

MOD-83-0000282-A

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Please quote: LT440755F/ISS/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 7th 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 2nd 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 2nd 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.

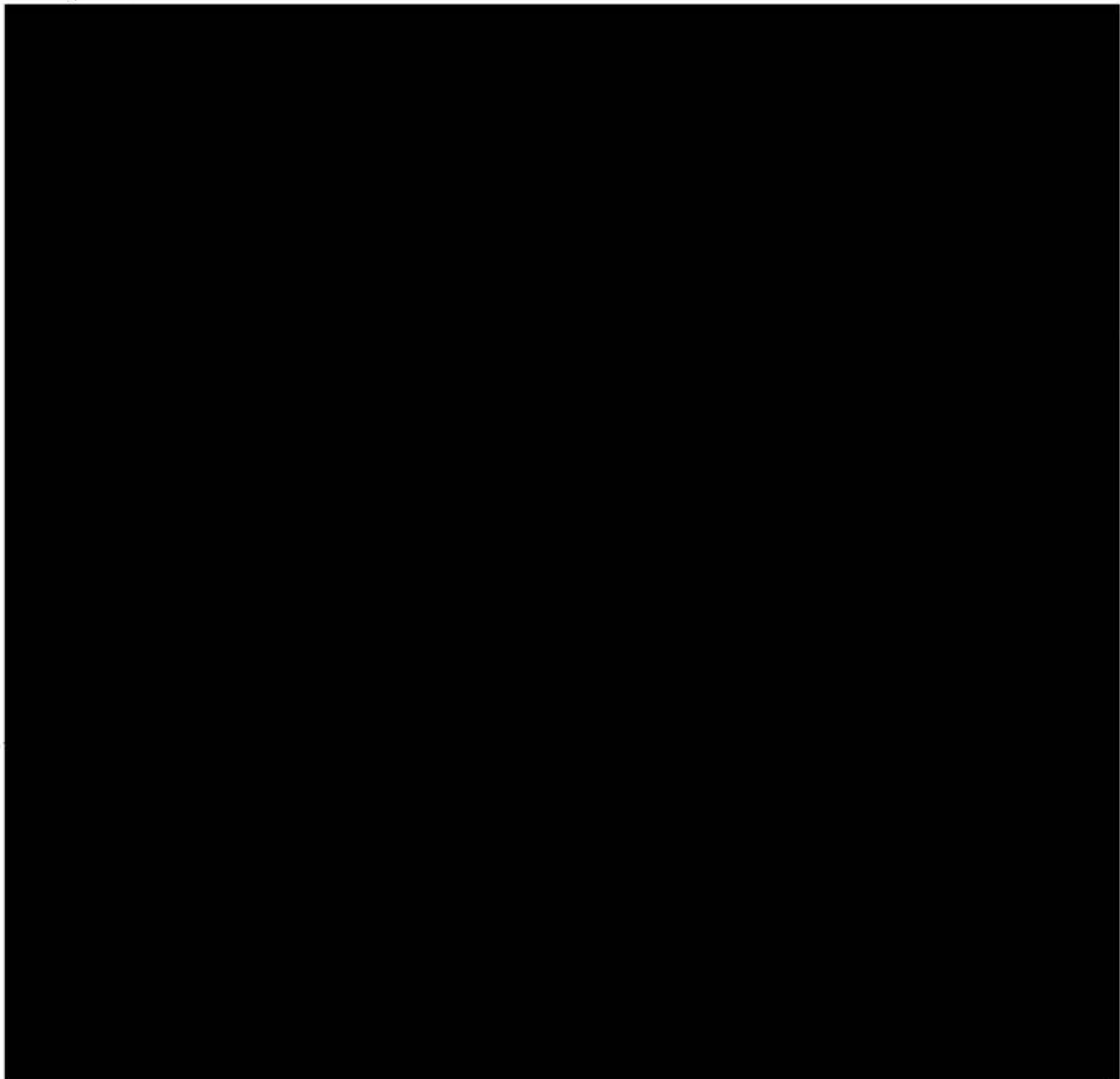
Furthermore, it is the MoD's case that their soldiers acted within the terms of the RoE. In such circumstances, the doctrine of "Act of State" applies (see, for example, Burmah Oil v Lord Advocate [1965] AC 75), and the Crown is immune from liability on ordinary constitutional principles.

