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Tuesday, 27 April 2010

(10.00 am)

Opening Remarks

THE CHAIRMAN: Good morning, ladies and gentlemen.

MR ELIAS: Good morning, Sir.

The first witness, S017, as the Inquiry knows, is subject to a restriction order in respect of the disclosure of her name, address, current post, image and any other information tending to identify her, before she is screened from the public and indeed from all persons other than those authorised to be present in this room.

THE CHAIRMAN: Thank you. Would you be kind enough to stand up please? I shall refer to you as "S017". Now I am going to ask that you be sworn.

S017 (sworn)

THE CHAIRMAN: Now please sit down. You have, if I may say so, a soft voice, so if you could be kind enough to speak into that microphone -- I don't think it is very comfortable, although I have not tried it myself -- then we will all be able to hear.

A. Okay.

THE CHAIRMAN: All right? Thank you.

Questions by MR ELIAS

MR ELIAS: S017, that is how we shall refer to you in the

1 course of your evidence, but I think you do understand
2 that there may be other names that you will give where
3 names have similarly been ciphered and I ask you,
4 please, to be careful in using names.

5 A. Okay.

6 Q. Would you have a look, please, at a folder which you
7 should find alongside you and find in that a statement
8 that you made to this Inquiry. Could you look, please,
9 to the last page of it at our BMI06820 and confirm that
10 it is your signature on that page above the date of
11 7 January of this year, 2010?

12 A. Yes, it is.

13 Q. When you signed that statement, S017, did you do so
14 attesting that the contents of it were true to the best
15 of your knowledge and belief?

16 A. Yes.

17 Q. Thank you. That statement stands, as you will probably
18 know, as your evidence to this Inquiry, in part, and
19 I don't therefore propose to go through every aspect of
20 it, but to take you to certain matters which are
21 revealed by it where you may be able to help us further.

22 A. Okay.

23 Q. May I begin, please, by asking you just a little about
24 your army career history? You tell us that you joined
25 the army adjutant general's corps on a short service

1 commission in March of 1995.

2 A. That's correct.

3 Q. You joined the Territorial Army intelligence corps,
4 3rd Battalion Military Intelligence, in October 1999 --

5 A. Yes.

6 Q. -- and you say that you have been involved on
7 operational deployments to Cyprus, Bosnia, the UK and
8 Iraq.

9 A. Correct.

10 Q. Of those deployments, it was only in Iraq that you were
11 involved in prisoner handling; is that right?

12 A. Yes.

13 Q. You deployed to Iraq, so you tell us in your statement,
14 on 8 July 2003 --

15 A. Yes.

16 Q. -- and you were there until 10 December?

17 A. Yes.

18 Q. And your rank and role in Iraq during that period?

19 A. I was a captain and I was OC of the JFIT.

20 Q. I want to ask you a little about your pre-deployment
21 training before going to Iraq and specifically about
22 a prisoner handling and tactical questioning course with
23 which you were involved. Can you remember when the
24 course was held?

25 A. Well, I didn't attend a specific course. I was actually

1 involved in two or three PH&TQ courses.

2 Q. Sorry your voice is very soft. Could you pull the
3 microphone down a little towards you or move?

4 A. Yes, I didn't actually attend a single whole PH&TQ
5 course. I was involved with two or three of the
6 courses.

7 Q. Spread over what period of time?

8 A. About six months.

9 Q. So you attended elements, did you, of a number of
10 courses?

11 A. Correct.

12 Q. What was your role in attending those elements?

13 A. I had various roles. One was as a role-player, so that
14 students could practise what they had learnt on me,
15 I would also offer those students feedback on how they
16 questioned and really to do with the kind of debriefing
17 aspects of the course. I was seen as a specialist for
18 debriefing and, therefore, assisting the students in
19 better questioning.

20 Q. On that course, I want to ask you about certain aspects
21 with which this Inquiry is particularly concerned. Was
22 hooding of prisoners covered?

23 A. Yes.

24 Q. What was the training that was given which you observed
25 or received in relation to hooding?

1 A. Not to use hooding, to use blindfolds.

2 Q. So was the training clear, that hoods were not to be
3 used?

4 A. Yes.

5 Q. In all circumstances?

6 A. Yes.

7 Q. But deprivation of sight was permissible, was it?

8 A. Yes.

9 Q. For what purpose?

10 A. For moving a prisoner through a secure area so they are
11 unable to gain information on our movements or
12 accommodation.

13 Q. So for security reasons?

14 A. Yes.

15 Q. Was deprivation of sight taught that it could be used
16 for any other purpose?

17 A. No.

18 Q. Were any methods of deprivation of sight -- hooding
19 being banned -- were any alternative methods taught?

20 A. During the six months I was there, they used blacked-out
21 goggles, but also mentioned blindfolds, so strips of
22 material.

23 Q. You attended various elements, as you have told us, over
24 a six-month period. Was what you were taught about
25 hooding something that was received or observed by you

1 once or was that a theme that you picked up from
2 a number of elements?

3 A. I would say it was a theme through a number of elements.

4 Q. Were you taught why hoods were not permissible under any
5 circumstances?

6 A. On two accounts. First of all from the 1972 directive,
7 but the fact that -- the health implications of covering
8 someone's mouth.

9 Q. Forgive me, but your voice is very soft and it is not
10 easy for us to pick it up.

11 A. From the 1972 directive, but also from the health
12 implications of using a hood to cover the face.

13 Q. The health implications being ...?

14 A. Restrict breathing for having a piece of material
15 actually across your mouth.

16 Q. Were you taught that specifically?

17 A. I believe I was, but it was more in conversation, not
18 actually in the classroom.

19 Q. The Inquiry has heard some evidence from others who have
20 been on courses -- not to say the one that you attended
21 or the ones that you may have seen elements of -- that
22 suggest that hooding was taught as being something that
23 might be employed in certain circumstances. That
24 clearly wasn't the case --

25 A. No, that wasn't the case when I was there during that

1 six-month period.

2 Q. And you have a clear recollection of that, do you?

3 A. Yes.

4 Q. Over that same period, did you receive any instruction

5 in what is sometimes called "the shock of capture"?

6 A. Yes.

7 Q. What did you understand by "the shock of capture"?

8 A. Yes.

9 Q. Sorry, what did you understand by "the shock of

10 capture"?

11 A. Sorry, the shock of capture is effectively maintaining

12 the emotional state that someone would be in at the

13 point that they are captured, so effectively maintaining

14 their dislocation of expectation.

15 Q. And on this course or these courses -- I will call it

16 "this course", but we know it's spread over a number of

17 different courses --

18 A. Sure.

19 Q. -- on this course, were you taught anything as to how

20 shock of capture may be maintained or prolonged?

21 A. Yes, by not talking to the prisoners, by having minimal

22 contact with them.

23 Q. Were you taught anything as to the role, if anything,

24 that deprivation of sight might play in maintaining or

25 prolonging the shock of capture?

1 A. No, we were told that the deprivation of sight couldn't
2 be used in order to falsely maintain the shock of
3 capture for no security reason.

4 Q. So you were taught that specifically, were you?

5 A. Yes.

6 Q. So neither hooding nor blindfolding in any form could be
7 used to maintain the shock of capture?

8 A. No.

9 Q. That was from your training?

10 A. Yes.

11 Q. Were you taught anything as to when it would be
12 appropriate to blindfold -- you have told us that it
13 might be for security reasons -- but at what point
14 between, if you like, capture and delivery to whatever
15 unit was detaining?

16 A. Not specifically. Just when there was a requirement for
17 security.

18 Q. If we look at paragraph 12 of your statement to this
19 Inquiry at BMI06799 please, you say:

20 "I can recall the PH&TQ course taught that
21 blindfolds should be applied to an individual at the
22 point of capture."

23 Is that right?

24 A. Yes.

25 Q. What, and therefore, if you like, as an SOP, that would

1 be done in every case?

2 A. Yes.

3 Q. "The individual should only be blindfolded for the

4 period of transportation back to a benign and secure

5 environment (ie the holding cell) where the blindfold

6 must be removed."

7 A. Yes.

8 Q. That's what you were taught, was it?

9 A. Yes.

10 Q. So it would have been, would it, from your training, an

11 SOP that a prisoner should be deprived his sight at the

12 point of capture?

13 A. Only if there was a requirement to do so.

14 Q. The requirement being the security requirement?

15 A. Security.

16 Q. I follow. Did you yourself teach on these courses?

17 A. No.

18 Q. You were merely -- I don't mean that in any derogatory

19 sense, but you were the role model from time to time?

20 A. Yes.

21 Q. On this course, were you given any training in relation

22 to tactical questioning?

23 A. Sorry, in what sense?

24 Q. Well, were you, for example, taught the purpose of

25 tactical questioning?

1 A. Yes.

2 Q. And what was the purpose that you were taught?

3 A. It's to elicit immediate tactical information that could
4 lead to an immediate operation.

5 Q. Were you given information as to the sort of timescale
6 that one might look to in employing tactical questioning
7 on a prisoner?

8 A. No.

9 Q. Were you taught any of the techniques that might be
10 employed in tactical questioning?

11 A. Sorry, I don't know which ones you mean.

12 Q. Well the actual tactical questioner and --

13 A. How to question?

14 Q. Yes.

15 A. Yes.

16 Q. But you were not trained, were you, or were you, as
17 a tactical questioner?

18 A. No. I shadowed the course, but I didn't participate as
19 a student.

20 Q. Did you learn from the course the responsibility of the
21 BGIRO, the battlegroup internment review officer?

22 A. No.

23 Q. That was something that you were to learn later in Iraq,
24 was it?

25 A. Yes.

1 Q. Did you learn anything on the course as to the chain of
2 command, if you like, for prisoner handling, who was
3 responsible for which aspect of prisoner handling?

4 A. In a very brief sense, but because it differed from
5 battlegroup to battlegroup, then it was a very generic
6 chain of command.

7 Q. Can we look at paragraph 27 of your statement, please,
8 at BMI06804, where you say:

9 "I used the knowledge and expertise that I gained
10 through my attendance of the above courses ..."

11 Those are the ones you have just, very briefly, been
12 telling us about.

13 "... to provide training in the capacity of
14 a temporary instructor on PH&TQ."

15 A. Correct.

16 Q. "During my time with the TA, pre-op and post-op Telic 2,
17 I also ran two debriefing exercise weekends for TA
18 personnel."

19 You refer to role-playing and so on there. Were you
20 qualified to provide instruction in prisoner handling
21 and tactical questioning?

22 A. Well, I didn't actually provide the instruction for
23 prisoner handling and tactical questioning. I provided
24 the instruction for debriefing techniques, for which
25 I was a qualified debriefer.

1 Q. Had you received instruction in what we have sometimes
2 called the "physical aspects" of prisoner handling, how
3 physically to deal with them?

4 A. Again, on the PH&TQ, also about leading prisoners and
5 when you would not touch them and when you may have to
6 touch them.

7 Q. Could we have a look, please, at a 1972 directive. We
8 find it at CAB001020, please. You can see it's a Joint
9 Intelligence Committee (A) 1972 document. I think you
10 tell us in your statement that you did see this
11 document.

12 A. Yes.

13 Q. Was it at the time of or at the course to which you have
14 referred?

15 A. I think it was referred to at the course, but I don't
16 remember seeing the actual document.

17 Q. Forgive me, you tell us -- it need not be put up -- at
18 paragraph 32 of your statement that you don't recall
19 having sight of the document, but you were aware of the
20 essence of it.

21 A. Yes.

22 Q. And you were aware of the essence of it because the
23 content, as you see it, was instructed to you?

24 A. Yes.

25 Q. I follow. We can see if we go over the page, please, to

1 the second paragraph under the body of the document:

2 "In the light of instructions from the
3 Prime Minister, the Secretary of the Cabinet requests
4 JIC(A) Departments and Agencies, the Home Department
5 [and so on] ... with immediate effect, that any
6 interrogations for intelligence purposes are conducted
7 in conformity with the directive."

8 We can see it is dated 29 June 1972.

9 Do you recall, S017, whether, on the course,
10 reference was actually made to what this Inquiry anyway
11 has been calling the "Heath ruling" or the Heath
12 statement to Parliament?

13 A. Yes, I distinctly remember a slide with the
14 1972 directive being on it with the Geneva Convention.

15 Q. So if we go through, please, to CAB001024 and
16 paragraph 7, under the heading "Treatment":

17 "Searching and sustained interrogation should be
18 carried out in a disciplined atmosphere, and it may in
19 some circumstances be necessary for interrogation to be
20 carried out by night."

21 But then this:

22 "But no form of coercion is to be inflicted on
23 persons being interrogated. Persons who refuse to
24 answer questions are not to be threatened, insulted or
25 exposed to other forms of ill-treatment. Techniques

1 such as the following are prohibited --

2 "(a) any form of blindfold or hood ..."

3 Were you taught that, that any form of blindfold or

4 hood was prohibited?

5 A. We were taught that a hood wasn't [sic] prohibited.

6 Q. But not blindfold?

7 A. No.

8 Q. Forgive me. You did answer, "We were taught that a hood

9 wasn't prohibited".

10 A. Correct -- sorry, was prohibited.

11 Q. I rather assumed that was your answer. So forgive me,

12 but that makes it clear.

13 Were you taught, given the content of this

14 document -- and you say that you were made aware, as you

15 understood it, of the essence -- that any form of

16 blindfold was prohibited?

17 A. No.

18 Q. "(b) the forcing of a subject to stand or to adopt any

19 position of stress for long periods to induce physical

20 exhaustion."

21 Were you taught that that was prohibited?

22 A. Yes.

23 Q. So stress positions were prohibited, what, for all

24 purposes?

25 A. Yes, absolutely.

1 Q. And were you specifically told that?

2 A. Yes.

3 Q. Under (c):

4 "The use of noise-producing equipment;

5 "(d) deliberate deprivation of sleep;

6 "(e) the use of a restricted diet to weaken

7 a subject's resistance."

8 Were you taught all those things?

9 A. Yes, they were prohibited.

10 Q. "Proper arrangements should be made for the physical

11 needs, including food and drink, of all persons being

12 interrogated. Female subjects must be in the care of

13 female staff."

14 These were matters that were covered, you say, were

15 they, in the courses that you observed?

16 A. The only bit I don't recall is that female subjects must

17 be in the care of a female staff.

18 Q. And you say that in your statement.

19 A. Yes.

20 Q. As to the rest of it, what might be called the

21 essence --

22 A. Yes.

23 Q. -- subject to that point about blindfolds --

24 A. Yes.

25 Q. -- you believe you were taught the essence. Was there

1 anything that you were taught in that course which in
2 any way altered from any earlier training you may have
3 received --

4 A. No.

5 Q. -- in this area?

6 A. No.

7 Q. Had you ever believed, for example, that the use of
8 hoods was permissible?

9 A. No.

10 Q. As OC of the JFIT, can you tell the Inquiry briefly what
11 your responsibilities were?

12 A. My responsibilities was to effectively run a team of
13 interpreters and interrogators to speak to internees
14 that were interned from British areas of responsibility,
15 which covered areas that came to the TIF, which was the
16 theatre internment facility. So essentially I ran the
17 operation from that area.

18 Q. And bearing in mind what I have told you about names, to
19 whom were you answerable directly?

20 A. S015.

21 Q. If you had concerns about matters in relation to the
22 operation of the JFIT, was it to S015 that you would
23 turn with those concerns?

24 A. Immediately, yes.

25 Q. If we look at paragraph 29 and on in your statement at

1 BMI06804, under the heading of "Orders, instructions and
2 doctrines during Op Telic 2", you refer here, don't you,
3 to those orders, instructions and doctrines that you
4 were aware of which, as it were, regulated the tasks
5 that you had to do?

6 A. Yes.

7 Q. You say in paragraph 30:

8 "I was only aware of the Geneva Conventions,
9 international law and the European Convention of Human
10 Rights being relevant to these areas ..."

11 That is the areas, is it, of your responsibilities?

12 A. Yes.

13 Q. "... because these were mentioned during my training on
14 ... [that course to which we have already referred].

15 I do not know how these doctrines were supplemented,
16 however, and I am not aware of any further orders,
17 instructions and doctrines that may have existed during
18 Op Telic 2."

19 A. I have to admit that I have missed off the
20 1972 directive there.

21 Q. You missed off the 1972 directive that we just looked
22 at.

23 A. Yes.

24 Q. That was something that was brought to your attention at
25 the course, as I understand it.

1 A. Yes.

2 Q. But it is right, is it, that you weren't aware, once in
3 Iraq, of any further orders, instructions or doctrines
4 that, as it were, directed or assisted you in the
5 fulfilment of your functions?

6 A. I was aware of JWP 1-10, but other than that, no.

7 Q. Did you receive any handover into the job, as it were?

8 A. Yes.

9 Q. As you understood it, was that a handover that was
10 a full handover to you?

11 A. I wouldn't say it was very comprehensive, no.

12 Q. Because ...?

13 A. Simply because the units that we were taking over were
14 going from a war-fighting scenario through to
15 a completely different scenario in, effectively, non-war
16 fighting. So I think it was felt that there was
17 a difference.

18 Q. Did you know at any time when you were in Iraq that
19 there were orders or an order banning the use of hoods
20 on prisoners?

21 A. No.

22 Q. You were never aware of such an order, were you?

23 A. No.

24 Q. But, in fact, from what you tell the Inquiry, it
25 wouldn't, as it were, have altered your position at all

1 because you already believed them to be banned?

2 A. That's correct.

3 Q. May we have a look at a document, please, at MOD049508?

4 I know that you have seen this because you refer to it

5 in your statement. You say you don't recall ever seeing

6 this standard operating instruction --

7 A. No.

8 Q. -- before it was brought to your attention for the

9 purposes of making your statement to this Inquiry. Is

10 that right?

11 A. Correct.

12 Q. Under "Aim" at 2:

13 "The aim of this SOI is to set in place the correct

14 working practices and procedures in accordance with

15 reference B [JWP 1-10] in order to ensure that UK

16 complies fully with its responsibilities."

17 This was a standard operating instruction, as we can

18 see from the heading, for the theatre internment

19 facility, the TIF. Should you have seen such

20 a document?

21 A. I would have thought so, yes.

22 Q. And whose responsibility, other than your own, would it

23 have been to ensure that you did see it?

24 A. I do not know.

25 Q. But the Inquiry can be clear, can it, that you didn't

1 see it --

2 A. Correct.

3 Q. -- or you have no recollection of seeing it?

4 A. No.

5 Q. Which of those is it, do you know?

6 A. I don't recall seeing that document.

7 THE CHAIRMAN: Mr Elias, that is a draft, isn't it? Do we

8 know the date of it?

9 MR ELIAS: I don't think there's a date on the document

10 itself.

11 THE CHAIRMAN: No, I have looked.

12 MR ELIAS: I don't think there is anything in the body of it

13 that --

14 THE CHAIRMAN: No.

15 MR ELIAS: -- as it were, hints at when it would have been

16 issued, but we can make further inquiries about that.

17 THE CHAIRMAN: I mean it is possible that it wasn't in

18 existence, but unlikely.

19 MR ELIAS: Of course that's a possibility. But you were, we

20 must remember, in Iraq between July and December. At

21 all events you didn't see it, as you recall.

22 Let me just ask you a little, please, about the TIF.

23 I don't need to go into, as it were, the geography of it

24 because you set that out in your statement for us from

25 paragraphs 40 and on. Detainees would be brought to the

1 TIF and, when they were brought, you would see them from
2 time to time?

3 A. If I had detainees and internees brought, they would be
4 brought to the registration tent to begin with, so
5 I would see every single one that came through.

6 Q. Do you remember, from time to time, detainees or
7 internees arriving hooded?

8 A. Very rarely, but yes.

9 Q. Hooded with sandbags?

10 A. Yes.

11 Q. Was that a process -- detainees arriving hooded -- which
12 went on throughout the period of your time in Iraq?

13 A. I would say that it occasionally occurred throughout the
14 whole period that I was there.

15 Q. From July through to December?

16 A. Yes.

17 Q. What would happen to detainees who arrived hooded?

18 A. I would immediately remove the hoods and remind the
19 arresting units not to hood them.

20 Q. It must have been apparent, S017, that your reminding
21 the arresting soldiers or the arresting unit was having
22 little effect if indeed this practice was continuing.

23 A. It happened so rarely that I would say it would, and
24 they were all different units, except one, that did it.
25 Some were foreign troops. So only on about two or three

1 occasions were they Brit troops.

2 Q. What, on two or three occasions over the whole period?

3 A. Yes.

4 Q. It wasn't something that you thought you ought to take
5 up with higher authority?

6 A. I did speak to other people about it, but I didn't see
7 it as a huge issue because it was only two or three
8 occasions in the entire time I was there.

9 Q. You say it wasn't a huge issue and you relate the number
10 of occasions as being why it wasn't a huge issue -- is
11 that what I understand?

12 A. Yes.

13 Q. -- but did you regard hooding of prisoners as inhumane?

14 A. Yes.

15 Q. Wasn't that an important issue?

16 A. Of course it was.

17 Q. And who did you take it up with?

18 A. I spoke to Captain Ellis-Davies about it initially.

19 Q. And what was her reaction?

20 A. She said that she would speak to the particular unit.

21 Q. So you were able to tell her which unit it was or units
22 it was which were bringing the hooded prisoners in?

23 A. On two occasions it was the same unit, yes.

24 Q. And did you, as it were, report this matter to her on
25 each occasion that it happened?

1 A. No.

2 Q. Did you report it to someone else?

3 A. I recall reporting it also to Colonel Le Fevre and
4 I may -- I cannot recall 100 per cent whether I reported
5 it to S015 and also Colonel Barnett.

6 Q. I don't want you to guess at this -- if you don't know,
7 please tell us -- but are you saying that all those now
8 that you have named would have been told by you, at some
9 time or another, that prisoners were being brought
10 hooded to the TIF?

11 A. I definitely told Captain Ellis-Davies and
12 Colonel Le Fevre.

13 Q. But as to S015 and Barnett --

14 A. I can't recall.

15 Q. You can't recall. I follow.

16 In paragraph 48 of your statement to this Inquiry --
17 BMI06810, please -- if we just go back to the beginning
18 of paragraph 48 you say this -- and perhaps the numbers
19 that you are giving in the statement are a little
20 different from those you may have given this morning:

21 "On the occasions that detainees and internees
22 arrived at the TIF with hoods (always made from sandbags
23 completely covering the individuals' heads), I removed
24 the hoods immediately and informed the soldiers to tear
25 the sandbag material into strips and use them as

1 blindfolds in future. The issue of hooding was
2 something that I raised orally during my visits to
3 Div HQ. I did not think it appropriate to raise it at
4 the Detainee and Internee Review Committee board
5 meetings ... because the purpose of all discussions
6 there surrounded the release of individuals from the
7 JFIT. However, I did raise these concerns on
8 a semi-regular basis with Captain Ellis-Davies [you say]
9 (approximately six times whilst on tour), on a couple of
10 occasions with Major S015 and Lieutenant Colonel Barnett
11 and on one occasion with Colonel Le Fevre, also on an
12 informal basis."

13 A. Yes.

14 Q. So should we understand that all of those that you name
15 in that paragraph were informed of your concern about
16 prisoners being brought hooded?

17 A. S015 and Colonel Barnett, I think I'm assuming that
18 I would have told them. However I can be sure about
19 Captain Ellis-Davies and Colonel Le Fevre.

20 Q. You go on to say:

21 "Other than Captain Ellis-Davies informing me, on
22 the occasions that I raised it with her, that she would
23 speak to those units adopting the use of hoods to tell
24 them to stop, I am unsure about what, if any, action was
25 taken to resolve the issue."

1 Wasn't it a matter of, if you like, greater
2 importance that you ought to have ensured that further
3 steps were being taken to stop this practice?
4 A. I had very little access to divisional headquarters, so
5 I didn't get many opportunities to follow up many of the
6 things that I had ongoing at divisional headquarters.
7 Q. It wasn't the case, S017, was it, that hooding was, if
8 you like, such a regular matter that it received very
9 low priority, indeed from you and others?
10 A. I would say on the contrary. It is because it happened
11 so infrequently that -- that is why, as opposed to the
12 seriousness of it.
13 Q. But you didn't follow through to ensure that it was
14 stopped, as it were, sooner rather than later?
15 A. Again, because it happened so infrequently, I didn't see
16 a trend of it continue to occur.
17 Q. When you did raise the issue of detainees arriving
18 hooded, did anyone raise with you the fact that an order
19 banning hooding existed --
20 A. No.
21 Q. -- or indeed that a FRAGO -- FRAGO 152, which I think
22 you will now be familiar with -- had been brought into
23 operation preventing the covering of the face?
24 A. No.
25 Q. Nobody raised those issues with you?

1 A. No.

2 Q. Plasticuffs were routinely used, were they, on
3 prisoners?

4 A. Yes.

5 Q. Again, I don't want you to guess if you can't remember,
6 but were plasticuffs used to the front or to the rear of
7 prisoners?

8 A. I can't recall.

9 Q. I want to ask you now, please, about what you may recall
10 of certain telephone calls that you received -- matters
11 that you refer to in your statement -- telephone calls
12 made to you in about mid-September of 2003.

13 You gave an account of the content of those calls,
14 didn't you, in statements that you have made earlier?

15 A. Yes.

16 Q. I am going to ask you, please, to look at that with me.
17 Can we look at the first page of the statement
18 MOD000593? You can see it's a statement dated 22 August
19 2005. I want to take you through, please, three or four
20 pages to MOD000596. Just to take you to the top of the
21 page, please, to begin there, where you say this --
22 sorry, forgive me, just to put it in context, perhaps
23 I should start with the paragraph at the foot of the
24 previous page, where you say:

25 "In relation to the detention of Baha Mousa and his

1 colleagues, we at JFIT had been made aware prior to the
2 operation that it was going to take place. This was not
3 an unusual occurrence, as we would generally be
4 pre-warned of significant arrest operations, so that we
5 could plan interrogations."

6 So nothing unusual in that.

7 A. No.

8 Q. "We were not, however, told of the specific date and
9 time of the operation involving Baha Mousa. We were
10 told of this operation by S015, the J2X."

11 Then, coming back to the point that I was starting
12 at:

13 "Sometime during the evening of 15 September 2003,
14 I received a phone call from the S03 legal at the
15 battlegroup/brigade."

16 Did you know who was phoning you?

17 A. No. I knew it was -- well, I believed it to be the S03
18 legal from battlegroup or brigade and I was aware that
19 I had met him before.

20 Q. You say:

21 "It was a male captain, but I do not recall his
22 name. He asked me what the policy was with regards to
23 the length of detention and how to extend it. I told
24 him it was 14 hours ..."

25 You were aware, were you, that prisoners were to be

1 brought to the TIF within 14 hours of their arrest?

2 A. Yes.

3 Q. "I told him it was 14 hours and that the time could only
4 be extended for operational reasons."

5 Would you have told him -- did you tell him, do you
6 recall -- what "operational reasons" might mean?

7 A. No.

8 Q. What did you mean by "operational reasons"?

9 A. For instance, if they were unable to get the transport
10 and the troops -- for security purposes, to get them to
11 the TIF.

12 Q. "I advised him to speak to Colonel Charles Barnett, who
13 was the senior ALS officer in theatre, as he would
14 probably have been aware of the policy for extending the
15 14-hour period. I advised this as I thought it would
16 need to be put before the brigade command and advised
17 the SO3 legal of this. As far as I can recall, this was
18 the only subject discussed during this phone call."

19 A. Yes.

20 Q. So was that a call, as it were, out of the blue to you?

21 A. Yes.

22 Q. "A couple of hours later I received a second phone call.
23 This call was from an officer from 1 QLR. I cannot
24 recall his name, however, I think that it was either the
25 unit internment officer, the unit intelligence officer

1 or a platoon commander directly linked to what was going
2 on at 1 QLR."

3 A. Yes.

4 Q. Why was it that in 2005 you were saying that?

5 A. Because that's what I recall.

6 Q. In your statement to this Inquiry, you now put a name to
7 the individual who called you.

8 A. Yes.

9 Q. You say it was Major Peebles.

10 A. Yes, but it was only as a result of being informed of
11 that at the court martial. I wouldn't have known
12 otherwise.

13 Q. So going back to the statement in 2005:

14 "A couple of hours later I received a second phone
15 call. This call was from an officer of from 1 QLR ...
16 He asked me about the policy for detaining an individual
17 and when you could blindfold and cuff them."

18 That was the first query, was it?

19 A. As I recall it, yes.

20 Q. "I informed him that individuals could be blindfolded
21 and cuffed at the point of arrest and when moved to
22 a holding area."

23 A. Yes.

24 Q. Would you have told him that?

25 A. Yes.

1 Q. "... blindfolded and cuffed at the point of arrest",
2 but, as you told us today, only if there were security
3 implications?

4 A. Yes.

5 Q. Or was the position that it was, in reality, an SOP to
6 blindfold at the point of arrest come what may?

7 A. My understanding is it was not, but I wouldn't have been
8 involved in the actual arrest -- point of arrest anyway.

9 Q. "When in the holding area, the blindfold and cuffs would
10 be removed, unless the individual was showing excessive
11 violence and the cuffs could be replaced. The blindfold
12 and cuffs could be replaced if the individual was being
13 moved between locations if they were not allowed to see
14 where they were going for security reasons, but
15 generally they would not be blindfolded and cuffed if
16 there was not a valid security reason. During prisoner
17 handling and tactical questioning courses ...
18 individuals are taught that only blindfolds are used and
19 not bags. Such as sandbags. I specifically said to the
20 QLR officer on the phone that blindfolds were only to be
21 used, as he mentioned to me hoods and I corrected him."

22 A. Yes.

23 Q. Do you recall that now?

24 A. Sitting here now, no.

25 Q. But that was an account you were giving in 2005 which

1 would have been the truth, would it?

2 A. Yes.

3 Q. The statement goes on:

4 "The officer asked about general care of detainees,

5 ie feeding, watering, et cetera, and I told him that the

6 unit was responsible for these matters until they are

7 handed over to JFIT. He also asked about the length of

8 time individuals could be detained and I said 14 hours,

9 however, the way the question was asked gave me the

10 impression that they had been holding detainees for

11 a longer period."

12 Do you recall what it was that gave you that

13 impression?

14 A. Just the way he was asking the questions.

15 Q. "I told the officer to get any detainees to me at JFIT

16 as soon as possible. I asked him if his unit had

17 somebody who was PH&TQ trained and he said yes."

18 You go on to say that you were "... amazed that this

19 officer was asking me these questions". Why were you

20 amazed at that?

21 A. Because if he had someone who is actually PH&TQ

22 qualified, they would have known just as much as me

23 about the -- how to handle and the welfare, et cetera,

24 of detainees.

25 Q. You go on, just a line or two further on, to say that:

1 "I formed the distinct impression that this officer
2 was hiding something from me."

3 A. Yes.

4 Q. Why did you form that impression?

5 A. Because, again, when I asked the question, "If you've
6 got any detainees, then get them to me", it was
7 a question he ignored.

8 Q. "I told the officer that any detainees should be with
9 JFIT and he said he would ring me back. He did ring
10 back about four hours later and I asked him where the
11 detainees were and he said they were on their way.
12 I did not hear anything else from him."

13 A. Correct.

14 Q. You say at the very top of the page, just to remind you,
15 that this was some time during the evening of
16 15 September that you received what I will call the
17 "first phone call" from S03 legal. Do you recall the
18 timing of this?

19 A. The first call I can't exactly recall the timing of it,
20 but based on the other two calls, it must have been
21 early evening.

22 Q. The statement goes on at the foot please:

23 "Due to my concerns over these phone calls, I spoke
24 to S015. As a result of my conversation with him and
25 the fact that the first phone call was from S03 legal,

1 I was left with the impression that the matter was in
2 hand."

3 A. Yes.

4 Q. What did you mean by that?

5 A. That it was being dealt with in the sense of I was being
6 asked these questions and he was aware of it or knew
7 more than I did.

8 Q. So were you really saying you didn't think there was
9 anything more that you could or should do?

10 A. At that stage, no.

11 Q. "I expressed my concerns as I was due to go on leave and
12 needed to make plans for interrogations. At this stage
13 I had no idea of the situation at 1 QLR."

14 You go on -- the following page of this statement --
15 to indicate that on 16 September, with another soldier,
16 you went to divisional HQ at Basra International Airport
17 where you were due to fly out.

18 A. Yes.

19 Q. You were informed that morning, were you, that
20 a detainee had died in QLR custody?

21 A. That is correct.

22 Q. You go on to say this in this statement:

23 "As soon as I was told this [that's of the death],
24 I immediately thought about the phone call from the QLR
25 officer the previous evening. I cannot say whether

1 Baha Mousa was already dead at the time of the phone
2 call as I do not know when exactly he died, but the
3 phone call definitely seemed to be an exercise in
4 'covering someone's arse'."

5 A. Yes.

6 Q. I think we probably do know what you mean by that, but
7 why did you make that assumption?

8 A. Because it was very unusual for me to get a lot of phone
9 calls from battlegroups.

10 Q. Very unusual for you to get, you say, a lot of phone
11 calls?

12 A. Yes, three phone calls in one evening to me was quite
13 a lot of phone calls.

14 Q. Did you ask the caller from 1 QLR why, in fact, he had
15 contacted you?

16 A. No.

17 Q. If we come back to your statement, please, at BMI06812,
18 you say at paragraph 54 and you told the Inquiry,
19 through the statement, that you believe it to be
20 Major Peebles --

21 A. Yes.

22 Q. -- who made the 1 QLR call to you. You say at the foot
23 of paragraph 53 on the previous page:

24 "I cannot recall if Major Peebles identified himself
25 by name at the time. I became aware of who he was only

1 during the subsequent court martial ...", as you tell us
2 today.

3 At paragraph 54:

4 "During the first call, Major Peebles asked me basic
5 questions on how to handle prisoners and the provision
6 of food and water to prisoners. I informed him that the
7 prisoners should be treated as he would expect to be
8 treated."

