴ D003 BMI 10/87/13-88/21

²³⁵ D003 BMI 10/88/22-89/24

²³⁶ D003 BMI 10/101/24-102/7

- 2.177** D003 said that apart from the occasions when he was given water and some food his hoods were never taken off. When he was given water the hoods would be lifted and hot water poured into his mouth. Cold water was poured over his head. He said that the soldiers drank cold water and kept repeating the words “*cold water*” in Arabic. He said the food Detainees were given was very hot and made him ill.²³⁷
- 2.178** He said that with three hoods on he was unable to see anything, but with two hoods on he had some vision through small holes in the fabric.²³⁸
- 2.179** He gave evidence of specific incidents which he remembered. He said that on his arrival at the TDF there were two soldiers present. He gave descriptions of them but was unable to identify them, nor was it possible to fit his descriptions to any particular soldier. Of these two soldiers he said when he arrived they stopped beating the other Detainees and after ten minutes started assaulting him.²³⁹ Subsequently he was able to identify Payne from the video clip, to which I will refer later. He said Payne was not in the TDF when he arrived but he was the soldier who beat all of them the hardest. He believed that he was the man who killed Baha Mousa.²⁴⁰ However, he had failed to identify Payne in a video identification parade.²⁴¹
- 2.180** He said that later on the first day the number of soldiers in the TDF increased. He could hear the voices of many men and he estimated the number rose to about fifteen.²⁴²
- 2.181** He described being taken to another room where he was questioned about C001 for no more than two to three minutes. It is clear this is a reference to questions asked by a tactical questioner. He was unable to say when this occurred but at the time he was in a very bad physical state. He was unable to stand properly and anyone who knew him would recognise that he was in a bad condition. He said he had obvious marks on his body and did not have a shirt on at the time.²⁴³ On the way to the room where he was questioned he went past the left-hand room of the TDF. In that room he recognised D005 and D006. He also saw a third man whom he did not know at the time but subsequently came to know as Maitham.²⁴⁴
- 2.182** At some stage he said the soldiers taunted and insulted him. This claim was made in his Inquiry witness statement but he resiled from it in his oral evidence, saying it had not happened.²⁴⁵
- 2.183** When he was seen by the SIB he made a video identification of Bentham, saying Bentham had kicked him in the back and stomach several times, on a single occasion on the second day. He said he had seen Bentham through a single hood.²⁴⁶ However, in his evidence given to the Inquiry he said that he was unable to remember this particular incident.²⁴⁷ Moreover, by the time that he provided an Inquiry witness

²³⁷ D003 BMI 10/90/18-92/18

²³⁸ D003 BMI 10/86/19-87/7

²³⁹ D003 BMI 10/98/10-99/25

²⁴⁰ D003 BMI 11/20/1-25

²⁴¹ D003 MOD000066; MOD015512-70

²⁴² D003 BMI 10/100/15-101/23

²⁴³ D003 BMI 10/102/15-107/6

²⁴⁴ D003 BMI 11/3/1-24

²⁴⁵ D003 BMI 11/13/5-16/24; D003 BMI02388-9, paragraph 71

²⁴⁶ D003 MOD000066; MOD015512-70

²⁴⁷ D003 BMI 11/9/4-10/2

statement, there was some confusion as to the occasions on which D003 had seen Bentham: he said that Bentham had transported him from D006's house to BG Main, which cannot be correct as Bentham was not one of those who attended D006's house; and there was some confusion in his accounts as to when he had seen Bentham in the TDF.²⁴⁸ However, there is other evidence which supports the allegation that Bentham was involved in using violence on the Detainees during the course of his stay on Monday afternoon. Although the circumstances in which D003 made the video identification may not have been ideal, and although his memory of Bentham has faded and become unclear over time, I find it probable that his original identification of Bentham was correct.

- 2.184** There came a time when D003 sensed that Baha Mousa had been moved because he could no longer hear him. D003 was unable to remember when this occurred. Later, however, he heard Baha Mousa shouting and screaming, saying "...I'll die", "my nose", "I'm bleeding"²⁴⁹.
- 2.185** On the last day before the Detainees were transferred to the TIF, D003 said he was offered a cigarette by a kind soldier. On the same day he was forced to dance, as the soldiers commanded, "*like Michael Jackson*".²⁵⁰
- 2.186** D003 also gave evidence of two particular incidents which he did not mention in his initial statements when it might be thought the events were most fresh in his mind. He alleged that he was hit with an iron or aluminium bar²⁵¹ and on another occasion a soldier spat in his face.²⁵² Neither allegation appears in his SIB statements.²⁵³

D004

- 2.187** D004 told the Inquiry in evidence that he and the other Detainees were hooded immediately on their arrival at the TDF.²⁵⁴ He said that it was Payne who hooded him.²⁵⁵ Initially he only had one hood on his head, but a second was added when the soldiers realised that he could see through his hood.²⁵⁶
- 2.188** D004 said he was beaten and kicked, and subjected to suffocating holds by a soldier putting his arm round his neck and picking him up.²⁵⁷ Later in his evidence he agreed that this hold was the one which Payne could be seen using on Detainees in the Payne video (see Chapter 9 below).²⁵⁸ He said that at one stage he was struck on the back of the neck by an aluminium bar which came from a window frame.²⁵⁹ In his Inquiry witness statement, he described an incident on the second night where many soldiers surrounded him and kicked him repeatedly with their boots all over his body for no apparent reason.²⁶⁰ He said that he suffered two broken ribs and swollen

²⁴⁸ D003 BMI02387-8, paragraph 66

²⁴⁹ D003 BMI 11/17/12-18/7

²⁵⁰ D003 BMI 11/18/8-19/25

²⁵¹ D003 BMI02389-90, paragraph 73

²⁵² D003 BMI02382, paragraph 48

²⁵³ D003 MOD000058-65; D003 MOD000732-34

²⁵⁴ D004 BMI 18/18/13-18

²⁵⁵ D004 BMI 18/27/20-28/17

²⁵⁶ D004 BMI 18/19/6-21/6

²⁵⁷ D004 BMI 18/23/5-22

²⁵⁸ D004 BMI 18/64/19-22

²⁵⁹ D004 BMI 18/40/7-17

²⁶⁰ D004 BMI02037-8, paragraph 56

kidneys.²⁶¹ However, upon examining him, Dr Ian Hill made no record of his ribs having been broken (see below), and the level of his injuries is difficult to reconcile with the level of beatings which he alleges.

- 2.189** D004 described the abusive treatment as having started very shortly after the Detainees had entered the TDF and continuing throughout the three days on which they were there.²⁶² They were prevented from sleeping by being shouted at.²⁶³ D004 said that on one occasion he was given a bottle in which to urinate. When he asked for a drink on the third day the contents of this bottle were poured into his mouth.²⁶⁴
- 2.190** One further aspect of D004's evidence was heard in private. This was a relatively narrow aspect of his evidence and does not change my overall conclusions.
- 2.191** At some stage, the time of which he did not know, D004 was taken to a room to be questioned. His hood was removed and the questioner shouted in his face. As a result he was too frightened to complain about being beaten.²⁶⁵ After the questioning he was taken back to the TDF and put in the left-hand room. In that room he saw D006, who was not hooded, and Maitham, who was hooded and was screaming in pain.²⁶⁶
- 2.192** D004 described the medical treatment which was administered to him after he had complained of pain in the lower back. He said he was taken by stretcher to the medical centre and seen by a doctor, who must have been the Regimental Medical Officer (RMO), Dr Derek Keilloh. He informed the doctor that he had been beaten and was examined by him. The doctor gave him an injection and on his return to the TDF he was given a cigarette and allowed to rest. However, later the beatings started again.²⁶⁷
- 2.193** On the final day before being transferred to the TIF he said he was made to dance "*like Michael Jackson*".²⁶⁸
- 2.194** He said a soldier with moles on his face beat him and was involved in photographing him whilst punching him.²⁶⁹ It has been submitted on behalf of the Detainees that this description fits Allibone. However, in my judgment, this evidence is not a sound basis for finding that Allibone assaulted D004 or was involved in taking "trophy" photographs.
- 2.195** After his transfer to the TIF a video identification parade was conducted by the SIB. D004 identified Payne as a man who beat him and the one who used the stranglehold on him.²⁷⁰ He also identified Bentham.²⁷¹ In an SIB statement, he said that Bentham was present from soon after he was placed in the TDF until sunset on Sunday, which cannot be correct as Bentham was not at the TDF on the Sunday afternoon. He

²⁶¹ D004 BMI02049, paragraph 93

²⁶² D004 BMI 18/38/21-39/7

²⁶³ D004 BMI 18/39/19-25

²⁶⁴ D004 BMI 18/41/7-12

²⁶⁵ D004 BMI 18/25/5-26/20

²⁶⁶ D004 BMI 18/36/16-38/9

²⁶⁷ D004 BMI 18/41/18-46/23

²⁶⁸ D004 BMI 18/47/21-48/9

²⁶⁹ D004 BMI 18/32/4-33/10

²⁷⁰ D004 MOD000008; MOD015547

²⁷¹ MOD015549

stated that Bentham punched and kicked him repeatedly.²⁷² However, in evidence to the Inquiry he said he was no longer able to remember the soldier whom he had identified as Bentham.²⁷³

2.196 The fact that D004 has now no recollection of the soldier who assaulted him is not surprising. But his assertion that the man he identified as Bentham was present between his arrival on Sunday and Sunday night throws doubt on the accuracy of the identification. Bentham was not present in the TDF on the Sunday afternoon and in the circumstances I reject the video identification as providing a sound basis for finding it was Bentham who beat him.

Ahmad Matairi

2.197 Ahmad Matairi is obviously an intelligent man with a forceful personality. He understood a little English, which led to him attempting to answer questions before they had been fully translated. The result was that at times his evidence was difficult to follow.

2.198 He said that on arrival at the TDF he and all the other Detainees were hooded and their hands handcuffed in front of their bodies. He thought there were about eight to ten soldiers in the room and they immediately subjected the Detainees to beatings and ill-treatment. After the soldiers realised that he could see through his hood a second one was put on his head.²⁷⁴ He said that the hoods remained on his head until the third morning and that he was unable to sleep at all throughout the three days.²⁷⁵ The soldiers would not allow talking between the Detainees and told them they were not permitted to sleep.²⁷⁶

2.199 Ahmad Matairi said the beatings, kicks and punches continued throughout the whole of the time he and the other Detainees were in the TDF. He was struck in the area of his kidneys and on one occasion the soldiers bet on whether they could knock him down.²⁷⁷ The betting allegation was not mentioned in his statements to the SIB.²⁷⁸ Prior to his arrest he was already suffering from a slight hernia but the blows to his abdomen caused the hernia to swell. He also said that his ribs were all broken by punches and kicks.²⁷⁹ In his case, there is no medical evidence to support this particular allegation (see Chapter 7 below). He said when the guards changed the new guards were fresh and always beat the Detainees more fiercely.²⁸⁰

2.200 So far as food and water are concerned, Ahmad Matairi said that when they asked for cold water to drink they were given hot water.²⁸¹ On the third morning their hoods were removed and they were given breakfast; he said this was the only food he was given at BG Main.²⁸²

²⁷² D003 MOD000008-10

²⁷³ D004 BMI 18/33/17-34/13

²⁷⁴ Ahmad Matairi BMI 12/64/6-66/24

²⁷⁵ Ahmad Matairi BMI 12/66/8-19; Ahmad Matairi BMI 12/95/8-15

²⁷⁶ Ahmad Matairi BMI 12/71/5-10

²⁷⁷ Ahmad Matairi BMI 12/77/12-25

²⁷⁸ Ahmad Matairi BMI 12/78/24-79/10

²⁷⁹ Ahmad Matairi BMI 12/85/6-87/20

²⁸⁰ Ahmad Matairi BMI 12/65/18-25

²⁸¹ Ahmad Matairi BMI 12/70/18-24

²⁸² Ahmad Matairi BMI 12/67/3-11; Ahmad Matairi BMI 12/94/17-21

- 2.201** Ahmad Matairi described being questioned by a man whom he said was a very senior commander. He was asked questions about C001. He was not ill-treated by the questioner but the man was aggressive and shouted loudly at him. The questioning occurred at about sunset on the first evening. On his return to the TDF there was a change of guard and he was subjected to a “hard” beating.²⁸³
- 2.202** Ahmad Matairi said that after Baha Mousa’s death he was examined by a doctor. The doctor must have been Keilloh. He was examined because his hernia was swollen. He said that the doctor told the soldiers not to beat him.²⁸⁴ In a witness statement taken by the SIB on 24 September 2003 he said that after being examined by the doctor his hood was removed and he was allowed to sleep.²⁸⁵ In evidence to the Inquiry, when this statement was put to him, he denied that he had been able to sleep. He said that he was kept awake both by the pain from the aching of his body and the noise of screaming from the other Detainees.²⁸⁶ I found his explanation that his SIB statement was wrong and that he was unable to sleep after being examined by the doctor, unconvincing. In my view it is more likely that his version of events in his SIB statement, taken much closer to the event, is more accurate than his evidence to the Inquiry on this issue.
- 2.203** Of Baha Mousa, Ahmad Matairi said he recollected him being taken to the centre room and he could hear him screaming. He heard him cry out,

“...“I will die, I have children, I have a dead wife.””²⁸⁷

- 2.204** To some extent Ahmad Matairi’s evidence may have been coloured by his obvious and understandable anger at the mistreatment of him by the guards. As I have said, he was at times not an easy witness to follow. There are also a number of comparatively minor discrepancies and inconsistencies in his evidence and previous statements. His evidence as to the level of beatings he received is very difficult to reconcile with the medical evidence of his injuries (see below). Nevertheless, for the most part his evidence fits into the spectrum of complaints made by other Detainees. Allowing for some exaggeration, such as his current recollection that he was not able to sleep at all throughout the three days, I accept his evidence as truthful and for the most part accurate.

Kifah Matairi

- 2.205** Kifah was Ahmad Matairi’s brother. In September 2003 he was in his early 40s. Sadly, on 4 February 2006 he died as a result of an accident from injuries wholly unconnected with any injuries sustained at the TDF. Before he died he had made three witness statements: the first two are statements dated 10 October 2003 and 24 January 2004 taken by the SIB and the third is a statement dated 23 February 2004 taken by solicitors acting for the Detainees in judicial review proceedings. What follows is a summary taken from these witness statements.

²⁸³ Ahmad Matairi BMI 12/72/11-76/2

²⁸⁴ Ahmad Matairi BMI 12/86/4-18

²⁸⁵ Ahmad Matairi MOD000037

²⁸⁶ Ahmad Matairi BMI 12/95/8-96/16

²⁸⁷ Ahmad Matairi BMI 12/80/1-5

- 2.206** On arrival at the TDF, Kifah Matairi said that he and the other Detainees were taken into the building which he described as a single-storey building with two entrances.²⁸⁸ In one statement he said that they were called terrorists by the soldiers.²⁸⁹ Kifah Matairi was made to stand in the middle of the room and had sandbags put over his head. The material of the sandbag was not particularly thick and he could see through it. He was then ordered to take up a stress position involving his arms being held out and his knees being bent at 45 degrees.²⁹⁰
- 2.207** He said he was kicked repeatedly to the kidney area, abdomen, ribs and genitals whenever his arms dropped. He described being struck on the back of his neck on several occasions over the three days by a man using the side of his hand. He gave a description of the man who he said was big bodied, medium height, about 28 years old and had short brown hair. This man also grabbed his face through the sandbags and tried to force his fingers into his eyes.²⁹¹
- 2.208** Kifah Matairi said the soldiers would play games, one of which involved the Detainees being punched in turn (almost certainly the “*choir*”). Another was to see which soldier could kick a Detainee the hardest. He also described the “*petrol incident*”. This involved petrol being rubbed under his nose, water poured over his head and a lighter held close to his head, with the obvious intention of causing him to think petrol was about to be ignited. Each of these allegations involved the soldier whose description he had given. At one point the soldier named “*Mackenzie*” was present during assaults but Kifah Matairi was unsure of his involvement.²⁹²
- 2.209** Kifah Matairi said that because of the way he was treated, he involuntarily urinated into his clothing. He and other Detainees were given nicknames and were beaten if they could not remember them.²⁹³ There is other evidence that one of the Detainees was called “*pissy pants*”.²⁹⁴ It does not take much to infer that this may have been a reference to Kifah Matairi.
- 2.210** Kifah Matairi remembered that Baha Mousa received more physical abuse than any other detainee because he cried out more than them.²⁹⁵ He said that all the Detainees would be punished by one soldier at a time, whereas Baha Mousa was often attacked by two or more. He said Baha Mousa was taken into another room and beaten there. On the second night he could hear Baha Mousa groaning and saying that he was bleeding and going to die.²⁹⁶

D005

- 2.211** D005 arrived at the TDF with his father. They were taken into the left-hand room and then hooded.²⁹⁷ He gave evidence of being beaten by the soldiers who were

²⁸⁸ Kifah Matairi MOD000053

²⁸⁹ Kifah Matairi PIL000391, paragraph 5

²⁹⁰ Kifah Matairi MOD000053-4

²⁹¹ Kifah Matairi MOD000054

²⁹² Kifah Matairi MOD000054-5

²⁹³ Kifah Matairi MOD000055

²⁹⁴ Mackenzie BMI 29/171/2-21

²⁹⁵ Kifah Matairi MOD000055

²⁹⁶ Kifah Matairi PIL000392, paragraph 7; Kifah Matairi PIL000393, paragraphs 13-14

²⁹⁷ D005 BMI 17/16/10-17/24

guarding them and of hearing other Detainees in the right-hand room screaming.²⁹⁸ He went on to describe specific incidents of mistreatment of him.

- 2.212** Some time on the first evening he was taken to a tactical questioner. He said he had his hood removed and was asked questions. He said he was questioned on two occasions and between those two sessions he was taken outside and forced to sit next to a generator outside the room where he was being questioned.²⁹⁹ There is other evidence, in particular evidence from SSgt Mark Davies, one of the questioners, and Maj Michael Peebles, the Battlegroup Internment Officer (BGIRO), that D005 was placed by a generator for approximately one and three quarter hours before being brought back for further questioning.³⁰⁰
- 2.213** D005 said that he was made to sit on the ground with his shirt off and his back to the generator. The “*lid*” from the radiator was taken off and hot, no doubt scalding, water splashed onto his face and back. A soldier sat in front of him drinking coffee and laughing. He described the generator as “...*pumping out intense heat...*”³⁰¹ He was then taken back for further questioning. He made no complaint about any physical abuse by the tactical questioner, but he said he was slapped in the face by an interpreter. He did not make this particular allegation in his statements to the SIB.³⁰²
- 2.214** He described another form of abuse which consisted of him being taken to the central room in the TDF and made to put his face very close to the hole in the ground which formed the toilet. In evidence to the Inquiry he said he thought that this must have taken place after he had been questioned. He said that a soldier or soldiers made him squat down with his legs either side of the toilet and put his face very close to the hole in the floor. D005 said the stench from the toilet was extremely bad. Whenever he lifted his head a soldier kicked him in the back. He said it ended with him being handcuffed, beaten and left helpless. He also remembered a soldier urinating on him when he was in this central room. He was not able to sleep and remained in the toilet room all night.³⁰³ However, in his SIB statements, whilst he mentioned being beaten and urinated on, it seems that these allegations related to his time by the generator, rather than his time in the middle room.³⁰⁴
- 2.215** D005 alleged that, shortly after being urinated on, whilst still alone in the central room, a soldier forced him to drink urine.³⁰⁵ However, he had given a different account in his interview with Younis, an agent for the Detainees’ solicitors who were tasked with obtaining the Detainees’ accounts of what had happened to them. He said to Younis that he and the other Detainees were in a room together when they were all made to drink urine.³⁰⁶
- 2.216** The following morning he was taken by Payne, whom he subsequently identified in a video identification parade, to see his father. His hood and plasticuffs were removed

²⁹⁸ D005 BMI 17/27/7-23; D005 BMI 17/35/20-36/5

²⁹⁹ D005 BMI 17/17/13-18/13; D005 BMI 17/24/6-22

³⁰⁰ SSgt Mark Davies BMI 42/75/13-76/5. Peebles’ estimate was 40 minutes: Peebles BMI 40/110/22-111/5; Peebles BMI 40/113/25-114/14

³⁰¹ D005 BMI02322, paragraph 60

³⁰² D005 BMI02324-5, paragraphs 66-68; D005 MOD000018-9

³⁰³ D005 BMI 17/21/17-24/2; D005 BMI 17/28/2-12

³⁰⁴ D005 MOD000018-9

³⁰⁵ D005 BMI02333, paragraph 89

³⁰⁶ D005 PIL000629

and he was given breakfast with his father. During this time he saw Maitham in the same room being beaten violently.³⁰⁷

2.217 D005 also stated that he had difficulty breathing whilst wearing a hood. He complained that he could not breathe and, in response, a soldier sprayed something on his face and on his hood, rubbing the hood on his face. The substance smelt like insect repellent. He thought that this occurred on the second day of detention.³⁰⁸

2.218 He agreed that Payne had been sympathetic to him, but he said Payne was present most of the time and that he saw him violently beating Maitham.³⁰⁹

2.219 D005 has given inconsistent accounts about whether he was permitted to use the toilet whilst at BG Main. In his Inquiry statement, D005 stated he was not allowed to go to the toilet during the first two days of his detention.³¹⁰ However, in his September 2003 statement to the SIB, he stated: "*I was allowed to go to the toilet when I asked in portaloos outside the room.*"³¹¹ I think it is likely that his original account is the more accurate.

2.220 He complained that he had been beaten frequently but the photographs taken of him by the SIB do not show any significant injuries. It has been suggested that he has exaggerated the beatings. It was put to him that perhaps the abuse of him was more humiliating than violent. He conceded that this may possibly have been correct but he continued to maintain that he had sustained bruising to the whole of his body.³¹² He did not at any point retract the allegation that he had been the victim of serious and sustained beatings. These allegations were not borne out by the medical or photographic evidence (see Chapter 7).

2.221 In oral evidence he said he recognised Baha Mousa's voice screaming on more than one occasion.³¹³ This evidence differed slightly from an account he gave in a tape recorded interview with an agent for his solicitors. In the latter account, D005 had mentioned hearing someone saying that he wanted to breathe and was going to die, but had said that he could not recognise the speaker's identity.³¹⁴

2.222 D005 was ostensibly a good witness, sensitive, intelligent and articulate. However, his credibility was not helped by the absence of any discernable injury to his body to support his allegations of being frequently kicked and beaten. Nevertheless, much of his evidence fits with the evidence of other Detainees and in some respects is supported by the evidence of soldiers who who guarded him. I shall refer to this evidence later in the Report.

³⁰⁷ D005 BMI 17/32/10-33/24; D005 BMI02334-5, paragraphs 92-93

³⁰⁸ D005 BMI 17/29/11-25

³⁰⁹ D005 BMI 17/33/25-35/7

³¹⁰ D005 BMI02337, paragraph 102

³¹¹ D005 MOD000021

³¹² D005 BMI 17/36/24-38/25

³¹³ D005 BMI 17/35/19-36/23

³¹⁴ D005 PIL000631

D006

- 2.223** D006 suffered from a pre-existing medical condition, namely hardening of the arteries (arteriosclerosis), and his ill health has caused him difficulties with his memory.³¹⁵ On arrival at the TDF he was received by Payne. He agreed that Payne was sympathetic to him and took his pills, apparently in order to keep them safe.³¹⁶ He said he was wearing his night clothes and both he and his son were hooded, handcuffed and put in the left-hand room of the TDF. He sensed that he had two hoods put on his head and he said that he was unable to see anything.³¹⁷ Apart from a short period when he was questioned by the tactical questioner he remained hooded until the following morning.³¹⁸ His hoods and plasticuffs were then removed in circumstances which I shall relate below (see Chapter 12).
- 2.224** D006 said that from shortly after being placed in the left-hand room he was beaten on the head and back by soldiers using a torch, and by kicks. He said he was also beaten in the area of his kidneys. He described the beatings as “*killing hits*” which were “*...brutal, frequent and designed to cause harm*”.³¹⁹
- 2.225** D006 said that on the night of the first day he was taken to be questioned. He spent approximately five minutes with the tactical questioner who asked about C001. He was not hooded during the questioning. He said he was apprehensive of the questioner but made no complaint of ill-treatment by him. After being questioned he was taken back to the TDF.³²⁰ He was aware that, during the night, his son was not in the left-hand room, but had been put in the central toilet room.³²¹
- 2.226** On the following morning D006 said he collapsed and “*a doctor*” was called to examine him. The soldiers resuscitated him and the “*doctor*” gave him some pills which helped him to recover. He said the doctor ordered that his hoods and plasticuffs be removed and thereafter he was left alone by the guards, unhooded and without plasticuffs. The doctor also told the soldiers that he should be taken to hospital but they refused. They did, however, allow his son to come back into the room. His son stayed with him for about an hour and each of them was provided with breakfast. He said his son was then taken away.³²² In fact it was not the RMO, Keilloh, but a regimental medic named Cpl Steven Winstanley, who examined D006 on that morning. However, it was Keilloh who, after being consulted by Cpl Winstanley, prescribed aspirin and propranolol for D006 (see Chapter 12 below).
- 2.227** Following the medic’s visit D006 said he was left alone by the guards and permitted to sleep when he wanted to. He was able to see Maitham in the room. He said all day long the soldiers beat Maitham and his other colleagues. He saw them beating Maitham and he could hear screaming coming from the other Detainees.³²³ In all, he saw three soldiers separately beat Maitham.³²⁴

³¹⁵ D006 BMI 13/58/15-59/5

³¹⁶ D006 BMI02139, paragraph 22

³¹⁷ D006 BMI 13/63/22-65/24

³¹⁸ D006 BMI 13/66/5-15; D006 BMI 13/70/23-73/3

³¹⁹ D006 BMI 13/66/16-70/4

³²⁰ D006 BMI 13/70/19-73/3

³²¹ D006 BMI 13/74/14-15

³²² D006 BMI 13/73/4-76/22

³²³ D006 BMI02144-5, paragraphs 39-42

³²⁴ D006 BMI 13/80/22-25

- 2.228** It was clear from his evidence that D006 felt great anger at the mistreatment of himself and his son. He said that the treatment of his son was a crime against humanity and, “*Even Israel wouldn’t do such a thing. Sharon is more honourable than the Army that did that...*”.³²⁵
- 2.229** D006’s resentment of the soldiers is entirely understandable given their treatment of him, his son and his colleagues. However, it is something which I bear in mind when assessing his evidence. I also bear in mind that photographs of him after these events revealed no serious injuries or marks of injuries on his body (see below). In his case I have no doubt he believed his evidence to be accurate and truthful, but in my judgment his resentment has caused him to exaggerate the mistreatment and injuries which he suffered. Nevertheless, I have equally no doubt that he was the victim of some abuse, but probably falling short of beatings.

Maitham

- 2.230** Maitham said that when he arrived at the TDF he was taken through the right-hand room and into the left-hand room via the corridor between the two rooms. As he passed through the right-hand room he saw five or six Detainees hooded and handcuffed. Some were sitting and some were standing. Those who were standing had their legs bent and were leaning against the wall with their arms outstretched.³²⁶ In his SIB witness statement he had said that the Detainees were all sitting.³²⁷ In evidence he said that the SIB statement in that respect was incorrect.³²⁸ The shirts of some of the Detainees were torn and they were moaning. The smell in the room he said was disgusting, as if it was a lavatory.³²⁹
- 2.231** In the left-hand room he saw D006. He said D006 was lying on the floor and not hooded. After about thirty minutes Maitham was hooded. He remembered that one hood was put on but, because it was obvious that he could see through the hood, a second and then a third were added.³³⁰
- 2.232** Shortly after being hooded the beatings started. Maitham said he was kicked and punched in the kidneys. He was also hit on his back with a “...*device or a tool*” or “... *a stick or a metal object*”.³³¹ In his SIB witness statements he had not mentioned being hit with a stick.³³² The beatings continued through Sunday night. When he tired and dropped his hands he was beaten with “*hard*” and “*strong*” blows. Maitham said that on the second day, Monday, the beatings became intermittent and there were periods when he was left alone.³³³
- 2.233** He remembered being fed and given water and in the evening of the second day a soldier gave him a cigarette.³³⁴ However, on the second night a soldier attempted to strangle him by putting thumbs into his mouth. To do this the soldier partially lifted

³²⁵ D006 BMI 13/77/23-78/6

³²⁶ Maitham BMI 13/18/17-21/6

³²⁷ Maitham MOD000046

³²⁸ Maitham BMI 13/21/7-22/9

³²⁹ Maitham BMI 13/23/3-22; Maitham BMI 13/54/18-25

³³⁰ Maitham BMI 13/25/14-29/9

³³¹ Maitham BMI 13/29/14-31/12; Maitham BMI 13/33/16-25

³³² Maitham MOD000045; Maitham MOD000742

³³³ Maitham BMI 13/29/16-31/12

³³⁴ Maitham BMI 13/28/3-10

the hoods and Maitham was able to see him and describe him. In his SIB statement he had mentioned thumbs being put in his mouth but had not mentioned attempted strangulation.³³⁵ He said that he had told the SIB about this but that they had not included it in his statement.³³⁶

2.234 He said throughout the time that he was in the TDF soldiers shouted at him so he was unable to sleep.³³⁷ At some stage he heard a man cry out from another room, saying “*I’m going to die*”, “*Have mercy on me*”, “*Why are you beating me?*”³³⁸ The probability is that this was Baha Mousa.

2.235 Maitham described being questioned by Sgt Ray Smulski, the second tactical questioner. Smulski told him not to blink during the questioning process. He said that when he did blink Smulski slapped him on the cheek.³³⁹ This allegation was not one which Maitham had made in his SIB witness statements or his Court Martial evidence, or even in his first Inquiry statement.³⁴⁰ He first made this allegation in a second Inquiry statement which he signed two weeks before giving evidence.³⁴¹ In his statement in the private law proceedings for compensation he had, in fact, said that he had not been beaten in the tactical questioning room.³⁴² Smulski denied slapping the Detainees³⁴³ and, in the circumstances, I find it has not been proved.

2.236 I have been critical of the credibility of some of Maitham’s evidence about the earlier incident when he was arrested by Wilding’s Multiple. However, so far as his evidence of what happened to him in the TDF is concerned I do not doubt that it is truthful and broadly accurate. Save for the alleged smack in the face by Smulski, his evidence fits into the general pattern of the evidence of the other Detainees. The evidence of him being beaten is supported by the evidence of D005 and D006, neither of whom knew Maitham before his arrival in the TDF.

The Detainees’ Credibility

2.237 I have set out the evidence of the Detainees in a little detail because in my opinion it is necessary to do so in order to understand the full impact on them of the abuse which they suffered at the hands of members of 1 QLR. It also has to be seen in the context of the treatment of Baha Mousa which ended in his death and which I shall describe in detail in a later chapter of this Report.

2.238 I have already commented on the credibility of the evidence of individual Detainees. Generally, in assessing their evidence, I bear in mind the trauma which these events caused them and the length of time between their detention and their evidence given to the Inquiry. I also bear in mind that individually there are some differences and inconsistencies between evidence in statements made by them to the SIB much closer to September 2003 and their evidence to the Inquiry. Some have clearer recollections than others. I also bear in mind that in assessing the evidence of

³³⁵ Maitham MOD000048

³³⁶ Maitham BMI 13/44/12-45/4

³³⁷ Maitham BMI 13/36/4-9

³³⁸ Maitham BMI 13/35/5-13

³³⁹ Maitham BMI 13/38/11-39/13

³⁴⁰ Maitham BMI 13/39/14-40/22

³⁴¹ Maitham BMI04225, paragraph 5

³⁴² Maitham PIL000366-7, paragraph 41

³⁴³ Smulski BMI 41/29/22-25

D002 and Kifah Matairi I have heard very little evidence on oath from one and, for obvious reasons, none from the other. Finally, I bear in mind the risk, pointed out in submissions by some Core Participants, that the Detainees may have exaggerated the abuse they suffered in order to bolster their claims for compensation.

2.239 Nevertheless, as will be apparent from the summaries of the Detainees' evidence, there are underlying themes common to all of them in respect of much of what they related to the Inquiry. Of course, there is a danger that they may have discussed amongst themselves details of what occurred and that such discussions have led to inaccuracies or exaggerations in their evidence. I also accept submissions made on behalf of Core Participants that beatings of the Detainees by soldiers could not have been incessant. There must have been intervals between episodes of beatings and enforcement of stress positions. It would have been physically impossible for the Detainees to have been made to hold stress positions for the whole period of 36 hours ending with Baha Mousa's death, however hard they were beaten. In the cases of at least some of the Detainees, the medical evidence, with which I deal in detail below, does not support the allegation that they were subjected to continuous beatings. It is also likely that some of the manhandling which fell short of punching and kicking may have been described by some of the Detainees as "*beatings*"; for example, D003 said that, when talking of "*being beaten*", he included the conduct recorded in the Payne video (which I address below).³⁴⁴

2.240 But after making due allowance for all of these matters, the fact remains that little of the Detainees' evidence was seriously challenged by Counsel acting for the soldiers and, as I shall relate later in this Part, there is a wealth of other evidence which supports the evidence of the Detainees. What was challenged was the identity of the perpetrators of the violence. Perhaps one of the strongest features of the supporting evidence is the evidence of injuries, both physical and psychiatric, which some of the Detainees sustained and which have been described by doctors who examined them after they had left the TDF. I should add that while I accept the evidence of the Detainees was broadly accurate I have found it impossible and unnecessary to make specific findings on every issue of detail relating to individual Detainees.

³⁴⁴ D003 BMI 11/45/21-46/2

Chapter 7: The Injuries to the Detainees

- 2.241** On arrival at the TIF, Um Qasr on 16 September 2003, all of the Detainees were examined and, where required, treated by a US doctor, Dr E G Shaw. Dr Shaw provided statements both to the SIB and to this Inquiry but did not give oral evidence to the Inquiry.³⁴⁵ There are some instances where his evidence is not borne out by photographs of the Detainees' injuries and is inconsistent with the evidence of Dr Ian Hill (see below). I therefore treat his statements with caution. Two of the Detainees, Kifah Matairi and D003, were promptly sent to the British Military Hospital, BMH Shaibah. There they were treated by medics including David Vassallo and Dr Michael Maguire, who have also provided statements to the SIB and to this Inquiry.³⁴⁶
- 2.242** At the end of this Chapter there are appended some, but not all, of the photographs taken by the SIB of the Detainees showing their injuries. I also append a schedule which, in an easy to understand form, sets out the evidence of those who saw injuries on the Detainees at different times over the period 14 to 16 September 2003.
- 2.243** Subsequently, on 21 September 2003, also at BMH Shaibah, an autopsy was conducted on the body of Baha Mousa by Dr Hill, an accredited Home Office pathologist. The following day, 22 September 2003, and now eight days after their arrest, Dr Hill also examined D001, D002, D003, D004, Ahmad Matairi and Kifah Matairi, who were all still being held by coalition forces.
- 2.244** Dr Hill's "Pathologist's Post Mortem and Injuries Report" dated 11 February 2004 set out in full the results of the post mortem of Baha Mousa and the results of the physical examination of D001, D002, D003, D004, Kifah and Ahmad Matairi. In this report Hill also commented on photographs of the injuries to D005, D006 and Maitham, the Detainees he had not physically examined on 22 September 2003.³⁴⁷ The Inquiry has evidence that these photographs were taken on the afternoon of Wednesday 17 September 2003.³⁴⁸
- 2.245** In addition to evidence of the physical injuries sustained by the Detainees, I have also had the benefit of reading medical reports relating to the Detainees' psychiatric injuries, produced as part of the Detainees' compensation claims against the MoD.
- 2.246** On instructions from Messrs Leigh Day, Solicitors, one set of reports was written by a consultant psychiatrist, Dr Mohamed Adib Essali, MD PhD MRCPsych. Essali is a British-trained psychiatrist, a member of the Royal College of Psychiatrists, a registered medical practitioner in the UK and Syria, and Director of the Centre of Psychiatry at the Al-Mazzeah Hospital in Damascus. He has prepared psychiatric reports and acted as an expert witness in both the UK and Syrian courts. His professional credentials are set out at the beginning of each report.³⁴⁹ I bear in mind that Essali's reports were not tested in oral evidence.

³⁴⁵ Dr Eric Shaw BMI06098; Dr Eric Shaw MOD000353; Dr Eric Shaw MOD000355; Dr Eric Shaw MOD000357

³⁴⁶ Maguire BMI04605; Maguire MOD000362: in relation to the treatment given to Kifah Matairi between 16 September and October 2003. Vassallo BMI00392; Vassallo MOD000360: in relation to the treatment given to D003 between 16 and 21 September 2003.

³⁴⁷ MOD000381

³⁴⁸ MOD000517-22

³⁴⁹ PIL000457; PIL000468

- 2.247** In June 2007, Essali interviewed all of the surviving Detainees at his clinic in Syria. He was instructed to give an opinion as to whether each Detainee had suffered psychiatric damage, a specific diagnosis for each Detainee, an assessment of the severity of any past and current conditions, the effect of those conditions on working and personal life, probable prognoses with and without treatment, and whether, on the balance of probabilities, the cause of any psychiatric injury was the treatment alleged to have occurred during the period 14 to 16 September 2003 or if there was another more probable cause for the condition.³⁵⁰
- 2.248** The MoD, in turn, instructed its own expert to assess the extent of any psychiatric injuries suffered by the Detainees. Its expert was Professor Simon Wessely, Professor of Epidemiological and Liaison Psychiatry at the Guy's, King's & St Thomas's School of Medicine and Institute of Psychiatry. His professional credentials are also set out at the start of each of his reports.³⁵¹ He produced reports on the psychiatric health of D001, D002, D003, D004, D006, Maitham, Ahmad Matairi and Col Mousa. His reports were based on interviews with these men on 5, 6 and 7 July 2008. In his reports he commented on the reports produced by Essali.
- 2.249** In some instances Essali and Wessely disagree. Neither gave oral evidence to the Inquiry, and I am quite unable to resolve most of the areas of disagreement between them. However, where their conclusions overlap, as they do in a large number of places, I am able to find that they are mutually supportive. Additionally, in a number of places Wessely does not take express issue with Essali's conclusions, and in those instances, I see little reason to doubt Essali's specialist expertise.
- 2.250** The following is a summary of the findings made by these various doctors, in relation to both the physical and psychiatric injuries sustained by the Detainees.

D001

Physical injuries

- 2.251** D001 was first examined by Dr Shaw on 16 September 2003. He complained of back pain and abdominal pain, but on examination was found by Shaw to be normal;³⁵² a surprising finding bearing in mind Dr Hill's evidence and the photographs.
- 2.252** On examination on 22 September 2003, Dr Hill recorded that D001 had suffered bruising to the left side of the back measuring 4cm by 1cm and bruising in the lower left flank area, just above the waistline, measuring 12cm by 8cm. Dr Hill also noted that D001 was extremely tender to touch on the chest and experienced considerable pain on inspiration, and as such a chest x-ray had been recommended.³⁵³
- 2.253** The injuries sustained by D001 appear in the photographs at the end of this Chapter.³⁵⁴

³⁵⁰ For an example of Dr Essali's instructions, see PIL000470-1

³⁵¹ MOD045271

³⁵² Dr Eric Shaw MOD000358

³⁵³ MOD000394

³⁵⁴ MOD021789-92; MOD021838-39

Psychiatric injuries

- 2.254** In June 2007, D001 described to Essali his experience of having regular panic attacks that had started shortly after his release from detention, some spontaneous and some with situational triggers, and of having nightmares about the events in question. He did not have any psychiatric complaints between these periodic attacks however.³⁵⁵
- 2.255** Essali diagnosed PTSD and panic disorder, the disabling features of which were moderate disability in personal care and family relationships and massive disability in the occupational and social realms. D001 displayed avoidance behaviours in order to cope. D001's quality of life was described by the doctor as "*poor*" and "*severely deteriorated after the index event*".³⁵⁶
- 2.256** Essali was of the opinion that the events that occurred during detention were the most probable cause of the psychiatric disorders, and that there were no other predisposing factors. He recommended antidepressant medication and cognitive behavioural therapy and prognosticated that the present symptoms might be expected to be controlled within six months, although he recommended therapy should continue for at least two years.³⁵⁷
- 2.257** Wessely agreed that D001 had suffered from PTSD following his detention. However, his view was that D001 had recovered within about four months of his release and that he was no longer suffering from any psychiatric injury. It followed that he did not agree with Essali's assessment that, without treatment, D001's condition was likely to deteriorate. He also disagreed with Essali's conclusion that D001 was suffering from massive disability in the occupational and social realms.³⁵⁸
- 2.258** In my judgment, D001 did suffer from PTSD as a result of the treatment which he received during his detention. However, on the evidence available, I cannot reliably assess the duration or seriousness of his psychiatric problems.

D002

Physical injuries

- 2.259** D002 was examined by Dr Shaw on 16 September 2003. He complained of mid-back pain and was found to have a large area of bruising and tenderness on the right flank and lower back. The doctor also found swelling beneath D002's right eye and minor swelling, bruising and superficial lacerations to the arms and legs.³⁵⁹
- 2.260** On examination on 22 September 2003, Dr Hill noted that D002 had a 1cm by 0.4cm laceration to the forehead just over the right eyebrow with associated bruising. There was also an area of bruising, swelling and crepitus (a crackling sound such as that produced by the rubbing together of fragments of a fractured bone or by air moving in

³⁵⁵ PIL000473

³⁵⁶ PIL000474

³⁵⁷ PIL000475-6

³⁵⁸ MOD045326-7

³⁵⁹ Dr Eric Shaw MOD000358

a tissue space) on the bridge of the nose and bruising under the right eye extending down the cheek measuring 2.5cm by 0.9cm.³⁶⁰

2.261 The injuries to D002's torso consisted of a diffuse bruise on the back of the left shoulder measuring 4cm by 1cm; an area of bruising on the right flank measuring 6cm by 2cm and an area of bruising on the lower right flank passing over the abdomen, measuring 17cm by 9cm.³⁶¹

2.262 D002 complained to Dr Hill of pain in the lower right rib cage with some difficulty in breathing.³⁶² A letter from Dr Hill dated 25 September 2003 records his recommendation that D002 should have a chest x-ray and an x-ray of his nose to confirm or refute the possibility that there were fractures in those regions.³⁶³

2.263 Dr Hill also assessed a number of photographs³⁶⁴ of an area of bruising to an initially unidentified part of D002's body. Although no injury at this site had been complained of at the time of the physical examination of D002, Hill identified it as apparently being the right thigh, which had a fingertip type bruise and an area of grazing.³⁶⁵

2.264 The injuries sustained by D002 are recorded in a number of photographs.³⁶⁶

Psychiatric injuries

2.265 In June 2003, D002 informed Essali that he had experienced changes to his temper, irritability and intolerance, which manifested in anger towards his family and physical violence towards his son. He was suffering from panic attacks, nightmares and erectile dysfunction. He described suffering from particular shame in relation to certain offensive behaviour to which he had been exposed.³⁶⁷

2.266 Essali diagnosed PTSD, with a severe depressive episode. The disabling features were massive disability in personal care, and massive disability in the occupational, familial and social realms. Similarly to the other Detainees, his quality of life was described by the doctor as "*poor*" and "*severely deteriorated after the index event*".³⁶⁸

2.267 The doctor was of the opinion that the events occurring during detention were the most probable cause of the psychiatric disorders, and that there were no other predisposing factors. It was recommended that D002 receive antidepressant medication and cognitive behaviour therapy. Essali predicted that without this treatment D002's condition was likely to deteriorate.³⁶⁹

2.268 Wessely agreed that D002 had suffered from PTSD after his release from detention. However, he considered that his mental state had since improved, although he still

³⁶⁰ MOD000404, paragraphs 1-3

³⁶¹ MOD000404, paragraphs 4-6

³⁶² MOD000404

³⁶³ MOD000989, paragraph 8. D002 is the "*prisoner labelled UK tag number 090359*" (See, for example, MOD030786)

³⁶⁴ MOD021853-5

³⁶⁵ MOD000404-5, paragraph 7

³⁶⁶ MOD021853-66

³⁶⁷ PIL000515-6

³⁶⁸ PIL000516-7

³⁶⁹ PIL000517-8

had some features of a mixed anxiety depressive disorder of mild to moderate severity. This latter condition was caused by various factors, including D002's personal circumstances, and not just his detention.³⁷⁰

2.269 Wessely disputed Essali's assessment that D002 had suffered from "*massive occupational disability*". He was also more optimistic than Essali about D002's prognosis. He thought that D002 might benefit from some fairly simple psychotherapy.³⁷¹

2.270 It is also appropriate to record that at the time he came to give evidence to this Inquiry D002 experienced significant upset when he was questioned about his detention. During his first scheduled appearance before the Inquiry, D002 suffered a "*panic attack*" type episode in the witness box and it proved necessary to complete his evidence at a later date via a video link facility. Unfortunately, he suffered a further panic attack when he attempted to give evidence by video link.³⁷²

2.271 I accept that D002 suffered from the symptoms which he described to Essali. My conclusion is that D002 suffered from PTSD as a result of the way he was treated during his detention. I also accept that he has suffered from depression and that his detention contributed to this, but it may be that other factors in D002's personal life have contributed to his depression. I also accept, having observed him giving evidence that he continues to suffer from panic attacks. Overall, I do not doubt that the psychiatric injury caused to him by his detention caused a severe deterioration in his quality of life.

D003

Physical injuries

2.272 D003 was first examined by Dr Shaw on 16 September 2003. On examination an elevated pulse was found and he was in distress due to pain. There was crepitus on the right lower rib, bruising, swelling and tenderness throughout the abdomen, of 30cm by 20cm in diameter, and blood in the urine. He was treated with intravenous fluids and ibuprofen and transferred to BMH Shaibah, initially for an ultrasound examination of the abdomen and a chest x-ray on suspicion of liver laceration.³⁷³ Dr Shaw's medical notes record his assessment that there was a fractured rib on the right hand side, above the liver.³⁷⁴

2.273 Subsequently, Vassallo, the Consultant General Surgeon at BMH Shaibah examined D003 at about 23:45hrs on 16 September 2003. Vassallo identified widespread bruising over D003's abdomen, elevated creatine kinase levels in the blood indicative of muscle damage, and some impairment to the renal function.³⁷⁵

2.274 Thereafter, on 22 September 2003, Dr Hill examined D003 and recorded the following injuries to the head and neck area. There was grazing on the bridge of the nose, a

³⁷⁰ MOD045310-1

³⁷¹ Ibid.

³⁷² D002 BMI 14/1-11; D002 BMI 20/1-13

³⁷³ Dr Eric Shaw MOD000355-6

³⁷⁴ MOD015339

³⁷⁵ Vassallo BMI00397, paragraph 17; Vassallo MOD000360-1

fingertip-sized graze on the right side of the forehead, a fingertip-sized graze by the outer corner of the right eye, grazing on the right cheek, and a graze downwards from the left eye towards the mouth.³⁷⁶

2.275 On D003's torso there was a 13cm by 4cm abrasion in an area of bruising which passed from side to side across the abdomen. There was a further unmeasured abrasion on the left flank and 5cm by 6cm of discolouration on the left side of the lower back. D003 also had abrasion injuries to both wrists and bruising to the left hand.³⁷⁷

2.276 The injuries sustained by D003 are also recorded in a number of photographs.³⁷⁸

Psychiatric Injuries

2.277 In June 2007, D003 presented to Essali with symptoms including: isolating himself socially, irritability, intolerance of noise, and vivid flashbacks to the events in question. He had also suffered sleep disturbance, nightmares, and problems in his personal life.³⁷⁹

2.278 Essali diagnosed PTSD, the disabling features of which were moderate disability in personal care and massive disability in his occupational, familial and social life. D003's quality of life was also described by the doctor as "*poor*" and "*severely deteriorated after the index event*".³⁸⁰

2.279 The doctor was of the opinion that the events occurring during detention were the most probable cause of the psychiatric disorders, and that there were seemingly no other predisposing factors. The symptoms experienced by D003 were expected to improve within six months with appropriate treatment, but a "*follow-up*" period of two years was envisaged.³⁸¹

2.280 Wessely found the issue of diagnosis complex. He agreed that, after his release from detention, D003 had clearly suffered from an adjustment reaction with features of depression, anxiety and PTSD. Whilst he considered that D003's mental health had improved after about six months, even in 2008, Wessely's opinion was that he continued to suffer from symptoms of depression and anxiety, albeit of only moderate severity. He concluded that D003 was continuing to suffer from a mixed anxiety depressive disorder, albeit of mild to moderate severity, whose major feature was irritability.³⁸²

2.281 Wessely disagreed with Essali's assessment of "*massive occupational disability*". He also did not agree that without treatment D003's condition was likely to deteriorate.³⁸³

³⁷⁶ MOD000402, paragraphs 1-5

³⁷⁷ MOD000402-3, paragraphs 6-11

³⁷⁸ MOD021815-36

³⁷⁹ PIL000505-6

³⁸⁰ PIL000507

³⁸¹ PIL000507-8

³⁸² MOD045273-4

³⁸³ MOD045274-5

- 2.282** Wessely said that there was no doubt that the alleged circumstances of D003's detention fulfilled the stressor criteria for PTSD.³⁸⁴
- 2.283** In my judgment, D003 clearly suffered from PTSD. It also appears that he developed anxiety and depression. I accept that he was suffering from the symptoms which he described to Essali and that his quality of life severely deteriorated following his arrest and detention.

D004

Physical injuries

- 2.284** D004 was examined by Dr Shaw on 16 September 2003. On examination there was found to be minimal swelling, bruising and superficial lacerations on the arms and legs.³⁸⁵
- 2.285** When he examined him on 22 September 2003, Dr Hill described D004 as having a variety of mild injuries. There was a series of grazes and bruises to D004's torso; two bruises on the back of his left shoulder, one 7cm by 2cm and the other 3cm by 2cm; and there was a smaller area of bruising on the back of the left axilla (underarm) measuring 4.5cm by 3.5cm. There were two further areas of bruising to the back of the right shoulder measuring 2cm by 1.1cm and 2cm by 2cm.³⁸⁶
- 2.286** Dr Hill also recorded that D004's right ear was slightly swollen and had been treated with a dressing, but this had apparently been treated on 13 September 2003, the day before his arrest.³⁸⁷
- 2.287** The injuries sustained by D004 were also recorded in photographs taken by the SIB.³⁸⁸

Psychiatric injuries

- 2.288** In June 2007, D004 described to Essali that he felt a tendency to isolate himself; he was experiencing headaches; and he had episodes of losing consciousness. He had episodes during which he had difficulty breathing and blurred vision, which the doctor recorded as consistent with psychogenic fits. He also had episodes of uncontrollable violent behaviour ending in bouts of crying.³⁸⁹
- 2.289** Essali diagnosed PTSD, with a severe depressive episode. The disabling features were moderate disability in personal care, and massive disability in the occupational, familial and social realms. Similarly to the other Detainees, his quality of life was described by the doctor as "*poor*" and "*severely deteriorated after the index event*".³⁹⁰

³⁸⁴ MOD045274

³⁸⁵ Dr Eric Shaw MOD000358

³⁸⁶ MOD000406-7, paragraphs 1-7

³⁸⁷ MOD000407, paragraph 8

³⁸⁸ MOD021797-800; MOD021849-51

³⁸⁹ PIL000527

³⁹⁰ PIL000528-9

2.290 Essali was of the opinion that the alleged treatment during detention was the most probable cause of the identified psychiatric disorder and there were seemingly no other predisposing factors.³⁹¹

2.291 Essali regarded D004's case to be serious, describing it as a "*psychiatric emergency*", with a serious suicidal risk. He recommended hospitalisation and significant treatment including medication, psychotherapy and possibly even electroconvulsive therapy. The doctor stated that following initial inpatient treatment, monthly psychiatric follow-up would be required for a period of at least two years.³⁹² Essali expressed the stark opinion that:

*"Without treatment, the outlook appears to be bleak. His condition has been constantly deteriorating and he may kill himself."*³⁹³

2.292 Wessely's diagnosis was that D004 was suffering from a moderate to severe psychiatric disorder. Whilst the exact diagnosis was unclear, it contained elements of PTSD, depression and also conversion disorder (his psychogenetic "*fits*"). Some would call this complex PTSD, others personality changes following serious stress. The exact label was, in Wessely's view, probably not particularly important anyway: he was in no doubt that D004 was suffering from a defined psychiatric disorder.³⁹⁴

2.293 He said that there was no doubt that D004's experiences during his detention, as set out in his Statement of Case in the private law proceedings,³⁹⁵ fulfilled the stressor criteria for PTSD. He did, however, cast doubt on Essali's assessment of "*massive occupational disability*". He also said that in his opinion the most significant contribution to D004's current disorder was the ending of a relationship with his fiancée, although he recognised that this may itself have been caused by the events surrounding D004's detention.³⁹⁶

2.294 Wessely agreed with Essali that D004 required treatment including psychological therapy and antidepressant medication. However, he did not agree that hospitalisation was required, and stated that D004 was nowhere near fulfilling the criteria used in the UK for prescribing electroconvulsive therapy.³⁹⁷

2.295 I have no doubt that D004 was suffering from the symptoms that he described to Wessely. In my judgment, it is plain that at the very least D004 was suffering from PTSD and that he was in need of psychiatric treatment. I also accept that his psychiatric ill-health involved a severe deterioration in his quality of life. It is clear that the fundamental cause of his psychiatric problems was his treatment during detention.

³⁹¹ PIL000529

³⁹² PIL000529-30

³⁹³ PIL000530

³⁹⁴ MOD045254

³⁹⁵ D004 PIL000108

³⁹⁶ MOD045254-5

³⁹⁷ MOD045255

D005

Physical injuries

- 2.296** D005 was examined by Dr Shaw on 16 September 2003. He gave a history of having a mild headache, but on examination nothing of significance was observed.³⁹⁸
- 2.297** Dr Hill did not examine D005, but before writing his report he assessed a photograph of D005,³⁹⁹ taken on Wednesday 17 September 2003 by the SIB.⁴⁰⁰ He identified the suggestion of a graze at the end of the right eyebrow.⁴⁰¹ However, I have been unable to discern any graze in the copy of the photograph provided to the Inquiry.

Psychiatric injuries

- 2.298** In June 2007, D005 reported to Essali that he had been depressed, nervous, bad tempered and less sociable since he had been released from detention. He reported that his education had been affected. He was also suffering from disturbed sleep, nightmares and a seasonal skin condition for which, despite extensive investigation, no physiological reason had been identified.⁴⁰²
- 2.299** Essali diagnosed PTSD and a somatoform disorder, with disabilities of a moderate level in relation to personal care and also within the occupational and social realms, but of a mild level in relation to family relationships. His academic achievements had deteriorated, and his quality of life was now poor, having severely deteriorated. His unexplained skin condition fulfilled the criteria for a somatoform disorder which is a condition characterised by physical complaints which appear medical in origin but cannot be explained in terms of a physical disease.⁴⁰³
- 2.300** Essali concluded that the cause of these conditions was the treatment during detention, and there were no apparent other predisposing factors.⁴⁰⁴
- 2.301** It was recommended that D005 receive antidepressant medication and cognitive behaviour therapy, with a psychiatric follow-up period of at least two years. Without treatment, Essali expected D005's psychiatric condition to deteriorate.⁴⁰⁵
- 2.302** It appears that Wessely did not interview D005: the Inquiry has not been provided with a report by Wessely concerning D005. In the circumstances there is no good reason to depart from Essali's conclusions.

³⁹⁸ Dr Eric Shaw MOD000358

³⁹⁹ MOD021848

⁴⁰⁰ MOD000518

⁴⁰¹ MOD000408

⁴⁰² PIL000484-6

⁴⁰³ PIL000485-6

⁴⁰⁴ PIL000486-7

⁴⁰⁵ PIL000487

D006

Physical injuries

- 2.303** D006 was examined by Dr Shaw on 16 September 2003. He did not make any complaint at that time and on examination there were no acute physical findings.⁴⁰⁶
- 2.304** Dr Hill did not physically examine D006, but looked at a photograph of him,⁴⁰⁷ taken on Wednesday 17 September 2003 by the SIB.⁴⁰⁸ Dr Hill stated in his report that it appeared from the photograph that D006 had a graze on the left cheek below the left eye.⁴⁰⁹ However, this injury said to have been sustained by D006 is not obvious in the photograph in question.

Psychiatric injuries

- 2.305** In June 2007, D006 explained to Essali that after his detention he had become irritable, fatigued, shaky, dizzy and nauseous, with a tight chest and numbness in his arm. He had symptoms of depression, nervousness, a lack of sexual desire, weight loss and sleep disturbance.⁴¹⁰
- 2.306** Essali diagnosed a severe depressive episode (with the concurrent physical disorders of arterial fibrillation and irritable bowel syndrome). He identified that D006 had suffered massive disability in personal care, massive occupational disability, massive social disability, and moderate disability in respect of family relationships. D006's quality of life was described by the doctor as "*poor*" and "*severely deteriorated after the index event*" in accordance with his findings in relation to the other Detainees.⁴¹¹
- 2.307** In relation to causation, Essali concluded that D006 had no other predisposing factors (a reference in D006's presentation to possible tranquilizer misuse was treated by Essali as resulting from an attempt to treat insomnia which was associated with the depression), and therefore it was more probable than not that the symptoms were caused by the index event.⁴¹²
- 2.308** The doctor recorded that D006 required urgent treatment for his depression, and recommended antidepressant medication and cognitive behaviour therapy. However, perhaps characteristic of the degree of seriousness in D006's case, Essali mentioned that electroconvulsive therapy might be necessary if D006 did not respond to medication and the therapy treatment. Without treatment, Essali thought that D006's condition would deteriorate. He thought that suicide remained a real risk in the light of his personal and social circumstances. Similar to the estimations in relation to the other Detainees, a follow-up period of two years was specified.⁴¹³
- 2.309** Wessely said that it was difficult to separate the relative contributions of D006's heart disease (which was not caused by his detention) and his psychiatric problems

⁴⁰⁶ Dr Eric Shaw MOD000357

⁴⁰⁷ MOD021837

⁴⁰⁸ MOD000517

⁴⁰⁹ MOD000408

⁴¹⁰ PIL000495

⁴¹¹ PIL000496

⁴¹² PIL000496-7

⁴¹³ PIL000497-8

(which were) to his various medical symptoms, such as heart palpitations. He concluded that D006 had suffered a psychiatric injury after his detention, and that the most likely diagnosis was of an anxiety disorder or PTSD. He agreed that D006 required psychiatric treatment, but disagreed with Essali's assessment that inpatient treatment was required. Wessely also stated that D006 did not reach the threshold for electroconvulsive therapy.⁴¹⁴

2.310 In my judgment, D006 clearly suffered from psychiatric injury as a result of the treatment he received during his detention. The proper label for his psychiatric injury is not clear. It may be PTSD or depression or anxiety. But in any event, I have no doubt that this caused a severe deterioration in his quality of life.

Maitham

Physical injuries

2.311 Maitham was examined by Dr Shaw on 16 September 2003. On examination he found swelling and bruising on the right thigh, but no treatment was required or given.⁴¹⁵

2.312 Dr Hill did not examine Maitham, but looked at photographs of his injuries,⁴¹⁶ apparently taken by the SIB on Wednesday 17 September 2003.⁴¹⁷ It appeared from the photographs that Maitham had bruises to the front, one small, and one larger, measuring 14.5cm and 9.8cm, and two areas of bruising to the right upper back and flank.⁴¹⁸

Psychiatric injuries

2.313 When examined by Essali in June 2007, Maitham complained of lacking motivation, and being isolated, irritable and violent towards his family. He experienced panic attacks, sleep disturbance and nightmares. He had also lost his ambition, confidence and sexual desire, and had taken to smoking excessively.⁴¹⁹

2.314 Essali diagnosed PTSD, with a severe depressive episode. The disabling features were massive disability in personal care, and massive disability in the occupational, familial and social realms. Similarly to the other Detainees, his quality of life was also described by the doctor as "*poor*" and "*severely deteriorated after the index event*". Essali concluded that the treatment during detention was the most probable cause of the psychiatric disorders suffered by Maitham.⁴²⁰

2.315 The doctor recommended antidepressant medication and cognitive behavioural therapy, with a psychiatric follow-up period of two years. It was recorded in the report that without such treatment Maitham's condition was likely to deteriorate,

⁴¹⁴ MOD045291-2

⁴¹⁵ Dr Eric Shaw MOD000357

⁴¹⁶ MOD021840-7

⁴¹⁷ MOD000517-8

⁴¹⁸ MOD000408

⁴¹⁹ PIL000462-4

⁴²⁰ PIL000464-5

with the depression intensifying and the PTSD possibly being complicated by agoraphobia.⁴²¹

2.316 Wessely agreed that Maitham had suffered from PTSD and depression, albeit in his view Maitham's psychiatric disorder had been moderate. He also agreed that the most likely cause had been the ill-treatment which Maitham received from the British Army. However, in his view, by the time that he interviewed Maitham in July 2008, Maitham had largely recovered. He therefore did not agree with Essali that Maitham needed further treatment, although he was happy to accept that this was the case when Essali wrote his report the previous year. He disagreed with Essali's assessment that Maitham had shown "*massive occupational disability*".⁴²²

2.317 I conclude that Maitham did suffer from PTSD and depression, but I cannot reliably assess the duration or severity of these disorders in his case.

Kifah Matairi

Physical injuries

2.318 Kifah Matairi was examined by Shaw on 16 September 2003. On examination he found a midline cervical tenderness, abdominal tenderness, bruising, swelling and tenderness on the left flank measuring 15cm by 15cm, bruising to the left hand, and a large amount of blood in the urine. Kifah Matairi was fitted with a neck brace and transferred to the BHM Shaibah to have X-rays to his neck and ultrasound examination of his abdomen.⁴²³

2.319 Kifah received treatment very late on the evening of 16 September 2003 at BMH Shaibah. The next day he came under the care of Maguire, consultant physician, who diagnosed renal failure caused by the breakdown of muscle (the medical name for this condition being rhabdomyolysis). X-rays taken at this time showed fractures of the ribs on the right side.⁴²⁴

2.320 On examination on 22 September 2003, Dr Hill identified signs of 28 separate injuries. These were mainly areas of significant bruising over various parts of Kifah Matairi's body, particularly down the sides of his torso. Dr Hill described his injuries as being extensive and serious. They had resulted in a life-threatening condition, and had the potential to leave sequelae which could affect Kifah Matairi's long term health.⁴²⁵

2.321 The injuries sustained by Kifah Matairi appear in a number of photographs.⁴²⁶

2.322 It will of course be remembered that Kifah Matairi very sadly died in February 2006 as a result of an unfortunate accident that is unrelated to the incident with which this Inquiry is primarily concerned.⁴²⁷ Therefore, the effects of the detention on Kifah

⁴²¹ PIL000465-6

⁴²² MOD045344

⁴²³ Dr Eric Shaw MOD000353

⁴²⁴ Maguire MOD000362-3. This statement was provided to the SIB on 10 October 2003, and Dr Maguire confirmed the contents of this statement in his statement to the Inquiry at BMI04605-6.

⁴²⁵ MOD000398-401, paragraphs 1-28

⁴²⁶ MOD021765-88; MOD021801-14

⁴²⁷ Ahmad Matairi BMI02254, paragraph 2

Matairi's psychiatric wellbeing (if indeed there was any particular effect at all) have never been the subject of a medical report.⁴²⁸

Ahmad Matairi

Physical injuries

- 2.323** Ahmad Matairi was examined by Dr Shaw on 16 September 2003. He presented with lower abdominal pain and a large left inguinal hernia. No treatment was given as the hernia was easily reducible.⁴²⁹
- 2.324** On 22 September 2003, Dr Hill assessed that Ahmad Matairi had sustained two areas of bruising to the left side of the lower back, one 6cm in length and another 3cm in length. Higher up the left side of the back was an area of diffuse bruising of 5cm by 4cm.⁴³⁰
- 2.325** Ahmad Matairi also had two medical conditions which were present before the detention but were apparently exacerbated by the mistreatment he received while detained. He had a hernia which was swollen and tender and which had previously been small but unproblematic.⁴³¹ Secondly, he was also found to be suffering from a swollen calf and limping badly. Dr Hill attributed this to the position he had been kept in and the effect this position had on a pre-existing condition of varicose veins. He had been referred in order to investigate the possibility that he was suffering from deep vein thrombosis.⁴³²
- 2.326** The injuries sustained by Ahmad Matairi appear in a number of photographs.⁴³³

Psychiatric injuries

- 2.327** In 2007, Ahmad Matairi described to Essali that his sociability had been affected since the incident in question. He spent most of his time alone crying, which in turn made him ashamed. He described his feelings of injustice and concern for his and his family's reputation.⁴³⁴
- 2.328** Essali diagnosed, as a clinical disorder, a severe depressive episode, the disabling features of which were moderate disability in personal care and the occupational and familial realms, and massive disability in the social realms. Ahmad Matairi's quality of life was described by the doctor as "*poor*" and "*severely deteriorated after the index event*".⁴³⁵
- 2.329** Essali was of the opinion that the alleged treatment during detention was most probably the cause of the identified psychiatric disorder. No other predisposing

⁴²⁸ However, Ahmad describes the effect of the detention on his brother: Ahmad Matairi BMI02281-2, paragraphs 89-91; Ahmad Matairi BMI02284, paragraphs 102-103

⁴²⁹ Dr Eric Shaw MOD000358

⁴³⁰ MOD000396, paragraphs 1-2

⁴³¹ Ahmad Matairi BMI 12/84/9-86/3

⁴³² MOD000396-7

⁴³³ MOD021793-6

⁴³⁴ PIL000537-8

⁴³⁵ PIL000539

factors were found. It was recommended that Ahmad Matairi receive medication, psychological therapy and social therapy for depression, with an initial treatment period of two years.⁴³⁶

2.330 Wessely disagreed with Essali's assessment of Ahmad Matairi. He concluded that Ahmad Matairi had not suffered from a depressive illness. Rather, his view was that the circumstances of his detention had caused him to suffer from a milder psychiatric disorder, namely an adjustment disorder, which had persisted for only two to four months. His assessment was that Ahmad Matairi had not suffered from PTSD and that he had not had "*a massive occupational impairment*".⁴³⁷

2.331 I conclude that Ahmad Matairi did suffer from psychiatric injury as a result of the way he was treated during his detention. However, the conflicting medical evidence means that I am unable to reach any conclusions about the duration or severity of that injury.

Daoud Mousa

2.332 Finally, it is also appropriate to summarise a psychiatric report submitted on behalf of Col Daoud Mousa, the father of Baha Mousa, during his civil claim against the MoD.

2.333 Col Daoud Mousa was also assessed by Essali in June 2007. He described to Essali the change in his mood and character since the death of his son. He suffered from headaches, fatigue, crying and forgetfulness. Essali diagnosed, as a clinical disorder, a severe depressive episode with psychotic symptoms. He was suffering from a morbid grief reaction. The disabling features were massive disability in personal care, and in the occupational, familial and social realms. His quality of life was also described by the doctor as "*poor*" and "*severely deteriorated after the index event*".⁴³⁸

2.334 Essali was of the opinion that the unexpected death of his son, and the manner in which this news was broken to him, were the probable cause of the condition suffered by Col Daoud Mousa. The doctor recommended antidepressant medication for the depression and also bereavement counselling, but also noted that Daoud Mousa had been noncompliant with medication and intolerant of psychotherapy, features which resulted in inpatient treatment now being a consideration. It was envisaged that treatment would be likely to continue for at least two years.⁴³⁹

2.335 Wessely agreed that Col Daoud Mousa was suffering from depression with morbid grief. However, he did not believe that there was any evidence of psychotic symptoms. He agreed that the most likely cause was the death of his son, and in particular the manner of his death. He agreed that treatment was necessary, but disagreed that inpatient treatment would be appropriate.⁴⁴⁰

2.336 I have no doubt at all that Baha Mousa's death caused Col Daoud Mousa to suffer from depression.

⁴³⁶ PIL000539-41

⁴³⁷ MOD045235-6

⁴³⁸ PIL000550-1

⁴³⁹ PIL000552-4

⁴⁴⁰ MOD045216

Summary

2.337 The physical injuries recorded in respect of the Detainees show that a number of them must have been severely and forcefully assaulted. The psychiatric injuries also demonstrated that their experiences in the TDF were, to say the least, extremely stressful. As is to be expected, some sustained more serious physical injuries than others. And one suffered more serious psychiatric effects. But the generality of the medical evidence demonstrates beyond doubt that most, if not all, of the Detainees were the victims of serious abuse and mistreatment by soldiers during their detention in the TDF.

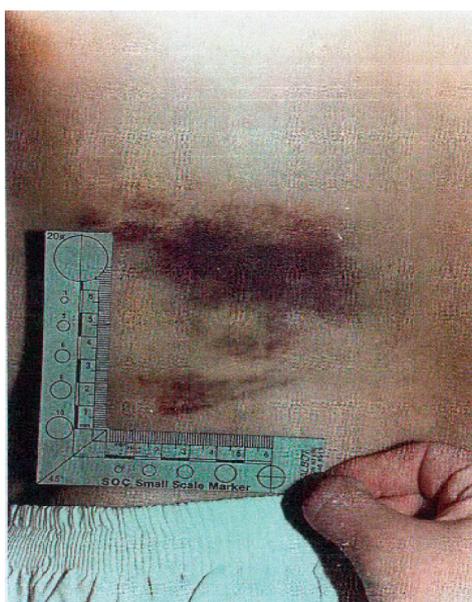
Evidence as to the Extent to which Injuries and General Condition of the Detainees would have been Apparent to Those Present at the TDF

2.338 Having set out the injuries suffered by the Detainees, this is a convenient point at which to address evidence as to the extent to which these injuries would have been visible to those who saw the Detainees between Sunday and Tuesday morning. It is useful to do so because a recurrent issue with which I have to deal in the following Chapters is the extent to which visitors to the TDF would have been aware of the mistreatment.

2.339 I attach some photographs of individual Detainees taken after they had been transferred to the TIF. It must be remembered that the photographs depict injuries, in particular bruising, which may have been more obvious at the time they were taken than when the Detainees were in the TDF.

Figure 6: Photographs of Detainees' injuries

View of the injury site (scaled) to left flank of D001



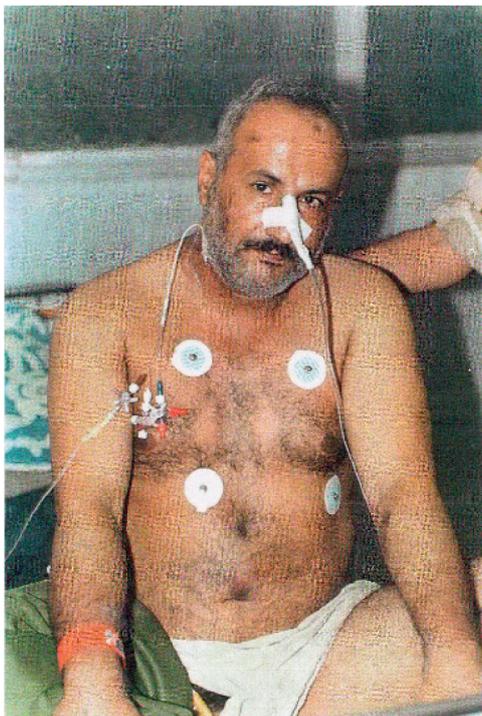
View of the injury site at left side of Kifah Matairi



View of the injury site at right side of Kifah Matairi



Frontal view of Kifah Matairi



View of the injury sites to front of torso of D003



View of injury site (scaled) to left oblique of D003



View of injury site (scaled) at right side lower back of Ahmed Maitham



View of injury site at right brow of D002



View of injury at right side of waist of D002



2.340 The following table summarises some of the key evidence about the state of the Detainees and of the TDF at various points during their detention at BG Main. By setting it out here I am taking that evidence out of chronological sequence. I return to each piece of evidence subsequently, at the appropriate point in the chronology. The table omits evidence from some soldiers to the effect that it was not apparent that the Detainees and TDF were in a poor condition. I found much of the evidence to that effect unconvincing, which is why I have omitted it below.

Witness	Timing	Evidence
Maj Richard Englefield	Sunday Morning, at the Hotel Ibn Haitham	Englefield saw a Detainee with a minor facial injury described as a cut to his lip or nose. He was told the Detainee had been injured while being put down to the floor. ⁴⁴¹
Cpl Steven Winstanley, Pte Steven Winstanley, LCpl Steven Baxter	Sunday, at a time between 11.00hrs and 15.00hrs ⁴⁴²	During the initial medical examination of the Detainees no injuries were found. ⁴⁴³
LCpl Simon Kendrick	Sunday, mid-morning to late morning On several occasions thereafter until late evening on Sunday	Kendrick noticed slight cuts and bruises to some Detainees' faces when their hoods were removed during the course of taking photographs for the Intelligence Cell records. ⁴⁴⁴ Kendrick noticed that the Detainees' condition deteriorated throughout the day. He thought they were tired, exhausted, sweating and finding it difficult to maintain stress positions; sometimes collapsing out of those positions. ⁴⁴⁵
CSgt Robert Livesey	Sunday, c 18.00–19.00hrs	In the TDF Livesey saw several Detainees in stress positions, hooded and plasticcuffed. They were moaning and whining. In the left-hand room he recollected there were three or four detainees crouched with their arms straight out in front of them. The Detainees were bedraggled and sweaty. He found the scene quite shocking and said that he had not come across anything like it before. ⁴⁴⁶
Lt Craig Rodgers	Sunday, c 18.45hrs–19.45 hrs	Rodgers said that Payne had pointed out to him the bruising on a Detainee's torso on the Sunday night. ⁴⁴⁷

⁴⁴¹ Englefield BMI 65/58/10-22; Englefield BMI04436, paragraph 179

⁴⁴² Baxter BMI 36/43/4-5; Baxter BMI 36/46/22-47/8 (referring to Baxter MOD000856); Cpl Steven Winstanley BMI 34/68/7-72/18; Pte Steven Paul Winstanley BMI 34/23/2-10; Pte Steven Paul Winstanley MOD000859

⁴⁴³ Baxter BMI 36/45/1-46/21; Pte Steven Paul Winstanley BMI 34/49/7-50/19

⁴⁴⁴ Kendrick BMI 38/157/3-160/8; Kendrick BMI 38/163/18-167/18

⁴⁴⁵ Kendrick BMI 38/167/19-170/21

⁴⁴⁶ Livesey BMI 39/24/8-26/13

⁴⁴⁷ Rodgers BMI 30/30/14-25

Witness	Timing	Evidence
Various soldiers from 1 QLR including Cpl Donald Payne and members of the Rodgers Multiple	Sunday, c 18.45hrs–19.45hrs	The “ <i>Free for All</i> ” incident is likely to have resulted in a deterioration in the condition of the Detainees. It is not possible to be specific about the details or degree of deterioration. ⁴⁴⁸
Ahmed Maitham	Sunday, c 22.30hrs	When Maitham was taken into the TDF he saw some of the Detainees looking exhausted, some of them had “ <i>torn out shirts</i> ”, and he described them as looking pitiful. The Detainees were moaning. ⁴⁴⁹ He told the Inquiry that the right-hand room of the TDF smelt disgusting, like a lavatory. ⁴⁵⁰
Pte Aaron Cooper	Sunday night	Cooper also said he became aware during the Sunday night that the Detainees had wet themselves. ⁴⁵¹
Pte Gary Reader	Sunday night	Reader described the condition of the Detainees as “ <i>quite bad</i> ”; they were tired and “ <i>visibly falling</i> ”. He remembered lots of moans and groans coming from them. ⁴⁵² He nicknamed one Detainee “ <i>Bruise</i> ” because of the bruising visible on his torso (on his abdomen, stomach, back and sides). He also saw bruising on the side of another Detainee (“ <i>young guy</i> ”). He was able to see these injuries because the Detainees’ clothing was in poor condition, either undone or torn. ⁴⁵³ Shortly after commencing his stag, he noticed for the first time that one of the Detainees, whom he had nicknamed “ <i>fat bastard</i> ”, had a cut on his nose. ⁴⁵⁴ Some had wet themselves and the room smelt of urine. ⁴⁵⁵ Indeed, in his SIB statement, he had referred to one of the Detainees as “ <i>pisspants</i> ”. ⁴⁵⁶

⁴⁴⁸ See Chapter 10 below

⁴⁴⁹ Maitham BMI 13/23/3-23/22

⁴⁵⁰ Maitham BMI 13/54/23

⁴⁵¹ Pte Aaron Cooper BMI 29/41/21-42/1

⁴⁵² Reader BMI 28/149/9-25

⁴⁵³ Reader BMI 28/139/13-140/20; Reader MOD000201-2

⁴⁵⁴ Reader BMI 28/212/8-13; Reader MOD000202; Reader MOD000204

⁴⁵⁵ Reader BMI 28/153/5-12; Reader BMI 28/185/14-16

⁴⁵⁶ Reader MOD000202

Witness	Timing	Evidence
CSgt Robert Livesey, D002	Sunday night, c 00.45hrs ⁴⁵⁷	<p>After D002 had been tactically questioned, Livesey escorted him back to the TDF. Livesey admitted that he punched D002 twice to the head around the right eyebrow with two relatively hard blows.⁴⁵⁸ As D002 was hooded, Livesey did not at that time know whether any injury was caused.⁴⁵⁹</p> <p>D002 stated that he was hit on the head more than once by the soldier accompanying him back to the TDF after questioning.⁴⁶⁰</p> <p>On 22 September 2003 Dr Hill identified an injury to D002 described as <i>“a gaping 1cm x 0.4cm laceration on the right side of the forehead at the medial end of the right eyebrow.”</i>⁴⁶¹</p>

⁴⁵⁷ SSgt Mark Davies MOD020301; MOD015395

⁴⁵⁸ Livesey BMI 39/42/16-43/5

⁴⁵⁹ Livesey BMI 39/44/7-12

⁴⁶⁰ D002 BMI01959, paragraph 44

⁴⁶¹ MOD000404

Witness	Timing	Evidence
LCpl Adrian Redfearn	Monday morning	<p>Redfearn stated that the temperature outside the TDF was in the mid-40s and it was like a sauna inside. The stench of urine and the humidity made the conditions disgusting.⁴⁶²</p> <p>Redfearn provided a graphic account as to what he witnessed at this time. He stated that the conditions in the TDF were indescribable. He explained that, <i>“When the Detainees were originally arrested they were tidily dressed and not in any kind of distress. The next time I saw them in the TDF on the Monday morning they all looked like they had been in a car crash. The majority of their clothes were ripped and most if not all of them had had heavy bruising across their abdomens and upper arms. This was visible through their ripped clothing. The bruising that I saw was not just simple round bruises that you might normally see. The bruises I saw ran in a line across the detainees’ stomachs and were perhaps five inches wide. The detainees also looked exhausted. When I started my guard shift and removed the detainees’ hoods I could see that at least two of them had bloody noses and bruising around their eyes. I remember that Baha Mousa was one of those with a bloody nose.”</i>⁴⁶³</p> <p>One Detainee had a visible lump in his pelvic area.⁴⁶⁴</p>
Pte Aaron Cooper	Monday morning	<p>In daylight, Cooper noticed bruising to <i>“the Detainee’s abdomen region”</i> (possible that transcript should say <i>“the Detainees’ abdomen region”</i>).⁴⁶⁵ He also saw bruising on Detainees’ faces when their hoods were lifted.⁴⁶⁶</p>
Pte Jonathan Hunt	Monday morning	<p>Hunt in evidence to the Inquiry agreed that on the Monday morning the Detainees were being kept <i>“in a pretty inhumane situation”</i>. He also said that on the Monday morning he was shown a large bruise on one of the Detainees. He identified the man with the bruise as the man who later died, namely Baha Mousa.⁴⁶⁷</p>

⁴⁶² Redfearn BMI01794, paragraph 100

⁴⁶³ Redfearn BMI01805, paragraph 134

⁴⁶⁴ Redfearn MOD000191

⁴⁶⁵ Pte Aaron Cooper BMI 29/32/20-33/6

⁴⁶⁶ Pte Aaron Cooper BMI04359, paragraph 96

⁴⁶⁷ Pte Jonathan Hunt BMI 27/69/24-70/2; Pte Jonathan Hunt BMI 27/141/6-142/22

Witness	Timing	Evidence
Pte John Douglas	By the end of Monday morning ⁴⁶⁸	Douglas was able to describe injuries which he had seen on the Detainees. They had injuries to their faces which could be seen when the hoods were lifted. These injuries consisted of bruising and marking around the face with blood on their lips and nose. He also remembered one detainee with a golf ball sized lump in his groin area which he thought could have been a hernia. ⁴⁶⁹
Pte Paul Stirland	By the end of Monday morning ⁴⁷⁰	Stirland saw bruising around the torso of one Detainee and a cut about another Detainee's eye. ⁴⁷¹
D003	Monday, between 10.00hrs and 15.00hrs (during a tactical questioning session) ⁴⁷²	D003 said by this point he had obvious marks to his body and no shirt on. ⁴⁷³
LCpl Ali Aktash	Probably early afternoon on Monday ⁴⁷⁴	The Detainees were "groaning" and "making noises as if distressed". He saw bruising on the face of one of the Detainees when a guard lifted up the Detainee's hood. ⁴⁷⁵
Pte Gareth Aspinall	Monday afternoon ⁴⁷⁶	Aspinall said he saw "really bad" bruising on at least one Detainee's torso and he thought that one or two had a cut lip or bloody nose. ⁴⁷⁷ Aspinall further stated that at about 14.00hrs or 15.00hrs on Monday he could no longer bear to be in the TDF because of both the deteriorating conditions (including the smell from the Detainees having soiled themselves) and the violence. ⁴⁷⁸

⁴⁶⁸ There is some confusion over when Douglas was first present at the TDF over the Sunday night and Monday morning, but it is likely that his visit during this period had ended by 13.00hrs on Monday; Douglas BMI 31/14/20-16/10

⁴⁶⁹ Douglas BMI 31/36/10-40/1

⁴⁷⁰ Stirland BMI02814, paragraphs 61-62; Stirland MOD000157

⁴⁷¹ Stirland BMI 38/33/16-34/23

⁴⁷² MOD015395

⁴⁷³ D003 BMI 10/105/1-107/5

⁴⁷⁴ Aktash BMI 16/77/8-11; Aktash BMI03480, paragraph 37

⁴⁷⁵ Aktash BMI 16/15/5-12; Aktash BMI 16/47/11-13

⁴⁷⁶ Aspinall BMI05222, paragraph 55; Bentham BMI 41/91/6-22; Pte Lee Graham MOD000146; Pte Jonathan Hunt MOD001397; Pte Jonathan Hunt MOD001404

⁴⁷⁷ Aspinall BMI 28/53/13-54/20

⁴⁷⁸ Aspinall BMI 28/58/8-22

Witness	Timing	Evidence
Pte Peter Bentham	Monday afternoon	Bentham said when he took over guard duty the Detainees were very tired. A few had injuries, one a hernia and another something wrong with his neck. These were pointed out by the outgoing guard. ⁴⁷⁹
Pte Lee Graham	Monday afternoon	Graham said that the room in which the Detainees were kept absolutely stank of sweat and urine to the extent that it was “almost uncomfortable just standing in the room”. ⁴⁸⁰ He described seeing during this guard duty bruising on the lower backs and sides of three of the Detainees. ⁴⁸¹
SAC Scott Hughes	Monday afternoon, c 15:00hrs ⁴⁸²	When Hughes mentioned the bad smell in the TDF, male 4 said to him, “They’ve pissed and shit themselves. Wouldn’t you if your head was covered and people were shouting at you?” ⁴⁸³ Hughes saw a Detainee in the middle room of the TDF, who was hooded and with the crotch of his trousers torn, overtly exposing his genitals. ⁴⁸⁴ The probability is that this Detainee was Baha Mousa. This is supported by a photograph of Baha Mousa which shows a large tear in his trousers in the groin area. ⁴⁸⁵

⁴⁷⁹ Bentham BMI 41/113/14-114/22

⁴⁸⁰ Pte Lee Graham MOD000146

⁴⁸¹ Pte Lee Graham MOD000151

⁴⁸² Betteridge BMI 15/4/5-6/2; Hughes BMI 15/72/23-76/17; LCpl James Riley BMI 15/149/12-150/20

⁴⁸³ Hughes BMI 15/86/15-22; Hughes MOD000072

⁴⁸⁴ Hughes BMI 15/113/5-115/2

⁴⁸⁵ MOD054295

Witness	Timing	Evidence
Pte Anthony Riley	Monday afternoon, c 17:00hrs ⁴⁸⁶	<p>Pte Anthony Riley saw a Detainee in the middle room of the TDF. The probability is that this man was Baha Mousa. He described this man as having a number of cuts on his face, a broken nose and blood on his lips. He was filthy and the room smelt. There were stains and marks on his clothing.⁴⁸⁷</p> <p>Pte Anthony Riley also witnessed the conditions in the right-hand room. All the Detainees in that room were in a state of distress, <i>“They were all making whimpering noises and groaning and they were shaking”</i>.⁴⁸⁸ The room smelt and there were pools of fluid and smears of solids on the floor. He believed the solids were faeces.⁴⁸⁹</p>
Capt Christopher Good	Monday afternoon, c 17:00hrs	<p>In the TDF Good saw a number of partially undressed Iraqis. Some of them were hooded and some not. He saw that they had cuts and bruises but he could not be specific as to what parts of their bodies were bruised.⁴⁹⁰</p> <p>Although during his oral evidence Good could no longer remember his earlier account, he accepted as true his own description in his SIB statement of seeing blood on the Detainees’ sandbags. He had described the Detainees covered in what appeared to be a film of sweat. In that statement he had also said that all of the Detainees were naked from the waist up and that they all had sandbags over their heads and their hands tied behind their backs. He also described in that statement a Detainee curled up on the floor, his knees to his chest, who appeared to Good to be in pain, because he was groaning.⁴⁹¹</p>

⁴⁸⁶ Schofield BMI 18/176/15-178/16; Schofield BMI 18/185/13-186/1

⁴⁸⁷ Pte Anthony Riley BMI 19/45/19-53/9

⁴⁸⁸ Pte Anthony Riley BMI 19/54/14-56/8

⁴⁸⁹ Pte Anthony Riley BMI 19/57/22-58/7

⁴⁹⁰ Good BMI 19/135/24-140/17

⁴⁹¹ Good BMI 19/141/5-143/24; Good MOD000632; Good MOD046720

Witness	Timing	Evidence
Capt Gareth Seeds	Monday night	<p>In the centre room Seeds saw what appeared to be a body, lying motionless underneath some cardboard (D004). He described the Detainees as <i>“tired, dirty, in pain”</i>. One of them was lying in the foetal position. It was <i>“clear he was struggling to lie still on the floor without actually being in physical pain”</i>.⁴⁹² He said he was embarrassed, ashamed and disgusted by the state of the Detainees.⁴⁹³</p> <p>The TDF had a general smell of urine and it seemed apparent that some of the Detainees had wet themselves. Maj Peter Quegan helped to lift up one of the Detainees before he was taken to the portaloo; this Detainee was in obvious pain.⁴⁹⁴</p> <p>Seeds said the lighting was not good in the TDF, he did not have a torch and he did not see injuries on Detainees. He agreed that it was obvious at that stage that at least some of the Detainees had been beaten.⁴⁹⁵</p>
Maj Peter Quegan	Monday night	<p>It appeared to Quegan that the Detainee he helped to the loo had soiled himself. He and Seeds helped a man who was lying in the foetal position on the floor of the right-hand room. He was in obvious pain: he winced and groaned and was obviously in too much pain to be lifted.⁴⁹⁶ Quegan recorded in his diary that this man was <i>“in too much pain to move”</i>. He recorded that <i>“some of the prisoners look in pain and at least one looks puffy around the face, so it may be physical”</i>.⁴⁹⁷</p>

⁴⁹² Seeds BMI 46/459/3-460/9

⁴⁹³ Seeds BMI 46/460/15-462/1

⁴⁹⁴ Seeds BMI 46/462/2-463/8

⁴⁹⁵ Seeds BMI 46/463/9-465/3

⁴⁹⁶ Quegan BMI 43/225/17-229/3; Quegan BMI 43/235/16-236/6

⁴⁹⁷ Quegan BMI00296

Witness	Timing	Evidence
Cpl Kenneth Simmons	Tuesday morning	<p>Simmons described the smell in the TDF as particularly unpleasant, a mixture of the smell of urine and sweat.⁴⁹⁸</p> <p>Simmons remembered facial injuries to one Detainee (D002), who had black eyes, congealed blood and cuts to the face and a thick lip. Another Detainee (Kifah Matairi) lifted up his shirt and showed Simmons that he had bruising all the way around his lower body. A further Detainee appeared to have been injured in his groin; he had a bulge above his groin.⁴⁹⁹ Simmons said that the Detainees were whimpering and even without being shown their injuries he would have been able to tell that they had been injured.⁵⁰⁰</p> <p>The Detainee whom Simmons assisted to walk up and down appeared to be in a lot of pain and was using Simmons as a human crutch.⁵⁰¹ One of the Detainees was unable to mount the lorry by himself and needed to be carried onto it on a stretcher.⁵⁰²</p>
Sgt Paul Smith	Tuesday morning	<p>The Detainees were in “<i>a right sorry state</i>”. Their clothing was filthy, they were dirty and dishevelled and they all looked tired. Nearly everybody, apart from the father and son, appeared to be stiff and tired to the extent that he had to get the guard to help them move up and around.⁵⁰³</p>

⁴⁹⁸ Simmons BMI 24/31/1-13

⁴⁹⁹ Simmons BMI 24/32/16-37/18; Simmons BMI 24/167/17-24

⁵⁰⁰ Simmons BMI 24/37/19-38/18

⁵⁰¹ Simmons BMI 24/52/2-55/13

⁵⁰² Simmons BMI 24/60/6-20

⁵⁰³ Sgt Paul Smith BMI 44/132/17-134/14; Sgt Paul Smith MOD000215

Chapter 8: Sunday Morning, Before the Start of the Fallon and Crowcroft Stag

- 2.341** In this Chapter I describe the arrival of the Detainees at BG Main on Sunday morning; their reception at the TDF; and the treatment of them before two guards from A Company took over guard duty.
- 2.342** Provost Sgt Paul Smith, Payne's superior NCO in the Provost Staff, was not present at the TDF on the arrival of the Detainees. So it was left to Payne to process the Detainees and supervise the guards. There was a period of time after the arrival of the Detainees at the TDF, and before Crowcroft and Fallon started their guard duty, when the processing of the Detainees was taking place. During that period of time Payne was in the TDF with other soldiers, including Stacey, the acting commander of the Hollender Multiple.

Initial Processing of the Detainees

- 2.343** On the arrival of the first six Detainees at the TDF, they were placed in the right-hand room. Stacey said in evidence that Payne turned the Detainees to the wall and one by one took their property; obtained their name; removed their plasticuffs, transferring them to the front; hooded them with a sandbag; and put them into a stress position.⁵⁰⁴ There is abundant evidence that in some cases it was possible for a hooded prisoner to see through the hessian material of the sandbag. If that happened, two sandbags were used, and sometimes three.⁵⁰⁵
- 2.344** Soon after 11.51hrs, D003 arrived at the TDF from Camp Stephen and was taken into the right-hand room, where he was plasticuffed and hooded. He was followed by D005 and D006, who were transferred to the TDF from Camp Stephen, arriving at BG Main at about 13.50hrs. These two Detainees, having been hooded and plasticuffed, were placed in the left-hand room. They were to be joined in that room at about 22.00hrs by Maitham. I take these timings from the logs.⁵⁰⁶
- 2.345** It is apparent that the soldiers who transferred the six Detainees from the Hotel to BG Main (listed at paragraph 2.145 above) remained at BG Main for some time.⁵⁰⁷ Exactly how long they stayed is, however, uncertain.
- 2.346** There is some evidence from other witnesses who were either present at, or in the vicinity of, the TDF when the six Detainees were being unloaded from the truck and taken into the TDF. CSgt Joel Huxley, the Quartermaster Sergeant, was based in the stores on the ground floor of the accommodation block, which was a short distance from the TDF.⁵⁰⁸ He thought it probable that he had seen the Detainees arrive. He said he was alerted to their arrival by soldiers from A Company coming over and telling him. He needed to know because the Quartermaster stores had to request

⁵⁰⁴ Stacey BMI 21/148/25-152/20

⁵⁰⁵ D003 BMI 10/86/19-87/7; D006 BMI 13/65/10-24; Fallon BMI 22/123/8-124/11; Reader BMI 28/136/7-16; Sgt Paul Smith BMI 44/103/8-21

⁵⁰⁶ See paragraph 2.382 below and paragraph 2.140 above

⁵⁰⁷ Broadbent, one of the Hollender multiple who escorted the Detainees to BG Main, estimated that they stayed at BG Main for "an hour to two hours" (MOD005057)

⁵⁰⁸ See figure 4 above (pages 80-81)

food and water for detainees (see Chapter 14). He said that there were a lot of soldiers “*milling around*”.⁵⁰⁹

2.347 Pte Craig Slicker, a member of the Quartermaster’s staff, in an SIB interview in March 2004, remembered the Detainees arriving and hearing “...*noise, beating, crying...*” He came out of the stores and went towards the door of the TDF and “...*could see all the beatings, the punches...*”.⁵¹⁰ In evidence to the Inquiry he said he was unable to remember the Detainees arriving.⁵¹¹ He did remember three other incidents to which I shall refer later. It seems unlikely that Slicker’s reference in his SIB interview to the arrival of the Detainees is accurate. He referred to the Detainees being accompanied by “...*twelve lads from A Coy, including Mr Rodgers...*”.⁵¹² In fact there is no dispute Rodgers was not present when the Detainees were escorted to BG Main. I believe Slicker was simply mistaken in this part of his evidence and he has transposed his recollection of what I find he saw later in the day (see Chapter 14).

2.348 Pte Liam Felton, also a member of the Quartermaster’s stores, said he remembered the arrival of the Detainees. He gave a graphic description of the Detainees being unloaded from the trucks in the middle of the night. He said one of the Detainees fell off the truck and broke his arm.⁵¹³ In a subsequent statement made after he had given evidence and during the Report writing stage he accepted that he must have been mistaken about the arrival of the Detainees and the timing of it.⁵¹⁴ He also gave evidence of occasions when he visited the TDF and saw the Detainees being beaten by soldiers.⁵¹⁵

2.349 In my view Felton was a very poor witness. There were difficulties with his evidence. The Detainees did not arrive during the night and none of them broke an arm. In addition, during the course of a searching cross-examination by Mr Neil Garnham QC, Counsel for soldiers represented by the Treasury Solicitor, his credibility was substantially damaged.⁵¹⁶ As a result I formed the view that Felton’s evidence was unreliable to the extent that I could not rely on any of it.

2.350 Allibone, Bentham, Kenny and MacKenzie, all members of the Rodgers Multiple, were part of the group of soldiers who accompanied the six Detainees from the Hotel to BG Main. Allibone, Bentham and Kenny said they did not see the Detainees being taken into the TDF. MacKenzie remembered the Detainees being dropped off but did not think he went into the TDF.⁵¹⁷

Payne’s Evidence

2.351 Payne agreed that at this stage he was in charge of processing the Detainees in the absence of Provost Sgt. Smith. He further agreed that on their arrival at the TDF he had put hoods over their heads, handcuffed them in the front, and placed

⁵⁰⁹ Huxley BMI 23/18/16-20/19

⁵¹⁰ Slicker MOD004800

⁵¹¹ Slicker BMI01856, paragraph 15

⁵¹² Slicker MOD004799

⁵¹³ Felton BMI 17/74/21-80/22

⁵¹⁴ Felton SUB003085-6

⁵¹⁵ Felton BMI 17/87/18-93/25

⁵¹⁶ Felton BMI 17/128/13-140/7; Huxley BMI 23/16/22-18/5; Huxley BMI 23/43/1-46/7; Huxley BMI 23/53/15-55/13

⁵¹⁷ MacKenzie BMI 29/145/1-5

them in stress positions facing the wall. He believed this to be a standard operating procedure which had been sanctioned by Brigade (see Part XIII).⁵¹⁸

- 2.352** Payne, it will be recalled, pleaded guilty at the Court Martial to a charge of inhuman treatment. He denied that he had been involved in any violent treatment of the Detainees before the “*Free for All*” incident on the Sunday evening which I describe in Chapter 10.⁵¹⁹ It follows that he did not accept that he had punched and kicked Detainees in the period after their arrival at the TDF and before the Crowcroft and Fallon stag.
- 2.353** Payne made three Inquiry statements, each of which he signed against the usual affirmation that the statement was true to the best of his knowledge and belief.⁵²⁰ The last of these statements, 16 November 2009, was the date on which he gave evidence to the Inquiry. In this statement he admitted that his first statement was in some respects untrue. He said he was “*now*” prepared to disclose that each time he returned to the TDF to ensure that the Detainees were awake the degree of force which he applied to enforce the stress positions was greater than he had hitherto admitted. In oral evidence he said that by this he meant that each time he went back to the TDF he would kick and punch the Detainees and on occasion lifted up their heads in such a way that he “*accidentally*” gouged their eyes.⁵²¹
- 2.354** Payne denied that this course of action by him started before the incident described in Chapter 10; in other words, before 19.00hrs.

Stacey’s Evidence

- 2.355** Stacey was in charge of the party transporting the Detainees from the Hotel to BG Main. On their arrival at the TDF he handed the Detainees over to Payne.⁵²² Stacey said he was present at the TDF, in all, for a period of no longer than one hour.⁵²³ He had seen detainees hooded on many occasions previously and on more than one or two occasions in stress positions. He said these occasions had been at Camp Stephen.⁵²⁴ This statement was not consistent with what he had told the SIB. When interviewed by the SIB he made no reference to other detainees being placed in stress positions.⁵²⁵
- 2.356** Stacey described the stress positions which the Op Salerno Detainees were made to adopt by Payne. He said their backs were to the wall with their knees bent and their arms in a parallel position held out in front. This was clearly a description of the stress position known as the ski position. He remembered Payne shouting at the Detainees to keep their arms up and the Detainees moaning and complaining. Stacey said when the Detainees fell over or dropped their arms Payne would put them back into the stress position. He accepted that he had assisted Payne in helping to get a Detainee back on his feet. He denied dragging the Detainee or other

⁵¹⁸ Payne BMI01721, paragraph 26; Payne BMI01737, paragraphs 76-77; Payne BMI01738, paragraph 80

⁵¹⁹ Payne BMI 32/94/6-95/1; Payne BMI 32/134/10-18; Payne BMI 32/150/22-151/12

⁵²⁰ Payne BMI01716, 24 June 2009; Payne BMI04227, 28 September 2009; Payne BMI05822, 16 November 2009

⁵²¹ Payne BMI 32/85/5-13

⁵²² Stacey BMI 21/150/1-16

⁵²³ Stacey BMI 21/147/22-23

⁵²⁴ Stacey BMI 21/132/6-134/3

⁵²⁵ Stacey MOD018770

Detainees to their feet but admitted that he had used his foot to move a Detainee's legs further from the wall.⁵²⁶

2.357 Insofar as Stacey supports the evidence of the Detainees that they were hooded and put into stress positions on their arrival at the TDF, I accept it. This part of his evidence is consistent with the evidence of the Detainees. However, I find it difficult to accept his evidence that what he saw Payne doing was merely lifting the Detainees back into stress positions rather than the more forceful conduct and shouting shown in the Payne video (see Chapter 9 below). When shown that video in evidence Stacey said that what he had seen Payne do was not the same as is shown in the video. Unconvincingly, he asserted it must have happened on a different occasion because when he was in the TDF Payne was wearing a different T-shirt and there were no water bottles.⁵²⁷

2.358 I do not accept that part of Stacey's evidence. In my opinion his evidence in that respect was an attempt to distance himself from Payne's actions of manhandling the Detainees and put his own in a more favourable light. He was the same rank as Payne and in my view he ought to have reported Payne's conduct up the chain of command. As to whether Stacey did more than merely move a Detainee's feet with his foot, I shall return to this in the concluding section of this Chapter.

Pte Lee's evidence

2.359 Pte Lee was a member of Hollender's Multiple and therefore on the day of the raid on the Hotel his Multiple commander was Stacey. As mentioned above, he was at the Hotel during the raid.

2.360 Pte Lee said that he went into the TDF about 30 minutes after the arrival of the Detainees.⁵²⁸ He had been a member of the party of soldiers accompanying the Detainees on their transfer from the Hotel to the TDF. In the TDF he saw Detainees in stress positions, which he described as in a sitting position but without a chair. They had sandbags on their heads and he thought they were plasticuffed. He said, "*They were screaming like babies*".⁵²⁹ He saw three men whom he identified as Stacey, Crowcroft and Fallon, punching and kicking the Detainees and dragging them into stress positions.⁵³⁰ He added that at one stage he was standing next to Stacey when one of the Detainees collapsed to the floor. Stacey then hit and punched the detainee. Pte Lee said in evidence:

*"I instinctively punched out as well. I grabbed him and pulled him to his feet and I don't know why I did it. I honestly don't know why I did it."*⁵³¹

2.361 He also said that other soldiers were going in and out of the TDF.⁵³²

⁵²⁶ Stacey BMI 21/152/7-157/17

⁵²⁷ Stacey BMI 21/159/23-161/11; Stacey BMI 21/188/3-7; Stacey BMI 21/192/14-20; Stacey BMI 21/196/13-17

⁵²⁸ Pte Johnathan Lee BMI 18/82/4-8

⁵²⁹ Pte Johnathan Lee BMI 18/87/23-88/15

⁵³⁰ Pte Johnathan Lee BMI 18/89/2-90/5

⁵³¹ Pte Johnathan Lee BMI 18/125/18-20

⁵³² Pte Johnathan Lee BMI 18/93/11-18

- 2.362** At the Court Martial Pte Lee had said in evidence that he saw a PTI (Physical Training Instructor) going into the TDF; the PTI was SSgt Christopher Roberts. At the Court Martial Lee said that, when he came out of the TDF, SSgt Roberts had told him what he had been doing, namely punching Detainees.⁵³³ However, in evidence to the Inquiry Pte Lee was unable to remember what Roberts had told him.⁵³⁴ I return to SSgt Roberts in Chapter 14.
- 2.363** These allegations were all challenged by Counsel acting for those soldiers against whom the allegations were made. It was suggested to Pte Lee, as it had been at the Court Martial, that he had simply made up these allegations and that there was no truth in them. It was suggested that he invented these allegations as a means of leaving 1 QLR. Pte Lee denied this.⁵³⁵ It was also suggested that he had been involved in an incident with Crowcroft, whom it was said he had threatened with a gun.⁵³⁶ Pte Lee denied this incident.⁵³⁷ In his Inquiry witness statement Pte Lee said he himself had received threats from members of the Regiment, essentially because he had told the SIB about the mistreatment of the Detainees which he witnessed.⁵³⁸
- 2.364** Pte Lee agreed that he had been an inadequate soldier⁵³⁹ and that following the tour in Iraq and an incident in Afghanistan in which he sustained a serious injury, he had suffered depression and some problems with his memory.⁵⁴⁰ The Judge Advocate at the Court Martial described him as a very unreliable witness.⁵⁴¹
- 2.365** It is clear that there are a number of discrepancies in the various statements made by him and the evidence which he gave to the Inquiry.⁵⁴² It is also very difficult to determine from his evidence precisely when some of the events which he described took place. Further, it is clear that his acknowledged inadequacy as a soldier did not make him popular with his peers. It may be that his unhappiness in the Regiment provided a motive for him to lie, or at least to embellish, his evidence. For this reason I found Pte Lee a witness whose evidence was difficult to assess. However, despite the various problems with his evidence, having observed him in the witness box, I do not wholly share the Judge Advocate's opinion of Pte Lee. I have no doubt that he was endeavouring to give the Inquiry truthful and accurate evidence. It is also to his credit that he admitted punching a Detainee. However, in my view it would be sensible to look for further evidence which supports Pte Lee's evidence before accepting it.

Pte Hill's Evidence

- 2.366** Pte Hill was one of the drivers for the Hollender Multiple. After the arrival of the Detainees at the TDF he went into it looking for Stacey who, at that time, was his Multiple commander. In his oral evidence to the Inquiry he was asked by Counsel to

⁵³³ Pte Johnathan Lee CM 50/43/22-44/11

⁵³⁴ Pte Johnathan Lee BMI 18/130/2-18

⁵³⁵ Pte Johnathan Lee BMI 18/121/24-122/16

⁵³⁶ Crowcroft BMI02564-5, paragraphs 163-171

⁵³⁷ Pte Johnathan Lee BMI 18/133/13-21

⁵³⁸ Pte Johnathan Lee BMI02610-11, paragraphs 52-53

⁵³⁹ Pte Johnathan Lee BMI 18/146/25-147/3

⁵⁴⁰ Pte Johnathan Lee BMI 18/71/8-24; Pte Johnathan Lee BMI 18/104/12-16

⁵⁴¹ CM 79/23/16-24/22

⁵⁴² For example, in his Inquiry witness statement he claimed to have seen the "choir" first-hand: Pte Johnathan Lee BMI02607, paragraph 46. Before the Inquiry he retracted this and said that he had actually seen it on a video (which he had not mentioned previously): Pte Johnathan Lee BMI 18/98/20-99/4

the Inquiry what he saw in the TDF when he went into it. He described seeing the Detainees against the walls, either side of the right-hand room. He said he thought that some were sitting and some had their backs to the wall. He was then asked:

“Q Hooded?”

A I don’t recall now. Some possibly, yes.

Q But you don’t recall either way; is that what you are saying?”

A I don’t remember specifically, no.

Q Anything else you remember about the detainees?”

A Not specifically.”⁵⁴³

2.367 He agreed that he had seen Stacey and Payne in the TDF at that time. He was asked if he saw what Payne was doing. His answer was:

“A I don’t really remember. Moving them into a position, just making sure they were keeping quiet.

Q How was he making sure they were keeping quiet?”

A Just being in the room, just telling them not to talk.

Q Telling them? Shouting?”

A Possibly shouting.”⁵⁴⁴

2.368 In my view it was clear that at this stage in his evidence Pte Hill was reluctant to describe what he had seen. However, on further questioning from Counsel to the Inquiry he accepted that he had seen the Detainees hooded and in stress positions. Further, he accepted that what he had said in his SIB statement of 25 August 2004 was the truth.⁵⁴⁵ In that statement he had said:

“Whilst outside QLR Main holding cell I did not hear anyone scream, however, I could hear soldiers shouting at the detainees. Upon looking at the holding cell there was a door on the right hand side of the building which was open, through which I could see a soldier named Don Payne, who I believe is a CSgt and a member of 1 QLR, and Cpl Stacey place the detainees in stress positions.”⁵⁴⁶

2.369 He went on to say:

“The stress position the detainees were placed in involved having their backs against the wall, thighs parallel to the ground with calves at 90° to the thighs. The detainees then had to put their arms out straight to the front and hold the position. Both Cpl Stacey and the individual known to me as Don Payne were kicking the detainees’ feet in order to put them into the correct stress position. Some of the detainees were moaning and complaining about the pain of holding this position.”⁵⁴⁷

⁵⁴³ Pte Gareth Hill BMI 16/143/14-15

⁵⁴⁴ Pte Gareth Hill BMI 16/144/10-17

⁵⁴⁵ Pte Gareth Hill BMI 16/157/3-7

⁵⁴⁶ Pte Gareth Hill MOD000270

⁵⁴⁷ Ibid.

Conclusions

- 2.370** The Detainees said that they were punched and kicked from the outset of their detention in the TDF. I accept their evidence and find that the assaults on them did start from the moment they were placed in the TDF, hooded, handcuffed and in stress positions. The moans and groans which Pte Hill described in his SIB statement lend some support to the Detainees' evidence.
- 2.371** There is also evidence of other soldiers who were in the vicinity of the TDF at that time. I think it probable that some of them entered the TDF and assaulted the Detainees. However, on the evidence I am unable to identify any such soldier save Pte Lee, who admitted punching a Detainee at this time. Although a disgraceful action and a serious breach of discipline, it is to Pte Lee's credit that he confessed to doing so.
- 2.372** So far as Payne is concerned, I am distinctly sceptical about his assertion that his assaults on the Detainees only started later on Sunday evening. The Payne video, which I discuss in the following Chapter, shows Payne forcefully enforcing stress positions at, or about, 12.00hrs on Sunday. I believe that his actions at this time went beyond forcefully enforcing the stress positions and into the realms of assaults. As to the allegations made against Stacey by Pte Hill and Pte Lee, in my opinion they support a finding that Stacey kicked the Detainees' feet apart in order to enforce the stress position. Stacey accepted that he moved the Detainees' feet with his foot but I find that Pte Hill's description that he kicked the Detainees' feet apart is a more accurate description of what he did. I do not, however, find the evidence sufficient for a finding that he punched the Detainees.

Chapter 9: The Fallon and Crowcroft Stag (Sunday Afternoon)

The Stags

- 2.373** Throughout the Detainees' detention in the TDF they were guarded by soldiers either from the Hollender Multiple or from the Rodgers Multiple. For the whole of this time they were overseen by Payne, although his presence in the TDF was intermittent. Guard duties were divided into periods of time called "stags". Stags varied in duration and ordinarily consisted of two, but on occasion three, soldiers. However, at times, accompanying those carrying out the stags were other members of the Multiple, some of whom were due to do a stag or had already been on duty. The evidence suggests that stags were not always rigidly adhered to. It seems that from time to time one soldier was on guard in the TDF whilst another was outside smoking a cigarette or resting. Similarly, soldiers resting between stags, and even those who had not been allocated a stag, would on occasion take over for one or both of those who were on duty. For instance, Douglas, one of the Rodgers Multiple Saxon drivers, said that on 15 September although he was not tasked to carry out a stag he helped out those who were on duty so they could rest.⁵⁴⁸ There therefore appears to have been some flexibility in the operating of the stags.
- 2.374** Before Stacey left to go back to the Hotel he detailed Crowcroft and Fallon to carry out the first stag.⁵⁴⁹ Once the Detainees had been processed, that is hooded and placed in stress positions, and their belongings taken, Crowcroft and Fallon, members of the Hollender Multiple, carried out the first stag from approximately 11.30hrs⁵⁵⁰ to 19.00hrs. At about 19.00hrs the Rodgers Multiple took over.⁵⁵¹ For the purpose of guarding the Detainees the Rodgers Multiple was divided into two sections. The first section, for which MacKenzie was in charge of organising the rosters,⁵⁵² carried out the stags from 20.00hrs on 14 September until approximately 06.00hrs on 15 September.⁵⁵³ They were relieved by the second section, of which Redfearn was the senior NCO, and which carried out guard duty until about 13.00hrs on 15 September. Between about 13.00hrs and about 21.15hrs, only three members of the Rodgers Multiple, namely Bentham, Graham and Aspinall, were left at the TDF to guard the Detainees. At the end of that period the rest of the Rodgers Multiple returned. Baha Mousa's death occurred shortly thereafter. The identities of those on guard duty after the death are not entirely clear.

