



**MOD-83-0000588-A**

IN THE IRAQ FATALITY INVESTIGATIONS

STATEMENT OF [REDACTED] SO91

I, [REDACTED] SO91 will state as follows:

1. I am the [REDACTED] SO91, [REDACTED]  
[REDACTED]

**A Background**

2. I was admitted to the Roll of Solicitors [REDACTED]. I joined the Army [REDACTED] and undertook professionally qualified officer (PQO) training at the Royal Military Academy, Sandhurst (RMAS) [REDACTED]. After an Infantry attachment with 1 Royal Welsh Fusiliers (1RWF), I was posted to Army Legal Aid (ALANW) in Germany [REDACTED]. I was then posted to HQ 1<sup>st</sup> (UK) Armoured Divisions from [REDACTED] and was part of the IFOR deployment to Bosnia in 1995. Thereafter I was posted to Headquarters Northern Ireland (HQNI) [REDACTED] where I undertook all aspects of legal work including that of "flying lawyer" a duty which involved giving immediate legal advice after operationally sensitive incidents on complex issues which often required being deployed into the field to the combat troops. I also oversaw Criminal Injury Compensation (CIC) claims and Courts-Martial. From Northern Ireland I moved to the Army Prosecution Authority (Germany) (APAG) [REDACTED] and was promoted to SO1 Prosecutions in post. [REDACTED]

[REDACTED] I moved to become Commander Legal at Headquarters 1<sup>st</sup> (UK) Armoured Division (HQ 1 UKADSR). I was deployed on OP TELIC 1 from January – July 2003. [REDACTED]

[REDACTED]

3. I have reread the statements and exhibits which have been made available to me but would respectfully point out that they were not complete as two statements from the Court Martial of *Payne and others* in 2006 were missing (now disclosed).

I have therefore had sight of the following relevant statements:

5<sup>th</sup> July 2004,  
21<sup>st</sup> July 2005  
16<sup>th</sup> December 2005  
17<sup>th</sup> July 2006  
9<sup>th</sup> September 2009,  
24<sup>th</sup> February 2010  
22<sup>nd</sup> January 2016  
Transcript of my evidence given at the Baha Mousa Public Inquiry.

I do not wish to amend or clarify any part of those statements unless I specifically do so in this statement.

4. In May 2002, I was appointed as the Command Legal Adviser HQ 1<sup>st</sup> (UK) Armoured Division and held this position until 2004. At the time, I was a Lieutenant Colonel in the Adjutant Generals' Corps, Army Legal Services branch (AGC (ALS)) and worked in the Divisional Headquarters for the General Officer Commanding (GOC) (Maj Gen ██████████ CB CBE) through the Chief of Staff (COS) (Col ██████████) or the Deputy Chief of Staff (DCOS) (Col ██████████). As Commander Legal, I was responsible for all legal advice to the 1<sup>st</sup> (UK) Armoured Division on matters of discipline together with Boards of Inquiry and Service complaints. However, when deployed on Military Operations, I became responsible for legal advice to the Division on Operational Law including all matters pertaining to the Laws of Armed Conflict (LOAC) including International Humanitarian Law. I deployed to Kuwait/Iraq on OP TELIC 1 in January 2003
5. On OP TELIC 1, when dealing with LOAC and other matters, I reported directly to the GOC HQ 1<sup>st</sup> (UK) Armoured Division or through the COS or DCOS. I also reported to Permanent Joint Headquarters (PJHQ) through the National Component Command (NCC) in Qatar. PJHQ reported to the Ministry of Defence and the Attorney General.
6. As part of my remit as the Command Legal Adviser, I was responsible for providing legal advice on all matters relating to prisoners, of any category, in the Theatre of Operations in the Division's area of responsibility (AO) when it came under the command of GOC. If I had concerns, I would raise them with the GOC directly or through the COS or DCOS.
7. The responsibility for providing legal advice in Theatre lay with me but many other people were involved in the detention and handling of prisoners. This included the Provost Marshall and the Prisoner of War Handling Organisation (PWHO).