9 Do you recall that?

10 A. Yes.

11 Q. You go on, then, to refer to the contents of your 2005
12 statement. Paragraph 55:

13 "Major Peebles did not initially mention that 1 QLR
14 had any prisoners at the time of the first call.
15 However, he also asked about the length of time that an
16 individual could be detained, and I told him it was
17 14 hours."

18 Again, do you recall that detail?

19 A. Yes.

20 Q. "I asked him whether he had anyone who was PH and TQ
21 trained and he said yes."

22 Did he give you that information?

23 A. Yes, otherwise I wouldn't have known.

24 Q. Then, at paragraph 56, you say that:

25 "... [Major Peebles] informed me that 1 QLR were

1 transporting a group of prisoners to the TIF. This
2 turned out to be the group of detainees arrested on
3 Operation Salerno, one of whom ... had died in 1 QLR
4 custody."

5 But, as you go on to say, you weren't present when
6 they arrived on 16 September because you had already
7 left for the airport.

8 A. That's correct.

9 Q. At paragraph 58, S017, you say:

10 "I do not recall being consulted about prisoner
11 handling by battlegroups on any other occasion during my
12 time in theatre ..."

13 A. Correct.

14 Q. May I ask you, please, about a matter that you refer to
15 in that statement of August 2005, that is the memorandum
16 on detainee policy. If we go back to MOD000597, please,
17 in the second paragraph, you say this:

18 "S015 asked me to write a memo concerning the policy
19 concerning detainees, as he said that the chief of staff
20 had asked for it."

21 A. Yes.

22 Q. Were you told what the purpose of the memo was or was to
23 be --

24 A. No.

25 Q. -- or what it was to cover?

1 A. It was to cover the 14-hour and basic handling of
2 prisoners.

3 Q. What, the 14-hour rule generally, if you like --

4 A. Yes.

5 Q. -- and the basic handling of prisoners?

6 A. Yes.

7 Q. What, and how the 14-hour rule was or was not operating?

8 A. No, just that there was the 14-hour rule and the basic
9 prisoner handling.

10 Q. And by "basic prisoner handling" you mean what?

11 A. Being fed, watered -- the process -- and also extended
12 to the process by which, I think, that they actually
13 came to the TIF.

14 Q. To what use was the memorandum to be put, did you
15 understand?

16 A. As -- I guess a precis of a very broad brush, "This is
17 how it should be happening".

18 Q. What, as a sort of aide-memoire, a memo?

19 A. Yes.

20 Q. You tell us in your statement to the Inquiry that you
21 spoke both to Charlie Barnett and to Sian Ellis-Davies
22 about it prior to writing the memorandum.

23 A. Correct.

24 Q. Did you, in fact, produce a memorandum, do you recall?

25 A. Yes.

1 Q. Did you produce it in conjunction with someone else?

2 A. No.

3 Q. You say in your statement at MOD000597, in the second
4 paragraph, at the very end of it, that the memo was
5 typed on a computer at divisional HQ and printed off,
6 but you don't know what happened to it.

7 A. No.

8 Q. In paragraph 74 of your statement to this Inquiry at
9 BMI06818, you say this:

10 "By the time I returned from R&R ..."

11 That was when you had left on the 16th. Do you
12 recall how long you were away for?

13 A. It was either one week or two weeks, I don't recall.

14 Q. One or two weeks.

15 "... S018 had begun to write another similar basic
16 document under the instruction of Major S015, which was
17 to be distributed to arresting units. This document
18 contained instructions on when to feed and water ...
19 detailed the techniques that were prohibited as taught
20 to me on the PH&TQ course. I cannot recall the precise
21 contents of this document ... because it was
22 predominantly written by S018 prior to my return ..."

23 A. Yes.

24 Q. Was that a document that, what, replaced yours?

25 A. I believe it was separate to. Whether they were

1 covering the same topics, I don't know.

2 Q. Well, from your description of the content in this
3 statement to this Inquiry, it would appear, would it,
4 that it was covering the same or very similar contents?

5 A. Yes.

6 Q. I want to ask you about a number of other unrelated
7 matters please. Could we have a look at paragraphs 62
8 and 63 of your statement to this Inquiry at BMI06815,
9 under "Registration and medical examinations". I don't
10 need to go into any detail of this with you, but at
11 paragraph 63 you say this:

12 "The majority of detainees and internees who arrived
13 at the TIF were usually in a fit and healthy state."

14 There were, however, exceptions, were there?

15 A. Very rarely, yes.

16 Q. What, where detainees might be showing some sign of
17 injury?

18 A. Yes.

19 Q. "If, however, a medic was of the opinion that they
20 required immediate medical assistance, the detainee or
21 internee was sent straight to the medical facility ..."

22 Then you refer to "one such instance", as you call
23 it. When one detainee was brought in, he "... had a
24 visible imprint of a boot on his back and others
25 suffered from cut lips or bruises to their heads".

1 You report that incident to S015 and Lieutenant
2 Colonel Barnett at the time.

3 A. Yes.

4 Q. I just want to ask you this about the soldiers who
5 brought in those detainees, so injured, the one with the
6 footprint to the back and so on: you couldn't identify
7 any of the soldiers by name who brought in those
8 detainees, is that right?

9 A. No.

10 Q. But you can say that they were not soldiers of 1 QLR?

11 A. Correct.

12 Q. I want to ask you a little about the 14-hour deadline of
13 which you were aware. It was a regular occurrence that
14 the 14-hour deadline was breached?

15 A. It was a regular occurrence, but it was infrequent,
16 I would say.

17 Q. And what does that mean?

18 A. Well, it occurred regularly, but not very often. So
19 I would say it happened perhaps six times throughout my
20 period there.

21 Q. When it happened and you were aware of it, what steps,
22 if any, did you take in relation to such breaches?

23 A. Again, I would speak to the arresting unit as to why
24 they had taken so long and the majority of the time was
25 because of reasons beyond their control, effectively.

1 They couldn't either get transport or enough troops to
2 get them down to us quick enough. And if they didn't
3 seem to have a good enough reason, I would speak to
4 divisional headquarters about it.

5 Q. So did you have occasion to make divisional HQ aware of
6 the fact that the 14-hour rule was being breached?

7 A. On a couple of occasions, yes.

8 Q. Did you yourself inquire of the delivering troops, if
9 you like, as to why the 14-hour rule had been breached?

10 A. Yes.

11 Q. Was there any pattern in the responses that you got?

12 A. It was, generally speaking, that they couldn't get the
13 transport or manpower to actually get them down to us.

14 Q. What was the longest delay in delivery that you were
15 aware of?

16 A. About 24 hours.

17 Q. And how seriously did you regard such delay?

18 A. Again, it was very dependent on the reason.

19 I appreciated that it was very difficult for soldiers to
20 actually get enough manpower together and the transport,
21 especially from places like Al Amarah.

22 Q. So you were, in your response, reasonably sympathetic,
23 were you --

24 A. Yes, I was.

25 Q. -- to units who were delivering after time?

1 A. Yes.

2 Q. Did you take it up with anyone that it seemed that the
3 14-hour rule was somewhat impracticable?

4 A. No. On the occasions where it was broken, I did take it
5 up, as I say, at divisional headquarters.

6 Q. At paragraph 60 of your statement -- can we have
7 BMI06814, please -- you say this:

8 "I can recall orally reporting non-compliance of the
9 14-hour deadline separately to both Major S015 and
10 Captain Ellis-Davies on approximately two or three
11 occasions. However I did this only in the more extreme
12 cases ..."

13 So the two or three occasions would have been the
14 more extreme cases, would they?

15 A. Yes.

16 Q. "... and these occurred approximately two to three times
17 during the period that I was on tour. I considered an
18 extreme case to be an occasion on which individuals were
19 brought to the TIF approximately 24 hours after capture
20 (ie ten hours past the 14-hour deadline) and when the
21 unit appeared to have no reasonable explanation for the
22 delay."

23 Having raised the matter, did you ever follow
24 through or ascertain what had been done in respect of --

25 A. No.

1 Q. -- these breaches?

2 A. No.

3 Q. What, you left it in the hands of Captain Ellis-Davies,
4 did you?

5 A. Yes.

6 Q. When prisoners were delivered to the TIF, should they
7 have been brought together with paperwork, reports and
8 so on, that may apply to them --

9 A. Yes.

10 Q. -- individually?

11 A. Yes.

12 Q. Would that have included, for example, records of any
13 medical examination that they may have undergone prior
14 to delivery?

15 A. No.

16 Q. What would it have included?

17 A. It should have included a capture report, so what had
18 happened at the actual arrest operation, it should have
19 included any intelligence as to why the arrest op
20 happened in the first place and also an internment form.

21 Q. And, in general, were such documents brought to the TIF
22 together with the prisoners when they were delivered?

23 A. Not always, no.

24 Q. And does "not always" mean that it was frequently the
25 case that they were not?

1 A. I can't recall.

2 Q. In your evidence to the court martial -- can we have
3 a look at that, please, at court martial Day 41,
4 page 23 -- you are being asked questions by Lord Thomas
5 at the court martial. Perhaps we should just start at
6 the foot of the previous page. Forgive me please.
7 Lord Thomas said:
8 "Just something first of all about the camp.
9 "We were told yesterday by Captain Whitehead that
10 the Americans were only open during daylight hours and
11 that if you were a British Battle Group with prisoners
12 you could not turn up after dark.
13 "Answer: That was not true. However it was an
14 excuse that I heard on several occasions from units that
15 arrived late.
16 "Question: We had that from Captain Whitehead who
17 no doubt you know?
18 "Answer: Yes."
19 Was the TIF, in fact, closed for delivery at any
20 time --
21 A. No.
22 Q. -- during your time?
23 A. No.
24 Q. So the prisoners could be delivered, what, at any time
25 of day or night?

1 A. Yes.

2 Q. And would be processed immediately?

3 A. Yes.

4 Q. You can't say, can you, whether that was the practice
5 prevailing before your time?

6 A. No, I can't comment on that.

7 Q. But certainly from 8 July you can tell the Inquiry, can
8 you, that the TIF was open all hours, as it were?

9 A. Absolutely, yes.

10 Q. And there was no delay in prisoners being processed if
11 they were brought --

12 A. No.

13 Q. -- or would they have to wait for a particular period,
14 if it were overnight, to be processed?

15 A. No. Because we had separate British registration
16 facilities, we could easily get them through British
17 registration quickly. Occasionally they would have to
18 come back to go to the American registration, but it
19 didn't hold anything up.

20 Q. You say, as we see from your answers in the court
21 martial, that it was an excuse that you heard on several
22 occasions. What, units would tell you that the reason
23 for non-delivery within the 14 hours was because the TIF
24 had been closed?

25 A. Yes, or they were late.

1 Q. On a separate matter, did you understand that the reason
2 for the creation of the BGIRO at battlegroup level, if
3 you like, was to act as a filter on the numbers of
4 prisoners being sent to the TIF?

5 A. No.

6 Q. Can we have a look again at your court martial evidence,
7 please? Day 41, page 31, line 5:

8 "Question: Is it right that there had been problems
9 at the JFIT that detainees were being sent to the unit
10 and to the camp without tactical questioning --

11 "Answer: That is correct.

12 "Question: -- and were having to be released? In
13 other words there was no filter?

14 "Answer: Yes.

15 "Question: And that was the thinking behind the
16 appointment of the BGIRO in the first place, was it not?

17 "Answer: I believe so.

18 "Question: So as to act as a filter and prevent you
19 from being overloaded?

20 "Answer: Yes."

21 Was that your understanding of, if you like, the
22 reason why -- or one of them anyway -- the BGIRO was
23 appointed?

24 A. Reading that now, then yes.

25 Q. The question goes on:

1 "Because you told us earlier that it took perhaps up
2 to a week for you to finish questioning a detainee?
3 "Answer: It could do. It depends how co-operative
4 they were."
5 That reminds you, reading that, does it?
6 A. Yes.
7 Q. Would you give me a moment, Sir?
8 Can we have a look, please, at MOD041858? I think
9 this is a document that you may have seen in recent
10 times; is that correct?
11 A. Yes, I believe so.
12 Q. Do you recall whether you saw that document at the time?
13 A. No.
14 Q. What, you don't recall or you didn't?
15 A. I'm pretty sure I didn't see it.
16 Q. "Intelligence exploitation base ... joint forward
17 interrogation team ... Op Telic". You are pretty sure
18 you didn't see it?
19 A. Correct.
20 Q. "Standard operating procedure number 1".
21 Again, this document is not dated, but your position
22 is, as you recall it, that you didn't see it?
23 A. Correct.
24 Q. Were you aware, S017, of seeing any standard operating
25 procedure for the JFIT prior to or during your time

1 officer."

2 A. Yes.

3 Q. "I believe he was a captain, but I cannot recall his
4 name."

5 What was the purpose of the call, do you recall?

6 A. I'm not sure. He called me and, as I said in my
7 statement, it seemed like he was having a bit of
8 a morality rollercoaster. He just wanted to talk to me.

9 Q. When you said in this statement in 2005, "I cannot
10 recall his name", does that mean at the time you would
11 have known who it was?

12 A. Yes, I would have thought so.

13 Q. And who was it?

14 A. I don't recall his name.

15 Q. "During the phone call he did mention that he had been
16 on a course at Chicksands in the past, wanted to do
17 human intelligence training and also had a dog, but I
18 cannot recall any other specific details about him,
19 apart from that he said he was single."

20 A. Correct.

21 Q. "The entire phone call must have lasted for between
22 three and four hours."

23 Is that right?

24 A. Yes.

25 Q. What, one telephone call?

1 A. Yes. We kept getting cut off, so at times we would be
2 offline for about 20 minutes whilst there was no signal.

3 Q. You did get cut off at times, as you say, but he would
4 phone back.

5 A. Yes.

6 Q. "During the call, he seemed to be on a morality
7 rollercoaster ..."

8 He was definitely, was he, a QLR officer?

9 A. That's what he said, yes.

10 Q. Well, you knew him at the time.

11 A. I didn't know him when he rang me.

12 Q. You did?

13 A. No, I -- when he -- as in somebody ringing me, I wasn't
14 aware that I knew this individual from prior meeting him
15 or previous conversations.

16 Q. So how did you know he was a QLR officer?

17 A. Because he told me he was.

18 Q. "During the call he seemed to be on a morality
19 rollercoaster, in that he would go on about the QLR
20 mentality and the attitude held that all Iraqis were
21 scum and then he would go on about the lack of training
22 that soldiers had."

23 Do you mean to say that he was reporting the QLR
24 mentality and attitude about Iraqis?

25 A. No I would not say that he was reporting it to me.

1 Q. I don't mean reporting to you officially, but he was
2 telling you about it?

3 A. Yes.

4 Q. This was his understanding of the QLR mentality and
5 attitude?

6 A. Yes.

7 Q. You say this then:
8 "I believed that he knew of what had gone on, but I
9 do not know the extent of his involvement."

10 A. Yes.

11 Q. "I believed he knew of what had gone on ..." in respect
12 of what?

13 A. In respect of the Baha Mousa case.

14 Q. Why did you get that impression?

15 A. I do not recall now.

16 Q. "... I do not know the extent of his involvement", you
17 say.
18 "I don't know if he was trying to distance himself
19 from what had happened or if he just was wanting to talk
20 to someone outside the unit about it. It was just such
21 a strange phone call. He did say he wanted to visit the
22 JFIT and would try to come down with any future
23 detainees, but he did not do so."

24 A. Correct.

25 Q. Did he say anything at all about Baha Mousa and those

1 detainees or what had happened to them?

2 A. I do not recall now.

3 Q. At the time of the call, you had knowledge of what had
4 happened, did you?

5 A. Yes, I would have done.

6 Q. You would have known there had been a death?

7 A. Yes.

8 Q. You would have known that it involved QLR soldiers who
9 were guarding those detainees, would you?

10 A. At that stage I didn't know how Baha Mousa had died, so
11 no.

12 Q. So what was it from this phone call that gave you the
13 impression that the caller knew what had gone on?

14 A. As I say, I cannot recall now.

15 Q. Nothing at all?

16 A. Other than what's written in my evidence there.

17 Q. To your knowledge, did you ever speak to that man again?

18 A. No.

19 MR ELIAS: Yes, thank you.

20 THE CHAIRMAN: There will be some more questions from
21 counsel.

22 Yes, Mr Friedman.

23 Questions by MR FRIEDMAN

24 MR FRIEDMAN: Thank you, S017. Can I start, just on the
25 matter you have been asked questions about, and go to

1 your Inquiry statement at paragraph 76, which is
2 BMI06819. This is the statement of January 2010. There
3 is just a little more detail written in there. It is
4 halfway down the paragraph you are talking about this
5 incident, after the words "Op Telic 2". You say there:
6 "The male captain felt remorseful about Baha Mousa's
7 death and was of the opinion that 1 QLR soldiers were
8 aware of what happened. He believed that poor treatment
9 of prisoners was common during the tour. He stressed
10 that he felt pressure not to say or do anything about
11 his concerns but he did not say where this pressure was
12 coming from."
13 A. Yes.
14 Q. In that added detail, can you be clear now that he was
15 saying that poor treatment of prisoners had been common
16 by that battalion during the tour?
17 A. That was me remembering it in 2010, yes.
18 Q. Yes, but you are confident on that recollection?
19 A. As sure as I can be, yes.
20 Q. Yes. Before the time when the SIB came to speak to you
21 to take that statement, did you pass this information to
22 anyone?
23 A. No.
24 Q. Why was that?
25 A. I didn't see any mechanism with which to do that.

1 Q. Right. Going back, then, to the courses and that
2 discrete period where you were assisting, as opposed to
3 being a trainee --

4 A. Yes.

5 Q. -- do you have a distinct recollection of an army lawyer
6 giving a lecture about the Geneva Conventions and the
7 like on the courses where you were an attendee?

8 A. No, I don't recall that.

9 Q. No. Just so I understand it, the six months when you
10 went on and off, is that a six-month period traversing
11 2002 to 2003?

12 A. No, it is approximately January 2003 to May 2003.

13 Q. On that timeline, the chairman has evidence that the
14 whole group of trainers actually went to Telic 1 round
15 about, we know, March 2003. You are nodding. You
16 recall that event?

17 A. Yes.

18 Q. To your knowledge, did that mean that the courses
19 ceased?

20 A. No, because there were still some instructors left
21 behind.

22 Q. So you went through that period. Right.

23 I do want to just investigate whether your memory of
24 what you learnt during the period of being an attendee
25 is slightly confused from the period when you did the

1 training.

2 A. Um-hm.

3 Q. You say you did the training itself after Telic, your
4 Telic.

5 A. Yes.

6 Q. When did you do it roughly? What year?

7 A. It was 2004, beginning of 2004.

8 Q. Without going into the details of what job you were
9 doing there, did you go and just do the ten-day course,
10 as we know about it, or was that course --

11 A. Yes.

12 Q. Yes. All right. At that stage we know from
13 a Lieutenant Colonel Yates that he was a lawyer that had
14 been deployed in September 2003 to JSIO and was giving
15 a course that included details along the lines of what
16 you described today, including, for example, the Ireland
17 and the UK ban.

18 If I give you that information, is it possible that
19 the references in your evidence to the ban on hooding
20 and the 1972 events are events that you learnt from the
21 time when you formally did the course, as opposed to
22 when you periodically attended it?

23 A. No. I'm confident that they were happening in 2003
24 also.

25 Q. Can you picture -- I know you have mentioned --

1 THE CHAIRMAN: Mr Friedman, you have a tendency to cut her
2 off short.

3 MR FRIEDMAN: I am so sorry.

4 THE CHAIRMAN: I would quite like to know if you wanted
5 to add anything. You said "No, definitely" and then you
6 ... --

7 A. I am confident because I remember the slide that was put
8 up about the Geneva Convention and the 1972 directive
9 quite explicitly.

10 MR FRIEDMAN: I apologise for interrupting. In your
11 specific recollection of that, can you picture
12 a particular trainer? You have mentioned S012 on the
13 cipher list and S004. Can you picture either them or
14 anyone else on that cipher list -- and otherwise be
15 careful with names -- actually saying that.

16 A. S004 presented the slide, definitely.

17 Q. So you have a clear recollection of S004 presenting it
18 and talking about the 1972 directive?

19 A. Yes.

20 Q. Right. You were asked about the reasons for sight
21 deprivation, and we understand your answers about
22 hooding. You clearly located the reasons of sight
23 deprivation in the purpose of security.

24 I just want to take you to paragraph 10 of the
25 statement for the Inquiry at BMI06798. In the first

1 sentence to get the context:

2 "It was taught on the PH&TQ courses I role-played
3 and instructed on that the use of a hood ... is
4 prohibited ..."

5 Further down:

6 "It was clear from these ... courses that
7 blindfolds, which cover only the eyes of an individual,
8 were to be used as a means to depriving the sight of an
9 individual for security reasons."

10 Then you say this:

11 "This had the incidental effect of maintaining the
12 shock of capture because of the heightened emotions
13 a person experiences at the point of capture. Someone
14 is more likely to answer questions when in this
15 emotional state because they will not feel comfortable
16 in their environment."

17 Then you say:

18 "The ... course was clear, however, that
19 blindfolding could not be used for maintaining the shock
20 of capture in its own right."

21 Just that sentence before what the course was clear
22 about, who told you that there was an incidental effect
23 of maintaining the shock of capture to heighten
24 emotions, et cetera?

25 A. I think it was a discussion that we would have between

1 the students and the instructors more in the anteroom,
2 as opposed to stood with a lecturer in front of us.

3 Q. You used the phrase with Mr Elias of conversations not
4 in the classroom.

5 A. Yes.

6 Q. That's what you are referring to here?

7 A. Yes.

8 Q. When you say about instructors and students, are we
9 right, on courses like this, some of the students can
10 have an enormous amount of experience in the field --
11 I use the phrase generally -- but they have never done
12 the course, so they are coming to do it? Is that
13 correct?

14 A. Sorry, in a general sense, experience in the field --

15 Q. I don't want to ask what these people --

16 THE CHAIRMAN: Just please let her finish what she is going
17 to say before you bound in again.

18 MR FRIEDMAN: I understand. You know it is a time-keeping
19 tic and I am going to control it.

20 THE CHAIRMAN: I know that is why you are doing it and I am
21 very grateful to you for keeping to time, but you must
22 allow her to answer.

23 MR FRIEDMAN: I am sorry, I am on a clock. I interrupted
24 you. Do you want me to repeat the question or --

25 A. Could you clarify the question?

1 Q. I don't want to ask generally about experience people
2 have had --

3 A. I understand that.

4 Q. -- but, as a general matter, is it a feature of these
5 courses that some of the students can be incredibly
6 experienced of doing covert work in the field, perhaps
7 interrogating themselves, but they have never actually
8 done the course?

9 A. No. They would not have been interrogators had they not
10 been qualified.

11 Q. I understand that, but, for instance, you -- and I know
12 there is a reason to it, but technically that was the
13 case with you when you finally did your course. You had
14 run a JFIT during an occupation --

15 A. That was extremely rare.

16 Q. Right. So when you were having this talk outside the
17 classroom, is it just the trainers who are saying that
18 there's an incidental effect about maintaining shock of
19 capture or are some of the trainees acknowledging that
20 as well?

21 A. I would say both.

22 Q. Yes. Is this the case: it is never, once one goes back
23 into the classroom, made clear, "Look, if there is an
24 incidental effect, you have to actually calm them down
25 so that, at the point where they are being questioned,

1 there's no hangover of this incidental effect because
2 that's not right or lawful"?

3 A. It was quite clear that the only reason you would hood
4 was because of security reasons, so I think that was
5 clear, yes.

6 Q. I understand that. But what about taking time
7 specifically to calm the person down so that there is no
8 incidental effect or benefit of maintaining shock of
9 capture?

10 A. I don't understand the reason for that would happen
11 to -- sorry, are you suggesting you would calm them down
12 beforehand, even once they had got their blindfold off?

13 Q. Yes.

14 A. I don't understand why they would do that --

15 Q. You were not taught that?

16 A. No.

17 Q. When you were assisting and you were, in effect,
18 a subject of the interrogation, did you experience what
19 the teaching materials describe as the "harsh
20 treatment"? Were you on the end of it?

21 A. Yes.

22 Q. I am not going to take to you all the documents, but
23 verbally, as opposed to physical -- we understand there
24 was an absolute exclusion of physical contact -- but
25 verbally could insults be made?

1 A. Insults, yes.

2 Q. Threats?

3 A. No. I was never threatened.

4 Q. What about indirect threats such as -- I will give you
5 an example -- "I don't know what the guards will do to
6 you after you are out of here"?

7 A. Absolutely not.

8 Q. Going to insults, was there any limitation on the
9 insults?

10 A. I think it was dependent on how you felt, so there would
11 be limitations for every individual person.

12 Q. But that was to do with personality, not regulation?

13 A. Yes.

14 Q. Was racism ever ruled out expressly?

15 A. I do not recall it being expressed ruled out, but I have
16 never heard it, no.

17 Q. Humiliating women --

18 A. No.

19 Q. -- expressly ruled out?

20 Moving then to Telic, Operation Telic, I am going to
21 ask some questions that are no criticism of the work you
22 actually did, but about your expertise. It is correct
23 that, exceptionally or otherwise, you are not qualified
24 to do tactical questioning or interrogation at that
25 stage --

1 A. Correct.

2 Q. -- and it's also correct that you are not qualified to
3 run a JFIT unit and you have had no training on that.

4 A. Correct.

5 Q. Now, just looking at two opposite consequences of that,
6 first of all, did your superiors, S015 and Lieutenant
7 Colonel Le Fevre, understand your lack of qualification
8 and training as relevant with regard to your
9 appointment?

10 A. Yes, they were put in a very difficult position because
11 we were supposed to be there as a debriefing team, not
12 a JFIT.

13 Q. And where did the order for you to take up that job come
14 from? Was it from above those two men?

15 A. I don't know.

16 Q. No. You talk about Lieutenant Colonel Le Fevre coming
17 once to the JFIT and S015 coming three times; do you
18 feel you were given sufficient support at the JFIT by
19 those two superiors?

20 A. Yes.

21 Q. Now, just the other consequence of that. Again
22 I understand you have to get on with the job that you
23 are given, but were you in the habit of disclosing to
24 others that you weren't sufficiently trained or
25 qualified outside of your JFIT group?

1 A. No.

2 Q. Do you think they would have looked upon you, mistakenly
3 as it so happens, as a subject matter expert?

4 A. I would not say "mistakenly" since I had attended those
5 courses beforehand and I was a debriefing expert and the
6 fact that I had read all the documentation that I needed
7 to prior to going out.

8 Q. Can I take as a given about the debriefing expert, for
9 obvious reasons -- and I don't want to challenge you,
10 but just to understand -- do you regard someone who has
11 done the ten day course, passed it, as someone who,
12 within forces culture, should be regarded as a subject
13 matter expert?

14 A. The ten-day interrogation course?

15 Q. The tactical questioning and interrogation course --

16 A. No, I wouldn't say they were a subject matter expert at
17 all.

18 Q. What has to happen before you are regarded as a subject
19 matter expert beyond doing the course?

20 A. I don't know, I am afraid.

21 Q. All right. Just, then, on events that arose and very
22 quickly. First of all, on the point of delay, in those
23 six stand-out times of 24 hours plus, were you notified
24 by the late units before the 14-hour limit had passed
25 that they were going to be late or was it the habit of

1 units just to turn up and start explaining to you?

2 A. Just to turn up.

3 Q. Right. On the tactical questioning at brigade and
4 battlegroup level, did you have an understanding who, if
5 anyone, was in charge of that capability?

6 A. Alongside the PH&TQ, it had been a battlegroup
7 responsibility.

8 Q. Sorry, you said alongside --

9 A. Well, if they had a PH&TQ-qualified person --

10 Q. Yes.

11 A. -- it would have been that person, but understandably
12 some of them didn't.

13 Q. No. And so did you understand anyone to be in charge of
14 them at brigade level?

15 A. No.

16 Q. We have heard some evidence -- and I don't want to go
17 into the detail of it -- but there were criticisms going
18 both ways from brigade and JFIT about flow of
19 information between one another.

20 A. Um-hm.

21 Q. Without going into the detail, did you take your
22 complaints at JFIT up with anybody?

23 A. Which complaints are you talking about?

24 Q. I think the complaint at that end was that the reports
25 were not always helpful. You have explained that the

1 documentation was not always complete.

2 A. I took that up with S015.

3 Q. Did you have any communication with anyone in brigade
4 about --

5 A. No, I had no form of communication with them.

6 Q. No. We have seen problems described in the documents
7 about the communication.

8 THE CHAIRMAN: Mr Friedman, you are getting close to the end
9 of your time.

10 MR FRIEDMAN: Understood.

11 In terms of the tactical questioning that was going
12 on in brigade, would you have expected the harsh
13 technique to be used by tactical questioners?

14 A. No.

15 Q. And if you take an example, as arose here where
16 a suspect has gone missing from the scene of arrest --
17 so on the face of it a good use of tactical questioning
18 to ask everybody where he is -- would you expect there
19 to be a significant delay before that tactical
20 questioning began, with documents being analysed and the
21 like, or should it have gone on quickly?

22 A. It's best practice to do it as quickly as possible.

23 THE CHAIRMAN: Well, last question.

24 MR FRIEDMAN: I will turn it into a question.

25 THE CHAIRMAN: Yes, that would be sensible.

1 MR FRIEDMAN: It is going to be hard to turn it into one
2 question, but I am going to.

3 You had done your guidance and then S018 did very
4 similar guidance. I want to look at the S018 guidance
5 because we have it. It is at MOD030862.

6 If you cast your eyes on paragraph 5, please, and
7 paragraph 10, do you recall seeing this document at the
8 time?

9 A. I don't recall, no.

10 Q. Those two paragraphs, did they reflect criticisms of
11 tactical questioning at battlegroup level that you and
12 S018 were aware of and wanted to deal with in terms of
13 stopping?

14 A. We wanted them to do neutral/logicals, so that we had
15 something to build on.

16 Q. What about the multiple questioning sessions in
17 paragraph 10?

18 A. Again, that was standard teaching and practice that you
19 do -- it's a quick five minutes or up to an hour, get
20 the information you need and move them on. It's
21 a tactical question. That's the point of tactical
22 questioning.

23 MR FRIEDMAN: Thank you, Sir.

24 THE CHAIRMAN: Well done Mr Friedman. Thank you very much.
25 Miss Dobbin?

1 Questions by MS DOBBIN

2 MS DOBBIN: May I just ask you about the occasions when you
3 observed people arriving at the TIF hooded. Were those
4 people generally arriving at the TIF, as it were, as
5 opposed to being people who had been pre-selected for
6 questioning at the JFIT?

7 A. Yes, they arrived at the TIF.

8 Q. And would you have habitually attended whenever people
9 were generally arriving at the TIF?

10 A. Yes.

11 MS DOBBIN: Thank you. That is all, Sir.

12 THE CHAIRMAN: Mr Ashley?

13 Questions by MR ASHLEY

14 MR ASHLEY: S017, I think by your own definition you are not
15 a subject matter expert when it comes to tactical
16 questioning; is that correct?

17 A. Correct.

18 Q. You were just asked a moment ago whether or not the
19 harsh technique ought to be used. You said "no". As
20 I say, you are not the subject matter expert. You, by
21 preference, as I understand it, would prefer
22 a neutral/logical method; is that right?

23 A. I recall it being taught, on the PH&TQ courses, that
24 essentially there is no point in doing a harsh at the TQ
25 phase.

1 Q. So open to the tactical questioner at the time to assess
2 what he feels is the best approach?

3 A. Yes.

4 Q. You just have a personal view that the neutral/logical
5 was what you prefer from an interrogation point of view
6 to build on. Is that the position?

7 A. Not necessarily to build on from an interrogation point
8 of view. I think the initial questioning should not be
9 a harsh because you then cannot go back down from it.

10 Q. So far as your role-play in 2003, I think you told us
11 that that was between January and May 2003 where you, as
12 it were, dipped in and out of the course. Can you help
13 us out with specifically what aspects of the PH&TQ
14 course you actually attended?

15 A. Well, I role-played for all of the practical sessions,
16 but I also made a point to shadow the entire course in
17 lectures for my own knowledge, so that when I was giving
18 feedback to the students, I knew what I was talking
19 about.

20 Q. So you saw the course in its entirety; is that the
21 position?

22 A. Yes.

23 Q. So far as the way the course was taught, can you recall
24 how many instructors there were --

25 A. It would vary because, during the practical sessions,

1 there would be more.

2 THE CHAIRMAN: How is that relevant?

3 MR ASHLEY: Well, in so far as the evidence is inconsistent

4 from this witness as compared to others, it is relevant

5 to determine whether an instructor who she saw may have

6 come up with one method of instructing, whereas others

7 didn't. It is the same point I think that has been put

8 by others already.

9 THE CHAIRMAN: It is pretty minimal, Mr Ashley.

10 MR ASHLEY: I am so sorry.

11 Did you follow one particular instructor?

12 A. No.

13 Q. As far as the role of the BGIRO -- the battlegroup

14 internment review officer -- is concerned, what role did

15 you understand that individual had in adhering to the

16 14-hour rule?

17 A. It was his responsibility to ensure that an internee or

18 detainee was properly processed, either released or

19 taken to the TIF within that 14 hours.

20 Q. Dealing with the chain of command, I think you said that

21 that was only very briefly taught -- that's, I think,

22 the evidence you gave earlier on to the Inquiry -- and

23 it was taught in a generic sense.

24 A. Yes.

25 Q. I think you also said that it changed depending on the

1 battlegroup, the chain of command; is that right?

2 A. Not -- sorry, I perhaps didn't make myself clear. If it
3 was a prisoner of war scenario, so a war-fighting
4 scenario, that chain of command would have probably been
5 different to what we were dealing with on Telic 2. So I
6 cannot be sure, therefore, what the exact chain of
7 command would have been taught.

8 Q. So far as that prisoner welfare situation is concerned,
9 I think you said that you told Major Peebles that it was
10 the unit that was responsible for that aspect of things
11 until the detainees arrived at the JFIT and I think you
12 answered the -- or put the same point forward during
13 your evidence at the court martial. Do you stand by
14 that position?