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]

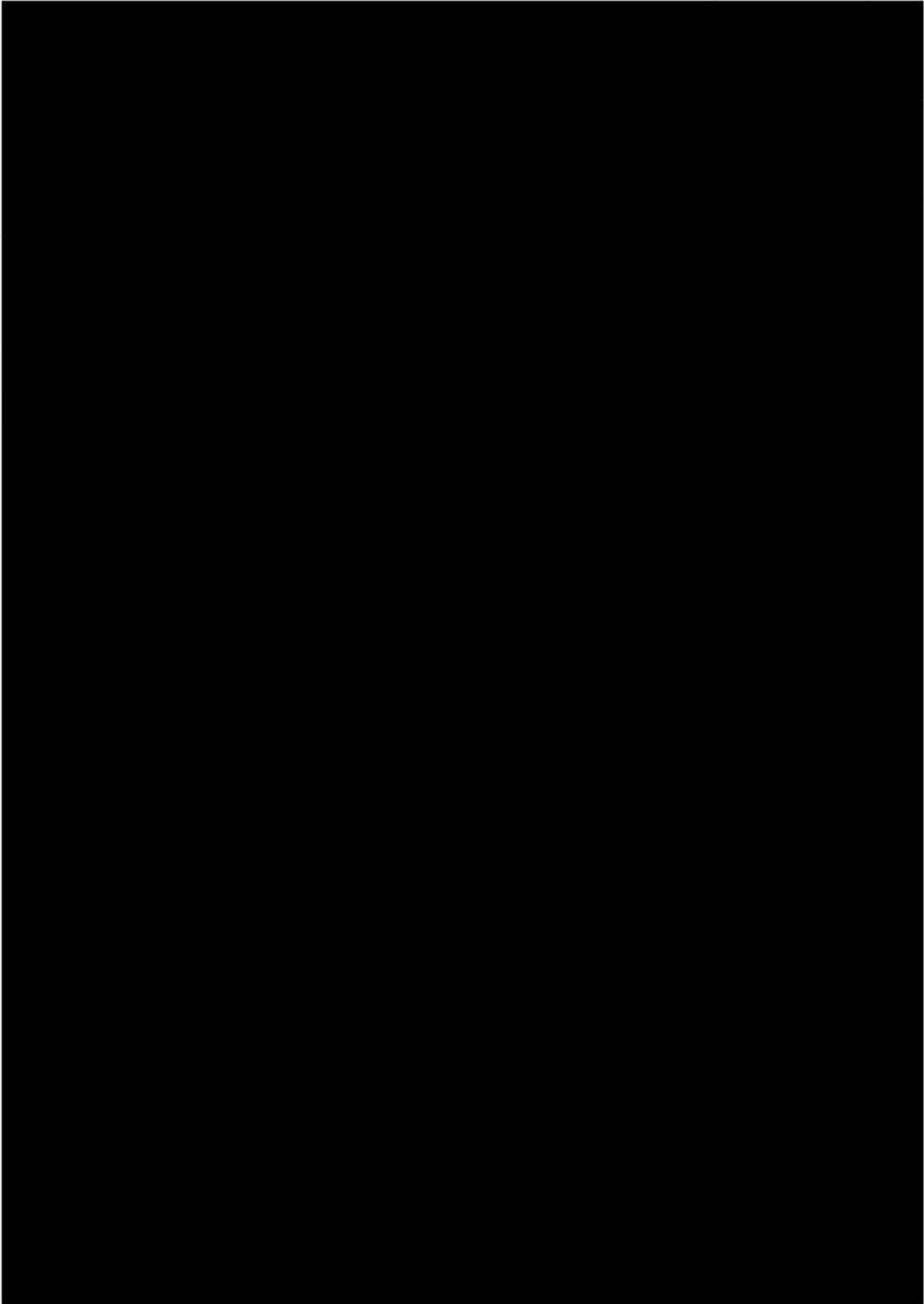
Case 2 - Muhammad Abdul Ridha Salim (deceased) aka Mohammed Abdul Aurda

