The Report of the Baha Mousa Inquiry

The Rt Hon Sir William Gage
(Chairman)

Volume II

HC 1452–II

The Baha Mousa Public Inquiry Report

Chairman: Sir William Gage

Volume II

Presented to Parliament pursuant to Section 26 of the Inquiries Act 2005
Ordered by the House of Commons to be printed on 8 September 2011

HC 1452–II LONDON: THE STATIONERY OFFICE £155.00

Three volumes not be sold separately

© Crown copyright 2011

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit http://www.nationalarchives.gov.uk/doc/open-government-licence/ or e-mail: psi@nationalarchives.gsi.gov.uk.

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

This publication is also available for download at www.official-documents.gov.uk

The details of the Inquiry are available at www.bahamousainquiry.org

ISBN: 978 0 10 297492 8

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office
P002448815 09/11 19585 11027

Printed on paper containing 75% recycled fibre content minimum.

Volume II – Parts IV to IX

Part IV

Part V

Part VI

Part VII

Part VIII

Part IX

Part IV

The Historical Context to 1972 and the Development of Orders and Publications between 1972 and 1997

Chapter 1: Introduction

4.1 On 9 August 1971 the Government introduced internment in Northern Ireland. This was in response to the increasing violence in the Province. It resulted in those viewed as suspected terrorists being interned and interrogated. It was not long before complaints were made about the treatment of those interned. Amongst the complaints of mistreatment were specific allegations of hooding, noise, wall-standing, deprivation of sleep, and deprivation of food and water. These complaints of mistreatment came to be known as the "five techniques". Two inquiries followed: The Compton Inquiry in 1971 and the Parker Inquiry in 1971 to 1972.

4.2 On 2 March 1972, the Prime Minister, the Rt. Hon. Edward Heath MP, announced in the House of Commons a ban on the five techniques (the Heath Statement). Despite this ban it appears that the five techniques did not disappear. The Inquiry has sought to trace their origins before the Heath Statement and the reasons for them re-surfacing following it. This exercise has led the Inquiry to unearth and examine a large number of documents dating from before the ban and an equally large number of documents from the period after the ban. Only three witnesses have given evidence, their evidence being received in the form of written witness statements. Essentially, these witnesses were researchers who provided the documentary evidence to the Inquiry.

4.3 The deployment of the documents in the Inquiry's Module 1 largely took the form of oral exposition by Counsel to the Inquiry.

4.4 The Core Participants are divided in their approach to what they label the historical context in this part of the Inquiry. The Detainees in their opening submissions produced an interesting and scholarly treatise, taking as its theme:

> *"... an historical thesis that is not readily apparent from the released Cabinet and Ministry of Defence documents that deal with the use of the 5 techniques in Northern Ireland. The thesis principally describes the processes which have enabled democracies to maintain and style their torture practices over time".*[1]

4.5 This thesis starts with the assertion that "*… techniques of extreme violence were used by the Army in counter-insurgency operations throughout the period of the British Empire*".[2] Further, it argues that in order to cope with the development of human rights, and human rights monitoring, the Army has had to develop new forms of ill-treatment in order to avoid torture that leaves marks. It characterises this as the development of stealth torture.

[1] PIL000704
[2] Ibid.

4.6 The MoD challenges this interpretation but, in any event, submits that the breadth of these submissions is outside the scope of the Inquiry's terms of reference. I have read and re-read with care the documentary evidence deployed in the Inquiry and at the same time kept in mind the stealth torture thesis. I conclude, however, that for a number of reasons it is unnecessary and inappropriate in the Report for me to deal in detail with the documents and events before the Heath Statement. Firstly, while significant records from this period were retained, it is not possible to be sure that all the relevant documents have been disclosed. Nor, for obvious reasons, would it have been possible to obtain first hand witness evidence of the earlier events from many of those involved. Secondly, the cost involved in carrying out an in-depth examination of the documents and events would in my opinion be disproportionate to the likely outcome. Thirdly, in any event, in my view events before the Heath Statement are not sufficiently close to the core issues in the Inquiry for such an exercise to be carried out.

4.7 Fourthly, in my view the real starting point for the Inquiry is the Heath Statement itself. What is important is to determine what it was intended to cover, what effect it had and what were the consequences of it.

4.8 For these reasons I propose to be selective in my reference to the events and documents before the Heath Statement and the comments which I make in respect of them. That is not to say that I reject the thesis put forward on behalf of the Detainees; merely that I do not think it either possible or necessary for me to form a view on it. However, I recommend that those interested read the Detainees' submissions on this aspect,[3] the MoD's historical annex attached to its submissions[4] and Counsel to the Inquiry's opening statement.[5]

[3] PIL000704-34
[4] SUB001131-001239
[5] BMI 1/27/8-3/50/23

Chapter 2: Prior to the Compton Inquiry

4.9 In general, the documents show that some or all of the five techniques had been in use for many years before their use in Northern Ireland. This was publicly acknowledged by Lord Carrington, the Secretary of State for Defence, in an unattributable briefing to correspondents on 16 November 1971[6] following the publication of the Compton Report on the same date (of which more later). Carrington there described the techniques as having been "*…used for 20 years or so*".[7]

4.10 In more detail, Brig R M Bremner provided a history of the use of intelligence gathering techniques in internal security situations in a report prepared as evidence for the Parker Inquiry.[8] Bremner's report dated 18 November 1971 set out the historical narrative of interrogation operations, the evolution of training and liaison in interrogation, and interrogation methods and techniques. The historical narrative, noting little of significance after hostilities with Germany came to an end in 1945 until the Malayan campaign in 1956, encompassed Malaya, Kenya, Cyprus, British Cameroons, Swaziland, Brunei, Aden, British Guiana, Borneo-Malaysia and finally, Northern Ireland. The report described the principles of interrogation as follows:

> *"a. Strict discipline must be inculcated in individuals selected for interrogation and to this end the following means are to be adopted:*
>
> *(1) Wall standing when not in individual cells or under interrogation.*
>
> *(2) A bread and water diet at regular intervals.*
>
> *(3) Limited deprivation of sleep.*
>
> *b. Rigid security measures must be enforced. These must be designed to maintain the security of the interrogation activity as a whole as well as safeguarding the individual subjects from mutual recognition and subsequent retribution. In this connection the use of hooding and background noise are of great assistance, where soundproofed cells are not available, to isolate subjects from one another.*
>
> *c. Information must be elicited as soon as possible in order to be in time for it to be exploited or to save life.*
>
> *d. Any form of violence or outrage must be avoided to conform with reference b. In any event, information thus gained cannot be relied upon.*
>
> *e. …*
>
> *f. …*
>
> *g. Long interrogations, both by day and by night, may be necessary, with subsequent disruption of the normal routine of living."* [9]

4.11 Returning to the chronology of the historical narrative, it is unnecessary to refer in detail at this stage to the 1949 Geneva Conventions for the Treatment of Prisoners of War. They have formed the backdrop for many of the submissions in the Inquiry on different issues. In any event, in November 1951 the War Office issued the 1951

[6] MOD031428
[7] MOD031429, paragraph 8
[8] CAB001604
[9] CAB001608, paragraph 29

Regulations for the Application of the 1949 Geneva Conventions and for the Treatment of Prisoners of War.[10] The Regulations were lengthy and detailed and I set out only limited passages from them.

4.12 The preface explained at paragraph 3:

> *"The object of these Regulations is to ensure that the principles of the above conventions [the Geneva Conventions] are understood and observed by all ranks, to clarify the rights and privileges to which members of the armed forces are entitled if they fall into the hands of the enemy, and to secure correct and uniform treatment for enemy prisoners of war."* [11]

4.13 Paragraphs 1, 2, 10 and 11 of the Regulations set out the following general principles:

> *"1. The Geneva Conventions for the Protection of War Victims, 1949, will be observed by all ranks in the event of hostilities. All troops on active service will carry a summary of the Conventions ...*
>
> *2. In circumstances not covered by the following regulations, or when their detailed application is impracticable, local commanders will ensure compliance with the general principles set out below, consulting the texts of the conventions as necessary ..."* [12]
>
> *"10. Prisoners will at all times be treated humanely and with respect. They will be protected against acts of violence or intimidation and against insults. No measures of reprisal will under any circumstances be taken against them, nor will any discrimination be made to the detriment of any prisoner or group of prisoners because of their race, nationality, religious belief or political opinions.*
>
> *11. Generally speaking, prisoners of war will on capture be treated and guarded in the same way as a British soldier under close arrest. Special care must, however, be taken to preserve any documents they may have in their possession and to see that when interrogated they are in a fit condition to answer questions. The treatment of prisoners from the time of capture and during interrogation will be firm but fair. They will be given food and drink at regular intervals, and if they are wounded care will be taken to see that they receive the same treatment as British troops. There will, however, be no fraternization with prisoners of war, nor will they be allowed to smoke before they have been interrogated."* [13]

4.14 Paragraph 19 of Part 1 of the Regulations in respect of questioning provided:

> *"A prisoner of war when questioned is bound to give only his surname, first name, rank, date of birth, and number. He must also produce his identity card when asked for it but in no case may it be taken away from him; even if he refuses this information, he will still be treated strictly in accordance with the Convention but any privileges accorded over and above the provisions of the Convention may be withdrawn. No physical or mental pressure, nor any other form of coercion, may be exerted on prisoners of war in order to induce them to answer questions; they may not be threatened, insulted or suffer any disadvantage as a result of a refusal to answer."* [14]

[10] MOD038665
[11] MOD038671
[12] MOD038670
[13] MOD038673
[14] MOD038675

4.15 At paragraphs 54, 57 and 59 of Part 1, the treatment of civilians was dealt with in the following terms:

> *"54. The obligations under the Civilian Convention, dealing with the treatment of individual persons other than sick and wounded, are for the most part restricted to the inhabitants of occupied territory ... The provisions in these Regulations are, however, to be regarded as constituting the minimum standard of treatment in regard to any civilians with whom the armed forces may come into contact. They should be read in conjunction with the instructions in 'Administration in the field, volume II,' and such other relevant orders and publications as may be issued."*
>
> *"57. Civilians are entitled in all circumstances to respect for their person, their honour, their family rights, their religious convictions and practices and their manners and customs. They will at all times be humanely treated and especially protected against all acts or threats of violence and, when they are for any reason held in custody, against insults and public curiosity…"*
>
> *"59. The following acts are especially prohibited:-*
>
> *(a) …*
>
> *(b) The exercise of pressure, mental or physical, against civilians, in order to obtain information from them or from other persons.*
>
> *(c) Any measure which would cause the physical suffering or extermination of civilians in the hands of the forces, e.g. murder, torture, corporal punishment, mutilation or any medical or scientific experiment not necessitated in the course of medical treatment or any other measure of brutality."* [15]

4.16 So it can be seen that the general requirement of humane treatment and the prohibition on coercive treatment, whether of prisoners of war or civilians, to obtain information was very clearly addressed in these Regulations. It will be observed that there is no reference in these Regulations to the five techniques. This is not surprising given the early date of these Regulations and the fact that they addressed situations of international conflict, whereas the five techniques came to be used in internal security situations involving insurgencies.

4.17 The next document of relevance in the period post-war is the Joint Service Pamphlet entitled "Interrogation in War" which is dated 1955.[16] This document was classified as secret but is now available in the National Archives. It described interrogation techniques in section 13. The introductory paragraph stated:

> *"1. No hard and fast rules can be laid down for the conduct of an interrogation. Each interrogator must develop his own approach, and sometimes similar success is achieved by interrogators using diametrically opposite methods. If the interrogator is really determined and really well briefed, the actual technique of interrogation will usually look after itself. Nevertheless, there are certain hints which can be given from past experience and these are summarised below. The interrogator must, however, strictly adhere at all times to the terms of the Geneva Convention, relevant extracts of which are given at Appendix F."* [17]

[15] MOD038678-9
[16] MOD038251
[17] MOD038265

4.18 This description is in general terms and leaves the detail of the techniques to be used to the interrogator following guidance described in the ensuing paragraphs, of which the following are noteworthy:

> ***"Start strictly***
>
> *2. The prisoner should be marched into the interrogation cell as a defaulter to company office. Discipline outside the interrogation room must be rigid and the bearing of guards firm, smart and decisive. Inside, a strict military bearing should be demanded, the prisoners standing to attention, at least in the initial stages. As the interrogation progresses, increased relaxation and informality may be permissible. But whereas strictness can easily be slackened, an interrogator who starts on a note of friendliness and informality will find it very difficult to grow stern later.*
>
> ***Order and Imposition of will***
>
> *3. The interrogator should impose his will on the prisoner. His great asset is his naturally superior position. Especially in the first hours after capture the prisoner tends to be bewildered by his experience, unsure about his fate, and low in morale. Every advantage should be taken of his confusion to extract information, questions being asked in the form of orders which must be obeyed. Particularly in the junior ranks of certain armies, the habit of automatic obedience to the orders of any seeming superior can be exploited, but it has been proved by experience that certain oriental races tend to react favourably to initial kindness, and to grow sullen and silent if treated sternly.*
>
> ***Power***
>
> *4. The interrogator should try to build up in the prisoner's mind the idea that his whole future lies in his, the interrogator's hands. A whole wealth of hint and innuendo may be expended along these lines. Nevertheless, the interrogator must never use any form of threat which he is, in fact, powerless to implement. Should his bluff be called, all chance of success may be lost.*
>
> *…*
>
> ***Avoid Violence and Threats***
>
> *9. Prisoners will be treated according to the Geneva Convention at all times; interrogation by torture or ill-treatment in any way is not, in any circumstances, permitted. Indeed, it is to be doubted whether such methods would prove fruitful as the prisoner might tend to say what he believed the interrogator wanted to hear, whether or not this accorded with the facts. Acts of violence or spite only tend to arouse the prisoner's animosity. Moreover, such an approach really amounts to a confession of failure. The basic aim of the interrogator is to win the willing co-operation of the prisoner since only then is he likely to gain complete, reliable and accurate military information. This co-operation and respect he is likely to gain by a blend of firmness, understanding and sympathy."*[18]

4.19 The MoD has rightly conceded that in the contrast between paragraphs 4 and 9 as cited above, this document gave mixed messages about threats and should simply have made clear that threats must never be used. Mixed messages over what amounts to a threat persisted up to and, it seems, beyond Op Telic, as I shall address in later sections of this Report. The MoD now recognises this, accepting in relation to paragraph 4 of the 1955 pamphlet that:

[18] MOD038266-7

> *"The unfortunate implication in the former passage that threatening action which could be implemented, rather than that which could not, strikes a chord with the misunderstanding of the true position demonstrated by many of the witnesses to the inquiry who gave evidence about the Prisoner Handling and Tactical Questioning course."* [19]

4.20 Both the 1951 Regulations and the 1955 pamphlet were still extant in 1990. But it is important to recognise that they addressed the international conflict/warfare situation rather than the internal security type of operation in which the five techniques came to be used.

4.21 In relation to the internal security type of operation subsequent documents are not consistent as to the precise date when hooding, wall-standing and the other techniques were first used or where they were first used. One can do no better than refer to Bremner's report to which I have referred in paragraph 4.10 above.

4.22 Meantime, in 1956 the Interrogation Branch was formed at Maresfield. It was a Joint Service asset and an independent organisation with direct access to the War Office. It ran intelligence courses. In 1958 the courses were modified to include interrogation of agents and security suspects and the Interrogation Branch was absorbed into the School of Military Intelligence. It remained in the School until April 1965 when it was re-named the Joint Services Interrogation Wing (JSIW) and became independent of the School. In 1966 it moved to and became part of the Intelligence Centre at Ashford.[20]

4.23 In 1965 the final "Draft JIC (65) 15 Joint Directive on Military Interrogation and Internal Security Operations Overseas" was produced (the 1965 Directive).[21] It was presented to the Cabinet on 3 February 1965. The Directive contained general guidance relating to interrogation, stating in the introduction that:

> *"Successful interrogation depends upon careful planning both of the interrogation itself, and of the premises wherein it is conducted. It calls for a psychological attack. Apart from legal and moral considerations, torture and physical cruelty of all kinds are professionally unrewarding since a suspect so treated may be persuaded to talk, but not to tell the truth."* [22]

In a reference to the Fourth Geneva Convention, it made clear that the following acts were prohibited:

> *"(i) Violence to life and person, in particular mutilation, cruel treatment and torture;*
>
> *(ii) Outrages upon personal dignity, in particular, humiliating and degrading treatment."* [23]

4.24 Under the heading "Application to Interrogation" the following appeared:

[19] SUB001230, paragraph 234
[20] CAB001606, paragraph 18
[21] CAB001320
[22] Ibid.
[23] CAB001321

> *"8. To obtain successful results from interrogation, the actual and instinctive resistance of the person concerned to interrogation must be overcome by permissible techniques. This will be more easily achieved by sustained interrogation in an atmosphere of rigid discipline. It may therefore be necessary for interrogation to be carried out continuously for long periods both by day and by night with consequent disruption of the normal routine of living."* [24]

Despite the fact that they had previously been used and were, it seems, approved techniques in internal security type operations, the 1965 Directive made no mention of the five techniques, referring only in general terms to "*psychological attack*" and "*permissible techniques*".

Aden and the Bowen Report

4.25 At about this time a State of Emergency was declared in the Federation of Arabia (Aden). The Government of the day made provision for suspects to be held and questioned during the emergency under a holding order and thereafter detained suspects without trial. During the emergency suspected terrorists were interrogated in the Interrogation Centre which was staffed by the British Armed Forces. During the course of the emergency complaints surfaced from those detained. They consisted of allegations of cruelty and torture principally, but not exclusively, during the interrogation process. As a consequence, in October 1966 the Foreign Secretary asked the former Liberal MP for Cardigan, Mr Roderick Bowen QC, to investigate and report the procedures "*… current in Aden for the arrest, interrogation and detention of persons suspected of terrorist activities...*" [25]

4.26 The Bowen Report was completed in November 1966. It made clear that the British military were bound by the 1965 Directive. It made a number of recommendations, of which the most important, together with the Government's response, were summarised in a document attached to the Bowen Report. The recommendations included proposals that interrogations should be conducted by civilians; the medical care of detainees should be in the hands of the Local Director of Medical Services and the work carried out by civilians; that those detained should be seen daily by the Medical Officer and asked if they have any complaints, and there should be "early" investigation into allegations of ill-treatment.[26]

4.27 As a result of the Bowen Report, the 1965 Directive was amended in 1967 to include a mandatory requirement that all persons detained in an Interrogation Centre should be seen daily by a Medical Officer and asked if they had any complaints. Medical examinations were made mandatory on admission and discharge, and records of each person's weight recorded on admission and discharge.[27]

4.28 It is right to record, as the Detainees submitted, that the Bowen Report made no reference to standard operating procedures.[28] But it is not possible to determine on the evidence whether there were any standard operating procedures in existence.

[24] Ibid.
[25] NCP000433
[26] NCP000442-3
[27] CAB000270
[28] PIL000712, paragraph 56

Internment in Northern Ireland and the Compton Report

4.29 The next episode of importance was internment in Northern Ireland. As already stated, the internment operation was launched on 9 August 1971. The contemporaneous documents show that it was envisaged that in-depth interrogation would be carried out under conditions which permitted subjects to be: in ignorance of their whereabouts, in isolation, enduring long periods with little sleep, and subjected to white noise.[29] The draft Standing Orders provided that the interrogation centre was to be run in strict accordance with the 1965 Directive.[30] As the MoD points out in its submissions, those same orders made reference to matters which related specifically to the five techniques.[31] Paragraph 10 of Standing Order 1 provided for the provision of food and drink.[32] Paragraphs 5 and 8 of Standing Order 3 assumed the use of hoods (at least when moving);[33] and paragraph 1(c)(ii) of Standing Order 5 assumed the use of noise generators.[34] Further, the MoD concedes the five techniques were taught orally to RUC police officers in Northern Ireland by a team sent to Northern Ireland from the JSIW in Ashford. [35]

4.30 Whether or not, and to what extent, Government Ministers in the UK knew about the five techniques is a matter which it is not necessary for me to determine. What is clear is that it was the MoD view that Mr Brian Faulkner, in his capacity as Northern Ireland's Minister of Home Affairs, did know about them. In a minute dated 9 November 1971, the Assistant Under Secretary (General Staff), Mr A P Hockerday stated:

> *"Mr Faulkner … had been extensively briefed by the Director of Intelligence in Northern Ireland on the techniques of interrogation …"* [36]

4.31 Shortly after the internment operation in which 342 men were arrested, some of those released following interrogation made a public allegation that they had been mistreated. This led to the establishment of the Compton Inquiry. A letter dated 31 August 1971 from the Private Secretary to the Home Secretary to Sir Edmund Compton set out the terms of reference which were recited in paragraph 1 of the Compton Report:

> *"To investigate allegations [~~made~~] by those arrested on 9 August under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 of physical brutality while in the custody of the security forces prior to either their subsequent release, the preferring of a criminal charge or their being lodged in a place specified in a detention order."* [37]

[29] CAB001728
[30] CAB001670, paragraph 1
[31] SUB001141, paragraph 28
[32] CAB001672
[33] CAB001671
[34] CAB001682
[35] SUB001142, paragraph 29
[36] MOD032026
[37] CAB001441

It appears that it was intended that the Compton Inquiry was not to investigate the "*process of interrogation*" which was "*a security matter which could not be investigated*".[38] The Inquiry was finally established on 31 August 1971.[39]

4.32 The documents show that when the Compton Report was completed and seen in draft by a senior civil servant it caused some concern since it discussed the five techniques which it had been thought were outside the remit of the Inquiry.[40] In the ensuing weeks a recurring theme was raised for consideration, namely the tension between the use of the five techniques for security and/or as an aid to interrogation.

4.33 After some debate as to its contents a final note of the Government's position on the five techniques was sent to the Compton Inquiry. It was included as published at paragraph 46 as follows:[41]

"NOTE ON INTERROGATION

(1) The general rules governing the custody of detainees and the processes of interrogation have been reviewed from time to time by the Government Departments and agencies concerned in the light of experience gained in the various internal security operations in which H.M.G. have been involved since the last war. The techniques of interrogation currently in use have also been employed in many previous internal security situations. The latest instructions on the rules to be followed were issued in 1965, and were revised in 1967 to provide for the daily inspection by a medical officer in the light of the recommendations in the Report on the Aden situation by Mr. Roderic Bowen, Q.C., issued in November, 1966 (Cmnd. 3165).

(2) These general rules include the following safeguards:—

(*a*) Medical examination and record of weight of subject on admission and discharge.

(*b*) Subjects to be seen daily by a Medical Officer.

(*c*) The following are prohibited:—

(i) Violence to life and person, in particular, mutilation, cruel treatment and torture.

(ii) Outrages upon personal dignity, in particular humiliating and degrading treatment.

(*d*) Subjects are to be treated humanely but with strict discipline. (These rules follow the broad principles for the treatment of persons under arrest or detention during civil disturbances as laid down in Article 3 of the Geneva Convention relative to the Treatment of Prisoners of War (1949)).

(3) The precise application of these general rules in particular circumstances is inevitably to some extent a matter of judgment on the part of those immediately responsible for the operations in question. Intelligence is the key to successful operations against terrorists; and the key to intelligence is information regarding their operations, their dispositions, and their plans. When combating a terrorist campaign time is of the essence; information must be sought while it is still fresh so that it may be used as quickly as possible to effect the capture of persons, arms and explosives and thereby save the lives of members of the security forces and of the civil population.

(4) Information can be obtained more rapidly if the person being interrogated is subjected to strict discipline and isolation, with a restricted diet; but violence or humiliating treatment, as explained above, are forbidden. Equally any person undergoing interrogation must be assured of security against either violent treatment by his fellow detainees or recognition by them; the evidence of I.R.A. vengeance against informers underlines the importance of this safeguard."

4.34 The Report went on to record evidence received from officials on the application of the general rules set out in the Government memorandum by reference to four of the five techniques (deprivation of sleep being omitted). In the description of each of the techniques the security aspect was emphasised, although in each there was a reference to the assistance of the technique for interrogation purposes. As regards sleep deprivation, paragraph 66 of the report recorded the supervising staff as confirming that "*…it was the general policy to deprive the men of opportunity to sleep during the early days of the operation*".[42]

4.35 The Compton Report was published on 16 November 1971.[43] The Report dealt with the specific complaints and found that the five techniques constituted physical

[38] CAB002211
[39] MOD034574
[40] MOD033406; MOD033407-10
[41] PLT000613
[42] PLT000617
[43] PLT000594

mistreatment. The techniques were described in the Report as posture on the wall, hooding, noise, deprivation of sleep and deprivation of food and water.[44] It also made findings in respect of eleven men who complained of ill-treatment during in-depth interrogation. The treatment of these men was to form the subject of proceedings in the European Court of Human Rights (ECtHR) in which that Court held the use of the five techniques in these cases amounted to a practice of inhuman and degrading treatment in breach of Article 3 of the European Convention on Human Rights.[45]

4.36 The Report also stated:

> *"Where we have concluded that physical ill-treatment took place, we are not making a finding of brutality on the part of those who handled these complainants. We consider that brutality is an inhuman or savage form of cruelty, and that cruelty implies a disposition to inflict suffering, coupled with indifference to, or pleasure in, the victim's pain. We do not think that happened here."* [46]

4.37 The Compton Report was not well received by the Government. A note dated 8 November 1971 from Heath to Sir Burke Trend, the Cabinet Secretary, contained the following comment:

> *"I have now carefully read the Compton Report. It seems to me to be one of the most unbalanced, ill-judged reports I have ever read. It is astonishing that men of such experience should have got themselves so lost in the trees, or indeed undergrowth, that they are proved quite incapable of seeing the wood."* [47]

[44] PLT000622-3, paragraphs 92-96
[45] NCP000350
[46] PLT000624, paragraph 105
[47] CAB002084

Chapter 3: The Parker Inquiry

4.38 Before the Compton Report was even published the Government decided to set up a second Inquiry, this time a Privy Council Inquiry, chaired by the retired Lord Chief Justice, Rt. Hon. Lord Parker of Waddington. The other two members were Rt. Hon. Lord Gardiner QC and Rt. Hon. John Boyd-Carpenter.

4.39 The reason given for the second Inquiry, as stated by the Home Secretary in the House of Commons on 16 November 1971, was to review the methods of interrogation of terrorist suspects. The committee of three Privy Counsellors was:

> *"… to consider whether, and if so in what respects, the procedures currently authorised for interrogation of persons suspected of terrorism and for their custody while subject to interrogation required amendment."* [48]

4.40 On 18 November 1971 the Prime Minister and Lord Parker met. They discussed the purpose of the Inquiry. A record of what was said is contained in a letter of the same date sent by an official in Downing Street to the Home Office. The Prime Minister described the purpose of the Inquiry as to consider revised rules "*about interrogation procedures*". [49]

4.41 The letter contained the following passages:

> *"Lord Parker said that, in addition to drawing information from Government sources, he felt that the Committee would need to take evidence from those who held the extreme view that interrogation was totally unacceptable, for example Amnesty and similar bodies. The Prime Minister said that Amnesty appeared to be a disreputable organisation, but accepted that it was necessary to take evidence from those opposed to interrogation…*
>
> *Lord Parker said that he assumed that the Committee's terms of reference were general and were not confined to Northern Ireland. The Committee could then accept the Compton Report as information, and go on to look at the general principles.*
>
> *The Prime Minister confirmed that this was so…*
>
> *Lord Parker said that a certain amount of hardship or discomfort (he preferred to avoid the phrase 'physical ill-treatment') was bound to arise in a situation of emergency. The problem was to assess phenomena like lack of sleep, lack of food, and noise, which were related to the 'softening up' process…*
>
> *Lord Parker said that he was sure that any right thinking person accepted that interrogation was necessary; it was the 'matter of degree' which the Committee would be considering…"* [50]

4.42 Judged by the standards of today it seems at the least odd for a discussion of this sort to have taken place between the Prime Minister and the Chairman of the independent Inquiry which he was setting up. The Detainees in their submissions make strongly critical comments about what both men are recorded as saying in this discussion.[51]

4.43 Once the Inquiry had been set up the Government was faced with the task of preparing evidence to be placed before it. The job of coordinating evidence to the Inquiry was allocated to Sir Dick White, the Intelligence Coordinator. However, the tension between

[48] PLT000769
[49] CAB000291
[50] CAB000291-3
[51] SUB002896-7, paragraphs 149-151

the use of the five techniques to aid the interrogation process and the justification for them as security measures remained.[52]

4.44 As a result the presentation of evidence to the Inquiry caused considerable debate. White's view was that the three techniques, hooding, wall-standing and noise should be used solely for security purposes with a time limit of two hours. He also argued that the need to use these techniques could be considerably reduced if the facilities, layout and construction of the interrogation centre could be improved.[53] The General Staff of the MoD, supported by Sir James Dunnett, the Permanent Under-Secretary and others at the MoD, believed that the techniques should be retained if possible as aids to interrogation albeit within defined limits.[54] Even within the MoD, however, there were differing views, with the Minister of State Lord Balniel indicating a preference for White's approach.[55]

4.45 The documents record the different views being exchanged between various senior civil servants including Trend, the Cabinet Secretary. In the result, an accommodation between White and Dunnett was reached on how their evidence should be presented.[56]

4.46 The Detainees in their submissions suggest that in reaching the compromise in the presentation of the evidence, Dunnett prevented White from fully expressing his views, which included an opinion that the techniques were not necessarily effective in obtaining useful intelligence.[57] In its submissions, the MoD points to the fact that the difference of views was escalated to Ministerial level suggesting the absence of any intention to mislead; that there is a question (and there was some confusion at the time) as to the capacity in which White was to give evidence to the Parker Committee; that aspects of his views were confused and that it was not inappropriate to seek to settle an agreed line before the Committee.[58]

4.47 In addition to evidence from the above two senior civil servants, the Parker Inquiry received a paper prepared in part by Bremner. This was not the Report of 18 November 1971 to which I have already referred, but was a revised paper dated 29 November 1971 to which Bremner had contributed. It contained the historical section of Bremner's earlier Report.[59]

4.48 The MoD witnesses gave evidence to the Parker Inquiry on 14 December 1971. The speaking note for Dunnett's introductory statement contained the following:

> *"There are five techniques – hooding, noise, wall-standing, restricted diet and deprivation of sleep".*[60]

[52] CAB000168
[53] MOD032007-9
[54] MOD034299; MOD031443; MOD033252; MOD031488 (in which the Intelligence Centre, Ashford, argued for the retention of the techniques not limited to security purposes, but restricting hooding, wall-standing, and background noise; to a period of two hours without any intermissions)
[55] MOD034296; MOD034299; MOD034327
[56] MOD033320
[57] PIL000727-9, paragraphs 80-84
[58] SUB001165-74, paragraphs 78-102
[59] CAB001510
[60] MOD031510

The note went on to outline a very brief history of the use of the techniques and an explanation of the way they were used, before continuing:

> *"3. In any interrogation operation the primary purpose of using the techniques is to ensure the security of the detainees and the guards. If a detainee believes that he may be recognised by his fellow-detainees he will be afraid of the possibility of retribution against him after his release from custody and he will be that much more unwilling to give information."* [61]

4.49 The penultimate paragraph of the speaking note contained the following:

> *"There is no doubt – and we said so to the Compton Committee – that even if the techniques are used only for security purposes, they also serve – as an incidental by-product – to increase a man's fatigue and sense of isolation. The question is whether it is right to use the techniques, including a restricted diet and lack of sleep, over and above what is required for security purposes, in order to make the process of interrogation itself easier and, above all, swifter – since the need is for operational intelligence quickly."* [62]

4.50 Further evidence was submitted to the Inquiry in the form of a paper on further safeguards.[63] This paper was only submitted after an internal debate on its contents.

4.51 The final piece of evidence which the Parker Inquiry heard appears to have been evidence from Sir Peter Rawlinson and Rt. Hon. Basil Kelly, respectively Attorneys-General of England and Wales and Northern Ireland. However, there are no documents or records which show what evidence either man actually gave to the Inquiry.

4.52 In this short summary I have not attempted to chronicle all the ramifications of the internal debates in Government about what evidence should be placed before the Parker Inquiry. It is not possible for me, nearly 40 years later, to determine whether or not there was an attempt by any person to mislead the Inquiry. My impression is that this was unlikely. There was clearly a debate about the line the Government should adopt in seeking to retain techniques which, as the majority of those involved appeared to believe, assisted in obtaining worthwhile intelligence. But drawing an inference from this that there was an attempt to mislead is, in my judgment, unjustified.

[61] Ibid.
[62] MOD031512
[63] MOD031681

Chapter 4: The Parker Report

4.53 On 31 January 1972 the Parker Report was sent to the Government.[64] On 2 March 1972 it was published. It was in two parts: Part I, the Majority Report signed by Lord Parker and Boyd-Carpenter, and Part II, signed by Lord Gardiner QC. I set out here extracts from both the Majority and the Minority Reports. Without going so far as to reject the Majority Report, it will be seen that the Government came to adopt a future policy that was more in keeping with the Minority Report. However, both Reports capture the flavour of most of the arguments and debate which occurred when evidence was being prepared for submissions to that Inquiry. There are also in both Reports matters which have a resonance with some of the issues with which this Inquiry has had to grapple.

4.54 The Majority Report started with a passage headed "*Our approach*". It made clear that the Inquiry was only concerned with interrogation "*… in circumstances where some public emergency has arisen as a result of which suspects can legally be detained without trial*".[65] It was not concerned with conduct or suspected conduct which could be dealt with by the usual procedures carried out by the police when investigating criminal offences.

4.55 The Majority noted that their terms of reference called upon the Committee to enquire "*…quite generally…*" into the interrogation and custody of persons suspected of terrorism "*… in the future, and not specifically in connection with Northern Ireland*". They referred to the 1965 Directive and Article 3 of both the Third and Fourth Geneva Conventions, pointing out that the only "*procedures currently authorised*" were procedures which could be said to comply with the 1965 Directive.[66] The Majority posed the question of whether the techniques "… *in current use in fact comply with the Directive*". Their response is set out as follows:

> *"8. The Directive moreover merely sets out the limits beyond which action may not go, and does not attempt to define the limits to which it is morally permissible to go. Accordingly a second more difficult question arises as to whether, even if the use of these techniques complies with the Directive, their application by a civilised and humane society can be morally justified. Some of the witnesses who appeared before us urged that this Country should set an example to the World by improving on the standards in the Geneva Convention and applying what were described as the basic principles of 'humanitarian law'. They took the line that, even though innocent lives could be and had been saved by the use of techniques described in the Compton Report, a civilised society should never use them. They argued that, once methods of this character were employed on people in detention in order to obtain information from them, the society which employed them was morally on a slippery slope leading to the deliberate infliction of torture. It was better that servants of the State and innocent civilians should die than that the information which could save them should ever be obtained by such methods. This approach has the attraction of relieving one of the difficult exercises of judgment involved in deciding exactly how far it is permissible to go in particular circumstances."*

[64] MOD032573
[65] MOD032576
[66] Ibid.

> *"9. Further, in considering the limits to which action may go, terminology is not of great assistance. There is a wide spectrum between discomfort and hardship at the one end and physical or mental torture at the other end. Discomfort and hardship are clearly matters which any person suspected of crime, under ordinary conditions, will suffer and that is accepted as not only inevitable but permissible. Equally, everyone would agree that torture, whether physical or mental, is not justified under any conditions. Where, however, does hardship and discomfort end and for instance humiliating treatment begin, and where does the latter end and torture begin? Whatever words of definition are used, opinions will inevitably differ as to whether the action under consideration falls within one or the other definition."* [67]

4.56 It will be seen from the above passage that the Majority did not in terms answer its own question at that stage. In the next section the Majority discussed "*The Techniques and Their History*":

> *"12. One of the unsatisfactory features of the past has been the fact that no rules or guidelines have been laid down to restrict the degree to which these techniques can properly be applied. Indeed, it cannot be assumed that any UK Minister has ever had the full nature of these particular techniques brought to his attention, and, consequently, that he has ever specifically authorised their use.*
>
> *13. These techniques are taught at purpose-built intelligence centres where Service personnel are instructed in the art of interrogation in depth, and where members of our Services are also taught to be resistant to such interrogation. Even at such a centre there are no standing orders or manuals dealing in detail with the use of such techniques, and accordingly their exact application in real life situations depends upon the training already received by those who employ them. It will be seen at once that such techniques can easily be used to excess, and specially so when their use is entrusted to personnel not completely trained in their use. To illustrate the matter, we understand that the Service training envisages a comparatively short period at the wall and subjection to hooding and noise there, while the detainees are taken one by one to be medically examined and the method of interrogation is assessed. Once that interrogation has taken place, it is envisaged that normally the detainee will be taken to a cell and not returned to the wall, or be hooded or subjected to noise. In practice, it may turn out that, through lack of proper accommodation, through lack of guards, through lack of interrogators, through the need to obtain personal and medical files and such matters, the degree of use envisaged is exceeded. In those circumstances, and in the absence of definite guidelines, there is a risk that the techniques will be applied to a greater degree than is justified either morally or under the Directive."* [68]

4.57 The passages above are followed by sections which deal with "*Medical aspects and Dangers*" and the "*Value of the techniques and the alternatives*". The Majority concluded that long-term mental injury could not scientifically be ruled out but there was no real risk of such injury if proper safeguards were applied. On the question of the value of the techniques and discussion on alternatives, the Majority alluded to the past success of "*these techniques*".[69] They were also impressed by the result of two operations of in-depth interrogation on some of those who had been interned "*… involving the use of these techniques*". The Majority were persuaded that these

[67] MOD032577-8
[68] MOD032578-9
[69] MOD032580-1

operations had obtained valuable information more quickly than if the more usual methods of interrogation used in wartime had been applied.[70]

4.58 In the next section the Majority sought to answer the question "*Should these techniques be employed?*" They stated that they did not subscribe to the principle that the end justified the means, continuing "*the means, in our view, must be such as not only to comply with the Directive, but are morally acceptable taking account of the conditions prevailing.*" Their conclusion is set out at paragraph 34:

> *"We have come to the conclusion that the answer to the moral question is dependent on the intensity with which these techniques are applied and on the provision of effective safeguards against excessive use. These safeguards are dealt with in the following paragraphs. Subject to these safeguards we have come to the conclusion that there is no reason to rule out these techniques on moral grounds and that it is possible to operate them in a manner consistent with the highest standards of our society."* [71]

4.59 As to the safeguards, the Majority recommended that before these techniques were used a number of safeguards should be put in place. These included: the Minister to take advice on the legal position; a senior officer always to be present at the interrogation centre to take overall control and responsibility for the operation; a panel of highly skilled interrogators always to be retained to reduce the number of occasions on which there would be a real necessity to use the techniques; a trained psychiatrist always to be present at the medical centre; and the establishment of an appropriate complaints procedure.[72]

4.60 Gardiner, in the Minority Report, posed four questions for consideration. They were:

> *"(a) Of what did those 'procedures' consist?*
>
> *(b) Were they 'authorised'?*
>
> *(c) What were their effects?*
>
> *(d) Do they, in the light of their effects, require amendment and, if so, in what respects?"* [73]

4.61 Gardiner answered what the procedures consisted of by reference to the conclusions of the Compton Report. These are set out in his Minority Report at paragraph 5:

> *"(a) Keeping the detainees' heads covered by a black hood except when being interrogated or in a room by themselves and that this constituted physical ill-treatment.*
>
> *(b) Submitting the detainees to continuous and monotonous noise of a volume calculated to isolate them from communication and that this was a form of physical ill-treatment.*
>
> *(c) Depriving the detainees of sleep during the early days of the operation and that this constituted physical ill-treatment.*
>
> *(d) Depriving the detainees of food and water other than one round of bread and one pint of water at six-hourly intervals and that this constituted physical ill-treatment for men who were being exhausted by other means at the same time.*

[70] PLT000693-4
[71] PLT000694-5
[72] PLT000695-7
[73] PLT000698

> *(e) Making the detainees stand against a wall in a required posture (facing wall, legs apart, with hands raised up against a wall) except for periodical lowering of the arms to restore circulation, and that detainees attempting to rest or sleep by propping their heads against the wall were prevented from doing so and that, if a detainee collapsed on the floor, he was picked up by the armpits and placed against the wall to resume the required posture and that the action taken to enforce this posture constituted physical ill-treatment."* [74]

4.62 Gardiner went on to discuss domestic and international law, the effects of the techniques on the detainees, the effect on obtaining of information and their effect on the reputation of the United Kingdom. He concluded that the techniques were illegal in domestic law. He expressed his view in the following terms:

> *"10a. By our own domestic law the powers of police and prison officers are well known. Where a man is in lawful custody it is lawful to do anything which is reasonably necessary to keep him in custody but it does not further or otherwise make lawful an assault. Forcibly to hood a man's head and keep him hooded against his will and hand-cuff him if he tries to remove it, as in one of the cases in question, is an assault and both a tort and a crime. So is wall-standing of the kind referred to. Deprivation of diet is also illegal unless duly awarded as a punishment under prison rules. So is enforced deprivation of sleep."* [75]

4.63 Gardiner declined to express any opinion as to whether or not the techniques infringed international law. He went on to consider what the effects of the techniques were under three headings: "physical effects", "mental effects" and the "effect of obtaining information". As to the latter, Gardiner expressed the view that he was not persuaded that substantially as much information might not have been obtained by using "*well tried and effective war-time methods*". It is clear from his description of those war-time methods that he believed they did not contravene Article 17 of the Third Geneva Convention.[76]

4.64 Having reached these conclusions and pointed out that the techniques could not be used without a change in the law, Gardiner said:

> *"19. The real question at the end of the day, therefore, is whether we should recommend that Parliament should enact legislation making lawful in emergency conditions the ill-treatment by the police, for the purpose of obtaining information, of suspects who are believed to have such information and, if so, providing for what degree of ill-treatment and subject to what limitations and safeguards."* [77]

4.65 Gardiner went on to give five reasons for recommending that the law should not be changed. In the light of the subsequent history of the five techniques it is worth reciting all five reasons:

> *"(1) I do not believe that, whether in peace time for the purpose of obtaining information relating to men like the Richardson gang or the Kray gang, or in emergency terrorist conditions, or even in war against a ruthless enemy, such procedures are morally justifiable against those suspected of having information of importance to the police or army, even in the light of any marginal advantages which may thereby be obtained.*

[74] PLT000698-99
[75] PLT000700
[76] PLT000702-6
[77] PLT000706

(2) If it is to be made legal to employ methods not now legal against a man whom the police believe to have, but who may not have, information which the police desire to obtain, I, like many of our witnesses, have searched for, but been unable to find, either in logic or in morals, any limit to the degree of ill-treatment to be legalised. The only logical limit to the degree of ill-treatment to be legalised would appear to be whatever degree of ill-treatment proves to be necessary to get the information out of him, which would include, if necessary, extreme torture. I cannot think that Parliament should, or would, so legislate.

(3) Our witnesses have felt great difficulty in even suggesting any fixed limits for noise threshold or any time limits for noise, wall-standing, hooding, or deprivation of diet or sleep.

All our medical witnesses agreed that the variations in what people can stand in relation to both physical exhaustion and mental disorientation are very great and believe that to fix any such limits is quite impracticable. We asked one group of medical specialists we saw to reconsider this and they subsequently wrote to us:

> *"Since providing evidence to your Committee we have given much thought to the question of whether it might be possible to specify reasonably precise limits for interrogators and those having charge of internees. The aim of such limits would be to define the extent of any "ill-treatment" of suspects so that one could ensure with a high degree of probability that no lasting damage was done to the people concerned.*
>
> *After a further review of the available literature, we have reluctantly come to the conclusion that no such limits can safely be specified. Any procedures such as those described in the Compton Report designed to impair cerebral functions so that freedom of choice disappears is likely to be damaging to the mental health of the man. The effectiveness of the procedures in impairing will power and the danger of mental damage are likely to go hand in hand so that no safe threshold can be set."*

(4) It appears to me that the recommendations made by my colleagues in the concluding part of their Report necessarily envisage one of two courses.

One is that Parliament should enact legislation enabling a Minister, in a time of civil emergency but not, as I understand it, in time of war, to fix the limits of permissible degrees of ill-treatment to be employed when interrogating suspects and that such limits should then be kept secret.

I should respectfully object to this, first, because the Minister would have just as much difficulty as Parliament would have in fixing the limits of ill-treatment and, secondly, because I view with abhorrence any proposal that a Minister should in effect be empowered to make secret laws: it would mean that the United Kingdom citizens would have no right to know what the law was about police powers of interrogation.

The other course is that a Minister should fix such secret limits without the authority of Parliament, that is to say illegally, and then, if found out, ask Parliament for an Act of Indemnity.

I should respectfully object even more to this because it would in my view be a flagrant breach of the whole basis of the Rule of Law and of the principles of democratic government.

(5) Lastly, I do not think that any decision ought to be arrived at without considering the effect on the reputation of our own country." [78]

4.66 In conclusions at paragraph 21 of the Report, Gardiner referred to the Geneva Conventions stating:

[78] PLT000707-8

> *"… as we do not appear to be complying with these provisions, some step should now be taken to incorporate such instructions in military training.*
>
> *As we have been told by those responsible that the Army never considered whether the procedures were legal or illegal, and as some colour is lent to this perhaps surprising assertion by the fact that the only law mentioned in the Directive was the wrong Geneva Convention, it may be that some consideration should now be given to this point."* [79]

4.67 In a second and final conclusion, he said

> *"Finally, in fairness to the Government of Northern Ireland and the Royal Ulster Constabulary, I must say that, according to the evidence before us, although the Minister of Home Affairs, Northern Ireland, purported to approve the procedures, he had no idea that they were illegal; and it was, I think, not unnatural that the Royal Ulster Constabulary should assume that the Army had satisfied themselves that the procedures which they were training the police to employ were legal."* [80]

Gardiner added:

> *"The blame for this sorry story, if blame there be, must lie with those who, many years ago, decided that in emergency conditions in Colonial-type situations we should abandon our legal, well-tried and highly successful wartime interrogation methods and replace them with procedures which were secret, illegal, not morally justifiable and alien to the traditions of what I believe still to be the greatest democracy in the world."*[81]

4.68 There followed a period during which the Government paused for reflection on the appropriate course to adopt. The documents show that the power of Gardiner's Minority Report categorising the techniques as illegal was soon recognised. The MoD in its final submissions to this Inquiry (the Baha Mousa Inquiry) "*… clearly endorses the view of Lord Gardiner…*".[82] Discussions at the time centred on whether the Government should state that the techniques would never be used again in the future as an aid to interrogation anywhere in the world.[83]

4.69 At the same time as the discussions between the Government and senior civil servants, the Army began to consider "*future interrogation policy*" at a meeting convened by the Vice Chief of the General Staff on 15 February 1972. The first two agenda items for discussion were "*Future Offensive Interrogation Policy*" and "*Future Offensive Interrogation Training*". Interestingly the third agenda item was "*Training in resistance to Interrogation*", which was one element of Conduct after Capture (CAC) and is now part of Survive, Evade, Resist, Extract (SERE) training.[84]

4.70 In the end a draft statement for the Prime Minister to make to Parliament was agreed. The day before a signed order was sent from the Chief of the General Staff (CGS), Sir Michael Carver, to the General Officer Commanding (GOC) Northern Ireland, Sir Harry Tuzo (with a copy to JSIW at Ashford), directing that the five techniques should no longer be used as an aid to interrogation. It permitted the use of wall standing only for a short time in the context of searching for weapons and stated that "*On no account*

[79] PLT000709
[80] Ibid.
[81] Ibid.
[82] SUB001188
[83] MOD033707
[84] MOD032659; MOD032660

will persons in army custody be hooded".[85] Thus hooding, even for security purposes and even if requested by the detainee, was prohibited for the Army in Northern Ireland. This line was adopted after both the CGS and the GOC had told the Prime Minister, in a discussion about the position in Northern Ireland, that they could not envisage any circumstance when the Army might want to hood a person on request, and they thought it much better that hooding should be "…*ruled out altogether and the position made absolutely clear*".[86]

[85] MOD033961
[86] MOD032755

Chapter 5: The Heath Statement

4.71 In the House of Commons on 2 March 1972, the Prime Minister made the statement which has come to be known as the Heath Statement. Having summarised the conclusions of the Parker Inquiry, the Prime Minister continued:

> *"The Government having reviewed the whole matter with great care and with particular reference to any future operation, have decided that the techniques which the Committee examined will not be used in future as an aid to interrogation."*[87]

4.72 Mr Dodds-Parker MP asked the Prime Minister:

> *"Will my right hon. Friend say whether in criminal investigations it will still be possible to put a blanket over the head of an individual who is in custody when there are good reasons for maintaining concealment of identity?"*

The Prime Minister replied:

> *"A Directive has been issued to the G.O.C., which, therefore, covers the whole Army in Northern Ireland, in the sense of the statement that I have made. As for the use of techniques for non-interrogation, obviously from the point of view of security sometimes it is necessary for people to be asked to stand against a wall with their arms raised so that they may be searched to see whether they have weapons. That is a specific and limited use. As for putting a blanket over someone's head, the Army has been instructed not to use that technique in any circumstances. The police are covered by the normal police regulations. If a person asks to be covered so that his identity should not be revealed in public, it is possible for that to happen."* [88]

4.73 This answer was in keeping with a draft response to supplementaries prepared for the Prime Minister before he made his statement.[89]

4.74 A further question was asked by Mr Woodhouse as to whether the Government's decision to discontinue intensive interrogation of the kind discussed applied only to Northern Ireland or to all future circumstances anywhere. In reply the Prime Minister said:

> *"I must make it plain that interrogation in depth will continue but that 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 powers to do it."* [90]

4.75 Three further documents have some relevance to the issue of the scope of the Heath Statement. In a letter dated 16 March 1972, the Prime Minister, responding to a letter from Mr George Cunningham MP, said:

[87] PLT000812
[88] PLT000813
[89] MOD032761
[90] PLT000813

> *"Should it ever become necessary for Service personnel to carry out interrogation to obtain intelligence in any future military operation, the methods used would be based on the practice of the civil police in the United Kingdom. The joint Military Directive is being revised accordingly."* [91]

4.76 On the same date as the above letter Mr Cunningham asked Lord Balniel in the House of Commons what were the characteristics of interrogation in depth which were to continue to be used by British Forces. Lord Balniel's answer was:

> *"When British Forces are operating in aid of the civil power, the conduct of interrogation is a matter for the civil authorities. If it should become necessary for Service personnel to carry out interrogation in order to obtain intelligence in any future military operation, the methods used would be based on the practice of the civil police in the United Kingdom."* [92]

4.77 Mr Cunningham followed this by asking Lord Balniel to give a categorical assurance that the methods used by the British troops without the authority of Parliament, would in future be limited to the use of those methods which were permissible for the police to employ in the United Kingdom. Lord Balniel's response was:

> *"That is how I answered the Question. The methods used will be based on the practice of the civil police in the United Kingdom. The procedures will be laid down in the revised joint directive."* [93]

4.78 In a reference to Lord Balniel's answer, Mr M E Herman of the Joint Intelligence Committee (JIC) wrote to Brig J Lewis CBE, BGS (Int) at the Ministry of Defence on 6 April 1972. After referring to the revised draft of the Joint Directive, Mr Herman stated:

> *"As I mentioned on the phone today [6th], the main point that struck me was the widening of the scope of the Directive to cover 'true' military operations, as well as those in support of the Civil Power. I can see that a Ministerial answer on 16 March could be construed as committing you to this. Nevertheless I can see various difficulties."* [94]

4.79 The letter continued by pointing out three difficulties which might result from "*the widening of the scope of the Directive to cover* '*true*' *military operations*".[95]

4.80 The above documents suggest that the Heath Statement might have been intended to apply to all operations wherever they were being carried out.

4.81 In respect of the Heath Statement I have reached the following conclusions. Firstly, the techniques which were banned by the Heath Statement must be those referred to in Gardiner's Minority Report, a reference back to the Compton Report, namely wall-standing, hooding, noise, bread and water diet, and deprivation of sleep. The expression "*stress position*" is only peripherally referred to but must be taken to be included in the term "*wall-standing*".[96]

[91] CAB001941
[92] PLT000845-6
[93] CAB001942
[94] CAB001918
[95] CAB001918-20
[96] PLT000690-1

4.82 Secondly, the Heath Statement, as expressed by the Prime Minister in Parliament, on its face applied to the use of the techniques as "*an aid to interrogation*". The Detainees submit that the ban applied to all hooding.[97]

4.83 They rely on the question from Dodds-Parker and Heath's answer which I have quoted at paragraph 4.72 above.[98]

4.84 The Detainees also rely on the ban imposed on the Army in Northern Ireland to which I have already referred.

4.85 In my view the Heath Statement is clear. The words "*as an aid to interrogation*" limit the effect of the ban. I do not accept that the answer to the Parliamentary Question from Dodds-Parker, which was itself posed on a limited basis, undermines the clear effect of the Statement. The whole context of the Parker Report was that techniques were aids to interrogation. As to the order imposed on the Army in Northern Ireland, in my judgment this was specifically referable to operations in that province.

4.86 Thirdly, although in some of the earlier discussions about the contents of the Heath Statement there was a reference to it having world-wide application, there is no specific reference to this in the Statement. However, in the answer given by the Prime Minister to the question raised by Mr Woodhouse, it would appear that the intention of the Government was to ban the use of the five techniques in all future operations wherever they took place. This is consistent with the answer given by the Prime Minister to Lord Parker in their preliminary discussion on 18 November 1971.[99] In addition, the answers given by the Prime Minister and Lord Balniel to Mr Cunningham may suggest that the Heath Statement was intended to have world-wide application. It would appear that this was how it was seen by Herman. I think it clear that there was no geographical limitation on the ban. I would add, however, that in referring to "*all future circumstances*", the Prime Minister may have been referring to internal security and counter insurgency operations against terrorists. That was the whole context in which the Compton and Parker Inquiries had reported and the five techniques had historically been used. So it is less clear whether the Heath Statement intended to go beyond internal security operations. Whichever is the correct interpretation or intention of the Heath Statement it does not mean that the five techniques were permitted in warfare/international conflict. On the contrary, as I shall refer to in Chapter 6 below, it was recognised that the five techniques when used as aids to interrogation would be contrary to the Geneva Conventions if used in an international conflict.

4.87 Fourthly, the term "*in the future*" appeared to extend the ban for an unlimited period of time: see also the Prime Minister's response to Mr Woodhouse.

4.88 Fifthly, as the Detainees point out, although the Prime Minister's statement in Parliament has been referred to in some quarters as a ruling, it was not in any sense a legal ruling. However, in respect of operations in Northern Ireland it gained legal status for the Army as a direct order from the CGS.

[97] SUB002405-6, paragraph 7; SUB002666, paragraph 52
[98] PLT000813
[99] CAB000291

Chapter 6: From 3 March 1972 to the Finalisation of the 1972 Directives

4.89 The Parker Majority had recommended that there should be guidelines to assist Service personnel as to the degree to which the techniques could be applied whether for security or for the purpose of obtaining information. The Government having decided that the techniques would not be used at all for the purposes of obtaining information, the available materials from the Cabinet Office and the MoD suggest that the main imperative following the Heath Statement was to amend the 1965 Directive.

4.90 As to the security use of hooding and the other techniques, I have addressed above how the CGS sent an order to the GOC in Northern Ireland, which completely prohibited the use of the hooding ("*on no account will persons in army custody be hooded*").[100] That dealt with the immediate theatre in which the controversy had arisen.

4.91 On 30 March 1972, a letter to Governors and High Commissioners of British Dependent Territories and Protectorates referred to the Order sent to the GOC (including the complete prohibition on hooding) and stated that "*Similar instructions are being sent to all overseas Commands*".[101] The letter requested that the policy announced by the Prime Minister be observed in the event of interrogation being undertaken in the territory for which the addressees were responsible. It also referred to the new Directive that was in preparation. It is just possible to interpret this letter as suggesting that there was to be some wider military order or guidance document, separate to the amended 1972 Directive, specifying to military commanders outside of Northern Ireland the circumstances in which wall-standing might be used for searching but prohibiting the use of hooding in all circumstances. If that was the intention there is no record of such an order or guidance having been given.

4.92 The evidence suggests that the Government's policy following the Parker Report was incorporated principally by:

(1) the amendments to the 1965 Directive culminating in the two parts of the 1972 Directive;

(2) the Northern Ireland specific order given in the signal of 1 March 1972; and

(3) the 30 March 1972 letter to Governors of dependent territories.

The 1972 Directive

4.93 The review and re-drafting of the 1965 Directive was assigned to the JIC, although it was MoD staff who took the lead in producing the revised draft.

4.94 It is not necessary for me to set out every part of the events between 3 March 1972 and the finalisation of the 1972 Directive. But there are a number of issues which are of interest as to how matters were to develop later.

4.95 Firstly, there was a good deal of debate about whether the 1972 Directive should be framed in such a way as to allow its publication. One factor was that it was felt that there would be considerable pressure to publish the 1972 Directive so as to

[100] MOD033961
[101] CAB001927

demonstrate that the five techniques had undeniably been prohibited; and that it would be hard to resist the pressure when parts of the 1965 Directive had been included in the Parker Report. But another factor was the concern that it might be damaging to reveal too much information about interrogation methods and techniques. The device which was eventually agreed was for the Directive to be split into two parts. Part I was to be capable, if necessary, of being published. It contained the main principles. Part II gave more detailed instructions for an interrogation centre and was not intended to be published. There was nevertheless a concern about even Part I being published.

4.96 Secondly, there was debate about the scope of the Directive, namely as to whom it applied and by whom it should be issued. It was noted that the title of the 1965 Directive had referred only to "*military interrogation*". However despite its apparent restriction to military interrogation, it was suggested that the 1965 Directive may have acquired a wider status as "*…HMG's Queensberry Rules on all interrogation for intelligence purposes, and not merely interrogation by military personnel overseas*".[102] Despite earlier suggestions that the Directive might simply be issued by the MoD, Part I of the 1972 Directive continued to be issued as a JIC Directive, with Part II becoming a purely MoD document. While Part I of the 1972 Directive was by its title stated to apply to the Armed Forces, the Cabinet Secretary recorded on the face of the Directive that, in the light of instructions from the Prime Minister, other Departments and Agencies were requested to ensure with immediate effect that "…*any interrogations for intelligence purposes are conducted in conformity with the Directive*". This applied to the "*JIC(A) Departments and Agencies, the Home Department and the Northern Ireland Office*".[103] Thus although the 1972 Directive was drafted primarily as a military Directive, other Crown Departments and MI5 and MI6, who might be involved in interrogation for intelligence, were required to ensure that their interrogations were conducted in conformity with it.

4.97 Thirdly, there was debate as to whether the amended Directive should apply more widely than to interrogation in internal security operations. On this aspect, the 1965 Directive applied to "…*internal security operations overseas*".[104] Various formulations were mooted for the scope of the 1972 Directive including:

> *(1) "persons arrested or detained during military operations, but particularly during Internal Security operations or in near emergency situations";* [105]
>
> *(2) "interrogation in counter-insurgency or internal security operations by the armed forces";* [106]
>
> *(3) "… for use worldwide and covers military operations generally on the grounds that it is almost impossible, in some instances, to distinguish between the various kinds of operation in which military personnel may be engaged. It is not, however, extended to cover situations of international conflict in which prisoners of war might be taken";* [107]
>
> *(4) "interrogation in operations by the Armed Forces";* [108] *and*
>
> *(5) "interrogation in operations worldwide by the Armed Forces".* [109]

[102] CAB001964-65; CAB001957
[103] CAB001021
[104] CAB001816
[105] MOD035020
[106] CAB001858
[107] MOD035107-8
[108] CAB001898
[109] MOD035021

4.98 It is relevant to record that, as against this latter suggestion of a wider scope for the 1972 Directive applying to all military operations, a number of concerns were raised:

(1) It was said that "*There must be no suggestion that these Directives could apply to interrogation of POWs or enemy civilians in wartime since for these the Geneva Conventions ban the sort of practices covered in the Directive*". [110] It was recognised that "*…the Geneva Conventions preclude interrogation in depth for prisoners-of-war and enemy civilians anyway*". [111]

(2) A concern was also raised in early April 1972 that the more the 1972 Directive embraced the purely military situation (as opposed to the military acting in aid of the civil power in internal security operations), the less suitable it would be for serving the secondary purpose of being used by the JIC to guide civilian interrogators and Governors overseas.[112] The same memorandum pointed to the difficulty of having a Directive that applied to prisoners of war as well as detainees, and as to whether the former could be provided with safeguards such as being weighed, provided with chairs, and access to doctors. Thus without suggesting that the five techniques could possibly be used in wartime, there was concern about whether all the practical aspects of an interrogation centre in an internal security operation could be replicated in wartime.

4.99 Ultimately, the 1972 Directive in its final form returned to the narrower formulation and was stated to relate to "*Internal Security Operations*". Thus the option, which had been very seriously considered, of the 1972 Directive applying more widely to all military operations was not ultimately pursued. The records tend to suggest that the predominant reasoning for this was that the Geneva Conventions would govern warfare and limited warfare situations and the techniques would be prohibited in any event:

> *"it was felt that the paper (and therefore the title) should only relate to "Internal Security operations", NOT to counter insurgency since that latter could merge into a limited war situation involving uniformed forces on both sides, which would be covered by Geneva Convention rules."* [113]

4.100 Fourthly**,** by mid-March 1972, the MoD was already working on the possibility of having a directive in two parts. As early as 16 March 1972 an early draft of Part II of the 1972 Directive contained a summary of the then four main approaches that were used in questioning: the "harsh approach", the "monotonous approach", the "apparently unprofessional approach" and the "apparently friendly approach". It was stated that the methods would not deviate from these and that they were not to include any form of physical violence. The detainee might be made to stand for some of the questioning but in most cases it was stated that he would be seated throughout the interrogation.[114] While the provision about standing and sitting was amended in later versions, the inclusion within Part II of the 1972 Directive of a list of approaches that were approved was a constant within the drafting negotiations and remained in the final version of Part II of the 1972 Directive.

[110] MOD035085
[111] MOD035037
[112] CAB001919
[113] MOD033039
[114] MOD032135

4.101 Fifthly, there is some indication that having had the use of the five techniques precluded, the JSIW was looking for means to compensate for the loss of the techniques:

> *"There is considerable pressure from "certain quarters" (not a million miles from Kent) to retain methods which would compensate for the loss of 'Compton' techniques, eg questioning to physical exhaustion of the subject. Some suggestions of this kind were toned down at the meeting."* [115]

While such comments may have been toned down, this might indicate that JSIW was at this time not fully attuned to what was required to ensure that treatment was in all respects humane following the prohibition on the five techniques. It should, however, also be recognised that it was said to have been one of the guiding principles of the revisions to the 1972 Directive that interrogation procedures must be lawful and consistent with HMG's obligations under international law.[116]

4.102 Sixthly, on the specific prohibition on the five techniques, it is notable that one of the early drafts in mid-April 1972 included:

> *"No form of coercion is to be inflicted on persons being interrogated in order to secure information from them. Persons who refuse to answer questions are not to be threatened, insulted, or exposed to other forms of ill treatment. Reasonable arrangements should be made for their physical needs including refreshment. Whenever practicable the subject should be seated. The use of the following techniques* ***as aids to interrogation*** *is an example of ill treatment and is prohibited:*
>
> *a. any form of blindfold or hood.*
>
> *b. The forcing of a subject to adopt any position of stress for long periods of (sic) induce physical exhaustion. A subject may only be made to stand against a wall for the short period necessary to search him for concealed arms.*
>
> *c. The use of noise producing equipment.*
>
> *d. Deliberate deprivation of sleep.*
>
> *e. The use of a restricted diet to weaken a subject's resistance."* [117]

It is not entirely clear why this formulation was amended to the shorter final phraseology: "*Persons who refuse to answer questions are not to be threatened, insulted, or exposed to other forms of ill-treatment. Techniques such as the following are prohibited - …*".[118]

Part I of the 1972 Directive

4.103 Following consultation on the MoD draft with the FCO, the Home Office, the Northern Ireland Office and the agreement of the Chiefs of Staff, the Prime Minister gave his approval to the promulgation of Part I of the 1972 Directive on 27 June 1972.[119] It was produced as a JIC Directive with a note by the Secretary as follows:[120]

[115] MOD035077
[116] MOD035105
[117] CAB001900 (emphasis added)
[118] CAB001023
[119] CAB000344
[120] CAB001020-6

JIC(A)(72)21 (Final) COPY NO 149

29 June 1972

CABINET

JOINT INTELLIGENCE COMMITTEE (A)

DIRECTIVE ON INTERROGATION BY THE ARMED FORCES IN INTERNAL SECURITY OPERATIONS

Note by the Secretary

The JIC(A) Directive on Interrogation by the Armed Forces in Internal Security Operations /JIC(A)(72) 21 (Provisional Final) dated 12 May 1972/ has been approved by Ministers subject to amendment. The final version incorporating these amendments is attached.

In the light of instructions from the Prime Minister, the Secretary of the Cabinet requests JIC(A) Departments and Agencies, the Home Department and the Northern Ireland Office to ensure, with immediate effect, that any interrogations for intelligence purposes are conducted in conformity with the Directive.

Signed M E HERMAN
Secretary
Joint Intelligence Committees

Cabinet Office
29 June 1972

4.104 The substantive text of Part I of the Directive was as follows:

DIRECTIVE ON INTERROGATION BY THE ARMED FORCES IN INTERNAL SECURITY OPERATIONS

Report by the Joint Intelligence Committee (A)

INTRODUCTION

1. Persons arrested or detained in Internal Security operations are likely to be valuable sources of intelligence. Even though there will normally be other ways of gaining information, when intelligence is urgently required interrogation is often the only way of gaining it in time.

2. When British forces are operating in aid of the civil power, the conduct of interrogation is a matter for the civil authorities. If, in exceptional circumstances, the civil authority is unable to carry out interrogation, the principles and procedures set out in this directive shall apply to Service personnel who may be employed for this purpose. Before Service personnel are used for interrogation, the approval of United Kingdom Ministers will be sought.

3. To be successful interrogation depends upon careful planning of the procedures for handling subjects for interrogation and of the interrogation itself. Any subject must be properly handled and treated from the moment of his arrest and adequate facilities provided for his interrogation.

AIM

4. The aim of this Directive is to establish rules for the conduct of interrogation by Service personnel in Internal Security operations when prior authority for interrogation has been given by United Kingdom Ministers.

DECLASSIFIED

LEGAL ASPECTS

5. International Law

The United Kingdom has obligations under international law to observe the Geneva Conventions and various other international conventions and covenants to which it is a party. These between them contain a number of provisions relating to the treatment of various categories of persons in custody in a variety of situations, both in peace and in war. These provisions are all directed towards enforcement of the same basic principle; that such persons are at all times to be treated humanely and not to be subjected to torture or cruel, inhuman, or degrading treatment. Service personnel will always strictly observe this basic principle in conducting interrogation, and will also ensure that they are aware of and do not infringe in any respect the rights in international law of any particular class of subjects with whom they may be dealing.

6. Domestic Law

The general laws which govern the treatment of arrested persons vary from country to country. Under conditions of emergency they may be modified by special legislation. Provision must be made for Service personnel to be acquainted with the relevant legislation of the country concerned. It is of paramount importance that they should not knowingly act unlawfully in any circumstances whatever. The Director of Operations should, whenever possible, have the services of a legal adviser to ensure that the methods adopted are in strict conformity with the requirements of international and domestic law.

TREATMENT

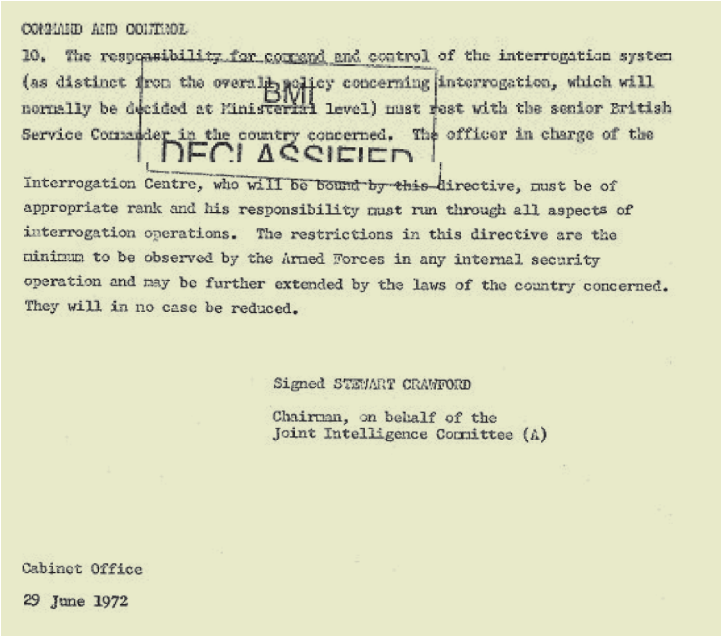
7. Searching and sustained interrogation should be carried out in a disciplined atmosphere, and it may in some circumstances be necessary for interrogation to be carried out by night. But no form of coercion is to be inflicted on persons being interrogated. Persons who refuse to answer questions are not to be threatened, insulted, or exposed to other forms of ill treatment. Techniques such as the following are prohibited -

a. any form of blindfold or hood;
b. the forcing of a subject to stand or to adopt any position of stress for long periods to induce physical exhaustion;
c. the use of noise producing equipment;
d. deliberate deprivation of sleep;
e. the use of a restricted diet to weaken a subject's resistance.

Proper arrangements should be made for the physical needs, including food and drink, of all persons being interrogated. Female subjects must be in the care of female staff.

8. Medical examinations of subjects for interrogation are mandatory on admission to and discharge from an interrogation centre (including temporary transfers to or from a detention or other holding centre) and medical treatment is to be available as required. The Medical Officer or Officers, who must be on call in the medical inspection room while interrogation is in progress, are to maintain a record of each person's weight as recorded on admission and discharge, with a comprehensive record of the subject's condition at each examination. All subjects in an interrogation centre are to be seen daily by a Medical Officer and asked if they have any complaints; any allegations of ill treatment should be reported at once by the Medical Officer to the appropriate superior medical headquarters or senior responsible civil or military authority.

9. Comprehensive records, including those for periods of rest and times when food and drink is offered, are to be maintained of each subject's progress through the interrogation centre from the time of admittance to time of departure.



COMMAND AND CONTROL

10. The responsibility for command and control of the interrogation system (as distinct from the overall policy concerning interrogation, which will normally be decided at Ministerial level) must rest with the senior British Service Commander in the country concerned. The officer in charge of the Interrogation Centre, who will be bound by this directive, must be of appropriate rank and his responsibility must run through all aspects of interrogation operations. The restrictions in this directive are the minimum to be observed by the Armed Forces in any internal security operation and may be further extended by the laws of the country concerned. They will in no case be reduced.

BMI

DECLASSIFIED

Signed STEWART CRAWFORD

Chairman, on behalf of the
Joint Intelligence Committee (A)

Cabinet Office

29 June 1972

4.105 Paragraph 7 of Part I of the 1972 Directive therefore contained the specific prohibition on the use of the five techniques. In contrast to the Heath Statement to Parliament earlier that year on 2 March, it was not in terms specifically limited to the use of the techniques as aids to interrogation.

4.106 A notice cancelling the 1965 Directive was issued with a fairly wide distribution list but Commands outside of Northern Ireland did not receive the new Directive itself at this stage.[121] The GOC Northern Ireland and the Commandant of the Intelligence Centre, Ashford received more. They were actually sent copies of the new Directive and the covering minute to them emphasised paragraphs 2-7 of Part I of the 1972 Directive. Of note, it was also said that:

> *"2. Any interrogation on the basis of this Directive will be carried out only the prior authority of United Kingdom Ministers which will be conveyed by the Ministry of Defence. Such instructions will provide for copies of the Directive to be made available to any civil authorities with whom Service personnel may be employed on interrogation in future. Any further detailed instructions which may be necessary will be issued at the time.*
>
> *3. In any theatre in which it may in future be necessary for Service personnel to be engaged in interrogation in Internal Security Operations, copies of the Directive will be issued by the Foreign and Commonwealth Office to appropriate Posts abroad…"*[122]

4.107 As I shall explore in Part V of this Report, Part II of the 1972 Directive came to be cancelled and replaced with a different policy in 1997. However, it is common ground that Part I of the 1972 Directive remained in force as at 2003.

Part II of the 1972 Directive

4.108 Part II of the 1972 Directive was approved by MoD Ministers. General Sir Cecil Blacker, Vice Chief of the General Staff, issued it on 8 August 1972 to Bremner, the Commandant of the Intelligence Centre at Ashford, as well as circulating it within

[121] MOD035342
[122] MOD034558

the MoD. It was stated that special instructions would be issued by the MoD for any interrogation operation which Ministers authorised involving the Armed Forces. However, Part II of the 1972 Directive was to be observed in all future training on interrogation in internal security operations, and was to be reflected in all training instructions issued by Ashford.[123]

4.109 Turning to Part II, the document is available in the National Archives and has been published by the Inquiry.[124] The first four paragraphs set the context and contained an important and clear cross reference to Part I of the Directive:

INTERROGATION BY THE ARMED FORCES
IN INTERNAL SECURITY OPERATIONS

Reference 'A': JIC(A) (72)21 dated 29th June 1972.

INTRODUCTION

1. Reference 'A' is the overall authority on the rules and conditions governing the conduct of interrogation by Service personnel in internal security operations. Reference 'A' deals with the principles only. Before any interrogation operation is carried out, detailed instructions supplementing Reference 'A' will be prepared under the direction of the Ministry of Defence, and will be submitted for the approval of Ministers authorising the particular operation.

AIM

2. The aim of this paper is to set out the basic rules, requirements and methods on which interrogation is to be based and which are to be incorporated and, if necessary, amplified in the detailed instructions referred to in para 1. They are to be considered always in conjunction with Reference 'A'.

DEFINITION

3. Interrogation is defined as the systematic extraction of information from a willing, or unwilling, subject who has been specially selected as likely to be able to provide useful information. In addition, the interrogation system is concerned with the whole period from arrest or capture to final discharge from an Interrogation Centre.

THE OBJECT OF INTERROGATION

4. The object on interrogation is to obtain reliable information with the maximum of speed, not to obtain evidence. The responsibility for obtaining a statement in compliance with the Judges' Rules for use as evidence will not normally rest with a Service interrogator. On the other hand, it must always be recognised that in internal security situations it may be open to subjects to bring civil cases alleging ill-treatment against the Crown or individual members of the Forces. It is therefore essential that the conduct of interrogation, both in the handling and the questioning phases, be within the law.

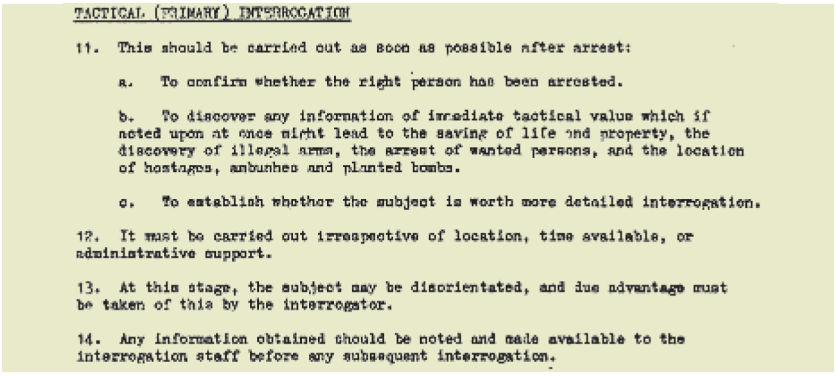
4.110 Under "*General Principles of Interrogation*", paragraph 7 provided:[125]

GENERAL PRINCIPLES OF INTERROGATION

7. Some subjects may be willing to volunteer information, but if this is not the case it is essential that moral ascendancy over the subject is established immediately. Interrogation is a contest of wills and psychological attack is called for. The interrogator has the advantage that from the moment of arrest the subject may be under mental strain to a greater or lesser degree, and that he has control over the freedom and movements of the subject. As soon as possible, as much information as can be obtained about the subject should be made available to the interrogator. If the interrogator can lead the subject to believe that he has extensive knowledge of his background, the interrogator's position is considerably strengthened. It will be essential to have information which positively identifies the subject, together with the reason for and circumstances of the arrest.

[123] MOD035327
[124] MOD035329
[125] MOD035330

4.111 On tactical (primary) interrogation, paragraph 11 provided:[126]



TACTICAL (PRIMARY) INTERROGATION

11. This should be carried out as soon as possible after arrest:

a. To confirm whether the right person has been arrested.

b. To discover any information of immediate tactical value which if acted upon at once might lead to the saving of life and property, the discovery of illegal arms, the arrest of wanted persons, and the location of hostages, ambushes and planted bombs.

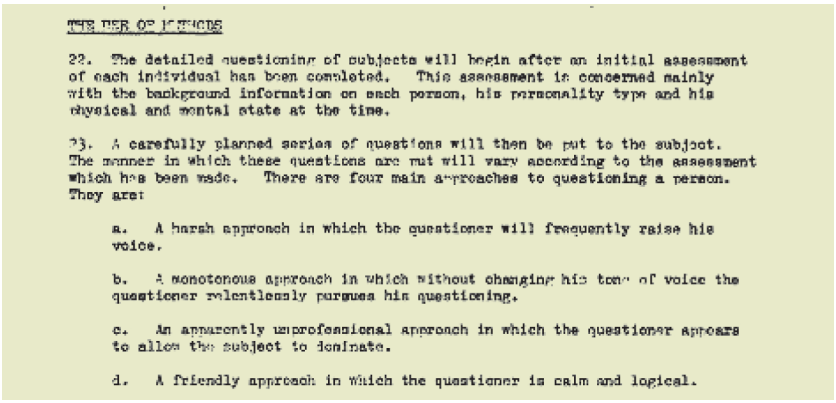
c. To establish whether the subject is worth more detailed interrogation.

12. It must be carried out irrespective of location, time available, or administrative support.

13. At this stage, the subject may be disorientated, and due advantage must be taken of this by the interrogator.

14. Any information obtained should be noted and made available to the interrogation staff before any subsequent interrogation.

4.112 As to methods of questioning, paragraphs 22 to 25 of Part II of the Directive provided:[127]



METHODS OF INTERROGATION

22. The detailed questioning of subjects will begin after an initial assessment of each individual has been completed. This assessment is concerned mainly with the background information on each person, his personality type and his physical and mental state at the time.

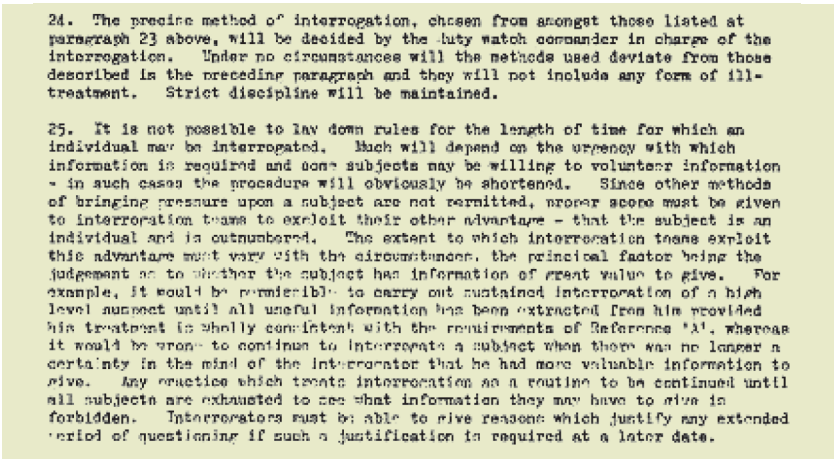
23. A carefully planned series of questions will then be put to the subject. The manner in which these questions are put will vary according to the assessment which has been made. There are four main approaches to questioning a person. They are:

a. A harsh approach in which the questioner will frequently raise his voice.

b. A monotonous approach in which without changing his tone of voice the questioner relentlessly pursues his questioning.

c. An apparently unprofessional approach in which the questioner appears to allow the subject to dominate.

d. A friendly approach in which the questioner is calm and logical.



24. The precise method of interrogation, chosen from amongst those listed at paragraph 23 above, will be decided by the duty watch commander in charge of the interrogation. Under no circumstances will the methods used deviate from those described in the preceding paragraph and they will not include any form of ill-treatment. Strict discipline will be maintained.

25. It is not possible to lay down rules for the length of time for which an individual may be interrogated. Much will depend on the urgency with which information is required and some subjects may be willing to volunteer information - in such cases the procedure will obviously be shortened. Since other methods of bringing pressure upon a subject are not permitted, proper scope must be given to interrogation teams to exploit their other advantage - that the subject is an individual and is outnumbered. The extent to which interrogation teams exploit this advantage must vary with the circumstances, the principal factor being the judgement as to whether the subject has information of great value to give. For example, it would be permissible to carry out sustained interrogation of a high level suspect until all useful information has been extracted from him provided his treatment is wholly consistent with the requirements of Reference 'A', whereas it would be wrong to continue to interrogate a subject when there was no longer a certainty in the mind of the interrogator that he had more valuable information to give. Any practice which treats interrogation as a routine to be continued until all subjects are exhausted to see what information they may have to give is forbidden. Interrogators must be able to give reasons which justify any extended period of questioning if such a justification is required at a later date.

4.113 The procedures set out in Part II of the Directive were required to be kept under review by the Commander of the Intelligence Centre. Any recommendations for amendment had to be consistent with Part I of the Directive and were to be referred to the MoD.[128]

4.114 Part II of the 1972 Directive was cancelled by the introduction of the 1997 Policy (see Part V of this Report). It is relevant and important to note, however, how it provided

[126] MOD035331
[127] MOD035333
[128] MOD035334

a specific cross reference to Part I of the Directive and descended into detail as to which approaches could be used.

Conclusions and Commentary on the 1972 Directive

4.115 Not many aspects relating to the 1972 Directive have been in dispute in this Inquiry. While restricted to internal security operations, it contained important principles that were designed to put in place key aspects of the Heath Statement to Parliament. In my view the key conclusions in respect of the 1972 Directive are as follows:

(1) the 1972 Directive was clearly limited to internal security operations by the Armed Forces. The rationale for this limitation appears to have been a combination of:

(a) concerns that certain practical safeguards in the 1972 Directive such as weighing detainees, availability of doctors, and chairs to seat prisoners in questioning could not be guaranteed in wartime;

(b) the 1972 Directive was likely to be adopted as guidance for civilian departments and agencies involved in interrogation and the more it addressed warfare scenarios the less suitable it would be for this secondary purpose; and

(c) an appreciation that the five techniques that had been used in the Northern Ireland internment context had already been prohibited in warfare by the Geneva Conventions;

(2) the 1972 Directive was split into two parts, the first covering principles and the second covering the more detailed instruction for running an interrogation centre. This was in large measure a device to allow for the publication (if necessary) of the principles for interrogation while keeping operational details secret. There is nothing to suggest any improper motive was behind this arrangement of the 1972 Directive;

(3) Part I of the 1972 Directive included a clear prohibition on the use of the five techniques. Part II contained a clear cross reference to Part I (Reference A);

(4) while there were reasonable contemporaneous rationales for limiting the 1972 Directive to internal security operations and splitting it into two parts, this can be seen now to have contributed over time to the loss of MoD corporate knowledge about the prohibition and its extent;

(5) in addressing the five prohibited techniques, Part I of the 1972 Directive did not use the formulation prohibiting their use "as aids to interrogation". Moreover both hooding and blindfolding were prohibited. However, on balance, I do not consider that this can properly be seen as a complete prohibition on hooding and blindfolding by the Armed Forces as opposed to a prohibition on their use as an interrogation technique. In reaching that conclusion the following are significant factors:

(a) Part I of the 1972 Directive was addressing interrogation in internal security operations. There is nothing in Part I of the Directive to suggest that it was laying down a general tactical level instruction, such as a complete prohibition on the use blindfolds or hoods, outside of the context of interrogation;

(b) the context of paragraph 7, in which the prohibition on the use of hoods

and blindfolds appears, is the prohibition on the use of coercion, threats, insults and ill-treatment to those being interrogated; and

(c) an MoD draft of Part I of the 1972 Directive had included the formulation "as aids to interrogation". While this was amended as a result of the JIC consideration of the Directive, had the intention been to ban all use of hoods and blindfolds in internal security operations, it would probably have sparked considerable debate on exceptions that might be required such as detainees who wanted to be concealed, or taking detainees through sensitive areas. There is no evidence of such issues being raised in May–June 1972 as they surely would have been had paragraph 7 of Part I of the 1972 Directive been understood to have been a complete prohibition on the use of hoods and blindfolds in internal security operations, as opposed to prohibiting their use as an aid to interrogation;

(6) the 1972 Directive required Ministerial approval before military interrogators were used for interrogation in an internal security operation. Detailed instructions supplementing the principles of Part I of the 1972 Directive were also required and would also be submitted for Ministerial approval; and

(7) Part II of the 1972 Directive included a short summary of the four approaches that could be used and prohibited deviation from these.

Chapter 7: In 1973 the Vice Chief of the General Staff Instructs a Review of Prisoner of War Interrogation Guidance

4.116 While the 1972 Directive did not apply to operations beyond internal security operations, this does not mean that the treatment of prisoners of war, and more particularly their tactical questioning/interrogation was unregulated.

4.117 As I set out in Chapter 2 of this Part, the MoD doctrine on prisoners of war at this time included both the 1951 Regulations for the Application of the 1949 Geneva Conventions and Treatment of Prisoners of War and the 1955 Joint Service Pamphlet "Interrogation in War". The 1951 Geneva Convention Regulations were publicly available while the Joint Service Pamphlet was classified as secret. Having dealt with these two documents in Chapter 2 above, I pass on to the Review which the Vice Chief of the General Staff instructed should take place.

4.118 As I addressed in Chapter 6 of this Part, by June 1972 Part I of the 1972 Directive had been finalised in such a way as to limit its application to interrogation by the Armed Forces in internal security operations.

4.119 That left the situation in which, as of the summer of 1972:

(1) the prohibition on the use of the five techniques was clearly expressed in relation to internal security operations;

(2) in considering the scope of Part I of the 1972 Directive, it had been noted and recognised within the MoD that the use of the five techniques would be prohibited in wartime under the Third Geneva Convention for prisoners of war and the Fourth Geneva Convention for civilians; and

(3) the two main publications on interrogation in war (drafted respectively 17 and 21 years previously and known to be out of date) had simply not addressed these sorts of techniques.

4.120 I have already commented that while the restriction of Part I of the 1972 Directive to internal security operations had a contemporaneous justification, it contributed to the loss of policy and doctrine. A further factor in the loss of policy and doctrine was a failure, after the summer of 1972, to introduce any amendment to the doctrine on interrogation in wartime to mirror the prohibition on the five techniques that applied to internal security operations.

4.121 What is particularly regrettable is that it cannot be said that the difference between the wartime and internal security operations policies was simply overlooked.

August/September 1973: Consideration of Interrogation Policies Arising out of SAS Operations in Oman

4.122 It would seem that one effect of Part I of the 1972 Directive having been given relatively limited circulation in the summer of 1972 was that it was not received by the SAS.

4.123 In a short series of impressive and insightful minutes, Bayley, the Brigadier General Staff (Intelligence) DIS, came to address this issue in August and September 1973, and in doing so the inconsistency between internal security operations interrogation policy and wartime interrogation policy was identified.

4.124 The context in which this arose was SAS operations in Oman. Of course, those operations are not a matter for the Inquiry, but the documents disclosed suggest that the SAS was not involved in interrogations in Oman save for advising on the sort of questions to be put to those detained, whereas British officers on loan to the Sultan's Armed Forces were involved in interrogation on arrest or capture in the field.[129]

4.125 Bayley's draft minute to the Vice Chief of the General Staff of 3 August 1973[130] included the following points:

(1) the 1972 Directive had not initially been circulated to the DSAS but it had been provided to HM Ambassador to Muscat and the Commander, Sultan's Armed Forces when an interrogation centre had been established;

(2) the DSAS wished to make the SAS aware of the principles in the Directive, knowing that the SAS had received resistance to interrogation training and might not be aware of the distinction between what UK Armed Forces might practice and what the UK expected of its enemies;

(3) while JSIW instructors had made the distinction clear in training given since August 1972, there would be advantage in issuing specific instructions to JSIW and adding to the form of consent signed before the training took place;

(4) noting that the DSAS wanted to make the SAS in Oman aware of the general principles underlying the 1972 Directive, the 1972 Directive was drafted in the context of interrogation in depth in internal security operations and was not aimed at battlefield questioning. The Directive was not therefore appropriate for operations in Dhofar, "*…although the basic principles of abiding by international conventions and avoiding ill-treatment, threats, insults, or coercion in any form have universal application.*"[131]; and

(5) that either the Directive should be issued to DSAS as a basis on which to brief the SAS on the general rules, or the Commander, Sultan's Armed Forces, should be invited to issue a directive on battlefield interrogation and a directive be issued to the JSIW relating to resistance to interrogation training.

4.126 On 7 September 1973, a minute sent by Bayley to the Vice Chief of the General Staff[132] made the following points:

(1) the 1955 "Interrogation in War" pamphlet was out of date. Neither the 1971 Manual of Service Intelligence nor the 1971 NATO STANAG were at all explicit on prisoner treatment;

(2) there was in effect no MoD approved current instruction on general issue which adequately covered interrogation of prisoners of war. The JSIW had no agreed policy document on which to base their teaching;

(3) the situation in Oman was a mixture of internal security and limited war;

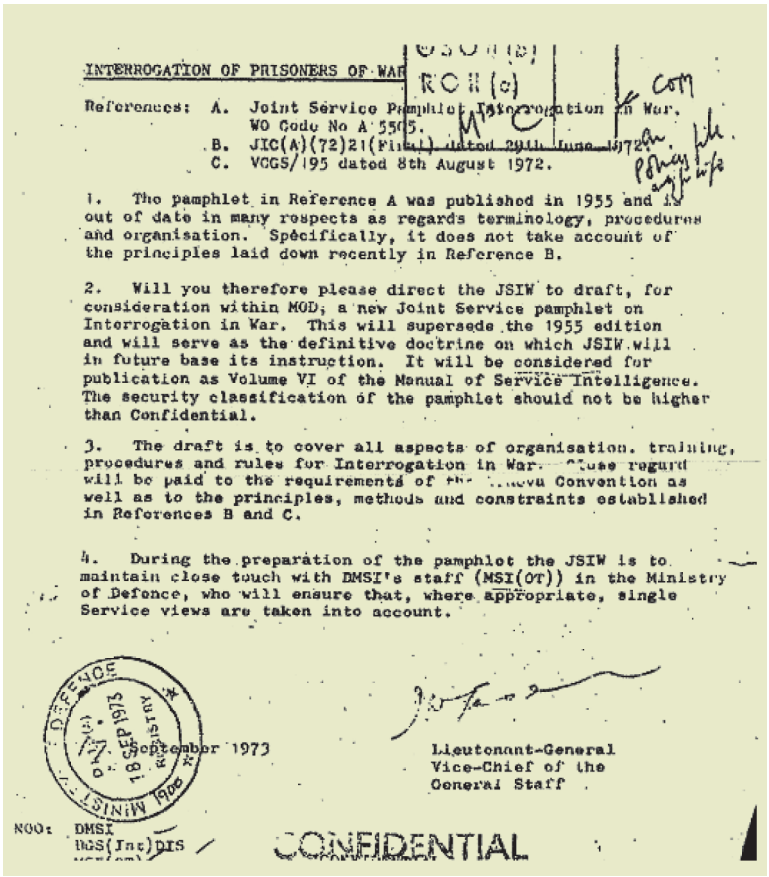
[129] MOD035312
[130] MOD035313
[131] MOD035315
[132] MOD041842

(4) a draft Dhofar-specific Directive was attached which stressed humane treatment, firm and efficient but not rough prisoner-handling, the prohibition on threats, insults and ill-treatment and the specific prohibition on the five techniques;[133] and

(5) recommendations included that JSIW should be approved to draft a new training pamphlet on interrogation of prisoners of war.

4.127 I accept a point made by the MoD in its closing submissions that Bayley's criticisms of the 1955 pamphlet appear to have centred on the fact that it was generally out of date rather than any specific concern that it did not include reference to the prohibition on the five techniques. But it is significant that Bayley judged it appropriate specifically to include the prohibition on the five techniques for the operation in Oman, notwithstanding that it was in part an operation of (limited) warfare. I am bound to observe that such a precautionary approach, referring to the prohibited techniques even if they ought obviously to be ruled out by the Geneva Conventions, stands in marked contrast with the failure, nearly 30 years later, of any orders for Op Telic to refer to the prohibition on the five techniques.

4.128 No doubt as a result of Bayley's minute, the Vice Chief of the General Staff wrote to the Commandant at the Intelligence Centre, Ashford on 17 September 1973. The three references within this document were to: A, the 1955 pamphlet; B, Part I of the 1972 Directive; and C, Part II of the 1972 Directive. The Vice Chief of the General Staff's instruction is a short but significant document and I set it out here in full:[134]



INTERROGATION OF PRISONERS OF WAR

References: A. Joint Service Pamphlet, Interrogation in War. WO Code No A 5505.
B. JIC(A)(72)21(Final) dated 29th June 1972.
C. VCGS/195 dated 8th August 1972.

1. The pamphlet in Reference A was published in 1955 and is out of date in many respects as regards terminology, procedures and organisation. Specifically, it does not take account of the principles laid down recently in Reference B.

2. Will you therefore please direct the JSIW to draft, for consideration within MOD, a new Joint Service pamphlet on Interrogation in War. This will supersede the 1955 edition and will serve as the definitive doctrine on which JSIW will in future base its instruction. It will be considered for publication as Volume VI of the Manual of Service Intelligence. The security classification of the pamphlet should not be higher than Confidential.

3. The draft is to cover all aspects of organisation, training, procedures and rules for Interrogation in War. Due regard will be paid to the requirements of the Geneva Convention as well as to the principles, methods and constraints established in References B and C.

4. During the preparation of the pamphlet the JSIW is to maintain close touch with DMSI's staff (MSI(OT)) in the Ministry of Defence, who will ensure that, where appropriate, single Service views are taken into account.

18 September 1973

Lieutenant-General
Vice-Chief of the
General Staff

NOO: DMSI
DGS(Int)DIS

CONFIDENTIAL

[133] MOD041846
[134] MOD041957

4.129 Since the Vice Chief of the General Staff referred to the principles, methods and constraints established in the 1972 Directive I think it clear that he intended that guidance on the interrogation of prisoners of war should include the prohibition on the five techniques.

4.130 The MoD submits that this instruction from the Vice Chief of the General Staff "… *had the effect of expanding the scope of the Heath prohibition beyond a narrow view of its terms*".[135] That is only the case if the Heath Statement is interpreted in the narrow sense contended for by the MoD. But for reasons to which I have referred in Chapter 5 above, it may not be correct to infer that the Heath Statement can be given that narrow meaning.

4.131 However, even if the Vice Chief of the General Staff was extending the scope of the Heath Statement beyond its strict terms, there ought to have been nothing controversial about his instruction. It can fairly be said that the prohibition on the five techniques in wartime, as compared to internal security operations, was an *a fortiori* case. That is so because the techniques had been correctly recognised to breach the Geneva Conventions. They had been used in counter insurgency operations even though it was known that they would be prohibited in warfare against prisoners of war or civilians. In any event, this was an instruction from the Vice Chief of the General Staff to a subordinate, the Vice Chief of the General Staff being responsible for Joint Service Interrogation Policy. It should have been followed. As the MoD sensibly concedes in its closing submissions, the Vice Chief of the General Staff's instructions were quite simply not carried out as he had envisaged. The disclosure from the MoD in fact reveals no good reason why his instruction was not complied with. As will be apparent in tracing through the development of doctrine after September 1973, the prohibition on the five techniques failed over the next three decades to be incorporated into the doctrine relating to prisoners of war and their interrogation.

[135] SUB001231-2

Chapter 8: The Development of Doctrine Following the Vice Chief of the General Staff's Instructions

4.132 The document trail as to what occurred after the Vice Chief of the General Staff's request is far thinner than in respect of the consideration of the 1972 Directive.

JSIW paper "Interrogation of Prisoners of War"

4.133 On 8 May 1974, a JSIW paper entitled "Interrogation of Prisoners of War" summarised the requirements of NATO STANAG 2033 and stated that "*It is agreed that the NATO Armed Forces will use the standard interrogation procedures*" detailed in the paper.[136] The paper annexed amongst other things, an explanation of the organisation of Units at each level of questioning.

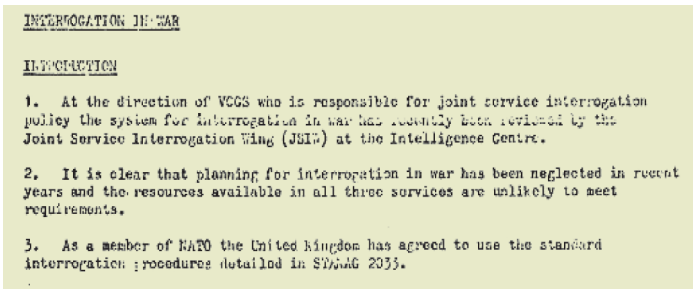
4.134 STANAG 2033 provided high level generic guidance on interrogation procedures and forms so that they would be standardised across NATO members. It required compliance with the Third Geneva Convention but did not purport to address interrogation methods/approaches/techniques as opposed to procedures. Unsurprisingly, it did not address sight deprivation of prisoners at all, nor did it address the five techniques.[137]

13 August 1974 paper "Interrogation in War"

4.135 On 13 August 1974 a paper was circulated by the Director, Management and Support of Intelligence. The covering minute stated that:

> *"At the direction of VCGS who is responsible for joint service interrogation policy the system for interrogation in war has recently been reviewed by the Joint Service Interrogation Wing of the Intelligence Centre.*
>
> *Attached is a paper which sets out proposals for the joint service requirement for interrogation in war."* [138]

4.136 The attached paper on which comments were invited stated:[139]



INTERROGATION IN WAR

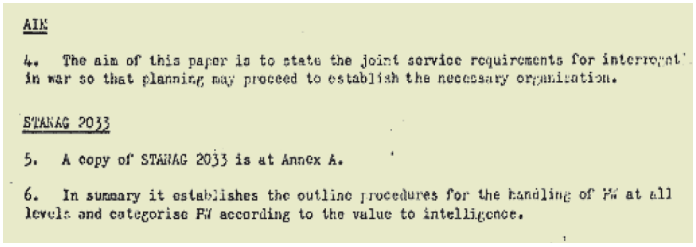
INTRODUCTION

1. At the direction of VCGS who is responsible for joint service interrogation policy the system for interrogation in war has recently been reviewed by the Joint Service Interrogation Wing (JSIW) at the Intelligence Centre.

2. It is clear that planning for interrogation in war has been neglected in recent years and the resources available in all three services are unlikely to meet requirements.

3. As a member of NATO the United Kingdom has agreed to use the standard interrogation procedures detailed in STANAG 2033.

[136] MOD042009
[137] Reproduced at MOD028530
[138] MOD042018
[139] MOD042019



AIM

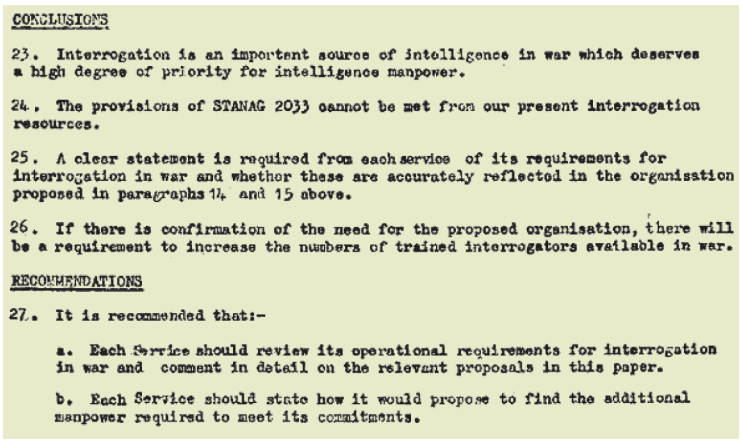
4. The aim of this paper is to state the joint service requirements for interrogat' in war so that planning may proceed to establish the necessary organisation.

STANAG 2033

5. A copy of STANAG 2033 is at Annex A.

6. In summary it establishes the outline procedures for the handling of PW at all levels and categorise PW according to the value to intelligence.

4.137 The paper then set out the stages of interrogation and the resource implications for training and manning the interrogation requirement. The conclusions and recommendations at the end of the paper[140] were as follows:



CONCLUSIONS

23. Interrogation is an important source of intelligence in war which deserves a high degree of priority for intelligence manpower.

24. The provisions of STANAG 2033 cannot be met from our present interrogation resources.

25. A clear statement is required from each service of its requirements for interrogation in war and whether these are accurately reflected in the organisation proposed in paragraphs 14 and 15 above.

26. If there is confirmation of the need for the proposed organisation, there will be a requirement to increase the numbers of trained interrogators available in war.

RECOMMENDATIONS

27. It is recommended that:-

a. Each Service should review its operational requirements for interrogation in war and comment in detail on the relevant proposals in this paper.

b. Each Service should state how it would propose to find the additional manpower required to meet its commitments.

4.138 In opening, Counsel to the Inquiry suggested that this paper shows that the MoD was relying upon STANAG 2033 as the interrogation policy in response to the Vice Chief of the General Staff's instruction, and pressing for greater resources to meet the interrogation requirements of each of the Services.[141]

4.139 In its closing submissions, the MoD doubted whether this conclusion was merited, relying on the fact that the papers set out the Vice Chief of the General Staff's instruction (paragraph 1) and the NATO STANAG (paragraph 3) disjunctively. The MoD also suggests that this was a paper that was dealing principally with resourcing and the MoD "*assumes*" that the review in response to the Vice Chief of the General Staff's request was ongoing at this time and resulted eventually in Joint Service Publication (JSP) 120(6), a document to which I shall return below.[142]

4.140 To some extent I accept MoD's submission in this regard. Given that JSP 120(6) was likely to have been in the course of being drafted at this stage, I do not think it can safely be concluded from this paper that the JSIW was seeking to rely upon STANAG 2033 as the sole doctrine for interrogation of prisoners of war in response to the Vice Chief of the General Staff's request.

4.141 However, MoD's more favourable interpretation of this August 1974 paper only serves to beg the question as to why, if the drafting of JSP 120(6) was the response to the Vice Chief of the General Staff's instruction on interrogation in warfare, it failed to meet his requirement to pay close regard to the constraints of the 1972 Directive applicable to internal security operations.

[140] MOD042022
[141] Opening BMI 3/67/3-11
[142] SUB001232, paragraph 241

4.142 Moreover, Counsel to the Inquiry were not alone in sensing a propensity by the intelligence staff to rely upon NATO STANAGs in place of detailed, adequate national doctrine. In a much later paper, the Inquiry's witness S040 told the Commanding Officer of the JSIO:

> *"References A to D are the current national and NATO publications covering EPW handling and interrogation in war. They are somewhat dated, stemming from the Cold War and the in-built assumptions that conflict would be more simplistic and at a higher level than is currently the norm. By adopting STANAGs 2033 and 2044 the UK appears, by default, to have adopted their content as national doctrine. Extensive searching has not revealed any parallel national requirements."* [143]

JSP 120(6) is drafted to replace the 1955 Pamphlet

4.143 The documentary record of the drafting of JSP 120(6) is obviously far from complete. There is, however, a significant piece of legal advice that survives from 1975. It was provided on 23 September 1975 by Col Sir David Hughes who was clearly commenting on a draft of JSP 120(6). Having referred to Article 17 of the Third Geneva Convention,[144] he stated:

3. In my opinion, the word "coercion" ought to be given its normal meaning, which is stated in the shorter Oxford Dictionary to be "coerce - to constrain (ie compel, oblige) or restrain by force, or by authority resting on force".

4. In essence it would seem that it is the use of force or authority based upon force to compel a prisoner to answer questions that is forbidden by Article 17. It matters not how the force or authority is made manifest, whether by direct brutality, environmental manipulation or in any other way: all are equally forbidden.

5. The second sentence of Article 17 states that "Prisoners of war who refuse to answer may not be threatened, insulted or exposed to any unpleasant or disadvantageous treatment of any kind". This provision goes both to the period of interrogation itself and to the period following the interrogation. In so far as it concerns the interrogation, it reinforces the prohibition on coercion; it would seem obvious that unpleasant or disadvantageous treatment during interrogation would in all cases amount to coercion. But it goes further in forbidding such treatment after the interrogation is over in the case of a prisoner who has refused to answer the questions put to him.

6. In the report of the Parker Committee (Cmnd. 4901) Lord Gardener commented on the methods of interrogation used in World War II. Referring to evidence on this point, he said that "Much vital information was obtained.... the prisoners and suspects were treated with kindness and courtesy and without anything that would contravene Article 17.... it was accompanied by interrogation, the cross-referencing of information and the use of microphones and 'stool pigeons' in cells". The majority report by Lord Parker and Mr Boyd-Carpenter made a similar reference to interrogation in time of war and it certainly appears to have been the view of all members of the Committee that the techniques used in Northern Ireland (and which are now forbidden) would have contravened Article 17 if used in time of war. This raises the question whether the methods of interrogation now suggested in Volume 6 of The Manual of Service Intelligence are the same as those used in World War II or whether they in fact adopt a different approach. It may be that experience in internal guerilla conflict (to which Articles 13 & 17 do not apply) has influenced the practice of interrogation so that World War II methods are now considered to be outdated. In particular, it may be that it is now thought that the most effective adjunct to interrogation is the "disorientation" of the prisoner. But deliberately to set out to disorient a prisoner of war protected by the Third Convention, even if it is done without recourse to the "forbidden techniques", is only too likely to cross the border-line of what is forbidden by international law.

7. It is absolutely clear that there is no prohibition against questioning a prisoner of war in order to obtain military information. It is equally clear that such a prisoner is bound to suffer a degree of discomfort and hardship, arising from the very fact of his captivity. The conditions of captivity themselves, which may necessitate, particularly in the early stages, a degree of isolation, coupled with the natural feeling of anxiety on the part of the prisoner, are likely in themselves to create in many prisoners a willingness to answer questions. There is no objection to taking advantage of this: what seems to me to be impermissible is to increase or decrease the hardship and discomfort according to whether or not the prisoner answers questions.

4.144 There can be no doubt, therefore, that those involved in drafting JSP 120(6) were reminded of the Parker Report, of the prohibition on the five techniques, and were

[143] MOD028348
[144] MOD032358

given legal advice that setting out to disorientate a prisoner even if done without the use of the techniques was likely to cross the border line of what is forbidden by international law.

4.145 To similar effect, further advice was given by the Army Legal Service on 29 June 1976 in the context of Parliamentary Questions and the Irish State Case:[145]

> "*4. It follows that if any of the procedures outlined in Para 5 of the Gardiner Minority Report on page 11 of "Parker" are used solely for the purposes of compelling PW to disclose information, then such use would be unlawful. Of course, Prevailing circumstances may produce a situation resembling such procedures: the interests of security may require the use of hoods or blindfolds or the conflict itself may lead to everyone being short of food, water and sleep. Whether or not particular allegations amount to torture must surely be a question of fact in each case.*"

4.146 The reference here to paragraph 5 of the Gardiner Minority Report is to Gardiner's list describing each of the five techniques based upon the conclusions of the Compton Report. Once again this is a clear reference to the five prohibited techniques in the context of interrogation of prisoners of war. It is also worthy of note that the Army Legal Service was not, at this stage, under the impression that there was any prohibition on the use of hoods or blindfolds for security purposes.

4.147 By August 1978, JSP 120(6) was in its fourth draft. It must be noted that by this stage it was five years since the Vice Chief of the General Staff had instructed that an updated pamphlet for interrogation of prisoners of war be prepared. Accepting that the MoD is probably right in its assumption made in closing submissions that the drafting of JSP 120(6) was the response to the Vice Chief of the General Staff's instruction, this was a scandalously dilatory response.

4.148 The covering minute to the fourth draft perhaps gives some indications of how it came to be that JSP 120(6) failed to address the five techniques. In the first instance, there was no reference back to the Vice Chief of the General Staff's initial instructions. Secondly, the covering minute stated that:

> *"Care has been taken in this draft to avoid contentious material and the result is a short manual which is a general guide, supplementing the appropriate STANAGs, for any officer whom may be required to handle prisoners of war, conduct tactical questioning and even interrogate in circumstances where trained interrogators are not available."* [146]

4.149 Accepting that the Vice Chief of the General Staff had asked that the new pamphlet should have a classification not higher than confidential, it is curious that the specialist Service Intelligence Manual should seek to "*avoid contentious material*" and that it was now being aimed more towards the officer involved in prisoner of war handling where trained interrogators were not available. Thus the 1955 Pamphlet that had given guidance on all aspects of interrogation of prisoners of war came to be replaced by a manual designed for those who were not trained interrogators.

4.150 It was not until June 1979 that JSP 120(6) was finalised.[147]

4.151 It is right to acknowledge the following aspects contained within JSP 120(6):

[145] MOD032354
[146] MOD038428
[147] MOD028370

(1) the message that accurate information is not gained by violence;[148]

(2) that nothing in the manual must be construed as contravening the Geneva Convention;[149]

(3) all prisoners of war must be treated in accordance with the Geneva Convention, treated humanely throughout their captivity and protected from torture, humiliation and degradation. Prisoners must be made to feel that they are in the hands of a fair, firm efficient organisation;[150]

(4) guards should be firm but not rough;[151]

(5) tactical questioners should ask simple questions of the kind the prisoner can reasonably be expected to answer;[152] and

(6) key articles of the Third Geneva Convention were set out including Article 17.[153]

4.152 Despite these sound principles being clearly set out, JSP 120(6) did not contain any reference to the prohibition on the five techniques.

4.153 At paragraph 56, JSP 120(6) provided that:

> *"There may be occasions when, for security reasons, a prisoner being moved from one place to another should be blindfolded. When this is necessary, actual movement will be carried out as follows:*
>
> *a. In corridors and passageways the blindfolded prisoner can be guided in the direction required if each of the two guards holds one of his arms.*
>
> *b. Climbing or descending stairways or moving across an area with obstacles. One guard should walk backwards in front of the blindfolded prisoner, holding his outstretched hand. The other guard walks behind with his hands on the prisoner's shoulders. This obviates all spoken instructions and there is no chance of the prisoner injuring himself."* [154]

4.154 As far it went, I consider that there was nothing fundamentally wrong with this guidance on security sight deprivation. However, the intelligence staff ought equally to have been informed of the debate that had ensued in 1971/1972 over sight deprivation for security and sight deprivation as an aid to interrogation. They ought to have known that the Vice Chief of the General Staff had instructed that the guidance for interrogation or prisoners of war should pay close regard to constraints in the 1972 Directive.

4.155 Volume 3 of JSP 120 included chapters dealing with tactical questioning, prisoner of war handling and interrogation, but they did not add materially to the guidance in the areas most relevant to this Inquiry.[155]

4.156 In its closing submissions, the MoD accepted that an explicit prohibition on the five techniques "*…would have been, with hindsight, a prudent addition to the doctrine for*

[148] MOD028380, paragraph 4
[149] MOD028382, paragraph 12
[150] MOD028392, paragraph 52
[151] MOD028393, paragraph 54
[152] MOD028416, paragraph 206
[153] MOD028439
[154] MOD028394
[155] MOD037158 (1978 version); MOD037164 (1986 version)

interrogation in war." But it added that "*…the MOD would not accept that the only appropriate response to the advice received was to incorporate an explicit prohibition on the five techniques. The MOD submits that it could reasonably be thought that a broader statement of the "catch-all" prohibitions in the Geneva Conventions …would suffice.*" [156]

4.157 I disagree. This is not a failure that could only have been appreciated with hindsight. The following factors, known at the time, in my view ought to have led to JSP 120(6) including the prohibition on the five techniques:

(1) the Vice Chief of the General Staff had specifically instructed that the guidance should pay close regard to the constraints contained in the 1972 Directive. Even though the documentary record is incomplete for this period, no documents disclosed by the MoD have explained why this instruction was not carried out;

(2) the prohibition had been included in the Directive drafted for operations in Oman which was in part a limited warfare scenario;

(3) concerns had been raised in the same context about the contamination effect of resistance to interrogation training using the prohibited techniques. This too ought to have led to the position being made abundantly clear in JSP 120(6) by incorporating the prohibition on the five techniques;

(4) the prohibited techniques had previously been taught to those UK personnel attending training courses at Ashford. Clear guidance ought to have been provided to make the illegality of their use in warfare abundantly clear;

(5) earlier drafts of the JSP had led the Army Legal Service to raise concerns about the deliberate disorientation of prisoners and the likely illegality of that approach. It is not apparent that the illegality of the five techniques in warfare would have been as obvious to officers in the late 1970s as the MoD now contends;

(6) JSP 120(6) did provide some guidance on sight deprivation. Knowing that there had been earlier debate about the relative significance of security sight deprivation and sight deprivation as an aid to interrogation, the MoD ought to have ensured that this section of the manual made clear that sight deprivation must not be used as an aid to interrogation; and

(7) the Attorney-General had on 8 February 1977, given to the ECtHR the "… *unqualified undertaking, that the* '*five techniques*' *will not in any circumstances be reintroduced as an aid to interrogation.*"[157]

4.158 I bear in mind the relative paucity of the documentary record for this period. But on the material made available to the Inquiry, I conclude that:

(1) the MoD failed to ensure that the updated guidance on interrogation of prisoners of war included a reference to the prohibition on the five techniques. It is not possible at this distance in time and with the extent of disclosure available to attribute fault to any individual in this regard;

(2) the fact that it took nearly six years for intelligence staff to produce finalised guidance in response to the Vice Chief of the General Staff's request is, in my opinion, likely to have been a significant contributing factor to this failure;

[156] SUB001235, paragraph 244
[157] PLT000812

(3) this historical failure contributed to the entirely unacceptable situation that no Op Telic Order, nor any readily accessible MoD doctrine at the time of Baha Mousa's death, referred to the prohibition on the five techniques; and

(4) JSP 120(6) did have the advantage of including guidance on sight deprivation for security purposes. However, this guidance did not endure later changes, as I address in Part V of this Report.

JSP 391 is Drafted to Replace the 1951 Geneva Convention Regulations

4.159 The Vice Chief of the General Staff's instruction in September 1973 related to the amendment of the 1955 interrogation pamphlet. In contrast, the 1951 Geneva Convention Regulations, which dealt with the wider aspects of the treatment of prisoners of war, remained in force until 1990 when they were superseded by JSP 391 *Instructions for the Handling of Prisoners of War*.[158]

4.160 Like the 1951 Regulations, JSP 391 was a lengthy and detailed publication and it is unnecessary for me to set out the content in detail.

4.161 JSP 391 made the general principles of prisoner of war handling clear in that:

(1) the binding nature of the Geneva Conventions was emphasised from the outset;[159]

(2) the requirement for humane treatment of prisoners, and the prohibitions of violence, intimidation and insults were clearly stated;[160] humane treatment was stressed in the aide-memoire. The same aide-memoire prohibited forcing prisoners of war to give information;[161]

(3) a general principle of treatment was stated to be that on capture and during evacuation, prisoners of war were to be treated and guarded in the same way as British servicemen under close arrest;[162]

(4) firm but fair treatment, the provision of food and drink and equivalence of medical treatment were all mandated;[163] and

(5) the provisions of Article 17 of the Third Geneva Convention were set out as the first guidance paragraph in the section addressing questioning.[164]

4.162 JSP 391 contained a short section on tactical questioning which was at a high level of generality.[165] The publication did not purport to address interrogation, instead it contained a cross reference to JSP 120(6):

[158] MOD036926
[159] MOD036933
[160] MOD036935
[161] MOD036948
[162] MOD036935
[163] MOD036935
[164] MOD036942
[165] MOD036954

> *"0205. Questioning of PW is to be carried out in a language which they can understand and will usually be conducted by specially trained personnel. The policy and procedures covering the questioning and interrogation of PW is laid down in the Manual of Service Intelligence (MSI) Volume 6 Interrogation in War (JSP 120(6))."* [166]

4.163 JSP 391 did not contain any reference to the prohibition on the five techniques. Nor did it contain any guidance whatsoever as to whether, and if so in what circumstances, prisoners of war might be deprived of their sight. The only way that the reader of JSP 391 would have found specific guidance on the latter would have been to follow the cross reference to JSP 120(6) and then find and read a copy of that protectively marked publication.

4.164 I conclude that:

(1) JSP 391 very clearly set out the basic principles of how prisoners of war should be treated;

(2) the absence of any reference to the prohibition on the five techniques is perhaps marginally more understandable in JSP 391 than in JSP 120(6), the latter being the more specialist interrogation doctrine;

(3) it would nevertheless have been far more prudent and sensible to have included the prohibition in JSP 391. The failure to do so anywhere in JSP 391 was a missed opportunity to ensure that the prohibition became properly entrenched in the MoD doctrine; and

(4) save for an oblique cross reference to JSP 120(6), JSP 391 lacked any guidance on whether prisoners could be deprived of their sight and, if so, in what circumstances.

[166] MOD036942

Chapter 9: The Conclusion of the Irish State Case and the Attorney General's Undertaking to the ECtHR

4.165 The Inquiry obtained many documents referring to the well known "Irish State Case" (Ireland v United Kingdom (1978))[167] brought by the Republic of Ireland in relation to the treatment of those detained in the internment operation in Northern Ireland in 1971. Many of these documents relate to the diplomatic moves to settle the case and to the strategic and tactical considerations as to how the UK should present its case. Those issues are not directly relevant to this Inquiry.

4.166 Adopting for the most part the outline that was provided by Counsel to the Inquiry in opening, it is however relevant to record the following.

4.167 Firstly, the UK Government sought to rely on the Heath Statement and the discontinuance of the techniques in order to contest the admissibility of the Republic of Ireland's complaint.[168]

4.168 Secondly, the UK Government recognised from an early stage that it was unlikely to be able to defend the argument that the five deep interrogation techniques constituted a breach of Article 3 of the European Convention on Human Rights:

> *"…since the use of the techniques was officially approved, our only defence is that they did not constitute a breach of Art 3 (which is unlikely to succeed) and, in any case, they have now been abandoned."* [169]

4.169 Thirdly, on 8 February 1977, the Attorney-General stated to the Court that:

> *"The Government of the United Kingdom have considered the question of the use of the 'five techniques' with very great care and with particular regard to Article 3 (art. 3) of the Convention. They now give this unqualified undertaking, that the 'five techniques' will not in any circumstances be reintroduced as an aid to interrogation."*[170]

4.170 Fourthly, the key findings of the ECtHR on the five techniques were contained in paragraphs 165 to 168 of the judgment:

> *"165. The facts concerning the five techniques are summarised at paragraphs 96-104 and 106-107 above. In the Commission's estimation, those facts constituted a practice not only of inhuman and degrading treatment but also of torture. The applicant Government asks for confirmation of this opinion which is not contested before the Court by the respondent Government.*
>
> *166. The police used the five techniques on fourteen persons in 1971 that is on twelve including T6 and T13, in August before the Compton Committee was set up, and on two in October whilst that Committee was carrying out its enquiry. Although never authorised in writing in any official document, the five techniques were taught orally by the English Intelligence Centre to members of the RUC at a seminar held in April 1971. There was accordingly a practice.*

[167] NCP000350
[168] MOD034859; MOD034886
[169] MOD032299, paragraph 4
[170] NCP000373

167. The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3 (art. 3). The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. On these two points, the Court is of the same view as the Commission. In order to determine whether the five techniques should also be qualified as torture, the Court must have regard to the distinction, embodied in Article 3 (art. 3), between this notion and that of inhuman or degrading treatment. In the Court's view, this distinction derives principally from a difference in the intensity of the suffering inflicted. The Court considers in fact that, whilst there exists on the one hand violence which is to be condemned both on moral grounds and also in most cases under the domestic law of the Contracting States but which does not fall within Article 3 (art. 3) of the Convention, it appears on the other hand that it was the intention that the Convention, with its distinction between "torture" and "inhuman or degrading treatment", should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. Moreover, this seems to be the thinking lying behind Article 1 in fine of Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on 9 December 1975, which declares: "Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment". Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood.

168. The Court concludes that recourse to the five techniques amounted to a practice of inhuman and degrading treatment, which practice was in breach of Article 3 (art. 3)." [171]

4.171 Fifthly, I should add that in addition to the Irish State Case, civil claims were brought by those interned. As to these:

(1) all of the civil claims brought by those interned were settled upon the payment of damages by the Government. The Government line was to accept liability for some ill-treatment whilst in custody, but not of torture;

(2) the payments made were, for the time, quite significant in amount. They reflected the expectation that exemplary damages would most likely have been awarded had the cases proceeded to trial; and

(3) the settlement sums also reflected an acceptance that there had been a measure of psychiatric damage, although its extent in the different cases does not appear to have been admitted or agreed.

[171] NCP000387

Chapter 10: Summary of the Position Reached by 1996

4.172 It is appropriate to pause at this stage and summarise the position that had been reached before the changes introduced in 1996-1997.

4.173 As at 1996:

(1) in the House of Commons on 2 March 1972 the Prime Minister had stated that:

> *"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 future as an aid to interrogation."* [172]

Asked whether the Government's decision to discontinue intensive interrogation of this kind applied only in Northern Ireland or to all future circumstances anywhere, Mr Heath replied:

> *"I must make it plain that interrogation in depth will continue but that 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."* [173]

(2) an unambiguous order had been given to the GOC Northern Ireland stating "*On no account will persons in army custody be hooded*".[174] It seems unlikely that a similar instruction was given to Army commands outside of Northern Ireland giving guidance in relation to the use of hoods;

(3) the 1972 Directive was divided into two parts and while it was seriously mooted that it might apply to all military operations, it was eventually limited to internal security operations;

(4) Part I of the 1972 Directive prohibited the use of the five techniques. Seen in context, the prohibition on the use of hoods and blindfolds ought to be seen as a prohibition on their use to aid interrogation and not a complete ban;[175]

(5) Part II of the 1972 Directive comprised more detailed instructions on the running of an interrogation centre in an internal security operation. It contained an exhaustive list of the approaches that could be used in questioning during internal security operations. It contained a clear cross reference to Part I where the prohibition on the five techniques was set out;[176]

(6) at the time when the 1972 Directive was finalised, the doctrine for general prisoner of war handling was contained in the 1951 Regulations and for interrogation of prisoners of war in the 1955 pamphlet;

[172] PLT000812
[173] PLT000813
[174] MOD033961
[175] CAB001860
[176] CAB001865

(7) the outdated nature of the 1955 prisoner of war interrogation pamphlet was drawn to the attention of the Vice Chief of the General Staff who in September 1973 instructed that it be updated by the JSIW Ashford, with close attention being paid to the 1972 Directive;

(8) through the Attorney-General, the UK Government gave an unqualified undertaking to the ECtHR in 1977 that the five techniques would not, in any circumstances, be reintroduced as an aid to interrogation;

(9) following the Vice Chief of the General Staff's request, it took nearly six years for an updated prisoner of war interrogation manual to be produced. When it was finalised in 1978, JSP 120(6) contained no reference to the prohibition on the five techniques, in apparent breach of the Vice Chief of the General Staff's much earlier instruction. It did, however, contain a short passage referring to blindfolding on security grounds;

(10) in 1990 the 1951 Regulations were replaced by JSP 391 which did not refer to the five prohibited techniques and did not address sight deprivation of prisoners of war at all; and

(11) there was completely separate doctrine on interrogation in internal security operations (the 1972 Directive) and in warfare (JSP 120(6)). The five techniques were expressly prohibited in the former but not in the latter.

4.174 It can be seen now, with only a modicum of hindsight, that this was an extremely unhappy state of affairs. With respect to the gradual loss of the doctrine, the situation was to get only worse in years 1997-2003. As the MoD concedes, the five techniques should have been banned as an aid to interrogation in all situations and in all operations, wherever they took place.

Part V

MoD Orders and Publications from 1996 Leading up to Op Telic

Chapter 1: The 1996/1997 Review of Interrogation Policy

5.1 It would appear that the review of policy that took place in 1996/1997 arose initially out of consideration of which non-UK nationals should be permitted to attend Joint Services Intelligence Organisation (JSIO) interrogation courses. In particular, arising out of operations in the Balkans, there was pressure for certain categories of non-UK nationals to attend the courses and it was envisaged that revised guidelines on who could attend the courses would need to be put to Ministers.[1]

5.2 The response of 26 June 1996 from the Brigadier Defence Intelligence Commitments (DIC), referred to the Compton and Parker reports and the Heath Statement. It referred to Joint Service Publication (JSP) 120(6) noting that it dealt with interrogation of prisoners of war during conventional military operations but said very little about questioning methods. It also referred to both parts of the 1972 Directive. The Brigadier went on to say:

> *"5. Military involvement in the questioning or "screening" of arrested suspects during internal security operations effectively ceased in 1977 when police primacy was reintroduced in Northern Ireland. In essence, because of changed circumstances, the direction given in JIC(A)(72)21 and the associated VCGS letter is historic and needs to be reviewed.*
>
> *6. Conduct After Capture (CAC) training is currently governed by a policy directive issued in 1990 by the then Directorate of Army Training. DMO now exercises tri-Service responsibilities on behalf of DCDS(C) for CAC policy; I understand that his staff are currently preparing a major paper on this subject in conjunction with the MOD CAC Working Group.*
>
> *7. With these various considerations in mind, and as a start point for further work, I agree that we ought to move forward in the way that you suggest. I have nothing to add to the guidelines that you propose for CAC, R to I, prisoner handling and debriefing training. As far as interrogation training is concerned, however, may I suggest that a submission to Min AF would be strengthened if we were to add a proviso stating that any techniques taught to* [redacted] *nationals, or to other nations on a case by case basis, will be in accordance with the Geneva Conventions and will be restricted to the questioning of PW during conventional military operations?"*[2]

5.3 It is noteworthy that at this stage, both JSP 120(6) and the 1972 Directive had been identified as applicable doctrine; that it was understood that the applicable doctrine was different for warfare and internal security operations; and that the latter doctrine was outdated.

[1] MOD041783-4, 6 June 1996
[2] MOD041782

5.4 A number of the subsequent minutes do not appear to have survived. But the Minister's Assistant Private Secretary called for further advice on 19 September 1996.[3] It seems most likely that the initial consideration of who may attend interrogation and resistance to interrogation training, together with the request for further background information from the Minister's Private Office, led to a broader review of interrogation policy.[4]

5.5 On 3 December 1996, DIC circulated a paper which addressed interrogation policy generally as well as participation in interrogation and related training.[5] JSP 120(6), the two parts of the 1972 Directive, the Compton and Parker Reports, and the most relevant articles of the Third Geneva Convention and the first protocol were referred to. The paper recorded the Government as having accepted Lord Gardiner's conclusions, it referred to the decisions of both the Commission and the Court in *Ireland v UK*, and to assurances given to Amnesty International in the mid-70s concerning resistance to interrogation training.

5.6 The paper then set out an analysis of the "Current Status of the Five Techniques":

> *"13. We are not aware of any developments since the 1970s that override the basic policy imperatives set out in the preceding paragraphs.*
>
> *14. Para 4 of Reference A asked several questions about the current status of the five techniques. Although not qualified to give a definitive legal view, we assume that the findings of the Gardiner Report, as accepted by HMG in 1972, still stand. The use of the term "illegal" is therefore correct when referring to the status of these techniques.*
>
> *15. Given that the five techniques are regarded to be contrary to UK law, and that they have been ruled inhuman and degrading by the ECHR, HMG is not in a position to argue that they comply with the terms of the GC Articles outlined at para 12 above.* ***We therefore consider that the use of the five techniques is contrary to the GC and that they should not be used during the interrogation of PW captured during conventional military operations.****"* [emphasis added][6]

5.7 The highlighted passage above is particularly interesting because it reflects an understanding that the prohibition on the use of five techniques in the 1972 Directive applied to internal security operations, but that they would also be illegal if used in conventional military operations. This was consistent with the thinking in 1972, and with the Vice Chief of the General Staff's request in September 1973 that guidance on the interrogation of prisoners of war should be redrafted to reflect, amongst other things, the constraints set out in the 1972 Directive. Unfortunately, while correctly setting out the position that had been reached, the paper did not go on to warn that the prohibition on the interrogation of prisoners of war had not specifically been incorporated in JSP 120(6), the then leading doctrine on interrogation of prisoners of war. This may reflect that the principal point under consideration at this time was who should have access to interrogation training.

5.8 On 16 January 1997, an important submission was put to the Minister for the Armed Forces on the policy for interrogation and related activities. The immediate background was described as follows:[7]

[3] MOD042736-7
[4] This sequence of events is supported by the first paragraph of the later submissions on 16 January 1997: MOD042035, see paragraph 5.8
[5] MOD042030
[6] MOD042032-3
[7] MOD042035

A. D/Min(AF)/NS/3/10 dated 19 Sep 96.

1. At Reference, APS/Min(AF) raised a number of questions concerning an earlier submission in respect of guidelines for Interrogation/Conduct After Capture (CAC) training. In replying, the opportunity has been taken to review the wider policy for interrogation and related activities conducted by the Armed Forces. The Cabinet Office and the Foreign Office along with relevant Departmental and Service branches have been consulted.

5.9 The submission then set out the background in broadly similar terms to the 3 December 1996 paper giving the background events from the 1970s. A series of proposed changes were then put to the Minister to consider:[8]

16. It is proposed that the overall policy for interrogation and related activities should now be revised, in accordance with the following guidelines:

a. The UK's existing Service interrogation capability should continue to prepare and train in peacetime for tasks involving the questioning of PW during conventional operations using procedures that comply with the Geneva Conventions.

b. If, in exceptional circumstances, Service interrogators are required in future to support the civil authorities during Internal Security operations, they are not to deploy without the specific approval of Ministers.

c. Interrogation methods employed during all operations should comply with the Geneva Conventions and international and domestic law. The services of a Legal Adviser should be made available to the interrogation organisation during operations to ensure that these requirements are met.

d. Procedures used by UK interrogators in an operational theatre should be governed by a detailed directive that incorporates current legal advice and is issued on behalf of the UK Joint Commander.

e. Debriefing operations and CAC training will continue to be governed by MOD rules and directives which will be updated as necessary by CDI and DCDS(C) and their respective staffs.

f. Commandant DISC should review on a routine basis all interrogation related procedures, methods and organisations employed by the UK Armed Forces. He should also be responsible for the supervision and conduct of all interrogation related training carried out by the three Services including practical CAC training.

g. Commandant DISC should advise the UK Joint Commander over the nomination of a suitably qualified officer to assume command of the UK Service interrogation organisation that is established in an operational theatre.

17. As far as access to training is concerned, the consolidated guidelines stated below are proposed:

a. Interrogation Training. Access to interrogation training should be restricted normally to [redacted] nationals. Access by other nations should be on a case by case basis, eg clearance might be granted to other nations contributing interrogators to the [redacted] Battalion or otherwise working in close association with UK personnel. All interrogation training would be in accordance with the Geneva Conventions and restricted to the questioning of PW during conventional military operations.

[8] MOD042038-39

b. Conduct After Capture (CAC) Training. Access to CAC training should be restricted normally to AUSCANUKUSNZ nationals and exchange personnel from NATO and Commonwealth countries serving with UK units, subject to them being eligible for access to UK CONFIDENTIAL information. Some NATO and Commonwealth personnel would be excluded from those elements of CAC training with an AUSCANUKUSNZ caveat. Access by nationals of other countries to be considered on a case by case basis.

c. Debriefing Training. Open to all nationals, subject to normal security rules regarding course classification.

18. The provision of training facilities for NATO and Commonwealth nations will be publicised through existing bilateral intelligence links and through the Directorate of Foreign and Commonwealth Training (DFCT). It is envisaged that, with the exception of overseas exchange personnel attached to British units, nations will bear costs on a pro rata basis.

19. The training now being provided, while sensitive, does not enter into the areas that caused embarrassment to HMG in the 1970s. As such, it is not proposed that any reference should be made to Parliament concerning the proposed Guidelines. In the event of questions, the Departmental response would be that such training is provided in accordance with UK and international law, and in support of UK defence and foreign policy interests.

20. It is recommended that Min(AF) approve the Guidelines described at paragraphs 16 and 17 above.

5.10 These proposals contain the broad policy imperative that interrogation methods for all operations should comply with the Geneva Conventions and international and domestic law.[9] But the proposal was to leave the procedures for any operational theatre to be governed by a detailed directive "*... that incorporates current legal advice and is issued on behalf of the UK Joint Commander*".[10]

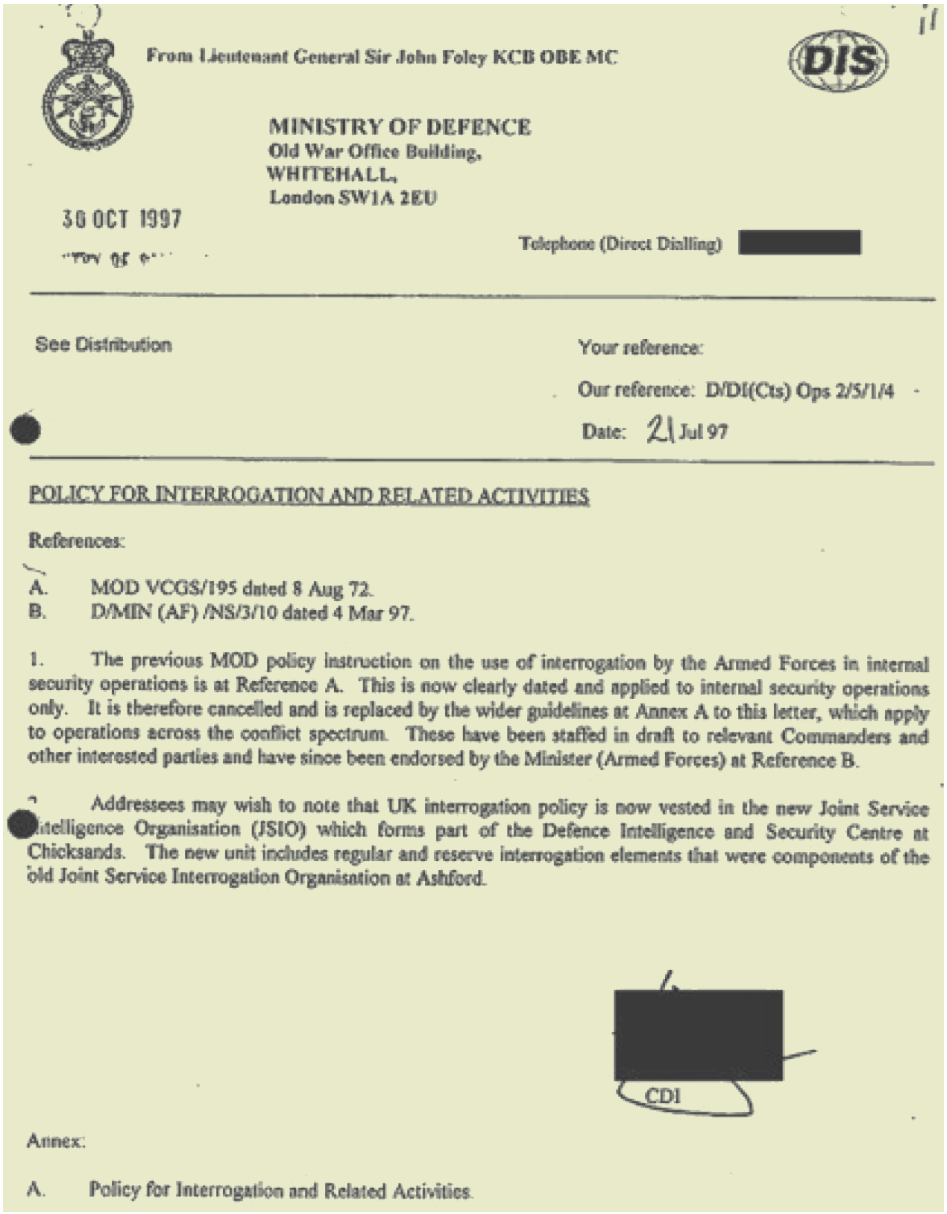
5.11 On 14 February 1997, it was confirmed that the Deputy Chief of the Defence Staff (Commitments) and the Assistant Chief of the General Staff were content with this submission.[11]

5.12 On 4 March 1997, the Minister for the Armed Forces approved the guidelines set out in paragraphs 16-17 of the 16 January submission.[12]

5.13 More than four months later, on 21 July 1997, Lt Gen Sir John Foley the Chief of Defence Intelligence issued the revised policy for interrogation and related activities.[13]

5.14 Significantly, the covering letter referred to Part II of the 1972 Directive as being "*clearly dated*" and applying to internal security operations only. That part of the Directive was therefore cancelled and replaced with the guidelines attached to the letter:

[9] Ibid., paragraph 16(c)
[10] Ibid., paragraph 16(d)
[11] MOD041758
[12] MOD041757
[13] MOD041753-6



From Lieutenant General Sir John Foley KCB OBE MC

DIS

MINISTRY OF DEFENCE
Old War Office Building,
WHITEHALL,
London SW1A 2EU

30 OCT 1997

Telephone (Direct Dialling) [redacted]

See Distribution

Your reference:

Our reference: D/DI(Cts) Ops 2/5/1/4

Date: 21 Jul 97

POLICY FOR INTERROGATION AND RELATED ACTIVITIES

References:

A. MOD VCGS/195 dated 8 Aug 72.
B. D/MIN (AF) /NS/3/10 dated 4 Mar 97.

1. The previous MOD policy instruction on the use of interrogation by the Armed Forces in internal security operations is at Reference A. This is now clearly dated and applied to internal security operations only. It is therefore cancelled and is replaced by the wider guidelines at Annex A to this letter, which apply to operations across the conflict spectrum. These have been staffed in draft to relevant Commanders and other interested parties and have since been endorsed by the Minister (Armed Forces) at Reference B.

2. Addressees may wish to note that UK interrogation policy is now vested in the new Joint Service Intelligence Organisation (JSIO) which forms part of the Defence Intelligence and Security Centre at Chicksands. The new unit includes regular and reserve interrogation elements that were components of the old Joint Service Interrogation Organisation at Ashford.

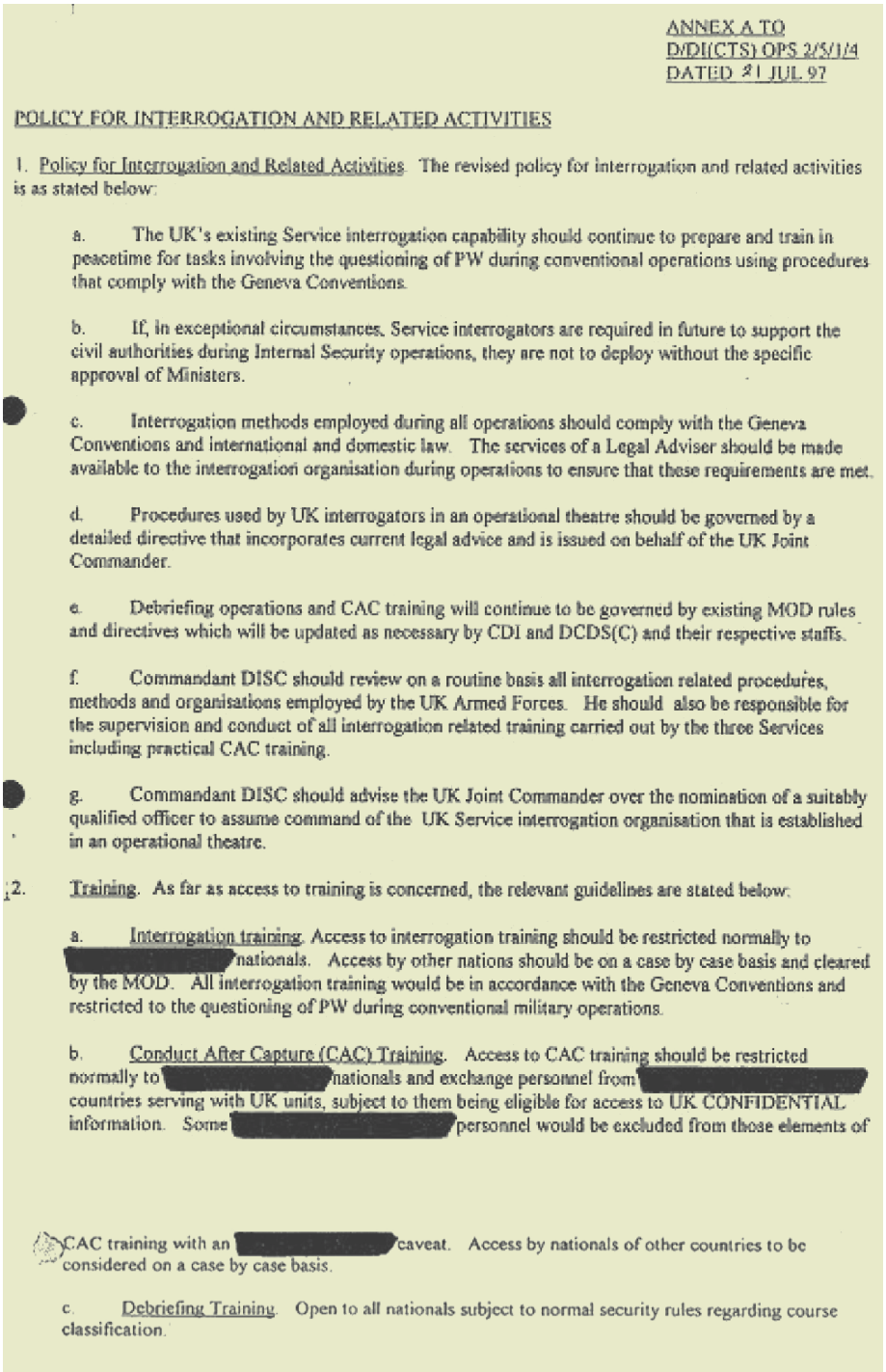
[redacted]
CDI

Annex:

A. Policy for Interrogation and Related Activities.

5.15 The policy was sent to the three services, Permanent Joint Headquarters (PJHQ), the Commandant of Defence Intelligence and Security Centre (DISC) as well as the Commander of the JSIO, and also internal MoD recipients. The revised policy was as follows:[14]

[14] MOD021755-6



ANNEX A TO
D/DI(CTS) OPS 2/5/1/4
DATED 21 JUL 97

POLICY FOR INTERROGATION AND RELATED ACTIVITIES

1. Policy for Interrogation and Related Activities. The revised policy for interrogation and related activities is as stated below:

a. The UK's existing Service interrogation capability should continue to prepare and train in peacetime for tasks involving the questioning of PW during conventional operations using procedures that comply with the Geneva Conventions.

b. If, in exceptional circumstances, Service interrogators are required in future to support the civil authorities during Internal Security operations, they are not to deploy without the specific approval of Ministers.

c. Interrogation methods employed during all operations should comply with the Geneva Conventions and international and domestic law. The services of a Legal Adviser should be made available to the interrogation organisation during operations to ensure that these requirements are met.

d. Procedures used by UK interrogators in an operational theatre should be governed by a detailed directive that incorporates current legal advice and is issued on behalf of the UK Joint Commander.

e. Debriefing operations and CAC training will continue to be governed by existing MOD rules and directives which will be updated as necessary by CDI and DCDS(C) and their respective staffs.

f. Commandant DISC should review on a routine basis all interrogation related procedures, methods and organisations employed by the UK Armed Forces. He should also be responsible for the supervision and conduct of all interrogation related training carried out by the three Services including practical CAC training.

g. Commandant DISC should advise the UK Joint Commander over the nomination of a suitably qualified officer to assume command of the UK Service interrogation organisation that is established in an operational theatre.

2. Training. As far as access to training is concerned, the relevant guidelines are stated below:

a. Interrogation training. Access to interrogation training should be restricted normally to [redacted] nationals. Access by other nations should be on a case by case basis and cleared by the MOD. All interrogation training would be in accordance with the Geneva Conventions and restricted to the questioning of PW during conventional military operations.

b. Conduct After Capture (CAC) Training. Access to CAC training should be restricted normally to [redacted] nationals and exchange personnel from [redacted] countries serving with UK units, subject to them being eligible for access to UK CONFIDENTIAL information. Some [redacted] personnel would be excluded from those elements of CAC training with an [redacted] caveat. Access by nationals of other countries to be considered on a case by case basis.

c. Debriefing Training. Open to all nationals subject to normal security rules regarding course classification.

5.16 The following points should be noted about the position that had been reached once this revised policy had been issued:

(1) only Part II of the 1972 Directive had been cancelled. The prohibition on the five techniques in internal security operations contained within Part I of the 1972 Directive was still applicable;

(2) similarly, there is nothing to suggest that JSP 120(6) as guidance for interrogation of prisoners of war in warfare was cancelled;

(3) during the course of the policy review, the point had been made expressly that the use of the five techniques in wartime would be contrary to the Geneva Conventions;

(4) the high level policy requirement was that interrogation methods employed during all operations should comply with the Geneva Conventions and international and domestic law. A legal adviser was to be made available to the interrogation organisation during operations to ensure these requirements were met; and

(5) the new requirement for a detailed directive to be issued addressing the procedures to be used by UK interrogators in an operational theatre applied to all military operations, including international conflict/warfare and internal security operations.

5.17 Seen in isolation, the changes introduced to interrogation policy in 1997 do not appear to be particularly controversial or inapposite. Indeed the prohibition on the five techniques was left in place for internal security operations; the key higher policy requirement was clear: compliance with the Geneva Conventions and international and domestic law was required; and for all operations there was a requirement for a detailed directive for the procedures to be adopted.

5.18 With hindsight, however, it is to be regretted that the opportunity was not taken in 1997 to make clear within the policy itself that the prohibition on the five techniques applied as much in international conflict/warfare as in internal conflict situations. From the flow of minutes that led to the policy changes, I have no doubt that those involved in 1996–1997 understood that to be the position. Having regard to what was written on 3 December 1996,[15] I have little doubt that they would have expected the prohibition on the five techniques to be contained in or referred to within the detailed directive for interrogation procedures used in any operational theatre.

[15] MOD042030-4

Chapter 2: JSP 120(6) Becomes Obsolete

5.19 As indicated above, there is nothing in the 1997 policy to suggest that JSP 120(6) was cancelled. JSP 120(6) did not contain any specific reference to the prohibition on the five techniques. I explained in Part IV of this Report that JSP 120(6) was the one place in the doctrine for prisoners of war that did at least contain a section on sight deprivation, which permitted prisoners to be blindfolded where necessary for operational security.

5.20 The next stage in the gradual loss of doctrine was that JSP 120(6) became obsolete and was replaced by a far more generalised publication, Joint Warfare Publication (JWP) 2-00 Intelligence Support to Joint Operations, first promulgated in 1999.

5.21 The MoD was not able fully to explain to the Inquiry the process by which JSP 120(6) became obsolete. In a helpful letter dated 9 July 2009[16] from the MoD's Tribunals and Inquiries Unit (TIU) to the Solicitor to the Inquiry, the best explanation the MoD could provide was that:

(1) in the main, the Manual of Service Intelligence (JSP 120) was superseded by JWP 2-00;

(2) there is no explicit record of JWP 2-00 replacing JSP 120(6); but

(3) it was the considered opinion of relevant experts within DISC, Defence Intelligence and the MoD's Development, Concepts and Doctrine Centre (DCDC) that JSP 120(6) was no longer extant for some time before or during Op Telic.

5.22 In Part IV, I have set out how the 1955 pamphlet on interrogation in war had been modified by JSP 120(6) such that the latter was no longer tailored towards those specifically trained in interrogation but towards officers who might need to deal with interrogation and tactical questioning matters, but who were not specialist trained interrogators.

5.23 JWP 2-00 exacerbated this change by providing guidance that was even more general in nature.[17] It concentrated on the intelligence cycle, the architecture for operational intelligence and guidelines for joint intelligence practice. There was nothing in JWP 2-00 which dealt with interrogation and tactical questioning. In contrast to JSP 120(6), there was no guidance at all on sight deprivation. Nothing was said about questioning prisoners of war. References to interrogators in JWP 2-00 were limited and incidental.

5.24 Thus from the 1955 pamphlet which had provided detailed guidance on interrogation in war, the written guidance on the subject had become so diluted that by 1999 and the introduction of JWP 2-00, interrogation was barely mentioned, let alone addressed in any meaningful level of detail. It follows that probably by 2000, and certainly by the end of 2002, the remarkable position had been reached by which the only doctrinal guidance that was available in relation to the interrogation of prisoners of war was from:

(1) NATO STANAGs all at a high level of generality;

[16] MOD055916
[17] MOD054517-52

(2) the 1997 policy guidelines at an even higher level of generality requiring compliance with the Geneva Conventions but requiring a detailed directive to be produced to govern procedures in any operational theatre; and

(3) teaching materials used on the courses run by the DISC.

5.25 Moreover, by replacing JSP 120(6) with JWP 2-00, the only written guidance within the Armed Forces of generally available doctrine on when, and in what circumstances, a prisoner could be deprived of their sight, appears to have been deleted leaving a complete absence of written guidance on this aspect.

5.26 In short, the position was that by this stage, the UK had no adequate doctrine for interrogating prisoners of war.

5.27 I give credit to the MoD for the extent to which it has faced up to this in sensible and appropriately realistic submissions to the Inquiry. In its closing submissions the MoD accepted that whereas Part I of the 1972 Directive applied to interrogation in international security operations, "*There was no corresponding written doctrine for interrogation in times of international armed conflict.*" The MoD went on to "*…accept its corporate responsibility for the gap in doctrine*".[18]

[18] SUB001058-9

Chapter 3: JSIO's Internal Review of Interrogation Policy

5.28 What is particularly regrettable about the gap in doctrine is that it was in fact recognised by the JSIO in 1999 and subsequently, and discussed within DISC and beyond. Yet this recognition did not lead to the doctrinal gap being filled. Concerns about doctrinal shortcomings appear to have become overtaken by greater concerns, more particularly concerns about capability and manning. For several years, nothing concrete was done. Further, JSIO and then others in MoD appear to have lost sight completely of the 1997 policy so that the doctrinal gap was even wider in practice.

5.29 An internal review in JSIO started on 11 October 1999 with a request from the Commanding Officer. The request was made to S040. S040 joined DISC in August 1998. He was at that time a Lieutenant Commander, and was the Officer Commanding the JSIO Reserves Wing and Commanding Officer HMS Ferret, a Royal Naval Reserves Unit. He was one of four officers reporting to the Commanding Officer of the JSIO.[19] The original request has not survived but its terms were reflected in the initial response from S040 from which it is clear that the task involved:

> *"a. Assembly of all relevant policy documents for use as references.*
>
> *b. Perusal of relevant extracts.*
>
> *c. Definition of the first identified interrogation policy (The Cold War is early enough).*
>
> *d. The last identified policy on interrogation support and its source and currency.*
>
> *e. Current concepts and methodology and an examination of whether current training addresses the requirement.*
>
> *f. Provision of statistics on assets currently available to perform interrogation support, including the number of reservists and their language qualifications.*
>
> *g. Legal debates which quantify requirements for interrogation outside Article 5[20] operations."*[21]

5.30 As to what led to the request, S040 described in his Inquiry witness statement how he had noted the absence of interrogation doctrine, and that in the absence of such doctrine it was difficult to exercise or train the reserve companies. Further, that:

> *"Standards existed for individual training and for language training but there was no overarching doctrine addressing how interrogation would be deployed during particular types of operation, what numbers of interrogators might therefore be needed to be called upon in any particular type of operation, how a JFIT would be employed and with what equipment nor any doctrine prescribing the permissible methods of interrogation in situations other than general war, all of which affected recruitment and training."* [22]

[19] S040 BMI06978-9, paragraphs 4-5

[20] Article 5 operations refers to Article 5 of the North Atlantic Treaty 1949 (the "Washington Treaty"), that is NATO members acting in support of one another following an attack upon one or more of them. In the current context it seems to be used a shorthand for full international armed conflict.

[21] MOD028335

[22] S040 BMI06993-4, paragraph 52

5.31 Pursuant to the request for a review, S040 sought legal input, writing to the Army Legal Service on 28 October 1999. Following the terms of the request of 11 October 1999, S040 asked specifically about interrogation other than in general war:[23]

REQUEST FOR CLARIFICATION OF THE LEGAL STATUS OF INTERROGATION IN SITUATIONS OTHER THAN GENERAL WAR

References:
A. TELECON [redacted] JSIO/Lt Col RIDGE ALS2/SO1 181430 Oct 99.
B. JSP 391 – Instructions for the Handling of Prisoners of War.
C. STANAG 2044 – Procedures for Dealing with Prisoners of War.
D. JSP 120(6) – Interrogation in War.
E. STANAG 2033 – Interrogation of Prisoners of War.
F. JWP 1-10 – Handling of Prisoners of War.

1. As discussed at Reference A, JSIO is currently conducting a review of interrogation doctrine and training in the UK Armed Forces. References B to E are still extant and cover UK and NATO procedures for the handling and interrogation of Prisoners of War (PW) during general war. They are obviously written with a NATO versus Warsaw Pact conflict in mind. Reference F, which will supersede References B and D in due course, is still being staffed through the MOD.

2. Currently Interrogators from all the UK Regular and Reserve Forces are trained solely by JSIO. They are trained to conduct interrogation within the terms of the Geneva Convention and the rules laid down by References B to E. While it is generally accepted that interrogation of PW will take place during general war, to date no doctrine appears to have been formulated to deal with the lower levels of conflict, though interrogation of PW by UK Armed Forces personnel certainly took place during Op GRANBY. It is believed that the decision to interrogate during Op GRANBY was taken after it was realised that the original intention of handing all PW to the Saudis would contravene the Geneva Convention. During Op CORPORATE it appears that interrogation was at first prohibited by Cabinet Office direction. Shortly afterwards this direction was altered to allow 'Specialist Tactical Questioning'; a term not seen in any of References B to E. More recent operations in Bosnia, Kosovo and East Timor have not generated PW and so the question of the legality of interrogation has not arisen.

3. Essentially, interrogation can be described as the systematic questioning of a selected, unwilling individual by a trained interrogator. Tactical Questioning (TQ) is carried out by the capturing unit and the object of it is to obtain information, the value of which would deteriorate or be lost altogether if questioning were delayed until a trained interrogator could be made available. Other activities such as interviewing, debriefing, etc., imply that the subject is a willing participant and so the question of legality does not arise.

4. It is requested that ALS outline the conditions which would be required in future in order that the interrogation of PW or other detainees by UK Armed Forces personnel would be legally sanctioned.

5.32 The aspect of most concern in this request for advice is what was omitted in S040's reference list of current doctrine. His letter did not refer to the Heath Statement, the 1972 Directive or the 1997 policy which had been circulated to JSIO only just over two years previously. These omissions are obviously disturbing. As will be seen, as the internal review progressed, the above omissions were not rectified in the later stages of the review. They do not therefore reflect individual omissions that can be attributed to S040's personal lack of knowledge, rather they reflect a corporate loss of understanding of what doctrine was applicable.

5.33 It is necessary to ask how it came about that S040 did not include Part I of the 1972 Directive or the 1997 policy in his list of doctrine. S040 attended the interrogation course on arrival at JSIO in 1998. I accept his evidence that he was taught that certain techniques were "*…prohibited by reference to a European Court case"* but he was not aware of the 1972 Directive itself nor of the 1997 policy.[24] S040 made clear in his evidence, and I accept, that as someone who was relatively new to interrogation

[23] MOD028340-1
[24] S040 BMI 67/109/21-110/25

in 1999, he canvassed DISC, MoD and PJHQ as well as F branch 'of the JSIO' as to what policy or doctrine existed.[25] The key documents had been available two years earlier when DIC were considering the 1997 policy changes but it would appear that no-one in PJHQ, MoD or DISC provided them to S040 for the review that he undertook. S040 said in his oral evidence that he was surprised when he saw the 1997 policy. Remarkably he saw the policy for the first time on this Inquiry's website.[26] As to Part I of the 1972 Directive, S040 said in his oral evidence that this was not provided to him either, but if it had been, he would have mentioned it in his report to the Commanding Officer and also mentioned the specifics of the area it was covering. By this S040 meant that he understood that Part I of the Directive applied only to Northern Ireland or at most the UK and British Protectorates.[27] In that understanding, S040 was plainly wrong, but it goes to demonstrate his own lack of familiarity with the Directive. S040 was by no means alone in misunderstanding the scope of the 1972 Directive.