15 A. Yes.

16 MR ASHLEY: Thank you very much.

17 THE CHAIRMAN: Mr Bourne?

18 Questions by MR BOURNE

19 MR BOURNE: Thank you, Sir.

20 S017, when you had concerns about matters such as
21 detainees arriving hooded, was it easy for you to raise
22 those concerns with your superiors?

23 A. No, purely because of the communication I had.

24 Q. What about with Major S015? Did you have ready access
25 to him?

1 A. Again, it was by mobile phone only.

2 Q. Did you have a good working relationship with
3 Major S015?

4 A. Yes.

5 Q. And with Colonel Le Fevre?

6 A. Yes.

7 Q. And with Captain Ellis-Davies?

8 A. Yes.

9 Q. And Colonel Barnett?

10 A. Yes.

11 Q. These people were all quite approachable as long as you
12 could get hold of them?

13 A. Yes.

14 Q. How often were you able to discuss matters of an
15 administrative kind with Captain Ellis-Davies?

16 A. I would say -- well, I was up at divisional headquarters
17 once a week.

18 Q. Yes.

19 A. That was the only time that I would have been able to
20 see her, but I wouldn't have been able to see her every
21 time because she would not be available or I just had
22 too much -- too many other things to do. So I had
23 access to her once a week, but I certainly didn't see
24 her once a week.

25 Q. Given that you could see her once a week, it's not quite

1 right to say that you had "very little" access to
2 divisional HQ?

3 A. As I say, I didn't see her every week because she was
4 not always there, so I didn't have access to her every
5 week.

6 Q. Now, at those meetings of the DIRC that took place
7 weekly, who typically would be on those boards?

8 A. Captain Ellis-Davies was on that board, I think S015
9 went once because he -- it wasn't his responsibility.
10 I believe there was another intelligence captain and
11 a few others, but I don't recall exactly who it was at
12 this stage.

13 Q. I am not so bothered about which individuals, but there
14 would be people there from provost staff, would there
15 not?

16 A. I believe so, actually, yes, thinking about it now.

17 Q. MPS, sometimes a political adviser?

18 A. Possibly, I don't recall that.

19 Q. Yes. Now at the DIRC, there was discussion, wasn't
20 there, of individual cases of detainees and whether they
21 should be released?

22 A. Yes.

23 Q. And there was also discussion of certain logistical and
24 practical matters concerning detainees?

25 A. Yes.

1 Q. Now, coming back to the specific question of detainees
2 arriving with hoods and your concerns on the occasions
3 when that happened, today you told us it happened rarely
4 and the rareness of it was something that obviously
5 lessened your concern; is that right?

6 A. No, I wouldn't say it lessened my concern. It just
7 meant that I didn't have to raise it very often.

8 Q. It only happened, you told us, about two or three times
9 with British units.

10 A. Yes.

11 Q. And two of those occasions were the same unit?

12 A. Yes.

13 Q. And you did not report such matters to
14 Captain Ellis-Davies on every such occasion?

15 A. No.

16 Q. Can we just have your paragraph 48 on the screen --

17 THE CHAIRMAN: I hope we are not going to go through all of
18 her evidence that she has given already, Mr Bourne.

19 MR BOURNE: Sir, no. There is just one matter I would like
20 to focus on now, if I may.

21 Perhaps we could go to the next bit of 48 on the
22 next page. I am grateful. Five lines in you describe
23 how you raised concerns with Captain Ellis-Davies and on
24 a couple of occasions with S015 and Lieutenant Colonel
25 Barnett. Do you say that that paragraph is actually

1 incorrect in that you are not sure about raising it with
2 S015 and Colonel Barnett?

3 A. Yes, as I said, I think I am assuming that I would have
4 done.

5 Q. It's an assumption?

6 A. Yes.

7 Q. How clear is your recollection of these matters seven
8 years on?

9 A. About referring to Captain Ellis-Davies and Lieutenant
10 Colonel Le Fevre, I am certain that I raised it with
11 them.

12 Q. Can it be right that you raised it approximately six
13 times with her when you have just told us that it only
14 happened on a couple of occasions with British troops
15 and you didn't mention it to her every time?

16 A. On the three occasions that it was foreign troops,
17 I actually, just out of politeness, said, "I am going to
18 go and speak to the specific nationality legal adviser
19 on that". So I would often go and speak to, let's say,
20 the Dutch or the Italian legal representatives. So just
21 out of courtesy, I would mention that I was going to go
22 and speak to them.

23 Q. I see. So it is a sort of -- rather like cc'ing it to
24 Captain Ellis-Davies orally, as it were.

25 A. Yes.

1 Q. I see. But in terms of British troops, you probably
2 only took it up with her once or twice from what you
3 have told us?

4 A. Yes.

5 Q. Were these formal requests to do something about it or
6 more in the nature of a casual mention?

7 A. On the one occasion -- I take that back. At no time
8 did I formally raise it with her. It was something that
9 I spoke to her within a context of a wider
10 conversation --

11 Q. I see.

12 A. -- and, as I say, on the occasion that it was two of the
13 same units, she said she would speak to them.

14 Q. But you never followed that up?

15 A. No.

16 Q. Finally, can we agree that any serious or lasting
17 concerns about these matters you could certainly have
18 raised at DIRC, where you would have the ear of all the
19 people that you mentioned to us a few minutes ago?

20 A. It wasn't a topic that would have been covered, in my
21 opinion, at the DIRC.

22 Q. Even though those meetings did cover logistical and
23 practical matters regarding detainees?

24 A. But that was to do with the transport of them back to
25 their home areas.

1 Q. So that would be relevant, but hooding wouldn't?
2 THE CHAIRMAN: That is an argumentive point, if I may say
3 so.
4 MR BOURNE: Forgive me, Sir. In that case, I have no more
5 questions.
6 THE CHAIRMAN: I think that is wise. Thank you. Mr Evans?
7 Questions by MR EVANS
8 MR EVANS: Two short matters, please, Sir.
9 May we have paragraph 6 of your witness statement on
10 the screen, please. It is BMI06797. Thank you.
11 You refer in there, S017, to your pre-operation
12 training at Chilwell Mobilisation Centre in Nottingham,
13 during which you were provided with a copy of an
14 Op Telic aide-memoire.
15 A. Yes.
16 Q. Is your understanding, as you say there, that it was
17 provided to all those who attended Chilwell?
18 A. Yes.
19 Q. Who were they, mostly, in terms of their status?
20 A. Mainly reservists and TA.
21 Q. So territorial Army reservists --
22 A. Anybody, but the regular army.
23 Q. May we just have that document on screen? It is
24 BMI06822. This is the aide-memoire to which you refer?
25 A. Yes.

1 Q. Thank you. Was it clear to you -- if you look at
2 paragraph 3 and 4, you see that the document provides
3 that you should not use hooding and that --
4 A. I think I'm on the wrong page.
5 Q. Sorry. It is the following page, I think, internal
6 page 9 of the document.
7 A. Okay.
8 Q. Could you blow up for me, please, paragraphs 3 and 4?
9 Do you recall being told on that course that you
10 should not use hooding?
11 A. Yes.
12 Q. And similarly as paragraph 3 says there and similarly as
13 paragraph 4, that blindfolds may only be used for
14 operational reasons, eg for transit through a militarily
15 sensitive area?
16 A. Yes.
17 Q. What was your understanding as to who actually got these
18 aide-memoires following that course at Chilwell?
19 A. Everybody got one.
20 Q. Thank you. Just can you help us with this before
21 I leave that? When was that course in Chilwell, do you
22 think?
23 A. It would have been June 2003, end of June.
24 Q. June 2003, thank you.
25 THE CHAIRMAN: Sorry, June when? 2003?

1 A. June 2003, yes.

2 MR EVANS: Just a final matter. You have been asked about
3 your experience. Can I ask you this? As a debriefing
4 expert and given that you had beneath you trained TQers
5 and interrogators who had been trained and given, as you
6 explained, you had a chain of command to whom you could
7 refer and with whom you felt comfortable, as you said to
8 Mr Bourne, did you feel equipped to be CO [sic] of the
9 JFIT when you were posted to Iraq in 2003?

10 A. Yes.

11 MR EVANS: Thank you, Sir.

12 THE CHAIRMAN: Mr Elias?

13 Further questions by MR ELIAS

14 MR ELIAS: I think you agreed that logistical and practical
15 matters concerning detainees would have been discussed
16 at the DIRC.

17 A. Yes, I believe so.

18 Q. But that they did not -- I think I understand your
19 evidence -- include, on any occasion, questions of
20 hooding?

21 A. No, or the care and welfare generally of internees.

22 Q. When you raised the question of hooding, however, with
23 your colleagues or some of them, as you told us you did,
24 is it right that you got the impression that they did
25 not regard the issue as being particularly important?

1 A. I would disagree about Captain Ellis-Davies, but
2 certainly Colonel Le Fevre, yes.

3 Q. Quoting from your statement that we looked at at
4 BMI06810, if we just have this and toward the foot of
5 it:
6 "In response to a question from the Inquiry,
7 following the lapse of time I cannot now remember in
8 detail the reactions of Major S015, Lieutenant Colonel
9 Barnett or Colonel Le Fevre when I notified them of
10 prisoners arriving hooded at the TIF ..."

11 I just pause to acknowledge that you have amended
12 that, as it were, in your evidence, haven't you?

13 A. Yes.

14 Q. "... but I remember that I was left with the impression
15 that the issue was not regarded as being of particular
16 importance."

17 A. Correct, yes.

18 Q. By anybody?

19 A. Well, as I say earlier in the paragraph, that --
20 Captain Ellis-Davies said she would talk to the units,
21 but as far as Colonel Le Fevre goes, then no.

22 Q. Can we have a look, please, at the document that
23 Mr Evans took you to a moment or so ago, I think, at
24 BMI06822?

25 THE CHAIRMAN: I think actually we were looking at BMI06824.

1 MR ELIAS: We were. Can I ask you to look at page 7 of the
2 document at BMI06822? You see that the heading you are
3 being shown about "Guidance on powers of detention (HQ
4 12 Mech brigade)" and a reference in the first paragraph
5 under "Power to detain ...":

6 "A member of MND(SE) may detain and hold, for
7 a maximum of 8 hours, any person ..." and so on.

8 Can you assist about this document, as to when this
9 document came into existence or whether it was in
10 existence in your time?

11 A. All I can say is I was issued it in June 2003.

12 Q. By which time the period of 14 hours was in operation,
13 you tell us?

14 A. I do not know when the 14-hour policy came in. I know
15 of it when I got into theatre.

16 Q. And this is a document which seems to refer to
17 12 Mech Brigade and not 19.

18 A. Yes.

19 Q. So we can't, from this document, can we -- or from any
20 evidence you can give us -- ascertain when this document
21 would have been in existence --

22 A. Originally, no.

23 Q. -- or, indeed, whether it was in existence during your
24 time?

25 A. Well, it was issued to me at Chilwell in June.

1 Q. You are clear about that, are you?

2 A. Yes.

3 MR ELIAS: Thank you.

4 Questions by THE CHAIRMAN

5 THE CHAIRMAN: When you were on your course -- I am looking
6 at and dealing with tactical questioning -- you were
7 asked a moment ago whether threats would be permitted
8 and I think you said "no"; is that right?

9 A. Correct.

10 THE CHAIRMAN: Could you conceive of a situation where it
11 would be permissible to have a large person standing
12 next door to the man who was carrying out the tactical
13 questioning with a baseball bat in his hand?

14 A. No.

15 THE CHAIRMAN: That would be quite beyond the pale?

16 A. Absolutely, that -- in my view that would be absurd.

17 THE CHAIRMAN: The only reason that I ask it is that
18 somebody told us yesterday that it was implicit that
19 there could be that sort of threat.

20 A. Not when I was there, no.

21 THE CHAIRMAN: All right. Thank you.

22 Thank you very much for coming. I am grateful to
23 you for your evidence. You are now free to go.

24 A. Thank you.

25 MR ELIAS: Sir, because there are obviously security

1 implications, may I ask that the security of the room be
2 maintained and that perhaps you remain here while this
3 witness leaves the room and before the next witness is
4 brought in?

5 THE CHAIRMAN: Fine. By all means leave the room.

6 We have submissions to be made at 20 past 2; is that
7 right?

8 MR ELIAS: At 2.30, Sir.

9 THE CHAIRMAN: Are we going to get to 2.30? Is there time
10 for that?

11 MR ELIAS: Not before 2.30 is what the parties have been
12 told.

13 THE CHAIRMAN: I don't want it to be too much later than
14 that.

15 MR ELIAS: No, I think we are about on course for that.

16 THE CHAIRMAN: Are we? Good. All right.

17 MR MOSS: Sir, our next witness is another witness in
18 respect of whom there is a restriction notice. It is
19 S015.

20 THE CHAIRMAN: Yes.

21 MR MOSS: The restriction notice covers his name, address,
22 current post, image and any other information that may
23 tend to identify him and he is another screened witness.
24 May I call S015, please?

25 THE CHAIRMAN: Yes.

1 If you would please stand for a moment, I will ask
2 that you take the oath. All right?

3 S015 (sworn).

4 THE CHAIRMAN: Thank you very much. Do sit down.

5 A. Thank you.

6 THE CHAIRMAN: Please may I ask you to get as close as you
7 can to the microphone because from time to time it's
8 impossible to hear what you say if you don't speak into
9 it. Thank you very much.

10 Questions by MR MOSS

11 MR MOSS: Major, your name is known to this Inquiry, but we
12 shall refer to you by your cipher of "S015". May I ask
13 you to take up the written copy of your statement, which
14 should be in the folder on the table in front of you,
15 and turn with us to the final page of your statement,
16 which we have at BMI06533.

17 Would you be able to confirm for us that that is
18 a statement that you provided to the Inquiry on
19 17 December of last year?

20 A. Yes.

21 Q. When you provided that statement, were the contents true
22 to the best of your knowledge and belief?

23 A. Yes.

24 Q. As you may have heard with the previous witness, that
25 statement stands as your evidence to this Inquiry and my

1 task is to pull out certain topics arising out of it.

2 May I start, please, briefly, with your career history?

3 You tell us in your statement that you were originally

4 commissioned into the RAF in the role of an intelligence

5 officer; is that right?

6 A. Yes.

7 Q. But you transferred to the army in 1996?

8 A. That's correct.

9 Q. Roughly how many years had you served in the RAF before

10 you transferred to the army?

11 A. Five and a half.

12 Q. You tell us that by November 2002 you had a posting

13 into really a quite separate and distinct area of

14 intelligence work, which was for the Joint Air

15 Reconnaissance Centre. Is that right?

16 A. That's correct.

17 Q. And it was not until July 2003 that you were deployed on

18 the posting with which this Inquiry is principally

19 concerned, as the SO2 J2X at divisional level for

20 Op Telic 2; is that right?

21 A. That's correct.

22 Q. Your current post and role is known to the Inquiry, but

23 is not relevant to our terms of reference. Can I just

24 ask you to confirm, however, that you are still with the

25 armed forces?

1 A. That's correct.

2 Q. And that your current rank is major?

3 A. Yes.

4 Q. So that we have it from the outset, that posting as SO2
5 J2X at divisional level, please, Major, was that your
6 first staff officer posting in that kind of formation
7 headquarters?

8 A. Yes.

9 Q. I don't want or need you to go into any training details
10 that are not directly relevant to us, but did you feel
11 that you had had the training and experience necessary
12 to carry out the role of J2X for a divisional
13 headquarters?

14 A. Yes.

15 Q. I think it's right, though, as you tell us in your
16 witness statement, that you hadn't had any previous
17 experience of being the staff officer who was
18 responsible for a JFIT. Is that right?

19 A. That is correct.

20 Q. May I turn, then, to some aspects relating to your
21 training? You tell us that the law of armed conflict
22 was covered both at training that you undertook at
23 Sandhurst and at the RAF college at Cranwell; is that
24 right?

25 A. That's right.

1 Q. Are you able to help us as to what the central message
2 was, if any, that you took from your law of armed
3 conflict training?

4 A. Yes.

5 Q. And what was that?

6 A. That Article 3 of the Geneva Convention dictates what
7 the British Armed Forces can and cannot do on
8 operations.

9 Q. And, in simple terms, how were prisoners of war to be
10 treated.

11 A. Justly.

12 Q. I am going to come on just in one moment to your
13 training on the prisoner handling and tactical
14 questioning course and interrogation course. Leaving
15 those courses aside and also leaving aside any conduct
16 after capture training that you may have been involved
17 in, did your annual training in the law of armed
18 conflict ever cover the use of hoods on prisoners and
19 whether that was permitted?

20 A. I don't recall. The annual training we received was
21 very much general, rather than specific.

22 Q. What about stress positions? Can you remember that ever
23 coming up in the generic annual training on the law of
24 armed conflict, as opposed to at the specialist courses?

25 A. I do not recall it coming up.

1 Q. Prior to undertaking the specialist courses then, would
2 you have had an understanding of whether it was
3 permissible to deprive a prisoner of their sight by any
4 means on operations?

5 A. I recall reading Geneva Conventions as homework in the
6 past and I recall, as I have stated, that prisoners must
7 be treated justly. I do not recall it being specific.

8 Q. Again, specialist courses left to one side for the
9 moment, had you come across the use of blindfolds or
10 hoods on courses that you may have been involved in, on
11 exercises, that sort of thing, other than in the
12 interrogation or conduct after capture context?

13 A. No.

14 Q. May I turn, then, to those specialist courses? Perhaps
15 I can take some aspects of this quite briefly. You tell
16 us that you were involved in two courses: firstly the
17 prisoner handling and tactical questioning course which
18 I think you undertook in 1994 -- is that right?

19 A. Correct.

20 Q. -- and, secondly, the longer interrogation course which
21 you undertook in 1996 as part of the longer five-month
22 intelligence staff training; is that right?

23 A. It was the junior -- the intelligence corps junior
24 officers' course --

25 Q. Yes.

1 A. -- that it was part of.

2 Q. We have heard evidence that that was about a five-month
3 course and that the interrogation course is about two to
4 three weeks on it. Would that be right?

5 A. That's correct.

6 Q. So far as tactical questioning is concerned, you tell us
7 in your statement that your understanding of that is
8 that it is questioning which is done at the point of
9 capture or close to the point of capture, that it should
10 be a fast process, but only to be carried out by those
11 who have been qualified in it. Is that the essence of
12 it?

13 A. Correct, yes.

14 Q. Whereas interrogation, a longer-term exercise, makes use
15 of self-induced pressures to obtain the information that
16 is sought. Is that right?

17 A. Yes.

18 Q. You tell us that you had an understanding from the
19 courses in general terms that, because of the
20 desirability of maintaining the pressure and obtaining
21 information, that the time from point of capture to
22 interrogation should be kept to a minimum. Is that
23 right?

24 A. Yes.

25 Q. Now, on either of these courses, was anything taught

1 about whether and in what circumstances and how it might
2 be permissible to deprive prisoners of their sight?

3 A. As I recall, the only time that you are permitted to
4 stop -- sorry, to block the sight of a detainee would be
5 for purposes of security.

6 Q. So for security purposes only, is that what you are
7 saying?

8 A. Yes, it is.

9 Q. What about the means by which a prisoner's sight might
10 be deprived? Did it specify how a prisoner's sight
11 could be deprived for security purposes?

12 A. I cannot recall what was said about what could be used
13 to deprive sight, but it was made quite clear that the
14 nose and mouth had to be left free so that breathing
15 wasn't impeded.

16 Q. How confident are you that that was something -- not
17 covering the nose and mouth, leaving free to breathe --
18 which was covered on one or other of these courses?

19 A. It was made very clear.

20 Q. And you have a clear recollection of that, do you?

21 A. Yes.

22 Q. Can you help us with this? Was that on the prisoner
23 handling and tactical questioning course, the short one,
24 or on the interrogation course or both?

25 A. It was on both.

1 Q. Sir, I want you to correct me if I am wrong, but would
2 this be fair? You don't recall the use of hessian bags,
3 sandbags, being expressly ruled out, but it would follow
4 from what you were taught that bags could not be used to
5 be pulled down over the nose and mouth?

6 A. That is correct.

7 Q. And on the courses, please, that you did attend, did
8 you, in fact, see the use of some material or some
9 device to restrict prisoners' sight during the
10 interrogation or the tactical questioning course?

11 A. I don't recall.

12 Q. When prisoners were brought in for the purposes of the
13 exercise to an interrogation room, did they have
14 blindfolds on?

15 A. Their eyes were covered. I cannot recall what was used
16 to cover their eyes.

17 Q. What about stress positions? Was the use of stress
18 positions covered in any way on these two courses?

19 A. Yes.

20 Q. And what was said about those positions?

21 A. You are not to use them.

22 Q. Again, I don't want you to guess, but was that on the TQ
23 course or on the interrogation course or on both?

24 A. It would have been on both.

25 Q. You say "it would have been". Do you actually remember

1 it being on both?

2 A. Yes.

3 Q. And discomforting levels of noise or white noise, again

4 was that mentioned?

5 A. That it was not to be used?

6 Q. Yes.

7 A. Yes.

8 Q. And, again, one or both courses?

9 A. Both courses.

10 Q. Were you, in fact, told on these courses that there was

11 a specific directive which prohibited the use of those

12 sort of techniques or were you just told that they were

13 not to be used?

14 A. I don't recall.

15 Q. I think you were shown, for the purposes of providing

16 your statement, the directive from 1972 of which the

17 Inquiry is aware. Taking it briefly, had you ever seen

18 that before?

19 A. I had not seen the document itself, no.

20 Q. But the essence of it you say you had been taught, is

21 that right?

22 A. The essence of the document was taught on both courses.

23 Q. Just this one aspect, just to pick up on a point of

24 detail if we may. Can we have a look at CAB001025?

25 This is an extract from that 1972 directive, Major. It

1 says at the top of the page, three lines down:

2 "Techniques such as the following are prohibited --

3 "(a) any form of blindfold or hood."

4 I think from what you have told us, the prohibition

5 on the use of a hood was well understood by you; is that

6 right?

7 A. Yes.

8 Q. As to techniques being prohibited which included any

9 form of blindfold, though, that was not something which

10 was drawn to your attention, is that right?

11 A. It was clear that the use of a blindfold or hood -- and

12 I refer you back to the comment about making sure the

13 face and the nose were clear --

14 Q. Yes.

15 A. -- could be used if -- for security purposes only.

16 Q. So you would have been aware, would you -- taking it

17 shortly -- that a blindfold couldn't be used actually

18 during the interrogation itself --

19 A. That's correct.

20 Q. -- and, as you understood it, it could only be used, the

21 blindfold, for the purposes of operational security?

22 A. That's also correct.

23 Q. But you did understand that, for operational security

24 purposes, a blindfold could be used in the overall

25 context of a prisoner, for example, being moved around

1 an interrogation centre?

2 A. Yes.

3 Q. Do you recall being trained in a number of approaches or
4 techniques that might be used during interrogation, one
5 of which is the harsh technique?

6 A. Yes, I do.

7 Q. In respect of that harsh technique, were you taught
8 anything about the limits of behaviour, the line which
9 should not be crossed, in terms of how harsh the
10 approach should be?

11 A. Yes, we were.

12 Q. Could you give us the essence of that, please?

13 A. That the approach to be used was verbal only and that
14 really was the essence of it.

15 Q. Getting up close and in the face of the person being
16 interrogated and shouting, was that in bounds? Was that
17 permitted?

18 A. Yes, it was.

19 Q. What about insults?

20 A. Insults were permitted, yes.

21 Q. The Inquiry has seen, for example, a video from 2005
22 where the harsh technique is being demonstrated and
23 language such as calling the prisoner "the unit fucking
24 rent boy" in the course of the harsh technique appears
25 to be demonstrated. Is that consistent with the sort of

1 insults that were taught for you in terms of the harsh
2 technique?

3 A. Yes.

4 Q. What about the question of threats? Can I start with
5 this? Could a threat of direct physical assault be
6 made?

7 A. No.

8 Q. Where was the line to be drawn, then, in terms of what
9 could and could not be threatened?

10 A. You couldn't -- we were not permitted to threaten the
11 prisoner or detainee.

12 Q. The Inquiry has seen again in the same video -- and I am
13 going to paraphrase it -- the use of an approach of
14 saying, "If you don't cooperate, you might be released
15 and the enemy are outside waiting for you. I don't know
16 what they'll do to you, but I think you probably do".
17 Was that consistent with the sort of, if not threats,
18 then indications of what might happen in the future that
19 could be used during the harsh technique that you were
20 trained in?

21 A. That I cannot remember.

22 Q. Throwing items of furniture around the room in an
23 obviously physical manner so long as they didn't strike
24 the prisoner, was that permitted?

25 A. I don't recall.

1 Q. Did you derive from this training, please, an
2 understanding of whether, in any circumstances, it might
3 be permissible to prevent the prisoner from sleeping?
4 A. No.

5 Q. There's some evidence to the Inquiry that in the
6 circumstances of the period shortly after capture or on
7 immediate arrival at an interrogation centre, it may
8 have been thought justified to keep the prisoner awake
9 at least for some hours so that they are not able to
10 relax before initial questioning. Do you remember
11 anything like that being taught?
12 A. No.

13 Q. A prohibition on sleep deprivation, was that raised
14 during the courses that you can remember?
15 A. It was raised that prisoners required a certain amount
16 of sleep within a 24-hour period.

17 Q. Help us with that. What was the amount of sleep within
18 a 24-hour period, can you remember?
19 A. I am afraid that I can't remember.

20 Q. So within that limit, whatever it was, of allowing so
21 many hours of sleep within a 24-hour period, might it be
22 that a prisoner could be kept awake so long as they had
23 the minimum number of hours' sleep?
24 A. I don't know.

25 Q. Presumably you took from these courses the fact that, as

1 a tactical questioner or interrogator, you would have
2 a direct responsibility for the prisoner during the
3 course of what was going on in front of you during the
4 TQ'ing or the interrogation itself.

5 A. That's correct.

6 Q. Were you given to understand whether, as a TQer or
7 interrogator, you would have any responsibility for
8 briefing the guard force in any way?

9 A. The only brief that I would be required to pass to the
10 guard force was which prisoner we wanted delivered to
11 which interrogation cell and the time at which we wished
12 them to be delivered.

13 Q. Does it follow that you did not understand it to be part
14 of the interrogator's or the TQer's function to explain
15 to the guards by what means the shock of capture ought
16 to be maintained and to brief the guards on matters of
17 that kind?

18 A. That's correct.

19 Q. I am going to move on just briefly, if I may, to your
20 training in conduct after capture. You tell us that you
21 have had such training yourself. You tell us that it
22 involved the use of all five of the prohibited
23 techniques -- is that right?

24 A. That is correct.

25 Q. -- and that you well understood -- again taking it

1 shortly -- you say in your witness statement that that
2 training was designed to prepare you and others for what
3 you might face if you were captured by
4 a non-Geneva-compliant enemy. Is that correct?

5 A. Yes, it is.

6 Q. Understanding that, can I ask you this? Was any
7 specific warning given during your conduct after capture
8 training, when you had it, to the effect that, "This is
9 what an enemy might do to you. If you are taking
10 prisoners as a British soldier, you must not use these
11 techniques on those that you detain"? Was an express
12 warning along those lines given?

13 A. I don't recall.

14 Q. You don't recall one being given like that?

15 A. Correct.

16 Q. Just look at paragraph 16 of your witness statement,
17 please. The reference is BMI06519. You tell us
18 there -- having dealt with your conduct after capture
19 training -- two-thirds of the way down the paragraph:

20 "This difference in approach and the reasons for it
21 were never explained to me during the conduct after
22 capture course, nor would I have expected them to be
23 because the purpose of this course was not to teach what
24 UK interrogators were permitted to do."

25 Do you see that there?

1 A. Yes.

2 Q. And were you seeking to say there that you wouldn't
3 necessarily have expected that sort of express warning
4 to be given on the course because of the context of what
5 it was training?

6 A. Yes.

7 Q. I just wonder if we could look at that in just a little
8 more detail. If we go to paragraph 28 of your
9 statement, you went on, Major, did you not, to say --
10 coming back to the same topic, paragraph 28, BMI06522 --
11 that:

12 "I do not recall being briefed on the CAC course
13 itself that these techniques were not to be used by the
14 British Army during its own interrogations. I do recall
15 however that the course was attended by individuals who
16 were not necessarily trained in interrogation. While
17 those techniques are used on CAC courses, I was under no
18 illusion that, as a trained interrogator, I was not
19 permitted to use those techniques on others."

20 Now, it is right, isn't it, as a trained
21 interrogator, you knew from your training in
22 interrogation that these techniques were not to be used
23 as part of interrogation?

24 A. That's correct, yes.

25 Q. But others on the course, would this be right, who

1 hadn't been trained as interrogators might not
2 necessarily have known that?

3 A. That is possible.

4 Q. Just a few other brief matters, if I may, relating to
5 your training.

6 "Conditioning" as a phrase, what do you now
7 understand "conditioning" to mean?

8 A. "Conditioning" is the means by which a prisoner or
9 detainee may find himself more willing to talk to a TQer
10 or interrogator.

11 Q. At the time of your deployment to Op Telic 2, however,
12 I think you tell us -- is this right -- that you would
13 understand "conditioning" to mean potentially two very
14 different things, the first one being the process of
15 self-induced pressures leading prisoners to be more
16 likely to talk as a result of the shock of capture -- is
17 that right?

18 A. That's one of the -- yes.

19 Q. -- but another meaning of "conditioning" was the sort of
20 techniques that would not be compliant with the Geneva
21 Conventions which you had been exposed to on conduct
22 after capture training?

23 A. That is correct.

24 Q. So, again, I invite you to correct me if I am wrong, but
25 would it be right that in 2003 you understood that

1 "conditioning" -- that single word -- was rather
2 ambiguous in military parlance because it could mean two
3 completely different things?

4 A. Yes.

5 Q. You hesitated slightly before answering. Is there any
6 doubt about it?

7 A. There is no doubt about it. "Conditioning" means two
8 things. I knew that the only ones we could use, were
9 allowed to use, were self-induced pressures.

10 Q. And that's on account of the specialist training that
11 you had had that you gained that understanding?

12 A. Yes.

13 Q. Thank you. The final matter on training -- I think at
14 least from me -- is this, your pre-deployment training.
15 I think you tell us in your statement that in fact you
16 were only given ten days' notice of deployment for
17 Op Telic 2; is that right?

18 A. That's correct, yes.

19 Q. And that, as a result, you didn't undertake
20 pre-deployment training at all?

21 A. Correct.

22 Q. I would like to move on, now, to your role and your
23 chain of command in theatre on Op Telic 2. Your rank at
24 that time I think was acting major; is that right?

25 A. That's correct.

1 Q. And your reporting chain -- the officer to whom you
2 reported in the J2 side at the divisional
3 headquarters -- would that have been Lieutenant Colonel
4 Le Fevre?
5 A. Yes, it would.
6 Q. And through him to the chief of staff, Colonel Barrons?
7 A. Yes.
8 Q. The joint forward interrogation team -- the Inquiry, of
9 course, has just heard from the OC of the JFIT, S017,
10 and she was reporting to you; is that right?
11 A. Yes.
12 Q. I think you also, though, would have had another officer
13 reporting to you, which was S016, if you have your
14 cipher list there. Is that right?
15 A. Yes, it is.
16 Q. And S016 was the OC of the field HUMINT team, is that
17 right?
18 A. Yes.
19 Q. And you had both the JFIT and the field HUMINT team
20 reporting into you in your HUMINT role, is that right?
21 A. Yes, it is.
22 Q. Again just taking it briefly, I think we know that your
23 handover would have been from your predecessor, an
24 officer known to this Inquiry as "S002". I think you
25 will know who I mean by referring to your cipher list.

1 A. Yes.

2 Q. Thank you. Just this: when you had your handover from
3 S002, can you recall whether any prisoner handling
4 aspects were addressed in the handover?

5 A. I don't specifically recall it, although we would have
6 discussed in the round the whole role of J2X within the
7 division.

8 Q. The Inquiry knows that there was some debate and
9 disagreement, even, about the use of hooding in
10 Op Telic 1 at the JFIT, with concerns having been raised
11 by the Red Cross, differences of legal view, ending, it
12 seems, in a verbal order that hooding should be
13 prohibited or shouldn't take place. Do you remember
14 whether that debate or earlier controversy about the use
15 of hoods was raised during your handover?

16 A. I don't remember if it was or not.

17 Q. If it had been raised with you, do you think that's the
18 sort of thing that you would remember from the handover?

19 A. Very much so, yes.

20 Q. Does it follow that you don't think that Red Cross
21 concerns about hooding at the JFIT was, in fact,
22 addressed during the course of your handover?

23 A. I don't remember if it was or was not part of my
24 handover.

25 Q. Yes, but if you are telling us that it's something that

1 you think, if you had been told, you would remember,
2 presumably what you are telling us is you think it's
3 more likely that it was not mentioned during your
4 handover.

5 A. Something of that gravity during a handover is the sort
6 of thing that I would remember if I had been told, yes.

7 Q. Yes, thank you.

8 What about the more general matter of whether
9 hooding had, in fact, been prohibited? The Inquiry
10 knows that there is a later order, FRAGO 152, which
11 prohibited the covering of prisoners' faces. Leaving
12 aside controversy about the Red Cross and what had
13 happened at the JFIT, was the simple fact that hoods and
14 covering faces had been prohibited by an Op Telic 1
15 order -- was that covered during your handover?

16 A. No.

17 Q. Now, in general terms, then -- before we turn to details
18 about the JFIT, interrogation and tactical questioning
19 in theatre, can I just ask you in general terms about
20 your understanding about the use of hoods during
21 Op Telic 2 prior to Baha Mousa's death? What would your
22 understanding have been about whether hoods could be
23 used in theatre?

24 A. Going back to my training, that hoods should not be used
25 because they may impede the nose and the mouth, but

1 blindfolding could be used for security purposes.

