

Thursday, 3 June 2010

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(10.00 am)

THE CHAIRMAN: Good morning, ladies and gentlemen. Good morning, Mr Elias.

MR ELIAS: Sir, good morning. May I call Brian Burr ridge, Air Marshal Burr ridge, please?

THE CHAIRMAN: Air Marshal, please stand up and I will ask that you take the oath.

BRIAN KEVIN BURRIDGE (sworn)

THE CHAIRMAN: Thank you very much. If you make yourself as comfortable as you reasonably can in the witness-box and if I can ask you to speak into the microphone, although, having heard you take the oath, I rather suspect that you will not need the microphone, but if you do, we will be better able to hear you.

A. Yes, Sir.

Questions by MR ELIAS

MR ELIAS: Would you give the Inquiry your full name, please?

A. Brian Kevin Burr ridge.

Q. If you look to a folder to your right, in which I hope you will find a copy of your statement to this Inquiry, and go to the last page of it, please, which is our BMI05335, and would you confirm, please, that above the date of 22 October of last year there is your signature?

1 A. That is my signature.

2 Q. Thank you. When you signed your statement, were you
3 attesting to the Inquiry that the contents of it were
4 true to the best of your knowledge and belief?

5 A. That is correct.

6 Q. Thank you. I am not going to take you to all parts of
7 your statement by any means, but to a relatively few
8 aspects of matters where we think you may be able to
9 assist the Inquiry a little further.

10 May I begin just by asking you a little about your
11 service career history? You tell us that you joined the
12 RAF in 1967.

13 A. That is correct.

14 Q. I think you left the RAF in January 2006.

15 A. That is also correct.

16 Q. When you left the RAF in January 2006, you were at the
17 rank of air marshal?

18 A. Air chief marshal four star.

19 Q. At that stage four star. You were, during your service
20 in Iraq, air marshal three star?

21 A. That is correct.

22 Q. Thank you. If I may, as it were, given the context of
23 the matters that the Inquiry is concerned with, I will
24 continue and call you "air chief marshal", if I may,
25 albeit you left the services in 2006.

1 Just looking at your career in a little more detail,
2 you served in the Ministry of Defence, you tell us,
3 between 1992 and 1997, initially as deputy director of
4 force doctrine, then director of force development, then
5 principal staff officer to the chief of the defence
6 staff.

7 A. That is correct.

8 Q. Moving on your to rank and role in Iraq, you were
9 air marshal, as you told us at that time, and you tell
10 us in your statement that you formally took operational
11 control at midnight on 20 February 2003 and you
12 relinquished control at midnight on 8 May 2003.

13 A. That is correct.

14 Q. I will come back just to have a look at that role with
15 you, if I may, in a moment or two.

16 Up to the time of that deployment, Air Chief
17 Marshal, may I just ask you a little about your training
18 and perhaps your understanding, in so far as you may
19 have had any, of certain of the techniques with which
20 this Inquiry has been, in part anyway, concerned?

21 You, as you say in your statement, were an air crew
22 officer and therefore presumably the training that you
23 received would not have gone into such things as the
24 detailed physical handling of prisoners --

25 A. That is correct.

1 Q. -- upon the basis you were unlikely to take them.

2 A. Absolutely.

3 Q. So does it follow that you would not, in your career,
4 have received training in those aspects of matters,
5 physical handling of prisoners?

6 A. Beyond that which is contained within the
7 Geneva Conventions and beyond that which I was
8 responsible for teaching in terms of the law of armed
9 conflict when I was commandant of the Staff College, but
10 in terms of the detail of prisoner of war handling or
11 administration, that is correct.

12 Q. And your teaching and indeed your own training in the
13 law of armed conflict would have given you the basic
14 grounding, would it, that prisoners should be treated
15 humanely and in accordance with, for example, the
16 Geneva Conventions?

17 A. Absolutely right.

18 Q. Would it be right to say in your case, as we have heard
19 from a number of infantry soldiers, that that would have
20 been a basic grounding of your training?

21 A. I'm sorry, would you repeat the question? I lost your
22 voice.

23 Q. Forgive me. Would it be right, notwithstanding that you
24 were in the air force, that it would have been a basic
25 grounding of your training that prisoners should be

1 treated humanely and according to the
2 Geneva Conventions?

