

CHAPTER 3: THE TACTICAL QUESTIONING OF THE NINE DETAINEES AT CAMP ABU NAJI ON THE NIGHT OF 14/15 MAY 2004

3.259 During the period in which they were detained at Camp Abu Naji, each of the nine detainees was subjected to a process known as Tactical Questioning. The purpose of tactical questioning was, at the time, set out at paragraph 1 of Annex G to Division's SOI³⁵²⁹ 390, in the following terms:

*"The aim of Tactical Questioning (TQ) is to extract time sensitive tactical intelligence from an internee or to establish if an internee requires interrogation in the Divisional Temporary Detention Facility (DTDF)."*³⁵³⁰

3.260 The times at which each of the nine detainees was tactically questioned and the duration of each session can be ascertained from the Prisoner Information Sheets and the reports produced of their tactical questioning. The recorded timings were as follows:

Hamzah Joudah Faraj Almalje (detainee 772)

Prisoner Information Sheet (MOD024467) – 00:10 hours – 00:20 hours

Tactical Questioning Report (MOD040955) – 23:59 hours – 00:15 hours

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

Prisoner Information Sheet (MOD024469) – 00:22 hours – 00:33 hours

Tactical Questioning Report (MOD040958) – 00:20 hours – 00:30 hours

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

Prisoner Information Sheet (MOD024471) – 00:35 hours – 00:45 hours

Tactical Questioning Report (MOD040961) – 00:32 hours – 00:49 hours

Kadhim Abbas Lafta Al-Behadili (detainee 775)

Prisoner Information Sheet (MOD024473) – 00:50 hours – 01:03 hours

Tactical Questioning Report (MOD040964) – 00:49 hours – 01:01 hours

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

Prisoner Information Sheet (MOD024475) – 01:07 hours – 01:17 hours

³⁵²⁹ Standard Operating Instruction

³⁵³⁰ (MOD048401)

Tactical Questioning Report (MOD040967) – 01:07 hours – 01:15 hours

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

Prisoner Information Sheet (MOD024477) – 01:20 hours – 01:28 hours

Tactical Questioning Report (MOD040595) – 01:18 hours – 01:28 hours

Hussein Fadhil Abbas Al-Behadili (detainee 778)

Prisoner Information Sheet (MOD024479) – 01:31 hours – 01:45 hours

Tactical Questioning Report (MOD046238) – 01:18 hours – 01:28 hours³⁵³¹

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

Prisoner Information Sheet (MOD024481) – 01:46 hours – 01:59 hours

Tactical Questioning Report (MOD040598) – 01:46 hours – 01:57 hours

Hussein Gubari Ali Al-Lami (detainee 780)

Prisoner Information Sheet (MOD024483) – 02:02 hours – 02:16 hours

Tactical Questioning Report (MOD040601) – 02:00 hours – 02:15 hours

- 3.261** The tactical questioning of the nine detainees at Camp Abu Naji, on the night of 14-15 May 2004, was conducted by a soldier who has been allocated the cipher M004. Having regard to the length and detail of this Report's consideration of his tactical questioning of the nine detainees that night, in the paragraphs that follow I have set out some introductory details about M004 and how he came to be the one who actually carried out the tactical questioning of these particular detainees.
- 3.262** M004 joined the army in 1983. At the start of his career he was involved in infantry operations. However, between 1997 and 2008, he became involved in various operational military intelligence roles.³⁵³² During this period, he deployed to Iraq twice. The first such deployment was between August 2003 and November 2003. The second deployment, and the deployment relevant to the matters discussed in this Report, was between 20 April 2004 and 7 July 2004.³⁵³³
- 3.263** M004 deployed to Iraq on the second occasion as part of the Field HUMINT³⁵³⁴ Team ("FHT") based at Camp Abu Naji.³⁵³⁵ He held the rank of Colour Sergeant and reported directly to the Officer Commanding FHT, an individual given the cipher M001 by this Inquiry.³⁵³⁶
- 3.264** During this particular tour, M001 volunteered M004 to assist the 1st Battalion, Princess of Wales' Royal Regiment ("1PWRR") Battlegroup based at Camp Abu Naji with the tactical

³⁵³¹ These timings must be an error, apparently a mistaken transposition of the times during which Ahmed Jabbar Hammood Al-Furaiji (detainee 777) was tactically questioned

³⁵³² M004 (ASI022254) [4]

³⁵³³ M004 (ASI022254) [5]

³⁵³⁴ HUMINT – 'Human Intelligence'

³⁵³⁵ M004 (ASI022254) [7]

³⁵³⁶ M004 (ASI022255) [7]–[10]

questioning of captured prisoners. When performing this task, M004 reported to the 1PWRR Intelligence Officer, Captain James Rands.³⁵³⁷

3.265 Immediately prior to his second deployment to Iraq, M004 undertook a course in Prisoner Handling and Tactical Questioning (the “PH and TQ” course), conducted by F Branch at Chicksands. This was a five day course and, having completed it, M004 was considered to be qualified to undertake tactical questioning.³⁵³⁸

1. The training received by M004

3.266 In his Inquiry statement, M004 provided considerable detail about the manner in which he had been trained.

3.267 First, he described having been taught a range of different questioning techniques, including the use of open, closed and compound questions. These were designed to teach tactical questioners to extract the basic information required for building an intelligence picture.³⁵³⁹

3.268 Second, M004 described having been taught how to use a method known as the “tree of knowledge” and time lines in order to develop lines of questioning.³⁵⁴⁰

3.269 Third, M004 described the training he had received on questioning techniques, as follows:

“The questioning techniques included shouting and screaming (which is also known as ‘harsh’), showing empathy and befriending (‘friendly’), firm and logical questioning without emotion (‘firm/logical’) and good cop/bad cop (also known as ‘Mutt and Jeff’). One exercise required me to go into a room and shout and scream at a teddy bear (who was playing the role of a detainee) and another to go into the room and be empathetic and attempt to befriend the detainee. I was given briefing instructions before entering the room and I understood that the purpose of these exercises was to establish whether I was capable or [sic] shouting at someone and empathising with them.”³⁵⁴¹

3.270 Fourth, M004 described how he had been taught the “...bridge, carrot, stick (‘BCS’) approach”, in the following terms:

“In practice this translates to giving a detainee a way out of his detention (the bridge), suggesting how the detainee can obtain this (the carrot) and the outcome of not taking this option (the stick). An example of this approach is recorded in the reports that have been disclosed to me by the Inquiry; see for example, MOD040956 where it states, ‘the subject was given the BCS. If he tells us all he knows we can try to keep him out of prison and repatriate him to his family quicker’.”³⁵⁴²

3.271 Fifth, M004 described a “wheat and chaff exercise”, the aim of which is to identify any individual with high-quality intelligence from a number of detained ill-informed combatants.³⁵⁴³

³⁵³⁷ M004 (ASI022255-56) [11]

³⁵³⁸ M004 (ASI022256) [12]–[13]

³⁵³⁹ M004 (ASI022256-57) [14]

³⁵⁴⁰ Ibid.

³⁵⁴¹ M004 (ASI022257) [15]

³⁵⁴² M004 (ASI022257) [16]

³⁵⁴³ M004 (ASI022257) [17]

- 3.272** Sixth, M004 recalled that there had been a brief discussion of the relevant Geneva Conventions and STANAGs (Standard NATO agreements). According to M004, due to the short duration of the course, participants were expected to read these documents in their own time. However, he recalled, that he had been taught to “...*treat all prisoners as we would like to be treated ourselves if we were captured.*”³⁵⁴⁴
- 3.273** Seventh, M004 recalled having been specifically taught that he could not physically touch a detainee at any stage during the process of tactical questioning. He recalled that guards were permitted to touch detainees while escorting them and also that an exception was made when it was necessary to stop a detainee from causing harm to himself or the soldiers nearby. In such circumstances, only enough force as was necessary to counter that possible harm was permitted. According to M004, he was taught that he could stand as close as he wished to a detainee during a tactical questioning session. M004 explained that this was to enable him to get into the “*personal space*” of the detainee being questioned, so as to emphasise that the questioner was in complete control of the situation.³⁵⁴⁵
- 3.274** Eighth and finally, M004 described having been taught a technique known as “*dislocation of expectation*” or “*conditioning*”. In order to illustrate what he meant, M004 gave an example of a blindfolded detainee being left in the centre of the room and the tactical questioner then tapping on the desk with his fingers, whilst whistling or making loud breathing sounds. The result would be that the detainee did not know what to expect was going to happen to him. M004 understood that the conditioning process continued from the point of capture right up to the time that a detainee was actually tactically questioned.³⁵⁴⁶
- 3.275** The Inquiry also heard evidence from a witness who was given the cipher, M033. M033 was a former trainer in tactical questioning. He gave evidence about the sort of training that a tactical questioner in the position of M004 could be expected to have received. M033 set out five key principles of that training.
- 3.276** The first key principle was that the use of physical violence against a detainee was prohibited.³⁵⁴⁷
- 3.277** The second key principle was that physical contact between the questioner and the detainee was not permitted, except in certain limited circumstances, which M033 described as follows:

*“The Inquiry has asked me about the physical contact permitted between the questioner and the detainee. The only physical contact permitted is that necessary to conduct a pat down search if this has not already been done. Also, if during the interrogation, a detainee becomes compliant (meaning that they are willing to provide information), a questioner may use an empathetic touch to consolidate the rapport-building process. Additionally, physical contact may be made in exceptional circumstances, such as in self defence. Where self-defence is necessary, no more force should be used than is necessary to bring the detainee under control. Physical contact may also be necessary if a prisoner becomes physically unwell or if there is a medical issue that needs to be attended to.”*³⁵⁴⁸

- 3.278** It is apparent that the permissible technique of invading a detainee’s personal space, so as to make him feel uncomfortable, might bring the tactical questioner close to acting in a

³⁵⁴⁴ M004 (ASI022258) [20]

³⁵⁴⁵ M004 (ASI022259) [21]–[22]

³⁵⁴⁶ M004 (ASI022259-60) [23]–[24]

³⁵⁴⁷ M033 (ASI024576) [27]; [161/146]

³⁵⁴⁸ M033 (ASI024580) [38]

manner that transgressed this second key principle.³⁵⁴⁹ Thus, during his oral evidence to the Inquiry, M033 was specifically asked whether blowing on the back of a detainee's neck was permissible. In reply, M033 said that it was not something that tactical questioners were ever trained to do and he considered it somewhat odd, but he knew of no reason why such a practice might be prohibited.³⁵⁵⁰

3.279 The third key principle was that threats to detainees were not permitted. In his written Inquiry statement, M033 gave the following detailed evidence of the prohibition on threatening detainees:

"Students were taught that threats to, or any violence directed at, the CPERS³⁵⁵¹ was not permitted. If during the practical exercises students misused or misapplied the approaches taught to them, for example by using threatening behaviour or throwing chairs around the room, the fact that this was unacceptable was highlighted to them. All of these exercises were observed by instructors on Close [sic] Circuit Television ('CCTV') and recorded on video so that the recording could be used to highlight areas for improvement to the students."³⁵⁵²

3.280 Two aspects of this key principle require more detailed consideration.

3.281 First, with regard to M033's example of a student throwing chairs around the room, there is a marked contrast between M033's characterisation of that behaviour as unacceptable and/or threatening behaviour by the student/trainee, that required to be highlighted as such by the "PH and TQ" course instructors, and M004's evidence about his understanding of the training he had received with regard to such behaviour. Thus, in the written statement that he gave to the Royal Military Police ("RMP") in November 2008, M004 said this:

"I did not deem this excessive or out of my remit as a TQer,³⁵⁵³ as I actually remember that one of the students on my PH TQ Course in one of his scenarios threw a chair in the de-briefing cell in front of his subject across the room and that was deemed perfectly fine by the DS [Directing Staff]."³⁵⁵⁴

3.282 I have no doubt that, during his training at Chicksands, M004 did gain the impression that to throw a chair across the room in the presence of the subject was acceptable behaviour on the part of the tactical questioner and that it did not constitute an unacceptable threat to the subject. I also have no doubt that this impression was the exact opposite of what the course instructors should have ensured that the students learnt from such an example. I entirely accept M033's evidence that the course instructors should have highlighted this as an example of unacceptable and/or threatening behaviour on the part of the student tactical questioner. Unfortunately, the lesson learnt by M004 was completely the wrong one. The fact that he was left with the clear impression that this was acceptable behaviour by a tactical questioner, and that he went on to model at least some of his own behaviour accordingly, strongly suggests that the training he received was not as carefully and clearly conducted as it should have been.

³⁵⁴⁹ M033 [161/18]

³⁵⁵⁰ M033 [161/74]; [161/135-136]

³⁵⁵¹ Captured Persons

³⁵⁵² M033 (ASI024576) [27]

³⁵⁵³ I.e. to hit the table very hard once with a metal tent peg, soon after the detainee had been brought into the tent and whilst he was still blindfolded

³⁵⁵⁴ M004 (MOD002068)

- 3.283** Second, the question as to what type of conduct was considered to constitute an impermissible threat to a detainee requires further examination. During the course of both his written and oral evidence to the Inquiry, M033 gave a number of hypothetical examples of various types of behaviour or conduct by a questioner during a notional tactical questioning session. In respect of each such example, M033 indicated whether he considered it to constitute a threat to the detainee and was therefore an unacceptable transgression of the third key principle that he had identified.
- 3.284** Thus, M033 expressed the view that throwing any object at a detainee would be unacceptable, but that throwing a paper cup onto the floor in frustration would be acceptable.³⁵⁵⁵ Similarly, M033 stated that the use of insulting language was acceptable and that a statement that might be perceived as threatening was also permissible, provided it was actually a statement of fact and not used as a threat.³⁵⁵⁶
- 3.285** For my part, I found it impossible to identify any clear or logical basis for the various distinctions drawn by M033 in his evidence, when determining whether something done or said constituted an unacceptable threat or (in the case of something said) merely a statement of fact. Whilst these distinctions were not investigated in evidence, I am concerned about how any student could be sure about what was and what was not permitted, with regard to this third key principle, beyond the specific examples actually presented to him or her during training.
- 3.286** The fourth key principle of the tactical questioning training, as set out in the evidence of M033, was that the use of stress positions and the deprivation of food and sleep were all prohibited.³⁵⁵⁷ M033 clarified the scope of the prohibition on sleep deprivation as meaning a requirement that each detainee should be allowed eight hours' sleep during a 24 hour period, of which four hours had to be consecutive. However, according to M033, there was no requirement that a detainee had to be allowed to sleep before being tactically questioned.³⁵⁵⁸
- 3.287** The fifth key principle identified by M033 was that the tactical questioner was permitted to have the subject brought into a session blindfolded and then for steps to be taken in relation to that detainee in order to arouse in him a sense of unease.³⁵⁵⁹ M033 also confirmed that it was permissible, as part of this process, for the tactical questioner to use loud noises to create a short, sharp shock in order to focus the subject's attention and to make him aware of his predicament.³⁵⁶⁰ He explained that, although it was permissible to shout at the subject from behind whilst doing so, it was not permissible to shout directly into the subject's ear.³⁵⁶¹
- 3.288** In the statement that he made to the RMP in September 2008, M033 also stated that "*scare tactics*" were impermissible.³⁵⁶² It therefore seems that, at least as far as M033 was concerned, the training of tactical questioners drew a distinction between a "*short, sharp shock*" and a "*scare tactic*". However, during the course of his oral evidence to the Inquiry, M033 said this: "*I think it would be extremely difficult to identify a dividing line between those two.*"³⁵⁶³

³⁵⁵⁵ M033 (ASI024584) [46]

³⁵⁵⁶ M033 [161/36]; [161/24]

³⁵⁵⁷ M033 [161/27]

³⁵⁵⁸ M033 [161/146/22]-[147/4]

³⁵⁵⁹ M033 [161/135]

³⁵⁶⁰ M033 [161/136/3-9]

³⁵⁶¹ M033 [161/46/19]-[47/3]

³⁵⁶² M033 (MOD021641)

³⁵⁶³ M033 [161/44/22-23]

- 3.289** I am quite sure that M033 was right about that. Again, whilst I accept that I have not actually seen precisely how M004 was trained, I have great difficulty understanding how, in practice, a student in his position could reasonably be expected to understand properly the distinction between a permissible short, sharp shock and an impermissible scare tactic – if there is one, which I doubt.
- 3.290** Apart from the specific matters to which I have drawn attention above, there was much common ground in the evidence of M033 and M004 about the training actually given to student tactical questioners. I have no doubt that the evidence of both M033 and M004 was truthful. I am therefore satisfied that the training M004 actually received in order to become qualified as a tactical questioner was as summarised in the foregoing paragraphs of this Report.