2 Q. So if you had received a report of the use of hoods,
3 even if it was the use of hoods outside of the immediate
4 interrogation context, that would have struck you, would
5 it, as being concerning?

6 A. Yes.

7 Q. Against that background, then, can I turn to the JFIT?
8 Did you yourself visit the JFIT itself?

9 A. Yes, I did.

10 Q. How frequently would you have done that?

11 A. I believe I was there three or four times a month during
12 my tour.

13 Q. And in the course of those visits, did you see the
14 prisoners who were held there?

15 A. In general, I saw prisoners at the detention facility.

16 Q. At the TIF?

17 A. Yes.

18 Q. At the TIF part, as opposed to the JFIT, is that the
19 distinction that you draw?

20 A. Yes.

21 Q. Thank you. In any of your visits to the TIF or to the
22 JFIT, did you ever see a prisoner hooded?

23 A. No, I didn't.

24 Q. Did you hear about prisoners being hooded, whether
25 within the TIF or within the JFIT or even on arrival at

1 the TIF or the JFIT when they were being delivered by
2 the capturing units?

3 A. Yes.

4 Q. And in what context did you hear that?

5 A. It was during discussions with S017.

6 Q. And what did she say to you on that matter?

7 A. She just informed me that on occasion it had happened.

8 Q. On occasion it had happened. And what was your
9 reaction?

10 A. My reaction would be to -- sorry, was to raise it
11 through my chain of command and find out the reason why
12 the unit decided to use that means to impede the sight
13 of a detainee.

14 Q. All right. Who did you raise it with -- just being
15 careful about names if you need to be.

16 A. Yes. I would have raised it through Colonel Le Fevre to
17 the chief of staff.

18 Q. You have a distinct recollection of doing that, do you?

19 A. Yes.

20 Q. The units involved, do you remember one way or the other
21 whether 1 QLR was one of the units?

22 A. I don't remember specifically, no.

23 Q. Do you remember whether the RAF Regiment was one of the
24 units involved?

25 A. I don't remember.

1 Q. Presumably, Major, in line with the question I asked you
2 a few moments ago, given your training, the report from
3 S017 that hoods had been used would have been a matter
4 of concern to you because it would be contrary to your
5 training; is that right?

6 A. That is correct.

7 Q. If we just have a look at paragraph 36 of your
8 statement, please, at BMI06524. You tell us here that
9 you did those visits to the JFIT three or four times
10 each month through overnight trips and so on, site
11 visits and the like. Then you say this:

12 "I did not see or hear anything that gave me cause
13 for concern."

14 It seems on the basis of the evidence that you have
15 given today that that's not quite right, is it?

16 A. During the visits to the TIF and the JFIT, I didn't see
17 or hear anything that gave me cause for concern.

18 Q. I will be corrected if I am wrong -- appreciating that
19 you are saying that that paragraph was dealing with
20 visits to the JFIT -- but I don't think you mentioned
21 anywhere in your Inquiry witness statement having
22 received a report from S017 about prisoners being
23 delivered hooded. Was there a reason for that?

24 A. An omission.

25 Q. Please don't discuss anything that's been passed between

1 you and your legal advisers or vice versa, but there is
2 absolutely no reason why you should not have looked at
3 S017's statement and considered it. That would be quite
4 acceptable and understandable. Is it the case that you
5 have read S017's written statement to this Inquiry?

6 A. Yes.

7 Q. Prior to reading that statement, did you have any
8 recollection of her raising this matter with you?

9 A. No, I didn't.

10 THE CHAIRMAN: Did you hear what she was saying in the
11 evidence?

12 A. Yes, Sir, I did.

13 THE CHAIRMAN: Yes, I follow.

14 MR MOSS: But you have read her written statement before
15 today? I don't ask you exactly when, but before today
16 you have read her witness statement?

17 A. Yes.

18 Q. Was it following reading her written statement that it
19 brought back some recollection?

20 A. That's correct.

21 Q. Was it a matter that you treated seriously once it was
22 reported to you?

23 A. Yes.

24 Q. You will have seen S017's account in her written
25 statement -- although she said today, in evidence, that

1 she thinks she would have raised the matter with you,
2 rather than having any distinct recollection, but in her
3 written statement to the Inquiry she did say that --
4 having listed those with whom she raised the matter, she
5 says:

6 "I remember that I was left with the impression that
7 the issue was not regarded as being of particular
8 importance."

9 Might that be right, that the matter was raised with
10 you and that you didn't think it particularly important?

11 A. I regard it as important.

12 Q. And now that you have seen that statement from S017 --
13 and perhaps it has brought back some recollection --
14 just help us with this: how confident are you that you
15 did, in fact, pass on the concerns about prisoners
16 arriving hooded?

17 A. I am confident I would have passed it up my chain of
18 command.

19 Q. If you did pass it up your chain of command, did
20 anybody, in response, say anything to the effect of,
21 "Well, that's doubly troubling because, in fact, there's
22 a specific order prohibiting the use of hoods in
23 theatre"?

24 A. No, that was not said.

25 Q. So that we are clear, other than Colonel Le Fevre, would

1 there have been any others with whom you would have
2 raised this matter directly?

3 A. It is likely I would have raised it with Lieutenant
4 Colonel Barnett, the LEGAD during Telic 2, but that
5 would have been in discussion.

6 Q. You accept, I take it, that this matter having been
7 raised with you by a subordinate officer, that it was in
8 fact your duty to raise that matter further up the chain
9 of command as a matter of concern?

10 A. That's correct, yes.

11 Q. What about the 14-hour deadline? Were you aware that
12 that was something that was not always being met by
13 those units who were involved in sending prisoners to
14 the TIF?

15 A. Yes.

16 Q. Can you help us, first of all, in general terms, with
17 what the issues were of why prisoners were sometimes
18 delivered late?

19 A. Generally due to lack of vehicles, be they helicopters
20 or Land Rovers and the number of people required in
21 order to do a road move at that time.

22 Q. Do you have any independent recollection yourself --
23 leaving aside what S017 has told us -- about the opening
24 hours of the TIF and whether that was an issue at the
25 time?

1 A. I recall there were opening hours. I do not recall what
2 they were.

3 Q. Just so that we are clear that we follow that, does that
4 mean that it was your understanding that the TIF was
5 closed for some part of a 24-hour period?

6 A. Yes.

7 Q. Might it have been that there was some confusion about
8 that aspect within the chain of command?

9 A. I know that S017 worked very closely with her American
10 counterparts to make sure that, when we were aware that
11 prisoners would be arriving, that the British TIF -- the
12 JFIT -- would be able to accept them.

13 Q. Let's look at that. It may be -- obviously the Inquiry
14 will have to look at the totality of the evidence --
15 that the position was that officially the US side of the
16 TIF was -- obviously it was run by the Americans and
17 that it was officially closed over certain hours at
18 night, but that British prisoners could, in fact, be
19 admitted because of the arrangements that S017 had made.
20 Do you follow that that's one possibility?

21 A. Yes.

22 Q. Was that, in fact, your understanding of what the
23 position was at the TIF, that British prisoners could be
24 admitted even if the TIF was formally closed for
25 American prisoners?

1 A. Not initially, but it became clear due to the work that
2 S017 had been doing.

3 Q. Taking the matter shortly, if there had been a change in
4 that respect because of the arrangements that S017 had
5 put in place, is it possible that units on the ground
6 were not clear and still may have thought that the TIF
7 was not open 24 hours a day for British prisoners?

8 A. I don't know.

9 Q. Whose job would it have been to ensure that the correct
10 message on that was circulated to the units and
11 sub-units on the ground?

12 A. I don't know specifically but, as we are talking about
13 detention, that's a J1 administration issue.

14 Q. Now, you say that you were aware on occasions of the
15 deadline not being met. Did you yourself take any steps
16 as a result of that when you became aware of it?

17 A. Yes.

18 Q. What did you do?

19 A. I informed my chain of command that the timings were
20 being broken and that we needed to speak to the brigade
21 and find out from the individual battlegroups why that
22 had happened.

23 Q. Again, when you say that you spoke to your chain of
24 command, what does that mean in real terms? Who did you
25 actual speak to, can you remember?

1 A. Yes, Colonel Le Fevre.

2 Q. Did you understand there to be any risk and problem
3 involved with battlegroups holding on to prisoners for
4 too long?

5 A. Other than from the interrogation perspective, that it
6 was prolonging the time from point of capture to the
7 first interrogation, no.

8 Q. Were you aware that during Op Telic 1, for example,
9 there had been a number of deaths in custody at
10 battlegroup level?

11 A. I was not.

12 Q. If it is the case that the time-frame within which
13 prisoners had to deliver the prisoners to the TIF had,
14 in fact, in part been motivated by concern about risk of
15 mistreatment at battlegroup level, is that something of
16 which you were aware?

17 A. I was not aware, no.

18 Q. So far as you can recall it, having raised that matter
19 with the chain of command, with Colonel Le Fevre, was
20 anything actually done in terms of clamping down on
21 compliance with the 14-hour limit?

22 A. I know that the battlegroup were certainly -- the
23 timings were reinforced with the battlegroup. I don't
24 know what happened after that.

25 Q. Do you know how the timings were reinforced?

1 A. That I don't know.

2 Q. Just a couple of slightly separate matters then about
3 the JFIT, if I may. Were you aware whether the
4 procedures at the JFIT were covered by any kind of
5 standard operating procedure in writing?

6 A. I can't remember.

7 Q. You were asked to comment on one SOP in the course of
8 your statements. May we just, please, look at it
9 briefly? It is at MOD041858. The terminology, please,
10 Major, at the top of this SOP, "Intelligence
11 exploitation base (IEB) joint forward interrogation team
12 (JFIT) Op Telic", can you help us with that? Is that
13 the standard way in which -- can I say -- "your JFIT"
14 would have been referred to on Op Telic 2 or does that
15 appear to be referring to something different?

16 A. As I said in my statement, the "joint forward
17 interrogation team" piece I fully agree with. I was
18 somewhat surprised at the term "intelligence
19 exploitation base".

20 Q. That's not a concept with which you were familiar on
21 Op Telic 2, would that be right?

22 A. On Op Telic 2, that's right.

23 Q. Just this: if we go to paragraph 10 within this, the
24 conclusion, at MOD041861, we see that first of all, as
25 in a number of other places, it is still prisoners of

1 war being referred to. The Inquiry has heard quite
2 a lot of evidence that by time of Op Telic 2, if there
3 were any prisoners of war, it was only a handful or one
4 prisoner of war still being kept; is that right?

5 A. Yes.

6 Q. "... on behalf of XXXXXX" and there has been something
7 left to fill in there, it may be that this is a draft.
8 Is this, in fact, something which you think you ever saw
9 in theatre?

10 A. I don't remember seeing it in theatre.

11 Q. That can be taken from the screen. Thank you. Would
12 you have expected the arrangements and procedures within
13 the JFIT to be covered by a written SOP by the time of
14 late June/July 2003?

15 A. Yes.

16 Q. Would you have expected that to have been drafted by
17 S017 or would you have expected a written SOP to have
18 been in place for Op Telic 1 which was handed over?

19 A. I would expect it to have been written before S017's
20 arrival in theatre.

21 Q. And handed over to her, would that be right?

22 A. Yes.

23 Q. Did you satisfy yourself that there was, in fact, such
24 an SOP in place?

25 A. I don't remember.

1 Q. Should you have done?

2 A. Yes.

3 Q. And the need for there to be a written SOP governing the
4 procedures, why was there a need for that sort of
5 written document?

6 A. To ensure that the direction was being adhered to, to
7 make it clear.

8 Q. And which direction was being adhered to?

9 A. That the treatment of prisoners of war or detainees was
10 quite clear.

11 Q. We will come on to TQ'ing perhaps after the lunch break,
12 but presumably the same would apply, would it not, in
13 respect of tactical questioning, that you would have
14 expected there to have been some sort of written SOP or
15 policy to guide that in theatre?

16 A. Yes.

17 Q. Moving up slightly in the types of doctrine relating to
18 the JFIT -- moving away from an SOP -- a detailed
19 directive governing the procedure to be used --
20 can I ask you this? Were you aware, first of all, that
21 there was a high level -- by which I mean ministerially
22 approved -- policy requirement for there to be
23 a detailed directive in place which should govern the
24 use of UK interrogators in theatre?

25 A. Yes.

1 Q. How had you become aware of that policy requirement for
2 a detailed directive?

3 A. The fact that we had a JFIT in theatre would require
4 such a directive to have been written and signed off.

5 Q. May we just look briefly at the directive which the
6 Inquiry is aware of. It's at MOD049310,
7 27 February 2003, the CJO's directive to the commander
8 of British forces for HUMINT operations for UK forces
9 deployed on Op Telic. Now, is that a document which you
10 saw at the time?

11 A. I can't remember whether I saw it at the time or not.

12 Q. Perhaps that could go on to the left-hand side of the
13 screen and we could just have your paragraph 52 from
14 your statement, BMI06592 -- just paragraph 52, please.
15 Thank you very much.

16 I think you tell us there, on the right-hand side of
17 the screen, your paragraph 52, five lines down:

18 "I recall seeing this document on my arrival in
19 theatre in 2003."

20 Is that right?

21 A. Yes, it is.

22 Q. We know, on the left hand of the screen -- if we can
23 just roll on to MOD049314 -- that there was an annex,
24 annex B, which dealt with permanent joint headquarters
25 guidance on prisoner handling detainees, and over the

1 page again to interrogation procedures, and over the
2 page again, procedure at the interrogation unit and
3 matters of that kind.

4 I think S017's evidence to the Inquiry was to the
5 effect that she had not seen this document, although,
6 bearing in mind its classification, she told us in her
7 statement that there would have been difficulties
8 security-wise with the directive being emailed to her.

9 Can you help us on that? Do you know whether you
10 made S017 aware of the existence of this directive?

11 A. I can't remember if I did.

12 Q. Again, if it was the policy that was meant to be
13 governing the procedures for UK interrogators in
14 theatre, it is something that you should have drawn to
15 her attention; is that right?

16 A. That's right, yes.

17 Q. Would you, in fact, bearing in mind the tempo of your
18 operations and what you were involved in, yourself have
19 given thought to this detailed directive in terms of
20 asking yourself, "Does this tell my JFIT everything they
21 need to know about their procedures?" or would you
22 simply have been concerned to pass it on one way or the
23 other?

24 A. I certainly would have read the directive and passed on
25 not only the directive, but I would have reinforced it

1 to make sure that, in the JFIT's case, S017 understood
2 my direction with regard to a document such as this.

3 Q. One point which arises from this detailed directive, if
4 you take it from me for the moment, is that it doesn't
5 contain any reference to the prohibition on the use of
6 the five techniques at all. Was that something which
7 you had spotted at the time?

8 A. I don't remember.

9 MR MOSS: Sir, I am about to move to a different topic.
10 I wonder if that might be a convenient moment.

11 THE CHAIRMAN: Yes.

12 MR MOSS: I wonder if, just before we break, the witness
13 might be able to leave the room following the
14 arrangements made.

15 THE CHAIRMAN: Yes, we will have a break for exactly an
16 hour. Please do not talk to anybody about your evidence
17 over the course of the break.

18 A. Yes, Sir.

19 MR MOSS: Thank you, Sir.

20 THE CHAIRMAN: All right. 2 o'clock.

21 (1.01 pm)

22 (The short adjournment)

23 (2.00 pm)

24 THE CHAIRMAN: You are still under oath, as I am sure you
25 appreciate.

1 A. Yes, sir.

2 MR MOSS: Before we broke, I had been asking you about the
3 JFIT. I want to move on now, please, to ask you
4 a series of topics about tactical questioning in
5 theatre. It may be that you are able to answer the
6 following question "yes" or "no".

7 Other than tactical questioning and interrogation,
8 were you responsible for other types of HUMINT work that
9 was going on in theatre?

10 A. Yes.

11 Q. Without going into what the other aspects of your work
12 may have involved, in terms of the percentage of time
13 that you spent in theatre, what sort of percentage of
14 time would have been spent on interrogation and TQ
15 matters, as compared to the rest of your workload?

16 A. Approximately 25 per cent.

17 Q. On interrogation and TQ?

18 A. On interrogation.

19 Q. Thank you. May we go back, please, to the directive for
20 HUMINT in theatre, the 27 February 2003 document. It is
21 MOD049310. If you look at paragraph 4, we see, don't
22 we, that within the tasks that were being assigned to
23 HUMINT units, other than debriefing at the bottom of the
24 page -- over the page -- was both interrogation at (d)
25 and tactical questioning. That's right, isn't it?

1 A. Yes.

2 Q. Would you accept, therefore, that in terms of
3 responsibility at divisional level, that tactical
4 questioning fell full square within the HUMINT sphere of
5 operations?

6 A. The flow of information from tactical questioning did
7 fall within HUMINT operations.

8 Q. Thank you. I think the document can be taken from the
9 screen.

10 To put it another way, if any of the staff officers
11 at divisional level were going to be dealing with
12 tactical questioning, the process for it and
13 responsibility for it, principally that was you as J2X,
14 wasn't it, at division?

15 A. From a staff perspective, yes.

16 Q. Thank you. I want to ask you about the chain of command
17 for tactical questioners. Were you aware at the time
18 where the tactical questioners would actually be coming
19 from, what their day jobs were, if I can put it in that
20 way?

21 A. No.

22 Q. The Inquiry has heard that some TQers were members of
23 battlegroups who happened to be -- or who had trained to
24 be -- tactically questioning trained -- would that have
25 surprised you?

1 A. No.

2 Q. -- that others were on the brigade staff, sometimes
3 brigade staff on the G2 side and had undertaken the
4 course. Again, would that surprise you if there were
5 some TQers at brigade level?

6 A. No, it wouldn't. However, if I can explain. When
7 a unit is warned for operations, they are expected to
8 have a number of tactical questioners. It is down to
9 the commander officer to decide how many he takes with
10 him. Unfortunately, if he arrives without sufficient --
11 you've got to be TQ qualified in order to conduct
12 tactical questioning, therefore it is likely that under
13 other individuals with the training would be sought from
14 across the brigade.

15 Q. Since you raise it, can we deal with those matters but
16 perhaps briefly? Were you aware that, prior to 2001,
17 the army, in fact as a matter of routine, simply did not
18 send infantry soldiers onto the TQ course at all --

19 A. I wasn't aware of that.

20 Q. -- and that some of the battlegroups, including 1 QLR on
21 Op Telic 2, didn't have any qualified TQers --

22 A. I didn't know that either.

23 Q. -- or that it may be that, in the first six months of
24 2003, those who would ordinarily have been running the
25 course at Chicksands were deployed in various ways on

1 Op Telic itself and so there was a particular shortage
2 of training course places? Was that something that you
3 were aware of?

4 A. I was not aware of that.

5 Q. But if the battlegroups, for whatever reason, didn't
6 have qualified TQers, presumably it would not have
7 surprised you if there were some TQers at brigade level
8 on brigade staff who were sent to battlegroups to help
9 out in TQ'ing?

10 A. That's correct.

11 Q. And were you aware, in addition, perhaps not as often,
12 that sometimes intelligence staff might be detached from
13 the field HUMINT team, just on occasion, to help out
14 with tactical questioning as well?

15 A. That could be possible, yes.

16 Q. Now, given those various sources from where the TQer
17 might come, did you yourself have an understanding of
18 who the superior officer would be for a TQer when he was
19 actually carrying out the TQ function at battlegroup
20 level?

21 A. No.

22 Q. Can you help us with how the chain of command then ran
23 above the TQer at all in terms of the TQ side of their
24 work?

25 A. I cannot.

1 Q. Would you accept that that perhaps was, at least to some
2 extent, a failing in theatre, that there wasn't a clear
3 chain of command to whom tactical questioners could
4 turn?

5 A. I said that I don't know what the chain of command was.
6 There may have been a clear chain of command to the
7 commanding officer. I just don't know what it was.

8 Q. All right. Well, other than you, in your position as
9 J2X -- I mean presumably you did not see yourself as the
10 immediate superior officer of TQers who are TQ'ing on
11 the ground, did you?

12 A. No, I didn't.

13 Q. Other than that, I think the Inquiry has heard at
14 brigade level -- does the name "Major Robinson" ring any
15 bells with you?

16 A. It doesn't.

17 Q. It doesn't -- that he was the senior staff officer at
18 brigade level, and he tells the Inquiry that he wasn't
19 tactical questioning or interrogation qualified at all.
20 Were you aware of that?

21 A. No.

22 THE CHAIRMAN: The fact is you can't throw any light on this
23 aspect of it at all -- is that right?

24 A. That's right, Sir, I can't.

25 THE CHAIRMAN: -- rightly or wrongly.

1 A. I can't.

2 THE CHAIRMAN: No.

3 MR MOSS: Thank you. Did it come to your attention, as some
4 of the TQers have told this Inquiry, that TQers felt
5 short of operational experience --

6 A. I was not aware of that.

7 Q. -- or, as some of them have described, that they were
8 somewhat left to get on with it and felt slightly
9 isolated when they were carrying out their TQ functions?
10 Was that something of which you were aware at the time?

11 A. No.

12 Q. If you were the staff officer at divisional level who
13 was responsible for tactical questioning matters, are
14 those various points that I have put to you not matters
15 of which you should have been aware at the time?

16 A. I should have been aware about the staff process
17 required of tactical questioning, but not the chain of
18 command issue as that belonged to the battlegroup.

19 Q. When you say that it belonged to the battlegroup, are
20 you seeking to say that, when the tactical questioner
21 was carrying out TQ'ing at battlegroup level, he or she
22 in fact became part of the battlegroup chain of command?

23 A. Yes.

24 Q. May I move on, then, please to orders and policy in
25 respect of TQ'ing? I am going to try to deal with the

1 orders, if I may, in chronological order. Can we start,
2 please, with FRAGO 163? Just give me one moment. We
3 have that at MOD017179.

4 Major, just so that you get your bearings on this,
5 do you see that this is in fact a 1 (UK) Div order, as
6 you can see from the top line?

7 A. Yes.

8 Q. The date of it is 30 May. It is dealing with internment
9 and detention procedures.

10 A. Yes.

11 Q. My reason for showing this to you is just to seek your
12 assistance with something on the third page at
13 MOD017181, please. This is in a section on the previous
14 page -- I can show you if you want -- that is dealing
15 with international law under "Coordinating
16 instructions", paragraph (d), "International law". Back
17 over the page, it says:

18 "Where it cannot be shown that it is absolutely
19 necessary to intern then the internee will be released."

20 But it then says this:

21 "Under no circumstances may a suspect be
22 interrogated until he has been processed by the TIF."

23 This was an order which would have predated,
24 obviously, your arrival in theatre, but were you aware
25 that there had been a previous divisional level order

1 which had given an express prohibition on interrogation
2 prior to arrival at the TIF?

3 A. Yes.

4 Q. How had that come to your attention?

5 A. I can't remember.

6 Q. Just help us if you would. The phrase, "Under no
7 circumstances may a suspect be interrogated until he has
8 been processed by the TIF", would you understand that to
9 prohibit just interrogation or also to prohibit tactical
10 questioning?

11 A. I understand it to only inhibit [sic] interrogation, but
12 to allow tactical questioning to go ahead.

13 Q. And if, as the Inquiry has heard from the author of this
14 guidance, the intention was, in fact, to prohibit all
15 kinds of questioning prior to arrival at the TIF, is
16 that something of which you were unaware?

17 A. Yes.

18 Q. If that had been the intention, to prohibit tactical
19 questioning, was that a suitable way for this FRAGO to
20 be phrased, "Under no circumstances may a suspect be
21 interrogated until he has been processed by the TIF"?

22 A. No, because "tactical questioning" and "interrogation"
23 are two separate things.

24 Q. Thank you. That's all I wanted to ask about that order.
25 Could we look next, please, at FRAGO 29? Again, Major,

1 we are looking here at an order that pre-dated 3 (UK)
2 Div's arrival in theatre. It is MOD016186. I think you
3 will have had the chance to look at this order, at least
4 in recent days. Do you see at the top again,
5 a 1 (UK) Div order, this time 26 June?

6 A. Yes.

7 Q. It is FRAGO 29. I know that you will have been able to
8 look at this order recently. Was this order something
9 which would have been handed over to you by S002 as part
10 of the handover process, do you think?

11 A. Yes.

12 Q. Were you aware, as is set out in "Scope of order" in
13 this order, that the G2 branch had assumed overall
14 control of the internment process?

15 A. I was not aware of that, no.

16 Q. So when you say that this order would have been
17 something that was dealt with in the handover process,
18 were you given a copy of it, do you think, or just told
19 about what the --

20 A. I don't remember.

21 Q. What was your understanding, then, of which branch was
22 overall in control of the internment process?

23 A. As I understood it, G2 was responsible for the flow of
24 information from interrogation operations. G1 branch
25 had the responsibility for the detention side of the

1 operation.

2 Q. What about G3?

3 A. G3 would have provided the manpower to support the
4 guarding part of the operation.

5 Q. You will forgive me putting it this way, but are you
6 actually there dealing with what your actual
7 recollection is or what you think your understanding
8 would have been at the time from your understanding of
9 how the army works generally?

10 A. It would be my understanding.

11 Q. In any event, you can't remember specifically, on taking
12 up your post in theatre, that there was a divisional
13 level order announcing that G2 had overall
14 responsibility for the internment process?

15 A. No.

16 Q. If you will take it from me for the moment, you may be
17 aware that this order sets out the position, in broad
18 terms, in respect of the battlegroup internment review
19 officer. Does that post mean anything to you?

20 A. It does not.

21 Q. If we look, please, at MOD016187 within this document
22 and if we look at paragraph 1(iii), one sees:

23 "Immediately following the lift operation the
24 suspect(s) is/are taken the BG internment review
25 officer, who, having heard the circumstances of the

1 detention, shall determine whether:

2 "(a) There is a case to answer. If there is no case
3 to answer ... then release.

4 (b) If the information shows that there is a threat
5 to coalition forces, internment at the TIF for further
6 exploitation by JFIT is to be authorised."

7 Then provisions about an internment record that was
8 to be completed. Were you really not aware of that
9 process --

10 A. I was aware of the process; I wasn't aware of the
11 individual.

12 Q. I follow. There is some evidence available to the
13 Inquiry that this was to act, as it were, as a greater
14 filter at battlegroup level, in part so that prisoners
15 who were, in truth, of no real intelligence value or
16 common criminals didn't end up being sent to the JFIT.
17 Do you follow?

18 A. Yes.

19 Q. Was that desire for a filter, so that there was greater
20 selection of those who were sent to the JFIT, something
21 of which you were aware --

22 A. Yes.

23 Q. -- at the time?

24 A. Yes.

25 Q. Were you aware that there was a different concern, which

1 was on behalf of battlegroups and brigade, that
2 information was slow to return out of the JFIT and be
3 cascaded back to brigades and battlegroups?
4 A. Yes.
5 Q. Perhaps without going into unnecessary detail, was that
6 in part caused by communication difficulties from the
7 JFIT?
8 A. In part, yes.
9 Q. Now this order, FRAGO 29, if you take it from me for the
10 moment, is completely silent about tactical questioning
11 in terms of whether it was even to be carried out as
12 part of this process of filtering by the battlegroup
13 internment review officer. Were you aware of that, that
14 FRAGO 29 didn't cover TQ'ing at all?
15 A. I wasn't.
16 Q. Thank you. Now "Major Haseldine" I think will be a name
17 that you are familiar with; is that right?
18 A. Yes.
19 Q. He was the SO3 in J2 for MND(SE). He told the Inquiry
20 that he would have expected there to be an in-theatre TQ
21 policy which dealt with the sort of issues that were put
22 into SOI 390 -- which we will come on to -- after
23 Baha Mousa's death. Would you agree with that, that
24 there should have been an in-theatre policy?
25 A. Yes.

1 Q. Was there, in fact, an in-theatre policy which gave
2 guidance on tactical questioning?
3 A. I don't remember.
4 Q. If there was one, first of all it's not something of
5 which this Inquiry is aware and, secondly, none of the
6 documents from the time after Baha Mousa's death
7 referred back to any sort of earlier order, to say,
8 "Well, this is all dealt with in our SOI or SOP X, Y,
9 Z". Are you aware of that?
10 A. Sorry can you explain?
11 Q. You say that you don't remember whether, in fact, there
12 was an in-theatre policy which gave guidance on tactical
13 question. I was asking whether you are aware that this
14 Inquiry has not had any such policy disclosed to it --
15 A. I was not aware of that.
16 Q. And, secondly, that none of the documents, in all of the
17 controversy after Baha Mousa's death and the
18 investigations and what had happened and what new
19 policies there should be -- none of those documents from
20 September 2003 indicate, "Well, we already had an SOP or
21 an SOI which dealt with tactical questioning, it was
22 FRAGO ..." whatever the number was. There is simply no
23 record in all the evidence the Inquiry has so far of any
24 policy on tactical questioning in theatre at all. Were
25 you aware of that?

1 A. I wasn't.

2 Q. Would you accept that it is likely that there was no
3 in-theatre policy for tactical questioning prior to
4 Baha Mousa's death?

5 A. Yes.

6 Q. Would you accept that that is an unsatisfactory state of
7 affairs?

8 A. Yes.

9 THE CHAIRMAN: That perhaps puts more on you than you might
10 expect to have put on you. The fact is, are you saying,
11 if there wasn't one, there should have been such a
12 policy?

13 A. That's correct, Sir, yes.

14 THE CHAIRMAN: Yes.

15 MR MOSS: Thank you. If that is the case, that that was not
16 a satisfactory state of affairs, would you accept some
17 responsibility yourself for the absence of such a policy
18 in theatre?

19 A. As a staff officer within the division, if it wasn't
20 there, then all of us should have looked for it and
21 raised the concern if it wasn't there.

22 Q. Yes. Forgive me, I don't mean to press you, but that
23 includes you?

24 A. Yes, it does.

25 Q. Other than yourself, who else principally ought to have

1 spotted that, that omission or that gap, at the time?

2 A. Other officers in the G2 staff and the LEGAD staff.

3 Q. Above you, at J2 level, there was only one officer,
4 wasn't there?

5 A. Yes.

6 Q. That is Colonel Le Fevre.

7 A. Yes.

8 Q. And within the legal staff, do you have in mind anyone
9 in particular or are you just saying the LEGAD part of
10 the chain of command generally?

11 A. Yes.

12 Q. Sorry, I asked you: do you have in mind anyone in
13 particular or are you just saying the LEGAD chain of
14 command generally?

15 A. The LEGAD chain of command generally.

16 Q. Thank you. If we come on, then, to the order that did
17 go out and dealt with detention and prisoner handling
18 procedures in general terms, may we look at FRAGO 005,
19 please? We have it at MOD022623.

20 Major, we are on here, as you will follow from the
21 top obviously, into 3 (UK) Div territory because one
22 sees "HQ MND(SE)" at the top. Do you follow?

23 A. Yes.

24 Q. The date of it is 3 September 2003, so a little way into
25 Op Telic 2.

1 If we may go over the page, please, one sees, in
2 terms of the "Action" section, what should take place in
3 terms of pre-planned operations with a target pack to be
4 prepared, that that target pack was to be submitted
5 through the chain of command to J2 at brigade level
6 prior to submitting the operation to divisional level
7 for J3 approval. In terms of that process, in general
8 terms, would that have been familiar to you?

9 A. Yes.

10 Q. Over the page, please, at paragraph 12, one sees the
11 documentation requirements of completing an internment
12 record and the battlegroup review to be carried out --
13 see paragraph 13 -- "... within eight hours of
14 apprehension or as soon as possible thereafter ...",
15 with the battlegroup internment review officer or BGIRO
16 to categorise the apprehended individual and provide
17 direction for the onward processing of them in
18 accordance with guidelines that were provided. Do you
19 see that there?

20 A. Yes.

21 Q. Again, in terms of the general process, accepting what
22 you say about the BGIRO, would that process at least
23 have been familiar to you?

24 A. Yes.

25 Q. Again, it is the old difficulty of proving a negative,

1 so if you would take it from me for the moment that
2 FRAGO 5 itself does not address tactical questioning or
3 give guidance in relation to tactical questioning and
4 nor do the various annexes. If you take that from me
5 for the moment. I just want to look at that for
6 a moment.

7 Colonel Barnett I think you have mentioned during
8 the course of your evidence. You would have been
9 familiar with him as being the S01 legal --

10 A. Yes.

11 Q. -- in the headquarters. He has given evidence to the
12 Inquiry in his statement which was to the effect that,
13 in the preparation of this FRAGO, FRAGO 005, he had
14 wanted to include within the FRAGO two things. One was
15 more detailed guidance on detention procedures, physical
16 aspects of prisoner handling, and the second was
17 guidance in relation to tactical questioning.

18 In his statement he suggests that he was advised by
19 other staff officers in the divisional headquarters that
20 that would not be appropriate -- I paraphrase --
21 essentially because they would not be capable of being
22 summarised in an order. So the effect of
23 Colonel Barnett's evidence is he was dissuaded from
24 including that sort of guidance in this order. Do you
25 follow what I am suggesting to you was the thrust of his

1 evidence?

2 A. Yes.

3 Q. I want to ask you about that. Were you aware of the
4 drafting process for FRAGO 005? There is some evidence
5 that it may have gone on for quite some weeks within the
6 divisional headquarters.

7 A. I was aware it was being drafted. I wasn't aware that
8 I had been required -- or if I was required to have any
9 part of it.

10 Q. Looking at it now, do you remember, in fact, yourself
11 having input into it?

12 A. No.

13 Q. Were you one of those officers within the divisional
14 headquarters who sought to persuade Colonel Barnett, if
15 his evidence is right, not to put too much detail into
16 FRAGO 5?

17 A. No.

18 Q. How confident of that are you?

19 A. I am confident.

20 Q. Do you know one way or the other whether
21 Colonel Le Fevre gave advice along those lines to
22 Colonel Barnett?

23 A. I don't know.

24 Q. You don't know one way or the other?

25 A. Correct.

1 Q. Thank you. May we just then, in terms of orders, look
2 finally in the chronology please at SOI 390? The
3 reference is MOD023104.

