

THE BAHA MOUSA PUBLIC INQUIRY

VICTIMS’ RESPONSE: HILL DICKINSON CLIENTS’ SUBMISSIONS

Introduction

1. This document sets out the response of the victims to the closing submissions made on behalf of the witnesses represented by Hill Dickinson (‘the Hill Dickinson witnesses’). It essentially tracks the order of those submissions. The victims cross-refer to their own opening and closing submissions as “VOS” and “VCS” respectively, followed by the relevant Part and paragraph number(s).
2. At two points during their submissions, the Hill Dickinson witnesses assert that the Inquiry cannot and should not make a negative finding about a witness in relation to a particular matter because the witness was not asked about it in his or her oral evidence.¹ The victims dispute this proposition. This is a public inquiry to which the normal rules of evidence for civil proceedings do not apply. In the interests of the efficient conduct of the Inquiry the hearing of oral evidence has been subject to strict time limits, particularly so as regards questioning by Core Participants. In these circumstances it cannot be right that a negative finding on an issue is debarred because it has not been canvassed in oral evidence with the relevant witness. The fact that the witness has not given oral evidence on the matter is a relevant factor in determining what conclusions may be drawn from the evidence as a whole, but no more than that. In inquiry proceedings, the notification of potential criticisms (or “Salmon letter” procedure) replaces the usual requirement in ordinary litigation that a point must be put to a witness before a criticism can be made of them.

¹ SUB000430 [618], SUB000431 [623].

Clifton – advice re hooding and stress positions

3. The victims' main submissions in relation to this issue can be found at VCS Pt V [85-89] and VCS Pt V [125-147].

Background to Op Salerno

4. The victims' main submissions in relation to this issue can be found at VCS Pt I [16-21] and VCS Pt II [31-50].

Events at the Hotel

5. The victims' main submissions in relation to this issue can be found at VCS Pt II [52-90]. In particular, the presence of weapons at the hotel is dealt with at VOS Pt I [17-19], VOS Pt VI [318-333] and VCS Pt II [34-36]. The holding of the detainees in the toilets at the hotel is dealt with at VCS Pt II [70-80].
6. Given that so much else in their account is otherwise corroborated, it is difficult to understand why the allegation of events in the toilets would have been made up. It was referred to in the initial SIB statements of both D001 and Ahmad Matairi, they having had little opportunity to discuss their experiences prior to this.² Yet more compellingly, the incident is also referred to by Kifah Matairi in his SIB statement made whilst he was still in hospital and separated from the other detainees.³ The fact that others did not voice this allegation in their initial statements is explicable for multiple reasons, including shame, ongoing disorientation or focus upon other features of the abuse. The very obvious impact on D002 is clear from the fact that he has sought to pursue his complaint about the event at various junctures over the years even though he did not mention it in the first SIB statement.⁴ The obvious question regarding fabrication with relation to the toilet incident is, why bother emphasising an event like this, if it was not a real and meaningful part of the abuse to those who endured it? The suspicious and inconsistent

² D001 MOD000012, Ahmad Matairi MOD000033. As to the opportunities to talk in 'Camp Silent', see VCS Pt II [8].

³ MOD000052

⁴ MOD0000748, PIL000644-645, MOD012050, CM 14/16/5 – 17/1, PIL000154 [14] and BMI01952 [17].

accounts of the soldiers regarding the toilet incident add weight to the detainees' allegations.

Return to BG Main

7. The victims' submissions in relation to the conversation between Peebles and Crawford, overheard by Aktash, are at VCS Pt II [79] and [114]. The victims' interpretation of the evidence of Pte Ellis is that his account probably relates to the taking of D005 and D006 from Camp Stephen to BG Main – see VCS Pt II [114].

Arrival at BG Main

8. The victims' main submissions in relation to this issue are at VCS Pt II [112-170]. They deal with the conduct of the escorting guards from multiple 10A at VCS Pt II [152]. Their main submissions on the conduct of the medics in relation to any medical checks on the first day are at VCS Pt II [361-364]. In relation to the treatment of D006, whilst it is correct that D007 stated that he was not aware of him being beaten,⁵ he explains in his Inquiry witness statement that he was hooded, crying out in pain himself, and concerned with his own suffering and pain.⁶
9. The victims address the tactical questioning of the detainees at VCS Pt II [207-218].

D005 held in the toilet

10. The victims' main submissions in relation to this issue are at VCS Pt II [249-258]. The suggestion that D005 was held in the toilet during the period when Fallon and Crowcroft were on guard and not when the Rodgers' multiple were on guard does not withstand scrutiny.⁷ Mackenzie recalled D005 being in the middle room during his second stag (0400-0600), having not been in the TDF during his first stag (2200 -2400).⁸ Cooper also recalled D005 as being in the middle room during his second stag but not his first,⁹ and

⁵ SUB000337 [218-221]

⁶ BMI02086 [41]

⁷ SUB000341 [239-241].