⁵⁴⁸ Douglas BMI 31/103/13-104/19

⁵⁴⁹ Stacey BMI 21/153/2-12

⁵⁵⁰ Stacey BMI 21/153/2-15: see Stacey's evidence that Fallon and Crowcroft commenced guard duty after the initial processing, which took about an hour.

⁵⁵¹ MOD016576: the 1 QLR radio log shows that at 18.48 the Rodgers Multiple was leaving Camp Stephen for BG Main.

⁵⁵² Reader BMI 28/134/6

⁵⁵³ The stag times were set out in Mackenzie's SIB statement of 10 October 2003, at MOD000115. Whilst it appears from this statement that the intention was that Mackenzie's section of the Multiple would guard until 8am, the other half of the Multiple in fact returned to BG Main to take over shortly before 6am: the 1 QLR Watchkeeper's log records that at 05.26, the Multiple was heading to BG Main "for guard task".

Detainees' Evidence of their Treatment During Crowcroft and Fallon's Stag

2.375 It will be remembered that the Detainees said that from the outset they were ill-treated by being verbally abused, kicked and punched. D001 remembered the beatings starting a minute or two after being hooded, and continuing thereafter.⁵⁵⁴ D002 said the beating started about fifteen minutes after arrival at the TDF.⁵⁵⁵ By this time he had three hoods over his head. D004 said beatings and abuse started a very short time after arrival at the TDF and continued thereafter.⁵⁵⁶ Ahmad Matairi similarly said he was punched, kicked and poked straight away on arrival.⁵⁵⁷ All of them maintained they were made to adopt stress positions, half sitting with their backs to the wall in what has become known as the "ski" position. They were made to keep their arms outstretched in front of them parallel with the floor. If they fell out of a stress position they were punched, kicked, roughly handled and put back into the position.⁵⁵⁸ Water was fed to them in such a way as to spill over their faces and clothes. Although they were taken to the toilet from time to time there were occasions when they were left to soil themselves. They also complained about the intense heat in the TDF and the increasingly unpleasant stench.⁵⁵⁹

Crowcroft and Fallon's Evidence

2.376 Both said that having been detailed by Stacey to carry out the first stag they went into the TDF where they found Payne. The Detainees were in the right-hand room, hooded and in stress positions. Some were speaking, some were moaning; Payne was shouting and swearing at them. Whenever a Detainee dropped out of the stress position Payne dragged him up, shouting "*Get up you fucking bastard*".⁵⁶⁰

2.377 Crowcroft said that Payne in his briefing to them told them to make sure that the Detainees were kept awake and in stress positions with their legs apart. He said that at some point he was told that the Detainees would be questioned by a tactical questioner. For this reason Payne emphasised that the Detainees should be prohibited from talking to each other.⁵⁶¹ Fallon agreed with this description of the briefing by Payne.⁵⁶² I have no doubt that Payne did brief these two soldiers in those terms. Payne accepts that he briefed Fallon and Crowcroft that the Detainees should be held in stress positions and should not be allowed to talk. He also claimed to have told Fallon and Crowcroft that the stress positions should be released every now and again, but admitted that he gave no guidance about when this should happen.⁵⁶³ I have equally no doubt that his own conduct was as good an example to them as any of the sort of force which they should use to enforce stress positions and generally to deal with the Detainees.

⁵⁵⁴ D001 BMI 12/14/20-15/11

⁵⁵⁵ D002 BMI 20/7/1-5

⁵⁵⁶ D004 BMI 18/38/21-39/7

⁵⁵⁷ D001 BMI 12/64/6-12

⁵⁵⁸ D001 BMI 12/20/15-16

⁵⁵⁹ See references in Chapter 6 above

⁵⁶⁰ Crowcroft BMI 22/21/10-11; Crowcroft BMI 22/24/9-28/23; Fallon BMI 22/136/16-138/13

⁵⁶¹ Crowcroft BMI 22/30/2-31/18

⁵⁶² Fallon BMI 22/140/23-141/8

⁵⁶³ Payne BMI 32/64/22-65/7

2.378 So far as their guard duty over the whole period of the stag was concerned both Fallon and Crowcroft said that neither of them did more than pick up Detainees when they fell over. Crowcroft admitted shouting and swearing at them but denied punching or kicking them, or seeing anyone else punch or kick them. He accepted that they were manhandled from time to time and were in stress positions for a very long time.⁵⁶⁴ Fallon also said that he neither kicked nor punched a Detainee, nor saw anyone else kicking or punching them. He only pushed Detainees' legs apart "carefully and gently." He conceded that some of the Detainees were double-hooded for the whole period of their eight hour stag.⁵⁶⁵ Whilst Crowcroft said that after some time they got bored with trying to keep the Detainees in stress positions and allowed them to sit down,⁵⁶⁶ Fallon's recollection was that stress positions were enforced throughout their stag.⁵⁶⁷ But at all times they ensured that they were hooded. Neither regarded what they were asked to do, and did, at the time as being wrong or inhumane.⁵⁶⁸

The Payne Video

2.379 This clip of video film has been referred to during the Inquiry hearings as the Payne video. There is no dispute that it depicts Payne shouting, swearing and manhandling six Detainees in the right-hand room.⁵⁶⁹ The evidence shows that the six Detainees were, in order, moving from left to right across two still photographs taken from the clip (see figure 7): Ahmad Matairi; D002; D004; Baha Mousa; D003; and D001. For reasons which I explain below I find that it was filmed at or just after 12.00hrs. This puts it as taking place during the Crowcroft and Fallon stag. Crowcroft and Fallon may not have been present at the moment the video was filmed, but it demonstrates the sort of conduct by Payne which each soldier must have seen when Payne came into the TDF during their stag.

⁵⁶⁴ Crowcroft BMI 22/46/21-47/18; Crowcroft BMI 22/50/7-19

⁵⁶⁵ Fallon BMI 22/124/18-125/1; Fallon BMI 22/144/2-23; Fallon BMI 22/146/14-147/1; Fallon BMI 22/170/21-24

⁵⁶⁶ Crowcroft BMI 22/51/2-53/4

⁵⁶⁷ Fallon BMI 22/145/8-17; Fallon BMI 22/171/12-172/2

⁵⁶⁸ Crowcroft 22/44/19-25; Crowcroft BMI 22/45/18-46/9; Fallon BMI 22/171/21-23

⁵⁶⁹ BMI02686

Figure 7: still photographs from the Payne video



2.380 Before I describe further what is portrayed in the video I must explain its provenance. The video, along with numerous photographs and some other videos, had been copied onto a recordable compact disc from a laptop computer used communally

by members of Hollender's platoon, 3 Platoon of A Company. The disc was given to LCpl Carl Cunningham by someone whom he was genuinely unable to name. Cunningham then handed a copy of the disc to Cpl David Schofield. Schofield passed a copy to the SIB.⁵⁷⁰ Cunningham was a member of Hollender's platoon.⁵⁷¹

2.381 The disc was examined by experts. What follows is taken from the experts' report.⁵⁷² From information obtained from the disc the experts were able to state that photographs on the disc had been taken by three different camera models, one of which was a Fuji FinePix F601. Additionally, two of the videos on the disc had been taken by a Fuji FinePix F601. The second of these videos is the Payne video. From an examination of the photographs and the video the experts were able to retrieve information about the time and date when they had been taken. This information is recorded in the electronic files containing the photographs and the video. The date of the video, as recorded, is 14 September 2003; the time recorded is 08.02hrs. All this information was available to the Court Martial in the unused material.

2.382 The Inquiry downloaded a number of the photographs on the disc which were taken by a Fuji FinePix camera. Information has also been obtained about the difference between the time in Basra and Greenwich Mean Time on 14 September 2003. The difference was four hours. Assuming the camera was calibrated to Greenwich Mean Time (rather than British Summer Time), adding the four hours to the time recorded on the video brings the time when the video was taken in the TDF to 12.02hrs. The video shows D003 as being present. As previously stated the BG Net Radio Operator's log shows him as being on his way to BG Main from Camp Stephen at 11.51hrs.⁵⁷³ BG Main was only about five minutes' drive from Camp Stephen.⁵⁷⁴ It follows that D003 would have arrived at BG Main shortly after 11.51hrs. It is likely that processing, hooding and handcuffing him took a few minutes. It is therefore just possible that the video was in fact taken at 12.02hrs. Alternatively, the clock on the camera may have been a little slow, and the video may have been taken shortly after 12.02hrs.

2.383 This information was put to Pte Hill, a driver for the Hollender Multiple, by Counsel for the Inquiry.⁵⁷⁵ Pte Hill accepted that on the tour he had a camera of precisely the same make and type as that used to provide the film for the Payne video, and that he took photographs from time to time during the tour. Indeed, Stacey described him as a "*happy snapper*" on account of his habit of taking photographs.⁵⁷⁶ Pte Hill also accepted that on the morning of 14 September 2003 he went into the TDF where he saw the Detainees hooded and in stress positions. He was looking for Stacey his multiple commander.⁵⁷⁷ He denied the suggestion that he had filmed the video. However, when the still photographs from apparently the same camera – at least, from a camera which was the same make and model – were put to him he accepted that one was taken by him with his own camera, a Fuji FinePix F601. He accepted that all but one of the other photographs were of locations which he recognised. In one of them he was able to identify the soldiers in the photograph. However, he did

⁵⁷⁰ Schofield BMI 18/200/22-205/16; Cunningham BMI04872-3, paragraphs 7-9

⁵⁷¹ Cunningham BMI04871, paragraph 3

⁵⁷² MOD019539

⁵⁷³ MOD016572

⁵⁷⁴ Pte Lee Graham BMI 26/61/12-17; Stacey BMI 21/139/1-6

⁵⁷⁵ Pte Gareth Hill BMI 16/172/11-181/12

⁵⁷⁶ Stacey BMI 21/129/7-19

⁵⁷⁷ Pte Gareth Hill BMI 16/141/23-148/23

not remember having taken those photographs.⁵⁷⁸ It was submitted on his behalf that the Fuji FinePix F601 camera is a popular model and one which other members of 1 QLR may have possessed.⁵⁷⁹

- 2.384** From this evidence I find that the camera used to take the video was the same as the one which took the photographs. In my opinion it would be too much of a coincidence for two cameras of the same make and type to have produced these photographs and the Payne video. It follows that it was Pte Hill's camera which was used to take the video. However, it may be that, as Pte Hill himself said, other people used the camera.⁵⁸⁰
- 2.385** Pte Hill was not an impressive witness and I found his denial that he took the video film with this camera unconvincing. Nevertheless, although I am deeply suspicious that he did take this film, the evidence is not such that I can find that he did. I also recognise that it is possible that it was taken by someone else after Pte Hill, with Stacey, had returned to Camp Stephen.
- 2.386** It is surprising and disappointing that no soldier has been able and willing to identify the person who filmed the video. Payne must have seen the cameraman filming him. It is possible that other soldiers who were in or near the TDF at this time, including Fallon and Crowcroft, were also aware of the cameraman's identity. Yet no one has revealed it to the Inquiry.
- 2.387** Payne identified himself in the video and said that he thought it must have been taken earlier than 12.02hrs although he was unable to say who took it or when it was taken.⁵⁸¹ In my view the evidence clearly shows, and I find, that it was taken shortly after 12.00hrs on 14 September 2003. Considered together, several aspects of the footage itself suggest that it was filmed early during the Detainees' detention: the room is relatively tidy; the clothing worn by the Detainees is not torn; the Detainees are, at least to some extent, still able to maintain the ski stress position; and it is daylight. Payne's evidence that it was taken on Sunday albeit in the morning is also significant.
- 2.388** The video shows Payne enforcing the stress positions in which the Detainees had been placed. He is dressed in combat trousers and a black T-shirt and is shown going round the room stopping at each Detainee and roughly manhandling them into the stress position at the same time shouting loudly at each one, swearing and using abusive language. At one stage Payne can be heard shouting at one of the Detainees, apparently using the words, "*Get up you fucking ape...*". He confirmed in evidence that this was in fact what he shouted.⁵⁸² The video has to be viewed in order to appreciate the full horror of Payne's actions.
- 2.389** Counsel to the Inquiry showed the Payne video to a number of witnesses for their comments. Mendonça was asked if he saw anything wrong with the film. His answer was:

*"There wasn't anything right with what you saw."*⁵⁸³

⁵⁷⁸ Pte Gareth Hill BMI 16/172/20-179/12

⁵⁷⁹ SUB003071

⁵⁸⁰ Pte Gareth Hill BMI 16/186/22-187/2

⁵⁸¹ Payne BMI 32/131/7-134/9

⁵⁸² Payne BMI 32/146/9-13

⁵⁸³ Mendonça BMI 59/122/2-15

- 2.390** Maj Stephen Bostock, the second in command of 1 QLR until mid-August 2003, described the conduct shown in the video as “*disgraceful*”.⁵⁸⁴ Payne, in answer to a question put by his Counsel, said of his conduct portrayed in the video that it was “*appalling*.”⁵⁸⁵
- 2.391** Crowcroft and Fallon were each shown the video during their evidence to the Inquiry and asked to comment on it. Crowcroft agreed that the video depicted the type of conduct which he had seen Payne use. Both Crowcroft and Fallon said that, at the time, they thought such conduct was proper although Fallon said that what he had seen Payne doing was different from what was shown in the video.⁵⁸⁶
- 2.392** In my opinion, the actions shown in this video are deplorable and shameful. The shouting, swearing and manhandling of the Detainees bear the hallmarks of a bully. There is no way this sort of conduct could possibly be justified as proper and legitimate by anyone who witnessed it.
- 2.393** The importance of this video to the Inquiry is that it demonstrates in the clearest way an example of the abuse carried out on the Detainees in the TDF. Furthermore the video shows that it was being carried out by Payne on the Detainees within the first few hours of their arrival at the TDF; that at that time they were hooded and in stress positions; and that it was taking place in the presence of at least one 1 QLR soldier who he must have realised was photographing it. Finally, the action in the video appeared to demonstrate the way in which Payne enforced stress positions, with just a hint at the way it developed subsequently into the process described by a number of witnesses as the “choir”.

Ingram

- 2.394** There is other evidence which relates to the events in the TDF on Sunday morning and afternoon which throws some light on the treatment of the Detainees. It consists of evidence given by 1 QLR personnel who for one reason or another visited the TDF on the morning and afternoon of 14 September. It is not easy to place the incidents described in this evidence in chronological order but I am satisfied that they all took place during the course of Crowcroft and Fallon’s stag.
- 2.395** The first such incident with which I shall deal, although I stress not necessarily first in time, concerns Ingram. Ingram, it will be remembered, was the A Company Crime Officer. He said that he went to the TDF on Sunday. The Detainees were hooded and positioned with their backs to the wall. Their legs were at 90 degrees and their hands in front of them. They were making sounds as if their muscles were hurting and consistent with being in stress positions. They also appeared to be hot and sweating. Ingram’s purpose in going to the TDF was to obtain the names of Detainees whose names he had failed to obtain at the Hotel. There were two soldiers present guarding the Detainees. Ingram was unable to recognise either soldier. He thought one of them might have been a Lance Corporal, although it was possible that they were both Privates. He asked one of them to bring the Detainees

⁵⁸⁴ Bostock BMI 55/146/24-148/16

⁵⁸⁵ Payne BMI 32/185/19-23

⁵⁸⁶ Crowcroft BMI 22/40/16-46/25; Fallon BMI 22/136/16-138/16

to him individually in the left-hand of the two main rooms of the TDF. At that time the left-hand room was empty so it must have been before D005 and D006 were brought to the TDF at about 13.50hrs.⁵⁸⁷

- 2.396** The interpreter asked for the Detainees to keep their hoods on so that they could not identify him. When one of the last Detainees came through Ingram asked his name twice but the Detainee did not give it. Ingram said the soldier who had brought him into the room then punched the Detainee in the stomach. Ingram said in evidence it appeared to be a light punch but it was sufficient to cause the Detainee to make a noise. He was unable to identify the soldier. He said he gave him a severe reprimand, loud enough for the second guard to have heard it. Subsequently he reported the incident to Peebles, the BGIRO.⁵⁸⁸ Peebles had no recollection of the incident.⁵⁸⁹ In my view Ingram was a truthful witness and I accept that he did report the incident to Peebles.
- 2.397** I am sure that the incident occurred as Ingram related it. In my view it is probable that the soldier concerned was either Crowcroft or Fallon, although neither was a Lance Corporal. It seems to me unlikely that it could have been some other soldier. There is no evidence of there being more than just Crowcroft and Fallon on guard at that time, although other soldiers may well have visited the TDF.
- 2.398** Ingram gave a description of the soldier, but I am quite unable to find which of the two, Crowcroft or Fallon, it was.
- 2.399** It is relevant to note that Ingram accepted that he saw the Detainees in stress positions but did not regard this as worthy of reporting up the chain of command.⁵⁹⁰ He was asked about a passage in his SIB statement in which he had said, "*While some of the men appeared to be in some distress, I did not think they were in complete agony so did not intervene to correct their treatment*".⁵⁹¹
- 2.400** In oral evidence he said that stress positions were obviously designed to give muscular pain but he did not think it was at this point too severe.⁵⁹² I found that on this matter Ingram's evidence was somewhat defensive. He was at the time a young and inexperienced officer and although he believed hooding and stress positions to be a standard operating procedure, in my view he ought, at the least, to have reported what he had seen up the chain of command. If, as is likely, the Detainees were showing signs of discomfort, he should certainly have intervened and reported what he had seen.

Kendrick

- 2.401** Simon Kendrick, a Lance Corporal in the Intelligence Cell of 1 QLR, went to the TDF some time about mid-morning of 14 September 2003. He arrived there after the first Detainees had reached the TDF and been processed. He was sent to the TDF in order to photograph the Detainees. He had performed this task on previous occasions with other detainees. He said all the detainees whom he had seen in the

⁵⁸⁷ Lt Douglas Ingram BMI 17/159/18-165/21

⁵⁸⁸ Lt Douglas Ingram BMI 17/165/22-176/20

⁵⁸⁹ Peebles BMI 40/133/16-134/8

⁵⁹⁰ Lt Douglas Ingram BMI 17/167/2-14

⁵⁹¹ Lt Douglas Ingram BMI 17/167/24-168/10

⁵⁹² Lt Douglas Ingram BMI 17/168/12-17

TDF before Op Salerno were hooded and in stress positions. It was therefore no surprise for him to find these Detainees similarly hooded and in stress positions.⁵⁹³

2.402 The hoods were removed for him to take photographs of each Detainee. When the hoods were removed he noticed slight cuts and bruises to the faces of some of these men. He did not report these injuries because he thought the photographs were a sufficient record for the Intelligence Cell and those at Um Qasr.⁵⁹⁴ The Inquiry has sought to find the photographs and other records of the Detainees which ought to have been sent with them to the TIF. However, it appears they have not survived the passage of time.

2.403 Kendrick returned to the TDF several times during that day, through until the late evening. On each occasion the Detainees were hooded and in stress positions. He noticed that their condition deteriorated throughout the day. They became tired, exhausted and very hot. He saw that they were having difficulty maintaining stress positions and when they fell over they were picked up roughly by the guards.⁵⁹⁵ He remembered seeing Payne being present on his visits but did not see him kicking or punching a Detainee. He did see Payne forcefully pick up and restrain them. He remembered seeing Payne putting his forearm across a Detainee's throat and moving a Detainee into the middle toilet room (although he was not sure whether this was on Sunday or later). Both these actions concerned Baha Mousa. The reason for Payne moving Baha Mousa to the middle room was that Baha Mousa was being disobedient.⁵⁹⁶ From other evidence, it appears that it was in fact on Monday that Baha Mousa was moved to the middle room (see Chapter 13 below).

2.404 Giving evidence, Kendrick appeared nervous but he gave his evidence in a clear and thoughtful way. Later in this Report I shall comment on his evidence concerning what I will refer to as the generator incident. He was cross-examined by Counsel acting for SSgt Davies about that incident and the reference to it in a statement made by him to the SIB on 1 September 2005. Suffice it to say at this stage that his cross-examination revealed some unusual circumstances in the way the witness statement was compiled and signed by Kendrick. However, as to his evidence which I have just related above, I have no reason to doubt its accuracy. I accept that Kendrick did see the injuries he described and the steady deterioration of the condition of the Detainees. What he had seen must have been obvious to Crowcroft and Fallon. It is possible that the facial injuries which he saw were those later recorded as having been sustained by Baha Mousa and D003.

Stokes

2.405 Bdr Terence Stokes came to the attention of the Inquiry as a result of completing a questionnaire sent to all enrolled members of 1 QLR at the time of Op Telic 2.⁵⁹⁷ He described an occasion at BG Main when he was walking past the TDF. He said this was on the day of Op Salerno. He saw a detainee kneeling down in what he called the "*compliance position*" outside the TDF. The detainee was not hooded. At some point a guard, whom he was unable to identify, made a sharp movement with his foot,

⁵⁹³ Kendrick BMI 38/157/3-160/8; Kendrick 38/163/18-166/13

⁵⁹⁴ Kendrick BMI 38/166/17-167/18

⁵⁹⁵ Kendrick BMI 38/167/19-170/21

⁵⁹⁶ Kendrick BMI 38/170/22-176/18

⁵⁹⁷ Stokes BMI 43/179/2-8

kicking the detainee in the face. He saw the movement out of the corner of his eye and then observed blood on the detainee's face.⁵⁹⁸

2.406 It has been submitted on behalf of the Detainees that this incident occurred during the Fallon and Crowcroft stag, and that the incident may have involved Fallon and Crowcroft.⁵⁹⁹ In my judgment, it would be unsafe to accept this submission. None of the Detainees described such an incident. None of them has described being unhooded outside the TDF. Stokes described the operation involving these detainees as a hard knock operation;⁶⁰⁰ Op Salerno was a soft knock operation. There is no sound evidence for concluding that the individuals he saw were Fallon or Crowcroft. For all of these reasons, whilst I accept that Stokes' evidence was truthful and accurate, I do not accept that it concerned Fallon or Crowcroft, or even that it concerned the Op Salerno Detainees. I therefore place no reliance on Stokes' evidence when reaching my conclusions about the conduct of Fallon and Crowcroft.

Peebles

2.407 Peebles said that he went to the TDF three or four times on Sunday 14 September.⁶⁰¹ The third time, at 16.30hrs, was the only occasion which was definitely during Crowcroft and Fallon's stag.⁶⁰² It is not possible for me to determine whether on the earlier occasions Crowcroft and Fallon were present although it is likely that if not in the TDF, they were in the vicinity of it.

2.408 Aktash, a Territorial Army (TA) soldier, who was deployed to Iraq initially to Brigade, in September 2003 was sent to 1 QLR to look after their radio equipment. In addition, he acted as a Watchkeeper in the Operations Room at BG Main monitoring the Brigade net.⁶⁰³ He said he remembered an occasion when he had overheard Peebles answer, "*Yes, but don't go as far as before*" in response to a question over the radio as to whether the "*shock of capture*" should be "*commenced*". Aktash said that after hearing this snatch of radio traffic he spoke to Lt Euan Crawford, then present in the Operations Room, and Peebles. Peebles explained that on a previous occasion the men had gone a bit too far and there were injuries to prisoners.⁶⁰⁴

2.409 Neither Peebles nor Crawford recalled this conversation.⁶⁰⁵ In his Inquiry witness statement, Peebles said that, if he had ever referred to a beating, it would have been in reference to an occasion when he saw a detainee with a bloody nose.⁶⁰⁶ After seeing the bloody nose he had asked Payne whether the detainee, who had been brought in by members of A Company, had arrived at BG Main in that condition. Payne said that he had, so Peebles told Englefield to ensure that members of A Company did not treat prisoners too robustly.⁶⁰⁷ Whether the Aktash conversation preceded Peebles' visit to the TDF on Sunday afternoon is not entirely clear from Aktash's evidence. It may have been on a different day altogether, but in my opinion

⁵⁹⁸ Stokes BMI 43/183/10-187/9

⁵⁹⁹ SUB002235

⁶⁰⁰ Stokes BMI 43/181/25-182/7

⁶⁰¹ Peebles BMI 40/68/23-69/7

⁶⁰² Peebles BMI 40/101/9-19

⁶⁰³ Aktash BMI 16/2/23-4/4

⁶⁰⁴ Aktash BMI 16/7/1-9/17

⁶⁰⁵ Crawford BMI 36/11/7-12/20; Peebles BMI 40/60/21-61/6

⁶⁰⁶ Peebles BMI02729-30, paragraph 79

⁶⁰⁷ Peebles BMI02718, paragraph 35

it is likely that on some occasion Peebles did make an observation such as the one Aktash overheard.

2.410 By the time that Peebles provided his Inquiry witness statement, the first visit he could remember making to the TDF on Sunday was a visit at about 12.40hrs. He said that on that occasion he went to the TDF but did not go into it.⁶⁰⁸ He said he made a second visit at about lunchtime. On that occasion he did not notice any Detainees in stress positions but he thought they were hooded.⁶⁰⁹

2.411 On the occasion of his visit at 16.30hrs, Peebles ordered that conditioning should start. By that time he had received a report from Brigade that the Detainees were not thought to be “friendlies”. He said that he assumed that Crowcroft and Fallon would know what was involved in conditioning, namely that the Detainees were hooded and put in stress positions.⁶¹⁰ He said that, when he told them to start conditioning, he said, “*Don’t go over the top*”, or words to that effect.⁶¹¹

2.412 It is in my view surprising that Peebles should have given the order for conditioning to start on Sunday afternoon, since in answer to further questions it became clear that he believed that the Detainees would have been hooded from the time they arrived at BG Main. He said that he assumed that the Detainees would have been put in stress positions shortly after they arrived as part of 1 QLR’s standard procedures.⁶¹² This is of course what in fact happened.

2.413 Peebles said he was only in the TDF on this occasion for about two minutes. He saw the Detainees sitting down with their arms out, although he did not regard these as the usual stress positions.⁶¹³ He agreed that on this occasion he told Crowcroft and Fallon that the Detainees might be connected with the murder of the three Royal Military Policemen. He said:

“...I was either asked or I said in terms of passing on information to the guard that – I was either asked why these people were in custody, so I gave a brief explanation, or I just said it. It wasn’t to – it was so that they were fully informed. I said, “The reason we are questioning them is because we might believe that they would know something about the RMP incident”. I never said – well, you know, I never said that they were responsible because clearly, at that stage, we didn’t know that.”⁶¹⁴

In his Inquiry witness statement, he said that he had at this point reached the “*preliminary view*” that the Detainees were “*involved with or linked to*” the RMP murders and that he discussed this matter with a person he thought was Fallon.⁶¹⁵ In an interview under caution, he said that he told the TDF guards: “*...we believe that these guys might be involved in the, the RMP stuff...*”⁶¹⁶

⁶⁰⁸ Peebles BMI02723, paragraph 53. In an earlier statement made on 18 March 2004 to the SIB he said that he visited the TDF when the Detainees first arrived: MOD007113

⁶⁰⁹ Peebles BMI02723-4, paragraph 56

⁶¹⁰ Peebles BMI 40/77/17-80/6

⁶¹¹ Peebles BMI 40/157/19-24

⁶¹² Peebles BMI 40/80/13-83/22

⁶¹³ Peebles BMI 40/83/14-84/4

⁶¹⁴ Peebles BMI 40/95/5-14

⁶¹⁵ Peebles BMI02719, paragraphs 40-41

⁶¹⁶ Peebles MOD018866

- 2.414** Whilst I can understand that Peebles might wish those guarding the Detainees to be aware of any possible danger to themselves from the Detainees, in my judgment, this was an ill-judged comment to make to the guards. In my opinion, as is submitted on behalf of the Detainees, such a comment ran the obvious risk of causing the guards to use excessive force in their dealings with the Detainees, or even to seek revenge for the killings.
- 2.415** Peebles did not accept that it was irresponsible for him to have passed on this information. He thought at the time it was appropriate that they were aware of the people they were dealing with and that they might pose a potential threat.⁶¹⁷
- 2.416** As I have related in paragraph 2.396 above, Ingram said he reported the behaviour of the guard punching a Detainee to Peebles and I accept that he did. Peebles said he had no recollection of this⁶¹⁸ and it may be that in the difficult and busy circumstances of dealing as BGIRO with a number of Detainees he simply forgot about it. I prefer to think that is the explanation rather than that he chose to do nothing about it. On any view he ought to have taken some swift action rather than leaving it with the reprimand administered by Ingram, a junior officer.
- 2.417** Peebles was an important witness and played a significant part in the events of 14 to 16 September. Later in this Part of the Report I shall deal with these aspects of his evidence in more detail.

The Rugby Tackle Incident

- 2.418** There was one incident which Fallon said started when one of the Detainees tried, as he thought, to escape. The Detainee, Fallon said, lunged at him as if making a rugby tackle. Fallon wrestled with the Detainee and called for Crowcroft to help. Crowcroft then struggled with the Detainee and wrestled him to the floor.⁶¹⁹ Crowcroft said that he put the Detainee down on his knees and then laid his face down on the floor. He said that the interpreter, present at the time, had told him later that the Detainee had said just before the incident, "...*Let's go*"... "*This is a chance*".⁶²⁰
- 2.419** Crowcroft said the Detainee spent the rest of the stag lying on the floor.⁶²¹ The probability is that this Detainee was Baha Mousa.
- 2.420** Evidence about the immediate aftermath of this incident was given by Slicker. I deal with that evidence in Chapter 14 below. For present purposes it suffices for me to record that Slicker, upon being told that this Detainee had "*tried to escape*", proceeded to punch him in the stomach.⁶²² It seems likely, although I accept it is not certain, that Fallon or Crowcroft would have witnessed this.

⁶¹⁷ Peebles BMI 40/95/15-97/5

⁶¹⁸ Peebles BMI 40/133/16-134/21

⁶¹⁹ Fallon BMI 22/154/6-158/14

⁶²⁰ Crowcroft BMI 22/64/19-68/3

⁶²¹ Crowcroft BMI 22/68/9-70/7

⁶²² Slicker BMI 21/73/13-75/15

Medical Examinations on Sunday Afternoon

- 2.421** There was a disagreement between the Detainees and the regimental medical staff as to whether the Detainees were examined on their arrival at the TDF. None of the Detainees save D001 remembered being examined by a medic on Sunday.⁶²³ At this stage it is unnecessary to go into the dispute in any detail. Later in the Report I discuss the evidence of the medical staff and the issues which arise out of it. For present purposes I record that on balance, for reasons I will explain later, I find that probably the majority, if not all, of the Detainees (bar Maitham, who arrived later, and also with the likely exception of D005 and D006 as well) were given a cursory examination by medical staff some time between about 11.00hrs and 15.00hrs, that is to say during the period of the Crowcroft and Fallon stag.
- 2.422** Save, possibly, for one FMed 5 (a type of form used by the Army to record medical examination and treatment) no medical records of these examinations, if they were completed, survive. The surviving FMed 5 is said to be a record of a medical examination carried out on Baha Mousa on 14 September 2003.⁶²⁴ It contains no indication of injuries being found on him.
- 2.423** I mention the issue of medical examinations here simply to observe that there is no medical evidence that any injuries were found on any of the Detainees by the medical staff following their examinations on 14 September. This does not affect my conclusion that they were mistreated, assaulted and abused during that period. Such examinations as there were probably carried out early on in the stag before any injuries were physically evident. It is also likely that they were cursory and superficial, so may not have identified relatively minor injuries. If they had been more thorough then they should, for example, have resulted in Ahmad Matairi's existing hernia being identified. It was not. If the examinations took place after the arrival of D005 and D006 at about 14.00hrs they should, if they were reasonably thorough, also have identified D005's heart condition and D006's asthma. These conditions were also not identified by the medics at this time.

Crosbie

- 2.424** It appears that Crosbie helped to deliver D005 and D006 to BG Main. At some stage he made a second visit to the TDF when the Detainees were there. He was uncertain of the time when he went there but from his description of what he saw and the reason for his going, I find that it was probably in the late afternoon of 14 September during Crowcroft and Fallon's stag.
- 2.425** Crosbie said he went into the left-hand room and saw the two Detainees whom he had delivered to the TDF, namely D005 and his father, D006. He said he went there to check up on their condition. He found the two men asleep but was unable to remember whether they were hooded or plasticuffed.⁶²⁵ In my opinion, almost certainly both men were hooded and plasticuffed.

⁶²³ D001 says that he was examined only as a result of having collapsed: BMI01994, paragraph 30.

⁶²⁴ MOD015335, FMed 5. It in fact bears the name of D004, and not of Baha Mousa. However, the author of the FMed 5, Pte Winstanley, says that the FMed 5 was in fact a record of his second examination of the Detainee who later died: MOD000860.

⁶²⁵ Crosbie BMI 19/203/17-204/10

- 2.426** He did not remember a third person being present and he thought it was still daytime.⁶²⁶ Because of the absence of a third person, it would seem likely that this visit took place on Sunday afternoon, before Maitham arrived and was placed in the left-hand room.
- 2.427** I am not so much concerned with what Crosbie saw in the left-hand room as with his description of events in the right-hand room of the TDF. In that room Crosbie described seeing a number of Detainees kneeling in a horseshoe formation and not hooded.⁶²⁷ Again, in my opinion, at that time most if not all of the Detainees were hooded. Crosbie said they looked wet and grubby. He went on to describe a soldier saying, "*We have the choir*" and then proceeding to demonstrate what it was.⁶²⁸
- 2.428** The soldier tapped or kicked the Detainees on their backs with his foot. Crosbie said the taps were not more forceful than a knock on the door. However, they were sufficient to cause the Detainees to make a noise; a noise which Crosbie supposed was a groan of discomfort but not a groan of pain. He thought this was done to two of the Detainees before he decided to leave.⁶²⁹
- 2.429** The soldier appeared to recognise Crosbie was an officer because he called him "Boss".⁶³⁰ Crosbie said what he saw was distasteful and he decided to leave, assuming that the soldier would stop. However, he did not take any action to stop the soldier from behaving in the way he described, nor did he report what he had seen to anyone, let alone anyone up the chain of command. He said in hindsight he should have intervened to stop the soldier.⁶³¹
- 2.430** At the time of Op Telic 1 Crosbie was a young officer aged 24 and, as he said, no doubt a little naive. But that can be no excuse for his failure to take action over what he had seen. I suspect that the taps on the backs of the Detainees by the guard were more than just taps but were forceful kicks. Whatever the reason for him going to the TDF that afternoon and whether the soldiers' actions were taps or kicks, the conduct witnessed by Crosbie was clearly wholly unacceptable.
- 2.431** Crosbie was not able to identify the guard. It may have been Payne, Crowcroft, Fallon or some other soldier, but whoever it was Crosbie should have immediately intervened to stop what the guard was doing and should have reported this conduct up the chain of command. He did neither. In my judgment his inaction was a serious and inexcusable breach of duty. Crosbie must also have seen that most if not all of the Detainees were hooded and in stress positions. Although in view of the Brigade sanction (Part XIII) it might be unfair to criticise Crosbie for not reporting this aspect of what he had seen, it is in my view likely that the Detainees were exhibiting signs of distress, or at least discomfort. Again, this is something which he should have reported.

⁶²⁶ Crosbie BMI 19/204/11-206/5

⁶²⁷ Crosbie BMI 19/207/2-11

⁶²⁸ Crosbie BMI 19/207/16-209/3

⁶²⁹ Crosbie BMI 19/209/13-210/13

⁶³⁰ Crosbie BMI 19/209/4-8

⁶³¹ Crosbie BMI 19/210/23-212/25

Livesey

2.432 Livesey described the conditions in the TDF and of the Detainees. His first visit was at about 18.00hrs to 19.00hrs on Sunday. In the TDF he saw several Detainees in stress positions, hooded and plasticcuffed. They were moaning and whining. In the left-hand room he recollected there were three or four Detainees crouched with their arms straight out in front of them. His description is very similar to the ski positions shown in the Payne video. The Detainees were bedraggled and sweaty. He found the scene quite shocking. He said he had never come across anything like it before. It was suggested to him that he knew the stress positions were inhumane and he agreed.⁶³² He said SSgt Davies accompanied him on this visit. However, when it was suggested to him that he might be mistaken in this recollection he agreed that it was possible.⁶³³

“Boasting” Back at Camp Stephen

2.433 Pte Lee said that on Sunday evening, when Crowcroft and Fallon returned to Camp Stephen, both men boasted that they had punched and kicked the Detainees. He added that he could see cuts on the hands and knuckles of both men.⁶³⁴

2.434 This part of Pte Lee’s account is supported to some extent by the evidence of Pte Hill. Pte Hill said that on Sunday evening when they returned to camp Crowcroft and Fallon bragged about witnessing the choir. His account of this bragging by Crowcroft and Fallon has not always been consistent (see his evidence at the Court Martial).⁶³⁵ In his SIB statement dated 25 August 2004, in respect of which he agreed he was endeavouring to tell the truth, he said Crowcroft and Fallon had bragged about assaulting the Detainees by means of the choir.⁶³⁶ I have commented above on the unsatisfactory nature of Pte Hill’s evidence but on this aspect of it I accept what he said, save that I believe it probable that his SIB statement is more accurate than his oral evidence. His evidence is similar though not identical to Pte Lee’s evidence.

2.435 Other members of the Multiple did not recall Crowcroft and Fallon bragging about the choir or assaults. Crowcroft and Fallon denied that they had talked, on returning to Camp Stephen, about Detainees being assaulted.⁶³⁷ I reject their evidence about this. I find that on Sunday evening at Camp Stephen, Crowcroft and Fallon did boast that they had assaulted the Detainees on their stag.

Crowcroft’s “Confession”

2.436 In November 2005 1 QLR was stationed in Cyprus, where the incident which I now relate took place. One night WO2 Paul Urey when off duty was having a drink in a local bar. He was standing talking to other soldiers when Crowcroft, who he said was rather drunk, came over to speak to him. They knew each other because at one stage they had been in the same Company. Urey said Crowcroft was upset and the conversation turned to the impending Court Martial. Crowcroft intimated that

⁶³² Livesey BMI 39/23/12-26/24

⁶³³ Livesey BMI 39/78/20-80/2

⁶³⁴ Pte Johnathan Lee BMI 18/107/1-10

⁶³⁵ Pte Gareth Hill CM 51/159/19-161/13

⁶³⁶ Pte Gareth Hill BMI 16/155/14-156/3; Pte Gareth Hill MOD000271

⁶³⁷ Crowcroft BMI 22/83/20-85/14; Fallon BMI 22/125/2-129/3

he was worried about the Court Martial, to which Urey said he responded by telling Crowcroft that if he had done nothing wrong he had nothing to worry about.⁶³⁸

- 2.437** Urey said that Crowcroft then said to him “*Well, we have, because we all kicked him to death*”. Urey said that he asked Crowcroft to repeat what he had said and Crowcroft said something similar.⁶³⁹ In his Inquiry witness statement Urey said that he told Crowcroft that their exchange had put him in a moral dilemma because he would have to report what Crowcroft had told him up the chain of command.⁶⁴⁰ Urey said that on the following morning he reported the conversation to RSM Kevin Hayes. He added that about two days later, on a Monday morning, he, Urey, called Crowcroft into his office. When he raised their previous conversation, Crowcroft denied making any comments in the bar.⁶⁴¹
- 2.438** Crowcroft, when giving his evidence to the Inquiry, was asked about this conversation. He denied that he had spoken the words reported by Urey. He said that what he had said to Urey was that “...*we may as well have kicked him to death...*”. By this he meant that he was not receiving any help from anyone within the Battalion. He also said that in Urey’s office he had not denied that he had said anything.⁶⁴²
- 2.439** On this issue I have no hesitation in preferring the evidence of Urey to that of Crowcroft. Urey’s evidence was consistent with what he had told the SIB some twelve days or so after the incident. However, he accepted that at the Court Martial, during cross-examination he had agreed that Crowcroft’s version of the conversation could “*possibly*” be correct.⁶⁴³ In my view it is understandable that he might have found it difficult giving evidence at a Court Martial of a member of the same regiment, but if Crowcroft’s version of the conversation was correct it would not have put Urey in the moral dilemma to which he referred. It may be, as he admitted, that he had had a certain amount to drink on the evening of the conversation, but that is no reason to doubt the accuracy of the statement he made twelve days later. Further, in my opinion, what Urey reported Crowcroft as saying fits and is consistent with other evidence about what he did and the evidence of the Detainees.

Conclusions on the Crowcroft and Fallon Stag

- 2.440** I find that during the course of this stag the Detainees were subjected to sustained, brutal and unjustified assaults.
- 2.441** I recognise that it is probable that other soldiers were involved, but I find that not only were Crowcroft and Fallon aware of these assaults (contrary to their assertions in evidence that they were unaware of any violence) but they also indulged in acts of gratuitous assault on the Detainees.
- 2.442** It is suggested by those representing Fallon that the evidence is no different than that which was before the Court Martial at which he was acquitted on the direction of the Judge Advocate. I disagree and in any event I am in no way bound or inhibited by the Court Martial verdict.

⁶³⁸ Urey BMI 17/48/21-51/8

⁶³⁹ Urey BMI 17/51/9-52/18

⁶⁴⁰ Urey BMI01601, paragraph 30

⁶⁴¹ Urey BMI01602-4, paragraphs 37-44

⁶⁴² Crowcroft BMI 22/89/24-92/19

⁶⁴³ Urey BMI 17/58/1-24

- 2.443** The Payne video, which I have found was taken near the start of this stag, graphically portrays an example of Payne's conduct. Crowcroft accepted that the video showed the type of conduct he saw Payne use.⁶⁴⁴ Fallon said that at the time he thought the actions shown in the video were proper.⁶⁴⁵ The video demonstrated some of the conduct which the Detainees described in their evidence and some of the conduct Payne accepted he was responsible for when enforcing stress positions. In my judgment it provides an example of conduct which was bound to affect the behaviour of guards who saw it and probably represented less serious mistreatment or abuse than usually used by Payne.
- 2.444** Payne also in my view did more than just enforce the stress positions in the way illustrated in the Payne video. I find that it is more probable than not that the force he used escalated into full physical assaults.
- 2.445** But Payne was not present in the TDF for the whole period of this stag. The pattern of his visits to the TDF throughout the whole period of time when the Detainees were present was, as related by other witnesses, to come into the TDF periodically to ensure that the guards were keeping the Detainees in their stress positions. He agreed that this is what he did, adding in evidence for the first time that when he did come into the TDF he would routinely kick and punch the Detainees.⁶⁴⁶ He did however claim, but I do not accept, that the punching and kicking only started on the arrival of the Rodgers Multiple in the early evening.⁶⁴⁷ I find that, as the Detainees alleged, the beatings started on their arrival in the TDF and that Payne, with others, was one of those involved.
- 2.446** It is clear from Kendrick's evidence that even as early as his visits to the TDF on Sunday there were signs of injuries on some of the Detainees and that their condition progressively deteriorated. As I have already stated the medics who examined the Detainees found no sign of injuries, but in my view it is probable that their examinations took place before Kendrick's visits to photograph the Detainees.
- 2.447** In my judgment, there are a number of key pieces of evidence which support the conclusion that Crowcroft and Fallon indulged in violent and unjustified conduct against the Detainees in the course of their stag. Firstly, I find that Crowcroft and Fallon boasted of their treatment of the Detainees on their return to camp on Sunday evening. Secondly, I accept Urey's evidence of Crowcroft's confession to him. Thirdly, I accept Ingram's account of a punch delivered, apparently by either Fallon or Crowcroft. Fourthly, there is Pte Lee's account of assaults by Fallon and Crowcroft (see Chapter 8). Fifthly, in my view, Fallon's and Crowcroft's denial that they ever saw others perpetrate any violence undermines their credibility. On Pte Hill's account to the Inquiry, on return to Camp Stephen, Fallon and Crowcroft reported seeing the choir. Similarly, Crosbie's evidence suggests that at the very least they would have seen the choir. Sixthly, there is the evidence of the Detainees that the beating and kicking started soon after they had been placed in the TDF, hooded and handcuffed. I find that the conduct they described did start at the outset of their detention in the TDF and that Crowcroft and Fallon, as well as Payne, were responsible for it.

⁶⁴⁴ Crowcroft BMI 22/40/17-41/16

⁶⁴⁵ Fallon BMI 22/138/2-16

⁶⁴⁶ Payne BMI 32/71/7-21; Payne BMI 32/87/13-88/6; Payne BMI05822, paragraph 5

⁶⁴⁷ Payne BMI 32/94/6-95/1; Payne BMI 32/134/10-18; Payne BMI 32/150/25-12

- 2.448** Further, I find that throughout the period of their stag, Crowcroft and Fallon sought to maintain the Detainees in stress positions. In this respect I prefer Fallon's evidence to that of Crowcroft.
- 2.449** In mitigation of what they did it can fairly be said that at the time both Crowcroft and Fallon were young men and both were encouraged to do what they did by the actions of Payne, who was senior in rank to both of them.

Chapter 10: the “Free for All”

- 2.450** The Battlegroup Net Radio log records that at 18.48hrs on Sunday the Rodgers Multiple left Camp Stephen to go to BG Main.⁶⁴⁸ The purpose of this journey was to relieve Crowcroft and Fallon and provide guards for the Detainees throughout the night and the following day. The whole Multiple was taken to BG Main in two Saxon vehicles driven by Stirland and Douglas,⁶⁴⁹ although guard duty was to be divided into two halves, with half of the Multiple taking the night shift and half on duty during the morning and afternoon of Monday. The half of the Multiple which did not perform guard duty at the TDF during Sunday night returned to Camp Stephen at 19.43 hrs.⁶⁵⁰
- 2.451** Guard duty on Sunday night was divided into a number of discrete stags. Before the first of these stags started there is evidence of a serious incident of violence against the Detainees in which a number of the Rodgers Multiple including Rodgers himself were said to be involved. One witness accepted the incident was “*mayhem*”⁶⁵¹ but I prefer the expression “*Free for All*”.

The Soldiers’ Evidence about this Incident

- 2.452** Following his admissions of his own violence against the Detainees inevitably Payne was asked by Leading Counsel to the Inquiry when this violence first began. He went on to describe violent assaults committed by him on the Detainees when the Rodgers Multiple first arrived on Sunday evening to start guard duty. I do not accept this was the first time Payne was involved in violence on the Detainees (see Chapter 9). Payne said he thought that the cause of the violence was a rumour that the Detainees were the men who had killed the RMP soldiers. He said he heard of this possible link from Peebles after the Detainees had been brought to BG Main.⁶⁵² He said that his violence was committed in the presence of the whole Multiple, including Rodgers. It consisted of hitting and punching the Detainees and he agreed that thereafter whenever he went back into the TDF he would indulge himself in more of the same violence. He also said that on occasions when he returned to the TDF he saw the guards hitting and kicking the Detainees. Payne was asked whether he could remember when he first saw members of the Rodgers Multiple assaulting the Detainees. He indicated that it was on the occasion when they first arrived to start their guard duty. He asserted that about ten of the Multiple including Rodgers were involved in violent acts against the Detainees.⁶⁵³ Before, he had said that the whole Multiple (apart from the drivers) was involved.⁶⁵⁴
- 2.453** Although the whole Multiple went to the TDF that evening, it is unlikely that all went into the TDF. In any event, the whole Multiple was more than ten soldiers, the number Payne said was involved. For obvious reasons Payne’s allegation of misconduct by others must be treated with great caution in view of the wholesale lies to which he admitted telling in his earlier Inquiry witness statements. However, as I shall now

⁶⁴⁸ MOD016576

⁶⁴⁹ Stirland BMI 38/14/13-15/5; Douglas MOD000183

⁶⁵⁰ The time is recorded in the Battlegroup Net Radio log at MOD016576

⁶⁵¹ Pte Aaron Cooper BMI 29/24/24-25/2

⁶⁵² Payne BMI 32/53/21-54/23

⁶⁵³ Payne BMI 32/94/6-96/21

⁶⁵⁴ Payne BMI 32/73/17-74/12

relate, there is evidence from some members of the Multiple that on their arrival at the TDF on Sunday evening there was a violent incident triggered by Payne's conduct and in which a number of them took part.

2.454 Allibone said he had heard rumours after the raid on the Hotel that the Detainees were linked to the murder of Capt Dai Jones or the RMP soldiers.⁶⁵⁵ He said that when the Multiple first arrived some soldiers, he thought four or five, including members of the Multiple, punched Detainees. He said that he was unable to name any of them, saying that he was no good with names or faces.⁶⁵⁶ Later in his evidence when describing the punching by members of the Multiple on the evening of the "first day" he said he believed Rodgers was present.⁶⁵⁷ Allibone denied that he had punched or kicked a Detainee, saying "*I know that I wouldn't do that*".⁶⁵⁸ He said that the period when Payne and others were present in the TDF, before the start of his own stag, lasted for about half an hour.⁶⁵⁹

2.455 Appleby described the incident that occurred on the arrival of the Multiple at the TDF. He said he went into the TDF and saw members of the Multiple shouting and swearing at the Detainees but not punching or kicking them.⁶⁶⁰ The Detainees were hooded and in stress positions. He did not remember seeing Rodgers. In a statement to the SIB, dated 12 October 2003, he had said that he remembered Crowcroft and Fallon being in the TDF at the time of the handover, but when giving oral evidence to the Inquiry he said he could no longer remember this. He said he saw Payne punching the Detainees, he thought on the chest and abdomen. As a result a number of the Detainees were knocked to the ground and on Payne's orders he and others picked up the Detainees.⁶⁶¹

2.456 Aspinall was a team commander in the Rodgers Multiple. He went into the TDF and saw six Detainees who were hooded. He could not remember whether Rodgers entered the TDF at this point (although he said in an SIB statement that Rodgers was in the Operations Room at about this time), nor whether Fallon and Crowcroft were present. He remembered seeing Payne punching and hitting Detainees. He said Payne was very angry and was punching the Detainees "*full-on*" in the back. No one did anything to stop him.⁶⁶² After initially denying it he accepted, as he had in his SIB statement, that he had slapped the Detainees on this occasion, as had others whom he was unable to identify. He said he knew it was wrong but he was unable to give any explanation for his and others' conduct save to say "*... we didn't know whether this is what happened in war. We was very young*".⁶⁶³

2.457 Pte Cooper said that on arrival that evening at the TDF he and other members of the Multiple, but not all, went in. He initially said that he was unable to name those members of the Multiple who entered. Fallon, Crowcroft and Payne were present. He had, he said, heard of the possible link to the death of Dai Jones at the briefing given by Rodgers before Op Salerno. The Detainees were hooded, plasticcuffed and

⁶⁵⁵ Allibone BMI 24/107/1-109/10

⁶⁵⁶ Allibone BMI 24/124/7-125/8

⁶⁵⁷ Allibone BMI 24/207/23-208/24

⁶⁵⁸ Allibone BMI 24/125/9-20

⁶⁵⁹ Allibone BMI 24/192/3-8

⁶⁶⁰ Appleby BMI 25/46/1-47/12

⁶⁶¹ Appleby BMI 25/25/18-31/6; Appleby MOD000171

⁶⁶² Aspinall BMI 28/32/1-39/25; Aspinall MOD000123

⁶⁶³ Aspinall BMI 28/42/9-46/7

in stress positions. The room smelt of excrement. There were at least six or seven soldiers in the room. They were shouting at the Detainees and punching them in the head and abdomen, causing the Detainees to groan. Pte Cooper admitted throwing about ten punches and he said other members of the Multiple also punched the Detainees. He initially identified the following in addition to himself as throwing punches: Rodgers, Redfearn, Aspinall, Appleby, Allibone, Kenny and Reader. One other, Douglas, he said, did not throw any punches.⁶⁶⁴

2.458 Pte Cooper said that he personally struck three to five Detainees. He remembered Rodgers being there and striking a blow. He accepted that when he walked into the TDF it was mayhem. He saw Crowcroft and Fallon punching the Detainees.⁶⁶⁵ However, later in his evidence he explained that he could not remember if Crowcroft and Fallon were involved in this incident. He did, though, say that Fallon and Crowcroft told him that they had been “*roughing up*” the Detainees.⁶⁶⁶ He described the cause of his anger as the link, as he thought, between the Detainees and the murder of Capt Jones.⁶⁶⁷

2.459 Pte Cooper went on to say that he had not seen those he had named throwing punches. He learnt they had done so in conversations afterwards.⁶⁶⁸ At the end of his examination by Leading Counsel to the Inquiry he was asked:

“Q Are you still in giving your evidence to this Inquiry seeking to protect the multiple as Lieutenant Rodgers had suggested that you should?”

A No. Considering that I have been honest about the way that I treated them and other people, it’s not really defending them, is it?”

Q But you cant tell us of one member of your multiple that you saw throwing a punch now, can you?”

A No, sorry.”⁶⁶⁹

2.460 Pte Cooper was then questioned by Counsel for the Detainees. He was taken through those whom he said he actually saw throwing punches. In the course of these questions he identified Rodgers, Redfearn, Aspinall, Reader and Appleby. He excluded Allibone and Kenny, although he said he remembered comments being made about the former kicking a Detainee.⁶⁷⁰

2.461 MacKenzie said that on Sunday evening he went into the TDF where he saw the Detainees hooded and plasticuffed. After being referred to his SIB statement dated 10 October 2003 he was prepared to accept that he and other members of the Multiple shouted at the Detainees. He said that the Detainees were handled firmly, by which he meant they were “*...slapped or moved into position or pulled up...*”. He said that the Detainees were pulled up from underneath their arms and sometimes possibly by their plasticuffs or their head. MacKenzie admitted that he had slapped Detainees round the back of the head “*...to shock them basically...*”.⁶⁷¹ In a statement to the SIB, he had said that Payne demonstrated that, if the Detainees were not

⁶⁶⁴ Pte Aaron Cooper BMI 29/14/1-22/15; Pte Aaron Cooper BMI 29/70/9-11

⁶⁶⁵ Pte Aaron Cooper BMI 29/24/10-27/25

⁶⁶⁶ Pte Aaron Cooper BMI 29/101/8-104/9

⁶⁶⁷ Pte Aaron Cooper BMI 29/25/13-23

⁶⁶⁸ Pte Aaron Cooper BMI 29/22/16-23/9

⁶⁶⁹ Pte Aaron Cooper BMI 29/97/22-98/5

⁶⁷⁰ Pte Aaron Cooper BMI 29/104/10-106/5

⁶⁷¹ Mackenzie BMI 29/152/2-157/19

doing as they were told, they were to be hit.⁶⁷² In his oral evidence to the Inquiry, he said that this was to shock them and make them listen, rather than knock them down and cause pain.⁶⁷³

- 2.462** MacKenzie also said that members of the Multiple were swapping with each other in that some were going into the TDF as others came out. He described the incident as lasting about 30 minutes. He said Rodgers arrived with the Multiple at the TDF but then immediately left and did not return until just before the second half of the Multiple returned to Camp Stephen. MacKenzie was unable to give any explanation for what happened. He admitted that he had heard the rumour of the possible link between the death of Dai Jones, he thought before the Multiple went to BG Main on Sunday evening. He did not know whether this was the reason for them being shouted at or “clipped”.⁶⁷⁴ He said he was not worried about Rodgers finding out what was going on because he believed Rodgers knew what was going on. He added it was his Multiple and it was his job to know what was going on.⁶⁷⁵
- 2.463** Kenny and Reader have since the events in 2003 suffered different psychiatric problems. Reader has suffered from some form of depressive illness. He remembered being briefed by Payne that the Detainees were to be subjected to sleep deprivation, to be put in stress positions and to remain hooded.⁶⁷⁶ He denied taking any part in the violence on that occasion, although he admitted that he was present in the TDF. He said that Fallon and Crowcroft were in the TDF, and that one of them poked a Detainee in the stomach, causing a “quiet scream”. He denied seeing any violence by Payne at this stage. Neither did he see any other violence, apart from the poke in the stomach.⁶⁷⁷ However, he did say that he absented himself from the TDF because he believed that the Detainees were being beaten, and that he did not want to be present.⁶⁷⁸ He said that at a briefing given by Rodgers before Op Salerno they were told that they were looking for persons suspected to have been involved with the death of Dai Jones.⁶⁷⁹
- 2.464** Kenny suffers from a psychiatric condition and said that he was now unable to remember what happened on Sunday evening.⁶⁸⁰ I refer to him again in the following Chapter.
- 2.465** Redfearn said that he did not remember being present at the TDF with the rest of the Multiple on Sunday evening. He could not remember exactly where he was on that evening but thought he was bagging and tagging evidence at Camp Stephen. He was part of the half Multiple which was on duty on Monday.⁶⁸¹ He said as part of the arresting team he had seen the evidence and knew that the Detainees were nothing to do with the death of the RMP officers.⁶⁸²

⁶⁷² Mackenzie MOD000114

⁶⁷³ Mackenzie BMI 29/156/8-18

⁶⁷⁴ Mackenzie BMI 29/158/2-161/8

⁶⁷⁵ Mackenzie BMI 29/210/21-211/4

⁶⁷⁶ Reader BMI 28/146/21-147/5

⁶⁷⁷ Reader BMI 28/136/22-144/5

⁶⁷⁸ Reader BMI 28/182/2-183/1

⁶⁷⁹ Reader BMI 28/130/1-15

⁶⁸⁰ Kenny BMI03559-60, paragraphs 25-35

⁶⁸¹ Redfearn BMI 30/149/15-150/20

⁶⁸² Redfearn BMI 30/176/2-19

- 2.466** Rodgers said when he gave evidence in relation to this incident that he went to the TDF on Sunday evening with his Multiple. He accepted that he went into the TDF and said that he was briefed on the guard duty by Payne.⁶⁸³ He agreed that in an interview under caution on 14 March 2005 he had said that he walked through the TDF with some of the Multiple.⁶⁸⁴ In evidence he said he saw detainees kneeling and hooded but could not remember them being in stress positions.⁶⁸⁵ He said that at no stage did he see or hear any acts of violence being carried out by any member of the Multiple.⁶⁸⁶ Members of his Multiple have said that he went to the Operations Room around this time before returning to the TDF in order to take the other half of the Multiple back to Camp Stephen.⁶⁸⁷ Rodgers denied briefing his Multiple that the persons they were seeking in the raid might be involved in the killing of the RMP officers.⁶⁸⁸ According to his SIB statement, he learnt of this possibility only when he was informed of it by Peebles on Sunday evening.⁶⁸⁹
- 2.467** It would appear that other members of the Rodgers Multiple went to the TDF on Sunday evening but since they were not to be in the half on stag overnight they returned to Camp Stephen. In this group, Hunt said he went into the stores when the Multiple arrived on Sunday evening. He denied MacKenzie's allegation that he had gone into the TDF on that evening.⁶⁹⁰ Bentham accepted that he had accompanied the night guard to BG Main on Sunday evening but denied going into the TDF.⁶⁹¹
- 2.468** Pte Lee Graham also denied an allegation by MacKenzie that he had gone into the TDF on Sunday evening when the night guard took over from Crowcroft and Fallon. He had no recollection of doing so.⁶⁹² This was consistent with his SIB statement made on 12 October 2003 in which he had said he remained in the Saxon vehicle when the handover took place.⁶⁹³ However, he accepted it was possible that at that time he had taken a look at the prisoners.⁶⁹⁴
- 2.469** Stirland accepted that with Douglas he had driven one of the two vehicles from Camp Stephen to BG Main on Sunday evening to drop off the guard. However, he said he did not get out of the vehicle on that occasion.⁶⁹⁵ Douglas did not make clear in evidence when he arrived at the TDF that evening but Pte Cooper said, and I accept, that Douglas was not involved in the violence which took place on the arrival of the Multiple. Richards, the Multiple's third driver, appears not to have attended BG Main on this occasion (see Chapter 12 below).
- 2.470** Crowcroft and Fallon both denied that they had been involved with any of the Rodgers Multiple in assaulting the Detainees when the Multiple arrived to take over guard

⁶⁸³ Rodgers BMI 30/27/4-28/25

⁶⁸⁴ Rodgers BMI 30/39/11-41/20; Rodgers MOD003560-1

⁶⁸⁵ Rodgers BMI 30/29/15-22

⁶⁸⁶ Rodgers BMI 30/48/2-22

⁶⁸⁷ Aspinall MOD000123; Mackenzie MOD000113

⁶⁸⁸ Rodgers BMI01834-5, paragraph 73

⁶⁸⁹ Rodgers BMI 30/124/9-125/11

⁶⁹⁰ Pte Jonathan Hunt BMI 27/47/10-51/16

⁶⁹¹ Bentham BMI 41/90/1-10

⁶⁹² Pte Lee Graham BMI 26/61/8-62/7

⁶⁹³ Pte Lee Graham MOD000145

⁶⁹⁴ Pte Lee Graham BMI 26/62/17/-21

⁶⁹⁵ Stirland BMI 38/13/9-15/10

duty. Crowcroft however did say he was positive that Rodgers had visited the TDF on Sunday night.⁶⁹⁶

Conclusions on this Incident

- 2.471** I am sure that a violent incident did occur when the Rodgers Multiple arrived at the TDF on Sunday evening. In general terms it fits with the evidence of D003 who, in his Inquiry witness statement and his oral evidence, confirmed that *“By the early evening I sensed that there were seven or eight soldiers involved in beating us and by the end of the first day I felt that this number had multiplied to about 15”*.⁶⁹⁷
- 2.472** There is abundant evidence, not only from Payne himself, but from other witnesses, that Payne started the violence by hitting and kicking the Detainees. I accept Payne’s evidence that he did so in the presence of a number, but not all, of the Rodgers Multiple. Pte Cooper and MacKenzie admitted taking part in the violence, Pte Cooper by punching and slapping the Detainees and MacKenzie by slapping them about the head. Aspinall also was constrained to accept that he slapped Detainees on this occasion. I suspect that both MacKenzie and Aspinall were rather more violent than either was prepared to admit
- 2.473** I do not, however, accept that Payne, Pte Cooper, MacKenzie and Aspinall were the only ones involved in this violence. In my judgment other members of the Multiple joined in. Allibone said, and I accept, that he saw some four or five members of the Multiple punching Detainees. Appleby described soldiers shouting and swearing at the Detainees but not punching or kicking them. I accept his evidence of swearing and shouting, but I do not accept that he saw no violence. In my opinion Appleby must have seen members of the Multiple punching and kicking the Detainees, but he has chosen not to say so.
- 2.474** Despite obvious difficulties over his credibility, to which I refer in more detail later in the Report (see Chapter 16), I believe Pte Cooper was doing his best to be truthful. To his credit he admitted his part in this incident. However, his evidence identifying others who were involved in it was, to say the least, confused and inconsistent. After initially saying that he was unable to name the members of the Multiple who entered the TDF, at one stage in evidence he identified those whom he said he saw striking Detainees. At another stage he said his identifications were made on the basis of conversations after the event. In the circumstances, whilst I accept his evidence that other members of the Multiple did indeed physically assault Detainees on this occasion, I do not find it possible from his evidence to determine who they were. The inconsistencies in his evidence are such that I am unable fairly to make findings identifying those whom he saw assaulting the Detainees, but I suspect that some, if not all, of those whom he identified, did participate in this violence.
- 2.475** MacKenzie also sought to identify others who were present when this incident occurred. As I record later in the Report, MacKenzie was an unsatisfactory witness. Again, in my opinion, it would be unsafe to rely on his evidence identifying participants in this violence, but I accept he did see some members of the Multiple coming in and out of the TDF at this time. I also accept his evidence that this violent incident lasted about 30 minutes.

⁶⁹⁶ Crowcroft BMI 22/81/1-8

⁶⁹⁷ D003 BMI 10/100/15-101/23; D003 BMI02384, paragraph 55

- 2.476** Rodgers, Redfearn, Crowcroft and Fallon all denied being present at the TDF when this incident took place. The evidence that they were present and took part in the violence came principally from Pte Cooper, although Reader also said he saw either Crowcroft or Fallon poking a Detainee in the stomach. Crowcroft and Allibone, the latter a little uncertainly, identified Rodgers as being present at some point in the evening. Payne also said Rodgers was present when he was assaulting Detainees.⁶⁹⁸ In the circumstances, although I suspect that Pte Cooper accurately described them, or some of them, assaulting Detainees, for reasons explained above, in my opinion the evidence that they were involved in violence at this time is not sufficient for a finding that they contributed to it, nor that they were present when it occurred.
- 2.477** As regards Hunt, Bentham, Pte Lee Graham and Stirland, the evidence that they were present in the TDF at some time during this incident is, in my view, insufficient to persuade me that any of them were there. I find none of them were present. There is no evidence that Kenny took part in any of the violence on this occasion. For understandable reasons he is now unable to remember anything of it. In the circumstances I absolve him from any blame or criticism in respect of it. Reader admitted that he was present in the TDF. I accept he took no part in the violence but I do not accept his assertion that he saw no violence. In any event, as recorded above, he absented himself from the TDF at a time when, in my view, he knew perfectly well that violence was either taking place or going to take place.
- 2.478** In summary, my conclusions in respect of this incident are that members of the Rodgers Multiple on their arrival at the TDF were involved in a violent incident during which the Detainees were assaulted. This incident lasted for a period of at least 30 minutes. During the course of it those whom I have identified above, namely Payne and Pte Cooper, assaulted the Detainees, as did other members of the Multiple in respect of whom it is not possible for me to make a finding identifying them. I suspect that Mackenzie's and Aspinall's admissions of slapping the Detainees on this occasion did not amount to the full extent of what either of them did, but the evidence is insufficient to find that what they did was more violent.
- 2.479** This was a disgraceful incident which represented a very serious breach of discipline by members of the Rodgers Multiple. In my judgment all those present who were about to take part in the overnight stags must have been well aware of what happened, even if they did not take part in the violence. Further, in my opinion, this incident set the tone for the conduct of the guards during the course of the ensuing stags.
- 2.480** For reasons which I have explained above the evidence is insufficient for me to find that Rodgers, the Multiple commander, himself took part in the violence, although he may have been present at one time during the course of it. However, in my view, it is inconceivable that he did not become aware of it either at the time or very soon afterwards. As the Multiple commander he must bear a heavy responsibility for these actions and breaches of discipline by members of his Multiple.
- 2.481** Before leaving this incident I should mention that there is some evidence that at about the time it occurred, Payne demonstrated the choir to the Multiple. Allibone, in his SIB statement of 12 October 2003, remembered Payne demonstrating the choir as soon as the Multiple arrived. He said Kenny, MacKenzie, Pte Cooper, Appleby and Reader were present when this occurred.⁶⁹⁹ Pte Cooper in his Inquiry witness

⁶⁹⁸ Payne BMI 32/94/6-95/5

⁶⁹⁹ Allibone MOD000135

statement said that at some time during the first night Payne demonstrated to him and others the choir.⁷⁰⁰ In oral evidence to the Inquiry MacKenzie agreed that he had heard of the choir. He thought that Payne may have demonstrated it to the Multiple when first they arrived on Sunday evening.⁷⁰¹ Appleby said that at some point either on Sunday night or Monday morning Payne demonstrated the choir.⁷⁰² No other member of the Multiple mentions the choir taking place on that occasion.

2.482 There is ample evidence from other witnesses that from time to time Payne demonstrated the choir to them. In the circumstances, although I strongly suspect that Payne did demonstrate the choir at about this time, it is unnecessary for me to make any finding as to whether or not the choir was demonstrated by him on this particular occasion.

⁷⁰⁰ Pte Aaron Cooper BMI04365, paragraphs 125-6

⁷⁰¹ Mackenzie BMI 29/162/20-163/13

⁷⁰² Appleby BMI 25/66/12-16

Chapter 11: Sunday Night from 20.00hrs to 06.00hrs

2.483 The night guard was divided into five stags, each of two hours' duration, starting at 20.00hrs on Sunday evening. These stags were divided between MacKenzie (who was put in charge of this group), Allibone, Appleby, Cooper, Kenny and Reader. MacKenzie rostered them to carry out stags in the following order.

20.00hrs – 22.00hrs:	Allibone and Kenny.
22.00hrs – 00.00hrs:	MacKenzie and Cooper.
00.00hrs – 02.00hrs:	Appleby and Reader.
02.00hrs – 04.00hrs:	Allibone and Kenny.
04.00hrs – 06.00hrs:	MacKenzie and Cooper. ⁷⁰³

2.484 Once again, I note that the times of the stags may not have been rigidly adhered to, nor were those allocated to them necessarily on guard for the whole period of their stag. Individuals would come out of the TDF for a rest or a cigarette leaving one or two guards on duty, or another soldier not rostered to replace them.

2.485 It is common ground between Payne and Rodgers that Payne briefed Rodgers. Rodgers in his SIB statement of 12 October 2003 stated that having been briefed by Payne that the Detainees should not be allowed to sleep pending tactical questioning, he then briefed Redfearn and Aspinall "... *the two commanders on what I had been told*".⁷⁰⁴ Payne said he gave the Rodgers Multiple the same briefing as he gave to Crowcroft and Fallon, namely that the Detainees were to be kept in stress positions, awake and not to be allowed to speak to each other.⁷⁰⁵ As appears hereafter, it is clear that this brief got through to the guards. They said they were told to keep the Detainees hooded and in stress positions.

2.486 The background to the stags is the evidence which the Detainees gave of the treatment of them by the guards throughout the first night. Generally, as stated in the summaries of their evidence, they allege that they remained hooded, handcuffed and in stress positions. As to the latter, it is probable that there were two different stress positions. The first was the ski position, already described. The second was a position in which the Detainees sat, squatted or knelt with arms handcuffed and outstretched in front of them.⁷⁰⁶ They alleged they were beaten by their guards and prevented from sleeping by the noise of a metal bar striking other objects.⁷⁰⁷

2.487 I set out here a summary of the evidence of each soldier who carried out a stag during Sunday night and I shall then discuss evidence of other witnesses who describe events occurring during this period. In addition, it must be remembered that throughout the night SSgt Davies and Smulski carried out tactical questioning of the Detainees. SSgt Davies' recollection of the questioning by him was as follows (the times are approximate):

⁷⁰³ Mackenzie MOD000115

⁷⁰⁴ Rodgers MOD000221

⁷⁰⁵ Payne BMI 32/64/22-67/17; Payne BMI 32/97/5-98/6

⁷⁰⁶ D001 BMI01994, paragraph 32; D002 BMI01956, paragraph 33; D003 BMI02383, paragraph 51. D001, D002 and D003 say that whilst they were initially forced to maintain the ski position, they were later moved into the sitting stress position before being made to resume the ski position.

⁷⁰⁷ D001 BMI 12/19/11-17; D002 BMI01959-60, paragraph 45

- (1) D005 19.15hrs to 20.00hrs and 21.45hrs to 22.15hrs;
- (2) Ahmad Matairi 20.00hrs to 20.45hrs;
- (3) D006 22.40hrs to 23.30hrs;
- (4) D002 00.01hrs to 00.45hrs;
- (5) D004 02.00hrs to 02.40hrs.⁷⁰⁸

2.488 SSgt Davies also remembered Smulski questioning D005 again late on Sunday night or early on Monday morning. The remaining Detainees were questioned by Smulski who arrived at BG Main at 23.45hrs on Sunday night. Smulski returned to Brigade Headquarters at Basra Palace on Monday at 20.45hrs. The following day he made the following written record of the times when he questioned Detainees:⁷⁰⁹

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ALL TIMINGS APPROX. WRITTEN 10.40 HRS.
TUESDAY 16 SEPT 03.

SUNDAY 14 SEPT 03.

22.50 - GIVEN NOTICE TO MOVE BY CAPT LEE.

23.10 - REPORTED TO SOMME COY, BASRAH PALACE. - ESCORTED TO BG MAIN.

23.45 - ARRIVED BG MAIN, FAMILIARISED WITH SITUATION BY MAJ PEELERS,
SAT IN ON TQ OF A PRISONER BY SSGT DAVIES, THEN APPRAISED
OF TQ REQUIREMENTS. - D002 (2359-0045)

MONDAY 15 SEPT 03.

01.40 VISIT TO PRISONER HOLDING BUILDING. ADVISED GUARDS TO
REVIEW SEATING OF PRISONERS, EG TURNED TO FACE WALL.
ACCOMPANIED SSGT DAVIES DURING A TQ THEN TQ'D (0200-0240)

03.30-04.15 YOUNGEST PRISONER, D004

05.15 RETURNED TO INT CELL, BG MAIN. NO INTERPRETERS AVAILABLE.

07.00 SSGT LEFT LOCATION.

08.00 CHECKED ON PRISONERS BEING FED BREAKFAST. ADDED DETAIL
TO TQ REPORT.

10.00 STARTED TQ OF PRISONERS 4, 5, 6 + 7.

12.30 LUNCH

15.00 TQ OF "PICK-UP TRUCK" PRISONER.

16.00 COMPLETED TQ REPORT + "PICK-UP TRUCK" DETENTION REPORT.

20.45 RETURNED TO BASRAH PALACE.

R.A. SMULSKI
SGT.
FLO SY SECTION.
G2, 19 HECH BDE.

6. Kifaly Tahir MUSA
S. Bahar Nawab SALEM *
6. D003
7. D001

2.489 The other handwriting on the document is that of SSgt Davies. Where necessary the Inquiry team has replaced the original text with the relevant Detainee's cipher.

2.490 I shall return later in the Report to the tactical questioning of the Detainees (see Chapter 15).

⁷⁰⁸ SSgt Mark Davies BMI04216-7, paragraphs 30-34

⁷⁰⁹ MOD015395

Allibone and Kenny

2.491 These two soldiers carried out two stags. Reader said he assisted with Allibone and Kenny's first stag.⁷¹⁰

2.492 As already stated, Allibone in his SIB witness statement dated 12 October 2003 said that on arrival at the TDF Payne and two other soldiers demonstrated the choir. He described Payne assaulting the Detainees, starting with the Detainee on the right. Payne jabbed the first one in the stomach with his fingers but punched the others.⁷¹¹ In evidence Allibone was less than forthcoming about this incident but eventually when pressed by Counsel accepted that he had seen the choir.⁷¹²

2.493 Whether this incident took place when he first arrived at the TDF or later, I am satisfied that at some stage he did witness the choir and I have no doubt that it influenced the way in which he dealt with the Detainees when carrying out his stag. Indeed his first SIB statement dated 12 October 2003 continued:

*"During my first stag I was told by Cpl Payne to hit the detainees harder, whilst he was present and watching I pushed the detainees against the wall quite hard, they were stood up. I think they expected more because as I went near them they curled into a ball to protect themselves."*⁷¹³

2.494 He had made other statements to the SIB and when pressed in relation to what they contained he was constrained to accept that they were likely to be accurate.⁷¹⁴ In evidence he said he was trained in martial arts. When asked about a push which he admitted making on a Detainee he said that because of his martial arts training he was able to make a push look like a punch. He did this because Payne had told the guards in his briefing that they must ensure the Detainees maintained their stress positions.⁷¹⁵ In his SIB statement he had said that Payne had briefed the guards that if the Detainees dropped their arms the guards were to hit them.⁷¹⁶

2.495 In an SIB pro-forma record of an interview with him conducted three days after Baha Mousa died, he is recorded as saying that one of the Detainees had kept taking off his "mask". His answer recorded on the pro-forma as to how he had dealt with this was that he had placed it back on and "*laughingly told him not to do it again*".⁷¹⁷ It is probable that the Detainee to whom he was referring was Baha Mousa. A number of the guards said that Baha Mousa kept removing his hood.⁷¹⁸

2.496 Allibone was further questioned about what force he used on the Detainees. He said he used no more force than pushing, shaking them and tapping their feet in order to keep them awake and in stress positions. This was done, he said, on the instructions of Payne.⁷¹⁹

⁷¹⁰ Reader MOD000203

⁷¹¹ Allibone MOD000135

⁷¹² Allibone BMI 24/127/19-130/22

⁷¹³ Allibone MOD000138

⁷¹⁴ Allibone BMI 24/98/2-25

⁷¹⁵ Allibone BMI 24/139/17-143/21; Allibone BMI01353-5, paragraph 58

⁷¹⁶ Allibone MOD000134

⁷¹⁷ MOD001762

⁷¹⁸ Aspinall BMI 28/69/12-70/3; Pte Lee Graham BMI 26/96/12-24; Mackenzie BMI 29/170/3-14; Payne BMI 32/111/3-10

⁷¹⁹ Allibone BMI 24/138/18-145/18

- 2.497** Allibone told the SIB that no meals were provided to the Detainees when he was on duty.⁷²⁰
- 2.498** Kenny agreed that he shared two stags with Allibone.⁷²¹ He denied that he had at any time slapped or hit a Detainee and he added that at no time had he seen any of the prisoners being hit or kicked by any soldier.⁷²²

Findings in Respect of Allibone and Kenny's Stag

- 2.499** Allibone was not a good witness. He continually sought to avoid accepting what he had said on previous occasions much closer to these events. In my view, in his evidence to the Inquiry, he was endeavouring to minimise what he had done when guarding the Detainees. I do not accept his description of just tapping the Detainees to keep them awake. I suspect that his treatment of them was much more forceful and in keeping with what he had probably seen Payne doing to them when he was enforcing stress positions, as can be seen in the Payne video.
- 2.500** Kenny was just 18 when he was deployed to Iraq. Towards the end of 1 QLR's tour in Iraq he suffered a serious injury resulting from an accidental discharge of a gun. In August 2006, on holiday, he suffered another serious injury, this time to his cheekbone and eye socket. As a result of these injuries Kenny has psychiatric problems.⁷²³ I have borne this in mind when assessing his evidence.
- 2.501** As Kenny's evidence progressed, it became very clear that he had little reliable memory of the events of 14 to 16 September. After one exchange between himself and Counsel he was asked:

"Q So it would follow, wouldn't it, that you can't even remember what you yourself did or didn't do?"

*A Yes."*⁷²⁴

- 2.502** This may be an extreme example of his assessment of his own memory but in my opinion it is not possible to place any reliance on his assertions that no abuse of the Detainees took place. In my view, sharing the stags with Allibone, he must have seen the Detainees being abused but I accept he cannot now remember what he saw.
- 2.503** For the same reasons it may be that he did take part in assaults on the Detainees but now cannot remember. Whether that is so or not there is insufficient other evidence for me to find that he did.

MacKenzie and Pte Cooper

- 2.504** MacKenzie and Pte Cooper also shared two stags.⁷²⁵ MacKenzie said they had been briefed on how to deal with the Detainees. In the main, they kept the Detainees hooded and in stress positions throughout the night. He said that in order to keep

⁷²⁰ MOD001761

⁷²¹ Kenny BMI03561, paragraph 36

⁷²² Kenny BMI 25/136/9-137/5

⁷²³ Kenny BMI 25/125/10-126/14

⁷²⁴ Kenny BMI 25/139/24-140/1

⁷²⁵ Pte Aaron Cooper BMI 29/29/23-30/5

them in their stress positions they would be forcefully lifted up under their arms and by their plasticuffs. He said that he handled them firmly and at times would slap and hit them *“to get them to know what they were doing. There were times when I would even have... tapped their feet to move them into position.”*⁷²⁶ In his Inquiry statement he had said, *“The prisoners were treated firmly. I would not like to have been one of the prisoners. They were not treated with kid gloves.”*⁷²⁷ He remembered another soldier punching a Detainee and getting into trouble with, he believed, Rodgers. However he saw neither the punch nor Rodgers talking to the soldier.⁷²⁸

2.505 He remembered two occasions during the first stag when two “*sergeants*”, Sgt Smith and Livesey, the latter in fact a Colour Sergeant, came into the TDF. The first told him and Pte Cooper to remove the hoods and let the Detainees rest. The second who came in a little later reversed this order. This was the only time during which the Detainees were not kept in stress positions.⁷²⁹ I return to this incident in Chapter 15 below, when addressing the parts played by Sgt Smith and Livesey.

2.506 MacKenzie also said that he saw prisoners *“hitting out”*. One was more violent than the others. This Detainee head butted and constantly tried to get out of his plasticuffs. He saw this prisoner partially remove his hood but did not remember seeing him get out of his plasticuffs. MacKenzie said this man was eventually put in the middle room on his own. MacKenzie remembered Payne punching Detainees and other members of the Multiple slapping them. At first he refused to accept that the slaps were in fact punches. However, in his Inquiry witness statement, as he eventually accepted, he had said that he did remember other soldiers as well as Payne delivering hard punches. He said this was because the Detainees were either trying to escape or slipping out of their stress positions. As to his own conduct, he accepted he slapped Detainees but did not believe he had punched them.⁷³⁰

2.507 During his tour, MacKenzie kept a personal diary. I refer to this diary in more detail in Part III of the Report. MacKenzie’s diary entry for 14 September 2003 included the following:

*“Out a few times then to main for conditioning prisoners. All night – no sleep for them – about 3 hours for me.”*⁷³¹

This would appear to be a reference to his guard duty on Sunday night.

2.508 Pte Cooper said that the death of Capt Jones made the Multiple quite upset. He said that after the death there was an atmosphere of anxiety and anger within the Multiple.⁷³²

2.509 During one of his stags Pte Cooper said he used a metal bar to make a noise to keep the Detainees awake. He believed that the bar was given to the guards when he was on duty.⁷³³ (Smulski accepted that he told the guards to do this: see Chapter 15 below). He confirmed MacKenzie’s recollection of the visit of a *“colour sergeant”*

⁷²⁶ Mackenzie BMI 29/164/19-167/10

⁷²⁷ Mackenzie BMI01044, paragraph 57

⁷²⁸ Mackenzie BMI 29/167/13-168/11

⁷²⁹ Mackenzie BMI 29/163/19-165/6; Mackenzie MOD000115

⁷³⁰ Mackenzie BMI 29/168/12-173/9

⁷³¹ MOD015619

⁷³² Pte Aaron Cooper BMI 29/8/12-9/6

⁷³³ Pte Aaron Cooper BMI 29/44/4-10

and “*staff sergeant*”. He said the “*staff sergeant*” told them to remove the hoods and let the Detainees rest. From other evidence it would seem clear, and I find, that the staff sergeant was Sgt Smith, the Provost Sergeant. Pte Cooper said that 20 to 30 minutes later a colour sergeant told them to put the hoods back on and place the Detainees back in stress positions.⁷³⁴ Livesey accepted that it was he who reversed Sgt Smith’s order.⁷³⁵

- 2.510** I return to the metal bar and the orders given by Sgt Smith and Livesey in Chapter 15, when dealing with the tactical questioning of the Detainees.
- 2.511** Pte Cooper also said that other soldiers from 1 QLR and from other units came into the TDF and punched and made fun of the Detainees.⁷³⁶ A little later in his oral evidence he asserted these soldiers came into the TDF before his first stag started.⁷³⁷
- 2.512** He believed that the orders to keep the Detainees in their stress positions emanated from Rodgers and Payne. However, he said that during his first stag he began to feel guilty about what he and others had done to the Detainees. Before Sgt Smith told him to take off the hoods he would quite forcefully put the Detainees back into their stress positions. He said he did not punch any of them at this time but he accepted he may have tapped them on the back of the neck with moderate force.⁷³⁸
- 2.513** Pte Cooper said he did not remember seeing MacKenzie use violence on any of the Detainees.⁷³⁹ He said that the Detainees were provided with water whenever they wanted it, and he remembered taking one Detainee to the portaloos.⁷⁴⁰
- 2.514** Pte Cooper remembered that some of the soldiers who came to the TDF poured water on the heads of Detainees. He remembered one incident before the start of his stag when petrol was put under the nose of a hooded Detainee and water poured over his head to make him think he was having petrol poured over him. A lighter was then lit in front of the man’s nose.⁷⁴¹ This bears a striking resemblance to the complaint of such an incident by Kifah Matairi (see paragraph 2.208 above).
- 2.515** There is other evidence which would appear to relate to the incident described by Pte Cooper in the preceding paragraph. Payne, in a witness statement signed on the day he gave evidence, described what appeared to be an incident which he said took place on Monday morning. However, Payne alleged that it was Rodgers who put a petrol can in front of, not Kifah Matairi, but D005. Rodgers then lit a match having poured water over D005.⁷⁴² Reader said he was told around the time of the Court Martial by Redfearn about such a thing happening to the Op Salerno Detainees.⁷⁴³ Redfearn denied this.⁷⁴⁴

⁷³⁴ Pte Aaron Cooper BMI 29/31/8-14

⁷³⁵ Livesey BMI 39/47/21-49/1

⁷³⁶ Pte Aaron Cooper BMI 29/31/18-32/6

⁷³⁷ Pte Aaron Cooper BMI 29/34/15-35/1

⁷³⁸ Pte Aaron Cooper BMI 29/33/17-34/1; Pte Aaron Cooper BMI 29/37/12-39/12

⁷³⁹ Pte Aaron Cooper BMI 29/35/9-14

⁷⁴⁰ Pte Aaron Cooper BMI 29/40/16-41/20

⁷⁴¹ Pte Aaron Cooper BMI 29/41/5-43/8

⁷⁴² Payne BMI05822, paragraph 7

⁷⁴³ Reader BMI03393, paragraph 40

⁷⁴⁴ Redfearn BMI 30/194/14-24

- 2.516** It is possible that this incident was an incident which D005 described. He said he had insect repellent or something similar rubbed under his nose.⁷⁴⁵ However, his description is so different to the petrol incident that I find they are two different incidents. Further, Payne's statement containing the allegation against Rodgers has the hallmarks of an attempt to blacken Rodgers' name. I accept such an incident occurred. I find that it involved Kifah Matairi, but I am unable to determine who instigated and carried it out. It was a cruel and disgraceful incident.
- 2.517** Pte Cooper accepted that throughout their two hour stag up to midnight on Sunday he and MacKenzie kept the Detainees in stress positions. He said Payne would visit the TDF from time to time, no doubt to check that the Detainees were being kept in stress positions. However, during the early morning stag he believed that the Detainees were allowed to rest.⁷⁴⁶
- 2.518** During his first stag Pte Cooper remembered the "*staff sergeant*", whom he believed to have been Livesey, taking and bringing back a Detainee from being questioned by a tactical questioner. On his return the Detainee was limping and Livesey said that he had fallen into the swimming pool.⁷⁴⁷ It is possible that this Detainee was D002 whom Livesey admitted punching when returning him to the TDF after he had been questioned by the tactical questioner (see Chapter 15). D002 also alleged that he was dragged back to the TDF, causing his tracksuit bottom to come down. Livesey made no mention of the state of the Detainee's tracksuit. I accept his tracksuit bottom did come down but I cannot be certain that Livesey was responsible for this.
- 2.519** Finally, on Monday, some time after his second stag (at about 1, following a few hours sleep at BG Main, according to his statement to the SIB) Pte Cooper said that he and other members of the Multiple went back to Camp Stephen. He said that at Camp Stephen they had a discussion about what had happened and what they had done. He felt guilty, as did others, and they all agreed that they would treat the Detainees differently when they next went back to carry out guard duties.⁷⁴⁸

Findings in Respect of Pte Cooper's and MacKenzie's Stags

- 2.520** I have already commented on Pte Cooper's credibility in Chapter 10. So far as MacKenzie is concerned he was in my opinion a singularly unimpressive witness. His SIB statement of 10 October 2003 was quite detailed in describing what had occurred in the TDF.⁷⁴⁹ Yet at the start of his evidence when asked whether what had happened had stuck in his memory he said he had a vague recollection of "*things*".⁷⁵⁰ In Part III I refer to the sale, as I find, by him, of fake photographs of Iraqis being abused by soldiers for which he was dismissed from the Territorial Army.
- 2.521** In my view MacKenzie's attitude to those whom he was guarding in the TDF is best demonstrated by the entry he made in his personal diary for 15 September 2003, the day Baha Mousa died. The entry read:

⁷⁴⁵ D005 PIL000279-80, paragraph 76

⁷⁴⁶ Pte Aaron Cooper BMI 29/44/24-45/20

⁷⁴⁷ Pte Aaron Cooper BMI 29/49/3-17

⁷⁴⁸ Pte Aaron Cooper BMI 29/50/6-51/22; Pte Aaron Cooper MOD000103

⁷⁴⁹ Mackenzie MOD000110

⁷⁵⁰ MacKenzie BMI 29/153/14-16

“Still [words scribbled out] conditioning the terrorists. They are in clip big time. Finally got back to camp at 13.30pm. Back to BG Main for 10pm. The fat bastard who kept taking his hood off and escaping from his plasticuffs got put in another room. He resisted [words scribbled out] – He stopped breathing though we couldn’t revive him. [words scribbled out] – what a shame.”⁷⁵¹

- 2.522** When asked in oral evidence what it meant he agreed it was probably not an expression of regret. He said *“Well, it is what is says. I suppose it was a bit tongue in cheek, if that’s the right word.”⁷⁵²* In my opinion it speaks volumes in respect of his attitude towards the Detainees. When describing his own actions in the TDF MacKenzie was not, in my view, prepared to tell the full truth about what he did and saw. I refer to other entries in his diary in Part III of the Report.
- 2.523** Both Pte Cooper and MacKenzie accepted that they had used force on the Detainees to keep them in stress positions. Each denied that they had punched the Detainees during their stag. I accept that during the first stag, Pte Cooper did begin to feel some sense of guilt and remorse about their treatment of the prisoners. I accept that for this reason in his two stags he did not use as much force as he had in the incident during the “Free for All”.
- 2.524** However, if only because Payne was likely to visit the TDF at any time, I think it probable that throughout both stags MacKenzie and Pte Cooper used force to keep the Detainees awake and in stress positions. In view of MacKenzie’s attitude to Iraqis with whom the Multiple came in contact, as expressed in his diary (see Part III), I find it difficult to accept that he merely tapped the Detainees on the back of the neck to keep them awake. I suspect that the force used by him was greater and harder than just a tap.

Appleby and Reader

- 2.525** Appleby accepted that he shared his stag with Reader, between midnight and 02.00hrs.⁷⁵³ He had seen Payne punching the Detainees with his clenched fist when the Multiple first arrived at the TDF that evening.⁷⁵⁴ They were told by Payne to pick the Detainees up when they fell over, and to shout and swear at them.⁷⁵⁵ MacKenzie briefed him that they were not to let the prisoners sleep.⁷⁵⁶ However, they were not told to hit or punch the Detainees.⁷⁵⁷
- 2.526** He knew from the time that the Regiment was in Catterick that Payne had a reputation as a hard man who could be aggressive. He said some regarded Payne as a psychopath.⁷⁵⁸ He feared that Payne might return to the TDF and find a Detainee asleep.⁷⁵⁹ He accepted that he knew Payne’s behaviour was wrong and

⁷⁵¹ Mackenzie BMI 29/201/17-23; MOD015619

⁷⁵² MacKenzie BMI 29/203/6-11

⁷⁵³ Appleby BMI 25/35/12-23

⁷⁵⁴ Appleby BMI 25/24/22-25/17; Appleby BMI 25/43/21-44/12

⁷⁵⁵ Appleby BMI 25/30/16-31/6; Appleby BMI 25/46/1-47/1

⁷⁵⁶ Appleby MOD000174

⁷⁵⁷ Appleby BMI 25/39/19-40/3

⁷⁵⁸ Appleby BMI 25/42/8-19

⁷⁵⁹ Appleby BMI 25/52/23-53/3

that Detainees should not be hit⁷⁶⁰ and, accepting that he had been guarding the Detainees whilst they were beaten, said that he felt ashamed.⁷⁶¹

2.527 Appleby said when he and Reader started on guard the Detainees were sitting on the floor. Their heads were dropping, apparently with fatigue.⁷⁶² He and Reader kept them awake by shining a torch on them or by shaking their heads and giving them a “tap”. He denied the tap was a slap or that he used the torch to hit them.⁷⁶³ However, in his SIB statement, he had admitted slapping Detainees in the face: “*Not hard... just to try and keep them awake.*”⁷⁶⁴ He accepted that it was more than likely that the Detainees would be moaning and groaning during his stag.⁷⁶⁵

2.528 Appleby remembered an “officer” and a colour sergeant coming to the TDF at one stage and telling him and Reader to take the young boy out because he was due to break. They were not told to shake him physically but to make him scared. They understood that they were meant to take him outside and shout at him.⁷⁶⁶ Smulski accepted that it was he who gave this instruction. It appears that he is the man described by Appleby as the “officer”. Smulski said he ordered this in order to disorientate the young man.⁷⁶⁷

2.529 Appleby remembered taking the young Detainee out and shouting at him before bringing him back in. He did this with Reader. He accepted that they handled him roughly. He said this incident caused the young Detainee to cry. It is clear from the description of the incident that the Detainee can only have been D005. Appleby denied positioning D005 with his head over the toilet in the middle room of the TDF.⁷⁶⁸

2.530 Appleby also remembered the “officer” (Smulski) going round banging a stick of some sort on the floor in order to frighten and confuse the Detainees. Appleby said the stick made a clanking noise and he remembered, as he had said in his Inquiry statement that the officer “*told us there were more effective ways of dealing with the detainees than ‘manhandling’ them, as Corporal Payne had been doing*”.⁷⁶⁹ The inference from this observation by, as I find, Smulski, is that Smulski was aware of some of Payne’s mistreatment of the Detainees.

2.531 Appleby was unable to remember any other visitors to the TDF during his stag. In addition, he did not remember taking any of the Detainees to the tactical questioner, nor did he remember any Detainee returning from being questioned with a cut on his face.⁷⁷⁰

2.532 Reader accepted that he had been on guard duty with Appleby (although he did say that he performed guard duty at other times also).⁷⁷¹ As I have already mentioned,

⁷⁶⁰ Appleby BMI 25/47/21-48/9

⁷⁶¹ Appleby BMI 25/96/22-97/5

⁷⁶² Appleby BMI 25/53/17-54/6

⁷⁶³ Appleby BMI 25/52/2-21; Appleby BMI 25/85/2-11

⁷⁶⁴ Appleby MOD000174

⁷⁶⁵ Appleby BMI 25/54/7-10

⁷⁶⁶ Appleby BMI 25/56/7-58/1; Appleby BMI02525, paragraphs 75-76

⁷⁶⁷ Smulski BMI 41/23/13-24/6; Smulski BMI01249-50, paragraph 94

⁷⁶⁸ Appleby BMI 25/57/6-59/22

⁷⁶⁹ Appleby 25/61/2-62/13

⁷⁷⁰ Appleby BMI 25/63/25-65/10

⁷⁷¹ Reader BMI 28/153/13-21

after the event of 2003 he suffered from some form of depressive illness. I bear that in mind in assessing his evidence.

- 2.533** He said that he was briefed by both Rodgers and Payne. Each gave broadly the same briefing, which was to keep the Detainees in stress positions, hooded and without sleep.⁷⁷² They kept the Detainees awake by shouting and, as he said, banging a door. When it was pointed out to him that there were no doors to the TDF, he said it must have been by shouting.⁷⁷³
- 2.534** On one occasion he remembered Livesey instructing him and Appleby to drag a Detainee out of the TDF. He thought that this was to disorientate the prisoner. Both he and Appleby manhandled the detainee out of the TDF. His trousers fell down as a result of him being dragged forcefully. From what Reader said about this incident it seems to be clear it was the same incident described by Appleby for which Smulski admitted giving the order. It may be that Livesey was also present when Smulski gave the order. In any event I am satisfied that the order came from Smulski. Reader said that he felt this conduct was inappropriate. His description of it in evidence was: *“He was literally dragged out and dragged back in. I didn’t see him physically get hit, kicked or punched...”*⁷⁷⁴
- 2.535** On another occasion he said he had slapped, but no more, a Detainee to get his attention. He conceded that it was quite a hard blow. The reason for this slap was because the Detainee was ignoring him when he was trying to put the man back into a stress position.⁷⁷⁵ Reader accepted that in a statement to the SIB in October 2003 he had described hitting the Detainee he had nicknamed as *“fat bastard”* when he was attempting to move him. In addition, he agreed that in the same statement he admitted using his feet and lower legs to *“budged him around”*.⁷⁷⁶
- 2.536** In the SIB pro-forma of questions and answers he was asked how he got the Detainees to do as they were asked. His reply, recorded in the pro-forma by the SIB, was *“Stand up - shout - grab them under the eyes”*. In evidence he said that *“eyes”* was a misprint for *“arms”*. In the pro-forma his recorded response to the question *“Did you require to use any degree of force?”* was *“Slapped on stag - big bloke. Hit once only on stag.”* His recorded response to the question *“What did you use to correct them?”* was *“Kicking them. Big fat guy. Pushing with boot.”* He said that he did not remember giving these answers to the SIB.⁷⁷⁷
- 2.537** Reader described the condition of the Detainees as *“quite bad”*; they were tired and *“visibly falling”*. He remembered lots of moans and groans coming from them.⁷⁷⁸ He nicknamed one Detainee *“Bruise”* because of the bruising visible on his torso. He also saw bruising on the side of another detainee (*“young guy”*). He was able to see this bruising because the Detainees’ clothing was in poor condition, either undone or torn.⁷⁷⁹ Shortly after commencing his stag, he noticed for the first time that one of the Detainees, whom he had nicknamed *“fat bastard”*, had a cut on his nose.⁷⁸⁰ Some

⁷⁷² Reader BMI 28/146/6-147/5

⁷⁷³ Reader BMI 28/159/16-25

⁷⁷⁴ Reader BMI 28/150/7-152/14

⁷⁷⁵ Reader BMI 28/161/1-162/1

⁷⁷⁶ Reader BMI 28/164/1-15

⁷⁷⁷ Reader BMI 28/166/12-167/11; MOD001680

⁷⁷⁸ Reader BMI 28/149/9-25

⁷⁷⁹ Reader BMI 28/139/13-140/20

⁷⁸⁰ Reader BMI 28/211/21-212/13

had wet themselves and the room smelt of urine.⁷⁸¹ Indeed, in his SIB statement, he had referred to one of the Detainees as “*pisspants*”.⁷⁸²

2.538 Reader said that high-ranking officers and soldiers had come to the TDF during the night. In addition, Payne would come in at intervals. When asked to name any of the high-ranking officers he named Mendonça and WO1 George Briscoe, but on further questions it was clear that he only saw Mendonça, accompanied by Briscoe, walk around the corner of the TDF. He did not see Mendonça go into the TDF and it also seems from his evidence that he was alleging this occurred on Monday morning, not during his stag. He also saw a medic going into the TDF in addition to Livesey and others.⁷⁸³ I return to Mendonça and the issue of what visits he made to the TDF in Chapter 21.

2.539 Reader denied seeing any violent conduct by any soldier on the Detainees during his stag. He added that if he did see such conduct he could not remember it.⁷⁸⁴

2.540 During the course of his evidence Reader said that the SIB officers had put words into his mouth when compiling his written statement. He admitted that he had not told the truth at the Court Martial for fear of repercussions which might affect his career and cause him to be bullied by Payne.⁷⁸⁵

Findings in Respect of Appleby and Reader’s Stag

2.541 I find that Appleby and Reader had been briefed to keep the Detainees hooded, in stress positions and awake. Appleby admitted tapping the Detainees and Reader admitted slapping them. If the answers given by Reader and recorded by the SIB in his pro-forma interview were accurate, as I find they were, he also admitted kicking the Detainees. In my opinion, it is probable that Appleby and Reader used more force than they were prepared to admit in evidence. The example of Payne’s violent conduct before the stag started and the threat of him returning to the TDF at any time, in my view, influenced both these young men forcefully to manhandle the Detainees when keeping them awake and, for the most part, in stress positions. I do not accept Reader’s assertion that he saw no violence inflicted on the Detainees. In my view his own conduct and that of Appleby was quite sufficiently forceful to amount to abusive treatment of the Detainees.

2.542 So far as D005 is concerned each accepted that they had forcefully manhandled him. Appleby accepted that they shouted at him and that this treatment was enough to cause him to cry. As set out above, if there were any physical injuries to D005 then they were minimal. For this reason, I accept that such force as was used on him by Appleby and Reader when taking him outside the TDF was not such as to cause him any serious or lasting physical injury. But it may, albeit in a small way, have contributed to the PTSD which he has suffered and which in my opinion is directly attributable to the abuse, physical and mental, which was inflicted on him in the TDF. It is some mitigation in respect of their conduct towards D005 that they were ordered by Smulski to act in this way.

⁷⁸¹ Reader BMI 28/153/5-12; Reader BMI 28/185/14-16

⁷⁸² Reader MOD000202

⁷⁸³ Reader BMI 28/154/2-158/9

⁷⁸⁴ Reader BMI 28/202/15-203/2; Reader BMI03393, paragraph 39

⁷⁸⁵ Reader BMI 28/125/13-126/20

2.543 Appleby in his SIB statement said that he and Reader were relieved of their guard duty at 08.00hrs by the second half of the Rodgers Multiple. In my view this is unlikely. Appleby in oral evidence was very uncertain about times and since the day time guard arrived at the TDF at approximately 05.45hrs it is in my view likely that they took over from Appleby and Reader at that time.

D005 and the Middle Room

2.544 There is one further incident which I find occurred at some stage during the course of the night-time stags. This is the toilet incident referred to in Chapter 6. In greater detail D005 alleged that at one stage he was taken to a toilet in the TDF. It must have been the floor-level toilet in the middle room. He said his trousers were taken down and he was made to squat over the toilet. His hood was lifted above his nose. The soldiers lowered his head over the hole and he described the smell as unbearable. He said this incident went on all night and ended when he was beaten by the soldiers.⁷⁸⁶

2.545 I accept that this incident happened. I am quite unable on the evidence to determine which soldiers were responsible for what happened. I do not think it can have lasted nearly as long as D005 said it did, but whatever length of time it must have been a horrible and cruel experience for anyone, let alone a young man. The absence of visible injuries on D005 suggests the beatings were not as serious as he said. But the psychological damage caused to him has been long-lasting (see Chapter 7).

⁷⁸⁶ D005 BMI 17/21/8-24/2

Chapter 12: Monday Morning

The Monday Morning Guards

- 2.546** The BG Main Watchkeeper's log records an entry for 05.26hrs stating: "G10A [the Rodgers Multiple] *heading here for guard task.*"⁷⁸⁷ At approximately 05.45hrs Rodgers arrived at the TDF with the other half of the Multiple who were to take over guard duty from the night guards.⁷⁸⁸ Those who arrived with Rodgers were Redfearn,⁷⁸⁹ Aspinall,⁷⁹⁰ Bentham,⁷⁹¹ Pte Lee Graham,⁷⁹² Pte Hunt⁷⁹³ and Stirland.⁷⁹⁴
- 2.547** Whilst his recollection of timings was not very clear (see further below), it appears that Richards joined the rest of the Multiple at the TDF at about 06.00hrs or 07.00hrs on Monday, and remained with them there.⁷⁹⁵ Douglas, the other Saxon driver, as I shall discuss below, was probably already at the TDF.
- 2.548** The principal guards on Monday morning were to be Pte Hunt and Stirland. In his SIB statement of 10 October 2003 MacKenzie said that the last night stag was between 06.00hrs and 08.00hrs, this to be undertaken by Appleby and Reader.⁷⁹⁶ Appleby, however, in his first SIB statement said that the remainder of the Multiple arrived at about 06.00hrs, at which point Rodgers told him to rest.⁷⁹⁷ Similarly, in his oral evidence, he remembered being on stag duty only from midnight until 02.00hrs.⁷⁹⁸ The fact that Rodgers and the second half of the Multiple arrived to take over at approximately 05.45hrs on Monday morning and both Stirland and Pte Hunt's memories that they started their stag at 06.00hrs indicate that Appleby and Reader did not undertake the second stag which MacKenzie had allocated to them.
- 2.549** As already noted, timings can only be approximate unless backed up by Battlegroup or company logs. The guards cannot be expected to remember accurately the precise times when they were on guard without the aid of written records. In this instance I think it likely, and I find, that Pte Hunt and Stirland started their stag at approximately 06.00hrs on Monday, at which time Appleby and Reader were relieved of guard duty.

⁷⁸⁷ MOD016536

⁷⁸⁸ MOD000221. Rodgers said in an SIB statement dated 12 October 2003 (MOD000221) that, after visiting the TDF at about 05.45, he then returned to Camp Stephen, before going back to BG Main with his Multiple at 09.00. However, this account is not corroborated by other members of the Multiple or by the logs, and I find it to be inaccurate. I find that, after their 05.45 arrival, Rodgers and the Multiple remained at BG Main throughout Monday morning.

⁷⁸⁹ Redfearn BMI 30/151/18-152/19

⁷⁹⁰ Aspinall BMI 28/48/2-12

⁷⁹¹ Bentham BMI 41/90/17-23

⁷⁹² Pte Lee Graham BMI 26/62/22-63/19

⁷⁹³ Pte Jonathan Hunt BMI 27/8/21-9/4

⁷⁹⁴ Stirland BMI 38/15/16-16/14

⁷⁹⁵ Richards BMI 31/125/14-126/25. The reference to "Sunday" in this passage must be incorrect, and Richards must in fact be talking about Monday, which is the only day on which the whole Multiple was at the TDF at 06.00. In his Inquiry witness statement he did in fact say that he was at the TDF on Monday, and not Sunday: Richards BMI04166-7, paragraphs 40-41.

⁷⁹⁶ MacKenzie MOD000115

⁷⁹⁷ Appleby MOD000176

⁷⁹⁸ Appleby BMI 25/35/12-23

2.550 It is plain that other members of the Multiple were also in and around the TDF during this period. For example, MacKenzie's diary records that, even though he had been one of the night guards, he did not go back to Camp Stephen until 13.30hrs.⁷⁹⁹ Appleby said that he slept in the back of a Saxon at BG Main between about 06.00hrs and 13.00hrs.⁸⁰⁰ Reader slept in the back of a Saxon at BG Main from about 06.00hrs until returning to the TDF at about 11.00hrs, and then escorted "Granddad" to a tactical questioning session at about 11.30hrs.⁸⁰¹ Rodgers said that, between his 09.30hrs and 11.00hrs visits to the TDF, he busied himself with work "in and about 1 QLR Main"; and that, until he left BG Main at 13.00hrs, he continued his work.⁸⁰² Indeed, in my judgment, the whole Rodgers Multiple was present at BG Main throughout the Monday morning; and various members of the Multiple were in and around the TDF throughout this period.⁸⁰³

Conditions in the TDF and the Condition of the Detainees

2.551 On arrival, Redfearn, who was in charge of the new day time guard, went into the TDF. His graphic description of what he saw, if accurate, throws a flood of light on the conditions in the TDF and of the Detainees at that time after approximately 24 hours of detention. In his Inquiry witness statement he said:

*"Conditions in the TDF were indescribable. When the detainees were originally arrested they were tidily dressed and not in any kind of distress. The next time I saw them in the TDF on the Monday morning they all looked like they had been in a car crash. The majority of their clothes were ripped and most if not all of them had had heavy bruising across their abdomens and upper arms. This was visible through their ripped clothing. The bruising that I saw was not just simple round bruises that you might normally see. The bruises I saw ran in a line across the detainees' stomachs and were perhaps five inches wide. The detainees also looked exhausted. When I started my guard shift and removed the detainees' hoods I could see that at least two of them had bloody noses and bruising around their eyes. I remember that Baha Mousa was one of those with a bloody nose. During my shift I had called out for a medic to come, but none ever did."*⁸⁰⁴

2.552 Earlier in the same statement he said the temperature was in the mid-40s and the TDF was like a sauna. The stench of urine and the humidity made the conditions disgusting.⁸⁰⁵

2.553 Rodgers, on the other hand, having said in his SIB statement dated 12 October 2003 that he got to the TDF at about 05.45hrs, did not make clear whether he went into

⁷⁹⁹ MOD015619

⁸⁰⁰ Appleby MOD000176

⁸⁰¹ Reader MOD000205

⁸⁰² Rodgers MOD000221-2

⁸⁰³ SUB000617 at paragraphs 41 to 43 and 46. It was submitted on behalf of some members of the Rodgers Multiple that the logs imply that on the Monday morning the Multiple, less Hunt and Stirland, was away from BG Main, involved in Operation Centurion 2. I do not accept this submission. None of the log entries expressly state this to have been the case and in my judgment they do not say so implicitly either. On the contrary, the entry in the A Company log for 10.32hrs, which states "G20A back in location. That leaves G10A on task at your location [BG Main]", implies that G10A, the Rodgers Multiple, had been at BG Main all morning. A further log entry, timed at 12.05, records that G10A are still on guard duty at BG Main: MOD016799. Furthermore, no member of the Multiple has at any point said that they were involved in Operation Centurion 2 during Monday morning.

⁸⁰⁴ Redfearn BMI01805, paragraph 134

⁸⁰⁵ Redfearn BMI01794, paragraph 100

the TDF at that time. He accepted, relying on what he said to the SIB, that he had visited the TDF twice more on that morning, once at 09.30hrs and secondly at about 11.00hrs.⁸⁰⁶ In his SIB statement dated 30 June 2005 he described what he saw on arrival, as he said in the statement, between 09.00hrs and 10.00hrs, as follows:

“When I entered the detention facility I saw that the men were still seated on the ground, hooded, with their hands restrained with plastic cuffs. I cannot confirm they were seated in the same positions in the building as that in which I had seen them the evening previous. I noticed all of the detained men were wet, which I opined was due to their sweating and this thought was compounded by a strong smell of body odour present in the facility. Some of the detained men were also complaining, by which I mean that they were moaning.”⁸⁰⁷

2.554 Although there may be a slight difference in the time when each is describing conditions in the TDF in my view the descriptions given by Redfearn and Rodgers about conditions in the TDF on Monday morning are very different and cannot be reconciled. Redfearn’s description conforms much more closely to what could be expected on the assumption that the Detainees’ account of their mistreatment up to that time was broadly correct.

