

# The Iraq Fatality Investigations

**Inspector: Sir George Newman**

**REPORT**  
**into the death of Muhammad Abdul Ridha Salim**



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Presented to Parliament by the Secretary of State for Defence  
by Command of Her Majesty

March 2016



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# GLOSSARY OF TERMS

1 KINGS	1 Kings Battlegroup
1 (UK) ArmdDiv	1 <sup>st</sup> United Kingdom Division
2ic	Second-in-command
2Lt	Second Lieutenant
7 Pl	7 Platoon
A1	Codename used to indicate target location of Mr Zuboon's house
Al Skeini Litigation	Litigation comprising the following four judgments: [2005] 2 WLR 1401; [2007] QB 140; [2008] 1 AC 153; (2011) 53 E.H.R.R 18
Adjt	Adjutant
AK	AK-47 assault rifle firing 7.62mm rounds. Aka Kalashnikov
AO	Area of Operations
AOR	Area of Responsibility
APA	Army Prosecuting Authority
APC	Armoured Personnel Carrier - fully tracked armoured vehicle such as a Warrior (see below). See also IFV.
ALS	Army Legal Service
Bde AO	Brigade Area of Operations
BG	Battle Group
BGHQ	Battle Group Headquarters
Bde	Brigade
Bn	Battalion
Brig	Brigadier
BF	British Forces

Card Alpha	Also known as 'the White Card'. A card outlining the Rules of Engagement and dictating in what circumstances a soldier may open fire
Casrep	Casualty Report
CF	Coalition Forces
CHARLIE	Time zone
CMT	Combat Medical Technician - aka army medic.
Comd/Cmd	Command
Cpl	Corporal
Coy	Company
C Coy	C Company
CO	Commanding Officer
COS	Chief of Staff
CSM	Company Sergeant Major
CS	Call-sign
DCOS	Deputy Chief of Staff
Dishdasha	A long robe traditionally worn by men in the Middle East
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FRAGO	Fragmentation Order
GWPC	Good Will Payment Committee
GR	Grid Reference
GSW	Gunshot wound
Hi Viz	High Visibility
HQ	Headquarters

ICC	International Criminal Court
IFI	Iraq Fatality Investigations
IFV	Infantry Fighting Vehicle - fully tracked armoured vehicle such as a Warrior (see below). See also APC.
IHAT	Iraq Historic Allegations Team
JCRP	Joint Case Review Panel
Kgn	Kingsman
LOAC	The Law of Armed Conflict
LO	See page 3 of Post Incident Report
LSW	Light Support Weapon - rifle firing 5.56mm rounds
Lt	Lieutenant
Lt Col	Lieutenant Colonel
Maj	Major
Med Tech	Medical Technician/Medic
MOU	Memorandum of Understanding
MND (SE)	Multi National Division (South East)
MPS	Military Provost Staff
NCO	Non-Commissioned Officer
OC	Officer Commanding
Offr	Officer
Ops	Operations
OP TELIC 1	Codename for operation to invade Iraq in 2003.
OP TELIC 2	Codename for the second phase of operations in Iraq.
OPTAG	Operational Training and Advisory Group

PIR	Post Incident Report
PJHQ	Permanent Joint Headquarters
PTSD	Post-traumatic stress disorder
QLR	Queen's Lancashire Regiment
QRF	Quick Reaction Force
QRH	Queen's Royal Hussars
RAMC	Royal Army Medical Corps
RAP	Regimental Aid Post - post providing medical care and assistance
Recce	Mobile reconnaissance mission
Regt	Regiment
RMP	Royal Military Police
ROE	Rules of Engagement
RPG	Rocket Propelled Grenade
RQMS	Regimental Quartermaster Sergeant
RSM	Regimental Sergeant Major
SA80	Small arms assault rifle firing 5.56mm rounds. Standard issue for British Forces
SIB	Special Investigation Branch
SITREP	Situation Report
Snatch	Snatch Land Rover vehicle
Sqn	Squadron
TA	Territorial Army
Tp	Troop
Tpr	Trooper

UKF	Unknown Female
UKM	Unknown Male
WKDB	Watchkeeper's Daily Brief
WR	Warrior (Armoured Vehicle). See also APC/IFV.

## GUIDE TO THE REPORT

1. There are two chronologies at Appendices 1 and 2 that are designed to provide an initial overview and, as desired, an easy reference to some of the material summarised in the body of the report. They have been used so as to reduce citation of material.
2. The body of the report is designed to be a self-standing account and where further information is desired it is to be found in the chronologies and in full on the Iraq Fatality Investigations ('IFI') website.
3. There are findings made throughout the review where consideration has been given to certain areas of the evidence. This has been done to allow for a progressive approach to the findings, leading to the central findings in the sections headed 'Findings and Conclusions'.
4. A list of persons named in the Investigation can be found at Appendix 4.
5. Maps and photographs of the locations in Southern Iraq, items of relevance to the detailed events, and other key documents are to be found in the remaining Appendices.

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## SECTION 1: INTRODUCTORY OBSERVATIONS AND CONSIDERATIONS

- 1.1** This report records the outcome of the third Investigation into civilian deaths referred to the IFI by the Secretary of State for Defence. The origin and purposes of the IFI, sometimes referred to as the Iraq Judicial Investigations, appear from the reports, rulings and public statements published on the website at [www. Iraq-Judicial-Investigations.org](http://www.Iraq-Judicial-Investigations.org). The website carries an extensive documentary record from which the legal background, objectives, procedures and the course of each of the Investigations can be seen. This Investigation's legal framework is, additionally, illuminated by the Al Skeini litigation<sup>1</sup>.
- 1.2** The material on the website in connection with the death of Mr Muhammad Abdul Ridha Salim (Mr Salim) should be regarded as supplementary to the material in this report and treated as part of this report. Nevertheless, for many purposes, the report may well serve as a self-standing account of events. It has not proved possible to avoid material being published both in the report and on the website, but unnecessary duplication has in general been avoided. My findings and conclusions are set out in this report and the report will appear on the website after the hard copy edition of this report has been published.
- 1.3** The course of this Investigation has been marked by issues in connection with the disclosure of evidence and difficulties in identifying and then locating military witnesses. The Investigation has proceeded without access to certain written records kept by the British Forces ('BF') in Basra, which were, for operational reasons, left behind in Iraq.<sup>2</sup>

### The legal framework set by the ECtHR (*Al Skeini v UK* (2011) 53 E.H.R.R.18)

- 1.4** Mr Salim, a schoolteacher, was shot and fatally wounded when confronted by a British soldier carrying out a house search in Basra. A prompt investigation was carried out by the military chain of command into the circumstances surrounding the planning and character of the operation as well as the immediate circumstances surrounding the fatal shooting but this investigation fell short of the requirements of Article 2, "...since the investigation process remained entirely within the military

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<sup>1</sup> [2004] EWHC 2911 (Admin); [2005] EWCA Civ 1609; [2007] UKHL 26; (2011) 53 E.H.R.R. 18

<sup>2</sup> CO of 1 KINGS who took over in September 2004 states: "*I found that the correct procedures had not been followed and the complete records had not been returned to the UK.*" (MOD-83-0000313-Z)



*chain of command and was limited to taking statements from the soldiers involved.*<sup>3</sup>

It follows that this Investigation has extended to a consideration of the surrounding circumstances giving rise to the fatal wounding, as well as the immediate circumstances prevailing at the moment Mr Salim was shot. It has been in connection with the latter that there has been an acute dispute of fact, namely whether at the time he was shot Mr Salim was armed with an AK-47.

- 1.5** Mr Salim was fatally wounded in a military operation that was not carried out as an act of war but in a situation where, despite the end of major combat operations, crime and violence were endemic.<sup>4</sup> His widow was entitled to an Article 2 investigation without having to request one but, as it happened, she commenced proceedings in the High Court in 2004 in which she requested *“the inquiry to establish why this raid took place... and... the truth about this killing...”*<sup>5</sup> And by a signed statement dated 21 June 2004 requested an investigation of *“the circumstances around the killing incident”*<sup>6</sup> which would disclose *“...the reasons that led to this raid... and the reason regarding the killing...”*<sup>7</sup>
- 1.6** Since an *“arguable breach”* of Article 2<sup>8</sup> occurred she was entitled to an investigation and the UK Government was obliged to provide her with one, without proof of more than the fact that Mr Salim, a civilian, died as a result of a shot from a soldier, while he was in a private house. She was not obliged to *“...take responsibility for the conduct of any investigative procedures...”*<sup>9</sup> For example, she was not bound to pursue a claim by taking civil proceedings for compensation. However, between 2004 and 2013 she did take civil proceedings in the High Court for damages. The requirement that the right to life is *“protected by law”*<sup>10</sup> gives rise to the investigative duty because, for practical purposes, the victim being dead, the circumstances of death may be largely confined within the knowledge of state officials.<sup>11</sup> It is a feature of this case that the circumstances that caused death were to a significant degree discussed between the BF and the victim at the time of the fatal wounding. The family witnessed the shooting and the circumstances were, in material respects, reported to them in writing three days after the shooting. Further, it was the family members who had knowledge of critical circumstances surrounding the incident which were confined to their knowledge.

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<sup>3</sup> (2011) 53 E.H.R.R. 18 paragraph 171

<sup>4</sup> (2011) 53 E.H.R.R. 18 paragraph 161

<sup>5</sup> FZD MOD-83-0000278-Z, see below at paragraph 5.7

<sup>6</sup> FZD MOD-83-0000293-Z paragraph 9

<sup>7</sup> Ibid

<sup>8</sup> *R (Gentle) v Prime Minister* [2008 AC 1356, para 6]

<sup>9</sup> 2011 53 E.H.R.R. 18 paragraph 165

<sup>10</sup> Article 2 ECHR

<sup>11</sup> See *Ilhan v Turkey* (2002) 34 E.H.R.R. 36

- 1.7** In her February and June 2004 statements she gave an account of both the surrounding circumstances and the immediate circumstances of the fatal shooting of her husband. As a matter of law she was, as I see it, probably not bound to do so. She was not present and could only give an account on the basis of what she had been told by those who were present. They were all members of her wider family. She may or may not have had knowledge as to why her husband went round to the house.
- 1.8** She was not an eye witness, her contribution to the facts could not be extensive, but her account, because it resulted from what she was told by those who were present, and have given evidence, has necessarily given rise to issues of consistency and reliability in connection with the evidence from the family witnesses.

## The family eyewitnesses

- 1.9** There were three eyewitnesses. They were not asked by Mr Salim's widow, nor by her solicitors, Public Interest Lawyers ('PIL'), who had become involved at or about the beginning of January 2004,<sup>12</sup> to provide evidence. For the purposes of her claim in the High Court, with Mr Shiner's assistance Mr Salim's widow made a statement. However, she and the family commenced claims in the Investigative Court of Al-Maaqaal in Basra on 6 November 2003. Short statements were made.<sup>13</sup> In support of those proceedings, an Arabic translation of a letter dated 9 November 2003 from the Officer Commanding ('OC') C Company ('C Coy'), Major Routledge, to the owner of the house was lodged, as best I can ascertain, shortly after the English original version had been delivered.<sup>14</sup>
- 1.10** In 2013 two eye witnesses and Mr Salim's widow made written statements to PIL in which they gave evidence about the facts surrounding the immediate circumstances of his death and referred to the contents of a letter in English dated 9 November 2003 ('the Routledge letter'), but they gave no account of detailed facts which were uniquely within their own knowledge, to which limited reference had been made in

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<sup>12</sup> IFI FZD 30/11/15 page 70, lines 5-8

<sup>13</sup> MOD-83-0000299-Z (Appendix 24)

<sup>14</sup> Email from owner of house dated 18th February 2016: *"The details of the incident had been presented to Public Interests office in Britain and it was signed by me but not stamped by the Supreme Judicial Council. As for the second statement issued by the British Forces regarding the incident, I had nothing to do with it. However, when it was presented to the investigative judge after the incident was reported and when it was attached to the documents of the investigation, it was only natural that any document attached to the file of the proceeding is stamped by the Judicial Council and the name of the Court like the rest of the documents of the proceeding and that it is sent to the court one or two days after the incident and the date of issue which was 9/11/2003."*

the Routledge letter since the BF considered they were facts which had a bearing on the course of events of the night of 5 November 2003.

## The military account

- 1.11** The results of the military investigation have been in evidence throughout the Court proceedings and have been the subject of judicial summaries at every stage to the House of Lords and thereafter in the ECtHR. No particular comment is called for at this stage.

## SECTION 2: THE ORIGIN AND REACH OF THE INVESTIGATION

- 2.1** The detailed legal background to the IFI is set out in full in the consolidated report into the death of Nadeem Abdullah and Hassan Abbas Said, published in March 2015. It is sufficient to record that the specific obligations which govern the reach and purpose of this Investigation are set out in two judgments of the Divisional Court in the action of *R (Ali Zaki Mousa and others) v the Secretary of State for Defence (No. 2)*.<sup>15</sup> By an order of the Divisional Court dated 31 October 2013, the Secretary of State for Defence was ordered to hold inquiries into civilian deaths in Iraq in any cases where he accepted that an Article 2 ECHR obligation to hold an inquiry existed and where it was clear that there would be no prosecution of any British soldiers alleged to have been involved in the deaths.
- 2.2** On 28 May 2015 I was appointed to conduct an inquiry into the death of Mr Salim. My appointment is subject to the terms of reference set out below:

### “TERMS OF REFERENCE

#### **The Scope of the Investigations:**

1. The investigation into the death of Muhammad Abdul Ridha Salim on 7 November 2003 (‘the death’) is to be conducted so as to ensure that, so far as possible, the relevant facts are fairly, fully and fearlessly investigated thereby ensuring the effective implementation of the right to life and accountability for the deaths and discharging the positive obligations of the State under Article 2 of the European Convention on Human Rights.
2. The investigation must be accessible to the family of the deceased and to the public, thereby bringing the facts to public scrutiny.
3. The investigation should look into and consider the immediate and surrounding circumstances in which the death occurred.
4. Where circumstances demand it, the investigation should extend to the instructions, training and supervision given to the soldiers involved in the circumstances in which the death occurred.

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<sup>15</sup> [2013] EWHC 1412 (Admin) and [2013] EWHC 2941 (Admin) respectively.

5. Where facts are found in connection with the instructions, training and supervision given to the soldiers, consideration should be given to whether it is proportionate or necessary to make recommendations on the issues raised taking into account the extent to which those issues have already been considered by the Ministry of Defence or other inquiries.
6. The investigation is to be conducted so as to bring to light all the facts, including failures on the part of the State and facts from which such failures could be properly inferred.

**The Conduct of the Inquiry:**

7. The procedure and the conduct of the investigation are to be such as the Inspector may direct so as to achieve the aims and purposes set out above and to comply with the terms of the Court's judgments, Orders and directions.
8. The Inspector will draw up and publish the procedures that are to be followed to progress the investigation. In this regard he will follow the guidance given by the Court about the extent to which legal representation will be necessary, the questioning of witnesses and the opportunity to be given to the next of kin to raise lines of inquiry.
9. The Inspector will from time to time consider and keep under review the need for procedures to be made public in connection with any of the aims and purposes of the investigation.
10. The Inspector has the power to require any person or organisation to provide evidence in writing, to produce relevant material in their possession or control and to attend a public hearing to give oral evidence.
11. The Inspector is to commence his investigation by considering all the relevant documentation in the possession of the Ministry of Defence and any relevant information emanating from the Iraq Historic Allegations Team ('IHAT') and Service Prosecution Authority.
12. Having considered all the documents which are to be supplied to him and any further documents or information which he may have requested the Inspector will decide what needs to be disclosed to the interested persons, the next of kin of the deceased or the public to enable the investigations to be accessible and subject to public scrutiny.
13. Where the Ministry of Defence considers publication or disclosure would be damaging to national security, international relations or the State, or the safety of any individual it shall bring its considerations to the notice of the Inspector who, having heard such representations from the Ministry as may be necessary, will determine the extent to which publication or disclosure is required in order to achieve the aims and purposes of the investigations.

14. At the conclusion of an investigation the Inspector will produce a written report which sets out:
  - a. a narrative account of the circumstances in which the death occurred; and
  - b. any recommendations he has decided to make.
15. The report will not be concerned to determine or address any person's criminal or civil liability. But the investigations are not to be inhibited by the likelihood of liability being inferred from the facts found or recommendations made."

## SECTION 3: THE PROCEDURES AND FORMAT OF THE INVESTIGATION

- 3.1** As set out in the Consolidated Report into the death of Mr Abdullah and Mr Said, the legal character of the IFI reflects the attributes and purpose of the coronial jurisdiction, mixed with aspects of a conventional inquiry process, being dispensed under the controlling supervision similar to that adopted as an inquisitorial procedure. To provide legal assistance, I appointed a junior barrister and retained the paralegal who had been on the team for the Consolidated Report into the death of Mr Abdullah and Mr Said. The team was expanded to include another paralegal.
- 3.2** Unlike the deaths of Mr Abdullah and Mr Said, the death of Mr Salim did not give rise to a criminal prosecution. It was the first case to be referred to me following the conclusion of a pre-investigation assessment by the IHAT that the 'evidential sufficiency test' (which, if met, would require the case to be passed to the Director of Service Prosecutions ('DSP')) had not been met. The evidential starting point was therefore provided by the material gathered for the purpose of the IHAT's assessment. In addition, the death of Mr Salim had been one of the six cases which were the subject of the judgments in the Al Skeini litigation. In the Al-Skeini litigation, PIL were the solicitors for the Iraqi interests, including the family of Mr Salim.
- 3.3** I decided to adopt the procedural approach taken in the first two investigations. I read through the documents provided by the IHAT and requested disclosure from PIL. Secondly, I began tracing and interviewing relevant soldiers from the 1<sup>st</sup> Battalion the King's Regiment ('1 KINGS'). I took witness statements from them, having provided anonymity and legal assistance to the soldiers when it was requested. Thirdly, I instructed Ms Zainab Al Qurnawi ('Zaq') of QC Law to assist in identifying, making contact with and providing legal assistance to witnesses in Iraq. She was asked to gather evidence and to take statements.
- 3.4** It was clear from the facts alleged by the claimant, which to this date had not addressed the military account, that it was essential to ascertain where factual differences existed between the accounts contained in the military documents and the sketchy and uneven evidence from Iraq, I interviewed the principal witness Mahmood Zuboon Dahesh, the owner of the house, ('Mzd') in Iraq, via Skype. He later gave more evidence by video link. As I have already observed, certain documents made by the military were no longer available. I should add that I have seen no evidence to suggest that the decision to leave documents behind was taken for any reason in connection with this case, or for a reason other than the one given by the military authorities. The disclosure given by PIL has not been smooth. Witness statements taken from Mr Salim's family members in connection with

English proceedings in the High Court were not disclosed to the IHAT. Nor were the documents from the Al Maaqal Court disclosed. This is a matter for some concern. I had to consider what course the investigation should take where the IHAT had made its assessment in connection with any possible criminal proceedings without sight of all of the relevant material. I made a public statement concerning this matter on 7 August 2015:

*This is the first preliminary statement, made on 7 August 2015, into my investigation into the death of Muhammad Abdul Ridha Salim. On the 28 May 2015 my appointment by the Secretary of State for Defence to conduct an investigation into the death of Mr Salim was confirmed. By a letter of the same date, Public Interest Lawyers Limited ('PIL') were notified by the Ministry of Defence ('MoD') of my appointment.*

*These investigations must take place as expeditiously as possible. I am concerned that more needs to be done to achieve that end. Paragraph 1.11 of the Order of the Divisional Court in R (Ali Zaki Mousa and others) v Secretary of State for Defence No. 2 states "where a case has been investigated by IHAT, all material relating to the investigation must be provided to the Inspector within seven days of his or her appointment."<sup>16</sup>*

*I can confirm that all the information investigated by the IHAT was provided to me within that time limit. There appears to me to be no good reason why all of the information held by any firm of solicitors on the record in connection with a victim or family, where that information has not already been supplied to the IHAT, should not also be supplied to the Inspector within seven days. There is no reason why that should not take place without any request having to be made by the Inspector for that material to be disclosed to him or her. This approach constitutes a working out of the express terms and the spirit of paragraph 1.11 of the Order, which is that these investigations are to be as expeditious as possible.*

*Further, paragraph 1.4 of the same Order states "as soon as it is clear that there will be no prosecution in a case in which the Secretary of State accepts that an Article 2 obligation to hold an inquiry arises, an inquiry should be commenced as soon as possible." To enable it to become clear that a prosecution is not likely, it is essential that there should be full disclosure by solicitors of all information in their possession, including witness statements, to the IHAT. I wish to make it clear that an Inspector appointed under these provisions expects of those who have the information in their possession or control relevant to the*

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<sup>16</sup> [2013] EWHC 1412 (Admin) and [2013] EWHC 2941 (Admin) respectively



*circumstances of a death which has become the subject of an investigation to co-operate with the terms and the spirit of the Order and to endeavour to comply with what I am now attempting to lay down as a form of procedure. The stage at which disclosure should take place should be prompt, for example by way of response to the standard form of letter, which I understand the IHAT to send to the solicitors on the record in connection with a case they are embarking upon investigating, asking for disclosure. That disclosure should be made without delay. I emphasise that the phrase "subject to investigation" should be understood as including each of the following stages:*

- 1) The stage at which the IHAT commences its investigations;
- 2) It having reached its conclusion, the stage at which a decision is made as to whether a prosecution is likely, and then;
- 3) The stage at which it becomes subject to an investigation by an Inspector.

*Persons familiar with High Court proceedings in which relief has been claimed in these cases, which include of course the fatality cases, will be aware of the limited factual detail provided in those proceedings for each case. Commonly the amount of detail amounts to a recital of facts and allegations that run to a paragraph comprising of a few lines. The IHAT has an obligation to conduct a criminal investigation under the statutory framework of the Armed Forces Act 2006 and in order for it to act expeditiously and effectively, those who have documents in their possession or control relevant to the death to be investigated should make full disclosure to the IHAT to enable it to fulfil its obligations. I understand, as mentioned already, that as a matter of routine a letter is sent by the IHAT to any firm of solicitors on the record acting for a family of a victim. Full disclosure is asked for. If that request is not complied with and documents and information are held, only to be disclosed later, the IHAT and the Service Prosecuting Authority may well go on to reach conclusions in the absence of highly material documents which should have been available to them and which it is envisaged by the Court are likely to be made available to the IHAT. Any failure to disclose what is then in existence can only lead to delay.*

*My present view is that the need for full disclosure should be a continuing expectation on the part of solicitors involved in these cases. Further, I intend to enquire with the MoD and the Government Legal Department*

*(‘GLD’) as to the best process that can be devised to ensure that documents held by the GLD in any relevant proceedings in connection with any of the IHAT cases are earmarked and disclosed to the IHAT so that there is in fact a comprehensive and sophisticated system for disclosure between the GLD and IHAT of course, where necessary, later in connection with any further disclosure to the Inspector.*

*I have to say unless this topic is addressed and effectively dealt with there will be a risk of delay being caused to an Inspector’s investigation. I am conscious that there may be misunderstandings about the nature of the obligation to disclose material both to the IHAT and to the Inspector. For example, whether a witness statement held by a solicitor must be disclosed. In the normal course, there is unlikely to be a valid ground to advance to resist disclosure. I should emphasise that the lack of client consent is not a valid objection. If arguable grounds do exist they can be asserted in the usual and proper way and the validity of an objection can be determined.*

*Whether there are existing witness statements or not, I need to emphasise the principle that it is a matter for the Inspector to decide according to his or her discretion the manner in which any statements, whether further statements or not, will be obtained. An Inspector’s access to witnesses for the purpose of taking a witness statement where a solicitor is on the record for the witness (in court proceedings or otherwise) is not subject to the consent of the witness and/or solicitors. That having been said, it is hoped that the Inspector’s access to witnesses for the purpose of taking a witness statement where a solicitor is on the record for the witness (in court proceedings or otherwise) is not subject to the consent of the witness and / or solicitors. That having been said, it is hoped that the Inspector’s investigation can take place with the full co-operation and understanding of all those involved in accordance with the Inspector’s decision as to how the procedures should be implemented.*

*I should conclude this statement by a message to the families and witnesses in Iraq in connection with the circumstances of the death of Mr Salim, and I will invite them as I do now to appreciate that an Inspector, on this occasion my role as the Inspector, looks for and hopes for the cooperation of them all in ensuring that the investigation I must carry out is as full, reliable and accurate as it can be.*

*Now to a short report on the state of my investigation into the death of Mr Salim. I can now report that I have taken steps to obtain evidence from a*

*number of witnesses. My investigations are relatively well advanced and I have recently turned to consider the best method of obtaining statements from the family of the deceased and eyewitnesses in Iraq. There are inquiries to be made in Iraq from persons other than the family and eyewitnesses. However, I have to report that within the last week I have received from PIL copies of witness statements, with exhibits, from the family and some eyewitnesses. These statements are dated February 2013 and are headed as having been filed in claims for compensation in the High Court here in London. I have requested full disclosure of all documents, including pleadings, witness statements and orders, existing in those proceedings.*

*I have yet to complete full inquiries into all the circumstances in which these statements have been disclosed to me, how they were obtained and the extent to which they have been available to the IHAT. When those inquiries have been complete, I shall make a further statement. As I said earlier, I shall take up with the MoD and the GLD the question whether there can be a co-ordinated process set up to ensure disclosure of all documents held by the GLD in any related proceedings.*

*Finally, a message to the family and witnesses in Iraq:*

*I am obliged by the terms of reference to make the investigation accessible to the family of Mr Salim. The reciprocal obligation is that the family and the witnesses should make themselves accessible to me. I shall have to decide how best to achieve these aims but I have no doubt that I will receive the full co-operation of the family and the witnesses in the common endeavour which we have to search for the facts and circumstances surrounding the tragic death of Mr Salim. I look forward to setting in train the best steps I can devise for the accessibility which is to be given to the family and the witnesses and I shall report to you as soon as the matters I have already mentioned have been resolved.”*

- 3.5** Further, whilst completing this report, it became clear that other documents might exist that were highly relevant. A request in late January 2016 led to the disclosure of more documents. I shall identify them later. In an attempt to ensure the fullest and most expeditious disclosure of documents in the future, at my request, attention has been given by PIL and the IHAT to the preparation of a disclosure protocol that could serve to guide the process when future investigations are ordered. To date there have been helpful and positive discussions, but no protocol has been finalised.

- 3.6** The course of events led me to make a second public statement on 14 October 2015. I outlined the current procedure and made observations about a way forward which might provide more expedition in complying with the Divisional Court's order:

## The current procedure

*The IHAT was established by the Secretary of State in 2010 to support Service Police investigations. As such, it operates within the rubric of the Armed Forces Act 2006 ('AFA'), however it does not have a statutory basis independent of the Royal Navy Police.*

*The IHAT is answerable to the Provost Marshal of the Navy. The duties of the Commanding Officer, Provost Marshal and service policemen to report and investigate 'Schedule 2 Offences' are set out in ss.113-118 of the AFA. The AFA Explanatory Note provides, In respect of Schedule 2 Offences, as follows:*

*"Section 113 requires a [Commanding Officer] to notify a service police force when he becomes aware that a serious offence has or may have been committed by a person under his command. Section 116 requires a service policeman who considers there is sufficient evidence to charge a person with a serious offence, or an offence prescribed by regulations made by the Secretary of State under section 128, to refer the case to the Director of Public Prosecutions. Schedule 2 lists those serious offences to which section 113 and section 116 apply. They include serious disciplinary offences, such as mutiny and desertion, and serious criminal offences, such as murder, manslaughter and certain sexual offences."*

*The procedure being followed by the IHAT is that where a Schedule 2 Offence may have been committed, the IHAT has a duty to consult with the DSP at the Service Prosecuting Authority ('SPA') as to whether the case meets the 'evidential sufficiency test' under s.116 (4)(a) AFA, namely, 'is there sufficient evidence to charge a person with a serious offence?' This duty to consult arises regardless of whether the case is then referred to the DSP. Where the IHAT concludes, having consulted with the DSP, that the evidential sufficiency test has not been met, the case is then passed to the MoD, which will consider whether to pass the case to the IFI. Where the IHAT concludes that the evidential sufficiency test has been met, the case must be referred to the DSP under s.116 (2) AFA. The DSP then applies a*

*two-stage test to decide whether to direct that charges must be brought, the two-stages being:*

- 1) Is there a realistic prospect of conviction?; if so*
- 2) Is a prosecution required in the public interest?*

*If the two-stage test is met, the case proceeds to Court Martial trial. If the two-stage test is not met the DSP directs that charges should not be brought, and the case passes to the MoD and then onto the IFI, according to the decision of the MoD.*

*In my view, these provisions should be understood and applied in the context of the exceptional circumstances in which the obligation to consider investigations and inquiries has arisen. The circumstances are exceptional because:*

- 1) The IHAT, the SPA and the DSP are having to process innumerable cases. I am not aware of the total but I believe that it could run into hundreds.*
- 2) The allegations that make up the cases, in many instances, are comprised in a few lines amounting to a short summary, For example, the cases communicated to the Divisional Court were communicated in a schedule in the Al-Skeini proceedings. The allegations relate to events taking place in 2003. At that time, the provisions governing the investigation and consideration of the conduct of soldiers, where the death of a civilian resulted, fell to be considered by the Commanding Officers. The quality and intensity of the process of these determinations by Commanding Officers has obviously varied, but at least, despite failings that caused the government to pass the AFA, the process had the advantage of taking place locally, with access to local witnesses and shortly after the event. Desirable as it may be for the SPA to give close attention to these historic allegations, in accordance with the new provisions contained within the AFA, I believe some regard has to be paid to the practical difficulties and the likely time which it will take if attempts are made to subject and consider these investigations as though they occurred recently, where the advantages and processes of the AFA have not been followed in the overseas territory.*

- 3) *The IFI is not a statutory body. It was set up to play its role in the resolution of these allegations by following terms of references that have to be compliant with the United Kingdom's obligations under the European Convention on Human Rights. A balanced view of the number of the cases likely to be prosecuted and the number of cases to be investigated by the IFI points to the desirability that the IFI Article 2 obligations are seen as the dominant objective underlying the order of the Divisional Court.*
- 4) *I am drawing attention to the above exceptional circumstances for consideration by the relevant parties and the Court because it seems to me reasonable to assume that the majority of cases will not give rise to prosecution. That will be for a variety of reasons, but a reason to be considered common to every case will be that the events took place 12 years ago and local witnesses will be very difficult to locate and question. If and when witnesses are located, the arrangements to take their evidence are expensive and complicated. For example, I am informed that the IHAT currently deploys over 100 people annually to interview witnesses in a third country.*
- 5) *If no prosecution follows, the death cases will come to the IFI. I set out my views about the IFI process, which had to be adopted and have explanations for my conclusions in my report in the cases of Said and Abdullah. In short, the IFI cannot fulfil obligations by reviewing the factors as they appear from the evidence in the papers. Compliance requires a rigorous fact finding exercise which excludes a review on the papers alone. The IFI too must, as necessary, contact witnesses, assess evidence, and probably hold video contact hearings.*
- 6) *It follows that the process currently adopted by the IHAT and the SPA gives rise to the likelihood of a substantial degree of duplication of effort and time and it is impacting on the rate at which the IFI is becoming involved. My conclusion is that there is room for an adjustment in the balance between the fulfilment of the Article 2 investigation by the IFI and the IHAT's investigation. The adjustment cannot be at the expense of the IHAT and the SPA being relieved of making an assessment about whether there should be a prosecution but an adjustment of the intensity of the assessment that should take place, taking account of the exceptional circumstances to which I have already referred. In the circumstances that have arisen, the respective roles of the IHAT and the IFI can be seen as*

*complementary. Thus I should emphasise that an important additional factor can be taken into account. Following the findings of the IFI it will be open to the SPA to conclude that a prosecution should be brought, notwithstanding an earlier decision not to proceed. See by way of parallel s.10 of the Code for Crown Prosecutors, and in particular that which is set out at 10 (2)(a) and (d).<sup>17</sup> It is clear that in every case there will be a real possibility of fresh evidence becoming available in the course of an IFI investigation. There should be no particular concerns on the part of the SPA and the DSP that a first decision not to prosecute can be the subject of a successful challenge where a second opportunity for the same question to be considered can be raised in the light of the findings of fact made by the IFI investigation.*

*If these conclusions are considered by the Court to have merit then I recognise that it would be desirable for some guidance to be given to the IHAT and the SPA as to the proper way to make the initial decision on the prosecution. It might be said that a consideration of the material available on the papers is likely to be susceptible to a clear conclusion. But it is probably more appropriate for the Court with the assistance of counsel to formulate the necessary guidance.*

## Protection and medical support for soldiers

- 3.7** It is essential that soldiers should be encouraged to be full and frank in giving their evidence and to that end they should have such protection as might be available to them from the Attorney General, the Director of Public Prosecutions and the Director of Service Prosecutions. On 8 October 2015 I received an email from the Attorney General confirming that, after consulting with the Director of Public Prosecutions and the Director of Service Prosecutions, the undertaking that had been given in respect of the Investigations into the deaths of Mr Abdullah and Mr Said, to the effect that no evidence given before the IFI would be used in evidence

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<sup>17</sup> S.10 of the Code for Crown Prosecutors provides: “10.1 People should be able to rely on decisions taken by the CPS. Normally, if the CPS tells a suspect or defendant that there will not be a prosecution, or that the prosecution has stopped, the case will not start again. But occasionally there are reasons why the CPS will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious. 10.2 These reasons include: a) cases where a new look at the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;... (D) cases involving a death in which a review following the finding of an inquest concludes that a prosecution should be brought, notwithstanding earlier decision not to prosecute.”

against that person in any subsequent criminal proceedings, also applied to soldiers giving evidence to the IFI in the enquiry into the death of Mr Salim.<sup>18</sup> In October 2015 I also sought an undertaking from the International Criminal Court at The Hague ('ICC') regarding the non-use of self-incriminating evidence given by soldiers to the IFI. An assurance was given by the Chief Prosecutor at the ICC by letter dated 8 December 2015<sup>19</sup>.

- 3.8** My contact with soldiers who were asked to provide evidence revealed that a number of them, including the principal witness, SO11, continued to suffer from PTSD and psychological trauma dating back to their service in Iraq and elsewhere.<sup>20</sup> Some reported deterioration in their symptoms following their provision of evidence to the Investigation. I investigated the availability of medical support and addressed the question in my Public Statement of 14 October 2015:

“Many of the military witnesses I have interviewed suffer from PTSD and psychological trauma. For example some, having initially been seen, have suffered setbacks and relapses in considering the draft statements which they have been sent for signature. It appears that many of them require medical assistance because currently, for reasons which it is unnecessary for me to go into, they have not been receiving it. It should not be assumed that these conditions are specifically attributable to the cases being investigated, but arise from events occurring during their service in Iraq. I am pleased to say that I have received approval from the MoD that I can inform witnesses that they can obtain counselling and necessary assistance through the Veterans Support Programme. It will be provided through the Veterans Welfare Unit and I shall endeavour to see that it is available to all who ask for it.”

- 3.9** In the course of a video link hearing another former soldier and witness found the process extremely distressing. I have concluded that in future, that from the first time of contact, the IFI should make soldiers aware of the availability of mental health support in addition to the availability of legal advice and assistance.
- 3.10** I gave my reasons for according anonymity to soldiers in the course of the Iraq Fatality Investigations in the consolidated report into the deaths of Mr Abdullah and Mr Said. Those reasons should stand as a general approach to be adopted in all cases. Accordingly, anonymity has been granted in this report to those soldiers who requested it.

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<sup>18</sup> MOD-83-0000311-Z (Appendix 7)

<sup>19</sup> Appendix 6

<sup>20</sup> SO11 MOD-83-0000262-Z paragraph 5



## SECTION 4: THE INVESTIGATION INTO THE DEATH OF MR SALIM

### The presence of 1 KINGS in Basra Province

- 4.1** 1 KINGS was deployed to Iraq between June and November 2003 with 19 Mech Bgde under the command of Lt Col Ciaran Griffin. The geographical area for which 1 KINGS was responsible included the northern part of Basra, and a number of towns outside of Basra strung along the Shat-al-Arab waterway. The area was divided into four regions, each under the control of a separate company or squadron; three regions west of the Shat-al-Arab waterway, under the control of A company, B Company and C Company ('C Coy'), and one region east of the Shat-al-Arab, under the control of D Company.<sup>21</sup>
- 4.2** The main remit of 1 KINGS was to establish law and order, ensure the population's general security and get public utilities services operating again in its area of operations ('AO'). The C Coy 1 KINGS Handover Notes to C Coy 1 RS state:

#### MISSION

...

'C Coy 1 KINGS is to conduct surge operations as directed in order to assist in the provision of a secure and stable environment within the North Al Basrah AO'

#### EXECUTION

...

'When not deployed on BG operations the Coy maintains a framework patrols routine to support the ground holding sub-units. We have 5 multiples plus an ability to free up an assault pioneer section for force protection or G5 tasks as necessary. The routine multiple tasking involved a rotation through guard, QRF and patrols 1,2 and 3. Surge ops are tasked through the issue of BG FRAGOs...

The Coy operates from Camp Cherokee and is co-located with BG Echelon, A Coy 1 KINGS and B Coy 1 R GJ. As the Ops Coy you should not be responsible for overall security of the Camp as you may be deployed

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<sup>21</sup> Griffin MOD-83-0000259-Z paragraphs 4-7

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for extended periods, The ground-holding sub-unit should be the lead, though you will have to contribute personnel when available.<sup>22</sup>

- 4.3** The situation between June and November 2003 was extremely volatile and threats to security came from four main sources: terrorist attacks, riots, tribal infighting and criminals.<sup>23</sup>
- 4.4** There was a constant threat of terrorist attacks by insurgents and others who would attack British troops and sometimes the Iraqi police using explosive devices and by shooting.<sup>24</sup> Attacks on 1 KINGS forces occurred roughly every 10 days.<sup>25</sup> There was also a constant possibility of riots, which were sporadic and unpredictable, and could flare up for any number of reasons.<sup>26</sup>
- 4.5** Although it did not pose a direct threat to the BF, one of 1 KINGS' responsibilities was to deal with tribal infighting and feudal attacks. The population in 1 KINGS' area was divided into a complex system of tribes that had been suppressed under Saddam Hussein and his regime and had reasserted themselves after the end of the war. Disputes were fought out using military grade weapons such as assault rifles like AK-47s, RPK and PKM machine guns, DShKs and rocket propelled grenades, which Saddam Hussein's army had left behind at the end of the war.<sup>27</sup>
- 4.6** There were criminal gangs in operation in 1 KINGS' area, with no existing operational police force to control the situation. There was no system in place to record crime. The Royal Military Police ('RMP') and 1 KINGS recruited and trained new and former policemen returning to their jobs, but there was little means of vetting recruits. 1 KINGS attempted to establish a stable judicial system, but the process was slow.<sup>28</sup> The general lawlessness in 1 KINGS' AO was described by one soldier as a 'wild environment'.<sup>29</sup>
- 4.7** This general state of affairs described by Lt Col Griffin has been amply demonstrated by the evidence that has emerged in the course of this Investigation. As this report will show, tribal feuding, anarchic conditions, violence and the use of firearms played a central part in generating the circumstances in which Mr Salim was killed.

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<sup>22</sup> MOD-83-0000283-Z pages 2-3

<sup>23</sup> Griffin MOD-83-0000259-Z paragraph 9

<sup>24</sup> Ibid, paragraph 10

<sup>25</sup> Ibid, paragraph 12

<sup>26</sup> Ibid, paragraph 13

<sup>27</sup> Ibid, paragraphs 14-17

<sup>28</sup> Ibid, paragraphs 19-26

<sup>29</sup> SO13 MOD-83-0000258-Z paragraph 6

## The base at Camp Cherokee

- 4.8** The OC C Coy was Major Simon Routledge. C Coy was based at Camp Cherokee on the 1 KINGS southern boundary by the Shat-al-Arab river, adjacent to the AO of 1<sup>st</sup> Battalion, The Queen's Lancashire Regiment ('1 QLR').<sup>30</sup> The Battle Group Headquarters ('BGHQ') were at the Shat-al-Arab Hotel, about a mile from Camp Cherokee.<sup>31</sup>
- 4.9** By November 2003, insurgency in Basra had picked up<sup>32</sup> and attacks were a fairly regular occurrence.<sup>33</sup> The risk of an attack on Camp Cherokee had increased because 1 KINGS was nearing the end of its tour.<sup>34</sup>
- 4.10** 1 KINGS did not have a central intelligence cell,<sup>35</sup> but soldiers acting as intelligence officers would collate what they could of information coming in. Some of this information came from local civilians who came to the gates of the Camp and told the guards on duty that they had information, often in the hope of obtaining food or money.<sup>36</sup> Soldiers on guard would then invite the walk-ins into camp to pass the information on with the help of an interpreter. The interpreters used at Camp Cherokee were locally employed civilians.<sup>37</sup> The evidence I have considered has implicated one of the Camp's interpreters being party to deliberately providing false information to bring about the raid that resulted in Mr Salim's death.
- 4.11** Information derived from walk-ins should have been kept in a logbook in the Ops Room at BGHQ.<sup>38</sup> However, most of these documents were left behind in the Shat-al-Arab Hotel when 1 KINGS left Basra.

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<sup>30</sup> Routledge 1 MOD-83-0000263-Z paragraph 5

<sup>31</sup> Ibid, paragraph 11

<sup>32</sup> SO14-83-0000268-Z paragraph 5

<sup>33</sup> Morris MOD -83-0000269-Z paragraph 3

<sup>34</sup> Price MOD-83-0000270-Z paragraph 4

<sup>35</sup> SO12 MOD-83-0000260-Z paragraph 3

<sup>36</sup> Jones MOD-83-0000266-Z paragraph 3

<sup>37</sup> Routledge 2 MOD-83-0000256-Z paragraph 3

<sup>38</sup> SO13 MOD-83-0000260-Z paragraph 7-8

## SECTION 5: THE EVIDENCE

### PART 1: The Evidence Lodged in Court Proceedings

#### Proceedings in the English courts and ECtHR

- 5.1** In this section and thereafter I shall refer to Mr Salim’s widow, Fatima Dahesh, as FZD, Mahmood Zuboon, the owner of the house that was raided, as MZD and his wife Entesar Zuboon as EZD.
- 5.2** The circumstances in which Mr Salim died comprised Case 2 in the Al Skeini litigation that passed through the Divisional Court in 2004, the Court of Appeal in 2005, the House of Lords in 2007 and the ECtHR in 2011. The circumstances of his death were considered, at every stage, upon the basis of documents disclosed by the parties in judicial review proceedings. For the claimant, two written statements from FZD<sup>39</sup> and for the MoD, documents which included an account based upon a signed statement by SO11 dated 6 November 2003 and records and reports comprising the results of investigations by Major Routledge, a report by Lt Col Griffin (Company Commander), and a report by Brig David John Rutherford Jones (Brigade Commander). The latter concluded that it was a “*straightforward case*”<sup>40</sup> that fell within the ROE and required no RMP investigation. At the date of these reports Mr Salim was seriously wounded but not dead. He died the next day on 7 November 2003. The account given by the BF was in part first hand, detailed, well-nigh contemporary evidence, and for the other part, the product of immediate consideration given by senior officers. It was no doubt generally helpful for the MoD to have available facts to support an argument that an adequate investigation had been carried out promptly. The facts were, so far as possible, closely considered.
- 5.3** The material formed the basis for paragraphs 60-63 of the judgment in the Divisional Court,<sup>41</sup> paragraph 24 of the Court of Appeal judgment of Brooke LJ<sup>42</sup> and paragraphs 62-67 of a ‘*Statement of Facts and Issues*’ lodged in the appeal to the House of Lords. Lord Bingham observed in his judgment in the House of Lords:

*“Mr Muhammad Abdul Ridha Salim was fatally wounded on 6 November 2003 when British troops raided a house in Basra where he was. He received medical attention but died on 7 November 2003. The claimant is*

<sup>39</sup> Draft dated 23rd Feb 2004 (MOD-83-0000278-Z) and signed statement dated 21 June 2004 (MOD-83-0000293-Z)

<sup>40</sup> Rutherford-Jones MOD-83-0000296-Z paragraph 42

<sup>41</sup> [2007] QB at 161-162

<sup>42</sup> [2007] QB at 254

*his widow. There is.... a radical divergence between the respective parties' accounts of the incident."*<sup>43</sup>

- 5.4** The divergence arose from the parties' respective approaches to the facts. The source of what Lord Bingham perceived to be a "*radical divergence*",<sup>44</sup> stemmed from the claimant's account contained in an unsigned witness statement drafted by Mr Philip Shiner on or about 23 February 2004, which had been lodged in the Divisional Court in May 2004. It was followed by a signed statement in June 2004. The statements exhibited the Routledge letter, which had not been written to her but was addressed by Major Routledge to MZD. FZD made no detailed comment about the truth or accuracy of the contents of the Routledge letter. Rix, LJ observed:

*"Fatima Dahash was not present when her husband was shot. Her account is based on what she was told by those who were present."*<sup>45</sup>

- 5.5** MZD could have provided her or Mr Shiner with any comment he had to make on the Routledge letter. But it seems likely that neither FZD nor PIL asked him to do so. As I read the Routledge letter, it was not intended to be a detailed account of everything that occurred. The shooting had been seen by MZD and Major Routledge had discussed the incident with him immediately after the shooting and again on at least one occasion thereafter, when he delivered the letter to MZD. Major Routledge had attempted to meet with FZD as well, but, for cultural reasons, that had not been possible. It is clear that the Routledge letter was prompted by the death of Mr Salim and by a desire on the part of Major Routledge to express his condolences to the family and to place on record, for the family, regret for the tragic outcome that had flowed from the action which he had taken on the basis of false information to the BF. As was known to MZD, it was the serious nature of the false information that led to the soldiers raiding his house.

- 5.6** The identities of all of those who were present, being family relatives, were known to FZD. Further, it has become clear from the latest disclosure from PIL, received on 3 February 2016, that FZD had filled out a questionnaire in or about February 2004, which revealed the identities of some of those present. Further, although she recorded in her statement: "*we reported the shooting to the Iraqi police....*",<sup>46</sup> the reports or statements, which it is now known were made to the police, were not obtained or disclosed. They were not disclosed to PIL until 2013. The questionnaire envisaged that all witnesses should receive a copy of the questionnaire, but on this occasion none of the witnesses who had been present appear to have filled out a

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<sup>43</sup> [2008] 1 AC 177

<sup>44</sup> [2008] 1 AC 177

<sup>45</sup> [2004] EWHC 2911 (Admin) paragraph 61

<sup>46</sup> FZD MOD-83-0000286-Z paragraph 7

questionnaire. That said, a short form of questionnaire was either filled out by MZD or by FZD on his behalf.<sup>47</sup> From the terms of the answers, it seems likely that MZD completed the answers. It was not until some nine years later, when PIL asked MZD, EZD and FZD to travel to Beirut in order to make witness statements in support of claims for compensation that eye witness accounts were obtained.

