

**IN THE BAHA MOUSA INQUIRY**

**Before Sir William Gage, Chairman.**

**Re: MAJOR MICHAEL PEEBLES**

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**SUBMISSIONS**

ON BEHALF OF MAJOR PEEBLES IN REPLY TO THOSE MADE ON BEHALF OF  
THE VICTIMS IN RESPECT OF IMMUNITY FROM ADMINISTRATIVE  
ACTION

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This brief note is in response to the submissions dated 14<sup>th</sup> November 2008, made on behalf of the injured parties (prepared by Rabinder Singh QC and Tessa Hetherington).

It is submitted that without a proper undertaking in respect of Major Peebles against disciplinary action and Army General Administration Instruction Chapter 67 (AGAi 67), the Inquiry will be less effective and further, will be unfair.

It was the indication given by the Deputy Judge Advocate, Sir Stuart McKinnon, at the end of the Court Martial (*R v Payne and others* held at Bulford , from September 2006) that in his view, the determination of these events had been hampered by a wall of silence, which led to the setting up of this Inquiry. He implied, at the very least, that a number of soldiers had failed to give a complete account of what had happened at the temporary detention facility in Basra in September 2003.

It follows that one of the specific terms of the inquiry is “to investigate and report on the circumstances surrounding the death of Baha Mousa and the treatment of those detained with him.”

It is obvious that those circumstances will mainly be established on the basis of the evidence of the soldiers and officers actually present at the detention centre. Major Peebles is in a uniquely pivotal position. Not only will his evidence deal with the chain of command, and the instructions he received on his induction into the post of BGIRO some three weeks before the incident, but he will be required to assist with the most serious issues, specifically the events directly surrounding the death of Baha Mousa. He was the most senior officer on duty near to the TDF for a significant period of time, fulfilling his role of determining whether the arrestees should be released, or forwarded on to the TIF .

Major Peebles has continued his career as a serving officer – hence, the impact of any adverse findings against him by the Inquiry on his career, his future prospects and ultimate pension, may be very significant. Major Peebles has already undergone the burden of a 3 year wait during the investigation, and a full court martial trial which lasted six months.

By the time the Inquiry was announced, other senior officers had left the army, with their pension and other rights unaffected. One of them, Colonel Mendonca, in a widely broadcast television interview in September 2007, sought to exculpate himself and to place the responsibility for the incident on a ‘major’ - by whom he meant to refer to Major Peebles.

Major Peebles is in the best possible position to assist the inquiry, and is anxious to do so. But it would be seriously unfair if he now had to give evidence whilst under threat of administrative action which crucially, could affect his future. It would not be helpful to the Inquiry if he were to have considerations of self-incrimination of any sort at the back of his mind. He in particular, has not enjoyed the “virtual impunity”, argued on behalf of the victims: he has been prosecuted at Court Martial and been acquitted - and not by the Deputy Judge Advocate on a submission of no case to answer, but by the considered verdict of the Panel.

Major Peebles still faces difficulties: it is argued on behalf of all of the seven service men and officers who have faced trial, that any undertaking in respect of arrest and/or proceedings is of limited effect, since it may not provide immunity from criminal proceedings in another jurisdiction, or in the International Court. That argument is wholly adopted and emphasised by those specifically acting on behalf of Major Peebles.

In no other public inquiry in recent years, have any of the core participants already faced criminal proceedings: although it was possible in the Bloody Sunday Inquiry that some of the soldiers involved might have taken part in an unlawful killing, not one of them had faced a trial, let alone been acquitted of the criminality alleged.

It may or may not be appropriate for other officers and soldiers (the 36 represented by the Treasury Solicitor) who have *not* faced criminal charges, to seek immunity from criminal proceedings and from administrative action: it will be for the Chairman to decide whether so to recommend. But Major Peebles' position is very different and his request for immunity is much more pressing: he ought not now to be facing, 5 years after the event, and after the investigation and criminal trial processes have been completed, a double jeopardy in the name of the "accountability role of the investigation" as so described on behalf of the victims.

In summary, for the reasons set out, it is submitted that without the appropriate undertaking on administrative action, the core participants as a whole, and more particularly, Major Peebles will be prejudiced and to that extent, the effectiveness of the inquiry may be reduced.

**LORD THOMAS of GRESFORD QC**  
**DINGLE CLARK**

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