2. The admitted conduct of M004

- 3.291** In his written Inquiry statement, M004 said that he could not specifically recall the tactical questioning sessions that he conducted in respect of the nine detainees captured on 14 May 2004. Nevertheless, he had no reason to believe that there had been any departure from the procedure that he normally followed.³⁵⁶⁴ In the statement that M004 gave to the Royal Military Police (“RMP”) in November 2008 and in both his written and oral evidence to the Inquiry, M004 gave a very detailed and candid account of the normal procedure that he followed when conducting tactical questioning sessions. M004 also said that he had conducted tactical questioning sessions for about six other detainees prior to 14 May 2004.³⁵⁶⁵
- 3.292** M004 explained that he was normally informed by the Officer Commanding the Field HUMINT Team when the Battalion had captured a prisoner or prisoners and his assistance was required. M004 would then go to the Battalion Headquarters, where he would receive a briefing from the Intelligence Officer (Captain James Rands) about what had happened and what to expect.³⁵⁶⁶
- 3.293** M004 said that he would then contact the RMP. They would provide him with further detail about the circumstances of the arrest and about any items found in the possession of the detainee/s, when arrested, which might be relevant to his tactical questioning.³⁵⁶⁷
- 3.294** M004 would also consider whether anything of relevance to his tactical questioning had come to light during the processing of the detainee/s in question. In his written Inquiry statement, M004 gave examples of this sort of information, such as whether a detainee did not like noise or that he had become distressed when talking about his family.³⁵⁶⁸ During his oral evidence to the Inquiry, M004 seemed to suggest that he would not necessarily have any real opportunity to make use of this sort of information himself, but that he would take steps to pass the information in question on to the Joint Forward Interrogation Team (“JFIT”).³⁵⁶⁹
- 3.295** M004 recognised there was a requirement for detainees to be medically examined prior to the commencement of a tactical questioning session. He confirmed that he relied upon

³⁵⁶⁴ M004 (ASI022275) [74]

³⁵⁶⁵ M004 (ASI022265) [41]

³⁵⁶⁶ M004 (ASI022265) [42]

³⁵⁶⁷ M004 (ASI022265) [43]

³⁵⁶⁸ M004 (ASI022266) [45]

³⁵⁶⁹ M004 [127/88]

the Adjutant General's Corps Sergeant, Sergeant Martin Lane, for confirmation that this examination had been carried out.³⁵⁷⁰

3.296 M004 then described how members of the guard force would bring the detainee, who was to be tactically questioned, from his individual shower cubicle in the prisoner holding area to the tent in which the tactical questioning session would take place, as follows:

*"There would normally be two guards who would escort the detainee into the tent. This would be done by each guard holding one of the detainees' [sic] arms at the elbow. It was important at this stage that the dislocation of expectation was maintained and therefore the guards would not generally speak to the detainee. The guards would leave the detainee standing in front of me on the other side of the desk, leave the tent and close the tent flap behind them."*³⁵⁷¹

3.297 Once the guards had removed themselves and gone outside, the detainee would be left standing blindfolded in the tent in silence for a short time. Apart from the detainee, only M004 and the interpreter would be present.

3.298 On 14 May 2004, the interpreter for the first five tactical questioning sessions was an individual who was given the cipher M013 by the Inquiry. M013 was therefore the interpreter for the tactical questioning sessions of Hamzah Joudah Faraj Almalje (detainee 772), Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), Kadhim Abbas Lafta Al-Behadili (detainee 775) and Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776).

3.299 It had been intended that M013 would act as the interpreter for the tactical questioning sessions of all nine detainees on 14/15 May 2004. However, after having completed five such sessions, M013 became "*mentally exhausted*" and was unable to complete the remainder.³⁵⁷² In the event, the Inquiry has been unable to establish who actually acted as the interpreter for the tactical questioning of Ahmed Jabbar Hammood Al-Furaiji (detainee 777), Hussein Fadhil Abbas Al-Behadili (detainee 778), Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) and Hussein Gubari Ali Al-Lami (detainee 780), despite having made considerable effort to do so.

3.300 M004 described how, at the very beginning of the tactical questioning session, he would break the silence by sometimes drumming his fingers on the table and/or by whistling. He would then approach the detainee in silence and walk around him, blowing on the back of his neck whilst doing so. At this stage, the detainee was still blindfolded and handcuffed. In his oral evidence to the Inquiry, M004 described what he did at this very early stage of the session, in the following terms:

*"I would always walk round, always blow on the back of the neck, sometimes drum fingers, sometimes whistle."*³⁵⁷³

3.301 In his written Inquiry statement, M004 then went on to say what he did next, as follows:

"After I had walked around the detainee and when there was no other noise, I would hit the tent peg on the table in the centre of the tent to startle the detainee and ensure that he was fully focussed [sic] on the questions that were about to be asked. I used

³⁵⁷⁰ M004 (ASI022266) [46]

³⁵⁷¹ M004 (ASI022267) [48]

³⁵⁷² M013 [137/25/13-19]

³⁵⁷³ M004 [127/52/9-11]

*this technique at the start of (I would estimate) nine out of ten tactical questioning sessions as I found it to be particularly useful in getting detainees to concentrate on the questioning.*³⁵⁷⁴

3.302 During his oral evidence to the Inquiry, the interpreter, M013, described his own reaction to M004's use of the tent peg in this manner, as follows:

"Q. You describe it as a tent peg in your paragraph 73, top of page 24, [ASI023641].

A. Tent peg, yes.

Q. Did any of the other TQ'ers use an implement like that?

A. Not that I can remember, no.

Q. And he used to bang it on the table, didn't he?

A. Correct.

Q. And did he warn you before he did it?

A. He would tell me if – yes. Before we went in, you know, "I'm going to shout, bang loud and make a lot of noise", yes.

Q. Did you see the detainee flinch or jump when that happened?

A. As did I, yes.

Q. As did you, both of you flinched and jumped?

A. Yes, yes.

Q. Why did you flinch?

A. It's a very sharp, loud noise.

Q. Yes.

A. It's a natural reaction.

Q. Even though you knew it was coming, it still shocked you?

*A. I didn't know at exactly what point he would decide to just pick it up and bang it. It was – it was generally, usually, a shock, yes. It made me jump.*³⁵⁷⁵

3.303 Next, M004 would stand directly in front of the detainee in question and remove his plasticuffs. Having done so, he would rub the detainee's wrists for a few seconds, in case the plasticuffs had been applied too tightly and had thus affected the detainee's circulation. M004 would then remove the detainee's blindfold.³⁵⁷⁶ Once the detainee's plasticuffs and blindfold had been removed, he was given a chair to sit on.³⁵⁷⁷

³⁵⁷⁴ M004 (ASI022269) [53]

³⁵⁷⁵ M013 [137/43/9]-[44/8]

³⁵⁷⁶ M004 (ASI022269) [54]

³⁵⁷⁷ M004 (ASI022269) [55]

- 3.304** From this position, M004 would begin to question the detainee. In doing so, he utilised the various questioning techniques that he had been taught during training. In his written Inquiry statement, he described how he would go about this, in the following terms:

*"The technique that I would adopt would depend on how effective I was at getting information from the detainee. If for example, one technique worked and the detainee was content to talk to me, I would not need to try another. However, if one technique was not working, I might try another technique to see if it had a different effect. Very occasionally, if the detainee was not willing to talk, or I felt that I was not getting his full attention, I would again use the technique of striking a tent peg on a table for a second time. Before doing so I would gesture to the interpreter that I was planning to do this, both so that the interpreter did not get a surprise and so he could observe the reaction from the detainee. I would then stand up from my chair and walk around the detainee again while the interpreter instructed the detainee to keep looking forward (rather than watching me walk around). I did not even look at my interpreter as I walked. When I reached the table at the back of the tent, behind the detainee, I would hit the tent peg loudly on it. Hitting the table with the tent peg was, as I understood it, the maximum limit of what I was permitted to do in questioning sessions to manage the dislocation of expectation. I would not use the tent peg on more than two occasions in the one session however as it would lose its effect."*³⁵⁷⁸

- 3.305** In his written Inquiry statement, the interpreter, M013, described how M004's conduct of his tactical questioning sessions had appeared to him, as follows:

*"M004 conducted the sessions with a mix of verbal and non-verbal communication. I recall he would stand then sit and sometimes walk around. At times he would get up close to the detainee, by which I mean he would decrease the space between himself and the detainee and stand very close to him, including moving his face close, although I never saw him touch a detainee. During the interview M004 had a wooden tent peg (which was about a foot long, of the type used to pin a guy rope to the ground) that he might bang on the table, but again I never saw him touch anyone with it. Other than removing the detainees' goggles and plasticuffs I never saw M004 have any physical contact with the detainees. In my RMP statement I indicated that detainees were allowed to sit if they were co-operative; however I cannot now recall if they sat or stood during the sessions. I remained seated throughout the session."*³⁵⁷⁹

- 3.306** During his oral evidence to the Inquiry, M013 suggested that other tactical questioners for whom he had acted as interpreter were calmer than M004. He also remembered M004 having told detainees: "if you don't cooperate, you will go away for a very long time; I don't know when you will see your family again." M013 said that he could not recall any other tactical questioners who made statements such as that. M013 also recalled how M004 had been the only tactical questioner who used to bang on the table, blow on the necks of the detainees and shout over their shoulders and in their ear.³⁵⁸⁰

- 3.307** M004 described all detainees as being "extremely distressed" when they first arrived in the tent for their tactical questioning sessions. He also accepted that some detainees, particularly the younger ones, had remained distressed throughout the entire session.³⁵⁸¹

³⁵⁷⁸ M004 (ASI022269-70) [56]

³⁵⁷⁹ M013 (ASI023640-41) [73]

³⁵⁸⁰ M013 [137/41-43]

³⁵⁸¹ M004 [127/180-181]

3.308 In his written Inquiry statement, the interpreter, M013, was able to recall the substance of some of the questions that the nine detainees were asked on the 14/15 May 2004, as follows:

*“The questions that night/morning concentrated on gathering information about the contact and how it was organised. The detainees were asked questions about the call to arms, in particular where the call came from. The detainees were also asked how they got into the contact. They were asked for names of others involved, their own involvement and about their capture. They were also probed about their previous military history.”*³⁵⁸²

3.309 For his part, M004 had a fairly limited recollection of the substance of his questioning. In his written Inquiry statement, he said this:

*“I recall that I was merely trying to find out who within the community had issued the order and was the brains behind the operation to attack the coalition forces. My overall impression of the nine detainees was they seemed shocked and disorientated. They cooperated in their tactical questioning sessions but they could provide very little information of intelligence value.”*³⁵⁸³

3.310 At the conclusion of each tactical questioning session, M004 would ask the detainee whether he had anything further that he wished to say. Once M004 was sure that there was no further information to be obtained, he replaced the detainee’s plasticuffs and blindfold and then called for a guard to take the detainee back to the prisoner holding area.³⁵⁸⁴

3.311 M004 took notes during the course of the each tactical questioning session. These notes were used to produce reports of the tactical questioning sessions. Once the reports were written, M004 either shredded or burned any notes that he had taken.³⁵⁸⁵ M004’s reports of his tactical questioning of the nine detainees on the 14/15 May 2004 have all been disclosed to the Inquiry.³⁵⁸⁶

3.312 M004 described how he had written his reports of the tactical questioning sessions on the Field HUMINT Team (“FHT”) computer, had saved them onto a secure memory stick and had then handed the memory stick to Captain Rands.³⁵⁸⁷

3. The nine detainees’ perception of the Tactical Questioning carried out at Camp Abu Naji on 14/15 May 2004

3.313 As I have already indicated,³⁵⁸⁸ many of the nine detainees had difficulty in distinguishing between the trips they made to the tent for processing and those that were for the purpose of tactical questioning. Inevitably, this sometimes made it rather difficult to identify a particular detainee’s perception of the tactical questioning to which he had been subjected that night. In the paragraphs that follow, I have summarised as best I can those parts of the detainees’ evidence that appear to refer to their tactical questioning sessions at Camp Abu Naji on 14/15 May 2004. Later in the Chapter, I will deal with specific allegations of ill-treatment

³⁵⁸² M013 (ASI023640) [73]

³⁵⁸³ M004 (ASI022278) [82]

³⁵⁸⁴ M004 (ASI022271) [59]

³⁵⁸⁵ M004 (ASI022272) [62]

³⁵⁸⁶ MOD040955; MOD040958; MOD040961; MOD040964; MOD040967; MOD040595; MOD046238; MOD040598; MOD040601

³⁵⁸⁷ M004 (ASI022272) [63]

³⁵⁸⁸ See paras 3.251 and 3.255

made by the detainees that relate to their tactical questioning and which go further than M004's own admitted conduct.

