

# The Baha Mousa Public Inquiry

Inquiry Chairman: The Right Honourable Sir William Gage

## SUMMARY OF PROCEEDINGS: MONDAY 7 JUNE 2010

### **Sir Robert Fry**

- Sir Robert was appointed Chief of Staff, later known as Deputy Chief of Joint Operations in May 2002 at PJHQ. In July 2003 he took up post with the rank of Lt General as Deputy Chief of the Defence Staff (Commitments). He retired from the Royal Marines in 2007.
- As DCJO he had final responsibility for provision of guidance on prisoner handling and would have satisfied himself as to the contents. Two directives referred to JWP 1-10, which he expected would have been supported by other training documents. He was unaware that there was no written doctrine available to troops on the ground, and he did not recollect any prisoner handling issues being raised during his time in this role.
- The witness became aware of hooding issues in his role as Deputy Chief of Defence Staff after Baha Mousa's death. It would have been discussed with the Secretary of State. A review of hooding policy would have to be carried out on a collegiate basis since there were several strands. He saw a draft policy paper, and although he cannot recollect the conclusion, believed that the policy was agreed. His responsibility was for ensuring policy conformed to international law. Front line command was responsible for providing individual training.
- Sir Robert was aware of the Heath ruling but understood that it applied to interrogation, not prisoner handling. Lack of resources did not affect the way in which prisoners were handled.

### **Lieutenant General Andrew Ridgway**

- General Ridgway joined the Army in 1968. He was Chief of Defence Intelligence from April 2003 until March 2006. In June 2006 he was appointed to the post of Lieutenant Governor of Jersey.
- He had training in the Law of Armed Conflict throughout his career. He was aware of the Heath ruling and considered that it applied as part of or in preparation for processes. Sight deprivation, not necessarily hooding, was permitted for security operational reasons. Hooding was not inherently illegal, but could become so in certain circumstances. It was permissible as a last resort. Stress positions could be used for control for short periods of time. There were distinctions between control position and stress positions. He had received Conduct After Capture training, and believed that everyone involved was told that the techniques being demonstrated were outwith the Geneva Conventions.
- General Ridgway undertook a number of shortened courses on various topics, including Tactical Questioning and Interrogation. He recalled the harsh technique being demonstrated but nothing he saw could be described as insulting or threatening. Sensory deprivation was not used in any interrogation or in preparation for it, although he saw blindfolded prisoners. The explanation was that it was necessary for security purposes. The blindfold was removed before questioning. Shock of capture was discussed and measures to be taken to preserve it, but not conditioning which he considered was different, and since it entailed sensory

deprivation and harm, was illegal. He was unaware that TQ and I students were practising straight after the course on the Conduct After Capture course.

- The witness visited theatre a number of times during Op Telic 1 and 2. The issue of hooding was raised by Gen Brimms in the margins of one of his meetings with him. He was unaware of the ICRC complaint, or that there had been dispute about the lawfulness of hooding. It was a theatre-specific issue.
- General Ridgway recalled the review of interrogation and TQ capability. Last minute training for TQers was a live issue. Non-deployment of trainers was important. Doctrine is not defined by the contents of a pamphlet, but what is taught. There are a number of areas where written doctrine is not complete. Every commanding officer had the opportunity to train with assets pre-deployment so they would understand what was permissible, and had themselves undertaken Law of Armed Conflict training.
- The witness was aware of the suggestion for a review of doctrine and training after the death of Baha Mousa and had asked his staff to undertake research, but not a wholesale review of training. He was not responsible for all the topics which were raised. There were a number of reasons why there was blurring of the distinctions between operational security and preserving the shock of capture and it was prudent to tighten up the training to ensure that there was no doubt. One of the changes explicitly ruled out the use of hoods.
- The CJO Directive built on the training provided at Chicksands and therefore did not need to refer specifically to prohibited techniques.