2.555 Hunt in evidence to the Inquiry agreed that on Monday morning the Detainees were being kept *“in a pretty inhumane situation”*.⁸⁰⁸ He also said that on Monday morning he was shown a large bruise on one of the Detainees.⁸⁰⁹ He identified the man with the bruise as the man who later died, namely Baha Mousa.⁸¹⁰ There is also other evidence that by that time some of the Detainees were showing signs of injuries. For example, Pte Cooper noticed bruising to a Detainee’s abdomen.⁸¹¹ Reader saw bruising on the torso of two Detainees and cuts on the nose of another.⁸¹² Even Rodgers said that Payne had pointed out bruising on a Detainee’s torso on Sunday night.⁸¹³ Pte Cooper and Reader also said they became aware during Sunday night that Detainees had soiled themselves.⁸¹⁴ In his diary, Mackenzie had written that the *“terrorists”* were still being conditioned and were *“in clip big time.”*⁸¹⁵ He said in evidence that *“in clip”* meant: *“In a bad way, you know, fatigued, not well.”*⁸¹⁶ These descriptions of what could be seen by that morning could probably have been observed by anyone coming into the TDF.

2.556 Redfearn said that he had spoken to Rodgers about what had been going on in the TDF. He was asked in his oral evidence to the Inquiry what he said to Rodgers. His reply was:

⁸⁰⁶ Rodgers BMI 30/49/17-54/3

⁸⁰⁷ Rodgers MOD000229-30

⁸⁰⁸ Pte Jonathan Hunt BMI 27/141/6-11

⁸⁰⁹ Pte Jonathan Hunt BMI 27/69/24-70/2

⁸¹⁰ Pte Jonathan Hunt BMI 27/142/19-22

⁸¹¹ Pte Aaron Cooper BMI 29/32/20-33/6

⁸¹² Reader BMI 28/139/13-140/20; Reader BMI 28/149/21-25

⁸¹³ Rodgers BMI 30/30/14-25

⁸¹⁴ Pte Aaron Cooper BMI 29/41/21-42/1; Reader BMI 28/153/2-12

⁸¹⁵ MOD015619

⁸¹⁶ Mackenzie BMI 29/202/8-11

“A. Well, I put it to him that obviously the detainees had been assaulted either during the night or the previous afternoon. And either members of that multiple or the personnel who took them from the Hotel to the TDF had assaulted them, sir and he said that everybody’s aware of it. At the time, sir, I thought he meant that everybody’s aware of it, that’s going to be the end of it. Not everybody’s aware of it, let’s carry on.”

Q. Because it did carry on, did it?

A. It obviously did, sir.”⁸¹⁷

2.557 This account was different from his Inquiry statement, where he said the following:

“But once Cpl Payne told me to leave them [the hoods], I thought that I should not argue with him as he was a higher rank than me, and to be honest I was intimidated by him, as he was the Provost Sergeant and was a physically big man.

...

In addition, although I could tell the Detainees were uncomfortable I did not know that anything that was going on was illegal or prohibited, and therefore had no justification to ignore orders.

...

As a result [of Payne’ instructions and not thinking that anything in the TDF was illegal or prohibited] although I did not agree with what was happening, I did not report the condition of the detainees, aside from attempting to call the medics as detailed above. I may have informed Lt Rodgers of what took place but he like me, was likely to have simply been following orders.”⁸¹⁸

2.558 On the issue of what state the Detainees were in and the conditions in the TDF on Monday morning, I prefer Redfearn’s evidence to that of Rodgers. Although Redfearn may have had his own motives for saying that the state of the Detainees and conditions in the TDF was attributable to a period before he took over responsibility for the guarding of them, on the whole of the evidence I am driven to conclude that Rodgers’ description was inaccurate and untruthful. In my view Rodgers must have seen what Redfearn and others described. Further, I accept that Redfearn did speak to Rodgers about the state of the Detainees on Monday morning and that Rodgers indicated he was aware of what had been going on. The response which Redfearn said Rodgers made to what he had told him accords with what in my view Rodgers must have known.

Douglas

2.559 Douglas at the time of Op Telic 2 was in the TA. As previously noted he was one of the drivers attached to the Rodgers Multiple. Stirland was another. A third soldier, Richards, said that he also drove for G10A. There is some confusion over when each was present at the TDF during the period 14 to 16 September.

2.560 Stirland said he did not transfer the Detainees back to BG Main from the Hotel. He did, however, have some recollection of driving from the Hotel to BG Main and dropping off part of the Multiple to take part in guarding the Detainees. He thought

⁸¹⁷ Redfearn BMI 30/163/19-164/3

⁸¹⁸ Redfearn BMI01804-5, paragraphs 131-133

this was on Sunday afternoon. That cannot be right. Either he drove from the Hotel to drop members of the Multiple off at BG Main at about 10.40hrs, or he drove from Camp Stephen to drop them off at about 18.50hrs. In any event, he explained that after the guards had been dropped off at the TDF he went straight back to Camp Stephen. He said that he did not see any of the Detainees until he started his stag at 06.00hrs on the following morning.⁸¹⁹

2.561 Richards gave confused evidence about when he first saw the Detainees at the TDF. At one point he said it was on Sunday morning at about 06.00hrs.⁸²⁰ However, in his Inquiry witness statement, he had said it was on Monday at 06.00hrs.⁸²¹ Similarly, later in his oral evidence, he said that he was at the TDF on the same day as he went on leave, which was Monday.⁸²² He went on to describe what he saw in the TDF. In my opinion he cannot be right in saying that he arrived on Sunday morning. It seems probable that in his evidence he confused Sunday morning and Monday morning.

2.562 Douglas said he went to the TDF on two occasions. The second was when he returned from Camp Stephen with the soldiers taking over from the Monday day time guard. They arrived at about 21.15hrs just before the incident which ended in Baha Mousa's death.⁸²³

2.563 Douglas said his first visit was, he thought, on Sunday night and lasted about eight to ten hours. He was reasonably sure that he was at the TDF during the night as well as on Monday morning. He was more certain about when his visit ended, which he said was at 12.00hrs on Monday, when the soldiers carrying out the morning stag handed over to Aspinall, Bentham and Pte Lee Graham.⁸²⁴ Pte Cooper remembered Douglas being at BG Main at about 19.00hrs on Sunday evening when the night-time guard took over from Crowcroft and Fallon.⁸²⁵ This suggests that Douglas must have been one of the drivers who transferred the Multiple from Camp Stephen to BG Main on Sunday evening. Douglas said that he thought the Multiple split in half (which accords with other evidence that one half stayed to carry out the night stags and the other half returned to Camp Stephen).⁸²⁶ There is little doubt, as the log shows, and I find, that the Monday day time guard would have arrived at the TDF at about 05.30hrs to 06.00hrs.⁸²⁷ It is unclear whether Douglas was already present, having remained there all night, or arrived with the day time guard.

2.564 The importance of this issue is due to the fact that Douglas's evidence, if truthful and accurate, describes in general terms significant actions of the guards, visitors and himself at the time he was present at the TDF. Douglas was unable to name any of the guards or visitors who, as he said, mistreated Detainees but he did identify Payne as one who was involved in assaults on the Detainees.⁸²⁸

⁸¹⁹ Stirland BMI 38/13/1-16/6

⁸²⁰ Richards BMI 31/124/5-126/25

⁸²¹ Richards BMI04166-7, paragraphs 38-43

⁸²² Richards BMI 31/131/5-17

⁸²³ Douglas BMI 31/14/20-16/18; Opening BMI 5/9/5-11

⁸²⁴ Douglas BMI 31/14/20-18/9

⁸²⁵ Pte Aaron Cooper BMI 29/22/10-23; Pte Aaron Cooper MOD000100

⁸²⁶ Douglas BMI 31/16/3-10

⁸²⁷ MOD016033

⁸²⁸ Douglas BMI 31/30/3-36/5

- 2.565** Aspinall, Bentham and Pte Lee Graham started their stag at about 13.00hrs on Monday.⁸²⁹ Working back eight to ten hours brings the time to the early hours of Monday morning. In my view the probability is that Douglas' description of events he witnessed and his own actions spanned a period which included the whole of the stag on Monday morning and possibly the night time stags as well. It follows that his description of the events that he witnessed in the TDF described the actions of the guards on the first morning stag as well as others who may have come into the TDF during that time. It is also possible that his description covers the actions of the guards and others during the night time stag.
- 2.566** Douglas said that he had no assigned role for guarding the Detainees. People would come in and out of the TDF to sleep in his Saxon or nearby.⁸³⁰ He described the situation in his Inquiry witness statement as "*disorganised chaos*".⁸³¹ In evidence he went back on that description to an extent, saying it was not altogether disorganised chaos but "*there was a lot of shouting at the prisoners to maintain the stress positions*". He went on to say that people were able to wander in and out of the TDF to "*...give them a bit of shouting. A lot of people came in just for a look*".⁸³²
- 2.567** Douglas said the guards received instructions by word of mouth. The instructions were to keep the Detainees in stress positions. He said he had slapped the arms or legs of Detainees with his hand or nudged them with his foot to get them back in position. At the same time he would shout at them "*Get your hands up*" or "*up Up*". He described the Detainees being allowed to relax from their stress positions from time to time.⁸³³
- 2.568** When asked about his slapping of the Detainees he said, "*I slapped them to put them into the positions. I didn't slap them for the hell of it...*". He agreed that the implication of this evidence was that other people were slapping them for "*the hell of it*". He agreed that those others were both members of the Multiple and strangers.⁸³⁴ He confirmed as accurate a passage in his SIB statement of 12 October 2003 in which he said:
- "I do recall that I saw excessive force being used against the prisoners where they were punched and slapped around the head. Punched in the back, kicked in the ribs, back and kidney areas while all were facing the wall."*⁸³⁵
- 2.569** He explained that it was mainly soldiers in the Multiple who were doing the punching and kicking, although he agreed that in his SIB statement he appeared to say that other visitors were also punching and kicking.⁸³⁶
- 2.570** Later in his evidence he said more than one member of the Multiple was punching and kicking: "*a lot of them could have been doing it, yes*".⁸³⁷

⁸²⁹ Aspinall BMI 28/31/17-23; Bentham BMI 41/91/6-18; Pte Lee Graham BMI 26/46/16-47/1

⁸³⁰ Douglas BMI 31/103/13-104/19

⁸³¹ Douglas BMI01399, paragraph 44

⁸³² Douglas BMI 31/20/22-22/19

⁸³³ Douglas BMI 31/23/1-26/9

⁸³⁴ Douglas BMI 31/30/3-23

⁸³⁵ Douglas BMI 31/32/10-14; Douglas MOD000185

⁸³⁶ Douglas BMI 31/32/24-34/18

⁸³⁷ Douglas BMI 31/34/5-36/9

- 2.571** Douglas was able to describe injuries which he had seen on the Detainees. They had injuries to their faces which could be seen when the hoods were lifted. These injuries consisted of bruising and marks around the face with blood on their lips and nose. He also remembered one Detainee with a lump in his groin area which could have been a hernia.⁸³⁸
- 2.572** In summary, Douglas agreed with Counsel that he had seen injured Detainees being assaulted by a number of people and there was a smell of urine and faeces. Urine was visible on the Detainees' clothing and on the floor. When asked whether what he had seen constituted inhumane treatment under the Geneva Conventions he said, "*It went far too far*" and "*for some reason these guys got treated a bit more aggressively*".⁸³⁹
- 2.573** The only person identified by Douglas as involved in the assaults was Payne. He said he thought Payne was in the TDF most of the time he was there. He saw him punching, slapping and kicking Detainees. He also saw Payne grab their throats.⁸⁴⁰
- 2.574** At the time of Op Salerno Douglas was significantly older and more mature than most of the guards and their NCOs.⁸⁴¹ He gave his evidence in a straightforward manner, making admissions of his own behaviour without equivocation. In my judgment his evidence was truthful and broadly accurate, and I accept it. I suspect that at some stage he might have been able to identify some of those other than Payne who mistreated the Detainees. But I accept that due to the passage of time and his lack of familiarity with 1 QLR personnel by reason of being a TA soldier he genuinely cannot now identify anyone other than Payne. In general, his evidence paints a clear picture of the way the Detainees were treated when he was present at the TDF on his first visit. It also confirms that members of the Rodgers Multiple were involved in assaulting Detainees.
- 2.575** Although I appreciate that as a member of the TA it might have been difficult for Douglas to have reported up the chain of command what he had seen, nevertheless in my view he should have done. It also goes without saying that his conduct of using force to keep the Detainees in stress positions and awake was wrong.

The Monday Morning Stag

- 2.576** Redfearn was responsible for arranging the day time stags for Monday.⁸⁴² He tasked Stirland and Pte Hunt to carry out the first stag.⁸⁴³
- 2.577** Redfearn stated in evidence that in view of the condition of the Detainees he asked Pte Hunt and Reader to carry out initial medical assessments and then sent for medics to see the Detainees, but none came.⁸⁴⁴ I think this is unlikely, but in fact, some time after 06.00hrs Cpl Winstanley said he was asked to examine one of the Detainees. Cpl Winstanley said he found the Detainee, an old man, lying on the

⁸³⁸ Douglas BMI 31/36/10-40/1

⁸³⁹ Douglas BMI 31/40/2-42/13

⁸⁴⁰ Douglas BMI 31/34/19-35/18

⁸⁴¹ Douglas BMI 31/3/14-21

⁸⁴² Redfearn BMI 30/152/1-12

⁸⁴³ Stirland BMI 38/16/1-14; Pte Jonathan Hunt BMI00780-1, paragraph 54

⁸⁴⁴ Redfearn BMI 30/157/7-158/19

floor holding a pack of tablets.⁸⁴⁵ The Detainee was D006, who remembered being attended by a medic that morning.⁸⁴⁶

- 2.578** Cpl Winstanley carried out a full examination of D006 and consulted Dr Keilloh. The FMed 5 which he said he completed after speaking to Dr Keilloh and returning to D006 recorded that on examination the Detainee had an irregular heartbeat and slight rising of his pulse rate. Aspirin was prescribed at the rate of 300 mg daily, and propranolol at the rate of 40 mg daily. No name is recorded on the FMed 5. Cpl Winstanley said that although he asked through the interpreter for the Detainee's name none was given.⁸⁴⁷
- 2.579** There is no dispute that following Cpl Winstanley's visit the guards removed D006's hoods and plasticuffs and allowed him to rest. His son, D005, was brought from the centre room, his hood removed, and both men were given breakfast.⁸⁴⁸
- 2.580** Rodgers, in his SIB statement dated 12 October 2003 said that on a third visit on Monday morning at about 11.00hrs he noticed a young male had breathing difficulties. He asked Pte Hunt, who spoke a little Arabic, to speak to him while he conducted some sort of exercise to help him breathe. In his statement Rodgers made no mention of a medic being summoned and in oral evidence to the Inquiry he said he had only a vague recollection of seeing both D005 and D006 at that time.⁸⁴⁹
- 2.581** The evidence showed that probably D005 was examined by a medic at that time. Pte Lee Graham, who took part in the afternoon stag but was present at BG Main in the morning said in an SIB statement of 12 October 2003 (to which I refer in more detail in Chapter 13) that a "doctor" had come over to examine the father, D006, who complained of chest pains, and at the same time the son, D005, who was complaining of shortness of breath.⁸⁵⁰ Stirland said in an SIB statement the same medic examined both D006 and D005.⁸⁵¹ D005 in his Inquiry witness statement said that he was suffering from breathing difficulties on Monday morning. He said that, after some delay, a soldier who may have been a medic lifted his hood and said he would give him some oxygen, but that the soldier then sprayed an irritant, possibly fly killer, on his nose.⁸⁵² In oral evidence he did not say that the soldier responsible for this action was a medic.⁸⁵³
- 2.582** I find that D005 was seen by a medic on Monday morning, probably Cpl Winstanley. However, whilst I accept that an irritant was sprayed in D005's face, I do not find that Cpl Winstanley was responsible for this (see further paragraph 2.1221 below).
- 2.583** Redfearn⁸⁵⁴ said that in the TDF the Detainees were hooded and in stress positions. He described them as sitting cross-legged, plasticuffed to the front with their hands and arms towards their stomachs. He said they were obviously tired and distressed

⁸⁴⁵ Cpl Steven Winstanley BMI 34/78/4-79/12

⁸⁴⁶ D006 BMI 13/73/4-76/4

⁸⁴⁷ Cpl Steven Winstanley BMI 34/79/2-83/3; MOD015391

⁸⁴⁸ D006 BMI 13/74/11-77/20

⁸⁴⁹ Rodgers BMI 30/53/11-54/16; Rodgers MOD000221-2

⁸⁵⁰ Pte Lee Graham MOD000149-50

⁸⁵¹ Stirland MOD000159-60

⁸⁵² D005 BMI02332-3, paragraph 87

⁸⁵³ D005 BMI 17/29/11-25

⁸⁵⁴ Redfearn BMI 30/166/20-168/7

and found it difficult to maintain the stress positions. If they failed to maintain their stress positions he let them relax as best they could.

2.584 In his SIB statement he said he had ordered their hoods to be removed, for them to be given water and to be allowed to lie down.⁸⁵⁵ However, Payne visited the TDF regularly and if he found Detainees not in stress positions he would go “*ballistic*”. Payne would tell the guards that it was not to happen again. Payne instructed the guards not to allow the Detainees to remove their hoods⁸⁵⁶ and to enforce the stress positions. I find that the guards duly did as they were told.

2.585 Redfearn said he did not use force on the Detainees and he did not see the guards do so.⁸⁵⁷ He also challenged some RMP officers who came to the TDF and, as he believed, wanted to cause trouble.⁸⁵⁸

2.586 Redfearn agreed that from what he could see some of the Detainees had soiled themselves and that conditions in the TDF became worse as the day progressed until they became indescribably bad. He maintained that at no stage did he witness or hear about the “*choir*”.⁸⁵⁹

Pte Hunt

2.587 Pte Hunt agreed that the Detainees were hooded and in stress positions when his stag with Stirland started.⁸⁶⁰ In his oral evidence to the Inquiry he was unable to remember by whom he was briefed.⁸⁶¹ In a witness statement to the SIB confirmed in his Inquiry witness statement, he had said that he was briefed by Rodgers before starting his stag. In that statement he said he remembered being told not to let the Detainees talk to each other, nor sleep.⁸⁶² Having initially said in oral evidence that he only had the vaguest recollection of the briefing and could not remember who it was who briefed him, he was prompted into saying that Rodgers told him not to let the Detainees sleep during the day and demonstrated how to prevent them sleeping by dropping a metal bar on the floor. Rodgers instructed the guards to let the Detainees go to sleep and then drop the metal bar so as to wake them up. He thought it was also probably Rodgers who told them to put the Detainees back in stress positions, although he has no specific recollection of this.⁸⁶³

2.588 After initially saying that he had not been told by one of the night guards that some of the Detainees were injured, Hunt accepted that a night guard had lifted the shirt of one of the Detainees, displaying a large bruise. He believed this Detainee was Baha Mousa. He said he did not examine the bruise to see how serious it was, nor did he ask the guard what had caused it. In the same way he did not question the fact that the Detainees were in stress positions.⁸⁶⁴

⁸⁵⁵ Redfearn MOD000191

⁸⁵⁶ Redfearn BMI 30/168/8-23

⁸⁵⁷ Redfearn BMI 30/168/21-169/8

⁸⁵⁸ Redfearn BMI 30/174/14-25

⁸⁵⁹ Redfearn BMI 30/169/18-172/2

⁸⁶⁰ Pte Jonathan Hunt BMI 27/12/16-22; Pte Jonathan Hunt BMI 27/17/20-20/16

⁸⁶¹ Pte Jonathan Hunt BMI 27/54/12-18

⁸⁶² Pte Jonathan Hunt BMI00779-80, paragraph 51; Pte Jonathan Hunt MOD001387

⁸⁶³ Pte Jonathan Hunt BMI 27/54/12-58/23; Pte Jonathan Hunt BMI 27/63/18-64/9

⁸⁶⁴ Pte Jonathan Hunt BMI 27/66/21-73/4; Pte Jonathan Hunt BMI 27/142/19-25

- 2.589** In his Inquiry witness statement of May 2009 Pte Hunt described pulling the Detainees' hoods down over their heads because "*The detainees were constantly trying to lift up their hoods, possibly because it was hot*". In this statement he continued, "*I would also shout at them to stop pulling up their hoods*".⁸⁶⁵ When asked if that was what he had done he said, "*I honestly don't remember it now*".⁸⁶⁶ This was just one example of an apparent lapse of memory between the date when he made his Inquiry witness statement in May 2009 and his oral evidence on 22 October 2009. He was unable to remember whether the Detainees were provided with breakfast on that morning but said they were given water. Their hoods were lifted up and water from bottles was poured into their mouths.⁸⁶⁷ As for the toilet, the Detainees were taken to the portaloos whenever they asked to go.⁸⁶⁸
- 2.590** In his Inquiry witness statement Pte Hunt said that the medics checked all the Detainees, implying it had happened during his stag.⁸⁶⁹ In evidence he said he was unable to remember any medical examinations but he and Stirland did check D006 by looking at him every ten or fifteen minutes.⁸⁷⁰
- 2.591** Pte Hunt thought he had accompanied one of the Detainees to the tactical questioner because he spoke a little Arabic and was asked to stay during the questioning. He denied dragging the detainee back to the TDF when questioning had finished, nor did he see anyone else do so.⁸⁷¹
- 2.592** Pte Hunt denied watching the choir and did not accept that Stirland was correct when he said that both of them saw it.⁸⁷²

Stirland

- 2.593** Stirland recollected starting his stag with Hunt at 06.00hrs on Monday. He remembered the Detainees were wearing hoods and sitting cross-legged but not in stress positions. He did not recollect the condition of the Detainees or the TDF being in any way untoward. Somebody, he could not remember whom, but probably one of the previous night guards, told him to give the Detainees breakfast and "*...a slap if they got out of hand*".⁸⁷³ In an SIB statement he had remembered giving breakfast to the Detainees.⁸⁷⁴
- 2.594** He said one of the Detainees did get out of his plasticuffs and he slapped him around the back of his head with his hand. This happened approximately in the middle of the stag. Apart from this occasion Stirland denied using any violence on the Detainees.⁸⁷⁵

⁸⁶⁵ Pte Jonathan Hunt BMI00786, paragraph 73

⁸⁶⁶ Pte Jonathan Hunt BMI 27/76/10-13

⁸⁶⁷ Pte Jonathan Hunt BMI 27/81/18-83/5

⁸⁶⁸ Pte Jonathan Hunt BMI 27/149/14-22

⁸⁶⁹ Pte Jonathan Hunt BMI00789, paragraph 81

⁸⁷⁰ Pte Jonathan Hunt BMI 27/84/19-85/9; Pte Jonathan Hunt BMI 27/90/5-18

⁸⁷¹ Pte Jonathan Hunt BMI 27/97/12-101/14

⁸⁷² Pte Jonathan Hunt BMI 27/115/5-116/11

⁸⁷³ Stirland BMI 38/16/1-22/20

⁸⁷⁴ Stirland MOD000159

⁸⁷⁵ Stirland BMI 38/23/12-25/9

- 2.595** He remembered Payne from a previous tour in Northern Ireland and was intimidated by him. In the TDF he saw Payne “*nudging*” the Detainees’ kidney areas with his foot in order to perform “*the choir*”.⁸⁷⁶
- 2.596** Appleby supported this evidence, at least in part. Although Appleby was not designated as a Monday morning guard, he said in an SIB statement dated 11 November 2003 that he entered the TDF when he woke at about 06.00hrs and witnessed Payne conducting the “*sing song*” by punching each of the prisoners in turn.⁸⁷⁷ By the time that he gave oral evidence to the Inquiry he was still able to remember this incident, but could no longer remember whether it took place on Sunday night or on Monday morning.⁸⁷⁸ Allibone and others described Payne demonstrating the choir on Sunday evening (see paragraph 2.481 above). I make no finding as to whether this demonstration of the choir took place on Sunday evening or Monday morning.
- 2.597** Returning to Stirland’s evidence, he also remembered an incident described by him in his SIB statement of 11 March 2003 when Payne, seeing a Detainee who had removed his plasticuffs, grabbed his shirt by the scruff of the neck and then punched him hard in the back of the neck.⁸⁷⁹ It was put to Stirland that Payne had told the Inquiry that almost every time he went into the TDF he assaulted Detainees. Stirland denied seeing any violence other than this one hard punch and the “*nudging*”.⁸⁸⁰
- 2.598** He saw bruising around the torso of a Detainee and a cut about a Detainee’s eye. He said that he did not mention this to anyone.⁸⁸¹
- 2.599** Stirland recollected a medic being summoned. In his original SIB statement he said he believed that he had summoned the medic. In this statement he said the medic examined both D005 and D006. The latter was given tablets by the medic.⁸⁸² This evidence supports and is supported by the evidence of D006 himself and Cpl Winstanley. Stirland confirmed in his SIB statement that for a period after the medic attended, D006 and D005 were allowed to sit together.⁸⁸³ D006 in his first SIB statement had said that after this incident he was left alone and not abused again.⁸⁸⁴
- 2.600** In his SIB statement, Stirland accepted that he had taken four Detainees to and from the tactical questioner.⁸⁸⁵ At the Court Martial he denied dragging them or punching them in the course of that process.⁸⁸⁶

Richards

- 2.601** Richards only surfaced as a witness during the course of the Inquiry. He was not a member of 1 QLR but had been attached to the battalion during the period June

⁸⁷⁶ Stirland BMI 38/25/10-30/12

⁸⁷⁷ Appleby MOD000178

⁸⁷⁸ Appleby BMI 25/66/7-67/10

⁸⁷⁹ Stirland MOD000161

⁸⁸⁰ Stirland BMI 38/25/10-32/21

⁸⁸¹ Stirland BMI 38/33/16-34/23

⁸⁸² Stirland MOD000159-60

⁸⁸³ Stirland MOD000160

⁸⁸⁴ D006 MOD000042

⁸⁸⁵ Stirland MOD000160

⁸⁸⁶ Stirland CM 34/10/10-13/2

to November 2003.⁸⁸⁷ His statement, made for the Inquiry,⁸⁸⁸ was the first time he had made a statement about the events, then six years ago, of 14 to 16 September 2003.

2.602 As I have already pointed out, he was confused about the day when he went on guard. For reasons previously explained he must have confused Sunday and Monday mornings and I find that he arrived at the TDF early on Monday morning.

2.603 Richards' account was as follows. He described seeing Detainees in the left-hand room of the TDF. In fact the majority were always in the right-hand room. He said they and members of the Multiple were in the left-hand room. All the Multiple but Rodgers were present. He went on to describe assaults by Redfearn on Detainees with Cooper, Bentham and perhaps Appleby joining in.⁸⁸⁹ In his Inquiry witness statement Richards said:

"When I was in the room, I saw the detainees being slapped by the soldiers in the room and after a while, they were also hit and kicked. The detainees did not have shoes on and the soldiers were stamping on their feet. LCpl Redfearn started treating the detainees in this way and the others followed what he was doing. This type of treatment continued all day".⁸⁹⁰

2.604 When asked to specify what exactly Redfearn did, Richards said that Redfearn punched and kicked some or all of the Detainees. He said that Redfearn was delivering serious blows.⁸⁹¹

2.605 Later he stated affirmatively that Appleby had joined in.⁸⁹² In his Inquiry witness statement Richards had said Redfearn said "...*"we have been told to rough them up, not to give them an easy time and not to let them sleep."*" He believed this instruction emanated from Mendonça, because that was what Redfearn told him.⁸⁹³

2.606 Richards also said that he was present for the whole day.⁸⁹⁴ He said there was no stag system and Redfearn was in charge. He did not know Payne and was unaware of him being present at any time. He said Pte Hunt and MacKenzie were not involved in striking any Detainee, nor did he do so because he knew it was wrong. He saw the Detainees in two different stress positions. One was standing up and the other lying on the ground with their feet in the air. They were hooded and plasticcuffed and physical distress could be seen in their faces.⁸⁹⁵

2.607 Richards was not aware of the Detainees soiling themselves but he said the room was dirty and smelt.⁸⁹⁶ Whenever a Detainee fell out of his stress position he would be kicked in the legs and pulled back up. Richards accepted that he was involved in putting Detainees back into stress positions, pulling them up when they fell over.⁸⁹⁷

⁸⁸⁷ Richards BMI 31/109/6-9

⁸⁸⁸ Richards BMI04156

⁸⁸⁹ Richards BMI 31/126/22-130/6

⁸⁹⁰ Richards BMI04168, paragraph 48

⁸⁹¹ Richards BMI 31/127/24-129/12

⁸⁹² Richards BMI 31/131/18-25

⁸⁹³ Richards BMI04167, paragraph 42

⁸⁹⁴ Richards BMI 31/165/7-10

⁸⁹⁵ Richards BMI 31/131/3-134/11

⁸⁹⁶ Richards BMI 31/134/12-21

⁸⁹⁷ Richards BMI 31/136/1-25

- 2.608** He also said he was unaware of any person senior to Redfearn being present at any time. By the time he left to go on leave he had observed no injuries, save perhaps some swelling but no bruising. The soldiers who were striking the Detainees mainly struck them on their body, legs and arms. Redfearn told them not to hit them on the face because he did not want their faces to be cut.⁸⁹⁸
- 2.609** Richards denied that he had a grudge against Redfearn. He accepted that he had been involved in an incident when he accidentally discharged his rifle. Two other soldiers, Cooper and Kenny, were injured as a result. He said that he was unaware that Redfearn had reported the incident.⁸⁹⁹
- 2.610** I found Richards a reasonable witness but one who was obviously confused about dates and times. Some other parts of his account also seemed inaccurate. No other witnesses mentioned a stress position which involved raised feet, and the Detainees were not all located in the left-hand room. Similarly, Richards said he did not see Payne or any visitors come to the TDF during Monday. If he really was at the TDF during the afternoon, he would almost certainly have seen the GMTV and G5 visitors to whom I refer below; and if he was there in the morning and afternoon I find it hard to believe he did not see Payne.
- 2.611** Richards said that he was at BG Main for the whole day, until about 21.00hrs.⁹⁰⁰ He thought that the rest of the Multiple was “*still*” at BG Main in the evening (and that they had been there “*through the day*”).⁹⁰¹ The problem with this account is that all of the other evidence is to the effect that the whole Multiple save Aspinall, Graham and Bentham were absent from BG Main during Monday afternoon. In my judgment, Richards was wrong about the rest of the Multiple remaining at BG Main during Monday afternoon and was probably also wrong in saying that he was there during the afternoon. It is not surprising that his recollection of timings should have become distorted over a six year period. Whilst I have found that his account of these timings was inaccurate, I do not think this is a good reason to doubt his overall credibility. Similarly, I believe that other inaccuracies in his evidence are explained by his fading memory.
- 2.612** I do not believe Richards invented or is deliberately lying in his description of certain guards striking the Detainees. Generally, it accords with what Douglas saw and what the Detainees said happened. Insofar as he said that he saw assaults during the afternoon, I think that he must have witnessed these during the morning. It is also difficult to believe that he could be mistaken about what he said Redfearn said and did. On his evidence, Redfearn played a prominent role instructing the guards how to carry out their duties as guards and, by his own example, striking detainees.

Conclusions

- 2.613** I have already stated that I accept Douglas’ evidence as accurate. I find that the period of time when he was at the TDF helping out the guards on stag covered the period when Pte Hunt and Stirland were on guard duty. Save for Payne, Douglas was unable to identify any of the guards or soldiers who he said assaulted the Detainees.

⁸⁹⁸ Richards BMI 31/137/21-140/2

⁸⁹⁹ Richards BMI 31/140/24-142/12

⁹⁰⁰ Richards BMI 31/177/8-180/16

⁹⁰¹ Richards BMI 31/169/14-170/25

But he said they included members of the Multiple as well as other soldiers. He also described the TDF as smelling of urine and faeces. This description accords with Redfearn's description of conditions in the TDF when he arrived on Monday morning.

- 2.614** Since there is evidence that soldiers not on stag went into the TDF Douglas' evidence does not enable me to make findings that Redfearn, Pte Hunt and Stirland assaulted the Detainees. However, accepting, as I do, Douglas' recollection of what happened in the TDF, I find that on the balance of probabilities all three must have seen soldiers, in addition to Payne, assaulting the Detainees.
- 2.615** Richards' evidence also provided some support for a finding that the Detainees were assaulted by members of the Multiple including those whom he named. But as I have pointed out above, Richards is confused about dates, times and who was present and where. For this reason, save for allegations against Redfearn, which I deal with separately, I find that it would be dangerous to rely on his evidence of identification about what others did.
- 2.616** Pte Hunt impressed as a witness with some sense of humanity. He had taken the trouble to learn some Arabic before being deployed to Iraq. However, his credibility was, in my view, damaged by his assertion in evidence that he could not remember pulling down hoods over the heads of the Detainees when they tried to lift them up. This was contrary to what he had said in his Inquiry witness statement made in May 2009 in which he conceded he had taken such action. I do not accept that his memory can have deteriorated to the extent that by the time he gave evidence in October 2009 he genuinely had no recollection of these matters. In my opinion this was an example of Pte Hunt's efforts to distance himself from events in the TDF.
- 2.617** Bearing in mind Richards' evidence I accept that Pte Hunt did not inflict gratuitous violence on the Detainees, but I suspect that when he enforced stress positions he used more force than was necessary. There is no evidence to contradict his assertion that he himself was not involved in hitting or striking any of the Detainees.
- 2.618** I do not accept that the picture Pte Hunt gave of events in the TDF on Monday morning was completely accurate. In my view he must have seen the Detainees being assaulted in the way Douglas described. Apart from himself enforcing stress positions, in my opinion Pte Hunt must have seen others inflicting gratuitous violence on the Detainees. He denied seeing Payne punching a Detainee or demonstrating the choir. Stirland said, and I accept, he saw the choir and I suspect that Pte Hunt did as well. In my judgment, although Pte Hunt was a party to keeping the Detainees in stress positions and hooded, I accept that he did so because of orders he had been given. But, in my opinion, by the time he started his stag the smell of urine and possibly faeces in the TDF and the deteriorating condition of the Detainees must have been obvious. He must also have realised that those who assaulted the Detainees should not have done so. I think it probable that Pte Hunt knew the identity of some of those who assaulted the Detainees but has chosen not to reveal to the Inquiry who they were.
- 2.619** Pte Hunt ought also to have reported what he had seen up the chain of command. His youth and the fact that soldiers higher in rank to himself may have been involved in mistreatment of the Detainees do not excuse him from reporting what he had seen. But it does provide some mitigation.

- 2.620** Stirland was not a particularly convincing witness. His assertion that the Detainees were not in stress positions during his stag was quite simply wrong. If they were not in stress positions there would have been no need for him to enforce the positions which they were in, something which he accepted he had done. As with Pte Hunt, I do not accept that he has given accurate evidence about the state of the TDF and what happened in it during his stag. He accepted that he had seen Payne assault a Detainee, but in my judgment he must also have seen others doing so as well. I do not accept his description of Payne demonstrating the choir. In my view the description of Payne nudging the Detainees with his foot substantially played down the seriousness of what Payne did.
- 2.621** Stirland must also have seen the distressed state of the Detainees and the appalling conditions in the TDF which were described by Redfearn. Further, I suspect that when Stirland put Detainees back into the positions they had been told to hold, he used more force than necessary.
- 2.622** Stirland, as did Pte Hunt, observed some injuries on the Detainees. Neither reported these injuries to an NCO or officer. In my opinion they should have done. Although I recognise it would have been difficult for him to do so, Stirland ought also to have reported Payne's conduct up the chain of command, at the very least either to Rodgers or Sgt Smith, or both. Again, his youth provides some mitigation for this failure.
- 2.623** I found Redfearn difficult to assess as a witness. My initial impression of him was that he was a reasonably straightforward witness. I had no difficulty in accepting his evidence about the state of the Detainees and the conditions in the TDF on Monday morning when he arrived at BG Main. Nevertheless I am sceptical about his assertion that he allowed the Detainees to relax and their hoods to be removed during the morning. If he did so, I believe it was only for a short time after he first arrived at the TDF on Monday morning. Once Payne had visited the TDF on that morning I find that the Detainees were put back in stress positions and made to wear hoods.
- 2.624** I find that Redfearn must have seen other soldiers assaulting the Detainees. The evidence of the Detainees was that there was little let-up from assaults on them throughout the whole period up to Baha Mousa's death. I have already pointed out that Douglas' and Richards' evidence supported these allegations for the period covered by the Monday morning stag. Payne also agreed that he visited the TDF at regular intervals and said that on each occasion he assaulted Detainees.
- 2.625** The difficult issue concerning Redfearn's evidence is whether or not Richards' description of what Redfearn said and did was accurate. It is submitted on Redfearn's behalf that Richards, on any view confused about times, bore a grudge against Redfearn for reporting him in respect of a shooting accident which occurred subsequently in Cyprus. Richards denied bearing any grudge against Redfearn.
- 2.626** I have already recorded my opinion about Richards' evidence in respect of Redfearn. I repeat, I have found it difficult to believe that Richards had mistakenly identified Redfearn about what he said he saw him doing or heard him saying. Although he may have been confused about dates and times, in my judgment, it is unlikely that he was confused about what Redfearn did or said. On this morning Redfearn was his commanding NCO. Having weighed the various factors I have concluded that

Richards' evidence is to be preferred. I accept his evidence that he did not bear any grudge against Redfearn and I reject the suggestion that he was confused about this aspect of his evidence. In the circumstances I find that Redfearn did encourage the guards to treat the Detainees roughly and that he himself was involved in assaults on the Detainees during Monday morning. Specifically, I find that he punched and kicked more than one Detainee.

- 2.627** It might also have been this morning on which Slicker saw Redfearn punch a Detainee, but for reasons explained in Chapter 14 I do not think it possible to see Slicker's evidence as supporting Richards' allegation.
- 2.628** I should add that in reaching this conclusion I see no inconsistency in accepting Redfearn's evidence about the state of the TDF and the Detainees on Monday morning, nor in preferring his evidence on that issue to the evidence of Rodgers. In my judgment the explanation for this apparent inconsistency in his evidence was that Redfearn, whilst being prepared to recognise the fault of others, was not prepared to confess to his own misconduct.
- 2.629** In any event, even if I am wrong in my conclusion about Redfearn's conduct on Monday morning, I find that he knew very well what went on in the TDF during that morning. I find that he must have known that the Detainees were being mistreated and that Payne had assaulted some of them. On any view he ought to have reported what he had seen up the chain of command. In his case, as an NCO, there can be no excuse or mitigation for his failure to do so. In making this criticism of Redfearn I have not forgotten that on Monday morning, as I find, he spoke to Rodgers, his Multiple commander, pointing out the state of the TDF and the Detainees. It might be thought that this was a sufficient report up the chain of command. But Rodgers' response and the subsequent events on Monday morning ought, in my opinion, to have caused Redfearn to take the matter further when he returned to Camp Stephen. Had he reported to a higher command what he must have seen or knew Payne was doing, it may very well have prevented subsequent events and the death of Baha Mousa.

Chapter 13: Monday Afternoon

2.630 At about 13.00hrs on Monday afternoon the majority of the Rodgers Multiple, including Rodgers and Redfearn, returned to Camp Stephen. Their arrival back at Camp Stephen was recorded in the Battlegroup Net Radio log at 13.07hrs.⁹⁰² Aspinall, Bentham and Graham were left behind to carry out the stag from 13.00hrs⁹⁰³ until the Multiple returned to BG Main shortly after 21.00hrs the same evening.⁹⁰⁴

The Guards' Evidence

Aspinall

2.631 Aspinall was by far the best of these three witnesses. He said that he was at the TDF throughout the day (and not only when most of the Multiple left at 13.00hrs).⁹⁰⁵ He said other soldiers came into the TDF from time to time⁹⁰⁶ and he remembered Payne being in and out throughout the day. He said Payne would stay for perhaps half an hour at a time. He was very aggressive, enforcing stress positions and delivering punches to the lower backs of the Detainees.⁹⁰⁷

2.632 Aspinall said he saw “*really bad*” bruising on at least one Detainee’s torso and he thought that one or two had a cut lip or bloody nose but he could not remember any Detainee being punched in the face. He said that apart from Detainees being slapped in the face on three or four occasions by him and his two fellow guards they did not themselves assault the Detainees. The slaps were delivered in order to make the Detainees hold their stress positions. He agreed that when the Detainees found it hard to maintain their stress positions they would be lifted back into position.⁹⁰⁸

2.633 Aspinall said that at about 14.00hrs or 15.00hrs on Monday he could no longer bear to be in the TDF because of both the deteriorating conditions (including the smell from the Detainees having soiled themselves) and the violence.⁹⁰⁹

2.634 He described the choir, which he said he witnessed. Payne poked Detainees in the same area where he had previously been punching them. Later in his evidence he accepted, as the truth, what he had said in previous witness statements, namely that Payne used punches and kicks during his demonstration of the choir.⁹¹⁰

2.635 He said a number of visitors came to the TDF during the afternoon.⁹¹¹ Particularly, he remembered the Padre, Father Peter Madden, coming into the TDF. Of his visit Aspinall said:

⁹⁰² Redfearn MOD000194; Rodgers MOD000222; MOD016582

⁹⁰³ Aspinall BMI05222, paragraph 55; Bentham BMI 41/91/6-22; Pte Lee Graham MOD000146; Pte Jonathan Hunt MOD001397; Pte Jonathan Hunt MOD001404

⁹⁰⁴ Redfearn MOD000194. The BG Net Radio log records the Multiple being en route to BG Main at 21.07: MOD016585

⁹⁰⁵ Aspinall 28/48/16-49/1

⁹⁰⁶ Aspinall 28/64/2-68/10

⁹⁰⁷ Aspinall BMI 28/36/20-39/16; Aspinall BMI 28/50/21-53/12

⁹⁰⁸ Aspinall BMI 28/53/13-56/11

⁹⁰⁹ Aspinall BMI 28/58/8-22

⁹¹⁰ Aspinall BMI 28/59/9-62/19

⁹¹¹ Aspinall BMI 28/64/2-13

“A. There is only a couple of people that really stand out specifically, even though I know there was more. I remember the padre coming, because I thought at the time when he visited it was – it was quite clear that he was probably maybe worse for wear, as in, you know, slouching on the floor and, you know, I don’t know, not great.

Q. Moaning and groaning?

A. I can’t remember if they were moaning and groaning, but it probably would have been apparent that they weren’t in great condition.

Q. I understand.

A. And I just remember it because I thought, well, even the padre has visited and even he – is he going to say anything, and he didn’t mention anything. So when people like that have come in of high authority you start to think, well, if I was going to report it who – is anyone bothered? I don’t know. So that’s why I was worried about reporting it.”⁹¹²

- 2.636** When asked if the Padre said anything Aspinall explained that although the Padre talked to him he said nothing as if to question what had been going on.⁹¹³
- 2.637** The second person Aspinall remembered coming into the TDF was a PTI, he thought SSgt Roberts. Although no mention of this appeared in any of his statements to the SIB,⁹¹⁴ Aspinall said he believed SSgt Roberts had administered a karate chop to a Detainee.⁹¹⁵ I deal below with allegations against Ssgt Roberts (see Chapter 14).
- 2.638** Aspinall thought that Baha Mousa got more attention, by which he meant ill-treatment, than others, because he removed his hood and stood up. At some point he was moved into the middle room following an occasion when Baha Mousa stood up and removed his plasticuffs and hood. Aspinall said he and Pte Lee Graham were later a bit shocked to see him standing up, with his hood off and plasticuffs off, because he could have tried to grab their weapons. So Aspinall “*pushed*” him to the floor and put him back in the middle room. Finally, Aspinall said that he was aware of the use of a metal pole to keep the Detainees awake: “*Maybe I might have used the metal pole a few times to bang on the walls.*”⁹¹⁶

Bentham

- 2.639** Bentham agreed that he had been on stag with Aspinall and Pte Lee Graham on Monday afternoon.⁹¹⁷ In 2004, in an interview under caution with the SIB, on the advice of his solicitors, Bentham answered “*no comment*” to all questions asked of him.⁹¹⁸ His Inquiry witness statement was the first time he had committed to writing his recollection of the events of 14 to 16 September 2003.⁹¹⁹
- 2.640** His oral evidence about events on that afternoon was in many ways unsatisfactory. He exhibited a marked reluctance to give any firm expression of what he remembered and what he had done. The following is a typical example:

⁹¹² Aspinall BMI 28/64/16-65/9

⁹¹³ Aspinall BMI 28/65/15-24

⁹¹⁴ Aspinall BMI05226, paragraph 62

⁹¹⁵ Aspinall BMI 28/66/5-68/10

⁹¹⁶ Aspinall BMI 28/68/11-72/7

⁹¹⁷ Bentham BMI 41/91/6-22

⁹¹⁸ Bentham MOD004772

⁹¹⁹ Bentham BMI 41/136/21-137/22

“Q. Did you, Mr Bentham, at any time while these detainees were being housed at the TDF, hear any rumour or gossip that these were men who might be connected with the death of Captain Jones or the deaths of the three RMP officers?”

A. Maybe.

Q. You think you might have heard such rumour?

A. Yes.

Q. Linking them with one or other or both?

A. One or the other.

Q. Do you remember which?

A. No.

Q. Was that something that you had heard on the Sunday?

A. No.

Q. When did you hear it?

A. I can't recall.

Q. So it could have been the Sunday, could it?

A. No, because what I remember is we weren't there that long to hear the discussions.

Q. So from whom did you hear the rumour?

A. I can't remember that.

Q. But it follows, does it, that it would have been members of your own multiple?

A. Maybe.

Q. Well, anything's possible, if you will forgive me saying so. But from your answer a moment or two ago, that you weren't there long enough to have picked up any gossip, I was assuming that you were indicating that you would have heard it from your own multiple.

A. All I can say is that rumours spread sometimes everywhere.

Q. So was there much gossip about this connection, the detainees with the deaths of one or the other?

A. You mean the deaths of the RMPs?

Q. I do.

A. Not really, no.

Q. Did that information, the rumour, have any effect upon any soldiers in your multiple –

A. No.

Q. – along the lines of, “We will be inquisitive to see these people”?

A. You mean the detainees?

Q. Yes.

A. No.

Q. What of the suggestion, Mr Bentham, that when this information through rumour came out, members of your multiple and indeed maybe other members of 1QLR took the opportunity to go to the TDF and assault the detainees?

A. Maybe.

Q. Maybe? Does that mean that you know that some of them did? You are smiling about it.

A. No, I can't confirm or deny anything if I don't know that anyway.

Q. You can't confirm or deny what?

A. If people were angry that an officer had been killed or the RMPs had been killed.

Q. Yes. I was asking you whether you were aware that members of the multiple and maybe indeed members of 1QLR more generally had gone to the TDF and inflicted blows, kicks and punches on the detainees there.

A. No.

Q. Were you aware of that –

A. No.

Q. – happening at any time on the Sunday or the Monday?

A. No.

Q. Never heard talk about it?

A. About what?

Q. About the detainees having been assaulted.

A. Yes.

Q. From members of your multiple?

A. No.

Q. Who did you hear talk about detainees having been assaulted from?

A. From the other multiples.

Q. The other multiples?

A. Yes.

Q. Names, as to who told you?

A. I can't recall.⁹²⁰

2.641 He thought he may have taken lunch to the Detainees.⁹²¹

2.642 When he and his two colleagues took over from the previous stag, he thought Rodgers was present. He said there were two or three Detainees in the left-hand room, one in the middle room and five or six in the right-hand room. Two of the men in the left-hand room were, he believed, related to one another (D006 and D005). They were not hooded. There was a Detainee in the centre room who was sitting cross-legged against the wall and hooded. He was told that the man in the centre room had tried to escape.⁹²²

⁹²⁰ Bentham BMI 41/91/25-95/2

⁹²¹ Bentham BMI 41/91/18

⁹²² Bentham BMI 41/97/11-99/22

- 2.643** In the right-hand room the five or six men were all hooded, handcuffed and sitting cross-legged and upright on the floor. He said the positions they held would be uncomfortable if held for any length of time.⁹²³
- 2.644** Bentham said that eventually his guard allowed the Detainees to relax because they saw no point, as they had been in the TDF for such a long time, in keeping them in stress positions. However, senior NCOs from BG Main came in and told them that the Detainees must be kept in stress positions. He was unable to identify any of these NCOs other than to say one of them had blond hair.⁹²⁴
- 2.645** Initially he said that all he could remember of Payne's conduct towards the Detainees was that he was quite forceful keeping them in stress positions, shaking them and kicking the soles of their feet. When it was suggested to Bentham that Payne in evidence had admitted coming into the TDF routinely and kicking and punching Detainees, he agreed that "*maybe*" he had seen Payne doing this. After further questions, Bentham accepted that he had seen Payne punching Detainees "*maybe to the body*".⁹²⁵
- 2.646** Bentham was similarly reluctant to admit that he had seen the "*choir*". In contrast to what he was eventually prepared to tell the Inquiry, Bentham had said in his Inquiry witness statement "*I cannot recall having seen it being performed but I may have*".⁹²⁶ But questions from Counsel to the Inquiry elicited that he had seen Payne obtain different sounds from Detainees "*either by punching them – maybe kicking them*". He said he only saw it once and did not regard it as either horrific or funny.⁹²⁷
- 2.647** Of his own conduct, Bentham said he did not hit any of the Detainees, nor did any soldiers from his Multiple. He said one of the senior NCOs who came into the TDF was quite forceful with the Detainees.⁹²⁸
- 2.648** As to the condition of the Detainees Bentham said when he took over guard duty they were very tired. A few had injuries, one a hernia and another something wrong with his neck. These were pointed out by the outgoing guard. Conditions in the TDF were hot but there was no smell of urine. He was not aware of any Detainee soiling himself. They were always taken to the toilets whenever they wanted to go.⁹²⁹
- 2.649** Bentham did accept that there were periods of time when he endeavoured to enforce stress positions.⁹³⁰ He did this by tapping their feet to get their attention and pushing them up into upright positions by grabbing their arms or back.⁹³¹
- 2.650** He denied that he had slapped any of the Detainees but accepted that he and the other two had kept the Detainees awake by shouting at them and tapping their feet. They kept them awake on the instructions of Payne and another NCO.⁹³²

⁹²³ Bentham BMI 41/99/23-100/10

⁹²⁴ Bentham BMI 41/100/15-103/6

⁹²⁵ Bentham BMI 41/103/10-106/8

⁹²⁶ Bentham BMI01641, paragraph 83

⁹²⁷ Bentham BMI 41/106/9-108/1

⁹²⁸ Bentham BMI 41/112/22-113/13; Bentham BMI 41/117/15-22; Bentham BMI 41/119/7-17

⁹²⁹ Bentham BMI 41/113/14-116/12

⁹³⁰ Bentham BMI 41/100/20-102/10; Bentham BMI 41/154/16-155/16

⁹³¹ Bentham BMI 41/116/22-117/12

⁹³² Bentham BMI 41/117/15-118/8

Pte Lee Graham

2.651 Pte Lee Graham made a statement to the SIB dated 12 October 2003. In respect of his stag on Monday afternoon, in that statement he gave a reasonably comprehensive description of what had occurred and what he did.⁹³³ By the time of the Court Martial it is clear he was beginning to retract a certain amount of what was in this statement.⁹³⁴ When he came to give oral evidence to the Inquiry he had by then made a further witness statement, dated 30 May 2009, in which he gave some explanation of why he had gone back on parts of his first statement.⁹³⁵ In his oral evidence to the Inquiry on 21 October 2009 he professed to have little recollection of any of the events with which the Inquiry was concerned. For instance, he said he could not remember anything about the Detainees being in the TDF.⁹³⁶ He even went so far as to assert that he was unable to remember Payne being in the TDF,⁹³⁷ something which in his Inquiry witness statement of 30 May 2009 he had said he could remember.⁹³⁸ The result is that I find it very difficult to accept much of Pte Lee Graham's oral evidence. Put simply, it is incomprehensible that he can have forgotten the part he played in all that had occurred in the fateful three days of 14 to 16 September 2003.

2.652 However, Pte Lee Graham did accept that he was endeavouring to tell the truth in his SIB statement and had held nothing back.⁹³⁹ He said there were passages in it where the wording was that of the SIB officer taking the statement. For example, he sought to withdraw the word "*torture*" from his statement.⁹⁴⁰ In oral evidence to the Inquiry he explained that he "*was worried about speaking in court and I was trying not to do it*".⁹⁴¹

2.653 Despite Pte Lee Graham's concerns about the accuracy of some of this statement it is necessary to give a short summary of what it contained, because firstly, it was made at the time when the events were far fresher in his mind; and secondly, as stated above he told the Inquiry on oath that he was endeavouring to tell the truth when he made this statement. Pages six and seven of this statement contained the following passage:

*"Throughout the day though, I recall that there were many visitors to the Prisoner Handling Centre from our unit personnel. During the day, Cpl Payne would come and go at irregular times and continue to treat the prisoners in the same aggressive way. I found his actions to be intimidating towards the prisoners. Due to the repeated nature of these kicks, always to the same area on the sides of the prisoners, I'd describe his treatment of these prisoners amounted to torture. That's how I saw it."*⁹⁴²

2.654 In the statement Pte Lee Graham described the handover at the TDF by the previous guard. He said he, Aspinall and Bentham were given no instructions other than being told they were to guard the Detainees. The room in which they were "*absolutely*"

⁹³³ Pte Lee Graham MOD000143

⁹³⁴ Pte Lee Graham CM 46/85/20-86/7; Pte Lee Graham CM 46/112/24-115/11; Pte Lee Graham CM 46/141/8-143/24

⁹³⁵ Pte Lee Graham BMI00975-8, paragraphs 2-11

⁹³⁶ Pte Lee Graham BMI 26/15/20-20/8

⁹³⁷ Pte Lee Graham BMI 26/20/9-21/4

⁹³⁸ Pte Lee Graham BMI00998, paragraph 85

⁹³⁹ Pte Lee Graham BMI 26/4/11-24

⁹⁴⁰ Pte Lee Graham BMI00976-7, paragraphs 5-7

⁹⁴¹ Pte Lee Graham BMI 26/5/21-24

⁹⁴² Pte Lee Graham MOD000148-9

stank of sweat and urine, to the point that it was “*almost uncomfortable just standing in the room*”.⁹⁴³ In a sketch plan of the TDF he set out the positions occupied by the Detainees in each room.⁹⁴⁴

2.655 Pte Lee Graham described the Detainees as being calm, neither moaning, crying, talking nor complaining. However, when Payne arrived the whole atmosphere changed. Payne made his presence felt, shouting at the Detainees and forcibly manhandling them into stress positions. He did this by physically manhandling the Detainees into position, using his hands to move their heads, arms and bodies. He shouted swear words at them to intimidate them.⁹⁴⁵

2.656 One Detainee, whom Payne called “*Grandad*” (Kifah Matairi) came in for particular attention from Payne, who slapped and kicked him to the back and sides of his body. He kicked this man in the side with the toe cap of his boot in excess of 30 times during the day. After staying for a period of about an hour, Payne subsequently came and went at irregular intervals during the day, each time treating the prisoners in the same aggressive way.⁹⁴⁶

2.657 In this statement Pte Lee Graham remembered many visitors to the TDF throughout the day. Sometimes Payne would mistreat the Detainees in front of the visitors. One of the visitors treated to this sight was a full Corporal Medic. Payne demonstrated the choir to him and Bentham. Pte Lee Graham saw the choir two or three times in total.⁹⁴⁷

2.658 At about midday, at a time when Payne was not present, he and Bentham moved a young lad (D005) from the left-hand room into the centre room. Before this he had been with his father (D006) and the two together had a tendency to keep talking so he and Bentham decided to split them up. However, he said after about an hour the young lad was put back in the same room as his father, because the latter was complaining of chest pains.⁹⁴⁸

2.659 Pte Lee Graham described the doctor attending both the father and his son. The doctor examined the father for chest pains and the young man, who was complaining of shortness of breath.⁹⁴⁹ I have referred to this in Chapter 12.

2.660 Pte Lee Graham also described how he had taken a prisoner for questioning by the tactical questioner.⁹⁵⁰ Heavy objects, such as a metal bar from a windowsill, were dropped next to prisoners to frighten them and prevent them from sleeping. All of the guards were involved in doing this, including Pte Lee Graham himself.⁹⁵¹

2.661 He described seeing bruising on the lower backs and sides of three of the Detainees.⁹⁵²

⁹⁴³ Pte Lee Graham MOD000146

⁹⁴⁴ Pte Lee Graham exhibit at MOD015413

⁹⁴⁵ Pte Lee Graham MOD000147

⁹⁴⁶ Pte Lee Graham MOD000148

⁹⁴⁷ Pte Lee Graham MOD000149

⁹⁴⁸ Pte Lee Graham MOD000149

⁹⁴⁹ Pte Lee Graham MOD000149-50

⁹⁵⁰ Pte Lee Graham MOD000150

⁹⁵¹ Pte Lee Graham MOD000152

⁹⁵² Pte Lee Graham MOD000151

- 2.662** Finally in this statement, he described an incident about four hours before the end of the stag when he, Bentham and Aspinall placed a Detainee, whom Payne called “*Fatboy*”, in the centre room, because he kept removing his hood and his plasticuffs. They lifted him up and dragged him into the centre room. When Payne next came to the TDF he made this Detainee lie on his front with his chin resting on his handcuffed hands. Later Pte Lee Graham remembered Payne kicking this man a couple of times in the sides and on his legs.⁹⁵³
- 2.663** In evidence to the Inquiry Pte Lee Graham was asked about the contents of this statement. His answers were, in most cases, non-committal. In answer to many questions he professed to have no memory of the events or contented himself with responding that what was in the statement might be correct. When he was asked about moving the young man, obviously D005, back to the centre room, he agreed that this room had an open toilet in it. It was suggested to him, as D005 had asserted, that his head was held over a toilet. He replied, “*I’ve no idea*” and “*He could have been*”.⁹⁵⁴
- 2.664** It is, in my opinion, obvious from its contents that this statement supports much of the other evidence about what happened to the Detainees during the whole of Monday. The reference to the father and young man, as already stated, was clearly a reference to D006 and D005. The reference to a medic (albeit described by Pte Lee Graham as a doctor) attending D006 supports D006’s and Pte Hunt’s evidence. Whilst they describe the incident as occurring on Monday morning, it appears that Graham’s statement describes events during the whole of Monday, and not just the afternoon. This is not surprising since members of the Multiple went in and out of the TDF even when they were not on stag.
- 2.665** The description of Payne’s treatment of the Detainees bears a close resemblance to what Payne himself admitted doing. It also echoes many of the allegations made by the Detainees. Further the description of “*Fatboy*” propping up his chin on his handcuffed hands finds an echo in what Pte Riley was to describe in the G5 visit.
- 2.666** As will become apparent the demonstration of the choir was seen by others. Pte Lee Graham’s description of taking a Detainee to be questioned conforms to other descriptions of Detainees being hooded and handcuffed when transferred from the TDF to the tactical questioner. The statement records such details as notes taken by Pte Lee Graham whilst the Detainee was being questioned, the Detainee had his hood removed during questioning, and the questioner was fairly aggressive but did not hit or strike the Detainee.
- 2.667** The statement referred to three other matters. Firstly, it described some of the Commanding Officer’s TAC group coming to the TDF. A member of it, SSgt Roberts, came in and kicked three Detainees in their sides. They cried out but did not fall over. His statement recorded “*There was no one between me and him [SSgt Roberts] obstructing my view. I saw it quite clearly. I’ve known him since I joined the battalion and recognise him*”. Whilst it was dark and they were using right-angle torches, he could nevertheless see clearly what happened.⁹⁵⁵ Surprisingly in his oral evidence Pte Lee Graham professed to have no recollection at all of this incident (see also Chapter 14).⁹⁵⁶

⁹⁵³ Pte Lee Graham MOD000150-1

⁹⁵⁴ Pte Lee Graham BMI 26/90/4-91/22

⁹⁵⁵ Pte Lee Graham MOD000152

⁹⁵⁶ Pte Lee Graham BMI 26/104/21-106/11

2.668 Secondly, the statement contained an admission by Pte Lee Graham that he had slapped the Detainees. The statement reads:

“Whilst I’ve said I’d had no prisoner handling training, I understood it was my duty to keep the prisoners awake and make them feel on edge. I certainly didn’t get involved in kicking the prisoners and I would have felt uncomfortable doing such a thing anyway. As part of this shock culture Pte Aspinall, Pte Bentham and I all engaged in gently slapping the prisoners across the head occasionally but I did this purely with the intention of shocking the prisoners into re-entering stress positions as opposed to in a bid to hurt them or cause them pain.”⁹⁵⁷

2.669 In evidence he agreed that this part of the statement was accurate. He remembered doing this. When asked why, he said: “...I thought it was something you did”. The reason for doing it was to keep the Detainees awake and scared.⁹⁵⁸

2.670 Thirdly, in his statement Pte Lee Graham remembered an RAF soldier “...who appeared to be hanging around the area for a time” and he remembered Payne having been present at some point during the RAF soldier’s visit.⁹⁵⁹ Again, it is apparent from other evidence that a member of the RAF was present at the TDF when Payne was there (see the GMTV visit below).

The GMTV Visit

2.671 At about 15.00hrs on Monday 15 September, a GMTV delegation arrived at BG Main to visit 1 QLR. The delegation consisted of a reporter and a cameraman. Accompanying this delegation were service personnel including three men, LCpl James Riley, LBdr Richard Betteridge and Hughes. On arrival the two vehicles which had transported the delegation to BG Main parked up next to the accommodation block opposite the TDF. The delegation left the vehicles in the charge of Riley, Betteridge and Hughes.⁹⁶⁰

Hughes’, LCpl Riley’s and Betteridge’s evidence

2.672 At some stage LCpl Riley, Betteridge and Hughes became aware of noises coming from the TDF and went over to investigate. It appears that Hughes went over by himself before the others, but that eventually all three of them went over. Hughes said that after an initial visit to the TDF he came back to the vehicles and then curiosity caused him to make a second visit.⁹⁶¹

2.673 LCpl Riley said he heard a voice shouting “...“No sleep, Granddad”” [Kifah Matairi].⁹⁶² When he got to the TDF he met a Provost Corporal who seemed to be in charge. There is no doubt this was Payne. There were also two private soldiers present. Riley described seeing Detainees sitting cross-legged on the floor in the right-hand room. They had cables tied around their wrists and sandbags on their heads. Their arms were raised straight out in front of them. He saw Payne taking a Detainee to

⁹⁵⁷ Pte Lee Graham MOD000152

⁹⁵⁸ Pte Lee Graham BMI 26/101/23-103/1

⁹⁵⁹ Pte Lee Graham MOD000153

⁹⁶⁰ Betteridge BMI 15/4/5-11/8; Hughes BMI 15/72/23-76/17; LCpl James Riley BMI 15/149/12-152/24

⁹⁶¹ Betteridge BMI 15/11/9-13/14; Hughes BMI 15/76/20-79/19; LCpl James Riley BMI 15/152/25-155/9; Hughes MOD000069-70

⁹⁶² LCpl James Riley BMI 15/153/16-154/1

the portaloo and also saw him lifting Detainees' arms when they were no longer able to keep them up in the stress position.⁹⁶³

2.674 Betteridge remembered someone shouting, "...*Get your fucking arms up. Granddad*" and different people shouting in both rooms of the TDF. He said that in the left-hand room he saw three men squatting on the floor with their arms out. One was not hooded.⁹⁶⁴ At this time on Monday these men must have been D006 without a hood, and the other two D005 and Maitham.

2.675 Hughes appears to have spent more time at the TDF than the other two.⁹⁶⁵ He heard shouts coming from the TDF. In his SIB statement he described seeing four guards whom he described as Male One who was in charge; a baby-faced soldier, Male Two; another soldier, Male Three; and a further one, Male Four, whom he later identified in a street identification as Bentham. Male One he identified as Payne. He recollected being told that the Detainees were being held in connection with the death of RMP soldiers.⁹⁶⁶ By the time that he provided a statement to the Inquiry, he was no longer able to remember Male Four.⁹⁶⁷ However, he confirmed in oral evidence that he relied on his SIB statement as likely to be accurate, in particular regarding Male Four's actions.⁹⁶⁸

2.676 In an SIB witness statement of 19 September 2003 Hughes is recorded as asking one of the guards (Male Two) how he could carry out the job of guarding the Detainees with all the smell of body odour and urine. He said that Male Four responded, "*Well if they caught you, they'd cut your balls off and make you eat them*" or words to this effect.⁹⁶⁹ In evidence he agreed that this was an accurate description of the conversation. He also agreed that when he mentioned the bad smell, Male Four had said to him, as recorded in his SIB statement, "...*They've pissed and shit themselves. Wouldn't you if your head was covered and people were shouting at you?*"...⁹⁷⁰

2.677 In his SIB statement Hughes described two soldiers, Males Two and Four, clicking their fingers. When Male Two did so he shouted "*No sleep!*" Both soldiers, by clicking their fingers, elicited apparently trained responses: "*No fuck in Iraq*" or "*No sleep Mister*" from the Detainee in the middle room.⁹⁷¹ In his oral evidence he had some recollection of this, albeit he was no longer sure which soldiers were involved.⁹⁷²

2.678 Apart from clicking his fingers to prevent the Detainees sleeping, Male Two was not involved in any violence and neither was Male Three.⁹⁷³

2.679 Hughes confirmed what he had said in his SIB statement that he saw three Detainees in the left-hand room, two of whom were not hooded, and other Detainees in the right-hand room, all of whom were hooded and in stress positions (seated cross-

⁹⁶³ LCpl James Riley BMI 15/155/10-167/10

⁹⁶⁴ Betteridge BMI 15/19/20-22/16

⁹⁶⁵ Hughes BMI 15/129/9-22; LCpl James Riley BMI 15/154/25-155/9

⁹⁶⁶ Hughes MOD000070-2; Hughes MOD000081; Spence MOD005922-4; MOD015455

⁹⁶⁷ Hughes BMI00158, paragraph 26

⁹⁶⁸ Hughes BMI 15/85/10-87/4

⁹⁶⁹ Hughes MOD000072

⁹⁷⁰ Hughes BMI 15/84/21-86/22; Hughes MOD000072

⁹⁷¹ Hughes MOD00075-6

⁹⁷² Hughes BMI 15/115/3-116/1; Hughes BMI 15/119/17-120/8

⁹⁷³ Hughes BMI 15/88/1-89/6

legged, but with their arms held straight out in front of them). He said it was very hot, there was a bad smell and one of the Detainees in the right-hand room, “Grandad”, appeared to be singled out by Payne for mistreatment. This Detainee was kicked, karate chopped and pulled up by the eye sockets by Payne.⁹⁷⁴ In his SIB statement he had also described Payne punching “Grandad”.⁹⁷⁵

2.680 In evidence at the Inquiry all three men said Payne asked them if they wanted to see the choir, or said “*This is the chorus*”.⁹⁷⁶ However, I note that at the Court Martial Betteridge said he could not remember who asked them if they wanted to see the choir.⁹⁷⁷ At the Inquiry LCpl Riley, in answer to Leading Counsel representing Payne, said it might have been another soldier who said, “*This is the chorus*”.⁹⁷⁸ These differences do not alter my conclusion that Payne did ask them if they wanted to see the choir. Betteridge said Payne lined up three or four men in the left-hand room and then kicked them in the small of the back, “*shoving*” his foot into their backs rather than executing a full drawn back kick. The Detainees shouted out in pain.⁹⁷⁹

2.681 Hughes described the choir as taking place in the right-hand room. He said Payne lined the Detainees up and kicked them, causing them to emit different noises. He was unable to say how hard the kicks were, other than to say they were sufficient to cause the Detainees to moan. He said that during the choir none of the Detainees was kicked in the testicles. In his SIB statement, he had said that Male Two and Male Three were present during the choir, and found it funny, but he was unable to remember their presence by the time that he gave oral evidence to the Inquiry.⁹⁸⁰

2.682 LCpl Riley described the kicks by Payne as taps with the foot.⁹⁸¹ Hughes remembered the two other soldiers being present and laughing at what was happening.⁹⁸² He also remembered another soldier, subsequently identified by him in a street identification as Slicker (Male Five) slapping a Detainee once about the head and kicking him in the kidney region of the lower back.⁹⁸³

2.683 Hughes went back to the TDF a second time to see what was going on.⁹⁸⁴ He described seeing one of the Detainees sitting on soggy cardboard in the middle room. This Detainee was hooded and the crotch of his trousers was torn, exposing his genitals. He was plasticcuffed at the wrists and by the thumbs, and tried to remove the plasticuffs from his thumbs. Payne appeared to kick the man in the genitals.⁹⁸⁵ The probability is that this Detainee was Baha Mousa. This is supported by a photograph of Baha Mousa’s trousers which shows a large tear in the groin area.⁹⁸⁶

2.684 In his SIB statement Hughes had described Male Four as squeezing water from a bottle into the mouths of “Grandad” and the Detainee in the middle room. It was

⁹⁷⁴ Hughes BMI 15/92/9-102/22

⁹⁷⁵ Hughes MOD000076

⁹⁷⁶ Betteridge BMI 15/23/23-25; Hughes BMI 15/103/25-104/6; LCpl James Riley BMI 15/167/11-168/20

⁹⁷⁷ Betteridge CM 30/17/22-18/2

⁹⁷⁸ LCpl James Riley BMI 15/185/2-186/13

⁹⁷⁹ Betteridge BMI 15/24/15-26/12

⁹⁸⁰ Hughes BMI 15/102/23-106/20

⁹⁸¹ LCpl James Riley BMI 15/168/22-169/3

⁹⁸² Hughes BMI 15/104/25-105/5

⁹⁸³ Hughes BMI 15/109/8-112/14

⁹⁸⁴ Hughes BMI 15/79/13-19

⁹⁸⁵ Hughes BMI 15/113/1-118/15

⁹⁸⁶ MOD054295

squeezed so fiercely that it was impossible for these two Detainees to swallow much of the water so that it spilt over them.⁹⁸⁷ In evidence to the Inquiry, Hughes said he was able to remember these incidents but unable to remember who was responsible for them.⁹⁸⁸ In his SIB statement, he also said that Male Four kicked most of the Detainees' feet, causing them to groan, and pulled their hands up to enforce the stress positions, and, when two of them turned their heads in response to groaning from "*Grandad*", he slapped each of them across the side of the head.⁹⁸⁹ In his oral evidence he said that, whilst he could not remember some of these details, or who was responsible for this particular conduct, he preferred to rely on his SIB statement as an accurate account of these matters.⁹⁹⁰

2.685 Betteridge and Hughes remembered a senior NCO and an officer coming into the TDF about this time. Betteridge said a man who looked like a senior NCO came over and told Payne to keep the noise down because the GMTV reporters were in camp.⁹⁹¹ Hughes remembered an officer, whose rank he was unable to recollect other than that he had "*pips and crown*", going into the left-hand room.⁹⁹² The Inquiry has been unable to identify either of these two men.

2.686 In oral evidence to the Inquiry Hughes' recollection of what he had seen and heard was at times vague and inconsistent with his SIB witness statement. However, at the outset of his evidence he said that his witness statement was more likely to be accurate for the very obvious reason that it was made much closer to the time of these events.⁹⁹³

2.687 On 8 October 2003 Hughes made two street identifications whilst watching 1 QLR soldiers from the back of a truck. There is no dispute that he correctly identified Slicker as Male Five.⁹⁹⁴ Whilst he was unable to identify Males Two and Three, he also identified Bentham as Male Four.⁹⁹⁵ Later, at a formal identification parade, he identified Payne as Male One.⁹⁹⁶ There is no dispute that the latter identification was correct.

2.688 Save that he admits "*tapping*" the Detainees' feet in order to keep them awake, Bentham disputes the actions and remarks attributed to Male Four by Hughes.⁹⁹⁷

Conclusions on this incident

2.689 Although there are some differences in the accounts of this incident given by LCpl Riley, Betteridge and Hughes, I have no doubt that their descriptions of what they saw and heard on the afternoon of 15 September were broadly accurate. The abuse described by Hughes is worse than that described by Betteridge. In turn, the abuse described by Betteridge is slightly worse than that described by LCpl Riley. These

⁹⁸⁷ Hughes MOD000075-7

⁹⁸⁸ Hughes BMI 15/107/6-108/23; Hughes BMI 15/118/23-120/15

⁹⁸⁹ Hughes MOD000076-8

⁹⁹⁰ Hughes BMI 15/107/2-108/23

⁹⁹¹ Betteridge BMI 15/38/7-39/10

⁹⁹² Hughes BMI 15/121/11-122/23

⁹⁹³ Hughes BMI 15/72/18-22

⁹⁹⁴ Hughes BMI 15/110/9-14; Hughes MOD000721-2; Spence MOD005925-7

⁹⁹⁵ Hughes BMI 15/81/10-83/14; Hughes MOD000721; Spence MOD005922-4

⁹⁹⁶ Hughes MOD000081; MOD0015455

⁹⁹⁷ Bentham BMI 41/112/22-24; Bentham BMI 41/117/15-118/8; Bentham BMI 41/140/18-141/7

differences are explained probably by Hughes being present for longer at the TDF and Betteridge and Cpl Riley to some extent playing down what they saw. Insofar as there are material differences I prefer Hughes' evidence.

- 2.690** I find that Payne did demonstrate to them the choir and their account of it represents what he did and the reactions to it of the other soldiers present. I also find that although Hughes cannot now remember all of what is in his SIB statement of 19 September 2003, that statement is truthful and substantially accurate. It is in my view not so surprising that six years later on he had no memory of some of the details.
- 2.691** It follows that I find in addition to demonstrating the choir Payne did assault "Grandad" (Kifah Matairi) and that he did kick the Detainee in the centre room, who was probably Baha Mousa. I find that the water incident and the conversations recorded in Hughes' witness statement of 19 September 2003 did take place and are broadly accurate.
- 2.692** In my view the demonstration of the choir shows that Payne was quite prepared to show off his predilection for violent and sadistic behaviour to complete strangers. It also shows that he did so without apparent fear that his conduct might be reported up the chain of command. Further, Slicker similarly had no anxieties about making his own contribution of gratuitous violence.
- 2.693** Self-evidently this incident supports the allegations made by the Detainees that mistreatment of them was continuous throughout the afternoon of 15 September.
- 2.694** There is one factual issue on which the evidence is finely balanced. The identification by Hughes of Bentham was carried out in circumstances which were not ideal. There is little evidence of the precise circumstances and conditions in which it was made. Furthermore, Hughes was no longer able to recall Male Four when he gave evidence to the Inquiry. Although Hughes correctly identified two other men, Payne and Slicker, it cannot be assumed that his identification of Bentham must be correct.
- 2.695** In this instance, the probability is that Bentham was present at this time. He was one of the three guards carrying out the afternoon stag, the other members of the Multiple having returned to Camp Stephen. Pte Lee Graham in his SIB statement dated 12 October 2003 described himself and the other two guards as "*gently slapping the prisoners across the head*" (see paragraph 2.668). I accept this statement as broadly accurate although I do not accept that any slapping of the Detainees was gentle. This provides some support for Hughes' description of what Male Four did.
- 2.696** Although there is a body of evidence that from time to time other soldiers went in and out of the TDF, and even after allowing for the less than ideal circumstances of the identification, in my opinion, it is more probable than not that Hughes accurately identified Bentham. I find that he correctly identified Bentham as the man whose actions he described seeing during this incident.

Criticisms

- 2.697** Betteridge said that when he, LCpl Riley and Hughes reached 3 Div Headquarters that evening they discussed between themselves what they had seen. Betteridge said that after their discussion, the following day, he reported the incident to his chain

of command, specifically Sgt Maj Watson.⁹⁹⁸ However, at the Court Martial he was asked if he had at any stage decided to report what he had seen. He replied that he had not.⁹⁹⁹ In the circumstances I find that Betteridge did not make any such report.

- 2.698** Hughes said he regretted not intervening and reporting what he had seen straight away.¹⁰⁰⁰ He said at the time he felt intimidated by what he was watching and did not feel able to intervene.¹⁰⁰¹ He said that later, after hearing that a Detainee had died, he reported what he had seen, he thought to Lt Cdr Walters, who was in his chain of command.¹⁰⁰² I accept that he did.
- 2.699** LCpl Riley accepted that he did not report what he had seen to anyone. LCpl Riley agreed that he should have reported what he had seen immediately. He said he felt ashamed for not having done so.¹⁰⁰³
- 2.700** In my judgment these three men should have intervened and reported immediately what they had seen up the chain of command. They knew what they were witnessing was wrong and were for that reason under a duty to do something about it.
- 2.701** However, Payne, who was the prime mover in the abuse, was senior to all of them. Although this is no good reason why they should not have intervened or reported it immediately, it is some mitigation, as is their age and inexperience, for not acting on the return of their senior officer to the vehicles. It is possible that if they had immediately reported what they had seen it might have prevented Baha Mousa's death.

The G5 Visit

- 2.702** After the GMTV visit another group of visitors came to BG Main. Some of them also witnessed events in the TDF. The group was commanded by Good, who was 1 QLR's Civil and Military Co-operation Officer, having taken over this position after his predecessor, Capt Dai Jones, was murdered.¹⁰⁰⁴ The second in command of the group was Schofield.¹⁰⁰⁵ Two other soldiers from this group were present, LCpl Dean Liggins and Pte Riley.¹⁰⁰⁶ On Monday afternoon the group attended BG Main to escort Good to an "O Group" which usually took place at 17.00hrs each day.¹⁰⁰⁷ Although there is some doubt about whether Liggins was present on this occasion, from the account he gave (in particular, the presence of a "father and son", most likely D005 and D006) I find that he was.¹⁰⁰⁸

⁹⁹⁸ Betteridge BMI 15/42/24-46/10

⁹⁹⁹ Betteridge CM 30/28/5-6

¹⁰⁰⁰ Hughes BMI 15/145/19-146/1

¹⁰⁰¹ Hughes BMI 15/127/17-129/8

¹⁰⁰² Hughes BMI 15/130/25-133/7

¹⁰⁰³ LCpl James Riley BMI 15/178/20-184/6; LCpl James Riley BMI 15/188/8-14

¹⁰⁰⁴ Good BMI 19/119/16-24

¹⁰⁰⁵ Schofield BMI 18/170/23-25

¹⁰⁰⁶ Liggins BMI 19/6/4-7/4; Pte Anthony Riley BMI 19/40/1-41/13

¹⁰⁰⁷ Schofield BMI 18/176/15-177/8; Schofield BMI 18/185/13-186/1

¹⁰⁰⁸ Liggins BMI 19/16/14-17/22

Schofield's, Liggins' and Pte Riley's evidence

- 2.703** Schofield said that on this occasion, after Good had left to go to the O Group, he heard cries of distress coming from the TDF when he went to the portaloo immediately beside the entrance to that building. From the right-hand doorway he saw five Detainees hooded and restrained. He was unable to say whether the Detainees were in stress positions because the focus of his attention was on a Detainee in the centre of the room. This man was kneeling with his hands bound behind his back. He was hooded and was being struck in the kidney area of the lower back. The punch being delivered was a punch that he said would break walls and was "...as hard as physically possible".¹⁰⁰⁹
- 2.704** Schofield described the man delivering the blow as a heavily built person, muscular with dark hair, issue combat trousers and a T-shirt. He believed the man was senior in rank to himself and that he had seen him previously at the Quartermaster's stores. He was unable to identify him. Because he believed the man to be senior in rank to him he did not intervene. (I return to this aspect of Schofield's evidence in Chapter 14 below, when addressing Huxley). However, he went straight back to the parked vehicle and reported what he had seen to Good on the latter's return from the O Group. Schofield also said he had seen other soldiers in the TDF.¹⁰¹⁰
- 2.705** Liggins asserted that he also went into the TDF. His description of what caused him to go over to the TDF was different from Schofield's, but I find that he went there at about the same time as Schofield. He saw between five and seven Detainees, as he remembered, not in stress positions.¹⁰¹¹ A soldier told him and Schofield that these Detainees were suspected of killing Dai Jones. For this reason, and also because he was invited into the TDF, he inferred that he was being invited to take revenge on these Detainees.¹⁰¹² He remembered nothing untoward in what he saw. He said that he looked only into the left-hand room of the TDF, and not the right-hand room or middle room.¹⁰¹³
- 2.706** Pte Riley said on the same occasion he went to the TDF but after Schofield and Liggins had returned to the vehicles.¹⁰¹⁴ His evidence was that on previous occasions he had seen prisoners being roughly treated on arrest and on detention at BG Main. He also remembered such an incident involving the Garamsche tribesmen.¹⁰¹⁵
- 2.707** On this occasion Pte Riley said he could hear screaming from the building and after he had spoken to Schofield he went into the TDF. Firstly he went into the left-hand room which, apart from a young Detainee looking sheepish, was empty. The young man was not hooded. Next he went into the centre room where he saw a man lying on his stomach with his elbows supporting his hands, which in turn were supporting his chin. His feet were near the toilet. The probability is that this man was Baha Mousa. He described the man as having a number of cuts on his face, a broken nose and blood on his lips. He was filthy and the room smelt. There were stains and marks on his clothing.¹⁰¹⁶

¹⁰⁰⁹ Schofield BMI 18/188/21-192/18

¹⁰¹⁰ Schofield BMI 18/192/11-194/12

¹⁰¹¹ Liggins BMI 19/9/11-11/8

¹⁰¹² Liggins BMI 19/14/8-15/6; Liggins BMI00215, paragraph 38

¹⁰¹³ Liggins BMI 19/12/21-13/20

¹⁰¹⁴ Pte Anthony Riley BMI 19/43/4-7

¹⁰¹⁵ Pte Anthony Riley BMI 19/34/1-36/21

¹⁰¹⁶ Pte Anthony Riley BMI 19/45/19-53/9

- 2.708** Pte Riley said next he went into the right-hand room where there were approximately five Detainees and two soldiers. The larger and older of the two soldiers was screaming in quite a loud manner at one of the Detainees. All the Detainees were hooded, handcuffed and kneeling facing the wall. Pte Riley could tell that all of them were in distress from the noises they made. One of them was being subjected to physical and verbal abuse by the larger of the two soldiers. The soldier referred to this Detainee as “Grandad” and told him to sit up and stop slouching. He then forcefully kned him in the back a number of times.¹⁰¹⁷
- 2.709** Pte Riley described the larger of the two soldiers as overweight and a lot older than the other soldier. He said he did not know this soldier but recognised him as someone who worked in the stores.¹⁰¹⁸ He spoke to him outside the TDF. This man told him he used to be a “provost”.¹⁰¹⁹
- 2.710** Pte Riley described the right-hand room as hot for the time of the year but not unusually hot for a stone-bricked building in Iraq. The room smelt and there were pools of fluid and smears of solids on the floor. He believed the solids were faeces.¹⁰²⁰
- 2.711** Pte Riley said he was shocked by what he had seen and after returning to the vehicles he discussed this with Schofield and Liggins.¹⁰²¹ Neither of these two soldiers remembered such a conversation and Pte Riley did not mention it in his Inquiry witness statement, although in that statement and in oral evidence he said a conversation had occurred later when they had returned to camp.¹⁰²²
- 2.712** Good accepted that on his return from the O Group Schofield informed him of the screams and shouts coming from the TDF. He was unable to remember if Schofield told him what he had seen. As a result of what Schofield said he went over to the TDF. He heard no noise coming from it. In it he saw a number of partially undressed Iraqis. Some of them were hooded and some not. They had cuts and bruises but he could not be specific as to what parts of their bodies were bruised. Although he could no longer remember this, he accepted as true his own description in his SIB statement of blood on the Detainees’ sandbags. He was unable to remember whether any of them were restrained in any way or in stress positions. One soldier was in the room but he could not identify him. This soldier’s rifle was on the floor. After speaking to the soldier about his rifle Good left the TDF.¹⁰²³
- 2.713** Good was asked if everything in the room appeared to be appropriate and proper. His response was:
- “Within the constraints of what was normal at the time, sir”.*¹⁰²⁴
- 2.714** He went on to say that there was nothing unusual in seeing Iraqis with cuts and bruises and partially dressed inside the camp perimeter, because they had been involved in crowd disturbances.¹⁰²⁵

¹⁰¹⁷ Pte Anthony Riley BMI 19/54/16-57/16

¹⁰¹⁸ Pte Anthony Riley BMI 19/55/8-23

¹⁰¹⁹ Pte Anthony Riley BMI 19/58/24-60/20

¹⁰²⁰ Pte Anthony Riley BMI 19/57/22-58/4

¹⁰²¹ Pte Anthony Riley BMI 19/62/7-17

¹⁰²² Liggins BMI 19/23/25-24/3; Pte Anthony Riley BMI 19/96/1-98/13; Schofield BMI 18/209/13-25

¹⁰²³ Good BMI 19/133/13-143/7; Good MOD000631-2

¹⁰²⁴ Good BMI 19/140/24-25

¹⁰²⁵ Good BMI 19/154/7-22

- 2.715** He agreed that in a written statement made in 2005 for the Court Martial he described the guard as very young looking and the Detainees covered in what appeared to be a film of sweat. In that statement he had said that all of the Detainees were naked from the waist up and that they all had sandbags over their heads and their hands tied behind their backs. He also described in this statement a Detainee curled up on the floor, his knees to his chest, who appeared to be in pain, because he was groaning. He asked the members of the guard who were present what had taken place and was informed “*nothing*”.¹⁰²⁶
- 2.716** Good was asked what he did about this incident. His response was rather vague. He said that later that day he expressed his concerns to the Officer Commanding C Company, Maj Mark Kenyon, but could not accurately remember either what he had said or what Kenyon said he would do.¹⁰²⁷ Kenyon had no recollection of such a conversation taking place before Baha Mousa’s death.¹⁰²⁸

Conclusions on the G5 visit

- 2.717** I have no hesitation in accepting Schofield’s evidence. He gave it in a sensible and straightforward way, and in my opinion was clearly telling the truth. I am also satisfied that his evidence was accurate. Liggins was not an impressive witness. His description of what he saw was very different from the descriptions given by Schofield and Pte Riley. However, he only went into the left-hand room and was there for only about a minute. In his mind he may have confused this visit with a separate occasion on which he saw detainees at BG Main.
- 2.718** Pte Riley gave a description of what he saw in the TDF which was a little different from that of Schofield. However, he was not there at precisely the same time as Schofield and probably stayed a little longer. He also saw a heavily built soldier, who was a lot older than the other soldier in the TDF, although he did not describe him as an NCO. There are aspects of his evidence which confirm what other witnesses have said and allegations made by the Detainees. His description of the man in the centre room, who I find was Baha Mousa, propping his chin in his hands is very similar to the description given by Pte Lee Graham in his SIB statement of the position Payne left Baha Mousa in on that afternoon.
- 2.719** My only reservation in respect of Pte Riley’s evidence is that following his return to the United Kingdom in October 2003 he contacted Amnesty International, the *Daily Mirror*, BBC *Panorama* and Public Interest Lawyers. As a result he had some involvement with “*The Mark of Cain*” (a fictional film which drew on elements of the events surrounding Baha Mousa’s death).¹⁰²⁹ Whilst I have no doubt these actions were taken in good faith, they do show that he had formed very strong views about what occurred during his tour in 2003. There is always the possibility that in relating the events which he witnessed he may to some extent have exaggerated what he saw. However, as I have said, in the main Pte Riley’s evidence is consistent with other evidence and I accept it as truthful and accurate.

¹⁰²⁶ Good BMI 19/141/5-144/7

¹⁰²⁷ Good BMI 19/144/19-145/19

¹⁰²⁸ Kenyon BMI 60/161/18-163/16

¹⁰²⁹ Pte Anthony Riley BMI 19/74/12-76/8

2.720 So far as Good is concerned I find it difficult to reconcile his description in oral evidence of what he saw in the TDF and the description given by others whose evidence I accept. His SIB witness statement of 9 May 2004 does not indicate that when he made it he had any difficulty in remembering what he had seen. In my opinion, for whatever reason, Good sought to minimise the seriousness of what he saw, especially in his oral evidence to the Inquiry. I accept that he did have some conversation with Kenyon about what Schofield had told him but from his description of this conversation, and from his own interpretation of what he had seen in the TDF as being essentially normal, it is possible that he gave Kenyon the impression that Schofield's complaint was not significant. It is also possible that, as Kenyon asserted, Good did not draw his attention to Schofield's complaint until after the death of Baha Mousa. It may be that the seriousness of the complaint did not dawn on Good until after Baha Mousa had died.

2.721 In my judgment no valid criticism can be made of either Schofield or Pte Riley. Schofield, very properly, at the first available opportunity, reported to Good, his superior officer, what he had seen. Pte Riley said on leaving the TDF he discussed what he had seen with Schofield. Schofield was immediately above him in the chain of command and in my opinion he could reasonably have expected Schofield to do as he did, namely report it to Good. Pte Riley said on the following morning he reported what he had seen to C Company's Company Sgt Maj, Noel Parry.¹⁰³⁰ In my opinion, Good should have acted immediately when he had been told by Schofield what he and Pte Riley had seen. He himself had seen a Detainee curled up on the floor who was groaning and appeared to be in pain. He had also seen other injuries on some of the Detainees. I do not think it was appropriate for him to dismiss these injuries as resulting from involvement with crowd disturbances, particularly after receiving Schofield's description of what he had seen. In my opinion he should have found a superior officer such as the BGIRO, Peebles, or the Adjutant. When he did report the matter to Kenyon he should have made quite certain that the seriousness of Schofield's complaint was brought home with full effect to Kenyon. So far as Kenyon is concerned I do not think he can be properly criticised for taking no action. If, as I suspect, Good only reported the incident to him after Baha Mousa's death, there was little that Kenyon could do other than refer him to the SIB, as Kenyon said he did. If the complaint was made earlier in such a way as to minimise its significance, it is, in my opinion, not so surprising that Kenyon took it no further.

Conclusions – Monday Afternoon

2.722 There is abundant evidence that conditions in the TDF deteriorated over the whole of Monday, including Monday afternoon. It is clear that the Detainees remained hooded and were forced to adopt stress positions throughout this period. Payne continued to visit the TDF in order to ensure that the guards enforced both. It is also clear from the evidence of the GMTV visit that Payne continued to demonstrate the choir to visitors. The G5 visit demonstrated that a more senior NCO visited the TDF and assaulted the Detainees. In my opinion, it is probable, as some of the guards said, that other visitors of more senior rank than the guards visited the TDF and some assaulted the Detainees (see Chapter 14).

2.723 It is clear that Baha Mousa was moved to the middle room during Monday afternoon. (In Chapter 15 I turn to Smulski's evidence about this). I accept that he was separated

¹⁰³⁰ Pte Anthony Riley BMI 19/71/3-23

because he was removing his plasticuffs and hood. It is not at all surprising that he wished to do so, since he was no doubt in considerable pain and discomfort. Merely by doing this, he was certainly not trying to “escape” from the TDF. I reject the submission that he did not in fact remove his plasticuffs, and that witnesses have fabricated the suggestion that he did. A substantial number of witnesses remembered him removing his plasticuffs at one point or another. Even MacKenzie’s diary recorded that he was removing his plasticuffs and hood. I cannot see any reason why MacKenzie would have invented this in his personal diary.

2.724 As I have already stated, of the three afternoon guards Aspinall was the best witness. Although he was a little argumentative at the outset of his evidence, over the course of it he became more co-operative and responsive. He accepted that his evidence to the Court Martial was far from satisfactory. He ascribed this to being brought back from a difficult tour in Iraq and receiving little support from the Army Legal Service. I am inclined to accept his evidence that at some time in the afternoon of Monday he had become sickened by what had happened to the Detainees and the treatment of them. However, I am sceptical about his assertion that he only slapped the Detainees on the face on three or four occasions. I think it likely that because Payne was in and out of the TDF on irregular occasions, he and his fellow guards did their best to ensure that the Detainees maintained their stress positions. So far as he is concerned I find that when enforcing stress positions it is likely he must have used force when manhandling them into position.

2.725 Bentham was a poor witness. I have set out above a sample of his reluctance to tell the Inquiry what he had seen and done. He may also have been reluctant to enforce stress positions, but I do not believe his evidence that he did not hit any of the Detainees. In my opinion, his attitude towards the Detainees was more akin to what Hughes saw him doing during the GMTV visit. I accept, as Hughes said in his SIB statement (which he relied upon as true in his oral evidence, albeit he could no longer remember this), that Bentham made the comments attributed to him by Hughes (see paragraph 2.676 above). I further accept that he was one of the two men seen by Hughes clicking their fingers at the Detainees, and that he fiercely squeezed water into the mouths of two Detainees as well as kicking most of the Detainees’ feet and slapping two of their heads. Further, Hughes’ evidence is mutually supportive of D003’s identification of Bentham as the guard who kicked him several times in the back and stomach on the second day (see paragraph 2.183 above), which I accept as accurate. In addition, I do not accept that during the periods when he said he endeavoured to enforce stress positions he did so by tapping the Detainees’ feet. I find that he used more force, probably kicks, to make them return to their stress positions.

2.726 I also do not accept that he only shouted or tapped the Detainees with his feet to keep them awake. I find, as Pte Lee Graham recounted in his SIB statement of 12 October 2003, that Bentham, as well as Aspinall and himself, slapped the Detainees on the face. I also find that these slaps were far more forceful than “gentle” slaps.

2.727 Finally, for the avoidance of doubt I find Bentham was present during the demonstration of the choir by Payne to Hughes, Betteridge and Pte Riley. Bentham accepted that he saw the choir. His assertion that he did not regard it as horrific throws additional light on his attitude and approach to his duties as a guard.

- 2.728** Pte Lee Graham was another very poor witness. I do not accept that by the time he came to give evidence his memory had deteriorated to the extent that he claimed. In my judgment he was just not prepared to give full and truthful evidence about the events of 14 to 16 September. He did, however, somewhat reluctantly, accept that his SIB witness statement was an effort by him at the time it was made to give a truthful account of these events. For this reason and the fact that it was made much closer in time to those events, I find that this witness statement does broadly represent a truthful account of what happened, save that it may have understated the wrongdoing by him and other soldiers.
- 2.729** I have set out above a summary of what Pte Lee Graham said in that statement and in general I accept the contents of it, although I do not accept it represents a complete account of Pte Lee Graham's own conduct. His admission that he and the other two guards used "gentle slaps" or "taps" to keep the Detainees awake struck me as an attempt to minimise what they did. I do not believe that what he and the other two guards used were mere "taps". I find in keeping with the evidence of the Detainees that he and the others used greater force to replace the Detainees in stress positions when, through exhaustion or otherwise, they fell out of them.
- 2.730** None of these soldiers reported to any senior NCO or officer what was going on in the TDF on Monday. I realise that as young and junior soldiers it would have taken some courage to report what they had seen, particularly in the face of Payne's aggressive conduct. I also believe that all three were probably frightened of Payne. In Aspinall's case I have some sympathy with his explanation that if the Padre had seen what was going on and made no adverse comment, what was he to do? But in my judgment the failure of each of them to report what they had seen up the chain of command was a serious breach of duty.

Chapter 14: Other Visitors to the TDF Before the Death

- 2.731** As will be apparent from what is contained in previous chapters, a number of soldiers, both guards and others, informed the Inquiry that throughout the period during which the Detainees were in the TDF, the TDF was visited by soldiers other than the guards. It was suggested by some of the guards that some of those who visited the Detainees in the TDF were senior NCOs and some officers. The Inquiry has sought to identify and track down those who it is alleged visited the TDF. This has been a difficult exercise due to the inability, which for the most part I accept as genuine, of the guards to identify visitors by name.
- 2.732** Generally, where a visitor has been identified as visiting the TDF at a particular time which is clear, I have dealt with their visit in the appropriate chapter. In this chapter I deal with those who have been identified as visiting the TDF but at uncertain times. I set out the allegations made by or against them and their evidence. I emphasize that it should not be assumed that those whom I have mentioned in this chapter were the only visitors to the TDF. I accept the evidence of the guards that there were a number of other visitors to the TDF during the whole 36 hours prior to the death who have not been identified. Some were members of 1 QLR and some possibly members of other units.

Aktash

- 2.733** Aktash, to whom I have referred earlier, said that he visited the TDF on Monday. He believed this was probably early afternoon, but certainly during daylight. He went there with a fellow signaller from 209 Signal Squadron after his duty in the Operations Room.¹⁰³¹ They were drawn to the TDF by “*whacking noises*”. This turned out to be a noise made by soldiers kicking a Detainee’s hands to make him hold his arms out.¹⁰³² In his SIB statement dated 8 May 2004 he had said it was on the same day that the Detainees were brought to BG Main.¹⁰³³ However, in oral evidence to the Inquiry he said he was muddled when he made his SIB statement and was now sure he visited the TDF on Monday.¹⁰³⁴
- 2.734** Aktash described seeing more than five soldiers either in the vicinity of the TDF or inside. One of them was Payne. The others were younger. The Detainees were mostly hooded and were making noises as if in distress.¹⁰³⁵ One was plasticcuffed by his wrists and fingers. On enquiry he was told that this Detainee had given the guards trouble the night before.¹⁰³⁶ He also saw a Detainee being given water. His hood was pushed up and water poured into his mouth, in the process spilling over his body. He noticed water all round the Detainees which at first he thought was urine but later realised was water.¹⁰³⁷

¹⁰³¹ Aktash BMI 16/12/14-14/6

¹⁰³² Aktash BMI 16/17/21-19/3

¹⁰³³ Aktash MOD000760

¹⁰³⁴ Aktash BMI 16/12/23-14/2

¹⁰³⁵ Aktash BMI 16/14/10-17/1

¹⁰³⁶ Aktash BMI 16/21/20-22/12

¹⁰³⁷ Aktash BMI 16/23/2-15

- 2.735** Aktash saw another Detainee unhooded and smoking a cigarette. This man was in the right-hand room. He also saw a Detainee in the small middle room. He thought this man was also not hooded. He was sitting on the floor and seemed very young.¹⁰³⁸
- 2.736** In June 2004 Aktash was shown photographs of the Detainees. From these he identified D003 as the one smoking a cigarette and D005 as the young man in the centre room.¹⁰³⁹ D003 said he was given a cigarette by a soldier. In his statement he said this occurred on Tuesday morning but in evidence he was unable to remember when it happened.¹⁰⁴⁰
- 2.737** D005's presence in the middle room, and Baha Mousa's absence from it, implies that Aktash's visit was either on Monday morning or in the early afternoon on Monday.
- 2.738** Aktash said the Detainees in the right-hand room were all on their knees, but unlike the Detainees in the left-hand room they did not have their arms held out. The ones in the left-hand room were kneeling, straight backed, with their arms out. One fell over on to his side and was put back into position by a guard.¹⁰⁴¹ The Detainees were "groaning" and "making noises as if distressed". He saw bruising on the face of one of the Detainees when a guard lifted up the Detainee's hood.¹⁰⁴²
- 2.739** Aktash said he remembered Payne coming in and out of the TDF. At one point Payne said to him, "*Watch this*". Payne then went into the left-hand room and proceeded to push his thumb into the eye sockets of a hooded Detainee.¹⁰⁴³ He also witnessed Payne shouting at a Detainee to keep his hands up. When the Detainee was unable to do so, Payne slapped him on the head before re-positioning his arms.¹⁰⁴⁴ At that time the TDF was, he said, hot and smelly.¹⁰⁴⁵
- 2.740** Aktash saw one of the Detainees being brought back to the TDF by two guards. The soldiers were running and the Detainee was "*basically being dragged to the detention centre*".¹⁰⁴⁶ He saw another Detainee being hurried off by two soldiers to go to the tactical questioner. In the course of this the Detainee's trousers fell down, causing a number of soldiers to laugh at him.¹⁰⁴⁷
- 2.741** Before he made his witness statement for the SIB, Aktash gave an interview to reporters from the *Daily Mirror* and ITV. He received hotel hospitality (from ITV) but no payment.¹⁰⁴⁸ He agreed in evidence that there might have been some exaggeration in what he told the reporters. The allegations of mistreatment which he made to the journalists were rather more extensive than his witness statements and evidence to the Inquiry.¹⁰⁴⁹ In particular he made allegations that senior members of 1 QLR knew about and encouraged mistreatment of the Detainees. He agreed that in reality this

¹⁰³⁸ Aktash BMI 16/24/7-25/15

¹⁰³⁹ Aktash MOD000767-8

¹⁰⁴⁰ D003 BMI 11/18/8-19/4

¹⁰⁴¹ Aktash BMI 16/25/16-27/2

¹⁰⁴² Aktash BMI 16/15/5-12

¹⁰⁴³ Aktash BMI 16/20/10-21/8

¹⁰⁴⁴ Aktash BMI03483, paragraphs 43-45

¹⁰⁴⁵ Aktash BMI 16/27/3-21

¹⁰⁴⁶ Aktash BMI 16/27/22-29/1

¹⁰⁴⁷ Aktash BMI 16/30/1-9

¹⁰⁴⁸ Aktash BMI 16/37/8-38/18

¹⁰⁴⁹ Aktash BMI 16/61/21-62/8

was based on a belief that Peebles allowed the mistreatment to happen. Contrary to what he had said to the media, he could not in fact recall an incident of an officer “stepping in” when the “beatings got too heavy”. A claim that an officer had lied to the SIB was explained as a comment about the fact that Peebles was not arrested as other soldiers had been.¹⁰⁵⁰

2.742 Aktash’s admission of exaggerating his allegations when speaking to journalists is relevant to his credibility and I bear it in mind when assessing his evidence. He was also a little confused about the day when he witnessed the events in the TDF. In addition, in my opinion he may have been confused between Detainees in the left-hand room of the TDF and those in the right-hand room. Other evidence shows that it was the right-hand room where the Detainees were, in general, subjected to the harshest treatment.

2.743 Despite the above discrepancies, Aktash’s evidence to the Inquiry supported much of the evidence given by the Detainees and fits the general picture of the way in which the Detainees were treated by Payne and the guards during Monday. I accept his evidence as broadly accurate and in particular I prefer his evidence of the eye-gouging incident to that of Payne.¹⁰⁵¹ On the basis of Aktash’s evidence I find that Payne did deliberately gouge the eyes of a Detainee or Detainees in the way described by Aktash.

2.744 Aktash said he reported what he saw to Sgt Bland, a superior NCO.¹⁰⁵² Aktash was at the time of Op Telic 2 a young TA soldier attached to 1 QLR and in my opinion cannot be criticised for not taking the matter further.

Huxley

2.745 CSgt Huxley was the H Company Quartermaster Sergeant. His place of work was the Quartermaster’s stores. As the senior Quartermaster’s Store NCO he had responsibility for the stores and a small unit of more junior NCOs and soldiers. He accepted that “*mid-to-late 30s, 5 foot 8, stocky build, overweight with a belly*” was a fair description of his own appearance in 2003. When he gave evidence to the Inquiry it could be seen that he was a large man. He is now a serving Warrant Officer.¹⁰⁵³

2.746 A number of allegations are made against Huxley. Firstly, there is some evidence that he himself was involved in the violence inflicted on the Detainees. Secondly, it is suggested that due to the position of the Quartermaster’s stores relative to the TDF (see Figure 4 above – the stores were on the ground floor of the building labelled “*Main accommodation block*”) he must have heard the sounds of abuse of the Detainees coming from the TDF. Thirdly, it is said that he failed to provide sufficient food and water for the Detainees. Fourthly, Felton made various allegations against Huxley. I shall deal with these allegations in the above order.

2.747 The allegation that Huxley was personally involved in violence rests on the evidence of Pte Daniel Ellis, Schofield, Pte Riley and Atkash.

¹⁰⁵⁰ Aktash BMI 16/40/9-41/15; Aktash BMI 16/51/4-53/10

¹⁰⁵¹ Payne BMI 32/84/18-85/13. Payne denied deliberately gouging the Detainees’ eyes, and said that if there was any eye-gouging, it would have been accidental.

¹⁰⁵² Aktash BMI 16/32/13-33/9

¹⁰⁵³ Huxley BMI 23/2/13-4/1

- 2.748** Ellis made a written statement for the first time on 2 November 2009. This was in response to the Inquiry's request for a statement from him. He said that he had been the driver of a Saxon vehicle which took the Op Salerno Detainees from the Hotel to BG Main. It is difficult to reconcile this with the other evidence. Moreover, his recollection of the part which he played in the operation was distinctly vague and confused.¹⁰⁵⁴
- 2.749** Ellis said that at BG Main he saw Huxley go into the TDF and he heard shouting and the sounds of punches being delivered. He said he saw prisoners in the left hand room being punched.¹⁰⁵⁵ However, as his evidence progressed he became more uncertain about what he had seen and what he could remember. He mentioned Payne being present in the TDF and also two staff sergeants, one of whom was Huxley. He tried to name the second staff sergeant but added that he was uncertain about this identification. He said that one of the staff sergeants, Huxley or the other one, said that the Detainees were not to be given water, and that one of them punched a Detainee.¹⁰⁵⁶
- 2.750** In my judgment, Ellis was a witness whose evidence was so uncertain that I could not safely rely on any of it. I do not believe he was attempting to mislead the Inquiry, but he was at times so vague that I found it impossible to accept any of what he said was accurate. This was hardly surprising since, as I have said, his first written statement was made some six years after the events about which he was speaking. I find it quite impossible to make any findings against Huxley on the basis of Ellis's evidence.
- 2.751** The evidence of Schofield and Pte Riley related to the G5 incident to which I have referred in Chapter 13. Each in a different way referred to a large and older soldier who each alleged was punching a Detainee.¹⁰⁵⁷ Schofield said that he recognised the soldier as an NCO senior in rank to himself and who he believed may have worked in the stores.¹⁰⁵⁸ There is a suggestion that this man was Huxley. Pte Riley said that the man he saw was in his mid to late thirties, stocky and overweight, and about five feet eight inches. The soldier told Pte Riley that he had worked as a Provost in Northern Ireland.¹⁰⁵⁹ Huxley had not worked as a Provost, but he had been the Base Commander for two police stations in Northern Ireland, and I recognise the potential for confusion between these two roles.¹⁰⁶⁰
- 2.752** Both descriptions given by Schofield and Pte Riley, although not entirely the same, could fit Huxley. However, no identification parade has ever taken place and in the course of his oral evidence Schofield was shown a photograph of Huxley taken recently, six years after the events in question, and in different circumstances. He said the man in the photograph was not the man whom he saw in the TDF.¹⁰⁶¹ Although Schofield and Pte Riley were not in the TDF at exactly the same times, in my opinion it is overwhelmingly probable that each saw and described the same man. In the circumstances, although Schofield may have been mistaken when he said that the

¹⁰⁵⁴ Ellis BMI05456-8, paragraphs 45-55

¹⁰⁵⁵ Ellis BMI 45/61/5-64/12

¹⁰⁵⁶ Ellis BMI 45/72/2-77/3

¹⁰⁵⁷ Pte Anthony Riley BMI 19/56/18-57/12; Schofield BMI 18/192/11-14

¹⁰⁵⁸ Schofield BMI 18/193/6-19

¹⁰⁵⁹ Pte Anthony Riley MOD009529-30

¹⁰⁶⁰ Huxley BMI01689, paragraph 4

¹⁰⁶¹ Schofield BMI 18/206/23-207/12

man in the photograph was not the same man whom he saw, his reaction to the photograph makes it unsafe for me to find that the man he and Private Riley saw assaulting a Detainee in the TDF was Huxley.

2.753 Finally, Aktash gave evidence that in November 2003, just before he returned to the United Kingdom from Iraq, during the course of a conversation with Huxley, Huxley said he had beaten up one of the Detainees.¹⁰⁶² I have already indicated that I regard Aktash as generally a truthful witness whose evidence can be accepted.

2.754 Huxley denied the conversation described by Aktash and he denied committing any acts of violence on the Detainees.¹⁰⁶³ He accepted that he was aware of the arrival of the Detainees at BG Main. He was also aware of a rumour that the Detainees were in some way connected with the death of Capt Dai Jones. He accepted that on one occasion after their arrival he “*popped his head*” around the doorway to the TDF. He could not recall whether this was on Sunday or Monday. He said he saw two Detainees hooded and sitting on the floor in the left-hand room with their hands behind their backs.¹⁰⁶⁴

2.755 Huxley was not a particularly impressive witness but I find it difficult to conclude that he was lying when he denied the allegations that he assaulted a Detainee or Detainees. He was then a senior NCO and is now a Warrant Officer. This bolsters his credibility.

2.756 Since I find it unsafe to rely on the evidence of Ellis, Schofield and Pte Riley, the only remaining evidence against Huxley in respect of this allegation is that of Aktash. Although I found Aktash an honest witness I do not find that his evidence is of sufficient weight upon which to base a finding that Huxley did assault the Detainees. He may have done, but I do not find this allegation proved on a balance of probabilities.

2.757 Next, I deal with the allegation that Huxley was aware of the violence being used on the Detainees. This allegation is based on the proximity of the stores to the TDF. It is suggested that those in the stores must have heard the noise coming from the TDF arising out of assaults being committed on the Detainees. Payne, Slicker and Cpl Christian Stout all gave some evidence to the effect that the noise of Detainees being assaulted could be heard outside the TDF and within its vicinity.

2.758 In response to questions about the half hour or so before Baha Mousa’s death, Payne said the noise of the Detainees being beaten could not be heard inside the stores but the noise of guards shouting at them could be heard outside them. He said those approaching the TDF would be able to hear shouting by soldiers but not sounds of Detainees suffering.¹⁰⁶⁵

2.759 Slicker, in an SIB interview in March 2004 and in evidence to the Court Martial said that the noise of the Detainees being beaten up could be heard in the stores.¹⁰⁶⁶ However, in oral evidence to the Inquiry he said screams could only be heard from the entrance to the main block.¹⁰⁶⁷ In my view his earlier evidence on this issue is more likely to be correct than his evidence to the Inquiry.

¹⁰⁶² Aktash BMI 16/35/22-37/7

¹⁰⁶³ Huxley BMI 23/40/2-41/13

¹⁰⁶⁴ Huxley BMI 23/19/22-24/24

¹⁰⁶⁵ Payne BMI 32/138/3-25

¹⁰⁶⁶ Slicker CM 47/11/7-25; Slicker MOD004803

¹⁰⁶⁷ Slicker BMI 21/66/17-69/20

2.760 Stout, at the time a corporal employed in the stores, in evidence to the Inquiry said he slept in the same building as the stores but in the opposite corner to the stores, closer to the TDF than the stores. He said he was probably the person who slept nearest to the TDF. He was aware of the presence of the Detainees in the TDF. But he said he did not go into the TDF to see them. In his Inquiry statement Stout included the following paragraphs:

“Soon after I deployed it became clear to me that it was common knowledge that the detainees were getting punched and thrown about. I cannot remember specifically how I gained this impression. It was not kept a secret. Stress positions were mentioned.

