

CHAPTER 4: OVERNIGHT DETENTION AT CAMP ABU NAJI

1. Command structure and the governing policy

3.487 As I have already indicated, the appropriate management and treatment of detainees was governed by Standard Operating Instructions (“SIOs”) that had been issued at Divisional, Brigade and Battle Group levels, namely the Divisional SOI 390, Brigade SOI 218 and the 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”) SOIs 206 and 207.

3.488 SOI 390 was a policy guidance document which was “...in essence, the rule book for prisoner handling in Iraq”.³⁷⁴⁴ The purpose of SOI 390 was to ensure that detainees were handled in a lawful manner. SOI 390 had been updated shortly before 14 May 2004, on 25 March 2004. It included a number of annexes that provided guidance on all aspects of prisoner handling, including matters such as processing, tactical questioning and onward transfer to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah.

3.489 In addition to SOI 390, there were a number of Battle Group SOIs in force on 14 May 2004 which related to prisoner handling, including 1PWRR SOI 206³⁷⁴⁵ which related to prisoner handling, and 1PWRR SOI 207³⁷⁴⁶ which related to tactical questioning. These were the Battle Group’s immediate point of reference for all matters relating to detainees. The SOIs were intended to function as instructions, rather than orders, and sought to reflect best practice.

3.490 There were also Brigade SOIs, such as SOI 218, which related to prisoner handling.³⁷⁴⁷ As 1PWRR’s adjutant, Captain Duncan Allen, explained:

“There were usually three levels of SOIs on any subject (Divisional, Brigade and Battle Group) and the idea was that the information in the Divisional and Brigade SOIs would be incorporated into the Battle Group version so that we did not need to refer to multiple sources to address any particular issues that came up.”³⁷⁴⁸

3.491 According to 1PWRR SOI 206 (Annex A), the responsibility for the detainees whilst they were held in the prisoner handling compound fell to a number of personnel.³⁷⁴⁹ At the top of the chain of command were the Officer Commanding and the Battle Group Internment Review Officer (“BGIRO”). The BGIRO was responsible for the entire post-arrest procedure with regard to detainees.

3.492 As I have already indicated,³⁷⁵⁰ Captain Duncan Allen was the adjutant of 1PWRR at the time and part of his role involved acting as the BGIRO, which meant having overall responsibility for detainee internment at Camp Abu Naji. In Captain Allen’s absence, the role of BGIRO was covered by Captain James Rands.³⁷⁵¹ As Captain Allen explained, he did not have a practical hands-on role with the detainees, but ensured that the procedures worked well and that those who did have a hands-on role knew what they were doing and were properly supervised. As he recalled, “I knew that I had to ensure that the systems in place at CAN were up to

³⁷⁴⁴ Captain Mynors (ASI024886) [7]

³⁷⁴⁵ (MOD015804)

³⁷⁴⁶ (MOD015807)

³⁷⁴⁷ (MOD038961)

³⁷⁴⁸ Captain Allen (ASI022997) [44]

³⁷⁴⁹ (MOD015804)

³⁷⁵⁰ See para 3.490

³⁷⁵¹ Captain Allen (ASI022985) [7]

*scratch and in accordance with the established policies and guidance at the time.*³⁷⁵² Captain Allen confirmed that WO1 Shaun Whyte and WO2 Darran Cornhill were delegated the task of managing the actual handling of the detainees who were brought to Camp Abu Naji.³⁷⁵³

3.493 1PWRR SOI 206 (Annex A) also stated that the BGIRO was to be directly responsible to the Commanding Officer. As the Regimental Sergeant Major, WO1 Shaun Whyte was ultimately the officer in charge of the prisoner handling compound. As he explained in his oral evidence to the Inquiry, this meant that he was ordinarily in charge of the detainees from the time of their arrival at Camp Abu Naji until their departure.³⁷⁵⁴ As I have already explained,³⁷⁵⁵ WO1 Whyte was not actually on duty on 14 May 2004, but he did confirm that he had visited the prisoner handling compound that night in his capacity as the Regimental Sergeant Major, acting as an “*extra pair of eyes*.”³⁷⁵⁶

3.494 On 14 May 2004, it so happened that WO2 Darran Cornhill was the officer in charge of the prisoner handling compound. He was therefore in overall charge of the handling and processing of the nine detainees.³⁷⁵⁷ According to Divisional SOI 390, WO2 Cornhill was the “Detainee Control Post Warrant Officer” (“DCPWO”) on 14 May 2004.³⁷⁵⁸ This meant that he also had responsibility for directing those in charge of the holding area in the movement of the detainees between the prisoner holding area and the processing/tactical questioning tent. It was thus WO2 Cornhill who had the immediate overall responsibility for the nine detainees during their stay in the prisoner holding area during the night of the 14/15 May 2004.

3.495 However, as I indicated earlier,³⁷⁵⁹ on the night of 14/15 May 2004 WO2 Cornhill had concentrated on what he considered to be his principal role, namely the processing of the detainees. WO2 Cornhill explained that he had delegated the responsibility of guarding the detainees in the prisoner holding area to Staff Sergeant David Gutcher that night.³⁷⁶⁰ In his oral evidence to the Inquiry, WO2 Cornhill said that he had felt that he no longer retained responsibility for the detainees once they had been processed. He believed that, thereafter, responsibility for the detainees had been transferred to Staff Sergeant Gutcher.³⁷⁶¹

3.496 Staff Sergeant Gutcher was the prisoner holding area non-commissioned officer (“NCO”) on the night of 14/15 May 2004. According to 1PWRR SOI 206 (Annex A), he was therefore responsible for the welfare of the detainees in the prisoner holding area and for detailing guards to move detainees as directed by the DCPWO (i.e. WO2 Cornhill).³⁷⁶² However, in his oral evidence to the Inquiry, Staff Sergeant Gutcher accepted that he had been effectively left unsupervised and in sole charge of the detainees, after he had assisted with their processing that night.³⁷⁶³

3.497 Despite WO2 Cornhill’s belief that, once he completed processing the nine detainees at Camp Abu Naji on 14 May 2004, he had transferred all responsibility for them to Staff Sergeant Gutcher, it is clear that he did, in fact, continue to have overall responsibility for the detainees

³⁷⁵² Captain Allen (ASI022987) [14]

³⁷⁵³ Captain Allen (ASI022988) [15]

³⁷⁵⁴ WO1 Whyte [106/10/11-13]

³⁷⁵⁵ See Part 3, Chapter 2: the Processing of the Detainees at Camp Abu Naji

³⁷⁵⁶ WO1 Whyte [106/40/8-9]

³⁷⁵⁷ WO1 Whyte [106/40-41]

³⁷⁵⁸ (MOD015804)

³⁷⁵⁹ See Part 3, Chapter 2: the Processing of the Detainees at Camp Abu Naji

³⁷⁶⁰ WO2 Cornhill (ASI013364) [81]

³⁷⁶¹ WO2 Cornhill [115/17-20]

³⁷⁶² (MOD015804)

³⁷⁶³ Staff Sergeant Gutcher [122/12/10-17]

on the night of 14/15 May 2004 in his capacity as the DCPWO. The fact that he believed otherwise strongly suggests that insufficient thought had been given to ensuring that there was a proper understanding of who actually was in overall charge of the detainees' welfare whilst they were held in the prisoner holding area that night. However, I accept Staff Sergeant Gutcher's evidence that, so far as he was concerned, he had taken over the responsibility for the prisoner holding area and the detainees' welfare in WO2 Cornhill's absence,³⁷⁶⁴ although this clearly did not reflect the provisions of the relevant SOIs and appears to have been an entirely ad hoc arrangement.

3.498 Another unsatisfactory aspect of the arrangements for prisoner handling at Camp Abu Naji, during the relevant period, was that neither Staff Sergeant Gutcher (as the prisoner holding area NCO) nor WO1 Whyte (as the Officer i/c Prisoner Handling) had undergone any type of formal training in prisoner handling.³⁷⁶⁵ WO1 Whyte did not receive any specific pre-deployment training of this sort, nor does it appear that WO2 Cornhill received any such training. The only "training" WO1 Whyte received in prisoner handling was in the form of a "walk through, talk through" by his predecessor in the course of the handover.³⁷⁶⁶ In fact, Divisional SOI 390 (At Annex G) specifically provides that the guard forces should have been instructed by a Prisoner Handling Instructor who had undergone relevant training:

*"...the guard forces should have been instructed by a prisoner handling instructor who has taken a course of qualification in prisoner handling and TQ and in the correct manner of holding and moving internees through the TQ centre. Such instruction is to occur prior to the operation and/or will be conducted as part of routine training procedures."*³⁷⁶⁷

3.499 The nine detainees were held in the prisoner holding area from the time of their arrival on 14 May 2004 (some of the detainees having arrived at 20:55 hours and others at 21:55 hours) until their departure on 15 May 2004. Apart from the time that they attended the processing tent for processing or for tactical questioning, the detainees remained in the prisoner holding area throughout the entire period that they were held at Camp Abu Naji.

3.500 The detainees have made a number of allegations relating to their overnight detention at Camp Abu Naji during 14/15 May 2004. Some of these were direct allegations of ill-treatment in the form of both physical and verbal assaults, whilst others were instances of omissions and failures to look after the detainees' welfare properly. The order in which I have dealt with these allegations does not necessarily reflect the chronological order in which the incidents may have occurred. Unsurprisingly in the circumstances, the order and timing of many of the incidents are uncertain and the detainees were often unable to be precise with regard to matters such as the timing and the order in which the alleged events occurred. I have considered these various allegations and other potential forms of ill-treatment under the following eleven headings:

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

³⁷⁶⁴ Staff Sergeant Gutcher [122/9-10]

³⁷⁶⁵ In its letter to the Inquiry dated 20 November 2014, the Ministry of Defence made it clear that the latest version of Joint Doctrine Publication 1-10 *Captured Persons (CPERS)* was published on October 2011. This Doctrine would prevent similar incidents happening now. The Ministry of Defence went on to point out that the assurance regime has also been greatly enhanced. The detention facilities in theatre are now run by a professional cadre of personnel (principally drawn from the Military Provost Staff, and reinforced by the Royal Military Police). These have been scrutinised both by internal inspections by the Provost Marshal (every six months) and the Army Inspector (in July 2010 and October 2012) and by external inspections by the International Committee of the Red Cross. I have no reason to doubt the accuracy and reliability of that assertion.

³⁷⁶⁶ Staff Sergeant Gutcher [122/25/8-14]; WO1 Whyte [106/36-40]

³⁷⁶⁷ (MOD046755)

- Allegation 2 – The detainees were prevented from talking which was enforced by verbal or physical assaults.
- Allegation 3 – The detainees were not given an adequate supply of water.
- Allegation 4 – The guard force used the giving of water as an opportunity to carry out physical assaults on the detainees.
- Allegation 5 – The detainees were not given an adequate supply of food.
- Allegation 6 – The detainees were deliberately deprived of sleep. The detainees were made to stay awake and subjected to physical assaults.
- Allegation 7 – The detainees were deprived of their sight for prolonged periods.
- Allegation 8 – The lavatory arrangements were inadequate.
- Allegation 9 – The detainees were ill-treated during medical examinations.
- Allegation 10 – The detainees were deliberately plasticcuffed too tightly and so as to cause pain.
- Potential ill-treatment 11 – The detainees were subjected to “static” or “white” noise from a radio.

3.501 In the paragraphs that follow, I deal with each of these allegations in turn.

2. Allegation – the detainees were ill-treated in the way they were escorted by the guards

3.502 The detainees were escorted to and from processing and tactical questioning by the guards on duty in the prisoner handling compound. While the detainees were held in the prisoner holding area at Camp Abu Naji on 14/15 May 2004 and with the exception of their arrival and departure, the only other occasions that the guards escorted them anywhere else was when they were escorted to the lavatories.

3.503 The detainees made a number of allegations concerning the way in which they were escorted while they were held at Camp Abu Naji during 14/15 May 2004. In essence, the allegations of ill-treatment involved two particular aspects of the escorting procedure: first, that the detainees were moved in an excessively robust manner, including being deliberately disorientated, in order to maintain the shock of capture; and second, that the detainees were subjected to direct physical assaults by the guards whilst they were being escorted.

Military Evidence

3.504 The escorting of detainees within the prisoner handling compound was governed by Annex G of the Divisional SOI 390, which stipulated as follows:

“Movement between the holding area and TQ rooms is to be controlled by two guards, under the instruction of an NCO. Instruction should be given to these guards as part of the TQ stand up procedure prior to the operation.”³⁷⁶⁸

³⁷⁶⁸ (MOD003688)

3.505 In his oral evidence to the Inquiry, WO1 Shaun Whyte said that the detainees would be moved quickly, but not so fast that they would trip or injure themselves. He emphasised that the detainees were not dragged or knocked into walls. In his opinion, moving the detainees quickly was simply a matter of efficiency. WO1 Whyte put it this way:

“... you wouldn’t move them slowly. That’s – it was just part and parcel. You would move them quickly. When you got to a step, you would – or an obstacle, you would make sure they were aware of it so they could step over them.”³⁷⁶⁹

3.506 The majority of the military witnesses said that, while in the prisoner handling compound, they escorted the detainees in much the same way as they had done when the detainees first arrived at Camp Abu Naji on 14 May 2004.³⁷⁷⁰ Thus, Corporal Jeremy Edgar remembered having escorted two of the detainees to the processing tent that night and explained: *“We will have used force, reasonable force, to lift him from his sitting position and then marched him quickly to the processing tent.”³⁷⁷¹* He went on to describe the pace as a *“quick march, almost a jog”*, which he believed was designed to keep the detainees disorientated, as he explained in answer to Counsel’s questions:³⁷⁷²

“Q. Why didn’t you just tell him to stand up and let him stand up? Why did you use force to lift him?”

A. It’s my belief that we had to ensure that the detainees knew that we were in charge and that, by doing so, we were effectively telling them that we were in charge.

Q. So rather than saying “Stand up”, you would take them from under the arms and just lift them up?

A. And say “Stand up” at the same time.

Q. And that was to keep them disorientated or under your control?

A. Certainly to keep them compliant with our wishes, yes.”³⁷⁷³

3.507 Lance Corporal Andrew Tongue described the pace at which detainees were moved to the tent as *“quick walking...we moved briefly, quickly.”³⁷⁷⁴* He denied that they had carried or dragged any of the detainees.³⁷⁷⁵

3.508 In his oral evidence to the Inquiry, Corporal Michael Taylor said that the detainees would be moved swiftly and at a fast pace, but not running. He believed that he had been instructed to move the detainees at that speed. He stressed that the detainees were not moved in a zigzag fashion, nor were they spun around while being moved.³⁷⁷⁶

3.509 Lance Corporal David Errington said that he believed that he moved detainees at a fairly fast pace that night, because he had been told to do so in the initial brief by Staff Sergeant David Gutcher.³⁷⁷⁷

³⁷⁶⁹ WO1 Whyte [106/84/18-22]

³⁷⁷⁰ See, for example, Corporal M. Taylor [129/54/11-13]; Lance Corporal Edwards [129/149/4-8]

³⁷⁷¹ Corporal Edgar [128/45/23-25]

³⁷⁷² Corporal Edgar (ASI020376) [51]; [128/48/12-13]

³⁷⁷³ Corporal Edgar [128/46/4-14]

³⁷⁷⁴ Lance Corporal Tongue [134/141/2-4]

³⁷⁷⁵ Lance Corporal Tongue (ASI015584-85) [73]; [134/142-146]; [134/148/16-19]

³⁷⁷⁶ Corporal M. Taylor (ASI018104) [37]; [129/54/14-25]

³⁷⁷⁷ Lance Corporal Errington [125/57/15-22]; [125/38/18-20]

3.510 For his part, Staff Sergeant Gutcher explained that the detainees were moved “robustly” so that they could be interviewed and taken out of the processing tent as quickly as possible. In his oral evidence to the Inquiry, he put it in this way:

“As far as I can recall, I believe that the robust handling at this point was not used as a scare tactic, just to speed up the momentum to get [them]...through the [process]... as quick as possible.”³⁷⁷⁸

3.511 Lance Corporal David Bond said that he had been told “...to place one hand under their armpit, lift them out of the chair or assist them in getting up out of the chair, a guard on either side and walk straight to the – to the tent.”³⁷⁷⁹ He recalled that, on one occasion at the processing tent “the RSM [i.e. WO1 Whyte] told [him] and the other escort that the detainee was not cooperating and to take him back to the detainee holding area ‘pretty sharpish if you know what I mean’”. He said that he took it to mean that the detainee was to be taken back to the detainee holding area quickly, but not assaulted in any way.³⁷⁸⁰

3.512 In all but two cases (Hamzah Almalje [detainee 772] and Hussein Al-Behadili [detainee 778]), the Inquiry has been able to identify which soldiers escorted each detainee to and from processing, mainly from the photographs of the detainees with their escorting guards that were taken during processing. However, it has not been possible to identify the soldiers who escorted each detainee to tactical questioning, because their names were not recorded in the Prisoner Information Sheets, there are no relevant photographs and the escorting guards were not necessarily the same as those who had escorted the detainees to be processed. Accordingly, to the extent possible, in the paragraphs that follow I deal with the evidence of the soldiers who are known to have escorted one or other of the nine detainees present in the prisoner holding area at Camp Abu Naji during 14/15 May 2004.

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.513 Mahdi Jasim Abdullah Al-Behadili (detainee 773) was escorted to and from processing by Lance Corporal Christopher Vince³⁷⁸¹ and Sergeant Samuel McKee.³⁷⁸²

3.514 Lance Corporal Vince recalled having escorted Mahdi Al-Behadili to the processing tent with one other guard. He did not think either of them had shouted at him. Lance Corporal Vince said that Mahdi Al-Behadili had been wearing blacked out goggles, but was not zigzagged or walked at speed, nor was he banged into any walls. Lance Corporal Vince said that he did not think that Mahdi Al-Behadili had stumbled, unless it had been on the step at the entrance to the prisoner holding area.³⁷⁸³

3.515 Sergeant McKee recalled having escorted Mahdi Al-Behadili to the processing tent that night. He said that they had not walked him in a zigzag fashion, nor had they shouted at him or banged him along the way. However, Sergeant McKee did confirm that Mahdi Al-Behadili had been walked in a brisk manner.³⁷⁸⁴

³⁷⁷⁸ Staff Sergeant Gutcher (MOD004516); [122/33]

³⁷⁷⁹ Lance Corporal Bond [120/80/9-12]

³⁷⁸⁰ Lance Corporal Bond (ASI011534) [56]; [120/121-122]

³⁷⁸¹ Lance Corporal Vince (ASI009937) [70]

³⁷⁸² Sergeant McKee (ASI014660) [41]

³⁷⁸³ Lance Corporal Vince [119/35/20]-[36/3]

³⁷⁸⁴ Sergeant McKee [124/189-190]

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.516 Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was escorted to and from processing by Corporal Stuart Bowden³⁷⁸⁵ and Craftsman Matthew Morris.³⁷⁸⁶

3.517 Corporal Bowden remembered that he and Craftsman Morris had escorted Ibrahim Al-Ismaeeli to the tent for processing that night. He said that they had moved him at his own pace. He had not been zigzagged, nor did he fall into a wall. In his oral evidence to the Inquiry, Corporal Bowden recalled that, at some point, he had accidentally stepped on Ibrahim Al-Ismaeeli's injured foot. What Corporal Bowden said was this:

*"I don't know if I stumbled or mistimed my steps, and, you know, he was a bit quicker than I thought. But I just accidentally stood on his foot. There was no malice or intention in it whatsoever."*³⁷⁸⁷

3.518 Corporal Bowden said that Ibrahim Al-Ismaeeli had made a noise, as he reacted to the pain caused to his injured foot by the accident, so they had paused for a moment, while everybody regained their footing.³⁷⁸⁸

3.519 It was Craftsman Morris' recollection that Ibrahim Al-Ismaeeli had to be half carried, because he kept his injured foot raised off the ground. Craftsman Morris said that he had held Ibrahim Al-Ismaeeli, with one hand under his armpit and the other on his wrist, and escorted him at a "brisk walking pace." Craftsman Morris also remembered an incident that occurred on the way back from the processing tent, that he described in the following terms:

*"I remember nearly tripping. I can't remember him standing on his foot, but I do remember he almost made me trip or made me stumble because he was, like, holding his foot either forward or backwards."*³⁷⁸⁹

3.520 Lance Corporal Andrew Tongue also recalled an incident that occurred when he had escorted a detainee that night, in which he had accidentally trodden on the detainee's foot. He said that he had been taking care when escorting the detainee, but that he had caught his shoulder on the doorway into the prisoner holding area, which had caused him to stumble onto the detainee's foot. He said that he had been concerned that he might have hurt the detainee, but that the detainee had not made any sound.³⁷⁹⁰ In a statement that he made to the Royal Military Police³⁷⁹¹ ("RMP") Lance Corporal Tongue said that he had trodden on the detainee's right foot. In his oral evidence to the Inquiry, Lance Corporal Tongue said that he was confident he had trodden on the detainee's left foot.³⁷⁹² It is to be noted that the latter was Ibrahim Al-Ismaeeli's uninjured foot.

³⁷⁸⁵ Corporal Bowden (ASI010614) [49]

³⁷⁸⁶ Craftsman Morris (ASI010887) [58]

³⁷⁸⁷ Corporal Bowden [120/201/1-4]

³⁷⁸⁸ Corporal Bowden [120/200-202]; (ASI010612) [45]

³⁷⁸⁹ Craftsman Morris [133/183/12-15]; [133/186/5-8]; [133/187/21-24]; (ASI010884) [46]

³⁷⁹⁰ Lance Corporal Tongue [134/188-189]

³⁷⁹¹ Lance Corporal Tongue (MOD004542)

³⁷⁹² Lance Corporal Tongue [134/511-13]

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 3.521** Kadhim Abbas Lafta Al-Behadili (detainee 775) was escorted to and from processing by Corporal Daniel Marshall³⁷⁹³ and Corporal Jeremy Edgar.³⁷⁹⁴
- 3.522** Corporal Marshall recalled that he had taken Kadhim Al-Behadili to the tent for processing. They had walked at a steady pace, not at speed or in a zigzag manner. According to Corporal Marshall, Kadhim Al-Behadili was “guided to where he needed to go.”³⁷⁹⁵
- 3.523** Lance Corporal Edgar said that, at the same time as saying “stand up”, they had used reasonable force to lift Kadhim Al-Behadili from the chair upon which he was sitting and had then marched him quickly to the processing tent. Lance Corporal Edgar said that they had acted in this manner, so that the detainees knew who was in charge and in order to keep them compliant. He also said that the detainees were marched quickly to keep them disorientated. However, Lance Corporal Edgar denied that the detainee had banged into anything on the way to the tent.³⁷⁹⁶
- 3.524** In his oral evidence to the Inquiry, Corporal John Everett described how he had witnessed an incident that night in which a detainee, who he now believes to have been Kadhim Al-Behadili, refused to walk from the cells to the processing tent. The detainee made himself into a dead weight and therefore had to be moved by two soldiers holding him under the armpits at chest height. Corporal Everett said that he saw one of the guards stumble into a wall, causing all three to fall forwards. Corporal Everett did not think they hit the ground, but he was unsure whether the detainee had banged into the wall as well.³⁷⁹⁷ He confirmed that this was how he now remembered the incident, although in his various Royal Military Police (“RMP”) statements and his written Inquiry statement he had implied that the detainee did hit the wall.³⁷⁹⁸

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.525** Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) was escorted to and from processing by Lance Corporal Raymond Edwards³⁷⁹⁹ and Lance Corporal Richard Garner.³⁸⁰⁰
- 3.526** Lance Corporal Edwards explained that two guards would be selected to take each detainee to the tent. He said that nothing was said to the detainees, other than to tell them to “stand up”. According to Lance Corporal Edwards, detainees were taken to the processing tent at a swift pace.³⁸⁰¹
- 3.527** For his part, Lance Corporal Garner could not actually recall having escorted Abbas Al-Hameedawi to the processing tent that night, but stated that the detainees were escorted to the tent in the same way as they were escorted from the vehicles to the prisoner holding

³⁷⁹³ Corporal Marshall (ASI011088) [57]

³⁷⁹⁴ Corporal Edgar (ASI020377) [54]

³⁷⁹⁵ Corporal Marshall [130/31/25]-[32/2]

³⁷⁹⁶ Lance Corporal Edgar [128/46-48]

³⁷⁹⁷ Corporal Everett [117/144-151]; (ASI009400) [142]-[143]

³⁷⁹⁸ Corporal Everett (ASI009411) [91]; [117/191]; NB – in their written Closing Submissions, those representing the Iraqi Core Participants suggest that Corporal Everett may have misidentified the detainee in question, because he had previously described the detainee as being “quite large” and that therefore it is more likely to have been either Abbas Abd Abdulridha Al-Hameedawi (detainee 776), Hussein Fadhil Abbas Al-Behadili (detainee 778) or Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (494) [1645]

³⁷⁹⁹ Lance Corporal Edwards (ASI011785) [59]

³⁸⁰⁰ Lance Corporal Garner (ASI009441) [23]

³⁸⁰¹ Lance Corporal Edwards [129/148-150]

area. According to Lance Corporal Garner, the detainees were moved at a normal pace and were not pushed into walls or assaulted while being moved.³⁸⁰²