⁸ MOD000115-6

⁹ CM 62/23/22ff

has suggested that D005 was placed in the middle room during one of his stags.¹⁰ Reader himself recalled D005 ('Boy') being in the middle room at the start of his 2400 stag, and that the 'forced walk' of D005 involved taking him out of the middle room.¹¹ He could certainly recall a point after his arrival when the order was made to put the boy in the middle room.¹² Appleby also recalls moving the boy from the middle room for his forced walk.¹³ More generally, it is clear that D005 was only moved into that middle room as a result of the tactical questioners perceiving him as someone who was about to break. That perception would not have arisen while Fallon and Crowcroft were still doing their stag.

Smith's Return, Order to Remove Hoods and Role/Responsibility

11. The victims' submissions in relation to his purported order that the detainees' hoods and cuffs be removed are at VCS Pt II [245-7]. Submissions in relation to his general absence are made at VCS Pt II [289-290].

D005 held next to Generator

12. The victims' main submissions in relation to the holding of D005 next to the generator are at VCS Pt II [219-235].

Rodgers Multiple Return to Guard

13. The victims' main submissions as to the events at this handover are at VCS Pt II [178-193]. Insofar as it is suggested that the guards were not in a position to challenge orders of Payne (whether explicit or implicit) to punch and kick detainees,¹⁴ the victims maintain that these were manifestly unlawful orders and should not have been followed. It is not the case (as asserted) that no witness has named Mackenzie or Reader as perpetrating any act of violence towards the detainees.¹⁵ Cooper expressly named Reader as

¹⁰ MOD000103, MOD001324

¹¹ MOD000204

¹² BMI 28/189/1-18.

¹³ MOD000175.

¹⁴ SUB000355 [291-2].

¹⁵ SUB000360 [316].

involved in his oral evidence.¹⁶ In any event, it is open to the Inquiry to draw conclusions as a matter of inference from the evidence as a whole, which points towards a mass beating at the time of the handover on Sunday evening. In these circumstances the limited concessions offered by Reader and Mackenzie as to their involvement in violence cannot be determinative (perhaps particularly so in the case of Mackenzie given the sentiments expressed in his diary regarding violence towards Iraqi civilians).

14. Mackenzie was clearly present on occasions when violence was being committed on these detainees. In this respect, Kifah Matairi actually recalled the name 'Mackenzie' being called out while his abuse was going on.¹⁷
15. The submission is made that the Inquiry does not need to decide and should not decide whether Mackenzie is 'Soldier A' in the Mirror interview.¹⁸ The victims disagree. It is of significance that Mackenzie was one of the soldiers in the interview because (1) it would provide further corroboration of a culture of violence inside Anzio Company (at least) prior to Op Salerno and (2) it further corroborates features of the abuse in this incident, in particular detainees being hit with an attempt not to leave marks and detainees being urinated upon and being tricked into drinking urine. The victims deal with the content of the Mirror interview transcript and their submissions as to why Mackenzie is Soldier A at VCS Pt V [227-229].

Arrival of D007

16. The victims' main submissions regarding the particular treatment of D007 are at VCS Pt II [244]. It is submitted that when read in context, D007 did not assert in oral evidence that he had been strangled for 20-30 minutes,¹⁹ but that this happened several times within a period of 30 minutes to 1 hour.²⁰ The description D007 gives of being lifted up by his mouth is one he gave in his first statement to the SIB.²¹ Payne can be seen lifting a detainee (D004) up by his neck in the TDF video. Contrary to the submission made by

¹⁶ BMI 29/22/3-9.

¹⁷ MOD000055.

¹⁸ SUB000358 [309]

¹⁹ SUB000362 [326]

²⁰ BMI 13/31/6-22.

²¹ MOD000048

the HD witnesses,²² D007 also complained of being beaten with his own shoe in his first statement.²³ The photos of D007's injuries at MOD021842-47 show extensive bruising to his right lower back which must have been caused by sustained and severe beating. In addition, there are signs of linear bruising consistent with having been struck with a bar (MOD021844). The photographs at MOD0021845-7 may well show bruising to his right thigh (and he complained of this to the SIB).²⁴ The photographs of D007 were taken on 17 September 2003, and only upon D007 showing specific injuries to the SIB.²⁵ He was not examined by Dr Hill (who required photographs of further injuries to a number of the detainees he did examine).²⁶

Sleep deprivation, metal bar, disorientation of D005

17. The victims' submissions in relation to the involvement of Smulski in these events can be found at VCS Pt II [238]. The more general submissions in relation to the disorientation of D005 can be found at VCS Pt II [253].