3 A. That is absolutely correct.

4 Q. Just one aspect on your training that I do want to ask
5 you in a little more detail about and that is what is
6 sometimes called "conduct after capture training". You
7 received such training?

8 A. Yes, I did.

9 Q. I don't want to go into the detail of it because you set
10 it out in your statement but, as you tell us, it was
11 plainly indicated that that conduct after capture
12 training was for the purpose of indicating to you what
13 might happen to you if you were taken by a rather less
14 scrupulous enemy.

15 A. It was by way of psychological preparation for
16 resistance to interrogation.

17 Q. You say, I think, that you had this training
18 particularly in the 1970s and 1980s.

19 A. That's right.

20 Q. When you received training of that kind, were techniques
21 used on you which went beyond what would have been
22 permitted by the law of armed conflict or the
23 Geneva Convention?

24 A. In terms of humane treatment and the Geneva Convention,
25 yes, techniques were used on me.

1 Q. Were you, in fact, subjected to hooding?

2 A. No, but blindfolding.

3 Q. When you were so trained in relation to conduct after
4 capture, was any distinction expressly drawn that these
5 techniques were techniques that must not be used against
6 enemy personnel?

7 A. Absolutely they were.

8 Q. Now may I come back to Iraq, please, and your rank and
9 role there? If we could have on the screen paragraph 7
10 of your witness statement at BMI05321 and over the page,
11 onto the next page, we can see you set out at (a) to (i)
12 the details of what your role involved. Can we go back
13 to the previous page? Thank you.

14 Your role, you tell us, was that of national
15 contingent commander, stationed in Qatar, with your
16 headquarters alongside that of US Central Command, and
17 you exercised operational control, you tell us, over the
18 UK joint force in Iraq.

19 You then set out, as I say at (a) to (i) -- and
20 I don't read it -- the details of the tasks, as it were,
21 that were yours. At paragraph 8, you say this:

22 "In the highest strategic terms, my role was to
23 ensure that the UK's objectives for the future of Iraq
24 were met ... the required military strategic end-state
25 was to separate the regime from its people and

1 vice versa. The population ... had been subjected to
2 30 years of intimidation and violence ..."

3 As you say in this paragraph:

4 "... we had to demonstrate that the coalition were
5 not adherents of the same behaviour."

6 You go to say in your statement, as I understand it,
7 that the focus of your work -- because, as we have seen,
8 you weren't in Iraq very long -- was on what other
9 witnesses have referred to as "targeting".

10 A. One of the focuses of my work.

11 Q. Yes. Can we just look at paragraph 15, please? You say
12 here:

13 "The period from my deployment ... until the
14 commencement of the war was dominated by: my continuous
15 engagement in coalition planning; the need to generate
16 the readiness of my headquarters; the direction of the
17 reception, integration and onward movement of UK forces;
18 maintaining relationships with regional governments;
19 refining our media management processes; and maintaining
20 a continuous discourse with PJHQ and London."

21 You go on to say that it was a period of high
22 activity, 18 hours a day and so on, and the war-fighting
23 phase, as you remind us, began on 20 March until the
24 disbandment of the NCC on 8 May.

25 "... most of this activity continued but moved up

1 a gear and was overlaid by command activity associated
2 with war fighting at high levels of manoeuvre, tempo and
3 intensity. The prime focus [you say] was on achieving
4 our end-state through the application of military
5 violence whilst, firstly, adhering rigidly to the LOAC
6 and, secondly, creating minimum impact on the people and
7 infrastructure of Iraq. In consequence, I spent much
8 time on target clearance."

9 Putting it shortly, that involved, did it, assessing
10 military targets and doing damage to them which did not
11 produce collateral damage which might have, as it were,
12 inflamed the local population?