4 This is now, as you will understand, Major, after
5 Baha Mousa's death, 30 September. It is a divisional
6 level SOI, number 390. Various references are set out,
7 to start off with, to the Geneva Conventions, to the
8 rules of engagement, to FRAGO 005 that we were just
9 looking at. Within this document there is an annex G --
10 may we look, please, at that annex at page MOD023123 --
11 giving instructions for the handling and tactical
12 questioning of internees.

13 Now there was evidence to the Inquiry yesterday from
14 Major Haseldine that he drafted this together with
15 a warrant officer, whose name please don't use, but
16 a warrant officer within the divisional intelligence
17 team. Were you aware, first of all, that
18 Major Haseldine had been given the task of drafting this
19 guidance?

20 A. No, I hadn't -- sorry, I wasn't.

21 Q. His evidence was to the effect that he was not perhaps
22 best pleased -- I paraphrase -- to be tasked with
23 drafting it because he thought it was a J2X matter.
24 Does that ring any bells with you?

25 A. It doesn't, no.

1 Q. One can see, just briefly from this guidance, the
2 flavour of it. In paragraph 3, for example, indications
3 that you should only tactically question or interrogate
4 if you have been trained on the course and have
5 operational experience.

6 Paragraph 4, the medical officer requirements for
7 medical examination and the documentation in respect of
8 that.

9 Then if we go over the page, guidance, starting
10 under paragraph 6, on guarding and holding of internees
11 during tactical questioning, including -- over the page
12 again please, paragraph 9 -- specific guidance on not
13 hooding and not using stress positions.

14 Without going into the particular detail of that,
15 would you accept that that is the sort of guidance that
16 ought really to have been in place in theatre prior to
17 Baha Mousa's death?

18 A. Yes.

19 Q. Thank you very much. One or two further matters, then,
20 if I may.

21 Do you recall whether on any occasion prior to
22 Baha Mousa's death -- that is 15 September 2003 -- do
23 you recall any occasion on which injuries to prisoners
24 arriving at the JFIT was reported to you?

25 A. Not specifically, no.

1 Q. I think you will be aware of the evidence of S017, who
2 says that there was an occasion -- if we just look at
3 it. It is her paragraph 63, BMI06815 -- four lines
4 down, I think:

5 "I can recall one such instance when individuals
6 suspected (but later cleared) of being involved in the
7 [RMP] murder ... were brought to the TIF ... One of them
8 had a visible imprint of a boot on his back and others
9 suffered from cut lips or bruises to their heads."

10 Her evidence was that she reported this instance
11 orally to you and to Colonel Barnett at the time. Does
12 that bring back any recollection at all?

13 A. It doesn't.

14 Q. Do you accept that this might have happened and that she
15 might have raised the matter with you?

16 A. Yes, I do.

17 Q. If it had been raised with you -- obviously you have no
18 recollection of it -- what would you have been likely to
19 do about it?

20 A. If it had been raised to me, I would have raised it
21 through Lieutenant Colonel Le Fevre to the chief of
22 staff to ensure that the chief of staff at division
23 would go back to the chief of staff at brigade to
24 investigate how the injuries occurred.

25 Q. Appreciating that we are dealing with hypotheticals

1 since you don't recall it, how confident are you that if
2 S017 did raise a matter such as this, that you would
3 definitely have passed it on within the chain of command
4 for others to deal with?

5 A. Very confident.

6 Q. Just Operation Salerno itself then, please, next. As
7 you probably are aware, Operation Salerno was the
8 operation in which Baha Mousa and those who were
9 detained with him were taken prisoner. Do you follow?

10 A. Yes.

11 Q. Do you remember now the detention of Baha Mousa or the
12 detainees generally from this operation arising at
13 a divisional O Group or a discussion at divisional level
14 during the course of their detention?

15 A. No.

16 Q. The Inquiry has heard some evidence which was to the
17 effect that it was reported that they were still being
18 held at battlegroup level, but that report was received
19 at a large-scale divisional meeting on the 15th and the
20 question was asked as to why they hadn't been moved on
21 to the JFIT. Does that ring any bells or bring any
22 recollection back?

23 A. It doesn't, no.

24 Q. The suggestion in evidence from Major West -- then
25 Major West, Colonel West now; he was on the provost side

1 as the 2IC -- was that your S01, Colonel Le Fevre, had
2 indicated in essence that the detainees might be linked
3 to the RMP murder and that being discussed. Again, does
4 that ring any bells with you at all?

5 A. It does not.

6 THE CHAIRMAN: Would you go to that sort of meeting if your
7 superior, Colonel Le Fevre, was there?

8 A. If Colonel Le Fevre was going to be there, it is
9 unlikely that I would attend unless he asked me
10 specifically for --

11 THE CHAIRMAN: I follow.

12 A. -- (inaudible) background.

13 MR MOSS: Could I just ask you, perhaps in more general
14 terms, were you aware, prior to Op Salerno, of any link
15 between the operation and the targets, be they
16 geographical locations, hotels or people -- any link
17 between Op Salerno and the RMP murder --

18 A. No, I wasn't.

19 Q. -- or the murder of Dai Jones?

20 A. I had seen some reporting that we were trying to put
21 together what we called a "target pack" relating to
22 individuals who may have been involved in the death of
23 Captain Dai Jones.

24 Q. And was Operation Salerno, as you understand it, part of
25 that?

1 A. That I don't know.

2 Q. But a target pack in relation to the murder of Dai Jones
3 was something which was current at the time?

4 A. Yes.

5 Q. You just don't know whether there was any link to
6 Operation Salerno; would that be a fair summary?

7 A. Yes.

8 Q. After Baha Mousa's death, can you help us with how you
9 first became aware of his death in custody?

10 A. I can't remember.

11 Q. Do you remember tasking S017 to draft some kind of
12 memorandum relating to the time limits for detention and
13 tactical questioning and those sort of matters?

14 A. Yes.

15 Q. Why did you ask her to draft that sort of a memorandum?
16 What was your thinking at the time?

17 A. I had been directed to have the memorandum written to
18 inform the chief of staff of what happened at the TIF.

19 Q. You say "what happened at the TIF"; do you mean what the
20 processes at the TIF were?

21 A. Yes.

22 Q. Forgive me for asking it in this way, but why was it
23 necessary for there to be a specific memorandum drafted
24 to deal with that? Was there not something in place
25 which already explained it?

1 A. There were documents in place to better explain it, but
2 in order to pass information quickly to a busy senior
3 officer, it was often the case that memorandums were
4 used to pass the required information, rather than all
5 of the documentation that he would have to sift through.

6 Q. So, taking it shortly, it was a question of a pithy
7 summary, that sort of thing, to be provided?

8 A. Yes.

9 Q. Did you, in fact, see any report in relation to the
10 death or understand, even in broad terms, what had
11 happened in relation to Baha Mousa's death?

12 A. No, I didn't.

13 Q. SOI 390 that I have shown you for different purposes
14 a moment ago, the 30 September guidance,
15 Major Haseldine's document --

16 A. Yes.

17 Q. -- is just one of several documents that seem to have
18 been being drafted at the time dealing with TQ and
19 prisoner handling matters and giving guidance on it.
20 Were you involved in any of that drafting process as far
21 as you remember it?

22 A. No.

23 Q. Was there a reason for that, given that your
24 responsibilities for HUMINT might lead somebody to think
25 that that would be natural for you to play a part in

1 those sort of considerations?

2 A. I do not have a reason, although I could surmise that if

3 Lieutenant Colonel Le Fevre felt that there were those

4 in the G2 shop who were less busy, he may have passed

5 the direction to them to allow me to get on with other

6 tasks.

7 Q. Perhaps I can ask you, were you, in fact, particularly

8 busy on this tour? Was it a demanding post?

9 A. It was very busy.

10 Q. Now just a very few minor miscellaneous matters, please.

11 I don't want to ask you anything about your later

12 deployment as J2X in 2005 save for this: did you

13 undergo, on that occasion, pre-deployment training from

14 OPTAG?

15 A. Yes, I did.

16 Q. Did that OPTAG training in 2005 address a specific

17 prohibition on hooding or stress positions?

18 A. I can't remember.

19 Q. In relation to Op Telic 2, can you help with this? Was

20 there, at the time, any kind of in-theatre management

21 committee that had oversight of HUMINT operations?

22 A. Yes, there was.

23 Q. Whether in respect of that management committee or in

24 respect of the directive that we looked at earlier,

25 which has a provision -- if you take it from me for the

1 moment -- about a lawyer being indoctrinated in HUMINT
2 matters, were you aware whether there was an in-theatre
3 lawyer who was indoctrinated in HUMINT matters so as to
4 be able to give legal advice on HUMINT issues arising in
5 theatre?
6 A. Yes.
7 Q. Can you remember the name now? Don't give it to us.
8 A. Yes, I can.
9 Q. Can I just ask you, out of an abundance of caution, to
10 write the name down now first, just in case it is a name
11 that ...
12 A. Of course.
13 Q. Thank you. You have indicated that that was Lieutenant
14 Colonel Barnett who was indoctrinated; is that right?
15 A. Yes.
16 Q. Thank you. Now just two matters that I think I should
17 have asked you about in this morning's session, which
18 I would just like to go back to very briefly.
19 On your interrogation training, you told us on the
20 course, if you remember, that blindfolding, as you
21 understood it, was only to be used for operational
22 security purposes. Do you remember telling us about
23 that?
24 A. Yes, I do.
25 Q. I just want to ask you this: were you given to

1 understand that there was a side benefit of the
2 deprivation of sight by blindfolding, which was that it
3 would also help to prolong or maintain the shock of
4 capture?

5 A. No.

6 Q. That was not mentioned at all?

7 A. No.

8 Q. And either at the end of your interrogation course or
9 perhaps during it, were you sent off to practise your
10 skills on any conduct after capture training which was
11 being provided to different soldiers?

12 A. Yes.

13 Q. In relation to that training, where you were practising
14 your skills, can you help us with that issue about
15 explicit warnings, whether any warning was given that
16 the use of the five techniques that you might see on the
17 conduct after capture training were specifically
18 prohibited? Was that warning given in the conduct after
19 capture aspect in the course that you were practising
20 your skills on?

21 A. I don't remember it being given to those practising
22 interrogation.

23 MR MOSS: Thank you. Well, those are my questions. There
24 may be some questions from others.

25 THE CHAIRMAN: Thank you. You will be asked some other

1 questions now, I think, probably, S015.

2 Questions by MR FRIEDMAN

3 MR FRIEDMAN: Thank you.

4 Major, just starting with Operation Telic, you say
5 in your Inquiry statement that you were given ten days'
6 notice that you were going to have that staff job. Is
7 that correct?

8 A. Yes, it is.

9 Q. Was the deployment effectively out of the blue? You had
10 no notice that you would be involved as a staff officer
11 before that ten-day period?

12 A. That is correct.

13 Q. You were a captain and you got put in an acting up major
14 role, is that correct?

15 A. No, I was already an acting major.

16 Q. Understood. The DIS personnel, those at the JFIT and
17 others, I just want to ask you about their chain of
18 command. Did they have a parallel chain of command
19 during their deployment that was outside of the division
20 and answered to the directorate itself?

21 A. No.

22 Q. On tactical questioning, you were shown the terms of
23 a previous FRAGO that said "Under no circumstances
24 should there be any interrogation before the TIF" and
25 you made the distinction in answer between "tactical

1 questioning" being one thing and "interrogation" being
2 another. I just want to ask about that.

3 In paragraph 10 of your statement you give a model
4 for tactical questioning which is, in short, a "fast
5 process" that should happen quickly after capture that
6 only needs a few moments to carry out. I summarise, but
7 do you agree with that summary of that technique?

8 A. Yes, I do.

9 Q. Is that what you would have expected tactical
10 questioning to entail during the time when you were on
11 tour in Operation Telic?

12 A. Yes.

13 Q. Given your position as J2X for HUMINT, if that model was
14 being developed upon -- perhaps to improve the HUMINT
15 capability of the entire tour -- is that something you
16 should have been consulted on?

17 A. Yes.

18 Q. The harsh technique that we know from the training
19 materials on the course that you have explained a little
20 bit about in terms of the insults, would you expect, in
21 this fast process carried out within a few moments, for
22 the harsh technique to be used?

23 A. I would be very surprised if, during TQ, they had time
24 to begin any of the real techniques.

25 Q. Let us say that that is what they were doing for the

1 moment. Just take that from me. Should the harsh
2 technique, even in a truncated form, have been used as
3 part of the tactical questioning discipline, as far as
4 you understood that discipline?

5 A. If it elicited the answers that resulted in the saving
6 of soldier's lives, then yes.

7 Q. I understand that. Just on that harsh technique, you
8 explained that there was no limitation upon insults.
9 I mean, does it come down to this? The limitations are
10 one's own imagination and what will be effective in
11 eliciting answers. Are those the only two limitations
12 on verbal insults?

13 A. On verbal insults, yes.

14 Q. I take your answers about your lack of knowledge about
15 the TQ'ing, but did you have a sense that qualification
16 to do TQ'ing involved not simply having done a course,
17 but having done it within a particular period of recent
18 time, be it two years or some other specific time limit
19 to qualification? Is that something that you understood
20 at the time?

21 A. It was not.

22 Q. No. So, in effect, you did your course in 1994 and it
23 would have been open for you to do tactical questioning
24 or interrogation?

25 A. As I understood it then, yes.

1 Q. And no one ever raised with you a question about whether
2 they were in date in their training or not?

3 A. No, they didn't.

4 Q. No. Just in terms of the tactical questioning that went
5 on in theatre, did you ever receive complaints from JFIT
6 about the quality of the tactical questioning reports
7 that were arriving at JFIT?

8 A. Yes.

9 Q. We have heard evidence from S018 and S017. One of it is
10 that they thought that assumptions were being made about
11 guilt and they weren't particularly sophisticated
12 documents. Is that what you heard?

13 A. Yes.

14 Q. Did you take it up with anyone either at division or
15 brigade?

16 A. We questioned the number of people that were arriving at
17 the JFIT following planned operations --

18 Q. Yes.

19 A. -- because it did seem, at time, there were an awful lot
20 arriving and then an awful lot being released very
21 quickly.

22 Q. So you questioned the sifting or lack thereof. Did you
23 ever descend, in your questioning, to the detail of the
24 reports or the quality of the reports that were coming
25 to you?

1 A. No.

2 Q. Just in terms of what was going on in theatre, there was
3 a rising insurgency during the course of Telic 2, wasn't
4 there, with serious terrorist attacks on British forces?

5 A. Yes, there was.

6 Q. In the round, without wanting detail obviously, there
7 must have been a sense that you had a pretty embryonic
8 intelligence system and that it was being challenged in
9 that there wasn't enough intelligence to stop these
10 attacks at the time.

11 A. Yes.

12 Q. You have given your answers about there being no policy
13 in place about tactical questioning and the sense in
14 which the staff as a whole should take responsibility
15 for that. Do you think that there was a lack of focus
16 upon what tactical questioners were actually doing at
17 the brigade or battlegroup level?

18 THE CHAIRMAN: Would you know the answer to that?

19 A. No, I don't know the answer to that.

20 THE CHAIRMAN: Would you have a means of knowing, other than
21 what's coming through to you?

22 A. No.

23 MR FRIEDMAN: The purport of the question is: should you
24 have asked more questions about that beyond the means of
25 what was coming through to you?

1 A. Possibly.

2 Q. Can I then move to after the death? First of all, go to
3 a document that was generated by S017. We looked at it
4 this morning with the other witness. It is at
5 MOD030862. First of all, did you see that document at
6 the time?

7 A. Sorry, can you just go back to the front page?

8 Q. Certainly. The front page is at MOD030860, where they
9 offer, as it were, a pro forma of a TQ report.

10 A. That's -- I have got "Annex C" on the front, not the
11 front of the document.

12 Q. Annex C, yes.

13 A. Yes, I was aware of that.

14 Q. Then if I could go then to MOD030862 and focus upon the
15 observations at paragraphs 5 and 10. First of all at 5:
16 "All TQs should be conducted using the
17 neutral/logical approach. No other approach should be
18 used."

19 Do you remember being consulted about the fact that
20 some other approach was being used and that wasn't
21 a good idea --

22 A. No, I don't.

23 Q. Likewise at 10:
24 "A [tactical question] is ... what it says. It is a
25 tactical assessment of an individual and should last no

1 longer than 1 hour ... No further interrogation is to be
2 carried out."

3 Again, did you get consulted at the time that the
4 discipline was inflating, as it were? It was becoming
5 more of a tactical interrogation, as opposed to
6 a tactical questioning session?

7 A. No.

8 Q. Lastly this, a report issued by the chief of staff of
9 brigade, Major Fenton, at MOD042858, entitled "Death in
10 detention" and dated 18 September 2003. I hope you were
11 given notice of this document, but do you recall seeing
12 it at the time in theatre?

13 A. No, I don't.

14 Q. No. Then just the subject, if you didn't see the
15 document, at MOD042859, paragraph 6(a) -- just whether
16 you were told about this subject under "TQ":

17 "... conducted by Swarovski and Sergeant Davies ...
18 both are properly trained and in date ...
19 Sergeant Davies as a brief on TQ for COS. It is on his
20 advice that we hood and handcuff detainees in order to
21 enhance the shock of capture and improve the level of
22 information extracted from the suspect."

23 Were you told that there was a view afoot at brigade
24 and battlegroup TQ level that that sort of thing could
25 be done after the death of Baha Mousa?

1 A. No, I wasn't.

2 Q. So in preparing for this Inquiry, it's the first time
3 you have found that out?

4 A. Yes.

5 MR FRIEDMAN: Thank you, Sir.

6 MR MOSS: Sir I am not sure that it matters, but just so
7 that we have it for the transcript, I think the document
8 at MOD030862 to which Mr Friedman took this witness --
9 I think the suggestion from S017 was that that was
10 a document that was drafted by S018, the 2IC, rather
11 than by her. It may not matter, but so that we have it.

12 THE CHAIRMAN: We had better be accurate.

13 MR FRIEDMAN: I understand that as well.

14 THE CHAIRMAN: Thank you. Ms Dobbin?

15 MS DOBBIN: No questions, thank you.

16 THE CHAIRMAN: Ms Edington?

17 Questions by MS EDINGTON

18 MS EDINGTON: Thank you, Sir.

19 You said that you felt that sight deprivation was
20 available for security purposes only and, of course,
21 S017 wasn't using sight deprivation of any sort in the
22 JFIT for Op Telic 2, was she?

23 A. No.

24 Q. Was that because the layout of the JFIT had become more
25 preferable and it wasn't necessary by that stage?

1 A. The layout of the JFIT was very open -- sorry, the
2 layout of the TIF was very wide open and the layout of
3 the JFIT was a closed area within it, which I surmise
4 led S017 to that decision.

5 Q. So that was a decision that she took, that everything
6 was much more secure within the JFIT and she didn't need
7 to blindfold for security reasons?

8 A. She made the decision, but informed me, as the next in
9 her chain of command, that that was what she wished to
10 do.

11 Q. Thank you. You said earlier that there was no policy
12 for TQ'ing per se in theatre and that it was something
13 that should have been approached, amongst others, by the
14 LEGAD chain of command. Is that right?

15 A. Yes.

16 Q. You had an indoctrinated HUMINT lawyer. Is it not more
17 appropriate that he should have dealt with that, rather
18 than the chain of command for legal per se?

19 A. That was the same person.

20 MS EDINGTON: Thank you very much. Thank you, Sir.

21 THE CHAIRMAN: Thank you. Mr Ashley?

22 Questions by MR ASHLEY

23 MR ASHLEY: You were led a moment or two ago in relation to
24 the amount of time that you thought TQ'ing would take
25 and I think the phrase was "it would take a few

1 moments". Then you went on to say that you would be
2 very surprised if, during TQ, there would be time to
3 carry out any of the techniques, for instance the harsh
4 technique.

5 Could you help with why you took the view that TQ
6 would only take a few moments and wouldn't allow for the
7 techniques that were actually taught on the course to be
8 carried out?

9 A. TQ should only take a few moments in that it is normally
10 done on the position where the operation has taken place
11 or the operation has culminated. You therefore want to
12 remove your troops from there as quickly as possible and
13 get them back to a safe environment.

14 Q. Just so we understand it, what do you mean by "just
15 a few moments"?

16 A. Five to ten minutes.

17 Q. Did you see, in your training for tactical questioning,
18 videos showing how to carry out a harsh?

19 A. Yes.

20 Q. And can you recall the sort of timescale that might
21 take, how long you might be shouting at somebody, for
22 instance?

23 A. I don't remember, but I do remember it -- you can't keep
24 it up for a very long time.

25 Q. No. But the harsh was used in conjunction with the

1 firm, logical and other methods, wasn't it?

2 A. Any approach was used as part of a plan during
3 interrogation.

4 Q. So far as briefing of the guards is concerned, I think
5 you already confirmed that you would not have expected
6 to brief the guards. I think it was your view that you
7 would expect the guards to know what they were doing.

8 Specifically though, so far as responsibility for
9 the detainees is concerned, leaving aside the points
10 when you are actually tactical questioning yourself, at
11 all other times who was responsible for the detainees?

12 A. Sorry, can you just clarify whether you mean --

13 Q. When you were tactically questioning, clearly you would
14 have been responsible for a detainee. At the times
15 before and after tactical questioning, who was
16 responsible for the detainees?

17 A. I don't know the answer to that question because that's
18 relating to an operation out on the ground.

19 MR ASHLEY: Thank you.

20 THE CHAIRMAN: Ms Cross?

21 Questions by MS CROSS

22 MS CROSS: Thank you. If I could just have up MOD049310.

23 You were taken to this document and I am happy to be
24 corrected, but I understand that your answer was that
25 this is a document that you had seen in theatre and that

1 you should have made S017 aware of.

2 A. That's correct.

3 Q. How likely is it, given that you saw it in theatre, that

4 you did hand this on to S017?

5 A. It is likely I showed it to her, but I take the point

6 that the security of classification may have precluded

7 her in taking it to the JFIT with her.

8 Q. Is this something that you would have expected to be

9 handed over to her during her handover?

10 A. A discussion about it, yes.

11 Q. Moving on to the questions in relation to tactical

12 questioning, were any concerns raised with you in

13 relation to tactical questioners on the ground prior to

14 Baha Mousa's death?

15 A. No.

16 Q. Had they been raised with you, how would you expect them

17 to have come to you, bearing in mind that the tactical

18 questioners were out on the ground?

19 A. It is likely they would have come to me through S017's

20 concerns when the detainees arrived at the TIF.

21 Q. And what would you have done, then, with those concerns?

22 A. I think, as I have stated, I would have raised them

23 through Lieutenant Colonel Le Fevre to the chief of

24 staff, who would then have access to the brigades -- the

25 brigade -- to talk to the battlegroups.

1 Q. In terms of whether there were concerns raised from
2 tactical questioners on the ground about any doctrine,
3 how would you have expected those to come to you, as
4 opposed to through detainees coming to the TIF?

5 A. Those concerns would only have come to me through the
6 chain of command working the opposite way to the way
7 I would get hold of the battlegroups.

8 Q. Namely ...?

9 A. That the TQers themselves would have to raise the
10 concerns through their chain of command. That would
11 result in it being raised to the chief of staff at
12 brigade and then being raised up to divisional level.

13 Q. You spoke briefly as well about difficulties that you
14 had in terms of communications with the JFIT. It was
15 raised by Mr Moss that sometimes information was slow to
16 come from the JFIT back down to brigades because of
17 communication difficulties.

18 A. That's right.

19 Q. Can you explain what exactly the communication
20 difficulties were?

21 THE CHAIRMAN: I think we have actually heard some evidence
22 about that and I can well understand it. Things didn't
23 work quite as well as they might have done -- is that
24 right?

25 A. That's right, Sir.

1 THE CHAIRMAN: -- on the telephone or the internet or the
2 emails.

3 MS CROSS: Just two more brief matters, Sir. If I could
4 have MOD041858, please?

5 You mentioned that you were surprised to see the use
6 of the term "intelligence exploitation base" in this
7 document because it wasn't a term you had heard used on
8 Op Telic 2. Can you explain when you became familiar
9 with this term?

10 A. It's certainly a term that I have become aware of over
11 the last few years, but I couldn't give you a precise
12 date.

13 MS CROSS: Thank you, Sir. No further questions.

14 THE CHAIRMAN: Thank you, yes.

15 Further questions by MR MOSS

16 MR MOSS: I think there is one matter I would like to
17 revisit in the light of the questions that have been
18 asked of you.

19 You were asked about how long you would expect
20 tactical questioning to go on for and whether the harsh
21 technique was appropriate. In the light of those
22 questions, could we just look again, please, at
23 FRAGO 29, MOD016186. It is the 26 June order at the
24 front sheet. Could we just look again over the page at
25 the provision that set out what the battlegroup internal

1 review officer essentially had to decide upon?

2 We see at 3(a) it was whether there is a case to
3 answer. If there is no case to answer, release.

4 I don't particularly need to trouble you with that. But
5 what the BGIRO was being asked to assess was whether the
6 information shows that there is a threat to coalition
7 forces, in which case internment would be authorised.

8 Just pausing there, would this be fair: you would
9 expect that, in some cases, information other than
10 questioning could indicate that there might be a case
11 for internment, such as weapons being found or documents
12 that might be seized on an arrest, that sort of thing.
13 Would that be fair?

14 A. Yes.

15 Q. If, however, the information that might lead to
16 internment is going to come from questioning -- to use
17 a neutral phrase -- would you expect a questioner to be
18 able to establish whether somebody was a threat to the
19 coalition by use of the lower level tactical questioning
20 or would that normally require interrogation, longer
21 lasting and so on? Can you help with that?

22 A. I can, but I think I will have to expand slightly in
23 that --

24 Q. Yes, of course.

25 A. -- dependent on what was happening actually at the point

1 of capture, it might be as simple as asking an
2 individual his name and, if that name relates to an
3 individual in the target pack, then you have got reason
4 to believe that he may be a threat to the coalition.

5 Q. So in some cases, short sharp questioning by tactical
6 questioning might reveal sufficient information to
7 determine that issue. Would that be right?

8 A. Yes.

9 Q. Would it also be right, though, that in some cases you
10 could only establish whether somebody was a threat to
11 the coalition forces by means of a lengthier process of
12 questioning than traditional TQ'ing?

13 A. Yes, that is the requirement for interrogation.

14 MR MOSS: Thank you very much. Those are my additional
15 questions.

16 Questions by THE CHAIRMAN

17 THE CHAIRMAN: On the same matter, the BGIRO system, help me
18 about this: I get the impression from you that your
19 training in TQ'ing was for something very quickly done
20 very shortly after the point of capture. Is that right?

21 A. That's right, Sir.

22 THE CHAIRMAN: Very shortly, and then he or she is going to
23 be moved back to the rear divisions as fast as possible.

24 A. Yes, Sir.

25 THE CHAIRMAN: From what I have seen of what happened after

1 Operation Salerno, that form of TQ'ing seems to be
2 rather different in the sense that it was more
3 elaborate, caused by the fact that the BGIRO had to make
4 quite an important decision.

5 Have you read about the evidence of the tactical
6 questioning and what happened at Battlegroup Main for
7 1 QLR?

8 A. No, Sir, I haven't.

9 THE CHAIRMAN: You haven't. So you are not able to tell me
10 whether that's right or wrong, that it looks as if it
11 were a rather different operation to that which you are
12 envisaging?

13 A. I am not, Sir.

14 THE CHAIRMAN: All right. Thank you very much.

15 MR MOSS: Sir, I wonder if the witness might be allowed to
16 leave the room while I deal with the next part of
17 business.

18 THE CHAIRMAN: Yes. For reasons which you will understand,
19 would you be kind enough to leave now? Thank you very
20 much for coming to the Inquiry and giving your evidence.
21 I am grateful to you.

22 MR MOSS: Sir, we have next, at least according to the
23 evidence, some read witness evidence which, in the usual
24 way, will only take a few moments. If it is convenient
25 to you, I think we would like to take that now before

1 the submissions on standard of proof, but we are in your
2 hands.

3 THE CHAIRMAN: All right. Yes. Is there a lot of it?

4 MR HALLIDAY: No, sir, there are three witnesses today.

5 I will hand you a copy.

6 THE CHAIRMAN: I can't see any reason, while you read that,
7 for the blindfolds, as I shall call them, to be taken
8 off the doors and anybody can come or go as they choose.

9 Yes.

10 Summary of witness statements by MR HALLIDAY

11 Summary of witness statement of BJ LE GRYS

12 MR HALLIDAY: Sir, the first of the three witnesses is
13 Brigadier Le Grys. He was a colonel at the time of
14 Op Telic 2. He deployed to Iraq as the deputy chief of
15 staff of 3 (UK) Division. He acted as the Coalition
16 Provisional Authority Governate co-ordinator in Dhi Qar
17 province and also held the post of head of the
18 multinational joint logistics co-ordination cell, which
19 included responsibility for personnel, administrative
20 and logistical planning for UK forces.

21 He tells the Inquiry that he was not involved in
22 prisoner handling issues and would only have read
23 divisional level orders focusing on matters related to
24 logistics. He does not now recollect any of the
25 specific orders that the Inquiry asked him to address in

1 his statement and states that he does not know of any
2 advice or order given by 3 (UK) Division in relation to
3 any of the five techniques.

4 Witness statement of BJ LE GRYS

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Witness Name: BRIGADIER B J LE
GRYS

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Statement No: ONE
Exhibits: BJLG1

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Dated: 25 August 2009

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THE BAHA MOUSA PUBLIC INQUIRY

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Witness Statement of Brigadier B J Le Grys

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1 I, Brigadier B J Le Grys will say as follows: -

2 1. I make this statement in response to the
3 Inquiry's Rule 9 Request dated 15 June 2009. I have
4 read this Request, and I seek here to cover everything
5 it raises to the best of my ability and recollection.
6 I have also been shown and read the documents referred
7 to, namely: MOD019145, MOD017101, MOD023083, MOD016186,
8 MOD023089, MOD031307, MOD023094, MOD019748, MOD022623,
9 MOD022613, MOD035554, MOD022299, MOD031235 and
10 MOD023104.

11 Career

12 2. I joined the Army in 1979 and completed the
13 Commissioning Course at Sandhurst. During my career
14 I have commanded a squadron in the Commando Brigade and
15 a Regiment in Germany. I have also served in Northern
16 Ireland, the Persian Gulf, the Falklands, the Balkans,
17 Kosovo and Sierra Leone.

18 3. I served with the UN Assistance Mission in
19 Sierra Leone in 2001 and spent a short period with the
20 Cabinet Office from September 2001. In January 2002
21 I attended the Higher Command and Staff Course.

22 4. I assumed the appointment of Deputy Chief of
23 Staff Headquarters 3 (UK) Division at the end of April
24 2002 on promotion to Colonel. The Headquarters deployed
25 to Iraq in July 2003. In December 2003 I assumed the

1 appointment of Chief Engineer, Headquarters Allied Rapid
2 Reaction Corps on promotion to Brigadier. The
3 Headquarters focused on its forthcoming tour as the
4 Headquarters International Security Assistance Force in
5 Afghanistan.

6 5. In December 2005 I returned to Sierra Leone as
7 Commander International Military Advisory and Training
8 Team and the Military Advisor to the Government of
9 Sierra Leone.

10 6. In 2007 I attended the Royal College of Defence
11 Studies in London before assuming my current appointment
12 of Engineer in Chief (Army) on 18 December 2007.

13 Training

14 7. I received training on the LOAC as part of the
15 annual ITD that every soldier has to complete.
16 I remember attending a lesson on the LOAC as part of the
17 pre-deployment training. I remember from this training
18 that prisoners were to be treated humanely and provided
19 with food and water. I also remember that the training
20 I received on the LOAC covered when and whether
21 prisoners should be permitted to sleep and the use of
22 force on prisoners. We were taught that prisoners
23 should be treated humanely and that intentional sleep
24 deprivation was not allowed, which is consistent with my
25 experience of prisoner handling during the first Gulf

1 War. During the first Gulf War we often found Iraqi
2 soldiers wandering the desert. We would gather them up
3 and provide them with food and water before passing them
4 to the Prisoner Handling Battalion the following day.
5 I do not remember any of these prisoners being cuffed or
6 hooded. I do not remember these prisoners being
7 questioned, as we did not have any trained Tactical
8 Questioners with us.

9 8. I have not received any other training or
10 guidance on handling or treatment of prisoners of war,
11 detainees and internees.

12 9. In response to the Inquiry's question on the
13 point, I have not given or received any training or
14 guidance during my career relating to:

15 (a) the practice or prohibition of deprivation of
16 sight by hooding;

17 (b) the practice or prohibition of blindfolding or
18 the use of blacked out goggles or similar;

19 (c) any prohibition on the covering of the face,
20 lest this impair breathing;

21 (d) the practice or prohibition of the use of
22 "stress positions" - that is any body position required
23 to be maintained over time and designed to cause pain or
24 discomfort;

25 (e) the practice or prohibition of subjecting any

1 prisoner to discomforting levels of noise;

2 (f) the use of plasticuffs, and how they should be
3 applied.

4 10. I have not received any training on Conduct
5 after Capture.

6 11. My understanding of conditioning is that it
7 refers to putting an individual in an environment which
8 makes him more likely to reveal information. I have not
9 received any training on conditioning and my
10 understanding of the term is one of common sense.

11 12. I have heard about the term "shock of capture",
12 which I understand is the shock or disorientation
13 a person experiences when captured and when they are
14 more likely to provide information to the capturing
15 force. My understanding of the shock of capture comes
16 from what I have seen on television and novels. As
17 I have not had any training on tactical questioning,
18 I would not know if it is possible to preserve the
19 "shock of capture" or what methods might be used to do
20 so.