While I was working in the Stores, I could hear soldiers screaming at the detainees. I remember hearing: “Get up!”, “Sit Down!”, “Get back there!”¹⁰⁶⁸

2.761 Stout said this related to detainees other than the Op Salerno Detainees.¹⁰⁶⁹ Nevertheless, it seems clear that if other detainees could be heard from the stores the likelihood is that noises coming from the TDF when the Op Salerno Detainees were present could also be heard.

2.762 Huxley denied hearing any untoward noise coming from the TDF. He also denied that he had heard rumours that the Detainees were being beaten up. However, he did not deny that he had been in and around the stores for much of the time when the Detainees were in the TDF.¹⁰⁷⁰

2.763 I accept Stout’s evidence that from the stores and from his own accommodation he could hear the noise of shouting and moans coming from the TDF. I find that Slicker also heard noises coming from the TDF, not only when he was at the entrance to the main building, but also when he was in the stores, as he said in his SIB interview and in evidence to the Court Martial.

2.764 In my view it is inconceivable that Huxley did not hear such noises when the Detainees were present in the TDF. His place of work in the stores put him in a position to hear what was going on when he was in the stores and when he was outside walking to and from them. I recognise that such noises may not have been incessant, but I nonetheless find that on the balance of probabilities, Huxley was near the TDF for enough time to hear at least some such noise. In my opinion, like others, both senior and junior in rank to him, Huxley simply ignored what he heard. As a senior NCO in my judgment he should have done something about it.

2.765 Huxley accepted that as the NCO in charge of the stores he had a responsibility to ensure that food and water was available for detainees on request. He notified the cookhouse when prisoners were brought into the TDF and it was left to the guards to pick up meals from the cookhouse and take them to the TDF.¹⁰⁷¹

2.766 Huxley said he remembered one of the guard force coming over to the stores and requesting that food was provided for the Op Salerno Detainees. When pressed by Counsel to the Inquiry, in evidence, he said he remembered someone from A Company

¹⁰⁶⁸ Stout BMI05200, paragraphs 12-13

¹⁰⁶⁹ Stout BMI 32/199/11-200/1

¹⁰⁷⁰ Huxley BMI 23/36/22-39/20

¹⁰⁷¹ Huxley BMI 23/10/1-24

coming over from the TDF and asking for about 20 extra meals. An order was put into the cookhouse, but he did not know whether the meals were delivered.¹⁰⁷²

2.767 As for water, Huxley said it was the guards' duty to collect the water and supply it to the Detainees. The water was kept in two "reefers" close to the cookhouse.¹⁰⁷³

2.768 Huxley denied that the stores had any responsibility for supplying either water or food to the Detainees beyond seeing that it was available on request.¹⁰⁷⁴

2.769 I deal with the provision of food and water to the Detainees in Chapter 20 below. In short, I find that they were given only two meals during the 48 or so hours they spent at BG Main, namely breakfast on Monday morning and another breakfast on the Tuesday morning. I also find that, whilst they were given water, the manner in which the water was given was on occasions demeaning and disgraceful. I do not, however, think that the blame for any of this can be placed on Huxley. I accept Huxley's evidence that the real responsibility for ensuring that food and water were provided lay with the guards, overseen by whoever was responsible for the Detainees at the time.

2.770 Finally, it is necessary briefly to refer to allegations made by Felton about Huxley. Shortly, those allegations were that Huxley had assaulted him on at least three occasions and that Huxley was responsible for deleting from a laptop photographs of prisoners which had been taken by Felton.¹⁰⁷⁵ Felton also alleged that Huxley threatened him because Felton gave a television interview about mistreatment of detainees.¹⁰⁷⁶ Huxley denied these allegations¹⁰⁷⁷ and Felton was subjected to a vigorous and effective cross-examination in respect of them by Counsel representing Huxley and other soldiers. The result of this cross-examination in my opinion was completely to destroy Felton's credibility as a witness. It became quite clear that he bore a grudge against Huxley and other members of 1 QLR. In the circumstances I find it quite impossible to rely on any evidence given by him.

SSgt Roberts

2.771 SSgt Roberts was deployed to Iraq on Op Telic 2 as the Battlegroup PTI. He was also a member of the Commanding Officer's TAC Group. He was based at BG Main. At the time of giving evidence to the Inquiry he had risen to the rank of WO1.¹⁰⁷⁸

2.772 A number of soldier witnesses alleged that SSgt Roberts was involved in some violence against individual Op Salerno Detainees. SSgt Roberts remembered Op Salerno, but said he played no part in it. He also said that he had no dealings with the Detainees.¹⁰⁷⁹ He understood that the raid on the Hotel related to the killing of the RMP soldiers. He said he "*certainly associated the detainees with the RMP*

¹⁰⁷² Huxley BMI 23/32/8-34/16

¹⁰⁷³ Huxley BMI 23/30/24-31/3

¹⁰⁷⁴ Huxley BMI 23/30/24-32/7

¹⁰⁷⁵ Felton BMI 17/72/23-73/12; Felton BMI 17/104/18-108/14

¹⁰⁷⁶ Felton BMI 17/109/13-111/18

¹⁰⁷⁷ Huxley BMI 23/44/11-46/4

¹⁰⁷⁸ Roberts BMI 20/44/3-47/11

¹⁰⁷⁹ Roberts BMI 20/76/22-77/9

deaths".¹⁰⁸⁰ In his Inquiry statement SSgt Roberts described a visit which he said he had made to the TDF on Monday, 15 September 2003.

"Monday 15 September 2003

60. On Monday, I went to lunch and sat at a table down the left hand side of the eating area with the officers. I noticed a guy I didn't recognise, I wondered who he was. He was small and bald, I think he was wearing glasses. I have now been informed that this may have been a Tactical Questioner.

61. Shortly after lunch, I went to the toilet and heard Cpl Payne's voice. I was wearing my normal off-duty dress, a singlet vest, running shorts and flip-flops. It was too hot for anything else. I went into the detention centre to ask Cpl Payne if he was coming out with the Rover Group that evening.

62. He was in there talking to the Tactical Questioner. There were detainees in there, I don't remember how many. I can't really remember much about them, as I was focusing on my conversation with Cpl Payne. I can recall going through the left hand door of the holding area and speaking to Cpl Payne. I remember there was one prisoner in the top right hand corner of the room who was sitting down. I can't recall if he was cuffed, but presume he was.

63. I do not have a clear memory of conditions in the TDF now, but in 2004 I discussed this episode with a solicitor. Having reviewed the draft proof of evidence prepared then, it appears that, at that time, I could recollect that I saw approximately three detainees sitting hooded and cross-legged in a sort of prayer position. They were not leaning against the wall. I described the room as being very light inside: the back windows had been painted green, but there was a strip at the very top which was clear. The room was also lit by the door and a window on the opposite side of the room, which I did not remember as being glazed at all.

64. The Inquiry has asked me to clarify the conditions of the detainees and any injuries sustained by them while detained at BG Main. In response all I can say is that I do not remember any of the detainees having injuries. Nor do I recall seeing any evidence of the detainees having required or having received medical treatment.

65. I was in the TDF for a few minutes. Due to the wall, I couldn't tell who was in the other room. Outside, there were two or three people around the front of the holding area, I can't recall who, and there was a Saxon vehicle nearby. I remember now that it seemed quiet on the particular day I went to see Cpl Payne. In contrast to the previous day, there was not much activity."¹⁰⁸¹

2.773 The reference in paragraph 63 was a reference to an unsigned proof of evidence taken by a solicitor at a time when SSgt Roberts was being considered for prosecution in relation to alleged assaults by him on the Detainees.¹⁰⁸²

2.774 In his oral evidence to the Inquiry SSgt Roberts was less certain about whether it was Sunday or Monday that he made his visit. When asked about the passage in his Inquiry statement in which he said his visit was on Monday, he said:

¹⁰⁸⁰ Roberts BMI01201, paragraph 55

¹⁰⁸¹ Roberts BMI01202-4, paragraphs 60-65

¹⁰⁸² Roberts BMI01209

*"I was assuming – at the time when I had been questioned, I wasn't aware of the actual day that the – that the incidents had happened. And clearly with the hustle and bustle of what happened on the first day of bringing detainees in, the Monday was sort of – the next day was quite sedate in terms of people around. It wasn't as busy as the first day, so I was presuming it was the Monday indeed, but not 100 per cent sure that it was the Monday."*¹⁰⁸³

- 2.775** In his draft proof of evidence SSgt Roberts said this visit was made by him on either 14 or 15 September.¹⁰⁸⁴ In an interview under caution on 9 March 2004 SSgt Roberts said his visit was either on the day before or the day when Baha Mousa died.¹⁰⁸⁵ He said that his visit was just before lunch at about 11.00hrs.¹⁰⁸⁶
- 2.776** SSgt Roberts said he went into the TDF through the right-hand door. Inside he saw Payne talking to the tactical questioner. He was unable to recall how many Detainees were in the TDF.¹⁰⁸⁷ In the draft proof of evidence prepared in 2004, he was recorded as saying he had seen three Detainees sitting cross-legged, hooded and in a sort of prayer position.¹⁰⁸⁸ His memory of these events when he gave evidence was more hesitant. He said that in the two or three minutes he was in the TDF he saw nothing untoward.¹⁰⁸⁹ When other witnesses' allegations that he had assaulted the Detainees were put to him he vehemently denied them.¹⁰⁹⁰
- 2.777** The soldiers who made allegations about SSgt Roberts' behaviour towards these Detainees were Felton, Slicker, Pte Lee Graham, Pte Lee and Aspinall. Felton said that he saw SSgt Roberts hit one of the Op Salerno Detainees with a chopping motion. At the time, SSgt Roberts was instructing two soldiers how to inflict pain by hitting a Detainee but without leaving any mark or signs of injury.¹⁰⁹¹ Felton mentioned this incident for the first time in his Inquiry statement dated 19 May 2009.¹⁰⁹²
- 2.778** Slicker, who had given a number of accounts before giving evidence to the Inquiry, said in his Inquiry witness statement that he saw SSgt Roberts in the TDF striking a Detainee with karate chops to the neck and stomach. He said at the time Rodgers and Redfearn were present in the TDF (see also Chapter 13).¹⁰⁹³ In oral evidence to the Inquiry, Slicker was at first unable to remember this allegation but on being shown his Inquiry statement in which he had described SSgt Roberts' behaviour, he said it did happen. He had not mentioned this allegation against SSgt Roberts in any of his previous accounts, including his interview with the SIB on 9 October 2003.¹⁰⁹⁴ His evidence over the timing of this incident was unclear. At one point he said he could not remember on what day it occurred,¹⁰⁹⁵ but at another he accepted it took place during daylight on the day of the Detainees' arrival at BG Main.¹⁰⁹⁶ He had described a similar incident in his SIB interview in March 2004, albeit he did not

¹⁰⁸³ Roberts BMI 20/88/13-21

¹⁰⁸⁴ Roberts BMI01213

¹⁰⁸⁵ Roberts MOD004878

¹⁰⁸⁶ Roberts MOD004885

¹⁰⁸⁷ Roberts BMI 20/92/20-97/8

¹⁰⁸⁸ Roberts BMI01214

¹⁰⁸⁹ Roberts BMI 20/99/20-102/12

¹⁰⁹⁰ Roberts BMI 20/124/24-131/16

¹⁰⁹¹ Felton MOD046697-8

¹⁰⁹² Felton BMI00837, paragraph 27

¹⁰⁹³ Slicker BMI01857-8, paragraphs 19 and 23

¹⁰⁹⁴ Slicker BMI 21/52/11-54/13

¹⁰⁹⁵ Slicker BMI 21/27/5-15

¹⁰⁹⁶ Slicker BMI 21/117/10-18

mention SSgt Roberts, saying it took place shortly after the Detainees' arrival at BG Main.¹⁰⁹⁷ For reasons which I shall explain in due course, even if Slicker's account of this incident is otherwise correct, his account of its timing in his SIB interview must have been wrong.

- 2.779** Redfearn, in oral evidence to the Inquiry, said he could not remember SSgt Roberts visiting the TDF, although in his SIB statement he had said that Roberts did visit the TDF when he was there. Redfearn agreed that if he had said in the past that SSgt Roberts had visited the TDF that "*presumably*" would be true.¹⁰⁹⁸
- 2.780** Pte Lee Graham, in a statement taken by the SIB dated 12 October 2003 (to which I have already referred in the preceding Chapters), described SSgt Roberts kicking three prisoners. This statement contained the following passage:

"I mentioned earlier that throughout the day, a stream of unit personnel visited the facility to look at the prisoners. I recall distinctly that at one point some of the CO's TAC Group came in including SSgt Roberts, a PTI.

He came in a couple of times to look around but on one occasion, whilst I was stood at the back of room 3 behind prisoner 4, I saw him kick prisoners 1, 2 and 6 in the sides. He didn't appear to have been given any reason to kick them as described and I thought at the time he'd done it just for the sake of it. As a result, prisoners 1, 2 and 6 cried out in pain but didn't fall over. I was real close to SSgt Roberts when he did this. He kicked them within seconds of each other and then he just walked out. There was no-one between me and him obstructing my view. I saw it quite clearly. I've known him since I joined the Battalion and recognise him. He was wearing full desert combat 95 uniform and desert boots. I should add though that the lights were off at the time and we were using right angle torches to see with but, even though it was dark, I could still see what happened clearly."¹⁰⁹⁹

- 2.781** However, when giving evidence at the Court Martial, Pte Lee Graham said he was unable to remember this event.¹¹⁰⁰ In evidence to the Inquiry Pte Lee Graham said he had no recollection of this incident. Indeed he went so far at one stage in his evidence as to say he was unable to remember whether or not the Detainees were in the TDF.¹¹⁰¹ Later in his oral evidence when he was referred to the passage in his SIB statement and asked whether he had made it up, he said, "*I doubt it*" (see also Chapter 13).¹¹⁰²
- 2.782** In answer to questions by Leading Counsel representing SSgt Roberts, it was suggested to Pte Lee Graham that his allegation of what SSgt Roberts had done was a lie. The following exchange took place:

"Q You told the RMP, in October 2003, didn't you, Mr Graham, what seemed the best account to save your interests then?

A No.

Q And they were no more truthful than the evidence you have given in your statement or the evidence you have given to the Inquiry today, were they?

¹⁰⁹⁷ Slicker MOD004799-810

¹⁰⁹⁸ Redfearn BMI 30/172/22-173/9; Redfearn MOD000193

¹⁰⁹⁹ Pte Lee Graham MOD000152

¹¹⁰⁰ Pte Lee Graham CM 46/122/22-124/8; Pte Lee Graham CM 46/142/5-143/14

¹¹⁰¹ Pte Lee Graham BMI 26/15/20-16/15

¹¹⁰² Pte Lee Graham BMI 26/104/24-105/25

A *I don't agree with you.*

Q *You were just saying what seemed the best thing to say at the time.*

A *I still disagree with you.*

Q *You identified people in your October 2003 statement as being involved because you thought the RMP wanted you to identify people, didn't you?*

A *Um, I don't know. I don't think so.*

Q *When you sought to identify a medic or when you referred to Staff Sergeant Roberts, you weren't saying that because it was the truth, were you? You were saying it because you wanted to satisfy the RMP at the time?*

A *I still disagree with what you are saying.*

Q *How do you know? How can you answer me in that way when you have no recollection of what actually went on?*

A *Because I wouldn't have said it if it wasn't true in the statement.*

Q *How do you know? How can you test what you said to the RMP if you have got no recollection of the events themselves?*

A *Well, I suppose in that way I can't, but I have to – I have to believe in what I think I would have –*

Q *Say that again?*

A *I said I have to believe in what I think and would have thought at the time.*

Q *So you have to rely on the fact that you would have intended to tell the truth at the time?*

A *Yes.*

Q *Like you intended to tell the truth here?*

A *Yes.*¹¹⁰³

2.783 It is suggested on behalf of SSgt Roberts that Pte Lee Graham's identification of him in his witness statement was in poor visibility,¹¹⁰⁴ but as the passage of his SIB statement above shows, Pte Lee Graham clearly recognised SSgt Roberts, whom he had known since he joined the Battalion. And although it may have been dark he could see quite clearly what happened.

2.784 Pte Lee said he could recall SSgt Roberts being present at a different time, when the Detainees arrived at the TDF.¹¹⁰⁵ At the Court Martial, Pte Lee said in evidence that he remembered a PTI coming out of the TDF and admitting what he had "*been up to*", which apparently meant that he had punched and beaten Detainees.¹¹⁰⁶ At the Inquiry during the course of Pte Lee's evidence the passage in his Court Martial evidence was put to him, but he said he was unable to remember what the PTI had said to him.¹¹⁰⁷

2.785 Aspinall, like Pte Lee Graham in his SIB statement of October 2003, alleged that SSgt Roberts had come to the TDF during the daytime on Monday. He was

¹¹⁰³ Pte Lee Graham BMI 26/127/4-128/15

¹¹⁰⁴ SUB001938-9, paragraph 7(a)

¹¹⁰⁵ Pte Johnathan Lee MOD000262

¹¹⁰⁶ Pte Johnathan Lee BMI CM 50/43/22-44/6

¹¹⁰⁷ Pte Johnathan Lee BMI 18/130/2-18

unable to remember the precise time. In his Inquiry statement Aspinall said SSgt Roberts made one of the Detainees kneel down. He then karate chopped him on the neck.¹¹⁰⁸ Aspinall had made five previous statements to the SIB but had not mentioned this incident in any of them. He explained that when he was making his Inquiry statement his memory was jogged by being asked whether Payne had karate chopped a Detainee. He was, however, constrained to accept that when he made the statement to the SIB on 10 October 2003 he was asked then whether Payne had karate chopped a Detainee, but this did not trigger a memory of SSgt Roberts executing a karate chop.¹¹⁰⁹

Conclusions on the Allegations Against SSgt Roberts

- 2.786** As is pointed out in the submissions made on behalf of SSgt Roberts, the evidence of those who made the above allegations against Roberts all suffered from one or more obvious difficulties. Felton, as previously noted, was a very poor witness. For reasons already expressed I found him to be a wholly unreliable witness. He did not mention the incident which he said involved SSgt Roberts until he made his Inquiry statement. In the circumstances, in reaching my conclusions on this issue I leave out of account altogether Felton's evidence.
- 2.787** Pte Lee Graham was another very poor witness. I have already commented on his evidence and my view of his credibility in Chapter 13 above. In my opinion his oral evidence to the Inquiry was designed by him to admit very little of what he knew had happened. His allegations against SSgt Roberts were investigated by the SIB. SSgt Roberts' boots were subjected to forensic examination but revealed no incriminating forensic evidence. In the result, no charges were made against SSgt Roberts. In my view Pte Lee Graham's explanation that he could not remember what occurred when he was on stag and present at the TDF on 15 September 2003 were simply not true. However, his SIB statement of 12 October 2003 contained many details of what happened in the TDF during that period which are clearly true. His description of what Payne did has now been substantially confirmed by the evidence of others, not least Payne himself. In my judgment, apart from playing down the part played by himself and other members of his Multiple, this statement was broadly truthful and accurate.
- 2.788** Slicker did not refer to SSgt Roberts' assault on a Detainee in any of the statements which he made before his Inquiry statement. As I have already said, in his oral evidence he only remembered this incident when his Inquiry statement was put to him. His evidence is also not supported by either Redfearn or Rodgers, both of whom he said were present when he said the assault by SSgt Roberts took place. There are also problems with the timing of what he said he saw. Referring back to his SIB interview, he appeared to have been saying that this episode occurred shortly after the Detainees' arrival. However, Rodgers and Redfearn were not present at that time. It follows that, if he is otherwise telling the truth, he must have been wrong about the time: the episode witnessed by him must have occurred when Rodgers and Redfearn were present, either on Sunday evening or on Monday morning. As to whether the event took place on Sunday evening, Slicker insisted that he visited the

¹¹⁰⁸ Aspinall BMI05226, paragraph 62

¹¹⁰⁹ Aspinall BMI 28/95/18-96/22

TDF only during daylight.¹¹¹⁰ During the “Free for All”, however, it would have been getting dark: sunset in Basra on 14 September 2003 was at 18.56hrs.

2.789 Furthermore, there were a significant number of inconsistencies in Slicker’s various accounts. I need not set all of them out here. Some of them are summarised in submissions made on behalf of Rodgers,¹¹¹¹ and I bear those points in mind.

2.790 But, as I relate later in this Chapter, Slicker had the courage to admit that he himself had assaulted Detainees. What he admitted doing was shameful and wrong, but it is to his credit that he had the courage to confess to such conduct. I do not think that the difficulties with the timing of what he saw necessarily undermine his account: in my judgment, he could have been confused about the order and timing of events, whilst still being honest and broadly accurate in relating what he actually saw. In my view, in respect of SSgt Roberts’ alleged conduct he was doing his best to tell the truth, although I recognise his evidence may be mistaken.

2.791 Pte Lee was a witness whose evidence I found difficult to assess. His memory clearly suffered from the effect of a tragic incident when subsequent to Op Telic 2 he was serving in Afghanistan.¹¹¹² This incident has obviously adversely affected his memory. At times he was reckless in what he said. However, I am confident that in his oral evidence to the Inquiry he was trying to give honest and accurate evidence. However, because of his inability to remember the incident involving SSgt Roberts when giving evidence to the Inquiry, I do not think much weight can be given to the evidence which he gave at the Court Martial, particularly since that evidence was a little vague.

2.792 As previously stated, Aspinall was the best witness of the three soldiers who were on guard on Monday afternoon. There is no reason for me to repeat here my comments on his credibility. I accept that up until he made his Inquiry statement he had genuinely not remembered SSgt Roberts carrying out any act of violence. In my judgment, the issue so far as he is concerned is whether what he told the Inquiry SSgt Roberts did is accurate and not mistaken.

2.793 In arriving at my conclusions in respect of these allegations I accord considerable weight to the fact that SSgt Roberts at the time of Op Telic 2 was a senior NCO. He has now reached the highest non-commissioned rank. This factor weighs heavily in support of his credibility. Nevertheless, I confess that I found SSgt Roberts a very unsatisfactory witness. It is understandable that after six years his memory of events in September 2003 should be less than perfect. However, in my judgment, he demonstrated a reluctance to say when he went into the TDF and what he saw when he was in there. In my view this was motivated by a desire to distance himself from what had happened in the TDF and his part in it, rather than by loss of memory.

2.794 There were parts of his evidence which I found great difficulty in accepting as truthful. He was asked by Leading Counsel to the Inquiry whether he had ever seen prisoners hooded either inside or outside the camp. He said he had only seen prisoners hooded at BG Main. When asked on how many occasions he had seen prisoners at BG Main hooded, he said it was on one occasion and only one prisoner.¹¹¹³ This

¹¹¹⁰ Slicker BMI 21/50/17-19

¹¹¹¹ SUB000815-20

¹¹¹² Pte Johnathan Lee BMI 18/104/12-16; Pte Johnathan Lee BMI02592, paragraph 1

¹¹¹³ Roberts BMI 20/56/9-58/20

evidence, as Counsel pointed out to SSgt Roberts, was contrary to what he had said in his Inquiry statement dated 5 June 2009:

*"I saw prisoners being moved from location to location with bags on their heads and with plasticuffs behind their backs..."*¹¹¹⁴

- 2.795** When this passage of his Inquiry statement was put to him, SSgt Roberts said he had meant only one occasion when he had seen one prisoner hooded. He could offer no explanation for this error in his statement.
- 2.796** SSgt Roberts was also asked about an assertion in his SIB interview in which he had said that *"...these blokes have been kicked to death effectively, or punched to death..."*¹¹¹⁵ When asked to identify who told him that the Detainees had been kicked and punched his answers were, in my view, evasive not only in content but also in the manner they were given.¹¹¹⁶
- 2.797** My clear impression from his evidence was that SSgt Roberts at all times was seeking to distance himself from the events which had occurred in the TDF.
- 2.798** I also found unconvincing SSgt Roberts' evidence about the length of time which he said he spent in the TDF speaking to Payne and what he saw. I find it very hard to believe that knowing, as he did, that the Detainees were thought to have a possible connection with the death of the RMP soldiers, he spent only two or three minutes in the TDF talking to Payne about something quite different. I also find it very hard to believe that, if his visit was on Monday afternoon, as he clearly stated in his Inquiry statement, he did not see anything of the shocking condition of the Detainees and the TDF itself. As pointed out earlier in this Part of the Report there is abundant evidence that by Monday the Detainees were obviously exhausted and distressed and conditions in the TDF were extremely unpleasant.
- 2.799** In all the circumstances I find that SSgt Roberts did visit the TDF on Monday afternoon or at least at some time on Monday when Pte Lee Graham was present in the TDF. I can see no reason why Pte Lee Graham, in his SIB statement of October 2003 should have concocted the allegation which he made against SSgt Roberts. It is supported by Aspinall's evidence of other violence by SSgt Roberts around the same time, which I accept as truthful and accurate in respect of this incident, despite the fact that no mention was made by him of it in witness statements made before his Inquiry statement.
- 2.800** I reject SSgt Roberts' evidence that he saw nothing amiss in the TDF at the time of his visit and I do not accept his denial that he was not involved in any violence. I find that SSgt Roberts karate chopped at least one Detainee, as Aspinall said, and kicked probably three, as Pte Lee Graham said in his statement of October 2003. In reaching these conclusions I do not take into account anything said by either Slicker or Pte Lee. These two may have been speaking about a completely different occasion and in my view it would be unfair to rely on their evidence to support the evidence of Aspinall and Pte Lee Graham. It is also possible their identification of SSgt Roberts is mistaken.

¹¹¹⁴ Roberts BMI01196, paragraph 36

¹¹¹⁵ Roberts MOD004891

¹¹¹⁶ Roberts BMI 20/78/15-81/3

- 2.801** On Monday, for reasons already expressed, conditions in the TDF must have been very unpleasant and the state of the Detainees such that all were showing obvious signs of distress.
- 2.802** Even if, as he stated, SSgt Roberts' visit had only lasted for a very short period of time, I find that his evidence that he saw little of this in the TDF was an example of him seeking to distance himself from these events. It also reflects adversely on his credibility.
- 2.803** These findings represent very substantial breaches of duty by SSgt Roberts, a very senior NCO. There can be no possible excuse nor mitigation for what I find he did.

Potter

- 2.804** Sgt Michael Andrew Potter was a member of B Company. He was a very good witness. He gave his evidence with an air of authority and with a genuine concern for accuracy and the truth. He gave evidence about seeing a Detainee next to a generator, to which I shall come in due course. He also related another incident which he witnessed concerning Detainees in the TDF. In respect of this incident he said he was coming back from lunch at about 12.30hrs to 13.00hrs. His route on that occasion took him past the TDF. He stopped there because he heard noises of screaming, shouting and swearing. It was all in English, and it made him curious about what was going on in the TDF.¹¹¹⁷
- 2.805** Potter described the guard force as those who were, in general, doing the shouting, screaming and swearing. There were possibly four soldiers present. He was not able to identify them but recognised that they were members of A Company. One was a lance corporal, of whom he gave a physical description (5'10" to 6'1", broad and muscular). The others were soldiers aged about eighteen to 21.¹¹¹⁸
- 2.806** Potter said he went into the TDF through the right-hand door and from there went through the connecting corridor into the left-hand room. In the left-hand room he saw Detainees in stress positions, squatting with their backs to the wall and arms stretched out in front. At least one of them was not hooded because he said he had a clear look at his face.¹¹¹⁹
- 2.807** Potter described the Detainees collapsing on the floor in exhaustion and being physically lifted up and placed back in position by the guards who were shouting and screaming at them. As soon as the guards let go of the Detainees they collapsed back on to the floor. The Detainees were "*moaning and groaning*" as might be expected of someone under "*great physical duress*". He did not see any violence other than these attempts to enforce stress positions.¹¹²⁰
- 2.808** Potter was disgusted and angry at what he saw. He ordered it to cease. He spoke to the lance corporal who made it clear to him that the guards were doing what they had been ordered to do by "*someone quite senior*". He was unable to remember who this person was.¹¹²¹

¹¹¹⁷ Potter BMI 44/27/18-29/5

¹¹¹⁸ Potter BMI 44/29/15-30/19

¹¹¹⁹ Potter BMI 44/30/22-32/11

¹¹²⁰ Potter BMI 44/32/16-33/7

¹¹²¹ Potter BMI 44/33/8-34/9

- 2.809** Potter described a conversation which he had later on the same afternoon with Sgt Smith, the Provost Sergeant. He told Sgt Smith what he had seen and been told. Sgt Smith told him that it was a tactical questioning procedure and he, Sgt Smith, had been told to “*butt out*” of this process. Sgt Smith indicated it was senior officers, the RSM, the Adjutant, the Operations Officer and the Commanding Officer, who had told him to keep out of this process. Potter added that Sgt Smith was not happy with this situation. Sgt Smith said that the RSM had told him that he should do as he was told or be disciplined. Subsequently, either on the same evening that Baha Mousa died or the following day, Potter said he and Sgt Smith spoke again. This time Sgt Smith was distressed and confided in Potter his anxieties about being blamed for Baha Mousa’s death. In that conversation Sgt Smith told him that the Detainees had been assaulted by the guarding Multiple.¹¹²²
- 2.810** In evidence to the Inquiry, Sgt Smith said he could not remember telling Potter that he had been told to mind his own business in respect of the treatment of the Detainees, but it was possible that he did have such a conversation. He did recall complaining to Briscoe that he had too much to do. Briscoe’s response was to make it clear that he had to do what he was told.¹¹²³ Briscoe denied that he had any conversation with Sgt Smith in which Sgt Smith complained about having too much work to do.¹¹²⁴
- 2.811** I accept Potter’s evidence as truthful and accurate. The only part of Potter’s evidence over which I have some hesitation is the date of the events he witnessed. I bear in mind that the Inquiry statement Potter made in response to the Inquiry’s request was the first statement he had made since the events of September 2003. It follows that when making this statement he was casting his mind back some six years. His recollection was bound to be not as good then as shortly after the events.
- 2.812** Despite the above factors, I find it probable that what Potter saw did concern the Op Salerno Detainees. He remembered stress positions being used only in the left-hand room and his description of the lance corporal did not match that of any of the Rodgers Multiple. But otherwise, the description which he gave of the conduct of the guards and the state of the Detainees was much the same as the treatment described by the Detainees themselves. It also echoes evidence given by other witnesses, for instance, Douglas and Richards. Potter placed his second conversation with Sgt Smith either on the evening Baha Mousa died or the following evening. In the circumstances, in my judgment, there is a sufficient link to the Op Salerno Detainees for me to find that the incident and Potter’s conversations with Sgt Smith referred to the Detainees and not some other incident.
- 2.813** Potter was unable to identify any of the guards by name. The most he was able to say by way of identification was that they were members of A Company. I accept that he recognised them as such. This factor also supports my finding that the detainees involved were the Op Salerno Detainees.
- 2.814** In my view, Potter cannot fairly be criticised for not passing this information up the chain of command. I accept that he did speak to SSgt Smith about what he had seen. It would have been better if at that stage he had spoken to someone more senior. But he had been told, as I find, by the lance corporal of the guard that the guards’ instructions had come from a man senior in rank to Potter. Potter also told

¹¹²² Potter BMI 44/34/14-41/22

¹¹²³ Sgt Paul Smith BMI 44/140/22-142/15

¹¹²⁴ Briscoe BMI 43/122/1-122/22

the Provost Sergeant, whom he might reasonably have expected either to be in charge of or to have some responsibility for the welfare of the Detainees.

Slicker

- 2.815** Slicker features in the events of 14 to 16 September on a number of occasions. He worked in the Company Quartermaster Stores as one of Huxley's staff.¹¹²⁵ He knew Capt Dai Jones and may have felt some sense of responsibility for his death because Capt Jones replaced him on the trip to Shaibah which resulted in Capt Jones' death.¹¹²⁶
- 2.816** Slicker described three occasions when he went into the TDF. Based on the descriptions given by him of what he saw, for convenience I refer to these incidents as the horseshoe incident, the escape, and the kicking incident. Slicker was unable to give precise dates and times for these incidents but he said the above represented the chronological order in which he witnessed them.¹¹²⁷
- 2.817** Slicker said the horseshoe incident happened when he went to the portaloo and heard screaming coming from the TDF. He said he was unable to see the faces of the Detainees but they looked tired. He described seven or so Detainees standing round in the shape of a horseshoe. They were standing up with sandbags over their heads and were screaming. He was unable to remember whether they were plasticuffed or whether their hands were in front or behind their backs.¹¹²⁸
- 2.818** Slicker was able to identify three men who he said were present. They were Rodgers, SSgt Roberts and Redfearn. He said Stacey and Fallon, both of whom he knew, were not present. There were other soldiers in the room, he thought A Company soldiers. These men were punching and striking the Detainees. He described Rodgers hitting one of the Detainees with a hard punch to the stomach which caused the man to fall to the ground. When the Detainee got to his feet Rodgers punched him again. The other soldiers joined in. He accepted that at his interview with the SIB he had described Rodgers' first blow as a punch to the face, and the second a kick. But he was now sure that Rodgers had delivered two punches.¹¹²⁹
- 2.819** At one stage in his evidence Slicker said Redfearn punched a Detainee, but when he was asked more detailed questions about this alleged assault, he said he was unable to remember where he punched the Detainee "*but he did punch someone*".¹¹³⁰
- 2.820** In oral evidence to the Inquiry, Slicker first said that he did not see SSgt Roberts do anything. It was then pointed out to him that in his Inquiry statement for the first time he said SSgt Roberts had struck a Detainee with a karate chop. I have already discussed this incident in the section above dealing with SSgt Roberts.
- 2.821** Later in his oral evidence Slicker agreed that somebody described this incident as the choir. He was unable to remember the name of the person who gave this description. Not surprisingly, following this evidence Slicker was asked by Counsel if

¹¹²⁵ Slicker BMI 21/5/21-6/6; Slicker BMI 21/14/3-14

¹¹²⁶ Slicker BMI 21/19/20-20/11

¹¹²⁷ Slicker BMI 21/26/9-24

¹¹²⁸ Slicker BMI 21/35/22-41/1

¹¹²⁹ Slicker BMI 21/41/11-49/7

¹¹³⁰ Slicker BMI 21/49/14-52/10

he knew Payne. He said he did and that he was on friendly terms with him. He said he was about “50:50” sure that on each of the three occasions when he was in the TDF Payne was not present.¹¹³¹

2.822 Rodgers and Redfearn vehemently denied what Slicker said about seeing each of them assault a Detainee. It was suggested that Slicker’s friendship with Payne had caused him to make up allegations against both of them.¹¹³²

2.823 The next incident to which Slicker referred was the escape incident. He said he went over to the TDF to use the portaloos and because he was fascinated by what was going on in the TDF. He saw one of the guards; he understood the other to be using the portaloos. He spoke to the soldier who was in the TDF. He could not identify him. This soldier informed him that one of the Detainees had attempted to escape. Slicker said he went up to the Detainee and punched him in the stomach. He was unable to give any coherent reason for doing so other than to say it was because the Detainee had tried to escape and to put him in his place. He described the blow as a gentle one. In his SIB statement he said he lashed out at the Detainee.¹¹³³

2.824 Slicker said the Detainee was not hooded at this time, although he agreed he had told the SIB that the man was hooded and that what he said to the SIB would have been correct. In his SIB interview he gave a description of the Detainee whom he had hit.¹¹³⁴ He denied that it was the man who later died, in other words Baha Mousa.¹¹³⁵ But on the assumption that this incident followed the rugby tackle incident it seems, on my findings, it must have been Baha Mousa.

2.825 The third incident happened when once again either out of curiosity or because he was going to the portaloos, Slicker said he went into the TDF. On this occasion he went into the right-hand room. The Detainees were still looking drained and exhausted. He could not remember whether they were hooded. He thought at least one of them, the one he kicked, was kneeling. He could not remember whether the Detainees were in stress positions but said, “... *all I can remember is I kicked his foot or kicked his leg...*” This was a reference to an assault by him at that time on one of the Detainees. He said he assaulted this Detainee because he had moved a little bit. He asked him to put his legs together. When the Detainee did not do so he kicked him on the leg. He expanded on this explanation for what he had done saying he was fed up with “*justice, basically. At the time... there were no justice in that, so it were just revenge, that’s all. There were six RMPs killed for nothing really. There’s still no justice now*”. He denied kicking this Detainee in the back or slapping him across the head.¹¹³⁶

2.826 It will be recalled that Hughes identified Male Five as Slicker, the soldier whom he saw slap and kick a Detainee when he visited the TDF as part of the GMTV crew.¹¹³⁷ It may be it was this incident which he witnessed, although Slicker said that at the time Payne was not in the TDF.

¹¹³¹ Slicker BMI 21/88/19-90/19

¹¹³² Redfearn BMI 30/197/1-7; Rodgers BMI 30/118/22-119/15; Rodgers BMI01849, paragraphs 126-127

¹¹³³ Slicker BMI 21/69/21-76/11; Slicker MOD004828

¹¹³⁴ Slicker BMI 21/76/12-81/8; Slicker MOD004828

¹¹³⁵ Slicker BMI01859-60, paragraph 27

¹¹³⁶ Slicker BMI 21/81/9-85/13

¹¹³⁷ Hughes BMI 15/109/4-112/14; Hughes MOD000077; Hughes MOD000721-2

- 2.827** On 10 November 2005 Slicker was summarily dealt with by his Commanding Officer for the offence of assault relating to his admission of assaulting one of the Detainees. He was fined £600.¹¹³⁸ He has reading difficulties which no doubt contributed to the poor impression which he made when he gave evidence to the Court Martial. Before giving that evidence he was handed a copy of his witness statement dated 19 January 2005. He was unable to read it and it was not read over to him.¹¹³⁹ As a result he was at a considerable disadvantage when he gave evidence since he did not have the benefit of refreshing his memory from that statement.
- 2.828** I found Slicker a deliberate, if slow, witness. He took his time to answer questions asked of him. There are undoubted inconsistencies between some of his evidence to the Inquiry, his evidence at the Court Martial and his interview with the SIB. Some of these can be explained in part by his reading difficulties. I refer back to the comments I have already made about the reliability of some of his evidence. I add that he must be wrong in saying that the horseshoe incident preceded the escape: the escape took place during Fallon and Crowcroft's stag, and the horseshoe incident must have taken place after that, after the arrival of Rodgers and Redfearn. Nevertheless, on the whole my view of Slicker was that in his evidence to the Inquiry he was doing his best to tell the truth and give accurate evidence.
- 2.829** Slicker, with some courage, admitted that on two different occasions he had assaulted Detainees in the TDF. I accept his evidence on these incidents, save that I find that the force which he used was probably greater than he was prepared to admit in his evidence. His assertion that the punch to the Detainee in the escape incident was a "*gentle one*", in my view substantially underplays the force used by him. His description of "*lashing out*" is in my view much nearer the truth. The same applies to the slap and kick delivered by him to a Detainee and witnessed by Hughes during the GMTV visit.
- 2.830** The difficult issues concerning Slicker's evidence relate to his allegations made against Rodgers, Redfearn and SSgt Roberts. My conclusions in relation to his evidence as to what SSgt Roberts did are set out above. So far as Rodgers and Redfearn are concerned his allegations appear to relate to an incident which I find occurred some time on Sunday evening. At that time, as I have found, there was an incident involving a number of soldiers from the Rodgers Multiple: the "Free for All" (Chapter 10). Slicker's description of what he saw bears many similarities with that incident. Present were members of the Rodgers Multiple, some of whom were involved in assaulting the Detainees. Slicker accepted someone described part of the incident as the choir. Others have said that at about that time Payne did show them the choir.
- 2.831** The difficulty with identifying what Slicker said he saw as the choir is that Slicker made no mention of Payne, who appears to have been the person who orchestrated it. In my view it is very unlikely that, if Payne had been there, Slicker would not have seen and recognised him. There are, of course, alternative explanations, namely that Slicker did not name Payne because he wished to protect his friend; and he did name Rodgers and Redfearn for other motives. Also, it is possible that this incident occurred on Monday morning on an occasion when Payne was not present but Rodgers and Redfearn may have been. There is another problem with the timing

¹¹³⁸ Slicker BMI 21/100/2-13

¹¹³⁹ Slicker BMI 21/17/20-18/8; Slicker MOD000697

of this incident as related by Slicker. He said all three men, Rodgers, Redfearn and SSgt Roberts, were present. No other witness said SSgt Roberts was present on Sunday evening. SSgt Roberts said he visited the TDF at about lunchtime, as I find, on Monday. At that time it is not clear precisely where Rodgers was. Redfearn on the other hand could have been present. These inconsistencies make it very difficult to determine the occasion which Slicker related occurred.

- 2.832** Nevertheless, I conclude that Slicker did see members of the Multiple assaulting the Detainees. I find that the most likely time when this occurred was at about the time of the “Free for All”. At that time, on any view, Payne was present. It follows that for whatever reason, either because he had forgotten about Payne being present or because he deliberately decided not to mention him, Slicker’s evidence that Payne was not there was wrong. If, on the other hand, the incident to which Slicker was referring happened on Monday morning, Payne might not have been there.
- 2.833** As to Slicker’s identification of Rodgers and Redfearn assaulting Detainees, I recognise that whenever the incident took place Slicker could still be accurate in his evidence that they were both involved in assaults on the Detainees. However, so far as they are concerned I have already rejected Pte Cooper’s evidence, deciding it is of insufficient strength to persuade me that his identification of them is correct. In my view the addition of Slicker’s evidence is not sufficient to cause me to conclude that either Rodgers or Redfearn were personally involved with the violence at the time of the “Free for All”.
- 2.834** Slicker deserves credit for his admissions that he was responsible for assaulting a Detainee on two different occasions but none for what he did. No doubt it took some courage for him to make these admissions. However, that does not excuse him from his duty to report what he had seen in respect of the horseshoe incident to those above him in the chain of command.

Madden

- 2.835** Father Madden was the Roman Catholic priest attached to 1 QLR as its padre for the whole of Op Telic 2.¹¹⁴⁰ In his Inquiry witness statement he said that he saw a number of detainees in hoods at BG Main;¹¹⁴¹ in oral evidence he said he could recall only one.¹¹⁴² Although when giving evidence at the Court Martial he said he would check on their welfare from time to time to make sure that they were fed, toileted and watered,¹¹⁴³ in his evidence to the Inquiry he said he did not feel any responsibility for doing so on a regular basis. His visits were fairly sporadic.¹¹⁴⁴
- 2.836** He told the Inquiry that he had seen Detainees squatting in the TDF but it was difficult to tell whether this was forced. However, when reminded of what he had said in his SIB statement of 10 March 2005 he agreed that he had seen them in stress

¹¹⁴⁰ Madden BMI 42/148/17-149/5

¹¹⁴¹ Madden BMI00238, paragraph 32

¹¹⁴² Madden BMI 42/161/3-162/22

¹¹⁴³ Madden CM 56/31/22-32/1. He agreed that he did this “*indirectly*”, by which he appears to have meant that he would do it at the same time as checking on the welfare of soldiers in the TDF. See also, a note drafted by solicitors for Mendonça, recording an interview with Madden, prepared for the purposes of the Court Martial, at MOD048656.

¹¹⁴⁴ Madden BMI 42/155/1-14

positions on one occasion.¹¹⁴⁵ He also agreed that he had not mentioned this at the Court Martial when asked whether he had seen stress positions. Nor did he mention it in his Inquiry witness statement.¹¹⁴⁶

2.837 Madden was unable to remember whether he had been to the TDF during the time when the Op Salerno Detainees were present, despite the fact that he had heard the shocking news of Baha Mousa's death the morning after it happened.¹¹⁴⁷

2.838 Madden was asked about two issues raised by the evidence of other witnesses. They were: whether he went to the TDF during Sunday morning; and whether he went into the TDF during Monday. He said he did not remember going to the TDF on either occasion. As to the Sunday morning, Stacey said Madden was at the TDF then.¹¹⁴⁸ Madden did say he tended to wait near the TDF for a lift into town on Sunday mornings.¹¹⁴⁹ As to the Monday, both Aspinall and Pte Hunt said they saw Madden at the TDF then.¹¹⁵⁰ Rodgers said the same thing in an interview under caution, albeit he could no longer remember this when he gave evidence to the Inquiry.¹¹⁵¹ Madden did not remember attending the TDF on the Monday either.¹¹⁵² It follows from the fact that Madden did not remember visiting the TDF on those occasions that he said he was unable to help the Inquiry on the condition of the Detainees on either Sunday or Monday.

2.839 Madden was also asked whether on other occasions he had heard obscenities being shouted in the TDF. He said that he had heard loud shouts but had no recollection of obscenities.¹¹⁵³

2.840 In assessing Madden's evidence, he is entitled to have considerable weight attached to his character by reason of his profession. He starts with a high rating on the credibility scale. However, I found him in some respects a poor witness. In my opinion he sought to re-position his evidence on two small but significant issues. These were the issues of whether or not he felt any responsibility for the welfare of detainees, and whether or not he had previously observed detainees being forced to maintain positions involuntarily. On each of those issues his evidence to the Inquiry was somewhat different from previous witness statements or evidence given by him at the Court Martial. In respect of both these matters Madden's explanations for the differences were defensive and unconvincing.

2.841 On the issue of whether or not Madden went to the TDF during Sunday morning, in my judgment the evidence that he did is not sufficiently substantial for me to make a finding that he was there in the face of his evidence that he had no recollection of being present at that time.

2.842 However, when considering his evidence and the evidence of Aspinall on the issue of whether or not he went to the TDF on Monday, I have reached the opposite

¹¹⁴⁵ Madden BMI 42/163/6-165/10; Madden MOD000977-8. See also to similar effect Mendonça's solicitors' note at MOD048656.

¹¹⁴⁶ Madden BMI 42/168/1-172/17; Madden BMI00239, paragraph 33

¹¹⁴⁷ Madden BMI 42/174/22-176/15

¹¹⁴⁸ Stacey BMI 21/163/21-165/22

¹¹⁴⁹ Madden BMI 42/176/16-178/15

¹¹⁵⁰ Aspinall BMI 28/64/14-66/4; Pte Jonathan Hunt BMI 27/145/11-24

¹¹⁵¹ Rodgers BMI 30/60/11-62/2

¹¹⁵² Madden BMI 42/178/20-180/9

¹¹⁵³ Madden BMI 42/157/17-159/20; Madden BMI 42/192/3-22

conclusion. I found Aspinall's evidence of Madden's visit on Monday persuasive and compelling. It was volunteered by Aspinall as an explanation for him not having reported what he had seen up the chain of command and in my judgment had the ring of truth. I prefer Aspinall's evidence on this issue to that of Madden. I do not find it surprising that neither Bentham nor Pte Lee Graham said they saw Madden in the TDF. It may very well be that they were resting outside the TDF at the time, or that the occasion when he visited on Monday was in the morning rather than the afternoon.

- 2.843** I find that Madden did go into the TDF on Monday. On the basis of this finding, whether on Monday morning or Monday afternoon, in my view he must have seen the appalling conditions in the TDF and the poor state of the Detainees. Redfearn's description of these conditions on Monday morning, as I find, was accurate. The conditions on Monday afternoon could have been no better and were almost certainly worse.
- 2.844** I find it inconceivable that when Madden went into the TDF he could not have observed what others had seen and described, namely the appallingly squalid conditions in the TDF and the obvious distress of the Detainees. Having reached this conclusion, it is inevitable that Madden, in my opinion, ought either to have intervened there and then or, more realistically, straight away reported it up the chain of command. It is a matter of regret that he did not find the courage to do either.

Discussion

- 2.845** Arising from my findings above I make the following comments. Firstly, the evidence demonstrates that when the Detainees were in the TDF a number of 1 QLR NCOs and soldiers who had no business to be there nevertheless visited the TDF. I exclude from this category Madden and Potter, both of whom cannot be criticised for going into the TDF.
- 2.846** Secondly, only Potter made any attempt to report up the chain of command what he had seen. I have found that there is also no valid cause for criticising Aktash in this respect. But the obvious distress of the Detainees and the conditions in the TDF should have been reported by each of the others.
- 2.847** Thirdly, SSgt Roberts' conduct in the TDF represents a shameful and serious breach of discipline by a senior 1 QLR NCO. His conduct, coupled with Livesey's equally serious breach of discipline (see Chapter 15) and the conduct of the senior NCO seen by Schofield at the time of the G5 visit (see Chapter 13), demonstrates an extremely serious lack of discipline amongst senior 1 QLR NCOs.
- 2.848** Fourthly, the fact that Slicker assaulted a Detainee on two separate occasions without being reported by any member of the guards demonstrates an acceptance of casual violence by soldiers guarding the Detainees.

Chapter 15: Tactical questioning

- 2.849** At this stage in the Report I am not concerned with the general doctrine, training and practice of tactical questioning. This Chapter deals instead with the conduct on 14 and 15 September of those involved in the tactical questioning of the Detainees. General issues about the development of doctrine and the training for tactical questioning are addressed in Parts IV to VI of the Report.
- 2.850** One officer and three NCOs were principally involved in the tactical questioning of the Detainees. They were Peebles, the BGIRO, SSgt Davies and Smulski, the two tactical questioners, and Livesey, the second in command of the 1 QLR Intelligence Cell. In this Chapter I also deal with some of the evidence given by the Provost Sergeant, Sgt Smith, since it is relevant to the conduct of these individuals.
- 2.851** I have briefly mentioned tactical questioning in the Introduction to the Report at paragraph 109. As stated there, tactical questioning was used to assist the BGIRO in deciding whether or not to intern detainees. FRAGO 29,¹¹⁵⁴ the order which established the BGIRO, did not in fact mention tactical questioning. Rather, a practice developed in theatre by which the BGIRO would be assisted by tactical questioners. It was recognised that tactical questioning also had the additional potential advantage of gaining information of immediate value to Battlegroups and Brigade; indeed, the traditional role of tactical questioning was to obtain information of immediate tactical value.¹¹⁵⁵ Some Battlegroups had their own embedded tactical questioners whereas others, of whom 1 QLR was one, did not. The latter had to request Brigade to send tactical questioners as and when they were required.¹¹⁵⁶
- 2.852** As early as 07.33hrs on Sunday, as a result of the discovery of weapons at the Hotel, 1 QLR made a request for Brigade to send a tactical questioner.¹¹⁵⁷ SSgt Davies arrived at BG Main at approximately 09.30hrs.¹¹⁵⁸

The Tactical Questioners: SSgt Davies and Smulski

- 2.853** SSgt Davies attended a two week all arms interrogation course at the Joint Services Intelligence Organisation (JSIO), Chicksands, in January 2003. The exact contents of that course are a matter of some controversy, and are addressed in Part VI of the Report. Here, I set out SSgt Davies' and Smulski's accounts of the contents of their respective courses at Chicksands.
- 2.854** SSgt Davies said the course included training in tactical questioning and some prisoner handling.¹¹⁵⁹ On that course, in addition to the various techniques involved in questioning prisoners, he said he also learnt that depriving prisoners of their sight was justified where operational circumstances required it. He said that a blindfold was used on the course for sight deprivation, but that there was no express proscription against hooding. He did not learn specifically that hooding in a detention facility was justified, but he believed it was appropriate in respect of these Detainees because it was not possible to keep them isolated individually within the TDF. In

¹¹⁵⁴ MOD016186

¹¹⁵⁵ Peebles BMI 40/28/14-22

¹¹⁵⁶ Peebles BMI 40/31/13-32/2

¹¹⁵⁷ MOD016520

¹¹⁵⁸ SSgt Mark Davies BMI 42/37/2-20

¹¹⁵⁹ SSgt Mark Davies BMI 42/6/5-24

the circumstances he regarded the hooding of these Detainees as operationally justified.¹¹⁶⁰ He was also aware that hooding for security purposes could, as a by-product, disorientate and thereby aid interrogation,¹¹⁶¹ but he was not taught on his course that sight deprivation had any purpose other than operational security.¹¹⁶² In a document headed “*Death in Detention*” dated 18 September 2003 of which Major Edward Fenton (the Chief of Staff at 19 Mech Bde Headquarters) was the author, SSgt Davies is recorded as advising that:

“...we hood and hand cuff detainees, in order to enhance the shock of capture and improve the level of information extracted from the suspect.”¹¹⁶³

2.855 SSgt Davies denied that this was an accurate record of his views; he said that he would only have said that hooding was primarily for security but achieves disorientation as a by-product, which could then aid questioning.¹¹⁶⁴ It may be that this information came from someone else (see the Brigade Sanction Part XIII). On the other hand, he had been taught in training that stress positions were not appropriate or permitted “*in any circumstances*”. As for noise, on his course it was mentioned that white noise was not to be used as an aid to tactical questioning or interrogation. He said that, whilst he was taught that sleep deprivation for long periods was not to be used, he believed that incorporating sleep “*disruption*” was permitted if there were sound and legal reasons (such as waking a prisoner to feed or question him) for doing so.¹¹⁶⁵ He did not consider a single night without sleep to amount to sleep deprivation.¹¹⁶⁶ Whether SSgt Davies’ account of the course which he attended and what he was taught accurately reflects the content of the JSIO course is discussed in Part VI of the Report.

2.856 In order to support SSgt Davies’ account of his own views about hooding and stress positions, submissions on behalf of SSgt Davies¹¹⁶⁷ relied on evidence given by Capt David Hunt, the Intelligence Officer for the 1 King’s Battlegroup. SSgt Davies had tactically questioned detainees for Capt Hunt on a number of occasions.¹¹⁶⁸ In oral evidence, Capt Hunt stated that he never understood from SSgt Davies that it was permissible to hood simply in order to disorientate;¹¹⁶⁹ and that SSgt Davies had told him that stress positions were not to be used.¹¹⁷⁰ However, Capt Hunt had stated very clearly in his Inquiry statement that SSgt Davies had briefed him that sight deprivation had two purposes: both security and disorientation of detainees in order to maintain the shock of capture until they were tactically questioned.¹¹⁷¹ When he gave oral evidence Capt Hunt was initially reluctant to say that SSgt Davies had briefed him that disorientation was one of the purposes of sight deprivation; but he eventually accepted that his witness statement was accurate.¹¹⁷²

¹¹⁶⁰ SSgt Mark Davies BMI 42/8/6-11/12; SSgt Mark Davies BMI04206, paragraph 10(a)

¹¹⁶¹ SSgt Mark Davies BMI 42/109/5-16

¹¹⁶² SSgt Mark Davies BMI 42/8/23-9/4

¹¹⁶³ MOD030850

¹¹⁶⁴ SSgt Mark Davies BMI09037-40, paragraphs 1-7

¹¹⁶⁵ SSgt Mark Davies BMI 42/12/9-14/6

¹¹⁶⁶ SSgt Mark Davies BMI 42/116/10-117/1

¹¹⁶⁷ SUB000504, paragraph 4.17; SUB000508, paragraph 4.25

¹¹⁶⁸ Capt David Hunt BMI 64/5/25-6/4

¹¹⁶⁹ Capt David Hunt BMI 64/41/3-7

¹¹⁷⁰ Capt David Hunt BMI 64/23/7-12

¹¹⁷¹ Capt David Hunt BMI05470, paragraph 22; Capt David Hunt BMI05474, paragraph 31

¹¹⁷² Capt David Hunt BMI 64/19/11-23/6

- 2.857** SSgt Davies explained conditioning from a tactical questioner's point of view as a natural process with two key components. They were self induced pressures, namely feelings of isolation, loneliness, guilt and worry, and system induced pressures, namely an enforced routine coupled with lack of comforts.¹¹⁷³
- 2.858** Since he had completed his course only a few months before deployment, SSgt Davies had no practical operational experience of tactical questioning before Op Telic 2.¹¹⁷⁴ His principal role during the tour was as staff sergeant to the military intelligence section at 19 Mechanised Brigade. He described his tactical questioning duties as "*something of a sideline*".¹¹⁷⁵ He was deployed to other units to carry out tactical questioning as and when required to do so.¹¹⁷⁶ He said that, before Op Salerno, he had conducted tactical questioning for 1 QLR on only two occasions, both times at Basra Palace. He had not previously conducted tactical questioning at 1 QLR's BG Main.¹¹⁷⁷
- 2.859** Smulski, a TA reservist, undertook a Prisoner Handling and Tactical Questioning (PH&TQ) ten day course in 1999. He had no practical operational experience of tactical questioning before being deployed on Op Telic 2.¹¹⁷⁸ He worked in the Field Security Section at Basra Palace and had not expected to carry out any tactical questioning during the tour. However, out of curiosity, he sat in on one session of tactical questioning before Op Salerno. As a result, he was asked by Capt Calvin Lee, his Company Commander, if he would be prepared to carry out tactical questioning at 1 QLR following Op Salerno.¹¹⁷⁹ It is obvious that by that stage Brigade was very short of trained tactical questioners. Smulski said he understood that all prisoners should be treated humanely.¹¹⁸⁰
- 2.860** Smulski thought conditioning was a process which meant prisoners were conditioned by circumstances.¹¹⁸¹ Despite stating in his Inquiry witness statement that he was unsure whether the PH&TQ course taught that stress positions were prohibited,¹¹⁸² in evidence he said he believed that this prohibition was taught on the course. However, he said that the course taught that hooding was permitted for security reasons. He said that he had no idea at the time whether hooding was something which was permitted as part of the conditioning process, to aid tactical questioning.¹¹⁸³ He thought the shock of capture permitted detainees to be kept awake and unsure as to what would next occur.¹¹⁸⁴ He considered that it was permissible for detainees to be kept awake whilst tactical questioning was pending for as long as 72 hours.¹¹⁸⁵ He believed the use of "*startling or unsettling noise*" was acceptable.¹¹⁸⁶ His understanding was that

¹¹⁷³ SSgt Mark Davies BMI 42/15/7-20

¹¹⁷⁴ SSgt Mark Davies BMI 42/24/7-15

¹¹⁷⁵ SSgt Mark Davies BMI 42/19/12-20/4

¹¹⁷⁶ SSgt Mark Davies BMI 42/23/8-24/1

¹¹⁷⁷ SSgt Mark Davies BMI 42/103/25-104/3

¹¹⁷⁸ Smulski BMI 40/209/11-25

¹¹⁷⁹ Smulski BMI 40/221/10-224/12

¹¹⁸⁰ Smulski BMI 40/211/1-213/5

¹¹⁸¹ Smulski BMI 40/213/13-214/20

¹¹⁸² Smulski BMI01236, paragraph 55

¹¹⁸³ Smulski BMI 40/215/23-217/2

¹¹⁸⁴ Smulski BMI 40/227/20-228/25

¹¹⁸⁵ Smulski BMI 41/60/1-7

¹¹⁸⁶ Smulski BMI 41/66/23-67/10

the shock of capture was to be maintained until the prisoners were delivered to the Joint Forward Interrogation Team (JFIT).¹¹⁸⁷

2.861 Smulski, to say the least, was singularly unprepared for the task of tactical questioning these Detainees. His training had taken place in 1999 and he had no practical experience.

SSgt Davies' Conduct on 14 and 15 September 2003

2.862 SSgt Davies said he arrived at BG Main between 09.00hrs and 10.00hrs on Sunday.¹¹⁸⁸ He said that at no time when he was at BG Main did he see any signs of injuries on the Detainees. He never saw the Detainees being subjected to any violence; he did not witness the choir; he did not see them in any stress positions; and he saw no measures taken to prevent them from sleeping.¹¹⁸⁹

2.863 Peebles said that SSgt Davies may have accompanied him to the TDF at 16.30hrs on Sunday (when Peebles gave the order for conditioning to start) but he was unsure about this.¹¹⁹⁰ He said that SSgt Davies may also have accompanied him to the TDF during Sunday evening.¹¹⁹¹ He was more categorical about SSgt Davies' visits to the TDF in a statement which he made to the SIB in 18 March 2004. In that statement, he said that SSgt Davies accompanied him to the TDF twice on Sunday: once shortly after SSgt Davies arrived at BG Main, before tactical questioning began, and again after a Detainee had been tactically questioned.¹¹⁹²

2.864 Livesey also said that SSgt Davies accompanied him to the TDF on Sunday. He said this was after his evening meal, at about 18.00hrs or 19.00hrs.¹¹⁹³ He said that during this visit, he saw several of the Detainees in stress positions (crouched down, apparently in the ski position, with their arms held out straight in front of them) and hooded with sandbags. They were moaning and whining.¹¹⁹⁴ In oral evidence at first he confirmed that SSgt Davies was with him when he witnessed this.¹¹⁹⁵ However later, when told that SSgt Davies did not remember such a visit, he accepted that he may have been mistaken about this.¹¹⁹⁶

2.865 SSgt Davies said that he could remember making only one visit to the TDF on Sunday, although he could not be certain whether or not he had visited on other occasions as well.¹¹⁹⁷ He remembered the visit was at about 21.00hrs on Sunday evening. He said he was accompanied by Peebles.¹¹⁹⁸

2.866 SSgt Davies said that on this occasion when he went into the TDF it was very dark and he could only see the Detainees in shadow.¹¹⁹⁹ He believed that they were all

¹¹⁸⁷ Smulski BMI 41/32/7-13

¹¹⁸⁸ SSgt Mark Davies BMI 42/32/2-14

¹¹⁸⁹ SSgt Mark Davies BMI 42/38/2-40/2

¹¹⁹⁰ Peebles BMI 40/101/12-102/7. See also, Peebles' interview under caution at MOD018865.

¹¹⁹¹ Peebles BMI 40/101/25-102/4

¹¹⁹² Peebles MOD007113

¹¹⁹³ Livesey BMI 39/21/9-22/4; Livesey MOD005039-40

¹¹⁹⁴ Livesey BMI 39/24/8-25/18

¹¹⁹⁵ Livesey BMI 39/26/5-7

¹¹⁹⁶ Livesey BMI 39/79/16-22

¹¹⁹⁷ SSgt Mark Davies BMI 42/52/21-53/1

¹¹⁹⁸ SSgt Mark Davies BMI 42/53/16-54/10

¹¹⁹⁹ SSgt Mark Davies BMI 42/56/21-57/8

hooded.¹²⁰⁰ He said his reason for going to the TDF was to satisfy himself that the Detainees were not in a position where they were able to communicate with each other. He said he did not visit the TDF any earlier because he was satisfied that the Battlegroup, which had been in Iraq for some months, was “...ensuring isolation of the detainees”.¹²⁰¹

2.867 SSgt Davies described using his torch in the TDF. He saw the Detainees scattered around the room on their knees with their heads bent down towards the floor. They looked as if they were in prayer. He said they were definitely not in stress positions.¹²⁰²

2.868 SSgt Davies said he could hear some shouting by the guards but nothing to cause him concern.¹²⁰³ In a statement made to the SIB, he had said that shouting at prisoners by the guards was “encouraged”.¹²⁰⁴

2.869 I have already set out SSgt Davies’ recollection of the timing of the tactical questioning sessions which he conducted. SSgt Davies said that he used the harsh technique of questioning on all of the Detainees he questioned, including D005.¹²⁰⁵ He described the harsh technique as:

“...getting within an individual’s intimate space, within 2 or 3 inches of the face. It involves shouting loudly and aggressively and that, in essence, is the harsh. It is a technique not entirely designed to elicit a response from the detainee. It is more a technique that seeks to shock the detainee initially.”¹²⁰⁶

2.870 However, SSgt Davies made it clear that when using the harsh technique, or indeed any other method of questioning, there must in no circumstances be any physical contact with the prisoner.¹²⁰⁷ He agreed that as part of his technique he would threaten prisoners, not with violence but with the consequences of a failure to cooperate, such as “You will go to the TIF and you won’t get out of it”, or “... reminding detainees that Basra was a dangerous place and they could be interned and then their family would be exposed to that danger”.¹²⁰⁸

2.871 SSgt Davies and Peebles agreed that they discussed the order in which the Detainees should be questioned.¹²⁰⁹ SSgt Davies said he decided to question D005 first because he was the youngest and a brother of C001. Because he had escaped, C001 was the focus of the questioning.¹²¹⁰ SSgt Davies remembered that D005’s first session started at approximately 19.15hrs.¹²¹¹ This was about the time the Rodgers Multiple arrived at BG Main.

¹²⁰⁰ SSgt Mark Davies BMI 42/59/5-8

¹²⁰¹ SSgt Mark Davies BMI 42/54/12-24

¹²⁰² SSgt Mark Davies BMI 42/56/23-57/16

¹²⁰³ SSgt Mark Davies BMI 42/62/13-63/5; SSgt Mark Davies BMI04219, paragraph 43

¹²⁰⁴ SSgt Mark Davies MOD020302

¹²⁰⁵ SSgt Mark Davies BMI04217, paragraph 38; SSgt Mark Davies BMI04221, paragraph 47

¹²⁰⁶ SSgt Mark Davies BMI 42/46/5-10

¹²⁰⁷ SSgt Mark Davies BMI 42/46/11-17

¹²⁰⁸ SSgt Mark Davies BMI 42/98/11-99/4

¹²⁰⁹ SSgt Mark Davies BMI 42/42/9-23; Peebles BMI 40/26/14-22; Peebles BMI 40/109/21-23

¹²¹⁰ SSgt Mark Davies BMI04217, paragraph 38

¹²¹¹ SSgt Mark Davies BMI04216, paragraph 30; SSgt Mark Davies MOD020301

- 2.872** Livesey said that he attended three sessions of questioning.¹²¹² His evidence was that D006 was questioned first, followed by D005 and then D002.¹²¹³ In my view, Livesey is mistaken about the order in which the Detainees were questioned. In my opinion it is far more likely that SSgt Davies' recollection contained in his first SIB statement dated 27 September 2003 is correct.¹²¹⁴
- 2.873** It is agreed by the Detainees and those involved in the tactical questioning that hoods were removed during the questioning,¹²¹⁵ although SSgt Davies said it was his practice when a detainee first entered the room to leave him hooded for a short period during which he walked round and studied the detainee.¹²¹⁶ None of the Detainees save Maitham, whose allegation against Smulski I reject (see Chapter 6) complained about being assaulted by the tactical questioners. He did not mention this in his SIB witness statements and for reasons explained earlier in the Report I find this was not proved (see paragraph 2.235). However, one, D005, alleged that he was struck by an interpreter during questioning.¹²¹⁷
- 2.874** SSgt Davies described D005 as very frightened when he came to be questioned.¹²¹⁸ Livesey also said D005 was frightened and tearful.¹²¹⁹ No doubt for all the Detainees the questioning session must have been stressful and the harsh technique frightening, particularly for one as young as D005.
- 2.875** I consider the general issues raised by the harsh technique and the use of threats during questioning or interrogation in Part VI of the Report.

The generator incident

- 2.876** There is no doubt that D005 was at some stage placed by a generator which was near the door of the room where the questioning was taking place. The location of the generator is marked on the plan at figure 4 above. The questioning was taking place on the ground floor of the Headquarters building, which is also marked on the plan, in a room which overlooked the generator. There is a good deal of evidence that the generator was loud and hot.¹²²⁰
- 2.877** D005 said in his Inquiry witness statement that this happened before the first session of questioning but in oral evidence he said that it was "...on the second time of the questioning".¹²²¹ SSgt Davies and Peebles agreed that it occurred but asserted that it happened after the first session of D005's questioning.¹²²² In my judgment, for reasons which I explain below, SSgt Davies and Peebles are probably right as to the time when this incident occurred. Not surprisingly, in my opinion, D005 is simply confused about the order of events that evening.

¹²¹² Livesey BMI00669, paragraph 18

¹²¹³ Livesey BMI 39/34/25-35/6

¹²¹⁴ SSgt Mark Davies MOD020301

¹²¹⁵ D001 BMI 12/28/11-14

¹²¹⁶ SSgt Mark Davies BMI04218, paragraph 41

¹²¹⁷ D005 BMI17/31/20-32/9

¹²¹⁸ SSgt Mark Davies BMI 42/71/17-72/2

¹²¹⁹ Livesey BMI 39/37/22-38/7

¹²²⁰ Aktash, when asked what sort of noise the generator made, said: "*Well it's a deafening sort of noise. When you are next to it, you can't really hear somebody talking. You have to be – you have to shout to make yourself understood.*" He also agreed that it produced a lot of heat: Aktash BMI 16/31/12-18

¹²²¹ D005 BMI 17/24/17-22; D005 BMI02323, paragraph 62

¹²²² SSgt Mark Davies BMI 42/75/13-23; Peebles BMI 40/110/22-111/5

- 2.878** SSgt Davies said that he gave instructions for D005 to be taken to the generator.¹²²³ Peebles accepted that he was “*cognisant*” of the order to put D005 next to the generator, and said that it “*might*” have been he who gave the order.¹²²⁴ In my judgment at the very least Peebles agreed to this action. SSgt Davies said that he intended that D005 should be by the generator only for a short period of about five minutes but in the event D005 remained by the generator for a lengthy period, about one hour and forty five minutes. Peebles said he could have been there for forty minutes or less.¹²²⁵ On this point, I prefer SSgt Davies’ evidence. He recorded the timings of D005’s tactical questioning sessions shortly after the event in his SIB statement of 27 September 2003.¹²²⁶ This statement recorded that D005’s first questioning session ended at 20.00hrs, and that his second session started at 21.45hrs. It seems to me much more probable that D005 was held at the generator between the first and second questioning sessions.
- 2.879** Livesey said that two people were placed by the generator on Sunday night, one of whom was D005 whom he described as frightened and tearful. Livesey thought that the purpose of placing detainees by a generator was to disorientate them, although he was not aware that it was specifically a response to them being uncooperative.¹²²⁷ There is supporting evidence that he thought as much at the time: Crosbie remembered that Livesey told him, at an intelligence meeting, apparently on 15 September 2003, that detainees had been held next to a generator as a “*technique*” to aid interrogation.¹²²⁸
- 2.880** A number of witnesses said that they observed someone close to the generator hooded and plasticuffed. It will be remembered that D005 said he was placed by the generator sitting on the ground with his back to it. He was close enough to feel splashes of water on his face and head.¹²²⁹ In an earlier statement to the SIB, dated 21 September 2003, he also said that he was punched, kicked and urinated on at the generator.¹²³⁰ He did not repeat these latter allegations in his oral evidence to the Inquiry, and I make no finding in respect of them.
- 2.881** Kendrick said he remembered guarding one Detainee who was by the generator. In his Inquiry witness statement he had said he saw three Detainees by the generator but in evidence he corrected this to one Detainee whom he had seen three times by the generator. He amplified his explanation, saying that he, Sgt David Brown and Cpl Mike Hartley (two other members of the 1 QLR Intelligence Cell) would each do a shift in turn guarding the Detainee.¹²³¹ In his SIB statement dated 30 May 2005 he agreed he had said:

¹²²³ SSgt Mark Davies BMI 42/75/19-20

¹²²⁴ Peebles BMI 40/111/1-112/3

¹²²⁵ SSgt Mark Davies BMI 42/75/24-76/18; SSgt Mark Davies BMI 42/82/5-13; Peebles BMI 40/112/4-114/14; SSgt Mark Davies MOD019009

¹²²⁶ SSgt Mark Davies MOD020301

¹²²⁷ Livesey BMI 39/38/13-39/24; Livesey BMI 39/56/17-19

¹²²⁸ Crosbie BMI 19/213/14-217/14

¹²²⁹ D005 BMI 17/25/8-26/6

¹²³⁰ D005 MOD000018

¹²³¹ Kendrick BMI 38/185/23-186/14

*"It may here be worthy of note that at various times through this interview stage when the SSgt believed he wasn't getting satisfactory answers, he would instruct me or either Sgt Brown and LCpl Hartley to remove the detainee from the room and place him next to a... and noisy generator in order to disorientate the detainee to assist me with the questioning."*¹²³²

- 2.882** He said the sergeant was the Intelligence Corps staff sergeant, whom I take to be SSgt Davies.¹²³³ However, later in his evidence he accepted that he could not remember whether it was the tactical questioner or someone else who told him to take the Detainee to the generator.¹²³⁴
- 2.883** Kendrick said that the purpose of this exercise was to make the Detainee feel uncomfortable and that the generator would be unbearably hot and noisy. He agreed that it was a punishment for the Detainee's non-cooperation.¹²³⁵ In answer to questions put by Counsel for SSgt Davies he agreed that his SIB statement was taken in unusual circumstances and signed by him just before he boarded an aeroplane without him having an opportunity fully to read the statement. He also agreed that at the Court Martial he had said that he did not know the reason why Detainees were placed by the generator.¹²³⁶ In answer to Counsel he said he had concluded that the reason must have been to punish the Detainee because he would not know why a prisoner would be placed next to a generator other than to punish him for not giving answers.¹²³⁷
- 2.884** When he was asked when this incident happened, Kendrick said he was unable to remember, adding *"All that sticks in my mind is the young Iraqi boy who was placed next to the generator"*.¹²³⁸
- 2.885** There is a separate aspect of Kendrick's evidence which is relevant to whether SSgt Davies condoned the use of stress positions. In his SIB statement of 1 September 2005 Kendrick had said that the tactical questioner (SSgt Davies) had told him to *"maintain the stress positions"*.¹²³⁹ However, at the Court Martial¹²⁴⁰ and in evidence to the Inquiry,¹²⁴¹ he was equivocal as to whether SSgt Davies had told him to *"maintain stress positions"* or had merely told him to *"maintain the shock of capture."* In my judgment, Kendrick's evidence on this particular point was too uncertain to form the basis of any conclusion that SSgt Davies told him that the Detainees should be kept in stress positions.
- 2.886** Hartley remembered seeing Kendrick guarding a young Detainee who was standing about one and a half to two metres from the generator on an occasion, the date of which he could not remember.¹²⁴² He said he had never been asked by Kendrick to place a detainee by the generator.¹²⁴³

¹²³² Kendrick MOD000849

¹²³³ Kendrick BMI 38/187/7-10

¹²³⁴ Kendrick BMI 38/205/21-206/5

¹²³⁵ Kendrick BMI 38/187/11-22

¹²³⁶ Kendrick CM 48/85/16-86/16

¹²³⁷ Kendrick BMI 38/202/11-207/3

¹²³⁸ Kendrick BMI 38/188/22-24

¹²³⁹ Kendrick MOD000718

¹²⁴⁰ Kendrick CM 48/84/20-85/13; Kendrick CM 48/150/6-151/1; Kendrick CM 49/46/13-47/9

¹²⁴¹ Kendrick BMI 38/190/17-191/5; Kendrick BMI 38/207/14-208/24

¹²⁴² LCpl Mike Hartley BMI 45/195/12-196/15

¹²⁴³ LCpl Mike Hartley BMI 45/197/10-198/11

- 2.887** Sgt Brown, a reservist in the TA, and attached to the Intelligence Cell of 1 QLR,¹²⁴⁴ said he was asked either by Livesey or Kendrick to oversee a detainee who was standing by the generator until the questioning room was free. He was not sure whether the detainee was one of the Op Salerno Detainees. He said the detainee was there for about 15 minutes. He described him as young and standing about two feet from the radiator. He said the radiator was hot and noisy but not, he thought, unbearably so.¹²⁴⁵
- 2.888** Maj Peter Quegan, a major in the TA and a solicitor by profession, kept a diary during his deployment on Op Telic 2. He was attached to the G5 cell of 1 QLR.¹²⁴⁶ His diary recorded that on the night of 14 September on his way to and from the portaloos, before going to bed, he saw a Detainee hooded and positioned “*very close*” to a generator. Whilst saying that it was difficult to remember, he estimated that the Detainee was between three and twelve feet from the generator, but “*...close enough that the intention was obvious...*”. Quegan said the prisoner was experiencing “*white noise*”. He spoke to the man guarding the Detainee (Sgt Bolton, now deceased). Bolton said the man had been there for about three hours. Quegan understood the purpose of placing the Detainee next to the generator was part of “*the conditioning process*”.¹²⁴⁷
- 2.889** Aktash also saw a Detainee being guarded next to the generator. It was dark at the time. He “*believed*” that this was after his visit to the TDF on Monday, although he appeared unsure in this respect. It seems more likely that he witnessed this on Sunday night. He said that the guard was about five metres away from the Detainee, sitting on a chair, and that the Detainee was “*really close to the generator... maximum a metre away*”.¹²⁴⁸
- 2.890** Slicker also saw a Detainee next to the generator. He thought this was at about 17.00hrs or 18.00hrs. It is likely that this time estimate was inaccurate. He said the Detainee was only a few inches from the generator.¹²⁴⁹
- 2.891** Finally, in respect of this incident, there was evidence from two senior NCOs, CSgt Jeffrey Lamb of B Company and Potter, both of whom remembered seeing a detainee exhausted and kneeling close to a generator’s exhaust. Potter said he was two to three feet away from the exhaust. CSgt Lamb’s estimate was three or four inches. The exhaust emitted “*red hot heat*”. Potter had the impression that the detainee was aged between 30 to 50. CSgt Lamb said 25 to 35. Potter said “*He wasn’t a young bloke...*” and CSgt Lamb said that he could not have been a younger man aged seventeen. CSgt Lamb said that he had a “*slight build*.” Both thought he was blindfolded but were quite sure that he was not hooded. They said Payne was standing in the doorway of the tactical questioning room guarding the detainee. Potter thought the time of this incident was shortly before lunch, at 12.30hrs to 13.30hrs.

¹²⁴⁴ Sgt David Brown BMI 38/106/25-107/23. Brown kept a personal diary during the tour. His entry for Sunday 14 September 2003 (BMI00466) mentions the Detainees, stating: “*Bad time they are having, stress positions, sand bagged and plasticuffed.*” It also mentions that he “*called in to see*” them “*before bed*” that night. In respect of Baha Mousa’s death, Brown commented in his diary: “*bound to happen sooner or later*”. In evidence, Brown was unable to say what he meant by this comment; Sgt David Brown BMI 38/140/16-142/6. In my judgment, it obviously implies that he thought detainees were often treated badly.

¹²⁴⁵ Sgt David Brown BMI 38/121/21-124/4

¹²⁴⁶ Quegan BMI 43/208/2-23

¹²⁴⁷ Quegan BMI 43/214/3-222/11

¹²⁴⁸ Aktash BMI 16/30/15-31/21; Aktash BMI 16/85/14-86/1

¹²⁴⁹ Slicker BMI 21/56/17-64/9

CSgt Lamb agreed, save that he thought it was before either lunch or breakfast, therefore between 09.30hrs and 12.30hrs. Neither was able to put a date on the incident. Potter said it was between one day and two weeks before Baha Mousa's death. CSgt Lamb said it was two to three days before the death. Potter seemed sure that it was not on the day of the death. The detainee was plainly exhausted. CSgt Lamb's immediate reaction was to ask Payne, "...*what the fucking hell's going on?*" According to CSgt Lamb, Payne's response was that he was following orders from the tactical questioner and Mendonça.¹²⁵⁰ Payne said that he was unaware of any occasion when a detainee was held by a generator.¹²⁵¹

2.892 Shortly after seeing this incident CSgt Lamb and Potter mentioned it to Sgt Smith, whom they met when they were taking their midday meal. Sgt Smith's response was initially, "*Don't ask me. I am nothing but a fucking social worker.*" When asked what he meant Sgt Smith said he had removed the man from the generator but was reprimanded by Mendonça for interfering and told to take him back.¹²⁵²

2.893 In evidence Sgt Smith denied having any memory of the conversation with CSgt Lamb and Potter but said it was possible he had told them that he had been ordered to mind his own business. He recollected the description "*social worker*" being given to him by an officer of senior rank.¹²⁵³

2.894 CSgt Lamb and Potter were concerned about the incident and reported it to Maj Lighten, the Officer Commanding B Company. Lighten told them he would take it up the chain of command and subsequently he reported back that he had passed their concerns on to Mendonça.¹²⁵⁴ Lighten did not dispute the account given by CSgt Lamb and Potter, but said that he had no independent recollection of the matter being reported to him, or of reporting it to Mendonça. Mendonça said he had no recollection of Lighten reporting this incident to him, and that he did not think he had.¹²⁵⁵ After so much time has passed since this incident, I do not find it surprising that Lighten's memory of what was said and by whom was uncertain. The same applies to Mendonça. In the circumstances I make no finding on the discreet issue of to what level these concerns were raised.

Conclusions on the generator incident

2.895 I am sure that at some time during Sunday evening D005 was taken to the generator on the instructions of SSgt Davies and with Peebles' consent. SSgt Davies said it was done to provide a pause in questioning of D005, so that he could think about his answers in isolation from the other Detainees and be quickly returned to the questioning room. It was also to prevent him from overhearing what was going on in the room where other Detainees were being questioned.¹²⁵⁶

¹²⁵⁰ CSgt Jeffrey Lamb BMI 41/158/5-166/21; Potter BMI 44/18/17-23/6

¹²⁵¹ Payne BMI 32/106/9-23

¹²⁵² CSgt Jeffrey Lamb BMI 41/167/2-168/17; Potter BMI 44/23/13-25/12

¹²⁵³ Sgt Paul Smith BMI 44/138/11-141/12

¹²⁵⁴ CSgt Jeffrey Lamb BMI 41/169/1-171/25; Potter BMI 44/25/13-27/17. Potter assumed that, when Lighten escalated the matter, it would have been with Mendonça. Lamb remembered Lighten saying that he had raised it with Mendonça.

¹²⁵⁵ Lighten BMI 56/112/13-120/13; Mendonça BMI 59/193/6-17; Mendonça BMI 59/249/9-250/15

¹²⁵⁶ SSgt Mark Davies BMI 42/76/8-77/18

- 2.896** Peebles, after first saying that it was a practical method of saving time between sessions by not returning him to the TDF,¹²⁵⁷ volunteered that it was not a punishment but a “*naughty schoolboy routine*”.¹²⁵⁸
- 2.897** I do not accept SSgt Davies’ explanation for this incident. I could understand his desire to prevent D005 speaking to other Detainees between questioning sessions and preventing him from hearing others being questioned, but I do not accept that this was the true explanation for placing him by the generator. In my judgment, Peebles’ “*naughty schoolboy routine*” is nearer the truth. On the whole of the evidence I am sure that the motive for placing D005 by the generator was to punish him for, as SSgt Davies and Peebles saw it, not being cooperative and to make him more amenable to answering questions.
- 2.898** I find that D005 was made to stand or sit next to the generator, which was very hot and very noisy. At the time he was hooded and plasticuffed. I accept Kendrick’s evidence on this issue as truthful and broadly accurate. Although he was a nervous witness he gave his evidence in a clear and thoughtful manner. It is also relevant to note that, as was pointed out in cross-examination on behalf of SSgt Davies, there were some differences between his evidence to the Inquiry and his SIB witness statement and evidence at the Court Martial. As I have said above, his SIB witness statement was compiled and signed in unusual circumstances. However, the only material difference in respect of this incident between his evidence to the Inquiry and his evidence to the Court Martial was that at the Court Martial he said he could not ascribe a reason for D005 being placed by the generator. At the Inquiry he attributed the motive for this action as a punishment for being uncooperative. Despite these discrepancies I prefer his evidence, and the evidence of Aktash and Slicker, to the evidence of Hartley and Sgt Brown on the position and posture of D005 when he was situated by the generator.
- 2.899** I also accept Quegan’s evidence of what he saw. As a solicitor he would be used to making contemporaneous notes. His diary supported his evidence and that of Kendrick.
- 2.900** I have no doubt that CSgt Lamb and Potter did see an Iraqi man standing close by the generator. Both struck me as good witnesses. But the timing of the incident they witnessed and their description of the man mean that it cannot have been D005 whom they saw.
- 2.901** I add, however, it is possible that it was another of the Op Salerno Detainees. Livesey said two Detainees were taken to the generator. The difficulty with this hypothesis is that no other Detainee made a complaint of such treatment. Theoretically, it could have been Baha Mousa whom they witnessed by the generator. But that seems very unlikely, since Potter and Lamb did not think that the incident occurred on the day of Baha Mousa’s death and it is highly unlikely that he was held by the generator on Sunday morning. The man they saw was of “*slight build*” and Baha Mousa was not. The man they saw was blindfolded, not hooded, whereas all of the other evidence is that the only means of sight deprivation used on the Op Salerno Detainees was hooding. For these reasons I think it is likely that the detainee Potter and Lamb witnessed being held next to the generator was not one of the Op Salerno Detainees.

¹²⁵⁷ Peebles BMI 40/112/4-20/1

¹²⁵⁸ Peebles BMI 40/116/4-117/4

- 2.902** Livesey rightly regarded the treatment of D005 as inhumane.¹²⁵⁹ As a senior NCO, he should at the least have intervened by speaking to Peebles about his misgivings.
- 2.903** In my judgment, this incident was, to say the least, highly regrettable. It was inappropriate and improper. It represents serious misconduct for which both Peebles, an officer of field rank, and SSgt Davies, a senior NCO, were responsible.
- 2.904** It is also of concern that there is evidence that other detainees, on other occasions, had been treated in a similar way.¹²⁶⁰ If, as seems likely, CSgt Lamb and Potter did raise concerns on an earlier occasion when a prisoner had been held close to the generator, this was a missed opportunity by the 1 QLR chain of command to take action in relation to the improper conditioning process which had developed.

Smulski's Conduct on 14 and 15 September 2003

- 2.905** As noted above, Smulski arrived at BG Main at approximately 23.45hrs. Between about 00.00hrs and 00.45hrs, he sat in on SSgt Davies' tactical questioning session with D002.¹²⁶¹
- 2.906** In evidence to the Inquiry, Smulski said that when he visited the TDF, at 01.40hrs as recorded in his handwritten note,¹²⁶² he saw two Detainees in the left-hand room, an older man who was not hooded and another man who, so far as he could remember, was hooded. Passing the centre room he believed he saw in it another Detainee, hooded or blindfolded. In the right-hand room he saw approximately seven or eight men. As far as he could recollect they were sitting, crouching or kneeling in a semi-circle facing the middle of the room. They were hooded and handcuffed.¹²⁶³
- 2.907** Smulski believed that he ordered the hoods to be removed but he understood this order was later countermanded.¹²⁶⁴ I have some doubt that Smulski did order the hoods to be removed. He did not mention this until he provided his Inquiry witness statement. He did not mention it in two SIB statements or an interview with the SIB and there is no other evidence which supports this assertion by him. Indeed, in his second SIB statement, made on 22 June 2004, he said: "*I did not question the detainees being hooded and cuffed as I have been taught that detainees being hooded and cuffed to restrict their vision and movement is part of what is known as the 'Shock of Capture' the purpose of which is to keep detainees disorientated and unaware of their surroundings.*"¹²⁶⁵ In addition, as noted above, he believed the conditioning should be maintained until the Detainees were transferred to the JFIT. In all the circumstances, in my view, it is unlikely that Smulski gave an order for the hoods to be removed and I find that he did not.
- 2.908** Smulski agreed that in the early hours of the morning he gave instructions to the guard to "exercise" the Detainees. In the case of one of the Detainees, D005, his purpose was to disorientate the Detainee, by having him taken or dragged out of the

¹²⁵⁹ Livesey BMI 39/40/17-19

¹²⁶⁰ Seeds BMI04175-6, paragraphs 15-16; Seeds MOD004035-41; Seeds MOD004052; see also the evidence of Lamb and Potter described above.

¹²⁶¹ Smulski's handwritten record of tactical questioning sessions at MOD015395.

¹²⁶² Smulski MOD015395

¹²⁶³ Smulski BMI 41/2/13-3/5

¹²⁶⁴ Smulski BMI 41/3/21-5/1

¹²⁶⁵ Smulski MOD006041

TDF, hooded, and brought back in.¹²⁶⁶ This coincided with the evidence of Appleby and Reader, both of whom remembered being told to take or drag D005 outside to “shake him up”, not physically, but to make him scared or disorientated (see Chapter 11).¹²⁶⁷ By reference to the Appleby and Reader stag this incident can be placed at some time between 00.00hrs and 02.00hrs. Smulski explained that in a discussion with SSgt Davies, SSgt Davies indicated that he thought D005 was about to break. Smulski agreed that D005 was obviously very frightened when he was questioning him.¹²⁶⁸ If, as recorded in SSgt Davies’ handwriting on Smulski’s note, D005 was questioned between 03.30hrs and 04.15hrs,¹²⁶⁹ this would fit with Smulski’s instruction to Appleby and Reader during the course of their stag.

2.909 Smulski said he made two or three visits to the TDF on Monday, the last of which was at about 16.00hrs or 17.00hrs.¹²⁷⁰ He described the conditions in the facility as hot. The Detainees were sweaty and later there was a smell of urine. He said that on his first visit the Detainees gave the impression of being agitated. On his last visit he noticed some bruising on the abdomen of one of the Detainees. The bruising was across his abdomen in the shape of three tennis balls. He made no inquiry about the cause of the bruising either of the Detainee or the guards, despite the fact that it looked as if it had been caused by some form of trauma. He said a guard told him that the Detainee had been seen by the RMO. He did not report what he had seen to Peebles or anyone else. He assumed that the RMO would have told Peebles.¹²⁷¹ He said that on one other occasion in the course of his questioning one of the Detainees he noticed had a slight cut or graze to the side of his nose.

2.910 Smulski denied that he instructed the guards to put D005 in the centre room and push his head down to the toilet.¹²⁷² He denied that he instructed the guards to put the Detainees in stress positions. But he agreed he had instructed them to use a metal bar to make a noise and keep the Detainees awake. He believed this was better than shouting at them. He said this occurred at some time early on Monday morning.¹²⁷³ Appleby remembered an officer whom he thought was a tactical questioner banging a stick of some sort to make a noise.¹²⁷⁴ The time Smulski gave this instruction is likely to have been between 00.00hrs and 02.00hrs on Monday.

2.911 Smulski recollected one other specific incident. He said Payne, although he did not know his name at the time, told him that one of the Detainees kept removing his hood and plasticuffs. Smulski said he also had seen this Detainee removing his plasticuffs when he was sitting on the floor in the right-hand room. He believed that this Detainee, obviously Baha Mousa, posed a threat to the guards so he suggested that he was put in the centre room for his own safety and the safety of others. Smulski assisted in moving him into the room and placing him on the floor sitting propped up against the wall.¹²⁷⁵ However, he agreed that in his SIB statement of 27 September 2003 he described placing the Detainee face down on the floor. This

¹²⁶⁶ Smulski BMI 41/15/21-16/16

¹²⁶⁷ Appleby BMI 25/54/18-56/19; Reader BMI 28/150/4-151/4

¹²⁶⁸ Smulski BMI 41/19/18-21/18; Smulski BMI 41/22/11-23

¹²⁶⁹ MOD015395

¹²⁷⁰ Smulski BMI 41/9/5-21

¹²⁷¹ Smulski BMI 41/7/11-15/20

¹²⁷² Smulski BMI 41/24/7-17

¹²⁷³ Smulski BMI 41/30/1-31/9

¹²⁷⁴ Appleby BMI 25/61/2-62/21; Appleby BMI02525, paragraphs 75-76

¹²⁷⁵ Smulski BMI 41/25/1-26/25

statement also contained a passage in which Smulski said that the Detainee's head was resting on his arms.¹²⁷⁶ The description of the position in which he left Baha Mousa lying down with his head on his arms is much the same as the description given by Aspinall and Pte Lee Graham of how they left him in the centre room and it also fits with the description given by Pte Riley of how he remembered seeing the Detainee in the centre room.¹²⁷⁷

2.912 Apart from seeing such injuries to the Detainees recorded above, neither SSgt Davies nor Smulski mentioned seeing any other injuries.

Peebles

2.913 As the BGIRO, a job he inherited from Maj Anthony Royce, Peebles had the responsibility for deciding whether any or all of the Detainees should be released, handed over to the police, or transferred to the Theatre Internment Facility (TIF) for interrogation.¹²⁷⁸ Like Royce, he had no specific training for this post, itself only created by Divisional FRAGO 29, promulgated by 1 UK Division on 26 June 2003¹²⁷⁹. FRAGO 29 is considered in Part IX of this Report.

2.914 In Chapter 9 above I recounted Peebles' evidence of three visits to the TDF on Sunday of which the third was at about 16.30hrs. As I find, Crowcroft and Fallon had throughout the afternoon sought to maintain the Detainees in stress positions. Peebles accepted that by the time of his visit at 16.30hrs he would have understood the Detainees to have been hooded from shortly after the time of their arrival at BG Main, approximately six hours earlier, in accordance with what he understood to be standard practice. By then he and SSgt Davies had jointly decided to start the tactical questioning process. On Sunday he did not notice anything abnormal.¹²⁸⁰

2.915 On Monday, he said he did not go into the TDF but on two occasions early in the morning he "*peeped [his] head round the corner*". He said he did not always go in or speak to the Detainees but when he was in the TDF the conditions were as they usually were, namely hot. In his Inquiry witness statement Peebles said he had on Monday morning seen the Detainees sitting with their arms in their laps, not in stress positions. On Monday all was quiet and the conditions were the same as the day before. He was unaware of a smell of stale sweat, urine or faeces. He was also unaware that any of the Detainees had injuries.¹²⁸¹ Next he went to the red brick meeting at Brigade Headquarters before returning to BG Main.¹²⁸²

2.916 Peebles accepted that in the TDF the Detainees were hooded, handcuffed and in stress positions.¹²⁸³ He understood from Royce that this was part of the conditioning process to aid tactical questioning and that sight deprivation and stress positions had been sanctioned.¹²⁸⁴ He understood that, in accordance with 1 QLR's standard procedure, the Detainees would have been conditioned, that is, hooded and put in

¹²⁷⁶ Smulski BMI 41/27/1-28/17; Smulski MOD006038

¹²⁷⁷ Aspinall BMI 28/69/12-71/7; Pte Lee Graham BMI 26/98/8-14; Pte Anthony Riley BMI 19/49/5-22

¹²⁷⁸ Peebles BMI 40/13/8-23

¹²⁷⁹ MOD016186

¹²⁸⁰ Peebles BMI 40/69/8-70/13

¹²⁸¹ Peebles BMI 40/70/14-72/13; Peebles BMI02726, paragraph 68

¹²⁸² Peebles BMI02727, paragraphs 70-71

¹²⁸³ Peebles BMI 40/75/13-76/1

¹²⁸⁴ Peebles BMI 40/164/15-166/4; Peebles BMI02711, paragraph 18

stress positions, after they arrived at the TDF. He accepted that he did not issue any order postponing conditioning, in order to prevent the Detainees from being put in stress positions.

2.917 He remembered being present when D005 was being questioned and he remembered the generator incident. He thought D005 was the only Detainee to be put by the generator. He asserted that he was present for the first four questioning sessions on Sunday night, including the questioning of D006 and D005.¹²⁸⁵

2.918 During the questioning he took notes to see if it was possible to develop any picture of what had happened.¹²⁸⁶ He categorically denied that any violence occurred during the questioning¹²⁸⁷ and he was unable to recollect any conversation with SSgt Davies involving the suggestion that a Detainee might “*break*”.¹²⁸⁸

2.919 Peebles recollected that the tactical questioner would ask a few simple questions about the Detainee and his family and “...*if it was fairly non-responsive, then it would probably ramp up the tempo a bit, get a little bit louder, a bit closer*”. By way of example the tactical questioner could inform the detainee, “*If you don’t answer my questions, you won’t be seeing your family for a long time.*”¹²⁸⁹

2.920 On Monday morning after attending the meeting at Brigade he returned to BG Main at about 10.00hrs. At that stage tactical questioning by Smulski was still in progress. He said that the Detainees were all sitting on the floor of the TDF but not in stress positions. He assumed that no conditioning was taking place at this particular point because the Detainees were “*on a rest period*”, it being impossible to maintain stress positions indefinitely. They were hooded and dishevelled. Peebles thought that the questioning finished at about 12.00hrs but Smulski’s handwritten note, which stated that the last questioning session was with Maitham, and started at 15.00hrs, is in my view more likely to be accurate. At this time Peebles started to draw up packs for the TIF.¹²⁹⁰ He did not go back into the TDF until after Baha Mousa’s death.

2.921 It appears that Peebles did not at any time order conditioning to cease, notwithstanding the fact that he must have known it had been started early on the previous day and was still going on at 12.00hrs on Monday, when he understood tactical questioning to have finished. He said in oral evidence that he knew the Detainees would have been hooded from the time when they arrived in the TDF “*Because it would have been pretty standard procedure...in order to prepare, then, for questioning.*” Peebles also agreed that putting the Detainees in stress positions was something the provost staff understood was part of the process.¹²⁹¹ I note here that Peebles said in evidence that he had viewed the Payne video. When I asked him what his view of it was, I detected some reluctance by him to grapple with the effect of the conduct shown in the video. He agreed it was “*pretty harsh*” but he seemed reluctant to say whether or not Payne was “*going over the top*” (which in my opinion he clearly was). The furthest Peebles was prepared to go in his comments on it was that it was “*...very close to the edge*”.¹²⁹²

¹²⁸⁵ Peebles BMI 40/109/24-114/24; Peebles BMI 40/197/2-13

¹²⁸⁶ Peebles BMI 40/110/7-15

¹²⁸⁷ Peebles BMI 40/118/5-11

¹²⁸⁸ Peebles BMI 40/117/16-118/1

¹²⁸⁹ Peebles BMI 40/155/18-156/21

¹²⁹⁰ Peebles BMI02726-8, paragraphs 68-74

¹²⁹¹ Peebles BMI 40/81/15-83/5

¹²⁹² Peebles BMI 40/203/14-204/15

Livesey

- 2.922** Livesey visited the TDF on Sunday evening and early Monday morning on a number of occasions.¹²⁹³ He was involved as a note taker for the tactical questioning¹²⁹⁴ and he also accompanied some of the Detainees to and from the TDF to the room where they were questioned.¹²⁹⁵
- 2.923** In Chapter 9 I have recorded the state of the Detainees and conditions in the TDF which he saw on his first visit at about 18.00hrs to 19.00hrs on Sunday afternoon. Livesey was asked why he neither said nor did anything about what he had seen. His explanation was that he assumed the tactical questioner, a Subject Matter Expert (SME), had ordered it. He added that he had later asked Peebles about the possibility of removing the hoods and plasticuffs after the Detainees had been questioned.¹²⁹⁶
- 2.924** Livesey believed that D006 was the first to be questioned. This man complained of pains in his chest and said he needed his medication, and Peebles and SSgt Davies must have heard this. Livesey said he asked the tactical questioner if, on his return to the TDF, D006 could have his hood removed. This was agreed and on returning D006 to the TDF his hood was removed and he was allowed to lie down.¹²⁹⁷
- 2.925** D006 said that when he was returned to the TDF the beating started again and it was not until later on Monday morning that his hood and plasticuffs were removed. Although, as I have said, I accept that D006 was doing his best to be truthful, the lack of evidence of injuries to him suggests he was not as badly beaten as he said. It is clear that at some time on Monday morning he was seen by the doctor and allowed to rest.¹²⁹⁸ I am inclined to think Livesey's evidence of the time when D006 had his hood removed and was allowed to lie down is accurate.
- 2.926** Livesey was involved in another significant incident. Up to very shortly before he was due to give evidence, he had denied being involved personally in mistreating any of the Detainees. However, at the outset of his evidence he made it clear that he wanted to correct his Inquiry witness statement. He made two corrections. The first was to admit that he had struck a Detainee when returning him to the TDF after he had been questioned. The second was to admit that he had visited the TDF on rather more occasions than previously stated, and in particular that he had visited two or three times on Monday.¹²⁹⁹
- 2.927** The Detainee whom Livesey admitted striking was D002. He would have been returned to the TDF at about 00.45, having been questioned by SSgt Davies, with Smulski observing.¹³⁰⁰
- 2.928** Livesey said that D002 was hooded and plasticuffed and that on returning him to the TDF he punched him twice with two relatively hard blows. When asked by Counsel why he had done this, his response was:

¹²⁹³ Livesey BMI 39/21/9-22 (Sunday); Livesey BMI 39/2/15-19; Livesey BMI 39/99/19-100/15 (Monday)

¹²⁹⁴ Livesey BMI 39/29/19-30/12

¹²⁹⁵ Livesey BMI 39/21/12-15

¹²⁹⁶ Livesey BMI 39/26/14-28/14; Livesey BMI 39/44/21-46/12

¹²⁹⁷ Livesey BMI 39/34/25-37/11; Livesey BMI 39/96/6-97/2

¹²⁹⁸ D006 BMI 13/71/18-76/20

¹²⁹⁹ Livesey BMI 39/2/2-3/21

¹³⁰⁰ SSgt Mark Davies MOD020301; MOD015395

*“To this day, sir, I don’t really know. Whether it was out of frustration, whether it was out of what the rumour was about Captain Dai Jones and other things, it was just – I just did it and I can’t – you know, it goes against everything I have been taught. It goes – you know, self-discipline and everything, sir, and I can’t think of why I did it, I just did it. There’s no explanation of why I did it at all, sir”.*¹³⁰¹

2.929 Livesey denied that he had punched the Detainee because he had seen others punching Detainees.¹³⁰² It is probable that his blows were responsible for the injury above the right eye seen by Dr Hill on his examination of D002.¹³⁰³ This was no doubt the assault described by D002, who said that he was hit on the head more than once by the soldier accompanying him from the questioning room back to the TDF.¹³⁰⁴ Also, although the times of the tactical questioning sessions drawn up by SSgt Davies, 00.01hrs to 00.45hrs for D002 do not fit with Pte Cooper and MacKenzie’s stags from 10.00hrs to 00.00hrs, the descriptions of this incident given by Livesey, Pte Cooper and MacKenzie are so close as to make it probable that this was the same incident referred to by all three men. Pte Cooper remembered a SSgt returning a limping Detainee from the tactical questioning room (Chapter 11). In addition neither Appleby nor Reader, whose stag was from 00.01hrs to 02.00hrs, made any mention of such an incident.

2.930 Livesey remembered the occasion on Sunday evening when he had ordered the guards to put the hoods and plasticuffs back on the Detainees, and to put them back into stress positions. This countermanded Sgt Smith’s earlier order. He said that he gave this order to the guards because he had been told to do so by the tactical questioner, Smulski, who accompanied him to the TDF. He thought this occurred after he had taken D005 back to the TDF. D005 was taken back to the TDF after questioning sessions which ended both at 22.15hrs and at 04.15hrs (see above).

2.931 There is some uncertainty over the timing of Livesey’s order. It may have occurred shortly after 22.15hrs or much later, shortly after 04.15hrs. Both times fell within stags conducted by MacKenzie and Pte Cooper; both came after a tactical questioning session involving D005. The principal evidence which suggests Livesey gave his order at the later time is Livesey’s SIB statement in which he stated that he gave the order between 03.00hrs and 04.00hrs, when told to do so by Smulski.¹³⁰⁵

2.932 However, in my view, it is much more likely that Livesey gave his order at about 22.30hrs, not 04.30hrs. The best evidence for this is Sgt Smith’s contemporaneous (or near-contemporaneous) handwritten note, signed by Pte Cooper and MacKenzie, which stated that Sgt Smith’s order was given at approximately 21.45hrs to 22.00hrs, and that it was countermanded by Livesey half an hour later.¹³⁰⁶ Additionally, the report

¹³⁰¹ Livesey BMI 39/41/24-43/15

¹³⁰² Livesey BMI 39/43/23-44/4

¹³⁰³ Hill report at MOD000404-5; photographs at MOD021853-64. Whilst he was hit in the face on other occasions too (D002 MOD000026), D002 believed that this particular assault was responsible for this particular injury (D002 BMI01959, paragraph 44).

¹³⁰⁴ D002 BMI01959, paragraph 44

¹³⁰⁵ Livesey MOD000771

¹³⁰⁶ MOD019669. The note is dated 14 September 2003, but that date is likely to be incorrect by a few days. Sgt Paul Smith has stated that he produced the note “at the time”, and procured Cooper’s and Mackenzie’s signatures, because in the days after Baha Mousa’s death people were panicking about what had happened: Sgt Paul Smith MOD000835-6. Mackenzie said that he signed the note when at Um Qasr, presumably on 16 September 2003: Mackenzie BMI 29/164/15-18. Smith agreed that the note was produced “very soon” after Baha Mousa’s death: Sgt Paul Smith BMI 44/153/19-21.

produced by the Brigade Chief of Staff, Fenton, on 18 September 2003 recorded that Sgt Smith had ordered hoods and cuffs to be removed between 21.30hrs and 22.00hrs, and that the “TQ team” then required them to be put back on.¹³⁰⁷

- 2.933** If that is right then it cannot have been Smulski who told Livesey to countermand Sgt Smith’s order, since Smulski did not arrive at BG Main until 23.45hrs. In the circumstances, I find that it was not Smulski who told Livesey to countermand Sgt Smith’s order. In that respect Livesey is mistaken.
- 2.934** I should add that there was a suggestion that Sgt Smith did not at any time give an order for the hoods and plasticuffs to be removed. I reject this suggestion. In my judgment the existence of Sgt Smith’s note and Livesey’s evidence demonstrate that Sgt Smith did give the initial order.
- 2.935** Livesey also remembered Smulski using a metal pole to keep the Detainees awake, and telling the guard to do the same. He said as the night wore on the condition of the Detainees seemed to be worsening.¹³⁰⁸
- 2.936** On Monday Livesey said he visited the TDF on two or three occasions. This was more visits than he had previously admitted to making. He said he made these visits out of curiosity.¹³⁰⁹ The Detainees were still in stress positions and hooded. He also saw them being roughly handled. When he was asked who was present on those occasions Livesey named Payne but was unable to identify any of the guards. He explained he had been away from the Regiment for some while and was unfamiliar with the names of most of the soldiers. He remembered the guards shouting at the Detainees, “*Things like “Get your arms out” – if they were kneeling...*”¹³¹⁰ In answer to the question “*Was it apparent to you that the detainees were obviously physically very exhausted?*” he responded, “*They were drained.*”¹³¹¹
- 2.937** In assessing Livesey as a witness I take into account that he was guilty of an unprovoked and cowardly assault on D002. There was, as he readily admitted, no excuse for what he did. On any view it was a serious breach of discipline by a senior NCO. It may also be an illustration of a more general lack of discipline amongst NCOs at BG Main (see Chapter 14 above).
- 2.938** In mitigation, it can be said that it must have taken some courage for Livesey to make this admission in his evidence to the Inquiry. However, in my view it strengthens the credibility of the rest of his evidence.
- 2.939** Livesey’s description of what he saw and the condition of the Detainees fits with the evidence of the Detainees and other witnesses whom I found truthful and accurate, and I accept it. Nevertheless, Livesey cannot escape criticism for his failure to intervene after what he had seen, or to refer it higher up the chain of command. Obviously from the time of his first visit to the TDF he knew what was happening was wrong. He admitted as much. It is, in my view, no excuse to say it was for the tactical questioner, the SME, to determine what happened in the TDF. Knowing what

¹³⁰⁷ MOD030849

¹³⁰⁸ Livesey BMI 39/51/8-52/11

¹³⁰⁹ Livesey BMI 39/53/4-11

¹³¹⁰ Livesey BMI 39/57/17-59/19

¹³¹¹ Livesey BMI 39/54/18-20

was happening was wrong he should have taken steps to stop it. His failure to do so represents a serious breach of duty.