13 A. In essence, that is correct.

14 Q. When in Iraq, did you actually, at any time, see
15 prisoners taken by British forces?

16 A. No, I did not.

17 Q. Did you at any time learn or know that prisoners were
18 hooded when taken by British forces?

19 A. Yes, I did.

20 Q. Was that in relation to what I will generally call the
21 "ICRC complaint"?

22 A. Yes, it was.

23 Q. Was that the only occasion that you became aware of the
24 issue?

25 A. Yes, indeed.

1 Q. I will come back to that, if I may, in a moment.
2 Forgive me for putting it this way, but, given your
3 background, did you have knowledge, when you were in
4 Iraq, in the role that you were in, as to, if I could
5 put it broadly, the rights and wrongs of hooding?
6 A. In as much I had an understanding of both the
7 Geneva Conventions and the extant doctrine, joint
8 doctrine, on prisoner of war handling, JWP 1-10, which
9 stresses humanity, which stresses the need to avoid
10 inhumane treatment, then from the point of view of the
11 principles involved, yes.
12 Q. In terms of the detailed practice, it would be fair to
13 say perhaps "no", would it?
14 A. Only in as much I had been on the receiving end during
15 my training so I knew the spectrum that could happen.
16 Q. But never on the receiving end of hooding?
17 A. Not of hooding.
18 Q. So if you can remember, what was your understanding in
19 2003 -- let's say just before your deployment to Iraq --
20 about whether hoods could or could not be used by
21 soldiers on enemy prisoners?
22 A. My understanding was twofold. One is that the use of
23 hoods were not legally permissible under the law of
24 armed conflict, so that's the legal aspect. The test of
25 appropriateness was the use of hooding would be seen --

1 depending on the circumstances could be seen -- as in
2 conflict with our intent in terms of the way in which we
3 wanted to portray ourselves to the people of Iraq.

4 Q. It wasn't going to win the hearts and minds?

5 A. Correct.

6 Q. Can I just pick you up, please, on the first point? You
7 say that hooding, as you understood it, was not legally
8 permissible.

9 A. My view was that hooding would, in most circumstances,
10 be regarded as inhumane.

11 Q. And if inhumane, unlawful and therefore should not be
12 used?

13 A. Correct.

14 Q. And in most circumstances means what?

15 A. That there is something of a grey area at the left end
16 of the spectrum about the security requirements for
17 prisoners in terms of during their initial transport to
18 the prisoner of war clearing facility. The legal
19 discussion I now know went on for some time over that
20 point but that actually is and was insignificant to me
21 because I could have clarified the legal grey area by
22 saying "Actually, this is inappropriate in our
23 circumstances", in other words, in your words, did not
24 contribute to capturing the hearts and minds of the
25 Iraqi people.

1 Q. It may be difficult, Air Chief Marshal, and say if you
2 feel you can't do it, but in 2003 -- you tell us that
3 you have read now of the legal dispute which I am going
4 to come to in just a few minutes -- but in 2003 was that
5 the view that you held, that hooding would be
6 fundamentally unlawful, but that there was this grey
7 area, as you call it?

8 A. Before the combat phase started, hooding as an issue was
9 not on my radar screen. It was not something that
10 I anticipated being confronted with. But the moment it
11 arose, my views then were the same as they are now.

12 Q. Just to be quite clear about it then, your views then
13 would have been that within what you call the "grey
14 area" there may be legitimate reason for using hoods?

15 A. I would find it very hard to find a legitimate reason.

16 Q. Would part of the reason for that be that, for example,
17 one might use blindfolds or blacked-out goggles just as
18 effectively?

19 A. Correct, and I should qualify my previous answer. It
20 may be a grey area to lawyers; it would not be a grey
21 area to commanders who were aware of the strategic
22 intent of our campaign in Iraq.

23 Q. Why, in your view, would hoods be inhumane where, for
24 example, blindfolds or goggles may be acceptable?

25 A. It seems to me that hooding does more in sensory

1 deprivation terms than does a blindfold. It muffles
2 hearing, it undoubtedly increases the temperature close
3 to the skin, so in those aspects it is different than
4 blindfolding.

5 Q. In 2003, would you have considered that hooding may
6 itself be detrimental to health and/or risk to life?

7 A. In certain circumstances, absolutely, given the ambient
8 temperatures in Iraq.

9 Q. You refer in your statement -- and I will take you to it
10 if I may -- to, I think, two directives issued by you
11 which, as I think you are telling us in the statement,
12 begin anyway to set the tone for what you expected.

13 Could we have a look, please, at MOD043344, please?

14 This is the national contingent commander's
15 directive for Operation Telic, issued by you, as we see
16 at the top of the page. I just want to take you,
17 please, through four pages to MOD043351, paragraph 31.
18 Under the heading "Prisoners of war and detainees", you
19 say this:

20 "You have a legal liability to acquaint yourself
21 with the Geneva Conventions ..."