## Witness statement of Philip Joseph Shiner

**5.7** The account given in FZD's statement drafted by Mr Shiner in February 2004 should be read in the light of a witness statement of Mr Shiner dated 18 May 2004, which was not disclosed to the IFI until 3 February 2016. FZD's statement drafted by Mr Shiner in February 2004 was as follows:

### *"WITNESS STATEMENT of FATIMA ZABUN DAHESH*

- 1) I am the widow of Muhammad Abdul Ridha Salim who was shot and fatally wounded on 5 November 2003 by a British soldier. My husband died in hospital on 7 November 2003.*
- 2) On the evening of the incident on 5 November my husband went to visit his brother-in-law at the home of Mr Mahmood Sabun near Al Jubaila, a school, which is in the vicinity of Al Andalus, Basra.*
- 3) It was made during the months of Ramadan. At approximately 23:30 a raid took place by British soldiers on this house. They forced entry by breaking down the front door. One of the British soldiers came face to face with my husband in the hall inside the house. He fired a shot at him. The wife of my brother-in-law Mrs Intesar Abdul Baqi pleaded with the soldier not to shoot again. The soldier pushed her aside and ordered the other soldiers to lock her in a room so that others could not hear her screams in the quiet of the night.*
- 4) My husband was hit in the stomach by a bullet fired from a rifle with an attached silencer. After the shooting incident the British forces took him to the Czech Military Hospital, where he was operated on but died on 7 November.*

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<sup>47</sup> See paragraph 5.10 of this section of the Report

- 5) *All those present at the incident are completely shocked and horrified at the events and they have no idea why their home was targeted and refer to the experience as indescribable. I am still in a state of shock.*
- 6) *My husband was aged 45 when he died and his occupation was as a teacher.*
- 7) *After the incident we reported the shooting to the Iraqi Police at Al Maqal in Basra. We have not applied for any compensation from the British Army.*
- 8) *Although I was not present at the time of the shooting those who were present insist that my husband posed no threat to the British soldier who fired a shot at my husband for no reason. The British Army appears to have mistakenly targeted the house that was raided. I now produce shown to me marked "FZD1" a copy of a letter from Major S J Routledge Commanding Officer of the 1<sup>st</sup> Battalion, the King's Regiment, of 9 November 2003. This letter accepts that the British forces shot my husband by mistake as they were led to believe that an armed group had entered my brothers house and expresses regret at the incident. However my family has not received any compensation.*
- 9) *I now wish my solicitor, Phil Shiner of Public Interest Lawyers, to pursue a claim from the British Courts for compensation and an inquiry into the circumstance of this killing. I want the inquiry to establish why this raid took place and why the British soldiers were in Iraq in the first place. My family and I want to establish the truth about this killing so we can better understand why my husband was killed and thus be in a better position to come to terms with his death."<sup>48</sup>*

**5.8** Mr Shiner's statement explained the background as follows:

*"WITNESS STATEMENT of PHILIP JOSEPH SHINER*

1. *I am the solicitor with the conduct of this application for judicial review concerning the deaths of Iraqi civilians in South East Iraq during the period of occupation of that territory by the UK Government.*

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<sup>48</sup> FZD MOD-83-0000278-Z

2. *The purpose of this witness statement is three-fold: one, to explain why, in the light of the position in Iraq, it was necessary to file the twelve witness statements in draft form at the permission stage; two, to explain how these statements were obtained and to exhibit the working papers; three, to introduce further relevant facts and materials in respect of those cases that the claimants will focus upon.*
3. *It is well known that the situation in Iraq is particularly difficult at the moment, and that it has been for some time. Mr Justice Collins recognized the position at the directions hearing on 11 May. It has had a number of relevant consequences for the litigation*
4. *The situation in Iraq in October 2003 made it impossible for me to travel to Basra to take instructions from my clients. Consequently, Fahim Mazhary, a man of Iraqi descent, was employed by Public Interest Lawyers to travel to Basra on my behalf. I prepared a standard form questionnaire so the answers could be translated into witness statements on his return. I now produce "PJS1" a copy of an English version of that questionnaire. Mr Mazhary translated the questionnaire into Arabic. I now produce as "PJS2" true copies of the Arabic version of the questionnaires.*
5. *At the time of drafting the statements, I had applied for public funding from the LSC on 25 February 2004. I had requested the applications to be dealt with as a matter of utmost expedition as Counsel and I were concerned about the need to preserve evidence and for the enquiries to proceed as a matter of urgency. I expected the applications to be determined within days and that if certificates were granted I would be able to instruct my caseworker to return to Iraq. He could then arrange for the statements to be signed and brief the clients on developments in the UK.*
6. *In mid-March I was approached by another Iraqi, Mr Mazin Younis, who has now settled in the UK. His credentials as a caseworker were impressive as he used to live in Basra where his father practiced as a lawyer. Accordingly, I decided to offer him a temporary contract of employment to visit Basra as soon as the LSC had determined the application for certificates. Unfortunately the LSC delayed so much that, in view of the pending twelve month deadline under the Human Rights Act 1998, (the first death of the twelve occurred on 6 May 2003) I decided again I would have to pay*



*for this caseworker to return to Iraq. (For the record that there will be no claim for the LSC for any of my team's work conducted to date.)*

- 7. Mr Younis left for Iraq on 28 March. As the situation in Iraq dramatically worsened, it was not until 23 April that he was able to travel to Basra. Once there, Mr Younis took statements on my behalf from Colonel Daoud Mousa and a witness Kifah Taha Al-Mutari about the death in custody of Baha Mousa. The signed statements are shortly to be filed and served in these proceedings. Mr Younis also gathered further information from the clients whom Mr Mazhary had met on his visit to Iraq.*
- 8. By this time the time limit under section 7 (5) of the Human Rights Act 1998 was approaching in relation to the case of Abbas Kuhdayar Gatteh, the earliest of the deaths in question (the time limit relates to the Claimants' argument that there has been a breach of the substantive obligation in Article 2 of the European Convention on Human Rights rather than relating to the procedural obligation). I took the view that even though the LSC had still not made a decision on funding, it was essential that claims be put in on a protective basis. I was also concerned about the need to preserve evidence, as I have mentioned above. Accordingly, I decided to lodge the claims on 5 May 2004 ( the day before the expiration of the time limit in the case of Mr Gatteh) on the basis of the unsigned statements that were put into the court bundle with a view to having them perfected and signed as soon as the difficult circumstances in Iraq permitted. I apologise to the Court that I did not make it clear that they were draft statements. This was because I thought that this was apparent from the fact that they were unsigned. I should also say by way of explanation that one of the reasons why I did not have time to give this issue of unsigned statements the requisite thought arose from the lack of funding, which was taking up a lot of my time. The claim was lodged without any funding being available from any public or other sources and the Legal Services Commission had not determined the applications for certificates. Indeed, it has not done so at the time of the Directions Hearing on 11 May when permission was granted, and still has not done so, although correspondence has continued throughout.*
- 9. Of the five cases that the judicial review application will focus on, Mr Younis has confirmed to me the accuracy of the draft statements. I have arranged for signed copies to be obtained and sent back to me as soon as possible. Mr Younis did not ask the five witnesses to sign*

*the draft statements while he was in Iraq as he expected that I would want the statements expanded in the light of his further instructions. As the claim has now been lodged these statements will be signed, with further information about the incidents being produced as set out below. I have checked the draft statements against the further accounts. I am satisfied that it is appropriate to ask the witnesses to sign the draft statements that I prepared in February 2004.*

*10. I now produce as "PJS3" short further accounts*

*....*

*Muhammad Abdul Ridha Salim*

*I understand from Mr Younis that the widow has now received the sum of \$1,500 from the British Army in February 2004 by way of ex-gratia compensation.<sup>49</sup>*

*....*

## Client Questionnaire

- 5.9** The form of the completed questionnaire from FZD, translated from a completed Arabic version, is as follows:

*"CLIENT QUESTIONNAIRE:*

- 1. Name of deceased: Muhammad Abderridha Salem*
- 2. Relationship: Husband*
- 3. Age of the deceased: 45 years*
- 4. His address: [redacted] lawyer Mahmoud Zuboon.*
- 5. Occupation: Teacher*
- 6. Date of the injury (incident) and death: 5/11/2003; death 7/11/2003*

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<sup>49</sup> Shiner MOD-83-0000285-Z

7. *Time of the injury: Eleven thirty at night.*
8. *Cause of the injury: Gunshot in the abdomen*
9. *Did you see the injury (incident) yourself: My brother lawyer Mahmoud Zuboon and his lawyer wife Intisar Abdelbaqi saw it.*
10. *If you did not see the incident yourself, please ask witnesses to fill in the attached questionnaire.*
11. *Where did the incident take place specifically?*  
*City/township/village: Basra province*  
*Street: [redacted]*  
*Block: House of lawyer Mahmoud Zuboon in [redacted]*  
*Other blocks in the neighbourhood: [redacted], Basra*  
*Site of the incident: Inside the above house*
12. *What were you doing at the site of the incident at the time? The incident took place in my brother's house where my husband the victim went to visit on the occasion of Ramadan*
13. *Who was with you at the time of the incident?*
14. *Specify your position and proximity from the site:*

**Before**

*In what direction were you going?*

*How far were you from the site of the incident?*

*How do you describe seeing the incident?*

**During**

*Describe your position in the street or building?*

*In what direction were you going?*

*How far were you from the site of the incident?*

*How do you describe seeing the incident?*

15. Describe the events leading to the incident in detail:

*Aerial shelling: No*

*When did it start?*

*Do you know from where the attack came?*

*Were the planes soaring?*

*How was the reaction of those present?*

*What did they do?*

*When did the attack take place?*

*Was the injury direct?*

*What was the injury resulting from the attack?*

*What did you do immediately after that?*

*If the answer was "no" what were the resulting wounds and injuries?*

*Who was also killed or wounded in this case, give the numbers and the details?*

*Give any relative information:*

*What happened immediately afterwards?*

*Ammunition that did not explode before May 2003: No*

*What is the name of the area?*

*How long was it before it went off from 1 May?*

*Were those present aware that there had been unexploded ammunition around?*

*Was the type of the ammunition known, i.e. cluster bombs?*

*Describe its shape and appearance*

*How did the victim deal with the ammunition?*

*Describe what happened exactly at the time of the explosion:*

*The time of the explosion accurately (hour/minute):*

*What were the resulting injuries?*

*How did those present react?*

*What happened at that moment?*

*Who was also killed or wounded in the incident, please give the numbers and the details?*

*Please give other details*

*Who was also killed or wounded in the incident, please give the numbers and the details?*

*Please give any additional information:*

*Gunfire: yes*

*When did the shooting start? at eleven thirty at night when my brother lawyer Mahmoud Zuboon's house was assaulted all of a sudden and doors were broken.*

*How many shots were fired? One*

*Do you know from where did the firing come: from a British soldier when my brother's house was assaulted all of a sudden by breaking the doors.*

*Were there other people?<sup>50</sup> Yes, my brother and his wife (illegible)*

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<sup>50</sup> In the original draft questionnaire settled in English the question was "Were other parties also firing in this incident? If so who?" The following questions were omitted from the Arabic questionnaire: "Please describe the location of the deceased?"; "Did death occur directly?"; "If not what injuries were caused?"; "What action was taken immediately?".

*Can it be said that the firing started with the intention of injuring or killing victims?<sup>51</sup> Yes*

*Could you see who fired? No because my husband the victim went to visit my brother in his house which was adjacent to ours.*

*Describe the place of the injury of your relative? It was in his abdomen*

*From which direction did the fire come (describe in detail the location of the building and the point of the firing: The British soldier fired as he was face to face with the victim inside the hall of the house.*

*Do you the type of weapon used? A rifle equipped with a silencer*

*Specify where in the victim's body did the bullet hit: in his abdomen*

*Time of firing: eleven thirty at night 5/6/11/2003*

*How was the reaction of those present: wondered why as there was no reason for the firing.*

*What did they do: My brother's wife was entreating them not to fire but the soldier after firing was shouting at her asking the other soldiers to get her inside the room. There was no resistance because those present had been secure inside the house.*

**Other:**

*When did the incident take place: at eleven thirty at night.*

*Specify the cause of the injury or the death: gunfire.*

*How did those present react: Our reaction was indescribable.*

*What were the measures taken: He was transported to the Czech Hospital one and a half hour after he was hit by gunfire.*

*The person demanding compensation:*

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<sup>51</sup> This question did not feature in the original draft questionnaire settled in English by Mr Shiner.

1. *Name: Fatima Zuboon Dahash, born in 1958 – female*
2. *Full address: Basra - Jubaileh, behind Teaching Aides.*
3. *Widow.*
4. *Occupation: employee at the Education Department of Basra*
5. *If working, what is the salary.*
6. *Possessions of land, houses: none*
7. *Loss of things they owned with description of the loss: no losses except the loss of my husband who died in the incident*
8. *The loss in details: no material loss.*
9. *Is the loss an old or modern item (age) if a car or the like? None.*
10. *How did you own what had been lost? N/a*
11. *Did the incident take place in front of you, if you did not see it, who told you about it? My brother and his wife told me about the firing at my husband.*
12. *If the incident was in a house, what is the address: the house of lawyer Mahmoud Zuboon, Al-Jubaileh, Andalus neighbourhood.*
13. *Describe in detail, before, during and after the incident: while my husband was sitting with my brother in the house of my brother lawyer Mahmoud Zuboon a British force broke the doors and entered in a surprising manner when a soldiers fired.*
14. *If you were accompanied, what did you do and how did you act: I was not there.*
15. *Did you inform the authorities: Yes Almaaqal Police station were informed.*

16. *Did you try to get compensation? No*<sup>52</sup>

**5.10** MZD did not answer a questionnaire, but the following short form has been disclosed. PIL has suggested that it could have been filled out by FZD. From the terms of the content, in particular the description given of the incident it seems likely to have been MZD.

*The person demanding compensation:*

- *Name: Mahmoud Zuboon Dahash, male, born 1950*
- *Full address: Basra - Andalus neighbourhood- near Al-Jubaileh School.*
- *Marital status: married*
- *Occupation: yes, lawyer*
- *If working, what is the salary: private sector.*
- *Possessions of land, houses: none*
- *Loss of things they owned with description of the loss: 5/6/11/2003 when the doors were broken and suitcases torn apart.*
- *The loss in details: loss of the external iron gate and the main wooden door and many suitcases torn apart in addition to the moral loss.*
- *Is the loss an old or modern item (age) if a car or the like: None.*
- *How did you own what you had lost: By purchase.*
- *Did the incident take place in front of you, if you did not see it, who told you about it: the incident took place when a British military force assaulted the house all of a sudden following a false information from an unknown person as they allege.*
- *If the incident was in a house, what is the address? The house of lawyer Mahmoud Zuboon, Andalus neighbourhood, Basra.*

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<sup>52</sup> FZD-83-0000286-Z



- *Describe in detail, before, during and after the incident: while sitting in my house in peace and security we were taken by surprise to see the exterior doors of the house broken into by armed British military force and a soldier shooting, the house was then searched and suitcase torn apart and some (illegible) doors were broken*
- *If you were accompanied, what did you do? I gave up to the force, as they were many in number.*
- *Did you inform the authorities? Yes I informed Almaaqal Police station in Basra.*
- *Did you try to get compensation? No*<sup>53</sup>

## The Routledge letter

### 5.11 The Routledge letter stated:

“STATEMENT ABOUT THE SHOOTING OF MR MOHAMMED ABDUL RIDHA SALIM

*The events leading up to the unfortunate shooting of your brother in law are as follows:*

- *An anonymous civilian came to the gates of Camp CHEROKEE and told the British that he had seen approximately 10 men armed with rifles and RPGs entering a house that was subsequently identified as your property.*
- *Because of the threat such a group poses a British Army platoon was deployed to enter the house and ensure that the men were disarmed and detained. Due to the possible risks a surprise entry to the building was carried out. During this Mr Mohammed Abdul Ridha Salim and another male came downstairs, believing they were being attacked by criminals.*

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<sup>53</sup> MZD MOD-83-0000304-Z (Appendix 28)

- *Sadly, as he was coming downstairs Mr Mohammed Abdul Ridha Salim met a British Soldier coming the other way. The soldier thought he was in danger and fired one round at Mr Mohammed that hit him in the stomach. The British Forces took Mr Mohammed Abdul Salim to the Czech Military Hospital and he was operated on. Sadly he later died.*
- *It appears that the British Forces were deliberately misled on this occasion and it is regrettable that this incident led to the death of Mr Mohammed Abdul Ridha Salim. We extend our sympathies to his family.”<sup>54</sup>*

**5.12** This letter was translated into Arabic, and there are translations of the Arabic version into English. I shall have to deal in detail with a number of issues arising from these documents at a later stage in this report.

## Witness statement of Fatima Zaboun Dahash

**5.13** The account drafted by Mr Shiner was subsequently reflected in a statement made by FZD in June 2004. She signed a statement made in Arabic and an English translation was lodged in court.<sup>55</sup>

The English translation of the statement signed by FZD on 21 June 2004 was as follows:

### “WITNESS STATEMENT OF FATIMA ZABOUN DAHASH

- 1. I am the widow of Mohammad Abdulridha Salem who was shot on the fifth of November 2003 by a British soldier, and sustained a fatal injury. My husband passed away at the hospital on the seventh of November 2003.*
- 2. In the evening of the day of the incident on the fifth of November, my husband went to visit the maternal uncle of his children Mr.Mahmoud Zaboun at his home near Al Jabaila School which is located near Al Andalus in Basra.*
- 3. This visit was during the month of Ramadan. At around 11:30 pm, the British soldiers raided this house. They broke into the house by breaking down the outside door. And one of the soldiers moved on until he came face to face with my husband in the hall of the house and fired a bullet at*

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<sup>54</sup> MOD-83-0000176-Z (Appendix 21)

<sup>55</sup> See paragraph 5.4 above

*him. At that time, my brother's wife got involved and begged the soldier not to fire more bullets. And the soldier pushed her aside and ordered the other soldiers to detain her in a room so that the people wouldn't hear her screaming in the silence of the night.*

- 4. My husband was injured in his abdomen with a bullet that was fired from a rifle that was equipped with a silencer. After the incident, the British soldiers took my husband to the Czech Military Hospital where he had an operation; however, he passed away on the seventh of November.*
- 5. All the people who were present had a big shock and were terrified for what they witnessed at the time of the incident. And we don't have any idea about the reason of targeting this house. This was an experience that can't be described and I am still in a state of shock up to now.*
- 6. My husband was forty-five years old when he died; he was working as a teacher.*
- 7. After the incident, we reported to the Iraqi police at "Al Maaqal" in Basra. We didn't apply for any compensation from the British Military.*
- 8. Although I wasn't present at the time of the shooting, the people present at that moment insist that my husband didn't cause any threat to the British soldier who shot him without a reason. It appears that the British forces targeted the house that they raided by mistake. And this is copy with the letters FZD1 of a letter drafted by Major S.J. Routledge, the Commander of the First of the Kings Division dated on the ninth of November 2003. The letter contains recognition that the British forces opened fire at my husband by mistake, because there was something that made them believe that the armed group entered my brother's house. The letter also expresses regression for the occurrence of the incident. However, my family didn't receive any compensation up to now.*
- 9. I now request that the solicitor Phil Shiner of "Public Interest Lawyers" who represents me to lodge a claim at the British Court for compensation and for investigating the circumstances around that killing incident. I request that the investigation disclose the reasons that led to this raid and the reasons of the presence of the British forces in Iraq in the first place. My family and I, request the disclosure of the truth regarding that incident to enable us to reach a better understanding of the reasons that led to the*

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*death of my husband, and thus, we will be in a better situation regarding knowing the reason of his death.”*<sup>56</sup>

**5.14** FZD’s statements can be summarised as follows:

- 1) That the deceased went to visit his brother-in-law at his house in the evening of 5 November 2003, which was an evening in the months of Ramadan.<sup>57</sup>
- 2) That at about 23:30 hours British soldiers raided the house, forcing entry by breaking down the front door.<sup>58</sup>
- 3) That one of the soldiers came face to face with Mr Salim in the hall and fired a shot at him. That the wife of her brother (Mr Salim’s brother-in-law) pleaded with the soldier not to shoot again and that she was then locked in a room.<sup>59</sup>
- 4) That the bullet that was fired came from a rifle with an attached silencer.<sup>60</sup>
- 5) That all those present were completely shocked and horrified and had “.... *No idea why their home was targeted...*” Alternatively, as stated in June 2004: “... *we don’t have any idea about the reason of targeting this house*”.<sup>61</sup>
- 6) That after the incident the shooting was reported to the Iraqi police.<sup>62</sup>
- 7) That all those present insisted that at the time of the shooting Mr Salim posed no threat to the British soldier who fired the shot for “*no reason*”.<sup>63</sup>
- 8) That the BF appeared “*to have mistakenly targeted the house*” because they believed an armed group had entered the house. The Routledge letter was exhibited, but comment was limited to the observation: “*This letter accepts that the British forces shot my husband by mistake as they were led to believe that an armed group had entered my brothers house...*” The assertion that those present had “*no idea*” why the house was raided was reflected also in the form of relief she requested, including an inquiry into “*the reasons that led to this raid.*”

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<sup>56</sup> FZD MOD-83-0000293-Z

<sup>57</sup> Answer to question 12 on the questionnaire

<sup>58</sup> Answer to question 15 on the questionnaire

<sup>59</sup> Answer to question 15 on the questionnaire

<sup>60</sup> Answer to question 15 on the questionnaire

<sup>61</sup> This does not appear from the answers on the questionnaire.

<sup>62</sup> See short form statements: MOD-83-0000305-Z (Appendix 27), MOD-83-0000304-Z (Appendix 28)

<sup>63</sup> See answer 15 to question 15

**5.15** Further, MZD/FZD in the short form attributed to MZD stated:

*“While sitting in my house in peace and security we were taken by surprise to see the exterior doors of the house broken into by armed british military force and a soldier shooting, the house was the searched and suitcase torn apart and some (illegible) doors were broken.”<sup>64</sup>*

**5.16** The BF’s account presented to the House of Lords which was based upon documents disclosed at the commencement of the judicial review proceedings in April 2005, can be summarised as:

- 1) Information had been received that heavily armed men had entered the house.
- 2) There was a forced entry, SO11 entered and heard four or five rounds of automatic fire from within the house.
- 3) That when SO11 reached the bottom of the stairs he encountered two men, who were armed with long-barrelled weapons and rushed down the stairs.
- 4) There was no time to give a verbal warning and SO11, who believed his life was in immediate danger, shot Mr Salim.
- 5) That the second man dropped his gun.
- 6) That the OC learned, after conversation with the occupants, that the house had been subjected to two armed attacks that day (one taking place about 30 minutes earlier).
- 7) The OC concluded that it was likely the army had been deliberately drawn in on one side of a feud about the ownership of the offices in Basra.

## “The radical divergence”

**5.17** Lord Bingham’s perception of a radical divergence in the respective accounts was entirely justified since the claimant’s account contained no response to the BF’s detailed account and conveyed the impression that the BF entered the house and shot Mr Salim while he was eating with the family.

**5.18** It is clear that Brig Rutherford Jones must have reached his conclusion that the shooting of Mr Salim was a “straightforward case”<sup>65</sup> on the basis that the PIR

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<sup>64</sup> MZD MOD-83-0000304-Z (Appendix 28)

<sup>65</sup> Rutherford-Jones MOD-83-0000296-Z paragraph 42

prepared by Major Routledge and a statement made by SO11 dated 6 November 200366 were true:

*“Sir I am [redacted] SGT SO11 serving with the 1st Battalion the King’s Regiment.*

*On 05 Nov 03 at approximately 2350 hrs we were tasked by OC C Company to carry out the search of a house. This search was conducted after being given information by a walk in to the effect that 15 persons had entered the building with small arms, RPG and grenades.*

*When 10A and 10B got to the target building, I [redacted] SGT SO11, tried to open a cast iron gate, which was secured, so I called forward a Snatch vehicle to force an entry through the gate. I then moved across the courtyard and kicked in the front door. I moved into room 1 then crossed to room 2. As I entered room 2 I heard 5 shots of automatic fire coming from the stairwell. I moved into room 4 and immediately saw two men armed with long barrelled weapons coming at speed down the stairwell. I did not believe I had time to issue a warning shot and I believed that there was a contact underway so I fired one round at the first male and then turned my weapon on the second male who dropped his weapon.*

*I tasked KGNS JONES and MORRIS to clear the rooms left and called for medical assistance.*

*1 unarmed male came down the stairs and he was taken into room 4 with the other two men. They were searched and first aid was given to the injured man by the medic CPL SO14.*

SO11

Sgt

C Coy PI Sgt”

**5.19** Brig Rutherford-Jones’s investigation undoubtedly met the requirement of promptness but it:

*“Fell short of the requirements of Art 2 since the investigation process remained entirely within the military chain of command and was limited to taking statements from the soldiers involved.”<sup>67</sup>*

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<sup>66</sup> MOD-83-0000253-Z (Appendix 18)

<sup>67</sup> (2011) 53 E.H.R.R 18 589 at 658 paragraph 171

**5.20** A significant degree of common ground has been revealed as shifts and changes in the evidence from the eye witnesses have emerged, but there are some critical differences remaining between the two respective accounts given by the occupants of the house and the soldiers involved.

## The common ground

**5.21** It is not disputed that:

- 1) The BF received information that heavily armed men had entered the house in question;
- 2) The information was false and was deliberately given to draw the BF into a feud over the ownership of offices in Basra between the Al Bedany family and MZD and his family;
- 3) MZD's house had been subject to a sustained drive-by shooting attack by the Al Bedanys at 5:30 pm on the evening of the 5 November 2003. It had left bullet marks on the exterior of the building;
- 4) The family believed the Al Bedanys would carry out another raid that evening and believed, when the raid by the army commenced, that it was another raid by the Al Bedanys;
- 5) SO11 encountered two men who were running down the stairs, one of them (not Mr Salim) being armed with an AK-47 rifle, which he dropped on to the stairs when Mr Salim was shot;
- 6) The OC discussed the incident with MZD immediately after it had occurred, and told him why the house had been raided;
- 7) MZD told him about the raid by the Al Bedanys, the feud and showed him the bullet marks on the building;
- 8) The OC delivered the letter written by him in English dated 9 November 2003 to MZD. The circumstances in which the Arabic translation was drawn up, how it came into MZD's possession and why it was lodged with the Al Maaqaal Court, will require attention.

**5.22** Insofar as the statement from FZD might be taken to have suggested that Mr Salim was simply visiting his brother-in-law, in a manner which was customary in the

course of Ramadan and for no other reason, the evidence, ultimately provided to me by the occupants, has confirmed that his visit was connected with the armed attack which had taken place at 5:30 pm. It is no longer alleged that the rifle used to fire the shot had a silencer attached to it.

**5.23** With the above in mind, the Routledge letter and the BF account can be examined to see the extent to which issues remain. There is no dispute that a civilian whose identity was unknown to the BF gave information about heavily armed men entering the house, and that MZD knew, or believed he knew his identity and that he was a member of the Al Bedany family. There remains an issue as to whether such information should have led to the decision to carry out the raid and to the decision to carry it out in the manner in which it was executed. It is not disputed that the occupants (and probably the deceased) believed at the time of the forced entry that it was a raid being made by the Al Bedanys. There is dispute as to whether grounds existed for SO11 to believe he was in danger because it is denied that Mr Salim was armed. It is accepted that there was a man on the stairs with Mr Salim (Ahmed Ibrahim Senouha ('AIS')), who was holding an AK-47. It is accepted that Mr Salim was taken to the hospital, but complaints have been made over the length of the delay that occurred in transporting him to hospital.

## PART 2: A Chronological Survey of Events after the Death of Mr Salim Including Evidence of the Circumstances Provided by the Family at Various Dates: The Course of Revelation

**5.24** MZD's evidence demonstrates that almost immediately after the shooting matters became very complicated for him owing to influence exerted by the Al Bedanys, as well as other powerful family and tribal consequences to which the shooting gave rise.

**5.25** MZD and Mr Salim were related by marriage but belonged to different tribes. Mr Salim was from the Bou Saleh tribe, and MZD was from the Al Karasani tribe. MZD and the Al Bedanys belonged to different tribes, with the Al Bedany family giving their name to a tribe.<sup>68</sup> The Al Bedany family had been powerful and well known

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<sup>68</sup> Email from Ms Al-Qurnawi dated 8 February 2016: "Q. *Is it correct that Mr Zuboon is from a different tribe to the Al-Bedanys and to Mr Salim (although his sister married Mr Salim)?* A: Yes.



supporters of the regime of Saddam Hussein. MZD was unable to attend the funeral of Mr Salim on 8 November 2003 because Mr Salim's family immediately blamed MZD for Mr Salim's death.<sup>69</sup> At some date MZD was required to pay 25,000,000 Iraqi Dinar to the tribe to which Mr Salim belonged. From MZD's own account, he was "*being threatened by the other tribe*"<sup>70</sup> and this was the only way in which the situation could be resolved. At the date of his statement in February 2013 MZD had formed the view that the British army had created these problems for him and his tribe.<sup>71</sup>

**5.26** The feud over the offices in Basra, including an attack on the offices of MZD at around midday on 5th November 2003, the threats, the attack on MZD's house, the giving of false information and the tragic fatal wounding of Mr Salim, all flowed from the dispute with the Al Bedanys. These were serious differences which had given rise to grave criminal conduct. They required resolution. After the attack at 5:30 and before the forced entry by the BF on the evening of 5<sup>th</sup> November a tribal leader, the uncle of Khaled Al Bedany (apparently the ringleader in all the above events), came to the house to try to settle the dispute. He apologised and stated that Khaled Al Bedany was a "*careless*"<sup>72</sup> man. MZD was unconvinced by this effort to calm the situation. He still felt threatened and anticipated another attack. After a conversation with his brother, his brother brought round an AK-47 to MZD's house to provide him with protection.<sup>73</sup>

**5.27** After the funeral of Mr Salim further efforts were made to calm the dispute with the Al Bedanys, now gravely aggravated by the death of Mr Salim, which was seen by MZD as the consequence of a false situation created by deliberate and malicious conduct on the part of the Al Bedanys.

**5.28** These important facts have evolved through a gradual process of revelation in the course of this Investigation.

## Reports to the police and the courts in Basra

**5.29** On the 6 November 2003 MZD reported the shooting to the police. The Chief Police Officer passed the report to a judge for his decision. The judge ordered:

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*Mr Salim was from the Bou Saleh tribe. Mr Zuboon is from the Al Karasani tribe. Both tribes are independent of each other and also independent of the Al Bedany tribe."*

<sup>69</sup> EZD MOD-83-0000281-Z page 7 paragraph 22

<sup>70</sup> MZD MOD-83-0000279-Z paragraph 38

<sup>71</sup> MZD MOD-83-0000279-Z paragraph 38, EZD MOD-83-0000281-Z paragraph 22

<sup>72</sup> IFI MZD 13/11/15 paragraph 14-17

<sup>73</sup> IFI MZD 13/11/15 pages 23-25

- 1) A statement to be taken from MZD.
- 2) A visit to the location of the incident for a sketch to be made.
- 3) A visit to the hospital to check on the condition of Mr Salim.

The report sent to the judge recorded:

*"Lawyer Mahmoud Zayoun Dahash came to this station this morning claiming that his neighbour was attacked by "British" Force elements who broke the exterior door, entered and searched the house injuring the victim Muhammad Abdulridha who was visiting him at the time"*<sup>74</sup>

- 5.30** A statement from MZD in slightly fuller terms was taken on 6 November 2003. It stated, after describing the raid:

*"One of them fired a gunshot at the victim Muhammad Abdulridha Salem, a relative of mine, the husband of my sister who was visiting me then...I ask that this information be taken down, adding that the British Forces searched my house and found nothing that was illegal. They apologised saying that they had false news from a bad man. I present a complaint and I ask for compensation"*<sup>75</sup>

- 5.31** On the 10 November 2003 (after the death of Mr Salim) MZD attended and made a further statement. He described the raid and the damage it had caused, and he stated again that Mr Salim had been shot, that nothing illegal had been found and that the BF apologised "...saying that it was a mistake and that the raid was based on false allegations."<sup>76</sup> On this occasion MZD stated that he wanted to make a "complaint against the person who gave wrong information... and also against the group of soldiers who raided..." his house as well as a "claim for compensation" because the deceased was married with three children and had been a teacher.<sup>77</sup>

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<sup>74</sup> MOD-83-0000299-Z (Appendix 24), page 1 (PIL translation reads: *Mahmood Zaboob who is a lawyer attended our police station to inform us that his house was raided by the British forces and that they have injured Muhammad Ridha Salim who was a guest in their house at the time....* (MOD-83-0000300-Z).

<sup>75</sup> MOD-83-0000299-Z, page 2 (PIL translation reads: *"One of the soldiers shot Muhammad who is my relative as well as my brother-in-law who was a guest in our house at the time... Also, for your information, the British forces inspected my house found nothing illegal and then apologised and told me that the raid was through false allegations. I want to make a complaint and also a claim for compensation."* (MOD-83-0000300-Z)

<sup>76</sup> MOD-83-0000300-Z page 3 (IFI translation reads: *"...apologising that they had received false information giving very dangerous details about my house."*

<sup>77</sup> Ibid, (IFI translation says *"..apologising that they had received false information" and "complaint against the person who gave false information" and "the elements of the section which broke into my house" and "ask for material and moral compensation" (Appendix 24)*)

- 5.32** A neighbour made a statement on the 12 November 2003. He heard a sound of a bullet being fired. He “knew”<sup>78</sup> that the raid was a mistake based on false allegations.
- 5.33** The nephew of MZD, AIS, made a statement on 12 November 2003. He stated that when the raid occurred he was in the house “as a guest”,<sup>79</sup> that they were sitting down having dinner when the raid took place and one of the soldiers opened fire “randomly”.<sup>80</sup> That they were told it was a mistake and that there had been false allegations. He made a second statement dated 25 November 2003, in which he stated:
- “At the entrance of the British forces we were sitting normally having our dinner.”*<sup>81</sup>
- 5.34** On 22 November 2003 the police and judge received a short statement from FZD verifying her husband’s injuries caused by the BF.
- 5.35** A sketch was drawn of the location and a report was made. One of two translations records: “I saw traces of the blood of the victim on the stairs of the house.”<sup>82</sup> The other translation states: “Witnessed the damages to the house where the victim was killed.”<sup>83</sup>
- 5.36** The outcome of the claims, complaints and statements was that the judge sent a written request to the BF. It referred to the incident resulting in the killing of Mr Salim and causing damage to the house and that it had taken place on the basis of false information. It asked the BF to provide the judge “with the name of the informer who lied... about a false illusive happening.”<sup>84</sup>
- 5.37** There are a number of aspects of this evidence given by those who were present in the house that call for comment. None of them reported that the soldier shot an unarmed man. None of them mentioned that the house had been the subject of a very serious armed attack in the early hours of the same evening. None of them mentioned the feud with the Al Bedanys. None of them revealed the fact that or expressed a belief that the informer was known to them and was a member of the Al Bedany family. Further, the firm suggestion was advanced that both Mr Salim and AIS (the nephew) were visiting and eating at the time the soldiers broke into the

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<sup>78</sup> Ibid, page 4 (IFI’s translation says “learned” (Appendix 24))

<sup>79</sup> Ibid, page 5 (IFI translation does not include “as a guest” (see Appendix 24))

<sup>80</sup> MOD-83-0000299-Z, page 5

<sup>81</sup> MOD-83-0000300-Z, page 6 (IFI translation reads “When the British soldiers entered, we were having dinner”

<sup>82</sup> MOD-83-0000299-Z, page 9

<sup>83</sup> MOD-83-0000300-Z, page 9

<sup>84</sup> MOD-83-0000299-Z, page 12

house. They failed to mention that Mr Salim was on the stairs when he was shot, and they failed to mention that he was in company with AIS, who was on the stairs and armed with an AK-47.

- 5.38** The thread which runs through all these accounts, starting with FZD's statement, is that the family were sitting in the house "... *in peace and security...*"<sup>85</sup> when they were taken by surprise.<sup>86</sup> "*We were sitting down having our dinner*"<sup>87</sup>. FZD's statement was to the effect that her husband was visiting in the course of Ramadan as a family member and guest.

## More detail in connection with the tribal feud and the Al Bedany family and the family disputes

- 5.39** The witness statements of FZD dated 23 February 2004 and June 2004 did not mention the feud in which her brother was engaged or the fact that the false information which led to the raid and her husband's death had been given to the BF by a member of the Al Bedany family. It did not mention that Mr Salim's family had blamed MZD for the death and that he had been forced to pay money to the tribe.
- 5.40** Her statement exhibited a copy of the original English version of the Routledge letter, but did not exhibit an Arabic translation. An Arabic translation was produced to PIL in February 2013. It bears the stamp of the court in Basra. I have been informed by MZD that it was lodged shortly after the 9 November 2003.<sup>88</sup>
- 5.41** When MZD made a statement in Beirut to PIL (the English version of the statement being dated 18<sup>th</sup> February 2013) he made no mention of the feud with the Al Bedanys and the attack by them at 5:30 pm. He made no mention of any attack. He repeated the suggestion that Mr Salim came round to visit because it was Ramadan and that it was in accord with the "*intimacy of the two families*" for him to visit. He

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<sup>85</sup> MZD MOD-83-0000279-Z paragraph 21

<sup>86</sup> MZD MOD-83-0000304-Z (Appendix 28)

<sup>87</sup> FZD MOD-83-0000300-Z page 5

<sup>88</sup> MZD said in an email on 18th February 2016 with regards to the letter "*However, when it was presented to the investigative judge after the incident was reported and when it was attached to the documents of the investigation, it was only natural that any document attached to the file of the proceeding is stamped by the Judicial Council and the name of the Court like the rest of the documents of the proceeding and that it is sent to the court one or two days after the incident and the date of issue which was 9/11/2003.*"

suggested that it was possible Mr Salim had visited that evening as he regularly visited a Mosque next to MZD's house.<sup>89</sup>

**5.42** He did mention that a tribal difference had arisen because Mr Salim's family and their tribe believed he was responsible for Mr Salim being shot by the British. He explained:

*"Mohammad's family assumed I had something hidden in my house which had caused difficulties with the British and meant that their Army had entered my home and had cause to shoot Mohammad. This was obviously not the case and it caused me great distress (as well as financial difficulties) that this belief was held by Mohammad's family."*<sup>90</sup>

Since it was known that the Al Bedanys had given the false information that caused the raid, it is difficult to see how this belief could have been entertained by Mr Salim's family, but his claim for financial loss flowing from the death of Mr Salim included 25,000,000 Iraqi Dinar paid to Mr Salim's tribe to stop the threats he had received, because of this belief on the part of Mr Salim's family and tribe.

**5.43** The role played by the Al Bedanys in causing the tragic death of Mr Salim is not mentioned. It was an obvious answer to the allegations and beliefs to which MZD stated he was subject, namely the belief, for example, that he was *"involved with Saddam and the Ba'ath party"*<sup>91</sup> and yet further that he was responsible for the death of his brother-in-law.<sup>92</sup>

**5.44** The statement made by his wife EZD dated 18 February 2013 makes no mention of the very violent armed attack on the house at 5:30 pm that evening. She confirms the suggestion that Mr Salim and AIS and herself were eating fruits having broken the Ramadan fast. She confirmed that there had been difficulties with Mr Salim's family, which led to MZD not attending the funeral and having to pay compensation but said nothing about the armed attack by the Al Bedanys. These facts provided an obvious opportunity for her and her husband to explain that it was the Al Bedanys who were to blame for having created the confrontation with the army by giving false information to the BF.

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<sup>89</sup> MZD MOD-83-0000279-Z paragraph 9

<sup>90</sup> Ibid, paragraph 27

<sup>91</sup> Ibid, paragraph 41

<sup>92</sup> Ibid, paragraph 27-41

**5.45** FZD made a statement in Beirut. She stated that:

*“Mohammad had left our house around 7 or 8 to eat with the family, as it was Ramadan.”<sup>93</sup>*

**5.46** She gave a detailed account of what she remembered being told by EZD some nine years earlier. In summary, that “...they had all been sitting in the reception area of the house... heard noises and Mohammad had run up the stairs... to see what was going on.”<sup>94</sup> It was in Beirut that the police reports were handed over to PIL. They included a sketch plan and report from a police officer recording that there were bloodstains on the stairs. The statement continued to the effect that she had been told:

*“...Mohammed was coming down the stairs... when he was shot and ...had no chance to explain who he was or why he was coming down the stairs.”<sup>95</sup>*

**5.47** The account she had been given did not place AIS on the stairs but did include a report that “...the interpreter who was with them became very agitated and nervous, and was shaking.”<sup>96</sup> By 2013 FZD must have known that the interpreter was of the Al Bedany tribe and had been party to the giving of false information to the BF. For that reason he had good reason to be “agitated and nervous and shaking.”<sup>97</sup>

**5.48** FZD exhibited the original English version of the Routledge letter. An Arabic translation had been in existence since 2003/2004, but had been given to PIL in February 2013. In paragraph 22 FZD exhibited the report of the Court of Al-Maaqal and drew attention to the request made to the judge for the BF to reveal the identity of the informant who gave false information to them. The identity of the informant was known to MZD and the family. It seems likely that this request being made to the judge and the failure to state the identity was deliberate. In 2013 it facilitated a complaint being made about the BF that “nothing further was heard from the British and no indication was given that they were prepared to cooperate with the legal proceedings.”<sup>98</sup> I shall have to consider whether the deliberate omission was, as MZD suggested, because he had made a separate complaint to the judge about the Al Bedanys or whether it was part of a settled strategy to remove blame from the Al Bedanys and place increased blame on the BF.

<sup>93</sup> FZD MOD-83-0000280-Z paragraph 6

<sup>94</sup> Ibid, paragraph 9

<sup>95</sup> Ibid, paragraph 11

<sup>96</sup> Ibid

<sup>97</sup> Ibid

<sup>98</sup> Ibid, paragraph 22

## Mr Salim's funeral

- 5.49** MZD did not attend, but there is video evidence that has been made available to me. In the course of the funeral an interview and an address were recorded.

### FUNERAL OF MOHAMED ABDULRIDHA LED BY THE DIRECTOR OF EDUCATION IN BASRA, IRAQ

#### SHEIK AHMAD AL MALED (INTERVIEWED)

*Crowd chanting "There is no God but Allah and America is the Enemy of God"*

#### PART ONE

**Foreword by the interviewee:** *We belong to God and to Him We return. This is one of the most important teaching cadre, a believer whom they killed in his very house without a sin of his own. Then they apologised, saying, "We killed the wrong man."*

**Interviewer:** *You mean it was wrong information, that he was informed against by a biased man so they came and killed him?*

**Answer:** *Impossible, I dare say this before God that if ethics were to be identified, they would be identified in the person of Abdulridha. He was the embodiment of ethical conduct on earth.*

**Question:** *So his killing was unjustified?*

**Answer:** *Unjustified, yes. His killing proves one of three things. Or all the three things combined. First, it proves the failure of British Intelligence. For a long time they have been killing the wrong people only to apologise later on, killing upon information against someone shows the weakness of British intelligence. Secondly, the weakness of British security apparatus. For even if there were information against someone, which does leads to killing. One should have been arrested and they... (interrupted)*

**Question:** *And then tried.*

**Answer:** *The third thing according to eyewitnesses in the issue is that as soon as the British came in, he stood up, just stood up, when the British man shot him which shows the cowardice and weakness of this British person.*

*They killed an unarmed man. It spells the deterioration of their security situation in and among themselves.*

**Question:** *You are the director of education of Basra, (and you know that) today at dawn prayer, mortar shells were launched on two schools in the neighbourhood of Al Hussein, what does that indicate, as they say that the continuation of the teaching process is indicative of support for the occupation or accepting it, what do you say to that?*

**Answer:** *First of all there is no relationship between teaching and occupation at all. Allah the almighty stressed seeking knowledge in all conditions at all circumstances, even when one dies one is taught at the edge of the grave when he is asked to say there is no one but Allah and Muhammad is His messenger, even when he is already dead. Anyhow, these are satanic trivialities by our enemies. The previous ruling party meant to sabotage the teaching process and the rightful social life in the country. There is no link between teaching and the occupation. Saddam was worse than the occupation and yet the teaching process was going on.*

**Question:** *Can you introduce yourself?*

**Answer:** *Sheikh Ahmad Al Malek, direction of education in Basra.*

## **PART TWO**

*Sheikh Ahmad Al Malki:*

*We are so proud to be here with the crowds of students and teaching staff to denounce the criminal act against one of the most important teaching and vocational cadre, Mr Mohamed Abdulridha, teacher at the preparatory school of Al Intifadha Al Mihaniyyah who was unjustly and aggressively killed at the hands of sinful criminals who attacked him in his house without any reason or justification. We can only say that those who go missing and those who are killed will grow in number if no measures are taken to stop these arbitrary and sinful acts which are usually committed without any justification or reason.*<sup>99</sup>

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<sup>99</sup> MOD-83-0000294-Z



**5.50** The content of the interview and the address are important because they have provided me with a powerful portrait of the quality and character of Mr Salim, and of the depth of anguish his death has caused for his family and of the anger that such incidents can generate within the community. The interview cannot be regarded as a reliable source of evidence. The interview discloses an erroneous belief that he had been shot because someone had informed against him. Further that he had just “stood up”<sup>100</sup> when he was shot.

## A joint statement prepared in August 2015 by MZD and FZD

**5.51** In a joint statement prepared by MZD and FZD and submitted by them to PIL in August 2015 no mention is made of the attack by the AI Bedanys that took place at 5:30 pm, nor of the AI Bedanys at all. Instead of stating that there had been an attack that evening they stated:

*“The Force that stormed the house claimed that a man came up to them at the gate of the camp and misinformed them by telling them a lie. They did not take down the identity of that person or his address..”* 101 They complained, *“We are aware at that same night a person had threatened us of revenging against us. We gave them his name and showed them his house to which they actually accompanied us. However they did not arrest nor interrogated him. They did not take any measure whatsoever even though the incident led to the death of a person of stature. They did not retaliate for themselves after that criminal person fooled them.”*<sup>102</sup> (See PIL’s translation below)<sup>103</sup>

**5.52** A complaint was advanced against the BF that the BF had claimed that they had received information from an informant that *“...without showing or telling us of the informant’s identity of address.”*<sup>104</sup> Further, it was said that the forces had been

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<sup>100</sup> Ibid

<sup>101</sup> MZD and FZD MOD-83-0000308-Z (PIL translation reads: *“The force claimed that they were told by an informant who had been to their base and had given false information without showing or telling us the informant’s identity or address.”* (MOD-83-0000295-Z)

<sup>102</sup> FZD/MZD MOD-83-0000308-Z

<sup>103</sup> *“Knowingly that same night someone threatened us and told us that he will retaliate on us, we gave them the name and address of that person to the British forces and they accompanied us to their house, but neither arrested nor investigated...”* (MOD-83-0000295-Z)

<sup>104</sup> FZD/MZD MOD-83-0000295-Z paragraph 1

“*really fooled*”<sup>105</sup> by someone whose father was a well-known supporter of the former regime. They did not reveal the identities of the persons to whom they referred, but as the evidence shows it was a reference to the Al Bedanys.

## The Arabic translation of the Routledge letter

**5.53** At the time PIL disclosed the joint statement, the Arabic translation of the Routledge letter was also disclosed. It seems likely that the translation was made in November 2003 because it was lodged with the Al Maaqaal Court at or around that time. There has been no clear identification of the author of the translation. PIL obtained a translation in London. It is not clear who prepared the Arabic version. I also obtained a translation of it in London. Having considered both translations I am satisfied, as best I can be, of what the Arabic version omitted and what I have concluded was likely to have been made as a deliberate addition:

- 1) The first main paragraph of the Arabic version states that “*ten men*” were seen heavily armed and that “...*seven of them entered a house that was to be known as...*”<sup>106</sup> MZD’s house.
- 2) The Routledge letter made no mention of “*seven men*” out of ten entering the house. This may be explicable as an error in translation. If it was a deliberate addition, it is difficult, without being speculative, to conclude what was being served by the addition.
- 3) I am satisfied that the Arabic version does state:

*“At that time, Mr Muhammad Abdul Ridha Salim was coming down the stairs, it is sad that while Mr Muhammad Abdul Ridha Salim was coming down the stairs he was met by a British soldier coming from the opposite direction.”*<sup>107</sup>

The alternative version:

*“Sadly, as Muhummad Abdul Ridha was coming down the stairs he came face to face with a British soldier.”*<sup>108</sup>

- 4) It is clear that the Arabic translation is wrong in two very significant respects. Major Routledge wrote: “*Mr Mohammed Abdul Ridha Salim and another male*

<sup>105</sup> Ibid paragraph 2

<sup>106</sup> MOD-83-0000302-Z

<sup>107</sup> MOD-83-0000302-Z

<sup>108</sup> MOD-83-0000302-Z

*came downstairs believing they were being attacked by criminals.*<sup>109</sup> This passage has been left out and its sense and importance has been contradicted. It placed Mr Salim alone on the stairs. MZD expressly reaffirmed this version and the question of whether there were two males on the stairs was deliberately raised by MZD in his statement in Beirut.<sup>110</sup> He was questioned in Beirut by an English solicitor from PIL whose questions were translated into Arabic by an interpreter. The solicitor obviously questioned him by reference to the original English version and it prompted the following reply:

*“Major Routledge also provided a letter to me on this second visit, which I exhibit as my Exhibit MZDA/2. That letter says there were two people on the stairs at the time Mohammad was shot. This is not true. The only other males in the house were myself and Ahmed and we were in the hall.”*<sup>111</sup>

Both MZD and EZD were emphatic that only Muhammad was on the stairs or near the stairs,<sup>112</sup> with this careful qualification from MZD:

*“Myself, my wife and my nephew stayed in the hall although I recall my nephew might have walked to the bottom of the stairs.”*<sup>113</sup>

These accounts have been contradicted by the oral and written evidence that has been submitted to me. But the translation also omitted the belief which Major Routledge had attributed to the two males. The reference to a belief on their part that the entry was being made by criminals, when read in context, was a reference to a belief that the Al Bedanys had returned and had it been included in the translation, it would have introduced the earlier armed raid by the Al Bedanys. I find it difficult to conclude that the omission of the passage was other than deliberate. The omission is consistent with the thread and purpose running through the evidence from the family, namely to avoid any reference to the part played by the Al Bedanys in the death of Mr Salim.

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<sup>109</sup> MOD-83-0000176-Z (Appendix 21)

<sup>110</sup> MZD MOD-83-0000279-Z

<sup>111</sup> Ibid, paragraph 31

<sup>112</sup> Ibid paragraphs 11-13, EZD MOD-83-0000281-Z paragraph 7

<sup>113</sup> MZD MOD-83-0000279-Z paragraph 11

- 5) I am satisfied, on the basis of both translations, that the Arabic version includes the word “*wrongly*” before the word “*thought*”,<sup>114</sup> and the translation is likely to have translated “*one round*”<sup>115</sup> into “*a salvo of bullets*”.<sup>116</sup>

*“The soldier wrongly thought that he was in danger and opened a salvo of bullets at Mr Salim hitting him in the stomach.”*<sup>117</sup>

One of PIL’s translation states: “*wrongly thought he was in danger which made him shoot Mr Muhammad in his stomach.*”<sup>118</sup> That said, the oral evidence that I obtained on the video link seems to support the view that more than one shot or bullet was clearly referred to in the Arabic text. PIL’s second translation also supports this.<sup>119</sup>

- 6) The oral evidence on this part of the case is important. It will be necessary to review it later because it sheds light on why a false Arabic version may have been created and provides some pointers to being able to form a conclusion about who was responsible for it.

## PART 3: The BF’s Account and Evidence Provided in 2005

- 5.54** The army documents disclosed in the High Court proceedings in April 2005<sup>120</sup> comprise a record, in some detail, and a well-nigh contemporaneous record of what happened at the house, how and why the raid was planned as well as the plans and make up adopted for its execution. The document entitled “Post-Incident Report” (‘PIR’) includes a loose minute sequence of events with remarks from the OC. Its compilation took account of a written statement, signed by SO11 and dated 6 November 2003 and a sketch map of the house, drawn by SO13.<sup>121</sup> A written report dated 6 November 2003 from the CO of 1 KINGS followed on the same date. He decided that SO11 acted lawfully within the Rules of Engagement (‘ROE’), by firing his weapon because he believed his life was in immediate danger. He concluded:

<sup>114</sup> MOD-83-0000302-Z (Appendix 22)

<sup>115</sup> MOD-83-0000176-Z (Appendix 21)

<sup>116</sup> MOD-83-0000302-Z (Appendix 22) (PIL’s second translation reads: “*...a round of fire.*” (MOD-83-0000314-Z)

<sup>117</sup> Ibid

<sup>118</sup> MOD-83-0000312-Z

<sup>119</sup> “*...a round of fire*”, See footnote 116 above.