Petrol and Water Incident

18. The victims' main submissions about this matter can be found at VCS Pt II [256-258].

Potter and Lamb Conversation

19. The victims regard the evidence of Potter and Lamb as reliable confirmation that detainees were placed at the generator on other occasions apart from the night of 14 September. This is corroborated by Seeds who saw detainees there on other occasions. Lighten regarded Potter and Lamb as reliable reporters on this subject.

Livesey's order to re-hood

20. The victims' main submissions in relation to this are at VCS Pt II [245-7].

²² SUB000363 [327]

²³ MOD000048. See also Sgt Butlin's notes from 17 Sept 2003 at MOD001080 and MOD001082a.

²⁴ See also MOD000049.

²⁵ MOD000517, MOD001083a.

²⁶ MOD000517.

Assault on D002

21. The victims' main submissions in relation to this incident are at VCS Pt II [248]. Even if the precise injuries caused by Livesey's assault on D002 cannot be determined,²⁷ it appears that *some* injury was caused, as seen by Reader immediately on D002's return from TQ.²⁸ Reader told the Inquiry that an account was given by the soldier who returned D002 to the effect that he had fallen over that he regarded at the time as self-evidently false.²⁹ Cooper recalls D002 limping, moaning and unable to walk properly when he was returned to the TDF.³⁰ Livesey accepts hitting D002 twice on the right side of his face (in the eyebrow area), "relatively hard".³¹ It is likely that he caused at least some of the injuries suffered by D002 in this area of his face. As for his trousers falling down, D002 did mention this in his account to an Iraqi interviewer,³² and the event was also seen by Pte Aktash.³³

Food & Water

22. The victims' main submissions in relation to this matter are at VOS Pt II [74] and VCS Pt II [399].

Medical attention to D006

23. The victims' main submissions in relation to this matter are at VCS Pt II [259] and [365-368]. Redfeam's account of a medic not interested in the other detainees may well reflect the discomfort of Cpl Winstanley at being involved in any way with what was happening at the TDF.

²⁷ SUB000381 [403].

²⁸ Reader BMI 28/129/20 – 28 and 190/5, MOD000204.

²⁹ BMI 28/190/5.

³⁰ Cooper BMI04366 [129].

³¹ BMI 39/40/20 – 39/44/11.

³² PLT000649 ("Even my tracksuit bottoms was down (sic) and my backside exposed").

³³ BMI03484 [48], BMI 16/30/3-9.

Injuries

24. The victims' main submissions as to the treatment and injuries of D005 can be found at VCS Pt II [249-258] and [414]. The main submissions regarding D006's treatment and injuries can be found at VCS Pt II [259] and [415]. General points are made regarding the victims' accounts at VCS Pt II [5-12] and their Opening Submissions [267-269]
25. The victims address the injuries to the other detainees at VCS Pt II [405-416].

Change of guard at 1.00/1.30pm

26. The victims' submissions in relation to Richards' account and the events of the Monday morning are at VCS Pt II [266-272].

Opening hours of TIF/14 hour deadline

27. In relation to the Op Salerno detention period, this issue is dealt with at VCS Pt II [273-279]. More generally, it is addressed at VCS Pt V [76-82]. Submissions on the failings of the lawyers at Brigade and Division (including Clifton) appear at VCS Pt V [21-35] and [72-93].

Visit to the TDF by the Riley Group

28. The victims address this visit at VCS Pt II [286-288]. Particular submissions in relation to CSgt Huxley, from the Stores, are made at VCS Pt II [156-159]. The account of Pte Aktash is dealt with at VCS Pt II [268].

Smith's return to BG Main

29. The victims' submissions as to the absence of Smith are at VCS Pt II [289-290]. Assertions of his diligence prove too much – a truly diligent Provost Sergeant, having the concerns Smith says he had, would have visited the TDF at every opportunity. Smith's concerns for self-preservation meant that he stayed away.

Moments before Baha Mousa’s Death

30. The victims’ submissions on this period are at VCS Pt II [291-330].

Attendance of the Medics

31. The victims’ main submissions on the actions of the medics after the death are at VCS Pt II [369-377]. As to the expectations of Keilloh’s conduct see VCS Pt III [41].

Tuesday 16 September 2003

32. The victims’ main submissions on the third day of detention can be found at VCS Pt II [382-398]. The arrival at the JFIT is addressed at VCS Pt II [400-402]. It seems entirely plausible that a conversation about the fabrication of a ‘log book’ did take place after the death, and related to the information provided to Major Fenton for his report on 18 September 2003, which detailed the timing of feeding, medical inspections and the like.

Major Radbourne

33. The victims’ main submissions regarding Major Radbourne are at VCS Pt V [67] and [108-109], but should be read generally with the submissions on the Brigade G2 witnesses at Pt V [104-124].

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