22 This was being issued to commanders; yes?

23 A. I'm sorry?

24 Q. This was being issued to commanders?

25 A. The directive?

1 Q. Yes.

2 A. Indeed.

3 Q. "You have a legal liability to acquaint yourself with
4 the Geneva Conventions and the first additional protocol
5 in relation to the taking and handling of prisoners of
6 war (your legal adviser or NCHQ legal adviser will
7 provide detailed advice) and you are responsible for
8 ensuring that all members of UK contingents and
9 components involved in prisoner of war and detainee
10 handling comply with the Third Geneva Convention and
11 guided by the provisions of JWP 1-10 'Prisoner of war
12 handling'. Further guidance is contained within
13 Section 10 of the TID."

14 You also refer us in your statement, at MOD043647,
15 to -- I think particularly paragraph 2 did you have in
16 mind?

17 "The method of prisoner of war handling is mandated
18 by the Geneva Convention and regulated by the
19 International Commission for the Red Cross ..."

20 What was your understanding of the way in which the
21 method of prisoner of war handling was regulated by the
22 ICRC?

23 A. In terms of they act as the protecting power and were
24 nominated so by the UK, and they -- that accords them
25 certain responsibilities and indeed access.

1 Q. You refer at paragraph 23 of your statement to the
2 Inquiry -- can we have that on the screen, please, at
3 BMI05331? You say this:

4 "As far as I was concerned, the direction given, in
5 particular the detailed information in the JWP 1-10,
6 constituted sufficient guidance for the commanders at
7 divisional level (and their staff) as to how prisoners
8 of war were to be treated. In my view, they would know
9 from this material that the use of any of the five
10 techniques prior to interrogation was unacceptable."

11 Did you appreciate, Air Chief Marshal, that within
12 JWP 1-10 there was no specific direction, as it were,
13 banning the use of the five techniques?

14 A. Absolutely.

15 Q. Did you know that there was no direction banning the use
16 of hoods?

17 A. I understood there was no specific direction that
18 mentioned hooding.

19 Q. So your comment in paragraph 23, that JWP 1-10
20 constituted sufficient guidance, is premised, is it,
21 upon the fact that that doctrine -- that document --
22 indicates the need for humane treatment and action in
23 accordance with international law?

24 A. And it goes on to elaborate slightly in terms of
25 coercion, harsh treatment, et cetera.

1 Q. Yes. Because it wasn't an issue, as you put it, on your
2 radar, presumably the absence of any specific guidance
3 on physical handling of prisoners, if you like, or the
4 absence of any specific ban on hooding or the use of
5 five techniques wasn't something that you ever
6 considered?

7 A. It wasn't something -- sorry, I lost your voice.

8 Q. That you ever considered specifically.

9 A. I had not considered that it would be an issue in this
10 campaign and, in giving direction in that way to
11 divisional and brigade commanders, I could anticipate
12 that, with their knowledge of the single service,
13 ie army doctrine and training, they could then turn that
14 direction into sufficiently granular orders and guidance
15 right down to the most detailed tactical level.

16 Q. So you would have expected, would you, those who
17 received your instruction, as it were -- your
18 directive -- to have taken down to -- you say the most
19 granular level -- but down to the troops on the ground,
20 what, instruction that, for example, hoods should not be
21 used because they were inhumane?

22 A. If at the time that was an aspect of army training and
23 doctrine, I would expect them to contextualise that
24 training according to my directive, not only the
25 references to JWP 1-10, but also the intent of the

1 campaign: the hearts and minds.

2 Q. If it be the case -- and the Inquiry has heard much
3 evidence that it was -- that at the time many a soldier
4 thought that hooding a prisoner, particularly at the
5 point of capture, was an SOP -- a standard operating
6 procedure -- is that something that would have been
7 known by you at the time?

8 A. It was not known by me at the time and it would have
9 disturbed me.

10 Q. For the reasons that you have outlined?

11 A. Absolutely.

12 Q. I don't ask this in any way critically of you anyway: if
13 hooding was being used in the way that I have outlined
14 by quite a number of soldiers, regarding it as an SOP
15 and approved, therefore, at least by their unit
16 commanders on the ground, is that something about which
17 you think you should have been made aware?