#### **General Sir Mike Jackson**

- Sir Mike Jackson was commissioned in December 1963. He was appointed Chief of the General Staff on 1 February 2003. He retired from the Army in 2006.
- In training he had been taught that it was permissible to deprive a prisoner of sight at the point of capture for security reasons. Sandbags could be used for this purpose if nothing else was available. However, the witness was very clear that once the prisoner was in a place of detention and there were no longer any security considerations, further hooding or deprivation of sight would be inhumane and in breach of the Geneva Convention.
- He considered that the use of hooding was acceptable only in those limited circumstances in the heat of battle. Those circumstances did not apply in the case of the detention of Baha Mousa and others.
- If hooding were to be banned across the board, it would jeopardise security and he would have concerns about operational effectiveness.

#### **General The Lord Walker**

- Lord Walker joined the Army in 1964. He held the appointment of Chief of the Defence Staff from 4 May 2003 until 28 April 2006.
- He had received training in LOAC and understood that all prisoners were to be treated humanely. He was not aware of knowing about the Heath ruling.
- The use of hooding was a grey area; it could be acceptable in extremis, e.g. at the point of capture or to protect the identity of a detainee. It would be better to use other means to deprive someone of their sight, however, but that was not always possible. If there were no longer any security operational reasons to deprive a prisoner of sight, hooding would no longer be appropriate.
- He was informed of Baha Mousa's death and the fact that he had been hooded for much of the 36 hours during which he had been detained. In his view that was totally unacceptable.
- He did not accept that he should have been more pro-active in relation to the review of policy on hooding in 2003/04.

## SUMMARY OF PROCEEDINGS: TUESDAY 8 JUNE 2010

### S011

- S011 joined the army in 1964. After leaving the army, he was a reservist who was recalled as a full-time captain. He was posted to the Joint Services Intelligence Organisation (JSIO) Chicksands, where he was a human intelligence instructor.
- He was aware of the “Heath ruling” by the mid-70s. He believed that hooding of prisoners was permissible but only for security purposes.
- He believes that soldiers should have been reminded in their annual battalion training (not by his colleagues at Chicksands) of the limits on the use of sandbags for hooding.
- He believed that an acceptable technique for the interrogation of prisoners is to intimidate prisoners and to make them believe that violence might follow. This is acceptable provided that no actual violence is used.

### Edward Fenton

- Lt Col Fenton joined the army in June 1988 and was commissioned in 1991 in the Royal Highland Fusiliers.
- He was deployed to Iraq in August 2003 as chief of staff (CoS ) to the 19<sup>th</sup> Mechanised Brigade , reporting to Brigadier Moore. He left Iraq in November 2003.
- Although he understood – then and now – that the use of sandbags was unacceptable, he could understand that, as a last resort, they might need to be used by soldiers in the pressure of battle.
- After the death of Baha Mousa (in September), he requisitioned a report, in theatre, on prisoner-handling. The report was largely based on evidence from 1QLR and was presented to Brig. Moore.

### S062

- S062 joined the army in January 1988 and was commissioned in the Intelligence Corps. Most of his career was spent in a variety of intelligence roles. He left the army in December 2008 with the rank of Lt Col.
- From September 2001 to August 2003, he was the staff officer, grade 2 (with the rank of major), of J2X at the PJHQ at Northwood.
- As part of his interrogation training, he was taught that the harsh approach was a useful technique for a short duration – in part to remind the prisoner of the seriousness of his situation. There were no limits to the language that could be used or threats that could be implied.
- During Op Telic 1, he was charged with drafting a directive on prisoner interrogation. The audience for this was the National Contingent Command (NCC): it was not sufficiently detailed for use in theatre. However, he was not aware of the 1972 Heath ruling at any time during the drafting.

### **Luke Smith**

- Mr Smith joined the army as a private soldier in the Royal Electrical and Mechanical Engineers (REME) in 1986. In 1999, he transferred to the Intelligence Corps in the rank of sergeant.
- He was deployed to Kuwait in December 2002 and then to Iraq in March 2003, returning to the UK in mid-July 2003.
- He described some of his experiences related to prisoner-handling and tactical questioning both immediately before and during his deployment to Iraq.