Hamzah Joudah Faraj Almalje (detainee 772)

3.314 In his Inquiry statement, Hamzah Joudah Faraj Almalje (detainee 772) gave the following account of what he described as several different interrogations at Camp Abu Naji:

*"The interrogator stood up and screamed at me. He was about a metre away. He began shouting continually and at first I was not able to say anything. He was shouting something like 'why did you do this', 'we helped you get rid of Saddam Hussein' and 'what did we do to you'. At some stage he was sitting down and once or twice banged the table hard with a piece of wood but I cannot remember how often this occurred. He did not hit me or point the stick at me but he made comments like 'tell us who sent you and what was your purpose'. He also said something like 'tell us or you'll go to a British prison or we will kill you'. I was very scared and expected to be attacked or killed."*³⁵⁸⁹

3.315 During his oral evidence to the Inquiry, Hamzah Almalje added the following:

*"I was afraid. I expected the worst to happen, to kill us, to kill me. Imprison us, leave us in prison. We expected everything to happen."*³⁵⁹⁰

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.316 In his first written Inquiry statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) gave the following account:

*"The interrogator was shouting at me and telling me I was lying. He was holding the tent peg as if to hit me. It was close to me, he was angry and I was scared he was going to hit me. I thought he was going to torture me. I was not hit at any time during this interrogation."*³⁵⁹¹

3.317 Mahdi Al-Behadili elaborated upon this account in his second written Inquiry statement, as follows:

*"He [M004] was seated mostly but when he got angry, he would come up to me and circle me. He had a metal rod in his hand which I thought he might hit me with although he did not. He did not lift the rod to me but the impression that he gave was that he would hit me at any moment if I did not cooperate. I was cowering in front of him. The closest he got to me was about a metre away. He did not insult me and did not threaten me explicitly. It was his aggressive manner and the way he questioned me that made me feel nervous and afraid."*³⁵⁹²

³⁵⁸⁹ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000688) [34]

³⁵⁹⁰ Hamzah Joudah Faraj Almalje (detainee 772) [20/79/16-18]

³⁵⁹¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [59]

³⁵⁹² Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000787) [44]

3.318 Mahdi Al-Behadili repeated the substance of this perception of his tactical questioning session in his oral evidence to the Inquiry.³⁵⁹³

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.319 In his Judicial Review statement, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) gave the following account of his perception of the tactical questioning session:

*“The interrogator then started swearing at me, shouting and was very angry. It felt like my day of judgment. The pain, worry and fear I had was intense and I was worried for my family at home. I was so angry with what had happened to me...I thought I would be taken away to be executed right away.”*³⁵⁹⁴

3.320 It was not entirely clear from Ibrahim Al-Ismaeeli’s oral evidence to the Inquiry whether he continued to maintain what he had said in his Judicial Review statement. However, he did not explicitly retract it.³⁵⁹⁵

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.321 Kadhim Abbas Lafta Al-Behadili’s (detainee 775) perception of his tactical questioning session was succinctly summarised in his written Inquiry statement in the following words: *“I felt I was psychologically and physically tortured.”*³⁵⁹⁶

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

3.322 To some extent, during the course of both his written and oral evidence to the Inquiry about being tactical questioned at Camp Abu Naji on 14/15 May 2004, Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) gave the impression that M004’s approach to questioning had not unduly perturbed him. His perception seems to be best summed up in the following answer that he gave during his oral evidence to the Inquiry:

*“As I told you, he was angry. He was – if he could – probably he could hit me in that time if he wanted. No one can tell him ‘no’. But if he can stand up from his desk and turn to my face – okay, like our discussion now, we are doing something nice, a question and answer. But if somebody wanted to be angry and stand there and do something, probably he can do. At that time I was imagining that probably he will hit me, he will force me to say something I can – I don’t say it.”*³⁵⁹⁷

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.323 In his first written Inquiry statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) described how his processing and tactical questioning had both occurred during a single trip to the processing tent. In that statement, Ahmed Al-Furaiji said this:

³⁵⁹³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/21]

³⁵⁹⁴ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013955) [21]

³⁵⁹⁵ See, for example, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/21-22]

³⁵⁹⁶ Kadhim Abbas Lafta Al-Behadili’s (detainee 775) (PIL000727) [44]

³⁵⁹⁷ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/52/24]-[53/8]

*"I was told that if I did not confess I would be killed or spend the rest of my life in prison. I was terrified but had nothing to confess to."*³⁵⁹⁸

3.324 In his second written Inquiry statement, Ahmed Al-Furaiji said that his tactical questioning session had been *"like a psychological war."*³⁵⁹⁹

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.325 In his second written Inquiry statement, Hussein Fadhil Abbas Al-Behadili (detainee 778) summarised his perception of his tactical questioning session in the following terms:

*"I was not hit in the interrogation at Camp Abu Naji, but I was shouted at repeatedly. The persons shouting at me were close to me, but I do not know how near exactly as I was blindfolded. I was fearful in this situation as I was unsure what they were going to do to me. The interrogator kept calling me a liar, when he asked me about people in Majar Al-Kabir and I told him that I didn't know them. The interrogation was a very frightening experience. I didn't know what would happen to me."*³⁶⁰⁰

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

3.326 Atiyah Sayyid Abdulridha Al-Baidhani's (detainee 779) perception of the tactical questioning session is encapsulated in the following comment that he made in his second written Inquiry statement, namely that: *"...I just wanted to get out as quickly as I could. I wanted to get out alive."*³⁶⁰¹

Hussein Gubari Ali Al-Lami (detainee 780)

3.327 In his second written Inquiry statement, Hussein Gubari Ali Al-Lami (detainee 780) gave an account of his tactical questioning session that included allegations which went much further than the conduct admitted by M004. However, Hussein Al-Lami did describe how he had felt during his tactical questioning, as follows:

*"At this moment, I was sure I was going to be executed. I began to scream and shout. I was screaming at a very high volume that I was innocent and that I did not know why they had brought me here. The interpreter started saying I needed to be calm and that I was innocent and they would release me. I was allowed to leave shortly afterwards. I cannot say how long this interrogation lasted as the whole experience was so traumatic."*³⁶⁰²

3.328 As it seems to me, there is one particular theme that is common to the detainees' various accounts of the tactical questioning to which they were subjected at Camp Abu Naji on 14/15 May 2004. This was the sense of uncertainty, great trepidation and apprehension that they all felt about what lay in store for them. Some feared imminent physical assault, while others described a fear of being executed or of indefinite detention and separation from their families.

³⁵⁹⁸ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (ASI000884) [57]

³⁵⁹⁹ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (PIL000319) [82]

³⁶⁰⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000367) [28]

³⁶⁰¹ Atiyah Sayyid Abdulridha Al-Baidhani's (detainee 779) (PIL000185) [96]

³⁶⁰² Hussein Gubari Ali Al-Lami (detainee 780) (PIL000413) [59]

3.329 There is a striking similarity between these feelings on the part of the nine detainees and what M004 described in his written Inquiry statement as a “*dislocation of expectation*”.³⁶⁰³ It would thus appear that M004’s conduct did succeed in keeping the detainees in a state of confusion and “*out of their comfort zone*”. I am satisfied that, during their tactical questioning sessions the nine detainees genuinely did not know what was going to happen to them and that this created in all of them a very heightened emotional and fearful state of mind.

4. Findings in relation to M004’s admitted conduct

3.330 Some of the features of the tactical questioning, as carried out by M004 at Camp Abu Naji on the night of 14/15 May 2004, were not in dispute. Essentially, these were the various features or aspects of the way he conducted the tactical questioning sessions that night, about which M004 himself gave evidence and which were also reflected or described in the accounts given by the nine detainees. In the paragraphs that follow I will deal with these various features or aspects of the way M004 conducted the tactical questioning that night, under the following five headings:

- a. the use of sight restriction;
- b. the invasion of the personal space of the detainees;
- c. the use of the tent peg;
- d. shouting; and
- e. the application of the Bridge, Carrot, Stick technique (“BCS”).

3.331 In considering the propriety of M004’s conduct under these five headings, two provisions of international law must be considered at the outset.

3.332 The first is Article 3, common to all Geneva Conventions of 1949, and generally known as “*Common Article 3*”. This provides that:

“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...”

3.333 The second relevant provision is Article 17 of the 1949 Third Geneva Convention. This provides that:

“No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted or exposed to any unpleasant or disadvantageous treatment of any kind.”

3.334 Guidance as to the interpretation of these provisions was recently provided by the Court of Appeal in the case of *R (Haidar Ali Hussein) v Secretary of State for Defence* [2014] EWCA Civ 1087 (“*Hussein v SSD*”). In the course of his judgment in that case, Lloyd Jones LJ said this:

“So far as inhumane treatment and unpleasant or disadvantageous behaviour are concerned, there must be a minimum threshold of seriousness before these standards can be infringed...Questioning of captured persons is permitted. That of itself is likely to

³⁶⁰³ M004 (ASI022259-60) [23]–[24]

*be an “unpleasant” experience in one sense as there can be no objection to questioning which is determined, uncompromising and relentless.”*³⁶⁰⁴

- 3.335** It seems to me that Articles 3 and 17 of the Geneva Convention and the guidance provided by the Court of Appeal in *Hussein v. SSD* provide an appropriate framework and standard against which to consider M004’s conduct of the tactical questioning of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004.

The use of sight restriction

- 3.336** In his written Inquiry statement, M004 confirmed that the detainees would have arrived for their tactical questioning sessions with their sight restricted, although he could not actually remember precisely how this had been done. M004 described how he would remove the detainee’s sight restriction at an early stage in the tactical questioning session.³⁶⁰⁵ However, it was clear that he did not do this until after he had taken certain preliminary steps, including walking around the detainee, blowing on his neck and striking the tent peg on the table.³⁶⁰⁶
- 3.337** In his written Inquiry statement, M004 said that the purpose of restricting the sight of the detainees was as follows:

*“I believe the purpose of restricting the detainee’s eyesight was to ensure that before they reached the tent, they could not see the Orderly Room (which was visible in a gap from the ablutions area). Restricting someone’s sight when moving them around the camp also played a useful part in conditioning a prisoner.”*³⁶⁰⁷

- 3.338** The Baha Mousa Inquiry gave much consideration to the question of what use could be made of sight deprivation in the lead up to and during tactical questioning. In his report published on 8 September 2011 (“the Baha Mousa Report”), Sir William Gage expressed the view that the use of sight deprivation as an “*interrogation technique*” was prohibited by Part 1 of the “Joint Intelligence Committee Directive on Interrogation by the Armed forces in Internal Security Operations” of June 1972 (“the 1972 JIC Directive”).³⁶⁰⁸ I agree with that conclusion. Furthermore, although it is clearly limited to internal security operations, as opposed to all military operations, it appears that the 1972 JIC Directive was nevertheless not subject to any geographical limitation.³⁶⁰⁹
- 3.339** I am satisfied that M004 delayed the removal of each detainee’s sight restriction, until he had carried out certain preparatory steps in the lead up to his questioning of that detainee. Although this continued sight deprivation was only for a short time, I have no doubt that M004 deliberately employed it in order to make his imminent questioning of the detainee that much more effective and, to that extent, it was an integral part of his overall approach to the task in hand. Thus, it seems to me that M004 was clearly using sight deprivation as an interrogation technique. It therefore appears that this particular aspect of his conduct was in contravention of the provisions of the 1972 JIC Directive.
- 3.340** Having regard to M004’s evidence as a whole, I have no doubt that he was a candid and truthful witness, whose approach to his work was both conscientious and diligent. M004 had

³⁶⁰⁴ *R (Haidar Ali Hussein) v Secretary of State for Defence* [2014] EWCA Civ 1087 at [60]

³⁶⁰⁵ M004 (ASI022278) [84]

³⁶⁰⁶ M004 [127/203]; [127/209]

³⁶⁰⁷ M004 (ASI022268-69) [52]

³⁶⁰⁸ Report of the Baha Mousa Inquiry (volume II) [4.115] (5)

³⁶⁰⁹ Report of the Baha Mousa Inquiry (volume II) Chapters 5/6

no difficulty recalling his training at some detail, despite the many years that have elapsed since he received it. It is clear that M004 took his training very seriously. I am sure that M004 left the detainees' sight restrictions in place to the extent that he did, because he understood it to be conduct that was permitted by his training. This would strongly suggest that this aspect of his training had been both inadequate and unsatisfactory.

3.341 Sir William Gage recognised some inadequacies in the training which tactical questioners such as M004 would have received at the time. In the Baha Mousa Report, Sir William said this:

*"... the evidence in Modules 2 and 3 of this Inquiry shows that it is all too easy for operational security reasons to give rise to the routine use of sight deprivation."*³⁶¹⁰

3.342 Sir William then continued, as follows:

"I consider that the following five principles need to be consistently spelt out in the joint doctrine and subordinate doctrine and instructions:

- 1) where practicable the need to deprive CPERS 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 of 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;*
- 3) where 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."*³⁶¹¹

3.343 This became Recommendation 10 in Sir William's Report. I understand that this recommendation has been implemented.³⁶¹² As a result, I do not consider there to be a need to make any further recommendations of my own about this particular matter.

The invasion of the detainees' personal space

3.344 M004 described the four steps that he took in quick succession at the start of a normal tactical questioning session. The first was a period of silence. The second would involve drumming his fingers on the table. The third involved whistling and the fourth involved walking around the detainee and blowing gently on the back of the detainee's neck. In the event, M004 could not be certain that he drummed his fingers or whistled when he tactically questioned the nine detainees with whom this Inquiry is concerned. He was certain that he would have blown on their necks as described and in any event, the procedure set out was indicative of

³⁶¹⁰ Report of the Baha Mousa Inquiry (volume III) [16.95]

³⁶¹¹ Report of the Baha Mousa Inquiry (volume III) [16.96]

³⁶¹² Ministerial Statement of Mr Mark Francois MP dated 27 March 2014

a practice that he might well have followed. M004 confirmed that the detainees would have been deprived of sight and handcuffed throughout this period of time.³⁶¹³

3.345 During his oral evidence to the Inquiry, M004 was asked what he hoped to achieve by blowing on the back of the detainee's neck. In reply, he said this:

"Basically, as I understand it, you are inside their personal space and he can feel your presence there just by blowing on the back of the neck. So you are not physically touching them.