18 A. If it was a difficult issue -- subsequently I am sure we
19 will talk about my order to ban hooding -- if it was
20 tactically so difficult for a soldier to move away from
21 what you describe as an "SOP", then I would have
22 expected someone to tell me about it.

23 Q. But only if it became, in your words, a difficulty?

24 A. Correct.

25 Q. And if you didn't know about it, whatever your view may

1 have been about it, you couldn't issue an order or
2 wouldn't issue an order because you wouldn't have
3 appreciated that there was any issue to be dealt with?

4 A. Correct.

5 Q. Can we look, then, at when you did become aware of
6 an issue? Perhaps it is most conveniently looked at at
7 paragraph 25 to start with in your statement, at
8 BMI05331, where you tell us you had no direct
9 involvement in prisoner handling yourself, but there
10 were two occasions -- two instances -- when the handling
11 of prisoners was brought to your attention.

12 We can dismiss the first -- you refer to it in that
13 paragraph -- the filming of prisoners of war, but the
14 second you go on to describe in detail in paragraph 26.
15 You tell us that on 1 April the ICRC verbally raised
16 with your political adviser -- and you are aware that we
17 use a cipher here, S034 -- an issue about the treatment
18 of prisoners at the JFIT within the TIF at Umm Qasr.

19 It wasn't an issue, you tell us, that was raised by
20 the ICRC directly with you. But you go on to tell us,
21 in this paragraph, that there was at least the
22 indication that a formal representation may be made in
23 relation to what had been witnessed at the JFIT.

24 A. That is correct.

25 Q. And you recall, do you -- may I call it "the complaint"

1 in shorthand -- that the complaint involved the hooding
2 of prisoners?

3 A. The potential complaint involved hooding and -- my
4 recollection -- also harsh treatment.

5 Q. Do you recall who reported this to you?

6 A. I do. S034.

7 Q. When you heard, Air Chief Marshal, of prisoners being
8 hooded at the JFIT, what was your reaction to it?

9 A. My instant reaction was to stop it in its tracks.

10 Q. Because it was inhumane?

11 A. Because firstly it was inhumane; secondly it was
12 inappropriate.

13 Q. For all the reasons you have given?

14 A. Correct.

15 Q. You tell us in your statement -- paragraph 28, please --
16 that you rapidly called together your LEGAD -- your
17 legal adviser -- political adviser and chief of staff.
18 Your immediate reaction, you tell us, which you didn't
19 need to hesitate or reflect upon, was simply to direct
20 that this is to stop.

21 A. Correct.

22 Q. May I just understand this? Was your immediate reaction
23 based more upon the hearts and minds issue than the
24 legality?

25 A. In fact -- and I need to go back a day -- on 31 March

1 the local Red Cross representative had visited the
2 headquarters for a briefing. He spent some time with me
3 in my office as an initial call and then time with my
4 legal team and the political team. Therefore, the
5 matter of legality, the Geneva Conventions, the laws of
6 armed conflict, were very much in my mind given the very
7 short passage of time since the presence of an ICRC
8 representative in my headquarters.

9 Q. Was there any debate about the issue when you met with
10 your LEGAD, POLAD and chief of staff?

11 A. At the point at which S034 informed me and I reacted by
12 ordering that this is to stop, there was no debate.

13 Q. Had there been any debate in the what must be hours
14 leading up to that meeting, presumably, that you were
15 aware of? Any contrary view taken?

16 A. I am unaware of any debate taking place in the hours
17 leading up to that.

18 Q. Can we have a look, please, at the statement of
19 Colonel Mercer, BMI04070, at paragraph 52, please?

20 Colonel Mercer says that:

21 "... the issue of hooding was in the hands of the
22 NCC."

23 Do you see that? He gave evidence to like effect.

24 "I had no doubt that, given the seriousness of the
25 situation, it would be staffed to PJHQ and to ministers

1 as there was going to be an official complaint to the
2 UK Government by the ICRC."

3 We know that there wasn't apparently an official
4 complaint ultimately made because, it is said, the
5 matter was, to some extent anyway, resolved on the
6 ground within Iraq.