Sgt Smith

- 2.940** Sgt Smith was the 1 QLR Provost Sergeant throughout 1 QLR's Op Telic tour.¹³¹² As such, he was responsible for the day-to-day administration of detainees in the TDF. At the start of the tour he was answerable to Briscoe, who as RSM had responsibility for the Regimental Provost staff. After the creation of the post of BGIRO (although he did not specifically remember the name of the post) Sgt Smith said he became responsible first to Royce and then Peebles for detainees in the TDF. At this point, Briscoe fell "*mainly out of the equation*" because he was engaged with the Commanding Officer's TAC group.¹³¹³
- 2.941** Sgt Smith was aware that those detained in the TDF in general were forced to adopt "*uncomfortable positions*" (facing the wall with their hands on their heads) but nothing like the sort of position shown in the Payne video (the ski position with arms held out horizontally).¹³¹⁴ Detainees were routinely hooded when brought into and escorted around the BG Main camp. He said that whether they were hooded inside the TDF depended on whether they posed some sort of threat. In the TDF it was his responsibility to decide whether detainees should remain hooded, although he often left it to the multiple commander to decide.¹³¹⁵
- 2.942** In theory, either he or Payne should always have been in the TDF when detainees were there. They were responsible for looking after (including feeding and watering) detainees. However, because each of them had other jobs it was not always possible for either of them to be there.¹³¹⁶ Sgt Smith explained that in addition to his post of Provost Sergeant, he performed duties as watchkeeper in the Operations Room, he acted as Capt John Seaman's (the Intelligence Officer) driver, he had responsibility for supervising the guards in the camp sangers and he was head of the criminal desk in the intelligence cell.¹³¹⁷ He described himself in his Inquiry statement as "*overstretched*".¹³¹⁸
- 2.943** Seaman had a different view of Sgt Smith. He thought he was lazy.¹³¹⁹ It was suggested by him that Sgt Smith's nickname was "*the Ace of Spades*" because, like Saddam Hussein, whenever he was needed he could not be found.¹³²⁰
- 2.944** On Sunday 14 September, Sgt Smith was deployed to the TIF at Um Qasr, transferring to the TIF a group of detainees who had been arrested the day before. He left BG Main at 09.00hrs and did not return until 18.00hrs. At that time he learnt of the arrest

¹³¹² Sgt Paul Smith BMI 44/62/16-18

¹³¹³ Sgt Paul Smith BMI 44/87/17-91/25

¹³¹⁴ Sgt Paul Smith BMI 44/80/14-83/19

¹³¹⁵ Sgt Paul Smith BMI 44/74/5-78/22

¹³¹⁶ Sgt Paul Smith BMI 44/93/10-94/8

¹³¹⁷ Sgt Paul Smith BMI 44/69/10-70/10; Sgt Paul Smith BMI 44/166/13-22; Sgt Paul Smith BMI04992, paragraph 10

¹³¹⁸ Sgt Paul Smith BMI04993, paragraph 15

¹³¹⁹ Seaman BMI 55/52/13-53/2. Cf Briscoe who disagreed with suggestion that Smith was lazy: Briscoe BMI 43/145/12-18

¹³²⁰ Sgt Paul Smith BMI 44/163/22-164/19, based on Seaman's evidence at BMI03265, paragraph 21.

and detention of the Detainees. On return, he understood their detention was being controlled by Payne.¹³²¹

- 2.945** In his SIB statement Sgt Smith said that on his return to BG Main on Sunday evening he saw soldiers walking one or two Detainees from the TDF to the room where tactical questioning took place. They were hooded and plasticuffed.¹³²²
- 2.946** At 21.45hrs on the same day he walked past the TDF. On his way past he stopped and spoke to MacKenzie. He saw that the Detainees in the TDF were hooded and plasticuffed. He was concerned for their welfare and asked the guards to remove the hoods and plasticuffs and allow them to rest. He also ensured that there was plenty of water available for them.¹³²³ It has been suggested that this incident did not occur.¹³²⁴ I reject that suggestion. I am sure that it did. It is supported by Livesey's evidence that later on the same evening he found the Detainees unhooded, without plasticuffs and resting. As Livesey related in evidence, he countermanded Sgt Smith's order. In addition the statement which MacKenzie and Pte Cooper agreed they had signed recording Sgt Smith's order has survived.¹³²⁵ This written statement fully supports Sgt Smith's evidence.
- 2.947** Sgt Smith said he walked past the TDF again at approximately 02.50hrs on Monday. At that time he saw and spoke to Livesey, who was by or in the TDF. Sgt Smith did not go inside. He said Livesey informed him that he had countermanded Sgt Smith's earlier order. Sgt Smith then went on duty as Watchkeeper between 03.00hrs and 06.00hrs.¹³²⁶
- 2.948** During Monday, Sgt Smith said he was tasked on other duties which kept him from the TDF.¹³²⁷ He first heard of Baha Mousa's death from Payne shortly after 22.00hrs when Payne came to his accommodation looking shaken and shocked.¹³²⁸ I refer in greater detail to Sgt Smith's actions on Monday in Chapter 21.
- 2.949** On Tuesday Sgt Smith took part in the transfer by road of the Detainees to the TIF. He described them on departure from BG Main as in "*a right sorry state*" and said "*some of them looked uncomfortable walking*".¹³²⁹

Conclusions

SSgt Davies and Smulski

- 2.950** SSgt Davies impressed as a fair witness who I accept when questioning the Detainees acted in accordance with what he believed he had been taught. There is no evidence that he physically assaulted or touched any Detainee, or that he saw

¹³²¹ Sgt Paul Smith BMI 44/120/23-122/12; Sgt Paul Smith MOD000213

¹³²² Sgt Paul Smith MOD000213

¹³²³ Sgt Paul Smith BMI 44/108/1-110/1; Sgt Paul Smith BMI 44/123/16-124/21; Sgt Paul Smith MOD000214

¹³²⁴ SUB002294-6

¹³²⁵ MOD019669

¹³²⁶ Sgt Paul Smith BMI05007, paragraph 65; Sgt Paul Smith BMI05008, paragraph 68

¹³²⁷ Sgt Paul Smith BMI05008, paragraph 68; Sgt Paul Smith MOD000214

¹³²⁸ Sgt Paul Smith BMI 44/125/15-127/9

¹³²⁹ Sgt Paul Smith BMI 44/132/17-134/14

others assaulting them. He agreed that he used the harsh technique, at the time a technique which he said was taught at Chicksands.¹³³⁰

2.951 Although SSgt Davies said in evidence that he could only remember going to the TDF once and that with Peebles at 21.00hrs, in my opinion it is likely that he went on at least one other occasion and possibly two other occasions. This would accord with Peebles' evidence of a visit both of them made at 16.30hrs and Livesey's evidence of a visit he and SSgt Davies made at about 18.00hrs to 19.00hrs. It also seems to me more likely that he went to the TDF on the first occasion at some time before 19.15hrs, the time when he first questioned D005. This would help explain how he and Peebles came to agree that D005 should be the first Detainee to be questioned. However, whether one of these visits was the one I refer to below is not certain.

2.952 I accept that as SSgt Davies asserted, he went into the TDF later on Sunday evening. I further accept that the room was in darkness and that it was difficult to see the precise condition of the Detainees. I recognise that SSgt Davies could have visited during a break in stress positions and may not have seen the Detainees in stress positions. Nevertheless, I find it difficult to understand how he was not aware of the condition of the Detainees. Livesey, whose evidence on this point I accept, graphically described the conditions in the TDF and of the Detainees when he made his first visit on Sunday evening, as he says, between 18.00hrs and 19.00hrs with SSgt Davies. Although Livesey may be mistaken that SSgt Davies accompanied him on that occasion, it is hard to reconcile his evidence of what he saw with SSgt Davies' description of the Detainees on the visit he admitted making on Sunday evening.

2.953 In my judgment SSgt Davies must have noticed the condition of the Detainees on the one visit to the TDF which he admitted he made on Sunday evening and his bland description of what he saw on that occasion was not accurate. By the time SSgt Davies went to the TDF either on Sunday afternoon or Sunday evening, Payne had already, as I find, started his campaign of physically bullying the Detainees. Their distress was such as to cause Livesey concern on his visit in the early evening and in my opinion should at that time have been obvious. Even in the darkness of SSgt Davies' later visit to the TDF, he must, in my view, have seen that the Detainees were at least uncomfortable and in distress. By then they would probably have been hooded and in stress positions for six hours, although, as I observe above, at the time of SSgt Davies' visit it is possible they may not have been in stress positions. But I do not accept they were calm. SSgt Davies' evidence was that on this visit the guards were shouting at the Detainees, an indication that the Detainees were doing something to which the guards took exception, possibly not maintaining stress positions.

2.954 In reaching this conclusion I do not place any reliance upon the evidence of the second in command of 21 Military Intelligence Company at Brigade, WO2 Roderick Paterson. In his Inquiry witness statement, Paterson had remembered SSgt Davies mentioning, after returning from BG Main, that the Op Salerno Detainees "*appeared to have been 'roughed up' a bit during their arrest.*"¹³³¹ However, on reflection, in his oral evidence, Paterson altered this account, saying that it may well have related to another occasion and different detainees.¹³³²

¹³³⁰ SSgt Mark Davies BMI 42/131/15-133/11

¹³³¹ Paterson BMI02623, paragraph 41

¹³³² Paterson BMI 76/122/25-123/7; Paterson BMI 76/131/13-136/4

- 2.955** It follows from these findings that, in my judgment, SSgt Davies ought to have reported what he had seen up the chain of command. The fact that he was with a senior officer, Peebles, is mitigation for SSgt Davies doing nothing but not an excuse.
- 2.956** In addition, SSgt Davies must share with Peebles the responsibility for the generator incident involving D005.
- 2.957** As I have already observed, Smulski was singularly unprepared for the task of tactical questioning. His qualification had taken place in 1999 and he had no refresher training or interim experience. Under current rules, his qualification would have been well out of date, but that was not the situation at the time of these events.
- 2.958** I accept that Smulski genuinely thought that making a noise to keep the Detainees awake was permissible. But his example and his encouragement of the guards to use the metal pole to keep the Detainees awake was, in all the circumstances, wrong and contributed to their distress. As with SSgt Davies, in my view, Smulski must have realised that the Detainees were in a sorry state throughout Monday. On his last visit to the TDF on Monday afternoon, Smulski must have seen how appalling the conditions were in the TDF and the physical state of the Detainees as described by Livesey and Redfearn, amongst others. He would also have been able to observe the condition of the Detainees when he was questioning them.
- 2.959** Both SSgt Davies and Smulski were aware that the Detainees were hooded although neither may have considered that this was solely as an aid to tactical questioning. Both denied that they had seen them in stress positions. I think it possible that SSgt Davies on his visits to the TDF did not see the Detainees in stress positions. So far as Smulski is concerned he appears to have made more visits to the TDF than SSgt Davies. Despite his denial I find it very difficult to believe he did not see the Detainees in stress positions and I find that he did. In my judgment it must have been obvious that keeping the Detainees hooded for any length of time would be stressful and all the more so if they were in stress positions, yet neither SSgt Davies nor Smulski took any steps to report these facts up the chain of command. Nor did they intervene to stop the hooding and allow the Detainees to rest. Allowing for the fact that they could reasonably have understood that Peebles, the BGIRO, would have seen what they saw, nevertheless they ought, in my judgment, to have taken steps to ensure that senior officers in the Battlegroup were made aware of the condition of the Detainees. Neither took any such steps.
- 2.960** It follows from my above findings that SSgt Davies was aware that the Detainees were hooded in the TDF pending questioning. He was also aware that hooding could cause the Detainees to be disorientated and thus aid questioning. Indeed, I find that he probably considered that one of the purposes of hooding was to cause disorientation and thereby aid the questioning process. I rely in that respect on Capt Hunt's witness statement, referred to above. Whilst recognising the risk that it may not accurately reflect his views, I also rely on Fenton's "*Death in Detention*" document which says that SSgt Davies advised the use of hooding and handcuffing "*in order to enhance the shock of capture and improve the level of information extracted from the suspect.*" Additionally, I doubt that, in theatre, SSgt Davies really said that disorientation was a by-product but not a purpose of hooding; that strikes me as the sort of nuanced distinction which he would not have made at the time. On the other hand, I have found that it is possible that he may not have been aware that the Detainees were in stress positions.

2.961 Smulski was, on my findings, also aware that the Detainees were hooded. I do not accept his assertion that he did not know whether hooding was permitted as part of the conditioning process. He said in his SIB statement of 22 June 2004: “.../ *have been taught that detainees being hooded and cuffed to restrict their vision and movement is part of what is known as the ‘Shock of Capture’ the purpose of which is to keep detainees disorientated and unaware of their surroundings.*” I find that he was also aware of the Detainees being kept in stress positions. He accepted that he ordered D005 to be taken outside and “exercised” for the purpose of aiding the tactical questioning procedure. He also ordered the Detainees to be kept awake by the use of loud noise so as to unsettle them; again, for the purpose of aiding the tactical questioning process.

2.962 Although I do not suggest that either SSgt Davies or Smulski had in their training or otherwise been made aware of the Heath Statement, it is clear from these findings that some of the very techniques which were banned in 1972 from use as aids to interrogation were being employed, at least in September 2003, by 1 QLR, and were condoned by Chicksands trained tactical questioners.

Sgt Smith

2.963 I accept that Sgt Smith did order MacKenzie and Pte Cooper to remove the hoods and plasticuffs from the Detainees and was annoyed when he found his order had been countermanded. Apart from one further visit to the TDF which he said he made very early on Monday, I accept that he did not go to the TDF until after Baha Mousa’s death. Whether he bears any responsibility for what happened in the TDF, I will discuss in a later chapter.

Peebles

2.964 I shall comment on Peebles’ part in these events later in the Report. For present purposes, I do not accept that Peebles was unaware of the condition of the Detainees on either Sunday or Monday. The evidence of other witnesses illustrates the state of the Detainees and the conditions in the TDF on both Sunday and Monday. Peebles visited the TDF on more than one occasion on each day. In my judgment he must have been aware of conditions Livesey described as shocking (Monday early evening) and Redfearn indescribable (early Monday morning). He knew throughout their detention that the Detainees were hooded and were being made to hold stress positions. The facilities for rest and relaxation in the TDF were non-existent. The heat during the day must have been very oppressive. I suspect that Peebles did know of the physical abuse of the Detainees by Payne and others. Even if he did not, I find it incomprehensible that he could not have understood the serious adverse effect of hooding and stress positions, coupled with the heat on the Detainees over the period of 36 hours. The tactical questioning must have added to the oppressive nature of the Detainees’ detention.

2.965 Peebles must also share responsibility with SSgt Davies for the generator incident and its effect on D005.

2.966 At no stage before Baha Mousa’s death did Peebles see fit to mention to the second in command, Maj Chris Suss-Francksen, or the Commanding Officer, Mendonça, what he had seen in the TDF, or to intervene himself. In my judgment he ought to

have done. I accept that he believed that hooding and stress positions had been sanctioned by Brigade. But even allowing for this sanction Peebles ought also to have ordered the cessation of hooding and stress positions long before Baha Mousa's death. Although the Detainees were probably always destined to be transferred to the TIF, there was in my view no vestige of justification for any of them to remain hooded and in stress positions after they had been questioned. Furthermore, I find it impossible to understand why given the heat and squalid conditions in the TDF, and the obvious distress of the Detainees, Peebles did not put a stop to "conditioning" many hours earlier.

- 2.967** I add here that Payne said that at one stage after the tactical questioning had finished he asked Peebles if the Detainees could be released from their stress positions. He said Peebles and Smulski told him that the JFIT wanted the shock of capture maintained until they were transferred to them.¹³³³ Peebles denied that any such conversation took place.¹³³⁴ I find that Payne's evidence is insufficiently reliable for me to conclude that this allegation is true.
- 2.968** The fact that weapons and false identity cards were found at the Hotel, coupled with C001's escape in my judgment provided justification for the work of the tactical questioner. In the circumstances, in my opinion, tactical questioning was necessary and proportionate. Nevertheless, the whole procedure, and in particular the use of the harsh technique, must have been particularly stressful for the Detainees.
- 2.969** I observe that had Peebles or anyone else involved in the tactical questioning process at BG Main been aware of the Heath Statement and Brims' order, or even FRAGO 152, it would have been appreciated that hooding and stress positions as aids to tactical questioning should never have been used.

¹³³³ Payne BMI 32/90/1-91/4; Payne BMI01746, paragraph 107

¹³³⁴ Peebles BMI 40/136/24-137/8

Chapter 16: Baha Mousa Dies

2.970 This chapter deals with the events surrounding the death of Baha Mousa in four sections. They are:

- (1) the arrival of the Rodgers Multiple;
- (2) the final struggle;
- (3) the pathologists' evidence;
- (4) conclusions.

The Arrival of the Rodgers Multiple

2.971 At approximately 21.15hrs the Rodgers Multiple returned to BG Main to relieve the afternoon guard of Aspinall, Bentham and Pte Lee Graham. An entry at 21.00hrs in A Company's Watchkeeper's log shows that the Multiple, when en route to BG Main, had to deal with an incident at a petrol station.¹³³⁵ In the light of this it seems likely that the Multiple arrived at BG Main some time between about 21.15hrs and 21.30hrs. Rodgers said he went straight to a briefing with Peebles elsewhere in the camp.¹³³⁶ It is not suggested that he was present in the TDF immediately before or at the time Baha Mousa died.

2.972 According to Bentham, Payne arrived at the TDF some minutes before the Multiple. Bentham said he was in the TDF when he saw Baha Mousa standing up outside the middle room without his plasticuffs. Payne then appeared and after they had struggled with Baha Mousa, trying to put his plasticuffs back on, the Multiple arrived.¹³³⁷ Payne's recollection is that Pte Cooper was the first to help him to replace Baha Mousa's plasticuffs. He made no mention of Bentham.¹³³⁸

2.973 Aspinall said that as soon as the Multiple arrived he and Pte Lee Graham, both of whom with Bentham had been on guard throughout Monday afternoon, went to the Saxons while Payne and other members of the Multiple were in the TDF. There was a lot of noise and shouting from the TDF. He had a sense of foreboding about what was to happen. He confessed to feeling that "*...it was getting out of control and that something – something really bad could happen...*" He remembered saying to Pte Lee Graham that evening, "*...something is going to happen tonight, it can't go on like this...*".¹³³⁹ I accept that by this stage Aspinall was anxious to get away from the TDF and all that had been going on in it. I further accept that he played no part in the final moments of Baha Mousa's life.

2.974 Pte Lee Graham added little to the events immediately preceding Baha Mousa's death. In his SIB statement made in October 2003, he said that at 21.00hrs on that evening he was relieved of his duty by a number of soldiers whom he identified. He said that before departing from the TDF that evening he learned that one of the prisoners had collapsed in custody.¹³⁴⁰ Whether or not he was in the TDF at any material time there is no evidence that he took any active part at this stage.

¹³³⁵ MOD016806. See also, to similar effect, the entry in BG Main's radio log at MOD016585.

¹³³⁶ Rodgers BMI 30/66/15-67/5; Rodgers MOD000222

¹³³⁷ Bentham BMI 41/119/23-121/2

¹³³⁸ Payne BMI 32/114/6-117/4

¹³³⁹ Aspinall BMI 28/72/25-74/6; Aspinall BMI 28/89/13-19

¹³⁴⁰ Pte Lee Graham MOD000153

- 2.975** Stirland, who had driven one of the Saxons bringing the Multiple back to BG Main, said that he remained in his vehicle.¹³⁴¹ No one mentioned him as playing any part in the ensuing events and I find that he saw and did nothing.
- 2.976** Pte Hunt remembered arriving at the TDF and hearing shouting coming from inside. His first recollection of events inside the TDF was seeing attempts to resuscitate Baha Mousa after the struggle was over.¹³⁴² Whether or not he was in a position to observe what was happening, there is no evidence that he took any active part in this incident.
- 2.977** Appleby remembered that on arrival he saw a large number of soldiers around the middle room, some from his Multiple and others from different 1 QLR units. He saw Payne pouring water into Baha Mousa's mouth and remembered a soldier, possibly Reader, throwing up after giving mouth to mouth resuscitation.¹³⁴³ There is no evidence that apart from Payne, there were soldiers from other units present and in my opinion Appleby's recollection in that respect is at fault. In any event, his evidence does not throw any light on the principal events leading to Baha Mousa's death.
- 2.978** MacKenzie said he went into the TDF on the Multiple's arrival at BG Main. He remembered "*flitting between the rooms*", as he said, to deal with other prisoners. He also remembered a struggle and seeing Payne kneeling by a Detainee. MacKenzie gave conflicting versions of what he had seen in previous written statements.¹³⁴⁴ In his first SIB statement dated 10 October 2003 he described seeing Payne kicking and punching Baha Mousa.¹³⁴⁵ In a subsequent statement dated 15 August 2006 he explained his first statement was not accurate.¹³⁴⁶ Whichever account is correct, his versions of the events surrounding Baha Mousa's death do not suggest he played any part in it and his evidence threw no credible light on what happened.
- 2.979** Douglas, the driver of one of the Saxons, explained that he went into the TDF on arrival at BG Main. He said he did so out of curiosity when everybody else went in.¹³⁴⁷ Douglas gave important evidence about what he saw of the struggle, to which I shall refer in the next sections.
- 2.980** Redfearn also had a premonition that something serious might occur. He said that from earlier in the day he "*knew that there was going to be a serious incident...*".¹³⁴⁸ He said having been delayed at the incident on the way to the TDF he arrived a little after others had gone into the building.¹³⁴⁹
- 2.981** Reader and Pte Cooper went into the TDF on the arrival of the Multiple. Their evidence of what happened is significant and important and I refer to it in the next Part.

¹³⁴¹ Stirland BMI 38/39/18-40/8

¹³⁴² Pte Jonathan Hunt BMI 27/120/13-121/24

¹³⁴³ Appleby BMI 25/69/16-74/67

¹³⁴⁴ Mackenzie BMI 29/173/25-183/12

¹³⁴⁵ Mackenzie MOD000118

¹³⁴⁶ Mackenzie MOD000919-21

¹³⁴⁷ Douglas CM 46/45/1-13

¹³⁴⁸ Redfearn BMI 30/190/18-191/21

¹³⁴⁹ Redfearn BMI 30/180/18-23

2.982 Kenny must have arrived at the TDF with the Multiple but he had no recollection of these events.¹³⁵⁰ Allibone said he was asleep in the back of a Saxon when these events occurred.¹³⁵¹ Richards had probably already departed to go on leave.

The Final Struggle

2.983 It is agreed by all those who admit to being in the TDF before the struggle started and who saw Baha Mousa at that stage that he was standing up either in the centre room or near the entrance to the right-hand room from the internal corridor. At that point he had extracted his wrists and thumbs from the plasticuffs, at least according to Bentham, Payne and Pte Cooper, and had removed his hood. What is not agreed is who were the first soldiers to approach him.

2.984 There are only two soldiers, Pte Cooper and Payne, who admit being present and involved in the final struggle. Pte Cooper said Reader was present helping to restrain Baha Mousa.¹³⁵² Reader said he saw Baha Mousa being forced into the middle room but then left the TDF and returned to the middle room only after the struggle was over.¹³⁵³ Payne said Redfearn came in during the struggle and Douglas said that Redfearn was involved in the early stages of the final struggle.¹³⁵⁴ Redfearn admitted that he entered the room during the struggle but said he then left.¹³⁵⁵ Douglas said he was present in the final moments although nobody else said they saw him there.¹³⁵⁶

2.985 I have already recounted Bentham's evidence that he was the first to see Baha Mousa standing up with his hood off and plasticuffs removed. He said that he pushed Baha Mousa back into the middle room and made him sit down. At that stage Payne appeared and the two of them tried unsuccessfully to put on the plasticuffs. They took turns, one trying to keep his hands together while the other tried to put on the plasticuffs. Whilst they were doing this Bentham said Pte Cooper arrived with the rest of the Multiple and took over from him. He asserted that at no time did he or Payne strike any blow to Baha Mousa.¹³⁵⁷

2.986 Reader gave a different account of the start of the struggle. He has consistently said that on entering the TDF that evening he saw Baha Mousa standing with his hood removed. He was unsure whether Baha Mousa was wearing plasticuffs at this point. He immediately shouted out and Pte Cooper reacted. Although not one hundred per cent certain, he thought that Payne immediately followed Pte Cooper. Both men then grabbed hold of Baha Mousa and a struggle ensued as they tried to get him into the centre room. He also said that he saw Baha Mousa being dragged, kicked and punched by Pte Cooper and Payne as they were taking him into the middle room. Both men were kicking him on various parts of the body: "...legs, arms, generally all round his body..." Baha Mousa was moved out of his sight and into the middle room. He heard shouting: "...*Get on the fucking floor, get down, get down*". At that point

¹³⁵⁰ Kenny BMI 25/146/3-147/16

¹³⁵¹ Allibone BMI 24/176/11-14

¹³⁵² Pte Aaron Cooper BMI 29/58/9-19

¹³⁵³ Reader BMI 28/170/1-173/9

¹³⁵⁴ Douglas BMI 31/47/9-48/2; Payne BMI 32/120/13-121/8

¹³⁵⁵ Redfearn BMI 30/184/1-8

¹³⁵⁶ Douglas BMI 31/45/19-53/25

¹³⁵⁷ Bentham BMI 41/119/18-123/2

Reader said he went outside and spoke to Pte Lee Graham before returning to the middle room approximately ten minutes later.¹³⁵⁸

- 2.987** Reader said that he came back into the centre room about ten minutes after he had been there previously. At that time the struggle was over and he had gone back in to check whether Baha Mousa was alright, because he knew Baha Mousa had just had a good kicking. At that time Baha Mousa was hooded and plasticuffed. Seeing Baha Mousa's condition he called for a knife and cut off the plasticuffs. He then started CPR, but to no avail. On the arrival of the medics he handed over to them.¹³⁵⁹
- 2.988** Reader accepted that his account to the Inquiry of these events included a great deal more detail than his earlier accounts, to the Court Martial and the SIB.¹³⁶⁰ He did not, for example, mention in his SIB statement of 12 October 2008 that Payne and Pte Cooper had punched and kicked Baha Mousa when forcing him back into the middle room.¹³⁶¹ He conceded that at the Court Martial he had lied. His explanation for the differences between his SIB statement and his Inquiry statement was that the SIB officers manipulated the answers he gave. As for the Court Martial, he said he did not tell the truth for fear of the effect it would have on his career. He said "*High ranking people involved*" would block his career.¹³⁶²
- 2.989** Pte Cooper's version of the start of his involvement with Baha Mousa on Sunday evening was as follows. He remembered getting out of the vehicle on arrival at the TDF and hearing a voice in English shouting, "*Can someone help me please*". He went straight into the middle room where he saw Payne struggling with a Detainee, obviously Baha Mousa. Payne and Pte Cooper managed to get Baha Mousa to the floor. With Baha Mousa lying face down on the floor with Payne's knee in his back, Pte Cooper assisted in replacing Baha Mousa's plasticuffs. They managed to do this twice, but each time Baha Mousa broke free again. On the second occasion they were assisted by Reader.¹³⁶³ Reader denied giving such assistance at this stage.¹³⁶⁴ Pte Cooper said that when Baha Mousa broke free for the second time, "*Obviously Corporal Payne was rather annoyed*".¹³⁶⁵
- 2.990** Pte Cooper said that after Baha Mousa broke free for the second time, Payne's facial expression changed. He stood up and gave Baha Mousa a "*good kicking*", punching and kicking him to his head and the area of his ribs. The force of the kicks was such that Baha Mousa's head was banged against the wall. In addition, he said with his hands Payne deliberately banged Baha Mousa's head against the wall a few times.¹³⁶⁶ Although his evidence on this point was not completely clear, he appeared to say that Baha Mousa's head sustained at least the following six blows: one kick to the left-hand side of the head, which caused the right-hand side of the head to hit the wall, three occasions when Payne used his hands to hold the head and bang it against the wall, each time on the right-hand side of the head, and one occasion on which a kick to the ribs caused the right-hand side of the head to hit the wall.¹³⁶⁷

¹³⁵⁸ Reader BMI 28/170/1-173/4

¹³⁵⁹ Reader BMI 28/172/8-175/2

¹³⁶⁰ Reader BMI 28/215/1-10

¹³⁶¹ Reader MOD000206

¹³⁶² Reader BMI 28/125/7-126/24

¹³⁶³ Pte Aaron Cooper BMI 29/53/23-58/23

¹³⁶⁴ Reader BMI 28/222/12-223/10

¹³⁶⁵ Pte Aaron Cooper BMI 29/59/3-17

¹³⁶⁶ Pte Aaron Cooper BMI 29/59/5-62/17

¹³⁶⁷ Pte Aaron Cooper BMI 29/124/14-128/2

- 2.991** Pte Cooper estimated that this violent assault on Baha Mousa by Payne lasted no more than 30 seconds. During the assault Baha Mousa was barely moving, save that he tried to defend himself from the kicks and punches to the ribs. When Payne stopped, Baha Mousa neither moved nor made any sound. Someone was present holding a torch; at the time he did not know who it was, but from other evidence he now understood it to be Redfearn. He checked to see if Baha Mousa had a pulse but found none. Reader then took over.¹³⁶⁸
- 2.992** Pte Cooper admitted that his accounts of this incident in his SIB interview¹³⁶⁹ and statement¹³⁷⁰ in 2003 and in his evidence to the Court Martial were lies. In the first two of those accounts, the interview and the statement, he asserted that whilst Payne did assault Baha Mousa during this episode (although the level of violence attributed to Payne differed as between these two accounts), Baha Mousa did not stop moving until after hitting his own head against the wall. He thereby portrayed the death as an accident. He told the Inquiry this was an attempt to protect Payne but accepted that other parts of his previous evidence in no way protected Payne.¹³⁷¹ At the Court Martial he even went so far as to assert that he did not lie when on oath.¹³⁷²
- 2.993** Douglas gave yet another version of the incident. He was drawn to the middle room of the TDF by noises, namely shouting in English, slaps, shouting and moaning. He said that when he went into the middle room Payne was there with someone else. Baha Mousa was not trying to escape, nor was he fighting. Insofar as he was moving at all, it was only “*very slightly*”. He thought there was another person, who he believed was Redfearn. He saw Redfearn jump on Baha Mousa’s legs and Payne give him a couple of punches and slaps. Baha Mousa was either lying down or possibly on all fours. He amplified this description, saying Payne punched Baha Mousa “...*four, five, six times, maybe*” about the head area. He then left to get a torch from his vehicle.¹³⁷³
- 2.994** In answer to questions asked by Counsel representing Redfearn, Douglas accepted that the TDF at the time was very dark, albeit it was lit with clyume lights. He also accepted that he might have mistaken Redfearn for Pte Cooper. He said, “*There is always a chance I could have mistaken, but as I say, I will go by my first statement, as I said. And I can’t speculate now*”.¹³⁷⁴ In his first statement dated 12 October 2003 he had identified Redfearn as the one who jumped on Baha Mousa’s legs.¹³⁷⁵ He agreed with Counsel for Pte Cooper that the two were of entirely different build and appearance.¹³⁷⁶
- 2.995** Douglas said that having fetched his torch from his vehicle he returned to the centre room. At that point he did not remember seeing anyone other than Payne. What he said he saw was Payne punching Baha Mousa randomly to the head. He remembered Baha Mousa then being flung across the room by Payne. Baha Mousa’s head and

¹³⁶⁸ Pte Aaron Cooper BMI 29/62/18-64/19

¹³⁶⁹ Pte Aaron Cooper MOD001256

¹³⁷⁰ Pte Aaron Cooper MOD000099

¹³⁷¹ Pte Aaron Cooper BMI 29/66/2-83/12

¹³⁷² Pte Aaron Cooper CM 62/44/16-45/18

¹³⁷³ Douglas BMI 31/45/19-50/19; Douglas BMI 31/78/20-79/9

¹³⁷⁴ Douglas BMI 31/81/8-85/6

¹³⁷⁵ Douglas MOD000186

¹³⁷⁶ Douglas BMI 31/93/6-94/17

shoulder came into contact with the wall. Douglas said, "...he was dying at that point. He had died". Payne then left the room.¹³⁷⁷

- 2.996** Payne's account of this incident started with him seeing Baha Mousa standing outside the middle room (or possibly in the corridor between the different rooms) and walking towards the door, with his hood and plasticuffs off. Payne shouted that he thought Baha Mousa was trying to escape, at which point Baha Mousa turned his back on him. There was no contact between the two of them until he put his knee in the small of Baha Mousa's back, his hand across his face, pulled him back, and used his knee to push Baha Mousa forward. This put Baha Mousa on the floor in the middle room. At that stage Pte Cooper came and helped him. Baha Mousa was face down on the ground, with Payne's knee on his back, as he and Pte Cooper tried to replace the plasticuffs. Payne said they managed to put the plasticuffs back on Baha Mousa but he was thrashing about and broke free.¹³⁷⁸
- 2.997** Payne made no mention of Bentham, Douglas or Reader being present either before Pte Cooper arrived or at any time thereafter.¹³⁷⁹
- 2.998** Payne made no allegation of violence by Pte Cooper. He said that when the plasticuffs were successfully applied for the second time he and Pte Cooper sat Baha Mousa up and Pte Cooper checked his pulse. At that stage they realised that he was in a serious condition. Payne explained that in the course of the struggle to re-attach the plasticuffs Baha Mousa was thrashing about and his head struck either the wall or the floor. He heard a "*whack*" from Baha Mousa's head but did not know what it had struck.¹³⁸⁰
- 2.999** Payne said Redfearn came in and out with the torch but played no part in the efforts to restrain Baha Mousa. He denied losing his temper. He denied kicking or punching Baha Mousa and he denied deliberately banging his head against the wall or floor.¹³⁸¹
- 2.1000** Redfearn's account was that having arrived at the TDF, he heard shouting and screaming of soldiers and Detainees coming from the TDF. As he went in he was handed a torch, there having been a power cut. By the time he got into the middle room Payne and Pte Cooper were with a Detainee, obviously Baha Mousa. All three were near to the top left-hand corner of the middle room. Baha Mousa was face-down on the floor, with Pte Cooper and Payne on his back. They were trying to put plasticuffs on Baha Mousa. He said both appeared to be "*Panicking, shouting at each other, telling each other what to do*". Baha Mousa was hooded and thrashing about on the floor, banging his head off the floor and wall. He denied jumping on Baha Mousa's legs. Redfearn said that, believing the two men were able to control Baha Mousa, he left to see what was going on in the right-hand room. Redfearn said that when he came back into the centre room Pte Cooper and Payne were standing up and staring at Baha Mousa, who was sitting motionless, propped up against the wall.¹³⁸²

¹³⁷⁷ Douglas BMI 31/50/13-53/25

¹³⁷⁸ Payne BMI 32/114/11-118/7; Payne BMI 32/140/3-23; Payne BMI 32/142/24-143/22

¹³⁷⁹ Payne BMI 32/121/2-4

¹³⁸⁰ Payne BMI 32/116/9-123/10

¹³⁸¹ Ibid.

¹³⁸² Redfearn BMI 30/180/25-190/12

2.1001 It soon became clear that Baha Mousa's condition was very serious.

2.1002 Keilloh, the RMO, was summoned to the TDF and, finding no signs of spontaneous life, immediately started to give Baha Mousa mouth to mouth resuscitation. He said that Baha Mousa vomited into his mouth. After about a minute a stretcher arrived and Baha Mousa was conveyed to the Regimental Aid Post (RAP).¹³⁸³

2.1003 At the RAP Baha Mousa was placed on a bed and CPR was carried out by the whole medical staff acting as a team. It lasted about twenty to 30 minutes before all agreed that Baha Mousa could not be revived. Attempts to resuscitate him ceased.¹³⁸⁴ His death was certified by Keilloh as having occurred at 22.05.¹³⁸⁵

The Pathologists

The post mortem

2.1004 Dr Ian Hill, OBE, an accredited Home Office pathologist, carried out a post mortem examination on Baha Mousa's body on 21 September 2003.¹³⁸⁶ The Inquiry commissioned its own report from Dr Deryk James, also an accredited Home Office pathologist. James produced two reports.¹³⁸⁷ Both pathologists gave evidence at the Inquiry.

2.1005 There is no dispute that Baha Mousa's body had sustained 93 different external injuries, as well as numerous internal injuries.¹³⁸⁸ In summary, Dr Hill identified multiple bruises and grazes situated on the head, neck, torso and the upper and lower limbs. There was distortion, swelling and bleeding from the nose, which had been fractured. There was slight swelling of the brain, a large area of bruising on the left side of the chest measuring 12 cm x 10 cm, and fractures of the 7th and 8th ribs close to the spine and the 8th and 9th ribs in the mid axillary line.

2.1006 Dr Hill based his findings on the cause of death on the physical examination of the body and statements available to him made by soldiers about the circumstances surrounding the death. At the stage he made his report he concluded that the cause of death was a combination of strangulation, postural asphyxia and multiple injuries.¹³⁸⁹

2.1007 Following Dr Hill's report, later reports were commissioned for the Court Martial from Prof Christopher Milroy¹³⁹⁰ and Prof Jack Crane.¹³⁹¹ In addition, since Dr Hill's report there is more comprehensive witness evidence available which has resulted in Dr Hill re-addressing his initial findings. When Dr Hill wrote his first report, he was led to believe that during the final struggle, the hood over Baha Mousa's head was being pulled tightly. The witness evidence does not in fact support this suggestion. Therefore, in his statement to the Inquiry, Dr Hill modified his report: he said that, if

¹³⁸³ Keilloh BMI 36/121/22-123/ 21

¹³⁸⁴ Keilloh BMI 36/123/22-124/16

¹³⁸⁵ Keilloh BMI 36/153/19-21; Keilloh MOD000351-2; MOD015346

¹³⁸⁶ MOD000381

¹³⁸⁷ James BMI05349; MOD046527

¹³⁸⁸ James BMI 33/4/25-5/3; MOD000386-92

¹³⁸⁹ MOD000393

¹³⁹⁰ Milroy BMI00795

¹³⁹¹ Crane BMI01380

the premise that someone was pulling tightly on the hood over Baha Mousa's head was incorrect, then strangulation did not play a part in the death, and the cause of death was positional or restraint asphyxia.¹³⁹²

Dr James' evidence

2.1008 The following is a summary of James' evidence and findings. Of course, he had no opportunity of examining the body. His findings are therefore based on the findings of physical injuries made by Hill and the photographs.

- (1) The head: the face and lips were swollen and the nose slightly swollen. There was extensive bruising around the eyes, nose and mouth, with an injury over the left eyebrow. The injury to the left eyebrow had an apparent fabric pattern which could have been caused by hessian sack material.¹³⁹³
- (2) The brain: the brain was slightly swollen but with no significant abnormality or damage.¹³⁹⁴
- (3) The neck: there was a linear graze to the neck which had the characteristic of a band of pressure applied broadly across the neck. The graze was linear but could have been caused by any fabric held tightly around the neck. From his knowledge that a hessian hood was worn, James said the mark could have been left behind by the tie of the hood being pulled or the hood itself being gripped from behind. There was no deep injury to the neck.¹³⁹⁵
- (4) The torso: the most significant injuries were to the front of the torso, the chest and belly. There were injuries over the top of the right shoulder below the right armpit. All these injuries were patterned, suggesting impact of blows through clothing. There was also extensive bruising to each flank of the torso and an area of extensive bruising within the chest over the outside of the left lower chest. This bruising was associated with the fractures of the 7th and 8th ribs close to the spine and the 8th and 9th ribs at the side. There was bruising and tearing of muscles between and over the fractures.¹³⁹⁶
- (5) The arms and legs: there was patterned bruising to arms and legs, and livid abrasions around both wrists. In addition there were many small grazes and bruises to the wrists. To the legs there were grazes and bruises present over the thighs, shins, calves, ankles, the left knee and the top of the left foot.¹³⁹⁷

2.1009 According to James, the presence of myoglobin in Baha Mousa's kidney indicated the breakdown of muscle tissue elsewhere in his body. This is a condition named rhabdomyolysis: the breakdown of muscle tissue releasing toxic substances including myoglobin and potassium into the circulation. It may be caused by, amongst other things, direct physical damage to the muscle or strenuous exercise. Maintaining a stress position for many hours (if it required an extended period of muscle contraction) could count as strenuous exercise for this purpose. When exercise is "extreme", severe rhabdomyolysis can occur. This is most liable to happen at high ambient temperatures and in high humidity. Severe rhabdomyolysis can result in

¹³⁹² Dr Ian Hill BMI00746, paragraphs 11-15

¹³⁹³ James BMI 33/5/9-6/4

¹³⁹⁴ James BMI 33/6/19-7/3

¹³⁹⁵ James BMI 33/7/4-8/6

¹³⁹⁶ James BMI 33/8/7-9/10

¹³⁹⁷ James BMI 33/9/11-10/5

kidney failure. Indeed, prominent myoglobin casts in Baha Mousa's kidney tubules suggested that he was in fact suffering from acute renal failure. Had Baha Mousa not died, it might reasonably be expected that he would have required prompt medical attention in order to treat these life threatening conditions.¹³⁹⁸

Causes of injuries

2.1010 James said some of the injuries to the head could have been caused by the head striking the wall or floor in the course of a struggle. Of the injuries to the torso he said the most common cause of injury to the upper arm and shoulder causing bold patterns is from stamps or kicks.¹³⁹⁹

2.1011 Asked generally about the causes of the injuries James said that in his opinion there were blunt impact injuries which could be the result of blows with the hand, fist, the elbow or the foot, or impact against surfaces including walls, the floor, the ground or furniture. He felt the injuries had the appearance of a sustained assault. The most significant injuries were the broken nose and ribs which would require quite substantial force to cause them.¹⁴⁰⁰

2.1012 When asked what nature of force he would expect in respect of those injuries James replied:

*"A kick or a stamp, or a knee heavily brought into contact with the chest. The nose can be broken by a hard punch. There are also bruises to the belly which of themselves are not particularly serious injuries, but it does take quite a bit of force to cause bruising to the front of the belly because there is no bone underneath against which to compress the soft tissues".*¹⁴⁰¹

2.1013 James explained that all the injuries could have been caused up to a period of 48 hours before death. None of the injuries were of themselves independently likely to have caused death.¹⁴⁰²

2.1014 James agreed that most of the external injuries which he had described would have been visible in life.¹⁴⁰³ Later in his evidence he said:

*"In somebody with a large number of injuries one would expect the overwhelming majority of them to be visible and quite similar to their – visible before death and quite similar to their appearance after death. But some you will find will come out in the intervening period."*¹⁴⁰⁴

2.1015 By the intervening period I understand him to have meant the period between death and post mortem.

¹³⁹⁸ MOD046539-40; MOD046554-6

¹³⁹⁹ James BMI 33/10/12-11/15

¹⁴⁰⁰ James BMI 33/12/4-21

¹⁴⁰¹ James BMI 33/12/25-13/6

¹⁴⁰² James BMI 33/13/7-14/12

¹⁴⁰³ James BMI 33/19/1-21/17

¹⁴⁰⁴ James BMI 33/61/17-22

Cause of death

- 2.1016** James ruled out injuries to the head caused by blunt force trauma as the cause of death for reasons which he explained. Taking into account the different witness accounts of the final struggle, he also ruled out the ligature mark to the neck as an identifiable cause of death.¹⁴⁰⁵
- 2.1017** James said in his opinion the cause of death was "...*'struggle against restraint' in that man exposed to whatever associated causal factors can be demonstrated to have been present*".¹⁴⁰⁶ He later clarified that, insofar as "*restraint*" was the trigger for death, being "*pushed to the ground and beaten*" would have had the "*same effect*" as restraint more narrowly defined.¹⁴⁰⁷ Similarly, when asked about the effect of a violent attack he said "...*as long as it meets the criteria as acting as a significant noxious event that is a severe physiological and psychological stress, then for me it meets the criteria to act as a trigger of sudden death.*"¹⁴⁰⁸
- 2.1018** James in his evidence went on to discuss what he meant by "*struggle against restraint*". He said it was well known that "*the occurrence of sudden death occurring in circumstances of extreme physical and psychological stress is well recognised*". He said the evidence in the literature suggests that a struggle against restraint is the most consistent and important feature. He said it is extreme physical and psychological stress when somebody is struggling, when they are exerting themselves, when they are being subjected to some noxious event that is possibly hurting them, certainly evoking fight and flight reactions, and causing them to attempt evasive action.¹⁴⁰⁹
- 2.1019** The final event is a cardio-respiratory arrest, a sudden loss of control over breathing and heartbeat which takes wide swings in control and then fails.¹⁴¹⁰
- 2.1020** However, in order for a sudden noxious event to trigger this cardio-respiratory arrest the person must be in jeopardy of an abnormal heart rhythm, that is in such a physiological state as to be at risk of generating abnormal control of the heart.¹⁴¹¹
- 2.1021** James went on to discuss the factors which can put a person at risk of abnormal heart rhythms, including: muscle injury, exertion, stress positions, high temperature, high humidity, lack of food and water, neck pressure, fear, anxiety, pain, rhabdomyolysis, lactic acidosis, dehydration, heatstroke and renal failure.¹⁴¹² In Baha Mousa's case, the factors which may have been present appeared to include exertion, exhaustion, hypothermia, rhabdomyolysis, fear/anxiety/behavioural disturbance, injury, renal failure and pressure to the neck. The physical conditions, high temperature and humidity, exertion, lack of food and water, and injury were causes of heatstroke, rhabdomyolysis and renal failure. These latter conditions could cause acidosis, raise the potassium level and "*stress*" the cardiorespiratory system.¹⁴¹³ He went on to say that:

¹⁴⁰⁵ James BMI 33/15/8-18/5

¹⁴⁰⁶ James BMI 33/22/5-13

¹⁴⁰⁷ James BMI 33/37/6-12

¹⁴⁰⁸ James BMI 33/66/7-15

¹⁴⁰⁹ James BMI 33/22/20-24/8

¹⁴¹⁰ James BMI 33/24/9-17

¹⁴¹¹ James BMI 33/24/18-25/6

¹⁴¹² MOD046705

¹⁴¹³ MOD046556

“... the rhabdomyolysis is demonstrated by the finding of myoglobin, which is a muscle protein in the kidney. So we know that had happened. The amount of myoglobin present in the kidney is of the order seen in people who have established renal failure from rhabdomyolysis. So it was a significant amount present. I can’t say from that finding that acute renal failure had to have been present in him, but it is the – the amount of damage that was present is what is seen in people who do have acute renal failure. So it would certainly be in keeping with it, though I have to say that if he were in a severe state of acute renal failure, you would not expect him to be well enough to struggle a great deal.”¹⁴¹⁴

2.1022 In layman’s terms, in the case of Baha Mousa, James explained the cause of death as follows:

“From my understanding of the background, it is in a man made vulnerable by injury, high temperature and humidity, lack of food and water, entrapment – by that, really I am meaning that he is restrained in plasticuffs with a hood over his head – and subjected to fear and pain, has suffered an event which includes struggle, restraint and assault, and that has acted as a trigger mediating death via cardio-respiratory arrest”¹⁴¹⁵

Dr Hill

2.1023 Hill did not dissent from James’ opinion although he preferred the label “*postural or restraint asphyxia*” to “*struggle against restraint*”. In his Inquiry statement he said:

“...I support the view that his bodily injuries contributed to his death because, in my opinion, the accumulation of other injuries and insults to the body would have acted detrimentally on his body’s functioning. The injuries would have caused pain and he had been kept in a hot environment and subjected to stress and all of these would have contrived to make him unwell adding to the load of adverse stimuli caused during the final struggle.”¹⁴¹⁶

2.1024 He agreed the adverse stimuli were the ones outlined by Dr James.¹⁴¹⁷

Professor Milroy

2.1025 Milroy, in a witness statement prepared for the Court Martial dated 11 January 2005, said that the evidence supporting death caused by strangulation was unconvincing.¹⁴¹⁸ He agreed with Dr Hill’s opinion that postural asphyxia “*played a significant part*”.¹⁴¹⁹ He gave as the cause of death “*...a combination of the restraint with associated struggle and the position that he was held in ... together with multiple injuries present on the body...*”.¹⁴²⁰ This opinion is not dissimilar to James’ opinion.

2.1026 When giving evidence at the Court Martial, Milroy said that if the final struggle was brief, it would be necessary to factor in other reasons to explain why Baha Mousa died. If the struggle was more prolonged, postural asphyxia might be the only cause.¹⁴²¹

¹⁴¹⁴ James BMI 33/32/25-33/14

¹⁴¹⁵ James BMI 33/32/8-15

¹⁴¹⁶ Dr Ian Hill BMI00746, paragraph 16

¹⁴¹⁷ Dr Ian Hill BMI 33/72/10-19

¹⁴¹⁸ Milroy MOD000443

¹⁴¹⁹ Milroy MOD000443

¹⁴²⁰ Milroy CM 64/91/7-13

¹⁴²¹ Milroy CM 64/121/2-14

Professor Crane

2.1027 Crane produced a report dated 12 October 2006. In it he concluded that postural asphyxia was the sole cause of death, excluding ligature strangulation. In his opinion it was pressure on the back which caused death. He excluded ligature strangulation or multiple injuries as alternative or contributory causes.¹⁴²² At the Court Martial, Crane accepted that if death followed a brief period of restraint (less than one minute), that would be an indication that other injuries may have played a part in the cause of death.¹⁴²³ However, in this instance in his opinion the other injuries were not sufficiently significant to have played a part in the fatal outcome and it was pressure on the back which caused death.¹⁴²⁴

Conclusions

2.1028 It is hardly necessary to explain that experience shows that even the most honest of witnesses when describing a violent incident which took place in a short period no longer than a few minutes can be mistaken about what occurred. Different witnesses describing the same incident often genuinely differ over what each has seen. In addition, the passage of time tends to dim or blur memories. Add to this mixture witnesses who have not been truthful in the past, or have a reason for protecting themselves or another, and the difficulty of deciding where the truth lies is increased substantially. All these factors play a part in the evidence on this incident. What follows are my conclusions in respect of this incident, arrived at after carefully assessing the evidence and making due allowance for the above factors.

2.1029 The first issue is whether or not at the start of this incident Baha Mousa was intent on escaping. Payne said that he thought he was. He was aware of the rugby tackle incident and conscious some of the guards had told him Baha Mousa from time to time had removed his plasticuffs.¹⁴²⁵

2.1030 I accept that from time to time Baha Mousa did extract himself from his plasticuffs and remove his hood. No doubt for the guards this was an annoyance, particularly with Payne breathing down their necks.

2.1031 However, I am far from satisfied that these actions represent Baha Mousa at any stage trying to escape. I have already discounted the suggestion that the rugby tackle incident was an attempt to escape. Baha Mousa was a big man. He may well have felt a deep sense of injustice at being incarcerated in the TDF in conditions which were always poor and became increasingly unpleasant. Equally, and as I find his injuries show, he was being subjected to sustained violent assaults. It is in my opinion hardly surprising that he might seek to break out of his plasticuffs and remove his hood so as to protect himself from further assaults.

2.1032 On this occasion when confronted by Payne, according to Payne, Baha Mousa turned his back on him. As James' report shows, by then he was probably exhausted. At that stage he was, in my view, physically an unlikely candidate for escape and I reject the suggestion that this was his intention.

¹⁴²² Crane NCP000971-3

¹⁴²³ Crane CM 64/168/5-17

¹⁴²⁴ Crane CM 64/176/25-177/25

¹⁴²⁵ Payne BMI 32/109/8-113/2

- 2.1033** As for Payne's perception of what Baha Mousa was going to do, in my judgment Payne could have no valid reason for thinking that Baha Mousa was going to try to escape. Apart from anything else, before Payne started physically to restrain Baha Mousa, the latter had already turned his back on Payne and was facing the inside of the TDF. A moment's thought should have made Payne appreciate that escape was wholly impractical. In my opinion, Payne's reaction was yet again to punish Baha Mousa, this time for extricating himself from his plasticuffs, his hood and the middle room.
- 2.1034** On the issue of who first saw and reacted to seeing Baha Mousa at the doorway into the right-hand room, in my view it is more probable that Bentham did rather than anyone else. Bentham, as I have indicated earlier, was not a witness to make admissions when he could avoid doing so. In this instance he has always said he was the first to reach Baha Mousa before Payne and Pte Cooper came to his assistance. I find that it was not Pte Cooper who first reached Baha Mousa.
- 2.1035** It is difficult to fit Reader's evidence with other evidence. As I have recorded above (paragraph 2.988) he conceded that his SIB statement and his evidence at the Court Martial was not the whole truth and that he had lied. He suffered depression after the tour, which may have added to his difficulty in giving accurate evidence. Taking the evidence as a whole, I find it is not possible to rely on Reader's evidence in relation to this incident as an accurate description of what happened.
- 2.1036** As to Douglas' allegation that Redfearn jumped on Baha Mousa's legs, in my view his evidence in this respect may be mistaken. I do not doubt that he saw someone jumping on Baha Mousa's legs but I find it difficult, on the evidence, to determine whether it was Redfearn or Pte Cooper or some other soldier. Redfearn and Pte Cooper are unlike in build and appearance, which makes it less likely that Douglas could have mistaken Redfearn for Pte Cooper. On the other hand, Redfearn denied jumping on Baha Mousa's legs. Although his description of leaving the centre room at a critical moment seems a little too convenient, in my opinion it would be unsafe to find that he did jump on Baha Mousa's legs. In the circumstances I make no finding as to who it was at that stage who jumped on Baha Mousa's legs.
- 2.1037** Pte Cooper accepted that until Payne started a final violent assault on Baha Mousa, he was involved only in helping Payne to apply the plasticuffs but did no more than that and was not involved thereafter in any violence. In reaching any conclusion on Pte Cooper's part in this incident I am conscious that Pte Cooper's credibility has been severely undermined. It has been pointed out by Counsel for Core Participants that Pte Cooper has made a number of wholly contradictory witness statements in relation to this and other events which occurred between 14 and 16 September. In respect of his evidence on this incident it is more than ever difficult to unravel what is or may be the truth and what is or may be lies. Pte Cooper had an obvious interest to minimise his part in this shocking and dreadful incident. That said, as with his evidence about the "Free for All" (Chapter 10), I believe that Pte Cooper was genuinely endeavouring to do his best to tell the Inquiry the truth about what happened in this incident.
- 2.1038** Doing the best I can I find that in helping Payne's efforts to put the plasticuffs back on Baha Mousa, Pte Cooper, acting on Payne's instructions, did no more than exert sufficient force to achieve that object. I do not accept Reader's account of what he saw Pte Cooper doing. It is not clear when, if at all, Baha Mousa's plasticuffs were

replaced. Reader said that after the event he cut off the plasticuffs. It is difficult to believe he can be wrong or mistaken about that, but since I have commented on the general unsatisfactory nature of his evidence, I make no finding as to whether or not this part of his evidence was correct. There is no other evidence as to whether or not Baha Mousa was plasticuffed after the second attempt.

2.1039 I find that after the second attempt to replace Baha Mousa's plasticuffs Pte Cooper took no further part in the struggle. Pte Cooper alleged that Payne then lost control of himself and violently assaulted Baha Mousa. If Reader saw Payne assaulting Baha Mousa it may have been from this point onwards. As to Pte Cooper's account, the injuries to Baha Mousa's head were not sufficiently serious to be consistent with Pte Cooper's account of Baha Mousa's head striking the wall a number of times,¹⁴²⁶ but they were consistent with a less forceful kick to the head.¹⁴²⁷ Moreover, there is evidence of cuts, bruises and fractures to his ribs. All these are consistent with a violent assault, although not necessarily all at this time. Douglas' account of Payne punching and throwing Baha Mousa across the room supports a conclusion that in the later stages of the struggle it was Payne alone who was assaulting Baha Mousa and not both Payne and Pte Cooper.

2.1040 Bearing in mind my assessment of Payne as a violent bully, I find that his part in this incident did not end once Pte Cooper had ceased to help him. I find that he lost his temper and continued to assault Baha Mousa until such time as it became obvious that he had stopped struggling. Whilst accepting that, six years after the event, Pte Cooper's account of the details of this assault may be inaccurate, since it is not wholly consistent with the medical evidence, I accept the gist of his account. I also rely on Douglas' account of Payne's actions.

2.1041 Even aside from the violent assault which followed it, the restraint itself was effected in an unsafe manner. It is dangerous to restrain a prisoner who is prostrate on the ground by kneeling on his back and pulling his arms behind him. Such action is liable to impair his breathing and gives rise to a risk of postural asphyxia.¹⁴²⁸ In the Prison Service, it is well recognised that it is dangerous to leave a prisoner face-down with his hands cuffed behind his back.¹⁴²⁹ Prison officers receive special training on the use of safe control and restraint techniques.¹⁴³⁰ Whilst he is to be condemned for his other actions during the course of this incident, I do not criticise Payne for failing to appreciate that it was dangerous to restrain someone by kneeling on his back and pulling his arms behind him. He had not received special training on safe control and restraint techniques. Moreover, during pre-deployment training, the Battlegroup PTI, SSgt Roberts, had taught an arrest and restraint technique which was very similar to the method of restraint used by Payne on Baha Mousa.¹⁴³¹ In Part XVI, I return to the issue of what training soldiers may receive in order to reduce the risk of unsafe restraint techniques being used on prisoners.

2.1042 I have no difficulty in accepting James' explanation of the cause of death, which is to a very great extent supported by Dr Hill and Milroy. There is in my opinion no evidence to support a finding that ligature strangulation played any part in the cause

¹⁴²⁶ James BMI 33/56/25-58/18

¹⁴²⁷ James BMI 33/65/4-15

¹⁴²⁸ Crane CM 64/172/19; Dr Ian Hill CM 63/69/7-23

¹⁴²⁹ BMI02473, paragraph 5.1.3

¹⁴³⁰ Collier MIV010294

¹⁴³¹ SSgt Roberts BMI 20/49/19-51/22

of death. There is also no evidence of any injury to the skull or brain sufficient to have had any causal effect on Baha Mousa's death. I accept James' opinion that the cause was essentially multi-factorial but not "*asphyxial*".¹⁴³²

2.1043 In summary, I find that there were two causes of death. Firstly, Baha Mousa had been made vulnerable by a range of factors, namely: lack of food and water, the heat, rhabdomyolysis, acute renal failure, exertion, exhaustion, fear and multiple injuries. Both stress positions, which are a form of exertion, and hooding, which obviously must have increased Baha Mousa's body temperature, contributed to these factors. Secondly, against the background of this vulnerability, the trigger for his death was a violent assault, consisting of punches, being thrown across the room and possibly also of kicks. It also involved an unsafe method of restraint, in particular being held to the ground in an attempt to reapply plasticuffs. The combination of both causes was necessary to cause his death; neither was alone sufficient to kill him.

2.1044 It is difficult to assess the length of time of the final violent incident but taking into account that some witnesses saw the start but not the finish of it and vice versa I judge it must have been minutes rather than seconds. I am unable to find whether or not the fractures to the ribs, or some of them, happened in the final assault or earlier in the 36 hours during which Baha Mousa had been detained. Whether they occurred earlier or in the final incident the final episode of violence must have caused Baha Mousa excruciating pain.

2.1045 In my judgment it follows that the immediate cause of Baha Mousa's sudden death was cardio-respiratory arrest at a time when most probably his body was in jeopardy by reason of mistreatment of him over the previous 36 hours. It also follows in my opinion, and I find, that the different parts played by both Pte Cooper (restraint) and Payne (restraint and violent assaults) on that night triggered Baha Mousa's death. But the actions of others, including Payne, who mistreated him over the previous 36 hours, were also significant contributory causes of his death.

¹⁴³² MOD046556

Chapter 17: Events Immediately after Baha Mousa's Death

- 2.1046** Baha Mousa was pronounced dead at 22.05hrs.¹⁴³³ Later that night his body, having been placed in a body bag, was transferred to the hospital at Shaibah.¹⁴³⁴
- 2.1047** Shortly after Baha Mousa's death Brigade Headquarters were informed. At about 22.30 the SIB were informed of the death by Maj Mark Moutarde, 1 QLR's Adjutant, acting under instructions from Mendonça. An SIB investigation followed.¹⁴³⁵

Discussions Within 1 QLR

- 2.1048** As the following events show, for a period of time some but not all of the Rodgers Multiple remained at BG Main in the vicinity of the TDF. What appears to have happened is that after the death there were some conversations between Payne and members of the Multiple, Moutarde and members of the Multiple, and members of the Multiple amongst themselves. The evidence as to who took part and what was said in these conversations is not always clear.

Payne and members of the Multiple

- 2.1049** Aspinall stated that shortly after the death he and about six or seven other members of the Multiple were gathered in a huddle when Payne approached them. It is likely that this meeting took place in the vicinity of the TDF.¹⁴³⁶
- 2.1050** Pte Cooper remembered Payne approaching him and Reader outside the TDF.¹⁴³⁷ Allibone asserted that he was asleep in the back of a Saxon when Baha Mousa died but after being woken up he was present outside the TDF when Payne was there. He said MacKenzie was "*possibly*" there with a total of five or six soldiers present.¹⁴³⁸
- 2.1051** Appleby also described being present with a group of soldiers outside the TDF when Payne came over. He thought Aspinall was present.¹⁴³⁹ MacKenzie, Kenny and Bentham did not remember any such meeting at that time between members of the Multiple and Payne.¹⁴⁴⁰
- 2.1052** Aspinall, Pte Cooper, Allibone and Appleby all gave similar versions of what Payne said at this meeting. Aspinall's recollection is that Payne said "...*If anyone asks we were trying to put his plasticuffs on and he banged his head*"...". He believed that Payne meant exactly what he said when he made that statement.¹⁴⁴¹

¹⁴³³ Colley BMI 45/135/22-24

¹⁴³⁴ Keilloh BMI00530-1, paragraphs 135-136

¹⁴³⁵ Mendonça BMI 59/188/5-7; Moutarde BMI 54/122/9-24; MOD016554; MOD030957; MOD005670; MOD005672

¹⁴³⁶ Aspinall BMI 28/74/7-18

¹⁴³⁷ Pte Aaron Cooper BMI 29/67/6-68/7

¹⁴³⁸ Allibone BMI 24/176/11-179/11

¹⁴³⁹ Appleby BMI 25/74/10-18

¹⁴⁴⁰ Bentham BMI 41/124/5-126/14; Kenny BMI 25/145/21-147/7; Mackenzie BMI01052, paragraph 76

¹⁴⁴¹ Aspinall BMI05227, paragraph 66

- 2.1053** Pte Cooper's recollection of what Payne said was very similar to that of Aspinall. In his SIB statement of 10 October 2003 he stated that Payne said to a few members of the Multiple, "...*It's alright, he just banged his, if anyone asks, he just banged his head.*"¹⁴⁴² Pte Cooper explained in evidence to the Inquiry that he understood this was said by Payne with the intention of putting in place a version of events that Baha Mousa's death had been an accident. However, contrary to his SIB statement, in oral evidence to the Inquiry Pte Cooper said only himself and Reader were present when Payne said this.¹⁴⁴³
- 2.1054** Allibone's account was that Payne had said, "...*'keep this between ourselves...'* and '*if we keep quiet nothing will happen...*'".¹⁴⁴⁴ He remembered another soldier, whom he could not identify, being present. Both Payne and this soldier spoke. Allibone said that the gist of what was said was "*Don't tell people what happened here*".¹⁴⁴⁵
- 2.1055** Richards was not present at this meeting, having gone back to Camp Stephen to go on leave. However, he said that on his return from leave Pte Cooper told him that Payne had told everyone to say that Baha Mousa fell and hit his head. Richards said that Pte Cooper and other members of the Multiple said they were telling the SIB that Baha Mousa had banged his head.¹⁴⁴⁶

Rodgers and Aspinall's conversation

- 2.1056** Rodgers was not present in the TDF during the final moments of Baha Mousa's life. He said that he first heard of Baha Mousa's death when he was in either the Operations Room or the Intelligence Cell. He thought he was with Peebles and Seaman. At the time he was being briefed for an operation on the following day. He remembered Payne coming in and telling them that one of the Detainees had stopped breathing. Payne left but returned a few minutes later and informed them that the Detainee had died.¹⁴⁴⁷
- 2.1057** Rodgers said he believed that he reported the death to Englefield and then went to the TDF. At the TDF he thought Mendonça was present and that Mendonça told him it was an SIB matter and he should not speak to the soldiers about it. However, Rodgers said he did speak to Aspinall who was, in his opinion, the one soldier who would always give him an honest answer. He denied that the reason for speaking to Aspinall was because he suspected there might have been some untoward conduct which caused the death.¹⁴⁴⁸
- 2.1058** Rodgers described Aspinall as being "*wound up*" and said he "*seemed stressed*". Although he did not press Aspinall, Aspinall told him there had been a struggle and "*...the guy had banged his head off the wall.*"¹⁴⁴⁹
- 2.1059** Aspinall's version of this conversation was confused. He accepted that he had had a conversation with Rodgers just after Baha Mousa had been taken away on a stretcher.

¹⁴⁴² Pte Aaron Cooper MOD000106

¹⁴⁴³ Pte Aaron Cooper BMI 29/67/9-68/3

¹⁴⁴⁴ Allibone MOD000138

¹⁴⁴⁵ Allibone BMI 24/179/12-180/18

¹⁴⁴⁶ Richards BMI 31/142/13-144/17

¹⁴⁴⁷ Rodgers BMI 30/66/15-68/11; Rodgers MOD000222

¹⁴⁴⁸ Rodgers BMI 30/68/18-73/9; Rodgers MOD000222-3

¹⁴⁴⁹ Rodgers BMI 30/69/24-71/24

A little later in his evidence he said he could not remember what he said, but that he would not have said anything significant because he was scared of Payne. He then added that he may have said something, despite his fear of Payne.¹⁴⁵⁰

Moutarde, Payne and members of the Multiple

- 2.1060** Payne has consistently stated that he only discussed Baha Mousa's death immediately after it had occurred with Moutarde, when Reader, Pte Cooper and Redfearn were present. In evidence he said he explained to Moutarde what had happened to Baha Mousa, saying "...*He banged his head. I can't believe he banged his head.*" He expanded on this, telling Moutarde that Baha Mousa was trying to escape and he had restrained him: "...*I had restrained him and he was dead and I couldn't believe it*". He denied that he had told any of the Multiple to tell a false story.¹⁴⁵¹
- 2.1061** Payne said that this conversation with Moutarde in the presence of the other three soldiers occurred as they were walking back to the TDF from the Operations Room. They stopped at the bottom of the stairwell of the accommodation block across the way from the TDF.¹⁴⁵² Redfearn agreed that shortly after Baha Mousa collapsed he met Payne, Pte Cooper, Reader and possibly Bentham, at a meeting initiated by Moutarde. He remembered Payne saying that he could not believe Baha Mousa was dead. Redfearn had the impression that Payne was endeavouring to cover his back.¹⁴⁵³
- 2.1062** Moutarde professed to have no recollection of this meeting between himself, Payne and the other members of the Multiple.¹⁴⁵⁴ However, both Pte Cooper and Reader accepted, when it was put to them during their oral evidence to the Inquiry, that the meeting did take place, and they confirmed what Payne said he had told Moutarde.¹⁴⁵⁵

Findings about these conversations

- 2.1063** The versions given by members of the Multiple of what Payne said at the meeting between him and them are all very similar. I accept that they are accurate. Aspinall in evidence to the Inquiry said at one stage:

"I think from what went on over that period of days I knew – I knew it was all wrong, but I felt helpless at the time to actually intervene. As the days progressed and – I felt I did have a duty maybe to – to put the truth forward and encourage other members of the multiple, people who were scared to tell the truth, who was worried – quite rightly so – because of Mr Payne's character and these – his reputation within the Battalion. So I tried to encourage them that we should tell the truth and whatever comes afterwards we will deal with it and it will be the right thing to do, because what happened over them period of days was unacceptable and it was – and it was wrong, and it was inhumane".¹⁴⁵⁶

¹⁴⁵⁰ Aspinall BMI 28/75/8-76/9

¹⁴⁵¹ Payne BMI 32/124/18-126/10

¹⁴⁵² Payne BMI01751, paragraph 128

¹⁴⁵³ Redfearn BMI01812-3, paragraph 150

¹⁴⁵⁴ Moutarde BMI04027, paragraph 183

¹⁴⁵⁵ Pte Aaron Cooper BMI 29/128/11-129/8; Reader BMI 28/216/20-217/5

¹⁴⁵⁶ Aspinall BMI 28/82/8-21

- 2.1064** I have already commented favourably on Aspinall's credibility and this statement reinforces my judgment that although at times he sought to play down his part in the events in the TDF, for the most part he was doing his best to tell the truth. What he said about this meeting is supported by the evidence of other members of the Multiple who say they were present at this meeting.
- 2.1065** I infer from this conversation that Payne was seeking to persuade those to whom his remarks were addressed to put forward the explanation that Baha Mousa's death was an accident. It is not without significance that Pte Cooper has said that initially he did try to protect Payne by telling the SIB that the death resulted from an accident.¹⁴⁵⁷
- 2.1066** As to the conversation between Payne and Moutarde in the presence of some members of the Multiple, I accept that the gist of what Payne told Moutarde was that he could not believe Baha Mousa had died. Such a statement by Payne is not inconsistent with what he had earlier said at the meeting between him and members of the Multiple. Whether he genuinely could not believe Baha Mousa had died as a result of what happened that evening is neither easy to determine, nor is it necessary for me to decide. I find that Payne's actions both that night and earlier did contribute to Baha Mousa's death and that Payne was well aware that what he had done was unjustified, hence his attempt, as I find it to be, to persuade members of the Multiple to explain the death as an accident, and to explain it to Moutarde as an accident.

Moutarde's Brief to Mendonça and Brigade

- 2.1067** In a witness statement made to the SIB in November 2005, Moutarde said he did not remember visiting the TDF on Monday evening after Baha Mousa's death.¹⁴⁵⁸ However, at the Court Martial in evidence he said that he believed he had visited the TDF that evening and that he had not seen anything untoward. He said by then he was quite involved with the SIB.¹⁴⁵⁹
- 2.1068** In his Inquiry statement Moutarde described being informed of Baha Mousa's death by telephone. He then went to the RAP to speak to the RMO. He did not look at the body long enough to observe any injuries. He left the RAP and called in the SIB. As stated above, he had no memory of the meeting with Payne and members of the Rodgers Multiple.¹⁴⁶⁰
- 2.1069** In oral evidence at the Inquiry, Moutarde agreed that it was highly likely that he visited the TDF on Monday evening after the death. However, he maintained that he could not remember seeing anyone in pain. He said that if he had gone to the TDF he encountered nothing like the scene described by Seeds (see below).¹⁴⁶¹
- 2.1070** Late in the Inquiry's investigation a document prepared by Moutarde came to light. It is a memorandum dated 15 September 2003.¹⁴⁶² It surfaced after Moutarde made his Inquiry statement and was not mentioned by him in that statement nor during

¹⁴⁵⁷ Pte Aaron Cooper BMI 29/66/2-68/13

¹⁴⁵⁸ Moutarde MOD000634

¹⁴⁵⁹ Moutarde CM 21/116/9-118/12

¹⁴⁶⁰ Moutarde BMI04026-7, paragraphs 177-183

¹⁴⁶¹ Moutarde BMI 54/120/4-124/11

¹⁴⁶² MOD052586

his evidence at the Court Martial. Hitherto he had said that he could not recall discussing the death of Baha Mousa with any of the soldiers concerned in it.¹⁴⁶³

2.1071 In evidence to the Inquiry, Moutarde said that he still had no memory of any discussion with the soldiers about this incident, but having seen his memorandum to Mendonça he accepted that it was written by him.¹⁴⁶⁴ The memorandum included the following paragraphs:

"1. [Baha Mousa] was one of the suspects arrested during Op SALERNO at a hotel. He was of significant G2 interest and is one of the men suspected of being involved in the RMP killings. He has been subjected to TQ since his arrest and details of this procedure will provided [sic] by the ISTAR Officer.

2. [Baha Mousa] had been misbehaving all day and was constantly observed removing the sandbag from his head and breaking out of the plasticuffs binding his wrists. At approximately 152130Dhrs Sep 03 he was again observed removing his sandbag and breaking out of his plasticuffs. [redacted]¹⁴⁶⁵ Cpl Payne (Helles) and [redacted] Pte Cooper (Anzio) entered the room and attempted to restrain and re-cuff the internee. Both soldiers described [Baha Mousa] as struggling wildly, trying to hit them with his hands, which were free. The soldiers restrained him and put a new set of plasticuffs on him. During this struggle both soldiers said he may have banged his head on the floor. Once re-cuffed the internee was sat up against the wall. He immediately slumped over onto the floor. It was at this point the soldiers noticed something was wrong. Pte Cooper checked [Baha Mousa] for a pulse and found one. At this point [redacted] Pte Reader entered the room and checked [Baha Mousa] for any signs of breathing. None were found and Pte Reader immediately began EAR [expired air resuscitation] and CPR [cardiopulmonary resuscitation]. The RMO, [redacted] Capt Keilloh (Helles) was summoned from the RAP and arrived at the scene at approximately 152135D hrs Sep 03. He immediately took over EAR whilst Pte Reader continued CPR. The entire incident was witnessed by [redacted] LCpl Redfearn (Anzio). The RMO organised a stretcher and [Baha Mousa] was conveyed to the RAP for further treatment. The RMO pronounced [Baha Mousa] dead at 152205D hrs Sep 03.

3. COS 19X has been informed by the 2IC. Capt Nugent of the SIB has been informed by the Adjutant and will begin the investigation tomorrow. The SIB have instructed us to move the body to the mortuary at Shaiba, which will be done tonight. The soldiers involved in the incident are free to conduct their duties and will be contacted in due course by the SIB.

4. A copy of this memo will be given to the SIB on their arrival at this location to begin the investigation."¹⁴⁶⁶

It was signed Capt M J Moutarde.

2.1072 Moutarde was asked by Counsel to the Inquiry why he discussed Baha Mousa's death if the matter had been handed over to the SIB. He responded to this question saying in his opinion it was entirely appropriate to discover the soldiers' point of view as to what had happened, but no more.¹⁴⁶⁷

2.1073 Moutarde was also asked why the statement contained the reference to Baha Mousa being of "significant G2 interest" because he was "suspected of being involved in the

¹⁴⁶³ Moutarde CM 22/2/7-9/22; Moutarde BMI04027, paragraph 183

¹⁴⁶⁴ Moutarde BMI 54/133/1-134/23

¹⁴⁶⁵ In accordance with the Inquiry's policy, personal information has been redacted.

¹⁴⁶⁶ MOD052586, paragraphs 1-4

¹⁴⁶⁷ Moutarde BMI 54/133/15-134/15

RMP killings” when there was no evidence to support this allegation. Moutarde said that he was simply including “*for context*” information which had been given to him by someone else. He had no idea who had given him this information and denied that it was a deliberate fabrication by him to blacken Baha Mousa’s character.¹⁴⁶⁸

2.1074 Moutarde also denied that before the discovery of the document he had sought to give the false impression that he had not had contact with any of the soldiers involved. He agreed that he must have been told by the soldiers that Baha Mousa had broken out of his plasticuffs but denied he had any detailed conversation with them. He also denied being a party to a false story being put forward by the soldiers.¹⁴⁶⁹

2.1075 Moutarde was also asked by Counsel about a document headed “*Provisional SINCREP*” (a military abbreviation of “*serious incident report*”) from 1 QLR to 19 Mech Brigade Headquarters. This document was timed at 23.40hrs on 15 September. It described the incident in the following terms:

*“Cas was one of the detainees from OP SALERNO. He had been consistently struggling with his cuffs and hood during the day and lashing out at tps. At 2140 he again slipped his hood and cuffs. 2 members of the gd restrained him, re-cuffed and hooded him and checked pulse. 3 mins later they noticed that he might not be breathing. Gave CPR and EAR and called RMO. CPR and EAR continued for 25 mins.”*¹⁴⁷⁰

2.1076 In a box entitled “*Friendly forces involved*” Reader was named together with six members of the medical staff, including the RMO, Keilloh. There was no reference to either Payne or Pte Cooper in this document and the description of the incident was significantly shorter than Moutarde’s description of it in his memorandum to Mendonça. It did not mention the struggle or the banging of Baha Mousa’s head which were described in Moutarde’s memorandum. Moutarde believed that the SINCREP would have reached the SIB and he was sure that his memorandum to Mendonça would also have been given to the SIB.¹⁴⁷¹ The full text of the SINCREP is in Part XIV.

2.1077 It is clear that these two documents do not fully relate the facts surrounding the death of Baha Mousa as I have found them to be. Moutarde said that he believed the SINCREP would almost certainly have been made out by the Operations Room staff. He said he might have had some input into it, but he had no recollection of the report.¹⁴⁷²

2.1078 There must be some suspicion that Moutarde in his memorandum to the Commanding Officer and the Operations Room in the SINCREP to Brigade deliberately glossed over the circumstances of Baha Mousa’s death. It is also odd and a little suspicious that Moutarde had no recollection of his memorandum to Mendonça. Nevertheless, the memorandum does contain a description of the incident which could well have been put forward by Payne in an attempt to minimise his part in it. It fits the version of events which, as I find, Payne was endeavouring to persuade the guards to put forward, namely that Baha Mousa’s death was accidental. What the memorandum omitted was any reference to the conditions in the TDF which Moutarde must have

¹⁴⁶⁸ Moutarde BMI 54/134/16-137/17

¹⁴⁶⁹ Moutarde BMI 54/138/3-142/8

¹⁴⁷⁰ MOD030957

¹⁴⁷¹ Moutarde BMI 54/143/23-147/8

¹⁴⁷² Moutarde BMI 54/143/23-144/24

seen if, as I believe more probable than not, he did look into the TDF on Monday evening after Baha Mousa's death. I discuss my finding and the evidence in respect of Moutarde's visit to the TDF after Baha Mousa's death in greater detail in Chapter 21.

2.1079 Although the circumstances surrounding the creation of these documents are a little suspicious, in my judgment it would not be fair to find that Moutarde was deliberately providing Mendonça and Brigade Headquarters with a false picture of what happened. Knowing there was to be an SIB investigation, Moutarde, in my view, was entitled to provide both Mendonça and Brigade Headquarters with a factual description of the events as relayed to him, without challenging what he had been told. But he should also have informed them of conditions in the TDF on the assumption, as I find, that he did go into the TDF.

Other Visitors to the TDF Following Baha Mousa's Death

Colley

2.1080 Sgt Charles Colley, a military police sergeant, was embedded in 1 QLR.¹⁴⁷³ He dealt with criminal detainees as opposed to potential internees who were detained by 1 QLR.¹⁴⁷⁴ It is possible he was the first soldier, other than the guards, to visit the TDF following Baha Mousa's death.¹⁴⁷⁵

2.1081 Firstly, Colley went into the RAP where he spoke to Keilloh.¹⁴⁷⁶ He recorded contemporaneously in his notebook that following CPR Baha Mousa was pronounced dead at 22.05hrs.¹⁴⁷⁷ The body was still in the RAP at that time. He accepted that he saw the body, which was covered with a sheet up to the chest, but the shoulders and head were uncovered. He claimed not to have seen any injuries on Baha Mousa's shoulders or head,¹⁴⁷⁸ stating in oral evidence that this was because he did not approach the body (he was standing a metre away from the feet) and did not examine it.¹⁴⁷⁹

2.1082 He secured the scene at the RAP by summoning one of his NCOs, Cpl Smith. He took no steps to secure or preserve physical evidence inside the TDF, which he visited immediately after leaving the RAP. He said he was unable to do so because he was busy "*taking details*" and because he had only one other corporal to help.¹⁴⁸⁰

2.1083 Colley described the scene at the TDF and the condition of the Detainees, as he observed them. In his Inquiry statement he said the Detainees "*...were all quite hot and bothered and seemed concerned at what was going on. They looked a little ruffled but I was not surprised at this as they had been arrested, transported and*

¹⁴⁷³ Colley BMI 45/120/5-24

¹⁴⁷⁴ Colley BMI 45/125/5-17

¹⁴⁷⁵ Colley BMI 45/139/17-140/1

¹⁴⁷⁶ Colley BMI05600, paragraph 72

¹⁴⁷⁷ MOD001088

¹⁴⁷⁸ Colley BMI05600-1, paragraph 73

¹⁴⁷⁹ Colley BMI 45/136/7-137/8

¹⁴⁸⁰ Colley BMI 45/137/9-138/5

then kept in the TDF. The Detainees were not clean but I did not see any injuries on [any of] them."¹⁴⁸¹

2.1084 Colley took the names of the guards who were present and recorded them in his notebook. They were: Payne, Douglas, Rodgers, Redfearn, Reader, Pte Cooper, Aspinall, Pte Lee Graham, Stirland, Allibone, Appleby, MacKenzie, Pte Hunt, Kenny and Bentham.¹⁴⁸² The time at which he recorded these names in his notebook was 22.30hrs to 23.10hrs.¹⁴⁸³

2.1085 In evidence to the Inquiry, Colley agreed that there was a smell of faeces and urine in the TDF but he did not find the conditions disgusting. He said the smell could have come from the portaloo immediately outside or from the toilet in the central room.¹⁴⁸⁴

2.1086 Colley asserted that through an interpreter he spoke to every single one of the Detainees. Between 23.00hrs and 23.10hrs he recorded their names in his notebook. If they were sitting or lying down he got them to sit up or stand up so that he could speak to them.¹⁴⁸⁵ In his Inquiry witness statement he said he observed no suspicious circumstances and none of the Detainees made any complaint of injury. Each was able to stand up and he saw no obvious signs of cuts or bruises.¹⁴⁸⁶

2.1087 It was suggested to Colley that others had described the Detainees as in a terrible state at about that time. He said, "*Well, that's not the words I used*". He said it was not apparent to him that any Detainee had been beaten.¹⁴⁸⁷

Seeds

2.1088 Seeds provided a quite different description of the TDF from that given by Colley. Seeds was at that time the Operations Officer and had been on patrol, a rare occurrence for him, with the Commanding Officer's TAC group. As a result he overheard the news that a Detainee had died, this information having been passed to Mendonça when the TAC group was still on patrol. On his return to BG Main Seeds went to the Operations Room and then to the TDF to use the portaloo and also to satisfy himself that "*...things were being done*". At that time he had been up for almost two days.¹⁴⁸⁸

2.1089 He described graphically what he saw on entering the TDF. He found two Detainees in the left-hand room, both handcuffed. They were the older man (D006) and the younger man (D005). There was one guard, whom he did not identify. He asked why the Detainees were still handcuffed and was told that they might escape and needed to be restrained. He made it clear to the guard that he did not accept there was any valid reason for the Detainees to be restrained.¹⁴⁸⁹

¹⁴⁸¹ Colley BMI05602, paragraph 79

¹⁴⁸² Colley BMI 45/138/10-139/16

¹⁴⁸³ MOD001089-90

¹⁴⁸⁴ Colley BMI 45/140/13-141/12

¹⁴⁸⁵ Colley BMI 45/141/20-142/3

¹⁴⁸⁶ Colley BMI05601-2, paragraphs 78-79

¹⁴⁸⁷ Colley BMI 45/143/21-146/15

¹⁴⁸⁸ Seeds BMI 46/455/22-457/4

¹⁴⁸⁹ Seeds BMI 46/457/14-458/24

- 2.1090** In the centre room Seeds saw what appeared to be a body, lying motionless underneath some cardboard (D004). In the right-hand room he saw the remaining Detainees in various postures lying around the room. Another guard was present. All the Detainees were handcuffed, but were not hooded. He described the Detainees as “*Tired, dirty, in pain*”. One of them was lying in the foetal position. It was “...clear he was struggling to lie still on the floor without actually being in physical pain”.¹⁴⁹⁰
- 2.1091** Seeds questioned the guard as to why the Detainees were still handcuffed and when told that it was to prevent them from escaping. He said, “...I lost my cool slightly...” He made it clear that this was unacceptable and unnecessary, giving the example of the Detainee in pain on the floor who was incapable of sitting or standing up, let alone escaping. He said he was embarrassed, ashamed and disgusted by the state of the Detainees. He summoned fresh water for them and went back to the Operations Room to get his snippers to release the plasticuffs. He felt so disgusted that he brought Suss-Francksen, the second in command, back with him to the TDF.¹⁴⁹¹
- 2.1092** The TDF had a general smell of urine and it seemed apparent that some of the Detainees had wet themselves. Quegan appeared in the TDF at that time and helped to lift up one of the Detainees before he was taken to the portaloo. This Detainee was in obvious pain. Seeds was assured by the guards that all of the Detainees had been seen by a medic or doctor.¹⁴⁹² (Whether in fact they had been is a matter to which I turn in Chapter 19 below).
- 2.1093** When asked what Suss-Francksen’s reaction was, Seeds said it was clear he was not “*overly impressed*”. He did not say anything but “*There wasn’t a lot to say. It was quite apparent. I didn’t need to say anything. You know, a picture paints 1,000 words*”.¹⁴⁹³
- 2.1094** Seeds said the lighting was not good in the TDF, he did not have a torch and he did not see injuries on the Detainees. He agreed that it was obvious at that stage that at least some of the Detainees had been beaten.¹⁴⁹⁴

Quegan

- 2.1095** Quegan in his diary recorded that he had been awoken during Sunday night by the sound of a screaming prisoner. His diary also recorded that during most of Monday daytime he heard loud shouting by soldiers at hooded Detainees.¹⁴⁹⁵
- 2.1096** Towards midnight on that day he was making his way to the portaloo when Seeds called him over to help with the Detainees who needed to be taken to the portaloo. He put gloves on because it appeared that the Detainee had soiled himself. He and Seeds helped a man who was lying in the foetal position on the floor of the right-hand room. He was in obvious pain: he winced and groaned and was obviously in too much pain to be lifted.¹⁴⁹⁶ He recorded in his diary that this man was “*in too much pain to move*.” He saw another prisoner stumbling towards the portaloo with the aid

¹⁴⁹⁰ Seeds BMI 46/459/3-460/9

¹⁴⁹¹ Seeds BMI 46/460/14-462/1

¹⁴⁹² Seeds BMI 46/462/2-163/23

¹⁴⁹³ Seeds BMI 46/464/5-16

¹⁴⁹⁴ Seeds BMI 46/463/9-465/3

¹⁴⁹⁵ Quegan BMI00296

¹⁴⁹⁶ Quegan BMI 43/225/17-229/3; Quegan BMI 43/235/16-236/6

of a soldier. He recorded that “*some of the prisoners look in pain and at least one looks puffy around the face, so it may be physical.*”¹⁴⁹⁷

Suss-Francksen

2.1097 In evidence to the Inquiry, Suss-Francksen remembered being asked by Seeds to accompany him to the TDF on Monday evening.¹⁴⁹⁸ However, in a witness statement made in June 2004 for the purposes of litigation in the Al-Skeini proceedings he said of the Baha Mousa case:

*“I had no involvement in this case at all. So far as I am aware, the matter was dealt with by the RMP straight away.”*¹⁴⁹⁹

2.1098 In this statement he made no mention of his visit to the TDF with Seeds.

2.1099 In his Inquiry witness statement he said that he could no longer remember the incident but did not dispute an account of it which had at that time been given by Seeds.¹⁵⁰⁰ In a proof of evidence given to solicitors for Mendonça for the purposes of the Court Martial, he is recorded as agreeing that Seeds had approached him with concerns that the Detainees were still handcuffed. Both of them went to the TDF to remove the plasticuffs. He described the Detainees as “*...not looking particularly happy and one of them was lying down looking pretty miserable*”.¹⁵⁰¹

2.1100 In oral evidence to the Inquiry Suss-Francksen said he could not remember Seeds wanting to report the conditions in the TDF. All he was able to remember was Seeds’ concern that the Detainees were still handcuffed. He agreed that his own feelings were of shock and disgust. However, he said that it did not appear to him that some of the Detainees were obviously seriously unwell. The impression he had was that the problem with the Detainees, and the cause of his shock and disgust, was that they were handcuffed and needed to be un-cuffed. He was unable to remember whether he had reported what he had seen to the RMO or to Peebles. He believed he had spoken to one or the other of them. He denied that he had minimised the seriousness of what he had seen.¹⁵⁰²

Englefield

2.1101 In his SIB statement dated 20 October 2003, Englefield said he attended BG Main on the night Baha Mousa died. He spoke to Rodgers, Redfearn, Pte Cooper, Pte Lee Graham and possibly Reader.¹⁵⁰³ In his Inquiry witness statement he asserted that he did not go into the TDF at any time when the Detainees were there.¹⁵⁰⁴

2.1102 In oral evidence to the Inquiry, Englefield accepted that he had been in the vicinity of the TDF on Monday evening before Baha Mousa’s death. He spoke to some of the soldiers but was given no indication that anything was amiss. On hearing of Baha

¹⁴⁹⁷ Quegan BMI00296

¹⁴⁹⁸ Suss-Francksen BMI 56/194/19-23

¹⁴⁹⁹ Suss-Francksen MOD006848-9

¹⁵⁰⁰ Suss-Francksen BMI01587-8, paragraph 54

¹⁵⁰¹ Suss-Francksen MOD048651

¹⁵⁰² Suss-Francksen BMI 56/194/17-202/1

¹⁵⁰³ Englefield MOD000252

¹⁵⁰⁴ Englefield BMI04443, paragraph 206; Englefield BMI04444, paragraphs 210 and 213

Mousa's death he returned to BG Main, where he saw Rodgers. He explained that he reminded Rodgers that there would be an investigation by the SIB and that they, himself and Rodgers, should not question the soldiers in any detail (see also my comments on his evidence in Chapter 21).¹⁵⁰⁵

Sgt Smith, Rodgers, Briscoe and Mendonça

- 2.1103** Sgt Smith, told the SIB that on learning of the death of Baha Mousa several officers told him to keep away from the TDF. One of them said, “*If you are not involved, go away*”.¹⁵⁰⁶
- 2.1104** Rodgers was recorded as being present at the TDF by Colley.¹⁵⁰⁷ He said he first spoke to Aspinall in the vicinity of the TDF (see above). In an SIB statement dated 12 October 2003 Rodgers remembered Seaman being present at the TDF at that time.¹⁵⁰⁸ Seaman, however, was unable to recall anything of substance about the immediate aftermath of the death.¹⁵⁰⁹
- 2.1105** Briscoe stated unequivocally that on his return from patrol with the Commanding Officer's TAC group, although he knew of Baha Mousa's death, he went straight to his room. He saw no need to go to the TDF since the matter would be in the hands of the SIB.¹⁵¹⁰
- 2.1106** Finally, Mendonça, in his Inquiry statement, said that on his return from patrol on Monday evening, having already been informed of Baha Mousa's death, he went straight to the TDF but he did not recall going into the building or seeing the Detainees.¹⁵¹¹ In oral evidence he accepted that it was possible he went into the TDF, but maintained that he did not remember doing so. He was wholly unaware of the conditions described by Seeds and Quegan.¹⁵¹² I shall return to Mendonça later in Chapter 21.
- 2.1107** Although the SIB was notified of the death, no member of the SIB arrived at BG Main until the following day.

Peebles' Call to S017

- 2.1108** S017, the Officer Commanding the JFIT at the time, said that at some point on Monday night she received a telephone call from an officer who described himself as “*the Unit Internment Officer, the Civil Intelligence Officer, or a platoon commander directly linked to what was going on at 1 QLR*”. Subsequently, at the Court Martial, Peebles was identified to her as the caller. The caller, Peebles, asked first what was the policy for detaining an individual and in what circumstances was it possible to hood and handcuff the prisoner. She said she specifically corrected the caller on hoods, saying only blindfolds could be used, not hoods. She gained the impression from the caller that 1 QLR had been holding detainees for longer than fourteen hours

¹⁵⁰⁵ Englefield BMI 65/72/19-79/6

¹⁵⁰⁶ Sgt Paul Smith MOD000835

¹⁵⁰⁷ Colley BMI 45/138/10-139/16

¹⁵⁰⁸ Rodgers MOD000222

¹⁵⁰⁹ Seaman BMI 55/81/10-88/12

¹⁵¹⁰ Briscoe BMI 43/130/7-131/8

¹⁵¹¹ Mendonça BMI01134, paragraphs 122-123

¹⁵¹² Mendonça BMI 59/186/23-190/18

and that the caller was hiding something from her.¹⁵¹³ Peebles said he did not recall making such a call,¹⁵¹⁴ but I did not find his evidence on this issue convincing. I prefer S017's evidence and I find that the caller was Peebles and that S017 accurately recalled the gist of the conversation.

2.1109 The following morning when the Detainees were transferred to the JFIT the internment records were sent with them. In the section entitled "Medical complaints" in respect of all the Detainees, this part of the form was completed with the solitary word "NONE". However, D006's F Med5 form recorded that he had received medication for a heart condition.¹⁵¹⁵ In Part XIV I comment on the absence of information on these forms and have found that Peebles failed in his duty to ensure that the internment records for the Detainees properly reflected the complaints made and injuries sustained by the Detainees during the period they were in the TDF (see Part XIV Chapter 1).

Conclusions

2.1110 Seeds was, in my opinion, a patently honest witness. I accept that what he saw on Monday evening in the TDF shocked, disgusted and embarrassed him. I further accept his description of the conditions in the TDF and the physical state of some of the Detainees. Seeds' evidence is supported by Quegan, another witness who in my opinion was truthful and accurate. I infinitely prefer their evidence to the evidence of Colley and Suss-Francksen.

2.1111 It follows that in my opinion Colley and Suss-Francksen's evidence that they saw nothing which could be described as untoward, apart from the Detainees being handcuffed, does not properly reflect the state of the Detainees and the conditions in the TDF at that time. In my opinion both these witnesses, for whatever reason, substantially understated the seriousness of the conditions in the TDF and of the Detainees when they visited the TDF on that evening.

2.1112 It is possible that Moutarde did not go into the TDF that evening after Baha Mousa's death but for reasons expressed in Chapter 21 I find it more probable than not that he did. If he did, I cannot believe he could have thought nothing was amiss. I accept that it is also possible that by the time he arrived at the TDF his attention was taken up by the impending SIB investigation. But I do not accept that this can have deflected him from registering the conditions in the TDF at that time.

2.1113 It follows that Colley, Suss-Francksen and Moutarde failed to discharge their duties on the night itself. Suss-Francksen and Moutarde (and possibly Colley) should have ensured the Detainees received medical attention and were properly cared for from that point on. Colley should at least have ensured that mistreatment of the surviving Detainees was investigated. It has also been suggested that he ought to have secured the TDF as a potential crime scene. I accept that in a perfect world the TDF should have been secured as a potential crime scene, but in my opinion, taking into account the conditions and the lack of available resources, it is unrealistic to criticise Colley for not doing so.

¹⁵¹³ S017 BMI 84/27/13-32/13

¹⁵¹⁴ S017 BMI 40/131/16-133/8

¹⁵¹⁵ MOD015391

- 2.1114** I am inclined to accept that Sgt Smith was warned not to go into the TDF. In my judgment Sgt Smith is not a forceful character and I believe it would have taken little for him to be persuaded not to go into the TDF. In the circumstances I find that he did not do so and was not in a position to describe conditions inside it.
- 2.1115** I also accept that Englefield did not go into the TDF after Baha Mousa's death. He also was in no position to describe the conditions inside it.
- 2.1116** As for Mendonça, his credibility generally depends upon incidents and allegations made against him by other soldiers. I defer stating my findings in respect of Mendonça until later in the Report.

Did Senior Members of 1 QLR Attempt to “Cover Up” the Death?

- 2.1117** I have some concerns about certain aspects of the events immediately following Baha Mousa's death. Some of the evidence about this period raises the question of whether certain senior members of 1 QLR attempted to conceal the mistreatment of the Detainees.
- 2.1118** There are three matters which cause me particular concern. Firstly, a number of 1 QLR officers deny being aware of or, in some cases, even suspecting any untoward behaviour by the guards or others at this point. Keilloh was intimately involved in the attempted but ultimately unsuccessful resuscitation of Baha Mousa. As I discuss in Chapter 19, I find that after the attempted resuscitation he was aware that Baha Mousa had been mistreated. Suss-Francksen visited the TDF at the request of Seeds and when Seeds was present. What, as I find, Seeds saw must also have been seen by Suss-Francksen. I do not accept Suss-Francksen's denial that he saw nothing untoward save for the Detainees in handcuffs. He must, in my view, have seen the appalling conditions described by Seeds.
- 2.1119** I have found that it is more probable than not that Moutarde did look into the TDF on Monday night following Baha Mousa's death (see paragraph 2.1078 above). In the light of this finding, Moutarde also must have seen what Seeds saw. As for Rodgers, whether or not he went into the TDF on Monday evening after Baha Mousa's death, by that time, as I discuss in Chapter 21, he knew that the Detainees had been mistreated by members of his Multiple.
- 2.1120** Save for Moutarde's report to Mendonça which I have discussed above, none of these officers appear to have made any formal report about what they had seen, nor to have taken any action in respect of Detainees still in the TDF. Of course, I accept that they must have been aware that they were likely to have to make statements to the SIB in due course about this matter. Nevertheless, I find what they had seen called for immediate action to be taken to investigate the state of the Detainees in the TDF and to ensure that they were not subjected to any further mistreatment. No such action was taken by any of them. It should have been.
- 2.1121** Secondly, Colley's conduct is of particular concern. As the first military policeman on the scene it is obvious to me that he should have appreciated that the surviving Detainees had been mistreated, and that there should be an investigation into this.

Instead, he maintained that he had no reason to suspect any mistreatment. I regret I do not accept this account.

2.1122 Thirdly, 1 QLR did not tell the SIB (or Brigade or Divisional headquarters) that the death was suspicious, or that there was any basis to suspect the other Detainees had been mistreated. It appears that the abuse of other Detainees came to light only because S018, an officer at the JFIT, subsequently raised the alarm (see Chapter 18 below).

2.1123 I have found that many individuals within 1 QLR lied to the SIB during the ensuing investigation. Additionally, it appears that certain senior officers within the Battlegroup were reluctant to accept that 1 QLR had done anything wrong.

2.1124 Despite these concerns, I find that senior officers of 1 QLR did not seek to cover up Baha Mousa's death or to prevent the circumstances of his death from being investigated and discovered. The crucial point is that Moutarde, in accordance with instructions from Mendonça, informed the SIB of the death shortly after it occurred. An investigation was therefore instigated and took place. In my opinion there is insufficient evidence for me to find that any of 1 QLR's senior officers sought to cover up what had happened.

Chapter 18: Treatment of the Detainees Following Baha Mousa's Death

The Detainees' Allegations

2.1125 I have already summarised the Detainees' evidence as a whole. What follows is a summary of allegations which appear to relate specifically to the period following Baha Mousa's death until they were transferred to the TIF at Um Qasr on Tuesday morning.

Further assaults

2.1126 D002 said that at one point he was punched in the mouth, which resulted in three of his teeth being broken.¹⁵¹⁶ He did not mention this incident in his evidence to the Court Martial, but had done so in both his civil claim and Inquiry statement, saying it occurred on Monday night.¹⁵¹⁷ However, when he was subsequently medically examined no such injury was recorded.¹⁵¹⁸

2.1127 D004 said that, after being returned to the TDF having been to the RAP, he was again beaten by the soldiers.¹⁵¹⁹

Trophy photographs

2.1128 D004 further alleged that on the third morning, trophy photographs were taken showing him being beaten. He alleged that he was made to pose with a soldier primed to strike him. He said that afterwards he was in fact struck by the soldier.¹⁵²⁰ D004 has consistently said that this soldier had moles on his face.¹⁵²¹ In January 2004, D004 had described him as five feet and nine to ten inches tall, of thin build, with short blond hair, white skin that had not coloured in the sun and having moles upon his neck and face.¹⁵²² He confirmed previous statements that he had been able to identify this man even when hooded, as the soldier had come close enough to be seen through the hood and he also saw the soldier when the hood was occasionally removed.¹⁵²³ It has been submitted on behalf of D004 that D004's physical description of this man matches Allibone.¹⁵²⁴ I think it likely that trophy photographs were taken of D004 but unlikely that at this time, after Baha Mousa's death, there were photographs of him being struck or about to be struck by a soldier. Further, in my judgment, the identification of Allibone as the man who beat D004 solely on the ground that D004 described a soldier with moles as the one who beat him, is insufficient evidence

¹⁵¹⁶ D002 BMI 20/9/6-10/10

¹⁵¹⁷ D002 BMI01962, paragraph 53; D002 PIL000161, paragraph 42

¹⁵¹⁸ MOD000404-5

¹⁵¹⁹ D004 BMI02041, paragraph 66

¹⁵²⁰ D004 BMI 18/32/4-33/10; D004 BMI 18/65/19-68/10; D004 BMI02041-2, paragraph 67

¹⁵²¹ D004 BMI 18/32/4-33/10; D004 BMI02030, paragraph 29; D004 BMI02041-2, paragraph 67

¹⁵²² D004 MOD000009. Note that he later referred to white skin that had coloured in the sun, but considered that his January 2004 description would be most accurate: D004 BMI 18/33/2-10; D004 BMI02030, paragraph 29.

¹⁵²³ D004 BMI 18/68/3-12

¹⁵²⁴ SUB002371, paragraph 384

upon which to base a finding that Allibone, who had some moles on his face, was that soldier.

Sexual humiliation

2.1129 At one time or another, several of the Detainees have alleged that a soldier touched their nipples and taunted them for being a “*dudacky*” (Iraqi slang for a homosexual or paedophile).

Urine

2.1130 D004 consistently stated that at some point during the second night and into the third morning of his detention he was placed in the centre room of the TDF following the death of Baha Mousa. He alleged that the contents of the bottle which he had been required to use in order to urinate were poured over him and into his mouth.¹⁵²⁵ There can be no doubt that during Monday night D004 was in the centre room. Although Seeds did not identify him as such, it seems obvious that D004 was the Detainee seen by Seeds in that room (see Chapter 17 above).

Other abuse

2.1131 D005 complained that, possibly on the second night, he had fluorescent illuminator liquid poured over his body, head, arms and trousers.¹⁵²⁶ He did not mention this in his SIB statements.¹⁵²⁷ In the account which he gave to Younis he appeared to say that this occurred during the first night, not the second.¹⁵²⁸

Forced exercise and dancing like Michael Jackson

2.1132 It is common ground between some of the soldiers and the Detainees that the Detainees were exercised on Tuesday morning before being transported to the TIF. However, the nature of that exercise is in dispute. The Detainees complain that the exercise was forced and that it was humiliating, specifically because they were made to dance like Michael Jackson.

2.1133 Not all of the Detainees have alleged that they were made to dance like Michael Jackson. Those who have are D002, D003, D004, D005 and Kifah Matairi.

2.1134 In his Inquiry witness statement, D002 stated: “...*the soldiers made us do some ‘sports’. They ordered us to run outside and back in again and to dance like Michael Jackson. We were not able to walk by this stage and were pulled about by the soldiers. They dragged us back and forwards.*”¹⁵²⁹ In his first SIB statement, D002 described being told to exercise, but he did not include the detail about being made to dance

¹⁵²⁵ D004 BMI 18/40/18-41/12; D004 BMI 18/45/15-46/11; D004 BMI02040-1, paragraphs 63-65

¹⁵²⁶ D005 BMI02335-6, paragraph 96

¹⁵²⁷ D005 MOD000016; D005 MOD000023

¹⁵²⁸ D005 PIL000628

¹⁵²⁹ D002 BMI01964, paragraph 59

like Michael Jackson.¹⁵³⁰ This detail was also omitted from subsequent accounts which he gave (although it re-emerged in his statement in the civil proceedings).¹⁵³¹

2.1135 D003 described a similar incident. He said that, on Tuesday morning, when the Detainees were too exhausted even to walk, they were ordered by the soldiers to run quickly. He said in oral evidence that he was the one who was asked to dance like Michael Jackson, although in his statement he said that each of the Detainees was made to do this.¹⁵³²

2.1136 D004 also described being forced to dance like Michael Jackson on the morning of the third day.¹⁵³³ He has been consistent in making this allegation: it appears, amongst other places, in his first SIB statement of 25 September 2003.¹⁵³⁴

2.1137 D005 said that he too was made to dance like Michael Jackson, but that this happened during Monday evening, not on Tuesday morning.¹⁵³⁵ He mentioned this in some of his earlier accounts,¹⁵³⁶ but not in his original SIB statement.¹⁵³⁷

2.1138 On 16 May 2004, before his death, Kifah Matairi gave a statement for the judicial review proceedings in *Al-Skeini*. In that statement he too described a soldier telling the Detainees to dance like Michael Jackson.¹⁵³⁸

The Guards

2.1139 It is not clear who guarded the Detainees for the remainder of the night of 15 to 16 September. There is some evidence that following Baha Mousa's death at least some of the Multiple returned to Camp Stephen, leaving the remainder to guard the Detainees until early Tuesday morning. The evidence suggests that those who went back to Camp Stephen returned the following morning in order to assist in the transfer of the Detainees to Um Qasr.

Stirland

2.1140 Stirland said in an SIB statement dated 12 October 2003 that after the incident "*The multiple remained at QLR Main until lunchtime the following day, Tue 16 Sep 03, when we conveyed the detainees to Umm Qasr. During this period I guarded the detainees for about an hour with no further incident...*".¹⁵³⁹ His Inquiry statement of 12 July 2009 contained the following passage:

¹⁵³⁰ D002 MOD000029

¹⁵³¹ D002 PIL000162, paragraph 46

¹⁵³² D003 BMI 11/19/5-24; D003 BMI02393, paragraph 82

¹⁵³³ D004 BMI 18/47/12-48/9

¹⁵³⁴ D004 MOD000006

¹⁵³⁵ D005 BMI02335, paragraph 95

¹⁵³⁶ D005 PIL000282, paragraph 84

¹⁵³⁷ D005 MOD000016

¹⁵³⁸ Kifah Matairi PIL000393, paragraph 15

¹⁵³⁹ Stirland MOD000161

*"I can confirm that I did not guard the detainees again that evening, half of the multiple stayed and the others came back with me in the Saxon to camp. To the best of my memory I did not return until the next morning when I guarded the detainees again, and then drove them to Um Qasr."*¹⁵⁴⁰

2.1141 He had no recollection as to which guards were present when he carried out his stag.¹⁵⁴¹

Pte Hunt

2.1142 Pte Hunt recollected that he may have carried out a stag before he was chosen to accompany the body to Shaibah on Monday evening. He said that on his return from Shaibah he slept until 04.00hrs, when he carried out a stag for one hour. He had said that during that stag he noticed that one of the Iraqis appeared to have a purple coloured swelling around one of his eyes which he had not noticed before. He was unable to remember who carried out this stag with him.¹⁵⁴²

Allibone

2.1143 Allibone remembered carrying out stags during the night and into the morning.¹⁵⁴³ In his SIB statement of 12 October 2003 he said that the Detainees were "*allowed to walk around and stretch their legs*" before they were transported to Um Qasr.¹⁵⁴⁴

Appleby

2.1144 In his SIB statement dated 12 October 2003 Appleby stated: "*We continued on stag for that evening taking an hour stag each. Nothing happened this night...and the prisoners had their cuffs and hoods removed and were allowed to sleep.*"¹⁵⁴⁵ During the course of his oral evidence to the Inquiry it was suggested to him that he had accompanied Pte Hunt and Pte Lee Graham taking Baha Mousa's body back to Um Qasr. His response was that this was possible but he was unable to remember.¹⁵⁴⁶ The premise of the question must have been mistaken since the body was transferred to Shaibah and not Um Qasr.

Pte Cooper

2.1145 Pte Cooper in his SIB statement of 10 October 2003 stated "*Following this [the death], each person in our multiple did an hours stag each. We were told to uncuff and unhood the detainees and let them sleep which we did. The night passed without incident and we conveyed the detainees to Umm Qasr about 1030 hrs on Tue 16 Sep 03.*"¹⁵⁴⁷ At the Court Martial he accepted that he had stayed all night at the TDF

¹⁵⁴⁰ Stirland BMI02829, paragraph 118

¹⁵⁴¹ Stirland BMI02829, paragraph 118

¹⁵⁴² Pte Jonathan Hunt BMI00791-2, paragraphs 89-92

¹⁵⁴³ Allibone BMI 24/214/3-14

¹⁵⁴⁴ Allibone MOD000138

¹⁵⁴⁵ Appleby MOD000177

¹⁵⁴⁶ Appleby BMI 25/116/6-12

¹⁵⁴⁷ Pte Aaron Cooper MOD000106

undertaking guard duty.¹⁵⁴⁸ In his Inquiry witness statement he repeated much of what he had said in earlier statements, adding, “*After the death of Baha Mousa, it was made clear to us that we were to treat the remaining detainees very differently. Their hoods and cuffs were removed and they were allowed to lie down and rest.*” He thought his stag during this period was between 06.00hrs and 07.00hrs, in the course of which he remembered taking breakfast to the Detainees.¹⁵⁴⁹

Pte Lee Graham and Aspinall

2.1146 In an SIB statement dated 12 October 2003 Pte Lee Graham said that before departing the scene of the death by Saxon that evening he learnt that a Detainee had collapsed.¹⁵⁵⁰ Aspinall similarly stated in an SIB statement dated 10 October 2003 that “*About 15 minutes later [after the death] we returned to Camp Stephen.*” He went on to say that the following morning he had returned to BG Main to escort the Detainees to the TIF.¹⁵⁵¹ He confirmed the accuracy of this statement in his Inquiry witness statement.¹⁵⁵²

2.1147 Pte Lee Graham’s and Aspinall’s statements imply that they had returned to Camp Stephen at some stage after Baha Mousa’s death before coming back to BG Main on Tuesday morning.

Kenny

2.1148 Both in his Inquiry witness statement and in oral evidence Kenny said that he had escorted Baha Mousa’s body to “*some place.*”¹⁵⁵³ It follows that he must have been part of the same group as Pte Hunt, which transferred Baha Mousa’s body to the hospital at Shaibah.

MacKenzie, Reader and Redfearn

2.1149 All three of the above gave evidence to the effect that they remained at BG Main for the night of 15 September 2003 before accompanying the Detainees to Um Qasr. Redfearn said that after the death he was warned by a member of the RMP to stay away from the TDF.¹⁵⁵⁴ MacKenzie asserted that the Detainees had their hoods and cuffs removed, were given a bottle of water each and allowed to sleep.¹⁵⁵⁵ Reader said that after the death, they were ordered to provide the Detainees with food and water regularly and to remove their hoods and plasticuffs. He remembered them being given breakfast on Tuesday.¹⁵⁵⁶

¹⁵⁴⁸ Pte Aaron Cooper CM 62/36/14-16

¹⁵⁴⁹ Pte Aaron Cooper BMI04372, paragraph 153

¹⁵⁵⁰ Pte Lee Graham MOD000153

¹⁵⁵¹ Aspinall MOD000126

¹⁵⁵² Aspinall BMI05228, paragraph 69

¹⁵⁵³ Kenny BMI 25/145/1-10; Kenny BMI03564, paragraph 41

¹⁵⁵⁴ Redfearn BMI01812, paragraph 148

¹⁵⁵⁵ MacKenzie MOD000119

¹⁵⁵⁶ Reader BMI03397, paragraph 58

Rodgers

- 2.1150** In his Inquiry witness statement Rodgers confirmed a previous witness statement that following the death he instructed his men to allow the Detainees to sleep. He had no recollection of getting the Detainees ready for transfer to Um Qasr on the following day and he made no mention of leaving BG Main that night.¹⁵⁵⁷
- 2.1151** Rodgers' evidence was that, even by Tuesday morning, nothing he had seen (leaving aside hooding, plasticuffing and stress positions) caused him to believe that the Detainees had been treated inhumanely.¹⁵⁵⁸ The only injury he described seeing at any point at BG Main was the bruising to one Detainee which had been shown to him by Payne on the Sunday evening, which he believed had been caused in a fight taking place before his detention.¹⁵⁵⁹ He denied any awareness at the time of the other injuries suffered by the Detainees.¹⁵⁶⁰

Bentham

- 2.1152** Bentham had no memory of what happened during the remainder of Monday night or on Tuesday morning.¹⁵⁶¹
- 2.1153** Finally, there is no evidence that Payne was present at any time during the course of the remainder of that evening and the following morning.