## B Training and Instruction

8. As set out in my statement of the 5<sup>th</sup> July 2004 and 21<sup>st</sup> July 2005, the training and instruction for provided for Theatre troops on OP TELIC 1 was as follows:
  - a. Individual Training Directive (ITD) – All soldiers regardless of rank received annual training in the LOAC. This training contains specific provision with regard to the treatment of Prisoners of War and civilians and emphasised that they were not to be mistreated.
  - b. Soldiers Card – all soldiers in Theatre were provided with a soldiers’ card (JSP 381) which made it clear that all Prisoners of War (PW) and civilians were to be treated humanely and respected at all times.
  - c. Theatre training – all combat troops received a Theatre briefing from either myself or one of my subordinates on LOAC and ROE. The briefing made it clear that prisoners and civilians were to be treated with “humanity and dignity” at all times.
  - d. PWHO – The Prisoner of War Handling Organisation also provided a briefing to all units on prisoner *handling* emphasising that prisoners were to be properly treated at all times.
  - e. Pre-deployment training. In addition to the training provided above, prior to deployment, Legal Branch HQ 1<sup>st</sup> (UK) Armoured Division provided briefings to relevant Divisional staff branches on PW’s and their potential responsibilities during Occupation.
9. **Rules of Engagement (ROE).** As mentioned in my statement of the 21<sup>st</sup> July 2005, the ROE remained largely unaltered throughout OP TELIC 1 (19<sup>th</sup> March -12<sup>th</sup> July 2003) and were therefore war fighting ROE throughout. This entitled Coalition Forces to attack and destroy positively identified Iraqi Forces (together with members of the Ba’ath Party, RGFC, Special RGFC, DGS, SSO, DMI, Al Quds, MEK, Fedayin Saddam and DGI) taking a direct part in hostilities. In addition, it allowed the right to detain persons posing a threat to the Coalition Mission (680B) and the searching of persons and vehicles (690C). Property could also be searched under the Law of Armed Conflict. The continuance of War Fighting ROE throughout OP TELIC 1 and the application of the Law of Armed Conflict meant that the use of force was invariably governed by the Law of Armed Conflict when it came to the apprehension of combatants and those included in ROE 520F. A number of civilians will have been detained as a result of war fighting operations under war fighting ROE. A request was made for amended ROE for phase 3B/4 of OP TELIC 1 but this was not granted during OP TELIC 1.
10. **Maintaining law and order and the prevention of looting.** It is impossible to predict what conditions an Occupying Power will encounter in advance of military operations and the complete break-down in law and order together with the epidemic of looting in Iraq was entirely unprecedented. As a result, such matters were addressed as and when they occurred. As such it was an evolutionary process
11. The chronology of the outset of the war might be helpful at this point. Hostilities broke out on the 19<sup>th</sup> March 2003 whilst the Divisional Headquarters were in Kuwait on the Kuwaiti/Iraqi border. Eight days later, on the 27<sup>th</sup> March, the Divisional Headquarters moved forward into Southern Iraq. Basra fell to Coalition Forces on the evening of the 7<sup>th</sup> April and the

Divisional Headquarters moved to Basra Airport on the 13<sup>th</sup> April.

12. The measures taken to restore law and order (including looting) have been set out in my previous statement dated 5<sup>th</sup> July 2004 and 21<sup>st</sup> July 2005. Direction was given by the Divisional Headquarters to the three Brigades in a series of Fragmentary Orders (FRAGO's) and Aide Memoires as we began to occupy an increasingly large portion of Southern Iraq.
13. **Commanders Aide Memoire on Occupation** – was produced prior to the commencement of hostilities for Commanders. The aide memoire was designed to instruct Commanders on their rights and obligations in Occupation and contained a section on civilians. The section made it clear that civilians were not to be subjected to violence, insults, public curiosity or reprisals.
14. **FRAGO 79** dated 3<sup>rd</sup> April 2003 - This FRAGO provided initial guidance on Law and Order to UK Forces whilst in occupation. This FRAGO made it clear that soldiers had the power to temporarily detain civilians under the Rules of Engagement (ROE) where they were a threat to Force Security and/or a threat to the Coalition mission (which included committing a criminal offence). The FRAGO also made it clear that a person who had been temporarily detained was to be handed over to the Royal Military Police (RMP) where they had committed a specified arrestable offence. The hand over to the RMP was to take place as soon as possible and, in any event, within 6 hours. The delivery to the Theatre Internment Facility (TIF) was to take place within 24 hours. A 'Commanders Guide' was also attached to the FRAGO to specifically assist Commanders.
15. **FRAGO 91** dated 9<sup>th</sup> April 2003 - As the problem of looting grew more acute particularly in Basra (which had fallen two days before), a 'Guide for Commanders' on looting was produced. Guidance was given that, in addition to those who had committed a specified arrestable offence (see FRAGO 79 above), looters should also be handed over to the RMP where temporarily detained.
16. **FRAGO 100** dated 14<sup>th</sup> April- Provided further guidance on Law and Order
17. **Detention Procedures** dated 8<sup>th</sup> May - This was issued by the Provost Marshal providing guidance on detention procedures to be adopted by the RMP once the temporary detainee was handed over to them. It required all detained civilians to be delivered to the RMP, who would then accompany the suspect to the detention facility. It also specifically mentioned that the ICRC were to be allowed access to individuals in RMP custody.
18. **FRAGO 152** dated 20<sup>th</sup> May- As a result of increasing concern over the treatment of a small number of those who had been detained by Coalition Forces (prior to delivery to the TIF) further guidance was produced by Comd Legal, which was disseminated to the lowest levels in Theatre. This guidance re-iterated the training and previous advice given that, anyone who was detained by Coalition Forces, was to be treated with humanity and dignity at all times. UK Forces were not to assault or threaten detainees with violence and were not permitted to cover the faces of those detained. They were also to provide detainees with food, water and medical support. In addition, detainees were to be delivered to the RMP within one hour of their temporary detention where possible.