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.528 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) was escorted to and from processing by Corporal Michael Taylor³⁸⁰³ and Lance Corporal Andrew Tongue.³⁸⁰⁴

3.529 Corporal M. Taylor stated that Ahmed Al-Furaiji was told to stand in Arabic, and then helped up. The chair was removed and he was walked to the processing tent. According to Corporal M. Taylor, Ahmed Al-Furaiji was moved to the tent in the same manner and at the same speed (a fast walking pace) as when he had been moved to the prisoner holding area initially. Corporal M. Taylor said that Ahmed Al-Furaiji had been moved at that pace because they were told to do it like that.³⁸⁰⁵

3.530 For his part, Lance Corporal Tongue said that each detainee had been escorted at normal walking pace, although he was a fast walker and it might have seemed fast to the detainee, who was blindfolded and handcuffed at the time.³⁸⁰⁶ Lance Corporal Tongue said that he had not shouted at the detainee or banged him into any walls whilst escorting him.³⁸⁰⁷

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.531 Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) was escorted to and from processing by Lance Corporal Andrew Tongue³⁸⁰⁸ and Corporal Jeremy Edgar.³⁸⁰⁹

3.532 Corporal Edgar recalled that Atiyah Al-Baidhani struggled a little bit, either on the way to or coming back from processing. He said that Atiyah Al-Baidhani had locked his body and so they had had to use a little more physical force in order to move him. According to Corporal Edgar, Atiyah Baidhani had resisted, by pulling away from them. Although he could not remember the precise details, Corporal Edgar said that he would have got him up from the chair, seized him under the arm and walked him to the tent at a pace akin to a jog.³⁸¹⁰

3.533 As I have already stated, Lance Corporal Tongue said that each detainee had been escorted at normal walking pace, although he was a fast walker and it might have seemed fast to the detainee, who was blindfolded and handcuffed at the time. Lance Corporal Tongue said that he had not shouted at the detainee or banged him into any walls whilst escorting him.³⁸¹¹

Hussein Gubari Ali Al-Lami (detainee 780)

3.534 Hussein Gubari Ali Al-Lami (detainee 780) was escorted to and from processing by Corporal Andrew Nicholls³⁸¹² and Corporal Daniel Marshall.³⁸¹³

³⁸⁰² Lance Corporal Garner [131/143]

³⁸⁰³ Corporal M. Taylor (ASI018110) [52]

³⁸⁰⁴ Lance Corporal Tongue (ASI015571) [25]

³⁸⁰⁵ Corporal M. Taylor [129/54/19]

³⁸⁰⁶ Lance Corporal Tongue [134/141/7-16]

³⁸⁰⁷ Lance Corporal Tongue [134/138/21]–[142/18]; [134/170-171]

³⁸⁰⁸ Lance Corporal Tongue (ASI015571) [25]

³⁸⁰⁹ Corporal Edgar (ASI020377) [54]

³⁸¹⁰ Corporal Edgar [128/51-55]

³⁸¹¹ Lance Corporal Tongue [134/138/21]–[142/18]; [134/170-171]

³⁸¹² Corporal Nicholls (ASI011455) [48]

³⁸¹³ Corporal Marshall (ASI011088) [60]

- 3.535** Corporal Marshall said that he had taken Hussein Al-Lami to the tent for processing. He confirmed that the escorting of a detainee to be processed and to be tactically questioned was generally done in exactly the same way. There was no zigzagging or banging into walls.³⁸¹⁴
- 3.536** For his part, Corporal Nicholls said that Hussein Al-Lami had been escorted at a quick pace, the same as that used when they had first arrived. Corporal Nicholls described how one guard would go into the cubicle in the prisoner holding area, put his hand under the detainee's armpit, lift him up to indicate he needed to stand and tell him to stand in Arabic. He said that the chair would then be moved out of the way and the detainee would be turned round and escorted out of the cubicle. Both guards would then take hold of the detainee and escort him to the processing tent. Corporal Nicholls said that, in Hussein Al-Lami's case this had all gone ahead without incident and that Hussein Al-Lami had been completely compliant throughout.³⁸¹⁵

The Detainees' accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

- 3.537** In his 2013 written Inquiry statement, Hamzah Joudah Faraj Almalje (detainee 772) alleged that he had been picked up under the armpits by two guards without warning and then taken to his first "interrogation". He claimed that he had been lifted off the ground at the time³⁸¹⁶ and that he had been carried out of the room afterwards in the same way as he had been taken there.³⁸¹⁷

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

- 3.538** In his 2010 first written Inquiry statement to the Inquiry, Mahdi Jasim Abdullah Al-Behadili (detainee 773) confirmed that he had not been assaulted in any way by the soldiers who had escorted him to processing³⁸¹⁸ or to tactical questioning³⁸¹⁹ or back from tactical questioning.³⁸²⁰
- 3.539** In his second written Inquiry statement, made in January 2013, Mahdi Al-Behadili gave the following account of how he had been escorted to processing:

*"I was taken out of the room by two soldiers who lifted me up from the chair, their hands under my arms. I was lifted up and, as the soldiers were tall, my feet did not really touch the floor. I was carried with my feet off the ground. The soldiers were rough with me but I was not hit against the wall or struck by either of them."*³⁸²¹

- 3.540** Mahdi Al-Behadili confirmed that he had not been hit or ill-treated on the way back from processing³⁸²² but claimed that he had later been half-carried, half-dragged back to the same "interrogation" tent.³⁸²³

³⁸¹⁴ Corporal Marshall [130/37-41]

³⁸¹⁵ Corporal Nicholls [124/68-69]

³⁸¹⁶ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000687) [33]

³⁸¹⁷ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000689) [38]

³⁸¹⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001117) [44]

³⁸¹⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001118) [54]

³⁸²⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [60]

³⁸²¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000783) [31]

³⁸²² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000785-86) [40]

³⁸²³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000787) [44]

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.541 In his 2008 Judicial Review statement, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) claimed that he had been dragged to a tent from his cubicle in the prisoner holding area, because he could not walk.³⁸²⁴ In his first written Inquiry statement, dated 26 July 2010, he confirmed that he had been dragged to the tent on the way to his “*first interrogation*.”³⁸²⁵

3.542 In his second written Inquiry statement, made on 23 November 2012, Ibrahim Al-Ismaeeli said that two large soldiers had stood either side of him holding his arms and bending his head forward. He said that he had his right leg (i.e. the leg with the injured foot) stretched out in front of him and that he had been trying to lift his foot off the ground.³⁸²⁶

3.543 In his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli said this:

“I went back [to the interrogation room] rather in pain, because they would take me there running and bring me back running.”³⁸²⁷

3.544 During his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli was asked about the evidence of the two soldiers who recalled having accidentally trodden on a detainee’s foot. In response, Ibrahim Al-Ismaeeli said that he did remember that his foot had been hurt on more than one occasion and went on to say that he was sure it had not been accidental, as follows:

“They were two days of suffering. It wasn’t accidental. How can it be accidental? How can I be sitting like this and one would hit me and then we say this was accidental? How come? It could be accidental if it was all dark or somebody very old passing by. Not a well-trained and skilled soldier hitting somebody and then saying ‘I apologise’.”³⁸²⁸

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.545 In his Judicial Review witness statement, made in October 2008, Kadhim Abbas Lafta Al-Behadili (detainee 775) alleged that he had been “*lifted*” off his chair and taken to a tent. Along the way he had been “*pulled along*” and “*knocked into walls*.”³⁸²⁹ On the way back he had been “*walked*” along, but had been “*constantly thrown against walls*.” He claimed that, once back in the cubicle in the prisoner holding area, he had been violently thrown against the wall and that hit his head twice as a result.³⁸³⁰ He went on to allege that he had then been pulled to his feet again and that the soldiers had spun him around about four times in order to disorientate him.³⁸³¹

3.546 In his written Inquiry statement, made in January 2013, Kadhim Al-Behadili said that, at some point, he had been taken off his chair in the cubicle and:

“They ran with me for a while and I lifted my feet as I had done when I was taken prisoner to prevent being dragged along the floor. They were weaving left and right as they ran.”³⁸³²

³⁸²⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013954) [19]

³⁸²⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001070) [52]

³⁸²⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (PIL000434) [23]

³⁸²⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/84/22-23]

³⁸²⁸ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/64/19-25]

³⁸²⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD006637) [11]

³⁸³⁰ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD006638) [15]-[16]

³⁸³¹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (MOD006639) [19]

³⁸³² Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000726) [42]

3.547 In his oral evidence to the Inquiry, Kadhim Al-Behadili gave this general description of how the detainees were handled by the guards at Camp Abu Naji during 14/15 May 2004:

*"...every now and then, they would take you. They would take you and make you turn around until you are dizzy. They would grab you and then make you turn around."*³⁸³³

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.548 In his 2008 Judicial Review statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) said this:

*"Suddenly I was dragged up out of the chair which fell over. This was a shock to me. I was dragged out of the cubicle and slapped on the back of the head as I was taken..."*³⁸³⁴

3.549 In his first written Inquiry statement, made in 2010, Abbas Al-Hameedawi explained that:

*"When being moved from one place to another by the soldiers, they always moved quickly, I could not keep up with them and that movement drained all the energy from me."*³⁸³⁵

3.550 In his oral evidence to the Inquiry, Abbas Al-Hameedawi said that the guards had taken him to the tent in a "hurry."³⁸³⁶ He went on to say this:

*"It was – it was dragging and then they slapped and then they – it's like dragging me, if you wanted to put it that way, if you wanted to catch something and it's not easy to catch, so you just hit and catch in the same time. So I – put it that way, it is a hit and catch at the same time and a snatch as well, and then he starts saying 'Go, go, go, go.'"*³⁸³⁷

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.551 In his first written Inquiry statement Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said this:

*"I was taken from the cell to the interrogation tent on only one occasion. The soldiers that escorted me to and from the tent handled me roughly [but] did not really harm me at any stage. They walked me in zig-zags to the interrogation tent."*³⁸³⁸

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.552 In his Judicial Review statements, Hussein Fadhil Abbas Al-Behadili (detainee 778) said that he had been lifted up by his arms and banged against the walls as he was pushed along whilst being taken to and from processing.³⁸³⁹

3.553 In his first written Inquiry statement, Hussein Al-Behadili confirmed this allegation and said that *"...after a period of time on the chair, two soldiers came, stood me up, and drew the chair*

³⁸³³ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/98/17-20]

³⁸³⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000006) [16]

³⁸³⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004770) [39]

³⁸³⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/17/5]

³⁸³⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/46/16-22]

³⁸³⁸ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000882) [48]

³⁸³⁹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006557) [26]; (MOD006698) [21]; (MOD006699) [23]

out from behind me. They dragged me out of the cubicle, and took me, hitting me against the walls as they did so.”³⁸⁴⁰ He said that he had been treated in the same manner when he was taken to the tent for a second time, as follows:

*“Just before my second interrogation I heard the soldier come rushing in, they were shouting ‘go, go, go’. They made me stand up and removed the chair, I was taken again and the same thing happened during this journey with being hit against the walls.”*³⁸⁴¹

3.554 In his second written Inquiry statement, Hussein Al-Behadili described how he had been “dragged and bashed against the walls.” He claimed that this had occurred every time he was taken away from or brought back to the prisoner holding area. He said that it appeared to him that the guards would take different routes when escorting him.³⁸⁴²

3.555 In his oral evidence to the Inquiry, Hussein Al-Behadili elaborated further, in response to Counsel’s questions, as follows:

“Q. Was this just a slight contact or was it hard?”

A. It was hard and they were shouting at the same time, shouts I couldn’t understand.

Q. You have described being moved in a zigzag, not in a straight line. Is that what happened?”

*A. Yes. They were forcing me to walk in a zigzag manner.”*³⁸⁴³

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.556 I have already dealt with the allegations made by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779), with regard to how he was treated when being escorted in the prisoner handling compound in that part of this Report that deals with the processing of the detainees at Camp Abu Naji on 14/15 May 2004.³⁸⁴⁴ However, it should be noted that he repeated the allegations in his oral evidence to the Inquiry.³⁸⁴⁵

Hussein Gubari Ali Al-Lami (detainee 780)

3.557 An allegation with regard to how he had been escorted in the prisoner handling compound, made by Hussein Gubari Ali Al-Lami (detainee 780) in his Judicial Review statement, has also already been dealt with in that part of this Report that deals with the processing of the detainees that night.³⁸⁴⁶ That particular allegation was as follows:

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

³⁸⁴⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001038) [30]

³⁸⁴¹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001040) [37]

³⁸⁴² Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000365-66) [23]

³⁸⁴³ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/48/11-16]

³⁸⁴⁴ See paras 3.245–3.246

³⁸⁴⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/94]

³⁸⁴⁶ See paras 3.245–3.246

3.558 However, Hussein Al-Lami also alleged that he had been “*dragged under my armpits to a tent*”³⁸⁴⁷ and that at the end of an interrogation he had been “*...spun around 3 or 4 times to disorientate [him]*” before he had been taken back to his cell in the prisoner holding area.³⁸⁴⁸

Conclusions

3.559 As stated earlier in this Report,³⁸⁴⁹ it is clear that the detainees were escorted into the prisoner holding area in a robust and firm manner when they first arrived at Camp Abu Naji on the 14 May 2004. I am satisfied that the same robust and firm manner was also used when the detainees were escorted to and from the processing tent later that night. I am equally satisfied that the escorting guards were well aware that they were not permitted to assault or ill-treat the detainees in any way while carrying out their duties. Having regard to the totality of the evidence, I am quite sure that none of the detainees were deliberately zigzagged or spun around in a manner that was intended to disorientate them. I am equally sure that none of the detainees had his head deliberately banged against any wall at any stage during 14/15 May 2004.

3.560 I now turn to consider the specific allegations made by each of the detainees about how they were treated when being escorted to and from the processing tent at Camp Abu Naji on the 14/15 May 2004.

Specific allegations by Hamzah Joudah Faraj Almalje (detainee 772)

3.561 It is unclear which soldiers escorted Hamzah Joudah Faraj Almalje (detainee 772) to be processed and tactically questioned. However, I am satisfied that Hamzah Almalje would have been escorted in a firm and robust manner. It is also possible that he was pulled along to some extent and/or half-carried, in order to overcome resistance on his part. Thus, there was evidence that, on some occasions, detainees would have to be “*held up and more carried*” when they refused to move.³⁸⁵⁰

Specific allegation by Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.562 I accept that Mahdi Jasim Abdullah Al-Behadili’s (detainee 773) description of how he had been escorted in the prisoner handling compound was broadly accurate, although he was not actually carried and he was not treated roughly. He was moved in a firm and robust manner and was not subjected to any deliberate ill-treatment. To the extent that he suggested otherwise, he exaggerated what occurred, possibly as a result of having been blindfolded and handcuffed at the time.

Specific allegations by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.563 I am satisfied that Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) was escorted at a brisk pace, although the soldiers did not actually run with him. Ibrahim Al-Ismaeeli described how he had put one leg out in front of him as he tried to lift his injured foot off the ground. Craftsman Morris also recalled that Ibrahim Al-Ismaeeli had kept his injured foot off the ground and that he had had to be half-carried as a result. I therefore accept Ibrahim Al-Ismaeeli’s evidence that he felt as if he was being “*dragged*”, a sensation to which his blindfolded and handcuffed

³⁸⁴⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000410) [54]

³⁸⁴⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI004811) [61]; [11/15]

³⁸⁴⁹ See para 3.82

³⁸⁵⁰ Corporal Everett [117/136/19-22]

state no doubt contributed. However, I am satisfied that this was only done because of the way in which he was holding out his leg and the resulting difficulty the escorts had in moving him. I have no doubt that the extent to which Ibrahim Al-Ismaeeli was half-carried or “*dragged*” while being escorted that night was entirely a matter of expediency and not an act of deliberate ill-treatment.

3.564 Both Lance Corporal Andrew Tongue and Corporal Stuart Bowden recalled having accidentally trodden on a detainee’s foot whilst escorting him in the prisoner handling compound at Camp Abu Naji on 14/15 May 2004. Corporal Bowden actually remembered that he had accidentally trodden on Ibrahim Al-Ismaeeli’s injured foot at some point while he escorted him to and from being processed. If the detainee on whose foot Lance Corporal Tongue trod was also Ibrahim Al-Ismaeeli, it must have been occurred when Lance Corporal Tongue escorted him later to his tactical questioning session, because he did not escort him to or from processing like Corporal Bowden.

3.565 In any event, I am sure that the incident was entirely accidental in both cases and that there was no deliberate intention on the part of either soldier to ill-treat or deliberately assault the detainee in question. Ibrahim Al-Ismaeeli made no complaint, in either of his written Inquiry statements, that a soldier had deliberately trodden on his injured foot while escorting him in the prisoner handling compound at Camp Abu Naji that night, although he did make such an allegation when asked about the soldiers’ accounts during his oral evidence to the Inquiry.³⁸⁵¹ The fact that he therefore seems to have had no real independent recollection of any such incident strongly suggests that he either did not notice it or that he did not regard it as deliberate at the time.

Specific allegations by Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.566 Kadhim Abbas Lafta Al-Behadili (detainee 775) alleged that the guards had banged him into walls and had weaved left and right as they ran with him. He said that he had to take his feet off the ground to avoid being dragged.

3.567 Both Lance Corporal Jeremy Edgar and Corporal Daniel Marshall, who escorted Kadhim Al-Behadili to and from processing at Camp Abu Naji on 14/15 May 2004, remembered that he had been escorted without incident. I am satisfied that he was moved at a quick pace and in a firm and robust manner. However, he was not taken to the processing tent at a run, although it may have seemed so to Kadhim Al-Behadili in his handcuffed and blindfolded state. I am also satisfied that Kadhim Al-Behadili was not deliberately knocked into walls or moved in a zigzag manner.

3.568 Corporal John Everett recalled an incident in which one of the detainees, who he believed to be Kadhim Al-Behadili, had been accidentally banged against a wall. He recalled that this had been because the detainee in question had refused to walk and that a certain amount of force had therefore been required to move him. Neither Lance Corporal Edgar nor Corporal Marshall recalled this having happened that night. However, the incident might have occurred when they were not acting as Kadhim Al-Behadili’s escorts, such as when he had been taken to be tactically questioned. In any event, I accept Corporal Everett’s evidence and am satisfied that Kadhim Al-Behadili may have accidentally banged against a wall as a result of the difficulty the guards had in moving him. If this incident did occur, I am entirely satisfied that this was accidental, as explained by Corporal Everett, and that there was no intention to ill-treat or to cause Kadhim Al-Behadili any injury or harm.

³⁸⁵¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/63-64]

Specific allegations by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.569** I am entirely satisfied that Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) would have been moved in a robust and firm manner. I do not accept that he was dragged, but I am satisfied that he would have been moved quickly. I also accept that, in his blindfolded and handcuffed state, it might well have felt to Abbas Al-Hameedawi that he was being “dragged” in a hurry.
- 3.570** I do not accept that Abbas Al-Hameedawi was slapped at any point as he was taken from the chair to the tent. This detail was a deliberately false embellishment, intended to lend support to his allegation of having been ill-treated.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

- 3.571** I accept the evidence of Corporal Michael Taylor and Lance Corporal Andrew Tongue who recalled that they had escorted Ahmed Jabbar Hammood Al-Furaiji (detainee 777) in an appropriate manner. Ahmed Al-Furaiji was not deliberately walked in a zigzag manner, although I accept that, in his handcuffed and blindfolded state, he may have felt disorientated by the escorting process.

Specific allegations by Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.572** Hussein Fadhil Abbas Al-Behadili (detainee 778) alleged that he had been made to move in a zigzag manner. He claimed to have been dragged along and deliberately banged into the walls. I have no doubt that, if he did bang against a wall at any point, it was accidental and not a deliberate act of ill-treatment. He was not taken to the tent in a zigzag manner, nor was he dragged there, although I accept that it is very likely that he felt disorientated while being escorted, because he was handcuffed and blindfolded at the time and thus he may have felt as if he was being dragged or taken in a zigzag manner. Furthermore, I am satisfied that Hussein Al-Behadili would have been escorted in the same way as the other detainees, namely in a firm and robust manner and at a quick and purposeful pace.

Specific allegations by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 3.573** As I have indicated above, my conclusions with regard to the way in which Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) was escorted in the prisoner handling compound that night, have already been dealt with in that part of this Report that deals with the processing of the detainees at Camp Abu Naji on 14/15 May 2004.³⁸⁵²

Hussein Gubari Ali Al-Lami (detainee 780)

- 3.574** As I have indicated above, my conclusions with regard to the way in which Hussein Gubari Ali Al-Lami (detainee 780) was escorted in the prisoner handling compound that night, have already been dealt with in that part of this Report that deals with the processing of the detainees. So far as concerns his additional allegations of having been spun around to disorientate him and dragged to the processing tent, I accept that he may have been disorientated to some extent and that he felt as if he were being dragged because he was handcuffed and blindfolded

³⁸⁵² See paras 3.245–3.246

at the time. However, I am quite sure that he was not deliberately spun round, nor was he actually dragged.

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

Military evidence

3.575 In his oral evidence to the Inquiry, Staff Sergeant David Gutcher said that there was a general rule that the detainees were not permitted to talk to one another whilst they were detained in the prisoner handling compound.³⁸⁵³

3.576 In his oral evidence to the Inquiry, Lance Corporal David Bond suggested the reason that the detainees were prevented from talking to one another was:

*“So that they couldn’t conclude any story between each other why they were in the area of the contact. For intelligence reasons, really, just to remain silent and so that they couldn’t – or plans to escape, or anything like that.”*³⁸⁵⁴

3.577 In his oral evidence, Captain Duncan Allen suggested that the rationale behind preventing the detainees from talking was linked to the idea of separating the detainees in order to maintain the shock of capture. Captain Allen put it in these terms:

*“I think it’s – for my – my interpretation was to – to conduct an efficient process in order to move to the TQ’ing, so that there was less time for the detainees to think about what they had done and either fabricate a story or collude with any others that they were detained with by understanding that they were there, or seeing them. So the important thing is an efficient process and separating the detainees in – primarily.”*³⁸⁵⁵

3.578 Lance Corporal Nicholas Collins also explained that after their arrival, detainees would be kept in a state of shock in order to prevent them from escaping and to keep them disorientated. He recalled that not allowing the detainees to speak to one another would be part of that process and would ensure that the detainees did not “collaborate a story.”³⁸⁵⁶

3.579 In his oral evidence, Staff Sergeant Gutcher said that the no-talking policy would be enforced by the prisoner handling team who would tell the detainees to “shut up” if they did try to talk.³⁸⁵⁷ The guards who gave evidence to the Inquiry confirmed that they were aware that the detainees were prohibited from communicating with one another and that the guards were responsible for enforcing this order.³⁸⁵⁸

3.580 Some of the guards recalled that they had been given specific instructions on 14 May 2004 to ensure that the detainees did not communicate. For his part, Lance Corporal David Bond remembered that the prisoner handling guards were given a briefing in which they were

³⁸⁵³ Staff Sergeant Gutcher [122/89-90]

³⁸⁵⁴ Lance Corporal Bond [120/33/9-13]

³⁸⁵⁵ Captain Allen [136/190/8-15]

³⁸⁵⁶ Lance Corporal Collins [128/91/13]; [128/90-91]; NB – see also the evidence of Craftsman Johnston who accepted that part of the reason for not allowing the detainees to talk was to keep them in a sense of isolation [123/167/2-6]

³⁸⁵⁷ Staff Sergeant Gutcher [122/89-91]

³⁸⁵⁸ See, for example, Sergeant McKee [124/225]

instructed to ensure that the detainees remained in their seats and did not talk to one another.³⁸⁵⁹ Lance Corporal Richard Garner also recalled that the guards were given a briefing in which they were told that the detainees were not permitted to talk to one another.³⁸⁶⁰

3.581 Staff Sergeant Gutcher did not actually recall any talking between the detainees having taken place on the night of 14/15 May 2004.³⁸⁶¹ There were also a number of other witnesses who could not remember the detainees having talked to one another that night.³⁸⁶²

3.582 Other witnesses did recall some attempts by the detainees to communicate with each other. Thus, Lance Corporal Andrew Tongue said that he would use the Arabic word “*ishkut*” if he wanted a detainee to be quiet.³⁸⁶³ Many witnesses, including Corporal Andrew Nicholls, recalled that the detainees would be told to be quiet by using the appropriate Arabic word if necessary.³⁸⁶⁴

3.583 Others recalled that the guards told the detainees to be quiet by using English words. Lance Corporal Bond was able to recall that some of the detainees spoke in Arabic whilst they were in cubicles. He said that the soldiers had answered them in English and told them to “*shush and stop talking, be quiet.*”³⁸⁶⁵ Craftsman Jason Marks also remembered that he had told the detainees to be quiet in English.³⁸⁶⁶

3.584 Staff Sergeant Gutcher told me that the order to maintain silence would be enforced by word of mouth. He denied that the guards had used any other means to quieten the detainees, such as hitting them or shouting at them.³⁸⁶⁷ Sergeant Martin Lane said that he could not actually remember, but he did consider it possible that the guards would shout when reinforcing an order to maintain silence. However, Sergeant Lane confirmed that no physical violence was used to enforce the order.³⁸⁶⁸