The Guards' Evidence about Exercising the Detainees

- 2.1154** Some sort of exercise of the Detainees occurred on Tuesday morning is accepted by some soldiers. Rodgers described in his earliest SIB statement of 30 June 2005 taking the Detainees for a walk to ease the stiffness in their legs.¹⁵⁶²
- 2.1155** Stirland agreed that the Detainees had been taken for a walk on Tuesday morning to stretch their legs. He described the Detainees as looking tired and having difficulty walking.¹⁵⁶³
- 2.1156** Pte Hunt agreed that exercising of the Detainees had taken place. He could not recall whether he personally assisted with this process. He described the Detainees being walked up and down and said that they had been made to stretch and raise their arms. He said two soldiers, one either side, assisted the Detainees in walking in this way.¹⁵⁶⁴ When he was asked to describe the condition of the Detainees at this time Pte Hunt stated they were "*Very tired and very worse for wear*", "*They didn't want to move at all...*", and "*...they didn't have any enthusiasm to do it...*". He accepted that the Detainees were not pleased to be up and mobile, although in his SIB statement

¹⁵⁵⁷ Rodgers BMI01850, paragraphs 131-132

¹⁵⁵⁸ Rodgers BMI 30/16/19-17/4

¹⁵⁵⁹ Rodgers BMI 30/30/14-25

¹⁵⁶⁰ Rodgers BMI 30/63/25-64/25

¹⁵⁶¹ Bentham BMI01644, paragraphs 98-99

¹⁵⁶² Rodgers MOD000230-231

¹⁵⁶³ Stirland BMI 38/42/17-43/10

¹⁵⁶⁴ Pte Jonathan Hunt BMI 27/130/1-131/3; Pte Jonathan Hunt BMI00792-3, paragraph 93

he had said that they were pleased.¹⁵⁶⁵ He denied having any awareness of the Detainees being made to dance like Michael Jackson.¹⁵⁶⁶

Simmons

- 2.1157** Simmons, a member of the TA, was attached to 1 QLR's Motor Transport Platoon for Op Telic 2.¹⁵⁶⁷ On the morning of 16 September he was instructed to take part in the transfer of the Detainees from BG Main to Um Qasr.¹⁵⁶⁸ He arrived at the TDF in his vehicle between 06.30hrs and 07.00hrs.¹⁵⁶⁹ He had heard about the possible involvement of the Detainees in either the death of Dai Jones or the RMP personnel.¹⁵⁷⁰ For this reason he was curious to see the Detainees and offered to assist the guards, some of whom were asleep outside the TDF on cot beds. He was unable to identify any of the soldiers or their company but walked straight into the right-hand room to speak to guards inside the TDF. His recollection was that there were two soldiers present, one of whom was a full corporal and the other a lance corporal. The corporal was not Payne, whom he knew.¹⁵⁷¹ The guards had told him about the death of Baha Mousa and that all the Detainees had had "*a rough time of it*" and "*a good kicking*."¹⁵⁷² He had already heard rumours around the Battlegroup to this effect.¹⁵⁷³ He described the smell in the TDF as particularly unpleasant, a mixture of the smell of urine and sweat.¹⁵⁷⁴
- 2.1158** None of the Detainees were hooded at this time and Simmons noticed injuries to some of them. In particular, he remembered facial injuries to one Detainee, who had black eyes, congealed blood and cuts to the face and a thick lip. This Detainee was in the right-hand room of the TDF and gestured to his face to indicate his injuries to Simmons. Another Detainee lifted up his shirt and showed Simmons that he had bruising all the way around his lower body. A further Detainee appeared to have been injured in his groin.¹⁵⁷⁵
- 2.1159** Simmons said that the Detainees were whimpering and even without being shown their injuries he would have been able to tell that they had been injured.¹⁵⁷⁶
- 2.1160** Simmons explained that he had a reasonably clear recollection of these Detainees and from photographs he was able to recognise D002 as the Detainee with the facial injuries; D006 as the Detainee who appeared to have been injured in the groin; D004 as the Detainee whom he had seen in the middle room of the TDF; and Kifah Matairi as the Detainee who had shown him his bruised lower body, although his identification of Kifah Matairi was only a 50 per cent certainty. He was unable to identify other Detainees from photographs shown to him.¹⁵⁷⁷ From all of the surrounding evidence,

¹⁵⁶⁵ Pte Jonathan Hunt BMI 27/131/4-132/14

¹⁵⁶⁶ Pte Jonathan Hunt BMI 27/133/19-134/2

¹⁵⁶⁷ Simmons BMI 24/8/25-9/25; Simmons BMI04493, paragraphs 2-4

¹⁵⁶⁸ Simmons BMI 24/13/9-20

¹⁵⁶⁹ Simmons BMI 24/17/20-24

¹⁵⁷⁰ Simmons BMI 24/12/8-13/8

¹⁵⁷¹ Simmons BMI 24/17/25-23/23; Simmons BMI 24/26/20-28/10

¹⁵⁷² Simmons BMI 24/23/24-26/19

¹⁵⁷³ Simmons BMI 24/67/3-22

¹⁵⁷⁴ Simmons BMI 24/31/1-13

¹⁵⁷⁵ Simmons BMI 24/32/16-37/18

¹⁵⁷⁶ Simmons BMI 24/37/19-38/18

¹⁵⁷⁷ Simmons BMI 24/38/20-44/4

these identifications appear to me to be accurate, save that Simmons may have confused D006 with Ahmad Matairi.

- 2.1161** Simmons went on to describe how he had been instructed to assist in exercising the Detainees. Sgt Smith asked him to get the Detainees up and moving, ready for transporting to Um Qasr. He was told that they had been lying down for a long time. Other soldiers assisted in this exercise, a number of them being required to lift the Detainees and assist them to their feet. Simmons explained that all of the prisoners were whimpering, especially when the soldiers tried to move them. However, Simmons remembered that the interaction between the soldiers and the Detainees at this stage also included “*fairly aggressive*” shouting to get them to stand up.¹⁵⁷⁸
- 2.1162** Simmons assisted a Detainee to walk up and down over a distance of approximately twenty metres outside the TDF. He appeared to be in a lot of pain and was using Simmons as a human crutch. Simmons thought this Detainee was the one with the apparent groin injury. After walking him up and down outside the TDF the Detainees were taken back inside and made to stretch.¹⁵⁷⁹ Before being driven to the TIF, the Detainees were helped onto the back of the lorry which took them there. One of them was unable to mount the lorry by himself and needed to be carried onto it on a stretcher.¹⁵⁸⁰ This may well have been Ahmad Matairi, who said that he had to be carried to the vehicle on a stretcher because he was unable to walk.¹⁵⁸¹
- 2.1163** Simmons denied seeing the Detainees being assaulted in any way. He further denied seeing Detainees being made to dance “*like Michael Jackson*” or having trophy photographs taken of them, or being subjected to sexual taunting or provocative touching.¹⁵⁸²
- 2.1164** On returning to Basra Palace on Tuesday morning, Simmons informally informed his superior officer, Captain Mark Armstrong, of what he had seen.¹⁵⁸³

Smith, the Provost Sergeant

- 2.1165** In evidence to the Inquiry Sgt Smith confirmed that the contents of his SIB statement dated 14 October 2003 in respect of what happened on Tuesday morning were accurate. He arrived at the TDF some time between 08.00hrs and 09.00hrs. It was his task to accompany the Detainees to the TIF at Um Qasr. He said that the Detainees were in “*a right sorry state.*” Their clothing was filthy, they were dirty and dishevelled and they all looked tired. Nearly everybody, apart from the father and son, appeared to be stiff and tired to the extent that he had to get the guard to help them move up and around.¹⁵⁸⁴ Together with other members of the Multiple he and Rodgers accompanied the Detainees to the TIF.

¹⁵⁷⁸ Simmons BMI 24/46/25-51/22

¹⁵⁷⁹ Simmons BMI 24/52/2-55/13

¹⁵⁸⁰ Simmons BMI 24/60/6-20

¹⁵⁸¹ Ahmad Matairi BMI02273, paragraph 59

¹⁵⁸² Simmons BMI 24/56/6-58/3

¹⁵⁸³ Simmons BMI 24/78/1-25

¹⁵⁸⁴ Sgt Paul Smith BMI 44/132/17-134/14; Sgt Paul Smith MOD000215

Vogel

- 2.1166** At the time of Op Telic 2, Cpl Claire Vogel was an RMP corporal deployed with 150 Provost Company, 3 Regiment RMP. She was deployed to Iraq after the murder of six members of the RMP.¹⁵⁸⁵ She said that a large part of her work was acting as one of the drivers for the Rover group of the Officer Commanding 150 Provost Company. She said there was one other woman in the Rover group. She was a member of the TA whose name Vogel thought was Sarah. Vogel agreed that the murder of three members of 150 Company on 23 August had a significant effect on the Company. It removed both the Officer Commanding and the most senior NCO.¹⁵⁸⁶
- 2.1167** On 16 September, in the morning, she visited BG Main, 1 QLR, as part of the Commanding Officer's Rover group. Having parked up the vehicles next to the accommodation block she saw two soldiers from 1 QLR assisting a Detainee to walk. In conversation with one of the 1 QLR soldiers she was told that the Detainees were believed to be the ones who murdered the Officer Commanding, CSM, and one of the corporals of her Company.¹⁵⁸⁷ She and an RMP colleague were asked if they wanted to see the men whom it was believed had killed the RMP.¹⁵⁸⁸ She went into the TDF, which smelt of urine and faeces to the extent that she did not want to stay there for very long.¹⁵⁸⁹ She was unable to remember whether the Detainees' clothing was dishevelled or torn, or missing.¹⁵⁹⁰ She said that at the time the smell, the heat and the apparent exhaustion of the Detainees did not strike her as being improper.¹⁵⁹¹
- 2.1168** She described the exercise which she saw the Detainees performing as like “*warm-up*” or “*aerobics*.” They were copying the movements of one of the soldiers.¹⁵⁹² In addition, one Detainee was holding his right side and moaning or wailing in apparent pain.¹⁵⁹³
- 2.1169** There is some evidence that on an occasion a female member of the RMP came into the TDF and brandished a baton. Redfearn said that this occurred on Monday morning and that he told the woman, who was with a male member of the RMP, to leave the TDF.¹⁵⁹⁴ Reader gave an account of a conversation in which he was told that a female RMP officer had attended the TDF. However, this also appeared to be on an occasion before Baha Mousa's death.¹⁵⁹⁵
- 2.1170** Vogel denied any suggestion that she had in any way behaved improperly in and around the TDF.¹⁵⁹⁶ I am inclined to accept that her evidence was truthful. But, in any event, there is no evidential basis for a finding that Vogel acted in any way improperly on her visit to the TDF on that morning. However, I find that she must have seen the

¹⁵⁸⁵ Vogel BMI 16/88/4-19

¹⁵⁸⁶ Vogel BMI 16/99/1-100/22

¹⁵⁸⁷ Vogel BMI 16/101/9-106/15

¹⁵⁸⁸ Vogel BMI 16/108/11-21; Vogel BMI00691, paragraph 50

¹⁵⁸⁹ Vogel BMI 16/110/19-25; Vogel BMI00693, paragraph 54

¹⁵⁹⁰ Vogel BMI 16/116/8-24

¹⁵⁹¹ Vogel BMI 16/119/25-120/10

¹⁵⁹² Vogel BMI 16/113/24-114/13

¹⁵⁹³ Vogel BMI 16/111/18-113/23

¹⁵⁹⁴ Redfearn BMI 30/176/2-177//11

¹⁵⁹⁵ Reader BMI03393-4, paragraph 42

¹⁵⁹⁶ Vogel BMI 16/122/4-123/13; Vogel BMI 16/131/25-132/3

condition of the Detainees and the TDF as described by Simmons (see paragraphs 2.1157 to 2.1160 below).

The Detainees' Arrival at the TIF

- 2.1171** The Detainees were driven straight from BG Main to the TIF without stopping, except for a brief period when one Saxon broke down.¹⁵⁹⁷
- 2.1172** Simmons said that on arrival at the TIF the Detainees again needed assistance to alight from the vehicle. One Detainee had to be put on a stretcher. Simmons and Sgt Smith took the Detainees to the processing centre. A female American officer at the processing centre then approached Simmons and Sgt Smith. Simmons described her as "*furios*". She confronted both Sgt Smith and Simmons and threatened to report the unacceptable condition of the Detainees.¹⁵⁹⁸
- 2.1173** The interrogation part of the facility, the JFIT, was run by British Forces. The second in command of the JFIT at that time was S018. He was present when the Detainees were delivered to the TIF.
- 2.1174** S018 saw the Detainees being unloaded from the back of the lorry. One of them (Ahmad Matairi) was having difficulty walking. S018 asked Sgt Smith the reason for this and was told that the Detainees were all pretending to be hurt.¹⁵⁹⁹
- 2.1175** S018 described being summoned by an American doctor who showed him a man lying on a stretcher with injuries and bruising which were purple in colour from the sternum to the navel. This Detainee later had to be casualty-evacuated to hospital for treatment. In the course of his evidence, S018 was shown a photograph of D003's injuries¹⁶⁰⁰ and confirmed that the bruising he had seen was similar to that in the photograph but much deeper in colour and more obvious. He said that the doctor was concerned about a broken rib and potential liver damage. The doctor thought that this Detainee's medical condition was quite serious. S018 said he spoke to the Detainee through an interpreter and was told by the Detainee that someone had died. S018 also confirmed in oral evidence that his perception at the time was that this Detainee "*...had had a good kicking...*".¹⁶⁰¹
- 2.1176** S018 next saw a Detainee sitting close by, who by now had a neck brace fitted and an intravenous drip attached to his arm. The doctor informed S018 that the man had a suspected broken vertebra in the neck. He also was casualty-evacuated to hospital by helicopter almost immediately after S018 had finished speaking to him. Later on the same day, S018 saw the Detainee whom he had earlier noticed walking awkwardly with splayed feet. This Detainee was undertaking his ablutions and S018 was able to see that there was a lump hanging out of his intestine area. In evidence he said that he was later informed that this was a hernia.¹⁶⁰²

¹⁵⁹⁷ Simmons BMI 24/63/3-10; Rodgers MOD000231

¹⁵⁹⁸ Simmons BMI 24/63/11-64/24; Simmons BMI04500, paragraph 29

¹⁵⁹⁹ S018 BMI 43/35/6-37/19

¹⁶⁰⁰ MOD021828

¹⁶⁰¹ S018 BMI 43/39/24-44/10

¹⁶⁰² S018 BMI 43/44/11-45/20

- 2.1177** Dr Eric Shaw was the US Army surgeon who examined the Detainees at this time. I have already, in Chapter 7 above, described the injuries which he found and recorded.
- 2.1178** Following S018's observation of the injuries to Detainees and while the 1 QLR escort was still at the TIF there was a meeting between S018 and Rodgers. S018's evidence was that he was angered by what he had seen. He described the exchange between himself and Rodgers as "frosty." It was S018's understanding from information received from Divisional Headquarters in Basra before the arrival of the Detainees at the TIF, that there had been "a scuffle" when the Op Salerno Detainees were arrested at the Hotel. On the assumption that the injuries he had seen were caused during this scuffle, S018 challenged Rodgers to give an explanation. Rodgers denied that there had been a scuffle at the point of arrest and in support of this mentioned that there had been TV cameras present during the raid at the Hotel. In view of all the evidence, Rodgers' denial that the injuries were caused at the Hotel may have been justified. However, as S018 pointed out in evidence, Rodgers did not mention anything about the Detainees' subsequent detention, or how or when the injuries were caused.¹⁶⁰³
- 2.1179** S018 formed the view that Rodgers was not being frank with him. In evidence at the Inquiry he was shown a statement written by Rodgers dated 17 September 2003.¹⁶⁰⁴ Rodgers wrote this statement for Suss-Francksen. The statement complained that S018 had, in effect, accused 1 QLR of injuring the Detainees. In it Rodgers stated that the examining doctor had told S018 that the injuries to a Detainee had occurred "...probably within the last week." S018 rejected this with certainty, saying that he (the American doctor) never said it. "*When he summoned me to look at the male on the stretcher, he just lifted the blanket and never said anything. Nothing needed to be said.*" S018 also challenged much of the other detail in the statement provided by Rodgers to Suss-Francksen.¹⁶⁰⁵
- 2.1180** The confrontation between S018 and Rodgers prompted Suss-Francksen to write a letter to the Chief of Staff at 19 Mech Bde Headquarters. His letter enclosed the above statement made by Rodgers and mentioned that there would be a full SIB investigation into Baha Mousa's death. It complained that S018's accusatory attitude towards Rodgers was therefore inappropriate and liable to damage 1 QLR's reputation.¹⁶⁰⁶ S018 in evidence to the Inquiry made it clear he was shocked by the state of some of the Detainees on their arrival at the TIF. I found him to be an entirely honest witness. I do not find it surprising that some of his anger and displeasure was directed at Rodgers.
- 2.1181** In his SIB statement S018 said that Sgt Smith had told him that his unit had not completed the logbook for the Detainees and that it therefore had to be filled in retrospectively, from memory.¹⁶⁰⁷ According to S018, this conversation took place two or three days after the delivery of the Detainees to the TIF. It was not normal for the TIF to receive a logbook from the arresting Battlegroup. S018 in fact never saw such a logbook,¹⁶⁰⁸ and no such logbook has been provided to the Inquiry. S017,

¹⁶⁰³ S018 BMI 43/42/16-43/6; S018 BMI 43/46/13-48/3

¹⁶⁰⁴ Rodgers MOD016096

¹⁶⁰⁵ S018 BMI 43/50/2-54/20

¹⁶⁰⁶ MOD016095

¹⁶⁰⁷ S018 MOD000592

¹⁶⁰⁸ S018 BMI 43/57/13-58/22

the JFIT Commander, thought that S018 had told her that 1 QLR had supplied a logbook but she never saw such a logbook.¹⁶⁰⁹ Sgt Smith denies completing any retrospective log of the Detainees' detention at BG Main.¹⁶¹⁰

2.1182 The evidence about whether such a log was created is obviously confused. In the circumstances, I make no findings on this issue. It is not in my view significant.

Conclusions

2.1183 Following Baha Mousa's death on Monday evening, I find that Seeds visited the TDF and together with Quegan released the Detainees from their handcuffs, removed their hoods and instructed soldiers on guard to allow them to sleep. Rodgers said that he also instructed the guards to allow the Detainees to sleep. Redfearn, MacKenzie, Pte Cooper and Reader all admitted to being on guard at different stages during Monday night. They all said that they were ordered to provide the Detainees with food and water regularly and to ensure they were neither hooded nor in stress positions. I accept that throughout the night the Detainees were neither hooded nor put in stress positions and were allowed to sleep.

2.1184 I have summarised above the allegations which the Detainees made about the continued abuse to which they were subjected including in the case of two of them, to episodes of sexual humiliation. I have reservations about their allegations of abusive treatment after Baha Mousa's death. Firstly, I think it probable that the allegations of abusive conduct were genuine, but I think it possible that they occurred before Baha Mousa died. I believe it is also entirely possible that these events have, not surprisingly, merged into one episode in the minds of the Detainees and they have been unable to distinguish precisely when the events occurred.

2.1185 Secondly, it is in my view at least possible that allegations of abuse at this stage were exaggerated. For example, there is some evidence that injuries which the Detainees alleged occurred at this stage were not evident on a subsequent medical examination, for instance, D002's allegation that three teeth were broken as a result of a punch to his mouth during this period.

2.1186 Thirdly, there is evidence that Payne was not present in the TDF at any time after Baha Mousa's death. His absence of itself would have reduced the amount and level of violence to which the Detainees had been subjected up to the time of Baha Mousa's death. It would also have removed from the guards the example of his behaviour. Further, so far as the guards are concerned, I believe that the very fact of Baha Mousa's death must have impressed upon them the need for restraint in their dealings with the Detainees.

2.1187 In the light of these factors and my assessment of the likely behaviour of the guards after Baha Mousa's death I conclude that although it is not possible to rule out isolated instances of violence and/or other abusive behaviour by guards on the Detainees, the level and frequency of such violence must have been far less than before his death.

¹⁶⁰⁹ S017 MOD000597

¹⁶¹⁰ Sgt Paul Smith BMI 44/145/19-22

- 2.1188** As to the allegations that the Detainees on Tuesday morning were forced to dance like Michael Jackson, there is some support from evidence of some of the soldiers that on the morning they took the Detainees out of the TDF in order to give them some exercise before being transferred to the JFIT. None of them admitted making the Detainees dance like Michael Jackson but in my view it is highly unlikely that the Detainees imagined or concocted such an event. I find that some of the soldiers did tell them they must dance like Michael Jackson and forcibly made them take exercise. This must have been a humiliating and unpleasant experience, but it was in my judgment nothing like as serious as the abuse to which they were subjected on Sunday and Monday.
- 2.1189** Once again, although I accept that some such incident took place on Tuesday morning, I am unable to identify those who were responsible for it.
- 2.1190** Next, I conclude from Simmons' evidence that by Tuesday morning the Detainees were very distressed. A number exhibited obvious signs of injuries. Vogel, on the other hand, said she went into the TDF. She accepted it smelt of urine and faeces but she was unable to remember whether the Detainees' clothing was dishevelled, torn or missing. I reject her evidence that nothing struck her as being improper. In my opinion, Simmons' evidence, which I accept, painted an entirely different picture of the Detainees and the TDF. In my judgment Vogel must have seen what Simmons saw. As a member of the RMP she should have taken steps immediately to report what she had seen.

Chapter 19: Medics

- 2.1191** This is an appropriate point at which to discuss in detail the actions and conduct of the medical staff in the events of 14 to 16 September. The RAP at this time was staffed by the following personnel.
- 2.1192** Keilloh (the RMO) took over from Capt Oliver Bartels on about 14 August 2003 after a 36 hour handover. Keilloh, at the time aged 29, had qualified as a medical practitioner in 1998. He was fully registered and entitled to practice in 1999. In 2000 he joined the TA and served in Bosnia for six months from February to August 2001. Following this deployment he underwent senior house officer appointments of six months each, the final six months being at Northallerton General Hospital. At the end of his six month appointment in Northallerton he was ordered on three days' notice to transfer to Iraq. He was given no time to acclimatise to conditions before taking over from Bartels.¹⁶¹¹
- 2.1193** Keilloh had no previous training or experience of dealing with prisoners of war or civilian detainees. However, he accepted that in dealing with civilian detainees at no time was he presented with any medical condition with which he felt unqualified to deal.¹⁶¹²
- 2.1194** Sgt Ian Goulding, the senior NCO on the medical staff,¹⁶¹³ aged 32 at the time of Op Telic 2,¹⁶¹⁴ was qualified as a Regimental Medical Assistant, Class One (RMA1).¹⁶¹⁵
- 2.1195** Cpl Winstanley, a Combat Medical Technician, Class Three (CMT3)¹⁶¹⁶ who Keilloh said was, in his opinion, the strongest of his small group of medical staff,¹⁶¹⁷ regarded himself as Goulding's second in command.¹⁶¹⁸ His primary role was looking after the medical welfare of the soldiers, whereas Goulding was involved more on the administrative side.¹⁶¹⁹
- 2.1196** LCpl Steven Baxter, at the time aged 27 was qualified as an RMA1.¹⁶²⁰ Ptes Steven Paul Winstanley and Kevin Armstrong, aged at the time respectively 21 and 22, were junior medics.¹⁶²¹
- 2.1197** Finally, Sgt Steven Saxton was the ambulance driver¹⁶²² and Pte Edward Knight the RMO's driver.¹⁶²³

¹⁶¹¹ Keilloh BMI 36/86/1-92/3; Keilloh BMI00493, paragraph 23; Keilloh MOD004100-1

¹⁶¹² Keilloh BMI 36/89/25-91/7

¹⁶¹³ Goulding BMI 34/155/7-25

¹⁶¹⁴ Goulding BMI 34/151/3-6

¹⁶¹⁵ Goulding BMI 34/152/12-20

¹⁶¹⁶ Cpl Steven Winstanley BMI04607, paragraph 2

¹⁶¹⁷ Keilloh BMI 36/120/8-23

¹⁶¹⁸ Cpl Steven Winstanley BMI 34/57/22-58/3

¹⁶¹⁹ Keilloh BMI 36/93/12-17; Keilloh BMI 36/96/12-97/5

¹⁶²⁰ Baxter BMI 36/26/23-27/16

¹⁶²¹ Pte Kevin Armstrong BMI 35/43/20-44/23; Pte Steven Paul Winstanley BMI 34/8/15-17; Pte Steven Paul Winstanley BMI00798, paragraph 2

¹⁶²² Saxton BMI 35/4/6-10

¹⁶²³ Knight BMI 35/112/14-19

1 QLR's Procedures for Medical Examinations

- 2.1198** There were no standing orders, instructions or policies at the time which dealt with the medical care for civilian detainees. Both Bartels and Keilloh said they had received no pre-deployment training (PDT) in prisoner handling.¹⁶²⁴ Bartels said his practice was to examine and assess all detainees admitted to the TDF himself. Following the examination he would complete the documentation consisting of forms and hand them to the provost staff for onward transmission with the detainee to the TIF. He understood that the purpose of the examination was for him to certify that the detainees were fit for detention. His understanding was derived from a conversation with Sgt Smith. On each occasion he completed a form whether or not the examination revealed any injury or other medical condition.¹⁶²⁵ He was unaware that his staff were carrying out medical inspections and expressed surprise when this was put to him in the course of his evidence to the Inquiry.¹⁶²⁶
- 2.1199** Keilloh said that at the handover to him by Bartels no mention was made of civilian detainees. He was wholly unaware that he or his staff had any responsibility for detainees until he was informed of this by Sgt Smith. He first learnt from Sgt Smith that detainees were to be given a medical examination in the course of a discussion with Sgt Smith and Goulding.¹⁶²⁷ He was told by them that a medical inspection was necessary for the purposes of screening the detainees for injuries. He asked if it was necessary to keep a record and was told that it was not. He asked what was the practice of his predecessor and was informed, contrary to Bartels' evidence, that he kept no records of medical examinations.¹⁶²⁸ He was also told that the detainees would be kept in the TDF for less than 48 hours and a cursory medical examination would be sufficient.¹⁶²⁹ Keilloh did not require that these examinations be conducted by himself as RMO. He permitted them to be performed by more junior medics from the RAP.¹⁶³⁰
- 2.1200** In fact Bartels said, and I accept, that he did complete records of all examinations made by him but at the handover to Keilloh he had not mentioned this. He said he had not done so because it was "... *such an ingrained process for doctors when undertaking medical treatment*". He agreed that it would be stating the obvious to do so.¹⁶³¹ I accept such record keeping is standard practice for doctors.
- 2.1201** Keilloh's instructions to the other medics were therefore that documentation needed to be completed only when some medical action was required and that no documents were required when the findings were compatible with the detainees remaining at the TDF for up to 48 hours.¹⁶³²
- 2.1202** Cpl Winstanley and Pte Kevin Armstrong were the only medics to contradict Keilloh on this point. Cpl Winstanley said that before the arrival of the Op Salerno Detainees he had carried out no medical examinations on detainees.¹⁶³³ However, he believed

¹⁶²⁴ Bartels BMI 52/142/12-144/4; Keilloh BMI00491-2, paragraph 20

¹⁶²⁵ Bartels BMI 52/155/21-161/20

¹⁶²⁶ Bartels BMI 52/162/7-164/5

¹⁶²⁷ Keilloh BMI 36/92/25-96/8

¹⁶²⁸ Keilloh BMI 36/106/10-110/1; Keilloh BMI 36/115/21-116/5; Keilloh BMI 36/165/10-167/6

¹⁶²⁹ Keilloh BMI 36/111/23-113/8; Keilloh MOD004102

¹⁶³⁰ Cpl Steven Winstanley BMI 34/61/3-15

¹⁶³¹ Bartels BMI 52/149/6-14

¹⁶³² Keilloh BMI 36/111/23-112/6; Keilloh BMI 36/115/12-17

¹⁶³³ Cpl Steven Winstanley BMI 34/60/23-61/21

that every examination should be documented, whether or not specific injuries were noted.¹⁶³⁴ Pte Kevin Armstrong agreed that this was the correct practice.¹⁶³⁵

2.1203 Baxter said the practice at the time was that an FMed 5 form need only be completed following an examination, if the examination revealed anything of medical significance. He agreed that on reflection since the events, a form should always have been completed.¹⁶³⁶ Similarly, Goulding stated that there was no system of recording the initial medical examination of a detainee unless something of note was found.¹⁶³⁷ Pte Winstanley agreed.¹⁶³⁸

2.1204 In evidence to the Inquiry Keilloh accepted that good practice dictated that a form should have been completed following every examination.¹⁶³⁹ After Baha Mousa's death he realised this should be done and, together with Peebles, promptly instituted a system which involved examinations of detainees being made regularly and documented.¹⁶⁴⁰

Conditioning

2.1205 Some of the medics accepted that they were aware before Op Salerno that detainees were being conditioned. Goulding accepted that he was aware that prisoners were hooded and placed in stress positions, that this was labelled conditioning, and that its purpose was to assist tactical questioners to extract information. He even accepted at one point that the purpose of the medical examination was to assess whether prisoners were "*fit for the conditioning*"¹⁶⁴¹, although it should be said that at another point in his evidence he said that the purpose was to assess whether prisoners were fit for questioning.¹⁶⁴² Baxter regularly saw prisoners hooded both outside and inside the TDF and on a couple of occasions he saw them in stress positions. He thought that hooding and the use of stress positions were standard operating procedures.¹⁶⁴³ He too agreed under examination that the purpose of the initial medical check was to assess whether detainees were fit for conditioning.¹⁶⁴⁴

2.1206 By contrast, Pte Winstanley said he saw prisoners hooded but not in stress positions.¹⁶⁴⁵ Cpl Winstanley said he did not see any detainees before Op Salerno. It follows as he said that he had not seen any detainees hooded or in stress positions.¹⁶⁴⁶ Pte Kevin Armstrong, who was with 1 QLR only for a short period before Op Salerno, was unaware before Op Salerno of the use of stress positions and hooding.¹⁶⁴⁷

¹⁶³⁴ Cpl Steven Winstanley BMI 34/62/16-66/4

¹⁶³⁵ Pte Kevin Armstrong BMI 35/49/10-50/11

¹⁶³⁶ Baxter BMI 36/37/1-39/8

¹⁶³⁷ Goulding BMI 34/162/19-164/10; Goulding BMI 34/175/5-15

¹⁶³⁸ Pte Steven Paul Winstanley BMI 34/15/20-16/15

¹⁶³⁹ Keilloh BMI 36/116/9-117/3

¹⁶⁴⁰ Keilloh BMI 36/144/9-150/13

¹⁶⁴¹ Goulding BMI 34/215/6-24

¹⁶⁴² Goulding BMI 34/167/21-23

¹⁶⁴³ Baxter BMI 36/29/2-32/16

¹⁶⁴⁴ Baxter BMI 36/68/24-69/4

¹⁶⁴⁵ Pte Steven Paul Winstanley BMI 34/18/2-23

¹⁶⁴⁶ Cpl Steven Winstanley BMI 34/62/3-15

¹⁶⁴⁷ Pte Kevin Armstrong BMI04686, paragraph 37

2.1207 Keilloh emphatically denied being aware of the use of stress positions. He knew that detainees were hooded but said he had been told by Sgt Smith that this was for security purposes and that detainees were not hooded for more than ten to fifteen minutes at a time. He did not perceive any medical problem with this and did not consider it to be inhumane.¹⁶⁴⁸

Medical Treatment of the Op Salerno Detainees

Initial examination on Sunday

2.1208 Payne said that on the arrival of the first six Detainees he sent one of the Rodgers or Hollender Multiple to notify the RAP.¹⁶⁴⁹ Keilloh was not at BG Main, having gone to Shaibah to collect some medical stores.¹⁶⁵⁰ Cpl Winstanley, Baxter and Pte Winstanley went across to the TDF to carry out the medical assessments. Cpl Winstanley said he supervised Pte Winstanley as he conducted the first examination. Thereafter he returned to the RAP, leaving Baxter to supervise Pte Winstanley.¹⁶⁵¹ Both Baxter and Pte Winstanley agreed this sequence of events.¹⁶⁵²

2.1209 What is not clear is when these three men went to the TDF. Cpl Winstanley believed the examinations took place in the morning.¹⁶⁵³ Pte Winstanley, in his SIB statement said that at about 15.00hrs he was tasked by Keilloh to carry out the examinations with Baxter.¹⁶⁵⁴ Baxter was unsure of this time but thought that the examinations took place about mid-afternoon.¹⁶⁵⁵ Although Goulding did not go to the TDF on that occasion, in his SIB interview in March 2005 he said that at about 13.30hrs, he or Keilloh tasked the other three to go to the TDF and carry out the examinations.¹⁶⁵⁶ Crowcroft's evidence was that he thought that the medics, after a brief early visit, returned to the TDF to examine all the Detainees at about 16.30hrs.¹⁶⁵⁷

2.1210 Only D001 of the Detainees said that he had been examined by a medic on the Sunday, and even then only after he started to feel unwell.¹⁶⁵⁸ The other Detainees denied that they had been the subject of any medical examination that day.¹⁶⁵⁹

2.1211 On this evidence, I accept that at least one Detainee was examined but it is very difficult to determine when this and any other examinations were carried out. I reject Crowcroft's evidence that the medics arrived at 16.30hrs. He had an obvious interest in placing the time as late as possible so as to be able to demonstrate the lack of injuries during his stag.

¹⁶⁴⁸ Keilloh BMI 36/102/23-106/9

¹⁶⁴⁹ Payne BMI01736-7, paragraph 74

¹⁶⁵⁰ Keilloh BMI 36/118/10-25

¹⁶⁵¹ Cpl Steven Winstanley BMI 34/68/7-72/18

¹⁶⁵² Baxter BMI 36/42/16-46/8; Pte Steven Paul Winstanley BMI 34/21/21-24/22

¹⁶⁵³ Cpl Steven Winstanley BMI 34/68/7-12

¹⁶⁵⁴ Pte Steven Paul Winstanley BMI 34/23/2-10; Pte Steven Paul Winstanley MOD000859

¹⁶⁵⁵ Baxter BMI 36/43/4-5; Baxter BMI 36/46/22-47/18

¹⁶⁵⁶ Goulding BMI 34/181/18-184/6

¹⁶⁵⁷ Crowcroft BMI 22/56/4-64/14

¹⁶⁵⁸ D001 BMI 12/16/23-17/14; D001 BMI 12/29/21-32/1

¹⁶⁵⁹ D002 BMI 20/3/21-23; D002 BMI 20/9/20-10/10; D003 BMI 11/46/8-14; D004 BMI 18/20/17-21; D004 BMI 18/41/18-45/3; D006 BMI 13/70/17-71/5; D006 BMI 13/73/4-76/20; Maitham BMI 13/36/20-37/6; Ahmad Matairi BMI 12/68/6-21; Ahmad Matairi BMI 12/92/14-94/3; D005 BMI02332, paragraph 87

2.1212 In my judgment it is much more likely that such examinations as took place occurred shortly after the Detainees arrived in the TDF and after Payne, as I accept, had informed the RAP that they were ready to be examined. I also believe that it is probable that more than one Detainee was examined. On this issue I accept Baxter and Pte Winstanley's evidence that they examined more than one Detainee.¹⁶⁶⁰ It appears likely that D005 and D006,¹⁶⁶¹ and almost certainly Maitham, who arrived much later, were not examined. If D006 had been examined I would have expected the medics to have learned at this stage of his heart condition, but apparently they did not. However, I find that the probability is that the other Detainees were examined. The examinations in my view are likely to have been cursory and in the confusion and distress of arrest and being taken into the TDF the Detainees have simply forgotten that they were examined.

2.1213 I accept that such examinations, albeit cursory, included a physical examination for injuries. With the possible exception of one of the two surviving FMed 5 forms, to which I refer below, there are no extant documents relating to these examinations. This is not surprising, since the practice of completing forms seems not to have been adhered to by all members of the RAP staff and Keilloh gave no instruction that they should be completed on every examination.

2.1214 Pte Winstanley remembered that the Detainees were hooded when he examined them. He remembered lifting the hoods from the heads of each Detainee so as to check their faces.¹⁶⁶² In his evidence to the Inquiry, he denied that they were in stress positions. However, in his SIB statement dated 17 September 2003 he had said: *"Upon arrival at the cells I noticed that there were eight detainees all of which were stood up with their hands cuffed together with plasticuffs and out to their front."*¹⁶⁶³ He denied in oral evidence that this was a reference to stress positions,¹⁶⁶⁴ but I did not find this denial convincing. Cpl Winstanley remembered Pte Winstanley lifting the shirt of the Detainee whose examination he supervised.¹⁶⁶⁵ He said that the Detainees were neither hooded nor in stress positions at that time.¹⁶⁶⁶ Pte Winstanley said that he saw no injuries on any of the Detainees whom he examined.¹⁶⁶⁷ Baxter said that the Detainees were hooded at the time of the examination and they were standing with their arms parallel to the floor in stress positions. He did not see any injuries.¹⁶⁶⁸

Examination of D004 and Ahmad Matairi on Sunday evening

2.1215 Later on Sunday, when it was still light, Pte Winstanley said he was called back to the TDF by a member of the guard force, and was asked to examine two Detainees (possibly Baha Mousa or D004 and Ahmad Matairi) because they were refusing to stand up. He said he again saw nothing abnormal.¹⁶⁶⁹ He said that this visit generated one of the two surviving FMed 5s, with which I deal below.

¹⁶⁶⁰ Baxter BMI 36/45/13-46/8; Pte Steven Paul Winstanley 34/23/13-24/7

¹⁶⁶¹ Pte Steven Paul Winstanley BMI 34/40/9-16

¹⁶⁶² Pte Steven Paul Winstanley BMI 34/49/7-15

¹⁶⁶³ Pte Steven Paul Winstanley MOD000859

¹⁶⁶⁴ Pte Steven Paul Winstanley BMI 34/20/2-21/19

¹⁶⁶⁵ Cpl Steven Winstanley BMI 34/70/16-71/21

¹⁶⁶⁶ Cpl Steven Winstanley BMI 34/62/6-15; Cpl Steven Winstanley BMI 34/68/20-70/15

¹⁶⁶⁷ Pte Steven Paul Winstanley BMI 34/49/7-50/19

¹⁶⁶⁸ Baxter BMI 36/45/1-46/21

¹⁶⁶⁹ Pte Steven Paul Winstanley BMI 34/26/16-31/12

2.1216 Pte Winstanley said he was supervised on this occasion by Cpl Winstanley, but Cpl Winstanley had no recollection of this visit.¹⁶⁷⁰

Examination of D005 and D006 on Monday morning

2.1217 I have already touched upon this episode in Chapter 12 above. D006 became unwell at some time during the morning of the second day of his detention. He described having heart palpitations and falling to the floor. He thought this happened at around 09.00hrs. The soldiers made attempts at resuscitation and then called for a doctor.¹⁶⁷¹ D006 recalled that a “*doctor*” came and examined him and wanted him to go to hospital. D006 did not remember an interpreter being present but he could understand the word “*hospital*” in English. He was given tablets for his condition and he was allowed to go to the toilet.¹⁶⁷² His condition improved once he had received the medication. His hoods and cuffs were removed.

2.1218 Cpl Winstanley was the medic who examined D006 as a result of his heart condition. He stated that he attended the TDF on Monday morning because he was called by the guard to a Detainee who was feeling unwell.¹⁶⁷³ The Detainee was lying on the floor and appeared in distress, pointing to his heart. He was questioned through the interpreter who was present and Cpl Winstanley understood that he had a heart condition for which he took medication. Cpl Winstanley then examined him, listened to his heart and found an irregular heart beat and a slightly raised pulse.¹⁶⁷⁴ Cpl Winstanley then consulted Keilloh and following this consultation some medication (aspirin and propranolol) was prescribed and given to D006.¹⁶⁷⁵

2.1219 Keilloh said that when he returned to BG Main in mid-afternoon on Sunday, Cpl Winstanley wanted to speak to him about one of the Detainees whom he had been called back to examine. Keilloh said Cpl Winstanley described the man as suffering an irregular heart rate.¹⁶⁷⁶ In my opinion this was a clear reference to D006’s heart problems which caused Cpl Winstanley to see him on, as I find, Monday morning. There is ample evidence that this incident happened on Monday morning and not Sunday afternoon.¹⁶⁷⁷ Keilloh said that he advised Cpl Winstanley to administer 300 mg aspirin and 40 mg propranolol. He understood from Cpl Winstanley that D006 was already on some form of medication.¹⁶⁷⁸

2.1220 An FMed 5 was generated in respect of this treatment, with which I deal below.

2.1221 D005 also believed he may have seen a medic at this time when he was suffering from breathing problems. There is some evidence that the medic who saw him was Cpl Winstanley, but Cpl Winstanley did not remember examining D005.¹⁶⁷⁹ D005

¹⁶⁷⁰ Cpl Steven Winstanley BMI 34/78/4-8; Pte Steven Paul Winstanley BMI 34/27/4-5

¹⁶⁷¹ D006 BMI 13/73/4-16

¹⁶⁷² D006 BMI 13/75/9-76/4

¹⁶⁷³ Cpl Steven Winstanley BMI 34/78/11-15

¹⁶⁷⁴ Cpl Steven Winstanley BMI 34/80/1-81/20

¹⁶⁷⁵ Cpl Steven Winstanley BMI 34/81/16-82/2

¹⁶⁷⁶ Keilloh BMI 36/118/20-121/17

¹⁶⁷⁷ D006 BMI 13/73/4-75/19; Cpl Steven Winstanley BMI 34/78/4-83/3; MOD015391

¹⁶⁷⁸ Keilloh BMI 36/119/7-120/1

¹⁶⁷⁹ D006 stated that he told the “*doctor*” his son was suffering from an allergy (D006 BMI02144, paragraph 38) and Stirland said the same medic was called to deal with both D006 and D005 (Stirland MOD000159-60)

alleged that “a soldier who could have been a medical officer” sprayed an irritant substance in his face.¹⁶⁸⁰ In his oral evidence D005 did not say that this soldier was a medic.¹⁶⁸¹ In the circumstances it is clear that there is no sound basis for concluding that Cpl Winstanley was responsible for this act of abuse.

The two FMed 5s

2.1222 Two FMed 5 forms survive.¹⁶⁸² The first was made out by Pte Winstanley and countersigned by Cpl Winstanley. It bears the name of D004, although the Winstanleys say this is a mistake, since it actually concerns an examination of Baha Mousa. It is dated 14 September 2003 and reads:

*“No injuries to face or body. Breathing sounds okay. 16 breaths per minute. Blood pressure 100 over 75. When asked the patient declared no previous illnesses before detained...”*¹⁶⁸³

2.1223 It has been submitted that this FMed 5 was a forgery, having been made out after Baha Mousa’s death.¹⁶⁸⁴

2.1224 In his SIB statement dated 17 September 2003, Pte Winstanley said that some time during the evening of 14 September 2003 he was called back to the TDF to see two of the Detainees who were refusing to stand up. He made out the FMed 5 after examining the first man, who he said was Baha Mousa. The second man was Ahmad Matairi. His evidence was that having examined Baha Mousa he found no injuries and recorded his findings on the FMed 5.¹⁶⁸⁵ He then took the FMed 5 to Cpl Winstanley, who countersigned it. Pte Winstanley denied that the form had been made out following the initial examination.¹⁶⁸⁶

2.1225 Cpl Winstanley’s explanation for this FMed 5 was that it had been completed following the initial routine medical examination and countersigned by him as the supervising medic.¹⁶⁸⁷

2.1226 There are difficulties with both these explanations for this FMed 5.¹⁶⁸⁸ Firstly, the FMed 5 does not record that the Detainee had been complaining of any medical condition. It makes no reference to any complaint or reason for the medic being asked to examine the Detainee. Secondly, although both Winstanleys said that Baha Mousa was the subject of the FMed 5,¹⁶⁸⁹ the name inserted on it was that of D004.

2.1227 Thirdly, so far as Pte Winstanley’s version of the reason for this FMed 5 is concerned it is relevant to note that there is apparently no FMed 5 for Ahmad Matairi, who was the second of the two men he said he returned to examine. Similarly, so far as Cpl Winstanley’s version is concerned, it is relevant to note that there are no

¹⁶⁸⁰ D005 BMI02332, paragraph 87

¹⁶⁸¹ D005 BMI 17/29/11-25

¹⁶⁸² MOD015335; MOD015391

¹⁶⁸³ MOD015335

¹⁶⁸⁴ Cpl Steven Winstanley BMI 34/113/2-114/22; SUB002361-2, paragraphs 363-364

¹⁶⁸⁵ Pte Steven Paul Winstanley MOD000860

¹⁶⁸⁶ Pte Steven Paul Winstanley BMI 34/26/13-33/5

¹⁶⁸⁷ Cpl Steven Winstanley BMI 34/70/19-72/24

¹⁶⁸⁸ MOD015335

¹⁶⁸⁹ Cpl Steven Winstanley BMI 34/70/19-72/24; Pte Steven Paul Winstanley BMI 34/28/11-32/1

surviving FMed 5 forms for the other Detainees who, according to the medics, were also examined at the same time, after their arrival at BG Main.

2.1228 Fourthly, Pte Winstanley's credit as a witness is affected by his denial in evidence that he had ever seen Detainees in stress positions. This assertion was in my view contrary to his SIB statement of 17 September 2003. In that statement, as he was constrained to admit, he had said:

*"Upon arrival at the cells I noticed there were eight detainees all of which were stood up with their hands cuffed together with plasticuffs and out to their front."*¹⁶⁹⁰

Pte Winstanley said he was unable to remember why he had said this in his SIB statement. But he added that if he had seen any of the Detainees in stress positions he would not have thought anything about it. He would have thought it was part of the normal protocol.

2.1229 Both Winstanleys deny that this FMed 5 had been made out after Baha Mousa's death. Both denied that it had been manufactured for the purpose of demonstrating they had carried out a medical examination of Baha Mousa on Sunday, finding no visible injuries on his body.¹⁶⁹¹

2.1230 The second FMed 5 concerned the visit by Cpl Winstanley to the TDF on the morning of Monday 15 September to carry out the examination of D006. This incident is described above. Cpl Winstanley was unable to say what time of day it was when he made the examination.¹⁶⁹² He was also unable to say in which room he had examined the Detainee. He did say that there were other Detainees present but none were hooded or plasticuffed.¹⁶⁹³

2.1231 This FMed 5 referred to the patient being prescribed aspirin and propranolol for *"irregular heart beat and slight rising of his pulse rate"*.¹⁶⁹⁴ The FMed 5 does not bear the name of the patient. Cpl Winstanley claimed that this was because the Detainee refused to give his name.¹⁶⁹⁵ Keilloh said that, so far as he could recall, he did not make out a written prescription.¹⁶⁹⁶

2.1232 This FMed 5 was produced by Cpl Winstanley to the SIB on 22 September 2003 after he had made his first statement on 17 September 2003 which made no mention of it.¹⁶⁹⁷ His attendance on the Detainee was not referred to in the information provided to Brigade Headquarters to be included in Fenton's post-death report.

2.1233 It has been submitted that this FMed 5 was also a forgery and that it was prepared after Baha Mousa's death. The suggestion is that the FMed 5 was created after the event for fear that at the TIF D006 would be found to be suffering from a serious heart condition, with no record of any treatment of this condition whilst he was at BG Main.¹⁶⁹⁸

¹⁶⁹⁰ Pte Steven Paul Winstanley BMI 34/20/2-21/19; Pte Steven Paul Winstanley MOD000859

¹⁶⁹¹ Cpl Steven Winstanley BMI 34/113/2-114/22; Pte Steven Paul Winstanley BMI 34/31/21-32/1

¹⁶⁹² Cpl Steven Winstanley BMI 34/141/23-142/21

¹⁶⁹³ Cpl Steven Winstanley BMI 34/78/20-84/11; Cpl Steven Winstanley BMI 34/135/18-136/25

¹⁶⁹⁴ MOD015391

¹⁶⁹⁵ Cpl Steven Winstanley BMI 34/80/18-83/3

¹⁶⁹⁶ Keilloh BMI 36/159/8-14

¹⁶⁹⁷ Cpl Steven Winstanley BMI 34/125/8-126/1

¹⁶⁹⁸ SUB002363, paragraph 367

Baha Mousa's death

- 2.1234** The most serious event with which the medics had to deal was the death of Baha Mousa. Much of their evidence about the circumstances in which they dealt with him just before and at the time of his death is not materially in dispute.
- 2.1235** As related above, Baha Mousa's condition necessitated the RMO's attendance at the TDF, probably at about 21.30hrs on the evening of 15 September 2003. Keilloh went straight to the TDF from the RAP and started to give Baha Mousa mouth-to-mouth resuscitation. He said that Baha Mousa vomited into his mouth. After about a minute a stretcher arrived and Baha Mousa was conveyed to the RAP. He was placed on a bed and CPR was carried out by the whole medical staff working as a team. It lasted about 30 minutes before all agreed that Baha Mousa could not be revived. Attempts to resuscitate him ceased and his death is recorded as having occurred at 22.05hrs.¹⁶⁹⁹
- 2.1236** Following the attempted resuscitation it is not in dispute that the body was left in exactly the same condition as it was at the end of those attempts.¹⁷⁰⁰ The photographs of Baha Mousa's body, taken after his death, show various tubes inserted into him for the purpose of resuscitation in the positions they were when the resuscitation attempt ceased.¹⁷⁰¹ In due course his body was removed to Shaibah Hospital and an autopsy performed. As outlined above (see Chapter 16), Baha Mousa's body was found to have sustained the numerous injuries which were described in the pathologists' reports.¹⁷⁰²
- 2.1237** Following Baha Mousa's death, on the same night Keilloh instigated a debrief. He said that at the time he had not noticed the injuries subsequently found on the body, apart from a small trace of dried blood under the nostril. He also denied that any of the medical staff drew his attention to injuries on the body during the debrief.¹⁷⁰³ In this respect Keilloh's evidence is at variance with the evidence of other members of the medical team.¹⁷⁰⁴
- 2.1238** Goulding said that in the course of the resuscitation attempts he noted a small amount of blood on Baha Mousa's nose and two bruises in his midriff area. He did not remember noticing any other injuries and was shocked by the sight of the injuries demonstrated by photographs shown to him when he was interviewed by the SIB. He said that at the debrief he and two other medics said to Keilloh that they had noticed bruising on the body.¹⁷⁰⁵
- 2.1239** Cpl Winstanley said in evidence that at the time of the resuscitation he had noticed bruising and swelling on Baha Mousa's face, neck, torso and abdomen. At first he said he did not know what had caused the bruising. However, he soon agreed that he knew at once that Baha Mousa had been mistreated whilst in the TDF. He agreed that in his Inquiry witness statement he said he had commented to Keilloh, "*Look at the state of him*". In evidence given at the Inquiry he said that this was said by him

¹⁶⁹⁹ Keilloh BMI 36/121/20-124/5; Keilloh BMI 36/153/19-21

¹⁷⁰⁰ Keilloh BMI 36/127/11-128/2; Cpl Steven Winstanley BMI 34/90/9-20

¹⁷⁰¹ MOD049898

¹⁷⁰² James BMI05349-51; MOD000386-90

¹⁷⁰³ Keilloh BMI 36/124/6-130/8

¹⁷⁰⁴ See paragraphs 2.1238-2.1240

¹⁷⁰⁵ Goulding BMI 34/207/24-209/22

to Keilloh in the presence of other members of the team and members of the RAP who were present in the room at that time.¹⁷⁰⁶

2.1240 Of the other medics who were present when resuscitation was being attempted, Baxter said he only noticed blood round Baha Mousa's nose, a puffy face and torn skin on the wrists.¹⁷⁰⁷ Pte Kevin Armstrong noticed Baha Mousa's hands were swollen and there were a few bruises on his body. He accepted that the bruises had the appearance of being caused by punches and kicks.¹⁷⁰⁸ Pte Winstanley remembered seeing bruising to Baha Mousa's chest but not elsewhere. He said at the time he was concentrating on the task of resuscitation. He too said that at the debrief after the death, there was a discussion about Baha Mousa's injuries.¹⁷⁰⁹ Saxton saw speckles of blood on Baha Mousa's nose and a small bruise on his abdomen. He even saw some of Baha Mousa's blood on Keilloh's face, and thought he commented on this to Keilloh.¹⁷¹⁰ It follows that the only person apparently not to notice any injuries to Baha Mousa's body was Keilloh.

2.1241 The Inquiry heard expert evidence as to whether Baha Mousa's injuries would have been visible at the time of his death. Dr Hill said that the majority of Baha Mousa's injuries would have been visible before death, but that some, particularly the deep bruising would not have been.¹⁷¹¹ James said that, in the days after death, bruising may change appearance or become visible for the first time.¹⁷¹² He also accepted that grazing may become more visible after death as it dries.¹⁷¹³ Ultimately, however, his opinion was that the vast majority of Baha Mousa's injuries would have been visible before his death.¹⁷¹⁴ Some of the photographs taken at the time of the autopsy are shown in Figure 8 below. It must be remembered they should be viewed in the light of Dr Hill's and James' comments above.

Figure 8: Photographs of Baha Mousa's body from autopsy



¹⁷⁰⁶ Cpl Steven Winstanley BMI 34/85/10-95/8

¹⁷⁰⁷ Baxter BMI 36/49/20-51/18

¹⁷⁰⁸ Pte Kevin Armstrong BMI 35/53/9-55/12; Pte Kevin Armstrong BMI 35/57/20-22

¹⁷⁰⁹ Pte Steven Paul Winstanley BMI 34/35/5-38/3

¹⁷¹⁰ Saxton BMI 35/15/21-17/19

¹⁷¹¹ Dr Ian Hill BMI 33/97/18-98/11

¹⁷¹² James BMI 33/42/11-18

¹⁷¹³ James BMI 33/47/17-48/6

¹⁷¹⁴ James BMI 33/66/23-67/5



Contact with Shaibah Hospital and the death certificate

2.1242 Baha Mousa's death certificate was signed not by Keilloh, but by a doctor at Shaibah Hospital, Capt Andrew Le Feuvre. Le Feuvre had not treated Baha Mousa, and so far as he could recall, he did not even see his body before signing the death certificate. Since he neither treated Baha Mousa in the lead-up to his death nor conducted any post mortem on his body, it was obviously wrong for him to sign the death certificate. He accepted as much, albeit a little grudgingly.¹⁷¹⁵

2.1243 The death certificate signed by Le Feuvre contained a section entitled "*cause of death*". This stated that the "*disease or condition directly leading to death*" was "*cardio respiratory arrest*". Where the form asked what the disease or condition leading to death was "*due to (or as a consequence of)*", Le Feuvre wrote, "*unknown, refer to coroner*".¹⁷¹⁶ These words indicated, and Le Feuvre confirmed, that Le Feuvre expected there to be a post mortem.¹⁷¹⁷ This is some mitigation for his signing the death certificate.

2.1244 The name on the death certificate was wrong: it was that of D004. It has not been possible to determine how this confusion arose. It appears that Le Feuvre was asked to, and did, fill out a second death certificate, on which the name was corrected.¹⁷¹⁸

2.1245 It appears that Le Feuvre obtained information about the cause of Baha Mousa's death from Keilloh. There is a handwritten note, written by Le Feuvre, on Baha Mousa's medical records. It states:

*"Spoke to Captain Keilloh – QLR – present at arrest. Cardio respiratory arrest after being taken into custody. Certified dead at RAP at 2205 15.9.3 by himself. For [review] by SIB in morning for [query] autopsy."*¹⁷¹⁹

2.1246 Neither Keilloh nor Le Feuvre were able to remember this conversation.¹⁷²⁰ Keilloh was only able to remember calling Shaibah Hospital and speaking to a female duty officer, telling her that there had been a sudden death, that the body was on its way and that it needed to be preserved.¹⁷²¹

2.1247 It is suggested in submissions that Keilloh thereby acted so as to procure a death certificate "*...that removed all acknowledgement of the risk of foul play...*"¹⁷²² I find that Le Feuvre was wrong to have signed the death certificate and to have relied, if he did, on Keilloh's word when doing so. But I reject the submission that it was a deliberate attempt by either doctor to cover up the real cause of death. Such a suggestion is a very serious allegation against both doctors who are professional men. In my view the evidence is nowhere near sufficient for me to draw this inference from the known facts.

¹⁷¹⁵ Le Feuvre BMI 46/25/17-25: "*In hindsight, it may have been inappropriate...*"

¹⁷¹⁶ MOD015344

¹⁷¹⁷ Le Feuvre BMI 46/27/1-10

¹⁷¹⁸ MOD015347. The other amendment on this version of the form – the addition of "*asphyxia*" as a cause of death – was not made by Le Feuvre. It was made by a member of the RMP, Sherie Cooper, on the insistence of Col Daoud Mousa, once he had been told by Hill after the post mortem about Hill's conclusions as to the cause of death. The latter amendment was not signed by a doctor or pathologist.

¹⁷¹⁹ MOD015346

¹⁷²⁰ Keilloh BMI 36/153/4-154/7; Le Feuvre BMI 46/17/25-18/23

¹⁷²¹ Keilloh BMI00484, paragraph 136

¹⁷²² SUB002368, paragraph 379

2.1248 I do not know whether or not the signing of a death certificate by a doctor who neither treated nor conducted a post mortem on the deceased was common in theatre. This incident may have been unique or it may not. However, I comment that it is a matter of some concern that this occurred. In this particular case, a post mortem was due so there was ultimately little real harm done. However, it is obvious that, unless death certificates are signed by the doctor who treated the patient during his final illness, causes of death may not be accurately recorded and suspicious deaths may not be properly investigated.

Examination of D004 and Ahmad Matairi after Baha Mousa's death

2.1249 After Baha Mousa's death, two other Detainees were brought to the RAP and examined by Keilloh. They were D004 and Ahmad Matairi.

2.1250 Pte Armstrong said he and Cpl Winstanley went to the TDF in response to a request from the guards. Cpl Winstanley had no recollection of this visit and Pte Armstrong accepted that he may have confused Cpl Winstanley with Baxter.¹⁷²³ Pte Armstrong said he saw the Detainees still hooded, handcuffed and in stress positions. One was rolling on the floor in pain. Pte Armstrong said this Detainee was taken to the RAP and examined by Keilloh. He said that the Detainee was diagnosed by Keilloh as having a kidney condition and given a pain-killing injection. He was then returned to the TDF.¹⁷²⁴

2.1251 Baxter remembered a Detainee at that time who on examination was complaining of stomach pain. The man complained of kidney pains and trouble passing water as a result of being kicked. Baxter referred this man to Keilloh. Baxter was unable to recollect whether he saw and examined this man in the TDF or at the RAP.¹⁷²⁵

2.1252 Pte Armstrong said that another Detainee was referred to the RAP. Baxter agreed that two Detainees had been referred to the RAP. Pte Armstrong was unable to recollect whether the second Detainee was a young man complaining of being kicked in the back or another Detainee. He did remember that two men were examined by Keilloh. However, he accepted that his evidence had become confused by conflating the description and symptoms of both Detainees into one.¹⁷²⁶ In any event, he remembered seeing that one of these two Detainees had bruising on his back.¹⁷²⁷ He also heard both Detainees telling Keilloh that their injuries resulted from being kicked.¹⁷²⁸

2.1253 What is clear and was accepted by Keilloh is that he examined two Detainees that evening after Baha Mousa had died. He said that he took a history from each and carried out a physical examination of both men. The first was D004. He complained of being kicked.¹⁷²⁹ In oral evidence Keilloh said he had understood the Detainee to be saying that he had been kicked once.¹⁷³⁰ However, in his SIB statement, Keilloh

¹⁷²³ Pte Kevin Armstrong BMI 35/79/21-82/4

¹⁷²⁴ Pte Kevin Armstrong BMI 35/61/14-68/24

¹⁷²⁵ Baxter BMI 36/56/20-59/2

¹⁷²⁶ Pte Kevin Armstrong BMI 35/75/24-79/20; Pte Kevin Armstrong BMI 35/95/15-22; Baxter BMI 36/60/21-61/2

¹⁷²⁷ Pte Kevin Armstrong BMI 35/71/17-18

¹⁷²⁸ Pte Kevin Armstrong MOD000877

¹⁷²⁹ Keilloh MOD000352

¹⁷³⁰ Keilloh BMI 36/132/2-133/3

said: “He was complaining of pain in his abdomen and renal area, lower right back. The interpreter present told me that the male alleges that he was struck in those areas.” The second was Ahmad Matairi. He complained of lower back pain. He also said that he had been kicked, on the previous day. Dr Keilloh said he saw no marks on the body of either man and he did not believe their allegations of assault. Nonetheless, he gave each pain relief medication and an anti-inflammatory injection. They were both returned to the TDF.¹⁷³¹

2.1254 As set out in Chapter 7 above, D004 suffered a variety of mild injuries, consisting of bruising and swelling. Keilloh says he did not see these. In his Inquiry witness statement D004 said that, when he told the doctor that he had been hit by British soldiers, the doctor looked upset and shook his head with disgust.¹⁷³² In oral evidence he said that the man who examined him shook his head and was dissatisfied when D004 told him that he had been beaten.¹⁷³³

2.1255 Ahmad Matairi also suffered from bruising (see Chapter 7 above). He also had a calf injury, later diagnosed as deep vein thrombosis. More obviously, he was suffering from a hernia. It seems clear that the hernia was sufficiently visible for a number of the guards and visitors to the TDF to have noticed it during his detention.¹⁷³⁴ Baxter was made aware of the hernia.¹⁷³⁵ Keilloh did not notice either Ahmad Matairi’s bruising, calf injury or hernia.¹⁷³⁶

Possible examination of other Detainees

2.1256 Keilloh’s evidence, which I accept, was that he did not see these Detainees again after examining Ahmad Matairi during Monday night. He did not take any steps to ensure that the remaining Detainees were examined, and so far as he was aware, they were not. He said that he proposed to review D004 and Ahmad Matairi the following morning, but by the time he came to do so all the Detainees had been transferred to Um Qasr.¹⁷³⁷

2.1257 By contrast, Baxter said all of the Detainees were medically checked on Monday night, after Baha Mousa’s death.¹⁷³⁸ Although Goulding no longer had any memory of this, from his SIB interview of March 2005, it seems he may have suggested to Keilloh that the other Detainees should be examined.¹⁷³⁹ The other medics did not remember any checks on the remaining Detainees that evening. Neither did the other Detainees remember any medical examinations at this time. Indeed, if they had been examined, it would have been expected that the very serious injuries suffered by Kifah Matairi in particular would have come to light at this time, but they did not. On the balance of all of the evidence, I find that only D004 and Ahmad Matairi received medical attention on Monday night, after Baha Mousa’s death.

¹⁷³¹ Keilloh MOD000352

¹⁷³² D004 BMI02039-40, paragraph 61

¹⁷³³ D004 BMI 18/41/18-44/24

¹⁷³⁴ Douglas BMI 31/38/23-40/1; Simmons BMI 24/167/17-24; Redfearn BMI01795, paragraph 102

¹⁷³⁵ Baxter BMI00440, paragraph 60

¹⁷³⁶ Keilloh MOD000352

¹⁷³⁷ Keilloh BMI 36/131/23-140/25

¹⁷³⁸ Baxter BMI 36/56/12-19

¹⁷³⁹ Goulding MOD003870

2.1258 As to Tuesday morning, Pte Kevin Armstrong said in his oral evidence to the Inquiry that he believed he went to the TDF with Keilloh in the morning and that Keilloh examined all of the Detainees. He said he did not remember finding any injuries but D005 was “*quite upset*”.¹⁷⁴⁰ However, in a statement to the SIB made only the next day, on 17 September 2003, he said he had no further involvement with the Detainees after Monday night.¹⁷⁴¹ I think his recollection in this respect when he gave evidence to the Inquiry was probably mistaken.

Conclusions

2.1259 The first conclusion which I have reached is that no criticism can be made of Keilloh and his staff in respect of their attempts to resuscitate Baha Mousa after they were called to the TDF on Monday evening. No criticism has been levelled at any of the medical staff in respect of what they did. It seems clear that in difficult and stressful circumstances everything that could be done was done to try and preserve Baha Mousa’s life. However, by the time they were called to the TDF it was simply too late for him to be successfully resuscitated.

2.1260 Having arrived at this conclusion there are other areas where some of the medical staff can, in my opinion, properly be said to be at fault. I shall discuss the actions of each in turn starting with the two drivers, Saxton and Knight. Neither has played any significant part in the events with which the Inquiry is concerned.¹⁷⁴² In the circumstances I make no criticism of either witness.

Pte Kevin Armstrong

2.1261 Pte Kevin Armstrong was attached to 1 QLR for a short period of three weeks during which these events occurred.¹⁷⁴³ He had no dealings with the Op Salerno Detainees until the attempts to resuscitate Baha Mousa.¹⁷⁴⁴ After Baha Mousa’s death he was involved in bringing two of the Detainees from the TDF to the RAP to be examined by Keilloh. On both occasions he was accompanied by a more senior NCO. On his visit to the TDF that night he must have observed the appalling conditions in that building. He admitted that he saw Detainees in hoods. It might be said that he failed to do anything about reporting these conditions up the chain of command.

2.1262 In my opinion, Pte Kevin Armstrong cannot sensibly be criticised for his conduct. As a very junior and inexperienced member of the medical staff he was entitled to rely on the actions of staff more senior to him to report conditions in the TDF and to take any necessary action.

2.1263 Although Pte Kevin Armstrong’s recollection of the events was not as full as might be expected there is no reason to think that from the outset he was other than truthful

¹⁷⁴⁰ Pte Kevin Armstrong BMI 35/72/23-73/16

¹⁷⁴¹ Pte Kevin Armstrong MOD000877-8

¹⁷⁴² Aspinall did say that he “*vaguely recalled*” that Knight “*may have visited*” the TDF before Baha Mousa’s death, but he could not recall when this was or the state of the Detainees at the time: Aspinall BMI05226, paragraph 61(d); Aspinall BMI 28/94/11-22. Knight denied entering the TDF prior to Baha Mousa’s death, although he said it was possible that he spoke to the TDF guards when using the portaloos: Knight BMI 35/116/14-117/25. Aspinall’s evidence on this point is, in my judgment, much too uncertain to found any conclusion that Knight was aware of the abuse in the TDF.

¹⁷⁴³ Pte Kevin Armstrong BMI04677, paragraph 3

¹⁷⁴⁴ Pte Kevin Armstrong BMI 35/50/24-51/5

in relating what he saw and what he could recollect. In the circumstances I make no criticism of him for any of his actions.

Baxter, Cpl Winstanley and Pte Winstanley

2.1264 In my opinion Baxter and Pte Winstanley must have seen that the Detainees were hooded and in stress positions when they went into the TDF on Sunday 14 September. Baxter admitted as much.¹⁷⁴⁵ Pte Winstanley admitted to seeing them hooded but denied seeing them in stress positions, and Cpl Winstanley said that they were neither hooded nor in stress positions.¹⁷⁴⁶

2.1265 I do not accept Pte Winstanley's denial as truthful. He accepted that he had seen detainees hooded before the Op Salerno Detainees arrived but he denied seeing any in stress positions. However, he thought there would be nothing unusual if a detainee had been placed in a stress position and in view of what he said in his SIB statement (see paragraphs 2.1214 and 2.1228 above). I do not accept his denial that he had seen these Detainees in stress positions. I find that he was aware not only that the Detainees were hooded but also that they were being made to adopt stress positions.

2.1266 Cpl Winstanley's evidence was that he did not see the Detainees in stress positions but if they were put in stress positions by those trained in tactical questioning it would not be for him to say whether that was objectionable.¹⁷⁴⁷ Although on Monday morning he may only have gone into the left-hand room of the TDF, I suspect that he saw what Pte Winstanley said in his SIB statement he saw on Sunday, when both went into the TDF to conduct medical examinations, albeit his visit was shorter than Pte Winstanley's visit.¹⁷⁴⁸

2.1267 Baxter had seen detainees hooded and in stress positions before. He presumed these were normal operational procedures sanctioned by higher ranks.¹⁷⁴⁹ He agreed that he regarded putting detainees in stress positions as being an ordeal for them.¹⁷⁵⁰

2.1268 In my opinion, when Baxter and Pte Winstanley saw the Detainees hooded and in stress positions on Sunday they ought to have reported this up the chain of command and in particular to Goulding or Keilloh. Their medical training (although probably limited) and their experience of the effects of the intense heat in Iraq ought to have caused them to question the use of hoods and stress positions in the TDF. In my view their failure to report what they had seen is not excused by assumptions that these practices were standard operating procedures and sanctioned by higher ranks. They ought to have appreciated that to keep detainees hooded and in stress positions was likely to cause, at the least, unjustified distress and suffering.

2.1269 It is also no excuse that these men were not involved in decisions as to how long the Detainees were to be kept in this state. As medics they should have pointed out

¹⁷⁴⁵ Baxter BMI 36/46/9-19

¹⁷⁴⁶ Pte Steven Paul Winstanley BMI 34/18/2-21/19; Cpl Steven Winstanley 34/69/4-70/15

¹⁷⁴⁷ Cpl Steven Winstanley BMI 34/74/3-19

¹⁷⁴⁸ Cpl Steven Winstanley BMI 34/72/25-74/24

¹⁷⁴⁹ Baxter BMI 36/29/2-32/21

¹⁷⁵⁰ Baxter BMI 36/80/18-81/11

the dangers of such conduct. In fact they did nothing, something which I regard as unacceptable.

2.1270 On the issue of whether the FMed 5s were forged, I make the following findings. In my view the circumstances surrounding the first FMed 5 are suspicious. I find neither of the explanations given by the Winstanleys for its creation convincing for the reasons explained above. However, I am not satisfied that it was a forgery. For it to be a forgery, in my judgment both Winstanleys must have been involved. Had they both agreed to concoct it after Baha Mousa's death it is difficult to understand why their versions of how it came into being were so different. In addition, having seen each give evidence, albeit at times I find neither told the truth, I do not find that they were men who would have gone to the lengths of forging a document to protect their own interests.

2.1271 In respect of the second FMed 5 I am also suspicious of its authenticity. I accept that Cpl Winstanley did examine D006 and I accept he went to Keilloh to obtain his advice. Keilloh accepted that he must have decided on the medication to be administered, although he was unable to remember making out a written prescription. In my view this makes it less likely that Cpl Winstanley would have forged the FMed 5. I can see no reason for him to take such a drastic and dishonest step. In all the circumstances I find that this document was not a forgery.

2.1272 However, there is another aspect of Cpl Winstanley's visit to the TDF on Monday morning which requires consideration. Cpl Winstanley was asked whether any of the Detainees on that occasion were showing any signs of distress. His response to the Inquiry was:

"No sir, they were all literally stood up or sat down."

He added that he heard no moaning or groaning.¹⁷⁵¹

2.1273 Cpl Winstanley's examination of D006 must have taken place in the left-hand room. It may be that D005, if present, was not at that time hooded, but Maitham, who was present, was hooded. Further, I cannot believe that Cpl Winstanley on that visit was unaware of the conditions in the right-hand room. He must have been in the TDF for more than just a momentary visit since he had to examine D006 before going back to Keilloh to obtain the prescription. Presumably he returned with the medication after Keilloh had made it out. As described by Redfearn, the conditions in the TDF on Monday morning were appalling. In my opinion it must have been obvious to any person visiting the TDF on that morning, let alone a medically qualified person, that the Detainees were in considerable distress. Yet none of this was reported by Cpl Winstanley, either to Goulding or Keilloh. In my judgment he must have seen the Detainees in distress and ought to have reported their condition to Keilloh or Goulding, or at least to a member of the Provost staff.

Goulding

2.1274 Goulding accepted that from time to time he had seen detainees hooded and in stress positions.¹⁷⁵² He also accepted that this was "conditioning" in readiness for

¹⁷⁵¹ Cpl Steven Winstanley BMI 34/83/19-25

¹⁷⁵² Goulding BMI 34/170/23-171/15

questioning.¹⁷⁵³ He thought it was widely known throughout the Battlegroup that hoods and stress positions were used.¹⁷⁵⁴ He appreciated that hooding and stress positions were potentially dangerous.¹⁷⁵⁵

2.1275 Goulding said he did not go into the TDF when the Op Salerno Detainees were present until the time of Baha Mousa's death, but he was made aware that they had been brought into the TDF earlier. He was also aware that the Detainees were being held in the TDF on Monday and were still there when Baha Mousa was brought into the RAP on Monday evening. At no time during that period did he go into the TDF, nor did anyone inform him of anything that would have given him cause for concern.¹⁷⁵⁶

2.1276 Following Baha Mousa's death Goulding agreed that he might have suggested to Keilloh that he, Keilloh, went over to the TDF to make sure the other Detainees were alright. He accepted that he and Keilloh "...perhaps should have ensured that all the other detainees had a further medical check". In fact neither he nor Keilloh went to the TDF that evening to make such checks.¹⁷⁵⁷

2.1277 Goulding was a reasonable witness whose evidence I accept. There was a suggestion that he had asked Payne at some stage to show him the choir but he denied this and I accept his denial.¹⁷⁵⁸ His admission that he and Keilloh should have gone back to the TDF after Baha Mousa's death was to his credit and, in my view, realistic.

2.1278 Given his knowledge of what conditioning involved and the length of time the Detainees had been in the TDF, in my opinion, as the senior NCO in the medical section, Goulding ought also to have questioned the use of hoods and stress positions, particularly in the intense heat. Once he knew that the Detainees were in the TDF he ought either to have gone himself into the TDF at some point well before Baha Mousa's death, or to have suggested to Keilloh that both of them went to inspect conditions in the TDF. He did none of these things. I consider his failure in that regard and his failure to go into the TDF after Baha Mousa's death was a serious failing on his part.

Keilloh

2.1279 I have some sympathy for Keilloh for the position in which he found himself when first he arrived at BG Main. The failure to give him any training or instructions in respect of prisoner handling was an unfortunate omission.¹⁷⁵⁹ He complained that his two Senior Medical Officers (SMOs) rarely got in touch with him, which contributed to him having a strong feeling of isolation.¹⁷⁶⁰ In making this comment, I am not to be taken as criticising Col Ewan Carmichael and Lt Col Antony Willman, Keilloh's immediate superiors. They no doubt were themselves extremely busy.

2.1280 As a witness, Keilloh was articulate, thoughtful and careful. He expressed himself clearly and was anxious to ensure that he gave as full an explanation of his actions as

¹⁷⁵³ Goulding BMI 34/215/6-14

¹⁷⁵⁴ Goulding BMI 34/180/10-15

¹⁷⁵⁵ Goulding BMI 34/217/13-17

¹⁷⁵⁶ Goulding BMI 34/181/25-186/20

¹⁷⁵⁷ Goulding BMI 34/210/7-212/9

¹⁷⁵⁸ Goulding BMI 34/195/11-196/21

¹⁷⁵⁹ Keilloh BMI00491-2, paragraph 20

¹⁷⁶⁰ Keilloh BMI 36/98/14-100/4

possible. I am satisfied that apart from one particular aspect of his evidence which I do not accept Keilloh was doing his best to give truthful and accurate evidence to the Inquiry.

2.1281 At some stage in the future Keilloh has to face disciplinary proceedings in the GMC arising out of his conduct in Iraq as RMO.¹⁷⁶¹ I do not know any of the details of these proceedings and at the time of writing this part of the Report, Keilloh has not appeared before the GMC. Mindful of these proceedings my findings in respect of Keilloh are not intended to be taken as indicating my view as to whether or not he is guilty of any professional misconduct. Such decisions are for the GMC and not me.

2.1282 Keilloh accepted that before the Op Salerno Detainees arrived at the TDF on 14 September 2003 he had seen detainees at BG Main who were hooded. He said he had been informed by Sgt Smith, that the hoods were only applied for ten to fifteen minutes and were taken off at intervals. He did not regard this practice as inhumane.¹⁷⁶²

2.1283 I find that Keilloh was aware that detainees brought into the TDF were hooded, but I accept that he believed they were hooded for only ten to fifteen minutes at a time. I further accept his denial that he did not know detainees were put in stress positions.

2.1284 It is not clear on the evidence when Keilloh first became aware that the Op Salerno Detainees were being held in the TDF. He said Cpl Winstanley came to him on Sunday afternoon to consult him about a heart condition of one of the Detainees.¹⁷⁶³ As already stated, in my view, this must have been in respect of D006 which I find took place on Monday morning. On any view, at that time Keilloh would have been made aware that a Detainee was in the TDF. However, in my opinion, it is very probable that Keilloh would have been informed either by one of his staff or a member of the Provost staff some time on Sunday that a group of detainees were present in the TDF.

2.1285 Having made these comments, my findings in respect of Keilloh are as follows. Firstly, in my judgment, by the time the Op Salerno Detainees were taken into the TDF, Keilloh ought to have devised an appropriate procedure for the medical examination of each detainee on arrival. He should also have ensured the recording of the findings of the examination.

2.1286 Very shortly after Baha Mousa's death, Peebles, in collaboration with Keilloh, did draw up a document (*Recommendations on Battlegroup Internment Procedures*), dated 18 September 2003) which dealt with these matters in addition to other procedures.¹⁷⁶⁴

2.1287 At the Inquiry, Keilloh excused himself from instituting such processes on the basis that he had not thought it necessary to do anything in addition to adopting the practice of his predecessor, Bartels.¹⁷⁶⁵ I appreciate that Keilloh was at all times extremely busy

¹⁷⁶¹ Keilloh BMI00485, paragraph 4

¹⁷⁶² Keilloh BMI 36/102/11-105/7

¹⁷⁶³ Keilloh BMI 36/118/16-120/1

¹⁷⁶⁴ Keilloh BMI 36/155/19-156/13; Peebles BMI 40/125/25-127/7; MOD016200

¹⁷⁶⁵ Keilloh BMI 36/115/10-117/3

and most, if not all of his time, was taken up with the care of 1 QLR personnel.¹⁷⁶⁶ He had received no training in procedures in respect of civilian detainees¹⁷⁶⁷ and detainees were, as Bartels accepted, “...a small, if not insignificant, part of day-to-day life in Iraq”.¹⁷⁶⁸

2.1288 I am also conscious that Lt Gen Louis Lillywhite told the Inquiry that “*The medical care of detainees is a sensitive issue needing very sensitive and careful consideration. It is not something that can be left to middle or junior medical management ...*”.¹⁷⁶⁹ Lillywhite went further in his Inquiry witness statement saying that in 2003, when there was no policy on medical care for detainees (this matter not being rectified until publication of the Surgeon General’s Policy Letter of January 2005), he would not have expected medical officers to see, examine and document examinations of detainees on arrival and before departure.¹⁷⁷⁰ In addition, Brig Carmichael, at the time Commander Medical for 3 UK Division, in evidence by implication did not criticise Keilloh for adopting the procedures which he inherited.¹⁷⁷¹

2.1289 In submissions made on behalf of Keilloh to the Inquiry by his legal representatives it was not challenged that the appropriate procedure was for the RMO to see all detainees on their entry and exit to and from the TDF and for the examinations to be recorded.¹⁷⁷² In evidence Keilloh accepted that the procedure in operation before Baha Mousa’s death for examining and recording the results of such examinations of detainees was inadequate.¹⁷⁷³ In my view Keilloh was right to make this concession. I am also of the opinion that when he was first informed by Sgt Smith of the procedure which Smith said was operated by Bartels (but was, I find, not accurate), Keilloh ought to have realised at that stage that it was inadequate and needed to be changed. He ought to have instituted a system by which on entry to the TDF all detainees were examined by himself or one of his senior medics and that all examinations were recorded whether or not they were ‘nil’ returns.¹⁷⁷⁴

2.1290 Secondly, I have considered whether Keilloh ought to have visited the TDF before Baha Mousa’s death. It is suggested on his behalf that there is no evidence upon which I could conclude that Keilloh should have been aware of the presence of the Detainees as a group in the TDF before Baha Mousa died.¹⁷⁷⁵ I disagree. Keilloh did not dispute that Cpl Winstanley had consulted him about D006, as he stated, on Sunday afternoon. As I find, this occurred on Monday morning. At that time obviously he did know of D006’s presence in the TDF and in my opinion it is probable that he would have been told that D006 was part of a group of Detainees held in the TDF. Yet Keilloh, by his own admission, made no further enquiries about D006 or the Detainees.¹⁷⁷⁶ Allowing for the fact that at that time Keilloh had not introduced the procedure of regular visits to monitor detainees, this is not surprising. In this instance, hearing that D006 was complaining of symptoms of a heart condition, in

¹⁷⁶⁶ Keilloh BMI 36/93/12-20

¹⁷⁶⁷ Keilloh BMI 36/89/25-90/5

¹⁷⁶⁸ Bartels BMI 52/191/20-192/5

¹⁷⁶⁹ Lillywhite BMI05742, paragraph 4

¹⁷⁷⁰ Lillywhite BMI05718-9, paragraph 33; Lillywhite BMI05727, paragraph 58

¹⁷⁷¹ Carmichael BMI 86/192/11-197/3

¹⁷⁷² SUB000553, paragraph 30

¹⁷⁷³ Keilloh BMI 36/149/21-150/13

¹⁷⁷⁴ Keilloh BMI 36/115/21-117/3

¹⁷⁷⁵ SUB000556-7, paragraphs 38-39

¹⁷⁷⁶ Keilloh BMI 36/119/9-121/21; Keilloh BMI 36/157/9-159/14: MOD015391

my opinion he should certainly have visited the TDF at that time. In addition, Keilloh was aware that the Detainees might be held in the TDF for up to 48 hours.¹⁷⁷⁷ In the circumstances he should have ensured that D006 was seen by a medic, probably himself, at regular intervals thereafter until he was released or transferred to the TIF. He might also have appreciated that there was a need from time to time for the other Detainees to be seen by either himself or a member of his medical staff. He knew that they were being kept in a building with no facilities and in considerable heat.

2.1291 Thirdly, following Baha Mousa's death Keilloh said he did not visit the TDF. This raises an important issue as to whether or not Keilloh became aware of injuries to Baha Mousa at the time of the attempted resuscitation in the RAP. He said that he had seen no injuries on Baha Mousa during and after the resuscitation process apart from dried blood around his nose.¹⁷⁷⁸ As already noted, all other members of the medical staff involved in the resuscitation process remembered seeing some injuries on the body during or after the resuscitation attempt.¹⁷⁷⁹

2.1292 At the debriefing session held immediately following Baha Mousa's death,¹⁷⁸⁰ Cpl Winstanley said he made the comment to Keilloh, "*look at the state of him*".¹⁷⁸¹ This is a reference to the fact that Cpl Winstanley believed there was evidence of mistreatment.¹⁷⁸² Goulding also remembered telling Keilloh about bruising on Baha Mousa's body.¹⁷⁸³ Pte Winstanley saw bruising on Baha Mousa's chest and he too remembered a discussion during the debrief about his injuries. Keilloh said he had no recollection of any discussion of injuries during the debrief.¹⁷⁸⁴ However, I find there was a discussion during the debrief and that Goulding and other members of the RAP team referred to the injuries which they had seen on Baha Mousa.

2.1293 I find it very difficult to believe that Keilloh did not see signs of mistreatment on Baha Mousa's body and that he had no recollection of any discussion about injuries seen by others. I accept that this whole incident and the attempts at resuscitation must have been a traumatic experience for Keilloh. It is possible, but in my view unlikely, that he simply cannot remember what was said at the debrief. In the circumstances I am reluctantly driven to the conclusion that Keilloh must have known following the resuscitation process that Baha Mousa had sustained injuries in the TDF.

2.1294 Fourthly, my finding above gives rise to the further issue of whether Keilloh should immediately have gone to the TDF himself and carried out examinations on the other Detainees. Goulding accepted that either he or Keilloh or both of them should have gone into the TDF to see for themselves the condition of the Detainees.¹⁷⁸⁵ The need for such a course of action must have been all the more obvious when a little later two Detainees were brought to the RAP complaining of injuries caused by kicks from the guards.¹⁷⁸⁶ Keilloh's explanation for not following this course of action was that he had ensured that the guards were told that if either of the two Detainees'

¹⁷⁷⁷ Keilloh BMI 36/111/25-112/9

¹⁷⁷⁸ Keilloh BMI 36/124/10-125/17

¹⁷⁷⁹ See paragraphs 2.1238-2.1240

¹⁷⁸⁰ Keilloh BMI 36/124/13-19

¹⁷⁸¹ Cpl Steven Winstanley BMI04617, paragraph 38

¹⁷⁸² Cpl Steven Winstanley BMI 34/92/9-14

¹⁷⁸³ Goulding BMI00136, paragraph 39

¹⁷⁸⁴ Keilloh BMI 36/124/13-125/21

¹⁷⁸⁵ Goulding BMI 34/211/14-212/9

¹⁷⁸⁶ Keilloh BMI 36/132/2-133/1

condition deteriorated he must be informed.¹⁷⁸⁷ I find this an inadequate explanation. He was relying on the very guards whom he must have known or at least suspected had been involved in assaulting Baha Mousa to inform him of any deterioration in the condition of the Detainees.

- 2.1295** Fifthly, again I find it very difficult to understand how Keilloh failed to observe in his examination of these two Detainees that they had been assaulted. Each complained of being kicked and at subsequent medical examinations at Shaibah each was found to have sustained injuries. In Ahmad Matairi's case he was found to be suffering from a large left inguinal hernia. Dr Hill said that hernias may sometimes be visible (when the gut protrudes) and sometimes not. He said that when a patient has a hole in the muscle the hernia itself is always detectable. If the hernia is not protruding and the patient does not point to the correct area it may be missed.¹⁷⁸⁸
- 2.1296** Even if Keilloh had failed to observe these injuries, which in my view would have been a serious failure, I do not accept that his response was appropriate. In my view the death of Baha Mousa and the complaints of the two Detainees who had been brought to the RAP ought to have caused Keilloh to make the short walk from the RAP to the TDF to see for himself the condition of the Detainees.
- 2.1297** Quegan gave evidence of meeting Keilloh on Tuesday morning. He asked Keilloh whether he had seen any of the Detainees the previous night. He said Keilloh replied, "...one had been killed and that the others were in *"shit state"*". He added that Keilloh had anger in his voice.¹⁷⁸⁹ This incident was recorded by Quegan in his diary but the diary entry used slightly different language. The word "*died*" was used rather than "*killed*" and there was no mention of anger in Keilloh's voice.¹⁷⁹⁰
- 2.1298** Keilloh vehemently denied going to the TDF after Baha Mousa's death on Monday night. He also denied using the words "*shit state*" when speaking to Quegan. He said it was not the sort of language which he used.¹⁷⁹¹
- 2.1299** I find Quegan's evidence compelling. As I have explained above (see paragraph 2.888 above) he was a member of the TA and by profession a solicitor. He kept a diary of events which he witnessed during the tour. It is suggested by those representing Keilloh that Quegan may have unwittingly transposed a conversation which he had with Seeds and recorded it as a conversation with Keilloh.¹⁷⁹² I cannot accept that submission. Quegan must have known both Keilloh and Seeds, they were fellow officers. I think it is very unlikely that Quegan was mistaken in identifying Keilloh as the author of these remarks and equally unlikely that he had incorrectly recorded the remarks in his diary. I find that Keilloh did speak to Quegan on Tuesday morning and that he did say that which Quegan recorded in his diary, namely that one man had died and the others were in a "*shit state*".
- 2.1300** Taking the evidence as a whole from the point when Keilloh was called to the TDF on Monday evening, I find that he did know that Baha Mousa had been assaulted. I find on a balance of probabilities that he was aware that Baha Mousa had been injured,

¹⁷⁸⁷ Keilloh BMI 36/137/12-138/5

¹⁷⁸⁸ Dr Ian Hill BMI 33/92/15-94/1

¹⁷⁸⁹ Quegan BMI00290, paragraph 60

¹⁷⁹⁰ Quegan BMI00296

¹⁷⁹¹ Keilloh BMI 36/138/15-142/10

¹⁷⁹² SUB000580, paragraph 96

either from what he saw during the resuscitation process or from what others had said at the debrief. I find that Keilloh's explanation of the condition of the Detainees given on the following morning to Quegan was based on what he had seen in the TDF, probably when he went there to attend to Baha Mousa, and from his subsequent examinations of D004 and Ahmad Matairi. The description of the Detainees being in a "shit state" was entirely accurate.

2.1301 These findings reinforce my criticism of Keilloh that he ought to have gone back to the TDF after Baha Mousa's death in order to examine all of the Detainees. In my judgment this was in all the circumstances a serious failing. Furthermore, in my opinion, on the same evening Keilloh ought to have reported what, I find, he knew to Peebles, the BGIRO, or some other senior officer in the Battlegroup.

2.1302 Sixthly, the Detainees also criticise Keilloh for his failure to appreciate what was involved in conditioning and failing to put a stop to it. Keilloh said that in dealing with detainees he followed what he had been told by Sgt Smith, was Bartels' procedure. He was not aware that they were to be questioned and he emphatically denied that he knew about stress positions.

2.1303 The Detainees suggest that since the medics in his team knew of the practice of hooding and stress positions they must have passed this knowledge on to Keilloh.¹⁷⁹³

2.1304 On this issue I accept Keilloh's evidence. He knew about hooding and said that he asked Sgt Smith what it involved. Hearing that hooding for security purposes was limited to fifteen minute periods with a break between each, he did not think the practice inhumane or unacceptable. I accept that he did not know about stress positions.

2.1305 Seventhly, given that Keilloh had no training at all in respect of prisoner handling, and save for my comments above in paragraph 2.1289, in my view he cannot fairly be criticised for following what he believed was the practice of his predecessor. In my judgment it was only when in respect of these Detainees he must have become aware that they had been in the TDF for any length of time that alarm bells ought to have rung in Keilloh's mind.

2.1306 I add that up to the time of Baha Mousa's death I think there is something in Keilloh's belief that as a young doctor on deployment to what had been a war theatre, he expected British soldiers to behave appropriately and in accordance with their training. Implicit in this belief is an underlying trust that British Forces would act in accordance with the laws, both national and international.¹⁷⁹⁴

2.1307 Finally, I have already stated that I have sympathy for Keilloh for the reasons I have set out. It is to his credit that he and his team of medics did their best to save Baha Mousa's life. It is also to his credit that following the death Keilloh took steps to see that the RMP attached to 1 QLR were informed. Generally there is no evidence of any complaint being made against him in respect of his treatment of 1 QLR personnel. The failures which I have found must be seen in the context of what for him must have been an extremely arduous and stressful tour, and one in which he believed he had been given little support from more senior medics.

¹⁷⁹³ SUB002357, paragraph 356; SUB002359, paragraph 360

¹⁷⁹⁴ Keilloh BMI 36/135/1-4

2.1308 In my judgment there are obvious lessons to be learned from Keilloh and his staff's experience in relation to the issues discussed in this Chapter. These can be summarised as a lack of training or guidance for doctors and medics in respect of prisoner handling, a system for checking detainees and record keeping. I find there is also a need for clear guidance for doctors and medics in respect of any involvement in interrogation. I discuss these matters in Part XVI and XVII.

Chapter 20: Those Responsible for Violence and Broader Issues Raised by the Events of 14 to 16 September 2003

Introduction

2.1309 In this Chapter, I start by providing a summary in table form of my findings about assaults before going on to draw together some further factual findings which I have made in order to identify broader concerns raised by these events. I shall deal with the latter under five headings:

- (1) the use of conditioning techniques;
- (2) loss of discipline and lack of “moral courage”;
- (3) delay and breach of the fourteen hour limit;
- (4) inadequate detention procedures: the TDF, custody records, food and water; and
- (5) a failure to supervise and the dispute over who was responsible for the Detainees’ welfare.

2.1310 These broader concerns inform my analysis of the context for the events of 14 to 16 September, in Parts III to XV of the Report, and the recommendations which I make in Parts XVI and XVII. But before discussing these broader concerns I set out the following table which lists all of those whom I have found to have been involved in violence against the Detainees.

Those Responsible for the Violence

2.1311 In my judgment one of the principal causes of this violence was the rumour circulating the Battlegroup to the effect that these Detainees were connected with the murder of Dai Jones or members of the RMP.¹⁷⁹⁵ Admittedly, not all of the soldiers involved with the Detainees remembered such a rumour.¹⁷⁹⁶ However, in my view there is compelling evidence that the abuse of these Detainees was motivated in part by the erroneous belief that they were connected to the murder of either Dai Jones or the RMP. Payne, the ringleader for the abuse, said so in terms. When asked why he had committed acts of violence against them, his evidence was as follows:

“Q. Or was it that this simply was a gratuitous, or a series of gratuitous acts of violence for no reason whatsoever?”

A. I think it was because we thought they had murdered the RMP.

Q. Who is the “we” in that sentence?”

A. Everybody.”¹⁷⁹⁷

¹⁷⁹⁵ Allibone BMI 24/107/1-109/1; Aspinall BMI 28/29/4-12; Sgt David Brown BMI 38/137/10-15; Brzezinski BMI 37/94/23-95/7; Huxley BMI 23/20/25-21/19; Richards BMI 31/128/4-20; Schofield BMI 18/175/18-176/3

¹⁷⁹⁶ Colley BMI 45/160/18-161/2; LCpl Michael Hartley BMI 45/202/8-12; MacKenzie BMI 29/160/12-16

¹⁷⁹⁷ Payne BMI 32/72/9-14. See to similar effect Slicker BMI 21/85/10-13; Pte Aaron Cooper BMI04359, paragraph 94

2.1312 There were, though, other factors which contributed to the violence. Firstly, as I have set out below, 1 QLR's system of custody was unsafe. The absence of a system of proper record keeping and medical checks increased the risk of abuse, as did the fact that access to the TDF was unrestricted. Secondly, certain individuals were guilty of a failure to supervise properly. Particular blame in this respect must lie with Payne, Peebles and Rodgers especially as they were each, to varying degrees, aware of at least some of the abuse. Thirdly, there was an inherent risk that guards who were required to enforce stress positions would resort to violence in order to do so. Fourthly, Payne, who was in direct charge of the TDF, played a critical role in the violence in two senses: he was personally responsible for many of the assaults and he also thereby set a terrible example to the other soldiers present. Fifthly, and importantly, there was a very serious breakdown of discipline within 1 QLR which enabled the violence to occur. I discuss the issue of discipline within 1 QLR and in particular whether the Battlegroup maintained its discipline when dealing with other Iraqi civilians in the next Part of this Report.

Table of findings about assaults

Name	Rank in September 2003	Description of assault or assaults	Report paragraph number
Allibone	Pte	Admitted that he pushed and shook the Detainees and tapped their feet in order to keep them awake and in stress positions. I do not accept his description of just tapping the Detainees to keep them awake, but am unable to reach findings as to what additional degree of force he may have used.	2.496 2.499
Appleby	Pte	Admitted tapping the Detainees. Used more force than prepared to admit in evidence. Forcefully manhandled the Detainees when keeping them awake and in stress positions. His conduct was sufficiently forceful to amount to abusive treatment.	2.541
Aspinall	Pte	Slapped Detainees during the "Free for All". Slapped the Detainees across the head during Monday afternoon. On Monday, when enforcing stress positions he used force when manhandling the Detainees into position.	2.456 2.472 2.695 2.724

Name	Rank in September 2003	Description of assault or assaults	Report paragraph number
Bentham	Pte	<p>Kicked D003 in the back and stomach several times, on a single occasion on Monday.</p> <p>On Monday afternoon, kicked most of the Detainees' feet and slapped two of them across their heads. Used kicks to return Detainees to stress positions.</p>	<p>2.183 2.725</p> <p>2.695 2.696 2.725 2.726</p>
Cooper	Pte	<p>Threw about ten punches during the "Free for All" and struck three to five Detainees.</p> <p>During his Sunday night guard duty, used force to keep the Detainees awake and in stress positions. Quite forcefully put the Detainees back into their stress positions and accepted he may have tapped them on the back of the neck with moderate force.</p>	<p>2.457 2.458 2.472 2.478</p> <p>2.512 2.524</p>
Crowcroft	Pte	<p>Indulged in acts of gratuitous assaults on the Detainees. Indulged in violent and unjustified conduct against the Detainees in the course of his stag.</p>	<p>2.441 2.447</p>
Douglas	Cpl	<p>Slapped the Detainees' arms or legs and nudged them with his foot to keep them in stress positions.</p>	<p>2.567 2.568 2.575</p>
Fallon	Pte	<p>Indulged in acts of gratuitous assaults on the Detainees. Indulged in violent and unjustified conduct against the Detainees in the course of his stag.</p>	<p>2.441 2.447</p>
Graham	Pte	<p>Slapped the Detainees across the head to keep them awake and scared. Used greater force than mere "taps" to keep the Detainees in stress positions.</p>	<p>2.668 2.669 2.695 2.729</p>
Lee	Pte	<p>Punched one of the Detainees once, shortly after their arrival at the TDF.</p>	<p>2.360 2.371</p>
Livesey	CSgt	<p>Punched D002 twice with relatively hard blows to the head when returning him to the TDF after he had been questioned by the tactical questioner.</p>	<p>2.926 to 2.929</p>
MacKenzie	Pte	<p>Took part in "Free for All" by slapping Detainees about the head.</p> <p>During his Sunday night guard duty, used force to keep the Detainees awake and in stress positions.</p>	<p>2.461 2.472</p> <p>2.524</p>

Name	Rank in September 2003	Description of assault or assaults	Report paragraph number
Payne	Cpl	<p>During the course of the Crowcroft and Fallon stag, he did more than just enforce the stress positions in the way illustrated in the Payne video; the force he used escalated into full physical assaults. The beatings started on the Detainees' arrival at the TDF and Payne was one of those involved.</p> <p>During the "Free for All", started the violence by hitting and kicking the Detainees.</p> <p>On Monday, gouged a Detainee's eyes.</p> <p>On Monday afternoon, singled out "Grandad" for mistreatment: kicked, punched and karate chopped him and pulled him up by his eye sockets.</p> <p>On Monday afternoon, kicked the Detainee in the centre room, who was probably Baha Mousa.</p> <p>Regularly on returning to the TDF, kicked and punched the Detainees.</p> <p>Demonstrated the "choir" from time to time.</p> <p>During the struggle ending with the death of Baha Mousa, lost his temper and assaulted Baha Mousa, punching and kicking him.</p>	<p>2.443 2.444 2.445 2.1401 2.1402</p> <p>2.472 2.478 2.1403</p> <p>2.743 2.679 2.690 2.691</p> <p>2.683 2.691</p> <p>2.1393 to 2.1396</p> <p>2.481 2.492 2.493 2.596 2.680 2.681 2.690 2.691 2.722 2.727</p> <p>2.990 2.991 2.993 2.995 2.1040</p>
Reader	Pte	Slapped and kicked the Detainees. Used more force than prepared to admit in evidence. Forcefully manhandled the Detainees when keeping them awake and in stress positions. His conduct was sufficiently forceful to amount to abusive treatment.	2.541

Name	Rank in September 2003	Description of assault or assaults	Report paragraph number
Redfearn	LCpl	Encouraged the guards to treat the Detainees roughly. He himself punched and kicked more than one Detainee.	2.626
Roberts	SSgt	On Monday, karate chopped at least one Detainee and kicked probably three Detainees.	2.800
Slicker	Pte	On Sunday, punched in the stomach a Detainee who, he said, was reported to have tried to escape. On Monday afternoon, slapped a Detainee once about the head and kicked him in the kidney region.	2.823 2.829 2.682 2.692 2.829
Stacey	Cpl	Kicked the Detainees' feet apart to maintain their stress positions.	2.372
Stirland	Pte	Slapped a Detainee around the back of the head.	2.594

The Use of Conditioning Techniques During this Episode

2.1313 I have found that the “*conditioning*” of the Detainees began immediately after their arrival at BG Main, and that it continued with little respite until the time of Baha Mousa’s death.

2.1314 I deal first with what conditioning consisted of during this period. On arrival, the Detainees were hooded and placed in the “*ski*” stress position. This is the position which can be seen in the Payne video. Payne said that he needed no specific instruction that this should happen. He was simply following a procedure which by that point of the tour had become standard at BG Main. The Detainees were prevented from sleeping throughout Sunday night, and probably until Baha Mousa’s subsequent death. Payne said prevention of sleep was also part of the standard procedure.¹⁷⁹⁸ Additionally, Smulski thought it appropriate to prevent the Detainees from sleeping. The result was that the Detainees were subjected to loud noise, consisting of shouting and the banging of a metal pole against the floor and walls.

2.1315 The extent to which conditioning was constant is in issue. There were some breaks. On Sgt Smith’s order, the Detainees were unhooded and permitted to rest on Sunday evening. But this situation persisted for only half an hour or so, until Livesey countermanded Sgt Smith’s order. Additionally, D006 was unhooded and permitted to rest from, probably, Sunday night and onwards.

2.1316 I have rejected Crowcroft’s contention that stress positions were not enforced on Sunday afternoon. I nonetheless accept that it would have been impossible for the Detainees to remain in stress positions at all times, and that there were probably short periods when the guards gave up trying to enforce stress positions. For example, I accept Bentham’s evidence that on Monday afternoon the guards gave up trying to

¹⁷⁹⁸ Payne BMI 32/41/16-42/4

enforce stress positions for a time. However, Bentham said that when this happened, senior NCOs from BG Main came in and told them that the Detainees must be kept in stress positions.¹⁷⁹⁹ Similarly, Redfearn said that on Monday morning, whenever Payne discovered the Detainees were not in stress positions, he went “*ballistic*” and ordered the guards not to allow the Detainees to remove their hoods and to enforce the stress positions. The guards duly did as they were told.¹⁸⁰⁰

2.1317 In my judgment, viewing the evidence as a whole, including the Detainees’ evidence that stress positions were enforced more or less constantly, I find that the Detainees were kept in stress positions for the overwhelming majority of the time between their arrival at the TDF and Baha Mousa’s death. It is obvious that they were unable to sustain the ski position for 36 hours, so for much of the time they were forced to maintain less extreme stress positions, namely kneeling or sitting with their arms raised in front of them.

2.1318 With the exception of D006, they also remained hooded throughout this period, apart from the half hour following Sgt Smith’s order on Sunday night and their tactical questioning sessions. Hoods were also raised to allow eating and drinking. I accept that at times certain Detainees were hooded with two and possibly even three sandbags.

2.1319 The next issue is who ordered that the conditioning of the Op Salerno Detainees take place, and who was otherwise aware of it. I have found that the conditioning was started by Payne, who was following 1 QLR’s standard practice during Royce’s period as BGIRO. Peebles knew that conditioning was being conducted, at least from 16.30hrs on Sunday when he ordered that it should start. Also he accepted that he knew it was a standard procedure on the arrival of detainees at the TDF. Other members of 1 QLR’s H Company were either involved in or otherwise aware of the conditioning in the sense of hooding of these Detainees, including Ingram, Kendrick, Livesey, Slicker, Pte Winstanley, Cpl Winstanley, Baxter, Aktash, LCpl Hartley, Sgt Smith and Qegan. This is not an exhaustive list. The point is that there was a widespread awareness amongst members of H Company that these Detainees were being conditioned. The TDF guards and the rest of the Rodgers Multiple, including Rodgers himself, were also of course aware of the conditioning, and most of them actively participated in it.

2.1320 I have also found that SSgt Davies and Smulski, the tactical questioners, knew that conditioning was taking place. SSgt Davies was aware of and approved the use of hooding as an aid to questioning. He also believed that hooding by guards helped in the tactical questioning process. On my finding he may also have been aware of the use of stress positions, which he knew were prohibited.

2.1321 Smulski approved the use of hooding. He was as I find also aware of the use of stress positions. He also expressly ordered that the Detainees should be prevented from sleeping, that D005 should be taken or dragged out of the TDF with a hood on to disorientate him and that they should be subjected to the noise of a metal pole striking the floors and walls of the TDF.

2.1322 Stress positions, hooding, sleep deprivation and noise should obviously not have been used to aid tactical questioning, even for short periods of time. But a distinctive

¹⁷⁹⁹ Bentham BMI 41/100/15-103/6

¹⁸⁰⁰ Redfearn BMI 30/168/4-23

feature of these events was that they were used for an excessively long time. Much of the blame for that lies with Peebles. He failed to tell the guards to postpone conditioning during the hours between their arrival at BG Main and the start of tactical questioning, while he was determining whether they were “*friendlies*”. Since he knew that conditioning was a standard procedure, he should have known that Payne was conditioning the Detainees during this hiatus. Peebles compounded this failure by failing, after the end of tactical questioning, to tell Payne and the guards to cease conditioning. I assess Peebles’ role in events in more detail in the next Chapter.

2.1323 I examine the origins of 1 QLR’s practice of conditioning detainees in Part X, “Handovers”, and Part XIII, “The Brigade Sanction”.

2.1324 The failure of many soldiers and officers to recognise that conditioning was obviously wrong raises concerns about the adequacy of Army training on prisoner handling. The conduct of SSgt Davies and Smulski raises issues in particular about the training delivered at Chicksands. I address these training issues in Part VI of the Report, Teaching and Training.

2.1325 It is however right that I acknowledge that the soldiers in carrying out their duties as guards were told by Payne to ensure that the Detainees were kept hooded and in stress positions, an order endorsed by Rodgers. In some instances guards were also told by both Payne and Smulski to see that the Detainees were kept awake. These orders to some extent mitigate the actions of the guards in seeking to maintain the conditioning of the Detainees. But even allowing for the fact that the guards were directed to maintain the conditioning process, as time went by and conditions in the TDF became progressively worse, the guards ought to have realised that what they were doing was wrong and unacceptable.

2.1326 Of course, the orders to maintain conditioning do not in any way excuse assaults on the Detainees. However, I accept that use of these conditioning techniques carried with it an inherent risk of escalating violence. In particular, since the guards were required to enforce stress positions, there was a risk that they would use violence in order to do this. Maintaining stress positions for long periods of time was bound to be difficult or even impossible for the Detainees. The effectiveness of shouting at the Detainees to maintain the positions was eventually bound to cease to be effective. Even the manhandling of Detainees back into position was bound to stop working eventually. Faced with these challenges, there was an inherent risk that the guards would resort to the use of assaults in order to enforce stress positions. I repeat, this in no way excuses the use of assaults. I return to this issue when discussing Mendonça’s responsibility for these events in the following Chapter.

2.1327 Before leaving this topic I must deal with a submission made by the Detainees that I should find that the conditioning carried out on these Detainees amounted to torture. Throughout their closing submissions the Detainees refer to the events of 14 to 16 September as the “torture incident”. The Treasury Solicitor submits that a finding of torture would be inappropriate, unnecessary and extraneous to my terms of reference.

2.1328 I do not consider it appropriate that I should seek to decide whether or not the above amounted to torture. In brief, my reasons are as follows.

2.1329 Firstly, by section 2 of the Inquiries Act I have no power to rule on or determine any person's civil or criminal liability, although I am not to be inhibited in the discharge of my functions by any likelihood of liability being inferred from the facts that I determine. Secondly, torture is a specific crime both in domestic and international law. It is not appropriate that I should rule on whether torture was committed during the events of 14 to 16 September 2003. Thirdly, my task is to determine the facts. It is for others to decide what, if any, category of criminal or civil liability they give rise to.

Loss of Discipline and Lack of “Moral Courage” to Report Abuse

2.1330 It hardly needs saying that the events I have described raise very serious concerns about discipline within 1 QLR. The assaults were not perpetrated by just one or two rogue individuals. I have found that at least nineteen different men were involved in assaulting the Detainees. They did so in the middle of the Battlegroup's main camp, in a building with no doors, apparently with little regard for the consequences of being caught. At least three senior NCOs were personally involved in the assaults. And I have found that several officers must have been aware of at least some of the abuse. There was undoubtedly a severe breakdown in military discipline on this particular occasion. In Part III of the Report, I make findings as to whether that loss of discipline was more widespread within 1 QLR.

2.1331 Broader concerns are also raised by the fact that a large number of soldiers witnessed the abuse but did not intervene to stop it, nor even report it up the chain of command. I find that every soldier who took part in guard duty over the period from the arrival of the Detainees in the TDF until Baha Mousa's death must have known that these Detainees were being assaulted. In my view they were not the only ones. There is evidence that other soldiers and officers whom the Inquiry has not been able to identify entered the TDF and must also have known what was or had been happening. I recognise that reporting up the chain of command would have been difficult for many of the younger men. The Army is a hierarchical organisation and it would not have been easy for an eighteen year old private to stand up to Payne, who was a corporal and no doubt an intimidating character. However, one of the Army's “core values” is supposed to be moral courage. This includes the courage to intervene when aware of something which is obviously wrong. In Parts XVI and XVII of the Report I assess current training within the Armed Forces on moral courage, and seek to make some recommendations as to what improvements may be possible in this area.

Delay and Breach of the Fourteen Hour Time Limit

Introduction: the time limit and previous breaches

2.1332 FRAGO 29, a 1 (UK) Div order dated 26 June 2003, required that internees be delivered to the TIF within fourteen hours of their arrest.¹⁸⁰¹ This deadline was relaxed slightly by FRAGO 005, a 3 (UK) Div order issued during Op Telic 2 on 3 September 2003. FRAGO 005 stated:¹⁸⁰²

¹⁸⁰¹ MOD016189; this Order is addressed in Part IX

¹⁸⁰² MOD022625-6; this Order is addressed in Part XI

15. Transfer. The transportation, security and welfare of apprehended persons prior to transfer to the TIF is the responsibility of the apprehending unit. Apprehended persons are to

be transferred to the TIF within 14 hours of capture, or as soon as possible thereafter. The BG IRO or appropriate officer is to notify the UK Military Provost Staff (MPS) at the TIF of the number of personnel being transferred and the expected time of arrival. Transfer should occur during daylight hours if operational circumstances permit and as much notice as possible of transfers must be given to the MPS. This is to allow for US procedures which govern the ability of the UK staff to conduct their in-processing responsibilities.

2.1333 The Op Salerno Detainees were arrested at about 07.00hrs on Sunday 14 September 2003, and did not arrive at the TIF until about 14.00hrs on Tuesday. This represents a period of approximately 55 hours. They spent about 48 of these hours at BG Main. By the time that Baha Mousa died, on Monday evening, he and the other Detainees should already have been at the TIF for about 24 hours. There was, clearly, a very major breach of the fourteen hour time limit. In this section I analyse the reasons for this breach, and attribute responsibility for it.

2.1334 Op Salerno was by no means the first occasion on which the fourteen hour time limit was breached. Mendonça, Royce, Peebles, Sgt Smith and Seeds all gave evidence that the rule had been breached on previous occasions.¹⁸⁰³ Royce said that the deadline was “rarely practicable”.¹⁸⁰⁴ Between them, they gave a number of reasons for these breaches: that the TIF was, at least so far as they understood, closed and could not accept new internees during the night; that the journey there took two hours; that there were delays obtaining tactical questioners from Brigade; and a lack of resources within the Battlegroup to provide escorts when required.