<sup>120</sup> See paragraph 5.61 below

<sup>121</sup> MOD-83-0000267-Z Exhibit SO13/1

*“This is a straightforward case and does not require any further RMP investigation.”<sup>122</sup>*

**5.55** The ECtHR correctly observed that his conclusion and investigations went no further than the military chain of command. The following aspects of the army account can be noted:

- 1) SO11 and the dismounting soldiers attempted to gain access to the courtyard at the front of the house without the use of force, but SO11 requested that the gates should be rammed because the gates were securely locked.
- 2) Entry to the house was gained by kicking down the front door. Shortly thereafter 4 to 5 automatic rounds of fire were heard coming from within the house.
- 3) SO11 recorded that as he entered room 2 (see sketch plan<sup>123</sup>), he heard five shots of automatic fire coming from the stairwell, and as he moved into the room he immediately saw two men armed with long barrelled weapons coming at speed down the stairwell.
- 4) SO11 stated that after he had shot the first male person he turned his weapon on the second male who dropped his weapon.
- 5) At approximately 00:56 hours an ambulance was called for by the OC.
- 6) The occupants of the house informed the military that they were lawyers and had been subjected to an armed attack at about 17:00 hours on 5 November 2003 and a further attack about 30 minutes before the raid by the army took place. The loose minute item at paragraph 19 contains the comment:

*“The exterior of the building has several strike marks over a wide frontage.”<sup>124</sup>*

**5.56** The discovery process having commenced, the War Diary for 1 KINGS for OP TELIC2 was disclosed but with notable and listed documents being absent, the reason given being that they were left in theatre as an operational expedient. The categories left in theatre included “Intelligence Reports and Summaries issued” and other categories which would have been likely to contain documents relevant to this Investigation.

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<sup>122</sup> MOD-83-0000249-Z

<sup>123</sup> MOD-83-0000267-Z Exhibit SO13/1

<sup>124</sup> MOD-83-0000248-Z Exhibit SJR/2 paragraph 19

**5.57** A letter from the Treasury Solicitor dated 11 April 2005 responded to the facts of the case and also made disclosure of a number of documents. As to the facts, reference was made to the information which had been received about armed men entering the building and as to the incident, the following account was given:

*“The unit made a soft knock attempt to gain access to which the occupants did not respond. After forcibly entering the building gunfire was heard coming from the stairwell and your client and another man, each armed with a long barrelled weapon, ran down the stairs towards SO11. The soldier believed he was in a contact situation and that his life was under threat, and he discharged his weapon. The man accompanying your client down the stairs dropped his weapon and so no further shots were fired.”<sup>125</sup>*

**5.58** Among the documents disclosed was a copy of the statement made by SO11 dated 6 November 2003, the Post Incident Report dated 6 November 2003, log sheets for 5 November 2003, a Report on the shooting dated 6 November 2003 and the letter to MZD dated 9 November 2003.

**5.59** It is clear from the judgment of the Divisional Court dated 14 December 2005 that the discovery from the MoD introduced sufficient detail about the background to the assertion that there had been false information given to the BF to enable the court to recite:

*“Inquiries of the occupants of the house made by the company commander suggested to him that the patrol might have been deliberately drawn in on one side of a feud about the ownership of some offices.”<sup>126</sup>*

But, this recitation appeared as “...the British account of the incident...”,<sup>127</sup> whereas it has now been accepted as the truth.

**5.60** The judgment does not record that the occupant(s) had also informed the OC that earlier in the evening of 5 November the house had been subject to an attack by the other party to the feud. Nor that the exterior of the house bore evidence of being sprayed by gunfire. These facts were apparent from the disclosed documents but the impression had been left that they were in issue and were the ‘British account’.

**5.61** In the Court of Appeal a year later the facts were taken from the Divisional Court judgment. In the House of Lords in June 2007 the parties agreed a recital of facts. It included a reference to the fact that the OC had been told about two armed attacks having been made on 5 November 2003. In the ECtHR in July 2011 the Court

<sup>125</sup> MOD-83-0000282-Z (Appendix 30)

<sup>126</sup> [2004] EWHC 2911 (QB) paragraph 61-63

<sup>127</sup> Ibid, paragraph 62

summarised the facts along the lines followed by the House of Lords but recited in connection with the feud the following:

*“The applicant’s family subsequently informed the patrol that they were lawyers and were in dispute with another family of lawyers over the ownership of office premises, which had led to them being subjected to 2 armed attacks which they had reported to the police, one three days before and one only 30 minutes before the patrol’s forced entry.”<sup>128</sup>*

But this recitation appeared as “...the British account..” ,whereas, in material respects, it has been accepted as true. It is not clear to me where the reference to an attack “three days before”<sup>129</sup> came from. The army documents refer to an attack “30 minutes”<sup>130</sup> before the army raided but this has not been accepted as accurate.

**5.62** At the time of the Court proceedings and until this investigation was underway, it was suggested that Mr Salim was visiting in order to take a meal with the family in the traditional way during Ramadan. There had been no comment by way of agreement or disagreement at the suggestion that there had been an attack that evening by a family in dispute with MZD. No comment about the likelihood that false information had been given to the British, nor any comment as to why such false information might have been given was provided until this Investigation had commenced.

**5.63** The impression given by the account from Mr Salim's widow was that the family was sitting down at the time Mr Salim was shot. There was no reference to the stairs being the place where he was shot. It is clear from the outset that it was being said that Mr Salim presented no risk to the soldiers. However, it was not said expressly until the speech recorded in a video of Mr Salim’s funeral that he was unarmed. Nor was the reason given for him not presenting a risk, other than an implication that he was simply sitting down eating food in the hall. No mention is made of the presence of rifles within the house or that Mr Salim was in company with another person on the stairs who was armed.

## PART 4: February 2013

**5.64** The process for taking statements was that oral answers in Arabic were translated and were then incorporated into an English statement that was translated into Arabic by reading it to the witness. It is clear allowances must be made for this process and the likelihood that it has given rise to inaccuracies and misunderstandings and the

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<sup>128</sup> [2012] 53 EHRR 18 paragraphs 39-42

<sup>129</sup> Ibid

<sup>130</sup> MOD-83-0000-248-Z item 19

possibility that in the reading and interpretation back of the statement attention to detail was lost by the maker of the statement. I have had all these points in mind when giving my consideration to the contents of the statements.

### MZD's statement dated 18th February 2013

**5.65** In paragraphs 8 and 9 he explained the circumstances in which Mr Salim visited on 5 November 2003:

*"..it was Ramadan... We were eating together having broken the fast we had sustained for Ramadan earlier in the evening. I recall that we were eating fruits and sweets with Mohammad."*<sup>131</sup>

**5.66** He recorded that Muhammad arrived at about 10pm and that he remembered Muhammad calling from a landline, saying that he and his family would be coming round to see them. He added:

*"This was entirely normal. It was Ramadan and due to the intimacy of our two families, I would expect that he would visit us. Mohammed also often uses the Mosque next to my house and it may be that he had prayed that night before arriving."*<sup>132</sup>

**5.67** He described being about 15 minutes into the meal when a loud explosion from the location of the front gate occurred. It was assumed to be a "bomb." There was a staircase in the room or space where they were sitting and "Mohammed left the position where we eating to go up the stairs to the balcony to try and see what was going on outside. Myself, my wife and my nephew stayed in the hall although I recall my nephew might have walked to the bottom of the stairs".<sup>133</sup>

**5.68** He described how seconds later the front door flew open and the British troops, armed, in battle dress burst into the house and surrounded them, pointing their guns at them. He continued:

*"Mohammed had been unable to reach the top of the stairs before the troops came flooding into the hall... He had obviously turned back down the stairs and I recall was at the second or third step when troops entered the room. A soldier came forward... and pointed his rifle at Mohammed. The two were no more than two metres away from each other. Mohammed had his hands in*

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<sup>131</sup> MZD MOD-83-0000279-Z paragraph 8

<sup>132</sup> Ibid paragraph 9

<sup>133</sup> Ibid paragraph 11



*the air exclaiming at the soldiers: "What is happening, what is happening?" However he had nothing in his hands and was not posing any sort of threat.*<sup>134</sup>

**5.69** He added that no one said anything to Muhammad and that there was no justification for what had happened. After being shot Muhammad was sitting down immediately on the steps.

**5.70** He described the treatment which he, his wife and their nephew received at the hands of the soldiers and went on to describe how Muhammad was left lying on the staircase. He and his nephew were handcuffed and taken outside. A senior officer spoke to him, and told him that the result of the search was that no weapons had been found.

**5.71** MZD went to the police station and provided a statement about what had happened (see above). MZD recorded how Major Routledge visited again and provided the letter to him dated 9 November 2003. In his statement he took express issue with the letter insofar as it stated there were two people on the stairs at the time Muhammad was shot. He emphasised that that was not true. He added:

*"The only other males in the house were myself and Ahmed and we were in the hall."*<sup>135</sup>

**5.72** He referred to the letter and the reference to guns in the house and the British being mistaken and observed:

*"There were no guns in the house and Major Routledge acknowledged this. I had previously owned a gun because it was very unsafe after the fall of Saddam. However, the gun was stolen in a burglary and I had not replaced it..."*<sup>136</sup>

**5.73** He commented on the suggestion that the soldier thought he was in danger, observing that this could not be the case because there were 10 or 15 soldiers in the room with armour and weapons. He added:

*"We were an unarmed family simply enjoying a meal. Mohammad did nothing that could have been interpreted as being a risk to the soldier and*

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<sup>134</sup> Ibid, paragraph 13

<sup>135</sup> Ibid, paragraph 31

<sup>136</sup> Ibid

*there was no reason to have killed him. His arms were in the air and it was clear that he could have been holding no weapon.*<sup>137</sup>

### EZD's statement dated 13 February 2013

- 5.74** EZD also made a statement dated 13 February 2013 and gave an account of the armed attack. She stated that when a large explosion was heard they were all sitting in the hall eating and talking and that the explosion took all by surprise. She, like MZD, stated that Muhammad got up and began to climb the stairs so that he could go to the balcony and see what had happened. She, like MZD, described that as Muhammad climbed the stairs the front door burst open and that, as the British entered the house, Muhammad came down the stairs and stopped in about the second or third step of the staircase and was shot immediately, . She also stated that she could not see how Muhammad presented a threat because he had his hands in the air and was asking what was going on. She recalled that after Muhammad had been taken to the hospital the soldier who had shot him apologised to her for having shot him.

### FZD's statement dated 18 February 2013

- 5.75** Mr Salim's widow made a statement. Her account was that in the evening in question at about 11:30pm she received a phone call from a neighbour saying that soldiers had been seen with tanks outside her brother's house. She added that Muhammad had left the house at around 7 or 8pm to eat with the family as it was Ramadan. He had asked her whether she wanted to join him but she had declined in order to be at home with the children and help them with their homework. When she received a telephone call at about 11:30pm, she went round to her brother's house and there were soldiers surrounding it, and no one could tell what had happened and so she returned home.
- 5.76** The next day she spoke with EZD and heard an account from her, which was to the effect that they had all been eating in the reception area of the house when there were noises from outside and that Muhammad had run up the stairs where there was a small window overlooking the street where one could see what was going on. Moreover, Muhammad must have heard the entry of the soldiers, as he immediately returned downstairs, and it was as he was coming down the stairs that he was shot in the stomach by a soldier, who gave him no chance to explain who he was, or why

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<sup>137</sup> Ibid

he was coming down the stairs. She was told that there must have been a silencer on the rifle because the noise was not heard. She was told by EZD that nothing was found in the search, that it was realised that there had been a mistake, and that the interpreter who was with the British soldiers, became very agitated, nervous and was shaking. The nephew did not make a statement in Beirut.

## PART 5: Evidence Given by MZD to QC Law Prior to Skype Interview

- 5.77** I gave notice to QC Law that I wished to interview MZD by Skype or some other visual means. I wished to establish before hearing evidence from other witnesses in Iraq what was in dispute between MZD's account and the British account. The documents disclosed by the MoD were sent to QC Law for the benefit of MZD. MZD had meetings with QC Law 1-2 November 2015. QC Law informed me that MZD had not seen these documents before QC Law showed them to MZD. The effect of his evidence was conveyed to me in a document prepared by QC Law.<sup>138</sup> The contents included evidence from MZD that had not emerged at any earlier stage. In particular MZD identified the person who had given false information to the BF as being Khaled Al Bedany and that he had a close connection to the interpreter, who was working with the BF at the time. According to MZD it was this individual who acted as the interpreter for the BF on the night in question. MZD confirmed that an attack took place some 5 hours before the BF raided the property. The attack by Khaled and his brothers was described as a drive-by shooting, in the course of which the house was sprayed with bullets. His account confirmed that there was a dispute between Khaled and his brothers and himself about offices in Basra. He informed QC Law that the police had been called, come to the house and examined the house. He suggested that it was after this attack that Khaled had gone to the army base and given false information, thereby deliberately misleading the BF.
- 5.78** He informed (and thereby contradicted his February 2013 statement) QC Law that Mr Salim and his nephew ran to the stairs to go to the roof to find out the source of the noise, but when they heard the soldiers and loud shouting they ran down the stairs. It was when Mr Salim was on the second stair that he was shot. He stated that Mr Salim was definitely not carrying any weapon in his hand and neither was

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<sup>138</sup> MOD-83-0000303-Z

anyone else. He added by way of emphasis that any suggestion to the contrary was “*downright cruel and vicious and a lie which only adds salt to the killing wound.*”<sup>139</sup>

- 5.79** In the course of responding to the account by the BF of the visit that was made to Khaled Al Bedany’s house, where two long barrelled weapons were found; he observed that the military examined those guns. He commented that he would have expected the British to have examined the two guns that were found at his house since it had been said that gunfire had taken place there, whereas the two guns found at his house were not seized by the soldiers.
- 5.80** It will be clear that prior to his evidence to QC Law it had not been stated by MZD that there were two weapons, namely two rifles in the house at the time the soldiers entered. His acceptance of there being two guns in the house contradicted his February 2013 statement.
- 5.81** The evidence he gave to QC Law went into some detail in connection with the two weapons that were in the house. It was said that one Kalashnikov was kept for protection. It was stated it was kept upstairs. It was said there was one magazine together with the gun. It was explained that, after the drive-by shooting that had taken place, MZD spoke to his brother who said that for extra protection he would bring round a second gun. His brother duly brought the second gun. But, the brother had been unable to obtain any ammunition for it and suggested that MZD should do that. MZD had been unable to do that in the course of the evening. As a result the unloaded gun brought by his brother was put under the stairs, and it was stated that it remained there until after Mr Salim was shot. He informed QC Law that the army conducted a search of the house and found both guns, one being upstairs and one under the stairs, downstairs. When they found the gun downstairs they sniffed it and were satisfied it had not been fired. This evidence contradicted his earlier suggestion that the guns were not examined.<sup>140</sup>

## PART 6: MZD’s Evidence by Skype in Answer to Questions from the Inspector dated 13 November 2015

- 5.82** MZD accepted that the army raided his home on 5 November 2003 because they had received false information from an informant who had given information about weapons being present in the home. He not only accepted that fact, but also added that the informer had a close connection to the interpreter who had come with the army when the house was raided.

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<sup>139</sup> MOD-83-0000303-Z paragraph 16

<sup>140</sup> See paragraph 5.77 above

- 5.83** He accepted that the informant had acted so as to retaliate against him in connection with the feud he was having with the Al Bedany family, but he did not accept that it was an on-going feud, instead that it was only a feud that had commenced that day, namely 5 November 2003. He identified the Al Bedany family breaking into his office in Basra taking furniture and causing damage as being the reason for the feud. He added that such conduct was part of a general course of conduct taken by various people in the “*anarchy*”<sup>141</sup> that had arisen after the fall of Saddam Hussein.
- 5.84** The invasion of his office in the morning of that day was reported to him by a phone call from his brother who went to the offices and encountered the members of the Al Bedany family. At some stage MZD also went down to the offices. There was no doubt that the Al Bedany family were responsible for what had happened. The incident had involved some violence, the intervention of a police officer who had fired a weapon into the air, threats from the Al Bedany family members and one of those family members, who was on a motorbike, being punched in the face which had resulted in a threat of retaliation.
- 5.85** He stated that the attack at 5:30 that evening was the retaliation that had been threatened. He returned home, but because of the threatening words that had been uttered at the scene he realised he had to take precautions. His brother offered to bring him a gun so that he would have two guns.
- 5.86** He agreed that he had received the gun from his brother so that he could use it and to protect himself, but added that when it was given to him it had no magazine. He agreed that he had his own rifle for which he did have a magazine. He said that after the drive-by shooting the police were called. Everybody knew what had happened and, after a tribal meeting his brother said, “*here is a rifle, you should keep that, but it doesn’t have a magazine in it*”<sup>142</sup>. Whilst he believed that there would be another attack, he was of the view that it would not be all that hard. Maybe they would punish him or beat him up, but that it would not be that violent.
- 5.87** In giving more detail about the drive by attack, he said that he was at home with EZD when he heard very heavy shooting and firing. The consequence of it could be seen on the outside of the house. He called the police and they arrived and saw the bullet holes on the outside of the house and found spent cartridges on the ground. He had gone up onto the roof when the shooting had just taken place, and he saw the car from which he believed the firing had come about 500 m away. Although he could not recognise the people in the car he knew that it was the Al Bedany family.

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<sup>141</sup> IFI MZD 13/11/15 13 November 2015 page 14 line 12

<sup>142</sup> Ibid page 19 lines 4-6

- 5.88** Later he said that the head of the family or tribe, the Sheikh, came to see him at his house to apologise, express regret about the incident and take it upon himself to calm down the situation. It was about two to three hours after the incident that the Sheikh came to see him. He recalled that when his brother arrived his brother stated that having one gun in the house was not enough and that is why he brought another gun. This was after the Sheikh had visited him. The Sheikh was the uncle of the Al Bedany family who stated that Khaled was careless and irresponsible. Despite this conversation, given the heavy firing on the house and because this man was careless, he thought that the Sheikh might come again.
- 5.89** After the police had visited and seen the house he made a statement to the police, but efforts to obtain a copy from the police station have failed to produce any record of this visit by the police to the house.
- 5.90** He recalled that his sister FZD, the widow of Mr Salim, whose home was close by had heard about the incident, and that after the incident Mr Salim came to find out what had happened. I asked him: *“He came round to see what had happened?”* He answered:

*“Like any person to come to see what happened”.<sup>143</sup>*

- 5.91** His nephew, AIS, came to the house after a request made by MZD, in case there was another attack on his home. While they were all in his home they believed that there would be another attack. For that reason he had attempted to obtain a magazine for his brother’s rifle.
- 5.92** In the course of the evening and before the army crashed the outside gates and then the indoor front door, they had discussed the possibility of a return attack. It seemed like seconds between the crashing noise of the gates being broken open and the front door being knocked in. When asked whether Muhammad responded when the crash occurred at the outside gates, he replied that his nephew went first and then Muhammad went to see what had happened. Muhammad said that he was going to see what had happened. He had only gone up about five steps before the army burst in. His nephew was at the top of the stairs where he, MZD, had earlier left his rifle. MZD had picked up his rifle at the time of the attack at 5:30 and when he had seen the car go away he had put it down at the top of the stairs. I asked him whether he had left it there because it would be a good place to keep it if there was another attack. He replied:

*“...to have a single rifle you cannot face the sort of barbarism that occurred.”<sup>144</sup>*

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<sup>143</sup> Ibid, page 28, lines 14-15

**5.93** When asked whether his nephew had picked up the rifle at the top of the stairs he replied:

*"All this happened in seconds... What I understood from Ahmed on the following day, that before he picked up the rifle he heard the shot that hit Mohammed...He said..."if I had picked up the rifle the British would have killed me."<sup>145</sup>*

MZD said the words used by AIS were:

*"I didn't pick up the rifle, thank God I didn't because the British would have killed me."<sup>146</sup>*

**5.94** MZD heard no shots from within the house when the British entered, and Muhammad was on the second step of the stairs returning down the stairs when he was hit in the stomach by a bullet. His own rifle was upstairs, but his brother's rifle was in a space under the stairs. When asked whether Muhammad knew that the gun under the stairs had no magazine, he replied that he did know because he had asked him if he could obtain a magazine and he had said no. The conversation took place after Muhammad had arrived. He could not remember whether he had told Muhammad that the gun at the top of the stairs had a magazine. AIS knew that the gun at the top of the stairs had a magazine because MZD told him because he had called AIS to come to the house for protection. However, Muhammad did not come for the same reason; he just came to check everything was fine after they had heard about the incident. He confirmed, in answer to a further question, that it was correct that AIS did know that the gun had a magazine because he wanted AIS to protect him, but that was not the case so far as Muhammad was concerned.

**5.95** Under further questioning he insisted that he was clear that the reason AIS did not pick up the gun was because there was *"not shooting or anything that he could answer back."*<sup>147</sup> It was thought that it was a bomb and not just shooting of the house and for that reason AIS did not pick up the gun. He repeated:

*"The following morning Ahmed told me that "I didn't pick up the rifle otherwise the British would have killed me, thank God that I didn't".<sup>148</sup>*

**5.96** I asked him whether Muhammed had a rifle in his hands as he came down the stairs. He answered:

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<sup>144</sup> Ibid, page 33, line 25 – page 26, line 1

<sup>145</sup> Ibid, page 34, lines 12-21

<sup>146</sup> Ibid, page 34, lines 24-25

<sup>147</sup> Ibid, page 38 lines 18-19

<sup>148</sup> Ibid, page 39, lines 24-25, page 40, line 1

*"I remember exactly that moment when Mohammed – he told Ahmed to go back, not to use fire. So from that perspective, for the son not to use the rifle."<sup>149</sup>*

- 5.97** When answering questions about why, in his statement made in the Lebanon, he stated that there were no weapons in the house he suggested that perhaps he did not understand the question at the time from the interpreter, or that maybe it was referring to weapons other than the two rifles. When paragraph 31 of his statement was drawn to the attention of Ms Al Qurnawi, he answered:

*"I've always said that Mohammed and Ahmed were in the house whether it was in Beirut or here." He added: "Mohammed came down, he was on the second step. Behind him was Ahmed who told him to go back... Even in Beirut I said this."<sup>150</sup>*

- 5.98** When he was asked why it had been stated that Mohammad was the first one to respond to the noise by going up the stairs he responded:

*"I remember exactly that Ahmed went first and then Mohammed. When he saw the British he told him to go back".<sup>151</sup>*

The questioning on that day concluded with some points by way of argument from MZD. For example that it was only soldier SO11 who had said that he had seen Muhammad with a gun. Secondly, that if Muhammad had been carrying a gun the Major would not have chastised SO11 or told him off about opening fire.

## PART 7: Written Statement of Ahmad Ibrahim Shouh ('AIS')

- 5.99** AIS did not go to Beirut to make a witness statement in 2013. QC Law interviewed him, and he made a witness statement that is dated 20 November 2015. It records that he was contacted by MZD in the afternoon of the 5 November 2003 who told him that his house had been "assaulted"<sup>152</sup> by the Al Bedany family and that he had been able to obtain a rifle from his brother but it had no "stock"<sup>153</sup>. MZD asked AIS to obtain one if he could. AIS went to MZD's house. Mr Salim was already there. At about 11:30pm, while they were sitting in the hall, eating fruit and watching

<sup>149</sup> Ibid, page 41, lines 11-13

<sup>150</sup> Ibid, page 46, lines 7-13

<sup>151</sup> Ibid, page 49, lines 7-9

<sup>152</sup> AIS MOD-83-0000270-Z paragraph 3

<sup>153</sup> Ibid



television, there was “a bang like a bomb”.<sup>154</sup> AIS thought the Al Bedanys had returned. “Being light of weight and agile at the time”<sup>155</sup>, he was the first to reach the upper flight in order to see what was going on. He recalled Mr Salim following him. AIS found a rifle on the stairs that he picked up when “seconds later”<sup>156</sup> he heard Mr Salim “shouting and screaming” from lower downstairs: “Ahmad they are British soldiers”.<sup>157</sup> AIS dropped the rifle on the stairs in fear and confusion and then heard a “round fired”<sup>158</sup> and saw Mr Salim lying on the stairs “even though” he was “not carrying any weapon in his hand.”<sup>159</sup>

**5.100** He recorded that even though he had his arms in the air, he was assaulted by a soldier who brought him down the stairs where he was made to sit next to Mr Salim. He was beaten with a stock of rifles, had a foot put on his head and a gun was pointed at him. Next he was dragged to be placed on the floor next to MZD, was further beaten and was next taken outside, handcuffed and made to squat. After some time, he was allowed to go into the house. MZD helped FZD, who was unconscious. He estimated that it was three to four hours between the time Mr Salim was shot and his removal to hospital. He recalled the soldiers apologising and saying that there had been a mistake.

## PART 8: Questioning Carried out by Video Link for Witnesses on 27 November 2015

**5.101** The video link on 27 November concentrated on receiving oral evidence from the military witnesses to facilitate them being seen and heard by the family of the deceased in Iraq. Statements obtained from them in the course of interviews with me were supplied to QC Law for the benefit of the family.

### Major Routledge

**5.102** Major Routledge made two written statements: the first dated 28 July 2015 and the second dated 2 November 2015. His account was given by reference to the army documents, in particular those that he had created. The PIR contains references to events and facts, which, if true, must have come from information supplied by the occupants of the house and in particular MZD. At item 19 it is recorded that the

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<sup>154</sup> Ibid, paragraph 5

<sup>155</sup> Ibid, paragraph 6

<sup>156</sup> Ibid

<sup>157</sup> Ibid

<sup>158</sup> Ibid

<sup>159</sup> Ibid

occupants informed Major Routledge that they were lawyers. Both MZD and his wife are lawyers. The same section records that Major Routledge was informed that there had been an attack at approximately 5 o'clock on the evening of 5 November, which had been reported to the police station. That is not disputed. The note records that there had been a further attack roughly 30 minutes prior to the army raid on the house.<sup>160</sup> That is not accepted by MZD as accurate. Major Routledge is unable to remember, independently of the minute he made at the time whether he was informed of a second attack, which occurred about half an hour before the army raided. It can be noted that it was seen that the exterior of the house had several strike marks over a wide frontage.

**5.103** The entry in the minute at item 7 of the PIR records that four or five rounds of automatic fire from within the house were heard at the time the troops entered. This is denied and has remained denied. In his oral evidence, Major Routledge stated that he did recollect there being gunshots, which he believed were fired from high up within the building, but he could not remember whether they took place before or after or at the time that the troops entered the house.<sup>161</sup> In his witness statement dated 28 July 2015, he stated at paragraph 20 that he is sure that he heard 2 or 3 rifle shots fired by an unknown party. He added that he believed the shots came from the roof of the building. He surmised that they might have caused the "soft knock" approach to be abandoned.<sup>162</sup>

**5.104** In paragraph 24 of his first witness statement he stated:

*"I went in and saw one wounded Iraqi individual lying on the stairs with an AK-47 by him on the ground".<sup>163</sup>*

**5.105** In paragraph 28 he stated that he established the identity of the injured man, that he was related to the owner of the property, that the owner told him of a long standing feud with another tribe and that the owner...

*"...himself had had a gun to protect his house from the attacks that he had been suffering from the family with whom he was feuding."<sup>164</sup>*

**5.106** His witness statement contained an account about the visit he made to the home of the family and that MZD believed to be responsible for the attack, being the family with which MZD was feuding. There were two AK-47s at that property that were

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<sup>160</sup> MOD-83-0000248-Z

<sup>161</sup> Ibid

<sup>162</sup> Routledge MOD-83-0000263-Z

<sup>163</sup> Ibid, paragraph 24

<sup>164</sup> Ibid, paragraph 28

examined, but it did not appear from examination that they had been recently fired.<sup>165</sup>

**5.107** In his second witness statement made on 2 November 2015, when asked about the entry in the Watch Keeper's Daily Brief (WKDB) that referred to the military vehicles being fired upon when they approached the house,<sup>166</sup> he stated that he only recalled the rounds being fired from what he thought was high up in the building or from the roof of the house. His perception was that the shots "*were being fired in the vicinity, but not that we were being fired upon.*"<sup>167</sup> The entries in the WKDB are made up by records from the Ops Room and are based upon radio reports being sent in by troops at the scene. As a result there will be misunderstandings and some errors. The WKDB is not intended to be an exact record of the incoming reports. For completeness, I should add that in evidence to me MZD stated that there was not an on-going feud as Major Routledge has recorded, but was instead a feud that had commenced on 5 November 2003.

**5.108** Major Routledge gave oral evidence about his letter dated 9 November 2003. In particular he stated that, where he had written that the two men on the stairs believed they were being attacked by "*criminals*",<sup>168</sup> he believed he would have formulated that as a result of his discussions with MZD. He agreed that it would have been better had his letter referred to the two men coming down the stairs each carrying a weapon, but he observed that having seen the AK-47 lying next to the wounded man, he considered it self-evident that that was the case. Because of what he had seen, and as one would infer what others present would have seen, he was not in that letter seeking to set out the detailed circumstances of the shooting.

*"I was more concerned about the loss of Mr Salim's life in what appeared to be an incident that we were misled, rather than the detailed circumstances of the shooting."*<sup>169</sup>

**5.109** As for the availability of an ambulance, he stated that there was no ambulance at Camp Cherokee and for that reason no ambulance went to the scene at the beginning, but using the loose minute note as a record he estimated that it could have been up to an hour after Mr Salim was shot that the ambulance arrived.

**5.110** In the course of the hearing on 27 November, questions were raised on behalf of MZD that were put to Major Routledge. In particular the Major was asked to explain

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<sup>165</sup> MOD-83-0000248-Z Post Incident Report Serial 20

<sup>166</sup> MOD-83-0000250-Z Watchkeeper's Daily Brief

<sup>167</sup> Routledge MOD-83-0000256-Z paragraph 5

<sup>168</sup> Routledge IFI 27/11/15 page 37 line 17

<sup>169</sup> IFI Routledge 27/11/15 page 38, lines 17-20

a part of his letter on 9 November 2003, where according to the understanding of MZD, he had stated that the soldier was under a "*wrong belief*"<sup>170</sup> when he shot Mr Salim. The provenance of the Arabic version of Routledge's letter became the subject of a significant degree of questioning in the course of the hearing on 30 November 2015 because it became clear that MZD had placed reliance upon an Arabic translation, which did not conform to the English original.

## SO11

- 5.111** SO11's statement dated 6 November 2003 has been sufficiently recorded. In addition he made a written statement to me dated 6 August 2015 and he gave oral evidence on 27 November 2015.
- 5.112** He stated that he had a clear recollection of events. He did not see the "*walk in*", but was briefed and went to the house expecting 10-15 armed "*enemy men*".<sup>171</sup> He remembered Kingsmen Hayes, Jones and Morrison being with him.<sup>172</sup> He could not recollect whether he had been briefed to conduct a "*hard knock*" or a "*soft knock*".<sup>173</sup> Having got through the gates, he did not believe they were fired upon. He reached the front door and decided not to delay because of the intelligence he had been given. He heard no noise before entering, but on entering he heard five rounds of automatic fire. He went through the house with soldiers he recollected as being Jones and Morrison.
- 5.113** When he heard the five rounds, as far as he was concerned they were "*in contact*".<sup>174</sup> Due to the intelligence he had received and the rounds that had been fired, when he saw two Iraqi men, who each had long barrelled weapons and were on the stairs, he believed his life and the lives of his men were in danger. As a result he fired at the male who was first on the stairs and turned his weapon on the other male, who immediately put his weapon down.
- 5.114** On the 27 November he confirmed the contents of his statements, stating that he wrote the 6 November 2003 statement himself, and that he had not spoken to anyone about what he wrote before he made it.

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<sup>170</sup> IFI SO11 27/11/15 page 80 line 7

<sup>171</sup> SO11 MOD-83-0000262-Z paragraph 10

<sup>172</sup> Ibid, paragraph 11

<sup>173</sup> Ibid, paragraph 13

<sup>174</sup> Ibid, paragraph 19

- 5.115** He said Ryan Jones was with him that night and the same Ryan Jones was in the hotel in Liverpool at the time he was giving his evidence. Further, the man he remembered as “Morrison” was also in the hotel with him.
- 5.116** His oral evidence conformed to his written accounts save that he told me that he remembered three people on the stairs, one being a woman. He agreed that he had not said that before and that it had only just occurred to him that it was relevant.<sup>175</sup>
- 5.117** He agreed that he had given no verbal warning because he assumed he “...was the enemy from the intelligence I was given... to give a verbal warning would have put my life or another soldier’s life... in danger.”<sup>176</sup>
- 5.118** He confirmed that the event had remained with him to this date “...one of the traumas... with...combat stress.”<sup>177</sup>
- 5.119** Before withdrawing as a witness he volunteered an apology.<sup>178</sup> He explained his deep sorrow, adding: “if I could change anything and go back in time I’d do it and I’m sorry.”
- 5.120** MZD refused to accept the apology because “the British forces... ruined the life of the family and the children, all on the basis of a wrong information from an informant.”<sup>179</sup>

### Andrew Richard Price

- 5.121** Andrew Richard Price, who at the material time held the rank of Sergeant and was the Warrior Sergeant of 7 Platoon, also gave evidence. In his statement, which he verified and signed on 14 November 2015, he recalled a briefing from Major Routledge to the effect that intelligence had been received that possibly there were weapons including rocket propelled grenades and rocket launchers being stashed in a house located a stone’s throw away from Camp Cherokee. His recollection was that attacks on the BF were a regular occurrence at this time, troops were frequently being shot at, and that because it was nearing the end of the tour there was a good possibility that Camp Cherokee would be attacked. He remembered

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<sup>175</sup> IFI SO11 27/11/15, page 91, lines 10-11

<sup>176</sup> Ibid, page 95, lines 17-23

<sup>177</sup> Ibid, page 99, line 1

<sup>178</sup> Ibid, page 106 lines 1-11

<sup>179</sup> Ibid page 106, line 25 - page 107, line 6

that in the briefing that took place they were instructed initially to attempt a soft knock entry, but if this was unsuccessful they could use a hard knock.<sup>180</sup>

**5.122** He recorded that on arrival he had heard no gunfire nearby. He described how the army drill involved establishing a link of communication by a line of soldiers who would pass commands back down the line to the OC.<sup>181</sup>

**5.123** In paragraph 8 of his statement he recorded how once the men gained entry to the house he heard large calibre rounds fired from what he believed to be an AK-47 followed by one lower calibre round from a rifle 5.56. He explained how from his experience, in particular in Northern Ireland, he had learned to recognise the sound of an AK-47 because this was used a lot by the IRA. Paragraph 8 of his statement concluded with this statement:

*"I am absolutely sure that after Sgt SO11 went into the house I heard multiple shots from a higher calibre gun followed by a shot from a lower calibre gun. The shots all came from inside the house, but I couldn't tell where they were directed."*<sup>182</sup>

**5.124** He recalled a medic being called for and after that had taken place he was directed to search the outside of the building. When asked whether he had seen an AK-47 in the building he recorded in paragraph 11:

*"I do not have a good recollection of this, but I think I remember seeing one of the Kingmen handling an AK-47. I do know for certain that I heard two different weapons being fired. The second one was an SA-80, and from my training I would say that the first was an AK-47."*<sup>183</sup>

**5.125** The evidence he gave orally confirmed his witness statement, but he stated that the initial round of fire was a burst round so that he could not be sure exactly how many rounds were fired, whether this was four, five or six rounds.<sup>184</sup> When asked more about the possibility that he saw a Kingman handling an AK-47, he said he could not be sure.

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<sup>180</sup> Price MOD-83-0000257 paragraph 4

<sup>181</sup> Ibid, paragraphs 6-7

<sup>182</sup> Ibid, paragraph 8

<sup>183</sup> Price MOD-83-0000257-Z paragraph 11

<sup>184</sup> IFI Price 27/11/15, page 46, line 25 - page 47, line 3

## The evidence from Ryan Jones and Edward Morris

- 5.126** Whilst the written record showed, and SO11 remembered, Ryan Jones and Edward Morris (incorrectly referred to at times as “Morrison”) as being the two Kingsmen in company with SO11, contacting them and obtaining evidence from them has been problematic. Eventually contact was made and each attended at the hotel in Liverpool on 27 November 2015. As appears from the transcript, both maintained that they had no recollection of the incident. It was clear to me that Edward Morris was very distressed about the request that was made of him. Therefore, I ruled that a draft statement, which had been prepared after some contact with the IFI, should be “*excised from the record.*”<sup>185</sup>
- 5.127** Ryan Jones had already provided a statement that he verified as true and accurate. Whilst he remembered incidents when the camp was attacked and informants coming to the gate of the camp, he had no recollection of the incident at MZD’s house. He could not recollect any forced entry to a house.<sup>186</sup> I asked Major Routledge whether Ryan Jones had been present on the evening of 5 November 2003. Major Routledge recognised Ryan Jones as a member of “*the team*”, but couldn’t say whether he was present on the night in question.<sup>187</sup>
- 5.128** Both these former Kingsmen had been called because the record had showed them as being present and SO11 had remembered them. I shall consider later in the report what inferences, if any, should be drawn from their evidence.

## SO13

- 5.129** The Platoon Commander, SO13, made a written statement dated 20 August 2015. He was not present on 27 November. His recollection was that Camp Cherokee was no more than half a mile from the house where the incident took place.<sup>188</sup> He recorded how it was an undoubtedly wild environment in terms of general lawlessness including theft, looting, tribal conflict and the proliferation of former Iraqi army weapons and ammunition. It was not unusual for information to be given to the Camp from local nationals known as “*walk-ins*”.<sup>189</sup> He recalled that on 5 November an orders group was called and that they were briefed by Major Routledge. The

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<sup>185</sup> IFI 27/11/15, page 60, lines 7-12

<sup>186</sup> Jones MOD-83-000266-A paragraph 5

<sup>187</sup> IFI Routledge 27/11/15 p.67 lines 8-12

<sup>188</sup> SO13 MOD-83-000258-Z paragraph 5

<sup>189</sup> Ibid, paragraph 6

intelligence had indicated that a group of around 10 men armed with a mixture of weapons including Kalashnikov rifles and rocket propelled grenades ('RPGs') intended to attack Camp Cherokee that evening. The walk-in stated that he could show where they were currently located and gathering prior to the proposed attack.<sup>190</sup>

**5.130** SO13 went on the reconnaissance in company with the OC and two other members of the company. They travelled in a civilian car. He remembered that a local national drove the vehicle, but he was unable to remember his identity. They drove past the house, and as the vehicle had approached the house, it slowed down so that they could all "get eyes on"<sup>191</sup> the house and commit it to memory. He remembers taking note of the seemingly well-constructed iron gate and eight foot railings surrounding the house. He did not see anything to confirm that there were armed men at that location, but someone in the vehicle said that they could see at least one individual with a long barrelled weapon on the roof. In paragraph 12, he states "*I am quite clear that at least one armed individual was seen by a member of the party.*"<sup>192</sup>

**5.131** Having returned to camp, preparations were made for a search and arrest operation. In paragraph 14 and 15 of his statement, SO13 described the make-up and constitution of the party that went to the property. He also explained the use of various terms in the PIR, throwing light on the references to vehicles and numbers by giving an explanation as to what they mean. Significantly he emphasised that although a Warrior vehicle is called a tank, it is not technically an infantry fighting vehicle. Instead it was used in Operation TELIC 2 as an armoured personnel carrier.<sup>193</sup>

**5.132** As the Commander of the platoon it was his responsibility to give orders to the platoon as to the manner in which entry should be made to the property. He instructed that there should be a "soft knock".<sup>194</sup> He observed that if the outside gates had not been locked they would have opened the gates as quietly as possible. The drill would have been that the "dismounts"<sup>195</sup> would have entered spreading themselves around the front of the house. Then there could have been a soft knock on the front door. The fact that the gates were locked did not automatically mean that a hard knock would have to be employed, but the fact that the gate was locked and barred movement left them in an extremely vulnerable

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<sup>190</sup> Ibid, paragraph 9

<sup>191</sup> Ibid, paragraph 12

<sup>192</sup> Ibid, paragraph 12

<sup>193</sup> Ibid, paragraph 21

<sup>194</sup> Ibid, paragraph 53

<sup>195</sup> Ibid, paragraph 27



position if there were a group of up to 10 armed men inside with AK-47s and RPGs.<sup>196</sup>

**5.133** Since the gates were locked, the driver of his vehicle was instructed to nudge the gate to break open the lock. It did so and the dismounts entered. He remained in his vehicle a few feet back from the gates, which had been pushed open, and he could hear a lot of shouting coming from the dismounts. He heard the front door being opened and he confirmed that, led by SO11, the platoon members entered. As he moved towards the front door, he heard a number of shots being fired from different locations inside the house. There was certainly one AK firing and he heard a single shot from a rifle that he recognised as an SA-80. The single shot fired by this rifle was the last round he heard being fired. He entered the house and there was a lot of shouting coming from inside. It was not immediately clear what was going on and he knelt down inside the front door and took instructions from the nearest soldier about what had happened.<sup>197</sup> The soldier gave him the gist, namely that two men had come running down the stairs firing at the team led by SO11 and SO11 had shot one of them, that the other had dropped his weapon and that now both weapons were on the ground.

**5.134** In paragraph 36 of his statement he refers to the diagram or plan that he drew up on a computer very shortly after the incident.<sup>198</sup> His position on the plan is shown by a blue circle on the diagram. The red marks indicate an event. The letters 'C/S' mean 'call-sign', which describes a team. He explained his plan as showing that SO11 and his team had gone into Room 1, had secured Room 1 and as they moved into Room 2 heard gunfire from another part of the house, indicating to them that someone in the building was conveying an intention to fight. He did not see the man or men running down the stairs,<sup>199</sup> but he remembers that he entered the house immediately after they had been engaged.<sup>200</sup>

**5.135** When he entered the house he took up a position in the hall and he could see through to the stairs when he saw a male Iraqi, whom he now knows to have been the deceased, lying down, having been shot. He could also clearly see what seemed to him to be an AK rifle on the floor where Mr Salim had fallen. He could also see the legs of another individual standing above Mr Salim on the stairs. He appeared to be standing still. There was still a lot of shouting as the dismounts were calling to the individual on the stairs to come forward and lie down on the floor, which he did. Although they had encountered just two armed men, since at least

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<sup>196</sup> Ibid, paragraph 29

<sup>197</sup> Ibid, paragraph 34

<sup>198</sup> MOD-83-0000267-Z (Appendix 15)

<sup>199</sup> Ibid, paragraph 37

<sup>200</sup> Ibid, paragraph 38

one AK-47 had been fired inside the house and because they had been led to believe that there may be up to 10 men possibly with RPGs as well as AK-47s, they were anxious to secure the whole house as soon as possible.<sup>201</sup>

- 5.136** He aimed to secure the building as quickly as possible and the dismounts continued in the patterns of search that they had been rehearsed to carry out and ensure that the house was secure. The medic with the company who was outside was called for by the link system using soldiers down the line to the outside. The OC, Major Routledge, as is the normal drill remained "*a tactical bound*"<sup>202</sup> behind the lead elements of the operation and to avoid becoming involved in any contact by the operation.
- 5.137** SO13 received confirmation that the entire building was secure. There were, he records, weapons on the floor. He had concluded from what he had been told and seen that there had been a direct and imminent threat posed to the men, but that it had become increasingly clear that this was not a group of armed men, who were just about to launch an armed attack on Camp Cherokee. He recalls the distress of an Iraqi woman who was present and seeing two men who were encountered on the stairs but agrees there could have been others.<sup>203</sup>
- 5.138** In paragraph 47, he stated that he had read the statement made by SO11 on 6 November 2003 and confirmed that it set out events much as he remembered them although he could not himself remember there being three Iraqi men inside the building. He is unable to remember how long it took for the ambulance to arrive.<sup>204</sup> It is his recollection, as appears from paragraph 49, that Major Routledge had a conversation with the other man who had been seen on the stairs. The gist as he understood it, was that he had no knowledge of a group of armed men planning to attack the Camp, but he did say that he was involved in a family or tribal feud with a group of individuals and that those people had already attacked the house. His recollection was that it had been said that it had been attacked a number of times earlier in the day.<sup>205</sup> He believed on the information that he had been given that Mr Salim had been asked to help the owner of the house to defend his house. SO13 took that as an indication or explanation as to why they appeared to be in an aggressive posture when the soldiers arrived.<sup>206</sup>

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<sup>201</sup> Ibid, paragraph 39

<sup>202</sup> Ibid, paragraph 43

<sup>203</sup> Ibid, paragraph 46

<sup>204</sup> Ibid, paragraph 48

<sup>205</sup> Ibid, paragraph 49

<sup>206</sup> Ibid, paragraph 50

- 5.139** As the Commander of the platoon, upon return to the camp, he took a full briefing from the platoon members. In paragraph 52, he recorded that the account he received was that as the men moved from the gate that had been opened weapons were heard being cocked in the building, which could have included the roof. It was this that had led to the front door being forcefully opened rather than the operation involving a "soft knock".<sup>207</sup> On the basis that such was the position, it was in his view, appropriate to use force to enter the building.
- 5.140** In paragraph 57 SO13 stated that Mr Salim had spoken to him saying "ouch ouch very ouch" as he waited for the ambulance. He also remembered him say "I don't understand, I like the British, why has this happened". He did not hear Mr Salim say "why Mr Bush why".
- 5.141** The words "Why, Mr Bush, why?" are taken from a statement made by the medic who attended Mr Salim immediately after he had been shot. In a statement he made to the IHAT dated 20 November 2014<sup>208</sup>, he explained that a reason why he remembered the incident so vividly was because, when he held Mr Salim, Mr Salim said the words "why, Mr Bush, why?".<sup>209</sup> This statement was made in the course of investigations carried out by the IHAT. He recalled going to the left side of the building and taking cover. He heard a burst of automatic fire from the house being fired from, as he recognised, an AK-47. He recollected there were then two or three rounds and the sound of a SA-80 rifle in return. He entered the house and went to the curved staircase directly opposite the door and saw a male lying on the lower two stairs on his back. There was an AK-47 next to him. He could see blood on the stairs from where the man had been hit. He treated the injured man as best he could with first aid field dressing and called for the ambulance to come. He remembered "asking for"<sup>210</sup> the RAP at Shat-al-Arab Hotel and being told that an ambulance would arrive. He remembered being disheartened when the ambulance arrived from Camp Cherokee because it was driven by a medically unqualified soldier.
- 5.142** SO14 also provided a written statement to me. In that statement he recalled that there had been sniping at the BF and some drive-by shootings.<sup>211</sup> He remembered the Ops Room meeting and being briefed. He remembered SO12 wearing a borrowed dishdasha over his uniform.<sup>212</sup> In paragraph 11 of this statement, he described the shots of gunfire that he heard as AK-47 shots followed by SA-80 fire

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<sup>207</sup> Ibid, paragraph 52

<sup>208</sup> SO14 MOD-83-0000251-Z

<sup>209</sup> Ibid

<sup>210</sup> SO14 MOD-83-0000251-Z

<sup>211</sup> SO14 MOD-83-0000268-Z paragraph 5

<sup>212</sup> Ibid paragraph 8

in return. He was able to recognise the difference between an AK-47 and an SA-80 because he had served in Bosnia as an Army medic. In paragraph 14, he recalled that having entered, SO11 was there holding an AK-47 which he was unloading. He did not recall seeing another Arab man further up the stairs or any other Arab men, but he did recall an Iraqi woman who was close by to him in a state of hysteria. In paragraph 16, he recorded how there was a problem in the ambulance arriving, and that he repeatedly asked for an ambulance and doctor to be sent.

## The Reconnaissance (“The Recce”)

- 5.143** After receiving the information from the walk-in, Major Routledge spoke with the OC QLR, who asked C Coy to investigate the intelligence that had been received. Major Routledge decided that, because the target location was not known to C Coy, a mobile reconnaissance (‘recce’) would first be carried out in a civilian vehicle.<sup>213</sup> This was a “*confirmatory recce*”<sup>214</sup>, the purposes being to confirm the location of the building<sup>215</sup>, to get a picture of the house, and to see what the best route in and out of the building would be.<sup>216</sup>
- 5.144** Major Routledge was accompanied on the recce by SO12 and SO13, who were wearing full body armour and combats,<sup>217</sup> and by the interpreter.<sup>218</sup> They were driven by the walk-in in his taxi<sup>219</sup>, who drove slowly past the house. This allowed the recce team to see that it was fairly large (around three storeys), with a flat roof, a “*well-constructed*”<sup>220</sup> iron gate and was surrounded by railings which were eight to ten feet high.<sup>221</sup> SO13 recalled that someone had seen at least one individual with a long-barrelled weapon on the roof of the house. He was “*quite clear that at least one armed individual was seen by a member of the recce, because I remember coming away from the recce believing that there was indeed at least one armed*

<sup>213</sup> SO12 MOD-83-0000260-Z, para 7

<sup>214</sup> MOD-83-0000248-Z, page 1

<sup>215</sup> IFI Routledge 27/11/15 page 14 lines 2-5

<sup>216</sup> SO12 MOD-83-0000260-Z, paragraph 8; Routledge, MOD-83-0000263-Z, paragraph 14

<sup>217</sup> SO12 MOD-83-0000260-Z, paragraph 7. There has been a suggestion that SO12 was wearing a loaned dishdash over his uniform when he went on the recce (SO14 MOD-83-0000268-A, paragraph 8). However, this is strictly refuted by SO12, and neither SO13 nor Major Routledge recall anyone on the recce wearing a dishdash over their uniform

<sup>218</sup> Routledge MOD-83-0000263-Z, paragraph 13. SO12 MOD-83-0000260-Z, paragraph 7.

<sup>219</sup> SO12 MOD-83-0000260-Z, paragraph 7. Alternatively, they were driven by the interpreter in his civilian car (Routledge, MOD-83-0000263-Z, paragraph 13).

<sup>220</sup> SO13 MOD-83-0000258-Z, paragraph 12

<sup>221</sup> SO12 MOD-83-0000260-Z, paragraph 8; SO13 MOD-83-0000258-A, paragraphs 10-12

*individual in building [sic] we had been shown.*<sup>222</sup> However, neither Major Routledge nor SO12 have stated that any armed individuals were seen at the house during the recce.