5.34 Part of the explanation for this loss of doctrine must lie in an incremental failure to ensure that the prohibition on the five techniques was read across from internal security operations into the prisoner of war doctrine. But more prosaic physical considerations also appear to have played a part in this. In a later report,[28] S040 stated there had been a loss of documents when the old JSIW merged and moved from Ashford to Chicksands to form the new JSIO. Many documents with the old JSIW headings had "*never been found*". He also said that all relevant files for the whole of the 1990s had been destroyed (though not for the 1970s and 1980s).

5.35 On 25 November 1999, Lt Col S.K. Ridge of the Army Legal Service provided the legal advice in response to S040's request.[29] The essential parts of Ridge's advice can be summarised as follows:

(1) While the request had been framed for operations other than general war, Ridge advised that the Third Geneva Convention and particularly Article 17 would apply in any situation that was one of international armed conflict and not just in general war. She suggested that interrogators could ask questions but not demand answers... Ultimately, in an international armed conflict "*you are very limited as to what you can do other than ask questions*".[30]

(2) There may be more flexibility in an operation short of international armed conflict where the Third Geneva Convention will not apply but "*regard must still be had to both the English criminal law and human rights law*". Ridge referred both to offences under the Offences Against the Person Act 1861 in the context of violence or the threat of violence, and to the European Court of Human Rights (ECHR) and Article 3 ECHR in particular. She cited *Ireland v UK* and the use of the five interrogation techniques. She gave as an example of conduct that might be acceptable under the ECHR but not under the Third Geneva Convention, the limited use of solitary confinement.[31]

[25] S040 BMI 67/140/24-141/7
[26] S040 BMI 67/137/8-11
[27] S040 BMI 67/141/9-145/8
[28] 30 November 1999, MOD028335-9, see paragraphs 5.36-5.37
[29] MOD028354-6
[30] MOD028356, paragraph 12
[31] MOD028355, paragraphs 7-11

(3) All of the advice was caveated by the comment that S040's request for advice had not specified the methods of interrogation used and thus the advice provided was necessarily general; much would depend upon operational circumstances. Ridge added:

> *"You intimated to me that the value of interrogation may be such that from a political viewpoint it outweighs the legal considerations. However you should be aware that it is Government policy to comply with its obligations under international law and organisations such as the ICRC and Amnesty International will keep a careful watch on proceedings. In a GCIII scenario the political fallout from not complying with legal obligations may be considerable. As regards the provision of human rights this is an expanding area with much potential for litigation."* [32]

5.36 On 30 November 1999, S040 provided the Commanding Officer of the JSIO with what were described as preliminary results of the review he had been able to undertake. His assessment of the policy documents reflected his earlier request for legal advice from Ridge:[33]

POLICY DOCUMENTS

3. After extensive enquiry in DISC, MOD and PJHQ the *only* evidence found to date of the existence of any policy or doctrine on interrogation is in the old and familiar publications, namely:

a. JSP 391 – Instructions for the Handling of Prisoners of War.
b. STANAG 2044 – Procedures for Dealing with Prisoners of War.
c. JSP 120(6) – Interrogation in War.
d. STANAG 2033 – Interrogation of Prisoners of War.

4. It is fortunate that in the act of signing any NATO STANAG the UK has by definition declared the contents of it to be national policy. A further document, JWP 1-10, is in its First Study Draft and is intended to replace JSP 391 only. A copy of JWP 1-10 is available in JSIO on the LAN and in hard copy. Its Second Study Draft is due to be produced around Christmas 99 and its author, Col (Retd) Paul LEFEVER, DGD&D, SIO Command Support, Upavon, welcomes any JSIO input and has thus far been promised feedback from JSIO by Christmas. Although JWP 1-10 details D INT CORPS as the provider of advice on interrogation and tactical questioning techniques and the processing of captured documents and equipment for intelligence purposes, it otherwise deals with interrogation in an extremely cursory and rather confused manner. There is as yet no evidence of any intention to replace JSP 120(6).

5.37 This minute reflects once more the absence of the 1997 policy, Part I of the 1972 Directive and the Heath Statement from any catalogue of doctrine held by the JSIO. S040 went on to give a précis of the recent uses of interrogation, the current interrogation capability and interrogation training. On the final subject of legal debates which "*quantify*" requirements for interrogation outside Article 5 operations, S040 wrote:[34]

LEGAL DEBATES WHICH QUANTIFY REQUIREMENTS FOR INTERROGATION OUTSIDE ARTICLE 5 OPERATIONS

12. As already described, there was an initial reluctance to allow interrogation during the Falklands Conflict and it was only allowed to progress after a form of weasel words was arrived at (Specialist Tactical Questioning). At the onset of the Gulf War, Oona Muirhead of GS Sec signalled that the idea of interrogating Iraqi prisoners was crass and would irritate the Iraqis. Indeed Malcolm Rifkind had intended to wash his hands of all responsibility by handing PW captured by the UK to the Saudis. At least two prisoners were taken by UK Forces in Kosovo but were released because there was no guidance on the legality of even detaining them, never mind interrogating them.

[32] MOD028356, paragraph 12
[33] MOD028336
[34] MOD028338-9

13. Obviously each conflict will have its own peculiarities and each one will need its own set of rules which may or may not allow interrogation. These rules will probably be subject to continuous review, but it is probably a truism to say that once politicians become aware of the value of intelligence obtained by interrogating enemy PW they will stretch their own rules to allow it in some form or another. How conscientious they will then be in protecting those individuals who actually do the interrogation from collateral legal action can only be imagined.

14. The overall factors which it is envisaged would lead to legally sanctioned interrogation are:

a. All UK Forces are subject to English, European Community and International law. Any actions which they take must be legal within that framework.

b. There must be a promulgated right for UK Forces to detain whoever is classed as 'the enemy'.

c. Permission to interrogate must be specifically given by the National Authority.

15. As a start to the debate Army Legal Services were asked to clarify the legal status of interrogation in situations other than general war. The letter requesting clarification and the subsequent answer from ALS2 are attached overleaf.

5.38 By 13 April 2000, S040 had progressed his preliminary results into a paper entitled "*Interrogation – Doctrine, Assets, Training and the Way Ahead*".[35] The paper was outlined as follows:[36]

INTERROGATION - DOCTRINE, ASSETS , TRAINING AND THE WAY AHEAD

References:

A. JSP 391 – Instructions for the Handling of Prisoners of War.
B. STANAG 2044 – Procedures for Dealing with Prisoners of War.
C. JSP 120(6) – Interrogation in War.
D. STANAG 2033 – Interrogation of Prisoners of War.
E. JWP 1-10 – Handling of Prisoners of War.

INTRODUCTION

1. JSIO is the unit responsible for the training of UK Armed Forces personnel, both Regular and Reservist, in interrogation techniques. These personnel are trained to interrogate Enemy Prisoners of War (EPW) within the constraints of the Geneva Convention (GC) and within the guidance laid down in References C and D. These publications are not easily applicable to the modern trend towards operations below Article 5 level.

AIM

2. The aim of this paper is to examine current interrogation doctrine, assets and training and seek policy direction as required.

[35] MOD028347-51
[36] MOD028347

5.39 On current doctrine, S040 stated:[37]

> CURRENT DOCTRINE
>
> 4. References A to D are the current national and NATO publications covering EPW handling and interrogation in war. They are somewhat dated, stemming from the Cold War and the in-built assumptions that conflict would be more simplistic and at a higher level than is currently the norm. By adopting STANAGs 2033 and 2044 the UK appears, by default , to have adopted their content as national doctrine. Extensive searching has not revealed any parallel national requirements.
>
> 5. Reference E will be the replacement for Reference A but is still at the draft stage. Although it details D INT CORPS as the provider of advice on interrogation, tactical questioning techniques and the processing of captured documents and equipment for intelligence purposes, it otherwise deals with interrogation in a cursory manner. There is, as yet, no evidence of any intention to replace Reference C.

5.40 While S040 continued to refer to JSP 120(6), there was no reference to JWP 2-00 or the fact that JSP 120(6) had become or was about to become obsolete. At the end of the paper, there was a section setting out areas requiring clarification. On doctrine and assets, S040 stated:[38]

> AREAS REQUIRING CLARIFICATION
>
> 17. Doctrine and Assets. Current doctrine dates from the end of the 1940s. It is still relevant for Article 5 Operations where war has been declared, but becomes less applicable as the level of conflict decreases and the complexity of political, legal and PR requirements increases. Specific areas of concern are:
>
> a. Other than Article 5 operations, will interrogation by UK Armed Forces personnel ever be allowed in the future and, if so, under what conditions? Interrogation is defined as '*The systematic questioning of a selected, unwilling individual by a trained interrogator*'.
>
> b. Clarification is required as to who exactly will carry out interrogation. The concept of a task-organised Regular FHT purely for interrogation currently lacks realism – no languages, different equipment and trained for other HUMINT duties. Reservist JFITs appear to be one solution.
>
> c. Where do JFITs fit in the Force Readiness Cycle ?
>
> d. If needed, how large should they be ? Should JSIO interrogation assets contribute to manning ? Is there a template LET to equip such units ?
>
> d. Are Detailed Interrogation Centres still required? Who mans and supports them and where are they?

5.41 On 2 May 2000, the Commanding Officer of the JSIO sent S040's paper to the Chief of Staff of DISC.[39] In doing so, he referred to S040's paper as being "*…a document to promote discussion on a largely–neglected HUMINT skill. The paper articulates the commonsense concerns of bringing this intelligence collection function to bear should it be required.*" He suggested that direction from the Director of Military Operations (DMO) and the Assistant Director of Intelligence (ADI) HUMINT would be a useful starting block, perhaps with an initiating conference as the catalyst.

[37] MOD028348
[38] MOD028350
[39] MOD028345-6

5.42 The covering minute continued to reflect a misunderstanding that there was no doctrine for interrogation other than in warfare, whereas Part I of the 1972 Directive was still extant and the 1997 Policy, general though it was, covered interrogation in all military operations:[40]

OTHER ISSUES

3. The constraints of interrogation being linked to Article 5 operations is a major factor in limiting collection by this means. Legal advisors, during the Kosovo air campaign, refused to allow the interrogation of any Serb (pilot, MUP etc) who had the potential to be captured. Debriefing was allowed but only with the subject's consent. This may well be tenable and excusable when UK is involved in multinational operations but not when the national interest may be the sole concern (as in the Falklands War). Even then, the use of 'softer' terminology was required ('Specialist Tactical Questioning' - see Ref A). If we intend to use interrogation (or more acceptable terminology) as a legitimate means of collecting intelligence in future operations less than Article 5 level, it should be so stated.

4. The dilemma for those who must deliver the skill is clear – train, equip, exercise and sustain a body of troops who may never be used because of legal considerations when conflict is technically defined **or** allow the skill to fade ? Operationally, it would be untenable to be unprepared but central support for this particular course of action, with the spin-off for funding and equipment, will be a factor.

5.43 Thus there was an evident frustration about the perceived restriction of interrogation being permitted in practice only in Article 5 operations due to legal constraints, but all being put forward in apparent ignorance of Part I of the 1972 Directive and the 1997 Policy.

5.44 The summary and recommendation of the covering minute were as follows:[41]

SUMMARY

7. It is evident that the interrogation function has not been properly addressed for several years. It is still regarded as a useful weapon in the HUMINT armoury, enabling the discipline to span all types of operational scenarios. Direction and firm policy need to be the start point for any re-examination.

8. The isues requiring clarification are complex, especially legal parameters; this is traditionally a charter for procrastination but they should not be allowed to slow the pace of change if this is what is required.

RECOMMENDATION

9. It is recommended that a suitable working group – perhaps a subset of the Defence HUMINT Working Group – be convened to address the issues raised in the paper. Membership to be directed by ADI HUMINT / MO.

5.45 It is apparent that not all records of how the JSIO paper progressed over the subsequent years have survived. It is not possible therefore to reach conclusions at a detailed level concerning exactly what decisions were made and by whom.

5.46 What is clear is that this warning from the Commanding Officer of the JSIO that complex issues with difficult legal parameters were traditionally a charter for procrastination was, sadly, all too prophetic. Despite this clear identification of a need for *"direction and firm policy"* no further policy or doctrine on tactical questioning or interrogation was drafted between 2 May 2000 and Baha Mousa's death in September 2003.

[40] MOD028345
[41] MOD028346

5.47 The ADI HUMINT at the time of this minute was Col Mike Hill. He was the first incumbent in the post of ADI HUMINT, a post that had been established in 1998 and which he held until October 2001.[42] Hill had only two staff below him. He founded and chaired the Defence HUMINT working group. Hill accepted that tactical questioning and interrogation capability issues fell within his remit. However he did not consider himself responsible for tactical questioning and interrogation doctrine, suggesting that this was the responsibility of the JSIO.[43] He candidly stated that interrogation was not considered a very high priority at the time.[44] Interrogation capabilities were hardly mentioned as Hill remembered it. It was understood that interrogation would only be needed in conventional warfare scenarios, the likelihood of which appeared remote. Non-interrogation aspects of the human intelligence sphere were perceived at this time to require significant work.[45] With the benefit of hindsight Hill accepted that not enough attention was paid to capabilities in tactical questioning and interrogation but at the time there were other more pressing areas of HUMINT work.[46]

5.48 I acknowledge that within the HUMINT sphere, tactical questioning and interrogation was only one aspect amongst many. Other aspects involved difficult legal and policy issues and may also have involved significant operational risks. Hill did not remember receiving the 2 May 2000 minute and attached paper nor did he remember the issues being raised with him. He thought he would have remembered it had it in fact been raised with him.[47]

5.49 S040 in contrast to Hill's evidence remembered that the paper was passed on to the ADI HUMINT. In his Inquiry witness statement he said:[48]

> 60. I am aware that the Chief Of Staff at DISC subsequently sent the report on to the Assistant Director of Intelligence (HUMINT) (who was one of a number of ADIs working for the then Chief of Defence Intelligence (CDI), Admiral West). Each ADI was responsible for his own specialised intelligence area of which HUMINT was one. There were others, although I cannot recall them all. I do not recall ADI (HUMINT)'s name although I remember that he was a Colonel (Intelligence Corps). I was aware that the report was sent to ADI (HUMINT) because I recall seeing a copy of the covering letter which was supportive of the proposal made by CO JISO. After that I did not hear anything further about the review into interrogation doctrine and policy. It appears that this issue was still being taken forward at that stage although progress appears to be quite slow (see the document dated 14 August 2001 (MOD037454) which I recall seeing at the time).

[42] Hill BMI 102/69/12-18. There is some uncertainty surrounding this date as Hill's successor Col Kett believed that he took over earlier, in November 2000 (Kett BMI08438, paragraph 9). However, in his oral evidence at the Inquiry this was put to Hill and he thought this to be unlikely (Hill BMI 102/69/19-24)
[43] Hill BMI 102/90/1-91/4
[44] Hill BMI 102/88/3-9
[45] Hill BMI08396, paragraph 29
[46] Hill BMI 102/94/5-15
[47] Hill BMI 102/94/16-98/15
[48] S040 BMI 67/158/24-159/5; S040 BMI06996

5.50 The records for the subsequent period in relation to what happened to S040's review are patchy. They do not establish whether or not Hill did see the paper and do not resolve the conflict of evidence on this issue between S040 and Hill.

5.51 On 11 Sept 2000, S040 provided some input to the third study draft of JWP 1-10, the joint doctrine on prisoners of war which was being drafted to replace JSP 391. In doing so, he again commented upon the lack of doctrine: *"Currently discussion of HUMINT topics, such as interrogation, is hampered by the lack of any published doctrine.*" [49]

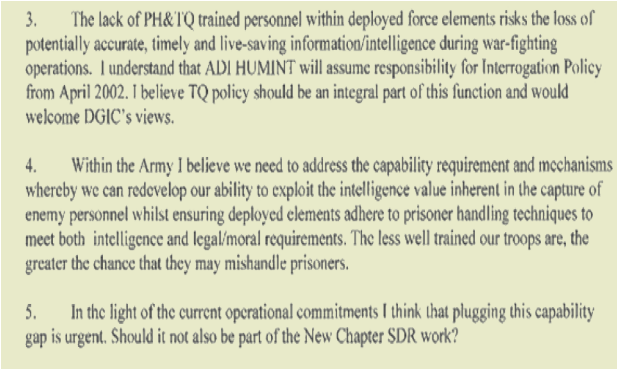
5.52 On 30 July 2001, S040 commented on an entirely different matter, namely the proposal to combine interrogation courses with the prisoner handling and tactical questioning courses.[50] In doing so, he commented that: "*Work is currently in progress to staff the production of Army HUMINT doctrine*" and suggested that this lay with HQ D Int. However, it is to be noted that this was a reference to HUMINT doctrine generally rather than anything specifically on tactical questioning and interrogation policy or doctrine. Moreover, what followed in describing the work that was in hand related much more to the staffing and organisational structure to meet possible future operational requirements.

5.53 I note in passing that a record of a Joint Forward Interrogation Team (JFIT) meeting on 9 August 2001 recorded that clarification would be sought as to whether JSP 120 was still extant as those attending did not believe it had been superseded yet felt the document was out of date. The same meeting recorded incorrectly that interrogation could only be used for Article 5 operations. This comment appeared to arise out of the ongoing mistaken view that there was no doctrine other than for interrogation of prisoners of war, overlooking both Part I of the 1972 Directive and the 1997 Policy. There was a reference to "Army JFIT Doctrine (draft)" but no such document was disclosed to the Inquiry nor does it appear to have evolved into finalised doctrine of any kind before Baha Mousa's death.[51]

5.54 It would appear that nothing of any real significance was done as a result of S040's paper until 2002, a delay of some two years.

5.55 By early 2002, the developing operations in Afghanistan were clearly high on the agenda. Against that background, on 28 March 2002, a minute from Director of Army Staff Duties commented that Service responsibilities for prisoner handling and tactical questioning policy appeared to be unclear.[52] He raised concerns about the lack of tactical questioning trained personnel within the deployed force. He noted that the ADI HUMINT was to assume responsibility for interrogation policy from April 2002 and suggested that tactical questioning should be an integral part of that function. He added that:

[49] MOD028357
[50] MOD028360-61
[51] MOD037454-7
[52] MOD037444-5



3. The lack of PH&TQ trained personnel within deployed force elements risks the loss of potentially accurate, timely and live-saving information/intelligence during war-fighting operations. I understand that ADI HUMINT will assume responsibility for Interrogation Policy from April 2002. I believe TQ policy should be an integral part of this function and would welcome DGIC's views.

4. Within the Army I believe we need to address the capability requirement and mechanisms whereby we can redevelop our ability to exploit the intelligence value inherent in the capture of enemy personnel whilst ensuring deployed elements adhere to prisoner handling techniques to meet both intelligence and legal/moral requirements. The less well trained our troops are, the greater the chance that they may mishandle prisoners.

5. In the light of the current operational commitments I think that plugging this capability gap is urgent. Should it not also be part of the New Chapter SDR work?

5.56 The response to this minute from the DMO in April 2002 agreed that the capability for prisoner handling and tactical questioning had been allowed to degrade.[53] In February 2002 Land Command had directed that all high readiness units send personnel on PH&TQ courses but the response was later recorded as having been "*patchy*".[54]

5.57 Hill's successor as ADI HUMINT was Col Robert Kett and it was he who took over responsibility for interrogation policy in April 2002.[55]

5.58 On 23 July 2002, S046, who had by then taken over as the Commanding Officer of the JSIO, distributed a first draft of a paper entitled *"UK Defence Policy For Tactical Questioning and Interrogation"* (a paper by JSIO for the DHWG).[56] The covering minute explained that this had been promised at the previous meeting of the Defence HUMINT Working Group.

5.59 The attached paper clearly drew upon the earlier paper by S040.[57] By this stage, however, the only references given were to JWP 1-10, the two STANAGs 2033 and 2044, and a fellowship study from 1990. JSP 120(6) was left out, and no reference was made to any successor publication. There was still no mention of Part I of the 1972 Directive, and no mention of the 1997 Policy.

5.60 Notably, however, while if anything there was now less doctrine referenced in the paper, the emphasis of the paper had shifted significantly towards capability issues, whereas S040's paper had raised both doctrinal shortcomings and capability issues. This change of emphasis is evident in a number of ways. The purpose of the July 2002 draft discussion paper was now to argue *"…for a coherent and sustainable Tactical Questioning and Interrogation capability and make* […] *recommendations"*.[58] Gone was the earlier reference to examining current interrogation doctrine as part of the aim of the paper.

5.61 The paper set out a number of assumptions which included an assumption that the Geneva Conventions and JWP 1-10 and the NATO STANAGs would be complied with. It set out a historical perspective:[59]

[53] MOD037458
[54] MOD042058
[55] 23 March 2003 memo, MOD037444, paragraph 3
[56] MOD041725-32
[57] 13 April 2000 paper, MOD028347-51
[58] MOD041726, paragraph 2
[59] MOD041727

5. Political Sensitivity. The term 'interrogation' has suffered throughout the 20th Century and to date from what could be termed a collective sense of revulsion on the part of the various politicians and Armed Forces staffs who have had to confront the decision to permit its use. Despite its civilised definition in both the dictionary[4] and modern, Armed Forces meaning[5] it invariably conjures thoughts of hardship and torture at the hands of a sadistic captor. Recent media pictures of the treatment of detainees at Camp X-Ray, Guantanamo Bay, coupled with the US admission they were not being treated as PW[6] did little to dispel this misconception. Whatever the reason for the corporate unwillingness to act, it is a historical fact that prior to about 1943 and from the end of the Second World War to the present day, there is a constant thread of woeful inadequacy in UK preparation for and implementation of the questioning of PW. It may be the case that, even with the most careful long-term preparation and planning, demand for linguists is likely to exceed supply. Some examples are:

5.62 Reference was made to Suez, The Falklands and the Gulf War, and then:[60]

d. Aden and Northern Ireland. Policy in Aden and Northern Ireland is/was that captured personnel are not PW and that interrogation is not a function carried out under the GC.

e. Afghanistan. Operation JACANA in Afghanistan is operating under Rules of Engagement which require all captured personnel to be treated as PW under the GC and to be handed to the Afghan Administration on completion of TQ. TQ is authorised to 'utilise interrogation methods'[8]

5.63 The paper did state at paragraph 10 that: *"There is no MOD-endorsed doctrine for interrogation"*. But this reference was very much overshadowed by concerns raised about capability, such as:

(1) Until recently, only the Royal Navy had retained a declared requirement for tactical questioning, "*As Op JACANA has proved, the consequence is that deploying units were not appropriately trained to handle PWs (in any quantity) nor were they trained to conduct TQ or sustain the 'shock of capture' which is critical to successful interrogation*".[61]

(2) The Army, Royal Marines non-spearhead units and RAF units were currently unable to meet the first requirement of the prisoner of war chain because of lack of personnel who had been through the tactical questioning course.[62]

(3) "*The latest calls for operational support (Ops VERITAS and JACANA) have highlighted the parlous state of UK Armed Forces' preparedness and ability to conduct TQ, interrogate or simply speak to any Arab or Afghan. The Reservist interrogation units have not trained in a properly-conducted exercise for at least 3 years. They have no vehicles or equipment with which to do their job.*"[63]

5.64 The greater emphasis on capability issues was reflected in the concluding proposals, summary and recommendations sections of the paper:[64]

PROPOSALS

17. It is proposed that:

a. At least two personnel from each HM Ship/Company/Squadron of High Readiness units receive TQ training. Spare capacity on TQ courses would be available to personnel from units at lower readiness.

[60] MOD041728
[61] MOD041729, paragraph 7
[62] MOD041730, paragraph 9
[63] MOD041730, paragraph 11
[64] MOD041731-2

b. A standing JFIT (with appropriate linguistic support) is established, probably within the emerging Defence HUMINT Unit (DHU).

c. HMS Ferret, 7630 Sqn RAuxAF and 22 (V) MI Coy be protected to ensure that up to [redacted] JFITs could be deployed. However, the linguistic skills of these personnel should be utilised more fully within the HUMINT spectrum and they should be trained in other HUMINT skills.

d. Formal action should be taken to ensure that the estimated number of PWs is incorporated into the estimates process in order to derive the TQ, interrogation, guard force and PWHO requirement.

e. The TQ, interrogation, guard force and PWHO organisation supporting High Readiness formations should be exercised regularly.

SUMMARY

18. PW continue to be a vital component of the MODUK HUMINT effort but JWP 1-10 is not being complied with.

19. The lessons of history have not been learned and has resulted in an inability to meet current operational requirements.

20. The sensitivities caused by the word "interrogation" have resulted in an unwillingness to countenance legal methods of acquiring information from unwilling human sources.

21. TQ, the PWHO and interrogation are part of the same continuum which PW undergo from the point of capture to their eventual repatriation or release and cannot be considered in isolation.

22. Regular High Readiness units should contain at least two trained Tactical Questioners at HM Ship, Company, and Squadron levels respectively.

23. A permanent JFIT should be established and up to [redacted] JFITs maintained by protected High Readiness Reserve units who should also provide linguistic support to other defence HUMINT capabilities.

RECOMMENDATIONS

24. It is recommended that MODUK:-

a. Accepts the need for an interrogation capability noting the proposals at Paragraph 17.

b. Endorses the establishment of a permanent JFIT.

c. Directs that each Service retain a capability (probably of reserves) specifically dedicated to the linguistic support of HUMINT operations which has an interrogation capability embedded within it.

d. Endorses the requirement for a TQ capability within High Readiness units.

e. Endorses the requirement that the PW factor be included in the estimates process prior to all operations.

5.65 None of the above proposals or recommendations and no part of the summary focused upon what S040 had previously identified as a lack of national doctrine parallel to the NATO STANAGs.

5.66 Given the extent to which this paper had shifted in focus towards capability issues, it is not perhaps entirely surprising that it did not lead to urgent action to rectify the doctrinal shortfall. On 2 September 2002 the Director of Military Operations (DMO) argued that a separate paper dedicated to tactical questioning and interrogation might complicate matters when there was already a study well underway in relation to wider future HUMINT and military intelligence capability.[65]

5.67 A further draft of the paper was produced on 27 September 2002.[66] The reference list remained unchanged. It would appear that none of the eleven recipients of the earlier draft, including the ADI HUMINT (Kett) and PJHQ, had pointed out that the first draft had omitted any reference to the 1997 Policy for interrogation and related activities approved by Ministers, or the JIC level Part I Directive from 1972. In my opinion this is highly indicative of the extent to which practical knowledge of that doctrine had been lost by late 2002.

[65] MOD042051-3
[66] MOD041735-52

5.68 By the end of 2002 and early 2003, S040's earlier message about the lack of doctrine alongside the capability concerns appeared to have become completely lost.

5.69 On 11 December 2002, Kett minuted the Director General Intelligence Collection on the "*Tactical Questioning / Interrogation Situation*".[67] By way of background, Kett stated that: *"The need to examine interrogation policy, develop a joint doctrine for interrogation and capability requirements were recognised in early 2002. DI Humint has sponsored a study of the subject to be carried out by CO JSIO. Although scheduled to be completed by the end of 02 it is unlikely that the draft paper will be ready before Feb 03. This was due to the author being deployed to Afghanistan"*.[68]

5.70 As to policy, Kett stated that: "*Doctrine for the handling and questioning of Prisoners of War (POW) is given in [JWP 1-10]. It is clear that TQ is conducted by capturing unit personnel and that TQ is acceptable from both a doctrinal and legal position. Further work is required in developing the CONOPS and Tactical Doctrine Notes. This will occur following the JSIO study*".[69] I address JWP 1-10 in the final Chapter of this Part of the Report but for present purposes it suffices to note that Kett's confidence in JWP 1-10 as providing doctrine for the questioning of prisoners of war was misplaced. JWP 1-10 addressed tactical questioning at quite a high level of generality and specifically did not address interrogation. Kett was responsible for interrogation and tactical questioning policy. He ought to have better appreciated the limited extent to which JWP 1-10 could be described as providing doctrine for the questioning of prisoners of war.

5.71 Looking ahead to the possible deployment in what was to become Op Telic, Kett stated in this minute that:

> *"Support to future operation. Despite the outstanding work to be done to develop doctrine for TQ, plans are well advanced for any Gulf deployment in the near to medium term. Provision has been made for a JFIT, largely from the Reserves, and an FHT to support the UK Land Component, subject to confirmation of CONOPS. Land Command has made provision for* [redacted] *personnel from 1 (UK) Armd Div to be trained in TQ during four weeks in early 2003. In addition DISC is to conduct a TQ course for 1 MI Bde personnel during 16-20 Dec 02, although TQ will not be a primary task for MI Bde personnel."*

Kett had, however, warned earlier in his minute that as regards tactical questioning trained personnel:

> *"… it is likely that there will be a shortfall if a medium or large scale war fighting operations were to be conducted."*[70]

5.72 While these latter points relate to capability issues rather than to policy and doctrine, it is right to say that Kett's description of the situation was by no means universally accepted. Kett said that he would not have included comments on the provision of the JFIT if he had not been told that one was available.[71] S046, as Commanding Officer of the JSIO, could not remember seeing this minute and thought that, had he seen it, he would have queried some of the content. He told the Inquiry that he was surprised at the positive tone of the document which did not reflect his experience and

[67] MOD042058-9
[68] MOD042058, paragraph 1
[69] Ibid., paragraph 3
[70] MOD042059, paragraph 5
[71] Kett BMI 97/209/16-17

the serious frustrations that the JSIO was experiencing over the formation of the JFIT, the ability of the JSIO to provide training and the overall preparations for impending military action.[72] Commodore Christopher Munns was the Assistant Chief of Staff for intelligence matters within PJHQ. He thought that he had raised capability concerns with the Director General of Intelligence Collection (DGIC) in Kett's presence and believed that this minute was the result of his doing so. In his evidence to the Inquiry, Munns stated that the minute did not reflect the situation that PJHQ was finding through its planning process. He was surprised at how reassuring the minute was and did not have much confidence in it.[73]

5.73 Kett told the Inquiry that his role was more focused on capability development than on setting policy and doctrine.[74] Nevertheless it is clear that he did take over responsibility for interrogation and tactical questioning policy in April 2002, albeit that it would have been the Joint Doctrine Development Cell which would actually have had to take forward the writing of any further doctrine. Kett was not aware of the 1997 policy, nor was he aware of the 1972 Directive or the essence of the prohibitions contained therein. Again, I consider this reflects the extent to which doctrine had already been lost and that interrogation doctrine was not sufficiently visible, rather than as justifying personal criticism of Kett.

5.74 Given the extent to which the JSIO paper was at this stage concentrating on capability, it is more understandable that Kett did not alight on the limited remaining references to the paucity of interrogation doctrine. Kett said in his evidence that *"…there was no MOD-endorsed doctrine for any of the HUMINT skills"*.[75] This reflected the many conflicting pressures and priorities in relation to other parts of the HUMINT sphere of operations. Kett accepted that other aspects of HUMINT capability were given a higher priority and he thought, even with hindsight, that this was right because of the pressures and risks involved in other aspects of HUMINT work.[76] Kett also suggested that there was very little interest in interrogation matters and that it was seen as a largely defunct or dormant capability.[77] I accept Kett's evidence regarding the high level of other pressures that were faced. I do not however accept that this can completely excuse the wider failure to take forward doctrinal shortcomings that had been identified.

5.75 At one stage of his evidence, Kett sought to suggest that as to interrogation, JWP 1-10 *"… lays out the whole gambit of how it is to be conducted and the rules and the various regulations, the conventions"*. But he went on to say that he was not surprised that JWP 1-10 made only passing reference to interrogation, and would expect the detail to have been in training materials. Kett was not aware that the obsolete JSP 120(6) had previously contained some guidance on interrogation in warfare, nor that the more recent replacement doctrine JWP 2-00 omitted detailed guidance for interrogation in war.[78] To the extent that Kett suggested that he had some recollection that his staff officer had indicated to the Joint Doctrine Command Centre (JDCC) that interrogation doctrine needed to be sorted out,[79] I do not consider that to be a reliable

[72] S046 BMI07313, paragraph 14
[73] Munns BMI 96/150/9-152/25
[74] Kett BMI08439, paragraph 15
[75] Kett BMI 97/187/7-9
[76] Kett BMI 97/169/11-171/10
[77] BMI 97/183/1-23
[78] Kett BMI 97/197/9-205/1
[79] Kett BMI 97/231/15-97/234/8

recollection. I am fortified in that conclusion by the fact that in his statement Kett had indicated that he was not aware of a relative lack of interrogation doctrine,[80] and by the fact that while records are incomplete, there is no indication in the disclosure of the JDCC working on any new interrogation policy at this time or of being tasked to do so.

5.76 The Chief of Defence Intelligence (CDI) at this time was Sir Joe French. He maintained that he was not aware of any issue regarding interrogation capability before the start of OP Telic, nor was he aware of concerns about a lack of interrogation doctrine. French was careful to explain to the Inquiry the military definition of "doctrine" meaning that which is taught and that the doctrinal publications such as JWP 1-10 are only part of a hierarchy of documents.[81] He sought to suggest that interrogators and tactical questioners were experienced people who were given appropriate direction in their training and that this needed to be seen as part of the hierarchy of doctrine. I acknowledge French's very considerable experience but to the extent that he sought to suggest that the perceived gaps in the various guidance on prisoner handling, interrogation and tactical questioning could be explained by misunderstandings as to the meaning of doctrine, I found those aspects of his evidence to be unconvincing. French and some other witnesses relied upon what was taught on the JSIO courses as being part of interrogation and tactical questioning doctrine. That is the technically correct use of the term "doctrine" in the military context. But it does not justify the manifest lack of clear written guidance, other than internal JSIO teaching materials, as to what was permitted and what was prohibited in tactical questioning or interrogation. In my opinion, it is no excuse for the lack of any clear written guidance available to relevant commanders and staff officers, that the teaching and handouts at Chicksands may have covered those matters for students. Leaving aside the fact that confidence at that level in the Chicksands teaching may have been misplaced, the MoD's own submissions make clear that it accepts that there was a gap in doctrine, one that had been recognised by the JSIO, and one for which the MoD must accept corporate responsibility.[82] Therefore, insofar as French sought to deny that there was a paucity of proper written guidance (whether it be labelled policy or doctrine) I reject his evidence in that regard: in my view it does not properly reflect the position that applied by the time of Op Telic.

5.77 Notably, despite his seniority as a former CDI, French sought to suggest that the 1997 Policy could be interpreted as cancelling more than just Part II of the 1972 Directive.[83] As the analysis of the 1997 Policy earlier in this Part shows, he was clearly wrong in that regard. It is remarkable, however, that at the time French was not even aware of the existence of the 1997 Policy. That the CDI of the time did not, in giving evidence to the Inquiry, have a proper understanding of what policy and doctrinal guidance applied to interrogation and tactical questioning as at 2002/2003, is itself indicative of the inadequacies of the hierarchy of materials that applied at the time. That is not to say, however, that any particular concerns about the inadequacy of doctrine in this area were brought to French's attention before Op Telic. It is apparent that the failures of policy and doctrine in this area built up gradually over a number of years. I accept that concerns about the dearth of doctrine in relation to interrogation were not specifically brought to his attention, and that the breadth and depth of his responsibilities were considerable.

[80] Kett BMI08444, paragraph 31
[81] French BMI 99/151/7-154/2
[82] SUB001059, paragraph 4
[83] French BMI 99/155/9-21

5.78 Further drafts of what had been the JSIO paper were produced on 12 February 2003[84] and 22 March 2003.[85] By this stage, the paper was attributed to the Defence HUMINT Group. It is apparent that the suggestion by the DMO that the paper should be part of the broader review of HUMINT had been accepted. The paper was given "routine" timing priority and it was noted that if endorsed, the capability improvements would coincide with the formation of the Defence HUMINT Unit.

5.79 Both these versions now suggested that: "*There is adequate doctrine (JWP 1-10) but the UK has not invested in the means to deliver it*". Given that no additional interrogation doctrine had been produced since the 27 September 2002 version of the paper which had stated: "*There is no MOD-endorsed doctrine for interrogation*", it is baffling that both drafts could be so confident as to the state of doctrine, not least because they relied upon JWP 1-10, a joint doctrine document which expressly disavowed coverage of interrogation in any detail beyond passing reference.[86]

5.80 S046 candidly accepted that this reference to adequate doctrine was an inappropriate qualification and that it was indicative of concerns about doctrinal shortcomings becoming lost in the clamour for greater capability and resources:

> *"Q. … By this stage what was being said is: "There is a great deal of ignorance surrounding the subject area. Most commanders do not understand that the JFIT is not the 'complete capability' but a relatively small group of specialist individuals who are one small part of a much large* [sic] *PWHO which must be provided from elsewhere. There is adequate doctrine (JWP 1-10) but the UK has not invested in the means to deliver it." Now that reference to there being adequate doctrine, what did you have in mind there?*
>
> *A. I think that in the light of everything else that we have discussed today, probably an inappropriate qualification of doctrine. I think what was in my mind at the time was doctrine at least of some sort existed in 1-10, and we weren't even capable of producing that, let alone anything that was up to date or appropriate. In other words, we did not see any desire to properly form or provide training in the prisoner of war handling organisation as a whole within the operations world.*
>
> *Q. Looking at that paragraph 6, may that be a further indication that the doctrinal shortcomings were getting lost in the clamour – perhaps understandable clamour – for greater capability and resources?*
>
> *A. I think I would accept that, absolutely."* [87]

5.81 I should add that evidence from more junior staff at the JSIO supported the view that there should have been more written guidance on tactical questioning and interrogation. S012, who was the Officer Commanding of F branch, 3 Training Company, JSIO, told the Inquiry that 2005 was the first time that the branch had a "*…real practical policy document*".[88] While he considered that there was clear direction given in the F branch lessons and course paperwork, he accepted that it would have been better to have had a manual giving guidance.[89] S001, the Officer Commanding 3 Training Company JSIO, agreed with S012's evidence in this regard:

[84] MOD037447-53
[85] MOD042671-81
[86] MOD013432, paragraph 5
[87] S046 BMI 88/140/6-141/5
[88] S012 BMI 87/83/7
[89] S012 BMI 87/155/10

> *"Q. Do you agree that what I might call, therefore, the confusion as between students and some of the instructors reflects an obvious need for there to have been some more clarification and direction on the course, or the courses?*
>
> *A. Yes, I do agree.*
>
> *Q. Would you agree with the evidence that S012 gave the Inquiry yesterday – my words, not his – that perhaps there was a clear need for some sort of written manual in this area of prisoner handling and tactical questioning, to which reference could be made by those who may be uncertain?*
>
> *A. Yes, I think that is a good idea – was a good idea.*
>
> *Q. Again, then, coming back to your position at the time as OC, wasn't that something that you should have been looking to, either the production of a written manual or flagging up the fact that there was a deficiency in the written doctrine at the time?*
>
> *A. With hindsight, yes. But I was occupied with other priorities and F Branch wasn't my highest priority, so I probably didn't focus on it as much as clearly I should have."*[90]

5.82 The creation of better interrogation and tactical questioning capabilities no doubt would have taken some time. But there was no good reason why the doctrinal shortcomings could not have been taken forward independently of the capability issues. In reality, despite having been recognised as early as 1999, the doctrinal concerns were initially not acted upon, and latterly drowned out by greater concerns about capability.

5.83 I accept that the doctrinal shortcomings are more easily seen now with the benefit of hindsight. I also think it important to recognise that those involved in human intelligence had to cover a number of highly demanding and sensitive areas, where non-interrogation aspects also needed to be reviewed. There were also significant HUMINT resource/capability shortfalls that required urgent attention. But it would be wrong to excuse entirely the failure to recognise these doctrinal shortcomings on the basis of other pressures and the clarity which hindsight brings. To take matters up to the start of March 2003, the month that saw the start of the warfighting phase of Op Telic, there was a very telling *"lessons learned"* memorandum from S040.[91] Having identified more than three years earlier the shortfall in interrogation doctrine, S040 was writing on 1 March 2003 as the designated Officer Commanding the JFIT which had been busy preparing to deploy. Giving the lessons learned from their pre-deployment preparations, his conclusions included that:

> *"The JFIT has formed from a diverse set of differently-trained personnel from JSIO and the Reserves of all 3 Services, some of whom met for the first time the day before deployment. It is untrained and unexercised in its war role and has no recourse to previous lessons learned from Op GRANBY* ***or indeed any interrogation doctrine on which to build its function****."*[92] [emphasis added]

His recommendations included the stark comment "*Interrogation doctrine must be promulgated without delay*".[93]

5.84 I consider it is clear that inadequate steps were taken between 1999 and March 2003 to plug the gap in tactical questioning and interrogation doctrine.

[90] S001 BMI 88/34/2-23
[91] MOD042060-4
[92] MOD042063, paragraph 12
[93] MOD042064, paragraph 20

Chapter 4: JWP 1-10

5.85 Joint Warfare Publication 1-10 was entitled *"Prisoners of War Handling"*.[94] It was finalised in March 2001 and therefore came into circulation part way through the JSIO review addressed in the previous Chapter. It replaced JSP 391. JWP 1-10 was the main doctrine in place for prisoners of war during Op Telic 1 and 2 in 2003. Its preface stated:[95]

> 1. Given the sensitivity and the potential serious political implications should an error occur when handling Prisoners of War, it is intended to produce an all-embracing, definitive document that should require few additional supporting publications[1]. It will supersede JSP 391.

5.86 It should be noted at the outset that JWP 1-10 was not a detailed guide to the interrogation of prisoners of war. Its preface stated that *"It should be noted that the publication, whilst making passing reference to the interrogation of PW, does not deal with the subject in detail."*[96]

5.87 Although JWP 1-10 was a high level joint doctrine publication, its preface also made clear that it was intended to address practice and procedures and not just principles and responsibilities:[97]

> 4. This publication covers three main aspects of PW handling:
>
> a. **Principles**. It identifies and examines the various influences that define the PW handling process, which lead to the identification of the principles of PW Handling.
>
> b. **Responsibilities**. It outlines the responsibilities for the Joint Task Force Commander and his staff for the correct handling and processing of PW, ensuring they take into account the effect that PW may have on his operational plan.
>
> c. **Practices and Procedures**. The publication contains comprehensive instructions covering the complete handling process in order to ensure that the precise requirements of International Humanitarian Law are taken into account.

5.88 The fact that JWP 1-10 was meant to provide comprehensive instructions for the complete handling process, and that JWP 1-10 was meant to be definitive requiring few additional supporting publications, is significant. It belies any suggestion that matters such as sight deprivation were too detailed to be contained in this level of joint doctrine.

5.89 The circumstances in which JWP 1-10 applied can be summarised as international armed conflict or situations where the parties to the conflict have agreed that Law of Armed Conflict will apply.

[94] MOD013428-591
[95] MOD013432
[96] MOD013432, paragraph 5
[97] MOD013432

5.90 Chapter 1 of JWP 1-10 addressed basic principles. It included under the title "historical perspective", the observation that:[98]

> 103. The standards a nation sets for the treatment of those whom it makes PW should be a benchmark of that nation's culture and humanity, on display for all to see. It is the requirement to establish a benchmark, which dictates the need for clear doctrine and, where necessary, instructions governing the treatment of PW.

5.91 The basic principles then addressed the Geneva Conventions. In doing so, it introduced the concept of grave breaches of the Geneva Conventions including the wilful killing, torture or inhumane treatment of protected persons, or otherwise wilfully causing them great suffering or serious injury to body and health. The requirement for the implications of the Geneva Conventions to be clearly understood by members of the Armed Forces was clearly spelt out.[99] It was made clear that maltreating prisoners of war was contrary to international law.[100]

5.92 Paragraph 126 required that if there was any doubt as to whether a captive fell within one of the categories of those entitled to prisoner of war status or other protected person, they should be treated as a prisoner of war until their status could be determined.[101] Paragraph 128 provided that:

> *"128. Detainees. Persons detained or captured as a result of operations outside international armed conflict will be subject to local and national law and, so long as there is reason to believe that their human rights will be respected, should be handed over to the appropriate authority at the earliest opportunity. They may be disarmed but must be allowed to keep all of their personal property and steps should be taken to establish their identity. Detained persons must be treated humanely and in accordance with British National Standards encapsulated in JSP 469 - Codes of Practice for the Management of Personnel in Service Custody.[24] Directions for handling detainees, including those suspected of crimes against humanity and war crimes, are to be included in the operational plan or in Standing Operating Procedures.*
>
> *…*
>
> *[24] This applies to those detained by the UK Armed Forces in the UK and abroad".*[102]

5.93 Chapter 2 of JWP 1-10 addressed the commander's responsibilities. It noted that in recent military campaigns prisoner of war issues were not taken fully into account as a planning factor.[103] It urged that the prisoners of war factor needed to be taken into consideration by that commander, at all levels, in all aspects of his planning for operations and his subsequent conduct of operations.[104]

[98] MOD013440
[99] MOD013442, paragraph 109
[100] MOD013446, paragraph 121
[101] MOD013448
[102] MOD013449
[103] MOD013452, paragraph 202
[104] MOD013452, paragraph 203

5.94 This chapter went on to specify the responsibility of commanders and of the staff:[105]

SECTION I - THE COMMANDER'S RESPONSIBILITY FOR PRISONERS OF WAR IN OPERATIONS

204. The commander has a duty to plan and conduct operations within the constraints of the Law of Armed Conflict (LOAC). In order to satisfy this requirement he must know exactly what his responsibilities for PW and their handling are. The following section attempts to summarise the main responsibilities which the commander must discharge, but does not absolve him from the requirement to acquaint himself in as much detail as is practicable with the provisions of the Conventions and Protocols.

205. The commander's main responsibilities towards PW are to ensure that:

a. The individual members of his force comply with the provisions of the Geneva Conventions (GCs) and Additional Protocol I (AP I).

b. PW captured by his force are treated in accordance with the LOAC.

c. A PW Handling Organisation (PWHO) is in place within his formation and that it is equipped and organised to process the number of predicted PW.

d. PW should be evacuated from the combat area as soon as possible and should not be exposed to danger while awaiting evacuation.

e. At the end of hostilities PW are to be repatriated with the minimum of delay.

SECTION II - RESPONSIBILITIES OF THE STAFF

206. Although the commander bears the overall responsibility for PW handling, he delegates responsibility for certain aspects of the process to his staff. The breakdown of responsibilities is as follows:

a. **J1 Staff**. The overall control of the PWHO will be exercised by J1 within the Joint Task Force Headquarters (JTFHQ), assisted by J3 and J4 for operational, logistic and medical matters respectively. J1 have responsibility for:

(1) Developing policy for the handling of PW within the formation area in conformity with the GCs and AP I.

(2) Issuing instructions for the safe custody, welfare, discipline and evacuation of PW from the formation area.

(3) Nominating officers and staffs to run PW Collecting Points and PW Camps within the formation area and the issuing of orders for the operation of these facilities.

(4) Organising the provision of interpreters for PW Collecting Points, PW Camps and Joint Forward Interrogation Teams.

(5) Formulating plans for PW work based on MOD directives and if appropriate, in conjunction with the J4 staff, identifying suitable work projects.

[105] MOD013452-4

(6) Determining the status of captured personnel and convening Boards of Inquiry (BOI) where necessary in order to determine the status of a PW[2], as laid down in the *Prisoner of War Determination of Status Regulations 1958*.

[1] Guidelines for the release and repatriation of PW can be found at Annex H, Section IV.
[2] At present Staff should use the MML Part III, Appendix XXVII for guidance on BOIs. MML Part III and the Royal Warrant are currently under revision.

(7) Arranging for the transfer of PW to other nations and from other nations and Services.[3]

(8) Arranging for the repatriation of PW during and after hostilities.

b. **J3 Staff.**

(1) Producing estimates of likely numbers of PW before the beginning of an operation (assisted by the J2 and J5 Staff).[4]

(2) Issuing instructions for the collection, searching, tactical questioning and interrogation of PW and for the handling and disposal of captured documents and equipment.

(3) Issuing instructions for the activating of the PWHO.

(4) Selecting locations for PW Collecting Points and Camps, and issuing orders to units for their construction.

(5) The identification of units to act as PW Guards and Escorts and the issuing of orders for these tasks.

c. **J4 Staff.**

(1) The procurement and provision of construction materials and stores for the establishment of PW Collecting Points and Camps.

(2) The production of Administrative Instructions covering the feeding, clothing, movement and accommodation of PW.

(3) Planning for the provision of sufficient resources to meet the requirements of the projected numbers of PW.

(4) Issuing instructions for the medical examination and treatment of PW.

5.95 Chapter 3 of JWP 1-10 addressed the prisoners of war handling processes. This part of the JWP was stated to be the point at which "*…the operational level principles set out earlier are translated into tactical doctrine and, where applicable, detailed instructions for the handling of prisoners of war (PW)*".[106]

[106] MOD013460, paragraph 301

5.96 Paragraph 302 gave the following guidance:[107]

> 302. **The Handling of Prisoners.** The initial handling of PW on capture will take place in the Area of Operations (AO) both while the operation is still in progress and immediately after its conclusion. Captors and captured will be affected by the stress of combat. In addition, the captured will be tired, frightened and in some cases wounded. Some of those who have been captured will be cowed and shocked, others will retain their aggression and fighting spirit. In these circumstances, there is an urgent requirement to make the initial handling of PW as swift and uncomplicated as possible in order to move the PW out of the combat area quickly and relieve the combat troops of the burden of guarding and escorting them. Specific guidance on the handling of PW is at Annex 3B.

5.97 Paragraph 315 provided that:[108]

> 315. It is not possible to be prescriptive over the requirement for the provision of PW Holding Areas and Camps because their establishment will depend on a wide range of factors. These will include the location of the theatre, the nature and likely duration of the operation, the length of the Lines of Communication, the policy concerning the evacuation of PW from the theatre and the political direction given to achieve the desired end state. The most practical guide to the provision of camps and holding areas is that GC III specifies that PW are to be accommodated under
>
> > conditions as favourable as those enjoyed by members of the forces of the Detaining Power who are accommodated in the same area. This will, however, require careful planning as it could take up a considerable amount of logistic resources to build and administer these Holding Area and Camps.

5.98 Annex 3A provided a "Prisoners of War Handling Aide Memoire" which was as follows:[109]

ANNEX 3A - PRISONERS OF WAR HANDLING AIDE MEMOIRE

COMBAT TROOPS	
WHO IS A PRISONER OF WAR?	• **Enemy personnel** in or out of uniform who carry arms openly. • Civilians who accompany the Armed Forces of the enemy e.g war correspondents, supply contractors, civilian members of aircraft crews. • Crews of merchant ships and civil aircraft belonging to the enemy. **IF IN DOUBT - TREAT AS PW**
ACTION ON CAPTURE	• **Disarm - Search - Administer First Aid** (if required) • **Segregate** Officers, NCOs, Other Ranks, Females from Males, and Juveniles (under 15) from both. • **Escort** to Unit or Sub-Unit HQ as directed.

ACTION AT UNIT OR SUB-UNIT HQ	• **Tag or Label PW.**
	• **Remove and Tag or Label:**
	  • Weapons.
	  • Documents or equipment captured with the PW.
	• **Do not Remove:**
	  • Clothing.
	  • Protective Equipment.
	  • Personal effects.
	  • ID discs or documents.
	  • Any medication.
	  • Medical or religious accoutrements from Retained Personnel
	• **Safe Custody:** Treat humanely.
	  • Shelter PW from enemy fire and the elements.
	  • Provide food, water, and protective clothing.
	  • Move PW out of the combat zone as soon as possible.

[107] MOD013460
[108] MOD013463-4
[109] MOD013466-7

	• Do not fraternise with PW. • Carry out Tactical Questioning. • Escort PW to Collecting Point.
MINIMUM INFORMATION	Do NOT use force to gain information from a PW. When questioned, a PW is required only to give: • Name – Rank – Number – Date of Birth

THE STAFF	
RESPONSIBILITIES	J1 • PW Policy. • All aspects of safe custody and evacuation of PW. • Determination of PW status. • Transfer of PW between nations. J2/J3 • Estimating PW numbers. • Organising Tactical Questioning and Interrogation of PW. • Establishing and manning the PW Handling Organisation. • Locating PW facilities. • Ordering the construction of PW facilities. J4 • Provision of medical support. • Provision of construction materials for PW facilities. • Administering PW (feeding, clothing, moving and accommodating).
THE COMMANDER	
INTELLIGENCE	As part of Intelligence Preparation of the Battlefield, J2 staff make assessment of likelihood of significant numbers of PW being captured in the course of the operation.
THE ESTIMATE	J3 staff make provision for impact of significant PW capture in considering 'Other Relevant factors' as part of the Estimate Process.
THE PLAN	J3 staff make provision for Handling PW in Plan.
COMMANDER'S RESPONSIBILITIES	Commander's responsibilities for PW are summarised as ensuring that: • Individuals under his command comply with the four 1949 Geneva Conventions and Additional Protocol I. • PW captured by forces under his command are treated in accordance with the Laws of Armed Conflict. • An appropriate PW Handling Organisation is in place within his formation. • PW are evacuated as soon as possible and are not needlessly exposed to danger.

5.99 Annex 3B was entitled "The Handling of Prisoners of War".[110] This included guidance on the treatment of prisoner of war casualties, searching prisoners of war, escorting prisoners of war and initial documentation. The section on escorting prisoners of war included guidance that "*Escorts should prevent PW from communicating with each other and should remain strictly impartial towards their PW. Escorts can assist tactical questioners and interrogators by noting the demeanour of the PW in their charge and reporting anything of significance such as excessive fear, obvious self confidence or behaviour out of line with the rank of the PW, to the interrogation Staff.*"[111]

5.100 The annex also included a section on prisoner of war handling at the unit headquarters. The latter section started with sub-paragraphs on the segregation of prisoners of war and tagging. It then contained an important section on tactical questioning which I set out in full:[112]

[110] MOD013468-85
[111] MOD013469
[112] MOD013471-2

c. **Tactical Questioning.** The object of tactical questioning is to obtain information, the value of which would deteriorate or be lost altogether if the questioning was delayed until a trained interrogator could be made available. In order to achieve this, it is necessary that:

(1) PW are thoroughly searched even though this may already have been done at the point of capture.

(2) The tactical questioners should have been provided, by the unit commander and his intelligence staff, with clear information requirements.

(3) In the course of questioning, tactical questioners are to adhere to the following provisions[4]:

(a) A PW, when questioned, is bound only to give his name, rank, number and date of birth.

(b) A PW must produce his identity document when asked for it but under no circumstances may this be taken away from him.

(c) No physical or mental pressure, nor any other form of coercion may be exerted on a PW in order to induce him to answer questions. A PW may not be threatened, insulted or suffer any disadvantage as the result of refusing to answer questions.

(d) A PW who is incapable, for physical or mental reasons of stating his identity is to be handed over to the unit medical staff for evacuation through the casualty evacuation chain.

(e) Questioning of PW is to be carried out in a language, which they can understand.

(4) For each PW, the tactical questioners produce a Tactical Questioning Report referring to the PW number (from the F/PW 778). Interrogators check that PW and any associated documents or equipment have been correctly tagged and that the documents and equipment accompany the PW as he moves rearwards.

(5) PW are segregated for interrogation, in accordance with STANAG 2033, into the following categories:

(a) **Category A.** A PW of high rank in his organisation whose particular knowledge requires him to be interrogated as soon as

[4] GC III: 17.

possible by specially trained interrogators. This category would include:

i. One star commanders, or their equivalent, and above.

ii. Senior Staff Officers.

iii. Scientific or technical personnel with specialist knowledge of nuclear, chemical or biological weapons or any new equipment.

iv. Personnel engaged in Psychological Operations (PSYOPS).

v. Communications personnel, especially those concerned with cyphers or cryptographic equipment.

vi. Intelligence staff.

vii. Aircrew.

viii. Special Forces personnel.

(b) **Category B.** PW who do not fall into one of the Category A classifications but who appear to have enough information to warrant a second interrogation.

(c) **Category C.** PW who have only short life information of tactical value.

(d) **Category D.** PW who have no information of any intelligence value.

(6) Category A and B PW are to be evacuated as quickly as possible for interrogation.

(7) Care must be taken if Juveniles are to be subjected to tactical questioning or specialist interrogation.[5]

5.101 Significantly, while JWP 1-10 made clear the need to treat prisoners humanely, it did not contain any reference to the prohibition on the five techniques.

5.102 Furthermore, JWP 1-10 did not address sight deprivation of prisoners at all. There was no guidance on whether or in what circumstances prisoners might properly be deprived of their sight, and no guidance on the means by which prisoners should be deprived of their sight. Indeed, the position was if anything worse than in the predecessor publication JSP 391. JSP 391 did at least have the cross reference to JSP 120(6) which had contained brief guidance on blindfolding prisoners for security purposes. But by 2001, JSP 120(6) was most likely already obsolete, and JWP 2-00 which had replaced JSP 120 contained no guidance of any real relevance to interrogation, let alone to sight deprivation of prisoners.

The Adequacy of JWP 1-10

5.103 In its closing submissions, the MoD relied upon the provisions of JWP 1-10 to argue that anyone who had read even the opening sections of the publication would have known that what was actually happening in 1 Queen's Lancashire Regiment's (QLR's) Temporary Detention Facility (TDF) was clearly prohibited.[113] In some essential respects I agree. But this argument only goes so far.

5.104 It is right that anyone who had given even cursory consideration to JWP 1-10, or indeed to the in-theatre orders, must have known that it was prohibited to kick, beat or otherwise abuse those in the TDF. That much must also have been patently clear from their annual Law of Armed Conflict (LOAC) training. In any event, this sort of conduct was also contrary to domestic criminal law.

5.105 However, I consider that JWP 1-10 was not so clear as to give adequate guidance in relation to "conditioning techniques". It is only necessary to remember that the Parker Committee was split on the question of the moral acceptability of the five techniques to realise that, without clear guidance, there is at least some scope for differing conclusions as to whether or not the use of the techniques is inhumane. The Heath Statement, Part I of the 1972 Directive, and the decision in *Ireland v UK* all point, of course, towards the answer that the techniques must now be seen as inhumane, prohibited and unlawful. But that does not mean that the soldier or junior officer acting under stress on the ground, who is suffering discomfort and violence every day, and who has been given to understand what an enemy might do to them if captured, placing a prisoner in a stress position for 30 minutes before questioning would understand that doing so was inhumane. So much ought to have been understood, not least because of Article 17 of the Third Geneva Convention. But the point is not so completely obvious that it could be said to have been unnecessary for JWP 1-10 to contain the prohibition on the five techniques.

5.106 Allowing for the fact that in 2003 any soldier of whatever rank ought to have known that kicking and beating captured persons of whatever category was wholly unacceptable

[113] SUB001060, paragraph 7.1

and illegal, the evidence shows that conditioning techniques, including hooding and stress positions, were not so clearly recognised as unacceptable and illegal at the time of Op Telic.

5.107 The difficulty with the submission of the MoD that JWP 1-10 was quite sufficient to make any reader conscious that the kicking and beating inflicted on the Detainees was wrong, is that it does not address or explain why at the time of Op Telic 2 experienced officers and Non-Commissioned Officers (NCOs) apparently did not recognise that stress positions and hooding were wrong. I accept that they ought to have done, but had the prohibition on the five techniques been fully embedded in Army policy, doctrine and training, including JWP 1-10, it would not have been necessary for Maj Antony Royce to have asked the questions at Brigade level about conditioning, which I find he did. See Part XIII of this Report. Nor could there have been any doubt or ambiguity about the answers which Robinson and Clifton would have provided. In my opinion, short, clear guidance on the prohibition of the five techniques in JWP 1-10, such as is now taught would have put the matter beyond doubt.

5.108 The MoD have further argued that there are risks inherent in listing certain acts as being prohibited and rely on the International Committee of the Red Cross (ICRC) Commentary in the context of the meaning of inhuman treatment. I do not accept this argument justified the failure of JWP 1-10 to include the prohibition on the five techniques. The particular danger of the five techniques included that they had at one stage been taught to UK Service personnel, and some personnel would also have been exposed to them in resistance to interrogation training. Also, since it seems that hooding was used in exercises at the point of capture, it was particularly important that JWP 1-10 should have contained as a minimum, guidance that under no circumstances should hoods be used to disorientate prisoners or otherwise as an aid to interrogation.

5.109 Rachel Quick who was Head of the PJHQ Legal Cell at the time accepted in her evidence that shortcomings in JWP 1-10 were part of the early lessons learned from Op Telic:

> *"MR DINGEMANS: You told us in your earlier evidence that one of the lessons learned was that greater detail and specific advice should have been given to the soldiers on the ground about prisoner handling. That is right, isn't it, that was one of the lessons learned?*
>
> *A. Yes, at the "lessons identified" conference.*
>
> *Q. Can you tell the chairman what greater detail should have been provided by way of advice to the soldiers?*
>
> *A. I am talking about JWP 1-10, the doctrine on prisoner of war, which I think could have had a lot more detail in it, insofar as it could have also dealt with criminal detainees, security internees and some of the other issues that we had to tackle with.*
>
> *Q. Can I just ask you for your comments on these propositions? It should certainly have included passages on the detention of civilian detainees?*
>
> *A. Internees, yes.*
>
> *Q. Internees. It should certainly have included passages on hooding?*
>
> *A. Yes.*
>
> *Q. The use of positions of control or stress positions, as I think they are called?*
>
> *A. It would have been helpful if it had had something in there, yes.*

> *Q. And, indeed, so far as battlegroups were concerned, what minimum standards of accommodation they should be providing to prisoners?*
>
> *A. Yes"* [114]

5.110 JWP 1-10 suffered from other shortcomings as well. Its main focus was on the treatment of prisoners of war in conventional warfare. As a document intended to apply principally to situations of international armed conflict, this is not altogether surprising. However it gave no real guidance on the handling of non uniformed civilians involved in hostile insurgency during occupation after the warfighting phase of international armed conflict. Soldiers on the ground might not instinctively apply to those regarded as terrorists/insurgents the same levels of protection and treatment as uniformed combatants captured on a conventional battlefield.

5.111 I do not accept the MoD's submission that it is only with the benefit of hindsight that one can conclude that the doctrine on prisoner of war handling ought to have been more prescriptive. On the contrary, not only was the need for prisoner of war doctrine to be brought into line with the prohibitions and constraints in Part I of the 1972 Directive foreseeable, it was actually foreseen by the Vice Chief of the General Staff in 1973.

5.112 For the reasons I have explored in the historical Parts of this Report, opportunities to improve doctrine had been missed over subsequent years, and the situation was exacerbated by gradual loss of practical knowledge of the applicable doctrine, and the degradation of the detail contained in interrogation doctrine.

5.113 There were many clear and impressive messages in JWP 1-10 but it was inadequate in not specifically including the prohibition on the five techniques or any guidance on sight deprivation of prisoners, in particular hooding.

5.114 As I shall detail in Part VII of this Report, doctrinal shortcomings can fairly be seen as one cause amongst several as to how a process of unlawful conditioning came to be in use on those detained by 1 QLR. It does not, however, provide any possible excuse or mitigation for those involved in kicking, punching and beating Baha Mousa, the more immediate and direct cause of his death.

[114] Quick BMI 92/84/14-85/16

Chapter 5: Other Generally Applicable Policy, Doctrine and Guidance

5.115 I address finally in this Part other miscellaneous policy, doctrine and guidance that was applicable before specific orders were issued for Op Telic.

Allied Joint Publication (AJP) 2.5

5.116 This NATO publication superseded STANAGs 2033 and 2044 which were cancelled in 2002. So AJP 2.5[115] was the applicable NATO doctrine for prisoners of war at the time of Op Telic.

5.117 AJP 2.5 included guidance under "Personnel" that:[116]

1. Conditions allowing, the following procedures should be followed by the capturing unit:

a. CPERS should be disarmed immediately, and all documents and effects of military or investigative interest except for necessary clothing, identity documents and protective equipment (Geneva Convention Relative to the Treatment of Prisoners of War (GC3), Article 18) should be removed. CPERS should then be tagged in accordance with the procedures outlined at Annex B. A Common Capture Report should also be completed and forwarded in accordance with the procedure set out in Annex C. It is important that the documents, equipment, maps, etc., taken from a CPERS accompany him to the next receiving unit. Valuable information may be lost by not having these items available during processing and interrogation.

b. Within the confines of the tactical situation, CPERS are to be segregated according to rank, grade, service, sex and nationality or ethnic group/warring faction to minimize the opportunity to prepare counter-interrogation measures. Furthermore, deserters, civilians and political indoctrination personnel will be individually segregated from other CPERS. Such segregation shall be undertaken in a manner which does not violate GC3, Article 16.

c. Talking or fraternization between CPERS is to be prevented in order not to prejudice future intelligence collection operations. CPERS will be allowed no opportunity to exchange information between themselves, to exchange identities or to dispose of articles of intelligence interest.

d. Interrogation operations must not be compromised by contact between CPERS and personnel not concerned with interrogation duties.

e. CPERS will also be prevented from observing sensitive and critical activities, equipment and procedures involving NATO, national or allied forces.

f. CPERS are to be guarded in a manner which shall deny them the opportunity for escape or sabotage.

g. Defectors and political refugees should also be segregated from other CPERS wherever possible. These personnel shall be screened by the nearest Interrogation Unit (IU), which will decide on their value to the intelligence organization and consequent future movements. In all cases, defectors are to be treated in accordance with the Geneva Convention Relative to the Protection of Civilians in Time of War (GC4). National policy may provide defectors treatment in accordance with GC3 where such treatment provides greater protection than GC4.

h. Personnel claiming to be agents of an allied power shall also be segregated from other CPERS. The intelligence organization (G2 or CJ2) is to be informed of all such individuals as soon as possible and will arrange for their screening to determine their future disposition.

[115] MOD039208-313
[116] MOD039229-31

i. CPERS suspected of crimes against humanity and war crimes will also be segregated from other prisoners. Legal authorities and the intelligence organization are to be informed of such suspects as soon as possible. They will be taken into custody by law enforcement personnel. Intelligence exploitation should be undertaken in cooperation with the legal authorities.

j. All CPERS are to be treated humanely.

k. Naval and air forces personnel are to be identified and the intelligence organization is to be notified in order that interrogation by naval/air force personnel may take place at the earliest opportunity.

l. CPERS are to be escorted to the nearest Collecting Point or Holding Area as quickly as possible.

m. Should any doubt arise as to whether any persons, including those appearing to be PWs, having committed a belligerent act and having fallen into Allied hands, belong to any of the categories of persons entitled to PW status pursuant to article 4 of GC3, such persons shall enjoy the protection of GC3 until such time as their status has been determined by a competent tribunal. If such a tribunal determines that an individual does not qualify for PW status, then the detaining commander must determine whether the detainee qualifies as a "protected person" pursuant to GC4, and obtain legal advice relative to the proper course of action for dealing with such detainees.

5.118 At paragraph 303, 2(d) AJP 2.5 required that:

> *"Other detainees who do not have prisoner-of-war status – primarily civilians – will be treated in accordance with Geneva Convention Relative to the Protection of Civilians in Time of War (GC4)."* [117]

5.119 Chapter 4 of AJP 2.5 dealt with interrogation:[118]

INTERROGATION OF CAPTURED PERSONNEL

401. GENERAL PROVISIONS

1. Geneva Convention. The treatment of captured personnel (CPERS) held for interrogation will comply with the provisions of the Geneva Convention Relative to the Treatment of Prisoners of War (GC3), its associated protocols when ratified by the nations concerned and other applicable Laws of Armed Conflict including the Geneva Convention Relative to the Protection of Civilians in Time of War as well as International Law pertaining to war crimes and crimes against humanity. The responsibilities of the "Detaining Power" as set out in GC3 shall rest with the capturing or detaining nation or NATO command. The term "Detaining Power" will have the meaning given in GC3.

2. Categorization. The primary aim of interrogation is the timely extraction of information and/or intelligence from CPERS, and dissemination of that product to the relevant command in order that it may be used in the production of intelligence estimates and in decision making. In order to achieve this aim, CPERS shall be categorized according to their assessed intelligence value to ensure the effective allocation of interrogation resources.

3. Responsibilities. The responsibility for the interrogation of CPERS in order to obtain information/ intelligence of military value shall rest with the intelligence organization.

a. Information obtained during operational interrogation may not be admissible as evidence in criminal proceedings unless certain legal procedures have been followed. Therefore, interrogation of CPERS for the purpose of obtaining evidence to be used in criminal proceedings should be the responsibility of competent police or judicial authorities.

b. The responsibility for the handling, guarding, administration and welfare of CPERS in custody of NATO forces shall rest with the administrative staff.

4. Screening Procedures. Throughout the interrogation phase, CPERS shall be:

a. Segregated by rank, sex and nationality/ethnic group/warring faction to minimize the opportunity for counter-interrogation measures and to maintain order.

[117] MOD039235
[118] MOD039237-8

b. Allowed no opportunity to exchange information between themselves or to compromise interrogation operations by contact with personnel not concerned with interrogation duties.

c. Given no opportunity to observe sensitive and critical activities, equipment and procedures involving NATO or national forces.

d. Guarded in a manner, which shall deny the opportunity for suicide, escape or sabotage.

e. Given no opportunity to exchange identities or to dispose of articles of intelligence interest.

5.120 Under Chapter 7, the following guidance was given relating to treatment of captured personnel:[119]

703. **TREATMENT**

1. All captured personnel, regardless of capture or detention circumstances, will be treated in a humane manner and be initially treated as if they are entitled to Prisoner of War status under the provisions of the Geneva Convention Relative to the Treatment of Prisoners of War (GC3). Their personal possessions and documents will also be handled in accordance with the 1949 Geneva Conventions in general and GC3 in particular. This is reflected in the following rules of behavior towards detainees:

a. Detainees shall be treated humanely.

b. Detainees shall not be physically or mentally abused.

c. Contact with detainees may not be of a sexual nature.

d. Gifts, money or other favors will not be exchanged between members of the NATO force and detainees.

704. **GENERAL PROCEDURES**

1. Where practicable, personnel, equipment and documentation captured or detained in PSOs will be handled, processed, interrogated and disposed of in accordance with the procedures outlined in Chapters 1-6 of this Allied Joint Publication.

a. Use of Force. In general the detention of any person, and in particular the detention of civilians, will be in accordance with the principles of necessity and proportionality. No more force is to be used than that which is reasonable and necessary for the detention of the person or persons in question.

b. Disarming and Confiscation. Personnel captured or detained in the course of a PSO are to be disarmed. Only weapons and other articles that constitute a threat to members of the NATO Force or the individual being detained as well as items that are to be used as evidence in criminal proceedings may be confiscated. Confiscated items must be safeguarded, the appropriate records kept and a receipt given. Unless otherwise instructed, such items will follow the detainee as he is processed.

c. Search. Searches should be conducted in accordance with the following procedures:

(1) Searches are not to humiliate.

(2) Females will be searched, when possible, by other females or by scanners.

(3) Vehicles or beasts of burden will be searched.

(4) Searchers must neither be overly friendly nor overbearing.

(5) Searchers will always be covered by a comrade or comrades.

(6) Searches must be carried out in such a way to avoid damage.

(7) Searches will be promptly and fully reported in accordance with the Standing Operating Procedures.

[119] MOD039254-5

d. Detention. Again, detainees are at minimum to receive the same treatment that is accorded to prisoners of war by GC3. However, in certain circumstances it may be necessary to seek guidance from higher formation's Provost Marshal or Legal Branch to ascertain the appropriate level of detention for the detainee. For example, a suspected war criminal will probably have to be segregated from individuals held for other reasons, and special measures may have to be taken to restrain him so that he cannot escape, destroy evidence or communicate with his accomplices.

5.121 AJP 2.5 also contained a prisoner of war handling aide memoire which included a warning not to use force to gain information from a prisoner of war:[120]

PRISONER OF WAR (PW) HANDLING
AIDE MEMOIRE

	COMBAT TROOPS
WHO IS A PW?	• Enemy personnel in or out of uniform who carry arms openly. • Civilians who accompany the Armed Forces of the enemy e.g. war correspondents, supply contractors, civilian members of aircraft crews. IF IN DOUBT – TREAT AS A PW
ACTION ON CAPTURE	**Disarm.** **Search.** **Administer first aid.** **Segregate** officers and senior NCOs from other ranks and women from men. **Escort** to unit or subunit HQ as directed.
ACTION AT UNIT OR SUBUNIT HQ	**Tag or label PW.** **Remove and tag or label:** • Weapons. • Documents or equipment captured with the PW. **Do not remove:** • Clothing. • Protective equipment. • Personal effects.[1] • ID discs or documents.[1] • Any medication. **Carry out tactical questioning.** **Escort** PW to Collecting Point.
MINIMUM INFORMATION	**Do NOT use force** to gain information from a PW. When questioned, a PW is required only to give: • Name. • Rank. • Service number. • Date of birth.

	THE STAFF
RESPONSIBILITIES	J1/G1 • PW policy. • All aspects of safe custody and evactuation of PWs. • Determination of PW status. • Transfer of PWs between nations. • Establishing and manning the PW holding organization. • Ordering the construction of PW facilities. J2/G2/J3/G3 • Estimating PW numbers. • Tactical questioning and interrogation of PWs. • Locating PW facilities. J4/G4 • Construction of PW facilities. • Administration (feeding, cothing, moving and accomodating) of PWs.

[120] MOD039310-1

THE COMMANDER	
PW INTELLIGENCE	As part of IPB, J2/G2 staff make assessment of likelihood of significant numbers of PWs being captured in the course of the operation.
THE ESTIMATE	J3/G3 staff make provision for impact of capture of significant numbers of PWs in considering "Other relevant factors" as part of the estimate process.
THE PLAN	J1/G1 staff make provisions for handling of PWs in plan.
COMMANDER'S RESPONSIBILITIES	Commander's responsibilities for PWs are summarized as ensuring that: • Individuals under his command comply with the Geneva Conventions and, when applicable, the Protocols to the Geneva Conventions. • PW captured by forces under his command are treated in accordance with the Laws of Armed Conflict. • An appropriate PW handling organization is in place within his formation. • PW are evacuated as soon as possible from the combat zone and are not needlessly exposed to danger.

5.122 It can therefore be seen that, in a similar fashion to JWP 1-10, AJP 2.5 made very clear the need for prisoners of all categories to be treated humanely including a warning that force must not be used to extract information. However, AJP 2.5 gave no guidance on whether or in what circumstances and by what means prisoners might be deprived of their sight, even though it stated that prisoners must be given no opportunity to observe sensitive and critical activities, equipment and procedures.

JSP 383: The Manual of the Law of Armed Conflict (2004)

5.123 The MoD's publication *The Manual of the Law of Armed Conflict* was not finally published until 2004.[121] It was, remarkably, a work that had been in preparation for almost 25 years. By the time of Op Telic, while not yet published, a late draft of the manual was in circulation and clearly was available at least to some MoD and Army legal advisers. This was not, however, a publication that would have been readily to hand for commanders in Iraq.

5.124 Chapter 8 addressed prisoners of war. Unsurprisingly, it addressed the obligation to treat prisoners of war humanely.[122]

5.125 The subsection within Chapter 8 on Interrogation provided as follows:[123]

INTERROGATION

8.34 The capturing power may ask further questions to obtain tactical or strategic information but the prisoner of war cannot be forced to disclose any such information.[109] Questioning should be done in a language that the prisoner of war understands. No physical or mental torture or any other

[109] See JWP 1–10, 3B, 8c. For PW documentation, see JWP 1–10, 3D.

[121] MOD036232-878
[122] MOD036431, paragraph 8.28
[123] MOD036433-4

form of coercion may be used to obtain information. Nor may those who refuse to answer be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.[110]

Wounded and sick prisoners of war may be interrogated, but not if it would seriously endanger their health,[111] so medical advice should be taken in case of doubt. **8.34.1**

Blindfolding and segregation may be necessary in the interests of security, the physical restraint of prisoners of war, or to prevent collaboration prior to interrogation, but these discomforts must be truly justified and be for as short a period as possible. **8.34.2**

The NATO states have agreed humane interrogation procedures.[112] Interrogation is best done by skilled, well-briefed interrogators who are able to build up a rapport with prisoners of war. **8.34.3**

[110] GC III, Art 17. In *Re Killinger and others* (1945) 3 WCR 67, some of the accused were convicted of having placed PW in excessively heated cells in order to extract information.
[111] GC III, Art 13. [112] NATO STANAG 2033.

5.126 This section of the manual is of some significance. Save for Part I of the 1972 Directive, which was by this stage clearly not readily available as current doctrine, this part of the manual appears to have been the only place within all of the available policy and doctrine publications where sight deprivation was addressed in any way.

5.127 Hooding was not referred to within this section. The MoD suggests in its closing submissions that the paragraph is "*…very clear about method (blindfold)…*".[124] I am not persuaded by that argument. It is certainly not sufficient to amount to a prohibition on the use of hoods. The difficulty arises from the fact that hooding could be thought of as a means of blindfolding. A fair reading of this paragraph and the section as a whole would suggest that the permitted purposes of blindfolding were security, restraint and to prevent collaboration before interrogation, and not to soften prisoners up, disorientate or condition them. For the most part that aspect of the guidance is unproblematic although the concept of blindfolding to prevent collaboration may in practice all too easily lead to extended sight deprivation. However, the section did make clear that the "discomfort" must be truly justified and for as short a period as possible.

5.128 This section of the manual directly mirrored the guidance contained within the ICRC's guidance *Fight it right*, which the ICRC published as a model manual on the Law of Armed Conflict for Armed Forces in 1999. Paragraph 1405.7 of the ICRC guidance was as follows:[125]

1405.7. Blindfolding and segregation may be necessary in the interests of security, the physical restraint of prisoners of war or to prevent collaboration prior to interrogation, but these discomforts must be truly justified and be for as short a period as possible.

5.129 Returning to JSP 383, Chapter 9 of the manual addressed the protection of civilians in the hands of a party to the conflict. It included at paragraph 9.24 prohibited acts against

[124] SUB001065, paragraph 10
[125] BMI06667

protected persons, including the prohibition on physical or moral coercion, especially with a view to obtaining information (the Fourth Geneva Convention Article 31).[126]

5.130 A point which arose during the Inquiry's consideration of the manual was that despite addressing interrogation of prisoners of war, security blindfolding and the treatment of civilians, it made no reference to either the prohibition on the five techniques or to the decision in *Ireland v UK.*

5.131 The reasoning for this was apparently that the manual was specifically a manual on the law of armed conflict; it did not extend to international human rights law. Col Charles Garraway, who was involved in drafting the manual (but not the passage at paragraph 8.34), explained that consideration had been given to whether the manual should expand, and include all relevant aspects of human rights law and refugee law, but it was decided to keep it focused as the manual on the law of armed conflict.[127] It followed that the manual was not meant to address human rights law except where it interplayed with LOAC. Moreover, it was intended to give legal guidance, not detailed practical guidance or operational instruction, for commanders on the ground.

5.132 The Detainees' legal team, while noting this explanation, have suggested that the manual was apt to mislead in the absence of a clear caveat that international human rights law was not being addressed.[128]

5.133 Professor Sir Adam Roberts, an expert for the Inquiry's Module 4 who was involved in reviewing the manual (although not Chapter 8) commented in his report that the wording of paragraph 8.34 was "*not brilliant*" and that: "*It could and should have been more precise that security is the only ground on which sight deprivation may be justified, and that sight deprivation should not be part of that actual process of interrogation*".[129]

5.134 I consider that the biggest shortcoming about the guidance provided in the manual is not a criticism of the manual at all. The main shortcoming is that such guidance on sight deprivation as appeared anywhere in UK policy and doctrine by 2003 appeared only in a draft manual principally designed as guidance for lawyers. It had not been effectively translated into practical guidance for commanders and soldiers on the ground who were given no guidance whatsoever on sight deprivation in the available prisoner of war handling and tactical questioning and interrogation doctrine.

5.135 That said, the wording of paragraph 8.34 was itself less than ideal in particular in interweaving collaboration and blindfolding. As to the absence of any reference to the prohibition on the five techniques or *Ireland v UK,* I consider that there is room for genuine differences of view. Given that *Ireland v UK* involved the very serious finding that techniques previously authorised by the UK Government and trained by MoD were inhuman treatment in the context of interrogation, and contrary to Article 3 ECHR, my own view would be that the manual might better have made some reference to the case, even if this strayed into international human rights law. But the opposing argument is not an unreasonable one and I would not criticise the authors for its omission. I think it most unlikely that its inclusion would have led to any different outcome to the events of the subject of this Inquiry.

[126] MOD036503
[127] Garraway BMI 94/14/8-18/17
[128] SUB002409-10, paragraph 13
[129] Roberts MIV010347, paragraph 75

Chapter 6: Conclusions and Commentary

5.136 Before stating my conclusions I must explain that I have set out in the above paragraphs large sections of the various relevant documents. I have done so deliberately in response to the MoD's submission that it must have been obvious from the above documents, containing, as they do, policy doctrine and guidance in relation to prisoner handling, that what occurred in the TDF at Battlegroup Main Headquarters (BG) Main in September 2003, could be seen to be wrong. This is a powerful and understandable submission. But for reasons which I now explain it is not a complete answer to the criticisms which may be made of the MoD.

5.137 At the time of the 1996 to 1997 review of interrogation policy, the MoD was still fully aware of both Parts of the 1972 Directive, and of the way in which prisoner of war and internal security operation doctrine had developed separately.

5.138 The 1997 Policy did not affect Part I of the 1972 Directive. It cancelled Part II of the 1972 Directive and required that procedures used by UK interrogators in an operational theatre should be governed by a detailed directive incorporating current legal advice and issued on behalf of the UK Joint Commander.

5.139 A downside of the 1997 Policy was that it left interrogation policy divided between interrogation in internal security operations worldwide, to which Part I of the 1972 Directive applied, and interrogation in warfare which JSP 120(6) applied. It is regrettable that the opportunity was not taken to unify interrogation policy. But both types of operation should have required a detailed directive setting out the procedures to be used by UK interrogators.

5.140 JSP 120(6) which had contained a provision about security blindfolding became obsolete. The timing is not clear but JWP 2-00, first promulgated in 1999, in the main superseded JSP 120. JWP 2-00 contained no meaningful guidance on interrogation. This was the culmination of a process over several decades whereby the highest level guidance on interrogation of prisoners of war became increasingly general: from the 1955 pamphlet which was a detailed guide to interrogation of prisoners of war; to JSP 120 (6) which was tailored to give information to non-interrogation trained officers who might become involved in interrogation; and to JWP 2-00 which gave no meaningful information about interrogation of prisoners of war at all.

5.141 By 2003, the MoD simply had no generally available written doctrine on the interrogation of prisoners of war other than NATO publications at a high level of generality. Doctrine had largely become restricted to what was taught at Chicksands.

5.142 The MoD has sensibly and realistically conceded corporate responsibility for this gap in doctrine. The gap was noticed as early as 1999 when an internal review was started in the JSIO.

5.143 In fact this review perceived the gap to be even wider than in fact it was, because the JSIO was by this stage seemingly unaware of both Part I of the 1972 Directive and the 1997 Policy. This was a tangible loss of significant policy documents. The fact that by 1999 the JSIO was unaware of an approved policy by Ministers from 1997 was a striking failure which may be explained, but not excused, by the move from Ashford to Chicksands and some loss of records by the MoD. The fact that wider MoD recipients of the JSIO review later failed to point out that JSIO had omitted

two main extant policy documents is indicative of a corporate failure to give proper attention to interrogation policy and doctrine.

5.144 The JSIO review taken up by the Defence HUMINT Working Group ought to have led to the formation of better and clearer interrogation and tactical questioning policy.

5.145 In the two year period from the Spring of 2000 to the Spring of 2002, no action appears to have been taken in response to the JSIO review. The review was thereafter taken forward. However, by this stage the focus of the review shifted to interrogation and tactical questioning capabilities rather than doctrine. The result was that capability concerns to some extent drowned out the message that there was no MoD-endorsed doctrine for interrogation. Indeed, despite the fact that no further doctrine had been published since 2001, the versions of the policy review in the weeks before Op Telic had been amended to suggest that there was adequate doctrine. This was inaccurate.

5.146 I accept that those involved in considering HUMINT issues had very considerable pressures arising from other aspects of the HUMINT sphere of operations. Interrogation was by no means the only area where doctrine was less than optimal. Considerable effort was being deployed to create a HUMINT capability in the form of what was to become the Defence HUMINT Organisation. When taken together with the shift in the review's focus to capability issues, this goes a long way to explaining why the shortcomings in interrogation doctrine highlighted earlier in the review were not acted upon. Nevertheless, I consider that more could and should have been done to produce better interrogation doctrine before Op Telic. The comments on doctrine in the final versions of the review were falsely re-assuring.

5.147 JWP 1-10 was the joint level doctrine on prisoner of war handling. It specifically did not address interrogation in detail. A careful reading of it and any consideration of its guidance on tactical questioning would have demonstrated to the reader that coercion of any form could not be used on prisoners of war to extract information. Although there were many clear and impressive messages in JWP 1-10 it was inadequate in that it did not specifically include the prohibition on the five techniques or any guidance on sight deprivation of prisoners, in particular hooding. Further, it should also have addressed civilians and insurgents more specifically.

5.148 The failure of JWP 1-10 to address the prohibition on the five techniques arose in large part from the failure over many years to bring together policy and doctrine on the treatment of captured persons in the two areas of international armed conflict and internal security operations.

5.149 By the time of Op Telic, the only place where any guidance existed in generally available policy and doctrinal publications was in the draft of JSP 383, the Manual of the Law of Armed Conflict. The guidance on sight deprivation within JSP 383 was not ideal in all respects, although some parts of it were clear and appropriate. It cannot be said to have been unreasonable guidance given that it mirrored the ICRC manual. The main difficulty was that this was a manual primarily for military lawyers. It was not, and did not purport to be, operational guidance for commanders on the ground.

5.150 As a result of the above, by the time of Op Telic, the position was as follows, firstly there was no proper MoD-endorsed doctrine on interrogation of prisoners of war that was generally available. The proper limits of interrogation had become confined

to teaching materials at Chicksands. As one experienced Chicksands instructor explained in his evidence:

> *"Q. Is it right that in fact at this time, 2000-2003, there simply wasn't any written doctrinal guidance, such as a manual on TQ'ing or interrogation, that gave specific written guidance on what was permitted and what was not permitted?*
>
> *A. No, I think 2005 was the first real practical policy document that we had".*[130]

Secondly, practical knowledge of the 1997 policy requiring a detailed directive had been lost. Thirdly, while varying knowledge of the Heath Statement and *Ireland v UK* remained, Part I of the 1972 of the Directive on internal security operations as a policy document containing the prohibition on the five techniques had also largely been lost. Fourthly, JWP 1-10 was the leading doctrinal publication. It contained many clear and appropriate instructions. But it gave no guidance on sight deprivation of prisoners and did not mention the prohibition on the five techniques.

5.151 In this Part of the Report, as appears above, I have made some limited comments on the part played by some individuals in the "lost doctrine" saga. Save for those comments, in my view, it is unnecessary and inappropriate to blame or apportion blame to any individuals. It would also, in my opinion, be unfair to do so. The MoD has conceded that there were corporate failures, as recorded above. As I have endeavoured to explain, the failings arose over a lengthy period of time and involved a combination of failings and missed opportunities, some more serious than others. In the circumstances, in my judgment, the only fair conclusion is that the position reached at the outset of Op Telic, as summarised in paragraphs 5.136 to 5.149 above, resulted from a series of corporate failings and missed opportunities.

[130] S004 BMI 87/83/2-8

Part VI

Teaching and Training

Chapter 1: Prisoner Handling and LOAC Training

6.1 The Law of Armed Conflict (LOAC) arises out of the regulation by international humanitarian law of the way in which armed conflict is used. The main purpose of LOAC is to protect combatants and non-combatants from unnecessary suffering and to safeguard the fundamental human rights of persons, who are not, or are no longer, taking part in the conflict.[1]

6.2 All soldiers undergo initial and annual training in the foundation skills of soldiery; in such aspects for example as fitness, personal weapon training and battlefield first aid.[2] Some introductory instruction in LOAC is a basic element of this training regime and this was the case before Baha Mousa's death.

6.3 Furthermore, at various stages in their Army career soldiers will also experience various training exercises at unit level or below, some of which will include prisoner of war handling. Such exercises will certainly have included action at the point of capture. However, the extent to which, historically, such exercises included handling detainees or prisoners of war up the prisoner handling chain is a weakness which has clearly emerged in the Inquiry's evidence and in the MoD's own reviews.

LOAC Training

6.4 I turn first to the training in relation to LOAC. The Army Recruiting and Training Division (ARTD) is the body responsible for the training given to junior Army recruits and to officer cadets. In response to a request from the Inquiry in November 2008, through the MoD's Tribunals and Inquiries Unit, the ARTD provided the following information in relation to the training given to officer cadets and soldiers concerning the detention of civilian detainees during their initial training.

6.5 Before September 2003, no instruction was provided on the treatment of civilian detainees to those soldiers (known as Phase 1 recruits) undergoing basic military training during the first twelve weeks of their service. Such prisoner handling training as was provided concentrated mainly on the handling of prisoners of war. There was a 40 minute presentation on LOAC as mandated by the Army Individual Training Directives.[3] It is this 40 minute presentation therefore, which provided the basic instruction and guidance to soldiers in relation to prisoner handling.

6.6 The relevant Individual Training Directive (ITD) was ITD (6) "The Law of Armed Conflict". The Inquiry has seen two iterations of this Directive, the September 1998

[1] JSP 383, The Joint Service Manual of the Law of Armed Conflict, 2004 edition, MOD036284, paragraph 1.8
[2] MOD009269
[3] Connolly BMI02499, paragraph 3-4

version of ITD (6)[4] and the January 2003 version, current at the time of Op Telic 1 and 2.[5]

6.7 ITD (6) contained the following relevant passages. The Directive recognised the international law stipulation that instruction on LOAC must be included in military training programmes, and stated that the aim of ITD (6) was to detail the requirements for LOAC training in the Army. The stated policy was that "*All Army personnel are to attend LOAC instruction annually*".[6]

6.8 The following extract shows the intended content of the initial and annual LOAC training as detailed in the 1998 version of the ITD (6):[7]

Training

8. All personnel are to attend one 40 minute period of training in LOAC annually. The training is to be based on the pamphlet "The Law of Armed Conflict" (Army Code 71130) and a brief explanation of the different roles of the soldier in peace support operations, which distinguish them in legal terms, from the other types of armed conflict. Additional training can be delivered, as part of exercise scenarios, on specific LOAC problems for particular operations as necessary.

9. The further instruction of officers in aspects of LOAC is to be conducted by legally qualified officers of the Army Legal Service (ALS). For specialist aspects of LOAC training, an officer of the ALS may be made available to assist in the preparation and presentation of instruction to WOs and SNCOs.

10. Instruction of soldiers and JNCOs may be undertaken by non ALS officers and WOs / SNCOs of a unit.

11. Briefings are to be provided within MOD under arrangements made by DMAO for all personnel detached on loan service. No additional training is required for personnel taking up exchange appointments, places on courses or undertaking short term visits or attachments overseas. Additional training in ROE is to form part of any theatre training package and is the responsibility of the Theatre Commander. Such training is to be in addition to, and not at the expense of LOAC training.

6.9 The following points are of note from this part of the directive. At paragraph 8, it is envisaged that additional training may be delivered as part of exercise scenarios (the manifestation of this through various prisoner handling exercises is dealt with later in this Part). At paragraph 10, it will be noted that LOAC training for soldiers could be delivered by non-specialist instructors at senior Non-Commissioned Officer (NCO) rank within each unit.

6.10 At paragraph 9, it is relevant to note that training for officers in aspects of LOAC was slightly more advanced, and conducted by legally qualified officers of the Army Legal Service (ALS). I shall discuss the training for officers briefly at the end of this Part of

[4] MOD043589-92
[5] MOD009274-8
[6] MOD043589, paragraph 5
[7] MOD043590, September 1998

the Report. For present purposes it will suffice to observe that the instruction received by officers at Sandhurst included two ALS lectures on LOAC, a presentation on the "Soldier and the Law" and two periods on "Introduction to Military Law".[8]

6.11 Also of relevance in ITD (6) were the recommended training aids and resources that a unit might utilise for the purposes of the annual training:[9]

14. The following films are available from the British Defence Film Library (BDFL):

a. The Law of Armed Conflict (1986)(C1610) 15 mins, with instructors notes.

b. Law of Armed Conflict - 75 Frames (1991) (DFS9158).

15. The British Red Cross Society video films "Ideals in Action" and "War and Dignity" are also available.

16. **Publications.** The following publications should be held by units to support training in this subject:

a. Manual of Military Law Part III.

b. Pamphlet "The Law of Armed Conflict" (Army Code 71130).

c. JSP 381 - Aide Memoire on the Law of Armed Conflict.

d. Basic Battle Skills (Army Code 71090) pp 61-66.

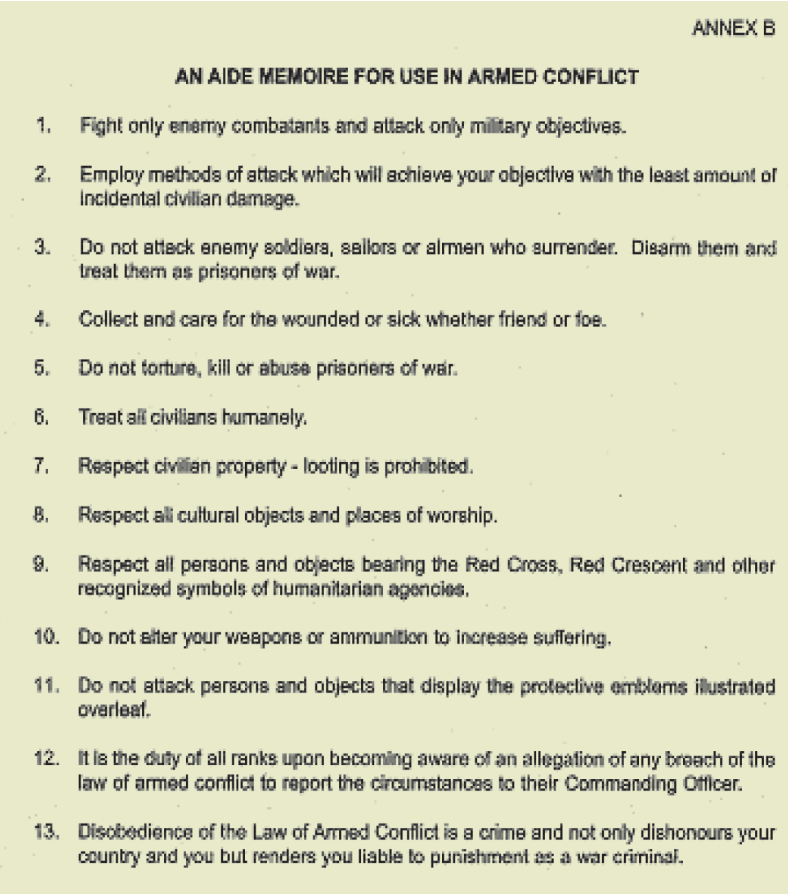
e. JSP 391 - Instructions for the Handling of Prisoners of War.

6.12 There were minor amendments to ITD (6) by the time of the January 2003 version. Firstly, in addition to instructor's notes available from the British Defence Film Library (BDFL),[10] the 2003 version mentioned a 24 slide PowerPoint presentation with speaker's notes on CD-ROM.[11] The MoD has not been able to retrieve and provide to the Inquiry a copy of either the instructor's notes or the PowerPoint presentation.[12]

6.13 Secondly, in addition to stipulating that the LOAC training was to be based on the pamphlet "A Soldiers' Guide To The Law of Armed Conflict", the January 2003 version included further reference to Annex B to that pamphlet; a document called "Aide Memoire for Use in Armed Conflict".[13]

6.14 The "Aide Memoire for Use in Armed Conflict" contained a set of thirteen bullet point injunctions, including those most relevant to the conduct central to the Inquiry's examination; "*Do not torture, kill or abuse prisoners of war*", and "*Treat all civilians humanely*":[14]

[8] MOD054509-16
[9] MOD043591
[10] Referred to in the 1998 version at 14. a. in the extract above at MOD043591
[11] MOD009275
[12] Opening BMI 5/92/12-93/4
[13] MOD009274, paragraph 7
[14] MOD029243



ANNEX B

AN AIDE MEMOIRE FOR USE IN ARMED CONFLICT

1. Fight only enemy combatants and attack only military objectives.
2. Employ methods of attack which will achieve your objective with the least amount of incidental civilian damage.
3. Do not attack enemy soldiers, sailors or airmen who surrender. Disarm them and treat them as prisoners of war.
4. Collect and care for the wounded or sick whether friend or foe.
5. Do not torture, kill or abuse prisoners of war.
6. Treat all civilians humanely.
7. Respect civilian property - looting is prohibited.
8. Respect all cultural objects and places of worship.
9. Respect all persons and objects bearing the Red Cross, Red Crescent and other recognized symbols of humanitarian agencies.
10. Do not alter your weapons or ammunition to increase suffering.
11. Do not attack persons and objects that display the protective emblems illustrated overleaf.
12. It is the duty of all ranks upon becoming aware of an allegation of any breach of the law of armed conflict to report the circumstances to their Commanding Officer.
13. Disobedience of the Law of Armed Conflict is a crime and not only dishonours your country and you but renders you liable to punishment as a war criminal.

6.15 This training requirement is directly relevant to all those deployed on Op Telic 1 and 2. Annex C of the "Land Mounting Order" for Op Telic made it mandatory for all personnel to have completed ITD (6) LOAC (or single service equivalent), and the Pre-Deployment Training (PDT) Directive annexed to this order mandated that the ITD 1 to 6 must have been taken within six months of deployment.[15]

The Content of LOAC Training

6.16 As identified above, LOAC training was meant to be substantially based on the pamphlet, "The Soldier's Guide to the Law of Armed Conflict".[16] The May 2002 version of the pamphlet gave guidance in relation to the history and basic principles of LOAC, the status of different categories of captured individuals, the rules of combat, the use of weapons and ammunition, the treatment of the wounded, sick, medical personnel and chaplains, the treatment of prisoners of war and the protection of civilians.[17] The guidance did not specifically mention the prohibition on the five techniques; and did not provide any detailed guidance on prisoner handling and the treatment of civilian detainees.

6.17 That said, it is right to record that emphasis was given in places in the guide to the principle of humane treatment. The MoD reasonably points to the relevant passages

[15] The Land Mounting Order at MOD017000, Paragraph 19 (b); the Pre-Deployment Training Directive at MOD043609
[16] MOD029203-44
[17] MOD029205-6

within the guide in this regard,[18] and I accept that this message was clearly articulated in the written guide.

6.18 For example, introducing the basic principles of LOAC, three core features were set out, one of which was humanity.[19] In the chapter addressing prisoners of war it was stated that "[t]*he fundamental principle underlying the treatment of PW is that they are war victims, not criminals, and are entitled to humane and decent treatment throughout their captivity*".[20] The guide specified that *"PW must at all times be humanely treated"*, having provided his name, rank, service number and date of birth, a "*PW is not required to provide any further information and no physical or mental torture nor any form of coercion may be used to obtain it*".[21]

6.19 In the chapter dealing with "Protection of Civilians in Enemy Hands", it was further stated that "*protected persons are those who at any time and for any reason are in the hands of a party to the conflict or Occupying Power of which they are not nationals. The most common categories are enemy nationals in your own territory and the population of occupied territory*".[22] Moreover, it was stated that protected persons must be dealt with "*humanely… Violence, torture, biological experiments, pillage, intimidation or coercion to obtain information …are forbidden*".[23]

6.20 While acknowledging these provisions however, I do not lose sight of the fact that this guide was not a lecture plan nor a set of teaching notes, but a 42 page document, the contents of which can only have been, for understandable reasons, selectively referred to during any LOAC training session.

The LOAC Training Videos

6.21 The preponderance of evidence heard by the Inquiry suggested that the 40 minute sessions in annual LOAC training consisted mainly of the presentation of a video, possibly with an accompanying lecture, and possibly a question and answer session. The video presentation was, I find, heavily relied upon by those giving the LOAC training.

6.22 ITD (6) specified the video "*The Law of Armed Conflict*" (1986) (C1610) as a training aid.[24] Extracts from this video that touch on civilians and prisoners[25] were shown during the opening of the Inquiry's public hearings.[26] The video is important because many of the Inquiry's military witnesses referred to it in their Inquiry witness statements as the prisoner handling training they had received during their Army careers.[27] For many it was the central part of the training which they remembered.

[18] SUB001082-3, paragraphs 4-5
[19] MOD029213-14
[20] MOD029230
[21] MOD029231
[22] MOD029236
[23] MOD029237
[24] In the 1998 version: MOD043591; in the 2003 version: MOD009275
[25] MOD036879
[26] Opening BMI 5/91/24
[27] See for example Bentham BMI01628, paragraph 11; Brzezinski BMI00701-2, paragraph 12; Cooper BMI06102, paragraphs 13-14; Huxley BMI01691, paragraphs 11-12; Mackenzie BMI01031-2, paragraph 15; Redfearn BMI01771, paragraph 13

6.23 The scenarios depicted in the video were based around a "conventional" cold war, warfighting situation addressing various elements of LOAC, such as the legitimacy of targets, the rules of the white flag, recognising protective emblems and so on. Although the video addressed protecting non-combatants it did not cover the treatment of civilian detainees. The video did not mention the prohibition on the five techniques.

Handling of Prisoners of War Video

6.24 The MoD also disclosed to the Inquiry a further video entitled "*Handling Prisoners of War*".[28] This was not specified as a training aid in the ITD (6) Directive. The video was produced in 1982. It was still a current video in 2003 in the sense that it was still available and had not been replaced. As it specifically referred to the handling of prisoners of war, the entirety of this video was shown during the opening of the Inquiry's public hearings.[29]

6.25 In line with the "*The Law of Armed Conflict*" video, the circumstances depicted in the "*Handling Prisoners of War*" video were conventional cold war, warfighting situations, focused on the point of capture and passing prisoners back from the front line, and not on matters of detention at unit level. It did not deal with civilian detainees. The video did however draw attention to the concept of humane treatment.

6.26 The "*Handling Prisoners of War*" video also emphasised the importance of maintaining the shock of capture. It very briefly discussed the restriction of sight, stating that prisoners should only be blindfolded if moved through sensitive military locations. It did not include any express mention of the prohibition on the five techniques.

6.27 The MoD submitted that there was no requirement explicitly to address the prohibition on the five techniques. The MoD submitted firstly that the video was concerned with prisoner handling and tactical questioning, not interrogation. Secondly, it is asserted that the International Committee of the Red Cross (ICRC) itself adopted the position that it can be counter-productive to be overly prescriptive as to what is or is not inhumane. I shall return to this point below. Thirdly, it is submitted that the video implicitly covered the issue of the five techniques[30] in that the restriction of sight is limited to security reasons, that sandbags are not referred to, and that stress positions, use of noise, and sleep deprivation are not depicted.[31] I have no hesitation in rejecting this third submission. I do not accept that the absence of these features can be taken to have the effect of sufficiently training soldiers that they were positively forbidden.

6.28 Whatever the rights and wrongs of these arguments, they may in a sense be academic for as the MoD conceded in its submissions, the circulation of this video may have been limited.[32] I have already mentioned that it was not referred to in the 1998 or 2003 versions of ITD (6). Counsel to the Inquiry rightly cautioned in their opening statement that it was the "*The Law of Armed Conflict*" video, and not the "*Handling Prisoners*

[28] MOD036883
[29] Opening BMI 5/93/5-94/5
[30] The MoD concedes there is one exception to this in relation to the prohibition on the deprivation of food and drink at SUB001085, paragraph 9. It is admitted that the provision of food and drink is badly dealt with in the video: a soldier is depicted offering a prisoner a drink, which is categorised as an error that reduces the shock of capture.
[31] SUB001084-5, paragraphs 8-9
[32] SUB001085, paragraph 10

of War" video to which many soldiers referred in their Inquiry witness statements.[33] While the evidence was not all one way, it seems likely that at the Joint Services Intelligence Organisation (JSIO), the instructors took the view that the video was so outdated that it was no longer used on their courses. In short, the Inquiry received very little evidence to suggest that regular soldiers ever saw the "*Handling Prisoners of War*" video.

The Delivery of LOAC Training

6.29 The annual LOAC training for soldiers and junior NCOs was delivered at unit level (in accordance with paragraph 10 of the Directive as set out above).[34]

6.30 The Inquiry heard evidence from witnesses at company and platoon commander level who had conducted annual LOAC training. In my opinion this evidence gave a good insight into the methods of delivery. A simple playing of the LOAC video was heavily relied on during training. The seemingly common approach was summarised by Maj Jim Landon as follows:[35]

> *"As of 2003 the ITD that covered LOAC had not changed much in content, since I first joined the Army in 1989. I had delivered it frequently during my career before 2003. There was a considerable amount of latitude as to how it is delivered; however there were key areas to be covered and there was a test at the end of the training. When I was responsible for delivering the training, I always showed the LOAC video. After the video there would be a discussion and/or a question and answer session"*[36]

6.31 Some other LOAC instructors also stated that they would have conducted a discussion of LOAC issues. Capt John Ainley, the second-in-command and Ops Officer for A Company, 1 Queen's Lancashire Regiment (1 QLR), stated that when he was involved in teaching soldiers about the LOAC he would "*try to get a discussion going about the issues raised by LOAC in order to ensure that they understood this*".[37] Sgt Nicholas Wesson, Platoon Sgt in C Company, said he would divide those troops watching the LOAC video into groups to discuss and amplify the LOAC video message using extracts from war films.[38]

6.32 Any participatory element of the training (as opposed to watching of the video) did not of course necessarily cover prisoner handling. Capt Oliver King, SO3 G3 Ops Officer, 19 Mech Bde, told the Inquiry that the discussions afterwards that he witnessed were "*generic discussions generally on the myriad of topics covered by the law of armed conflict…I don't recall anything specific about prisoner-handling in those discussions. There may well have been*".[39] This was a point supported by Capt Richard Osborne, Ops Officer, A Company 1 QLR, who described that, "*It was usual* […] *to discuss some of the aspects of the video to test that they understood those – the key lessons*

[33] Opening BMI 5/93/16-25
[34] MOD043590
[35] For examples of other instructors who described using the video see Potter BMI 44/50/25-51/21; Wesson BMI 50/8/3-9/3
[36] Landon BMI04927, paragraph 11
[37] Ainley BMI02422, paragraph 25
[38] Wesson BMI 50/27/7-20
[39] Capt Oliver King BMI 78/61/6-10

brought out in the video". However, he had no recollection of sight deprivation or the use of stress positions ever being the subject of these discussions.[40]

6.33 Of course, I recognise that discussion sessions after the showing of the video would all have been different. For example, S047 of Company 1 QLR stated that he specifically taught that stress positions were not allowed when he taught LOAC lessons to recruits. S047's evidence was that he taught LOAC three times a year, and he seemed to go into greater detail than the common pattern of the evidence showed: he stated that he would "*reinforce the lesson with examples from history, particularly from Northern Ireland, why the likes of sleep deprivation, stress positions and the mistreatment of prisoners is counter-productive*".[41] The reason for this would appear to be simply that S047 had a better than average understanding and knowledge of these matters.

Areas of Concern

6.34 I find that taken as a whole the evidence from soldiers who had undergone initial and/or annual LOAC training demonstrated significant areas of concern about the standards of LOAC training. The evidence of some witnesses gave the impression that the training was formulaic, outdated, and potentially suffered from the seriousness of the subject matter being undermined by the style of the video teaching material. I also recognise that there was some evidence that the simple showing of the LOAC video in particular was heavily relied upon to fulfil the requirement to deliver annual LOAC training.

6.35 The following are indicative examples only of the evidence that reflected these concerns.

6.36 CSM Tam Henderson C Company 1 BW, who had been an instructor on the law of armed conflict between 1990 to 1994 and 1998 to 2000,[42] stated "*I remember I taught it many years ago, yes. It was a video. You put the video in and you take the names of those who attended*."[43]

6.37 2Lt Kevan Callaghan, CIMIC Officer, B Company 1 QLR, stated *"*[i]*t comprised a video, where you watched or, depending on the role, showed the guys a video and then a small discussion at the end of it, just to clarify some points and – that would be the – pretty much the end of it*."[44]

6.38 WO2 Roderick Paterson, 1 QLR stated the LOAC training was invariably only the video, described as a very out-dated and generic video.[45]

6.39 Pte Matthew Bellingham, Company 1 QLR stated: "*The only ITD relevant to prisoner handling was the LoAC ITD. This involved a lecture, a video and a question and answer session. The majority of the session was set aside to watching a video. This video was the same throughout my time in the army and was outdated even when I joined*."[46]

[40] Osborne BMI 53/59/19-60/8
[41] S047 BMI 48/144/25-145/21
[42] Henderson BMI06447, paragraph 43
[43] Henderson BMI 60/73/7-9
[44] Callaghan BMI 55/5/10-13
[45] Paterson BMI 76/86/13-87/2
[46] Bellingham BMI06419, paragraph 9

6.40 Further, the Inquiry received this striking description from Father Peter Madden, Padre 1 QLR, of the reception of the LOAC video:

> *"The video seemed very dated …and the same video was shown year after year. I knew this because I had seen the video more than once during my time in the Army. The video was considered to be a bit of a laughing stock amongst the soldiers who I could see were visibly amused by the content of it. The video related to a war situation and prisoners of war as opposed to the handling of detainees. All that I can recall from the video is that each prisoner should be treated with respect. Given that the video was shown after the fitness training was completed, most of those watching it were exhausted and some fell asleep half way through"* [47]

6.41 It is worth noting the apparently limited benefit of the LOAC training as described by LCpl Adrian Redfearn, a member of the Rodgers Multiple:[48]

> *"…we had a video showed to us yearly but the video we were shown, sir, was well out of date. It was to do with basically fighting the Soviets and full on war. It was nothing to do with fighting a building insurgency in Iraq. It was totally out of context.*
>
> *Q: And you saw that video every year, did you?*
>
> *A: I saw the video once in training, sir, and once about three months before we deployed to Iraq, sir…*
>
> *…Q: You say that didn't help you very much in dealing with civilian detainees in Iraq?*
>
> *A: Not at all, sir."*[49]

6.42 I am supported in this view by the fact that the Inquiry also heard from senior MoD witnesses who were in a position to acknowledge some of the shortcomings described above.

6.43 During Brig Robert Aitken's review into Reputation and Operational Effectiveness, Col Robert Warren (at the time the Chief of Staff to the PM (A)) identified areas of improvement in the management and oversight of prisoners of war. Warren told Aitken that "*The PW Handling training video (1982), in addition to being significantly outdated, did not provide guidance for the handling of civilians by UK Forces on operations*".[50]

6.44 Moreover, during his evidence to the Inquiry, Brig Michael Conway, at the relevant time Chief Operational Law at the Army Legal Services, agreed that the LOAC video's sole focus on conventional warfighting cold war scenarios was not representative of the sorts of operations in which the Army might be involved. He agreed that the video was "*dated*" and that it looked "*rather amateurish in the way it was produced*". He also acknowledged that it would not help in the delivery of the message if the appearance of the video was somewhat comical, agreeing "*that was clearly the view that was taken and why we produced a replacement*".[51]

---

[47] Madden BMI00234, paragraph 15

[48] 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.

[49] Redfearn BMI 30/138/1-15

[50] MOD009296, paragraph 3(b)(1); see also Warren BMI 83/131/2-132/18

[51] Conway BMI 90/80/8-81/12

The Message to Treat Humanely

6.45 The MoD and those soldiers represented by the Treasury Solicitor submitted that irrespective of any deficiencies in the delivery of the this training, and despite the lack of a specific prohibition on the five techniques, it cannot be said that it was a lack of LOAC training which led soldiers who witnessed or committed abuse in the Temporary Detention Facility (TDF) not to realise it was wrong.[52] I accept that there was a prohibition on violence even if the message was delivered in an old fashioned video.

6.46 I also accept that there was considerable evidence that the basic message that soldiers were to treat prisoners "humanely" had been conveyed to all ranks. It is possible to cite numerous examples of this throughout the various ranks. Amongst the examples are some witnesses who were closely involved in the detention of the Op Salerno Detainees, and even some who admit to the mistreatment of them. Witnesses who expressed an understanding of the need to treat prisoners humanely included the following:

(1) Cpl Donald Payne, 1 QLR, remembered being taught that civilians must be treated humanely, and agreed that there was no doubt that he would have known that at the time of the events in question;[53]

(2) Pte Thomas Appleby, 1 QLR, agreed he would have appreciated that prisoners should be treated humanely and that to him, "*humanely*" meant "*as I would like to be treated if it were the opposite way around*";[54]

(3) Pte Wayne Crowcroft, 1 QLR, agreed that he understood from his training that at all times detainees were to be treated humanely;[55]

(4) although Pte Aaron Cooper, 1 QLR could not remember as a message from his training that civilian detainees should be handled and treated humanely, he did not doubt that to be the correct approach, and was able to describe that, to him, the word "*humanely*" meant, "*To treat someone how you would expect to be treated yourself*";[56] and

(5) Sgt Robert Livesey, 1 QLR understood prisoners of war and civilian detainees needed to be treated humanely; a message that had been instilled through his training, and that humanely meant "*treat others as you would like to be treated*".[57]

6.47 I therefore accept that the message that prisoners must be treated humanely was communicated. Obviously it was necessary that LOAC training should communicate such a message.

[52] SUB001292, paragraph 112; SUB001081, paragraph 2; SUB001083-4, paragraph 7
[53] Payne BMI 32/10/24-11/8
[54] Appleby BMI 25/15/6-13
[55] Crowcroft BMI 22/44/7-18
[56] Cooper BMI 29/3/25-5/10
[57] Livesey BMI 39/6/23-7/13; The message was also clearly expressed by soldiers of a higher rank, see RSM George Briscoe 1 QLR BMI 43/96/8-18; Air Marshal Brian Burridge National Contingent Commander BMI 98/4/12-5/3; Major Paul Davis 1 QLR BMI 56/65/4-12; Maj Edward Fenton COS 19 Mech Bde BMI 101/78/19-24; General Graeme Lamb GOC 3 UK Div BMI 103/73/11-17; Maj Simon Wilson SO2 Detention, 1 (UK) Armd Div BMI 71/5/7-14.

6.48 However, there remains a further question as to whether the basic message to "treat humanely" was sufficient. As is pointed out in the submissions made on behalf of the Detainees[58] and on behalf of those soldiers represented by Kingsley Napley,[59] the understanding as to what is or is not inhumane will differ between individuals. Moreover the scope for differences of understanding is exacerbated when UK service personnel are deployed in extremely demanding operational circumstances, where they themselves have to endure considerable hardships and witness disturbing violence. As is pointed out, the Inquiry heard evidence illustrating this difference in appreciation.

6.49 For instance, it is possible to contrast the views of Gen Brims, GOC 1 (UK) Div and Gen Lamb, GOC 3 (UK) Armd Div, both of whom made it clear (by reference to LOAC and the principle of humane treatment) that hooding and stress positions were inappropriate,[60] with the opinions of soldiers within the chain of command at 1 QLR. Lt Col Jorge Mendonça was aware that hooding and stress positions (albeit in a standing position with arms out in front at waist level) were used, but it was not obvious to him that they were inhumane.[61] The Adjutant of 1 QLR, Capt Mark Moutarde, thought that stress positions for a limited period before tactical questioning was within the rules at the time.[62]

6.50 Furthermore, as illustrated in submissions on behalf of the Kingsley Napley witnesses, the simple message to "treat humanely", without any elaboration or example, was insufficient to instil the general understanding that stress positions were inhumane treatment and that hooding at least carried the risk of being an inhumane prisoner handling technique.

6.51 In relation to hooding, for example, the Inquiry heard evidence from:

(1) S002, 1 (UK) Div SO1 J2X, who thought that hooding as a security precaution but with the benefit of maintaining the shock of capture was appropriate;[63]

(2) Redfearn who had received training that hoods and blindfolds may be used on civilian detainees for the purposes of shock of capture;[64]

(3) Maj Mark Kenyon, Officer Commanding C Company 1 QLR, who stated that he did not regard hooding as inhumane. He was "*quite comfortable that this was a necessary technique to be applied at the time*";[65]

(4) Maj Christopher Parker, Chief of Staff 7 Armd Bde, who when asked if it was proper for a sandbag to have been used for sight deprivation for security reasons, stated, "*If the reason was there and the sandbag was to be used and it was the only eventuality and the overriding law of armed conflict – which is 'humane as possible treatment' – then I would see no reason at all why that shouldn't be a deduction by a frontline commander*";[66]

[58] SUB002406-9, paragraphs 9-11
[59] SUB000626-7, paragraph 66
[60] Lamb BMI 103/122/19-123/14; Brims BMI07386-7, paragraph 17
[61] Mendonça BMI 59/115/4-115/11
[62] Moutarde BMI 54/89/13-90/7
[63] S002 BMI05830-2, paragraphs 28-30
[64] Redfearn BMI 30/133/11-134/8
[65] Kenyon BMI 60/102/12-19
[66] Parker BMI 96/57/17-21

(5) W02 Michael Porter, 1 QLR, who, having personally experienced being hooded, believed that hooding was not inhumane.[67]

6.52 Furthermore, in relation to stress positions, again by way of example:

(1) Crowcroft told the Inquiry that at the time he would have thought the stress positions depicted in the Payne video to be humane treatment;[68]

(2) Capt Shaun Cronin, Intelligence Officer, 1 QLR, stated that "*Stress positions in the broader sense of short-term uncomfortable positions I would not necessarily see as being wrong because I've been put in stress positions myself in PT sessions, for example, so it depends on the exact circumstances*";[69]

(3) Maj John Lighten, 1 QLR, admitted, "*I do not know whether the stress positions are also forbidden in a war fighting operation*";[70] and

(4) Maj David Hunt, Intelligence Officer 1 Kings stated "*I do not recall stress positions being discussed in training, but understand the term to mean placing an individual in an uncomfortable position. I do not know whether stress positions are legal in some situations ...*".[71] When asked, during oral evidence, whether his view had changed he said: *A.* "*No, I'm still unsure. I don't believe, but I'm not sure*."[72]

6.53 I acknowledge that there is some force in the submission that training which provides definitions of inhumane treatment, and which enumerates what inhumane might be, possibly risks unintentionally restricting a deliberately wide-ranging and flexible concept. I recognise also that the ICRC commentary on Article 3 of the Fourth Geneva Convention does itself caution against being too prescriptive.[73]

6.54 Ultimately, however, I think the balance lies clearly in favour of the need to give service personnel meaningful examples of what may amount to inhumane treatment and that this ought specifically to have included the prohibition on the five techniques. I find that a simple instruction to treat prisoners and/or civilians humanely is not sufficient for young soldiers and officers to understand what that means in practical terms, especially when those personnel may have to serve under conditions of hardship which risks distorting the understanding of what treatment is humane. This is particularly so in the light of the other training that was received on exercises which exposed soldiers to the hooding of prisoners.

6.55 I also note that the MoD's argument to the effect that LOAC training did not specifically refer to the prohibition on the five techniques might be justifiable as there were dangers in giving specific examples of what might amount to inhumane treatment, was in truth unsupported by any positive evidence. No evidence was submitted by the MoD to demonstrate that the absence of reference to the prohibition on the five techniques in the LOAC training had been considered and rejected because of a perceived danger of enumerating only some cases of what amounts to inhumane treatment. In my opinion there is more than a hint of an after-the-event rationalisation in the MoD's arguments in this regard.

[67] Porter BMI 77/79/5-10
[68] Crowcroft BMI 22/44/2-45/20
[69] Cronin BMI 58/5/19-23
[70] Lighten BMI05969, paragraph 61
[71] Hunt BMI05477, paragraph 39
[72] Hunt BMI 64/36/12-15
[73] SUB000957-8, paragraph 10.3

6.56 I conclude that those who deployed on Op Telic 1 and 2 would have benefited significantly from LOAC and prisoner handling training which was more specific and gave more relevant and meaningful examples of behaviour on operations which was inhumane and forbidden, including the five techniques.

Prisoner Handling Exercises

6.57 The Inquiry heard evidence of a variety of different training situations which might have involved prisoner handling exercises; for example, during Territorial Army (TA) training, battle training at Brecon, at the British Army Training Unit (BATUS) in Canada, at Sandhurst for Officers, and at the Infantry Training Centre in Catterick during pre-deployment training.

6.58 Two features of the evidence regarding this aspect of training stood out. Firstly, there were accounts from a significant number of soldiers who experienced hooding being used on training exercises, without any training that the technique was not to be used on captured prisoners in any way as an aid to interrogation, nor any guidance on when and how other forms of sight deprivation might be appropriate. Secondly, where prisoner handling was included on exercises, the exercises typically ended at the point of capture, sometimes with the "prisoners" hooded; and did not concern the handling of prisoners higher up the handling chain. While I am sure that there were exceptions, the general picture was one of the soldiers not being properly trained during exercises in the handling of prisoners beyond the point of capture.

6.59 During the course of the Inquiry the following 1 QLR witnesses provide examples both of witnessing, and in some cases directly experiencing, the use of hooding on exercises:

(1) Pte Paul Stirland, A Company, 1 QLR, had undertaken training exercises where captured "enemy" forces were hooded for the purpose of maintaining the shock of capture;[74]

(2) Pte Joseph Grist, C Company 1 QLR, stated that he had not received training in relation to hooding as such, but that hooding was "*a thing that happened when on exercise, an unwritten SOP*";[75]

(3) Payne described hooding being used during training. When situations were acted out simulating a prisoner of war being captured, those playing the "enemy" would be hooded. Payne said that he did not know what the purpose of this was, "*It was just an underlining SOP throughout the British Army*";[76]

(4) Redfearn told the Inquiry that he was trained that hoods and blindfolds may be used on civilian detainees for the purposes of the shock of capture;[77]

(5) Capt John Seaman, during part of his TA training, saw hooding used on prisoner handling exercises, and described it as normal for prisoners to be hooded. He also saw hooding used on an exercise in Canada. He thought the purpose of hooding was for maintaining the shock of capture as well as for security reasons;[78]

[74] Stirland BMI 38/6/1-21
[75] Grist BMI 37/132/3-11
[76] Payne BMI 32/5/18-6/6
[77] Redfearn BMI 30/133/11-134/8
[78] Seaman BMI 55/42/3-44/14

(6) Maj Paul Davis, Officer Commanding A Company, 1 QLR (until August 2003) understood hooding to be a "*usual and a standard operating procedure*", he was hooded when playing an enemy part and felt this to be appropriate;[79]

(7) Maj Richard Englefield, Officer Commanding A Company 1 QLR (from August 2003) had taken part in exercises where he himself had played the role of prisoner and was hooded;[80]and

(8) Kenyon stated that "*during exercises it was a common occurrence to hood prisoners of war during training*". He too had personally experienced hooding on exercises.[81, 82]

6.60 This experience was not confined to 1 QLR. Other witnesses who remembered the use of hoods in training included:

(1) Hunt, the Intelligence Officer for 1 Kings, described how his Sandhurst training in 1996 had included "*bagging and tagging*"; which meant hooding of prisoners, and which was done for the purposes of shock of capture as well as security. He received no instruction as to how long a prisoner should be hooded, what should be used to hood, or what health implications there might be as a result of hooding;[83]

(2) RSM David Bruce, 1 BW, described exercises conducted on the BATUS exercise in Canada, and an assessed exercise on prisoner handling. "*It was normal practice at the point of capture that a prisoner would be hooded*…[Using] *sandbags*";[84] and

(3) S002, the SO2 G2X at 1 (UK) Div, said that he saw hoods used during Army prisoner handling exercises (and clarified that this was not during specialist conduct after capture training).[85]

6.61 Further, as the MoD acknowledge[86] there is evidence of hooding being used on Army promotion courses for NCOs held at Brecon in Wales:

(1) WO2 Ian McCleary, described attending the Section Commanders Battle Course at Brecon in 1989 and the Platoon Sergeants Battle Course in 1990, during which he was taught to use hoods on captured prisoners;[87]

(2) WO2 John McLaughlin saw hoods in use on prisoner handling exercises when he completed his Junior and Senior courses at Brecon, but he did not receive any specific instruction on sight deprivation one way or the other;[88]

(3) Capt Neil Wilson, Officer Commanding the Military Provost Staff (MPS) team of custodial advisers during Op Telic 1, remembered a training situation in

[79] Davis BMI 56/5/1-15
[80] Englefield BMI 65/5/1-11
[81] Kenyon BMI 60/99/17-100/4
[82] Other witnesses giving an account of encountering hooding on exercises included: Callaghan BMI 55/6/1-16; Landon BMI 80/128/14-131/1; Lighten BMI 56/80/22-81/3; Seeds BMI 46/428/9-429/9; Jones BMI00848, paragraph 14; Strong BMI00389, paragraph 16
[83] Hunt BMI05465, paragraph 4
[84] Bruce BMI 62/7/10-8/1
[85] S002 BMI 82/8/9-11/4
[86] SUB001085, paragraph 11
[87] McCleary BMI01080-1, paragraphs 17-18
[88] McLaughlin BMI 52/47/7-48/23

2002 when the MPS were acting in an advisory capacity. He became aware of hooding being used on an exercise. He instructed that it was not to take place. He learned thereafter that hooding had been taught at the infantry school at Brecon;[89] and

(4) Maj Rhett Corcoran, MPS, confirmed that he saw hooding used during exercises on his Junior Brecon course.[90]

6.62 The Inquiry also heard evidence that some soldiers encountered stress positions when being subjected to them during physical training exercises. Examples included: Maj Edward Hemesley, Officer Commanding S Company, 1 QLR[91] and Capt Gary Pinchen, second-in-command and Ops Officer C Company, 1 QLR.[92] Pinchen said he received no instruction that such techniques should not be used on prisoners. There was no suggestion that such physical training was in any way teaching stress positions as a method to be used on prisoners. Those who were asked about this and responded that they had not been taught to use stress positions on prisoners included WO2 Antony Weston;[93] Capt Gareth Seeds;[94] and SSgt Christopher Roberts.[95] However, the fact that stress positions were sometimes used in physical training, and might therefore have been seen as "normal" by some service personnel, served to emphasise further why it was important to ensure that the prohibition on the five techniques was specifically taught to soldiers.

6.63 I bear in mind the fact that these exercises were point of capture exercises. During the exercises hooding seemed to be utilised for security purposes and not deployed as conditioning before questioning. Maintaining the shock of capture, where mentioned, was generally seen as a secondary consideration. These were not exercises in handling prisoners further up the prisoner handling chain; nor in guarding prisoners at unit level; or in preparation for tactical questioning or interrogation. Hooding was not taught in that context, in which it would have been clearly unlawful.[96]

6.64 The difficulty however is that if service personnel were not being trained in how to handle prisoners beyond the point of capture, there was an obvious risk of hooding at the point of capture being continued later in the prisoner handling process and in circumstances where it could all too easily become part of the tactical questioning or interrogation process.

6.65 I was impressed by the candour of Parker, the then Chief of Staff, 7 Armd Bde when assessing the core problem:

> *"…there's a fundamental flaw in our training, in as much our training is always fairly rushed and we don't have – we have never trained long enough with people playing prisoners for several hours. We always tend to finish off at the prisoners and debrief and end – go on to the next exercise. So that has been the flaw in our training.*
>
> *Q. So what is the flaw, that these things are not thought through enough?*

[89] Capt Neil Wilson BMI 73/48/20-49/22
[90] Corcoran BMI 95/7/3-11
[91] Hemesley BMI 57/184/23-185/21
[92] Pinchen BMI 50/32/4-33/3
[93] Weston BMI 47/93/14-94/18
[94] Seeds BMI 46/429/13-430/8
[95] Roberts BMI 20/68/12-20
[96] Bostock BMI 55/149/1-13; Corcoran BMI 95/7/12-8/3; Landon BMI 80/128/14-135/18

> *A. No, it's the time taken to train, to actually tease out those issues. Effectively training time is pretty precious and expensive and so the end of a drill to perhaps clear a village or an attack on a house or something, to remove some enemy from it, would end with the prisoners being taken and the drills being done and then that would be it. To go on for several hours to show the sort issues which we are discussing might be covered in a discussion afterwards, but we have failed, through lack of time to do that, to ever address those issues."* [97]

Conclusions on Prisoner Handling and LOAC Training

6.66 It is very unlikely that the prohibition on the five techniques was commonly taught in express terms during LOAC training unless brought up in question and answer sessions. LOAC teaching, and any answers provided, would ordinarily have come from non-specialist officers or Warrant Officers.

6.67 LOAC training communicated reasonably effectively the core message that prisoners were to be treated humanely. However, the training lacked specific guidance on how to handle a prisoner; what the permitted treatment of a prisoner actually was in practical terms; and most importantly what type of treatment was expressly forbidden. Although no exhaustive list can, or indeed perhaps should be provided in the context of prisoner handling, the prohibition on the five techniques should have been taught.

6.68 As discussed above, instead, LOAC training at officer level included two ALS lectures on LOAC, a presentation on the, "Soldier and the Law", and two periods on "Introduction to Military Law."[98] Although more detailed training than for soldiers, this was still training at a level of broad generality.

6.69 There was, however, some specific training of greater relevance to the matters concerning this Inquiry for some officers later in their careers. This was the training in counter insurgency theory and practice provided to officers attending the Army Command and Staff Course (ACSC). This training is the focus of Chapter 2 of this Part.

6.70 LOAC training was adversely affected by the video, central to annual training, being badly out of date both in respect of its style and presentation, and in terms of the operational situations it depicted. Repeated annual training must be kept fresh, interesting and relevant. So outdated was the LOAC video that in some quarters it appeared to have become something of a source of amusement. This was unacceptable. The separate video on handling prisoners of war was similarly outdated and appears to have fallen from regular use. Neither video referred to the prohibition on the five techniques. They should have done.

6.71 The use of hoods on soldiers playing prisoners at the point of capture during unit level exercises, is likely to have been a common, though not an invariable practice. While the general pattern of evidence was that this was being taught as a security precaution at the point of capture, with the shock of capture sometimes a secondary aspect, the training risked misleading service personnel about what was acceptable at later stages of the prisoner handling chain. The MoD realistically conceded that "*it would have been better if there had been more comprehensive and uniform doctrine and teaching about prisoner handling".* It is suggested in particular that what would have

[97] Parker BMI 96/66/7-67/1
[98] MOD054509

been useful was teaching on the limited circumstances when it is necessary to restrict sight, the permitted methods of sight deprivation and the *"applicable parameters and considerations*".[99] I am in full agreement with those concessions.

6.72 Both the MoD and the Treasury Solicitor put forward variants of the argument that it cannot be said that it was a lack of LOAC training which led soldiers who witnessed or committed abuse in the TDF not to realise that the abuse was wrong. That argument has some merit, but it is not a complete answer to the training deficiencies. Nor do I accept that training deficiencies played no causative part in the events leading to the abuse of Baha Mousa and the other Detainees in the TDF. The MoD and the Treasury Solicitor are clearly right to the extent that any service personnel who saw the Detainees being punched, kicked or otherwise beaten must have known that it was wrong and inhumane treatment. I accept that every soldier or officer in that position had enough training to know that they had to treat detainees humanely and that beating them was entirely unacceptable.

6.73 But the argument breaks down when the question is asked why it was that so many Battlegroup officers in 1 QLR did not adopt a more questioning approach to the practice of hooding, especially as a part of the conditioning process. Similarly, when one considers why a form of stress position, even if more limited in form and duration than those used in the TDF on the Detainees, was also thought to be acceptable.

[99] SUB001086, paragraph 13

Chapter 2: Counter Insurgency (COIN) Training for Officers

6.74 The Army has historically provided further training to selected officers on and in preparation for appointment to staff and command posts. Between 1977 and 1996 this training was provided at the Army Staff College in Camberley on the Army Staff Course (ASC). In 1997 the Joint Service Command and Staff College (JSCSC) took over provision of this training, the Army Junior Course (AJC) replacing the Army Staff Course. It was the AJC that was the extant course in 2003, its successor the Intermediate Command and Staff Course (ISIC), not being introduced until 2004.[100]

6.75 From 1997, the JSCSC also provided two relevant tri-service courses in addition to the AJC, the Higher Command and Staff Course (HCSC) and the Advanced Command and Staff Course (ACSC).[101]

I will address the training provided by the JSCSC from 1997 onwards in due course. I begin with what was taught at the predecessor Army Staff College on the ASC, which is of particular interest to the Inquiry for three reasons. First, the Inquiry heard evidence that between 1977 and 1996 the Counter Insurgency (COIN) component of the ASC introduced students to the Parker Report. This is in contrast to its successor course, the materials for which contained no reference to the Parker Report.[102] Secondly, Mendonça attended the ASC in 1995.[103] Thirdly, a number of senior officers who deployed on Op Telic 1 or 2 and who gave evidence to the Inquiry had attended the ASC.

The Army Staff Course Coverage of the Parker Report between 1977 and 1996

6.76 Gp Capt Bryan Evans provided written evidence to the Inquiry in his role as Chief of Staff of the JSCSC. His statement to the Inquiry details the result of searches carried out for references to the Parker Report and other similar phrases within the course materials for the ASC:

> *"The archive hard copy course notes for the ASC were searched in detail by the College's Chief Librarian. The first reference to the Parker Report was found in the 1977 Course notes as part of a Counter Revolutionary Warfare Exercise; in later courses these notes developed into a printed CRW Handbook which was re-titled the 'COIN Handbook' in 1993[fn]. In addition to this Exercise the search also identified reference to the Parker Report within a number of ASC Directing Staff and Student Guidance Notes for various years between 1989 – 1996; these Guidance Notes are attached at Enclosures 1-13*
>
> *[fn] The Baha Mousa Inquiry already has a copy of the COIN Handbook…"* [104]

[100] Evans BMI07611-2, paragraph 3 and paragraph 6; Evans BMI03499, paragraph 8(c); SUB001086-7, paragraph 14; SUB001095, paragraph 34
[101] Evans BMI03496, paragraph 6
[102] Evans BMI07612, paragraph 6(a)-(c)
[103] Mendonça BMI01091, paragraph 9
[104] Evans BMI07612, paragraph 6(b)

6.77 The following points emerged from Gp Capt Evans' written evidence. Firstly, the Parker Report was addressed on the ASC from 1977 to 1996 as part of a syndicate on the Use of Force within the COIN element of the course. It was required reading for the COIN syndicate on the Use of Force and part of a book pack issued to students in the years 1989 to 1996.[105]

6.78 Secondly, the Counter Revolutionary Warfare (CRW) Handbook was issued to students between 1989 and 1992 and the COIN Handbook, replacing the CRW Handbook, was issued to students between 1993 and 1996. These Handbooks were publications by the College and intended specifically for use on the CRW/COIN component of the ASC.[106] Chapter 7 of the CRW Handbook set out the British policy on prisoner handling and interrogation, detailing the history of the use of the five techniques in Northern Ireland, the Parker Report, the Heath Statement and the 1972 Directive. In respect of the Parker Report, paragraph 21 of Chapter 7 stated:

> *"You must be absolutely clear that the British Government accepted the minority report of Lord Gardiner."* [107]

The Handbook explicitly stated, in setting out the rules guiding interrogation policy:

> *"The 5 techniques examined by the Parker Committee are absolutely forbidden (hooding, stress positions etc)."* [108]

6.79 Thirdly, Chapter 6 of the COIN Handbook contained the same history of the use of the five techniques in Northern Ireland, the Parker Report, the Heath Statement and the 1972 Directive; the same instruction about the Government's adoption of the Minority Report of Lord Gardiner and explicitly stated that the five techniques were forbidden.[109] In addition, the COIN Handbook discussed the Universal Declaration on Human Rights and the European Convention on Human Rights and the Irish State Case.[110] It also included a chapter on Intelligence and Psychological Warfare Operations in Northern Ireland[111] and a case study on Algerian insurrection.[112]

6.80 Fourthly, Chapter 7 of the CRW Handbook was required reading for the syndicate on the Use of Force from 1989 to 1992.[113] Chapter 6 of the COIN Handbook was required reading for the syndicate on the Use of Force in 1993[114] but does not appear to have been in 1994 to 1996.[115]

6.81 Fifthly, there was a question for syndicate discussion that referred to the Government's adoption of the minority view in the Parker Report in 1989[116] but not thereafter.

---

[105] 1989 - BMI07652, paragraph 3(c); 1990 - BMI07659, paragraph 3(c); 1991 - BMI07623, paragraph 2(b); 1992 - BMI07628, paragraph 2(b); 1993 - BMI07678, paragraph 3(c); 1994 - BMI07630, paragraph 2(b); 1995 - BMI07691, paragraph 3; 1996 - BMI07699 paragraph 3
[106] MOD022671, paragraph 1
[107] BMI07641, paragraph 21
[108] BMI07641-2, paragraph 22(b)
[109] MOD017416-7, paragraphs 1-2
[110] MOD022854-5, paragraphs 28-30
[111] MOD017376-83
[112] MOD022720-7
[113] 1989 - BMI07614, paragraph 2; BMI07652, paragraph 3(a); 1990 - BMI07659, paragraph 3(a); 1991 - BMI07665, paragraph 3(b); 1992 - BMI07672, paragraph 3(b)
[114] BMI07678, paragraph 3(a)
[115] 1994 - BMI07630, paragraph 2; 1995 - MOD017349, paragraph 2; BMI07691, paragraph 3
[116] BMI07655, paragraph 8(b); BMI07614, paragraph 5

6.82 Sixthly, in the years 1989 to 1996, the syndicate discussion on the Use of Force included viewing of extracts of a video shown on BBC in 1988 entitled "The Unleashing of Evil". The course notes remain unchanged from 1989 to 1996 and described the extracts as concentrating on *"the methods of interrogation used in Ulster in 1971 that were the subject of the Parker Report enquiries*".[117] The Inquiry has obtained a copy of "The Unleashing of Evil" from the BBC.[118] The video explains what the five techniques were and includes discussion of: the Compton Report, the Parker Report; the Rt. Hon. Edward Heath listening to the minority view in the Parker Report and stopping "*deep interrogation*" in Northern Ireland; the European Court of Human Rights' (ECHR) decision six years later that the UK was guilty of brutal, inhuman and degrading treatment of prisoners; and the much stricter code of practice to which the police and Army worked at the time the video was made.

Colonel Mendonça's COIN Training

6.83 Mendonça attended the ASC in 1995. As noted above, at that time the Parker Report was required reading for the COIN syndicate on the Use of Force and part of a book pack issued to students. Students would have been issued with the COIN Handbook, which contained explicit instruction that the five techniques were forbidden and extracts of the BBC video "The Unleashing of Evil" were shown during the syndicate on the Use of Force. The video extracts were linked to the following question:

> *"Is causing discomfort to a prisoner acceptable in order to gain information?"* [119]

6.84 Mendonça said that he did not remember being taught about the Heath Statement on the ASC.[120] He accepted that he would have done the minimum reading on the course but did not remember reading either the Heath Statement or the Parker Report.[121]

6.85 Mendonça said that if he attended the syndicate discussion and had been conscientious, there could not have been any doubt that the five techniques were regarded as inhumane and techniques which the government had said should never again be used without Parliamentary authority.[122]

6.86 I accept that by 2003 Mendonça had genuinely forgotten this course and syndicate discussion. I have already summarised his view in 2003 about hooding and stress positions (see Part II, Chapter 21).

Other Senior Officers who Attended the Army Staff Course

6.87 Mendonça noted in his witness statement that the training provided on the ASC was "*in military command and staff education aimed at preparing officers for demanding*

[117] 1989 - BMI07655, paragraph 9(a); 1990 - BMI07662, paragraph 8(a); 1991 - BMI07668, paragraph 8(a); 1992 - BMI07675, paragraph 8(a); 1993 - BMI07681, paragraph 8(a); 1994 - BMI07688, paragraph 8(a); 1995 - BMI07694-5, paragraph 10(a); 1996 - BMI07702, paragraph 10(a)
[118] This has been disclosed to Core Participants but we are currently unable to publish this on the website due to copyright issues.
[119] BMI07694, paragraph 9
[120] Mendonça BMI 59/105/25-106/4
[121] Mendonça BMI 59/107/15-108/1
[122] Mendonça BMI 59/114/1-13

command and staff appointments up to and including the rank of colonel".[123] I understand that candidates from ASC were selected on the basis of their confidential reports and by an examination, the Staff Promotion Exam. Some students attended having already been promoted to Major, but many were Captains who would most often gain promotion to Major during the one year course.

6.88 As submitted on behalf of the MoD, during the period 1977 to 1996 many of the senior officers who gave evidence to the Inquiry attended the ASC.[124] The list of attendees provided by Gp Capt Evans included 29 Inquiry witnesses.

6.89 It is perhaps notable that of these witnesses, only three gave evidence indicating that they specifically remembered being taught about the prohibition on the five techniques on the ASC. They were Lt Col Channer, attending in 1995; Gen Brims, in 1983; and S009, in 1992. Their evidence to the Inquiry on the issue was as follows:

(1) Channer had seen some documents from the ASC that suggested to him that the course might have contributed to his understanding of the Heath Statement;[125]

(2) Brims knew that the five techniques were illegal through his experiences in Northern Ireland but also though general training including at Staff College;[126] and

(3) S009 did not recollect reference to the Heath Statement in his training[127] but said he was told that the use of stress positions, sleep deprivation, white noise and food and water deprivation were illegal on his first tour of Northern Ireland and he said that this was emphasised at Staff College.[128] However, he did not recollect having been given any instruction during training about the use of hoods on prisoners.[129]

6.90 The remaining 26 witnesses did not appear to remember specifically reading or being taught about the Heath Statement whilst at the Army Staff College. Of these witnesses some were aware of the prohibition on the five techniques either from other training or because it was simply something they came to understand during the course of their career (e.g. Lt Col Phillip Baillie;[130] Lt Gen Robert Fry;[131] Lamb;[132] and S046[133]). Others were not aware of the prohibition on some or all of the five techniques (e.g. Capt James Wakefield[134]; Col Barry Le Grys[135]; and Col Richard Barrons[136]).

Conclusions about the ASC

6.91 The MoD submitted in respect of the ASC that the evidence showed that most, if not all, of those in the key senior command positions at the time, including Mendonça,

[123] Mendonça BMI01091, paragraph 9
[124] SUB001087, paragraph 15
[125] Channer BMI 63/6/19-8/4
[126] Brims BMI 103/4/13-18; Brims BMI 103/51/10-21
[127] S009 BMI 66/10/22-11/7
[128] S009 BMI03517, paragraph 11
[129] S009 BMI 66/5/1-7
[130] Baillie BMI 74/75/17-22
[131] Fry BMI 100/35/3-15
[132] Lamb BMI 103/74/4-8; Lamb BMI04914-5, paragraph 21
[133] S046 BMI 88/95/22-96/7
[134] Wakefield BMI05038-9, paragraphs 12-13
[135] Le Grys BMI03756-7, paragraphs 7-9
[136] Barrons BMI 99/99/3-20

had the benefit of detailed military education which dealt with the Parker Report, the Heath Statement and the Irish State Case. The MoD suggest that this training should have equipped these senior personnel with the knowledge that coercive interrogation the use of the five techniques as aids to interrogation were unacceptable.[137]

6.92 I accept that for a period at least, the ASC was comprehensive in its treatment of the use of force in the context of Counter Insurgency and included elements of appropriate teaching relating to the prohibition on the five techniques.

6.93 For a number of reasons, however, I consider that the ASC's treatment of the prohibition on the five techniques did not succeed in instilling knowledge of the prohibition in all officers. Firstly, this was not training provided to all officers, rather only those who were selected as suitable for the Army Staff College. Secondly, it is unfortunate that the COIN Handbook appeared to have fallen out of use after 1996.[138] Thirdly, it is not clear if those who attended the ASC were always pointed directly to the prohibition on the five techniques, although I accept that it was set out in the CRW/COIN Handbook issued to students. The prohibition on the five techniques was contained in a Handbook which appeared to have been treated as a study guide. The COIN Handbook stated as follows in the introduction:

> *"The purpose of this Handbook is to provide the principles on which Term 4 Counter Insurgency (COIN) studies are based. The rewrite of Land Operations Volume III in the form of Army Field Manuals is not yet complete [fn]. In the meantime this Handbook provides an update in procedures and doctrine, covering the areas in which there are no written doctrinal references. In the main, the chapters stand or* [sic] *their own and give students at the Staff College the baseline of knowledge required for the discussion periods. It is not an authoritative reference and in many cases reflects the considered opinion of its several authors.*[139] *[emphasis added]*
>
> *[fn]* …"

6.94 Fourthly, when the prohibition on the five techniques was actively taught during the syndicate discussion on the Use of Force, as for example it would appear was the case in 1989, it was likely to have been done in a discursive, academic way, since, *"*[the] *emphasis of the College is on education rather than training*".[140]

6.95 Fifthly, it is striking how many senior officers who gave evidence to the Inquiry and went on the ASC did not remember being taught on this course about the prohibition on the five techniques as aids to interrogation. I accept that in all cases their lapse of memory was genuine. The message simply did not stick in their minds. The reasons for this may have varied but it is likely to have been affected by the fact that this was just one small part of a course that was academic in nature and the message was not reinforced by subsequent training and orders. Whatever the reason, I do not accept that attendance on the ASC alone was sufficient to ensure that by 2003 the majority of officers would have known about the prohibition on the five techniques as aids to interrogation.

6.96 It is submitted on behalf of Mendonça that he had forgotten whatever he had been taught concerning the Heath Statement and that he cannot sensibly be criticised for this as the Heath Statement was merely the subject of a session at Staff College back in 1995.[141] It is in my view relevant that Mendonça received the training he did

[137] SUB001094, paragraph 31
[138] As appears to have been accepted by the MoD in written submissions at SUB001095, paragraph 34
[139] MOD022671, paragraph 1
[140] Evans, BMI03497, paragraph 8
[141] SUB000068-9, paragraph 54

on the ASC in 1995 and I accept the submission made on behalf of the Detainees that the techniques imported into Battalion practice by 1QLR were counter-intuitive to this training.[142] However, as I have said, I also accept that Mendonça genuinely did not remember being taught about the prohibition on the five techniques as aids to interrogation.

6.97 It is more than unfortunate that the training that I find Mendonça did receive in relation to the five techniques some eight years before Op Telic 2 did not stick in his mind. But he was by no means alone in this. Seen in this context the greater issue for Mendonça is not criticism of him for not specifically remembering this part of this training, but as to why he did not instinctively have greater concerns about the use of hooding and stress positions by his Battlegroup (see Part II, Chapter 21).

Other Courses

The Army Junior Course

6.98 The AJC replaced the ASC in 1997. A manual search of the College library turned up a hard copy archive of the AJC course handouts, the relevant documents being exhibited to Gp Capt Evans' statement.[143] The AJC set out the requirement of humane treatment and the prohibition of any coercion as part of questioning; see the handout on *Operational Military Law – Prisoners of War (PW)*[144], the Aide-Memoire[145] and handout[146] provided as part of the Combat Service Support Capabilities part of the course. However, as accepted by the MoD in its submissions,[147] the AJC does not seem to have contained explicit references to the Parker Report, the Heath Statement or The Irish State Case, although I note that a copy of the Parker Report continued to be held by the College library.[148]

The Higher Command and Staff Course

6.99 Evans' evidence was that hard copy course documentation for the HCSC is only retained for two years for validation purposes. This was searched but unsurprisingly contained nothing of relevance to the Inquiry's terms of reference. The course archive and course documents held on the College Intranet were also searched but no relevant documents were identified.[149]

6.100 There is therefore simply no evidence to suggest that the HCSC taught the prohibition on the five techniques, and I think it is very unlikely that the prohibition would have been referred to in this course. Beyond that, I need not make any findings in respect of the course content of the HCSC. However, few if any of the senior officers deployed on Op Telic 2 attended this course as it was the highest level of course offered by the JSCSC. As such, the course content is in any event of limited relevance.

[142] SUB002598-9, paragraph 179, Fn 376
[143] Evans BMI03499-500, paragraph 8(c)
[144] MOD039178
[145] MOD039180-2
[146] MOD039183-5
[147] SUB001095, paragraph 34
[148] Evans BMI07612, paragraph 6(a)
[149] Evans BMI03497-8, paragraph 8(a)

The Advanced Command and Staff Course

6.101 The relevant documents disclosed to the Inquiry in respect of the ACSC were exhibited by Gp Capt Evans. The ACSC was introduced when the JSCSC took over provision of courses from the Army Staff College. The course is an academic one, lasting an academic year. It is attended by civil servants, members of other government departments and a wide variety of international students in addition to officers selected for high grade appointments.[150]

6.102 The course included lectures on the Law of Armed Conflict, the Geneva Conventions and International Law, which were primarily provided by visiting lecturers, as shown by the lists of visiting speakers and their lecture topics for the course for the years 1997/1998, 1998/1999 and 1999/2000.[151] In addition, the lectures in 1997/1998 covered the Northern Ireland Campaign[152] and the lectures in 1998/1999 and 1999/2000 included ethics and the military[153] and the historical development of COIN.[154]

6.103 Gp Capt Evans explained that the Interrogation Operations training exercise EX ADEPT CORMORANT, for which the Inquiry was given the relevant documents for the year 1999/2000, was run annually on the ACSC. The Directive for that exercise provided that:

> *"Detained persons are to be treated in accordance with the Geneva Conventions. Prisoners of War are not to be subjected to physical or mental torture, nor any other form of coercion, in order to secure information from them. Prisoners of war who refuse to answer are not to be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."*[155]

6.104 The course materials for the ACSC from 1997 to 2009 were searched for references to the Parker Report, but no such reference was found.[156] The MoD accept that there seems to be no explicit articulation of the prohibition on the five techniques on the course.[157]

6.105 The MoD submits that the ACSC appears to have covered the relevant standards of prisoner handling and that attendees ought to have known, implicitly from Article 17 of the Third Geneva Convention at least, that techniques such as hooding and stress positions could not be used as aids to interrogation.[158] I have some sympathy for this view in the context of senior officers. There is however (as I have indicated in Chapter 1 in respect of the LOAC training provided to officers and soldiers) a danger in legal guidance being at a high level of generality without situational examples. In the context of COIN training, specific examples of techniques that were used on COIN operations but became impermissible should have been identified.

---

[150] MOD039079
[151] Evans BMI03498 paragraph 8(b)(iii); list for 1997/1998: MOD039059-62; list for 1998/1999: MOD039063-8; list for 1999/2000: MOD039069-78
[152] MOD039062
[153] MOD039063; MOD039070
[154] MOD039065; MOD039073
[155] MOD039085, paragraph 1
[156] Evans BMI07612, paragraph 6(a)
[157] SUB001097, paragraph 39
[158] SUB001097, paragraph 40

The Army Field Manual

6.106 As accepted by the MoD, the COIN Handbook appears to have fallen out of use after the JSCSC took over the provision of courses from the Army Staff College in 1997.[159] The Introduction to the COIN Handbook indicates that the authors viewed the then extant doctrinal publication on COIN, the Land Operations Manual, Volume III, as outdated and in need of supplement pending the expected publication of the relevant parts of the Army Field Manual.[160]

6.107 Volume 5B of the Army Field Manual was published in 1995.[161] Parts 1 and 2 of the Manual were replaced in 2001 by the Army Field Manual, Volume 1, Part 10[162] and Parts 3 and 4 of the 1995 publication were replaced by the Army Field Manual, Volume 1, Part 9.[163] Students on the ACSC were provided with Parts 9 and 10 of the Army Field Manual dealing with Operations other than War and COIN respectively.[164]

6.108 When Volume 5B was published, it acknowledged a gap in the doctrine on COIN, with specific reference to Northern Ireland in the Introduction.[165] Despite this, the Army Field Manual (both the 1995 edition and later editions) did not refer to the Parker Report, the Heath Statement or the prohibition on the five techniques.[166] Although there is a passing reference to certain interrogation techniques no longer being permitted,[167] there was no real attempt in the Manual to address interrogation or tactical questioning.

6.109 The MoD "*is not convinced*" that the lack of explicit reference in the Army Field Manual to the prohibition on the five techniques was an error and submits that the hiving off of interrogation as a specialist subject was not obviously wrong provided the prohibition was covered in interrogation doctrine and training.[168] That submission assumes adequate interrogation doctrine and training. It also does not really address the point of concern that in respect of COIN training, the Army Staff College used to teach the prohibition on the five techniques on the ASC, whereas the succeeding AJC and the other new courses introduced when the JSCSC took over did not. This was in short a further example of the gradual loss of knowledge of the prohibition on the five techniques with latter doctrinal material giving less, not better, coverage than their predecessors.

[159] SUB001095, paragraph 34
[160] MOD022671
[161] Parts 1 and 2: MOD023768-938; Parts 3 and 4: MOD024078-443
[162] MOD024552-844
[163] MOD026418-749
[164] Evans BMI03498, paragraph 8(b)(ii)
[165] MOD023775-6, paragraphs 22-26
[166] SUB001095
[167] In the 1995 edition: MOD023874, paragraph 4; in the 2001 edition: MOD024648, paragraph 4
[168] SUB001096, paragraph 37

Chapter 3: Training – Provost Staff

Introduction

6.110 The MPS is one component of the Provost Martial (Army) (PM(A)) branch, which is the Army branch responsible for, amongst other things, all aspects of the detention of soldiers within the UK.[169] The MPS are mostly employed at the Military Corrective Training Centre (MCTC), Colchester, which is the central place of detention for the Army where soldiers and servicemen and women who have broken military rules are held.[170]

6.111 Where the detention of soldiers occurs as a method of discipline at a unit level however, this is dealt with by soldiers appointed as Regimental Police (RP), who are also known as "Provost Staff", but who are not in fact part of the MPS or the PM(A). The RP will detain soldiers for short periods within their battalion base. In order to be equipped to do so, RP soldiers receive training from the MPS at the MCTC on the Regimental Police Course.[171] Traditionally the RP staff are responsible to the Regimental Sergeant Major (RSM) who in turn is responsible to the Commanding Officer for their work.

6.112 As a result of this customary responsibility and the RP's experience in dealing with the detention of soldiers in barracks in the UK, the RP soldiers at Battlegroup level during Op Telic 1 and 2 were centrally involved in the detention and handling of prisoners, including civilian detainees. In the case of 1 QLR during Op Telic 2 the responsibility for the day to day running of the TDF rested with the senior Provost Staff, Sgt Paul Smith and Payne.

6.113 The Inquiry heard evidence relating to the training in military detention provided to the RP on the Regimental Police Course. In particular, the Inquiry was concerned to investigate the extent to which this training was adequate for the role that RP staff were asked to perform in relation to the handling of civilian detainees at unit level on operations.

