

SYSTEMIC ISSUES IDENTIFIED FROM INVESTIGATIONS INTO MILITARY OPERATIONS OVERSEAS: JULY 2014

BACKGROUND

The Ministry of Defence (MoD) is committed to a continuous process of review and improvement in all matters arising from operational activity as well as ensuring that mechanisms are in place to prevent the recurrence of any incidents of wrongdoing. To this end it has put in place a robust process for identifying, reviewing, and correcting areas where its doctrine, policy and training have been insufficient to prevent practices or individual conduct that breach its obligations under international humanitarian law. This is the first account of that work and updates will be prepared and made available as necessary.

The Iraq Historic Allegations Team (IHAT) and Systemic Issues Working Group (SIWG) – both of which reinforce existing MoD governance and assurance mechanisms – are central to this process. It originated in the need to prevent the recurrence of shortcomings identified through legal action arising from UK operations in Iraq, but will go beyond this. All court and inquiry findings (e.g. the Royal Marines court martial, the Al-Sweady Public Inquiry) and evidence of wrongdoing by UK forces, irrespective of the theatre of operations, will be reviewed for potential systemic issues. Progress towards addressing any systemic issues arising from these reviews will be included in future updates.

The role of the IHAT

In 2010 the MoD set up IHAT to review and investigate allegations by Iraqi civilians of abuse by UK Armed Forces personnel in Iraq between 2003 and 2008. In 2012, we increased the IHAT's resources to allow them to investigate a number of allegations of unlawful killings over the same period.

The MoD always takes issues of this nature seriously: the IHAT will independently review all claims of abuse in order to ensure that those allegations are investigated appropriately. It will work in accordance with the requirements of the Armed Forces Act 2006, and any cases which identify credible evidence of potential serious criminal acts will be referred to the Director of Service Prosecutions.

Since the IHAT began work, a number of challenges have been brought in the High Court to the lawfulness of the way in which it is conducting investigations and querying its independence from the Chain of Command responsible for the conduct of those implicated in the allegations. In May 2013 the High Court ruled that the IHAT in its current form has the necessary independence to conduct its investigations.

Once an IHAT investigation is completed, its report is referred to the independent Service Prosecution Authority for a decision on whether any

person should be prosecuted. If there is no prosecution the IHAT's investigative report will then be released to the MoD for consideration of systemic issues; if there is, the report will be released once the prosecution is complete. The MoD has a range of processes in place to ensure that lessons are learned and that appropriate action is taken to ensure that issues identified do not recur. The High Court ruling of October 2013 acknowledged MoD's conscientious approach in this area and the extensive work that has already been undertaken following the recommendations made by Sir William Gage in the report of his findings in the Baha Mousa Inquiry.

The SIWG

The MoD conducts a review of the IHAT's report and all issues relating to training, policy etc are highlighted and presented to the SIWG. It is chaired by the MoD's Director, Judicial Engagement Policy, who also co-chairs the 2* Detention Steering Group. It comprises the Head of Claims, Judicial Reviews and Public Inquiries; the Head of MoD Central Legal Services' Operational and International Humanitarian Law division; the Head of the Operations Directorate's Legal Policy team; the Deputy Army Inspector; and a small secretariat. This Group reviews the action that has been taken to address the issues identified, and determine whether such measures are appropriate and sufficient – or whether further action needs to be undertaken. The findings of the SIWG are referred to senior military and civilian staff across the MoD: swift action is taken to put in place any changes to doctrine, policy or guidance that are required.

The MoD has in place a number of governance mechanisms to provide assurance that the changes made are working. In the first instance, this includes periodic inspections by the Provost Marshal (Army) (PM(A)) who is the subject matter expert for operational detention across Defence. PM(A)'s staff undertake inspections in-theatre on behalf of the Secretary of State for Defence and the Chief of Joint Operations. In addition the Army Inspector, who is independent from the chain of command, has carried out two in-depth reviews into detention in both 2010 and then again in 2012; in both cases an external expert joined the review team to provide external assurance and credibility. The Army Inspector's 2010 report was laid before Parliament in September 2010 as well as being released to and published by, the Baha Mousa Public Inquiry. The 2012 report has been circulated internally and is due to be made available on the MoD website shortly.