**5.145** The recce team did not stop at the house, nor did they drive by a second time.<sup>223</sup> The team returned to Camp Cherokee where Major Routledge gave quick battle orders for a search and arrest operation against the target house.<sup>224</sup> The total time between leaving Camp Cherokee to go on the recce (roughly 11.30pm)<sup>225</sup> and departing Camp Cherokee as a fully armed group patrol (having returned from the recce and carried out a briefing) at 12.20am<sup>226</sup> would have been around 50 minutes.

## PART 9: Oral Evidence on 30 November 2015

### SO14 (a Corporal in the RAMC)

**5.146** SO14 gave oral evidence on 30 November 2015. He confirmed that he has suffered from PTSD, and he had a vivid memory of the incident partly because he had had dreams that Mr Salim was talking to him.<sup>227</sup> Since the distance of the house from Camp Cherokee had been made a matter of particular interest by MZD, he gave his estimate according to his best recollection of the distance. He estimated probably no more than two to two and a half km, maybe less. He stated that there was only a battered ambulance at Camp Cherokee, and therefore that evening as on other occasions, he travelled with the OC providing top cover in a Land Rover and had his medical pack with him. He placed his location around the side and on the left-hand side of the building and he did not see the platoon enter the house.<sup>228</sup> He did not hear any particular noise from the gates or the front door being broken down but he did hear gunfire from automatic weapons. He was sure that the gunfire came from the house, and as he has said before, he stated that he heard an AK-47 first, probably two to three rounds as it was a very short burst. He next heard one or two shots from a SA-80 rifle. It was certainly not an automatic burst.<sup>229</sup> He saw the casualty on the bottom two or three of the stairs, *“sort of...legs were on to the floor*

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<sup>222</sup> SO13 MOD-83-0000258-Z, para 12

<sup>223</sup> Ibid

<sup>224</sup> PIR, Introduction, SO13 MOD-83-0000258-Z, paragraph 13.

<sup>225</sup> Routledge IFI 27/11/15, page 17 lines 22-25

<sup>226</sup> PIR, Serial 1.

<sup>227</sup> SO14 IFI 30/11/15, page 29, lines 7-19

<sup>228</sup> Ibid, page 30-31

<sup>229</sup> Ibid, pages 32 line 24 - page 34 line 11

*and then his torso was laying back onto the steps*".<sup>230</sup> SO11 was there as he remembered unloading the rifle, an AK-47.<sup>231</sup> He had expected the ambulance to come from regimental headquarters and had expected it to take no more than 25 minutes to arrive.<sup>232</sup>

- 5.147** He explained that his anxiety in the course of waiting for the ambulance to arrive arose because he was not informed that one was coming. He moved the injured man from the bottom of the stairs. Apart from the AK-47, which he recollected SO11 was unloading, he did not see another AK-47.<sup>233</sup> He believed the wait for the ambulance was very long, and when it arrived it was his ambulance from the Camp and he understood that they had had to try find someone who had the correct licence to drive it. He thought that they waited between 40 minutes and one hour for the ambulance to arrive.<sup>234</sup>
- 5.148** MZD raised a question in connection with the delay in a doctor being able to give treatment to the injured man. SO14 expressed the opinion that if the wound had been treated within the "*golden hour*"<sup>235</sup> it would have been a survivable wound. He added his view that had the evacuation procedures used in recent campaigns been in place then the patient would not have died.<sup>236</sup> The campaigns that he was referring to were those in Afghanistan.

## MZD, EZD and FZD's evidence

- 5.149** The need to question MZD further arose from the issue that had been raised in connection with an Arabic translation of the Routledge letter and some questions in connection with the report to the police and EZD's statement and the recollection of FZD.

## The report to the police

- 5.150** I wished to know why he had not mentioned the attack by the Al Bedanys to the police or the Judge, according to the only record available of his complaint. It was

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<sup>230</sup> Ibid, page 38, lines 8-11

<sup>231</sup> Ibid, page 38, lines 21-23

<sup>232</sup> Ibid, page 40, lines 3-11

<sup>233</sup> Ibid, page 42, lines 9-11

<sup>234</sup> Ibid, page 44 line 22

<sup>235</sup> Ibid, page 49 line 4-5

<sup>236</sup> Ibid, page 49 lines 4-8

suggested that he made a separate complaint against the Al Bedanys.<sup>237</sup> There has been no further information provided to me.

**5.151** EZD agreed that she had not mentioned the Al Bedanys. She stated: *“Nobody asked me. When I gave a statement, nobody asked me this question.”*<sup>238</sup>

**5.152** EZD answered questions about who went upstairs first, AIS or Mr Salim, she replied:

*“Ahmed is younger and he’s more energetic, so he was the first...”*<sup>239</sup>

**5.153** As to weapons kept by MZD she stated: *“for extra security we kept a weapon on the second floor.”*<sup>240</sup> The weapon from MZD’s brother she said was *“unusable”*<sup>241</sup> and was under the stairs.

**5.154** As to FZD, her recollection of what had been said by her in 2004 to PIL was not clear. She could not help on the instructions that had been given to solicitors.

## The Arabic translation of the Routledge letter

**5.155** The Arabic translation of the Routledge letter contained two errors: first the use of the word *“wrongly”*<sup>242</sup> and secondly the word *“salvo”*.<sup>243</sup> I asked MZD where the translation had come from. MZD replied to me:

*“We agree that one round was shot. We don’t have any interest in saying that it was more than one round... That’s even stated in their statement, in all their interviews with the press.”*<sup>244</sup>

**5.156** MZD then stated that both the English and the Arabic letter or text were received from the uncle of Khaled Al Bedany.<sup>245</sup> MZD described him as the *“subcontractor”*<sup>246</sup> for the BF. It was given because (*per Ms Al Qurnawi*):

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<sup>237</sup> MZD IFI 30/11/15 page 55 lines 14-18

<sup>238</sup> EZD IFI 30/11/15 pages 56 line 25 – page 57 line 1

<sup>239</sup> Ibid, page 61 lines 14-18

<sup>240</sup> Ibid, page 62 lines 7-8

<sup>241</sup> Ibid, page 63, line 23

<sup>242</sup> MOD-83-0000302-Z (Appendix 22)

<sup>243</sup> Ibid

<sup>244</sup> MZD IFI 30/11/15, pages 14, line 20- page 15, line 2

<sup>245</sup> Ibid, page 15, lines 14-17

<sup>246</sup> Ibid, page 15 line 24

*“...there was a tribal conflict... and in order to resolve the tribal dispute the uncle produced this letter to... put the blame... he said: look, even the British themselves acknowledge they mistakenly did what they did. So not our fault, it is the fault of the British soldiers...”<sup>247</sup>*

After that Major Routledge came and gave them an English version.<sup>248</sup> Ms Al Qurnawi continued<sup>249</sup>: It was at a tribal meeting to resolve the disputes. She added that MZD had only at the hearing realised that there were errors in the translation. There had been a man who had gone back and forth between the two tribes to try and calm things down.<sup>250</sup> He had said that MZD was accusing the Al Bedanys but he pointed to the letter and said “..it’s an unknown person.”<sup>251</sup>

**5.157** MZD stated that Khaled had subsequently fled and added that the tribal dispute had not been settled.

*“We are sure that it is Khaled who done it but the British forces stated that was an unknown person who did it.”*

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<sup>247</sup> MZD IFI 30/11/15, page 16, lines 7-14

<sup>248</sup> Ibid, page 16, lines 17-20

<sup>249</sup> Ibid, page 17, lines 7-12

<sup>250</sup> Ibid, page 18, lines 21-24

<sup>251</sup> Ibid, page 21, lines 2-4



## SECTION 6: A SUMMARY OF THE FINDINGS AND CONCLUSIONS REGARDING THE DEATH OF MR SALIM

### PART 1: Narrative Account

- 6.1** The written and oral evidence establishes to my satisfaction that at approximately 23:15 hours on 5 November 2003<sup>252</sup> an Arab male came to the guard room at Camp Cherokee and deliberately supplied false information about a group of armed men having entered a private house not far from the camp, who were planning an operation against the BF.
- 6.2** Unknown to the BF at the time and revealed only in the course of this Investigation, the informant was Khaled Al Bedany, who had a close connection to the interpreter who was on duty at the Camp that night. They were members of the Al Bedany tribe.
- 6.3** The interpreter introduced the informant as an acquaintance and a taxi driver. The informant gave information through the interpreter to SO12 (the acting intelligence officer at the Camp) and again to Major Routledge (the OC) to the effect that a party of 10-15 men had broken into a house armed with long barrelled weapons, grenades and RPGs and were planning an operation against BF. He could well have also stated, as SO12 recalls, that the occupants had been taken hostage.
- 6.4** Major Routledge, accompanied by SO12, SO13 (the platoon Commander) and the interpreter, with Khaled Al Bedany driving his taxi, drove slowly past the house in question. The purpose of the “*recce*” was to confirm the location, the layout and to get an idea of the best way in and out of the building. There were no indications of armed activity at the location save that S013 (but not Major Routledge or SO12) recalls that someone stated that at least one individual with a long barrelled weapon was on the roof of the house. On the evidence, if said, it seems likely to have come from Khaled Al Bedany or the interpreter. I dismiss it as unreliable evidence, which I am satisfied had little or no impact on the decision, made by Major Routledge, to mount the operation.
- 6.5** On the return to the camp Major Routledge gave quick battle orders for a search and arrest operation against the target house.

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<sup>252</sup> SO12 MOD-83-0000260-A paragraph 4

- 6.6** The security situation prevailing at this time was seriously affected by the activities of terrorists, riots, tribal in-fighting and high levels of criminality. There had been extensive proliferation of former Iraqi Army weapons and ammunition.
- 6.7** The intelligence records which, had they been available, would have been relevant and helpful, were left behind in Basra for operational reasons. Such action should be avoided in future unless no other option is available.
- 6.8** There would have been an Operations Room log book into which intelligence from informants was recorded. SO12 was the intelligence officer but he had not been trained as such. C Coy had no central intelligence cell and thus had tasks for its AOR allocated to it. Notes, war diaries and other documents would have been collected into a pack. No such records have been available.
- 6.9** In circumstances differing from those with which I am concerned in this case, the absence of intelligence records might have mattered. Written contemporaneous records of the receipt of intelligence could have been of critical probative value in establishing the reason for the search and arrest operation. However, since there has been evidence from the family of the deceased, which has confirmed that false information was given to the BF and the identities of those responsible have been made known, I have been able to be sure about the reason for the decision taken by Major Routledge. I have no reason to doubt that the information justified a high degree of concern, presented a potential threat to the BF and called for an immediate decision to be made about what course of action was appropriate. In a situation where an anarchic breakdown of law and order had occurred and there was continuing armed violence it was not open to Major Routledge to do nothing. A decision to carry out a search and arrest operation was, in the circumstances, reasonable and not hasty or irresponsible.
- 6.10** But, a search and arrest operation on a house where it is believed armed occupants could be present requires planning so as to achieve a balance between the degree of force that should be used to enter the building, the risk to which soldiers could be exposed as they enter the building and measures for the safety and interest of the occupants of the building, in the event the intelligence proves to be false.
- 6.11** A “*soft knock*” involving the BF making known their presence vocally was contemplated and ordered by SO13.<sup>253</sup> But, necessarily, there had to be flexibility to meet circumstances as they occurred. The locked gates and the need to use force to gain entry to the courtyard changed the circumstances. It is likely the gates to the courtyard were locked because of the security threat prevailing generally as well as the threats to the family which the Al Bedanys had made. Had communication been

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<sup>253</sup> SO13 MOD-83-0000258-Z paragraphs 23 and 27

established before entry, I am confident that the perceived threat to the BF would have been reduced by the response by the occupants. A search would no doubt have ensued but there would have been no circumstances calling for force to be used against the occupants. Such conclusions can be reached only with the benefit of hindsight.

- 6.12** I accept the evidence that the forced entry through the gates exposed the soldiers who had to gain entry into the house to a potential degree of risk which made a forced entry into the house a reasonable measure to adopt. I have had in mind in my consideration of the tactics and the planning that the involvement of the interpreter and his introduction of the so called “*walk-in*” are likely to have had an influential bearing on the weight given to the credibility of the information. Given that it is now known that Khaled Al Bedany and the interpreter were acting so as to induce action by the BF against the house, they must have played an influential role in creating the perceived need for action by the BF. There was a paucity of evidence, but the source, supported by the interpreter, added to its credibility. Steps which might have been taken to verify the information could have included, in other circumstances, enlisting the assistance of the Iraqi police. However, in the state of affairs in Basra at this date that is not likely to have achieved much. I do not believe recording the identity of the informant, which might be a sensible course in general to adopt, would have made much difference since the informant had been introduced as an acquaintance of the interpreter. Retaining an informant until after the completion of a search and arrest operation might in many circumstances amount to a safeguard, but on the facts of this case it would have made no difference. It has been said that ascertaining whether there were armed men at the target location should have taken place before executing the operation. The decision to attempt a soft knock operation was designed to achieve that end.
- 6.13** There has been a body of evidence from the BF, which is not in all respects consistent about whether shots were fired from within the house at or about the time the soldiers entered the house. I shall come to this topic later.
- 6.14** The family have denied that shots were fired within the house. Whether there were any shots fired as (among others) SO11 has maintained, is highly material to the likely state of mind in which SO11 was acting when he shot Mr Salim. My conclusion on this question forms part of the critical dispute about what circumstances existed at the time Mr Salim was shot. It requires my conclusions on the credibility, reliability and accuracy of the eye witnesses to be set out.

## PART 2: Conclusions on Evidence from the Family

**6.15** The evidence from the family set out in this report demonstrates that, until this Investigation began, each of them had portrayed the fatal shooting of Mr. Salim as having taken place in the following circumstances:

1. The family members being present together, in Ramadan, to eat and enjoy the “intimacy”<sup>254</sup> of their family life, in “..peace and security”,<sup>255</sup> sitting normally “having dinner”.<sup>256</sup> It was stated that: *As part of our tradition as Muslims, during Ramadan time we get visitors and visit relatives during the nighttime, it happened that night we were visited by [Mr Salim]... we were sitting enjoying our time and eating fruit.*<sup>257</sup> That prior to his arrival, Mr Salim telephoned on the landline to say that “he and his family”<sup>258</sup> would be coming round. That this was entirely normal. That when he arrived he explained that FZD had stayed behind to help the children with their homework.
2. The family members were sitting in the hall when the soldiers started the assault. Mr Salim was in the hall when he came face to face with a soldier, alternatively he may have moved to climb the stairs and was coming back down when he was shot. There was an interpreter present who seemed “shamed” that MZD, “a well-known and respected local lawyer”<sup>259</sup> should have been treated in this way.
3. Mr Salim had moved to the stairs when the exterior gates were broken through. He was alone on the stairs, on the second or third stair. AIS may have moved towards the stairs, but the suggestion that there were two men on the stairs was “untrue”.<sup>260</sup>
4. The family were an “unarmed family simply enjoying a meal.”<sup>261</sup> There were no guns in the house. MZD had previously owned a gun but it had been stolen in a burglary.

<sup>254</sup> MZD MOD-83-0000281-Z, paragraph 9

<sup>255</sup> Ibid, paragraph 21

<sup>256</sup> Ibid, paragraph 31

<sup>257</sup> MZD/FZD MOD-83-0000308-Z

<sup>258</sup> MZD MOD-83-0000281-Z, paragraph 9

<sup>259</sup> Ibid

<sup>260</sup> Ibid

<sup>261</sup> Ibid

5. The family had no idea why their house had been targeted. They requested an inquiry “ *to disclose the reasons why the house had been targeted.*”<sup>262</sup>
6. They acknowledged that the BF said that they had made a mistake because they had received false information from an unknown person, but limited their comment to a complaint that the BF should have acted upon it. They drew attention to a variety of consequences, including tribal differences with Mr Salim’s tribe, the need for MZD to pay to settle the tribal differences and a change in the attitude of Mr Salim’s family to FZD with whom it was said they had not maintained a good relationship. MZD asserted that all these problems had been caused by the BF and he claimed to be compensated for them.

**6.16** Shortly after this Investigation commenced, in August 2015, MZD and FZD volunteered a joint statement to PIL, which was expressly stated to serve as a record of the particular circumstances they regarded as relevant to their claims. To the matters which had been previously raised they drew attention to a “*threat made by a person who had threatened revenge against them.*”<sup>263</sup> A complaint was advanced that, despite the fact they had given the name and address to the BF, who had visited the address, the BF failed to interrogate or arrest the person. In truth the BF had visited the Al Bedanys not because of a threat, but because MZD had stated that they had attacked the house. They deliberately avoided mentioning the drive-by shooting and portrayed the informant and the person who had threatened them as different persons.

**6.17** After the details of the BF’s account had been supplied to them by the IFI and the relevant documents in support had been supplied to MZD through QC Law, MZD reviewed them. The results of his review were recorded and supplied to the Investigation. MZD’s comments reflect his experience as a lawyer. They are detailed and contentious. His review of the documents, which I understand he had not seen before, resulted in substantial changes being made to the account previously given. He would have appreciated the probative value of the written record which included facts that could only have come from himself or his wife. The changes which he made contradicted many assertions which had been central to the earlier posture which had been taken:

1. MZD accepted the account referred to in the PIR that he had been subjected to an armed attack earlier in the evening when the exterior of the house had been

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<sup>262</sup> FZD MOD-83-0000293-Z

<sup>263</sup> MZD/FZD MOD-83-0000308-Z

sprayed by bullets. As I find he had resolutely and deliberately failed to refer to this event in any earlier account. He had disingenuously attempted to reduce the event to a mere “*threat*”<sup>264</sup> that he had communicated to the BF, which led to a visit being made by the BF, when in truth the visit had been made because he had informed the BF of the feud and the attack. Whilst he had mentioned the tribal feud with Mr Salim’s family to support his claim for compensation, at that time he had made no mention of the tribal feud, which had been the cause of the BF raid that night. For the first time, it became clear that far from having no idea why the BF had raided, the family knew or believed that the Al Bedanys had given false information to induce the raid. The interpreter, who in the 2013 statement had been reported as being shamed by the conduct of the BF had played a central part in deceiving the BF. In the circumstances, I consider the suggestions made by MZD that he was seen by Mr Salim’s family and in the community generally to be the person responsible for the death of Mr Salim, to have been contrived. In circumstances where he knew, and everyone else concerned to know would also have known, that the Al Bedanys were to blame, the suggestions are not plausible.

2. MZD identified Khaled Al Bedany as the person who had misled the BF, and the interpreter who came on the raid with the BF as a member of the same tribe.
3. MZD confirmed the existence of the feud and that it was over offices in Basra.
4. MZD suggested that Khaled had gone to the Camp to give false information after the drive by raid and in order to mislead the BF.
5. MZD stated, contradicting his earlier repeated assertion that Mr Salim was alone on the stairs, that both AIS and Mr Salim were on the stairs.
6. MZD contradicted his earlier assertions that there were no weapons in the house and revealed that there were two AK-47s in the house. I reject the attempts he made to explain what he had said in his 2013 statement as a misunderstanding as to whether it was “*guns*” or “*rifles*”<sup>265</sup> which were being referred to by the questioner. It is clear to me that he set out, when speaking of the burglary, to provide a reason why there were no weapons, which enabled

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<sup>264</sup> MZD/FZD MOD-83-0000308-Z

<sup>265</sup> MZD MOD-83-0000279-Z paragraph 12

him, later in the statement, to assert that they were an unarmed family simply having a meal. As he stated when giving evidence by Skype, they were a family who had deliberately armed to counter an attack they expected from the Al Bedanys.

7. The revelation of these facts followed MZD's review of the BF material. The revelations confirmed large parts of the BF's account of the circumstances, but whether Mr Salim was armed with an AK-47 must be resolved.
8. It emerged from his Skype evidence that Mr Salim had telephoned on a landline to say he was coming round, not because of his normal habit of visiting, but because he had heard about the drive by shooting and wanted to know how things were . It is not surprising that in those circumstances, FZD and the children did not come. Contrary to the early account, AIS had not come round because it was Ramadan and he wanted to enjoy a meal. He came round to provide help and protection knowing that MZD was taking steps to arm himself against another attack.
9. When the crash to the gates took place, contrary to the earlier account, it was asserted that AIS went first and mounted the stairs and that Mr Salim followed. MZD gave somewhat confusing evidence about whether or not AIS picked up the AK-47, which was a loaded rifle, when he reached the top of the stairs but AIS, in his statement dated 20 November 2015, said he did pick up the AK-47 but put it down again when Mr Salim called out "*..they are British soldiers.*"<sup>266</sup> MZD accepted that when the front gates were crashed he assumed that it was the return of the Al Bedanys. I am satisfied that a similar belief was likely to have been shared by AIS and Mr Salim. For that reason, reference had been made in the Routledge letter to the belief that they were subject to attack from criminals.

**6.18** I have considered these changes in evidence, reminding myself at every stage of the problems which can arise when statements are made in one language in answer to questions posed in another and where the scope for misunderstanding through interpretation can arise. I have also had in mind that the process of making a statement would have been strange to them all and that the content could well have been driven by the questions posed, with limited elaboration from the interviewee.

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<sup>266</sup> AIS MOD-83-0000270-Z paragraph 6

**6.19** I have weighed all these factors but I am left having little or no confidence in the reliability of the family's evidence. MZD is an experienced lawyer and it is clear that he has applied his experience to the exercise of providing his account and where he has wished to do he has elaborated on the facts. There are too many contradictions on important matters and details, for example why the family were together that evening, whether Mr Salim was on the stairs alone and whether the family had weapons in the house. The failure to mention the drive by raid until the last minute was deliberate.

### The false translation

**6.20** My confidence in the reliability of the family evidence has also been seriously undermined by the existence of the false translation of the Routledge letter. I have already given my reasons for concluding that the omissions and additions were deliberate. They were contrived to remove blame from the Al Bedanys and to focus blame on the BF. MZD explained his part by stating that the Arabic version was provided to him by the uncle of Khaled Al Bedany: "...produced this letter to put the blame ... even the British themselves acknowledge they mistakenly did what they did. So not our fault. This was done as part of an effort to resolve the tribal conflict."<sup>267</sup>

**6.21** I do not believe that MZD created the false translation. It seems likely that the interpreter would have done it in the interest of the cause of the Al Bedanys. It is not entirely clear how they thought the Arabic version could help unless it was to be used as some form of public notice that the Al Bedanys had nothing to do with it. Supplying it to MZD would not achieve much. I was informed by PIL that MZD had asked for a translation from Major Routledge.<sup>268</sup> Major Routledge had no recollection of being asked. If the purpose was to acquit the Al Bedanys, then that purpose would have been assisted by the translation being lodged in the Al Maaqaal court. I have been informed it was lodged shortly after the 9 November 2003. MZD was party to that happening. MZD had commenced proceedings seeking the Al Maaqaal Court's assistance in tracking down the informer.

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<sup>267</sup> MZD IFI 30/11/15

<sup>268</sup> IFI informed by PIL in a telephone call on 17<sup>th</sup> September 2015 that: "*Mahmoud sent through the letter received from the British Military in November 2003. Mahmoud says that originally the British forces attended his home in November 2003 bringing him a letter in English. Mahmoud asked them to come back with a translated version, and accordingly they came back later in November 2003 with an Arabic translation stapled to the original English version of the letter.*"



- 6.22** It would have not have been proportionate to attempt to carry out a collateral inquiry into all the circumstances surrounding the creation of the false document, or the use to which the false evidence was or could have been put. It has nevertheless appeared significant that the strategy adopted by the family to keep the Al Bedanys out of the picture and only to admit their involvement when it was felt that revelation was required is entirely consistent with the stated purpose for the creation of the document. It was in aid of a strategy to place blame for all the consequences of the incident on the BF. The first portrayal of the facts by the family involved a concerted effort to place everyone in the hall when the soldiers attacked. This version avoided a need to explain why Mr Salim was on the stairs. But the version was subject to contradiction by the content of the police report that there was blood on the stairs. Thus, later there was a concerted and deliberate effort to maintain that Mr Salim was alone on the stairs. This account only changed in the face of the detail from the material supplied by the IFI. The account, which was consistent with the terms of the false translation had been tenaciously held to by MZD who said that the Routledge letter was untrue in stating there were two men on the stairs. After it had been accepted that there were two guns in the house and evidence was given that AIS held one of them, emphasis was placed on the agility of AIS to mount the stairs and be in a position to pick up a gun which, unlike the AK-47 said to be under the stairs and unloaded, was loaded. The acceptance introduced at the last minute that there were guns in the house contradicted the forceful, repeated and deliberate assertions to the effect that they were unarmed. I reject the attempt by MZD to explain his denials in the 2013 statement that there were no weapons in the house as arising from translation difficulties. He was clear in his assertions, he elaborated by reference to the burglary and he stated that they were an unarmed family.
- 6.23** The account now given is so far removed from the earlier portrayal of the circumstances surrounding the fatal wounding of Mr Salim that I am unable to accept the evidence of the family both on the issue as to whether there were shots fired within the house and whether Mr Salim was armed with an AK-47 when he was shot.
- 6.24** Notwithstanding this conclusion on the family evidence, I must now consider the credibility, accuracy and reliability of the BF's evidence.

## PART 3: Conclusions on the Evidence of the BF

- 6.25** The BF's account lacked independence, being from the military command, and for that reason it requires scrutiny so that one can be sure that there has been no attempt to cover up facts, nor to present a self-serving account of events.

### Whether SO11 was acting within the ROE when he shot Mr Salim

- 6.26** The PIR and SO11's statement was prepared almost immediately and certainly within the first available opportunity that existed. On the other hand, no photographs of the scene were taken, although a sketch plan was made by SO13. Had photographs of the guns found in the house been taken, the record would have been more definitive. Although a statement was made by SO11 within 24 hours or less, no statements were obtained from the other members of the patrol, and in particular no statements were taken from the two Kingsmen who had entered the house immediately behind him or beside him. The references to Kingsmen Morris and Jones have not, in the event, proved to be the source of any evidence. Since neither of them gave evidence to the Investigation that they did witness the shooting of Mr Salim, I accept the submission made by the family that I should make my findings on the presumption that neither was present when the shooting took place. Accordingly, the only eyewitnesses to the shooting were SO11, AIS, MZD and EZD. I make my findings on the basis of their evidence, inferences to be drawn from the surrounding facts and circumstances, and witness testimony from others who were present either shortly before or after the event.
- 6.27** SO13 and Andrew Price, who have been able to provide detailed evidence, have done so from their recollection 12 years after the event, save that SO13 was able to identify his sketch plan. Although the PIR and WKDB and extracts from the radio logs have been available, full documentation, including the intelligence logs and records were left behind. There are inconsistencies, in particular in connection with the record made of the number of shots fired and when they were fired, but I have received evidence that the ends of strict accuracy of reporting are not always met by a radio log process, where accuracy and complete understanding can be the victim of misunderstanding and the garbling of messages. Time lags also occur so that the recorded timings cannot be taken as being precisely accurate. That said, although I have not taken the recorded times as being precise, the records are a reliable source of time lag between events.
- 6.28** Notwithstanding the above, I am satisfied that the time in which the records were made (including the statement by SO11) did not permit of fabrication or collusion.

A full incident report was called for “...by 12:00 pm today..”<sup>269</sup> Far from attempting to cover up facts or present a partial picture, Major Routledge wrote and apologised, accepting that he had made a mistake. I reject with confidence any possibility that he wrote a dissembling letter when he conveyed his condolences. It might have been better, in the light of events, had he stated that Mr Salim was armed with an AK-47, but I accept his explanation that he had not set out in the letter to give a full account of every detail, but to provide a proper explanation and to apologise. He was writing to an eyewitness with whom he had already had a conversation about the incident. I understand his observation that it was “*self evident*”<sup>270</sup> to make the point. Further, I am satisfied that it would not have been plausible for him to advance a suggestion that fully armed soldiers, who had entered the house and encountered an unarmed man, could have believed “...*there was a contact underway ....*”<sup>271</sup>, or as Major Routledge stated, a soldier could have thought he was in danger. I have concluded that Major Routledge wrote in the terms he did in the hope that his letter would provide an accurate explanation, show his respect for the family and regret for the loss of life which had occurred, as well as to provide some comfort to MZD and the widow of Mr Salim. EZD recalls, SO11 apologised to her in the house. He apologised again on the occasion of the video hearing:

*“I am deeply, deeply sorry for the family, the widow... and if I could change anything or go back in time, I’d do it and I’m sorry.”*<sup>272</sup>

I am satisfied that he was not apologising for having shot an unarmed man, but for having shot an armed man, who contrary to SO11’s belief at the time, did not present a risk. His words which were marked by their spontaneity reflect regret born of the wisdom of hindsight. Knowing now that Mr Salim was a respectable and valuable school teacher who would not have shot a British soldier, if he could “*go back in time*”<sup>273</sup> he would now act differently.

**6.29** I am satisfied on all the evidence that Mr Salim was armed with an AK-47 as he ran downstairs, ahead of AIS who was also armed with an AK-47 and that SO11 encountered him as he was moving through the hall from the front door and encountered him within seconds of having entered.

**6.30** Notwithstanding the above conclusion I have to consider other aspects affecting the immediate circumstances of the confrontation. It is clear that the false information upon which the raid was launched must have operated on the mind of SO11. He had

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<sup>269</sup> MOD-83-0000250-Z

<sup>270</sup> Routledge IFI 27/11/15 page 38 line 9

<sup>271</sup> SO11 MOD-83-0000253-Z

<sup>272</sup> SO11 IFI 27/11/15 page 106 line 9

<sup>273</sup> Ibid

entered the house having grounds for holding a reasonable expectation that he could meet hostile, armed combatants. There is no evidence that he should have realised, by the time he was confronted, that in truth he had entered a house of a respectable family, where the occupants harboured no intention of engaging the BF. I am satisfied that his belief that he was in danger was, in truth, wrong, in that Mr Salim had no intention to harm him but his belief was based upon the sight of a respectable school teacher who had armed himself to protect the family from the Al Bedanys and whose demeanour and carriage would have been, at immediate sight, potentially hostile and a threat to him. I have written earlier of the malign impact of the Al Bedanys. Had they but limited their criminality to the giving of false information, Mr Salim would not have been armed with an AK-47. He was armed because the Al Bedanys had carried out an armed attack and had forced MZD and his family to resort to an armed defence.

- 6.31** The other aspect which has been in issue is whether there were five to six shots from an AK-47 fired within the house at or about the time the soldiers entered through the front door.
- 6.32** The contemporary logs appear to record that at 00:34 hours five to six rounds of fire took place “*at them*”, namely the soldiers entering the building.<sup>274</sup> The WKDB records that as the soldiers “*...approached the building they were fired upon.*”<sup>275</sup>
- 6.33** I find the record somewhat garbled. It is not clear when the six rounds were fired and, on one view, it could suggest Mr Salim and the occupants were engaged by six rounds. The oral and written statements are clear. Only one shot was fired by SO11. Further, Andrew Price, who gave written and oral evidence to me, impressed me as a witness of truth and reliability. In paragraph 8 of his statement he stated “*... I remember hearing large calibre rounds fired from what I believed was an AK-47 followed by one lower calibre round from a rifle 5.56 (which used to be called an SA-80).*”<sup>276</sup> He repeated this in his oral evidence.<sup>277</sup> He was clear that the shots came from within the house after the building had been entered. I have no reason to doubt that his experience in Northern Ireland had familiarised him with the distinctive fire from an AK-47.
- 6.34** SO13 recalled “As I moved towards the front door of Room 1, I heard a number of shots being fired from different locations inside the house. There was certainly at least one AK-47 and I also heard a single shot fired from an SA-80.”<sup>278</sup>

<sup>274</sup> MOD-83-0000307-Z

<sup>275</sup> MOD-83-0000250-Z

<sup>276</sup> Price MOD-83-0000257-Z

<sup>277</sup> Price IFI 27/11/15 page 46 paragraph 22

<sup>278</sup> SO13 MOD-83-0000258-Z paragraph 33

**6.35** SO14 stated that he “*heard a burst of an automatic fire from the house from an AK-47 and then two or three rounds from an SA-80.*”<sup>279</sup> He was, as has been emphasised by the family, on his own evidence, some 20-30 metres away at the time and whilst I accept he is being truthful in his recollection, it is not the most compelling evidence I have received of the time and circumstance of the firing of rounds.

**6.36** Major Routledge heard 2 or 3 rifle shots being fired but thought they were fired from the roof of MZD’s house.

**6.37** I have considered the following evidence:

1. SO11’s account of the shooting has not remained wholly consistent insofar as it relates to the number of individuals encountered on the stairs, and which, if any, of them was armed with a weapon.
2. In his initial statement made on 6 November 2003 SO11 stated that as he entered the second room of the house he heard five shots of automatic fire coming from the stairwell. He moved into Room 4 and saw two men armed with long barrelled weapons coming at speed down the stairwell. There was no time to issue a warning shot and, believing that a contact was underway, he fired one round at the first male then turned his weapon on the second male who dropped his weapon.<sup>280</sup>
3. In his statement of 6 August 2015, SO11 stated that as he entered the first room in the house he heard five rooms of automatic fire, although he could not tell where the rounds were coming from the stairs, “*one or both of them were carrying long barrelled weapons. I can’t remember if it was both men.*” As he believed the life of himself and his men were in danger, he fired a shot at the first male on the stairs. He did not recall whether the first man had been running down the stairs when he shot him.<sup>281</sup>
4. In his statement of 6 November 2015, SO11 stated that the man he engaged was standing at the top of the stairwell holding a long barrelled weapon. There was a second man behind him also holding a weapon. He said that the first man’s weapon was “*in his shoulder but I am not sure whether or not it was levelled to*

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<sup>279</sup> Statement to IHAT dated 30 October 2014

<sup>280</sup> MOD-83-0000253-Z

<sup>281</sup> SO11 MOD-83-0000262-Z paragraphs 19-22

*fire.*” Mr Salim was standing on the landing just before the stairs. When he was shot, his weapon landed on the first floor landing. The second man put his weapon down on the first floor landing next to the stairs.<sup>282</sup>

5. In the course of the hearing on 27 November 2015, SO11 stated that no more than five or 10 seconds after entering the building he heard five rounds of automatic fire from within the house. From the bottom of the staircase he saw two males and one female on the landing. Both males were carrying long-barrelled weapons. The man who was engaged by SO11 was carrying his weapon in his shoulder. SO11 stated that he identified the threat, “*as he saw it*”, and neutralised it prior to any of the other kingsmen seeing the threat.<sup>283</sup>
6. The Iraqi evidence was that there was no shooting from within the house other than the fire from SO11’s SA-80 rifle when he engaged Mr Salim.<sup>284</sup>
7. There are conflicting accounts regarding the timing and location from which gunfire was heard by other soldiers. The WKDB states that “*At 00:33hrs as the C/S approached the building they were fired upon.*”<sup>285</sup> Major Routledge stated that he heard two or three rifle shots fired from the roof of the building, but which did not appear to be aimed at the BF.<sup>286</sup> SO12’s account was that either shortly before, or as the gates of the house were opened, two automatic weapons were fired from the roof over the heads of the BF.<sup>287</sup>
8. SO13 said that as he moved towards the front door of the house he heard a number of shots being fired “*from different locations within the house.*”<sup>288</sup> He was certain that he heard at least one AK firing, followed by a single shot from an SA-80.<sup>289</sup> He was also adamant that the BF were not fired upon outside the house, but only once they had entered.<sup>290</sup> Andrew Price had a very clear recollection of hearing shots fired from two different weapons inside the house:

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<sup>282</sup> SO11 MOD-83-0000264-Z paragraphs 4-6

<sup>283</sup> IFI SO11 27/11/15 page 89 line 25- page 91 line 4; page 103 lines 21-24

<sup>284</sup> MZD IFI 13/11/15 page 35 lines 1-3

<sup>285</sup> WKDB Serial B

<sup>286</sup> Routledge MOD-83-0000263-Z paragraph 20

<sup>287</sup> SO12 MOD-83-0000260-Z paragraph 11

<sup>288</sup> SO13 MOD-83-0000258-Z paragraph 33

<sup>289</sup> Ibid

<sup>290</sup> Ibid, paragraph 55

*“Once they had gained entry to the house, I remember hearing large calibre rounds fired from what I believe was an AK-47, followed by one lower calibre round from a rifle 5.56 (which used to be called an SA-80). Before I was deployed to Northern Ireland we received training where we were fired at under control so that we could tell what kinds of weapon were being fired at us. I know what an AK-47 sounds like as these used to be used a lot by the IRA. As an AK-47 is fired you hear a crack, followed by a thump as the bullet goes past you. This is different to the sound from an SA-80 being fired, which gives off much less of a bang. I am absolutely sure that after SO11 went into the house I heard multiple shots from a higher calibre gun followed by a shot from a lower calibre gun. The shots all came from within the house, but I couldn’t tell where they were directed.”<sup>291</sup>*

9. SO14 was also clear in his recollection that he heard the sound of AK-47 shots followed by the sound of 5.56mm SA80 fire in return immediately prior to someone calling for a medic.<sup>292</sup>
  
10. The PIR states that two males ran down the stairs, the first two with long barrelled weapons. Major Routledge and SO13 stated that Mr Salim had an AK-47 lying beside him on the ground.<sup>293</sup> It is evident that the BF did not search the house for AK-47 shells or casings,<sup>294</sup> nor did they examine the gun said to have been dropped by Mr Salim to check whether it had been fired recently.<sup>295</sup> Major Routledge accepted that it would have been prudent to examine the gun which he saw lying next to Mr Salim, however he hadn’t done so, and couldn’t say whether any other soldier had.<sup>296</sup> Although SO14 recalled seeing SO11 unloading a gun,<sup>297</sup> SO11’s evidence was that he did not examine either of the AK-47’s found in the house.<sup>298</sup> Andrew Price stated that he thought he had seen one of the kingsmen handling an AK-47 inside the building, however he did not have a good recollection of this.<sup>299</sup> SO11’s account of the shooting has not remained wholly consistent insofar as it relates to the number of individuals encountered on the stairs, and which, if any, of them was armed with a weapon.

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<sup>291</sup> Price MOD-83-0000257-Z, IFI Price 27/11/15 page 46 line 23-page 48 line 5

<sup>292</sup> SO14 MOD-83-0000268-Z paragraphs 11-12, IFI S014 30/11/15 p.33 line 25-page 34 line 15

<sup>293</sup> IFI Routledge 27/11/15 page 27 lines 14-16, Routledge MOD-83-0000263-Z paragraph 24, SO13 MOD-93-0000258-Z paragraph 39

<sup>294</sup> IFI Routledge 27/11/15 page 22 lines 16-23

<sup>295</sup> Ibid, page 28 line 23 - page 29 line 13

<sup>296</sup> IFI Routledge 27/11/15, page 28 line 23-page 29 line 13.

<sup>297</sup> IFI SO14 30/11/15 page 38, lines 22-23; SO14 MOD-83-0000268-Z paragraph 14

<sup>298</sup> IFI SO11 27/11/15 page 97 lines 22-25

<sup>299</sup> Price MOD-83-0000257-Z, paragraph 11

- 6.38** It is submitted on behalf of the family that the evidence should lead one to be “*sceptical*” about any shots being fired from the occupants of the house. In respect of whether Mr Salim was carrying a weapon at the time that he was shot, that even if this were the case, such weapon was not being brandished in such a way as to lead SO11 to reasonably believe that his life was in imminent danger. That SO11 was so psyched up by the briefing given by Major Routledge that he took no chances and acted immediately to neutralise Mr Salim, regardless of whether his life was in danger or not. It is accepted by SO11 that he did not give a warning prior to engaging Mr Salim.
- 6.39** I am satisfied from the weight of the evidence I have reviewed that as the soldiers entered the house rounds from an AK-47 were fired. AIS and Mr Salim were expecting the Al Bedanys and had armed themselves to protect the house and its occupants. It seems consistent and sensible for them to have fired rounds by way of warning to the Al Bedanys that they could expect an armed response.
- 6.40** The circumstances as I have found them to be, namely the false information, the shots after entry, and an encounter with armed men on the stairs after entry, taken together were sufficient to have generated a belief in any reasonable, trained soldier that his life could be in immediate danger. With the benefit of hindsight one can ask whether a warning should have been given, but split second decisions are called for in these circumstances and hindsight is no guide to a fair assessment of the facts. SO11 was entitled to act in self-defence, and I have concluded that sufficient circumstances did exist to justify the belief on his part that he was in danger. The ROE applicable provide “...6. *Nothing in these ROE shall be construed as limiting a commander’s or individual’s inherent right of self-defence as provided for under national and international law.*”<sup>300</sup>

### Whether there was an unjustifiable delay in providing an ambulance to treat Mr Salim

- 6.41** The BF did not take an ambulance with them on the search and arrest operation. SO11 stated that they did not have one at Camp Cherokee. The main aid post and

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<sup>300</sup> MOD-83-0000298-Z Card Alpha (“*Guidance for opening fire for service personnel authorised to carry arms and ammunition on duty*”) also provides: “1. *This guidance does not affect your inherent right to self-defence...*”, MOD-83-0000099-A



ambulances were located at the Shat-Al-Arab Hotel, which was between five to eight minutes' drive away.<sup>301</sup>

- 6.42** The PIR records that the house was cleared at approximately 12.30am on 6 November 2003. At approximately 12.56am “the OC calls forward a BFA from Camp CHEROKEE...and the casualty is taken to Czech Military Hospital.”<sup>302</sup>
- 6.43** SO14's evidence was that “I immediately asked for my ambulance, as I did have one at camp, but there was a problem with getting that to us...I would say that it took about 40 minutes from my first treating the injured male to getting him into the ambulance.”<sup>303</sup> At the public hearing he stated that he asked for an ambulance to be called from the Shat-Al-Arab Hotel, which he would have expected to take around 25 minutes.<sup>304</sup> However, he felt like he was waiting for a very long time, and when it did arrive it was not the ambulance he had asked for, but was his vehicle from Camp Cherokee. He estimated that it took between 40 minutes and an hour for the vehicle to arrive.<sup>305</sup>
- 6.44** Major Routledge's evidence was that it took between 15 to 20 minutes from the time that Mr Salim was shot to an ambulance being called.<sup>306</sup> Although he would have expected an ambulance to take only 10-15 minutes to arrive from the Shat-Al-Arab Hotel, it in fact took between 30-40 minutes.<sup>307</sup> He said that he did not believe, as contended by Mr Salim's family, that it had taken up to two hours for the ambulance to arrive, and he thought it had been “in an hour”.<sup>308</sup>
- 6.45** The evidence of the family members was that the total time between Mr Salim being shot and being taken away in an ambulance was around two hours.<sup>309</sup> During this delay FZD was kissing the hands of the soldiers begging them to take Mr Salim to hospital.<sup>310</sup>
- 6.46** There was a delay of between 15-20 minutes between Mr Salim being shot and an ambulance being called. The BF's evidence is that it took from between 40 minutes to an hour from the ambulance being called to it arriving at the house. The Iraqi

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<sup>301</sup> IFI Routledge 27/11/15, p.20, lines 2-5

<sup>302</sup> PIR Serials 15-16.

<sup>303</sup> SO14 MOD-83-0000268-A paras 16-18

<sup>304</sup> IFI SO14 30/11/15 p.40 lines 1-11

<sup>305</sup> Ibid, p.44 line 19-p.45 line 15

<sup>306</sup> IFI Routledge 27/11/15 p.25, lines 7-8

<sup>307</sup> Ibid, p.25 lines 22-23

<sup>308</sup> Ibid, p.41 lines 7-20

<sup>309</sup> IFI MZD 13/11/15 page 43 line 21-page 44 line 7

<sup>310</sup> Ibid, page 38 lines 17-19

witnesses contend that it was around two hours. As I have referred to earlier in the report, SO14 expressed the view that Mr Salim's wound was survivable if treated "within the golden hour". There is no evidence which either supports or refutes this suggestion.

**6.47** It is submitted on behalf of Mr Salim's family that the delay in the ambulance arriving to take Mr Salim away could have been avoided if:

1. An ambulance had been organised prior to setting off on the search and arrest operation.
2. An ambulance driver had been placed on standby.
3. The ambulance was properly kitted out with life-saving equipment and a doctor.

**6.48** Further, that these measures should have been in place in any event in case any soldiers were injured during the operation. However, although I have had reservations about the accuracy of some of the content of the logs, I believe that as to timing they have defensibility. Not as to the accuracy of the precise time but the time lag between entries. I have no doubt that the wait for the ambulance to arrive, at a time when the family would have been extremely anxious for his wellbeing, was an agonising period for the family but I do not find the evidence supports a conclusion that it was longer than one hour before it arrived.

## PART4: Recommendations

**6.49** I have no formal recommendations to make, but I have been asked by MZD to consider whether there are any points which I can draw to the Secretary of State's attention "*...bearing in mind the highly unusual circumstances of this case whereby the army has caused a family... to be torn apart from their loved one...through no fault of their own.*" I am asked to have in mind that anything I can say will "*...certainly go a long way towards to trying to bring closure to this traumatic experience for this very unfortunate family.*"<sup>311</sup> There are a few points which I will make, not for the particular attention of the Secretary of State, but because they might help the family return to a balanced and rational understanding of what brought this about.

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<sup>311</sup> QC Law 21/01/16 paragraph 222

- 6.50** I am fully aware of the horror and anguish which the family experienced on that night. I have no doubt that being forcefully subjected by armed soldiers to physical restraint, accompanied by shouting, noise and vigorous searching of the house, all of which took place as Mr Salim, seriously wounded, waited for the ambulance, was a deeply traumatic experience. It is not disputed that MZD and AIS were placed in plasticuffs and taken outside, quite probably at gunpoint. The exercise of such force as would have been necessary on the part of the soldiers to carry out the house clearance exercise must have been alien to the family, and inevitably would have been a terrifying and unpleasant experience for them. It was bound to generate anger, anguish and profound considerations about the appropriate measures and legal avenues which might lead to justice and assist closure.
- 6.51** Unfortunately, the family did not have the benefit of any measured and balanced legal advice. It is regrettable that it was not until the IFI sent the documents to MZD in October 2015 that he had the opportunity to consider the documentary record prepared by the military. Had he seen the strength of the evidential record, he may have hesitated before he committed himself to the strategy, urged upon him by the Al Bedanys, which was supported by the creation of a false document, to blame the BF.
- 6.52** The legal imperative of an Article 2 inquiry required under the ECHR has been met. But, in my view it has been the pursuit of compensation which has prevented closure and given oxygen to anger and bitterness. MZD had a more balanced approach when the incident occurred and he met with Major Routledge. His meetings with Major Routledge caused him to regard him as “...*a decent man and I respected him.*”<sup>312</sup> The Al Bedanys made protagonists of natural allies and persuaded the family to take a course which has delayed closure. A return to an assessment freed from the malign influence of the Al Bedanys will, in my judgment, be a step towards closure.

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<sup>312</sup> MZD MOD-83-0000279-Z paragraph 29

# Appendix 1: Confirmation of Appointment and Terms of Reference



From: Ben Sanders, DJEP Assistant Head (Public Inquiries & Judicial Reviews Strategy)

**MINISTRY OF DEFENCE**

1st Floor, Zone M, Main Building, Whitehall, London, SW1A 2HB

Email: [DJEP-PublicInquiriesAsstHd3@mod.uk](mailto:DJEP-PublicInquiriesAsstHd3@mod.uk) Telephone 020 721 81101

Sir George Newman  
Room C3/4  
Headquarters London District  
Horse Guards, London  
SW1A 2AX

Our Ref: DJEP/GLOBAL ISSUES/QUASI-INQUESTS

Date: 28 May 2015

Dear Sir George,

**CONFIRMATION OF APPOINTMENT**

On 27 January 2014 the Secretary of State for Defence wrote to appoint you to conduct such fatality investigations as the Ministry of Defence assigns to you from time to time with your agreement.

In accordance with the Secretary of State's decision that the establishment of such fatality investigations should be delegated to the Directorate of Judicial Engagement Policy, I am writing to confirm your appointment as Inspector in a third fatality investigation. This relates to the death of Muhammad Abdul Ridha Salim. The terms of reference are annexed to this letter.

Mr Salim died in the Czech Military Hospital on 7 November 2003, having been shot by a soldier from the 1<sup>st</sup> Battalion, the King's Regiment during an arrest operation at his brother-in-law's house in Basra the previous day. It is alleged that he was killed unlawfully. The Iraq Historic Allegations Team (IHAT) has conducted a pre-investigation assessment of the available evidence relating to this incident. It concluded that the evidential sufficiency test to justify charging the soldier with Mr Salim's murder or manslaughter had not been met, and that no further viable lines of enquiry existed. This case has not been referred to the Director of Service Prosecutions.

As the Divisional Court emphasised, your investigation should be conducted expeditiously, proportionately, and economically. You are to produce and publish a report of your findings.

You will be paid a daily rate (or part thereof) equivalent to the scale of remuneration currently payable to a High Court Judge.

I am most grateful to you for accepting this responsibility.

Yours sincerely,

*Ben Sanders*

#### **ANNEX A: TERMS OF REFERENCE**

##### The Scope of the Investigation.

1. The investigation into the death of Muhammad Abdul Ridha Salim on 7 November 2003 ('the death') is to be conducted so as to ensure that, so far as possible, the relevant facts are fairly, fully and fearlessly investigated thereby ensuring the effective implementation of the right to life and accountability for the deaths and discharging the positive obligations of the State under Article 2 of the European Convention on Human Rights.
2. The investigation must be accessible to the family of the deceased and to the public, thereby bringing the facts to public scrutiny.
3. The investigation should look into and consider the immediate and surrounding circumstances in which the deaths occurred.
4. If circumstances demand it the investigation should extend to the instructions, training, and supervision given to the soldiers involved in the circumstances in which the deaths occurred.
5. Where facts are found in connection with the instructions, training and supervision given to the soldiers, consideration should be given to whether it is proportionate or necessary to make recommendations on the issues raised taking into account the extent to which those issues have already been considered by the Ministry of Defence or other inquiries.
6. The investigation is to be conducted so as to bring to light all the facts, including failures on the part of the State and facts from which such failures could be properly inferred.