3.585 For his part, Lance Corporal Bond said that physical action was not permissible to enforce the order of silence.³⁸⁶⁹ Corporal Stuart Bowden described using a raised voice to enforce this order, but said that he did not swear at the detainees. He also said that, in some circumstances, he would place his hand on a detainee’s shoulder and gently tap it at the same time as telling him to be quiet. He denied that he, or any other guard, had ever hit any of the detainees or used any form of physical force to enforce the order. In his oral evidence to the Inquiry, Corporal Bowden recalled that there had been one detainee who had to be repeatedly told to be quiet that night. He accepted that this had been frustrating but said that he did not get angry as a result.³⁸⁷⁰

3.586 In his oral evidence to the Inquiry, Lance Corporal David Errington said that he would stand behind a detainee when he told him to be quiet. He said would tell the detainees to be quiet

³⁸⁵⁹ Lance Corporal Bond [120/18-19]

³⁸⁶⁰ Lance Corporal Garner (ASI009440) [22]

³⁸⁶¹ Staff Sergeant Gutcher [122/89-91]

³⁸⁶² See, for example, Private Grist [131/69]; Corporal Nicholls [124/40/15]-[41/2]

³⁸⁶³ Lance Corporal Tongue (ASI015579) [57]

³⁸⁶⁴ Corporal Nicholls [40/15-22]; NB – see also Sergeant Lane [136/84/10-16]; Lance Corporal Edwards [129/167-168]; Corporal Randall (ASI009757) [53]

³⁸⁶⁵ Lance Corporal Bond [120/72-74]; [120/73/25]

³⁸⁶⁶ Craftsman Marks [126/19]

³⁸⁶⁷ Staff Sergeant Gutcher [122/89-91]

³⁸⁶⁸ Sergeant Lane [136/99-100]

³⁸⁶⁹ Lance Corporal Bond [120/33/14-19]

³⁸⁷⁰ Corporal Bowden [120/185-189]

in a loud voice, but not by shouting at them. Lance Corporal Errington said that he had not made any form of physical contact with the detainees in order to enforce silence.³⁸⁷¹

3.587 However, in his oral evidence, Lance Corporal Nicholas Collins suggested that if a detainee disobeyed an order to be quiet it would be permissible to use some physical force in order to reinforce the command, for example by pushing down on the detainee's shoulders whilst telling him to be quiet.³⁸⁷²

The Detainees' accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

3.588 Hamzah Joudah Faraj Almalje (detainee 772) claimed that a closed plastic water bottle had been put to his mouth when he tried to speak to another detainee. He understood that gesture to be an instruction to tell him to be quiet.³⁸⁷³ In the course of his oral evidence to the Inquiry, Hamzah Almalje said this:

*"...then somebody came and brought an empty bottle and he push it through my mouth. So I understand that gesture to say I need to shut up and not talk again."*³⁸⁷⁴

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.589 Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) alleged that, when he was moaning in pain, some of the guards swore at him, shouting things like "*Fuck you*" and "*Shut up.*" He also claimed that, in response to his moaning, the guards hit him in the mouth.³⁸⁷⁵

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.590 Kadhim Abbas Lafta Al-Behadili (detainee 775) claimed that the soldiers would shout words such as "*fuck you*" and "*shut up*" many times, whilst he was seated in the cubicle in the prisoner holding area. He said that the soldiers spoke very loudly when speaking to one another and that they sounded angry. He said that he had found the swearing directed at him to be very humiliating.³⁸⁷⁶

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.591 In his Judicial Review statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) claimed that, whilst he was seated in the cubicle in the prisoner holding area, a soldier had slapped him when he shouted out for "*Haydar*", i.e. Haydar Hatar Mtashar Khayban Shamkhi Al-Lami (deceased 2).³⁸⁷⁷ He does not appear to have repeated this particular allegation in any of his later Inquiry statements and did not appear to maintain this particular allegation. Moreover, in his oral evidence to the Inquiry, Abbas Al-Hameedawi said that he could not remember if he had called out for Haydar Al-Lami, while he was in the Prisoner Holding Area at Camp Abu Naji on the night of 14/15 May 2004. He went on to say that he had not been

³⁸⁷¹ Lance Corporal Errington [125/27-28]

³⁸⁷² Lance Corporal Collins [128/91-92]

³⁸⁷³ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000686-87) [30]; [19/74]; [20/76/22-25]

³⁸⁷⁴ Hamzah Joudah Faraj Almalje (detainee 772) [20/17/17-20]

³⁸⁷⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001070) [51]; (MOD032734-35)

³⁸⁷⁶ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000726) [41]

³⁸⁷⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000006) [17]

beaten at Camp Abu Naji that night, except on once occasion when a soldier had hit him with a water bottle when he asked for water.

Allegation 2: Conclusions

3.592 I accept that the guards were instructed to prevent the detainees from talking to one another whilst they were in the prisoner handling area. The main reason for this seems to have been that given by Captain Duncan Allen, namely that it was felt necessary to ensure that the detainees were not given an opportunity to discuss the details of their detention with one another. Another possible reason, and certainly a consequence, was that enforcing silence amongst the detainees helped to maintain the shock of capture by keeping them in a state of isolation.

3.593 It is clear that the guards who were on duty on the night of 14/15 May 2004 believed it was permissible to stop the detainees from talking with one another by telling them to be quiet or to “shut up”, in either English or Arabic. It seems to me very likely that, when doing so, the guards would often use a somewhat raised voice and, on occasion, they would shout in order to reinforce the instruction to keep quiet.

3.594 It is less clear whether physical contact was ever used to emphasise or enforce the order to maintain silence. Although the majority of witnesses denied using or seeing any form of physical contact, I accept the evidence of Corporal Stuart Bowden and Lance Corporal Nicholas Collins that the order to remain silent was emphasised or enforced at times by pressure on the detainee’s shoulder. However, I am completely satisfied that, when this was done, it did not involve the detainee in question being subjected to any significant physical violence.

3.595 A consequence of the fact that the detainees were prevented from talking to one another was that it could be difficult for them to make it clear that they were actually asking for such things as water, medical treatment or to go to the lavatory. Corporal Nicholls explained that most of the detainees would speak English in order to get the attention of the guards for such purposes. However, he accepted that if they did not do so, they might not have been able to make their needs known to the guards, as is apparent from the following exchanges during his oral evidence to the Inquiry:

“Q. So if a detainee started to talk, he would be told to stop?”

A. It depends what he was trying to say. If he was calling us, saying ‘Mister, Mister’, then, like, he’s talking to us, not to another detainee.

Q. But if a detainee was talking in Arabic, you wouldn’t know what he was saying, would you?

A. All the detainees, when they got our attention, no matter which day it was, called ‘Mister’.

Q. Were they told that they could shout ‘Mister’ to get your attention?

A. No, it was just a general thing.

Q. So if a detainee did not know to call ‘Mister’, there would be no way of getting your attention?

*A. Possibly not, no.*³⁸⁷⁸

3.596 For his part, Craftsman Jason Marks believed that, if a detainee did have a specific request, he would have been able to communicate that fact by means of gesticulation. However, he also accepted that there could still have been a failure in communication, as follows:

“Q. So your evidence just a moment ago that they could gesticulate, was that a sort of a guess, or an assumption?”

A. I have a vague memory of that happening, but it’s –it’s very vague.

Q. It is certainly possible, isn’t it, staff sergeant, that a detainee could ask to go to the toilet, he could hear the response “be quiet”, and understand – whether mistakenly or not – that he wasn’t allowed to go?

*A. That’s possible.*³⁸⁷⁹

3.597 As it seems to me, not all the guards drew any distinction between the instruction that they were not to allow the detainees to communicate with one another and an instruction that detainees were not to be allowed to speak at all. Thus, in his written Inquiry statement to the Inquiry, Corporal James Randall said that he had understood the instruction to be that the detainees were not allowed to talk at all, although he had assumed that the reasoning behind the instruction was to prevent the detainees from communicating with one another.³⁸⁸⁰

3.598 Lance Corporal David Errington recalled an instruction not to allow the detainees to communicate with one another. However, in his oral evidence to the Inquiry, he explained that, in practical terms, this meant not allowing the detainees to speak at all. Accordingly, when Lance Corporal Errington heard a detainee make any sound at all, including when praying to himself, he would tell him to be quiet.³⁸⁸¹ Lance Corporal Christopher Vince also told me that he had been instructed to keep the detainees quiet and that he would not necessarily have been able to tell the difference between a detainee who was trying to communicate with others, and a detainee who was actually praying to himself.³⁸⁸²

3.599 There were no interpreters present in the prisoner holding area as a matter of course, although interpreters were present during processing and tactical questioning. Although the services of an interpreter could be provided in the prisoner holding area when needed, it appears that in practice a detainee had to rely on his own ability to use some English, or perhaps gestures, to make the guards aware that he had a request to make. It is likely that, in the event, some genuine requests for assistance were misconstrued as attempts to communicate with other detainees and thus were simply silenced, rather than responded to in an appropriate way.

Specific allegation by Hamzah Joudah Faraj Almalje (detainee 772)

3.600 Although it is possible that Hamzah Joudah Faraj Almalje (detainee 772) had a plastic water bottle put to his mouth when he tried to speak to another detainee, I consider that it is unlikely that this was an instruction to him to be quiet. It seems to me to be much more likely that Hamzah Almalje was actually being offered a drink of water, particularly given the fact

³⁸⁷⁸ Corporal Nicholls [124/98/1-15]

³⁸⁷⁹ Craftsman Marks [126/60/14-23]

³⁸⁸⁰ Corporal Randall (ASI009757) [53]

³⁸⁸¹ Lance Corporal Errington [125/27-28]

³⁸⁸² Lance Corporal Vince [119/47-48]

that Hamzah Almalje did not recall this gesture being accompanied by any verbal instruction to keep quiet.

Specific allegations by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.601 I accept Ibrahim Gattan Hasan Al-Ismaeeli's (detainee 774) evidence that some of the guards told him to "*Shut up*". I also accept that this may have been in response to a situation in which Ibrahim Al-Ismaeeli was actually moaning in pain, given that some of the soldiers believed that it was their duty to maintain silence, in order to ensure that the detainees did not attempt to talk or communicate. It may well be the case that Ibrahim Al-Ismaeeli was also sworn at on occasion, in conjunction with an instruction that he was to remain quiet.

3.602 So far as concerns Ibrahim Al-Ismaeeli's (detainee 774) allegation that he was physically assaulted by being hit in the mouth, I am satisfied that this particular allegation is untrue and was a lie. I am quite sure that none of the guards reinforced the order to be quiet by hitting Ibrahim Al-Ismaeeli in this way or at all. If any such incident had occurred, I am satisfied that it would have been noticed and reported.

Specific allegation by Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.603 I accept the evidence of Kadhim Abbas Lafta Al-Behadili (detainee 775) that the soldiers would shout words such as "*shut up*", whilst he was seated in the cubicle that night, in order to ensure that the detainees did not communicate with each other. I also accept that some of the guards would also swear when doing so. I accept that this was unnecessary and that Kadhim Al-Behadili found it to be offensive.

Specific allegation by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.604 In the event, Abbas Al-Hammedawi (detainee 776) appeared to have made only one allegation of having been hit whilst he was in the Prisoner Holding Area at Camp Abu Naji on 14/15 May 2004, as detailed in paragraph 3.591 above. That allegation is dealt with separately in paragraph 3.667 of this report.

4. Allegation 3 – The detainees were not given an adequate supply of water

Military evidence

3.605 The provision of water to detainees is expressly governed by international law. Article 89 of the Fourth 1949 Geneva Convention states "*Sufficient drinking water shall be supplied to internees.*"³⁸⁸³ Furthermore Common Article 3 of the 1949 Geneva Conventions provides as follows:

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

³⁸⁸³ Persons protected by this Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals (nationals of a State which is not bound by the Convention are not protected by it)

- 3.606** Guidelines on the provision of water to detainees were given in the Divisional SOI 390 which, in the same vein as Article 89, stated “Food and water are to be provided as necessary.”³⁸⁸⁴
- 3.607** In the 1st Battalion Princess of Wales’ Royal Regiment (“1PWRR”) SOI 207 more specific instructions were given as to how water was to be provided. That document made specific provision with regard to the frequency with which water was to be provided to detainees. It instructed that the following “*must be adhered to in all TQ operations*.”³⁸⁸⁵

“a. Water to be made available on arrival

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

- 3.608** The Prisoner Information Sheets record that water was provided for each of the detainees upon arrival.³⁸⁸⁶ The Prisoner Information Sheets then go on to record that water was provided thereafter at the following times:
- a. on return to the cells from tactical questioning (between 00:20 hours and 02:16 hours);
 - b. at 03:00 hours when the detainees were given biscuits; and
 - c. between 06:18 hours and 06:25 hours when the detainees were again given biscuits.³⁸⁸⁷
- 3.609** Staff Sergeant David Gutter confirmed that he had specifically directed that the detainees were to be given water upon their arrival at Camp Abu Naji on 14 May 2004.³⁸⁸⁸ Many of the military witnesses recalled that each detainee was offered and/or provided with water on arrival at the prisoner handling compound at Camp Abu Naji prior to being processed.³⁸⁸⁹
- 3.610** In his oral evidence to the Inquiry, Lance Corporal David Bond said that the guards had been briefed that the detainees were to have a constant supply of water.³⁸⁹⁰ Others, including Corporal Michael Taylor, had a similar recollection.³⁸⁹¹ None of the military witnesses who gave evidence to the Inquiry believed that it was permissible to withhold water from the detainees for any reason, whilst they were detained in the prisoner holding area.
- 3.611** In his oral evidence to the Inquiry, Corporal Stuart Bowden accepted that it was possible that some of the detainees had not been given water prior to having been processed that night.³⁸⁹² Corporal Andrew Nicholls also recalled that the detainees were not always given water before processing, unless they specifically requested it, because of the quick turn-round time between their arrival and being processed.³⁸⁹³ Corporal Nicholls put it in this way:

“Q. So you have a recollection of water bottles being in the shower cubicles when they arrived -

A. Yes.

Q. – but it not being identified to them until after they were processed?

³⁸⁸⁴ (MOD003674)

³⁸⁸⁵ (MOD015808) [10]

³⁸⁸⁶ (MOD033658-75)

³⁸⁸⁷ (MOD024467-84)

³⁸⁸⁸ Staff Sergeant Gutter [122/79-80]; (ASI012961)[66],

³⁸⁸⁹ See, for example, Lance Corporal Tongue [134/161]; Sergeant McKee [124/173-174]

³⁸⁹⁰ Lance Corporal Bond [120/106/15]

³⁸⁹¹ Corporal M. Taylor [129/21/20-21]

³⁸⁹² Corporal Bowden [120/191/10-15]

³⁸⁹³ Corporal Nicholls [124/46/20]–[47/6]; (ASI011454) [46]

A. From what I recall, yes.

Q. Why was that?

A. I'm not sure.

Q. Was it a policy: don't tell them about the water until after they have been processed?

A. No, because it was a quick turn-around from them going into the cubicle and then going for processing."

- 3.612** In his oral evidence, Staff Sergeant Gutcher said that biscuits and water were set out on a table in the prisoner holding area for distribution to the detainees.³⁸⁹⁴ A bottle of water would be kept in the cubicle with the detainee for him to drink from and was replaced if it ran out.³⁸⁹⁵
- 3.613** As to the frequency at which the detainees were given water after their arrival in the prisoner holding area, in his oral evidence to the Inquiry Staff Sergeant Gutcher said that the detainees would have been offered water by the prisoner handling guards at various times throughout the night, although was unable to remember how frequently that would have happened.³⁸⁹⁶
- 3.614** Staff Sergeant Gutcher and Sergeant Samuel McKee were responsible for filling in the Prisoner Information Sheets on the night of 14/15 May 2004. Occurrences such as the provision of food, water, medical treatment and lavatory visits would all have been recorded on these sheets.³⁸⁹⁷ As Sergeant McKee explained, he and Staff Sergeant Gutcher would sign off the sheets as confirmation of what had taken place, but they would not necessarily have taken part or overseen the recorded matter itself.³⁸⁹⁸ It also appears that other than when either Staff Sergeant Gutcher or Sergeant McKee had actually requested or seen water being given to the detainees (such as on arrival or when the detainees were provided with food and water), any other occasions when the detainees were given water by the guards would not actually have been recorded in the Prisoner Information Sheets.
- 3.615** Many of the guards remembered having given the detainees water whenever they requested it, but accepted that they would not actually ask the detainees if they required more water. Private Marc Kendall recalled that some of the detainees had requested water by asking for it in English.³⁸⁹⁹ In his oral evidence to the Inquiry, Lance Corporal Christopher Vince said that he would not actively inquire whether the detainees required water, except on arrival when they would be offered water. It was his recollection that, thereafter, the detainees would indicate when they required some water.³⁹⁰⁰ For his part, Craftsman Michael Johnston recalled that the detainees were provided with as much water as they required as and when they requested it.³⁹⁰¹
- 3.616** In his oral evidence to the Inquiry, M021, who was one of the guards who escorted the nine detainees from Camp Abu Naji to Shaibah in due course, said that when he went on duty

³⁸⁹⁴ Staff Sergeant Gutcher [122/51]

³⁸⁹⁵ Staff Sergeant Gutcher (ASI012975) [135]; [122/52-55]; Craftsman Marks [126/42]; Sergeant Lane (ASI020038) [63]

³⁸⁹⁶ Staff Sergeant Gutcher [122/19/21-23]

³⁸⁹⁷ See, for example (MOD045606), (MOD024471), (MOD045614)

³⁸⁹⁸ Sergeant McKee (ASI014664) [56]; [124/180-181]

³⁸⁹⁹ Private Kendall [131/200]

³⁹⁰⁰ Lance Corporal Vince [119/20/7]

³⁹⁰¹ Craftsman Johnston [123/143/3-11]; (ASI019673) [26]

during the night of the 14/15 May 2004 he had been verbally instructed not to give the detainees any water if they asked for it because they had already been given some.³⁹⁰²

3.617 Some of the guards that night remembered having been more active in providing the detainees with water. Thus, in his oral evidence to the Inquiry, Craftsman Jason Marks said this:

*“...I think from memory we would always, as part of the detainee guard duties, go walking up and down and keeping an eye on them, we would check to see their water level. So if their bottle was empty, we would give them another one.”*³⁹⁰³

3.618 Craftsman Matthew Morris had a vague recollection of checking whether the detainees required water *“every once in a while”*. However, he said that he assumed this to be the case, because he was unable to recall having been given specific orders to give the detainees water whilst he was on duty.³⁹⁰⁴

3.619 For his part, Sergeant McKee recalled that a bottle of water had been placed between each detainee’s ankles or knees so that he knew it was there to drink from if he needed it.³⁹⁰⁵ Others, like Sergeant Lane, recalled that the water bottle would be kept in the cubicle, but in a place such as under the chair in the cubicle.³⁹⁰⁶ Staff Sergeant Gutcher confirmed that, although water would be kept in the cubicles with the detainees, they would have been unable to help themselves to it because the fact that they were blindfolded would have meant that they were unable to see where the bottle was actually located.³⁹⁰⁷

3.620 Private Adam Gray remembered having visited the prisoner holding area at some stage during the night of 14/15 May 2004, whilst the detainees were seated in the cubicles. He said that he believed he had given water to all the detainees who were present. He said that he had handed the bottles to the detainees himself and stated that, by this time, the detainees were neither handcuffed nor blindfolded. According to Private Gray, each detainee had either taken the bottle of water or, if he declined, Private Gray placed the bottle next to him on the floor.³⁹⁰⁸

The Detainees’ accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

3.621 Hamzah Joudah Faraj Almalje (detainee 772) claimed that he had not been given water upon arrival at Camp Abu Naji on 14 May 2004. Despite being shown the entry on the Prisoner Information Sheets that indicated that he had been given water on arrival, he still maintained that he could not remember having been given water at this stage of his detention.³⁹⁰⁹

³⁹⁰² M021 [135/130/13-16]

³⁹⁰³ Craftsman Marks [126/42/17-21]

³⁹⁰⁴ Craftsman Morris [133/218/24]; (ASI010889) [64]

³⁹⁰⁵ Sergeant McKee [124/174/1-8]

³⁹⁰⁶ Sergeant Lane [136/51-52]

³⁹⁰⁷ Staff Sergeant Gutcher [122/53/5-7]

³⁹⁰⁸ Private Gray believed that this was prior to 06:00 hours but he was certain that Corporal Carroll was there at the same time – Corporal Carroll is recorded from the Prisoner Information Sheets as being present at 06:00 hours; Private Gray [117/61-63]

³⁹⁰⁹ Hamzah Joudah Faraj Almalje (detainee 772) [20/47-48]

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.622 In his oral evidence to the Inquiry, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) told the Inquiry in his evidence that he had not been given any water when he arrived at Camp Abu Naji, and that it was only after he had returned from the processing tent that he had actually been given any water.³⁹¹⁰

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.623 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) claimed that, apart from one occasion when water had been offered to him, he had not asked for, nor did he receive any more water until the morning of 15 May 2004.³⁹¹¹

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.624 Hussein Fadhil Abbas Al-Behadili (detainee 778) said that he had not been provided with enough water whilst he was held at Camp Abu Naji during 14/15 May 2004. According to Hussein Al-Behadili he had not been given water at any stage other than on one occasion when water had been squeezed into his mouth. He claimed that he had been forced to drink drips of his own sweat, because he was so thirsty, and that he had *“found it suffocating not being able to drink in the extreme heat.”*³⁹¹² Hussein Al-Behadili said that, as a result, when he arrived at the Divisional Temporary Detention Facility (“DTDF”) at Shaibah on 15 May 2004, he had been *“badly in need of water.”*³⁹¹³ As he went on to explain:

*“Several times we asked for water, I asked for water, just a drop of water I needed because I was not able to swallow even my saliva at that time...I was blindfolded and sweat fell down from my forehead and I was trying hard to lick the drops of sweat into my mouth in order to wet my mouth. To that extent I was thirsty and I asked for water and after a while – maybe after the first interrogation or maybe before – they brought water.”*³⁹¹⁴

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.625 In his written Inquiry statement, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) said that, apart from one occasion when water had been forced down his throat, he had not been provided with any water whilst he was detained in the cubicle in the prisoner holding area at Camp Abu Naji on 14/15 May 2004.³⁹¹⁵

³⁹¹⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/14-15]

³⁹¹¹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000316) [74]

³⁹¹² Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000369) [36]; (MOD006560) [34]

³⁹¹³ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/76/11-13]

³⁹¹⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/49/4-13]

³⁹¹⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000955) [53]

3.626 In his earlier Judicial Review statement, Atiyah Al-Baidhani (detainee 779) claimed that on one occasion the soldiers had poured water from a bottle onto his head. He said that he was so thirsty that he had licked the drops of water that were falling down his face.³⁹¹⁶

Allegation 3: Conclusions

3.627 I am satisfied that the general policy was that the detainees were to be provided with water as soon as they were first seated in the cubicles in the prisoner holding area. I do not believe that there was any instruction to withhold water from the detainees at any time. It is clear that a supply of bottled water was brought to the prisoner holding area for the use of the detainees that night. I am satisfied that the guards were fully aware that the detainees were to be provided with bottled water from that available supply.

3.628 As it seems to me, the guard force was not made aware of any policy or given any instruction about how often they were to provide the detainees with water. It does not appear that any specific instructions were given to the guards with regard to the frequency at which the detainees were to be offered water. The requirement that water was to be provided hourly, as stipulated in 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") Standard Operating Procedure ("SOP") 207, was not adhered to. It seems to me very likely that the guards were completely unaware of this particular requirement in any event.

3.629 It does appear that water was offered to the detainees during both processing and tactical questioning. Water was also provided on the two occasions that the detainees were provided with biscuits during the night of 14/15 May 2004. Thus, both Kadhim Abbas Lafta Al-Behadili (detainee 775) and Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) remembered that they had been offered water at the same time as they were offered biscuits to eat that night.³⁹¹⁷

3.630 Apart from those specific occasions, it appears that the detainees were expected to ask for water if they needed it, although there was no formal procedure for making such a request. Accordingly, it is apparent that the detainees had difficulty in making any request for water heard and understood by the guards. This difficulty was exacerbated by the fact that no interpreter was immediately available in the prisoner handling area³⁹¹⁸ and it is likely that the strict operation of the no-talking policy meant that there were occasions when a detainee requesting water was simply told to be quiet. Furthermore, although the guards did take steps to place a bottle of water in each detainee's cubicle, the fact that the detainee was blindfolded meant that it was very likely that the detainee was both unaware of the availability of the water and of its location in the cubicle.

3.631 Accordingly, although I am entirely satisfied that the guards fully understood that the detainees were to be provided with water and that water was not to be withheld from them, it is possible that some of the detainees were not actually provided with sufficient water during the night of 14/15 May 2004, either because they failed to request it or because their requests for water were not understood by the guards at the time.