### **Michael Hill**

- Mr. Hill joined the army in 1970 and was commissioned into the King's Own Scottish Borderers. He transferred to the Intelligence Corps in 1982. In November 1998, he was promoted to the rank of Lt Col and appointed as the first Assistant Director of Intelligence for HUMINT. He retired from the army in January 2006 in the rank of full Colonel.
- He undertook interrogation training in 1982. This covered the "harsh" technique and did not prohibit threats, insults and intimidation. An overarching principle, however, was that a prisoner must never be touched.
- Responsibility for TQ and interrogation policy was vested in the Joint Services Intelligence Organisation (JSIO) as per a 1997 MoD policy.

### **The Lord Boyce**

- Lord Boyce joined the Royal Navy in 1961. He was promoted to the rank of Admiral in 1995 and was Chief of the Defence Staff from February 2001 until his retirement in May 2003.
- During Op Telic 1, he was the Chief of the Defence Staff, whose role included that of professional head of the armed services.
- In relation to prisoner-handling, he believed that the policy document JWP1-10 provided comprehensive guidance on the subject.
- He did not believe that the draw-down of forces after the war-fighting phase had adversely affected the army's prisoner-handling capacity.

## **SUMMARY OF PROCEEDINGS: THURSDAY 10 JUNE 2010**

### **Robin Brims**

- General Brims joined the army in 1970 and was commissioned into the Light Infantry. He retired in October 2007 in the rank of Lt. General.

- During Op Telic 1, he was the General Officer Commanding (GOC) of the 1<sup>st</sup> (UK) Armoured Division (1 Div) in the rank of Major-General until mid-May 2003. He then became Deputy Chief of Operations at PJHQ in Northwood until 2005.
- He has always known that the 5 techniques were (and are) inhumane and unlawful, and expected all soldiers to know this. His directive to all of his troops in February 2003 reinforced the need to “treat people properly”.
- However, the temporary use of hoods, in the absence of other means, for security purposes only, need not be inhumane.
- He banned hooding on or about 3 April 2003 immediately after a visit to Umm Qasr where he saw one hooded prisoner being led from one place to another. The order was distributed by radio net, a medium which Gen. Brim thought to be perfectly adequate.

### **Sir Graeme Lamb**

- Sir Graeme has wide experience of army command, including a period from 1991 to 94 as commanding officer of the 1<sup>st</sup> Battalion, Queen’s Own Highlanders and, from 1996 to 98 as brigade commander of the 5<sup>th</sup> Airborne Brigade. He retired in the rank of Lt. General.
- During Op Telic 2, Sir Graeme was GOC of the 3<sup>rd</sup> (UK) Armoured Division (3 Div) from July 2003. Simultaneously, he was Commander of the Multi-National Division (South East), of which 3 Div was the largest contingent.
- He has always known that the 5 techniques were (and are) inhumane and unlawful. Sight deprivation may, however, be used for short periods either to protect the security of the site and building at the point of arrest or to protect an individual prisoner from future intimidation.
- He was not aware that algorithm Gen. Brims had banned hooding: this order seems to have been lost at the time of handover from Gen. Brims to Gen. Lamb.
- He confirmed that his exceptionally strong assessment of Lt. Col. Mendonca, both in his (Mendonca’s) annual appraisal and the recommendation for a DSO, was fully justified.
- He believes that the immense pressures that were exerted on all allied forces did not excuse what happened to Baha Mousa and his companions.
- Sir Graeme had been in favour of appointing an independent legal reviewer to consider questions of prisoner internment.

### **Martin Hemming**

- Mr. Hemming was called to the Bar in 1972. He joined the Civil Service in 1982, initially to work in the Treasury Solicitor’s department. He was promoted to the Senior Civil Service in 1988. Between January 1998 and January 2009, he was the MoD’s Legal Adviser.
- His view on hooding was (and is) that it could be legitimately used for security reasons and for short periods, provided that its use did not cross the boundary of inhumane treatment.

**Rt. Hon. Geoffrey Hoon**

- Mr. Hoon was a Member of Parliament (MP) from 1992 until 2010. He was Secretary of State for Defence from 1999 to 2005.
- He did not take a personal view at the time (2003-4) of whether hooding was inhumane; rather he accepted the view of his legal advisers that, in limited circumstances, hooding could be lawful, a view that was shared by the UK's coalition partners.
- He supported the idea of an independent review system to consider the appropriate status of Iraqi prisoners.