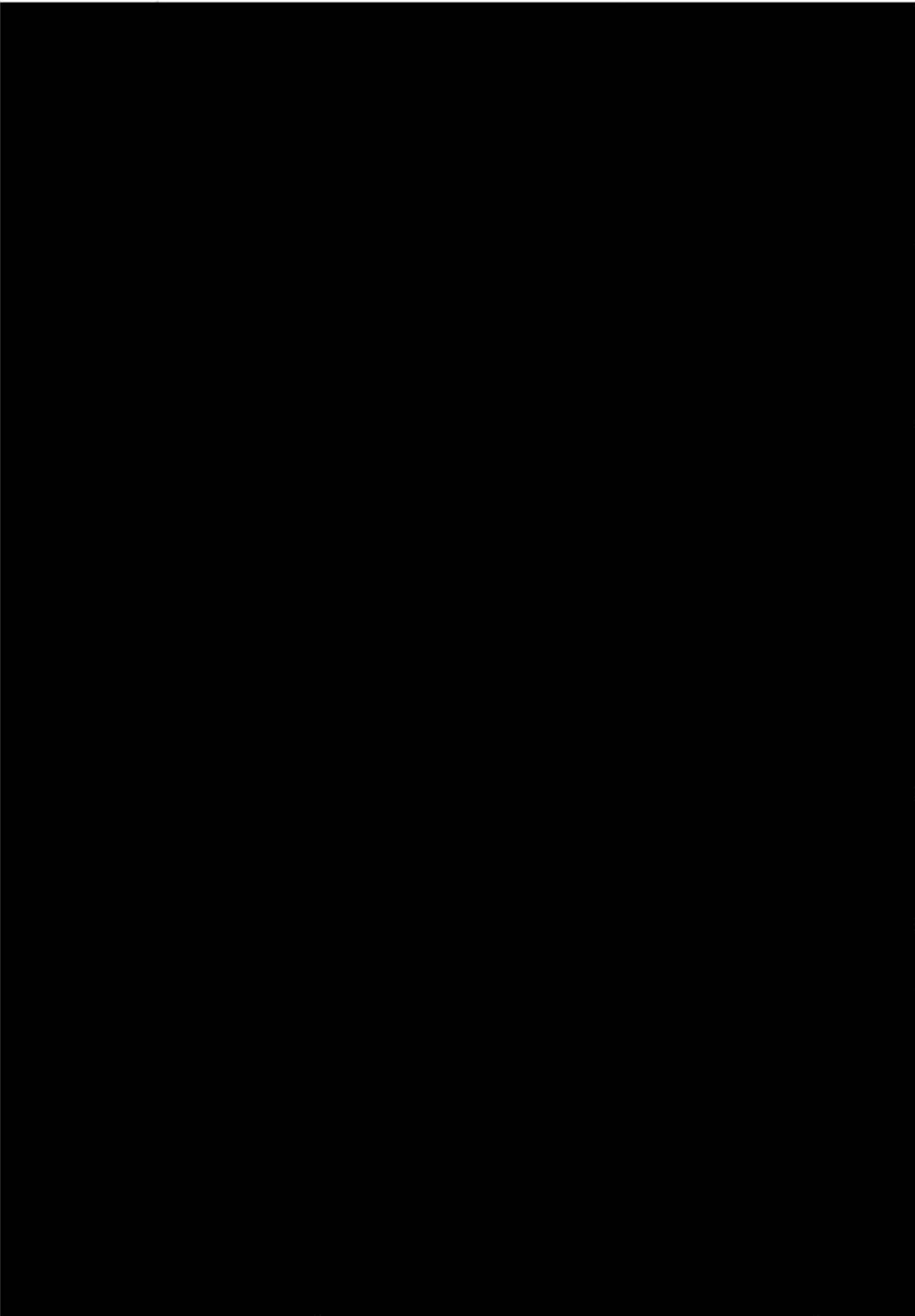
The records available and attached confirm that the correct date for this incident is 6th November 2003.