Specific allegations by Hamzah Joudah Faraj Almalje (detainee 772) and Ibrahim Gattan Hasan

³⁹¹⁶ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006677) [24]

³⁹¹⁷ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000730-31) [58]; Abbas Abd Abdulridha Al-Hameedawi (detainee 776) (ASI000865) [58]

³⁹¹⁸ Staff Sergeant Gutter [122/19/10-15]

Al-Ismaeeli (detainee 774)

3.632 In relation to the allegations made by Hamzah Joudah Faraj Almalje (detainee 772) and Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) that they had not been given any water upon arrival at Camp Abu Naji, I accept that it is possible that this did happen. It seems to me likely the reason for this omission was that they were both processed very soon after their arrival. However, I am satisfied that any such omission was an oversight. It was not the result of any deliberate refusal to provide water and it was not part of any wider policy of withholding water from the detainees.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.633 I accept that Ahmed Jabbar Hammood Al-Furaiji (detainee 777) may not have been offered water whilst he was held in the cubicle overnight at Camp Abu Naji on 14/15 May 2004, apart from the water offered during processing, tactical questioning and when he was offered biscuits on two occasions that night. In any event, in his written Inquiry statement, Ahmed Al-Furaiji accepted that he had not actually made any further request for water.

Specific allegation by Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.634 Hussein Fadhil Abbas Al-Behadili (detainee 778) said that he did not have enough water to drink at Camp Abu Naji that night and that he became extremely thirsty. Hussein Behadili also alleged that he had asked for water but his requests had gone unanswered. Although I do not believe that water was deliberately withheld from Hussein Al-Behadili, I accept that it may not have been made readily available to him, because his requests for water may have not been heard or understood by the guards.

Specific allegation by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.635 I accept Atiyah Sayyid Abdulridha Al-Baidhani's (detainee 779) evidence that he had been thirsty whilst held at Camp Abu Naji on the night of 14/15 May 2004, although I do not believe that water was deliberately withheld from him. Atiyah Al-Baidhani's further allegations that he had water forced down his throat and poured onto his head, are dealt with later in this report.

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

Military evidence

3.636 Staff Sergeant Gutcher explained that, prior to processing, it was likely that the detainees' hands had been restrained behind their backs. He said that he therefore told the guards to offer up the bottles of water to the detainees' lips in order to let them drink.³⁹¹⁹ He said that, once the detainee had been processed, a bottle of water would be placed in his hands (which by then had been secured in front of the body) and the guard would tip the bottle so that the detainee could drink from it.³⁹²⁰

³⁹¹⁹ Staff Sergeant Gutcher [122/79-80]; (ASIO12961)[66]; (ASIO12975) [135]

³⁹²⁰ Staff Sergeant Gutcher (ASIO12975) [135]

- 3.637** Private Liam Grist also recalled having seen guards tilting bottles of water into detainees' mouths, at a stage when their hands were restrained to the front and thus when they were unable to hold the bottles themselves.³⁹²¹
- 3.638** In the statement that he gave to the Royal Military Police ("RMP"), Corporal Stuart Bowden recalled having helped a detainee to drink water by pouring some into his mouth and that this had occurred prior to processing.³⁹²² During his oral evidence to the Inquiry, Corporal Bowden broadly agreed with this account, saying that he had held an opened bottle of water to the detainee's mouth, so that he could take a sip or two of water from it. However, he appeared to reject the suggestion that he had actually poured the water into the detainee's mouth.³⁹²³
- 3.639** Craftsman Jason Marks remembered that bottles of water would be placed in the detainees' hands, when they were plasticcuffed to the front. He said that the screw caps would be loosened and the detainees' goggles raised so that they could see the bottle. He did not recall any circumstance in which the guards would assist the detainee in drinking from the bottle.³⁹²⁴ Corporal Andrew Nicholls had a similar recollection of lifting the detainees' goggles so that they were able to see the bottles of water in their hands,³⁹²⁵ as did a number of other witnesses.³⁹²⁶
- 3.640** Sergeant Samuel McKee recalled that the each detainee was given a bottle of water in his hands so that he could quench his thirst himself, with another bottle being placed between his ankles or knees. When he came to give his oral evidence to the Inquiry, he was unable to remember whether each detainee was given one bottle or two.³⁹²⁷ Corporal Jeremy Edgar similarly recalled that a bottle of mineral water would be placed in the detainee's hands for him to drink from himself.³⁹²⁸
- 3.641** Corporal Daniel Marshall recalled in oral evidence that when the detainees were plasticcuffed to the front, a bottle of water with an unscrewed top would be placed in their hands. He said that the detainees were blindfolded at the time, but could drink from the bottles themselves, although he recalled that they tended to wait until the guards had walked away before they did so.³⁹²⁹

The evidence of Corporal Jeffery MacDonald

- 3.642** At the outset of his oral evidence to the Inquiry, Corporal Jeffery MacDonald said that he wished to add a further paragraph to his written Inquiry statement, in which he gave an account of two particular incidents that had occurred when he gave water to two of the detainees upon their arrival at Camp Abu Naji on the evening of 14 May 2004, as follows:

"(1) I now recall, when giving water to one of the detainees, some of that water came out of his mouth. He gurgled. I removed the bottle and gave him some more, which he drank. I did not squeeze the bottle. I did not see water coming out of his nose. He did not choke.

³⁹²¹ Private Grist [131/48]

³⁹²² Corporal Bowden (MOD004553); [120/190]

³⁹²³ Corporal Bowden [120/190-191]

³⁹²⁴ Craftsman Marks [126/43]

³⁹²⁵ Corporal Nicholls [124/44-45]

³⁹²⁶ Lance Corporal Tongue [134/161]; Corporal M. Taylor [129/49]; Lance Corporal Edwards [129/133-134]

³⁹²⁷ Sergeant McKee [124/173-174]

³⁹²⁸ Corporal Edgar [128/37/6-16]

³⁹²⁹ Corporal Marshall [130/22-23]

(2) I remember, when giving water to a second detainee, that I tripped over his feet and presented the water bottle to his mouth faster than I had intended. When I removed the bottle, I saw a little blood on his lip. I do not know if this was caused by the bottle or if it was pre-existing. I did not mention this before because I was only asked about the specific allegations and I did not think these incidents were relevant.”³⁹³⁰

3.643 Corporal MacDonald also described how he had assisted the detainees to drink the water from the bottles by “*tipping a quantity of water into their mouth.*”³⁹³¹ He said that he tipped the water into each detainee’s mouth and did not force it in. According to Corporal MacDonald the detainee gulped and gagged on the water to some extent, but no water actually came out of his nose.³⁹³²

3.644 In relation to the first incident outlined above, Corporal MacDonald said that the detainee had gurgled after he had poured the water into his mouth. He explained that he thought that this was the result of a misjudgment on his part,³⁹³³ as follows:

“either he couldn’t drink it as quick as I was pouring it in or I was pouring it in maybe too quick –the flow of it was a bit too quick for him to swallow and it came out of his mouth.”³⁹³⁴

3.645 In relation to the second incident, Corporal MacDonald explained that the water bottle had made contact with the detainee’s mouth more quickly than he had intended. He emphasised that this had not been deliberate on his part. Corporal MacDonald said that he might also have poured too much water into the detainee’s mouth and so he withdrew the bottle to allow him a chance to swallow. Corporal MacDonald believed that the incident may have caused a minor “*paper-cut*” type injury, but nothing as serious as a split lip.³⁹³⁵

The evidence of Lance Corporal David Bond

3.646 Lance Corporal David Bond said that at some point during the evening of 14 May 2004, he noticed that flies had started to gather near a wound on the head of one of the detainees. In the course of his oral evidence to the Inquiry, Lance Corporal Bond explained how he had therefore poured water over the detainee’s head, in order to clean the wound and remove the flies, as follows:

“Q. Can you explain why you took the decision to pour water on his head?

A. Because the flies were gathering in his wound. Be it all hygienic, I would guess it was for compassionate reasons, to try to clean it, remove the flies.

Q. How much water did you pour on to the head wound?

A. Enough to – for the flies to fly off. I didn’t – it wasn’t the contents of a full bottle. It was enough for him to remove the flies, and as soon as they flew off I stopped.”

3.647 Lance Corporal Bond explained that the surplus water ran down the detainee’s back and did not go over his face. He said that he did not observe any reaction on the part of the detainee,

³⁹³⁰ Corporal MacDonald [134/7/1-13]

³⁹³¹ Corporal MacDonald [134/37/5]

³⁹³² Corporal MacDonald [134/40]; [134/88]

³⁹³³ Corporal MacDonald [134/71]

³⁹³⁴ Corporal MacDonald [134/39/12-15]

³⁹³⁵ Corporal MacDonald [134/42-48]; [134/72]

although he accepted that the detainee was wearing blacked out goggles at the time and therefore would not have been expecting it to happen.³⁹³⁶ Lance Corporal Bond recalled that, as he was pouring the water, WO1 Shaun Whyte had been standing behind him and had nodded his head, apparently in approval at the action being taken by Lance Corporal Bond.³⁹³⁷

The Detainees' accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

3.648 Hamzah Joudah Faraj Almalje (detainee 772) said that, when he asked for water, the soldiers had hit him on the head with a water bottle. He later clarified that he had asked for water twice and was then hit with a water bottle, but was not given any water.³⁹³⁸

3.649 Hamzah Almalje also claimed that, after he had been interviewed that evening, he had been given water by having it poured over his head, so that he had to tip back his head in order to drink it.³⁹³⁹

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.650 According to Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), on one occasion the top of the bottle of water was forced into his mouth, so that he choked and was unable to drink any of the water.³⁹⁴⁰

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.651 Abbas Abd Ali Al-Hameedawi (detainee 776) claimed that when he asked for water that night he had been sworn at (words such as “*shut up*” and “*fucking*” were used) and he had been hit over the head with a water bottle.³⁹⁴¹ A soldier then squeezed a bottle of water into his mouth so violently that water had surged through his mouth and come out of his nose. He said that this had made him feel as though he was suffocating.³⁹⁴²

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.652 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) alleged that when he asked for water, a bottle had been offered up to his mouth by a soldier who then struck the end of the bottle and caused a split to the inside of his lower lip.³⁹⁴³ Ahmed Al-Furaiji stated that he had been holding the bottle when this happened and that, although the soldier had indicated that he should once more try to drink, he did not want to in case the same thing happened again. He claimed that he had therefore dropped the bottle.³⁹⁴⁴

³⁹³⁶ Lance Corporal Bond [120/65/13]–[69/12]

³⁹³⁷ Lance Corporal Bond [120/69/13]–[70/10]

³⁹³⁸ Hamzah Joudah Faraj Almalje (detainee 772) [19/74]; [20/47]

³⁹³⁹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000690) [39]

³⁹⁴⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001070) [51]

³⁹⁴¹ Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/16]; [15/45]; (ASI000864) [52]

³⁹⁴² Abbas Abd Abdulridha Al-Hameedawi (detainee 776) [14/66]; (ASI000864-65) [53]; (PIL000006) [15]

³⁹⁴³ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000882) [45]

³⁹⁴⁴ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000316) [74]

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.653 Hussein Fadhil Abbas Al-Behadili (detainee 778) alleged that, when he arrived at Camp Abu Naji on 14 May 2004, he had been extremely thirsty. He claimed that when the soldiers gave him some water, the bottle was squeezed so that water was forced out of his nose, nearly choking him.³⁹⁴⁵ In his oral evidence to the Inquiry, Hussein Al-Behadili said this:

*"I very much wish they didn't bring that water and force it in that way into our mouth. It was a moment of near death and eventually it ended up without me drinking anything."*³⁹⁴⁶

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.654 Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) alleged that, while he was seated in the cubicle in the prisoner holding area that night, he had been hit over the head with a water bottle on a number of occasions, although he could not remember how many times it had happened.³⁹⁴⁷

3.655 Atiyah Al-Baidhani also alleged that, on a separate occasion, a soldier had held a bottle of water to his mouth and that, when he tried to take a drink from it, the soldier squeezed the bottle and caused the water to go down his throat in such a way as to make him believe he was going to choke.³⁹⁴⁸ In the course of his oral evidence to the Inquiry, Atiyah Al-Baidhani described what happened in the following terms:

*"It was one time and they just squeezed. It was the last time and I was not really sure if it is water or not and I was just taking my mouth away off it and then he brought that bottle – he put it in my mouth and he squeeze it. And then afterwards the water came from my nose."*³⁹⁴⁹

3.656 In his earlier Judicial Review statement, Atiyah Al-Baidhani (detainee 779) said that, on one occasion that night, the guards had started to pour water from a bottle onto his head.³⁹⁵⁰

Hussein Gubari Ali Al-Lami (detainee 780)

3.657 In his first written Inquiry statement, Hussein Gubari Ali Al-Lami (detainee 780) claimed that, after he had been taken to a cubicle at Camp Abu Naji, a soldier had come and hit him on the head with what felt like a large water bottle. He said that the soldiers had been speaking English, but that he did not know what they were saying. After this, a bottle had been placed at his mouth. However, he did not want to drink from it, because he thought it was alcohol. According to Hussein Al-Lami, the bottle was then squeezed, so that water squirted into his mouth and choked him as it came out of his nose. Hussein Al-Lami told me that he felt that this was deliberate rather than accidental³⁹⁵¹ and that, as a result, a soldier had slapped him across the back of his head.³⁹⁵²

³⁹⁴⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001040) [36]; (PIL000369) [36]; (MOD006560) [32]

³⁹⁴⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/49/15-18]

³⁹⁴⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/65/14]–[66/10]

³⁹⁴⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/15-17]; (MOD006674) [16]; (ASI000953) [41]

³⁹⁴⁹ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [10/16/18-23]

³⁹⁵⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006677) [24]

³⁹⁵¹ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004808) [51]; [11/63/5-9]

³⁹⁵² Hussein Gubari Ali Al-Lami (detainee 780) (PIL000410) [53]

3.658 In his earlier Judicial Review statement, Hussein Al-Lami also claimed that the contents of a bottle of water had been poured over his head and he had been slapped by a soldier, whilst he was seated in the cubicle in the prisoner holding area at Camp Abu Naji on the morning of 15 May 2004.³⁹⁵³ Hussein Al-Lami does not appear to have repeated this particular allegation in any of his later Inquiry statements although, during his oral evidence, he did claim that a soldier had hit him on the head with a water bottle on the morning of 15 May 2004.³⁹⁵⁴

3.659 In the course of his oral evidence to the Inquiry, Hussein Al-Lami also said this:

“...I didn’t mention that when I was in the toilet [clearly a reference to the cubicle in the prisoner holding area] and I was so thirsty, one brought a big bottle of water, pushed it into my mouth and squeezed it. I refused then because I thought it was alcohol, but while refusing to drink, water came down my nose. Then when I tasted the water, found out that it was water, then I drank because I was so thirsty.”³⁹⁵⁵

3.660 Hussein Al-Lami made a further allegation that at some point, whilst he was held in the cubicle in the prisoner holding area during 14/15 May 2004, he was punched by one of the guards. I have already considered this allegation when considering Hussein Al-Lami’s arrival at Camp Abu Naji, although there was some confusion as to whether this particular incident was said to have happened before or after he had been processed that night.³⁹⁵⁶ In his 2008 Judicial Review statement, Hussein Al-Lami alleged that his head had been hit against the wall while he was being seated in the cubicle and that this had occurred after he had been processed.³⁹⁵⁷ In his first written Inquiry statement, Hussein Al-Lami said that his head had been hit against the walls of the cubicle as he was first being seated in the cubicle, prior to processing.³⁹⁵⁸ In his second written Inquiry statement, made in November 2012, Hussein Al-Lami repeated the allegation that his head had been deliberately hit against the walls of the cubicle as he was first being placed in it. He also went on to say that he had been punched by the guarding soldiers at the same time.³⁹⁵⁹

Allegation 4: Conclusions

3.661 There does not appear to have been a set procedure for providing the detainees with water whilst they were being held at Camp Abu Naji overnight on 14/15 May 2004. As Corporal Jeffery MacDonald explained, the guards had not been given specific instructions about how and when the detainees were to be provided with water and that the guards therefore acted as the circumstances seemed to require.³⁹⁶⁰ For that reason, common sense suggested that the detainees should be allowed to drink from the bottles themselves, if they were able to. Similarly, when the detainees were unable to hold the bottles themselves (e.g. when their hands were secured behind their backs), the guards would sometimes help them to drink from the bottle in an appropriate fashion.

³⁹⁵³ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006642) [27]

³⁹⁵⁴ Hussein Gubari Ali Al-Lami (detainee 780) [12/26/10]

³⁹⁵⁵ Hussein Gubari Ali Al-Lami (detainee 780) [11/16/11-17]

³⁹⁵⁶ See paragraphs 3.119 – 3.121

³⁹⁵⁷ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006638) [16]

³⁹⁵⁸ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004808) [49]

³⁹⁵⁹ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000410) [52]; [11/10]

³⁹⁶⁰ Corporal McDonald [134/25]

The evidence of Corporal Jeffery MacDonald

3.662 In his evidence to the Inquiry, Corporal Jeffery MacDonald described what had happened on two of the occasions when he had helped a detainee to drink from a bottle of water that night. It seems likely that both incidents took place after the detainees had arrived at Camp Abu Naji and prior to the detainees in question being processed. I accept that Corporal MacDonald gave truthful and accurate evidence about these two incidents. In effect, Corporal MacDonald accepted that he might have poured water into a detainee's mouth rather too quickly and that, on another occasion, he might have accidentally caused a very minor injury to a detainee's lip, when trying to help him drink from a bottle. I accept his explanation for not having referred to these two incidents in his original written Inquiry statement. In my view, the fact that he volunteered details of the two incidents at the very beginning of his oral evidence clearly demonstrates his genuine willingness and desire to assist the Inquiry.

The evidence of Lance Corporal David Bond

3.663 I accept Lance Corporal David Bond's evidence that he poured some water on one of the detainees in order to drive away flies that had gathered near or around a wound on his head. I also accept that he genuinely believed that he was acting in the detainee's best interests when he did this, because he poured only as much water as he thought necessary to clear the flies and cleanse the wound.

Specific allegations by Hamzah Joudah Faraj Almalje (detainee 772)

3.664 Hamzah Joudah Faraj Almalje (detainee 772) recalled an occasion in which he claimed that water had been poured over his head. It seems to me very likely that this was the same incident as that described by Lance Corporal David Bond, in which he admitted having poured water onto one of the detainee's heads in order to clean a wound. Hamzah Almalje also said that when it happened, he had tipped his head back in order to drink the water, because he was thirsty. Lance Corporal Bond did not actually recall that the detainee had leant back to allow water to enter his mouth.³⁹⁶¹ However, I have no doubt that the incident described by Lance Corporal Bond was actually an act of compassion on his part and did not amount to deliberate ill-treatment. I also accept that Hamzah Almalje may well not have appreciated that such was the soldier's intention when he poured water on his head.

3.665 Hamzah Almalje (detainee 772) also recalled an incident in which he had been hit on the head with a bottle of water. I do not feel able to rule out the possibility that there was such an incident, although I believe that it is very unlikely. If it did occur, I am quite sure that was contrary to the general behaviour of the guards that night. Hamzah Almalje also claimed that he had not been given any water when this particular incident happened. If there was such an incident, it seems to me very likely that his request for water was misinterpreted as an attempt to talk to other detainees. I do not believe that he was deliberately denied water. However, he might have been told to be quiet and perhaps struck with a water bottle in order to reinforce this. If it happened, I do not believe that any significant violence or injury would have been involved and it is not possible to say who would have been responsible for having behaved in this way, other than that it would have been one of the guards.

³⁹⁶¹ Lance Corporal Bond [120/114/24]–[115/22]

Specific allegation by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.666 Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) alleged that the top of a water bottle had been forced into his mouth, so that he choked and was unable to drink. It seems to me very likely that Ibrahim Al-Ismaeeli was describing one of the occasions when the guards helped detainees to drink from the bottles of water. I do not believe that the top of the bottle was actually forced into Ibrahim Al-Ismaeeli's mouth, although it may have felt as if it was. Nor do I believe that he was deliberately choked, although I accept it is possible that the water was inadvertently poured too quickly into his mouth, as described by Corporal Jeffery MacDonald. If this did happen, I am quite sure that it was accidental and was not an act of deliberate ill-treatment.

Specific allegations by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.667 Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) also alleged that a soldier squeezed a bottle in such a way as to cause water to surge through his mouth and come down his nose. I accept that it is possible that water might have been poured into his mouth rather too quickly. If this did happen, I am quite sure that it was as a result of a soldier trying to help Abbas Al-Hameedawi to have a drink of water, as explained above. It would not have been a deliberate act of ill-treatment. Although Abbas Al-Hameedawi went on to claim that the bottle had been held to his mouth in such a way that he was unable to get any water,³⁹⁶² I do not believe that this was so. If the incident happened, it was during a genuine attempt by the soldier concerned to give water to Abbas Al-Hameedawi and the soldier in question would not have done anything to frustrate that on purpose. Furthermore, I do not believe that any water was deliberately forced down his nose as a result. I am sure that these two latter details were untrue embellishments, intended to support Abbas Al-Hameedawi's claim to have been deliberately ill-treated.

3.668 Abbas Al-Hameedawi also alleged that, when he had asked for water, he was sworn at and was hit over the head with a water bottle. As with the similar allegation made by Hamzah Joudah Faraj Almalje (detainee 772), I do not feel able to rule out the possibility that there was such an incident, although I think that it is very unlikely. If it did happen, it was out of keeping with the general behaviour of the guards that night and very likely happened as the result of a misguided enforcement of the no-talking rule. The incident would not have involved any significant violence or injury and it is not possible to say who would have actually been responsible, other than that it would have been one of the guards.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.669 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said that a bottle had been placed against his mouth by a soldier, who then struck the end of the bottle and caused a split to the inside of his lower lip. It seems to me to be very likely that this was the same incident as the second of the two incidents described by Corporal Jeffery MacDonald. As I have already indicated, I accept the truth and accuracy of Corporal MacDonald's evidence about this incident. Corporal MacDonald did not strike the end of the bottle. This was a deliberately untrue embellishment by Ahmed Al-Furaiji. The incident was an accident and, if any injury was caused, it was extremely trivial. No similar injury was recorded during Ahmed Al-Furaiji's medical examinations at the Divisional Temporary Detention Facility ("DTDF") at Shaibah on

³⁹⁶² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000864) [53]

15 May 2004.³⁹⁶³ Accordingly, if any injury had been caused, it was so slight that it was not really noticeable.

Specific allegation by Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.670 Hussein Fadhil Abbas Al-Behadili (detainee 778) also claimed that a soldier had squeezed a bottle of water in such a way as to force water down his nose and nearly choke him. In my view, this allegation relates to an occasion when Hussein Al-Behadili was given water by one of the guards that night. I accept that Hussein Al-Behadili was blindfolded at the time and could not see the water being poured into his mouth. I also accept that the water might have been poured rather too quickly. If this did happen, it was an accident and was not a deliberate act of ill-treatment. Furthermore, I am quite sure that the water was not poured into his mouth in such a way as to force it down Hussein Al-Behadili's nose. I have no doubt that this particular detail was a deliberately false embellishment, intended to strengthen the suggestion that he had been ill-treated.

Specific allegations by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.671 The allegation made by Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) that he had been hit over the head with a water bottle on a number of occasions, is similar in substance to the allegations to like effect made by Hamzah Joudah Faraj Almalje (detainee 772) and Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776), considered above. Again, I am unable to rule out entirely the possibility that this may have occurred, although it is very unlikely. If it did happen, it likely to have been the result of a misguided enforcement of the no-talking rule. No significant violence or injury was involved and it is not possible to say who would have been responsible for behaving in such a manner, which was not typical of the general behaviour of the guards that night.

3.672 On a separate occasion, Atiyah Al-Baidhani claimed that a soldier had held a bottle of water to his mouth and that, when he tried to drink from it, the soldier had squeezed the bottle and caused the water to go down his nose in such a way as to make him think that he was going to choke. As I have already indicated in relation to the very similar allegations made by Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), Abbas Al-Hameedawi (detainee 776) and Hussein Fadhil Abbas Al-Behadili (detainee 778), I am sure that, if this did occur, it was an accident and the result of a soldier attempting to help him to have a drink of water. It was not a deliberate act of ill-treatment. Atiyah Al-Baidhani's allegation that water was forced down his nose was a deliberately false embellishment of his account of how he was treated that night.

3.673 I do not believe Atiyah Al-Baidhani's claim that the guards poured water over his head. In fact he did not repeat that allegation in his later witness statements, because it was clearly false. He also alleged that, apart from the one occasion on which water was forced down his throat (as explained above), he had not been given any food or water at all that night.³⁹⁶⁴ I have no doubt that that this particular allegation was also untrue and deliberately so, as shown by the Prisoner Information Sheet relating to him.³⁹⁶⁵

³⁹⁶³ See, for example, (MOD024481); Corporal Carroll (ASI016088) [161]; (MOD043681)

³⁹⁶⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000955) [53]

³⁹⁶⁵ (MOD024481)

Specific allegations by Hussein Gubari Ali Al-Lami (detainee 780)

- 3.674** Hussein Gubari Ali Al-Lami (detainee 780) alleged that he had been hit on the head with a water bottle, that on another occasion a water bottle had been squeezed so that water squirted into his mouth and choked him as it came out of his nose, that water had been poured over his head and that a soldier had slapped him.
- 3.675** Whilst I accept that it is possible that Hussein Al-Lami was hit with a water bottle, as the result of some misguided enforcement of the no-talking rule, I consider it to be unlikely. If it did happen, it did not involve any significant violence or injury and was not typical of the general quality of the guards' behaviour that night.
- 3.676** Similarly, I accept that it is possible that water might have been poured into his mouth too quickly but, if so, it was not intentional and was not an act of deliberate ill-treatment. I do not believe that he was slapped or hit across the back of the head after he had been offered water or at all. Nor do I believe that water was forced down his nose as he alleged, at any stage. I am quite sure that these were false embellishments, intended to suggest that he had been subjected to deliberate ill-treatment.
- 3.677** I am equally sure that Hussein Al-Lami was not punched by soldiers at any stage (including after he had been processed) nor did they deliberately bang his head against the walls of the cubicle. I have no doubt that this part of his evidence was also false and deliberately so.