##### The Conduct of the Investigation.

7. The procedure and the conduct of the investigation are to be such as the Inspector may direct so as to achieve the aims and purposes set out above and to comply with the terms of the Court's judgements, Orders and directions.
8. The Inspector will draw up and publish the procedures which are to be followed to progress the investigation. In this regard he will follow the guidance given by the Court about the extent to which legal representation will be necessary, the questioning of witnesses and the opportunity to be given to the next of kin to raise lines of inquiry.
9. The Inspector will from time to time consider and keep under review the need for procedures to be made public in connection with any of the aims and purposes of the investigation.
10. The Inspector has the power to require any person or organization to provide evidence in writing, to produce relevant material in their possession or control and to attend a public hearing to give oral evidence.
11. The Inspector is to commence his investigation by considering all the relevant documentation in the possession of the Ministry of Defence and any relevant information emanating from the Iraq Historic Allegations Team (IHAT) and Service Prosecution Authority.
12. Having considered all the documents which are to be supplied to him and any further documents or information which he may have requested the Inspector will decide what needs to be disclosed to interested persons, the next of kin of the deceased or the public to enable the investigations to be accessible and subject to public scrutiny.

13. Where the Ministry of Defence considers publication or disclosure would be damaging to national security, international relations of the State, or the safety of any individual it shall bring its considerations to the notice of the Inspector who, having heard such representations from the Ministry as may be necessary, will determine the extent to which publication or disclosure is required in order to achieve the aims and purpose of the investigations.
14. At the conclusion of an investigation the Inspector will produce a written report which sets out:
  - a. a narrative account of the circumstances in which the death occurred; and
  - b. any recommendations he has decided to make.
15. The report will not be concerned to determine or address any person's criminal or civil liability. But the investigations are not to be inhibited by the likelihood of liability being inferred from the facts found or recommendations made.

## Appendix 2: Chronology of the Investigations

Date	Event	Reference
<b>2004</b>		
14 December	Judgment of Divisional Court in <i>Al Skeini and ors v Secretary of State for Defence</i>	[2005] 2 WLR 1401
<b>2005</b>		
21 December	Judgment of Court of Appeal in <i>Al Skeini and ors v Secretary of State for Defence</i>	[2007] QB 140
<b>2007</b>		
13 June	Judgment of House of Lords in <i>Al Skeini and ors v Secretary of State for Defence</i>	[2008] 1 AC 153
<b>2011</b>		
7 July	Judgment of ECtHR in <i>Al Skeini v UK</i>	(2011) 53 EHRR 18
<b>2015</b>		
28 <sup>th</sup> May	Sir George Newman appointed as Inspector with conduct of the Investigation into the death of Mr Salim and provided with Terms of Reference.	Letter from Ben Sanders at MoD. (Appendix 1)
1 <sup>st</sup> June	IHAT provide disclosure to IFI	
23 <sup>rd</sup> June	IFI request disclosure from PIL of all documents relevant to the Investigation.	
10 <sup>th</sup> July	PIL disclose the following documents: <ul style="list-style-type: none"> <li>• Routledge letter and Arabic translation, referred to as exhibit FZD1 of FZD's statement dated 23<sup>rd</sup> February 2004.</li> <li>• Iraq Police Investigation including statements of FZD, MZD and AIS to the Investigative Court of Al-Maqaal in 2003 ('the Police Report')</li> </ul>	
23 <sup>rd</sup> July	IFI request PIL to inform the Inspector when they received the Police Report.	
30 <sup>th</sup> July	IFI instructs QC Law to assist the Investigation by identifying, making contact with and providing assistance to witnesses in Iraq.	
31 <sup>st</sup> July	PIL inform the IFI that they received the Police Report from FZD during the taking of her civil claim witness statement in February 2013. <ul style="list-style-type: none"> <li>• PIL disclose the following statements dated 18<sup>th</sup> February 2013:</li> <li>• FZD (includes Routledge letter as exhibit FCDA/2; Police Report as FCDA/3)</li> <li>• MZD (includes Routledge letter and Arabic translation as exhibit MZDA/2)</li> <li>• EZD</li> </ul>	

4 <sup>th</sup> August	Joint statement by FZD and MZD created by MZD.	
4 <sup>th</sup> /5 <sup>th</sup> August	IFI request from PIL all documents and potentially relevant documents and information pertaining to the witness statements disclosed on 31 <sup>st</sup> July including any pleadings, proceedings through the Iraqi Courts, as well as any relevant or potentially relevant information in PILs possession or control.	
7 <sup>th</sup> August	The Inspector makes a public statement with regard to establishing a process for prompt disclosure.	<a href="http://www.iraq-judicial-investigations.org/latest/index.aspx">http://www.iraq-judicial-investigations.org/latest/index.aspx</a>
12 <sup>th</sup> August	<p>PIL disclose the following documents:</p> <ul style="list-style-type: none"> <li>• The Al Skeini Grand Chamber judgment</li> <li>• The index to the bundle of materials for the Grand Chamber hearing of 9 June 2010</li> <li>• ECtHR Statement of Facts</li> <li>• House of Lords Statement of Facts and Issues</li> </ul> <p>Included in disclosure were:</p> <ul style="list-style-type: none"> <li>• Death certificate of Mr. Salim</li> <li>• Joint report by FZD and MZD and PIL's translation</li> <li>• Routledge letter in Arabic and PIL's translation</li> </ul>	
21 <sup>st</sup> August	<p>IFI request from PIL the following Al Skeini documents:</p> <ul style="list-style-type: none"> <li>• Applicants' Submission and Annexes (together with any appendices) - 31 March 2010</li> <li>• Government's Observations - 31 March 2010</li> </ul>	
24 <sup>th</sup> August	PIL provide English translation of the death certificate of Mr Salim.	
27 <sup>th</sup> August	PIL disclose Applicants' Submission and Annexes – 31 March 2010 and Government's Observations - 31 March 2010.	
1 <sup>st</sup> September	IFI request PIL to provide information regarding the provenance of the two Arabic documents (the Joint report by FZD and MZD and the Routledge letter) disclosed on 12 <sup>th</sup> August.	
9 <sup>th</sup> September	IFI request PIL to disclose Appendices to the Applicant's Submission and Annexes that were lodged at the ECtHR (fourth section) Application No: 55721/07.	
11 <sup>th</sup> September	<p>PIL confirm they are unable to state when the FZD and MZD Joint Report was first given and in what language, but confirm that on the 5<sup>th</sup> August MZD emailed them the Arabic documents disclosed on 12<sup>th</sup> August. PIL confirm they translated these on 3<sup>rd</sup> September.</p> <p>PIL also state that they carried out '<i>an e-disclosure exercise in relation to PIL's public law claims as lodged on the Claims Register with the Administrative Court Office.</i>' in which the Director of Service Prosecutions (DSP), the IHAT and the Government Legal Department (GLD) were provided with '<i>all supporting documents that PIL has in its possession</i>'</p>	



The Iraq Fatalities Investigation

15 <sup>th</sup> September	IFI request that PIL provide list of all documents disclosed including information regarding how the statements were taken, when taken and when provided to PIL.	
17 September	PIL disclose documents as requested on 9 <sup>th</sup> September 2015.	
18 <sup>th</sup> September	PIL provide radio log sheets.	
21 <sup>st</sup> September	PIL provide CD copy of the funeral procession of Mr Salim on 8 <sup>th</sup> November 2003 together with notes identifying individuals and dialogue in the footage.	
22 <sup>nd</sup> September	IFI request PIL to provide explanation for failure to disclose statements by EZD, FZD and MZD taken in February 2013.	
8 <sup>th</sup> October	Attorney General confirms that undertaking given in respect of the Investigations into the deaths of Mr Abdullah and Mr Sai that no evidence given before the IFI would be used in evidence against that person in any subsequent criminal proceedings applies to soldiers giving evidence to the IFI in respect of the death of Mr Salim.	MOD-83-0000311-Z (Appendix 7)
13 <sup>th</sup> October	PIL state that late disclosure of February 2013 statements was due to an erroneous belief that they should not be disclosed to any party other than the MOD pursuant to an MOU entered into with the MOD on 7 <sup>th</sup> March 2013.	
14 <sup>th</sup> October	The Inspector releases a public statement regarding the progress of the investigation and the respective roles of the IFI and the IHAT.  IFI requests Chief Prosecutor at the ICC provide an assurance of non-use of self-incriminating evidence given by any soldiers to the IFI in any subsequent prosecution of them in the ICC.	
13 <sup>th</sup> November	The Inspector interviews MZD via Skype.	
24 <sup>th</sup> November	The Inspector makes a ruling regarding calling the witness Ryan Jones.	
27 <sup>th</sup> November	Hearing in London at which oral evidence of the following witnesses is heard: <ul style="list-style-type: none"> <li>• Lt Col Simon Routledge</li> <li>• Andrew Price</li> <li>• Edward Morris</li> <li>• Ryan Jones</li> <li>• SO11</li> </ul>	
30 <sup>th</sup> November	Hearing in London at which oral evidence of the following witnesses is heard: <ul style="list-style-type: none"> <li>• SO14</li> <li>• MZD</li> <li>• EZD</li> <li>• FZD</li> <li>• AIS</li> </ul>	
8 <sup>th</sup> December	Chief Prosecutor at the ICC provides undertaking sought by IFI on 14 October.	

2016		
29 <sup>th</sup> January	IFI request PIL to disclose information and relevant documents in connection with witness statement of FZD dated 23 <sup>rd</sup> February 2004 lodged in the Judicial Review proceedings.	
3 <sup>rd</sup> February	PIL disclose following documents: <ul style="list-style-type: none"> <li>• FZD signed witness statement dated 21<sup>st</sup> June 2004</li> <li>• Witness Statement of Philip Josph Shiner dated 18<sup>th</sup> May 2004 and exhibits:               <ul style="list-style-type: none"> <li>○ PJS1 – Client Questionnaire</li> <li>○ PJS2 – Client Questionnaire in Arabic with answers in Arabic by FZD. Also includes short form statements in Arabic by FZD and MZD.</li> </ul> </li> </ul>	
4 <sup>th</sup> February	PIL disclose translation of PJS2.	
10 <sup>th</sup> February	IFI submit list of questions regarding process for taking of witness statements in February 2013.	
16 <sup>th</sup> February	PIL respond to letter of 10 <sup>th</sup> February setting out process of taking witness statements in February 2013.	

## Appendix 3: Chronology of events relating to the circumstances surrounding the death of Mr Salim

Date	Event	Reference
<b>2003</b>		
<b>November</b>		
<b>5th</b>		
Midday	Al Bedanys raid MZD's office.	IFI MZD 13/11/15, p.3, line 21 – p.16, line 25
17.00/17.30	Drive-by shooting of MZD's house	IFI MZD 13/11/15, p.17, line 1 – p.17, line 7; p.20, line 12 – p.21, line 7  Watchkeeper's Daily Brief MOD-83-0000250-Z
c.17.45	Police attend MZD's house.	IFI MZD 13/11/15, p.27, lines 2 – 4
22.00-23.25	'Walk-in' provides info that 10-15 armed men at a house nearby and planning an attack on Camp Cherokee.	SO12 MOD-83-0000260-A para 4; Watchkeeper's Daily Brief MOD-83-0000250-Z; Post Incident Report MOD-83-0000248-Z page 1
c.23.55	Maj Routledge, SO12 and SO13 carry out 'recce' of target house in civilian car with interpreter and walk-in.	Routledge MOD-83-0000263-A, para 13; SO12 MOD-83-0000260-A, para 7; Post Incident Report MOD-83-0000248-Z page 1; Watchkeeper's Daily Brief MOD-83-0000250-Z; Watchkeeper's log MOD-83-0000307 serial 068
<b>6th</b>		
	Maj Routledge gives battle orders for a search and arrest operation against target house.	Post Incident Report MOD-83-0000248-Z page 1.
00.10-00.15	BG Ops Officer confirms authority granted to conduct the op across the BG boundary.	Post Incident Report MOD-83-0000248-Z page 1; Watchkeeper's log MOD-83-0000307 serial 068

Appendix 3: Chronology of events relating to the circumstances surrounding the death of Mr Salim

00.20	C Coy sets off from Camp Cherokee in 1 Warrior and 4 Snatch Land Rovers.	Post Incident Report MOD-83-0000248-Z, Serial 1; IFI Routledge 27/11/15 p.17 lines 14-20
00.33 (MZD says the Army arrived at 23.30)	C Coy arrives at house of MZD.	Watchkeeper's Daily Brief MOD-83-0000250-Z IFI MZD 13/11/15, p.29, lines 3 – 25
	Unsuccessful soft knock on gate of target house. SO13's Snatch forces open gate.	Post Incident Report MOD-83-0000248-Z, Serials 2-3; SO13 MOD-83-0000258-A para 30
	SO11 and 10A dismounts enter the courtyard. SO11 conducts 'hard knock' entry to the building.	Post Incident Report MOD-83-0000248-Z, Serials 4-5;
c.00.34	SO11 encounters Mr Salim and AIS on the stairwell. Mr Salim shot in the stomach by SO11.	Post Incident Report MOD-83-0000248-Z, Serial 10; SO11 MOD-83-0000262-A, para 21 Watchkeeper's log MOD-83-0000307 serial 003
00.56-01.05	Mr Salim taken to Czech Military Hospital.	Post Incident Report MOD-83-0000248-Z, Serial 17; Watchkeeper's log MOD-83-0000307 serial 004
c.02.00	MZD informs Maj Routledge that house attacked twice earlier in the day and they know the house where attackers live.	Routledge MOD-83-0000263-A, para 28; Post Incident Report MOD-83-0000248-Z, Serial 19; Watchkeeper's log MOD-83-0000307 serial 004
c.02.33	Maj Routledge visits Al-Bedany house in Door Al-Naft. Khaled Al-Bedany and his brother confirm the existence of a feud with MZD.	Post Incident Report MOD-83-0000248-Z, Serial 20; Watchkeeper's log MOD-83-0000307 serial 009
	MZD reports incident to Al-Maaqal Police Station.	MOD-83-0000299-Z
<b>7th</b>		
	Mr Salim dies.	SO14 MOD-83-0000268-A para 22
<b>9th</b>		
	Routledge writes letter in English to Mr Salim's family.	MOD-83-0000176-Z

<b>10th/11th</b>		
	Uncle of Khaled Al-Bedany gives MZD Arabic translation of Routledge letter.	IFI MZD 30/11/15 p.18, lines 1-10; p.20, lines 16-19
<b>Thereafter</b>		
	MZD lodges Arabic translation of Routledge letter at Al-Maaqal Court.	Email from MZD 18/2/16

## Appendix 4: List of persons named in the Investigations

### Military/ex-military personnel<sup>1</sup>

Lt Col Ciaran Griffin	Lieutenant Colonel ('Lt Col') Griffin was the Commanding Officer ('CO') of 1 KINGS in November 2003 and author of the Report on Shooting Incident dated 6 November 2003.
Maj Simon Routledge	Major ('Maj') Routledge was the Officer Commanding ('OC') of C Company ('C Coy') in November 2003. Maj Routledge interviewed the walk-in and went on the recce to Mr Zuboon's house on 5/6 November 2003. Maj Routledge obtained permission from Battle Group Headquarters ('BGHQ') to cross their Area of Operations ('AO') to investigate the house of Mr Zuboon and led the search and arrest operation. He authored the Post Incident Report dated 6 November 2003.

### Soldiers

SO11	SO11 held the rank of Sergeant ('Sgt') in November 2003, and was the Platoon Sgt of 7 Platoon ('7 PI'), C Coy, 1 KINGS. SO11 was first into the house of Mr Zuboon and fired the fatal shot at Mr Salim.
SO12	SO12 held the rank of Colour Sergeant acting as Warrant Officer ('WO') in November 2003, with duties including acting as intelligence officer for C Coy. SO12 received the information initially from the walk-in, and also went on the recce.
SO13	SO13 was Second Lieutenant ('2Lt') and Platoon Commander ('PI Cmdr') of 7 PI in November 2003. SO13 attended the O Group meeting on 5 November 2003 at which the information from the walk-in was disseminated, and also went on the recce. SO13 led 7 PI during the operation, and instructed his Snatch to force the gate open.
SO14	SO14 was a Corporal ('Cpl') and Combat Medical Technician ('CMT') seconded to C Coy in November 2003 who administered First Aid to Mr Salim.

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<sup>1</sup> Ranks indicated are those at the relevant period and not the individual's current rank.

Lt Tony Calunniato	Lt Calunniato was in C Coy in November 2003 and named in the witness statement of SO14 as possibly being on the op on the 5/6 November.
Ian Fleming	Ian Fleming was named in the statement of SO14 dated 20 November 2014 as a member of the Territorial Army ('TA') and driver of the ambulance that took Mr Salim to hospital.
Kgn Michael Heyes	Kgn Heyes was a rubber baton gunner in 7 PI in November 2003 who recalls a raid on a house.
Cpl Johnson	Cpl Johnson was part of the op on the 5/6 November 2003 and is named in the Post Incident Report as being one of the soldiers who, with Sgt Price, escorted Mr Salim to hospital.
Kgn Ryan Jones	Kgn Jones was in C Coy and indicated as being part of the operation to Mr Zuboon's house on the 5/6 November 2003.
Pte Grant Leech	Pte Leech was a member of the Territorial Army ('TA') in C Coy, 1 KINGs and drove one of the Snatch Land Rovers to Mr Zuboon's house on the 5/6 November 2003. Pte Leech remained inside his vehicle during the operation.
Kgn Edward Morris	Kgn Morris (sometimes mistakenly referred to as 'Moore' or 'Morrison') was in C Coy indicated as being part of the operation to Mr Zuboon's house on the 5/6 November 2003.
Sgt Andrew Price	Sgt Price was the Warrior Sgt of 7 PI in November 2003 and went on the operation to Mr Zuboon's house but was outside at the time of the shooting. Sgt Price was one of the soldiers, along with SO14, who took Mr Salim to the hospital.
Cpt Joseph Rawsthorne	Cpt Rawsthorne is named in the witness statement of Andrew Price as being the second-in-command ('2iC') to Major Routledge.
Cpt Richard Vines	Cpt Richard Vines was Maj Wilson's Ops Officer who was with Maj Routledge on the op on the 5/6 November 2003.

Maj Alex Wilson	Maj Wilson was part of the Queen's Royal Hussars and with Maj Routledge on the op on the 5/6 November 2003.
Cpl Raymond Wright	Cpl Wright was 2 <sup>nd</sup> Commander in C Coy based in Camp Cherokee in November 2003. Cpl Wright was part of the Cordon at the back of Mr Zuboon's house on 6 <sup>th</sup> November 2003.

**Iraqi witnesses<sup>2</sup>**

Entesar Abdullah	Wife of Mahmood Zuboon. Entesar Abdullah was
Al-Mazhem/Intisar	at her home when Mr Salim was shot.
Abdul Bakay	('EZD')
Khaled Al Bedany ('KAB')	Iraqi civilian involved in dispute with Mr Zuboon on 5 November 2003.
Rahid Al Bedany ('RAB')	Brother of Khaled Al Bedany.
Fatima Zabun Dahesh ('FZD')	Widow of Mr Salim and sister of Mahmood Zuboon.
Ahmed Ibrahim Sanouh/Ahmed Ibrahim Senouha ('AIS')	Nephew of Mr Zuboon who was at his house when Mr Salim was shot.
Mahmood Zuboon	Owner of the house in which Mr Salim was shot
Dahesh/Mahmood	and brother of Fatima Zabun Dahesh.
Zuboon Dahsh Al-Akhrass ('MZD')	Mahmood Zuboon was at home when Mr Salim was shot.

**Miscellaneous**

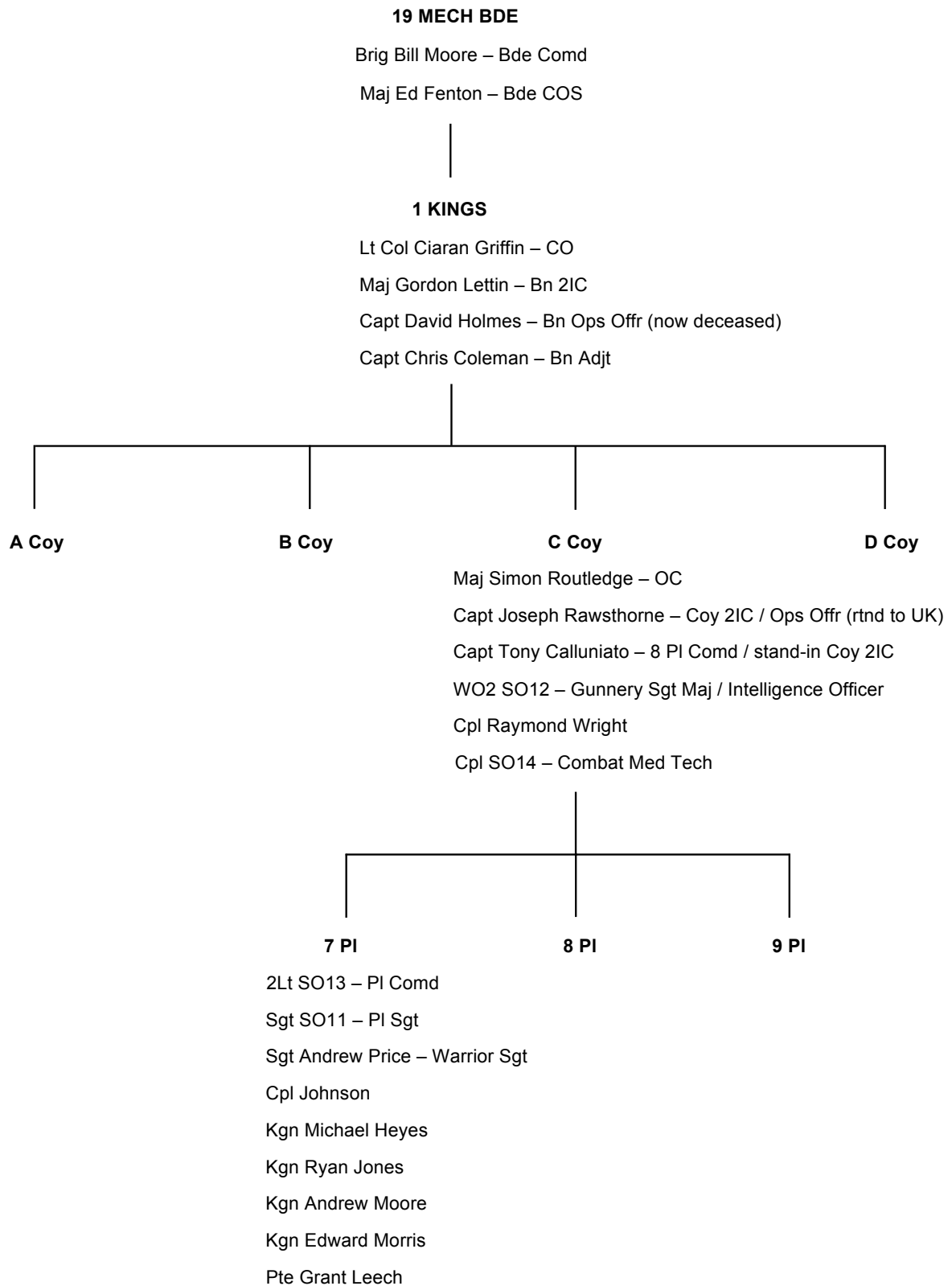
[redacted]	Interpreter to C Coy who interpreted the information from the walk-in.
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<sup>2</sup> The last name of Iraqi witnesses is often a tribal name and may not have been used in the text of the Report. Variations in spelling of the surnames occur as a result of different translations from Arabic.



# Appendix 5: Chain of Command for 1 KINGS

## Simplified Chain of Command Diagram: 1 KINGS (June – November 2003)



# Appendix 6: The undertaking provided by the Prosecutor of the International Criminal Court



Le Bureau du Procureur  
The Office of the Prosecutor

Sir George Newman  
Inspector  
The Iraq Fatalities Investigation  
HQ London District  
Horse Guards  
London SW1A 2AX  
United Kingdom

Ref.: OTP2015/047257

Date: 8 December 2015

Dear Sir George Newman,

I write in response to your letter dated 14 October 2015, requesting a non-use undertaking in relation to evidence given in your investigation by the soldiers alleged to have participated in the immediate circumstances leading to the death of an Iraqi national, Muhammad Abdul Ridha Salim and further requesting a similar assurance with respect to future cases referred to the Iraq Fatality Investigations (“IFI”) on condition that these are notified to my Office.

I recall that on 6 October 2014, you requested a similar assurance in relation to evidence given to your investigation by the soldiers alleged to have participated in the immediate circumstances leading to the deaths of Mr Nadheem Abdullah in May 2003, and of Mr Hassan Abbad Said in August 2003. Following a careful legal consideration of that request, I concluded that such an undertaking would not violate any of my obligations under the Rome Statute, as explained in my letter of 2 December 2014. In particular, I determined that in the particular circumstances of the IFI, such an assurance of non-use of self-incriminating evidence would be in accordance with the object and purpose of the Rules of Procedure and Evidence of the International Criminal Court (“ICC”), in particular Rule 74.

Likewise, with reference to your request of 14 October 2015, I can provide a similar assurance that any self-incriminating evidence provided to the IFI by any of the soldiers alleged to have participated in the immediate circumstances leading to the death of Mr Muhammad Abdul Ridha Salim in November 2003 will not be used by my Office either directly or indirectly as incriminating evidence in any possible subsequent prosecution before the ICC of any soldier that provided that evidence.

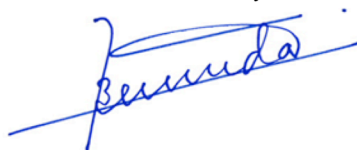
I am also willing to consider positively future requests with respect to similar cases of alleged participation of UK soldiers in the immediate circumstances leading to the death of Iraqi nationals

under investigation by IFI. However, such cases should first be notified to my Office so that I am in a position to consider whether to grant a similar assurance on a case by case basis.

Let me reiterate, however, that the incidents which form the subject of your investigations fall within the scope of my Office's preliminary examination. I am therefore unable to provide an assurance of non-prosecution in relation to those incidents. An assurance not to prosecute particular individuals would not be consistent with my statutory obligations, particularly at the preliminary examination stage, where there are as yet no individual suspects and the contours of my potential cases are only defined in very general terms. Nonetheless, I should recall that my prosecutorial policy, as a general rule, is to investigate and prosecute individuals who bear the greatest responsibility for the most serious crimes, the determination of which is based on the evidence that emerges in the course of an investigation. Thus, as a matter of prosecutorial discretion, I would normally select for prosecution those situated at the highest rather than the lowest echelons of responsibility.<sup>1</sup>

As with previous cases, I hope that this letter will facilitate your efforts to investigate and establish the circumstances that led to the death of Mr Salim and other possible Iraqi nationals, and that this assurance will help to provide the soldiers you wish to interview with additional clarity and assuage their concerns regarding prospects of being prosecuted before the ICC on the basis of any evidence they give before the IFI.

Yours sincerely,



Fatou Bensouda

Prosecutor

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<sup>1</sup> See ICC Office of the Prosecutor, "Strategic Plan June 2012-2015," 11 October 2013, at [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Documents/OTP%20Strategic%20Plan.pdf](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Documents/OTP%20Strategic%20Plan.pdf), pp. 13-14; and "OTP Strategic Plan 2016-2018", 16 November 2015, pp.15-16 at [https://www.icc-cpi.int/iccdocs/otp/070715-OTP\\_Strategic\\_Plan\\_2016-2018.pdf](https://www.icc-cpi.int/iccdocs/otp/070715-OTP_Strategic_Plan_2016-2018.pdf).

# Appendix 7: The undertaking provided by the Attorney General's Office

MOD-83-000311-A

Undertaking request - Iraq Fatality Investigations

Page 1 of 1

**Undertaking request - Iraq Fatality Investigations**

**From:** [redacted]@attorneygeneral.gsi.gov.uk  
**To:** "ben.dustin@iraq-judicial-investigations.org" <ben.dustin@iraq-judicial-investigations.org>  
**Cc:** "SPA-HQ-EA [redacted]@defence.gsi.gov.uk" [redacted]@defence.gsi.gov.uk>, [redacted]@cps.gsi.gov.uk, [redacted]@cps.gsi.gov.uk

**Priority:** Normal  
**Date:** 08/10/2015 14:38

Dear Ben,

I writing to inform you that, after consulting the Director of Public Prosecutions and the Director of Service prosecutions, the Attorney General on 4<sup>th</sup> August 2014 can be drawn to the attention of the soldiers giving evidence before Sir George in the investigation into the deceased so I no new letter is needed.

Please call me if there is anything further you wish to discuss.

Regards,



[redacted]  
Head of Superintendence  
Criminal Law & Policy Team  
[redacted]@attorneygeneral.gsi.gov.uk 020 7271 2403  
20 Victoria Street, London SW1H 0NF

**From:** ben.dustin@iraq-judicial-investigations.org [mailto:ben.dustin@iraq-judicial-investigations.org]  
**Sent:** 22 September 2015 14:08  
**To:** [redacted]  
**Subject:** Re: Undertaking request

Dear [redacted],

Please find attached a current witness list relating to the case currently under investigation.

Sir George is establishing contact with the ICC with a view to obtaining a suitable assurance in similar terms to those obtained by Sir George. Sir George is intending to interview witnesses from the week commencing the 12th October 2015, and accordingly receipt of the

Kind regards,

Ben

\*\*\*\*\*  
The Attorney General's Office is located at 20 Victoria Street, London SW1H 0NF.  
Visit our website at [www.gov.uk/ago](http://www.gov.uk/ago).  
This message is the property of the Attorney General's Office.  
If you are not the intended recipient, please notify us and delete it.  
AGO emails are recorded, stored and monitored.  
\*\*\*\*\*

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Vodafone in partnership with Symantec. (CC) Communications via the GSI may be automatically logged, monitored and/or recorded for legal purposes.

image001.png	Content-Type: image/png Size: 4.02 KB
image002.png	Content-Type: image/png Size: 178 bytes

# Appendix 8: Rules of Engagement dated July 2003

MOD-83-000298-A

UK CONFIDENTIAL RELEASABLE MND(SE)

ANNEX F TO <sup>320</sup>  
MND(SE) IRAQ MOU  
DATED JUL 03

## MND(SE) ROE PROFILE

Draft ROE Profile for Coalition operations within the UK AO in Iraq

Draft is based on the definitions and principles of MC 362 (Nov 99), amended where required for this particular mission at Appendix 1

OPER/TELIC MND(SE)

MSGID/PJHQ ROEAUTH OP MND(SE) 001

REF/A/MC 362 (9 Nov 99)

REF/B/MOU between participant nations dated 4 Jul 03

REF/C/1907 Hague Convention IV Respecting the Laws And Customs of War On Land

REF/D/Geneva Convention Relative to the Protection of Civilian Persons In Time Of War 1949

## ROE AUTHORITY

Initial profile for units allocated to OP TELIC MND(SE). Profile is effective DTG JUL 03 (to be issued separately)

## AREA

The territory, airspace and territorial seas of Iraq and the High Seas of the Arabian Gulf (north of 25N)

## GENERAL

1. This profile reflects the Command and Control arrangements agreed between participating nations at Ref B. TCNs will apply this ROE profile subject to national clarification, where appropriate. National clarifications to the MND(SE) ROE profile are made on the basis that such clarification will not be more permissive than the MND(SE) ROE profile and will be communicated to MND(SE) force commander.
2. NATO ROE signal formatting and paragraph titling have been removed to improve clarity.
3. This ROE is based upon CJFLCC/CJTF(I)/CJTF 7 assessment of the current situation on the ground in Iraq. The Coalition Provisional Authority (CPA)/Iraqi Interim Administration's (IIA) control of Iraq is likely to remain fragile with force protection issues dominating the scope of ROE. In view of the unpredictability of the situation in Iraq, MND(SE) force commander must have the delegated authority to take immediate action to emergent threats to ensure adequate force protection.

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UK CONFIDENTIAL RELEASABLE MND(SE)

UK CONFIDENTIAL RELEASABLE MND(SE)

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AMPLIFICATION

1. MND(SE) military objectives are to be achieved within the constraints of Ref B with IIA security forces support where appropriate. Ops are likely to take place in an initially low-medium acceptance environment.
2. In such an environment MND(SE) force commander must be able to employ force as necessary to:
  - a. Fully support the actions of the IIA in maintaining security and restoring permanent government institutions by acting as a stabilising influence.
  - b. Demonstrate resolve.
  - c. Ensure the safety of his deployed force by:
    - (1) Protecting designated persons and property.
    - (2) Protecting designated locations.
3. In determining the appropriate level of force to be applied, MND(SE) force commander is to apply the principles of the Law of Armed Conflict to the use of minimum force:
  - a. Military Necessity.
  - b. Proportionality.
  - c. Distinction.
  - d. Humanity.
4. Guiding principles for MND(SE) are that at all times MND(SE) forces must:
  - a. Respect local social and religious customs
  - b. Show no favouritism toward any ethnic group
  - c. Show courtesy in executing duties
  - d. Respect private property
5. Where appropriate MND(SE) maritime units may apply the provisions of UNCLOS 110 (to rule 171)
6. Nothing in these ROE shall be construed as limiting a commander's or individual's inherent right of self-defence as provided for under national and international law.

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**COMPLETE PROFILE/OP TELIC MND(SE) SRL 001**

**PPI/YANKEE (MAINTAIN STATUS QUO)**

**ONE ZERO ONE (101)**

Entry into the territory, airspace, territorial waters and internal waters of Iraq, in support of Op MND(SE) is authorised.

**ONE THREE TWO (132)**

Use of minimum force to prevent boarding, detention, or seizure of MND(SE) aircraft, vehicles, vessels or MND(SE) designated property is authorised.

**ONE FOUR ONE (141)**

Intervention to implement MND(SE) direction of non-military activities is authorised to the extent necessary for mission execution

**ONE FIVE ONE (151)**

Passing of warnings to any person, aircraft, vehicle or vessel by any means in circumstances where MND(SE) forces or elements under MND(SE) protection or the mission are threatened or where the passing of warnings is necessary for purposes of execution of the mission is authorised.

**ONE SIX ONE (161)**

Ordering of diversion(s) to any aircraft, vehicles, vessels or persons in circumstances where the ordering of diversion is necessary for purposes of execution of the mission is authorised.

**ONE SIX TWO (162)**

Ordering of diversion(s) to non-MND(SE) ships not complying with rights of innocent passage in Iraqi territorial seas, and in internal waters is authorised

**(L)ONE SEVEN ONE (171)**

If unopposed, boarding of all vehicles, vessels in internal waters or aircraft for MND(SE) mission execution is authorised. Use of minimum force up to but not including deadly force is authorised.

**(M)ONE SEVEN ONE (171)**

If unopposed, boarding of all vessels (compliant and non-compliant) outside Iraqi internal waters for MND(SE) mission execution is authorised. Use of minimum force up to but not including deadly force is authorised.

**(L)ONE SEVEN TWO (172)**

If opposed, boarding of all vehicles, vessels in internal waters or aircraft for MND(SE) mission execution is authorised. Use of minimum force is authorised.

**ONE EIGHT TWO (182)**

Detention of a person who is suspected of committing a criminal offence is authorised.

**ONE EIGHT TWO (182)**

Detention (internment) of a person where necessary for imperative reasons of security is authorised.

**ONE EIGHT FOUR (184)**

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UK CONFIDENTIAL RELEASABLE MND(SE)

**UK CONFIDENTIAL RELEASABLE MND(SE)**

Seizure of weapons, ammunition, cargo, products or other similar property or equipment in the possession of any person detained/interned by MND(SE) forces is authorised. 323

**ONE EIGHT FIVE (185)**

Seizure of aircraft, vessels or vehicles of persons detained under Rules 182 is authorised.

**ONE EIGHT SIX (186)**

Searches of persons, vehicles, aircraft, vessels and buildings to the extent necessary for the execution of the MND(SE) mission is authorised

**TWO TWO TWO (222)**

Use of all illuminants or illumination systems is authorised.

**TWO THREE TWO (232)**

Identification is to be established visually or by one or more of the following means: IFF (or other systems requiring a positive response from the unidentified unit), electro-optic, electronic warfare support measure, track behaviour, flight plan correlation, thermal imaging, acoustic intelligence, or other secure active/passive systems, including those from an off-board source, not requiring a positive response from the unidentified unit.

Note: Positive identification may be accepted from US/Coalition control agencies using established Operation TELIC / Iraqi Freedom/MND(SE) procedures and criteria

**TWO FOUR ONE (241)**

Movement of armament, display of small arms, firing weapons including small arms, operating helicopters and fixed wing aircraft, ECM equipment, laser target markers for training, exercises, equipment calibration to maintain operational effectiveness is authorised.

**TWO FIVE ONE (251)**

Conduct of simulated attacks against potentially hostile elements as a non-lethal escalatory warning option is authorised.

**TWO EIGHT ONE (281)**

Designation of targets by use of Laser Target Designation equipment is authorised.

**(M) TWO EIGHT TWO (282)**

Designation of targets by fire control radar for the purposes of height finding by maritime forces is authorised.

**(LA) TWO NINE THREE (293)**

Counter harassment to a similar extent and degree to that experienced by MND(SE) forces in the AO is authorised.

**(M) TWO NINE THREE (293)**

Counter harassment including riding off to a similar extent and degree to that experienced by any vessel is authorised.

**THREE TWO ONE (321)**

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**UK CONFIDENTIAL RELEASABLE MND(SE)**



UK CONFIDENTIAL RELEASABLE MND(SE)

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Use of riot control means where necessary for the purpose of controlling detainees and internees, is authorised.

**THREE TWO TWO (322)**

Use of riot control means where necessary for the conduct of Public Order Control is authorised.

**THREE THREE ONE (331)**

Use of force up to but not including deadly force to prevent interference with MND(SE) personnel during the conduct of their mission is authorised.

**THREE THREE TWO (332)**

Use of minimum force to defend designated non-MND(SE) forces/personnel is authorised.

**THREE THREE THREE (333)**

Use of minimum force to prevent the taking possession of or destruction of MND(SE) property or the weapons and ammunition and explosives seized in the execution of the MND(SE) mission is authorised.

**THREE THREE FOUR (334)**

Use of minimum force to defend against intrusion into Military Restricted Areas or other areas designated by an authorised commander is authorised.

**THREE THREE FIVE (335)**

Use of minimum force to control the movement and prevent the escape of PWs and persons detained/interned under rules 182 and 183 is authorised.

**THREE THREE SIX (336)**

Use of minimum force to secure the release of MND(SE) personnel, aircraft, vehicles(s), vessels or installation(s) or elements under MND(SE) protection following unlawful detention, or seizure is authorised.

**THREE THREE EIGHT (338)**

Use of minimum force to enforce compliance with diversion and/or boarding instructions is authorised.

**THREE THREE NINE (339)**

Use of covert actions in Iraq is permitted to the extent necessary for mission execution.

**THREE FIVE ONE (351)**

Deployment of indirect fire and crew-served weapon systems is authorised.

**THREE FIVE TWO (352)**

Use of indirect fire and crew-served weapon systems is authorised.

**THREE FIVE THREE (353)**

Use of demolitions in Iraq is permitted.

**THREE FIVE FOUR (354)**

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UK CONFIDENTIAL RELEASABLE MND(SE)

UK CONFIDENTIAL RELEASABLE MND(SE)

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Use of non-explosive obstacles in Iraq is permitted.

**THREE SEVEN FOUR (374)**

Unrestricted use of ECM is authorised.

**THREE EIGHT ZERO (380)**

Laying of anti-personnel mines is prohibited.

**FOUR TWO ONE (421)**

Use of minimum force against elements demonstrating Hostile Intent against MND(SE) forces or elements under MND(SE) protection is authorised.

Note: Hostile Intent is defined at Appendix 1.

**FOUR TWO TWO (422)**

Use of minimum force against elements, which commit or directly contribute to a hostile act against MND(SE) forces or elements under MND(SE) protection is authorised.

Note: Hostile Act is defined at Appendix 1

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UK CONFIDENTIAL RELEASABLE MND(SE)

CONFIDENTIAL - REL MCFI

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HQ MND (SE) SOI	Number	399
Subject: Policy for Apprehending, Handling and Processing of Detainees and Internees	Sponsor	Ch J3
	Last Updated	30 Sep 03

References:

- A. 1949 Geneva Convention IV relative to the Protection of Civilian Persons in Time of War
- B. MND(SE) ROE Profile - Annex F to MND(SE) Iraq MOU dated Jul 03
- C. HQ MND (SE) FRAGO 005 to MND (SE) OPO 03/03 Dated 031300DSEP03
- D. CPA Memorandum No 3 on Criminal Procedures dated 18 Jun 03

INTRODUCTION

1. Internment is permitted under Art 78 of Reference A where it is necessary for imperative reasons of security to restrict a person's liberty. It is distinct from detention which is the restriction of a person's liberty because they are suspected of criminal activity. Internees are not subject to the ordinary criminal system but their cases will be subject to review. The ROE at Reference B authorise internment and also detention, subject to individual Troop Contributing Nations' (TCN) declarations and clarifications.

2. This policy sets out the procedure for the handling of internees and detainees from the point of apprehension to the authorisation of continued detention, internment or release. It replaces previous instruction issued at Reference C. The aim of this policy is to ensure a common approach to internee and detainee handling across the MND(SE) AO.

DEFINITIONS AND CATEGORIES

3. The following definitions apply:

- a. Internees. Internees are persons whose liberty is restricted for imperative reasons of security.
- b. Detainees. Detainees are persons who are apprehended on suspicion of committing a criminal offence.

4. Categories of detainees/internees. Guidance as to whether an apprehended person should be categorized as an internee or a detainee is contained at Annex A. Those suspected of committing a criminal offence should be handed over to the IZ authorities to be dealt with under IZ criminal law wherever possible. Hand over is to be carried out as soon as possible and no later than 12 hours after the initial apprehension. In addition to handing over the person apprehended, all Apprehension Report and Complaint Statements, documents and any exhibits should be handed over to the IZ authorities. Where exhibits cannot be handed over for reasons of security the details and photographs of those exhibits should be handed over. Where a person is apprehended in relation to a criminal offence which also poses a threat to CF, he may be held at the Theatre Internment Facility (TIF) pending classification as a

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detainee or an internee once legal advice has been sought. Legal advice must always be sought from either Bde (NL BG) or HQ MND(SE) LEGADs where there is any doubt as to whether a person should be classified as an internee or a detainee.

5. Guarding and Holding of detainees/internees. Detained persons must be treated humanely and in accordance with International Law and National Standards, which for the UK is encapsulated in JSP 469 - Codes of Practice for Custody. Key points:

- a. On arrest, they are to be restrained using minimum force levels. National guidelines on the use of handcuffs should be applied, which for the UK is to the front of the body.
- b. At the earliest opportunity following arrest, the suspect should be handed over to a nominated Custody Officer, which for the UK is a member of the Regimental Provost Staff who has qualified at the Military Corrective Training Centre.
- c. The nominated Custody Officer is responsible for ensuring the safe treatment and handling of detainees and internees whilst in his care. A record of those individuals assuming responsibility for custody at each stage is to be maintained (see Annex J).

6. Juveniles. Individuals under the age of 18 are juveniles. The age of criminal responsibility under IZ law is 7. Juveniles between the ages of 7 and 15 who are detained on suspicion of committing a criminal offence should be handed to the IZ police. In addition to handing over the person apprehended, all Apprehension Report and Complaint Statements, documents and any exhibits should be handed over to the IZ authorities. As a matter of policy, juveniles of 15 years and below should not be interned. If it is considered necessary to intern a juvenile under the age of 16 for imperative reasons of security, chain of command guidance and legal advice must be sought from either Bde (NL BG) or HQ MND(SE) LEGADs prior to transfer to the TIF.

7. Sensitive detainees/internees. If it is proposed to detain or intern any individual whose apprehension would be regarded as sensitive due to their status or to detain or intern someone who is in a sensitive place then chain of command guidance and legal advice must be sought before the operation and before transfer to the TIF. This category includes individuals who are part of the political process, individuals of standing within the community (such as Judges, Doctors and other professionals) and third country nationals. A sensitive place includes religious buildings (such as mosques) and the offices of political parties.

#### ACTION

8. Apprehension. Internees or detainees may be apprehended as a result of either a pre-planned or a reactive operation.
  - a. Pre-planned op. A target pack is to be prepared detailing all the available intelligence relevant to the persons to be apprehended including a threat assessment, details of the proposed J3 operation and an assessment of the potential consequences of the operation. The pack will be submitted through the chain of command to J2 at Bde (NL BG) prior to submitting the operation for HQ MND(SE) J3 approval.

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b. **Reactive op.** Apprehension may also result from a response to an incident. If it is decided that it is necessary to intern the individual for imperative reasons of security, a J2 assessment of all the available intelligence is to be prepared at Bde (NL BG) level immediately following apprehension.

9. **Apprehension Report and Complaint Statement.** For both a planned and a reactive operation, apprehending soldiers should apprehend a person in accordance with the guidance contained at Annex A and should conduct the apprehension in accordance with the guidance on searching, apprehension and treatment of detainees and internees at Annex B and complete the Apprehension Report and Complaint Statement at Annex C, which should include the circumstances of the apprehension and the details of the offence alleged to have been committed. The purpose of this is to record the circumstances of any criminal offences so that it can be subsequently provided to the Investigating Magistrate to enable him to conduct his investigation. Guidance on the necessary content and assistance in the completion of the Apprehension Report and Complaint Statement should be sought from BG and Bde level MP staff. These are to be completed prior to the transfer of individuals by the BG to the TIF. A summary of the most serious offences under the IZ Penal Code and the IZ Criminal Procedures necessary for an IZ compliant investigation is at Annex D.

10. **Seized Property.** Any property, including conveyances and other forms of transport, which are seized from a person who is or is not apprehended, is to be fully documented and accounted for on the Apprehension Report and Complaint Statement. The purpose of this is to ensure that property can be preserved as evidence or returned to the owner as appropriate. If it is deemed necessary to dispose of seized property or to divert its use, then an estimate of the value of the property is to be included on the relevant documentation. A Receipt for the property is to be prepared, shown to the individual and then attached to the Apprehension Report and Complaint Report. A suggested format for the receipt is at Annex E. If the person is released and the property is still subject to confiscation or forfeiture the receipt is to be handed over to the person and a copy is to be attached to the Apprehension Report and Complaint Statement.

11. In order to ensure chain of custody requirements it is imperative that exhibit labels are utilised when seizing weapons, ordnance or property, including conveyances and other forms of transport. All such articles are to be appropriately tagged and noted on the Apprehension Report and Complaint Statement. The UK Service Police exhibit label is at Annex F.

12. **Handling and Tactical Questioning of Internees.** Instructions on the handling and Tactical Questioning (TQ) of Internees are at Annex G. At all stages of custody the procedures in this SOI and the specific guidance on searching, apprehension and treatment of detainees and internees at Annex B are to be strictly adhered to.

13. **Documentation.** The capturing Unit must give the apprehended person a completed copy of the Apprehension Notice and Complaint Statement for detainees or internees, which are at Annex H and I respectively. This informs them of the reason for their detention or internment and of their rights, including the right to have someone notified of their apprehension. The Unit must also complete the Detention/Internment Record at Annex J as soon as the Battle Group Internment Review Officer (BG IRO) or appropriate officer has reviewed the case and the individual has been categorised. Copies of the completed Annexes

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C, E, H or I & J are to be sent to both the TIF and J3 Ops HQ MND(SE) within 48 hours of apprehension. It is the responsibility of the BG IRO to ensure that this documentation is completed correctly and in the timescales laid down.

14. Investigating Magistrates. The IZ Criminal Justice System is an inquisitorial one in which the Investigating Magistrate (IM) directs the Police in the investigation and hears the evidence himself. All Apprehension Report and Complaint Statements and translations thereof must be produced by Units in all cases and be provided to the IM. Apprehending soldiers may subsequently be required to give evidence directly before the local IM who will take a note of the evidence himself. This requires the Unit to identify the IM in the District Court area where the offence took place.

15. BG Review. Within 8 hours of apprehension or as soon as possible thereafter, the BG IRO or appropriate officer must categorise the apprehended individual(s) and provide direction for the onward processing of them in accordance with the guidelines at Annex A.

16. Reports and Returns. All units are to provide details to J3 Ops at Bde (NL BG) on the numbers of individuals interned and detained each week and the collated details are to be provided to J3 Ops HQ MND(SE) by 1800hrs every Sunday in accordance with the format at Annex K. For individuals detained by BGs and released without further action only numbers are required, however, full details are required in all other cases, to include name, date of birth, alleged offence, police station/officer transferred to and the court dealing with the case. This is to enable follow up enquiries to be made to ascertain the effectiveness of the criminal justice system.

17. Transfer. The transportation security and welfare of apprehended persons prior to transfer to the TIF is the responsibility of the apprehending unit. Apprehended persons are to be transferred to the TIF within 14 hours of capture, or as soon as possible thereafter. The BG IRO or appropriate officer is to notify the UK Military Provost Staff (MPS) at the TIF of the number of personnel being transferred and the expected time of arrival. The TIF is open 24hrs for the receipt of internees, however as much notice as possible of transfers must be given to the MPS.

18. In-processing. In processing of captured personnel at the TIF is the responsibility of UK MPS who will allocate each individual a UK and a US Individual Serial Number (ISN). For auditing purposes, MPS at the TIF are to provide a list of all detainees/internees to J3 Ops at HQ MND(SE) on a weekly basis. Processed internees or detainees are not to be transferred to the control of another nation without seeking authority from HQ MND(SE).

19. Rights of Individuals. All detainees and internees are entitled to certain legal rights in accordance with Reference D. The capturing BG will discharge its obligations by the correct application of this policy, and specifically, the guidance at Annex B, the completion of Annex H or I and compliance with the timelines for handover to IZ Police or transfer to the TIF as appropriate. It is the responsibility of the IZ Police or the MPS staff at the TIF to accord individual detainees or internees the appropriate rights as detailed in Reference D.

