

Witness Name: Lt Gen Louis Patrick Lillywhite

Statement No.: 2

Exhibits: LPL 5

Dated: 13 May 2010

THE BAHA MOUSA PUBLIC INQUIRY

Witness Statement of Lieutenant General Louis Patrick Lillywhite

I, Lieutenant General Louis Patrick Lillywhite will say as follows: -

I make this statement further to my first statement to this Inquiry dated 2 November 2009.

1. I retired from the Army in April 2010.

Fitness for Detention

2. Dr Bartels stated in evidence to the Inquiry that he had carried out medicals on soldiers in custody with the aim of assessing them as being fit to detain, and he assumed that this practice could be applied to detainees (Day 52/166/14 ff).
3. At paragraph 36 of my previous statement I stated that a medical officer should not say whether a person is or is not fit for detention. I feel that the Inquiry may be assisted if I clarify my views on the issue as to whether medical officers are permitted to give an opinion on a detainee's fitness to be detained.
4. For clarity, I believe that the situation is as follows: Medical personnel must be involved from the outset of detention, and indeed their late involvement in the process of detention during the introduction of internment in Northern Ireland

was criticised by the Compton Inquiry. This involvement should include a mandatory, thorough examination of detainees and result in an objective statement of their medical condition, any medical treatment required and of any risks associated with ongoing detention. For example, the notes should indicate whether the detainee is currently well, but has a condition that can quickly deteriorate if his diet is inappropriate, or he does not take his insulin as required. The medical personnel should not, however, make any recommendation on fitness for detention. The decision to detain a person is one that should be taken by the custody officer once he has weighed up a number of factors, of which the person's medical condition is but one.

5. The reason that medical officers are not permitted to certify fitness for detention is because detention is usually for the purpose of interrogation. Even for a medical officer to ask 'is this man to be detained only, or is he being detained for the purpose of interrogation' is involvement in the process of interrogation. Seeking to differentiate clinically between fitness for detention and fitness for interrogation requires the medical officer to take a view on the interrogation process.

6. There are a number of 'grey areas'. Where a detainee is severely ill and needs hospital treatment then he is clearly not fit for detention. The medical officer should therefore recommend evacuation to hospital and, were this not to happen, he should take steps to give effect to his recommendation. A detainee who the medical officer states has no medical conditions is clearly fit for detention from a medical perspective. In the middle, for example, is the brittle diabetic who is at risk (but not a 100% risk) of becoming unstable but who is also a person of significant intelligence interest or one suspected of carrying out a serious crime. An ordinary medical officer will not usually have the knowledge or experience to properly assess the risk. He should spell out the risks, but not form a conclusion as to fitness for detention. The custody officer or chain of command has to balance the various factors - in the example quoted there is no absolute right or wrong answer. The example is

one I came across in Northern Ireland, complicated by the particular individual manipulating his illness.

Changes to timeframe for when medical examination is required

7. An additional matter that the Inquiry may wish to note relates to the changes to the timeframe in which detainees should be seen. The time frame between detention and medical examination is in essence a compromise between the ideal (immediate examination) and the practical. Bearing in mind that a major purpose of the detention medical examination is the protection both of the detainee and those detaining him, it should be undertaken as soon as possible. However, doctors are not available at all locations on the ground and time has to be allowed to enable the detainee to reach a doctor or vice versa. On the other hand, the wording of any instruction on the timeframe of examinations needs to be framed so that the detaining authorities cannot exploit it in a way that circumvents the intent of the instruction.

8. The difference between paragraph 6h(i) of the SGPL 1/05 (MOD064959) and paragraph 7i(1) of SGOPL 10/08 (Exhibit LPL 4 of previous statement) reflects changes made in response to requests for clarification on the specific time within which a medical examination was required and who would require a medical examination, noting that not all persons who were stopped by the UK Armed Forces were formally detained. On reflection, the changes left open too many opportunities for an individual to be detained or questioned without a medical examination when in fact such an examination would be appropriate. The wording of this paragraph has now been changed with the issue of a new SGOPL 08/09 (Exhibit LPL 5). This retains the same wording as its predecessor except for paragraph 7i(1) and the addition of paragraph 7i(5).

9. Paragraph 7i) now reads:

The medical officer shall conduct medical inspections and examinations in the following circumstances:

 - (1) As soon as reasonably practical after admission to a detention facility and in any case within 4 hours and prior to any

interrogation occurring, with a view to discovering any physical or mental illness. Those captured but not yet held in or en route to a detention facility do not require routine examination unless the time between capture and admission to a detention facility exceeds 4 hours and/or unless any interrogation is to occur. At all times they should receive care based on their immediate clinical need.

10.

'(5) Every 24 hours in those cases where extended detention has been authorised'.

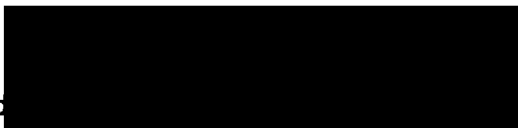
11. The new SGOPL was issued to medical personnel in late December 2009. Having sought this revision to make clear to medical personnel the importance of early examination, this intent is now being developed with the policy leads for the operational chain of command so that it can be reflected in operational orders, having due regard to :

- a) What is reasonably practical in some remote locations where medical officers are not readily available;
- b) Reinforcing the point that medical personnel must restrict themselves to ascertaining objectively the medical condition of a detainee together with any recommendation for treatment and do not and must not make any recommendation about fitness or otherwise for interrogation.

Statement of Truth

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

Signed

A large black rectangular redaction box covers the signature of the witness.

LIEUTENANT GENERAL LOUIS PATRICK LILLYWHITE

Dated

13 May 2010