*The reason I did it is because on my course it was done to me and it was remarkably effective. You just didn't know what was happening. You knew someone was there behind you in your dead space, and it worked."*³⁶¹⁴

3.346 I have no hesitation in concluding that, as a result of the training that he had received, M004 honestly believed that it was acceptable to use this technique during a tactical questioning session (i.e. blowing gently on the back of the blindfolded detainee's neck, whilst walking round him in silence). M004 went on to describe the control that the use of this particular technique gave him over the detainee in question and how it helped in obtaining the answers he sought.³⁶¹⁵ For his part, M033 confirmed that this technique was not inconsistent with the training that tactical questioners would have received in early 2004.³⁶¹⁶

3.347 Nevertheless, it seems to me that the way in which this technique was actually employed in relation to these nine detainees, during their tactical questioning sessions on 14/15 May 2004, did amount to a form of ill-treatment.

3.348 During his oral evidence to the Inquiry, M004 was at pains to point out the disorientating impact of this particular technique.³⁶¹⁷ I have no doubt that this reflects M004's main, if not his only, reason for using it as he did.

3.349 M004 felt unable to comment on the suggestion that the technique might have made the detainee feel sexually at risk.³⁶¹⁸ However, I am quite satisfied that the technique did not have that particular effect on the detainees with whom this Inquiry is concerned, because none of them suggested that it did.

3.350 Nevertheless, I am satisfied that the effect that this technique did have on the detainees went far beyond creating a mere sense of disorientation. Each detainee was already very frightened and apprehensive about what was going to happen to him; he was blindfolded and did not know where he was; no doubt he was tired and hungry; and he had been left to stand alone in silence in a strange place. I have no doubt that M004's use of this technique in such circumstances would have seemed full of menace to the detainee on the receiving end. I am quite sure that the detainee would have been intimidated by it. It would have heightened his existing anxiety considerably and might well have led him to fear that he was about to be subjected to some form of physical violence. In those circumstances, I am satisfied that

³⁶¹³ M004 [127/51-55]

³⁶¹⁴ M004 [127/52/25]-[53/7]

³⁶¹⁵ M004 [127/54-55]

³⁶¹⁶ M033 [161/135-136]

³⁶¹⁷ M004 [127/55]

³⁶¹⁸ M004 [127/55]

M004's conduct in slowly walking around the blindfolded detainee in silence and blowing gently on the back of his neck amounted to a form of ill-treatment.

The use of the tent peg

3.351 Quite apart from the use of the tent peg to bang on the table, which I come to next, those representing the Iraqi Core Participants contended, in their written Closing Submissions, that the mere presence of the tent peg in the tent during tactical questioning was a breach of the military's own standards of conduct.³⁶¹⁹ I was referred in particular to the following passage taken from Joint Warfare Publication ("JWP") 1-10 relating to tactical questioning:

*"No physical or mental pressure, nor any other form of coercion may be exerted on a [prisoner of war] in order induce him to answer questions. [He] may not be threatened, insulted or suffer any disadvantage as a result of [having] to answer questions."*³⁶²⁰

3.352 Those representing the Iraqi Core Participants submitted as follows:

*"Having any object which could be perceived as a weapon, such as a metal tent peg, in his possession at all [was inconsistent with the standards set in JWP 1-10]: if it cannot be seen by the detainee, what is the point? If it can be seen, it plainly may have an intimidating effect."*³⁶²¹

3.353 During his oral evidence to the Inquiry, M004 made clear that it had not been his intention to make a detainee think that he was about to be hit with the tent peg. Nevertheless, he readily accepted that "self-induced pressure" might have led a detainee to that conclusion.³⁶²² However, whilst I acknowledge the force of the submissions made on behalf of the Iraqi Core Participants, I doubt whether M004's mere possession of the tent peg, without anything more, would amount to ill-treatment. In the event, it seems to me that the point can properly remain moot, because of the clear conclusions that I have reached with regard to the actual use to which the tent peg was put by M004.

3.354 M004 has always made it clear that he used the tent peg to bang on the table during his tactical questioning sessions. To his credit, he has never sought to deny having done so. In his written Inquiry statement, M004 described how he would use the tent peg in this way at the start of the session: "...to startle the detainee and ensure that he was fully focussed [sic] on the questions that were about to be asked."³⁶²³ During his oral evidence to the Inquiry, M004 added the following: "The purpose was to unsettle them, to make them feel overwhelmed."³⁶²⁴ Of course, at this stage in the session the detainee was still blindfolded and so would hear the sound of the blow, but would not be able to see what had caused it.

3.355 M004 also confirmed that he would sometimes use the tent peg later in the session if required, as follows:

*"Very occasionally, if the detainee was not willing to talk, or I felt I was not getting his full attention, I would again use the technique of striking a tent peg on the table for a second time."*³⁶²⁵

³⁶¹⁹ ICP Closing Submissions (536) [1764]-[1765]

³⁶²⁰ (MOD037884)

³⁶²¹ ICP Closing Submissions (536) [1764]-[1765]

³⁶²² M004 [127/63/15-18]

³⁶²³ M004 (ASI022269) [53]

³⁶²⁴ M004 [127/63/13-14]

³⁶²⁵ M004 (ASI022269-70) [56]

- 3.356** A number of witnesses confirmed the obvious fact that the blow on the table with the tent peg made a loud, sharp noise.³⁶²⁶ I have no doubt the blindfolded detainee would have been very startled by this sudden loud noise. Furthermore, I am quite sure that the noise would have considerably heightened the detainee's existing sense of anxiety and fear. In short, it would have really scared and overwhelmed him. This was precisely what M004 intended and, during his oral evidence to the Inquiry, he very candidly admitted that such was indeed the case.³⁶²⁷
- 3.357** It is clear that M004 took these steps because he believed that they would help to ensure that the maximum possible useful intelligence was obtained from the tactical questioning session. M004 described how he believed that the publicity given to the Abu Ghraib scandal had emboldened detainees. M004 said that it had made detainees realise that soldiers would be punished if they mistreated detainees during tactical questioning sessions. Detainees had therefore become less apprehensive about the process. M004 claimed to have developed the technique of using the tent peg to bang on the table at the start of a session, in order to counteract this new found confidence to some extent.³⁶²⁸
- 3.358** On the basis of this evidence, I am satisfied that the technique of striking the tent peg on the table in the manner described, did amount to a form of ill-treatment. It was a technique designed to scare the detainee and clearly involved an obvious risk of putting the detainee in immediate fear of physical violence. It was thus conduct that was contrary to the provisions of Common Article 3 and Article 17 of the 1949 Third Geneva Convention, because it effectively amounted to a threat.
- 3.359** Even if such conduct did not generate an immediate fear of physical assault in a particular individual case, I am quite sure that it would have startled and scared all or virtually all detainees who were subjected to it. In my view, it would therefore amount to "*unpleasant or disadvantageous treatment*", within the terms of Article 17, in any event. Furthermore, it seems to me very likely that the effect of such conduct on the detainee in question would meet the "*minimum threshold of seriousness*" to which Lord Justice Lloyd Jones referred in *Hussein v SSD* (supra).
- 3.360** In his Inquiry statement, M004 explained that the use of the tent peg in this manner was not something that he had been taught in training.³⁶²⁹ However, he went on to say that, at the time he conducted the tactical questioning sessions in 2004, he believed his that his use of the tent peg in the manner described was a permissible technique. He said this:
- "I did not at the time deem using the tent peg in this way excessive or outside my remit as a tactical questioner. In fact, I can recall on my course that a student had thrown a chair across the room in front of the detainee he was questioning and that this was permitted."*³⁶³⁰
- 3.361** As I have already indicated,³⁶³¹ M033 explained that to throw a chair across the room in the presence of the subject was an example of impermissible behaviour by a tactical questioner and should have been highlighted as such by the course instructors.³⁶³² Although M004 was a truthful and honest witness, clearly he had misunderstood this particular aspect of

³⁶²⁶ See, for example, M013 [137/44]; Sergeant Lane [136/15]; M004 [127/66]

³⁶²⁷ M004 [127/63]; [127/187-188]

³⁶²⁸ M004 [127/56-61]

³⁶²⁹ M004 (ASI022288) [129]

³⁶³⁰ M004 (ASI022288) [128]; See also (MOD002068)

³⁶³¹ See paragraph 3.279 above

³⁶³² M033 (ASI024576) [27]

his training, because I am satisfied that M033's evidence about the matter is correct. The throwing of a chair in the presence of the subject should have been highlighted, during M004's training, as an example of inappropriate conduct by the questioner. However, as I have already indicated,³⁶³³ M004 was somehow left with the clear impression that this was permissible conduct by a tactical questioner, although he understood it to be the limit of what was acceptable in order to "*manage the dislocation of expectation*".³⁶³⁴ I do not doubt M004's bona fides. It therefore seems very likely that this misunderstanding on his part was the result of some shortcomings or lack of clarity in the training that he had received.

3.362 Unfortunately, it appears that, from time to time, M004 then used this particular example as a yardstick against which to determine the permissibility or otherwise of any improvised technique for maintaining the "*dislocation of expectation*" in a detainee, such as the way in which he admitted having used the tent peg during his tactical questioning sessions at Camp Abu Naji on the night of 14/15 May 2004. Accordingly, as a result of what appears to have been the inadequacy of his training, M004 genuinely believed that his use of the tent peg in the manner he described was permissible, whereas in reality it constituted a threat to the detainee and was thus behaviour that transgressed the third key principle identified by M033.³⁶³⁵ In my view, it therefore amounted to a form of ill-treatment of the nine detainees during their tactical questioning at Camp Abu Naji on the night of 14/15 May 2004.

Shouting

3.363 It is evident that shouting at detainees was a feature of M004's technique, when conducting a tactical questioning session. In particular, M004 recalled screaming and shouting over the left shoulders and into the left ears of the detainees as part of his softening up routine at the very beginning of the session. Thereafter, M004 would consider which of the various questioning styles in which he had been trained best suited the individual being questioned.³⁶³⁶

3.364 So far as concerns the shouting at the beginning of the session, M004 frankly admitted that this was part of his method of intimidating and scaring the detainee, in order to assist in the acquisition of intelligence. In my view, to shout and scream at a detainee at close quarters would have had a very similar effect on the subject as that of using the tent peg to bang on the table. For the same reasons that I have already given in respect of M004's use of the tent peg, I am satisfied that his technique of shouting and screaming at each of the nine detainees at close quarters at the outset of the tactical questioning sessions at Camp Abu Naji on 14/15 May 2004 was a form of ill-treatment.

3.365 In the light of the evidence given by both M004 and M033 about the training given to tactical questioners, I am satisfied that, when shouting at the detainees at the start of the session, M004 acted entirely in accordance with the training he had received, apart from the following one discrete issue. It is clear from M033's evidence that M004 should also have been trained that it was not permissible to shout directly into a detainee's ear.³⁶³⁷ However, M004 candidly admitted having done so and I am satisfied that he had gained the impression from his training that this was, in fact, a permissible technique.³⁶³⁸ I do not doubt that this was a genuine misunderstanding on his part. Again, it would appear that M004's misunderstanding

³⁶³³ See paragraph 3.282 above

³⁶³⁴ M004 (ASI022269-70) [56]

³⁶³⁵ See paragraph 3.279 above

³⁶³⁶ M004 [127/65]

³⁶³⁷ M033 [161/46-47]

³⁶³⁸ M004 [127/34-35]

was the result of inadequacy or lack of clarity in the training that he had undergone in order to qualify as a tactical questioner in the first place.

3.366 M004 also confirmed that, once the session began, he would use one or more of the range of questioning techniques that he had learned during his training.³⁶³⁹ One of those techniques was known as the harsh technique or “*harshing*”. During his oral evidence to the Inquiry, M004 described the harsh technique in the following terms:

*“Different TQ’ers would do it in different ways, as I have mentioned before. I’m not a big screamer and shouter because my voice goes hoarse very quickly, so I would use more sarcasm, cutting remarks, that way. But other people would shout and scream. Some people were extremely good at it.”*³⁶⁴⁰

3.367 In the course of his judgment in the Divisional Court in *Hussein v SSD*,³⁶⁴¹ Mr Justice Collins gave the following very helpful and comprehensive description of the harsh technique, as a method of interrogation:

*“The harsh technique included the following elements which could be deployed as the questioner considered necessary. The shouting could be as loud as possible. There could be what was described as uncontrolled fury, shouting with cold menace and then developing, the questioner’s voice and actions showing psychotic tendencies, and there could be personal abuse. Other techniques were described as cynical derision and malicious humiliation, involving personal attacks on the detainee’s physical and mental attitudes and capabilities. He could be taunted and goaded as an attack on his pride and ego and to make him feel insecure. Finally, he could be confused by high speed questioning, interrupting his answers, perhaps misquoting his replies.”*³⁶⁴²

3.368 It is evident that the harsh technique embraces a wide range of different styles. However, I accept M004’s evidence that he tended to use the more cynical or sarcastic styles, rather than the explicitly aggressive shouting styles (apart from at the very outset of the session). I also accept the evidence of the interpreter, M013, that M004 did not resort to using personal insults when employing the harsh technique in his questioning of the detainees.³⁶⁴³

3.369 In the Baha Mousa Report, Sir William Gage expressed some serious concerns about the appropriateness of harshing as a questioning technique. Sir William commented that:

*“I consider that it is not appropriate for me to appear to make any kind of ruling as the legality of the harsh approach. This is an issue which may arise for consideration in individual litigation and the question of whether particular conduct on any given occasion was lawful or not would be fact sensitive.”*³⁶⁴⁴

3.370 He continued:

*“...the harsh approach at the very least comes close to the edge of what is legally permissible in the treatment of CPERS.”*³⁶⁴⁵

³⁶³⁹ M004 (ASI022269-70) [56]

³⁶⁴⁰ M004 [127/35/12-17]

³⁶⁴¹ [2013] EWHC 95 (Admin)

³⁶⁴² [2013] EWHC 95 (Admin) at [7]

³⁶⁴³ M004 [137/42/19-21]

³⁶⁴⁴ Report of the Baha Mousa Inquiry (volume III) [16.176]

³⁶⁴⁵ Report of the Baha Mousa Inquiry (volume III) [16.181]

- 3.371** I entirely agree with these comments by Sir William. It seems to me that a very broad range of conduct is included within the overall scope of the concept of the harsh technique. It therefore seems to me that it would be inappropriate to conclude that, if the harsh technique is used during the tactical questioning of a detainee, this means *ipso facto* that that detainee has been ill-treated. However, I am satisfied that, if the tactical questioner were to use the harsh technique in questioning a detainee, he would always run a very real risk of ill-treating the detainee in question by so doing.
- 3.372** Beyond his initial “softening up” of each detainee, I am not able to say to precisely what type of harsh technique M004 actually used, when questioning the nine detainees at Camp Abu Naji on the night of 14/15 May 2004, and to what extent he used it in each case. M004 genuinely had a very limited recollection of the specific tactical questioning sessions of the detainees in question. However, judging from the evidence of the detainees themselves, I consider it very likely that M004 did use the harsh technique when questioning each of them, at least to some extent. It is also likely that M004’s harsh technique did not make use of personal insults and was mainly conducted in the cynical and sarcastic styles. Although it is not possible for me to say whether, when considered in isolation, the “*harshing*” actually used by M004 in any particular case that night did amount to ill-treatment of the detainee in question, I am satisfied that it was an integral part of an overall process of tactical questioning that, when considered as a whole, did amount to a form of ill-treatment, for the reasons already given with regard to its various constituent elements.
- 3.373** In the Baha Mousa Report, Sir William Gage made a number of recommendations with regard to the harsh technique. Of particular relevance is Recommendation 23:

“The harsh approach should no longer have a place in tactical questioning. The MoD should forbid tactical questioners from using what is currently known as the harsh approach and this should be made clear in the tactical questioning policy and in all relevant training materials.”