20. Release. The apprehending unit retains responsibility for transporting internees and detainees back to their local areas on release. Apprehending units will be notified by HQ MND(SE) of the authorisation to release and are to liaise with the MPS at the TIF a minimum of 24hrs in advance to arrange collection.

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21. Flow diagram. A flow diagram illustrating the detainee and internee process is at Annex L. An outline of the chain of command responsibilities for the handling of detainees and internees is at Annex M.

#### TRAINING

22. In the prosecution of any criminal offence it is important that MND(SE) personnel gather evidence capable of admission in a hearing or trial before a court. As a result, training of MND(SE) in evidence gathering and handling is important. Training guidance on evidence and handling procedures is at Annex N. In addition, Bde level MP staff can provide assistance.

#### REVIEWS

23. General. The Detention and Internment Review Committee (DIRC) at HQ MND(SE) will review every case within 10 days of apprehension to ensure that the correct documentation, intelligence and evidence has been provided. All available evidence, intelligence and documentation must therefore be provided without delay.

24. Authority. COS HQ MND(SE) is the authority for all releases and for continued detention or internment up to 28 days from the date of apprehension. If release is authorised, the Form of Authority for the Release of Detainees and Internees at Annex O is to be completed by HQ MND(SE) and forwarded to the MPS at the TIF. GOC MND(SE) is the authority for continued detention or internment beyond 28 days. Individuals apprehended by a TCN may only be released with the express consent of that TCN.

25. MOUs. The release or transfer to another nation of any detainee or internee apprehended by a TCN must be in accordance with the MOU between the UK and the TCNs comprising MND(SE). The transfer of any detainee or internee by the UK to the US must be in accordance with the MOU between the UK and US.

#### CO-ORDINATING INSTRUCTIONS

26. Legal advice should be obtained from individual Bde (NL BG) or HQ MND(SE) LEGADs. POC are as follows:

- a. Comd Legal HQ MND(SE), Lt Col Barnett, on 5427 (PATRON) or (+965) 9117794 (mobile).
- b. HQ MND(SE) Legal Branch on 5413 (PATRON) and on Duty Mobile (+965) 9119341
- c. SO2 Legal 19 Bde on 8235 (PATRON) or (+965) 9115444 (mobile).
- d. SO2 Legal NL BG.
- e. SO3 Legal Garibaldi Bde.

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f. MPS at TIF (+965 6457432) or MND(SE) MP Branch 5451 (PATRON) or 960-3165 (SYNERGY).

27. HQ MND(SE) J3 SO2 Detainees/Internees will co-ordinate the meetings of the DIRC, and will be the POC for information being passed to HQ MND(SE).

Annexes:

- A. Categories of Captured Personnel
- B. Guidance on Searching, Apprehension and Treatment of Detainees and Internees
- C. Apprehension Report and Complaint Statement
- D. IZ Penal Code and Criminal Procedures - Summary of Significant Provisions
- E. Receipt
- F. Evidence Tag
- G. Instruction for the Handling and Tactical Questioning of Internees
- H. Apprehension Notice (for Detainees)
- I. Apprehension Notice (For Internees)
- J. Internment/Detainment Record
- K. Details of Captured Personnel Weekly Return
- L. Internee/Detainee Flowchart
- M. Chain of Command Responsibilities for the Handling of Detainees and Internees
- N. Training Guidance on Evidence Gathering and Handling
- O. Form of Release of Detainee Internee

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# Appendix 9: HQ MND SE Policy for the Recording and Investigation of Shooting Incidents

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**MND (SE)**  
فرقة متعددة الجنسيات  
(جنوب شرق)

**Headquarters Multinational Division (South East)**  
**British Forces Post Office 641**

Telephone Via Operator 9100      Military: Patron – 93616 5422  
Switchboard: Via MOD Whitehall Ext 100 (Insecure)  
Via MOD Whitehall 9299 86100 (Secure)  
Fax: Via Operator Ext 9100      Fax: 93616 5431 Patron

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Reference: J3/1260

See Distribution      Date: 28 Jul 03

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**POLICY FOR THE RECORDING AND INVESTIGATION OF SHOOTING INCIDENTS**

Reference:

- A. LANDSO 3203 (Third Revise) dated May 01
- B. DCOS/1800 dated 21 Jun 03

**INTRODUCTION**

1. With MND(SE) now engaged in stabilisation operations and operating under Phase 4 ROE it is necessary to implement a new policy for the recording and investigation of shooting incidents involving UK forces on OP TELIC II. This policy replaces that which was promulgated at Ref B.

**AIM**

2. The aim is to record and, where appropriate, to investigate shooting incidents and that there is transparency of this process. Soldiers must be clear and confident that if it is necessary to fire in accordance with the ROE then they must do so. Soldiers must also understand that a RMP investigation is only necessary if the circumstances warrant it. This policy will ensure that the Chain of Command maintains a record of all shooting incidents, that Commanding Officers have sufficient evidence upon which to determine the type and extent of investigation and to provide reassurance to soldiers of the lawfulness of their actions.

**DEFINITION**

3. A shooting incident is defined as, “An incident where shots have been fired by UK Forces resulting in the injury or death of a third party”. This does not include incidents where warning shots (which do not cause injury) are the only shots fired unless it is suspected that the individual has committed a disciplinary offence.

**GUIDANCE**

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4. Guidance on the circumstances under which crimes and serious incidents should be reported to the Police is contained in Ref A. This states that it is mandatory for Commanding Officers’ to report without delay to the RMP all crimes in which Service personnel are involved or are suspected

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to be involved. The fact that an incident has been reported to, or come to the notice of, another agency does not relieve the CO of the responsibility to report such incidents to the RMP.

POLICY – SHOOTING INCIDENTS

5. With immediate effect the current policy for the investigation of shooting incidents as defined above, is as follows:

a. All shooting incidents are to be reported to J3 Ops at MND(SE) immediately following the incident. COs' are to ensure that a serious incident report (SINCREP) is completed and submitted. J3 at MND(SE) will maintain oversight of all such incidents.

b. If the CO is satisfied that the soldier has acted lawfully and within the ROE on the basis of all the information available to him there is no requirement to initiate an RMP investigation. If this is the case the CO must record this decision in writing to Higher Authority, having sought the advice of the chain of command and legal advice. Guidance on the content of that report is at Annex A.

c. If, however, the CO is not satisfied or does not have sufficient information available to him then he must initiate an RMP investigation in order to obtain the necessary evidence upon which to make his decision. If the incident has resulted in death or serious injury then the investigation should be conducted by the RMP(SIB). If the injuries are of a minor nature then the RMP will conduct the investigation. Units must not undertake their own investigations of shooting incidents.

6. There is potential for some incidents to be of such gravity, involving deliberate hostile acts against Coalition Forces, that the GOC may determine that these are a continued act of war. In such a situation it will be for the GOC to decide if an investigation is appropriate. In addition there is potential for UK forces to be specifically tasked to conduct offensive operations under the Phase 3 ROE (or the anticipated replacement warfighting ROE) and in this situation the Laws of Armed Conflict will apply.

R L BARRONS  
Col  
for COMBRITFOR

Distribution – Addresses are requested to disseminate to all UK elements within their chain of command:

External:

Action:

Comd 19 Bde

Comd UKNSE/DEPCOMBRITFOR

All BRITFOR Units and Independent Sub-Units (for COs/OCs)

# Appendix 10: C Coy 1 KINGS Handover Notes

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*Dave,  
for info if you  
cannot sleep.  
Simon*



**C Company**  
**1<sup>st</sup> Battalion The King's Regiment**  
**Camp Cherokee**  
**OP TELIC 2**  
**BFPO 647**



Telephones:    Mob:    Pstamgram: 5030609

Reference: KINGS/C COY/3067V

See Distribution

Date: 8 October 2003

## C COMPANY 1 KINGS HANDOVER NOTES TO C COMPANY 1 RS

### References:

A. C Coy 1 KINGS OpO 01/08 – BG Ops Coy dated 20 Aug 03.

### GENERAL

1. The following notes are intended to assist C Coy 1 RS in their preparation and takeover of the role of the QRH BG Ops Coy on Op TELIC 3. The information is gained from the personal experiences of C Coy 1 KINGS and may require amendment as the situation in Basrah Province matures through the Op TELIC 3 deployment.

### SITUATION

2. See the 1 KINGS BG presentation by the Bn 2IC during visit to QRH BG in Germany. In outline the QRH BG takes over from 1 KINGS BG as the Brigade North Central BG (NCBG) within Basrah Province. The BG is responsible for the northern sector of Basrah City, the rural area stretching North towards Al Qurnah and a substantial area of border with Iran to the East. The AO is cut by the Shatt Al Arab waterway, which currently has only two vehicle crossings; one in the North at Ad Dayr and in the South near the Shatt Al Arab Hotel (BG HQ). The NCBG currently has four ground-holding sub-units and one ops sub-unit. C Coy 1 KINGS is the BG Ops Coy.

3. The threat to Coalition Forces (CF) is varied:

a. Crime. Generally across the AO the level of organized crime is on the increase with carjacking and drug smuggling being the most prevalent. The threat to CF from this activity is usually as a secondary target if we disturb the crime taking place.

b. Tribal Feuding. There is a complex tribal system in place that can result in conflict. This often entails fire-fights between neighbourhoods and sometimes armed attacks by tribal gangs across village boundaries. Again the major threat is from cross-fire or being engaged as a secondary target.

c. Public Order. Due to the shortages of all basic needs the most likely reaction is a demonstration targeting the CF or Coalition Provisional Authority (CPA). This is peaceful in the main, but agitators have orchestrated riots. Generally they are not well co-ordinated, but

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can involve upwards of 1500-2000 people. They generally throw rocks and any other debris they can get their hands on and light fires on small barricades. As yet the rioting is not well organised and has not involved snipers or petrol bombs. They can be broken up fairly easily with the aggressive use of vehicles and baton rounds.

d. Terrorists. There are a number of groupings operating within Iraq. Former Regime Loyalists (FRL) and Iranian/Al Qaeda backed Islamic groups. Their capabilities are increasing and the most likely current threats are:

- (1) VBIED – suicide or proxy delivery.
- (2) Command detonated IED on well used routes.
- (3) Ambush or drive-by shoots onto CF patrols.
- (4) As yet no mortar threat has been identified. However, there is plenty of ordnance in the country and with a little training and inventiveness on their part the possibilities are limitless.

4. Apart from CF there are also a number of Iraqi security forces:

a. Iraqi Police (IZP). Slowly gaining confidence, they are not well respected by the local population and are seen as ineffective and corrupt. Their situation is improving, but they need the support and encouragement of CF at a local level to get things done.

b. Iraqi Civil Defence Corps (ICDC). Formed up for duties from the 11 Oct 03. They will be very much a new organisation and will require a lot of work to integrate into the security framework. Initially they will be deployed on static security tasks.

c. Police-Style Security Forces. These are policing units tasked with specific missions and include the River Police, Facilities Police, Power Station Guards and Port Security. They all have limited local jurisdiction and are armed.

d. Local Security Forces (LSF). An unpaid neighbourhood watch scheme that is authorised to carry small arms in a limited area – their own neighbourhood. They have ID and wear Day-Glo vests.

5. C Coy 1 RS will receive an up to date G2 and situation brief on arrival in Basrah and the C Coy copies of the BG INTSUMS will be signed over to maintain a source of background reference material. If there are any specific points you would like us to cover or questions outstanding please inform our Bn 2IC so he can pass it on to us for inclusion in our handover programme.

**MISSION**

5. C Coy 1 KINGS was initially the Div/Eds Ops Coy and as such was deployed to support the Maysan Province BG (1 PARA then 1 KOSB) from 24 Jun – 11 Aug 03. The Coy was tasked with reinstating the Al Majarr al Kabir Police Station after the 6 RMP were killed. On completion we remained as the 1 KOSB BG Ops Coy. On Return to Basrah we took over the Ops Coy role for our own BG. The mission is as follows:

'C Coy 1 KINGS is to conduct surge operations as directed in order to assist in the provision of a secure and stable environment within the North Al Basrah AO.'

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**EXECUTION**

6. The Coy OpO for the BG Ops Coy role is included as an enclosure (electronic copy) to this letter. When not deployed on BG operations the Coy maintains a framework patrols routine to support the ground holding sub-units. We have 5 multiples plus an ability to free up an assault pioneer section for force protection or G5 tasks as necessary. The routine multiple tasking involves a rotation through guard, QRF and patrols 1, 2 and 3. Surge ops are tasked through the issue of BG FRAGOs. A selection of OpOs and FRAGOs will be left for C Coy 1 RS for reference purposes.

7. The Coy operates from Camp Cherokee (QU686832) and is co-located with BG Echelon, A Coy 1 KINGS and B Coy 1 R.GJ (SSTT for the ICDC). As the Ops Coy you should not be responsible for overall security of the camp as you may be deployed for extended periods. The ground-holding sub-unit should be the lead, though you will have to contribute personnel when available.

8. **Co-ordinating Instructions.**

a. **Handover Programme.** A detailed handover programme will be issued to C Coy 1 RS during their RSOI package. In outline it will include Camp Cherokee orientation, G2 and G3 briefing in general. G2 briefings on each ground-holding sub-unit AO, familiarisation patrols of all AOs including neighbouring units where the Ops Coy has operated across boundaries (Danish Battalion and 40 Regt RA area around Az Zubayr).

b. **Training.** C Coy 1 RS should attempt to cover as much of the following training during pre-deployment and RSOI training.

(1) **Mandatory Briefings:**

- (a) Mine/IED/UXO awareness and IA drills ('Erica the Eye' posters available).
- (b) Convoy safety and IA drills.
- (c) Aviation Ops (Gazelle, Lynx, Sea King and Chinook).
- (d) ROE.
- (e) Comds Risk Assessment and Management.
- (f) Prisoner handling and conditioning (TQ trained personnel are useful).

(2) **Patrol Skills.**

- (a) Cultural and language training, including using an interpreter.
- (b) Foreign weapon handling.
- (c) Patrol search and use of documentation (Patrol Search Record (Iraq) and Search Report M (Iraq)).
- (d) First Aid - Team Medic Training.
- (e) Voice procedure (A to H, SCRIM, Contact Report and Shot Report).
- (f) Vehicle handling (documentation, maintenance and breakdown procedures).

(3) **Patrol Drills.**

- (a) Contact drills.
- (b) Vehicle anti-ambush drills.
- (c) House clearance.
- (d) Cordon drills (deliberate and hasty).

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- (e) Search procedures for buildings, vehicles and people.
- (f) VCP drills (vehicle and eagle).
- (g) Riverine ops – Engr boats are available for use on the Shatt al Arab.
- (h) Public order.
- (i) OPs.
- (j) CASEVAC.
- (k) Obstacle/choke point crossing.

(4) Training Equipment. Bring the following if possible:

- (a) Training Pamphlets including PAM 21 and Army Op Shooting Policy.
- (b) Simple range targetry – Fig 11, patches, nails, etc – as a coy reserve for continuation training. Wood is available in theatre.

c. Patrol Equipment. The CQMS has a comprehensive list of equipment that will be handed over to C Coy 1 RS. Patrols carry the following as standard:

- (1) PO kit – hickory sticks, baton guns, shields and visors.
- (2) Arrest kit – plasticuffs, laminated arrest cards and blacked out goggles for conditioning detainees.
- (3) Search kit – Garret metal detector, gloves, documentation, torches, etc. C Coy 1 KINGS USA will brief the incoming USA and search teams.
- (4) Mine/UXO identification and marking kit – aide memoire, mine tape, signs if available.
- (5) Signal smoke and illumination – illum is often useful for calming down tribal firefights.
- (6) Water – not as bad over the winter months, but temperatures will still be fairly hot to you as you arrive. Camelbaks are a must. Once acclimatised, patrols tend to carry boxes of water in coolers – normally pre-chilled/frozen before deployment in the refrigerated ISOs (reefers) in camp.
- (7) Rations – a minimum of 48 hrs stowed in vehicles allows maximum flexibility, especially when deployed at short notice.
- (8) First Aid kits.

d. Miscellaneous Points.

- (1) Malaria Prophylaxis. You arrive as the malaria season begins in earnest. The mosquitoes have been out for a couple of weeks and are not shy. Make sure you take the tablets.
- (2) Floppy hats. Normally worn when dismounted on tasks where there is no immediate PO threat. They were mandatory during the summer months.
- (3) Ice. The locals sell blocks of it on the street. Not as common now, but useful for cooling drinks, etc. Just don't drink it.

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(4) **Food.** If you are being entertained by the local dignitaries you will encounter some good local food, which has not resulted in any D&V. Some of the soldiers have bought food from local vendors on patrol, it should not be encouraged, but you will not stop it. Locally bought cans of soft drinks are perfectly safe – the going rate is around 4 cans for US \$1.

e. **IT.** There is no need to bring any standalone desktop PCs. You will takeover 2 x desktops in theatre. However, if you have a coy laptop this would be useful. You will also takeover 2 x memory sticks. If you have your own memory sticks bring them and use CD-ROM rather than floppy disks if your laptop supports this, floppies tend to corrupt quickly in the conditions. A PowerPoint projector is also a useful extra if available.

**SERVICE SUPPORT**

9. **CSM Points.**

a. **Ammo.** All demands for re-supply of operational ammunition are immediate depending on current stocks available. Demands for training ammunition are required generally 2 weeks in advance.

b. **Returns.** The current 1 KINGS policy is a weekly return of all ammunition holdings and rounds fired by 1200hrs each Friday to the RQMS. Additional there is a separate return for any ammunition fired for that week, which includes DTG, Location and reason, etc.

c. **Mail.** The mail has to be delivered/collected on a daily basis from the hotel; this is generally done by the QRF or any passing patrols.

e. **Fitness.** As part of the operational welfare package there is a limited amount of fitness equipment, basically 1x runner, 1x rower, 1x cross trainer and a number of weights. It is possible to run around the inside perimeter of the camp.

f. **Guard.** The guard currently consists of the following:

- |                 |  |
|-----------------|--|
| (1) Main gate   | x 3 (1x JNCO).                               |
| (2) 2 x Sangars | x 1 per sangar by day, x 2 at night.         |
| (3) TDA camp    | x 2 patrolling during the day, x 4 at night. |
| (4) QRF         | x 4 all day.                                 |

10. **COMS Points.** The CQMS has prepared these notes so that you and your CQMS will know what to expect on handover:

a. **Operational ET.** At present this contains:

- (1) FN Minimi Para Machine Gun 5.56mm x 20.
- (2) Underlung Grenade Launcher x 12.
- (3) GPS Garmin 12XL x 26.
- (4) Image Converter NV (Monocular night sight) x 29.

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**Information:**

**Ops Offr 1 KINGS**

**Internal:**

**Information:**

**Coy 2IC**

**CSM**

**COMS**

**7 PI**

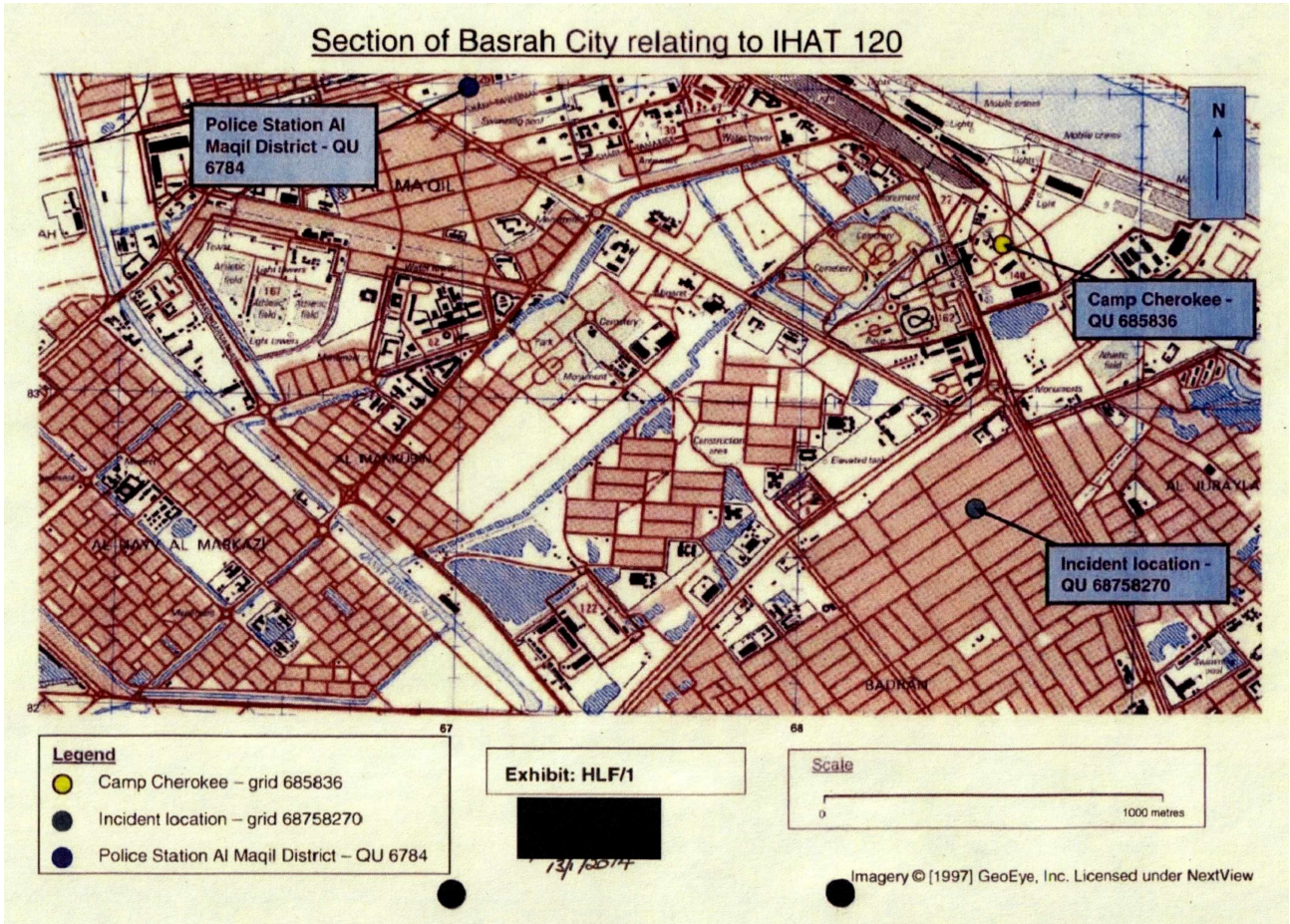
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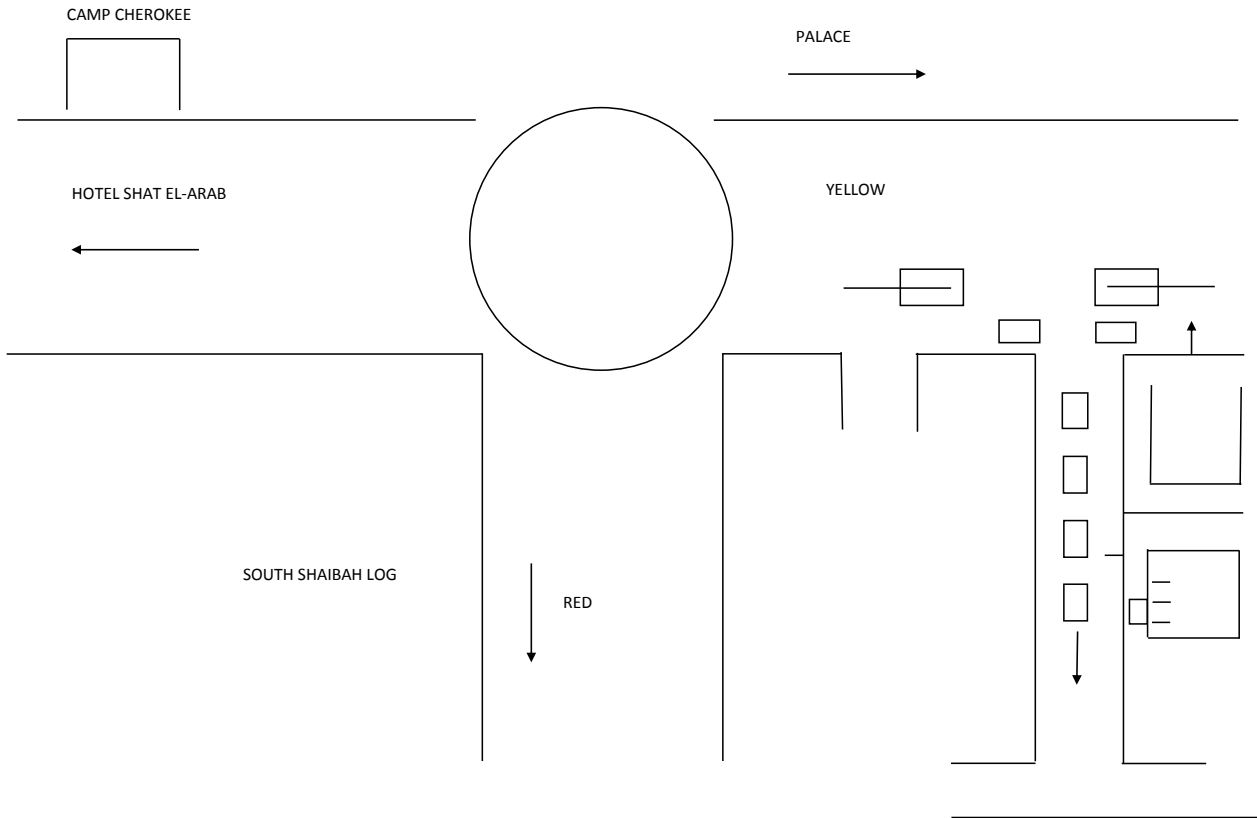


# Appendix 11: Map of Section of Basrah City



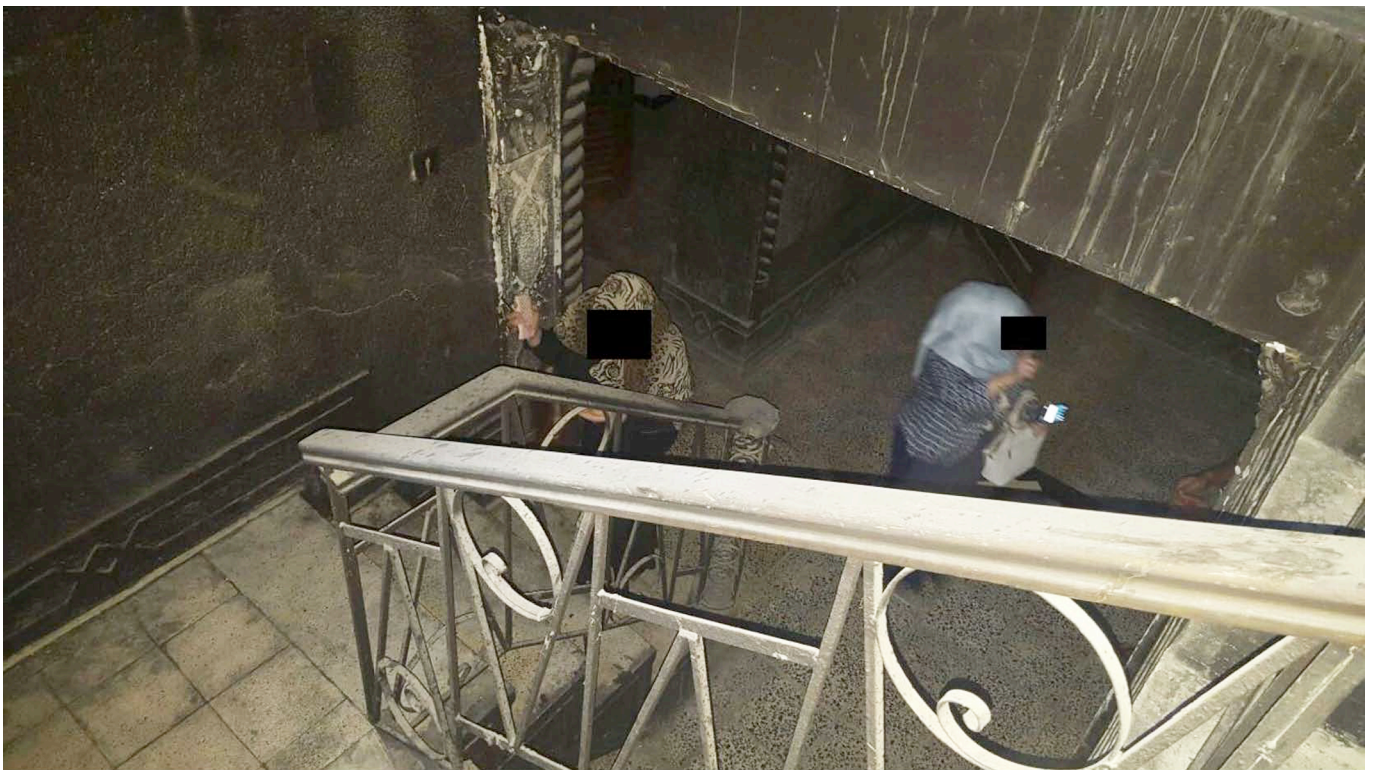
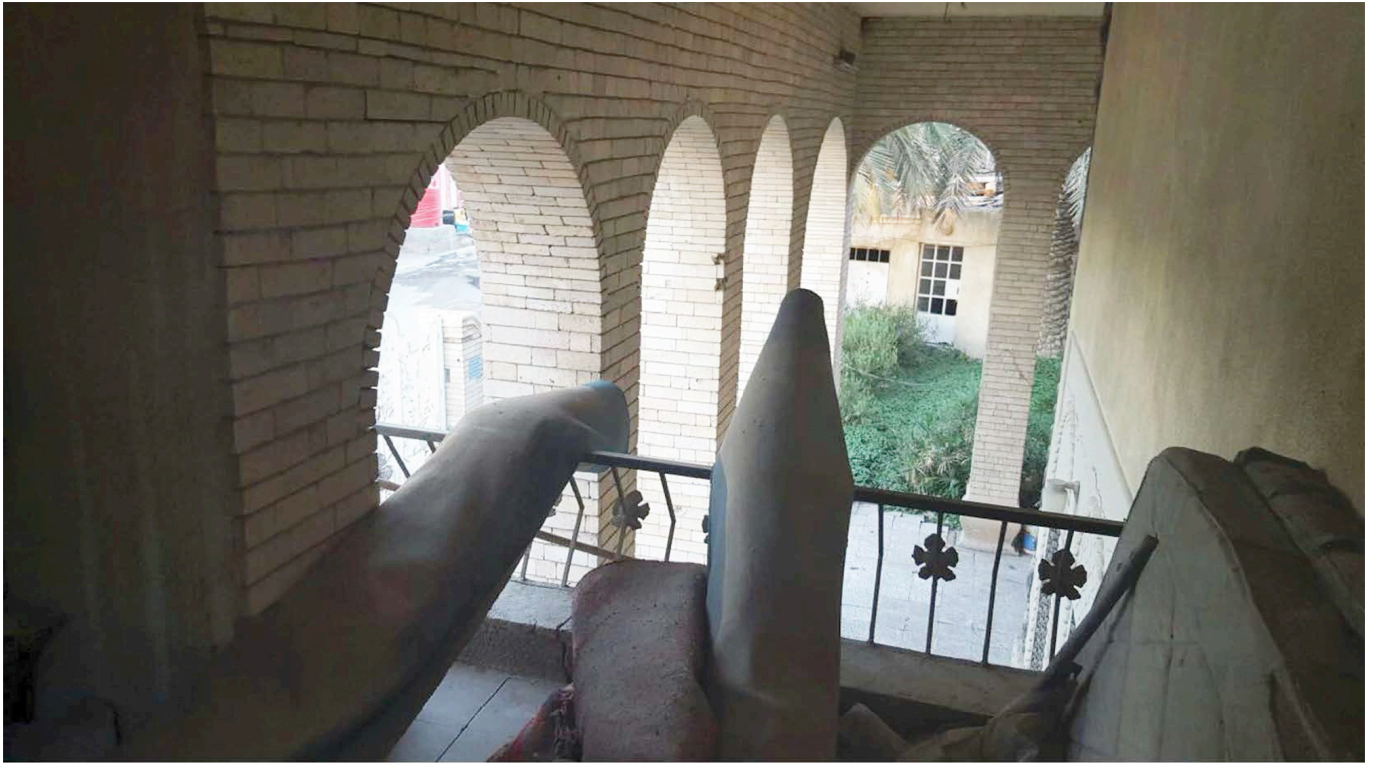
# Appendix 12: Sketch Plan by SO12

Exhibit SO12/1 - Sketch Plan by SO12

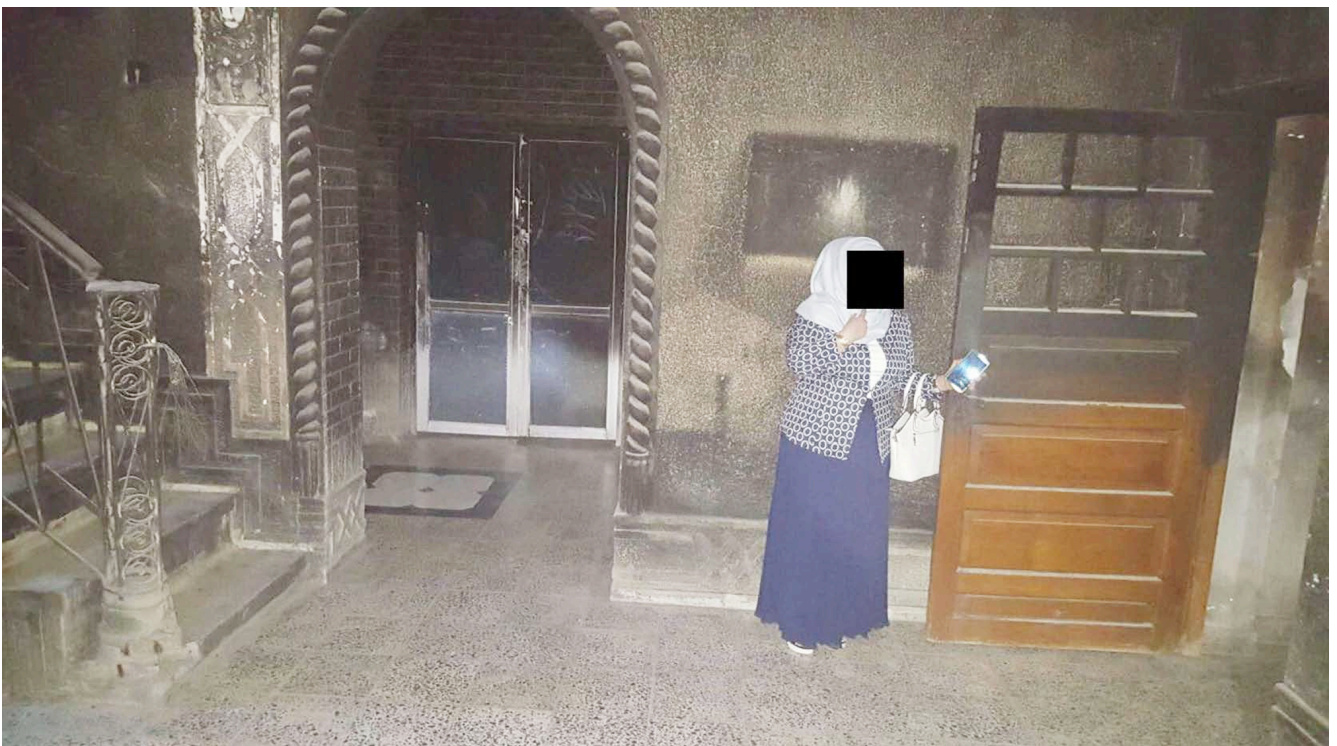
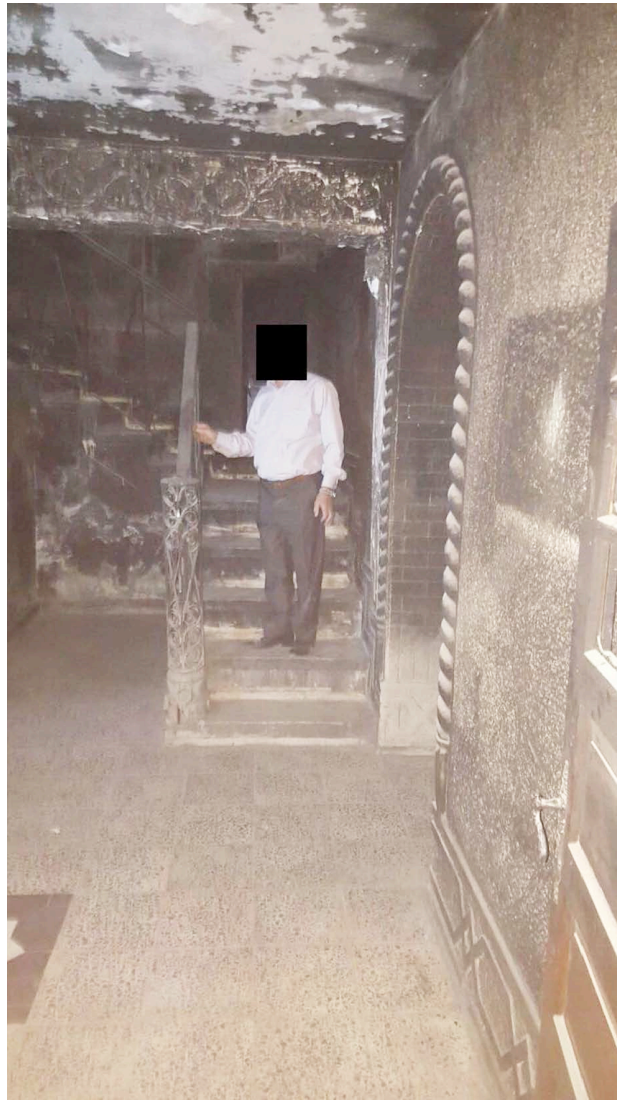


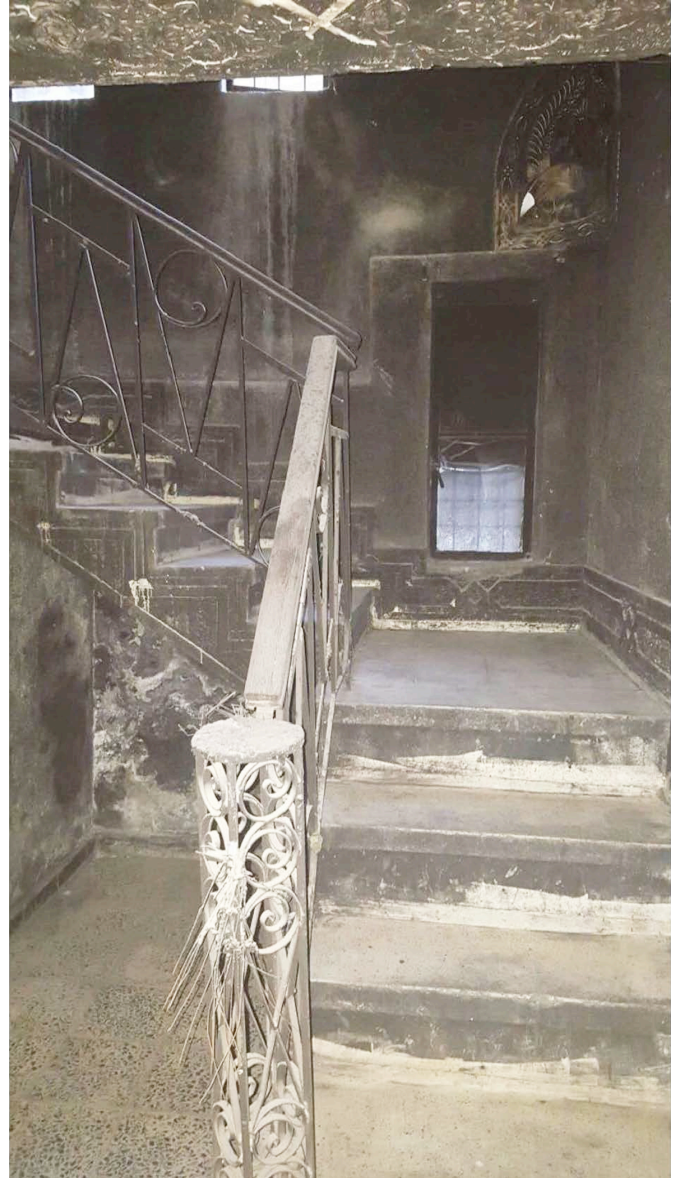
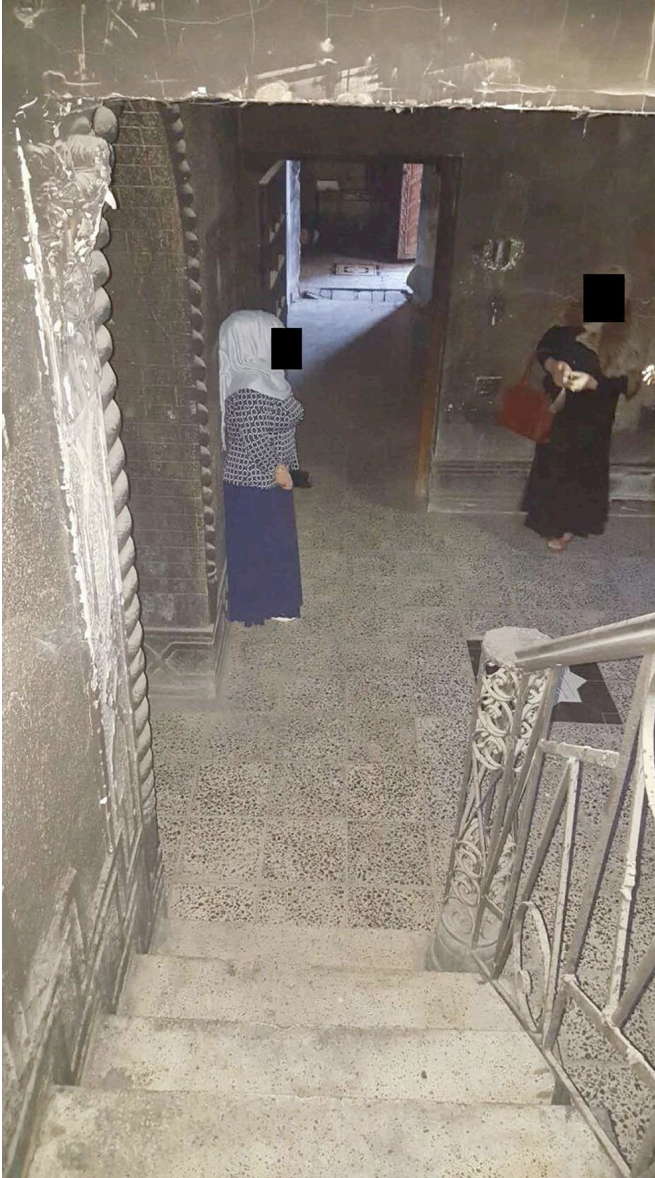
# Appendix 13: Photographs of MZD house (1)

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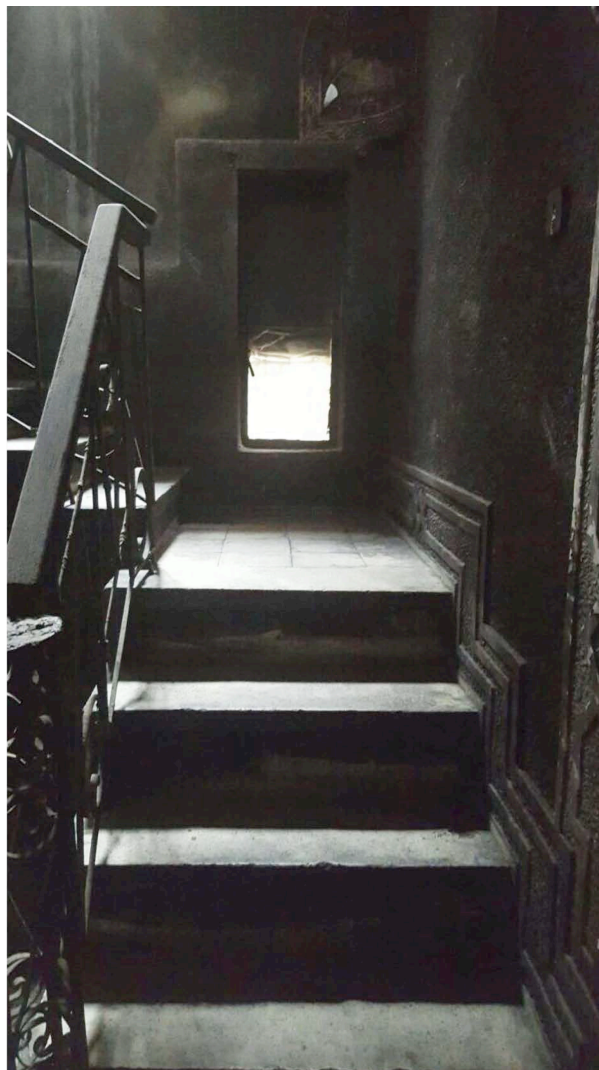
# Appendix 14: Photographs of MZD house (2)

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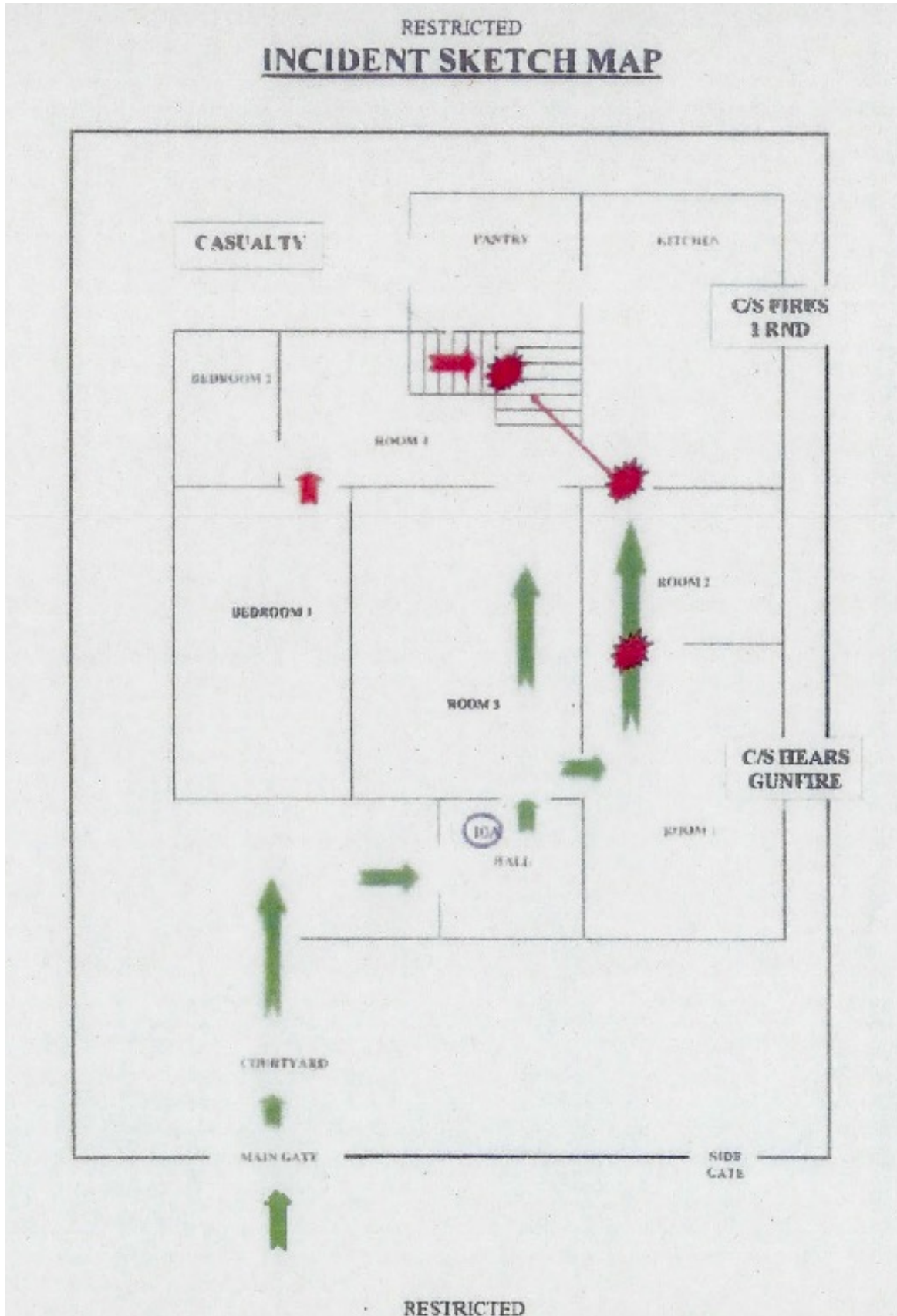






# Appendix 15: Incident Sketch Map by SO13

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# Appendix 16: Extract from Watchkeeper's Log

MOD-83-0000307-A

Form B58 (Revised 4/99)

Security classification \_\_\_\_\_

Note: Carbonless. Do not use carbon, insert backing plate (Code No 38-64) after required number of pages.