19. **FRAGO 163** dated 30<sup>th</sup> May- In a further attempt to deal with the treatment of detainees, further guidance on the procedures to be adopted were issued which now required delivery of those temporarily detained to the RMP within 1-2 hours and to the TIF within 6 hours. A flow diagram setting out the procedure was also produced and cards were made which were distributed to troops who were involved in such operations.
20. **FRAGO 29** dated 26<sup>th</sup> June 2003 – On the 4<sup>th</sup> June, all detainees were handed over to the Iraqi authorities after the partial restoration of the criminal justice system. This FRAGO was issued in order set out further guidance and required all pre-planned lift operations to be cleared through the Chain of Command and further procedures in the review of all internments.
21. In addition to the above, further practical measures were taken. The Provost Marshal ensured that there was an RMP NCO in every facility and it was agreed that the ICRC should have access, at all times, to any detention facility. I also placed a legal officer in each Brigade Headquarters in order to provide further legal scrutiny across all Theatre activity and so that any concerns could be reported to Divisional Headquarters. The Provost Marshal and Comd Legal also had regular contact with the ICRC/Amnesty International and Human Rights Watch and an open a frank dialogue was established and any concerns raised by them were immediately addressed.
22. It should be noted however that whilst Commander Legal sets out the legal advice, the responsibility for implementation rested with Brigades and other sub-units.
23. **The use of restraint techniques;** - this will have been dealt with by the PWHO and Provost branches.
24. **Prisoner handling;** this will have been dealt with by the PWHO and Provost branches.
25. **The processing of detainees;** This will have been dealt with by Battle Groups, Provost and J1 personnel at the PW Camp.
26. **Training, briefing or instructions specific to your role at Camp Stephen** – With respect, the question shows a fundamental misunderstanding about the nature of a Divisional deployment. I was the Command Legal Adviser working at the Divisional Headquarters. As such I never visited Camp Stephen and have no knowledge of any of the procedures in place at that base. There was a hierarchal command within the UK forces deployed on Op Telic. The Division had command over three Brigade Headquarters. Each Brigade in turn commanded a number of Battle Groups, of which 1BW was one. Within that 1 BW Battle Group the Commanding Officer commanded a number of company bases, of which Camp Stephen was one. As such I was many levels removed from the troops in that base and patrolling on the ground from there. Although I was responsible for issuing direction and advice from the Divisional level down to the lower levels of command, I had no direct knowledge of how those orders were distributed to the lower levels of command by each Brigade or unit in turn down to Company level or to the patrol commanders.