21 Rank and Day to Day Role in September 2003

22 13. As stated in paragraph 4 above, I deployed to
23 Iraq on Operation TELIC 2 as Deputy Chief of Staff
24 Headquarters 3 (UK) Division in late June 2003. I was
25 a full Colonel at the time and acted as Coalition

1 Provisional Authority Governorate Co-ordinator in An
2 Nasiriyah, Dhi Qar Province when not establishing
3 national and multi-national logistics arrangements.

4 14. During this time I reported to the General
5 Officer Commanding, Major General Graham Lamb. Below me
6 I had a multi-national joint logistics coordinating
7 staff consisting of approximately 40 personnel.

8 15. As the Head of the Multi-National Joint
9 Logistics Coordination Cell I was responsible for
10 co-ordinating with the various nations the logistics
11 planning, which involved arranging the supply, movement,
12 and maintenance of military equipment; the supply of
13 medical support; personnel; administrative and field
14 services; infrastructure engineering and real estate
15 management. This role also initially involved being
16 responsible for personnel, administration and logistics
17 planning for the UK Forces.

18 16. As 3 (UK) Division took over from 1 (UK)
19 Division, I split the logistic and support roles for the
20 UK and the Multi-National Forces. By doing so
21 I arranged for the UK's logistic needs to be dealt with
22 by the National Support Command in Umm Qasr under the
23 leadership of then Brigadier (now Major General) Dale.
24 This enabled me to focus on my role as Head of the
25 Multi-National Joint Logistics Coordination Cell as was

1 more fitting in a Multi-National Headquarters, making
2 sure the various national support commands were not at
3 odds with Divisional plans. Lt Col Pearson (Adjutant
4 General Corps) acted as my Deputy when I was employed
5 fully in Dhi Qar province.

6 17. My role never required me to get involved in
7 prisoner handling issues. I also did not receive any
8 training on prisoner handling other than attending
9 a brief on the Law of Armed Conflict during
10 pre-deployment training, which is a brief every soldier
11 receives prior to deployment. I also do not recall any
12 UK Servicemen under my command having dealt with
13 prisoner handling issues.

14 Chain of command

15 18. I think that the Chief of Staff, Col (now Major
16 General) Barrons would have held the G3 responsibility
17 for prisoner handling and treatment issues. I don't
18 remember who else within the chain of command held
19 responsibilities in relation to prisoners.

20 Handover

21 19. During the handover period by 1 (UK) Division
22 to 3 (UK) Division I received a number of documents and
23 briefs including fragmentary orders issued by 1 (UK)
24 Division.

25 20. During the handover period I checked to see if

1 there were any outstanding inquiries or disciplinary
2 issues relating to UK Forces relating to deaths,
3 incidents or negligence that the Divisional Staff would
4 have been responsible for. I do not recall there being
5 any such incidents relating to prisoners or detainees.

6 FRAGO 152

7 21. I do not recall specifically, but it is
8 possible that FRAGO 152 was included in the handover.
9 I would have read the various operational orders and
10 FRAGOs only in so far as they pertained to my area of
11 responsibility.

12 22. I do not recall FRAGO 152 or any other order on
13 hooding, nor do I remember any discussions relating to
14 hooding in general.

15 Experience of Prisoner Handling in Op TELIC 2

16 23. I remember seeing a detainee only on one
17 occasion. This was during a helicopter flight and he
18 was being transported. I do not remember this detainee
19 being hooded or cuffed. I cannot recall any further
20 details now.

21 24. I did not see and was not aware of any
22 detainees during my tour being hooded or placed in
23 stress positions. I do not know if any of these
24 techniques were being used by 19 Mech Bde Battlegroups
25 or at the Theatre Internment Facility.

1 Development of Internment Process and Prisoner
2 Handling Policy

3 25. I have been asked by the Inquiry to explain how
4 the internment process and the approach to prisoner
5 handling and treatment developed during Operation TELIC
6 2.

7 26. As previously stated I was not involved in any
8 prisoner handling issues. I would only have read
9 Divisional level orders and would have focused on
10 matters therein relating to logistics.

11 27. I would also note that I was not the Commander
12 Royal Engineers at the time and cannot make any comment
13 on the building of any detention facilities in Iraq.
14 The only detention facility that I saw was the one at
15 Shaibah. I visited the location only, not inside the
16 facility itself, when I returned from Dhi Qar to make
17 sure that there was no real estate issue, particularly
18 from a multi-national perspective i.e that other nations
19 were content that the location did not interfere with
20 their use of the facility. I do not remember seeing any
21 prisoners held at this facility during my visit, but
22 I only had an external view.

23 28. In relation to the documents to which I have
24 been referred by the Inquiry, I comment as follows:

25 29. I contributed to the section dealing with

1 logistics in Operational Order 005/03 Establishment of
2 MND South East (Ser2a-00152) dated 8 June 2003. I did
3 not contribute to any other part of this document.

4 30. J505 - Multi-National Division (SE)
5 CONOPS 03/03 (MOD023094) dated 30 August 2003 was
6 prepared at a time when I was in Dhi Qar. Having read
7 the document I can state that it is possible that my
8 staff would have contributed to this document, but only
9 with reference to logistical needs.

10 31. I have been shown HQ Multi-National Division
11 (SE) SO1 390 - Policy for Apprehending, Handling and
12 Processing of Detainees and Internees (MOD023104).
13 Detainee handling was not my concern and I do not recall
14 reading this document in 2003, although I expect I would
15 have made myself familiar with it at the time to ensure
16 that there were no logistical demands for my attention.

17 32. I do not specifically remember any of the other
18 documents I have been referred to.

19 33. I do not know of any occasions where advice or
20 orders were given by 3 (UK) Division or 19 Mechanised
21 Brigade to 1QLR or any other Battle Group in relation to
22 hooding or blindfolding, the use of stress positions,
23 sleep deprivation, exposure to noise or deprivation of
24 food and/or water, although I would not necessarily have
25 known of such advice or orders being given.

1 Tactical Questioning

2 34. Although I have not been trained in tactical
3 questioning my understanding, through the use of common
4 sense, would be that its purpose is to get information
5 from a detainee as soon as possible after he has been
6 arrested. I do not know what tactical questioning
7 involves. I would however expect that a trained
8 tactical questioner would be called in as part of
9 a deliberate operation to ask specific questions in the
10 right way to obtain information from a detainee as
11 quickly as possible.

12 35. I do not know what the Chain of Command for
13 Tactical Questioners was. I am unable to comment on the
14 handling of detainees by Tactical Questioners or the
15 available resource of Tactical Questioners as this is
16 not an area I was involved in myself.

17 36. I do not know what guidance, orders or
18 publications were in place for those carrying out
19 tactical questioning at Battlegroup level on Operation
20 TELIC 2 prior to the death of Baha Mousa. The Chief of
21 Staff would, however, have been responsible for any such
22 guidance.

23 14 hour transfer period

24 37. I have been asked to relay my experience of the
25 compliance with the fourteen hour period in which

1 detainees were required to be transferred to the Theatre
2 Internment Facility. I was not involved in the transfer
3 of detainees to the TIF, and do not know about the
4 compliance with this time limit.

5 Subsequent changes

6 38. I have also been asked to provide an account of
7 any changes in procedures and/or responsibilities for
8 prisoner handling that were implemented after the death
9 of Baha Mousa of which I am aware, and I have been
10 referred to the email chain (MOD016122), which I have
11 read.

12 39. I do not remember intervening in any
13 discussions on this email other than acknowledging
14 repeat thereof. It had no direct impact on my task as
15 Head of the Multi-National Joint Logistics Coordination
16 Cell but I would have made sure Commander Medical was
17 aware so that he could offer advice on how medical
18 treatment should be provided to detainees.

19 MOD014027

20 40. I have read the document Annex B to Misconduct
21 in Iraq papers, September 2004 [MOD014023]. I note that
22 on page [MOD014027] DCOS 3 (UK) Div makes
23 a contribution. I did not make these comments. I was
24 not DCOS 3 (UK) Div at this time, having left the
25 Division in late November 2003 and assumed the

1 appointment of Chief Engineer, Headquarters Allied Rapid
2 Reaction Corps in December 2003. I believe that
3 Brigadier Paul Jaques was DCOS in September 2004.

4 Press

5 41. I have not given any interviews to the press or
6 the media relating to the Inquiry's terms of reference.

7 Statement of Truth

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

10 Signed: B J Le Grys.

11 Dated: 25 August 2009.

12

13 Summary of witness statement of ANTHONY PEARCE

14 MR HALLIDAY: The second witness is Captain Anthony Pearce.

15 During Op Telic 2, he was the staff officer grade 3 G3
16 training and plans at the headquarters of
17 3 (UK) Division. He was responsible for coordinating
18 headquarters staff participation in OPTAG pre-deployment
19 training, but was not responsible for the content of the
20 training.

21 During Op Telic 2 he worked for Lieutenant Colonel
22 Murray-Playfair, a staff officer grade 1 G3 plans,
23 focusing on reform of the security sector. He tells the
24 Inquiry that, to the best of his knowledge, the plans
25 cell did not have direct input into the policy and

1 practice of detainee handling. He states that the plan
2 cell would have had responsibility for future orders
3 and, therefore, would not have had responsibility for
4 taking over existing orders on handover.

5 He says that he was not privy to information in
6 relation to the treatment of prisoners, nor was he asked
7 for guidance on the handling of prisoners.

8 Witness statement of ANTHONY PEARCE

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Witness Name: Antony
Christopher Bissett Pearce

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Statement No:
Exhibits:

14

Dated: 24 February 2010

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THE BAHA MOUSA PUBLIC INQUIRY

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Witness Statement of ANTONY CHRISTOPHER BISSETT PEARCE

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1 I, Antony Christopher Bissett Pearce will say as
2 follows: -

3 1. Prior to and during Op TELIC 2 I was a Captain
4 employed as the SO2 G3 Training and Plans at
5 Headquarters 3 (United Kingdom) Division (3 (UK) Div).
6 As a junior staff officer I worked directly to the
7 SO2 G3 Training (Major Louis Scott) and SO2 G3 Plans
8 (Maj Jim Maybery). I was in post at 3 (UK) Div from
9 December 2002 until July 2004.

10 2. Prior to deployment my day to day role was
11 assisting in the planning and preparation of HQ staff
12 and subordinate units for Op TELIC 2. I was responsible
13 for co-ordinating the HQ staff participation within the
14 OPTAG pre-deployment training package. I was not
15 responsible for the topics covered or delivery of the
16 training. I recall that 3 Division Signal Regiment were
17 responsible for the training of Divisional Staff and
18 co-ordination with outside training deliverers.
19 MOD015203 refers to the direction given to 3 HQ Div
20 units for pre-deployment training. Where an individual
21 was unable to complete OPTAG delivered training, the
22 deploying unit was responsible for delivering the
23 training by lectures and lessons included within
24 MOD015203. MOD015205 and MOD015208 gave the detail to
25 units for the delivery and content of the lectures and

1 was enclosed with MOD015203. MOD015225 was the
2 instruction for a HQ 3 Div staff and unit hierarchy
3 study period conducted at Catterick. It covered a wide
4 range of topics including Legal and ROE. I am unable to
5 recall the actual presentations given. MOD020602 and
6 MOD020610 articulated the direction to 19 Brigade units
7 in conducting PDT; specifically MOD020610 covered
8 security patrols and public order. The content and
9 conduct of the lessons was directed by OPTAG.

10 3. The training received by divisional staff during
11 the OPTAG package was generalist in nature and as per
12 the direction issued by PJHQ and OPTAG. I understand
13 this was because as divisional staff we would have
14 a limited role deployed on the ground, and be largely HQ
15 based for the duration of the tour. I recall that the
16 training did include the basic lessons in POW capture
17 and the Law of Armed Conflict.

18 4. During Op TELIC 2 I worked for Lt Col James
19 Murray-Playfair (SO1 G3 Plans), within a plans cell
20 consisting of 2 Multinational SO1s and 4 SO2s. My main
21 responsibility was for Security Sector Reform (SSR) with
22 a Danish SO2; whose name I have forgotten. I was also
23 responsible for the collating the daily FRAGO for
24 a short period of time, which contained information from
25 the entire HQ. G3 Ops then took this responsibility on

1 after a short time in theatre.

2 5. To my knowledge the plans cell did not have
3 direct input into the policy and practise of detainee
4 handling. Within the HQ I believe that the G2 and Legal
5 branches advised 19 Brigade on the correct procedures to
6 be undertaken.

7 6. On arrival in theatre I received a handover from
8 Capt Ben Ryan. The handover consisted of the history of
9 the operation, situational awareness and introductory
10 briefs. I was also briefed on the daily FRAGO, which
11 was a staff procedure that facilitated the passage of
12 information, orders and instructions to units on a daily
13 basis. It was generalist in nature and did not cover
14 specific operations. The current operations desk held
15 the responsibility for taking over the existing orders,
16 as the plans cell worked on future orders. I do not
17 recall FRAGO 152.

18 7. I was not aware or privy to information on the
19 treatment of prisoners. I was not asked for guidance on
20 the handling of prisoners. I understand that this was
21 conducted by the Legal branch.

22 8. I was not involved in any changes to procedures
23 after the death of Baha Mousa, and unaware of the
24 changes implemented at the time. I am aware that
25 current procedures ban the hooding of prisoners.

1 I cannot recall any information relating to the death of
2 Baha Mousa as information was compartmentalised.

3 9. I have not been in contact with the media in
4 relation to the Baha Mousa Inquiry.

5 10. Training. I received the standard OPTAG and
6 MATT training on POW handling and the LOAC at Picton
7 Barracks Bulford in 2003 prior to deployment. I recall
8 that prisoners should be given medical assistance, food
9 and water. If prisoners are to be restrained then they
10 should be plasticuffed with their hands in front. The
11 shock of capture is the practice of being firm and
12 robust but fair with prisoners. It does not advocate
13 physical harm to the prisoner. This was taught to me
14 during my young officer training at RMAS and then
15 reinforced during annual training conducted at unit
16 level.

17 11. My initial training in the Armed Forces was at
18 The Royal Military Academy Sandhurst. I completed the
19 mandatory ITDs (now MATTs) annually, these included the
20 LOAC. I did not receive any additional Conduct after
21 Capture training until pre-deployment training for Op
22 HERRICK 6 and 10 in 2007 & 2008 respectively.

23 Statement of Truth

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

1 Signed: Antony Christopher Bissett Pearce.

2 Dated: 24 February 2010.

3 Summary of witness statement of JERRY HARTLEY

4 MR HALLIDAY: The third and final witness is Lieutenant
5 Colonel Hartley. During Op Telic 2, Jerry Hartley was
6 a staff officer grade 2 within the G2 intelligence and
7 security cell at 3 (UK) Division. He reported to
8 Lieutenant Colonel Le Fevre. His statement gives
9 a detailed description of his training before and after
10 deploying to Iraq in 2003. His statement also provides
11 information about his role as a member of the Detainee
12 Internment Review Committee, which was responsible for
13 reviewing the detention of those detained at the theatre
14 internment facility.

15 He states that otherwise he had no role in tactical
16 questioning, interrogation or setting the standards in
17 relation to prisoner handling. He recalls that his
18 subordinate, Andrew Haseldine, was tasked with producing
19 a divisional standard operating instruction on handling
20 detainees after the death of Baha Mousa, but he did not
21 have any involvement in this himself.

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Witness statement of JERRY HARTLEY

Witness Name: Jerry Hartley

Statement No: 1

Exhibits:

Dated: 17 July 2009

THE BAHA MOUSA PUBLIC INQUIRY

Witness Statement of JERRY HARTLEY

I, Lieutenant Colonel Jerry Hartley will say as follows:-

I make this statement in response to the Inquiry's Rule 9 Request dated 8 April 2009. I have read this Request, and I seek here to cover everything that it raises to the best of my ability and recollection.

I have also been shown and read copies of the following documents:

(a) My previous statement, dated 27 June 2006 [MOD011167] ("my first statement");

(b) FRAGO 152 1 (UK) Armd Div Daily Miscellaneous FRAGO [MOD017061];

1 (c) Email chain dated 18 September 2003 [MOD016126];

2 (d) FRAGO 79 1 (UK) Armd Div Daily Miscellaneous
3 FRAGO [MOD019133].

4 ARMY CAREER

5 1. I am a Lieutenant-Colonel in the Intelligence
6 Corps. My current unit is the Defence, Intelligence and
7 Security Centre (DISC) Head Quarters (HQ) at Chicksands,
8 Bedfordshire. My role is Staff Officer, Grade 1, J3,
9 Capability.

10 2. I first joined the army in January 1990, when
11 I commenced Officer Cadet training at Sandhurst. Prior
12 to my Sandhurst training, I had attended two or three
13 weekends of Officer Training Corps training.

14 3. I graduated from Sandhurst in August 1990 as
15 a Second Lieutenant with The King's Own Royal Border
16 Regiment (KORBR), which was amalgamated into the Duke of
17 Lancaster's Regiment).

18 4. I was deployed to Iraq with HQ 3 (UK) Armoured
19 Division (3 (UK) Div) as Staff Officer, Grade 2 (SO2),
20 G2 from June until November 2003.

21 5. I stayed with KORBR in the infantry for 15 years
22 until I transferred into the Intelligence Corps in April
23 2005, having reached the rank of Major. In
24 September 2005 I moved to the Permanent Joint Head
25 Quarters (PJHQ) in Northwood.

1 6. I left PJHQ in late February 2007 to deploy to
2 Afghanistan with HQ 6th Infantry Division. I was in
3 Afghanistan from sometime in April until 15 June 2007.
4 I was promoted to Lieutenant Colonel shortly before
5 deployment to Afghanistan.

6 TRAINING

7 7. I would like to highlight the following issues
8 with regard to training at the outset:

9 8. First, when trying to recall my knowledge of
10 prisoner handling techniques and theory at the time of
11 deployment to Iraq for the purposes of this statement,
12 my recollections may have been influenced by subsequent
13 intelligence knowledge obtained as part of my more
14 recent work. It is now very difficult to separate out
15 when I knew prior to departing for Iraq from what
16 I picked up in Iraq and from what I know now. I have
17 attempted to highlight areas where I am unsure on this
18 issue in the course of this statement.

19 9. Second, whilst I have taken part in training on
20 arrest and restraint techniques and prisoner handling
21 (full details are given below), I have had no practical
22 experience of prisoner handling in real operations.

23 The Law of Armed Conflict

24 10. All recruits and Officer Cadets receive generic
25 training on the Law of Armed Conflict as part of their

1 annual training directives. I myself received this
2 training both prior to and following deployment to Iraq.

3 11. The Law of Armed Conflict training is in the
4 form of a video followed by a group discussion.
5 However, some units may cover the issue more
6 comprehensively than others, for example with varying
7 levels of comment being provided by those leading the
8 training.

9 12. The video is in the form of a short story
10 intended to highlight the appropriate response in given
11 war time situations. The examples that I can remember
12 are fairly obvious ones, i.e. that you should not fire
13 on someone who is clearly trying to surrender; that you
14 are not allowed to take personal possessions from
15 captured enemy troops; that all injuries are to be dealt
16 with according to medical priority as opposed to
17 treating our troops in preference to the enemy; and that
18 you must not sexually assault prisoners.

19 13. The video has changed slightly in recent years
20 by being modernised. The basic principles of the video
21 have always remained the same, but the discussion
22 element of the training is now in a little more depth.

23 14. In addition to training on the Law, there is
24 also a discussion on the moral component of war and this
25 is usually led by a Padre but it could also be given by

1 the Platoon Commander. In my current unit, this part of
2 the training is delivered by the Adjutant.

3 15. Whoever is leading the discussion basically
4 reinforces the themes touched upon in the video. I seem
5 to remember that during the discussion session there is
6 emphasis on the principle that prisoners must not be
7 abused, but I cannot recall any further details.

8 16. As Officer Cadets at Sandhurst, we had about
9 two days worth of training on the Law of Armed Conflict,
10 but I cannot remember now what information was covered
11 outside the video and discussion as that was nearly
12 20 years ago.

13 17. I also remember that prior to deployment in
14 Operation TELIC, there was some Law of Armed Conflict
15 refresher training. I think that this would probably
16 have involved watching the video again, but I do not
17 actually remember the session itself. The
18 pre-deployment training was in Bulford, Wiltshire, in
19 either February or March 2003.

20 18. HQ 3 (UK) Div had a training Warrant Officer
21 responsible for pre-deployment training. I cannot
22 remember the Warrant Officer's name but I recall that he
23 was a Sergeant Major from the Scots Div.

24 19. I remember that we were given an aide memoire
25 on the Law of Armed Conflict prior to deployment to

1 Iraq. The aide memoire card summarised the main points
2 raised in the video. It was provided to us along with
3 a number of aide memoire cards, for example cards with
4 language prompts and medical issues.

5 Hooding and blindfolds

6 20. I understand hooding to refer to the covering
7 of a prisoner's head. I think that a hood could be made
8 of anything, but I am aware from press stories about
9 Iraq that sandbags are sometimes used as hoods: I have
10 no experience of this myself.

11 21. In 2003 I knew of hooding, but I am not sure
12 how I had been made aware of this term. I have a vague
13 memory of seeing prisoners being hooded in videos as an
14 example of what British soldiers should not do but
15 I cannot recall the circumstances in which I saw such
16 videos, any other details shown, or whether this was
17 before or after Iraq. I have not received any other
18 training on hooding and I have never used hoods myself
19 in training or otherwise.

20 22. I have not had any training on blindfolding or
21 the use of blacked-out goggles.

22 23. I do not recall receiving any specific training
23 on any risks of restriction to breathing as a result of
24 hooding, but I consider this to be an obvious risk,
25 depending on the circumstances.

1 Stress positions

2 24. I was aware of the term 'stress positions' in
3 2003, prior to deployment to Iraq. I knew that these
4 involved making people stand up or kneel for long
5 periods.

6 25. I had no personal experience of this but I was
7 generally aware of it from hearing it being discussed.
8 Subsequent to my deployment to Iraq, I became more aware
9 of it, because I had spoken to soldiers who had been put
10 into stress positions as part of conduct after capture
11 training. As I understand it, this is done so that the
12 service personnel, especially aircrew and special
13 forces, know what to expect if they are captured. I
14 cannot now recall the names of who I spoke to or any
15 further details of these conversations.

16 26. Conduct after capture training (now called
17 Survival, Evade Resistance and Escape training) used to
18 be carried out at the same site as the DISC, where
19 (I think) the training provided included sessions on
20 Tactical Questioning. Although the conduct after
21 capture training was run completely separately to
22 Tactical Questioning training, there was concern that
23 service personnel might mistakenly believe that
24 techniques they were exposed to as part of the former
25 training (such as being put in stress positions) were

1 somehow related to Tactical Questioning. In the
2 circumstances, the conduct after capture training was
3 re-located shortly before I joined the DISC. I cannot
4 now recall who told me this or any details of our
5 conversation.

6 Noise

7 27. I am only aware of prisoners being subjected to
8 noise from reading spy novels and not from my experience
9 of the British military. I have never received any
10 training about this.

11 Conditioning

12 28. I am loosely familiar with this term. As
13 I understand it, conditioning is a way in which
14 a prisoner can be made amenable to questioning, for
15 example by questioning them as soon as possible after
16 they are captured, whilst they are still in shock.

17 29. I am not sure whether I had this knowledge at
18 the time of my deployment to Iraq or whether this is
19 information I have gained from experience in my current
20 role at the DISC.

21 30. I am aware that putting prisoners in stress
22 positions and subjecting them to noise could in theory
23 be part of a conditioning process, but I am not aware of
24 any British soldiers being taught that this is something
25 that they should do, and those techniques are not used

1 in questioning by British Forces. I am now aware that
2 such techniques are banned. I am not able to say how
3 I know this. It may be because it is covered on recent
4 MATTs training, or because it is more topical.
5 Alternatively, it is possible that I have become aware
6 of this because I currently work at DISC. However, I am
7 in an Administrative post in the HQ processing requests
8 for training; I am not involved in delivering training
9 and my role at DISC does not require me to know the
10 contents of the training courses.

11 Shock of capture

12 31. As touched upon already, I understand the term
13 shock of capture to refer to expeditious questioning
14 after capture so that the prisoner is more responsive to
15 the questioning process. I cannot remember now how
16 I first become aware of this phrase, but it is likely
17 that I have heard it being used by other intelligence
18 officers, either whilst in Iraq or subsequent to my
19 deployment.

20 Deprivation of food, water and sleep

21 32. I have not come across depriving prisoners of
22 food and water in any of my training but in my view to
23 do so would clearly be wrong.

24 33. I am aware of a technique of prisoners being
25 deprived of sleep in advance of questioning, but I do

1 not recall ever receiving any training on it or
2 discussing it with colleagues. I am not sure how
3 I first became aware of this technique. I am now aware
4 of the prohibition on sleep deprivation because of the
5 improved training given during MATTs. As stated in
6 paragraph 30 above, I do not teach at Chicksands and
7 therefore, although it is possible that this was the
8 source of my knowledge, I think is unlikely that I know
9 of the prohibition from the content of any course given
10 there.

11 Use of force and Plasticuffs

12 34. Physical restraint of prisoners has been part
13 of my training as an Infantry Officer, but only in the
14 context of immediate post-combat prisoner handling.

15 35. I can remember only one relevant training
16 session, which was when I was a Company Commander in
17 Cyprus in 2001 and 2002. The training was in restraint
18 techniques in preparation for anticipated civil unrest.

19 36. The training was led by two Non-Commissioned
20 Officers, who had themselves been trained in restraint
21 techniques. I cannot recall their names but I know that
22 one was a Corporal.

23 37. They explained that if prisoners were
24 plasticuffed they should be cuffed tightly enough to
25 restrict movement but not so tightly that circulation

1 was restricted.

2 38. I cannot recall any other specific training
3 sessions on restraint or the use of handcuffs or
4 plasticuffs. However, I do recall at some stage being
5 taught that prisoners should be cuffed in front rather
6 than behind. I may have been taught this in more recent
7 training since Iraq.

8 39. As I understand it, cuffing to the front is
9 employed for two reasons: because cuffing behind can
10 restrict breathing; and, if the prisoner falls over,
11 they cannot protect themselves.

12 40. Use of force against a prisoner by employing
13 physical abuse is not something that is permitted within
14 the army. In the annual training and specific
15 pre-deployment training (during the Law of Armed
16 Conflict training and also during basic training) it is
17 made clear that soldiers must not abuse prisoners.
18 However, I cannot recall any further details or whether
19 there have been any changes to how this is dealt with in
20 training since my deployment to Iraq.

21 RANK AND ROLE IN SEPTEMBER 2003

22 41. I arrived in Iraq in June 2003. I cannot
23 recall the exact date, but I remember that it was soon
24 after some members of the Royal Military Police (RMP)
25 were killed.

1 42. My rank and role in September 2003 was Staff
2 Officer, Grade 2 (SO2) with 3 (UK) Div. I was part of
3 the G2 Intelligence and security cell and we were based
4 in the airport building in Basra. My role was to make
5 the intelligence that we received usable in the planning
6 and operational environments.

7 43. In the Chain of Command, I reported to
8 Lieutenant Colonel Graham Le Fevre, Staff Officer Grade
9 1 (SO1) G2 on all operational matters. He in turn
10 reported to Colonel Richard Barrons, the Divisional
11 Chief of Staff. Regarding matters of military
12 discipline, I reported to the Commanding Officer of the
13 Signals Regiment, Lieutenant Colonel David Hudson.

14 44. In theory, reporting to me was Captain Andrew
15 Haseldine, a Staff Officer Grade 3 (SO3) G2 and Captain
16 William Hadley, who commanded the All Source Cell (ASC).
17 However, in fact they both reported direct to Lieutenant
18 Colonel Le Fevre because he was able to offer more
19 guidance on intelligence matters than me, as this was my
20 first combat intelligence post.

21 45. I remember that approximately midway through
22 the tour, Captain Carol Green replaced Captain Hadley as
23 Officer Commanding the ASC. I think that Captain Green
24 was a Territorial Army (TA) reservist.

25 46. The ASC's function was to receive and collate

1 all intelligence information and to write summary
2 reports. The ASC was augmented by about 10 or 12
3 reservists from the TA.

4 47. All of the G2 cells reported to Lieutenant
5 Colonel Le Fevre. As well as G2 Intelligence and
6 Security, there was G1/4 - Personnel and discipline and
7 logistics, G3 - Operations, (which included the Military
8 Provost Staff (MPS) who were usually responsible for
9 prisoner handling), G5 - Plans and G6 - Communications.
10 All of these additional cells had their own chains of
11 command which all reported to the Chief of Staff,
12 Colonel Barrons and, latterly, Colonel Evans.

13 48. There was also a cell called G2X. This cell
14 dealt with human intelligence information i.e. talking
15 to local people who wished to volunteer information.
16 S015 led this cell.

17 49. We had frequent Orders Group ('O Group')
18 meetings. The main Headquarters group O Group was held
19 every morning. The purpose of these meetings was
20 primarily for each staff branch to update and appraise
21 the General Officer Commanding (GOC) of important
22 matters, and for each the GOC to give direction and
23 steerage to the staff branches. Each staff branch,
24 G1 - G9, would attend at either S01 (Lieutenant Colonel)
25 or S02 (Major) level. The GOC and Chief of Staff would

1 also attend. I would only attend if I needed to
2 stand-in for Lieutenant Colonel Le Fevre. During the
3 O Group, each staff branch would raise key issues, for
4 example, G1 (personnel) would raise any immediate
5 problems with serious breaches of discipline, whether
6 anyone had to go home on compassionate leave; G2
7 (intelligence) would take the GOC through the key
8 intelligence reports; G3 (operations) would take the GOC
9 through key operational matters, and so on and so forth.

10 50. There was also another O Group meeting at about
11 1700 hours local time, which was a Divisional O Group on
12 radio, where all the Brigade and other Divisional combat
13 elements updated Divisional HQ. This O Group was aimed
14 at giving situation reports (sitreps) to the GOC, Chief
15 of Staff and Deputy Commander.

16 HANDOVER

17 Arrangements for my post

18 51. When I first visited Iraq at the beginning of
19 May 2003 as part of pre-deployment preparations, my
20 predecessor from 1 UK Armoured Division (1(UK) Armd Div)
21 was still in post. I cannot now recall his name.

22 52. However, by the time I was deployed to Iraq in
23 June 2003, my predecessor had already left. The SO3, G2
24 for HQ 1 (UK) Armd Div was Captain Fiona Galbraith and
25 she handed over to me in my predecessor's absence.

1 53. All I can remember of the handover is that we
2 discussed my duties and responsibilities and a detailed
3 situation brief; I cannot recall any specific details of
4 which areas of work were mentioned or what was said. I
5 do not believe that my handover would have addressed
6 aspects of the physical handling of prisoners of any
7 category, as this was not part of my role.

8 Arrangements for the Division

9 54. The arrangements for handover across the
10 Division were the same as those that I received. Each
11 member of 3 (UK) Div went to their 1 (UK) Armd Div
12 counterpart to receive a briefing. They would probably
13 also have shadowed their counterpart on visits with
14 other staff.

15 55. An Operational Order (OPO) sets the overarching
16 direction for a military campaign. A Fragmentary Order
17 (FRAGO) is specific to a particular Operational Order.
18 All Operational Orders and FRAGOs were kept in a file
19 accessible to staff. I cannot recall how the handover
20 of orders was dealt with. I do not recall whether or
21 not I was directed to the file of Operational Orders and
22 FRAGOs as part of my handover.

23 PRISONER HANDLING

24 Background

25 56. During Op TELIC 1, British Forces were focused

1 on conventional warfare against the Iraqi military.
2 Op TELIC 2 was the end of the war fighting phase, and so
3 the aim was the restoration of law and order. On
4 deployment of 3 (UK) Div, it was anticipated that
5 criminal gangs and tribes would seek to exploit the lack
6 of a regime and that the main focus of the operation
7 would be imposing order.

8 57. 3 (UK) Div was not structured, on deployment,
9 for the processing of insurgents who had been arrested
10 and required detention. Apart from the Military Provost
11 Staff, who deal with detention of service personnel in
12 the UK, the soldiers deployed as part of Op TELIC 2
13 would only have been trained to deal with prisoners of
14 war in a conventional war fighting scenario, i.e. where
15 you had subdued the prisoner and would then pass them on
16 quickly to the prisoner handling unit.

17 My role

18 58. The only role I had in relation to handling of
19 prisoners was sitting on the Detainee Internment Review
20 Committee (DIRC). It was set up under my auspices, but
21 I cannot recall the circumstances or whether there was
22 any specific order initiating its creation. Any such
23 order would have come from Graham Le Fevre or from the
24 G9 cell, which included the Legal Officers.

25 59. We did not set up the DIRC immediately on

1 arrival in Iraq, but it was in place prior to
2 Baha Mousa's death. I cannot remember when it was first
3 started.

4 60. The DIRC was responsible for the processing of
5 people arrested for carrying arms or on suspicion of
6 carrying arms. The detainees were held at a US facility
7 at Shaibah Logs base, down on the Gulf Coast. This was
8 also referred to as a Theatre Internment Facility, or
9 'TIF'.

10 61. The DIRC was responsible for reviewing the
11 periods of detention for prisoners, considering the
12 intelligence available and (on legal advice) ensuring
13 compliance with the relevant criteria in terms of time
14 limits. The DIRC met weekly to go through a list of all
15 detainees being held at Shaibah. There were also ad hoc
16 meetings to consider any detainee whose permitted period
17 of extension in accordance with set time limits was
18 about to expire.

19 62. At each meeting, we would consider why the
20 person was being held, how long they had been detained
21 and the available intelligence. We would then reach
22 a view on the appropriate action to take, for example to
23 release the prisoner or to extend the period of
24 detention.

25 63. As well as me, the DIRC was also attended by

1 the following posts: S03 G2, S01 Legal, S03 Legal, and
2 the Joint Force Interrogation Team (JFIT) Team Leader.
3 I think Major Tony West, of the Royal Military Police
4 (RMP), was the person within the Provost Branch of the
5 Div HQ with specific responsibility for detainee
6 handling. I think he used to attend the DIRC along with
7 the legal officers.