The Regimental Police Course

The Regimental Police Course: content up to 2003

6.114 The Regimental Police Course was a week long course held at the MCTC to teach the general principles of regimental policing. The course was standardised with the same content taught to soldiers irrespective of their rank.[172] The course allowed a soldier to be permanently qualified as an RP team member with no requirement for refresher training or a review of the qualification thereafter.[173] Only one member of the RP staff in a unit was required to be trained on the Regimental Police Course, with

[169] Since 2008, the MPS has also been responsible for detainee custody on operations: Corcoran BMI03680, paragraph 9
[170] Corcoran BMI03680, paragraphs 9-11
[171] Corcoran BMI03681, paragraphs 18-19
[172] Corcoran BMI03696, paragraph 100; Beeforth MOD000344
[173] Corcoran BMI03697, paragraph 101

the expectation that the trained individual soldier would subsequently return to their unit and cascade the training.[174]

6.115 The content of the course was delivered through a mixture of theoretical and practical teaching. The central course materials were Joint Services Publication (JSP) 469 (Service Codes of Practice for Custody), the Imprisonment and Detention Rules 1979 and Army General & Administrative Instructions (AGAI) vol. 2, chapter 64 (Detention Facilities).[175] The full training objectives and lesson subject list of the Regimental Police Course in 2003 were as follows:[176]

Training Objectives	Subject
Discipline within the unit	
2804	PERSONS SUBJECT TO MILITARY CUSTODY
2808	CUSTODY COMMITTAL PROCEDURES
1500	PROTECT A CRIME SCENE
2813	PROPERTY LOST AND FOUND
1400	RISK ASSESSMENT
1400	DRUNKENNESS SAFETY PROCEDURES
1400	MILITARY CUSTODY (ALL RULES)
1400	ESCAPES AND CHALLENGING BEHAVIOUR
1400	WORK TRAINING AND CUSTODY PROCEDURES
1400	SEARCHING OF SUS/MILITARY CUSTODY
1400	SUS COMMITTAL (FIRST LINE)
1400	SUS COMMITTAL (SECOND LINE)
1400	RULE 83 – PUNISHMENTS & COMPLAINTS
1400	CLOSE CONFINEMENTS & MECHANICAL RESTRAINTS
1400	PRIVILEGES
1400	ESCORTING
1400	RELEASE
1400	VISITS
1400	REMISSION
Maintain a Unit Custody Facility	
1200	ACCOMMODATION IN UNITS
1200	COMMITTAL DOCUMENTS
1200	MAINTAIN LEGAL REQUIREMENTS AND INSTRUCTIONS
1200	DETENTION REGISTER AND OCCURRENCE BOOKS
Advise RP Staff	
1700	USE OF FORCE
1700	SUICIDE AWARENESS
1700	CUSTODIAL BRIEF

6.116 Students on the course were not taught about prisoner of war handling or about control and restraint techniques, although prisoner escorting, the use of force and the use of mechanical restraints were addressed. Sgt Anya Beeforth, an All Arms Regimental Police Instructor in 2003, told the Special Investigation Branch (SIB) that the teaching made continued reference to the principle of minimum force.[177] Corcoran gave evidence that a training session on dealing with "*challenging behaviour*" was a quarter of a day session, and a session on the use of force lasted half a day.[178] However, the course did not include any training regarding the risks of positional

[174] Corcoran BMI 95/17/7-18/6
[175] Beeforth MOD000344-5
[176] MOD015398
[177] Beeforth MOD000345
[178] MOD000341

asphyxia.[179] The slides used as a teaching aide in relation to the use of force teaching session and in relation to escorting prisoners and the use of mechanical restraints were disclosed to the Inquiry.[180]

6.117 The course did however incorporate what was variously described as "*a general interest lesson*"[181] or "*taster*"[182] session to demonstrate control and restraint techniques. Sgt Mark Whiting, a Control and Restraint Instructor at the MCTC stated that although the RP staff were not taught anything to do with arrest and restraint or control and restraint, they received a general interest lesson in the minimum use of force; which was a three hour lesson teaching "*basic arm holds and basic wrist locks*".[183]

6.118 The RP staff were encouraged to try out the techniques under Whiting's supervision. Whiting's evidence was that at the beginning and end of the session the RP staff were warned that the demonstration did not qualify them actually to use the techniques in practice. Whiting also stated that when he was the instructor concerned, the risks of positional asphyxia would have been covered as "*It was drilled into us – for want of a better phrase – that when we were teaching prisoner prone on the ground, we would teach about positional asphyxia*". He would have expected every instructor, even on a mere demonstration of techniques, to cover the risks of positional asphyxia.[184] The apparent purpose of showing the techniques at all was in order to provide a short break from the classroom based sessions and possibly to prompt an interest in the RP soldiers to join the MPS.[185]

6.119 In contrast to the above, when the MPS themselves were trained they underwent a 12-week training course at the MCTC[186] which incorporated a one-week course in control and restraint techniques. The control and restraint techniques taught to MPS staff at the MCTC by Whiting were regulated techniques approved by the Home Office under Prison Service Order 1600 and the accompanying Control and Restraint Manual ("Use of Force").[187] Whiting informed the Inquiry that all the techniques he demonstrated to the RP students on the Regimental Police Course similarly came from the approved control and restraint manual. Once qualified as a member of the MPS, in order to remain qualified in the use of control and restraint techniques, soldiers are required to take an eight hour annual refresher course.[188] Whiting told the Inquiry that the MPS control and restraint training would incorporate specific training on the risks of positional asphyxia, with written instructions including a list of warning signs to be vigilant for during a violent restraint.[189]

6.120 Payne took the Regimental Police Course training in 1998. He described the training in his Inquiry witness statement:

[179] Beeforth BMI01376-7, paragraph 14
[180] MOD015403; MOD015400
[181] Whiting MOD000347
[182] Corcoran BMI 95/27/12
[183] Whiting MOD000347
[184] Whiting BMI 88/78/3-20
[185] Whiting BMI 88/77/17-78/2
[186] Whiting BMI02450, paragraph 16
[187] BMI02462
[188] Whiting BMI 88/70/8-16; Whiting BMI02456-7, paragraphs 44-5
[189] Whiting BMI 88/70/17-73/23

> *"What we were told was guard room procedures; suicide awareness; search techniques; how to use handcuffs; how to run a detention centre. We were shown the books; how to subdue troublesome prisoners e.g. Empty a cell and shut the cell door using minimum force and in the event this failed we used a team approach. I was never trained about the risk of positional asphyxia.*
>
> *24. My training was all geared to dealing with soldiers who needed to be disciplined for one reason or another. It did not involve teaching us how to deal with civilian prisoners of war."*[190]

6.121 Provost Sgt Smith gave the Inquiry a similar account of that which he remembered from the course:

> *"The course did not cover any war time training and we were told that we would receive specific training on this prior to deployment. I don't remember receiving any specific training on the handling and detention of detainees. I also do not remember receiving any additional training on the Geneva Convention or LOAC other than what was included in the annual training programmes"*[191]

6.122 The following two matters are the central areas of concern in relation to the Regimental Police Course.

6.123 Firstly, the Regimental Police Course delivered no guidance on the handling of prisoners (whether prisoners of war, civilian internees or criminal detainees) on operations outside the UK. Additionally, the prohibition on the use of the five techniques was not taught.

6.124 Secondly, the Regimental Police Course did not formally teach any approved control and restraint methods but did include an "interest lesson" during which approved control and restraint methods were demonstrated but were not taught sufficiently to qualify the RP students in their proper use. I acknowledge at the outset, however, that there were significant resource issues which may have inhibited the full teaching of control and restraint techniques on the Regimental Police Course.

6.125 I address these two issues in turn below.

No training relating to detention on operations

6.126 It is not in dispute that the Regimental Police Course did not include training in relation to detention on operations, nor did the teaching mention the shock of capture, conditioning, or the prohibition on the five techniques.[192] Corcoran's evidence was that when he took over the course, he was content that the teaching was adequate in this regard,[193] as the Regimental Police Course training was intended to deal solely with the detention of service personnel in the UK. Corcoran stated that as far as he was aware, none of those practices were being carried out in guard rooms in the UK and he did not anticipate any risk of them being carried out in future.[194]

[190] Payne BMI01720-1, paragraphs 23-4
[191] Smith BMI04994-5, paragraph 19
[192] Corcoran BMI03699, paragraph 112
[193] Corcoran BMI03697, paragraph 103
[194] Corcoran BMI03702, paragraph 113

6.127 Corcoran accepted that there was an awareness in 2003 that RP staff might have a role in detention on operations running a battalion level temporary holding facility where civilian detainees would be held. However, he said that it was thought that the detention of civilians would not be a regular or significant part of RP duties beyond holding prisoners in transit for twenty minutes to an hour. It is of course the case that during Op Telic 1 and 2 the time limits for the onward transmission of detainees from unit detention facilities, originally short, were fourteen hours at the time of the Op Salerno Detainees. [195]

6.128 When pressed as to whether the lack of operation detention instruction was a deficiency in the RP training, Corcoran stated that regardless of the differences in training the RP and the MPS are nonetheless required to abide by the same standards: JSP 469, the Service Code of Practice for Custody, and the Imprisonment and Detention Rules 1979.[196]

6.129 JSP 469 (Codes of Practice for the Management of Personnel in Service Custody)[197] was the guidance in relation to all unit facilities used for the custody of personnel subject to the Service Disciplinary Acts. The Code of Practice had to be complied with by all with responsibility for detainees, or those whose duties brought them into contact with anyone in custody.[198] It provided guidance in relation to the general principles of custody, record keeping requirements, and the treatment and rights of service personnel under sentence; it had provisions regarding the necessary accommodation and furnishings, and instructions in the event of an injury or death in custody.[199]

6.130 At paragraph 106 JSP 469 required, and provided instruction on, the "*Humane treatment of Detainees*", specifying that "*All detainees have the right within law to be treated humanely*" and describing five component parts of the concept of humanity: Respect, Fairness, Individuality, Openness and Care,[200] and at paragraph 143F: "*Any form of punishment, other than that which is awarded during formal disciplinary proceedings, regardless of what form it takes, is illegal. 'Chin ups', press ups or any other form of physical training activity, other than under the direction of PT Staff during formal training periods, and any activities that inflict pain, discomfort or humiliation are illegal. Awarding extra cleaning tasks as a form of punishment is illegal. Activities, which adversely affect the well being of a detainee eg. protracted periods of standing still etc, are also illegal*".[201] The guidance also contained provisions concerning "*Dealing with Challenging Behaviour*"[202] and "*Dealing with Aggression*".[203]

6.131 By virtue of the fact that detention facilities in Iraq would be formulated under Joint Warfare Publication (JWP) 1-10, which at paragraph 128, detailed that "*Detained persons must be treated humanely and in accordance with British National Standards encapsulated in JSP 469*",[204] it was expected by Corcoran that RP soldiers at

[195] Corcoran BMI 95/30/13-33/23
[196] Corcoran MOD000342
[197] MOD041569-662
[198] MOD041577, paragraph 4
[199] MOD041570-4
[200] MOD041586-7, paragraph 0106
[201] MOD041594
[202] MOD041592
[203] MOD041593
[204] MOD013449

a TDF would refer to JSP 469 for guidance on humane and decent treatment of detainees.[205]

6.132 I find that it is possible by this exercise in cross referencing to see that the unit RP could have found valuable guidance in JSP 469 on operations. Where this analysis falls down is that RP staff were not trained in operational detention at all. They did not in practice appear to know that the standards laid down in JSP 469 were meant to be applied to those detained on operations. The single cross reference in JWP 1-10 was simply not sufficient to ensure that the RP staff had been trained appropriately for the situations they might reasonably be expected to encounter when on deployed operations.

6.133 Corcoran also said that any lack of provision for what RP staff might face on operations was an issue of lesser significance when the other training which those soldiers would have received was considered. It is said that the RP staff by virtue of their mandatory LOAC ITD training would have been aware of the Geneva Convention requirements and that all captured persons were to be treated humanely. This was a point supported by the Treasury Solicitor's submissions.[206]

6.134 Nevertheless, Corcoran also made the fair concession that given the JWP 1-10 detention policy and the cross reference to JSP 469 which that contained, the minimum that might be expected on the Regimental Police Course would be an instruction that prisoners on operations were to be treated in the same way as soldier prisoners in barracks. It is a fact that even this type of basic injunction was not included on the course. Corcoran candidly accepted that at the time he was SO2 Custodial at the MCTC, this omission would have been his responsibility.[207]

6.135 In my opinion, it was particularly important that RP staff should have been told that the same standards of treatment were expected in relation to all categories of detainees including suspected insurgents or terrorists. That requirement is perhaps easier to identify with the benefit of hindsight.

No formal training in relation to control and restraint techniques

6.136 As I have indicated above, the Regimental Police Course did not deliver formal training in arrest and restraint or control and restraint techniques, or training regarding the risks of positional asphyxia.[208] Although the training objectives reveal that there were sections of the course devoted to challenging behaviour and the use of force, it was also accepted that these were approached in theoretical terms only.[209]

6.137 Corcoran was again best placed to explain the reasons why it was that the Regimental Police Course did not fully address control and restraint techniques. The reasons he advanced were: that aggressive behaviour from detainees is very rare in the guard room; that as only one member of the RP staff from each unit was trained it was considered best not to teach restraint techniques which might then be passed on

[205] Corcoran BMI03690, paragraph 70
[206] Corcoran BMI 95/36/23-39/1; SUB001320, paragraph 181
[207] Corcoran BMI 95/38/5-39/15
[208] Beeforth BMI01376-7, paragraph 14; Whiting MOD000347
[209] Corcoran BMI 95/23/15-26/5

through informal and potentially inaccurate training to others; and, that the ordinary first aid training of the RP staff would be sufficient for any situation in relation to risks to breathing or asphyxia that the RP were likely to face within a short-term detention environment.[210]

6.138 I conclude however that these were not sufficient reasons. Corcoran very fairly conceded that there was potential for violence whenever there was a person in custody in a locked environment.[211] That of course must be the case irrespective of the intended length of detention. He accepted the point that it might be viewed as a deficiency not to have as part of the Regimental Police Course adequate practical guidance on safe techniques of minimum force for the RP to use.[212]

6.139 I find this was particularly the case given that control and restraint techniques were referred to in an informal manner during the Regimental Police Course training. The acknowledged risks inherent in a qualified RP soldier returning to his unit and cascading inaccurate training to others appear to have been overlooked by allowing this to occur as an established part of the course content.

6.140 As described above, Whiting demonstrated control and restraint techniques which qualified MPS soldiers used to control violent or non-compliant prisoners. The RP were shown the techniques and then given the opportunity to try them in order to show how effective they were. They were apparently warned that they were not qualified to use them.[213] As the techniques were the same as those taught to the MPS under the Prisoner Service Order 1600, they also included techniques that were only ever to be carried out by a team of three soldiers:[214] thus making it impossible for the individual RP watching the demonstration to put the technique into practice.

6.141 Alongside the ostensible safeguard of informing the RP that they were not qualified to use the techniques outside the course, Whiting had also suggested that the lesson included teaching on the dangers of positional asphyxia when dealing with prisoners in a prone position, and that the lesson included an instruction not to put weight on the prisoner's back.[215] Although Whiting said he was sure that positional asphyxia would have been covered by every instructor on a demonstration such as this, I find that that could only be an assumption on his part. Written material relating to the contributory factors of asphyxia was not given to RP students (whereas it was as a matter of course given to the MPS during their positional asphyxia training), even though Whiting's evidence was that the RP generally would be told about the signs and symptoms of positional asphyxia.[216]

6.142 Whiting accepted it was a cause for concern that receiving the full training was necessary in order to be qualified to use the techniques and that full training had not been given to the RP. Also, the approved techniques required three people, while the course students would each be an individual returning to a unit in which there were no other qualified people. He accepted that in hindsight it did not seem necessary

[210] Corcoran BMI03699, paragraph 111(a)-(c)
[211] Corcoran BMI 95/21/11-23/5
[212] Corcoran BMI 95/24/23-26/5
[213] Whiting BMI02458, paragraph 51
[214] Whiting MOD000648
[215] Whiting BMI02458-9, paragraph 52
[216] Whiting BMI 88/78/3-79/10

to have shown the students on the Regimental Police Course the techniques in this way.[217]

6.143 The factual position is straightforward in this area of training. Beeforth, Whiting and Corcoran were reliable and frank witnesses and fair in accepting certain areas of concern in relation to the content of Regimental Police Course.

6.144 There was however something of a conflict between Whiting's account and Payne's account regarding the training of the risks of positional asphyxia. Whiting said that he would have always included mention of positional asphyxia risks in the general interest lesson, whereas Payne said he received no such instruction. In an attempt to resolve this conflict, I find the following.

6.145 There was no reason to doubt Whiting's account on this matter. Nevertheless, he was not the only tutor on the Regimental Police Course who would have demonstrated techniques. He cannot therefore be sure that it was always taught by others. Moreover, the warning was only ever a verbal indication and not a written instruction, making it less likely to have been a consistent feature of the training.

6.146 Turning to Payne's account, I do not find it possible to conclude that he is definitely accurate in saying that he was not instructed in the risks of positional asphyxia. He may well have received such instruction and forgotten it. There is an equal possibility that the instruction was not included on the occasion he attended.

6.147 The potential demonstration or use during this type of session of a specific technique, involving the placing of a guard's knee into the back of a prisoner, was of particular interest to the Inquiry due to the description given by Payne of the mechanism of the final struggle with Baha Mousa.[218]

6.148 Payne described seeing Baha Mousa in the corridor of the TDF outside the middle room. Payne shouted and Baha Mousa turned back into the middle room thus turning his back towards Payne. Payne told the Inquiry "*I placed my knee in the small of his knee* [sic] *at the back. Put my hand across his face, pulled him back, and knelt with my knee to push him forward. Got him to the ground*".[219] When Baha Mousa was on the ground, he said he placed his knee in Baha Mousa's back to control him as he was thrashing around.[220]

6.149 Pte Aaron Cooper also described seeing Payne with "*his knee into the back of Baha Mousa's legs*"[221] and agreed that while Baha Mousa was face down on the ground Payne's knee was on Baha Mousa's back.[222] The full circumstances of the struggle and my findings in respect of Baha Mousa's death are in Part II, Chapter 16.

6.150 Whiting was asked both by the RMP (SIB) and by this Inquiry about the use of a particular restraint technique involving the use of a knee placed into the prisoner's back. Whiting said that he had never received instruction on such a method during his training.[223] However, a technique would apparently have been demonstrated to

[217] Whiting BMI 88/85/12-86/25
[218] Payne's full oral evidence on this feature of the final struggle is at Payne BMI 32/115/6-119/18
[219] Payne BMI 32/115/20-23
[220] Payne BMI 32/117/24-118/7
[221] Cooper BMI 29/55/12-14
[222] Cooper BMI 29/57/14-17
[223] Whiting MOD000649

Regimental Police Course students during which a knee was placed on the back of a prisoner's knee and ankle,[224] which "*from an angle, can look like kneeling on a person's back*". Whiting stated that the students would have been advised that they were not qualified to use this technique,[225] and during his oral evidence he told the Inquiry that as an instructor he would never have viewed it as a reasonable or acceptable method of control and restraint to kneel on the back of a prone prisoner due to the risk of restricting breathing.[226] I accept Whiting's evidence as helpful and honest in relation to this particular matter. There is no evidence that students on the Regimental Police Course would have witnessed Whiting demonstrating any unauthorised control and restraint techniques, and I find it unlikely that other instructors would have done so.

6.151 The Inquiry also heard relevant evidence from Roberts that before deployment to Iraq he had instructed 1 QLR soldiers in arrest and restraint methods, including a technique where an individual would be pinned in a position on the ground by a knee placed on the shoulder blade,[227] and from Osborne, who also recollected this demonstration.[228]

6.152 I would emphasise that Payne has not at any stage advanced an argument that during the final struggle with Baha Mousa he was only executing a technique that he had been taught on the RPC. Had he been taught such a manoeuvre it might be thought an obvious answer to give once his actions came under scrutiny.

6.153 In all the circumstances, I find that there is clearly insufficient evidence to conclude that the misapplication of a technique potentially witnessed by Payne during his Regimental Police Course training played any part in the final struggle with Baha Mousa.

Conclusions

6.154 In my view the omission of even basic guidance in relation to operational detention; the failure to teach the prohibition on the five techniques; and an incomplete and potentially confusing glimpse into control and restraint techniques, were plainly unsatisfactory features of the Regimental Police Course. They form an unfortunate background in relation to the tasks the RP were asked to undertake on the ground in Iraq.

6.155 I do not, however, find that these deficiencies were in any way a factor which was causative of the treatment meted out to Baha Mousa and the other Op Salerno Detainees in September 2003. I accept that the course did address the concept of using minimum force.[229] I also accept that general service training in LOAC would have equipped Payne and Provost Sgt Smith with the knowledge, even if it was not already inculcated in them, that they were required to treat civilian detainees humanely.

6.156 I accept that to have ensured that the RP staff were fully taught control and restraint techniques to the same extent as the MPS would have significantly extended the duration of the Regimental Police Course and also necessitated annual refresher training for those who initially attended the course; and that this would have been an

[224] Whiting MOD000649
[225] Whiting BMI02459, paragraph 53
[226] Whiting BMI 88/80/7-81/5
[227] Roberts BMI 20/49/19-51/9
[228] Osborne BMI 53/61/5-13
[229] MOD015400

additional burden on limited resources. I accept what Corcoran told me, that at the time in question namely before 2003 there would not have been the resources to do that.

6.157 I also note however, the resources issue aside, that Corcoran conceded that at the time it had not occurred to him that it would be desirable to ensure the training was extended in such a way.[230] He also accepted that in hindsight it would have been desirable that all RP had received the training directly rather than merely one soldier per unit. There were logistical problems in providing universal training but he accepted that in an ideal world all RP staff should be directly trained in the role they might be called upon to fulfil.[231] The main difficulty was that the training adopted a rather unsatisfactory half-way house of introducing control and restraint techniques without properly qualifying the students in them. It would have been better to have provided a more tailored approach that taught basic techniques which could be used operationally by the course students.

6.158 I end this Chapter of the Report with the observation that Corcoran, who was in all respects a thoroughly impressive and straightforward witness, took rather too much on his own shoulders in terms of responsibility.

6.159 I think it plain that the deficiencies in the RP course which I have indentified in this Part of the Report were of long standing and involved issues above Corcoran's rank. I have no doubt that other aspects of the RP course were effective and well run.

[230] Corcoran BMI 95/29/18-30/12
[231] Corcoran BMI 95/18/7-19/12

Chapter 4: Training in Tactical Questioning and Interrogation by the JSIO

Introduction

6.160 The question of what training was provided to tactical questioners (and to a lesser extent interrogators) was an important issue in the Inquiry. Taken at its highest, the Inquiry sought to establish whether tactical questioners had positively been taught to use the five prohibited techniques by their instructors. Short of the possibility that the courses may have taught prohibited techniques, questions arise as to:

(1) whether less explicit approval may have been given to the use of the five techniques;

(2) whether and to what extent the prohibition on the five techniques may have been taught;

(3) what was taught about the security use of sight deprivation and control positions;

(4) whether students' participation in Conduct After Capture (CAC)/Resistance to Interrogation training may have blurred understanding of what techniques were permissible; and

(5) the efficacy of the training in ensuring that the students could apply the skills without contravening the law.

6.161 This has been a difficult, complicated and time-consuming part of the Inquiry's task. There is significant variation within the evidence of different witnesses, including between different witnesses who I found to be honest and largely reliable in their evidence. To a significant extent, such variations in the evidence are unsurprising. Tactical questioning and interrogation students who gave evidence were often remembering a course they had attended a minimum of seven years previously, often much longer. In many cases, instructors had taught subsequent courses and had to try to recollect the content of courses around 2002/2003 or earlier without the benefit of the contemporaneous teaching materials. It is clear that there were course handouts and a degree of consistency within the 'syllabus' of what was taught, though I think it likely that there was some significant scope for differences of interpretation and emphasis as between different instructors.

6.162 In reaching conclusions in this Chapter of the Report, I have taken into consideration the evidence of all of the students, instructors and other members of staff of the JSIO from whom the Inquiry received written and oral evidence. I do not refer here to every aspect of their evidence, nor indeed to every witness who gave evidence. However, the breadth of the task of dealing with the issues in this Chapter was considerable and for that reason this part of the Report is inevitably and necessarily lengthy.

JSIO Teaching Materials

6.163 Ordinarily the best starting place to consider what was taught on the JSIO tactical questioning and interrogation courses before Op Telic would be to consider the written materials used on the course.

6.164 In this regard, there are two substantial difficulties.

6.165 Firstly, for the reasons that I have explored in Parts 4 and 5 of the Report, by 2002/2003 there was a marked lack of any published policy or doctrine to which the JSIO could teach. JSP 120(6) had become obsolete and was in any event not designed for trained interrogators. Part I of the 1972 Directive appears, on the basis of S040's review, no longer to have been in circulation in the JSIO. The limit of the written policy/doctrine on which to teach appears to have been such guidance as was contained in JWP 1-10 on tactical questioning, although JWP 1-10 disavowed any detail in relation to interrogation. Thus one cannot turn to any kind of manual or other written publication as a source of what the JSIO was teaching because there simply was no such guidance.

6.166 This position is properly reflected in some of the concessions made in the MoD's own submissions:

> *"After the withdrawal of Part 2 of the 1972 JIC Directive there was no universally applicable detailed written doctrine for tactical questioning and interrogation in internal security operations.*
>
> *There was in any event little detailed written doctrine for the use of tactical questioning and interrogation in times of international armed conflict…"*[232]
>
> *"The position therefore appears to be that in practice, by the time of Operation Telic, tactical questioners and interrogators learned what to do from their training and any materials, notes or hand outs which they retained from that training They did not have a bespoke manual setting out detailed doctrine or procedures."*[233]

6.167 With hindsight, the lack of a proper written doctrine was recognised by those who had to teach the courses as well. S012 was the Officer Commanding F branch, from February 2001 until July 2004. His was the branch that delivered, amongst other courses, those on prisoner handling and tactical questioning and interrogation. His evidence was that following his own tour to Iraq in 2003 he informally suggested that written doctrine should be produced. He remembered that S045, then the Commanding Officer of the JSIO, did not agree. But this was in any event too late to make a difference to those operating on Op Telic 2. In hindsight he wished he had been more forceful in the request:

> *"Q. With hindsight, S012, would you agree that in the area of deprivation of sight in particular -- and perhaps to some extent the use of stress positions and other conditioning techniques -- in the absence of appropriate written doctrine, there was real scope for misunderstanding if not for confusion?*
>
> *A. Yes, there is.*

[232] SUB001068, paragraphs 3-4. The submission went on to address JWP 1-10 and JSP 383 and Part 1 of the 1972 Directive was footnoted.
[233] SUB001070, paragraph 7

> *Q. Was it any part of your task to bring such inadequacies in doctrine up to scratch?*
>
> *A. It was my part to make them known to the chain of command, yes.*
>
> *Q. You did that on one occasion, did you?*
>
> *A. Yes.*
>
> *Q. With hindsight, should you not have done more?*
>
> *A. Yes.*
>
> *Q. What else might you have done?*
>
> *A. I think my part would have been to be more forceful, to have some form of manual written. There is always reticence in revealing too much in a document on sensitive subjects."* [234]

6.168 Secondly, there was no system for archiving the handouts and other written teaching aids or presentations such that barely any of the 2002 and early 2003 teaching materials have survived. The result is that in fact relatively few teaching materials from before Baha Mousa's death have survived. It seems that by late 2002/2003 PowerPoint was being used, but for the most part, the presentations from this time have not survived.

6.169 S012 stated that the IT system used to store F branch materials before August 2003 had a severely limited storage capacity. Old materials were not retained. His first statement to the RMP was dated 15 October 2004. In that statement, S012 exhibited the following which would appear to have been current at that time, October 2004:

(1) a single page setting out the terms of Article 17 of the Third Geneva Convention;[235]

(2) a single page setting out the terms of Article 13 of the Third Geneva Convention;[236]

(3) a single page entitled *"Pressures on Prisoners and Detainees"*;[237]

(4) a tabular course programme for the January 2004 interrogation course;[238] and

(5) a series of course handouts.[239]

None of the PowerPoint presentations appear to have been exhibited at the Court Martial by the JSIO, although two of the documents retained by SSgt Mark Davies look like printouts of PowerPoint presentations.

6.170 S012 told the RMP in October 2004 that the course content did change constantly but that the "*fundamental changes have not affected the way a POW is treated or questioned for at least 20 years*".[240] He told the Inquiry that his third and fifth exhibits as listed above were supplementary course notes issued to students which originated from before his appointment as Officer Commandry F branch and remained in use as

[234] S012 BMI 87/181/11-182/5
[235] Exhibit S012/1: MOD015464
[236] Exhibit S012/2: MOD015466
[237] Exhibit S012/3: MOD015468
[238] Exhibit S012/4: MOD015470-80
[239] Exhibit S012/5: MOD015482-98
[240] S012 MOD000303

supplementary notes.[241] I accept this evidence and think it likely that the documents I have listed as items 3 and 5 above were in use in similar form[242] in 2002 to 2003. S012 also produced an August 2003 Operation performance statement, training objectives and enabling objectives document.[243] This is principally a management document addressing performance and training objectives. The standards included that students must comply with legal requirements but the document adds very little to the understanding of what was actually taught.

6.171 SSgt Davies appears to have retained a number of handouts from his interrogation course in January 2003 which were produced at the Court Martial. These comprise:

(1) a handout entitled "Introduction to Interrogation and Tactical Questioning – Course Notes";[244]

(2) a series of sequentially numbered pages (but starting at page 41) addressing "*assessment*",[245] including "*pressures on a Prisoner*";[246]

(3) a table on interrogation methods and techniques;[247]

(4) a presentation (probably a PowerPoint print off) on the applicable STANAGs;[248] and

(5) a presentation (probably again a PowerPoint print off) relating to the Geneva Conventions.[249]

6.172 In addition Sgt Ray Smulski exhibited his own notes that he made at the tactical questioning course which he attended in 1999.[250] These are obviously notebook-style entries and nothing like verbatim. Nevertheless, they give a useful insight into the course.

6.173 Maj Michael Peebles' documents at the Court Martial included a JSIO handout entitled *"PH&TQ/Interrogation Court Notes PW Handling by Capturing Units*".[251] He said he received this from RSM George Briscoe after Baha Mousa's death.[252] This appears to be an earlier and shorter version of one of the handouts exhibited by S012.[253]

6.174 The MoD's general disclosure for Module 1 of the Inquiry included a course timetable from the Prisoner Handling and Tactical Questioning Course for 8 to 12 April 2002.[254] It shows sessions including an Opening Address, Geneva Conventions and STANAGs, Introduction to Tactical Questioning and Interrogation, Prisoner Handling in the

241 S012 BMI05538, paragraph 118; S004 confirmed that the exhibits S012/3 and S012/5 existed around the time that he became an instructor in 2000; S004 BMI05052, paragraph 24.
242 There are some minor differences between certain of the documents exhibited by Davies (January 2003 course) and by S012 (October 2004) suggesting some revisions took place between these dates.
243 MOD028321-34
244 MOD022469-71
245 MOD022472-6
246 MOD022475
247 MOD022477-9
248 MOD022480-1
249 MOD022482-9
250 Manuscript version: BMI01266-89; transcribed version: BMI01290-1302
251 BMI02779-84
252 Peebles BMI02732, paragraph 84
253 MOD015484-90
254 MOD021030-4

Interrogation Process, Pressures on a Prisoner of War, Assessment, and Approaches. Save for those listed, there was no separate legal briefing.

6.175 Finally although it is somewhat later material, I think it right to include in this assessment of the materials, video footage from 2005 of two course students practising the harsh approach.[255] In a statement provided to the Court Martial, a Branch Warrant Officer from Defence Intelligence Security Centre (DISC) explained that one clip from July 2005 was used on subsequent courses as an example of "*what not to do*" because the student throws a chair which actually struck the person playing the part of a prisoner. However, the second clip recorded in December 2005 was used as an example of "*the correct way to question/interrogate*". The Warrant Officer described this clip as "*…an ideal example of how to question/interrogate and stay completely within the guidelines of the law and the instruction given on the relevant courses*". The Warrant Officer said the clip was shown on tactical questioning and interrogation courses.[256] The video clips are on the Inquiry's website and are transcribed.[257]

6.176 I think it highly unlikely that there was any hardening of the JSIO teaching between 2003 and 2005. Thus, although the second of the 2005 clips was self-evidently not in use in 2002/3, the fact that it was described as an "ideal example" in 2005 suggests that it is similar to the kind of treatment that was taught or permitted as part of the harsh approach in 2002/3 and previously.

6.177 I have referred above to the relevant surviving instruction materials that survive from the period 1999-2004.[258] I do not overlook that these documents are a far from complete record, nor do I overlook any of the evidence from the JSIO instructors to which I shall turn in a little detail below. I nevertheless make the following observations about the surviving written teaching materials:

6.178 The five techniques: It is notable that none of the materials from 2003 to 2004, including those exhibited by S012, referred to the prohibition on the five techniques or to the Heath Statement or to the 1972 Directive. The "Introduction to Interrogation and Tactical Questioning – Course Notes" referred to AJP 2.5 and JWP 1-10 as references.[259] If any of the written teaching materials in 2004 had contained a clear reference to the prohibition on the five techniques and which had also been part of the content of teaching materials used in 2002/2003, I think it overwhelmingly likely that they would have been part of the material that S012 provided to the RMP as part of his October 2004 exhibits. S012 told the Inquiry that he had produced photocopies of the PowerPoint presentations and accompanying notes to the RMP, and certainly everything that was relevant at the time. [260]

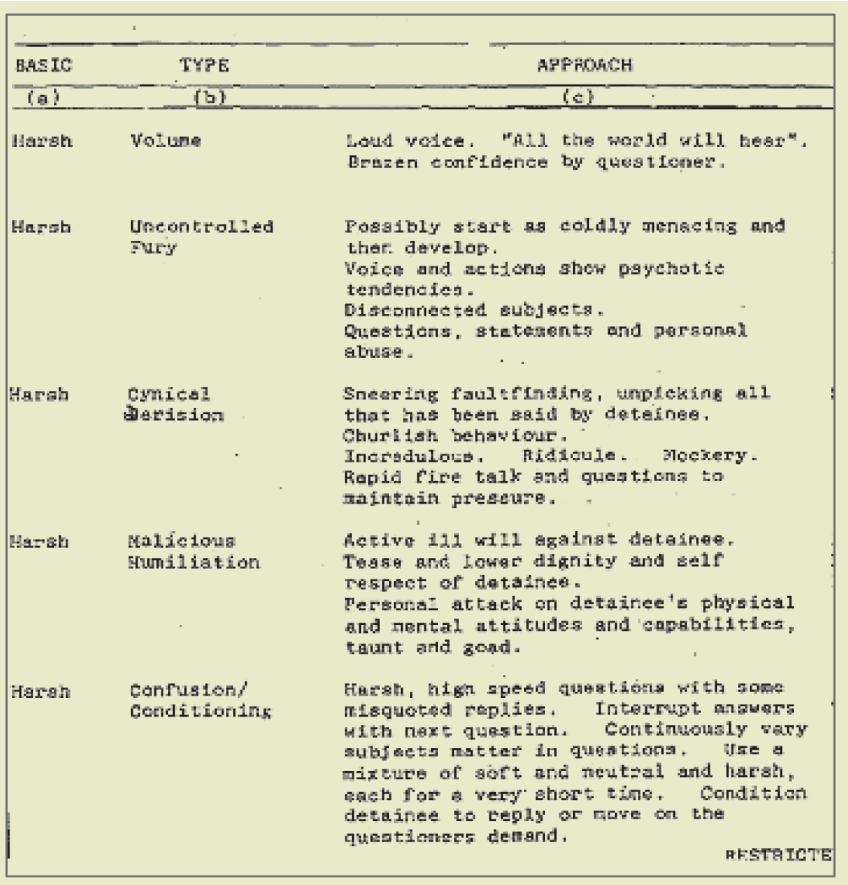
[255] As shown during the opening of the Inquiry's public hearings BMI 8/151/16-155/17
[256] WO2 from DISC MOD013214
[257] BMI01605-11
[258] In addition to the instruction materials a Draft Training and Enabling Objectives document was also disclosed to the Inquiry: MOD028316-20. However, this sheds no further light on what was actually taught, although I note passing reference to both the harsh approach and conditioning methods. The same can be said of MOD021040-53 and MOD037470-582. These documents relate more to the administration of the courses, and how students were assessed than what was actually taught on the courses.
[259] MOD022469
[260] S012 BMI 87/204/13-205/4

6.179 No violence was permitted nor any physical contact save for self defence or to prevent escape: these principles were made clear in the teaching materials.[261] So was the duty to avoid inhumane treatment of prisoners.[262]

6.180 Sight deprivation: taken by themselves, the surviving materials would tend to suggest that students were taught that prisoners should be deprived of their sight during movement to prevent them seeing sensitive areas or installations. The method referred to was wearing a blindfold.[263] The guidance included the instruction that prisoners must not be gagged and must be able to breathe without hindrance, and circulatory blood flow must be maintained to all parts of the body.[264] There is no indication in the surviving written materials of a specific mention of the prohibition on using hoods or blindfolds as an aid to interrogation. The materials included inappropriate training that questioners could increase the pressure by moving around the prisoner while still blindfolded; the prisoner having been delivered to the interrogation room.[265] The MoD rightly conceded that this was an unacceptable practice that should not have been taught.[266] As I shall address in Part XVI of this Report, that particular teaching was not amended until 2010. Albeit that such treatment may have been only for a short period, it was teaching the use of sight deprivation as an aid to interrogation contrary to the Heath Statement, and the 1972 Directive.

6.181 The harsh approach: the description of this approach in the table produced by SSgt Davies included five varieties of the harsh approach, some aspects of which are obviously of concern:[267]

[261] See for example: "*Never touch your prisoner*": Smulski notes BMI01293; reference to Article 13 of the Third Geneva Covention: Geneva Convention presentation MOD022484; and "*There must be no violence, and only sufficient force used to prevent escape or injury to themselves or others*": MOD015482, paragraph 5
[262] See for example: MOD015484, MOD015466
[263] MOD015482, paragraph 5(c); see too Smulski notes "*use of blindfolds*": BMI01279
[264] MOD015483, paragraph 5(f)
[265] MOD015498
[266] SUB001071, paragraph 9.1
[267] MOD022477



BASIC	TYPE	APPROACH
(a)	(b)	(c)
Harsh	Volume	Loud voice. "All the world will hear". Brazen confidence by questioner.
Harsh	Uncontrolled Fury	Possibly start as coldly menacing and then develop. Voice and actions show psychotic tendencies. Disconnected subjects. Questions, statements and personal abuse.
Harsh	Cynical Derision	Sneering faultfinding, unpicking all that has been said by detainee. Churlish behaviour. Incredulous. Ridicule. Mockery. Rapid fire talk and questions to maintain pressure.
Harsh	Malicious Humiliation	Active ill will against detainee. Tease and lower dignity and self respect of detainee. Personal attack on detainee's physical and mental attitudes and capabilities, taunt and goad.
Harsh	Confusion/ Conditioning	Harsh, high speed questions with some misquoted replies. Interrupt answers with next question. Continuously vary subjects matter in questions. Use a mixture of soft and neutral and harsh, each for a very short time. Condition detainee to reply or move on the questioners demand.

RESTRICTE

Smulski's notes on the harsh approach included the following: "*HARSH – VERBAL ABUSE – LOUD AGGRESSIVE & CYNICAL DERISIVE*" and "*HARSH 1. SARCASTIC / CYNICAL. PLAN. 2. LOUD / VICIOUS. DO NOT ASK QUESTIONS – CONDITIONING PROCESS. AT LEAST FOR 50 MINS / 1 HR. PACE YOURSELF. GET IN CLOSE. BE CREDIBLE*".[268]

6.182 The second of the 2005 video clips (the "ideal example") graphically illustrates what used to be permitted by the teaching of the harsh approach. The video needs to be seen and heard to understand the tone and volume that is used but the following are excerpts from the questioning:

> *"What's your regimental number? What's your date of birth? What's your date of birth? WHAT'S YOUR FUCKING DATE OF BIRTH? WHAT IS YOUR DATE OF BIRTH? ARE YOU FUCKING STUPID? DON'T YOU KNOW WHEN YOU WERE BORN? WHAT UNIT ARE YOU FROM? Are you too stupid to answer the fucking question? What fucking unit are you from?*
>
> *What's your first name? WHAT'S YOUR FIRST NAME? What was your mission? COME ON DICKHEAD, WHAT WAS IT? WHAT WAS YOUR MISSION? Do you understand the question? You're a bit simple and fucking Kagan army, are you? Bit simple? You get fucking dropped on your head as a kid, did you?*
>
> *WHAT'S YOUR FUCKING NAME? WHAT IS IT? WHAT UNIT ARE YOU FROM? What's your date of birth? Mm? What is it? Don't you know? Were you fucking hatched? Were you? What's your date of birth? Come on, mong, it's not a difficult question? What is it?*
>
> *What fucking unit are you from? Mm? What is it? Look at fucking me. Fucking look at me. WHAT IS YOUR NAME?*

[268] BMI01296

SPEAKER #4

Bannatalli.

SPEAKER #3

FIRST NAME! DON'T KNOW IT! FORGOT IT! I think you fucking have. I think you're SO FUCKING STUPID you don't know your first name. WHAT IS IT? WHAT UNIT ARE YOU FROM? Didn't they tell you? Didn't think they could fucking trust you with it, did they?

Look at me. Fucking look at me. What's your date of birth? Come on. What fucking unit are you from? Don't you know? You the unit fucking rent boy, were you? Is that why you didn't fucking say? Only there for one fucking reason, weren't you? Mm? You and your fucking mates. What was your mission? What was your fucking mission?

…

Pick up your fucking blindfold. Don't put it on your fucking head. I'll tell you when to put it on your fucking head. Do you FUCKING UNDERSTAND ME? I'll TELL YOU when you DO IT. Right. You go back into the fucking holding facility. And while you're in there, I'm going to give you three questions to fucking think about. Yeah? Only three. That is: what other OPs are there in Alba? Yeah? What's their mission in Alba? Yeah? The third one, last one for you stupid boy, is, how long are they going to stay there? OK? And if you answer those questions, yeah, I'll make sure that you're treated properly here. If you don't answer those questions, you know the Albans are outside, don't you? And you know the Albans are just waiting for you? OK? Of course, I've got no idea what they'd do to you. No idea at all. But I think you do. OK?" [269]

6.183 Article 17 of the Third Geneva Convention: it is clear that Article 17 of the Third Geneva Convention was referred to in the training but less clear how comprehensive the teaching was in relation to it. Smulski's notes refer to Article 17 but only briefly[270] but that is hardly conclusive. The Geneva Convention presentation exhibited by SSgt Davies referred to Article 17 but only to the provision that prisoners of war when questioned are bound to give only their surname, first names and rank, date of birth and number.[271] It omitted the important provision that prisoners of war who refuse to answer questions may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind. However, one of the single page documents exhibited by S012 in October 2004 contained a better and fuller summary of Article 17[272] and it was set out in full at the handout he exhibited.[273] It also appeared in the document exhibited by Peebles.[274] This suggests that students were at least given the full content of Article 17 of the Third Geneva Convention. However, as to how Article 17 of the Third Geneva Convention should be applied, the teaching of the harsh technique set out above calls seriously into question whether the real meaning and importance of Article 17 of the Third Geneva Convention's prohibition on threats and insults was really imparted on the course.

6.184 Shock of capture, pressures on a prisoner, threats: in 2002/2003, the messages in relation to the shock of capture and pressures on a prisoner may have been mixed. The guidance exhibited by SSgt Davies did not make clear that pressures on a

[269] BMI01610-1
[270] BMI01274
[271] MOD022484
[272] MOD015464
[273] MOD015486-7, paragraph 9(c)(1)
[274] BMI02780-1, paragraph 3(c)(1)

prisoner could not be increased.[275] Indeed it stated at one point that *"…the system can increase the pressure*".[276] Interestingly this had been amended by October 2004 to read "...*the system can use this pressure*".[277]

6.185 In the document produced by S012 "*PW Handling by Capturing units*" (2004), it was stated under the heading "Introduction" that "*This 'shock of capture' can be exploited by military interrogators to gain information* ***but is not to be increased artificially***" [emphasis added].[278] And under the title "*AIM*" that: "*The aim of correct prisoner handling is to ensure that whilst the provisions of the Geneva Convention (GC) governing the treatment of PW are observed, the shock of capture and the disorientation experienced by a prisoner on capture are prolonged,* ***but not exacerbated****,* [emphasis added] *by correct handling procedures, thereby subsequently rendering him more susceptible to questioning. This can only be achieved by firm, efficient but fair handling on the part of the capturing/guarding troops*".[279] Interestingly in the apparently earlier but similar document produced by Peebles and in circulation in 2003, the words "*but is not to be increased artificially*" and "*but not exacerbated*" did not appear.[280]

6.186 Smulski's notes from the 1999 training record *"Intimidate and invade"* as one of the first three points written as notes from his course.[281] And the means by which pressure was to be maintained was "*Bridge/Carrot/Stick*" where the stick was a "*Credible implied threat for being un-reasonable*" and "*Don't…make threats that you cannot carry out*".[282] Finally, by way of analysis of the surviving teaching materials, I note the evidence of S045 who was the Commanding Officer of the JSIO from September 2003. In October 2003, after Baha Mousa's death, he fielded queries about hooding in the context of what became the Chief of Joint Operations' order prohibiting hooding. S045 told the Inquiry that, having been asked whether hooding was a technique taught at the JSIO, he looked at various files held at JSIO, and would have looked at all available files relating to interrogation training and documents concerning the policy available at that time. He said that he was not aware that there was any documentation dealing specifically with hooding. His responses were therefore based on discussions with the training staff and with S012.[283] The fact that in October 2003, S045 looked at all the relevant training files and did not find any reference to hooding tends to suggest that the written teaching materials: (i) did not positively advocate hooding; (ii) did not contain a prohibition on the use of hoods or any expressed preference for blindfolds over hoods; and (iii) are unlikely to have referred to the prohibition on the five techniques since hooding would most likely have been mentioned in that context if the prohibition had been included.

[275] MOD022473, paragraphs 10-1; MOD022475, paragraphs 1-3
[276] MOD022473, paragraph 10
[277] MOD015496, paragraph 10
[278] MOD015484, paragraph 1
[279] MOD015484-5, paragraph 6
[280] BMI02779
[281] BMI01267
[282] BMI01269
[283] BMI07300-1, paragraph 32

Examples of the Evidence Given by Instructors and Members of Staff of JSIO

6.187 Without attempting to summarise all of the evidence given by JSIO instructors I set out below examples of the evidence that was given which I consider fairly reflects the range of evidence given by the instructors. The evidence of Maj Stephen Graley was problematic and I consider his evidence separately.

The prohibition on the five techniques

6.188 S004 was a Captain and one of the F branch instructors from 2000. He is now the Officer Commanding the Interrogation branch.[284] I found him to be an honest witness who was ready to make sensible concessions about where there had been shortcomings in training. He maintained, and I accept, that his own training in 1979 had included the prohibition on the five techniques because this had been reinforced in 1978.[285] This is consistent with the Attorney-General's undertaking to the ECHR and the timing of the decision in *Ireland v United Kingdom*. S004 did not know of the 1972 Directive itself but the essence of it was familiar to him from his own training and understanding of what he knew as the "*Heath rulings*".

6.189 S004 was typical of the instructor witnesses who maintained that they made clear that the five prohibited techniques were not to be used. In his case, as an instructor who was initially trained just after the decision in *Ireland v United Kingdom*, I accept that the prohibition was something that he personally was likely to have mentioned during training that he gave. S004 was not able to explain why the prohibition did not appear in any of the handouts that do survive, although he was personally confident it would have been covered in the legal PowerPoint presentation.[286] If that was so, it is hard to understand why S012 did not provide the 2004 version to the RMP to show that students had clearly been taught about the prohibited techniques in 2002/2003.

6.190 S012 told the Inquiry that he was aware of directions on prisoner of war handling from "*the NI inquiries in the 1970s*" which had emphasised the prohibition of a number of techniques. He said that this formed part of the course materials.[287] He accepted in oral evidence that this was not reflected in the surviving course materials but he emphasised that not all the course materials had survived.[288]

6.191 S012 was asked at the Court Martial about where the Heath Statement in relation to hooding was to be found in the written course materials. While stating that the teaching was clear, he appeared to accept that the effect of the Heath Statement might not have found its way into the written teaching materials:

> *"Q. Did you know in 2003 about the Heath Government position in relation to shall we say hooding?*
>
> *A. Yes.*
>
> *Q. Where do I find that, if I do, written down on your training course paperwork?*

[284] S004 BMI05048-9, paragraphs 6-7
[285] S004 BMI05050-1, paragraph 17
[286] S004 BMI 87/19/12-21/16
[287] S012 BMI05524, paragraph 69
[288] S012 BMI 87/153/4-154/11

> *A. It possibly might not even be there.*
>
> *Q. No.*
>
> *A. There is a wealth of material out there that we would use in designing training courses. Not all of it becomes a reference otherwise the bibliography for the course could stretch to dozens of papers.*
>
> *Q. I entirely accept that, but the fact is that the position in relation to hooding was by no means clear in 2003, would you accept that?*
>
> *A. It was clear in my branch. In the training we delivered it was clear."* [289]

6.192 I find it difficult to understand why S012 would have given this answer in 2006 if he knew full well that the prohibition on the five techniques was set out within the course teaching materials. I find it equally hard to understand why he did not provide the relevant part of the 2004 teaching materials to the RMP if the prohibition was in fact contained somewhere within the materials that existed when he gave his first RMP statement.

6.193 S017 had instructed on the debriefing course but helped out on two or three prisoner handling and tactical questioning courses.[290] She gave evidence of remembering a slide used on the course which specifically referred to the 1972 Directive as well as the Geneva Convention.[291] If that was a reference to the 1972 Directive as distinct from the Heath Statement, I find it unlikely that the Directive was referred to on an F branch slide given that it was not amongst the policy documents then current in the JSIO. I have no reason at all to doubt S017's honesty as a witness, although I note that she was adamant that she had received an aide memoire[292] before Op Telic 2 which had specifically prohibited hooding[293] when in fact that document must have been a later aide memoire.[294] This suggests that in some aspects at least, S017 recollections, while honestly given, were not entirely reliable.

6.194 S048, another JSIO instructor, told the Inquiry that if not the exact wording from Part I of the 1972 Directive then something similar was used on the course.[295] Notably however, in addressing stress positions, he suggested that he taught that stress positions were illegal and that "*…If the subject came up, students were told quite clearly that they were not allowed to use stress positions*".[296] If there had been a clear exposition of the prohibition on the five techniques, it seems to me odd that the question of stress positions would be raised thereafter by students. Again, I have some difficulty in accepting on the basis of S048's evidence that one of the lessons specifically explained the prohibition on the five techniques. Nevertheless, I accept that he would have said that stress positions were illegal if the issue arose on the courses he taught.

6.195 S049, another of the JSIO instructors, was not aware of the 1972 Directive, the Heath Statement or the case of *Ireland v United Kingdom*.[297] He was quite clear that the

[289] S012 CM 36/52/3-18
[290] S017 BMI06796-7, paragraph 6
[291] S017 BMI 84/13/9-14
[292] BMI06824
[293] S017 BMI 84/76/11-78/1
[294] Letter from Ms Birch, DJEP MOD to Ms Carnegie, Solicitor to the Inquiry, dated 7 May 2010: MOD055915
[295] S048 BMI07464, paragraph 18
[296] S048 BMI 87/217/16
[297] S049 BMI 89/22/25-23/11

message consistently given was that hoods should not be used and that the substance of the prohibitions were covered. While he did not teach all parts of the course, he was familiar with the materials used on the course. However, he could not remember the written training materials or the slides or the notes or the handouts specifically containing a prohibition on the use of hoods.[298]

6.196 Sgt Jonathan Thomas was, from April 2003, the junior instructor on the F branch team.[299] I take into account that he was new, that he predominantly taught on other courses and that he would not have taught all parts of the tactical questioning/ interrogation courses. Nevertheless, he did observe others instructing the courses before himself starting as an instructor. Allowing for the limitations of his role, his evidence was hardly supportive of the proposition that the five techniques were explained to students. There were, for example, the following passages in his oral evidence:

> *"Q. Was anything taught on the courses in 2003 about stress positions?*
>
> *A. No, sir.*
>
> *Q. Nothing was said about them being prohibited?*
>
> *A. F Branch didn't cover stress positions.*
>
> *Q. Did you give or receive any training about the use of white noise or sleep deprivation?*
>
> *A. Again, F Branch didn't cover sleep deprivation or white noise.*
>
> *Q. Again, to make it clear, it wasn't stated expressly that these activities were prohibited, is that right?*
>
> *A. Not that I recall. But what I know is we didn't cover white noise.*
>
> *Q. Or sleep deprivation?*
>
> *A. Or sleep deprivation, sorry, yes."* [300]
>
> *and:*
>
> *"Q. To become an instructor, you completed two courses and therefore observed a number of the other instructors carrying out the course?*
>
> *A. Yes, sir.*
>
> *Q. As a result of that, you are clear about the fact that nothing was said about stress positions?*
>
> *A. Sir.*
>
> *Q. Sleep deprivation?*
>
> *A. Sir.*
>
> *Q. The use of sandbags or instructing the guards, speaking to the guards?*
>
> *A. Not that I can recall, sir, yes."* [301]

6.197 Similarly, Sgt Neil MacKinnon, another JSIO instructor, gave evidence that did not fit well with the suggestion that the five techniques were clearly flagged up in the JSIO

[298] S049 BMI 89/25/24-26/17
[299] Thomas BMI08182, paragraph 5
[300] Thomas BMI 89/193/11-25
[301] Thomas BMI 89/205/14-25

course materials. I take into account that he did not teach the Geneva Convention section of the course. However, he told the Inquiry that he did not remember sleep deprivation, white noise or conditioning forming part of the course, nor did he remember whether they were expressly prohibited. He did however consider that they would be inappropriate based on the Geneva Convention training.[302]

6.198 S011 told the Inquiry that the five techniques "*…would certainly have been mentioned during the PH&TQ course during the lectures on prisoner handling and the introductory stuff on the Geneva Conventions and legal requirements*". Attendees would be briefed that they could not use such practices, and that they must comply with the Geneva Conventions and Law of Armed Conflict at all times.[303] However in oral evidence S011 did not suggest that the five techniques were prominently covered in the Geneva Convention and LOAC lecture as a specific part of applicable doctrine; rather that matters like stress positions were to be covered in the prisoner handling part of the course:

> *"Q. Let me ask you then specifically, please, about some aspects of the courses and what you can tell us you did or did not teach. The five techniques, as they are sometimes called – you will know what I mean by that – including stress* [sic]*, conditioning, deprivation of sleep and matters of that kind, were they taught?*
>
> *A. Never, sir, never.*
>
> *Q. Was any instruction given in relation to those five techniques in any shape or form?*
>
> *A. Not at all.*
>
> *Q. In other words, was there any instruction that the five techniques were not to be used, for example?*
>
> *A. As I would recall it, certainly in the prisoner handling lectures, students would be instructed in the correct way to handle prisoners within the interrogation process and it would be made clear to them what they can and can't do, and they certainly could not use stress positions, sight deprivation, et cetera, et cetera. They would have known at the end of the course exactly what they could do and what they couldn't.*
>
> *Q. How would they know that at the end of the course? Can we take stress positions specifically, if you like? What would they be taught about stress positions by you?*
>
> *A. Nothing, because we didn't use them, sir.*
>
> *Q. So what would they be told about stress positions, if anything, by you?*
>
> *A. They can't use them.*
>
> *Q. Would they be told that?*
>
> *A. They would, certainly, I am sure, in the prisoner handling phase."* [304]

6.199 If in fact there had been a clear explanation of the prohibition on the five techniques in the legal part of the course which dealt with the Geneva Conventions and LOAC, it is difficult to understand why S011 would not simply have said so in this part of his evidence.

[302] Mackinnon BMI08196-7, paragraphs 18 and 21
[303] S011 BMI06748, paragraph 26
[304] S011 BMI 101/15/21-16/25

6.200 S035 was the Branch Warrant Officer from August 2002.[305] He gained the qualification of interrogator in February 2003 having observed two tactical questioning and interrogation courses, discussed approaches and strategies for every exercise with the instructors and had one-on-one instruction; he could not do the course as an ordinary student because of his duties in organising the courses. S035 never heard hooding being mentioned at all in his time at the branch. He was not aware of any instruction being given with regard to stress positions or that phrase being mentioned in any way on the course. He did not remember any instruction which directly stipulated that sleep deprivation, white noise and food and water deprivation should not be used. S035 made it clear in his statement that none of these techniques were taught as being appropriate. But even allowing for his role as the Branch Warrant Officer, his lack of any recollection of a direct prohibition on these techniques being taught sits uneasily with the suggestion that the prohibition on the five techniques was directly addressed in the training materials.[306]

Sight deprivation

6.201 S004 suggested that on the tactical questioning and interrogation courses before September 2003 students were taught that there was an absolute prohibition on hooding. However, he was unaware of the existence of any documents used on the courses before September 2003 which evidenced this prohibition. Deprivation of sight was permitted to preserve security, and blindfolds were actually used on the course.[307] S004 recognised that sight deprivation could have the side effect of maintaining or prolonging the shock of capture;[308] and that this would "*probably*" have been addressed in training.[309] S004 recognised that the handout reference to increasing pressure on a blindfolded prisoner by walking around him, was with hindsight something he would want to re-phrase.[310] If blindfolds were not available, S004 suggested that students be taught to use blacked out goggles, strips of material or cut hessian bags or bags secured over the nose and lightly taped, provided the airways were not covered.[311]

6.202 I accept that this was S004's own understanding and probably what he personally taught. He may not have been alone in this approach. S049 was a witness who was clear and compelling. In evidence he said that if he was asked by a student, he taught that hoods should simply not be used.[312] S017 thought the training was clear that blindfolds and not hoods were to be used.[313]

6.203 However S004 did accept that students might have gone away from the course with the impression that deprivation of sight to maintain the shock of capture was

[305] S035 BMI04094, paragraph 3
[306] S035 BMI04102-3, paragraphs 29-31
[307] I would note the strong corroboration for this from S035 who was the Branch Warrant Officer who had to organise those role-playing the prisoner: S035 stated that it was blindfolds that were used on those role-players: BMI04100, paragraphs 22-24. He did not remember hooding being mentioned *at all* though students were told that blindfolds or in their absence blacked out goggles were appropriate for use: BMI04100-1, paragraphs 22-29
[308] S004 BMI 87/11/5-9
[309] S004 BMI 87/27/2-11
[310] S004 BMI 87/31/6-8
[311] S004 BMI05057, paragraph 41
[312] S049 BMI 89/24/2-11
[313] S017 BMI 84/4/20-5/6

legitimate.[314] There was moreover some variance on these aspects even as between different instructors.

6.204 S012's evidence was different in that he understood blindfolding to be the preferred method of denying sight during movement for security/force protection; and that hooding was neither illegal nor prohibited. He understood it was not ideal, and was illegal if used during an actual interrogation session.[315] Sight deprivation was only for security purposes albeit that he would have been surprised if the shock of capture had not been mentioned as an incidental by-product.[316] During his oral evidence to the Inquiry, S012 sought to make clear that while his understanding was that hoods were "*not ideal*",[317] hooding was not taught on the course even as a last resort alternative.[318] However, S012 was much less emphatic in his first statement to the Royal Military Police. In that statement, he said that the "…*advice on treatment taught by my department is that the placing of hoods on heads is not recommended. Blindfolds should be used when movement is necessary within an area of a sensitive nature that the POW should not see.*" [emphasis added][319]

6.205 S011 was perhaps the most experienced of the branch instructors. In his evidence to the Court Martial, he said that it would not have seemed problematic to him for hoods to be used in a battlegroup location, if it was done for security while moving prisoners around:

> *"Q… Hooding in Iraq in 2003, do you recall that?*
>
> *A. I am aware that capturing units used to use sandbags to restrict the vision of their in that case prisoners of war and subsequently detainees. That – I would not consider that to be a problem…[t]he term "hooding" has been linked to sensory deprivation so every time someone hears the term "hooding" they automatically assume that it is part of a rigorous conditioning process. In this instance this would not be the case: you are merely restricting the vision of the detainee as you move them, as you hold them.*
>
> *Q. So if somebody comes into a tactical questioning room hooded, that would not – so far as you are concerned in Iraq in 2003 – be remarkable?*
>
> *A. Not particularly, considering it was being done in a Battle Group location and you do not want the internees/detainees to see what is happening around them."* [320]

6.206 At the Court Martial, S011 went on to accept that hooding for security reasons when moving a prisoner could, as a by-product, create uncertainty. However, he did not think it caused "*undue stress or discomfort. It is certainly not impeding their breathing*".[321] When a scenario based upon SSgt Davies' experience of having to question detainees on the first day of their detention was put to S011, he agreed that it would have been necessary to prevent these detainees from communicating. In that instance, "*Under those circumstances it was a security measure and I would be content. It was not being done to achieve sensory deprivation*".[322] He later emphasised that no more

[314] S004 BMI 87/32/2-8
[315] S012 BMI05506-7, paragraphs 14-17
[316] S012 BMI 87/192/14
[317] S012 BMI05506, paragraph 15
[318] S012 BMI 87/129/14-22
[319] S012 MOD000301-2
[320] S011 CM 87/18/20-19/10
[321] S011 CM 87/20/18-24
[322] S011 CM 87/41/20-42/11

than one hood should have been used, but that it was tactically acceptable to hood for the whole day in that situation.[323] This evidence given by S011 to the Court Martial is inconsistent with there having been a settled clear line of teaching on the JSIO courses that hoods should not be used for security sight deprivation before tactical questioning. It is in my view surprising evidence even if what was taught by F branch was that there was a clear preference for the use of blindfolds (or goggles) rather than hoods for security sight deprivation on operations.

6.207 S011's evidence to the Inquiry was notably different. He emphasised in his written statement for the Inquiry that blindfolds should be used where restriction of sight was needed.[324] In his oral evidence, he suggested that the courses taught that hooding was "*not a good practice, it ideally should not be used… that ideally, frankly, it should not be used"* and that the teaching was "...*the use of a hood with great reluctance, if there is nothing else available and, in that case, it would be made clear that the PW – his breathing must not be restricted, which is why a hood is particularly ineffective*".[325]

6.208 In relation to hooding, in my view the evidence S011 gave to the Court Martial was much closer to the reality. Insofar as S011 moved a considerable way in his Inquiry evidence towards suggesting that hooding was specifically and actively discouraged as the means to deprive prisoners of their sight in the F branch courses, I think his evidence was less reliable. I have considered carefully what S011 said in his oral evidence by way of explanation for his apparently different account to the Court Martial.[326] I found his explanation for the difference unconvincing. Similarly, S011 attempted in his written statement to justify the contemporaneous F branch document which taught walking round the blindfolded prisoner as being only "*for a few moments*" and *"… just taking advantage of the incidental opportunity to assess the prisoner without his being able to see you*".[327] Given that the document itself referred to increasing the pressure on the prisoner, this explanation was in my opinion unconvincing.

6.209 S048 told the Inquiry that from an infantry point of view, it was common practice for a sandbag to be put over the head of a prisoner of war at the point of capture.[328] But as regards interrogation, he said that the teaching was clear that sight deprivation by hooding or otherwise was unlawful "*whilst interrogation took place*" but that blindfolding could be used to transport a prisoner for security reasons.[329] Perhaps tellingly, he suggested in his witness statement that in the lessons*, "…words were used to the effect that 'subjects are not to be questioned while blindfolded'…".*[330] In oral evidence S048 did explain that he understood the prohibition to extend to hooding as an aid to interrogation as well as during the interrogation itself,[331] but his evidence demonstrated how confusion may have crept in. Moreover, having suggested in his witness statement that blindfolding was the only method for sight deprivation that was mentioned on the course for security purposes, he said in oral evidence that hooding was not banned for security purposes when moving a prisoner from A to B. He

[323] S011 CM 87/86/14-88/1
[324] S011 BMI06749, paragraph 26
[325] S011 BMI 101/18/7-19/19
[326] S011 BMI 101/22/17-24/15
[327] S011 BMI06752-3, paragraph 36
[328] S048 BMI07467, paragraph 26
[329] S048 BMI07470, paragraph 39
[330] S048 BMI07464, paragraph 18
[331] S048 BMI 87/211/1-5

referred to blindfolding as the "*preferred method*".[332] S048 accepted that there were informal exchanges in a social setting on the courses, and he accepted that during such exchanges it might have been said that sight deprivation for security would have the by-product of maintaining the shock of capture.[333] I found S048 to be a blunt, straightforward witness who was telling the truth. But the slight inconsistencies in his evidence on sight deprivation reflect how messages on sight deprivation could have become rather mixed in the courses.

6.210 Thomas considered that if prisoners were held together in a cell before questioning, it would be appropriate for them to be deprived of their sight to prevent them from talking and concocting an account.[334] Sight deprivation was for security purposes, although preserving the shock of capture would be a by-product.[335] He remembered that blindfolds and blacked out goggles were used on the course. As far as he remembered, nothing was said about the use of hoods, although the teaching was that the mouth and nose should not be covered.[336]

6.211 MacKinnon told the Inquiry that Army issue blindfolds were used on the course. He would have said, if asked, that hoods could not be used but he could not remember whether anything was said actually to prohibit their use during the courses.[337]

6.212 S001 was the Officer Commanding 3 (Training) Company of the JSIO from July 2002 to April 2004. In that role she commanded F branch and four other branches and thus S012 reported to her.[338]

6.213 I found that aspects of S001's evidence were somewhat unsatisfactory. To the Inquiry she maintained that as someone who had not herself received tactical questioning or interrogation training, she was unable to give any detail in relation to what the course taught.[339] This was not surprising given her managerial role. However, at the Court Martial, S001 agreed that she was "*fully conversant*" with 95 per cent of all the courses and that the tactical questioning and prisoner handling course was one of them, and interrogation another, although she did make clear that her role was a managerial one with perhaps more focus on the training objectives.[340] I do not think this was a case of S001 misleading the Court Martial, although it was unfortunate that she did not make clearer in her initial evidence to the Court Martial the limits of her knowledge of the content of the courses. She accepted in answering questions from her own Counsel at the Inquiry that she had perhaps gone outside her own area of expertise in her Court Martial evidence.[341]

6.214 S001 was entirely consistent in saying that sight deprivation was only to be used for operational security reasons. However, there were differences between her evidence to the Inquiry and her evidence to the Court Martial about hooding. She told the Court Martial that hooding was not the preferred option but might be used if other materials

[332] S048 BMI 87/215/2-8
[333] S048 BMI 87/227/24-229/2
[334] Thomas BMI 89/189/19-22
[335] Thomas BMI 89/189/23-191/1
[336] Thomas BMI 89/190/25-192/5
[337] MacKinnon BMI 94/170/18-171/20
[338] S001 BMI05267-8, paragraphs 2-4
[339] S001 BMI 88/6/11-12/13; S001 BMI05274, paragraphs 18-19
[340] S001 CM 61/51/20-24; S001 CM 61/7/13-8/13
[341] S001 BMI 88/52/8-11

were not available, and that students were taught to check the person who was being hooded. Her statement to the Court Martial read:

> *"Having been asked, with regards to hooding, this is highlighted on the PH&TQ course. Students on the course are informed that hooding should not be used for sensory deprivation reasons, however, prisoners may be hooded for operational security reasons, but only for short durations and should be properly controlled, for example, periodic checks on prisoners to ensure that the hoods are not causing discomfort."*[342]

6.215 S001 told the Inquiry that:

> *"On a few occasions, I observed sandbags or goggles being used to obscure the vision of character players on courses, when it was being demonstrated how to move a prisoner from a holding area to the questioning room through a sensitive area. I recall that at some point during 2003, after I had returned from Iraq, we were directed by the chain of command to use only goggles."*[343]

6.216 The difference between her Court Martial and Inquiry evidence was raised with S001 by Counsel to the Inquiry:

> *"Q… Do you recall that being taught on any course, that hoods may be used only for short durations and that the wearers should be checked from time to time?*
>
> *A. No. This is my fault, because I have described this wrong. What I should have said was that prisoners may have sandbags over their eyes up to the bridge of their nose to obscure their vision. But clearly I didn't say that. I said the word "hood", but I didn't say the word "hood" with the full plan of the use of the hood which is the full face covering. It was purely for the vision restriction.*
>
> *Q. So what are you telling us was taught on the course that you were aware of?*
>
> *A. That restriction of vision for operational security reasons could be used and preferably with goggles, but if you didn't have goggles, then you had to improvise and a rolled-up sandbag was suitable.*
>
> *Q. Again, self-evidently – I was going to come to it a little later but let's deal with it now – in this statement in 2005 you don't refer to goggles or to blindfolds, but you only refer to hoods, don't you?*
>
> *A. Yes.*
>
> *Q. There's no reference to rolled-up hoods or hoods rolled up above the nose, is there?*
>
> *A. No, there's not.*
>
> *Q. How does that come about, S001?*
>
> *A. Well, I think my own personal definition of what is a hood, I – when I was referring to a hood, it wasn't a complete over the face, absolute blocking everything. All I had seen in 2005 was a rolled-up sandbag used to obscure the eyesight as a blindfold. That's what I referred to as a hood. That was incorrect of me and I shouldn't have referred to it as a hood.*
>
> *Q. So you had seen a rolled-up sandbag used as a blindfold?*
>
> *A. Yes.*
>
> *Q. Do you mean put over the head but rolled up from the bottom, as it were, in some way?*

[342] S001 MOD000299-300
[343] S001 BMI05273, paragraph 17

A. Yes. So that it would sit on the bridge of the nose.

Q. Are you telling the Inquiry now that that is what you saw when you observed sandbags used in training?

A. Yes.

Q. Why doesn't any of this appear in the statement of July 2005?

A. Because at that time I wasn't going -- I didn't think the detail was that important. But clearly it is.

… [further passages of the Court Martial evidence were then put]…

Q Again, there wasn't mention there, was there, of the rolled-up hood?

A. No. But that's what I'm saying is – my definition of hooding is actually restriction of vision.

Q. I understand that. But I am simply querying whether that is really what you meant at the time in 2005 and 2006 when you gave this evidence.

A. Well, it is what I meant, but clearly I didn't articulate it.

Q. Can we have a look then, please, at page 54 and line 25. You have at hard copy there. Last line on page 54, running into page 55:

"Question: I think you said ought to be checked as well?" Answer: Ought to be checked to ensure that he can still breathe and, you know, he is not suffering."

Do you have that?

A. Yes, I do.

Q. "Ought to be checked to ensure that he can still breathe and, you know, he is not suffering."

You didn't go on to say, "But of course the hoods were rolled up above the mouth anyway, or above the nose", did you?

A. No, I didn't.

Q. Would that be, S001, because it wasn't a consideration at the time in your mind?

A. It probably wasn't a consideration in my mind at the time, no.

Q. Because the truth is that what you had seen on the course demonstrated was hooding in what I will call the full sense, the bag over the head?

A. No, that's not correct.

Q. Can we have a look then, please, at just two parts of the in camera transcript. Day 61. Can you go to page 8, and to line 22:

"Question: But as far as you are concerned, have I understood your evidence correctly, that within the qualifications you say that you did not teach the course, hooding is permissible or was permissible within 2002, 2003 for operational security reasons?"

You answer:

"Yes."

A. And again I think I meant –

Q. Please continue.

A. I say, again, I think I was referring purely to restriction of vision as opposed to hooding.

Q. But again you don't take the opportunity there to indicate that, do you?

A. No.

Q. Indeed, as we have seen in your statement in July 2005, there's nothing in there about rolled-up hoods.

A. No.

Q. Could it be the case, S001, that your memory plays tricks with you now, that you think that that may have been now what the position was, but in fact on the course when you were there, hoods were used in the full sense of hooding?

A. No, I don't think that is memory.

Q. Can you help us then as to why you don't seem to have referred to that qualification about the use of hoods anywhere?

A. No, I don't know why I didn't elaborate and go into detail as to what type of material was used and where it was rolled up to." [344]

6.217 I take into account that S001 was not directly involved in the teaching of courses. Nevertheless, there are two curiosities about her evidence above. Firstly, if what S001 had seen at Chicksands when sandbags were used, was bags rolled up above the nose, it is odd that she did not mention this in evidence to the Court Martial. Odd also because she maintained such emphasis was given to ensuring in this way breathing was not restricted. Secondly, several of the instructors were adamant that it was only ever blindfolds, or in some cases goggles, that were used on the course. If that were so, it is odd that S001 had any recollection of hoods in use at all, whether rolled up or not.

Stress positions

6.218 S004 in his evidence was positive that stress positions were not taught and the prohibition on their use was covered, as he remembered it, in the legal briefing. He thought that the difference between stress positions and restraint positions would have been addressed.[345] I have already referred to S048's evidence to the effect that he taught that stress positions were illegal, although I cannot be satisfied on his evidence that it was taught as a matter of routine on every course as opposed to only if the issue arose during the course. He said stress positions were not specifically defined on the course but he was sure that everyone understood it was any position that could cause physical exhaustion or pain if maintained for a sustained period of time.[346] S001 told the Court Martial that stress positions were not taught but that whether individual trainers would go into stress positions might depend on whether the issue was raised by students.[347]

[344] S001 BMI 88/16/5-22/7
[345] S004 BMI 87/47/14-48/8
[346] S048 BMI07467-8, paragraph 30
[347] S001 CM 61/10/25-11/21

Sleep deprivation

6.219 S004's evidence was that the course would not have taught students to keep prisoners awake pending questioning even in the early hours of their detention.[348]

6.220 S012's evidence differed to the extent that he considered the question of whether prisoners could be kept awake in the short term following capture pending questioning might be dependent more on circumstances. It was a grey area. On the course soldiers would have been told that there may be circumstances where it would be permissible to keep a prisoner awake pending questioning. The means to achieve it might have been a gentle nudge or walking them about but not creating noise to keep them awake.[349] However, he would not have thought that keeping prisoners awake if they had already been awake for eighteen hours was acceptable.[350]

6.221 Similarly, S048 considered that prisoners might be kept awake in the early stages pending tactical questioning, but he thought physical contact to achieve it would not be acceptable.[351] S011 told the Court Martial that sleep deprivation was keeping a subject awake "*for excessive periods*" by which he appeared to have meant "…*in excess of over 24 hours or more*".[352] In evidence to the Inquiry he suggested that this had been a "*bad use of language*".[353] S011 clearly considered that the tactical questioning in Op Telic ought to have been circumscribed by the fourteen hour time limit and he was critical of deliberately waking prisoners after sixteen to eighteen hours of detention without sleep. In his evidence to the Inquiry S011 suggested that if the prisoner had eight hours sleep in 24 then he could be kept awake pending imminent questioning *"…as long as it caused – here we go – no distress"*. However, he considered that this should not arise in the tactical questioning situation at all because of the time constraints. He thought that neither nudges nor noise should be used in such a case, and only perhaps getting the prisoner up and walking them around to take exercise.[354]

Exposure to noise

6.222 S004 told the Inquiry that students were taught that the use of loud noise to disorientate was prohibited. The general principle was that if British personnel were exposed to the same conditions that is acceptable. It was generally accepted that military bases could be inherently noisy places.[355] The evidence from other instructors did not appear to vary significantly on this aspect. S011 was specifically asked about placing a detainee near a generator. The effect of his evidence was that so long as the detainee was not closely positioned to the generator; and that there was a need to keep the detainee close at hand, and that it was not being used as a technique for sensory deprivation, then he would not have a difficulty with such a tactic.[356] However, if it was because the detainee had not co-operated or was done for one and a half hours in circumstances

[348] S004 BMI 87/46/10-24
[349] S012 BMI 87/140/22-143/13
[350] S012 BMI 87/201/24-202/16
[351] S048 BMI 87/219/6-220/1
[352] S011 CM 87/28/24-29/4
[353] S011 BMI 101/69/14-70/2
[354] S048 BMI 101/31/18-32/25
[355] S004 BMI05057-8, paragraph 43
[356] S011 BMI 101/69/4-9

where the detainee could feel the heat of the generator, he would have thought the treatment inappropriate.[357]

The harsh approach, credible threats and insults

6.223 S004 fairly accepted that in 2002/2003 the limits on the harsh approach were only that no violence or threat of violence, or even touching of the prisoner could be used, and that the delivery of the "*harsh*" should be to the front or rear of the prisoner not directly into his ear. There was no limit on the insults that could be used. Facts could be stated that might be perceived as threats, including comments such as handing the prisoner over to the local police, "*you know what they are like*". Insults such as appeared in the 2005 video, "*You the unit fucking rent boy, were you?*" would have been seen in 2002/2003 as perfectly legitimate.[358] S004 accepted in his evidence to the Inquiry that it was now seen how such insults could be a contravention of Article 17 of the Third Geneva Convention.[359] S012 told the Inquiry that he agreed with S004's oral evidence about the harsh approach.[360] Most of the instructors' evidence was broadly to similar effect on this aspect. S011 agreed that at this time threats were permitted in the harsh approach but that all threats had to be credible and ought not to demean the subject or his beliefs.[361] I consider that S049 perhaps took a more precautionary and sceptical approach to the use of the harsh technique than his colleagues. MacKinnon thought that the permitted range of insults at this time was more restricted.[362]

Pressures on a prisoner, the shock of capture, conditioning

6.224 S004 said the teaching was that the fact that self induced and system induced pressures prolong or maintain the shock of capture was "*…an incidental by-product of being captured*"; and that firm, fair and efficient prisoner handling would in many cases prolong or maintain the shock of capture. But, he said, the pressures should not be increased or maintained artificially.[363] When he used the term "conditioning" S004 meant making use of existing pressures and maintaining them incidentally through appropriate firm, fair and efficient prisoner handling. S004 accepted that "conditioning" was a phase used on the course, that it was an ambiguous term and that the course did not go into the different nuances of its meaning.[364] S012's evidence was similar in all material respects.

6.225 Thomas considered that "*conditioning*" was a vast area. He did not think a clear definition was given of it to students. It was apparent from his evidence generally that he saw it mainly as the process by which prisoners would become compliant with the system of detention. He did not think that students would have misinterpreted how the term was being used on the course.[365]

[357] S004 BMI 101/70/5-71/15
[358] S004 BMI 87/63/7-71/14
[359] S004 BMI 87/71/15-73/12
[360] S012 BMI 87/169/20-170/2
[361] S011 BMI 101/40/3-11
[362] MacKinnon BMI 94/178/24-180/16
[363] S004 BMI05059-60, paragraphs 49-50
[364] S004 BMI 87/56/5-57/11
[365] Thomas BMI 89/187/9-189/5

Evidence of Maj Stephen Graley

6.226 I have considered the evidence of Graley separately because on one view, his evidence was very worrying. Graley was S012's predecessor as the Officer Commanding F Branch of the JSIO, a post he held from 1999 to 2001. He first received training in prisoner handling and tactical questioning in 1980, and undertook interrogation training in 1999. Like many witnesses, Graley first provided the Inquiry with a draft statement which was circulated with the authority of his legal representatives.[366] In this statement, Graley gave an account of his own earlier training which was unexceptional. The draft suggested that sight deprivation had been taught as being for security purposes. Stress positions had not been mentioned and he would have considered them to be banned. He appeared to suggest that conditioning was only used in the limited sense of maintaining the shock of capture by processing the prisoner quickly.[367]

6.227 The provision of a final signed statement by Graley was delayed as he had been on holiday and was not able to read through and finalise the draft. In the event it was not until the day of his oral evidence that he provided a signed statement. When he did so, it was in terms fundamentally different in important respects to his draft statement. He suggested that his 1980 Prisoner Handling and Tactical Questioning (PH&TQ) course had taught that sight deprivation, stress positions and subjecting prisoners to noise were all permissible as aids to interrogation.[368] However, he suggested that by the time of his 1999 interrogation course, the prisoner handling and tactical questioning element taught the opposite, namely that sight deprivation was for security only; sleep deprivation was not permitted and prisoners should not be put into stress positions. He did not suggest that any of the prohibited techniques were taught while he was officer commanding the branch.[369]

6.228 I believe that Graley was doing his best and was an honest witness but his evidence was in my view hopelessly confused on the more historic issues regarding his training. When the evidence of the prisoner handling and tactical questioning and interrogation students as a whole is considered, there is really no reliable support for the suggestion that the prohibited techniques were being taught at this level. Nor could Graley give a suitable explanation for the very significant differences between his draft and final statements.[370] Of course I bear in mind that as the branch officer commanding for two years, Graley was extremely familiar with the teaching concepts and might have been expected to be able to give a reliable account of the training he had himself received.

6.229 I think the most likely explanation is that Graley had become confused with CAC/tactical questioning training which he had undertaken at about the same time as his first tactical questioning training. It is notable that Graley initially could not remember the prisoner handling and tactical questioning training being separate from the CAC training whereas the Module 1 documents available to the Inquiry show that the training courses have been separate even from the early 1970s, albeit that those who had undertaken the interrogation (or on some evidence the tactical questioning courses) would practice their skills on the CAC courses.

366 Graley BMI08262-76
367 Graley BMI08265-6, paragraph 18
368 Graley BMI08317-9, paragraphs 17-22
369 Graley BMI08321-2, paragraphs 32-5
370 Graley BMI 95/68/25-71/10

6.230 If, as seems to me the most likely explanation, Graley as a former Officer Commanding F branch had confused CAC and tactical questioning and interrogation training, his evidence best served to underline the imprudence of permitting trained tactical questioners or interrogators to practice their skills on courses where non-Geneva Convention compliant techniques were used on UK personnel to prepare them for what an unscrupulous enemy might do.

6.231 In the event, I find that I cannot place any weight on what Graley told the Inquiry about his training in 1980.

6.232 In these circumstances, I approach Graley's evidence on the more recent teaching in the period 1999 to 2001 with caution. He suggested that sandbags could be used for security sight deprivation if they were the only means available, although he would have expected the sandbag to be rolled up to above nose level.[371] He could, however, remember no discussion on the courses at that time as to what means should be used. However, in oral evidence he suggested that it must have been discussed although he could not remember it. He accepted it was possible that the means for sight deprivation were only raised if a student asked a question about it.[372] Graley suggested that sleep deprivation was taught as being prohibited, but that disruption to sleep patterns could be used. He suggested that stress positions were taught as prohibited as was subjecting prisoners to discomforting noise.[373] But on noise he had said the opposite in his draft statement.[374] Graley was aware of the essence of the 1972 Directive but not the document itself, nor was he aware of the Heath Statement. He said he saw it for the first time in connection with the Inquiry.[375] Graley thought that the prohibition on the five techniques was covered but he accepted that this would have been by way of the individual techniques being addressed during the course, not by teaching about the 1972 Directive or the Heath Statement. He said:

> *"… given that it is your evidence that you didn't know about the Heath ruling and you don't recall the 1972 directive as a document, does it follow that, on the interrogation and the PH&TQ courses, there was not specific teaching given about a specific prohibition dating back from the 1970s on the use of the five techniques?*
>
> *A. No, we definitely briefed on the five techniques and not to use them.*
>
> *Q. Forgive me. It is probably my fault. One follows your evidence that as regards some of the individual techniques your evidence is, "We briefed the students that they couldn't use that technique". But you didn't teach about the Heath ruling as a subject, did you –*
>
> *A. No.*
>
> *Q. – or about the 1972 directive?*
>
> *A. No, I don't believe so.*
>
> *Q. So to the extent that a prohibition on the five techniques was taught, it came down to what was taught about each of those individual points, about blindfolding, hooding and so on?*
>
> *A. Yes"* [376]

[371] Graley BMI08321, paragraph 32(a)
[372] Graley BMI 95/87/12-91/12
[373] Graley BMI08321, paragraphs 32(b)-(d)
[374] Graley BMI08270, paragraph 32(c)
[375] Graley BMI 95/85/15-86/1; Graley BMI08316-7, paragraphs 12-15
[376] Graley BMI 95/101/19-102/15

Students who Undertook Tactical Questioning or Interrogation Training

6.233 I now consider the evidence of students who attended the tactical questioning or interrogation courses. In some cases, Inquiry witnesses attended these courses in late 2002 or early 2003 in the lead up to Op Telic. In other cases, witnesses were students on courses many years previously.

6.234 As with the instructors I have reviewed, I take into account the full spectrum of evidence that was given. I need not refer to every aspect of each student's evidence nor to every student but I set out below some indicative examples of the range of evidence that was given by course students.

The prohibition on the five techniques

6.235 WO1 David Bruce, the RSM of 1 Black Watch (1 BW), attended the PH&TQ course before his deployment on Op Telic 1. He told the Inquiry in his witness statement that conditioning including sleep deprivation and disorientation were discussed but informally, and similarly stress positions were mentioned conversationally on the course. In both cases, Bruce understood from the discussions that the techniques were not to be used. But it is relevant to note that these issues appear to have arisen on the course he attended in an informal way.[377] Bruce added in oral evidence that it was part of the course in role playing as well.[378]

6.236 Somewhat similar was the evidence of Sgt Michael Porter who attended the PH&TQ course in December 2002. In Op Telic 2 he was a sergeant in the Field Security team attached to 19 Mech Bde. He told the Inquiry that he remembered deprivation of sleep and noise being mentioned conversationally but not stress positions:

> *"Q. Can you remember whether the course, in any shape or form, covered these conditioning techniques: the use of stress positions, perhaps deprivation of sleep, the use of noise?*
>
> *A. The deprivation of sleep and noise I do remember there being conversation about that, yes, and that it should not be used.*
>
> *Q. That was the instruction, was it, that it should not be used?*
>
> *A. Yes, that is correct.*
>
> *Q. But you can't remember either way about stress positions and their use?*
>
> *A. No"* [379]

6.237 Lt Joshua King was an officer with the Royal Tank Regiment and served in both Op Telic 1 and Op Telic 2. In the latter tour, he was the Troop Leader of a Tank Troop attached to 1 Kings. He was one of the Battlegroup tactical questioners having completed the course in February 2003. He remembered being taught that conditioning by removal of a prisoner's senses, subjecting them to white noise and putting them in stress positions were not allowed. But he said that they were not told whether specific techniques such as sleep deprivation or white noise had been banned.[380]

[377] Bruce BMI02698, paragraphs 26-27
[378] Bruce BMI 62/25/8-18
[379] Porter BMI 77/68/24-69/11
[380] Lt Joshua King BMI03982-3, paragraphs 34-36

6.238 SSgt Marc Bannister, also with the Royal Tank Regiment, served on both Op Telic 1 and Op Telic 2. He said that the course did not touch upon subjecting prisoners to noise. This is not consistent with the course having clearly taught the prohibition on the five techniques. Similarly the course did not teach that that there was a prohibition on stress positions so far as he could remember, although he was certainly aware of some of the other techniques being prohibited.[381]

6.239 Maj Bruce Radbourne attended the PH&TQ course in 1995. In Op Telic 2 he served in the Headquarters of 19 Mech Bde. His initial roles became unnecessary and he ended up covering several roles, one of which was working for G2 Intelligence in Brigade Headquarters. It was some time since he took the course and he could not remember whether stress positions, deprivation of sleep, food or water, or exposure to noise were explicitly discussed on the course. However, he had never considered such techniques to be acceptable.[382] At the Court Martial, he appeared to suggest that he knew of the prohibitions from general education and experience in Northern Ireland. He did not mention the 1995 course in this context.[383]

6.240 Col S046, the Commanding Officer of the JSIO, 2001 to 2003, undertook the interrogation course in 1985. His evidence was that the prohibition on the five techniques was covered, although he understood the prohibition on hooding to be during the interrogation itself. He could not remember if hooding as an aid to interrogation was covered.[384] Col Graham Le Fevre was another witness who had attended the course some time ago (PH&TQ in 1984) and he remembered that the prohibition on the five techniques was covered.[385] S040 took the interrogation course in 1998. He remembered that the teaching covered the five techniques and being taught that they had been banned. Reference was made to a European court case.[386]

6.241 Capt Andrew Haseldine was the SO3 G2 at 3 UK Div during Op Telic 2. He undertook the interrogator's course in 1998. He told the Inquiry that stress positions, white noise, sleep deprivation and the provision or withholding of water were not dealt with in the interrogation course.[387] He accepted it was "[t]*heoretically*" possible that he had forgotten the prohibition being mentioned.[388]

6.242 Col Michael Hill attended the interrogation course in 1982. He did not remember any prohibition in relation to sight deprivation being referred to on the course. He thought that sight deprivation in order to make prisoners less able to resist interrogation was legitimate. He understood stress positions to be inhumane but did not remember a prohibition on their use being referred to on the course. Obviously he took the course some time ago but his evidence was not particularly consistent with the prohibition on the five techniques having been specifically and clearly taught. He was not aware of the Heath Statement nor of the 1972 Directive.[389]

[381] Bannister BMI 71/163/17-25; Bannister BMI05425-6, paragraphs 37-38
[382] Radbourne BMI04138, paragraph 11
[383] Radbourne CM 60/62/7-63/12
[384] S046 BMI 88/96/4-97/13
[385] Le Fevre BMI 85/10/6-11/2
[386] S040 BMI 67/109/19-110/8
[387] Haseldine BMI04597, paragraph 21
[388] Haseldine BMI 83/68/16-22
[389] Hill BMI 102/74/6-77/1

6.243 SSgt Davies attended the interrogation course in January 2003. In evidence he was sure that no mention was made of the Heath Statement or of any practices being specifically banned.[390] He indicated that in relation to some of the techniques, he was taught either that they were counter-productive or not best practice, or not to be used. But his evidence was that the teaching was not that the techniques had been specifically banned nor was the Heath Statement referred to:

> *Q. May I ask you this in relation to your training and that course that you have referred to or indeed any other: was any specific reference made to what this Inquiry has called the "Heath ruling", Prime Minister Heath's ruling in the early 1970s?*
>
> *A. No mention at all. The first I heard about it, sir, was during the disclosure of court martial material"* [391]

I found these aspects of Davies' evidence credible and reliable.

6.244 In the same way S062, who undertook the PH&TQ course at some time between 1990 and 1992, and the interrogation course at some time between 1992 and 1994,[392] told the Inquiry that beyond the general principle of being taught that prisoners were to be treated humanely, he did not remember any real discussion of the details of prisoner handling.[393] The course material included parts of the Geneva Conventions.[394] However, his training overall had not ever included the teaching of a specific prohibition on the five techniques, and he was not made aware of the Heath Statement.[395] S062 was of course the S02 J2X (HUMINT) at Permanent Joint Headquarters (PJHQ) responsible for drafting the "CJO Directive to COMBRITFOR for HUMINT Operations".[396]

Sight deprivation

6.245 Capt Michael Wiliamson was the intelligence officer for 1 BW. He attended the PH&TQ Course, as he remembered it, in late 2002.[397] He attended the same course as Sgt Gallacher, the 1 BW Provost Sgt. Williamson was a quietly impressive witness whose evidence I have no hesitation in accepting as honest and generally reliable.

6.246 Williamson remembered that in practical exercises on the course prisoners were brought into the room deprived of their sight. He could not be certain how this was done although he appeared to think it was most likely by blindfold. This seemed to him to be for security reasons. His evidence was, however, that it was consistent with conditioning the prisoner and maintaining the shock of capture as a side effect. He said:

> *"Q.. But you tell us now, do you, that you do remember deprivation of sight being taught?*
>
> *A. Yes, but I didn't – I don't remember hoods being used. But certainly there were – I have recollection of when you were running through a serial to practise one of the verbal techniques, that the prisoner would be brought into the room with his eyes covered and then his -- then*

390 Davies BMI04207, paragraph 10(c)
391 Davies BMI 42/17/4-10
392 S062 BMI08402, paragraph 9
393 S062 BMI08402, paragraph 11
394 S062 BMI08403, paragraph 13
395 S062 BMI 101/226/18-228/6
396 MOD049310-3
397 Williamson BMI03207, paragraph 15

the blindfold or whatever was used, and I couldn't tell you what it was but I am assuming it was a blindfold –

Q. Yes.

A. – was removed and he would then be in another room to where he had been earlier on. That was my understanding of conditioning a prisoner prior to tactical questioning." [398]

6.247 It seems to me highly likely that Williamson saw blindfolds used on the tactical questioning course. It also seems likely that the course did not teach him that blindfolds were the preferred method of sight deprivation and not hoods, still less that hooding should not be used. Williamson could not remember ever receiving any training on whether or not hoods could be used. He did not remember being told at any time in his Army training that the use of hoods was prohibited. By the time he was deployed on Op Telic 1, which was after he had completed his tactical questioning training, he understood that sight deprivation for security purposes was permitted and that hoods were the best way to do it.

6.248 Williamson's evidence was not consistent with him being given clear teaching on the PH&TQ course that blindfolds were much the preferred method for sight deprivation, still less that hoods should not be used for security sight deprivation.

6.249 Bruce stated in his witness statement that it was made clear on the course that they were not allowed to manhandle or ill-treat prisoners. This included a ban on hooding in order to disorientate the prisoners. However, Bruce's statement made clear that this was the position in relation to hooding for sensory deprivation.[399] There was a general practice of blindfolding prisoners of war with hoods for security purposes.[400] In his oral evidence, the emphasis in his evidence was slightly different. Bruce made clear that what was mentioned on the course was blindfolding for security although a secondary effect would be disorientation. He seemed less clear as to what if anything had been said about hoods:

"Q. Well, then, can we look, please, at the training you received at Chicksands in relation to the handling of prisoners? What, if anything, were you taught about the rights and wrongs of hooding prisoners?

A. I can't recall ever being taught how we – or should not hood or blindfold prisoners of war.

Q. Can you say that again.

A. I can't recall being taught that process. I can recall vaguely that we were instructed on the course that a prisoner of war could be blindfolded at the point of capture in order to – to prevent them from seeing our dispositions prior to – or whilst moving them from the point of capture to their detainment facility. And I think it was mentioned on the course that a prisoner of war would be blindfolded at the point of the detainment facility to the area room that he was going to be tactically questioned in, again in order to prevent him from seeing our dispositions.

Q. So you were told on the course, were you, that hooding was for security, if I can put that in shorthand?

A. I'm not sure the word "hooding" was used. Blindfolding.

[398] Williamson BMI 62/91/13-92/1
[399] Bruce BMI02699, paragraph 29
[400] Bruce, BMI02700, paragraphs 35-36

Q. I follow. That was going to be my next question to you. What did you understand by "blindfolding"? Did that include hooding?

A. "Blindfolding" was just a method or a phrase used to prevent the individual from seeing.

Q. Was anything said on the course in relation to blindfolding as to whether hoods could or could not be used for this purpose?

A. I can't recall.

Q. The blindfolding, you told us the detail of how it was to be used for – as I am putting it in shorthand – security reasons; is that right?

A. Yes.

Q. Was anything said or discussed about any other reason for blindfolding?

A. No.

Q. You seem a little unsure about that.

A. Yes – again, during the discussions of treatment of prisoners, it was discussed that a method of blindfolding would also assist with disorientation prior to arriving for tactical questioning, but it was clear to us that it wasn't to be used as a method to disorientate. It was just part – it would occur.

Q. So, in other words, it was a consequence but it wasn't being done for that purpose?

A. Yes.

Q. Is that what you say?

A. Yes.

Q. Was it made clear to you that blindfolding should not be used, if you like, as an aid to tactical questioning?

A. I can't remember if it was made clear to us or not." [401]

6.250 In his statement to the Inquiry, Porter made clear that the prisoner handling part of the course included how to move a prisoner from place to place which involved leading the prisoner who was deprived of his sight. Porter said that in the role playing this was done either by a sleeping mask type blindfold or sometimes it would be a hessian hood pulled down to the nose level "…*and sometimes to the chin so it would completely cover the face*". He said such sight deprivation was for security reasons.[402] He had no recollection of being taught that one method was the preferred means of sight deprivation.[403]

6.251 LCpl Andrew Bowman was attached to 1 KOSB in Maysan Province for part of Op Telic 2 and was a trained interrogator having attended the course in January 2003. Bowman remembered that sight deprivation was taught on the course as being permitted for security purposes. He asserted it was blindfolds that were used on the course. He could not remember being told whether anything was said about alternative means of sight deprivation including hooding.[404]

[401] Bruce BMI 62/12/25-15/1
[402] Porter BMI04981-2, paragraphs 11-13
[403] Porter BMI 77/81/22-4
[404] Bowman BMI 79/118/1-119/3

6.252 S046 who had undertaken the interrogation course in 1985, understood that hoods could be used for security so long as they did not go down below the nose.[405]

6.253 Lt King was not certain about the instruction given in relation to sight deprivation but believed that they were told that any blindfold could be used including sandbags, though it was only blindfolds that were used on the course. Sight deprivation was justified first for tactical security reasons and second to provide a degree of uncertainty for the prisoner. He thought it most likely that the latter reason was mentioned in general conversation between instructors and students.[406] In his oral evidence he explained it as follows:

> *"Q. What were you taught should be used in order to deprive prisoners of their sight?*
>
> *A. On the course, specifically we used a folded-up piece of cloth placed over the eyes and tied behind the head. It was also implied that other mediums could be used if a piece of cloth was not available.*
>
> *Q. How was that implied?*
>
> *A. I believe it was in general conversation, discussion, as to what else you could use, such as blacked-out goggles, a sandbag, other pieces of material, whatever was readily available.*
>
> *Q. Was that a conversation amongst the students or amongst the student and the instructors?*
>
> *A. I believe amongst the students and the instructors.*
>
> *Q. So it was expressed rather than implied that sandbags could be used?*
>
> *A. No, I don't believe it was expressed, as in they didn't say "You must use sandbags"; it was implied in a conversation that they could be used.*
>
> *Q. At the risk of being a bit pedantic, was it expressed that they could be used, but not expressed that they needed to be used?*
>
> *A. Yes.*
>
> *Q. Were you told what the purpose was of depriving prisoners of their sight?*
>
> *A. Yes. The main purpose was to – was for the security of the prisoner and for your camp in that it would prevent a prisoner from seeing the internal layout and workings of the security forces' bases. But also you had to bear in mind that when releasing a prisoner, in all likelihood they may well be debriefed by insurgents upon release and therefore, for their own safety, if they had no information about the inside workings of security forces' bases, they had no information to give. It was also implied that it may also maintain shock of capture, as it was.*
>
> *Q. How was that implied or was it said explicitly?*
>
> *A. I do not recall if it was said explicitly.*
>
> *Q. Did you understand that one purpose of blindfolding could be to preserve the shock of capture?*
>
> *A. I did understand that, yes.*
>
> *Q. Where did your understanding come from?*
>
> *A. I think from general conversation on the course amongst students.*
>
> *Q. Were the instructors involved in that conversation?*

[405] S046 BMI 88/99/6-23
[406] Lt Joshua King BMI03982, paragraph 33

A. I don't recall.

Q. You say in your statement – I can turn it up if you want me to, but I don't propose to unless you do: "I think it was more likely that it was in a general conversation between instructors and attendees on the course whether shock of capture, surprise of capture, was mentioned as an incidental benefit of blindfolding." Can you remember now whether instructors were involved in that conversation?

A. It's as my statement. It was a general conversation. I cannot be certain whether they were involved or not."[407]

6.254 In his Inquiry witness statement, Bannister referred to having been taught to keep prisoners *"…blindfolded and/or hooded with a sandbag when being transported through sensitive areas. There was no preference indicated as to whether to use a sandbag or other blindfold*". He thought it was common sense that security sight deprivation would have a secondary effect of keeping the prisoners unsettled, but there had to be a security reason to deprive the prisoner of their sight.[408] In his oral evidence, Bannister appeared less certain about hoods having been mentioned, although to an extent I formed the impression that he was minimising what he had been taught:

"Q. Were you told how they were to be deprived of sight?

A. I can't recollect, to be perfectly honest with you, but it was – I am sure sandbagging was mentioned on the course – well, I am not so sure whether sandbags was mentioned on the course –

Q. You are just dropping your voice a little. I wonder if you could sit a little closer to the microphone.

A. I am not convinced that they said sandbagging was allowed, but they just said that sight should be deprived.

Q. At that time, anyway, if you had been told that sight should be deprived, would the use of a sandbag perhaps have been the first or amongst the first things that one would have thought about, as a soldier, to use for that purpose?

A. Probably not – as a soldier, yes, but for myself, no.

Q. What would you have thought of as the first thing to use?

A. Probably goggles, blackened out.

Q. Was anything said to you on this course in that regard, using sandbags, hoods or goggles to deprive sight, as to how long it was appropriate for sight to be deprived?

A. Only during transportation in secure areas. So, for instance, in the back of a Land Rover, from one position to the next, where they have sight of the radio and could pick up the frequency and therefore, if they are released, later pass on that frequency, for instance.

Q. Does it follow – I don't want you to accept it because I'm saying it – that if the security consideration went on for hours, that there would be justification in depriving sight for that period of time?

A. No, because the security situation probably would not go on for a period of hours.

[407] Lt Joshua King BMI 61/137/6-139/10
[408] Bannister BMI05424, paragraph 34

> *Q. You wouldn't expect that?*
>
> *A. No."*[409]

6.255 Radbourne made a number of witness statements in which he gave his view of the need for and purpose of hooding. I do not propose to refer to all of these statements. In the main, although with some different emphasis, his evidence, and what he stated in the various statements and said at the Court Martial, was consistent with what he told the Inquiry. This was that he had been taught in 1995 that to hood prisoners for transit was acceptable but it was unacceptable to hood them in a detention facility. It was, also, not acceptable to hood for the purpose of sensory deprivation.

6.256 He recognised that depriving a prisoner of sight by hooding or blindfolds could provide an incidental advantage of preserving the shock of capture.[410] In his SIB witness statement dated 6 January 2006 he put it two ways: "*My understanding is that hooding a prisoner ensures the 'shock of capture'. A second element is security in that when a prisoner is hooded he is not able to view any sensitive locations or equipment*".[411] In oral evidence to the Inquiry he maintained that the shock of capture was a secondary spin-off albeit one that was taught in his 1995 course. He told the Inquiry that in putting the shock of capture before security in his SIB statement he had got it the wrong way round.[412]

6.257 Haseldine was sure that hoods were used on the course for moving prisoners to the interrogation room. They were used for security and for the shock of capture, including isolation and disorientation.[413]

6.258 Smulski told the Inquiry that the purpose of sight deprivation, as he understood from his PH&TQ course, was to disorientate the prisoner and for security by prevent them from communicating. In his Inquiry witness statement he said that he could not remember whether blindfolds or hoods were used on the course.[414] He thought that hooding was justified based on the course[415] although, as I have noted above, that it was blindfolds that appeared in his own handwritten notes. In oral evidence he accepted the proposition put to him that blindfolds not hoods were used on the course.[416] He accepted that his recollection of the course was very hazy.[417]

6.259 Le Fevre undertook the PH&TQ course in 1984. He remembered that sight deprivation was for security purposes, although it might have an incidental effect on the shock of capture. He thought that hoods had been mentioned as a means of sight deprivation.[418]

6.260 SSgt Davies gave evidence that blacked out goggles[419] were used on the interrogation course but there was no specific instruction on how visual impairment could or should be achieved. He said that at no stage was the use of sandbags ruled out as a means of achieving it.[420] He saw hooding as being for security purposes and for preventing

[409] Bannister BMI 71/162/7-163/16
[410] Radbourne BMI04149, paragraph 66
[411] Radbourne MOD000980
[412] Radbourne BMI 78/125/3-23
[413] Haseldine BMI04597, paragraphs 16-17
[414] Smulski BMI01227, paragraph 26
[415] Smulski BMI 40/216/19-217/3
[416] Smulski BMI 41/49/12-14
[417] Smulski BMI 41/49/1-5
[418] Le Fevre BMI 85/6/14-7/23; Le Fevre BMI 85/10/15-18
[419] He suggested it was blindfolds in his oral evidence: Davies BMI 42/8/11-15
[420] Davies BMI04206, paragraph 10(a)

communication though it had a by-product of disorientation.[421] He was not aware of sight deprivation in the holding facility as an issue in training because in the ideal situation, the prisoners would have been isolated.[422]

6.261 S014 understood from the course that sight deprivation was to be for security purposes. He believed that he had been taught that it was against the Geneva Conventions to use sight deprivation as a preliminary to questioning, although he could not specifically remember being taught this, his course having been in the early 1990s.[423] He had referred in his written statement to being taught that sight deprivation to condition or prepare prisoners for interrogation was one of the banned five techniques that had been used in Northern Ireland.[424] In his oral evidence, S014 said that he could not specifically remember this but "*However, having written that in my witness statement, I would imagine that, yes, it probably was brought up*".[425] He understood hooding to be a legitimate means to achieve sight deprivation for security.[426] A form of blindfold was what was actually issued during the course.[427]

6.262 S062 remembered that (either on the PH&TQ course or the interrogation course) he had been instructed that sight deprivation was only acceptable for reasons of security. However, he did not remember the context of this message nor the instruction, if any, in relation to the means by which sight deprivation might be achieved.[428] He was asked during his oral evidence whether any teaching was given in relation to sight deprivation to the effect that sight deprivation as an aid to interrogation was specifically prohibited. He did not remember being given that specific message, but did think that he would have remembered that instruction if he had been told it.[429] However, he also went on to indicate that the evidence of other Inquiry witnesses had prompted a recollection that during the training exercises prisoners may have been brought to the student interrogator with their sight deprived. S062 accepted that it was a technique to employ that it was the interrogator's decision as to when to tell the prisoner to take off the blindfold. He did not accept that this was in order to increase the pressure or intimidate the prisoner.[430]

Stress positions

6.263 As noted above, Bruce told the Inquiry that it was made clear in his PH&TQ course that stress positions were never to be used, although in his witness statement he described this as being mentioned "*conversationally*".[431] In oral evidence, Bruce indicated that stress positions had actually been demonstrated during the course but in the context of indicating what was not permitted, but they were told that stress positions could definitely not be used.[432]

[421] Davies BMI04208, paragraph 11(a)
[422] Davies BMI 42/10/13-24
[423] S014 BMI 67/7/16-8/14
[424] S014 BMI06762, paragraph 8
[425] S014 BMI 67/10/11-13
[426] S014 BMI 67/10/19-11/4
[427] S014 BMI 67/14/2-7
[428] S062 BMI 101/188/5-189/2; S062 BMI08404, paragraph 17
[429] S062 BMI 101/189/3-14
[430] S062 BMI 101/190/11-191/18
[431] Bruce BMI02698, paragraph 27
[432] Bruce BMI 62/11/16-17/11

6.264 Porter could not remember being taught anything about stress positions on the PH&TQ course although he would himself have considered them inhumane.[433]

6.265 Bowman remembered that he was taught that stress positions could not be used, even for the purposes of control.[434] Lt King also remembered that the teaching on the course included a direction that stress positions were prohibited.[435] He could remember being told that it was acceptable to make prisoners stand during questioning.[436]

6.266 Bannister was probably on the same course as Lt King but in his witness statement, he said that he had been taught:

> *"…to place prisoners into non life-threatening, uncomfortable positions. It was made clear that this was done for the purposes of controlling the prisoners by keeping them unsettled and certainly not to cause pain. The prisoners were only put into positions prior to TQing taking place; after they had been TQed* [there] *was no need for them to be kept in any particular position*
>
> *We were told that prisoners should not be put into positions for any significant period of time (although no exact time frame was given to my recollection) and that if a prisoner demonstrated that he was in pain, for example by repeatedly coming out of the position, we would move them into a different position.*
>
> *As the positions were not being held for a long time or being used to cause pain I did not consider them to be stress positions. … "* [437]

6.267 He described two positions. One was sitting on the floor with feet straight out and arms behind the head. The second was leaving prisoners standing with their arms not placed in any particular position.[438] In his oral evidence, Bannister appeared to suggest that the fact that the positions would be uncomfortable and might assist in maintaining the shock of capture were not stated directly by the teaching staff. Such positions were only to be used on "difficult detainees".[439] He agreed to the suggestion that these were normal handling techniques.[440]

6.268 Williamson thought that it was implicit that stress positions should not be used but he could not remember whether anything explicit was said:

> *" … were you taught anything, one way or the other, about the use of stress positions?*
>
> *A. I refer back to my earlier points. We were made very – it was made very clear that putting any individual under any stress would impinge upon any information that they may be likely to give during the tactical questioning. So by implication that would mean not to put anybody under undue stress and therefore not in a stress position.*

[433] Porter BMI 77/90/12-15; Porter BMI04982, paragraph 14
[434] Bowman BMI 79/122/19-123/1
[435] Lt Joshua King BMI03981, paragraph 30
[436] Lt Joshua King BMI 61/141/10-42/7
[437] Bannister BMI05423-4, paragraphs 29-31
[438] Bannister BMI05424, paragraph 32
[439] Bannister BMI 71/164/2-166/21
[440] Bannister BMI 71/204/10-13

> *Q. But dealing with an actual physical position of being put in a ski position or something like that, was that mentioned as being a prohibited technique or was that just what you would imply or infer from the general teaching you had on the course?*
>
> *A. I can only give my interpretation of the implication. I cannot recall if it was explicit."* [441]

6.269 Radbourne remembered that the 1995 course taught that stress positions were prohibited.[442]

6.270 In his oral evidence, Smulski also considered that his 1999 course had taught that stress positions were not permitted,[443] although he said in his Inquiry witness statement that he was not instructed in their use but was uncertain whether the actual prohibition had been taught.[444]

6.271 SSgt Davies told the Inquiry that the interrogation course had taught that the use of stress positions was *"not best practice and is actually counter-productive*".[445] He was clear in his evidence, however, that it was not mentioned on the course that stress positions may be contrary to the Geneva Conventions and may be illegal. Nevertheless, he understood that they should not be used and he said in oral evidence that this was made clear on the course.[446]

6.272 Both S014 and S040 understood stress positions to be prohibited from the training they had received.[447] S062 also remembered the interrogation and PH&TQ course he attended teaching that stress positions were prohibited.[448]

Sleep deprivation

6.273 Bowman in his Inquiry statement said that he had been taught that sleep deprivation was prohibited.[449] Porter remembered that there was discussion that sleep deprivation was prohibited.[450] Bruce understood from the course that sleep deprivation had been used in the past but that they were not allowed to do it now.[451]

6.274 Bannister stressed that he was not taught to deprive prisoners of sleep. However, he said that they were taught on the course that the guards should check on the prisoners' physical condition every ten to fifthteen minutes or so. He said "…*it was simply noted that tiredness was a secondary effect of the process to be followed and that if we were aware of this we could exploit in our TQing*".[452] From his oral evidence, it appeared that Bannister was saying that he deduced this was a secondary effect rather than it being specifically taught on the course.[453]

[441] Williamson BMI 62/93/7-23
[442] Radbourne BMI 78/126/5-15
[443] Smulski BMI 40/215/23-216/1
[444] Smulski BMI01236, paragraph 55
[445] Davies BMI04206, paragraph 10(b)
[446] Davies BMI 42/12/9-19
[447] S014 BMI 67/14/25-15/6; S040 BMI 67/114/23-115/16
[448] S062 BMI 101/191/19-23
[449] Bowman BMI07837, paragraph 19(e)
[450] Porter BMI 77/69/3-8
[451] Bruce BMI02698, paragraph 26
[452] Bannister BMI05425, paragraph 35
[453] Bannister BMI 71/171/3-14

6.275 Radbourne said it was made clear that sleep deprivation was not permitted. However in one of the annexes to Radbourne's memorandum of 27 September 2003 it was stated that: "*Prisoners should be made to stand or sit but must not be placed in stress positions. However, they must not be allowed to relax or lie down to continue the shock of capture and conditioning process*".[454] In answering questions at the Court Martial, Radbourne suggested that he did not think this amounted to sleep deprivation because it happened during the early hours of detention.[455] This reflects the rather grey area in the JSIO teaching as to whether the prohibition on sleep deprivation extended to preventing prisoners from sleeping in the early hours of their detention. However, in his oral evidence to the Inquiry Radbourne stopped short of saying that waking a prisoner up would be permissible even in the first fourteen hours of capture:

> *"Q… What about the use of other techniques, such as deprivation of food and water? Were they permitted?*
>
> *A. No.*
>
> *Q. Or the deprivation of sleep?*
>
> *A. Deprivation of sleep would not be permitted. However, in a 14-hour holding period, there wouldn't really be a need for sleep.*
>
> *Q. That was your view, was it?*
>
> *A. My view over a 14-hour period, sir, yes.*
>
> *Q. Whatever may have happened to the prisoner in the period beforehand?*
>
> *A. Well, it depends on the time the prisoner has been lifted, sir, and picked up on an arrest operation or –*
>
> *Q. Yes, but your view anyway was that the 14-hour holding period – which, as we know, in the latter part and I think your stages of being present in Op Telic 2 would have applied – your view was that it would be, what, appropriate for a prisoner to be kept awake during that period?*
>
> *A. For the 14-hour period it would be appropriate that he is awake for that period, sir, yes.*
>
> *Q. I just want to be clear about it. Are you telling the Inquiry that stopping him sleeping in that period would be legitimate and justified?*
>
> *A. It wouldn't be legitimate. If the prisoner fell asleep, you couldn't stop him from falling asleep, sir."* [456]

6.276 And later in his evidence when asked about the annex:

> *Q. "... the same procedures in paragraph 3 should be implemented. Prisoners should be made to stand or sit, but must not be placed in stress positions. However, they must not be allowed to relax or lie down to condition the shock of capture and conditioning process."*
>
> *A. That was a direct lift from the draft SOI, sir.*
>
> *Q. What did you understand by that, that they were not to be allowed to sleep?*

[454] MOD030864, paragraph 5. This was the only annex which Radbourne himself wrote. I have addressed this annex and the rest of this document in greater detail in Part XIV of this report at paragraphs 14.138-14.157.
[455] Radbourne CM 60/25/10-26/2
[456] Radbourne BMI 78/127/25-128/25

> *A. That's the way it looks, doesn't it, sir, I agree, which is therefore an illegal practice to stop people from sleeping.*
>
> *Q. You must have realised that at the time this document was going out, did you?*
>
> *A. Well, it looks fairly clear from that paragraph that that is what it means, sir.*
>
> *THE CHAIRMAN: Did you question it, Major, at the time?*
>
> *A. I didn't question it, sir, no.*
>
> *Q. Why didn't you?*
>
> *A. I should have, sir, with hindsight."*[457]

6.277 Smulski told the SIB on 27 September 2003 that in order to ensure the shock of capture, "…*it is necessary to keep exercising detainees, taking them for brisk walks so that they remain awake*".[458] His statement to the Inquiry included this: "*It may be appropriate that prisoners should not be allowed to sleep before they have been tactically questioned, in order to maintain the shock of capture. This was part of the TQ process that I had been trained to do. It did not harm the detainees, and the situation is different from the interrogation process which is carried out over a longer period of time. I know that sleep deprivation is forbidden during the interrogation process but the TQ process is different as we need to get information from people in the quickest time possible*".[459] In his oral evidence, Smulski told the Inquiry that he could not remember any reference one way or the other to sleep deprivation on the course.[460] It is worthy of note here that during the night-time stag on 14 September, Smulski said that D005 was walked around to disorientate him.[461] In addition, Smulski instructed the guards to bang a metal pole to keep the Detainees awake.[462]

6.278 SSgt Davies told the Inquiry that sleep deprivation was mentioned on the course and the students were taught that it should not be used as an interrogation technique, although it was not actually taught as being banned, outlawed or illegal. He understood sleep deprivation to relate to deprivation of sleep over an extended period and that it was not a consideration where the Detainees were only held throughout one night.[463]

Exposure to noise

6.279 Porter remembered that there was conversation on the course to the effect that subjecting prisoners to noise was not permitted.[464]

6.280 In his oral evidence Bowman remembered being taught that white noise was not permitted, though he had not given that account in his written statement. What Bowman thought was discussed and permitted was the use of noise to prevent prisoners from listening. Noise was not to be excessive but a radio might for example be used, the purpose being to prevent prisoners listening, not to disorientate them.[465]

[457] Radbourne BMI 78/167/21-168/15
[458] Smulski MOD006035
[459] Smulski BMI01255, paragraph 108
[460] Smulski BMI 40/217/22-218/6
[461] Smulski BMI 41/24/3-6
[462] Smulski BMI 41/31/1-16; and see generally Part II, Chapter 15
[463] Davies BMI04207-8, paragraph 10(e)
[464] Porter BMI77/69/3-8
[465] Bowman BMI 79/123/2-22

6.281 Bannister could not remember the teaching touching on subjecting prisoners to noise but he was aware anyway that this was not permitted.[466]

6.282 Smulski told the Inquiry that he understood that subjecting prisoners to startling or unsettling noise was acceptable but not discomforting levels of noise:

> *"Q. Just so that we understand what it is you are saying, you say: "I set out above my understanding that within the concept of the shock of capture as taught to me, that in order to optimise the results of subsequent tactical questioning it might be appropriate to subject prisoners to startling or unsettling noise." Do you see that?*
>
> *A. Yes.*
>
> *Q. Does that mean that you believed from your training that it was appropriate to subject prisoners to startling or unsettling noise?*
>
> *A. I believed it at the time, yes.*
>
> *Q. And the use, for example, of the metal bar was one way of so doing?*
>
> *A. Yes.*
>
> *Q. You go on to say this: "The examples I use are the slamming of a door or shouting." Then you say this: "I don't believe that my training recommending subjecting prisoners to discomforting levels of noise."*
>
> *A. Yes.*
>
> *Q. What's the difference, can you help us, between startling or unsettling noise and discomforting levels of noise?*
>
> *A. It's my perception that – I'm going back to stress positions which I believed were used in Northern Ireland, such as white noise, where it's a continuous non-interrupted noise which, after a period of time, becomes discomforting.*
>
> *Q. So continuous use of white noise would not be on the agenda, but banging and crashing and startling noise of that kind you took the view could be appropriately and properly used?*
>
> *A. I believe so, yes, at that time, yes"* [467]

6.283 SSgt Davies said he was taught that subjecting prisoners to noise was counter-productive, but he was not taught that it was outlawed.[468] In his oral evidence, however, he did make clear that the course indicated that it was not to be used as an aid to interrogation.[469] Somewhat contradictorily in an SIB statement dated 27 September 2003, SSgt Davies described a visit to see the Detainees in the TDF on Sunday evening of 14 September 2003. He said: "*The prisoners were being shouted at by the guard but this is encouraged*".[470]

[466] Bannister BMI05426, paragraph 38
[467] Smulski BMI 41/66/23-68/8
[468] Davies BMI04207, paragraph 10(c)
[469] Davies BMI 42/12/20-25
[470] Davies MOD020302

The harsh approach, credible threats and insults

6.284 Williamson was one of many witnesses who were students on the courses and who made it clear that they were taught that there was to be no physical contact with the prisoners.[471] I entirely accept that this was part of the teaching. As to the harsh technique, he remembered being taught to shout directly at the prisoner. Insulting them was acceptable. He could not remember if parameters were placed upon the sort of insults that could be used. As to threats, he remembered being taught that nothing could be said that could not be backed up.[472] This seems consistent with the line of teaching that only credible threats could be made.

6.285 Porter described the harsh as getting up close to the prisoner and "…*belittling them in order to get information"*. He was taught that it was impermissible to "rough up" the prisoner but they could build up the shock by throwing things across the room or banging a fist against the desk. He suggested it was hard to maintain for even 30 seconds let alone for half an hour, thus he personally preferred other approaches.[473] Other than the no touching rule, he could not remember any training on the limits of what could be said if playing the role of "bad cop".[474]

6.286 Bowman remembered that a fellow student was firmly pulled up when he poked a finger into the chest of the person playing the prisoner or pulled his lapel. He could not remember using threats or insults but described the harsh as a barrage of shouting.[475] In contrast to Porter, he thought the training had been not to throw things around the room lest they accidentally touched the prisoner.[476]

6.287 Lt King remembered that the threat of physical violence could be implied but he meant this in the sense that you could say to the prisoner *"assist me and I will make sure you are well treated*". Threats of what might happen if they did not answer questions were not allowed nor were any threats of violence against the prisoners.[477] It was acceptable to shout right in the prisoner's face. They were also allowed to use props; for example throw furniture around the room to display anger, provided the prisoner was not touched.[478]

6.288 Haseldine's evidence on the harsh stood out because he indicated in his oral evidence that violence could be implied, though no actual violence could be used:

> *"Q. In relation to that technique* [the harsh]*, can you remember if anything was taught to you about what the limits were in terms of how harsh you could be?*
>
> *A. Yes.*
>
> *Q. What was that training?*
>
> *A. It was implicit that one could use the threat of violence, but no actual physical contact was to be made.*

[471] Williamson BMI 62/88/14-18
[472] Williamson BMI 62/88/19-89/20
[473] Porter BMI04982-3, paragraphs 16-18
[474] Porter BMI 77/89/1-15
[475] Bowman BMI 79/126/2-27/13
[476] Bowman BMI 79/137/21-138/2
[477] Lt Joshua King BMI03979, paragraph 25
[478] Lt Joshua King BMI03981-2, paragraph 32

Q. When you say that it was implicit that one could use the threat of violence, what sort of thing did you understand it was permissible to say?

A. It's not a case of just what you can say, it's what you can have the interrogatee think you may do through body language, et cetera, et cetera. You could say anything which could be seen as a threat; you can intimidate by standing over somebody; if need be, you could have some kind of weapon in your hand to introduce a threat. However, you could never actually make physical contact with the interrogatee.

Q. Just pausing there, can I take a hypothetical example? Could you go so far, as you recall it, as to say, "If you don't give me the information, I'm going to have you beaten up"?

A. Yes, although things like that were not advised because if you didn't follow through with the threat, eventually you lost – you lose credibility because you're not – your actions aren't congruent with the intent you gave. However, that's not to say – people did make threats.

Q. Now the Inquiry has heard some evidence that the line was drawn differently to that which you have just explained. The Inquiry has heard some evidence – and we will hear more to come – that you could not threaten physical violence, but you could make the person who was being questioned aware of disadvantageous treatment or a disadvantageous outcome. So you couldn't threaten to beat them up, for example, but you could say that if they didn't cooperate, they wouldn't see their family for a long time. Do you think that that might be where the line was actually drawn?

A. Most definitely not.

Q. You have a clear recollection, do you, of being taught, in 1998, that you could make direct threats of physical violence?

A. Yes." [479]

6.289 And later in his evidence:

"Q. Just help with this: physical violence, that was out, wasn't it, actually touching or striking –

A. Correct.

Q. – a prisoner on the course was not allowed? Short of that sort of direct physical violence, could you, in fact, use anything to intimidate the prisoner by your physical presence or by how you behaved in the interrogation room?

A. Yes, you could. As I briefed to you, you could imply the threat of physical violence.

Q. How would that be implied, as you remember it from the course?

A. Limited only by your imagination.

Q. Can you give us some examples so that we have the flavour of it?

A. If you – a tall person like yourself, if you were sat down in a chair and an 18/19 stone bloke is stood next to you with a baseball bat saying nothing, you are not to know why there is somebody that big next to you and why has he got a baseball bat in his hand. You are implying the threat that if someone doesn't comply, there is the possibility of physical violence. It can be far more subtle than that with regards to – again, if you were sat down in front of someone, the penetration of body space comes into this.

Q. Yes.

[479] Haseldine BMI 83/7/16-9/4

> *A. If you are holding the nib of a fountain pen three or four inches from somebody's eye and poking it into their face while you are speaking to them, you are not physically touching them, but the implication is there that if you slipped or went too far – does that clarify the implied threat of violence as opposed to actual violence?*
>
> *Q. And those implied threats of violence, you took it from the course that that was permitted?*
>
> *A. Most definitely, used on a daily based* [sic] *throughout the course.*
>
> *Q. But the line was drawn that you could not, in fact, touch them?*
>
> *A. Correct."* [480]

6.290 This evidence was of some concern: I found Haseldine to be an entirely straightforward honest witness who was doing his best to assist the Inquiry. He had no apparent motive to make up this account. I note however that several witnesses specifically rejected this account.[481] It was also contrary to the general understanding of most witnesses who had undergone the training. I am certain that Haseldine was not lying or wilfully exaggerating his evidence in this regard. I think it is likely either that he misunderstood the training, which in itself is a cause for some concern since it ought to have been clear, or that his recollection on this aspect is unreliable. I cannot however altogether rule out the possibility that an individual instructor did give the teaching referred to by Haseldine.

6.291 Hill described his understanding of the harsh approach as follows:

> *Q… if you, as an interrogator, were practising the harsh technique, would you be permitted, during the interrogation course, to insult the person being questioned?*
>
> *A. I can't recall with particular clarity that I would be permitted to. I am not certain that I would choose to.*
>
> *Q. The Inquiry has seen evidence which might suggest that personally abusive language, including, for example, homophobic language, was being trained as part of the harsh technique. Would you agree that personally abusive language and swearing was being taught as part of the harsh technique when you did the course?*
>
> *A. I don't recall it being specifically taught. I certainly observed its use and, yes, homophobic references and sexually demeaning expressions were used. I think it is important to discriminate between harsh and those aspects. Those aspects I have seen deployed in various techniques. The harsh really, in my view, in my recollection, relates to the creation of a state of fear in the prisoner that – there is an anger in the interrogator which could lead to consequences, physical or otherwise. Harsh to my mind is – and it is purely a personal recollection – is the introduction of loud – you know, loud volume, angry questioning, gesticulation and so on, to induce a state of concern and anxiety in the prisoner.*
>
> *Q. And the concern and anxiety is what, that the prisoner may actually be assaulted even though the British interrogator, of course, is not allowed actually to assault the prisoner?*
>
> *A. Yes, indeed, or to lead them to the belief that their failure to satisfy the interrogator will have consequences, physical or otherwise.*

[480] Haseldine BMI 83/77/25-79/14

[481] Graley BMI 95/123/11-25; S004 BMI 87/115/18-116/5; S011 BMI 101/71/19-72/7; S017 BMI 84/81/10-20; Thomas BMI 89/204/24-205/7; Thomas BMI 89/208/15-209/15

> *Q. But the physical consequences that would be put in mind in the mind of the prisoner were what?*
>
> *A. They would be physical assault, potentially.*
>
> *Q. It is not asked as a personal criticism of you so much as giving you the opportunity to comment on it: if that was being trained, did it not occur to you that that was a form of threat and intimidation which might well be contrary to the Geneva Convention?*
>
> *A. It did not occur to me, no."* [482]

Pressures on a prisoner, the shock of capture, conditioning

6.292 Bowman remembered being taught that the shock of capture could be exploited but that the interrogators could not actively enhance it.[483] As to what it entailed, he explained:

> *"A. Conditioning is whereby you can – through passage of time, the ultimate aim is to get the prisoner to become more receptive to your questioning. Little commands, ie getting them just to accept a drink of water on request, sit down on request, things like that, it eventually becomes apparent and they will start answering questions. That's what I remember.*
>
> *Q. Was there any other way in which someone could be conditioned to make them more likely to answer questions?*
>
> *A. I don't remember being taught anything else about conditioning."* [484]

6.293 Lt King remembered from the course teaching that conditioning was not allowed. He remembered conditioning being a process of grinding a prisoner down by removing their senses for example by blindfolding, using white noise and putting them in an uncomfortable positions.[485]

6.294 Bannister said in his Inquiry witness statement that the strip search was principally for security but it could also be utilised as part of the conditioning process because it allowed the questioner to exercise a degree of control.[486] He agreed that firm but fair treatment was part of the conditioning process, as was prisoners not being offered comforts by the guards.[487]

6.295 Smulski gave examples of maintaining the shock of capture in his SIB interview in 2005: "*You can walk people around, you can slam doors, talk loudly, just basic things like that. There's no skills in it, there's no, there's nothing taught as such as far as I remember*".[488] To the Inquiry, Smulski gave the following evidence about the shock of capture and how it was to be maintained:

> *"Yes, the specifics, as I understood it at the time, were that the shock of capture, the pace of – the tempo of their experience at that time should not be lessened, so that they would become relaxed and in a way be able to plan what they are going to do and take control –*

[482] Hill BMI 102/81/2-82/19
[483] Bowman BMI 79/119/23-120/6
[484] Bowman BMI 79/122/7-18
[485] Lt Joshua King BMI03982-3, paragraph 34
[486] Bannister BMI05423, paragraph 28
[487] Bannister BMI 71/202/4-15
[488] Smulski MOD006073

Q. And how are they going to be stopped from relaxing?

A. What I took that to be is that to keep them awake, keep them unsure of what was going to happen next.

Q. So you took it, did you, that keeping them awake was a part of maintaining shock of capture?

A. Yes.

Q. Anything else to maintain shock of capture?

A. You could also move people about, yes.

Q. Moving them about in what way?

A. Exercising them.

Q. What, a sort of forced exercise?

A. It would depend if force would be to actually get someone from a seated position, if they were unwilling to get up or unable to get up.

Q. If they were unwilling or unable to get up, what would you expect to happen?

A. You would attempt to move them.

Q. Force would be used?

A. Yes.

Q. If they were unable or unwilling to go for a walk with the soldier, you would expect them to be dragged around?

A. No.

Q. What would you expect to happen then?

A. They would be assisted.

Q. Assisted to do what?

A. To walk round.

Q. Keeping awake and exercising were two ways of maintaining the shock of capture?

A. I believe so at the time, yes.

Q. Was that something you were taught at the course in 1999?

A. I couldn't refer back to my notes then and that's what I believed at the time, yes."[489]

6.296 In cross-examination, Smulski accepted that his notes from the time referred to firm fair and efficient handling:

"MR EVANS: May we look then, please, at BMI01279PR, which are your notes. If we could blow up the top seven lines or so. Can you see that you have headed this "Prisoner handling", Mr Smulski, and "Shock of capture"? Do you see that?

A. Yes.

Q. If you look down to the first underlined word, "Principles": "Search, identify, segregate and isolate, firm, efficient and fair handling."

A. Yes.

[489] Smulski BMI 40/228/15-230/2

Q. So it does appear that you were taught that that was the way to handle prisoners in terms of the shock of capture.

A. Those words obviously were taught, but as to the actual techniques to use in a firm, efficient and fair handling means, I couldn't recall what those actual procedures were and that's why I did what I did basically.

Q. I understand, but those words you accept were taught to you on the course?

A. Yes, they are on my notes, yes." [490]

The evidence of Sgt John Gallacher

6.297 The evidence of Sgt John Gallacher needs separate consideration because on one view, his evidence was at the extreme end of the spectrum of what students said they were taught on the JSIO courses.

6.298 Although some Core Participants invited me to treat Gallacher's evidence with much caution, I found him to be a straightforward and honest witness. I have no doubt that he was telling the truth as he believed it to be, including in relation to the training he received. I note that there is near-contemporaneous support for the fact that he understood that hooding was taught on the PH&TQ course.[491]

6.299 Gallacher was the Provost Sgt for 1 BW and he deployed on Op Telic 1 in that capacity. Insofar as is relevant I address the BW's evidence relating to prisoner handling procedures in Part X of this Report.

6.300 In respect of Gallacher's JSIO training, he attended the PH&TQ course, as he remembered it, in January 2003. He initially said that Bruce was amongst those on the same course as him.[492] Bruce did not agree with that, and Gallacher later explained that he meant the same type of course and not the exact course which he attended.[493] It seems likely that Williamson was on the same course as Gallacher.

6.301 Gallacher's account was that he was hooded with a hessian sandbag during a role play and also placed in a stress position. The role play involved a group of about four. He said he concluded from this that they were expected to use these techniques themselves. The stress position was squatting against the wall with hands on knees. He could not remember if an instructor or another student put him in that position. He thought everyone was put in this position at some stage. He thought that hooding was referred to by the instructors but was not sure if the stress positions were or whether they were just put into stress positions.[494] He said that he understood that stress positions were a way of "*conditioning*" prisoners before questioning them. However, he may have divined this from the use of stress positions rather than specifically being told so by the instructors.[495] Hooding was principally for security but there was some

[490] Smulski BMI 41/52/6-53/1
[491] MOD055778. This is a June 2003 SIB interim report into one of the deaths that occurred in 1 BW custody. It records that Gallacher stated that *"...prior to Op Telic he attended the PHTQ Course during which hooding of detainees was taught*." See further Part X, Chapter 5.
[492] Gallacher BMI06879, paragraph 14
[493] Gallacher BMI 61/58/10-16
[494] Gallacher BMI06879-80, paragraph 16
[495] Gallacher BMI06880, paragraph 19

discussion on the course about hooding maintaining the fear factor, though Gallacher said he did not use it for this purpose.[496]

6.302 In his oral evidence to the Inquiry, Gallacher initially suggested that he was told by instructors that stress positions could be used but he was clearly not sure about that aspect:

> *"Q. Were you told the purpose of hooding or the use of stress positions?*
>
> *A. Yes.*
>
> *Q. What were you told about that?*
>
> *A. It was a method, like I say, as conditioning for HVTs.*
>
> *Q. You were told it was conditioning for HVTs?*
>
> *A. Correct.*
>
> *Q. "HVTs" being ...?*
>
> *A. "High value target".*
>
> *Q. Were you told what was meant by the term "high value target"?*
>
> *A. People of importance.*
>
> *Q. What, importance in the sense that they may have information?*
>
> *A. Correct.*
>
> *Q. Were you taught anything about how you might identify such individuals?*
>
> *A. No.*
>
> *Q. So if hooding and stress positions were to be applied to high value targets, what was the purpose of applying it to them?*
>
> *A. To give them a sense of fear.*
>
> *Q. To give them a sense of fear. Was that what you assumed or was that something that you were told?*
>
> *A. Something that I was told.*
>
> *Q. If you look at paragraph 18 of your statement to this Inquiry, at BMI06880 – and we all bear in mind, I am sure, Mr Gallacher, that this course is now some years ago – you said at paragraph 18 – what you have told us, that is: "... I understood that stress positions should only be used on high value detainees likely to possess useful intelligence ... I cannot recall exactly what was said but this was my understanding. I concluded that the purpose was to numb them and give them a sense of fear about being questioned, although I cannot now recall that being specifically taught and it may be that these were simply conclusions I reached myself." That's not quite what you have said to us today.*
>
> *A. What you need to remember, sir, is this was seven years ago.*
>
> *Q. I understand that. So might it be the case that the fear point was a conclusion that you might have come to yourself, rather than being taught?*
>
> *A. Possibly."* [497]

[496] Gallacher BMI06880-1, paragraph 20
[497] Gallacher BMI 61/9/20-11/14

6.303 Later in his evidence Gallacher accepted that his understanding that stress positions were to be used might have been his interpretation from seeing them demonstrated rather than it being specifically taught by an instructor.[498]

6.304 Having considered the evidence of students and instructors alike, I cannot accept that Gallacher was ever taught that he was permitted to use stress positions. Such teaching would seem contrary to all the other evidence.

6.305 Gallacher said he used the techniques of hooding and stress positions on high value targets on about ten occasions during 1 BW's deployment on Op Telic and then only for short periods.

6.306 Accepting, as I do, that Gallacher was an entirely honest witness, I have considered how he came to believe that hooding and stress positions were permitted techniques. I reject any suggestion that he has exaggerated or mis-recollected what he was taught. I also reject the possibility that he decided on his own to use these techniques. In my opinion he had no motive to do so and I am confident he would not have been involved in practices which he knew to be wrong.

6.307 It seems to me that Gallacher must at some stage during the course and in some way, have picked up a suggestion that these techniques were permitted. There are three possibilities. The first is that when he was involved in a role playing exercise where stress positions were used he misunderstood what was being said. Although it appears he was on a different course from Bruce it is relevant to note that Bruce (1 BW RSM) remembered that on his PH&TQ course there was a demonstration which included stress positions as an example of what should not be done. Bruce clearly understood these techniques should not be used. He described the demonstrations thus:

> *"I recall that there was a demonstration as part early on in the training which showed us how not to treat prisoners of war, which was then countered by how we should treat them. The demonstration consisted of personnel on the course role-playing being captured, being introduced to some rough treatment, being placed in stress positions, being hooded. Then the other part of that, the demonstration, was how we should capture them and treat them within the confines of the Geneva Convention."* [499]

6.308 It is possible that Gallacher saw such a demonstration and thought erroneously that it was a technique or techniques which he could use.

6.309 The second possibility is that Gallacher confused CAC training with what was permitted. There was evidence from some other students that a CAC exercise came in the middle of the two week course attended only by interrogation students, not by PH&TQ course students. Gallacher said that he attended a course which was two weeks long and was a PH&TQ course. Other witnesses said the PH&TQ course was only five days long. Gallacher said that on the CAC part of his course in role playing he was hooded and put in a stress position. Gallacher was confident that he was not told in this part of the course that techniques were prohibited for any prisoners he might deal with on operations.[500] There is, I find, some confusion about whether or not Gallacher could have had any CAC training.

[498] Gallacher BMI 61/50/23-51/5
[499] Bruce BMI 62/11/22-12/6
[500] Gallacher BMI 61/17/21-18/2

6.310 The third possibility is that Gallacher misunderstood what was permitted in discussions with others in the margins of the course.

6.311 I am unable to determine which of these possibilities is right. However, I find that Gallacher genuinely believed that he had learnt on the course he attended that hoods and stress positions could be used on high value targets. Equally, I find that he was not taught that it was permissible to hood or put prisoners in stress positions. I find that in some way he must have misunderstood the training. It remains of some concern that the training was such that a misunderstanding of this sort could arise.

Later Evidence Bearing on what was Taught before 2003

S012's emails in May 2004

6.312 On 11 May 2004, S012 sent the following informal internal email to his colleagues in F branch:[501]

From: OC F Branch
Sent: 11 May 2004 16:30
To: _F Branch
Subject: PH&TQ and Interrogation

136

Importance: High
Gents

As you are no doubt aware, Ministers have now taken a very close interest in what we teach on the above courses. At this moment they and 3 star types are being briefed based on numerous documents that I have prepared and sent, both to SO1 legal, ADI and most recently to CO JSIO answering questions ref how we teach and what we teach, specifically ref hooding (which I know we teach not to do !). To date we appear to be holding our own however, the questions may well become much more searching as this progresses

Although we are not in any way implicated in any illegal activity and, to my knowledge no allegations have been made against any individual trained here, mud gets flung and some of it may stick albeit unjustly Suffice to say that I am the final resting place for anything that comes our way and will deal with it whenever I can, you should not be involved.

In short, we may be the focus for some questioning ourselves, both from genuine bodies as well as other twats such as the media digging for info. The upcoming Corps day may well see journalists sneaking about trying to pry into our activities. Suffice to say that journos are to be politely directed at the DISC Adjt whilst any enquiry from an (apparently or otherwise) genuine military caller is to be directed to me personally. This latter point is most important.

To give you an overview of what I have sent I have attached several documents. The first two are ref recommendations sent to ADI some time ago providing what I consider to be acceptable guidelines on the practical application of many of our techniques. The third is our overarching techniques in broad terms, a reply to ministerial Qs from Fri last week. If you have not read these already, please do so and ensure that you base all your comments to students on this 'wisdom'. If you are unsure please speak to me ASAP

As previously briefed, SO1 legal has already reviewed our training material and considers that it does not infringe anything that it should not, and is therefore within UK law. We must stick rigidly to these standards at all times, as not to do so will bring us into the shitty problem area. Bottom line is that we are currently legal and not even at the brink of the shit pit. Lets stay there without getting paranoid about what we teach.

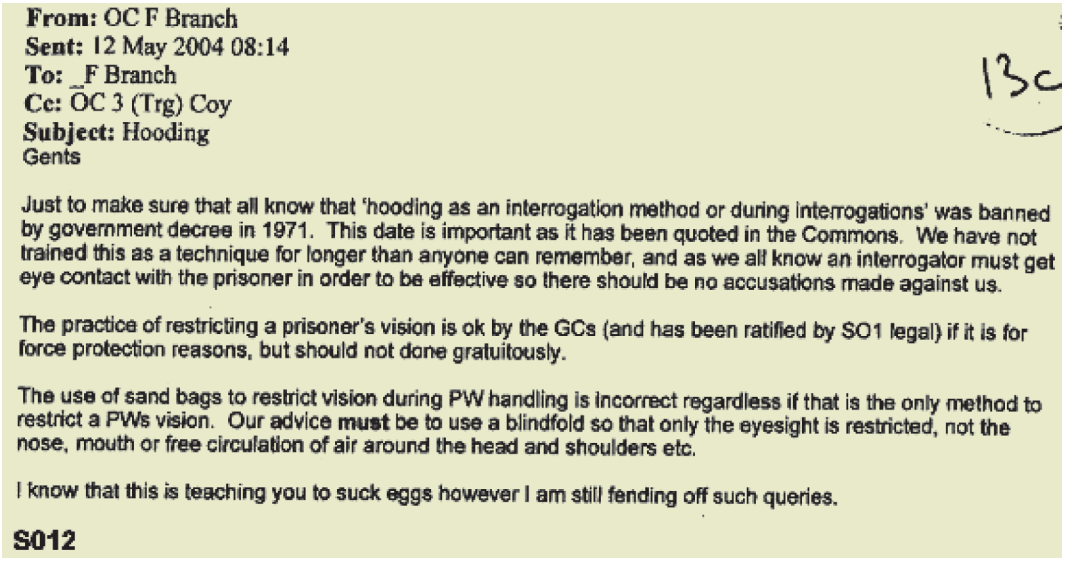
Please read the attachments and ensure you understand exactly what they mean.

Any comments to me as usual.

S012

6.313 That was followed the following day by a further email referring to the teaching in relation to hooding:[502]

[501] MOD028363
[502] MOD028364



From: OC F Branch
Sent: 12 May 2004 08:14
To: _F Branch
Cc: OC 3 (Trg) Coy
Subject: Hooding
Gents

13c

Just to make sure that all know that 'hooding as an interrogation method or during interrogations' was banned by government decree in 1971. This date is important as it has been quoted in the Commons. We have not trained this as a technique for longer than anyone can remember, and as we all know an interrogator must get eye contact with the prisoner in order to be effective so there should be no accusations made against us.

The practice of restricting a prisoner's vision is ok by the GCs (and has been ratified by SO1 legal) if it is for force protection reasons, but should not done gratuitously.

The use of sand bags to restrict vision during PW handling is incorrect regardless if that is the only method to restrict a PWs vision. Our advice **must** be to use a blindfold so that only the eyesight is restricted, not the nose, mouth or free circulation of air around the head and shoulders etc.

I know that this is teaching you to suck eggs however I am still fending off such queries.

S012

6.314 The significance of these emails is a matter of some contention.

6.315 During examination by Leading Counsel to the Inquiry, S012 accepted that the comment "*The use of sandbags to restrict vision during PW handling is incorrect regardless if that is the only method to restrict a PW's vision*" was a change of stance from that he had previously held.[503]

6.316 In submissions for the Detainees it was suggested that the emails were sent "…*to ensure consistency of response*…" and *"…to ensure that his instructors knew that hooding had been banned as an interrogation technique in the 1970s…*".[504] To the extent that these submissions may suggest that S012 was in any way inappropriately guiding what was said by his colleagues about previous teaching of hooding, I reject the suggestion. I note in this regard the comment in the second email that he was teaching his colleagues to "suck eggs" in giving this guidance.

6.317 However, it seems to me that these emails suggest that knowledge of the 1972 prohibition of the techniques was not all that it might have been even amongst the instructors, albeit that hooding as an aid to interrogation may not have been taught for longer than anyone could remember.

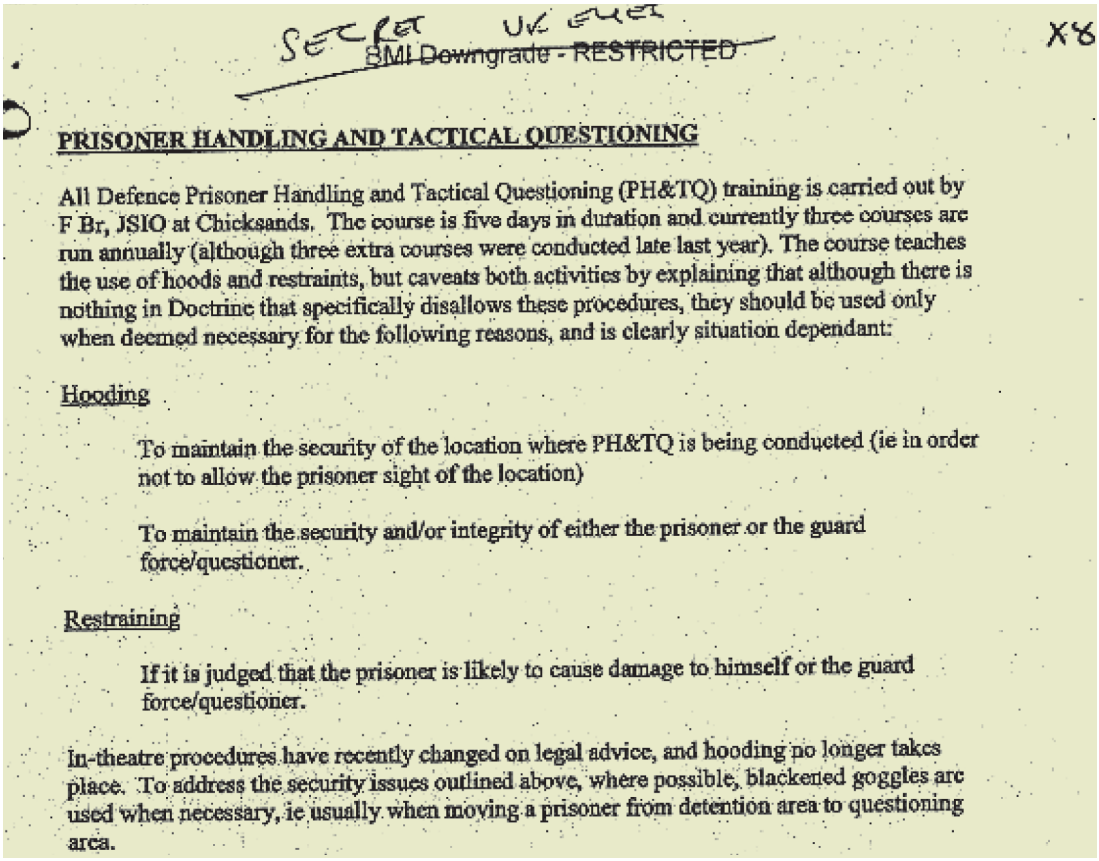
September 2003 Draft Memorandum

6.318 On 16 July 2010, after the hearings in Modules 1-3 had been completed, the MoD disclosed a small group of documents which appeared to date from September 2003. The documents were described as:

> *"A pack of apparently draft and undated PJHQ documents from September 2003, covering prisoner-handling guidance in the light of the death and injuries sustained by detainees. There is no record of any final guidance being issued."*

6.319 Amongst these documents was the following:[505]

[503] S012 BMI 87/177/11-178/1
[504] SUB002443, paragraph 69
[505] MOD055625



Secret UK Eyes
~~BMI Downgrade - RESTRICTED~~
X8

PRISONER HANDLING AND TACTICAL QUESTIONING

All Defence Prisoner Handling and Tactical Questioning (PH&TQ) training is carried out by F Br, JSIO at Chicksands. The course is five days in duration and currently three courses are run annually (although three extra courses were conducted late last year). The course teaches the use of hoods and restraints, but caveats both activities by explaining that although there is nothing in Doctrine that specifically disallows these procedures, they should be used only when deemed necessary for the following reasons, and is clearly situation dependant:

Hooding

To maintain the security of the location where PH&TQ is being conducted (ie in order not to allow the prisoner sight of the location)

To maintain the security and/or integrity of either the prisoner or the guard force/questioner.

Restraining

If it is judged that the prisoner is likely to cause damage to himself or the guard force/questioner.

In-theatre procedures have recently changed on legal advice, and hooding no longer takes place. To address the security issues outlined above, where possible, blackened goggles are used when necessary, ie usually when moving a prisoner from detention area to questioning area.

6.320 The document is unsigned and is not dated. Some of the surrounding documents were PJHQ drafts from 23 September 2003 but others appear to have been PJHQ draft documents dating from early 2004.

6.321 It is a not unreasonable inference from this document that the JSIO had been contacted and asked what they taught about hooding, the response being that the use of hoods and restraints was taught but that hooding should only be for security purposes (either of the location, the prisoner, guard force or questioner).

6.322 There is no caveat in this document suggesting that blindfolds were the preferred method taught at the JSIO.

6.323 The document therefore lends some support to those students whose evidence suggests either that hoods were actually used on the course, or that blindfolds were used but that nothing was said against the use of hoods as a means of sight deprivation.

6.324 I bear in mind however that this document was disclosed late, its provenance is unclear, and JSIO instructors, although asked many questions about hooding, were not able to comment on this specific document due to its late disclosure. The weight which can properly and fairly be given to the document is accordingly somewhat limited.

The Shortened PH&TQ Course Given to 1 QLR and Other Battlegroups

6.325 It is clear that before Op Telic 2, F branch of the JSIO gave a shortened course to selected members of 19 Mech Bde Battlegroups. The course was described in one document as a shortened TQPH cadre.[506] It took place on 10 June 2003. S011, MacKinnon and Thomas were the instructors attending.

Examples of the evidence given by those attending the training as 'students'

6.326 Briscoe described a session of prisoner of war handling training which he attended with Provost Staff and Company Sergeant Majors (CSMs) before deployment. It was a four hour course in the training wing at Alma Barracks in Catterick. It was run by an external training group which Briscoe described as OPTAG. He remembered being told that prisoners were to be treated as prisoners of war with sandbagging and plasticuffing. In his view, the trainers did not say anything different from the ITD training "*but talked about hooding for security purposes and talked about securing the prisoner*".[507] He stated that he was not given any training before deployment on whether hooding should or should not be used.[508] He was asked whether he remembered attending a lecture in relation to prisoner handling and tactical questioning before going to Iraq. He responded that it was prisoner handling only, and not tactical questioning. He did not learn anything which added to his sum of knowledge of prisoner handling.[509]

6.327 Sgt Smith remembered attending a half day training course as part of pre-deployment training, at the Alma Barracks in Catterick. It is not at all clear that this training was necessarily the training provided by F branch JSIO. It included a video on the Geneva Convention. He was told to expect more information from the 1 BW on handover. Smith received a handout, which he stated was also given to all the Officers attending and to the RSM. The document is *"JSIO F Branch Introduction to Interrogation and Tactical Questioning – Course Notes"*.[510] As Sgt Smith remembered the training, several questions were asked about detainee handling on this course but that the instructor was unable to answer them. The video was the annual training LOAC video.[511]

6.328 Payne remembered attending a two hour lecture in Catterick given by the Intelligence Corps, also attended by Briscoe, Sgt Smith and other NCOs. Payne's account was that they were told about the shock of capture, lack of sleep and to keep prisoners as confused as possible. He did not remember, however, any mention of stress positions. The training instructed them to keep this approach going until tactical questioning was completed.[512] He confirmed this account during his oral evidence, describing the instructors as being from "Chicksands". He said the content of the talk was based on tactical questioning, with the emphasis being on getting prisoners questioned as fast and as soon as possible. He remembered being instructed to maintain the shock of

[506] MOD035479
[507] Briscoe BMI00725, paragraph 10
[508] Briscoe BMI 43/97/1-8
[509] Briscoe BMI 43/99/1-10
[510] MOD022469
[511] Smith BMI04995-6, paragraphs 22-24
[512] Payne BMI01721, paragraph 26

capture, and that the shock of capture and the lack of sleep were in order to aid the interrogator. He confirmed that he had been told this was to be done until questioning had been completed, and that they were taught that prisoners were to be hooded.[513]

6.329 Roberts said that his pre-deployment training on the handling of detainees was limited to a short presentation from two officers from the Joint Forward Interrogation Team (JFIT). He remembered that they explained that tactical questioning would take place. He said that they did not give any guidance or training in how to handle or process detainees or suggest any particular role that soldiers might have in the process.[514] During his oral evidence to the Inquiry, Roberts said that hooding was mentioned in the briefing by the JFIT team. He remembered seeing pictures of it on the television screen, but he was not able to provide any further description or the content of the instruction delivered by the JFIT team.[515]

6.330 WO2 Tomkinson (CSM A Company) said that he had only a vague recollection of some OPTAG training being given to 1 QLR, but did not remember the content. He specifically did not remember any training from the Intelligence Corps.[516] He confirmed in oral evidence, that despite his name appearing as an attendee, he had no recollection of being on the shortened TQPH cadre.[517]

6.331 WO2 Parry (CSM C Company) remembered a specific training session on the LOAC at Alma Barracks, Catterick, held by an "LE Officer" from the Intelligence Corps. He said also in attendance on the course were the RSM and other Sergeant Majors (including CSM Tomkinson), and other Senior Non-Commissioned Officers (SNCOs). He remembered that the presentation was very general with not a lot of practical guidance. The Intelligence Officer told them that they should "*follow our 'own moral code' and to be guided by the Geneva Convention when dealing with prisoners of war*". He remembered that although questions were asked seeking practical guidance, they were told simply to adopt the practices of the company they relieved and that further guidance would come from the chain of command.[518]

6.332 WO2 Weston (CSM S Company), in oral evidence, was taken to the list of attendees on which his name appeared. He agreed that it "rang a bell". He said his memory was still very vague, but volunteered that he must have attended if he was on the list. He had no recollection of the content of the course, nor any substantive recollection of the trainers.[519]

F branch instructors giving the training

6.333 S011 was one of the three instructors who were present at the shortened PH&TQ cadre on 10 June 2003. He stated in his Inquiry witness statement, and I accept, that the course made clear that it did not qualify those present to carry out tactical questioning. S011 stated that the course would have included the introduction to tactical questioning and interrogation lecture, the prisoner handling and search lectures and demonstrations. He explained that it would have been a "*standard*"

[513] Payne BMI 32/20/4-23/8
[514] Roberts BMI01194, paragraph 30
[515] Roberts BMI 20/139/16-140/7
[516] Tomkinson BMI05019, paragraphs 23-25
[517] Tomkinson BMI 51/177/17-179/10
[518] Parry BMI00865, paragraphs 16-17
[519] Weston BMI 47/94/24/-96/13

lecture, mentioning firm, efficient but fair handling, to maintain the shock of capture. The fact that "*detainees could be blindfolded if necessary*" would have been explained. I accept that he would have emphasised firm, fair, and efficient prisoner handling and security sight deprivation. He did not think that he would have mentioned that stress positions were not to be used.[520] S011 said in oral evidence that they took F branch blindfolds up to Catterick on the shortened course and used them in the presentation. He said that it was "*absolutely not*" possible that Payne could have come away from the course with the belief that sleep deprivation was approved. Also it was unlikely that Briscoe could have come away from the training believing that hooding could have been used in the conditioning process before tactical questioning. In the demonstrations blindfolds would have been used. He said that the instructors work from their lesson plans, and if there was any confusion this was on the part of 1 QLR, not the presentation team.[521] While I understand the sentiment behind S011's evidence on this last point, in my opinion instructors ought generally to have ensured that their teaching had been clearly understood.

6.334 Sgt Neil MacKinnon remembered going to Catterick to give the shortened course but had no specific recollection of the training that was given. When the evidence of his attendance was further explored with him during his oral evidence, he accepted that the assumption must be that he was at Catterick but he could not remember delivering any training there. He confirmed S011's account of a basic briefing which referred to firm but fair handling to maintain the shock of capture, sight deprivation with blindfolds, and that sleep deprivation would not have been taught. He understood sleep deprivation to be a prohibited technique. He assumed that sight deprivation would be covered to the extent that it would have been mentioned that prisoners should be blindfolded to be moved from place to place.[522]

6.335 Thomas was the third instructor present from F branch, although he appeared to have been there in an observation capacity. He did not have any specific recollection of the content of the course, though he remembered going to Catterick for it.[523]

Conclusions

6.336 I accept that the training given to 1 QLR and other Battlegroups on this shortened course emphasised firm, fair and efficient prisoner handling and made clear that it did not qualify any attendees to conduct tactical questioning. I accept it covered the maintenance of the shock of capture. I also accept that blindfolds would have been used on the course to demonstrate sight deprivation. For the same reasons that I have reservations as to how clear the F branch instructors were about the means of sight deprivation on the full F branch courses, I am less convinced that the teaching would have made clear, beyond the use of blindfolds in the demonstration, that blindfolds and not hoods were the preferred means to achieve security sight deprivation. I accept that blindfolds would have been used in the demonstration but I doubt that clear advice was given against the use of hoods.

6.337 I reject Payne's suggestion that sleep deprivation specifically as an aid to interrogation was encouraged on the course. It is possible however that those attending may have

[520] S011 BMI06755-6, paragraph 47-48
[521] S011 BMI 101/40/12-42/6
[522] MacKinnon BMI 94/174/9-176/12
[523] Thomas BMI 89/196/17-197/22

been told that it was acceptable to keep prisoners awake during the very early hours of detention pending imminent questioning. This was something of a grey area in the more full F branch courses.

Interrogators' Involvement in CAC

6.338 I address CAC training in the next Part of the Report. At this stage it suffices to note that there is no doubt that before Baha Mousa's death, those who were taking the interrogation course (and on some of the evidence the PH&TQ course) may have been invited, as part of that course, to practise their newly-learnt questioning skills on British servicemen who were undergoing training in conduct after capture. For the reasons I explore in the next Chapter, the MoD was right to concede in this Inquiry that this was an imprudent course because of the risks of contamination between techniques used in conduct after capture training and what was taught on the PH&TQ course and interrogation courses.[524]

Conclusions on JSIO Tactical Questioning and Interrogation Training

6.339 JSIO did not archive its teaching materials from the F branch PH&TQ and interrogation courses which makes assessment of what was taught difficult. Since retention of the materials was not mandated at the time, I do not think this can be a matter of criticism for those in the chain of command of F branch. However, even by 2003 JSIO as an organisation, ought to have had a better record keeping system.

6.340 On the evidence available to the Inquiry, I have reached the following conclusions. Firstly, the PH&TQ and Interrogation courses taught students that prisoners must be treated humanely. Relevant aspects of the Geneva Conventions and the LOAC were covered, although the implications may not have been fully understood. Firm, fair and efficient prisoner handling was taught, and students were told that such handling would help to maintain the shock of capture.