Unit: 19X Logkeeper(s): \_\_\_\_\_ Date: 05 NOV 03 Sheet No: 1728

Serial	Time	To	From	Event	Action	Initials
168	00:55		Ops 1 Kings	Walk-in to Clay reports 10-15 men in building 68958276 planning attack 10 mins ago walk in visually confirmed building	Ops Box Yellow 7-5 River 20 Blue 5-Yellow RRW informed 1 KINGS informed 1 KINGS OP control 1 RRW GRF given + freq to support (p.o. 325) Authority given to 1 KINGS @ 0010 06-11-03	
<del>169</del>	00:25		RCW	shelup 0010/647828/4/640/061/-		
<del>170</del>	00:25		26	Enquiry about OOB for route From QV 561709 to QV 016004 Ref OP GERRIE	Informed to avoid all current OOB	
<del>171</del>	00:34		1 KINGS	Ref 068 <del>COMP</del> <sup>COMP</sup> Multiple entered building 5-6 rds fired at them. 1 UKM aimed in building engaged with 6 rds. UKM hit inj unknown medic on scene (SITREP)		
<del>172</del>	01:05		1 KINGS	SITREP Ref 071 L 2 UKMs, 1 UKF found - 1 injured now en-route to hospital Gech		

Security classification \_\_\_\_\_

Sheet Security classification

Note: Carbonless. Do not use carbon, ins., backing plate (Code No 38-64) after requisition. Army Form 1558 (Revised 4/89)

Station/Unit: 19X Logkeeper(s) \_\_\_\_\_ Date: 06 Nov 03 Sheet No: 1729

Serial	Time	To	From	Event	Action	Initials
004	0105		1KINGS	UKF says armed men tried to gain access in order to harass, pass group seen by walk-in. Injured UKM schoolteacher	Details request. Reported to Div	
005	0148	1KINGS	G3	Car - at hospital (SITREP) L3PA at scene following up		
006	0200		KINGS	Car - GSW abdomen looked at by surgeon. Owner of building: MOHAMMAD ZABOUN UKM not in. wife - INTISAR ABDUL BAKAR. Car - MOHAMMED ABDUL AVSUA. Nephew - AHMED IMBRAHIM SHOUVA		
007	Reported 0150		REN	Report 2x coaches due for task @ 0200 - having problems locating them. Task: AF00 -> SP02 (with pass) -> REN Coy locs. @ may need 4x coaches @ 0200	@ 0220 - CANCEL wva 2 coaches - not required	
008	0219		REN	Shutup cell / 718 796 / 10-15 / GID / Obs /		
009	0233		1KINGS	L3PA doing follow up on nearby house following tip off. Car - in theatre		

Security classification \_\_\_\_\_

Log Sheet

Security classification

Note: Carbonless. Do not use carbon, insert backing plate (Code No 38-64) after required number of pages.

Form B58  
Revised 4/89

Location/Unit

ISx

Logkeeper(s)

Date

06 Nov 03

Sheet No.

1730

Serial	Time	To	From	Event	Action	Initials
010	0250		RRW	SITREP ① RRW QRF can stand down ② Request RRW concentrate pte in vic tomorrow.		
011	0300		RRW	Shakeup 0241 / 718796 / 10-15 / G10 / obs / -		
012	0450		26 FA	Convoy team not able to achieve New tasking required		
013	0545		MEDLO	ETA ① MRS at BP next PM car i) 1x P1 ii) 1x shock car ② Reported roll over in Saadah Meha then left MRS to 'search for another vehicle'	① passed to RRW to obtain clarity	
014	0555		RRW	Shakeup 0534 / 709809 / 20 auto / G10 / <del>obs</del> / -	Investigated	
015	0615		RRW	SITREP RTA Yellow 3 C Coy outer cordons QRF inner cordons RMP + interpreters tasked		

Security classification

1118102/210056 C150-0301

# Appendix 17: Watchkeeper's Daily Brief

MOD-83-0000250-A

## WATCH KEEPER'S DAILY BRIEF

The G3 update for the period 051800 NOV03 to 060800 NOV 03 CHARLIE is as follows:

### INTRODUCTION

A very quiet day across the Div and Bde AO.

### BDE AO

No incidents of note.

### 1 KINGS AO

There have been 1 shotreps across the AO. In B Coy AO initially reported as a contact. On investigation it was identified as celebratory fire. GR 638905

a. Petrol States @ 0700 hrs:

5 Mile	91,200		Nil	
PVCP	8,000	36,000	15,000	
Ad Dayr	109,200	Nil	22,750	

b. 2325hrs C Coy reported that a walk in had given details of 10 – 15 armed men in a house at GR [redacted] They were alleged to be planning an attack, details of which were unknown, last night. C Coy drove past to confirm the tgt house then mounted an op. At 0033hrs as the C/S approached the building they were fired upon. As the C/S entered the building 1 x UKM was walking down stairs carrying a weapon. He was engaged by 6 rds. Medic administered first aid. Also in the house were 2 x UKM and 1 x UKF. On questioning the UKF it appeared a group of armed men had been trying to gain entry to the building last night and several rds had been fired at the building at around 1700hrs. C Coy following up to gain more info. They had also received threatening phone calls. The UKM shot was a school teacher. Latest info: Cas will need surgery for GSW to abdomen. *-lead?* *CONFIDENTIAL* *INFO*

Cas – MOHAMMED ABUL AURDA  
 Owner of house – MAHMOUD ZABOUN  
 Wife of owner – INTISAR ABDUL BAKAY

Full incident report by 1200hrs today.

### TODAY:

a. TOA A Coy and C Coy 1 RS at 1000hrs.

### QUESTIONS



# Appendix 18: Witness Statement of SO11 dated 6th November 2003

MOD-83-0000253-A

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**COPY**

STATEMENT

No: 25707123 Rank: SGT Name: [REDACTED] SO11 DOB OVER 18

This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable for prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.

Dated 06 11 03 2003

Signature: [REDACTED] SO11

Sir I am [REDACTED] SGT SO11 serving with the 1<sup>st</sup> Battalion the King's Regiment.

On 05 Nov 03 at approximately 2350 hrs we were tasked by OC C Company to carry out the search of a house. This search was conducted after being given information by a walk in to the effect that 15 persons had entered the building with small arms, RPG and grenades.

When 10A and 10B got to the target building, I [REDACTED] SGT SO11, tried to open a cast iron gate, which was secured, so I called forward a snatch vehicle to force an entry through the gate. I then moved across the courtyard and kicked in the front door. I moved into room 1 then crossed to room 2. As I entered room 2 I heard 5 shots of automatic fire coming from the stairwell. I moved into room 4 and immediately saw two men armed with long barrelled weapons coming at speed down the stairwell. I did not believe I had time to issue a warning shot and I believed that there was a contact underway so I fired one round at the first male and then turned my weapon on the second male who dropped his weapon.

I tasked KGNS JONES and MORRIS to clear the rooms left and called for medical assistance.

I unarmed male came down the stairs and he was taken into room 4 with the other two men. They were searched and first aid was given to the injured man by the medic CPL SO14.

[REDACTED] SO11

[REDACTED] SO11  
Sgt  
C Coy Pl Sgt

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# Appendix 19: Post Incident Report

MOD-83-0000248-A

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KINGS/C COY/3067V

6 Nov 03

Adjt (for CO) Copy to:  
 Ops Offr OC C Sqn QRH  
 IO  
 C Coy G2  
Coy Float File

→ sq to DCOS.

**POST INCIDENT REPORT – CONTACT AT GR OU685827 ON 06 NOV 03**

1. **Introduction.** At approximately 2315 hrs on the evening of 5 Nov 03 an acquaintance of one of the C Coy interpreters ██████ told him that he had seen a group of men armed with long barrelled weapons, grenades and RPGs entering a house to the South of Camp CHEROKEE. This information was brought to the attention of the G2 Cell (WO2 ██████ SO12) and briefed to OC C Coy. After conducting a confirmatory recce of the target location (A1) with the interpreter, WO2 ██████ SO12 and 2Lt ██████ SO13 the OC gave quick battle orders for a search and arrest operation against target A1. The BG Ops Officer confirmed that authority was granted to conduct the operation across the BG boundary at 0015 hrs on 06 Nov 03. The Coy then moved on task.

2. **Sequence of Events.** The approximate sequence of events is as follows:

Ser	Event	Remarks
(a)	(b)	(c)
1	At approximately 060020C Nov 03 C Coy (-) departs Camp CHEROKEE	OC's Rover with 1 x WR (C/S 32), 10A and 10B in 4 x LR SNATCH
2	Sgt ██████ SO11 and 10A dismounts conduct soft-knock on front gate of target A1. This proves to be unsuccessful.	Comment: Interpreter was not used to give verbal warning or caution
3	2Lt ██████ SO13 mounted in 1 x LR SNATCH forces entry into the target by ramming the front gates with the vehicle. This breaks the padlock allowing entry into the courtyard.	
4	Sgt ██████ SO11 and 10A dismounts enter courtyard	
5	Sgt ██████ SO11 opens front door and enters target A1 followed by Kgn Jones and then Kgn Morris. Force is used to gain entry though 2Lt ██████ SO13 briefed the platoon to conduct a soft knock on the target door	Comment: A warning that they were entering the building may have been beneficial, but as they suspected there were armed men inside this may have led to CF casualties. There seems to have been some confusion over whether the multiple was to revert to a soft-knock after gaining entry to the courtyard using a hard-knock
6	Team enters first room in house	
7	4-5 rounds automatic fired by unknown number of pax from within the house	
8	Team moves into second room	
9	2 x UKMs run down the stairs – the first two with	

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	long barrelled weapons.	
10	Sgt <b>SOTT</b> fires 1 round at the first man – he drops to the floor at the foot of the stairs with a stomach wound	Comment: Serials 7– 10 happen within a timeframe of 60-90 seconds. OC C Coy confirms that 6 rounds were heard from his position at the gate, which is consistent with the UKMs firing 5 rounds and Sgt <b>SOTT</b> returning fire with one round. Sgt <b>SOTT</b> statement of events is included as an enclosure to this loose minute
11	The second man drops his weapon after Sgt <b>SOTT</b> trains his rifle on him. One further, unarmed UKM comes down the stairs	
12	10A dismounts continue clearance of the house	
13	1 x woman appears from a ground-floor bedroom	
14	10A <b>CMSREP</b> sent over PRR to CMT	Comment: Linkman also calls for medic and he is brought forward by the OC
15	House clear at approximately 060030C Nov 03.	
16	CMT treats casualty – morphine administered to give pain relief. The 2 x UKM that are unhurt are placed in an adjacent room then removed from the house, plasti-cuffed and held at the main gate. The woman is allowed to remain in an adjacent room	Comment: CMT later reports one entry wound to right of belly button and exit wound to right rear, the bullet having passed through the abdominal cavity.
17	The OC calls forward a BFA from Camp CHEROKEE at approximately 060056C Nov 03 and the casualty is taken to the Czech Military Hospital escorted by C/S 10C (Sgt Price and Cpl Johnston)	
18	It is becoming apparent to the OC by this time that the information received is likely to have been given to cause such a response and therefore use CF to terrorise an unsuspecting family on behalf of someone else. The UKM are released and brought back into the house for questioning.	Occupants details: Owner – MAHMOUD ZABOUN. Wife – INTISAR ABDUL BAKAY. Brother of wife – MOHAMMED ABDUL AURDA (The Casualty). Nephew of owner – AHMED IBRAHIM SENOUHA
19	The occupants inform the OC that they are lawyers. They were subject to an armed attack at approximately 051700C Nov 03 that was reported to AL MA'QIL Police Station. A further attack took place roughly 30 minutes prior to the Coy op. They also claimed they knew the house where the people terrorising them live.	Comment: The exterior of the building has several strike marks over a wide frontage
20	The son of the owner (name unknown) is telephoned to come and show CF where these people live. He is taken in 2 x LR SNATCH with the OC to a house in DOOR ALNAFT (Block 15, Door 5). The OC conducts a soft knock at this location and enters the house to question the occupants. The owner is a lawyer and his brother an engineering student. They	Occupants Details: Owner – KHALED J. AL BEDANY. Brother – RAHID AL BEDANY.  Comment: The involvement of CF is now likely to calm the situation for the present, but it may well flare up

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	say they have been threatened and that the rest of the family have been moved to a friend's house. Further questioning reveals that they have a feud with MAMOUD ZABOUN over the ownership of a set of offices. KHALED AL BEDANY stated that there was going to be a meeting between the two parties to settle their dispute	again. 2 x long barrelled weapons were found at the house, but neither had been fired recently
21	The Rover Group returned to target A1 and dropped off the son of the owner. The incident was closed at approximately 060303C Nov 03.	
22	At 060800C Nov 03 C/S 10C on route back to camp CHEROKEE from completion of Op BOMBARD called into the Czech Hospital for a SITREP on the casualty. He had undergone surgery and was likely to remain in intensive care for 3 days. None of his vital organs were hit, but approximately 20 cm of intestine ad to be removed.	

3. Observations.a. The Shooting.

(1) Sgt SO11 may have been hasty in carrying out a forced entry to the target building and thereby sparking the reaction that led to the shooting. However, the information given was that the building contained a number of armed men. Therefore a quick surprise entry was favourable to maintain the initiative. With hindsight, the response of the occupants was understandable given their earlier experience, but Sgt SO11 and the rest of the C/S were unaware of this at the time. The rounds fired inside the building sounded like a contact was underway, so Sgt SO11 would have been alert to any movement of individuals with weapons.

(2) I am convinced that Sgt SO11 acted within the Theatre ROE. Effectively he carried out a meeting engagement with the men coming down the stairs and therefore had insufficient time to issue a verbal warning. Due to rounds already having been fired in close proximity, he is right to have assumed that they could have fired upon him thereby endangering his life and was correct in engaging the lead male carrying a long barrelled weapon. The fact that the second male dropped his weapon when Sgt SO11 turned his rifle on him, and that Sgt SO11 did not fire, indicates that he was acting in a controlled manner.

b. Lessons Identified:

(1) If the source of the information is unknown, or cannot be corroborated, they should be held at the CF base until the op is completed to allow for a hot debrief if the information is incorrect. This should deter this sort of action in the future.

(2) It was thought that speed was of the essence if the armed men were to be apprehended. If time permits a check of the local police station and the involvement of the local police may serve to calm a situation and possibly provide useful information. This also reinforces the 'Iraqi face on security' info ops line.

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(3) Leading on from point 2, if time permits and when operating in an unfamiliar area an LO from the ground-holding unit responsible should be obtained to give local knowledge to the planning process

4. Follow-up Action.

a. C Coy G2 is to confirm the identity of the informant and have him questioned as to the facts of his observations and whether he is linked to either family. Further action dependent on results of interview.

b. The Op Offr is requested to inform 1 RRW Coy now taking over from Aazio Coy. IQLR of the target details and likelihood of a flare up in the feud at some point in the future. Possibly the use of additional patrols in that district.

c. OC C Coy to conduct a follow up visit to the target house to check on the family and the condition of the casualty.

[REDACTED]  
S J ROUTLEDGE

Maj

OC C Coy

Mobile Tel. [REDACTED]

Enclosures:

1. Statement by Sgt [REDACTED]
2. Sketch map of target A1.

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# Appendix 20: Report on Shooting Incident by Lt Col Griffin

MOD-83-0000249-A

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1<sup>st</sup> Battalion The King's Regiment  
Shatt Al Arab Hotel  
Basrah  
Op TELIC 2  
BFPO 647

Tel: (Synergy Blue) 965 3100

3067F

See Distribution.

06 November 2003

**REPORT ON SHOOTING INCIDENT RESULTING IN SERIOUS INJURY**  
**BASRAH - [REDACTED] AREA 06 NOV 03**

Reference:

A. MND(SE) J3/1260 dated 28 Jul 03.

**BACKGROUND**

1. The aim of this report is to provide an analysis of the shooting incident in the [REDACTED] area of Basrah, Grid [REDACTED], at 060025C NOV 03 as required in Reference A. It is clear to me that Sgt [SO11] acted correctly under the rules of engagement and that an RMP investigation is not required.

**CIRCUMSTANCES OF INCIDENT**

2. **Nature of the Task.** At approximately 2315 hours on the evening of Wed 5 Nov 03 an acquaintance of one of the C Coy interpreters [REDACTED] provided information that a group of men armed with long barrelled weapons, grenades and RPGs had been seen entering a house in the [REDACTED] area of Basrah, [REDACTED] south of the CF base at CHEROKEE. This is just across the 1 KINGS - 1 RR W BG boundary. OC C Coy gained permission from HQ 19 (Mech) Bde, via BGHQ, to conduct a quick cross-boundary search and arrest operation to exploit this information.

3. **Description of the Incident.** At approximately 0020 hours Thu 6 Nov 03 C Company minus departed from CHEROKEE in one Warrior and 4 Snatch vehicles. On arrival at the target house Sgt [SO11] tried a soft-knock, but this proved unsuccessful. Then 2Lt [SO13] rammed the gates in his Snatch, breaking the padlock and gaining access to the courtyard.

4. Sgt [SO11] entered the house through the front door with 2 men and cleared the first room. As he entered the second room he heard 4 or 5 rounds of automatic fire from within the house and moved forward into the next room by the bottom of the stairs. Immediately two men armed with long barrelled weapons rushed down the stairs towards Sgt [SO11] and due to their proximity and speed of movement there was no time to give a verbal warning. Sgt [SO11]

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believed that there was a contact underway and that his life was in immediate danger. He fired one shot at the leading gunman, hitting him in the stomach and then trained his weapon on the second man, who dropped his weapon.

Sgt SO11 then tasked his men to clear the other rooms, whilst he called for medical assistance. Another unarmed male came down the stairs and was taken into a downstairs room to be searched.

6. The medic then gave first aid to the first gunman, whilst the BFA was called forward to take him to the Czech Military Hospital.

7. The Company Commander questioned the occupants of the house and discovered that they were lawyers who had been subject to an armed attack earlier that day, which had been reported to Al Maqil Police Station. A further attack had taken place about 30 minutes prior to the company operation. On investigation there appears to be a feud over the ownership of some offices with a man called Khaled Al Bedany, and British Forces may have been deliberately drawn in on one side.

8. Nature of Injuries. The gunman, Mohammed Abdul Aurda, has an entry wound to the right of his belly button and an exit wound on his right back. The bullet appears to have passed through the abdominal cavity. At 0800 hours Thu 6 Nov 03 it was reported that he had undergone surgery and was likely to remain in intensive care for 3 days. None of his vital organs had been hit, but he had lost about 20cm of intestine.

JUSTIFICATION

9. Assessment of Operational Situation. The operational situation at the time of the incident was very tense, with the expectation of heavily armed men in the house. Once Sgt SO11 heard automatic fire inside the house he believed that a contact had started. When, moments later, he saw armed men rushing down the stairs at him a split second decision was required to protect his own life.

10. Rules of Engagement. The current ROE state that if a soldier believes that a person is committing an act likely to endanger human life he may open fire if there is no other way to prevent the danger. In this case Sgt SO11 believed that the gunman was about to shoot at him and that the only option to protect his life was to shoot first. He was obviously in full control of the situation as when the second gunman dropped his weapon Sgt SO11 correctly decided not to shoot him.

11. Other Factors.

a. Soldier's Experience. Sgt SO11 is a very experienced man with 11 year's service and 4 operational tours in Northern Ireland to his credit.

b. Complicating Factors. The confined space in the house did not allow time to identify targets at a distance and attempt full identification before shooting.

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DECISION

12. As Commanding Officer I am satisfied that Sgt SO11 acted lawfully within the ROE, by firing his weapon because life was in immediate danger. This is a straightforward case and does not require any further RMP investigation.



C M GRIFFIN  
Lieutenant Colonel  
Commanding Officer

Distribution

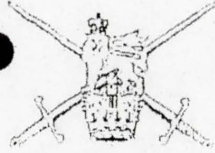
MND(SE) for J3 Ops  
HQ 20 Armd Bde for DCOS  
OC C Coy  
File

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# Appendix 21: Major Routledge Letter

MOD-83-0000176-A



ARMY

Officer Commanding  
C Company  
1<sup>st</sup> Battalion The King's Regiment Battlegroup  
Operation TELIC 2  
British Forces Post Office 647  
Telephone Mobile +965 911 9433



Mr Mahmoud Zaboun

KINGS/C COY/3067V

9 November 2003


Dear Mr Zaboun,

## STATEMENT ABOUT THE SHOOTING OF MR MOHAMMED ABDUL RIDHA SALIM

The events leading up to the unfortunate shooting of your brother in law are as follows:

- An anonymous civilian came to the gates of Camp CHEROKEE and told the British Forces that he had seen approximately 10 men armed with rifles and RPGs entering a house that was subsequently identified as your property.
- Because of the threat such a group poses a British Army platoon was deployed to enter the house and ensure that the men were disarmed and detained. Due to the possible risks a surprise entry to the building was carried out. During this Mr Mohammed Abdul Ridha Salim and another male came downstairs, believing they were being attacked by criminals.
- Sadly, as he was coming downstairs, Mr Mohammed Abdul Ridha Salim met a British Soldier coming the other way. The soldier thought he was in danger and fired one round at Mr Mohammed that hit him in the stomach. The British Forces took Mr Mohammed Abdul Ridha Salim to the Czech Military Hospital and he was operated on. Sadly he later died.

It appears that the British Forces were deliberately misled on this occasion and it is regrettable that this incident led to the death of Mr Mohammed Abdul Ridha Salim. We extend our sympathies to his family.

  
S J ROUTLEDGE  
Major  
Officer Commanding

## Appendix 22: Major Routledge Letter (IFI translation of Arabic translation)

MOD-83-0000302-A

British Army  
Commanding Officer  
Company C  
First King Archers' (Riflemen) Battle group  
Operation Telik/2  
British Forces POB (sic) 647  
Telephone +9659119433  
Kings / Coy / V 3067 9/11/2003

---

### Statement regarding firing at Mr. Muhammad Abderridha Salem

The circumstances surrounding the regrettable shooting incident at the aforesaid are as follows:

- An unknown civilian came up to the gate of Cheroky Camp and informed the British Forces that he had seen ten men armed with rifles and RBGs, seven of them entered a house that was to be known as the house of Mr. Mahmoud Zayoun.
- Fearing a threat the British Forces decided to enter the house to disarm the above mentioned men and to detain them. And in order to avoid possible risks the house was stormed. At that time, Mr. Muhammad Abderridha Salem was coming down the stairs. It is sad that while Mr. Muhammad Abderridha Salem was coming down the stairs he was met by a British soldier coming from the opposite direction. The soldier wrongly thought that he was in danger and opened a salvo of bullets at Mr. Muhammad Abderridha Salem hitting him in the stomach.
- The British Forces transported Mr. Muhammad Abderridha Salem to the Czech Hospital where he was operated upon but very regrettably and sadly he died thereafter.

It is clear that the British Forces were deliberately misinformed in this regard and it is very regrettable that the incident resulted in the death of Mr. Muhammad Abderridha Salem.

We offer our sorrow and deep condolences to his family.

Signed  
S G Rotledge (sic)


Major  
Commanding Officer

# Appendix 23: Final Report of Brigadier Rutherford Jones

MOD-83-0000292-A

Dca


**RESTRICTED - STAFF**



**ARMY**

Headquarters  
20<sup>th</sup> Armoured Brigade  
OP TELIC 3  
British Forces Post Office 647

Synergy Red: 3140 Synergy Blue: 3110 Mobile: 994 7967



---

See Distribution Reference: 20 Bde/Comd

Date: 10 Nov 03

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**1 KINGS SHOOTING INCIDENT 06 NOV 03**

References:

A. 1 KINGS 3067F dated 6 Nov 03.  
B. LANDSO 3203 (Third Revise) dated May 01.  
C. HQ MND(SE) J3/1260 dated 28 Jul 03.

**INTRODUCTION**

1. Working on a tip off from an interpreter, C Coy minus deployed on 6 Nov at approximately 0020 to apprehend a group of men who had been seen entering a house in the Madran area of Basrah. It was reported that they were in possession of long barrelled weapons, grenades and RPGs. After attempting a 'soft-knock' operation which proved unsuccessful they forced their entry into the premises. The commander, Sgt **S011** cleared the first room but then heard shots from within the house. As he moved to the bottom of the stairs he was confronted, in a confined and dark space, by 2 men armed with long barrelled weapons. Fearing that his life was in immediate danger Sgt **S011** fired one round which hit the gunman in the abdomen. The second gunman dropped his weapon which allowed Sgt **S011** to administer first aid to the injured man, who was subsequently taken to hospital.

**ENDORSEMENT OF CO'S INVESTIGATION**

2. I have read the report of the CO's investigation (Reference A). I am happy that this investigation has been conducted in accordance with the policy laid down by HQ MND(SE). Furthermore I am satisfied that the action of the soldier involved was within the current Rules of Engagement. I concur with the CO's view that this incident requires no further investigation and is now closed.

[REDACTED]

**DJ RUTHERFORD-JONES**  
Brig  
Commander

**RESTRICTED - STAFF**

**Distribution:**

**External:**

**Info:**

HQ MND(SE)      - DCOS  
                         - Comd Legal  
1 KINGS            - CO

**Internal:**

**Info:**

DCOS  
LEGAD

# Appendix 24: Police Report

MOD-83-0000299-A

Almaqal Police Station

6/11/2003

Mr. Public Prosecutor Esq

Lawyer Mahmoud Zayoun Dahash came to this station this morning claiming that his neighbour was attacked by "British" Force elements who broke the exterior door, entered and searched the house injuring the victim Muhammad Abdulridha who was visiting him at the time. He requested that the report be taken down. Your decision is kindly requested.

(Signed)

Investigative officer

To the judge

I demand the informer above to be brought before you and his statements taken down by you and an inspection of the site of the incident and its sketch plan to be carried out. (illegible) the investigative assistant and taking down the statement of the lawyer with the medical report attached thereto.

signed

deputy prosecutor

(illegible name)

6/11/2003

(Stamp)

Presidency of the Supreme Judicial Council

Appeal Court (illegible)

Investigative Court of Almaqal

The officer

1) Your report above. The informer is to appear before us to take down his remarks by us as appropriate.

2) Site of the incident is to be inspected and a sketch plan made thereof.

3) Contact with the hospital is to be maintained to follow up on the condition of the injured and let us know about it so that we can make the appropriate decision in light of the condition. The investigation is to be maintained until completed.

The judge

[REDACTED]

(date illegible)

Almaqal Police Station

6/11/2003

## Proceeding

This morning the informer lawyer Mahmoud Zayoun came to this station claiming that while he was in his house in [REDACTED] area with his guest the victim Muhammad Abdulridha Salem and that at 11:30 pm a group of "British" Coalition Authority elements broke into his house and searched it injuring the victim Muhammad Abdulridha Salem with a gunshot fired by a soldier. He requested that the report be noted down, hence this proceeding has been prepared.

(Signed)

Investigative officer

Informer's statement

The informer Mahmoud Zayoun Dahash who works as a lawyer born (illegible), mother [REDACTED] (sic) [REDACTED] living in [REDACTED] [REDACTED] stated as follows:

The night of 5-6/11/2003 at 11:00 pm a section of "British" Coalition Authority elements suddenly broke into my house taking us by surprise when they broke the exterior door and the interior wooden door to enter the house. One of them fired a gunshot at the victim Muhammad Abdulridha Salem, a relative of mine, the husband of my sister who was visiting me then. The incident resulted in him being injured and transported to hospital. I ask that this information be taken down, adding that the British Forces searched my house and found nothing that was illegal. They apologised saying that they had false news from a bad man. I present a complaint and I ask for compensation.

signature.

Investigative Court of AlMaqal  
10/11/2003

The statement of the informer Mahmoud Zayoun Dahash who works as a lawyer born in [REDACTED] and lives in [REDACTED]. Under oath he stated as follows:

The night of 5-6/11/2003 at 11:00 pm I was in my house. With me was my wife and my guest the victim Muhammad Abdulridha Salem. A large group from the British Forces attacked my house. They broke the exterior door and the wooden door thus entering the house, taking us by surprise. A British soldier shot at the victim Muhammad Abdulridha Salem hitting him in his abdomen and injuring him. They searched the entire house scattering my furniture around and breaking the door of the upper room. They found nothing illegal. After that they took the injured to the Czech Military Hospital apologising that they had received false information giving very dangerous details about my house. The victim Muhammad Abdulridha Salem died on 17/11/2003 as a result of his injury. Therefore, I want to file a complaint against the person who gave false information to the authorities and against the elements of the section which broke into my house and destroyed the exterior door in addition to some other damages. I ask for material and moral compensation knowing that that the victim was married with three children and was a vocational teacher with the Department of Education of Basra. This is my statement.

(Stamp)  
Presidency of the Supreme Judicial Council  
(illegible)

(signed)  
The informer

signed  
The judge

Almaqal Police Station  
12/11/2003

The statement of the witness [REDACTED] aged [REDACTED] years, an employee living in Basra, [REDACTED]. He stated as follows:

I live in a house adjacent to that of lawyer Mahmoud Zayoun.

The day of the incident 5-6/11/2003 at about 11:30 pm the British Forces broke into the house of lawyer Mahmoud Zayoun. We heard a firing sound after which we learned that a soldier fired at the victim Muhammad Abdulridha Salem who was the husband of the sister of the owner of the house and who was then taken to the Czech Military Hospital. I learned that the British Forces apologised to the relatives of the victim for making a mistake and having had a false impression. I saw a group of the British Forces breaking into the house of aforementioned individual and heard the sound of firing from their side. I also saw the victim being taken to the hospital. I learned that the hospital (illegible) died two days later as a result of his injury. This is my statement.

(Stamp)  
Presidency of the Supreme Judicial Council  
Basra Federal Appeal Court  
The Court of (illegible)

(signed)  
Witness

[REDACTED]

signed  
Investigative officer



Almaqal Police Station  
12/11/2003

The statement of the witness Ahmad Ibrahim Safouh, aged [REDACTED] years, a freelance worker living in Basra, [REDACTED] near the (illegible) mosque. He stated as follows:

The night of the incident 5-6/11/2003 I was at the house of my relative lawyer Mahmoud Zayoun visiting. While were eating at about 11:30 pm the British Forces suddenly broke into the house without prior warning and without knocking at the door. One of the British soldiers fired randomly inside the house hitting the victim Muhammad Abdulridha Salem who was sat eating. Upon asking for explanation the British Forces told us that they had a false impression and that they made a mistake as this was not the intended house and they had received false information. They took the injured to the Czech Hospital, formerly the military hospital. The victim died two days later and his body was handed over to his relatives. This is my statement.

(Stamp)  
Presidency of the Supreme Judicial Council  
Basra Federal Appeal Court.  
The Investigative Court of Almaqal

(signed)  
Witness  
Ahmad Ibrahim Safouh

signed  
Investigative officer

The Investigative Court of AlMaqal  
25/11/2007

The statement of the witness Ahmad Ibrahim Safouh, born in [REDACTED], a (illegible) worker living in Basra, [REDACTED] neighbourhood near the (illegible) mosque. He stated (illegible) the investigative judge of AlMaqal.

On 5/11/2003, around 11:30 I was in the house of my relative lawyer Mahmoud Zayoun visiting. We were taken by surprise when British soldiers broke the exterior door into the house and one of the British soldiers fired inside the house randomly injuring Muhammad Abdulridha Salem in his abdomen who was then taken to the hospital where he died. When the British soldiers entered, we were having dinner and the victim was sitting with us and upon enquiring from the British soldiers they told us that searching the house was wrong and based on false impression. The British soldiers took the victim to the Czech Hospital. He died two days after the incident and his body was received by his relatives. This is my statement.

(Stamp)  
Presidency of the Supreme Judicial Council  
Basra Federal Appeal Court  
The Investigative Court of AlMaqal

(signed)  
Witness

signed  
Judge  
[REDACTED] (illegible)  
25/11/2007

(Stamp)

Presidency of Supreme Judicial Council  
Basra Federal Appeal Court  
The Investigative Court of Almaqal

The Investigative Court of Almaqal  
22/11/2007

The statement of the claimant of personal right Fatima Zayoun Dahash, born in [REDACTED], works as an employee at [REDACTED] of Basra and lives in (illegible), Basra. After being exposed to , (illegible) and taking the legal oath she stated as follows:

On 5/11/2003, at about 11:30 pm and while I was in my house which is situated in (illegible) area, I was told that my husband the victim Muhammad Abdulridha Salem had been killed by British soldiers while he was in the house of (illegible) Mahmoud Zayoun in the [REDACTED] neighbourhood. He was visiting (illegible) Mahmoud Zayoun at the time. He was taken to the Czech Hospital and when I went to the hospital (illegible) I saw my husband injured by a gunshot in his abdomen (illegible) my husband to Muhammad Abdulridha Salem the second day (illegible) after staying in the hospital for two days where he died (illegible) on 17/12/2007. I ask for (illegible) against the British forces and also to be provided with a copy of (illegible) documents to the department of education of Basra. This is my statement.

(Stamp)

Presidency of the Supreme Judicial Council  
Basra Federal Appeal Court  
The Investigative Court of Almaqal

signed  
22/11/2007

signed  
claimant of personal right

Almaqal Police Station  
22/11/2007

To the Investigative Judge of Almaqal

The statement of the claimant of personal right Fatima Zayoun Dahash, wife of the victim Muhammad Abdulridha Salem have been noted down and is now forwarded to you for your appropriate decision. Regards.

signed  
The officer  
Lieutenant   
22/11/2007

The officer

1. The statement of the claimant of personal right Fatima Zayoun Dahash has been noted and attached with the documents (illegible).
2. The claimant of personal right is to be provided with a (illegible) copy of the documents (illegible) for the Education Department of Basra governorate.
3. To be reviewed by the deputy prosecutor.

(Stamp)  
Presidency of the Supreme Judicial Council  
Basra Federal Appeal Court  
The Investigative Court of Almaqal

signed  
22/11/2007

Almaqal Police Station  
illegible/11/2003

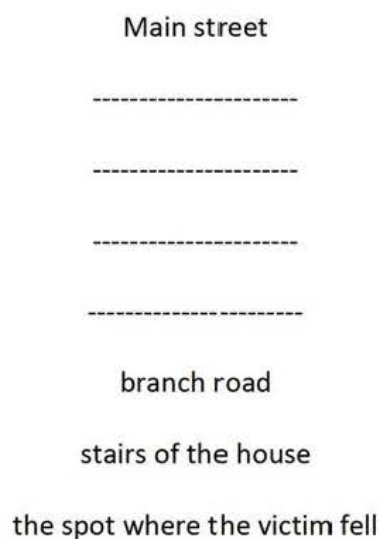
Inspection of the site of the incident where the victim was killed

1. The site of the incident is located in the area of [REDACTED] which is about 2 kilometre south.
2. The site of the incident is the house of a relative of the victim Mahmoud Zayoun.
3. I saw traces of the blood of the victim on the stairs of the house.
4. I saw traces of the breakage of the main interior door and there are no signs of heavy blows and also the wooden door (illegible) and the door of one of the rooms.
5. I did not see anything relevant to the investigation.

signed  
Investigative officer

(Stamp) Presidency of the Supreme Judicial Council, Basra Federal Appeal Court, The Investigative Court of Almaqal

signed  
Investigative officer



signed  
Investigative officer

Almaqal Police Station  
10/11/2003

To the deputy prosecutor esq

Your decision of 6/11/2003 and the decision of the investigative judge of 6/11/2003.

Inspection of the site of the incident has been completed and a report with a site sketch prepared.

We forward to you the informer Mahmoud Zayoun Dahash for you to kindly take down what he has to say.

We were not able to take any statement of the casualty due to his death. Please advise.

signed  
the officer

The Judge

To register the remarks of the informer above and attach the death certificate of the victim together with all medical reports obtained from the Czech military hospital and open a case file with regard to the informer's false information in accordance with the provisions of Article 243 (illegible). Contact the Coalition Forces to find out the name of the informer who should be provided with copies of the investigation documents with which to approach the Coalition Forces and the victim's (illegible) to take down what they say being claimants of personal right. The investigation to be completed.

signed  
deputy prosecutor general  
[REDACTED] (illegible)

(Stamp) Presidency of the Supreme Judicial Council, Basra Federal Appeal Court. The Investigative Court of Almaqal

The officer

1) The informer's remarks have been noted down by us and attached with the documents.

2) The Coalition Forces Command to be approached to know the name of the informer of the false situation that they portrayed to them which led to the incident and so that an appropriate action can be taken.

Almaqal Police Station  
8/11/2003

Examining the body of the victim

The body of the victim has been seen

1. The victim (was) wearing a striped *dishdasha* (gallabiyyeh)
2. The victim (was) laid on a Czech military hospital bed
3. I saw the victim's injury caused by a gunshot on the right-hand side of the abdomen
4. I saw traces of blood on the victim's belly
5. I did not see anything relative to the investigation

(Stamp)

Presidency of the Supreme Judicial Council, Basra Federal Appeal Court. The Investigative Court of Almaqal

signed

investigative officer

In the name of Allah the merciful and the compassionate

Almaqal Police Station

issue 2448

17/11/2003

To the Coalition Forces' HQ in Basra

13 killing incidents

On 5-6/11/2003 and at exactly 11:00 pm the house of lawyer Mahmoud Zayoun Dahash in the area of [REDACTED] was broken into by individuals of the customs camp belonging to the British Forces located in the school building of the children of the armed forces. In the meantime a British soldier opened fire and the incident resulted in killing the victim Muhammad Abdulridha Salem and in damages in the house of the aforementioned lawyer (illegible). The incident took place following false information. Almaqal judge decided to contact you to provide us with the name of the informer who lied when he told the British soldiers about a false illusive happening. Please give us his name in accordance with the decision of the investigative judge (illegible).

(Stamp)

Presidency of the Supreme Judicial Council

Basra Federal Appeal Court

The Investigative Court of Almaqal

Major

[REDACTED]

Station officer

17/11/2003

cc:

The (illegible) Customs Camp

(illegible)



# Appendix 25: Goodwill Payment Committee email

MOD-83-0000290-A

INFORMATION ONLY - CASE CLOSED  
(GPC CONSIDERED SECOND CASE)

Page 1 of 3

**Perkins Mr R GBR (INET)**

LAWYERS' CLAIM

**From:** Barnett Lt Col CMJ GBR (INET)  
**Sent:** 28 November 2003 01:05  
**To:** Calder Maj C GBR (INET)  
**Cc:** Kidwell Lt Col T GBR (INET); [REDACTED] NZ (INET); McCafferty Dr MC GBR (INET); Perkins Mr R GBR (INET); Bartlett Maj AT GBR (INET); Harkins MR R GBR (INET); Harnett Capt GBR (INET); Ellis-Davies Capt S GBR (INET); Murray Capt AM GBR (INET); [REDACTED] NLD (INET); Evans Col T GBR (INET)  
**Subject:** RE: SHOOTING 1 KINGS - 6 NOV 03

Charlie,

Thank you for the additional information. The GWPC has met and has determined that a welfare payment should be made to the family in this case. CO 1 KINGS in his letter of 11 Nov 03 requested the sum of \$2000. This amount is agreed by the GWPC.

We have a completed CERP application form for that amount. Please ensure that the BG collect the money from Ops Spt here at Div.

The OC Coy should also confirm that this sum is understood to be the full and final welfare payment. It should be absolutely clear that it is not a negotiating start point. The GWPC is concerned to ensure that payments are not forced up or that expectations of a payment in every case are created. It will be interesting to see if the increase in the Al Batal case has filtered out and others seek to hold out for higher payments.

I also notice that the deceased in this case is called Mohammed Abdul Aurda and that is also the name of the claimant in the 1 KINGS shooting incident of the 10 Nov where the claimant's wife was shot and killed. Has there been an admin mix up with these claims or are they coincidentally the same name?

The GWPC has also made a determination on the second case (10 Nov incident) which I will communicate in a separate e-mail.

Charlie Barnett

Lt Col  
Comd Legal  
MND (SE)

-----Original Message-----

**From:** Calder Maj C GBR (INET)  
**Sent:** 23 November 2003 23:02  
**To:** Barnett Lt Col CMJ GBR (INET)  
**Cc:** Bartlett Maj AT GBR (INET)  
**Subject:** RE: SHOOTING 1 KINGS - 6 NOV 03

Colonel

2. Fair point I was not aware it had to go to Rick first. As soon as I was I delivered a copy of all the paperwork by hand on Wed am.

4. We believe that CF were inadvertently drawn into a dispute between 2 groups of lawyers over the ownership of some offices. It is worthy of note that they had been subjected to an armed attack at 1700 and also a further attack 30 mins before the CF op. Despite the tip off telling them that there were grenades and RPGs at the house none were discovered. There were only the 2x AK47s which the men were carrying.

5. They have not formally made a written request for compensation but they are in regular contact with the new coy comd on the subject. They are expecting some form of compensation.

On your last question the Comd is engaged on this as one of the 'Agencies' that regularly brief

28/11/2003

44

# Appendix 26: PIL Questionnaire completed by FZD

MOD-83-0000286-A

(illegible line)

1. Name of deceased: Muhammad Abderridha Salem
2. Relationship: Husband
3. Age of the deceased: 45 years
4. His address: [REDACTED] lawyer Mahmoud Zuboon.
5. Occupation: Teacher
6. Date of the injury (incident) and death: 5/11/2003; death 7/11/2003
7. Time of the injury: Eleven thirty at night.
8. Cause of the injury: Gunshot in the abdomen
9. Did you see the injury (incident) yourself: My brother lawyer Mahmoud Zuboon and his lawyer wife Intisar Abdelbaqi saw it.
10. If you did not see the incident yourself, please ask witnesses to fill in the attached questionnaire.

11. Where did the incident take place specifically?

City/township/village: Basra province

Street: [REDACTED]

Block: House of lawyer Mahmoud Zuboon in [REDACTED], Basra

Other blocks in the neighbourhood: [REDACTED]

[REDACTED], Basra

Site of the incident: Inside the above house

12. What were you doing at the site of the incident at the time? The incident took place in my brother's house where my husband the victim went to visit on the occasion of Ramadan

13. Who was with you at the time of the incident?

14. Specify your position and proximity from the site:

**Before**

Describe your position in the street or building

In what direction were you going

How far were you from the site of the incident

How do you describe seeing the incident

**During**

Describe your position in the street or building

In what direction were you going

How far were you from the site of the incident

How do you describe seeing the incident

15. Describe the events leading to the incident in detail

aerial shelling: No

when did it start

do you know from where the attack came

were the planes soaring

how was the reaction of those present

what did they do

when did the attack take place

was the injury direct

what was the injury resulting from the attack

what did you do immediately after that

If the answer was "no" what were the resulting wounds and injuries

who was also killed or wounded in this case, give the numbers and the details

give any relative information

what happened immediately afterwards

ammunition that did not explode before May 2003: No

what is the name of the area

how long was it before it went off from 1 May

were those present aware that there had been unexploded ammunition around

was the type of the ammunition known, i.e. cluster bombs

describe its shape and appearance

how did the victim deal with the ammunition

describe what happened exactly at the time of the explosion

the time of the explosion accurately (hour/minute)

what were the resulting injuries

how did those present react

what happened at that moment

who was also killed or wounded in the incident, please give the numbers and the details

Please give other details

who was also killed or wounded in the incident, please give the numbers and the details

Please give any additional information

gunfire: yes, when did the shooting start: at eleven thirty at night when my brother lawyer Mahmoud Zuboon's house was assaulted all of a sudden and doors were broken

how many shots were fired: one

do you know from where did the firing come: from a British soldier when my brother's house was assaulted all of a sudden by breaking the doors.

were there other people: yes, my brother and his wife (illegible)

can it be said that the firing started with the intention of injuring or killing victims: yes

could you see who fired: no because my husband the victim went to visit my brother in his house which was adjacent to ours.

describe the place of the injury of your relative: it was in his abdomen.

from which direction did the fire come (describe in detail the location of the building and the point of the firing: the British soldier fired as he was face to face with the victim inside the hall of the house .

do you the type of weapon used: a rife equipped with a silencer.

specify where in the victim's body did the bullet hit: in his abdomen.

time of firing: eleven thirty at night 5/6/11/2003

how was the reaction of those present: wondered why as there was no reason for the firing.

what did they do: my brother's wife was entreating them not to fire but the soldier after firing was shouting at her asking the other soldiers to get her inside the room. there was no resistance because those present had been secure inside the house.

other:

when did the incident take place: at eleven thirty at night.

specify the cause of the injury or the death: gunfire.

how did those present react: our reaction was indescribable.

what were the measures taken: he was transported to the Czech Hospital one and a half hour after he was hit by gunfire.

## Appendix 27: Short Form statement of FZD

MOD-83-0000305-A

The person demanding compensation:

1. Name: Fatima Zuboon Dahash, born in [REDACTED] - female
2. Full address: Basra [REDACTED].
3. Widow.
4. Occupation: [REDACTED]
5. If working, what is the salary.
6. Possessions of land, houses: none
7. loss of things they owned with description of the loss: no losses except the loss of my husband who died in the incident.
8. the loss in details: no material loss.
9. is the loss an old or modern item (age) if a car or the like: none.
10. how did you own what had been lost: n/a
11. did the incident take place in front of you, if you did not see it, who told you about it: my brother and his wife told me about the firing at my husband.
12. if the incident was in a house, what is the address: the house of lawyer Mahmoud Zuboon, [REDACTED]
13. describe in detail, before, during and after the incident: while my husband was sitting with my brother in the house of my brother lawyer Mahmoud Zuboon a British force broke the doors and entered in a surprising manner when a soldiers fired.
14. if you were accompanied, what did you do and how did you act: i was not there.
15. did you inform the authorities: yes Almaaqal Police station were informed.
16. did you try to get compensation? No

## Appendix 28: Short Form statement of MZD

MOD-83-0000305-A

The person demanding compensation:

- Name: Mahoud Zuboon Dahash, male, born [REDACTED]
- Full address: Basra - [REDACTED]
- Marital status: [REDACTED]
- Occupation: yes, lawyer
- If working, what is the salary: private sector.
- Possessions of land, houses: none
- loss of things they owned with description of the loss: 5/6/11/2003 when the doors were broken and suitcases torn apart.
- the loss in details: loss of the external iron gate and the main wooden door and many suitcases torn apart in addition to the moral loss.
- is the loss an old or modern item (age) if a car or the like: none.
- how did you own what you had lost: by purchase.
- did the incident take place in front of you, if you did not see it, who told you about it: the incident took place when a British military force assaulted the house all of a sudden following a false information from an unknown person as they alleged.
- if the incident was in a house, what is the address: the house of lawyer Mahmoud Zuboon, [REDACTED], Basra.
- describe in detail, before, during and after the incident: while sitting in my house in peace and security we were taken by surprise to see the exterior doors of the house broken into by armed British military force and a soldier shooting, the house was then searched and suitcases torn apart and some (illegible) doors were broken.
- if you were accompanied, what did you do: I gave up to the force as they were many in number.
- did you inform the authorities: yes I informed Almaaqaal Police station in Basra.
- did you try to get compensation? No

# Appendix 29: PIL Letter of Claim dated 7th July 2004

MOD-83-0000284-A

Public Interest Lawyers <sup>(2)</sup>

The Right Honourable Geoffrey Hoon MP  
The Secretary of State for Defence  
Ministry Of Defence  
Whitehall  
London SW1A 2HB

Newhall Place  
16-17 Newhall Hill  
Birmingham  
B1 3JH  
UK  
Tel: 0121 212 1868  
Fax: 0121 212 1878  
Email: phil\_shiner@publicinterestlawyers.co.uk

Specialists in  
public, human  
rights,  
international,  
environmental  
and planning  
law

cc: [redacted] The Treasury Solicitor

7 July 2004

Your ref:  
Our ref: NC/PS/Iraq Personal Injury

### LETTER OF CLAIM

Dear Sir,

#### Re: Death/Injury of Iraqi civilians due to acts of UK occupying forces

1. We are instructed (at this stage) by 30 Iraqi clients who have either lost relatives or suffered injury as a result of acts of UK occupying forces. All incidents causing death or injury occurred in Basra, which is controlled by UK Armed Forces. The 30 cases in paragraph 4 below set out further details.
2. We anticipate that we shall be instructed by other clients who have also either lost relatives or suffered injuries in similar circumstances.
3. This is a Letter of Claim for the purposes of the Pre-action Protocol for Personal Injury Claims.

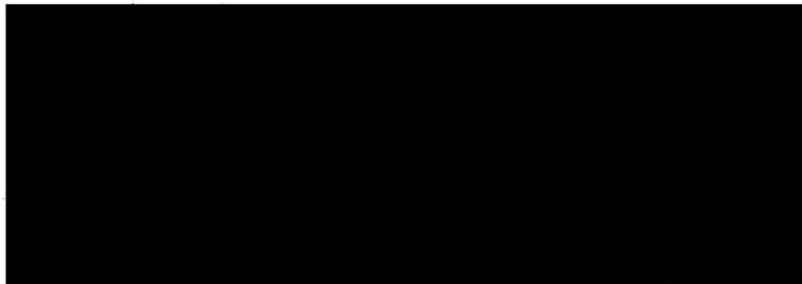
#### FACTS

4. The 30 cases on which we have so far received instructions all occurred in or around Basra, South East Iraq and are as follows:

Case 1: [redacted]

6.4.11432 ✓

PIL/  
ANN





PIC Case 2: Muhammad Abdul Ridha Salim (Deceased)

6 NOV 03 ?

(2) On 5 November 2003 Mr Salim who was aged 45, was at his brother-in-law's house in Basra at approximately 2330. British soldiers forced entry into the house by breaking down the front door and one soldier fired a rifle with a silencer into Mr Salim's stomach. Mr Salim died in hospital on 7 November 2003 as a result of the injuries suffered. A letter of Major S J Routledge of 9 November 2003 (enclosed) confirms that the British forces had entered the property by mistake.

(3) Mr Salim was a teacher and married to Fatima Zabun Dabesh.