Identification of systemic issues

To date, the SIWG has reviewed 3 reports produced by IHAT. The first relates to an allegation of abuse, the second relates to an allegation of unlawful killing, and the third is a report by IHAT following their review of all of the recordings (video and audio) of interrogation sessions during TELIC operation.

Across the 3 IHAT reports reviewed, the MoD initially identified 28 possible systemic issues. In order to eliminate overlap these have now been combined into 19 distinct issues. The IHAT reports only indicate that there was potential

for the issues that we deal with in this report to occur. This does not necessarily mean that these failings actually occurred in every case, only that there were gaps in doctrine, policy and training which might otherwise have contributed to the prevention of such incidents.

Of the 19 issues identified, those numbered 1-8, 13, and 15-16 were raised as a result of the report of the IHAT investigation of allegations made in the case of *Kammash v Secretary of State for Defence*; issues 7 and 9-12 were raised by the IHAT review – referred to as Operation Twickenham – of the footage of interrogations in Iraq; and issues 14 and 17-19 were raised by the IHAT's review of the initial RAF police investigation of the death of Tanik Sabri Mahmud.

ISSUES AND ACTIONS

A. TACTICAL QUESTIONING AND INTERROGATION TRAINING

1 – NEED TO PRACTISE DURING TRAINING PRACTICAL ASPECTS OF THE INTERROGATION COURSES.

The interrogation course was redesigned in 2011 following the recommendations made by the Chairman of Baha Mousa Inquiry. A specific course for interrogation controllers has been established. Interrogators are now able to deploy on development exercises to help maintain their skill set.

In addition, personnel are now able to undertake an extended posting of 3 years which improves their capabilities by extending the experience they gain. Other training opportunities have been identified which enhance the depth of the interrogators' experience; these include attendance on Police negotiation courses and other Government Departments' training programmes.

Interrogation courses are reviewed on an annual basis. In addition, Joint Force Intelligence Group's Human Intelligence (HUMINT) staff conduct six-monthly inspections of exploitation practices. This particular inspection also mandates sample interviews with tactical questioners, interrogators, interrogation controllers and Intelligence exploitation staff to ensure understanding of and adherence to, MOD policy and Permanent Joint Headquarters (PJHQ) directives.

2 – NEED FOR TRAINING COURSES TO MAKE CLEAR THAT CAPTURED PERSONS SHOULD NOT BE HUMILIATED OR VERBALLY ABUSED SUCH THAT THEY FEEL PHYSICALLY THREATENED.

A new approach to the interrogation of detainees who appear to be withholding information, the Challenging Approach, was introduced on 1 August 2011. That approach makes clear that threats or insults are not to be

used. The legitimacy of this approach was confirmed by the Judgment in a Judicial Review brought by Public Interest Lawyers (the Hussein JR). In evidence to the Hussein JR, the MoD was able to demonstrate that in over 9000 interrogation sessions the Challenging Approach has only been authorised for use on 40 occasions and only used on 11 occasions.

MoD Interrogation Policy 2012 and MoD Tactical Questioning (TQ) Policy 2012 have been amended to explain in detail the strict limitations of each approach and specific reference to its applicability under Geneva Conventions. These policies are further explained in detail at the relevant TQ and Interrogation (TQ & I) courses at the Defence Intelligence and Security Centre; they are repeated and expanded upon in PJHQ TQ & I Directives.

The combination of revised policy and improved training is enhanced by the mandated and overlapping inspection regimes such as those carried out by staff of the Provost Marshal (Army), PJHQ Intelligence Exploitation, Human Intelligence (HUMINT) Policy, Joint Force Intelligence Group HUMINT staff, and the Army's Inspector General as well as those of the International Committee of the Red Cross (ICRC).

3 – NEED FOR CLARITY IN TRAINING COURSES AS TO WHAT CONDUCT IS PERMISSIBLE AND IMPERMISSIBLE DURING INTERROGATION.

The MOD Tactical Questioning and Interrogation (TQ & I) policies of 2012 provide clear and unambiguous direction on what is permissible and what is not. This is re-emphasised during TQ & I courses: these are reviewed annually by Defence Intelligence HUMINT Policy and Defence Intelligence and Security Centre (DISC) Legal Advisers during their interrogation and tactical questioning course reviews. The amendments provide clear instructions to Service personnel of their responsibilities towards Captured Persons.

