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Made on Behalf of: MOD

Witness: D Hogan-Hern

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IRAQ FATALITY INVESTIGATIONS

FIRST WITNESS STATEMENT OF DAVID HOGAN-HERN

Introduction

1. I am the Deputy Head of the Disclosure Coordination Unit (DCU) within the Directorate of Judicial Engagement Policy (DJEP) at the Ministry of Defence. This is an appointment which I have held since 11 September 2014.
2. The DCU is a designated central repository of expertise and experience at the Ministry of Defence in undertaking and coordinating disclosure stemming from military operations in Iraq, Afghanistan and elsewhere, including the search for documents, appropriate redaction, Public Interest Immunity, and related issues. The workload facing the DCU is considerable, and at present includes the many claims the Ministry of Defence is facing from operations in Iraq and Afghanistan, as well as work relating to investigations elsewhere, such as Kosovo, and in support of UK public inquiries.
3. I make this witness statement in response to a request from Sir George Newman to provide information from Ministry of Defence records relating to specific areas of training undertaken by the 3rd Battalion, Parachute Regiment (almost universally known as "3 Para") and the 2nd Royal Tank Regiment ("2 RTR"), prior to deployment on Operation TELIC (the name given to the operation conducted by British Forces in Iraq) in 2003. My aim is to provide Sir George with information regarding the searches we have undertaken,

and the feasibility of further searches. The contents of this statement reflect either my own knowledge or my understanding of the position as conveyed to me by others.

Methods of Storage – Background

4. The Ministry of Defence has historically operated a very wide range of different information systems, both domestically and on operations. In addition, it is only over the last decade that the Ministry of Defence has moved away from the primacy of hard copy records (whether the information originated electronically or not). Matters are complicated by the number of potential repositories of documents. Individual units frequently held operational records locally, and in both paper and electronic form, and as a result the Ministry of Defence can end up working with information systems that are no longer accessed regularly, or retrieving physical IT assets that have not been accessed for years.
5. Whilst the Ministry of Defence is now in a position where the vast majority of documents are created and stored on shared electronic information management systems, the documents relevant to these Investigations bridge the period where significant amounts of documents were made and/or stored in hard copy. This has added to the difficulties encountered in, and the length of, search operations.
6. With regard to documents that were created during Operation TELIC, there are a number of particular difficulties. Operation TELIC, which commenced in March 2003, was initiated at short notice and was expected to last for a relatively brief period. Accordingly, in the early stages there were no Information Technology (IT) systems in place. Paper, as opposed to electronic filing systems, was used and there was a lack of consistency regarding the paper filing itself and what file names were used for cataloguing.
7. As it became evident that an established presence in Iraq was going to be lengthy, the IT capability increased and record keeping began to improve. Nevertheless, the record is not complete, reflecting the nature of the operation, the fact that it consisted of six-month tours of duty with handovers from one unit to another, failures in theatre to save

documents electronically or at all, and instances where IT assets have been lost or corrupted.

8. Documents that were saved correctly were, on return from six-month tours, transferred onto a temporary electronic archive capability known as "I-Net" established at the Permanent Joint Head Quarters (Northwood) ("PJHQ"). The temporary electronic archive "I-Net" was subsequently transferred and reconfigured and named as the DJEP Archive System ("DAS").
9. DJEP also holds a smaller electronic archive of records, the "DJEP File Store", made up of documents previously identified by the DCU in their support of public inquires and civil litigation cases.

Electronic Archives – DAS

10. DAS holds operational records from both Iraq and Afghanistan. Although as much material as possible has been transferred to DAS, the multiplicity of units, differing information management practices, and the pressures of the operational environment, have meant that not all data collected can be said to have been transferred.
11. Furthermore, although DAS is a relatively sophisticated system, retrieving relevant documents from it is not without complication, and depends to a significant degree on the search terms used. The way in which DAS searches are described is that they produce 'results', with each 'result' referring to a specific file containing reference/s to one or more search terms. That is not to say, however, that a search which yields 10 results will mean that 10 individual items have been found – those 10 results might all be duplicates of the same file. Nor does it indicate that the files are relevant to material issues in dispute. Additionally, each file ("the Primary File") can contain files ("the Secondary Files") which themselves can contain further files ("the Tertiary Files"). For example, if the Primary File is an e-mail with attachments which contain more attachments, the results will only refer to the Primary File, not the Secondary or Tertiary Files. Therefore, the number of individual items potentially relevant to a claim could only be confirmed by a further, more detailed review of the results, which may not be proportionate or justified, in whole or in part depending on the numbers of results

generated. Specific targeted search terms, for example, a detention number, are more likely to generate a proportionate number of results. Once an electronic search has generated results, it is not feasible to further interrogate those returns electronically; each has to be examined one by one by the DAS operator.