6. Allegation 5 – The detainees were not given an adequate supply of food

Military evidence

- 3.678** The provision of food is expressly governed by Article 89 of the Fourth 1949 Geneva Convention³⁹⁶⁶ which states "Daily food rations for internees shall be sufficient in quantity..."
- 3.679** The relevant provision in the Divisional Standard Operating Instruction ("SOI") 390 was simple and straightforward and stated that "*Food and water are to be provided as necessary*".³⁹⁶⁷ However, the 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") SOI 207 went further and set time limits by which detainees were to be fed. SOI 207 provided as follows:³⁹⁶⁸
- a) "*A meal should be provided six hours after arrival at the TQ location*
 - b) "*A meal should be provided 12 hours after arrival at the TQ location*".
- 3.680** The "*Points to Note*" section of the Prisoner Information Sheets also stipulated that detainees were to be fed every six hours.³⁹⁶⁹ In fact, the Prisoner Information Sheets for the nine detainees recorded that they had been given biscuits on two occasions. Each such sheet recorded that, at 03:00 hours on 15 May 2004, the nine detainees had been given "*3x biscuit*" and then, between 06:18 hours and 06:25 hours on the same day, they had again been provided with

³⁹⁶⁶ Persons protected by this Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals (nationals of a State which is not bound by the Convention are not protected by it)

³⁹⁶⁷ (MOD003674)

³⁹⁶⁸ (MOD015808) [10]

³⁹⁶⁹ (MOD024467–84)

biscuits.³⁹⁷⁰ The detention log maintained at the Divisional Temporary Detention Facility ("DTDF") at Shaibah recorded that the nine detainees were next given food at 17:31 hours on 15 May 2004.³⁹⁷¹ Accordingly, it is clear that over the first 24 hours or so of their captivity, the only food provided to the nine detainees was two small quantities of biscuits.

3.681 Staff Sergeant David Gutter confirmed in his oral evidence that water and biscuits had been put out during the setting up process, before the detainees arrived, and therefore would have been available as soon as they arrived in the prisoner handling compound on 14 May 2004.³⁹⁷² However, he was unable to explain why the detainees had not actually been given any biscuits until 03:00 hours on the 15 May 2004. Nor was he able to say whether this was because the tactical questioning of the nine detainees had not been completed until 03:00 hours on 15 May. Staff Sergeant Gutter was unable to confirm whether there had been deliberate decision not to feed any of the detainees until they had all been tactically questioned.³⁹⁷³ However, he rejected the suggestion that he had intentionally kept the detainees in a state of hunger or that he would have deliberately refused them food if they had asked.³⁹⁷⁴

3.682 Staff Sergeant Gutter accepted that it had been his responsibility to ensure that the detainees were given food, although Sergeant Samuel McKee would have been responsible in his absence. Staff Sergeant Gutter thought it likely therefore that the detainees would have only been provided with some biscuits, following an instruction to that effect by one or other of them. In the course of his oral evidence to the Inquiry, he said this:

"Q. Was it your role to instruct the giving of biscuits?"

A. Me or my 2IC.

Q. All right. So the men wouldn't have given biscuits without an order from you?"

A. Possibly. I can't remember.

Q. Well, I'm asking you. You were there; I wasn't. Would the men have given them a biscuit without an order from you or not? You were in charge.

A. Not when I was in charge of the guys, ie 03.00. If I was in the tent and they gave them biscuits and it wasn't recorded on there – it may have happened. I can't remember.

Q. So the probability is that biscuits were not given without an order from you?"

A. Yes, that's correct.

Q. Why, Mr Gutter, did you give the order to give a biscuit only after the last man had been TQ'd?"

*A. Don't know."*³⁹⁷⁵

3.683 Sergeant McKee said in his oral evidence that he did not believe there had been a conscious decision not to feed the detainees earlier that night, but thought that the provision of biscuits

³⁹⁷⁰ (MOD033658-75)

³⁹⁷¹ (MOD040072)

³⁹⁷² Staff Sergeant Gutter [122/49-51]

³⁹⁷³ Ibid.

³⁹⁷⁴ Staff Sergeant Gutter [122/109]

³⁹⁷⁵ Staff Sergeant Gutter [122/50/3-20]

at 03:00 hours might have been the first available opportunity to do so.³⁹⁷⁶ Similarly WO2 Darran Cornhill did not think that there had been any deliberate decision not to feed the detainees earlier.³⁹⁷⁷

- 3.684** Staff Sergeant Gutcher accepted that the detainees had not been provided with a hot meal at any stage while they were held at Camp Abu Naji during 14/15 May 2004. He did not recall any occasion when the guards would leave the compound for a meal themselves, nor did he believe that the guards had ever brought hot food back from the cookhouse for the detainees in the prisoner holding area at Camp Abu Naji.³⁹⁷⁸
- 3.685** However, Sergeant McKee claimed that he could recall an occasion when breakfast had been brought from the cookhouse for the detainees, at the same time that the guards had been provided with their breakfast. However, he said that it was unlikely that this had happened on 14/15 May 2004, because the Prisoner Information Sheets had no record of the detainees having been provided with breakfast that morning. Sergeant McKee was unable to say why it had not been done on this particular occasion.³⁹⁷⁹
- 3.686** Many of the military witnesses recalled that it was standard practice for detainees to be fed at the same time as the soldiers. Thus, in his written Inquiry statement, Lance Corporal John Peskett said that it was standard practice for detainees to be fed at the normal mealtimes and that, if detainees were held overnight, they would be provided with a cooked breakfast in the morning.³⁹⁸⁰
- 3.687** Lance Corporal Raymond Edwards stated that the normal practice was for detainees to be provided with meals at meal times, i.e. at the standard times at which the soldiers ate their food.³⁹⁸¹ Corporal Andrew Nicholls also recalled that the general practice was to get food from the cookhouse for the detainees. He therefore believed that this would have been done on 14/15 May 2004, because it had happened on other occasions when detainees were held at Camp Abu Naji.³⁹⁸²
- 3.688** Sergeant Julian King also believed that detainees would have been fed with food from the cookhouse and recalled occasions which detainees were given hot food.³⁹⁸³
- 3.689** Corporal Daniel Marshall said that, generally speaking, the soldiers would visit the cookhouse in pairs, if they were guarding detainees at a meal time. He recalled that the soldiers would have already eaten, by the time the nine detainees arrived at the prisoner handling compound on 14 May 2004, although he believed that they would have gone to breakfast as usual the following morning.³⁹⁸⁴
- 3.690** Lance Corporal Christopher Vince also believed that detainees would receive meals at the same time as the guards. He recalled that the evening meal would have been provided for the soldiers at approximately 17:00 hours until 18:30 hours and that breakfast would have been somewhere between 06:00 hours until 08:00 hours. He therefore would not have expected the detainees to be fed on the evening of 14 May 2004, because they would have arrived

³⁹⁷⁶ Sergeant McKee [124/209/3-6]

³⁹⁷⁷ WO2 Cornhill [115/70]

³⁹⁷⁸ Staff Sergeant Gutcher [122/50-51]

³⁹⁷⁹ Sergeant McKee [124/179-181]

³⁹⁸⁰ Lance Corporal Peskett (ASI015207) [52]

³⁹⁸¹ Lance Corporal Edwards [129/186]

³⁹⁸² Corporal Nicholls [124/64]

³⁹⁸³ Sergeant King [113/165-166]

³⁹⁸⁴ Lance Corporal Vince [130/46]

after the evening meal time. However, he would have expected them to be given breakfast on the morning of 15 May 2004. Lance Corporal Vince said that this would have been done by the guards bringing back breakfast from the cookhouse for the detainees.³⁹⁸⁵

- 3.691** Sergeant Martin Lane, said that he believed the detainees were fed on 14/15 May 2004, contrary to what is recorded in the Prisoner Information Sheets. Sergeant Lane said that containers of food had been brought into the prisoner handling compound that night, although he was unable to say whether it was the detainees or the guards who ate the food. He said that he believed the food had been intended for the detainees. During the course of his oral evidence to the Inquiry, he said this:

“Q. Why did you say that you believed that they received a meal –

A. Because I –

Q. – rather than you saw some containers arrive?

A. Yes, I believed they were being fed from them. That was the idea.

Q. Why do you believe they were being fed from them?

*A. Because – because we had the duty of care to ensure they were fed because they were staying with us overnight.”*³⁹⁸⁶

- 3.692** Sergeant Lane recalled that the food had come at some stage after the detainees had arrived in the prisoner handling compound and before 03:00 hours on the 15 May 2004. He said that he was “positive” that food had been brought. However, it is clear from all the evidence that Sergeant Lane was mistaken about this. It is possible that he was confusing the events of 14/15 May 2004, with regard to the provision of food, with the events of another occasion. He accepted that an important aspect of his responsibilities on 14 May 2004 was to ensure that the detainees were properly fed.³⁹⁸⁷

- 3.693** Corporal Jeremy Edgar also remembered that the detainees had been fed on 14 May 2004. He believed that they had been given a meal consisting of lamb and peas.³⁹⁸⁸ Similarly, when he made his written Inquiry statement, Craftsman Michael Johnston recalled that the detainees had been given a meal, which they ate whilst they were still plasticuffed and blindfolded. According to Craftsman Johnston, the meal had consisted of some sort of curry with rice. However, when he gave his oral evidence to the Inquiry, Craftsman Johnston said that he did not have a clear memory of what happened and that he believed he might have actually been referring to a different occasion when detainees had been brought back to Camp Abu Naji.³⁹⁸⁹

- 3.694** Many of the military witnesses remembered having provided the detainees with biscuits, as recorded in the Prisoner Information Sheets. Thus, Corporal MacDonald recalled that biscuits would be given to detainees by putting them into their mouths.³⁹⁹⁰ For his part, Lance Corporal Andrew Tongue recalled that the biscuits would be placed in the detainees’ hands.³⁹⁹¹ According to Craftsman Michael Johnston, the biscuits were placed in the detainees’ hands

³⁹⁸⁵ Lance Corporal Vince [119/17-18]; [119/57]

³⁹⁸⁶ Sergeant Lane [136/115-118]

³⁹⁸⁷ Sergeant Lane 136/116-117]

³⁹⁸⁸ Corporal Edgar [128/62/19-25]

³⁹⁸⁹ Craftsman Johnston [123/136-139]

³⁹⁹⁰ Corporal MacDonald [134/24-25]

³⁹⁹¹ Lance Corporal Tongue [134/167/9-14]

while they were still blindfolded. He said that some of the detainees would eat the biscuits, but others would not.³⁹⁹²

The Detainees' accounts and specific allegations

3.695 None of the detainees recalled having been given a hot meal at any point during their detention at Camp Abu Naji on 14/15 May 2004. Most of the detainees remembered that they had been provided with some biscuits at some point during the night. Of the nine detainees, the following three detainees made specific allegations with regard to the inadequate provision of food that night.

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.696 Mahdi Jasim Abdullah Al-Behadili (detainee 773) said that he had not been given any food at all during the time that he was held at Camp Abu Naji on 14/15 May 2004.³⁹⁹³

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.697 Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) recalled that he had been woken at some point during the night and provided with water and a biscuit. Later he had felt hungry and had asked for some food. According to Abbas Al-Hameedawi, an interpreter had come over and said to him: *"you are annoying them, they have given you food."* Abbas Al-Hameedawi went on to say that he had not been provided with anything further to eat.³⁹⁹⁴

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.698 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) said that he had suffered from both hunger and pain while he was detained at Camp Abu Naji. He said that, at some point he had asked the guards for food but was only given two biscuits to eat and nothing else.³⁹⁹⁵

Allegation 5: Conclusions

3.699 I am satisfied that that none of the nine detainees were provided with any form of food until 03:00 hours on 15 May 2004, when they were each provided with a small number of biscuits, as recorded in the Prisoner Information Sheets. Although Corporal Jeffery MacDonald recalled that he had given the detainees some biscuits before they went to the processing tent that night,³⁹⁹⁶ I have no doubt that he was mistaken about that. However, I am sure that his mistake is simply a result of the passage of time since the events in question occurred.

3.700 Given that biscuits appear to have been available for distribution from the time of the detainees' arrival at the prisoner handling compound at Camp Abu Naji on the evening of 14 May 2004, it seems to me likely that a deliberate decision was taken, by those in charge of prisoner handling, not to give the detainees any food until their tactical questioning had been completed, although it is possible that it was simply overlooked. Whatever the reason for the delay, I consider it to be unsatisfactory that the detainees were not offered any biscuits until 03:00 hours, some five to six hours after they arrived at the prisoner handling compound.

³⁹⁹² Craftsman Johnston [123/163-164]

³⁹⁹³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001120) [64]; [8/24/4-6]

³⁹⁹⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000865) [58]-[59]

³⁹⁹⁵ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000319) [82]

³⁹⁹⁶ Corporal MacDonald [134/66-67]

- 3.701** Furthermore, I have no doubt that the detainees were not given any hot food or any form of meal, whilst they were held at Camp Abu Naji during the 14/15 May 2004. As it seems to me, to give the detainees only a small number of biscuits cannot be sensibly regarded as amounting to the provision of a meal in the ordinary sense of that word. The witnesses who remembered that a hot meal had been provided were mistaken about it, most likely because they confused the 14/15 May 2004 with some other occasion on which detainees had been held at Camp Abu Naji.
- 3.702** In my view, the detainees should have been provided with a meal at the appropriate mealtime. In fact, it appears that this is what normally happened. Given that the detainees arrived well after the evening mealtime, it is perhaps understandable that they were not provided with a full meal during the late evening and night of 14 May 2004. However, I am satisfied that the detainees should have been provided with a meal on the morning of 15 May 2004 and I have not heard any acceptable explanation as to why that did not happen.
- 3.703** Despite being aware that he had a responsibility for the detainees being properly fed, it is clear that Sergeant Martin Lane did not take sufficient measures to ensure that the detainees were provided with a meal whilst they were held at Camp Abu Naji on 14/15 May 2004. Even if food was delivered to the prisoner handling compound, as he claimed it was, Sergeant Lane did nothing to make sure that the food was actually given to the detainees that night or the following morning.
- 3.704** Although Staff Sergeant David Gutchter said that he did not believe that detainees were ever provided with a hot meal during their detention, I am quite sure that this was not the case. It is clear from the evidence that hot food was provided to detainees held at Camp Abu Naji on other occasions. In any event, the provision of a small quantity of biscuits on only two occasions during 14/15 May 2004, as recorded in the Prisoner Information Sheets, was wholly inadequate and no substitute for a meal at an appropriate time.
- 3.705** It is clear that those in charge of prisoner handling on the night of 14/15 May 2004, simply did not comply with the relevant provisions of the 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") SOI 207, which effectively stipulated that detainees were to be given a meal at six hourly intervals. Despite Sergeant Lane's evidence that he had given instructions for the detainees to be provided with hot food, there was a joint failure by those in charge to ensure that this was properly carried out. That neither Staff Sergeant Gutchter nor Sergeant Samuel McKee gave any consideration to the need to provide the detainees with a meal at an appropriate time was extremely unsatisfactory. I have no doubt that the overall failure to provide the detainees with adequate and/or sufficient food or meals at any stage during their detention at Camp Abu Naji on 14/15 May 2004 could amount to a form of ill-treatment. If so, I am satisfied that this was the result of imperfect administration and not a deliberate form of ill-treatment.
- 3.706** In the paragraphs that follow, I deal with the specific allegations made by some of the detainees.

Specific allegation by Mahdi Jasim Abdullah Al-Behadili (detainee 773)

- 3.707** I am satisfied that Mahdi Jasim Abdullah Al-Behadili (detainee 773) was actually given biscuits at the times recorded in the Prisoner Information Sheets. However, I accept that it may well be the case that he could not remember this when he gave evidence to the Inquiry or that he did not actually eat the biscuits offered to him at the time.

Specific allegation by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.708 I accept that Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) might have asked for something to eat, but was not provided with anything as a result. I am quite sure that no interpreter spoke to him in the way that he claimed. As has been made clear in other parts of this Report,³⁹⁹⁷ interpreters were not generally active and/or present in the Prisoner Holding Area during the night of 14/15 May 2004. I believe this latter detail to be a deliberately false embellishment of his allegation on the part of Abbas Al-Hameedawi.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.709 I am satisfied that Ahmed Jabbar Hammood Al-Furaiji (detainee 777) may have asked for some food and was then given some biscuits. It seems to me very likely that this was one of the distributions of biscuits as recorded on the Prisoner Information Sheets. I also accept that he was not offered a more substantial meal and thus was likely to have been hungry.

7. Allegation 6 – The detainees were deliberately deprived of sleep. The detainees were made to stay awake and subjected to physical assaults.

3.710 Sleep deprivation was one of five prohibited techniques considered in the case of *Ireland v. the United Kingdom* (Case No. 5310/71), which concluded that, in certain circumstances, sleep deprivation could amount to “*torture or inhuman or degrading treatment or punishment*” in breach of Article 3 of the European Convention on Human Rights (“ECHR”).

Military evidence

3.711 WO1 Shaun Whyte said that, in order to assist the process of tactical questioning, the guards had been instructed not to allow any of the detainees to fall asleep before they had been tactically questioned. However, the detainees were permitted to sleep after their tactical questioning had taken place.³⁹⁹⁸ WO1 Whyte explained the purpose behind keeping the detainees awake, as follows:

“It was to keep them alert and aware so we can get them in to the TQ people to make sure that they – you know, they can answer the questions properly. There is a thing called, you know – they have been caught, it’s a bit of a shock of capture. They needed to keep them awake, and after that they could relax, once they had been tactically questioned.”³⁹⁹⁹

3.712 WO1 Whyte accepted that keeping the detainees awake and maintaining the shock of capture was not something he had learnt from any training or had derived from any of the SOIs.⁴⁰⁰⁰ It is clear that preventing detainees from sleeping, as a means of maintaining the shock of capture (or for any other reason), is not included in any of the relevant SOIs. As WO1 Whyte explained, he considered it to be a matter of “*common sense*” that the detainees should be kept awake until they had been tactically questioned. WO1 Whyte accepted that he had probably given the order for the detainees to be kept awake.⁴⁰⁰¹ However, he did not believe

³⁹⁹⁷ See paragraph 3.599

³⁹⁹⁸ WO1 Whyte [106/73-74]

³⁹⁹⁹ WO1 Whyte [106/74/24]–[75/5]

⁴⁰⁰⁰ Standard Operating Instructions

⁴⁰⁰¹ WO1 Whyte [106/75-77]

that the detainees had been subjected to any form of sleep deprivation as a result, given that they would have only been prevented from sleeping for a short period of time.⁴⁰⁰²

3.713 WO2 Darran Cornhill, who happened to be on duty in place of WO1 Whyte on 14 May 2004, did not recall there having been any decision made not to allow the detainees to sleep until they had been tactically questioned. In his oral evidence to the Inquiry, WO2 Cornhill said this:

*"I would like to think they would have been allowed to sleep at any time. I'm not aware of any instruction to say you are not allowed to sleep until after the tactical questioning."*⁴⁰⁰³

3.714 Staff Sergeant David Gutter said that he was unaware of any policy that prevented the detainees from sleeping at any time, including prior to processing or tactical questioning. However, in the third witness statement that he made to the Royal Military Police ("RMP"), he had said that once the detainees had been processed, they were allowed to rest and to fall asleep.⁴⁰⁰⁴ During his oral evidence to the Inquiry, it was suggested that this implied that detainees were temporarily deprived of sleep, until processing had taken place. However, Staff Sergeant Gutter explained that what he meant was that the detainees would have had hardly any opportunity to sleep prior to processing, but that they were not actively prevented from doing so.⁴⁰⁰⁵

3.715 Staff Sergeant Gutter's second in command that night, Sergeant Samuel McKee, also stated that he had not heard of any policy that prevented detainees from sleeping at any stage, whether before or after tactical questioning.⁴⁰⁰⁶

3.716 Sergeant Julian King also said that he believed that detainees were not prevented from sleeping prior to tactical questioning. However, during his oral evidence to the Inquiry, he also suggested that the detainees would not have slept prior to processing, because prisoner holding area would have been too busy for the detainees to have fallen asleep in.⁴⁰⁰⁷

3.717 For the most part, the guards who had been on duty in the prisoner handling compound at Camp Abu Naji on 14 May 2004 did not recall having been given any order to wake the detainees up. It appears that most of them thought that the detainees were permitted to sleep at all times.⁴⁰⁰⁸ Thus, in the course of his oral evidence to the Inquiry, Lance Corporal Raymond Edwards said this:

*"When I was on the roster to do the duty, walking up and down, sir, I would let them sleep. I don't know about the other detainee handlers, but if they were asleep, they were asleep. Unless they were needed for anything else, you would just let them sleep. It is easier to look after a sleeping person."*⁴⁰⁰⁹

3.718 However, in his witness statement to the Inquiry, Lance Corporal John Peskett said that, when he had been on guard duty in the prisoner holding area at Camp Abu Naji, he was instructed

⁴⁰⁰² WO1 Whyte [106/145-146]; NB – WO1 Whyte said that he did consider preventing a detainee from sleeping all night as sleep deprivation and agreed it was merely a "matter of degree"

⁴⁰⁰³ WO2 Cornhill [115/68/23]–[69/1]

⁴⁰⁰⁴ Staff Sergeant Gutter (MOD004517)

⁴⁰⁰⁵ Staff Sergeant Gutter [122/46-47]

⁴⁰⁰⁶ Sergeant McKee [124/187]

⁴⁰⁰⁷ Sergeant King [113/155]; [113/164-5]

⁴⁰⁰⁸ See, for example, Corporal Marshall [130/43]; Corporal M. Taylor [129/53]

⁴⁰⁰⁹ Lance Corporal Edwards [129/181/1-7]

to ensure that the detainees stayed awake. He said that, in general, he would wake a detainee up by telling him to wake up and by shaking his shoulder, if necessary. Lance Corporal Peskett said that he believed that he was required to wake the detainees up, whenever he saw them sleeping, and that he believed that the other detainee handlers also did this.⁴⁰¹⁰

- 3.719** WO1 Whyte had a similar recollection about how the order to keep the detainees awake would be enforced. In the course of his oral evidence to the Inquiry, he said this:

*"If the guy looked like he was falling sleep, he would have been just shaken to say 'wake up'."*⁴⁰¹¹

- 3.720** Some of the military witnesses recalled that, although detainees would be allowed to sleep, they would be moved and thus often woken up, if it appeared that they were in danger of falling off their seat in the cubicle. Thus, in his oral evidence to the Inquiry, Staff Sergeant Gutchter said that the detainees would be allowed to sleep, but they would be moved if there was a risk that they might fall off their chair and sustain an injury, as follows:

*"The only time prisoner handlers would move them, if they felt that they were slouching forward and may fall off the chair and injure themselves."*⁴⁰¹²

- 3.721** According to Lance Corporal David Bond, detainees were permitted to sleep at any time. However, he also recalled that a detainee would be moved if it appeared that he was going to fall off his seat and injure himself. Lance Corporal Bond put it in the following terms:

*"I don't believe we was told to sit them up, but just, um, if they were going to fall off their seat and hurt themselves in a position where they were going to fall off, I would right them. But we wasn't specifically told to either not let them sleep or not right them if they were going to fall off. We just – as if anyone would prevent someone from hurting themselves. You would right them if they was going to fall off."*⁴⁰¹³

- 3.722** Similarly, during his oral evidence to the Inquiry, Corporal Stuart Bowden described how one of the detainees had appeared to be sliding off his chair. So he had stood behind him, placed his arms underneath his armpits and then lifted him up back onto the chair. He accepted that, in doing so, he might have woken the detainee, but said that had not been his intention.⁴⁰¹⁴ Somewhat surprisingly, both Sergeant Martin Lane and Private Adam Gray said that, on 14 May 2004, camp beds had been available in the prisoner holding area cubicles for the detainees to sleep on.⁴⁰¹⁵

- 3.723** In his oral evidence to the Inquiry, Sergeant Samuel McKee said that it would have been difficult for the detainees to have slept, because they had to sit on folding metal chairs, which would have made it too uncomfortable to sleep properly. However, he did not believe that the detainees would have been deliberately woken up if they had managed to fall asleep, nor were they forced to maintain an upright position if they were slumped in the chairs.⁴⁰¹⁶

- 3.724** Others military witnesses confirmed that they were not aware of any order that the detainees were to maintain an upright position and that they were not allowed to slump in their chairs.