4 – NEED FOR INTERROGATION STAFF TO GAIN EXPERIENCE BEFORE THEY DEPLOY INTO THEATRE.

There is now a comprehensive process for assessing, interviewing, appointing, training and reviewing interrogators. Volunteers are required to pass both a pre-training assessment and the Defence Interrogation Course prior to their posting to the Defence HUMINT Unit (DHU). Prior to deployment there is a further six-week exercise; and an interrogator's first tour, which last four months, is conducted on a probationary basis.

During this time, their ability to work with actual Captured Persons is closely assessed to ensure that the interrogation training has been understood and is being adhered to. All interrogation sessions are monitored by an interrogation controller and recorded, and a proportion of these recordings are also sampled by visiting inspections, so supervision is continuous.

The post of Staff Officer Intelligence Exploitation (Interrogation) is now always filled by personnel with previous operational experience, as are the Interrogator Controller posts. This gives two levels of experienced oversight within the interrogation facility. In addition, the interrogation capability benefits from six-monthly inspections by Subject Matter Experts (HUMINT Policy, DHU and PJHQ staff) from outside the intelligence Chain of Command to assess processes and to gauge understanding and adherence to doctrine, policy and directives.

5 – NEED FOR CLARITY ABOUT PERMITTED PRACTICES IN TRAINING AND/OR BRIEFING IN DOCUMENTS DETAILING THE POLICY APPROACH TO INTERROGATION DURING THE UK MILITARY INTERVENTION IN IRAQ.

The MOD's first Tactical Questioning & Interrogation (TQ & I) Policy was produced in 2005 and updated in 2007. The major change between the 2010 MOD TQ & I Policy and those of 2012 is the introduction of the Challenging Approach. The need for re-training for those originally trained in the now-abolished Harsh Approach was met first for interrogators and subsequently for Tactical Questioners. This has been achieved through the training and deployment of a dedicated Short Term Training Team which both conducts Pre-Deployment Training (PDT) and deploys in Afghanistan to conduct training during the Reception Staging and Onward Integration (RSOI) process when personnel arrive in theatre.

The 2012 TQ & I policies were both reviewed in depth at the High Court during the *Hussein vs Secretary of State for Defence (February 2012) judicial review*, and no weaknesses, ambiguities or lack of clarity were apparent.

B. TACTICAL QUESTIONING AND INTERROGATION POLICIES

6 – NEED TO PREVENT THE IMPROPER USE OF BLINDFOLDS.

The responsibilities of Service Personnel in relation to sight deprivation are clearly articulated in Joint Doctrine Publication (JDP) 1-10 Captured Persons. Restriction of vision is to be avoided through common sense steps such as the design and layout of facilities, covering sensitive equipment and the planning of operations. During transit, enclosed vehicles or vehicles with windows covered should be considered. Where it is necessary to prevent detainees from seeing around them, blacked-out goggles must be used (in other words, "hooding" – the complete coverage of the head - is forbidden at all times), but they should only be employed as a last resort and for the time and extent necessary – for example to preserve operational security. A record is maintained of when sight deprivation has been used.

During Mission Specific Training all UK forces undergo training on detainee handling and this includes briefings on the use of sight deprivation.

The Provost Marshal (Army) conducts twice-yearly inspections of the UK detention facilities in Afghanistan during which he reviews the guidance and use of sight deprivation.

Further amendments to JDP 1-10 are planned in 2014. These will relate to the circumstances under which the protection of interpreters and other locally-employed civilians (who could be subjected to intimidation or worse if recognised by insurgents) can be a justification for requiring the detainee to wear blacked-out goggles. These changes will ensure that practice on operations – which already complies with the recommendation made by the Chairman of the Baha Mousa Inquiry – is properly reflected in documentation. The amendments to the JDP will include provisions which seek to protect the identity of interpreters and other locally-employed civilians. In the meantime, training guidance and standing orders will be reissued to enforce revisions to policy.

7 – NEED FOR TIMELY PROVISION OF WATER TO DETAINEES.

JDP 1-10 states that 'CPERS [Captured Persons] shall be provided with sufficient drinking water. CPERS must have access to water at all times either on request or by default, where CPERS are given a supply to self ration'. This stipulation is mirrored exactly in MOD Tactical Questioning Policy 2012 and MOD Interrogation Policy. The policies are explained at length during the tactical questioning and interrogation courses.