6.341 Secondly, I find that by 2002/2003, none of the pre-prepared handouts or PowerPoint presentations for the PH&TQ and Interrogation courses included a reference to the Heath Statement, the 1972 Directive or specifically to the prohibition on the five techniques as a distinct part of the applicable doctrine. Had they done so, in my opinion whatever the training materials contained, the prohibition on the five techniques would have been reproduced in the 2004 versions of the material provided to the RMP by S012 when making his October 2004 statement. This is also consistent with the 1972 Directive not being referred to in the JSIO review of doctrine from 1999 onwards. In my view the omission of a specific reference to the prohibition on the five techniques was consistent with an approach that put most emphasis on teaching what could be done, rather than emphasising what was prohibited. Whatever the reason for the omission of the prohibition on the five techniques, I think it likely that clear reference to the prohibition on the five techniques as a specific part of the applicable doctrine was no longer part of the course materials. I recognise however, that the poor archiving of materials makes certainty in this area impossible. I also recognise that individual instructors, who were familiar with the background of deep interrogation techniques

[524] SUB001074, paragraph 9.8

in Northern Ireland, may well have referred to the prohibition in their own teaching when expanding upon the written course materials.

6.342 Thirdly, even if the prohibition on the five techniques was routinely referred to, which I consider is possible but not in my opinion likely, I am sure that insufficient emphasis was given to it in the teaching. This is clear from the variation in understanding of the students who gave evidence to the Inquiry. It is also apparent from later versions of the teaching materials which, until far more recently, gave inadequate emphasis to the prohibition on the five techniques.

6.343 Fourthly, while I do not consider that the prohibition on the five techniques was taught as a distinct part of the doctrine on interrogation and tactical questioning, I do accept that prohibitions on some of the individual techniques were taught. In particular, I think it is likely that the courses did contain, or often contained, an express prohibition on the use of stress positions. It is likely that sleep deprivation was taught as being prohibited, although it was a grey area; and I expect there was some variation between different instructors, concerning keeping prisoners awake pending questioning in the first hours after capture.

6.344 Fifthly, in respect of sight deprivation I find that the teaching would have included teaching that sight deprivation for security purposes was acceptable. Further, I find that the teaching was clear that sight deprivation during questioning was not permitted, and was counter-productive. For the most part, I consider that the message conveyed was that sight deprivation as an aid to interrogation was prohibited. But an exception was teaching students to walk around a blindfolded prisoner for a short period immediately after his arrival in the interrogation so as to increase the pressure. The latter teaching was in breach of the 1972 Directive and should not have been permitted. It is of concern that it was understood by those who designed the training course materials to be an appropriate procedure to include in the training. It may well have diluted the message that sight deprivation as an aid to interrogation was prohibited.

6.345 Further, I find that students would have been routinely told that if prisoners were deprived of their sight for security purposes this would have had the side-effect, or incidental benefit, of maintaining the shock of capture. Such teaching further risked giving mixed messages about sight deprivation and blurring the prohibition on it as an aid to interrogation. I find that blindfolds were what were usually used on the course as the means of depriving the sight of those playing the part of prisoners during the training role plays. Most members of staff remembered that it was only ever blindfolds or goggles that were used. However, it is curious that the Officer Commanding the Training Company, S001, remembered hoods were sometimes used. In addition, some students such as Porter[525] remembered hoods being used. I think it possible that hoods were on occasions used by some instructors in role plays on the course, although given the preponderance of evidence that it was blindfolds that were used, I very much doubt that this was the norm. I find that teaching on what means could be used for security sight deprivation in an operational theatre most likely varied from instructor to instructor. I accept that much of the course had centrally administered direction in the sense that common lecture material was provided on PowerPoint. But I think it unlikely that the PowerPoint presentations were clear and specific about the means that should be used to achieve sight deprivation. As a result, I think it likely that this aspect of the teaching particularly was prone to different interpretation and

[525] Porter BMI 77/66/16-67/14

emphasis by different instructors. The range of factors which I have set out above meant that students were at risk of coming away from the courses with an unclear understanding in relation to the proper limits and purposes of sight deprivation. The main message that some students may reasonably have taken away from the course on sight deprivation was that prisoners could be deprived of their sight including, if necessary, by hooding for security purposes; and that there was usually a security need to deprive prisoners of their sight in an interrogation or tactical questioning holding facility and that it was also beneficial for maintaining the shock of capture. But as stated above deprivation of sight during questioning was not permitted.

6.346 Sixthly, there were other aspects of course taught methods which in my view were unacceptable. The teaching of the "harsh" permitted insults not just of the performance of the captured prisoner but personal and abusive insults including racist and homophobic language. The "harsh" was designed to show anger on the part of the questioner. It ran the risk of being a form of intimidation to coerce answers from prisoners. It involved forms of threats which while in some senses indirect were designed to instil in prisoners a fear of what might happen to them, including physically. Insufficient thought was given to whether the harsh approach was consistent with the Geneva Conventions. The teaching was also inconsistent on points such as whether or not furniture could be thrown. Next, I have already referred to the teaching which permitted walking around a blindfolded prisoner when he was brought into the questioning room. While only for a brief time, this was to use sight deprivation as an aid to interrogation contrary to the Heath Statement and the undertaking given to the ECHR. It should never have been taught.

6.347 Seventhly, although there had not been a complete loss of memory in regard to the prohibition on the five techniques, I find that some senior instructors, the heads of the branch and their immediate chain of command, might all have done more to ensure that teaching the basics of the five techniques was made clear, particularly in respect of sight deprivation. They might also have done more to ensure that some of the techniques which were taught were compliant with the requirements of Article 17 of the Third Geneva Convention; and pressed for a proper manual or other doctrinal guidance to which they could teach.

6.348 Eighthly, I have some sympathy with the more junior officers and NCO instructors and the heads of the interrogation training branch. In my view the main fault for the inclusion of inappropriate training and/or exclusion of appropriate material lay principally in a systemic failure over the course of many years. These were failures:

(1) to have in place adequate doctrine to which the branch should teach;

(2) to recognise the proper significance of aspects of the Geneva Conventions, such as the prohibition on insults, even though I accept that key Geneva Convention provisions were taught on the course; and

(3) to have a proper legal assessment of the teaching on the courses.

6.349 Finally, there was no dispute on the evidence that before 2003, there was no formal lifespan to the course qualifications and no formal provision for refresher training. As a result, there was a real risk of both the skills and parameters taught on the course fading over time. That risk was all the greater when there was no written policy and no manual or other guidance on tactical questioning and interrogation practice to which those qualified could later refer.

Chapter 5: Conduct after Capture Training

Introduction

6.350 Most British service personnel undergo training to prepare them for the eventuality of being captured by an enemy during operations. The preferred terminology to describe this training appears to have varied over time. The overall area of training is now known as "SERE": Survival, Evasion, Resistance, Extraction. Conduct After Capture (CAC) and Resistance to Interrogation are part of the "Resistance" element of SERE. I will use the acronym CAC since the training in 2003 principally used that terminology.

6.351 By no means all aspects of CAC training are relevant to this Inquiry. I have not seen it as part of my terms of reference to enquire into such matters as the monitoring, medical and other precautions that are taken in such training; the precise duration of techniques that applied during CAC training, decisions as to which servicemen undergo the training or matters of that nature. Nor have I examined the much broader question of whether practical training in CAC is appropriate, although on the evidence that the Inquiry has heard, there would seem to be a genuine need to ensure that service personnel are prepared for the eventuality of their capture; all the more so for those who are prone to capture and prone to interrogation.

6.352 The primary issue of concern for this Inquiry has been whether CAC training posed a risk of what has been called "contamination". Contamination in this context meant the risk that those undergoing CAC training may have learnt of prisoner handling techniques that would be unlawful and/or contrary to UK policy if used on prisoners taken by British Forces, without fully understanding that they must not be used by British service personnel.

6.353 CAC training was given at three levels. Basic level 1 training was a theoretical briefing which was given as part of annual training, a version of which was given as part of pre-deployment training for Op Telic. Most service personnel, at least all of those who were liable to be deployed on operations, ought to have received this basic level of CAC training annually and before any actual deployment.

6.354 Level 2 and 3 training was more specialised and was only provided to select service personnel who were most prone to capture. At this level, the training was more practical and involved the use of techniques, including at least some of the five prohibited techniques, which are contrary to the Geneva Conventions. The aim was to prepare those service personnel for how they might be treated by an unscrupulous enemy. The training included how to resist interrogation by such an enemy.

6.355 In the context of this practical CAC training, there is no factual dispute that before 2003, those students who had successfully completed the JSIO's interrogation course, and on some of the evidence, the PH&TQ course as well, might be asked to attend the CAC course in order to practise their interrogation skills. The thinking appeared to have been that they would benefit from using their recently acquired skills on those British service personnel who would be undertaking CAC training. In such circumstances the interrogators ought to have been using only the techniques acquired on the interrogation course, which were understood to be Geneva Convention compliant. That this sort of exercise was incorporated into an interrogator's training is confirmed by the interrogation course programme for January 2004. That programme

included as the final exercise on the interrogation course "*… – 4 (CAC) Coy Exercise – If coincides with CAC exercise*".[526]

6.356 All practical CAC training was meant to be provided only by trained JSIO staff. There was a separate training company that provided such training; it was not provided by F branch who ran the PH&TQ and interrogation courses. However, before 2003 practical CAC training (Resistance to Interrogation) did take place at Chicksands and so was taking place physically in the same location as prisoner handling and tactical questioning and interrogation training. This changed in 2008. Tactical questioning and interrogation training now no longer takes place in the same location as SERE training.

Level 1 CAC Training

6.357 Relevant disclosure to the Inquiry included the PowerPoint presentation for CAC level 1 training[527] as well as the presentation that was used for pre-deployment training for Op Telic (heavily based on the standard CAC level 1 training briefing)[528] and the speaking notes that went with it.[529]

6.358 S059 held the post of Officer Commanding 4 Conduct After Capture Company at the JSIO from December 2001 until September 2003. This was the Company that provided CAC and Resistance to Interrogation training.[530] S059 was therefore best placed to inform the Inquiry about the CAC training that was in place in the few years before Baha Mousa's death.

6.359 In his evidence to the Inquiry S059 was careful to emphasise that the level 1 CAC training was in no way designed to teach prisoner handling to those receiving the level 1 briefing.[531] However, I consider that there were two aspects of the CAC level 1 briefing of potential concern.

6.360 The first aspect of concern is that it shared some terminology with the F branch PH&TQ and Interrogation course. There was a slide setting out prisoner's state of mind at the point of capture addressing relief at being alive, apprehension, anxiety, confusion and mind numbing fear. This was followed by a slide stating "*You are now suffering from the… 'Shock of Capture'*".[532] The briefing covered methods of interrogation using labels also used by F Branch: "*Friendly*", "*Logical*", *"Harsh*", "*Mutt and Jeff*".[533] The briefing also covered "*self induced pressures*" and "*system induced pressures*"[534] culminating in slides stating in large print that the combination of the two is known as *"Conditioning*".[535] In the context, as S059 accepted, "Conditioning" was being used to connote a process which included unlawful treatment.[536] S059 accepted

[526] MOD015480
[527] MOD023176-219
[528] MOD011884-91
[529] MOD011863-82
[530] S059 BMI08227-8, paragraphs 3-6
[531] S059 BMI 93/182/12-183/3
[532] MOD023186
[533] MOD023202
[534] MOD023190-6
[535] MOD023197-8
[536] S059 BMI 93/189/5-7

that there could be a possibility of the two meanings of conditioning becoming mixed in soldiers' minds:

> *"Q. The simple point is that the same term was used on both types of course, wasn't it?*
>
> *A. Yes – "conditioning", yes.*
>
> *Q. And it meant different things on the two different courses. On the F Branch course it was designed only to describe lawful conditioning, was it not?*
>
> *A. Correct, yes.*
>
> *Q. Does it concern you that the term was being used to mean two different things on the two different types of course? Perhaps I can help. Are you concerned that the two meanings might become mixed together in soldiers' minds?*
>
> *A. I think there is a – yes, there could be a possibility of that occurring, yes."* [537]

6.361 Secondly, the level 1 CAC briefing slides did not contain any express warning that the training would address treatment which was unlawful and therefore must not be used against prisoners of any category taken by British soldiers. S059 again accepted that, with hindsight, such a warning should have been included:

> *"Q. Are you aware that the pack of slides we were just looking at does not, at least on the face of the slides, include any express warning that British soldiers are not to treat prisoners in the ways described in the slides?*
>
> *A. Yes, I am aware of that.*
>
> *Q. Should such a warning have been contained in the slides?*
>
> *A. In hindsight, I think yes."* [538]

6.362 The speaking notes for the Op Telic level 1 CAC briefing show that the only warning that was given was to the effect that practical Resistance to Interrogation training is dangerous and may only be carried out by selected officers within the JSIO.[539] That was an important message but it did not serve specifically to warn the audience that the briefing would address treatment that was unlawful and/or contrary to British policy and therefore must not be used on prisoners taken by British soldiers.

6.363 It is important to remember in this context that the briefing was obviously being given to help British service personnel understand what to do if they themselves were captured. To a significant extent, therefore, it ought to have been obvious to the audience in receipt of this briefing that it was not a briefing on how they should treat prisoners.

6.364 However, when the similarity of some of the language used in the CAC level 1 briefing with techniques that were permitted to be used by British servicemen is considered, in my opinion, S059 was right to accept that, with hindsight, more express warning ought to have been included.

[537] S059 BMI 93/190/10-23
[538] S059 BMI 93/190/24-191/6
[539] MOD011863

Level 2 and 3 (Practical) CAC Training: What Warnings Were Given?

6.365 This training was provided to a relatively limited number of service personnel who were seen as being particularly at risk of capture or interrogation. Practical CAC training required a "guard force" as well as "interrogators" to question those undergoing the training.

6.366 S059's evidence was that before all such training run by his Company, a warning was given to the students, and a separate warning to the instructors and guard force:

> *"At the outset of all practical training, before any exercises began, it was clearly stated that the exercises represented the actions of a power that does not comply with the Geneva Conventions and that UK forces should not use these methods. The students on the course were given a short group lecture on UK Resistance policy. This was given prior to the field and resistance to interrogation phases. They would have been informed during the de-briefing process of the Resistance to Interrogation exercise that the treatment they had received, during the practical exercise, reflected that of a power that did not comply with Geneva Conventions. This instruction was also explicitly stated in the brief given by the Exercise Centre Controller (an officer of Lt Cdr or above rank who was responsible for the delivery of the practical Resistance to Interrogation exercise) to the Resistance to Interrogation instructors and in a separate briefing to the guard force. The Resistance to Interrogation instructors were in any event fully aware that the methods used were not compliant with the Geneva Conventions, but this was reinforced during the Centre Controller's brief. This clear statement was also always given before any R to I exercise began."* [540]

6.367 S059 was a straightforward witness who, in giving his oral evidence, was adamant that these warnings were routinely given. In so stating, I have no difficulty in accepting that he was telling the truth as he remembered it.

6.368 Consistent with S059's evidence that warnings were given on practical CAC exercises run by the JSIO is the fact that the CAC training directive was supplemented by detailed guidelines that required such warning to be included in the briefing. Thus the CAC Tri-Service Guidelines 2000 required that the brief given to the guard force should "*Emphasise that the treatment of trainees during the exercise in no way reflects the treatment of PW's during interrogation by British or NATO forces. The exercise is designed to stimulate* [sic] *the methods of interrogation used by an enemy who does not abide by the conditions of the Geneva Conventions"*.[541] A similar requirement existed for debriefing the guard force.[542]

6.369 There was support for S059's evidence that such warnings were consistently given. Examples from former attendees of CAC training include the following:

(1) Maj S002 (now Colonel) had been involved in some CAC training. He said in evidence that warnings were given:

> *"Q. …Again, prior to Op Telic, did you have an understanding of whether such stress positions could be legitimately used?*

[540] S059 BMI08238-9, paragraph 46
[541] MOD042248
[542] MOD042250

A. I was of the understanding that they could not be used.

Q. What was the source of that understanding?

A. On some other training that I had done or been involved with in terms of CAC training, there were specific warnings that stated that the positions that we experienced or had a chance to experience should not be used under British Army law of armed conflict.

Q. I don't want to go into the details of exactly what positions may have been used on that conduct after capture training, but you are telling us, are you, that there was definitely a specific warning to that effect on the training that you were involved in?

A. Absolutely.

Q. I don't need details about how many times you may have done that training or if you were involved in giving it, but has that been your consistent experience of CAC training or have you sometimes been involved in it when such warnings weren't given?

A. No, my consistent experience is that that warning has always been there, both at the beginning and at the end" [543]

(2) Lt Col David Yates undertook CAC training in about 1993 and he remembered that explicit warning had been given:

"A. They were clearly briefed as being non-Geneva Convention compliant and therefore techniques that were not to be used on prisoners of war or detainees, for example.

Q. Was that something that was left, as it were, to be understood or was it an explicit message that was given to you, do you recall?

A. I recall it as an explicit message at the time." [544]

(3) The former Chief of Defence Intelligence, Lt Gen Andrew Ridgway, a convincing and impressive witness, was involved in two CAC training exercises which occurred after the Heath Statement, one of which he commanded. His recollection was that a warning was given in clear and forceful terms to the guard force, to the CAC students and to those interrogating as part of the course.[545]

(4) Col Christopher Vernon had personal experience of practical CAC training. He was clear that the course taught what might be done to British soldiers and not what British soldiers could do to prisoners. To the best of his recollection, he thought this was made clear in what he described as the "*preamble*" to the course.[546]

(5) Col Ewan Duncan gave evidence that warnings were given on CAC training.[547]

(6) Capt Andrew Haseldine remembered a verbal warning that the techniques used on the course were those that might be used by a non Geneva Convention country.[548]

[543] S002 BMI 82/16/1-23
[544] Yates BMI 89/148/16-22
[545] Ridgway BMI 100/71/5-72/14
[546] Vernon BMI 69/5/16-7/4
[547] Duncan BMI 76/5/16-6/13
[548] Haseldine BMI 83/22/13-23/4

(7) Maj Gen Adrian Bradshaw: "*It was absolutely clear that such techniques were not to be used by British Soldiers*".[549] The evidence of Air Chief Marshal Brian Burridge was to similar effect.[550]

6.370 However, the evidence was not all one way on this aspect.[551] For example:

(1) Capt Oliver King underwent practical CAC training and he remembered that it was implicit rather than made explicit that the techniques on the course should not be used on British prisoners, although he personally understood what the correct position was;[552]

(2) Maj Mark Robinson underwent a combat survival course with a resistance to interrogation element in which he was subjected to some of the techniques. He had no recollection of specific warnings being given although I bear in mind that the exercise was some considerable time ago.[553] It should also be noted that Robinson understood that prisoners were to be treated humanely and he did not consider stress positions to be humane.[554] He understood that the course was teaching what others might do to him, but not, at least as he remembered it, through any explicit warning have been given;[555]

(3) Maj S015 was another witness who could not remember a specific warning being given on the CAC course, but he said he did not really expect such a warning to be given because he considered it clear that it was training in what others might do to British service personnel if captured. S015 understood the techniques used on the CAC course to be prohibited for use by British personnel.[556] He practised his interrogation skills on a CAC exercise as part of the interrogation course. He did not remember a specific warning being given to the interrogators attending that CAC training in relation to the five techniques which might be used on the CAC exercise.[557]

(4) Col S062, the then J2X at PJHQ, had received practical CAC training. He could not remember a specific warning being given that the techniques used in Resistance to Interrogation training should not be used on British prisoners, although he did not mean that it was not given, rather that he could not remember one been given.[558]

(5) Col Michael Hill, the former Assistant Director of Intelligence for Human Intelligence (ADI Humint) did not remember any warning being given that techniques applied during CAC courses would be unlawful for British soldiers to use on their own prisoners.[559] In his case, however, I note that his involvement

[549] Bradshaw BMI 96/10/15-16
[550] Burridge BMI 98/6/3-6
[551] I include here witnesses in respect of whom it is clear they were remembering level 2 or level 3 *practical* conduct after capture training. Some other witnesses gave evidence of not receiving specific warnings prior to or as part of conduct after capture training, but where their evidence tended to suggest that it was theoretical level 1, or Pre-deployment level 1, CAC training that they were receiving. See, for example: Englefield BMI 65/11/16-12/18; Royce BMI 57/20/2-21/7; Vogel BMI 16/91/8-94/18.
[552] Capt Oliver King BMI 78/69/5-71/2
[553] Robinson BMI 80/9/25-11/16
[554] Robinson BMI 80/112/18-20
[555] Robinson BMI 80/11/1-11/16
[556] S015 BMI 84/96/19-99/3
[557] S015 BMI 84/146/8-22
[558] S062 BMI 101/198/13-21
[559] Hill BMI 102/80/1-6

in CAC was a very long time ago, shortly after he completed the interrogation course in 1982.

6.371 I consider below the position of student interrogators and tactical questioners attending the practical CAC training to practice their questioning skills. As regards warnings, however, there were some similar variations in recollection between the F branch, JSIO instructors who gave evidence to the Inquiry.

6.372 Thus, for example, S004 accepted that an explicit warning was not given to the students by the F branch instructors concerning the non Geneva-compliant prisoner handling techniques that they might see on the CAC course. Nor did he believe that such an explicit warning was given by those running the course. He thought, nevertheless, that the role of interrogators on the CAC exercises was clear.[560]

6.373 Other instructors gave different evidence. S048 for example remembered that a warning was given on the interrogation course before students attended the CAC exercise.[561] S049 remembered warning all students at the outset to put aside anything that they had learnt on CAC exercises.[562] S011 suggested that it was made "*absolutely clear*" to students that the conditioning practices they saw being used on the course were impermissible for use by UK service personnel.[563] Bowman remembered going to do a CAC exercise after the PH&TQ course first week as a student and remembered a warning being given.[564]

6.374 S014 remembered the CAC exercise containing a warning statement or declaration. But his recollection, though not certain, was that it was given to the guard force only and not to the interrogators. He said the latter were already aware that the techniques should not be employed.[565]

6.375 On balance, I think it likely that warnings were consistently given on the practical resistance to interrogation exercises and I am satisfied that this was so after December 2001 while S059 was the branch Commanding Officer. In my view the majority of the evidence pointed in that direction and of those that did not remember a specific warning, some may simply have forgotten while others appear to have been recollecting level 1 CAC training and not practical level 2 or 3 CAC training. In my opinion the warning would have been better had it specifically pointed out that there was a prohibition on the use of the five techniques that might be used on the course. However, I do not consider that to be a matter for which those historically involved in CAC training should be criticised.

The Use of Student Interrogators and Tactical Questioners in Practical CAC Training

6.376 As will be apparent from the evidence to which I have already referred in this Chapter of the Report, before Baha Mousa's death there was undoubtedly a practice by which

[560] S004 BMI 87/52/17-55/19
[561] S048 BMI 87/223/5-224/4; S048 BMI 87/229/19-231/10
[562] S049 BMI 89/51/5-22
[563] S011 BMI06756-7, paragraph 51
[564] Bowman BMI 79/127/14-128/14
[565] S014 BMI 67/19/11-20/3

those taking part, or who had just taken part, in the interrogation course would join CAC exercises as the "interrogators" questioning the students undergoing the training.

6.377 The evidence varied as to whether it was only interrogation students or also PH&TQ course students who were invited to take part as questioners in CAC exercises. S059's evidence was that when he qualified in 1996, students from the PH&TQ course were being utilised in practical CAC training. He thought that this practice reduced and eventually ceased altogether some time after 2000 although he was not sure when.[566] Several of the F branch instructors believed it was only interrogation students who took part in the practical CAC training. S004 was only aware of interrogators being permitted to do so.[567] Graley remembered that he had stopped the entire practice when he was Officer Commanding.[568] But Bowman is an example of a witness who, although on the interrogation course, remembered there being a live exercise at the end of the PH&TQ part of the course, that took place at RAF St Mawgan, Cornwall.[569] Gallacher who only did the PH&TQ course, not the interrogation course, remembered a CAC element of the training.[570]

6.378 Whether it was only interrogation students or tactical questioners as well who conducted questioning within the practical CAC training, the question arises as to whether or not this was appropriate. The practical training obviously involved some of the prohibited five techniques being used. Interrogators on the CAC course would not have been involved in that aspect of the prisoner handling but would have conducted the "interrogations" which followed it. On the CAC courses, the PH&TQ/interrogation students ought to have been questioning in a Geneva Convention compliant way (practising what they had learnt on the F branch courses). But this would follow treatment to the CAC students which would be non-Geneva Convention compliant and unlawful if used by British service personnel on prisoners detained by the British in operations.

6.379 In this Inquiry, the MoD has accepted, rightly in my view, that to have recently trained interrogators taking part in CAC exercises in this way was "*an imprudent practice which gave rise to a risk of confusion as to what was acceptable*". The MoD argue nevertheless that:

> *"…the significance of this issue is not as great as that which attaches to the impermissible conduct which was expressly taught or permitted on the PHTQ course itself. First, there is some evidence of witnesses questioning on the course without being aware of the conditioning which was being applied to course students before they were brought into the questioning room. Second, very many witnesses who were involved in CAC training and either saw or were subjected to illegal conditioning techniques recognised them as such either because there was a warning or as a matter of common sense"* [571]

6.380 I am sure there was no malign motive in using interrogation students on the CAC course. In part the thinking must have been that it would give the interrogation students a chance to practice what they had learnt and if they attended later CAC courses, it

[566] S059 BMI 93/191/13-192/15
[567] S004 BMI05067, paragraph 77
[568] Graley BMI 95/112/20-114/12
[569] Bowman BMI 79/120/14-121/2
[570] Gallacher BMI 61/16/8-13
[571] SUB001074, paragraph 9.8

would give them a chance to practice further. Another factor appears to have been the number of CAC courses that had to be run and the pressure on CAC instructors.[572]

6.381 Nevertheless, introducing interrogation and particularly PH&TQ students, into CAC courses did run a risk of contamination. And in my opinion that risk was not a fanciful one. As I have explained in the previous Chapter, Graley was one witness who appeared to have confused his historic training in CAC with his historic PH&TQ training, even though he was to become the Officer Commanding F branch. Gallacher may have picked up his wrongful understanding about the use of hoods and stress positions before questioning, from a CAC exercise he attended as part of his tactical questioning training (see paragraphs 6.297 to 6.302).

6.382 One of the lessons to be learnt in this area is that it only needs one or two tactical questioning or interrogation students to leave the course with an incorrect understanding of unlawful techniques for such techniques to be introduced into an operational theatre. Thus, while I have no doubt on the evidence I have heard that the clear majority of interrogation/PH&TQ students who attended a CAC course, to question the students by way of mock interrogation/tactical questioning, would have understood that the techniques used on CAC courses should not be replicated, the risk of a misunderstanding by a minority was too great a risk in this highly sensitive area.

6.383 I find that, while there was no malign motive for the practice, the MoD should not have maintained a policy which permitted newly qualified interrogators and tactical questioners to question on practical CAC exercises. The MoD has now rightly stopped this practice and conceded that it was imprudent.

6.384 There is one further aspect of detail in the evidence in this area with which I must deal. The report from Brig Brian Aitken suggested that in 2003, attendance on CAC training qualified an individual to conduct tactical questioning and interrogation.[573] It may be that this was a misunderstanding which arose from a 4 CAC Company handout.[574] But the overwhelming preponderance of evidence was that this was not the position and that only those who had completed the F branch interrogation course could conduct operational interrogation. It was not an area, however, where uncertainty should have been tolerated. I am satisfied however that this played no part in the treatment of Baha Mousa or the other Detainees.

Unauthorised CAC/Resistance to Interrogation Training

6.385 Thus far I have considered the CAC training which was fully authorised. It is apparent however that from time to time units and sub-units carried out their own CAC/SERE training which had inappropriately included resistance to interrogation elements in the sense that soldiers were treated in ways that were meant to simulate what an enemy might do to them.

[572] See the evidence of S046 BMI 88/160/25-161/24
[573] MOD041549, paragraph 22
[574] S011 BMI06757, paragraph 53

6.386 S059 gave evidence that he became aware of such training occurring and that a letter from the Chief of Staff, Headquarters Land Command on 30 November 2001 was probably a response to this:

> *"From a visit from the RMP I learned that there were units which had undertaken their own SERE training, and in particular a form of Resistance training. This was in contravention of the direction that only JSIO qualified instructors could deliver practical resistance training. I learned that other units had undertaken practical exercises whereby students had been required to adopt stress positions and that some injuries to individuals had been sustained. The letter from Major General Viggers reinforces that responsibility for R to I training lies with JSIO (MOD038595) and was most likely issued as a response to these incidents."* [575]

6.387 Whereas I believe that warnings were given in authorised CAC training, it is very doubtful whether such informal/unauthorised CAC exercises at unit level or below would have contained appropriate warnings to limit the risk of contaminating processes used by UK service personnel handling prisoners on operations. The evidence to the Inquiry demonstrated that there are considerable grounds for concern in relation to such informal CAC teaching, by which I refer to teaching other than by those specifically qualified to teach practical resistance to interrogation.

6.388 The MoD's disclosure in relation to Module 1 indicated a number of exercises that had come to its attention where inappropriate practical CAC training had taken place. In addition to the memorandum from Maj Gen Viggers to which S059 referred in his evidence,[576] a warning reminder was issued by Headquarters 1st Reconnaissance Brigade on 27 April 1998 after a number of reports of units conducting unsupervised practical resistance to interrogation exercises.[577] The reminder issued on that occasion also had to warn against the "...*belief that personnel who have attended certain courses or who have undergone practical training themselves are qualified and authorised to conduct this training. This is* ***not*** *the case…*" [emphasis added].[578]

6.389 Some of the Inquiry's witnesses gave evidence of training exercises which involved some of the five techniques but either were not JSIO led or in which there are grounds to question whether JSIO qualified staff were supervising the training. For example, Lt Michael Crosbie underwent some kind of CAC training with his TA unit during which he said he was hooded with a sandbag and made to kneel with arms behind his neck. No relevant warnings appear to have been given to him.[579] Maj Anthony Fraser took part in an escape and evasion exercise at Sandhurst in which he was hooded and put into stress positions. He thought the trainers were external to Sandhurst but he could remember no discussion about the techniques used, nor any specific warning that they would be unlawful. However, Fraser said he did not understand that they could be used by the infantry under normal circumstances.[580]

6.390 Lt Michael Peel gave evidence of an exercise as an Officer Cadet in the Officer Training Corps (OTC). He said that the training was by "… *one of the instructors who was qualified in such matters*" and that he was hooded, plasticuffed and put into stress positions. Nothing was said about whether stress positions or hooding

[575] S059 BMI08233, paragraph 27
[576] 30 November 2001: MOD038595-6
[577] MOD038337-39
[578] MOD038339
[579] Crosbie BMI 19/162/15-164/14
[580] Fraser BMI 63/44/18-46/5

could be used by British soldiers when they took prisoners and no relevant warning was given, although Peel understood that despite the lack of specific warning, they were not permitted to use the techniques because they were "*not trained*" in them.[581] To give such training to members of the OTC appeared to have been contrary to the policy that only those susceptible to capture and interrogation service personnel should receive practical CAC/Resistance to Interrogation training. I have significant doubts as to whether the exercise described by Peel could have been authorised and led by trained JSIO instructors.

6.391 Brig Robert Purdy, the Army inspector, raised relevant concerns as recently as 15 July 2010 in his report on Detainee Handling. Having concluded that by 2010 sufficient safeguards existed to prevent "contamination" from SERE training, he stated:

> *"However, the Review is less convinced that adequate safeguards are in place to prevent inappropriate lessons being learned from informal, unit-organised, 'escape and evasion' training. There is no formal guidance from the Director Training (Army) to Field Army units on whether they may or may not conduct such activity, the view being that at present only directed activity should be undertaken, and unit-based 'escape and evasion' or other SERE is not so directed"* [582]

6.392 Purdy recommended that Headquarters Land Forces should direct that if any "escape and evasion" training is undertaken other than under the auspices of the authorised Defence SERE training centre, this activity may not include any form of CAC or Resistance to Interrogation training.[583]

Conclusions in Relation to CAC Training

6.393 The conclusions which I have reached in respect of CAC training are as follows. Level 1 training in CAC was given annually and by way of pre-deployment training to most service personnel. It took the form of a theoretical classroom briefing. It contained a warning that practical CAC training was dangerous and must only be carried out by trained JSIO staff. It did not expressly or explicitly warn that the training covered elements of treatment that would be unlawful and/or contrary to UK policy if used on prisoners taken by UK service personnel. This point would have been obvious to many. However, when the similarity of some of the language used in the CAC level 1 briefings with techniques that were permitted to be used by British service personnel is considered, in my opinion more express warnings ought to have been included. I accept that this is another point which it is easier to have identified in hindsight.

6.394 Level 2 and Level 3 CAC training included practical training in Resistance to Interrogation which was given only to those who were interrogation personnel who might be captured. Interrogation students certainly attended such training to practise their skills and some PH&TQ course students probably did as well.

6.395 On balance, I am satisfied that such training consistently contained a warning by way of a briefing to all those involved in the training that procedures would be used on the course that would simulate what a non Geneva Convention compliant enemy might do. The clear majority of both students and interrogation/PH&TQ students who

[581] Peel BMI 48/199/4-200/12
[582] MIV005250, paragraph 49(b)
[583] MIV005250-1, paragraph 49(b)-50

attended CAC course for the purpose of questioning other students by way of mock interrogation or tactical questioning would have understood that the techniques used on CAC courses should not be replicated on prisoners taken by UK Forces. However, the risk of a minority misunderstanding the position, of whom Graley and possibly Gallacher are examples, is too great a risk to run in this highly sensitive area. The MoD were therefore right to concede that it was imprudent to allow interrogation/ PH&TQ course students to attend such training. Moreover it would have been better had the warnings in practical CAC training spelt out a reminder on the prohibition on the five techniques. The latter point has now been recognised by the MoD (see Part XVI, Chapter 6 of this Report).

6.396 Attendance on practical CAC courses did not qualify the students to conduct tactical questioning or interrogation and I think this was a misunderstanding in Aitken's report. This aspect played no causative part in the abuse of Baha Mousa and the other Detainees.

6.397 Whereas attempts were clearly made in authorised practical CAC training to warn that it involved non Geneva Convention compliant techniques, such control measures are likely to have been absent in unauthorised, informal SERE training when it veered away from mere escape and evasion training into CAC or Resistance to Interrogation training. There is anecdotal evidence of a repeated problem occurring with such training. Such unauthorised training carried a clear risk of teaching inappropriate prisoner handling concepts into the mindset of UK Forces. It should cease.

Chapter 6: Medical Training

6.398 In 2003 there was a gap in MoD policy and training on the medical care of detainees. This gap meant that Regimental Medical Officers (RMOs) received no guidance on two important matters, namely: their ethical duties to avoid involvement in interrogation; and practical procedures for the medical treatment of detainees.

6.399 The most important witness to address these matters was Lt Gen Louis Lillywhite. Lillywhite was the Director General of the Army Medical Services between June 2003 and July 2005. This role involved, amongst other things, responsibility for identifying any gaps in medical policy. He later became the Surgeon General, a tri-service role involving responsibility for setting clinical policy and standards for the Armed Forces.

6.400 Lillywhite explained in his Inquiry witness statement that medical officers are strictly prohibited from being involved in or being present whilst interrogation is taking place.[584] Medical Officers should not say whether a person is fit for questioning, or even whether a person is fit for detention. Ethically, their role is simply to provide any medical care needed by a detainee and to act in the patient's best medical interests.[585] In the Inquiry hearings for Module 4, there was some difference of opinion between two expert witnesses as to the proper ambit of this prohibition.[586] Lillywhite's strict interpretation of the prohibition may err on the side of caution, but it reflects MoD policy, and I accept that it is appropriate.

6.401 Lillywhite recollected that in the 1970s a detailed policy was in place as to the medical care of detainees in Northern Ireland. The policy was taught to newly commissioned medical officers. It covered both practical matters such as the requirement that there be a medical examination of a detainee when he was handed from one unit to another, and the ethical prohibition against the involvement of medical officers in any form of interrogation.[587]

6.402 Unfortunately this policy was at some point lost or forgotten. Between the Army's operations in Northern Ireland in the 1980s and Op Telic, the Army did not deal with significant numbers of civilian detainees. By 2003, there was no MoD or Armed Forces policy dealing specifically with the provision of medical care for detainees. Similarly, medical officers were no longer taught specifically about their duties in relation to detainees. They did receive some generic training on their duties under the Geneva Conventions towards prisoners of war in the context of a conventional conflict. But they were not taught about the prohibition against involvement in interrogation, and they were not taught about the practical requirements for dealing with detainees, such as the need for detainees to be medically examined upon admission to and departure from a detention facility.[588]

[584] Lillywhite BMI05712, paragraph 11

[585] Lillywhite BMI05720-1, paragraphs 36-40; According to Lillywhite, there is one minor exception to this, namely where a detainee is an inpatient in a medical unit, normally a hospital, in which case it may be appropriate for a clinician to advise as to whether questioning would adversely affect the patient's health: see Lillywhite BMI05721-2, paragraph 39; and the Surgeon General's Policy Letter 01/05 at MOD004961.

[586] Prof Vivian Nathanson (an expert in medical ethics) at BMI 110/140/12-142/25; cf Dr Jason Payne-James (an expert as to forensic medical examiners, i.e. medics who attend to those in police custody) at BMI 114/24/22-30/1.

[587] Lillywhite BMI05714, paragraphs 17-18

[588] Lillywhite BMI05714-7, paragraphs 19-28

6.403 Lillywhite first became aware of this gap in policy in about December 2004. He took prompt action to rectify the problem. The outcome was the publication in January 2005 of a policy document entitled "*Surgeon General's Policy Letter 01/05*".[589] The Letter set out authoritatively UK policy on medical support for detainees held by UK Forces on operations. It required, amongst other things, that each detainee be medically examined as soon as reasonably practicable after admission to a detention facility; that he be examined again before transfer to another facility and upon release; that written records be kept of such examinations, in accordance with normal medical standards; that the normal rules of consent to medical care should apply; that medical personnel inspect detention facilities to ensure that they are hygienic and healthy; and that medics avoid involvement in interrogation. Its contents were obviously sensible and appropriate. In particular, requiring examination at the start and finish of detention would create an audit trail which would detect any injuries received during custody.

6.404 The Surgeon General's Policy Letter has been updated subsequently.[590] Its contents are now taught to all medical officers deploying on operations.

6.405 In my judgment, the Surgeon General's policy letter demonstrates the serious gap in policy which existed in September 2003: there should have been an equivalent policy in place for Op Telic. During Op Telic 2, no in-theatre instructions were issued in order to fill this gap. The Commander Medical for 3 (UK) Division during Op Telic 2, Brig Carmichael (then a Colonel) accepted that this was the case.[591] I do not think it would be fair to attach personal blame to him for failing to fill the gap. The gap in policy was of long standing, and Carmichael was no doubt under great pressure of work during his tour in Iraq, with numerous other matters requiring his attention.

6.406 The outcome of these failings was that RMOs deployed on Op Telic 2, including Capt Derek Keilloh, were provided with no real guidance as to how to deal with civilian detainees. As I have stated in Part II of the Report, I consider that this is mitigation for some of Keilloh's conduct, but it certainly does not excuse him entirely.

[589] MOD004959-70
[590] See SGOPL 10/08 at BMI05745-64; SGOPL 09/09 at MIV002683-702; Lillywhite BMI 95/149/4-150/12
[591] Carmichael BMI 86/157/21-158/16; Carmichael BMI 86/190/9-191/12

Chapter 7: Pre-Deployment Training

Introduction

6.407 As well as annual and specialist training, UK Forces quite naturally undertake pre-deployment training (PDT) tailored to the theatre of operations to which they are deployed. In enduring operations such as Op Telic, in Iraq, and Op Herrick, in Afghanistan, the PDT naturally becomes honed and developed as lessons are learnt from theatre and passed back to the trainers. To some extent, therefore, it is to be expected that PDT for the first phase of an operation will be truncated and more basic than in the later phases. Indeed, depending upon the extent of notice for the first phase of an operation, PDT may be very curtailed.

6.408 In the Army, some PDT is carried out by and within infantry units. However, a package of training is also provided by the Operational Training Advisory Group (OPTAG). In recent years, OPTAG have provided packages of PDT for a number of theatres: Northern Ireland, Afghanistan, Sierre Leone, the Balkans, as well as Iraq. It was also responsible for training personnel deploying to undertake duties with the United Nations as monitoring officers. As well as training in core rural and urban skills, OPTAG training often included specialist training by subject matter experts, who could be either permanent OPTAG staff or brought in from other specialist organisations such as the JSIO.

6.409 As regards operations in Iraq, I heard evidence that there was a significant difference between the training for Op Telic 1 and Op Telic 2.

6.410 For Op Telic 1, OPTAG only produced CD-based training materials. The actual PDT was delivered by the units themselves, including the use of the OPTAG training materials.

6.411 By the time of Op Telic 2, OPTAG was able to provide a package of live training, albeit a relatively short one. This comprised some training given to all ranks, and other training provided on what was known as the “Train the Trainer” approach. This involved selected officers or NCOs from a unit or sub-unit receiving specialist training from OPTAG instructors (or instructors drafted in by OPTAG), and the unit officers or NCOs would then be tasked with cascading that training within their own units.

6.412 In both Op Telic 1 and Op Telic 2, units designed and implemented their own training packages in addition to what was provided by OPTAG. A significant element of this training comprised checking that soldiers were up-to-date with compulsory annual training subjects and providing the requisite annual training if they were not.

6.413 I turn to look at the training for each of Op Telic 1 and Op Telic 2 in more detail.

PDT for Op Telic 1

The Op Telic 1 training package from OPTAG

6.414 I have already referred to the self-evident fact that the time for PDT for the first phase of a military operation may be curtailed. Whether enough time was allowed to train and prepare the Armed Forces for Op Telic 1 is a question beyond the terms of reference of this Inquiry. Nevertheless, it is right that I should record at the outset that there were significant pressures on PDT for Op Telic 1. Firstly, planning for Op Telic 1 did not start properly until November 2002.[592] Secondly, the military were heavily engaged in covering fire-fighting duties during the firemen's strike, involving force commitment from October 2002 into April 2003.

6.415 For Op Telic 1, PJHQ stipulated on 10 January 2003 a minimum mandatory PDT content for forces who might deploy to Iraq. This included such matters as a theatre background brief, an intelligence brief, and basic language instruction. More immediately of relevance to the Inquiry, it also included both a CAC Level 1 brief and a Prisoner of War Handling Brief.[593]

6.416 The training package put together by OPTAG in response to this requirement comprised a CD containing a series of PowerPoint presentations accompanied by scripts and other supporting documents. The presentations were designed to be given by training staff with individual units or other nominated individuals without further research being necessary by the nominated presenter.[594]

6.417 Despite the fact that this CD package was provided to all units deploying on Op Telic 1, and therefore would have been delivered to thousands of soldiers, surprisingly, the MoD was unable to retrieve a copy before the close of the Module 3 evidence, after which a copy of the material was found and provided to the Inquiry.

6.418 Within this CD package, the CAC Level 1 briefing was that which I have addressed in Chapter 5. I do not repeat the observations I have made about this CAC briefing.

6.419 For Op Telic 1, there was also the Prisoner of War Handling Brief. This comprised a presentation of approximately 30 minutes. The Prisoner of War Handling Brief had aimed to provide:

> *"…a confirmatory brief for the PW principles that should have been covered in ITD6. The brief will give you the information you need in order to deal correctly with any PW you may capture, from the moment of that capture through to the processing of the PW at your Unit or Sub-Unit HQ"* [595]

6.420 The presentation included a section on grave breaches of the Geneva Conventions including wilful killing, torture or inhumane treatment.[596]

[592] Marriott BMI06128, paragraph 9
[593] MOD016963
[594] MOD039031
[595] MOD055557, paragraph 1
[596] MOD055560

6.421 One slide gave bullet-point guidance on "Action on Capture".[597] The speaking notes for the slide gave guidance on disarming and searching. It advised under the heading "Segregate" that:

> *"As soon as possible after capture Officers and Senior NCOs are to be segregated from their men to prevent them organising escapes, sabotage or generally giving encouragement and moral support to their men.*
>
> *The further segregation of PW into three groups [of] Officers, NCOs and Other Ranks is to be carried out as soon as practical with further sub-division of males, females and juveniles following after that"* [598]

6.422 Under "Escort", it was stressed that the escort must understand that his role is both to protect the prisoner of war as well as to prevent his escape.[599]

6.423 Directly relevant to the Inquiry's issues are the speaking notes that covered the subjects of "Action at Unit or Sub-Unit HQ" and "Minimum Information and Tactical Questioning". I set out these speaking notes in full below:[600]

SLIDE 10

ACTION AT UNIT OR SUB-UNIT HQ

Direction from presenter to audience: "You should now look at the third box on your copy of the PW Handling Aide Memoire." The main purpose of this part of the brief is to give you an overview of what happens to a PW once he has been passed back to your Unit or Sub-Unit HQ.

1. **Tag or label PW:**

   The PW will be tagged or labelled. The completion of the Capture Tag will be dealt with through your G1 staff at your Unit or Sub-Unit HQ. The Capture Tag has a specific format and there are set PW recording procedures which must be followed.

2. **Remove and tag or label weapons:**

   As mentioned above, in an ideal world the PW weapons will have been removed from the PW in the initial search and evacuated with him to the Unit or Sub-Unit HQ. At the Unit or Sub-Unit HQ they will be tagged or labelled. The same process should happen with any equipment or documentation found on the PW in the initial search.

3. **Do not remove:**

   The items which a PW will be allowed to retain following a search have been covered already in the presentation.

4. **Safe Custody:**

   The fundamental principle underlying the treatment of PW is that they are war victims, not criminals, and are entitled to humane and decent treatment throughout their captivity. Their status as PW begins at the moment of capture when their safety and care becomes the responsibility of the capturing state. This heading therefore spans the period from the moment of capture onwards, not just the actions at the unit HQ.

   PW must be treated humanely and must be:

   - Sheltered both from enemy fire and from the elements
   - Provided with food and water and protective clothing
   - Moved from the combat zone as soon as possible.

   It is a provision of Geneva Convention III that as part of the humane treatment of PW they should be protected against "acts of violence and intimidation and

[597] MOD055575
[598] MOD055566-7
[599] MOD055567
[600] MOD055568-71

against insults and public curiosity". This last point "public curiosity" means that wherever possible the media should not have access to PW. Any media access to PW that may be allowed will be dealt with once the PW have passed further up the PW handling chain when a media plan will be in place to ensure that the correct messages are put across and the privacy of PW maintained.

5. **Do not fraternise**

6. **Tactical Questioning**

   This is dealt with in the next slide.

7. **Escort PW to Collecting Point**

   Escorts have already been mentioned.

SLIDE 11

MINIMUM INFORMATION AND TACTICAL QUESTIONING

Direction from presenter to audience: "You should now look at the fourth and final box on your copy of the PW Handling Aide Memoire."

1. **Do NOT use force to gain information from a PW**

2. **When questioned a PW is required only to give Name-Rank-Number-Date of Birth**

   This box re-iterates what you should already know from ITD6 and what has been covered by this brief, namely that force must **never** be used to obtain information from a PW and, when questioned, a PW is required only to give the big four: Name, Rank, Number and Date of Birth.

3. **Carry out Tactical Questioning**

   So what is tactical questioning and how does it fit with the principle that a PW is only required to give Name, Rank, Number and Date of Birth?

   The object of tactical questioning is to obtain information, the value of which would deteriorate or be lost altogether if the questioning was delayed until a trained interrogator could be made available.

   Nevertheless, in the course of questioning, tactical questioners are still obliged to adhere to the following provisions:

   - A PW, when questioned, remains bound only to give his name, rank, number and date of birth.
   - A PW does have to produce his identity document when asked for it but under no circumstances may it be taken away from him.
   - No physical or mental pressure, nor any other form of coercion may be exerted on a PW in order to induce him to answer questions. A PW may not be threatened, insulted or suffer any disadvantage as the result of refusing to answer questions.
   - A PW who is incapable, for physical or mental reasons of stating his identity is to be handed over to the unit medical staff for evacuation through the casualty evacuation chain.
   - Questioning of PW is to be carried out in a language, which they can understand.
   - For each PW, the tactical questioners is obliged to produce a Tactical Questioning Report

6.424 It will be noted from this that the principle that prisoners of war must be treated humanely and decently and protected from violence, was specifically addressed in the OPTAG CD. The principles, derived from Article 17 of the Third Geneva Convention, that neither force nor any other physical or mental pressure or other coercion may be exerted on prisoners of war to induce them to answer questions were also covered.

6.425 On the other hand, despite addressing segregation, tactical questioning and actions on capture at unit and sub-unit level, the OPTAG CD training material on prisoner handling was completely silent on whether, and if so in what circumstances, and for

what purposes and by what means, prisoners might be deprived of their sight. The prohibition on the five techniques was not referred to. The speaking notes directed the audience to JWP 1-10 if they needed more detail on the subject of prisoners of war. However, as addressed in Part V of this Report, while JWP 1-10 was a detailed publication on prisoners of war, it too was completely silent on the subject of sight deprivation.

6.426 The "Aide Memoire" on prisoner of war handling which was part of the CD package and referred to in the speaking notes[601] was the version taken from JWP 1-10:[602]

JWP 1-10

PRISONERS OF WAR HANDLING
AIDE MEMOIRE

COMBAT TROOPS	
WHO IS A PRISONER OF WAR?	• **Enemy personnel** in or out of uniform who carry arms openly. • **Civilians** who accompany the Armed Forces of the enemy e.g. war correspondents, supply contractors, civilian members of aircraft crews. • **Crews** of merchant ships and civil aircraft belonging to the enemy. **IF IN DOUBT - TREAT AS PW**
ACTION ON CAPTURE	• **Disarm - Search - Administer First Aid** (if required) • **Segregate** Officers, NCOs, Other Ranks, Females from Males, and Juveniles (under 15) from both. • **Escort** to Unit or Sub-Unit HQ as directed.

ACTION AT UNIT OR SUB-UNIT HQ	• **Tag or Label PW.**
	• **Remove and Tag or Label:**
	  • Weapons.
	  • Documents or equipment captured with the PW.
	• **Do not Remove:**
	  • Clothing.
	  • Protective Equipment.
	  • Personal effects.
	  • ID discs or documents.
	  • Any medication.
	  • Medical or religious accoutrements from Retained Personnel
	• **Safe Custody**: Treat humanely.
	  • Shelter PW from enemy fire and the elements.
	  • Provide food, water, and protective clothing.
	  • Move PW out of the combat zone as soon as possible.
	• **Do not fraternise with PW.**
	• **Carry out Tactical Questioning.**
	• **Escort PW to Collecting Point.**

MINIMUM INFORMATION	**Do NOT use force** to gain information from a PW. When questioned, a PW is required only to give: • Name – Rank – Number – Date of Birth

6.427 Having carefully considered what was in the Op Telic 1 OPTAG CD package on prisoner of war handling, I do not consider that it would be fair to criticise those responsible for designing the Op Telic 1 training package for the omission of any guidance on sight deprivation or the prohibition on the five techniques. Pre-deployment training ought obviously to be drawing upon the most relevant teaching and doctrine that is currently available. As I have discussed in earlier Parts of this Report, by late 2002, early 2003, the prohibition on the five techniques had largely faded from written doctrine and there was inadequate written guidance on tactical questioning and interrogation. Since JWP 1-10 was silent on sight deprivation and omitted any reference to the prohibition on the five techniques, in my opinion OPTAG training staff can hardly be blamed for not spotting its absence in the JWP and not including it in what was, of necessity, much more concise pre-deployment training materials.

[601] MOD055562, paragraph 3
[602] MOD055573

6.428 In my view, it would have been reasonable and more appropriate for the Op Telic 1 presentation to address sight deprivation specifically and to contain a reminder about the prohibition on the use of the five techniques. The fault for that omission lies in the MoD's historic failures both to follow through the prohibition on the five techniques in doctrine in the years after 1972, and to have a sufficiently clear policy and training approach to sight deprivation.

Op Telic 1 Training by Divisional Legal Staff and by the Military Provost Staff

6.429 While the OPTAG package was limited by the pressures of time, OPTAG training was not the only training that was provided.

6.430 At Divisional level, Lt Col Nicholas Mercer, the Legal Adviser to 1 (UK) Division and his legal branch, provided in-theatre training on LOAC to the combat element of the force. Mercer explained this training in oral evidence as follows:

> *"Q. In-theatre training – what in-theatre training did you give?*
>
> *A. Well it would tend – it would be the law of armed conflict – those law of armed conflict briefs to the combat troops prior to the war commencing in March 2003.*
>
> *Q. That was training which you and your department, if I can call it that, gave?*
>
> *A. That's right. I wrote the script for that. I sent it up to the NCC for clearance. I handed that – it was not for them to read out like a homily, but it was there to give them a guidance on the subject to be covered, and I delivered some of them myself.*
>
> *Q. And the subjects to be covered would have included, as I think you say in your statement, the need to treat civilian prisoners with humanity and dignity, as you put it.*
>
> *A. That's right. Those words were included.*
>
> *Q. Was any training given by you or your subordinates in this context, in theatre, in relation to the use of hooding, stress positions, matters of that kind?*
>
> *A. No, none whatsoever. We gave training in relation to prisoner-handling, not prisoner interrogation.*
>
> *Q. So you gave no instruction again either way – if I can put it that way – as to whether it was appropriate or not to use hoods, for example?*
>
> *A. No. That's correct.*
>
> *Q. So we are clear about it, you gave no instruction as to deprivation of sight, whether by hoods, blindfolds or anything else?*
>
> *A. No, that's correct.*
>
> *Q. Did you not regard, for example, deprivation of sight as being something that might be necessary in handling prisoners outside the interrogation area?*
>
> *A. I can't recall whether we gave such instruction, but my understanding was that we just used the generic phrase "humanity and dignity" as a sort of catch-all phrase, "treat them with decency". Blindfolding was on – JSP 383, which I have seen subsequently, refers to blindfolding as being part of the interrogation process and I have no recollection at all of giving any instruction on blindfolding. Only plasticuffs were covered."* [603]

[603] Mercer BMI 68/8/20-10/11

6.431 Aide memoires were distributed at the same time, apparently in the form of the JSP 381 Aide Memoire.[604]

6.432 Maj David Frend provided an additional explanation of the rationale behind this training and a more detailed description of the content of the LOAC briefings. He suggested that it became clear at senior levels that there was a need to reinforce the LOAC training. This was because there was a concern that applying previous understandings based on the rules of engagement in peacekeeping operations could be unnecessarily dangerous to troops engaged in what was full international conflict where LOAC applied. Frend referred, for example, to the focus on self defence and the use of minimum force under the rules of engagement in a peacekeeping role, as opposed to the fact that the pre-emptive targeting of positively identified enemy combatants was permissible during an armed conflict.[605]

6.433 Frend explained that a PowerPoint presentation on LOAC would be delivered, specifying the relevant principles and illustrating them with examples.[606] In line with the intent expressed above, the presentation was designed to remind soldiers that armed conflict rather than peacekeeping principles applied. However, Frend also stated that the briefing reiterated that once the ground offensive was completed, resulting in a state of occupation, further guidance on the rules of engagement applicable during the occupation would then be disseminated. Prisoner handling was not expressly covered in the briefing further than a general reminder that prisoners and civilians were to be treated humanely.[607]

6.434 A different part of the in-theatre training was provided by the MPS whose briefings included the more hands-on aspects of prisoner handling. The MPS team was only twelve strong and headed by Capt Wilson. He told the Inquiry, and I accept, that he had been involved in a 2002 exercise, LOG VIPER, which, unusually, had involved testing the full prisoner of war chain. During that exercise he saw the guard force using hoods on the prisoners. The MPS NCO ordered that the hoods be removed and Capt Wilson spoke to the Officer Commanding the guard force. He raised the issue through the chain of command.[608] The Inquiry sought to establish what if anything became of the concerns raised by Capt Wilson. No relevant records of action taken or indeed of the concerns being raised could be found, and records relating to the exercise have not been retained. I stress however that I have no reason to doubt Capt Wilson's evidence that he raised concerns. From this exercise, Capt Wilson learnt that hooding had been taught at the infantry school, Brecon, and understood that some guard forces were using sandbags to deprive prisoners of their sight as a matter of routine.

6.435 The Op Telic 1 in-theatre training delivered by the MPS comprised a 40 minute basic prisoner handling session covering initial capture, definitions of prisoners of war, internees and criminal detainees, search and segregation of prisoners, the identification of risk and the identification of high-value detainees as well as the Geneva Conventions and the principle of humane treatment of prisoners. This presentation was given many times over a two week period in Kuwait, the intention being to give the talk to as many troops as possible. However, Capt Wilson could not estimate what proportion of troops actually received the talk or whether 1 BW did

[604] MOD011176
[605] Frend BMI02895, paragraphs 39-40
[606] The full presentation is exhibited at BMI02973-88
[607] Frend BMI02896, paragraphs 42-43
[608] Capt Neil Wilson BMI07244-5, paragraphs 68-69

so. The presentation made clear that hooding was inhumane treatment under the Geneva Conventions.[609] There is strong support for this in contemporaneous crib cards retained by one of Capt Wilson's team, SSgt Shuttleworth. These mention "*Treatment firm but fair. How you would want to be treated*". In relation to the point of capture the crib notes read:

> *"POINT OF CAPTURE*
>
> *DISARM – SHOCK OF CAPTURE*
>
> *– NO TALKING*
>
> *SEARCH – FEMALES*
>
> *INT ITEMS VALUE*
>
> *DON'T PUT BAGS OVER HEADS!"* [610]

6.436 I was impressed both by Capt Wilson as a witness and by the content of the MPS training produced by his small team.

6.437 However, as is apparent from the use of hooding in both Op Telic 1 and 2, it is apparent that this MPS training did not have the effect of cutting out the practice of hooding prisoners. In my view, that is not surprising. While very many combat troops would have received this brief on Op Telic 1, the coverage of the training is unlikely to have been comprehensive. Further, as Capt Wilson's evidence made clear, at least parts of the infantry appeared to have received the message that hooding was a routine practice for prisoner of war handling and it is very unlikely that a single in-theatre briefing would have been sufficient to eradicate that understanding. It may also be the case that not every MPS briefing did contain the information that hooding of prisoners was not to be carried out.[611]

6.438 The MoD has rightly conceded in its submissions to the Inquiry, that clearer and more detailed training on the limited circumstances in which sight should be deprived and the best methods for doing so would have been desirable.

6.439 The reality is that the differences between the messages conveyed by the in-theatre MPS team and previous training at Brecon and elsewhere demonstrates that training on sight deprivation was inconsistent, subject to the interpretation of individual trainers and training units, and uncoordinated by any clear policy. This lack of consistency in training regarding the use sight deprivation is further underlined by aspects of the PDT for Op Telic 2 to which I now turn.

---

[609] Neil Wilson BMI07234, paragraph 40

[610] MOD052326. See too MOD055777 which in the context of an SIB interim investigation report dated June 2003 Capt Neil Wilson told the SIB that all MPS briefing prior to the conflict had stated that the hooding of prisoners of war was not to be carried out.

[611] The SIB interim report of June 2003 into one of the 1 BW deaths in custody reflects conflicting accounts from Capt Neil Wilson and Capt Christopher Heron as to whether all MPS briefings did contain this advice.

PDT for Op Telic 2

Introduction – ongoing training pressures

6.440 There was a large measure of agreement between the Core Participants in the Inquiry that, while there may have been somewhat more time for training for Op Telic 2 than Op Telic 1, the training phase for Op Telic 2 was still curtailed and difficult. The MoD has accepted that 1 QLR had to prepare for its deployment "…*in circumstances which were suboptimal*". [612]

6.441 In part this was caused by the fact that 1 QLR were deployed on Op Fresco covering fire-fighting duties in Liverpool when they should have been able to concentrate upon PDT. This factor was outside of the control of 1 QLR, 19 Mech Bde and of the MoD as well.

6.442 But there were other factors that impacted on 1 QLR's training for Op Telic 2.

6.443 While 1 QLR had expected to deploy on Op Telic for some time, the formal warning order did not come until relatively late in the day, on 3 May 2003. Although the unit had put a training plan in place in April 2003, without the formal warning order, 1 QLR did not receive priority treatment for their various training needs and resources. This was a point that Mendonça was careful to emphasise in his evidence, which I accept:

> *"Q. The Inquiry has also heard, as you are probably aware, from Major Bostock about PDT training. I don't take you to his statement or his evidence, but you may have seen it. But he described PDT training, certainly without being critical of you – and indeed perhaps of anyone in QLR – as being "chaotic" and having insufficient resources and insufficient brigade guidance. Would you agree with that?*
>
> *A. The brigade were in a difficult position because there had been no formal warning and so we had to take initiative and deal with this ourselves. So from Major Bostock's perspective, it might well have been chaotic as he tried to get brigade to support us where they could. But we did – it was certainly the case that we didn't have sufficient resources. That's why I corrected you earlier about whether or not we were warned for deployment because, when you are formally warned for deployment, your priority goes to the highest within the army and suddenly you get preferential treatment on course bookings, trainee areas, ammunition and everything else you need to prepare for operations. We didn't have that."* [613]

6.444 As regards tactical questioning training, while it was a requirement for 1 QLR to have its own trained tactical questioners, very many of the F branch JSIO instructors had already deployed on Op Telic 1. The result was that it was impossible for 1 QLR to get any of its own personnel trained in tactical questioning before deployment.

6.445 OPTAG training for Op Telic 2, which I shall consider in greater detail below, progressed and improved at least in some aspects from Op Telic 1. In particular OPTAG provided more than a CD package. However, due to timing constraints, OPTAG were still not able to produce the kind of full PDT package that they would normally have wished to provide. The training was much shorter than would normally have been the case and did not include the level of checks necessary to ensure that training had been properly assimilated by units.

[612] SUB001100, paragraph 48
[613] Mendonça BMI 59/30/13-31/9

OPTAG Training for Op Telic 2

6.446 OPTAG were tasked to coordinate elements of training for 19 Mech Bde in advance of Op Telic 2. The Inquiry heard evidence about the OPTAG training from Maj Richard Clements who was at the time the Officer Commanding the Operational Training Advisory Team. He was a straightforward, truthful and impressive witness.

6.447 Clements told the Inquiry that he was not involved in Op Telic 1 training but was tasked to design and deliver PDT to 19 Mech Bde for Op Telic 2. He explained that his team had weeks rather than months to prepare and deliver the training. The production of the training was, he explained, severely hampered by the short notice to prepare and the limited time to deliver a training package to an entire Brigade.[614]

6.448 That OPTAG felt under pressure and constraint was reflected in Clements' training paper from early May 2003 which set out the following principles upon which OPTAG was providing the training:[615]

3. Principles It is important that the following principles in relation to OPTAG training are noted:

a. The training delivered is that directed by Comd 19 Mech Bde.

b. The cascading of training is the responsibility of COs.

c. It is assumed that units are best prepared in warfighting skills prior to embarking on OPTAG training.

d. OPTAG will teach the generic principles, while units will apply them to the operational situation.

6.449 The format of the training provided by OPTAG comprised principally a mandatory All Ranks Briefing; additional training packages of one to three days' duration, in a format of "Train the Trainer", at which a small number of nominated individuals from each company would attend and the package would aim to train those attending in how to deliver the training so as to cascade it down to unit level; and a Team Medics course which was the only element of the training that was a pass or fail course.[616]

6.450 For the majority of units deploying on Op Telic 2, including 1 QLR, this package of training was delivered from 12 to 16 May 2003.

6.451 Clements' evidence was important for the insight that he gave into the inadequacies which he candidly accepted existed in the OPTAG training. He detailed two particular aspects.

6.452 The first was lack of time, in that by the time OPTAG were engaged, there was not enough time to follow the preferred cycle of training. The normal training cycle then involved sub-units consolidating the training cascaded from "Train the Trainer" packages. It would also normally involve OPTAG engaging again with units to audit and validate that the training had been properly communicated and understood. The consolidation of training stage did not happen and nor was OPTAG able to undertake

[614] Clements BMI07589, paragraph 29
[615] MOD020602-3
[616] Clements BMI07589-90, paragraphs 31-33; MOD020602

the final validation phase. Even the "Train the Trainer" elements between 12 to16 May 2003 were significantly compressed compared to their normal duration.[617]

6.453 The second aspect was that non-OPTAG "fill-in" instructors from units not deploying on Op Telic had to be nominated to provide elements of the training because OPTAG did not have sufficient resources to allow it properly to deliver all the training that it was required to do concurrently. As a result, some instructors were acting rather as "*talking heads*" working to pre-prepared scripts.[618]

6.454 I turn to consider the relevant elements of the OPTAG training that were provided.

OPTAG All Ranks Briefing

6.455 In addition to an opening and closing address, the All Ranks Briefings covered the following topics[619]:

- History of Iraq
- Cultural Brief
- G2 [intelligence] Overview / Current Situation
- Driving in Iraq
- Environmental Health
- Legal Powers
- Helicopter Safety

6.456 The legal powers briefing was given by Lt Col Barnett, 3 (UK) Div's Commander Legal. It was a 30 minute presentation. The talk was based on handwritten lecture notes which the Inquiry has seen,[620] and PowerPoint slides.[621] Within the presentation was a slide on "Detention Basics" which set out seven bullet points:

> " • *USE ONLY MINIMUM REASONABLE FORCE*
> • *RESPECT DETAINEES RIGHTS*
> • *SPECIAL PROTECTION FOR WOMEN/CHILDREN*
> • *ETHNIC SEGREGATION*
> • *DON'T HARM OR HUMILIATE*
> • *COMPLETE SEARCH PROFORMAE*
> • *HANDOVER TO IZP" [Iraqi Police]* [622]

[617] Clements BMI 90/22/8-23/19
[618] Clements BMI07593-4, paragraph 43(b)
[619] MOD020607
[620] MOD020411-31
[621] MOD019742-6
[622] MOD019744

6.457 The handwritten speaking notes for this slide included the underlined message "*cannot arrest a corpse*" and "*respect rights – do not become part of the problem*".[623] Barnett remembered using the phrase "*don't let the red mist rise*" to remind soldiers not to lose their temper and self-control.[624]

6.458 Barnett volunteered in his Inquiry witness statement that he did not think that he mentioned the ban on hooding because he was not aware of the detail of the hooding debate at this stage, although it would seem that he was aware that hooding had been prohibited.[625] However, in his earlier SIB statement of 13 July 2006, Barnett said that, while he could not specifically remember the topic being raised by the audience or his offering advice on it, he may have commented on hooding "…*because I was aware that the issue had arisen during the conflict and that it had been directed by GOC 1 (UK) Armd Div that hooding was not to take place*".[626] In his oral evidence to the Inquiry, Barnett stated:

> *" A. …. I don't believe I mentioned the hooding ban. It's entirely possible that I may have done and if – if people say that I have, who were in the audience, then that's good. But I – it was early on in when I had got back from being abroad when I gave those presentations in May, and whilst I was aware of the ban, I hadn't yet, I believe, been to PJHQ and discussed the whole circumstances. If I did mention it, I would have mentioned it simply in passing that hooding was banned and not gone into it any further. But as I say in there, I can't recall that and I don't therefore believe I did mention it in that presentation."* [627]

6.459 Maj Anthony Royce, 1 QLR's Battlegroup Internment Review Officer (BGIRO), was one witness who referred to a presentation given by a Divisional Lawyer at Catterick, an officer of the rank of Lieutenant Colonel. I find that this must be a reference to Barnett's presentation. Royce's evidence was that he distinctly remembered the presentation including the advice that whilst prisoners of war could be hooded, detainees should not be although they could be plasticuffed.[628] Royce also mentioned this in his SIB statement of 31 March 2005[629] and in his Court Martial evidence.[630]

6.460 I find it difficult to determine whether Royce's recollection is accurate. Although Barnett was not certain whether he had mentioned a ban on hooding, if he had it would be expected that some other members of those present would have remembered this. It appears only Royce did. Nevertheless, I find it equally implausible that Royce invented this part of his evidence. It formed the basis for his enquiry of Robinson at Brigade Headquarters, as to whether hooding was permissible. I refer to this issue in more detail in Part XIII of the Report (the Brigade Sanction). At this point in the Report I simply record that I do not find that Royce was lying about what he heard during that lecture. Nor do I find that Barnett was untruthful. In my opinion Barnett was obviously an entirely honest witness. The explanation for this conflict of evidence in my opinion is probably that Royce either gleaned it from something Barnett said (not necessarily in the lecture itself) or he learnt of it from another source during the same training.

[623] MOD020429
[624] Barnett BMI07902-3, paragraph 63
[625] Barnett BMI07903, paragraph 64
[626] Barnett MOD000881
[627] Barnett BMI 86/30/2-15
[628] Royce BMI03135, paragraphs 17-18
[629] Royce MOD000247
[630] Royce CM 43/5/10-23

6.461 With hindsight it would have been preferable if Barnett had included a specific mention of the prohibition on hooding in his OPTAG presentation. However, if it was an omission, I do not consider that it can be considered a culpable omission on Barnett's part. As a short general presentation on legal aspects that had to cover a lot of ground, and by no means just detention issues, I find that his presentation was reasonable in the circumstances including, as it did, emphasis on the important message not to harm or humiliate prisoners.

OPTAG "Train the Trainer" Packages

6.462 Of the "Train the Trainer" packages delivered, the most relevant to the Inquiry's terms of reference was the Patrol Skills and Public Order element. This package lasted three days. To the extent that this addressed prisoner handling, it is clear that it would have focused upon prisoner handling at or near the point of capture, for example in a public order incident.[631] The second annex to Clements' May 2003 paper detailed this aspect of the training package indicating that, as well as such matters as urban patrol skills, containment and dispersal skills, the training was to cover arrest and detention techniques.[632]

6.463 Clements said the following about the train the trainer content:[633]

> 36. Of relevance to the inquiry is the demonstration covering "Arrest and Detention Techniques" (See Annex B to MOD020602). I do not recall the detail of this demonstration, nor who delivered it. However, from previous demonstrations I have been involved with, I believe it would have covered the use of 'control positions' (as I have described at paragraphs 11-13 above) and the use of plasticuffs. This training would normally have been delivered by the OPTAG Royal Military Police ("RMP") but, given the paucity of manpower at the time, it may have been delivered by augmentee training troops from 1 Royal Gloucestershire Berkshire & Wiltshire ("1RGBW") who had been tasked with assisting.

> 37. Besides the above, I do not remember there being any OPTAG training to 19 Mech Bde on prisoner handling or related issues in Catterick over the period 12-15 May 2003. Specifically, I do not recall there being any OPTAG training on the following issues:
>
> (a) responsibility for the handling and welfare of prisoners undergoing, or waiting to undergo, tactical questioning/interrogation, and what if any instructions tactical questioners should give to those tasked with guarding the prisoners;

631 MOD020603
632 MOD020610-2
633 Clements BMI07591-2, paragraphs 36-38

(b) the limits of behaviour for approved approaches so that the treatment of prisoners, both prior to, and during tactical questioning or interrogation did not breach domestic or international legal obligations;

(c) the deprivation of sight, and to what extent, if any, a distinction was drawn between blindfolding and hooding;

(d) sleep deprivation, exposure to discomforting levels of noise, deprivation of diet, conditioning, shock of capture and the physical treatment of prisoners.

38. I can only assume that the reason why no further PW or detainee handling training was provided by OPTAG to 19 Mech Bde in Catterick was because 19 Mech Bde did not ask for this to be included. As stated, I organised the course according to what 19 Mech Bde demanded and OPTAG was not authorised to and did not arbitrarily drop elements of training demanded of it. I do not know why 19 Mech Bde did not request for the OPTAG training delivered at Catterick to include general PW Handling training.

6.464 In oral evidence to the Inquiry, Clements clarified that "control positions" were by no means advocated for all arrests. It would only be where they were deemed appropriate, for example just after a gun battle when dealing with prisoners who were non-compliant. The sort of position that would be used would be *"…inviting them to kneel down, cross their legs, kneel back on the – with your legs on your calves and your hands behind your head"*. Clements said that "full" stress positions would not have been taught. It would have been implicit, he suggested, that even control positions should not be used for long. Explicit warnings that control positions could only go so far would probably not have been given. But Clements thought in that context one could rely upon the clear teaching that prisoners had to be treated humanely and the role of commanders to ensure they were.[634] Clements was shown the photograph below of a 1 QLR prisoner, with the caveat that the circumstances of the picture were not known:[635]

[634] Clements BMI 90/33/12-37/5
[635] LCY000042

LCY000042

6.465 Clements's comment upon this photograph was revealing:

> *"Q. If we just look at LCY000042. Can I say immediately, in fairness to you, that we don't know the full circumstances of this picture and I don't pretend that we do, but we see – this is from Op Telic 2, from 1 QLR – a prisoner who may be – it may be that he is sitting on a paving stone or something of that kind, but, in any event, with hands on heads and at this time with his T-shirt pulled up over his head. Is that the sort of position that you, from OPTAG training, would think would be endorsed and would be all right?*
>
> *A. Words beggar me, but absolutely unequivocally no.*
>
> *Q. Because ...?*
>
> *A. That's just inhumane and you don't treat prisoners in that way."* [636]

6.466 Clements' evidence was that as far as he was aware, OPTAG training had not advocated hooding prisoners. His general understanding was that sight deprivation of short duration for security purposes, avoiding prisoners seeing sensitive locations, could be justified but he was "*pretty certain*" that even that was not taught on the Op Telic 2 OPTAG PDT.[637]

6.467 Evidence from 1 QLR's RSM, Briscoe, was put to Clements. Briscoe's evidence suggested that OPTAG training had included hooding prisoners of war for security purposes.[638] Clements picked up on details in Briscoe's account such as the timing and location which Clements suggested were not consistent with this being OPTAG training.[639]

[636] Clements BMI 90/37/6-19
[637] Clements BMI 90/38/17-39/7
[638] Briscoe BMI00725, paragraph 8
[639] Clements BMI 90/39/11-41/21

6.468 Clements made similar points concerning the evidence of Lt Craig Rodgers whose evidence also suggested that OPTAG taught hooding. Clements could not entirely rule out the possibility that an instructor used on the "Train the Trainer" package who had been drafted in to assist the OPTAG team may have ad-libbed and gone outside of his remit.[640] A number of other witnesses referred to hooding during what they described as "OPTAG" training. However, the context of this evidence was often training being given to whole sub-units which would not fit the "Train the Trainer" packages directly delivered by OPTAG.

6.469 On balance I found Clements' evidence on these aspects to be more reliable than that of Briscoe and Rodgers. I emphasise, however, that Rodgers and Briscoe may very well have been right in remembering hooding being mentioned in PDT. However, I think their evidence is more likely to have been a recollection of the internal training of 1 QLR including that which was conducted at Whinney Hill, and Catterick (see further paragraphs 6.479 to 6.492).

6.470 Accordingly, I do not accept that the OPTAG "Train the Trainer" packages are likely to have positively advocated hooding. On the other hand, given Clements' evidence, it is overwhelmingly likely that the OPTAG training did not include any clear guidance that hooding had been prohibited in theatre. In my opinion, that was not the fault of Clements personally but it does indicate a systemic failure in the training cycle: the in-theatre oral prohibition on hooding (see Part VIII) had not been fed into the OPTAG training programme for Op Telic 2. It should have been.

6.471 More broadly, the MoD now accepts that clearer and more detailed training as to the limited circumstances in which prisoners should be deprived of their sight and the best methods of doing so would have been desirable. That acceptance must hold true for this kind of OPTAG pre-deployment training as well. However, it would have been asking for an *unrealistic counsel of perfection* to expect OPTAG trainers in early 2003 to have come up with more detailed training at short notice when neither adequate doctrine nor wider training before the pre-deployment phase were in place.

The OPTAG training CD for Op Telic 2

6.472 As with Op Telic 1, OPTAG produced a CD training package for Op Telic 2. A fundamental difference, however, was that whereas the CD for Op Telic 1 was the only OPTAG training, for Op Telic 2, the CD was intended to serve as a training package only for those who could not attend the Catterick live OPTAG training programme. A memorandum dated 28 May 2003 from Capt Pearce, in the training/plans branch of 3 (UK) Div, confirmed that the CD was to be utilised to provide the requisite training to those who had not received the official OPTAG PDT package.[641]

6.473 The principal shortcoming in the Op Telic 2 CD training package was that prisoner handling was entirely dropped from the CD. In considering the Op Telic 1 CD I have already set out that it contained both the level 1 briefing in CAC and a prisoner of war handling presentation. Comparing the contents list for the Op Telic 1 and 2 CD packages, it can be seen that prisoner handling was simply dropped:

[640] Clements BMI 90/41/22-46/12
[641] MOD015203-4

6.474 Op Telic 1 CD, 14 Jan 2003:[642] Op Telic 2 CD, 15 May 2003:[643]

PDT MATERIAL FORMAT

Title	Format
Theatre Background	Powerpoint Presentation
J2	Powerpoint Presentation
Environmental Health	Powerpoint Presentation
Mines Awareness	Powerpoint Presentation
PW Handling	Powerpoint Presentation
CAC Level 1	Powerpoint Presentation
COLPRO	Powerpoint Presentation
Language Cards	Handout
Certificate	Certificate

PDT MATERIAL FORMAT

Title	Format
Theatre Background	PowerPoint Presentation plus video
J2	PowerPoint Presentation
Driving	PowerPoint Presentation
Environmental Health	PowerPoint Presentation
Mines Awareness	PowerPoint Presentation
CAC Level 1	PowerPoint Presentation
Stress Management	PowerPoint Presentation
Language Cards	Handout
Certificate	Certificate

6.475 Clements made clear in his evidence, and I accept, that he was not personally involved in, or responsible for, the production of the CD package for Op Telic 2.[644] Insofar as Clements was able to comment on the content of the CD package, his evidence was that the HQ Land Command Mounting Order for Op Telic 2 no longer specified prisoner handling as one of the mandated training elements to be provided by OPTAG.[645] Although the Mounting Order in its final form marginally post-dated the Op Telic 2 CD contents list, Clements' evidence was that the list of mandated training must have come at an earlier stage; that it would have been based on conversations between HQ Land, the Land Warfare Centre and OPTAG; and that OPTAG would then have followed the mandated list of training. He could not remember any conversations about the fact that prisoner of war handling had dropped out and whether there needed to be something in its place. Clements accepted that it was odd that the package should contain CAC training but not prisoner handling training.[646]

6.476 The warfighting phase had ended by mid-May and there may well have been an expectation at that stage of troops operating in a relatively benign environment. However, it was inappropriate for prisoner handling to have been dropped from the Op Telic 2 CD package altogether. It should be remembered in this context that in the fuller OPTAG training at Catterick, Barnett felt it appropriate to stress in his legal briefing the need for prisoners not to be harmed or humiliated, to respect their rights and to tell soldiers "*don't let the red mist rise*".[647] When Barnett as the Divisional Commander Legal saw prisoner handling as a risk area it is obvious that the CD Package ought to have addressed prisoner handling for those who could not attend the fuller PDT at Catterick. Instead, on the Op Telic 2 CD package, the *only* information about prisoners related to how British troops might be treated, and ill-treated, on capture, training which referred explicitly to concepts such as "conditioning" of prisoners and used images of prisoners being mistreated. The context was what might be done to British prisoners but in my opinion it was undesirable and inappropriate that this should be the sole content regarding prisoners in the Op Telic 2 CD package.

6.477 It should be remembered, however, that in the Op Telic 1 PDT CD package, the guidance on prisoner handling had largely mirrored the basic messages in the Army's

642 MOD039033
643 MOD015208
644 Clements BMI 90/57/24-58/3
645 See the Op Telic 2 Mounting Order at MOD015201, dated 16 May 2003. Contrast the Op Telic 1 Mounting Order at MOD043609 at Annex C
646 Clements BMI 90/58/4-62/22
647 Barnett BMI07902, paragraph 63

annual training on LOAC. There is no doubt that, regardless of the omissions from the OPTAG PDT CD training package for Op Telic 2, soldiers ought to have been fully aware of the principle of humane treatment of prisoners. I repeat, also, that the OPTAG CD package for Op Telic 2 was principally used as a back up for those who for any reason were not able to attend the full live OPTAG training.

Training Provided other than by OPTAG: 3 (UK) Div Study Period

6.478 In addition to the OPTAG and Battlegroup level training, a two day study period was arranged by 3 (UK) Div. Attendees were due to include the Battlegroup Commanding Officers, sub-unit Officers Commanding and a limited number other key Battlegroup officers.[648] The content included a briefing on Legal issues and Rules of Engagement (ROE) as well as many other aspects such as cultural considerations, Foreign Office policy, and media aspects. The evidence did not suggest that this more strategic level training was particularly relevant as regards prisoner handling aspects. The breadth of its content can however be seen from the timetable annexed to the final instructions for the study period, dated 19 May 2003.[649]

Training Provided other than by OPTAG: 1 QLR's own Training Programme

6.479 It is important to remember that the OPTAG training package was only a relatively small component of the PDT for members of 1 QLR. It is clear from all the evidence that the Battlegroup made significant efforts, in difficult circumstances, to provide its own "in-house" training.

6.480 When introducing the topic of training for Op Telic 2, I have already referred in outline to the pressures created by:

(1) Op Fresco in which the Army, including 1 QLR, had to cover fire-fighting duties during the firemen's strike;

(2) the late formal warning order to 1 QLR;

(3) the fact that there were no Prisoner Handling and Tactical Questioning courses available so that 1QLR could deploy with their own tactical questioners.

6.481 In the lead-up to Op Telic 2, Maj Steven Bostock was the 1 QLR's second in command and it was he who arranged the Battalion's internal training package. Bostock was an impressive witness whom I thought gave his evidence candidly and fairly. Bostock explained some of the difficulties encountered in the following terms:[650]

[648] MOD015225-33
[649] MOD015227-9
[650] Bostock BMI04543-4

Preparations for deployment to Iraq

12. When it was first decided that we would deploy to Iraq in about late February, there was little clarity on the detail of this deployment, including our likely role. In anticipation, we started to do our own training. Meanwhile the CO, other Battalion staff and I (in common with the other units) pestered the Brigade HQ for further information on what was to happen next and what vehicles, equipment, personnel and training we would need to achieve combat effectiveness. In turn, we were aware that the Brigade was experiencing a similar lack of direction and guidance from HQ 3 UK Division. From my perspective the situation was chaotic.

13. I arranged the Battalion's training package. Although there were some elements which we could control, we were reliant on the Brigade to tell us the precise requirements and to provide certain resources. Although the Brigade Chief of Staff, Major Hugh Eaton, held a meeting with the 2ics (with the SO3 G3 Training Staff Captain Rupert Steptoe) as soon as the deployment was confirmed, it was clear that the Brigade did not know what training was required nor where instructors, courses and other training resources would come from. It ended with some of the Battalion 2ics (including George Wilson from the Kings Own Scottish Borders, Gordon Lettin from 1 KINGS, Simon Humphrey from 40 Regiment RA) having to give the Brigade a list of training requirements. Subsequent meetings were held, but on each occasion it was clear that there was little information flowing down from the UK formations (i.e. Division, Brigades, units) already deployed in Iraq, to us

in the UK.. There was also little evidence of OPTAG involvement until perhaps late March 2003.

6.482 Bostock also stated that, in reality, very little in-theatre training was provided once 1 QLR had deployed.[651]

6.483 Similar sentiments can be seen in the letter that Mendonça sent to Aitken as part of the Brigadier's investigation for his report:[652]

2. Was our PDT adequate for the 3 block war? No. The delay in formally warning us for TELIC 2, exacerbated by Op FRESCO preventing us from conducting properly resourced training was, with hindsight, a significant factor. Prior to that, the experience of the training year, being broken-up to support others' training at BATUS, Op FRESCO and the generally frantic tempo of brigade activity, took its toll on our aspirations for junior NCO in-barracks training and education. In the 5 weeks from warning to deployment, we instituted an extended working day (routinely 0600-1800). This allowed the Battalion to cover the mandated pre-deployment training (including LOAC and PW handling) and my insistence on language and cultural awareness training, theatre-specific IS/COIN training, vehicle preparation and the host of other essential preparatory tasks required. Whilst I am sure that all soldiers took part in LOAC and PW handling training, I am aware that such were the competing priorities, there was little time for the reinforcement of such lessons.

3. Late formal warning meant that we had to construct our pre-deployment training plan without OPTAG's input. OPTAG were finally tasked to support our training once we had embarked on our own programme and so they came to the party late and with their own time pressure caused by having to train 4 major units in less than 3 weeks, when other training 'immovables' had already been programmed.

Continued [illegible] copy

651 Bostock BMI04544, paragraph 15
652 MOD005799

6.484 That 1 QLR made significant efforts to provide their own training programme despite the late formal warning order is apparent from an instruction provided by Mendonça dated 6 April 2003. Introducing the training need, Mendonça wrote as follows:[653]

SITUATION

1. For sound operational, political and O&D reasons, the chain of command remains reluctant to formally warn us for a deployment to Op TELIC. Nevertheless our deployment at some stage in the middle of this year now seems highly likely.

2. Given the current state of the war it would appear that, on deployment, we will face an unstable post-conflict environment where emerging political factions and remnants of military resistance operate in an environment generally unfriendly towards the west. The need for us to be able to operate effectively and safely in a counter-terrorist, counter insurgency role, whilst being able to quickly transition to warfighting at the lowest levels, demands that we undertake some very specific training.

AIM

3. The aim of this instruction is to outline the training requirements to be met and the training regime that is to be adopted between the period 28 Apr 03 to 30 Jun 03.

6.485 The outline programme that Mendonça then set out was for 1 QLR's Op Telic training to begin in earnest from 5 May 2003 and that "*The Battalion will work long days to preserve weekends and each day will include language training aimed at creating the capability at one level to communicate and at the lowest level to show some attempt to respect the host country*". The training plan in outline provided amongst other things for ongoing fitness training; nuclear biological and chemical training; a week of training in the core individual training directives (ITDs); a week concentrating on internal security training; a week set aside for Brigade training, medical training, vehicle preparation, weapon training and administration; a week to complete internal security training and test those skills, language skills and the ITDs; as well as a Battalion field exercise and final preparations, administration and loading.[654]

6.486 The annexes to this training instruction indicated that 1 QLR's normal training day was to last from 07.00 to 18.00hrs each day, starting with an hour's language training. Under LOAC training, Mendonça required "*In addition to the basic ITD standard, company instructors are to train all ranks in PW handling and rules of engagement (ROE) issues. On ROE, the various profiles likely to be imposed are to be discussed and explained…*".[655] Mendonça also required arrest and restraint training where *"PT staff are to be used by companies to teach arrest and restraint techniques to all ranks*".[656]

6.487 This training outline was then cascaded down and taken forward by way of Company level orders, of which Maj Mark Kenyon's training order for C Company 1 QLR of 28 April 2003 is an example.[657]

6.488 There is no doubt that, as part of this planned training, 1 QLR carried out public order/ internal security training including at the Whinney Hill facility, Catterick.

[653] MOD022124
[654] MOD022124-5
[655] MOD022128, paragraph 6
[656] MOD022130, paragraph 4
[657] BMI01531-48

6.489 I am persuaded by a clear weight of evidence that hooding was used in this element of 1 QLR's PDT. There are simply too many witnesses who remember the use of hoods during the PDT, in particular at Whinney Hill, for it to be a case of mistaken recollection or for there have just to have been just one use of hoods in a single exercise. For example:

(1) in A Company 1 QLR, those referring to the use of sandbags or instruction in the use of sandbags during PDT included Pte Wayne Crowcroft[658], Pte Darren Fallon,[659] Pte Victor Floyd,[660] Pte Jonathan Lee,[661] and LCpl Joseph Grist;[662]

(2) Maj John Lighten of B Company saw a prisoner with a sandbag on his head during a house clearance operation at Whinney Hill during 1 QLR's PDT.[663] This was internal 1 QLR training being given by Platoon Commanders or Sergeants.[664] Sgt Michael Potter of B Company taught the 4 S's at Whinney Hill ("secure, search, silence and segregate"). He told the Inquiry that sandbagging or hooding would have been mentioned during this training.[665] Cpl Kelvin Stacey said that during PDT at the FIBUA village (Fight in built up areas, a reference to the facility at Whinney Hill), prisoners who were captured would be hooded;[666]

(3) in C Company 1 QLR, those referring to the use of sandbags or instruction in their use during PDT included CSgt Thompson[667] and Cpl Christopher Smith;[668] and

(4) in S Company 1 QLR, Warrant Officer Ian Topping said that hoods had been used in PDT for Op Telic 2.[669]

6.490 Amongst the examples I have listed above is evidence from some witnesses whose evidence was problematic in other aspects, and some in respect of whom I would be reluctant to rely without supporting evidence. But other witnesses cited above were entirely reliable. I do not overlook that some other witnesses, Bostock and Mendonça amongst them, stated that they were not aware of hoods being used in PDT at Whinney Hill.[670] Clearly not all of the Whinney Hill exercises would have involved taking prisoners and hoods may not have been used on every occasion. Given the number of witnesses referring to the use of hoods in some aspects of 1 QLR's PDT, I have no doubt however that they were used at least on some exercises.

6.491 In many ways, it is not surprising that 1 QLR were using hoods in their PDT. As I have noted earlier in this section of the report, hooding had clearly been taught on promotion courses at Brecon. Members of 1 QLR had also seen hoods in use by 1 BW during their recce mission on 7 to 10 May 2003. JWP 1-10 was completely silent on the issue. The fact that hooding had been banned in theatre had not been

[658] Crowcroft BMI02538-9, paragraphs 18-20
[659] Fallon BMI 22/131/10-20; Fallon BMI 22/133/24-134/1
[660] Floyd BMI00968-9, paragraph 9
[661] Lee BMI02594, paragraph 6
[662] Grist BMI04893, paragraph 20
[663] Lighten BMI05966, paragraph 51
[664] Lighten BMI 56/80/5-81/4
[665] Potter BMI 44/12/11-19
[666] Stacey BMI01563, paragraph 46
[667] Thompson MOD009540-1
[668] Smith BMI06404, paragraph 25
[669] Topping BMI03420-1, paragraphs 10-12
[670] Bostock BMI 55/160/15-25; Mendonça BMI 59/32/5-9

fed properly into OPTAG's own training programme to be cascaded in their "Train the Trainer" packages.

6.492 Given that by May 2003 hooding had been banned in theatre, it was inappropriate and a clear failing that 1 QLR's own training was advocating the use of hoods in internal security PDT, albeit only as a measure to be taken at the point of capture. However, I do not think that those responsible for delivering PDT within 1 QLR should be criticised for this failure. The use of hoods in 1 QLR's PDT directly reflects the MoD's failure at any time before Baha Mousa's death to issue proper instruction and training in respect of sight deprivation. The fact that soldiers and officers from 1 QLR emerged from their PDT in May/June 2003 with very varied understandings of whether and in what circumstances and for what purposes hoods might be used, directly reflects the wider lack of any clear or detailed training or policy on sight deprivation.

Discussion and Conclusions in Relation to PDT

6.493 It is quite clear that Op Telic 1 and Op Telic 2 PDT suffered from the short time available for this training to be carried out. It was not only that time was short; training also suffered from a lack of clear direction from the top as to what was required. I accept Bostock's description of little information being available as to precisely what was required. Mendonça also made clear that 1 QLR had to construct its own PDT plan without help from OPTAG. But, in my view, regrettable though this lack of time for PDT undoubtedly was, it does not of itself provide an explanation for the events of 14 to 16 September 2003 at Battlegroup Main Headquarters (BG Main).

6.494 The training would have impressed on 1 QLR personnel that all prisoners, whether prisoners of war or civilian detainees, must be treated firmly but fairly and humanely in accordance with the Geneva Conventions. As I record elsewhere in the Report, all the soldiers who gave evidence to the Inquiry had some idea of what was required of them in respect of prisoner handling. Most thought that treating prisoners humanely meant treating them as they would wish themselves to be treated if captured.

6.495 What, however, was missing from the PDT was detailed guidance on the treatment of prisoners of war and civilian detainees. It is, in my view, significant that by 2003 there was no reference to the prohibition on the five techniques. The absence of the prohibition from the PDT is less surprising when seen in the context of those failings which I have identified in Parts IV and V of this Report. I have found that hooding did occur during PDT, in the case of 1 QLR predominantly at Whinney Hill. No clear guidance or training was given on the limited circumstances in which sight could be deprived and how it should be achieved. The MoD concede that more detailed guidance should have been given. I agree.

6.496 One exception was the in-theatre instruction given by the MPS for Op Telic 1. I think it likely that this did teach that prisoners should not be hooded. However, I think it clear that this single in-theatre briefing, while laudable, was insufficient to eradicate the practice of hooding. It has to be seen in the wider context of training that gave very mixed messages about hooding.

6.497 Although some training by OPTAG on prisoner handling had been given to units deployed on Op Telic 1 in the OPTAG CD training package, such training did not deal with the above. Furthermore, training for prisoner handling was deleted from

the OPTAG CD training packages for Op Telic 2. This only affected the CD package used by those who could not attend the live OPTAG training for Op Telic 2. The reason for this omission is not clear, but it may suggest that by Op Telic 2, the combat phase having finished, it was considered that there was no need for any training for prisoner handling. It may also be an indication that the prisoner handling within the post-combat occupation of Iraq was, in May 2003, given insufficient consideration.

6.498 I accept that 1 QLR did endeavour to provide its own training for its own personnel. Such training was significantly affected by Op Fresco, the late formal warning order and a lack of higher direction as to what the training should contain. For example, 1 QLR was unable to train any of its own unit strength as tactical questioners because the instructors had had to deploy on Op Telic 1 and no tactical questioning courses were being run. The shortened TQPH cadre could not make up for this. In my view, it was sensible to seek to provide each unit with its own trained tactical questioners and unfortunate that this was not possible for 1 QLR.

6.499 If 1 QLR had had its own dedicated tactical questioners, in my opinion, almost certainly officers and men, particularly Mendonça, the BGIROs and Provost Staff would have had a better understanding of the processes which they carried out.

6.500 The failings in PDT which I have discussed above are likely to have led to many soldiers having an understanding that hooding prisoners at least for security purposes was acceptable, without having any further guidance on the circumstances in which sight deprivation was permitted.

6.501 In most other respects, the failures in PDT which I have identified in this Chapter did not themselves impinge on the events of September 2003 involving 1 QLR. In my view these failings demonstrate the fault lines in policy and doctrine which I have discussed in other sections of this Report. Expressing these fault lines, I believe it does not over simplify matters to conclude that they stem from, and are examples of, the consequences of the loss of corporate memory of the Heath Statement and the 1972 Directive.

Part VII

Theatre-Specific Orders on Prisoner of War Handling

Chapter 1: Introduction and the Doctrine of Mission Command

7.1 Thus far I have examined the historical context, how doctrine and publications relating to prisoners and interrogation matters had developed in the years up to 2003 and relevant aspects of military training.

7.2 I turn in this Part of the Report to consider how prisoner handling, including interrogation and tactical questioning, were addressed in the early directives and orders for Op Telic in Iraq.

7.3 In Chapter 2 of this Part I consider the early directives and orders issued for Op Telic as they related to prisoner handling. In Chapter 3 I look particularly at the framework for interrogation and tactical questioning by reference to the HUMINT Directive that was issued. In Chapter 4, I consider more briefly the Ministerial authorisation for tactical questioning and interrogation operations before turning to my conclusions for this Part in Chapter 5.

7.4 Before considering these issues, it is convenient to introduce and discuss the important concept of "mission command", a concept that very many of the military witnesses at all levels, but particularly senior officers, relied upon in their evidence. There is no doubt that mission command is central to the way the Army operates, and it is therefore an essential context in which the orders for Op Telic need to be considered and examined.

7.5 The Treasury Solicitor's closing submissions aptly chose the evidence of the most senior commander in Iraq for the warfighting phase, Air Marshal Brian Burridge, as providing an appropriate explanation of the concept of mission command:

> *"Under UK doctrine, as a general principle, military commanders operate on the basis of 'mission command'. As such, they make their intent very clear to the levels below them and define the end-state that they require. In so doing, they specify what they require their forces to achieve and why, but do not specify what to do and how. Mission command is thus articulated through a statement of the commander's guidance and intent, together with the articulation of subordinates' missions in the context of the overall plan. The staffs in each headquarters are thus charged with directing operations and managing the plethora of related supporting activity in line with their own commander's intent. They actively interface on a continual basis with the headquarters immediately above and immediately below them. This process is finely tuned to allow harmonisation and alignment without adding inertia or imposing barriers that would otherwise slow the tempo of military operations."* [1]

[1] Burridge BMI05322-3, paragraph 10

7.6 I have no hesitation in accepting the importance of mission command to the way the Army operates. The Treasury Solicitor's submissions relied upon the uniform evidence of the most senior commanders (for example Generals Sir John Reith, Graeme Lamb and Robin Brims) each of whom echoed Burridge's evidence:[2]

> *"Gen Reith: "UK Armed Forces work on the basis of the principle of 'mission command' which meant that it was not for me to set out every detail but rather the broad order. It was for those delegated the task, who had the requisite in-depth knowledge, to fill in the detail.""* [3]
>
> *"Gen Lamb: "The Army relies upon the principle of mission command, namely that commanders set the direction, by guidance, orders and policy, and those under them fill in the detail, following orders in a way that is consistent with that guidance and direction; delegated authority is how the system works.""* [4]
>
> *"Gen Brims: "The way I approached my responsibility was to ensure that the troops under me had the right idea of the purpose of our mission. This was to inform the important principle of Mission Command. This is the principle whereby subordinates can use their initiative to react to a particular situation, without necessarily having had a direct order from above, because they know what the higher intent is. In other words, it allows for a degree of autonomy: each person can act, knowing the principles by which he should do so. Mission command is therefore the key principle that enables the army to function properly. It is necessary because it would not be possible to legislate for every factual situation that might arise.""* [5]

7.7 Lt Gen Sir Philip Trousdell was appointed by me as an expert for the Inquiry's Module 4, looking at recommendations for the future (see Parts XVI and XVII). While I am mindful of the need to refer to Module 4 evidence only with care when looking at Module 1-3 issues, his insight into how mission command should work was extremely clear, and I do not understand it to be controversial.

7.8 Without repeating the entirety of Trousdell's evidence on mission command, I simply summarise the following key themes that emerged from his evidence:[6]

(1) mission command is designed to ensure that there is co-ordination of effort across the whole chain of command and designed to allow both leadership and controlled initiative to flourish;

(2) the commander who is given a mission must analyse it and assess what the issued tasks and implied tasks are, in order to articulate his "intent". The formation of clear intent requires careful thought and analysis;

(3) decision making is pushed to the lowest competent level: you insist that people are trained to accept responsibility and the acceptance of responsibility is a key part of the training of junior Non-Commissioned Officers (NCOs) upwards;

(4) subordinates are told what effect they are to create and why rather than being told how to do their job;

(5) it is part of the doctrine of mission command to understand the higher command's intent "two up". That is to understand the intent not just of your superior officer but also of his/her superior officer. This achieves coordination and unification

[2] SUB001286-8, paragraphs 103-4
[3] Reith BMI 94/105/11-22; Reith BMI08254, paragraph 24
[4] Lamb BMI 103/96/22-97/4; Lamb BMI04913, paragraph 16
[5] Brims BMI07387, paragraph 19
[6] Trousdell BMI 115/53/1-115/69/9

of purpose. A Company Commander should therefore understand the intent of the Brigade Commander;

(6) successful mission command requires mutual trust, professional respect and honesty. The superior must trust and respect that the subordinate has the professionalism to carry out the mission and honestly assess that is the case. The subordinate must be able to trust that it is a professionally constructed mission and must have the honesty to say if he is not capable of carrying out the mission or does not have the resources to do it. Commanders need to be capable of receiving constructive criticism from their subordinates. They must foster an atmosphere in which subordinates can contribute ideas and raise concerns;

(7) importantly, there must be an agreed oversight regime. The commander and subordinate need to agree what frequency and degree of oversight of the mission is necessary. This will depend upon the nature of the mission including the amount of risk it involves. The more the risk involved, normally the more questioning the commander must be so as to ensure that everyone understands what is required and the more formal the oversight procedure may need to be;

(8) critically, the commander still absolutely shoulders the responsibility for the outcome. As other witnesses also described it, tasks can be delegated but responsibility cannot; and

(9) finally, once a mission has been accepted and is underway, everyone is mandated to ask whether anything has so fundamentally changed that they should be doing something differently: known as the fourth question.

7.9 It is therefore axiomatic that one should not, in looking at military directives and orders, expect to see close detail on how a mission or effect should be achieved. Rather there should be a clear and thoughtfully explained intent and explanation of what effect is to be created. Equally, however, the duties of commanders in no way end with the production of directives and orders that are consistent with the doctrine of mission command. It is just as important that the commander follows through with that degree of oversight that is appropriate to the nature of the mission and its risk, and fosters mutual trust, honesty and respect with subordinates. Mission command cannot be used as an excuse for abdication of all responsibility for the way the mission is carried out and its outcome.

Chapter 2: The Early Development of Directives and Orders Addressing Prisoner Treatment on Op Telic

The High Level Commanders' Directives

7.10 Unsurprisingly, the doctrine of mission command underlies the high level directives and orders that were issued in the lead up to Op Telic.

7.11 Admiral the Lord Boyce was Chief of the Defence Staff during and in the lead up to the warfighting phase of Op Telic. He retired in May 2003.

The Chief of Defence Staff's Execute Directive

7.12 The essential high level approach to prisoners of war was relatively briefly addressed in Boyce's Directive to Reith, as Chief of Joint Operations.[7] Boyce told the Inquiry that this Directive would have been amended in further editions leading up to 19 March 2003, and have been prepared by Lt Gen Piggott (the Deputy CDS (Commitments)) and by Reith.[8] It was a Directive issued for planning and guidance purposes.[9] The Directive made Reith the Joint Commander for Op Telic. As Joint Force Commander, he was made responsible for all of the United Kingdom's in-theatre prisoners of war. The Directive stated:

> *"PW and Detainees. PW and detainees are to be administered in accordance with JWP 1-10 (Prisoners of War Handling). The joint force commander is responsible for all of UK's in-theatre PW."* [10]

7.13 The Directive indicated that the Chief of Defence Intelligence would retain overall direction of defence intelligence but that the Chief of Joint Operations was to manage the provision of all-source intelligence to assigned forces.[11] An annex set out a separate Intelligence and Security Directive.[12] This made Permanent Joint Headquarters (PJHQ) and subordinate elements responsible for operational intelligence on military activity within its area of intelligence responsibility. They were to undertake, amongst other things, both (i) the production and dissemination of all-source operational intelligence on activity impacting on coalition forces in its area of intelligence responsibility; and (ii) the organisation of in-theatre capability to represent UK intelligence interests.[13] The scope of HUMINT operations was to be defined by a PJHQ HUMINT Directive and the SO1 J2X at the National Contingent Command (NCC) was to be the lead for all HUMINT operations.[14] Under interrogation, the Chief of the Defence Staff stated as follows:

[7] MOD052345, edition 4 March 2003
[8] Boyce BMI08310, paragraph 19
[9] MOD052361
[10] MOD052358
[11] MOD052355
[12] MOD052362
[13] MOD052364
[14] MOD052369

> *"The NCC interrogation team will be located with the US led joint interrogation facility (JIF) … A PJHQ /CENTCOM MOU [memorandum of understanding] concerning POW handling between US & UK forces is to be drawn up. There will be no independent 3rd line UK interrogation facility. All interrogation is to be conducted in accordance with JWP 1-10: prisoner of war handling and the Geneva Convention. Joint force interrogation teams (JFITs) will provide a tactical questioning (TQ) & interrogation capability to the LCC. They will carry out interrogation of POWs assessed to be high value, following TQ carried out at unit level, by appropriately trained personnel. JFITS will also conduct debriefing of willing subjects."* [15]

7.14 In Annex K (Personnel and Administration) PJHQ was given a long list of specific responsibilities which included notifying the MoD of any significant personnel and administrative constraints affecting the operation, or having a significant impact beyond the scope of the operation. PJHQ was also tasked with preparing to establish a Prisoner of War Handling Organisation (PWHO) in accordance with Joint Warfare Publication (JWP) 1-10.[16]

7.15 Boyce's evidence was that the Directive was "*...sufficiently clear, insofar as it was a directive from the CDS to the CJO, in the guidance it gave in respect of prisoner handling and interrogation, and who was responsible for prisoners and detainees*".[17] Relying on the principle of "mission command", which I addressed in Chapter 1 of this Part, Boyce noted the following:

> *"While the directive does not go into the detail of that guidance or how that responsibility would be exercised, that was not its purpose…it was not for me to set out every detail, but to set out the broad order. It was for subordinates, who had the requisite in-depth knowledge, to fill in the detail."* [18]

7.16 Boyce's view was shared by Reith whose evidence was that, beyond reference to JWP 1-10 and the principle of "mission command", he would not expect the CDS's and its Annexes to cover any further detail as this would be developed further by those who had more knowledge of the areas.[19]

The Chief of Joint Operations' Mission Directive and Related High Level Guidance

7.17 At the next level below the level of the CDS, the CJO, Reith, issued a Mission Directive to Burridge, the National Contingent Commander, dated 19 March 2003.[20]

7.18 Reith set out the Government's objectives in the following terms:[21]

[15] MOD052369
[16] MOD052373-74
[17] Boyce BMI08311, paragraph 21
[18] Boyce BMI08311, paragraph 21
[19] Reith BMI08254, paragraph 25
[20] MOD052847
[21] MOD052848

STRATEGIC ISSUES

4. HMG's Objectives.

a. Political Goal. To rid Iraq of its weapons of mass destruction (and their associated programmes and means of delivery, including prohibited ballistic missiles) as set out in UNSCRs.

b. Strategic End State. HMG's strategic end state is as rapidly as possible for Iraq to become a stable, united and law abiding state, within its present borders, co-operating with the international community, no longer posing a threat to its neighbours or to international security, abiding by all its international obligations and providing effective government for all of its people.

c. Wider Political Objectives. The wider political objectives in support of both the military campaign and the achievement of HMG's strategic end state are to:

(1) Demonstrate to the Iraqi people that our quarrel is not with them and that their security and well-being is our concern;

(2) Work with the UN to lift sanctions inhibiting the supply of humanitarian and reconstruction goods, and to enable Iraq's own resources, including oil, to be available to meet the needs of the Iraqi people;

(3) Sustain the widest possible international and regional coalition in support of military action;

(4) Preserve wider regional security, including maintenance of the territorial integrity of Iraq and mitigating the humanitarian and other consequences of conflict for Iraq's neighbours;

(5) Help create the conditions for stable and law-abiding governance of Iraqis;

(6) Further our policy of eliminating international terrorism.

d. Strategic Military Objective. To support the coalition effort, within allocated resources, in order to enforce the disarmament of Iraq in accordance with UNSCRs.

e. Objectives in Support of the UK's Higher Political Intent.

(1) Support efforts of humanitarian organisations to mitigate the consequences of hostilities.

(2) Facilitate international efforts for the rehabilitation and reconstruction of Iraq.

(3) Contribute to the preservation of the territorial integrity of Iraq and the wider regional security within the JOA.

7.19 The inclusion of a wider political objective of demonstrating to the Iraqi people that the UK quarrel was not with them and that their security and well-being was a UK concern evidences the importance of the battle for "hearts and minds". Reith gave Burridge specified high level tasks in the Directive stating that "*All military operations by UK forces and from UK territory are to be conducted in accordance with the UK's obligations under Law of Armed Conflict (also known as international humanitarian law) and UK national law.*"[22]

7.20 Specifically in respect of prisoners of war and detainees, the Directive provided as follows:[23]

25. PW and Detainees. The processing of PWs and detainees is to be in accord with the provisions of the Law of Armed Conflict. You have a legal liability to acquaint yourself with the Geneva Conventions and Protocols and you are responsible for ensuring that all members of UK contingents and components comply with them. Any PW and detainee handling by UK forces is to be conducted strictly in accordance with the provisions of JWP 1-10.

[22] MOD052851-52
[23] MOD052853

7.21 Reith's Mission Directive enclosed an Op Telic reference document which provided further guidance in a number of areas. Section 9 of the reference document was entitled "*personnel and administration*". Much of it is not directly relevant to the Inquiry. It did, however, provide as follows:[24]

> 30. Enemy Prisoners of War (EPW). Appropriate procedures are to be established for the registration and holding of captured belligerents, and for the protection of civilians in accordance with 1949 Geneva Convention III and JWP 1-10 (EPW Handling). Geneva Convention III Article 12 requires that EPW may only be transferred to another power if the Comd is satisfied that the power is willing to apply the Convention. DOI 005 gives further information for the management of EPW; arrangements for the burial/repatriation of enemy dead are contained in DOI 008-012.
>
> 31. Detainees. In the UK Compendium of Nation Rules of Engagement (JSP398), ROE680 lays down the circumstances under which foreign nationals may be detained, together with guidance on how they may be handed over and to whom. Further guidance may be found in the J9 Legal Advice in this Directive.

7.22 Annex J to Section 10 of the reference document was entitled "Op Telic – Prisoners of War" and gave details to supplement JWP 1-10 and to support the guidance that Reith had given to J1 staff. In particular it provided details regarding medical treatment. The Geneva Conventions, the first Additional Protocol and JWP 1-10 were all referenced in the Annex. The first part of the general guidance given was in these terms:[25]

> GENERAL
>
> 1. The handling of PW wounded must be conducted in accordance with the provisions of International law. Defence Medical Services staff will be familiar with the requirements of References A and B and the Laws of Armed Conflict. Those in command and staff appointments must have read JWP 1-10. This Annex is designed to provide mission specific guidance to supplement that publication and to support CJO's J1 Directive.

The Annex provided guidance on the medical standard of care (the same standard as for British casualties),[26] and amongst other things, indicated that the maintenance of clinical records was a medical responsibility whereas prisoner of war documentation was the responsibility of J1 staff.[27]

7.23 The Deployed Operating Instruction (DOI) referred to in the reference document was DOI 005, entitled "*PJHQ J1 Deployed Ops Instruction Prisoner of War (PW) Handling*".[28] It was a guidance document which was stated on its face to have been constructed from the guidance contained in JWP 1-10. It comprised a six-page précis of key aspects of prisoner of war handling, annexes of copy forms, a prisoner of war aide memoire and a prisoner of war "movement after capture schematic". The introduction emphasised that all operations must be planned and conducted within the constraints of the Law, meaning that commanders at all levels must know exactly what their responsibilities for prisoner of war handling are. The DOI emphasised that handling must be in accordance with JWP 1-10 and that "*All Component Commanders will be responsible for the safe delivery of PW to the PW Collection Point.*" [29] The guidance on "Action on Capture" emphasised that prisoners of war should be "*… disarmed, searched and have First Aid administered if required*".[30] Prisoners of war were to be segregated where possible. At unit and sub-unit level, it was stated that it

[24] MOD020006
[25] MOD052913
[26] MOD052913, paragraph 2
[27] MOD052914, paragraph 8
[28] MOD050773
[29] MOD050774, paragraph 5(c)
[30] MOD050775, paragraph 8(a)

was necessary to ensure that prisoners of war were kept in safe custody and treated humanely at all times, including the provision of shelter, food, water and protective clothing. Tactical questioning was to be carried out at unit or sub-unit level but it was stated "*Do not use force to gain information from a PW. When questioned, a PW is required to give only Name, Rank, Number and Date of Birth*".[31] Thus there was a clear emphasis on the need for humane treatment and ensuring proper treatment of prisoners of war. Equally, however, and unsurprisingly for a document that was constructed from JWP 1-10, there was no guidance at all in the DOI on sight deprivation, let alone any specific mention of hooding, nor any reference to the prohibition on the five techniques.

7.24 Reith's evidence was that his Directive to Burridge was sufficient for the purposes for which it was drafted having regard to the principle of mission command.[32] He suggested that the related documents set out above contained adequate guidance on the Law of Armed Conflict (LOAC), prisoner handling, interrogation, guarding and escorting prisoners of war, detainees and/or internees.[33]

The National Contingent Commander's Directive for Op Telic

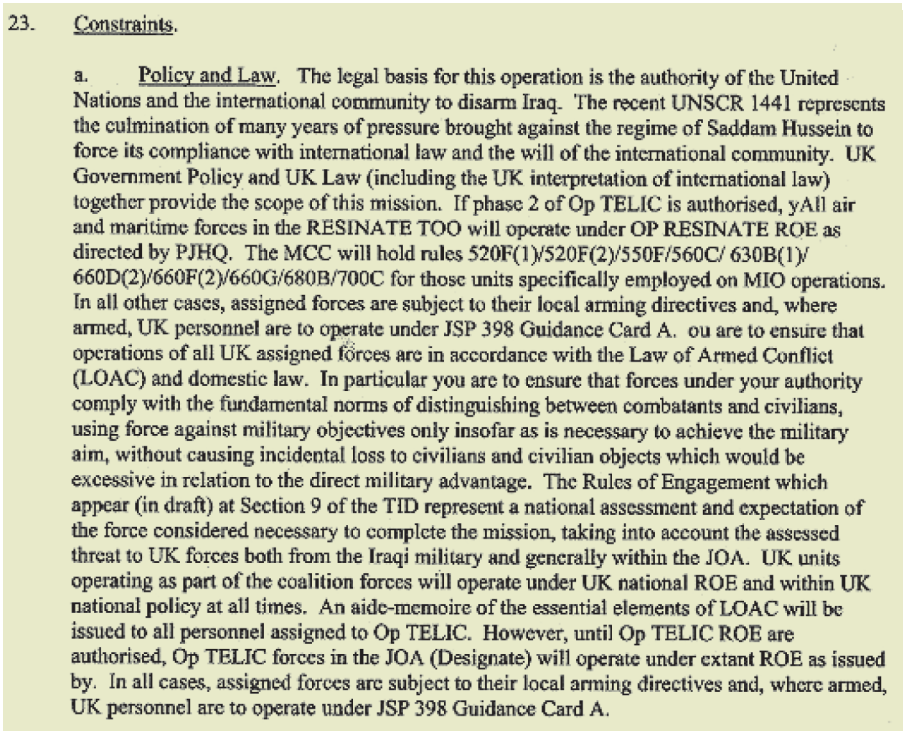
7.25 At the next level down in the cascade of high level Directives, Burridge, as the National Contingent Commander, issued his own Directive dated 21 February 2003. This went to the commanders of the air, land and maritime contingents, as well as recipients such as the Joint Force Logistic Commander.[34]

7.26 Burridge's Directive provided as follows regarding prisoners of war and detainees:[35]

> 31. PW and Detainees. You have a legal liability to acquaint yourself with the Geneva Conventions and the First Additional Protocol in relation to the taking and handling of PWs (your Legal Advisor, or NCHQ Legal Advisor will provide detailed advice), and you are responsible for ensuring that all members of UK Contingents and Components involved in PW and Detainee handling comply with the Third Geneva Convention and guided by the provisions of JWP 1-10 "Prisoner of War Handling". Further guidance is contained within Section 10 of the TID.

7.27 More broadly, Burridge's Directive also required recipients to ensure that operations of all UK assigned forces were in accordance with both LOAC and domestic law:[36]

[31] MOD050776, paragraph 11
[32] Reith BMI08255, paragraph 26
[33] Reith BMI08255, paragraph 27
[34] MOD043344
[35] MOD043351, paragraph 31
[36] MOD043349, paragraph 23



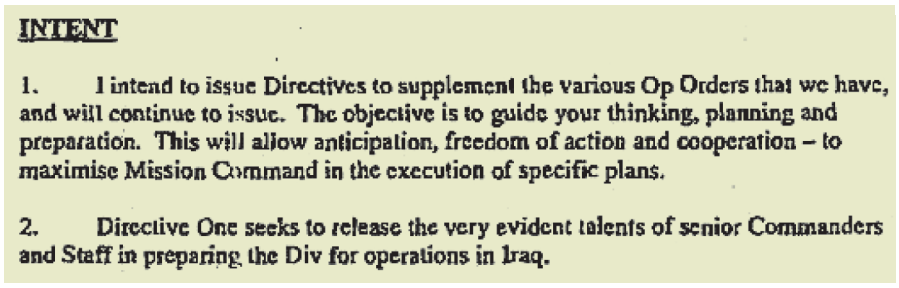
23. Constraints.

a. Policy and Law. The legal basis for this operation is the authority of the United Nations and the international community to disarm Iraq. The recent UNSCR 1441 represents the culmination of many years of pressure brought against the regime of Saddam Hussein to force its compliance with international law and the will of the international community. UK Government Policy and UK Law (including the UK interpretation of international law) together provide the scope of this mission. If phase 2 of Op TELIC is authorised, yAll air and maritime forces in the RESINATE TOO will operate under OP RESINATE ROE as directed by PJHQ. The MCC will hold rules 520F(1)/520F(2)/550F/560C/ 630B(1)/ 660D(2)/660F(2)/660G/680B/700C for those units specifically employed on MIO operations. In all other cases, assigned forces are subject to their local arming directives and, where armed, UK personnel are to operate under JSP 398 Guidance Card A. ou are to ensure that operations of all UK assigned forces are in accordance with the Law of Armed Conflict (LOAC) and domestic law. In particular you are to ensure that forces under your authority comply with the fundamental norms of distinguishing between combatants and civilians, using force against military objectives only insofar as is necessary to achieve the military aim, without causing incidental loss to civilians and civilian objects which would be excessive in relation to the direct military advantage. The Rules of Engagement which appear (in draft) at Section 9 of the TID represent a national assessment and expectation of the force considered necessary to complete the mission, taking into account the assessed threat to UK forces both from the Iraqi military and generally within the JOA. UK units operating as part of the coalition forces will operate under UK national ROE and within UK national policy at all times. An aide-memoire of the essential elements of LOAC will be issued to all personnel assigned to Op TELIC. However, until Op TELIC ROE are authorised, Op TELIC forces in the JOA (Designate) will operate under extant ROE as issued by. In all cases, assigned forces are subject to their local arming directives and, where armed, UK personnel are to operate under JSP 398 Guidance Card A.

7.28 Burridge acknowledged that he was responsible for ensuring that adequate orders and guidance in respect of prisoner of war handling and processing were provided to those under his command. His evidence was that, through the TELIC Instruction Document and his Directive of 21 February 2003, he provided what he considered to be adequate guidance for the commanders under him to pass down the chain of command in turn.[37]

The General Officer Commanding's First Directive

7.29 At one further level down the command chain, Brims supplemented the Divisional Operation Orders with Directives. He explained his approach in the first Directive which he issued on 3 February 2003:[38]



INTENT

1. I intend to issue Directives to supplement the various Op Orders that we have, and will continue to issue. The objective is to guide your thinking, planning and preparation. This will allow anticipation, freedom of action and cooperation – to maximise Mission Command in the execution of specific plans.

2. Directive One seeks to release the very evident talents of senior Commanders and Staff in preparing the Div for operations in Iraq.

7.30 It is right that I should set out in full the impressive guidance that Brims gave on this intent for the conduct of operations and also for discipline:[39]

[37] Burridge BMI05331, paragraph 24
[38] MOD054392
[39] MOD054394-6

CONDUCT OF OPERATIONS

17. We must be clear – when we employ force this is war. We are invading Iraq. The enemy will fight back. We must expect the Regime to act unethically and contrary to laws of war. It will seek to create chaos. It will sacrifice its own citizens in order to achieve this. We must be ready to overcome use of chemical and biological weapons.

18. We win. We overcome whatever obstacles are put in our way.

19. Invading and winning requires analysis:

a. We are invading but only to disarm Iraq of WMD. In process we shall liberate the people from the consequences of a Regime that refuses to recognise the will of the International Community.

b. We only win on successful implementation of Phase IV. See Paragraph 21.

20. We are manoeuvrists. We must grasp opportunities to deliver our missions with minimum kinetic force. Iraq must still exist after the conflict as a sovereign state, stable and able to defend itself.

21. As we enter Iraq in Phases II/III, everything behind us is automatically in Phase IV. The Phase IV requirements have yet to emerge. I am confident that our people have the physical and mental agility to attend to it quickly, thoughtfully and effectively when the requirements emerge, and we judge the moment has arrived. But 2 important points:

a. There must be no triuphalisms on achieving Phases II/III. Indeed we must restore, foster, Iraqi dignity in our AO and work together as far as possible to achieve Phase IV for their benefit.

b. We shall probably be the first Coalition forces to implement Phase IV. We can set the pace. The world media will be reporting our activities.

22. We shall increasingly be in the public eye. We represent our country in the Coalition and once battle is joined will be the focus of our country's media. We expect to be accompanied by accredited correspondents, who in accepting a degree of censorship expect in return the opportunity to report. We must recognize that essentially our aims are contradictory. So we must be neither naïve nor unduly officious. Professional respect and cooperation should allow us to use this powerful medium to put our message across. We must identify the core message and determine the best way of putting them across. The Media's impression of us must be that identified at Paragraph 11 "professional, disciplined, determined, quietly confident in our abilities and at all times acting decently".

…

SITUATION AWARENESS, DISCIPLINE AND SECURITY

26. Uninformed soldiers, poor discipline and security lead to low morale:

a. We must establish throughout 1 (UK) Armd Div an attitude of mind that is robust and capable of enduring the incertainties, fear and confusion associated with war. People must accept we do not know what tomorrow will bring, nor how long this deployment will last. We must encourage people to live for the day, take prudent measures for their next, and be confident in their ability to handle every eventuality.

b. We must explain the circumstances of Iraq and the Coalition. But not speculate as to what might be. This generates rumour, the very stuff of uncertainty and confusion. We must deal in facts.

c. Let us insist on the highest standard of (self) discipline from the moment of arrival in Theatre. It will be a significant Force Protection measure before we are ordered to employ force, it will significantly improve our sustainability (people and equipment) on employment, and it is the primary antidote to fear. Good discipline leads to trust, confidence and camaraderie – a virtuous circle. This is the state from where we shall prevail.

R V BRIMS
Maj Gen
GOC 1(UK) Armd Div

7.31 This first Directive was, in Brims' words "*designed to set the tone for the invasion and subsequent occupation of Iraq*".[40]

7.32 Trousdell said of the Directive that:

> *"He lays out in this intent very clearly the context in which the operation is going to take place, how he wishes it to be conducted, and he does, as well, this very important thing of setting the tone for the operation about how he wants it to be run in a -- in the sort of air of the moral component of emotions and humanity."*[41]

The development of prisoner of war planning and orders

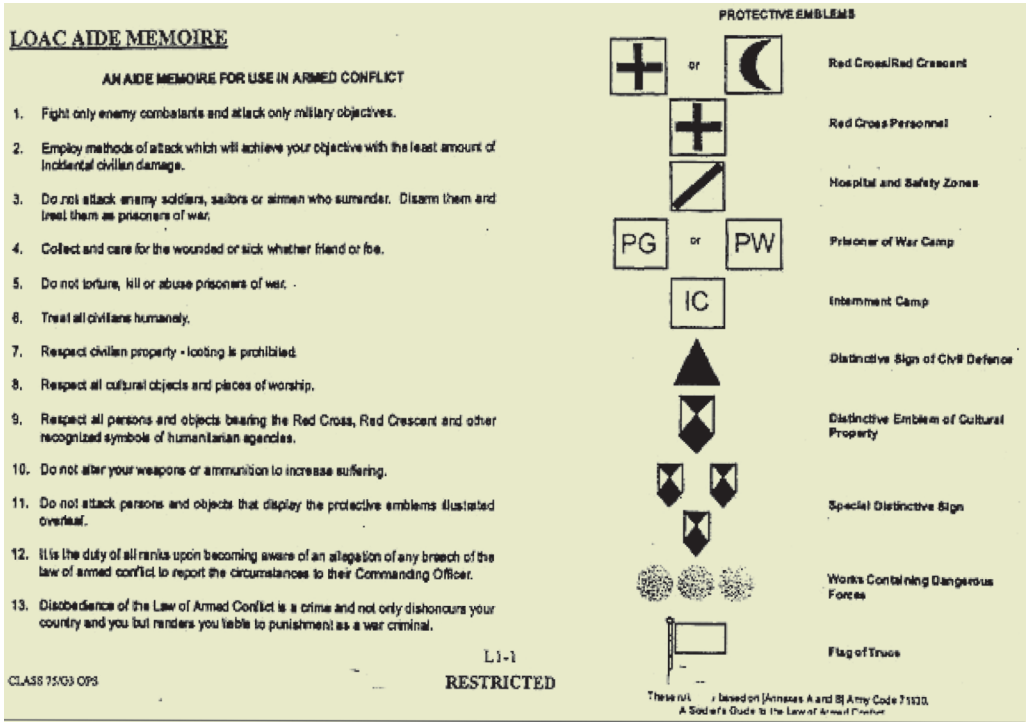
7.33 Having considered how the high level Directives addressed prisoners of war, I turn to the development of Op Telic-specific prisoner of war planning meetings and orders in the lead up to the warfighting phase. In doing so I remind myself that the documents disclosed by the MoD to the Inquiry are only the written orders that were issued. Verbal briefings and orders would have been given as well. One cannot assume that by considering the pattern of the written directives and orders together with surviving meeting minutes, the full picture has emerged as to the guidance given to the soldier on the ground. It is nevertheless obviously highly relevant and important to assess how the Directives and Orders for Op Telic addressed prisoner handling.

20 January 2003: HQ Land Mounting Order for Op Telic

7.34 On 20 January 2003, HQ Land issued its Mounting Order for Op Telic.[42] In Part VI Chapter 1 of this Report, I have already referred to Annex C to the mounting order, which addressed pre-deployment training. But at Annex L, the mounting order also included a legal annex. This annex gave a brief definition of LOAC and stated that "*LOAC will apply to Op TELIC unless and until such time as the conflict ceases*".[43] It reminded

[40] Brims BMI07388, paragraph 20
[41] Trousdell BMI 115/55/9-15
[42] MOD016843
[43] MOD016982, paragraph 1

recipients that the UK has an international law obligation to ensure that its soldiers are trained in the principles of LOAC, hence the mandatory requirement for all personnel deploying to TELIC to have completed ITD(A)6 on LOAC.[44] The annex required that the LOAC aide memoire from the most up-to-date version of the *Soldier's Guide to the Law of Armed Conflict* be reproduced and issued locally to all personnel:[45]



LOAC AIDE MEMOIRE

AN AIDE MEMOIRE FOR USE IN ARMED CONFLICT

1. Fight only enemy combatants and attack only military objectives.
2. Employ methods of attack which will achieve your objective with the least amount of incidental civilian damage.
3. Do not attack enemy soldiers, sailors or airmen who surrender. Disarm them and treat them as prisoners of war.
4. Collect and care for the wounded or sick whether friend or foe.
5. Do not torture, kill or abuse prisoners of war.
6. Treat all civilians humanely.
7. Respect civilian property - looting is prohibited.
8. Respect all cultural objects and places of worship.
9. Respect all persons and objects bearing the Red Cross, Red Crescent and other recognized symbols of humanitarian agencies.
10. Do not alter your weapons or ammunition to increase suffering.
11. Do not attack persons and objects that display the protective emblems illustrated overleaf.
12. It is the duty of all ranks upon becoming aware of an allegation of any breach of the law of armed conflict to report the circumstances to their Commanding Officer.
13. Disobedience of the Law of Armed Conflict is a crime and not only dishonours your country and you but renders you liable to punishment as a war criminal.

L1-1

CLASS 7503 OPS

RESTRICTED

PROTECTIVE EMBLEMS

Red Cross/Red Crescent

Red Cross Personnel

Hospital and Safety Zones

PG or PW — Prisoner of War Camp

IC — Internment Camp

Distinctive Sign of Civil Defence

Distinctive Emblem of Cultural Property

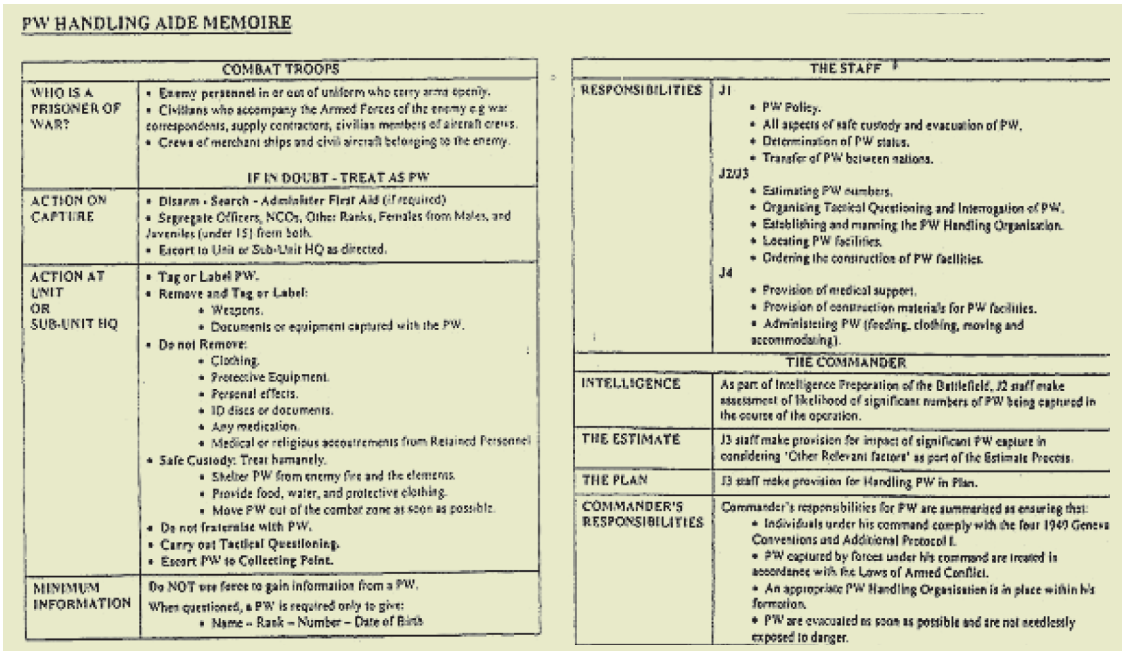
Special Distinctive Sign

Works Containing Dangerous Forces

Flag of Truce

These are based on Annexes A and B Army Code 71630, A Soldier's Guide to the Law of Armed Conflict

7.35 The annex also referred to JWP 1-10 as the "doctrinal authority" on prisoner of war handling matters, stating it was available via intranet and the British Army Battle Box. It required that the "PW Handling Aide Memoire" be reproduced and issued locally to all personnel:[46]



PW HANDLING AIDE MEMOIRE

COMBAT TROOPS	
WHO IS A PRISONER OF WAR?	• Enemy personnel in or out of uniform who carry arms openly. • Civilians who accompany the Armed Forces of the enemy e.g war correspondents, supply contractors, civilian members of aircraft crews. • Crews of merchant ships and civil aircraft belonging to the enemy. IF IN DOUBT - TREAT AS PW
ACTION ON CAPTURE	• Disarm - Search - Administer First Aid (if required) • Segregate Officers, NCOs, Other Ranks, Females from Males, and Juveniles (under 15) from both. • Escort to Unit or Sub-Unit HQ as directed.

ACTION AT UNIT OR SUB-UNIT HQ	• Tag or Label PW.
	• Remove and Tag or Label:
	  • Weapons.
	  • Documents or equipment captured with the PW.
	• Do not Remove:
	  • Clothing.
	  • Protective Equipment.
	  • Personal effects.
	  • ID discs or documents.
	  • Any medication.
	  • Medical or religious accoutrements from Retained Personnel
	• Safe Custody: Treat humanely.
	  • Shelter PW from enemy fire and the elements.
	  • Provide food, water, and protective clothing.
	  • Move PW out of the combat zone as soon as possible.
	• Do not fraternise with PW.
	• Carry out Tactical Questioning.
	• Escort PW to Collecting Point.

MINIMUM INFORMATION	Do NOT use force to gain information from a PW. When questioned, a PW is required only to give: • Name – Rank – Number – Date of Birth

THE STAFF	
RESPONSIBILITIES	J1 • PW Policy. • All aspects of safe custody and evacuation of PW. • Determination of PW status. • Transfer of PW between nations. J2/3 • Estimating PW numbers. • Organising Tactical Questioning and Interrogation of PW. • Establishing and manning the PW Handling Organisation. • Locating PW facilities. • Ordering the construction of PW facilities. J4 • Provision of medical support. • Provision of construction materials for PW facilities. • Administering PW (feeding, clothing, moving and accommodating).
THE COMMANDER	
INTELLIGENCE	As part of Intelligence Preparation of the Battlefield, J2 staff make assessment of likelihood of significant numbers of PW being captured in the course of the operation.
THE ESTIMATE	J3 staff make provision for impact of significant PW capture in considering 'Other Relevant Factors' as part of the Estimate Process.
THE PLAN	J3 staff make provision for Handling PW in Plan.
COMMANDER'S RESPONSIBILITIES	Commander's responsibilities for PW are summarised as ensuring that: • Individuals under his command comply with the four 1949 Geneva Conventions and Additional Protocol I. • PW captured by forces under his command are treated in accordance with the Laws of Armed Conflict. • An appropriate PW Handling Organisation is in place within his formation. • PW are evacuated as soon as possible and are not needlessly exposed to danger.

[44] MOD016982, paragraph 2
[45] MOD016982, paragraph 4; MOD016982b
[46] MOD016982, paragraph 5; MOD016982c

20 January 2003: Prisoner of War Planning Meeting at PJHQ

7.36 Also on 20 January 2003, a high level meeting was held to consider potential prisoner of war issues. A number of the Inquiry's witnesses attended. They were Rachel Quick, Lt Col Nicholas Clapham, Capt Neil Brown, Lt Col Nicholas Mercer, Maj Gavin Davies, Capt Christopher Heron, Nick Ayling and Sean Martin. The record of the meeting suggests that the proper medical treatment of prisoners of war was a major topic of discussion.[47] Clapham, Brown, Mercer, Davies and Heron are all lawyers.

7.37 A section of the record of the meeting refers to a discussion of what was to be the Divisional work for 1 (UK) Armd Div. The following issues were raised:[48]

DIVISIONAL WORK

16. 1 (UK) Armd Div see their role as handling PWs from capture to the cage. Lt Colonel Mercer stated that they were not equipped for anything further than this and were planning accordingly.

17. Lt Col Mercer made it very clear that in order for planning to take Place we need to have assurance from the US that they will be accepting the responsibility of the running the PW camps and that they will be accepting UK captured PWs into those camps. This matter needs to be clarified urgently.

18. The issue of how the UK will track its enemy PWs from capture to repatriation needs to be resolved.

19. There will need to be a Prisoner of War Handling Organisation (PWHO) established. The role of this organisation needs to be defined and its location within the Command chain needs to be agreed. Only then can it be staffed/resourced properly.

20. Has the PW information Bureau been activated?

21 Who will conduct PW status tribunals and where will they be conducted?

22. There will need to be separate arrangements for non-PW detainees.

23. Grass roots issues, such as the provision of food that accords with the religious beliefs of the Iraqis, the use of hand-cuffs, the provision of NBC IPE for PWs and detainees, both in camps and prior to their establishment will need to be addressed.

24. Will a Protecting Power be appointed?

7.38 At paragraph 28, the minutes of the meeting record:[49]

ARTICLE 5 ECHR & BANKOVIC

28. The meeting agreed that guidance was needed on whether the ECHR would apply in Iraq in accordance with the decision in the case of Bankovic.

Similarly in paragraph 36, the following question was raised: "*Will the ECHR apply in the conflict or can we derogate in some way*".[50] Heron suggested in his evidence that even at this stage, the issue of concern in relation to the European Court of Humans Rights (ECHR) was whether Article 5 ECHR applied to the determination of a detainee's status.[51]

[47] MOD053714
[48] MOD053717
[49] MOD053718
[50] MOD053719
[51] Heron BMI 64/62/17-25; Heron BMI 64/64/3-25

7.39 The upshot of the meeting was that Davies, the then SO2 Legal JFHQ was tasked with taking the lead in compiling a minute detailing all the potential problems in prisoner of war handling. With input from others, he was to compile a note for PJHQ to bring to their attention the problem areas on prisoners of war.[52] Several drafts of the resulting paper on enemy prisoners of war were disclosed to the Inquiry.[53] What appears to have started off as a note to PJHQ was added to and amended during February and early March with input from PJHQ legal and other policy staff until it ultimately formed a minute to the Secretary of State dated 14 March 2003.[54] I address this minute to Ministers later in this Chapter, see paragraphs 7.92 to 7.100 below.

7.40 Heron, one of those attending this meeting explained in his oral evidence that:

> *"My recollection was that Colonel Mercer was very worried that prisoners or prisoner of war issues were not being given the attention that they deserved, particularly in light of the estimates that they were talking about, about the numbers of prisoners of war we would be taking."* [55]

7.41 I have no doubt that Heron was accurately recalling the very significant concerns held by Mercer. In his own evidence Mercer reflected critically on the pre-war prioritisation of prisoner of war matters in his statement to the Inquiry:[56]

> 23. Although the UK maintained that it took its responsibilities under the Geneva Conventions in relation to prisoners very seriously, this was not my experience. In my view, the issue of prisoners had very low priority and was treated more as an inconvenience than an obligation under International law. I cover the basis for this view in the paragraphs below.

7.42 Mercer went on in his evidence to detail a number of concerns. Firstly, the Battalion originally assigned to deal with prisoners of war had been struck off the order of battle. Secondly, assurances that the US would deal with UK prisoners had faltered when it became apparent that the US forces for this task would not materialise. Thirdly, he had legal concerns about alternative plans based on sending Iraqi forces who had capitulated back to their own barracks. Fourthly, the UK's ability to deal with the sheer number of expected prisoners with the force levels originally assigned to the PWHO.[57]

3 February 2003: Concerns raised by Col S009, Commanding Officer Queen's Dragoon Guards (nominated as the Prisoner of War Handling Organisation)

7.43 These concerns were soon to be supported by Col S009 who was the Commanding Officer of the Queen's Dragoons Guards (QDG). The Battalion Headquarters of the QDG had been appointed as the UK's Prisoner of War Handling Organisation.

[52] MOD053717-8, paragraph 25
[53] MOD053721; MOD011453; MOD050753; MOD053123; MOD053143; MOD053031; MOD053039; MOD053047
[54] MOD054362
[55] Heron BMI 64/61/18-23
[56] Mercer BMI04064, paragraph 23
[57] Mercer BMI04064-6, paragraphs 23-33

7.44 On 3 February 2003, S009 wrote to the Divisional Chief of Staff raising concerns that the UK was taking undue risk in the area of its prisoner of war handling.[58] His concerns centred on both the need to provide a dedicated and appropriately trained Prisoner of War Handling Organisation and the scale of the task and number of prisoners of war who might be involved. Typical of the clarity of thought of S009's approach, his conclusion to his Divisional Headquarters was as follows:[59]

> **CONCLUSION**
>
> I regret being the bearer of bad news. But I think it important to raise the issue before we are held up as the bad men for not looking after our PW. We have international, legal and moral obligations to get this right. And whilst we may wish defeated Iraqis to go home or declare a cease fire to obviate the need to resource the problem, I do not think we should base our plans on hope. I think we must address the issue of the HQ staff now, and identify a minimum of one new unit capable of carrying out these tasks. We should also be prepared to use up to another 2 – 3 from within the Division if the US leave us holding the baby.

7.45 Although it was plain that S009 was not entirely satisfied with the response to his concerns, some additional manpower was found for the Prisoner of War Handling Organisation. A number of documents give a picture of the attempts at Divisional and NCC level to meet the likely prisoner of war demands and policy requirements. For example:

(1) Lt Col Andrew Mason, the SO1 J3 (Land) at the NC HQ was tasked to set up a PW Operational Planning Team;[60] and

(2) an Assessment Report for 23/24 February 2003[61] in which 1 (UK) Div urged that it was still one sub-unit short of the minimum requirement and requested the NCC to identify a further sub-unit to be placed under command of the Division for additional prisoners of war tasks.

13 February 2003: The Base Operations Order for Queen's Dragoon Guards

7.46 The base operation order for the QDG as the Prisoner of War Handling Organisation was issued on 13 February 2003.[62] In it S009 explained his intent in the following terms:

> (1) Intent. The intent is to remove the burden of PW from the Bdes as swiftly as possible to allow them to conserve combat power for their primary warfighting mission. This is to be done in accordance with the Geneva Convention (GC) and in light of the UK's position as a leading human rights advocate and permanent member of the UN Security Council.

7.47 The mission/tasks of the Prisoner of War Handling Organisation were threefold: to co-ordinate the collection and security of prisoners of war; to ensure the safety and dignity of the prisoners of war held at the Divisional Collection Point; and to ensure the processing of prisoners of war in accordance with the Geneva Conventions.[63] The

[58] MOD029065. See further MOD050871
[59] MOD029066
[60] Mason BMI07032, paragraph 35
[61] MOD042893-4
[62] MOD042987. A second operation order was issued on 15 March 2003 (MOD043126) but this was not significantly different in matters relevant to the Inquiry's terms of reference.
[63] MOD042988

order addressed the segregation of prisoners of war, such as officers from their men, but sight deprivation was not addressed in any form.[64] Annexes to the order addressed amongst other things the status of prisoners of war[65] and religious considerations.[66]

7.48 A slightly later clarification of this order included under the task organisation the deployment of a military dog section "…[in order] *to continue the shock of capture and the pacification of PWs in the* [Divisional Collection Point]*".*[67] This was a rare direct reference to the shock of capture in the early prisoner of war directives and orders. S009's evidence in relation to this use of military dogs was that it was appropriate to have a military dog section available as a further tool in the escalation of force for prisoner control purposes since it limited the situations in which the use of more lethal force might be required. S009 suggested that, in the event, he did not think that military dogs were deployed for the purposes of maintenance of the shock of capture, nor had they ever been intended to be used to make prisoners more frightened.[68] The latter suggestion I found a somewhat difficult one to square with the plain wording of the order. But I saw no evidence or reason to doubt S009's account that military dogs were not in fact utilised by the Prisoner of War Handling Organisation as a "shock of capture" device. Perhaps unsurprisingly, given the religious sensitivities, S009's evidence was that on the few occasions when military dogs were used for prisoner control purposes, it had the opposite effect and tended to agitate the prisoners.[69]

15 February 2003: 1 (UK) Div Base OpO 001/03 (3rd Edition)

7.49 Whereas the Senior Commanders' Directives had addressed prisoner of war handling at a very high level of generality, greater detail emerged in the cascade of orders at a lower level. The main operation order covering the early stages of the warfighting was Brims' 1 (UK) Div Base OpO 001/03, the third edition of which was dated 15 February 2003.[70] In the version disclosed by the Inquiry, much of the operational detail for the initial warfighting phase retained a degree of sensitivity and was therefore redacted. However, two annexes were directly relevant to prisoner handling.

7.50 The first was Annex R, the Legal Annex, which included the following:[71]

> LEGAL ADVICE. This OPLAN and all subsequent OPOs are to be planned and executed in accordance with International and National Law. Commanders and their staff are required under International Law to have legal advisers available when necessary and will seek legal review and advice in the planning and execution of this OPLAN accordingly. Divisional Legal advisers will provide legal advice, training and services to commanders and their staffs during all phases of this operation.
>
> …

[64] MOD042989
[65] MOD042993
[66] MOD042995
[67] MOD042998, 16 February 2003
[68] S009 BMI 66/25/20-34/14
[69] S009 BMI03521-2, paragraph 27
[70] MOD043656
[71] MOD043692-6

6. EPW. All combatants captured during an International Armed Conflict that fall within Art 4 of GC III and Art 43 of GP I will be treated as EPW. All EPW will be treated in accordance with LOAC and any further policy issued by UK NCC. G1 can provide further policy guidance on PW handling. Detention of EPW is a national responsibility and this responsibility cannot be delegated (see 7e below).

a. Catagories. There are 4 categories of combatants entitled to EPW status:

(1) Members of regular armed forces and their authorised supporting personnel.

(2) Combatants who would qualify but are not in uniform but carry their arms openly and wear some distinctive sign (eg militia, volunteer corps, organised resistance).

(3) Combatants who would qualify but due to the particular circumstances are unable to wear any uniform / distinctive sign, but carry their arms openly during and prior to an attack.

(4) Inhabitants of the country who, on the approach of the enemy spontaneously take up arms to resist the invading forces (levee-en-masse). They will be considered combatants so long as they carry their arms openly and observe LOAC.

c. Status. If the status of a captured person is unclear, that person should be treated as an EPW until his status is determined by a competent Tribunal. Where such doubt arises Divisional Legal Advisor must be notified. The competent tribunal will be located at the Theatre Camp, unless notified otherwise.

d. Other Detainees. Any power to detain non-combatants will be issued under the authorised ROE, or further instruction from Divisional Legal.

e. Minimum Standards. All combatants and retained personnel must be treated in accordance with the standards laid down in GC III. These standards cannot be altered or amended. Non-combatants are guaranteed a minimum standard of treatment under Art 75 of GP I. The principles of International Humanitarian Law apply throughout.

7.51 The second relevant annex was Annex W which comprised 1 (UK) Div's Enemy Prisoner of War Standard Operating Instruction.[72] It can be seen that this had its origin as an SOI circulated on behalf of S009, by the Adjutant of the QDG.[73] The introduction impressively set the context in which prisoner of war handling would be occurring, emphasising how it would be part of creating the conditions for the civilian/occupying power relationship in Phase 4 of Op Telic:[74]

Refs:

A. Geneva Convention III (GC).
B. JWP 01-10.

INTRODUCTION

1. General. Conservative OA analysis predicts that 2,500 PW will be captured on the AL FAW peninsula and a further 11,500 PW captured within 1 (UK) Div's AO. The manner in which the PW are handled will attract huge media attention and will help create the conditions for the civilian/occupying power relationship in Ph 4.

2. The method of PW handling is mandated by the GC and regulated by the International Commission for the Red Cross (ICRC). A capturing force effectively takes ownerships of its PW and responsibility for their protection, shelter, feeding, medical and welfare needs.

[72] MOD043702
[73] MOD042967
[74] MOD043702

3. Prisoner of War Handling Organisation (PWHO). QDG BGHQ have been identified as the PWHO and as such will be responsible for the collection of PW from Bde XPs, their processing, registration and detention at the Div Collection Point and their subsequent move to the Corps Handling Area once open. The aim of the PWHO organisation is to efficiently and humanely process the PW and whilst relieving Combat Power from the burden of PW.

7.52 Under "General handling points", the SOI provided an overriding message to treat prisoners in the manner in which you would expect to be treated if taken prisoner:[75]

6. UK tps will operate within the parameters of the GC; the overriding message is that PW are to be treated in the manner in which you would expect to be treated if taken prisoner. The fol points apply throughout the PW process:

a. Safe Custody. PW are to be treated humanely, provided with shelter from en fire and the elms and are to moved away from the combat zone as swiftly as poss.

b. Tps are not to fraternise with the PW.

c. PW are only req to give Name, Rank, Number, DOB.

d. Treat en med and religious personnel the same way as PW but allow them to perform their duties without hindrance.

7.53 The SOI's guidance on prisoner of war handling at the point of capture was as follows:[76]

PW HANDLING AT POINT OF CAPTURE

7. The key to PW handling at the POC is simplicity; troops in combat must be as unhindered by the processing needs of PW. To ameliorate this a simple wristband tag has been produced and must be issued to the lowest level notwithstanding logistical constraints. The following is to happen at the POC:

a. Disarm.

b. Search.

c. Administer First Aid.

d. Segregate – Officers, NCOs, ORs, Females, Juveniles.

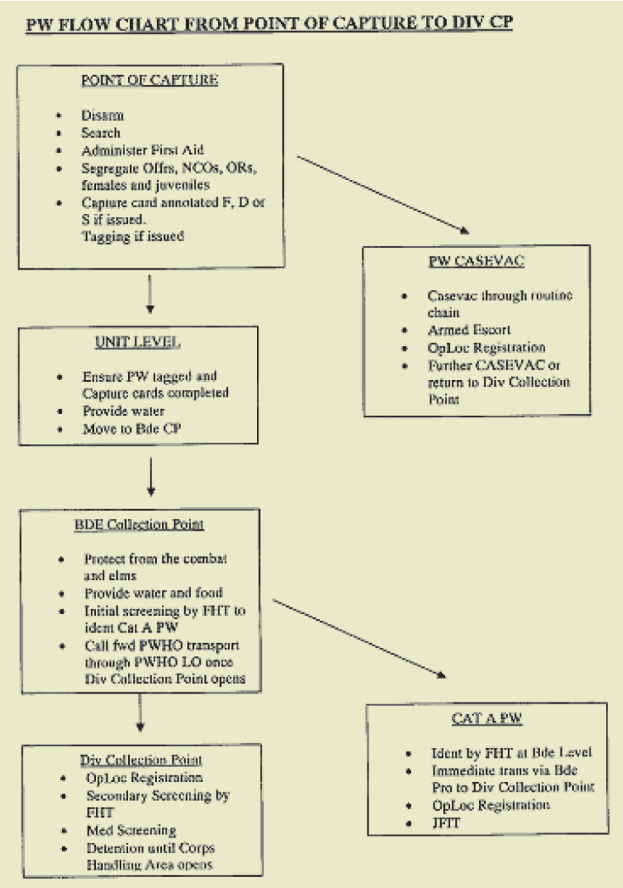
e. Capture Cards if issued at plt level – Marked with unit, DTG and Loc of capture and annotated with F (Fought), S (Surrendered) or D (Deserted).

f. Tagging if issued at plt level – UK Tag on right wrist, wpn and eqpt.

g. Escort to Sub-unit or Unit HQ as directed.

7.54 The SOI contained an appendix giving guidance on prisoner of war status[77] and a further appendix providing a prisoner of war flow chart from point of capture to the Divisional Collection Point:[78]

[75] MOD043703
[76] MOD043703-4
[77] MOD043706
[78] MOD043710



February 2003: Prisoner of War Coordination Meeting

7.55 The MoD disclosed to the Inquiry the undated minutes of a Prisoner of War Coordination meeting.[79] Those attending included the Inquiry's witnesses S002 (the SO2 J2X at 1 (UK) Div, responsible for human intelligence matters), S014 (the Operations Officer of the Joint Forward Interrogation Team (JFIT)) and Heron, of the Army Legal Service.

7.56 Part of the agenda for this meeting was to discuss the concept of operations for the Field HUMINT Teams and the JFIT. In relation to those matters, the record of the meeting was as follows:[80]

> Maj **S002** outlined the FHT/JFIT concept of Ops. The detail will follow in the Op order.
>
> a. At what level will tactical questioning take place and by whom? Tactical questioning will take place at Bde level using FHT. Bdes with additional trained personnel are to make them available to the FHT to assist in this process.
> **ACTION: Bde HQs, Capt S014 FHT/JFIT**
>
> b. What methods will be employed to report findings from tactical questioning? FHT will already be present. **No action required**

[79] MOD029092
[80] MOD029094

c. How many trained tactical questioners do Bdes hold? Bdes will trawl for numbers of trained tactical questioners. It is acknowledged that some of these may not be available due to their existing work commitments. **ACTION Bdes to liaise with Capt S014**

d. At what level (Unit/Bde will FHT be deployed? Brigade and in some circumstances Unit. **No further action required.**

7.57 On legal issues, the rights of detained civilians appear to have been discussed. The record of the meeting recorded the following:[81]

b. What are the rights of detained civilians Civilians may be detained by Bdes for their own safety and to allow operations to continue. After this period they may be released, unless (on screening) they are determined to be suitable for further questioning in which case they will move through the normal PW chain. **No further action required.**

7.58 In his statement to the Inquiry, S002 suggested that hooding of prisoners was raised at this meeting.[82] I will return to the evidence of S002 and S014 in relation to the use of hoods at the JFIT in Part VIII of the Report. S002's evidence was that Mercer, Major Frend, S009 and Lt Cdr S040 were present at the meeting.[83] However, none of those officers are recorded as being present at this coordination meeting. If hooding had been discussed, I think it very likely that Heron would have raised it with Mercer. S002 was, in my view, wrong in his recollection that this was a meeting at which hooding was discussed.

27 to 28 Feb 2003: Lt Col Mercer's concerns regarding prisoners of war are raised during the National Contingent Headquarters Visit to 1 (UK) Div

7.59 By late February 2003, it is clear that Mercer's concerns about the impact of resource shortages on proper prisoner of war handling had deepened. When the National Contingent Headquarters visited 1 (UK) Div on 27 to 28 February, the following concerns on prisoners of war were noted:[84]

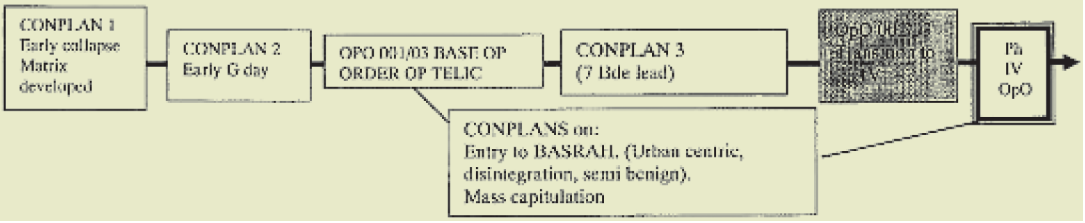
7.	PWs	Any additional manpower for PWs is required by 10 Mar 03. The LEGAD (Lt Col Mercer) in Div has advised that the lack of troops will put them in a 'legal amber' position, and not able to provide much in the way of support.	J3 Land

[81] MOD029094, paragraph 6(b)
[82] S002 BMI05826, paragraph 10
[83] Ibid.
[84] MOD017249

28 February 2003: 1 (UK) Div Operation Order 002/003 Stabilisation and Transition to Phase IV

7.60 Although there was an emphasis on the immediate warfighting phase of operations, some of the orders did address the post warfighting moves towards stabilisation. At Divisional level, this was the subject of 1 (UK) Div's second operational order, dated 28 February 2003.[85] The scope of the order was described as follows:[86]

Scope of Order: This OpO provides direction on how the Div will adopt an initial stabilisation stance on completion of the activities listed in the Reference B. Due to the likely nature of the situation on the ground, Bdes are to start acting on the direction in this OpO when the conditions in their AO allow them to do so. As a result there will clearly be a period when Bdes, or even BGs within Bdes, are implementing this direction to different degrees. The degree to which it is applied is a Comds decision based on the local situation. This stabilisation stance will set the conditions for the formal transition to Ph IV activity. Ph IV itself will be covered in detail by a subsequent OpO:



7.61 To the lay reader the above flow chart is, to say the least, a little opaque although I can understand that its meaning may have been clearer for its intended readership.

7.62 The intent was described as follows:[87]

a. Intent. The key objective for 1 (UK) Armd Div is to provide stable conditions within which local structures can operate effectively to provide essential services to the local population and to allow coalition, international and non government organisations to enter and begin the process of reform, reconstruction, and delivery of humanitarian aid. To achieve this 1 (UK) Armd Div must: establish authority through a robust liaison/ supervisory structure with both the local civil administration and the military units that remain within the AO; take control of key civil sites or facilities whilst supervising local structures such as the Police; maintain a credible military deterrent to ensure the continuance of local ceasefires and maintenance of law and order; remove any security impediment to the running of the maritime or oil infrastructure. Successful endstate will see 1 MEF operations continuing unhindered in and through the UK AO whilst we are postured to transition to formal Ph4 operations, with both the civil and military structures functioning

7.63 The legal annex, Annex R, to this order contained a number of relevant appendices. The first was "Commanders Aide Memoire – Occupation".[88] It is clear that this is a modestly amplified version of a document that was originally drafted by 1 (UK) Div's Commander Legal, Mercer.[89] Mercer told the Inquiry that his intention in producing this document was to give commanders an understanding of the breadth and scale of their potential legal responsibilities.[90] He told the Inquiry that the Aide Memoire would

[85] MOD043755
[86] MOD043755. "Reference B" was 1 (UK) Div's first operation order.
[87] MOD043755, paragraph 3(a)
[88] MOD043771
[89] Compare the version in this Divisional Order at MOD043771 with the version produced by Mercer at MOD019129.
[90] Mercer BMI04071, paragraph 56

have gone to all Brigade Commanders and he would also have expected it to go to Battalion Commanders as well.[91]

7.64 The Aide Memoire referred to the following:[92]

(1) the occupying power having the right of internment for reasons of security; the duty to conduct initial and six monthly reviews of internment; and internees to be accommodated separately from prisoners of war with standards to be no less than those for prisoners of war;

(2) the occupying power's obligations towards civilians including in respect of the practice of their religion, avoiding discrimination, and protection from violence, insults and public curiosity.