2.1335 It is necessary to say something about 1 QLR’s understanding that the TIF was closed at night. According to those who worked at the TIF, 1 QLR were wrong about this. The TIF was a US led facility. It was co-located with the JFIT, which was a British run facility. The JFIT was a separate entity within the TIF, which dealt only with British internees and detainees. In her Court Martial witness statement, the Officer Commanding the JFIT, S017, said:

“The Americans would only work until 2100 hrs and would not accept anyone being booked in after this time. As the Americans insisted on booking in British detainees, it was not possible for British detainees to be fully booked in after 2100 hrs. This was because the Americans guarded the British compound and would not accept a detainee without an American number. Even though the Americans had this time limit, the MPS [the British Military Provost Staff] would generally accept any British detainee, regardless of the hour. The MPS booking-in procedure would be carried out and the individual would then either be put straight into the JFIT or would be held in small holding compound until the following morning, when the American booking-in procedure could be completed.”¹⁸⁰⁵

2.1336 I do not doubt that that was the case. S017’s evidence was supported by S018, her second in command.¹⁸⁰⁶ However, it is notable that orders from Op Telic 1¹⁸⁰⁷ had stated expressly that the TIF was shut to new internees during the night. It appears

¹⁸⁰³ Peebles BMI 40/34/15-36/2; Seeds BMI 46/88/8-90/5; Sgt Paul Smith BMI 44/96/12-100/3; Mendonça BMI01118-9, paragraphs 69 and 71; Peebles BMI02715-6, paragraph 28; Royce BMI03177-8, paragraph 119; Royce BMI03179, paragraph 125; Royce MOD000246

¹⁸⁰⁴ Royce MOD000246. See too, to the same effect, the Fenton Report, which stated that the fourteen hour deadline was “rarely met”: MOD030851

¹⁸⁰⁵ S017 MOD000594

¹⁸⁰⁶ S018 BMI 43/19/19-20/25; S018 BMI05395, paragraph 44

¹⁸⁰⁷ Divisional FRAGO 163 of 30 May 2003 (MOD016175); Brigade FRAGO 70, Brigade’s equivalent order of the same date (MOD017101).

that, even though this situation had changed by the time of Op Telic 2, there was a “myth” amongst Battlegroups that the TIF remained closed at night. Capt Sian Ellis-Davies, a legal officer at Divisional headquarters during Op Telic 2, confirmed the existence of this myth,¹⁸⁰⁸ as did the Fenton Report.¹⁸⁰⁹ Sgt Smith said that he subscribed to the myth, even though he had never personally been turned away from the TIF for delivering internees there too late at night.¹⁸¹⁰ It is obviously regrettable that there was a breakdown in communications about the TIF’s opening hours.

Op Salerno: reasons for breach and communications between 1 QLR and 19 Mechanised Brigade

2.1337 As for Op Salerno, witnesses offered a number of explanations for the delay in transferring the Detainees to the TIF on that particular occasion. Firstly, it was said that 1 QLR did not have the vehicles or manpower necessary to transfer the Detainees to the TIF. This shortage of resources was caused by another operation being conducted by 1 QLR on Monday, named Op Centurion. Secondly, the Detainees were not transferred to the TIF in the late afternoon, evening or night time because it was understood that the TIF would not be able to receive them at night. It is obvious that there was also a third reason, namely the duration of tactical questioning, which did not finish until mid-afternoon on Monday.

2.1338 I shall deal in turn with each of these three reasons. Before doing so it is convenient to describe the communications between 1 QLR and 19 Mech Bde about breach of the time limit on this occasion. 1 QLR requested a tactical questioner from Brigade at 07.33hrs on Sunday. SSgt Davies duly arrived at approximately 09.30hrs, before the arrival of the Detainees. After Brigade had confirmed that the Detainees were not friendlies, there were subsequently five relevant conversations.

2.1339 Firstly, Maj Bruce Radbourne, who worked in the G2 cell for 19 Mech Bde, remembered a conversation he had with Peebles about the Op Salerno Detainees.¹⁸¹¹ He could not remember when this conversation took place. He said Peebles informed him that the Detainees were going to be held over the fourteen hour time limit. If that is correct then it seems likely that the conversation took place some time on Sunday. Peebles contacted Radbourne because Radbourne was at that particular time standing in for Maj Mark Robinson as head of the G2 cell, due to Robinson’s absence on leave. Peebles asked Radbourne to sanction an extension of the time limit but Radbourne told him that it was not his position to do so. When he gave oral evidence at the Inquiry, Radbourne said that he could not remember any explanation given by Peebles for the delay. However, in an SIB statement which he made in January 2006,¹⁸¹² he said that Peebles told him that the delay was due to “*information forthcoming*”. It seems to me that Peebles was telling him that the delay was caused by the fact that tactical questioning was still ongoing. In hindsight, when giving oral evidence, Radbourne accepted that he should have told Peebles that he needed to transfer the Detainees to the TIF forthwith, or should have referred the

¹⁸⁰⁸ Ellis-Davies BMI 85/141/9-142/10

¹⁸⁰⁹ MOD030851

¹⁸¹⁰ Sgt Paul Smith BMI 44/187/20-189/22

¹⁸¹¹ Radbourne BMI 78/172/23-175/9

¹⁸¹² Radbourne MOD000982

matter to someone else, namely G3, to arrange a transfer. Peebles did not mention this conversation in his evidence.

2.1340 Secondly, on Sunday evening, 1 QLR requested from Brigade a second tactical questioner in order to speed up the questioning process.¹⁸¹³ The request appears to have been made by Suss-Francksen and was answered by the arrival of Smulski.¹⁸¹⁴

2.1341 Thirdly, there was a conversation at Brigade headquarters on Monday morning between Peebles and Maj Russell Clifton, the legal officer attached to 19 Mech Bde. Peebles had travelled to Brigade headquarters, at Basra Palace, for a meeting. The two men spoke after the meeting. Their accounts of their conversation differ. Peebles said that he told Clifton that the time limit had already been breached and that the reason for this was a shortage of the resources necessary to transfer the Detainees to the TIF.¹⁸¹⁵ He said that Clifton was not happy but that the gist of his response was, *“If you are saying you cannot do it, then I will have to accept what you are saying.”* He said that he also told Clifton that tactical questioning had not finished. He accepted that Clifton told him that the Detainees should be transferred to the TIF as soon as possible.

2.1342 Clifton’s account of this conversation was that Peebles told him when they spoke that the time limit had not expired.¹⁸¹⁶ Clifton said his response was that shortage of resources was not a good enough reason to exceed the fourteen hour limit. He said Peebles did not tell him that the Detainees were being kept in order to facilitate further tactical questioning. If he had, this would have rung an alarm bell, since tactical questioning was supposed to occur within the first hour or two after capture. He said he then approached the Brigade Chief of Staff, Fenton, and a member of Brigade’s G2 cell, to ask them whether they could provide 1 QLR with the resources necessary to move the Detainees to the TIF. Fenton said that he did not remember this happening.¹⁸¹⁷

2.1343 Fourthly, it appears that Fenton spoke to either Seeds or Suss-Francksen on Monday morning. Fenton recorded this in a statement to the SIB which he made in December 2005.¹⁸¹⁸ According to that statement, Fenton learnt from someone in Brigade headquarters that the Detainees were still being held at BG Main for questioning the day after their arrest. He said in the statement that it may have been Radbourne who told him this. I comment that it could also have been Clifton, according to Clifton’s evidence. Fenton therefore contacted either Seeds or Suss-Francksen for an explanation. He was told that there was a lack of manpower and transport to move the Detainees to the TIF. He accepted this explanation but said that they should be moved at the earliest opportunity. Fenton could no longer remember this conversation when he gave evidence to the Inquiry. He even doubted the accuracy of his own witness statement,¹⁸¹⁹ but in my judgment, his SIB statement was accurate, at least insofar as it recorded that he had spoken about the delay to someone at 1 QLR on Monday morning. Seeds remembered speaking to a G3 Operations Officer

¹⁸¹³ MOD030850

¹⁸¹⁴ Suss-Francksen BMI 56/193/24-194/1; Peebles BMI02725-6, paragraph 64

¹⁸¹⁵ Peebles BMI 40/137/9-138/10; Peebles BMI 40/182/21-185/1; Peebles BMI02731, paragraph 82

¹⁸¹⁶ Clifton BMI 81/74/1-76/7

¹⁸¹⁷ Fenton BMI 101/163/17-25

¹⁸¹⁸ Fenton MOD000702

¹⁸¹⁹ Fenton BMI 101/120/16-122/6

from Brigade, whose name he could not remember, on Monday.¹⁸²⁰ He said he had received telephone calls from this person, asking him why the Detainees had not been moved to the TIF. In my judgment, the person contacting him was probably Fenton. Seeds said that Peebles' response was that tactical questioning had not been completed.

2.1344 Fifthly, on Monday evening, Fenton spoke to Suss-Francksen. Fenton said he was quite sure it was Suss-Francksen to whom he spoke, even though in earlier accounts he had said it was Seeds. He said he asked Suss-Francksen why the Detainees had been at BG Main for so long. Suss-Francksen told him the delay was caused by lack of manpower and vehicles, and that it was too late to deliver the Detainees to the TIF that night. Fenton accepted this explanation and said that the Detainees should be moved early on the Tuesday morning.¹⁸²¹ There is some support for this in Fenton's report of 18 September 2003. The report stated that, at 18.55hrs on Monday evening, Brigade G3 were informed that the Detainees would not be delivered to the TIF until the Tuesday morning.¹⁸²² Suss-Francksen said that he could not remember the details of this conversation but did not deny that it had occurred.¹⁸²³

2.1345 Turning to the reasons for the delay, I deal first with the suggestion that the TIF was shut at night. I accept that 1 QLR genuinely but mistakenly believed that they could not deliver detainees to the TIF at night. But at best, this is only a partial explanation for the delay. It certainly does not explain why the Detainees were not delivered to the TIF during the daytime on Monday.

2.1346 As to the second reason offered, namely that the delay was caused by a shortage of resources, I have some sympathy with 1 QLR. I have little doubt that resources were very stretched due to the Battlegroup's daunting workload. Nonetheless, I am sceptical as to whether it would really have been impossible to find the transport and personnel necessary to move the Detainees. Seeds, who was 1 QLR's Operations Officer and therefore responsible for coordinating the Battlegroup's resources, said in evidence that, so far as he was concerned, the delay on this occasion was caused by ongoing questioning, and not by a lack of resources.¹⁸²⁴ It also appears that Sgt Smith would have been available to deliver the Detainees to the TIF on Monday morning. On Sunday evening, Sgt Smith asked Peebles whether he would be taking the Detainees to the TIF the next morning. Peebles' response was that he should wait and that he would be told when the Detainees were ready to be moved, once questioning had finished.¹⁸²⁵ Sgt Smith said that in all he reminded Peebles on three occasions of the need to transfer the Detainees to the TIF.

2.1347 In my judgment, the principal reason for the delay in delivering these Detainees to the TIF was the duration of tactical questioning. Questioning continued until mid-afternoon on Monday. They were kept at BG Main until then in order to facilitate questioning.

¹⁸²⁰ Seeds BMI04189, paragraphs 69; Seeds BMI04197, paragraph 103

¹⁸²¹ Fenton BMI 101/108/7-113/19

¹⁸²² MOD030850

¹⁸²³ Suss-Francksen BMI01586, paragraph 50

¹⁸²⁴ Seeds BMI 46/482/10-483/6

¹⁸²⁵ Sgt Paul Smith BMI 44/122/25-123/15; Sgt Paul Smith MOD000213. By the time he gave evidence to me, Sgt Smith no longer remembered this conversation, but he relied upon his SIB statement as an accurate account of it. Peebles did not remember the conversation either, but said that Sgt Smith's account of it was "very likely" to be accurate: Peebles BMI 40/135/3-10

2.1348 This was wrong. Tactical questioning is supposed to be a speedy, front-line method for extracting information. It is not the same as interrogation. The principal purpose of tactical questioning on this occasion should have been to determine whether the Detainees should be sent to the TIF, where they could be interrogated further. Peebles appeared to have decided early in the Detainees' captivity that they should be interned. Of the items found at the Hotel, he said this: "*My initial assessment was that this was a significant find... These were plainly not common criminals that we would arrest on the street.*"¹⁸²⁶ Once Brigade had confirmed that they were not "*friendlies*", at about 16.30hrs on Sunday, it is difficult to see why much more time was required for legitimate tactical questioning. Instead, the questioning focused on the whereabouts of C001. This issue was of interest but of marginal relevance as to whether these Detainees should be interned. It was a legitimate topic for brief questioning, but not for lengthy interrogation at BG Main. In my judgment 1 QLR, and Peebles in particular, were using lengthy questioning in order to gather new intelligence. This was reflected in the report produced by Fenton in the days after Baha Mousa's death. In a paragraph addressing reasons for the delay in moving the Detainees to the TIF, Fenton wrote:

*"Poor feedback. Bde and BGs receive little feedback or actionable intelligence from the TIF. BGs thus try to obtain as much information as possible to exploit against FRL before detainees go to the TIF."*¹⁸²⁷

Conclusions

2.1349 1 QLR was not equipped to hold detainees for long periods of time. It did not have appropriate detention facilities or the requisite expertise. The fourteen hour limit was no doubt designed to protect detainees in light of these matters.

2.1350 It is therefore of concern that the limit was breached a number of times during Op Telic 2. In Part XI of this Report I address issues as to the frequency of and reasons for such breaches. If it had not been breached on the occasion of Op Salerno then Baha Mousa would not have died. He would have been transferred to the TIF long before Monday night.

2.1351 Most of the blame for the breach of the time limit with respect to the Op Salerno Detainees lies with Peebles. As BGIRO, Peebles was responsible for overseeing tactical questioning and internment. He should have taken steps to ensure that the Detainees were transferred to the TIF much earlier than they were.

2.1352 Mendonça was also aware that the Detainees were held for much longer than fourteen hours. This is a topic to which I return in Chapter 21 below.

2.1353 As for the relevant officers at Brigade headquarters, my assessment of their role in relation to the delay is as follows.

2.1354 Radbourne correctly conceded that, upon being informed by Peebles of the delay, he should either have told Peebles that the Detainees needed to be transferred to TIF forthwith or have referred the matter to someone else.

¹⁸²⁶ Peebles BMI02723, paragraph 54

¹⁸²⁷ MOD030851

- 2.1355** I do not make any criticism of Clifton on account of his conversation with Peebles on Monday morning. Even on Peebles' version of that conversation, Clifton told Peebles that the Detainees should be moved to the TIF as soon as possible. I also find that Clifton contacted Fenton in order to ask whether Brigade could find the resources necessary to move the Detainees. Insofar as there are material differences between the accounts of Peebles and Clifton of their conversation on Monday morning, I prefer Clifton's account.
- 2.1356** Fenton, in my judgment, could have done more to ensure that the deadline was met on this occasion. I find that on Monday morning he was aware of the delay and spoke to someone at 1 QLR about it. This person was probably Seeds. In the light of Seeds' evidence I suspect that Fenton may have been told that the reason for delay was that questioning was ongoing, but I make no finding about that because the evidence is not sufficiently clear. Even if Fenton was told that the delay was caused by a lack of resources, as Chief of Staff, he could have ensured that resources were made available in order to secure the Detainees' transfer to the TIF forthwith. This topic is also discussed in Part XIV Chapter 1.
- 2.1357** In general the totality of the evidence shows that front line units ought not to hold detainees for long periods of time. For the most part they have neither the specialist training nor the facilities to do so effectively and safely. However, circumstances are bound to vary from one operation to another, so it is difficult to make generalised recommendations about time limits for the holding of detainees by Battlegroups. This is an issue to which I shall return in Parts XVI and XVII of the Report, where I set out my recommendations.

Detention Procedures: the TDF, Custody Records, Food and Water

- 2.1358** It is obvious that, quite apart from conditioning and the assaults, there were serious shortcomings in the detention procedures used at BG Main. One aspect of this was the medical attention given to detainees. I have dealt with that already, in Chapter 19. There were further shortcomings.
- 2.1359** Firstly, the facilities for holding detainees, and the TDF in particular, were inadequate. The TDF did not have any doors. There were no restrictions on who could enter it. A number of soldiers with no legitimate role in relation to the Detainees were permitted to wander into the building. There were no beds or other furniture in the building.
- 2.1360** Secondly, no log of personnel visiting the TDF and no meaningful custody record were maintained. A standard "*internment*" form was completed for each detainee.¹⁸²⁸ But although this document included a section entitled "*Events before internment*", which did record the times at which detention started and transfer elsewhere occurred, it was not used to record other basic custodial matters such as meal times, guards, visitors, medical problems and any significant incidents.
- 2.1361** Thirdly, in my opinion it was an error of judgment for soldiers from the arresting Multiple, the Rodgers Multiple, to be tasked to guard the Detainees. There was an obvious wish in this instance (as in any other instance when an arresting multiple was tasked to guard detainees whom they had arrested) that events at the Hotel

¹⁸²⁸ MOD016651

might have raised feelings of antipathy by the soldiers against those whom they had arrested and that such feelings would affect the soldiers' conduct of their duties as guards of the Detainees.

2.1362 I am unable on the evidence to identify who was the author of this order, but in my judgment whoever it was, ought to have foreseen that causing the arresting soldiers to be involved in guarding the Detainees might give rise to problems, although perhaps not as serious as those which later transpired.

2.1363 Fourthly, the Detainees were not properly fed whilst at BG Main. In line with most of the witness evidence,¹⁸²⁹ I find that they were given only two meals during the 48 or so hours which they spent at BG Main, namely breakfast on Monday morning and another breakfast on Tuesday morning. This finding is supported by the post mortem on Baha Mousa, which found that his stomach and bladder were empty and his small intestine contained only gas. Dr Hill commented that "*this does not accord with the indication that he was fed during the course of his detention.*"¹⁸³⁰

2.1364 The Detainees were given water. However, at times this happened in an inappropriate and demeaning way. Water was sometimes simply poured over their heads or squirted into their mouths with such force that they could not swallow it.¹⁸³¹

2.1365 There is no sound evidence that the failure to feed the Detainees properly was designed to aid questioning. I find that this failure was not part of 1 QLR's approach to conditioning. It is much more likely that it was caused by a lack of proper attention to the Detainees' needs. The guards and those supervising them, in particular Payne and Peebles, should have ensured that regular meals were provided. 1 QLR failed to have a basic system in place for ensuring that detainees were properly fed.

2.1366 I make recommendations about safe and proper custodial practice in Parts XVI and XVII of the Report.

Lack of Supervision and the Dispute Over Responsibility

2.1367 Finally, there was a clear failure by 1 QLR properly to supervise the TDF guards. For long periods at a time private soldiers were left alone with the Detainees. Frankly, they did not know what they were doing. They were told to "*condition*" the prisoners, but conditioning was unsurprisingly something they had never been trained to do. Payne's presence was intermittent. Sgt Smith, the Provost Sergeant, was required to perform other duties and was almost entirely absent.

2.1368 Peebles knew the Detainees were being conditioned. He knew that the guards suspected them of involvement in the RMP murders. He knew their detention was excessively long. It seems to me obvious that he should from time to time on a regular basis have checked on their welfare and on the conduct of Payne and the TDF guards. He made no real attempts to do so. Instead, he left conditioning in the hands of Payne and the guarding soldiers with no meaningful supervision.

¹⁸²⁹ Aspinall BMI 28/56/16-57/7; D001 BMI 12/23/9-24; D004 BMI 18/21/2-4; D007 BMI 13/35/18-24; Mackenzie BMI 29/167/2-5; Ahmad Matairi BMI 12/94/17-95/7

¹⁸³⁰ MOD000393

¹⁸³¹ Crowcroft BMI 22/37/2-38/3; D001 BMI 12/23/22-24/2; D002 BMI 20/5/12-14; D003 BMI 10/90/21-91/7; D006 BMI 13/81/11-16; Ahmad Matairi BMI 12/70/18-71/1

- 2.1369** Peebles' response to this suggestion was that he was not responsible for the welfare of the Detainees. In essence he said that he was responsible for deciding whether they should be interned, a duty which he discharged in the headquarters building, but that their physical handling and guarding, which took place in the TDF 100 or so metres away, was not his responsibility. Indeed, there was a sharp dispute amongst the senior members of the Battlegroup as to who was responsible for detainees' welfare. It appears that this dispute, or at least ambiguity over where responsibility lay, existed even in the days immediately following Baha Mousa's death.¹⁸³² The key witnesses in this dispute were Royce, Mendonça, Briscoe, Payne, Sgt Smith and Peebles. Payne said that the tactical questioner controlled the manner in which detainees were handled prior to questioning, but that the tactical questioner was answerable to the BGIRO. Royce, Mendonça and Briscoe said that Peebles as BGIRO was responsible for detainees' welfare. Peebles denied this and said that such responsibility lay with Briscoe as RSM, and the RP staff beneath him. Sgt Smith said that the BGIRO was principally responsible but there was a residual role in this area for the RSM.¹⁸³³
- 2.1370** Ultimate responsibility for all matters in a Battlegroup lies with the Commanding Officer. Conventionally, the delegation of responsibility for detention of servicemen in the regimental guard room is to the Adjutant, the RSM and then to the RP staff.¹⁸³⁴ Briscoe accepted that, at the very start of 1 QLR's Op Telic 2 tour, he was responsible for prisoner handling.¹⁸³⁵
- 2.1371** The assertion made by Royce, Mendonça and Briscoe was that this normal situation was altered in Iraq in 2003 following the introduction of the BGIRO, a non-standard role, by FRAGO 29. FRAGO 29¹⁸³⁶ required each Battlegroup to appoint a BGIRO. It did not explicitly shift responsibility for detainees' welfare to the BGIRO. Expressly, it made the BGIRO responsible only for determining whether detainees should be interned. The first BGIRO appointed by Mendonça was Royce.
- 2.1372** Mendonça and Royce stated that, when Mendonça appointed Royce as 1 QLR's BGIRO, he also put him in charge of all other aspects of detainee handling, including their physical handling and welfare. They agreed that Royce was therefore put in charge of the Provost staff for the purposes of prisoner handling. This meant that Briscoe's responsibility in this area was removed from him. Despite this, Briscoe rightly accepted that as RSM he would still have some residual interest in detainees because of his interest in all aspects of the Battlegroup's operations. Briscoe was physically removed from BG Main and the TDF for much of his time, because Mendonça included him as a member of his TAC group. Mendonça said that his intention in making this change was to place prisoner handling in the hands of a senior officer.¹⁸³⁷ The change was communicated orally to relevant members of the Battlegroup, including Briscoe, by Royce.¹⁸³⁸

¹⁸³² The Fenton Report, at MOD030850, states: "*Responsibility. There is no clear answer whether it is BG staff or Int Corps reps who are responsible for TQ and prisoner handling in theatre... Responsibility throughout however must be assumed to lie with the CO, delegated to the BG Internment Review Officer, (Major Peebles in this case) and the Bn Provost staff that run the detention centre.*"

¹⁸³³ Payne BMI 32/42/9-43/2; Payne BMI 32/46/25-49/9; Sgt Paul Smith BMI 44/87/17-91/18. Citations to the relevant evidence from Royce, Mendonça, Briscoe and Peebles appear below.

¹⁸³⁴ Moutarde BMI 54/77/1-5

¹⁸³⁵ Briscoe BMI 43/100/9-101/16

¹⁸³⁶ MOD016186

¹⁸³⁷ Briscoe BMI 43/109/1-22; Mendonça BMI 59/117/4-118/6; Royce BMI 57/31/7-33/24

¹⁸³⁸ Briscoe BMI 43/107/7-108/22; Mendonça BMI 59/120/12-121/19; Royce BMI 57/32/16-33/19

2.1373 Shortly after his appointment as BGIRO, Royce drafted a “1 QLR Internment Procedure” dated 9 July 2003.¹⁸³⁹ This document was distributed to relevant personnel within the Battlegroup. It addressed various matters including the fourteen hour deadline and the BGIRO’s responsibility for making internment decisions. Importantly it did not record the change in responsibility described above. It did not indicate that oversight of the Regimental Provost (RP) staff’s prisoner handling duties had shifted from the RSM to the BGIRO.

2.1374 I accept that having this duty thrust on him in the early stages of the tour meant that to some extent Royce was under pressure of time to produce the procedure document. It was, of course, always open to him at any time to amend or supplement his original draft. He said he did this orally when directing medical examinations to be made.¹⁸⁴⁰ I can also understand that so long as he was the BGIRO there was no ambiguity about who was responsible for the overall welfare of detainees during the time they were present in the TDF and being subjected to tactical questioning. However, in my opinion, it would have been better if he had drafted into the Internment Procedure a written passage declaring the BGIRO as having overall responsibility for the welfare of detainees.

2.1375 In an SIB statement dated 31 March 2005, Royce described his responsibility for detainees during his tenure as BGIRO in the following terms:

“To conclude, given I was responsible for the detained Iraqi national throughout the period they were held at our lines I also was responsible for their welfare prior to and post TQ. As such it was I who would determine when an individuals’ hood was removed, the “Shock of Capture” phase having ended. I would give instructions that hoods should be removed, unless this advice had already been given by the TQ himself.”¹⁸⁴¹

In his Inquiry witness statement, he said he was always present in the camp when prisoners were brought in from a lift operation. Of the tactical questioners, Royce said, “Other than questioning, the TQer had no other roles or interaction with suspects”.¹⁸⁴² In his time as BGIRO, Royce tasked Sgt Smith to be responsible for the hands-on supervision of detainees throughout the whole period of their detention at the TDF.¹⁸⁴³ He himself visited the TDF regularly, “probably at least once every half an hour”.¹⁸⁴⁴ When conditioning was taking place Sgt Smith had to be there the whole time. Payne was not left to oversee conditioning.¹⁸⁴⁵

2.1376 Peebles, having taken over from Royce as BGIRO, said he considered the chain of command in Iraq to be the same as if the Battalion was in the United Kingdom. The Provost staff, who were responsible for handling prisoners, would report to the RSM.¹⁸⁴⁶ This obviously raised an issue as to what Peebles was told about his responsibilities when he took over as BGIRO from Royce.

2.1377 There was a face to face handover between the two men. Royce said that during the handover he showed Peebles the entire process for dealing with detainees, “from

¹⁸³⁹ MOD015432

¹⁸⁴⁰ Royce BMI 57/52/11-53/1

¹⁸⁴¹ Royce MOD000249

¹⁸⁴² Royce BMI03152, paragraph 63

¹⁸⁴³ Royce BMI 57/34/21-35/2

¹⁸⁴⁴ Royce BMI 57/35/8

¹⁸⁴⁵ Royce BMI 57/37/22-40/24

¹⁸⁴⁶ Peebles BMI02710, paragraph 13

*initial processing, conditioning, TQ, evidence gathering and production of casework files and finally despatch to the TIF... Most importantly I made it clear to him that during detention the BGIRO role was key to the exclusion of everything else and that he was in Command of the process...".*¹⁸⁴⁷ In evidence, Royce did not specifically state that he told Peebles that, as BGIRO, he would have the sole responsibility for welfare of prisoners in the TDF. Peebles said that at no point was he told that as BGIRO he, and not the RSM, would hold chain of command responsibility for prisoner handling and welfare.¹⁸⁴⁸ He relies on the fact that his contemporaneous notes from theatre, which cover meetings held with Royce and Mendonça, do not record any occasion on which he was told this.¹⁸⁴⁹

2.1378 It is quite possible that Peebles was never expressly told, “*You are responsible for prisoner handling and welfare*”, or words to that effect. Nonetheless, in my judgment, he should have appreciated that in practice he was the officer overseeing treatment of detainees at BG Main. It should have occurred to him that, due to his role dealing with detainees generally, he should supervise their physical handling and welfare. He ought to have appreciated that there was no one else performing this function: Briscoe was obviously absent for much of the time, engaged with the Commanding Officer’s TAC group. Peebles ultimately accepted a modicum of responsibility for the treatment of detainees in the TDF. Whilst conceding that he had a “*pivotal role*” in the coordination of dealing with detainees, and that he would have felt responsible for intervening in matters of physical handling if he felt the guards or RP staff were doing anything wrong, he “*...didn’t see it specifically as my job to deal directly with the handling of detainees.*”¹⁸⁵⁰ In my judgment, he should have accepted a much greater degree of responsibility.

2.1379 Moreover, Peebles ought to have ensured that he and everyone else involved in the handling process knew who was responsible for detainees’ welfare. If, as he said, at the handover he had not understood that as BGIRO he was responsible for detainees’ welfare, he should, in my opinion, have determined who was. Peebles was a senior and experienced officer. His acceptance that he had a pivotal role in coordinating dealings with detainees ought to have led him at the very least to perceive that there may have been some ambiguity about the parameters of his role. In my judgment it was for him to clear up any such ambiguity and determine who was responsible for the welfare of the detainees when they were in the TDF. In my opinion Peebles, in his position as BGIRO, failed to deal with this ambiguity and make clear who had overall responsibility for the welfare of the detainees.

2.1380 In my view, Briscoe cannot be criticised for thinking that he did not have the same responsibilities for detainees at BG Main as he did for soldiers who were in custody. He was entitled to believe, as Royce said, that in respect of detainees he had been taken out of the usual Regimental chain of command concerning those in custody. That is not to say that he had no responsibility for them. He was, I believe, correct to accept that he had the same responsibility as he had for any other activity of soldiers in the Battlegroup. In that capacity, I find it surprising that Briscoe had no knowledge, or inkling, of the way in which these Detainees were treated over the lengthy period they were in the TDF.

¹⁸⁴⁷ Royce BMI03182, paragraph 131

¹⁸⁴⁸ Peebles BMI 40/39/18-41/13; Peebles BMI02712, paragraph 21; Peebles BMI02731, paragraph 83

¹⁸⁴⁹ Peebles BMI 40/40/4-41/13; SUB000451, paragraph 28

¹⁸⁵⁰ Peebles BMI 40/17/9-19/5

2.1381 The obvious but important lesson to be learned from the dispute over responsibility for detainees is that there must be absolute clarity in this area. Those with responsibility for prisoners' welfare will be able to do their job properly only if they are made fully aware of their duties. If they know that they will be held accountable for any failures then this will help to motivate them to perform their role properly. This is a matter to which I return in Parts XVI and XVII.

Joint Warfare Publication (JWP) 1-10

2.1382 Finally, in this Chapter I draw attention to the comments which I make in Part V of the Report which deal with the above publication as it applied to tactical questioning. My observations and comments in this Part of the Report must be understood and read in the light of my conclusions in respect of JWP 1-10 set out in Part V. The relevant part of JWP 1-10 is set out in Chapter 4 of Part V.

2.1383 As stated in Part V, the MoD submitted that anyone who had read JWP 1-10 would have known that what was occurring in the TDF was clearly prohibited. In Part V I make the comment that a reading of JWP 1-10 would demonstrate that kicking and beating prisoners was wrong. What was not so clear was whether or not prisoners could be deprived of their sight before being questioned and what if anything was permitted as a conditioning technique preparatory to tactical questioning.

2.1384 I do not think that the existence of such guidance as there was in JWP 1-10 would have had any impact on the guarding soldiers. They were directed to ensure conditioning of the Detainees was maintained. For them the issue was a simple one: namely whether beating and kicking prisoners was permitted. The answer was obvious. Clearly all soldiers must have understood that it was not permissible to kick and beat those detained in the TDF, whether or not they were about to be questioned.

2.1385 As to the more senior officers, the three officers who it might be said were most clearly connected with the issue of what was permitted in the process of prisoner handling and tactical questioning were Royce, Peebles and Mendonça. Royce said in evidence that he had never read the relevant part of JWP 1-10, namely Annex C of the section on Prisoner of War Handling entitled "Tactical Questioning". He was therefore unaware of sub-section (3)(c), which prohibited physical or mental pressure "*... or any other form of coercion being exerted on a PW in order to induce him to answer questions*". Nor was he aware of that part which prohibited a prisoner of war from being "*... threatened, insulted or suffer any disadvantage as a result of refusing to answer questions*".¹⁸⁵¹

2.1386 Peebles also had not seen JWP 1-10 before becoming involved in the Inquiry. Mendonça was not asked about JWP 1-10, but in any event his stance on prisoner handling and tactical questioning was that these were matters for the BGIRO to deal with.¹⁸⁵²

2.1387 I accept that if the above three officers had been aware of that part of JWP 1-10 which deal with tactical questioning they would have been better informed as to what might or might not be permissible treatment of prisoners during that process. But the fact that neither Royce nor Peebles were aware of Annex C does not in my view

¹⁸⁵¹ Royce BMI 57/126/6-16; MOD013471

¹⁸⁵² Mendonça BMI 59/117/25-118/6

in any way relieve them of responsibility for what went on in the TDF. I conclude in the case of Peebles and Mendonça, and in Part XIII, in the case of Royce, their ordinary training and experience as officers of field rank and above, ought to have led them to conclude that hooding and stress positions used in the circumstances in the TDF were wholly unacceptable.

Chapter 21: Key Personalities in 1 QLR

2.1388 In this section I propose to draw together some of the threads which appear earlier in the Report in respect of certain important personalities who feature in the events of 14 to 16 September 2003. I shall not repeat findings already made, nor attempt to describe in any detail the evidence covering these men, where I have previously set out my findings. The first of these men is Payne.

Payne

2.1389 Payne's name appears frequently in the preceding pages of the Report. He joined the Army on 18 June 1988.¹⁸⁵³ By September 2003 he was aged 33 and had risen to the rank of corporal.¹⁸⁵⁴ He was a member of the RP Staff of 1 QLR.¹⁸⁵⁵ His immediate superior NCO, to whom he reported, was Provost Sergeant Smith. Sgt Smith in turn reported to the RSM, Briscoe.¹⁸⁵⁶

2.1390 Following the death of Baha Mousa, Payne was interviewed under caution on two occasions: the first time on 3 October 2003¹⁸⁵⁷ and the second on 9 March 2004.¹⁸⁵⁸ Subsequently he was charged with three offences: count 1, manslaughter; count 2, a war crime, namely inhuman treatment of a person protected under the provision of the Fourth Geneva Convention; and count 3, doing acts tending and intended to pervert the course of public justice. He pleaded guilty at the outset of the Court Martial to count 2 and not guilty to counts 1 and 3.¹⁸⁵⁹ At the close of the prosecution's case the Judge Advocate directed the Board to return verdicts of not guilty to counts 1 and 3.¹⁸⁶⁰

2.1391 The trial continued against other defendants at the end of which Payne was sentenced. The basis of his guilty plea was explained by Mr Tim Owen QC, his trial Counsel, in the course of his plea in mitigation. Payne was sentenced to twelve months' imprisonment and reduced to the ranks.¹⁸⁶¹

2.1392 Payne was sentenced by the Board on the basis that he accepted he had enforced conditioning of the Detainees, which the Board in turn accepted was a standard operating procedure. The Judge Advocate said that the Board was sure that from time to time Payne did treat the Detainees with excessive force.¹⁸⁶² It found that he had inflicted some violence on Baha Mousa but it was unable to determine the extent of it.¹⁸⁶³ It further found that Payne was responsible for the choir. In a telling passage the Judge Advocate said in his sentencing remarks:

¹⁸⁵³ Payne BMI 32/3/17-19

¹⁸⁵⁴ Payne BMI01719, paragraph 19

¹⁸⁵⁵ Payne BMI 32/3/20-4/3

¹⁸⁵⁶ Payne BMI01720, paragraph 21

¹⁸⁵⁷ Payne MOD018613

¹⁸⁵⁸ Payne MOD018483

¹⁸⁵⁹ CM 5/74/11-76/7

¹⁸⁶⁰ CM 80/10/6-16

¹⁸⁶¹ CM 94/32/5-67/13

¹⁸⁶² CM 94/63/7-12

¹⁸⁶³ CM 94/63/21-64/6

“We are clear that Corporal Payne would not have committed this offence but for his being placed in the exceptional position of being required to condition the detainees, hooded and handcuffed, by imposing stress positions upon them.”¹⁸⁶⁴

- 2.1393** Payne’s admission on the day he gave evidence at the Inquiry that he had been involved in rather more violence than he had hitherto admitted led to Counsel to the Inquiry questioning him about his previous stance in relation to his part in the events of 14 to 16 September.¹⁸⁶⁵ He conceded that in his interviews with the SIB and his first witness statement made for the Inquiry he had lied. He accepted that the case put forward by him at the Court Martial was not the full truth and that the basis of his plea of guilty to count 2 was false. He conceded that he had used gratuitous violence on the Detainees, including kicks and punches.¹⁸⁶⁶
- 2.1394** In his third witness statement Payne said that each time he returned to the TDF to ensure that the Detainees were awake he would use more force than he had previously admitted. He went on to implicate the whole of the Rodgers Multiple, including Rodgers himself, in the use of violence on the Detainees.¹⁸⁶⁷ He admitted that he was responsible for episodes described by others as the choir, although he denied using that term.¹⁸⁶⁸ He agreed that he could have “accidentally”, gouged the eye of a Detainee.¹⁸⁶⁹
- 2.1395** These admissions whilst welcome and requiring some courage on his part raised further questions about his credibility. I accept that his confession that he had used gratuitous violence was truthful. The evidence of the Detainees and some of the soldiers overwhelmingly supports the veracity of that admission.¹⁸⁷⁰ Payne accepted that he kicked and punched all the Detainees with forceful blows designed to hurt them.¹⁸⁷¹ This also accords with the evidence of the Detainees and some of the soldiers.
- 2.1396** I further accept his evidence that this gratuitous violence by him occurred whenever he went into the TDF. Again this accords with other evidence. I find that his visits to the TDF were made randomly throughout the whole 36 hours leading up to Baha Mousa’s death.¹⁸⁷² It is not surprising that he was on hand when Baha Mousa was found standing up, unhooded and without his plasticuffs on immediately before the final incident which led to his death.¹⁸⁷³
- 2.1397** Where Payne sought to implicate others in violence I have had to consider his motive for doing so.¹⁸⁷⁴ I have taken into account that he had an obvious motive for involving others in an effort to spread the blame for the injuries to the Detainees and the death

¹⁸⁶⁴ CM 94/65/3-7

¹⁸⁶⁵ Payne BMI05822

¹⁸⁶⁶ Payne BMI 32/68/17-71/21

¹⁸⁶⁷ Payne BMI05822, paragraphs 5-7

¹⁸⁶⁸ Payne BMI 32/79/4-18

¹⁸⁶⁹ Payne BMI 32/85/9-13

¹⁸⁷⁰ Appleby BMI 25/24/24-31/20; Aspinall BMI 28/32/11-14; Aspinall BMI 28/36/22-38/13; D001 BMI 12/14/23-16/10; D003 BMI 11/20/12-25/23; D004 BMI 18/27/23-31/4; D005 BMI 17/33/6-35/7; D006 BMI 13/66/21-69/3; Maitham BMI 13/29/14-32/12; Ahmad Matairi BMI 12/76/24-78/23 ; D002 BMI01962, paragraph 52

¹⁸⁷¹ Payne BMI 32/84/6-12

¹⁸⁷² Payne BMI 32/87/25-88/6; Payne BMI 32/108/4-8

¹⁸⁷³ Payne BMI 32/114/11-115/3

¹⁸⁷⁴ Payne BMI 32/73/17-75/19

of Baha Mousa. The fact that he has previously told so many lies made it difficult to discern in his evidence what was truthful and what may still be lies.

The arrival of the Detainees at BG Main

2.1398 Payne first features in any material way in Chapter 8 of this Part of the Report. In that chapter I have described Payne processing the Detainees on their arrival at BG Main. In the absence of Sgt Smith he was responsible for searching the Detainees, hooding them, removing their plasticuffs and replacing them on their arms in front of their bodies. He was also responsible for placing them in stress positions in the TDF.

2.1399 Payne's evidence was that he first heard about the shock of capture on a training course at Catterick for RP Staff. He, Sgt Smith and the RSM, Briscoe, attended this course.¹⁸⁷⁵ Payne understood that detainees should be kept in the state of the shock of capture. He believed this involved hooding detainees so as to disorientate them and aid the tactical questioning process. He understood this was to continue until the whole tactical questioning process was completed.¹⁸⁷⁶ He said that he understood conditioning also involved preventing detainees from sleeping. However, he had not been told on the course at Catterick that stress positions were permitted.¹⁸⁷⁷ He regarded conditioning as a standard operating procedure.¹⁸⁷⁸ He further understood from a conversation in theatre between a tactical questioner (whom he was unable to identify), Royce, Sgt Smith and himself that conditioning included putting detainees in stress positions.¹⁸⁷⁹

2.1400 I accept that Payne did regard hooding and stress positions as a standard operating procedure. I further accept that there was some justification for him doing so. As I discuss in Part XIII, Royce understood that hooding and stress positions had been sanctioned by Brigade and were permissible. However, this sanction was not, and should not, have been taken as a justification for permitting these techniques to last for 36 hours or more. It was also not a sanction for the sort of rough handling and violence which Payne admitted he had indulged in.

The Payne video and the Crowcroft and Fallon stag

2.1401 Payne made some attempt to persuade the Inquiry that his violent conduct did not start until the time of the "Free for All" (Chapter 10). I reject this assertion. Stacey said that he saw and copied Payne's efforts to keep the Detainees in their stress positions. The Payne video was filmed at about midday on Sunday. It clearly depicts Payne using excessive force and abusing the Detainees when enforcing their stress positions but not punching them. Crowcroft agreed it illustrated the sort of conduct he had seen Payne use. The Detainees asserted and I accept that the violence on them started from the moment they were put in the TDF.¹⁸⁸⁰

¹⁸⁷⁵ Payne BMI 32/20/4-21/13

¹⁸⁷⁶ Payne BMI 32/21/14-22/16

¹⁸⁷⁷ Payne BMI 32/22/20-24

¹⁸⁷⁸ Payne BMI 32/40/5-42/4

¹⁸⁷⁹ Payne BMI 32/36/1-37/13

¹⁸⁸⁰ D001 BMI 12/14/5-15/2; D003 BMI 10/99/22-25; D004 BMI 18/38/21-39/7; D006 BMI 13/71/16-22; Maitham BMI 13/30/4-5; Ahmad Matairi BMI 12/64/6-65/3

2.1402 From all this evidence I conclude that Payne’s use of gratuitous violence on the Detainees began from the time shortly after the arrival of the Detainees in the TDF. But I accept that this was not the first abusive treatment perpetrated on the Detainees by 1 QLR soldiers. It had started with low level violence at the Hotel (see Chapter 2) and mistreatment of D005 at Camp Stephen (Chapter 3), in none of which Payne was involved.

The “Free for All”

2.1403 There is no dispute that Payne was involved in this incident. Indeed, I find he started it. He agreed that he had assaulted the Detainees at that time and asserted that the whole of the Rodgers Multiple was involved.¹⁸⁸¹ Appleby and Aspinall both saw Payne punching Detainees.¹⁸⁸² Aspinall described the punches as “*full on to the back*” (see Chapter 10 above).¹⁸⁸³ It seems probable that at about this time before the “Free for All” started, Payne briefed Rodgers and through him the Multiple to the effect that when carrying out their stags the guards should see that the Detainees were kept hooded and in stress positions, and not allowed to sleep.¹⁸⁸⁴ As I explain in Chapter 10 above, I suspect that on this occasion Payne did demonstrate to members of the Multiple an episode of the choir.

The rest of the stags up to the final incident

2.1404 I do not propose to detail here the many occasions when Payne’s part in these events is mentioned by witnesses who were involved as guards or described by others who visited the TDF during this period. These occasions appear in the narrative in the various Chapters above. They need no repetition in this Chapter. Generally, it can properly be said that Payne’s visits to the TDF over the whole 36 hour period up to the final incident were accompanied by incidents of violence. I find this was as much for his own personal gratification as it was to serve as an example and instruction to the guards of how they should behave. I further find that these visits were random in the sense that they did not follow a regular pattern.

2.1405 In his first Inquiry witness statement Payne said he visited the TDF in the 36 hour period when the Detainees were in the TDF on about 30 to 40 occasions.¹⁸⁸⁵ In his second statement he amended this figure to fifteen to twenty times at most.¹⁸⁸⁶ I accept that 30 to 40 times was probably an over estimate. It would be equivalent to one visit every hour. Equally, fifteen times on the evidence may be an under estimate. Payne attached to his second witness statement a schedule which purports to give approximate times of his visits.¹⁸⁸⁷ There are sixteen visits on this schedule, not including the first occasion which he said was taken up with the arrival and processing of the Detainees.

2.1406 In my view the probability is that the gaps between his visits were variable in time. If he made a total number of twenty visits this would involve one visit just under

¹⁸⁸¹ Payne BMI 32/71/18-74/12

¹⁸⁸² Appleby BMI 25/24/24-31/20; Aspinall BMI 28/32/11-14; Aspinall BMI 28/36/22-38/13

¹⁸⁸³ Aspinall BMI 28/37/11-16

¹⁸⁸⁴ Reader BMI 28/148/10-16

¹⁸⁸⁵ Payne BMI01742, paragraph 94

¹⁸⁸⁶ Payne BMI04227, paragraphs 2-5

¹⁸⁸⁷ Payne BMI04229-32

every two hours. Assuming that to be reasonably accurate it gives some indication of the number of times he would have assaulted a Detainee in the TDF. If there is added to this figure assaults by guards or others when Payne was not in the TDF, it becomes readily understandable that the Detainees thought the beatings were almost continuous.

The final incident and the aftermath of it

2.1407 Payne's part in the final incident which led to Baha Mousa's death is discussed in Chapter 16. I have concluded that in the final minutes Payne was involved in a violent assault on Baha Mousa. I find that his conduct on this occasion was a contributory cause of Baha Mousa's death.

2.1408 Following Baha Mousa's death, as I have found, Payne attempted to persuade members of the Rodgers Multiple to put forward the explanation that the death was accidental (see Chapter 17). He knew perfectly well that it was not.

Discussion

2.1409 Payne's part in the events of 14 to 16 September leading up to and immediately surrounding Baha Mousa's death constitute a dreadful catalogue of unjustified and brutal violence on the defenceless Detainees. His own use of violence on them was appalling. Earlier in this Report I have described him as a bully. His part in these events demonstrates him to be a violent bully.

2.1410 That he was capable of some kindness is shown by his dealings with D005 and D006 on Monday morning.¹⁸⁸⁸ There was also evidence from officers, fellow NCOs and soldiers that he was respected as a capable NCO.¹⁸⁸⁹ As for soldiers junior in rank to him, in my judgment any respect in which he was held by them was more on the basis of fear than anything else.

2.1411 Others may judge for themselves when reading this Report the responsibility which Payne bears for what happened to the Detainees. My assessment is that not only was he personally responsible for much of the violence, he was also responsible by his example and instructions to them for the parts played by the much younger and more impressionable soldiers whom he was supposed to be supervising. I accept some low level violence had been inflicted on the Detainees before they arrived at the TDF, but without Payne's example and his instructions to the guards on how they should treat the Detainees, any violence they might have indulged in would probably have been of a less serious degree.

2.1412 In the circumstances, I find that Payne bears a very heavy responsibility for the events which took place in the TDF between 14 and 16 September 2003.

¹⁸⁸⁸ D005 BMI 17/33/25-34/15; D006 BMI 13/88/3-92/13

¹⁸⁸⁹ Goulding BMI 34/217/18-23; Mendonça BMI 59/175/5-8; Moutarde BMI 54/192/1-11; Sgt Paul Smith BMI 44/73/13-22; Sgt Paul Smith BMI 44/93/6-9

Sgt Smith

- 2.1413** Sgt Smith joined the Army in 1982. He completed his basic training on 31 March 1983 and went straight to 1 QLR. He served in a number of locations, including Northern Ireland, before receiving notification in early 2003 of 1 QLR's impending deployment to Iraq. Shortly before deployment he was promoted to the rank of sergeant and told he was to act as provost sergeant attached to H Company.¹⁸⁹⁰
- 2.1414** Sgt Smith said he never received any training in respect of conditioning, an expression which he understood to be a process of maintaining the shock of capture pending questioning of a prisoner.¹⁸⁹¹ He understood the process was managed by the tactical questioner. He said he was told to keep prisoners separated, at a distance, so they could not communicate.¹⁸⁹² He received no training in restraint positions and no training on the provost staff role in Iraq.¹⁸⁹³
- 2.1415** As for hooding, Sgt Smith said if prisoners came in hooded they were kept hooded until he was told to remove the hoods. He was not told in training that hoods were not to be used.¹⁸⁹⁴ So far as stress positions were concerned, he received no training in respect of that procedure, nor was he given any instruction in prisoner handling.¹⁸⁹⁵ He was, however, given the standard Law of Armed Conflict (LOAC) training. He understood that every prisoner should be treated humanely in accordance with the Geneva Conventions.¹⁸⁹⁶
- 2.1416** Once in Iraq Sgt Smith understood that his primary role was Provost Sergeant, but he was given other responsibilities, such as "camp commandant", head of a desk in the Intelligence Cell, and duty Watchkeeper.¹⁸⁹⁷ In the course of his evidence it also became apparent that he was from time to time detailed to drive the Commander of the Intelligence Cell, Seaman.¹⁸⁹⁸ He complained to Briscoe that he was too busy to carry out all these different duties but nothing was changed.¹⁸⁹⁹
- 2.1417** Sgt Smith said on the changeover to the BGIRO regime Briscoe largely dropped out of the immediate chain of command in respect of prisoner handling. Although he was still answerable to Briscoe, Smith said he also became answerable first to Royce and then to Peebles.¹⁹⁰⁰
- 2.1418** When detainees were in the TDF, Smith said in theory either he or Payne should be at the TDF and should ensure that the detainees were given food and water. However, this was often not possible, in his case because of his other duties.¹⁹⁰¹

¹⁸⁹⁰ Sgt Paul Smith BMI 44/61/24-62/18

¹⁸⁹¹ Sgt Paul Smith BMI 44/62/25-63/11

¹⁸⁹² Sgt Paul Smith BMI 44/63/17-64/13

¹⁸⁹³ Sgt Paul Smith BMI 44/66/22-67/17

¹⁸⁹⁴ Sgt Paul Smith BMI 44/64/16-65/9

¹⁸⁹⁵ Sgt Paul Smith BMI 44/65/10-22

¹⁸⁹⁶ Sgt Paul Smith BMI 44/66/1-17

¹⁸⁹⁷ Sgt Paul Smith BMI 44/69/13-70/19

¹⁸⁹⁸ Sgt Paul Smith BMI 44/166/13-22

¹⁸⁹⁹ Sgt Paul Smith BMI 44/142/4-23

¹⁹⁰⁰ Sgt Paul Smith BMI 44/87/25-91/18

¹⁹⁰¹ Sgt Paul Smith BMI 44/93/10-21

The Op Salerno Detainees

- 2.1419** Sgt Smith was absent from BG Main when the Detainees arrived there on Sunday. He was delivering other detainees to the TIF. He did not return to BG Main until 18.00hrs that evening.¹⁹⁰² He realised on his return that there were Detainees in the TDF because he saw Saxons parked opposite it and because he heard soldiers discussing the arrest in the dinner queue shortly afterwards.¹⁹⁰³ He also saw one or two of the Detainees being walked to the tactical questioning room, with sandbags over their heads.¹⁹⁰⁴
- 2.1420** Sgt Smith said that he was aware that the questioning was still continuing at a time which he thought was “rather late in the day”. He then had a conversation with Peebles in which he asked him if it was likely that he would be taking these Detainees to the JFIT first thing the next morning. Peebles told Sgt Smith to wait, and said that he would be told when the Detainees were ready to move, as soon as tactical questioning was completed.¹⁹⁰⁵ Peebles did not remember this conversation but said it was “*very likely*” that Sgt Smith’s account of it was accurate.¹⁹⁰⁶ I find that it was.
- 2.1421** Sgt Smith was unable to remember how many times he went into the TDF during the period when the Detainees were there. He remembered they were separated into different rooms. He also remembered seeing them in uncomfortable positions and hooded.¹⁹⁰⁷ Payne was in charge of them at that time.¹⁹⁰⁸
- 2.1422** In his various accounts, Sgt Smith has described two visits he made to the TDF before Baha Mousa’s death.
- 2.1423** The first was the occasion, around 21.45hrs on Sunday night, when he ordered the hoods and handcuffs to be removed from the Detainees and for them to be allowed to relax out of their stress positions. The evidence concerning this incident is discussed in Chapters 11 and 15 above in which I set out my findings in respect of that incident. In this Chapter it is only necessary for me to record that in my opinion Sgt Smith’s near contemporaneous note in respect of this incident provides the most reliable evidence of the time when it took place. It was signed by Pte Cooper and MacKenzie.
- 2.1424** Sgt Smith returned to the vicinity of the TDF at about 02.50hrs. He heard a noise from inside, which sounded like someone dragging a metal bar across the floor. The only person he recalled being present was Livesey.¹⁹⁰⁹ He spoke to Livesey, but did not go inside the TDF. He said Livesey informed him that he had countermanded Sgt Smith’s earlier order.¹⁹¹⁰
- 2.1425** Between 03.00hrs and 06.00hrs on Monday, Sgt Smith was on duty as the Watchkeeper. Shortly afterwards, he again enquired of Peebles when the Detainees were to be transferred to the TIF, and was told he was not required to transfer them

¹⁹⁰² Sgt Paul Smith BMI 44/121/8-21

¹⁹⁰³ Sgt Paul Smith BMI 44/100/3-16; Sgt Paul Smith MOD000833

¹⁹⁰⁴ Sgt Paul Smith MOD000213

¹⁹⁰⁵ Sgt Paul Smith BMI 44/122/25-123/15; Sgt Paul Smith MOD000213

¹⁹⁰⁶ Peebles BMI 40/135/3-10

¹⁹⁰⁷ Sgt Paul Smith BMI 44/101/15-105/16

¹⁹⁰⁸ Sgt Paul Smith BMI 44/122/1-12

¹⁹⁰⁹ Sgt Paul Smith MOD000834

¹⁹¹⁰ Sgt Paul Smith BMI05007, paragraph 65; Sgt Paul Smith BMI05008, paragraph 68

that morning as tactical questioning was ongoing. During the daytime on Monday, until 16.00hrs, he was again away from BG Main. He was tasked by Seaman to take him to Basra Palace.¹⁹¹¹ He raised with Seaman his responsibility for the Detainees present in BG Main at the TDF. Nevertheless he was ordered to go to Basra Palace, and told that Payne had matters in hand.¹⁹¹²

2.1426 After his return to BG Main, some time between 16.00hrs and 18.00hrs, Sgt Smith was again in the vicinity of the TDF. It is not clear from his evidence whether he actually went into the TDF, but he did see Detainees hooded, handcuffed and being moved, as he thought, to and from the tactical questioner.¹⁹¹³ At this time I think it very unlikely that the Detainees were being taken to and from the tactical questioner, since the last session of questioning appears to have started at 15.00hrs that day.¹⁹¹⁴ Whether he actually went into the TDF or was outside, it, I accept he saw Detainees still hooded. Yet again he spoke to Peebles because he was concerned about the length of time the Detainees had been kept in the TDF. Again he was told by Peebles that the Detainees would not be taken to the TIF until the following morning.¹⁹¹⁵ It is to Sgt Smith's credit that on three occasions, as I find, he sought to remind Peebles of the need to transfer the Detainees to the TIF within the time limit.

2.1427 On Tuesday morning at between 08.00hrs and 09.00hrs, Sgt Smith reported to the TDF in order to take part in the transfer of the Detainees to the TIF. In his SIB witness statement dated 14 October 2003 he described the state of the Detainees in the following terms:

*"At that time, I saw that all of these internees were freed already from plasticuffs and their sandbags had been removed from their heads. I'm unable to describe any of the internees individually but collectively, they all seemed to be in a right sorry state. Their clothing was filthy, dirty and dishevelled and they all looked tired. There was an older man and a younger man who I think were father and son who I noticed didn't seem to have suffered any injuries that I saw. Nearly everybody else though seemed to be really stiff and tired to the extent that I had to get the guard to help them up and move them around. Some of them looked uncomfortable walking."*¹⁹¹⁶

2.1428 Sgt Smith retired from the Army in 2005 and since his deployment to Iraq he has suffered from PTSD.¹⁹¹⁷ I take this fact into account when assessing his evidence. I found him to be a not particularly impressive witness. On his performance in the witness box I judged him to have been a not very effective NCO. He did not strike me as an NCO who found it easy to gain the respect of his colleagues and those under his command.

2.1429 However, I do not see any reason for doubting the truthfulness of most of Sgt Smith's evidence. I accept that on Sunday evening he did order the guards to remove the hoods from the Detainees and allow them to relax. It is in my view to Sgt Smith's credit that this was the correct thing to do when he came across the Detainees

¹⁹¹¹ Sgt Paul Smith BMI 44/180/19-182/23

¹⁹¹² Sgt Paul Smith BMI 44/181/23-182/23

¹⁹¹³ Sgt Paul Smith MOD000214

¹⁹¹⁴ Smulski BMI01263

¹⁹¹⁵ Sgt Paul Smith MOD000214-5

¹⁹¹⁶ Sgt Paul Smith MOD000215

¹⁹¹⁷ Sgt Paul Smith BMI 44/60/23-24; CM 58/51/20-52/20

hooded, handcuffed and in stress positions and in marked contrast to what other senior NCOs failed to do.

2.1430 I find that when he returned to BG Main on Monday afternoon and discovered that the Detainees were still hooded and handcuffed he did inform Peebles of his concerns about that the duration of their custody at BG Main. By then he must have been aware from his previous visit to the TDF and his reaction to what he had seen, that the Detainees were suffering considerable distress and the conditions in the building were likely to be deplorable.

2.1431 It is suggested by some Core Participants that Sgt Smith was lazy and work-shy.¹⁹¹⁸ It is submitted this was the reason why he took little part in supervising the welfare of these Detainees in the TDF.¹⁹¹⁹ It is clear that during the Detainees' stay at BG Main Sgt Smith did very little to supervise their detention. But I do not accept that idleness was the reason for his visits to the TDF being so few. It is clear he had a number of other duties to perform. However, there are occasions when he might have exercised more supervision.

2.1432 On Sunday afternoon at 18.00hrs when Sgt Smith returned to BG Main he was aware of the presence of the Detainees but did not go into the TDF. On Monday afternoon he again returned to BG Main between 16.00hrs and 18.00hrs. He did not go into the TDF on that occasion, although seeing some Detainees still hooded, as I record above, he did speak to Peebles.

2.1433 In my view, on both these occasions a keen and efficient provost sergeant might well have thought it his duty to see for himself the state of the Detainees and conditions in the TDF. He accepted that on Sunday afternoon the Detainees were still being questioned at a "... *rather late hour in the day*".¹⁹²⁰ On Monday evening it was obviously much later and the Detainees had still not been transferred to the TIF. Again, in my opinion, a keen and efficient provost sergeant might have thought it necessary to go into the TDF and see for himself the condition of the Detainees.

2.1434 On each of these occasions Sgt Smith spoke to Peebles and on each occasion Peebles told him the Detainees were not, at that stage, going to be transferred to the TIF. So far as Sunday evening is concerned, in my view, the fact that Sgt Smith spoke to Peebles is sufficient to discharge his duty as provost sergeant. But on Monday, knowing that the Detainees were not to be transferred until the following morning, and being aware that the night before he had seen them hooded, handcuffed and in stress positions in the TDF, in my opinion, Sgt Smith ought to have done more than simply accept from Peebles that they were not to be transferred until the following morning. By then, as Sgt Smith must have appreciated, the Detainees had been in the TDF for over 24 hours. On the occasions when he had seen them they were hooded and handcuffed and on one occasion in stress positions. In my view this ought to have caused Sgt Smith, in his capacity as Provost Sergeant, to have exercised closer supervision of Payne and the Detainees until such time as they were transferred to the TIF. I am confident that if he had seen the state of the Detainees in the late afternoon of Monday before Baha Mousa died, he would have done something about it.

¹⁹¹⁸ Seaman BMI 55/52/27-54/2

¹⁹¹⁹ Sgt Paul Smith BMI 44/163/23-166/8

¹⁹²⁰ Sgt Paul Smith MOD000213

- 2.1435** Whatever the reason for Sgt Smith's absences from the TDF during the period after 16.00hrs on Monday, in my judgment, if he had been doing his job as Provost Sergeant properly he should have found time to visit the TDF during this period. He ought to have kept a far closer watch on the Detainees and also on Payne and the guards. This was particularly important since he had obviously realised that the ongoing use of hoods, handcuffs and stress positions was inappropriate.
- 2.1436** Generally, whilst I acknowledge that Sgt Smith had other responsibilities, in my judgment, he could and should have done more to supervise what was going on in the TDF and to keep a closer watch on Payne. I suspect that the fact that he did not may have been because he deliberately kept out of Payne's way. Payne was, in my judgment, a much more forceful character than Sgt Smith.

Briscoe

- 2.1437** Briscoe joined the Army in 1983. In November 2001 he was appointed RSM of 1 QLR, the regiment which he had been in from the time he enlisted in the Army. He was deployed to Iraq with 1 QLR in June 2003.¹⁹²¹ As to training, he said in about 1995 he undertook a course on Northern Irish intelligence. On it he heard about what he came to understand as conditioning. He learnt that sleep deprivation was a part of tactical questioning. It was used to keep prisoners disorientated. But he did not undergo a tactical questioning course.¹⁹²²
- 2.1438** As with all regular soldiers, his training included basic instruction on prisoner of war handling. He learnt that at all times prisoners of war should be treated humanely.¹⁹²³ In 2003 he attended a shortened prisoner handling and tactical questioning course as part of his PDT (see Part VI paragraph 6.326). For ease of reference, I summarise here his evidence on this course. He was taught that prisoners could be hooded with sandbags and handcuffed for security purposes. The training was in fact only on prisoner handling and not tactical questioning.¹⁹²⁴
- 2.1439** Briscoe said that he had been aware of the use of hoods on prisoners as common practice since before his first deployment to Northern Ireland in 1987. He regarded it as standard practice to prevent prisoners from discovering the layout of a camp and recognising the faces of key personnel.¹⁹²⁵
- 2.1440** As RSM, Briscoe was traditionally responsible to the Commanding Officer for the RP staff. In that capacity he knew both Sgt Smith, the provost sergeant, and Payne, the provost corporal. It was his belief that on deployment to Iraq he would be responsible for prisoners of war. He was also a member of the Commanding Officer's TAC group. He was, of course, generally responsible to the Commanding Officer for the work and discipline of the NCOs and all the soldiers.¹⁹²⁶ He accepted in evidence that the RSM in any battalion is traditionally the eyes and ears of the Adjutant and the Commanding Officer.¹⁹²⁷

¹⁹²¹ Briscoe BMI 43/94/25-95/12

¹⁹²² Briscoe BMI00726, paragraph 13

¹⁹²³ Briscoe BMI 43/95/24-96/18

¹⁹²⁴ Briscoe BMI 43/97/1-99/10; Briscoe BMI00724-6, paragraphs 7-12

¹⁹²⁵ Briscoe BMI00724, paragraph 8

¹⁹²⁶ Briscoe BMI 43/100/9-101/13

¹⁹²⁷ Briscoe BMI 43/174/23-175/24

- 2.1441** In Iraq Briscoe accepted that he had seen detainees hooded in the TDF. It was, he said, a practice which 1 QLR had inherited from 1 Black Watch (1 BW). Its purpose was for security within the building. He did not appreciate that there was anything wrong with this practice but *“With hindsight I now know it [hooding] to be improper, however, at the time, I believed it to be an acceptable practice”*.¹⁹²⁸
- 2.1442** Briscoe’s position and responsibilities in the Battlegroup changed after the promulgation of FRAGO 29.¹⁹²⁹ FRAGO 29 set up at Battlegroup level the BGIRO regime.¹⁹³⁰ I discuss this at greater length Chapter 20 above. For present purposes it is sufficient for me to note here that Royce removed Briscoe from overall responsibility for prisoners of war and detained civilians.¹⁹³¹ Although some members of 1 QLR continued to believe that he had some responsibility for persons detained in the TDF¹⁹³² there was no dispute between Mendonça and Royce that on FRAGO 29 coming into effect Royce assumed overall responsibility for detainees and Briscoe relinquished the responsibility which formerly he had for them as the head of the RP staff section.¹⁹³³
- 2.1443** I have concluded that Royce and Peebles had responsibility for the detainees’ welfare by virtue of their appointments as BGIRO. I have found that Briscoe did not have the same responsibility for detainees as he had before the BGIRO regime (see paragraph 2.1380 above).
- 2.1444** Briscoe said, and I accept, that he had never seen prisoners in the TDF, or anywhere else, in stress positions. I accept this evidence but am bound to point out that I find this surprising, given firstly that Payne and others said it was an standard operating procedure for prisoners on arrival at the TDF; and secondly, Briscoe’s overall responsibility as RSM for oversight of all the NCOs and soldiers in the Battlegroup. Briscoe also said that he had never seen any violence used by any guard or member of the provost staff on detainees.¹⁹³⁴
- 2.1445** Of Sgt Smith, the Provost Sergeant, Briscoe said he never had any concerns about his competence.¹⁹³⁵ So far as Payne was concerned, similarly, he had no concerns about him and regarded him as competent.¹⁹³⁶

Briscoe’s knowledge or complicity in respect of the events of 14 to 16 September

- 2.1446** There is some evidence that Briscoe visited the TDF on one occasion. Reader said he saw both Mendonça and Briscoe visit the TDF when the Detainees were present. Reader’s evidence was far from clear as to when and at what time this occurred. However, in the course of questioning by Counsel he narrowed the date and time down to some time during the day on Monday. He said that he saw both men in the vicinity of the TDF when he was relaxing by the swimming pool. Reader said both

¹⁹²⁸ Briscoe BMI 43/109/23-111/22

¹⁹²⁹ Briscoe BMI 43/103/16-105/1

¹⁹³⁰ MOD016186

¹⁹³¹ Briscoe BMI 43/103/16-104/9; Royce BMI 57/32/6-10

¹⁹³² SSgt Mark Davies BMI 42/127/6-18; Livesey BMI 39/12/19-13/4; Rodgers BMI 30/17/16-18/5

¹⁹³³ Mendonça BMI 59/117/4-24; Royce BMI 57/31/25-32/10

¹⁹³⁴ Briscoe BMI 43/112/1-6

¹⁹³⁵ Briscoe BMI 43/121/15-20

¹⁹³⁶ Briscoe BMI 43/122/23-123/1

then went out of his vision and he accepted he was unable to see whether they went into the TDF.¹⁹³⁷ Mendonça denied that he visited the TDF on Monday and I accept that he did not.¹⁹³⁸ Briscoe accepted that he was in the vicinity of the TDF on Monday morning, but not with Mendonça. He said it was in the early morning when he went to the CQMS offices. He saw Payne in the offices.¹⁹³⁹ In oral evidence to the Inquiry Briscoe said the CQMS offices were opposite the TDF and he could “vaguely” see some Detainees crouched in the TDF. He saw a couple hooded and the rest were unhooded. He spoke to Payne, but not about the Detainees.¹⁹⁴⁰

2.1447 Rodgers also said that Briscoe visited the TDF on Monday morning.¹⁹⁴¹ I discuss this allegation in that part of this Chapter which deals with Rodgers. I conclude that the evidence of Mendonça and Briscoe, both of whom denied going into the TDF on Monday morning, is to be preferred to that of Rodgers. I find that neither Briscoe nor Mendonça visited the TDF on that morning.

2.1448 As noted in Chapter 20 above, Peebles was obviously well aware of the FRAGO 29 regime. On the issue of responsibility he said that he believed Briscoe should “*take a share of the blame*”.¹⁹⁴² Other witnesses such as WO2 Alan Weston, the Company Sgt Maj of S Company, believed Briscoe had some responsibility for prisoners in the TDF. However, Weston had no detailed knowledge of the regime put in place by the appointment of the BGIRO.¹⁹⁴³

2.1449 In my opinion Briscoe gave his evidence in an entirely straightforward manner. He accepted that although, as he contended, and I find, his responsibility for the Detainees was secondary to that of Peebles, he had the same general responsibility for all the soldiers involved in prisoner handling as he had for soldiers involved in any other activity.¹⁹⁴⁴ I accept that he did not know what was going on in the TDF in the period 14 to 16 September 2003. In my view the real criticism of him is that he ought to have known about the violence being carried out on the Detainees. I take into account that he had been relieved of his traditional role of oversight of the provost staff and that he spent much of his time on patrol in the Commanding Officer’s TAC group. Nevertheless, in my opinion as the 1 QLR RSM, had he been doing his job properly as the eyes and ears of the Adjutant and the Commanding Officer, he ought at some time during the 36 hours when the Detainees were being abused in the TDF to have discovered what was going on. In his post as RSM the discipline of NCOs and soldiers was very much his responsibility. It can also properly be said that as RSM, Briscoe ought to have had some awareness of the other incidents which I describe in Part III below.

2.1450 Furthermore, even if, as I accept, Briscoe had had a long and busy day on Monday 15 September, I find it difficult to understand why, when he returned to BG Main on 15 September, he went straight to his quarters rather than going to the TDF to make his own appraisal of what had happened. Even allowing for the facts that he understood Baha Mousa’s death was accidental, that the SIB had been informed

¹⁹³⁷ Reader BMI 28/155/8-158/11

¹⁹³⁸ Mendonça BMI 59/181/9-10

¹⁹³⁹ Briscoe BMI00737, paragraph 48

¹⁹⁴⁰ Briscoe BMI 43/125/2-12

¹⁹⁴¹ Rodgers BMI 30/55/23-56/4

¹⁹⁴² Peebles BMI 40/140/3-23

¹⁹⁴³ McLaughlin BMI 52/62/6-63/16; Weston BMI 47/112/11-18

¹⁹⁴⁴ Briscoe BMI 43/109/3-14

and that senior officers were aware of the death, it seems to me that a conscientious RSM in such circumstances would have gone straight to the TDF to make his own appraisal of the situation.

Rodgers

2.1451 At the time of Op Telic 2 Rodgers was a young lieutenant commanding a platoon in A Company. He was also the commander of a multiple consisting of men from the platoon, the Rodgers Multiple. A number of the soldiers under his command and officers senior to him, particularly Englefield, his Company Commander, regarded him as a very good officer.

2.1452 In Part III of the Report, which deals with whether there was a culture of violence within 1 QLR, I refer to a number of incidents involving the Multiple and Iraqis other than the Op Salerno Detainees. Suffice to say, at this point, that I have not found Rodgers was himself physically concerned in violence on Iraqis. Rather I have found that he was aware of violent actions for which soldiers from his Multiple were responsible. I now draw together conclusions about his involvement with the Op Salerno Detainees.

2.1453 In oral evidence to the Inquiry Rodgers said that because of the length of time since September 2003 his memory of the events that occurred at that time was now poor. He has made a number of witness statements, including three taken by SIB officers and one interview under caution.¹⁹⁴⁵ He was content to accept that the statements were likely to be more accurate than his oral evidence.¹⁹⁴⁶ He also made a witness statement for the Inquiry.¹⁹⁴⁷

Rodgers' credibility

2.1454 I found Rodgers an intelligent, forthright witness. On the face of it he gave the impression of giving truthful evidence. However, there are a number of instances in relation to which I have had real difficulty in accepting his evidence. They surround Rodgers' denial that on any of his visits to the TDF he had seen anything which had caused him disquiet.¹⁹⁴⁸ This assertion in my view flies in the face of evidence of a number of witnesses whose evidence I accept.

2.1455 By the time of Rodgers' first visit on Sunday evening the Detainees had been hooded and in stress positions for most of the day. As I find, they had been subjected to beatings by Payne, Crowcroft and Fallon. The conditions in the TDF late on Sunday afternoon described by Livesey as quite shocking can have been no better when Rodgers "walked" his Multiple through the TDF at about 19.30hrs on that evening.¹⁹⁴⁹ The condition of the Detainees and conditions in the TDF must have become progressively worse during Sunday night. Yet, again, on Monday morning Rodgers said that apart from the smell in the TDF and the heat there was nothing he saw which caused him any real anxiety.¹⁹⁵⁰ I have already recorded in Chapter

¹⁹⁴⁵ Rodgers MOD000216; Rodgers MOD000225; Rodgers MOD003480; Rodgers MOD015789

¹⁹⁴⁶ Rodgers BMI 30/34/2-12; Rodgers BMI 30/35/7-10; Rodgers BMI 30/42/15-22

¹⁹⁴⁷ Rodgers BMI01816

¹⁹⁴⁸ Rodgers BMI 30/16/7-13

¹⁹⁴⁹ Livesey BMI 39/26/8-10; Rodgers BMI 30/41/5-45/19

¹⁹⁵⁰ Rodgers BMI 30/31/13-31/11

12 my conclusion in respect of the two different descriptions given by Redfearn and Rodgers of the condition of the Detainees and the TDF at that time. I have found that Redfearn's evidence is to be preferred.

2.1456 Even at the end of the Detainees' detention in the TDF, Rodgers still maintained that on Tuesday morning when he visited that building before the Detainees were transferred to Um Qasr, he saw nothing which caused him to think that the Detainees had been treated inhumanely.¹⁹⁵¹ Again, this is in marked contrast to the evidence of another witness, Simmons, whose evidence I accept. Simmons graphically described the injuries which he saw on the Detainees that morning, one of whom had black eyes and congealed blood on his face.¹⁹⁵² Simmons also described the disarray of the Detainees' clothing and the smell of urine and sweat in the TDF.¹⁹⁵³ I find it incomprehensible that Rodgers should say that he did not notice anything which caused him to think that the Detainees had been treated inhumanely. I infinitely prefer Simmons' evidence.

2.1457 I am also sceptical about Rodgers' assertion that he had little memory of the events of 14 to 16 September.¹⁹⁵⁴ It seems to me unlikely that looking back immediately after the death of Baha Mousa in which members of his Multiple must have had some involvement, these events would not have been indelibly etched on Rodgers' memory.

2.1458 For the above reasons I cannot accept as truthful Rodgers' assertion that he saw nothing on his visits to the TDF which caused him disquiet.¹⁹⁵⁵ This finding, in my judgment, adversely affects Rodgers' credibility and colours much of his evidence.

The Hotel raid

2.1459 The Rodgers Multiple was in the forefront of the raid on the Hotel. As will be apparent from my description of the raid and my findings in respect of it, the Multiple was involved in some abusive treatment of the Detainees at the Hotel, including some incidents of low level violence. I have found that Rodgers did not himself commit any acts of violence but I strongly suspect he was aware that they had occurred. After the raid and the removal of the Detainees to BG Main, I find Rodgers remained at the Hotel with some members of his Multiple before returning to Camp Stephen.¹⁹⁵⁶

Sunday evening

2.1460 I have described the events which occurred on the return of the Multiple to the TDF on Sunday evening in Chapter 10, the "Free for All". Rodgers knew from Payne's briefing of him, and he in turn briefed the Multiple, that the Detainees were to be kept hooded, handcuffed and in stress positions. He also knew that one of the Detainees had already been injured. Payne showed Rodgers bruising on one of the Detainees

¹⁹⁵¹ Rodgers BMI 30/62/10-63/24

¹⁹⁵² Simmons BMI 24/32/23-33/1

¹⁹⁵³ Simmons BMI 24/31/1-13

¹⁹⁵⁴ Rodgers BMI 30/20/7

¹⁹⁵⁵ Rodgers BMI 30/58/1-17

¹⁹⁵⁶ Rodgers BMI 30/26/5-9

when Rodgers arrived with his Multiple on that evening. Rodgers made no inquiry as to the cause of this bruising and Payne gave no explanation for it.¹⁹⁵⁷

2.1461 I have not found that Rodgers was involved in the assaults by Payne and members of his Multiple before the start of the stags. However, I have found that he knew, or very soon after became aware, of what had happened. My conclusions on this incident and Rodgers' responsibility in respect of it can be found in Chapter 10.

The overnight stags

2.1462 Rodgers said that he did not visit the TDF during the night time guard duty¹⁹⁵⁸ and I accept that he did not. It has been suggested that as Commander of the Multiple he had a duty to oversee his soldiers when they were carrying out guard duty. In general, it seems to me that a platoon and multiple commander must have a duty to supervise and monitor those under his command when they are carrying out their duties. But, in this instance, those on guard were for the period of their stags under the command of the provost corporal and, as I find, also under the command of the BGIRO.¹⁹⁵⁹ In the circumstances I do not think Rodgers can be criticised for not visiting the TDF during Sunday night.

2.1463 Having made the above comment, I accept that Rodgers was not aware of the guards' conduct overnight, but I do not accept that he remained unaware of their conduct. As I describe below, Rodgers had returned to the TDF on Monday morning. At that stage there is abundant evidence of the conditions in the TDF and the distress and disarray of the Detainees. Rodgers went into the TDF on that morning and he would have seen the Detainees at that stage. As I have stated above, I do not accept his evidence that he saw nothing which caused him real anxiety. I accept Redfearn's evidence of what he saw and what he said he had said to Rodgers on that morning (see Chapter 12). In my opinion it is just not credible that he had neither observed the consequences of the actions of Payne and members of the Multiple overnight, nor heard what had happened. As MacKenzie succinctly put it when asked why Rodgers must have known what had been going on during the "Free for All" and the stags: "*It's his multiple, it's his job to know*".¹⁹⁶⁰ I agree, and find that Rodgers did know what had been going on.

Monday

2.1464 In his SIB statement of 12 October 2003 Rodgers referred to three visits which he made to the TDF on Monday morning.¹⁹⁶¹ Monday was the day of Op Centurion in which the Rodgers Multiple was taking some part. Rodgers agreed that, as stated in his SIB statement, he visited the TDF at 05.45hrs to exchange the night time guards with the guards who were to carry out the day time stags. The statement also recorded that initially Rodgers thought that the Detainees were to be taken to the TIF some time during the morning. He said he was aware of the fourteen hour rule.¹⁹⁶²

¹⁹⁵⁷ Rodgers BMI 30/30/14-31/12

¹⁹⁵⁸ Rodgers BMI 30/49/15-20

¹⁹⁵⁹ Rodgers BMI 30/65/12-66/14

¹⁹⁶⁰ MacKenzie BMI 29/211/2-4

¹⁹⁶¹ Rodgers MOD000221

¹⁹⁶² Rodgers MOD000229

- 2.1465** This SIB statement also recorded Rodgers stating that he had visited the TDF again at 09.30hrs and 11.00hrs. This statement made no mention of Mendonça and Briscoe being present on either of these occasions, although in his SIB statement of 30 June 2005 he recalled that Mendonça and Briscoe had visited the TDF during his visit at 09.30hrs. In this statement Rodgers also said that his guards mentioned the Commanding Officer had visited the TDF several times during the night.¹⁹⁶³
- 2.1466** I do not accept Rodgers' assertion in his SIB statement that he saw Mendonça and Briscoe visiting the TDF at that time in the morning.¹⁹⁶⁴ I reject that part of his evidence and I reject the suggestion that Mendonça visited the TDF during the night other than on the one visit which Mendonça said he made during the night at about 22.30hrs.¹⁹⁶⁵
- 2.1467** As I have said, Rodgers had no present memory of these events when he gave evidence to the Inquiry.¹⁹⁶⁶ He made no mention of a visit by Mendonça in his first SIB statement when his memory of these events must have been fresher in his mind than subsequently.¹⁹⁶⁷ Having observed both men give evidence I have no hesitation in preferring Mendonça's evidence on this issue to the evidence of Rodgers.
- 2.1468** Whether or not Rodgers' evidence that he had made as many as three visits to the TDF on Monday morning is accurate, I am satisfied that he made at least two visits on Monday morning, the first of which was at 05.45hrs and the second at approximately 09.30hrs.¹⁹⁶⁸ As I have already concluded in respect of the different descriptions of conditions in the TDF on Monday morning given by Redfearn and Rodgers, Redfearn's description is more accurate than Rodgers' description.
- 2.1469** By 09.30hrs the Detainees had been in the TDF for about 24 hours. They had been held in stress positions and hooded throughout that time. In his statement dated 30 June 2005 Rodgers referred to the Detainees complaining and moaning.¹⁹⁶⁹ He also said there was a stench in the TDF.¹⁹⁷⁰ On any view, the Detainees must by then have been exhausted and exhibiting signs of distress. Rodgers would have known that they had been held in stress positions and hooded for at least twelve hours and he could have inferred that the period was as long as 24 hours. He knew from what Payne had shown him at 19.30hrs the previous evening that one of the Detainees had a large bruise on his body.¹⁹⁷¹ Furthermore, conditions in the TDF during that morning, as described by Redfearn, were appalling.¹⁹⁷² I accept Redfearn's evidence about what he said he told Rodgers on that morning (see Chapter 12). There is no evidence either that Rodgers did anything about what he must have seen, and little evidence that he returned to the TDF after 11.00hrs until the death of Baha Mousa.
- 2.1470** The guards changed at about 13.00hrs on Monday. At that time the Multiple, less the three men who remained on guard, left. Thereafter, I find it probable that Rodgers and most of the Multiple were involved in Op Centurion until approximately the time

¹⁹⁶³ Rodgers MOD000229

¹⁹⁶⁴ Rodgers MOD000229-30

¹⁹⁶⁵ Mendonça BMI 59/182/7-19

¹⁹⁶⁶ Rodgers BMI 30/55/18-56/7

¹⁹⁶⁷ Rodgers MOD000216-24; Rodgers MOD000230

¹⁹⁶⁸ Rodgers MOD000221

¹⁹⁶⁹ Rodgers BMI 30/55/2-10

¹⁹⁷⁰ Rodgers BMI 30/54/23-25

¹⁹⁷¹ Rodgers BMI 30/30/14-25

¹⁹⁷² Redfearn BMI 30/238/10-24; Redfearn MOD000191

when they had to leave Camp Stephen to drive to BG Main, arriving between 21.15hrs and 21.30hrs.¹⁹⁷³

2.1471 I accept the submission made on his behalf that during the afternoon of 15 September Rodgers could not be expected to make visits to the TDF in order to monitor the work of members of his Multiple who were on guard.¹⁹⁷⁴ I further accept that he was entitled to rely on the BGIRO and the provost staff to ensure that the guards were acting properly and appropriately.¹⁹⁷⁵ Nevertheless I find it surprising that he did not visit the TDF more often on Monday morning before the Multiple took part in Op Centurion. He was the Commander of the Multiple providing the guards and might have been expected to visit his men whom, as I find, he must have known by then had been involved in a serious incident on Sunday evening.

2.1472 The fact that Rodgers at no stage remonstrated with or controlled his Multiple or reported what he must have known was going on to a superior officer is, in my opinion, a very serious breach of duty which had very serious consequences. It was a failure to demonstrate the moral courage required of any officer of whatever age or rank. If he had taken action when first he knew what was going on, Baha Mousa would almost certainly not have died. In this connection, Rodgers ought when he was shown by Payne the bruise on the abdomen of one of the Detainees on Sunday evening to have instigated an investigation to find out how this had occurred. He should also have reported it up the chain of command there and then.

Baha Mousa's death and events after it

2.1473 Rodgers was not involved in the incident which led to Baha Mousa's death. On arrival at BG Main he said, and I accept, that he went either to the Operations Room or the Intelligence Cell to speak to Peebles.¹⁹⁷⁶ There is no evidence that he went into the TDF at that time.

2.1474 When he learnt of Baha Mousa's death Rodgers went over to the TDF and spoke to Aspinall and some of the guards.¹⁹⁷⁷ His conversation with Aspinall is recorded in Chapter 17.

2.1475 The morning after the death of Baha Mousa the Detainees were transferred to the JFIT at Um Qasr. They were accompanied by Rodgers, Sgt Smith and soldiers from the Rodgers Multiple.¹⁹⁷⁸ What happened at Um Qasr is described in Chapter 18.

2.1476 The final issue with which Rodgers is concerned is an allegation that he attempted to persuade soldiers from his Multiple to give false statements to the SIB. Reader said in evidence that this occurred before they went in to be interviewed by the SIB officer. He said at that time Rodgers spoke to members of the guard. Reader also said that Rodgers told them that Payne was not a member of the Multiple and that they should stick together as a Multiple. Reader took this to mean that members of the Multiple should blame Payne for what had happened.¹⁹⁷⁹

¹⁹⁷³ Rodgers MOD000216-24

¹⁹⁷⁴ SUB000813-4

¹⁹⁷⁵ Ibid.

¹⁹⁷⁶ Rodgers BMI 30/66/19-74/15

¹⁹⁷⁷ Rodgers BMI 30/71/16-72/2; Rodgers MOD000222

¹⁹⁷⁸ Redfearn BMI 30/177/23-178/11; Rodgers BMI 30/16/23-24; Sgt Paul Smith BMI 44/98/10-99/6

¹⁹⁷⁹ Reader BMI 28/178/1-17

- 2.1477** Pte Cooper gave a similar account of a conversation which he remembered had been between Rodgers and most of the Multiple some weeks after Baha Mousa's death. He said Rodgers had obviously received a medical report on the condition of the Detainees. Rodgers said "...we should all stick together as a team and deny all knowledge of treating them the way we did treat them".¹⁹⁸⁰ Pte Cooper said the majority of the Multiple agreed to this suggestion. He said Rodgers was saying they should put all the blame on Payne.¹⁹⁸¹
- 2.1478** Richards asserted that the Multiple explained they had all said the same thing to the SIB. He did not say this was at Rodgers' instigation.¹⁹⁸² He agreed "the same thing" was that Baha Mousa had accidentally banged his head.
- 2.1479** In evidence, Crowcroft said that there was a rumour within the Battlegroup that the Rodgers Multiple had agreed to tell the same story to the SIB.¹⁹⁸³ Aspinall, on the other hand, denied that members of the Multiple agreed to blame Payne in order to protect themselves.¹⁹⁸⁴
- 2.1480** Finally, Rodgers denied that he told or advised the Multiple to blame Payne. He made the point that if he had done so it would mean putting a lot of trust in the soldiers. I accept his denial as accurate.¹⁹⁸⁵

Rodgers' responsibility for the events of 14 to 16 September

- 2.1481** I do not criticise Rodgers for not appreciating that hooding and stress positions were themselves likely to risk the Detainees being treated inhumanely. He might however have appreciated that these techniques would become inhumane after a short space of time. But, as a young and junior officer he was entitled to accept that the orders for the Detainees to be hooded and placed in stress positions had come from a senior officer. In my view the real responsibility for this lay with those more senior to him. However, when he went to the TDF on Sunday evening he must have appreciated that the likelihood was that the Detainees had been hooded and in stress positions for some hours. In my opinion they must have been showing some signs of distress at that time. In addition to the investigation into the injury to one of the Detainees whom Payne told him was bruised, he ought, in my opinion, at that time to have intervened and reported any distress which he had observed up the chain of command.
- 2.1482** However, this failure is less significant than his failure to report what he must have known was the conduct of his soldiers during their guard, or to take other immediate steps to prevent any further misconduct.
- 2.1483** I have not found that Rodgers at any time was personally involved in violence on the Detainees. I strongly suspect that he was aware of incidents of low level violence perpetrated by members of his Multiple during the raid on the Hotel. Apart from those incidents I have found that Rodgers must have been aware at the time or soon after of violence conducted by members of his Multiple at the start of their stags and

¹⁹⁸⁰ Pte Aaron Cooper BMI 29/83/3-84/15

¹⁹⁸¹ Pte Aaron Cooper BMI 29/85/12-14

¹⁹⁸² Richards BMI 31/144/7-15

¹⁹⁸³ Crowcroft BMI 22/88/13-89/3

¹⁹⁸⁴ Aspinall BMI 28/21/10-13

¹⁹⁸⁵ Rodgers BMI 30/83/1-6

during Sunday night. I have also found that on Monday morning he must have seen and been aware of conditions in the TDF and the state of the Detainees. Further, I suspect that Rodgers must have a greater knowledge of the identity of some, if not all, of those responsible for the assaults on the Detainees than he was prepared to admit.

2.1484 I add that in the following Part of the Report (Part III) I refer to incidents of random violence perpetrated by members of the Rodgers Multiple. In respect of those incidents I find Rodgers was both aware of them and also witnessed them.

2.1485 Finally, the conduct of the Multiple represented, as I have commented earlier in the Report (Chapter 10), a very serious breach of discipline. As their Multiple Commander, Rodgers must accept responsibility for what they did to the Detainees and also in respect of the other incidents which I have recorded in Part III. In mitigation of his failures, it can properly be said of Rodgers that at the time of Op Telic 2 he was very young and still an inexperienced officer. It may very well be that he was more than a little intimidated by the older and more experienced Payne. As a young officer it would have taken courage to have stood up to such a man. Nevertheless, as an officer, however young, he ought to have reported up the chain of command what he knew was going on in the TDF in the period 14 to 16 September.

2.1486 It has been submitted on Rodgers' behalf that this was an "*operation control*" situation, in that the members of his Multiple were on a short-term deployment under the command of the provost staff and BGIRO.¹⁹⁸⁶ Whilst there is some truth in that, I do not find that it absolves Rodgers of all responsibility for the conduct of members of his Multiple. It is obvious, in my judgment, that Rodgers retained some responsibility for the conduct of his Multiple even when they were on guard duty at the TDF. A number of witnesses told me that they would expect a multiple commander in this sort of situation to check regularly on his men, to discover what they were doing.¹⁹⁸⁷ Indeed, Redfearn said, and I accept, that on the Monday morning, he and Rodgers "*alternated in terms of the supervision of the soldiers*".¹⁹⁸⁸ Obviously, when Rodgers was absent from BG Main during the Sunday night and the Monday afternoon, there was nothing he could do to supervise the guards. However, during both the Monday morning and each of the handovers when he was present, I find that he both should have checked and did check on his soldiers from time to time.

2.1487 Finally, I must deal with an allegation which Payne made against Rodgers at a very late stage. He alleged that it was Rodgers who had put a petrol can in front of, not Kifah Matairi, but D005. Payne said that Rodgers then lit a match, having poured water over D005.¹⁹⁸⁹

2.1488 It is possible that this incident was the one in which D005 described as having insect repellent or something similar rubbed under his nose. However, D005's description is so different to the petrol incident that I find they are two different incidents.¹⁹⁹⁰ Further, Payne's statement containing this allegation against Rodgers has the hallmarks of an attempt to blacken Rodgers' name. I accept such an incident occurred. I find that

¹⁹⁸⁶ SUB000813, paragraph 212

¹⁹⁸⁷ Englefield BMI 65/24/16-26/8; Mendonca BMI 59/252/20-253/12; Potter BMI 44/55/7-56/1; Wall BMI 97/146/20-148/25

¹⁹⁸⁸ Redfearn BMI01793, paragraph 96

¹⁹⁸⁹ Payne BMI 32/126/21-128/18

¹⁹⁹⁰ D005 BMI 17/29/7-25

it involved Kifah Matairi, but I am unable to determine who instigated and carried it out. It was a cruel and disgraceful incident.

Englefield

- 2.1489** Englefield, now Lt Col, was the Officer Commanding A Company at the time of the events in the TDF in September 2003. He took over as Officer Commanding from Maj Davis on 19 August 2003, when the Battlegroup was already on deployment in Iraq. Before this he had spent a period of time in Iraq during Op Telic 1 with an appointment in the Intelligence field.¹⁹⁹¹
- 2.1490** Englefield joined the Army as an officer cadet at Sandhurst in 1988. On being commissioned in December 1989 he went straight to 1 QLR as a second lieutenant and platoon commander. Between that time and deployment to Iraq, Englefield had served in a number of capacities both in the United Kingdom and abroad as a regimental officer and on extra regimental duties. By the time of Op Telic 2 Englefield was an experienced officer.¹⁹⁹²
- 2.1491** In oral evidence Englefield readily accepted that he was aware of the techniques of hooding and stress positions.¹⁹⁹³ He also was aware of the expression “shock of capture”. Before his deployment to Iraq he was not aware of the Heath Statement nor of any prohibition on hoods and stress positions. As to the latter, on Conduct after Capture (CAC) training before being deployed to Kosovo, these techniques were applied to him and no warning was given that use of them by UK forces was prohibited.¹⁹⁹⁴ His understanding was that stress positions were acceptable if used to control a number of prisoners and only for a limited time. Use of stress positions over an extended period of time would, he believed, not have been permitted.¹⁹⁹⁵ Englefield said he learnt of the expression “shock of capture” from an American WO during Op Telic 1. As he described it, it was a process of moving prisoners around, shouting at them and hooding them (the latter only for security) for the purpose of keeping prisoners unsettled. He believed that nothing he was taught by this US officer was contrary to British practice.¹⁹⁹⁶
- 2.1492** Englefield said he had no knowledge of the Brigade sanction, but he had had a casual conversation with Royce, who informed him that he had questioned Brigade about hooding.¹⁹⁹⁷ Englefield had not mentioned this before in any of his previous witness statements. Curiously, when he came to give evidence to the Inquiry on 24 February 2010 he was unable to remember this conversation, which was recorded in his Inquiry statement dated 14 September 2009. He said, *“I can’t recall it today, sir, but when I put this statement together, clearly that’s what I thought, yes sir”*.¹⁹⁹⁸
- 2.1493** Englefield believed that it was only after Baha Mousa’s death that the prohibition on the use of hoods and stress positions arose. Up to that time he believed they

¹⁹⁹¹ Englefield BMI04399-400, paragraphs 7-8; Englefield BMI04417-8, paragraphs 92-93

¹⁹⁹² Englefield BMI04399-400, paragraphs 3-8

¹⁹⁹³ Englefield BMI 65/6/25-7/17; Englefield BMI 65/9/10-16

¹⁹⁹⁴ Englefield BMI 65/11/24-13/7

¹⁹⁹⁵ Englefield BMI 65/7/20-25

¹⁹⁹⁶ Englefield BMI 65/17/22-18/2

¹⁹⁹⁷ Englefield BMI004418, paragraphs 95-96

¹⁹⁹⁸ Englefield BMI 65/33/12-14

were permitted as a technique to preserve the shock of capture and aid tactical questioning.¹⁹⁹⁹

2.1494 Englefield was present at the Hotel shortly after the arrest of the Detainees. He said he first saw them when they were lying on the floor in the reception area.²⁰⁰⁰ I have already described his evidence about what he saw and my conclusions in respect of it in Chapter 2 above.

2.1495 After the Detainees had been removed from the Hotel and transferred to BG Main, Englefield said that at some point he went back to Camp Stephen. He accepted that two or three Detainees had been brought back to Camp Stephen before being transferred to BG Main but he was unaware of this at the time.²⁰⁰¹

2.1496 Englefield said that he had made two visits to the TDF during the period when the Detainees were present in it. Those two visits were on both Sunday and Monday evenings.²⁰⁰² His evidence about the visits is somewhat confused because it is not clear whether they were at the time of the Commanding Officer's evening O Group. Whether or not the visits coincided with the O Groups, Englefield said on Sunday evening he spent about fifteen to twenty minutes outside the TDF talking to Rodgers, and possibly two of the guards. He stood about fifteen to twenty metres from where the Detainees were being held.²⁰⁰³ He said it was not his place to go into the TDF and he did not do so. He heard and saw nothing untoward and Rodgers did not tell him anything was amiss.²⁰⁰⁴

2.1497 On Monday evening Englefield believed he went to the O Group and he believed that he visited the TDF then and some time later in the evening as well.²⁰⁰⁵ He had no direct recollection of speaking to any soldiers save at some point either on Sunday or Monday he believed he had spoken to Crowcroft. It must have been Sunday evening when he spoke to Crowcroft, if he did, because Crowcroft was only on guard on Sunday.

2.1498 Englefield asserted that on none of his visits to the TDF or the vicinity of it did he hear or see anything untoward. There were no sounds of moans or groans of distress and he was never aware of anything being amiss.

2.1499 Not long after his visit on Monday evening he learned of Baha Mousa's death. He spoke to Rodgers about the death. He was told, not necessarily by Rodgers, that there had been a struggle and a Detainee had banged his head. In his SIB statement of 20 October 2003 he said he spoke to Rodgers, Redfearn, Pte Cooper, Pte Lee Graham and one other.²⁰⁰⁶

2.1500 In evidence, Englefield commented on Rodgers. He regarded him as a "very, very effective soldier" who ran a fairly tight ship and was generally liked by his men.²⁰⁰⁷ He

¹⁹⁹⁹ Englefield BMI 65/41/5-12

²⁰⁰⁰ Englefield BMI 65/54/18-20

²⁰⁰¹ Englefield BMI 65/64/23-65/25

²⁰⁰² Englefield BMI 65/69/20-70/2

²⁰⁰³ Englefield BMI04443-4, paragraphs 206-213

²⁰⁰⁴ Englefield BMI 65/71/14-72/1

²⁰⁰⁵ Englefield BMI 65/72/21-24

²⁰⁰⁶ Englefield MOD000252

²⁰⁰⁷ Englefield BMI 65/121/1-6

would have expected him to have visited the TDF on a regular basis, say four or five times, during the Detainees' detention in the TDF.²⁰⁰⁸

2.1501 I found Englefield in some respects an unsatisfactory witness. At times his evidence was confused and confusing. By way of example, an SIB witness statement made by Englefield dated 15 September 2006 contained the following passage:

*"I would only say that the only real concern I and others had was that by changing the guidance, there was an implication that things had been incorrect prior to this. By this I mean the use of hoods. I can state that we found this a concern because the use of hoods had been the accepted means of breaking detainees and had been what we had been briefed and trained on pre-deployment."*²⁰⁰⁹

2.1502 The "real concern" in the above passage was a reference to a ban on hooding after Baha Mousa's death. He was asked about this passage in the course of his oral evidence. The following exchange took place:

"Q. What does 'breaking detainees' mean?"

A I don't know, sir, I don't recall details of making the statement. I know it's a summary. That's not to say I don't – I didn't say that word. I can only know that – I knew the purpose of hooding was for security and it would be: you were not to hood to break, to harm a detainee.

Q Forgive me, colonel, you signed this statement.

A I have indeed, sir, yes ...

Q I am asking you now, on behalf of the Inquiry, please if you will help us as to what you meant putting your signature to the term 'hoods had been accepted means of breaking detainees'. What does it mean?"

A I don't know what I meant when I signed that statement and, reading it, I can only assume I did not read it as fully as I should, and at no point did I have the opinion or the thought that using hoods to break detainees, i.e. cause them harm, was accepted or allowed.

THE CHAIRMAN: Major, can I just ask you, 'breaking' the detainees, reading it as it stands, does it mean breaking their will?"

A Reading the sentence as pure English, sir, it does, yes.

THE CHAIRMAN: It does. Breaking their will and causing them to say something that they otherwise would not?"

A You could draw that inference, sir, yes.

MR ELIAS: You say 'you could draw that inference', colonel, but that's what you meant, wasn't it? However one puts it, making them more malleable, more likely to say that which otherwise they wouldn't volunteer, isn't that what you mean?"

*A That's what the sentence meant, sir."*²⁰¹⁰

²⁰⁰⁸ Englefield BMI 65/121/7-19

²⁰⁰⁹ Englefield MOD007072

²⁰¹⁰ Englesfield BMI 65/44/6-45/20

- 2.1503** I also found Englefield's assertion in his Inquiry witness statement that Fearon had not stolen money from the Hotel safe, but merely put it in his pocket, as a vain attempt to defend the indefensible, in an effort to protect his Company's reputation.²⁰¹¹
- 2.1504** In my judgment both the above examples undermined Englefield's credibility. Those representing the Detainees submit that Englefield had not told the Inquiry the full truth about his actions.²⁰¹² It is submitted that Englefield did visit the TDF on Sunday night and knew that the Detainees had been assaulted; alternatively, by 14 September he and Mendonça were so complacent about the suffering of Iraqi prisoners that they were oblivious to any mistreatment of the Detainees.²⁰¹³ In the further alternative, Englefield made no visit to the TDF on that evening and along with Mendonça kept a studied distance from the building because they knew that conditioning was going on in there.²⁰¹⁴
- 2.1505** I reject the submission that Englefield did not visit the TDF on Sunday evening and was endeavouring to keep out of the way of what was going on in the TDF. Despite my reservations about his credibility I accept that he did visit the TDF on Sunday, whether before or after the Commanding Officer's O Group. I can see no reason for him not telling the truth about this. However, I think it unlikely that he spoke to Rodgers for anything like fifteen to twenty minutes or at all. I have found that Rodgers, having "walked" his Multiple through the TDF on that evening, then left. Whether Englefield did or did not speak to Rodgers on that occasion I accept that on that evening he was unaware of any untoward events in the TDF. There is no evidence to contradict his assertion that he did know of anything which was amiss.
- 2.1506** I further accept Englefield's evidence that he visited the TDF on Monday afternoon or early evening. I am much less confident of the truthfulness of his assertion that on that visit he neither went into the TDF nor was aware of anything untoward having occurred in it. On Monday afternoon, or early evening, Englefield would have known that the Detainees had been in the TDF for at least 24 hours or more. He would also have known that for at least part of that time they were hooded. But he said he was unaware of the fourteen hour rule, having taken over as Officer Commanding A Company during the tour and not at the start of it. It may well be he did not know of this rule.
- 2.1507** I have gone on to consider whether Englefield went into the TDF on Monday, or if he did not, whether he ought to have done. I recognise that he would have understood that the guards from his Company were at that stage under the command of Peebles, the BGIRO, and being supervised by the provost staff. He was entitled to expect that Peebles and the provost staff were monitoring the welfare of the Detainees and the behaviour of the guards.
- 2.1508** There is no evidence that Englefield did go into the TDF on Monday at whatever time he visited. There is therefore in my judgment no sound evidence to support a finding that he did go into the TDF, as opposed to being in the vicinity of it.
- 2.1509** As to whether Englefield ought to have gone into the TDF to investigate why the Detainees were still present, given the length of time they had been there, it might

²⁰¹¹ Englesfield BMI04437-8, paragraphs 184-187

²⁰¹² SUB002190

²⁰¹³ Ibid.

²⁰¹⁴ SUB002274

be expected, if only out of curiosity, Englefield would have wanted to go into it. I find it very surprising that he did not. But the fact that he did not cannot, in my judgment, in all the circumstances, be a matter for criticism. As I have already stated, he was entitled to believe and accept that the Detainees' welfare was being appropriately supervised by Peebles and the provost staff. In the circumstances, it would, I believe, be unfair to criticise Englefield for this omission in the absence of any evidence that he was aware of what had gone on in the TDF.

Moutarde

- 2.1510** Moutarde attended the Royal Military Academy, Sandhurst, in September 1995. In August 1996 he was commissioned and he joined 1 QLR as a second lieutenant in December 1996.²⁰¹⁵ By the time of Op Telic 2, Moutarde had risen to the rank of captain and had been the Adjutant of 1 QLR since April 2002.²⁰¹⁶ In his Inquiry witness statement Moutarde put some emphasis on the administrative role of the Adjutant. He asserted that his responsibility for the discipline of soldiers was confined to the disciplinary process. He had no training and no responsibility in connection with the detention of prisoners of war or civilian detainees.²⁰¹⁷
- 2.1511** Moutarde accepted that during Op Telic 2 he was aware that civilian detainees could be conditioned before being questioned. Although he received no training in prisoner handling, he knew that conditioning could involve the use of hoods and stress positions. He described stress positions as any position which causes a degree of discomfort.²⁰¹⁸ In oral evidence he described conditioning as a process of softening up. He said he had received no training in respect of conditioning and he did not know when he deployed to Iraq whether conditioning techniques were permitted to be used.²⁰¹⁹ He also believed that sleep deprivation for a finite period of time was permitted but it was not allowed after the prisoner had been questioned.²⁰²⁰
- 2.1512** Moutarde believed that the BGIRO was responsible for processing and tactical questioning of detainees. He said this was a change from the usual responsibility for prisoners which was that of the RSM and the provost staff. As Adjutant he said he had no command responsibility for the staff in the TDF under the BGIRO regime.²⁰²¹
- 2.1513** As for hooding and stress positions, during Op Telic 2 he believed from what had been said at O Groups that these techniques had been sanctioned by Brigade. This understanding came from a verbal brief given by Royce.²⁰²² He accepted that he had seen detainees in the TDF hooded and in stress positions. He remembered seeing them being put back in stress positions but he never saw anything amiss in what was being done.²⁰²³

²⁰¹⁵ Moutarde BMI03995, paragraphs 5 and 7

²⁰¹⁶ Moutarde BMI03996, paragraphs 13-14

²⁰¹⁷ Moutarde BMI03997, paragraphs 23-24

²⁰¹⁸ Moutarde BMI04000, paragraph 34

²⁰¹⁹ Moutarde BMI 54/72/9-24

²⁰²⁰ Moutarde BMI 54/74/6-13

²⁰²¹ Moutarde BMI 54/78/3-21

²⁰²² Moutarde BMI 54/97/8-99/14

²⁰²³ Moutarde BMI 54/93/1-18

2.1514 Moutarde said during the tour, apart from the incident concerning the Op Salerno Detainees, he was not aware of any other incidents or allegations of ill-treatment of prisoners.²⁰²⁴

2.1515 As for Op Salerno, Moutarde said that during that operation he was part of the Commanding Officer's TAC group. He said he regularly went on patrol with the Commanding Officer as a member of his TAC group.²⁰²⁵ He did not remember being briefed about the possible connection of any particular group of civilians being responsible for Dai Jones' death.²⁰²⁶

2.1516 His usual practice was to visit the TDF about twice during every 24 hours.²⁰²⁷ He was unable to remember any particular visit to the TDF during the detention of the Op Salerno Detainees but he accepted he probably would have made a visit to the TDF when they were present:

"I don't remember the specific occasion of visiting over that period, but I am fairly certain that at some point over the period they were held I would have visited the TDF once, possibly more."²⁰²⁸

2.1517 He was unable to remember any specific detail of what he saw but said he would have seen what he was used to seeing routinely. This would have included what could be seen on the Payne video, but without the swearing.²⁰²⁹

2.1518 Of the Payne video clip Moutarde said:

"A. I think, as I mentioned in the Court Martial evidence, the use of the particular language in that video clip was not something I heard or experienced on my visits to the TDF or, indeed, when I was moving through that particular area. But apart from that, I think that was the – they were the sort of stress positions that I described earlier, those ones that I saw being used.

Q. So apart from the f'ing and blinding, you would have experienced, would you, the shouting?

A. I saw and heard occasional shouting from the TDF.

Q. Yes?

A. Yes.

Q. You saw – I think you say this in your statement – detainees being placed in or pushed back into stress positions?

A. Placed into stress positions, yes.

Q. Detainees pushed down in the manner that we see in that clip, pushed down into stress positions?

²⁰²⁴ Moutarde BMI 54/94/16-22

²⁰²⁵ Moutarde BMI 54/150/18-24

²⁰²⁶ Moutarde BMI 54/114/21-115/2

²⁰²⁷ Moutarde BMI 54/83/18-84/1

²⁰²⁸ Moutarde BMI 54/117/14-17

²⁰²⁹ Moutarde BMI 54/88/12-89/12

A. No, because the only two stress positions I saw were ones that required the prisoner to be sort of more upright, i.e. back against the wall or up on their knees.

Q. Did you regard what you saw in that clip as humane treatment of detainees?

A. Well, if that was going on for protracted periods of time, then no, I would not. If that was being done for five or ten minutes immediately prior to tactical questioning, then, as I believed they were the sanctioned processes at the time, then I would have thought that that was within the rules of what we were asked to do.”²⁰³⁰

2.1519 At the Court Martial, when asked whether he found Payne’s actions in the video untoward, Moutarde said:

“Because of the direction we were given at the time and were working under and the fact that I was no expert in this, then no. According to what I have seen that was in line with the direction that was given for the conditioning of prisoners for limited periods of time to prepare them for tactical questioning.”²⁰³¹

2.1520 Moutarde said he heard about Baha Mousa’s death on Monday evening. Although he had no memory of visiting the TDF that evening, he said it was highly likely that at some time he would have done.²⁰³² He did not remember seeing anything amiss in the TDF on that evening.

2.1521 What followed Moutarde’s visit on Monday evening is recorded in Chapter 17 above. I do not propose to repeat my summary of the evidence and conclusions in respect of the sequence of events in which Moutarde was involved at that time. I merely record here that Moutarde was involved in conversations with Payne and members of the Rodgers Multiple. Following these conversations he prepared a memorandum for Mendonça. This memorandum and a SINCREP which was sent to Brigade have been the subject of criticism by the Detainees, as attempts to gloss over or mislead. I have dealt with these submissions and criticism in Chapter 17.

2.1522 Moutarde came across as an intelligent and articulate witness. His evidence about what he knew of conditioning struck me as being commendably frank. He made no attempt to hide the fact that he was aware that Detainees were hooded and kept in stress positions in the TDF. He further accepted that he knew it was for the purpose of assisting the tactical questioning process.

2.1523 I accept that as Adjutant he was not responsible for discipline within the Battlegroup save when it came to the disciplinary process. I further accept that he believed Brigade had sanctioned the use of stress positions and hooding whilst detainees were waiting to be questioned.

2.1524 It is submitted on behalf of the Detainees that Moutarde, in company with other officers in the higher chain of command within the Battlegroup bears some responsibility for allowing the conditioning techniques to become standard operating techniques. It is further submitted that he, with others, failed to develop a system of supervision to ensure that the use of these techniques did not cross the line between what was humane and what was inhumane.²⁰³³ Whilst, in general terms, I recognise the

²⁰³⁰ Moutarde BMI 54/88/17-89/20

²⁰³¹ Moutarde CM 22/46/25-47/5

²⁰³² Moutarde BMI 54/120/13-20

²⁰³³ SUB002401, paragraph 456

force of these submissions, I do not think that it is fair to criticise Moutarde for these failures.

2.1525 Accepting as I do that Moutarde believed the use of these conditioning techniques had been sanctioned by Brigade, in my view he was entitled to rely on others such as Royce, Peebles and the provost staff to ensure that their use was appropriate and not inhumane. For reasons discussed in Part IV to V of this Report, the Heath Statement, regrettably, had, for the most part, long since been forgotten. Like many others, Moutarde did not know and had not been told of the ban on the use of hooding and stress positions as aids to interrogation.²⁰³⁴

2.1526 I have already made a finding that on Monday evening after Baha Mousa's death, Moutarde visited the TDF. I have also found that on that occasion he must have seen conditions in the TDF as described by Seeds (see Chapter 17). I now amplify my reasons for making these findings. I also discuss whether or not Moutarde visited the TDF before Baha Mousa's death.