Adherence to these policies is conducted through various mechanisms, including monitoring and reporting upon detention conditions by the International Committee of the Red Cross (ICRC); six-monthly inspections conducted by the Provost Marshal (Army); as well as the six-monthly inspections conducted separately by Defence HUMINT Organisation, Permanent Joint Headquarters (PJHQ), and HUMINT Policy staffs.

Allegations of water being withheld or delayed fall within the scope of the five prohibited techniques, and the comments on prevention of the use of such methods under serial 11 below apply equally here.

8 – NEED FOR TIMELY PROVISION OF FOOD TO DETAINEES.

JDP 1-10 provides extensive guidance on the provision of food which is mirrored in MOD Tactical Questioning & Interrogation (TQ & I) policies of 2012. These policies are explained at length during the tactical questioning and interrogation courses.

Detention staff have full responsibility for feeding Captured Persons, and the keeping of records which are inspected by the Provost Marshal (Army). Detention staff and Interrogators are governed by exactly the same instructions, laid out for detention staff in JDP 1-10 and for Interrogators in MOD Interrogation Policy. Interrogators are required to check that feeding has

occurred in accordance with instructions and to report any failure to comply with this requirement.

9 – NEED TO PREVENT THREATS OF PHYSICAL ASSAULT BY THE USE OF GESTURES; AND THREATS OF FUTURE ABUSE OR ATTACKS ON DETAINEES OR THEIR FAMILIES AND FRIENDS DURING INTERROGATION.

The prohibition on instilling fear of violence or threats of violence was made explicit in policy, for the avoidance of any doubt, when the Challenging Approach to interrogation was defined in August 2011 and it was incorporated into the May 2012 reissue of the policies on Tactical Questioning and Interrogation (TQ & I).

The Challenging Approach is taught, practised and exercised fully on the tactical questioning and interrogation courses conducted at the Defence Intelligence and Security Centre (DISC). The courses have both been validated internally and found to be compliant with the principles of a Defence Systems Approach to Training (DSAT). They are also externally inspected each year by Legal and Policy staff, and every three years by Director Army Legal Service.

Any use of the Challenging Approach must be pre-authorised, and in common with all interrogation sessions must be monitored remotely by the interrogation controller as set out in the MOD Interrogation Policy of 2012.

10 – NEED TO PREVENT DETAINEES SUFFERING SLEEP DEPRIVATION.

JDP 1-10 sets out the minimum requirements for sleep and rest. These are mirrored in MOD Tactical Questioning Policy 2012 and MOD Interrogation Policy 2012. It remains entirely legitimate to question a captured person who is tired, provided that the requirement is genuinely time-sensitive and is not being manipulated solely to cause disorientation and that the minimum standards are applied over a 24 hour period.

These policies are explained in detail on the relevant Tactical Questioning and Interrogation (TQ & I) courses at the Defence Intelligence and Security Centre (DISC) by means of legal briefings delivered on each course. This policy is then repeated and expanded upon in PJHQ Tactical Questioning and Interrogation Directives which are available to all Tactical Questioners and Interrogators in theatre.

Detention logs which record periods of sleep have to be reviewed before interrogation can commence and any failures to meet required standards reported to the Chain of Command.

11 – NEED TO AVOID SUBJECTION OF DETAINEES TO LOUD NOISE.

JDP 1-10 gives explicit guidance on the prohibition of the use of excessive or unnecessary noise. These are mirrored exactly in MOD Tactical Questioning Policy 2012 and MOD Interrogation Policy.

These allegations fall within the scope of the five prohibited techniques which are repeatedly set out, in exactly the same format, across doctrine, Policy Directives and standing instructions; and to which training makes repeated reference. Failure to adhere to these prohibitions would require wilful disobedience by a large number of complicit individuals across detention and exploitation domains, including failures of leadership and failures of the inspection regime. Cumulatively these safeguards are considered robust.

12 – NEED TO PREVENT ASSAULTS ON DETAINEES.