7.65 A further appendix comprised a "Draft Detention and Internment Directive".[93] The aim of this draft was to provide "*...guidance on the proposed policy to be adopted regarding the detention and internment of individuals by UK Armed Forces within the Basrah Region during Phase IV of OP TELIC.*"[94] It then set out in some detail, plans for a "Detention and Internment Management Unit" (DIMU) and a "Reviewing Authority" (RA) that would be established.[95] These would oversee the arrest, detention and internment of individuals over a temporary period whilst the criminal justice system in Iraq was re-established.[96] It was stated that this would ensure at the same time that the power to detain and intern civilians was effected "*…in accordance with the highest standards under International Law*".[97] The draft envisaged the appointment of UK Armed Forces legal officers as prosecuting and defence officers. The draft Directive was described in the conclusion as being an initial and interim one. It was accompanied, in the next appendix to Annex R, by a Draft Detention and Internment Ordinance for the Basra Region.[98]

4 March 2003: 1 (UK) Armd Div Op Directive 010

7.66 Further guidance on prisoner of war handling was contained in 1 (UK) Armd Div Op Directive 010, the final version of which was dated 4 March 2003. Its introduction emphasised correct handling and commanders' legal responsibilities:[99]

INTRODUCTION

1. General. Conservative OA analysis predicts that 2,500 PW will be captured on the AL FAW peninsula and a further 11,500 PW captured within 1 (UK) Armd Div's AO. PW are to be handled correctly and with dignity so to help the conditions for the return of a functioning Iraqi society on cessation of hostilities.

2. The method of PW handling is mandated by the GC and monitored by the International Commission for the Red Cross (ICRC). A capturing force effectively takes ownerships of its PW and is responsible for their protection, shelter, feeding, med and welfare needs. All commanders are to ensure that those under their command are aware of their legal responsibilities under the GC.

[91] Mercer BMI04071, paragraph 56
[92] MOD043772-3
[93] MOD043780
[94] MOD043780, paragraph 1
[95] MOD043780-3
[96] MOD043780-1, paragraph 6
[97] MOD043781, paragraph 6
[98] MOD043784
[99] MOD041866

7.67 The Directive defined the aim of the Prisoner of War Handling Organisation as *"… to efficiently and humanely process the PW whilst relieving the* [Forward Echelon (at Brigade Collection Points)] *of the burden of PW."* [100] The Battlegroup HQ of the QDG which was designated as the Prisoner of War Handling Organisation was given a task organisation (task org) which included organising teams responsible for the registration of prisoners of war, interrogation (although as it transpired, the interrogation teams were not under the chain of command of the Prisoner of War Handling Organisation as I explore later in this Report), primary healthcare for prisoners of war, environmental health, media and legal. There was to be a prisoner of war Guard Force and a prisoner of war Escort Force.[101]

7.68 Training requirements in this Directive covered both training for the sub-units directly involved in the war-fighting operation and specific training for those making up the Prisoner of War Handling Organisation. As to the former, Brigades were directed that all sub-unit commanders and above were to receive a 40 minute briefing on the handling of prisoners of war to be conducted by the Prisoner of War Handling Organisation.[102] As to the Prisoner of War Handling Organisation's own training, the training requirements included advanced prisoner of war training to be provided by the Military Provost Staff (MPS) tailored to the specific role.[103]

February/March 2003: Aide Memoire on the Law of Armed Conflict

7.69 The in-theatre training provided to troops for Op Telic 1 is dealt with in Part VI of this Report. However, there was a document produced and distributed in parallel with the oral in-theatre LOAC briefs that I should address as part of this assessment of the orders and guidance that was issued in the lead up to the warfighting phase of operations. This was an Aide Memoire on the Law of Armed Conflict (LOAC).[104]

7.70 The background to this document was explained by Frend, the SO2 Legal with 1 (UK) Div, in his Inquiry witness statement:

> *"Also during this period, a new document was produced entitled "Operation Telic Aide Memoire on the Law of Armed Conflict". The existing Joint Service Publication 381 (JSP 381) had been withdrawn as there was disagreement within the Ministry of Defence as to whether it accurately reflected the UK's legal obligations because the UK had become a signatory of further international treaties since its original publication and the effect of being a signatory to these treaties was not reflected in the wording of JSP 381. However HQ 1 (UK) Armd Div felt that it was necessary that the troops, who were used to referring to a rules of engagement card (normally Card A which provided the rules of engagement for an individual opening fire in self-defence), had something to refer to. This document was therefore produced, as I understand it through NCHQ, and was distributed in parallel with our oral briefs."* [105]

7.71 This Aide Memoire set out rules for junior ratings, Royal Marines, soldiers and airmen, including the need to treat persons in their power humanely and protect them from the

[100] MOD041866, paragraph 3
[101] MOD041866-7, paragraph 3
[102] MOD041867, paragraph 6
[103] MOD041867
[104] MOD011176
[105] Frend BMI02897, paragraph 46

dangers of war, that they should not cause more damage or injury than an operational task required, that they should not attack enemy combatants who are no longer fighting and are disabled or have surrendered.[106]

7.72 Rules for senior rates and NCOs included specific rules in respect of prisoners of war and civilians:[107]

PRISONERS OF WAR (PW) Status

16. In cases of doubt, captured personnel should be treated as PW until their status has been determined by higher authority.

Initial Capture

17. On initial capture of PW the following rules must be followed:

a. Humane treatment.

b. Medical care for the wounded.

c. Search, disarm, remove military papers and equipment.

d. Allow PW to keep identity documents, personal items, protective and other clothing, cutlery, badges of rank and decoration.

e. Establish identity.

f. No torture of threats to obtain information.

g. Swift evacuation from the combat area.

h. Money and valuables are only to be removed on the order of an officer and a receipt must be given.

Rights if Captured

18. If you are captured you must give only your number, rank, full names, and date of birth.

The Detaining Power:

a. Must provide adequate shelter, food, clothing and medical treatment.

b. Must allow PW to make complaints to representatives of the Protecting Power or the International Committee of the Red Cross.

c. Must display in permanent PW camps a copy of the 1949 Geneva PW Convention in the language of the PW.

d. Cannot make any PW do work of a dangerous or military nature and can require NCO PW to do supervisory work only.

e. Can take disciplinary measures against PW after investigation, trial and conviction, but may not use torture or coercion.

CIVILIANS

19. Civilians, especially women and children, must be treated humanely and respected. They must be protected so far as possible from the incidental dangers of war. In particular they may not be used to shield military operations. Coercion, torture, collective punishments and the taking of hostages are forbidden.

7.73 Mercer confirmed in his oral evidence to the Inquiry that this document was printed 20,000 times and distributed to troops in Iraq.[108]

[106] MOD011176, Part B
[107] MOD011177
[108] Mercer BMI 68/139/18-140/2

5 March 2003: Further evidence of Lt Col Mercer's increasing concerns regarding prisoner of war resourcing

7.74 An assessment report for 4 to 5 March 2003 recorded that changes in US Force levels and intelligence on Iraqi army movements might together result in increased numbers of prisoners of war for 1 (UK) Div. It was recorded that:

> *"Comd Legal has already described the situation as "legal amber" in a previous assessrep and is now of the view that the UK's obligations under International Law could be violated unless additional troops are found…. We understand that two companies have been found for PWs and that further force generation is extraordinarily difficult at this time. But this does not in any way exempt the division from its responsibilities under International law – hence this additional request. Clearly this may well affect forces currently within the division and it is now our intention to task AD troops with PW duties – and we will be reviewing others with increasing operational penalty."* [109]

6 March 2003: 7 Armoured Brigade Operation Order

7.75 As was to be expected, 1 (UK) Div's Operation Order was followed and cascaded in Brigade level operation orders. For the Inquiry, the most relevant order was the Operation Order for 7 Armd Bde, which was in due course to be succeeded in Op Telic 2 by 19 (Mech) Bde of which 1 QLR was a part.

7.76 7 Armd Bde's Operation Order was dated 6 March 2003.[110] Annex S to the order was entitled "G1/G4 PW Handling Order". Since the prisoner of war handling resources were at Divisional level (with a sub-unit of the Prisoner of War Handling Organisation being used as a prisoners of war escort force), the emphasis at Brigade level was on establishing Brigade collection points and backloading prisoners of war as soon as possible to the Divisional facilities.[111]

7.77 Thus the Brigade order described the mission for Brigade as "*… to contain and control PW within* [Area of operations in order to] *backload ASAP to* [Divisional Collection Points]*;* [Be Prepared To] *sustain for at least 72 hrs*".[112] And the Brigade's main effort was to be "…*avoidance of disruption to* [Friendly Forces] *Military* [operations] *and transparent compliance with* [Geneva Conventions, Geneva Protocol 1] *and LOAC".*[113] Processing was to be in accordance with Joint Warfare Publication (JWP) 1-10 as close to the point of capture as feasible. Battlegroups were tasked amongst other things with rehearsing the necessary procedures. Under "PW Admin and Documentation", the Brigade order required the completion of prisoner of war documentation as soon as possible. It was stated that plasticuffs issued for the restraint of non-compliant prisoners of war were for emergency only. Detailed instructions were given on the tagging of prisoners of war. While the use of plasticuffs and identity bracelets were addressed at this level, the Brigade order, as with other orders, was silent on sight deprivation of prisoners. The order recognised that UK Forces were subject at all times to the requirements of the Geneva Conventions, the first additional protocol and LOAC.[114]

[109] MOD042896-7
[110] MOD042938
[111] MOD042955
[112] MOD042956
[113] MOD042956
[114] MOD042955-59

7.78 Annex S to the Brigade Order had a number of appendices. One appendix addressed the Iraqi enemy, assessing the likely morale, numbers and attitude of enemy prisoners of war. This included the guidance that prisoners of war captured during engagement against their will were more likely to provide valuable information than those who voluntarily surrendered. It was said that *"The shock of capture must therefore be maintained and the swift passage of these PW to JFIT ensured to provide the most effective HUMINT."*[115]

7.79 A further appendix provided extracts from JWP 1-10.[116] The final appendix addressed religious considerations for prisoners of war. This included basic guidance on the five pillars of the Muslim faith, issues surrounding Muslim prayer, diet, gender sensitivities and provision for ablutions. It cautioned about issues that might arise between Sunni and Shiite Muslims.[117] This appendix and the detail in it is much to be commended.

6 March 2003: Lt Col Mercer intensifies his warnings over prisoner of war resourcing

7.80 Following a reduction in US force levels that could be assigned to prisoner of war handling, Mercer minuted Brims on 6 March 2003 making even clearer the extent of his concerns.[118] He described prisoner of war handling as having been on the Divisional "at risk" register for some time and the manning shortfall as being potentially very serious.[119] The crux of his message was that:[120]

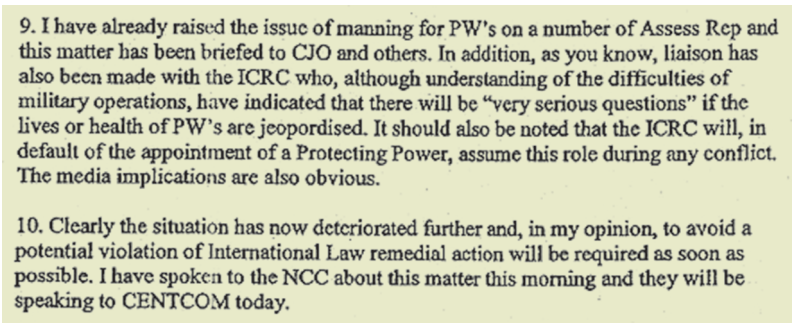
> 3. I appreciate that the manning and resources estimate for PW's is difficult to evaluate but, as your legal adviser, I am professionally obliged to point out any legal risks that you or the Division may run in any area of military operations and, in my opinion, the failure to find additional manning and resources with regard to PW's now brings a real risk of potentially violating International Law

Citing the duty under the Third Geneva Convention to treat prisoners of war humanely, Mercer commented to Brims that:[121]

> Although I am optimistic that UK forces will not commit unlawful acts clearly the current circumstances mean that **an omission** leading to death or seriously endangering the health of a PW remains a very real possibility. Failure to evacuate from the battlefield, prompt evacuation, leaving forces in place pending processing as PW's, public health, inadequate food and water are just some of the circumstances in which UK Forces might cause the death or seriously endanger the health of PW's.

[115] MOD042960
[116] MOD042962
[117] MOD042964-66
[118] MOD019764
[119] MOD019764, paragraph 2
[120] MOD019764
[121] MOD019765, paragraph 7

His conclusion in his minute was as follows:[122]



9. I have already raised the issue of manning for PW's on a number of Assess Rep and this matter has been briefed to CJO and others. In addition, as you know, liaison has also been made with the ICRC who, although understanding of the difficulties of military operations, have indicated that there will be "very serious questions" if the lives or health of PW's are jeopordised. It should also be noted that the ICRC will, in default of the appointment of a Protecting Power, assume this role during any conflict. The media implications are also obvious.

10. Clearly the situation has now deteriorated further and, in my opinion, to avoid a potential violation of International Law remedial action will be required as soon as possible. I have spoken to the NCC about this matter this morning and they will be speaking to CENTCOM today.

It is relevant to note that the focus of this minute was lack of adequate human resources.

7.81 Brims was himself clearly somewhat frustrated by the situation on prisoner of war handling resources. He explained to the Inquiry that he took prisoner of war responsibilities very seriously and was "…*somewhat surprised*" that he had to struggle to get sufficient forces to allocate to prisoner of war handling. By this stage, early March 2003, Brims was informing higher command that he would have to re-allocate his own troops away from combat duties if the troops for prisoner of war duties could not be found.[123]

8 March 2003: Divisional Support Group's FRAGO 29: Prisoner of War Handling

7.82 The Divisional Support Group (DSG) was the part of 1 (UK) Div's Headquarters that dealt with logistics and support to the deployed forces. On 8 March 2003 the issued DSG FRAGO 29[124] to expand upon the prisoner of war handling plan that had been set out in Annex L of the 1 (UK) Div Base OpO 001/03 (see paragraph 7.49 above).

7.83 As with other orders, DSG FRAGO 29 emphasised the importance of prisoners of war being handled in accordance with the Geneva Convention, this being part of the mission for the Prisoner of War Handling Organisation.[125] It was noted that the QDG, as the Prisoner of War Handling Organisation, would need to be provided with further forces. Some of these further forces had already been nominated but the full requirement had not yet been provided.[126]

7.84 DSG FRAGO 29 gave Joint Service Publication (JSP) 1-10 (an erroneous reference to JWP 1-10) as the reference work that provided full guidance on the handling of prisoners of war both by the capturing unit and those charged with looking after them later in the prisoner handling chain.[127] Other than this reference to JWP 1-10 and some further information about the particular prisoners of war identification bracelets being produced,[128] no particular information was provided on the physical aspects of prisoner handling, although it is to be remembered that this order had an emphasis on the logistics/support aspects.

[122] MOD019765
[123] Brims BMI07393, paragraph 40
[124] MOD031034. The Divisional Support Group FRAGO 29 should not be confused with 1 (UK) Div's FRAGO 29 which I consider in Part IX of this Report.
[125] MOD031035, paragraph 2(c)
[126] MOD031035, paragraph 1(b)
[127] MOD031037
[128] MOD031037-8

8 to 9 March 2003 and 10 to11 March 2003: 1 (UK) Div pressing again for further prisoner of war handling resources

7.85 In a further assessment report covering 8 to 9 March 2003,[129] the Divisional Chief of Staff's comments sent to NCC reflected that concerns over prisoner of war handling manpower had now developed from "legal amber" to "legal red":[130]

> 3. PWHO. The Division still has no official confirmation of what is coming and when. If we do not have sight by 101000Z Mar, GOC now intends to remove F Echelon capability from 16 Air Asslt or 7 Armd Bde - with obvious implications. The subject will be dropped following this assessrep and tomorrow the we will inform NCC of how the requirement has been resourced from within the Division. All this being said, your work on this difficult issue has been hugely appreciated - thus far…(!) In addition, the MOU and MTA both need to be brought to a conclusion and the issue regarding disciplinary regulations needs to be addressed. Transport for the PWHO remains critical and the policy of JFLOGC of pooling vehicles is unsatisfactory if evacuation from the battlefield is to be in accordance with International legal obligations. The issue of PWHO manning remains "legal red" and requires resolution.

7.86 This was followed by a report for 10 to 11 March 2003 in which the following concerns were expressed:[131]

> SECRET
>
> 5. PWHO. The PWHO have raised a number of concerns with LEGAD, some of which are laid out below;
>
> a. Lack of dedicated lift capacity.
>
> b. Lack of camp infrastructure (generators, lighting and circuitry).
>
> c. AP3 Ryan server
>
> c. Dedicated couriers to collect AP3 information (to ensure delivery to PWIB in London).
>
> e. Lack of pallets (200 required).
>
> f. Reconfiguration of tentage (extra 110 required).
>
> g. 35 coaches have been identified by JFLogC for use by the PWHO. JFLogC is requested to provide an additional 25 coaches in order that a fleet of 60 is available to transport PWs.
>
> 6. The legal concerns remain in this matter on the information given above. The PWHO estimate that the manning levels will not be sufficient to meet the UK's obligations under International law (eg. They reckon that it will take four days to evacuate from the battlefield !). JFLogC is requested to confirm that the austere plan for handling PWs is being fully resourced. If not this will remain "legal red".

10 March 2003: Reinforcement for 1 (UK) Div prisoner of war handling agreed at Ministerial level

7.87 No doubt as a result of the combined concerns of Mercer, S009, Brims and 1(UK) Div as a whole, the prisoner of war handling resource issue was in due course escalated to Ministerial level with a submission to the Secretary of State dated 10 March 2003.[132] This identified the urgent need for an additional 320 personnel to meet the prisoner of war guarding tasks.

7.88 The recommendation was to take a battalion away from duties on Op Fresco notwithstanding that replacing an Op Fresco battalion would have a significant knock on effect elsewhere in the Army.[133] It would be fair to record that while the MoD well recognised the urgent need for prisoner of war handling resources to meet international

[129] MOD042899
[130] MOD042900
[131] MOD042907
[132] MOD052886
[133] MOD052886

obligations, it simply did not have "spare" sub-units which could easily be extracted, without risk, from other duties.

7.89 The records to the Ministerial submission show that before the submission was sent, the issue of prisoner of war handling resources had been discussed at the CDS's O Group,[134] having already been the subject of papers discussing the manning options and impact.[135]

7.90 The Secretary of State, the Rt. Hon. Geoffrey Hoon MP, told the Inquiry that in respect of the request for reinforcements:

> *"I do not have a specific recollection of this document; I cannot be certain if this document was ever received in my office as I note that it is a draft submission. I remember, however, that the availability of additional forces depended on the ability to retain personnel to provide cover during the firemen's strike (Operation Fresco) in the UK. My understanding is that this issue would have been considered and discussed at the Chief of Defence Staff Orders Group ('CDS O Group') and then sent to me for my approval as the deployment of extra personnel normally requires Ministerial approval. I do not recall whether the additional 320 personnel were actually requested or sent. The request would have come up to my office through the military chain of command although it is possible that Adam Ingram could have dealt with it as it is also copied to his PS."* [136]

7.91 In the event, the request was approved and 1 Duke of Wellington's Regiment (1DWR) were tasked at short notice to deploy as reinforcements to the Prisoner of War Handling Organisation and attached to QDG.[137]

14 March 2003: Minute to the Secretary of State on Prisoner of War Handling

7.92 I have earlier referred to the minute to the Secretary of State dated 14 March 2003[138] which had its origins in an earlier legal note arising out of the prisoner of war meeting on 20 January 2003. The minute was clearly a collaborative effort, but the final version was signed by Richard Johnson who was the Deputy Head of Policy/Operations (ME) in PJHQ. The recommendations addressed in the minute to the Secretary of State, were outlined in the conventional way at the start of the document:[139]

> Recommendations
>
> 2. That Secretary of State notes the arrangements for handling PWs, in particular that:
>
> a. our planning is designed to ensure we meet our legal obligations; and
> b. the arrangements for the transfer of UK captured EPW to the US do not compromise this position.
>
> and further notes that additional advice will be provided to Ministers in respect of possible war crimes, crimes against humanity and crimes against peace, and individuals judged to be of high value intelligence interest.

[134] MOD052878
[135] MOD052879; MOD052881
[136] Hoon BMI08525, paragraph 15
[137] Brims BMI07392, paragraph 37
[138] MOD054362
[139] MOD054362

I note that this was not, therefore, a submission inviting the Secretary of State to make any particular policy decision but merely to note the arrangements that had been put in hand in relation to handling prisoners of war.

7.93 The background section to the minute contained a useful summary of all of the issues raised for the Secretary of State:[140]

Background

4. The paragraphs below set out the practical, legal and presentational considerations in respect of PW handling. Given the length of this minute, and that no decisions are required by Ministers, the key points in summary are:

- Planned arrangements are designed to ensure compliance with Geneva Convention obligations [paras 5-6].
- HQ 1 UK Div anticipate having to hold around 14,000 PWs in the early days of the campaign, with PWs subsequently being transferred to US facilities [para 8].
- An MOU under consideration by the Attorney General would preserve UK jurisdiction over all UK PWs transferred into US custody in respect of acts committed prior to their transfer, and preclude their transfer outside Iraq without UK consent [paras 10-12].
- Separate advice will be put to Ministers in respect of war (and similar) crimes, and detainees of potentially high value intelligence interest [paras 15-16].
- In extremis, it may be necessary to transfer wounded PWs to RFA ARGUS, which will have a 100-bed role 3 capability. RFA ARGUS will have a dual role, and as such will not be afforded the protection of the red cross [para19].

7.94 As to legal obligations, the Secretary of State was informed that:[141]

Legal Obligations

5. Enemy personnel in the power of the military of a particular nation are the responsibility of that nation (the Detaining Power), which is obliged to ensure their rights and status as PW, as governed by the Geneva Convention Relative to the Treatment of Prisoners of War (GC III). Even though responsibility for the treatment of PWs rests with the Detaining Power, they may be transferred to the custody of another party to the Convention and even, in some circumstances, to a neutral power (the Accepting Power). PWs must not be exposed to the dangers of the combat zone, and they must be evacuated to a safe location as soon as is possible. They must be protected from physical violence or torture and must not be exposed to conditions likely to be detrimental to their health. In addition, they are entitled to respect for their persons and honour and must be allowed to exercise the rights attaching to their civil capacity to the extent that the captivity permits. As well as the physical aspect to the protection of the rights of PWs, there is a moral aspect that covers their rights to religious and intellectual freedom and protection against acts, other than the mere fact of captivity, that might demoralise them.

6. The UK will be required to treat combatants who fall into our power as a PW. All members of Iraq's armed forces will be classed as combatants.

7.95 The minute went on to indicate how the coalition was planning for the safe handling of prisoners of war. While much of the prisoner of war handling effort was intended to be met by US Forces, it was recognised that there would be a need for UK Forces to make their own provision for safe handling of prisoners of war in the first few weeks of ground operations. An estimate of 13,000 to 15,000 prisoners of war was the basis of the planning provision. Although a conventional ratio of 1 UK Company per 500

[140] MOD054363
[141] MOD054363-4

prisoners of war would have suggested a prisoner of war guard force of some seven Battalions, it was noted that the Secretary of State had already approved the proposal to deploy personnel from 1 DWR to carry out prisoner of war duties.[142]

7.96 It was noted in relation to prisoner of war status that the potential for prisoners of war captured by UK Forces to be transferred to US custody generated a need both for rigorous prisoner of war tracking and a Memorandum of Understanding between coalition partners. In this regard, it was noted that advice was being sought from the Attorney-General as to whether European Convention on Human Rights (ECHR) considerations would apply to status tribunals.[143] The nomination of a protecting power, investigation of war crimes, the provision of food, medical support, protection, pay and the Rules of Engagement (ROE) for dealing with prisoners of war were all addressed.[144]

7.97 In his Inquiry witness statement, Johnson sought to draw a distinction between prisoner of war handling in the round and specific issues of questioning and interrogation. He pointed to this distinction as a reason for the absence of any reference to prisoner of war interrogation in the submission.[145] I have sympathy for this view, especially given the understandable emphasis in the submission on "*...those issues that were either novel or contentious, or simply specific to the circumstances at that time*".[146] I do not think any criticism can fairly be levelled at the Policy/Operations team within PJHQ for the absence of reference to the questioning and interrogation of prisoners of war in this particular submission. As I address in Chapter 4 of this Part, below, a separate submission went to Ministers addressing HUMINT operations in Op Telic.

7.98 On 17 March 2003, the Assistant Private Secretary to the Secretary of State replied to Johnson indicating that the Secretary of State:

> *"… notes the arrangements for handling Prisoners of War, in particular that:*
>
> *a. UK planning is designed to ensure that we meet our legal obligations;*
>
> *b. the arrangements for the transfer of UK captured Prisoners of War to the United States do not compromise this position."*[147]

7.99 Hoon told the Inquiry that he did not recall having any concerns about the submission:

> *"...it was detailed and appeared to be comprehensive. My office received a very large volume of documents at that time and consistent with my ministerial practise I had given instructions to my PS to organise the material in the following three groups: urgent/action, letters to sign and reading/noting. All material in the last pile did not require specific action on my part; it was simply for reading and noting. It is likely that this submission fell into the 'reading/noting' category."* [148]

[142] MOD054364, paragraphs 7-10
[143] MOD054365, paragraph 11
[144] MOD054365-8
[145] Johnson BMI07525-6, paragraph 3
[146] Johnson BMI06076, paragraph 13
[147] MOD054361
[148] Hoon BMI08525, paragraph 14

7.100 In my view, this response was entirely appropriate and it cannot fairly be suggested that further details on prisoner of war handling should have been sought by the Secretary of State in response to the submission.

Pre-invasion: Detailed order for 1 DWR as the Guard Force for the Prisoner of War Handling Organisation

7.101 While the QDG under the command of S009 had been appointed the Prisoner of War Handling Organisation, two squadrons of QDG had been detached to other units. As I have discussed above, the QDG had been reinforced with sub-units from 12 Air Defence Regiment and, at short notice, also from 1 DWR, as well as a squadron of engineers.

7.102 Disclosure to the Inquiry included the Operation Order for 1 DWR which was to act amongst other things as the Guard Force at the main Divisional level prisoner of war facility.[149] The standard operating procedures annexed to the operation order included the following:[150]

(1) personnel were to be briefed to treat all prisoners of war humanely and equally, not to form social relationships with prisoners of war, to treat International Committee of the Red Cross (ICRC) visitors with due respect and assist the ICRC, to maintain segregation of prisoner groups and protect prisoners of war;

(2) instructions for how prisoners of war were to be handled on admission, although these instructions were silent on the question of sight deprivation; and

(3) prisoners of war in the initial holding area would be held in segregation and in silence whilst waiting for searching and if required JFIT questioning. Again, sight deprivation was not addressed.

Pre-invasion: S009's Directive to the Prisoner of War Handling Organisation

7.103 Just before the invasion, S009 wrote a further Directive for the Prisoner of War Handling Organisation. While I have made selected quotations from a large range of directives and orders, I think it appropriate to set out this Directive in full. I do so because it evidences how the commander in charge of the Prisoner of War Handling Organisation thought that prisoners should be handled but also because it serves as a clear example of the thoughtful production of a commander's intent which is so important to proper mission command:[151]

[149] MOD043101
[150] MOD043113
[151] BMI02485

1st The Queen's Dragoon Guards, Battle Group
Headquarters, Operation Telic, BFPO 641
Ptarmigan: [redacted]

Reference: G1/1050

See Distr

Date: March 2003

DIRECTIVE 02 – PRISONER OF WAR HANDLING ORGANISATION

INTRODUCTION

1. We are a disparate group of peoples and units, pulled together at the last minute to execute a task of considerable size and complexity. We do so against a backdrop of uncertainty both in the international arena, but more importantly within the theatre of operations. In addition, we do not yet have knowledge of the final shape of our organisation, our resources or the security environment in which we will operate.

AIM

2. The aim of this directive is to give shape to your efforts and guide you through the continuing uncertainties of our mission.

COMMAND

3. Our place in the UK force structure means we operate and deal with many organisations at different levels of command. This is something which causes friction. You are to work through this hurdle and do all you can to avoid strife, for this will inject delay to our processes. Seek out the reasonable man who can deliver, but keep the chain of command informed of developments. If an insurmountable hurdle is encountered refer this problem to me without delay.

PURPOSE

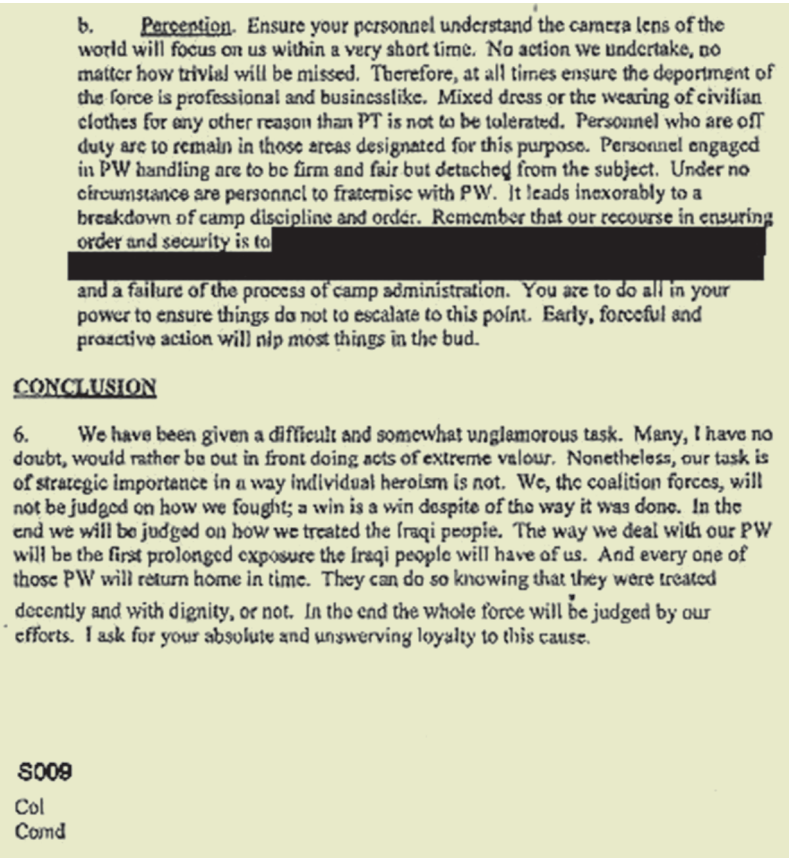
4. Within the PWHO every person, irrespective of capbadge, service or speciality is to understand we have one common goal. In any case there is doubt, it is to

Build and maintain a PW collection, processing and detention system in accordance with the law and to the highest moral and humanitarian standards.

PROFESSIONALISM

5. I demand of every soldier the highest professional standards. In this task we represent our service and nation. We will be in the public eye very shortly and should conduct ourselves with pride in our competence. None the less you are to pay particular attention to two areas:

a. Military Standards. Ensure every man or woman is properly equipped. I include every aspect of that person's capability from his weapon to NBC suits, malarial tablets, and so forth. This includes matters of personal discipline, such as weapon and gas mask carriage, sleep enforcement, water intake and matters of general hygiene such as foot inspections. This is not an optional aspect of your leadership responsibilities. We are about to embark on a mission in a hostile country, in an unhygienic environment and in the heat. You are to ensure your personnel do not fail from the lack of your supervision or basic disciplinary standards. An atmosphere of quiet efficiency is to prevail. Shouting and an air of chaos indicates indecision and a lack of order which will be seized upon by those who would seek to detract from our efforts and by the PW who will use it to their advantage.



b. Perception. Ensure your personnel understand the camera lens of the world will focus on us within a very short time. No action we undertake, no matter how trivial will be missed. Therefore, at all times ensure the deportment of the force is professional and businesslike. Mixed dress or the wearing of civilian clothes for any other reason than PT is not to be tolerated. Personnel who are off duty are to remain in those areas designated for this purpose. Personnel engaged in PW handling are to be firm and fair but detached from the subject. Under no circumstance are personnel to fraternise with PW. It leads inexorably to a breakdown of camp discipline and order. Remember that our recourse in ensuring order and security is to [redacted] and a failure of the process of camp administration. You are to do all in your power to ensure things do not to escalate to this point. Early, forceful and proactive action will nip most things in the bud.

CONCLUSION

6. We have been given a difficult and somewhat unglamorous task. Many, I have no doubt, would rather be out in front doing acts of extreme valour. Nonetheless, our task is of strategic importance in a way individual heroism is not. We, the coalition forces, will not be judged on how we fought; a win is a win despite of the way it was done. In the end we will be judged on how we treated the Iraqi people. The way we deal with our PW will be the first prolonged exposure the Iraqi people will have of us. And every one of those PW will return home in time. They can do so knowing that they were treated decently and with dignity, or not. In the end the whole force will be judged by our efforts. I ask for your absolute and unswerving loyalty to this cause.

S009
Col
Comd

7.104 When giving evidence in Module 4 of the Inquiry, Trousdell said of this Directive, and I agree, that it should be extracted and put into a training pamphlet. It is a fine example of a commander clearly expressing what he required his unit to do by impressing his personality on it; setting the tone, but recognising as well the difficulties of his unit's task.[152]

Prisoner Of War Operational Planning Team meeting 17 March 2003

7.105 The prisoner of war Operational Planning Team (OPT) met on 17 March 2003 with the aim of confirming that the arrangements which were in place for prisoners of war met the UK's international obligations and to identify any shortcomings before "D Day".[153] Much of this meeting appears to have been involved with the interface between coalition partners and the Memorandum of Understanding which covered amongst other things, the transfer of prisoners. The interface with the ICRC was also discussed. The tasking and sequencing in the prisoner of war chain were confirmed, with a total of 981 staff making up the Prisoner of War Handling Organisation. Logistics and resources were also discussed with the view being expressed that resources were on line to support the prisoner of war plan albeit that risks remained in specific areas. The summary stated as follows:[154]

[152] Trousdell BMI 115/67/23-68/6
[153] MOD050897
[154] MOD050902

SUMMARY

25. The two key areas where the UK must demonstrate compliance with international standards are in its treatment of PW on the ground and the speed and accuracy with which it can inform the ICRC of UK PW holdings. The UK PW plan for Op TELIC will meet these requirements for up to 15,000 PW from G Day to G + 15 and then 30000 till G + 45 - albeit the latter at some risk. Critical requirements are the provision of sufficient water storage and power generation in the creation of the 1 Div facility and in the transfer of data from AP3 in the field through the PWIB in London and onwards to Geneva.

20 March 2003: Explanation of Responsibility of Staff Branches for Col Cowling, Deputy Chief of Staff, 1 (UK) Div

7.106 In a note produced on 20 March 2003, shortly after the prisoner of war OPT meeting of 17 March 2003, Maj MacGill SO2 Provost produced a short explanation of the prisoner of war process and in particular the alignment with the staff responsibilities set out in JWP 1-10.[155] This was said to be in response to a request from Col Cowling, the Deputy Chief of Staff of 1 (UK) Div.[156]

7.107 MacGill suggested that whereas JWP 1-10 indicated that J1 would bear the responsibility for prisoner of war handling, it was "*readily believed*" that this was not a task for J1 and that J3 branch had been encouraged to take the lead.[157] I would note that this was an early example of some degree of confusion about which branches had what responsibilities in relation to prisoners of war, a theme that was to recur later in the operation.

7.108 MacGill's note indicated that the policy for handling prisoners of war had been encompassed within the plan issued by the Prisoner of War Handling Organisation and that this had also addressed instructions for the custody, welfare and discipline of prisoners of war.[158]

The role of the MoD legal advisers and lawyers at PJHQ pre-invasion in respect of prisoners of war

7.109 It is right to note that lawyers at a more senior level than Mercer were involved with prisoner of war issues. However, the issues of concern for the MoD Legal Advisers and lawyers at PJHQ were generally not those relating to the physical aspects of prisoner handling. Consistent with this, Vivien Rose's evidence in her Inquiry witness statement was as follows:

> *"I do not recall anyone at MODLA, including myself, providing any advice on prisoner handling per se (including hooding etc) prior to the commencement of Op Telic 1."* [159]

7.110 There was a meeting of the MoD, FCO and PJHQ lawyers on 5 March 2003, the minutes of which give an idea of the prisoner of war issues being addressed by these lawyers

[155] MOD049923-4
[156] Cowling BMI07161, paragraph 23; MOD049924 (also at MOD050887)
[157] MOD049924
[158] MOD049924
[159] Rose BMI08033, paragraph 37

at the time.[160] Present at that meeting were a number of Inquiry witnesses including Vivien Rose (MODLA 2), Rachel Quick (PJHQ J9 LEGAD), Col Nicholas Clapham (PJHQ J9 LEGAD) and Richard Johnson. The predominant matters discussed were the putting in place of a Memorandum of Understanding between the UK and other coalition members for the transfer of prisoners, the requirements of tribunals for the determination of status under Article 5 of the Third Geneva Convention and the applicability of the ECHR in this regard.[161]

7.111 A considerable number of emails involving the participants in the 5 March 2003 meeting were disclosed to the Inquiry. These reflect the concerns raised at that meeting and also cover the proposed ROE for Op Telic 1, the issue of medical treatment of prisoners of war (including movement of prisoners of war to RFA Argus for medical treatment where required); as well as a number of other queries being raised at the time.

7.112 I am satisfied that, seen in the round, the involvement of the MoD and PJHQ lawyers in these pre-war fighting issues reflected an intent that the UK Forces' handling of prisoners should comply with UK international obligations. In particular it is apparent that considerable work went into the Memorandum of Understanding to ensure that the UK retained ultimate control over prisoners of war who were captured by UK Forces, notwithstanding the complexities of working in a coalition where prisoners may of necessity need to be handled by coalition partners.

7.113 The fact remains that, save for particular issues such as medical treatment of prisoners of war on a naval vessel, the focus of these pre-invasion legal considerations was not upon the physical aspects of prisoner handling nor interrogation/tactical questioning of prisoners of war.

7.114 Bearing in mind the tempo and number of issues that needed to be addressed in the weeks before the warfighting phase of operations, I do not consider that it is realistic to have expected the lawyers at the MoD/PJHQ independently to have noted the doctrinal shortcomings in relation to sight deprivation of prisoners or tactical questioning/interrogation doctrine.

Commentary: The situation immediately before the warfighting phase

7.115 From the analysis of the orders to which I have referred above, and on the basis of the material disclosed to the Inquiry, I conclude that by the time UK Forces were launching the Op Telic offensive:

(1) there was a clear emphasis on the importance of humane treatment of prisoners of war, and compliance with the Geneva Conventions and LOAC;

(2) none of the orders at NCHQ Divisional or Brigade level addressed hooding or gave any guidance on sight deprivation or the prohibition on the five techniques. For the most part, where detail was required, the approach was to refer to the main doctrinal publication on prisoners of war, JWP 1-10, which, as I have already pointed out, was silent on these aspects.

[160] MOD053082
[161] MOD053084-5, paragraph 9; MOD053086, paragraph 12

7.116 To a large extent, therefore, on the question of whether prisoners of war could be deprived of their sight, and if so by what means and for what purposes, units deployed on Op Telic 1 would have had to fall back on their previous training.

7.117 Some may have received and been assisted by the MPS in-theatre guidance to which I have referred in Part VI Chapter 3 of this report. But it seems inevitable that units' understanding of when and by what means sight deprivation of prisoners of war was permitted would have varied, and suffered from the overall lack of clear consistent guidance (both doctrinally and in training) which I have previously addressed.

7.118 While it is only an anecdotal example, the MoD's disclosure to the Inquiry included a sub-unit order for a company of Marines dated 28 February 2003. It seems that this was only an initial order for part of the warfighting operation but it contained the direction that enemy prisoners of war should be plasticuffed to a fixed point and hooded:[162]

(17) EPW. Disarmed. Plasticuffed to fixed point and booded. When time avail, possessions bagged and numbered. Centralised at respective PPLs during re-org. Initial scan for critical info. Each sect to nominate 2 ranks as EPW handlers. PW moved to MMS cage once link up with Recce Tp complete.

(18) EPW cas. Sec tgt. Initial triage. Centralise. Move to RAP.

7.119 Even as an anecdotal example, it seems to me unsurprising that this sort of understanding should have been current at sub-unit level in the lead up to the warfighting phase of Op Telic, given the relative lack of guidance on sight deprivation. I should record, however, that in the confirmatory orders that followed the above order the reference to hooding was not replicated. The confirmatory order was silent about sight deprivation although it emphasised compliance with the Geneva Conventions and LOAC.[163]

[162] MOD035465
[163] MOD035469; in particular at MOD035474; MOD035477

Chapter 3: The Chief of Joint Operations' HUMINT Directive

7.120 I acknowledge at the outset that the MoD in its closing submissions has made significant concessions to the effect that the Chief of Joint Operations' HUMINT Directive was not formulated as it ought to have been. I shall return to those submissions in my conclusions on the Directive.

Recap: The 1997 Policy for Interrogation and related activities

7.121 In earlier Parts of the Report I have made the following findings that are relevant to what the HUMINT Directive for Op Telic should have contained:

(1) there were two parts to the 1972 Directive which gave effect to the Heath Statement. Part I was a Joint Intelligence Committee document of 29 June 1972 which contained the prohibition on the five techniques. It applied to internal security operations worldwide. Part II was dated 8 August 1972. Whereas Part I addressed general principles, Part II was designed to set out the basic rules, requirements and methods on which interrogation would be based. Detailed instructions for individual operations were to be issued amplifying Parts I and II of the Directive but Part II should always be considered in conjunction with Part I (Part IV, Chapter 6);

(2) Part II of the 1972 Directive had addressed the approved approaches to questioning (harsh, monotonous, etc.) albeit at a fairly high level of generality (Part IV, Chapter 6);

(3) the 1997 policy for interrogation cancelled Part II of the 1972 Directive and replaced it with wider guidance applicable to all operations (Part V, Chapter 1); and

(4) the 1997 Policy required amongst other things the following (emphasis added):[164]

b. If, in exceptional circumstances, Service interrogators are required in future to support the civil authorities during Internal Security operations, they are not to deploy without the specific approval of Ministers.

c. Interrogation methods employed during all operations should comply with the Geneva Conventions and international and domestic law. The services of a Legal Adviser should be made available to the interrogation organisation during operations to ensure that these requirements are met.

d. Procedures used by UK interrogators in an operational theatre should be governed by a detailed directive that incorporates current legal advice and is issued on behalf of the UK Joint Commander.

e. Debriefing operations and CAC training will continue to be governed by existing MOD rules and directives which will be updated as necessary by CDI and DCDS(C) and their respective staffs.

f. Commandant DISC should review on a routine basis all interrogation related procedures, methods and organisations employed by the UK Armed Forces. He should also be responsible for the supervision and conduct of all interrogation related training carried out by the three Services including practical CAC training.

g. Commandant DISC should advise the UK Joint Commander over the nomination of a suitably qualified officer to assume command of the UK Service interrogation organisation that is established in an operational theatre.

[164] MOD041755

The Chief of Joint Operations' HUMINT Directive

7.122 There are some uncertainties surrounding the Chief of Joint Operations' Directive addressing HUMINT activity for Op Telic. The latest version of the Directive disclosed to the Inquiry contained a drafting comment and some other features that might suggest it was not the final version. For reasons which I will explain below, I think it far more likely than not that the version disclosed by the MoD is only a draft of the Directive. While I am satisfied on the balance of probabilities that the Directive was finalised and issued, it is unclear when this was in fact achieved.

7.123 Since the Inquiry has only been provided with a draft version of the Chief of Joint Operations' HUMINT Directive, it is impossible to be certain about the content of the final version. I base my conclusions in this part of the Report on the content of what I find to be only a draft of the Directive. Had the final Directive contained any reference to hooding or to the prohibition on the five techniques, I consider it very likely that it would have been spotted and relied upon during the trawl of TELIC documents that followed Baha Mousa's death, during the criminal investigation that followed, or as a result of the prisoner abuse allegations that surfaced in May 2004.

7.124 The extent of the circulation of the Directive is not clear, although on any view it appears to have been surprisingly limited.

7.125 It is surprising and concerning that the MoD was not in a position to disclose a copy of the finalised HUMINT Directive. This was a high level Directive addressing a sensitive area of operations. The fact that a draft of the Directive was retained and disclosed to the Inquiry satisfies me that there is nothing sinister in the MoD's failure to disclose the Directive. However, this does not excuse the fact that in not retaining such an important document, PJHQ's record keeping in this regard fell far short of the record keeping standards that ought to have been maintained.

7.126 The latest version of the Directive disclosed to the Inquiry was dated 27 February 2003.[165] It bore an electronic signature block from Commodore Christopher Munns who was at that time the Assistant Chief of Staff for J2 (Intelligence) at PJHQ.

7.127 Since the Directive covers aspects other than interrogation and tactical questioning, a number of redactions to the document remain. Those redactions do not affect the issues of relevance to this Inquiry.

7.128 The scope, aim and mission of the Directive were set out as follows, with references that included JWP 1-10:[166]

[165] MOD049310
[166] MOD049310

SECRET UK EYES DISCRETION - Rel US

D/PJHQ/2/2170/15/0 27 Feb 03

CJO DIRECTIVE TO COMBRITFOR
FOR HUMINT OPERATIONS IN SUPPORT OF UK FORCES DEPLOYED ON OP TELIC - [redacted]

References:

A. MOD Directive [redacted] D/MO2/230/2/4 dated 13 Feb 03.
B. PJHQ OP TELIC Intelligence and Security Management Plan (3rd Draft) D/PJHQ/2/2170/15/0 dated 16 Feb 03.
C. MO2 HUMINT Definitions D/MO2/230/9 dated 23 Aug 02.
D. MOD Standing Instruction – Intelligence Acquisition Operations – OP STONEWARE.
E. MOD [redacted] Guidance Notes.
F. JWP 1-10. Prisoner of War Handling.

SCOPE

1. This HUMINT directive gives formal direction to COMBRITFOR for [redacted]. HUMINT operations (less SF) in support of UK Forces deployed on OP TELIC. This directive is for planning purposes only. It draws authority from Reference A and should be read in conjunction with Reference B - F.

AIM

2. The aim of this directive to define the concept of operations and command and control arrangements for HUMINT operations (less SF) supporting OP TELIC.

MISSION

3. The FHT and JFITs assigned to [redacted] are to undertake HUMINT operations, as directed, in order to assist in COMBRITFOR's PIRs.

7.129 Under "*Execution – Concept of Operations*", HUMINT units were approved to undertake a number of tasks including:[167]

d. Interrogation.

e. Prisoner Handling and Tactical Questioning.

7.130 Under "*Legal Advice*", the Directive contained a number of important provisions. Firstly, that HUMINT operations would be subject to specific legal advice. The NCC Legal Adviser would be indoctrinated for HUMINT operations and provide appropriate advice. Secondly, any conflict between operational requirements and legal advice was to be highlighted to the J2X (the Staff Officer responsible for Human Intelligence matters) at PJHQ. Thirdly, that tactical questioning and interrogation, as with other HUMINT activities, were to be conducted in line with the Geneva Conventions, with further guidance appearing in Annex B of the Directive. Fourthly, that the SO1 J2X was to ensure that the Legal Adviser at the NCC approved methods and approaches for interrogation and de-briefing operations. These various requirements can be seen in paragraph 7 of the Directive.[168]

7.131 Annex B to the Directive was entitled "*PJHQ GUIDANCE ON THE HANDLING OF PRISONERS OF WAR AND DETAINEES*". It gave the familiar references of JWP1-10 and AJP2.5. Under "*Applicable Law*", Annex B emphasised compliance

[167] MOD049311
[168] MOD049311-2

with applicable legal standards and specifically cited Article 17 of the Third Geneva Convention:[169]

> 1. Applicable Law. The treatment of captured personnel (CPERS[1]) held for interrogation will comply with the provisions of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (GC III) and the 1997 Additional Protocol to the Geneva Conventions, and other applicable Laws of Armed Conflict including the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War. In particular in accordance with Article 17 of GC III, no physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

7.132 Under "*Responsibilities*", Annex B stated:[170]

> 3. Responsibilities. The responsibility for the interrogation of CPERS in order to obtain information/ intelligence of military value shall rest with the intelligence organisation. Information obtained during operational interrogation may not be admissible as evidence in criminal proceedings unless certain legal procedures have been followed. Therefore, interrogation of CPERS for the purpose of obtaining evidence to be used in criminal proceedings should be the responsibility of competent police or judicial authorities.

7.133 In the section dealing with screening procedures, the Annex set out the requirement that captured personnel (CPERS) should be segregated by rank, sex and nationality/ ethnic group. It stated that they should be:[171]

> b. Allowed no opportunity to exchange information between themselves or to compromise interrogation operations by contact with personnel not concerned with interrogation duties.
>
> c. Given no opportunity to observe sensitive and critical activities, equipment and procedures involving Coalition or National Forces.
>
> d. Guarded in a manner, which shall deny the opportunity for suicide, escape or sabotage.
>
> e. Given no opportunity to exchange identities or to dispose of articles of intelligence interest.

7.134 No further guidance was contained in the Annex as to how CPERS should be prevented from observing sensitive and critical activities, equipment and procedures.

7.135 As regards interrogation procedures, the Annex described the four recognised categories of CPERS bracketed into different levels of intelligence value. The Annex set out a number of ground level administrative requirements relating to matters such as record keeping, serial number allocation, searching, and interrogation report writing.[172]

7.136 As I have already recognised, this version of the Chief of Joint Operations' Directive clearly referred to the prohibitions contained in Article 17 of the Third Geneva Convention and to other relevant legal obligations. However, it is notable that there is no indication on the face of the main body of the Directive nor from Annex B that

[169] MOD049314
[170] MOD049314
[171] MOD049314-5
[172] MOD049315-8

specific current legal advice had been taken before, and for the purposes of informing, the Directive. Rather the Directive required that legal advice be given by the senior lawyer in theatre.[173]

7.137 Neither the main body of the Directive nor Annex B referred in any way to the prohibition on the five techniques. Further, unlike Part II of the 1972 Directive, neither the main body of the Directive nor Annex B contained any cross reference to Part I of the 1972 Directive (albeit that the latter only applied to internal security operations).

7.138 Finally, unlike Part II of the 1972 Directive, neither the main body of the Directive nor Annex B spelt out the actual methods and approaches that were permitted to be used in interrogation or tactical questioning.

7.139 I should add, if only for completeness, that the Chief of Joint Operations' draft HUMINT Directive appears to have been followed on 11 March 2003 by an NCHQ FRAGO.[174] This reflected many of the points in the Chief of Joint Operations' draft but did not remedy any of the issues which I have highlighted above.

Key Witness evidence concerning the Chief of Joint Operations' HUMINT Directive

7.140 I turn to deal with some of the key witness evidence about the HUMINT Directive, starting with the chain of command within PJHQ at the time.

Maj S062 SO2 J2X, PJHQ

7.141 S062 was at the time the SO2 J2X at PJHQ. He had wide ranging responsibilities for HUMINT operations. These were not limited to Iraq or by any means limited to interrogation and tactical questioning. Rather he had responsibilities for the full range of HUMINT activity of which tactical questioning and interrogation would have been only a relatively small part.[175]

7.142 S062 told the Inquiry that he was responsible for drafting the Chief of Joint Operations' HUMINT Directive including its Annex B, although he was not responsible for its subsequent distribution.[176] He would have produced the draft in conjunction with his deputy.[177]

7.143 S062 told the Inquiry that he was unaware of the Heath Statement.[178] Nor did he know of the 1997 Policy for interrogation and related activities.[179] S062 was in my assessment an honest and reliable witness. I accept his evidence that he was genuinely ignorant of these matters.

[173] MOD049311-2, paragraph 7
[174] MOD055653. This NCHQ FRAGO is dated 11 March 2003 but curiously referenced an earlier draft of the Chief of Joint Operation's HUMINT Directive.
[175] S062 BMI 101/198/22-199/17
[176] S062 BMI08409, paragraphs 46-47
[177] S062 BMI 101/217/24-218/6
[178] S062 BMI08409, paragraph 49
[179] S062 BMI 101/220/11-221/11

7.144 Further, S062 told the Inquiry in his oral evidence that the Directive was drafted largely for use at an operational level, rather than for a detailed tactical level.[180] He was confident that a final version would have been produced and sent to theatre. He had produced similar HUMINT Directives for at least twelve other operations. He said that, sadly, he was not surprised that corporate knowledge of something like the 1997 Policy had been lost. Had he known of the 1997 Policy, he would have sought further advice on what the HUMINT Directive should contain.[181] It was apparent from S062's evidence that aspects of the Directive would have been drafted differently, and in a less broad-brush way had he been aware of the specific prohibition on the five techniques and the 1997 Policy:

> *"MR MOSS: Perhaps I can ask it in a different way: you had been trained, for example, about stress positions, that prisoners were not to be put into stress positions?*
>
> *A. That's correct.*
>
> *Q. But, for example, in relation to hooding and sight deprivation, you told the Inquiry that you had not, so far as you could recall, had any specific warning that sight deprivation was not to be used as an aid to interrogation.*
>
> *A. That's correct.*
>
> *Q. You certainly were not aware of the Heath ruling?*
>
> *A. That's correct.*
>
> *Q. And you were not aware of the background that in 1972 there had been a specific prohibition on five techniques?*
>
> *A. That's correct.*
>
> *Q. Some of those techniques, however, were specifically covered in your training?*
>
> *A. That's right.*
>
> *Q. Because some of them had been covered, but on your evidence not all, and because you didn't even know about the Heath ruling, it must follow that you were not in a position to include a cross-reference to the Heath ruling in your directive, were you?*
>
> *A. That's correct.*
>
> *THE CHAIRMAN: Sorry, I think what you wanted to say, before I interrupted perhaps, is that, having seen the Heath ruling, would you have made any alterations to what you put in the directive?*
>
> *A. Sir, if I had been given clearer policy guidance from MoD, including the Heath ruling, it is axiomatic that I would have put that in a directive because that was my job to do that.*
>
> *MR MOSS: So, for example, just to pick up on that question from the chairman, if we were to look within the directive at annex B -- the front page of that, thank you, and MOD049314, the references -- again it is not a criticism of you if you were not aware of the Heath ruling or nobody had made you aware of it -- the references ought to have included part 1 of the 1972 directive which we are told was still extant at the time and prohibited the five techniques?*
>
> *Absolutely"* [182]

[180] S062 BMI 101/211/7-24
[181] S062 BMI 101/219/8-222/25
[182] S062 BMI 101/227/7-228/24

7.145 S062 said that it would be routine for a HUMINT Directive to have been circulated to the legal team at PJHQ and in that sense there would have been legal consideration of it. He indicated that a lesson learned from other theatres was that legal advice needed to be embedded in the decision making process on HUMINT operations, hence the requirement for the NCC legal adviser to work alongside the HUMINT officer in theatre.[183] The thrust of S062's evidence was that the wording of the Directive would not have been drafted from scratch. Much of it would have been in place as a framework from other Directives and there would have been a degree of copying and pasting and some reliance on earlier documents as being established MoD policy. He would have expected the NCC to take the final Directive and then to write their own HUMINT directive incorporating comment from their legal adviser, their policy adviser and from the Commander of the NCC. It would then be issued to each of the component commands, specifically to the land component command, 1 (UK) Div, for them to produce further detail and instructions for HUMINT operations.[184]

7.146 As to the evidence of S002 that he had been agitating for the Directive to be completed (see paragraphs 7.169 to 7.170 below), S062 said that he did not remember such agitation for the Directive. The production of this kind of Directive was a consultative process including consultation with those in-theatre. He did not remember any specific areas of controversy and he had run a training day for the HUMINT staff covering the issues addressed in the Directive. He felt he had thereby properly discharged his responsibilities for ensuring that the constraints were understood and the way HUMINT operations should work had been conveyed to those who needed to know.[185]

7.147 S062 said in his oral evidence that a comment bubble on the document was only one sign that the version of the Directive disclosed to the Inquiry was only a draft. There were also, he said, a number of errors or omissions that led him to conclude that it was only a draft.[186] He thought the omissions (principally in other areas of HUMINT activity) were so significant that the Directive was actually quite an early draft.[187]

Lt Col S065, SO1 J2 Intelligence Production, PJHQ

7.148 S065 was the SO1 J2 Intelligence Production, one of the two staff officers to whom S062 reported at PJHQ. He provided a written statement to the Inquiry. He did not specifically remember the HUMINT Directive but accepted that it was likely that he would have seen it at the time and made comments upon it.[188] S065 indicated that in his view, whether or not the Directive as disclosed was a draft or the final version, it was entirely adequate. He would not have expected it to cover permissible and impermissible interrogation techniques.[189] But, significantly, S065 was not aware of the 1997 Policy for interrogation and related activities.[190]

[183] S062 BMI 101/232/15-235/6
[184] S062 BMI 101/250/7-251/2
[185] S062 BMI 101/236/18-237/18
[186] S062 BMI 101/218/7-14
[187] S062 BMI 101/223/25-224/7
[188] S065 BMI09022, paragraph 33
[189] S065 BMI09024, paragraphs 41-43
[190] S065 BMI09025, paragraph 45

Munns, ACOS J2, PJHQ

7.149 Munns was the Assistant Chief of Staff on the J2 intelligence side at PJHQ and as I have noted above, it was his name in the signature block of the version of the HUMINT Directive disclosed to the Inquiry. Munns was an impressive witness. He was not an intelligence specialist by training, but I formed the view that he would nevertheless have brought much benefit to the intelligence role at PJHQ.

7.150 Like S062, Munns was not aware of the requirement for a detailed Directive in the terms of the 1997 Policy. He accepted that if the system had been running correctly, he should have been aware of it. Munns was not aware of the Heath Statement.[191] His understanding was that the main guidance on prisoner handling, tactical questioning and interrogation was contained in JWP 1-10, assisted by annual training and professional training courses at Defence Intelligence Security Centre.[192] I accept this was not, as such, an unreasonable understanding in the circumstances, but it does not reflect the reality of the relatively limited guidance on tactical questioning and the absence of guidance on interrogation in JWP 1-10.

7.151 Although it did contain some detail, Munns viewed the Directive primarily as a coordinating instrument, and as such it would not give specific guidance on procedures or techniques to be used by tactical questioners or interrogators. He was not himself sure what was meant by a "detailed directive" in the 1997 Policy, and to an extent at least, Munns sought to rely upon JWP 1-10 as giving appropriate guidance.[193] Munns thought it would have been customary for the lawyers at PJHQ to be involved with the Directive although he did not specifically call for legal advice personally. He accepted that it would have been better had he personally ensured that legal advice was incorporated in the document, but relied upon the fact that the conduct of tactical questioning, and compliance with legal obligations in that regard, was addressed in JWP 1-10.[194]

7.152 Munns said that the document did appear to him to be only a draft document, but an advanced draft.[195]

Rachel Quick, PJHQ Legal Adviser

7.153 Ms Quick was the senior legal adviser at PJHQ. She could not specifically remember the HUMINT Directive but accepted in her oral evidence that it was possible that she had looked at it because it was a Chief of Joint Operations' Directive. She accepted that someone in the PJHQ legal branch should have been shown the Directive before it was promulgated.[196]

Lt Gen Sir John Reith, Chief of Joint Operations

7.154 Reith told the Inquiry that he would have approved the Directive before it was distributed. Obviously he did not write it personally; Reith suggested that it would have been drafted by Munns. It would have been staffed through the staff branches at PJHQ.

[191] Munns BMI 96/164/13-165/15
[192] Munns BMI08113, paragraph 38
[193] Munns BMI 96/168/20-170/25
[194] Munns BMI 96/173/19-176/1
[195] Munns BMI 96/163/12
[196] Quick BMI 92/74/21-76/3

Reith explained that it would have been usual for such documents to be cleared by legal advisers. He considered that the Directive was sufficiently clear. He did not know of the 1972 Directive at the time but the purpose of the Directive, in accordance with the mission command principle, was to define the concept of operations and command and control arrangements rather than detail how that responsibility would be exercised.[197]

7.155 Reith was not aware of the 1997 Policy for interrogation and related activities. To an extent at least, Reith considered that the Directive was a detailed one and did cover procedures. The procedures section within the Directive is relied upon by those representing Reith to suggest that the Directive did in fact comply with the 1997 Policy.[198] In any event, Reith said he believed it to be adequate or he would not have cleared it to be issued.[199] Reith did not think he would need to have his attention drawn to the 1997 Policy if staff officers drafting the HUMINT Directive on his behalf were aware of the policy and made the Directive compliant with it.[200]

Col Robert Kett, ADI HUMINT, Directorate of Intelligence HUMINT

7.156 Kett was the Assistant Director (HUMINT) from, on his evidence, November 2000 to April 2004.[201]

7.157 Kett told the Inquiry that he was not involved in the drafting of the Chief of Joint Operations' HUMINT Directive. This was not surprising given that he was in the Directorate Intelligence HUMINT, rather than at PJHQ. Kett was confident that the Directive would have been copied to his branch probably before being finalised. Kett suggested that the Directive and annex were sufficiently detailed and he thought it was intended to be "… *a broad Directive and that those conducting HUMINT activities would rely on their training and Standard Operating Procedures as drafted by the unit concerned*." The value of this evidence, and Kett's assessment of the draft Directive must, however, be seen in the light of the fact that Kett, like so many others, was not aware at the time of the 1997 Policy for interrogation and related activities which required a detailed directive. When first asked, Kett did not accept that the Directive failed to comply with the 1997 Policy. His evidence was that it matched other similar Directives of its kind.[202] When I returned to the issue with Kett at the end of the evidence, however, Kett told me that he had not in fact read the 1997 Policy in detail so that he did not know whether the Directive complied with it.[203]

Air Marshal Sir Jonathan French, Chief of Defence Intelligence

7.158 Air Marshal Sir Jonathan French had no involvement in the drafting of the Chief of Joint Operations' Directive, which I accept is unsurprising given his own role which was not part of PJHQ. His own view was that the Directive was sufficiently detailed

[197] Reith BMI08253-4, paragraphs 23-24
[198] SUB001917, paragraph 1(c)
[199] Reith BMI 94/106/10-109/1
[200] Reith BMI 94/149/20-150/11
[201] Kett BMI 97/152/5-15. Although it was Hill's evidence that Kett in fact took over from him as ADI HUMINT in October 2001 (Hill BMI 102/69/12-70/2).
[202] See generally Kett BMI 97/181/2-182/15; Kett BMI 97/213/24-218/14; Kett BMI 97/228/14-230/2; Kett BMI08441, paragraph 20; Kett BMI08453-4, paragraphs 66-67.
[203] Kett BMI 97/234/19-22

and did give adequate guidance. Having looked at both the Directive and the 1997 Policy in preparation for his evidence to the Inquiry, French thought that the Directive appeared to him to give the guidance required in the 1997 Policy. French was not, however, aware of the 1997 Policy at the time. He did not think that it ought necessarily to contain a cross reference to Part I of the 1972 Directive.[204] In Part V of this report, I have already referred to French's suggestion, which I find to be incorrect, that the 1997 Policy could be read as cancelling more than just Part II of the 1972 Directive.

7.159 I turn next to consider the evidence of a number of the officers in theatre.

Air Marshal Sir Brian Burridge, National Contingent Commander, Op Telic 1

7.160 As the former Commander of the National Contingent, Burridge told the Inquiry in his oral evidence that he was certain that he had not seen the draft Directive disclosed to the Inquiry before, because it contained what he considered to be some fundamental errors. He detailed considerations such as how the scope of the Directive was phrased, and errors in the Command and Signal instructions such as the Chief of Joint Operations having "*full command*". Burridge was forthright in expressing his view that there were significant errors of the kind which he would have spotted had he seen this version.[205]

Lt Col Ewan Duncan, SO1 J2X NCC, Op Telic 1

7.161 Duncan was the SO1 J2X at the NCHQ. He was therefore the most senior officer in theatre specifically dealing with HUMINT matters.

7.162 Duncan's evidence was that the Directive disclosed to the Inquiry looked familiar though he did not remember when he first saw it. He suggested he would have seen the document and referred to it in theatre on a day to day basis. He considered that the version was only a draft one, but that the final version would have been distributed to everyone in the chain of command with responsibility for HUMINT operations.[206]

7.163 In his oral evidence, Duncan explained that he was confident that Clapham[207] was indoctrinated into HUMINT matters and sufficiently experienced to have met the requirement for a legal adviser. He would have expected those who were running the JFIT to be aware of the Directive. It was Duncan's custom always to involve lawyers in discussions about HUMINT activity.[208]

Capt (RN) Neil Brown, Commander Legal NCC, Op Telic 1

7.164 Brown was the senior legal adviser in theatre, being the LEGAD at the NCHQ, with an equivalent rank at the time of a Col in the Army. In his oral evidence to the Inquiry, Brown stated that he did not recognise the HUMINT Directive, that he had

[204] French BMI08429-32, paragraphs 43-49
[205] Burridge BMI 98/45/20-49/10
[206] Duncan BMI06047-8, paragraphs 50-52
[207] Clapham was not in fact the LEGAD at the NCC, that was Capt (RN) Neil Brown, see below. But Clapham was deployed as an extra pair of hands at the NCC for the early part of Op Telic 1.
[208] Duncan BMI 76/42/15-47/25; Duncan BMI 76/79/22-80/3

not been indoctrinated into HUMINT matters, and that he was never aware of the intention (expressed in the draft HUMINT Directive) that as NCC LEGAD he should be indoctrinated into HUMINT matters. He was aware of the general duty to highlight differences between operational requirements and legal advice but not of the specific provision in the HUMINT Directive to that effect. Brown was not aware of, and did not sit on, an in theatre management board.[209] Brown was adamant that he was not aware of the Directive at all. He was sure that he would have recalled the document if he had ever seen it. Since it referred to him, he would absolutely have expected to have been shown it.[210]

7.165 I accept Brown's evidence in this regard and find that, remarkably, given his role as NCC LEGAD and the many references to him in the HUMINT Directive, he was never shown it.

Lt Col Clapham, additional SO1 lawyer attached to NCC, Op Telic 1

7.166 Clapham was an SO1 Legal at PJHQ but he served in the early stages at the NCHQ in Qatar for about a month, spanning the final preparations for, and the start of, the warfighting phase. He described his role as being in effect a 'spare pair of hands' at the NCHQ.[211]

7.167 Clapham told the Inquiry that he could not remember seeing any detailed directive issued by the CJO nor was he aware of the 1997 policy requirement that such a Directive should be issued. He could not rule out the possibility that he saw the Directive disclosed to the Inquiry but he did not remember it. At PJHQ he thought any legal input would have come from Rachel Quick and not from him. In respect of his in theatre legal work for Op Telic, Clapham was indoctrinated into some aspects of HUMINT work but did not have any particular indoctrination or training relating to the interrogation and tactical questioning side of HUMINT work.[212]

Lt Col S002, SO2 J2X 1 (UK) Div, Op Telic 1

7.168 S002 was the SO2 J2X at 1 (UK) Div, Duncan's equivalent at the Divisional level of command.

7.169 S002's evidence was that there was a detailed Directive governing the procedures used by HUMINT teams in theatre. But he emphasised in his statement to the Inquiry that its publication was delayed until June 2003, despite what he said were agitations from him and others at 1 (UK) Div for a written statement of the "*terms of reference*". S002 said that he contacted S062, amongst others, pursuing the Directive.[213] When

[209] Such a management board was required according to co-ordinating instructions referred to in a paper that went to the DCDS(C) (through the DMO) on 13 February 2003 (MOD044522, at MOD044525, paragraph 18; see also the MOD Directive on HUMINT Operations, MOD055603 at MOD055607, paragraph 13(e)). The NCC LEGAD was meant to sit on the board. A number of other witnesses could not recall an in theatre management board sitting either (Clapham BMI 91/35/4-12; Duncan BMI 76/47/13-14; S034 BMI 72/15/8-14) while S002 recalled that it did sit but not until about June of 2003 (S002 BMI 82/53/11-21). Later disclosure to the Inquiry in fact suggests that the Board first sat on 17 March 2003 and that it was Maj Gavin Davies who attended as the legal member, with Duncan and Hayes (POLAD) amongst others being present (MOD055610).

[210] Capt (RN) Neil Brown BMI 75/129/17-133/23; Capt (RN) Neil Brown 75/144/21-145/17

[211] Clapham BMI 91/114/17-20

[212] Clapham BMI 91/31/1-35/16; Clapham BMI06509-10, paragraphs 71-72

[213] S002 BMI05829-30, paragraph 24

S002 made these comments in his first witness statement, the draft Directive had not yet been disclosed by the MoD. In a second statement, S002 expressed surprise at the date of the draft Directive (27 February 2003) because he did not consider that he had sight of it until May or June 2003. He said that the Directive was not timely and that the procedures had been "*walked through*" without the benefit of the Directive.[214] His overall assessment of the Directive as he stated in a supplemental witness statement to the Inquiry was:[215]

> 11. Overall, I would say that, insofar as the Directive (MOD049310) and PJHQ guidance (MOD049314) defined the concept of operations, command and control arrangements, and responsibilities for HUMINT operations and since it referred to JWP 1-10, it was adequate guidance on the procedures to be used by UK interrogators in Iraq. However, the fact remains that this guidance was superseded by events. It was not received until after we had invaded Iraq and had instituted procedures and practices by reference to relevant doctrine.

7.170 Unlike many witnesses, S002 explained in his oral evidence that he was familiar with the essence of the 1997 Policy requirement for a detailed directive, having come across it in a different context in 2000.[216] He thought on reflection that the publication date of the final Directive was May rather than June 2003. He was adamant that he had consistently lobbied for the document. He said that he and his second in command joked about the Directive when it did arrive in May because by then the diagram of the HUMINT organisation in theatre was so out of date. He accepted that he and Duncan had an obligation to get the Directive into the hands of Lt Cdr S040 as the officer commanding the JFIT. He denied failing to pass it on to S040. He said that having looked at the Directive again, the detail was "...*a little thin*". He accepted that he might have expected to see a reference to the 1972 Directive within the Chief of Joint Operations' HUMINT Directive if the 1972 Directive was still extant. He would have expected the Directive to have some kind of cross reference to the prohibition on the five techniques, although he was not himself aware of the 1972 Directive until 2009.[217]

Lt Cdr S040, OC JFIT, Op Telic 1

7.171 S040 was the Officer Commanding the JFIT. He told the Inquiry that he had not seen the Chief of Joint Operations' HUMINT Directive before it was shown to him during the course of his preparation for giving evidence to the Inquiry.[218] I accept his evidence in that regard. S040 had not seen the 1997 Policy either.[219]

7.172 Since the HUMINT Directive was required by a Ministerially-endorsed policy to provide detailed procedures for use by interrogators in theatre, I would observe that it is extraordinary that S040 was never provided with it. In saying this, I do not overlook the communication and security considerations in theatre to which S040 referred in

[214] S002 BMI07379-80, paragraphs 2-6
[215] S002 BMI07381, paragraph 11
[216] S002 BMI 82/24/12-25
[217] S002 BMI 82/47/18-52/11; S002 BMI05829, paragraph 22
[218] S040 BMI07000, paragraph 73
[219] S040 BMI06992-3, paragraph 49

his oral evidence and which made it difficult for classified material to be sent to his team.[220]

Maj S015, SO2 J2X, 3(UK) Div, Op Telic 2

7.173 S015 was the SO2 J2X for 3 (UK) Div for Op Telic 2 and thus was S002's successor in theatre. S015 told the Inquiry that he remembered seeing the HUMINT Directive when he arrived in theatre in 2003. He accepted that he would have been responsible for ensuring that Capt S017, the Officer Commanding the JFIT for Op Telic 2 was aware of its existence although he would have expected her to be aware of it anyway through her own handover.[221]

7.174 In his oral evidence, S015 was asked about S017's evidence that she had not seen the Directive in theatre. He could not specifically remember drawing the Directive to her attention but he thought that he would have read the Directive and passed it on and re-enforced it.[222]

Capt S017, OC JFIT, Op Telic 2

7.175 S017 was the Officer Commanding the JFIT for Op Telic 2. Her evidence was that she was unaware of the 1997 Policy requirement for a detailed directive. She did not remember seeing a copy of the Chief of Joint Operations' HUMINT Directive but added that she would not have had the facilities available to receive secret documents by email at the JFIT.[223]

Intelligence Exploitation Base (IEB) Joint Forward Interrogation Team (JFIT) Op Telic – SOP

7.176 At this stage I should address a document of potential relevance of the JFIT witnesses who gave evidence to the Inquiry. This is a document entitled "*Intelligence Exploitation Base (IEB) Joint Forward Interrogation Team (JFIT) Op Telic*", which purports to provide *"...a generic set of Standard Operating Procedures (SOPs) for the UK Land Command Component JFIT (UKLCC JFIT) deployed in support of the UK National Component Command (NCC) on Op TELIC*" in respect of prisoner of war handling, questioning and interrogation.[224] I should say at the outset that this document is undated and it is not clear whether this was a draft or a final document. The incomplete reference at paragraph 10 of this document adds to the picture of it having been a draft.[225] Further, there is no distribution list.

7.177 Among other procedures addressed were processes for holding, processing, interrogating and moving prisoners. The document stated that prisoners could be restrained during interrogation sessions:

[220] S040 BMI 67/176/16-25
[221] S015 BMI06529, paragraph 52
[222] S015 BMI 84/115/17-118/8
[223] S017 BMI06805-6, paragraphs 35-36
[224] MOD041858
[225] MOD041861

> *"The OC/Ops Offr will decide upon the use of restraints, on a case by case basis. The guard force will fit restraints to the PW prior to any movement. The interrogator is to be in possession of a key and may, after consultation with and the authorisation of the OC/Ops Offr, remove the restraints."* [226]

7.178 None of the JFIT witnesses to whom this document was put could remember having seen it before, nor were they aware of a standard operating procedure for the JFIT on Op Telic 1.[227]

7.179 It appears that there was intended to be a separate IEB JFIT deployed on Op Telic 1 that was distinct from the JFIT at Um Qasr.[228] Taking this and all the evidence of the JFIT witnesses into account I am satisfied that this document was not the standard operating procedure for the JFIT based at Um Qasr on Op Telic 1. Furthermore no written standard operating procedure for the JFIT's operations at Um Qasr in Op Telic 1 was disclosed to the Inquiry.

[226] MOD041860, paragraph 6(f)
[227] S015 BMI 84/113/2-114/10; S017 BMI 84/47/8-48/5; S015 BMI06529-30, paragraphs 53-54; S017 BMI06806-7, paragraphs 37-38; S018 BMI05400, paragraph 64; S040 BMI07001-2, paragraph 76; S045 BMI07296, paragraph 14; S062 BMI08408, paragraph 43; S062 BMI08412, paragraph 63
[228] MOD055654

Chapter 4: Ministerial authorisation for tactical questioning and interrogation operations

7.180 On 25 February 2003, a submission was put to the Secretary of State for Defence seeking approval for HUMINT operations in support of UK Forces deployed on Op Telic.[229] The submission unsurprisingly recommended that approval be given for the conduct of such operations. It also recommended that HUMINT operators would not deploy to Iraq before the start of hostilities. Finally, the submission recommended that the Secretary of State should write to the Foreign Secretary along the lines of a draft letter provided with the submission.[230]

7.181 The submission advised the Secretary of State that:[231]

Background

4. HUMINT operations provide valuable information that is not available from any other source, and may also corroborate intelligence acquired by other means. It is therefore proposed that HUMINT operations be conducted before, during and after any conflict with Iraq, in order to meet MOD, PJHQ and theatre command intelligence requirements in support of UK forces.

5. Prior to the commencement of hostilities, HUMINT would be used to support force protection, provide tactical intelligence [redacted] During conflict, HUMINT operators would attempt [redacted] to determine Iraqi political and military intentions and to provide tactical intelligence. Post conflict, HUMINT would focus on [redacted] issues affecting the stability of Iraq. Throughout these phases, our HUMINT capability would also support the UK collection effort on Iraq's WMD capabilities.

7.182 As to interrogation teams, the Secretary of State was informed that:[232]

Interrogation Teams

9. Prior to hostilities, the three interrogation teams will debrief Iraqi defectors in Kuwait. [redacted] Debriefing may also support planning for the post conflict scenario.

10. During conflict, the interrogation teams will provide a tactical questioning and interrogation capability to land component commanders. Tactical questioning will be conducted at unit level, and those individuals assessed to be high-value PoWs may then be interrogated by appropriately trained personnel. Additionally, the interrogation teams may debrief any willing subjects that they come across.

11. The NCC interrogation team will be located within the US-led Joint Interrogation Facility. This facility will be used to interrogate PoWs of particularly high value, such as high-ranking military and WMD experts. Prisoner handling will be managed in accordance with agreed UK-US guidelines.

7.183 The Secretary of State was advised that HUMINT operations would be directed and controlled by an in theatre management board and that an MoD supervisory authority would provide high level oversight and guidance.[233]

[229] MOD054893
[230] MOD054898
[231] MOD054894
[232] MOD054895
[233] MOD054895

7.184 Under the heading "*Risk*", the Secretary of State was advised that the political risk associated with UK HUMINT operations against Iraq was assessed to be low.[234] Under "*Legal*", he was advised that all interrogation would be conducted in accordance with the Geneva Conventions.[235]

7.185 The draft letter to the Foreign Secretary reflected the contents of the submissions, indicating amongst other things that a specified number of interrogation teams would conduct debriefing, tactical questioning and interrogation of prisoners of war; that interrogation would be carried out by appropriately trained personnel; and that all prisoner handling would be managed in accordance with agreed UK-US guidelines and the Geneva Conventions.[236] The draft letter also suggested that:[237]

> During and after hostilities, tactical questioning and interrogation, although accepted elements of warfare, are likely to attract media attention, especially at the US-led Joint Interrogation Facility, following events at Guantanamo Bay. However, UK personnel will operate in accordance with the Geneva Convention, the UN's Universal Declaration on Human Rights and UK Armed Forces regulations at all times. The interrogation teams will face no threat higher than other deployed UK land elements and will normally operate behind the frontline.

7.186 A copy of the letter finally sent to the Foreign Secretary on 3 March 2003[238] is almost identical in content to the draft.[239]

7.187 On 10 March 2003, the Foreign Secretary, the Rt. Hon. Jack Straw MP replied to the Secretary of State agreeing to the conduct of HUMINT operations including interrogation.[240] Straw stated:

> *"I note that an In-Theatre Management Board will be formed to direct and control HUMINT operations, ensuring that they do not conflict with coalition operations [redacted]. I am also pleased that you have confirmed that UK personnel will operate in accordance with the Geneva Convention, the UN's Universal Declaration of Human Rights and UK armed forces regulations at all times. There will be media interest in the handling of prisoners and our Press Officers will need to keep in close touch. I also understand that MOD Legal Advisers will confer with FCO Legal Advisers on a MOU covering UK/US guidelines for prisoner handling.*
>
> *This is good but I should also make clear that I will need to see the draft MOU and consider any recommendations from my Legal Advisers and officials before I could agree it."*[241]

7.188 The following day, 11 March 2003, a memorandum from the office of the Director of Military Operations referred to the fact that both the Secretary of State for Defence and the Foreign Secretary had approved the conduct of UK HUMINT operations for a period of twelve months starting on 1 March 2003.[242] This memorandum stated that

[234] MOD054895
[235] MOD054896
[236] MOD054899
[237] MOD054900
[238] MOD048584
[239] MOD054898
[240] MOD048589
[241] MOD048589, paragraphs 3-4
[242] MOD055603

"*The enclosed directive lays out the conditions under which those operations are to be conducted. PJHQ is to now take the steps necessary to ensure that is complied with."* [243] This was sent to both the J2X and PJHQ and to the DI HUMINT.

7.189 The Directive attached to this memorandum was dated 24 February 2003.[244] It stated that the overall responsibility for the management of HUMINT operations for Op Telic lay with J2X at PJHQ. S01 J2X at the NCC (Duncan) was to be responsible for ensuring that HUMINT operations were planned and conducted in line with laid down procedures in accordance with this and PJHQ HUMINT directives.[245] It stated simply that tactical questioning and interrogation was to be conducted in accordance with JWP 1-10 and the Geneva Conventions; that only appropriately qualified personnel were to carry out these tasks; and that prisoners of war were to be handled in accordance with the PJHQ/CENTCOM Memorandum of Understanding.[246]

7.190 In late March 2003, there was an exchange of correspondence between Vivien Rose and Mr Huw Llewellyn of the FCO Legal Advisers.

7.191 The letters concerned a proposal that British Sovereign Base Areas might be used for the interrogation of Iraqi prisoners of war and civilian internees. Llewellyn wrote to Rose regarding this proposal on 25 March 2003. He referred to advice given by Counsel at a meeting with the Attorney-General before turning to "…*the substance of the protections to which these individuals would be entitled*."[247] Llewellyn then referred to the fact that members of Iraq's armed forces would be entitled to protection under the Third Geneva Convention, and he referred specifically to Article 17. He also referred to the Fourth Geneva Convention protection for civilians. He suggested that:

> *"The use of the word "interrogation" and "interrogation units" in the Defence Secretary's request is therefore very worrying. I would be grateful if you could find out and let us know what methods of questioning MOD envisage, and in what sense they will amount to "interrogation""* [248]

7.192 Rose responded on 27 March 2003. I set out the substance of her response in full:[249]

27 March 2003

Dear Huw,

IRAQ: POSSIBLE DETENTION OF POWS AND CIVILIAN INTERNEES IN THE SBAs

1. Thank you for your letter of 25 March faxed through on 26th. ES3

2. Let me reassure you straight away that though, for lay people, the word "interrogation" summons up images of dank dungeons, blinding lights and the removal of finger nails, the military (and hence the MOD generally) use the term in an entirely benign sense -- to mean simply "questioning". I agree that it appears rather alarming but there is no call to be worried.

[243] MOD055603
[244] MOD055604
[245] MOD055604-5
[246] MOD055606
[247] MOD053173
[248] MOD053174, paragraph 5
[249] MOD053170

3. All those who are involved in the handling and questioning of detainees, whether they are PWs or civilian internees, are fully aware of the legal obligations that you describe. They are also aware that they will be held accountable for any breach of them. There are military and civilian lawyers, who are very familiar with the terms of the Geneva Conventions and other rules of IHL, deployed at various levels of the command chain. It is their task to ensure that all troops are given the guidance and instruction necessary to enable compliance with the UK's international obligations. Our expectation is that HM Forces will comply fully with these obligations in this conflict as they have done in conflicts in the past.

4. With regard to GCIV, as you know the way in which this is going to operate in Iraq is currently the subject of detailed discussion between the Foreign Office and the MOD on a daily basis. Work is also in hand in relation to the rules to govern status and disciplinary tribunals. [redacted] efforts should be made to ensure that as much protection was given to detainees appearing before tribunals as was practicable. Such steps might include a firm direction to those staffing the tribunals that they are to act independently and impartially and allowing decisions of the tribunals to be subject to judicial review in the English courts. It is not quite right to say, as you say in your letter, that we concluded at the meeting that we would do this. [redacted]

5. With regard to the establishment of an information bureau for registering the details of civilian internees, you may not be aware that there has been considerable discussion between FCO (Helen Upton and Nick Macduff), Home Office Legal, Home Office Immigration and Nationality Department, the Red Cross and my MOD colleagues (Sean Martin of MODLA and Barbara Cooper of SP Pol Welfare) about this. As I understand it, the agreement with the ICRC is that the PW Information Bureau will report civilians captured in theatre and that the handling of any Iraqis detained in the UK will be undertaken by the Home Office. No doubt Helen can give you further details.

May I leave you to copy this response to the various FCO recipients of your letter. I am copying it to Cathy Adams.

Yours ever

[redacted]

Vivien Rose

7.193 Rose had the following exchange with Counsel for the Detainees when questioned about the assurances she gave in this letter:

> *"A. Well, I was – I don't remember who I consulted. I think I gave the answer fairly rapidly after I had got the letter. The main point I was trying to get across was that the fact that the Secretary of State referred in his letter to the Foreign Secretary to "interrogating" people should not lead anyone to understand that the Secretary of State meant that we would be torturing people and that, although Huw had gone on to draw our attention to the relevant provisions of the Geneva Convention, in fact people at the MoD were familiar with those and, as far as I was aware, people were trained about them.*
>
> *Q. But insofar as Huw Llewellyn had asked specifically whether you knew what methods of questioning would happen –*
>
> *A. Yes, I didn't know what the methods were.*
>
> *Q. You did not know –*
>
> *A. No.*
>
> *Q. – and you didn't go to anyone or any documents to work out what methods there would be?*
>
> *A. No.*
>
> *Q. Did you go to any one or any documents to clarify that the people carrying out the methods, whatever they were, were fully aware of whether those methods were in accordance with law or not?*

> *A. No, I think I assumed that people were trained to conduct questioning in accordance with the Geneva Conventions."* [250]

7.194 I do not think Rose's response to Llewellyn deserves any personal criticism. I accept it was given in good faith. The MoD rightly accepts that it did not live up to the assurance in Rose's letter and the MoD expresses regret for that.[251] I should make clear that in matters such as the harsh technique, military "*interrogation*" was not in fact a mere synonym for "*questioning*" as Rose had, in good faith, tended to suggest to her FCO colleagues.

[250] Rose BMI 93/146/23-147/25
[251] SUB001106, paragraph 8

Chapter 5: Conclusions regarding the early theatre-specific orders and developments regarding prisoner handling

7.195 In this Part of the Report I have not referred to all the documents available to the Inquiry which touch on the issues discussed above. Nor have I referred to all the evidence which the Inquiry heard. To have referred to all of the documents and the evidence would have been to extend an already lengthy Part beyond what is necessary or sensible. I have carefully read and had regard to the submissions of all of the Core Participants on the issues on this topic. I have endeavoured to concentrate upon what I believe to be the central issues which relate to my terms of reference.

7.196 I set out my conclusions on this Part of the Report under four headings. They are:

(1) the Early Op Telic orders and directives as they related to prisoner of war handling;

(2) whether the HUMINT Directive as disclosed to the Inquiry is a draft or final version;

(3) the content, drafting and circulation of the Chief of Joint Operations' HUMINT Directive; and

(4) the authorisation of HUMINT operations.

The early Op Telic orders and directives as they related to prisoners of war handling

7.197 I accept that the early orders and directives must be considered in the context of mission command. In my view it would therefore be unreasonable to expect to find fine tactical details in orders and directives from commanders of higher military formations.

7.198 It is submitted on behalf of the Detainees that the concept of mission command has less relevance when considering slow moving and predictable operations, "*... the more routine and regimented function of prisoner handling, where the task and its parameters are clear in advance...*".[252] I do not accept this submission for two reasons. Firstly, I accept the evidence of the numerous witnesses who have given evidence to the Inquiry on the applicability of mission command to high level orders. Secondly, if what is meant is that there ought to have been detailed guidance dealing with tactical procedures at ground level for prisoner handling that does not obviate the importance of applicability of mission command.

7.199 For the most part, the approach of higher level directives was to refer to and rely upon JWP 1-10 and to insist upon compliance with the Third Geneva Convention and LOAC in regard to how prisoners of war were to be treated. So far as the directives being given at the level of Boyce, as Chief of the Defence Staff, Reith as Chief of Joint Operations, and Burridge as the National Contingent Commander, I find that reliance on JWP 1-10 and the Third Geneva Convention without reference to the detail contained in those documents was a not unreasonable approach to adopt. In my view, it is not realistic to expect commanders at that level, or indeed their staff

[252] SUB002919, paragraph 25

officers, to re-visit areas of established doctrine in the weeks or days before combat operations.

7.200 Earlier in this Report I have referred to clear shortcomings in JWP 1-10. It did not address sight deprivation at all and did not contain any reference to the prohibition on the five techniques. At the level of Chief of the Defence Staff, Chief of Joint Operations and National Contingent Commander I would not have expected detailed instructions covering sight deprivation and prohibition on the five techniques to be highlighted in the Directives given at that level. But, by referring to JWP 1-10 senior commanders were not in fact giving sufficient guidance on all aspects of prisoner handling. Nevertheless, in my opinion, this fault lay in the historic shortcomings in the MoD's doctrine and not with the individual senior commanders who were preparing for the myriad demands of a major combat operation.

7.201 I do not find that sight deprivation or hooding of prisoners or civilians arose as an issue in any significant way in the consideration of prisoners of war handling before the warfighting phase.

7.202 I respectfully commend Brims for the way in which he sought to communicate his intent for 1 (UK) Div operations. His intent set out the right blend of the determined use of force in what was a war but tempered by the need to avoid triumphalism, to bear in mind the needs of Phase IV, to restore and foster Iraqi dignity and to insist upon the highest standards of self discipline.

7.203 A number of issues did arise in relation to prisoner of war handling such as the use of a Royal Navy vessel for the medical treatment of prisoners of war (and whether this would be lawful) and, in particular, negotiations concerning the memorandum of understanding on transfer of prisoners between member states of the coalition. I have no hesitation in concluding that the overriding objective in the input given to these issues, including by the military lawyers, was compliance with the UK's international legal obligations.

7.204 A more difficult issue was the resourcing of prisoner of war handling by the UK Forces. A number of senior officers, Mercer, S009 and Brims among them, had to press hard for sufficient manpower to be dedicated to the handling of prisoners of war. For Mercer, the shortfall in prisoner of war handling resources was so significant that he genuinely felt that the UK's responsibilities under the Geneva Conventions were not being taken sufficiently seriously. On the other hand, it is apparent that the MoD was struggling to find further sub-units to augment the Prisoner of War Handling Organisation without damage to other commitments outside of Iraq. In the event, elements of 1 DWR were taken off Op Fresco duties, as agreed by the Secretary of State. For the issues under consideration by this Inquiry, the resources dedicated to prisoner of war handling in Op Telic 1 were not in any sense a contributory factor to the abuse suffered later by Baha Mousa and the other Detainees. Further consideration of Mercer's concerns (shared to some extent by others) about the under resourcing of prisoners of war handling in Op Telic is beyond the proper scope of this Inquiry. I was nevertheless impressed by the determination of Mercer to press concerns he genuinely felt were imperative.

7.205 Moving to the more tactical level, I find that in the lead up to the combat phase, the guidance given to soldiers and junior commanders, although fulsome and detailed was, paradoxically, inadequate. Soldiers on Op Telic 1 were provided with aide memoires

that re-enforced the need to treat prisoners and civilians humanely, and not to use force to gain information from either. In a number of lower level orders, there was a proper emphasis on the importance of humane treatment of prisoners of war, compliance with LOAC and with the Geneva Conventions. Some of the orders went into detail on such matters as the need to disarm, segregate and complete relevant capture cards for prisoners of war. However, none of the orders from Brigade or Division addressed hooding or gave any guidance on sight deprivation or the prohibition on the five techniques. For the most part, where detail was required, the approach was either to refer to JWP 1-10 or to provide a précis of the guidance contained within it.

7.206 It follows that to a large extent, on the question of whether prisoners of war could be deprived of their sight, and if so by what means and for what purposes, units being deployed on Op Telic 1 would have had to fall back on their previous training. Such training, as I have explained in Part VI, would have been inconsistent and inadequate, there being no settled guidance on whether, when and by what means sight deprivation might be employed. I therefore find that soldiers deployed on Op Telic 1 were not given appropriate guidance on the circumstances and means by which they could deprive prisoners of their sight.

7.207 Having reached this conclusion I do not think it proper or appropriate to blame individual NCC, Divisional or Brigade level staff officers for this shortcoming in the prisoners of war handling guidance which was given in the lead up to Op Telic. One might have hoped that the gap in prisoner of war guidance relating to sight deprivation would have been spotted. However, those involved in drawing up Op Telic 1 prisoner of war handling guidance were, in my opinion, entitled to draw guidance from JWP 1-10.

7.208 The principle of mission command does not excuse the fact that ultimately there was no guidance to soldiers on the ground concerning sight deprivation. But, in my opinion, the MoD is corporately responsible for the fact that the guidance in JWP 1-10 was inadequate. The historic failures to maintain adequate prisoner of war handling and interrogation doctrine led directly to inadequate prisoner of war handling guidance being issued in the lead up to the warfighting phase of Op Telic 1.

7.209 The lack of any guidance on whether or not prisoners could be deprived of their sight extended to orders from the Prisoner of War Handling Organisation. I nevertheless commend S009 for the inspirational way in which he sought to communicate his intent to the Prisoner of War Handling Organisation (see paragraphs 7.103 to 7.104 above).

Whether the HUMINT Directive as disclosed to the Inquiry is a draft or final version

7.210 The MoD has suggested that there is uncertainty as to whether the Chief of Joint Operations' HUMINT Directive as disclosed to the Inquiry is a draft or final version.[253] I accept that the draft is dated, and has lettered annexes, suggestive of a final or late draft.

7.211 However, I consider it far more probable than not that the version disclosed to the Inquiry was only a draft. Apart from the obvious drafting comment,[254] the main part

[253] SUB001104, paragraph 3
[254] MOD049311

of the Directive has incorrect paragraph numbering. Both S062 and Munns agreed that the document was only a draft, though they differed on how far it has progressed. While I am not confident that S002 was right in suggesting that the finalised document was produced as late as May 2003, his recollection of agitating for it from theatre for a significant period suggests that the final version was not produced as early as 27 February 2003. Perhaps more significantly, there were errors in the version disclosed to the Inquiry particularly concerning the description of command arrangements that ought not to have survived through the full drafting process. I accept Burridge's evidence that the errors in the document were such that he would have spotted them had he considered this draft.

7.212 PJHQ's system for document retention failed to maintain a copy of the final Chief of Joint Operations' HUMINT Directive. In this regard its record keeping fell far short of the standards that ought to have been in place.

Conclusions on the Content, Drafting and Circulation of the Chief of Joint Operations' HUMINT Directive

7.213 The Treasury Solicitor's closing submissions understandably seek to protect their individual officer clients who were involved in drafting the HUMINT Directive, and reflect the evidence of other clients who did not see anything particularly wrong with the content of the Directive. However, once the content of the 1997 policy and the background of both the Heath Statement and the 1972 Directive are fully understood, I regret that I find the attempts to justify the content of the Chief of Joint Operations' HUMINT Directive unpersuasive. This, all the more so, given the evidence of important witnesses on this topic such as S062 who actually drafted the Directive and said in clear terms that he would have included the prohibition on the five techniques if he had been given clearer guidance.

7.214 Unencumbered by the need to focus upon protecting individual officers involved in the drafting process of the HUMINT Directive, the MoD itself took what I consider to be a far more realistic line in its closing submissions.

7.215 The MoD, in my view rightly, made the following concessions:

> *"…it is a regrettable fact that those who drafted the CJO's HUMINT Directive to COMBRITFOR were not aware of the 1997 policy or its specific requirement for a detailed directive."* [255]
>
> *"Consequently, the actual directive did not meet the terms of the 1997 policy."* [256]
>
> *"It is clear that the result of the 1997 Policy for Interrogation and Related Activities which was approved at ministerial level ought, if applied, to have resulted in a detailed directive for Operation Telic which addressed interrogation in detail and which incorporated legal advice. Admittedly, that did not happen."* [257]
>
> *"As to its content there is no doubt that the document does not provide the detail envisaged in the 1997 policy. It does not descend to particulars in relation to interrogation practices and it does not incorporate actual legal advice. The MOD suggests that the explanation is that no one involved in the document's production was aware of the 1997 policy."* [258]

[255] SUB001058-9, paragraph 3
[256] SUB001059, paragraph 3
[257] SUB001104, paragraph 2
[258] SUB001104-5, paragraph 4

> *"It must…be accepted that the circulation of the Directive appears to have been very limited…"*[259]
>
> *"As to practices, the CJO's HUMINT Directive does not attempt to set out how interrogation was to be conducted. Accordingly, there was no high level order giving detailed direction on interrogation procedures. Interrogators and tactical questioners were therefore reliant upon their training as to how to fulfil their tasks. The MOD accepts that a very different directive ought to have emanated from PJHQ in accordance with the 1997 Policy."*[260]

7.216 For the sake of completeness I record that the MoD also submitted that the fact that legal advice was not incorporated within the Directive was to some extent compensated by the arrangements provided for in paragraph 7 of the Directive.[261] The MoD doubted the causative impact of the shortcomings in the HUMINT Directive, suggesting that all knew they were obliged to act in accordance with the Geneva Conventions and treat prisoners humanely. It was submitted that those who actually mistreated Baha Mousa and the Detainees must clearly have known that their treatment was wrong.[262]

7.217 I have reached the following conclusions. Firstly, the content of the Chief of Joint Operations' HUMINT Directive was inadequate. It failed to address interrogation methods and approaches when those subjects should have been addressed and had been addressed as long ago as Part II of the 1972 Directive.

7.218 It failed to incorporate within the Directive itself up-to-date legal advice, instead leaving in-theatre lawyers to provide advice on a more ad hoc basis. The latter arrangement mitigates, but does not excuse, the fact that up-to-date legal advice should have been taken on what should have been fuller and more detailed content of the Directive.

7.219 It failed to refer to the prohibition on the five techniques or Part I of the 1972 Directive. While the latter concerned internal security operations worldwide, the prohibition on the five techniques ought to have applied *a fortiori* to a warfighting international conflict to which the constraints of the Geneva Conventions applied.

7.220 Secondly, in the absence of adequate written doctrine outside the training branch at Chicksands, which set out what could and could not be done in interrogation and tactical questioning, the 1997 requirement for a detailed directive governing interrogators' procedures ought to have been a mechanism by which the detailed constraints were made available, in writing, to the senior HUMINT staff in theatre. The Chief of Joint Operations' HUMINT Directive failed to fulfil this function because the Directive addressed higher levels of coordination and lower level administrative matters. It did not address interrogation methods and constraints.

7.221 Thirdly, the fault for this unacceptable state of affairs lies not with the authors of the Directive or indeed the Chief of Joint Operations who was ultimately responsible for it. In my view individual officers such as S062 and Munns involved in drafting the HUMINT Directive for the Chief of Joint Operations were not personally responsible for the shortcomings in its contents. These officers were not aware of the 1997 Policy or of the specific prohibition on the five techniques from 1972. This state of affairs arose because of a systemic failure within the MoD that had, in practice, allowed knowledge of the 1972 Directive and the Heath Statement to fade even amongst intelligence

[259] SUB001105, paragraph 5
[260] SUB001105, paragraphs 6-7
[261] SUB001105, paragraph 5
[262] SUB001105-6, paragraph 7

staff and, more surprisingly, had permitted knowledge of the current interrogation policy which only dated back to 1997 to have been almost completely lost. To this extent, in my opinion, the MoD did not have a grasp on, or adequate understanding of, its own interrogation policy.

7.222 Fourthly, the Directive was not distributed in theatre to the officers who commanded the JFIT in Op Telic 1 and Op Telic 2. This may be partly mitigated by the fact that the Directive was, wrongly, largely a broad coordinating Directive, and partly by security/communications in theatre. Since the Directive's content was inadequate, its limited distribution was not significant. Nevertheless, it ought to have been properly distributed.

7.223 Fifthly, I readily accept that the omissions in the content of the HUMINT Directive do not excuse the conduct of Payne, the guards and others in relation to the Detainees. But the absence of a clear statement in the Directive that conditioning and the five techniques were prohibited in prisoner handling and tactical questioning operations may have contributed to the failure to prevent such conduct. Had there been such a clear statement disseminated to all units it may have prevented at least some of what happened in the TDF. For instance, as I have commented in a different connection, if the ban on conditioning, hooding and stress positions had been promulgated throughout the Division, there would have been no need for Royce to ask Robinson and Clifton questions about conditioning, hooding and stress positions. If he had raised these issues, the answer would have been quite clear.

The authorisation of HUMINT Operations

7.224 I find there is no proper basis for criticism of the submissions that informed Ministers of the approach that was to be taken to prisoner of war handling operations, or sought Ministerial approval for HUMINT operations. Nor should the Secretary of State be criticised for his response to those submissions. It is unrealistic to expect that the doctrinal shortcomings in relation to the prohibition on the five techniques and guidance on sight deprivation should have been apparent at that level of the MoD in the run up to the war. The Secretary of State was right to approve, and did approve, the allocation of slightly greater resources to prisoner of war handling for Op Telic 1.

Part VIII

Hooding and Other Concerns About the Joint Field Interrogation Team (JFIT) March/April 2003

Chapter 1: Introduction and background

8.1 There is no doubt and no dispute that in late March and early April 2003 UK Forces used hoods on prisoners at the Joint Field Interrogation Team (JFIT). Concerns about this practice were raised by a number of British Officers and by the International Committee of the Red Cross (ICRC) which led to at least one order banning the use of hoods in theatre. In this Part of the Report I examine the issues raised.

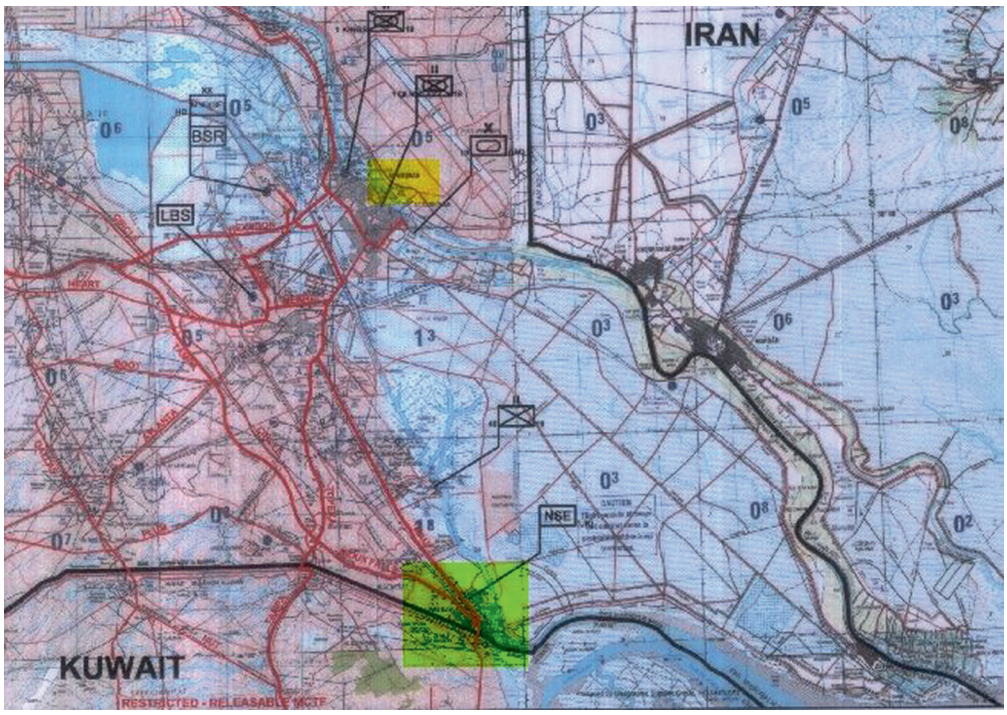
8.2 In the Introduction to this Report, I address the context in which the actions of military witnesses to the Inquiry have to be judged including the dangers which they faced and the tempo of operations (Part I, Chapter 4).

8.3 In considering what was happening at the JFIT in late March and early April it is particularly important to keep in mind the context in which these events were occurring.

8.4 The land offensive started on 20 March 2003. UK Forces did not enter Basra until 6 April 2003. All of the events covered in this Part of the Report took place during the full warfighting phase of the operation.

8.5 The UK's Prisoner of War Handling Organisation set up a facility for prisoners of war about 1 to 2 kms outside the town of Um Qasr. Initially this was known as Camp Freddie, later changing its name to Camp Bucca. It was also known as the Temporary Detention Facility (TDF) and later the Theatre Internment Facility (TIF). Although it was not known as the TIF until later in the chronology, to avoid confusion and for consistency I shall refer to the facility as the TIF throughout.

8.6 The relative positions of Basra and Um Qasr in south east Iraq are highlighted below in yellow and green respectively:



8.7 The TIF was established very soon after the ground offensive started. The Inquiry heard evidence that the Prisoner of War Handling Organisation convoy moved to an overnight position in the Kuwaiti desert on 21 March 2003. There were recce, construction and main body elements of the Prisoner of War Handling Organisation force arriving in that order at the site of the TIF. Although there was some minor conflict in the evidence as to when exactly the JFIT element arrived it was certainly within 48 hours of the Prisoner of War Handling Organisation recce party.[1]

8.8 The site was that of a former communications/radar station that had been chosen from aerial surveillance because of its size and because it appeared to have some perimeter fencing.[2]

8.9 The coalition could not establish prisoner of war facilities outside Iraq and so all of the infrastructure for the prisoner of war holding facility had to be acquired in Kuwait and taken into Iraq. The TIF was therefore a compound that had to be built largely from scratch with the aim of accommodating some 8,000 to 12,000 prisoners. It was intended to be a temporary facility; the original plan being that the US would build a more permanent facility. Shelter for prisoners was in the form of tents with carpets and blankets provided. Latrines had to be constructed. There was little at the site save for a TV transmitter and a few derelict concrete buildings.

8.10 Since US Forces had captured prisoners even before the establishment of the TIF the Prisoner of War Handling Organisation had to deal with prisoners from the time of its arrival at the site of the TIF. Combatants were often not wearing uniform and it was hard for the Prisoner of War Handling Organisation to distinguish between combatants and civilians in the groups being brought to the TIF. Prisoners commonly arrived without any paperwork relating to the circumstances of their capture.

8.11 The construction of the main TIF compound took a number of weeks with gradual improvement to the infrastructure of the compound, sanitation, showers and the

[1] S002 BMI 82/63/10-20; S040 BMI 67/179/25-180/4
[2] Christie BMI04854, paragraph 47

like. In the early stages, fighting was still going on in the vicinity of Um Qasr. The Inquiry heard evidence that this fighting around Um Qasr did not cease until about 26 March 2003. Indeed S002 stated that there was still incoming mortar and sniper fire towards the TIF in the early stages.[3]

8.12 Within the TIF compound, the JFIT had a separate, self-contained prisoner facility. This area was described as being to the left of the entry road with the main Prisoner of War Handling Organisation registration and reception area being on the opposite right hand side of the entry road. The main prisoner of war holding area was further down the entry road beyond the JFIT and prisoner of war registration and reception areas.

8.13 The most basic elements of the construction of the JFIT facility appears to have started on 23 March 2003 with nothing more than fence posts and razor wire. Before that, for the first 24 hours, prisoners were held in the open and could see each other. At that stage, the JFIT carried out their questioning in the surrounding desert so that prisoners would be out of ear shot of each other.

8.14 Obviously conditions must have been difficult for the Prisoner of War Handling Organisation and the JFIT staff as well as the prisoners. Initially, the first prisoners brought to the TIF were guarded in the open or in derelict buildings while the tented accommodation was constructed. The Inquiry heard that a "barn" like building with walls but no roof was used for the first days while more secure areas were constructed.[4]

8.15 These conditions faced by the Prisoner of War Handling Organisation and their prisoners were mirrored by those which the JFIT faced. In the very early stages, the JFIT staff had to use their personal accommodation tents as interrogation rooms and sleep anywhere they could using bivouac bags or makeshift canopies. They were exceptionally busy dealing with the early prisoners as well as the construction of their facility. They themselves had little sleep. S014 told the Inquiry that he and many of the JFIT staff fell ill with diarrhoea and vomiting, with staff regularly requiring treatment at the hospital facility.[5]

8.16 The JFIT compound area was then gradually improved by engineers who constructed a proper fence and berm around the JFIT facility. The JFIT staff ran the interrogation of suspected high value prisoners in the JFIT compound. Their facility was not set up or resourced to cope with more than about 30 prisoners but on occasions they had to deal with considerably more. The JFIT staff had the use of a detachment of about 30 soldiers from the Duke of Wellington's Regiment (1 DWR) element of the Prisoner of War Handling Organisation to guard the JFIT facility, of which about ten would be on duty at any one time. It seems that the same 30 guards could not be consistently occupied on JFIT duties, so some retraining of guards was required.

8.17 Thus neither the Prisoner of War Handling Organisation running the TIF nor the JFIT had the luxury of taking a few days to construct their own facilities before starting their substantive tasks. They worked exceptionally long hours to construct the facilities while also taking care of, and in the case of the JFIT, interrogating prisoners who had already arrived.

[3] S002 BMI 82/163/2-8
[4] Christie BMI04854, paragraphs 48-50
[5] S014 BMI06776, paragraph 51

8.18 Communications to and from the TIF were a problem in the early stages of the war. Even by mid to late April, the lack of secure communication was being flagged as "[t]*he key area of weakness*" for the TIF.[6]

8.19 I have referred in Part I of this Report to the debilitating temperatures in which the soldiers of 1 Queen's Lancashire Regiment (1 QLR) had to operate in Op Telic 2; and equally in which Baha Mousa and the other Detainees were detained and hooded. In considering what witnesses saw of earlier hooding at the JFIT, it is to some extent relevant to bear in mind that the temperatures in late March and early April would have been hot at times during the day and increasing, but this would not have been comparable with the extremely punishing temperatures of July, August and September.

8.20 It is relevant and important to understand the command relationships of the Prisoner of War Handling Organisation which ran the TIF and those who ran the JFIT.

8.21 The JFIT was commanded by S040. His Operations Officer was S014. S040 reported direct to 1 (UK) Div, his superior officer being the Divisional J2X, S002, who had responsibility for HUMINT matters at Divisional level.

8.22 As I have addressed in Part VII, the Prisoner of War Handling Organisation was commanded by Col S009 who had under his command only some elements of his own Regiment, Queen's Dragoon Guards (QDG), augmented by other sub-units. Like the JFIT, the Prisoner of War Handling Organisation was a Divisional asset. Although there may have been some changes in the reporting arrangements,[7] Brig Andrew Cowling who was the Deputy Chief of Staff of 1 (UK) Div and responsible for the Divisional Support Group remembered being responsible for the resourcing of the TIF. S009 recalled that it was the Divisional Deputy Chief of Staff to whom he initially reported.[8]

8.23 Thus the Prisoner of War Handling Organisation and the JFIT reported separately via different Staff Officers to 1 (UK) Div. As regards the interrelationship between the Prisoner of War Handling Organisation and the JFIT on the ground, there was some conflict between the technical military terminology used by S009, S040 and S002 to describe their relative command situation. But they all agreed on the essential point which was that S009 did not command or control in any way how S040 and the JFIT carried out their intelligence function. That level of control was vested in S002 the relevant Staff Officer at 1 (UK) Div. The Prisoner of War Handling Organisation under S009 supported the JFIT with resources, accommodation and guarding but had no oversight or command of its interrogation operations.[9] S009 said he would have preferred to have more direct control over the activities of the JFIT. He remembered this being a bone of contention.[10]

8.24 Just as both the TIF and the JFIT were being set up in the midst of warfighting when the events in this Part of the Report took place, I bear in mind that those involved at divisional level were in the midst of fighting a war, running the operation, and living

[6] MOD052616

[7] A National Contingent Headquarters (NCHQ) report following a visit on 19-20 April 2003 complained that the NCHQ had had no prior knowledge of the fact that on about 28 March 2993, the PW Camp transferred from 1 Div to JF Log C.

[8] S009 BMI03523, paragraph 35

[9] S002 BMI 82/31/7-19; S009 BMI03526, paragraph 45; S040 BMI07002-3, paragraph 80

[10] S009 BMI 66/52/14-18

out of tents and vehicles in the desert. It was obviously not until later that divisional headquarters was established more permanently in Basra.

8.25 The TIF was handed over to US control on 7 April 2003. Thereafter only a small UK element remained at the TIF to deal with the interest of the UK captured prisoners held there. The remaining units included a JFIT element.

Chapter 2: The misconception concerning the email exchanges between Lt Col Mercer and Rachel Quick

8.26 With the warfighting phase underway, there was a now infamous exchange of emails between Lt Col Nicholas Mercer, the Legal Adviser to 1 (UK) Div, and Rachel Quick, legal adviser at Permanent Joint Headquarters (PJHQ). The exchange was on 24 March 2003, in the first week of the war, when the TIF was being established as briefly outlined above.

8.27 The exchange between Quick and Mercer has been much reported in the media and commented upon in numerous reports. In part this was because Quick jokingly remarked in a post-script to Mercer that if the Attorney-General and Professor Greenwood were wrong in the advice they had given on the applicability of the ECHR, Mercer could perhaps put himself up to be the next Attorney-General.[11]

8.28 While the Inquiry has of course made extensive use of the evidence that witnesses gave at the Court Martial, it is no part of this Inquiry's function to investigate the running of the criminal investigation, the conduct of the Court Martial or the fairness or otherwise of comments made at the Court Martial.

8.29 In the light of previous reporting of this exchange of emails, I do, however, consider that it is appropriate that I should make the following points clear.

8.30 Firstly, as to timing, this exchange of emails occurred just short of a week before Mercer raised concerns about the physical handling of prisoners at the JFIT. Thus, while it is undoubtedly right that Quick was passing on her understanding of the advice of Lord Goldsmith, Greenwood, and Mr James Eadie, this was in no way a response to Mercer raising concerns about hooding, stress positions or any other aspect of the physical handling of prisoners.

8.31 Secondly, anyone who considers the full exchange of emails could see that the general context of the exchange was what legal obligations the UK would owe during the occupation (Phase IV of operations) after the warfighting.[12] The sort of issues that Cmdr Neil Brown had raised were the operation of the death penalty by the administration during the occupation, and what the requirements would be for the review of the detention of those who were held in custody at the cessation of hostilities.

8.32 It was in that context that Mercer was arguing that the ECHR would apply during Phase IV of operations to which Quick responded with her email below:[13]

[11] MOD052610
[12] Working backwards from MOD052613 to MOD052610
[13] MOD052610

Dear All

Thanks for copying me in on this. I've arranged for the FCO Legal Adviser (Gavin Hood) to come up to PJHQ so we can only discuss many of these issues. WE hope to have a complete translated version of Iraqi Penal code tomorrow (some progress. If possible, I'll try and arrange a VTC with NCC (and possible 1 DIV) to discuss how proceed on these issues.

On the application of ECHR, Vivien's letter dated 19 March (copied to NCC Legal Cell) which records the advice of the Attorney General (supported by Prof Greenwood and Jamie Eadie) makes the following points:

1. During Phase III (b)/Phase IV, lex specialis operates to oust ECHR. At PJHQ we only intend to concentrate on the impact of GC III/GC IV/Hague Regs when providing guidance to TELIC Phase IV operations. I would refer to the A/Gs advice (Nicholas if you do not have a copy, please ask Neil to send you a copy). This concluded the better view was that the HRA was only intended to protect rights conferred by the Convention and the court must look to international law to determine the scope of those rights.
If international law applied, the lex specialis to the exclusion of ECHR then those Articles could not confer a right which HRA would render enforceable. For your purposes, I would suggest this means no requirement for you to provide guidance on the application of HRA/ECHR. I hope this is clear.

2. With regard to the detention of civilians - I will look at your documents in more detail and discuss with FCO, MOD Legal Advisers. Although my initial thoughts are you are trying to introduce UK procedures in a GC IV context. Whilst this may be the perfect solution - it may not necessarily be the pragmatic solution. Again we raised this issue with the A/G and got a helpful steer on the procedures. I'll aim to try and produce some guidance, taking into account their advice on the detention of civilians.

Please bear with us - it has been extremely busy week - not helped by the onerous OP TELIC Battle Rhythm. I intend to make this a Phase IV week - helped by the useful progress Nick C has made in Qatar.

Rachel Quick
PJHQ Legal Adviser

P.S Nicholas: If the A/G, and Prof Greenwood are wrong on this advice, perhaps you could put yourself up to be the next Attorney General!!

8.33 A later email from Quick, probably written in April 2003, contained the following paragraph:[14]

> There is nothing in GC IV which requires us to review the detention of detainees/internees held in UK custody. The standards to which Nicholas refers are based on UK law. Whilst his advice might be appropriate for individuals locked up following a saturday night in Brixton - they are not appropriate for detainees arrested by Black Watch, etc following a bit of looting in Basra.

8.34 This email was, similarly, being sent entirely in the context of what legal standards applied to the review of prisoners' detention/internment; it did not relate to the physical treatment of prisoners during detention still less to the application of any of the five prohibited techniques.

8.35 It is clear Mercer did have concerns and strong views about the applicability of the ECHR to Phase IV of Op Telic. But, as I explore later in this Part, it is equally clear that he saw hooding and stress positions as both being unlawful simply under the Geneva Convention regardless of the ECHR position. To the extent that he can be characterised as having been engaged in a debate with Quick and others about the applicability of the ECHR, it was not in the context of the physical aspects of prisoner handling at all.

8.36 A number of previous references to these exchanges of emails involving Quick and Mercer have tended to suggest that Quick argued for the non-applicability of the ECHR in the face of concerns being raised about the physical handling and/or interrogation of prisoners.[15] It follows from what I have said that such previous references to Quick's emails conveyed an interpretation of the exchanges that was wrong.

[14] MOD019811

[15] Quick BMI 92/15/13-20/11: I should note in passing that when physical aspects of prisoner handling concerned Quick, she does not appear to have been slow to raise her concerns. During Op Telic 1, during a visit to theatre, she saw a prisoner who was being kept in solitary confinement in an ISO container. Quick raised concerns about this both in theatre and with PJHQ and the MoD.

8.37 I think it right to put the record straight on this aspect, both in fairness to Quick, and to allay public concern that a senior PJHQ legal adviser may have given such advice in the face of concerns about the physical aspects of prisoner handling by British Forces. That was not what occurred.

Chapter 3: How were prisoners treated in the early stages at the JFIT?

8.38 In this Chapter of the Report I refer to the main sources of direct, first-hand, evidence of how prisoners at the JFIT were treated in the very early stages of Op Telic 1.

Col S009

8.39 It is likely that S009 was the first, or at least one of the earliest officers, to raise concerns about prisoners being hooded at the JFIT. S009's evidence suggests that his concerns over how the JFIT was physically handling prisoners arose a few days after the invasion and shortly after the arrival of the JFIT. This is likely to have been before a visit by Mercer and before Gen Robin Brims attended the Prisoner of War Handling Organisation. It was probably S009's concerns that led to the visit by Col Christopher Vernon which must therefore also have been at a later stage.

8.40 In assessing all of S009's evidence, I take account of the fact that unlike many other witnesses, he did not have the benefit of having made a more contemporaneous statement. In his Inquiry witness statement made in August 2009, S009 described what he saw:

> *"Within the JFIT area I saw two rows of prisoners, totalling approximately 12 to 20 men, kneeling on the ground in the sun. I recall that they were hooded with plastic sandbags and their hands were cuffed behind them. A couple of soldiers were guarding them. I have been asked by the Inquiry to provide further details of these men, but I cannot now recall any details about these soldiers. The guards were walking up and down amongst the prisoners, and would lift the sandbags up from time to time to give them water.*
>
> *I considered this treatment to be wrong and I raised it with the captain in command. I cannot recall exactly what I said, but in essence I made it clear that it was unacceptable to place plastic hoods upon the prisoners and leave them kneeling in the sun because it was not in keeping with UK law and was morally objectionable. I also pointed out that it would reflect badly on British troops"*[16]

8.41 His oral evidence was to the same effect:

> *"…I witnessed a number of prisoners of war, kneeling in the sun with what I believed to be plastic hoods over their heads and with their hands handcuffed behind their backs, in two rows, facing each other.*
>
> *Q. You considered that treatment to be wrong?*
>
> *A. Yes.*
>
> *Q. Unlawful?*
>
> *A. Yes.*
>
> *…*
>
> *Q. Did you understand what you have now told us you witnessed to be part of, if you like, the pre-interrogation or interrogation process?*

[16] S009 BMI03527, paragraphs 46-47

> *A. Yes.*
>
> *Q. You didn't mean any wider concerns which actually involved interrogation?*
>
> *A. Not that I witnessed."*[17]

S009 said that he was "[p]*retty much*" clear that it was plastic sandbags that were used.[18] He told the Inquiry that he did not know for how long the hoods were being used. He did not know anything about a restriction on their sleeping.[19] As set out above, the prisoners he saw were kneeling on their haunches in the sun. S009 said that he had not seen prisoners in stress positions other than kneeling in this way, although he himself assumed this to be a stress position.[20]

8.42 I accept the evidence of S009 as being honest and reliable. He was an extremely impressive witness, probably one of the best witnesses heard by the Inquiry. I have no doubt that what he told me he had seen of how prisoners were being held was correct.

Col Christopher Vernon

8.43 Vernon was the media spokesman and Chief Media Operations for 1 (UK) Div for Op Telic 1. He visited the TIF at the request of S009, following what S009 had himself seen and which had caused him concern. Vernon put the date of his visit as either 27 or 28 March 2003. With him was a civil servant from the Government Information Service who was the Divisional civilian media advisor.[21]

8.44 In his Inquiry witness statement, Vernon described what he saw on his visit as follows:

> *"S009, de Ville and I went to see the PW camp operated by DISC. I noticed what I believed to be about 30 Iraqi prisoners some of whom were kneeling on the ground and some of whom were sitting. All had their heads covered by sandbags and their hands handcuffed. As best I can recall, their hands were to the rear. They were kneeling with their posteriors resting on their heels, in what could be considered a stress position. Lt Col S009 had already informed me that he had no direct command or control of the facility operated by DISC."*[22]

8.45 Vernon said he was concerned about both the hooding and that prisoners were made to kneel. He did not know why this was being done or whether it was completely necessary. He was also concerned about the strategic impact on the image of British Forces.[23]

8.46 Vernon's account in his Special Investigation Branch (SIB) statement of 14 March 2006 was as follows:

> *"At The PW camp operated by DISC I noticed a number of what I believed to be Arab looking prisoners kneeling on the ground in what could be considered a stress position as well as some others sitting with their heads covered by sand bags (hooded) and their hands handcuffed to*

[17] S009 BMI 66/58/3-59/5
[18] S009 BMI 66/59/25-60/1
[19] S009 BMI 66/82/8-22
[20] S009 BMI 66/69/9-12
[21] Vernon MOD007097
[22] Vernon BMI03445, paragraph 14
[23] Vernon BMI03445, paragraph 15

> *the rear. S009 had already informed that he had no direct command or control of the facility operated by DISC"*[24]

8.47 In oral evidence to the Inquiry, Vernon indicated that the prisoners were in different positions, some kneeling and some sitting. They were handcuffed and his recollection was that they were all hooded. They were in the open. He did not get closer to them than fifteen to 25 metres. So far as he could see, they were hooded with hessian sandbags. His recollection was that the sandbags covered the whole head but he was not sure about that aspect. He saw them only for a short period in passing and he did not see any soldiers enforcing any particular position. At the time of his visit, he thought it would be possible to see into the JFIT compound from the main road if one was standing on top of a 4x4 vehicle. It was apparent from Vernon's description of the JFIT that this was after a sand berm had been erected around the JFIT.[25]

8.48 I found Vernon to be a truthful and reliable witness.

Lt Col Andrew Mason

8.49 Mason was present during Vernon's visit. They discussed what Vernon had seen. However, while Mason was part of the discussions about hooding both during Vernon's visit and subsequently at the National Contingent Headquarters (NCHQ), he does not appear to have witnessed first hand the treatment that had concerned Vernon and S009. Mason told the Inquiry that he had seen prisoners in the TIF but could not remember any being hooded.[26] It seems likely that he did not personally go into the JFIT.[27]

Maj David Christie

8.50 Christie was one of the SO2 legals serving with Mercer in 1 (UK) Div. He was given the task of legal adviser to the Prisoner of War Handling Organisation for Op Telic 2; although he still had other legal tasks and responsibilities for Divisional HQ.[28] He did not see himself as providing legal advice to the JFIT, since he understood this would be dealt with at Division by Maj David Frend (one of the other SO2s) and Mercer as the SO1 legal. Unlike the other lawyers, Christie was permanently based at the TIF.

8.51 Christie remembered seeing prisoners of war arriving at the Prisoner of War Handling Organisation hooded. He told the Inquiry that this was the first time that he had witnessed hooding with sandbags.[29] Christie visited the JFIT on a number of occasions. He said he did not witness any abuse nor did he have reason to question the activity of JFIT staff.[30] He said that on his visits to the JFIT he did not remember seeing prisoners hooded or in stress positions. He did however remember on one occasion seeing prisoners being marched to the JFIT hooded; having arrived hooded with standard hessian sandbags. The prisoners did not resist and were not being

[24] Vernon MOD007098
[25] Vernon BMI 69/16/12-32/1
[26] Mason BMI07037, paragraph 54
[27] Mason BMI 74/148/6-13
[28] Christie BMI04850, paragraphs 33-34
[29] Christie BMI04847, paragraph 23
[30] Christie BMI04859-6, paragraph 67

abused. This occurred in the open. It was Christie's understanding that initially it was not uncommon for prisoners to be deprived of their sight when they were being transported to the TIF "*…in order to preserve operational security*".[31] On the occasion when he could clearly remember seeing hoods, he assumed it was only one sandbag that had been used, but he was not close enough to tell.[32]

8.52 On seeing this, Christie did not consider that the treatment he saw was inhumane. He did not remember being shocked at what he saw. Although Christie could not be sure of the exact sequence, and it may be that concerns raised by others played a part, fairly shortly after seeing the prisoners hooded Christie looked at the resources available to him to see what was said about hooding. He explained:

> *"Q. – but when you saw it yourself, did you consider that this might be inhumane?*
>
> *A. I don't recall exactly. I don't think I had a violent reaction – because I'm sure I would have remembered that – to feel the need to rush up and stop or perhaps intercede at that particular time. I think it gave me a concern to see whether this was a legitimate activity and therefore whether it's legitimate within GC III, whether it would be humane or not. But that was probably part and parcel of the then research or then digging about that I did following that incident.*
>
> *Q. So it was enough to raise questions in your mind, was it?*
>
> *A. I think it raised a concern that this needed to be looked into. It certainly didn't give me the impetus to rush across and stop it immediately, if that assists"*[33]

8.53 Christie was described in a contemporaneous report as having for some time "*punching above his weight*" at the Prisoner of War Handling Organisation.[34] I similarly found him to be an impressive honest and straightforward witness.

Gen Robin Brims

8.54 Brims was the recipient of a memorandum from Mercer expressing concern about the hooding and use of stress positions.[35] He had, it seems independently of Mercer, witnessed a prisoner who was hooded and was concerned about it. For reasons I shall explain later in this Part of the Report, I am satisfied that this took place on 28 March 2003.

8.55 In his Inquiry witness statement, Brims described what he saw on that day and his immediate impressions:[36]

[31] Christie BMI04862, paragraphs 78-79
[32] Christie BMI 69/128/9-16
[33] Christie BMI 69/126/1-16
[34] MOD052616
[35] MOD019799
[36] Brims BMI07394

45. A few days into the war, sometime around late March I think, I went to the POW Handling Facility near Umm Qasr to have a look at the situation on the ground and ensure that things were running properly. I saw a number of people there, and remember speaking to a couple of Iraqi POWs. I asked them whether they were being treated reasonably, and they replied that they were.

46. While at the Facility, I saw a POW being led from a to b, hooded such that he could not see where he was going. There was nothing apparently aggressive about it, he appeared to be relaxed. He was being led through an area in the Facility which had tables with paperwork and maps upon it. I thought that he may have been hooded so he could not see these maps and papers. I am unable to recall now whether I saw him at the JFIT facility specifically or the POW Handling Facility.

47. I remember mentioning it after the visit to the CO QDG, Col S009 , at the time and saying that I would check out what the regulations were.

48. My immediate concern was that the hooding did not fit the type of operation we were doing. As my directive 1 had indicated, treating Iraqis decently and humanely (and being seen to do so) was of crucial importance. I felt that hooding at the POW Handling Facility was inconsistent with this approach and sent the wrong message to the Iraqi people.

8.56 While Brims had travelled to the TIF with Mercer on 28 March 2003, it is clear that he was here describing an entirely different scene to that which Mercer described. Brims was clear and consistent, explaining that he did not see any prisoners in stress positions.[37] His account was of seeing a single prisoner being escorted.[38]

8.57 Brims referred to this incident in an SIB statement dated 5 June 2005:[39]

[37] Brims BMI 103/24/22-24; Brims BMI07396, paragraph 53
[38] Brims BMI07394, paragraph 46
[39] Brims MOD000315

The incident I referred to in the footnote took place in late March / early April 2003 when I personally visited a prisoner of war handling facility near Umm Qasr in Southern Iraq. This facility was being run by UK Forces and I cannot recall the exact date of my visit.

This was a pre-planned visit by me as GOC to ensure the facility was running properly and to see if there were any problems.

Whilst at the facility I saw one of the detainees being moved from one point of the detention facility to another and he was being led by a number of UK soldiers. I cannot recall the exact number however I noticed the detainee had a hood over his head which in effect meant he couldn't see where he was going and so he had to be led.

He appeared to me to be relaxed and the actions of the soldiers gave me absolutely no cause for concern that he was under any stress. I cannot recall what this man was wearing or if his hands were tied in any way. They may have been, they may not have been, I cannot now remember.

When I saw him he was being led through a tented area in the facility which had lots of maps and paperwork on display. At that time I thought he had been hooded so that he could not see the paper work and maps I have mentioned. I only saw him for a matter of seconds as at the time I was engaged in a conversation and I literally just happened to look over and saw him as I have described.

He was about 20 yards away from me and I had a clear unobstructed view of him. This was during the daytime. Again, the exact time I cannot recall and I was stood outside the tent and looked in as the tent walls had been rolled up. At the time I saw the man I thought he was hooded to stop him seeing any of the maps / paperwork I have mentioned.

At that time I was uncomfortable with the idea of him being hooded because it gave the perception that we might be treating them harshly, although this prisoner was being treated perfectly decently when I saw him.

8.58 Brims' account in his oral evidence was consistent with his earlier accounts:

"I saw an Iraqi prisoner of war being led across from one tent to another and he had a sandbag over his head. I was uncomfortable with this sight. I discussed it briefly with the commanders of the prisoner of war handling organisation and said that I would review the matter when I got back to my headquarters.

Q. One prisoner?

A. As I recall, one prisoner.

Q. When you discussed it with the commanders there and then, as I understand it, were you given any explanation as to why the prisoner was hooded?

A. I can't remember being given one because I don't think I asked for much of an explanation. It was fairly obvious to me that it was to effectively blindfold the prisoner as they were moving from (a) to (b) because there were documents on evidence and it was quite clear to me that the prisoner was not in any way stressed.

Q. Why do you say that?

A. Because I could see. He was being led very properly in his blindfold state – in a perfectly humane way from A to B.

Q. But you couldn't see his head or face or eyes?

A. No.

Q. So you assumed that the purpose was to blindfold him to deprive him of sight –

A. I assumed that.

Q. – for the purpose that you have given?

A. Yes.

Q. If he had been blindfolded or, as we understand later may have happened, blacked-out goggles had been used, that would not have concerned you at all, would it?

A. Probably not.

Q. So it was the use of the hood that troubled you?

A. Yes. It was the use of the sandbag, actually, that troubled me.

Q. And why?

A. Because it didn't look very nice."[40]

8.59 Although it is clear that he could not be sure, Brims appeared to favour the likelihood that what he saw was in the general TIF rather than specifically in the JFIT; certainly he said that he had no recollection of visiting the JFIT and he thought he would have remembered such a visit had he made one.[41]

8.60 There is no reason to doubt any part of the evidence that Brims gave about what he saw at the TIF. It is difficult to determine whether the hooded prisoner he saw was within the TIF or the JFIT. The former is more likely, but ultimately I do not think that it makes a difference to the issues which I have to decide.

Lt Col Nicholas Mercer

8.61 In Mercer's case, I am assisted as to the timings by the diary which he kept. His diary suggests that he visited the Prisoner of War Handling Organisation twice on successive days, Friday 28 and Saturday 29 March 2003, and that Brims was with him certainly on the first of these visits.[42]

8.62 The substance of what Mercer said in his Inquiry witness statement about what he saw and his immediate reaction was as follows:

"…As I passed the JFIT, I saw approximately forty prisoners kneeling or squatting in the sand (in lines) with their arms cuffed high behind their backs with bags on their heads. I cannot recall if they were simply hooded with sandbags or if other bags may have been used as well. There was also a generator running outside the interrogation tent, which seemed to me to create a culture of intimidation and possibly with the aim of muffling any noise from the interrogation tent. However, that was only my impression and I do not in fact know why the generator was situated where it was or indeed was necessary.

I was shocked when I saw the prisoners. At an appropriate moment, I went into the JFIT to see what precisely was going on and went into the interrogation tent and spoke to an officer who was conducting the interrogations. I am unable to remember the officer's name, but think he was a Major or a Captain. I would say he was in his forties. I expressed my concerns about the legality of the treatment but was unable to change the situation at that time as I was assured by this officer that what was occurring was permissible..."[43]

8.63 In his near contemporaneous note to Brims, his General Officer Commanding (GOC), written on Saturday 29 March, Mercer set out in the first five paragraphs concerns about the process which was being used to review prisoner of war status, but then concluded:[44]

[40] Brims BMI 103/21/23-23/9
[41] Brims BMI 103/65/16-22
[42] MOD019884; MOD019885
[43] Mercer BMI04067, paragraphs 37-38
[44] MOD019799

6. Finally, I visited the JFIT and witnessed a number of PW who were hooded and in various stress positions. I am informed that this is in accordance with British Army Doctrine on tactical questioning. Whereas it may be in accordance with British Army doctrine, in my opinion, it violates International Law. Prisoners of War must at all times be protected against acts of violence or intimidation and must have respect for their persons and their honour (Articles 13,14 GC III). I accept that tactical questioning may be permitted but this behaviour clearly violates the Convention.

8.64 It follows that Mercer mentioned hooding and stress positions on the day of his visit, although he did not refer to the use of generators.

8.65 I have considered previous statements made by Mercer and his evidence to the Court Martial. In a statement dated 5 July 2004, Mercer mentioned his visit of 29 March 2003 and seeing hooding, although this was a statement mainly addressing the flow of orders (in the context of the abuse at Camp Bread Basket).[45] In a further statement dated 21 July 2005, Mercer referred to the same visit and to seeing "*… PWs held by the JFIT with hoods on their heads and some in (what I believed to be) stress positions lined up in the sand awaiting interrogation. A generator was also running.*"[46] Mercer's statement of 17 July 2006 merely provided further details of his earlier statements.[47] At the Court Martial, Mercer related seeing:

> *"On the visit down to the prisoner of war camp I saw 40 Iraqi prisoners – approximately, I did not count them – but they were kneeling in the sand, cuffed behind their backs, in the sun with bags over their heads and there was an interrogation tent next to the prisoners with a generator running outside. I was extremely surprised to see this going on and indeed went to the tent to check that everything was in order but in my view as a lawyer it violated the Law of Armed Conflict so I brought my concerns to the GOC."*[48]

And:

> *"Q. You focussed obviously from what you have said on the hooding aspect, but you were concerned about the kneeling of these prisoners as I understand it in the desert?*
>
> *A. Yes.*
>
> *Q. Why did that cause you a concern as the lawyer that you were, or as you are?*
>
> *A. I thought they were in stress positions. Just thinking about it yourself, kneeling there in the sand with a hood on your head and cuffed behind your back – and the ICRC drew attention to periods of hooding of over 24 hours. So putting the two bits of the jigsaw together I felt it was unlawful."*[49]

8.66 In his oral evidence to the Inquiry, Mercer explained what he had seen in the following terms:

> *"…As I walked past, I saw two lines of prisoners and I think some prisoners – from memory, there were two lines of prisoners, all kneeling in the sand, hands cuffed behind their backs, all with hoods on their heads, and from memory there were two lines of prisoners and another group, I think, squatting somewhere in the corner.*
>
> *Q. And the two lines of prisoners comprised roughly how many?*

[45] Mercer MOD005275
[46] Mercer MOD000575, paragraph 4
[47] MOD000889-92
[48] Mercer CM 57/11/6-15
[49] Mercer CM 57/13/17-14/4

A. Well, there was quite a large number of prisoners in there. I think it was – I mean, two columns of prisoners and some in the corner, either 30 or 40, I would think.

Q. All of them hooded?

A. From memory, yes.

Q. With what?

A. Well, I saw sandbags on their heads and I'm pretty sure there were other bags as well, which would be – I think they were blue bags from memory.

Q. You think they were blue bags?

A. There were some blue bags, yes.

Q. Were the blue bags woven hessian like the sandbags?

A. Well, I clearly was not close enough – the JFIT is to my right. I mean, it's a bit like seeing a picture of Guantanamo Bay for the first time. It is quite a shock.

Q. Would you describe the position in which the prisoners were being held – apart from the hoods on their heads – would you describe the positions as being stress positions?

A. Yes, I mean I wrote – you have got my memo to the GOC.

Q. We are going to come to that.

A. But that's my – the way I described it to him when I wrote my concerns down in that memo.

…

If I just go back to the stress positions, the prisoners were cuffed behind their backs, up like this (indicates), so it looked extremely uncomfortable"[50]

8.67 A little later in his evidence, Mercer made clear that the impression which he immediately formed was that the prisoners were being intimidated to make interrogation easier. Again, as a matter of impression, he thought that the generators were being used to muffle sound from the interrogation tent, and overall the conditions were designed to intimidate the prisoners and make interrogation easier.[51] It is clear that after what was a passing view of the JFIT compound Mercer went back to the JFIT, having attended to the business he had on status tribunals. He said that he saw nothing unpleasant within the actual interrogation tent.[52]

8.68 At the Inquiry, Mercer was challenged as to why he had proceeded to his meeting on status tribunals if the treatment he had seen was so unacceptable. He was also pressed as to why he had not mentioned the generators in the note he sent to the GOC. In my view the latter point is largely explained by the fact that it was the combined overall picture that had concerned Mercer. The fact that he did not intervene immediately may perhaps reflect to some extent on the level of mistreatment as Mercer perceived it, but I note that he was in the company of others heading for a pre-arranged meeting. He was sufficiently concerned that he went back to the JFIT after the meeting. Perhaps more significant was the fact Mercer accepted that the prisoners were not all adopting the same position, although all were hooded and cuffed to the rear. Some were in regimented lines kneeling, others he thought were

[50] Mercer BMI 68/39/7-40/22
[51] Mercer BMI 68/44/25-46/18
[52] Mercer BMI 68/46/21-47/2

in a group squatting. He did not see them for long and could not say whether or not they were being allowed to change position.[53]

8.69 Mercer was, in my opinion, an impressive, reliable and honest witness. As I shall consider below, he took a firm line against hooding, as he did on some other prisoner-related matters. His approach might have been seen by his colleagues as at times 'purist' and I suspect this led to a degree of professional tension. Although Mercer's strength of feeling on such matters may to some extent have influenced his descriptions of what he saw, I have no hesitation in accepting the overall tenor of his evidence in relation to what he saw. I accept that he was shocked at how he saw prisoners being treated in the JFIT and that he genuinely considered their treatment to be unacceptable and unlawful.

8.70 The only reservation I have about his evidence of the treatment he witnessed is in relation to what he described as "*stress positions*". It is clear that Mercer did not see anything like the imposition of the 'ski sit position' later applied by Payne in 1 QLR's TDF. Clearly if prisoners were forced to squat or kneel for extended periods without being permitted to move or change position, this could become a stress position. But Mercer did not witness the prisoners for long enough to know whether or not that was the case. Based on Mercer's evidence alone, I cannot be satisfied that stress positions, properly so called, were being used at the JFIT.

Maj David Frend

8.71 As noted above, Frend was one of the other SO2 legal officers at 1 (UK) Div. Whereas Christie advised the Prisoner of War Handling Organisation, Frend provided legal advice to the JFIT. Much of that role related to the filtering of prisoners of war from civilians and a role in the provision of legal advice relating to other HUMINT aspects that are not relevant to the Inquiry. Frend explained to the Inquiry that he was never asked to advise on how the JFIT could and could not treat detainees.[54]

8.72 Frend told the Inquiry that he was at the TIF from 29 March to 6 April. I shall come in due course to his contribution to the debate about the use of hooding but I note here that, despite being present at the TIF from late in the day on 29 March until 6 April, he personally did not see anyone hooded at the TIF when he was there.[55] Frend was heavily engaged during a long working day with the tribunals seeking to assess prisoner of war status. He only spent about 30 minutes in the JFIT, late in the evening. I accept this evidence and simply note that as a result, Frend's direct evidence of what he himself saw at the TIF does not help to resolve the issues that arise.

Capt S014

8.73 S014 was the Operations Officer of the JFIT from February to April 2003 reporting directly to S040. He described his role as the "*…control and oversight of all 'hands-on' aspects of the JFIT's operations, as directed by the OC JFIT*".[56]

[53] Mercer BMI 68/131/13-137/1: questioning of Mercer by Mr Garnham QC
[54] Frend BMI02898, paragraph 49
[55] Frend BMI 69/69/19-70/20; Frend BMI02902, paragraph 60
[56] S014 BMI06769, paragraph 30

8.74 S014 explained that prisoners would be interrogated at the JFIT either because they had been identified before their arrival at the TIF as of potential intelligence interest or because they were identified as of interest during processing on entry to the TIF. If identified during the Prisoner of War Handling Organisation processing, a prisoner would have their vision restricted for security reasons. He said that this was initially with the padded blindfolds that had been brought to theatre from Chicksands.[57]

8.75 S014 explained that the questioning of JFIT prisoners took place in separate tents. Power for light was provided by generators. The generators were placed between the tents *"…to provide some noise interference to ensure that an interrogation in one tent could not be overheard in the adjacent tents"*. This was the only reason for this positioning of the generators. S014 emphasised that the JFIT staff had their accommodation tents near to this area such that they slept or rested closer to the generators than the accommodation tents for the prisoners and closer even than the interrogation tents.[58]

8.76 S014 accepted that in the early stages, prisoners were left without shade for periods of time. He ascribed this to the logistical challenges and particularly the lack of tents in the first days of the JFIT's work. Even when more tents arrived, there were times when the accommodation for prisoners in the JFIT was insufficient and prisoners had to be rotated through the shade during their rest periods. He emphasised that the JFIT staff and guards were similarly working without shade.[59]

8.77 As to sight deprivation, S014 said that initially padded masks from Chicksands were used but they wore out and went missing. Sandbags were readily available and were used as an alternative from quite early on. S014 said that the way sandbags were used was for the bag to be folded up thus giving a double layer over the eyes and lifting the bag off the mouth of the prisoner. S014 said that he was aware that a single layer of hessian was not sufficient to restrict vision effectively. In oral evidence, S014 appeared to accept that it was principally to make the sight deprivation effective that hoods were folded back.[60] He also accepted that in all probability hoods in use at the JFIT would not always have been folded back in this way, although he maintained that is what he personally did.[61]

8.78 In his Inquiry witness statement, S014 said that sight deprivation was necessary for several security reasons. They were:

(1) to prevent prisoners from seeing the layout of the JFIT,[62] its routine and the number and location of the guards, knowledge of which might be used in escape attempts; (the guards and JFIT staff were outnumbered by JFIT prisoners certainly when the JFIT was busy);[63]

(2) to isolate prisoners to prevent communication for escape attempts, threats or collusion in relation to their stories; and

[57] S014 BMI06774, paragraphs 46-47
[58] S014 BMI06775-6, paragraph 50
[59] S014 BMI06777, paragraphs 53-54
[60] S014 BMI 67/26/13-28/15
[61] S014 BMI 67/39/15-40/4
[62] S014 BMI 67/81/23-82/10: S014 said that it was not possible to see into the JFIT compound from the road once the berm was erected.
[63] S014 BMI 67/85/10-86/1: S014 referred in this context to the infamous murder of Cpls Wood and Howes in Northern Ireland.

(3) to provide a measure of security for those prisoners who were cooperating with their questioners, removing the threat of reprisals.[64]

8.79 In his oral evidence, S014 took issue with the suggestion that hooding could "*preserve*" the shock of capture, but he accepted that it might have the potential to "*maintain*" the shock of capture. He appeared to accept that he probably considered this side-benefit of hooding. He considered that it would be unlawful if just used for that purpose, but that security sight deprivation did have this "*spin-off benefit*" as would other forms of isolation:

> *"Q. Would hooding, do you think – whatever the reason it was being used – also have the potential to maintain the isolation of a prisoner?*
>
> *A. Yes, sir. I think any form of isolation – if we had put them behind the hessian screens earlier, then that might have been effective as well; any form of isolation.*
>
> *Q. So hooding, even if needed for security reasons, might have the potential to continue the shock of capture?*
>
> *A. Yes.*
>
> *Q. Was there ever any discussion about that, either by you or in your presence, that although it was being done for security reasons, hooding did have that additional potential?*
>
> *A. I don't honestly recall.*
>
> *Q. Was it considered by you?*
>
> *A. Probably.*
>
> *Q. If you probably did consider it, would you have regarded it as being lawful for those purposes?*
>
> *A. I believe it's against Article 17 of the Geneva Convention to use it just for that purpose.*
>
> *Q. Sorry, I don't again want to misrepresent your evidence at all, of course, S014, but are you telling the Inquiry that you appreciated, probably, that this was, if you like, a spin-off of security hooding and it might maintain or prolong the shock of capture, that you probably did consider it, but that you didn't rule it out as being inhumane and contrary to the Geneva Conventions?*
>
> *A. Sir, I think any form of isolation would have had that spin-off benefit, so answer to that is "yes".*
>
> *Q. I'm not sure that is an answer to my question. Let me just try it once again. Did you regard hooding, producing the isolation that you have described or agreed with as being a product of hooding, did you regard that as being contrary to the Geneva Convention and therefore a reason why hooding should not be permitted at all?*
>
> *A. Forgive me, sir, I have just become confused with your question again. Could you ask me once again?*
>
> *Q. Yes. Correct me if I have got this wrong, but you have told the Inquiry that you probably understood and probably considered the fact that hooding, albeit it was being done for security reasons, had the additional spin-off, as I have called it, of perhaps prolonging isolation and therefore prolonging the shock of capture.*
>
> *A. Yes.*

[64] S014 BMI06778-80, paragraphs 56-61

Q. You have told us that you knew that hooding could not be used for that purpose alone because it would have been in breach of the Geneva Convention as you understood it.

A. Yes, sir.

Q. When you considered those matters, did you ask yourself or indeed any of your colleagues, "Should we be going on with hooding in these circumstances where it may be in breach of the Geneva Convention?"

A. I don't know. Probably not.

Q. And can you help the Inquiry as to why not?

A. Because the main reason that we were hooding at that stage was for security purposes.

Q. So forgive me, we have really come full circle, have we? Security considerations in your mind, can I put it this way, trumped everything else?

A. At that stage of the conflict, yes it did, sir. If we had more room and better facilities, we could have isolated individual prisoners in their own areas. We didn't unfortunately have that logistics."[65]

S014 nevertheless denied that hooding, albeit used in the first place as a security measure, was in fact being used to prolong the shock of capture as part of a conditioning process before questioning.[66]

8.80 S014 explained that even when the JFIT moved into their compound after the initial few days, the JFIT had insufficient resources to segregate all prisoners effectively so the prisoners were still blindfolded or sandbagged while awaiting interrogation. In his statement to the Inquiry S014 said he did not remember man-made fibre sandbags being used.[67] While S014 was in that statement speaking of what the JFIT did, in his oral evidence, he said that prisoners would arrive at the JFIT with synthetic weave sandbags on, the implication being that they had been applied by capturing units and not by the JFIT.[68] He thought such bags were weave material that would permit breathing but they were nevertheless changed for hessian sandbags by the JFIT staff.[69]

8.81 S014 suggested that prisoners were not routinely held handcuffed. Some prisoners may have been kneeling but they were allowed to change position provided that they did not stand, this being as a security measure. Stress positions were not used.[70]

8.82 S014 said that prisoners may have arrived in the JFIT cuffed to the rear and with double or triple sandbags if that was what had been applied by the capturing units. However, he said that these would have been replaced in the JFIT by a single hood folded over or by a blindfold made from strips of cloth.[71] In oral evidence he accepted that prisoners may have been hooded for "*many hours*" but he could not say what the longest period spent hooding would have been.[72] He accepted that it may have been for up to 24 hours.[73]

[65] S014 BMI 67/32/2-34/17
[66] S014 BMI 67/68/18-24
[67] S014 BMI06779-80, paragraphs 59-61
[68] S014 BMI 67/41/18-42/1; S014 BMI 67/52/23-53/8
[69] S014 BMI 67/91/21-92/15
[70] S014 BMI06786-7, paragraphs 74-76
[71] S014 BMI06781-2, paragraph 64
[72] S014 BMI 67/37/5-16
[73] S014 BMI 67/48/17-49/5

8.83 In his Inquiry witness statement, S014 said that he stipulated that detainees in the JFIT should receive a minimum of eight hours rest during a 24 hour period, of which at least four hours were uninterrupted. He said that prisoners were not permitted to sleep before their initial interrogation "*…if they were within 16 hours of their last rest or last sleep*". He said that the difficulty for interrogators was that to allow a prisoner to sleep whenever he liked could permit the prisoner to become more at ease with his surroundings, thus destroying the shock of capture and removing initial system and self-induced pressures. He suggested that sleep and rest were monitored and those close to the limit of sleep requirements were made a priority for interrogation. If that was not possible, they would be permitted to sleep for a minimum of four hours, uninterrupted.[74] In his oral evidence, S014 explained that he had a clear recollection of these sleep and rest figures but could now find no basis for them. He ultimately accepted that it was possible that prisoners may not have been permitted to sleep for as much as 24 hours after reception if they were still awaiting initial interrogation, but he would not have thought that it would be that long.[75] He did not consider that delaying when people could get to sleep for that sort of period was inhumane.[76]

8.84 S014 was consistent in his evidence that the only occasion of abuse he remembered was when a guard (not a JFIT interrogator) kicked a prisoner to make him move. That guard was removed from JFIT duties and did not return.[77]

8.85 I did not find S014 to be a particularly good witness. As I shall discuss later in this Part I found his evidence on the way in which he "interpreted" an order banning the use of hoods a little disingenuous and of much concern. In addition, in my view he could have done more in his Inquiry witness statement to volunteer information about prisoners arriving at the JFIT already hooded with synthetic weave sandbags. Nevertheless, generally I found his evidence credible in respect of his own practices with regard to hooding. I find that on the use of sight deprivation his main concern was security. But in my view he was well aware that the isolation of prisoners including by sight deprivation did provide a spin-off benefit of helping to maintain the shock of capture. I am prepared to accept that absent a requirement of hooding for security purposes S014 would not have thought hooding prisoners appropriate or proper. But when there were security concerns, I find that the side-effect of maintaining the shock of capture was part, although not the primary reason, of his thinking in keeping prisoners hooded.

Lt Cdr S040

8.86 S040 told the Inquiry that the use of sight deprivation was solely for security purposes. The security concerns were preventing prisoners of war seeing the physical location and layout of the JIFT, visiting people, vehicles and helicopters. Permitting prisoners sight of these would increase the potential for attacks on the camp and coalition forces. There was also a concern to prevent them seeing JFIT personnel, their weapons and procedures, as well as interpreters; and preventing them from seeing other prisoners. The concern here was in part that any prisoner seen to be collaborating would be at

[74] S014 BMI06787-8, paragraphs 78-80
[75] S014 BMI 67/45/12-50/7
[76] S014 BMI 67/80/9-81/5
[77] S014 BMI 67/56/9-21

risk of being murdered on release and in part that permitting prisoners to see each other allowed them to collude with each other.[78]

8.87 Like S014, S040 told the Inquiry that blindfolds brought from Chicksands were initially used but they were insufficient in number (only about a dozen were taken out to theatre and they soon went missing). Sandbags were in plentiful supply. He suggested that the *"…use of sandbags for the purpose of sight deprivation was a naturally-occurring process and was not deliberately decided upon at the outset"*. Prisoners of war were not kept handcuffed unless their behaviour demanded it.[79]

8.88 In his oral evidence, S040 explained that after the initial days of prisoners arriving, the majority he saw were hooded when they arrived at the TIF.[80]

8.89 In contrast to S014's evidence that man-made weave bags and more than one hood were only used at the JFIT when prisoners arrived with them, S040 said in his Inquiry witness statement that:

> *"…The sandbags used were either hessian sacks or sandbags made from man-made fibres which were of a similar weave to the hessian sacks. Sometimes more than one hessian sandbag may have been placed on a PW's head, depending on the quality and state of the sandbag. It is possible to see through a hessian sandbag but not through the man-made ones. When the ICRC raised concerns about the use of sandbags … I tried them on myself and found them to be not inappropriate for the task for which they were needed. I did not find that a loosely-placed bag caused breathing difficulties in either case. Initially, hessian sandbags were used and subsequently man-made fibre sacks were used as well."*[81]

8.90 Similarly, in his oral evidence, S040 accepted that there was a period when it was standard operating procedure for prisoners either to keep their hoods on at the JFIT if they had arrived hooded, or to have hoods put on, on being taken from the TIF to the JFIT. He confirmed that if the sandbags were of poor quality, this might involve hooding with more than one sandbag. Sometimes the plastic-weave type of sandbag was used instead of, not as well as, hessian sandbags.[82] S040's evidence was that the sandbags were not always turned up so that the mouth of the prisoner was uncovered. He said this was normally done to enable the prisoner to eat and drink.[83]

8.91 In his Inquiry witness statement, S040 accepted that prisoners wore sandbags for longer than would have been desired in an ideal situation. But he explained that they did not have sufficient capability to segregate prisoners of war or prevent them from gathering their own intelligence visually.[84] In his oral evidence, S040 appeared slightly uncertain about the duration of hooding and whether prisoners would have had hoods replaced after their initial interrogation. Ultimately his position appeared to be that the only time that prisoners were unhooded in the JFIT was during the actual interrogation. He thought that even after initial interrogation, prisoners would remain hooded in the JFIT prisoner accommodation tent. Although hoods would be taken off for interrogation, the result was that cumulatively prisoners might have been

[78] S040 BMI07011, paragraph 105; S040 BMI07014-5, paragraphs 115-116
[79] S040 BMI07011, paragraph 105
[80] S040 BMI 67/185/1-186/2
[81] S040 BMI07012, paragraph 106
[82] S040 BMI 67/186/17-187/11
[83] S040 BMI 67/202/14-19
[84] S040 BMI07018, paragraph 125(a)

hooded for longer than 24 hours.[85] Later in his evidence S040 told the Inquiry that the period of hooding could have equated to a number of days.[86] He accepted the suggestion put by his own Counsel that it was possible that hoods were removed if prisoners were put into different tents according to status and they were considered safe.[87]

8.92 S040 said his personal understanding was that hooding would not have a side benefit of prolonging the shock of capture because he believed "*…that hooding someone will actually give them somewhere to go to, to escape to, rather than have to deal with what is around them*".[88]

8.93 S040 said that no stress positions had been used to his knowledge in the JFIT.[89] Prisoners were not permitted to stand in the reception areas but could otherwise adopt any position they wished. The same applied in the prisoner of war accommodation tent in the JFIT. Not permitting them to stand was a security measure to protect the JFIT staff and the guard force.[90]

8.94 As to JFIT prisoners being permitted to sleep, S040 explained that the prisoners were permitted to sleep once they had been through the initial processing, search and first assessment by interrogators. They were not permitted to sleep while awaiting reception.[91] S040 did not think that this period before initial interrogation would be as long as 24 hours.[92]

8.95 As with S014, S040 was only aware of one incident of abuse in which a 1 DWR private soldier kicked a prisoner; and he was required to leave the JFIT and not return.[93]

8.96 I have considered the comments that S040 made in an email dated 3 July 2002. Reporting on a meeting at the Military Corrective Training Centre in which S040 said in the email, amongst other things, that it had enabled him *"…to remind the assembled crowd of the need to approach PH, TQ, Interrogation and the PWHO holistically and not to get too wound up in prisoners' rights at the expense of* [Intelligence]".[94] This was a meeting at which the potential for deployment of a reserves element of the Military Provost Staff (MPS) was being discussed. S040 explained that others were approaching prisoner handling on operations as if the prisoners were in a normal prison as criminals who had been convicted, rather than as soldiers who had a duty to escape. It was in that context, S040 said, that he had made the comment in his email. A US Military Policeman was present at the meeting explaining "*…what they are doing in Bagram and Guantanamo*". S040 said, and I accept, that his approach to prisoner handling was not influenced by anything said by foreign service personnel. Nothing was said at this meeting about conditioning techniques.[95]

[85] S040 BMI 67/191/18-195/2
[86] S040 BMI 67/233/22-234/4
[87] S040 BMI 67/236/19-25
[88] S040 BMI 67/113/19-22; S040 BMI 67/187/12-190/4
[89] S040 BMI 67/203/15-19
[90] S040 BMI07012, paragraph 107; S040 BMI07013, paragraph 109
[91] S040 BMI07012, paragraph 107
[92] S040 BMI 67/207/3-16
[93] S040 BMI07013-4, paragraph 111
[94] MOD037459
[95] S040 BMI 67/168/1-172/12

8.97 On a fair consideration, although S040's comments were perhaps ill judged, they were informal comments which need to be seen in the context of the meeting that had taken place and S040's explanation of the MPS approach. The email shows that S040 did not think that prisoners of war could be approached in the same way as domestic soldiers under sentence, but beyond that, I do not think that this email adds much to the issues the Inquiry has to determine.