12. In accordance with the strategy for disclosure adopted in other litigation, DAS searches have been conducted in respect of search terms which, experience shows, will be most relevant to the information being sought:

Search term	No. of results	Comments
"VCP training"	1,844	None relevant
"VCP" and "3 Para"	2,531	None relevant
"VCP and 3Para"	61	None relevant
"VCP" and "2 RTR"	1,470	None relevant
"VCP" and "2RTR"	2,068	None relevant
"VCP training" and "3 Para"	1	Not relevant
"VCP training" and "3Para"	0	
"VCP training" and "2 RTR"	11	None relevant
"VCP training" and "2RTR"	11	None relevant
"Op Telic Training" and "3 Para"	235	None relevant
"Op Telic Training" and "3Para"	5	None relevant
"Op Telic Training" and "2 RTR"	104	None relevant
"Op Telic Training" and "2RTR"	53	None relevant
"Pre-Deployment training"	64,000+	Disproportionate result; refined as below
"Pre-Deployment training" and "3 Para"	2,741	None relevant
"Pre-Deployment training" and "3Para"	29	None relevant
"Pre-Deployment training" and "2 RTR"	2,193	None relevant

"Pre-Deployment training" and "2RTR"	1,336	None relevant
"Stop and search training"	12,730	Disproportionate result; refined as below
"Stop and search training" and "3 Para"	0	
"Stop and search training" and "3Para"	0	
"Stop and search training" and "2 RTR"	0	
"Stop and search training" and "2RTR"	0	
"Law and order training" and "3 Para"	0	
"Law and order training" and "3Para"	0	
"Law and order training" and "2 RTR"	0	
"Law and order training" and "2RTR"	0	
"3 Para" and "PDT"	2,254	None relevant
"3Para" and "PDT"	48	None relevant
"2 RTR" and "PDT"	3,317	None relevant
"2RTR" and "PDT"	1,406	None relevant

13. The use of the term "disproportionate" in this context follows our usual disclosure practice in relation to document searches, whereby a number of results greater than 2,000 is considered (on legal advice) to be too large to be accurately reviewed for relevance in a timely manner within existing resources. However, where feasible, we have conducted a review of all the returns, even where the number exceeded 2,000. I understand that Sir George is content with the concept of proportionate research in these matters.

Electronic Archives – DJEP File Store

14. In 2014, the DCU also conducted a search of the DJEP File Store for potentially relevant documents. A tranche of 5 documents resulting from these searches was disclosed to Sir George. This material related to general training in preparedness for overseas operations, as well as training with the specific objectives of Operation TELIC in mind. However, none of the material that we identified related to the specific questions we have been

asked regarding training in the use of Vehicle Check Points and Stop and Search operations.

Hard Copy Archives

15. The majority of the Ministry of Defence's hard copy records are held at the TNT facility in Swadlincote, Derbyshire. By way of explanation, in accordance with the Public Records Act (the Act), the Ministry of Defence sends its records deemed worthy of permanent preservation to the TNT storage facility. If not retained at Swadlincote under the Act, documents will be destroyed unless they are being retained pursuant to some specific instruction or policy. This is a government-wide, contractor-run facility that stores hard copy material and media; the Ministry of Defence uses this facility to store hard copy records at Secret classification and below. This facility holds many thousands of boxes of the Ministry of Defence's records (the facility itself can hold 1.8 million boxes), each containing archived files; each file is made up of tens of individual documents. In short, this archive contains millions of paper documents relating to all aspects of the Ministry of Defence's activities.

16. Files held at Swadlincote are catalogued by reference to file title. An electronic search facility, known as O'Neill's, enables the file index to be interrogated electronically. However, the success of an electronic search depends largely on the detail supplied at the time that the box was archived, and on the degree of specificity with which the file was labelled. In the DCU's experience, documents relating to matters *other than* detention were not labelled with significant levels of detail. As an example, there are various boxes in the TNT archive labelled simply "Iraq box *n* of *n*" with no other indication of what they contain. Consequently, when the DCU has previously searched using operation and policy names, they have generally found nothing. In other words, whilst it is possible to search the index electronically, the results are not as comprehensive as they are on DAS.

17. The DCU has undertaken electronic searches of the index of the TNT archive by putting the following search terms into the O'Neill's electronic search facility.

Search term	Number of results	Comment
"training"	41,722 files	Disproportionate number of results
	400 containers	Where contents are further specified, the results are not relevant here
"3 Para" or "3Para"	590 files	None obviously related to training. We recalled the files that specifically related to ciphered witnesses; none contained any relevant material
	32 containers	Where contents are further specified, the results are not relevant here
"2 RTR" or "2RTR"	300 files	Where contents are further specified, the results are not relevant here
	19 containers	
Service numbers	3 additional files found	None obviously related to training. We recalled the files that specifically related to ciphered witnesses; none contained any relevant material

18. A manual search of the TNT archive for any documents that do not appear in the index for that archive would be a massive undertaking which would place an enormous burden on DCU's resources, requiring individual boxes to be recalled and examined one by one. By way of an indication of the likely size of such a task, the Al Sweady Public Inquiry resulted in around 1,000 boxes being recalled. This required a special contract to be agreed with TNT, with a dedicated van to bring the boxes from Swadlincote to Whitehall on a rolling basis. It took an average of 4 investigators a day working for 8 weeks to complete the review.

Disclosure

19. In the light of evidence given to Sir George by witnesses during Hearings, in which they highlighted that they had received some training in the set-up and management of Vehicle Check Points in preparation for prior service in Northern Ireland, we have undertaken further searches of our records for material relating to such training. In conducting these searches, we have identified one potentially relevant document –

Volume 1, Part 9 of the September 2002 edition of the Army Field Manual. We have submitted this to Sir George.

STATEMENT OF TRUTH

I believe that the facts stated in this Witness Statement are true.

Signed



Dated

17th February 2015