MOD Interrogation Policy 2012 and MOD Tactical Questioning Policy give clear and comprehensive instructions concerning physical touching of Captured Persons (CPERS) by interrogators. These policies are explained in detail on the relevant Tactical Questioning and Interrogation courses at DISC by means of legal Briefings delivered on each course by the legal adviser at the Defence Intelligence and Security Centre. This is then repeated and expanded upon in Permanent Joint Headquarters (PJHQ) Tactical Questioning and Interrogation Directives which are available to all Tactical Questioners and Interrogators in theatre.

In addition to the oversight provided by the interrogation controller, who is required to intervene in any case where the Policy is not being adhered to, the PJHQ, HUMINT Policy and Joint Force Intelligence Group HUMINT staff inspection teams are also required to review a representative sample of audio-visual recordings of interrogations both in theatre and back in the UK.

C. MEDICAL POLICY

13 – NEED TO ENSURE THAT MEDICAL COMPLAINTS ARE DEALT WITH PROPERLY BY (i) SUSPENDING OR STOPPING INTERROGATIONS SO THAT MEDICAL ATTENTION CAN BE PROVIDED TO THE DETAINEES; (ii) ADAPTING INTERROGATION PROCEDURES TO TAKE ACCOUNT OF COMPLAINTS OF PHYSICAL DISCOMFORT MADE BY DETAINEES; AND (iii) BRINGING DETAINEES' MEDICAL COMPLAINTS TO THE ATTENTION OF MEDICAL STAFF AT THE CONCLUSION OF INTERROGATIONS.

The MOD Interrogation Policy 2012 mandates that, prior to interrogation, all captured persons are to be medically examined and where required recorded as not being fit for interrogation on the grounds of poor health. Furthermore, the same policy sets out the procedure as to how to respond if a captured person complains of lack of treatment during interrogation: most importantly

Annex A to MOD Interrogation Policy 2012 clearly sets out the minimum standards of treatment, including access to medical treatment.

14 – NEED TO ENSURE MEDICAL TREATMENT IS PROVIDED IN CASES OF OBVIOUS URGENT NEED.

The Law of Armed Conflict (LOAC) is unequivocal in stating that the responsibility for care of captured persons lies with the detaining personnel and that medical treatment is to be administered to such persons without regard to combatant status. This is reiterated through LOAC training within Military Annual Training Tests (MATT) 7, which is focused on Operational Law.

In addition, all personnel are briefed annually of their responsibilities towards captured persons during Common Core Skills training. Further briefings and practical lessons are conducted during Mission Specific Training for appropriate personnel (ie those most likely to deal with captured persons) and for all personnel during Individual Readiness Training. Thereafter, deployed personnel are briefed on their LOAC responsibilities towards captured persons during Reception Staging and Onward Integration (RSOI). All training in respect of captured persons and LOAC uses JDP 1-10 as its source document.

The UK Medical Group's Standard Operating Procedures (SOP)_3004 provides in-theatre policy for the medical care of detainees. In particular, it directs that "All UK CPERS [captured persons] should have a medical examination within 4 hours of capture and should be transferred as a priority back to a Temporary Holding Facility (THF)."

Assurance mechanisms are in place to ensure that medical provision for captured persons is provided and is checked at 3 separate levels:

- a. Level 1 – This is a formal review of each facility led by Commander Medical on a six-monthly basis and completed using the Common Assurance Framework, a process developed by the Defence Medical Services to assure medical treatment facilities.
- b. Level 2 – This is a six-monthly formal review of each facility, and is led by an Assurance team from either Permanent Joint Headquarters (PJHQ) or PJHQ Sponsored or Provost Marshal (Army) with a health representative. The Common Assurance Framework is used as this provides a consistency of approach and assures not only the standards within the facility but the assurance process used at Level 1.
- c. Level 3 – This review is conducted by the International Committee of the Red Cross (ICRC). It is external to the MoD and importantly captures patient experience feedback through ICRC engagement with individuals within the facility.

D. CURRENT THEATRE-LEVEL INSTRUCTION AND DETENTION PRACTICE

15 – NEED TO ENSURE THAT, BEFORE DETAINEES ARE INTERROGATED, IT HAS BEEN VERIFIED THAT THEY HAVE BEEN PROVIDED WITH THE RECOGNISED NORMS OF FOOD, WATER AND SLEEP AND WITH MEDICAL ATTENTION, IF NECESSARY.