Maj S002

8.98 As J2X for 1 (UK) Div, S002 had responsibility for matters across the whole HUMINT spectrum; tactical questioning and interrogation would have been only a minor part of his responsibility. He did not personally have any interrogation or tactical questioning training, and because of that, he had to rely on those who had received such training.

8.99 S002 visited the JFIT. He told the Inquiry in his witness statement that he had seen detainees in the JFIT hooded with sandbags, cuffed and in kneeling positions.[96] He said that he had witnessed prisoner handling at the JFIT during a routine visit in his first week in theatre. He also made the following points:[97]

(1) detainees would on occasion ask to be hooded because they did not wish other detainees to know that they were cooperating with coalition forces;

(2) generally, however, the hooding was for operational security which was more effective if prisoners were hooded since control was maintained using fewer soldiers and guards;

(3) hooding was practically easier than blindfolding as all soldiers carried sandbags;

(4) the hood might be left on the prisoner for up to 24 hours because it could take a while to process the prisoners. In oral evidence S002 appeared to suggest that that it might be twelve hours before a prisoner was interrogated, which he might spend hooded but that in total the period spent hooded might be up to 24 hours. He thought that prisoners did have their hoods taken off after interrogation once they were in the JFIT holding area but he would not disagree with S040's account that hoods may have been used in the holding tents as well, though S002 thought this related to the early period when there were not enough tents to sub-divide prisoners;[98]

(5) he believed that the hoods would be taken off intermittently for fifteen to twenty minutes every two hours or so. He believed this had been discussed in pre-deployment discussions and that he had witnessed it at the JFIT. Hoods could be removed from about five prisoners at any one time and they were then placed so that they faced, for example, the wall of a tent. In his oral evidence S002 said that he was confident that he had been told that prisoners would have had their hoods lifted up for a break about once every two hours;[99] and

(6) hessian sandbags only were meant to be used. In oral evidence he said that when he first visited the JFIT and saw prisoners hooded, his recollection was that it was with one sandbag.[100]

[96] S002 BMI05832, paragraph 31
[97] S002 BMI05832-3, paragraphs 31-33
[98] S002 BMI 82/58/9-60/24
[99] S002 BMI 82/56/11-57/22
[100] S002 BMI 82/56/7-10

8.100 S002's evidence was that hoods were used primarily for security purposes. However, he had a *"strong recollection"* of S014 indicating before the warfighting phase that hooding would carry benefits which included preserving the shock of capture.[101] He suggested that by the time people arrived at the JFIT the shock of capture had probably dissipated but he accepted that at least part of his thinking was that hooding potentially had a by-product of helping to deliver better intelligence.[102]

8.101 In respect of stress positions, S002 said that to his knowledge detainees at the JFIT were never put into stress positions such as the ski position or wall standing. He considered that kneeling, sitting and standing were acceptable positions as long as the prisoners were given regular breaks every 30 minutes or so.[103]

8.102 S002 said he was aware that when prisoners were brought to the JFIT they were not allowed to sleep before being tactically questioned or interrogated. The aim was not to let the prisoners relax too much as this would enable them to overcome the shock of capture. By not allowing prisoners to sleep before they were questioned, the prisoners were more likely to cooperate during questioning and provide mission-critical information. He said that the first interrogation might not be for some hours after arrival at the JFIT if a large number of prisoners had been brought in. The guards would keep prisoners awake by giving them a gentle nudge if they looked as if they were falling asleep.[104] He accepted that there was no security justification for this aspect of prisoner handling.[105] He thought at the time this would be for no longer than twelve hours and then subsequently he thought that 24 hours would be the maximum.[106] He relied on S040 and S014 as the subject matter experts in respect of this practice. It did not occur to him that keeping prisoners awake by nudging them might technically be an assault.[107] He was not aware at the time of the 1972 Directive prohibiting sleep deprivation as an aid to interrogation. He said that he was shocked when he saw it for the first time in 2009. It had not been drawn to his attention in theatre.[108]

8.103 It would seem that the above was based on what S002 remembered being discussed before hostilities, and from his first routine visit to the JFIT.

8.104 S002 said he visited the JFIT again in late March, possibly on 28 March 2003 or perhaps a day or two later.[109] This followed an ICRC complaint. For present purposes it suffices to note that S002 said that the complaint was of hooding with two sandbags, one hessian and one made from plastic. S002 said that he was *"very angry"* on hearing this, thinking that it was not only inhumane given the high temperatures but in addition the prisoner could have suffocated.[110] In his Inquiry witness statement he said he flew to the JFIT and discussed the matter with S040. He said he *"vaguely recalled"* being told by S040 that S040 had only ordered double hooding for the first time the previous evening. S002's evidence was that double hooding had been

[101] S002 BMI 82/46/13-47/17
[102] S002 BMI 82/66/20-24
[103] S002 BMI05833-4, paragraphs 35-37
[104] S002 BMI05834-5, paragraphs 38-40
[105] S002 BMI 82/70/2-4
[106] S002 BMI 82/70/5-11
[107] S002 BMI 82/72/4-17
[108] S002 BMI 82/164/2-13
[109] S002 BMI 82/77/3-18
[110] S002 BMI 82/77/19-78/19

implemented without his knowledge or approval and he *"…could not believe that anyone could be so stupid".*[111] I return to the ICRC's concerns and S002's part in the response to it in the next Chapter.

8.105 I regret that I had real difficulties with some aspects of S002's account.

8.106 In a statement which S002 made to the SIB on 4 July 2006, he stated that:

> *"Initially the practice of double-hooding was employed to prevent the detainees from observing their surroundings, as one hood was proving inadequate.*
>
> *This practice was stopped on my order and was being employed without my knowledge. Although this is a method that is acceptable within the realms of MOD Doctrine, it was felt that due to the high temperatures within Iraq, one hood would be acceptable and proper in the circumstances".*[112]

It is difficult to understand the basis upon which S002 could have suggested to the SIB that double hooding was acceptable *"within the realms"* of MoD doctrine. This account gave no indication of the anger which S002 says he felt on hearing of double hooding occurring at the JFIT. S002 was asked about this in his oral evidence to the Inquiry and in my opinion he was not able to explain why he had suggested to the SIB that double hooding was within MoD doctrine:

> *"Q. What you, though, went on to say – and I wonder if you could particularly try to assist the Inquiry with this – is as follows. You said: "Although this is a method that is acceptable within the realms of MoD doctrine, it was felt that due to the high temperatures within Iraq, one hood would be acceptable and proper in the circumstances."*
>
> *A. Yes. I can't explain that statement particularly well. My understanding, as I have already stated, was that what was acceptable was deprivation of sight for security reasons and – so that's the first piece. The second piece, in terms of the high temperatures within Iraq, of course you are then starting to inflict pain on people, which is not what we were trying to do.*
>
> *Q. Because even if – we may need to come back to the question of single hooding and whether that appears anywhere in army doctrine – but you are not really aware of anything in army doctrine, are you, that suggests that double hooding is acceptable?*
>
> *A. No. My recollection is that deprivation of sight in JDP 383 [sic] and the JSIO document on running a JFIT, that was where I was getting my understanding from.*
>
> *Q. As it happens, none of those refer to hooding at all or certainly the JSP 383 does not refer to hooding, it refers to blindfolding. But none of them refer to double hooding in any shape or form, do they?*
>
> *A. No.*
>
> *Q. Why is it then that you were telling the SIB that double hooding was acceptable within MoD doctrine?*
>
> *A. I have got no account of why I stated that at the time".*[113]

8.107 At the Court Martial, S002 was asked by Counsel for Lt Col Jorge Mendonça whether he was aware of plastic hoods being used. S002 told the Court Martial that he did not recall this:

[111] S002 BMI05835-7, paragraphs 44-49
[112] S002 MOD000897
[113] S002 BMI 82/82/9-83/13

MR LANGDALE: S002, I have a few questions for you on behalf of Colonel Mendonça. It is really a question of asking you to elaborate on one or two points you have already covered.

A. Certainly sir.

Q. I am not trying to go over the same ground again. So far as hooding is concerned, I think that there was a period of time in the comparatively early stage when plastic hoods were used?

A. Um, not that I – I am aware of, no.

Q. We are going to have reference to it from a later witness. I would just like you to deal with it: was it the case that plastic hoods were used, plastic bags?

A. No, I mean, everybody knows you would not stick your child's head in a plastic bag and in that sort of environment –

Q. Instead of being a hessian bag, a sandbag which was plastic, did you recall that ever happening?

A. No, no.

Q. If you do not recall it at all –

A. No, I do not recall that at all. As far as I was concerned it was hessian sandbags. The sort of sandbags that we were using obviously to build fortifications".[114]

Similarly, asked in examination in chief at the Court Martial about the practice of double hooding, S002 said he was "*… slightly surprised when…I saw it to start with*".[115]

8.108 Again, it is hard to understand how S002 could have given evidence to the Court Martial that he did not recall plastic bags and being *"slightly surprised"* at seeing double hooding when his account to this Inquiry was of a clear recollection of being positively angry on hearing of double hooding with a hessian and a plastic bag resulting in an urgent flight down to the TIF to address it. S002 said that he went to the Court Martial with no preparation and was asked some questions that he was expected to answer very quickly without much background in respect of dates, times or names. He gave as an example the fact that he could not remember S040's name and had wrongly referred at the Court Martial to S014 as being the officer commanding the JFIT.[116] The Court Martial questioning by Mr Timothy Langdale QC cited above was put to S002 when he gave evidence to the Inquiry. The following exchange occurred:

"…that was, in your sworn evidence in 2006, the clearest possible evidence from you, was it not, that you knew nothing about plastic bags, including a sandbag which was plastic? You were claiming to know nothing about that at the court martial.

A. You are correct. I have no defence for myself in regard to that statement. I made that statement, but it's not correct.

Q. You say that it's not correct. If your evidence to this Inquiry is true, you couldn't have forgotten about it because you were angry about its use.

[114] S002 CM 59/55/19-56/16
[115] S002 CM 59/33/12-16
[116] S002 BMI 82/42/21-43/4

> *A. As I already stated to you earlier, I had no preparation for the court martial, no advice, and unfortunately I believe I don't give a – I didn't give a particularly good account of myself or what happened at the time.*
>
> *Q. But it might be said that –*
>
> *THE CHAIRMAN: I think I have that point, Mr Moss.*
>
> *MR MOSS: I am grateful. Perhaps I ought to deal with it so that you can at least respond to it and give your account. Might it be the case that, in fact, you were lying to the court martial and simply not telling the truth about what you knew was the use of plastic bags?*
>
> *A. I don't believe that I knowingly lied to the court martial about plastic bags. I accept that my evidence was incorrect, but I don't believe that I went there with the due intention to lie."*[117]

8.109 I return to this issue in my overall conclusions on this Part of the Report.

8.110 I should add that S002 also gave evidence that there had been legal advice before the warfighting phase to the effect that hooding for operational security was acceptable.[118] S002 suggested that those who agreed to the use of hoods as a security measure, or at least were present and raised no objection when it was discussed, included Mercer, Frend, and S009. S002 made a point in his Inquiry witness statement of emphasising that Mercer was:

> *"… wholly supportive of the prisoner handling process we had talked through. Both Lt Col Mercer and Major Frend said repeatedly that hooding for security purposes was compliant with the Geneva conventions. It was recognised by those present at the meeting that hooding would carry the additional benefits of: providing privacy/security to prisoners; improving the effectiveness of guarding; and preserving the shock of capture … I believe that it was Captain S014 who indicated that these additional benefits could arise from hooding prisoners at the JFIT. The advice on the use of hoods changed though, once the Red Cross made complaints about the treatment of detainees …"*[119]

8.111 In Part VII of this Report, I have already rejected S002's account that hooding was raised at the prisoner of war coordination conference.[120] S002 did not mention in his Court Martial evidence that Mercer and Frend had agreed to the use of hooding. It was denied by both Mercer[121] and Frend.[122] In his oral evidence, S002 accepted that it was possible that sight deprivation for security purposes may have come up in general terms with Mercer and Frend without reference to hooding; although he still remembered that hooding was joined with sight deprivation and had been agreed.[123] If Mercer had been present at meetings before the warfighting phase at which he had agreed to the use of hoods, S002 and others who were later to defend the use of hoods in some circumstances, would have been bound to have referred to such a significant change in Mercer's views. Yet despite committing his views on hooding to writing in a loose minute on 30 March, S002 made no reference whatsoever to Mercer having earlier agreed that hoods could be used. When these points were put to S002, in oral evidence, I did not find his responses convincing.

[117] S002 BMI 82/85/22-86/22
[118] S002 BMI05826, paragraph 10; S002 BMI05831-2, paragraph 30
[119] S002 BMI05831-2, paragraph 30
[120] MOD029092-5; Part VII at paragraph 7.58
[121] Mercer BMI 68/24/4-25/24
[122] Frend BMI02900-2, paragraphs 53-57
[123] S002 BMI 82/36/6-20

8.112 I find S002's evidence that Mercer, Frend and S009 initially agreed to the use of hoods on prisoners to be unreliable. Similarly, I find to be wrong the suggestion that Mercer accepted this in face of an explanation that included maintaining the shock of capture. While it may have led some to regard his approach as dogmatic, nobody who heard Mercer give evidence could be in any doubt as to the force of his views against hooding.

8.113 In my opinion, S002 was not an impressive witness. I do not think his evidence on this aspect was consciously motivated by any malice against Mercer but I find that with the passage of time, for whatever reason, S002 has convinced himself that Mercer and others initially agreed to the use of hoods when they did not.

8.114 I state my conclusions in relation to the early use of hooding at the end of this Part of the Report. I have had regard to the submissions of all the relevant Core Participants in relation to these events, including the Detainees and the global and individual submissions made on behalf of those acting for the individual soldiers and officers.

8.115 I record here the fact that for its part, the MoD has now accepted that evidence in relation to the early days of the JFIT gave cause for concern. The MoD cites evidence of hooding being carried out with the side-benefit of preserving the shock of capture, hooding for long periods, instances of double hooding and the use of plastic sandbags, and hooding carried out in conjunction with other exacerbating features such as kneeling in the sun and cuffing to the rear. The MoD suggests that "*…It should have been obvious to those involved that this breached the principle of humane treatment…*". The MoD has further accepted that the use of hooding at the JFIT was *"totally unacceptable"* and states that the same is true of the use of sleep deprivation as an aid to interrogation at the JFIT. The MoD has not sought to defend what occurred at the JFIT but invited credit be given for those such as S009, Vernon, Mercer, Air Marshal Brian Burridge, Brims and S002 who took positive steps to improve matters.[124] In my judgment these were helpful and realistic submissions.

[124] SUB001055-7

Chapter 4: The concerns that were raised about the treatment of prisoners at the JFIT and how they were initially addressed

8.116 Having considered the evidence of witnesses who saw at first hand how prisoners were being treated at the JFIT, I now consider what concerns were raised about this treatment, and how those concerns were addressed. In considering these issues, I refer to concerns that were raised by the ICRC. I should explain that the ICRC maintains a strict policy of confidentiality regarding the communications that it has with governments in the course of its humanitarian work. However, there was in fact a leak of the ICRC report that referred, amongst other things, to prisoner handling in the early stages of OP Telic at the TIF. In addition, certain information regarding the ICRC was put into the public domain during the course of the Court Martial. Taken together, this meant that many of the references to the ICRC and their involvement in raising concerns about certain aspects of prisoner handling at the JFIT, could be examined openly by the Inquiry. In a small minority of instances I agreed that certain redactions should remain to protect ICRC confidentiality. In an even smaller number of instances, where I considered that confidential ICRC references might have some (limited) bearing on matters in dispute, these were disclosed to Core Participants and a very limited amount of evidence was heard in private session in relation to these.

S009's Concerns and how they were addressed: 24 to 25 March 2003

8.117 I have already indicated that S009 is likely to have been one of the first, if not the first, of those who raised concerns about hooding at the JFIT.

8.118 S009 told the Inquiry, and I accept, that the following events occurred following what he saw at the JFIT.

8.119 Having seen prisoner handling in the JFIT which concerned him, namely prisoners kneeling with plastic hoods on sitting handcuffed in the sun (see paragraphs 8.40 to 8.41 above), S009's immediate reaction was to raise the matter with *"the captain in command"* of the JFIT.[125] S009 was not able to put a date on it but believed this was a few days after the invasion, shortly after the JFIT arrived. It may be that this occurred on or about 24 to 25 March.[126]

8.120 S009 told the JFIT Captain that it was unacceptable for plastic hoods to be used on prisoners and for them to be left kneeling in the sun. S009 argued this was not in keeping with UK law, was morally objectionable and would reflect badly on British Forces.[127]

8.121 He said the Captain's response was that the methods were being used to isolate the prisoners and were a legal interrogation tactic (so that they could not draw support or succour from other prisoners); and they prevented the prisoners from seeing

[125] In fact, it was not an Army Captain but S040 a naval Lt Cdr who was in charge of the JFIT. It may be that this was a reference to S014 but there was more than one army captain in the JFIT.
[126] S009 BMI03527, paragraphs 46-47
[127] S009 BMI03527, paragraph 47

one another for security reasons. S009 argued that separate huts should be built to separate them. The Captain gave S009 the impression that it was none of S009's business but the Captain said he would raise the issue with 1 (UK) Div.[128]

8.122 Within days, at most, the response came down to S009 to the effect that Division knew about the methods and approved of them. S009 said in his Inquiry witness statement that he could not remember by whom he was told this, but in oral evidence, he suggested it was by the same JFIT Captain.[129] S009 assumed, mistakenly in my view, that this advice had come from Mercer.

8.123 Still concerned, S009's response was first to contact Vernon in his role as the senior media adviser to 1 (UK) Div. Secondly, he contacted the ICRC and asked them to visit (not Amnesty International as was later suggested).[130]

Vernon's Concerns and how they were addressed: circa 27/28 March 2003

8.124 The above sequence of events is consistent with what Vernon told the Inquiry. He said he visited the JFIT on 27 or 28 March 2003, at S009's request. This was on the same day that S009 had spoken to him informing him of his concerns.

8.125 I have set out above at paragraphs 8.43 to 8.48 what Vernon saw on his own visit. Vernon was accompanied by Mr De Ville and not, as S009 remembered it, by S034, the NCHQ Policy Adviser.

8.126 Vernon's immediate reaction on seeing prisoners who were hooded and in what he considered to be stress positions, was to speak to the intelligence personnel who were present in the JFIT. In both his SIB and Inquiry witness statements, Vernon referred to two captains and a warrant officer being present amongst others.[131] Vernon's SIB statement about this conversation with the JFIT staff was as follows:[132]

> I then spoke with members of DISC who were present at the time, whom I believe were two Capt's and a WO amongst others. I do not know the details of these people though if I saw them again I would probably recognise them. We were informed by the two Capt's that they were an independent unit and reported direct to their chain of command in London. I raised the concerns of S009 and mine, firstly that the PW were hooded and made to kneel and that they were located adjacent to a road where Press would have access and be able to record the treatment of PW. My concerns regarding the hooding and kneeling were why it was needed and what impact it would have at a strategic level of the British Forces should images of this nature come to the attention of the Press. I believed it would seriously undermine the credibility of both British and Coalition Forces and be interpreted as the mistreatment of PW. It had the potential of being a Press Relations (PR) disaster. We were basically informed that this was accepted practice and that they would continue to do it. They reiterated the point that they were an independent unit and did not come under the command of the GOC 1 (UK) Armd Div.

8.127 In his Inquiry witness statement, Vernon gave a little further detail in relation to this exchange:[133]

[128] S009 BMI 66/60/10-62/17; S009 BMI03527, paragraph 47
[129] S009 BMI 66/62/11-17; S009 BMI 66/66/1-22; S009 BMI03528, paragraph 48
[130] S009 BMI03528-9, paragraphs 50-54
[131] Vernon BMI03445, paragraph 15; Vernon MOD007098
[132] Vernon MOD007098
[133] Vernon BMI03445-6

16. However, basically we were informed by the members of the DISC that this was accepted practice and that they would continue to do it. They justified the practice from an operational security and a PW self security standpoint. They reiterated that they were an independent unit and did not come under the command of the GOC 1 (UK) Armd Division. They indicated that some prisoners were senior Iraqi personnel and that good intelligence was being obtained from the prisoners. I asked what intelligence was obtained. The reply was that the information related to the size and shape of the relevant Iraqi division in our area of operations. I recall replying that this information had very little relevance as that Iraqi division had surrendered a few days beforehand. The Captains added that they may have suspects within the group who were believed to have murdered two soldiers outside Al Jubayr, a suburb of Basrah.

8.128 It is fair to observe that S014 recognised some of this account reflected discussions he, S014, remembered having with Vernon. However, S014 said that there were some things which he would not have said. He told the Inquiry that he would not have told Vernon that he was part of an independent unit that reported direct to a chain of command in London. Nor did he think that he would have commented upon details of the intelligence product or of what individual prisoners were suspected in that kind of conversation.[134]

8.129 Vernon then recounted discussing his concerns with Mason. There is little dispute between the accounts of Vernon and Mason of this discussion. Vernon remembered that Mason stated his view that the methods being used were justified.[135] Mason's account in his Inquiry witness statement was that, although he had not himself seen prisoners hooded, he told Vernon and S009 that he believed that in certain circumstances, for reasons of operational security with the secondary benefit of maintaining the shock of capture, depriving prisoners of war of their sight was legitimate. Mason said that although this was his view, the tactical issues surrounding prisoner handling rested with the GOC 1 (UK) Div and his commanders. Mason was not aware of any suggestion that prisoners were being deprived of sleep, and he had not witnessed prisoners kneeling in what might be considered stress positions. Nor could Mason remember a discussion about how long prisoners had been hooded. As Mason put it in his oral evidence, his major concern at the time was that they should not be affecting operational security with decisions at their level. He felt that the appropriate authority should be informed and should deliver the appropriate direction.[136] Mason's view was that hooding could in some circumstances be legitimate in a warfighting scenario when operational security was paramount. He considered that it would be different with civilian detainees in an occupation situation; and a difficult question would arise in the transition stage between the two.[137]

[134] S014 BMI 67/57/14-63/4
[135] Vernon BMI03446, paragraph 17; Vernon MOD007098
[136] Mason BMI 74/146/1-147/7; Mason BMI07037-8, paragraphs 54-55
[137] Mason BMI 74/153/25-155/2; Mason BMI 74/157/10-158/24

8.130 The discussion with Mason was, it seems, co-incidental in that Mason as a member of the NCHQ happened to be visiting the TIF. Mason said that on returning to NCHQ, he discussed the matter with Capt Neil Brown, NCHQ commander legal, and Lt Col Ewan Duncan, the SO1 J2X at the NCHQ (although Duncan remembered actually being present at the discussion with Vernon). Mason could not remember the detail but thought that shortly afterwards action was taken at Divisional level in the form of Brims' order banning the use of hooding.[138]

8.131 Beyond his immediate discussion with officers at the JFIT, Vernon's approach was that the hooding and handcuffing was a legal matter which would need to be dealt with at HQ level and that he would report the matter to Mercer as 1 (UK) Div legal commander. As he remembered it, Vernon did then raise the matter with Mercer.[139]

8.132 Although I have no reason to doubt that Vernon did raise his concerns with Mercer shortly after his visit to the TIF and JFIT, Mercer's first recollection of a concern about prisoner handling at the JFIT appears to have arisen from his own visit on 29 March 2003. Mercer appeared to have some recollection of Vernon raising concerns, but he said this was not what had prompted his own visit.[140] This difference of recollection between Vernon and Mercer is, in my opinion, not a matter of any significance.

8.133 Duncan told the Inquiry that he had travelled to the TIF with Mason and Lt Col Nicholas Clapham (although Clapham was going to the TIF for a different purpose) and met Vernon and S009. His evidence was that S002 and S014 were also present.[141] Duncan characterised the discussion as one where Vernon and S009 were concerned that the ICRC was to visit the JFIT accompanied by media. They did not wish either the ICRC or the media to see prisoners hooded, whereas Duncan was of the view that the media should not be allowed access to any of the locations. Although it is not a point that I need to determine, I record that there was evidence of a separate issue about the filming of prisoners of war[142] and it is possible that Duncan elided two different concerns that had been raised.[143]

8.134 Duncan gave a straightforward account of his position at this meeting. It was that in the conditions at the time, hooding should continue.[144] He believed hooding in these circumstances to be lawful. Expanding on his account, Duncan remembered that Vernon was more focused on the media and the possible adverse publicity, whereas S009 *"…really was only interested in making sure we weren't hooding, regardless of what other circumstances or what our views were"*.[145]

8.135 Vernon in his Inquiry witness statement did not mention the presence of Duncan at the discussion but when in oral evidence Vernon was asked about it he said that in going through other evidence it brought back a recollection that an intelligence corps Lieutenant Colonel had been present.[146] In my view it is clear that Duncan was present for some of the discussion with S009 and Vernon.

[138] Mason BMI07038, paragraph 56
[139] Vernon BMI03446-7, paragraph 18-19
[140] Mercer BMI 68/133/14-23
[141] Duncan BMI 76/23/2-24/3; Duncan BMI06045, paragraphs 41-42
[142] Burridge BMI05331, paragraph 25; Vernon BMI03448, paragraph 24
[143] Duncan BMI06045-6, paragraphs 43-44
[144] Duncan BMI 76/25/4-26/6
[145] Duncan BMI 76/26/14-21
[146] Vernon BMI 69/40/11-20

8.136 However, Duncan's evidence went further than any of the others present at these discussions. Duncan said it was at this meeting with Vernon, S009, S014 and S002 at the TIF, that a compromise was reached in that goggles would be used instead of hoods.[147] The evidence of Vernon and Mason gave no real support to this suggestion of a compromise on the use of goggles as early on as the day of Vernon's visit to the TIF. I find that the compromise with the use of goggles came later in the context of the ICRC meeting on 6 April. In this regard I believe that Duncan's recollection was therefore mistaken. I find Duncan understandably elided and compressed different events. He may have had in mind meetings or discussions that took place over subsequent days.

Christie's Concerns: Late March 2003

8.137 As I have noted above, Christie on one occasion saw hooded prisoners being marched to the JFIT. He did not have a 'violent' reaction against what he had seen, or consider it inhumane. He was told that it was for operational security reasons.[148] It is impossible to put a date on when this occurred but I believe it is likely to have been early in the JFIT's operations. Christie appeared to draw a distinction in time between his early involvement when he saw a single incident of hooding, and the later intervention of the ICRC.

8.138 The hooding that Christie saw, even with the explanation given to him that it was for security purposes, does appear to have been enough to cause him to research what the doctrine was and whether hooding was a permitted activity.[149]

8.139 The only relevant reference Christie could find that was the draft of Joint Services Publication (JSP) 383, which in its final version contained the guidance:[150]

> Blindfolding and segregation may be necessary in the interests of security, the physical restraint of prisoners of war, or to prevent collaboration prior to interrogation, but these discomforts must be truly justified and be for as short a period as possible.

8.140 Christie explained in his statement to the Inquiry that having been told that sandbags were being used for security purposes and having seen this direction permitting blindfolding, he was content that hoods were not being used inappropriately.[151] He had a recollection of learning from those operating the system that:

> *"… blindfolds or strips of material could slip and therefore not actually fulfil the function that they were designed to do, to prevent the prisoner from seeing. Therefore, from a pragmatic view, given the timing very early on in the piece, sandbags were thought to be the effective approach to blindfolding".*[152]

[147] Duncan BMI 76/28/22-30/17; Duncan BMI06046, paragraph 44
[148] See paragraphs 8.50-8.53 above
[149] Christie BMI 69/24/20-130/11
[150] MOD036434, paragraph 8.34.2
[151] Christie BMI04863, paragraph 80
[152] Christie BMI 69/131/11-17

8.141 Thus Christie, who had seen hooding only once on prisoners being taken to the JFIT, appears to have checked what the doctrine had to say. However, he did not himself escalate this up the chain of command, nor did he take further action at this stage. He said he did not do so because the doctrine allowed blindfolding for security purposes; what he saw had not struck him as being inhumane; he had been told it was for security purposes; and he had been told that blindfolds or strips of material could slip.

Brims' Concerns: 28 March 2003

8.142 Mercer's diary showed that he attended the TIF on 28 March 2003 accompanied by the GOC, Brims. Mercer was to attend the TIF again on the following day, 29 March. I think it likely that Brims only made one visit to the TIF in this period. Mercer's diary helps to fix the date as 28 March 2003. This is confirmed by a 1 (UK) Div assessment report for the 27/28 March 2003, which recorded that Brims and Mercer visited the Prisoner of War Handling Organisation on 28 March 2003 to see the prisoner of war collection area and to deal with the issue of Article 5 tribunals.[153] I am therefore confident that the date of Brims' visit to the TIF was 28 March 2003.

8.143 I make no criticism of Brims in this regard but I consider it likely that in giving accounts of his visit and subsequent order banning hooding, Brims has understandably compressed the timescales in which the events occurred.

8.144 I entirely accept that on Brims' visit, which is likely to have been on 28 March 2003, he saw a single hooded prisoner probably within the TIF and that this caused him concern.[154]

8.145 Brims' first formal written account of what he did as a result would seem to be his statement of 5 June 2005.[155] In that statement the essence of Brims' account was that he did not raise what he had seen with anyone at the TIF that day. He did discuss the matter with Mercer and his Chief of Staff, Col Patrick Marriott, on the same day as his visit; and Mercer informed him that:

> *"… we were acting legally in the context I have described in this statement (it was permissible to hood POWs in these circumstances)".*[156]

8.146 Brims nevertheless decided that as a matter of policy hooding should cease because it seemed to him to contradict the style of operations he was anxious to achieve. Brims therefore instructed Marriott to direct that as a matter of policy hooding should stop. But there should be an option for an application to be made to override this direction should circumstances require it.

8.147 The impression given in Brims' earlier accounts is that this all occurred immediately following Brims' visit to the TIF on 28 March 2003.

8.148 I fully accept the good faith of Brims' account but in some respects I find that it is not entirely reliable.

---

153 MOD042911
154 See paragraphs 8.54-8.60 above
155 Brims MOD000315-6
156 Brims MOD000316

8.149 Firstly, as to Brims' account of Mercer's immediate advice that hooding in these circumstances was lawful, it is quite apparent from Mercer's evidence that he took a firm, some might have said uncompromising, stand against hooding. I cannot imagine that Mercer's memorandum of 29 March 2003[157] would have been written in the terms it was if Mercer had advised the very day before that hooding was lawful. In his Inquiry witness statement, Brims again suggested that:

> *"…Lt Col Mercer said that it was legal to deprive a prisoner of vision for security purposes, and that on the assumption that the hooding at the Facility had been to stop the prisoners seeing the papers on the table while they were being moved, it was legal..."*[158]

Brims gave a different account in his oral evidence, making clear that Mercer:

> *"…gave his own view that the use of sandbag hooding was not legal, but that blindfolding was in another way: goggles, for example. But I was also briefed, again by commander legal, that there were contrary legal opinions about this and there were contrary opinions about which laws applied in the circumstances we were in".*[159]

Brims agreed that he had conflated two different things in his Inquiry witness statement; Mercer's own opinion and what he conveyed as being the view of other lawyers. He accepted that his Inquiry witness statement did not record correctly what Mercer had said to him.[160]

8.150 That Mercer did not at this stage advise Brims that hooding was lawful in the particular circumstances at the JFIT is also apparent from the evidence of Marriott. He remembered that Mercer's advice was that hooding should stop immediately as in Mercer's view it was illegal under the Geneva Conventions.[161]

8.151 For this reason I do not accept that Mercer advised Brims, immediately following their 28 March 2003 visit to the TIF, that hooding in these circumstances was legal.

8.152 Secondly, as to the timing aspects of Brims' account, Brims' remembered Mercer reporting that there was a difference of legal view between him and lawyers at the Prisoner of War Handling Organisation and at the NCHQ.[162] I believe this demonstrated that the discussion between Brims and Mercer would not have taken place on the same day as Brims' visit to the TIF, 28 March 2003 (as Brims suggested in his 5 June 2005 statement). Those discussions must have taken place later, after Mercer's second visit to the TIF had led to a debate about the legality of hooding.

8.153 There is further evidence that Brims did not ban hooding, nor have defining discussions about the practice, immediately after his 28 March visit. As I shall examine in more detail below, S002 wrote to Mercer on 30 March 2003 referring to discussions which had already been held with Brims, Marriott and S002.[163] The terms of Mercer's memorandum are not consistent with a positive decision to ban hooding, still less an order to that effect, having been made on the very day of Brims' visit. Marriott, who as Chief of Staff, must have been closely involved, remembered a lengthier process.

[157] MOD019799, see further paragraphs 8.156-8.161
[158] Brims BMI07395, paragraph 49
[159] Brims BMI 103/27/9-15
[160] Brims BMI 103/28/8-29/8
[161] Marriott BMI06131, paragraph 20
[162] Brims BMI 103/27/8-19
[163] MOD011451-2

In essence his account was of initial discussions following Brims' visit to the TIF in which Mercer advised against hooding but S002 was in favour of its use. Vernon also advised against hooding and Marriott agreed with that line. Brims' intent was then to stop hooding but it was agreed that NCHQ and PJHQ advice should be sought. At that stage the NCHQ advised they were content for hooding to continue. Mercer was annoyed by this advice but the NCHQ position was that if Brims thought is should be stopped then the NCHQ would accede given his position as GOC.[164] In addition, Mercer's diary suggested that the decision and order to ban hooding was not made until, or at least closer to, 3 April 2003.[165]

8.154 On this evidence, I am sure of the following facts. Firstly, Brims is mistaken in attributing to Mercer initial advice that hooding for operation security purposes was lawful. Secondly, the single incident of hooding that Brims had himself witnessed at the TIF played a part in discussions between Brims and his subordinate officers at Divisional level and was part of what motivated Brims to ban hooding. Thirdly, these discussions were more protracted than Brims remembered in his own written accounts. I find that a series of meetings and discussions at Divisional level started on 28 or 29 March 2003 which would have been given added impetus by Mercer's own concerns following his visit on 29 March. Fourthly, Brims' ban on hooding was made some days later.

8.155 In fairness to Brims, I should add that he fully accepted in his oral evidence that the discussions and meetings on hooding may not have been a single meeting, and that:

> *"…Sometimes we would have a discussion, people would go away, have a further consultation and think about it and then re-form. I can't remember precisely how this happened, but that would be the sort of meeting it was."*[166]

Bearing in mind that Brims was at the time the General Officer Commanding a Division still engaged in fighting a war with Basra not yet fallen, I do not find it remotely surprising that Brims should have confused some of the details, and compressed the timescales, in his account. I found him to be an impressive and compelling witness.

Mercer's Concerns: 29 March 2003 and how they were addressed

8.156 Mercer's diary showed he visited the TIF on both 28 and 29 March 2003.[167] He started his memorandum to Brims of 29 March 2003 with the words *"I attended the PWHO again today".*[168] Although Mercer could not specifically remember two trips to the TIF, it is clear that he did make two trips. It is also clear that Brims accompanied Mercer on 28 March, but it is not likely that Brims did so with Mercer again on 29 March.

[164] Marriott BMI06131-3, paragraphs 20-23
[165] MOD019890
[166] Brims BMI 103/25/22-26/1
[167] MOD019884-5
[168] MOD019799

8.157 Since it was on the day of his second visit, 29 March 2003, that Mercer sent his memorandum to Brims, I think it likely that Mercer did not himself see anything of concern in respect of prisoner handling at the TIF on his first visit, 28 March 2003. He is more likely to have seen the hooded prisoners in the sun on his second visit, 29 March 2003.

8.158 Mercer's immediate response to what he saw was threefold. Firstly, he raised the matter at the JFIT where, (as with S009 and Vernon previously), he was told by a JFIT Officer that what was happening was permissible.[169]

8.159 Secondly, on the same day 29 March 2003, he drafted his memorandum to Brims, his GOC, which raised concerns about the tribunals he had seen that day but referred at the end to what he had seen in the JFIT (see paragraph 8.63 above).[170]

8.160 Thirdly, he spoke to his colleagues on the G2, intelligence, side of the Divisional Headquarters, including S002.[171]

Brims' Evidence about Mercer's Memorandum

8.161 One of the oddities in the evidence relating to this part of the events is that despite the fact that Mercer's memorandum of 29 March 2003 was addressed directly to Brims, and was in strong terms, Brims had no recollection of receiving it.[172] The version disclosed to the Inquiry does not bear Brims' annotated initials, which was Brims' way of indicating he had read a document. However, that is not determinative of whether the memorandum was in fact sent and read by Brims. I am simply not able to determine whether Brims saw this memorandum and had forgotten it or whether it was sent but for some reason either did not reach Brims or was not read by him. Given Mercer's strength of feeling on the matter, I think it is very unlikely that he drafted the memorandum but did not send it, as was suggested as one possibility by the Treasury Solicitor on behalf of Brims.[173]

S002's Response to Mercer's Memorandum

8.162 The following day, 30 March 2003, S002 sent a memorandum to Mercer responding to the concerns that he had raised. This is a significant document and I set it out here in full:[174]

[169] Mercer BMI 68/46/21-47/2; Mercer BMI04067, paragraph 38
[170] MOD019799
[171] Mercer BMI04067, paragraph 39
[172] Brims BMI 103/41/3-6; Brims BMI 103/66/13-18; Brims BMI07396, paragraph 54
[173] SUB001537, paragraph 4(c)
[174] MOD011451

RESTRICTED

30 Mar 03

G2X/3010

Comd Legal

TACTICAL QUESTIONING OF EPWs

1. After discussion with both the GOC and COS reference your observations derived from your visit to the JFIT, I have the following details which you may like to consider and perhaps discuss soonest. If my observations and answers do not assure you that the JFIT are not conducting malpractice, and you consider that we are indeed breaking International Law, then I feel that matter should be referred to Comd Legal NCC or PJHQ for guidance before we amend the current practises of the JFIT.

2. The current doctrine for tactical questioning taught by F Branch at the Joint Services Intelligence Organisation (JSIO) in Chicksands and is derived from two key documents. These are;

a. JWP 1-10. This outlines the duty of care we must take when dealing with EPWs as well as advising on the infrastructure and manpower requirements that this duty of care entails. It also advises on the handling of Prisoners of War and I have a copy on computer ready for you to review at your convenience.

b. The Geneva Convention. This is used as the base document in defining the rules and regulations which allow us to tactical question EPWs.

3. In answer to your criticisms of our treatment of EPWs whilst undergoing tactical questioning I have the following facts.

a. The Hooding of Prisoners. The JFIT currently hood the screened prisoners when they are escorted from the main EPW cages to the JFIT working area. This is not done to intimidate or cause distress but as a security precaution, so they do not observe the route, layout, support functions and staff within the JFIT area. Once they are moved into an Interrogation room the hood is removed. The reverse procedure is the applied when they return to the main EPW cage. It is not a procedure that is designed to remove or damage their sensory capability and is practiced only when at war in order to protect operational security and is maintained for the shortest period of time.

b. Stress Positions. When the prisoners are moved from the EPW cages to the JFIT they are told to either sit or knee down in the waiting area (situated in the centre of the JFIT compound and where you observed the prisoners during your visit). At no time are they put into other more extreme stress positions. They can lie down but are not allowed to go to sleep. Extreme stress positions are in fact counter productive and are not taught at JSIO. Current practises are allowed within both JWP 1-10 and GC.

c. Plastic-cuffs on Hands. The only prisoners that are bound by plastic cuffs are those who have shown violence in the main cage or who the JFIT has identified as being potentially excessively violent under tactical questioning to either the JFIT or other prisoners. During your visit 3 out of 10 prisoners had plastic cuffs fitted to their wrists.

4. The chief instructor from F Branch, **S012** is currently running the FHT with 16 AA Bde. He can advise the JFIT on working practises if you feel that the descriptions I have described were not as you found them during your visit. If they are as described and you still feel very uncomfortable with the situation I would like the matter to be referred to the NCC.

S002

SO2 G2X

Internal:

COS

8.163 There are a number of points of interest about this loose minute from S002:

(1) it is clearly dated 30 March 2003, and is sent from S002 to Mercer ("Comd Legal");

(2) there is a handwritten dated and signed annotation in the top right hand corner made by Mercer. It reads "[redacted Christian name of S002] *I have referred the matter to the NCC*. [mercer's signed initials redacted] *1 IV 3*";

(3) there is a further annotation by Mercer on the right hand side which appears to read "*No ref to hooding*". This is alongside S002's comments about Joint Warfare Publication (JWP) 1-10. In my view Mercer was here, correctly, observing that JWP 1-10 was completely silent about hooding;

(4) significantly, there is no reference anywhere in S002's memorandum to the ICRC having raised concerns. On the contrary, the minute appears from paragraph 1 to be written in response to observations made by Mercer following his visit, without any reference to the ICRC whatsoever;

(5) it contains no reference to double hooding or the use of plastic-weave sandbags; and

(6) it relies upon the security justification for hooding but makes no mention of maintaining the shock of capture.

8.164 It seems clear that S002 in his memorandum was defending the practice of hooding for security purposes. He was also acknowledging and implicitly supporting the practice of not allowing prisoners to sleep during the early stages of their detention at the JFIT. On those two issues, S002 was by no means alone and I shall return in my overall conclusions as to whether S002 and other staff officers were culpable of misjudgment or worse in support of hooding and this limited form of sleep deprivation.

8.165 In the case of S002 however, further specific issues arise which potentially reflect critically on him. I have considered:

(1) why S002 made no mention in this memorandum of the double hooding which had so angered him that he flew down to the TIF and effectively confronted the officer commanding the JFIT;

(2) why S002 made no mention here of the shock of capture being a side-benefit of the use of hooding; and

(3) what if any advice S002 had received from S012 in theatre about the use of hoods and whether it was satisfactorily communicated in this memorandum.

I deal with each of these three issues.

(1) S002's failure to refer to his concerns over double hooding in his minute to Mercer

8.166 On S002's own account in his Inquiry witness statement, he wrote this minute of 30 March 2003 after flying down to the TIF and confronting S040 with the complaint about double hooding. Indeed S002 described this memorandum to Mercer as being "*… prompted by, and addressing the concerns raised by the ICRC*".[175] I am bound

[175] S002 BMI05838, paragraph 53

to observe that on that basis I was initially troubled by the essentially placatory tone of S002's memorandum to Mercer and the fact that it did not refer to those matters that had caused him such anger.

8.167 However, on reflection I think it is likely that the sequence of events given by S002 in his Inquiry witness statement was confused. In fact, he entirely contradicted his witness statement on this aspect in his oral evidence to the Inquiry. In oral evidence he said that his memorandum was written before he was told of the double hooding incident reported by the ICRC, the date of which he put as being about 1 April 2003.[176]

8.168 It is significant in this context that neither Mercer's memorandum of 29 March nor S002's memorandum refer at any stage to concerns raised by the ICRC.

8.169 I conclude that it is more probable than not that at the time of writing his memorandum, S002 had not heard of the ICRC complaint, nor had he flown to the TIF for his second visit. He cannot therefore be criticised for failing to mention his own concerns about the use of double hooding in this minute.

(2) S002's lack of reference to the shock of capture in his memorandum to Mercer

8.170 S002's evidence was that he wrote this memorandum quickly and that security *was* the primary concern and reason for hooding being used. He denied that he was giving a sanitised account.[177] It is said on S002's behalf that he believed that the shock of capture was a well known side effect of sight deprivation; that security was the prime concern; and that the shock of capture would be likely to have dissipated by the time of arrival at the JFIT in any event; and that at its highest, the shock of capture was only an incidental by-product. It is also said that given that S002 believed maintaining the shock of capture to be legitimate he had no reason to hide anything.[178]

8.171 I note, however, that there was a clear and consistent thread in S002's evidence indicating his own understanding that hooding, while primarily for operational security, also carried the benefit of maintaining the shock of capture.

8.172 In my opinion S002, in this memorandum, was taking something of a defensive line to Mercer. A more frank explanation in this document would have mentioned that hooding was understood to have a side benefit of maintaining the shock of capture. On S002's own account, that is what S014 the JFIT operations officer had told him. While I think it fair to say that S002 could have given a more candid explanation in this memorandum, the evidence does not justify a conclusion that he set out to misrepresent to colleagues the purpose of hooding. Some, but by no means all, of other staff officers involved in the discussions clearly understood that hooding could have the effect of maintaining the shock of capture.[179]

[176] S002 BMI 82/93/1-18
[177] S002 BMI 82/96/8-97/12
[178] SUB001962-74
[179] Frend BMI 69/97/1-7

(3) S002's reference to the availability of advice from S012 in his memorandum to Mercer

8.173 There is in my opinion nothing at all surprising or contentious about the mere fact that S002 suggested to Mercer that S012 (the Officer Commanding F Branch, DISC) was in theatre and could advise on working practices. However, S002 said in oral evidence that he had spoken to S012 before he wrote the memorandum.[180] Consistent with this, S012 told the Inquiry that he was contacted by S002 sometime after 28 March 2003. S012 said that the gist of his answers to S002 were that hooding for security reasons was not illegal but also not ideal because covering a prisoner's entire head risked raising the person's temperature and possibly restricted their breathing. S012 said that he had therefore advised that blindfolds could be used if available (or if unavailable, improvised from local materials) to restrict a prisoner's sight for limited force protection purposes.[181]

8.174 In his oral evidence, S002 was asked about S012's account and the lack of any reference to S012's claimed preference for the use of blindfolds instead of hoods:

> *Q. What's your own recollection about what the nature of S012 told you?*
>
> *A. We had a reasonably wide-ranging discussion but –*
>
> *Q. Sorry, forgive me, on this aspect, the use of blindfolds and hoods and the Red Cross aspects that have been raised?*
>
> *THE CHAIRMAN: Can we have a thumbnail of it, if you wouldn't mind, please, Colonel.*
>
> *A. That it was – that blindfolding or deprivation of sight was allowed for security purposes.*
>
> *MR MOSS: Deprivation of sight was allowed for security purposes?*
>
> *A. Yes.*
>
> *Q. Is it not the case – and S012 has told us in his witness statement – that what he told you was that hooding for security reasons was not as such illegal, but that it was not ideal because of the risks of raising a person's temperature and possibly restricting their breathing and that blindfolds should be used in preference?*
>
> *A. Yes, he may well have stated that, but the fact was at the time we didn't have any blindfolds and the JFIT had run out of blindfolds.*
>
> *Q. You say that he may well have said that. Do you actually recall that that was the case?*
>
> *A. I don't recall him saying that. The piece I recall is him saying that – in security terms that it was acceptable for people to have deprivation of sight for security purposes.*
>
> *Q. How clear is your recollection of the fact that you consulted and spoke to S012 in theatre?*
>
> *A. I was complete – I have total recollection that I consulted him.*
>
> *Q. Forgive me, there is a lot of paperwork and again I will be corrected if I am wrong, but I don't think you referred to that conversation specifically as being a conversation with S012 in your witness statement. You talk about consulting subject matter experts, but not a specific conversation where sight deprivation was raised with him in theatre.*
>
> *A. Okay, well I am – I should have incorporated it into my statement then.*

[180] S002 BMI 82/100/11-102/18
[181] S012 BMI 87/144/7-148/1

Q. You see, it may be said, Colonel, that a difficulty with your evidence and the account that you gave to the court martial was that you were at pains to make clear, in defence of the JFIT's use of hooding, that hooding was within MoD doctrine, that it was taught at Chicksands – I summarise and paraphrase – but that it was taught at Chicksands – [redacted] … – and that it was approved for use and taught, whereas on the evidence that the Inquiry has seen in terms of a written statement from S012, he spoke to you and almost, as it were, warned you that hooding was not illegal, but that blindfolding in fact was the preferred option and that that was what was taught at Chicksands.

A. My understanding was based on the subject matter experts that I had consulted, which was S040 and S014, and their staff. They, at no time, turned round and said that hooding was not correct and that – at no time did they turn round and say that at Chicksands, on the courses, that they had not used hoods.

Q. But if S012 did say that to you, he was, as you knew, the very officer commanding of the relevant section within Chicksands that actually taught the course, was he not?

A. Yes, he was, yes.

Q. So, what, is the position that there may have been a contrast between what S040 and S014 were saying and what S012 was saying?

A. As I just said to you, my recollection is that he did not turn round and say to me that hoods could not be used. He stated that deprivation of sight, in whatever means, was a legitimate activity in terms of security – that is my recollection – and the same applies for S012 [sic] and S040.

Q. And the conversation with S012 that you accept took place – again I don't want you to guess but can you help – did it take place before or after you had written your 30 March memorandum to command legal?

A. No, it informed my 30 March memorandum.

Q. Because if that is the case and you had spoken to S012 before your memorandum where you are referring to hooding and S012 is right about what he told you, would you not have been duty bound to say to Colonel Mercer, "I have taken advice from the OC of the relevant section who tells me that blindfolding is the preferred way to do this"?

A. I accept your premise, but, as I say, I don't remember him differentiating between blindfolding and hooding, so – but I remember the conversation that I had with him that informed me to be able to write that memo."[182]

8.175 I find that it may well be that what S002 was looking for by contacting S012 was some reassurance that the use of hoods was lawful, which S012 would have provided. It is difficult to know to what extent S012, in responding to S002's inquiry, really pressed the preference for blindfolds over hoods, and the extent to which this was appreciated by S002. Again, this seems to me to reflect that S002's minute, which I accept was likely to have been written in haste, was taking a defensive line. To the extent that S012 had made clear that F branch "doctrine" was a preference for the use of blindfolds, it would have been much better had S002 reflected this in his memorandum to Mercer. However, I do not find that the evidence establishes that in his memorandum S002 was deliberately trying to mislead.

[182] S002 BMI 82/102/9-105/25

The Referral to the NCHQ: circa 1 April 2003

8.176 It may well be that S002, in coming to the view stated in his 30 March 2003 minute that hooding for operational security purposes was justified and should be continued, had already consulted some of those at the NCHQ as well as S014, S040 and S012.[183]

8.177 Whether or not some communication with the NCHQ had already occurred before S002's note of 30 March 2003, it is clear that by 1 April 2003, Mercer, still unhappy with the intelligence branch's defence of hooding, acceded to the suggestion of S002 that the matter should be referred to the NCHQ. This is shown by the handwritten endorsement by Mercer on S002's memorandum (see above paragraphs 8.162 to 8.163).

8.178 That Mercer referred matters up to the NCHQ is supported by Capt Brown, the NCHQ legal adviser. In his Inquiry witness statement, Brown stated that it was Mercer who contacted him:

> *"…to express his concern about the hooding of PW. I do not recall whether the initial contact was by e-mail or telephone but we spoke Lt Col Mercer stated that he had witnessed large numbers of PW who were hooded and held outdoors but in the JFIT compound, which was located just next to the UK PW Camp at Umm Qasr. He reported that some of the PW were hooded with plastic cement bags."*[184]

8.179 I think it probable that this decision to involve the NCHQ was not taken by Mercer alone. Marriott the Chief of Staff remembered that he had confidence in Mercer's advice and that Brims agreed with the advice given to him by both Marriott and Vernon that hooding should stop. As Marriott put it:

> *"I think it was then agreed that we would seek NCC and PJHQ advice but with a clear intent to stop hooding".*[185]

8.180 Marriott's account, which I accept, was that his personal view was that the hooding which had been raised with him at Divisional level was inhumane, and that he also had concerns that there were media implications of hooding: "*…I didn't think that it was something that one would want to see on camera for an army which was essentially going in to rescue a country from a dictator who used such techniques*".[186] Marriott explained that the opposing view was put by S002 who insisted that hooding was doctrine, that it was what they had been taught to do, and that S002 felt it was important to do it.[187]

8.181 Another witness who was involved in the discussions at this stage was Nicholas Ayling, the Policy Adviser (POLAD) to 1 (UK) Div. His desk was next to Mercer's. He provides a further insight into the views that both Mercer and S002 had taken:

> *21.The next discussion I recall having with Lieutenant Colonel Mercer about the standards of treatment of prisoners was following Lieutenant Colonel Mercer's visit to the PWHO and JFIT in late March or early April 2003. He said that during his visit he had witnessed the widespread hooding of prisoners and was concerned that this was in contravention of our*

[183] S002 BMI 82/101/13-102/1
[184] Brown BMI05869, paragraph 53
[185] Marriott BMI06132, paragraph 20
[186] Marriott BMI 98/148/11-14
[187] Marriott BMI 98/149/11-17

obligations under the Geneva Conventions. I cannot recall exactly how Lt Col Mercer referred to PWHO/JFIT, but I think his main concern was about the JFIT, because I remember him saying that the people who were hooded were mostly those awaiting interrogation. To the best of my recollection, he suspected that hooding was being used at the JFIT as a conditioning technique rather than as a security measure. He and I discussed what measures the law provided for in relation to hooding - for example, whether or not hooding was permitted to protect the identities of interpreters or other prisoners waiting to be questioned. My recollection is that Lieutenant Colonel Mercer believed that the law did not allow for hooding at all.

22. Having heard Lieutenant Colonel Mercer's concerns, I spoke to S002, SO2 J2X in the Divisional Head Quarters, who was responsible for the tactical questioning of prisoners at the Joint Force Interrogation Facility. I went over to his tent and spoke to him face to face on more than one occasion over a period of a couple of days. Some of his subordinates were co-located with the PWHO. I raised Lieutenant Colonel Mercer's concerns about hooding with him and asked what policy was being followed. To the best of my recollection, S002 told me that the practice of hooding was permitted under MOD guidelines but only for security reasons and not as a conditioning technique and that the guidelines were being followed.

23. I spoke to Lt Col Mercer and S002 a number of times over the next day or so to try to understand the basis for their conflicting views. On examination of the relevant provisions of the Geneva Conventions, which I discussed with Lt Col Mercer, it seemed to me that restricting the vision of POWs, and therefore potentially the practice of hooding, was permitted under certain specified circumstances, such as for reasons of security. The question therefore appeared to me to be whether or not the way hooding was being used was consistent with those purposes. I did not have any legal qualifications to make this judgement, but it was right for me to contribute to the discussion to ensure that what seemed to me to be relevant questions were being properly addressed. In the event of an important disagreement on policy or the law between different parts of the Divisional Headquarters, it would have been usual for it to be resolved by the superior Headquarters, in this case the NCCHQ, and in particular the POLAD and LEGAD there.

…

25. Most of the discussions I had with Lieutenant Colonel Mercer were on a one to one basis as he had a desk next to mine and would speak to me about matters of concern to him. He was seeking to get the practice of hooding changed. I had no direct authority but he sought my support from a policy perspective. In my view, there is a considerable overlap between legal advice and policy advice, and it was my experience that Legal Advisers sometimes took views and offered advice which was not based solely on an interpretation of the law, but also with a view to policy considerations. Although I was coming from a policy perspective, I too was concerned that hooding, if used, should be used in accordance with the law. To the best of my recollection, I wanted to clarify whether hooding was being used for narrow security purposes, or whether it was deliberately being used as a conditioning technique, or whether it was being incorrectly applied for any other reason."[188]

8.182 As with a number of other witnesses, by the time of these discussions, Ayling could not remember stress positions being mentioned as a matter of concern. But he was well aware of the strength of Mercer's opposition to hooding and that, as he remembered it, Mercer was concerned that hooding was being used as a conditioning technique.[189] Ayling's own position was that he was not persuaded by Mercer's

[188] Ayling BMI03228-30
[189] Ayling BMI 70/52/25-53/19

argument that hooding was illegal in all circumstances; but he recognised the risk that it could constitute inhumane treatment and, in any event, cause reputational damage. Ayling said he was essentially undecided on the issue and he too raised the matter at NCHQ level; in his case with the NCHQ POLAD S034.[190] He could not remember S002 having mentioned a side effect that hooding helped to maintain the shock of capture.[191]

8.183 I am satisfied on the whole of the evidence that it is probable that at some stage between 30 March 2003 and 1 April 2003, a decision was taken by 1 (UK) Div headquarters that the NCHQ ought to be consulted about the hooding issue. By this stage the majority feeling within the Divisional headquarters (Brims, Vernon and Marriott included) had moved towards a decision to ban hooding whether or not the NCHQ agreed with Mercer's legal view. S002, relying significantly upon what he had heard from S012, S014, S040 and perhaps from early contact with NCHQ staff officers, was still arguing that the JFIT should be permitted to continue hooding. It is also relevant to note that at this stage the principal concern being addressed was hooding. Although "stress positions" had been raised initially, it seems that the concern that was still being debated related only to hooding.

31 March to 1 April: ICRC Raise Concerns

8.184 It will be remembered that S009, the Commanding Officer of the Prisoner of War Handling Organisation, took two steps to pursue his concerns about the hooding which he had seen: contacting Vernon and contacting the ICRC.

8.185 Whether or not it was as a direct result of being contacted by S009, I am satisfied that ICRC representatives did visit the TIF and saw hooding being used there at the JFIT. A number of military witnesses indicated that the ICRC had already visited the TIF. It appears likely that their representatives visited relatively frequently in late March and early April. However on one ICRC visit, which I find probably occurred on 31 March or 1 April 2003, the ICRC representatives were clearly concerned about the prisoner handling they saw in the JFIT.

8.186 The leaked February 2004 ICRC report, to which I shall return below, gave the specific date of 1 April 2003 as the day on which the ICRC raised concerns "*… about methods of ill-treatment used by military intelligence personnel to interrogate persons deprived of their liberty in the internment camp of Umm Qasr*".[192] The report gave the date of the ICRC raising concerns rather than the date of their actual visit. The report suggested, I find correctly, that the concerns were raised with the "political adviser" of the Commander of British Armed Forces, a reference to S034. S034 also put the date that this occurred as 1 April 2003.[193]

8.187 In her statement to the Inquiry, S034 described the ICRC's message to her in the following terms:[194]

[190] Ayling BMI 70/61/18-62/5
[191] Ayling BMI 70/55/9-14
[192] MOD012257, paragraph 32
[193] S034 BMI 72/17/1-25
[194] S034 BMI05190, paragraph 13

13. On 1st April 2003 I received a telephone call from the ICRC representative based in Qatar. He told me that the ICRC intended to make a formal complaint about the UK's treatment of prisoners at Um Qasr following an ICRC delegation visit. The delegation had been concerned in particular with the hooding of prisoners that they had witnessed in the JFIT. I told him that I had been unaware of the hooding issue or of any other issues surrounding prisoners, but that the UK took its international obligations very seriously and I would deal with the issue immediately thereby hopefully negating the need for the ICRC to make its formal complaint. We only had a brief conversation, as the representative had not been involved in the investigation. I cannot recall whether anything more was said on the hooding of prisoners; until I received this call I had no knowledge whatsoever as to the British military's position on hooding.

8.188 In this statement S034 was putting emphasis on the ICRC's concerns about hooding. It should also be noted that the concerns that S034 received were not direct from the ICRC representatives who were at the TIF but from the ICRC representative in Qatar.

8.189 In May 2004, S034 was asked to provide a note setting out her recollection of the ICRC complaint. This note included the following, slightly wider, description of the concerns raised by the ICRC:

> *"ICRC had access to Um Qasr camp and on 1 Apr I was notified by a senior ICRC rep that one of his team intended to make a formal complaint via Geneva of the treatment she had witnessed being meted out to special category prisoners at the camp. The complaint centred on the bagging, cuffing and harsh treatment of those limited numbers of prisoners subject to interrogation on entering the camp. Such prisoners included those suspected of being senior Baath party officials, those on the 'wanted' list, suspected terrorists, and those thought to be responsible for ordering the killing of the two EOD soldiers. And whilst the majority of PWs were compliant, a minority were disruptive and violent (and fights amongst PWs were not uncommon) hence the need for restraining measures. Examples the ICRC gave of harsh treatment included PWs being made to sit in the sun as a punishment for disruptive/violent behaviour, kicking, and use of stress positions."*[195]

8.190 I consider it is likely that the ICRC's concerns were raised via other routes as well as by the ICRC representative in Qatar telephoning S034.

8.191 Evidence from two witnesses demonstrated that the ICRC concerns came through a number of channels probably at about the same time (31 March to 1 April). Firstly, Maj Gavin Davies was the SO2 Legal at the NCHQ. In oral evidence to the Inquiry, Davies explained that he did not remember any issue regarding prisoner handling coming to his attention before the ICRC raised concerns. Specifically he said that he did not believe that the issue of the hooding of prisoners was raised with him before the ICRC concerns.[196] His first recollection of having any involvement in relation to hooding was hearing about the ICRC concerns in a telephone call from Frend whose roles included providing legal advice to the JFIT. Frend did not arrive at the JFIT until 29 March.

[195] MOD023002, paragraph 4
[196] Davies BMI 75/5/21-8/6

8.192 Secondly, as I have indicated above, in his oral evidence S002 suggested that it was only after he had written his memorandum to Mercer of 30 March 2003 that the ICRC concerns came to his attention.[197] As stated above, he said that he flew to the TIF immediately on the day that he was made aware of these concerns; and that he was able to hold an initial meeting with the ICRC representatives that day. He said that this visit was either on 1 April[198] or that the ICRC activity occurred on about 1 April.[199] S002's evidence was that he was summoned by Marriott and told that there had been a complaint by the ICRC that they had witnessed a prisoner hooded with two sandbags, one plastic and one hessian.[200]

8.193 The confidentiality which the ICRC maintains in its work, and which it sees as essential to its effectiveness, meant that it would not have been appropriate, nor did I think it was necessary, for the Inquiry to hear evidence from ICRC representatives who saw prisoners in the JFIT. An ICRC report dated February 2004 addressing allegations, amongst other things, of inappropriate conduct at the TIF, was leaked. [201]

8.194 The report raised numerous allegations that are not within my terms of reference. As a number of witnesses observed, the report also addressed coalition forces in terms that do not always permit the reader to understand whether it is UK or other coalition forces which are being referred to.

8.195 I set out below the most relevant sections of the February 2004:[202]

3.3 Umm Qasr (JFIT) and Camp Bucca (JIF/ICE)

28. Since the establishment of Umm Qasr camp and its successor, Camp Bucca, persons deprived of their liberty undergoing interrogation, whether they had been arrested by British, Danish, Dutch or Italian armed forces were segregated from other internees in a separate section of the camp designed for investigation. This section was initially operated by the British Armed Forces who called it Joint Field Intelligence Team (JFIT). On 7 April, its administration was handed over to the US Armed Forces, which renamed it Joint Interrogation Facility/Interrogation Control Element (JIF/ICE). On 25 September 2003, its administration was handed back to the British Armed Forces.

29. CF intelligence personnel interrogated persons deprived of their liberty of concern to them in this section. They were either accused of attacks against the CF or deemed to have an "intelligence value". They could be held there from a few days to several weeks, until their interrogation was completed. During a visit in September 2003, the ICRC interviewed in that section several persons deprived of their liberty that had been held there for periods from three to four weeks.

30. Initially, inmates were routinely treated by their guards with general contempt, with petty violence such as having orders screamed at them and being cursed, kicked, struck with rifle butts, roughed up or pushed around. They were reportedly handcuffed in the back and hooded for the duration of the interrogation and were prohibited from talking to each other or to the guards. Hooding appeared to be motivated by security concerns as well as to be part of standard intimidation techniques used by military intelligence personnel to frighten inmates into cooperating. This was combined with deliberately maintaining uncertainty about what would happen to the inmates, and a generally hostile attitude on the part of the guards. Conditions of internment improved according to the degree of cooperation of the persons deprived of his liberty. Interrogated persons deprived of their liberty were held in two separate sections. Those under initial investigation were reportedly not allowed to talk to each other (purportedly to avoid exchange of information and "versions of events" between them). They were not allowed to stand up or walk out of the tent but they had access to water with which to wash themselves. Once they had cooperated with their interrogators, they were transferred to the "privileged" tent where the above-mentioned restrictions were lifted.

197 S002 BMI 82/93/1-18
198 S002 BMI 82/55/16-19
199 S002 BMI 82/93/7-13
200 S002 BMI05835, paragraph 44
201 MOD012243-66
202 MOD012256-7

31. Persons deprived of their liberty undergoing interrogation by the CF were allegedly subjected to frequent cursing, insults and threats, both physical and verbal, such as having rifles aimed at them in a general way or directly against the temple, the back of the head, or the stomach, and threatened with transfer to Guantanamo, death or indefinite internment. Besides mentioning the general climate of intimidation maintained as one of the methods used to pressure persons deprived of their liberty to cooperate with their interrogators, none of those interviewed by the ICRC in Umm Qasr and Camp Bucca spoke of physical ill-treatment during interrogation. All allegations of ill-treatment referred to the phase of arrest, initial internment (at collecting points, holding areas) and "tactical questioning" by military intelligence officers attached to battle group units, prior to transfer to Camp Bucca.

3.4 Previous actions taken by the ICRC in 2003 on the issue of treatment

32. On 1 April, the ICRC informed orally the political advisor of the commander of British Armed Forces at the CF Central Command in Doha about methods of ill-treatment used by military intelligence personnel to interrogate persons deprived of their liberty in the internment camp of Umm Qasr. This intervention had the immediate effect to stop the systematic use of hoods and flexi-cuffs in the interrogation section of Umm Qasr. Brutal treatment of persons deprived of their liberty also allegedly ceased when the 800th MP Brigade took over the guarding of that section in Umm Qasr. UK Forces handed over Umm Qasr holding area to the 800th MP Brigade on 09.04.03. The 800th MP Brigade then built Camp Bucca two kilometers away.

8.196 In respect of the allegations of assaults contained in paragraph 30 of the report, these are not allegations for this Inquiry to resolve, even if they relate to UK Forces. I have already set out the evidence from S014 and S040 as to the extent to which hoods were used. Their evidence was that hoods were not used by UK Forces during interrogations. In relation to paragraph 31, there is a level of ambiguity in the report since firstly, it referred to coalition forces generally rather than UK Forces. Secondly, it suggested that persons "*undergoing interrogation*" were subject to cursing, insults, threats physical and verbal. But thirdly, it also stated that "besides" mentioning the general climate of intimidation, those interviewed did not complain of physical ill treatment during interrogation. All the allegations of ill-treatment referred to the phase of arrest, initial internment and collecting points and holding areas and tactical questioning at battlegroup level.

8.197 There was a reference in S034's report in May 2004 to "*…a very limited number of incidents of abuse (kicking etc) had been uncovered as a result of which the interrogator concerned had been removed from theatre*".[203] As I have indicated above, S014 and S040 remembered only a guard, not an interrogator, who was immediately removed from JFIT duties for kicking a prisoner to make him move.

8.198 Beyond the question of hooding and why it was being applied by UK Forces at the JFIT, it is not for this Inquiry to determine wider issues raised by the allegations contained in the ICRC's leaked February 2004 report.

[203] MOD020061

Chapter 5: 1 to 3 April 2003 – Hooding is Banned

8.199 On the evidence provided to the Inquiry, I am sure that both Burridge, the NCHQ Commander, and Brims, the GOC 1 (UK) Div, issued bans on hooding in theatre by verbal orders made between 1 and 3 April.

8.200 In examining how these orders came about, their timing, and communication between the NCHQ and 1 (UK) Div, I have concluded that there are some areas of uncertainty about the period 1 to 3 April 2003 which cannot be resolved. Given the passage of time, the fact that there appears to have been simultaneous consideration of the issues at three levels (TIF/JFIT, Division and NCHQ) and the fact that a war was being fought, this is not perhaps altogether surprising. I do not consider that these areas of uncertainly are significant as factors that can be described as in any way causative of the mistreatment of Baha Mousa and the other Detainees.

8.201 In addressing this period I shall be careful to distinguish between those facts about which I am sure, those which I think are more probable than not, and a few that I am simply unable to resolve.

Circa 1 April 2003: S002 urgently visits the JFIT; double hooding is stopped and more tents are demanded

8.202 I have referred above to the fact that it was only after S002 had written his memorandum of 30 March 2003 that he was made aware of complaints by the ICRC. It is probable that S002 learned of the ICRC concerns on 31 March or 1 April 2003 and immediately went to the TIF to investigate. It is not surprising that S002 viewed this matter as requiring his urgent attention. The ICRC was raising concerns including about double hooding and the use of plastic sandbags, which, on the sequence of events as I find they occurred, S002 had only just minuted the Divisional legal commander justifying and defending hooding from the intelligence perspective.

8.203 S002's account about this in his Inquiry witness statement was as follows:

> *"44 …On a morning in late March, possibly the 28th March 2003,[204] I was informed during a conversation with Col Marriott that the ICRC had witnessed and reported a prisoner being hooded at JFIT with two sandbags: one made from plastic, the other from hessian material. I remember that I was very angry because it was not only inhumane given the high temperatures but, in addition, the prisoner could have suffocated.*
>
> *45. I flew to the TIF within three hours and spoke to Lt Cdr S040. It became apparent that Lt Cdr S040 had ordered this. I understood that this double hooding had been implemented without my knowledge or approval. I could not believe that anyone could be so stupid.*
>
> *46. A meeting with the ICRC was convened at the JFIT that day, immediately after the double-hooding incident. I recall the meeting taking place on the vehicle track in the TIF. I was present, along with (I think) Maj Frend, Lt Col S009 and Lt Cdr S040. The ICRC sent a female representative, who was French. I don't recall anyone else being present.*

[204] As, above, I find that it in fact occurred two to three days later.

47. A number of other concerns were raised during that meeting regarding the treatment of prisoners, including the fact that detainees had apparently remained hooded in temperatures that had rapidly increased since our initial arrival. By way of illustration of the temperature increase, at the time of the invasion at the end of March the day time temperature was around 12 degrees Centigrade: by April, it was averaging 25 degrees, and by June it had risen to over 50 degrees. During the invasion, it got very cold at night, with temperatures dropping to minus one or two degrees. It also rained. We were therefore providing the prisoners with blankets and duvets to manage the cold.

48. The ICRC were also concerned that the prisoners had been left sitting in the sun due to the lack of tents and the limited water available. While I knew that the limited water supply affected both soldiers and detainees alike, I had not known that prisoners were sitting in the sun.

49. It was agreed that 'double hooding' (i.e. the practice of blindfolding a prisoner by hooding him with two sandbags, of whatever material) would be immediately and expressly prohibited, that we would review our prisoner handling processes and that a second meeting with the ICRC would be scheduled four or five days later in order to report back once we had held internal discussions. The double-hooding incident that I describe is the only one that I am aware of taking place. I did not consider it to be either standard, or acceptable, practice. I vaguely recall being told by Lt Cdr S040, though, that he had only ordered double hooding for the first time the previous evening, and the use of two hoods therefore lasted no longer than approximately 12-24 hours.

50. Immediately after that initial meeting, there was a discussion at the JFIT with me, [redacted name of S002's 2ic] and the rest of the JFIT specialists who were on shift at the time. I gave a specific direction that no hooding should take place. I also directed that cuffing should only take place with arms at the front, not at the back, and only applied to non-compliant prisoners. I ordered that prisoners were not to be left in the sun and that tents were to be found immediately to shade them, which they were. The Inquiry has asked whether the ban on double hooding and hooding were simultaneous. As soon as I became aware of the double hooding incident, it was stopped and directions were given to the JFIT to this effect, as described above. Within 24 hours hooding (of any kind) of detainees was banned at Divisional level. That order would have been communicated via Lt Col Mercer to the rest of the Division, through Brigade and then through the chain of command to Battlegroups."[205]

8.204 S002 was persuasive in his recollection of genuine anger at hearing of the use of double hooding involving plastic weave bags. As I have noted above, this raised the concern as to why he told the Court Martial that he had no recollection of the use of plastic bags .

8.205 S040 said that he would not have condoned a mix of hessian bags and plastic weave bags and that he did not remember this specific visit by S002 or him raising double hooding.[206] S040 accepted that more than one hessian bag would have been used if they were of poor quality, and that man-made sandbags were sometimes used instead of but not as well as hessian bags.[207]

8.206 I accept S002's evidence about the report he received of ICRC concerns; that he was angry; that he flew to the TIF; and that he raised the matter in strong terms with S040. I think it unlikely that S040 had approved the use of hessian sandbags together

[205] S002 BMI05835-7, paragraphs 44-50
[206] S040 BMI 67/199/6-201/2
[207] S040 BMI 67/187/3-187/11

with plastic weave bags, although prisoners may have been delivered like that to the JFIT. S040 had, however, tolerated the use of double hessian hooding and, on their own, the use of plastic weave bags. I accept that S002 stopped both practices. I fully accept that he ordered that additional tents should be found immediately and that this was achieved reasonably quickly. As I shall state in my conclusions, this reflected critically on those who had been running the JFIT. This action could and should have been taken sooner.

8.207 In S002's Inquiry witness statement he suggested that as well as stopping double hooding and the use of plastic weave sandbags, and giving the ICRC assurances in the first preliminary meeting with them, he also went on to give a specific direction that no hooding at all should take place. In his oral evidence, S002 said that he was *"very confident"* that he gave an immediate order that hooding should cease and that this was discussed with Brims the same evening.[208]

8.208 It is not easy to determine whether S002's recollection that he personally gave a direction that hooding should cease at the JFIT was accurate.

8.209 There is some support for it in the evidence of Frend. Having arrived at the JFIT on 29 March 2003, Frend remembered S002 saying at an early stage that there had been an order banning hooding. Frend referred to the fact that S002 had said that using plastic sandbags was wrong.[209] Frend's evidence was that by the time he spoke to S002 for the first time, there was already a "*moratorium*" on hooding, pending the meeting with the ICRC that was to take place on 6 April.[210]

8.210 Frend's position on hooding was that he did not consider it was unlawful *per se* if it was justified for reasons of security and its use limited in time to no more than was absolutely necessary. In this essentially he agreed with the views of Capt Brown and Maj Davies, the lawyers at the NCHQ. He was told by S002 that the use of sandbags for security reasons was something that they had been trained to do and had always done.[211]

8.211 On the other hand, neither S040 nor S014 remembered any order for hooding to cease before the order from Brims.[212]

8.212 Ultimately, I do not think it is necessary for me to determine whether or not S002 gave his own direction that hooding at the JFIT was to cease, although I accept that it is possible he did do so.

[208] S002 BMI 82/92/1-12
[209] Frend BMI02900, paragraphs 52-53
[210] Frend BMI 69/74/3-8
[211] Frend BMI 69/75/7-13; Frend BMI02900, paragraph 53; Frend BMI02901, paragraph 56
[212] S014 BMI06784, paragraph 68; S040 BMI07016, paragraph 119

NCHQ Staff Officers' Input and Major Gavin Davies's Email Addressing the Legality of Hooding (circa 1 April 2003)

Maj Gavin Davies

8.213 At some stage in late March or early April, Maj Davies, SO2 Legal at the NCC, composed an email to the Command Group of the NCHQ. In the only version disclosed to the Inquiry, the text alone is shown and not the date or the addressees. I consider that this email was probably written on about 1 April 2003, but it is not possible to be certain about its timing. The email was addressed to "*Sirs*", and the Christian name of S034. Maj Davies' evidence was that the "*Sirs*" to whom the email was addressed would have included Burridge, Maj Gen Peter Wall (Chief Of Staff), and Col David Capewell the Assistant Chief of Staff.[213] The email is significant because it reflected what was being conveyed to the NCHQ about the nature, extent and reason for hooding and other aspects of prisoner treatment at the JFIT. I set it out in full:[214]

Sirs, 9324

I have just spoken to Major 9312 , SO1 G2X at HQ 1 Div, about the subject of placing PWs in hoods at the UK PW facility in Um Qasr.

I asked him whether PWs were being placed in hoods, if they were, under what circumstances and for what duration, and for what purpose.

The information provided confirmed that a small percentage of the overall number of PWs being held (suspected High Value Intelligance PWs) were being placed in hoods for the period during which their intelligence status was being assessed (the preliminary interview usually takes 45-60 minutes), and, for those assessed as HVIs, during interrogation thereafter.

All those assessed as being non-HVI prisoners (the vast majority) are released immediately on completion of the preliminary phase into the main compound. Apart from the interview itself, they will have been hooded from the time of their arrival at the camp (as pre-nominated J2X prisoners) until their release back into the main body of the compound.

The length of time spent hooded depends on the numbers to be vetted and their place in the order of those to be assessed. Those assessed first will only be hooded for an hour or so, but if there are large numbers of potential HVI prisoners those assessed last have on occasion been hooded for a considerable period of time. Those assessed as HVI prisoners remain hooded for a further period prior to interrogation. Major 9312 assesses that during particularly busy periods a total of about ten HVI PW have been held in hoods for up to 24 hrs.

This has been a direct consequence of two factors - first, there being too few interpreters available to the J2X unit (7 only) and secondly, the fact that capturing units have been over-assessing the importance of PW. Efforts made to address the former would considerably reduce waiting times (and we will ask if this can receive a higher priority), but more significantly a FRAGO has already been issued to all 1 Div units to ensure that they assess potential HVIs more realistically, thus greatly reducing the numbers to be processed and directly impacting on the time taken to fully process any PW.

Throughout these periods all PW are fed and watered and provided with shelter from the sun in tents (open sided) within the J2X compound. No stress positions are implemented while PW are waiting to be interviewed. The decision on which physical positions they adopt and how often they change etc is a matter for them. The only restriction is that they may not sleep.

The use of hoods is considered necessary to protect not only members of the JFIT, but the PWs themselves. Many of the HVI prisoners are dangerous and indeed a significant proportion of those held are not compliant. This is therefore considered the only way (given the facilities available) to eliminate the possibility that interviewees may be identified as having co-operated and, therefore, become the victims of reprisals by fellow prisoners. The hooding also makes them far easier to control, isolating them from potential sources of support and removing any physical threat they may pose.

[213] Davies BMI 75/14/5-15/16
[214] MOD022122-3

In my opinion, this course of action will be lawful as long as it is carried out for valid military reasons, such as those outlined above, and as long as it is restricted to only that which is absolutely necessary in terms of time and effect. To ensure the lawfulness of hooding, G2X must take all steps possible to reduce the time that these PW spend in these hoods to a minimum. Maj [redacted] has made a good start towards this end.

The only other complaint received by Maj [redacted] was the fact that the HVI PWs were not being issued with soap and water for washing prior to interrogation. This was a complaint made to the ICRC representative by some PWs. Maj [redacted] has refused this request as he does not want these prisoners coming to interrogation refreshed after having washed themselves (the same reasoning behind preventing them sleeping while they are awaiting interrogation). Soap and water (and access to ablution facilities) are available immediately after release into the main compound.

No complaint has been made to Maj S002 to the effect that these PWs are being held in handcuffs. Even if they were being held in this manner, there would be no breach of our legal obligations as long as they were being so held for valid reasons, such as for reasons of security (and it could be argued that all those held in the J2X compound need to be handcuffed for security purposes due to their potentially dangerous and hostile dispositions) or during transit. However, the PWHO teams are all aware that PWs may not be held in handcuffs as a form of punishment.

I am hoping to speak to Maj David Freed (Army Legal Services), who provides legal advice to the JFITs, and is currently at the PWHO in Um Qasr for his assessment of the situation from a legal viewpoint, but I am thus far completely happy with Maj S002's assessment of the situation. I will provide an update immediately I have more information.

Tomorrow morning the ICRC representative is calling on HQ 1 (UK) Div to discuss these matters. This evening Cdr Brown has spoken with Cdr Legal at 1 Div and recommended the following:

1. The ICRC Rep should meet COS (if available) and not GOC (who need not be personally involved yet) nor Cdr Legal / or CO PWHO. The rationale is that COS will speak for GOC but not be expected to address issues himself, so allowing him to refer to his SMEs to verify / investigate etc.

2. If COS is content, he should -

a. welcome ICRC assistance and comments, and explore any of the recommendations made which are not immediately clear.

b. undertake to have these matters investigated and to respond within ? days

c. undertake to remedy problems immediately where they are verified as extant

d. undertake to make proposals where problems cannot be solved immediately

e. assure the ICRC of our intentions to all that we reasonable can to comply with our GC responsibilities.

I will provide a further update when available.

GAVIN R DAVIES
Maj
NCHQ SO2 Legal

8.214 I note in particular the following relevant aspects of this email:

(1) Maj Davies made no mention anywhere within the email of any order prohibiting hooding, whether by Burridge or Brims;

(2) the references to what S002 had, and had not, received by way of complaints, and the handling advice regarding the ICRC at the end of the email, makes it clear that this email was written after the ICRC had first raised their concerns;

(3) Maj Davies appears to be setting out what was happening on the ground at the JFIT based upon information he had received from S002. This is consistent with Maj Davies's evidence that he had not himself witnessed hooding;

(4) Maj Davies suggested that for a limited number of JFIT prisoners, the time spent hooded may have been up to 24 hours. This is to be contrasted with the evidence of S040 who, as noted above at paragraph 8.91, told the Inquiry that cumulatively some prisoners may have spent the equivalent of a number of days hooded, albeit with breaks when they were actually being interrogated;

(5) Maj Davies correctly reflected what the evidence of S014, S040 and S002 suggested, namely that prisoners were prevented from sleeping before interrogation. The implication is that this would be for not longer than 24 hours, and only for that long in a minority of cases;

(6) Frend had not yet been consulted or given advice on the issue, at least so far as Maj Davies was aware;

(7) Maj Davies was content that hooding was lawful so long as it was for security/prisoner of war safety reasons and so long as it was being restricted to that which was absolutely necessary in respect of time and effect. The HUMINT branch had to take all steps possible to minimise the time spent hooded. Although it is not certain, Maj Davies' reference to S002 having made "*a good start towards this end*" suggested that this email may well have been written after S002's second visit to the JFIT.[215] However, Maj Davies made no mention of either double hooding or hooding with plastic weave bags having occurred;[216] and

(8) Maj Davies made no mention of hooding having the side effect of prolonging the shock of capture.

8.215 In his Inquiry witness statement Maj Davies said of the advice that hooding was lawful if for security purposes and if restricted to what was absolutely necessary, that it was the position agreed between him and Capt Brown, and also "*…cleared with and agreed by PJHQ…*".[217] Maj Davies also said in his Inquiry witness statement that he did not know the reason why prisoners' sleep was restricted. However, I note that this evidence is inconsistent with his own email in which it is clear that this and not permitting prisoners to wash in the early stages, were to prevent prisoners from coming to interrogation refreshed. However, Maj Davies did not consider that keeping a prisoner awake for up to 24 hours was inhumane.[218]

8.216 In his oral evidence, Maj Davies agreed that he was aware that "*disorientation*" was one of the purposes of the use of hoods but he suggested that he understood this to be a facet of security:

> *"…if they were not able to get their bearings, communicate with one another, gain the moral support of having friends and colleagues around them, they were far less likely to pose a risk to the security of the guards and/or others in their immediate vicinity. That was what was described to me.*
>
> *Q. Was that from S002?*
>
> *A. That was, yes."*[219]

8.217 I asked Maj Davies whether hooding for a period of 24 hours ought to have caused alarm:

> *"THE CHAIRMAN: Even if you take all of this as you can sit down or adopt any position, but you are handcuffed, would you not be a little alarmed about having a hessian sack on your head for 24 hours?*

[215] Davies BMI 75/12/24-13/2: Davies said in his oral evidence that *"…I was told that the 24 hour period was exceptional and that they were taking matters to reduce the time that people were in hoods."*
[216] Davies BMI 75/36/18-19: "*…I had been instructed that hessian sandbags were being used*."
[217] Davies BMI04586, paragraph 18
[218] Davies BMI 75/23/25-26/3; Davies BMI04586, paragraph 19
[219] Davies BMI 75/55/23-56/6

A. Sir, the – I certainly think it would have been uncomfortable. The –

THE CHAIRMAN: "Uncomfortable" is putting it mildly, isn't it?

A. It would have been considerably uncomfortable, sir. I think I state that in my statement, that it would have been considerably uncomfortable. The fact of the matter was those were exceptional circumstances that had already taken place by the time it was reported to me and I was – in the conversations that I had with S002, it was made clear to me that they were the exception rather than the rule and that they were getting a handle on things so that that sort of thing would be far less likely to happen again.

THE CHAIRMAN: I wonder why you might not have said to them, "Well, look, for goodness' sake, 24 hours, you have to stop that straightaway".

A. As I said, the 24-hour period was briefed to me as being exceptional –

THE CHAIRMAN: I follow that. But even exceptional, would you not have wanted to say, "24 hours is out, you can't do that"?

A. It didn't occur to me to make that assessment, Sir, no, but I certainly wasn't happy with the fact that they had been put with a hessian sack, nor was S002. Those were the exceptions and he was taking steps to ensure that that did not happen again in the future and that length or period of time was being minimised as far as he possibly could. So at the point that the email that we discussed here was written, I was comfortable that steps were being taken to minimise the length of time so that these exceptional periods of up to 24 hours wouldn't be happening again."[220]

Capt Neil Brown

8.218 I find that Maj Davies was correct in his evidence that the advice which he gave in this email was in line with what was agreed with his legal superior, Capt Neil Brown. Once Mercer had told him of his concerns, Brown's response was to speak to the legal and intelligence staffs in the NCHQ, in particular Maj Davies and Duncan. In similar terms to Maj Davies, Brown said he made it clear in the advice that he gave that:

"…hooding was permissible only so long as absolutely necessary in these limited circumstances"[221]

And:

"It was my impression that in discussions it was understood by all the lawyers and other staff officers I dealt with that hooding for the purposes of interrogation was not permitted by the UK. This accorded with my general knowledge of the case law and Heath Directive and I was given assurances that hooding was not taking place for this purpose although I cannot recall whether this was from legal or other officers or both. It was also my view (and I advised) that the Law of Armed Conflict did not permit hooding for the purposes of interrogation, but did not prohibit the use of hooding in other situations and that it could be legitimate in limited circumstances, namely to protect the immediate physical safety of UK troops and/or operational security where, for example, PW were being transferred from one area to another within a UK facility"[222]

[220] Davies BMI 75/70/6-71/17
[221] Brown BMI05870, paragraph 55
[222] Brown BMI05870, paragraph 55

8.219 In addition, Brown's evidence was that he had been given the assurance that hooding with plastic bags had ceased.[223]

8.220 Brown suggested that this advice was discussed with Clapham, a member of the PJHQ legal branch in theatre augmenting the NCHQ team, and his superior at PJHQ, Quick.[224]

8.221 As to the shock of capture, Brown's evidence included:

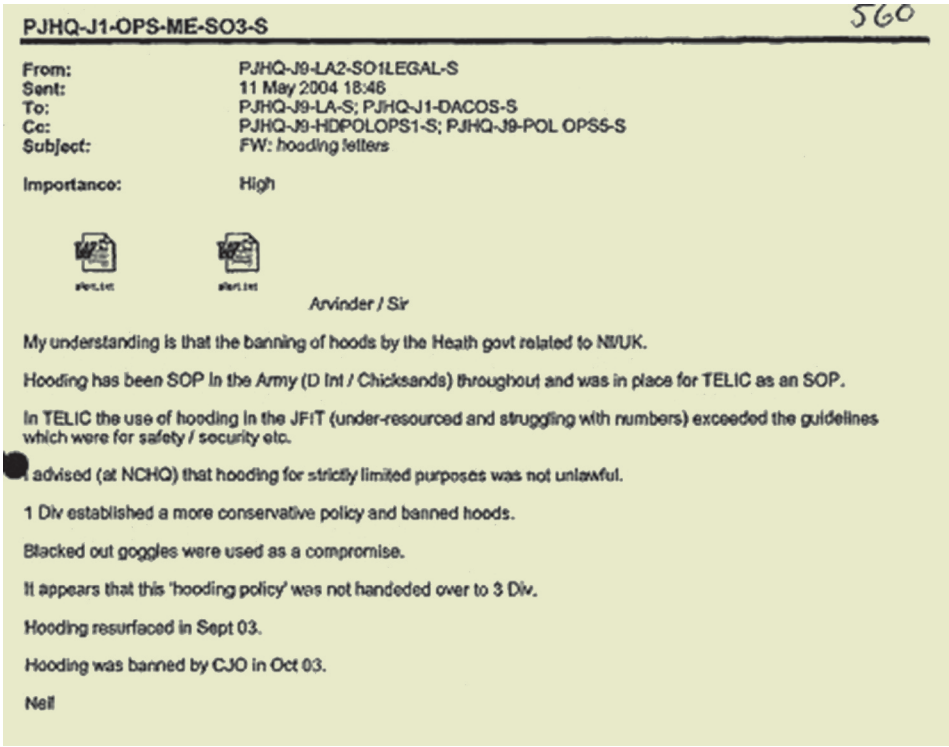
> *"A… In the course of the discussions, which involved intelligence officers as well as legal and operations officers, the intelligence officers did discuss intelligence considerations, but my view is the view that I expressed to you earlier, that hooding should not be used to prolong shock of capture.*
>
> *Q. So in what context was the shock of capture discussed?*
>
> *A. The sorts of procedures which I was briefed on were that guards would not become familiar with prisoners, wouldn't show them any overt signs of friendship, would let prisoners stay, if you like, slightly in isolation and not make efforts to make human contact with them before their first interview. Those were the sorts of things that were outlined to me.*
>
> *Q. In the context of hooding, was the shock of capture referred to, the effect that hooding may have upon that?*
>
> *A. It may have been part of the discussions, but I was always quite clear that that wasn't a legitimate purpose and sensible steps, such as I outlined a moment ago, should be taken to detach the effect of hooding for security purposes from the impact on interrogation."*[225]

8.222 Having taken this view, but understanding that there was another view expounded by Mercer, the essence of Brown's account to the Inquiry was that the approach was to impress on those running the JFIT the need to keep the use of hooding to a minimum and to engage with the ICRC at the planned meeting which eventually took place on 6 April 2003:

> *"A. The first order issue was whether hooding could be used at all and, having consulted to try and ascertain what exactly was happening, we took the view that we should find out from the ICRC, because Colonel Mercer had said that the ICRC were also concerned – find out from their representatives what view they had and therefore what scope was available to commanders to use hoods during the operation."*[226]

8.223 Brown was aware of Brims' order banning hooding but his recollection was that this came after the 6 April 2003 meeting.[227] But even when writing an email in May 2004, Brown did not appear to be aware that Burridge, his own Commander, had banned hooding as soon as he heard of the ICRC's concerns (see paragraph 8.227 below); he only referred to the Brims ban:[228]

[223] Brown BMI 75/106/12-23; Brown MOD000901
[224] Brown BMI05870, paragraph 55
[225] Brown BMI 75/99/8-100/3
[226] Brown BMI 75/90/8-15
[227] Brown BMI 75/120/13-25
[228] MOD020204



PJHQ-J1-OPS-ME-SO3-S

560

From: PJHQ-J9-LA2-SO1LEGAL-S
Sent: 11 May 2004 18:46
To: PJHQ-J9-LA-S; PJHQ-J1-DACOS-S
Cc: PJHQ-J9-HDPOLOPS1-S; PJHQ-J9-POL OPS5-S
Subject: FW: hooding letters

Importance: High

Arvinder / Sir

My understanding is that the banning of hoods by the Heath govt related to NI/UK.

Hooding has been SOP in the Army (D Int / Chicksands) throughout and was in place for TELIC as an SOP.

In TELIC the use of hooding in the JFIT (under-resourced and struggling with numbers) exceeded the guidelines which were for safety / security etc.

I advised (at NCHQ) that hooding for strictly limited purposes was not unlawful.

1 Div established a more conservative policy and banned hoods.

Blacked out goggles were used as a compromise.

It appears that this 'hooding policy' was not handeded over to 3 Div.

Hooding resurfaced in Sept 03.

Hooding was banned by CJO in Oct 03.

Neil

8.224 It would seem clear that Brown had advised that hooding was not in itself unlawful provided it was restricted to a period that was absolutely necessary and it was for security purposes. Against that background, one of the issues which arose in relation to Brown's evidence was whether his legal view was affected by his understanding of the scope of the 1972 ban on hooding, and/or his understanding of the applicability or otherwise of the ECHR.

8.225 This issue arose out of two emails sent by Brown in May 2004 when hooding and prisoner abuse was a high profile issue in the media.

8.226 The first was his email of 11 May 2004 which I have set out above at paragraph 8.223 and which stated *"My understanding is that the banning of hoods by the Heath govt related to NI/UK."*[229]

8.227 The second was an email written by Brown on 14 May 2004 over a year after the early stages of Op Telic, and nine months after Baha Mousa's death. The email provides some useful insights and I set it out in full with the passage relating to the ECHR highlighted:[230]

[229] MOD020204
[230] MOD020218-9

574

PJHQ-J1-OPS-ME-SO3-S

From: PJHQ-J9-LA2-SO1LEGAL-S
Sent: 14 May 2004 18:55
To: PJHQ-J3(MAR)MW-SO2-S
Cc: PJHQ-J3 DACOS C-S; PJHQ-J9-LA-S
Subject: HOODING

All

I thought it might be helpful to provide a brief synopsis of the relevant events last year during the period when the NCHQ was deployed. All of it is to the best of my recollection, 12 months after the event, and the morning after an overnight flight, but I believe that much of it will be able to be supported by correspondence at that time which I will try to recover. While some of my comments relate to matters in which I was directly involved, others are impresssions which I held at that time of what was a tactical issue.

Hooding was not part of any OP TELIC mission directive from CJO or the NCC and was not, as such, ordered by those Commanders. It was not referred to specifically in any orders. A significant amount of training was however provided on behaviour of troops in an armed conflict and this included the treatment of PWs etc.

I first heard of hooding shortly after the commencement of combat operations when I was contacted by Lt Col Mercer [redacted] Div Cmd Legal) who had visited the PW Camp and was concerned about its use there, and particularly at the JFIT. He was particularly concerned about large numbers of prisoners being left hooded for long periods (I believe that he spoke of 'many hours').

By way of background, the PW Camp included a JFIT facility. They were built by UK forces on a patch of earth near Umm Qasr the day after the land offensive started. My recollection is that the camp was built for 10K PWs but never had more than around 3K. The problem was that the camp (and JFIT facilities) were constructed in the expectation that the vast majority of PWs would be straightforward Iraqi military. Had this been the case both the general administration of the PWs and the selection of High Value prisoners for intelligence exploitation would have been straightforward (they have military ID / Rank etc). Instead almost 1/3 of those held were captured in civilian clothing. As a result, a couple of factors came into play -

1. Capturing units tended to over-categorise those lifted in civilian clothing who had been fighting against them.
2. The processing of POSSIBLE high-value prisoners became a much slower process.

This resulted in large numbers of prisoners being forced to wait in some cases for days prior to questioning and rendered useless what limited facilities which were available to keep PWs separate prior to questioning and between questioning sessions. The ICRC local representative also expressed concern about the use of hoods in these circumstances. I took the view that in very clearly defined circumstances (eg as an accepted method of ensuring safety / security immediately after capture) and for short periods the use of hoods would not be unlawful. Without [redacted]ing into any detail I had in mind the direction of the AG that ECHR did not apply (and UK case law in this area was as I understood it ECHR- related), and GC3 was the *lex specialis*. I determnined that this was a proper application of GC3 in what was an armed conflict. That said, the view at 1 Div was that a more conservative approach (a general ban) would not compromise operational effectiveness. That was of course an option available to GOC 1 Div.

At about this time (Apr 03 I believe) a meeting was convened at the PW Camp in April (date tbc) and attended by representatives of 1 Div, the PWHO (at that time a 1 Div unit), NCHQ (POLAD and SO2 Legal) and 2 ICRC representatives. [redacted], it was agreed that all safety and security requirements could be achieved by using blindfolding or blacked out goggles. As I recall, 1 Div issued direction to the effect although I cannot say whether that was for the DTDF and TQ facilities only or whether it also sought to extend the policy to PW handling how. I reported all of the developments of this issue to PJHQ in my regular sitreps, and my SO2 legal produced a short record (agreed by the NCHQ POLAD) of the ICRC meeting. I will try to recover these documents.

I was surprised when I joined PJHQ in January this year to hear that there had been a recurrence of the practice of hooding (for interrogation?) and also that CJO had issued orders which I think significantly duplicated the policy issued by GOC 1 Div 6 months before. I cannot account for what may appear to have been the reappearance of this policy, perhaps because the use of hooding for security/safety reasons is a common procedure.

I have heard that Chicksands have denied teaching hooding and suggested that there may be confusion in the minds of those who have completed the conduct after capture course during which students are hooded. I find this implausible. The people I have spoken to are not stupid. It seems to me more likely that hooding is taught but for actions immediately on capture or for prisoner handling (moving around a facility to be questioned etc) but not as a means of softening up or interrogation. The impression I have is based on informal discussions here in recent weeks

but is consistent with the perception I had last year.

I hope that this is useful.

Neil

8.228 In his Inquiry witness statement, Brown stated that he wished to make clear that it was his view from his legal training that there was a general ban on hooding for the purposes of interrogation albeit the ban arose out of cases in relation to operations in Northern Ireland. He knew that the ban was imposed by the Heath Government. Brown said that:

> *"…My email advice was attempting to explain that the case law, upon which the Army doctrine on interrogation was based, related to Northern Ireland. I was not intending to suggest that there was any geographical limitation on the application of the ban on hooding. In my view the use of hooding for interrogation purposes and the other matters upon which I have been asked to comment upon and have dealt within this statement were not permitted under the Law of Armed Conflict which I understood to be the applicable law in relation to the treatment of Prisoners of War during the armed conflict (OP TELIC 1)."*[231]

8.229 In his oral evidence, Brown was adamant that his phrase *"My understanding is that the banning of hoods by the Heath govt related to NI/UK"* did not mean that he understood the Heath Statement to be restricted to operations in the UK and Northern Ireland.[232]

8.230 The passage from Brown's email on 14 May set out above was put to Brown for comment in his oral evidence. His response was as follows:

> *"…I do not specifically – so that there is any concern to anyone who may read the transcript, Commodore – ask you about the Attorney's advice for the reasons that you will be well aware of and I do not ask you, therefore, to comment on what you say as to that in the paragraph. May I ask you this question in the light of what you there wrote? In the circumstances then pertaining in Iraq, whether ECHR applied or no, did it make any difference in your view as to the way in which prisoners could properly be treated?*
>
> *A. Sir, in our preparation for the operation, carefully assessing GC III, a Convention devoted entirely to prisoners of war, with the 140 articles setting out in great detail all of the protections and rights of prisoners of war, detaining states, receiving states and the ICRC, I found in that body of law the comprehensive guide, if you like, to the legal obligations that we had to meet. But in terms of the fundamental protections of prisoners, I didn't for a moment believe that Articles 13 and 14 in any way differed from other obligations, for example under the ECHR, in relation to torture and inhumane treatment.*
>
> *Q. So if I put it in terms of the use of hoods or the use of what are sometimes called "the five techniques" – and you will understand what I mean by that, I think – was the position altered, as it were, whether the ECHR applied or not, as to the treatment of detainees?*
>
> *A. No, sir.*
>
> *Q. Was that your view in 2003?*
>
> *A. Yes, sir.*
>
> *Q. Has that always remained your view?*
>
> *A. Yes, sir."*[233]

8.231 Leading Counsel for the Detainees sought to press this issue further with Brown:

> *Q. Next I would like to ask you about two lines further on, when you say in brackets:*
>
> *"... (UK case law in this area was as I understood it ECHR-related) ..."*
>
> *What UK case law were you there thinking of?*

[231] Brown BMI05872, paragraph 61
[232] Brown BMI 94/65/19-23
[233] Brown BMI 94/74/5-75/12

A. Sir, the only case I had in mind was Ireland v UK.

Q. Is it your evidence that you had that in mind when you were thinking about these questions in the spring of 2003?

A. I was aware, sir, of the case and that the decision in the case was that the five techniques together – and used for the purposes of interrogation – amounted to cruel and inhuman treatment or inhuman and degrading treatment. Sir, I was aware of no case law relating to the application of IHL.

Q. I see. Given the answer you have just given me, Commodore, would I be right in saying that your understanding of Ireland was that it prohibited hooding as a means to interrogation?

A. Yes, sir.

Q. But your view was also that IHL – in other words the Geneva Conventions – prohibited hooding as an aid to interrogation; is that right?

A. Yes, sir.

Q. So why mention the ECHR in this context at all?

A. I think, sir, I was trying to set out very briefly a complex issue which had been running for about a year and I mentioned it in relation to case law simply to say that I knew of no IHL cases when I was interpreting GC III. I relied on my studying of legal texts and legal publications and writings about IHL. I didn't know of any cases."[234]

8.232 Brown's oral evidence to the Inquiry as to how he viewed the law, namely that hooding for the purposes of interrogation was proscribed both under international humanitarian law and under the ECHR, was entirely coherent and justified. I am bound to observe, however, that it does not sit entirely happily with the actual wording of his two emails in May 2004, although I bear in mind that these were in no sense formal advices.

8.233 However, contrary to submissions made by the Detainees, I do not find that Brown's views as to the applicability or otherwise of the ECHR were significantly relevant to how the NCHQ actually approached the hooding issue. That is so for two main reasons:

(1) Whatever view Brown took of the applicability of the ECHR (and whether or not this was based on his understanding of the Attorney-General's advice), I accept that Brown knew that hooding for the purposes of interrogation was legally unjustified. His advice was a joint view with Maj Davies that hooding would not in itself be unlawful if it was being applied for security or prisoner safety purposes and was restricted to the period that was absolutely necessary.

(2) Whatever the legal advice, hooding ended up being the subject of a prohibition in theatre. It is true that there was a caveat to the Brims order to the effect that a unit could apply to Division for permission to use hoods but no such application was ever made. In any event, since Brown was well aware that hooding for the purposes of interrogation was not permitted, I do not see that there can be any correlation between the caveat to Brims's order and the views of Brown on the applicability of the ECHR.

[234] Brown BMI 94/78/9-79/15

8.234 The more material question is not the applicability of the ECHR but whether Brown, like other staff officers who supported the use of hoods (albeit with constraints and limitations) were right in the judgment they made about its humanity, and the degree to which they questioned its use.

8.235 Finally on this aspect, I should add that for the reasons set out in the ruling that I gave on 1 April 2010, I accepted that the Attorney-General's advice, and certain material relating to it, remained the subject of legal professional privilege.[235] The Government decided before the Inquiry to assert rather than waive privilege in respect of that material. Under s.22 of the Inquiries Act 2005, the Government was entitled to take that course. The Rt. Hon. Lord Goldsmith has made a number of public comments in different forums about his views at the time, but I found that these had not eroded the privilege in the full terms of his advice. In those circumstances, since the Attorney's advice was not introduced in evidence to the Inquiry, it would in my opinion be quite wrong to pass comment on whether or not the views held by Brown, or other lawyers, correctly reflected what the Attorney's advice had been.

8.236 Having considered all the evidence before the Inquiry I am satisfied that to the extent that issues arose in relation to the applicability of the ECHR to prisoners taken by the UK Forces in Iraq, they arose primarily in relation to the review of the detention of prisoners after their initial capture and detention at Battlegroup level; and to the transfer of prisoners to the custody of other states. Those issues are very far removed indeed from the real causes of the abuse of Baha Mousa and the other Detainees.

Lt Col Ewan Duncan

8.237 Having visited the TIF at an earlier stage, it is clear that Duncan was involved again when Mercer raised concerns at NCHQ level. It is likely that S002 (as his opposite number at Divisional level) also raised the issue with him. Mason may also have done so. Brown consulted Duncan amongst others and Duncan accepted that he discussed the issues with Brown and Clapham.[236]

8.238 Duncan's evidence was, however, a little unusual in that he remembered that the concern which Mercer raised was not hooding so much as the propriety of interrogation itself.[237] However, Duncan did accept that hooding would have emerged as part of this discussion.[238] Duncan remembered that this discussion was on the same day as his only visit to the TIF. In that regard, I think Duncan may again have been subconsciously compressing the timescale of events. It is more likely that this occurred once the issue of hooding had been raised up to NCHQ level by Mercer.

8.239 I consider that Duncan may understandably have been confused about aspects of detail in his evidence. However, I found him to be a largely impressive witness whose significant experience commands respect. He was blunt and straightforward when talking about his experience of hooding, stating that it was used in previous theatres for security and was effectively a standard practice.

[235] http://www.bahamousainquiry.org/linkedfiles/baha_mousa/key_documents/rulings/bmpi-agruling310310v1.pdf
[236] Duncan BMI06046-7, paragraph 47
[237] Duncan BMI06046, paragraph 46
[238] Duncan BMI 76/32/20-33/5

8.240 In dealing with Duncan's discussions with Vernon and S009, I have already referred to the fact that he supported the use of hoods on security and prisoner of war protection grounds given the conditions that applied at the time (see paragraphs 8.133 to 8.136 above).

8.241 An issue arises in Duncan's case as to whether he was being frank with the Inquiry on the extent to which the maintenance of the shock of capture played a part in the practice of hooding. In his Inquiry witness statement, Duncan stated that:

> *"From my experience and training, my general understanding is that the use of sandbags and/or blindfolds to deprive prisoners of their sight is acceptable in order to protect either their own safety (for example, to prevent others from identifying individuals who undergo questioning by UK forces) or the operational security of UK forces (for example, to prevent enemy PWs from learning about the layout of UK bases). The deprivation of sight may well have the effect of prolonging the shock of capture, but I have never been told that it is permissible to hood a prisoner for that purpose alone, i.e. where there is no security imperative."*[239]

He maintained this line in his oral evidence:

> *Q. The term the "shock of capture" is familiar to you?*
>
> *A. Yes, it is.*
>
> *Q. Should steps be taken, having captured a prisoner, to maintain that shock of capture or prolong it?*
>
> *A. Reasonable steps, yes.*
>
> *Q. Would those steps include hooding?*
>
> *A. No. Hooding was for a different purpose.*
>
> *Q. Did it, in your view, nonetheless have the capacity, if you like, to prolong or maintain the shock of capture?*
>
> *A. Perhaps and in specific circumstances and depending on the nature of the prisoner himself.*
>
> *Q. It was permissible, as far as you were concerned, to hood a prisoner to prolong the shock of capture?*
>
> *A. Not at all. No, it was not my view.*
>
> *Q. You say it wasn't your view. Were you taught that or told it or instructed it?*
>
> *A. I was never taught and never experienced the use of hooding to maintain the shock of capture.*
>
> *Q. But you were never told that you were not to?*
>
> *A. I was never told – sorry, could you repeat the latter part of your question?*
>
> *Q. Yes. Were you ever told specifically in any training or instruction when you were in the army that it was impermissible – you were not permitted – to hood a prisoner for the purpose of prolonging the shock of capture?*
>
> *A. No, I don't recollect being told that.*
>
> *Q. But it was nonetheless your view that you should not or one should not?*
>
> *A. My view is – and my experience, it was a widespread view."*[240]

[239] Duncan BMI06041, paragraph 18
[240] Duncan BMI 76/12/20-13/25

8.242 In their closing submissions, the Detainees argue that Duncan's evidence before the Inquiry *"…was not as straight talking as he would have been in his NCC role in 2003"*.[241] I have carefully read and taken account of their submissions. They rely amongst other things on an email exchange between Clapham and Duncan in September 2003.[242] I address that exchange in Part XIV of this Report. I do not accept that it established that Duncan believed that hooding should take place for the purposes of disorientation in the absence of a real security need to deprive prisoners of their sight.

8.243 As already indicated above, I found Duncan, as a witness, to be straightforward, articulate and entirely honest. I gained the impression that he took a robust and tough approach to his duties and his professional performance. He made it clear without equivocation that he believed hooding prisoners for security reasons, that is security for the camp and security for themselves, was entirely legitimate. He also made it clear that in his view hooding a prisoner for anything up to 48 hours was not inhumane. He made the point that hooding could assist interrogation because by preventing prisoners recognising each other it could make them more willing to speak to UK Forces. He thought that hooding was quicker and easier to apply than goggles.[243]

8.244 Duncan had long understood that hooding for security purposes was justified and a standard operating procedure. Despite his vast experience I disagree with his conclusions and justification for hooding. In my opinion the use of goggles rather than hoods, and better segregation, where necessary, achieve the same effect without all the disadvantages of hooding.

8.245 But none of this means that Duncan was in any way covering up some hidden motive for his support of hooding. Nevertheless, I conclude that in supporting hooding when other officers had raised concerns about it he misjudged the balance of security concerns against the humane treatment of prisoners. In my judgment Duncan ought to have taken a more questioning approach to the necessity of hooding and whether it could have been avoided altogether by taking alternative measures in the interest of treating prisoners humanely. If he had done so with his great experience and his position at NCHQ I have no doubt that his views would have carried considerable weight in the debate over hooding. However, I reject the suggestion that he was holding back in the evidence he gave to the Inquiry as to why he supported the retention of hooding. It is also of note that he noticed the paucity of doctrine in relation to deprivation of sight and related this to PJHQ.

Lt Col Nicholas Clapham

8.246 In his Inquiry witness statement, Clapham said that at some point during his time at the NCC during Op Telic 1, Brown informed him that Mercer had raised a concern regarding the hooding of UK prisoners of war.[244] In his oral evidence Clapham was less certain who told him of Mercer's concerns but imagined it was either Maj Davies or Brown.[245] Clapham did not remember discussing the matter directly with Mercer but did not discount the possibility that a discussion may have taken place.[246]

[241] SUB002475
[242] MOD022183-4
[243] Duncan BMI 75/57/7-58/17
[244] Clapham BMI06501, paragraph 47
[245] Clapham BMI 91/35/17-22
[246] Clapham BMI 91/43/5-21

8.247 Clapham said that Mercer's concerns prompted discussions and debate at NCHQ during which he learned that for some troops it was a standard operating procedure to hood at the point of capture. Clapham said he was surprised at this and had not been previously aware that this was a standard practice.[247]

8.248 Clapham remembered that at the same time as this initial debate he had a passing conversation with Duncan in which it was suggested that hoods were also being used at the JFIT.[248] Clapham told the Inquiry that this led to a debate regarding whether or not this was permissible. Clapham remembered discussing the issue with Brown and Maj Davies. Clapham's view was that hooding was only acceptable for the purposes of security.[249] However, he said that Brown and Maj Davies were not obliged to follow his views because he was not speaking as a legal representative from PJHQ.[250]

8.249 Clapham did not remember S002 suggesting that hooding had a side benefit of maintaining the shock of capture. Clapham initially suggested that if anybody had raised this with him it would have caused him concern. However, he clarified this saying that it would not have concerned him if there was, during the process of hooding or blindfolding for security, with a properly applied test of necessity, some minimal preservation of the shock of capture resulting from hoods being used.[251]

8.250 Clapham said that during the debate they also discussed Article 17 of the Geneva Convention, and the language, *"no physical or mental torture nor any form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever"*. He understood this to prohibit the use of hooding for interrogation purposes. Clapham said in his Inquiry witness statement that this provision was not seen as directly relevant to the situation where hoods were being used for security reasons, but was considered as follows: *"It may be that in debate we were exploring the perception that hoods might be seen as some form of coercion that offended the provision…"*.[252] During his oral evidence Clapham was asked whether this indicated that he had been aware that this perception was actually held by some officers in theatre. Clapham did not confirm this however, explaining that his phrase about the perception that hoods might be used as a form of coercion came from his own experience of being hooded; the process of exploring all the issues during the debate, and also an awareness that the ICRC had raised a concern about hooding.[253]

8.251 Clapham suggested that before the debate was concluded, Brims issued an order that prohibited the use of hoods outright. As Clapham remembered it, the order required the use of blacked-out goggles to deprive sight only when necessary for security reasons.[254]

[247] Clapham BMI 91/36/18-38/2; Clapham BMI06501, paragraph 47
[248] Clapham BMI06501, paragraph 48
[249] Clapham BMI 91/39/12-17; Clapham BMI06501-2, paragraph 49
[250] Clapham BMI06502, paragraph 49
[251] Clapham BMI 91/39/18-43/4
[252] Clapham BMI06502, paragraph 50
[253] Clapham BMI 91/44/14-47/6
[254] Clapham BMI06502, paragraph 49

Burridge's order that hooding was to stop (1 April 2003)

8.252 The fact that Brims issued a verbal order banning hooding was never seriously in doubt, whether at the Court Martial or in this Inquiry. However, it appeared to be much less known and appreciated that Burridge, as the National Contingent Commander, had also directed that hooding was to stop. No contemporaneous record was disclosed referring to Burridge's verbal direction, although it was mentioned in S034's 11 May 2004 minute in which she related her recollection of the ICRC concerns: "*… Air Marshal Burridge acted immediately on ICRC's complaint and gave orders that bagging was to stop forthwith as was harsh treatment…*".[255]

8.253 Having heard evidence from Burridge, S034 and Wall, who was then Burridge's Chief of Staff, I am sure that Burridge did give a direction that hooding was to stop.

8.254 In his Inquiry witness statement, Burridge said that prisoner handling was only brought to his attention twice: firstly, in respect of the filming of prisoners of war and secondly in relation to the ICRC complaint. As to the latter, Burridge said:[256]

26. The second instance was when, on 1 April 03, the ICRC verbally raised with my Political Adviser **S034** an issue about the treatment of prisoners of war at the JFIT within the TIF at Umm Qasr. The ICRC did not directly raise the issue with me personally. [redacted], the local ICRC representative in Qatar said to **S034** that one of his staff was going to make a formal representation to Geneva in respect of the prisoners of war at Umm Qasr being subjected to hooding and harsh treatment. By harsh treatment, my recollection was that it was asserted that Iraqi detainees had been held in the open and thus subject to prolonged exposure to high ambient temperatures. News of the ICRC's concern also came through to me via a different route, through my Legal Adviser (LEGAD) at NCC, Cdr Neil Brown, who I understand had been told this by the 1(UK) Div LEGAD, Lt Col Mercer. I can recall these events with reasonable precision for three reasons. First, this was the first time in my operational career that I had received any input from the ICRC. Secondly, the conduct reported was at variance with our doctrinal approach to the war in Iraq. Thirdly, this was potentially an issue that would be of importance to London.

27. The Inquiry refers me to the memorandum of **S034**, the Political Adviser (POLAD) at NCC, at MOD020060. To the best of my recollection, her account at MOD020061 is accurate. I remember being informed that the ICRC had complained of hooding and harsh treatment though not specifically the use of stress positions. My understanding was that hoods were being used at the JFIT because the large number of potential Category A prisoners caused anonymity and security concerns. There were many more such prisoners than had been anticipated. Many Iraqi personnel removed uniform before capture or were fighting in civilian clothes.

28. On rapidly calling together my LEGAD, POLAD and Chief of Staff, my immediate reaction over which I did not need to hesitate or reflect was simply to direct that 'this is to stop'. None of my senior staff at this meeting held any contrary views. The matter was clear-cut to all of us: there was

[255] MOD023002
[256] Burridge BMI05332-3

no debate. It was wrong and it was inappropriate in that it did not fit with the way that we needed to operate in order to create the conditions of trust with the Iraqi people that would yield a smooth transition to normality during the aftermath.

29. Since I am no longer a serving military officer, I am not aware of what documentary evidence still exists as to the way in which my direction that hooding and harsh treatment was to stop was passed down the command chain. I simply verbally briefed my LEGAD, POLAD and Chief of Staff to take the necessary command action and issue the appropriate instructions. I would expect it to have gone down the legal route, because in UK operational doctrine, the treatment of prisoners was a J9 (Legal) issue.

8.255 In his oral evidence, Burridge's approach was clear and persuasive. His evidence was to the effect that hooding had not come to his attention before hostilities. However, the moment the issue arose, his views were as they remain today. Firstly, that although there was a legal grey area about the security requirements for prisoners during their initial transport to the prisoner of war clearing facility, hooding in most circumstances would be inhumane. Secondly, that the use of hooding could, depending upon the circumstances, be in conflict with the intent of how UK Forces wanted to portray themselves to the Iraqi people. Even with the legal "*grey area*", the decision that hooding should stop does not appear to have been a difficult one for Burridge:

"Q. Just to be quite clear about it then, your views then would have been that within what you call the "grey area" there may be legitimate reason for using hoods?

A. I would find it very hard to find a legitimate reason.

Q. Would part of the reason for that be that, for example, one might use blindfolds or blacked-out goggles just as effectively?

A. Correct, and I should qualify my previous answer. It may be a grey area to lawyers; it would not be a grey area to commanders who were aware of the strategic intent of our campaign in Iraq.

Q. Why, in your view, would hoods be inhumane where, for example, blindfolds or goggles may be acceptable?

A. It seems to me that hooding does more in sensory deprivation terms than does a blindfold. It muffles hearing, it undoubtedly increases the temperature close to the skin, so in those aspects it is different than blindfolding.

Q. In 2003, would you have considered that hooding may itself be detrimental to health and/or risk to life?

A. In certain circumstances, absolutely, given the ambient temperatures in Iraq"[257]

8.256 As to the terms of his direction and its ambit, Burridge said this:

"Q… As we noted before, your immediate reaction that you did not hesitate about was to direct "this is to stop". Was that the order that you gave?

A. That was the order I gave.

[257] Burridge BMI 98/11/12-12/8

Q. And by "this", what did you mean?

A. I meant, to the best of my recollection, using those words, that: the use of hoods, which was the basis of a potential ICRC complaint, was both unlawful and inappropriate in my view. I am the commander, I am responsible, this is an order.

Q. You will be perhaps aware that the Inquiry has heard quite a lot of evidence that such an order, if given, does not appear to have been recorded or indeed to any great extent disseminated.

A. I am aware of that.

Q. Was the order, Air Chief Marshal, given in terms that could have been interpreted that this meant that this was to stop at Umm Qasr?

A. No.

Q. It was, what, a wider order than that?

A. It was clear from my reaction that this was inappropriate and unlawful in my view.

Q. But you didn't specifically say, did you, that hooding was to stop, as it were, everywhere?

A. I think it was clear to my subordinates that that is what I meant"[258]

8.257 As far as he could remember, Burridge gave this order after a meeting in his office. He thought that the meeting had broken up and that he gave the direction in a conversation in the corridor outside of his room.[259]

8.258 Burridge said that he would have expected Wall, his Chief of Staff, to oversee the staff processing of his order to make it happen, and that he would have expected it to have gone down the J9 legal chain or J3 operations chain, perhaps being communicated in the first instance from NCHQ Chief of Staff (Wall) to Divisional Chief of Staff (Marriott). He said that it would have been best practice for the order to have been committed to writing at some stage, whether in a signal, email or downrep. However, given the nature of the tempo of operations at the time, Burridge accepted that it is possible that it just had to take its place amongst all the other factors that were being dealt with.[260] It would have been desirable, but there was no absolute need at the time, to put the order in writing, although this would have been best practice.[261]

8.259 As to Brims' own order prohibiting hooding, Burridge was frank in prefacing his evidence with the caution that it was seven years since these events and he was clearly not certain of timings. However, Burridge believed that it was reported to him on the evening of 1 April that Division had already banned hooding.[262]

8.260 I think it right to set out fully the important evidence that Burridge gave as regards the wider situation in which the hooding issue had arisen:

"…The period at the end of March was characterised by very bad weather. A sand storm was across the operating area and in Iraq a sand storm is a strong wind like – almost like fog with sand in it. Visibility was almost zero and it made it difficult to conduct land operations. By 31 March it was clear that Republican guard divisions were repositioning for the defence of Baghdad. There were divisions to the north which needed to come to the south because

[258] Burridge BMI 98/30/9-31/10
[259] Burridge BMI 98/39/21-40/21
[260] Burridge BMI 98/31/11-32/15
[261] Burridge BMI 98/35/14-19; Burridge BMI 98/50/24-51/2
[262] Burridge BMI 98/33/16

simultaneously the two US corps, accompanied by significant coalition air power, were positioned 120 miles south of Baghdad. There were two points of significance in that: firstly, we believed that that would be the point at which the Iraqis would use chemical weapons; we were within range of the artillery that they kept and what we believed would be their chemical weapon installation at Al Kut. Therefore this was a tense time.

We lost location of two Republican guard divisions. We realised rapidly after that that was because they had been destroyed from the air. We were flying 750 sorties a day against the land – the Iraqi land forces south of Baghdad. We were flying a total of 1,200 sorties every day. Much of that would involve high reaction targeting. Of that air power 10 per cent was UK. At the same time, the Iraqis were continuing to fire surface to air missiles at our aircraft – an average day in that period was 80 and, by 2 April, more than 100 – as well as anti-aircraft fire.

Subsequently – or rather simultaneously – UK forces were around Basra. We did not siege Basra. That was not in accordance with our intent. We controlled the bridges and, at around that period, I recall that the Baath militia were violently gunning down citizens of Basra as they tried to leave across those bridges.

I believe on 2 April, it must have been, that we located the nerve centre of the Baath military control and attacked it from the air and we killed 200. I believe later on in that period, probably the next day, we located the commander in southern Iraq, in Basra, known as "Chemical Ali", and we attacked his headquarters as well. This allowed the people of Basra to gain strength from the coalition intent, it allowed the division to make an initial entry into Basra and withdraw and then subsequently to dominate the ground.

At the same time, 15 miles away in Al Zabia, by 3 April, UK forces were wearing berets not body armour. This is the complexity of the theatre, the texture of warfare with a very high intensity warfare going on around Baghdad through to the semblance of normality arising in Al Zabia. The UK Government had a stake in all of that. This was probably the most intense period of joint manoeuvre warfare that we have seen since the Second World War.

Q. Thank you. Without wanting to make light of the issues with which this Inquiry is concerned, can you place within that general context the relative importance of the potential complaint to the ICRC and the issue about hooding on 1 April 2003?

A. It was but one grain of sand, albeit an important grain of sand, amongst many. That is not to make light because, actually, the intent to gain hearts and minds depends on getting all of those sorts of things right and getting one wrong can immediately devalue the others."[263]

8.261 S034 said she informed Burridge of the ICRC concern as soon as she had finished the telephone call from the ICRC representative. Consistent with Burridge's own account, S034 told the Inquiry that Burridge was *"…alarmed…"* and immediately gave orders that hooding was to cease, as were the practices described by the ICRC.[264]

8.262 In his Inquiry witness statement, Wall indicated that the issue of prisoner of war handling at the TIF was the only prisoner of war incident that he remembered during his time as the NCHQ Chief of Staff:

"…There was a question as to whether PWs should be hooded. On the one hand this was thought to be inhumane and inconsistent with a liberation operation; on the other hand there was an onus to protect the identity of some prisoners to protect them from reprisals from other Iraqis in custody. The HQ's Policy Adviser, S034 visited Umm Qasr. I think she was

[263] Burridge BMI 98/42/6-44/20
[264] S034 BMI05191, paragraph 14

accompanied by an ICRC representative we had been keeping abreast of our plans. I cannot recall precisely how I became aware of this prisoner handling issue or the detail of the arguments. I suspect that this would have arisen through discussion at the daily command group meeting chaired by Air Marshal Burridge at the NCHQ. As a consequence, Air Marshal Burridge, ordered that hooding should cease, and dark goggles should be used to protect identity. I do not now recall who said what, or how the policy was communicated.

Such issues were obviously important but they took their place with all the other activity going on; Saddam's regime was still in being and UK forces were facing the challenge of stabilising the situation in Basra."[265]

8.263 In oral evidence, Wall was, not surprisingly, unsure of the precise sequence of events. However, he thought that the ICRC concern was the first and only time that hooding came to his attention. Wall told the Inquiry that he knew that a discussion had been going on, and he remembered discussions about the extent to which hooding might be applicable and appropriate where it was necessary to preserve the identity of people who were being detained from other detainees, and where sight deprivation might preserve security. Wall told the Inquiry that he was not at the time aware of quite how disparate the legal opinion was but he believed that this had been overridden by the clear direction given by both Burridge and Brims. He suggested that their orders were at about the same time and possibly related, although he could not be sure which came first. He was entirely confident that Burridge had himself given a direction that hooding was to stop.

8.264 When he was asked about the dissemination of Burridge's order, Wall explained:

A. I don't recall how the order was passed, but I do now know that at about the same time General Brims issued the same order effectively to his people, which is the conduit through which Air Marshal Burridge's order would have reached folks on the ground.

Q. If Air Marshal Burridge issued the order, as his chief of staff, did you have responsibility for cascading it?

A. Yes.

Q. Did you do that?

A. I can't remember how I did it, but it could have happened in a number of ways.

Q. Was anything ever put in writing –

A. No, I don't think it was, but oral orders and oral direction were very much part of our business.

Q. But here was obviously an order that was born of something that was concerning to Air Marshal Burridge and indeed to General Brims, as we shall hear no doubt, and it may have been something which was changing an operating procedure for soldiers; a standard operating procedure, according to quite a lot of the evidence the Inquiry has heard. In those circumstances, shouldn't this order have been in writing?

A. Not necessarily, and it may well have been reflected in some of the operational logs as an order passed verbally.

Q. Would it have been desirable to have it in writing?

A. Well, I think in hindsight it certainly appears so, but it didn't necessarily merit that sort of treatment at the time. We, as a matter of habit, do an awful lot of our direction by word of mouth, conference calls and phone calls and so on and so forth"[266]

[265] Wall BMI04509, paragraphs 11-12
[266] Wall BMI 97/101/1-102/6

Brims Bans Hooding

8.265 I have already referred to Brims' concerns following his own visit to the TIF, his recollection that he banned hooding on the same day as his visit, and to my finding that Brims in this regard innocently but mistakenly truncated the timescales of events.

8.266 However, I have no doubt that Brims did give a verbal order that hooding should cease. Brims' own evidence was that:

> *"…For me, as a matter of operational policy, we simply did not want to be hooding our prisoners in any circumstances. Therefore I decided that from then on, hooding was not to be used. However, I also said that if anyone though that they did need to hood for security or operational reasons, then the could apply to Division for permission to do so, and make the case, but the general position was to be no hooding under any circumstances*
>
> *… As I remember I told my CoS Colonel Marriott to relay this order; I do not know how or when he did so. It would be routine for him to have given instructions to others to stop the activity, including to those at the POW Handling Facility. He might have done so orally or by written order, I don't know. I think it is fair to point out that in retrospect, the subject matter of this meeting has obviously become very significant. However it is important to say that at the time, it was just one issue in a busy day, in the middle of fighting a war; just one item in routine meeting after a visit to troops on the ground…. I would have such meetings several times every day. For me, it was a matter of detail that I corrected because I thought it was inappropriate. However, it did not have any great significance at the time..."*[267]

8.267 In oral evidence, Brims said that he made this order notwithstanding that Mercer had told him that there was a difference of legal opinion between Mercer's own view that the use of sandbag hooding was not legal, and the views of the legal adviser at the Prisoner of War Handling Organisation and the NCHQ who took the contrary view.[268] Brims order was to stop using hoods altogether for all purposes.[269] He said that he left the opportunity for an exception because *"…those people who argued for the use of hoods as a means of depriving sight wanted to leave that opportunity present"*. However, no such case for an exception was ever made during his time as the GOC.[270] Brims did not himself feel that there was any need to give the order particular emphasis. He was not aware at the time that some soldiers might have viewed hooding prisoners at the point of capture as a standard operating procedure. By the time he gave oral evidence to the Inquiry, Brims was aware that some soldiers may have seen hooding as a standard operating procedure, though he had still not seen any written standard operating procedure to that effect.[271]

8.268 I understood Brims to accept a command responsibility for the fact that his order had only been patchily received, while making the point that what he himself did had been perfectly normal for the operating situation at the time:

[267] Brims BMI07395, paragraphs 49-50
[268] Brims BMI 103/27/6-19
[269] Brims BMI 103/30/22-31/9
[270] Brims BMI 103/33/3-17
[271] Brims BMI 103/34/15-22

"Q… If it is the case that subsequently – and again the Inquiry has heard quite a lot of evidence – that order appears not to have been carried through by soldiers on the ground at least in a number of instances, that is to say the order was not being complied with, and there is the suggestion that the order had not been received, indeed, by some units, how could that have come about and whose responsibility would it be?

A. Well, the communication within the division – my orders and the procedures within division are my responsibility. I agree with you, I have seen evidence that has been shown to me that in some cases my order has not got through. Equally I have seen evidence where my order has got through. So I would suggest that the order has gone through patchily. That is regrettable. I accept full responsibility for that.

Q. Where does –

A. But I had given out my order, I had given it out as is perfectly normal within the way we operate and it had subsequently gone out.

Q. I am not looking necessarily for you, as it were, to pin the blame on individuals, but within the system, can you assist as to how your order may have gone out patchily, where the defects may have occurred?

A. In my experience, communication is a two-way process and quite a lot of things go out and get into a bit of a muddle sometimes. If this had been something that I felt was absolutely vital to the prosecution of the mission, I'd have given out something very precise and perhaps would have got on to the radio myself at the evening update and given out the instruction, which I often did. But it wasn't something that struck me – this was an issue that wasn't, at the time, something which was causing me enormous concern.

Q. So it wasn't an issue which was, if you like, at the top of your priority list?

A. Correct, at the time.

Q. At the time. We understand you would have had a million other issues to deal with in the –

A. Yes.

Q. – situation that the Inquiry has now heard much about. Accepting that, General, would you now accept that, perhaps, not just that issue, but prisoner handling did not have the priority that perhaps it ought to have had?

A. Well, with the benefit of hindsight, we wouldn't be here today if there wasn't a problem. But, at the time there had been no lessons that I was aware of from recent operations where the prisoner of war handling had been an issue – and I am thinking of Kosovos, Bosnias, East Timor – I could go on – and indeed it would be Operation Granby, the previous operation in Iraq."[272]

8.269 Brims said that at the time he had no reason to doubt that his order would be disseminated in the normal way via his Chief of Staff, and he would have regarded dissemination over the radio net as an adequate and appropriate way of cascading the order.[273] The context against which the hooding issue arose was described by Brims in the following terms:

[272] Brims BMI 103/37/17-39/18
[273] Brims BMI 103/65/23-66/6

"A. I think the order – my decision was at the end of March. At the end of March, my whole focus was on achieving the mission, which was securing the flank as the American armed forces moved north towards Baghdad. We had to hold some vital ground to achieve that. We had to hold the oil infrastructure, which we and the Americans had captured, and I was being asked down the American chain of command, "Are you holding the oil infrastructure?" – we got almost that daily question, and we did, of course. I had to deal with the possibility of a humanitarian disaster and, above all, my greatest concern was the use of a chemical weapon. If a chemical weapon had been fired into Basra, even if it was just one – and you potentially would have a city of a million and a quarter people in panic – how were we going to achieve that and the logistics to be able to deal with those people. I was going to have to get into the urban areas, Al Zubyr, which I think I got into around about that time – I can't remember – but certainly I was going to have to get into Basra at some stage. These were the things that were on my mind, and finally getting into the urban areas, I was desperately trying to do it without trashing the place, without spilling too much blood, British or Iraqi.

Q. Finally this: where physically was the division at the end of March/early April 2003?

A. The headquarters?

Q. Yes.

A. It was in the desert.

Q. And you were living effectively out of vehicles at that stage?

A. Yes."[274]

8.270 As to the timing of this order, Mercer's diary for Thursday 3 April recorded the following:[275]

lying. I do not think the war will last much longer. At the same time, I gained a minor victory as I managed to prevent Prisoners of War being hooded by interrogators. I referred the matter to the General on Saturday and said that it was a breach of the law of International Armed Conflict. G2 tried to argue that it was approved by the Government but when I checked there was no mention of hooding. Hopefully law brings some humanity to the battlefield. We have been told that we should be leaving the desert at about the beginning of May so we only have about four weeks to go. It will be a real endurance test in this heat - better start pacing myself although Basra will make it more interesting.

8.271 The reference to Mercer having referred the matter to Brims on Saturday, fits with Mercer's memorandum of Saturday 29 March. This diary note is strong evidence that Brims' verbal order was issued no later than 3 April 2003. It is not entirely clear from this whether the order was issued on that date or at some time slightly earlier. Although Burridge said that his recollection may have been affected by the passage of time, his recollection was that it was as early as the evening of 1 April 2003 that he heard that Brims had himself banned hooding.[276]

[274] Brims BMI 103/67/24-69/6
[275] MOD019890
[276] Burridge BMI 98/33/16-19

8.272 Mercer's evidence was that it was Marriott, as Chief of Staff, who had actually issued the order. He said it was an oral order.[277] S002 remembered Marriott giving the order on the ptarmigan telephone system on one of the evening calls, when he, S002, was physically present and the Brigades would have been listening in to the conference.[278]

8.273 Like Brims, Marriott sought in his evidence to put the hooding issue into the context of the pace and demands of the events at the time. He said that hooding would have been a minor item on a long agenda. In his Inquiry witness statement, he commented:

> *"The GOC made the decision to stop hooding, and that blacked out goggles should be used instead where sight deprivation was necessary for security purposes. I think that this order was passed on through a divisional conference call to the whole division, including Brigades, on the ptarmigan system in late March 2003 but I cannot be sure of the date nor of who passed it on. It could have been me, but as stated at paragraph 18 above, it may have been Maj. Maciejewski in my absence. The watchkeepers on the other end of this conference call may well have kept a note. The orders should then have been passed down through the chain of command to the Units on the ground. These conference calls normally last about half an hour and all the Brigade Commanders, among others at Brigade level, would be at the other end of this call, usually at the Brigade HQ's sitting around a "bird table" listening in. Normally these conference calls would include approximately 60 to 70 people. The orders passed on through such conferences would sometimes, but not always, be drawn up in the form of a FRAGO later. At the time hooding would have been a very minor item on a very long agenda and it may have just been a one-liner. It may not have subsequently been confirmed in writing – I cannot now remember. At the time I would have considered the issue very minor, given the context of the fight at the time."*[279]

8.274 Another similarity between Brims and Marriott was that Marriott was also unaware that the use of sandbags to hood prisoners at the point of capture may have been seen as a standard operating procedure by soldiers:

> *Q. The Inquiry has heard quite a lot of evidence from soldiers who suggest that the use of sandbags to hood prisoners, particularly at the point of capture, was an SOP, a standard operating procedure. Were you aware that sandbags were used in that way as a standard operating procedure to hood prisoners at the point of capture?*
>
> *A. I was not aware. As the chief of staff, I was rarely allowed out of the headquarters"*[280]

8.275 The prime means of orders being given at this time was by oral order:

[277] Mercer BMI 68/52/13-20
[278] S002 BMI 82/118/21-119/1
[279] Marriott BMI06133, paragraph 23
[280] Marriott BMI 98/159/10-18

> *Q. – the GOC. You describe in paragraph 15 your role as being the "staff linchpin". You ensured, did you, that whatever Major General Brims directed was carried through?*
>
> *A. Yes, I think that's a good way to describe the role of the chief of staff. He would state what he wanted to achieve, we would work out how he might do it and then it would be our task – and I am the head of his staff – to ensure that his orders were passed down.*
>
> *Q. And in ensuring that his orders were passed down, what, in practice, did that involve?*
>
> *A. In practice it meant giving them out.*
>
> *Q. And to whom would you give them out?*
>
> *A. I gave orders out to the staff and then a number of staff branches and they would then trickle those orders out down through their own individual columns and, importantly and relevant here, I used to run the twice-daily divisional conference calls, by which his orders were passed down to the units within the division.*
>
> *Q. By conference call, therefore, the orders would be given orally and not in writing?*
>
> *A. There are many ways of giving out the orders, but the prime means at the time was undoubtedly oral because events were moving very fast indeed and you need to consider the context in which we were operating at the time"*[281]

8.276 Marriott explained that it was "*ferociously busy*" at the time, and there were a vast amount of orders required. Some orders would be underscored in writing but it was a matter of judgment. Sometimes Brims himself would require the order to be underlined in writing or Marriott or another staff officer might take that decision.[282] Marriott did not in fact remember the qualification to Brims' order to the effect that an application could be made to Division.[283]

8.277 Maj Justin Maciejewski was the SO2 G3 Operations, the lead operations officer for 1 (UK) Div. When Marriott's evidence was raised with him, Maciejewski explained why he thought it was more likely that Marriott as the Chief of Staff or Brims himself would have given the oral order prohibiting hooding:

> *"A. I don't believe – I have no recollection of giving that on the ptarmigan conference call and my understanding – my recollection of the discussions being held and the level at which they were being held, in the corner of the tent, and the fact that I wasn't involved in those discussions leads me to think that it's more likely that it was given by the chief of staff or the GOC, only because it was lieutenant colonels, full colonels and a general discussing it in the corner, with some G2 intelligence specialists. Therefore – when it was an operational matter, I would be intimately involved in it and I would often give the direction myself on the ptarmigan conference call. In a slightly odd issue like this, which it would have seemed odd at the time compared to all the other things that were going on in the headquarters, I think it is less likely that I would have given it."*[284]

8.278 Maj George Waters, the Divisional SO2 G2 (intelligence), indicated to the Inquiry that reading other evidence had brought back a recollection of the circumstances in which the oral order prohibiting hooding was given:

[281] Marriott BMI 98/141/18-142/19
[282] Marriott BMI 98/143/4-144/20
[283] Marriott BMI 98/162/24-163/6
[284] Maciejewski BMI 72/154/23-155/14

"Q… As you sit there now, how do you recall that a prohibition on the use of hoods was communicated? Who did it come from and how was it communicated?

A. Having had the benefit of seeing some other witness' statements, I do now recall that the prohibition was issued by the general officer commanding, General Brims. It was promulgated at a divisional bird table update, which is to say that it was promulgated to all the divisional staff and it would have been promulgated to all the people who were on the other end of the divisional net, so the brigade headquarters and the like, via a verbal order.

Q. If we just break that down. The meeting that you describe with General Brims is some members of the divisional staff, what, would have been physically present in the same room?

A. Yes, a significant number of the divisional staff are – I don't know if you know how a divisional bird table works, but essentially all the representatives of the divisional headquarters are there around the table and all chip in as is appropriate. In this case it would have been promulgated, you know, to the whole divisional staff and to subordinate formations.

Q. So to get the flavour of it, what, the senior staff officers for each of the branches within the divisional headquarters are present?

A. Correct or their representatives, if they are away on other business.

Q. All right. You mentioned the radio net. Would that meeting also include some who would be in other locations and would be chipping in by telephone or by radio link?

A. Yes, absolutely.

Q. Would that have included what I think at that time would have been three brigade commanders?

A. Yes, it should have – them or their chiefs of staff. It's probably worth adding the caveat that the communication systems were pretty unreliable at times.

Q. Now, it's right, isn't it – and I don't mean it as a criticism – that that's not a matter that you referred to in your statement to the Inquiry last year?

A. No, that's correct.

Q. You say that it's something that has come back to you having read other witnesses' statements. How confident are you that that verbal order was actually given at a divisional bird table meeting, as you have described it?

A. I'm pretty confident that that happened."[285]

8.279 Just as Marriott, Maciejewski and S002 were somewhat uncertain in their recollections as to how the oral order was disseminated so too the evidence of others within 1 (UK) Div and 7 Armoured Brigade suggested the "patchy" nature in which the order was received.

8.280 For example, the Deputy Chief of Staff for 1 (UK) Div, Col Andrew Cowling, said in evidence to the Inquiry that he was never aware of an oral order banning hooding issued by Brims being given at a divisional conference call nor of any procedures or checks to ensure the order was being complied with.[286] However, Cowling did state that this would not necessarily be a remarkable state of affairs:

[285] Waters BMI 71/110/25-112/22
[286] Cowling BMI07166, paragraph 41

> *"Q. So you never became aware, did you, if an order were issued, as the Inquiry has been told, on or about 3 April, that hooding should cease perhaps for all purposes? You were simply never aware of that?*
>
> *A. I was not aware.*
>
> *Q. Again, as the deputy chief of staff, does it surprise you that an order changing what many have described as a "standard operating procedure" – that an order of that nature coming from General Brims, you were not made aware of it?*
>
> *A. I'm not surprised. Life was fraught, hectic, and to have received their order, while I would recognise that my staff would have done and would have passed it on, I might have been out of the headquarters at that particular time, visiting one of the many regiments that I was coordinating. I could have been anywhere.*
>
> *Q. If this was changing a standard operating procedure – a matter of principle, as some have described it – is not that something that you ought to have known about?*
>
> *A. No. I would have expected the commanding officers of my regiments to understand that and I would have expected it to have been passed on to them, but there were so many changes, variations, we were so agile, it was – there was so much movement, momentum"*[287]

8.281 The Inquiry heard evidence from a number of officers whose roles, it might be thought, would have necessitated them knowing about the ban on hooding. For example, Maj Simon Wilson, who became the SO2 Detention for 1 (UK) Div in late April 2003, was not aware of the order having been made, and although this might have been explained by the fact that on the likely date the oral order was issued he was out of theatre, there was nothing which led to him subsequently becoming aware of the order.[288]

8.282 Most significantly, neither the Brigade Commander of 7 Armd Bde, Brig Graham Binns[289] nor his Chief of Staff, Maj Christopher Parker,[290] were aware of Brims' order banning hooding. Binns told the Inquiry that he never became aware of the order before he left theatre. He further stated that "*If the order was issued, then I would have expected to have been made aware of it*".[291] Parker was asked whether it was surprising that such an order had not reached him:

> *"Q. May I move on then, please, just to confirm what you say in your statement at paragraph 53 at BMI06311. You were never aware of what would now appear to have been an order probably given orally on 3 April or thereabouts by General Brims prohibiting the use of hoods on prisoners? You were never aware of that?*
>
> *A. That is correct.*
>
> *Q. You may have heard – you heard the evidence, I think, of the last witness, didn't you, and perhaps the question that I asked him, let me ask you: if hoods had been in quite widespread use and, as many of the witnesses have told the Inquiry, something of an SOP at the point of capture anyway, does it surprise you that, if an order had been given, as it were, putting an end to that SOP or that widespread use, that you didn't hear of the order?*

[287] Cowling BMI 70/15/21-16/19
[288] Wilson BMI 71/42/17-43/16
[289] Binns BMI 95/214/3-13
[290] Parker BMI 96/79/7-13
[291] Binns BMI 95/214/12-13

A. It may well sound astonishing, but the reality is there were probably something along the lines of maybe 50 or more orders a day, if we can call those aspects "orders" or "directives" or "statements" coming down on the divisional radio net each day. Therefore I think it's quite reasonable to accept that there was an element of filtering out going on in a busy situation. My view is as this was no doubt after a visit – I understand now to a visit to the theatre internment facility, it was probably and quite rightly considered by my staff that this was all about a visit to the theatre internment facility and hooding or the covering of someone's head with a bag had been outlawed and everyone probably thought that was a quite right thing and perhaps didn't make the connection that this was, therefore, something that was widespread in 7 Armoured Brigade, which we still didn't feel it was at the time.

Q. Do you mean by that that this may have been interpreted as an order that only applied to the JFIT?

A. No, what I mean by that – I must make myself more clear – is that the staff were filtering orders of which ones which were applying to passed direct down, which ones were to be passed down on the daily briefing, which ones were not to be passed down and were just relevant to perhaps procedural reporting by us. So there was a daily filtering process by the staff. The fact that this message does not make my recollection doesn't mean it didn't happen, nor does it mean it didn't get passed down. One would hope that the logs, the radio logs, would be able to prove that it was at least registered if it was passed over the radio."[292]

8.283 Two slightly contrasting factors emerge from these accounts. Firstly, as I have referred to above, some witnesses have put in context the patchy reception of the oral order banning hooding by reference to the fact that it was, at that time, only one issue among many, and without the benefit of hindsight perhaps a lower ranking issue in comparison to other decisions being made during the warfighting phase.[293] But secondly, as Maciejewski pointed out in order to explain why it was less likely that he rather than Marriott had promulgated the oral order, the order was a decision on an issue which had engaged not only the GOC but several other of the most senior officers across staff branches within 1 (UK) Div.[294] Additionally, of course, the ICRC had been involved and the issue was of sufficient importance and dispute that 1 (UK) Div had referred the issue to the NCHQ. There is force in both of these considerations.

8.284 In respect of the link between the patchy reception of the oral order banning hooding and the continued use of hooding in theatre up to the death of Baha Mousa, it is also relevant to consider whether the order ought to have been disseminated in writing. As to that issue, Waters said in an ideal world that is what could have happened. But in the context of the work load in the control stage he could understand why it did not.[295]

8.285 Maj Simon Wilson thought that the seniority of Brims and the fact he gave the order personally might warrant it being recorded in writing even though it had been issued to the command group:

"Q. If indeed, as this Inquiry has heard, hooding was going on of prisoners for a period of time at least, such that an order was required to be given to put a stop to it – the order to which I have already referred, General Brims, on or about, it would seem, 3 April, when you were

[292] Parker BMI 96/79/7-81/3
[293] Waters BMI 71/112/23-113/15; Brims BMI07395, paragraph 50; Marriott BMI06133, paragraph 23
[294] Maciejewski BMI 72/154/23-155/14
[295] Waters BMI 71/112/23-115/16

not in Iraq, I appreciate – would you have expected such an order, if there were a breach of such an important matter, to have been sent out in writing?

A. Orders can be in writing or verbally, sir. I understand this one was verbal. I understand it was to the command group. That should have been sufficient, sir.

Q. So it doesn't surprise you that this was not in writing or reinforced in writing, if you like?

A. It surprises me slightly that it wasn't reinforced in writing, sir.

Q. Why should it have been reinforced in writing, would you say?

A. Just because of the nature it was given by the GOC giving it himself, sir."[296]

8.286 Brig Adrian Bradshaw, who took over command of 7 Armd Bde from Binns from 11 May 2003, did not know of the oral order as he received his handover from Binns who himself did not know of the order. In his oral evidence Bradshaw finally suggested that he would have probably expected such an order to repeated in writing, and his evidence illustrated the effects of the transient nature of an oral order:

"Q. Now you have told us about FRAGOs 63 and 152, which we have looked at. I think it follows – you don't say it specifically, but I think by implication you do in your statement, don't you – that you weren't aware of General Brims' order, if there were an oral order given on 3 April or thereabouts banning the use of hoods?

A. No, I wasn't aware of that.

Q. Looking at that now, General, does it surprise you that you weren't aware of that order?

A. Well, if it was a verbal order, no, it is not so surprising because I can imagine that, in the vast amount of material covered in quite a short time in my handover between me and Brigadier – then – Binns, a mention of such a thing might not have been made. I have subsequently heard that he was not aware of the order anyway, so it doesn't –

Q. If he didn't know about it, he couldn't pass it on to you.

A. If he didn't know about it, he could hardly pass it on to me.

Q. I follow that. Perhaps my question ought to have been this: if it be the case – and I understand your evidence about it – that an order was issued on 3 April which effectively removed from the soldier on the ground an SOP, namely hooding of prisoners, one, would you have expected that order only to have been made orally or might you have expected to see something in writing about it?

A. No, I would have expected to see it repeated, for example in a brigade FRAGO or in an amendment to prisoner handling procedures.

Q. If that were not done, it might explain, might it, why, as may appear to be the case here, some didn't know about the order and some simply didn't apparently follow it?

A. As far as I'm aware, the first formal instruction to avoid, as we have discussed at length, covering of faces, which included hooding, was in FRAGO 152 from division, but I'm not aware of any order having been given before then. Had such an order been given, I would have probably expected it to be repeated in writing and I would certainly have expected it to be adhered to.

Q. It follows, does it, from the evidence you give, that at the time of considering FRAGO 152 and issuing the brigade order 63, nobody, at that stage, raised the issue with you or in your presence, "Well, actually, there is already an order in existence in relation to this"?

A. No, absolutely not."[297]

[296] Wilson BMI 71/50/1-19
[297] Bradshaw BMI 96/32/9-34/8

8.287 On the Divisional legal side, Christie and Frend both accepted, albeit with hindsight, that it would have been beneficial for the order to have been re-enforced in writing.[298]

8.288 Maciejewski said that if hooding had been a standard operating procedure before Brims' order (and he was not aware of it being a standard operating procedure), then the ban on hooding would have merited a written order. He remembered that hooding was discussed as an issue at the Prisoner of War Handling Organisation and if that was the case, and it was not an issue across the whole force, a direct oral order to the commander of the organisation might have sufficed. Even if done by a conference call and not in writing, he would have expected the relevant staff to be taking notes, adding, *"…When the general speaks about an issue and all the brigade commanders are on the net, that's as good as done. So we may not have followed it up"*.[299]

8.289 Binns was at this stage one of Brims' Brigade commanders. In oral evidence to the Inquiry, he indicated that he would have expected the order to have been followed up with a written FRAGO:

> *"Q. If I may just move to a number of separate matters, please. You tell us in your statement at paragraph 26 at BMI03667 – thank you very much: "Command decisions were usually communicated orally in the first instance. Operation orders ... are a means of reducing those orders into written form and communicating command intent so that decisions can then be made with those objectives in mind." If it be the position, General, that hooding had been widespread, whether an SOP or not, and that an order were given by General Brims orally that hooding was to stop, is that the sort of order that you would think would be followed up by a written order?*
>
> *A. Yes.*
>
> *Q. You would expect that, would you?*
>
> *A. Yes.*
>
> *Q. The reason being presumably the need to ensure – can I put it this way – that the instruction got down to the grass roots?*
>
> *A. Not necessarily for that reason. The written orders don't always get down to the grass roots anyway. It requires a combination of written and oral orders. But I would have expected something of that importance to have been followed up by a written FRAGO.*
>
> *Q. When you say "something of that importance", do you mean it was important because it was something dealing with prisoners or it was important because it was something changing policy or what?*
>
> *A. It was important because it was an order given by the divisional commander. Only through my reading do I realise how much time he had taken in getting advice on that order.*
>
> *Q. I suppose, had it been committed also to writing, the chances of you not picking it up, as appears to have been the case given that it was an oral order, would at least have been significantly reduced?*
>
> *A. Yes."*[300]

[298] Christie BMI 69/138/12-21; Frend BMI 69/85/8-86/13
[299] Maciejewski BMI 72/135/14-137/12
[300] Binns BMI 95/216/19-218/5

8.290 There was some suggestion from S002 that there may have been a written guidance note issued following the oral ban on hooding.[301] I have no reason to think that this was anything other than a genuine recollection but I believe that S002 was mistaken, or possibly had FRAGO 152 in mind. The overwhelming weight of evidence was that only an oral order was issued and no written version of the late March or early April ban on hooding has ever been disclosed to the Inquiry. In his more contemporaneous SIB statement, S002 referred only to his briefing to the JFIT with S014, and not to any guidance note being issued.[302] In his Court Martial evidence, S002 referred in rather vague terms to a belief that some kind of document went down the chain of command after the ICRC meeting, but that was at a time when he thought that the ICRC meeting had been in May 2003.[303]

8.291 In assessing whether Brims' oral order to ban hooding should have been issued in writing I am very conscious of the beguiling precision of hindsight. If Brims' order had been reduced to written form it is of course possible to speculate that its effect of banning hooding for all purposes might have been disseminated to the widest extent and down to each individual soldier on the ground. It is also possible that the communication difficulties experienced in theatre and the untold number of other complex issues and tasks simultaneously being faced by all levels of the Armed Forces during the combat operations, would have otherwise stalled or hindered the message Brims' order conveyed.

Shortcomings and confusion in the communications over hooding and its prohibition

8.292 Some aspects of the chronology of the above events are uncertain. I make allowance for the passage of time and the likelihood of both faded and confused recollections. It is nevertheless clear that there was an unfortunate level of confusion and miscommunication surrounding the prohibition on the use of hoods, and the debate in relation to it. A number of examples illustrate this.

8.293 Firstly, even some of those closely involved in the discussions about hooding, do not appear to have been aware of the orders banning hooding. For example, Maj Davies, as the NCHQ SO2 Legal, was part of the team that met the ICRC at the meeting on 6 April (see further Chapter 6 below). He was sure in his evidence that by the time of that meeting, he was not aware that any order had been issued which imposed a blanket ban on the use of hoods. He understood that the line that was going to be taken at the meeting with the ICRC was that hoods would no longer be used and the compromise reached was that goggles would be used instead. But he understood this to apply only at the JFIT. He was not at the time aware of hooding going on elsewhere, or that Battlegroups were delivering prisoners hooded. It was only later that he became aware of Brims' order banning hooding. He was not aware, at the time, of the order from Burridge, his own commander, banning hooding.[304] Similarly, his commander legal, Capt Brown, told the Inquiry that one of the purposes of the meeting with the ICRC was in order to see what scope there was available to commanders to use hoods for the purposes that they had in mind

[301] S002 BMI 82/118/9-119/16
[302] S002 MOD000898
[303] S002 CM 59/42/5-16
[304] Davies BMI 75/47/10-49/11; Davies BMI 75/33/18-38/25; Davies BMI 75/62/21-63/9

(i.e. security and prisoner protection, not for interrogation).[305] Brown told the Court Martial that *"In my view there was no reason for a blanket ban but I also made it clear that commanders at any level below ours could decide to take a more conservative approach and not use hooding and that was well within their rights if they felt the situation was sufficiently benign or that they did not need to do it."*.[306] This despite the fact that Burridge, the National Contingent Commander, and Brown's immediate superior had already banned hooding before the ICRC meeting. Similarly, Duncan had no recollection of Burridge being involved in the issue at all.[307] At Divisional level, the message that appears to have come down to both Mercer and Marriott was not that Burridge had banned hooding but that 1 (UK) Div was free to adopt its own policy on hooding.[308]

8.294 Secondly, it is doubtful whether commanders were fully briefed even on matters that were being put up to them in relation to hooding. Brims could not remember ever having seen Mercer's memorandum of 29 March 2003, though he was undoubtedly aware of Mercer's views and concerns.[309] Perhaps more significantly, and of greater concern, Burridge could not remember seeing the email from Maj Davies in which the latter supported the use of hooding subject to constraints.[310] Given its content, Burridge was adamant that he had never seen it:

> *".Q … If you just move on to the last line of the next paragraph:*
>
> *"... S002 assesses that during particularly busy periods a total of about ten HVI [high value intelligence] prisoners of war have been held in hoods for up to 24 hours."*
>
> *Was this ever brought to your attention?*
>
> *A. No, never, and that is why I am certain that I never saw this document because I would have been horrified.*
>
> *Q. I appreciate you say you didn't see the document. Were those facts, as they are there related, brought to your attention, that prisoners were being hooded for apparently up to 24 hours in the JFIT?*
>
> *A. No, they were not."*[311]

8.295 Thirdly, as all participants with an interest in the issues before the Inquiry recognise, the hooding prohibition as issued in early April 2003 simply did not reach all units on the ground. There is no doubt that the JFIT was aware of it. But 1 Black Watch (1 BW), one of the Battlegroups within 7 Armd Bde continued to hood prisoners at least into May 2003, as I explore in Part X of this Report. At 7 Armd Bde, neither Binns the Brigade Commander[312], nor Parker the Brigade Chief of Staff[313], nor Medhurst-Cocksworth the SO2 G2[314] had any recollection of an order banning hooding from 1 Div before FRAGO 152, in May 2003.

[305] Brown BMI 75/91/16-22
[306] Brown CM 60/93/7-12
[307] Duncan BMI 76/48/16-49/1
[308] Marriott BMI06132, paragraph 21; Mercer BMI04069, paragraph 46
[309] Brims BMI 103/51/22-52/7
[310] Burridge BMI 98/24/19-29/12
[311] Burridge BMI 98/25/22-26/10
[312] Binns BMI 95/214/3-7
[313] Parker BMI 96/79/7-13
[314] Medhurst-Cocksworth BMI 68/162/13-163/14

8.296 It is suggested on behalf of the Treasury Solicitor clients that the fact that Brims's oral hooding prohibition was not received or understood by 7 Armd Bde and 1 BW is of no real significance to the issues in the Inquiry because 7 Armd Bde did receive the later FRAGO 152 which was cascaded to 1 BW as FRAGO 063.[315] I return to this argument in my conclusions on this Part of the Report.