7 Were you aware of any -- can I put it this way --
8 legal push to have this issue staffed up?

9 A. I'm not sure I follow your question, given that I am
10 subsequently aware that continuing and quite dynamic
11 discussion was taking place in the period 31 -- no,
12 1 April to 6 April between the divisional lawyer, who
13 I believe is Lieutenant Colonel Mercer, my legal team
14 and the PJHQ legal team.

15 Q. And you were aware of those discussions in that period
16 of time?

17 A. I was not aware of those discussions. As I said, I have
18 become subsequently aware.

19 Q. I follow. You are aware of those now, but you were not
20 at the time?

21 A. Correct.

22 Q. So in theatre, Air Chief Marshal, you were not aware,
23 were you, of the fact that there were differing views
24 taken as to both the legality of the use of hoods and
25 the practicality, if you like -- the need -- to use them

1 for operational security reasons?

2 A. That is correct. I was aware neither of a legal debate
3 or any debate whatsoever about how my intent should be
4 articulated on the ground.

5 Q. Knowing what you now know, that there was that debate
6 and indeed quite stark differences of opinion, it would
7 seem, both as to the legal position and as to the need
8 to use hooding for operational security reasons as it is
9 sometimes said -- had you known that at the time, would
10 you then have regarded that as being a matter that
11 perhaps ought to be referred higher for more direction?

12 A. I would have said "The legal argument at this point does
13 not matter. This is inappropriate in terms of my
14 intent. Therefore, hooding is to stop and it will be
15 resolved another day in the cool light of contemplation
16 after combat".

17 Q. And how would that, as it were, have been picked up? If
18 you had said that, how would it have been picked up?

19 A. We are slightly in the realms of conjecture here, but
20 the process by which that is picked up is through the
21 "lessons identified" process, which is driven by the
22 Ministry of Defence and would, for example, have
23 required inputs from the staff branches at the Permanent
24 Joint Headquarters as to issues which either lay
25 unresolved or where current practice or doctrine was

1 deemed to have been not fit for purpose.

2 Q. Could we look, please, at MOD049310? This is a document
3 I think you will have seen in preparation for giving
4 evidence to this Inquiry, "CJO directive to ComBritFor
5 for HUMINT operations in support of UK forces deployed
6 on Op Telic". Could I just take you, please, to
7 paragraph 7 over the page and under the heading "Legal
8 advice":

9 "HUMINT operations are subject to specific legal
10 advice. The NCC LEGAD will be indoctrinated to HUMINT
11 operations and provide appropriate advice. Any conflict
12 between operational requirements and legal advice is to
13 be highlighted to PJHQ J2X."

14 Then there is the reference to the acts and
15 conventions that are to be adhered to.

16 Would that, Air Chief Marshal, had you been aware of
17 the conflict, have, as it were, impelled you to staff
18 the issue up at least to PJHQ?

19 A. I am absolutely certain that I have never seen that
20 document. I know that because it contains some
21 fundamental errors which leads me to wonder about the
22 provenance of the document.

23 Q. So you have never seen it?

24 A. I'm sorry?

25 Q. You had never seen it?

1 A. Correct.

2 Q. Thank you. Could I then just come back to your
3 statement, please, and to paragraph 26, just to ask you
4 a question or two about the last four or five lines,
5 where you are recalling the events, as you say, with
6 reasonable precision -- this is the events of the ICRC
7 alleged complaint -- you recall with reasonable
8 precision for three reasons:

9 "First, this was the first time in my operational
10 career that I had received any input from the ICRC.
11 Secondly, the conduct reported was at variance with our
12 doctrinal approach to the war in Iraq."

13 That's the hearts and behinds point, is it?

14 A. Correct.

15 Q. "Thirdly, this was potentially an issue that would be of
16 importance to London."

17 What do you mean by that?

18 A. That any incident, albeit at the tactical level, can
19 have strategic consequences in terms of relationships
20 with other nations, relationships with those nations on
21 whom a coalition relies for support, media reaction, the
22 ability to maintain public support in the sending
23 nation, in our nation, and the ability to maintain
24 political support.