The Interrogation master log ensures that all minimum standards of treatment have been met, in accordance with extant MOD Interrogation and Tactical Questioning Policies 2012, before interrogation begins. This is reinforced through Tactical Questioning and Interrogation Courses.

16 – NEED TO ENSURE THAT THOSE MONITORING THE INTERROGATION SESSIONS ADDRESS ISSUES ARISING IN THE COURSE OF INTERROGATION.

MOD Interrogation Policy 2012 clearly sets out the supervisory mechanisms and responsibilities from interrogator, through to the interrogator controller and Intelligence Exploitation Staff, to the In-Theatre Management Board, and the MOD Supervisory Authority.

17 – NEED TO AVOID DELAY IN THE REPORTING OF DEATHS TO SERVICE POLICE.

The procedures and timelines for reporting allegations of mistreatment or death of a detainee are covered in a Permanent Joint Headquarters (PJHQ)-issued Standard Operating Instruction known as SOI J3-9. First Impression Reports are to be submitted to the Force Provost Marshall within 4 hours of any incident. The First Impression Report is then forwarded to PJHQ within 4 hours of the Force Provost Marshal being notified to allow Ministers to be notified where appropriate. This requirement is confirmed in JDP 1-10.

During Mission Specific Training, all UK forces undergo training on detainee handling and this includes the requirement to report allegations of mistreatment witnessed by or reported to UK forces. Importantly, during training, it is highlighted as a key learning point that effective record keeping must be maintained and the requirement to report incidents of alleged mistreatment is emphasised.

The requirement to report allegations of mistreatment – or instances of mistreatment that have been witnessed – is covered routinely during annual core skills training such as Military Annual Training Tests and Common Core Skills. For deploying personnel this is then rehearsed during Mission Specific Training and then further reinforced by the Legal Adviser and Military Provost Service staff during Reception Staging and Onward Integration (RSOI).

In theatre, the Force Provost Marshal is responsible for ensuring the timely and accurate reporting of allegations of mistreatment or death and for initiating the appropriate follow-on investigations.

18 – NEED TO ENSURE HUMANE TREATMENT OF INDIVIDUALS IN CUSTODY.

The need for humane treatment of Captured Persons is set out in JDP 1-10 and is taught during, Military Annual Training Tests and Common Core Skills training. Personnel are taught their responsibilities under the Law of Armed Conflict (LOAC) and their obligations towards captured persons, including the channels for reporting mistreatment.

In support of this, the Army Inspector's Follow Up Review into the Handling of CPERS dated 31 Oct 12 stated: "*On Op HERRICK, substantial evidence exists that demonstrates behaviours of personnel handling CPERS meet the high standards expected by the Defence and external bodies. This is driven by strong leadership and clear, consistent doctrine that is understood across all ranks. As far as can be reasonably expected, UK Armed Forces understand the need to treat others humanely and with respect.*"

19 – NEED TO ENSURE UK FORCES IMPLEMENT UK POLICY ON HOODING WITH REGARD TO PERSONS IN THEIR CUSTODY WHO WERE CAPTURED AND HOODED BY ANOTHER COALITION FORCE.

The hooding of detainees in UK custody, regardless of which state's forces originally captured them, is now forbidden and this is addressed through training, although as noted above detainees may in certain circumstances be deprived of sight by other approved means. All personnel are taught their responsibilities under the Law of Armed Conflict (LOAC) during Phase 1 and, where appropriate during Phase 2 training. Thereafter, all RAF personnel are briefed annually on their responsibilities towards Captured Persons during Common Core Skills training.

Common Core Skills training covers moral leadership issues on ensuring rules are complied with and also covers the legal and moral obligation on UK service personnel to intervene when international or UK law is being breached, including by another state's personnel. This is also covered under Rules Of Engagement training when the protection of human life is covered.

Further briefings and practical lessons are conducted during Mission Specific Training for personnel most likely to deal with captured persons and for all personnel during Individual Readiness Training. Thereafter, deployed personnel are briefed further on their LOAC responsibilities to captured persons during Reception Staging and Onward Integration (RSOI).

The pre-deployment training for personnel has undergone considerable revision. All Service personnel are briefed at least twice during Pre-deployment training and RSOI. Those undertaking 'outside the wire' roles (i.e.

those most likely to be involved in actual captures), undergo 4 periods of training relating to treatment of captured persons.

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