[315] SUB001342, paragraph 227

Chapter 6: The Meeting with the ICRC 6 April 2003

S034

8.297 As the NCHQ POLAD, S034 was the senior member of the UK contingent who met the ICRC on 6 April 2003.

8.298 Having been the one who initially told Burridge of the ICRC concerns, S034 was of course aware that Burridge had made clear that hooding and other practices criticised by the ICRC were to cease. S034 had no recollection of hooding as a means to maintain the shock of capture being raised with her. In her Inquiry witness statement, she indicated that the meeting was arranged because she wanted to assure herself that they were addressing the ICRC's concerns seriously and because, if there was no resolution with the ICRC, she would have had to advise the commander on the necessary steps to take. S034 indicated that she was impressed by what she saw of the TIF; prisoners were relaxing under a tent canopy, lying on rugs, neither hooded nor in stress positions. During the tour of the TIF before the meeting, S009 pointed out synthetic sandbags that had been used to hood prisoners. S034 said that she remembered asking *"don't you mean a hessian sack"* to which S009 had replied that it was whatever was available that was used.[316] In oral evidence, S034 explained this exchange as follows:

> *"A. I asked him. My recollection of that – because at this stage I had seen the prisoners in the JFIT and I have quite a strong recollection of what I saw and none were wearing – none were hooded at this stage, unsurprising given the order that I believed had been sent down. So I remember saying to him, "What are these hoods like?", and he said, "They are sandbags". And I said something like, "Please humour me. Can you show me one?", and he pointed to a filled sandbag, somewhere near our feet, and I said, "That looks synthetic to me and not hessian", and he said, "Yes, sometimes they are synthetic".*
>
> *Q. And when you were shown the sandbag, either hessian or synthetic, did you yourself consider whether hooding a man with that was humane or otherwise?*
>
> *A. Yes, I did.*
>
> *Q. What was your view about it?*
>
> *A. On a number of different counts. From a very practical reason I was obviously concerned about the ability to breathe and the heat aspect and particularly with the synthetic sandbag. And I actually brought a synthetic sandbag back with me to the office to show people because I hadn't understood and I wanted other people to understand. In terms of –*
>
> *Q. Just before you move on from that, so that I understand you, are you saying that you were more concerned about the breathing issue with the synthetic bag than you were with the hessian one?*
>
> *A. As a sandbag is porous, I assumed one could still breathe with it on, but I was concerned particularly about the heat aspect.*
>
> *Q. But you say that you only took the synthetic one back with you to the office, as you put it.*
>
> *A. On the basis that I assumed people would know what an ordinary hessian sandbag looked like.*

[316] S034 BMI05191-2, paragraphs 16-18

> *Q. I follow. I stopped you. You were going on to say something else.*
>
> *A. In terms of the humane aspect of it, my initial view was that this was an undesirable thing to do in terms of protecting the dignity and wellbeing of prisoners. However, I was very taken with the arguments that were put to me that it was done for security reasons, which I understood to be twofold: one was to – that some of the prisoners were quite violent and, in particular, it was thought at the time that there were two prisoners who may have ordered the killing of two EOD soldiers and there were issues about prisoners trying to escape or attack guards; secondly, there was an issue about prisoners either attacking one another or intimidating one another based on whether they – trying to coerce other prisoners presumably not to cooperate with the military authorities. My understanding was that one or two – a number – of prisoners had asked to have their identity disclosed [sic] for that reason. I did feel very strongly about this, that we had – the other side of the coin, if you like, that we had a duty to protect violence and intimidation by one prisoner against another prisoner and, as I had done quite a lot of work in a totalitarian regime in the past and had seen and witnessed for myself intimidation and violence, that was something I felt quite strongly about.*
>
> *Q. I think you said in that answer, so it is not misunderstood, that some prisoners wanted to have their identity "disclosed". I think you meant "not disclosed".*
>
> *A. Sorry, yes, that's what I meant".*[317]

S034 understood that hooding had by this stage stopped at the TIF.[318]

8.299 S034 initially remembered that those who attended the meeting were S009, one or two lawyers from 1 (UK Div), including possibly Frend, and a number of ICRC officials. In oral evidence, S034 said that she remembered travelling with Maj Davies, though she still had no actual recollection of Mercer being present.[319] S034 remembered that the focus of the meeting was very much on the alternative means by which sight restriction could be achieved, hooding having ceased. She could not remember any discussion at the meeting of hooding, as opposed to other forms of sight deprivation, being continued. S034 did not remember whether she informed the ICRC representative at the meeting of Burridge's order to stop hooding. However she had no reason to doubt that she did so.[320] S034 did not agree with the oral evidence of Frend to the effect that she had been the proponent of sight deprivation.[321] She told the Inquiry that she saw her role as chairing the meeting; she wanted to understand the cause of the ICRC's dissatisfaction and what they considered to be permissible within the security context.[322] S034 had seen Mercer's evidence to the effect that she had instructed him not to speak at the meeting. She did not remember but was prepared to accept that she did say it. Since she had no recollection of Mercer being present, she did not remember him walking out of the meeting. This was primarily a meeting between NCHQ and the ICRC and she said she did "*…not think it was a place to have a detailed legal debate or argument including with people necessarily at the divisional level*". She felt that Mercer had very good qualities, was extremely conscientious but he could be a little dogmatic on occasions.[323]

[317] S034 BMI 72/47/16-50/8
[318] S034 BMI05191-2 paragraphs 16-18
[319] S034 BMI 72/46/8-18
[320] S034 BMI 72/98/5-14
[321] S034 BMI 72/52/11-56/8; S034 BMI05192-3, paragraph 20
[322] S034 BMI 72/55/20-25
[323] S034 BMI 72/52/11-55/7

Maj Gavin Davies

8.300 In his SIB statement of 15 may 2006, Maj Davies' description of the ICRC meeting of 6 April 2003 was as follows:

> *"Although Lt Col Mercer raised such concerns, this did seem to be at odds with the discussions I had with Maj Frend and S002. Nevertheless, I recall a meeting taking place at Umm Qsar [sic] several days later in which the ICRC and the POLAD NCC were present. This meeting was to discuss the treatment of PW.*
>
> *From memory, the results of the meeting was that hooding was no longer to take place, but an alternative method may be used. The idea of blacked out goggles was suggested as an alternative. This was a suggestion made by me after having reviewed the situation and seeing the sandbags that were used. I felt that this alternative method was more acceptable. I do recall the ICRC at the meeting having concerns in the use of hoods on PW. I can't recall any notes being taken at the meeting, but Lt Col Mercer was present and would have been aware of the discussions and agreements made".*[324]

8.301 In his Inquiry witness statement, Maj Davies said that the ICRC meeting was arranged in order to discuss the relationship between the ICRC and the military in general but the key point was to discuss the complaints relating to the use of hoods. Maj Davies attended at Brown's request. On visiting the TIF, Maj Davies was shown the types of bags that were used as hoods which he said were standard hessian sandbags:

> *"…I remember that the sandbag that I was shown was covered in dust and sand, and I thought that it would be most unpleasant to wear such a bag in this condition…"*[325]

Maj Davies confirmed that S034, Mercer and Frend were present and he remembered S009 (together with his Adjutant) and Christie being present as well. Maj Davies recalled that the ICRC complained at the meeting that prisoners were being left in hoods for lengthy periods, that the use of hoods had a distressing effect and that it was illegal. Maj Davies told the Inquiry that he stated:

> *"… that the use of hoods was not illegal per se but said that the use of hoods was perhaps not the best approach, and that we could achieve our aims in a more humane manner. This was the view I had reached having been shown the hoods prior to the commencement of the meeting as discussed above, and having been informed during the meeting of the distressing effect they could have on prisoners. Having seen the actual hoods and been given this information by the Red Cross, I decided that a blanket ban on their use was in fact necessary, and advised the meeting that the use of all hooding at the camp would stop from that point. I suggested that where blindfolding was necessary, only blacked out goggles would be used".*[326]

8.302 In oral evidence to the Inquiry, Maj Davies said that even before the meeting, it had been decided that a compromise position would be put to the meeting. This position was that *"… hooding wouldn't continue and that we would use goggles instead"*.[327] However, Maj Davies did confirm that the line taken was that hooding was not unlawful:

[324] Maj Gavin Davies MOD000895
[325] Maj Gavin Davies BMI04587, paragraph 20
[326] Maj Gavin Davies BMI04587-8, paragraph 22
[327] Maj Gavin Davies BMI 75/35/11-14

> *"The line that the use of hoods was not unlawful, per se, yes. That line was still intact and that was actually a part of the meeting. We delivered that opinion. But in the meeting – the whole purpose of the meeting was to discuss working relationships and we felt that the compromise that we had come up with was a useful compromise. So it didn't really – it wasn't really that crucial an issue because the decision had already been taken that there was going to be no more use of hoods."*[328]

8.303 In dealing with shortcomings concerning the communication of the orders prohibiting hooding, I have already referred to the fact that in taking this line at the meeting, Maj Davies was unaware that hooding had already been banned not just by Brims as the GOC 1 (UK) Div, but also by Burridge as the Commander of the NCHQ, Maj Davies's own formation commander.

8.304 I have considered whether Maj Davies may just have been confused about this, and with the passage of time had forgotten that Burridge's order having already been made. I do not believe this to be the case. Maj Davies was quite clear in his evidence that he was unaware of Burridge's order at this time: *"I was unaware of any ban at that point by Air Marshal Burridge"*.[329] In addition, Maj Davies' lack of knowledge of Burridge's order at this stage is supported by the evidence of Brown, his legal commander. As I have indicated in above, Brown told the Inquiry that of the first purpose of the meeting with the ICRC was:

> *"… to find out the ICRC view, and that was in order to see what scope there was available to our commanders to use hoods for the purposes that we had in mind. So our line was that we felt, on a reading of the law, that there was limited scope for the use of hoods for purposes other than interrogation."*[330]

This is inconsistent with Maj Davies or Brown being aware before the ICRC meeting on 6 April that Burridge had ordered that hooding should cease.

Lt Col Ewan Duncan

8.305 Although there is some suggestion that Duncan attended the 6 April 2003 meeting, I doubt that he did. Duncan was consistent in his evidence that he only attended the TIF on one occasion, and that was the earlier date in late March when he discussed hooding with Vernon and S009.[331] It is possible that the meeting was attended by Duncan's successor as the SO1 J2X NCHQ, although Duncan recollected that he was in post until mid-April 2003. It may well have been that it was only S002 who provided the HUMINT input at the meeting.

Lt Col Nicholas Mercer

8.306 Mercer remembered attending the ICRC meeting. He travelled to the TIF with S034. He said that he was instructed by S034 not to speak at the meeting. He believed this was because S034 did not want a contrary view put at the meeting. Mercer thought it was strange and unusual that, as the Divisional Commander Legal, he had been instructed not to speak. At the meeting itself, the ICRC raised concerns about the

[328] Davies BMI 75/37/24-38/8
[329] Davies BMI 75/62/21-63/1
[330] Davies BMI 75/91/17-22
[331] Duncan BMI06044-5, paragraph 40; Duncan MOD000952

treatment of prisoners of war including concerns about hooding. Mercer said that some of the UK participants at the meeting, S002, and to an extent Frend and Maj Davies, tried to justify the UK approach to hooding on the grounds of security of interrogators and of the prisoners. Although, as instructed, Mercer did not speak at the meeting, he was totally against this defence of hooding. This was so in part because from what he had seen, he did not think that hooding had in fact been used for security purposes; and in part because, as he said, he found hooding repulsive, violent, intimidating and degrading. Like others, Mercer remembered that there was some discussion of the alternatives to hooding, blindfolds or "sunglasses". But Mercer's evidence was that he did not agree with their use either. He thought that alternative means could nearly always be found to obviate the need for any sight deprivation. Mercer told the Inquiry that he was so appalled by the attempts to justify the conduct of the UK that he walked out of the meeting to get some fresh air. He spoke informally to the ICRC delegate after the meeting indicating that he did not agree with the views being put forward by some at the meeting. He recalled speaking to S034 and expressing the view that he would "win" the debate over the treatment of prisoners of war.[332] Mercer's diary for the day recorded this:

> *"…I went down to the PWHO today. I have argued that hooding and any sensory deprivation is unlawful. The ICRC agree but NCC do not – the NCC do not understand the law – I will win this debate".*[333]

Maj David Frend

8.307 Frend confirmed that he attended the ICRC meeting on 6 April, and that Maj Davies was present. S034 took the lead at the meeting. He described the meeting as *"cordial and sensible"*. He remembered that the ICRC were re-assured that the lack of shade was a one off and that hooding had ceased. Frend remembered that the UK delegates canvassed whether any other methods of temporary impairment of senses was permissible in limited circumstances (blackened goggles, blindfolds, ear mufflers) but the ICRC sensibly indicated that it was not for them to endorse any particular alternatives.[334] In oral evidence, Frend said that he did remember Mercer being present. Frend said that the security explanation for the use sight deprivation was put forward by S034:

> *"Q. Can I just understand that in a nutshell? Stating the UK position, was that that it was necessary to use hooding for security purposes?*
>
> *A. Stating the general position that some sensory deprivation – ie sight deprivation – was permissible for the purposes of security.*
>
> *Q. S034 was saying that?*
>
> *A. Yes. Now, there was an acceptance that, because of the nature of the complaint, as I say, about plastic sandbags – the sensitivity of the use of sandbags, in whatever guise, was obviously live, so the UK were looking for alternative methods. So that's what S034 led with. The explanation from a legal perspective was given by Major Gavin Davies, as the NCHQ – the senior headquarters – legal adviser, and the substance of the requirement, the security risks, was given by S002"*[335]

[332] Mercer BMI 68/53/20-59/10; Mercer BMI 68/115/14-116/11; Mercer BMI04069-70, paragraphs 48-51
[333] MOD019893
[334] Frend BMI02901-2, paragraph 57
[335] Frend BMI 69/83/8-23

8.308 Frend remembered that Mercer was silent at the meeting. He had no recollection of Mercer walking out.[336]

S002

8.309 S002 remembered that he attended the 6 April meeting with the ICRC along with Mercer, S034, Maj Davies, Frend, S040, and S009. He also suggested that the officer who was Duncan's successor as SO1 J2X at the NCHQ attended. S002 remembered that S034 had instructed Mercer not to speak at the meeting, having been present on the journey to the TIF where this was said. As he recalled it,

> *"… S034 said that he [Mercer] was not representing the UK view, he was representing his own view and that it was the UK view that she was going to give".*[337]

S002 thought S034 was being forceful because Mercer only had one view and would not accept the views of others. S002 suggested that the meeting was to inform the ICRC of the changes that had been made since their representations. Sight deprivation was to continue but that the ICRC concerns had led to the processes being adapted and that, once they were delivered to theatre, blacked out goggles or sunglasses would be used instead. In the meantime no sight deprivation would occur. Whereas others had not thought that stress positions were raised, S002 remembered that it was agreed that holding positions pending interview had occurred. These were described as prisoners simply kneeling or sitting down, but not in direct sunlight and there was no use of stress positions. He also suggested that it was established that prisoners would not be allowed to sleep from their arrival at their JFIT to the time of their first being questioned, a period of up to 24 hours but usually twelve hours or less.[338]

8.310 S002 did not think that the shock of capture was mentioned at the meeting with the ICRC:

> *"Q. A different point, if I may. S034, you referred to her in the context of the meeting that we have all heard about with the ICRC. I think you gave evidence that she described something as being "the UK view". I hope I correctly quote you. Can you just help us with this? What did she say, that you are aware of, was the UK view on hooding?*
>
> *A. She – my recollection from that meeting is that she majored on the reasons why we wanted to maintain some form of sight deprivation capability in terms of operational security, and she was – the UK view was that that was legal and she wanted endorsement from the ICRC for that to continue.*
>
> *Q. Colonel, given that a moment ago you said to me that not only Major Davis, but really everyone, knew that one of the benefits of hooding was to maintain the shock of capture, surely that was also one of the things that she, S034, would have included as being part of the UK view, or is that not right?*
>
> *A. Yes, but she didn't mention it and I can't account for that.*
>
> *Q. She only mentioned the security rationale; is that right?*
>
> *A. My recollection is that the main thrust of her conversation was about operational security, which is the main thing that we were worried about at that particular point."*[339]

[336] Frend BMI 69/83/24-84/6
[337] S002 BMI 82/117/20-23
[338] S002 BMI 82/117/2-23; S002 BMI05839-40, paragraphs 58-61
[339] S002 BMI 82/144/24-145/25

S040

8.311 In his Inquiry witness statement, S040 confirmed that he attended the meeting with the ICRC in the first week of April and suggested that those present were Duncan, Duncan's successor as SO1 J2X NCHQ, Frend, S002, S009, and a female Army Legal Service Captain. He did not specifically remember Mercer being present, though he accepted that he might have been. S040 had no recollection at all of Mercer walking out of the meeting. Oddly, S040 did not remember the presence of S034, despite the weight of evidence that it was she who led the meeting on the UK side. S040 suggested that with the exception of S009, those present "*…wanted to continue the use of sandbags in order to restrict the sight of PWs*".[340]

8.312 It is clear from S040's evidence that he attended a number of meetings where these issues were discussed, including at least one earlier meeting with the ICRC. While I am sure that the use of hooding was defended at the meeting with the ICRC on 6 April 2003, I do not think it likely that a positive case was being put forward for hooding to continue, given that S034 was leading the meeting and she was fully aware of Burridge's intent that hooding should cease. I consider that S040 has, understandably, somewhat blurred recollections of different meetings and discussions involving the ICRC.

S009

8.313 S009 could not specifically remember the meeting with the ICRC on 6 April 2003.[341] His recollection was a little confused over different visits. He remembered Vernon visiting with S034, whereas it is clear that S034 attended the meeting on 6 April and was shown around the TIF by S009. S009 was undoubtedly doing his best to recall events but if he did attend the ICRC meeting on 6 April, he was unable to assist with what happened at it.

Maj David Christie

8.314 It is not entirely clear whether Christie was at the 6 April meeting with the ICRC or only at an earlier meeting with them. Maj Davies' remembered that Christie attended, but other attendees made no reference to his presence. Christie told the Inquiry that he certainly remembered a meeting with the ICRC. He suggested that this meeting was attended by, amongst others Clapham, whereas neither Clapham nor anyone else suggested that Clapham attended the 6 April meeting. Christie frankly admitted that his recollection of the meeting was not very clear. He remembered that a pragmatic decision was reached not to continue hooding, and that the use of alternatives was discussed. He remembered some concerns being raised about the effectiveness of blindfolds and blacked out goggles, but he could not remember what solution was agreed upon. He said that he was aware of the Brims ban on hooding.[342]

8.315 I shall return at the end of this Part of the Report to conclusions about the 6 April meeting.

[340] S040 BMI 67/209/9-210/14; S040 BMI07015, paragraphs 117-118
[341] S009 BMI 66/98/17-25; S009 BMI03529, paragraph 55
[342] Christie BMI 69/132/7-133/18; Christie BMI 69/137/8-138/11; Christie BMI04863-5, paragraphs 81-84

Chapter 7: Partial continuation of hooding in Op Telic 1 after the oral orders banning hooding

8.316 I did not consider it necessary or proportionate to investigate in detail the extent to which hooding may have continued in Op Telic 1 after the orders of Burridge and Brims. To do so fully would have involved taking evidence from many Op Telic 1 Battlegroups and would have been very far removed from the events at the heart of this Inquiry.

8.317 I make clear, therefore, that I am not able to make any findings as to quite how widespread the practice of hooding was following the bans by Burridge and Brims.

8.318 There were, however, five instances in evidence given to the Inquiry which demonstrated, even if in some cases anecdotally, that hooding was not fully and effectively stopped as a result of the oral orders in early April.

(1) Continued use of Hooding at the JFIT

8.319 Despite Brims' ban on hooding, there was a limited continued use of hooding even within the JFIT.

8.320 In his Inquiry witness statement, S014 stated that the instruction received was to stop the restriction of vision by use of sandbags on all prisoners of war whilst awaiting interrogation. However, he said that he, some others at the JFIT, and some prisoners of war were not happy with the instruction. It meant that prisoners were aware of others who were being held and there was no segregation. This was seen as potentially dangerous. As a result, S014 said that one of the interrogation tents had to be closed to house those who were assisting the coalition forces. In addition, S014 said that there remained a requirement to restrict vision at certain times when prisoners of war were moved in or out of the JFIT and when they were moved between various tents in the JFIT. S014 suggested that this was purely a security issue. He said that until goggles were received, they continued to use sandbags because this was all that they had available.[343]

8.321 S014 was asked when he gave oral evidence why he had continued to use hoods when their use had been banned by Brims. S014's explanation was that he had not ignored or disobeyed the order, but rather had "interpreted" it. S014 said that he had no alternative means of sight deprivation apart from hoods. He said that he believed that he would have shared this "interpretation" with S040.[344] At the end of his evidence I asked S014 to explain this approach:

> *"THE CHAIRMAN: All right. May I just ask you this? You talk about interpretation of an order. In what circumstances are you, as an officer, entitled to interpret an order that completely disobeys it?*
>
> *A. I was under the impression that that order was a –*
>
> *THE CHAIRMAN: Well, I was asking you generally to start with, but you anticipate I shall be asking you in the particular form in a moment.*

[343] S014 BMI06784-5, paragraphs 68-71
[344] S014 BMI 67/64/22-67/18

A. Well, I would say so, sir, that this is probably one of those occasions. I didn't think that the order had detailed enough – it was given as a generalisation and was not detailed enough.

THE CHAIRMAN: Did you understand the order to be that hooding is banned?

A. No, sir.

THE CHAIRMAN: What did you understand the terms of the order then?

A. No prisoners could be held with hoods on until they need to have their sight deprived while you are moving them.

THE CHAIRMAN: I'm sorry, until ...?

A. Until they need to have their sight deprived.

THE CHAIRMAN: Which part of that is your interpretation – which part of the order?

A. Sir, I can't comment on that.

THE CHAIRMAN: When you say you can't comment –

A. Well, it's obviously mine, isn't it, sir?

THE CHAIRMAN: Well, as I understand it, the order from the GOC1 Division came through as "no hoods".

A. It did, sir.

THE CHAIRMAN: Well, that is an order which is quite easy to understand, isn't it?

A. Yes, sir.

THE CHAIRMAN: What entitles you not to obey it?

A. I didn't believe it had been written fully and I interpreted that order as no hoods except the point where you need to hood, which is the security piece.

THE CHAIRMAN: If that's right, why was it that you didn't make some inquiry and ask whether that was permitted or not?

A. Sir, I don't know.

THE CHAIRMAN: Do you think you ought to have done?

A. Possibly sir. I don't know.

THE CHAIRMAN: You say "possibly". Wouldn't that have been – if you had any doubt about it – a proper course for any subordinate officer to take?

A. Sir, forgive me, but what I'm saying is – our interpretation, we weren't doubting that we were right. So because of that, it was obviously no hoods across the board –

THE CHAIRMAN: Yes.

-- however, our interpretation was he means that, but obviously he doesn't mean when we are moving them from there to there.

THE CHAIRMAN: I will try once more: wouldn't that be something that, as a junior officer, you ought to have found out about by making an inquiry?

A. Yes, sir.

THE CHAIRMAN: Thank you."[345]

[345] S014 BMI 67/92/16-94/23

8.322 S040's evidence was that he never witnessed any hooding within the JFIT after the prohibition on hooding. He agreed that hooding should not have carried on at the JFIT after the ban. He denied that S014 ever alerted him to the fact that it was happening.[346]

8.323 S002 said that he was not aware of any hooding within the JFIT after the hooding ban had been received, although he was made aware that prisoners were still being delivered hooded to the TIF (as to which see paragraphs 8.325 to 8.336 below).[347]

8.324 Capt Neil Wilson was the Military Provost Staff (MPS) representative at the TIF. Wilson remembered that at some stage before 6 April 2003, there had been an order that Category A prisoners could be hooded. These were the prisoners who were automatically filtered to go to the JFIT. He personally saw no prisoners hooded.[348] The Detainees' legal team has suggested that this order, positively permitting hooding for Category A prisoners, confirms S014's account and that this was an exception to the non-hooding rule introduced for JFIT prisoners.[349] That is a possibility. However, it is not clear that this was an order given after Brims' hooding ban, as opposed to some sanction given to JFIT hooding before Brims' ban had been communicated. Wilson could not in fact remember whether the order that Category A prisoners could be hooded came before or after the discussion of MPS's concerns about hoods being used. I do not consider that Wilson's evidence takes matters much further on this aspect, not least because I have no doubt that S014 was telling the truth in volunteering that he did continue to approve the use of hooding for a period after the hooding ban.

(2) Prisoners arriving at the TIF/JFIT having been hooded by capturing units

8.325 There was some evidence from different sources which suggested that some prisoners continued to arrive hooded at the TIF/JFIT, indicating that hoods must have been applied by either the capturing units or, if different, the units transporting the prisoners to the TIF.

8.326 Wilson said that early on in the tour, they did have to reiterate the MPS position that prisoners should not be hooded. He could not, however, date this other than by saying that it was early in the tour.[350] He did not see hooding himself; the concern would have been raised by the MPS in the initial holding and reception area of the TIF. He said that he thought this had been taken up with Division.[351] This may be evidence of hooding after the oral ban, although there is a possibility that it may have related to late March rather than early April.

[346] S040 BMI 67/213/24-214/8
[347] S002 BMI 82/121/25-123/11; S002 BMI05841, paragraph 65
[348] Wilson BMI 73/79/2-18; Wilson BMI 73/87/9-88/20; Wilson BMI07257, paragraph 104; Wilson BMI07251-2, paragraph 87
[349] SUB002491, paragraph 60
[350] Wilson BMI07251, paragraph 86
[351] Wilson BMI 73/80/5-16

8.327 In addition to the hooding which continued within the JFIT, S014 said that prisoners were still routinely arriving hooded even after the ban on hooding.[352] He said that such hooding included hessian and man-made weave sandbags.[353]

8.328 S040 agreed with S014 on this issue. He said that prisoners arriving at the JFIT having been hooded by the capturing force was "…*a very regular occurrence*" which carried on after the prohibition on hooding. He said that the Prisoner of War Handling Organisation knew that this was happening because they received most of the prisoners. But S040 also said that he was sure that he would have mentioned conversationally to S002 that this was happening: "…*it wouldn't have been the priority — that wasn't my function – but I am sure it would have been fed back*".[354]

8.329 In his oral evidence, S002 agreed with S040's account. S002 said that S040 did report to him on a number of occasions (he could not specify how many times, certainly once, possibly twice) that prisoners were arriving hooded at the JFIT. S002 suggested that he in turn reported this to G3 Ops, to Mercer and he thought that he had mentioned it to Marriott as well.[355]

8.330 S002 was asked to address in his Inquiry witness statement whether, subsequent to the order/order(s) prohibiting hooding, he was aware of the extent to which hooding of prisoners of any category may have continued within the 1 (UK) Div area of operations, or of any steps that were taken to monitor or check compliance with the order(s). In response to this S002 said in his Inquiry witness statement:

> *"The Inquiry has asked about the extent to which I was aware of the continued practice of hooding within the 1 (UK) Div area of operations. I had no knowledge of the practice taking place elsewhere. Brigades should have been conducting some form of audit of compliance, but ultimately Commanding Officers and the chain of command would have been responsible for monitoring and enforcing compliance."*[356]

8.331 S002 sought to explain in his oral evidence that in this paragraph he was referring to the "front end", at Battlegroup level.[357] Nevertheless, I find it odd that if S002 remembered passing on to G3 Ops, Mercer and/or Marriott that prisoners continued to arrive hooded at the TIF, he should not have mentioned this in his Inquiry witness statement.

8.332 Neither Mercer nor Marriott suggested that S002 raised concerns about prisoners still arriving hooded at the JFIT. I acknowledge that neither Mercer (who gave evidence before S002) nor Marriott were specifically asked this. However, on the balance of probabilities, I am confident that Mercer, would have remembered and would have reacted strongly had he been told that hooding was still taking place after the ban. Mercer had no recollection of seeing hooding after the ban and he gave no evidence that he had heard of breaches of the order.[358] Mercer had also instructed his subordinate legal officers at the TIF to be on the lookout, for any hint

[352] S014 BMI 67/67/19-68/4
[353] S014 BMI06785, paragraph 71
[354] S040 BMI 67/214/9-215/5
[355] S002 BMI 82/121/11-24
[356] S002 BMI05841, paragraph 65
[357] S002 BMI 82/122/17-22
[358] Mercer BMI 68/52/21-53/15

of any mistreatment.[359] It would be very surprising if Mercer had received a report of hooding after the ban had been introduced and forgotten about it.

8.333 I think it more likely than not that Marriott would have remembered receiving a subsequent report of prisoners arriving hooded at the JFIT. Given that it was Marriott who had conveyed Brims' oral order, I expect that Marriott's reaction would have been similarly strong to Mercer's if he had been advised of such breaches.

8.334 On the assumption that S002's assertion in oral evidence that S040 had on possibly two occasions reported to him that prisoners had arrived at the TIF hooded is correct, rather than his Inquiry witness statement in which no such reporting is mentioned, for the reasons expressed above I think it unlikely that S002 reported this up to either Mercer or Marriott. It may be, however, that he reported it to others and is mistaken about reporting it to Marriott or Mercer.

8.335 I therefore accept that it is possible that S002 reported to others that prisoners were still arriving at the TIF hooded. If so, I think it unlikely he made that report to Marriott and more unlikely still that he made it to Mercer.

8.336 A number of other witnesses said that they did see prisoners at the TIF/JFIT on subsequent visits but did not see any prisoners hooded. These included Mercer who went to the TIF quite often but never saw hoods in use there;[360] Frend;[361] Christie,[362] and Quick.[363]

(3) Continued use of Hooding by 1 Black Watch

8.337 The Inquiry investigated in more detail the practices of 1 BW since they were the Battlegroup who handed over to 1 QLR. I have addressed hooding by 1 BW in Part X of this Report. I simply note for present purposes that there is no factual dispute that 1 BW continued to hood some prisoners into May 2003, and that one of the deaths in 1 BW custody involved a detainee who had been hooded on capture and transferred to the company location, although it was said that the hood had been removed once at the company location.

(4) 5 April 2003 ITN Television Footage

8.338 On 5 April 2003, ITN news footage of a British arrest operation was broadcast. The Inquiry was told that the operation depicted in the footage was Operation Selous, an arrest operation conducted on 4 April 2003 by the Royal Regiment of Fusiliers supported by a US Psyops team. It would seem the operation involved targeting Baath party officials and Fedayeen militia.

8.339 The footage shows:[364]

[359] Mercer BMI 68/53/7-13
[360] Mercer BMI 68/52/21-53/15
[361] Frend BMI 69/88/ 24-90/23
[362] Christie BMI 69/151/3-7: although he did not often see prisoners actually arriving.
[363] Quick BMI 92/13/4-21
[364] MOD036885: the clip and stills represent footage from ITN, who reserve all rights in this footage.

Prisoners apparently arrested in their homes, hooded and plasticuffed to the front or rear:

Two prisoners hooded and squatting, plasticuffed to the rear, being told to stand up, one grabbed by the hood in order to make him stand up:

One prisoner who appears to be hooded with a black plastic bag:

Prisoners hooded and plasticuffed to the front in the back of an open-backed lorry, one of whom, the figure in white in the video, can be seen to be physically shaking (the news commentary suggests that some were terrified and overcome by nerves):

A line of prisoners cuffed to the rear apparently awaiting transport:

A group of prisoners all hooded being taken away in the back of an open-back lorry:

8.340 Other than to confirm the date and unit involved, it would not have been appropriate for the Inquiry to have investigated this operation any further. I did not hear evidence of the precise circumstances depicted in the footage and it would not be fair to make or imply and criticism of the unit or personnel involved. Depending upon the precise date of Brims' order the operation may have been as little as the day after Brims had banned hooding, and it is possible that it had not cascaded down to the Royal Regiment of Fusiliers.

8.341 I would, however, observe that the fact that there was a broadcast of British prisoners hooded by British soldiers after Brims' oral order banning hooding ought to have registered as a sign that the order may not have been successfully communicated. This was a critical stage of Phase III of the operation, especially in respect of operations around Basra. The chain of command would, I accept, have been ferociously busy. Nevertheless, especially given that this was broadcast in the UK, I consider this was a missed opportunity for the MoD and the deployed forces to have noticed that there may have been shortcomings in the communication of the ban on hooding, or at least to take steps to ensure that the message had been received. That is all the more so given that this footage generated Ministerial correspondence in the UK (see further paragraphs 8.415 to 8.443 below).

8.342 The evidence provided by a number of the key senior witnesses from the MoD who addressed this broadcast footage was that they had no recollection of seeing it. The Secretary of State for Defence Rt. Hon. Geoffrey Hoon MP, told the Inquiry that he was not aware of the broadcast at the time, and went on to say:

> *"…I can't say anyone who viewed that film would particularly like what they saw. I think, having seen it, I might have taken the same view that I think General Brims probably took when he saw groups of prisoners, that this was not something that – unless it could be strongly justified for operational security reasons – was acceptable".*[365]

8.343 Nevertheless, despite this hypothetical response, Hoon also said that he was not surprised that the footage had not been brought to his attention as *"…until the death of Baha Mousa it was not an issue"*. (I take Hoon to have been referring to the issue of hooding.)[366]

[365] Hoon BMI 103/213/8-14
[366] Hoon BMI 103/213/3-4

8.344 Adam Ingram, then Minister of State (Armed Forces), did not remember seeing this footage; that is to say he might or might not have done. He agreed that he would have been shocked if he had seen it, and if something had shocked him he would have wanted to know more about it. I accept that, as Ingram stated, there is no evidence that he did not make an inquiry, and that as he has no recollection of seeing the footage he therefore cannot state what action he did or did not take in response to it.[367] Ingram did, however, differ from Hoon in his response to the question of whether it would be surprising if at some stage the video had not been drawn to his attention. He restated that he did not recall it being brought to his attention. However, he stated that he did not disagree with the premise of the question that it would have been surprising had it not been brought to his attention.[368] It is unfortunate that Ingram could not confirm one way or the other whether this footage was shown to him, but in light of the lapse of time since the event and considering the volume and pressure of other work as a Minister both at the time and since that time, I do not find it surprising that he could not remember, and I make no criticism of Ingram in respect of it.

8.345 Mr David Johnson, Head of Secretariat Iraq, also did not see or have brought to his attention any television news footage of prisoners hooded, although he stated that he would have been surprised not to have heard about it. His clear evidence was that, if this apparent continuing practice of hooding after the ban in theatre had come to his attention, his department would have intervened to establish the true position:

> *"A. Well, if we had thought that there was evidence to suggest that an order to stop hooding had not been implemented, then I suppose the first thing we would do is go to PJHQ and ask them what was – you know, what was going on.*
>
> *Q. But that situation never arose for any reason?*
>
> *A. I don't recall that arising at all, no."*[369]

8.346 It is a matter of some surprise, and greater regret, that this broadcast does not appear to have been brought to the attention of these MoD witnesses at the time, not least because it was referred to in correspondence from constituents (see further Chapter 9, below). Nevertheless, I think it is more likely on the balance of probabilities that they did not see it.

8.347 There is a secondary point of witness evidence to address in relation to the ITN footage. Admiral the Lord Michael Boyce, at the relevant time the Chief of the Defence Staff, stated in his Inquiry witness statement that:

> *"…I do recall seeing, at some point, TV pictures of prisoners wearing hoods shortly after capture and awaiting transport, presumably to deny them visual intelligence of their surroundings and so on, but I cannot remember when this was…"*[370]

Of the footage that he saw, which was limited to detainees hooded with sandbags, he did not perceive this to be inhumane.[371] However, he straightforwardly confirmed that he would not have regarded as acceptable the features seen in the ITN footage

[367] Ingram BMI 97/26/9-27/21
[368] Ingram BMI 97/28/12-20
[369] Johnson BMI 89/96/12-18
[370] Boyce BMI08312, paragraph 28
[371] Boyce BMI 102/117/1-120/15

of hooding inside a prisoner's own home (a situation without the necessity to deny "visual intelligence") or hooding with a plastic bag.[372] I accept Boyce's recollection that the full ITN News footage under consideration in this Part of the Report was not the footage that he saw at the time.[373]

8.348 The fact that this was a missed opportunity to address possible shortcomings in the communication of the ban on hooding is borne out by the evidence from some soldiers within 1 QLR when they were questioned about the continued use of hooding during Op Telic 2. Some soldiers had seen the footage of the hooding of prisoners taking place in the theatre into which they were about to deploy. For example, Capt Gareth Seeds:

> *"Q. Through hooding. Was, therefore, hooding something that you were given training about before going to Iraq?*
>
> *A. No, sir.*
>
> *Q. Was hooding something that you yourself had experienced in training?*
>
> *A. I had seen it once before in Canada. I might also add that I also saw it on Sky News as part of Telic 1 whilst I was on AJD.*
>
> *Q. So you saw that in fact in practice it was being used?*
>
> *A. Yes, 7th Armoured Brigade used it"*[374]

8.349 Dr Oliver Bartels, the first 1 QLR Regimental Medical Officer (RMO) in theatre during Op Telic 2, also appeared to recall having seen hooding on a television broadcast during the time of Op Telic 1.[375] Maj Mark Kenyon, Officer Commanding C Company 1 QLR did not question the use of hoods by 1 BW when he witnessed it at the time of the handover between the two Battlegroups, at least in part because he had seen the practice on the television before deployment.[376] Within the Rodgers Multiple,[377] Pte Gareth Aspinall told the Inquiry that he believed it was perfectly acceptable to hood detainees, claiming *"…We'd actually seen it on television…"*.[378]

8.350 I bear in mind that it is of course not possible to be certain that all these soldiers are referring to this particular broadcast. I also recognise the possibility that being able to claim having seen the apparently permissible practice of hooding on the television news before deployment might for some soldiers be part of an exculpatory justification for applying or for not intervening in the practice of hooding. However, this does not alter the fact that the broadcast had the potential to mislead soldiers who were soon to deploy on Op Telic as to the acceptability of hooding. Nor does it change the fact that, since it covered an operation that took place slightly after the hooding ban, it was an opportunity for the MoD to have noticed that the ban had not been effectively communicated.

[372] Boyce BMI 102/126/6-127/11
[373] Boyce BMI 102/128/14-129/3
[374] Seeds BMI 46/428/6-15
[375] Bartels BMI 52/176/11-19
[376] Kenyon BMI 60/101/19-25
[377] This expression has been used as convenient shorthand for the Inquiry to describe G10A; and findings relating to individuals within the Rodgers Multiple do not imply findings relating to Craig Rodgers unless that is explicitly stated.
[378] Aspinall BMI 28/33/22-34/2

(5) 11 April 2003 – use of hoods on prisoners being transported by the RAF Regiment on Chinook helicopters

8.351 In an operation in theatre on 11 April 2003, there is evidence that a number of prisoners had been hooded whilst aboard Chinook helicopters. Allegations regarding the treatment of prisoners, and the death of one prisoner, on this operation have been reported in the media. Those allegations are not within my terms of reference and I make no findings in respect of them.

8.352 I simply record that on the basis of material disclosed to the Inquiry, it seems likely that on 11 April 2003:

(1) a number of prisoners were kept in hoods while aboard Chinook helicopters in the custody of the RAF Regiment;[379]

(2) that other coalition forces were also involved in the operation; and

(3) the fact that the prisoners had been hooded was mentioned in reporting of the operation that followed the death of one of the prisoners who had been found to be unresponsive following the flight.[380]

[379] Haseldine BMI 83/36/19-37/20: while the evidence was anecdotal, Capt Haseldine, one of the SO3s in the J2 (intelligence) branch of 3 (UK) Div for Op Telic 2 told the Inquiry that on one occasion he saw the RAF Regiment squadron who provided security for the Divisional Headquarters at Basra Airport with hooded prisoners captured on the site.

[380] MOD055787-9

Chapter 8: The extent to which the issue of hooding and related lack of doctrine concerning interrogation was staffed up beyond those in theatre

Introduction

8.353 It was clear from the evidence that the debate about the use of hooding did not end with the decisions that were made to ban their use in theatre. A clear example of this was the evidence of Marriott, the 1 (UK) Div's Chief of Staff:

> *"Q. And is this right, that notwithstanding the promulgation of that order, the legal debate nonetheless went on in the background?*
>
> *A. Annoyingly so it did.*
>
> *Q. Yes. Did you have any sense of why it was that Colonel Mercer was continuing to conduct the legal debate, notwithstanding that the ban had already been put into place by General Brims?*
>
> *A. Yes, I did understand that because – and – because Colonel Mercer and indeed, I think, Nick Ayling, but I cannot be sure, had had this debate going on with the NCC who, as I understood it at the time, supported the concept in some way. And Nick Mercer wanted to bottom this out and that he sought to do. But we had already taken the decision, and what irritated me was the fact that this debate was still going on which was contrary to my general and what he wanted."*[381]

8.354 That the debate continued is also supported by Mercer's contemporaneous diary entries. I have set out above how, on 3 April 2003, Mercer recorded that he had "*gained a minor victory*" in having managed to prevent prisoners of war being hooded by interrogators. This was a reference to Brims' ban. Yet in relation to the later meeting with the ICRC on 6 April 2003, Mercer referred to the different views between him and the ICRC on the one hand and the NCHQ on the other hand, stating "*… the NCC do not understand the law – I will win this debate*".[382]

8.355 The Inquiry examined the extent to which the issues that had emerged out of the use of hooding at the JFIT were, and should have been, referred upwards or "staffed up".

8.356 In considering this issue, there are several considerations which I think it fair to address at the outset.

8.357 Firstly, it is obviously important that a decision had already been taken in theatre that hoods would not be used, and in doing so the ICRC complaint appeared to have been resolved. In closing submissions, the Treasury Solicitor went so far as to suggest that this meant that it cannot sensibly be suggested that the issue of hooding was one which at the time warranted staffing up to the MoD or Ministers.[383] I do not accept this submission when put so highly, not least because a number of

[381] Marriott BMI 98/189/24-190/15
[382] MOD019893
[383] SUB001339, paragraph 220

witnesses made clear that they did expect the issue to be raised and resolved above NCHQ level, for example:

(1) Frend:

> *"Both Lieutenant Colonel Mercer and I were certainly of the view that a ban had been ordered, because on 8 April we had a discussion on this point. I told him of my view at that time, namely that it had been premature to impose a blanket ban on hooding without first establishing on what basis the practice had hitherto been conducted and without considering the circumstances and reasons for which hoods were being used. I was of the view that this was an issue of significant national importance which required the highest level direction and guidance from the Ministry of Defence in the UK. He was of the view that a full ban had been the only option and said that "history would prove me right".* [384]

> *"…For my own purposes I wanted to know what the legal and policy position was from a UK perspective because of the significance of what had occurred and obviously to give confidence to those people in the JFIT as to whether or not what had happened was inappropriate or wrong.*
>
> *…*
>
> *I expected Whitehall – when I say "Whitehall", I expected the Ministry of Defence legal advisers to be engaged."*[385]

(2) Christie:

> *"I think certainly it would have gone out of theatre back to the UK, so PJHQ plus. I do not know from where and probably didn't have much sight as to what decision-making processes were employed at that level."* [386]

(3) Clapham:

> *"...I think it should have been staffed in a variety of fashions. It should have been staffed up the legal chain because there were legal concerns, it should have been staffed up the policy/political chain because the outside agency was involved, and those that were affected, such as the J2 branch, who might have felt that doctrine or guidance was lacking, they should have fed things back as the HUMINT directive required them to do and, in fact, commanders should probably have spoken to each other about a concern. So, yes, it should definitely have gone back, but through any one of many channels."* [387]

(4) Mercer:

> *"From my perspective, the issue of hooding was now in the hands of the NCC. I had no doubt that, given the seriousness of the situation; it would be staffed to PJHQ and to Ministers as there was going to be an official complaint to the UK Government by the ICRC. However, although a Theatre policy was adopted as a pragmatic way of solving the legal dispute between the NCC and HQ 1st (UK) Armoured Division, I was advised by PJHQ that they only endorsed my legal position in September/October 2003. In other words the matter remained unresolved, legally, for the next six months."* [388]

[384] Frend BMI02902-3, paragraph 62
[385] Frend BMI 69/81/8-22
[386] Christie BMI 69/134/21-24
[387] Clapham BMI 91/63/16-64/2
[388] Mercer BMI04070-1, paragraph 52: in his oral evidence Mercer explained that even leaving aside the ICRC complaint aspect, he would expect the issue to have gone to PJHQ, although not in those circumstances to Ministerial level: Mercer BMI 68/60/15-62/3

But I do accept that, in looking at the decisions taken by individuals in this process, it is a very relevant feature that the ongoing debate about hooding took place in the context of a ban which had already been issued, and, of course, in the context of the high-tempo pressurised warfighting environment.

8.358 Secondly, I accept that the extent of *legal* disagreement about the use of hooding was in one sense limited. Mercer was effectively a lone voice in suggesting that hooding was in all circumstances unlawful, whereas Brown, Maj Davies and Clapham at the NCHQ and Christie and Frend at 1 (UK) Div all considered it lawful if used for security purposes and limited to that which was absolutely necessary. However, as the Commander legal of 1 (UK) Div, Mercer was not a junior dissenting officer in the debate, and the difference of view was quite a sharp one. Furthermore, even if on a combination of policy and presentational rather than legal grounds, other senior officers had effectively sided with Mercer in suggesting that hooding should not be used.

8.359 Thirdly, it is relevant to note that the debate on hooding had served to expose the relative lack of doctrine both in respect of prisoner handling guidance regarding sight deprivation and of tactical questioning and interrogation doctrine. As I have addressed above, it had been noticed that JWP 1-10 was silent on sight deprivation (see, for example, Mercer's comment on S002's loose minute that JWP 1-10 had *"no ref to hooding"*, see above paragraph 8.163). Furthermore, the reference to sight deprivation in the draft JSP 383 had been seen, certainly by Christie, but this referred to blindfolding not to hooding (see above paragraph 8.139).

8.360 Moreover, it is clear that the absence of any written doctrine on tactical questioning or interrogation referring to sight deprivation by whatever means, had become apparent: Duncan, as the J2X in the NCHQ, said in evidence that the dearth of interrogation doctrine had emerged from the debate over the use of hoods:

> *"My conversation with Lt Col Mercer concerned the use of interrogation by UK forces. Following that conversation I spoke with Cdre Neil Brown and Lt Col Clapham, and we agreed that UK defence doctrine on interrogation was somewhat thin and lacking in detail. I am confident that I raised this issue with PJHQ. I cannot now remember precisely who I spoke to or precisely how the Issue was reported up, although I believe that the ACOS J2 in PJHQ (Cdre Munns), and his staff officers, would have been made aware of the issue."*[389]

So in looking at what has been referred during the Inquiry as the "staffing up of the hooding debate" for consideration by PJHQ/MoD, it is relevant to bear in mind that the in theatre discussions had exposed a lack or paucity of doctrine in this area.

8.361 Fourthly, it is important to remember that at the material time, late March and April 2003, the NCHQ was a deployed command headquarters between 1 (UK) Div and PJHQ. It would not, therefore, be expected for staff officers from 1(UK) Div to staff issues direct to PJHQ, leapfrogging the NCHQ. To the extent that the hooding debate, and the doctrinal shortcomings which it had exposed, ought to have been raised with PJHQ, it was for the NCHQ to do so.

8.362 Against this background, I turn to consider the evidence from Burridge, as the National Contingent Commander, and from the policy advice, legal and intelligence sides of his headquarters about the extent to which hooding the doctrinal issues were referred up to higher levels, whether PJHQ, the MoD or to Ministers.

[389] Duncan BMI09000, paragraph 2

Air Marshal Burridge

8.363 Burridge's evidence was that, having given his direction that hooding should stop, he was simply unaware of any legal debate or any other debate about how his intent should be articulated on the ground.[390] Burridge appreciated that the hooding issue was potentially an issue which would be of importance "to London":

> *"A. That any incident, albeit at the tactical level, can have strategic consequences in terms of relationships with other nations, relationships with those nations on whom a coalition relies for support, media reaction, the ability to maintain public support in the sending nation, in our nation, and the ability to maintain political support.*
>
> *Q. So media sensitivity was certainly one of the issues?*
>
> *A. One, but by no means the only one.*
>
> *Q. I follow. It was a matter that you made, to use your word, London aware of?*
>
> *A. The S034 did just that, as I would have expected.*
>
> *Q. Did you give any direction to S034 as to what she should do in this –*
>
> *A. No, I did not need to.*
>
> *Q. What did you expect that she would do? To whom would she report?*
>
> *A. I expected her to inform the Secretary of State's office and also her opposite number in the Permanent Joint Headquarters.*
>
> *Q. What, if you like, was the main purpose of her reporting to the Secretary of State's office?*
>
> *A. That they would be aware that there was potential of an ICRC complaint over the handling of prisoners by British personnel."*[391]

8.364 When asked about the hypothetical question whether he would have regarded the hooding issue to be a matter that ought to be referred higher had he known about it at the time, Burridge's evidence was that:

> *"A. I would have said "The legal argument at this point does not matter. This is inappropriate in terms of my intent. Therefore, hooding is to stop and it will be resolved another day in the cool light of contemplation after combat".*
>
> *Q. And how would that, as it were, have been picked up? If you had said that, how would it have been picked up?*
>
> *A. We are slightly in the realms of conjecture here, but the process by which that is picked up is through the "lessons identified" process, which is driven by the Ministry of Defence and would, for example, have required inputs from the staff branches at the Permanent Joint Headquarters as to issues which either lay unresolved or where current practice or doctrine was deemed to have been not fit for purpose."*[392]

[390] Burridge BMI 98/20/22-21/4
[391] Burridge BMI 98/23/18-24/18
[392] Burridge BMI 98/21/12-22/1

NCHQ POLAD, S034

8.365 I have already examined how S034 received the ICRC concerns about hooding at NCHQ level and how as the equivalent in rank to a Brigadier she was the senior UK representative at the meeting with the ICRC on 6 April 2003.

8.366 As regards S034's evidence about staffing up of the issues that were in dispute, it is necessary to distinguish between S034's immediate action in informing Ministers of the ICRC concern, and the substantive policy issue of whether hooding should be permitted.

8.367 On receiving the ICRC's concerns by telephone on 1 April 2003, and having discussed the matter with Burridge who ordered that hooding was to stop, S034 said was that she telephoned the office of the Secretary of State for Defence. The purpose was to inform the Secretary of State's office of the complaint, but also to indicate that steps had been taken in theatre to resolve it.[393] In oral evidence, S034 explained that she could not be sure whether she telephoned the Secretary of State's office on 1 April, when the ICRC first raised the matter, and a second time after the meeting on 6 April; or whether this was all rolled up in one telephone call. She was confident that she had spoken to the Secretary of State's office after the meeting of 6 April, but was less sure whether she had also spoken to the office before then.[394]

8.368 S034 said informing the Secretary of State's office was not done with the purpose of staffing the issuing of hooding up to a higher level for resolution. She did not seek to suggest that this had been her intention:

> *"Q. But presumably – presumably – S034, you would, would you, before contacting the Defence Secretary's office to pass on this information, have sought to find out as much as you reasonably could about how, for example, hooding had been employed and what the issues were about it?*
>
> *A. I think there are two issues here. The first is I wanted to understand for myself and on behalf of the NCC headquarters what had been happening and why. The second issue is I was notifying the Secretary of State's office that a sensitive and politically sensitive circumstance – issue, if you like – had occurred. I would not have expected to have given absolute full chapter and verse to the Secretary of State's office because that is where the staffing process would have come in. That is where the chain of command would have worked.*
>
> *Q. Forgive me if it's obvious, but why was this a politically sensitive issue?*
>
> *A. Because UK Plc signs up to the Geneva Convention and the law of armed conflict and, for an international organisation, of which I think I'm right in saying UK is the second-largest donor, it would be rather odd for that organisation to be making a complaint about the way we were treating prisoners. So that, to me, was a political issue.*
>
> *Q. So in the phone call or calls – whichever it were – to the Defence Secretary's office, were you effectively giving the message that there had been an issue raised, there might have been a complaint, but the matter has now been dealt with and there is nothing more that the Ministry need do?*
>
> *A. Yes, up to the last point. I would not have said that there is nothing more the Ministry needed to do. I was simply tipping off the Secretary of State's office. It was by no shape or form me passing them a problem and expecting them to act. I was merely acting as a warning system.*

[393] S034 BMI05191, paragraph 15
[394] S034 BMI 72/28/13-31/7

> *Q. Alerting them to the possibility of a complaint and giving them as much detail, presumably, as you could do that they needed to know about the nature of the complaint that may come their way?*
>
> *A. Yes. But I would not have expected to have gone into copious detail, no, because had any complaint been made, that would have been staffed very thoroughly within PJHQ and the Ministry of Defence, and the Secretary of State would have been notified about it separately. So it was not – I did not see it as my role to effectively staff the issue there and then and pass the details over the telephone.*
>
> *THE CHAIRMAN: I think I probably know the answer, but when you talk about "staffed", do you mean just sending up the problem to higher up the chain of command?*
>
> *A. If I can, in answering that, Sir, draw on my current experience. When ICRC make a complaint, then it is investigated fully and quite formally, and then what we would call a submission – a detailed written note – would be passed to ministers, either saying "Yes, we agree the allegations" or "No, we don't".*
>
> *THE CHAIRMAN: That's what you are referring to when you say "staffed"?*
>
> *A. Correct."* [395]

8.369 The Secretary of State could not remember the ICRC concerns being raised with him in March or April 2003. He said that having checked with his private office staff, they could not either. Hoon explained, and I accept, that whether he would have expected personally to be informed of S034's message to his private office would depend upon the terms of what was said.[396] I think it clear from S034's evidence that she was not giving a message urging any particular action rather alerting the private office to what had occurred because of the potential sensitivity, and the steps taken to resolve it.

8.370 I find nothing surprising nor any fair point for criticism in respect of S034's communication with the Secretary of State's office. As she explained in evidence, and I accept, for the ICRC to make a formal complaint would have been a serious and sensitive issue and she was warning of that possibility while advising on the steps taken to resolve the issue.[397] This was, I find, a typical communication by an experienced civil servant to a Minister's private office, alerting Ministers to an emerging problem that might have political repercussions.

8.371 A different question is whether S034 should have played a part in staffing the policy issues surrounding hooding to PJHQ or the MoD for further consideration and resolution beyond what had been ordered in theatre, and resolved with the ICRC. On that aspect, Ayling (the 1 (UK) Div POLAD) told the Inquiry that at Divisional level it was not for him to raise the dispute to PJHQ level.[398] Ayling's evidence suggested that it was for S034 to decide whether to staff the dispute over hooding up to PJHQ:

> *"Q. It may be said that on the basis of the very clear dispute of what might be said to be a serious matter that had arisen, it would have been desirable for this matter to have been staffed up to PJHQ or to MoD for resolution. In general terms, what do you say about that?*
>
> *A. That would have been for S034 to decide. She was an experienced civil servant and I trusted her judgment.*

[395] S034 BMI 72/31/18-34/4
[396] Hoon BMI 103/180/24-182/23
[397] S034 BMI 72/29/23-30/7
[398] Ayling BMI 70/63/4-14

> *Q. If it was suggested that that should have been part of your responsibility, what would you say about that?*
>
> *A. I would say that as a rule it would have been an odd thing for me to do, to second-guess her judgment on an issue like this, where she was clearly concerned and had made clear that she would deal with the matter. I didn't see the dealing with that matter as solely encompassing addressing the ICRC's concerns, but I think it would have been notifying other people as well. But I can't remember specifically discussing with her who else she was going to notify about it."*[399]

8.372 S034 said that she was not involved in any discussions on the staffing up of the issue. She agreed that it was for NCHQ rather than Ayling at 1 (UK) Div to staff the matter up. However, S034's view was that it was for the NCHQ legal officers, and not her as the NCHQ POLAD to staff the matter up: She was to the best of her knowledge not involved in any subsequent staffing of the issue. She would have expected the issue to be staffed up the legal chain of command.[400] Specifically in relation to Ayling's evidence, S034 said:

> *"A. If you are asking me was it for him or was it for me, then I agree it was probably for the NCC. Do I think it was for me as opposed to the legal advisers, I would say it was for the legal advisers.*
>
> *Q. So it was for the legal advisers within NCC to staff this up. Did you discuss with them, following the meeting that you had led with the ICRC, that this was a matter about which further guidance might be sought from higher authority?*
>
> *A. I don't recall specifically. I do recall some general discussion about whether we might, through, I think, ICRC, going back to Geneva, asking for clarification, shed some further light on it. I don't remember anything more specific than that, I am afraid.*
>
> *Q. I mean, it was at least a matter that was very far from concluded, wasn't it?*
>
> *A. That isn't strictly my recollection, no, in the sense that my very clear understanding was we had a workable way forward, agreed to the extent that ICRC agree things, but agreed at the meeting, and that what remained was, I believe, a single lawyer, Colonel Mercer, who was in disagreement.*
>
> *Q. So, as you understood it, he stood alone, what, and you determined that the matter was in fact dealt with, did you?*
>
> *A. For the specific purposes of what we were dealing with, yes. I do accept that there is a wider issue of doctrine in the sense that an issue had been raised that did not appear to be a straightforward interpretation one way or the other from the Geneva Convention or any other legal documents, but I did not think that had a strong direct bearing at that point in time and it would not have been for me to engage in longer-term doctrine discussions.*
>
> *Q. So was that a defect, if I may characterise it as such, that you brought to the attention of anyone in the NCC or to any higher authority?*
>
> *A. In terms of the NCC, although I have no recollection, I would undoubtedly have briefed Air Marshal Burridge in detail on what had happened, as indeed I would have expected the legal adviser, Gavin Davies, to have briefed him. Given that Gavin Davies was at the meeting, I would have expected him to have briefed Commander Neil Brown and decided what, if any, further action was taken."* [401]

[399] Ayling BMI 70/63/22-64/15
[400] S034 BMI 72/35/16-36/13
[401] S034 BMI 72/59/19-61/13

NCHQ Legal and the extent to which they referred the issues to PJHQ and the MoD

8.373 Brown's evidence was that he considered that he had properly raised the hooding issue with PJHQ by discussions with Clapham[402] and in Situation Reports (SITREPs) to PJHQ.[403] In his Inquiry witness statement, Brown stated that the discussion of the hooding issue had included Clapham and Quick as well as Maj Davies[404] and he referred to his view on hooding as being one that was agreed by colleagues at PJHQ.[405] In his SIB statement of 6 July 2005, Brown stated that the lines for S034 to take at the meeting with the ICRC "*…were cleared with PJHQ*".[406] Brown also told the Court Martial that PJHQ had consulted the MoD about the hooding issue,[407] although by the time he gave evidence to the Inquiry, Brown could no longer remember what had led him to give that evidence at the Court Martial.[408]

8.374 Brown said that once the GOC had made the decision to prohibit the use of hooding in theatre, the legality of the practice was not a significant issue for him. At that stage, he thought the issue had been "put to bed", because although there had not been a full resolution of the debate, the issue under humanitarian law had gone away:

> *"THE CHAIRMAN: Is the position this: once the order had come out from the general officer commanding 1 (UK) Div, you, as it were, thought it had been put to bed? Is that right?*
>
> *A. That's exactly right, Sir.*
>
> *THE CHAIRMAN: Not put to bed in the sense that you got the answer because you hadn't got the answer, had you?*
>
> *A. Sir, the general took a decision which could not have offended humanitarian law, so the question on humanitarian law had gone away."*[409]

This has to be seen on the context of the warfighting stage of the conflict, and in particular daily targeting decisions that required NCHQ legal input.[410]

8.375 At the end of his evidence Brown explained his view that the wider lessons ought to have been captured as part of the lessons learned process, and that is was simply not possible finally to resolve in theatre the myriad issues that arose:

> *"MR ELIAS: Forgive me. When the chairman said to you, Commodore, the matter had been put to bed but the issue had not been resolved, that was right at least in this sense, wasn't it: it had been put to bed because this general officer commanding had issued an order, but I think as you told us this morning it would have been open to another to take a different view?*
>
> *A. Yes, sir.*

[402] Brown BMI 75/113/19-25
[403] Brown BMI 75/114/22-115/11: while there is no doubt that there would have been the normal flow of SITREPs to PJHQ, if these referred to hooding, the relevant SITREPs were never found and disclosed to the Inquiry.
[404] Brown BMI05870, paragraph 55
[405] Brown BMI07342, paragraph 5
[406] Brown MOD000901
[407] Brown CM 60/92/17-93/15
[408] Brown BMI 75/117/1-118/12
[409] Brown BMI 75/149/25-150/4
[410] Brown BMI 75/147/5-148/10

Q. So the issue as it were was not finally in any sense finally resolved, was it? It was resolved for you and your colleagues and for the immediate moment but it wasn't resolved, as it were, from on high for all future purposes until policy was reversed?

A. No, sir. That wasn't – that didn't arise out of the operation. What happened subsequently was that the Ministry of Defence instigated a "lessons learned" programme and as part of the "lessons learned" programme the – with the benefit of more time to consider things carefully and look for wider lessons – then the organisational lessons learned programme ran from there. But at the time our responsibility was mission command and making sure that decisions that were taken were within the law.

Q. Of course. But that didn't prevent you, had you chosen and your colleagues, to staff it up to Ministry level at the time. You weren't prevented from doing that were you?

A. No, sir.

Q. And had you done so a decision might have come earlier?

A. I don't accept that, sir. S034 informed Whitehall. The issue was known within PJHQ and I can only conclude that others shared my view, which was that there wasn't an outstanding question. Sir, there are thousands of potential questions about humanitarian law and particularly its relationship with human rights law which the courts are examining today and which, in the middle of an armed conflict, we weren't in a position to finally resolve." [411]

8.376 Maj Davies' evidence on this issue was in many respects similar to that of Brown, his immediate superior. He too remembered that the line which he and Brown took on hooding had been cleared with PJHQ, and that this was done by either Clapham or Quick.[412] He did not consider that there was an issue to staff up because the practice of hooding at the JFIT was brought to an end, and he later learned of the Divisional ban by Brims:

"Q. Did it occur to you at the time of that Red Cross meeting or before or shortly after, perhaps, that this was an issue about which further advice ought to be sought and that the matter ought to be staffed up?

A. It didn't because the process was at an end. As far as we were concerned, the practice of hooding was finished.

Q. Because you understood it only to apply to this particular camp?

A. Well, no, I also became aware that there had been a divisional-wide ban by General Brims, but that awareness came later." [413]

8.377 The evidence of Clapham was subtly different to that of Brown and Maj Davies. Like Brown and Maj Davies, Clapham believed that the hooding issue had been raised with PJHQ at least insofar as he believed that he had raised the matter with Quick, his immediate superior in the PJHQ chain of command:

"Q. Does that mean that you accept that there were failures in that regard, in that it seems that the matter probably was not staffed up to PJHQ or to MoD in that way?

A. No, I find it almost incomprehensible that it wasn't staffed back. Certainly, the way that Neil Brown worked as a staff officer was as an effective one. He would realise that to some extent his job was to facilitate the passage of information between the subordinate headquarters

[411] Brown BMI 75/153/17-155/4
[412] Davies BMI 75/52/4-53/14; Davies BMI04585-6, paragraph 18
[413] Davies BMI 75/47/19-48/4

and his superior headquarters. I would have realise the same. We were both in regular contact with Rachel at PJHQ and, whilst I can't put my hand on a specific email or telephone call, it just seemed incomprehensible to me that it wasn't raised as matters went along.

Q. Can we deal with your side of the house on the legal side? Did you, first of all, formally, in any form, staff this matter back to PJHQ?

A. Not to the extent that one would have written a paper and sent it back for comment. But as I say I find it incomprehensible that I wouldn't have made my line manager aware of it at the time. But I also think that given that I went back within days, it is incomprehensible that I would not have included in my verbal back-brief of what had happened when I had been in theatre. It is true that this was a relatively significant event – amongst others, but still significant in its own right.

Q. So do you say that perhaps informally, as part of a verbal briefing, you think you did make Rachel Quick aware of the fact that there had been this dispute, been Red Cross concerns and the like?

A. As I say, I can't put my hand on an email or recollect a specific conversation. I just find it incomprehensible that I wouldn't have discussed it on a number of occasions. Given the tempo and the nature of that operation, to give a verbal brief would, in my opinion, have been formally enough.

THE CHAIRMAN: Is the answer to the question really that you think you did, but you can't recollect it specifically – you think you did tell Rachel Quick?

A. That's right, Sir, yes.

MR MOSS: There could have been a whole spectrum of ways in which this could have been raised. Perhaps at the bottom of spectrum would have been "This issue about hooding arose in theatre, there is no need to worry because it has all been dealt with, General Brims has made his order, you just need to be aware that this happened, but it has all been dealt with, there is no issue", through to the other end of the spectrum, which might be "The debate was never concluded, the doctrine appears to have been thin" – I will come back to that in a moment – "This is a real problem. There is not enough guidance on this. It has been dealt with temporarily in theatre, but we really need to have definitive guidance on that". Where within that spectrum – you put it in your own words – do you think any briefing back to Rachel Quick, your information would have fallen or your message to her would have fallen?

A. I think it is likely to have encompassed both those possibilities and also the third option that you don't include is the report back, when the debate is still live. So I see it as short term when the debate is live, medium term reporting back what has happened to the debate and longer term the need for doctrinal changes or follow-up action."[414]

8.378 However, whereas Brown and Maj Davies tended to see the hooding issue as having been dealt with by stopping hooding in the JFIT and by the Brims order, Clapham was inclined to accept the proposition that there was an issue that needed to be staffed up. In introducing this topic, I have already referred to his evidence that the issue should have been *"…staffed in a variety of fashions"* (see paragraph 8.357 above).[415]

[414] Clapham BMI 91/64/3-66/19
[415] Clapham BMI 91/63/16-17

8.379 It is noticeable that witnesses like Brown and Maj Davies saw discussions with Clapham about hooding as a way of involving PJHQ in the process. In this regard, Clapham's role was, I find, not entirely well defined. Clapham was of equivalent rank to Brown but from a higher headquarters. Clapham was clear in both his Inquiry witness statement[416] and his oral evidence that when he was in theatre in the early stages of Op Telic 1, he was there as another service lawyer on the NCHQ legal staff, or as he put it a "*spare pair of legal hands*" and not in a PJHQ capacity. He thought that it would have been well recognised by those such as Burridge, S034, Duncan, Brown and Maj Davies that he was not the senior lawyer in theatre.[417] I accept that would have been well understood; nevertheless Brown and Maj Davies do appear to have regarded raising issues with Clapham during his stay at the NCHQ as, at least to some extent, clearing the issue with PJHQ.

8.380 As I shall turn to when considering the evidence of Duncan, there is evidence that Clapham was involved in discussions with Duncan in which they both recognised that doctrine on interrogation was somewhat 'thin'. Clapham said of this that he did not specifically remember this debate with Duncan but he accepted it was highly likely that this was Duncan's view. Clapham was asked whether this ought to have led to further action being taken:

> *"Q. That emphasised all the more, didn't it, the need for further guidance and further consideration to be given to this aspect of hooding and tactical questioning and interrogation, notwithstanding the in-theatre order?*
>
> *A. Yes. It was definitely a matter for follow-up action. The lawyers would have played a part in that, but also, as the owners of their own doctrine, if you like, I would have seen the first responsibility to rest with J2 to pass back this situation that the doctrine needed to change. Now PJHQ, of course, don't own doctrine or training. They run current operations. So eventually this needs to be passed back to the frontline commands for them to deal in slightly slower time, because our job is to solve the situation on the ground, and that's what General Brims and the alternative third way of blacked-out goggles actually did. Then our responsibility next was to inform the debate and, if one goes forward to what happens in September 2003, at that time the C[J]O, recognising that he does not own the doctrine, writes to the chief of defence intelligence and invites him to change –*
>
> *Q. If you forgive me saying, you are jumping slightly ahead. I don't want to interrupt you. But dealing with matters at this stage still in Op Telic 1, understanding what you say about a primary responsibility for J2 because it had arisen in J2 and it was their doctrine, on the legal side it might be said that as an augmentee from PJHQ who was going back physically to Northwood, you were ideally placed to act as the bridge, as it were, to ensure that further legal consideration was going to be given to these aspects. Would you agree with that?*
>
> *A. I was certainly best placed to take the full version of what had happened in theatre back to PJHQ on April 3, yes.*
>
> *Q. So sticking with the legal sides of the house, both in theatre and in PJHQ, can you help us to understand why it is that, as it seems on the material disclosed to the Inquiry, the trail goes cold in April 2003 and one doesn't see PJHQ legal considerations of hooding or any further clarification?*

[416] Clapham BMI06501-2, paragraph 49
[417] Clapham BMI 91/26/16-30/9; Clapham BMI 91/114/4-20

A. No, I can't explain it specifically, other than to say we moved on to deal with the next significant issue of the day. What had happened was that the staff branch that owned the doctrine, they were well aware of what they regarded as it being thin and I suspect that we considered that it would be taking place in the background. What we did know was that often these improvements are made following a lessons learned process, to which all parties participate, and the legal branch had its own lessons learned process with all the lawyers that were deployed. To some extent it would have been for 1 Div to capture this problem at the first instance and use that in their lessons identified process to pass that back to the Land Warfare Centre for army doctrine to be rewritten.

Q. Before I move on, so that we have your comments on it, those are all points about what other parts of the forces and the joint forces ought to have been doing. But ultimately J9 Legal, as you have told us, was part of the policy branch at PJHQ, wasn't it?

A. Yes, it was, although it – "policy" in that sense means something different. It almost means "political". It doesn't mean "doctrine".

Q. Understanding what you say about it not being doctrine, nevertheless, as a theatre issue, as you have said yourself, it was a significant one, wasn't it, having involved, for example, serious concerns raised by the Red Cross in theatre?

A. Yes, and in that respect that was probably the most significant and immediate aspect of it, because whilst in theatre, the matter of whether to hood, what to do for security, had been resolved fairly quickly, there was still this potential for a complaint against the UK. So, in political terms, that probably was, in the short term, the significant issue that remained.

Q. Taking matters to a head, then, if you say, "Well, perhaps we moved on to the next thing", would you accept that perhaps you ought to personally have done more to ensure that on the J9 side at PJHQ more consideration was given to definitive guidance, definitive legal guidance at least, in this area once you were back at PJHQ in April 2003?

A. Well, our responsibility for the conduct of operations continued and, when Nicholas Mercer was replaced by Lieutenant Colonel Charlie Barnett, we ensured that the solution that had been arrived at in March and April 2003 was continued for Op Telic 2. So that is our immediate command responsibility-…"[418]

8.381 Quick was the senior legal adviser within PJHQ. I found her to be frank and straightforward in her evidence. She had no particular recollection of knowing about the ICRC concerns or about the debate about the legality of hooding but she accepted that she may have been informed of them.[419] If she was so informed, there is no evidence that Quick escalated the issue to the MoD legal advisers or to Ministers. However, Quick said in evidence that she was never aware of Mercer's view that there were issues that he expected would need to go as high as Ministerial level. Mercer never raised that directly with her.[420]

8.382 As with other witnesses, the fact that Quick could not remember the ICRC concerns or the hooding debate being raised with her must be seen in the context of what was occurring at the time. In Quick's case, she told the Inquiry that at that time she was *"…extremely busy and I would get something like 100 emails an hour. So I got an awful lot of information coming in to me. So it is very difficult for me to say what I*

[418] Clapham BMI 91/67/11-71/1
[419] Quick BMI 92/45/5-48/17
[420] Quick BMI 92/49/10-50/5

was told or what I was not told".[421] She later expanded on this and said that during March 2003, and the first week of the operation, she did not go home, but stayed in the mess at PJHQ Northwood, working from 05.00hrs to 23.00hrs, thereafter settling into a routine of 08.00hrs to 20.00hrs to 21.00hrs.[422]

8.383 Quick accepted that it was part of the lessons learned that greater detail ought to have been given about prisoner handling:

> *"MR DINGEMANS: You told us in your earlier evidence that one of the lessons learned was that greater detail and specific advice should have been given to the soldiers on the ground about prisoner handling. That is right, isn't it, that was one of the lessons learned?*
>
> *A. Yes, at the "lessons identified" conference.*
>
> *Q. Can you tell the chairman what greater detail should have been provided by way of advice to the soldiers?*
>
> *A. I am talking about JWP 1-10, the doctrine on prisoner of war, which I think could have had a lot more detail in it, insofar as it could have also dealt with criminal detainees, security internees and some of the other issues that we had to tackle with.*
>
> *Q. Can I just ask you for your comments on these propositions? It should certainly have included passages on the detention of civilian detainees?*
>
> *A. Internees, yes.*
>
> *Q. Internees. It should certainly have included passages on hooding?*
>
> *A. Yes.*
>
> *Q. The use of positions of control or stress positions, as I think they are called?*
>
> *A. It would have been helpful if it had had something in there, yes.*
>
> *Q. And, indeed, so far as battlegroups were concerned, what minimum standards of accommodation they should be providing to prisoners?*
>
> *A. Yes".*[423]

8.384 At the level of the MoD and the MoD legal adviser team, the evidence suggested that their involvement in relation to hooding issues arose through ministerial correspondence and Non-Governmental Organisation reports rather than through hooding or any doctrinal shortcomings having been staffed up from PJHQ. I shall refer to their involvement in the next Chapter of this Report but simply note here that there is insufficient evidence to suggest the MoD Legal Advisers were brought into the question of the legality of hooding or shortcomings in tactical questioning and interrogation doctrine in March or April 2003.

Duncan (NCHQ J2X) referring issues up to PJHQ J2

8.385 Duncan's evidence was to the effect that it was recognised at NCHQ level that UK defence doctrine on interrogation was "*…somewhat thin and lacking in detail…*".[424] In statements to the Inquiry, Duncan stated that:

[421] Quick BMI 92/37/15-22
[422] Quick BMI 92/89/2-18
[423] Quick BMI 92/84/14-85/16
[424] Duncan BMI06047, paragraph 47

> *"I remember subsequently discussing these issues with Cdre Neil Brown and Lt Col Clapham, both at NCC. The conclusion from our discussions was that UK Defence doctrine on interrogation was somewhat thin and lacking in detail and should be strengthened. I do not remember now whether specific steps were taken to strengthen doctrine… it is my recollection that the widespread view at the time was that UK Defence doctrine did not contain sufficient guidance or detail as to how interrogation should be conducted, both from a legal and a practical stance."* [425]
>
> *"My conversation with Lt Col Mercer concerned the use of interrogation by UK forces. Following that conversation I spoke with Cdre Neil Brown and Lt Col Clapham, and we agreed that UK defence doctrine on interrogation was somewhat thin and lacking in detail. I am confident that I raised this issue with PJHQ. I cannot now remember precisely who I spoke to or precisely how the Issue was reported up, although I believe that the ACOS J2 in PJHQ (Cdre Munns), and his staff officers, would have been made aware of the issue.*
>
> *I am confident that I also reported to PJHQ the content and outcome of my meeting with Col Vernon and S009, as described at paragraphs 42 to 45 of my original statement. I believe this was a significant enough issue for me to ensure that PJHQ knew about both the hooding issue and the ICRC concerns. Again, I cannot now remember precisely who I spoke to or precisely how the issue was reported up."* [426]

8.386 Duncan told the Inquiry that he remembered that he did make representations about this:

> *"My recollection is that I did, both within the NCC, within 1 Div and back in PJHQ, that this situation had arisen, our doctrine didn't provide the answers it should and, therefore, doctrine needed to be rewritten in order to meet these purposes. My recollection is also that everybody agreed, but it was not a priority task"* [427]

8.387 There was support for Duncan's evidence that he raised these concerns with PJHQ. S002, the Divisional G2X remembered that S062, the J2X at PJHQ, indicated that he was aware of the issue about the propriety of hooding from a conversation that S062 had with Duncan.[428]

8.388 Turning to the relevant PJHQ witnesses on the J2 side, S062 accepted that PJHQ was made aware of the hooding debate. S062's evidence was that he was aware of a dialogue between S065 (his superior officer at PJHQ) and Duncan. S062 suggested that it was a debate the details of which he was not brought into because "*…it was a debate between people senior to me and it is rare for a major to be brought into a debate between lieutenant colonels when there is perhaps disagreement*".[429] S062 said that once he learned that it was being addressed at the level of chief of staff and GOC of 1 UK Division, he felt that he had discharged his responsibilities as a Major because the issue was being dealt with at general staff officer level. As to doctrinal shortcomings, S062 did not recall any specific comments from NCHQ requesting clarification about doctrinal policy for interrogation operations.

[425] Duncan BMI06046-7, paragraph 47
[426] Duncan BMI09000-1, paragraphs 2-3
[427] Duncan BMI 76/38/5-11
[428] S002 BMI 82/109/16-110/14
[429] S062 BMI 101/208/14-19

8.389 S065 was the SO1 J2 Intelligence Production and S062's superior officer at PJHQ. S065 remembered the ban on hooding that was issued by the Commander Joint Operations following Baha Mousa's death. He told the Inquiry that before that Directive, he was not aware that hooding was occurring in theatre and that had he been aware of it, he would have gone through his chain of command to try to stop it. His training taught him that the use of hoods was not appropriate, although security blindfolding was permissible in certain situations.[430] S065 remembered a discussion with Duncan and S062 but not specifically one on hooding in March/April 2003:

> *"I have been referred to the evidence of Major S062 which he states there was a dialogue between myself and Col Duncan regarding the issue of hooding. I do recall a general discussion between Major S062, Col Duncan and me in December 2002, shortly before Col Duncan left for theatre. However, I do not now remember the exact issues discussed. We may have touched upon hooding, and if we did, I would have reiterated that hooding was not to be employed and would, as always, have stressed the correct handling of prisoners at all times. However, I simply cannot recall whether or not hooding was in fact discussed on this occasion or at any other particular time in March-April 2003.*
>
> *I have been asked whether or not I have been made aware of a view expressed that the doctrine on the subject of hooding was thin or lacking. I have not. However, doctrine is sometimes defined by the military as "that which is taught." In a broader setting I had, between 1999 and 2005 regularly expressed concerns that military investment in our interrogation capacity had been significantly reduced to such a point that I termed it a 'Cinderella' branch of the HUMINT business; possibly appreciable here by its lower order listing in the tasks in paragraph 4 of the CJO Directive. I saw interrogation and to some extent PH&TQ, being disadvantaged as a consequence of prioritisation and energy being applied to other fields in HUMINT, which would have included that which is taught. Sometime during Op TELIC 2, I do not recall exactly when, the J2 Division held a Lessons Learned workshop to form a list of areas perceived as needing addressing and I pressed that Interrogation was included as a particular field needing deep review.*
>
> *During Op TELIC 1 I do not remember being aware of ICRC concerns about prisoner handling or treatment of prisoners, including the use of hoods on prisoners. I only became aware of such concerns through media reports in the course of this Inquiry."* [431]

8.390 Commodore Christopher Munns was the Assistant Chief of Staff J2 at PJHQ. Munns could not remember the use of hoods at the JFIT, or ICRC concerns coming to his attention. He thought that if these matters had been drawn to his attention he would have remembered it. Specifically, he was absolutely sure that he would have remembered a report from Duncan about a complaint concerning hooding being made by the ICRC, if such a report had been made to him.[432]

8.391 Counsel to the Inquiry asked Munns what his reaction would have been if Duncan had informed him of concerns about the use of hoods, the dearth of doctrine and the concerns of the ICRC. Since he made clear he had no recollection of such a report by Duncan, his answers were hypothetical and have to be seen as such. He said that he believed that he would have convened a meeting to discuss the implications with legal advisers and various other branches to decide on an appropriate response. He would, of course, have been conscious of the Brims banning order which was acting

[430] S065 BMI09026-7, paragraphs 51-52
[431] S062 BMI09027-8, paragraphs 54-56
[432] Munns BMI 96/198/2-9

as a stop gap, but this would have needed to have been backed up by further action. I gained the impression from his evidence that if these issues had been raised against the background of complaints by the ICRC the action in response would have been more immediate than if he was informed just that hooding had been observed in the JFIT and that there was a scarcity of doctrine.[433]

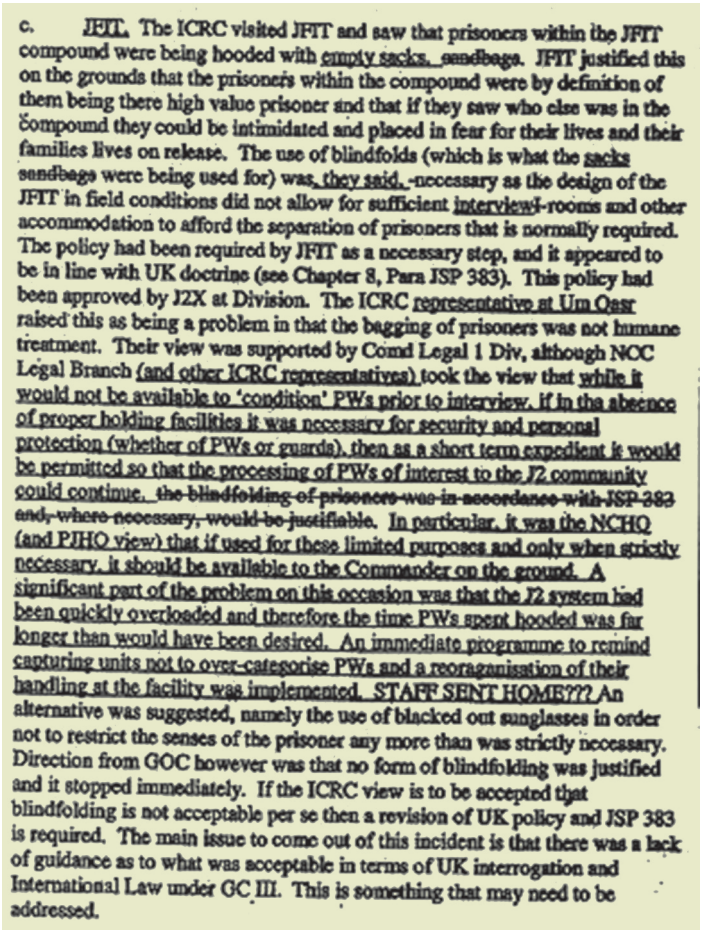
Operational Reports and Lessons Learned Reports

8.392 End of tour and similar reflective reports were written by a number of the relevant formations and branches involved in Op Telic 1. Interrogation and prisoner handling issues were addressed in some of these. One obvious difficulty, however, is that the process of distilling lessons learned from Op Telic 1 took time and while references to prisoner handling, hooding and interrogation doctrine were to be found in a number of these reports, many were not completed until after Baha Mousa's death.

Legal lessons identified: Maj Christie's "Report on PW Handling During Op Telic"

8.393 Christie produced a draft "*Report on PW Handling During Op Telic*" following his involvement as the legal officer who served with the Prisoner of War Handling Organisation. The version of the report provided to the Inquiry appeared to be a draft dated 7 May 2003 with track changes to Christie's initial version.[434] Christie explained that this report was written at the request of Mercer who wanted Christie to identify issues which arose concerning prisoner of war handling during the planning and mobilisation phases of Op Telic. He provided it to Mercer before leaving theatre in May 2003.[435] The draft report suggested, I find incorrectly, that Brims had ordered that there should be no form of blindfolding at all, rather than that hoods must not be used. The report did, however, refer to the possible need for UK policy and JSP 383 to be revised. It certainly addressed the issue that there was a lack of guidance as to what was acceptable in respect of interrogation practice:[436]

[433] Munns BMI 96/180/19-185/17
[434] MOD052186-99
[435] Christie BMI07210-1, paragraphs 2-6
[436] MOD052196



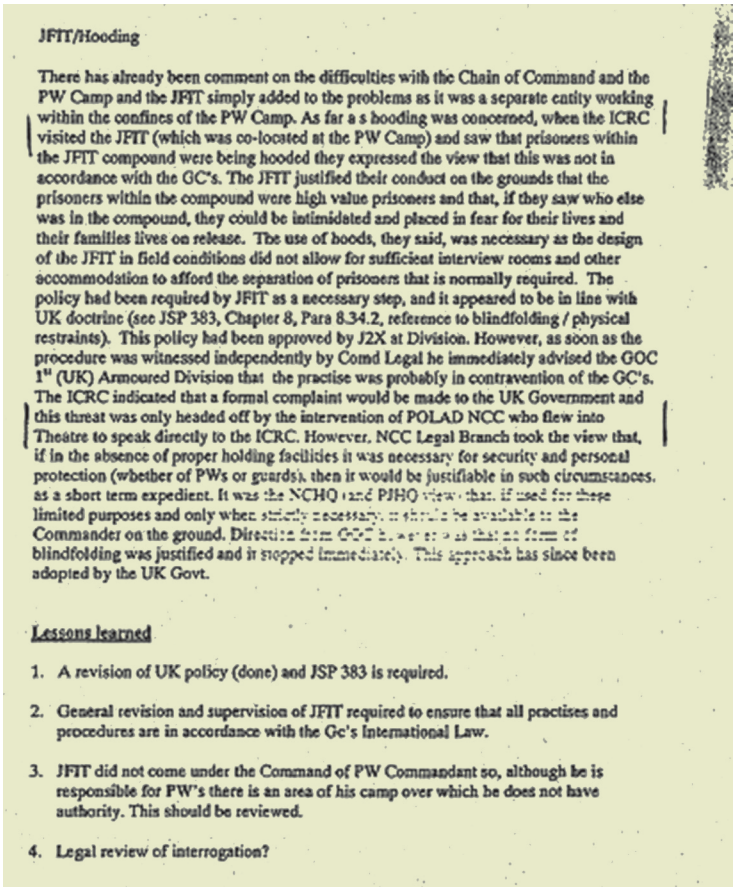
c. JFIT. The ICRC visited JFIT and saw that prisoners within the JFIT compound were being hooded with empty sacks, sandbags. JFIT justified this on the grounds that the prisoners within the compound were by definition of them being there high value prisoner and that if they saw who else was in the compound they could be intimidated and placed in fear for their lives and their families lives on release. The use of blindfolds (which is what the sacks sandbags were being used for) was, they said, necessary as the design of the JFIT in field conditions did not allow for sufficient interview rooms and other accommodation to afford the separation of prisoners that is normally required. The policy had been required by JFIT as a necessary step, and it appeared to be in line with UK doctrine (see Chapter 8, Para JSP 383). This policy had been approved by J2X at Division. The ICRC representative at Um Qasr raised this as being a problem in that the bagging of prisoners was not humane treatment. Their view was supported by Comd Legal 1 Div, although NCC Legal Branch (and other ICRC representatives) took the view that while it would not be available to 'condition' PWs prior to interview, if in the absence of proper holding facilities it was necessary for security and personal protection (whether of PWs or guards), then as a short term expedient it would be permitted so that the processing of PWs of interest to the J2 community could continue. ~~the blindfolding of prisoners was in accordance with JSP 383 and, where necessary, would be justifiable.~~ In particular, it was the NCHQ (and PJHQ view) that if used for these limited purposes and only when strictly necessary, it should be available to the Commander on the ground. A significant part of the problem on this occasion was that the J2 system had been quickly overloaded and therefore the time PWs spent hooded was far longer than would have been desired. An immediate programme to remind capturing units not to over-categorise PWs and a reoraganisation of their handling at the facility was implemented. STAFF SENT HOME??? An alternative was suggested, namely the use of blacked out sunglasses in order not to restrict the senses of the prisoner any more than was strictly necessary. Direction from GOC however was that no form of blindfolding was justified and it stopped immediately. If the ICRC view is to be accepted that blindfolding is not acceptable per se then a revision of UK policy and JSP 383 is required. The main issue to come out of this incident is that there was a lack of guidance as to what was acceptable in terms of UK interrogation and International Law under GC III. This is something that may need to be addressed.

8.394 In the draft conclusions section of this paper, probably not written by Christie himself, the fourth item listed was "*Development of JWP 1-10 and other doctrine*".[437]

Legal lessons identified: 1 (UK) Div Legal Branch Post Operational Tour Report

8.395 Elements of Christie's report were incorporated into the 1 (UK) Div Legal Branch Post Operational Tour Report.[438] This report was signed off by Mercer on 17 October 2003, and so after Baha Mousa's death. The section on JFIT/Hooding read as follows:[439]

[437] MOD052199
[438] MOD011301-70
[439] MOD011342



JFIT/Hooding

There has already been comment on the difficulties with the Chain of Command and the PW Camp and the JFIT simply added to the problems as it was a separate entity working within the confines of the PW Camp. As far a s hooding was concerned, when the ICRC visited the JFIT (which was co-located at the PW Camp) and saw that prisoners within the JFIT compound were being hooded they expressed the view that this was not in accordance with the GC's. The JFIT justified their conduct on the grounds that the prisoners within the compound were high value prisoners and that, if they saw who else was in the compound, they could be intimidated and placed in fear for their lives and their families lives on release. The use of hoods, they said, was necessary as the design of the JFIT in field conditions did not allow for sufficient interview rooms and other accommodation to afford the separation of prisoners that is normally required. The policy had been required by JFIT as a necessary step, and it appeared to be in line with UK doctrine (see JSP 383, Chapter 8, Para 8.34.2, reference to blindfolding / physical restraints). This policy had been approved by J2X at Division. However, as soon as the procedure was witnessed independently by Comd Legal he immediately advised the GOC 1st (UK) Armoured Division that the practise was probably in contravention of the GC's. The ICRC indicated that a formal complaint would be made to the UK Government and this threat was only headed off by the intervention of POLAD NCC who flew into Theatre to speak directly to the ICRC. However, NCC Legal Branch took the view that, if in the absence of proper holding facilities it was necessary for security and personal protection (whether of PWs or guards), then it would be justifiable in such circumstances, as a short term expedient. It was the NCHQ and PJHQ view that, if used for these limited purposes and only when strictly necessary, it should be available to the Commander on the ground. Directive from GOC [illegible] as that as form of blindfolding was justified and it stopped immediately. This approach has since been adopted by the UK Govt.

Lessons learned

1. A revision of UK policy (done) and JSP 383 is required.
2. General revision and supervision of JFIT required to ensure that all practises and procedures are in accordance with the Gc's International Law.
3. JFIT did not come under the Command of PW Commandant so, although he is responsible for PW's there is an area of his camp over which he does not have authority. This should be reviewed.
4. Legal review of interrogation?

Legal lessons identified: Joint Doctrine Command Centre Conference on Legal Lessons

8.396 The Joint Doctrine Command Centre hosted a three day conference in late September to early October 2003 to discuss legal lessons identified during Op Telic 1. It follows that this, too, was after Baha Mousa's death. Those attending the conference included Mercer, Quick, Rose and for part of the conference, Martin Hemming, the MoD's Legal Adviser. It was agreed that a written report would follow this conference and it is apparent that there was much heated discussion about the contents of that report.[440] A number of versions of extracts of the report were disclosed to the Inquiry. To an extent they reveal the difference of legal view on issues such as review of detention of prisoners, which are not central to this Inquiry.[441] However, the various drafts do reveal that lessons identified included that:

> *"Potentially controversial aspects of detainee handling need to be legally reviewed so that appropriate training can be conducted in preparation for operations*
>
> *…*
>
> *Consideration must be given early to the generation of policy and procedures covering all types of persons that UK forces may capture (prisoners of war, security internees and criminal detainees) so that it can be passed down in simple terms to those at the tactical level who will implement it"* [442]

[440] Rose BMI08040, paragraph 64
[441] MOD053789; MOD049833; MOD049814
[442] MOD049814

It was also noted that JWP 1-10 was an advance on prisoner of war procedures from the first Gulf War. However:

> *"…Whilst this document contained details regarding the construction of camps and the document required it contains little to assist the legal adviser with the types of questions that will arise during conflict"*[443]

8.397 A sub-section of the draft report was on "*Specific legal aspects of Op Telic Intelligence*". In relation to hooding at the JFIT, this part of the draft report stated:[444]

> Within the TIF UK intelligence personnel were formed into a Joint Force Intelligence Team (JFIT) with the purpose of providing a filter process on an ad hoc basis for those detained persons in respect of which a doubt existed regarding their status and also an mechanism to exploit the HVDs. The JFIT was constrained in its operation by the makeshift nature of their facilities within the TIF. Their doctrine was predicated upon their having facilities which were capable of segregation from other persons not subject to questioning. The aims of such segregation were to provide security between detained persons, for those being questioned and for those conducting the questioning.
>
> The manner in which the segregation was effected was by use of a hood placed over the head of the detainee. This procedure attracted mixed responses from both the ICRC and the military legal community. In essence the view of those in favour was that the use of hoods protected the person hooded as the person would not want to be seen to have co-operated with the coalition forces. Those against argued that it was inhumane and dangerous. The latter argument was borne out with the death of a person hooded whilst in UK 'custody'.
>
> Even before the death of the detainee the practice was suspended although this prompted 15 of the 40 persons being questioned to request the reinstatement of the use of hoods. A proposal to adopt the use of goggles was not put into effect.
>
> The confusion surrounding the use of hoods could have been eliminated by clear legal assessment of the techniques proposed for use prior to the conduct of the operation.
>
> **LESSON: Potentially controversial aspects of detainee handling need to be resolved so that appropriate training can be conducted in preparation for operations**

8.398 To some extent, therefore, the Joint Doctrine Conference had considered legal issues arising out of the use of hoods at the JFIT and the lack of guidance relating to prisoner handling in the interrogation context. However, apart from the fact that the conference did not take place until after Baha Mousa's death, there was considerable delay in the production of the legal lessons learned report. Quick, who in fairness to her had moved on to different posts and was not responsible for the production of the report, told the SIB in her 30 August 2006 statement that the report had still not been finalised at that stage.[445]

[443] MOD049819
[444] MOD053804
[445] Quick MOD011278

MPS Post Operational Report Op Telic 1

8.399 Wilson, the Officer Commanding the small detachment of MPS deployed on Op Telic 1 produced a post-operational report dated 19 May 2003.[446] His report commented upon the need for amendments to JWP 1-10 to include the lessons learned, and the role function and operation of the Brigade Collection Point (i.e. the TIF). He also recommended that clear command and control in respect of the Prisoner of War Handling Organisation was required.[447]

8.400 This report was followed, but only after Baha Mousa's death, with a full lessons learned paper, also from Wilson, dated May 2004.[448] Here, again, a full review of JWP 1-10 was recommended[449] and described as "*…urgent…*".[450] This report also showed that as early as 20 February 2003, a lesson had been identified that prisoner of war handling training was out of date regarding the correct treatment of prisoners of war. This was said to apply in particular "*…with regards to the routine* "*bagging*" *of PW*." The recommendation included that the MPS should be the lead arm for the delivery of prisoner of war handling and detention issues throughout the Services; MPS training advisory teams should sponsor the relevant individual training directives; and that the MPS should directly support BATUS, OPTAG and all major exercises involving detention or prisoner of war handling.[451]

8.401 Maj Rhett Corcoran, the SO2 Custody, told the Inquiry that Wilson's reports and comments in relation to JWP 1-10 led to a meeting at the Joint Doctrine and Concepts Centre sometime in late 2003 or early 2004.[452]

Joint Force Logistic Component (JFLogC) Post Operation Report

8.402 A post operation report of the JFLogC was produced on 12 May 2003. Unsurprisingly, where this did touch on prisoner handling, it concentrated on command, control, logistics and manning aspects. It stated in relation to prisoners of war that:[453]

1.37 Enemy Prisoners of War. There was no organisation deployed initially to plan and conduct operations to collect, register, administer and secure Enemy Prisoners of War. This was a serious omission. While the RHQ QDG, reinforced by others, including 1 DWR, did eventually provide this capability, significant risks were taken in all areas. This was made worse

when the UK facility was designated the 1 MEF facility. We should follow our published doctrine in this area and resource it properly. Despite the clear OA which indicated a potential requirement to deal with 13,500 prisoners, we failed to do so.

446 MOD049942-57
447 MOD049956-7
448 MOD050084-103: an earlier draft of the same report appears at MOD050224.
449 MOD050084-5, paragraph 4
450 MOD050091, paragraph 65
451 MOD050098
452 Corcoran BMI07269-70, paragraph 5
453 MOD051638-9

JFIT tour reports and lessons learned

8.403 In Part V I have already referred to the fact that on 1 March 2003, S040 produced a report on the JFIT lessons learned from the pre-deployment phase.[454] That report included the assessment that:

> *"The JFIT has formed from a diverse set of differently-trained personnel from JSIO and the Reserves of all 3 Services, some of whom met for the first time the day before deployment. It is untrained and unexercised in its war role and has no recourse to previous lessons learned from Op GRANBY or indeed any interrogation doctrine on which to build its function"*[455]

S040's recommendations included the stark comment:

> *"Interrogation doctrine must be promulgated without delay"*[456]

8.404 Two post tour JFIT reports were disclosed to the Inquiry. The first dated 1 July 2003, was prepared by a member of 4 (Conduct After Capture) Company, JSIO and largely concentrated on the proposal that JFIT doctrine be amended to allow for JFIT teams which would deploy forward in direct support of Battlegroups.[457]

8.405 Of greater relevance to the Inquiry was the second report, which in the version disclosed was only an undated draft but was stated to have been "*… submitted several weeks after departure from theatre…*".[458] This report was authored by the Sergeant Major of the JFIT.[459] This report was critical of the poor understanding of capturing troops in respect of passing on the circumstances of capture, documentation and equipment of prisoners sent to the JFIT. It also referred to some prisoners complaining of injuries which the prisoners claimed were received only after capture. It is not of course possible for this Inquiry to investigate such allegations. As regards the use of hoods, the report contained the following:[460]

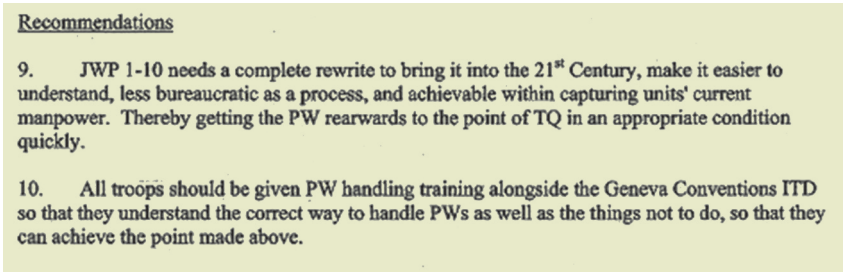
21. After approximately two weeks into the operation the International Committee (ICRC) requested that the PW's hoods be removed. [redacted] During this time a visit to the JFIT by Col Chris Vernon and a civilian spin-doctor, Marcus de Ville, combined with a paper from SO1 LEGAD at 1 (UK) Div led to a decision by the GOC that there was to be no hooding in the UK AOR. Some Prisoners were not happy about this because they wanted to preserve their identity from other Prisoners. Also the behaviour of the PW changed dramatically. They became more confident as they could gain support from others through verbal and sign communication. This was difficult to prevent due to the large numbers of Prisoners (eighty four at one point) and so few guards (as little as eleven at one point). The Prisoners could also see what was going on around them and there was a concern about security as some of the Prisoners did get released into the population. Therefore they could have gathered intelligence and knew were we were located. Also some of the JFIT Staff were re-rolled into FHTs and could be recognized later when carrying out such duties. A limited number of blindfolds were taken into theatre but some were quickly lost or stolen but sandbags were plentiful. [redacted]

[454] MOD042060-4
[455] MOD042063, paragraph 12
[456] MOD042064, paragraph 20
[457] MOD038658-60
[458] MOD041849
[459] S040 BMI 67/213/9-22; S040 BMI 67/237/15-24: the name of this individual has been redacted from the end of the report.
[460] MOD041855

8.406 The recommendations included a recommendation that the JFIT should deploy with its own equipment table; that a training needs analysis should be carried out on the Interrogation and PH&TQ course and the lessons identified from Op Telic and other recent deployments should be put into the course; and that JWP 1-10 should be rewritten and troops should receive instruction on how to handle prisoners of war correctly. It stated that Infantry Training Directive 6 on the law of armed conflict only covered the "*…basic do's and don'ts*".[461]

8.407 It is notable that this report took a somewhat defensive stance on the hooding that had taken place. Whilst I recognise that the report advocated a review of training and of JWP 1-10, it is surprising that the scarcity of interrogation doctrine, recognised by S040, Duncan and Clapham in theatre, did not receive more attention in this report.

8.408 A third report was provided by F Branch JSIO dated 21 May 2003. It addressed the experience of the instructional staff who had deployed on Op Telic 1 and acted in particular as a Field HUMINT Team rather than as part of the JFIT.[462] That report was similarly critical of capturing troops' lack of understanding of correct prisoner of war handling methods. This was again in the context of circumstances of capture, weapons, documents and equipment not being provided with prisoners. Its recommendations included that:[463]



Recommendations

9. JWP 1-10 needs a complete rewrite to bring it into the 21st Century, make it easier to understand, less bureaucratic as a process, and achievable within capturing units' current manpower. Thereby getting the PW rearwards to the point of TQ in an appropriate condition quickly.

10. All troops should be given PW handling training alongside the Geneva Conventions ITD so that they understand the correct way to handle PWs as well as the things not to do, so that they can achieve the point made above.

8.409 The Commanding Officer of the JSIO at this time, S046, told the Inquiry that this call for a re-write of JWP 1-10 would have had a sympathetic hearing from him.[464] In speaking of S040's earlier report of 1 March 2003, S046's evidence was that he did not think that he did anything specific in relation to the requirement for interrogation doctrine to be promulgated without delay.[465] In relation to the reports of 1 March 2003 and 21 May 2003, S046's evidence was that it was too late for the process of doctrinal drafting to get to those in theatre.[466]

8.410 S046 also told the Inquiry that in his role as the Commanding Officer of the JSIO, he had not been made aware at the time, of the hooding issue at the JFIT. He did not think that he had seen the reference to it in the Sergeant Major's report:

[461] MOD041856
[462] MOD042844-57
[463] MOD042856
[464] S046 BMI07318, paragraph 27
[465] S046 BMI 88/145/5-14
[466] S046 BMI 88/146/7-14

"Q. If you had seen the reference to Red Cross concerns about hooding, what do you think you would have done?

A. Had I seen that reference, I would have certainly wanted to speak to the individuals who were there at the time, particularly S040, to get the details. And I suppose that what I would have done would have raised it within the Defence Intelligence Security Centre senior staff – the chief of staff and brigadier – and I may well have raised it with ADI HUMINT. The fact that I didn't is why I think I didn't see this document.

Q. You tell us in your witness statement – can we look at paragraph 27, please – and over the page – you tell us that you are disappointed – about ten lines up from the bottom: "I am disappointed that this is my first exposure to these allegations since it refers to places where I now understand elements of my peace-time command were serving." When you were saying that you were disappointed that it was your first exposure to the allegations, first of all, were you saying that you would have expected S040 and others to have brought these matters to your attention?

A. Not so much S040. I would have expected the chain of command to have raised the issue. If the chain of command feels that we were the focal point for interrogation policy, as some appear to have claimed, and if they felt that we were the centre of excellence and the people who taught this subject, not to come to me and question me contemporaneously is a disappointment, yes.

Q. Just so that we have it and we are clear, the disappointment about these allegations that you were saying you were first exposed to in looking at the evidence to this Inquiry, is that a reference to the hooding issue at the JFIT or the wider Red Cross concerns and complaints in the leaked report or both?

A. No, it is specifically the hooding within the JFIT that would have been a major concern for me. Because that's my units' responsibility."[467]

Directorate of Operational Capability Op Telic Lessons Learned

8.411 At a higher level, the Vice Chief of the Defence Staff set a framework for a lessons learned process by the Directorate of Operational Capability. The resulting report was dated 17 October 2003. In relation to prisoner of war handling, the lessons identified included a section on the JFIT which stated:

"382. Joint Field Interrogation Teams (JFIT). Some UK Joint Field Interrogation Team (JFIT) methods, although contained in standard procedures, proved controversial and in one instance drew adverse comment from the ICRC. These included the use of hoods (to protect identity) and the use of restraint combined with questioning, which is considered to be illegal interrogation. The hoods issue was resolved by the use of sunglasses instead. Reviewing such procedures in advance of operations and amending procedures where appropriate would enable consistency during operations and assist in maintaining good relations with the ICRC.

383. Lesson: Joint Field Interrogation Team procedures require review to comply with ICRC standards (Action: MOD LA, PJHQ)."[468]

[467] S046 BMI 88/148/15-150/4
[468] MOD042276-7

8.412 Here again, it can be seen that the lessons learned process had captured, at least to some extent, the relative lack of guidance on prisoner handling in the interrogation context, pointing to the need for review of such procedures. But the lessons learned process did not work sufficiently swiftly to lead to any enhanced guidance or doctrine in theatre before Baha Mousa's death.

Conclusions

8.413 I set out my conclusions in relation to the issues addressed above in the final Chapter of this Part of the Report.

Chapter 9: Subsequent statements about hooding following events at the JFIT but before Baha Mousa's death

8.414 Thus far I have examined how issues concerning prisoner handling at the JFIT arose in theatre, the decisions and orders that were made, and the extent to which they were referred beyond the NCHQ. The question of the hooding of prisoners involved the MoD and, in some instances, Ministers. The involvement of Ministers in other ways between March 2003 and September 2003 occurred in the form of constituents' correspondence, an Amnesty Report, and some early parliamentary questions. The most relevant evidence in relation to these is set out under the heading below.

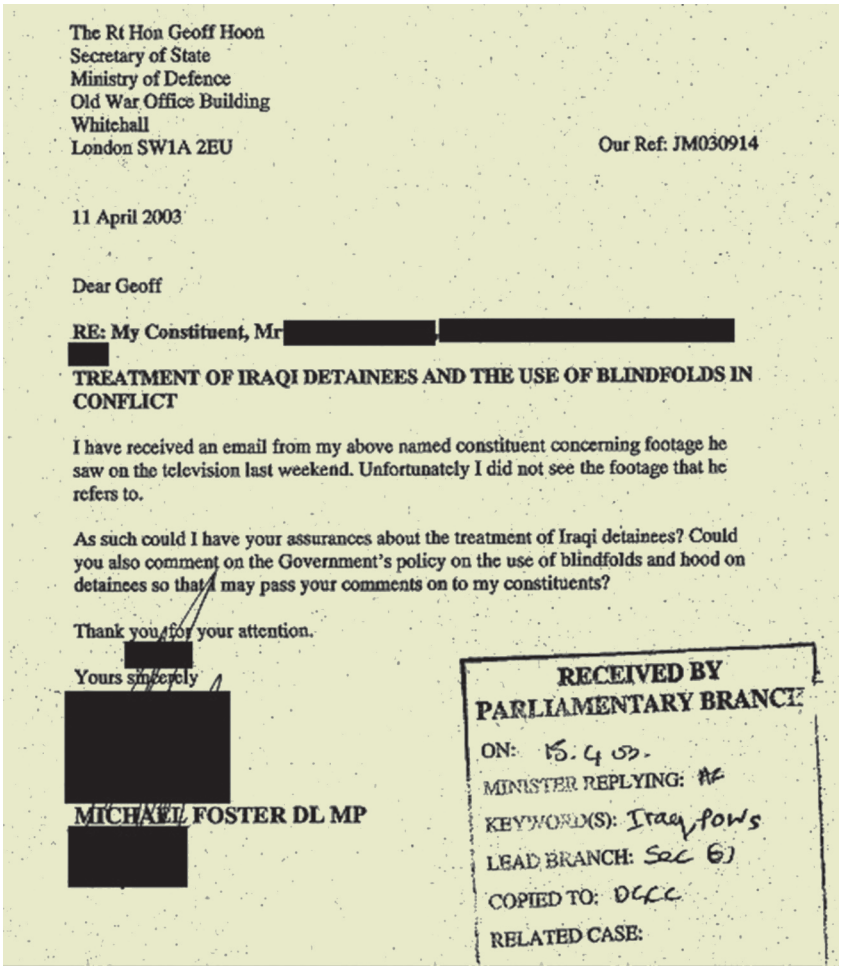
Correspondence between MoD Ministers and MPs/ Constituents touching upon the hooding of prisoners: April to May 2003

8.415 In April 2003, Defence Ministers received a number of letters from other Members of Parliament passing on concerns of constituents about the treatment of Iraqi detainees. The letters were answered by Rt. Hon. Adam Ingram MP, the Minister of State for the Armed Forces, although some had been addressed in the first instance to the Secretary of State for Defence, the Rt. Hon. Geoffrey Hoon MP.

8.416 It is unfortunate that this is another area where the MoD record keeping did not lead to all of the relevant materials being preserved. In several cases, the draft responses prepared by officials that would have gone to the relevant Minister were not available, and often the background note that would have accompanied the draft response was not available or not available in its final form. This made the task of both the Inquiry and witnesses that much more difficult.

8.417 There were similarities in the correspondence and it suffices to record as an example correspondence relating to the concerns raised by a constituent of Mr Michael Foster DL MP. He wrote to the Secretary of State on 11 April 2003 in the following terms:[469]

[469] MOD054852



The Rt Hon Geoff Hoon
Secretary of State
Ministry of Defence
Old War Office Building
Whitehall
London SW1A 2EU

Our Ref: JM030914

11 April 2003

Dear Geoff

RE: My Constituent, Mr [redacted]

TREATMENT OF IRAQI DETAINEES AND THE USE OF BLINDFOLDS IN CONFLICT

I have received an email from my above named constituent concerning footage he saw on the television last weekend. Unfortunately I did not see the footage that he refers to.

As such could I have your assurances about the treatment of Iraqi detainees? Could you also comment on the Government's policy on the use of blindfolds and hood on detainees so that I may pass your comments on to my constituents?

Thank you for your attention.

Yours sincerely

[redacted]

MICHAEL FOSTER DL MP

[redacted]

RECEIVED BY PARLIAMENTARY BRANCH
ON: 15.4.03.
MINISTER REPLYING: AF
KEYWORD(S): Iraq/POWs
LEAD BRANCH: Sec (I)
COPIED TO: DCLC
RELATED CASE:

8.418 The reference to television footage seen by the constituent the previous weekend is highly likely to have been the ITN News footage which I have addressed at paragraphs 8.338 to 8.350 above.

8.419 In the conventional way, a draft response was provided by officials. The draft reply was forwarded to the ministerial correspondence section on 1 May 2003 with the indication that it had been cleared by an official in the Sec (Iraq) AD Pol Ops team.[470] I note that similar responses to other letters in similar terms were in the same way cleared by other officials. The draft response contained the following passage:[471]

> We would only restrain prisoners if we felt that it was necessary to do so (for example if we felt that they might seek to escape, or be violent towards the guards or other prisoners). There were a couple of occasions at the start of the conflict where prisoners were hooded for short periods - this practice has now been stopped. It is worthwhile repeating that in all this we have worked very closely with the ICRC who have expressed themselves content with the way we have treated prisoners and detainees throughout the conflict.
>
> I hope this is helpful

[470] MOD054850
[471] MOD054848-9

8.420 This draft contained three aspects of concern. The first was the suggestion that the ICRC had expressed themselves content with the way that UK Forces had treated prisoners and detainees throughout this conflict. In the context of an MP's letter which specifically referred to hooding and bearing in mind that the ICRC had specifically raised concerns about hooding with a threat of an official complaint in relation to the practice, I am bound to observe that I find this statement to be inaccurate. Secondly, the draft reply clearly understated the extent of hooding in theatre. There was no proper basis upon which it could have been said that there were only "…*a couple of occasions at the start of the conflict where prisoners were hooded…*". Thirdly, it was also extremely questionable to state that the hooding had only been "…*for short periods…*". While some cases of hooding would indeed have been of short duration, it was clear on the basis of the contemporaneous minute from Maj Davies that about ten prisoners had been hooded for up to 24 hours.[472] Even allowing for the particular circumstances that applied to UK Forces operations in late March 2003, I suggest most people would not regard hooding for 24 hours as being of short duration.

8.421 Without the background note that went up with this draft response, it is extremely difficult to know why the response was drafted in this way. Nor is it apparent what the source was for officials' including these three aspects in the response.

8.422 The final paragraph of the response sent by Ingram was in material terms very similar although the reference to "*a couple of occasions*" was amended to read "*a small number of occasions*":[473]

D/Min(AF)/AI 2268/03/P 2 May 2003

Dear Michael

Thank you for your letter of 11 April (reference: JM030914) to Geoff Hoon on behalf of your constituent, Mr [redacted] of [redacted], about the treatment of Iraqi detainees. I am replying as this matter falls within my area of responsibility as Minister of State for the Armed Forces.

Prisoners of War (PWs) captured by British Forces are being treated strictly in accordance with our obligations under the Geneva Conventions and international law. Some of the PWs currently being held by British Forces were actually detained by US Forces. They will be held until custody can be transferred to appropriate US facilities. We have worked very closely with the International Commission of the Red Cross (ICRC) who have expressed themselves content with the way we have treated prisoners and detainees throughout this conflict.

Captured Iraqis are given prisoner of war status until proved otherwise, and will be treated according to our obligations under the Geneva Convention. Captured Iraqi Forces are likely to be prisoners of war unless they have concealed weapons in the conduct of operations, in which case they are unlawful combatants. Although unlawful combatants do not have PW status, we would have a duty under International Humanitarian Law to treat the prisoner in a reasonable and humane manner which we would discharge in full.

We would only restrain prisoners if we felt that it was necessary to do so (for example if we felt that they might seek to escape, or be violent towards the guards or other prisoners). There were a small number of occasions at the start of the conflict where prisoners were hooded for short periods - this practice has now been stopped. But I would like to reassure your constituent that in all this we have worked very closely with the ICRC who have expressed themselves content with the way we have treated prisoners and detainees throughout the conflict.

I hope this is helpful

Yours [redacted]

The Rt Hon Adam Ingram MP

Private Office

[472] MOD022122
[473] MOD050331

8.423 Essentially the same lines were taken in reply to a number of letters from other Members of Parliament.[474]

8.424 In evidence to the Inquiry, Ingram made the obvious, but nonetheless valid point, that he had a huge volume of work coming across his desk and relied upon the quality of the briefings and drafts which were sent to him. He agreed with the proposition put to him by his own Counsel that in the absence of an obvious contradiction on the face of the advice he was given, it would not have been practicable for him to have queried all the advice that he was given by civil servants on a daily basis. Ingram struck me as loyal to those who had advised him, describing them as having the utmost integrity and commitment to their task at hand.[475]

8.425 In relation to the point that the ICRC had expressed themselves content with UK Forces treatment of prisoners, Ingram told the Inquiry that he had no recollection of ever being informed of the ICRC raising concerns in theatre.[476] Ingram pointed to the difficulties of addressing this issue without the background briefing that would have accompanied the draft reply. When pressed as to whether he would have signed off this letter had he known that only a month or so earlier, there had been a complaint made by the ICRC which, in fact, complained that prisoners were hooded, left in the sun and possibly left in stress positions, Ingram's response was effectively that it would depend on the circumstances. He could not remember the ICRC complaint. I understood Ingram to suggest that if the ICRC had raised an issue and it had been resolved to their satisfaction, this would be consistent with what was said in the letter. With hindsight he accepted that it was unusual to refer to the ICRC's point of view. Government did not usually comment on its views.[477] I note in passing that Vivien Rose, a member of the MoD legal adviser's team, made a similar point, namely that the MoD was not meant to refer to the ICRC when it had made positive points about UK Forces. This led her to think she had not seen this particular text.[478]

8.426 When pressed further, I found Ingram rather reluctant to accept what I consider were the obvious points of which officials ought to have made him aware when answering Foster's letter, namely of the nature of the ICRC's concerns about hooding:

> *Q. …May I just ask this one last time and I shall then move on. The last two lines of the letter: "The ICRC, who have expressed themselves content with the way we have treated prisoners and detainees throughout the conflict ..." Would you have put your signature to that if you had known that, a month or so earlier, there had been a complaint made by the ICRC which, in fact, complained that prisoners were hooded, left in the sun and possibly left in stress positions? Would you have put your signature to the letter as it is there drafted?*
>
> *A. I would have probably tried to establish ground truth and examined the words probably and whether there were stress positions. I would have probably asked about that if it had been brought to my attention. Looking at that particular phrase in that letter which appeared in a number of letters, I say that – you know, it is unusual to have commented about the ICRC at all, but probably consistent with the views – it would not have been – I would take this view and an honest view that it would not have been reported to me unless it had been said by the ICRC in theatre to those who had drafted those documents because there was no – nothing to be gained from people telling something that wasn't true because the truth would always surface.*

[474] MOD050332; MOD050333; MOD050334
[475] Ingram BMI 97/77/5-78/14
[476] Ingram BMI 97/16/9-17/8
[477] Ingram BMI 97/19/1-23/7
[478] Rose BMI 93/85/15-23

Q. Then one final question on the ICRC issue: if it be the case that you didn't know about the ICRC complaint at the time that you were writing this letter, given that this was the very thing that you were almost bound to do as a minister for Parliament, should you not have been made aware of the fact that the ICRC had made a complaint about the treatment of detainees?

A. I would have operated on the basis in the way in which I answered earlier, that I would have taken the view that our people in theatre at all levels – the political advisers, the military personnel who had responsibility – would have taken on board any criticism, implied or otherwise, from the ICRC, that if it was something where they felt they had to – felt it was something which they had to address, they would have addressed it because it goes back to an earlier discussion we had about winning hearts and minds. It was about making friends with the wider community, not making enemies, and anything that went into the enemy category, creating a hostility, would have been contrary – would have been working against all that we were trying to achieve.

So my view on this would have been that how you are operatives in the field – military or civilian – would have an onus upon them to correct anything that was brought to their attention. So I would not have been informed of every minutiae, big as some of them may well be in terms of individual incidents, that had happened on the ground. So I don't think it was a denial of honesty. I think it was dealing with the ground truth at that point in time and correcting any feelings that may have arisen.

Q. That doesn't quite address my question, Mr Ingram, which is really this: we know what you did write, we know what you signed because it is there in back and white. Looking back even with hindsight, in 2010, if you like, do you think now, given that you were going to be writing letters of that kind, it would have been better had you been told in March or April 2003 that the ICRC have made a serious complaint about the way prisoners are being handled?

A. Without seeing the nature of what the ICRC has said, I don't know whether it was serious or not. I don't know whether it was one incident or it was symptomatic of systemic failings on the part of the way detainees were being handled. I can't answer that question without knowing the specifics."[479]

8.427 Ingram was, in my opinion, keen to avoid answers that might reflect critically upon those who advised him at the time. In that sense, in the passage I have cited above and in places elsewhere, his evidence was not entirely convincing. I would stress, however, that I found him an entirely honest witness. There is no basis at all upon which I could properly conclude that Ingram knowingly mislead Foster and other MPs in the responses he gave in May 2003.

8.428 A short email exchange between officials was disclosed to the Inquiry dated 20 to 23 April 2003 which referred to *"…MC* [Ministerial Correspondence] *on a series of issues – the MC sets the particu*[lar] *exam question "to comment on the use of hoods and handcuffs on PWs"…".*[480] The similarity of issues addressed and the similarity of the draft line to take strongly suggests that these emails were providing input for the response to the ministerial correspondence from Foster and other MPs to which I have referred above.

8.429 The email chain started from Ian Gibson to David Lester (PJHQ J9) on 20 April 2003 with the following email and attachment:[481]

[479] Ingram BMI 97/23/10-26/7
[480] MOD053241
[481] MOD053241-2

LA11-S

From: DCMC CCT2C-S
Sent: 20 April 2003 19:26
To: PJHQ-J9-POL/OPS4-S; LA11-S
Subject: C: Lines on use of hoods and restraints

Lines on use of hoods and rest...

David

PSA a draft paragraph to insert into an MC on a series of issues - the MC sets the particualr exam question "to comment on the use of hoods and handcuffs on PWs". I've interpreted this pretty narrowly yto mean UK use (US use is a matter fro them). this is based - as discussed on a conversation with S034 - whom you'd asked to update me before briefing Min(DP) on Pw issues.

Grateful for your views (and theatre's, if nec) - before I go final (Sean would also welcome you views)

Rgds

IAn G

Lines on use of hoods and restraints

Text for the MC

We treat prisoners of war strictly in accordance with our obligations under the Geneva Conventions. Detainees who do not qualify for prisoner of war status (for example ~~on account of their conduct during hostilities~~) are still treated decently and humanely. We would only restrain prisoners if we felt that it was necessary to do so (for example if we felt that they might seek to escape, or be violent towards the guards or other prisoners). [There were a couple of occasions at the start of the conflict where prisoners were hooded for short periods - this practice has now been stopped. [Goggles - what do we say?]

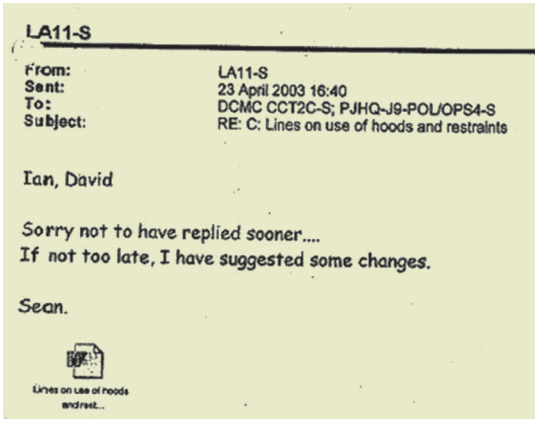
In all this we have worked very closely with the ICRC - who have expressed themselves content with the way we have treated prisoners and detainees throughout the conflict.

Background (C)

Handcuffs and hoods were used by UK forces at an early stage of the conflict to detain (and disorientate) Iraqi Prisoners of War. Command in theatre expressed concern about this and the practice was discontinued. Handcuffs are now only used to restrain prisoners who are violent (towards the guards or other prisoners). Theatre have asked the ICRC locally whether it would be permissable to make certain prisoners (notably those of high intelligence value) wear blacked out goggles. [redacted] [David - this is the position as of about 2 weeks ago (as briefed by S034) - any developments since?]

8.430 I note, firstly, that this draft contained the same suggestion that the ICRC had expressed themselves content with the way that UK Forces had treated prisoners and detainees throughout the conflict which I find to have been inaccurate. Secondly, the same phrase appears: "*There were a couple of occasions at the start of the conflict where prisoners were hooded for short periods – this practice has now been stopped*". As I have noted above, there was in fact no proper basis to suggest that this had only been on a "*couple of occasions*". Thirdly, it is notable that this original draft sent by Gibson suggested that the purpose of hoods was both to detain and disorientate prisoners of war.

8.431 In response to the email, Sean Martin of the MoD legal advisers team replied with the following email attaching an amended version:[482]



LA11-S

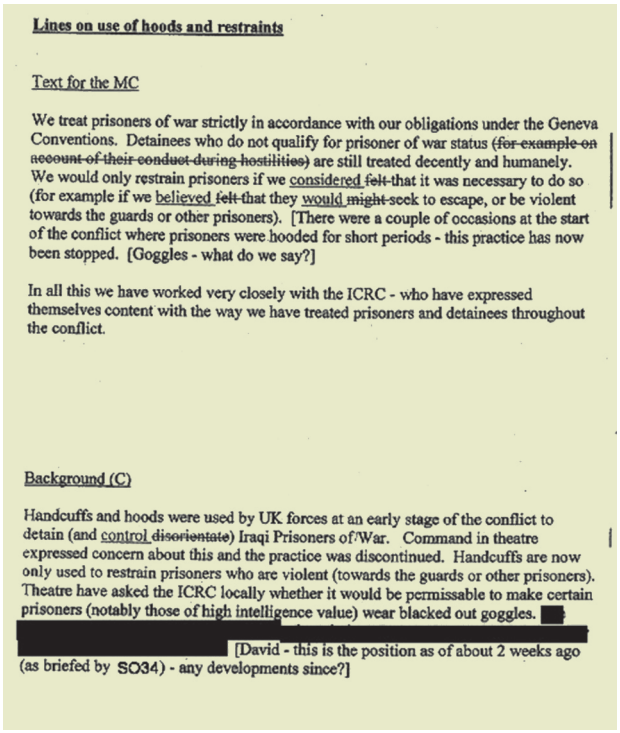
From: LA11-S
Sent: 23 April 2003 16:40
To: DCMC CCT2C-S; PJHQ-J9-POL/OPS4-S
Subject: RE: C: Lines on use of hoods and restraints

Ian, David

Sorry not to have replied sooner....
If not too late, I have suggested some changes.

Sean.

Lines on use of hoods and rest...



Lines on use of hoods and restraints

Text for the MC

We treat prisoners of war strictly in accordance with our obligations under the Geneva Conventions. Detainees who do not qualify for prisoner of war status ~~(for example on account of their conduct during hostilities)~~ are still treated decently and humanely. We would only restrain prisoners if we considered ~~felt~~ that it was necessary to do so (for example if we believed ~~felt~~ that they would ~~might~~ seek to escape, or be violent towards the guards or other prisoners). [There were a couple of occasions at the start of the conflict where prisoners were hooded for short periods - this practice has now been stopped. [Goggles - what do we say?]

In all this we have worked very closely with the ICRC - who have expressed themselves content with the way we have treated prisoners and detainees throughout the conflict.

Background (C)

Handcuffs and hoods were used by UK forces at an early stage of the conflict to detain (and control ~~disorientate~~) Iraqi Prisoners of War. Command in theatre expressed concern about this and the practice was discontinued. Handcuffs are now only used to restrain prisoners who are violent (towards the guards or other prisoners). Theatre have asked the ICRC locally whether it would be permissable to make certain prisoners (notably those of high intelligence value) wear blacked out goggles. [redacted] [David - this is the position as of about 2 weeks ago (as briefed by SO34) - any developments since?]

8.432 Of note within this redraft from Martin was the fact that he had suggested changing "disorientate" to "control", thereby giving a quite different explanation for the purpose of the hooding that had been used in theatre.

8.433 Gibson, Martin and S034 were all asked about these drafts in their evidence to the Inquiry.

8.434 S034 told the Inquiry that she could not explain why the word "disorientate" had been changed to "control". She did not remember having any involvement with this document. But she told the Inquiry that she would have understood "control" to be the appropriate word and not "disorientate".[483] In my view the reference to a briefing from S034 may have been a reference only to the ICRC having been asked about the use of goggles and not to the earlier parts of the background brief. It is not

[482] MOD053239-40
[483] S034 BMI 72/78/15-79/2

clear. I am not satisfied that the background note suggests that it was S034 who had suggested that hooding was used to detain "*and disorientate*" prisoners, and I accept her evidence that this was not her understanding.

8.435 Gibson's role was as Assistant Director for Personnel at the Iraq Secretariat, under Johnson. The Iraq Secretariat provided policy guidance on the conduct of operations. Gibson's role included day to day Parliamentary and Ministerial business, and advising on Parliamentary Questions and letters from the public. Prisoner of war policy issues fell within his remit although he had no recollection of giving any advice in relation to interrogation techniques and was not sure whether or not it would have fallen to him to respond should such issues have been raised.[484]

8.436 Gibson told the Inquiry that the information regarding hooding contained in his draft text for the ministerial correspondence and background note came from multiple sources and not just from S034.[485] He stressed:

> *"A. That is the point of genuine difficulty. This is seven years down the line. I would have spoken with the PJHQ, a variety of desk officers and managers, Sean Martin, the legal advisers and others, about a wide range of prisoner handling issues or prisoner of war issues, rather than prisoner handling issues, fairly regularly and they, in turn, would have derived their information from sources in theatre."*[486]

Gibson made it clear in his evidence that his understanding was that hooding had gone on for two reasons, both for security and to keep prisoners disorientated so as to prolong the confusion of capture and thereby make tactical questioning more effective. He thought it was for both purposes, not for one or the other. Gibson's account was that his understanding was purely historic in the sense that by the time he had learned about the use of hooding, it had already been banned in theatre.[487] In oral evidence Gibson referred to the disorientation as a side effect.[488] Gibson also emphasised that when drafting this kind of text and background brief it would then be sent back to PJHQ and to legal advisers for comment. He was very much assimilating his understanding from various sources but ensuring that it went back to PJHQ for confirmation, since PJHQ was much better placed to determine the position in theatre.[489] Gibson did not know why Martin changed "disorientate" to "control".[490]

8.437 Having listened carefully to Gibson's evidence I formed the impression that if anything he veered towards a slightly pedantic approach. I do not find that he would have inserted anything into the draft text for the ministerial correspondence that he did not believe to be true. I accept he was relying on the assimilated understanding gained from a number of conversations with colleagues in the MoD, legal advisers and PJHQ. I consider that he was given the impression, wrongly, that hooding had only been used on a limited number of occasions. Since a number of commanders in theatre did not appreciate that some soldiers saw hooding on capture as a standard operating procedure, it is not perhaps difficult to envisage how this misinformation

[484] Gibson BMI 91/167/15-20
[485] Gibson BMI 91/172/19-174/25
[486] Gibson BMI 91/173/21-174/3
[487] Gibson BMI07512-3, paragraphs 39-41
[488] Gibson BMI 91/179/14-180/2
[489] Gibson BMI 91/175/18-176/14
[490] Gibson BMI 91/184/17-21

may have filtered back from theatre. I think it likely that Gibson was not put fully in the picture about the concerns that had been raised by the ICRC. This meant that his draft contained material errors. I accept that he was told by someone, most probably from PJHQ but it is impossible to identify who, that hooding was both for security and to disorientate prisoners to facilitate tactical questioning.

8.438 Martin was questioned robustly on the reason why he had changed the word "disorientate" to "control". The essence of Martin's evidence was that:[491]

(1) He readily accepted that this was a change that he suggested;[492]

(2) he could not in fact remember the reason for making the change and so he was doing his best to reconstruct the likely reason for having made it;[493]

(3) he was adamant that he must have had the understanding that hoods had been used for security purposes and genuinely believed that this was a more accurate description of the purpose of their use;[494]

(4) he said it was possible that he had gained this understanding from previous discussions within the MoD legal advisers team;[495]

(5) he did not think that he had direct contact with S034;[496] and

(6) he categorically denied that he would have made the change simply because he appreciated that, from a legal point of view, an acceptance that hooding had been applied to disorientate would have been an acceptance that something had been done that was unlawful. Nor did he do so dishonestly to improve his client's, the MoD, position.[497]

8.439 I am confident that Martin changed "disorientate" to "control" without any intent to deceive or cover up the real reason why hooding had been applied. In my opinion the most likely explanation for the change is that, having contact with other MoD lawyers, Martin had been given to understand from the legal chain of command that hooding was used for security purposes; whereas Gibson is likely to have come to a different understanding from discussions with PJHQ. Given the notable differences of understanding amongst those in theatre about whether or not hoods and/or sight deprivation could be used in part to maintain the shock of capture, I do not find it surprising that conflicting messages were received. I accept that Martin's change was made in good faith.

8.440 Johnson was at the material time the Head of Secretariat (Iraq) and the head of the team of which Gibson was a member. If he was involved at all, he thought it more likely that he would have seen the final version for clearance of ministerial correspondence rather than this interim draft.[498] He accepted that the material for Ingram's responses were provided through his department.[499] As far as he knew, the reference to the "couple of occasions" was consistent with what PJHQ had reported, although he was

[491] Martin BMI 99/204/22- 208/9; Martin BMI 99/215/25-219/22; Martin BMI 99/220/3-221/8; Martin BMI 99/222/15-225/10
[492] Martin BMI 99/217/9-16
[493] Martin BMI 99/217/21-24
[494] Martin BMI 99/205/23-206/4; Martin BMI 99/208/2-9; Martin BMI 99/217/25-219/5
[495] Martin BMI 99/205/23-206/11
[496] Martin BMI 99/207/10-21
[497] Martin BMI 99/219/10-15; Martin BMI 99/222/24-223/5
[498] Johnson BMI 89/98/15-18
[499] Johnson BMI 89/100/3-13

not sure that the number of occasions was reported to him. In any event he stressed that the draft was being provided to PJHQ for confirmation.[500] He was only aware from evidence in the Inquiry that hooding had in fact continued quite extensively after the warfighting phase of the operation. His own understanding was that hooding, which had stopped, had been used for security purposes.[501] When asked about his knowledge of the ICRC concerns and the wording of Ingram's letters he said:

> *"Q. Were you ever aware, Mr Johnson, that in fact the ICRC had made complaints about hooding, about keeping detainees out in the sun, and raised possible issues about the use of stress positions?*
>
> *A. I don't believe I was, no.*
>
> *Q. Never aware of that?*
>
> *A. I do not think so.*
>
> *Q. Because if in fact that had been the position with the ICRC – and the Inquiry has heard evidence about it – the last sentence in this letter – and it is not a matter that I can suggest Mr Ingram is responsible for in this sense of course – but the last sentence in that letter is very far from being the whole truth, isn't it?*
>
> *A. That would appear to be the case, if the ICRC had complained, yes.*
>
> *Q. If there had been an ICRC complaint, is that a matter about which your department, your team ought to have known? You ought to have known?*
>
> *A. I think certainly if they had complained to MoD ministers, then we would have expected to know. If it had been a local complaint in theatre which had been addressed in theatre, then no, not necessarily*
>
> *….*
>
> *THE CHAIRMAN: Just before we leave that letter of 2 May, who would have drafted that, or who would be likely to draft that? Do you know?*
>
> *A. Well, it would have been – I can't say any one individual necessarily. It could have been any desk officer in Iraq secretariat.*
>
> *THE CHAIRMAN: It would have been in your secretariat?*
>
> *A. It would. Although it would have been done in consultation with the relevant experts such as PJHQ and the legal advisers –*
>
> *THE CHAIRMAN: But essentially someone within your secretariat would have drafted that letter?*
>
> *A. They would, yes."* [502]

8.441 Johnson accepted that it could be said with hindsight that the ministerial correspondence gave a rosier view of the situation than was in fact the case, but he denied that there was any intent to bury the bad news:

> *"MR ELIAS: : Finally this: from what we have looked at this morning, and the briefings, the drafts, forgive me, that formed the basis of the letters that were sent out by Adam Ingram and no doubt others, would you agree that on the face of it a less than full picture was in fact being revealed, because you tell us your department didn't know the full picture.*

[500] Johnson BMI 89/98/24-99/25
[501] Johnson BMI 89/123/1-5
[502] Johnson BMI 89/101/14-102/25

A. Well, I think we certainly said what we believed to be the case at the time. I mean, we would not have fabricated or invented material for that purpose. Clearly with hindsight and with what has emerged since, it could be said that those documents gave a rosier view of the situation than was in fact the case.

Q. There wasn't, was there, any deliberate intent, as it were, to give a rosier view and rather to bury what might be called the bad news?

A. No, absolutely not."[503]

Conclusions in relation to the April to May 2003 Ministerial Correspondence

8.442 The Inquiry was not provided with the final version of the background briefing note arising out of this exchange between Gibson, Lester, and Martin, nor with any wider background briefing that went to Ingram for his reply to Foster and the other MPs. If the background note was in accordance with the draft from Gibson, as amended by Martin, it would not have alerted Ingram to the fact that the ICRC had raised concerns in theatre but instead suggested that ICRC had expressed themselves content with UK prisoner handling throughout the conflict.

8.443 On the evidence I have heard and read, I have reached the following conclusions and findings in respect of the ministerial correspondence of April to May 2003 which was signed by Ingram.

(1) There is no proper basis for any suggestion that Ingram sought to mislead those MPs to whom he wrote.

(2) The MoD has failed properly to retain the briefing materials in relation to this correspondence as it ought to have done.

(3) It is more likely than not that the background briefing material to Ingram did not alert him to the fact the ICRC had specifically raised concerns about hooding in theatre.

(4) The responses signed by and sent out in Ingram's name contained aspects that were both inappropriately defensive and inaccurate. Ingram was relying on what his officials told him. But it was inaccurate to suggest that hooding had only been applied on a small number of occasions. It had been standard practice at the JFIT in the early stages, and for some front line units, hooding on capture is likely to have been a standard operating procedure as well. It was inaccurate in reply to letters that specifically raised questions about hooding, to state that the ICRC had expressed themselves content with how UK Forces had treated prisoners throughout the conflict. The ICRC had in fact raised significant concerns about the use of hoods and had threatened to make a formal complaint. It was inaccurate to state that hooding had only been applied for short periods. The information supplied from theatre and/or PJHQ via the Iraq Secretariat to Ingram in relation to each of these details led to the Minister's responses being in material respects inaccurate and, I find, misleading.

[503] Johnson BMI 89/116/4-21

(5) All these inaccuracies were contained in a text put forward for comment by Gibson of the Iraq Secretariat. I find that he was relying in good faith on what he was told by others, and also expecting that any errors in the text would be corrected by PJHQ/MoD legal advisers when forwarded for comment.

(6) Gibson's text suggested that hooding was used to "*detain (and disorientate)*" prisoners of war. I find that this reflected the views of one of more of Gibson's sources of information about hooding, that hooding was used partly for security and partly to maximise the product of tactical questioning by prolonging the shock of capture. Such views were held by a number of those in theatre. I think it unlikely that this part of his information came from S034 since this was not her understanding of the purpose of hooding.

(7) Martin's suggested amendments to Gibson's draft included changing "disorientate" to "control". I find that he made this change in good faith relying most probably on information gleaned from the legal chain of command as to the purpose of hooding.

(8) It is not possible at this remove to determine the sources of the inaccurate information contained in the Gibson "*lines on the use of hoods and restraints*". The MoD must, in my view, take corporate responsibility for the fact that inaccurate answers relating to hooding were sent out in the name of the Minister of State.

Amnesty International's 'Preliminary Findings' Report

8.444 Amnesty International prepared a report, dated 29 May 2003, entitled *"Preliminary findings by Amnesty International alleging abuses at the hands of United Kingdom military personnel in Iraq"*.[504] The report was broken down into sections addressing allegations of abuses in custody; security and policing; and the death in custody of a civilian whom the Inquiry has discovered died while in the custody of 1 BW. I comment on that death in custody in Part X of this Report, but note for present purposes that the Amnesty report did not refer to the fact that the civilian who died in custody had been hooded.

8.445 The section of the Amnesty report addressing allegations of abuses in custody referred to four cases. In each of those cases, the report recorded allegations that those detained had been hooded by UK Forces. The incidents were said to have occurred within a short space of time, 9 to 11 April 2003. This was, of course, after Brims' order prohibiting hooding. The Amnesty report in relation to three of the four cases suggested that the hoods were used within a custodial area rather than merely at the point of capture or in transit to a holding centre.

8.446 It is right to record, however, that the allegations included unlawful treatment of greater severity than hooding, including punches, kicking, and beating with rifle butts. The relevant section of the report is set out below:[505]

[504] MOD053298-301
[505] MOD05398-9

Preliminary findings by Amnesty International
alleging abuses at the hands of United Kingdom military personnel in Iraq

29 May 2003

I. Introduction

In April 2003, Amnesty International dispatched an exploratory mission to Iraq. Subsequently, Amnesty International has sent teams of researchers to the region. The primary focus of Amnesty International's research, to date, has been to assess compliance with the applicable international humanitarian and human rights laws and where allegations of non-compliance are raised, to investigate the cases. Amnesty International's preliminary research to date has revealed several areas of concern. These include allegations of ill treatment of Prisoners of War, the failure in the post conflict process to provide adequate security and policing, and a death in custody in circumstances which remain unclear.

II. Allegations of abuses in custody

According to information received by Amnesty International, it would appear that people have been ill-treated, possibly tortured, during transport or while initially held from one to three days by UK military in so-called temporary holding centres in and around Basra, before being moved to the Umm Qasr camp. The allegations include beatings with rifle butts, repeated kicking and hitting while lying face down or squatting, intimidation, failure to provide prompt medical assistance and adequate food and water. Two men alleged they had had their noses or teeth broken as a result of blows and one said he required hospitalization.

Case 1

A male guard working for an alcohol distributor in Basra, told Amnesty International that he had been taken into custody by soldiers on 9 April 2003. Based on his description of the uniforms worn by the soldiers who took him into custody, Amnesty International believes that those who took him into custody were UK military.

According to his testimony, he was handcuffed and had a sack placed over his head. He was taken to a British military base at the Shatt al-Arab Corniche, which at the time was being used as a temporary holding centre by UK military personnel. He said that there he was kicked and his head was banged against a wall. He said he lost consciousness and the next thing he remembered was waking up in hospital three days later. He told Amnesty International that, upon awakening, he had bruises over his right eye and behind his right ear, severe pain in his ribs and his face, and his hands and robe were covered in blood. In addition, several personal items, including his identity card, his nationality card, 55,000 Iraqi dinars and his headdress (kafiya) had gone missing.

He reported to Amnesty International's delegates that he subsequently lodged a complaint with a UK soldier and a US soldier in Safwan. To Amnesty International's knowledge he has not received any information about what, if anything, the military authorities are doing to investigate his allegations. He told Amnesty International "Why did they do this to me; I did not do anything. They were kicking me as if I was a boy."

Case 2

A 17-year-old labourer, reported to Amnesty International that he had been arrested by UK soldiers on 9 April 2003 near Al Marbod Hotel in Basra. He stated that he did not understand the reason why he had been arrested. According to his testimony, he was taken to the "Corniche" for one night. A sack was placed over his head and his hands were restrained behind his back with plastic strips. He said that he was then beaten with a rifle butt by being struck on the right and left hand sides of his body, as well as on his back and nose, which bled profusely.

He told Amnesty International that he was then moved to a British military holding centre in Al-Rumaila where he was interrogated by a Kuwaiti interpreter. He said that the interpreter threatened to subject him to electric shocks, and that someone whose specialty was beatings would be called in to assist in his interrogation unless he confessed that he was a member of Fedayeen or the Ba'ath Party. He told Amnesty International that he was then taken to a field hospital, where he had been provided with water and a pain killer. He was then taken to Umm Qasr before being released on 2 May 2003.

He said that he sustained injuries to his back and a broken nose. Amnesty International's delegates saw marks on his back.

Case 3

Born in 1973, he was arrested on 10 or 11 April 2003 in the streets of al-Saymar in Basra by British soldiers. He said he was patrolling the neighbourhood with other people to protect the area from looting. The patrolling was organized by the community. He was first beaten up in the street. He was hit on the mouth. He was made to lie on the ground for about 10 minutes during which he was kicked, punched and beaten with rifles. He was then taken to the South Club in al-Tahslaya near al-Saymar. There the soldiers put a hood on his face and head. He said he was subjected to beatings, including with rifles, all night. His hands were tied up behind his back which resulted in them being swollen. He said he and another friend of his arrested at the same time asked for water but it was not given to them. As a result of the beatings he lost one complete tooth and half of another. He was bleeding but was not allowed to wash. The following day he said he was taken to a military hospital at Basra airport where he stayed for four days for the treatment of his ribs. On 14 April he was taken to Umm Qasr and he stayed there for 18 days.

Case 4

On the night of 10 or 11 April 2003, he and case 3 were patrolling the neighbourhood to protect the area from looting. He had one gun and before he laid down, he threw the gun away. He tried to explain that they were civilian guards but they started to beat the two men with hands and boots. Some of the neighbours came but the soldiers hit one woman who was screaming and tried to intervene. The soldiers searched the men and took about 142000 Iraqi dinars from his pocket.

The men had their head covered with a burlap sack and their hands were tied behind their backs. They were taken and told to lay face down. He said, the soldiers continued to hit them on the back, face and legs.

He was taken to a holding area and at first kept outside. He said one of the soldiers pushed him against the ledge of the building quite hard. The two men were kept outside for 15 minutes but they kept yelling so finally they took them inside. Because his nose was bleeding, he asked for water to wash off his face. He was kept in this place for about one and a half hours and then a soldier came and took off his hood.

After questioning he was returned to the holding area. He kept asking for water to wash his face as it was bloody but they did not give him or anyone else any water. The following morning, his hands were swollen as the plastic ties were tight. These eventually came free but the soldiers thought that he had tried to free himself and indicated that because of this they hit him again with the butt of a rifle.

He said that he still suffers from pain in his shoulders, side and his nose.

8.447 A delegation from Amnesty met FCO and MoD representatives on 29 May 2003 to discuss alleged human rights abuses in Iraq. Following that meeting, Amnesty's report was forwarded to J1 branch at PJHQ, and copied to the Iraq Secretariat with a commentary on the meeting. It invited comments on the investigation process, timeframe for investigation and asked whether Amnesty could visit the prisoner of war camp.[506] This was forwarded to Martin at the MoD who in turn faxed the report to Quick, legal adviser at PJHQ.[507] Martin advised that he was going to pass the issue to a colleague Linda Dann because she dealt with war crimes issues.[508] The input from Dann, not an Inquiry witness, largely focused on the tone and content of what was being said in response to Amnesty about the investigation process to be undertaken by the Royal Military Police (RMP). She was concerned that the suggested line was too apologetic about it being the RMP who would investigate. She was also concerned that the MoD should not make commitments in a response to Amnesty on which they may not be able to deliver.[509]

8.448 Of more direct relevance to the Inquiry was whether the legal advisers had picked up on the pattern of allegations of hooding post-dating the Brims' ban, which might be said to have been apparent from Amnesty's report.

8.449 Martin was asked about that matter when he gave oral evidence to the Inquiry: He said that when he saw the report he would have been concerned about the more serious allegations, particularly beatings. When asked if he had noticed the allegations of hooding he said he felt it was the treatment of prisoners in general which he felt needed further examination. In his own defence Martin said hooding was not the issue which it had since become. He did not think he could reasonably have concluded from this report that hooding was a "*…widespread issue within the armed forces…*".[510]

8.450 Quick did not remember the faxed version of the report being sent to her, although she accepted that possibly she would have expected to see it. Quick was asked about her reaction to the report in respect of the hooding allegations:

> *"Q …If you did receive and read that in May 2003, you would have been aware, wouldn't you, at least of allegations that hooding was something which was a problem?*
>
> *A. Yes, I would have.*
>
> *Q. Do you recall being so aware, Ms Quick, at any stage?*

[506] MOD053296-7
[507] MOD053295
[508] MOD053291
[509] MOD053284-6
[510] Martin BMI 99/211/24-215/13

> *A. I just have no recollection of it, possibly, again, because, you know, my focus was elsewhere dealing with other issues. Also I would add that, you know, Sean Martin was giving the legal advice, so I may not have applied my mind to it.*
>
> *Q. Forgive me, I do not mean to sound like a gramophone, but I do just need to put it to you: if in May 2003 these things had arisen through your reading that report, that there appeared to be an issue about not an isolated occasion of hooding, but obviously hooding on a more widespread basis, would you not have regarded that as something that needed to be staffed up?*
>
> *A. I personally – speaking personally, probably yes, but it wasn't my role to do that. It was others', who would have gone into the detail and read the detail and would have taken a view. It was also – I would add, it went into the MoD, so they were coming down and asking us questions, so they were seized of the matter and they were dealing with it.*
>
> *Q. So it wasn't a matter, as it were, even if you had read that report, that you would have felt it was your duty or your job to be proactive about? Does that put it fairly?*
>
> *A. Yes."*[511]

8.451 Rose frankly accepted that she must have been aware of this Amnesty report at the time, since she strongly believed it would have been raised with her by Quick or Martin. Rose's evidence was that the account alleged in the four cases demonstrated clear mistreatment that would be unlawful, as she put it, "*in anybody's book*"[512],

> *"The fact that they involved hooding would not necessarily be the element of them that jumped out at me when I read them because they describe absolutely appalling mistreatment of prisoners."*[513]

8.452 The Detainees have suggested that the reaction to the Amnesty report, and later the reaction to Baha Mousa's death, suggests a lack of proactivity amongst Government lawyers, a defensiveness and a reluctance to seize hold of controversial issues.[514]

8.453 In my opinion, that suggestion goes too far. The hooding incidents referred to in the Amnesty reports were, in context, at the milder end of serious criminal allegations that were being made in each of the cases. There was a willingness to ensure that the RMP investigated them. It is not altogether surprising that amongst allegations of punching, kicking and beating with rifles, the hooding aspect did not leap out of the page as a separate item that needed consideration. I do not, therefore, criticise Martin, Quick or Rose for their response to the report. However, a perceptive and astute reading of the Amnesty report, against the known background that hooding had been banned in theatre, might have led to questions being asked about an apparent pattern of the ongoing use of hoods. The Amnesty report was in that sense a missed opportunity to detect that Brims' hooding ban had not filtered down to all front line soldiers in theatre. I do not overlook the fact that by means of FRAGO 152, there was in any event a written order prohibiting the covering of prisoners' faces, following Brims' oral order. However, as I address in Part X of this Report, there were some problems with the cascading and handover of FRAGO 152 as well. I do not, therefore, accept that the missed opportunities to notice before May 2003 that the hooding ban had not been properly implemented is rendered causatively inconsequential by the later issue of FRAGO 152.

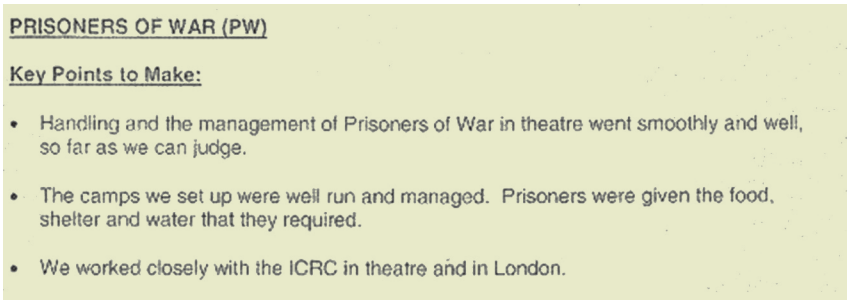
[511] Quick BMI 92/61/7-62/11
[512] Rose BMI 93/127/16-21
[513] Rose BMI 93/127/23-128/1
[514] SUB002489, paragraph 57

Other Ministerial Involvement

8.454 The Inquiry also considered the briefing that was given the Secretary of State for his appearance before the House of Commons Defence Committee, and a response which was given in letter form to a series of Parliamentary Questions tabled by Mr Kevin McNamara MP. I can deal with each more briefly.

8.455 On 25 April 2003, a request was made for briefing for the Secretary of State's appearance before the House of Commons Defence Committee. The call for briefings indicated that the Secretary of State would be looking for *"…punchy facts and figures to underpin what is, in many quarters, self-evidently a strong case*" but it went on to add that "*Defensive material will also be required, where necessary, for those areas in which we have performed less strongly*".[515] Briefing was to be provided to a standard template. One of the topics upon which briefing was sought was the arrangements for prisoners of war.[516] Gibson was tasked with drawing together, amongst other briefing areas, the section on prisoners of war, although it is apparent that in so doing he called for assistance from various colleagues.[517]

8.456 The final briefing provided to the Secretary of State on prisoners of war included set out the following key points to make:[518]



PRISONERS OF WAR (PW)

Key Points to Make:

- Handling and the management of Prisoners of War in theatre went smoothly and well, so far as we can judge.
- The camps we set up were well run and managed. Prisoners were given the food, shelter and water that they required.
- We worked closely with the ICRC in theatre and in London.

The briefing made no mention of the concerns that the ICRC had raised about the use of hoods and prisoners being left in the sun; and there were no defensive lines provided to address that topic.

8.457 As I have already indicated, Gibson acted as the conduit for pulling the information together for this briefing rather than as the source of the information. Gibson explained, and I accept, that the practice was to brief the Secretary of State on those issues that were perceived to be most likely to be raised by the Committee. For points of detail not covered in the briefing there is the safety net of the officials who attend the Committee with the Secretary of State and who can provide advice at the time. Gibson did not see mistreatment of prisoners as a live issue at that time, despite the ministerial correspondence that had taken place, and emphasised that the briefing was to cover key strategic issues.[519] Similarly, Martin who was one of those consulted, told the Inquiry that he would not have appreciated at that time that hooding was a serious or real issue in respect of the handling of prisoners of war. He had no further information about concerns that had been raised in theatre, and was not aware that there had been legal debate in theatre about whether hooding was legitimate. Had he known that, he said it might well have been something he would have considered for inclusion in the briefing.[520]

[515] MOD053224-5
[516] MOD053227-8
[517] MOD053216-22
[518] MOD052044
[519] Gibson BMI 91/190/22-193/11; Gibson BMI 91/197/25-198/9
[520] Martin BMI 99/208/10-211/12

8.458 Without making personal criticism of Gibson or Martin, which I do not find justified on the evidence I heard, I simply record that it remains surprising that such an unambiguously positive message was being conveyed about prisoner of war handling without acknowledgement of the concerns that had been raised by the ICRC on hooding. It is another example, perhaps by itself a minor one, of the full story not being accurately conveyed by drafts and briefings by officials within the MoD. In the event, the Committee did not have time to reach questions on prisoners of war.[521]

8.459 On 11 April 2003, McNamara tabled a series of twenty written Parliamentary Questions about detainees held at Um Qasr. Most of these concerned aspects of detainee treatment that are not directly relevant to this Inquiry. But one question was:[522]

> PQ2609N - To ask the Secretary of State for Defence, how many interrogation rooms are situated in the vicinity of Camp One, Umm Qasr; what the maximum number of hours each day a detainee may be interrogated is; what the guidelines and rules governing interrogation procedures are; and if he will place a copy in the Library.

8.460 A holding response was given to these questions indicating that Ingram provide a response by letter with a copy to be placed in the Library of the House.[523]

8.461 In relation to the Parliamentary Question set out above, the final response which was sent to McNamara[524] reflected drafts from officials[525] in stating:

> *"…Personnel conducting the questioning of detainees do so in accordance with guidelines drawn up by Defence Intelligence Training staff…"*[526]

8.462 I observe that this response is a worrying one. The draft provided by officials (and it is not clear which civil servant was responsible for the draft) was more reassuring than was justified. As I have examined in Part VI of this Report, the only written "guidelines" that existed were lecture handouts and the instructional materials used at Chicksands on the PH&TQ and Interrogation courses. In criticising the response that was sent, I do not ascribe any personal fault to Ingram. It seems to me unlikely that this response would have been given in the absence of some assurance from the HUMINT side of either the MoD or PJHQ, or from Chicksands, that such guidelines were in place. But the difficulty is that the response was likely give the impression that there was a clear set of identifiable guidelines that set parameters for questioning detainees. Written guidelines in that sense were simply not in place at the time.

[521] PLT001035-8: Minutes of Evidence, House of Commons Defence Committee, 14 May 2003
[522] MOD053245
[523] MOD050307
[524] MOD050303-5
[525] MOD053204-7
[526] MOD050303

Chapter 10: Conclusions

8.463 I have made a number of findings on individual specific issues in the course of relating in summary the evidence on topics in this Part of the Report. I do not propose to repeat them in these conclusions. I set out here my conclusions in more general terms. I emphasise at the outset, this Part covers a great deal of ground, albeit for the most part encompassing a short period of time. As with other Parts of the Report I shall not refer to much of the helpful submissions which have been made on behalf of the Core Participants and the Detainees. I have taken them all into account. This Chapter is an attempt to draw together the important points which seem to me to be most relevant to the issues arising from my terms of reference.

The JFIT

8.464 There is no dispute, and ample evidence to demonstrate that from the start of the combat phase of Op Telic 1 on 20 March 2003 to about mid-April, prisoners housed at the JFIT were hooded. There were examples of double hooding and hoods of plastic weave used on prisoners in order to deprive them of sight. At the end of this Report in Parts XVI and XVII, I recommend that this practice should cease in all circumstances and in all places. Only goggles (or if none are available, blindfolds that do not cover the nose or mouth) should be used as a means of depriving a prisoner of sight and then only with suitable safeguards.

8.465 However, in 2003, although hooding was prohibited as an aid to interrogation, and even this doctrine was not well publicised, there was no clear policy on whether and in what circumstances hoods could be used for security purposes to deprive prisoners of sight. I have found that the teaching on the means of sight deprivation in the interrogation and tactical questioning courses was subject to variations between different instructors. What follows must be seen in this context.

8.466 Allowing for the lack of adequate, clear MoD contemporaneous doctrine on sight deprivation of prisoners, I find that there were some aspects of prisoner handling at the JFIT which were inappropriate and unacceptable. From the evidence, I identify the following factors either in combination or on their own.

(1) Hooding of prisoners at the JFIT could last for unduly lengthy periods.

(2) On occasion, more than one hood was used and in some instances plastic weave bags were used as well as hessian sacks. S002 put a stop to both double hooding and the use of plastic sacks on 31 March or 1 April 2003.

(3) Prisoners were, at times, left in the sun for lengthy periods of time, it was said due to the lack of availability of tents.

(4) Prisoners could be kept awake before their initial interrogation by permitting guards to nudge them. I accept that this practice was only permitted before the initial interrogation of prisoners but it could prevent a prisoner from sleeping in the initial stages (perhaps up to 24 hours) of their capture.

(5) The sole purpose of keeping a prisoner awake was to improve the opportunity of obtaining intelligence product by preventing them from refreshing themselves by sleeping before being interrogated. In my opinion, forcibly keeping prisoners awake by nudging them pending questioning was inappropriate and unacceptable treatment.

8.467 In my view greater effort and improvisation could have reduced the need to deprive prisoners of their sight. Each of the above factors singly, but more particularly in combination, amounted to inappropriate and unacceptable treatment of prisoners.

8.468 I find that S014, as the Operations Officer at the JFIT, bears responsibility for the above. He shares this responsibility with his Officer Commanding the JFIT, S040. I find that both men genuinely considered that there were security reasons justifying sight deprivation of prisoners at the JFIT. I find that security concerns were the prime motivating factor for hooding and that their security concerns were sincerely held by both of them.

8.469 However, in my judgment, the desirability of maintaining the shock of capture, albeit as a spin-off or side benefit from the security considerations was one part of the overall thinking in the continued use of hoods at the JFIT. S014 accepted that he appreciated hooding could have that effect. S002 said he had a "strong recollection" of S014 informing him of this side benefit. S040, however, emphatically denied that hooding for him had the side effect of enhancing the shock of capture. I find it difficult to accept that S040, like S002, was not made aware of this benefit or effect by S014. Nevertheless, in my view, S040 was a truthful witness and I find that he, at least, did not regard hooding as having this effect, nor was it any part of his thinking on the desirability of hooding.

8.470 Whether or not S040 and S014's reasons for hooding were the same, to leave prisoners hooded in the sun for lengthy periods of time, to have permitted double hooding sometimes with plastic weave sacks, and permitting guards to keep prisoners awake by nudging them, in my opinion constituted errors of judgment by both men. Other officers, in my view rightly, soon recognised that hooding was inappropriate to the force's mission. But these errors of judgment are mitigated by the following non-exclusive factors.