PIC Case 3: [REDACTED]

[REDACTED]

PIC Case 4: [REDACTED]

[REDACTED]

PIC Case 5: [REDACTED]

[REDACTED]

PIL

Case 6: [REDACTED]

[REDACTED]

PIL

Case 7: [REDACTED]

[REDACTED]

PIL

Case 8: [REDACTED] ✓

[REDACTED]

PIL

Case 9: [REDACTED]

[REDACTED]

3

[Redacted]

PIL

Case 10: [Redacted] ✓

[Redacted]

PIL

Case 11: [Redacted] ✓

[Redacted]

PIL

Case 12: [Redacted] ✓

[Redacted]

Case 13: [Redacted]

[Redacted]

[Redacted]

Case 14: [Redacted]

[Redacted]

Case 15: [Redacted] ✓

[Redacted]

Case 16: [Redacted]

[Redacted]

Case 17: [Redacted]

[Redacted]

[Redacted]

Case 18: [Redacted]

[Redacted]

Case 19: [Redacted]

[Redacted]

Case 20: [Redacted]

[Redacted]

Not on PIL  
list but PIL  
AWCUR

Case 21:

[Redacted]

64.11437? AMN

[Redacted]

Case 22:

[Redacted]

[Redacted]

Case 23:

[Redacted]

11433

Case 24:

[Redacted]

Case 25:

[Redacted]

Case 26:

[Redacted]

Case 27:

[Redacted]

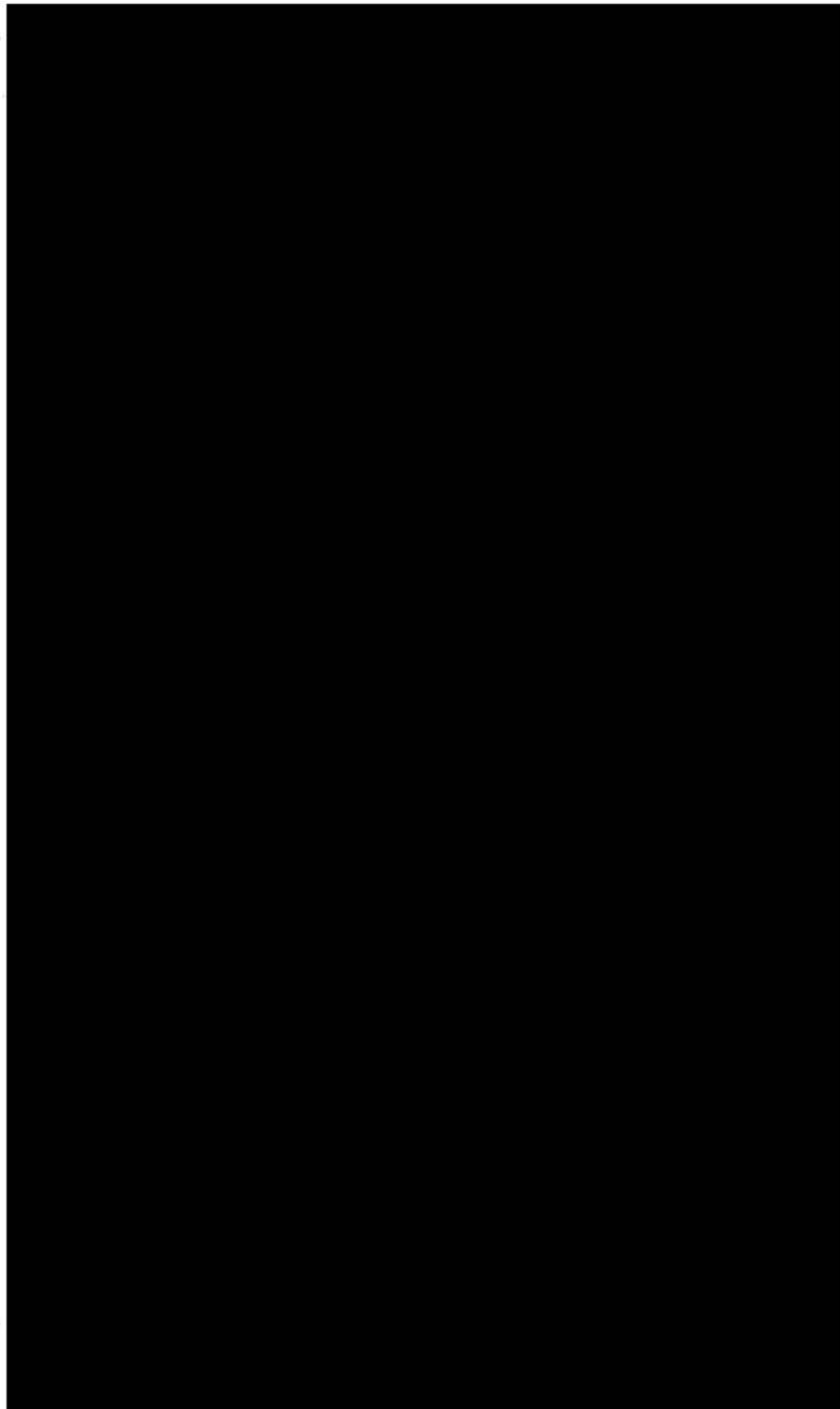
Case 28:

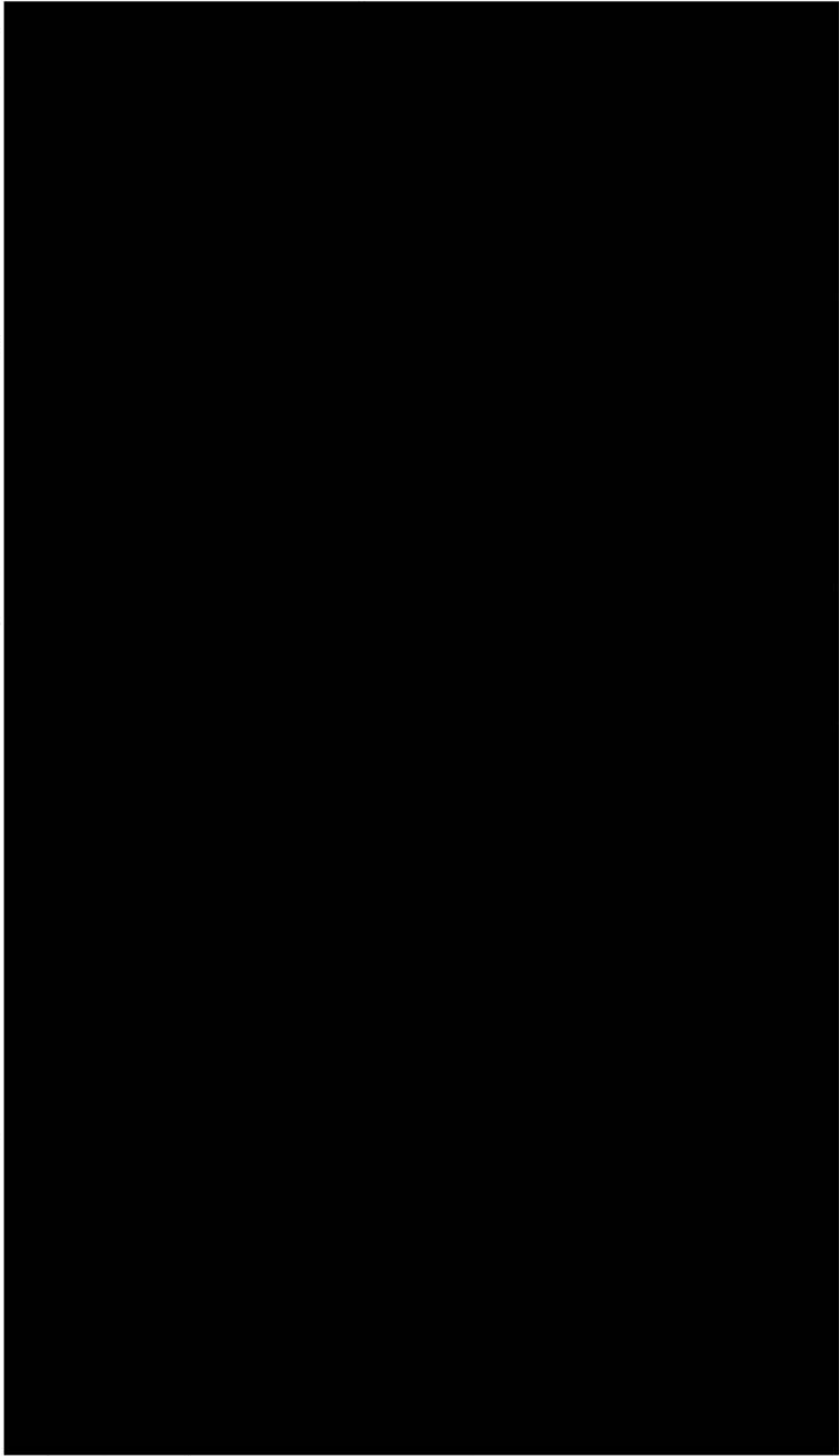
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Case 29:

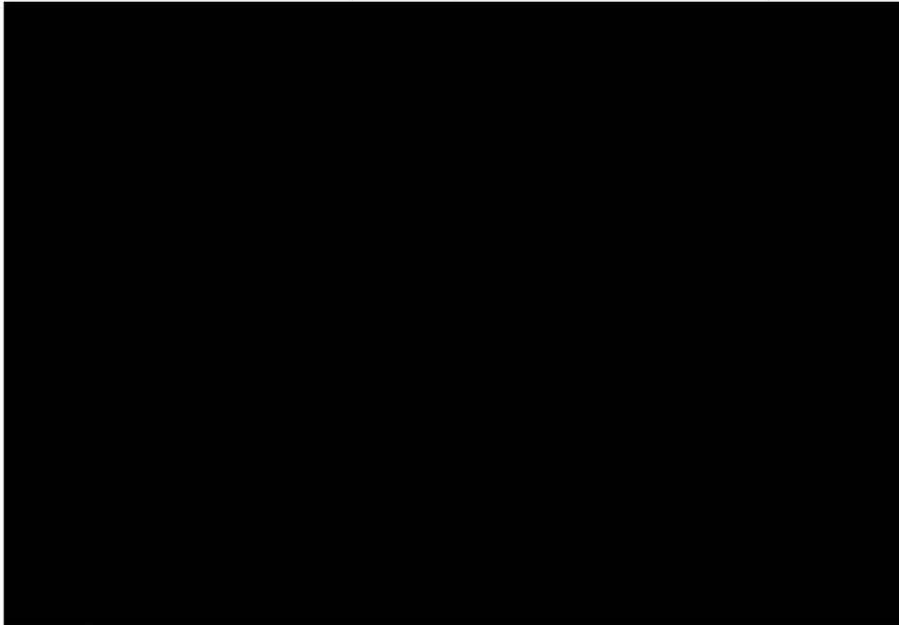
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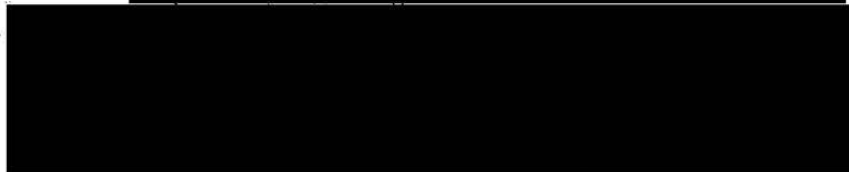








Case 30: [redacted] 5 4 1145



**CAUSE OF ACTION**

5. It is alleged that UK troops were:
  - a) Negligent and/or,
  - b) Intentionally or recklessly committed acts which amounted to unlawful force and the tort of battery,causing death or injury to Iraqi civilians in the above cases.
6. We request that you accept liability and agree to pay damages by way of "just satisfaction" to our clients. We will of course provide further details in support of our clients' losses in due course.

**PRE-ACTION PROTOCOL**

7. We appreciate that paragraph 3.8 of the Pre-Action Protocol states that where the accident occurred outside England and Wales and/or where the defendant is outside the jurisdiction, the time period to respond is normally extended up to six months (from the usual three months). However, the Pre-Action

Protocol for Personal Injury claims is primarily designed for cases with a value less than £15,000 which are likely to be allocated to the fast track (paragraph 2.3) and the timetable and arrangements may need to be varied to suit the circumstances of the case. We of course intend to act in accordance with the spirit of the Protocol but considering this will be a case with a value in excess of £15,000 and in light of the fact that none of the deaths have been acknowledged in these cases, the concern in relation to preservation of evidence and the current security situation in Iraq, we request that the usual three month period for responding to a Letter of Claim should apply, and that the period should not be extended to up to six months. We refer you to paragraph 2.5 which provides that where one or both parties consider the detail of the protocol is not appropriate to the case, and proceedings are subsequently issued, the court will expect an explanation as to why the protocol has been varied. We consider this is a case where the court would consider that six months to respond to this Letter of Claim would not be appropriate. We therefore put you on notice that if a response is not received within 3 months, we will consider whether it is appropriate to issue proceedings at that stage.

8. We look forward to receiving an acknowledgment of this letter within 21 days.

Yours faithfully

*Public Interest Lawyers*

**Public Interest Lawyers**

Enc.

# Appendix 30: Letter from the Treasury Solicitor to PIL dated 11th April 2005

MOD-83-0000282-A



## THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS  
DX 123242 St James's Park. Switchboard 020 7210 3000 (GTN 210).

Direct Line: 020 7210 3572 Direct Fax: 020 7210 3214 E-mail: [REDACTED]@treasury-solicitor.gal.gov.uk

Public Interest Lawyers  
16-17 Newhall Hill  
Birmingham  
B1 3JH

Please quote: LT40755F/JSS/TZJ/C1

Your reference: NC/PS/Iraq PI20018

Date: 11 April 2005

Dear Sirs

### IRAQ CIVILIAN CLAIMS

Thank you for your letter to the Secretary of State for Defence dated 7<sup>th</sup> July 2004. As you know, we are instructed to act for him in these proceedings, and the Crown Proceedings Act 1947 requires you to send all correspondence and legal process to the Treasury Solicitor rather than Mr Hoon's office.

This is our formal response to your Pre-Action Protocol letter of the above date.

In the time available, it has been possible to carry out a range of investigations into the claims brought by approximately 30 Iraqi civilians or their dependants. These investigations are ongoing, but some (for reasons which we will explain) cannot be taken further at this stage. Additionally, in relation to a number of the claims it has not been possible to obtain confirmation from the relevant Unit or Battlegroup that the alleged incident took place at all: either you have provided us with the wrong date and/or location (in such circumstances, we cannot be confident that the correct Unit or Battlegroup has been approached for instructions), or alternatively your instructions are mistaken. We would urge you that in each of these cases (further particularised below) you obtain further information and clarification from your clients in Iraq to ascertain the position.

As suggested above, a number of the claims cannot be taken further at this stage. This is because they are the subject of continuing investigation by the Royal Military Police. These investigations cannot be prejudiced by the threat of concurrent civil proceedings, and our instructions are that we will apply for a formal stay of proceedings should you see fit to issue any at this juncture.

We refer to your letter dated 2<sup>nd</sup> February 2005. We note that, as matters currently stand, you are unable to confirm that you are formally instructed in Cases 6, 8-12, 18 and 21. Accordingly, we do not propose to provide any substantive response in relation to those cases. This letter is coming to you within a reasonable time of receipt by us of your letter of 2<sup>nd</sup> February, and we were not obliged to comply with the strict timetable of the Pre-Action Protocol whilst doubt existed as to your retainer in relation to the above cases.

[REDACTED] Head of Personal Injury Group  
[REDACTED] - Team Leader



We provide a detailed analysis of all the currently extant claims below, to the extent that we are able to do so in the light of (a) the on-going police investigations, and (b) our inability in specific cases to confirm that the alleged incidents happened at all.

Subject to the foregoing, it appears to us that the claims fall into two broad groups:

- (1) claims arising out of deaths or injuries sustained whilst in MoD custody.
- (2) claims arising out of shooting incidents.

As regards (1) above, these claims are all the subject of continuing investigation by the Royal Military Police. For the reason we have given, it is not possible for us to reply substantively at this stage.

As regards (2) above, without prejudice to the detailed circumstances of the individual cases (full particulars of which are given, where the relevant information is available), we have advised the MoD that a number of defences are available. We propose to explain these defences in general terms before turning to address the circumstances of the individual cases.

The starting-point for any accurate legal analysis of the circumstances of these cases is the MoD's Rules of Engagement ("RoE") which cover, amongst other matters, the opening of fire by service personnel. It should be appreciated that the RoE also cover a range of other matters which are of no relevance to the issues arising in these proceedings. Insofar as the RoE are relevant to the use of potentially lethal force, they are explained in the "Card Alpha" held by all HM Service Personnel whilst on duty in Iraq. Reference will need to be made to the entirety of the guidance given on the card, but it is noteworthy that such guidance is not intended to affect the soldier's inherent right to self defence.

The legal ingredients of the defence of self defence in a civil context are relatively uncontroversial: what is required is an honest and reasonable belief that the soldier is under threat, and the proportionate use of force. In many of the cases currently under scrutiny, the soldier will have acted in the "heat of the moment" such that it would not have been possible finely to weigh the pros and cons of action. Accordingly a defence of self defence will be properly available to the MoD in many of these cases.

In some cases the soldier may not have anticipated a direct threat to himself: rather, the threat was to a colleague or someone else. In such cases the defence under s.3 of the Criminal Law Act 1967 will apply. This permits the use of such force as is reasonable in the prevention of crime. In many respects, it is clear that there is an overlap between this and the defence of self defence.

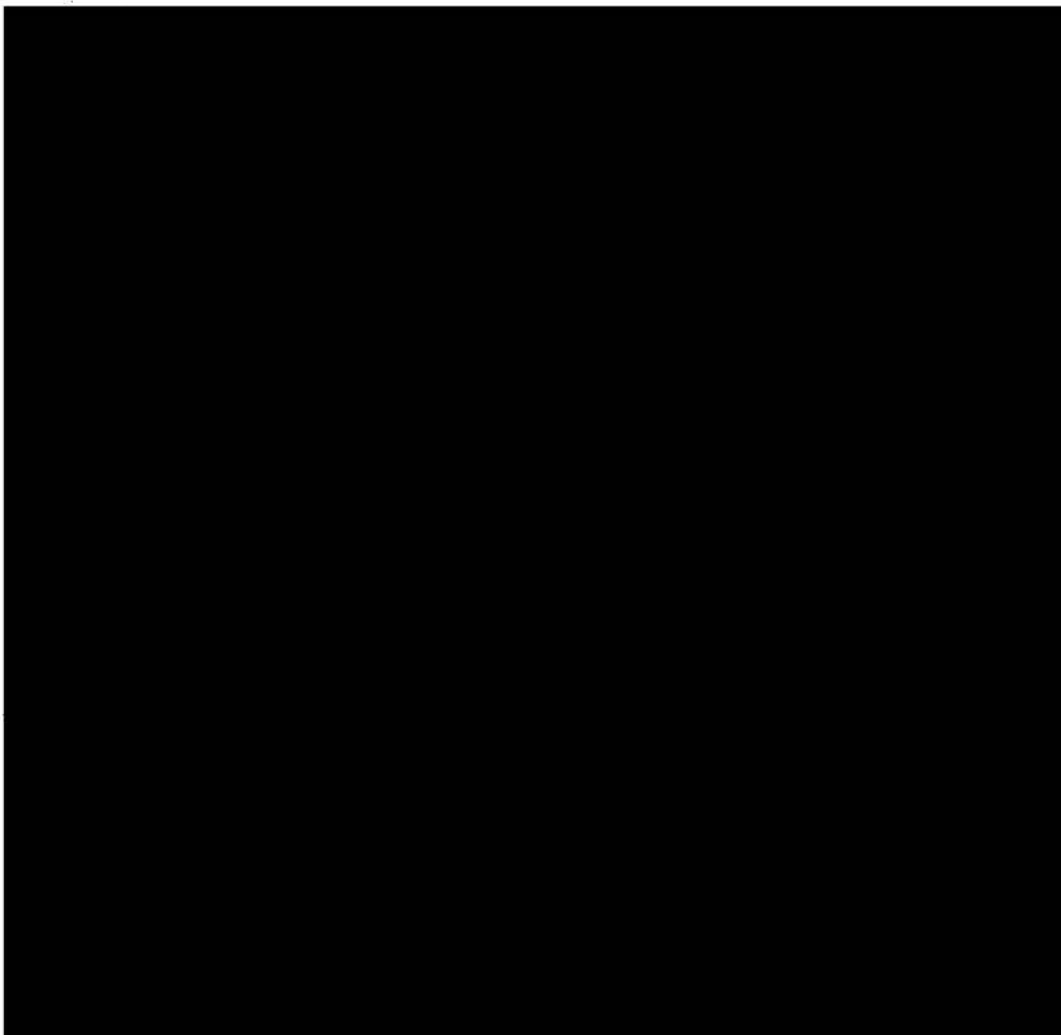
Furthermore, it is the MoD's case that their soldiers acted within the terms of the RoE. In such circumstances, the doctrine of "Act of State" applies (see, for example, Burmah Oil v Lord Advocate [1965] AC 75), and the Crown is immune from liability on ordinary constitutional principles.

Similarly, it is also the MoD's case that their soldiers discharged their arms in circumstances where they were under direct threat and were actively engaged with or against hostile Iraqi civilians. The defence of combat immunity, as recently explained by Owen J in Bell v MoD, applies in such circumstances.

Finally, we set on record that, save in the case of deaths occurring in MoD custody, the recent decision of the Administrative Court in Al-Skeini v Secretary of State for Defence (2004) EWHC 2911 (Admin) is authority for the proposition that your clients are not entitled to place reliance on article 2 of the ECHR in support of a claim for damages.

With those background considerations in mind, we now turn to address the facts of the individual cases. The same numbers and names as set out in your letter of claim have been used here for ease of reference.

We are also taking this opportunity to disclose a number of documents and witness statements to you, notwithstanding that we are not strictly speaking required to do so under the CPR. A number of the documents have been redacted so as to exclude material protected by PII. Specifically, the redactions cover: (i) references to the classification of documents, (ii) the names of any individuals not relevant to these claims, and (iii) material which is sensitive, for example information which could lead to the identification of individuals assisting the Coalition, or information otherwise protected by PII.



[REDACTED]

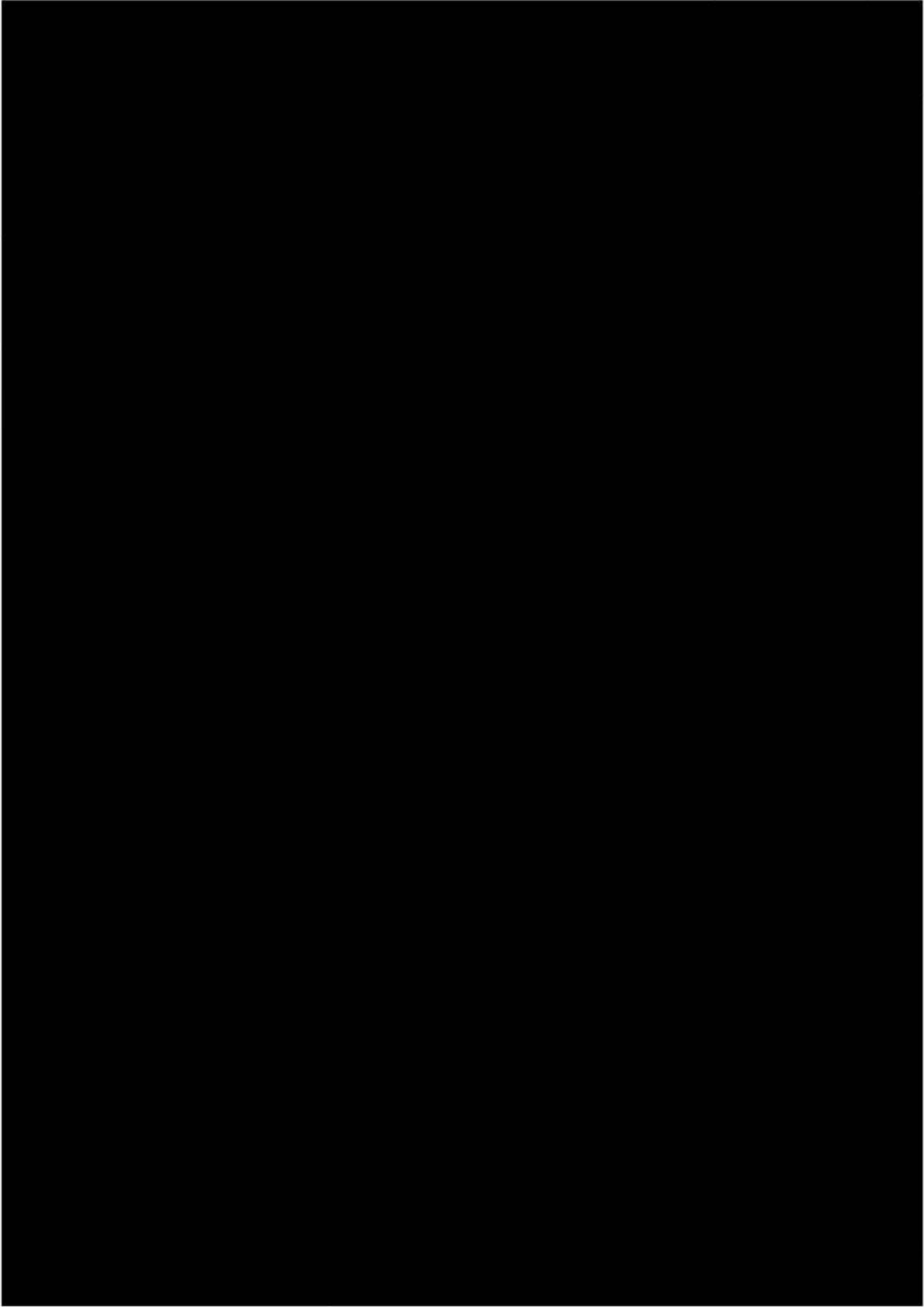
**Case 2 - Muhammad Abdul Ridha Salim (deceased) aka Mohammed Abdul Aurda**

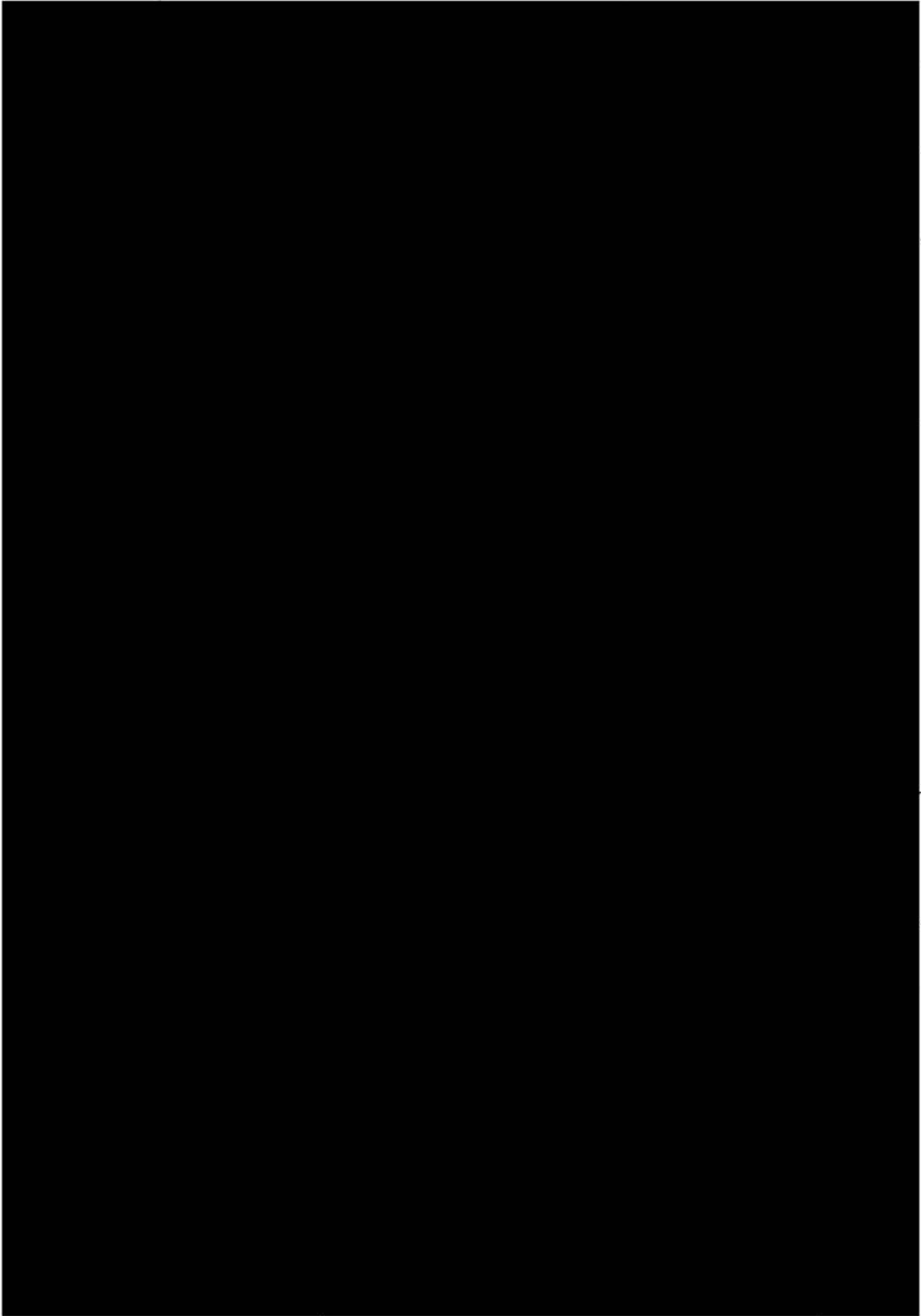
The records available and attached confirm that the correct date for this incident is 6<sup>th</sup> November 2003.

British soldiers were acting on information received on 5<sup>th</sup> November 2003 at approximately 2315 that armed men were seen entering the building in the Madran area of where the incident occurred. The unit made a "soft knock" attempt to gain access to which the occupants did not respond. After forcibly entering the building, gunfire was heard coming from the stairwell and your client and another man, each armed with a long barrelled weapon, ran down the stairs towards Sgt [REDACTED] SOT1. The soldier believed he was in a contact situation and that his life was under threat, and he discharged his weapon. The man accompanying your client down the stairs dropped his weapon, and so no further shots were fired.

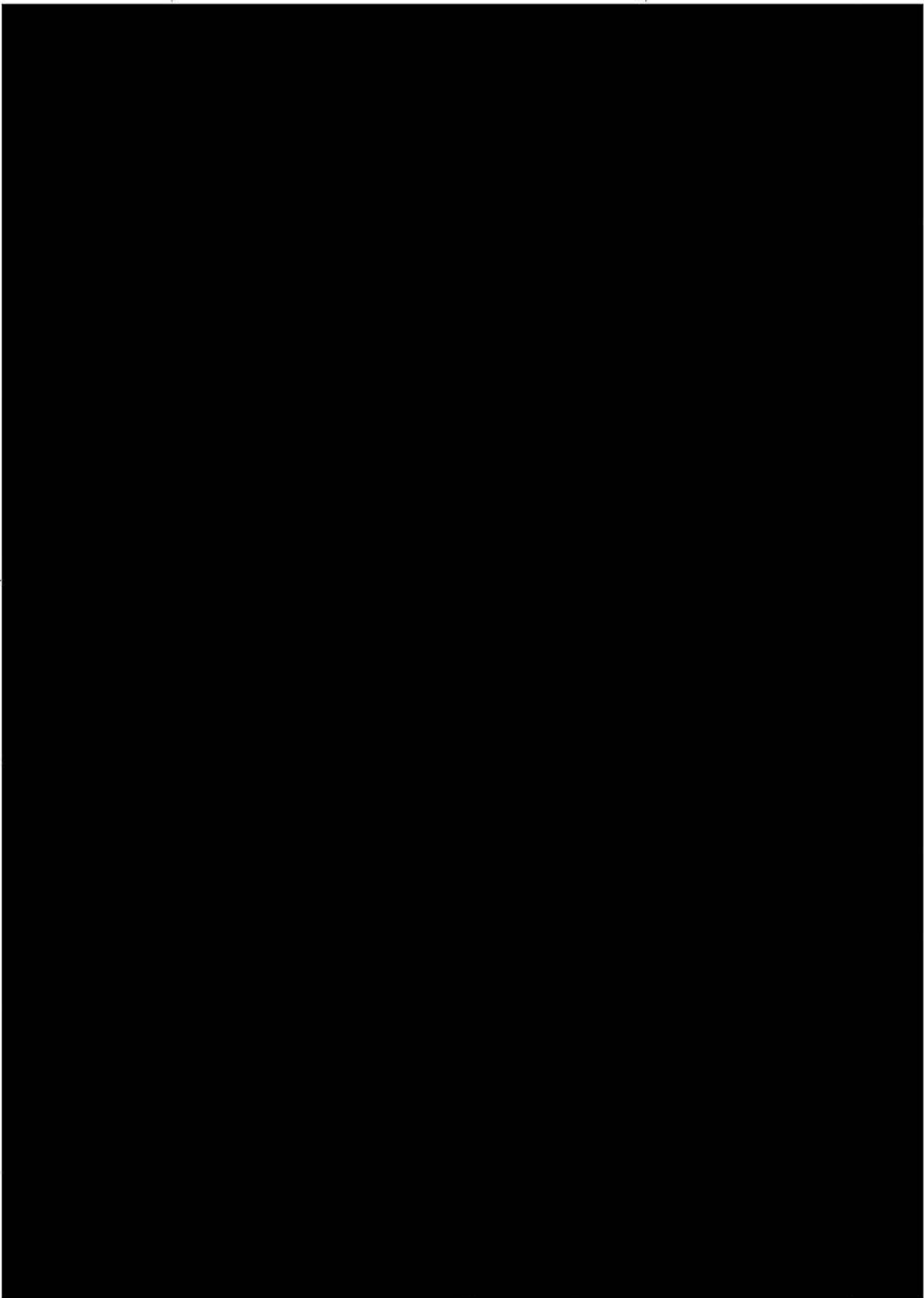
Liability is therefore denied on the bases that the soldier acted within the rules of engagement (see above), of self-defence, of Act of State, and, finally of combat immunity. Copies of the following documents are attached in that regard:

- a. HQ 19 Mech Bde radio log sheets 1717-1739 covering the period 0559 5 November – 1750 6 November 2003.
  - b. OC C Company 1 KINGS Post Incident Report - 6 Nov 03
  - c. CO 1 KINGS letter 3067F dated 6 November 2003 Report on Shooting Incident Resulting in Serious Injury Basrah-Badran Area 06 Nov 03
  - d. OC C Company 1 KINGS letter KINGS/C COY/3067V dated 9 November 2003 to Mr Mahmoud Zaboun
  - e. 20 Armd Bde Loose Minute G1 Claims - 9 Nov 03
  - f. HQ 20 Armd Bde letter 20 Bde/Comd dated 10 Nov 03 1 KINGS Shooting Incident 06 Nov 03
  - g. HQ 1 KINGS letter KINGS/BGHQ?3067D dated 11 November 2003 Request for Civilian Charitable Donation.
  - h. HQ 20 Armd Bde Letter 20 Bde/Case 01 dated 15 Nov 03 Application for Goodwill Payment Mohammed Abdul Aurda
  - i. Statement Sgt [REDACTED] SOT1 including sketch plan dated 06 11 03
  - j. Letters to/from ACO Iraq regarding goodwill payments - 21 November 2003, 24 November 2003, 25 February 2004 and 27 June 2004.
- [REDACTED]

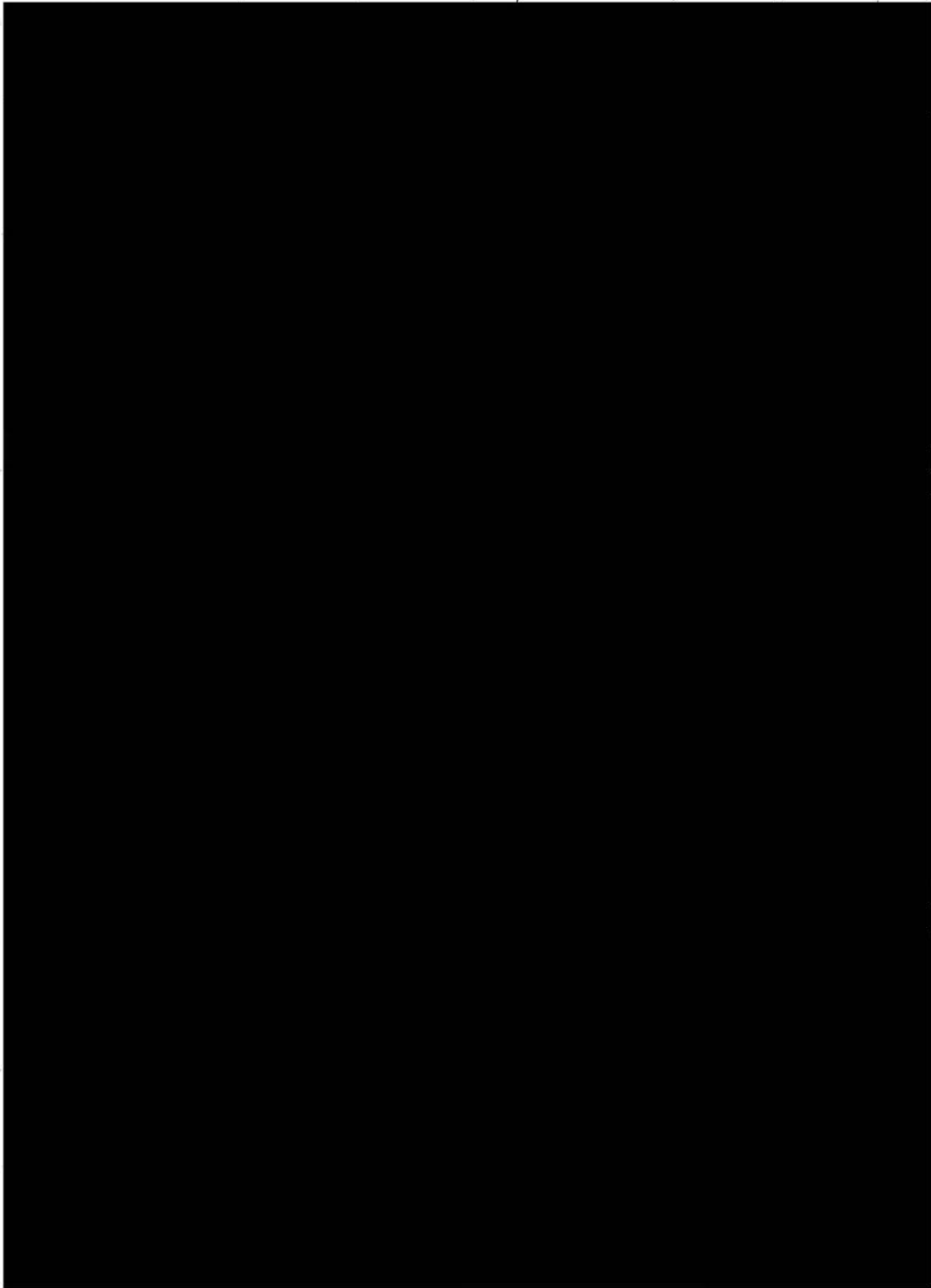


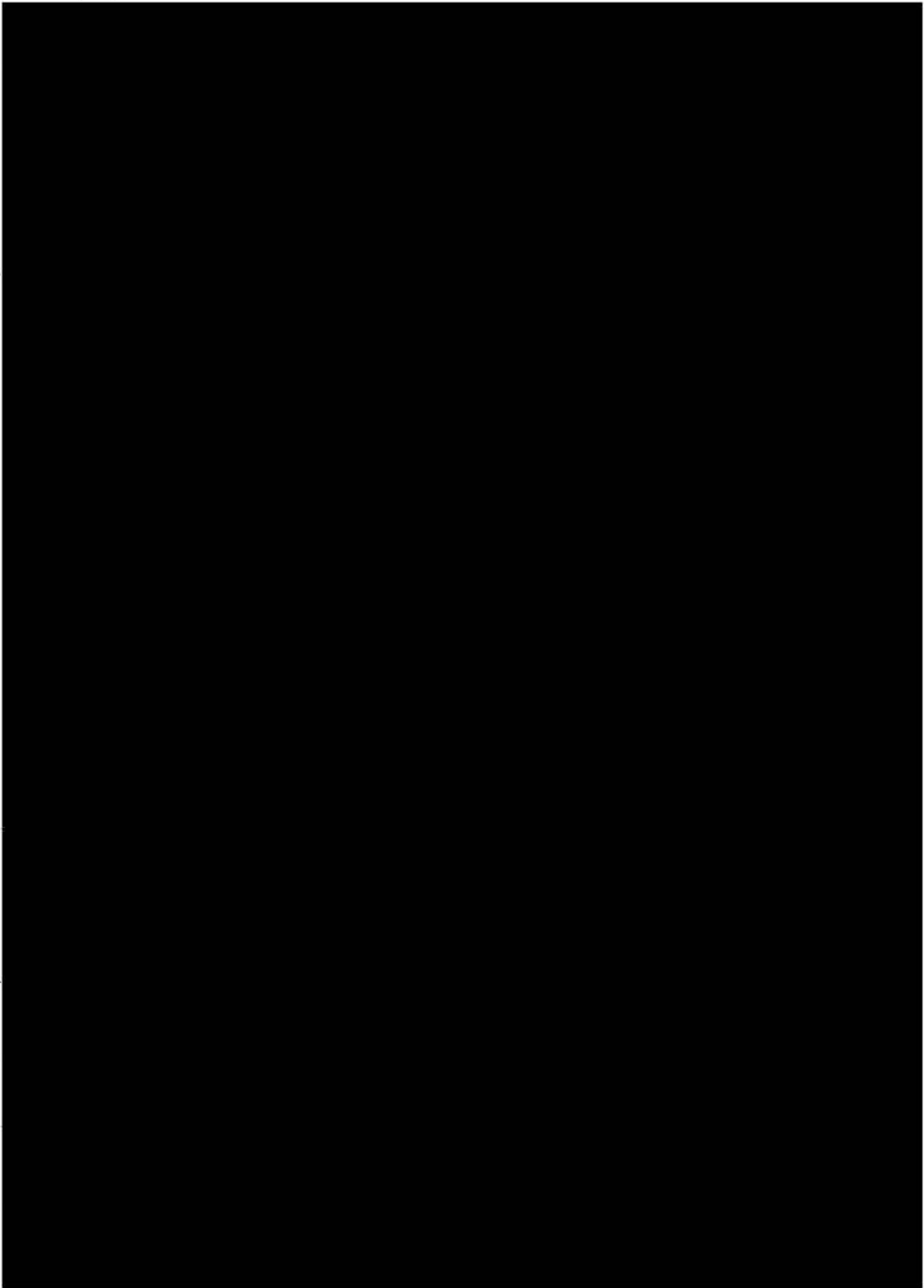


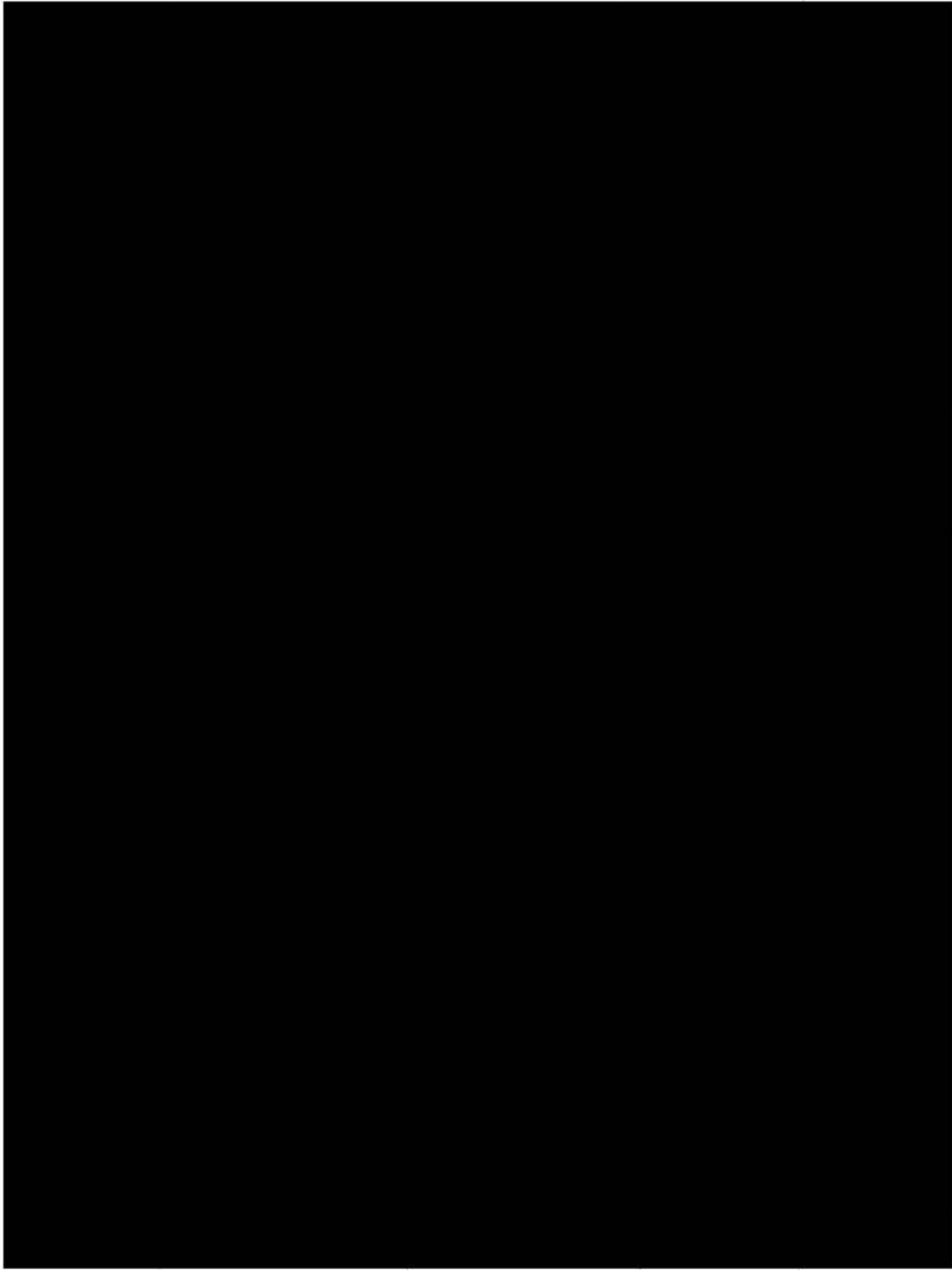


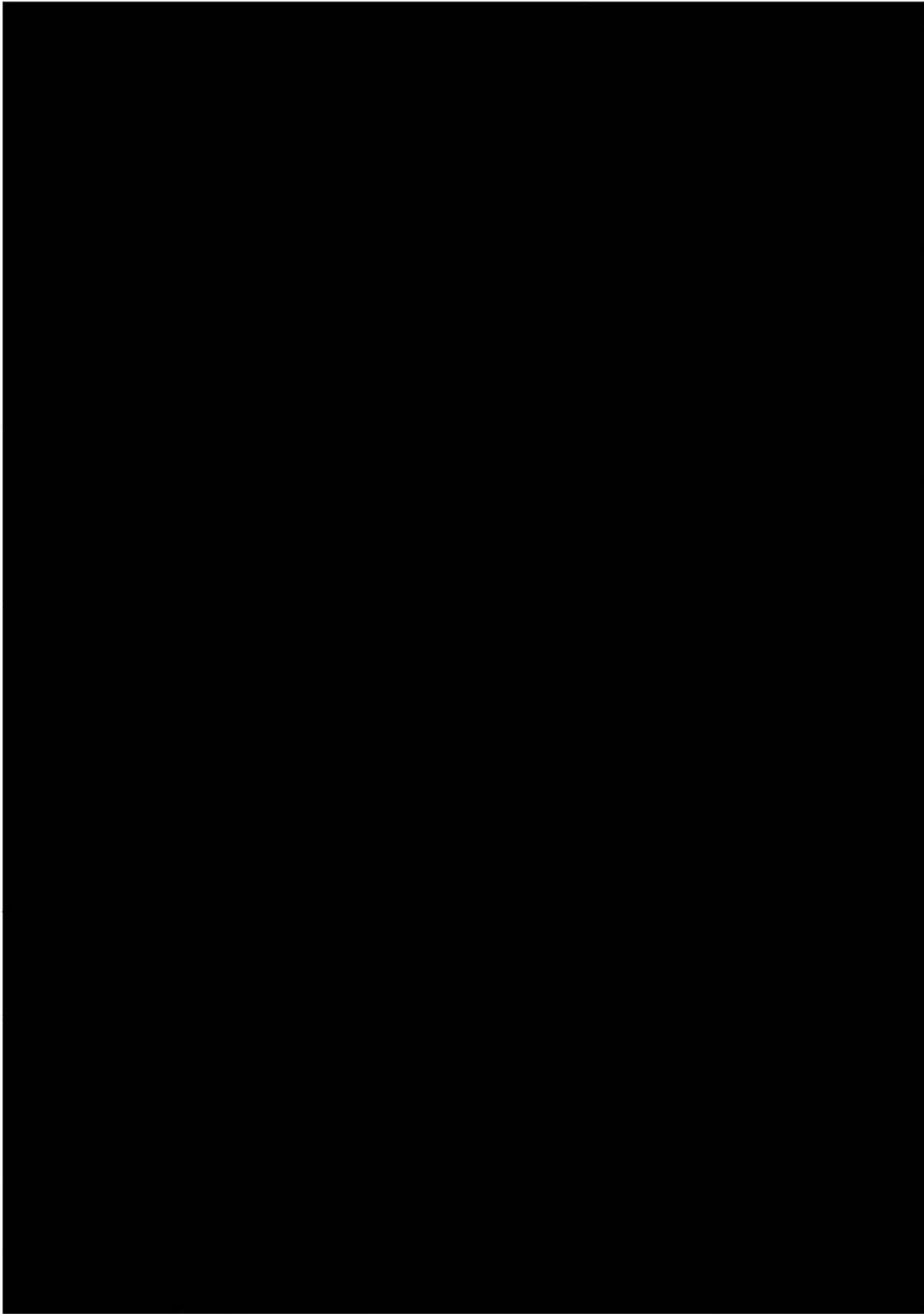


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Kindly acknowledge safe receipt.

Yours faithfully

  
For the Treasury Solicitor

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