- 3.374** I agree with Sir William’s decision to make that particular Recommendation and I also agree with the terms in which he expressed it. However, shortly before the Baha Mousa Report was published, the Ministry of Defence withdrew the harsh technique from use and replaced it with a technique entitled “*Challenging Direct*”. This new approach has itself been recently considered by the Court of Appeal in *Hussein v SSD* (supra). Accordingly, I am satisfied that it would not be appropriate for me to make any recommendations as a result of my conclusions with regard to this particular aspect of the treatment of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004.

The application of the Bridge, Carrot, Stick technique (“BCS”)

- 3.375** At the start of this Chapter, I set out M004’s account of his training on the Bridge, Carrot, Stick technique, generally known by the acronym “BCS”.³⁶⁴⁶ Based on the reports that M004 produced with regard to his tactical questioning of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004, it appears that he used the BCS technique in each case.³⁶⁴⁷

³⁶⁴⁶ See, for example, M004 (ASI022257) [16]

³⁶⁴⁷ (MOD040956), (MOD040959), (MOD040962), (MOD040965), (MOD040968), (MOD040596), (MOD046239), (MOD040599), (MOD040602)

- 3.376** In the written statement that he made to the Royal Military Police (“RMP”) in November 2008, M004 suggested that, as part of his use of the BCS technique that night, he might have made the following type of statement to a detainee during his tactical questioning session:

“If you don’t tell me the truth your wife will be told that you are going to prison and she won’t see you for a very long time.”

- 3.377** During his oral evidence to the Inquiry, M004 was unable to remember whether he had actually used this particular phraseology that night, but he acknowledged that it was very similar to the sort of language he would have used.³⁶⁴⁸ Thus, M004 accepted that he would have incorporated some reference to the detainee’s family, as follows:

“Yes, if I knew any of the background, I would certainly mention family because that’s a big motivator.”³⁶⁴⁹

- 3.378** In the Baha Mousa Report, Sir William Gage considered the following form of words, which apparently formed part of the training received by tactical questioners:

“If you DO NOT answer my questions to my satisfaction, who is going to look after your wife and children if you are in British custody?”

- 3.379** Having previously declared an alternative form of words to be too close to a threat, and therefore possibly prohibited by Article 17 of the 1949 Third Geneva Convention, Sir William made the following observation about this particular form of words:

“Whether it should or should not be used is less clear-cut. Opinions may differ but I consider it would be unwise to use it.”³⁶⁵⁰

- 3.380** Without any clear evidence as to the precise form of words used by M004, it is not possible to say whether, when considered in isolation, his use of the BCS did actually constitute ill-treatment of any of the nine detainees that night. However, it seems to me that, to make reference to a detainee’s family, when using the BCS technique during tactical questioning, does involve running a serious risk of breaching Article 17 of the 1949 Third Geneva Convention. Drawing a detainee’s attention to the possible adverse consequences for his family, if the detainee were to fail to answer the questions, is likely to have a significant emotional impact on the detainee in question, particularly given his likely state of apprehension and fear at the time. This alone might well transform such a comment from being a statement of fact into the making of a threat.

- 3.381** I am satisfied that M004’s use of the BCS, when conducting his tactical questioning of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004, was entirely consistent with his understanding of what was permissible in the light of the training he had received.³⁶⁵¹ However, the problems involved in its use by the questioner were well illustrated by the following exchanges between Counsel and M033. During his oral evidence to the Inquiry, M033 was asked to comment on whether the following expression would be an appropriate form of words to use as part of the BCS technique:

“If you don’t tell us the truth, you are never going to see your family again.”³⁶⁵²

³⁶⁴⁸ M004 [127/83-84]

³⁶⁴⁹ M004 [127/84/11-12]

³⁶⁵⁰ Report of the Baha Mousa Inquiry (volume III) [16.385]

³⁶⁵¹ M004 [127/84]

³⁶⁵² M033 [161/24]

3.382 M033's response demonstrated not only a good understanding of the limits on questioning set out in Article 17 of the 1949 Third Geneva Convention, but it also exposed the very real problem facing the questioner in striking the right balance, because M033 said this:

*"If you are using it as a threat to the captured person, then no. If you are stating fact, then yes. This is the consequence of your action or inaction, would be legitimate. To use it as a threat to hang over somebody wouldn't be."*³⁶⁵³

3.383 In my view, the difficulty in training questioners to apply the BCS effectively, whilst also enabling them to avoid infringing Article 17 of the Geneva Convention, is all too obvious. I therefore consider it likely that M004's use of the BCS that night may, at times, have amounted to an impermissible threat. In the event that it did, it seems to me that this was due to the way in which M004 had been trained, rather than to any personal fault on his part. In any event, as with M004's use of the harsh technique, M004's use of the BCS technique, when tactically questioning the nine detainees that night, was an integral part of an overall process of tactical questioning that, when considered as a whole, did amount to a form of ill-treatment for the reasons already given with regard to its various constituent elements.

3.384 In the course of his oral evidence to the Inquiry M033 said that he thought the BCS technique had been removed from the training given to tactical questioners in about 2008/2009. He believed that the reason for its removal was, unsurprisingly, that the "stick" element of BCS was considered too close to constituting a threat.³⁶⁵⁴ In a letter to the Inquiry dated 8 September 2014, the Ministry of Defence ("MoD") confirmed M033's belief that the BCS technique has been removed from the training given to tactical questioners was indeed correct.³⁶⁵⁵

5. The detainees' allegations of other forms of ill-treatment during Tactical Questioning at Camp Abu Naji on the night of 14/15 May 2004

3.385 In addition to those matters which M004 admitted and which I have considered in the foregoing paragraphs of this Report, some of the detainees claimed to have suffered other forms of ill-treatment during their tactical questioning at Camp Abu Naji on the night of the 14/15 May 2004. In the paragraphs that follow, I will deal with these various allegations under the following four headings:

- a. physical assaults by the tactical questioner;
- b. the making of direct threats to kill;
- c. the firing of shots; and
- d. the throwing of items by the tactical questioner

Physical assaults by the tactical questioner

3.386 Three detainees, namely Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

³⁶⁵³ Ibid.

³⁶⁵⁴ M033 [161/70-71]

³⁶⁵⁵ See MoD letter to ASI dated 8 September 2014 (MOD05413-MOD054164). It is for this reason that no recommendation will be made about this aspect of training

alleged that they were physically assaulted during their tactical questioning sessions at Camp Abu Naji on 14/15 May 2004.

3.387 In October 2008, Mahdi Al-Behadili was interviewed by Arlen Harris of the BBC. The Inquiry has been provided with a transcript and recording of that interview.³⁶⁵⁶ During the interview, Mahdi Al-Behadili alleged that he had been hit five or six times with a wooden stick about a metre in length at the start of his tactical questioning session.³⁶⁵⁷

3.388 However, Mahdi Al-Behadili gave a different account about this in his evidence to the Inquiry. In both his written Inquiry statements, Mahdi Al-Behadili said that he was not actually hit with the stick, but that he felt threatened because of the way in which the questioner had held the stick.³⁶⁵⁸ During his oral evidence to the Inquiry, Mahdi Al-Behadili again said that he had not actually been hit with the stick during his tactical questioning session.³⁶⁵⁹ In effect, therefore, Mahdi Al-Behadili did not maintain the original allegation. When asked to explain why he had told the BBC that he was assaulted in this way, Mahdi Al-Behadili said that he might have told them this by mistake, because “[he] was tired”.³⁶⁶⁰

3.389 In my view, this explanation was simply untrue. I do not accept that such a mistake could possibly have been the result of tiredness. On the contrary, I have no doubt that Mahdi Al-Behadili deliberately lied about the matter during his 2008 interview with the BBC.

3.390 In his first written Inquiry statement, Ibrahim Al-Ismaeeli alleged that he had been assaulted both by being punched and by being struck with a rod or stick during his tactical questioning session that night.³⁶⁶¹ Ibrahim Al-Ismaeeli’s account of his tactical questioning session was difficult to follow during his oral evidence to the Inquiry.³⁶⁶² However, I have assumed that his intention was to maintain this particular allegation.

3.391 When he gave his Judicial Review statement, Atiyah Al-Baidhani made the following allegation about his tactical questioning session at Camp Abu Naji that night:

*“Then the officer held a heavy lead water pipe in his hand. It was about two and a half feet long. The officer started to beat me with the bar. This man hit me 3 or 4 times on my back and sides. I threw myself on the floor to avoid the blows. The other soldiers then started to kick me all over my body. There were countless blows.”*³⁶⁶³

3.392 In his first written Inquiry statement, Atiyah Al-Baidhani made a similar allegation, as follows:

*“The officer was taking the lead in the questioning and became angry with me. He stood up and with the pipe beat me on my legs and body from the stomach downwards. He was beating me and I fell to the floor. I was fainting.”*³⁶⁶⁴

3.393 In his second written Inquiry statement, Atiyah Al-Baidhani repeated this allegation and, as he had done in his Judicial Review statement, he claimed to have been kicked and beaten

³⁶⁵⁶ (ASI003696)

³⁶⁵⁷ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI003708)

³⁶⁵⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [59]; (PIL000787) [44]

³⁶⁵⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/62/23-24]

³⁶⁶⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/68]

³⁶⁶¹ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001071) [55]

³⁶⁶² Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/22]

³⁶⁶³ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006676-77) [22]

³⁶⁶⁴ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000954) [47]

after he had fallen to the floor.³⁶⁶⁵ Atiyah Al-Baidhani also maintained this allegation when he gave his oral evidence to the Inquiry.³⁶⁶⁶

3.394 M004 categorically denied ever having physically assaulted any detainee during any tactical questioning session that he conducted.³⁶⁶⁷ I have no doubt that he spoke the truth. His denial was both emphatic and credible. As I have already indicated, I found M004 to be a candid and truthful witness, whose evidence I believed.³⁶⁶⁸ M013 was also a truthful witness and he was adamant that he had never seen any physical violence used during any tactical questioning session in which he had acted as the interpreter.³⁶⁶⁹ Although M013 was not present during Atiyah Al-Baidhani's tactical questioning session that night, I am satisfied that his answer was indicative of the way in which the sessions were generally conducted by M004 and had been conducted that night in respect of the first five detainees for whom M013 did act as the interpreter.³⁶⁷⁰

3.395 In contrast to the credible and convincing evidence given by both M004 and M013, I found the evidence of each of the three detainees about these alleged assaults to be wholly unconvincing and I did not believe them. Mahdi Al-Behadili effectively withdrew the original allegation and Ibrahim Al-Ismaeeli's evidence lacked any real coherence. Although Atiyah Al-Baidhani's evidence was consistent and clear, some of the details were inconsistent with what is known about how the tactical questioning sessions were actually conducted at Camp Abu Naji that night. Thus, Atiyah Al-Baidhani claimed that the assaults had taken place some appreciable time into the session and after he had already been asked a number of questions.³⁶⁷¹ However, it is clear that by that stage in the process only M004 and M013 would actually have been present in the tent with Atiyah Al-Baidhani, although Atiyah Al-Baidhani's account clearly suggests that a number of different soldiers had joined in the assaults inflicted upon him.

3.396 For these reasons, I have no doubt Mahdi Jasim Abdullah Al-Behadili (detainee 773), Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) all deliberately lied about having been assaulted during their tactical questioning sessions at Camp Abu Naji on the night of 14/15 May 2004. I am quite sure that no such assaults took place that night.

The making of direct threats to kill

3.397 Two of the nine detainees, namely Hamzah Joudah Faraj Almalje (detainee 772) and Hussein Gubari Ali Al-Lami (detainee 780), each alleged that the soldier conducting the tactical questioning at Camp Abu Naji on night of 14/15 May 2004 had made a direct threat to kill him.

3.398 Hamzah Almalje was one of the detainees who seemed to have difficulty in distinguishing the processing procedure from the tactical questioning session. In his written Inquiry statement, Hamzah Almalje said that in one of his trips to the tent he had been told something like: *"tell us who sent you and what was your purpose...tell us or you'll go to a British prison or we will kill you"*.³⁶⁷²

³⁶⁶⁵ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (PIL000185) [94]

³⁶⁶⁶ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) [9/98-99]

³⁶⁶⁷ M004 (ASI022280-82) [90]-[101]

³⁶⁶⁸ See paragraph 3.401 above

³⁶⁶⁹ M013 [137/58]

³⁶⁷⁰ See paragraph 3.298 above

³⁶⁷¹ Atiya Sayyid Abdulridha Al-Baidhani (detainee 779) [9/98]

³⁶⁷² Hamzah Joudah Faraj Almalje (detainee 772) (PIL000688) [34]

- 3.399** Hamzah Almalje also alleged that, during another trip to the tent, he had been told that if he did not stand they would shoot him.³⁶⁷³ However, when he gave his oral evidence to the Inquiry, Hamzah Almalje appeared to withdraw this second allegation, saying that he could no longer remember it.³⁶⁷⁴
- 3.400** In his Judicial Review statement, Hussein Al-Lami (detainee 780) said that the interrogators had told him that, if he did not confess, they would do “*serious things*” to him.³⁶⁷⁵ In his first written Inquiry statement Hussein Al-Lami clarified that the expression “*serious things*” meant his execution.³⁶⁷⁶
- 3.401** However, M004 emphatically denied ever having threatened to execute anybody³⁶⁷⁷ and I believe him. As I have already indicated, I have no doubt that M004 was a candid and truthful witness. Whilst I accept that the nine detainees might well have perceived some of the statements, made to them by M004 during their tactical questioning that night, as threats I have no hesitation in concluding that M004 did not make any threat to kill or to execute any of them. I am sure that M004 made no such threat that night or at all. I am equally sure that, in alleging that they had been subjected to such threats at Camp Abu Naji that night, both Hamzah Joudah Faraj Almalje (detainee 772) and Hussein Gubari Ali Al-Lami (detainee 780) deliberately lied.