27. **Hooding and stress positions;** the issue of hooding was addressed in my statement dated 5<sup>th</sup> July 2004. Neither hooding or stress positions were authorised by Headquarters 1<sup>st</sup> (UK) Armoured Division prior to combat operations. In my view, both are unlawful under LOAC (1949 GCIII Article 13). On the 29<sup>th</sup> March, after visiting the PW Camp in Umm Qsar and seeing hooded PW's in stress positions, I raised an immediate complaint to the GOC and the issue was then staffed to the NCC. The NCC advised that hooding was not, in their opinion, unlawful but the Division were permitted to adopt their own policy in Theatre. The policy adopted by the Division was to forbid hooding but this policy was not officially sanctioned by PJHQ until September 2003. Specific mention was made in FRAGO 152 however that detainees should not have their faces covered at all and no such authority was given at any time in relation to any category of prisoner. It was accepted that stress positions were unlawful *per se* as they violated LOAC.
28. **Lack of planning for Occupation:** I addressed this issue in my statement dated 15<sup>th</sup> December 2005.
29. Anticipating that we would be in belligerent occupation I provided a briefing prior to the deployment to Iraq for staff officers in the Divisional Headquarters about the rights and responsibilities of an Occupying Power.
30. After deployment, part way through January 2003, I issued a Commanders Aide Memoire on Occupation to enable Commanders to understand the nature of a Belligerent Occupation and their rights and obligations and to factor this into their planning.
31. However, despite issuing the Aide Memoire there was no planning by Higher Headquarters for the forthcoming Occupation of Iraq. No planning or direction was received from either PJHQ or the NCC in Qatar. This issue was raised in numerous UPREPS and, particularly in relation to detainees and internees.
32. On 22<sup>nd</sup> February, I visited the NCC in Qatar and, again raised the issue with the NCC. However, nothing ever came of this meeting. As far as planning for the Occupation of Southern Iraq was concerned, the Headquarters had only just enough time to prepare for the war never mind the Occupation itself. In addition, there was no planning by the Higher Headquarters and, equally, no planning by 1 MEF (US Forces).
33. On my return from Op TELIC in September 2003, at an "After Action Review" (AAR), I questioned why there was no planning for the Occupation of Southern Iraq. I was advised that the UK anticipated that we would receive a Security Council Resolution prior to the invasion of Iraq (and therefore the Occupation would be the responsibility of the United Nations). Whatever the reason, there was a total failure to plan for the Occupation of Iraq, which was subsequently described as a "strategic failure".
34. I have since discussed the matter further with the GOC who spoke to Chief of the General Staff (CGS) about this matter immediately before combat operations began in March 2003. In essence, the HQ 1<sup>st</sup> (UK) Armoured Division were instructed to plan for the war fighting and the subsequent occupation of Iraq would be left to others. This did not happen.

### **C Detainees at Camp Stephen**

35. I did not visit Camp Stephen and cannot comment on the detention facilities there. I have no knowledge of the orders practices or procedures within 1BW and cannot comment on them

other than to say that I would have expected them to comply with the advice or guidance that they had received from their higher formation. In relation to the company based at Camp Stephen this would have been from the 1BW Battle Group HQ. Please see para 26 above.

#### **Death of Radhi Nama**

36. I have had sight of my legal advice on this matter dated 11<sup>th</sup> September 2003. The police report was sent to Legal Branch HQ 1<sup>st</sup> (UK) Armoured even though no one had been reported for a crime. I made a legal judgement on the evidence and reached the same conclusion as the Military Police. This was the same conclusion subsequently reached by the SPA. The clerical error has no bearing on the advice. The Geneva Conventions set out the procedure for the death of civilians (1949 GCIV Articles 129-131) and this procedure was followed.

#### **Death of Mousa Ali**

37. I normally received a provisional report from the SIB about any death that occurred within the Divisional AO but have no recollection of the same in this case.

#### **D Culture at Camp Stephen**

38. I never visited Camp Stephen and therefore have no knowledge of the culture within that camp. I was never made aware of any allegations of mistreatment of detainees in Camp Stephen. Please see para 26 above.

#### **Existence and awareness of “wetting”**

39. I was unaware of what has been termed “wetting” whilst in Theatre. It violates both International and domestic law and would have been stamped on as fast as hooding and stress positions had it come to the attention of Divisional Headquarters. Detailed guidance had been provided on law and order and the treatment of prisoners and should have been applied by Brigades, Battle Groups and Battalions alike.
40. With regard to the allegation that [REDACTED] SMU [REDACTED] threw prisoners off a bridge into the Shat al Arab in Basra, this was first brought to my attention in 2005. It was the result of a conversation with a fellow legal officer (RAF) who had attended a PACE call in Iraq in 2003. He was able to review the evidence on his first visit which included information that [REDACTED] SMU [REDACTED] had bound and thrown members of the Ba’ath party of a bridge in Basra. He said that when he went back for a second visit, this evidence had been removed from the file.

41. I have not heard of any other incidents of this kind and do not place it in the same category as "wetting". If this allegation is true, it would amount to an extra-judicial killing.

42. As far as the credibility of this account is concerned, the information was relayed to me by a lawyer who seemed perfectly well adjusted and level headed. I have no reason to doubt the account. It would also beg the question as to why someone would make this up? There was a fear however that reporting such matters would end up having a detrimental effect on military careers.

**Statement of truth**

I believe that the facts stated in this witness statement are true.

Signed [redacted] SO91 [redacted]. Dated 11<sup>th</sup> January 2023

[redacted] SO91 [redacted]