⁴⁰¹⁰ Lance Corporal Peskett (ASI015206) [49]

⁴⁰¹¹ WO1 Whyte [106/78/5-6]

⁴⁰¹² Staff Sergeant Gutchter [122/46/14-17]

⁴⁰¹³ Lance Corporal Bond [120/44/23]–[45/5]

⁴⁰¹⁴ Corporal Bowden [120/184-185]

⁴⁰¹⁵ Sergeant Lane [136/134]; Private Gray [117/26-28]

⁴⁰¹⁶ Sergeant McKee [124/211-212]

The witnesses said that if they had seen a detainee slumped in his chair, they would have left him in that position, undisturbed.⁴⁰¹⁷

The Detainees' accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

3.725 Hamzah Joudah Faraj Almalje (detainee 772) said that he had fallen onto the ground two or three times, whilst he was in the cubicle in the prisoner holding area at Camp Abu Naji on the 14/15 May 2004. He explained that he had wanted to sit on the ground, because his leg was hurting him. However, each time he tried to do so, the guards had pulled him back on to the chair by taking hold of his neck.⁴⁰¹⁸

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.726 Mahdi Jasim Abdullah Al-Behadili (detainee 773) alleged that he had been hit on the head while seated in the cubicle, when his blindfold had come loose.⁴⁰¹⁹ He further alleged that, when he had tried to go to sleep, he was hit by the guarding soldiers, who were deliberately keeping him awake.⁴⁰²⁰

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.727 Kadhim Abbas Lafta Al-Behadili (detainee 775) recalled how water had been splashed against his face, when he lowered his head in exhaustion. He said that his face had also been forcibly lifted, to show that he was to maintain an upright position. According to Kadhim Al-Behadili, the position the guards required him to maintain was uncomfortable and hard to sustain. He claimed that the guards would move him back into that position, by putting a hand under his chin, if he slouched.⁴⁰²¹

3.728 According to Kadhim Al-Behadili, at some point he had been hit on both sides of his face and around his ears with the palm of a hand. He explained that what had happened was that he had been struck on the side of his face and then struck again on the other cheek.⁴⁰²²

3.729 In his oral evidence to the Inquiry, Kadhim Al-Behadili said that, every now and again, a soldier would come and hit him in the face and on the head. He also claimed that the soldiers would pull his chair away from under him.⁴⁰²³

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.730 Ahmed Jabbar Hammood Al-Furaiji (detainee 777) claimed that, when he started to fall asleep, he would be woken up by soldiers who slapped him on the head or hit him with a water bottle.⁴⁰²⁴

⁴⁰¹⁷ See, for example, Lance Corporal Williamson [166/136/8-10]; Corporal Nicholls [124/91/17-19]; Craftsman Johnston [123/167/18-25]

⁴⁰¹⁸ Hamzah Joudah Faraj Almalje (detainee 772) [20/76]; (PIL000690) [38]

⁴⁰¹⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000782) [29]

⁴⁰²⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [61]; (MOD006491) [12]

⁴⁰²¹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000725) [39]

⁴⁰²² Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000725) [38]–[39]

⁴⁰²³ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/95]

⁴⁰²⁴ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000317) [75]; (PIL000319) [82]; (ASI000884) [61]

Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.731** Hussein Fadhil Abbas Al-Behadili (detainee 778) alleged that, if he tried to move from his position on the chair in the cubicle, he was grabbed from behind by his hair and made to face forwards.⁴⁰²⁵ He described how he was treated, prior to being processed, in the following terms:

*“They would lift my head up from my hair so that I straighten up like this. Once I tried, tired and in fear, my head fell down, immediately they – immediately the soldier lifted me up from my hair and ordered me to stay straight all the time we were there.”*⁴⁰²⁶

Hussein Gubari Ali Al-Lami (detainee 780)

- 3.732** Hussein Gubari Ali Al-Lami (detainee 780) alleged that, every time he moved his head while seated in the cubicle, a soldier would hit him with a large plastic bottle filled with water.⁴⁰²⁷

Allegation 6: Conclusions

- 3.733** The evidence of WO1 Shaun Whyte suggests that the detainees were deliberately kept awake, prior to undergoing tactical questioning on 14/15 May 2004. Any order to enforce this decision came from WO1 Whyte, who accepted that he believed that it was a matter of common sense to do so. It is possible that others may have been unaware of such an order, including the tactical questioner that night. M004, who carried out the tactical questioning of the nine detainees at Camp Abu Naji on 14/15 May 2004, was asked whether the detainees would be sleep deprived prior to tactical questioning and confirmed that no such order had come from him.⁴⁰²⁸
- 3.734** In his oral evidence to the Inquiry, M004 also said that he considered there to be little advantage in depriving the detainees of sleep prior to tactical questioning, particularly given the short amount of time during which they would have been prevented from sleeping.⁴⁰²⁹
- 3.735** The Prisoner Information Sheets indicate that about three to four hours elapsed after arrival at the prisoner handling compound, before each detainee was tactically questioned on 14/15 May 2004. Therefore, if the detainees were kept awake until they had been tactically questioned, they would have been kept awake throughout this period. This would also mean that they were kept awake until very late that night.
- 3.736** In the event, I am satisfied that the detainees were kept awake until they had been tactically questioned that night, although they were allowed to sleep after that. In my view, it was wholly inappropriate to prevent the detainees from sleeping for such a reason and until such a late hour. I am satisfied that such a practice was wrong in principle and amounted to a form of ill-treatment.
- 3.737** Having regard to the totality of the evidence, I am quite sure that the detainees were not provided with camp beds on 14/15 May 2004. The witnesses who believed that camp beds had been available that night were mistaken, probably confusing the events of 14/15 May 2004 with some other occasion. In fact, I have no doubt that the detainees remained seated

⁴⁰²⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001038) [28]; (MOD006697-98)

⁴⁰²⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) [19/48/25]–[49/4]

⁴⁰²⁷ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006637) [10]

⁴⁰²⁸ M004 [127/38/5-8]

⁴⁰²⁹ M004 [127/138-140]

on chairs in their cubicles, for the whole of the time that they remained in the prisoner holding area. Many of the guards had to take action during the night, to prevent a detainee from falling off his chair onto the floor, particularly when asleep. When this occurred, it is likely that the detainee in question was made to sit up and was thus awoken from his sleep.

- 3.738** I accept the evidence of Lance Corporal David Bond, who explained that he only intervened if he thought there was a safety risk and that, for most of the time, the detainees were simply left to sleep undisturbed, as follows:

“Q. If they simply nodded their head down and were fairly secure in the chair but were resting, would you have done anything about that?”

No. One of my prisoners did sleep for – at one point by placing his head forward, and he was left, because he didn’t present any risk of injury to himself or anything else.”⁴⁰³⁰

- 3.739** I am satisfied that the detainees were not required, as a matter of course, to remain in a completely upright position, whilst seated in their cubicles in the prisoner holding area, nor do I believe that there was any policy or practice requiring them to do so. However, I have no doubt that it would have been very uncomfortable to be seated on a metal fold-up chair for an extended period of time and it is also very likely that the detainees were woken up on a number of occasions, when being saved from slipping off the chair whilst asleep. Lance Corporal Bond’s oral evidence to the Inquiry suggests that it did not take much to make him pull a sleeping detainee back onto his seat, as follows:

“Q. For the detainees that you were stopping from slumping over, did it appear to you that they were finding it difficult to sit upright, or uncomfortable?”

A. Not really. But they were sleeping at one point with their head, if you can imagine, leaning to one side or leaning forward, but as soon as their body arched over to one side, either side, that’s when I intervened to sit them up to prevent them from injuring themselves by falling off the chair.”⁴⁰³¹

- 3.740** I now turn to consider the specific allegations made by the detainees with regard to their claims to have been prevented from sleeping and to have been made to sit in an upright position.

Specific allegation by Hamzah Joudah Faraj Almalje (detainee 772)

- 3.741** I accept the evidence of Hamzah Joudah Faraj Almalje (detainee 772), who explained that he had wanted to sit on the floor, but that each time he attempted to do so, the guards had pulled him back on to his chair.

- 3.742** I am satisfied that it was the guards’ understanding that detainees were to remain seated on the chair in their cubicles at all times. However, Corporal Andrew Nicholls recalled one detainee (probably not Hamzah Almalje) who kept trying to get off his chair and onto the floor. Corporal Nicholls said that initially they had moved the detainee back onto his chair, although eventually they had left him on the floor after having moved him repeatedly.⁴⁰³²

⁴⁰³⁰ Lance Corporal Bond [120/128/13-19]

⁴⁰³¹ Lance Corporal Bond [120/118/4-12]

⁴⁰³² Corporal Nicholls (ASI011458-59) [60]

Lance Corporal Mark Rider also explained that he believed that the correct thing to do in such circumstances was to put a detainee, who tried to lie on the floor, back on his chair.⁴⁰³³

Specific allegation by Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.743 I do not accept that Mahdi Jasim Abdullah Al-Behadili (detainee 773) was hit on the head when his blindfold came loose, although I accept that his blindfold may have needed some adjustment at some stage.⁴⁰³⁴ I am unable to rule out the possibility that he may have been struck by the guards, when they were trying to keep him awake. If this did occur, it was before his tactical questioning that night, after which Mahdi Al-Behadili would have been allowed to sleep. However, it seems to me much more likely that Mahdi Al-Behadili was shaken to keep him awake, rather than hit. If he was hit, this would have been done in order to wake him and would not have involved any significant force or caused any injury.

Specific allegations by Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.744 It is possible that Kadhim Abbas Lafta Al-Behadili (detainee 775) did have some water splashed against his face when he lowered his head. If this did occur, it was because the guards thought he was falling asleep and were trying to keep him awake until he was tactically questioned. For the same reason, it is possible that he was struck on the face and ears. If so, very little force was used and no injury was caused. The intention would have been to prevent him from sleeping. Any such incident would have occurred before he was tactically questioned, after which he would have been allowed to sleep. However, I do not believe that the soldiers pulled his chair away from under him or that they hit him arbitrarily as they walked past. I am quite sure that these two details were deliberately false embellishments, intended to lend force to the suggestion that he had been ill-treated.

3.745 It is possible that Kadhim Al-Behadili's face was lifted by a soldier to indicate that he should remain in a more upright position. If this did occur, I am satisfied that it was done in order to prevent him from sleeping (in the period before tactical questioning) or from falling off his chair. It was not done simply to ensure that he was seated in an upright and deliberately uncomfortable position.

Specific allegation by Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.746 It is possible that Ahmed Jabbar Hammood Al-Furaiji (detainee 777) was struck on the head with a hand or with a water bottle in order to keep him awake. If this did occur, it would have been prior to him being tactically questioned and in order to keep him awake, rather than as an act of gratuitous violence. In any event, no significant force was involved and no injury was caused.

Specific allegation by Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.747 I accept Hussein Fadhil Abbas Al-Behadili's (detainee 778) evidence that, from time to time, his head was lifted and he was ordered to sit up and face forwards. Again, I am satisfied that the guards did this to ensure that he remained awake prior to tactical questioning or to prevent him from falling off his chair. However, I do not believe that his hair would have been

⁴⁰³³ Lance Corporal Rider [100/164-165]

⁴⁰³⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) was blindfolded with blacked-out goggles from a very early stage of his detention at Camp Abu Naji, even if he had arrived there initially wearing a temporary blindfold

grabbed as he alleged. I am sure this was a deliberately false embellishment, intended to lend force to his allegation that he had been ill-treated.

Specific allegation by Hussein Gubari Ali Al-Lami (detainee 780)

3.748 I am satisfied that, if Hussein Gubari Ali Al-Lami (detainee 780) was hit at any stage, it was only because one of the soldiers was attempting to keep him awake prior to tactical questioning or to ensure that he was not falling off his chair. Although it is possible that he may have been struck for the same reason, little force was involved and no injury was caused. I do not believe that he was hit with a full water bottle, or that he was hit for any other reason. I am sure that these details were untrue embellishments, intended to lend force to the suggestion that he had been ill-treated.

8. Allegation 7 – The detainees were deprived of their sight for prolonged periods

Military evidence

3.749 Staff Sergeant David Gutcher recalled that, when the detainees first arrived at the prisoner handling compound at Camp Abu Naji on 14 May 2004, they were plasticcuffed to the rear and were already wearing large ski goggles with black masking tape applied across the front (“blackened out goggles”).⁴⁰³⁵ Private Adam Gray and Lance Corporal Christopher Vince also believed that the detainees they saw were wearing blacked out goggles as they got out of the Warriors.⁴⁰³⁶

3.750 For his part, Sergeant Martin Lane remembered that some of the detainees had arrived at Camp Abu Naji with improvised blindfolds and with their hands plasticcuffed to the rear. He recalled that it had been during the processing procedure that the detainees were re-cuffed to the front and had their improvised blindfolds replaced with blacked out goggles.⁴⁰³⁷ WO1 Shaun Whyte confirmed that detainees would arrive at Camp Abu Naji wearing improvised blindfolds, which were replaced with blacked out goggles when they arrived. However, he was unable to recall if this took place prior to processing or in the processing tent itself.⁴⁰³⁸

3.751 It was generally agreed that after they had arrived at Camp Abu Naji on 14 May 2004, the nine detainees remained deprived of their sight for the whole time that they were held in individual cubicles in the prisoner holding area and during their transfer to the Divisional Temporary Detention Facility (“DTDF”) at Shaibah on 15 May 2004. The only time their blindfolds/blacked out goggles were removed was during processing and when they were subject to tactical questioning.

3.752 The deprivation of sight of detainees was governed by Annex G of the Divisional SOI 390, as follows:

“Internees are not to be hooded during the TQ process, however the Geneva Convention allows for internees to be blindfolded when in a military sensitive area. Such blindfolding shall cease as soon as the reason for the blindfolding ceases to exist.”⁴⁰³⁹

⁴⁰³⁵ Staff Sergeant Gutcher (ASI012960) [64]

⁴⁰³⁶ Private Gray [117/37]; Lance Corporal Vince [119/42-43]

⁴⁰³⁷ Sergeant Lane [136/46-49]

⁴⁰³⁸ WO1 Whyte (ASI015962) [36]

⁴⁰³⁹ (MOD046754-56)

- 3.753** The 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") SOI 207 repeated this instruction, as follows:

*"Annex C to MQ MNDSE SOI 390 refers to the Geneva Convention when allowing suspects to be blindfolded when in military sensitive areas. Should suspects require blindfolding, goggles with the lenses covered by black tape are to be used."*⁴⁰⁴⁰

- 3.754** In his oral evidence to the Inquiry, WO1 Whyte confirmed that he had been fully aware of the instruction in SOI 390, but that he had decided to adopt a practice, that could be construed as a departure from its terms, based on safety concerns. What he said was this:

*"When I arrived in Iraq at Camp Abu Naji, I was concerned that the holding area we had wasn't a holding area as was set out when the writing of 390 was done, ie the holding area didn't have locked doors, it didn't have secure facilities. And therefore, I took the decision that individuals, when they come in, should have goggles put on to their – to restrict their eye – their sight."*⁴⁰⁴¹

- 3.755** During his oral evidence, WO1 Whyte also maintained that sight deprivation was necessary when the detainees were escorted anywhere for security purposes. When asked why it was necessary for the detainees to be deprived of their sight while they were seated in the prisoner holding area in individual cubicles facing a wall, WO1 Whyte replied that it "...assisted the control of them." He then went on to explain as follows:

*"...if there was any gap in their sight vision and that, they could see through it. But if they was staring at the wall, then that's fair enough. Or they could turn their head."*⁴⁰⁴²

- 3.756** In his oral evidence to the Inquiry, Captain James Rands said that he also believed that the reason for blindfolding the detainees was for purposes of security. What he said was this:

*"[Blindfolding] is more about security...with nine of them in a relatively small space, blindfolding them stopped them from cooperating and doing anything stupid, like going for one of the guards. We only had a relatively small area to hold them in, so it made sense to keep them blindfolded...One of the key things that we needed to do was just keep them calm and, you know, prevent them from doing anything stupid that could injure themselves or one of our guys. So keeping them blindfolded made sense."*⁴⁰⁴³

- 3.757** For his part, Captain Rands did not believe that there had been any conscious decision about when or how detainees were to be sight restricted. It was his recollection that 1PWRR had simply followed the procedure and practice of the previous Battle Group and had not given the matter any separate consideration themselves, as he explained when questioned by Counsel during his oral evidence to the Inquiry:

"Q. Yes. So are we to understand, then, that to an extent the practice of blindfolding and plasticcuffing was simply following blindly, if you like, that which the previous battlegroup had done?"

A. Um, I think that's actually pretty fair, sir. We did carry on with what the previous battlegroup had – had done. I don't think anyone thought to question it at the time."

⁴⁰⁴⁰ (MOD015808)

⁴⁰⁴¹ WO1 Whyte [106/34/10-16]

⁴⁰⁴² WO1 Whyte [106/83/12-17]

⁴⁰⁴³ Captain Rands [110/20/12]-[21/7]

Q. Was the blindfolding and fisticuffing⁴⁰⁴⁴ [sic] done on your specific instructions or with your passive approval?

*A. I don't recall, but I think passive approval is probably more accurate, sir."*⁴⁰⁴⁵

3.758 WO2 Darran Cornhill also believed that the detainees had been blindfolded in order to ensure that they did not take in any intelligence about their surroundings.⁴⁰⁴⁶

3.759 Sergeant Martin Lane believed the reason for sight deprivation of the detainees was for the purposes of security, and not in order to maintain the shock of capture. What he said was this:

*"It's nothing to do with disorientating. We get them out of the way of the people of the camp because it is none of the camp's business and we don't want to make a big thing of them being there. And it is – yeah, it is more of a security thing. Get them in there, get them housed and sat down. That way they can be guarded correctly and properly, they are all in one location."*⁴⁰⁴⁷

3.760 Lance Corporal David Bond also assumed that the use of blacked out goggles was to ensure that the detainees did not gain any intelligence about their surroundings. He said that he believed it to be reasonable for them to have been deprived of their sight for that reason.⁴⁰⁴⁸

3.761 Sergeant Julian King also believed that the justification for the use of sight restriction was for reasons of security. Although he did not have any direct dealings with the detainees after they had been taken into the prisoner handling compound, he said that he believed that detainees would have their goggles removed once there was no longer any threat to security. During his oral evidence to the Inquiry, he said this:

"A. As far as I can remember, once it had all settled down – obviously I can't comment as I can't remember because I wasn't in there – but quite often, if we had a couple of detainees, the goggles would come off completely for all of them. It's – once everything settles down and there is no problem, unmask the lot of them."

Q. It is just a question of assessing risk at the particular time; is that right?

*A. Yes."*⁴⁰⁴⁹

3.762 Captain Duncan Allen explained that security would have been one reason to blindfold the detainees and was probably the primary purpose. However he said that he believed that the separation of detainees, either through placing them in separate cubicles or by blindfolding them, was also carried out in order to maintain the shock of capture. As he understood it, part of the reason they would be sight deprived was to ensure that they did not communicate

⁴⁰⁴⁴ This was orally corrected during the hearings to read "plasticuffing"

⁴⁰⁴⁵ Captain Rands [110/21/18]–[110/22/4]

⁴⁰⁴⁶ WO2 Cornhill [115/56/3-7]

⁴⁰⁴⁷ Sergeant Lane [136/75/7-13]

⁴⁰⁴⁸ Lance Corporal Bond [120/128-130]

⁴⁰⁴⁹ Sergeant King [113/179/15-24]

with, or see one another “so they felt that they were on their own.” He went on to explain what he meant, as follows:

“Q. Was the blindfolding, or the restriction of sight, acknowledged to be a part – a deliberate part – of the preparing of the detainees for tactical questioning, or was it just a helpful coincidental by-product of the operational security reason?”

A. In terms of preparation, in a benign way to prevent that, particularly if they were all in the – the holding area with inside the ablutions, because they were all in there and I think if they had the blindfolds off, they would that recognise other – other detainees were in there as well. And, again, to prevent that ability to communicate with each other.”⁴⁰⁵⁰

3.763 For his part, Lance Corporal Gordon Higson said that detainees were deprived of their sight for safety and security reasons, although he accepted that there would be no security purpose in blindfolding a detainee who was in a cubicle staring at all wall. However he believed that had the detainees not been sight deprived, they might have been able to see how many guards there were and where the exits were situated, if they turned their head.⁴⁰⁵¹ Lance Corporal Higson also said that keeping the detainees sight deprived could have been done to disorientate the detainees, as follows:

“Q. Do you think there might have been another purpose to wearing the goggles, or requiring them to wear the goggles, namely to keep them disorientated and confused?”

A. At the time I wouldn’t have thought, but subsequently to it, obviously I believe that that’s possibly what – the reason.”⁴⁰⁵²

3.764 For his part, Corporal John Everett said that the detainees would always be sight deprived, even when seated in the cubicles. He believed that the primary reason for sight deprivation was for security purposes – in order that the detainees did not gain any intelligence about their surroundings. He accepted that they would not have been able to gain any intelligence from facing a cubicle wall and assumed that the continuing use of sight restriction had something to do with preparing them for tactical questioning, although had not been specifically told this.⁴⁰⁵³

3.765 Corporal Jeremy Edgar said that he understood that detainees had to be treated in a certain way, in order to ensure that they were in the best condition for tactical questioning. He understood that they should be deprived of sight for this purpose, in order to keep them disorientated. He confirmed that this was not something he had been specifically taught, but believed that it was common sense that that such would be the case.⁴⁰⁵⁴

Allegation 7: Conclusions

3.766 Some, if not all, of the detainees arrived at the prisoner handling compound wearing blacked out goggles. Any detainees that arrived at Camp Abu Naji with temporary blindfolds had these replaced with blacked out goggles. The detainees also had their hands re-tied from the

⁴⁰⁵⁰ Captain Allen [136/193-196]; [196/11-22]

⁴⁰⁵¹ Lance Corporal Higson [118/22]; [118/139]

⁴⁰⁵² Lance Corporal Higson [118/103/6-11]

⁴⁰⁵³ Corporal Everett [117/185-186]

⁴⁰⁵⁴ Corporal Edgar [128/17-18]; [128/71-72]

rear to the front. It is not entirely clear at exactly what stage this occurred, although it is likely that it happened either just before or during processing.⁴⁰⁵⁵

- 3.767** I have no doubt that the nine detainees remained deprived of their sight by the use of blacked out goggles during the whole period of their detention at Camp Abu Naji during 14/15 May 2004, although their goggles were temporarily and briefly removed during both processing and tactical questioning.
- 3.768** As discussed above, the Divisional SOI 390 stipulated that it was permissible to restrict the sight of detainees when they were in “*military sensitive areas*.” As it seems to me, the intention behind this particular instruction is to ensure that detainees are only deprived of sight in circumstances where there is a security risk or where it is likely that they may see or observe something of a militarily sensitive nature.
- 3.769** Many of the military witnesses recalled that the reason for blindfolding the detainees was for “security” or “operational security” purposes, which they explained meant not permitting the detainees to see their surroundings, in case they obtained some sensitive information as a result or they tried to escape.
- 3.770** WO1 Shaun Whyte said that, although he was aware of the relevant provision in SOI 390, he had decided to restrict the sight of all detainees as soon as they entered the prisoner handling compound. He accepted this might be construed as a departure from the provisions of SOI 390, but claimed that he had based his decision on safety concerns. He said that the prisoner handling compound was not the sort of secure area that the provisions of SOI 390 envisaged.
- 3.771** In my view, WO1 Whyte’s explanation amounted to a concern on his part that, unless they were blindfolded from the moment they arrived in the insufficiently secure prisoner handling compound at Camp Abu Naji, detainees might be able to acquire sensitive information or to plan and execute an escape.⁴⁰⁵⁶ Thus, I am satisfied that the essential reason for WO1 Whyte’s decision, to have detainees blindfolded from the outset, was for purposes of security, as was the case with other military witnesses. In effect, WO1 Whyte regarded the entire prisoner handling compound as a “*military sensitive area*”, as described in SOI 390, and therefore felt that it was appropriate to restrict the sight of the detainees for the whole of the time they were held there.
- 3.772** However, I have no doubt that there was another purpose to be served by depriving the detainees of their sight, as was frankly acknowledged by 1st Battalion, Princess of Wales’ Royal Regiment (“1PWRR”) adjutant, Captain Duncan Allen. Restriction of the detainees’ sight ensured that they remained unaware of their surroundings and therefore helped to maintain the shock of capture. It also ensured that the detainees remained unaware of their fellow detainees and kept them in a state of isolation, which also helped to maintain the shock of capture.
- 3.773** Although it might not have been the main reason for restricting the detainees’ sight, I have no doubt that it was an important factor and that many of the soldiers were perfectly well aware of this additional purpose in keeping the detainees sight deprived. I am also satisfied that the use of sight deprivation solely for such a purpose was impermissible. The permissible reasons for sight deprivation were considered by Sir William Gage in the Baha Mousa Inquiry. The subsequent Baha Mousa Report made a recommendation that the governing guidance document for detainee handling should make it absolutely clear that sight deprivation

⁴⁰⁵⁵ See the conclusions expressed in relation to Allegation 10 at paras 3.841 – 3.842 below

⁴⁰⁵⁶ I accept that maintaining the shock of capture played no part in WO1 Whyte’s reasoning [106/111]

should not be used as a means of segregating captured persons in order to prevent them communicating with each other.⁴⁰⁵⁷