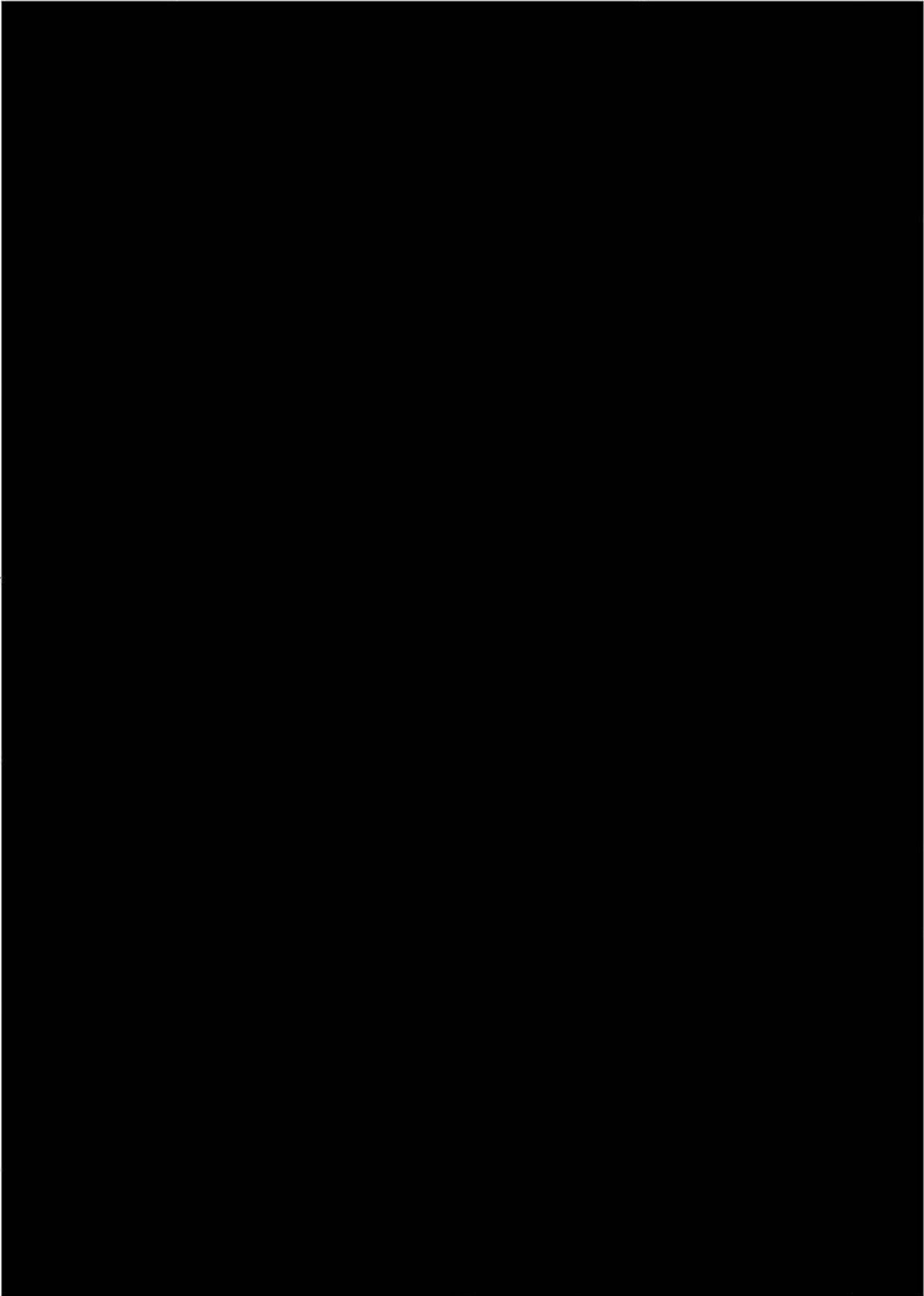
British soldiers were acting on information received on 5th November 2003 at approximately 2315 that armed men were seen entering the building in the Madran area of where the incident occurred. The unit made a "soft knock" attempt to gain access to which the occupants did not respond. After forcibly 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] S011. 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.