2.1527 Before making any finding on what Moutarde saw on any visit to the TDF, it is, of course, necessary to determine whether he visited the TDF when these Detainees were present and if so, when. Moutarde's evidence was that it was his usual practice to visit the TDF twice every 24 hours when detainees were present. But he was unable to remember doing so when these Detainees were in the TDF. Despite this admission, there being no other evidence that he visited the TDF before Baha Mousa died, I find this admission is not sufficient for me to make a positive finding that he saw the Detainees in the TDF before Baha Mousa died.

2.1528 As to whether Moutarde went into the TDF after Baha Mousa's death, again Moutarde said he had no recollection of such a visit.²⁰³⁵ However, in his Inquiry witness statement he said he remembered being informed of Baha Mousa's death and he remembered going to the RAP and speaking to Keilloh.²⁰³⁶ He did not remember speaking to Payne and members of the Multiple, but there is evidence, which I accept, that such a meeting did take place (see Chapter 17). In oral evidence to the Inquiry Moutarde frankly conceded that it was highly likely that he had visited the TDF on Monday evening after the death.²⁰³⁷ In my opinion, this was a realistic and candid admission.

2.1529 There is evidence that he was in the vicinity of the TDF at that time and that he spoke to Payne and members of the Multiple.²⁰³⁸ I accept that there was such a conversation. In the circumstances, it seems to me more probable than not that Moutarde did go into the TDF after Baha Mousa's death on Monday evening. It is the sort of action which in the circumstances I would have expected him to take and I find it more probable than not that on that evening he did go into the TDF.

2.1530 I find it very difficult to understand how Moutarde could have found at that time nothing was amiss. I accept that by then the probability is that the Detainees were neither hooded nor handcuffed, but Seeds' description of the Detainees and conditions in the TDF, in my view, demonstrated it was obvious that something untoward had occurred.

²⁰³⁴ Moutarde BMI 54/70/15-71/21

²⁰³⁵ Moutarde BMI 54/120/17-122/8

²⁰³⁶ Moutarde BMI04026, paragraphs 177-179

²⁰³⁷ Moutarde BMI 54/120/13-20

²⁰³⁸ Pte Aaron Cooper BMI 29/128/17-20; Payne BMI 32/124/25-125/15; Redfearn BMI 30/228/21-229/17

I recognise that Moutarde's mind was no doubt on the subsequent investigation but, even so, I would have expected him to have appreciated that something had gone seriously wrong with the treatment of the Detainees over the previous 36 hours.

2.1531 In summary, I find that Moutarde visited the TDF once, after but not before Baha Mousa's death.

2.1532 In fairness to Moutarde, it is right that I record what he said about the ill-treatment of the Detainees:

*"I am sure I am not alone in sharing a sense of collective responsibility for what happened to those detainees, which was clearly extremely bad, horrific even, and quite frankly there is not a day that goes by when I don't think 'Should I have done more?' With absolute clarity of hindsight the answer to that is probably 'Yes'. But at the time, in that place, I believe that I did my job to the best of my abilities."*²⁰³⁹

2.1533 I accept the feelings expressed by Moutarde in the above passage were genuine, but once he had seen the state of the Detainees and the TDF on Monday evening I do not agree that it was only with hindsight that he should have done more. I further find that he did see conditions in the TDF as Seeds described them and that he must have seen Detainees in some distress. In the circumstances as I have said in Chapter 17 (see paragraph 2.1120), Moutarde ought to have taken immediate action to investigate the state of the Detainees and to ensure that they were not subjected to any further mistreatment.

Peebles

2.1534 Peebles was commissioned in December 1995, at which time he joined 1 QLR. In July 1997 he was promoted to the rank of Captain and in July 2003 to Major. Between June 1999 and August 2003 Peebles was employed in extra regimental duties, returning to 1 QLR on 23 August 2003.²⁰⁴⁰ It is submitted on his behalf that the fact that he had been away from the Regiment for some years and was inexperienced in its ways in some way explains his part in what happened.²⁰⁴¹ I reject this submission. Peebles' rapid promotion demonstrates that up to that time he was regarded as an efficient officer.

2.1535 Peebles had undergone the conventional training for regimental officers both at Sandhurst and subsequently. From his LOAC training Peebles was well aware that prisoners when captured had to be treated firmly but fairly. He remembered that on PDT for Iraq, as part of an OPTAG briefing, he and others were shown some slides which referred to the shock of capture and conditioning.²⁰⁴² He understood that conditioning was a process which occurred before tactical questioning or interrogation in which stress positions and deprivation of sight were used and created a degree of disorientation.²⁰⁴³ He also understood conditioning would include some form of sleep deprivation.²⁰⁴⁴

²⁰³⁹ Moutarde BMI 54/159/15-23

²⁰⁴⁰ Peebles BMI02707, paragraphs 1-3

²⁰⁴¹ SUB000443, paragraph 10

²⁰⁴² Peebles BMI 40/4/25-5/16

²⁰⁴³ Peebles BMI 40/15/10-21

²⁰⁴⁴ Peebles BMI 40/6/25-7/2

- 2.1536** Peebles' understanding was that conditioning was not unlawful but was subject to the Geneva Conventions.²⁰⁴⁵ He did not, however, have any formal prisoner handling training, nor did he have any training for carrying out the role of BGIRO which, on his arrival at 1 QLR, he was detailed by Mendonça to take over from Royce. In addition he became the Brigade Liaison Officer. I have described the handover between Royce and Peebles in Chapter 20. In that chapter I set out detailed findings as to what Peebles knew of his responsibilities in respect of the welfare of detainees. In summary, my findings are that Peebles should have appreciated that he was the officer overseeing the treatment of detainees at BG Main and he should have supervised their physical handling and welfare (see paragraph 2.1378). In respect of these duties Peebles failed properly to oversee and supervise the treatment of the Detainees.
- 2.1537** So far as the Op Salerno Detainees are concerned, the part played by Peebles is described in Chapters 9 and 15. In summary I find that he went to the TDF at about 16.30hrs on 14 September and ordered conditioning to start. In fact, by then Payne had already started the conditioning process. Peebles agreed that at that time he told Crowcroft and Fallon that the Detainees might be connected with the murder of the six RMP.²⁰⁴⁶ For reasons set out in Chapter 9 this was in my opinion an ill-judged remark.
- 2.1538** According to him, on this occasion, Peebles saw the Detainees sitting down with their arms outstretched. He knew that they would be placed and maintained in stress positions whilst at the same time being hooded.²⁰⁴⁷ He accepted that he visited the TDF again on Sunday and on three occasions on Monday.²⁰⁴⁸
- 2.1539** Peebles accepted that he was involved in the tactical questioning process.²⁰⁴⁹ This itself would have brought him into contact with the Detainees, giving him the chance to judge their state. He would also have seen their condition and the conditions in the TDF on his visits to that building. In addition, he was involved in the generator incident, described in Chapter 15, an incident which reflects no credit on him.
- 2.1540** On Monday, Peebles said he went to the TDF early in the morning.²⁰⁵⁰ The Detainees were sitting with their arms in their laps and not in stress positions. He returned to BG Main at about 10.00hrs. He thought tactical questioning finished at about 12.00hrs.²⁰⁵¹ In fact, according to Smulski's note of the times he conducted sessions of tactical questioning, it was still going on at 15.00hrs.²⁰⁵² At no stage did Peebles order the conditioning to cease.
- 2.1541** Peebles was aware that the Detainees should have been taken to the TIF no longer than fourteen hours after capture.²⁰⁵³ Sgt Smith said he reminded Peebles three times of this requirement.²⁰⁵⁴ But the Detainees were not transferred to the TIF until Tuesday morning. I have discussed the delay and the reasons for it in Chapter 20

²⁰⁴⁵ Peebles BMI 40/10/16-24

²⁰⁴⁶ Peebles BMI 40/95/2-14; Peebles BMI 40/98/23-24

²⁰⁴⁷ Peebles BMI 40/83/14-22

²⁰⁴⁸ Peebles BMI 40/68/11-69/7

²⁰⁴⁹ Peebles BMI 40/26/2-22

²⁰⁵⁰ Peebles BMI 40/70/17-22

²⁰⁵¹ Peebles BMI02726-8, paragraphs 68-75

²⁰⁵² MOD015395

²⁰⁵³ Peebles BMI 40/34/12-19

²⁰⁵⁴ Sgt Paul Smith BMI 44/122/25-125/9

above. I find that most of the blame for the delay lay with Peebles. He should have taken steps to ensure that the Detainees were transferred to the TDF much sooner than Tuesday morning.

2.1542 On behalf of Mendonça it has been submitted that the two people who bear the immediate responsibility for what occurred in the TDF between 14 and 16 September were Payne and Peebles.²⁰⁵⁵ I accept, and have already stated, that in my view Payne bears a very heavy burden of responsibility for these events. I also accept that Peebles' responsibility for what happened is considerable, although in my opinion not as great as that of Payne.

2.1543 Peebles was not responsible for securing the Brigade sanction. He accepted it as an appropriate procedure handed on to him by his predecessor, Royce.²⁰⁵⁶ But like his predecessor, in my judgment, he ought to have realised from the outset of his time as BGIRO that hooding detainees, placing them in stress positions and permitting the provost staff and guards to enforce these procedures was fraught with danger. In my view it was foreseeable that in the heat hooding for any length of time was likely to be inhumane. Similarly, stress positions, by their very nature, caused pain. Peebles ought, in my opinion, to have realised that permitting such a process for any significant length of time would almost certainly be inhumane. Whether or not Peebles understood he was responsible for the welfare of the Detainees, he was well aware that these processes were being used for a lengthy period of time, well over the permitted fourteen hours. In my judgment, his failure to order the cessation of conditioning was responsible for prolonging the ordeal which the Detainees underwent. In my opinion, Peebles' visits to the TDF on Sunday and Monday must have caused him to realise that the Detainees were being mistreated, not only by the guards but also by the very fact of being kept hooded and in stress positions. To let these processes continue for such a long time as 36 hours was, in my view, wholly unjustified and unacceptable.

2.1544 In reaching my conclusion that Peebles must have realised that the Detainees were being mistreated not only by the guards and others, the following factors are in my opinion significant. Livesey described conditions in the TDF on late Sunday afternoon as quite shocking. Redfearn echoed Livesey's evidence about the state of the Detainees and the TDF on Monday morning. There is abundant evidence that throughout the 36 hours before Baha Mousa's death, the Detainees were regularly assaulted by Payne and some of the guards. I accept that although it appeared to the Detainees that the assaults were continuous, there must have been intervals when they were not being assaulted. Nevertheless, as time progressed from the Detainees' arrival in the TDF on Sunday morning to Baha Mousa's death on Monday evening, conditions in the TDF and the physical state of the Detainees must have become steadily and more obviously worse.

2.1545 Peebles admitted that he went into the TDF on Sunday both in the afternoon at 16.30hrs and later that evening. During the night he played some part in the tactical questioning process (see Chapter 15). This must have brought him into contact with some of the Detainees. Peebles said that on Monday he visited the TDF twice in the morning, once before going to bed at 06.00hrs, and once after he had got up at 07.00hrs to 07.30hrs. He said on each occasion he would have just "...peeped my

²⁰⁵⁵ SUB000041-2, paragraphs 3-4

²⁰⁵⁶ Royce BMI 40/164/22-165/23

head round the corner". He said at no time was he aware that the Detainees were in any distress nor that the TDF smelled of sweat, urine or faeces. Nor was he aware of any injuries to the Detainees.²⁰⁵⁷

2.1546 I cannot accept that Peebles was unaware either of the stench of urine and possibly faeces in the TDF or of the distress of the Detainees throughout the whole of the 36 hour period before Baha Mousa's death. I accept that as a senior officer in the Battlegroup he starts with a high credit rating. But in my opinion it is not credible that throughout the 48 hour period he was unaware of the conditions in the TDF as described by other witnesses, or the distress of the Detainees. A number of the Detainees received serious injuries as a result of their treatment at the hands of Payne and the guards. The assaults by Payne on the Detainees although random were considerable in quantity. Ingram, as I find, told Peebles of the incident when a guard struck one of the Detainees.

2.1547 In the circumstances I do not find it credible that Peebles could have been completely ignorant of what was going on during that period of time. In my opinion he must have known at least in general terms that the Detainees were, and had been, the subject of serious assaults.

2.1548 I find that at least by Monday morning Peebles did know in general terms that the Detainees were being ill-treated by the guards. He may not have known of the injuries they sustained but I find he knew that they were distressed. It could hardly have been otherwise bearing in mind the length of time they were subjected to hooding and stress positions in a building which was devoid of all the usual facilities.

2.1549 If I am wrong in my above conclusion, in my opinion, as BGIRO Peebles should have made it his business to monitor and supervise what was going on in the TDF. It is no excuse, as is submitted on Peebles' behalf, that there was a lack of clarity in the area of individual responsibility between different officers and NCOs for the welfare of the Detainees. In fairness, in evidence, Peebles accepted that he had to bear a shared responsibility with others for what happened.²⁰⁵⁸ I accept he was not the only individual who must bear some responsibility for what occurred, but his share is, in my opinion, on any view, substantial.

2.1550 Further, it is obvious that the TDF was quite unsuitable to be used as a detention facility for any length of time. Its facilities were to say the least rudimentary. I accept that by the time Peebles became BGIRO the building had been used as a detention facility for some weeks. But in my view its unsuitability ought to have been an added spur to Peebles to ensure that the Detainees were kept detained in it for the minimum possible time and certainly nothing like as long as the 48 hours involved in this instance.

2.1551 Peebles, in common with others, is entitled to pray in aid the absence of any contemporaneous written policy or doctrine banning hooding and stress positions. But allowing for this serious corporate failure, it ought nevertheless to have been obvious to Peebles that hooding and stress positions, exacerbated by the Iraq heat, were unacceptable and unjustified.

²⁰⁵⁷ Peebles BMI 40/70/11-72/13

²⁰⁵⁸ Peebles BMI 40/76/24-77/15

Mendonça

- 2.1552** On any view Mendonça was a central figure in this Inquiry. I set out here a short biography of his military career. He entered the Army in September 1981 as an officer cadet at Sandhurst. He won the Royal United Services Institute prize for the highest attainment in defence and international affairs study. He passed out of Sandhurst in 1982 and joined 1 QLR in November of that year. Between September 1984 and June 1987 he read for a degree in economics at Manchester University.²⁰⁵⁹
- 2.1553** After leaving University, following various appointments as Adjutant of 1 QLR, Platoon Instructor at Sandhurst, Instructor with the British Military Training and Advisory Team in South Africa, Mozambique and Zimbabwe, he returned to 1 QLR in March 1993 as a Company Commander.²⁰⁶⁰
- 2.1554** Mendonça attended the Army Staff College course at Shrivenham and Camberley between March 1994 and December 1995. He was appointed an MBE for performance in the post of Staff Officer Grade 2 at HQ Land between December 1995 and August 1998. On returning to 1 QLR in August 1998 he became the Officer Commanding C Company and was selected for promotion to Lieutenant Colonel at the age of 36. After a post in the MoD, on 18 December 2001 he returned to 1 QLR as Commanding Officer.²⁰⁶¹ He served as 1 QLR's Commanding Officer in Iraq throughout its tour on Op Telic 2 from late June to November 2003.
- 2.1555** After handing over command of 1 QLR in June 2004 Mendonça occupied various posts. After Baha Mousa's death he was charged with the offence of negligently performing a duty by failing to take reasonable steps to ensure that civilians were not ill-treated. He was acquitted of this offence on the direction of the Judge Advocate on 14 February 2007. However, he decided to retire from the Army and was discharged on 3 September 2007.²⁰⁶²
- 2.1556** After 1 QLR had returned to the UK following its tour of duty on Op Telic 2, Moore cited Mendonça for a Distinguished Service Order (DSO) for his service in Iraq. The citation is dated 6 October 2003, less than one month after the events in the TDF with which this Inquiry is concerned. Moore explained that he was aware of the incident in the TDF at the time of the citation. He discussed the matter with Maj Gen Graeme Lamb. The SIB investigation was ongoing but Moore did not feel it inappropriate to make the citation.²⁰⁶³ The award of the DSO was gazetted on 23 April 2004. Two passages of the citation give a flavour of the full document. The first reads:

“Lieutenant Colonel Mendonça’s personal leadership has been seriously impressive. Not only does he direct operations a [sic] highly effective manner, but he leads from the front and constantly puts himself in harm’s way. He does not interfere with his junior commanders but he has that keen instinct to know where to be and at what time to influence every crucial situation. His presence certainly gave commanders confidence during very dangerous situations and always prevented situations from getting out of hand.”

and

²⁰⁵⁹ Mendonça BMI01089-90, paragraphs 1-3

²⁰⁶⁰ Mendonça BMI01090, paragraphs 4-8

²⁰⁶¹ Mendonça BMI01091-2, paragraphs 9-13

²⁰⁶² Mendonça BMI01092-3, paragraphs 14-18

²⁰⁶³ Moore BMI 99/74/19-75/14

“Lieutenant Colonel Mendonça has been truly inspirational. Faced with a task of mammoth proportions he has produced some exceptional ideas, has led his Battalion with flair and élan and has shown a degree of bravery that puts him well above any other individual across the Brigade. He has made a huge difference. The fact that Basrah has settled down has calmed the whole of South East Iraq. Although only one man in Basrah, the effect of his actions has found resonance at the national level. His outstanding leadership, personal courage and incredible successes are worthy of national recognition.”²⁰⁶⁴

Op Telic 2

2.1557 There can be no doubt that 1 QLR’s tour in Iraq presented considerable challenges. As I have already stated, following the combat phase of Op Telic 1, conditions in the region deteriorated rapidly (see Part I Chapter 4, The Operational Context). The heat was extreme and the workload immense. Mendonça stated that with few exceptions everyone in the Battlegroup worked eighteen to twenty hours a day.²⁰⁶⁵ Mendonça said his own work entailed in summary: campaign planning; visiting Company locations; joining Company patrols; checking police stations; checking the production and distribution of petrol; visiting hospitals, markets, power stations, local sheikhs and mosques; attending Brigade Headquarters at least once each week; and holding twice daily conferences with Battlegroup officers. In addition he had to consider personnel issues including visiting sick and wounded soldiers in the field hospital, considering shooting reports and training issues for Iraqi police.²⁰⁶⁶ There were no doubt also a myriad of other small and large issues with which he had to deal arising out of the above.

2.1558 I do not propose to recite every detail of Mendonça’s evidence to the Inquiry which occupied the whole of one day. I propose to concentrate on those matters which principally concern prisoner handling and the issues which arise out of this topic as they concern Mendonça. I shall also deal with individual incidents in which it is alleged that Mendonça was either himself involved in violent conduct on civilians or witnessed violent conduct on civilians by members of the Battlegroup. I shall deal with the latter first. They arise out of allegations made by individual soldiers or officers. It is not possible to place them in chronological order, but all are alleged to have occurred before 14 September 2003.

Payne’s allegations

2.1559 Payne was a member of the Commanding Officer’s TAC group which meant that when available he would travel in a vehicle which was part of this group when the Commanding Officer went into Basra. He described Mendonça’s style of leadership as “gung-ho”. He alleged that on one occasion during a patrol with the TAC group the group came under fire. Payne and SSgt Roberts chased and arrested the Iraqi responsible for firing on them. Payne said Mendonça questioned and threatened the Iraqi by holding his pistol to the man’s mouth and saying he would “blow his face off”. Payne also alleged that when the TAC group came across vehicles with blacked out windows Mendonça would shoot out the windows.²⁰⁶⁷ Payne agreed that if the first

²⁰⁶⁴ Mendonça BMI01150

²⁰⁶⁵ Mendonça BMI 59/9/20-10/13

²⁰⁶⁶ Mendonça BMI01107-9, paragraph 49

²⁰⁶⁷ Payne BMI 32/25/15-28/18; Payne BMI01726-7, paragraphs 37-41

of these events had occurred the rest of the TAC group, including two journalists also travelling with them, would have seen Mendonça threatening the Iraqi with his gun.²⁰⁶⁸

2.1560 Mendonça denied this allegation.²⁰⁶⁹ It was pointed out by his legal representatives, and I accept, that if true a number of other members of the TAC group, as well as the two journalists present in the first incident, would have been able to verify these alleged incidents.²⁰⁷⁰

2.1561 No other witness gave evidence supporting Payne's evidence. Briscoe and SSgt Roberts both denied these allegations.²⁰⁷¹ SSgt Roberts did agree that the TAC group was known as the "viper" squad.²⁰⁷² LCpl Andrew Bromley, the Commanding Officer's driver, also denied that such incidents occurred.²⁰⁷³

2.1562 I do not accept Payne's evidence about these incidents. Payne's credibility is generally very much in issue. He had told a number of lies in the past about his part in the events in the TDF. Quite apart from these lies I recognise the force of the submissions made by those representing Mendonça, that if such events had occurred, they would have become widely known within the Battlegroup and by the wider world through the journalists. I reject Payne's evidence in respect of these allegations. He has an obvious motive to blacken Mendonça's name and reputation, and draw criticism away from himself.

S038's allegations

2.1563 S038 was a WO2 Multiple Commander in S Company and the unit search adviser for Basra.²⁰⁷⁴ He described an occasion which occurred after a large haul of weapons and bomb making equipment had been seized shortly after the deaths of the RMP soldiers in August 2003. He alleged that a female RMP officer attached to B Company assaulted one of the three men detained. He reported this to Lighten, the Officer Commanding B Company. The weaponry and the detainees were taken to B Company's Headquarters, where they were prepared for being photographed. Whilst these preparations were being made the Commanding Officer arrived.²⁰⁷⁵

2.1564 S038 alleged that Mendonça assaulted one of the detainees, punching him on the side of the face and calling him "*a terrorist fucker*". He said that about 140 people were present at that time. S038 said he went into B Company office and "*aired*" his views to Lighten. He was disgusted at Mendonça's action, which happened in front of his men and the men of B Company. S038 also alleged that before Mendonça arrived, the three detainees had evidence of blood spattering on their white dish-dashes, indicating that they had been assaulted on the way from the site of the haul to B Company's location.²⁰⁷⁶

²⁰⁶⁸ Payne BMI 32/169/1-21

²⁰⁶⁹ Mendonça BMI 59/101/16-24

²⁰⁷⁰ SUB000051

²⁰⁷¹ Briscoe BMI 43/138/19-139/3; Roberts BMI 20/134/3-135/8

²⁰⁷² Roberts BMI 20/135/9-135/16

²⁰⁷³ Bromley BMI 39/106/23-107/15

²⁰⁷⁴ S038 BMI 48/4/10-11

²⁰⁷⁵ S038 BMI 48/19/22-23/14

²⁰⁷⁶ S038 BMI 48/24/21-29/12

- 2.1565** S038 also alleged that there was an assault subsequent to the one by Mendonça which caused further injuries to the detainees. He attributed this assault to a female B Company clerk. He said on this occasion photographs were taken of the weaponry and the detainees and that the photographs would show the blood on the detainees' dish-dashes.²⁰⁷⁷ He said Sgt Neil Tillotson subsequently told him that the photographs had been deleted.²⁰⁷⁸
- 2.1566** Lighten and Tillotson, the latter a B Company Intelligence Officer, were both at the site of the seizure of the weapons and at B Company's location when the three detained Iraqis and the weapons arrived at B Company's camp. Lighten remembered the patrol and the seizure of the weapons by 2nd Lt William Riley's platoon. He had no recollection of a complaint by S038 that the detainees had been assaulted by a female RMP soldier. He described this allegation as "*absolutely ridiculous*". He denied seeing or hearing about the allegation that Mendonça had assaulted one of the detainees.²⁰⁷⁹ He was able to recall a female clerk in B Company Headquarters who had a problematic disciplinary record. He did not recall any suggestion that she had assaulted these detainees, nor that he had seen any photographic evidence of bloodstains on the detainees' garments.²⁰⁸⁰
- 2.1567** Tillotson remembered the raid and the detainees together with the haul of weapons being taken to B Company's camp.²⁰⁸¹ He also remembered Mendonça being present at some stage. He described the presence of 140 soldiers as a gross exaggeration. He estimated the number of soldiers present at this time as about 35 to 40. He did not see Mendonça strike a detainee and although a friend of S038, he had never thereafter heard of this allegation until about twelve months before giving evidence to the Inquiry, when he saw S038's statement. He denied, as S038 had alleged, that he had been told about this incident by S038.²⁰⁸²
- 2.1568** Tillotson did remember photographs of the scene at B Company's location being taken by the Company G5 officer, 2nd Lt Kevin Callaghan. He saw the photographs, which were stored on the Intelligence stand-alone computer. They showed the scene of B Company's location which included the weapons and one detainee.²⁰⁸³ He remembered that the photograph did show some blood spattering on the detainee's dish-dash. He was unable to say how the blood got onto the dish-dash.²⁰⁸⁴ He believed that the photographs remained on the laptop and were handed over to the unit which took over from B Company at the end of their tour.²⁰⁸⁵ He did not remember a conversation in which he told S038 that the photographs had been deleted.²⁰⁸⁶
- 2.1569** Tillotson also recalled hearing that an RMP officer had "*flown at*" one of the detainees on that day. Subsequently someone told him that she had slapped a detainee. He remembered a female clerk coming into the Operations Room and being told by Lighten to sit down and that he would deal with her later.²⁰⁸⁷

²⁰⁷⁷ S038 BMI 48/30/5-33/10

²⁰⁷⁸ S038 BMI 48/32/9-11

²⁰⁷⁹ Lighten BMI 56/135/18-137/8

²⁰⁸⁰ Lighten BMI 56/137/9-139/9

²⁰⁸¹ Tillotson BMI 48/99/19-101/1

²⁰⁸² Tillotson BMI 48/103/20-107/4

²⁰⁸³ Tillotson BMI 48/102/10-103/12

²⁰⁸⁴ Tillotson BMI 48/107/5-108/2

²⁰⁸⁵ Tillotson BMI 48/103/10-17

²⁰⁸⁶ Tillotson BMI 48/111/6-11

²⁰⁸⁷ Tillotson BMI 48/108/3-109/25

- 2.1570** The Inquiry called Callaghan, 2nd Lt Riley and Peel, who were involved on the periphery of these allegations made by S038. Callaghan had no recollection of this incident, nor of taking photographs from the roof of the B Company Operations Room. He suggested 2nd Lt Riley or Peel might have taken the photographs. He did not see Mendonça strike any of the detainees.²⁰⁸⁸
- 2.1571** 2nd Lt Riley had no recollection of this incident or of hearing about it.²⁰⁸⁹ Similarly, Peel denied witnessing this incident or hearing about S038's allegations.²⁰⁹⁰
- 2.1572** Although some part of S038's evidence surrounding this incident is confirmed by other witnesses, namely Tillotson's recollection of the female clerk being told to wait for Lighten to deal with her, and of the photographs which showed blood on one of the detainees' dish-dash, there is no supporting evidence for the alleged assault by Mendonça.
- 2.1573** Mendonça did not remember an occasion when he visited B Company's location after that Company had made a significant discovery of weapons. But he said it was entirely possible that he had. He denied punching a detainee at any time. He added that if he had done so in front of soldiers it would very soon have been the talk of the Battlegroup and thus become known to the Brigade Commander.²⁰⁹¹
- 2.1574** S038 was subjected to searching and effective cross-examinations by Neil Garnham QC representing a number of soldier Core Participants and Timothy Langdale QC, representing Mendonça. Suffice it for me to record that in my view it became apparent during the course of these cross-examinations that S038 had become disenchanted with the Army and suffered, rightly or wrongly, from a deep sense of injustice at the way he had been treated by the Army authorities. As a result he had instituted civil proceedings against the Army.²⁰⁹² In my opinion it became clear that there was a real danger that S038's evidence about incidents which he said he had witnessed was coloured by this sense of grievance and injustice.
- 2.1575** At the end of this Chapter, I shall set out my overall conclusions on Mendonça's credibility as a witness. At this stage, I state simply that I prefer his evidence to that of S038. I accept the submission made on his behalf that if the allegation had been true, there was bound to have been evidence from soldiers amongst 35 to 40 onlookers who, it is alleged, were present on this occasion and must have seen Mendonça strike the detainee had he done so. In the circumstances I reject S038's version of this incident.
- 2.1576** S038 also gave an account of a further and separate occasion when he alleged that he had seen members of the Commanding Officer's TAC group assault an Iraqi civilian. He alleged that this incident happened during a raid on the Basra steel factory.²⁰⁹³
- 2.1577** S038 said that Mendonça, Briscoe and the PTI staff sergeant, probably a reference to SSgt Roberts, were present. According to S038 the PTI punched and kicked a civilian whilst others present watched. S038 said he discussed this incident with

²⁰⁸⁸ Callaghan BMI 55/11/5-15/5

²⁰⁸⁹ 2nd Lt William Riley BMI 49/25/19-26/8

²⁰⁹⁰ Peel BMI 48/223/12-224/13

²⁰⁹¹ Mendonça BMI 59/60/9-61/12

²⁰⁹² S038 BMI 48/58/8-60/12

²⁰⁹³ S038 BMI 48/33/14-36/16

Weston, the CSM of B Company, and Sgt Ian Topping the day after it occurred. He said he had not reported this incident for fear of being labelled as disloyal to the Regiment.²⁰⁹⁴

2.1578 Briscoe and SSgt Roberts both denied this allegation. SSgt Roberts remembered the occasion when the TAC group attended the steel factory but denied assaulting any arrested Iraqi.²⁰⁹⁵ Briscoe described the allegation as completely untrue.²⁰⁹⁶

2.1579 Weston and Topping both told the Inquiry that they did not remember any such conversation with S038.²⁰⁹⁷

2.1580 Having rejected S038's allegation in relation to the weapons haul for the reasons explained above, I think it very unlikely that S038 witnessed the incident at Basra steel factory. There is no evidence which supported his version of what he alleged occurred. He did not report it up the chain of command and I do not accept that he did not do so for fear of being thought disloyal. In the circumstances I also reject this allegation. I add that my impression of Mendonça is that if he had seen any such incident he would have made his disapproval of that sort of conduct abundantly clear.

MacFarlane's evidence

2.1581 Capt Stuart MacFarlane was attached to 1 QLR for a fortnight in late June and early July 2003 (see Part III).²⁰⁹⁸ He described an incident which he said occurred between 11 and 14 July. He was acting as a Watchkeeper at BG Main. He said that Mendonça, preparing for an operation, came into the Operations Room in order to get his weapon. MacFarlane said, as Mendonça left, he spoke to members of his TAC group in the vicinity saying, "*Let's go get some blood on tracks*" or words to that effect.²⁰⁹⁹ In an SIB statement dated 9 August 2005 MacFarlane recorded Mendonça as saying, "*Let's go kill some Iraqis*".²¹⁰⁰ MacFarlane insisted that the statement taker had simply wrongly transposed his words.²¹⁰¹ He remembered the expression because it was a cavalry expression being used by an infantryman.²¹⁰²

2.1582 Whatever were the precise words used by Mendonça on this occasion I do not regard this evidence as of any significance or as providing any insight into Mendonça's attitude to operations. I have no doubt that he was a robust commander, but if he uttered these words on that occasion it is in my opinion no indication of what he intended to do. It is, in my view, the sort of throw-away expression that might be uttered by any commander about to go on an operation.

²⁰⁹⁴ S038 BMI 48/33/14-39/12

²⁰⁹⁵ Roberts BMI 20/131/17-132/17

²⁰⁹⁶ Briscoe BMI 43/141/20-142/8

²⁰⁹⁷ Topping BMI 47/62/24-64/12; Weston BMI 47/114/2-116/25

²⁰⁹⁸ MacFarlane BMI 54/3/22-4/4

²⁰⁹⁹ MacFarlane BMI 54/26/14-27/12

²¹⁰⁰ MacFarlane MOD000730

²¹⁰¹ MacFarlane BMI 54/28/1-29/13

²¹⁰² MacFarlane BMI 54/27/13-25

The generator incident

- 2.1583** The evidence of Mendonça's involvement with this incident is tenuous. I have dealt with it in detail in Chapter 15 when discussing tactical questioning. Mendonça's involvement arises on two small issues. Firstly, CSgt Lamb and Potter, having seen a Detainee close to the generator, spoke to Payne who was guarding the Detainee. I have found that this was probably not D005 or any of the other Op Salerno Detainees. Payne's response was that the Detainee had been placed by the generator on the orders of Mendonça and the tactical questioner.²¹⁰³ I think it highly unlikely that this order came from Mendonça. There is no other evidence that it did.
- 2.1584** CSgt Lamb said he then went to the cookhouse and told Sgt Smith what he had seen. Sgt Smith's response was "*Don't ask me, I am nothing but a fucking social worker*". He told CSgt Lamb that he had removed the Detainee from the generator but had been pulled up by the Commanding Officer and the Detainee was returned to the generator.²¹⁰⁴ Critically, on further questioning CSgt Lamb said it was possible that what Sgt Smith said might have been that he had been told what to do by tactical questioners from Brigade and not Mendonça.²¹⁰⁵
- 2.1585** Potter remembered Sgt Smith's expression that he was not just a social worker but was more uncertain whether he had said this emanated from Mendonça.²¹⁰⁶
- 2.1586** Sgt Smith remembered that he had been called "*a fucking social worker*" but had not remembered this in any way being connected with CSgt Lamb and Potter. He was unable to remember who it was who called him a social worker.²¹⁰⁷
- 2.1587** As to CSgt Lamb and Potter's report of this incident to Lighten and what followed, I have discussed this in Chapter 15. In short, I make no finding as to whether or not Lighten did report this incident to Mendonça. If he did, there is no evidence of what action, if any, Mendonça took in respect of it. Further, the evidence suggesting that any order had come from Mendonça with the accompanying insulting expression about Sgt Smith is, in my view, wholly insufficient for me to make any finding upon it.

The Lt Jones incident

- 2.1588** Maj Richard West was an RMP officer and second in command of 3 Regiment RMP at the time of Op Telic 2. His Commanding Officer was Lt Col Robert Warren.²¹⁰⁸ On an occasion in August 2003 West made a complaint about an officer in C Company, 1 QLR, Lt David Jones. In a written statement sent by West to Warren. West complained that Lt Jones had assaulted an Iraqi. The circumstances of the incident were recorded by West in this written statement. In essence he alleged that he had seen Lt Jones assault an Iraqi.²¹⁰⁹ Warren decided to take the allegation of assault no further. Warren remembered that Mendonça was firmly of the view that West had over-reacted, had "*seen what he wanted to see*" and failed to take account of the fact

²¹⁰³ CSgt Jeffrey Lamb BMI 41/158/5-166/23; Potter BMI 44/18/17-24/8

²¹⁰⁴ CSgt Jeffrey Lamb BMI 41/167/2-168/17

²¹⁰⁵ CSgt Jeffrey Lamb BMI 41/194/12-195/21

²¹⁰⁶ Potter BMI 44/23/7-24/8

²¹⁰⁷ Sgt Paul Smith BMI 44/139/13-140/21

²¹⁰⁸ West BMI 83/154/21-155/6

²¹⁰⁹ West MOD044551-5

that the Quick Reaction Force which Lt Jones commanded was attempting to move quickly.²¹¹⁰ West said he did not think the matter was being taken as seriously as it should be, but he did not think Warren's decision not to take it further was affected by Mendonça.²¹¹¹

2.1589 Both Warren and West gave evidence to the Inquiry. The detail of the incident itself is not material and was dealt with briefly. Warren said he was not influenced by Mendonça when reaching his decision not to proceed further with West's allegation against Jones. He said he always supported his second in command where it was appropriate to do so.²¹¹²

2.1590 Mendonça's evidence about this incident betrayed more than a little irritation over what had happened. He explained that he did not believe West on the basis that in his opinion Lt Jones would not have assaulted a civilian Iraqi and certainly not, as West described, have "*rained blows*" on the civilian.²¹¹³ He made clear that he wanted West to be charged for his actions in delaying a Quick Reaction Force. In evidence he said:

*"Absolutely I wanted Major West charged. That organisation – my patrol was going out of the camp gates to an incident where my soldiers might have been bleeding to death on the side of the street and he deprived it of its officer because he got a little bit – what do you call it – squeamish about the fact that an Iraqi was pushed out of the way of the vehicle. That is what it said to me. So, yes, I wanted Major West charged. He was an idiot."*²¹¹⁴

2.1591 Mendonça's reaction to this incident was surprising, and more than a little confrontational, although it is understandable that at the time he was concerned about the Quick Reaction Force being delayed. However, it is in my view important not to read too much into Mendonça's attitude to it.

Whether Mendonça was aware of other incidents of violence

2.1592 Mendonça was asked about whether he was aware of other incidents of violence. He said that he was convinced his soldiers were not involved in gratuitous violence. He based this on his experience of seeing his soldiers on the ground in Basra. He said that if soldiers had been involved in violence he would have known about it.²¹¹⁵ Counsel to the Inquiry put to Mendonça other incidents of violence of which he may have been aware. Mendonça remembered Moore bringing to his attention photographs which suggested an over-robust search of a house by A Company. He investigated this incident through Maj Paul Davis, the Officer Commanding A Company. From what he was told by Davis he accepted that the damage was "*an unfortunate consequence of the battle we were fighting to make Basra a less dangerous place*". He did not think the men of A Company had "*overstepped the mark*" but they had left the house in a manner in which they should not have left it.²¹¹⁶

²¹¹⁰ Warren MOD021702-3

²¹¹¹ West BMI 83/177/19-178/2

²¹¹² Warren BMI 83/121/3-125/9

²¹¹³ Mendonça BMI 59/89/12-24

²¹¹⁴ Mendonça BMI 59/90/9-17

²¹¹⁵ Mendonça BMI 59/75/10-76/15

²¹¹⁶ Mendonça BMI 59/79/21-81/13

- 2.1593** Mendonça also remembered early in the tour Moore speaking to him about unsubstantiated rumours of “*overly robust*” handling of Iraqi civilians by 1 QLR soldiers. He remembered one rumour involved C Company’s treatment of a civilian at a checkpoint. Again, he made enquiries and whether or not the rumour was correct, he directed Company Commanders at his next O Group that all those civilians stopped at checkpoints should be treated politely. Thereafter he made it his business to stop Iraqi vehicles after they had been through a checkpoint and ask the drivers if they had been greeted in Arabic politely and dealt with properly.²¹¹⁷
- 2.1594** Lastly, Mendonça was asked about an incident involving a Cpl Smith of C Company who it was alleged had thrown an Iraqi into a canal. Mendonça said he instigated an investigation which resulted in the incident being reported for prosecution. Apparently there was a video of the incident, but according to Mendonça, he had a vague memory that the pixilation on the video was not sufficiently accurate for the prosecuting authority to be sure of a conviction.²¹¹⁸
- 2.1595** Colley, the RMP attached to 1 QLR, confirmed that the matter was referred to the prosecuting authority but no action was taken. Colley said the matter was dealt with by Mendonça.²¹¹⁹
- 2.1596** Mendonça remembered the incident. He said the matter was not referred back to him, but he would have taken some “*management action*” such as speaking to Kenyon, Cpl Smith’s Company Commander, making sure “*someone sat on Corporal Smith for the rest of the tour*”.²¹²⁰
- 2.1597** There is other evidence which supports a finding that Mendonça was a strict disciplinarian who was known not to tolerate ill-discipline. For example, Suss-Francksen, Seaman and Briscoe all spoke of Mendonça’s “grip” or control of members of 1 QLR.²¹²¹
- 2.1598** In my judgment the incidents which I have just described above are not sufficient in quantity or quality to demonstrate that Mendonça knew that his Battlegroup was prone to incidents of gratuitous violence. In reaching this conclusion I am not to be taken as finding that there were no such incidents. I deal further with this issue in Part III which deals with the alleged culture of violence.

Prisoner handling

- 2.1599** Prisoner handling had, to some extent, been neglected during the PDT: see my discussion and findings on PDT generally and in respect of 1 QLR in particular, in Part VI of the Report. Mendonça agreed that with the benefit of hindsight, PDT on the handling of civilian detainees had been inadequate. In part this was due to the fact that training was focused on warfighting rather than occupation following the combat phase.²¹²²

²¹¹⁷ Mendonça BMI 59/83/18-85/16

²¹¹⁸ Mendonça BMI 59/85/20-87/13

²¹¹⁹ Colley BMI 45/151/16-152/6

²¹²⁰ Mendonça BMI 59/87/3-9

²¹²¹ Briscoe BMI 43/149/1-24; Seaman BMI 55/101/4-25; Suss-Francksen BMI 56/229/3-230/19

²¹²² Mendonça BMI 59/22/12-26/9

2.1600 What is clear, as I find, is that during PDT carried out by 1 QLR in respect of public order and internal security, hooding was used as an element in this training (see Part VI paragraphs 6.488 to 6.490). In my opinion no criticism for this can be levelled against Mendonça. As I record in Part VI, the use of hoods in 1 QLR's PDT, reflects the MoD's failure at any time before Baha Mousa's death, to issue proper instruction and training in respect of sight deprivation.

2.1601 It is also relevant to note that following the promulgation of FRAGO 29, 1 QLR were likely to have to hold detainees for a longer time than might have been foreseen before the Battlegroup was deployed to Iraq. For this reason 1 QLR and Mendonça could not have foreseen that civilian detainees might be held in a detention facility for up to fourteen hours. In addition, through no fault of its own, 1 QLR had no trained tactical questioners attached to the Battlegroup.

Mendonça's knowledge of conditioning, hooding, stress positions and sleep deprivation

2.1602 As will now be apparent, the Detainees were subject to conditioning. Mendonça accepted that in 1995 during his course at the Staff College he would have attended a week long Counter Insurgency (COIN) training package. This course included desktop exercises, lectures and syndicate discussions. On this course he would have been required to read the Parker Report. He would, no doubt, also have seen the COIN handbook which set out the prohibition on the five techniques. In addition, Mendonça would have attended a 40 minute discussion on the 1972 Heath Statement (see Part VI).²¹²³

2.1603 Mendonça said, and I accept, that he had no recollection of reading the Parker Report or being referred to the Heath Statement.²¹²⁴

2.1604 As practised during the detention of the Op Salerno Detainees, conditioning consisted of hooding, stress positions and sleep deprivation before and after the Detainees were subjected to tactical questioning. Mendonça said of conditioning that he believed it was essentially "*prevention of relaxation*" in order to maintain the shock of capture.²¹²⁵ He agreed that the term conditioning featured in two of the Battlegroup's operation orders which went out under his name:²¹²⁶ Quintessential²¹²⁷ and Quebec.²¹²⁸ He also agreed that he was aware that conditioning techniques were, to his knowledge, being used at BG Main. However, he denied that he was aware that the techniques used in conditioning were inhumane.²¹²⁹

2.1605 In his interview under caution in response to the question "*Do you know how these prisoners were conditioned?*" Mendonça replied:

²¹²³ Mendonça BMI 59/105/4-112/23; Mendonça BMI01091, paragraph 9

²¹²⁴ Mendonça BMI 59/105/14-107/15

²¹²⁵ Mendonça BMI 59/134/2-21

²¹²⁶ Mendonça BMI 59/141/8-23

²¹²⁷ MOD011741

²¹²⁸ MOD030900

²¹²⁹ Mendonça BMI 59/115/4-11

*"I believe that the tactical questioners invited them to be put in stress positions, in other words not allowed to sit down, and not allowed to go to sleep until they were questioned. I think."*²¹³⁰

Hooding

- 2.1606** Mendonça accepted that he was aware that detainees were hooded in the TDF.²¹³¹ During the course of his interview under caution on 29 March 2005, Mendonça explained that after Royce had sought clarification from Brigade he understood hooding was permissible. His thoughts were that this was for security purposes, security of both the prisoner and the camp.²¹³²
- 2.1607** In oral evidence to the Inquiry Mendonça said that it was probably only after Baha Mousa's death that it became clear hoods were used as part of the tactical questioning process.²¹³³ Later in oral evidence in answer to questions from his own leading Counsel, Mendonça said it was "*inconceivable*" that Royce would not have told him that the practice of hooding was "*cleared by Brigade and that, moreover, it would have been because that's what the tactical questioner required*".²¹³⁴

Stress positions

- 2.1608** In my view, it does seem from answers to a number of questions at different times that Mendonça appeared to be less than certain of precisely what was involved in stress positions as used in the period before a prisoner was taken to the tactical questioner. In his Inquiry witness statement he said:

*"My understanding was that in the early stages of an arrest, particularly when several arrestees are involved, stress positions might reasonably be used to impose a degree of control on the arrestees whilst the situation is brought under control. In this instance the stress position used might be standing with arms outstretched to the side or lying down on the floor, again with arms outstretched. At some stage during the tour following the regime prescribed by FRAGO 29 I came to understand that conditioning through the use of stress positions was an important part of tactical questioning in order to maintain the shock of capture. I understood that for a short period before questioning detainees would be held in a position that made relaxation impossible. The stress position was not to be painful but sufficiently uncomfortable to achieve the prevention of relaxation and thereby maximise the effectiveness of the tactical questioning. The application of stress positions was a matter for the BGIRO governed by common sense and consultation with the tactical questioner."*²¹³⁵

- 2.1609** However, in an addendum to his Inquiry witness statement and in oral evidence, Mendonça said he never discussed or considered stress positions before Baha Mousa's death.²¹³⁶ He confirmed in evidence that at some stage he had a vague

²¹³⁰ Mendonça MOD019093

²¹³¹ Mendonça BMI 59/122/16-123/4

²¹³² Mendonça MOD019069

²¹³³ Mendonça BMI 59/136/11-21

²¹³⁴ Mendonça BMI 59/246/13-19

²¹³⁵ Mendonça BMI01122-3, paragraph 80

²¹³⁶ Mendonça BMI 59/129/6-7; Mendonça BMI01138-9, paragraph 136

memory of men in “mild” stress positions “*compelled to keep their arms up at waist height*”.²¹³⁷

2.1610 Royce said that Mendonça was present on an occasion when detainees arrived at the TDF and he was able to observe them being processed. Royce said Mendonça’s initial query was about hooding and handcuffing the detainees. He said their discussion involved “*conditioning*” including the use of stress positions. Further, he believed he would have explicitly told Mendonça that stress positions were being used on prisoners. He was sure that conditioning was discussed. He added that he was “*absolutely content*” that Mendonça knew that hooding and stress positions were being used.²¹³⁸

2.1611 Mendonça agreed that there was an occasion when he did have a conversation with Royce at a time when some detainees had been brought into camp. They were hooded and he thought he had a discussion with Royce about what was going to happen. He said he left thinking that tactical questioning involved maintaining the shock of capture.²¹³⁹

2.1612 Mendonça accepted that he knew detainees were kept hooded in the TDF and that he gave no instructions as to how long they were to remain hooded. He knew that detainees were not allowed to sleep or relax because the shock of capture had to be maintained. He made a distinction between stress positions such as mere standing and those shown in the Payne video. His understanding of stress positions was described in the final paragraph of his Inquiry witness statement:

“‘Stress positions’ was a term much discussed after the death of Baha Mousa, not before. Prior to his death, my understanding of stress positions was that this was a catch-all expression that could mean anything from leaning a person against a wall, standing on his toes with only his fingertips touching the wall – as seen in some films – to making a person kneel with his hands on his head. The term ‘stress position’ is so loose because it is not a recognised practice, but one which most soldiers have heard of, via various routes. In my case, I did not consider ‘stress positions’ prior to the death of Baha Mousa but did understand the need to prevent a potential terrorist from relaxing before he was questioned. I could see the point of ensuring that the ‘shock of capture’ was maintained from the point of arrest until questioning and, as such, agreed that prisoners should be prevented from relaxing until questioning was complete. But this only meant, at worst, maintaining a standing position and not to the extent that pain or suffering was inflicted. Being made to stand in the detention centre could be described as a ‘stress position’. I gave no instructions about stress positions because, prior to Baha Mousa’s death, I was never asked to give an opinion and my advice or guidance was never sought.”²¹⁴⁰

2.1613 Finally, Mendonça was aware of the fourteen hour rule and that in practice it was difficult to maintain.²¹⁴¹

²¹³⁷ Mendonça BMI 59/135/6-136/10

²¹³⁸ Royce BMI 57/94/20-96/6

²¹³⁹ Mendonça BMI 59/130/11-131/16

²¹⁴⁰ Mendonça BMI01138, paragraph 136

²¹⁴¹ Mendonça BMI01118, paragraph 69

The Brigade sanction

- 2.1614** I discuss the issues surrounding the Brigade sanction in Part XIII. I find that Royce did believe that he had received an assurance from Brigade that conditioning of prisoners was legitimate in the period up to questioning by the tactical questioner. He further received assurance that the process of conditioning involved the legitimate use of hooding and stress positions.
- 2.1615** I accept that Royce did brief one of the Commanding Officer's O Groups on this sanction. I further find that he discussed the sanction with Mendonça. Despite Mendonça's answer at one stage in the evidence that he did not recall discussing stress positions before Baha Mousa's death, I find that he did discuss this practice with Royce. This is consistent with earlier statements made by Mendonça to the effect that at some stage following FRAGO 29 he came to understand that stress positions were part of the conditioning process required before a prisoner was questioned.

Mendonça's knowledge of the treatment of the Detainees

- 2.1616** One of the most important factual issues so far as Mendonça is concerned revolved around his knowledge of what was going on in the TDF from the start of the Detainees' detention in it, to the death of Baha Mousa. Mendonça stated that although he knew of their detention, he had no knowledge of the abuse and violence being carried out on them.²¹⁴² He was present at the Hotel at the very beginning of the operation, but he did not remember if he had gone into it. He might have done.²¹⁴³ There is no evidence that he did go into the Hotel or that he saw or was aware of any abuse of the Detainees in the Hotel after their arrest and transfer to BG Main.
- 2.1617** It is clear that the operation involved other hotels in addition to the Hotel Haitham in which the Detainees were arrested.²¹⁴⁴ The Watchkeeper's log recorded that at 08.57hrs the Commanding Officer's TAC group was returning to BG Main.²¹⁴⁵ Mendonça said that at some stage during the day he would have received a briefing from Peebles. Peebles informed him of the possible link between the Detainees and those who killed three RMP officers. He understood that the tactical questioners had arrived from Brigade and would be carrying out questioning of the Detainees.²¹⁴⁶ In the early evening he would have had his usual O Group, in the course of which Op Centurion, scheduled for the following day, would have been discussed. He was unable to remember any discussion about the Detainees and the time limit but such a discussion would almost certainly have taken place.²¹⁴⁷
- 2.1618** The Watchkeeper's log showed that during the late afternoon and evening of 14 September, Mendonça visited A, C and B Companies. Mendonça said he was very angry about the theft of money from the Hotel and was determined to address each Company on the need to treat all civilians properly. He emphasised that if anyone was caught stealing they could expect to be charged, punished and possibly sent home.²¹⁴⁸

²¹⁴² Mendonça BMI 59/70/19-74/4

²¹⁴³ Mendonça BMI 59/176/2-14

²¹⁴⁴ Mendonça BMI 59/176/7-10

²¹⁴⁵ MOD045434

²¹⁴⁶ Mendonça BMI01129, paragraph 105

²¹⁴⁷ Mendonça BMI01130, paragraph 108

²¹⁴⁸ Mendonça BMI01130, paragraph 109

- 2.1619** The Watchkeeper's log recorded that Mendonça returned to BG Main at 22.17hrs. It was on his return at that time that Mendonça said he made his only visit to the TDF before Baha Mousa's death.²¹⁴⁹ I return to this visit below.
- 2.1620** After visiting the TDF Mendonça said he went to his sleeping quarters, which were situated above the Operations Room.²¹⁵⁰ There was some suggestion that screams and shouting from the TDF might be heard in his quarters. There is evidence from other witnesses who did hear noises emanating from the TDF during the night.²¹⁵¹ Mendonça said he heard nothing of this sort during the night.²¹⁵²
- 2.1621** On the following morning, the log recorded Mendonça leaving BG Main at 05.51hrs to take part in Op Centurion. By 10.34hrs, according to the log, he was back in camp. Mendonça said that at some point he would have received an update on the Detainees from Peebles.²¹⁵³
- 2.1622** During the afternoon Mendonça went out on the second leg of Op Centurion. He said that at some stage he would have been aware that tactical questioning had finished and that given the lack of resources it would not be possible for the Detainees to be taken to the TIF until the following day. He held his usual O Group in early evening and later he must have gone out again with his TAC group. The Watchkeeper's log recorded his TAC group stopping a Mercedes car at 21.45hrs. At 22.04hrs the log recorded that he was informed that one of the Detainees had collapsed, and at 22.08hrs that the Detainee had died.²¹⁵⁴ On his return to BG Main, Mendonça said he believed he went straight to the TDF, although he did not go into it. He said he did not go to the RAP to view the body.²¹⁵⁵ Mendonça visited Baha Mousa's father and family on 23rd September 2003.²¹⁵⁶

Mendonça's first visit to the TDF

- 2.1623** Mendonça said on Sunday evening he believed he went to the TDF after returning to BG Main. Assuming the Watchkeeper's log is accurate, this would mean that Mendonça's visit was at about 22.30hrs. The purpose of his visit was to see if the Detainees had water available to them.²¹⁵⁷ He said he had a short discussion with the guard to see that all was well. In his SIB statement dated 22 October 2003 he is recorded as saying that he saw that the Detainees were seated and quiet.²¹⁵⁸ He was unable to remember who the guards were, but if his estimate of the time is correct it would have been during MacKenzie and Pte Cooper's stag.²¹⁵⁹ It has, however, to be remembered that due to the flexible nature of stags, other members of the Multiple

²¹⁴⁹ Mendonça BMI01131, paragraph 111

²¹⁵⁰ Mendonça BMI01132, paragraph 114

²¹⁵¹ Aspinall BMI 28/72/8-18; LCpl Michael Hartley BMI 45/199/9-200/9; Livesey BMI00673, paragraph 33; Quegan BMI00296

²¹⁵² Mendonça BMI01132, paragraph 115

²¹⁵³ Mendonça BMI00132-3, paragraphs 116 and 120

²¹⁵⁴ Mendonça BMI01133, paragraphs 120-121

²¹⁵⁵ Mendonça BMI 59/189/12-190/23

²¹⁵⁶ Mendonça BMI01136, paragraphs 127-129; MOD016108

²¹⁵⁷ Mendonça BMI 59/181/4-182/13

²¹⁵⁸ Mendonça MOD020281

²¹⁵⁹ Mendonça BMI 59/184/13-20

might have been present. Neither MacKenzie nor Pte Cooper mentioned a visit by Mendonça.²¹⁶⁰

2.1624 In oral evidence to the Inquiry Mendonça said that to the best of his recollection the Detainees were not hooded, or in stress positions, or exhibiting any sign of pain. He could not remember whether they were plasticcuffed. He thought he had been in both rooms. He saw no sign of any injury but accepted that it was possible that by then they had been kicked and beaten. It was also possible that they were hooded, but if they had been he thought he would have wanted to know why tactical questioning had not been moving apace. He said he spent no more than a minute or so in the TDF on that occasion. The guards were present, but not Payne.²¹⁶¹

The Monday evening visit

2.1625 Mendonça heard about Baha Mousa's death on Monday evening at the time stated above, namely 22.08hrs. On his return to BG Main he went to the TDF but he said he did not go in. When pressed by Leading Counsel to the Inquiry on the basis that to go in would have been the most natural thing to do, Mendonça said that he could give no explanation for not going in to the TDF. He was unaware of the conditions in the TDF as described, for instance, by Seeds.²¹⁶²

2.1626 Mendonça maintained that he was completely unaware of the abuse and violence inflicted on the Detainees. He accepted that during the course of their detention, the Detainees must have been assaulted by members of 1 QLR.²¹⁶³ He also accepted, when they were put to him, that there may have been other incidents of ill-discipline in the Regiment. He did not accept that it was an error for him not to have questioned Royce more closely about the Brigade sanction. He felt that with hindsight he might have released the RSM, Briscoe, from his TAC group. He said that before the events of 14 to 16 September he had no reason to question the system for dealing with detainees.²¹⁶⁴ There had in the past never been reports of any difficulty with any aspect of prisoner handling.

Rodgers' allegation

2.1627 In addition to the occasions referred to above, Rodgers alleged that Mendonça and Briscoe visited the TDF on Monday morning. Rodgers said the Detainees were in stress positions and there was a strong smell of body odour in the TDF. This allegation was made by Rodgers in the second of his two SIB statements (but not the first) dated 30 June 2005. He put the time of this visit on that morning as between 09.00hrs to 10.00hrs.²¹⁶⁵ Mendonça denied that he had visited the TDF on any occasions other than those referred to above.²¹⁶⁶ In oral evidence, Rodgers said he was now unable

²¹⁶⁰ Pte Aaron Cooper BMI 29/119/14-19

²¹⁶¹ Mendonça BMI 59/181/11-184/22

²¹⁶² Mendonça BMI 59/189/15-190/14

²¹⁶³ Mendonça BMI 59/182/20-183/17

²¹⁶⁴ Mendonça BMI 59/200/25-204/3

²¹⁶⁵ Rodgers MOD000229-30

²¹⁶⁶ Mendonça BMI 59/186/19-22

to remember this incident but if it was in his statement it must have been true.²¹⁶⁷
Briscoe also denied that he had gone into the TDF on that morning.²¹⁶⁸

2.1628 As I have said in the section in this Chapter on Rodgers, I do not accept his evidence in respect of this incident. He had an obvious motive for alleging that Mendonça had seen the Detainees in stress positions and the poor conditions in the TDF. If he really had seen Mendonça and Briscoe there on that morning I would have expected him, despite the passage of time, to have been able to remember it when he came to give evidence. I prefer Mendonça and Briscoe's evidence to his evidence. Reader also said that he saw Mendonça in the area of the TDF on Monday morning, but Mendonça went out of his sight so that he was unable to see if he went into the TDF.²¹⁶⁹ Similarly, I prefer Mendonça's evidence to Reader's and I find neither Mendonça nor Briscoe went into the TDF on Monday morning.

Mendonça as a witness

2.1629 Having closely observed Mendonça giving evidence, my impression of him as a witness was that he was articulate and intelligent. He gave his evidence in a clear and thoughtful manner, answering questions without equivocation. He had an air of authority which suggested that the many tributes to his leadership qualities were accurate. In short, he was an impressive witness and in my opinion, an honest one. This does not mean that he can escape all criticism or responsibility for the events of 14 to 16 September, but it does mean that I can accept his evidence as truthful and in the main, accurate.

2.1630 My assessment of Mendonça's leadership qualities is confirmed by evidence from his subordinates, as well as from Moore. It is also supported by his curriculum vitae. I have no doubt he was a strong leader, a strict disciplinarian, and a Commanding Officer who demanded the highest standards from his subordinates.

2.1631 On the other hand, having observed him giving evidence I believe Mendonça could well have been a quite forbidding Commanding Officer. I suspect that he did not suffer fools gladly and that this made him a difficult man for his subordinates to approach, particularly if it was to confess some failure or fault of themselves or men under their command. Paradoxically, for a strict disciplinarian, this may go some way to explain why he was not told of minor acts of ill-discipline which might have alerted him to a more general lack of discipline within the Battlegroup.

Findings of Fact

Mendonça's knowledge of conditioning, hooding, stress positions and sleep deprivation

2.1632 So far as Mendonça's knowledge of the above techniques is concerned, I find that he did know that Detainees arriving in the TDF would be hooded, whether for security reasons or because it was required by the tactical questioner. I further find that he knew that they were being placed in stress positions in the period before they were

²¹⁶⁷ Rodgers BMI 30/55/18-56/7

²¹⁶⁸ Briscoe BMI 43/126/7-17

²¹⁶⁹ Reader BMI 28/154/2-157/23

questioned. I find that he did have a conversation with Royce in which not only did Royce explain the Brigade sanction, he also told Mendonça that conditioning involved hooding and stress positions.

2.1633 As I have said above, Mendonça's evidence of his knowledge of what stress positions involved and their part in the conditioning process is not entirely clear. It is suggested by Counsel representing the Detainees that in this respect Mendonça has sought to minimise his knowledge of stress positions and distance himself from their use in the TDF. I do not accept this submission. Whilst I accept that Mendonça's evidence as to when he became aware that stress positions were being used was confusing, the explanation for this confusion is to be found, in my opinion, in his definition of a stress position. I accept that he believed that if a stress position was used, it was a mild technique designed to prevent detainees from relaxing. As I shall make clear below, one of his failures in respect of them was a failure to find out precisely what they involved and the manner in which they were used by 1 QLR personnel in the TDF.

2.1634 The same goes for the length of time the detainees were kept hooded and deprived of sleep. I accept that he left these matters to the discretion of the BGIRO, believing that nothing would be done which involved treating detainees inhumanely.

Mendonça's first visit to the TDF

2.1635 If Mendonça is right about his visit to the TDF at about 22.30hrs on Sunday night, it is surprising, although not impossible, that he did not see the Detainees hooded or in stress positions. In my view it is unlikely that he could have been mistaken. If he had seen the Detainees in stress positions, and as he said, hooded, from my assessment of him I would have expected him at least to have made enquiries about the progress of the tactical questioning.

2.1636 I have already found that at about that time the Detainees, for a period of approximately 30 minutes, were not hooded and not handcuffed. Sgt Smith gave the order to allow them to relax at about 21.45hrs to 22.00hrs, according to his handwritten note. This order was not rescinded by Livesey until approximately half an hour later.²¹⁷⁰ It is quite possible that on these estimates of time, Mendonça could have gone to the TDF at a time when the Detainees were sitting down and relaxing, as Sgt Smith intended.

2.1637 Bearing in mind my assessment of Mendonça's veracity and credibility as a witness, I find it is more probable than not that he visited the TDF in that short period of time when the Detainees were neither hooded nor in stress positions. In that period conditions in the TDF would have been different from the conditions described by other witnesses who went there earlier on Sunday 14 September. On the basis that the Detainees were unhooded, not handcuffed, not in stress positions and were not being shouted at, the atmosphere in the TDF is likely to have been far calmer than when earlier visitors were present.

2.1638 In my opinion, it remains surprising that Mendonça did not find anything wrong or untoward with the conditions in the TDF. By then the build up of heat and smell must have been oppressive. Nor did Mendonça see any signs of injury or distress being

²¹⁷⁰ Sgt Paul Smith MOD019669

exhibited by the Detainees. By then they had, on my findings, been subjected to severe beatings.

2.1639 It is not easy to understand how Mendonça saw nothing in the condition of the Detainees in the TDF to cause him concern. Whether this may have been because his visit was so fleeting, or it was too dark for him to observe these conditions, I am not able to determine. Having carefully considered this issue and bearing in mind my assessment of Mendonça's credibility as a witness, I am not prepared to reject his account that he did not see anything untoward on this visit to the TDF.

Mendonça's second visit

2.1640 Mendonça visited the TDF for the second time on the evening of Baha Mousa's death. The death had been reported to him over the radio at 22.08hrs.²¹⁷¹ His visit must therefore have occurred some time after that report. In his Inquiry witness statement he said he did not go into the TDF on this occasion.²¹⁷² In oral evidence he said he could not remember going into the TDF, but he may have done. He did, however, say that he was careful not to speak to witnesses about the incident because by then the SIB had been informed. He did not want to do anything to prejudice this investigation. He added that maybe he should have gone into the TDF.²¹⁷³

2.1641 Mendonça's reluctance to do anything to prejudice the SIB investigation is understandable. However, when he arrived at the TDF that night he must have known that the Detainees had been there for at least 36 hours. If Peebles did tell him when the tactical questioning had finished, he would have known that it had lasted for an inordinately long period. Even if he did not know when tactical questioning had finished he would still have been well aware that the fourteen hour limit had long since passed. A Detainee had died in custody and although Mendonça did not know the cause of death, the situation, in my opinion, was so unusual that it called for him to take steps to ensure that the other Detainees came to no harm. I find it difficult to understand why Mendonça did not go into the TDF at that time. I find that as Commanding Officer with overall responsibility for the welfare of the Detainees, he ought to have done. If he had, he would have seen what Seeds saw, namely the appalling conditions in that building. I have no doubt that if he had seen those conditions he would immediately have taken steps to alleviate the distress of the Detainees.

Mendonça's responsibility

2.1642 There are a number of factors to be considered. Firstly, there is the whole process of conditioning detainees. It involved hooding for reasons other than security and it involved physically forcing a detainee to adopt and maintain a position or positions against his will. If Mendonça had displayed better judgment he would simply have appreciated that the combined use of hoods and stress positions as a conditioning process was an unacceptable way to treat detainees. This should have been his reaction. But on any view, and regardless of the so-called Brigade sanction obtained by Royce, both he and Mendonça ought to have appreciated that at the very least

²¹⁷¹ Mendonça BMI01134, paragraph 121

²¹⁷² Mendonça BMI01134, paragraph 123

²¹⁷³ Mendonça BMI 59/189/15-193/3

a process enforcing hooding and stress positions involved a very serious risk of the detainee being exposed to inhumane treatment. Royce realised that stress positions caused pain. He candidly admitted in evidence he gave to the Court Martial that pain was part of the purposes of the conditioning exercise.²¹⁷⁴ Mendonça should also have come to the same realisation.

2.1643 Furthermore, one only has to envisage the young soldier tasked with enforcing stress positions and faced with a tired, exhausted and uncooperative detainee falling out of his stress position, to realise that there was a real risk of the soldier using violence to enforce the stress position. There was also a real risk that hooding for any length of time in conditions of such heat would cause distress. In my view this is precisely what happened to these Detainees.

2.1644 If Mendonça had appreciated that there was such a risk, as in my opinion he ought to have, he should have either banned the use of stress positions and hooding as well, or himself raised the matter formally with Brigade. Mendonça's failure in this regard was a very significant one. As the Commanding Officer, he had a non-delegable responsibility to ensure that detainees were treated humanely. In permitting the process of conditioning of detainees he failed to appreciate that the use of hoods and stress positions to gain intelligence was totally unacceptable.

2.1645 Secondly, it is apparent from his evidence that Mendonça was not aware what precisely was involved in the use of stress positions. His idea of a stress position may have been something rather anodyne compared with what actually happened in the TDF. But he accepted that stress positions covered a "*multitude of sins*".²¹⁷⁵ For that reason, he ought to have discovered from Royce and Peebles precisely what was involved in the stress positions which they were proposing to permit to be deployed or had permitted to be deployed. I do not regard it as any excuse for him to say, as he did, that he understood that the form stress positions took was for the BGIRO to determine, guided by common sense and consultation with the tactical questioner.

2.1646 In my opinion, in a process such as this where the risk of inhumane treatment was a high one, Mendonça ought to have made quite certain he knew exactly what the process involved. Had he done so, in this instance I am confident he would have immediately banned the process. In this regard it is instructive to compare his actions with those of S009, the Commanding Officer of the Queen's Dragoon Guards (QDG) (see Parts VII and VIII).

2.1647 Thirdly, in my judgment, it was Mendonça's responsibility to ensure that the conditioning procedure, involving as it did hooding and stress positions, was properly supervised. In my view, Mendonça is not absolved from the duty to ensure proper oversight of this process by the principle of "*mission command*". Mission command is an Army concept akin to delegation. It describes a situation in which subordinates are informed of a commander's intentions, but are then left with a substantial degree of freedom to decide how to fulfil those intentions.²¹⁷⁶ Once again, I point out that the

²¹⁷⁴ Royce CM 43/43/4-23

²¹⁷⁵ Mendonça BMI 59/113/6-7

²¹⁷⁶ A number of witnesses gave evidence about this concept and about the related topic of a commander's duties. Reith BMI 94/100/11-19; Brims BMI07387, paragraphs 18-19; Scott-Bowden MOD000317. I deal with the concept more fully in Part VII. I have taken such evidence into account in assessing Mendonça's conduct.

risk of the detainees being subjected to inhumane treatment from hooding and stress positions was a high one. In those circumstances, Mendonça should personally have ensured that a proper system of supervision was in place. This duty is not removed by the appointment of an officer of field rank as BGIRO. By whatever means he judged appropriate, Mendonça ought to have ensured a level of personal oversight by him of this process.

2.1648 I recognise that Mendonça was extremely busy. He said in his evidence that he wished for his own sake he had taken a more personal interest in prisoner handling, but for the sake of the people of Basra he was glad that he did not.²¹⁷⁷ I accept he had to organise priorities in his work. However, in this instance, it was in my opinion a serious error of judgment to exercise so little personal oversight of the prisoner handling process, once it involved the conditioning of prisoners.

2.1649 Fourthly, the Detainees submit that Mendonça fostered a robust approach by the Battlegroup in respect of their dealings with Iraqis. There is some evidence which supports this submission. Maj Gary Pinchen, the second in command of C Company at the time of Op Telic 2, spoke of a conversation he had with Kenyon, in which Kenyon told him that Mendonça wanted a robust posture to be adopted by the Company. He understood this to mean “...a firm approach and that would include ‘rough handling’”. He explained this as meaning taking a firm hand in order to dissuade a detainee from attempting to escape or become troublesome.²¹⁷⁸ This evidence was not confirmed by Kenyon or Mendonça. However, Mendonça accepted that he had fostered a robust posture for the Battlegroup but “*absolutely not*” for handling of prisoners.²¹⁷⁹

2.1650 On my assessment of Mendonça I regard the adoption of a robust approach to operations as in keeping with his style of leadership. Equally, there is evidence that he made it clear to his Battlegroup that their dealings with arrested civilians were to be scrupulously fair. I accept that he was at pains to ensure that the Battlegroup was in Iraq to win hearts and minds (see his lecture to three companies after Fearon’s theft of money). This also, in my judgment, was in keeping with his leadership style.

2.1651 But, there were dangers in fostering a robust approach to operations which may have unwittingly, so far as Mendonça was concerned, spilled over into the treatment of the detainees by the guards in the TDF. Soldiers who had been used to adopting a robust posture on patrol might have thought that they could adopt a similar posture when guarding detainees. The requirement for close supervision of guards on stag was all the more necessary.

2.1652 Turning from the general to the particular, fifthly, in my opinion Mendonça was at fault in failing to discover on Monday why the Detainees had not been transferred to the TIF. By Sunday night, when he visited the TDF, the fourteen hour limit had already expired.²¹⁸⁰ By Monday morning they had been in the TDF for 24 hours. Yet, as I find, at no time during that day did Mendonça visit the TDF in order to find out for himself why the Detainees were still being held there and what condition they were in. By then, Mendonça ought to have appreciated that they had been kept in the stifling heat in rooms with no proper facilities for resting. If he had spoken to

²¹⁷⁷ Mendonça BMI 59/223/1-10

²¹⁷⁸ Pinchen BMI 50/52/22-54/7

²¹⁷⁹ Mendonça BMI 59/96/15-20

²¹⁸⁰ Assuming they were arrested at 07.00hrs, the time limit expired at 22.00hrs, which was about half an hour before Mendonça’s visit.

Peebles to check whether tactical questioning had been completed, he would have discovered that the last session of questioning started at 15.00hrs on Monday. His knowledge of conditioning would have informed him that one of the Detainees had been subject to the conditioning process until that time. Others may also have been hooded and in stress positions during Monday morning.

- 2.1653** In my view, during the course of Monday, Mendonça ought to have found out for himself what was the state and status of the Detainees and have visited the TDF to see for himself their condition.
- 2.1654** Sixthly, I have considered whether Mendonça ought to have appreciated that the TDF with its lack of facilities was an inappropriate place for holding detainees for any length of time and in any event, holding them for as long as 48 hours. Further, I have considered whether the regime which allowed visitors to come and go without records being made of their visits, was an appropriate procedure.
- 2.1655** At that time there was no doctrine or instruction to inform Battlegroups about what was required for a detention facility, nor what was required as an appropriate regime for recording visits and the supply of food and water. I bear that in mind.
- 2.1656** So far as record keeping of visits and examinations, whether medical or otherwise, are concerned, in my view there ought to have been clear instructions to establish such a regime. However, since there was no doctrine or instructions from higher command, I do not consider it right or fair to criticise Mendonça for failing in this regard. For the same reason I absolve Royce and Peebles in respect of this matter.
- 2.1657** However, the TDF was, in my view, unsuitable for holding detainees for any length of time. It had no facilities for detainees to rest and sleep. It was not secure and did not even have doors. The centre room, with its open toilet, was at all times wholly inappropriate as a room in which to hold a detainee. Whereas the TDF might just be regarded as sufficient as a holding facility for a very short period, it was, in my opinion, unsuitable as a facility to hold detainees for as long as 48 hours. Mendonça and Peebles ought to have appreciated the TDF's defects and as time wore on ensured that these Detainees were either transferred to the TIF before conditions in the TDF became oppressive or, if that was impossible, steps should have been taken to ameliorate these conditions. In this regard, there was evidence that there had been beds in the TDF at some stage. However, for reasons which were never explained they had been removed and not replaced before these Detainees arrived.
- 2.1658** In my opinion, the longer the Detainees remained at BG Main, the greater the need to ensure that the conditions in which they were held were appropriate. This was a failure for which both Mendonça and Peebles bear responsibility.
- 2.1659** Seventhly, I accept Mendonça was unaware of the violence that was going on in the TDF. In Part III, I outline incidents of random violence by members of the Battlegroup which had occurred in the weeks leading up to 14 September 2003. I have not categorised these incidents as amounting to an entrenched culture of violence but I would have expected at least some of them to have come to the attention of the Commanding Officer. I accept that he had no knowledge of any of them.
- 2.1660** The violence which occurred in the TDF between 14 to 16 September was more sustained and much more serious than these other individual incidents. It involved at least three senior NCOs and one junior NCO. Payne's conduct was a flagrant

and very serious breach of discipline. Furthermore, it demonstrated that Payne appeared to be untroubled that he might be seen by senior officers and other NCOs doing what he did. A platoon commander, Rodgers, if not taking part in the violence, on my finding, knew full well what was going on, as did Peebles to some extent. In these circumstances, although I accept Mendonça was unaware of the violence being carried out on the Detainees, I am driven to the conclusion that he ought to have known.

2.1661 Mendonça, correctly, accepted command responsibility for these events but, in my judgment, his responsibility extended beyond command responsibility. It is, or should be, a Commanding Officer's responsibility, through his officers and NCOs, to be astute to the possibility of such events occurring and to devise ways of discovering them. I have pointed to individual areas where in my opinion Mendonça was at fault. But, in addition, I find that he was also at fault for so conducting his command that he did not become aware of that which he should have known.

Part III

Were the Events of 14 to 16 September a “One-Off”?

- 3.1** Although the Inquiry has adhered strictly to its terms of reference, it was inevitable that it should seek to determine whether the events of 14 to 16 September 2003 were a “one-off”, as some of the Core Participants submitted, or revealed a deeper culture of violence within 1 Queen’s Lancashire Regiment (1 QLR), as was submitted on behalf of the Detainees.
- 3.2** As a result, the Inquiry has uncovered evidence of some further incidents which require consideration. Of course, in assessing the evidence of these other incidents I bear in mind that they are not central to the issues raised in respect of the Op Salerno Detainees and for this reason the evidence in respect of them may not be as full as might otherwise be the case.
- 3.3** The evidence of other incidents can be summarised as follows:
- (1)** evidence of other incidents involving the Rodgers Multiple;¹
 - (2)** evidence given by witnesses of isolated incidents; and
 - (3)** evidence arising out of newspaper reports of statements given by two unidentified soldiers.

¹ The expression has been used as a convenient short hand for the Inquiry to describe G10A and findings related to individuals within the “Rodgers Multiple” do not imply findings relating to Craig Rodgers unless that is explicitly stated.

Chapter 1: Incidents Involving the Rodgers Multiple: The MacKenzie Diaries

- 3.4** These incidents substantially arise out of descriptions of abuse and violence against Iraqi civilians contained in a diary kept by Pte Stuart MacKenzie. It appears that MacKenzie, kept a diary during the course of the tour in Iraq. This diary came into the possession of the prosecution during the course of investigations leading to the Court Martial. Thus the Inquiry obtained copies of the diary.²
- 3.5** In evidence, MacKenzie agreed, as he had said in his Inquiry witness statement, that he believed the diary to be generally true and accurate.³ It contained a number of entries of which the following are a selection of eleven different entries between 8 July 2003 and 13 September 2003:

"Punched a policeman for not doing as told... Found [weapons at VCP]. Arrest perp and take car. Hostage beaten up – broken wrist, concussion, sore bollocks." 8 July 2003.⁴

"With Pete Bentham... Arrested 6 men – bit of roughage." 11 July 2003.⁵

"Arrested 1 man all day with a 9mm pistol – he resisted slightly so got a couple of kicks and punches". 12 July 2003.⁶

"Up at 7am then out at 8am – 11am – petrol station... Out for another hour 1.30pm – 2.30pm... A big Iraqi punched Mr Rodgers and got filled in immediately by about 10 of us. He was bleeding from his head, face and ears. He was battered from head to toe so we let him go instead of arresting him." 18 July 2003.⁷

"Ali Baba stealing steel rods from outside camp, chased them. Asp and Benny swam the sewer to catch him. One warning shot fired by Redders. Man caught and roughed up. Head under water. He is going to be ill. Taken to cop shop." 24 July 2003.⁸

"Les & A [threw] Ali Baba into Shat al Arab [river] for stealing wood. He cried. Piss funny." 25 July 2003.⁹

"6am-6pm VCP's. Guy tried to stab interpreter – Beat him up. Jordan first – I hit him with stick on shoulder – crack – he was crying..." 27 July 2003.¹⁰

"Petrol crisis, no petrol or elec – 3 mile queues at stations. Throwing stones. Haslam hit in head 4 stitches... Stones raining down – I head butted a man in cheek with helmet on. Coops hit him three times. Fearon hit him with bat – He still ran off. Burning road blocks – 60 people stoning us and rounds. Caught 1 guy – cornered – punching and kicking him. Redders put 8 baton rounds into him. Looked dead but just very sore. Next guy battoned by Boyo, very fucked. He bled on my boot when he got kicked in face. What a good day, but I am fucked." 9 August 2003.¹¹

² MOD015571

³ MacKenzie BMI 29/189/13-20

⁴ MOD015577

⁵ MOD015579

⁶ MOD015581

⁷ MOD015585

⁸ MOD015589

⁹ Ibid.

¹⁰ MOD015591

¹¹ MOD015598

“Just bit of fight at petrol station. Aspy [Aspinall] punched 1 man and broke his knuckle.” 11-14 August 2003.¹²

“Found 3 Ali Babas at WTP7. Beat them up with sticks and filmed. Good day, so far.” 11 September 2003.¹³

“Caught three Ali Babas. Beat the fuck out of them on the back of the Saxon... One had a punctured lung and broken ribs and fingers. One had a dislocated shoulder and broken fingers.” 13 Sep 2003.¹⁴

- 3.6** MacKenzie agreed that the entries demonstrated that there were times when a captured person would be given a beating. He also agreed that this would be known, he believed, “... up to CO level...”.¹⁵ He was asked during the course of his evidence to the Inquiry about these entries. Although he continued to assert that they were accurate, in many instances he said he was unable to remember this “...exact incident...”.¹⁶
- 3.7** Some members of the Rodgers Multiple confirmed in general terms the violence described in the diaries. Some denied their accuracy. Of those who confirmed the tenor of the diary entries, the following are in my opinion significant.
- 3.8** Fus Lee Richards said that on occasion civilians other than the Op Salerno Detainees were punched and kicked on arrest; and also punched and kicked in the back of a Saxon in order to stop them from talking. He went so far as to say that in some instances these assaults resulted in broken arms. He said he believed that the violence was necessary to stop them talking. He identified Pte Aaron Cooper, Pte Peter Bentham, Pte Thomas Appleby and LCpl Adrian Redfearn as involved in this kind of violence. He believed that Pte Jonathan Hunt, MacKenzie and Pte Gary Reader did not take part in such violence.¹⁷
- 3.9** Richards described an incident at a Vehicle Check Point (VCP) when an interpreter was threatened by a civilian with a knife. Richards said that Lt Craig Rodgers selected a soldier from a different multiple to beat up the civilian.¹⁸ This may have been a reference to the incident described in the diary entry for 27 July 2003.¹⁹ So far as that entry is concerned the Inquiry discovered that there was a Pte Jordan in A Company. He was believed to be living abroad and it was not possible to trace him.
- 3.10** I have already commented on Richards as a witness in Part II Chapter 12. I found him a reasonable witness but confused about dates and times. His credibility was subjected to a searching cross-examination by Mr James Dingemans QC acting for Rodgers, among others. In respect of these allegations he accepted that he was a driver of a Saxon vehicle which would have restricted his view of what was going on in the rear of the vehicle. He also accepted that he had not mentioned the VCP incident in his Inquiry witness statement.²⁰ The latter was the first and only witness

¹² MOD015602

¹³ MOD015616

¹⁴ MOD015617

¹⁵ MacKenzie BMI 29/189/21-190/12

¹⁶ MacKenzie BMI 29/193/4-7

¹⁷ Richards BMI 31/113/3-116/24

¹⁸ Richards BMI 31/149/10-150/16

¹⁹ MOD015591

²⁰ Richards BMI 31/160/16-162/15

statement he made,²¹ having apparently not been contacted and interviewed by the Special Investigation Branch (SIB).

- 3.11** I accept that in general terms Richards' evidence of these incidents is truthful. But I have doubts about his ability accurately to identify individuals. Further, in my judgment, it would be dangerous and unfair to base any specific finding of misconduct by an identified individual on the basis of this part of Richards' evidence. I bear in mind that he only committed to paper his recollection of these incidents long after they are alleged to have occurred. Necessarily the parts alleged to have been played by named individuals have not been fully investigated.
- 3.12** Reader gave evidence that from time to time he had seen members of the Rodgers Multiple engage in casual violence which he described as the odd kick or punch on Iraqis. He said that any officer who was present paid no attention.²² He asserted that on occasions Rodgers was present.²³ He accepted that he did not like Rodgers.²⁴ But he went on to say that subsequently after the Battalion had left Iraq "...we rekindled and sort of forgave Lieutenant Rodgers...".²⁵ However, Reader was not an impressive witness and admitted that he had not been completely truthful when giving evidence at the Court Martial. He also blamed the SIB for manipulating his statement in that "...the SIB would ask specific questions and would put answers to those questions for you."²⁶
- 3.13** Cpl John Douglas said he saw "casual slapping" but not "beatings" of Iraqis who did not do what they were told. Asked about the culture of doing this he said "It did get harder after the killings", the latter a reference to the murders of Dai Jones and the Royal Military Police (RMP) soldiers.²⁷
- 3.14** Finally, Pte Christopher Allibone had some recollection of rumours of the incident referred to in the diary entry for 24 July 2003. He heard a rumour that a man had been chased by members of the Multiple and that the chase involved swimming across a sewer. When the man was caught his head was pushed under the water.²⁸ He remembered an Iraqi being thrown into the Shat-al-Arab river on the following day: diary entry 25 July 2003. However, he did not recall other incidents described in the diary.²⁹
- 3.15** Other members of the Rodgers Multiple denied that the Multiple committed acts of unjustified violence against Iraqi civilians, contradicting the diary entries: Appleby;³⁰ Pte Gareth Aspinall;³¹ Redfearn;³² Rodgers;³³ and Cpl Paul Stirland.³⁴ Bentham also denied that the Multiple gratuitously kicked or punched civilian detainees. However,

²¹ Richards BMI04156

²² Reader BMI 28/180/11-23

²³ Reader BMI 28/199/7-200/12

²⁴ Reader BMI 28/198/14-17

²⁵ Reader BMI 28/199/3-6

²⁶ Reader BMI 28/125/11-129/7

²⁷ Douglas BMI 31/68/8-22

²⁸ Allibone BMI 24/204/17-18

²⁹ Allibone BMI 24/204/23-24

³⁰ Appleby BMI 25/95/8-22

³¹ Aspinall BMI 28/80/8-14

³² Redfearn BMI 30/205/9-23

³³ Rodgers BMI 30/86/11-89/10

³⁴ Stirland BMI 38/49/21-50/10

he accepted that Iraqis would be kicked or punched if they tried to resist arrest.³⁵ Cooper accepted that the Multiple became more aggressive after Dai Jones' murder but denied there was within the Multiple a culture of assaulting detainees. He went on to say that he remembered that assaults happened on the "odd occasion".³⁶

- 3.16** There is other evidence which tends to support the accuracy of the diary entries. The Battlegroup Main (BG Main) log contains an entry for 8 July at 17.30 hrs which recorded G10A had arrested a person with a vehicle in which were found five sub-machine guns:³⁷ see the diary entry for the same day.³⁸ A log for 18 July 2003 records that that G10A left Camp Stephen at 07.52 hrs to go to a petrol station:³⁹ see the diary entry for 18 July 2003.⁴⁰ The 1 QLR Commander's diary for 16.10 hrs on 11 September 2003 stated:

"Anzio Company c/s G10A was despatched to Water Point 7 at grid 6890 8300 after reports of thieves attempting to steal a generator. On arrival the c/s saw 3 UKMs attempting to steal the generator and 3 UKMs standing guard outside armed with AK47s. The 3 armed men fled as the c/s shouted a warning and fired warning shots. The 3 thieves attempting to steal the generator were apprehended and taken to Anzio Company base for processing before handover to the Iraqi Police."⁴¹

See diary entry for 11 September 2003.⁴²

- 3.17** In addition to these log entries, which in my view provide powerful independent evidence to support the diary entries (albeit not surprisingly they do not record the violence described in the diaries), some support can be gleaned from photographs found at MacKenzie's home by the SIB. The photographs show images of Iraqi civilians hooded with sandbags and with their hands over their heads surrounded by soldiers; an Iraqi man lying on the ground with a soldier's boot on him; two distressed and possibly injured Iraqi civilians in the back of a Saxon.
- 3.18** As I have already commented earlier in the Report, I found MacKenzie to be a singularly unimpressive witness. He was dismissed from the Army on grounds that he had sold fake photographs to a national newspaper displaying abuse of Iraqis by soldiers.⁴³ He was described in this newspaper as Soldier A although he still denies that he was Soldier A.⁴⁴ The Army did not believe this denial and nor do I. His credibility therefore started at a very low ebb. However, in my view the entries in his diary have the ring of truth, albeit as he admitted, he may have exaggerated and embellished them.⁴⁵ They are the one part of his evidence on which, in my view, it is possible to rely.
- 3.19** The contents of the diaries are supported in a general sense by the evidence of Richards, Reader, Douglas and, to an extent, Allibone. I have already commented favourably on Douglas' and Richards' credibility. Further, in my opinion, it is in the

³⁵ Bentham BMI 41/130/8-15; Bentham BMI 41/135/6-22

³⁶ Cooper BMI 29/9/2-19; Cooper BMI 29/92/8-94/2

³⁷ MOD048593

³⁸ MOD015577

³⁹ MOD048590-2

⁴⁰ MOD015585

⁴¹ MOD016822

⁴² MOD015579

⁴³ MOD029840

⁴⁴ MacKenzie BMI 29/207/1-208/15

⁴⁵ MacKenzie BMI01053, paragraph 79

highest degree unlikely that the entries in the two logs which coincide with diary entries are mere coincidences. If MacKenzie compiled the diary weeks or months after the events it is improbable in the extreme that he could have remembered the dates of these events with such accuracy. Taken as a whole, they give the impression of contemporaneous entries.

- 3.20** I do not leave out of account the evidence of other members of the Multiple who denied the truth of the diary entries. It is understandable that they should wish to distance themselves from this record of events. Taking the evidence of the diary entries and the other evidence as a whole, I accept the tenor of the diary entries. I find that generally they give an accurate account of the sort of casual violence in which members of the Rodgers Multiple indulged.
- 3.21** As to the evidence which implicates named individuals as being involved in casual violence, I have expressed above my doubts about making findings of misconduct by individuals on the basis of Richards' evidence. I have the same doubts about attributing any specific violence to Rodgers. But I accept the evidence of both Richards and Reader that Rodgers was present and witnessed acts of casual violence. In my view, on the basis that acts of casual violence were perpetrated by members of the Rodgers Multiple, as I find they were, it seems to me obvious that Rodgers must have been aware of them and witnessed some such incidents.

Chapter 2: Isolated Incidents of Casual Violence Witnessed by Other Soldiers

Jones

- 3.22** LCpl Graham Jones was aged 39 at the time of Op Telic 2. He had been in the Territorial Army (TA) for approximately thirteen or fourteen years and was detached from his TA battalion to serve with 1 QLR as a member of 5 Platoon, B Company. He was a qualified Saxon driver. In his Inquiry statement and in oral evidence he described general violence on Iraqi civilians by soldiers. He also described three specific incidents of violence.
- 3.23** In general he said that “*roughing up*” of civilian prisoners by soldiers was a regular occurrence, “...it just seemed to be the norm”.⁴⁶ The “*overuse of aggression*” was regular and whilst not everyone indulged in it “...*certain elements in there just seemed to think it was a free for all...*”. He said he had seen punches thrown and kicks on occasions but not by his own multiple.⁴⁷
- 3.24** The first of the three specific incidents occurred at B Company’s location and involved soldiers from B Company, in particular, a blonde soldier. Detainees were brought into the camp by B Company soldiers but none from his platoon. The detainees were hooded and plasticcuffed.⁴⁸ He saw them being unloaded from the vehicle and made to kneel down under “*the canopy*”.⁴⁹ One of the detainees was punched once to, he believed, the side of the head. The soldier who punched the detainee was a large blonde soldier from the HQ element of B Company. The blow sent the detainee “...*straight to the floor ...*”.⁵⁰
- 3.25** In his witness statement Jones had described soldiers pushing these detainees around and “...*roughing them up with some kicks...*”.⁵¹ He agreed that this was an accurate description and accepted that in his statement he had made no mention of the single punch. However, he asserted that the single punch stood out more than anything else.⁵² The other punches were “...*just small punches to jolly them on...*”.⁵³ This incident, he said, occurred in mid-September.⁵⁴
- 3.26** The second incident occurred on a subsequent occasion when Jones said he was tasked to be a guard commander at the Temporary Detention Facility (TDF). He and two other guards were given instructions by two men, one of whom he believed was an “*RP guy*” and the other an intelligence officer.⁵⁵ He and the other guards, who were not from his multiple, were told to “*rough them up a bit and disorientate them*”.⁵⁶

⁴⁶ Jones BMI 49/115/21

⁴⁷ Jones BMI 49/103/10-105/17

⁴⁸ Jones BMI 49/54/12-13

⁴⁹ Jones BMI 49/55/10-12

⁵⁰ Jones BMI 49/56/8-57/2

⁵¹ Jones BMI05354, paragraph 8

⁵² Jones BMI 49/57/13-58/20

⁵³ Jones BMI 49/59/22-23

⁵⁴ Jones BMI 49/51/10-12

⁵⁵ Jones BMI 49/69/20-70/11

⁵⁶ Jones BMI 49/77/9-10

- 3.27** Jones said he and the guards did not carry out this instruction but they did “*make sure they knew there was a presence around them*”.⁵⁷ Some of the guards did punch and kick detainees but Jones said he made sure it stopped.⁵⁸
- 3.28** The third incident involved a detainee being punched and kicked when in the back of a Land Rover which at the time, Jones alleged, was being driven by Lt Michael Peel. Jones was detached from his platoon on this day and attached to Peel’s Multiple driving a Saxon. He could see the Land Rover in front of the Saxon which he was driving. As they approached an area in the vicinity of the old university he saw arms and legs being raised and descending in the back of the Land Rover. He assumed it was a detainee being assaulted.⁵⁹ In the grounds of the old university the Land Rover stopped and the detainee was dragged off it. At that stage “*he really did take a bit of a beating there. He was getting kicked and punched and dragged down the road*”.⁶⁰ Jones said Peel must have seen what was going on in the back of the Land Rover and when the detainee was dragged down the road. Jones said he was “*pretty confident*” that the incident involved Peel and his Multiple. He knew of Peel and was able to recognise him.⁶¹
- 3.29** Peel denied that any such incident had taken place involving him and members of his Multiple. He pointed out that he never drove a Land Rover. Detainees were always put in the back of the Saxon for safety and security rather than in a Land Rover. He said he regarded as offensive and ridiculous the allegation that members of his Multiple would assault a detainee in the back of an open Land Rover which was being driven down a public road.⁶²
- 3.30** Jones was on the whole an impressive witness. He was older and more mature than most of the young soldiers who made up the bulk of 1 QLR junior soldiers. I find that his evidence was truthful. So far as the first and second incidents are concerned and the general allegations of mistreatment of detainees, I unhesitatingly accept Jones’ evidence. I find that both incidents occurred substantially as Jones described them.
- 3.31** In respect of the third incident involving Peel’s Multiple, I have reservations. Peel’s explanations as to why he could not have been involved in that incident were, in my opinion, convincing. There is no evidence from other members of Peel’s Multiple to assist in resolving this issue. In the circumstances I reject the allegation that Peel was involved as Jones alleged.
- 3.32** There is some suggestion that Jones might have confused Peel with Capt William Riley, the Commander of 5 Platoon of which Jones was a member. Riley was, in my opinion, an excellent witness. He denied any knowledge of this incident and I accept his evidence.⁶³
- 3.33** In the circumstances I think it probable that Jones did witness such an incident as the third incident which he described. But I find that he was mistaken in his evidence that Peel was involved in it. I also reject the suggestion that Riley was in any way involved.

⁵⁷ Jones BMI 49/79/17-80/7

⁵⁸ Jones BMI 49/83/6-84/13

⁵⁹ Jones BMI 49/90/13-93/8

⁶⁰ Jones BMI 49/94/8-95/12

⁶¹ Jones BMI 49/96/5-98/18

⁶² Peel BMI 48/233/3-234/15

⁶³ 2nd Lt William Riley BMI 49/22/21-23/8

Stokes

- 3.34** Bdr Terence Stokes joined the Parachute Regiment in 1990 but was deployed to Iraq as a Royal Artillery Bombardier attached to S Company. He came to the attention of the Inquiry as a result of completing a questionnaire sent to all enrolled members of 1 QLR at the time of Op Telic 2. He had not hitherto been approached to make a statement. In his Inquiry witness statement⁶⁴ he described two incidents of ill-disciplined violence by soldiers against civilian detainees.
- 3.35** The first was an occasion at BG Main when he was walking past the TDF. I have already described his evidence about this in Part II. In short, he said that he saw a detainee kneeling down in what he called the “*compliance position*” outside the TDF. He saw a guard kick the detainee in the face and he then saw blood on the detainee’s face.⁶⁵ My conclusion is that this incident occurred, but that Stokes was probably incorrect in saying that it involved the Op Salerno Detainees.
- 3.36** Stokes said he did not report the incident. There was present at the time a soldier who out-ranked him and as a member of the Royal Artillery he did not feel that any complaint by him would be taken any further.⁶⁶
- 3.37** The second incident occurred about three weeks after the first. He was guarding Basra docks when a patrol was out at night looking for thieves stealing material from the docks. When the patrol returned it brought in three suspects who had been trying to steal bits of steel and metal. In due course soldiers from 1 QLR came to collect the three men. Two younger men of the three were placed in the back of the Saxon without incident. The third, an older man, took more time to get into the Saxon. One of the soldiers who were helping to load the detainees into the Saxon put his foot on the man’s chest and pushed him with such force that the detainee lost control of his bowels. Stokes said he remonstrated with the soldier, whose explanation was “*We’re getting them in, aren’t we?*”.⁶⁷
- 3.38** Stokes did not report this incident either.⁶⁸ In my view he was clearly an honest witness and I have no difficulty in accepting his evidence of these two incidents.

Simmons

- 3.39** Cpl Kenneth Simmons, it will be remembered, was one of the drivers who transferred the Op Salerno Detainees to Um Qasr. I have already commented favourably on his credibility as a witness. In his Inquiry witness statement he described seeing detainees being thrown or kicked out of the back of vehicles when hooded. This happened at Camp Stephen and at the Old State Building.⁶⁹ He confirmed this in his oral evidence to the Inquiry, saying that he had seen such incidents on three or four occasions. On some of those occasions the detainees were hooded and plasticcuffed.⁷⁰ These

⁶⁴ Stokes BMI06151

⁶⁵ Stokes BMI 43/183/25-186/21

⁶⁶ Stokes BMI 43/190/10-18

⁶⁷ Stokes BMI 43/196/2-197/6

⁶⁸ Stokes BMI 43/197/22-24

⁶⁹ Simmons BMI04502, paragraph 37

⁷⁰ Simmons BMI 24/69/19-70/8

incidents occurred at A and C Company locations but he did not know whether they were soldiers from these companies.⁷¹

3.40 There is no evidence that Simmons reported these incidents.⁷² However, I regard him as a truthful witness and I accept he witnessed such incidents as he described.

Lighten

3.41 There is one other incident which was witnessed by Maj John Lighten, the Officer Commanding B Company, who witnessed a member of his company try to hit a civilian who had head-butted and spat in the face of this soldier when he was being arrested. This latter incident, Lighten said, was quickly dealt with by the soldier's platoon sergeant and the Company Sergeant Major.⁷³

Generally

3.42 In my judgment all of these three men were truthful witnesses. Apart from my reservations in relation to Jones' description of the third incident he saw, I have no doubt that their evidence can be accepted as accurate. None of them reported these incidents and it might well be said that they ought to have done so. Nevertheless, for the most part, when they witnessed these incidents they were almost always in the company of a soldier senior in rank to them. In the circumstances it is understandable, if not correct, that they did not report what they had witnessed.

⁷¹ Simmons BMI 24/71/6-23

⁷² Simmons BMI 24/71/4-5

⁷³ Lighten BMI 56/110/17-111/12

Chapter 3: Other Allegations

- 3.43** There is other evidence which might suggest that casual violence in 1 QLR was wider than just the incidents involving the Op Salerno Detainees. Allegations have been made that Lt Col Jorge Mendonça was involved in such incidents or was aware of incidents of casual violence. I have considered and rejected these allegations in Part II of the Report.
- 3.44** Further allegations arise out of the transcript of the interview of soldiers A (MacKenzie) and B by *Daily Mirror* journalists. It will be remembered the *Daily Mirror* was the national newspaper which published the fake photographs found to have been produced by MacKenzie. As to the transcript, there has been some suggestion that soldier B was Bentham. Bentham denies this and the evidence that it was him is, in my opinion, too tenuous for me to find that he was soldier B. The transcript itself contains allegations of violence by soldiers on civilians. But bearing in mind that the photographs produced by MacKenzie were fake it would in my opinion be dangerous and unfair to rely on any of the allegations disclosed in that interview.
- 3.45** Another allegation concerned Maj Paul Davis, at the time Officer Commanding A Company (before Maj Richard Englefield took over this post). The allegation against Davis was made by Capt Stuart MacFarlane, the suggestion being that Davis had used casual violence. MacFarlane was attached to 1 QLR for a period between 30 June 2003 and about 16 July 2003. He kept a diary in which he recorded an incident which occurred on a date between 7 and 10 July. In evidence, MacFarlane described Davis' behaviour towards a detainee who had just been brought in. He said Davis, whilst not using any violence in the sense of hitting or kicking the detainee, held him at the shoulder and shook him. MacFarlane said that what struck him was Davis' loss of control in front of his soldiers. Later on the same day he spoke to WO2 Peter Tomkinson the Company Sergeant Major (CSM), and the Company Quartermaster Sergeant (CQMS), Sgt Christopher Maycock, about what he had seen.⁷⁴ He said on the following day Maycock told him that the detainee had been found to have broken wrists. He was told by Maycock this was the result of rough handling by a guard.⁷⁵
- 3.46** MacFarlane's evidence in respect of this incident is wholly contradicted by Davis and the two senior Non-Commissioned Officers (NCOs). It is clear that MacFarlane's brief attachment to 1 QLR was not a success and he was quickly moved to another unit. It is submitted on behalf of Davis and the two NCOs that MacFarlane bore a grudge against 1 QLR and against them in particular.
- 3.47** My impression of MacFarlane, based on his demeanour in the witness box was that he is a somewhat flamboyant character who might tend to exasperate some colleagues. I suspect that his evidence in respect of this incident was truthful and accurate. However, apart from the interesting reference in the MacKenzie diary for 8 July 2003 to a hostage with a broken wrist, there is no evidence which in any way supports MacFarlane's account. Even the diary entry may have no connection with the incident referred to by MacFarlane. In the circumstances, in my opinion, there is insufficient evidence upon which I could make a finding that this incident occurred in the way he described.

⁷⁴ MacFarlane BMI 54/14/7-17/10

⁷⁵ MacFarlane BMI 54/19/18-20/21

The Garamsche Tribe and C Company

3.48 The Garamsche tribe were thought by 1 QLR to be criminal trouble makers – “*the heavily armed Mafia of Northern Basra City*”.⁷⁶ They were also unpopular with the *local* population.⁷⁷ A number of operations were carried out against them. On 8 September 2003 an entry in the Commander’s diary recorded that a threat had been made by the Garamsche to local shopkeepers. As a result, C Company was ordered to take action against them. The diary in the material part read:

“.. the GARAMSHA want the shops shut for 72hrs, Corunna Coy will mount an Operation on AL JAZEAR St and 1 KINGS will inform the GARAMSHA that they will be dealt with harshly if they try to enforce this ultimatum.”⁷⁸

3.49 This entry was not drafted by Mendonça. He was on leave at the time. Maj Chris Suss-Francksen, the Second in Command (2IC), also disclaimed responsibility for it.⁷⁹ Mendonça said in evidence that while “*harshly*” might not have been the best word to use it was entirely appropriate to deal with the Garamsche “*very firmly*”.⁸⁰

3.50 S037, a private soldier in C Company, described a conversation which he overheard between Maj Mark Kenyon and Capt Garry Pinchen, C Company’s 2IC, in which Kenyon said he had “*carte blanche*” to deal with the Garamsche in whatever way he determined.⁸¹ Mendonça, Kenyon and Pinchen all denied that this expression was used by any of them.⁸²

3.51 Whoever drafted the entry and whatever might be inferred from it, there is a body of evidence which shows that serious physical assaults were carried out on the Garamsche. Equally, it is right to record that a large number of soldiers said that they did not see any unjustified violence that day.

3.52 Cpl James Dunn saw four of the detained Garamsche being punched and kicked whilst being manhandled into transport at the scene of the arrest and throughout the journey to C Company’s location, “...*they were screaming and squealing like pigs*”. He described the physical assaults continuing for about ten to fifteen minutes at the Old State Building in the presence of Kenyon and the C Company WO2, Noel Parry.⁸³

3.53 LCpl Alifereti Nasau, a medic not from C Company, saw members of the arrested Garamsche tribe being kicked and punched. He saw two of the tribesmen bleeding, one from the mouth and an old man with a cut over his eyes.⁸⁴

3.54 Two soldiers, LCpl Joe Meller and Pte Paul Bond described assaults by S037 on detainees.⁸⁵ Pte John Morris identified two other soldiers punching and kicking detainees. He saw a third strike a prisoner with a rifle butt.⁸⁶

⁷⁶ Mendonça BMI 59/94/1-7

⁷⁷ Kenyon BMI 60/121/21-122/11

⁷⁸ Mendonça MOD016820

⁷⁹ Suss-Francksen BMI 56/220/9-20

⁸⁰ Mendonça BMI 59/93/12-94/7

⁸¹ S037 BMI 49/218/1-11

⁸² Kenyon BMI 60/152/6-18; Mendonça BMI 59/94/8-15; Pinchen BMI 50/51/23-52/13

⁸³ Dunn MOD009453-4

⁸⁴ Nasau MOD009441

⁸⁵ Bond MOD009449; Meller MOD009408

⁸⁶ Morris MOD009475-6

- 3.55** On arrest the detained Garamsche were blindfolded for lengthy periods, either with sandbags or by black gaffer tape being wrapped round their heads. Photographs graphically show such treatment. In each of these photographs S037 is shown in distasteful poses crouched by the detainees.⁸⁷ There is evidence that he shouted at, punched and kicked these detainees, see paragraph 3.51.
- 3.56** In evidence S037 accepted that he featured in the photographs but denied that he had assaulted any of the Garamsche.⁸⁸ He said that at the scene of the arrest the confrontation with the Garamsche was tense and there was a large crowd. He alleged that a prisoner spat in his face and Kenyon, noticing his anger, spoke to him in words to the effect, “*Nothing out here, behind closed doors*”.⁸⁹ This was denied by Kenyon.⁹⁰ S037 accepted that on arrival back at the Old State Building he had “*exercised*” the detainees in order to keep them disorientated.⁹¹
- 3.57** Kenyon and Parry denied that they had seen any of the Garamsche being assaulted,⁹² although Parry accepted in evidence that he had raised with Kenyon concerns he had about the treatment of them.⁹³ He agreed that in the handover of the Garamsche on 9 September 2003 to 1 King’s Regiment there were noticeable signs of injuries on some of them.⁹⁴ This was confirmed in statements from a number of 1 Kings soldiers.⁹⁵
- 3.58** Following this incident Kenyon addressed the whole of C Company.⁹⁶ A number of those present (but not others) said the address constituted a form of apology for the fact that the treatment of the Garamsche had gone too far. Kenyon denied that he acknowledged that abuses had taken place. His version of the address was in essence that if anything had “*gone on*” it was not to be condoned; there was no change in circumstances and he would not tolerate any abuse of detainees.⁹⁷
- 3.59** Pinchen did not remember being at the address but accepted that he had heard talk subsequently that the address had indicated that the Garamsche tribesmen had not been properly treated.⁹⁸ LCpl Dean Liggins also remembered Kenyon effectively saying he may have condoned a bit of harsh treatment but it must cease forthwith.⁹⁹
- 3.60** In respect of this incident I have not attempted to summarise all the evidence. Much of it is contained in witness statements by soldiers, which were read, but who were not called to give oral evidence. Respecting the Inquiry’s terms of reference, I was concerned to avoid disproportionate investigation of satellite issues and events. Accordingly, I made it clear during the course of the evidence that the Garamsche incident had only slender relevance to the main issues in the Inquiry. Evidence of

⁸⁷ MOD054308; MOD054309; MOD054310

⁸⁸ S037 BMI 49/230/3-231/17; S037 BMI 49/217/18-25

⁸⁹ S037 BMI 49/209/13-213/24

⁹⁰ Kenyon BMI 60/152/24-153/1

⁹¹ S037 BMI04335, paragraph 20

⁹² Kenyon BMI 60/130/22-25; Parry BMI 58/118/4-8

⁹³ Parry BMI 58/123/13-20

⁹⁴ Parry BMI 58/120/9-121/20

⁹⁵ Parry BMI 58/147/19-150/2

⁹⁶ Kenyon BMI01512, paragraph 29

⁹⁷ Kenyon BMI 60/149/13-151/7

⁹⁸ Pinchen BMI 50/58/20-50/61/9

⁹⁹ Liggins BMI 19/22/9-18

the incident was not therefore subjected to the close scrutiny accorded to evidence in respect of the principal issues.

3.61 In the circumstances it would be unfair and inappropriate for me to make detailed findings in respect of this incident. Its relevance is that it helps to show, with other evidence already referred to, that the events of 14 to 16 September were not a “one off”. I have no doubt that on their arrest and during the time they were held at the Old State Building the Garamsche were subjected to physical assaults. The photographs give the flavour of the humiliating treatment they suffered at the hands of C Company soldiers. I think it probable that Kenyon realised that the Company had gone too far in its dealings with the Garamsche, hence the need for him to address the whole Company.

Racism

3.62 The Inquiry’s main concern has been the use of violence on civilian detainees. But in the course of evidence, questions have been addressed to witnesses on the issue of racism and racist language. There is little, if any, evidence of racist-inspired violence, although the remark made by Cpl Donald Payne, “*fucking ape*”, clearly audible in the Payne video, was clearly racist and might suggest his motivation was in part racial.¹⁰⁰

3.63 There is, however, some evidence of racial comments being made. Capt Riley admitted hearing such words and phrases as “*sand nigger*” and “*raghead*”.¹⁰¹ Cpl John Douglas recollected hearing the words, “*chogies*”, “*Paki bastards*” and “*black bastards*”.¹⁰²

3.64 A number of witnesses heard the use of the words “*Ali Babas*”. However, that expression was, it was said, an expression in common use by both soldiers and Iraqis to describe thieves.¹⁰³

3.65 Although Mendonça said that he made it clear to his officers and men that derogatory racial words and phrases were wholly unacceptable, I am bound to observe I would be surprised if at times racial expressions had not been used by soldiers. However, on the evidence which I have heard in this Inquiry there is no sufficient basis to suggest that the violence that did occur was racially motivated. The fact that Mendonça and others may have issued orders or directions indicating that Iraqis respected firm handling or robust treatment does not, in my judgment, come anywhere near justifying a conclusion that racial motivation played a part in the ill-treatment of civilians.

¹⁰⁰ Payne BMI 32/146/4-15

¹⁰¹ 2nd Lt William Riley BMI 49/27/11-28/3

¹⁰² Douglas BMI 31/70/2-23

¹⁰³ Allibone BMI 24/93/15-24/19; Brown BMI 38/131/19-132/3; Douglas BMI 31/70/2-23; Hunt BMI 27/137/2-11

Chapter 4: General Conclusions on These Allegations

- 3.66** Many soldiers and officers from 1 QLR gave evidence that the Battlegroup was not involved in unjustified violence against Iraqis. However, it follows from my findings above that there were other incidents of abuse and mistreatment of Iraqi civilians by soldiers of 1 QLR. The MoD in its closing submissions accepted with regret that the violent treatment of the Op Salerno Detainees was not the only incidence of unacceptable behaviour by members of 1 QLR.¹⁰⁴ In my judgment, that concession was rightly made.
- 3.67** These other incidents which I have discussed demonstrate failures of discipline in other sub-units of 1 QLR in addition to the Rodgers Multiple. They involved other soldiers in A Company, B Company and C Company. They were, as are all breaches of discipline involving civilians, serious incidents. All ought to have been reported up the chain of command.
- 3.68** Nevertheless, in my opinion, although they show that the incident involving the Op Salerno Detainees was not an isolated incident, they do not demonstrate that such disciplinary failures were so widespread throughout 1 QLR as to amount to an entrenched culture of violence in the Battlegroup. Nor, as stated above, was there in my opinion an entrenched racist attitude by members of 1 QLR. Other incidents such as the one witnessed by Lighten might, of course, have occurred; such a possibility cannot be ruled out.
- 3.69** It is also right to record that there is no evidence of any other incident as serious as the one involving the Op Salerno Detainees. As for the responsibility for these breaches of discipline, I discuss this issue in Part II of the Report. In particular, in Chapter 21 of Part II, I have discussed other allegations involving Mendonça.

¹⁰⁴ SUB001046



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