The firing of shots

- 3.402** Two of the nine detainees, namely Hussein Fadhil Abbas Al-Behadili (detainee 778) and Hussein Gubari Ali Al-Lami (detainee 780) each gave evidence that shots had been fired during the course of his tactical questioning session at Camp Abu Naji on the night of 14/15 May 2004.
- 3.403** In his first written Inquiry statement, Hussein Al-Behadili (detainee 778) described how shots had been fired during his tactical questioning session that night, as follows:

*“There were two gunshots, they were close to me, he was provoking me, I felt that he would point the gun or rifle at me at any time and shoot me. The soldier was getting upset and screaming, the interpreter was translating. I heard the two shots strike the floor close to me, the floor was solid, it was not earth but it was not concrete so the bullet could penetrate the ground. The shots were loud and not muffled, I believe that his intention was to intimidate me; they were trying to pressure us to confess to anything. The shots came from the direction of the front of me I cannot be exact but they were close.”*³⁶⁷⁸

- 3.404** Hussein Al-Behadili maintained this allegation in his second written Inquiry statement and went on to explain that had not known that there was a gun present before he heard the shots.³⁶⁷⁹ He said that he had been blindfolded at the time and could not see the shots actually being fired.³⁶⁸⁰

³⁶⁷³ Hamzah Joudah Faraj Almalje (detainee 772) (PIL000690) [41]

³⁶⁷⁴ Hamzah Joudah Faraj Almalje (detainee 772) [20/80]

³⁶⁷⁵ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006638) [17]

³⁶⁷⁶ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004811) [63]

³⁶⁷⁷ M004 (ASI022283) [103]

³⁶⁷⁸ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001041) [39]

³⁶⁷⁹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (PIL000367) [29]

³⁶⁸⁰ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001041) [38]

- 3.405** The same type of allegation was made by Hussein Al-Lami (detainee 780). He also claimed to have been blindfolded at the time.³⁶⁸¹ In his first written Inquiry statement, Hussein Al-Lami described how the questioner had taken out his gun and cocked it. He then said that two shots had been fired in his direction.³⁶⁸² Hussein Al-Lami repeated this allegation in his second written Inquiry statement and also during the course of his oral evidence to the Inquiry.³⁶⁸³
- 3.406** In his written Inquiry statement, M004 said that when he was tactically questioning detainees, no weapons were allowed and nobody carried a pistol into the tent.³⁶⁸⁴ When he gave his oral evidence to the Inquiry, M004 emphatically denied ever having fired a shot during any tactical questioning session that he had conducted. He added that news that somebody had fired a weapon in the tactical questioning tent would have spread rapidly throughout the camp and would have had widespread implications.³⁶⁸⁵ I have no doubt that his evidence was true. I am sure that no shots were fired during the tactical questioning of the detainees at Camp Abu Naji on the night of 14/15 May 2004.
- 3.407** I have given consideration to whether either Hussein Al-Behadili or Hussein Al-Lami might have mistaken the noise of the tent peg striking the table for the sound of a gunshot. M004 himself considered that the sounds might be similar.³⁶⁸⁶ On the other hand, Sergeant Lane did not think that the sound of a tent peg being banged on a table could be confused with a gunshot.³⁶⁸⁷
- 3.408** Having regard to the fact that they were blindfolded and in a very anxious and apprehensive state at the time, it seems to me possible that the detainees in question might initially have thought the noise of the tent peg striking the table was a gunshot. However, I am equally satisfied that, once their blindfolds were removed, they would have quickly realised that no gun had actually been fired. They would have seen the tent peg. There was no gun to be seen and there was no evidence that one had been discharged (e.g. there was no smell of a weapon having been fired). On any view, the sound of the tent peg hitting the table could not have been confused with the sound of bullets hitting the ground nearby. Accordingly, to the extent that Hussein Fadhil Abbas Al-Behadili (detainee 778) and Hussein Gubari Ali Al-Lami (detainee 780) each claimed to have been shot at during their tactical questioning at Camp Abu Naji on the night of 14/15 May 2004, I have no doubt that they deliberately lied. I am sure that no such shots were fired and that each of them knew that perfectly well.

The throwing of items

- 3.409** Three of the detainees, namely Kadhim Abbas Lafta Al-Behadili (detainee 775), Ahmed Jabbar Hammood Al-Furaiji (detainee 777) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) each described how something had been thrown at him during his tactical questioning at Camp Abu Naji on the night of 14/15 May 2004.
- 3.410** In his written Inquiry statement, Kadhim Al-Behadili described how a baton (perhaps a reference to the tent peg) had been thrown at him. Kadhim Al-Behadili said that he had anticipated this might happen and so he had been able to avoid it.³⁶⁸⁸

³⁶⁸¹ Hussein Gubari Ali Al-Lami (detainee 780) (ASI004811) [63]; [11/75]

³⁶⁸² Hussein Gubari Ali Al-Lami (detainee 780) (ASI004811) [64]

³⁶⁸³ Hussein Gubari Ali Al-Lami (detainee 780) (PIL000413) [59]; [11/15]; [12/22]

³⁶⁸⁴ M004 (ASI022281) [94]

³⁶⁸⁵ M004 [127/203-204]

³⁶⁸⁶ M004 [127/176]

³⁶⁸⁷ Sergeant Lane [136/105]

³⁶⁸⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000727) [43]

- 3.411** In his first written Inquiry statement, Ahmed Al-Furaiji claimed that the interrogator had become very angry during the tactical questioning session and had thrown a steel mug at him. Ahmed Al-Furaiji's said that the mug had missed and had hit a tent pole behind him.³⁶⁸⁹
- 3.412** Atiyah Al-Baidhani consistently described having seen a glass containing red liquid during his tactical questioning session. Atiyah Al-Baidhani claimed that, during the course of the session, the interrogator had thrown the glass at him which missed and smashed against a tent pole behind him.³⁶⁹⁰
- 3.413** In his written Inquiry statement, M004 said that he did not have any cup or mug in his possession during any of the tactical questioning sessions.³⁶⁹¹ I have no doubt that his evidence about this was truthful. For this reason, I am satisfied that the allegations made by Ahmed Jabbar Hamood Al-Furaiji (detainee 777) and Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) were deliberate falsehoods.
- 3.414** I am similarly quite sure that M004 did not throw a baton or the tent peg or any other item at Kadhim Abbas Lafta Al-Behadili (detainee 775). Such an action would have been entirely inconsistent with the way in which M004 credibly described the way in which the tactical questioning sessions were conducted on the night of 14/15 May 2004. I have no doubt that this allegation was also a deliberate falsehood by Kadhim Al-Behadili, because no such incident occurred, as he knew full well.

The use made of Tactical Questioning reports as evidence

- 3.415** M004 produced a written report of his tactical questioning sessions of each of the nine detainees at Camp Abu Naji on the night of the 14/15 May 2004. The general format of the reports was the same for each of the nine detainees. Each report consisted of three pages. The first page was devoted to biographical information about the detainee in question. The second page dealt with the administrative details concerning that particular session. This included the identities of the questioner and the interpreter and the time and place of the session. The third page of the report was split into five sections, as follows:
- a. Background to Interrogation
 - b. Interrogation
 - c. Information Gained
 - d. Additional Information
 - e. Recommendations
- 3.416** The Background to Interrogation section set out briefly the military account of the capture of each detainee. The Interrogation section set out the questioning techniques used, along with a brief comment about the appearance of the detainee and any practical difficulties faced during the session. The Information Gained section was generally brief and focused on the purpose of the session and sometimes reiterated the practical difficulties encountered. In the Additional Information section, there was a summary of the information purportedly given by the detainee during the session. The Recommendation section reported that the Bridge, Carrot, Stick ("BCS") technique had been applied to each of the detainees and recommended in each case that the detainee be sent to the Joint Forward Interrogation Team ("JFIT").

³⁶⁸⁹ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (ASI000883) [55]

³⁶⁹⁰ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD006676) [21]–[22]; (ASI000954) [46]; [9/98]

³⁶⁹¹ M004 (ASI022282) [97]

- 3.417** Copies of the reports relating to the tactical questioning of the nine detainees at Camp Abu Naji on the night of the 14/15 May 2004 have been disclosed to the Inquiry. Those copy reports have been disclosed to the legal representatives of the Core Participants in full. They were also provided to the nine detainees to enable them to comment on the contents in both their oral and written evidence. Where appropriate, the copy reports have also been disclosed publicly on the Inquiry's website, although some redactions have been made to certain passages in the reports in accordance with the Inquiry's protocol on the Redaction of Documents and other Evidence provided to the Inquiry by the ("MoD") Ministry of Defence.
- 3.418** As I have already indicated,³⁶⁹² prior to the commencement of the Inquiry's oral hearings, those representing the Iraqi Core Participants submitted that the use to which these reports could be put when making my findings of fact was limited. In short, it was submitted that I should not treat those aspects of the reports, which purport to record the information given by each detainee during his tactical questioning session, as admissible evidence of a previous account of the facts as given by that particular detainee.
- 3.419** At an earlier stage of this Report, I referred to this particular submission and indicated that, for the reasons stated and as a matter of general principle, I would ignore the entire contents of these reports, insofar as they purported to record any factual or other information provided by any of the detainees, irrespective of any submissions regarding the admissibility of that material.³⁶⁹³ However, I also went on to make it clear that I would nevertheless consider the details of both the circumstances and the manner in which the various tactical questioning and interrogation sessions were carried out, when dealing with the detainees' allegations of ill-treatment during and as a result of such sessions.³⁶⁹⁴
- 3.420** It remains my view that it is not necessary for me to make any finding as to the admissibility of the contentious aspects of these reports of the tactical questioning of the nine detainees at Camp Abu Naji on the night of 14/15 May 2004. However, as I indicated earlier that I would,³⁶⁹⁵ I have made a number of findings in the preceding paragraphs of this part of my Report concerning the circumstances and manner in which the tactical questioning sessions in question were actually conducted. In some of those findings, I have indicated that the conduct in question amounted to a form of ill-treatment, as did the entire process of tactical questioning that night, when considered as a whole.³⁶⁹⁶ Those findings reinforce my view that it was not appropriate to have regard to any part of the contents of the tactical questioning reports as evidence of previous accounts of the facts as given by the detainees.

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

- 3.421** At this stage in my Report it is convenient to deal with allegations of the utmost seriousness that have been made by eight of the nine detainees about certain events that they claim to have occurred whilst they were detained at Camp Abu Naji during the 14/15 May 2004. At some stage in their evidence, eight of the nine detainees (Hamzah Joudah Faraj Almalje

³⁶⁹² See paragraphs 2.1037 – 2.1048

³⁶⁹³ See paragraph 2.1048

³⁶⁹⁴ Ibid.

³⁶⁹⁵ Ibid.

³⁶⁹⁶ In its letter to the Inquiry dated 20 November 2014, the Ministry of Defence made it clear that the latest versions of the policies on Tactical Questioning and on Interrogation were published in May 2012 and would prevent similar incidents happening now. I have no reason to doubt the accuracy and reliability of that assertion.

[detainee 772] was the exception) described sights and sounds that all eight of them said had led them to conclude that Iraqi men were being tortured and/or executed nearby at Camp Abu Naji on the night of 14/15 May 2004.

3.422 I have no doubt that these particular claims and assertions made by these eight detainees contributed significantly to the rumours and stories that Iraqis were tortured and unlawfully killed at Camp Abu Naji overnight on 14/15 May 2004. Those stories and rumours still persist today. However, as I have described earlier in this Report, at the conclusion of the oral evidence in this Inquiry, those representing the Iraqi Core Participants very properly conceded the central allegation of unlawful killing at Camp Abu Naji on the night of 14/15 May 2004 could not be made good.³⁶⁹⁷ In this section of my Report, I will summarise the evidence given by each of the detainees about this aspect of the matter and then set out my conclusions of fact about that evidence.

Mahdi Jasim Abdullah Al-Behadili (detainee 773)

3.423 When he made his Judicial Review statement, Mahdi Jasim Abdullah Al-Behadili (detainee 773) described an event that he claimed had occurred at the end of the night, possibly just after sunrise, in the following terms:

*"After some time I heard footsteps and thuds and thought there may be 3 to 4 soldiers in the area. Suddenly without warning there was a terrible scream from a person behind me and to my right. The scream went on and on. I could hear a word being shouted that I did not understand at the time, I have since learnt what 'Shurru' means. This person was screaming as if in absolute agony and then there would be a pause and then a repeat of the same scream. This went on for some time. I do not know how long. After some time the screaming stopped. It was followed by the sound of buckets and water being thrown and then the sound of mopping. At this time I was crying."*³⁶⁹⁸

3.424 In his first written Inquiry statement, Mahdi Al-Behadili's account of this event had changed somewhat, as follows:

*"There was no other noise which I found disturbing except at one stage I heard someone screaming. This was followed by two to three gunshots. After the gunshots it went quiet again, I thought someone had been executed."*³⁶⁹⁹

3.425 In his second written Inquiry statement, Mahdi Al-Behadili said this:

*"The screaming and washing incident that I explain in my Judicial Review at paragraph 15 seems to confuse two separate incidents. The last period of screaming I heard was before I went in for the second period of interrogation in the tent. I did also hear washing but this was sometime in the morning I believe, quite a long time after the interrogation had ended. There was no screaming involved in this incident, just the sound of water being thrown on the ground and then someone cleaning."*³⁷⁰⁰

3.426 Mahdi Al-Behadili's oral evidence to the Inquiry did little to clarify this already inconsistent evidence. On the first day of his oral evidence Mahdi Al-Behadili said that he had heard three

³⁶⁹⁷ See paragraph 2.6

³⁶⁹⁸ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (MOD006492) [15]

³⁶⁹⁹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (ASI001119) [62]

³⁷⁰⁰ Mahdi Jasim Abdullah Al-Behadili (detainee 773) (PIL000788) [46]

to four gunshots while he was at Camp Abu Naji³⁷⁰¹ that night, but that he did not think they were the sounds of executions taking place.³⁷⁰²

3.427 On his second day of his oral evidence, Mahdi Al-Behadili appeared to change his mind and said that he did believe that people were being executed when he heard the gunshots.³⁷⁰³

3.428 Finally, in his oral evidence to the Inquiry, Mahdi Al-Behadili confirmed that, despite the way in which his Judicial Review statement was expressed, he had seen nothing suspicious or unpleasant in the sounds of cleaning or mopping that he heard that night.³⁷⁰⁴

Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774)