8.471 I accept that there were genuine security concerns in respect of the layout of the JFIT, particularly sight of some personnel and interpreters, and sight by prisoners of each other. The process of sight deprivation was not the subject of any proper doctrine to guide S040 and his team. As well as the rudimentary nature of the facilities at the TIF in the early stages, the supply of blindfolds at the start of the combat phase was wholly inadequate. There were about a dozen blindfolds for use on an estimated 8,000 to 12,000 expected prisoners. S040 suggested the ultimate responsibility for this poor logistical planning lay with Land Command and their generic equipment list. While those in charge of the JFIT ought themselves to have raised concerns before deployment about the scarcity of blindfolds, I have some sympathy with S040's evidence in this regard. Making due allowance for the fact that this was the very early stages of the warfighting phase, I would observe that the risk of large numbers of prisoners of war being taken had been recognised in the operational planning. It is therefore a worrying aspect of Land Command's performance that elements of the necessary equipment for prisoner of war handing, particularly tents and blindfolds or goggles, were in such short supply.

8.472 It can also be properly said that in March and April the temperatures were not as hostile as in the first months of Op Telic 2. Furthermore, these errors of judgment have to be seen in the context of the extreme high tempo of operations and demands on the JFIT team in the midst of the combat phase of operations.

JFIT: Stress positions and noise

8.473 Some witnesses who saw prisoners in the JFIT were concerned that the positions in which the prisoners were held might be construed as stress positions. However, none of the positions described were "obvious" stress positions such as the "ski position" or fingertip wall standing. Those witnesses who saw the prisoners did so only for short periods of time. On the available evidence I find that there was no policy of holding prisoners at the JFIT in stress positions. Although prisoners were seen to be handcuffed and kneeling on the ground in lines, the probability is they were newly arrived prisoners and I accept that, save for not being allowed to stand, they were permitted to adopt any position which they chose.

8.474 I find that generators were being used at the JFIT as a noise curtain to prevent prisoners' interrogation being overheard by other prisoners. This does not meet current best practice, but I note that the JFIT staff were at least as much affected as the prisoners. In my view this was more a case of a security precaution in a poorly resourced facility in the early stages of the war rather than a conditioning technique.

S009 and S002

8.475 S009 was the commander of the Prisoner of War Handling Organisation. I find that he had no authority over the way the JFIT carried out its interrogation function. When he saw what he considered a bad practice was being used, namely hooding, he took a pragmatic, if somewhat unorthodox course in raising his concerns about hooding and the circumstances in which this practice was used, with Vernon and the ICRC. I do not think he can be criticised for not doing more, nor for not informing himself more precisely of other aspects of prisoner treatment within the JFIT.

8.476 S002 knew that hooding was being used at the JFIT. I accept that he believed that hooding for security purposes had been deemed acceptable on legal advice. I also find that he knew that it may also have had the side benefit or effect of preserving the shock of capture, something which he may well have believed was widely understood.

8.477 I further accept that when he learned of the use of double hooding and/or hooding with plastic weave bags, he took the immediate action of flying to the JFIT to prevent this occurring. Further, I find that he gave some impetus to the JFIT's need for more tents to avoid prisoners being put to sit in the sun. In each of these respects S002 acted correctly, for which he deserves credit. It is also possible that he ordered an initial cessation of hooding, again, to his credit.

8.478 However, not least from his own first visit to the JFIT, S002 was aware from an early stage that prisoners were hooded for protracted periods and were being kept awake pending initial interrogation by being gently nudged. Whilst I am not confident that S002 was necessarily aware of quite how lengthy the periods of hooding were, I find that by doing nothing in respect of these practices S002 was guilty of the similar error of judgment as S014 and S040. Similarly, he is entitled to the same mitigation as S014 and S040 with the additional fact that he had not himself had any interrogation and tactical questioning training. He was entitled to defer to some extent to those who had such training. He was not aware of a ban on sleep deprivation for the purpose of aiding interrogation.

8.479 S002 is now a very senior officer and obviously deserving of considerable credit for his past record. However, I find it very difficult to understand how in evidence at the Court Martial he said that he did not know that plastic weave hoods had been used. This was the very reason for him flying down to the JFIT to ban their use and double hooding. Ultimately, since this issue has no impact on the causes of Baha Mousa's death, I do not find it necessary to decide whether or not he told the Court Martial the full truth, as he knew it, about what occurred in the TDF.

8.480 Having heard evidence of the circumstances of the hooding which took place at the JFIT in the early stages of Op Telic, I have thought it right and within my terms of reference to make the above findings and comments. However, I make clear that the findings I have made are only that the general treatment of prisoners at the JFIT was "inappropriate and unacceptable" in the respects highlighted above. The Inquiry did not hear evidence of individual cases of treatment of a prisoner or prisoners at the JFIT and I make no findings about how any individual prisoner was treated there or more widely in the TIF.

Concerns raised about the treatment of prisoners at the JFIT and how they were addressed

8.481 I have set out in detail the views of legal staff officers in the above section. I have already commented on some of the evidence they gave. It is unnecessary for me to repeat those comments.

8.482 A range of staff officer lawyers supported hooding, but only for security purposes and with constraints. These included Brown, Clapham and Maj Davies. In addition, Brown and Maj Davies did not raise any legal objection to the practice of keeping prisoners awake for up to the first 24 hours of being held in the JFIT. Frend and Christie also supported the use of hoods for security purposes, although they said further factors needed to be taken into account.

8.483 I find that lawyers who supported hooding and those who did not raise concerns about the limited form of sleep deprivation may be said to have misjudged the balance between security requirements and the need for prisoners to be treated humanely. It might also be said that they failed to take a more questioning and inquisitive approach to the necessity for hooding and the details of what it involved. They ought to have questioned whether hooding could be avoided altogether by alternative measures in the interest of treating prisoners humanely.

8.484 As against the above, the following factors are in my view important. These officers were not necessarily all made fully aware of the duration of the hooding that was taking place. They were either not aware that hooding had included the use of double hoods and the use of plastic weave bags; or they had been given assurances that such practices had stopped. Further, the legal advice emphasised the need to ensure that hooding was for the minimum period that was absolutely necessary.

8.485 Individually, Christie did not see prisoners actually hooded in the JFIT, but rather being marched to the JFIT. Both Christie and Frend appear to have checked carefully, and as best they could, what doctrine existed. To his credit, Frend considered that the whole subject had not been thought through enough and required further consideration at a higher level. In addition, Frend most likely only became involved after a direction had already been given that hooding was to stop and in that sense his hooding for security purposes was somewhat academic.

8.486 Maj Davies' view on hooding changed when he attended the TIF on 6 April 2003 and saw a hessian sandbag. At that point he took the view that a blanket ban on their use was necessary.

8.487 Finally, the legal support for the use of hooding for security purposes did not in fact lead to any significant prolongation of the practice of hooding at the JFIT because the order for the practice to cease was very quickly given. In reaching my conclusions on whether or not those legal officers are to be criticised for the views which they expressed at this time I take into account that the debate about hooding took place within a short period of time. It occurred when the tempo of the combat phase was at its height. All those officers had no doubt many other duties and activities to perform.

8.488 Whilst I recognise that prisoners kept hooded without sleep for lengthy periods before interrogation might well be said to be being treated inhumanely, the question of what did or did not constitute inhumane treatment where hoods were concerned can be regarded to some extent as fact specific.

8.489 Taking all the above factors into account I conclude that it would be an overly harsh and unfair judgment to criticise those lawyers who supported hooding simply on the basis that that advice was wrong. Where I think they, or some of them, were at fault was in not adopting a more questioning and inquisitive approach to precisely what hooding at the JFIT involved. It is in my view significant that Maj Davies changed his opinion following a visit to the JFIT. I also take into account that I have criticised S002, S014 and S040 for not appreciating that the practices, the detail of which they knew, were inappropriate. In my opinion the only fair criticism that can be made of the legal officers is that they did too little to find out more precisely what was happening at the JFIT before giving advice. In this regard I think it right to recognise that Frend and Christie played lesser roles in the debate than the other in theatre lawyers and that Maj Davies did change his approach when he visited the TIF.

Hooding is banned

8.490 Both orders, Burridge's and Brims', were oral orders made between 1 and 3 April. Neither was committed to writing. No doubt much of the impetus for these orders came from the intervention of the ICRC and their proposed complaint. I note and record that the following officers had raised concerns about hooding and/or were involved in the decision to prohibit its use. These officers were Burridge, Brims, Marriott, Vernon, Mercer and S009. They deserve credit for their actions.

8.491 Brims' order included the qualification that application could be made to Division for hoods to be used. Faced with contradictory legal advice on the issue, I see nothing in this which justifies criticism of Brims. His approach might fairly be described as a sensible and pragmatic one based on his conviction that hooding was not consistent with the style of operations that he wanted to achieve. But I think it a counsel of perfection and unrealistic to suggest that he should himself have pressed for a full legal resolution in the midst of the warfighting operation, so as to permit a more categorical ban on hooding.

8.492 There were shortcomings and confusion in respect of the communication between the NCHQ and 1 (UK) Div regarding the use of hooding and the bans that were ordered. Some senior staff officers in the NCHQ were clearly unaware that their commander, Burridge, had banned hooding. The view of the NCHQ as understood by some in

1 (UK) Div was that hooding was not regarded as being in itself unlawful, but that Division was free to issue its own order if it felt appropriate. In fact the view that should have been cascaded from NCHQ was that Burridge the senior commander in theatre had ordered that hooding was to cease, whether or not it might technically be lawful in some circumstances. I find aspects of these miscommunications worrying. It has been difficult, given the passage of time and scarcity of records, to uncover precisely how they arose. A mitigating factor is the very significant operational demands at the time. Since hooding did in fact come to be banned by Brims, I am also not persuaded that these failures were of any substantial causative significance in the abuse of Baha Mousa and the other Detainees that followed in September 2003.

8.493 It would have been far better had Brims' order prohibiting hooding been followed up by a written order. I find that Marriott ought to have followed up the GOC's oral order with a written order making clear that prisoners were no longer to be hooded. However, this needs to be seen in the context of the massive demands of the warfighting operation that were pressing on 1 (UK) Div at the time. With hindsight, one can appreciate that the hooding of prisoners of war with sandbags was, at least for some units, seen as a standard operating procedure such that a single oral order in a conference call might be insufficient to change operating practice. An important consideration here is that, absent any proper instruction or doctrine on sight deprivation, the understanding of individual staff officers varied very significantly. Some understood hooding of prisoners of war for security purposes to be a, largely unwritten, standard operating procedure. Others had not come across hooding at all, or only to a very limited extent, and so may not have understood the extent to which it was ingrained, for some, as a standard operating procedure. Given their knowledge at the time, I find that the communication of Brims' hooding ban is something in respect of which 1 (UK) Div, and Marriott as the Chief of Staff, could have performed better, rather than being a matter that is deserving of personal criticism.

The meeting with the ICRC

8.494 At the meeting with the ICRC on 6 April 2003, I find that the position put forward by S034 (supported by S002, and to an extent by Maj Davies and Frend) was that sight deprivation for security purposes for the limited period necessary was lawful; that hooding had already been stopped, and that this showed how seriously the ICRC concerns had been treated. It was also argued that, since there was a security need for sight deprivation, hooding was not unlawful *per se* and in the circumstances that had prevailed at JFIT in late March, the use of hoods had been lawful. The meeting then concentrated on alternative means of sight deprivation, and the pragmatic way forward was reached for the use of blacked out goggles.

8.495 Since hooding had already been banned in theatre, I do not find that there is any causative significance in the NCHQ having sought, at this particular meeting, to defend the legality of hooding for security purposes. Nevertheless, a product of some of the shortcomings in communication of the hooding prohibition is that Maj Davies, attending this meeting as the representative of Brown, the NCHQ Commander Legal, did not even know that Burridge had already ordered that hooding to cease, or that Brims had made a similar order. In the midst of the exceptional demands of a warfighting operation, such miscommunications are not altogether surprising but it is of concern that the NCHQ legal staff were not at this stage aware of their Commander's own order in respect of hooding.

8.496 Before the meeting, S034 instructed Mercer that he was not to speak during it. I find that she did so principally because she was aware that the NCHQ's legal view was that hooding for security purposes, restricted to that which was strictly necessary, was lawful albeit that by this stage a decision had already been taken that hooding would not be used. By virtue of her then equivalent rank (Brigadier), S034 was entitled to take this approach in relation to a meeting with a high profile outside body. Mercer's approach to hooding, and the determination with which he pursued his concerns, was entirely creditable. However, Mercer's views extended beyond the stance that all hooding was unlawful. He was critical of any use of sight deprivation even by goggles or blindfolds. Given the legal view that prevailed at the NCHQ, it is understandable that S034 should not have wanted a UK officer to present the contrary view that hooding of prisoners of war even for security purposes was in all circumstances unlawful, still less that sight deprivation by other means could not be justified.

8.497 At the same time, Mercer was deeply unhappy at the approach taken at the meeting, especially the defence of the legality of hooding. I accept that at one stage, his frustration was such that he left the meeting. This position may have been aggravated by the fact that not all of the attendees at the meeting understood that orders had already been given that hooding was to stop.

8.498 Even after receiving the ban on hooding, S014 continued to permit prisoners to be hooded when moving prisoners between locations within the JFIT and when they were being moved in and out of the JFIT compound. He justified this as an "interpretation" of an order that he regarded as not having been fully thought through. S014 had no right to interpret the order in this way. If he perceived that the order put operations at the JFIT, its staff or prisoners at risk because of the lack of alternatives to hoods, he should have raised those matters through the chain of command and sought clarification of, or an exception to, the order. S014's decision unilaterally to "interpret" the order (an order which I think was, in truth, quite clear) to fit his own view of the operational imperatives, was wholly inappropriate conduct. On balance I accept that S040 was not aware that S014 had taken this course. I have had regard to all that has been said on S040's behalf but it is not acceptable that S014 should have been able continue a more limited practice of hooding at the JFIT without S040 as the Officer Commanding being aware that it was occurring. To that extent, S040 failed properly to monitor the implementation of the hooding ban in the JFIT. Both officers were therefore at fault. However, this specific conduct did not in any way cause or contribute to 1 QLR hooding, still less to the abuse of Baha Mousa and the other Detainees.

Partial continuation of hooding in Op Telic 1

8.499 Brims' oral ban on hooding reached the JFIT but it does not appear to have been adequately received or disseminated across the divisional area of operations. For example, 1 BW continued to hood prisoners as I examine in Part X of this Report. There were a number of missed opportunities to notice and rectify the fact that the oral hooding ban had not been adequately received and implemented. Following the hooding ban some prisoners in Op Telic 1 continued to arrive at the JFIT having been hooded by their capturing or delivering units. I find that this was, at least to some extent, reported up the chain of command. Reports of it certainly reached S002 from S040. S002 said he reported this on. He may have done so, although I found some aspects of S002's evidence unreliable. On any view, this was a

missed opportunity by 1 (UK) Div to rectify the fact that the hooding ban had not been adequately communicated.

8.500 Similarly, the news footage transmitted by ITN News on 5 April 2003 showed an operation that had taken place on 4 April 2003 in which prisoners were hooded with hessian sandbags and, at least in one case, with a plastic bag. Although this occurred only very shortly after the orders banning hooding, it was a further missed opportunity to realise that the "no hooding" message had not effectively reached Battlegroup level.

8.501 A coalition force operation took place on 11 April 2003 involving the RAF Regiment transporting prisoners by Chinook helicopters. The prisoners were hooded while in the custody of the RAF Regiment. In circumstances that are beyond my terms of reference, one of the prisoners was later found to have died and hence certain reports of the operation were made including the fact that the prisoners had been hooded. What is relevant to this Inquiry is that this incident should have been a clear warning that the hooding ban had not been adequately received and implemented. Beyond this, it is not appropriate that I make any further findings in relation to this separate incident.

Staffing up

8.502 As to the extent to which the issue of hooding and related lack of doctrine concerning interrogation was staffed up beyond those in theatre, I have reached the following conclusions.

8.503 Firstly, the debate about whether the hooding of prisoners was lawful continued to some extent after Burridge and Brims had issued their orders that hooding should cease.

8.504 Secondly, the fact that a Divisional level order prohibiting hooding had been issued had a very significant impact on how those involved perceived the urgency of further referral of the hooding issue, and associated shortcomings in interrogation doctrine. This is a very important factor in assessing the steps taken by NCHQ and PJHQ staff officers. However, I do not accept that the in theatre order obviated altogether the need to refer these issues for further consideration.

8.505 Thirdly, it is a relevant consideration that Mercer was the only lawyer who took a different stance to the NCHQ legal view. But the dispute remained a significant one: the ICRC had clear concerns about the use of hoods; a number of UK staff officers had also been concerned about its use; and Mercer was not a junior dissenting officer but the Divisional legal commander.

8.506 Fourthly, since the NCHQ was deployed in Qatar, it was not for those in 1 (UK) Div to staff the hooding issue, or concerns about interrogation doctrine, up to PJHQ or other UK headquarters: any appropriate action lay with the NCHQ.

8.507 Fifthly, S034's reporting of the ICRC concerns, and the action taken as a result, to the Private Office of the Secretary of State for Defence, was both a reasonable and routine step to take. It was not, and did not purport to be the staffing up of issues for resolution. It was the normal process of alerting Ministers to an in theatre issue that might have political and/or media ramifications of which the Private Office needed to

be made aware. In my opinion there was force in S034's evidence that it was more for the legal branch to staff up the issue of the legality of hooding.

8.508 Sixthly, in the legal branch of the NCHQ, it is clear that Clapham was involved in the discussion of the hooding issue while he was working at the NCHQ. On the balance of probabilities, I find that by SITREPs and/or oral briefing by Clapham, Quick at PJHQ was also made aware of the hooding issue that had arisen in theatre. I think it is unlikely that Quick was alerted to the hooding issue in any form that sought a formal PJHQ resolution of the different legal views that had arisen. It is also very likely that she was informed that an in-theatre order had been issued prohibiting hooding. It is likely and understandable that Quick agreed with, or did not dissent from, the NCHQ legal view on hooding that was broadly shared by Brown, Maj Davies and Clapham, namely that it was not unlawful if used for security purposes where strictly necessary. Dealing with a formidable workload, and not having been asked formally to resolve any legal issue regarding hooding, I think it likely that Quick took no particular action on being informed of the hooding issue. With the benefit of hindsight, it can be seen that it would have been better if Brown had referred the hooding debate up for a formal resolution by PJHQ. It was an issue that might recur in future operations; Brown did not do so although he did ensure that both Clapham and Quick were aware of the issue and that Clapham's view was not significantly different from his own.

8.509 Clapham's role as a PJHQ legal staff officer deployed *ad hoc* as an extra pair of hands to the NCHQ blurred reporting lines. When Clapham was in theatre, NCHQ staff officers considered that addressing an issue with Clapham was, to some extent at least, clearing the issue with PJHQ legal.

8.510 Ideally, Quick should have alighted on the hooding issue as one with the potential to impact on other operations and/or later stages of Op Telic. However, given her workload and the nature of other issues with which she and others were engaged, it is unsurprising that she did not do so.

8.511 In summary, I find that more could have been done between Brown, Clapham and Quick to ensure that the legal issue regarding hooding received further consideration and a resolution. But given the pressures at the time and the fact that an order had been issued prohibiting the use of hooding I do not criticise any of them as having fallen below acceptable standards of conduct or performance in this regard.

8.512 On the human intelligence side of the NCHQ, I accept the evidence of Duncan that his involvement in in-theatre discussions led him and others to notice that doctrine in relation to interrogation was scarce. I accept his evidence that he referred to both the hooding issue and the thinness of interrogation doctrine, in discussions with the J2 side of PJHQ. As with the legal branch, I do not think that this amounted to any kind of formal staffing up of an issue for resolution to PJHQ. Rather Duncan conveyed that the hooding issue had arisen and that no interrogation doctrine adequately addressed the point. I accept that the essence of the response Duncan received was an agreement that interrogation doctrine was lacking but that it was not a priority task. Given the lack of contemporaneous records I am not able to establish precisely who, as between Munns, S065 and S062, was involved and in which part of these exchanges with Duncan. If the J2X and J2 side of PJHQ were aware that an order had been issued in theatre prohibiting hooding, it makes it somewhat more understandable that they may not have seen such doctrinal shortcomings as a priority

task, this all the more so when one considers the other evidence of the focus that had to be given to intelligence capabilities and to other areas of intelligence operations. It would have been better if the J2 side of PJHQ had taken more proactive measures to pursue the doctrinal shortcomings to which it had been alerted. However, the fact remains that the middle of the warfighting phase of a major campaign is not in my opinion the time to be drafting doctrine, and it would not have been PJHQ but the JDCC which would have had to have taken this forward. The key failures in this regard was in the historic failure to have adequate tactical questioning and interrogation doctrine in place in the years before Op Telic, together with the shortcomings in the communication and handover of the hooding prohibition itself.

8.513 Against the background where an order had been issued in theatre prohibiting hooding, a number of witnesses appeared to contemplate that the lessons learned process would address any longer term issues arising out of the controversy over the use of hoods in the JFIT. To an extent this was not unreasonable. A number of lessons learned reports and post tour operational reports did indeed refer to the hooding issue that had arisen and/or shortcomings in relation to JWP 1-10 and interrogation doctrine. However, many of these reports were not finalised until after Baha Mousa's death, and those that were completed sooner did not in fact lead to any additional tangible doctrine or guidance on sight deprivation or doctrine or guidance on tactical questioning and interrogation being issued to those who deployed on Op Telic 2. As I have set out in Chapter 7 of Part VI of this Report, 1 QLR were still carrying out exercises using hoods as part of their pre-deployment training for Op Telic 2. The lessons learned procedures are understandably time consuming and painstaking. The Op Telic 1 prohibition on hooding ought to have been made known to the Op Telic 2 forces principally through the handovers in theatre, as I address in Part X of this Report. The MoD may, however, wish to consider whether the lessons learned procedures need to be adjusted or supplemented so that the clearer and more urgent lessons and changes to previous practice are fed back far more quickly both to the operational theatre and into the pre-deployment training cycle.

Subsequent statements about hoods

8.514 A number of constituents wrote to MPs in April 2003 following the television footage showing prisoners hooded. Responses were sent in May 2003 by the Minister of State, The Rt. Hon. Adam Ingram. In respect of this ministerial correspondence at paragraphs 8.415 to 8.443 above, I set out my findings on this correspondence.

8.515 Amnesty International provided the UK Government with a report dated 29 May 2003 entitled "Preliminary findings by Amnesty International" alleging abuses at the hands of United Kingdom military personnel in Iraq. It contained four cases of alleged abuse and assault of prisoners by UK Forces, all of which included references to the prisoners being hooded and three of which referred to hooding within detention centres rather than on capture or in transit. The hooding incidents referred to in the Amnesty reports were, in context, the milder end of serious criminal allegations that were being made in each of the cases and there was a willingness to ensure that the RMP investigated them. It is not perhaps surprising that amongst allegations of punching, kicking and beating with rifles, the hooding aspect did not leap out of the page as a separate item that needed consideration. I would not, therefore, criticise Martin, Quick or Rose for their response to the report. However, a perceptive and astute reading of the Amnesty report, against the known background that hooding

had been banned in theatre, might have led to questions being asked about an apparent pattern of the ongoing use of hoods. The Amnesty report was in that sense another missed opportunity to detect that Brims' hooding ban had not filtered down to all front line soldiers in theatre. I do not overlook the fact that by means of FRAGO 152, there was in any event a written order prohibiting the covering of prisoners' faces, following Brims' oral order. However, as I address in Part X of this Report, there were some issues concerning the cascading and handover of FRAGO 152 as well. I do not, therefore, accept that missed opportunities before May 2003 to notice that the hooding ban had not been properly implemented, were necessarily rendered causatively inconsequential by the later issue of FRAGO 152.

8.516 I have already provided my conclusions in respect of the ministerial correspondence with MPs and the answers given to Parliamentary Questions.

Part IX

Later Prisoner Handling Orders in Op Telic 1

Chapter 1: FRAGO 56 of 24 March 2003 and FRAGO 79 of 3 April 2003

9.1 In the previous Parts of the Report, I have considered the early theatre-specific orders relevant to prisoner handling (Part VII), and the concerns about hooding at the Joint Forward Interrogation Team (JFIT) leading to the oral ban on hooding in the first days and weeks of the warfighting operation (Part VIII). I turn now to consider how the orders in respect of prisoner handling developed through Op Telic 1.

9.2 As I will address in Part X, the orders and instructions given by 1 (UK) Div and 7 Armd Bde were either handed over to incoming formations at the start of Op Telic 2 or laid the foundations for the system of prisoner handling which was adopted and developed during Op Telic 2. The development of orders during Op Telic 1 is therefore important in understanding what guidance was in place at the time of Baha Mousa's death.

9.3 Before the fall of Basra on 7 April 2003, some planning for the post warfighting phase of Op Telic 1 had already begun. FRAGO 56 was issued on 24 March 2003, three days after the start of the land offensive. This was one of the first Divisional orders dealing with post warfighting phase. Maj Justin Maciejewski who was the 1 (UK) Div SO2 J3 Ops, said this of the background to FRAGO 56:

> *"A...I recall at this time that, once we crossed the line of departure into Iraq, we had an operation order that was all about getting into Iraq and getting to Basra – the outskirts of Basra. There was an immediate realisation of the scale of what we were facing in Basra and I remember Colonel Mercer being very vexed about all these sorts of issues. I think there was a sense at the time, in headquarters, that we needed to get something out because this thing could move quicker than we thought and the term used at the time was "catastrophic success"."*[1]
>
> *...*
>
> *"Q. Can I just go back to an answer that you gave a little earlier in this context when you said Colonel Mercer was very "vexed about these issues". What issues were you referring to?*
>
> *A. Well, just generally. I think – this is from my recollection – generally as a character in the headquarters, he was somebody who was, I think, from a legal point of view, trying to look one step ahead of some of the more day-to-day operational issues that we were dealing with as SO2s in the headquarters. So I look at this FRAGO here today and it says to me that that is an example of Colonel Mercer's work or somebody trying to get something into the thinking of the division that was perhaps focused at that time – because we were flat out 20 hours a day, trying to win the war – on more immediate concerns, artillery, where the infantry are going, tanks, crossing rivers, bridges, et cetera, et cetera.*

[1] Maciejewski BMI 72/120/1-12

> *Q. And Colonel Mercer was trying to lay down some lines, if you like, for what should happen to prisoners?*
>
> *A. Yes, sir…"*[2]

9.4 FRAGO 56 identified four law and order functions and identified a requirement for powers to intern civilians:[3]

FRAGO 056 OP TELIC PHASE IV – NEW ANNEX R TO OPO 002/03 LAW, ORDER, DETENTION AND INTERNMENT

INTRODUCTION

1. This Annex identifies 4 key law and order functions and suggests how 1 (UK) Armd Div should perform these functions when acting as an Occupying Power in Phase III b and IV in the event of a complete or partial breakdown of the Iraqi criminal justice system in our AO. It replaces the direction given in OpO 002/03. The key law and order functions identified are:

a. Stop and search.

b. Entry, search and seizure.

c. Arrest.

d. Detention.

2. This annex also identifies a requirement for powers to intern civilians who have been arrested on suspicion of posing a threat to the security of our own or coalition forces.

9.5 In respect of arrest, FRAGO 56 stated that *"As soon as practicable after the arrest, the arrested person should be transferred to the jurisdiction of the local police or handed over to the Service Police."*[4] Guidance was given for police custody at paragraphs 28 to 38.[5]

9.6 As to internment, FRAGO 56 stated:[6]

INTERNMENT

39. If a person is arrested on the grounds of posing a threat to force security and subsequently detained they are classified as an internee under International Law.

40. On arrest for posing a threat to Force Security, an immediate signal should be sent to G3 Ops HQ 1 (UK) Armd Div through the chain of command. The signal should include the following information:

a. Personal details of individual;

b. Grounds for suspecting that the person is a threat to the security of the Coalition forces

c. Location of the individual; and

d. Any other information that will assist in the determination of whether to issue an Internment Certificate.

41. As soon as practicable after detention, the detainee should be handed over to the Service Police or conveyed to a UK service police station. As soon as practicable, and within 24 hours, the arrested person shall be transferred to the DIMU.

[2] Maciejewski BMI 72/121/3-23
[3] MOD016156
[4] MOD016160, paragraph 27
[5] MOD016160-2
[6] MOD016162

9.7 It can be seen that at this stage, it was envisaged that the Royal Military Police (RMP) and J3 (Operations) branch would have the key roles in the internee process.

9.8 I referred in Part VII of this Report to 1 (UK) Div's early plans to establish a Detention and Internee Management Unit (DIMU).[7] In FRAGO 56 it was still envisaged that a DIMU would take responsibility for the legal review of detention.[8]

9.9 On 3 April 2003, 1 (UK) Div issued FRAGO 79, a Daily Miscellaneous FRAGO. This FRAGO was forward looking in that it looked ahead to a stage where UK Forces would be in occupation.[9]

9.10 FRAGO 79 stated:[10]

> Legal
>
> 2. Law & Order. See Annex A. Attached is a guide for Brigades on their legal powers in enforcing law and order in their Brigade AOs for Phases 3B and 4. This direction will evolve to meet requirements and changing circumstances, and any questions should be directed to the Legal Branch at Div Main.

9.11 Annex A to FRAGO 79, entitled "OP TELIC PHASE 3B/4 – 'Public Order and Safety'", was drafted by Lt Col Nicholas Mercer and provided guidance on the power to stop, search and detain. In respect of detention, the following instruction was given, including in particular the requirement that prisoners be handed over to the RMP as soon as practicable and in any event within six hours:[11]

> 10. Once, a person has been temporarily detained, he should either be released or handed over to the Royal Military Police (or equivalent) as soon as practicable and, in any event, within six hours. The detainee should always be handed over to the Royal Military Police where threat to force security or where has committed a specified arrestable offence (see schedule 2).

9.12 As with FRAGO 56, it was also still envisaged at this stage that a DIMU would take responsibility for the legal review of detention.[12]

9.13 Mercer's conclusion in Annex A to FRAGO 79 was that:[13]

> 26. The guidance provided above will evolve and further clarification will be provided and in due course. However, the powers set out above are considered sufficient for both Phase 3B/4 but clearly it is impossible to anticipate all scenarios. In the meantime, any comments in respect of this policy should be forwarded, in the first instance, to Legal Branch, HQ 1 (UK) Armd Div.

9.14 The Annex included a Commander's Guide at Schedule 1, which addressed actions on arrest:[14]

> 4. Arrest
>
> There is now power of arrest under the ROE and soldiers can only temporarily detain civilians. However, where a civilian is a threat to Force Security or has committed a specified arrestable offence (see schedule 2), the Royal Military Police should be called to the scene or the civilian taken to the Police Station. This should be done as soon as practicable.

[7] See Part VII at paragraph 7.65
[8] MOD016162-3, paragraph 42
[9] See the evidence of Baillie below in this respect at paragraph 9.21
[10] MOD019133
[11] MOD019135
[12] MOD019136, paragraph 18
[13] MOD019138, paragraph 26
[14] MOD019139, paragraph 4

9.15 A 1 RMP FRAGO dated 9 April 2003 followed FRAGO 79 and set out the RMP responsibilities under the FRAGO 79 system:[15]

> This Frago provides specific direction on the responsibilities of RMP with regard to the functions listed above and is further to Reference B. It is a working guide for RMP and a briefing tool for Bde DCOSs and BGs.

9.16 The relevant part of this FRAGO was the custody section which stated:[16]

> **CUSTODY**
>
> 7. On arrival at the Pl/Coy HQ or police station the subject must be presented to an RMP SNCO who will become the 'Custody SNCO' and who will initiate custody procedures as follows:
>
> a. The Custody SNCO is to ascertain the circumstances of the arrest and is to check the record of arrest.
>
> b. The Custody SNCO is to complete the custody record at Annex E.
>
> c. All seized property and other evidence is to be checked and booked in to the criminal property book.
>
> d. All personal effects (which fall short of being evidence) are to be recorded and bagged and are to be returned to the subject on release or are to accompany him to the internment facility.
>
> e. The subject's NOK is to be informed of the arrest unless this will hinder the administration of justice or adversely affect Force security. The Custody SNCO is to notify RHQ, 1 RMP of the NOK details and RHQ will fwd details to the CMOC.
>
> f. The subject's details are to be passed to 1 (UK) Armd Div G2and G2X (HUMINT). The Custody SNCO will fwd the subject's details to RHQ, 1 RMP who will fwd details to Div G2.
>
> g. The subject is to be photographed and fingerprinted.
>
> h. Within 24 hours of being presented to the Custody SNCO the subject is to be released or transported to the Theatre Internment Centre (TIC).
>
> [3] Whether the subject is taken to the Pl/Coy HQ or a police station will depend on whether a police station is operating in the AO. If it is not the subject is to be taken to either the Pl or Coy HQ (whichever is closest) and a SNCO will begin custody procedures.
>
> i. If the subject is transported to the TIC details are to be passed to the GOC, SO2 G1 and the Detention and Internment Management Unit (DIMU). The Custody SNCO is to fwd details of the disposal of the subject to RHQ 1 RMP who will fwd relevant details as reqd.

9.17 The conclusion stated:[17]

> **CONCLUSION**
>
> 10. It is imperative that the correct procedures are followed whenever members of the local population are detained, arrested or searched. It is also imperative that criminal property is handled correctly, with continuity statements, and that arrests and searches are documented effectively. Failure to do so will result in the (untimely) release of a person who poses a threat to the Coalition's mission.

[15] MOD017012, paragraph 1
[16] MOD017014-15, paragraph 7
[17] MOD017015, paragraph 10

9.18 While noting that the guidance in both FRAGO 79 and the RMP FRAGO that followed it were both to some extent aspirational, I should record two notable aspects of the guidance they provided. The first is the central role which was given to the RMP in the arrest and detention process. The second was the relatively short timescale put in place for the handing over of detainees by Battlegroups to the RMP, namely within six hours.

9.19 Maj Gen Peter Wall was Air Marshal Brian Burridge's Chief of Staff at the National Contingent Headquarters (NCHQ), and later the General Officer Commanding (GOC) of 1 (UK) Div. He explained the rationale of these orders as being to minimise the risks of mistreatment associated with prisoners being held at Battlegroup level:

> *"Q. ...Can we then go on to look at paragraph 31 of the statement, at BMI04516, where you say: "Detention procedures at grass roots level were led by the Royal Military Police as I have explained above." That is your understanding of how the system operated, correct?*
>
> *A. Yes.*
>
> *Q. "In general we sought to minimise any risks to detainees at battlegroup level by handing over prisoners to the RMP as quickly as possible." What risks were you envisaging which were minimised by this process?*
>
> *A. I am talking about risks of not handling them in accordance with our procedure."*[18]

9.20 Whereas Wall saw the protection of prisoners as the predominant reason for the timely transfer of prisoners to RMP custody, other factors may also have been in play. Transposing FRAGO 79 into guidance for the RMP about their responsibilities under FRAGO 79 was within Lt Col Philip Baillie's remit.[19] Baillie suggested that the reason behind the Custody Senior Non-Commissioned Officer (SNCO) role provided for in the RMP FRAGO[20] was the proper retention and recording of evidence, rather than prisoner welfare:

> *"Q. Was there any sense in which the role of having a custody SNCO from the RMP was seen to be a safer means of securing the prisoner?*
>
> *A. That wasn't the intention at the time, sir. The intention was to make it a safer means of recording the evidence."*[21]

9.21 I have already noted that FRAGO 79 was inevitably somewhat aspirational, given that it was issued before the end of the warfighting stage of Op Telic 1. Baillie's evidence in this respect was as follows:

[18] Wall BMI 97/107/6-19
[19] Baillie BMI 74/104/22-105/22
[20] MOD017014, paragraph 7
[21] Baillie BMI 74/107/14-19

"Q. If we go, please, to paragraph 10 over the page, still dealing, I think, at this stage, with the detaining soldier who effects the temporary detention: "Once a person has been temporarily detained, he should either be released or handed over to the RMP (or equivalent) as soon as practicable and, in any event, within six hours. The detainee should always be handed over to the RMP where threat to force security or where he has committed a specified arrestable offence …" And the specified arrestable offences were set out in a schedule. Just pausing there, should the Inquiry understand that to an extent, when this order was issued on 3 April, this was somewhat aspirational, paragraph 10?

A. Correct, sir.

Q. The Inquiry heard evidence from members of 1 Black Watch, who were one of the Battlegroups in 7 Armoured Brigade, in relation to this very order, that at this time, when they first received it, there simply weren't any RMP in Basra at all to hand those who had been detained over to. Do you follow?

A. It would be incorrect for them to say there were no RMP in Basra at all. It may be that they did not have access to those that were in the city.

Q. So those that were available would not have been involved in these sort of custodial matters?

A. Not at that stage, no, sir."[22]

9.22 After FRAGO 79 had been issued, Mercer told the Inquiry that he began to have concerns that the guidance contained in the order was not being complied with:

"Q. Moving on in time to paragraph 81 of your statement at BMI04077, at the foot of page, where you say this: "Although strict instructions had been given in FRAGO 79 [the one we just looked at a moment or two ago] that detainees were to be handed over to the Royal Military Police as soon as practicable, and in any event within six hours, before being transported to the TIC, I began to have concerns that this was not being complied with in theatre and that detainees were being held by battlegroups." Can you help as to why you began to have concerns? What were the source of your –

A. Well, the schematic was fairly straightforward, I thought; in other words, that people who were detained under the ROE were handed to the police and the police then handed them to the – took them down to the TIC, the theatre internment centre, or TIF or whatever it's called, at this particular moment in time. It's very hard to read a situation from divisional headquarters. You have 25,000 soldiers over a massive geographical area and you begin – you were conscious that things might happen or might be happening, and one of my concerns was that people weren't being taken down to the TIF, but were being held elsewhere."[23]

9.23 As a result, Mercer required that detailed information about where detainees were being held before the Theatre Internment Facility (TIF) should be provided to Divisional headquarters. This was covered in paragraph 3 of FRAGO 143, another 1 (UK) Div Daily Miscellaneous FRAGO, dated 14 May 2003:[24]

3. Treatment of Detainees. Bdes are reminded that detainees should be treated in accordance with the responsibilities as laid out in 'Geneva Convention 4'. All details of locations where detainees are held in the Div AOR should be confirmed to G3 Pro at this HQ by **151830D MAY 03**, and all are reminded to allow ICRC access to such sites if requested.

[22] Baillie BMI 74/101/14-102/15
[23] Mercer BMI 68/67/19-68/17
[24] MOD030975

9.24 Mercer said that the reason behind this request was his concern about non-compliance with the FRAGO 79 guidance and prisoners being held elsewhere than the TIF:

> *"Q. So what you were asking for here, in paragraph 3, is to know the location – any location – where detainees were being held?*
>
> *A. Yes. I mean the schematic was simple: detain under the ROE, hand to the police, the police take them down to the TIF. But, of course, as we know, that system had become very overloaded and broken.*
>
> *Q. And so the purpose of having those areas identified was what?*
>
> *A. Well, I mean, obviously the schematic wasn't working. I wanted people in the TIF and nowhere else."*[25]

[25] Mercer BMI 68/70/23-71/8

Chapter 2: FRAGO 152 and FRAGO 63 of 20 and 21 May 2003

9.25 Renewed guidance on the detention of civilians was issued by 1 (UK) Div's Daily Miscellaneous FRAGO 152, dated 20 May 2003. The main body of the FRAGO simply referred to attached guidance, although making clear that it was to be passed down to the lowest level:[26]

LEGAL

3. Find renewed guidance on the detention of civilians attached at Enclosure 1.. This is to be passed down to the lowest level.

9.26 The attached guidance was once again drafted by Mercer and I set it out in full:[27]

UNCLAS

DETENTION OF CIVILIANS

Introduction

1. There have recently been a number of deaths in custody where Iraqi civilians have died whilst being held by various units in Theatre. At the same time, the ICRC have advised that they have received a number of complaints about the handling of detainees by Coalition Forces. A number of these cases are currently being investigated by the SIB but all units in Theatre are to ensure that **all persons** detained by UK Forces are treated with humanity and dignity at all times.

ROE

2. The ROE for Phase IV of OP TELIC are currently in draft and have not yet been agreed. Brigades have had a chance to comment on the draft ROE but, for political reasons, Phase IV ROE appear to have been delayed. The current ROE are therefore extant and the following ROE apply to the detention of individuals;

680 BRAVO (ONE) Permits the temporary detention of persons posing a threat to Coalition Forces or elements under UK protection or otherwise interfering with or threatening the Coalition mission.

690 CHARLIE (ONE) [redacted] detained persons may also be searched under this ROE

3. It should be noted that the power to stop and search and temporarily detain can be used either if the person is a threat to force security or where someone has committed a criminal offence. Both are regarded as "interfering with or threatening the Coalition mission".

[26] MOD017061

[27] MOD017062-3. I have seen behind the redaction that has been applied to this document and can confirm that the content bears no direct relevance to the issues being investigated by the Inquiry.

MINIMUM FORCE

4. Reasonable force may be used to effect the detention and search but this only allows the **minimum force necessary** to be used. Guidance on search has already been provided (FRAGO 79) but once the person has been detained they should be handed over to the Military Police as quickly as possible. This should occur within six hours of detention. However, this does not mean that a unit can hold for up to six hours but rather the delivery to the RMP should occur **as soon as possible**. The guidance allowing up to six hours is to take account of those units which might be in remote locations. All other units should attempt to deliver the detained person in under an hour.

5. If a unit has to hold a detained person prior to the arrival of the Royal Military Police or to await transport or for any other unavoidable reason the detained person should be treated with **humanity and dignity** at all times. They should not be assaulted. They should be provided with water in all cases and food if they are detained for longer. If they need to be restrained then this should only be affected where absolutely necessary and using the minimum force required. Under no circumstances should their faces be covered as this might impair breathing. Medical assistance should also be close at hand at all times. The Royal Military Police are specially trained in all these matters and timely delivery to the Military Police is the best way to ensure that the correct procedures are adopted at the outset.

GENEVA CONVENTION

6. The Law of Armed Conflict still applies during Occupation and there are very strict rules when it comes to dealing with civilians. They are to be treated humanely at all times and protected against all acts of violence or threats of violence. The use of force is therefore only permitted where absolutely necessary to detain or search and the excessive use of force could breach the Geneva Convention.

MILITARY LAW

7. Members of the Armed Forces are subject to military law at all times when serving on Military Operations. If a civilian is assaulted or mistreated in any way this could amount to a breach of Military Law which could result in disciplinary action being taken. If a detainee is assaulted, excessive force used or the detained civilian suffers injury or death as a result of not receiving humane treatment then disciplinary action will probably follow.

CONCLUSION

8. The detention of civilians will continue to be necessary whilst UK Forces are in Occupation of Iraq and have responsibility for law and order. It is important that we continue to detain those who interfere with or threaten the Coalition Mission. However, those detained need to be treated properly if we are to avoid death or injury and the justified criticism that arises if excessive force is used.

N J Mercer
Lt Col
Comd Legal

(See also HQ 1 (UK) ARMD DIV FRAGOs 079, 091 and 102)

9.27 This divisional guidance was reproduced at Brigade level by way of 7 Armd Bde FRAGO 63, dated 21 May 2003:[28]

FRAGO 63 – MISCELLANEOUS POINTS

1. DETENTION OF CIVILIANS. A NUMBER OF CIVILIANS HAVE DIED IN CF CUSTODY AND HUMAN RIGHTS ORGANISATIONS ARE ACTIVELY INVESTIGATING ALLEDGED ABUSES. AT ANNEX A IS A COMPREHENSIVE GUIDE TO THE DETENTION OF CIVILIANS WHICH IS TO BE BRIEFED TO ALL THOSE LIKLEY TO BE IN A POSITION OF CONTACT WITH CIVILIANS UNDER DETENTION AT ANY STAGE IN THE CHAIN. BGS AND SUB-UNITS ARE TO ADHERE TO THIS POLICY

[28] MOD031014

9.28 Annex A to FRAGO 63 exactly replicated Enclosure 1 to FRAGO 152.[29] The distribution list included 1 Black Watch (BW).[30] As I will address in further detail in Part X of this Report, I am satisfied that, although the 1 BW logs for the relevant period do not record receipt of FRAGO 63,[31] the majority of evidence given by the relevant 1 BW officers supports the conclusion that FRAGO 63 was received by the Battlegroup.[32]

9.29 It can be seen that Mercer's guidance on the detention of civilians issued under FRAGO 152 and its Brigade equivalent FRAGO 63 contained four points of particular significance:

(1) firstly, the guidance was clearly being issued in the wake of deaths in custody and I shall address some of those deaths in Part X of this Report;

(2) secondly, the guidance reiterated the requirement to hand detained persons to the RMP as quickly as possible and in any event within six hours. Indeed, the guidance made clear that other than for units in remote locations, the expectation was now that prisoners would be handed over within one hour;

(3) thirdly, the guidance was the only *written* order issued before Baha Mousa's death disclosed to the Inquiry, which contained an apparent reference to the prohibition on hooding prisoners. The direction was that "*under no circumstances should their faces be covered as this might impair breathing*";[33] and

(4) fourthly, the guidance contained an explicit warning that prisoners must be protected from violence and threats of violence and that breach of this would probably lead to disciplinary action.

9.30 Mercer was asked about the reason for including the particular direction that detainees should not be assaulted:

> *"Q… Just pausing there, if I may for a moment, "they should not be assaulted", was that put into this FRAGO for any specific reason because you were aware of any allegations that prisoners had been assaulted?*
>
> *A. I was aware that prisoners had died.*
>
> *Q. But you knew no more or less than that, did you?*
>
> *A. Well, I can't remember if it was at this point or others, but there were reports of prisoners – some prisoners – being delivered who were quite bruised down to the TIF. Now I cannot recall whether it fell before this or after this. Now that's difficult because was it a result of a lift operation, which it could be, or was it for some other reason? So I put that in. I can't recall at this particular moment in time, but it's likely to have been because of the mention of the deaths.*
>
> *Q. But we should assume, should we – the Inquiry should assume – that you put it in, as it were, specifically, not because it formed some part of a stream of words that would have been used in a FRAGO of this kind come what may?*
>
> *A. No. It was aimed specifically."*[34]

[29] MOD031016-7
[30] MOD031014
[31] Eloquin BMI09007-8, paragraph 19
[32] See Part X of this Report at paragraphs 10.105-10.108
[33] MOD017063; MOD031017
[34] Mercer BMI 68/76/12-77/8

9.31 As far as Mercer was aware there was no indication that breathing difficulties had been involved in the earlier deaths in custody.[35] Mercer's explanation for the inclusion of the direction that under no circumstances should detainees' faces be covered as this might impair breathing (paragraph 5 of the guidance enclosed with FRAGO 152) was as follows:

> *"Q. Why did you put that into this FRAGO, Colonel?*
>
> *A. Well, at this point, of course, I've got two interim reports or two reports from the SIB that people -- two people held by battlegroups had died. I, as the lawyer, am trying to envisage what might have happened. I don't know. So I am trying to cover as many bases as I can. I covered the assault in the first paragraph. I cover food, water in the second line. I cover -- hooding had been banned and I was thinking, well, soldiers being soldiers, they might try something else because I know what they're like -- if they say "hooding is banned", then they will do something that, you know, cuts out sight or whatever using other means. So I put it in for those reasons. I am really trying to get at what might be going wrong here."*[36]

9.32 I have addressed Maj Gen Robin Brims' ban on hooding in Part VIII of the Report and concluded that his order was given between 1 and 3 April 2003 and was only disseminated orally.[37] Against that background, the Inquiry explored with Mercer why it was that his guidance did not give greater prominence to the prohibition on hooding or put the matter in clearer and bold terms:

> *"Q. Given that you knew that hooding had been banned by way of an oral order from Maj General Brims via Marriott – but you knew it was not in writing, didn't you?*
>
> *A. That's correct.*
>
> *Q. – did you think that in this FRAGO, where you were making things – as you put it in your statement, setting them out in unequivocal terms, did you think that in this FRAGO it might be an opportunity to indicate that of course prisoners may not be hooded?*
>
> *A. Well, I took that as a given and this addressed the situation where they were trying to get round that instruction.*
>
> *Q. Taking it as a given, therefore, you didn't consider that you needed to put the ban on hooding unequivocally and in writing in this FRAGO –*
>
> *A. Well, the order had already been given –*
>
> *Q. Yes.*
>
> *A. – so this supplemented.*
>
> *Q. Okay. By "faces being covered", what did you have in particular in mind?*
>
> *A. Well, I just thought someone could have wrapped something round their eyes, covered their noses. I mean, I was trying to guess how this could have happened."*[38]

9.33 Thus Mercer's account was that the guidance he issued under FRAGO 152 was not intended simply to put into writing Brims' earlier verbal ban on hooding. Rather Mercer believed that the ban had already been adequately disseminated. In this guidance he was seeking to go further and ensure that soldiers did not seek to get round the prohibition on hooding by using other material to cover detainees' faces.

[35] Mercer BMI 68/73/10-16
[36] Mercer BMI 68/77/25-78/14
[37] See Part VIII at paragraphs 8.265-8.291
[38] Mercer BMI 68/79/22-80/21

9.34 Mercer's evidence on this was supported by that of Maj George Waters, the 1 (UK) Div SO2 J2, who told the Inquiry that Brims' verbal order addressed the immediate hooding concerns on Op Telic 1, whilst FRAGO 152 addressed subsequent concerns.[39]

9.35 It is accepted by the MoD that despite the verbal order from Brims, the written guidance issued with FRAGO 152 and its equivalent at Brigade level, FRAGO 63, the use of hooding continued into Op Telic 2.[40] The MoD suggests that while the FRAGO 152 guidance did not contain the term hooding, it plainly covered this practice.[41]

9.36 The Detainees suggest that the terminology used by Mercer in the guidance issued with FRAGO 152 may have confused some, and they point to the fact that 1 BW continued to hood prisoners, even at the time of handover to 1 QLR.[42]

9.37 I have considered whether Mercer should have done more in FRAGO 152 to make absolutely clear that there was a ban on hooding. He might, for example have used more simple language, set out more prominently and more clearly in the FRAGO, stating simply that "hooding is banned" or "hooding must not under any circumstances be used". Moreover with hindsight it is clear that Mercer's confidence that the verbal prohibition on hooding had been adequately communicated was misplaced. On the other hand, unlike a number of subsequent orders, such as FRAGO 29 and FRAGO 005,[43] any proper reading of Mercer's FRAGO 152 should have led the reader to conclude that hooding was indeed banned. And unlike the later orders FRAGO 29 and FRAGO 005, Mercer did not omit all reference to sight deprivation in his guidance. It is also relevant to note that the clear majority of the Inquiry's witnesses who received FRAGO 152/FRAGO 63, both at Divisional/Brigade level[44] and at Battlegroup level,[45] understood the guidance contained within FRAGO 152 to prohibit hooding. Maciejewski was typical of this evidence in his understanding of FRAGO 152:

> *"A…. The way I read this as the operations officer, when I looked at this, was that it was not exclusively about hooding, but hooding was encompassed within it; in other words, it went beyond hooding to other methods that might be used – you know taping up somebody, their eyes possibly, over the bridge of their nose. You know, I think it was – that's the spirit, in my recollection, of why it was written, those form of words were chosen. But I certainly understood it to encompass hooding, even if it wasn't only about hooding."*[46]

9.38 I set out my findings on this aspect in the conclusions at the end of this Part of the Report.

[39] Waters BMI 71/116/24-117/14
[40] SUB001107, paragraphs 11-12
[41] SUB001107, paragraph 11
[42] SUB002499-500
[43] I consider these orders at Chapter 5 of this Part, and Chapter 4 of Part XI respectively.
[44] See by way of example only: Bradshaw BMI 96/20/19-21/13; Bradshaw 23/11-24/4; Heron BMI 64/119/10-24; Parker BMI 96/96/6-97/17
[45] See for example Riddell-Webster BMI 63/134/6-11; S056 BMI 79/94/1-95/16
[46] Maciejewski BMI 72/132/22-133/7

Chapter 3: FRAGO 163 and FRAGO 70 of 30 May 2003

9.39 The next orders of note were FRAGOs 163 and 70. FRAGO 163 was issued on 30 May 2003. This was a further 1 (UK) Div FRAGO dealing specifically with internment and detention procedures. A Brigade equivalent, FRAGO 70, was issued the same day cascading the divisional order to Battlegroups.

9.40 The background to the order was the handing back to the Iraqi civilian authorities the responsibility for dealing with criminals. The FRAGO stressed the importance of all soldiers understanding the procedures for temporary detention to prevent violations of international law:[47]

> SITUATION
>
> 1. General. During the current occupation of Iraq, Coalition Forces are permitted to apprehend those who have committed a criminal offence or who are a threat to force security. Those who have committed a criminal offence are called detainees and those who pose a threat to force security are called internees. In the current situation, particularly where the civilian police force is still developing, it will often fall to Team Commanders to initiate the process of internment or detention of those who have committed a criminal offence or who pose a threat to Force Security. It is essential that all soldiers must understand the procedures to temporarily detain detainees or internees to prevent violations of International Law.

9.41 As examined above, the original timetable for handing prisoners over to the RMP was as soon as possible and in any event within six hours (FRAGO 79). This had then been clarified and tightened to indicate that the handover should be achieved within one hour save for those units in remote locations (FRAGO 152). FRAGO 163 further refined this timetable, requiring handover to the RMP within one to two hours, save in exceptional circumstances. The scheme of manoeuvre was set out as follows:[48]

> b. Scheme of Manoeuvre. From 01 Jun the Iraqi civilian legal organizations will be responsible for detention of criminals. Coalition forces will continue to be responsible for internment of those that present a threat to the security of coalition forces. However, Coalition Forces still have a responsibility for law and order under International Law. **Those temporarily held by UK forces must be handed to RMP within one to two hours. Any later delivery can only be in exceptional circumstances. The RMP will then be responsible for initial processing before releasing back to the arresting BG for onward movement to the TIF. All internees are to be delivered to the TIF within 6 hours of arrest when practicable.**

9.42 Coordinating instructions were also provided, including in particular the instruction at paragraph 5(d) that "*[u]nder no circumstances may a suspect be interrogated until he has been processed by the TIF*".[49]

[47] MOD017179
[48] MOD017180, paragraph 3(b)
[49] MOD017180-1, paragraph 5

Coordinating Instructions.

a. Categories of suspect.

(1) Detainees. Those that are arrested for acts relating to criminal activities are detainees and are to be handed over to the RMP within one to two hours of apprehension for onward processing to the civilian police.

(2) Internees. Those arrested as a threat to the security of the Force are internees and are to be handed over to the RMP within one to two hours of apprehension for onward processing to the TIF.

If the soldier on the spot cannot decide which category an individual falls into, they are to deliver the person they have temporarily detained within one to two hours to the RMP who will seek legal advice if necessary.

b. Interment procedures. A flow chart specifying internment procedures is at Annex A. This flow chart is to be issued down to Team level. The TIF is closed 2100 – 0800D. When a suspect is apprehended during this period the BG will be handed back the suspect after initial processing by the RMP. The BG RP staff is responsible for the care of the suspects when in BG custody. In such cases BGs are to deliver the suspect to the TIF before 0830D.

d. International Law. Under International Law, internment is only permitted where it is absolutely necessary for the security of the Force. It is therefore a serious measure to intern civilians and all cases must be reported to the ICRC.

Informing the ICRC is the responsibility of the UK element in the TIF. Where it cannot be shown that it is absolutely necessary to intern then the internee will be released. Under no circumstances may a suspect be interrogated until he has been processed by the TIF.

9.43 The flow chart which was attached to the order at Annex A reiterated the instruction that handover of a suspect to the RMP was to take place within one to two hours.[50]

9.44 Mercer was involved in drafting FRAGO 163. I have already referred to his concerns that the procedures put in place by FRAGO 79 were not being complied with. Mercer's evidence was that the intention of FRAGO 163, along with FRAGO 152, was to "design out" the possibility of prisoner abuse:

> *"Q. Can we have on the screen, please, paragraphs 87 and 88 of your statement to this Inquiry? At paragraph 88:*
>
> *"At the same time, over the course of the week, specific internment and detention procedures were produced [you say] to 'design out' the possibility of prisoner abuse and on 30th May 2003, FRAGO 163 was issued."*
>
> *In what ways did these provisions, the guidance that we have seen a moment or two ago and then FRAGO 163 – how were they designing out the possibility of prisoner abuse?*
>
> *A. Well, I think it's no questioning except at the TIF and also the time prerogatives for handing over, bringing to the TIF and also the involvement of the Military Police. That's part of the process.*
>
> *Q. So those were the safeguards essentially?*
>
> *A. They were, yes."*[51]

[50] MOD017182
[51] Mercer BMI 68/91/4-20

9.45 The guidance in FRAGO 163 was cascaded down by way of 7 Armd Bde's FRAGO 70,[52] also dated 30 May 2003, and disseminated to Battlegroups including 1 BW.[53] I need not set out the content of FRAGO 70 because it directly mirrored the divisional order FRAGO 163.

9.46 Dealing first with the reduction on the timescales for handover to the RMP, I accept Mercer's evidence that in shortening that timescale for handover, he had in mind the desirability of minimising the risk of prisoner abuse at Battlegroup level. However, other staff officers may have seen other factors as being more relevant in justifying the shortened timescales. Col Patrick Marriott, for example, the Divisional Chief of Staff, endorsed FRAGO 163 but his explanation of the shortened timescales was a little different:

> *"Q… Two issues here perhaps: a six-hour timing for handover of prisoners, the timing being, if you like, squeezed to what might have been thought the practicable minimum. Would that be right?*
>
> *A. Yes. There was debate about the timings. What we sought to do was to get the timings down as tight as we could practically deliver and the timings changed and that's for practical reasons.*
>
> *Q. Would you agree, as some witnesses have told this Inquiry, that one of the reasons for, if you like, tightening up the time limits was to lessen the risk of anything untoward happening to prisoners if they were left with battlegroups for longer periods, particularly, for example, in a situation where it may have been the battlegroup soldiers who effected the arrest, it may have been a violent arrest, and the scope for possible retaliation was being reduced if the timescale was being reduced?*
>
> *A. I don't think I wholly agree with that. Humanely we wanted to get these people back as quickly as we possibly could – that was the prime driver here – and to get them to the people who understood what to do next, the specialists. That was the real thing we wanted to do."*[54]

9.47 However, it is clear from Mercer's evidence that getting detainees to the specialists, the RMP for custody and the JFIT staff for questioning, within a short timescale was considered by him, as it had been by Wall, to be an important protective measure against potential abuse of prisoners at Battlegroup level.

9.48 The next issue is Mercer's guidance that suspects were under no circumstances to be "interrogated" until they had been processed by the TIF.

9.49 To understand the thinking that lay behind this part of the guidance, it is necessary to consider slightly earlier guidance which had been drafted by Mercer but in respect of which there is considerable doubt as to whether it was in fact issued. On balance it seems to me that this earlier guidance was probably not issued, although I cannot be sure that this was the case.[55] Its content is nevertheless instructive in terms of understanding Mercer's approach. The introduction provided as follows:[56]

---

[52] MOD017101

[53] I note in passing that FRAGO 70 was received by Briscoe shortly before his deployment with 1 QLR as the Regimental Sergeant Major. He understood it to give him, among others, prisoner handling responsibility: Briscoe BMI 43/105/23-106/25. However, this was to change as a result of changes introduced by FRAGO 29, see below

[54] See, for example, Marriott BMI 98/165/11-166/10

[55] Mercer suggested that this would have been issued under a FRAGO (BMI 68/82/21-83/2). However, the document disclosed to the Inquiry is undated. No such FRAGO enclosing this guidance was disclosed to the Inquiry. The evidence of Maj Medhurst-Cocksworth suggested that the guidance looked more like legal advice that would have gone to the Brigade legal officer (BMI 68/169/7-170/15)

[56] MOD011514

Introduction

Guidance was provided recently on detainees (being those persons who have committed a serious criminal offence who are subsequently detained by Coalition Forces). However, there is another category of persons who can be detained called internees. These are people who simply pose a threat to Force Security and, under the under the IV Geneva Convention 1949, such persons may be interned where it is "absolutely necessary" for Force Security. Clearly internment is potentially a very useful tool in ensuring the security of the Coalition Forces. At the present time however, there appears to be some confusion within the Brigades as to the procedure for arresting and holding internees and this document is intended to provide guidance to ensure that internees are not held unlawfully.

9.50 Timescales for handover to the RMP were addressed and it was clear at this stage that the six hour time limit was still in place:[57]

OP TELIC PHASE 3B "Interim Measures for Public Order and Safety"

The guidance for the temporary detention and subsequent arrest of both detainees and internees is found in the "Interim Measures for Public Order and Safety". Internees must be delivered to the Royal Military Police or the Royal Military Police within six hours of temporary detention. The time guide of six hours is provided to allow those in remote rural locations time to deliver such persons to the Military Police. However, persons who are being temporarily held by the Brigades should be delivered to the Royal Military Police ideally within one hour of temporary detention. This should hopefully ensure the safe detention of both internees and detainees. The procedure is identical in both cases.

9.51 In respect of questioning the draft guidance stated:[58]

Questioning

Questioning of internees will not be carried out by the Brigades in Brigade holding areas and should only be conducted at the Theatre Internment Centre (TIF). From July 2003 however, 3 Div will not have a permanent JFIT presence but the Brigades may wish to consider the provision of Trained Tactical Questioners who can question the internee at the TIF. In addition a team of British interrogators in the ISG (Iraqi Support Group) in Baghdad will also be on call. They can be on task within twelve hours and can be surged to support specific units or operations

9.52 It is notable that in this guidance, the word that Mercer was using was not "interrogation" but "questioning". Mercer was seeking, it would seem, to exclude all questioning other than at the TIF. Mercer was asked about this guidance and he explained that "questioning" did include tactical questioning:

"A. I was trying to design out the potential for abuse.

Q. And "designing out the potential for abuse" means, putting it in straightforward language, lessening the opportunity for assault?

A. That's correct.

Q. That was being done by – may I put it this way – this constant reiterating of the six-hour maximum and the one-hour ideal?

A. Yes, that's correct.

Q. You go on to say: "The procedure is identical in both cases." Then if we go to the foot of the page, under the heading "Questioning": "Questioning of internees will not be carried out by the brigades in brigade holding areas and should only be conducted at the theatre internment facility ..." You go on then to refer to what's going to happen I think some little time in the future.

[57] MOD011514-5
[58] MOD011515

"From July 2003 ... 3 Div will not have a permanent JFIT presence ...", and so on. But just to ask you about that, please, the first line, "Questioning of internees will not be carried out by the brigades in brigade holding areas ...", was that suggesting that tactical questioning would not take place there?

A. It covers everything.

Q. So questioning of all kinds?

A. Well, interrogation of all kinds, yes.

Q. Which would include tactical questioning, would it?

A. Of course, yes.

Q. Over the page, as it were –

A. If I can just say on that, the theatre internment facility had a lawyer present at the theatre internment facility; in other words, I had legal supervision at that point and I didn't have it elsewhere.

Q. So what you were seeking to bring in, if you like, through this guidance was – if it had been going on – an end to tactical questioning at brigade level?

A. I didn't know it was going on there. The idea was to – it doesn't say so at all. It says: detain, hand to the police, delivery to the TIF, questioning at the TIF.

Q. But if, insofar as it had been going on, this was designed to prevent tactical questioning or questioning of any kind –

A. Of any kind, "questioning" being generic.

Q. – anywhere other than at the TIF?

A. At the TIF because I had legal supervision of that.

Q. Looking back on it, Colonel Mercer, do you think that it might have been clearer on that issue to indicate that tactical questioning was also not to be conducted?

A. No, "questioning" covers everything.

Q. So over the page, please, just to underline perhaps the point –

A. And I think can I – sorry, just to go back to that last paragraph, it says "tactical ..." – it goes on to say "trained tactical questioners who can question the internee at the TIF", so it does deal with tactical questioning. So I hope it's clear."[59]

9.53 In addition to Mercer's evidence about the intent of FRAGO 163 and his draft guidance, he told the Inquiry that FRAGO 152 also went to the issue of interrogation not being permitted before transfer to the TIF, since it referred to delivery of detainees to the RMP, which "*...would then fit into the schematic*".[60]

9.54 On the basis of the draft guidance and Mercer's evidence, I have no hesitation in finding and accepting that Mercer's intent was to ensure that the only questioning of prisoners by UK Forces, whether tactical questioning or interrogation, should take place at the TIF. He saw this as being part of the tightening of procedures that would minimise the risk of prisoner abuse.

9.55 I do not however accept Mercer's evidence that FRAGO 152 indicated that there was to be no interrogation before the TIF. If that was the intent, the wording of FRAGO 152 was manifestly insufficient to convey it. Further, there was a marked difficulty with

[59] Mercer BMI 68/85/8-87/15
[60] Mercer BMI 68/81/13-24

the terms in which Mercer sought to communicate his intent in FRAGO 163. As set out above FRAGO 163 was drafted in the terms that *"[u]nder no circumstances may a suspect be **interrogated** until he has been processed by the TIF"* [my emphasis added].[61] Mercer's evidence was that "interrogation" included, or was intended to include, tactical questioning and strategic questioning:

> *"Q. In that FRAGO 163 that we just looked at, you used the term that no interrogation was to take place before delivery to the TIF.*
>
> *A. Yes.*
>
> *Q. Why "interrogation" on this occasion as opposed to "questioning" which we have seen you used earlier?*
>
> *A. There's no particular reason. I can't see any particular difference between the two.*
>
> *Q. Would tactical questioning fall under the umbrella of "interrogation"?*
>
> *A. Yes, very clearly. Interrogation includes tactical questioning and strategic questioning.*
>
> *Q. Again, with hindsight, do you think that might have been made clearer if that was your intention?*
>
> *A. If you read it in the light of the previous FRAGO, it makes it absolutely crystal clear that this only takes place at the TIF. This is again a reiteration of that earlier FRAGO.*
>
> *Q. It is rather what only takes place at the TIF that I am suggesting might have been made a little clearer, to include TQ'ing, if that's what you intended.*
>
> *A. We looked at that last paragraph in the provisions for internees and it makes it very clear that questioning is only to take place at the TIF, and it includes tactical questioning in that paragraph and then that's reiterated in the later FRAGO."*[62]

9.56 Whilst there were some witnesses at Divisional and Brigade level who understood the intent of FRAGO 163 / FRAGO 70 to be that no questioning in any form was to take place until after processing of a detainee by the TIF,[63] it was accepted by Waters that there was a risk that those at Battlegroup level would understand interrogation before the TIF to be prohibited but not tactical questioning.[64]

9.57 Waters' concern that the wording of FRAGO 163 carried a risk of misunderstanding was amply borne out in evidence given to the Inquiry by other witnesses. For example, S015 arrived in theatre in July 2003 and was Divisional J2X responsible for human intelligence issues in Op Telic 2. He was aware of an order predating his arrival that expressly prohibited interrogation before arrival at the TIF. His evidence was that he would have understood a prohibition on "interrogation" only to prohibit interrogation but to allow tactical questioning to go ahead.[65]

9.58 Similarly, at Battlegroup level, a number of Inquiry witnesses gave evidence that they would have assumed that the prohibition on "interrogation" excluded tactical questioning. These included the 1 BW Intelligence Officer, Capt Michael Williamson, and the 1 BW Battlegroup Logistics Officer, Maj Anthony Fraser.

---

[61] MOD017181, paragraph 5(d)
[62] Mercer BMI 68/93/16-94/16
[63] See for example Eaton BMI 98/90/5-8; Wilson BMI 71/76/8-22
[64] Waters BMI 71/121/12-122/16
[65] S015 BMI 84/125/20-126/23

9.59 Williamson emphasised that interrogation clearly meant something different to tactical questioning:

> *"Q. ... There is a FRAGO, which perhaps we don't need to turn up unless you particularly want to see it, dated 30 May, as part of the change in how prisoners should be handled once the Iraqi civilian courts were back up and running – at that stage towards the end of your tour – which included an express requirement that prisoners should not be interrogated before they had got to the theatre internment facility. Were you aware of that?*
>
> *A. I was aware of that prior to deployment.*
>
> *Q. You say that. Do you draw a distinction between tactical questioning and interrogation?*
>
> *A. Absolutely, categorically, yes.*
>
> *Q. Again, ask if you want to see it, but if you had received an order using the word "interrogation" and that interrogation was not to take place before the TIF, would you have understood that as prohibiting tactical questioning at battlegroup level as well?*
>
> *A. No."*[66]

9.60 Similarly, Fraser's evidence showed that he considered there to be a marked distinction between interrogation and tactical questioning:

> *"Q. ...Just again on the process of handling detainees in Basra, can we have MOD017101? This is a FRAGO from brigade dated 30 May, so I appreciate right at the end of your tour. I just wanted to ask your understanding of one element of it. If we could turn to the next page and have the first half of that left-hand side highlighted, you can see there's a heading "International law". Then the last sentence of that heading says: "Under no circumstances may a suspect be interrogated until he has been processed by the TIF." Firstly, do you remember seeing this whilst you were in Basra?*
>
> *A. No, I would not have seen this. I was on my way back through – down to Kuwait.*
>
> *Q. If I can ask you a hypothetical question then. Had you seen this, what impact, if any, would it have had on how you were dealing with prisoners in Basra?*
>
> *A. I don't believe that would have had any impact because we weren't involved in interrogation in any way. There was limited tactical questioning done by the battlegroup, but there's a heavy distinction between tactical questioning and interrogation."*[67]

9.61 The ambiguity of Mercer's reference to interrogation in FRAGO 163 is further borne out by the simple fact that tactical questioning continued at 1 BW after the issue of this order. I address 1 BW's use of hooding and tactical questioning in Part X of this Report. The evidence did not suggest that 1 BW stopped tactical questioning part way through Op Telic 1 as a result of this order.

9.62 It is submitted on behalf of Mercer that FRAGO 163 may have been misinterpreted because of a general confusion about the terms interrogation and tactical questioning.[68] As I have pointed out above there were different views as to whether the order prohibited tactical questioning as well as interrogation before prisoners reached the TIF. But in my view the confusion was on this occasion caused more by the language adopted by Mercer in FRAGO 163. I shall return to this issue in the conclusions at the end of this Part.

[66] Williamson BMI 62/132/18-133/11
[67] Fraser BMI 63/72/8-63/73/5
[68] SUB000184, paragraph 189

Chapter 4: OPO 005/03 of 8 June 2003

9.63 OPO 005/03 was issued on 8 June 2003.[69] It introduced a number of changes which are an important context for the orders and events that followed. It established the new Multi National Division (South East) (MND(SE)). The command structure was thereby changed. For the warfighting phase, as previously explained, there had been a UK National Contingent Command (NCC) in place in Qatar, commanding the British Forces including the Army Division, 1 (UK) Div, which in turn commanded British Brigades. After the warfighting phase, the NCHQ had been withdrawn and the high level operational direction came direct from Permanent Joint Headquarters (PJHQ) to 1 (UK) Div. With the changes introduced by OPO 005/03, the senior formation in theatre was now the MND(SE), of which 1 (UK) Div was to be the largest contingent. But other troop contributing nations held posts within the Divisional Command, and the Division commanded Brigades from the different troop contributing nations. At the same time, the Division's area of operation expanded from two provinces (Basra and Maysan) to four (Basra, Maysan, Al Muthanna and Dhi Qar).

9.64 OPO 005/03 also contained an Annex relevant to prisoner handling which was Annex M "Law & Order and Internees".[70] This set out law and order and internment procedures which were to be adopted with immediate effect. These were the procedures in place in respect of internment up until FRAGO 29:[71]

2. Internment. Civilians are interned if they represent a threat to the Coalition Force mission. Additionally individuals may voluntarily request to be interned. Internment is the period spent in an internment facility up to the point of release. This term is not to be confused with pre-internment custody by battlegroup (BG) personnel, which is in accordance with the ROE.

3. Procedures to be adopted. The following procedures are to be adopted with immediate effect:

a. In accordance with the ROE, a suspect is detained by a BG patrol as posing a threat to CF.

b. The suspect is taken to the CF Service Police, who, having heard the circumstances of detention, shall determine whether:

(1) There is a case to answer. If there is no case to answer (ie the circumstances related do not pose a threat to CF), then release NFA.

(2) If the information shows that there is/was a threat to CF, internment at the Theatre Interment Facility (TIF) for further G2 exploitation will be authorised. The Internment Record is to be completed by the BG. A copy of the Internment Record is at Appendix 1.

(3) If the information relates to purely criminal activities the suspect is to be handed over to the IZ Police Force.

c. The suspect is taken to the TIF UMM QASR by the BG patrol.

d. Within 48 hrs, SO2 Detention shall review the case and determine whether the internee should be released or remain in internment.

e. If internment is authorised an initial report or case summary should be sent to SO2 G2X. This shall be with SO2 G2X no later than 14 days after arrest so that Legal is in a position to review the case and make submissions to the GOC if required. At the 28-day point after internment, the GOC is required to make a decision as to whether further internment is justified.

[69] MOD043711
[70] MOD043734
[71] MOD043735-6, paragraphs 2 and 3

9.65 This order reflected a change from the procedures provided for by FRAGO 56, in that it was no longer the J3 role ultimately to determine whether to issue an internment certificate. It was now the SO2 Detention's responsibility to make a determination once an individual reached Um Qasr, with a report going to SO2 J2X and the Legal branch reviewing the determination after fourteen days and the GOC deciding whether internment should continue beyond the 28 day point.

9.66 Within four weeks of 1 (UK) Div issuing FRAGO 163, very significant changes to internment process and timescales were announced, prospectively, in a further divisional FRAGO, FRAGO 29.

Chapter 5: FRAGO 29 of 26 June 2003

9.67 FRAGO 29 was issued on 26 June 2003. It did not come into force immediately, rather a further order provided that the changes announced by FRAGO 29 were to come into effect on 5 July 2003.[72] It introduced significant changes for handling internees and these changes were to be introduced just before the start of Op Telic 2 and the handover from 1 (UK) Div to 3 (UK) Div.

9.68 The Inquiry heard a great deal of evidence about the procedural changes introduced by FRAGO 29. This was appropriate because the template set by FRAGO 29 was both markedly different to what had gone before, and in most respects it remained the process that was in place at the time of Baha Mousa's death. Some changes were introduced by 3 (UK) Div's FRAGO 005 and I consider these in Part XI of this Report. However FRAGO 005 did not make radical changes to the process introduced by FRAGO 29. Given the significance of FRAGO 29, it is appropriate that I should set it out in full:[73]

FROM: MAIN HQ 1(UK) Armd Div, BASRAH International Airport, IRAQ

TO: G3 PLANS Standard Distribution List, ICRC (via G2), CJTF 7, MPS (TIF)

INTERNAL: COS, G3 Ops, G3 Plans

PRECEDENCE: ROUTINE

DTG: 261200DJUN03

FRAGO 29 TO OPO 005/03 – INTERNMENT PROCEDURES

Ref:

A. Annex M to OpO 005/03
B. GC IV
C. UN Declaration of Human Rights

Time Zone Used Throughout the Order: DELTA (note ZULU remains extant for aviation Ops).

Scope of Order: This FRAGO announces the intention for G2 Branch to assume overall control of the Internment Process in MND(SE). Further it confirms the procedures, outlined at Ref A, to be used in all cases where internment may or does result. The DTG G2 assumes this function from SO2 Detention will be published in a subsequent sweep up FRAGO.

TASKORG: See OpO 005/03

1. SITUATION. Civilians may be interned if they represent a threat to Coalition Forces. Additionally individuals may voluntarily request to be interned[1]. Internment is the period spent in an internment facility without trial up to the point of release. This term is not to be confused with pre-internment custody by battlegroup personnel, which is in accordance with the ROE. It is distinct from detention which is used to incarcerate those guilty of criminal activity. Internees are assessed to be a threat to CF and their processing is now a G2 led G3 Ops responsibility.

2. MISSION. 1 (UK) Armd Div conducts security and stabilisation operations within bdrys, in order to set the conditions for IRAQ becoming a stable, self governing state.

3. EXECUTION.

a. Intent. No change. Legally compliant internment procedures are to be implemented across MND(SE) in accordance with Refs A and B. There is to be continuous scrutiny at all levels to ensure that appropriate persons only are interned.

b. Scheme of Manoeuvre. Internment may take place either as the result of a pre-planned lift operation in response to intelligence or as a reaction to a threat to Coalition

[1] Voluntary Internees are those persons who seek protection from the Occupying Power and who are interned for their own protection. They are not to be interrogated.

[72] See FRAGO 47 at MOD035394
[73] MOD016186

Forces that manifests itself on the ground. The flow diagram at Annex A illustrates the process to be followed in both cases.

(1) Pre-planned Lift Operations. In all cases where a clear threat is identified and a lift is planned, the following procedure is to be followed:

i. A target pack is to be prepared detailing all available intelligence pertaining to the potential internee(s). The pack should include:

(a) Details of target personnel including assessment of threat posed to Coalition Forces

(b) G3 details of intended operation

(c) Assessment of potential consequences of lift operation

ii. The pack should be submitted through the chain of command to Div G2. Div G2 are to conduct the necessary deconfliction with J2X and other agencies prior to submitting the operation for G3 approval by the COS. This does not need to be a lengthy procedure and where necessary could be achieved verbally in time sensitive situations, but a written target pack must follow.

iii. The lift operation takes place. Immediately following the lift operation the suspect(s) is/are taken to the BG Internment Review Officer, who, having heard the circumstances of detention, shall determine whether:

(a) There is a case to answer. If there is no case to answer (ie the circumstances related do not pose a threat to Coalition Forces), then release.

(b) If the information shows that there is a threat to Coalition Forces, internment at the TIF for further exploitation by JFIT is to be authorised. The Internment Record, shown at Annex B, is to be completed. At this stage the CO is responsible for the potential internee and the legality of his pre-internment.

(c) If the information relates to purely criminal activities the RMP is to be contacted.

If the BG Internment Review Officer is unsure how to dispose of the arrested person he should consult G2 1 (UK) Armd Div who will seek legal advice if required.

iv. The suspect is taken to the Theatre Internment Facility (TIF) by the Battle Group concerned and handed over to the UK Military Provost Service (MPS), regardless of the nationality of the capturing BG[2]. The MPS will allocate a UK Identity Serial Number (ISN) to the internee as they are booked in as well as a US ISN. It is vital that both these numbers are accurately noted on the Internment Record to assist in subsequent tracking of internees and ensure the efficient administration of their case paperwork. Examples of ISNs are as fol:

UK: UKDFO123456DM
US: UK9IZ109725EPW

v. The Internment Record should be photocopied at this stage with a copy retained with by the MPS for use by the JFIT to inform any subsequent interrogation. Annex B will be completed and be issued to the internee. Annex C is also to be completed. These three documents together are the internee paperwork and are all to be processed together. The original Internment Record is to be brought to Div G2 by the Battle Group as soon as the MPS have booked the internee in. A second copy should be delivered to Bde where appropriate with a third copy to be retained by the Battle Group.

(2) Reactive Internment. Where a direct threat to Coalition Forces is identified by troops on the ground an initial arrest should be conducted. The Battle Group Internment Review Officer should then conduct an initial assessment. Should he decide that internment is justified the process highlighted above should then be implemented. The circumstances of the internment, including a assessment of why the individual constitutes a threat, must be detailed in the Internment Record.

(3) Subsequent Procedures. Within 48 hrs Div G2 will review the case, informed by the Internment Record and initial JFIT interrogation, to confirm that the internee should remain interned and what further G2 enquiries might be required. Further reviews may be conducted if required as a result of any subsequent interrogation. A formal review of each case will be conducted by LEGAD HQ MND(SE) 21 days after internment to ensure that the circumstances and evidence justify continued internment. This review will then be followed at the 28 day point by a formal GOCs review to endorse the continued internment. Thereafter reviews will be conducted on an ad hoc basis as any new evidence comes to light. Each review is to be formally recorded on and Internment Review record a copy of which is at Enclosure 3. There are to be at least two reviews a year.

c. Other Tasks.

(1) BG. BGs are to appoint a BG Internee Review Officer (BGIRO) who is responsible to the CO for making the initial decision as to whether an individual is to be interned on the information provided by the patrol. This is likely to be the Bn Ops Offr or IO. It may not be a Service Police Officer, as a conflict of interests is likely to arise. However advice may be sought from the Service Police if a suspect's

[2] MOUs are being prepared which will provide final direction on the processing of other nation's internees. In the meantime they are to be processed as UK internees with their paperwork annotated with the nationality of the capturing BG.

activities have been border lining on the criminal. The BGIRO is responsible for maintaining an audit trail which will start following the point of capture through to sustained internment or release of individuals.

(2) JFIT. In addition to other tasks, JFIT is required to liaise with RMP when internees are of no further intelligence value but have admitted to criminal offences.

(3) ICRC. The ICRC is permitted access to internees. ICRC visits are to be included in the Internment Record as necessary. LEGAD is to be informed of any ICRC visit. NGOs – *Amnesty International* etc – seeking access are to be referred to LEGAD, via Div G2

d. Co-ordinating Instructions.

(1) Timings.

i. Internees are to be delivered to the TIF within 14hrs of capture.

ii. Reviews are to be conducted at the following intervals:

(a) Within 48 hrs of registering at TIH

(b) On Day 21 of internment

(c) On Day 28 of internment

(d) At the 6 mnth point

(e) Every 6 mnths after that date.

(2) R2. BGs are responsible for ensuring 1x copy of Annexes B – D are delivered to G2 HQ MND(SE), Bde HQ (less Maysan BG) and BG HQ. Thereafter all R2 is the responsibility of MND(SE) G2.

4. SERVICE SUPPORT. No change.

5. COMMAND AND SIGNAL. No change.

Ack:

P C MARRIOTT
COS
1 (UK) Armd Div

Auth:

G C C WATERS
SO2 G2
1 (UK) Armd Div

9.69 The key changes as between FRAGO 163 and FRAGO 29 were:

(1) overall control of the internment process in MND(SE) was assumed by J2 branch from the SO2 Detention. In this regard, I do not overlook the evidence of Lt Col Edward Forster-Knight who said the SO2 Detention had not previously had quite the level of authority suggested by the wording of FRAGO 29 and that J3 had previously had overall authority over the internee process.[74] However OPO 005/03 shows that the decision maker after an individual's arrival at Um Qasr had been the SO2 Detention albeit that the report sent by SO2 Detention was to a J2 postholder. The requirement for further legal review and review by GOC at the 28 day point was not removed by FRAGO 29;

(2) responsibility for the sifting and assessment of those detained by Battlegroups transferred from the RMP to the new Battlegroup post of Battle Group Internment Review Officer (BGIRO). The BGIRO was required to assess whether a detainee posed a threat to the coalition and consequently whether an individual should be released, sent to the TIF or notified to the RMP in cases of purely criminal activities; and

(3) the time limits for delivery of internees to the TIF were significantly extended from one to two hours from arrest to delivery to the RMP (save in exceptional cases) with a six hour time limit from arrest for delivery to the TIF to the new limit of fourteen hours from arrest to delivery to the TIF.

9.70 I consider below the various reasons and justifications for the changes made by FRAGO 29. I note at the outset, however, that giving the J2 intelligence branch the overall lead in the internment process; transferring responsibility for sifting and assessing detainees from the RMP (who were more specialist than Battlegroups in dealing with arrested persons) to the BGIRO, who was part of the capturing unit; and extending the time for which Battlegroups could hold detainees were all steps that were in marked contrast to the approach that had hitherto been taken in developing the prisoner handling and internment orders for Op Telic 1. Designing out prisoner abuse had been a concern of Mercer's when developing the earlier guidance.

9.71 In oral evidence a number of themes emerged as to why these quite significant changes were made and the potential problems and risks that might have been associated with them. In outline, these were as summarised below.

9.72 The justifications for the shift in responsibility from the RMP to the BGIRO and from J1/J3 to J2 were:

(1) there was to be a substantial reduction in the number of RMP in theatre at the start of Op Telic 2;

(2) there was a suggestion that the RMP were not the most suitable decision makers when it came to internment and threats to force security, which were largely intelligence matters;

(3) there was a concern that too many prisoners were being sent to the TIF, in particular those that should not have been, such as looters and other relatively minor criminals; and

[74] Forster-Knight BMI 74/41/14-24

(4) there was a concern that information obtained from internees at the JFIT was not being fed back to Battlegroups and so once internees were sent to the TIF, information was effectively "lost".

9.73 The justifications for the extended timescale for delivery to the TIF were:

(1) the impracticality of meeting the six hour timescale set by FRAGO 163, caused by transport difficulties compounded by depleting resources and expansion of the Division's area of operations from two provinces to four; and

(2) that at the time of the issue of FRAGO 29 the TIF was closed overnight, creating further difficulties for Battlegroups in meeting the six hour timescale.

9.74 Potential problems and risks that might have been associated with the changes introduced by FRAGO 29 changes were as follows:

(1) there may have been potential for confusion about roles and responsibilities in respect of prisoner handling, caused in part by the processing of internees being a *"G2 led G3 Ops responsibility"* and in part by introducing the novel post of a BGIRO into Battlegroups. Linked to the latter consideration was the relative lack of training for BGIROs;

(2) the BGIRO had to determine whether the information obtained "*shows that there is a threat to Coalition Forces*". It may be said that this encouraged questioning that went beyond the normal scope of tactical questioning, that is the obtaining of time sensitive intelligence of immediate tactical value;

(3) the intention behind FRAGO 163 had been to prevent questioning before the TIF, albeit that this was inaptly referred to as "interrogation". The process undertaken by the BGIRO under FRAGO 29 was likely to involve the use of qualified tactical questioners yet FRAGO 29 was silent about tactical questioning before the TIF. It provided no guidance whatsoever on tactical questioning; and

(4) the potential for abuse was increased by the extended timescale for Battlegroups to hold detainees before their delivery to the TIF.

9.75 I turn to consider each of these considerations in more detail.

Justifications for the FRAGO 29 changes

Shift of responsibility from the RMP to the BGIRO and J1/J3 to J2

RMP drawdown

9.76 The Inquiry was told of the general drawdown of troops following the warfighting phase, which led to a significant reduction in the numbers of RMP in theatre by the end of Op Telic 1.[75] Forster-Knight said this of the drawdown:

> *"Q. You say at paragraph 48, the first sentence of that paragraph in your statement, BMI05889: "From 1 May onwards, the deployment of RMP staff in theatre altered to reflect the general draw-down of troops."*
>
> *A. That's correct, sir.*
>
> *Q. Is "the general draw-down of troops" a reference to the reductions?*
>
> *A. Well, the reductions had already started, sir. After the war, 3 Commando Brigade were sent home pretty quickly. We had deployed 22,000 ground troops, sir, which is essentially a fifth of the whole total of the army. So it was clear from the – I think from the sort of MoD/PJHQ end, that they had to get troops back to the United Kingdom. It started with 3 Commando Brigade. They took obviously Royal Marine Police Troop with them that had been out in theatre supporting them. Then 16 Brigade went home, sir, I think some time in June, or parts of 16 Brigade. They left up in Maysan Province 1 Para Battlegroup, which was a battlegroup centred on 1 Parachute Regiment, with all armoured support, engineers, military police, et cetera, but the rest of the brigade also went home in June. Again this was because of a general draw-down and transition of the force from war fighting to post conflict, sir. So the transition had already started during Op Telic 1 and continued through to Op Telic 2. In that, sir, of course, 156 Provost Company, that was supporting 16 Air Assault Brigade, reduced to a platoon in about June of 2003."*[76]

9.77 Maj Simon Wilson, who held the post of SO2 Detention, said that around the time of FRAGO 29 the RMP presence in theatre was being reduced from three companies to one.[77] Similarly, Maciejewski and Wall explained that the RMP Regiment in theatre during Op Telic 1 was to be replaced by a single company.[78]

9.78 The majority of witnesses gave evidence that the drawdown of RMP troops was a factor in the creation of the BGIRO system under FRAGO 29.[79] Forster-Knight said this of the impetus for the FRAGO 29 changes:

> *"A. …I understood the intent, sir, of why it was coming in, because of the changes in force elements between 1 Division and 3 Division.*
>
> *Q. So was it essentially again, do you say – the changes resource-driven?*

[75] Boyce BMI 102/125/15-19; Wall BMI04512-3, paragraphs 20-21
[76] Forster-Knight BMI 74/31/17-32/22. See also Forster-Knight BMI05889, paragraph 48 and BMI05893, paragraph 59
[77] Maj Simon Wilson BMI 71/35/3-5
[78] Maciejewski BMI 72/145/18-20; Wall BMI04512, paragraph 20
[79] See for example Wall BMI 97/118/11-119/6; West BMI 83/160/17-162/2; Maj Simon Wilson BMI 71/34/25-35/22

> *A. I believe so, sir, and also the consequent expansion of the AOR from two provinces to four, which again could be put down to resources, sir."*[80]

9.79 The RMP also wished to concentrate increasingly scarce resources on capacity building and policing functions.[81] Mercer's evidence about the RMP's perspective on the issue was this:

> *"A. …. Now the police were very overstretched. They wanted to deploy manpower elsewhere.*
>
> *Q. When you say "they", again use the ciphers if necessary, but who were "they" at the RMP?*
>
> *A. Colonel Eddie Forster-Knight was one, for instance, and I worked with him on a daily basis.*
>
> *Q. Yes.*
>
> *A. And I know he wanted to disengage from the process so he could use his police resources elsewhere. I think the other thing to mention on that – if you look at the numbers – you know, we had gone down from 3,000 prisoners of war, who had all, but one or two, been released; we had got rid of 300 criminal detainees, who are now in the Iraqi law and order system, and we were down to 18 internees at this point. So this was a point to disengage as far as the police were concerned."*[82]

9.80 Wilson knew, before the formulation of FRAGO 29, that the reduction in numbers meant that he would not be replaced at the end of Op Telic 1.[83] His evidence on the removal of the RMP's role in sifting and assessing detainees after capture was:

> *"Q. Under FRAGO 29 – can I put it this way and please develop it if it is necessary – was the role of the RMP effectively being written out?*
>
> *A. RMP were becoming a limited resource in theatre, sir. They were going down from three companies to one company. Because of the custody officer's criminal nature in identifying whether a person had committed a crime, it was felt that he would not necessarily be the best placed to identify whether somebody posed a security risk and, therefore, the BGIRO was seen as the best person because he would have access to security and classified information that would pertain upon a certain individual, sir.*
>
> *Q. That may be so, Colonel – three companies to one may be so, resources were scarcer – but the effect of FRAGO 29 was to write the RMP out of this particular script.*
>
> *A. To a large extent, yes, sir.*
>
> *Q. Was your understanding – and indeed the intention as one of the authors of FRAGO 29 – that the BGIRO would take over that role?*
>
> *A. Would take over the role of custody officer in making the decision, which would then be passed up to the SO2/G2X."*[84]

I find that the drawdown of RMP numbers was a real factor in the changes brought in by FRAGO 29.

[80] Forster-Knight BMI 74/44/16-23
[81] Maj Simon Wilson BMI03330, paragraph 89
[82] Mercer BMI 68/117/24-118/14
[83] Maj Simon Wilson BMI 71/33/7-13
[84] Maj Simon Wilson BMI 71/34/25-35/22

The suitability of the RMP as decision makers and the wrong prisoners being sent to the TIF

9.81 Reduced RMP resources was not the only consideration in play in the formulation of FRAGO 29. As Wilson explained in his evidence, the BGIRO was considered by some the more suitable decision maker to address questions relating to a threat to force security than the RMP.[85] A related consideration was that too many prisoners were being sent to the TIF by the RMP, in particular, a high number of looters and similar relatively low-level criminals more suitable to treatment as criminal detainees than being sent to the TIF as potential internees. The initial assessment by the BGIRO of whether detainees should be interned before sending them to the TIF was expected to help counter this problem. S002 told the Inquiry that:

> *"Q. ...Can you just briefly summarise, to the extent that you were aware of them, why it was that those various changes in FRAGO 29 were being brought into effect?*
>
> *A. Yes. It was the – it was trying to separate tomato farmers from insurgent activity. What we were seeing was that people were – when we were receiving prisoners in the JFIT, there had been no triage as such, and so we were getting common criminals set against insurgents who were trying to fight us. It took quite a lot of time in order to process those individuals and suddenly realise that there was no need for them to have come to the JFIT or no need for them to have been maybe interned. So it was a process of trying to stream decent criminals away from insurgents.*
>
> *Q. So there had been, had there, a lack of previous sifting out of the common criminals from the insurgents?*
>
> *A. Yes."*[86]

I find this factor, allied to the reduction in RMP resources, played some part in the introduction of the FRAGO 29 regime.

A conflict of interest

9.82 Maciejewski provided a further reason for the shift in responsibilities for internees from the RMP to BGIROs:

> *A. My – to the best of my recollection there are a number of factors. One of the factors was that there was a sense that the RMP should not be so involved in the process that they couldn't investigate it if it went wrong. I think that was a factor that was being discussed, if my recollection is correct*.[87]

9.83 I accept, however, the submission made by Core Participants represented by Kingsley Napley that this reason was not a particularly strong justification for the change, in part because the investigating Special Investigation Branch (SIB) is distinct from the uniformed RMP.[88] In any event, the evidence did not suggest that this was a major factor in the changes introduced by FRAGO 29.

---

[85] Maj Simon Wilson BMI 71/34/25-35/22
[86] S002 BMI 82/130/12-131/4; S015 BMI 84/129/12-24; S017 BMI 84/46/1-24; Waters BMI 71/127/11-128/15; Robinson BMI04316, paragraph 47(e)
[87] Maciejewski BMI 72/145/10-15
[88] SUB000645, paragraph 83

Communication problems with the JFIT and "lost" intelligence

9.84 A further concern that provided impetus for the introduction of the BGIRO system was that information obtained from internees at the JFIT was not being fed back to Battlegroups. Waters' evidence in the context of FRAGO 29 was that after the Brigades had captured individuals some prisoners appeared to get lost in the system. Important people were passed up the line but there was no feedback and as a result divisional headquarters became involved in improving procedures relating to the tracking of detainees.[89] S015 confirmed that he was aware of the concern on behalf of Battlegroups and Brigade and that information was slow to return out of the JFIT. His evidence was that this was in part due to communication difficulties with the JFIT.[90]

9.85 Maj Edward Fenton's evidence on this issue was as follows:

> *"Q. There was, wasn't there – and you will have seen some documents. I can take you to them if necessary – a feeling that, once at the TIF, no intelligence was fed back from the TIF in relation to prisoners who were taken there?*
>
> *A. That's correct, yes.*
>
> *Q. Was that in itself regarded as some incentive, if you like, for battlegroups to hold on to and question suspects longer because they would get intelligence which they could use which they wouldn't get if they transferred to the TIF more rapidly?*
>
> *A. I admit that there must have been a degree of that developing in the brigade at the time."*[91]

9.86 S002 told the Inquiry of the advantage of the FRAGO 29 system in delivering immediate intelligence leads:

> *"Q. – but it may be thought that one advantage potentially of the FRAGO 29 system – I want your evidence as to whether this was in people's minds at the time – might be that, by allowing battlegroups a greater role in immediate tactical questioning and sifting, they would get some information on the ground – more information about the people that they had taken and some intelligence from tactical questioning on the ground – and they would have that intelligence there and then and then they would be passed down for further exploitation at the JFIT.*
>
> *A. Absolutely. That was standard SOP at the time. Tactical questioning at the front end would or could deliver you some immediate intelligence leads."*[92]

Extended timescale for delivery to the TIF

Practicality of meeting the six hour timescale

9.87 The Inquiry heard evidence that one of the main reasons behind extending the timescale for delivery of detainees to the TIF from a maximum of six hours to fourteen hours was that in practice compliance with the six hour timescale was not always possible.

[89] Waters BMI02674, paragraph 49
[90] S015 BMI 84/129/25-130/8
[91] Fenton BMI 101/135/5-17
[92] S002 BMI 82/131/22-132/10

9.88 Marriott, under whose name FRAGO 29 went out, told the Inquiry that whilst a short timescale was desirable it was not practical to deliver it:

> *"Q. Were any issues raised in that discussion as to whether it was desirable to leave detainees in the hands of the battlegroup for that period of time, given that there had not long before been, as we have seen – and this Inquiry has seen a number of times now – a tightening of the time limit, as it were?*
>
> *A. Yes, there were a number of factors that came into play over the 14 hours. FRAGO 29, as I recall, was issued only, I think, a couple of days after six members of the Royal Military Police had been killed in Majar Al Kabir, which was a fairly sobering event, and as a result a considerable amount of resource had to be sent up north to Al Amarah to deal with the situation up there. That removal of resource meant that the time was going to have to lengthen because we would not have sufficient resource to get people back to the internment handling facility or whatever and so it was a pragmatic decision. We simply didn't have the resource to do it. There were other issues as well –*
>
> *Q. Before you go on to the other issues, just so we understand the resources, do you mean the basic resources such as the transport and the guard for –*
>
> *A. Absolutely. It was a question of manpower in part, military police, and also the transport. It was now about 50 degrees centigrade and we had a number of helicopters that were broken. The prime means of moving these people around was helicopters and we now needed more helicopters to be based, as I recall, in the north, away from Basra, which reduced our ability. And so we knew we just couldn't – even though we wanted to reduce that time and keep it as short as we could, we could not pragmatically deliver it."*[93]

9.89 Wilson's evidence on this was very similar:

> *"Q. The Inquiry has seen – and I hope I paraphrase it correctly – from a number of documents and through the evidence of now many witnesses that in the weeks and months prior to FRAGO 29, the amount of time that was permitted to elapse during which a prisoner could be held before delivery ultimately to detention – that is to say held by battlegroup soldiers – was a short period of time and indeed a reducing period of time.*
>
> *A. Yes, sir.*
>
> *Q. FRAGO 29 altered that, didn't it –*
>
> *A. Yes, sir.*
>
> *Q. – by expanding the time to 14 hours anyway?*
>
> *A. A maximum of 14 hours, sir, yes.*
>
> *Q. A consequence of FRAGO 29 was that detainees would be left in the hands of, can I put it generally, battlegroup soldiers for longer than had previously been indicated?*
>
> *A. If I may, sir, the timings were not realistic given the circumstances and it was purely for a logistical reason that this was increased. The timelines had not been met, for example, with people being transported down from Al Amarah and we were constantly failing to achieve the right timelines.*
>
> *THE CHAIRMAN: So you mean the timings before FRAGO 29 were not being achieved?*
>
> *A. Yes, sir, they were consistently being – we were consistently failing on meeting them, sir."*[94]

[93] Marriott BMI 98/169/11-170/17

[94] Barnett BMI 86/62/13-63/5; Moore BMI 99/49/24-50/19; S002 BMI 82/127/15-128/1; Waters BMI 71/131/15-132/16; Maj Simon Wilson BMI 71/33/14-34/11

9.90 I have referred already to OPO 005/03, the expansion of the Divisional area of operations from two provinces to four and to Forster-Knight's evidence on the relevance of this expansion to the ability of Battlegroups to meet the six hour deadline.

9.91 Marriott was another witness whose evidence was that the change in timescales may have reflected the geographical expansion of 1 (UK) Div's responsibility.[95]

The TIF's opening hours

9.92 There was a further factor regarding the practicality of timescales for delivering prisoners to the TIF. FRAGO 163 and FRAGO 70 had stated that the TIF was "*closed 2100 – 0800D*".[96] When a suspect was apprehended during this period they were to be handed back to Battlegroups after initial processing by the RMP. Mercer told the Inquiry that he questioned the extension of the timescale from a maximum of six hours to fourteen hours and was told that the TIF was closed between 18.00hrs and 06.00hrs:

> *"A. …the 14-hour delivery and I questioned that with the – someone in the headquarters and was told that the facility was closed from 6 until 6 and that's what I understood the position to be; in other words, we had been giving an order that people simply could not comply with. So one is as it was not a UK facility – and I think that raises issues because we don't have control where it's run by another nation – then obviously one had reluctantly to go along with that."*[97]

9.93 There was supporting evidence for the fact that the TIF was indeed closed for new arrivals at night at the stage when FRAGO 29 was issued. Maj Russell Clifton was a divisional legal officer posted at 19 Mech Bde during Op Telic 2. He deployed on 23 June 2003.[98] As such, he was not of course involved in the drafting of FRAGO 29. But his evidence on the TIF's opening hours reflected how things were operating when he arrived in late June. He said:

> *"When we arrived in theatre, the TIF was closed at night and we had had some problems with battlegroups turning up to try to deliver people to the TIF and then being turned away because the TIF was closed."*[99]

9.94 Steps were subsequently taken to improve the situation so that even fairly early on in Op Telic 2, it seems that UK prisoners could in fact be processed throughout the night at the TIF (although, even then, a myth persisted that it was closed at night).[100] What is relevant, however, is that at the time that FRAGO 29 was being considered, the TIF was still closed to new prisoner arrivals overnight. This would undoubtedly have been another factor that made it more difficult for the six hour time limit set down by FRAGO 163 to have been met.

---

[95] Marriott BMI06137, paragraph 39
[96] MOD017180, paragraph 5(b)
[97] Mercer BMI 68/96/17-97/1
[98] Clifton BMI 81/8/6
[99] Clifton BMI 81/80/23-81/1
[100] See Clifton BMI 81/80/23-82/2. The TIF's opening hours operating at the time of Baha Mousa's death will be addressed in Part XI of the Report.

The potential problems and risks associated with the changes introduced by FRAGO 29

Confusion about roles and responsibilities

9.95 I turn to consider the potential problems and risks associated with FRAGO 29.

9.96 The Inquiry heard evidence from a number of witnesses on this issue. FRAGO 29 stated that the J2 intelligence branch was to assume overall control of the internment process and that the processing of internees was to be a "*G2 led G3 Ops responsibility*".[101] It also introduced the new post of BGIRO into Battlegroups without defining the parameters of the BGIRO's areas of responsibility.

9.97 There were a number of witnesses from divisional and Brigade levels who took differing stances on the questions of whether J2 had the overall lead responsibility for prisoner handling under FRAGO 29 and on the extent to which the J3 and J1 branches had responsibility for prisoner handling. I do not propose to recite in any detail all this evidence; examples of a few will suffice.

9.98 Marriott, the 1 (UK) Div Chief of Staff in theatre until 12 July 2003 said:

> *"Q. ...What do we make of what is said a little higher in FRAGO 29, under "Scope of order"? "This FRAGO announces the intention of G2 branch to assume overall control of the internment process in MND(SE)."*
>
> *A. Yes, I think, looking at that, it is not very well written. It is pretty clear in paragraph 1 that they are still subordinate to G3 ops, but in that scope of the order it implies in some way they are gaining total control. Staff officers would still understand that G2 never goes above G3. It is always absolute – that is an absolute military rule.*
>
> *Q. What, and so the scope of the order as set out here is incorrect, is it?*
>
> *A. I think it is not well phrased."*[102]

9.99 Fenton, the 19 Mech Bde Chief of Staff, believed that responsibility for prisoner handling lay with the provost staff and the BGIRO. However, he was unaware before Baha Mousa's death what responsibility tactical questioners had for prisoner handling:

> *"Q. At paragraph 76, if we go over the page, you say this: "I believe that every officer in the chain of command is responsible for prisoner welfare." I think that echoes almost every witness who has been asked about it. You go on to say that Colonel Mendonca, the CO, Provost Sergeant Smith and Maj Peebles, the BGIRO, would have held ultimate responsibility for prisoners held by 1 QLR. "Part of Maj Landon's role as the deputy chief of staff was to oversee the processes and procedures for discipline of brigade personnel. I do not recall how much he had to do with internment." So your understanding was that, as it were, below Colonel Mendonca – and no doubt you would have expected him to have delegated the matter, wouldn't you?*
>
> *A. Yes.*

[101] MOD016186

[102] Marriott BMI 98/197/23-198/13. See further: Marriott's responses to me at the end of his evidence, Marriott BMI 98/198/23-199/12

Q. – there would be the BGIRO and the provost sergeant.

A. Yes, that is my understanding around that. I – it is important to distinguish that's my understanding as I came to learn and be thoroughly conversant with it after the death of Baha Mousa.

Q. So before his death you would not have understood, would you, if there were an absolute responsibility, where it lay for the welfare of, for example, prisoners who were held at the TDF in BG Main?

A. I would have expected it to be, as I stated there, the commanding officer's responsibility and he would have delegated that to the provost staff. That's what I would have understood to be the correct process in place.

Q. So the provost staff would have had, if you like, the day-to-day guarding, welfare, of prisoners?

A. Yes.

Q. The BGIRO was, as you put it, the liaison officer who took the decisions in respect of them?

A. I am clarifying when I say he was a liaison officer. I mean he is dual hatted in that function. Being a liaison officer to the brigade was not necessarily linked to being the BGIRO for 1 QLR. They are two separate responsibilities. But Maj Peebles' role in the chain prior to the death of Baha Mousa I was not aware of. I didn't – hadn't connected the dots, if you like, in that sense.

Q. At paragraph 77, [of his BMI statement] Colonel, you say this: "I do not know what the TQers' responsibility was in relation to prisoner handling or who they reported to ..." Wasn't that something you ought to have known about?

A. Yes, it is something I should have known about in the first few weeks of my tenure, but as I wasn't aware that there was a problem or an issue, it is not an area I had focused on with everything else I had to do at that time."[103]

9.100 Lt Col Graham Le Fevre, the Senior Intelligence Officer (SIO) at 3 (UK) Div during Op Telic 2, did not see his responsibility extending beyond tactical questioning. He saw prisoner handling as a J1 matter consistent with what he understood to be the orthodox view of prisoner handling responsibilities:

"A. ...as I said, my responsibility wasn't for actual prisoner handling. It was for the tactical questioning. But I would point out again it refers to exceptional cases.

Q. Yes. Just briefly about the FRAGO 29, that you only know about through this Inquiry but you have seen it in preparing for your evidence, have you?

A. Correct.

Q. It speaks about G2 having overall responsibility. I know it doesn't say J2, but it is clearly a divisional document signed by divisional people. Your answers about this have always been based, haven't they, on what your orthodox understanding of responsibility for prisoner handling would be, isn't it; that it is a J1 matter?

A. Correct.

Q. Does it follow that you would find it very unorthodox for J2/G2 to be in overall responsibility for matters such as this, as opposed to being advisers of others who were?

[103] Fenton BMI 101/99/8-101/10

A. Yes, I would.

Q. If you had been aware of that standing order and the role that G2 were being described to play, do you think you would have paid a lot closer attention to those matters?

A. If I had been aware of FRAGO 29 and that apparent responsibility – although having looked at the document, I would suggest that some of wording would need to be clarified –

Q. Yes?

A. – yes, I would have raised it as an issue."[104]

9.101 Other examples of somewhat contrasting understandings about responsibilities for prisoners included those of Maj Mark Robinson, the 19 Mech Bde SO3 G2 from June to November 2003,[105] Clifton the divisional legal officer posted at 19 Mech Bde[106] and Maj Hugh Eaton, the 19 Mech Bde Chief of Staff.[107]

9.102 The MoD in its closing submissions, makes the sensible concession that the FRAGO 29 system created confusion about the precise ambit of responsibilities for captured persons at unit level.[108] I also accept the submission made on behalf of the Detainees that the reference in the text to G2 taking the "*overall control of the internment process*" was not the subject of any collective understanding.[109] I find that the written orders, and FRAGO 29 in particular, did create a degree of confusion about roles and responsibilities. It would therefore have been better if FRAGO 29 had been drafted in such a way as to avoid the confusion over responsibility.

9.103 Having expressed this opinion, my own view on this confusion is that whatever is the correct interpretation of responsibility for the matters dealt with in FRAGO 29, it ought not to have impacted to any great extent on the issues I have been concerned with in this Inquiry. It ought to have been possible for staff officers using their common sense to have worked out for which areas each branch was responsible.

9.104 When it came down to Battlegroup level, as I have concluded in Chapter 20 of Part II of this Report, Maj Antony Royce on receipt of FRAGO 29 worked out a regime which put him in overall charge of the prisoner handling process and removed the Regimental Sergeant Major from his additional responsibility for detention, whether of soldiers or detainees. It also took the Adjutant out of this chain of command. Maj Michael Peebles, on the other hand, in my opinion failed to determine who had overall responsibility for detainees.

9.105 The most important question which arises out of this issue, in my opinion, is the one raised by the Detainees' submissions. It is submitted that by putting J2 branch in overall charge of the detention processes there were risks that J2 staff had a vested interest in exploiting detainees for intelligence gathering.[110] In my view this was a real risk, and ought to have been foreseen.

[104] Le Fevre BMI 85/56/10-57/15
[105] Robinson deployed as SO3 G2 but was promoted Major part way through the tour. See Robinson BMI 80/95/18-97/16
[106] Clifton BMI 81/106/8-108/16; Clifton BMI 81/114/25-115/13
[107] Eaton BMI 98/68/7-69/10
[108] SUB001111, paragraph 29
[109] SUB002545-6, paragraph 62
[110] SUB002505, paragraph 89

9.106 One example of this risk might be said to be taking the guards at the Temporary Detention Faculty (TDF) from the Rodgers Multiple, the very soldiers who had arrested the Detainees. It is not possible on the evidence to determine who was responsible for this decision. But a clearer division of responsibility for prisoner handling might have avoided this unfortunate error of judgment.

Training for BGIROs

9.107 Since the BGIRO role was a novel approach creating a new post at Battlegroup level, it might have been expected that some training would have been provided to the BGIROs. Maj Simon Wilson's evidence about the training of those in the BGIRO role was this:

> *"Q. Was thought given to the training that might be necessary to give to anyone who was to act as BGIRO in these circumstances with that decision-making power?*
>
> *A. The training should have been – well, the person who was the BGIRO should have had G2 training and should have been able to identify whether somebody posed a security risk or not, sir."*[111]

9.108 Despite this evidence however, FRAGO 29 stated that the person appointed BGIRO would be "*likely to be the Bn Ops Offr or IO*"[112] and so not necessarily G2 trained.

9.109 S002 said he was unaware of any specific training for BGIROs but recalled some BGIROs who were having a tour of the JFIT so that they could understand the processes and mechanisms that were going on.[113]

9.110 If, as some claimed, the BGIROs were indeed meant to oversee prisoner handling at Battlegroup detention centres rather than just consider whether they should be released, handed over to the Iraqi criminal process or sent to the TIF as potential internees, it may be thought surprising that the perceived training need was so narrow as to be only some limited intelligence familiarisation training.

9.111 In fact, neither Royce nor Peebles appear to have had any training specifically for carrying out the role of BGIRO. I have some sympathy for the concern expressed by Royce that the risks of FRAGO 29 were exacerbated by the lack of formal training for the BGIRO post.[114]

[111] Maj Simon Wilson BMI 71/35/23-36/4
[112] MOD016188, paragraph 3(c)(1)
[113] S002 BMI 82/136/21-137/6
[114] Royce BMI03161, paragraph 77

The nature of the questioning under FRAGO 29

9.112 The BGIRO had to determine whether the information obtained "*shows that there is a threat to Coalition Forces*".[115] The wording of FRAGO 29 stressed that "*there is to be continuous scrutiny at all levels to ensure that appropriate persons only are interned.*"[116] The assessment of whether an individual posed a threat to force security was one that necessarily required a certain level of information. The MoD accepted in its closing submissions that the FRAGO 29 system "*may have led to the temptation to rely upon TQers to extract intelligence with which to assist the BGIRO to make his decision.*"[117]

9.113 Peebles told the Inquiry this:

> *"Q. …Just moving on, then, please, and dealing with your role in Iraq pre the Operation Salerno detainees still, please. Can you help us a little about the role of TQers and where they slotted in, as you understood it, in terms of responsibility and answerability, if you like?*
>
> *A. Yes, sir.*
>
> *Q. So what was the role of the TQers with detainees?*
>
> *A. Well, the tactical questioner, really, as the name suggests, was there to do the questioning, and because they were not part of the battlegroup, we had to bring them in from the outside. So really they would turn up, do the questioning, provide the tactical questioner report to the evidence bundle and to the BGIRO, and then they would depart after that, job done.*
>
> *Q. So who determined who the tactical questioner questioned?*
>
> *A. Well, the tactical questioner would have a role to play in determining the order of march for questioning. I would say that the BGIRO had a role to play in that as well, to say – because I had first sight of the evidence, as it were, and the situational awareness of why these detainees were being brought in. Then I would discuss that with the tactical questioner, he would advise me probably on the order of march in which detainees should be questioned, based on his experience as a tactical questioner."*[118]

9.114 Waters acknowledged the risk that in asking the BGIRO to decide whether there was information showing that there was a threat to the coalition, questioning might go beyond the scope of immediate tactical information and go more towards full scale interrogation to ascertain exactly what the person being questioned had actually been involved in:

> *"Q. …. would you be expecting the Battlegroup internment review officer to take into account such information as had been obtained by that initial-level questioning?*
>
> *A. Yes.*
>
> *Q. What did you understand tactical questioning to be aiming to achieve? What was the purpose of tactical questioning?*
>
> *A. I'm not sure we laid it out for them and perhaps we should have. In my view tactical questioning is, you know, "Who are you? Where do you live? Who do you hang out with? What have you been up to in the last 24/36 hours?", that sort of stuff.*

[115] MOD016186, paragraph 1
[116] MOD016186, paragraph 3(a)
[117] SUB001111-2, paragraph 29
[118] Peebles BMI 40/25/12-26/13

Q. The sort of definitions that the Inquiry has seen of tactical questioning may tend to suggest that it's questioning in the early stages of capture to obtain information of immediate tactical value: how many people were in the person's unit; are there mines in the area; how many of you have escaped capture – that sort of information that might be of immediate tactical value in the operation going on on the ground. Do you follow?

A. I do. I would expand slightly and say that what sort of immediate tactical value when you are fighting a war, in war fighting, is exactly the sort of information you have said, so minefields and units. Once you come into an insurgency situation, clearly the sorts of information that are of tactical value changed.

Q. Might there have been a risk, looking at this provision, that in asking the battlegroup internment review officer to decide whether there was information showing that there is a threat to the coalition, that questioning might go beyond the scope of immediate tactical information and go more to full-scale interrogation to get to the bottom of exactly what the person being questioned had actually been involved in?

A. I guess that's fair. There probably was a risk of that.

Q. And it's right, isn't it, that the order didn't set out in any way at all what the limits of questioning should be?

A. That's correct."[119]

9.115 The risk of questioning going too far towards interrogation when the BGIROs had been tasked to determine whether or not the prisoner was a threat to coalition forces was in my view borne out in the treatment of the Op Salerno Detainees. One of the Detainees, D005, was questioned three times. The other Detainees were each questioned for approximately 45 minutes. The process started at about 19.15hrs on Sunday, 14 September but did not finish until some time between 15.00hrs and 16.00hrs on 15 September. This was far too long. Moreover, as I have addressed in Part II of this report, some of the treatment of D005 took place against the background that it was perceived that he was "about to break". These factors are some indication that the process went beyond the short initial questioning envisaged in the concept of obtaining time-sensitive intelligence.

FRAGO 29's lack of reference to tactical questioning or interrogation before the TIF

9.116 I have already noted that the intention behind FRAGO 163 had been to prevent questioning before the TIF, albeit that this was inaptly referred to as "interrogation" rather than interrogation and tactical questioning.

9.117 There is no doubt that 1 BW continued tactical questioning of detainees after FRAGO 163, and that 1 QLR and the other Op Telic 2 Battlegroups all used tactical questioning before or at the time the decision was made by their BGIROs.

9.118 However the confusion as to what if any tactical questioning was envisaged under FRAGO 29 is demonstrated by the evidence of Wilson, who, as I address below was heavily involved in the drafting of FRAGO 29. Wilson's understanding was that under FRAGO 29, no tactical questioning would take place before the prisoner arrived at the TIF:

[119] Waters BMI 71/135/21-137/10

"Q. So what, if anything, was envisaged as to who might question the individual to ascertain as to whether he was somebody who ought to be interned or no?

A. The intention was that it would only take place – my understanding of it is that it would only take place at the JFIT and Um Qasr, sir.

Q. Well, that would be – if I have understood it correctly – after the BGIRO had made his decision.

A. Yes, sir.

Q. Well, was it envisaged? If it wasn't envisaged, please tell us, but was it envisaged that there would be any aspect of investigation carried out by the BGIRO, any questioning on his behalf or by him of the individual?

A. The intention was that that would not take place – my understanding is, sir, anyway.

Q. So, what, there would be no questioning? The BGIRO would make a decision based upon whatever information was available? There would be no questioning of any kind; is that your understanding?

A. The exploitation would take place at the JFIT, sir. That is my understanding.

THE CHAIRMAN: When you say "exploitation", do you mean questioning?

A. Questioning, Sir.

MR ELIAS: So the BGIRO was not to question. You didn't anticipate, did you, in framing FRAGO 29 or being a part of that, that there would be, for example, any tactical questioning before delivery to Um Qasr?

A. No, sir.

Q. FRAGO 29, in its drafting, did not set out those stages, as you have put them, at all, did they? That is to say there should be no questioning until the prisoner has reached Um Qasr and that the BGIRO is to operate without any tactical questioning of the prisoner and matters of that kind.

A. No, it didn't, sir.

Q. Was that with hindsight, do you think, a mistake?

A. I believe, sir, with hindsight, it could have been crafted so it tied down exactly what was meant. At the time, sir, I don't believe it was required."[120]

9.119 Mercer's evidence was that when he saw FRAGO 29 he did not envisage that questioning would go beyond initial questions and he hoped that the interrogation provisions, which he had intended would prevent any tactical questioning or interrogation before the TIF, were clear.[121]

9.120 However, Clifton's understanding when he arrived in theatre was that the FRAGO 163 prohibition changed when FRAGO 29 was issued:

" Q. Were you aware, as you received all the extant orders in theatre, that FRAGO 163 prevented any form of questioning[122] *until processed at the TIF?*

A. Yes, I think that order was issued, though, before the process was changed.

[120] Maj Simon Wilson BMI 71/37/12-39/1
[121] Mercer BMI 68/97/2-22 and 68/100/21-102/3
[122] I should note here that although it was suggested by Counsel for Mercer that FRAGO 163 prevented any form of "questioning", the word used in the order was in fact "interrogation" see above at 9.48-9.52.

Q. On 31 May, yes, indeed, and FRAGO 29 then came in at the end of June.

A. Yes.

Q. How does FRAGO 29 permit any questioning when FRAGO 163 prohibits questioning until processing at the TIF?

A. I am trying –

….

MS EDINGTON: … FRAGO 163 prohibited any form of questioning until processed at the TIF and FRAGO 29 envisages, does it not, a position where the BGIRO is a filter into the Iraqi criminal justice system or down to the TIF?

A. Yes.

Q. It does not actually permit any form of questioning at that stage, does it, FRAGO 29?

A. I think it is implicit in the nature of the role. As I understand it, the system was changed because a large number of people were being rounded up and sent down to the TIF and deprived of their liberty and that just was not acceptable, so we had to put a filter in process, because once they got into the TIF, they could be there for a long time. So we put in place a process whereby somebody senior and responsible within the battlegroup was making those kinds of decisions because, before they had been made by junior officers or non-commissioned officers, and I, myself, in early July, had to order the release of about 40 people who had just been sent to the TIF on the basis of no real evidence. So the purpose, as I understand it, of changing the process was that we could have somebody there who was responsible and was allowed to ask these sorts of questions and use the experts to help them doing that. So we avoided the situation where mass job-lots of people were sent to the TIF and weren't heard of again for a few weeks and deprived of their liberty.

Q. So really you are saying that in FRAGO 29 it is explicit that FRAGO 163 has ceased?

A. Absolutely, yes."[123]

9.121 S002's evidence was that he did not understand FRAGO 163 to prohibit tactical questioning at Battlegroup level. His assumption was that the reason that the FRAGO 163 prohibition on "interrogation" was not replicated in FRAGO 29 was that the FRAGO 163 provision which only applied to interrogation was still extant.[124] S002 told the Inquiry that an advantage of the FRAGO 29 system was that it allowed Battlegroups a greater role in immediate tactical questioning and sifting and that tactical questioning at the front end would or could deliver some immediate intelligence leads.[125]

9.122 In my opinion, the lack of clarity in FRAGO 163 in the use of the term "interrogation" was now compounded by the absence of any instruction at all on tactical questioning and/or interrogation in FRAGO 29.

The increased risk of an extended timescale

9.123 I have already addressed the evidence the Inquiry heard as to the reasons for the extended timescales in FRAGO 29 for delivering prisoners to the TIF. I acknowledge that there had sometimes been difficulties for Battlegroups in meeting the six hour

[123] Clifton BMI 81/121/4-122/23; Clifton BMI 81/124/3-15
[124] S002 BMI 82/129/10-130/9
[125] S002 BMI 82/131/22-132/10

time limit imposed by FRAGO 163, and those difficulties were to be magnified with the increase in summer temperatures and the expanded area of Divisional operations. The MoD submits that the extent to which the fourteen hour time limit in fact extended the time for which detainees were kept by Battlegroups is not entirely clear because of some evidence that the new limit was, in at least some instances, simply reflecting the reality of finding transport and then moving detainees over long distances to the TIF.[126]

9.124 It may well be that it was unavoidable that the time for delivering prisoners to the TIF had to be extended. In due course, as I shall consider in Part XI, FRAGO 005 relaxed the time limit a little further, providing for transfer of captured persons "*to the TIF within 14 hours of capture, or as soon as possible thereafter*".[127]

9.125 For Mercer, a shortened timescale for the delivery of prisoners to those more specialised in detention had been an important part of his attempts to "design out" the risks of prisoner abuse. This indicates that it was not just foreseeable, but it had actually been foreseen, that permitting prisoners to remain for longer at Battlegroup level with non-specialist soldiers responsible for their detention brought increased risk of abuse.

Appreciation of the risks at the time

9.126 Some, but by no means all, witnesses involved in the development of FRAGO 29 appeared to have appreciated that it carried increased risks as well as some benefits.

9.127 Marriott told the Inquiry that he did not remember detainee safety being a factor that was considered in extending the timescale for which Battlegroups could hold detainees. He did not consider the FRAGO 29 system less safe than what had gone before. In his view, the BGIRO was something of a safety check.[128]

9.128 Similarly, S002:

> *"Q. I don't mean to suggest in any way that you would have been the only person who might have thought of this, but was consideration given to the fact that, by increasing the amount of time that prisoners could be held by battlegroups and therefore be held by the infantry who had been involved in their capture, there might be an increase in the risk of mistreatment at that vulnerable time in the hours after capture –*
>
> *A. I'm not aware that people made that connection.*
>
> *Q. – or that that was a risk factor in the FRAGO 29 changes?*
>
> *A. Yes, or that that was a risk factor in the FRAGO 29 changes.*
>
> *Q. That didn't occur to you?*
>
> *A. It didn't occur to me and I think that the chain of command assumed that the brigades and battlegroup commanders knew their responsibilities."*[129]

[126] SUB001111-2, paragraph 29
[127] MOD022625-6, paragraph 15
[128] Marriott BMI 98/170/18-172/4
[129] S002 BMI 82/133/8-24

9.129 However, there were those who appreciated there would be an increased risk in detainee handling stemming from the FRAGO 29 system. Forster-Knight's evidence was this:

> *"Q. But did you appreciate that the system that was being brought in by FRAGO 29, as it has been outlined to the Inquiry, devolving, if you like, to battlegroups the responsibility for holding detainees for longer periods of time, dropping, if not entirely out of the picture, at least substantially out of the picture, RMP involvement in the process, enlarging the period of time over which detainees might be held at battlegroup level before being handed over to what is said to be the experts in guarding and so on – did you regard all those matters as increasing the risk to detainees of the sort of thing that in fact happened which this Inquiry is concerned about; that is assaults to them?*
>
> *A. Yes – yes, indeed I did, sir.*
>
> *Q. And did you appreciate that risk, that increased risk, at the time that FRAGO 29 and that new policy, if you like, was being discussed?*
>
> *A. Yes, sir, I did.*
>
> *Q. Did you bring those –*
>
> *A. But –*
>
> *THE CHAIRMAN: I am sorry –*
>
> *A. Sorry, I did appreciate those, but they were a direct consequence of having been informed by the incoming force that they were only bringing 1 Provost Company with them and discussions that had clearly been articulated to us that the new force coming in would devolve responsibilities down to battlegroup commanders within their areas of operation. Since these were measures which would apply to them during their tour and not to us during our tour, these were issues for the incoming force to deal with, sir.*
>
> *Q. Were they issues that you raised with the chief of staff, the GOC or anyone else, that you had concerns that if these measures were brought about, the diminution in the role of the RMP and so on, the matters that I have referred to, that this might increase risk to prisoners?*
>
> *A. Sir, I had a generic discussion, as I say, with the GOC and others with regard to the consequences of the lack of RMP on the rotation of 1 Div to 3 Div. Whether I specifically said to him "Detainee handling will be substantially riskier" I cannot remember, but I certainly brought it to the attention that I was concerned about the huge difference in military police support and this would have an impact on our ability to deliver the spectrum of work we had been delivering on Telic 1."*[130]

9.130 I have referred already to the evidence of Waters. He acknowledged the risk that in asking the BGIRO to decide whether there was information showing that there was a threat to the coalition, the questioning might go beyond the scope of immediate tactical information. It risked going more to full scale interrogation to establish exactly what the person being questioned had actually been involved in.[131]

9.131 The evidence of Mercer is relevant here too but I return to his evidence in considering the legal input into the order.

[130] Forster-Knight BMI 74/41/25-43/21
[131] Waters BMI 71/136/23-137/6

The authorship of FRAGO 29

9.132 Overall, the evidence about who wrote and contributed to FRAGO 29 was less than satisfactory. I accept that the significant passage of time is unlikely to have helped witnesses remember the detail of how FRAGO 29 was formulated, especially when so many orders were issued in a pressured and high tempo operation. It may be that a perception developed amongst witnesses that the Inquiry might be critical of the changes introduced by FRAGO 29. Whether or not that was the case, I detected something of a disinclination on the part of witnesses to accept responsibility for the strategic direction that was taken in FRAGO 29, and sometimes something of a propensity to blame others.

9.133 The two signatories on the face of FRAGO 29 were Marriott, the Chief of Staff (who was the "acknowledge" signatory) and Waters (who was the "authenticate" signatory). Ordinarily, the "authenticate" signatory is the person under whose auspices the order has been drawn together, and the "acknowledge" signatory is the senior officer under whose name the order is issued.

9.134 Marriott's evidence was that he was not involved in drafting the order. He stated that the LEGAD, Mercer, and Policy Adviser (POLAD) would have given some input into it.[132] Marriott said that he was in particular unaware of the reason for J2 taking the lead on internment.[133]

9.135 Waters accepted that FRAGO 29 came under his responsibility, because it came "*out of the G2 shop*". But Waters could not recall clearly the drafting process for the order.[134] Waters not unreasonably reminded the Inquiry that at this time he was heavily engaged in the intelligence efforts relating to the murder of the six members of the RMP on 24 June 2003.[135]

9.136 Wall's evidence was that he did not remember FRAGO 29 and did not remember discussing its creation. He said it was not a matter which, in the context of the events of the time, he would have expected to have been brought to him.[136]

9.137 The witness who shed most light on the drafting of FRAGO 29 was Wilson. His evidence was that he had considerable input into the content of FRAGO 29.[137] He identified those with whom he had discussions about the policy behind FRAGO 29 as Forster-Knight, S002, and "*…an SO2 within the G3 organisation*".[138] The SO2 within G3 to whom Wilson referred here was very likely to have been Maciejewski.[139]

9.138 Wilson went on to confirm that he produced a first draft of FRAGO 29 on behalf of S002 and with whom he exchanged communications about the order, with Waters taking over thereafter.[140] He said that the J2 lead on identifying internees was fully supported by Marriott and the 1 (UK) Div chain of command.[141]

[132] Marriott BMI06137, paragraph 38
[133] Marriott BMI 98/171/7-18
[134] Waters BMI 71/123/4-124/1
[135] Waters BMI 71/124/7-17
[136] Wall BMI 97/114/5-114/18; Wall BMI04523, paragraph 57
[137] Maj Simon Wilson BMI03328, paragraph 85
[138] Maj Simon Wilson BMI 71/33/4-13
[139] Maciejewski BMI 72/145/4-7
[140] Maj Simon Wilson BMI 71/60/13-19
[141] Maj Simon Wilson BMI03329, paragraph 85

9.139 Forster-Knight said that he understood FRAGO 29's intent but was not directly involved in drawing it up, noting that normal procedure would be for Waters to have drafted the order with support from Mercer and Wilson.[142] Forster-Knight's account of his involvement was broadly in line with Wilson's evidence.

9.140 While Wilson and Forster-Knight's evidence was relatively straightforward about the J1 input into FRAGO 29, the evidence was far less clear about the J2 intelligence branch input and the consideration that was given to the order by Mercer and his Divisional legal branch. I will take these issues in turn.

S002's involvement in FRAGO 29

9.141 There was a discrepancy between Wilson's evidence about S002's involvement in FRAGO 29 and S002's own account. S002 acknowledged that he was probably involved in discussions about FRAGO 29 but he denied that Wilson undertook the first draft on his behalf[143] and categorised FRAGO 29 as a "*commander legal and SO2 detention FRAGO that had a G2 spin on it*".[144]

9.142 Wilson's account of S002's involvement is supported to an extent by Waters' evidence. Waters stated that S002 led the staffing of procedures in respect of the tracking of detainees once it became a concern that feedback was not forthcoming when Brigades passed important people up the line.[145] Waters told the inquiry that it would make sense to him for Wilson to have been involved in a first draft of the FRAGO with S002.[146] Mercer's view was that S002 would have been involved in the creation of FRAGO 29.[147]

9.143 The Detainees submit that S002 "*must have had primary involvement in the novelty of G2 acquiring 'overall control' of internment*" and that he played down his influence over FRAGO 29's creation.[148] The Treasury Solicitor who represented S002 and many of the other officers suggest that there is no evidence of this.[149]

9.144 I find that S002 was more heavily involved in the strategic direction adopted in FRAGO 29 than he now remembers. Although elsewhere in the Report I have had cause to question certain aspects of S002's evidence I do not consider that he was seeking to mislead the Inquiry about the level of his involvement in FRAGO 29. It is however highly unlikely that a divisional order that put J2 in the lead would have been developed without a significant intelligence, and indeed human intelligence, input. On the basis of Wilson's evidence, and having regard also to Waters' evidence, I think it likely that the main intelligence input into FRAGO 29 came from S002, although the order would have been discussed with Waters as well.

142 Forster-Knight BMI 74/44/14-18; Forster-Knight BMI05900, paragraph 83
143 S002 BMI 82/126/5-21
144 S002 BMI 82/134/6-8
145 Waters BMI02674, paragraph 49
146 Waters BMI 71/124/2-17
147 Mercer BMI 68/117/10; Mercer BMI 68/152/15-17
148 SUB002504, paragraph 87; SUB002505, paragraph 88
149 SUB002799-800, paragraph 25

Legal consultation/involvement

9.145 There was a range of evidence, most notably from S002, Marriott and Forster-Knight[150] which suggested that Mercer was significantly involved in, or at least consulted about, the changes introduced by FRAGO 29.

9.146 Mercer himself denied that this was the case.[151] His evidence was as follows:

> *"A. Yes, I cannot recall when I saw FRAGO 29, but it was some days after it had been issued. It could have been longer. I was not consulted on FRAGO 29 and it makes it is absolutely clear that G2/G3 have taken this back from what they saw was being led by police and lawyers. And of course it makes it clear that interrogation is a G2 function; in other words, we had strayed onto their turf. I saw it as a way to bring that back into their domain and to marginalise the police and the lawyers."*[152]

9.147 Maj Christopher Heron, who acted as the legal adviser at 7 Armd Bde, said that he was not consulted about FRAGO 29 and he would have been surprised if there had been any legal involvement in the order.[153] Heron gave rather striking evidence about what he would have done had he been consulted about the content of FRAGO 29:

> *"Q. If you had seen it, would it have been something that caused you concern?*
>
> *A. I think I would have been straight on the phone to Colonel Mercer about it.*
>
> *Q. Because ...?*
>
> *A. Because it was totally contrary to what we had achieved and strived to do prior to that time."*[154]

9.148 Against the background of the notable changes introduced by FRAGO 29 and their apparent contrast with the intent behind earlier prisoner handling and internment guidance, Mercer was asked about his reaction to FRAGO 29, whether he had concerns about it and whether he raised those concerns with others. His evidence about this was as follows:

> *"Q. Given what you had been striving to do through the FRAGOs we have looked at over the last half an hour or more, when FRAGO 29 came out – my words – reversing that process –*
>
> *A. Yes.*
>
> *Q. – in large measure, did you have concerns as to whether prisoners might be mistreated or ill-treated under the new regime?*
>
> *A. Well, I had hoped by this stage that the provisions of FRAGO 152, setting out very clearly – you know, it couldn't be more in your face what you shouldn't do to prisoners – was clear. I was hoping that the interrogation provisions with regard to interrogation at the TIF was clear. And, yes, it wasn't ideal, but at the end of the day I am a legal adviser and it's a G2/G3 product.*
>
> *Q. I am not sure that answers my question, does it?*
>
> *A. Well, I am trying to.*

[150] See above footnotes 132, 142 and 144
[151] Mercer BMI0408, paragraph 93
[152] Mercer BMI 68/96/2-11
[153] Heron BMI 64/146/4-147/9
[154] Heron BMI 64/147/10-16

Q. Did you have concerns as a result of the regime that FRAGO 29 was now introducing, given your concerns which you've expressed to us over the last hour or so which resulted in FRAGOs 143, 152, 163 and so on?

A. Yes, I think I had ongoing concerns until we left and I think that then – I mean, this had been taken from our hands, but I didn't think it was – you know, given that it was a 14-hour, I didn't – maybe that is regrettable, but I didn't see how we could change that and I had no concerns about the BGIRO, as I understood it. But I should just say that simultaneously with this, of course, I'd written to General Wall and was now trying another route to screw down on mistreatment, which was by – this route was going to go directly to commanders to remind them, if they didn't already know, of the doctrine of command responsibility; in other words, I was changing tack to a degree and trying another route to screw down on it.

Q. If you had concerns about the new regime, as I am calling it, produced under FRAGO 29, did you raise those with anyone?

A. Yes, I raised the time limit and checked it and was told that that was a given.

Q. Any other aspects about FRAGO 29 that you raised –

A. I don't recall raising any other."[155]

9.149 Thus it seems that Mercer raised the timescale for delivery to the TIF and then accepted that the TIF's opening hours meant the extended timescale was necessary. Mercer raised no other aspect of FRAGO 29, having no concerns about the BGIRO post.

9.150 Mercer also told the Inquiry, rather optimistically in my view, that he assumed the FRAGO 163 ban on "interrogation", which on his evidence intended to cover tactical and strategic questioning, would survive FRAGO 29:

"MR ELIAS: Did you envisage that even under FRAGO 29 all questioning would nonetheless take place at the TIF, as had been previously ordered?

A. Absolutely clear. Questioning only took place at the TIF.

Q. So how was the BGIRO to operate in his role?

A. Well, it was an immediate determination. What is this person – in the same way that the police determined it. Is he a criminal detainee? Is he an internee?

Q. Without questioning of any kind?

A. Well of course you have to – obviously there is going to be some initial contact, but is a crude filtration. Does he go left? Does he go right? In an internment situation that would seem, you know, appropriate.

Q. Forgive me, did you envisage that the BGIRO would be questioning?

A. Well, he would have to ask initial questions to see which category he fell into.

Q. So there was going to be some questioning before the TIF under FRAGO 29 –

A. As there always had been, because the police would have had to ask the same question under the previous schematic, as the battlegroup would."[156]

[155] Mercer BMI 68/97/9-99/2
[156] Mercer BMI 68/100/7-101/4

9.151 Mercer's evidence on this aspect was contradicted by Clifton. I have set out above at paragraph 9.120 that Clifton understood FRAGO 29 to have changed the previous position under FRAGO 163 that no "questioning" (the order in fact referred to "interrogation") was to happen before the TIF.[157]

9.152 It was submitted by Lewis Cherry on behalf of Mercer that Clifton was wrong to see FRAGO 29 as overruling FRAGO 163 and that the evidence suggested that all existing FRAGOs were extant until specifically overruled.[158] However, I find it rather difficult to see how a prohibition on any questioning before the TIF (even if it had been clearly phrased in those terms) could have survived the requirement that the BGIRO assess whether a detainee posed a threat to the security of coalition forces; that was a process that most understood to involve tactical questioning at Battlegroup level.

9.153 It is submitted on behalf of the Detainees that if, as appears likely, there was a failure to consult Mercer, this was a critical error.[159]

9.154 It is submitted on behalf of those represented by the Treasury Solicitor that Mercer did review FRAGO 29, even if it was after the order was issued, and that he had no concerns apart from the timescale for delivery to the TIF. This is, they say, significant given how assiduous Mercer was. The Treasury Solicitor cites the evidence of Maciejewski in support of the argument that if Mercer had concerns when he saw FRAGO 29 he could have raised them and FRAGO 29 could have been rescinded or amended accordingly.[160] It is suggested that "*there is no proper basis for impugning FRAGO 29 or those who conceived, drafted or approved it*".[161] My conclusions on the issues raised by FRAGO 29 appear at the end of this Part of the Report.

[157] Clifton BMI 81/121/4-122/23
[158] SUB000183, paragraph 186
[159] SUB002503, paragraph 86
[160] Maciejewski BMI 72/179/5-13; Maciejewski BMI 72/183/25-184/2; SUB001356, paragraphs 257-259
[161] SUB001356, paragraph 259

Chapter 6: Mercer's Soldiers' Card and Draft Memorandum on Treatment of Internees/ Detainees

9.155 Before leaving theatre Mercer wrote to Wall, 1 (UK) Div GOC, sending him a draft memorandum dated July 2003. The draft memorandum was intended to be signed by the GOC and to go to Chief G2, SO2 Detention and SO2 Provost. It was entitled "Treatment of internees/detainees":[162]

July 2003

Treatment of internnees/detainees

1. The current ROE allow UK Forces to temporarily detain civilians where they pose a threat to the Coalition Forces or interfere or threaten the Coalition mission. This is perfectly sensible but, at the present time, there are currently five investigations being conducted by the SIB into the death or serious assaults of Iraqi civilians who have been temporarily detained by UK Forces.

2. Whereas I cannot predict the outcome of these investigations, there was a further incident last week where one of our Coalition partners refused to hand over a prisoner over to a battle group as a result of the instructions they were given with regard to the treatment of the prisoner.

3. Legal direction with regard to the treatment of civilians (whether detainee or internee) has already been provided by my Legal Branch both in ROE briefings and by FRAGO but, despite these instructions, there continues to be incidents where civilians are maltreated whilst being temporarily detained by the Battle Groups.

4. The legal position is perfectly clear. Civilians must be treated with humanity and dignity at all times whatever they are alleged to have done. They must receive sufficient food and water and be held in acceptable conditions. They must not be mistreated in any way and, in simple terms, they should be treated no differently from our soldiers.

5. If civilians are not treated in this fashion then it may amount to a breach of International or national Law and may also cause unnecessary political or media embarrassment. Needless to say the International Committee of the Red Cross (ICRC) is informed of all internees and will interview prisoners about their treatment.

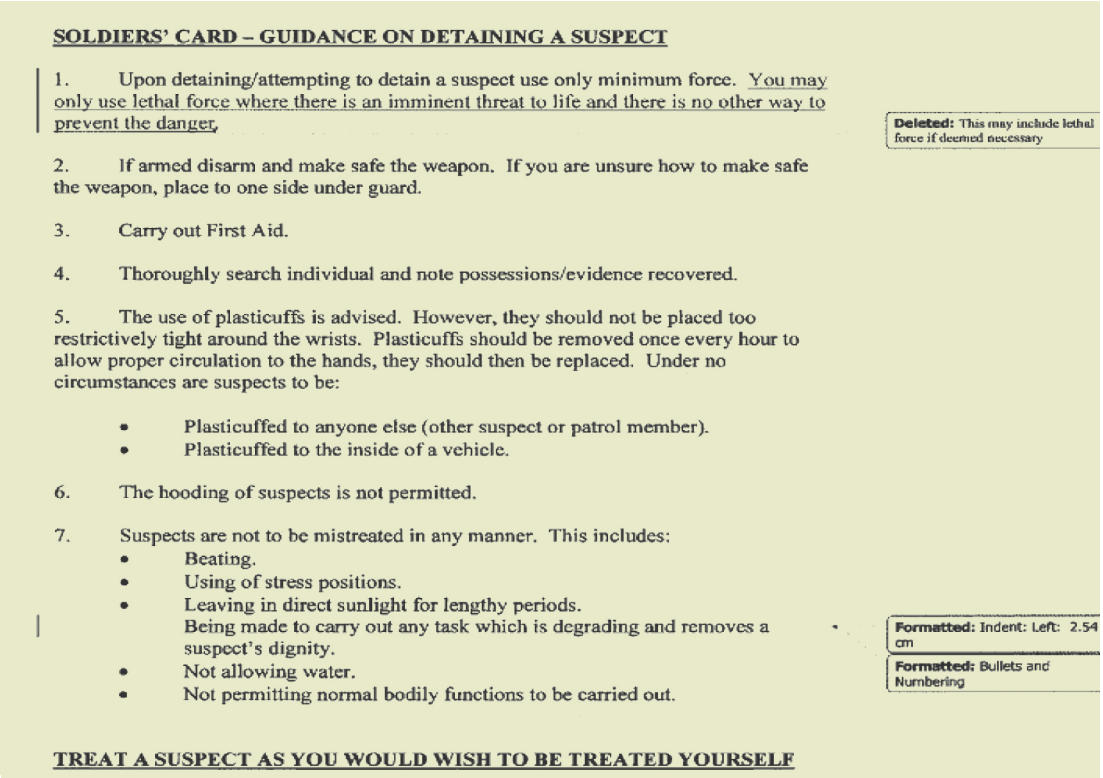
6. It is a Command responsibility to ensure compliance with the Law of Armed Conflict and this responsibility is personal to all Commanders at whatever level. I therefore expect my Commanders to personally ensure that prisoners are treated correctly.

7. In addition, and to reinforce this message further, cards on the temporary detention of civilians will be produced for all troops in Theatre and this will contain clear guidelines on the standard of treatment expected. Finally, Legal Branch will be available to provide briefings on this subject as and when they are required.

8. International Law must be complied with at all times and nothing less will do. It is hoped that there will not be a repetition of these unfortunate incidents but Commanders may be held liable if this matter is not brought fully under control.

9.156 Alongside the memorandum, a draft soldiers' card on the temporary detention of civilians for all troops in theatre was drafted, as mentioned in paragraph 7 of Mercer's draft memorandum. The first version of the card does not appear to have survived but a later version showing track changes was as follows:[163]

[162] MOD049458
[163] MOD049507



SOLDIERS' CARD – GUIDANCE ON DETAINING A SUSPECT

1. Upon detaining/attempting to detain a suspect use only minimum force. You may only use lethal force where there is an imminent threat to life and there is no other way to prevent the danger.

Deleted: This may include lethal force if deemed necessary

2. If armed disarm and make safe the weapon. If you are unsure how to make safe the weapon, place to one side under guard.

3. Carry out First Aid.

4. Thoroughly search individual and note possessions/evidence recovered.

5. The use of plasticuffs is advised. However, they should not be placed too restrictively tight around the wrists. Plasticuffs should be removed once every hour to allow proper circulation to the hands, they should then be replaced. Under no circumstances are suspects to be:

- Plasticuffed to anyone else (other suspect or patrol member).
- Plasticuffed to the inside of a vehicle.

6. The hooding of suspects is not permitted.

7. Suspects are not to be mistreated in any manner. This includes:
- Beating.
- Using of stress positions.
- Leaving in direct sunlight for lengthy periods.
- Being made to carry out any task which is degrading and removes a suspect's dignity.
- Not allowing water.
- Not permitting normal bodily functions to be carried out.

Formatted: Indent: Left: 2.54 cm

Formatted: Bullets and Numbering

TREAT A SUSPECT AS YOU WOULD WISH TO BE TREATED YOURSELF

9.157 Mercer's evidence was that he had some input into the wording of the card and that the cards were produced but that he could not remember how or whether they were issued.[164]

9.158 The soldiers' card was referred to in Mercer's handover notes to Lt Col Charles Barnett, 3 (UK) Div's Comd Legal, as were Mercer's concerns about deaths in custody:[165]

> **6. Deaths In custody** - This is also an operational matter and there are currently five investigations being conducted by the SIB with regard to death or serious injury whilst in custody. FRAGO's have already been issued to the Brigades on the treatment of civilians and, as a result of the further cases, a further FRAGO was issued which set out the procedures which had to be adopted upon the temporary detention of a civilian. This has been reduced into a card and is available for all troops. (At the same time, the GOC has also issued his direction to his Commanders and all these are contained in your folder.)

9.159 Wall could not remember whether the draft memorandum sent to him by Mercer was in fact sent out,[166] but there is no document disclosed to the Inquiry to suggest that it was. Wall's evidence about the memorandum and the soldiers' card was as follows:

> *"Q. Do you recall ever making a decision not to a issue what we have been referring to as the "soldiers' card"?*
>
> *A. I don't recall the memorandum or the card.*
>
> *Q. There would on the face of it, would there, have been no reason why you should have stopped the issuing of a card of this kind?*
>
> *A. I think that, you know, stepping back from the specific detail of this, there becomes a point in a handover between a division and its successor division when it's not particularly*

[164] Mercer BMI06898, paragraph 11
[165] MOD052579
[166] Wall BMI 97/120/11-17

helpful for the outgoing commander to issue fresh instructions a few days before the incoming commander on issues that he may wish to address in his own way and take proper account of the way in which his soldiers had been trained and so on and so forth. So I think there a point at which you wouldn't, particularly on something that went that far down the tactical chain, be issuing that sort of thing. Whether that was in my mind at the time I can't recall.

Q. What, you mean because, as it were, you are binding the hand of your successor in some way?

A. Yes, yes, and you are also doing it without a knowledge of the guidance and training that those soldiers have been given.

Q. So it wouldn't be –

A. So it would not be the most responsible thing to do necessarily, to impose that sort of direction a few days before the incoming commander might want to issue it in a slightly different way or with a slightly different tone.

Q. So if this were happening towards the end, as it were, of your turn in theatre, you may, in essence, have deferred the issue to your successor?

A. That's possible, but I don't remember whether that was the key factor in this case."[167]

9.160 I shall return to the soldiers' card in considering the orders issued on Op Telic 2 in Part XI of this Report. As regards the flow of orders in Op Telic 1, I find that neither the draft memorandum nor the accompanying soldiers' card were issued before the end of Op Telic 2. Given the difficulty that witnesses had recalling this aspect, it is impossible to be certain why this was the case. However, Wall's speculation that this may have related to the imminent handover was, I find, highly plausible.

[167] Wall BMI 97/124/19-126/2

Chapter 7: Conclusions

FRAGOs 56 and 79

9.161 Given their timings FRAGOs 56 and 29 were to a certain extent aspirational. It was envisaged at the time FRAGO 56 was issued that the RMP and J3 Branch would have the key roles in the internee process. It was still thought that a DIMU would take responsibility for the legal review of detention.

9.162 The protection of prisoners was an express consideration of both Wall and Mercer in the requirement under FRAGO 79 for the timely transfer of prisoners to RMP custody, namely within six hours.

9.163 Mercer's concern that the FRAGO 79 system was not being complied with led to a request for detailed information about where detainees were being held before the TIF. This was covered in paragraph 3 of FRAGO 143.

FRAGOs 152 and 63

9.164 Renewed guidance on the detention of civilians was issued by 1 (UK) Div's Daily Miscellaneous FRAGO 152, dated 20 May 2003. The main body of the FRAGO simply referred to attached guidance, although making clear that it was to be passed down to the lowest level. The guidance attached was drafted by Mercer and reproduced at Brigade level by way of FRAGO 63, and was received by 1 BW.

9.165 Mercer's guidance on the detention of civilians issued under FRAGO 152 and its Brigade equivalent FRAGO 63 was the only written order disclosed to the Inquiry which was issued before Baha Mousa's death and which contained an apparent reference to the prohibition on hooding prisoners. The direction was that "*under no circumstances should their faces be covered as this might impair breathing.*"

9.166 Mercer deserves some credit for ensuring that this order was issued. The Inquiry explored with Mercer why it was that his guidance did not give greater prominence to the prohibition on hooding or put the matter in clearer and bold terms. I conclude that it would not be fair to criticise Mercer for failing to make the hooding ban clearer or more prominent within FRAGO 152. The date of the orders and Mercer's evidence both demonstrate that it was not an exercise in putting Brims' earlier order into writing. The purpose of the reference to not covering detainees' faces was to discourage soldiers from using any other means of sight deprivation that might impair prisoners' breathing.

9.167 While it would have been better had Mercer reiterated the prohibition on hooding in clearer and more prominent terms in the order, I do not consider that he fell below an acceptable standard in the way he framed this part of the order.

9.168 However, I do not accept Mercer's evidence that FRAGO 152 indicated that there was to be no questioning before the TIF. I do not consider that message was conveyed at all in FRAGO 152.

FRAGO 163 and FRAGO 70

9.169 FRAGO 163 tightened the prisoner handling timescales further imposing a limit of one to two hours for handing prisoners over to the RMP, save in exceptional circumstances.

9.170 FRAGO 163 also contained the guidance that "*Under no circumstances may a suspect be interrogated until he has been processed by the TIF*". I have no hesitation in finding that Mercer's intent in FRAGO 163 was to ensure that the only questioning of prisoners by UK Forces, whether tactical questioning or interrogation, should take place at the TIF. He saw this as being part of the tightening of procedures that would minimise the risk of prisoner abuse.

9.171 I find that FRAGO 163 (and FRAGO 70 which duplicated its wording) was misinterpreted because Mercer's drafting was, on this occasion, ambiguous. I find that Mercer was himself not sufficiently familiar with the terminology of tactical questioning and interrogation. To some extent, the fact that a military lawyer as assiduous as Mercer was not sufficiently aware of this distinction reflects other evidence that many staff officers did not know very much about tactical questioning and interrogation training, methods and doctrine. Mercer, like other key staff officers in the formation headquarters, faced a formidable workload and held demanding responsibilities. But in relation to FRAGO 163, his drafting was not sufficiently clear. I accept that his intent was to prevent all questioning except at the TIF but I do not accept that Mercer had sufficiently involved the J2 side of the divisional headquarters on the guidance he wrote in FRAGO 163: had he done so an intention to exclude questioning before the TIF would not have been phrased as a prohibition on "interrogation" so as to create, at best, an ambiguity about tactical questioning.

9.172 In making this relatively limited criticism of Mercer I must stress that the totality of Mercer's evidence and the majority of the contemporaneous records demonstrate his singular dedication to the highest practicable standards of prisoner handling. In a busy and demanding environment, those who do most and engage most fully in any issue, by the very fact of being so involved, are likely along the way to make some mistakes, and indeed to make more mistakes that than those who are less pro-active.

FRAGO 29

9.173 FRAGO 29 introduced very significant changes to the internment process. Overall control of the internment process was passed to the intelligence branch. Responsibility for the sifting and assessment of those detained by Battlegroups transferred from the RMP to the new post of Battlegroup Internee Review Officer (BGIRO). The time limits for delivery of internees to the TIF were significantly extended from one to two hours from arrest to delivery to the RMP (save in exceptional cases) with a six hour time limit from arrest for delivery to the TIF to the new limit of fourteen hours from arrest to delivery to the TIF.

9.174 These changes were in marked contrast to the development of earlier guidance, largely inspired by Mercer, which had increasingly tightened the time limits for delivery of prisoners to the TIF and had intended to restrict questioning before the TIF. The latter restriction had been inaptly drafted in FRAGO 163 but both changes had been introduced by Mercer with the intention of minimising the risk of prisoner abuse.

9.175 The changes in process introduced by FRAGO 29 were, with some later refinements, those under which 1 QLR ended up holding Baha Mousa and the other Detainees for such an extended period, a process which included extended tactical questioning of the Detainees. With hindsight a number of these changes introduced by FRAGO 29 would seem to be of questionable merit.

9.176 I find that Wilson produced the first draft of FRAGO 29 at the request of S002, both being heavily involved in the drafting process. Waters, Forster Knight, and Maciejewksi would have been involved in the discussions and Marriott must, I find, have approved the final product.

9.177 I accept the evidence of Mercer that he was not consulted until FRAGO 29 was issued. I find that there was not sufficient consultation of the divisional legal branch in the formulation of this order. There was however a degree of fault on both sides here: those drafting the order ought to have involved Mercer at an earlier stage. Given his previous approach to trying to design out the risk of prisoner abuse, I would have expected Mercer to question the changes brought in by FRAGO 29 to a greater extent than he did. His evidence suggests a certain amount of resignation to the changes brought in by FRAGO 29, perhaps not unassociated with it being towards the end of an arduous tour.

9.178 The lack of adequate communication between the divisional staff branches in relation to FRAGO 29 is typified by the fact that both Mercer and Wilson believed that questioning before the TIF would not take place under FRAGO 29, whereas most others appear to have seen tactical questioning as part of the information that would be available for BGIROs to consider. I do not accept that Mercer's reaction to FRAGO 29 means that earlier consultation with him and his branch would have made no difference. Better communication should have led, at the very least, to a recognition that there was this significantly different understanding about questioning before the TIF which should then have been articulated clearly in FRAGO 29. Instead, the earlier regrettable ambiguity in the drafting of FRAGO 163 which was unclear about whether the prohibition on "interrogation" before the TIF included tactical questioning, was compounded by the fact that FRAGO 29 made no reference at all to tactical questioning, let alone did it give any useful guidance in relation to it.

9.179 I find that there was no malign intent nor any wilful risk taking in the changes introduced by FRAGO 29. The changes were to a large extent understandably perceived both to carry positive advantages and to overcome difficulties being experienced in theatre. The very significant drawdown in RMP numbers created a real difficulty in the RMP remaining so central to the handling of prisoners. To a somewhat lesser extent, the RMP involvement was also called into question because internment was based more on intelligence considerations than the criminal process with which the RMP were more experienced. The BGIRO system also had the ostensible advantage of allowing Battlegroups to obtain intelligence on the ground before prisoners were passed on to the TIF, countering the slow feedback of intelligence product from the TIF back to Battlegroups. I accept that there were practical difficulties in meeting the existing six hour time limit in some cases. I accept also the proposition that FRAGO 29 was a "well-intentioned" system, albeit one that created problems.

9.180 However, while the disadvantages of FRAGO 29 are far more easily identified with the benefit of hindsight, I consider that more consideration could and should have been given at the time to the potential disadvantages of the changes introduced by the order. Lessening the requirement that prisoners be moved on from the detaining unit as soon as possible, even if unavoidable given the increased divisional area of operations and logistical difficulties, ought to have been better recognised as a risk factor. The introduction of the BGIRO post risked confusing Battlegroup responsibilities for prisoners as I find indeed occurred within 1 QLR. Perhaps slightly less obviously, requiring the BGIRO positively to determine whether or not the information available showed that the prisoner was a threat to coalition forces risked distorting the tactical questioning process beyond its proper remit of obtaining only time-sensitive tactical level information and identifying prisoners of particular intelligence interest. There were risks too, in giving J2 the overall lead in the internment process.

9.181 Further consideration of these factors may not have changed the overall approach of FRAGO 29 but they might well have led to better guidance being provided alongside the order and/or in adequate training for BGIROs. In the event, FRAGO 29 contained no guidance on tactical questioning.

Soldiers' Card and Draft Memorandum

9.182 A further soldiers' card and accompanying memorandum on detainees/internees were both produced towards the end of Op Telic 1 with Mercer being again involved in their drafting. I find that these were not issued by the GOC, Wall, rather their distribution was deferred to Op Telic 2. The imminent handover to a different division is likely to have been the reason and I find that this was not unreasonable.

Published by TSO (The Stationery Office) and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Order through the Parliamentary Hotline Lo-Call 0845 7 023474
Fax orders: 0870 600 5533
E-mail: customer.services@tso.co.uk
Textphone: 0870 240 3701

The Parliamentary Bookshop
12 Bridge Street, Parliament Square
London SW1A 2JX
Telephone orders/General enquiries: 020 7219 3890
Fax orders: 020 7219 3866
Email: bookshop@parliament.uk
Internet: http://www.bookshop.parliament.uk

TSO@Blackwell and other Accredited Agents