8 64. I remember that at one stage, the S03 Legal was
9 a Welsh officer named Captain Sian Ellis-Davies, but she
10 was later replaced by a man whose name I cannot recall.
11 Lieutenant Colonel Charlie Barnett was the S01 Legal.

12 65. The DIRC was my only involvement in handling
13 prisoners. I did not have any role in tactical
14 questioning, interrogation or setting of standards in
15 relation to prisoner handling.

16 66. I handed the running of the DIRC to my
17 successor, whose name I cannot recall. I cannot recall
18 anything else about the handover that I gave.

19 67. I have been shown a copy of FRAGO 79 - 1 (UK)
20 Armd Div Daily Miscellaneous FRAGO [MOD019133] and
21 I have been referred to page A-3. This FRAGO, dated
22 18 April 2003, refers to the Detention and Internee
23 Management Unit. I do not recall seeing this document
24 prior to being shown it for the purposes of the Inquiry.
25 I do not recall any mention of the Detention and

1 Internee Management Unit and it is not the same entity
2 as the DIRC. As far as I recall, we set up the DIRC
3 from scratch and we had no previous reference to work
4 from.

5 Others' involvement

6 68. I think that, within HQ 3 (UK) Div the Military
7 Provost branch was responsible for ensuring that the
8 physical movement of prisoners from the point of arrest
9 to Shaibah Logs base was within the current guidelines.
10 However they were not responsible for physically moving
11 detainees themselves. I think that this branch was
12 headed up by Major Steve Fielding, a member of the Royal
13 Military Police (RMP). The Provost branch was within
14 the G3 cell, so Major Fielding would have reported to
15 Chief of Staff, Colonel Richard Barrons.

16 69. I remember that at some point during the tour,
17 I am not sure when, a Chief of Operations post was
18 introduced between Major Fielding and the Chief of
19 Staff. I am not sure exactly why this post was
20 introduced, but I think there was a broadening of
21 interest from our NATO partners, who were then able to
22 provide greater depth to the staff function within the
23 Headquarters, as a higher ranking officer. The Chief of
24 Operations post was filled by a Lieutenant Colonel, who
25 I think was a Danish officer.

1 70. As mentioned above, Major Tony West had
2 specific responsibility within the Provost Branch for
3 overseeing detainee handling. The Provost Branch was
4 responsible for establishing and reviewing the procedure
5 and processing time limits for handling of detainees.

6 Conditioning techniques

7 71. I am not aware of anyone at 19
8 Mechanised Brigade (19 Mech Bde) giving advice to
9 Battlegroups, including 1 Queen's Lancashire Regiment)
10 (1 QLR) on the following aspects of prisoner handling:
11 hooding or blindfolding, the use of stress positions,
12 sleep deprivation, exposure to noise, deprivation of
13 food and/or water.

14 72. I was not aware of such techniques being used
15 by 19 Mech Bde or at the TIF. I do not think that I was
16 ever specifically trained that these techniques were not
17 permitted; however I did not consider that the use of
18 these techniques would be permitted as an aid to
19 interrogation. I would consider this obvious because it
20 would be abuse and this is clearly iterated in the
21 generic training that I have mentioned previously.

22 73. I am aware that sandbags are issued to all
23 infantry soldiers. The bags could be used for a variety
24 of activities, for example carrying ammunition and
25 putting rubbish in but are primarily used for filling

1 with sand to make improvised fortifications. As far as
2 I know, the bags are treated with chemicals to stop them
3 rotting. However, as I have stated above, I do not have
4 any experience of hooding using sandbags or at all.

5 74. FRAGO 152 [MOD017061], which prohibits the
6 covering of a prisoner's face, predates 3 (UK) Div's
7 arrival in Iraq. I do not recall seeing this order
8 prior to deployment to Iraq or at all. I am not aware
9 of any other order which prohibited the hooding of
10 prisoners.

11 Tactical Questioning

12 75. I do not think that I was familiar with the
13 term 'tactical questioning' prior to deployment to Iraq
14 as I had an infantry, rather than intelligence,
15 background. However, I became aware of tactical
16 questioning during my time in Iraq. I have also learnt
17 about tactical questioning through my role at DISC, as
18 my work includes administration for the tactical
19 questioning course.

20 76. I now know that the purpose of tactical
21 questioning is to try to elicit information of tactical
22 importance, that is to say information useful in the
23 pursuance of an ongoing operation.

24 77. Tactical questioners are generally
25 Non-Commissioned Officers. As the purpose of tactical

1 questioning is to elicit information and then pass it
2 on, tactical questioners do not issue orders or give
3 instructions on the handling of detainees, so far as
4 I am aware. Aside from the asking of questions, I am
5 not sure what else is involved in tactical questioning.

6 78. I do not know who within the chain of command
7 was responsible for the tactical questioning process as
8 this questioning was carried out at Battalion level.
9 The Battalions would collate the information obtained
10 and then (having been evaluated by Brigade HQs) it would
11 be reported up to the ASC head for collation in
12 intelligence reports.

13 79. Some of the people who had been tactical
14 questioned might continue along the prisoner handling
15 process to be interned at Shaibah Logs Base. However,
16 other detainees might be released or passed on to the
17 Iraqi police.

18 80. I only became involved in the process (via the
19 DIRC) once a detainee reached Shaibah Logs Base. At
20 that stage, I would see all their records and this
21 information included the time taken for processing.
22 I cannot recall how often the relevant time limits had
23 been complied with but this was something that we tried
24 hard to adhere to.

25 81. With regard to the availability of tactical

1 questioners as a resource, I am now aware through my
2 work at DISC that there should be two trained tactical
3 questioners per Rifle Company. I recall being told
4 after Baha Mousa's death that not enough people had been
5 trained in tactical questioning. I cannot now recall
6 how I became aware of this or in what context, other
7 than as part of informal discussions following his
8 death.

9 BAHA MOUSA

10 82. The first time that I heard of Baha Mousa was
11 after his death. I do not know anything about how he or
12 the other detainees were handled or treated, and I did
13 not have any interaction with those involved in
14 questioning and/or guarding them.

15 83. I do not remember how I first became aware of
16 Baha Mousa's death. I assume (although I do not
17 actually remember this) that it was probably raised at
18 an Orders Group.

19 84. Once I had been made aware of his death,
20 I reviewed the reports that the IQLR had written with
21 regard to his detention and death. One of my specific
22 roles was to review all intelligence reports that came
23 into the HQ. These particular reports were relevant
24 because the reasons that the detainees were being
25 questioned were to do with intelligence. Graham Le

1 Fevre, Andrew Haseldine and a number of others at staff
2 level would have also seen this report. However, I
3 cannot now recall the content of these reports.

4 85. After Baha Mousa's death there was a close
5 examination of the existing policies and procedures for
6 processing of detainees.

7 86. SO3 G2, Andrew Haseldine was instructed by SO1
8 G2 Graham Le Fevre to write Division Standard Operating
9 Instructions (Div SOI) on handling detainees. I know
10 this because Andrew Haseldine told me that he had been
11 given this task.

12 87. He did it without any involvement from me, but
13 he did show me the final version, which I read through.
14 As far as I can remember, the re-drafted guidance was
15 simply reiterating the policies already in place. There
16 was no change to the procedures or responsibilities for
17 prisoner handling, simply stronger emphasis on the
18 importance of adhering to the procedures, reinforcing
19 what people should already have known.

20 88. I have been asked to comment on the email chain
21 at MOD016126 - MOD016127. The first email
22 chronologically is from Lieutenant Colonel Le Fevre to
23 Major Edward Fenton, Chief of Staff at 19 Mech Bde. It
24 is dated 18 September 2003, which I understand to be
25 only a few days after Baha Mousa's death. The time is

1 10:21 hours.

2 89. Lieutenant Colonel Le Fevre refers to "J2":
3 this is another name for G2 Intelligence and Security,
4 but denotes a Joint Staff role, more commonly used
5 within PJHQ. In the email he says that a Div SOI is
6 being prepared. This is the document that was drafted
7 by Andrew Haseldine and is mentioned at paragraph 86
8 above.

9 90. Lieutenant Colonel Le Fevre goes on to say that
10 "J2 is starting the process because someone has to ...".
11 This is a reflection of the fact that detainee handling
12 processes would normally be the responsibility of G3
13 (operations) as opposed to G2 (intelligence). The
14 Military Provost Staff, as part of G3, were responsible
15 for the physical handling of detainees. As already
16 mentioned, the Provost is normally a military police
17 function used to ensure to regimental standards of
18 discipline. However, 1QLR ended up using their own
19 Battalion Provost Staff to handle detainees, because
20 they were the only ones with relevant experience of
21 detention.

22 91. Lieutenant Colonel Le Fevre goes on to say that
23 "[Tactical questioning] is the only part of the process
24 of dealing with detainees that is a J2 responsibility".
25 I understand this to be a reference to the fact that

1 information gained as part of the tactical questioning
2 process eventually forms part of the intelligence
3 collated by the ASC.

4 92. The next email in the chain is Major Fenton's
5 response of the same date. The time is 11:01 hours.
6 I was not copied into this email and first saw it when
7 it was provided to me as part of my involvement in this
8 Inquiry.

9 93. In this email, Major Fenton refers to "the
10 guidance that we are issuing BGs as an interim measure".
11 I do not recall having seen any interim guidance
12 (although I may have done) and therefore I cannot give
13 details of what it contained.

14 94. The last email in the chain is a further
15 response from Lieutenant Colonel Le Fevre, once again on
16 the same date. The time is 11:44 hours.

17 95. I cannot recall any other documents being
18 produced as a result of Baha Mousa's death and I am not
19 aware of any changes in procedure or policy. The DIRC
20 did not have any role in changes to procedures following
21 his death.

22 PREVIOUS STATEMENT

23 96. Around 3 years after my Iraq tour, I was based
24 at PJHQ running the TELIC intelligence desk. The
25 intelligence desk supports operational intelligence,

1 including the storage of information obtained and
2 created during operations.

3 97. Because I ran the intelligence desk, an RMP
4 investigator came to see me to request that I go through
5 the records from Iraq. He wanted everything that was on
6 file, and so I gave him what we had in terms of both
7 paper and electronic records. The reference in my
8 statement to JCH/1 - SOR - Divisional Internment
9 Facility (Version 2) Annex C is therefore to all the
10 documents that I passed to the investigator.

11 98. My first statement was given to record that
12 I had handed over the relevant documentation to the RMP.
13 It was not connected with my work in Iraq as SO2 G2,
14 Intelligence and Security.

15 MEDIA/PRESS

16 99. I have never given an account of matters
17 relevant to the Inquiry to the press or other media.

18 Statement of Truth

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

21 Signed: Jerry Hartley.

22 Dated: 17 July 2009.

23 MR HALLIDAY: Sir, might that be a convenient moment to take
24 the afternoon break?

25 THE CHAIRMAN: I think that will be a very sensible idea.

1 THE CHAIRMAN: All right. Well, then -- I mean I have read
2 them. I have read a number of the authorities, but
3 I would not want you to think that I have read all of
4 them.

5 Yes, Mr Elias.

6 Submissions by MR ELIAS

7 MR ELIAS: Sir, then, may I simply briefly outline the
8 position and then leave the floor to others, reminding
9 all present that on 28 January you said this, towards
10 the close of play that day:

11 "It may assist ... if I simply say at a stage that
12 my provisional view, so far as the standard of proof is
13 concerned, is that I should not operate an
14 across-the-board standard of satisfaction but, rather,
15 indicate the level of satisfaction which I find
16 established in relation to any significant finding of
17 fact which warrants such an indication; in other words,
18 a range starting at the top of perhaps, one might say,
19 the criminal burden of proof, running down to suspicion
20 and the like and, indeed, going on to say those whom the
21 report should exculpate from any criticism. That is my
22 very much provisional view."

23 At the same time, Sir, you invited submissions on
24 the issue from interested core participants, which have
25 resulted in written submissions from the detainees, from

1 the Treasury Solicitor, from Kingsley Napley,
2 Lewis Cherry, Hill Dickinson, Halliwells, Messrs Payne
3 and Crowcroft and the Ministry of Defence.

4 Broadly speaking, the detainees support your
5 provisional view, pointing out that the context here is
6 inquisitorial and is distinct from normal litigation,
7 determining, as it does, responsibility and not
8 liability.

9 The Ministry of Defence submit that "Provided there
10 is evidence and reasoning that logically supports the
11 conclusion to the degree of confidence or certainty
12 expressed ..." it is not necessary for the Inquiry to
13 adopt any particular standard of proof following the
14 line taken, they say, by Lord Saville in the Bloody
15 Sunday Inquiry.

16 The Treasury Solicitor, on the other hand, contends
17 that your provisional stated approach would be
18 "unworkable" and "carries a real risk of unfairness".
19 "Unworkable", they say, because it is suggested every
20 finding of fact is potentially significant and,
21 therefore, submissions would have to be permitted as to
22 whether an indication is warranted and as to the
23 standard of proof to be applied; "unfair", they say,
24 because the adoption of different standards of proof for
25 different witnesses or sets of facts has that potential

1 consequence.

2 The Treasury Solicitor submits that an
3 across-the-board balance of probabilities standard is
4 the appropriate way forward. The Treasury Solicitor
5 criticises the Kingsley Napley approach as "neither fair
6 nor necessary", but does appear to agree with
7 Kingsley Napley's submission that "there must be
8 a standard which is capable of being applied so that
9 everyone ... can know what is meant by a finding by the
10 Inquiry".

11 The Kingsley Napley submissions themselves conclude
12 that the civil standard should be applied across the
13 board, albeit with the use of an enhanced standard where
14 conduct equating to criminal conduct is being considered
15 and what they describe as the common sense application
16 of the concept of inherent probabilities in some other
17 circumstances and the "bare" civil standard in yet
18 a third category of factual situations.

19 As we understand it, Sir, this is the submission
20 that is adopted by my learned friend Mr Langdale.

21 THE CHAIRMAN: Yes.

22 MR ELIAS: Lewis Cherry's submissions argue for two levels,
23 the criminal standard for all allegations of criminal
24 conduct and the balance of probabilities for all other
25 allegations, taking account of the issue of inherent

1 probabilities. They submit that "exculpation from
2 criticism should be decided at this standard" also.

3 Hill Dickinson suggest that your provisional view is
4 correct in that an "across-the-board" standard is
5 inappropriate. They also agree that different standards
6 of proof -- indeed the whole range, as we understand it,
7 if appropriate -- should be utilised to apply to
8 different sets of findings of fact. However, they
9 submit that by reference to a table, the Inquiry should
10 adopt the same three categories as are outlined in the
11 Kingsley Napley submissions, but publicise them in
12 advance according to their factual content.

13 Halliwells appear to agree with the detainees'
14 submission that the Public Inquiry equates to neither
15 civil nor criminal proceedings. They argue for
16 a criminal standard for conduct of a criminal kind,
17 otherwise for the civil standard, and accept the
18 Inquiry's "power", as it is put, to comment on lesser
19 standards of proof subject to "its duty of fairness".

20 On behalf of Messrs Payne and Crowcroft, it is
21 argued that any findings equating to criminal conduct on
22 their parts should only be determined by applying the
23 criminal standard of proof.

24 On behalf of Mr Crowcroft, it is submitted that the
25 civil standard, taking account of inherent

1 probabilities, is appropriate for less serious conduct.

2 Sir, all core participants have, in their various
3 ways, argued for fairness to be at the heart of the
4 decision on the standard of proof, but, perhaps
5 unsurprisingly, each argues that his or her solution
6 provides fairness, certainty and transparency.

7 Faced with all that, at this stage, Counsel to the
8 Inquiry would simply comment that it may be that some of
9 the difficulties foreshadowed are more theoretical than
10 practical, more imaginary than real, and that the
11 practical application of common sense and fairness in
12 making decisions will ensure that in fact these
13 difficulties do not arise.

14 Further, we have been at pains to point out -- and
15 as you know, Sir, did so in a note circulated to core
16 participants now a few weeks ago -- the duties of this
17 Inquiry to make findings and report in a way which is
18 fair, transparent, comprehensive and complete. In this
19 regard, we have posed the following questions to core
20 participants to seek to assist you in coming to
21 appropriate conclusions on this issue.

22 We said, having regard firstly to the provisions
23 of section 2(1) and (2) of the Inquiries Act 2005, that:

24 "an inquiry panel has no power to determine any
25 person's civil or criminal liability ... but an inquiry

1 panel is not to be inhibited in the discharge of its
2 functions by any likelihood of liability being inferred
3 from facts that it determines ..."

4 And secondly to section 24(1)(a) of that Act:

5 "The chairman of an inquiry must deliver a report to
6 the minister setting out -- (a) the facts determined by
7 the inquiry panel; ..."

8 And, thirdly, to the Inquiry's terms of reference,
9 specifically:

10 "To investigate and report on the circumstances
11 surrounding the death of Baha Mousa and the treatment of
12 those detained with him ..."

13 We then, in the light of that, pose three questions.

14 (a) The extent to which any core participant submits
15 that you are inhibited from making findings, accepting
16 your overriding duty of fairness at all times, on the
17 basis of a degree of satisfaction below that of being
18 sure or on the balance of probabilities, for example, on
19 the basis of evidence giving rise on a reasonable
20 suspicion.

21 (b) How it is suggested, we ask, in accordance with
22 your duties under the Act, you should deal with
23 a situation where you would propose to make a finding
24 where, on the evidence available, you are neither sure
25 nor satisfied on the balance of probabilities;

1 And (c):

2 Given that you, Sir, are not determining and indeed
3 may not determine criminal or civil liability, the
4 manner in which it is submitted unfairness may operate
5 if you adopt the approach of indicating the level of
6 satisfaction applicable to each finding you make where
7 appropriate.

8 Self-evidently, these are not the only questions
9 raised by the various submissions made to you in
10 writing, but we venture to suggest that these questions
11 provide the basis for focusing particularly on those
12 matters which are more starkly raised by those who
13 contend for a solution which differs from your
14 provisional view. Those, Sir, are our comments at this
15 stage.

16 THE CHAIRMAN: Yes, well, thank you very much. I propose to
17 take submissions in a slightly different order from the
18 one we have done up to now.

19 First of all, I shall start with Mr Barr and the
20 Ministry of Defence. I have read the letter that has
21 been written by Samantha Ryb. If I were to summarise
22 the submission as you put it on the basis, not that you
23 necessarily adopt the preliminary view, but that you
24 would be content if that was my ruling -- is that right?

25 MR BARR: That is entirely correct, Sir, and unless you wish

1 me to add anything, I have nothing to add to our written
2 submission.

3 THE CHAIRMAN: No, I don't think there is anything that
4 I specifically want you to do.

5 So, then, thank you very much.

6 MR BARR: Thank you, Sir.

7 THE CHAIRMAN: Mr Evans, I think you are next on the list.

8 MR EVANS: Sir, yes. Mr Garnham sends his apologies that he
9 can't be here --

10 THE CHAIRMAN: I hope he has managed to return safely from
11 wherever he is.

12 MR EVANS: He has, Sir. He is safely back in the
13 United Kingdom. I suspect you might be seeing him next
14 week.

15 THE CHAIRMAN: That will be, as ever, a pleasure.

16 Submissions by MR EVANS

17 MR EVANS: Sir, we have very little to add to our written
18 submissions, but we propose simply, with your leave, to
19 offer some short observations on the questions just
20 raised by Counsel to the Inquiry on which you said you
21 might be particularly helped.

22 THE CHAIRMAN: Yes.

23 MR EVANS: First of all, dealing with the reasonable
24 suspicion standard which has been proposed. What we say
25 about that is you can't make a finding of fact --

1 a finding of fact -- on the basis of a reasonable
2 suspicion. For your reference, we do mention this in
3 paragraphs 20 and 21 of our skeleton argument.

4 The point is, we say, that section 2(2) of the
5 Inquiries Act refers to facts that the Inquiry
6 determines, and to determine a fact, we say, more is
7 needed than reasonable suspicion.

8 THE CHAIRMAN: Yes. Sorry to interrupt you, but I can -- to
9 some extent what I would like to know is what is your
10 answer to the question that's raised by Mr Bourne in his
11 submissions to me, contained at paragraphs 16 and 17 --

12 MR EVANS: Sir, I don't have Mr Bourne's submissions, I am
13 afraid.

14 THE CHAIRMAN: What he says is:

15 "We do not submit that the Inquiry lacks the power
16 to state such matters in its report."

17 That is to say about an allegation.

18 "In particular the Inquiry is, of course, empowered
19 to comment on the evidence, even where the evidence does
20 not need an allegation being proved to the standard."

21 It then goes on to say, very sensibly, that this
22 power must be exercised fairly.

23 MR EVANS: Yes, we would accept that you could comment on
24 evidence, but that couldn't amount to a finding, we say,
25 for that reason.

1 Sir, you could say that there was a suspicion --

2 THE CHAIRMAN: Yes.

3 MR EVANS: -- but that wouldn't amount to a finding of fact

4 because it's not the same as a determination.

5 THE CHAIRMAN: Yes. I see.

6 MR EVANS: So that is as far as our submission goes on that

7 point.

8 THE CHAIRMAN: Yes.

9 MR EVANS: The reason we say that, I think, is because

10 reasonable suspicion must be more than just

11 a possibility, otherwise it would be mere suspicion.

12 THE CHAIRMAN: Well, I quite understand that, if one was to

13 make a comment like that, fairness very much comes into

14 it and I take the point that is made in Mr Bourne's

15 submissions.

16 MR EVANS: Yes, all right.

17 Can I just say this final point then? It may be

18 that -- this may be too semantic -- but for a suspicion

19 to be reasonable rather than simply groundless, it must

20 be based on some credible evidence and that, we say,

21 must involve a weighing of evidence; in other words, if

22 credible evidence leads you to a reasonable suspicion,

23 you ought to be in a position to go on to say what is

24 more likely than not to have happened.

25 THE CHAIRMAN: You say all of that, but take the situation

1 where there is little, but some, evidence upon which
2 there might be a finding of fact against a particular
3 person and that particular person turns out to be
4 a witness whose evidence I find extremely
5 unsatisfactory, now, I might not go as far as to say it
6 is proved on a balance of probabilities, but why
7 am I not entitled to say that I don't find it is proved
8 on the balance of probabilities, but I am suspicious
9 about his part in that particular matter?
10 MR EVANS: Yes, it comes back to the point that you put to
11 me earlier. That would be an appropriate comment to
12 make, but it wouldn't amount to a determination.
13 THE CHAIRMAN: I follow that.
14 MR EVANS: Yes.
15 THE CHAIRMAN: Well, then, just one other matter before
16 I finally shut up. Suppose I was satisfied to the
17 criminal standard that somebody had not done something
18 which others say he had, why shouldn't I not say that?
19 MR EVANS: Yes, I think you would be entitled to say that.
20 I don't think we quarrel with that.
21 THE CHAIRMAN: That gets over -- I say "gets over" -- that
22 reduces the effect of your across-the-board standard.
23 MR EVANS: Yes, it does. Can I finally, then, address the
24 mischief of the variable standard and why we say it
25 might operate unfairly?

1 THE CHAIRMAN: Yes.

2 MR EVANS: We say -- I think the core point that we make
3 here in the skeleton -- and if I can emphasise it -- is
4 that, with a variable standard, those who might be
5 subject to criticism in the report following findings of
6 fact on an application of any lower standard than beyond
7 reasonable doubt will be more vulnerable to scrutiny
8 with a view to disciplinary or other proceedings than
9 those who have had findings made against them on
10 a higher standard and that differential per se operates
11 unfairly in the sense (a) that witnesses might perceive
12 that it would be unfair to have differential treatment
13 in this way, first of all -- and that perception is an
14 important consideration -- but, secondly, we say that it
15 operates in another way to work unfairness because the
16 problem is a pragmatic one.

17 With a variable approach, especially perhaps in our
18 case where we have 240-odd clients, for different
19 standards for different witnesses and even different
20 issues within what witnesses say, we are presented with
21 a situation in which the witnesses do not know which
22 standard is likely to be applied for whatever issue is
23 being considered and we are in the position of having,
24 perhaps, to make three different submissions on three
25 possible different standards of proof, beyond reasonable

1 doubt, balance of probabilities or reasonable suspicion.
2 We say that might work to operate unfairly in the sense
3 that our witnesses don't know where they are. I think
4 that's the point we make.

5 THE CHAIRMAN: Well, they know where they are in the sense
6 that, if I am to adopt a variable standard of proof,
7 they know that if they want to escape all findings
8 against them, they have to show -- or you have to submit
9 on their behalf -- that they are entirely innocent of
10 whatever is alleged against them.

11 MR EVANS: Yes, but on this hypothesis we would have to say
12 "entirely innocent beyond reasonable doubt for these
13 reasons, entirely innocent on the balance of
14 probabilities for these and there is not a jot of
15 a suspicion for the following reasons".

16 THE CHAIRMAN: I think personally that is raising problems
17 which in truth, from a practical point of view, simply
18 don't exist.

19 MR EVANS: I think what we would say to that is this
20 represents a genuine concern that we have in the way
21 that we might respond finally in making submissions to
22 you.

23 THE CHAIRMAN: Yes.

24 MR EVANS: It's not merely a point made in passing, as it
25 were. This does represent a genuine concern that we

1 are to inquire into matters of public concern, secondly,
2 to discover so far as possible what happened and
3 thereby, thirdly, to restore public confidence --

4 THE CHAIRMAN: Yes.

5 MR DINGEMANS: -- but at all times acting fairly to all core
6 participants and witnesses. I hope that that is not
7 a controversial opening submission.

8 In that respect, it is important to note that, when
9 discharging those functions, an inquiry is necessarily
10 limited, as well as advantaged, by the inquisitorial
11 nature of the process. The limitation is that witnesses
12 and core participants simply do not have the panoply of
13 rights available to them in adversarial litigation.

14 The advantage is, of course, that you can then be
15 very much more efficient and proportionate in your own
16 inquiry. But then how to balance all that and ensure
17 that there is fairness --

18 THE CHAIRMAN: You leave out one other advantage that they
19 have, in that I am not making any findings of civil or
20 criminal liability.

21 MR DINGEMANS: I entirely accept that proposition, Sir,
22 although and -- in this respect the jurisprudence, as
23 you know, in relation to inquests is slightly different
24 from that in relation to the approach taken by
25 Lord Saville to Bloody Sunday. In our submission it can

1 be overstating the point to say that the fact that I am
2 not making any finding of fact, whether civil or
3 criminal -- leading to civil or criminal liability --
4 you can be left with a reputation that is worthless for
5 all time. You know, Sir, from your own experience in
6 the Queen's Bench Division, that there are many
7 expensive actions brought to repair reputations and much
8 money and time invested in those matters.

9 So, of course, there is no civil or criminal
10 liability, but it would be, in our submission, wrong to
11 suggest, as might be thought to have been a suggestion
12 from Bloody Sunday, that there is not necessarily a real
13 interest that people have in preserving their own
14 reputations in inquiries.

15 THE CHAIRMAN: I recognise that it can affect reputations,
16 and a number of the people against whom allegations are
17 made are army officers, whose careers may well be
18 affected. I am conscious of that.

19 MR DINGEMANS: Sir, I am grateful for that.

20 Indeed, the strength, then, of the system to allow
21 one to cover a great deal of material efficiently and
22 proportionately then has to be borne in mind when one is
23 considering findings of fact. Now, there is no escaping
24 this proposition that findings of fact need to be made
25 to discharge your duties under the statute --

1 THE CHAIRMAN: Yes.

2 MR DINGEMANS: -- to discover, so far as possible, what
3 happened. But -- and this is an important "but" --
4 I suspect -- and this is where, I suspect, picking up
5 the point that my learned friend Mr Elias has made and
6 you, Sir, have already made as to what then becomes
7 academic and what becomes real -- some findings of fact
8 may not be necessary to be made and some plainly will
9 be.

10 THE CHAIRMAN: Yes.

11 MR DINGEMANS: Against the background and then turning to
12 the questions that are specifically addressed in my
13 learned friend Mr Elias' note, we do submit this -- the
14 first question is this:

15 "The extent to which any core participant submits
16 that the Chairman is inhibited from making findings ...
17 on the basis of a degree of satisfaction below that of
18 being sure or on the balance of probabilities ..."

19 Our simple submission -- and in some respects it
20 part-echoes perhaps what has already been submitted
21 before -- is you are not then making a finding of fact.

22 THE CHAIRMAN: I am commenting on evidence.

23 MR DINGEMANS: Yes, you are saying that there are grounds
24 for suspecting -- indeed plainly there would be grounds
25 for suspecting because, no doubt, you will have set out

1 some of those grounds for suspecting it. But to make
2 a finding of fact, in my submission, one plainly has at
3 least to satisfy the unvarnished civil standard,
4 otherwise it is not a finding of fact. It is simply
5 stating that which is apparent from the material before
6 you.

7 In this respect, having regard to where public
8 inquiries fit into the constitution, which is to assuage
9 matters of public interest and concern and is hardly
10 likely to assuage matters of public interest or concern
11 if one then makes a whole series of, "I suspect this,
12 I suspect that" -- that is not necessarily taking it
13 further forward.

14 Of course sharing your reasoning leading up to
15 findings of fact, where necessary to be made, is again
16 taking it -- plainly discharging your functions. But in
17 that respect it may be that there's not very much
18 between our submission and that proposition, apart from
19 this: the bald submission that a reasonable suspicion is
20 not a finding of fact in any sense of the word.

21 In the same way that having drawn attention to your
22 statutory duties to report, if you haven't made
23 a finding of fact, you are still reporting that you
24 weren't making that finding of fact; in the same way
25 that a jury has a constitutional duty to say whether

1 they are sure that a person is guilty or not, but if
2 they are not sure, they are still discharging that duty
3 in the same way that you will be discharging your duty
4 to the minister when you report saying whether you are
5 satisfied or not.

6 The second question that is asked directly is:

7 "How is it suggested, in accordance with his duties
8 under the Act, the chairman should deal with a situation
9 where he would propose to make a finding where, on the
10 evidence available, he is neither sure nor satisfied on
11 the balance of probabilities."

12 The short submission is you should say you are not
13 making that finding. That is a submission which is not
14 going to get better with repetition, but it won't get
15 worse.

16 THE CHAIRMAN: I see that. Take the other end of the scale,
17 at the top end of the scale -- I mean you have provided
18 quite an elaborate analysis of the current state of the
19 law on civil standards of proof, which I have to say,
20 going into that sort of thing with great respect to the
21 House of Lords and Supreme Court, those judges who have
22 been trying issues of fact for some time, common sense
23 is an attractive proposition which almost certainly is
24 always taken into account. I can't see really that any
25 gloss on that helps to a great extent.

1 MR DINGEMANS: I respectfully agree in the vast majority of
2 cases that one is simply not going to be concerned with
3 subdivisions, but there are features which are -- just
4 dealing with the second question, if you are neither
5 sure nor satisfied on the balance of probabilities, then
6 the short submission is that one simply can't then make
7 a finding of fact. Of course, you can share your
8 reasoning of that --

9 THE CHAIRMAN: But take, as I say, the other end of the
10 scale. If I am sure, using a criminal expression --

11 MR DINGEMANS: Yes.

12 THE CHAIRMAN: -- that someone has committed a crime or what
13 amounts to a crime -- of course half the time we are
14 talking about things which are not necessarily criminal
15 offences and, furthermore, they are not necessarily
16 a criminal offence because you don't have the mens rea
17 to establish some of them -- but if I were to say "I am
18 sure that X hit Y", why shouldn't I say that?

19 MR DINGEMANS: My submission would be that that would be the
20 entirely appropriate standard to be applied to those
21 allegations which are effectively quasi criminal.

22 THE CHAIRMAN: Take your quasi criminal conduct, supposing
23 I were not sure, but on the balance of probabilities
24 found it proved, what is wrong with that?

25 MR DINGEMANS: In my submission, this is where fairness is

1 engaged because your Inquiry is against a very specific
2 factual background. Perhaps I can just identify that.

3 First, there has been a fully blown criminal trial.
4 Secondly, there were, at that criminal trial, a number
5 of people who were acquitted. Thirdly, the allegations
6 that were engaged and dealt with at that criminal trial
7 form part of, but not the whole of of course -- but part
8 of the allegations made against those self-same people,
9 but others effectively accused of the same thing.

10 In those very unusual circumstances, in my
11 submission, fairness requires that such serious
12 allegations which have been tested to the criminal
13 standard should only -- findings should only be made if
14 the criminal standard is satisfied.

15 THE CHAIRMAN: So that if, for instance, somebody against
16 whom it is alleged that he struck a detainee -- if
17 I were satisfied on a balance of probabilities that he
18 had done it, but not that he was sure, are you saying
19 I couldn't put that in my report?

20 MR DINGEMANS: In my submission you should identify perhaps
21 at the beginning of your report which standard you are
22 applying to respective findings. You have seen our
23 submission that effectively quasi criminal acts should
24 be the enhanced civil standard or the first part of the
25 civil standard.

1 THE CHAIRMAN: But you are not saying that I shouldn't say,
2 are you, that if I don't reach the satisfaction to the
3 enhanced civil standard, I can't say I find it on the
4 balance of probabilities?

5 MR DINGEMANS: Well, in my submission you should then adopt
6 the approach which was adopted in Macpherson in
7 paragraph 8.5 -- just to remind you, Sir -- which is
8 where he was dealing with the racism and the collusion
9 standards and he said:

10 "When dealing with the issues of collusion, the
11 standard of proof is not so rigid that we cannot make
12 findings or indicate that a situation may exist
13 otherwise than by applying the well-known principles
14 which govern litigation. But where such a serious
15 allegation as collusion with criminals or corruption is
16 made, it would be wholly unfair to reach any adverse
17 conclusion without being sure that such a conclusion was
18 justified as a matter of evidence and proper inference."

19 In my submission, where one is dealing with
20 effectively the quasi -- and there are not many of them,
21 but there are some -- the quasi criminal allegations, we
22 do respectfully submit that if you are not sure, then it
23 would be unfair to the individuals to say that, "I am
24 not sure, but satisfied on the balance of
25 probabilities".