3.429 In his first written Inquiry statement, Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) gave the following account of an event that he said occurred shortly after Camp Abu Naji had been attacked with mortars and grenades on the night of 14/15 May 2004:

*"After the attack finished I could still hear Iraqi voices in pain, it was then that I heard the gunshots, the water and mopping that I describe in my earlier statement. To clarify exactly what I heard, it was three or four gunshots, spaced about a minute apart followed by the sound of washing with water and dragging noises between each gunshot. I could not see anything at all under my glasses. I could smell blood but I was still covered in blood; I could not say if there was any such smell coming from anywhere else, or from the water. I could not feel any water at my feet because the cubicle I was in I believe had a step at the doorway which would have prevented it running in. The gunshots started about fifteen minutes after the mortar attack finished."*³⁷⁰⁵

3.430 In that passage of his first written Inquiry statement, Ibrahim Al-Ismaeeli was referring to his Judicial Review statement, in which he first made this particular allegation. In his Judicial Review statement, Ibrahim Al-Ismaeeli confirmed that he had assumed from these sounds that people were being executed nearby.³⁷⁰⁶ Ibrahim Al-Ismaeeli maintained this allegation when he gave his oral evidence to the Inquiry.³⁷⁰⁷

Kadhim Abbas Lafta Al-Behadili (detainee 775)

3.431 In his written Inquiry statement, Kadhim Abbas Lafta Al-Behadili (detainee 775) made the following similar allegation:

"Approximately 5 (five) minutes after I had been put in the toilet cubicle I heard the sound of someone screaming in pain. The sound stopped abruptly and then a few moments later I heard the sound of something being dragged along the floor. This was followed by the splashing of water and sounds of mopping. I heard this many times over, though I am unable to now recall how many times. I also thought that I could smell blood. I cannot exactly say why I thought it was blood but I may have associated the terrible sounds I heard with the splashing of water and mopping and believed that

³⁷⁰¹ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/23/23]

³⁷⁰² Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/69/23-24]

³⁷⁰³ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [9/9/12-15]

³⁷⁰⁴ Mahdi Jasim Abdullah Al-Behadili (detainee 773) [8/74/15-21]

³⁷⁰⁵ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI001073) [60]

³⁷⁰⁶ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) (ASI013954) [20]

³⁷⁰⁷ Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774) [16/18-19]

blood was being washed away. The sounds of screaming were different each time I heard them. There was crying and screaming.

Sometimes the sounds of the water splashing and mopping would continue through the screaming. I could not be sure what was happening. The sounds of screaming were coming from different areas. I was terrified because I thought people were being badly beaten and tortured. I thought that the beating must have stopped when the screaming stopped abruptly.”³⁷⁰⁸

- 3.432** Kadhim Al-Behadili repeated this allegation when he gave his oral evidence to the Inquiry.³⁷⁰⁹ However, he also made it clear during his oral evidence that he had not heard any gunshots, whilst he was detained at Camp Abu Naji on the 14/15 May 2004.³⁷¹⁰

Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776)

- 3.433** The evidence of Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) with regard to this particular allegation has varied in the various accounts that he has given about it. In his Judicial Review statement, Abbas Al-Hameedawi gave the following description of an event that he claimed occurred shortly after he had been placed in the cubicle in the prisoner holding area:

“After about 5 minutes had passed I heard the thuds of heavy footsteps coming in. Then I heard the sound of a chair falling and what sounded like something heavy being dragged along the floor. The next sound I heard was that of screaming and shouting in pain. I also heard British voices shouting and screaming. I heard these sounds from behind me. This was repeated 4 or 5 times, that is, the sound of loud thuds, a chair falling, the sound of dragging and then screams and shouts of pain. Each time this lasted about 2 or 3 minutes. There was about a 10-15 minute break between each of these events. I thought that by the sounds of the screams that people were being beaten and punched but nothing worse. I thought that the same would happen to me. I heard the sound of chairs being put back upright but could not hear the sounds of any people being returned.”³⁷¹¹

- 3.434** In his third written Inquiry statement, Abbas Al-Hameedawi sought to add some further significant detail to the account that he had given in his Judicial Review statement, as follows:

“I have described in paragraph 12 (twelve) of my JR witness statement dated 13 October 2008 and in paragraph 14 (fourteen) of my JR witness statement dated 14 October 2008, of the sounds of chairs falling and sounds of something heavy being dragged along the floor. I thought that soldiers must have been dragging people off chairs by their legs and that I was hearing the sound of a chair falling because of this. I understood the dragging sound along the floor to be a person being dragged along to be tortured. I was so afraid that at any moment it would be my turn to be taken away.”³⁷¹²

- 3.435** However, when he gave his oral evidence to the Inquiry, Abbas Al-Hameedawi disavowed this particular passage from his third written Inquiry statement, claiming that he simply had

³⁷⁰⁸ Kadhim Abbas Lafta Al-Behadili (detainee 775) (PIL000724) [36]–[37]

³⁷⁰⁹ Kadhim Abbas Lafta Al-Behadili (detainee 775) [12/94-95]

³⁷¹⁰ Kadhim Abbas Lafta Al-Behadili (detainee 775) [13/74/8-15]

³⁷¹¹ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000005) [14]

³⁷¹² Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) (PIL000475) [93]

not said it when his Inquiry statement was taken.³⁷¹³ From his oral evidence to the Inquiry, it appears that Abbas Al-Hameedawi claimed to have heard the sounds of Iraqis moaning in pain at the same time as the noise of chairs being dragged along the floor, but that he did not hear any gunshots associated with this.³⁷¹⁴ It also appears that, in his oral evidence to the Inquiry, Abbas Al-Hameedawi no longer maintained that he had heard any screaming, as alleged in his Judicial Review statement. Thus, during his oral evidence, Abbas Al-Hameedawi said this:

*"I can't say exactly if I heard screaming. In that time it was a generator working in the background and the noise was really loud and it was a big generator so far as I can tell. I was really noisy, you know. Even somebody shout at you, you don't really hear proper. That's why I couldn't hear proper noises or clear noises."*³⁷¹⁵

3.436 During his oral evidence, Abbas Al-Hameedawi said that, after his tactical questioning session, he had heard the sound of water and mopping.³⁷¹⁶ However, it was not clear how he had been able to hear this, but had not been able to say whether he had heard any screaming, because of the noise made by the generator.

Ahmed Jabbar Hammood Al-Furaiji (detainee 777)

3.437 In his Judicial Review statement, Ahmed Jabbar Hammood Al-Furaiji (detainee 777) alleged that he had heard the following sounds of torture and killing, whilst he was detained at Camp Abu Naji on the 14/15 May 2004:

"The room was filled with these sounds. Then I also began to make out the sounds of a choking noise as if someone was being strangled. I think I then heard a second sound which was similar of someone choking or being strangled. All of these sounds became mixed together and were coming from behind me. As the sounds went on the volume in the room of all these sounds mixed up got louder. The screaming went on and on. It sounded to me that people were being tortured. I had never heard such sounds before. At no point whilst this was going on did I hear any voices either Iraqi or English. I did not hear anyone cry out for mercy or for this treatment to stop. I was without sight and did not know what was happening. I was certain I was about to be tortured or executed or both. At some point whilst this was going on I said the Shahada prayer. The sound of moaning and screaming mixed with the occasional choking sound went on for about 15 minutes.

*Then all of a sudden the room went quiet. I sat in the dark and waited. I felt certain I was to be the next. As I sat I began to smell blood. As I work on a farm I know the smell of animal blood and this was not animal blood. Then I heard water being splashed on the floor and I heard the sound of mopping. I felt water hit the back of my trousers. I do not know whether that was from the splashing or from the mopping or both. Then I could smell something sweet and perfumed. It may have been disinfectant."*³⁷¹⁷

³⁷¹³ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/91-93]

³⁷¹⁴ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/16]; [14/64]

³⁷¹⁵ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [15/53/14-20]

³⁷¹⁶ Abbas Abd Ali Abdulridha Al-Hameedawi (detainee 776) [14/20/3-4]

³⁷¹⁷ Ahmed Jabbar Hammood Al-Furaiji (detainee 777) (MOD006724-25) [21]–[22]

3.438 This particular description in Ahmed Al-Furaiji's Judicial Review statement had been preceded by his claim to have heard the sounds of Iraqi voices moaning and a "terrible, ear-piercing scream."³⁷¹⁸

3.439 However, in his first written Inquiry statement, Ahmed Al-Furaiji merely said this:

*"I have been asked what noise I could hear. I heard a generator and also the sound of other people making a variety of strange noises, shouting and screaming as if they were being tortured. I could hear nothing being said in Arabic. I could hear British soldiers talking."*³⁷¹⁹

3.440 In his second written Inquiry statement, Ahmed Al-Furaiji made it clear that the details given in his Judicial Review statement had been correct.³⁷²⁰

3.441 As I have already indicated, for health reasons Ahmed Al-Furaiji was unable to give oral evidence to the Inquiry, beyond confirming on oath that the contents of his written Inquiry statements were true.

Hussein Fadhil Abbas Al-Behadili (detainee 778)

3.442 In his Judicial Review statement, Hussein Fadhil Abbas Al-Behadili (detainee 778) made the following allegation:

*"Whilst I was in the toilet cubicle I heard a number of other Iraqis being mistreated. I could hear the chairs collapsing on the floor and it sounded as if this was because the soldiers were forcefully abusing people."*³⁷²¹

3.443 In the same statement, Hussein Al-Behadili then went on to describe the following additional series of incidents:

"About an hour after the second interrogation a terrifying sequence of events occurred. A group of soldiers rushed into the toilet area shouting and behaving in an aggressive and terrifying manner. They were not speaking or shouting to the Iraqis because they were shouting in English. Whatever they were shouting made no sense to me and I was terrified and felt very nervous. I then heard the terrible sound of someone being choked or strangled. This sound was really loud and unmistakable. Almost immediately afterwards there were 4 to 5 shots fired in the room and I thought that they were being fired in different directions. I would say that the shots were being fired very deliberately with the interval between each shot being about one second.

*As an ex-soldier I think that, given the small area involved, the gun or guns must have been used with a silencer because otherwise I would have expected the sound to have been deafening."*³⁷²²

3.444 In his first written Inquiry statement, Hussein Al-Behadili appeared to combine this sequence of events into one single event, as follows:

³⁷¹⁸ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (MOD006724) [20]

³⁷¹⁹ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (ASI000884) [62]

³⁷²⁰ Ahmed Jabbar Hamood Al-Furaiji (detainee 777) (PIL000320) [83]–[85]

³⁷²¹ Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006700-01) [27]

³⁷²² Hussein Fadhil Abbas Al-Behadili (detainee 778) (MOD006701) [28]–[29]

"About half an hour after the second interrogation I heard a group of soldiers come running in. I knew they were running because I heard their boots. They came in shouting and screaming, then I hear voices; it sounded as if Iraqi people were being beaten; I then heard shots being fired. I heard the sound of a person in real pain, and a noise being made which sounded like someone being strangled or being shot at, I could not tell what the exact sound was it was like the last sound as a person makes before they die.

*There were four or five single shots; one after each other, within seconds of each other. They were muffled or quietened in some way; however I believe they were in the same building. I didn't know whether people were being intimidated or being killed, I didn't know if I might also be killed, I started to pray."*³⁷²³

- 3.445** Hussein Al-Behadili also claimed to have heard something being dragged, to have smelt blood and then to have heard the sound of water or liquid being poured.³⁷²⁴ In his first written Inquiry statement, Hussein Al-Behadili added the following detail:

*"The dragging sounded as if something was being dragged once or twice. The sound of the water was close to me as if someone was cleaning up and I could hear the sound of a mop. From underneath my glasses by my nose I saw water running into the cubicle where I was and down the slope towards the toilet, the toilet was white and I could see the colour of the liquid; it looked like water mixed with blood, not 100% red but mixed with water I saw it clearly."*³⁷²⁵

- 3.446** During his oral evidence to the Inquiry, Hussein Al-Behadili said that he could not be sure whether he had heard the shooting after the first interrogation (processing) or after the second interrogation (tactical questioning).³⁷²⁶

Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779)

- 3.447** In his Judicial Review statement, Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) gave the following description of what he claimed had occurred just before dawn, whilst he was detained in the cubicle in the prisoner holding area at Camp Abu Naji on the night of 14/15 May 2004:

*"I must have fallen asleep at some point as the next thing I knew I was woken by water starting to flow across my feet. It was very cold. I looked down and saw red coloured water on the floor. I could smell blood. I can also remember bird-song which meant it was just before dawn. I remember that there were also a lot of flies around my face but what woke me fully was the sound of someone screaming seemingly in excruciating pain. I heard a chair being pulled and then another person screaming and then another chair being pulled. I did not hear the sound of any bullets. Each time someone screamed a chair was being pulled and then I could hear water splashing. I saw the water and it was coloured red. Again I could smell blood. I think this sequence of events happened 3 times with a 2 or 3 minute gap between each one. I felt that this was an execution process. I could hear quite a lot of soldiers speaking loudly in English to each other. There was a lot of movement of soldiers going to and fro."*³⁷²⁷

³⁷²³ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001042) [43]-[44]

³⁷²⁴ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001043) [45]; [18/23]

³⁷²⁵ Hussein Fadhil Abbas Al-Behadili (detainee 778) (ASI001043) [46]

³⁷²⁶ Hussein Fadhil Abbas Al-Behadili (detainee 778) [18/74/15-23]

³⁷²⁷ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (MOD047161-62) [25]

3.448 Atiyah Al-Baidhani maintained this allegation in his first written Inquiry statement. However, in that account he said that the events in question had occurred shortly after his tactical questioning session, rather than early in the morning.³⁷²⁸ It is to be noted that Atiyah Al-Baidhani's evidence did not include any allegation that shots had been fired at any stage that night.

Hussein Gubari Ali Al-Lami (detainee 780)

3.449 In his Judicial Review statement, Hussein Gubari Ali Al-Lami (detainee 780) said this:

"Approximately 30 minutes had passed since I had been given the water and biscuits when about 6 or 7 soldiers approached. They were about 2 metres away from me and behind me to my right. I recall that they were talking loudly and shouting in an agitated manner. I heard a very loud scream from about 2 metres behind my right shoulder. The scream came without warning and, once it started, the same person was screaming and screaming for a long period of time, maybe as long as 15 minutes. It was a series of screams of a person who appeared to be in excruciating pain. They were not screams of terror but more of pain. The first person I recall was shouting for their family, their mother and father. After about 15 minutes the scream went up and up both in volume and scale. The scream then began to subside and fade away and then there was only silence.