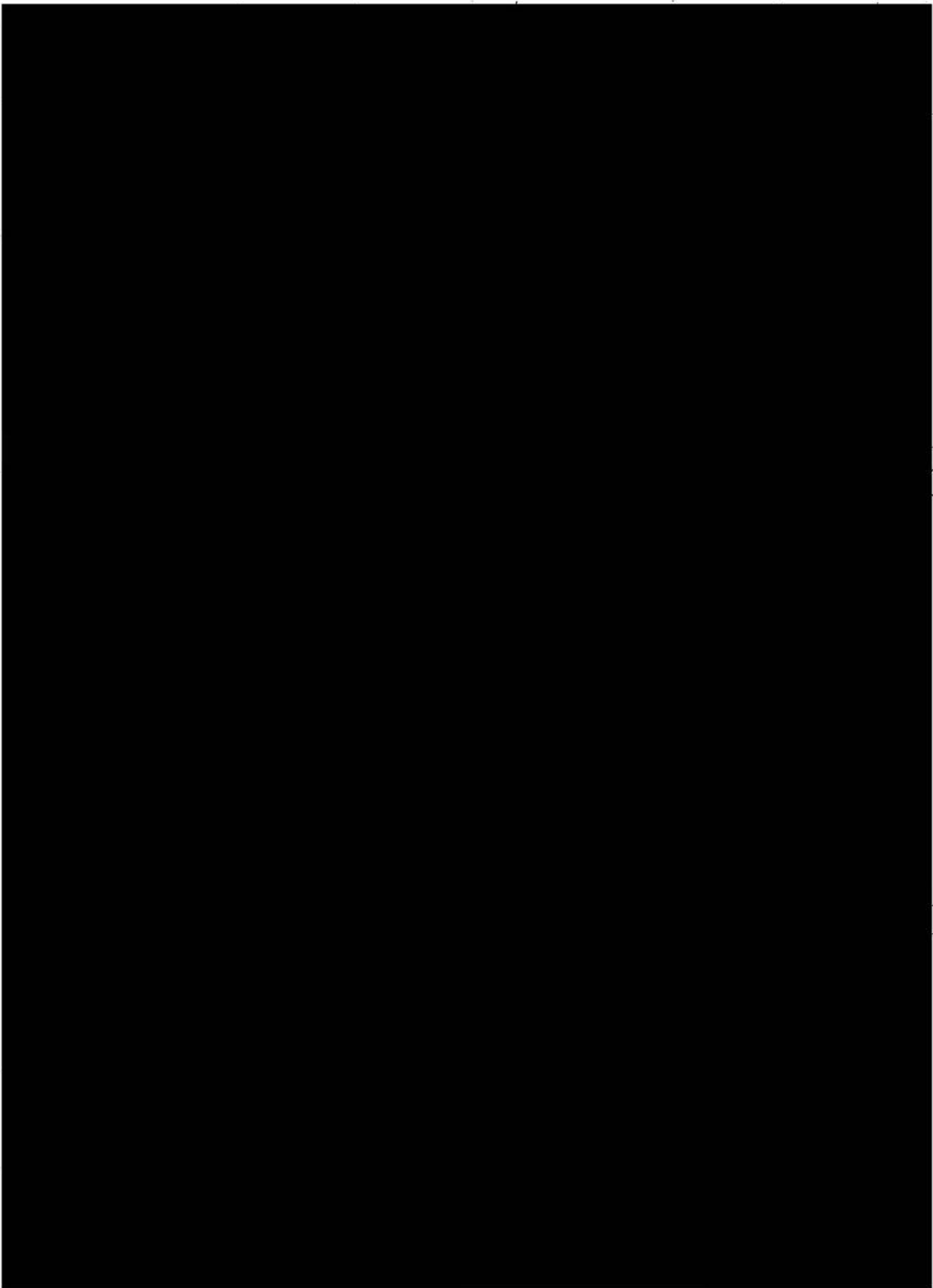
Liability is therefore denied on the bases that the soldier acted within the rules of engagement (see above), of self-defence, of Act of State, and, finally of combat immunity. Copies of the following documents are attached in that regard:

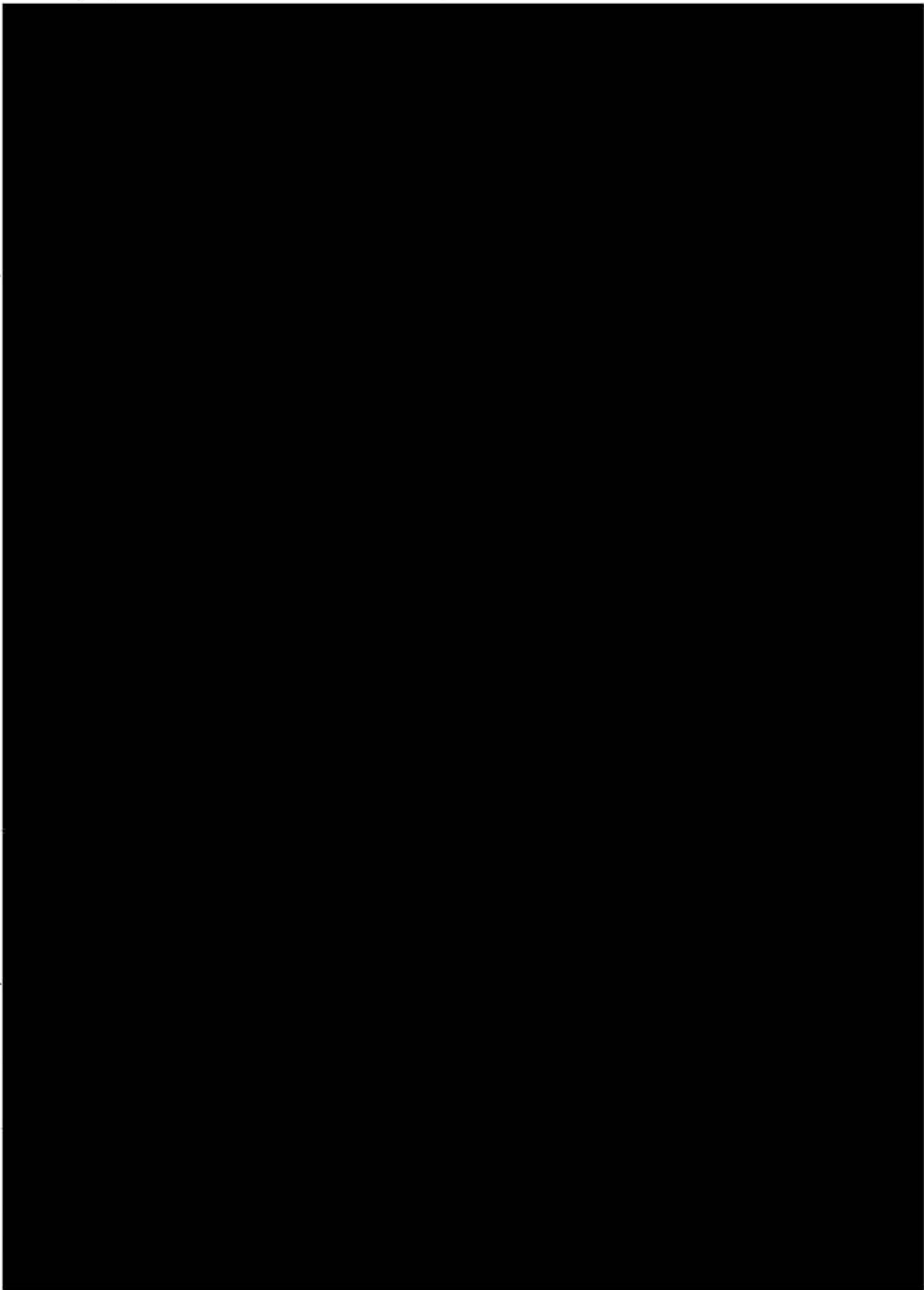
- a. HQ 19 Mech Bde radio log sheets 1717-1739 covering the period 0559 5 November – 1750 6 November 2003.
 - b. OC C Company 1 KINGS Post Incident Report - 6 Nov 03
 - c. CO 1 KINGS letter 3067F dated 6 November 2003 Report on Shooting Incident Resulting in Serious Injury Basrah-Badran Area 06 Nov 03
 - 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] S011 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]