- 3.774** Many of the military witnesses, including WO1 Whyte, explained that even when the detainees were seated facing the wall in the cubicles in the prisoner holding area, there was still a security threat that meant that sight restriction was permissible. The security threat was said to be the fact that detainees would be able to see how many guards there were and the layout of the compound, thus enabling detainees to consider and plan an escape.
- 3.775** I am not persuaded that there was any real security threat, once the detainees were seated in individual cubicles within the prisoner holding area. The detainees were each seated facing the wall opposite the entrance to the cubicle. I do not believe that they would have been able to see very much, if anything, of the layout of the prisoner holding area. The detainees were guarded by at least one soldier, with other soldiers nearby, and they were handcuffed. In my view, the risk of escape would have been negligible. In truth, there was no security risk, once the detainees were seated in their cubicles. It was therefore no longer permissible for their sight to be restricted, because it was not permissible to restrict the detainees' sight solely for the remaining additional purpose of maintaining the shock of capture. In my view, the blacked out goggles should have been removed as soon as each detainee was seated in the cubicle.
- 3.776** It seems to me to be clear that insufficient thought was given, by those in charge of prisoner handling at Camp Abu Naji during the relevant period, to the circumstances in which it was permissible for detainees to be sight deprived. Whilst I accept WO1 Whyte's evidence that he considered there to be security concerns, I do not believe that sufficient consideration was given overall to the nature, substance or duration of those concerns. In fact, I have no doubt that Captain James Rands was substantially correct when he said that there had been little more than a "*passive approval*" of the practices and procedures of the previous Battle Group. As it seems to me, in reality the precise circumstances in which it was permissible to restrict the sight of detainees were never properly considered and certainly not implemented.⁴⁰⁵⁸
- 3.777** The Baha Mousa Inquiry gave detailed and careful consideration to the circumstances in which the sight deprivation of detainees was permissible. In the Baha Mousa report, Sir William Gage expressed the view that there was routine use of sight deprivation and that it was "*all too easy*" to justify the use of sight deprivation for reasons of operational security.⁴⁰⁵⁹ Sir William went on to make five recommendations regarding the use of sight restriction which have subsequently been implemented by the Ministry of Defence ("MoD"), as follows:

"(1) where practicable the need to deprive CPERS⁴⁰⁶⁰ of their sight should be avoided in the first place by common sense steps such as appropriate design and layout of facilities, the planning of operations, choice of routes, and covering up equipment;

(2) even if it is impracticable to avoid CPERS seeing facilities or equipment in the first place, there must be a genuine sensitivity about the facilities or equipment before sight deprivation can be justified;

⁴⁰⁵⁷ Report of the Baha Mousa Inquiry (Volume III) [16.105]–[16.107]; NB – recommendation 13

⁴⁰⁵⁸ This criticism applies to both Captain Allen and WO1 Whyte as actually in charge. For his part, Captain Rands also told me that he undertook the role of BGIRO (see paragraph 3.492 above) and, having accepted that he knew about the use of sight deprivation and had passively approved this (see paragraph 3.757 above), he too is criticised for this failure

⁴⁰⁵⁹ Report of the Baha Mousa Inquiry (Volume III) [16.95]

⁴⁰⁶⁰ Captured Persons

(3) when sight deprivation does take place it must only be for as long as is strictly necessary;

(4) sight deprivation should not become routine; it must always be capable of being justified by the operational circumstances on the ground; and

(5) when sight deprivation is used, the fact that it has been used should as soon as practicable be noted in a simple brief record giving the date/time/duration/circumstances/justification for its use.”⁴⁰⁶¹

3.778 Although these recommendations had not been made at the time, let alone officially implemented, I am satisfied that good practice should have meant that points such as those raised in each of these recommendations were actually considered and/or implemented in relation to detainees held at Camp Abu Naji generally and on 14/15 May 2004 in particular. However, it is clear that insufficient consideration was given to whether there was any need to deprive the detainees of their sight whilst in the cubicles, or whether other appropriate steps could be taken to eliminate any security risks. I have no doubt that the use of blacked out goggles to deprive detainees of their sight whilst held at Camp Abu Naji had become entirely a matter of routine by 14 May 2004. In my view, this was wrong in principle and completely unacceptable.

3.779 I am therefore satisfied that the almost continual deprivation of the detainees’ sight at Camp Abu Naji during 14/15 May 2004 was very unsatisfactory and amounted to a form of ill-treatment.

3.780 The deprivation of sight also gave rise to some of obvious communication difficulties that have been explored elsewhere in this part of the Report.⁴⁰⁶²

9. Allegation 8 – The lavatory arrangements were inadequate

3.781 The Prisoner Information Sheets record that all nine detainees were taken to the lavatory on 15 May 2004. They were taken on two occasions and in the same order as their detainee numbers. They were first taken between 03:41 hours and 04:12 hours on 15 May 2004 and then again between 08:10 hours and 08:15 hours the same morning.⁴⁰⁶³

3.782 In his oral evidence to the Inquiry, Sergeant Samuel McKee said that, although he had been the one who countersigned the record of the lavatory visits in the Prisoner Information Sheets that night, it would have been the guards, acting in pairs, who actually escorted each detainee to and from the lavatory.⁴⁰⁶⁴

3.783 Staff Sergeant David Guther also remembered that it would have been the guards who escorted the detainees to the lavatory. He said that the detainees had been taken to the lavatory at intervals, although could not recall how frequently this was done. He also thought that there had been occasions, other than the set times, when a detainee would request to go to the lavatory and would be allowed to do so. According to Staff Sergeant Guther, there were occasions when a detainee would wet himself before the guards were aware that he

⁴⁰⁶¹ Report of the Baha Mousa Inquiry (Volume III) [16.96]

⁴⁰⁶² See paragraphs 3.620, 3.630, 3.670

⁴⁰⁶³ (MOD033658–75)

⁴⁰⁶⁴ Sergeant McKee [124/184-186]

needed the lavatory, because the detainee had been was unable to make his request for the lavatory known to or understood by the guards at the time.⁴⁰⁶⁵

- 3.784** None of the military witnesses remembered there having been any form of restriction on when the detainees were allowed to use the lavatory, although Lance Corporal Nicholas Collins believed that the detainees were not allowed to use the lavatory until after they had been processed, in case they had anything hidden on their person.⁴⁰⁶⁶
- 3.785** Many of the military witnesses believed that the detainees had been able to go to the lavatory upon request and that they did not have to wait to be taken at set times. According to Lance Corporal Andrew Tongue, the detainees could go to the lavatory whenever they wanted and there was no shift or rota system for lavatory visits. As far as he was aware, it was for the detainee to decide whether he wished to go to the lavatory and not the guard.⁴⁰⁶⁷ Sergeant Martin Lane also said that the detainees were able to go to the lavatory whenever they wanted. He also said that he did not believe that detainees were ever taken to the lavatory in shifts.⁴⁰⁶⁸
- 3.786** Lance Corporal Raymond Edwards believed that detainees could go to the lavatory whenever they asked. He did not recall them having been taken in shifts. However, he thought that, if all the detainees were taken to the lavatory one after the other, this might have been at Staff Sergeant Gutcher's suggestion if the detainees had not been to the lavatory for an appreciable period of time.⁴⁰⁶⁹
- 3.787** Lance Corporal David Errington also believed that detainees would be taken to the lavatory on request and that they did not have to wait until the guards decided to take them.⁴⁰⁷⁰
- 3.788** In his oral evidence to the Inquiry, Craftsman Matthew Morris said that he had been given a briefing inside the prisoner handling compound on the first occasion that he had performed guarding duties. He said that, during the briefing, he had been told to escort detainees to the lavatory on request. However, he also remembered that there were occasions when he had been specifically instructed to take detainees to the lavatory at certain times, although he was unable to confirm whether such had been the case on 14 May 2004. Craftsman Morris also recalled that an interpreter was available in the area to help the guards understand what the detainees wanted and that the detainees would usually use gestures to indicate that they needed to go to the lavatory. Craftsman Morris said this:

"Q. How were you to go about understanding if a detainee needed the toilet, say if he didn't speak any English?

*A. There was an interpreter there and, essentially, you know, they sort of made it obvious that they needed to go to the toilet, like a small child would do, you know. You know, like sort of bounce – you know, sort of move about as if they needed the toilet, if you like."*⁴⁰⁷¹

- 3.789** Craftsman Jason Marks could not remember how detainees would make it known that they needed to use the lavatory, but thought that they would gesticulate in some way. He accepted

⁴⁰⁶⁵ Staff Sergeant Gutcher (ASI012976) [137]; [122/91-92]

⁴⁰⁶⁶ Lance Corporal Collins [128/140]

⁴⁰⁶⁷ Lance Corporal Tongue [134/160-161]; [134/191]

⁴⁰⁶⁸ Sergeant Lane [136/118-119]

⁴⁰⁶⁹ Lance Corporal Edwards [129/144-145]

⁴⁰⁷⁰ Lance Corporal Errington [125/66]

⁴⁰⁷¹ Craftsman Morris [133/139/17]–[141/10]; [133/219-220]; [133/234-235]

that a detainee might not have been able to make himself understood properly and that he might have been told to be quiet in response to his request to go to the lavatory.⁴⁰⁷²

3.790 For his part, Corporal Stuart Bowden said that he knew a few words in Arabic, including the word for lavatory. He said that he would listen out for it. He also said that the detainees could make their intentions clear by the use of pointing and sign language.⁴⁰⁷³ However, he accepted that, on occasion, a detainee might have had difficulty in making it clear that he needed to use the lavatory. During his oral evidence to the Inquiry, he said this in response to Counsel's questions:

"Q. So if the detainee needed to communicate, for example, that they were in pain or they required the toilet, they had to do so without the assistance of an interpreter; is that right?"

A. Yes.

Q. If the detainees did speak in Arabic, they were being told to be quiet or to shut up; is that right?"

A. That's correct yes.

Q. How did you know that a detainee that was shouting out or speaking wasn't trying to communicate that they required assistance of some kind?"

*A. We didn't."*⁴⁰⁷⁴

3.791 In his witness statement to the Inquiry, the interpreter M013 said that he had visited the prisoner holding area on the evening of the 14 May 2004, because one detainee had been shouting. It turned out that the detainee needed the lavatory. Once M013 had translated what the detainee was saying so that the guards understood, the detainee was then taken to the lavatory.⁴⁰⁷⁵

3.792 In his oral evidence to the Inquiry, Corporal Daniel Marshall said that a detainee would sometimes not ask to go to the lavatory, but would simply urinate in the cubicle he was in. Corporal Marshall said that this would be done quite deliberately.⁴⁰⁷⁶

3.793 Staff Sergeant David Gutter said that, although he did not personally escort detainees to the lavatories, he believed that the guards would leave the detainee in the lavatory, whilst they waited outside. According to Staff Sergeant Gutter, the detainee would still be handcuffed to the front of his body, but he was unsure whether the detainee would remain blindfolded whilst using the lavatory.⁴⁰⁷⁷

⁴⁰⁷² Craftsman Marks [126/60]

⁴⁰⁷³ Corporal Bowden [120/230-231]

⁴⁰⁷⁴ Corporal Bowden [120/193/23]-[194/9]

⁴⁰⁷⁵ M013 (ASI023648) [100]

⁴⁰⁷⁶ Corporal Marshall [130/54-55]; [130/65]

⁴⁰⁷⁷ Staff Sergeant Gutter (ASI012976) [137]

3.794 Corporal James Randall stated that, in general, detainees were allowed to use the lavatory without assistance, although the door to the lavatory would remain open.⁴⁰⁷⁸

The Detainees' accounts and specific allegations

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.795 In his first written Inquiry statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) said that he had been allowed to go to the lavatory and that his handcuffs were removed to allow him to do so.⁴⁰⁷⁹ In his second written Inquiry statement, Mahdi Al-Behadili said that he had been taken to the lavatory by two soldiers, who lifted his blindfold to allow him to urinate.⁴⁰⁸⁰ However, in his oral evidence to the Inquiry, Mahdi Al-Behadili said that he had not been allowed to go to the lavatory at all.⁴⁰⁸¹

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.796 In his first written Inquiry statement, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) said that he had only been allowed to go to the lavatory on one occasion.⁴⁰⁸² He claimed to have shouted to the guards repeatedly that he needed to go to the lavatory. He was made to stand in the corner for 10-15 minutes, then he was taken to a yard and told to go to the lavatory, but he had been unable to go. At the time he was made to kneel and was handcuffed.⁴⁰⁸³ In his second witness statement to the Inquiry, he said that he made a second request for the lavatory which was refused by the guards who had told him to “*shut up*.”⁴⁰⁸⁴

3.797 In his oral evidence to the Inquiry, Abbas Al-Hameedawi said that he could not be sure if he had been taken to the lavatory once or twice that night. He said this, in response to Counsel's questions:

“Q. And how many times do you recall you were taken to use the lavatory?”

*A. I think it was once I wanted to go to the toilet and once to the shower, and once I told them, you know, ‘I need to go to the loo’, and they just left me and they took ages.”*⁴⁰⁸⁵

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.798 In his 2008 Judicial Review statement, Hussein Fadhil Abbas Al-Behadili (detainee 778) said that he had asked to go to the lavatory, but that his requests were refused on approximately three occasions. He said that he had been allowed to go to the lavatory on one occasion. He had been handcuffed, so soldiers were required to pull down his trousers and undergarments

⁴⁰⁷⁸ Corporal Randall (ASI009759) [60]

⁴⁰⁷⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001120) [65]

⁴⁰⁸⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000787) [45]

⁴⁰⁸¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/24/7–9]

⁴⁰⁸² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000865) [54]; (ASI000866) [61]

⁴⁰⁸³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI000865) [59]

⁴⁰⁸⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (ASI004770) [40]

⁴⁰⁸⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/69/11-16]

and pull them back up for him when he was finished. He said that he had found this to be extremely humiliating.⁴⁰⁸⁶ In his oral evidence to the Inquiry, he said this:

*“Before they took us to the helicopter, we asked for a toilet and they got us to a makeshift toilet. And when I was there and while handcuffed – I had to use the toilet handcuffed – my – he unzipped my trousers and then zipped it back again.”*⁴⁰⁸⁷

3.799 In his second Judicial Review statement, Hussein Al-Behadili also alleged that he had heard an interpreter tell an Iraqi “no toilets” in response to an Iraqi who had shouted “toilets please.”⁴⁰⁸⁸

Allegation 8: Conclusions

3.800 It is clear that, as indicated by the entries in the Prisoner Information Sheets, there was a routine for taking the detainees to the lavatory at set times while they were held at Camp Abu Naji during 14/15 May 2004. In addition to those set times, the detainees could request to be taken to the lavatory at any time, as a number of the military witnesses recalled in their evidence. However, it appears that separate unscheduled trips such as those were not recorded in the Prisoner Information Sheets, although they should have been.

3.801 The fact that no interpreter was present in the prisoner holding area as a matter of course made it difficult for a detainee to make it known that he needed to go to the lavatory. Many of the military witnesses who gave evidence to the Inquiry acknowledged the difficulty that a detainee faced in making himself heard and understood, when asking to go to the lavatory. It is very likely that the strict enforcement of the no-talking policy did make it more difficult for the detainees to communicate their needs to the guards. However, it is also apparent that when a detainee did succeed in making it known that he needed to go to the lavatory, he would have been taken. I do not believe that any of the detainees were deliberately and consciously prevented from going to the lavatory.

3.802 There does not appear to have been any set procedure as to how the practicalities of a trip to the lavatory were to be managed, although it seems that the guards sometimes lifted blindfolds and loosened or removed handcuffs temporarily, when the detainees used the lavatory. Thus, a number of the detainees, who actually made no complaint about the lavatory arrangements, described how their blindfolds had been temporarily raised, so that they were able to use the lavatory unassisted.⁴⁰⁸⁹

Specific allegation by Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.803 I am quite sure that Mahdi Jasim Abdullah Al-Behadili (detainee 773) was not deliberately prevented from going to the lavatory. He deliberately lied in his oral evidence in alleging that this had happened. In fact, he had made it clear in his two written Inquiry statements that he had been taken to the lavatory and that his blindfold and handcuffs had been removed, so that he had been able to use the lavatory unassisted. I am perfectly satisfied that this was what had happened in reality.

⁴⁰⁸⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006560) [35]

⁴⁰⁸⁷ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/23/17-21]

⁴⁰⁸⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006703) [33]

⁴⁰⁸⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000731) [59]; Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (MOD005346) [19]; (ASI013955) [23]

Specific allegations by Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.804** Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) suggested that he had been only allowed to go to the lavatory on one occasion. I am satisfied that he was mistaken about this and am satisfied that he would have been taken on at least two occasions, at the times and as recorded in the Prisoner Information Sheets. I accept that he asked to go to the lavatory at other times that night and I also accept that it is possible that he was simply told to “*shut up*” on one such occasion. If this did happen, it was because the guards believed that he was trying to talk to other detainees and did not appreciate that he was actually asking to be taken to the lavatory.
- 3.805** I very much doubt if Abbas Al-Hameedawi was ever required to stand in a corner for 10-15 minutes at any time that night, before being taken to a yard and told to go to the lavatory. Nevertheless, given that there was a set procedure for taking all the detainees to the lavatory in order and at one time, I am unable to rule out the possibility that Abbas Al-Hameedawi may have had to stand and wait for his turn to use the lavatory. However, if that did happen, it seems to me very unlikely that he had to stand and wait for as long as 10 to 15 minutes (although it may have seemed like it to him at the time). In any event, I am quite sure that it would have been happenstance, rather than some form of deliberate ill-treatment by the guards.

Specific allegation by Hussein Fadhil Abbas Al-Behadili (detainee 778)

- 3.806** I accept that it is possible that Hussein Fadhil Abbas Al-Behadili (detainee 778) may have had his requests for the lavatory refused on several occasions. If this did happen, it was not done with the deliberate intention of preventing him from going to the lavatory, but because the guards either did not hear or did not understand what he wanted.
- 3.807** I accept that it is possible that Hussein Al-Behadili remained handcuffed when he was taken to the lavatory and that this meant that soldiers had to pull down his trousers and undergarments and pull them back up for him. As I have already indicated, I am satisfied that there does not appear to have been a set procedure about how the practicalities of going to the lavatory were to be managed. In some cases, a detainee’s cuffs were loosened or removed, in other cases the detainee’s cuffs remained in place. If this did happen, I am quite sure that it was not because the guards deliberately intended to humiliate or embarrass Hussein Al-Behadili. It was done to assist him. However, I readily accept that the experience would have been both embarrassing and humiliating for Hussein Al-Behadili. It was a wholly unsatisfactory practice that could and should have been avoided by an appropriate procedure for managing the practicalities of lavatory visits by detainees in a satisfactory manner.⁴⁰⁹⁰ In my view, those who were in charge of ensuring that appropriate procedures were in place for dealing with such matters should have devised such a procedure and/or taken steps to ensure that the guards were fully aware of it and put it into practice.⁴⁰⁹¹
- 3.808** I do not believe Hussein Al-Behadili’s evidence that he had heard an interpreter tell an Iraqi “*no toilets*” in response to an Iraqi shouting “*toilets please*.” No other detainee made such an allegation and I am quite sure that, if a detainee did request to go to the lavatory in this manner, his request would not have been consciously and deliberately refused. I am sure that

⁴⁰⁹⁰ Hamzah Joudah Faraj Almalje (detainee 772) also recalled having being taken to the lavatory and placed on it although did not expand on whether this meant that the guards assisted him with his clothing (PIL000691) [44]

⁴⁰⁹¹ In my view those responsible for ensuring that there were proper procedures in place for dealing with such matters were Captain Allen and WO1 Whyte

this was a deliberate lie by Hussein Al-Behadili that was intended to support the allegations that the detainees had been ill-treated at Camp Abu Naji that night.

10. Allegation 9 – The detainees were ill-treated during medical examinations

Military evidence

- 3.809** After they had been processed, the nine detainees all received medical checks at three-hourly intervals. According to the Prisoner Information Sheets these occurred at approximately 00:01 hours, 03:10 hours, 06:06 hours, 12:10 hours and 09:00 hours on 15 May 2004.⁴⁰⁹² The Prisoner Information Sheets stipulated that detainees should be seen by a doctor every three hours after their initial medical check.
- 3.810** It was Corporal Shaun Carroll who carried out the medical checks at 00:01 hours, 03:10 hours and 06:06 hours. He said that he had followed the same procedure on each occasion. He explained that he walked down the middle of the prisoner holding area with an interpreter and asked each detainee if he had any problems. He recalled that the detainees were asleep at the time and that the interpreter had to wake them in order to ask if they had any problems.⁴⁰⁹³
- 3.811** The two medical checks at 09:00 hours and 12:10 hours were carried out by the 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") Regimental Medical Officer ("RMO"), Captain Kevin Bailey. He said that the purpose of the medical checks was to ensure that any injuries, which had been identified in the initial medical examination, were not worsening and that the detainees still remained in a healthy state. He explained that these later checks were relatively cursory and that an interpreter would have been on hand to ask the detainees if they had any medical problems.⁴⁰⁹⁴
- 3.812** In addition to the routine three-hourly medical checks, there were two specific medical interventions during the night of 14/15 May 2004. First, after he had been processed, Hamzah Joudah Faraj Almalje (detainee 772) was seen in the prisoner holding area by Corporal Carroll at 21:37 hours on 14 May 2004. Corporal Carroll believed that he had then changed Hamzah Almalje's dressings.⁴⁰⁹⁵ Corporal Carroll noted that Hamzah Almalje had been processed between 21:03 hours and 21:10 hours. However, because he did not believe that this gave sufficient time for Hamzah Almalje's wound to be treated and redressed during his processing, Corporal Carroll thought it likely that he had taken Hamzah Almalje back to his cubicle to dress the wound, before returning him to the tent to finish his processing. However, he was quite unable to say why the relevant Prisoner Information Sheet did not record any such prisoner movement and accepted that the details in the Prisoner Information Sheet were likely to be correct.⁴⁰⁹⁶
- 3.813** Second, Private Malcolm Shotton administered medication to Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) at 02:21 hours on 15 May 2004. Private Shotton said that he had volunteered to treat Ibrahim Al-Ismaeeli, after having been told by Corporal Shaun Carroll that the detainee needed some medication administered to him: namely co-codamol and

⁴⁰⁹² (MOD033658-75)

⁴⁰⁹³ Corporal Carroll [116/97/19]–[99/5]

⁴⁰⁹⁴ Captain Bailey (ASI015298) [130]

⁴⁰⁹⁵ Corporal Carroll (ASI016082) [138]

⁴⁰⁹⁶ Corporal Carroll [116/44-47]

diclofenac. Private Shotton assumed that the medication in question had been prescribed by a doctor, because he believed it to be prescription only medication.⁴⁰⁹⁷

- 3.814** Private Shotton said that he had gone to the prisoner holding area and checked that the correct medication was available and in date. He then went to see Ibrahim Al-Ismaeeli with one of the guards. Private Shotton described how they had then lifted the detainee to his feet while he was speaking in Arabic and also saying something that sounded like “pain” in English.
- 3.815** According to Private Shotton, the guard then opened the detainee’s mouth, by using his hands to apply pressure to his chin and to either side of his mouth. Once the detainee’s mouth had been opened in this fashion, Private Shotton put the pills into his mouth and then gave him water in order to swallow them.
- 3.816** According to Private Shotton, Ibrahim Al-Ismaeeli had been reluctant to open his mouth and Private Shotton thought that this might have been because he believed he was being poisoned. Ibrahim Al-Ismaeeli was wearing blacked out goggles at the time.⁴⁰⁹⁸ In a written statement that he gave to the Royal Military Police (“RMP”) in March 2008, Private Shotton said that he had been the one who had opened the detainee’s mouth,⁴⁰⁹⁹ but in a second statement to the RMP in December 2008, he stated that it had been a guard who had done so.⁴¹⁰⁰
- 3.817** None of the soldiers, who had been guarding the detainees at the time, were able to recall this incident. Staff Sergeant David Gutchter said that every time a medic visited the prisoner holding area, the visit would be recorded in the Prisoner Information Sheets. He said that he was unable to recall where he had been when Ibrahim Al-Ismaeeli was given medication on 15 May 2004 or how it had come about that it was decided he needed the medication in the first place.⁴¹⁰¹
- 3.818** Corporal Carroll accepted that he must have authorised Private Shotton to give the painkillers to Ibrahim Al-Ismaeeli, because Private Shotton did not have the authority to dispense/prescribe the medication himself. Corporal Carroll could not remember how he had come to know that the Ibrahim Al-Ismaeeli was in sufficient pain to make the painkillers necessary.⁴¹⁰² Corporal Carroll said that he assumed that Private Shotton had taken the medication to the prisoner holding area himself, because did not think that he (Corporal Carroll) had taken the medication to the prisoner holding area and simply left it there. Corporal Carroll said he was sure that, when he had checked the detainees at 00:01 hours that night, he had asked Ibrahim Al-Ismaeeli, through the interpreter, if he was in pain and he had answered “No.”
- 3.819** Corporal Carroll said that he would only have prescribed the medication for Ibrahim Al-Ismaeeli because he asked for it, although he was unsure how he had come to know that Ibrahim Al-Ismaeeli needed the pain-relief medication, given that when he had checked at 00:01 hours that night, he had not required any such medication. Corporal Carroll emphatically denied that he had withheld pain relief from Ibrahim Al-Ismaeeli for any reason and made it abundantly clear that he regarded such conduct to be unethical.⁴¹⁰³

⁴⁰⁹⁷ Private Shotton [109/40-42]

⁴⁰⁹⁸ Private Shotton [109/44-45]; [109/57-62]

⁴⁰⁹⁹ Private Shotton (MOD019713)

⁴¹⁰⁰ Private Shotton (MOD023904)

⁴¹⁰¹ Staff Sergeant Gutchter[122/61–67]

⁴¹⁰² Corporal Carroll [116/74/4]–[80/1]

⁴¹⁰³ Corporal Carroll [116/112-118]

- 3.820** In his written Inquiry statement, Craftsman Steven Hetherington recalled there having been a detainee with a leg wound seated in one of the cubicles in the prisoner holding area that night. He made no further comment about that particular detainee in the original version of his Inquiry statement, other than to say that he did not see him being given any medical treatment.⁴¹⁰⁴ However, at the outset of his oral evidence to the Inquiry, he amended his original Inquiry statement to add that he remembered how he had seen a guard “*putting a finger in a wound of sorts*” that night. Craftsman Hetherington went on to say that he had been concerned when he saw this happen, but had not questioned why it was being done, nor did he report it. He went on to say that it had struck him at the time as something that should not be happening. Craftsman Hetherington said that he could not be sure whether it had been a guard or the medic who had acted like this, but that he thought that he had done it to be smart and to act the “*big man*”. Craftsman Hetherington said that he believed it had been done to cause deliberate pain to the detainee in question.⁴¹⁰⁵
- 3.821** If such an incident actually did occur at Camp Abu Naji on the night of 14/15 May 2004, it seems likely that that detainee would have been Ibrahim Al-Ismaeeli (detainee 774), given that Craftsman Hetherington recalled that the detainee in question had a leg wound.