1 THE CHAIRMAN: So X gets, as it were, clean out if I found
2 it on the balance of probabilities, but not sure to the
3 civil criminal standard?

4 MR DINGEMANS: Yes, Sir. But in my submission your
5 formulation to me slightly might be considered to
6 betray -- the fact "clean out" -- exactly the importance
7 of having --

8 THE CHAIRMAN: Well, that's how it would be read.

9 MR DINGEMANS: And therefore, Sir, you have the point on
10 fairness, which is that people will read one way or
11 another -- this is effectively a conviction and you,
12 Sir, recognise the reality, putting the question to me.
13 In those circumstances, take, for example, a person
14 against whom an allegation is made who hasn't had the
15 benefit of the six months of preparation for the court
16 martial, who hasn't had the benefit of all the hard work
17 cross-examining before, who is restricted perfectly
18 properly because of the constitutional duties that you
19 are discharging and the interests of justice in
20 inquiring into the matter, by all those matters -- and
21 then to be effectively condemned forever more, as you,
22 Sir, would put it, in or out, on the basis of "not
23 sure" -- that is why, in my submission, in that
24 particular case, the approach adopted by Macpherson in
25 his report is the appropriate one. That, again, is one

1 of those submissions that won't get better, but nor will
2 it get worse with repetition.

3 Can I then turn to the third bullet, which is this:

4 "Given that the Chairman is not determining (and may
5 not determine) criminal or civil liability, the manner
6 in which it is submitted unfairness may operate if the
7 chairman adopts the approach indicating the level of
8 satisfaction applicable to each finding he makes, where
9 appropriate."

10 And the answer is exactly that which became obvious
11 from your own formulation of the question to me: clean
12 out or forever condemned.

13 THE CHAIRMAN: Yes, I see.

14 MR DINGEMANS: That is why, in our respectful submission,
15 a practical, but also, we submit, helpful way forward --
16 but it has this advantage: it does attempt to adopt the
17 reasoning of the Supreme Court and make it applicable.

18 The enhanced, if one can put it, civil standard
19 effectively equating to the criminal standard for those
20 quasi criminal allegations that have already been tried
21 against some people and effectively repeated or made
22 against others; the general civil standard which has two
23 sub-divisions, namely taking account of the common sense
24 provisions that people are more likely to push than
25 strike; and the unvarnished civil standard for other

1 matters.

2 THE CHAIRMAN: Yes, we are really at Lord Hoffmann, aren't
3 we, in the thrust of the latest two cases?

4 MR DINGEMANS: Yes, in those three ways. The advantage of
5 Lord Hoffmann's analysis in that respect --

6 THE CHAIRMAN: It is really repeating what Lord Nicholls
7 said.

8 MR DINGEMANS: It does, but it also picks up and deals with
9 Lord Brown's question at the end of the Northern Ireland
10 case and, therefore, gives an answer on standard of
11 proof which we submit is comprehensive, but also, so far
12 as it can be when dealing with an academic legal matter,
13 fair and workable.

14 THE CHAIRMAN: Yes.

15 MR DINGEMANS: Sir, those, for what they are worth, are my
16 submissions.

17 THE CHAIRMAN: They are worth a lot. I am very grateful to
18 you. Thank you very much.

19 Ms Edington?

20 Submissions by MS EDINGTON

21 MS EDINGTON: Sir, you have indicated that you have read the
22 skeleton arguments and I can do no more really than
23 adopt that which Mr Dingemans has given to you before
24 me.

25 THE CHAIRMAN: You were kind enough to put in your skeleton

1 argument the decisions about ASBOs and the like.

2 MS EDINGTON: Indeed.

3 THE CHAIRMAN: At the moment I don't find it easy to relate
4 those to what I have to decide. They are specific
5 penalties for those who have been, in most cases,
6 convicted of a criminal offence.

7 MS EDINGTON: Sir, yes. It was really there as an
8 assistance, we would hope, to take really where the
9 Supreme Court have gone to now with Re S-B, which you
10 yourself has said is no more and no less than common
11 sense.

12 The difficulty we have, perhaps, is that we have two
13 people who have stood trial, as you well know, Sir, and
14 have been acquitted and one who has been convicted of
15 the core participants that those instructing me
16 represent. The difficulty, Sir, we would say, with the
17 submission that on the balance of probability was
18 satisfactory for those, one has already been convicted
19 so, to a certain extent, a finding of fact can be made
20 against him and that is absolutely fair because he
21 himself has admitted that offence and the criminal
22 conduct has been dealt with and that's where we are.

23 The other two, of course, were acquitted at trial.
24 Again, as you said to Mr Dingemans, the difficulty that
25 remains with those two in particular is that if you were

1 to say, on the balance of probabilities, that they
2 were -- on a finding of fact and balance of
3 probabilities, that may be seen to be undermined in the
4 criminal cases being posed against them --

5 THE CHAIRMAN: When you say "undermine the criminal
6 convictions", I am tempted to say: so what? I have an
7 entirely different panacea of evidence to look at, some
8 of which was described at the criminal trial as a "wall
9 of silence", which is not quite the wall of silence that
10 has occurred here and I am not making a finding that
11 they have committed an offence. I can't see why
12 I should be inhibited by the fact that they have been
13 tried, convicted or acquitted.

14 MS EDINGTON: Sir, as I said, I can add no more than that
15 which my learned friend Mr Dingemans has already
16 addressed to you, but we would ask that you use, for all
17 criminal behaviour, the criminal standard of proof.

18 THE CHAIRMAN: You say, as Mr Dingemans says, that if I am
19 not satisfied to the civil criminal standard -- you
20 would say the criminal standard -- if I am not sure that
21 X has done something, then I simply say that I am not
22 sure and that's the end of it so far as he or she is
23 concerned?

24 MS EDINGTON: Sir, yes.

25 THE CHAIRMAN: And I can make no further comment at all?

1 MS EDINGTON: I think, Sir, you can make the comment --
2 THE CHAIRMAN: Well, what comment?
3 MS EDINGTON: The question is whether you can make
4 a finding -- you could make a comment that there has
5 been evidence, but you cannot be sure. That in itself I
6 would submit is quite telling.
7 THE CHAIRMAN: My point to him -- and I would like your
8 answer -- why can't I comment that on the balance of
9 probabilities I think he did?
10 MS EDINGTON: Sir, I would submit it is quite telling if you
11 were to say that you cannot be sure and left it at that.
12 It's quite telling that you probably have, on the
13 balance of probabilities, found that that was conduct
14 (inaudible) by that particular person.
15 THE CHAIRMAN: Well, there we are. I have that point.
16 Mr England?
17 Submissions by MR ENGLAND
18 MR ENGLAND: Sir, I don't think there is anything else that
19 I can usefully add --
20 THE CHAIRMAN: You are in much the same boat as the others,
21 is that right?
22 MR ENGLAND: I certainly adopt the most recent submissions
23 by Mr Dingemans because what we submit is at the
24 cornerstone is fairness and certainty, and if one
25 follows the suggestion that he makes, then we reach

1 fairness and certainty and that is critical, we say.

2 THE CHAIRMAN: Is there anything else you want to say?

3 MR ENGLAND: No, thank you.

4 THE CHAIRMAN: I am slightly surprised at the point in your

5 submission, which I forgot to mention, where you say

6 that you had proceeded on the basis of your

7 cross-examination as if what had been alleged against

8 your client was something which you thought must be

9 proved to the criminal standard and you had proceeded on

10 that basis. I am surprised that you should have assumed

11 that from the start without saying so and, secondly,

12 surprised that you might have conducted the case -- or

13 your client's case -- in any different way.

14 MR ENGLAND: Well, having spoken to Mr Dingemans this

15 afternoon, I don't think that's my strongest point.

16 THE CHAIRMAN: Nor do I.

17 Very well. Is there anything else you want to say?

18 MR ENGLAND: No, thank you.

19 THE CHAIRMAN: Mr Langdale?

20 Submissions by MR LANGDALE

21 MR LANGDALE: Sir, I think it follows that I have nothing to

22 add to the submissions made by Mr Dingemans, which, of

23 course, echoed, in terms of the suspicion question, the

24 submissions that Mr Evans had made before him.

25 THE CHAIRMAN: Yes. Now A question, I think I asked

1 Mr Dingemans and also Mr Evans, if I were to say, in the
2 case of your client -- and I am not by any means saying
3 that this is any concluded view at all or any view --
4 supposing I were to say that for a number of incidents
5 that your client is alleged to have committed some act
6 of violence, you would not prevent me, I dare say, from
7 saying, "Well, I am quite satisfied on the criminal
8 standard that he did not"?

9 MR LANGDALE: There is no difficulty with that. In these
10 discussions we tend to get locked into particular
11 phrases as if they all carry some precise magic.

12 THE CHAIRMAN: I quite agree with that.

13 MR LANGDALE: We are all used to courts in various hearings
14 and trials and whatever the circumstances may be saying,
15 for example, "We are satisfied that ..." in the Court of
16 Appeal. They do not need to necessarily specify whether
17 they are applying in certain circumstances the criminal
18 standard or the civil standard. "I accept the evidence
19 of so-and-so", that sort of comment can indicate clearly
20 what the finding is and "I do not find that that
21 incident took place", some phrase. If it is
22 necessary to say, "Well, I am absolutely convinced in a
23 way that ..." --

24 THE CHAIRMAN: Well, save that if one left it --

25 MR LANGDALE: -- one runs into other difficulties when there

1 may be gradations of the strength of your conclusion
2 about a particular topic or certain issues. The
3 question is to make findings, as you are more than well
4 aware, on a proper basis and to make that clear as you
5 will.

6 I think the advantage of the approach which
7 Mr Dingemans developed from what Lord Hoffmann said is
8 that it gives an inquiry -- the chairman of an
9 inquiry -- a degree of flexibility. It provides a path
10 where one can avoid getting over-technical about
11 precisely how you describe the basis of a finding of
12 fact.

13 THE CHAIRMAN: Save that, I think as Dame Janet Smith said,
14 if you specify the standard that you have adopted,
15 everybody will know exactly what the basis of the
16 finding is --

17 MR LANGDALE: Yes, it does specify the standard in general
18 terms. It's quite clear what that approach sets out,
19 that it provides a greater degree of flexibility in
20 terms of precise phraseology in terms of how one
21 describes the basis on which a finding was made.

22 THE CHAIRMAN: Yes.

23 MR LANGDALE: It may well end up that you will be concluding
24 that "There is some evidence that X did so-and-so, but
25 I am not satisfied that he did". That kind of

1 conclusion may be the sort of conclusion in certain
2 instances in this case which you come to.

3 THE CHAIRMAN: I have a feeling that a lot of these problems
4 are more theoretical than practical.

5 MR LANGDALE: Yes, it is much easier for me to make these
6 submissions because I am only representing one core
7 participant. I appreciate the sensitivity that my
8 friends will have in relation to instances where they
9 are representing a large number.

10 THE CHAIRMAN: Yes. Very well, Mr Beer. I think you have
11 been reading too much of the sentencing guidelines to
12 produced that excellent ladder for categorising
13 offences.

14 MR BEER: I am pleased to be accused of such a default.
15 Can I try and simplify matters?

16 THE CHAIRMAN: Yes, I know. Do not take that seriously.

17 Submissions by MR BEER

18 MR BEER: No. In relation to the three points that Mr Elias
19 raises, can I address two of them, that's the first two.

20 The first is: is the Inquiry prohibited from making
21 findings on the basis of a quantum of proof below that
22 of certainty or on a balance of probabilities, ie on the
23 basis of evidence giving rise to a suspicion or
24 a suspicion based on reasonable grounds.

25 THE CHAIRMAN: Yes.

1 MR BEER: We say it would be wrong to record in the
2 Inquiry's report such a state of mind amounting to
3 a finding by the Inquiry or a fact determined by the
4 Inquiry.

5 THE CHAIRMAN: I see the point that Mr Evans makes on that,
6 but would it prevent me from commenting on it, providing
7 I do so, as Mr Bourne suggests, fairly?

8 MR BEER: We would say yes. We are grateful to Mr Singh for
9 identifying section 24 as being really the relevant
10 provision in this regard because it requires you to
11 deliver a report setting out the facts determined by the
12 panel --

13 THE CHAIRMAN: Yes.

14 MR BEER: -- or by you in this case.

15 Setting out findings or determinations or even
16 comment about suspicions, whether based on reasonable
17 grounds or otherwise, is inconsistent with section 24
18 and we say should be avoided for three reasons:
19 Firstly, section 24, as with section 2, speaks in terms
20 of "determining facts". The use of the word
21 "determining" as a verb, a transitive verb, doesn't
22 permit a statement within a report that a finding is
23 made on the basis of a reasonable suspicion. The word
24 "determine" means "to establish", "to ascertain
25 definitely", "to establish or ascertain conclusively

1 after an investigation or an inquiry" --

2 THE CHAIRMAN: Yes.

3 MR BEER: -- and they are all OED definitions.

4 The second reason is that suspicion based on
5 reasonable grounds is such a fragile and precarious
6 state of mind that a statement by an inquiry that it
7 holds such a state of mind is very dangerous indeed.

8 As to the fragile state of mind that that state of
9 reasonable submission conveys, you will be familiar with
10 the dictum of Lord Devlin -- this isn't in your
11 bundle -- in *Holgate-Mohammed v Duke*. I give the
12 reference for the transcript. It is 1984, 1 Appeal
13 Cases 437. Suspicion is a state of conjecture, a state
14 of surmise, where proof is lacking. Suspicion arises at
15 or near the starting point of an investigation of which
16 the obtaining of prima facie proof is the end.

17 The third reason -- and it's linked -- is that an
18 inquiry is set up -- as Mr Dingemans has mentioned -- in
19 part to dispel suspicion, not to create it or restate
20 existing suspicion. If a finding cannot be made on the
21 balance of probabilities, it should not be made or
22 stated at all. I have said "on the balance of
23 probabilities" there as the lowest standard, the bare
24 balance of probabilities, of the quantum of proof that
25 we set out in our submissions, so we say for those three

1 reasons.

2 Turning to issue two, how should you deal with the
3 situation where you would propose to make a finding but
4 you are neither sure nor satisfied on the balance of
5 probabilities, we say the answer is as follows: firstly,
6 you state what the issue is; you secondly set out the
7 competing evidence in relation to that issue; thirdly
8 discuss it; fourthly, state that you are neither sure
9 nor satisfied on the balance of probabilities whichever
10 standard you are applying in relation to that issue or
11 that finding of fact. In that way the evidence is
12 ventilated, the allegation is ventilated, but your
13 finding, your determination on it in the terms
14 of section 24, is made clear.

15 In relation to Mr Elias' third issue, we make no
16 submissions. We don't say that indicating different
17 levels of satisfaction causes unfairness.

18 THE CHAIRMAN: I'm sorry, you don't?

19 MR BEER: We don't say that indicating differing levels of
20 satisfaction in relation to different issues causes
21 unfairness.

22 THE CHAIRMAN: No. So if, for instance, I were dealing with
23 what is serious conduct which might be inferred to be
24 a crime --

25 MR BEER: Yes.

1 THE CHAIRMAN: -- you say I am entitled to say "Well, I am
2 not sure but I am ..." or to make a finding specifying
3 on the balance of probabilities?

4 MR BEER: For the reasons set out in our submissions and
5 consistently with what Mr Dingemans has said already,
6 conduct of a criminal nature should achieve the criminal
7 standard of proof.

8 THE CHAIRMAN: So if it doesn't achieve that standard, then
9 I simply say, "... but it is not proved to a criminal
10 standard"?

11 MR BEER: Yes.

12 THE CHAIRMAN: And I can't say, "On the balance of
13 probabilities I find that it happened"?

14 MR BEER: No. You set out the allegation, the evidence,
15 your discussion of it, and that you don't make a finding
16 or determination that that fact or allegation occurred.

17 THE CHAIRMAN: Thank you. I have heard your submissions.

18 MR BEER: I am grateful.

19 THE CHAIRMAN: Mr Bourne?

20 Submissions by MR BOURNE

21 MR BOURNE: Sir, I propose to add only very, very briefly to
22 what I put in writing --

23 THE CHAIRMAN: Yes.

24 MR BOURNE: -- and really just to echo what Mr Beer has just
25 said and to say one thing.

1 If a particular allegation is of a broadly criminal
2 nature and if, as a matter of law, it therefore should
3 attract the criminal standard and it doesn't, but an
4 inquiry chairman is of the view, nevertheless, that the
5 allegation would have been proved on the balance of
6 probabilities, in addition to the points made by
7 Mr Beer, there is perhaps one other reason why, even if
8 you are legally empowered to say that you would have
9 found the fact proved on the balance of probabilities
10 had that been the test -- I submit there is one other
11 good reason not to do so, which is the propensity for
12 the public to become confused by that sort of legal
13 technicality.

14 It is perhaps a matter of regret that there may have
15 to be more than one standard of proof. It may already
16 be difficult enough for the public to appreciate that
17 some allegations will be tested in one way, others in
18 another. My submission would be that one is liable to
19 move into the impossible territory when one starts
20 saying, "Well, it will have succeeded on one test but
21 not the other".

22 THE CHAIRMAN: One is not actually saying that, would one?
23 One would simply be saying, "I find that this is more
24 probable than not".

25 MR BOURNE: Sir, I understand that distinction, but the

1 difficulty is, if in pursuing the statutory duty to
2 determine the facts, it is, as a matter of law,
3 necessary to apply the higher standard --

4 THE CHAIRMAN: Why is it, as a matter of law, necessary to
5 apply the higher standard?

6 MR BOURNE: Because if, on a proper analysis of the
7 authorities, fairness demands that criminal or quasi
8 criminal conduct be tested in that way, I submit that is
9 a legal requirement rather than a matter of pure
10 discretion.

11 THE CHAIRMAN: And in an inquiry rather than adversarial
12 litigation?

13 MR BOURNE: My submission, as in the skeleton argument, is
14 that that is the case for a public inquiry because of
15 the nature of that sort of allegation and the likely
16 consequences for those who face them, notwithstanding
17 the fact that, as I have recognised in the skeleton
18 argument, a public inquiry is unique and that the Act
19 does not lay down strictures over and above those which
20 it does.

21 THE CHAIRMAN: Yes. All right.

22 Do I read correctly what you said in paragraph 18 of
23 your skeleton, that you don't see any problem about my
24 making a comment on the evidence -- not necessarily
25 a finding of fact, but making a comment about it?

1 MR BOURNE: In paragraph 18 I say I agree that an inquiry
2 report must have the power to comment on the evidence.

3 As Mr Beer has said, it may be a very important part
4 of the fact-finding process that one sets out that
5 evidence with any comment that rightly goes with that
6 along the way.

7 What I say, however, is that a judgment is finally
8 to be made by the writer of the report in deciding which
9 comments it is fair to include. And there may be cases
10 where, whilst commenting on the evidence in a way that
11 would express a suspicion, it might express the state of
12 mind of the writer of the report, but it might yet be
13 the wrong thing to do if stating it would confuse the
14 public or cause unfairness to the individual which would
15 override the public interest in hearing the comment.

16 THE CHAIRMAN: I can't see how the public can be confused.
17 I can see how the individual may not be so pleased
18 with it.

19 MR BOURNE: The point on which I rely is not so much that
20 the individual would not be pleased with it. As I say,
21 the public interest may very well outweigh that. The
22 danger is when, as others have submitted, if the overall
23 effect is perhaps to increase uncertainty in the form of
24 suspicion instead of dispelling it, that may be the case
25 in which it is better not to voice the suspicion.

1 But I do not say that an inquiry's hands are tied
2 against making that sort of comment; rather that it is
3 a balancing act to be carried out whenever a comment may
4 be appropriate.

5 THE CHAIRMAN: Obviously, if it is to be used, it is to be
6 used sparingly.

7 MR BOURNE: Sir, indeed. Unless I can assist on any other
8 point?

9 THE CHAIRMAN: No, thank you. I am grateful for your
10 submissions.

11 Now, Mr Elias --

12 MR ELIAS: Mr Singh may have a word or two, Sir.

13 THE CHAIRMAN: It is entirely my fault. Mr Singh, I looked
14 at the wrong place and turned to you.

15 Submissions by MR SINGH

16 MR SINGH: Thank you. As you know from our written
17 submissions, we respectively invite you to conclude as
18 you were minded to do in your provisional view of
19 January.

20 THE CHAIRMAN: Yes.

21 MR SINGH: What I would like to do, therefore, now is to
22 respond to some of the points you have heard from other
23 counsel --

24 THE CHAIRMAN: I would be grateful if you would.

25 MR SINGH: -- and also, if I may, briefly make a few

1 supplemental submissions before I conclude.

2 Sir, Mr Beer referred you, as we have done in
3 writing, to section 24 of the Inquiry's Act and read
4 from the first part of it. However, we would wish to
5 emphasise, as we do at paragraph 7 of our written
6 submissions, that one cannot stop there and one has to
7 read the whole of the provision in question.

8 The duty to deliver a report to the minister is not
9 one confined to setting out the facts determined by the
10 Inquiry panel. I will come back to what that may mean
11 in that moment.

12 THE CHAIRMAN: Yes.

13 MR SINGH: But it also includes obviously the
14 recommendations, but importantly this too: you have
15 a power, expressly conferred by Parliament; the report
16 may also contain anything else that the panel considers
17 to be relevant to the terms of reference. That
18 obviously is subject to the duty of fairness, as
19 everyone has accepted.

20 It may be, Sir, as you said a moment ago, that some
21 of the differences between us may be theoretical rather
22 than practical because some of my learned friends -- not
23 all, I know -- accept that you have an entitlement to
24 make certain comments.

25 Whether one analyses that as falling within that

1 express power to contain anything else the panel
2 considers to be relevant or analyses it in some other
3 way as a matter of law probably doesn't matter
4 ultimately, but we would respectfully suggest that your
5 powers are broad enough to include such comment.

6 Sir, then, Mr Dingemans made a few points I would
7 like to respond to. First, he referred to the suggested
8 analogy with the law of inquests. We have set out in
9 paragraphs 19 to 23 of our written submissions why the
10 suggested analogy with inquests is inapt. Can I just
11 emphasise one reason why we have said that now? That is
12 to do with the different legislative context. In the
13 law of inquests there is an express provision, which was
14 in Rule 42 of the Coroners' Rules and now has been
15 elevated to the status of primary legislation because it
16 is to be found in section 10 of the 2009 Act.

17 Essentially, the wording of that is quite materially
18 different from section 2 of the Inquiries Act 2005. An
19 inquest, for example, may not even appear to determine
20 criminal liability.

21 The point was made by Mr Dingemans that there has
22 been the court martial and several acquittals in there.
23 We would respectfully endorse something that you said in
24 the course of argument, at least, and ask rhetorically
25 "So what?" You are not determining criminal liability

1 or indeed civil liability and that is the whole point.

2 THE CHAIRMAN: One knows, to take another analogy, cases
3 where there has been a criminal case and indeed, in some
4 instances, an acquittal or a conviction where civil
5 proceedings have followed and the civil proceedings have
6 reached a different outcome. It is just one of those
7 things.

8 MR SINGH: It is just one of those things.

9 THE CHAIRMAN: It is an entirely different operation.

10 MR SINGH: It is an entirely different operation, governed
11 by different legal rules, procedures and provisions.
12 One obvious and perhaps commonplace example is just to
13 remind yourself that an assault in law can be either
14 a tort or a crime, that the standard of proof which will
15 be applicable to proving whether it occurred will
16 therefore necessarily differ and there is nothing in the
17 fact of an acquittal in a criminal court to prevent, for
18 example, an alleged victim bringing civil proceedings
19 and the judge who applies the civil case will obviously
20 apply the civil standard of proof.

21 We say, as you know, that in an inquiry, talk of
22 civil and criminal standards of proof is inapt anyway
23 because the proceedings are inquisitorial and not
24 adversarial.

25 Finally, in relation to Mr Dingemans' point, he

1 mentioned the Stephen Lawrence Inquiry report. We
2 simply observe that we commend, as others have done to
3 you, the ruling in the Saville Inquiry.

4 THE CHAIRMAN: Lord Saville really followed Dame
5 Janet Smith.

6 MR SINGH: Indeed. So, although, of course, my learned
7 friend is entitled to point to one inquiry as he has
8 done, there are certainly other precedents that we
9 invite you to follow --

10 THE CHAIRMAN: Does that not simply demonstrate that it is
11 for the individual chairman or panel to decide --

12 MR SINGH: It does.

13 THE CHAIRMAN: -- what is the appropriate course in the
14 inquiry that he or she is dealing with?

15 MR SINGH: Sir, we respectfully agree and, if anything, the
16 position has been reinforced by the fact that you now
17 have and operate under the 2005 Act, whereas some of
18 these other inquiries pre-date --

19 THE CHAIRMAN: I think both Shipman and Bloody Sunday were
20 certainly not under the Inquiries Act.

21 MR SINGH: Exactly. Then, Sir, can I make a point in
22 response to Mr Bourne in particular? In our respectful
23 submission, many of the submissions, both in writing and
24 oral, on the civil standard of proof are actually
25 fundamentally wrong in law.

1 The whole point about the recent case law,
2 particularly at the level of the House of Lords and
3 Supreme Court, has been to emphasise that there is only
4 one civil standard --

5 THE CHAIRMAN: Balance of probabilities.

6 MR SINGH: Balance of probabilities. What that then leads
7 to, in some of the cases, as you know, Sir, is the
8 concept of inherent improbability being a factor in
9 weighing up the evidence. The well-known example of the
10 lion in Regent's Park has been given.

11 We have to say that, although you have not yet
12 finished hearing the evidence, you are very
13 substantially through the evidence of this Inquiry. One
14 of the things that, in our respectful submission, cannot
15 be said here is inherently improbable is that soldiers
16 might actually hit people.

17 THE CHAIRMAN: Well, one of the plain facts is that a number
18 of the detainees, if not all of them, have suffered
19 quite substantial injuries.

20 MR SINGH: Indeed, and so we do ask you to bear that in
21 mind, Sir.

22 THE CHAIRMAN: As an exercise in common sense, applying the
23 balance of probabilities, speaking personally and I hope
24 not arrogantly, I don't find that a serious problem.
25 There are a number of factors which every judge has to

1 weigh up when making a finding, whether to the criminal
2 standard or on the balance of probabilities.

3 MR SINGH: Indeed. We would respectfully agree, Sir.

4 Sir, can I then just make a few supplementary
5 submissions?

6 THE CHAIRMAN: Yes.

7 MR SINGH: The first is this: although we, as lawyers and
8 judges, are used to considering evidence, we are not the
9 only people in life who have to do such things. To name
10 just three disciplines, others also have to approach
11 questions of evidence: historians, scientists and
12 medical professionals. There is nothing inherent or
13 commonsensical, with respect, about the legal system's
14 approach to making findings which, for the sake of
15 argument, let's assume has only two standards -- I am
16 going to dispute that in that moment, but let's start
17 with the two standards, the well-known standards of
18 criminal and civil standards.

19 For example, if you are a doctor interested to know
20 what may have caused an illness, and therefore what
21 recommendations you should make to your patient to try
22 to improve his health for the future, you might well be
23 very interested to know that there is a 40 per cent
24 chance, let's say, that your lung cancer was caused by
25 your smoking and you might well advise the patient,

1 therefore, to stop smoking.

2 Now if you look at the way the civil standard in the
3 law would approach that we know, from medical negligence
4 cases and the like, the law takes the view that if there
5 was only a 49 per cent probability that something caused
6 something else, it did not happen. Whereas, if there
7 was a 51 per cent chance that it caused that illness,
8 the law takes the view it definitely did happen. In
9 other words it becomes a certainty; it becomes
10 100 per cent in law.

11 Apply that, if I may say so, to something closer to
12 the facts of this Inquiry. Again entirely
13 hypothetically for the moment, one thing that you may be
14 interested to ask yourself, Sir, is: on a given occasion
15 was there an incident of torture committed?

16 Now you may, at the end of your consideration of the
17 evidence, not be sure; you may even take the view that
18 you are not satisfied on a balance of probabilities --

19 THE CHAIRMAN: Yes.

20 MR SINGH: -- but you may feel that in reporting on these
21 important matters to the Secretary of State, and well
22 within your terms of reference, that there is an
23 important public interest to be served in informing the
24 Secretary of State, let's say, that there is a 40
25 per cent chance that there was an incident of torture.

1 The reason why you might well feel it important to
2 report that is not only because of its inherent public
3 importance, but also because an integral part of your
4 function is the making of recommendations so that
5 lessons can be learnt and incidents avoided in the
6 future. You might well conclude that even if you are
7 not satisfied on a balance of probabilities that the
8 issue is so important that the Secretary of State needs
9 to take urgent steps to improve, for example, training
10 in the Armed Forces and in the Civil Service.

11 Sir, we say that that is not only common sense and
12 in the public interest but it is reinforced, if
13 reinforcement is needed, by legal considerations which
14 we have referred to in our written submission, in
15 particular the requirements of an effective
16 investigation under Article 3 of the European Convention
17 on Human Rights, and also on provisions in the Torture
18 Convention which are essentially about suppressing
19 torture. Of course one of the ways you suppress an evil
20 practice is by learning lessons from the past and making
21 sure that things are done in the future to avoid it ever
22 even being a possibility.

23 Finally, if I may, Sir, this: we submit that there
24 has been more than adequate satisfaction of the
25 requirements of procedural fairness in the methodology

1 that you have adopted at this Inquiry, which has gone
2 beyond the express requirements of the Rules, and indeed
3 can be contrasted with, for example, the law of inquests
4 to which Mr Dingemans referred.

5 In the context of inquests, it can be, for example,
6 that someone like these soldiers could be required to
7 come and give evidence with really no notice and
8 certainly not the kind of detailed notice in the form of
9 criticisms or the pro formas and exact notice of precise
10 documents that might be referred to in questions. And
11 yet the consequences of an inquest verdict can actually
12 in one sense be much more serious for the individual
13 affected: You, as you know, can determine no liability;
14 an inquest at least can return, without assigning
15 individual legal liability, it can determine that in
16 fact someone was killed unlawfully.

17 THE CHAIRMAN: Concentrating on the crime for a moment,
18 there are a lot of submissions which I understand about
19 criminal conduct, but in fact I am not concerned with
20 that. And it may be disgraceful conduct; it may be for
21 instance -- one doesn't know -- if I may find an act
22 which is an act of violence which could come into
23 innumerable different categories of criminal conduct but
24 I am not concerned with that in the slightest.

25 MR SINGH: No, you simply are not, Sir, and we respectfully

1 invite you to maintain that approach in your approach to
2 this ruling.

3 Sir, unless I can assist you further?

4 THE CHAIRMAN: Are you saying then that I am entitled to say
5 of any given fact -- provided I provide my reasons and
6 set out the standard that I adopt -- I can achieve or
7 arrive at a finding whether it amounts to something that
8 somebody would infer as a criminal offence, either on
9 a balance of probabilities or I am sure, whatever may be
10 the standard that I find it proved?

11 MR SINGH: Indeed, and at least in law we would submit that
12 it would be open to you to state a lower standard than
13 that provided you have acted fairly and provided you say
14 that's what you are applying --

15 THE CHAIRMAN: To say "I can't rule out" or "I am
16 suspicious" or whatever?

17 MR SINGH: That's fine. Like the doctor who says "I am not
18 sure or even satisfied on a 51 per cent chance that this
19 is the cause ..."

20 THE CHAIRMAN: That you will not suffer severe consequences
21 from what I am going to do to you, yes.

22 MR SINGH: That's why I respectfully suggest to you, Sir,
23 that approaches to findings of fact and having evidence
24 to base your conclusions of fact is not inherently
25 something that has to be done in the sort of

1 strait-jacketed approach that sometimes the law has to.

2 The reason why the law takes that approach is no
3 doubt because at the end of the day in litigation there
4 is going to be legal liability established --

5 THE CHAIRMAN: There has to be a judgment or a finding of a
6 charge proved, which is not what I am about.

7 MR SINGH: Indeed. Sir, unless I can assist further?

8 THE CHAIRMAN: No, I am very grateful to you.

9 Mr Elias, do you want to add anything?

10 Further submissions by MR ELIAS

11 MR ELIAS: Sir, I think everything we might have wanted to
12 say at this stage has effectively been said.

13 We have come full circle, in our submission, perhaps
14 to the consideration of fairness echoed on all sides.
15 The determinations that you will make, whether by way of
16 comment or by way of finding, will no doubt be governed
17 by that and we will submit, as we said at the outset,
18 that that is likely to overcome most if not all of the
19 problems that may be faced.

20 I make only one other comment and that is this -- it
21 hasn't been picked up as it were by anyone else -- but
22 Mr Evans did suggest, and it is indeed in the Treasury
23 Solicitor's submissions, that there is a practical
24 difficulty for them unless there is certainty at the
25 outset as to how they frame their submissions.

1 As a matter of practicality -- and indeed as
2 a matter of fairness -- we cannot see why that should be
3 the case as no doubt the case will be put, as it were,
4 at its highest in any event.

5 THE CHAIRMAN: I rather thought that the same comment might
6 be made of Mr England's submission about how he
7 approached cross-examination and the like. I can't see
8 how it makes any difference.

9 MR ELIAS: No. Sir, that is all that we would wish to say.

10 THE CHAIRMAN: I am very grateful to everybody for their
11 submissions. I am not going to give my decision now.
12 I will do it as soon as I can.

13 At the moment I can't even tell you when. Quite
14 apart from anything else, my clerk who types everything
15 for me is not very well and I am not very good at
16 typing. So that may cause a slight delay -- or
17 a slightly longer delay -- but I will let you know just
18 as soon as I can. I might even do so on the basis of
19 telling you what my decision is and the reasons can come
20 later because I know you all want to have it before you
21 approach your submissions.

22 MR ELIAS: Sir, I am grateful.

23 The witnesses to be called tomorrow are, in this
24 order, Messrs Le Fevre, S016 and Sian Ellis-Davies.

25 THE CHAIRMAN: Thank you very much.

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