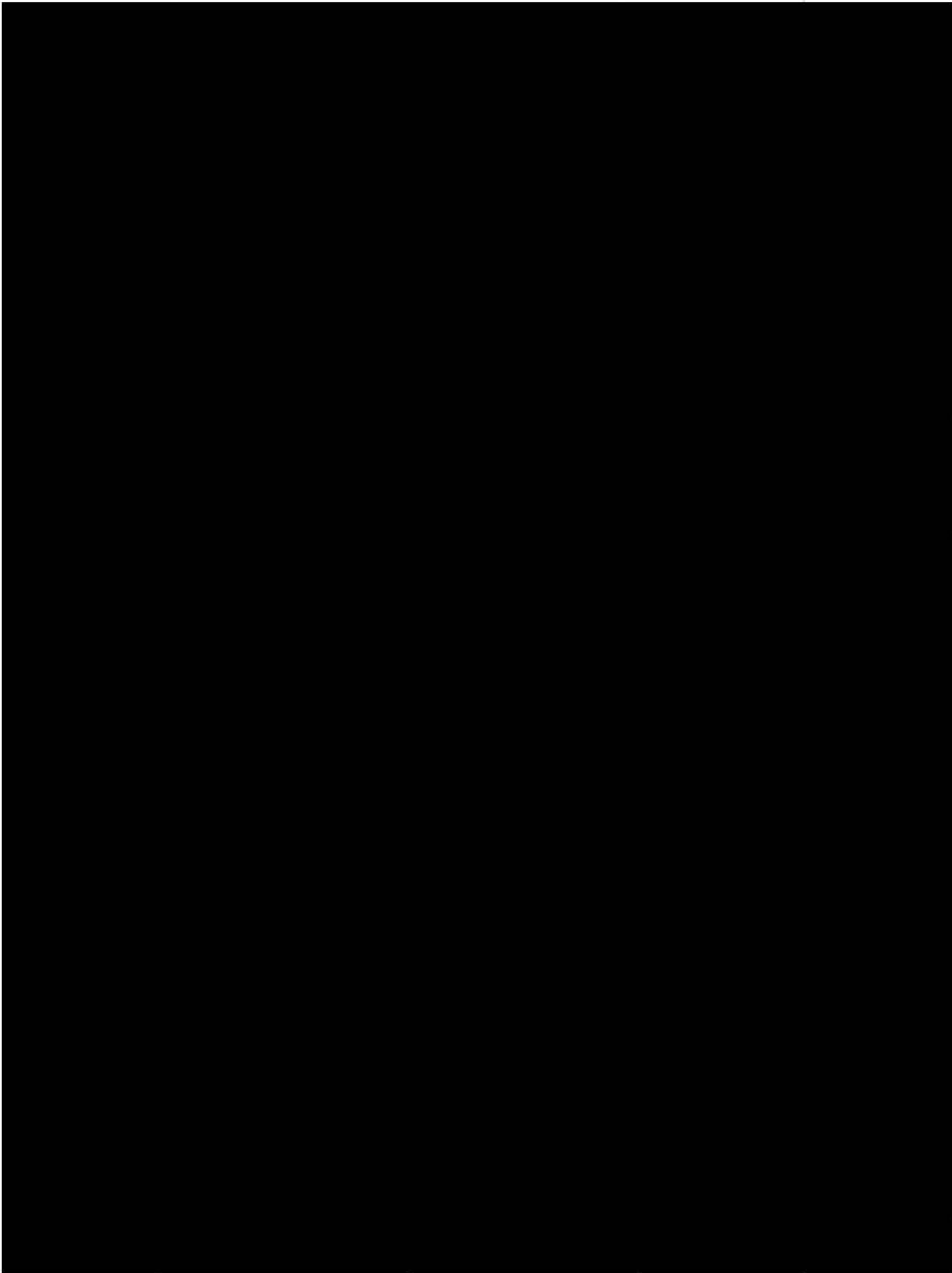


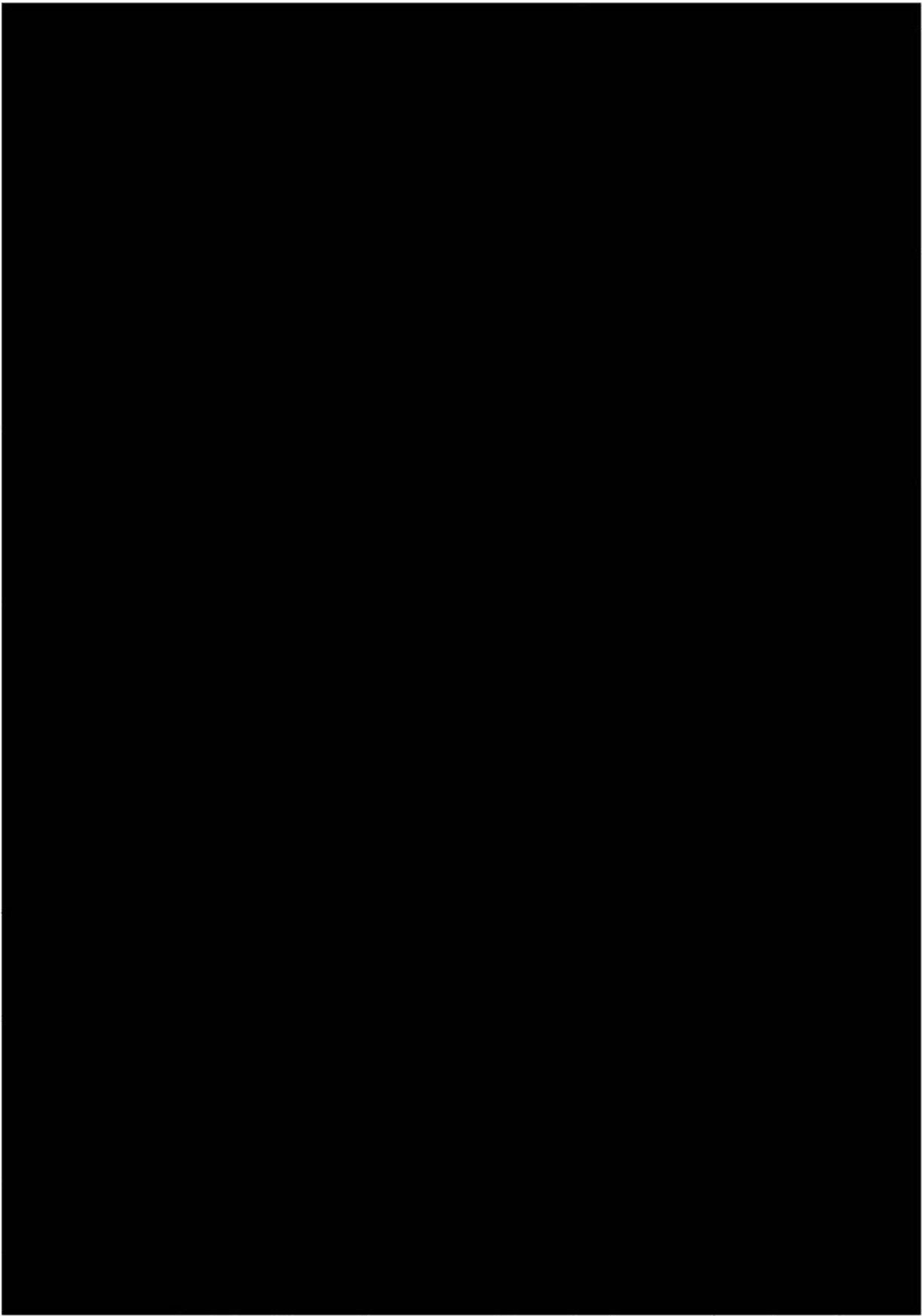












We are also taking this opportunity to disclose a number of documents and witness statements to you, notwithstanding that we are not strictly speaking required to do so under the CPR.

Kindly acknowledge safe receipt.

Yours faithfully


For the Treasury Solicitor