*This was followed by the pouring of water and the sound of buckets or something like that and I heard a chair being dragged. I smelt blood and heard the sound of mopping. Then I smelt perfumed disinfectant and could no longer smell blood."*³⁷²⁹

3.450 In the same statement, Hussein Al-Lami said that this sequence of events had been repeated on a further seven occasions. He added that he did not hear any sounds to suggest that people were being punched, nor had he heard any shots being fired.³⁷³⁰ He also expressed the opinion that: *"It was the sound of a person being tortured in some horrible way and then executed."*³⁷³¹

3.451 This particular allegation was repeated in Hussein Al-Lami's first written Inquiry statement. In that statement, Hussein Al-Lami said that this sequence of events had occurred about 30 minutes before sunrise on 15 May 2004.³⁷³²

3.452 Hussein Al-Lami maintained this allegation during his oral evidence to the Inquiry, although he mistakenly suggested that the sequence occurred on five separate occasions rather than a total of eight.³⁷³³

Conclusions with regard to the detainees' evidence of having heard and seen the sounds and signs of "torture" and "execution" at Camp Abu Naji on the night of the 14/15 May 2004

3.453 In my view, it is appropriate to consider the evidence of the detainees as a whole, when coming to my conclusions about this particular group of allegations. As it seems to me, there

³⁷²⁸ Atiyah Sayyid Abdulridha Al-Baidhani (detainee 779) (ASI000954-55) [49]-[51]

³⁷²⁹ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006640) [22]-[23]

³⁷³⁰ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006641) [25]

³⁷³¹ Hussein Gubari Ali Al-Lami (detainee 780) (MOD006640) [23]

³⁷³² Hussein Gubari Ali Al-Lami (detainee 780) (ASI004812-13) [69]-[73]

³⁷³³ Hussein Gubari Ali Al-Lami (detainee 780) [11/17-18]

are two main reasons for this. The first is that there is a great deal of similarity in the various accounts that were given by each of the eight detainees who actually made these allegations. The second is that, according to each of these detainees, the events in question all took place within close proximity of the other detainees. Accordingly, if the eight detainees were giving truthful and accurate accounts of their experiences that night, it would be necessary for me to make appropriate findings of fact as to what event or sequence of events had given rise to the perceptions that the detainees all described in their evidence.

3.454 Having reviewed the evidence in question and taken the helpful written Closing Submissions of the Core Participants into account, it seems to me that there are four possible explanations for this body of evidence.

3.455 The first possibility is that the eight detainees accurately described seeing and hearing the effects of Iraqi men being tortured and/or executed nearby. The second possibility is that, whilst no Iraqi men were actually tortured or executed that night, the military personnel at Camp Abu Naji behaved in such a way as to cause or allow the detainees to believe that Iraqi men were being tortured or executed nearby. The third possibility is that the detainees saw and heard a sequence of incidental and innocent events and mistakenly concluded that Iraqi men were being tortured and executed that night. The fourth and final possibility is that the allegations were deliberate falsehoods by the detainees who made them. In the paragraphs that follow, I deal with each of these possibilities in turn.

The first possibility

3.456 I can eliminate the first possibility very quickly. I repeat the concession made on behalf of the Iraqi Core Participants by Patrick O'Connor QC at the conclusion of the oral evidence:

*"The Iraqi Core Participants will not submit that, on the balance of probabilities, live Iraqis captured during the course of the battle on 14 May 2004, died or were killed at CAN."*³⁷³⁴

3.457 In my view, this concession appropriately reflected the huge body of evidence that, as I set out in the previous Section of this Report, established beyond doubt that a total of 20 bodies of dead Iraqis had been recovered from the battlefield on the 14 May 2004 and that, on the same day, a total of nine live Iraqi men had been detained on the same battlefield. The 20 dead bodies and the nine live detainees were then transported back to Camp Abu Naji that day. On 15 May 2004, the same 20 dead bodies were handed over to the local community by the British military and the same nine live detainees were sent to the Divisional Temporary Detention Facility ("DTDF") at Shaibah.

3.458 I have seen, heard or read nothing whatsoever that gives me any reason to believe or suspect any other Iraqi men, not taken from the battlefield, were present overnight in Camp Abu Naji in the prisoner handling area or its immediate vicinity on 14/15 May 2004.

3.459 I am thus sure that there is no possibility that what the eight detainees claim to have seen and heard that night were the sounds and/or signs of torture or executions that were actually taking place nearby that night.

³⁷³⁴ Patrick O'Connor QC [167/204/20-23]

The second possibility

3.460 This second possibility is put forward in some detail, in their written Closing Submissions, by those representing the Iraqi Core Participants.³⁷³⁵ In summary, it is suggested that the detainees were deliberately exposed to sights and sounds in the prisoner handling area, during their detention at Camp Abu Naji and whilst being processed and tactically questioned that night, with a view to making them believe that Iraqi men were being tortured and/or executed nearby.

3.461 An important element in that submission was the suggestion that the sound of the tent peg striking the table during the tactical questioning sessions would have been heard in the prisoner holding area. It was therefore contended that, because the detainees had seen a firearm earlier during processing, they might have thought that the sounds they heard included muffled or distant gunshots.

3.462 However, I have no hesitation in rejecting this particular submission and I do so for three main reasons.

3.463 First, for the reasons given earlier in this Report, when I dealt with the processing of the detainees at Camp Abu Naji on the night of 14 May 2004,³⁷³⁶ I am satisfied that none of the detainees actually saw any firearm during processing that night.

3.464 Second, during his oral evidence to the Inquiry, M004 was asked whether the detainees in the shower block might possibly have thought that the sound of the tent peg being banged on the table was, in fact, a muffled gunshot. In response, M004 said this:

“No, that’s the first time I’ve actually considered that. It’s entirely feasible, but it didn’t cross my mind. That wasn’t the intent.”³⁷³⁷

3.465 I have no doubt that M004’s answer was entirely truthful. Accordingly, his use of the tent peg, to bang on the table during tactical questioning, clearly did not form any part of a broader and more elaborate objective of creating the illusion of executions being carried out.

3.466 Third, of the eight detainees who made allegations of having seen and heard the signs and sounds of Iraqi men being tortured and/or executed nearby that night, only two (Ibrahim Gattan Hasan Al-Ismaeeli [detainee 774] and Hussein Fadhil Abbas Al-Behadili [detainee 778]) claimed to have heard gunshots being fired as part of that process.

3.467 For these reasons, I am quite sure that the detainees were not deliberately subjected to the signs and sounds of mock torture and/or executions by the British military that night.

The third possibility

3.468 The third possibility is that the detainees saw and heard a number of incidental sights and sounds whilst they were detained at Camp Abu Naji on the night of 14/15 May 2004 and, due to their heightened state of anxiety, mistakenly assumed that people were being tortured and/or executed nearby.

³⁷³⁵ ICP Closing Submissions (549) [1775]-[1783]

³⁷³⁶ See paras 3.253–3.258 above

³⁷³⁷ M004 [127/176/8-10]

- 3.469** In their evidence, as summarised above, the detainees said that they had heard and/or seen the following main sights and sounds of the torture and executions that they claimed to believe were being carried out nearby:
- a. the sound of moaning;
 - b. the sound of dragging;
 - c. the sound of bangs;
 - d. the smell of blood and the sight of blood stained water;
 - e. the sound or feel of water being poured and the sound of mopping;
 - f. the smell of chemical products; and
 - g. the sound of screams.
- 3.470** Each of these various matters can be explained in a way that has nothing to do with torture or executions, by simply having regard to the prevailing circumstances at the time. Many of these “innocent” explanations are also apparent from the evidence given to this Inquiry.
- 3.471** First, there was a considerable amount of evidence to suggest that some of the nine detainees spoke or called out to each other during the time they were detained in the prisoner holding area that night.³⁷³⁸ It is also apparent that some of the detainees were injured at that time and that they were all frightened and apprehensive. In such circumstances, it seems to me very likely that some of them might well have been moaning in pain or despair that night.
- 3.472** Second, the sounds of dragging described by the detainees might well have been caused by one of other detainees being taken from his seat in the cubicle to the tent for processing or tactical questioning.
- 3.473** Third, I accept that, whatever might have been M004’s intention, the sounds of the tent peg being struck on the table might well have been heard by the detainees in the prisoner holding area. This possibility was accepted by both M004 and M013.³⁷³⁹ As I set out earlier in this Chapter, there was a difference of opinion between M004 and Sergeant Martin Lane about whether the sound of the tent peg being struck might have been confused with a gunshot.³⁷⁴⁰ Nevertheless I am satisfied that some detainees might possibly have mistaken the sound for a muffled or distant gunshot.
- 3.474** Fourth, I accept that some of the detainees might have smelt blood. Some of the detainees were wounded as a result of their participation in the Battle of Danny Boy. In the case of Ibrahim Gattan Hasan Al-Ismaeeli (detainee 774), it seems possible that he had bled sufficiently for him, and possibly the detainees near him, to have detected the smell of blood.
- 3.475** Fifth, the descriptions of hearing water being poured, of hearing the sounds of mopping, of smelling chemical products and of seeing stained water (possibly coloured by both chemicals and/or dirt) all seem to be straight-forward descriptions of various aspects of an overall process of cleaning the prisoner holding area. However, there is a conspicuous absence of any record in either the military witness evidence or the documentary records to suggest that the shower block was actually mopped/cleaned in this way overnight on 14/15 May 2004. The state of the military evidence on the matter was accurately summarised by those

³⁷³⁸ Part 3, Chapter 4: Overnight Detention at Camp Abu Naji

³⁷³⁹ M004 [127/175/18-20]; M013 [137/44/6-14]

³⁷⁴⁰ M004 [127/176/4-11]; Sergeant Lane [136/105/11-12]

instructed by TSol on behalf of most of the soldiers in their written Closing Submissions, as follows:

“There is, for example, no credible evidence before the Inquiry that the floor of the shower block was mopped in the early hours of 15 May, whether to clean away large quantities of blood or at all. The Inquiry has taken evidence from every guard on duty that night, and the others in the vicinity. It has considered the detailed contemporaneous documentation that was produced at CAN concerning what was done concerning the detainees. There is nothing to suggest mopping, or that there was a substantial quantity of blood on the floor of the shower block (as opposed to the possibility that there may have been a few drops).”³⁷⁴¹

3.476 Whilst I accept the general thrust of that submission and agree that it accurately reflects the state of the evidence, I feel that I cannot rule out the possibility that the floor of the prisoner holding area was mopped with water containing some form of chemical product in the early hours of 15 May 2004. It seems to me that such a possibility is far from fanciful, given that it is likely that the block would have become dirty overnight. It seems to me entirely possible that something as mundane as mopping the floor might have slipped the memories of the guards who were on duty at the time and was not recorded in any contemporary documentation.

3.477 As for the sounds of screams, when he was interviewed by the Royal Military Police in November 2008, M004 rejected the possibility that the allegations related to screaming by any of the detainees being tactically questioned by him that night. However, he went on to suggest that the detainees might have been recalling screaming by M004 himself.³⁷⁴² It seems to me that this is a possible explanation for the screams/shouts that the detainees claimed to have heard that night.

3.478 However, the mere fact that the detainees could have seen and heard incidental sights and sounds at Camp Abu Naji that night that were consistent with those they described in their evidence, is not enough. In order that this third possibility should actually provide the real explanation for the detainees’ claims to have seen and heard what they thought to be the signs and sounds of torture and execution being carried out that night, it is necessary that the detainees in question should have honestly believed that to have been the case, both at the time and subsequently.

3.479 In their written Closing Submissions, those instructed by TSol on behalf of most of the soldiers submitted that no such finding can be made, as follows:

“The evidence given by the detainees as to what they saw, heard and smelt in the shower block at CAN cannot be explained away by misunderstanding on the part of disorientated witnesses suffering from the shock of capture, and whose minds may have been playing tricks on them. In particular, and in case this might be suggested by PIL, it cannot be explained by the sound of a tent peg striking a table in a nearby tent.”³⁷⁴³

3.480 Having considered the evidence which I have seen, heard and read as a whole I broadly agree with this submission. It also seems to me that, for the third possibility to offer an adequate explanation for this body of evidence, there would need to have been an almost complete

³⁷⁴¹ TSol Closing Submissions (36) [85]

³⁷⁴² (MOD045426)

³⁷⁴³ TSol Closing Submissions (35) [83]

failure on the part of all eight detainees to apply any form of hindsight or *ex post facto* reasoning to their experiences that night.

- 3.481** In particular, by the time the detainees had themselves been both processed and tactically questioned, each of them would have appreciated that the sounds of chairs dragging were simply the sounds of other detainees being taken to be processed or tactical questioned. Similarly, by that stage they would each have realised that the muffled bangs were not gunshots but were the sounds of a tent peg striking a table.
- 3.482** I accept that, in a heightened state of anxiety, some of the detainees might well have feared the worst, when they saw and heard any or all of the various matters that I have detailed in the preceding paragraphs. However, I do not accept that, by the time they came to give evidence to the Inquiry, any of them continued honestly to believe that they had seen and heard the signs and sounds of the torture and/or execution of their fellow detainees or of other Iraqis at Camp Abu Naji that night. Nevertheless, each of the eight detainees persisted in making their allegations to that effect. In my view, each of them did so dishonestly and in the full knowledge that the allegations were false.

The fourth possibility

- 3.483** Having regard to the foregoing, I am left in no doubt that the fourth possible explanation is the correct explanation for this body of evidence by these eight detainees. I am quite sure that, by the time they came to give their evidence to the Inquiry, each of them gave evidence in support of allegations that they knew by then to be entirely false. They therefore each consciously and deliberately lied.
- 3.484** Furthermore, having regard to how much the evidence of these eight detainees had in common, it appears likely that their various falsehoods are the product of active collusion between them and possibly between them and one or more third parties intent on discrediting the British forces as much as possible.
- 3.485** Perhaps the clearest evidence that these false allegations are the product of collusion can be seen in the areas in which the evidence of these detainees actually differed. The detainees gave different evidence about the way in which the Iraqi men were said to have been executed, different evidence about the number of men actually killed and different evidence about the time at which the executions occurred that night. However, despite these considerable differences, seven of the eight detainees, the exception being Abbas Al-Hameedawi (detainee 776), came to the same conclusion, namely that Iraqi men had been executed nearby by the British that night. In my view, this strongly suggests that they had colluded about the central aspect of the allegation, namely that they had heard and seen the sounds and signs of Iraqi men being executed that night, but had not managed to agree or remember a suitable narrative about how and when those executions had actually taken place.
- 3.486** In my view, this conclusion has a substantial adverse impact on the credibility of these particular witnesses. It demonstrates a truly lamentable approach on the part of each of them to the giving of evidence, including evidence on oath, and it shows each of them to be a person who is willing to go to considerable lengths in order to bolster false allegations of criminal conduct of the most serious kind on the part of the British forces.