The Detainees’ accounts and specific allegations

Hamzah Joudah Faraj Almalje (detainee 772)

- 3.822** Although Hamzah Joudah Faraj Almalje (detainee 772) was unable to remember whether he had had his dressing changed that night, he did recall that a doctor had bandaged his leg at some stage. According to Hamzah Almalje, the bandage had not been tight enough and had become loose later on. He was unable to remember whether his leg was dressed during his first or second “*interrogation*” or whether the bandage had been changed at any point.⁴¹⁰⁶ He remembered that, at some stage, he had told the “*interrogator*” that he had pains in his stomach and that he needed to go to the lavatory. He said that he had been taken to the lavatory, but he had lost the bandage on his leg and he had lost his trousers, so that when he came out of the lavatory he was only in his underpants.⁴¹⁰⁷

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

- 3.823** Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) did not recall having been given any painkilling drugs, while he was held at Camp Abu Naji on 14/15 May 2004. He said that he had been tired and in shock and could only remember the pain. However, he said that he did remember that the guards had given him a biscuit and some water that night. He said that the soldiers had held his cheeks and inserted the bottle in his mouth in order to give him the water.⁴¹⁰⁸ Later in his oral evidence to the Inquiry, Ibrahim Al-Ismaeeli appeared to accept that a soldier did try to put something in his mouth by holding it open.⁴¹⁰⁹

⁴¹⁰⁴ Craftsman Hetherington (ASI022944) [47]; [126/134-135]

⁴¹⁰⁵ Craftsman Hetherington [126/130-133]; [126/163/7-11]

⁴¹⁰⁶ Hamzah Joudah Faraj Almalje (detainee 772) [20/18-19]

⁴¹⁰⁷ Hamzah Joudah Faraj Almalje (detainee 772) [19/80/2-7]

⁴¹⁰⁸ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/17-18]

⁴¹⁰⁹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/52]

3.824 Ibrahim Al-Ismaeeli also alleged that, whilst he had been seated in the cubicle in the prisoner holding area, one of the soldiers had trampled on his leg that night.⁴¹¹⁰

Allegation 9: Conclusions

Hamzah Joudah Faraj Almalje (detainee 772)

3.825 I accept that Hamzah Joudah Faraj Almalje (detainee 772) may be correct in saying that the bandage on his leg became loose and had to be re-dressed. For his part, Corporal Carroll was unable to recall clearly why it was that he had dressed Hamzah Almalje's injury about half an hour after he had been processed. It seems to me very likely that the reason was that the bandage he had applied during the processing medical examination had become loose and that he had to reapply it shortly after Hamzah Almalje had been returned to the prisoner holding area. In any event, I am satisfied that Hamzah Almalje was given appropriate medical care and not subjected to any form of ill-treatment at the time.

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.826 The circumstances in which Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) came to be given painkilling medication at 02:21 hours on 15 May 2004 are not clear. I accept that the medic, Corporal Shaun Carroll, was responsible for the decision to prescribe the medication in question. However, Corporal Carroll had carried out a medical check at 00:01 hours and said that Ibrahim Al-Ismaeeli did not require painkillers then. On that basis, it appears that Corporal Carroll took the decision to medicate him at some time after that particular medical check, but before he carried out a further check at 03:10 hours that night.

3.827 Corporal Carroll said that he would only have prescribed the medication in question if Ibrahim Al-Ismaeeli had asked for pain relief. However, he went on to say that he could not have seen Ibrahim Al-Ismaeeli after 00:01 hours and before he was actually given the tablets at 02:21 hours that night, otherwise it would have been recorded in the Prisoner Information Sheets.⁴¹¹¹ Furthermore, according to Private Malcolm Shotton the medication in question was already in the prisoner holding area when he arrived at 02:21 hours and yet Corporal Carroll did not think that he had brought them there. During his oral evidence, Private Shotton said that he thought painkillers had been given to Ibrahim Al-Ismaeeli earlier that night.⁴¹¹² If so, it is possible that the medication in question was a repeat or follow-up prescription of an earlier and unrecorded prescription.

3.828 On behalf of the Iraqi Core Participants, it was submitted that pain relief medication had been deliberately withheld from Ibrahim Al-Ismaeeli until tactical questioning had been completed.⁴¹¹³ This suggestion was emphatically denied by Corporal Carroll and I accept his evidence that he did not take a conscious decision to withhold medical treatment until after tactical questioning.

3.829 So far as concerns the manner in which the medication in question was actually administered to Ibrahim Al-Ismaeeli that night, it is clear that insufficient steps were taken to ensure that Ibrahim Al-Ismaeeli was not medicated against his will. When he was given the medication, the only steps taken to inform him about what was happening had been to tell him in English

⁴¹¹⁰ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/14]

⁴¹¹¹ Corporal Carroll [116/79]

⁴¹¹² Private Shotton [109/41]

⁴¹¹³ See ICP written Closing Submissions at (647) [2189] onwards

that pain relief was being given. In my view, that was wholly unsatisfactory. I can see no good reason why an interpreter had not been called to assist, so that Ibrahim Al-Ismaeeli could properly understand what was intended and his informed consent obtained. His blacked goggles should have been lifted, so that he could see the pills in question and properly understand what was happening. If measures such as these had been taken, it is very likely that Ibrahim Al-Ismaeeli would have cooperated fully, because he was obviously in pain,⁴¹¹⁴ as a number of the soldiers who guarded or saw him in the prisoner holding area that night remembered.⁴¹¹⁵

3.830 As it was, Ibrahim Al-Ismaeeli was effectively forcibly medicated against his will. I accept Private Shotton's evidence that he had not previously administered medication to a detainee in the prisoner handling area and that he therefore did not know the correct procedure for doing so. In my view, it was wholly unsatisfactory that this task should have been carried out by a soldier who was, in effect, unqualified to do it properly. I accept that Private Shotton believed his job to be simply that of administering the medication, as opposed to carrying out any medical checks or discussing the medication with Ibrahim Al-Ismaeeli himself. Nevertheless, measures should have been taken to ensure that Ibrahim Al-Ismaeeli fully understood what was happening. I have no doubt that appropriate steps should have been taken before Private Shotton's attendance to ensure that Ibrahim Al-Ismaeeli was fully aware of what was happening and that he consented to the procedure. As it seems to me, these various shortcomings were the responsibility of those in charge of the medical procedures at Camp Abu Naji that night.

3.831 I am therefore satisfied that the manner in which Ibrahim Al-Ismaeeli (detainee 774) was medicated at 02:21 hours on 15 May 2004 may have amounted to a form of ill-treatment. However I am also satisfied that it was more a case of poor practice, rather than deliberate ill-treatment and, in any event, that it did not have any significant adverse consequences for Ibrahim Al-Ismaeeli himself.

3.832 I am satisfied that Craftsman Steven Hetherington's evidence was essentially truthful and accurate. I therefore accept that he was able to remember an occasion in which a soldier touched a detainee's leg wound that night. It seems likely that the detainee in question was Ibrahim Al-Ismaeeli (detainee 774). Craftsman Hetherington accepted that his memory of events that night was unclear and that the soldier may have been a medic. It seems to me likely, therefore, that what he actually observed was Ibrahim Al-Ismaeeli being medically examined and/or given medical treatment that night and that he has somewhat misinterpreted what he saw. There was no sinister intent and it was not an act of ill-treatment.

3.833 I am sure that the incident described by Ibrahim Al-Ismaeeli was not the same as the one recalled by Craftsman Hetherington. Ibrahim Al-Ismaeeli alleged that a soldier had trampled on his injured leg, whereas Craftsman Hetherington recalled that a soldier had put his finger in or on a detainee's leg wound. I am quite sure that the incident described by Ibrahim Al-

⁴¹¹⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [17/65]

⁴¹¹⁵ See, for example, Lance Corporal Vince (ASI009928) [48]

Ismaeeli did not happen at all. I have no doubt that this was a deliberate falsehood on his part, intended to lend substance to his claims of ill-treatment at Camp Abu Naji that night.

11. Allegation 10 – The detainees were deliberately plasticcuffed too tightly so as to cause pain

Military evidence

- 3.834** Many of the witnesses recalled that the detainees had arrived at Camp Abu Naji on 14 May 2004 with plasticuffs applied to their rear,⁴¹¹⁶ although some of the witnesses, such as Colour Sergeant Graham King, recalled that some of the detainees had plasticuffs applied to their front.⁴¹¹⁷
- 3.835** WO1 Shaun Whyte explained that detainees were usually plasticcuffed to the rear when they arrived at Camp Abu Naji. He considered this to be acceptable for security reasons for the short period required to transport the detainees from the point of capture.⁴¹¹⁸ WO1 Whyte confirmed that it was standard procedure for detainees to be plasticcuffed to the front whilst detained at Camp Abu Naji.⁴¹¹⁹
- 3.836** According to Staff Sergeant David Gutchner, detainees would be cuffed to the rear when they were first brought to the processing tent. He said that the plasticuffs would be removed and each detainee re-cuffed to the front after he had been processed.⁴¹²⁰
- 3.837** Some of the guards remembered that the detainees already had their hands plasticcuffed to the front when they were seated in the cubicles in the prisoner holding area before they were processed.⁴¹²¹

The Detainees' accounts and specific allegations

- 3.838** Many of the detainees did not make any specific complaint about how they were plasticcuffed at Camp Abu Naji that night. All the detainees confirmed that they had remained plasticcuffed throughout their detention at Camp Abu Naji and while they were seated in the cubicles after processing, they had been plasticcuffed to the front.

Kadhim Abbas Lafta Al-Behadili (detainee 775)

- 3.839** Kadhim Abbas Lafta Al-Behadili (detainee 775) said that he had been repeatedly cuffed and un-cuffed before processing that night. He said that this had caused him a lot of unbearable pain, as follows:

“They cuffed me to the front and pulled the plasticuffs incredibly tight and then cut them off and cuffed me to the rear and then to the front again, repeatedly.”

⁴¹¹⁶ See, for example, Corporal Bowden [120/190]

⁴¹¹⁷ Colour Sergeant G. King (ASI010809) [131]; See also Lance Corporal Tongue [134/131/12-14]

⁴¹¹⁸ WO1 Whyte (ASI015975) [77]

⁴¹¹⁹ WO1 Whyte (ASI015962) [35]; See also, Lance Corporal Bond [120/11/14-15]; Private Marc Kendall [131/181/18-25]

⁴¹²⁰ Staff Sergeant Gutchner (ASI012969) [102]

⁴¹²¹ See, for example, Corporal Marshall [130/22]

- 3.840** Kadhim Al-Behadili (detainee 775) said that he believed that this had been quite deliberate and claimed that *“the soldiers seemed to be seeing how tightly they could cuff my wrists together.”*⁴¹²²

Allegation 10: Conclusions

- 3.841** The military evidence was not entirely consistent about when the detainees had their wrists cuffed and un-cuffed at Camp Abu Naji during 14/15 May 2004. It seems clear that the detainees were un-cuffed during processing and were re-cuffed to the front thereafter. The detainees may also have been re-cuffed at some stage after they had been taken to the cubicles and before processing, most likely at the stage that they were first offered water in the prisoner holding area. Thus, Mahdi Jasim Abdullah Al-Behadili (detainee 773) remembered that he had his hands re-cuffed to the front before processing took place.⁴¹²³
- 3.842** If Kadhim Abbas Lafta Al-Behadili (detainee 775) did have his wrists re-cuffed prior to processing, I am satisfied that this was done in order to comply with protocol that the detainees should be cuffed to the front. There may have been, at this stage, some over tightening of his cuffs, but if this occurred I am satisfied that it was not deliberate. In any event, it would have been remedied once the cuffs were removed and later replaced during processing. I am sure that he was not cuffed and recuffed repeatedly. This was a deliberately false embellishment on his part, intended to lend substance to his claims of ill-treatment at Camp Abu Naji that night.

12. Potential ill-treatment 11 – The detainees were subjected to “static” or “white” noise from a radio

- 3.843** Corporal John Everett recalled that there was a radio in the prisoner holding area which was deliberately mistuned. He believed that it was present and playing a static noise when the detainees arrived on 14 May 2004. He had previously stated that it continued to play throughout their stay,⁴¹²⁴ but in his oral evidence to the Inquiry he said that he had turned it off as soon as he noticed it. He described the sound as loud enough to block out background noise, but no louder.⁴¹²⁵ Corporal Everett explained that he believed its purpose was to prevent the detainees from overhearing anything said or discussed by the guards. What he said was this:

*“I considered it being, at the time, used as a tool to block out the whispering of the guards while they were going about their duties.”*⁴¹²⁶

- 3.844** Lance Corporal David Bond also remembered having heard the sound of an untuned radio that was in the prisoner handling compound on 14 May 2004 and went on to say this:

*“I remember being in there and it was on. I don’t know if it was being tuned, or – it wasn’t playing music, it was like in between stations.”*⁴¹²⁷

- 3.845** Corporal Stuart Bowden also remembered the radio in the prisoner holding area, but was unable to recall if it had been on the whole time he was present on 14 May 2004. He said

⁴¹²² Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000726) [41]

⁴¹²³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL00082) [30]

⁴¹²⁴ Corporal Everett (MOD020178)

⁴¹²⁵ Corporal Everett [117/175-179]

⁴¹²⁶ Corporal Everett [117/176/6-8]

⁴¹²⁷ Lance Corporal Bond [120/76/14-15]

that it had made a static noise for a minute or two, after which someone had turned it off. According to Corporal Bowden, it had not been very loud and he did not know why it had been switched on in the first place.⁴¹²⁸

- 3.846** Sergeant Samuel McKee also remembered the presence of a radio in the prisoner holding area on 14 May 2004, which had been tuned “off-station.” He said that there was an occasion when he had switched a radio off, but he was unable to confirm whether that had been on 14 May 2004 or on some other occasion.⁴¹²⁹ In his oral evidence to the Inquiry, Sergeant McKee explained that the radio had been placed there and played “off-station” for the following reason:

“It was off-station for a reason. It was there to create noise and it was to mask people in case anyone could hear – because it was so close to the Battalion Headquarters and if anyone had have – if there had have been comings and goings or discussions or anyone talking, it was there so that it would be loud enough to mask anything so that the detainees wouldn’t be able to hear it.”⁴¹³⁰

- 3.847** In his oral evidence to the Inquiry, Lance Corporal David Errington said that there had been a radio adjacent to the cubicles in the prisoner holding area, which was used to play untuned “static” noise on 14 May 2004. As he understood it, the purpose of the radio was to ensure that the detainees did not hear the sounds of the camp or the guards. He went on to say that it was also to prevent the detainees from communicating with or hearing one another. He said that he had not been told that this was so, but that he considered it to be the obvious reason.⁴¹³¹
- 3.848** Similarly, Lance Corporal Christopher Vince remembered that an untuned radio had been there on 14 May 2004. He also thought that its purpose was to prevent detainees from communicating with one another or from overhearing anything.⁴¹³² Craftsman Matthew Morris recalled that a radio had been present on 14 May 2004. He assumed its purpose was to prevent detainees from overhearing sensitive information from the HQ building.⁴¹³³
- 3.849** A number of other military witnesses remembered the presence of a radio in the prisoner handling compound, but were unable to say whether it was present or switched on during 14/15 May 2004.⁴¹³⁴ Lance Corporal Raymond Edwards recalled a radio, but was unable to say definitely whether it had been present on 14/15 May 2004.⁴¹³⁵ He recalled that the radio would be tuned off-station so that emitted “white noise” or “static”. He believed that it had been put there to prevent the detainees from hearing what the guards were saying.⁴¹³⁶
- 3.850** Sergeant Martin Lane also remembered that there had been a radio in the prisoner holding area, which had been deliberately tuned off-station, so that it made a hissing, crackling noise. He said that it was quite loud. He believed that its purpose was to mask the sound of talking

⁴¹²⁸ Corporal Bowden [120/192-193]

⁴¹²⁹ Sergeant McKee [124/142-149]

⁴¹³⁰ Sergeant McKee [124/142/20]-[143/2]

⁴¹³¹ Lance Corporal Errington [125/31-33]

⁴¹³² Lance Corporal Vince [119/32/22]-[33/15]; (ASI009927) [45]

⁴¹³³ Craftsman Morris [133/157-159]; (ASI010878) [25]

⁴¹³⁴ Lance Corporal Tongue [134/114-115]; NB – he did not remember the radio being used to play “white noise”, but stated that he recalled it playing British forces Broadcasting Services during the day; Craftsman Marks [126/29]; [126/63]; Lance Corporal Peskett (ASI015206) [50]

⁴¹³⁵ Lance Corporal Edwards [129/189]

⁴¹³⁶ Lance Corporal Edwards [129/108-109]

or vehicle movement. However, according to Sergeant Lane, the radio was definitely not there on 14/15 May 2004, because it had either been removed or broken by then.⁴¹³⁷

3.851 A number of the guards did not recall the presence of a radio in the prisoner handling compound at all.⁴¹³⁸ Thus, Corporal Andrew Nicholls told me that he did not recall a radio ever being present in the prisoner handling compound.⁴¹³⁹

3.852 Sergeant Samuel McKee said that he believed the radio would have been put there originally on the orders of either WO1 Shaun Whyte or WO2 Darran Cornhill.⁴¹⁴⁰ In his oral evidence to the Inquiry, Lance Corporal Raymond Edwards said that he believed that it was the Regimental Sergeant Major (“RSM”) (i.e. WO1 Whyte) who would have been responsible for placing the radio in the prisoner handling compound.⁴¹⁴¹

3.853 However, WO1 Shaun Whyte said that he had never heard or seen a radio in the prisoner handling compound and that he would not have permitted there to be one.⁴¹⁴² Similarly, WO2 Darran Cornhill said that he was unaware of there having been any radio in the prisoner handling compound.⁴¹⁴³

3.854 Staff Sergeant David Gutter said that he had no recollection of there having been any sort of noise from a radio in the prisoner handling compound at Camp Abu Naji and was unable to remember whether or not there had actually been a radio there.⁴¹⁴⁴

3.855 In his oral evidence to the Inquiry, Captain Duncan Allen said that he did not recall there having been a radio in the prisoner handling compound. He explained that he did not authorise the use of one, nor was he aware that one was ever used. In response to Counsel’s questions, he said this:

“Q. If there was a radio and it played white noise in the area of the ablutions block, what would your reaction be to that?”

A. It would be unusual. I don’t think that was – that was necessary. Unless it was there to – to drown out any noise coming from the outside in terms of, you know, operational security.

Q. Do you remember that ever being discussed?

*A. No, I don’t – I don’t recall any discussion on that.”*⁴¹⁴⁵

⁴¹³⁷ Sergeant Lane [136/44-45]

⁴¹³⁸ Corporal Marshall [130/43/6-10]; Corporal M. Taylor [129/52/14-17]; Corporal MacDonald [134/32/23-25]; Corporal Edgar [128/42/8-17]; Private Grist [131/84/20-21]; Lance Corporal Rider [100/143/10-14]

⁴¹³⁹ Corporal Nicholls [124/43-44]

⁴¹⁴⁰ Sergeant McKee (ASI014663) [54]; [124/149]

⁴¹⁴¹ Lance Corporal Edwards [129/109-110]

⁴¹⁴² WO1 Whyte [106/105]

⁴¹⁴³ WO2 Cornhill [115/96]

⁴¹⁴⁴ Staff Sergeant Gutter [122/44/22-24]; (ASI012974) [128]

⁴¹⁴⁵ Captain Allen [136/248/7-15]

Potential ill-treatment 11: Conclusions

- 3.856** None of the nine detainees made any allegations about a radio having been played while they were held in the cubicles in the prisoner handling compound at Camp Abu Naji during 14/15 May 2004. In fact, none of the detainees remarked on the presence of a radio at all.⁴¹⁴⁶
- 3.857** Having regard to the totality of the evidence, I am satisfied that the static noise from a radio was played from time to time in the prisoner handling compound, and that this is likely to have included occasions on which detainees were present in the prisoner holding area. I am satisfied that, on such occasions, the radio was tuned “*off-station*,” so that it played static or “*white*” noise. It is very likely that the purpose of this was to ensure that conversations were not overheard, either those between guards, from the processing tent or from the HQ Building. I have not heard any evidence to suggest that the radio was set to play static noise for any other reason and it appears to have occurred in a somewhat *ad hoc* and informal fashion. It also seems to be the case that it was never a formally authorised practice.
- 3.858** I am unable to conclude with any certainty whether an untuned radio was actually played in the prisoner holding area on 14/15 May 2004, although it seems to be unlikely. It may be that those witnesses who recalled this having happened that night were confusing it with other occasions when it did occur. In any event, if an untuned radio was played on 14/15 May 2004, it is clear that it did not give rise to any concern on the part of any of the nine detainees who were held in the prisoner holding area that night. This may have been because the radio was played at such a low volume that it went unnoticed or because it was switched off very soon after the detainees arrived, as suggested by Corporal Everett and Sergeant McKee. I am therefore satisfied that, if the radio was played at all that night, it did not amount to any form of ill-treatment of the detainees as a result.
- 3.859** Although, on the facts, there was no actual ill-treatment of the detainees by any use of an untuned radio in the prisoner holding area on the night of 14/15 May 2004, it is nevertheless worth mentioning that the use of an untuned radio in order to increase the noise in the prisoner handling compound at any time, even for security purposes, was neither an appropriate nor a permissible practice. Thus, in the Report of the Baha Mousa Inquiry, Sir William Gage included a recommendation that prisoner handling guidance should make it clear that, when strictly necessary, ear defenders should be used to prevent captured persons from overhearing sensitive information.⁴¹⁴⁷

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

- 3.860** As detailed above, there were a number of respects in which the handling of the detainees at Camp Abu Naji during 14/15 May 2004 was less than satisfactory. It seems clear to me that insufficient thought had been given to some important aspects of detainee handling, such as the use of blacked out goggles and whether it was an appropriate or proper practice for them to be worn for prolonged periods.
- 3.861** Additionally, there was no formal or satisfactory method whereby detainees could make their requests or concerns known. I make no criticism of the decision to prevent the detainees from talking with another, which I am satisfied was enforced for good reason. However, with

⁴¹⁴⁶ The only remotely similar recollection was from Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) who stated that one of the guards listened to music on headphones [16/95]

⁴¹⁴⁷ Report of the Baha Mousa Inquiry (volume III) [16.72]–[16.83]

the benefit of hindsight, it is clear that this policy, coupled with the fact that an interpreter was not present or used whilst the detainees were held in the Prisoner Holding Area, led to an unsatisfactory situation in which the detainees were not always able to make their requests or concerns known. Thus simple requests, such as asking for water or to use the lavatory, were often misunderstood or ignored.

3.862 Furthermore, many of the actual ways in which detainee handling was carried out at Camp Abu Naji during the relevant period had been adopted or developed on a somewhat *ad hoc* basis. This meant that some unacceptable practices had developed over time. The use of a radio to produce “white noise” in the prisoner holding area and the prevention of sleep until the completion of tactical questioning are examples.

3.863 The lack of guidance in some key areas also resulted in some significantly sub-standard treatment, in particular the failure to provide a meal at any stage and the practice of keeping the detainees blindfolded throughout the entire period of their detention at Camp Abu Naji. The latter unsatisfactory state of affairs was also compounded by the general perception that “the shock of capture” could be maintained by adopting such a practice.