25 Q. So media sensitivity was certainly one of the issues?

1 A. One, but by no means the only one.

2 Q. I follow.

3 It was a matter that you made, to use your word,
4 London aware of?

5 A. The S034 did just that, as I would have expected.

6 Q. Did you give any direction to S034 as to what she should
7 do in this --

8 A. No, I did not need to.

9 Q. What did you expect that she would do? To whom would
10 she report?

11 A. I expected her to inform the Secretary of State's office
12 and also her opposite number in the Permanent Joint
13 Headquarters.

14 Q. What, if you like, was the main purpose of her reporting
15 to the Secretary of State's office?

16 A. That they would be aware that there was potential of an
17 ICRC complaint over the handling of prisoners by British
18 personnel.

19 Q. Thank you. Can we look then, please, at another and
20 a different document on a slightly different point? Can
21 we have on the screen, please, MOD022122? If we go to
22 the second page, just so that you can get your bearings,
23 Air Chief Marshal, at the foot of the page you see the
24 author, "Gavin Davies, NCHQ SO2 Legal".

25 Going back to the first page, it is addressed to

1 "Sirs, S034".

2 "I have just spoken to S002 ...", and so on.

3 Gavin Davies suggests that you may have been copied
4 into this document. Do you ever recall seeing it?

5 A. I did not -- I do not recall seeing it. It would be
6 helpful to know the date of origin of the document.

7 Q. Well, I think the date is about the time of the ICRC
8 complaint that we have been referring to.

9 A. The ICRC ...? I'm sorry, I lost your voice.

10 Q. The ICRC complaint to which we have been referring.

11 A. Then I am absolutely sure I have never seen it.

12 Q. Can we just look, then, please, at paragraphs 3 and 4,
13 beginning, "All those assessed as being non-HVI
14 prisoners ... are released immediately on completion of
15 the preliminary phase into the main compound". You see
16 it is a reference, it would seem, to operations at the
17 JFIT.

18 "Apart from the interview itself, they will have
19 been hooded from the time of their arrival at the camp
20 ... until their release back into the main body of the
21 compound."

22 If you just move on to the last line of the next
23 paragraph:

24 "... S002 assesses that during particularly busy
25 periods a total of about ten HVI [high value

1 intelligence] prisoners of war have been held in hoods
2 for up to 24 hours."

3 Was this ever brought to your attention?

4 A. No, never, and that is why I am certain that I never saw
5 this document because I would have been horrified.

6 Q. I appreciate you say you didn't see the document. Were
7 those facts, as they are there related, brought to your
8 attention, that prisoners were being hooded for
9 apparently up to 24 hours in the JFIT?

10 A. No, they were not.

11 Q. You were never aware of that?

12 A. Correct.

13 Q. If we go on two paragraphs, please, to the paragraph
14 beginning:

15 "Throughout these periods all prisoners of war are
16 fed and watered and provided with shelter from the sun
17 in [open-sided tents] ... No stress positions are
18 implemented ... The decision on which physical positions
19 they adopt and how often they change et cetera is
20 a matter for them. The only restriction is that they
21 may not sleep."

22 Were you ever made aware of such a restriction on
23 prisoners?

24 A. No, I was not.

25 Q. Would you have regarded that as lawful?

1 A. I regard sleep deprivation as inhumane.

2 Q. Then what follows in the next paragraph:

3 "The use of hoods is considered necessary to protect
4 not only members of the JFIT, but the prisoners of war
5 themselves."

6 Do you recall those arguments being advanced?

7 A. No.

8 Q. What, they weren't advanced with you, were they?

9 A. I should clarify. My memory is vague at seven years'
10 distance, but before the meeting that was held at the
11 prisoner of war facility on about 6 April, my POLAD,
12 S034, would have agreed with me the approach to that
13 meeting. So my only excursion into the need to protect
14 the security of prisoners would have been in relation to
15 that meeting which, as we know, culminated with the
16 agreement of the ICRC that in certain limited
17 circumstances blacked-out goggles were appropriate.

18 Q. So you would have gone along, would you, with the
19 proposition that deprivation of sight, which
20 I distinguish from hooding, might be appropriate in
21 certain circumstances?

22 A. Only in very, very limited circumstances and only for
23 very, very limited amounts of time.

24 Q. So where, as he does, Gavin Davies, in the penultimate
25 paragraph on this page -- perhaps we should go back to

1 the previous paragraph:

2 "The use of hoods is considered necessary to protect
3 not only members of the JFIT, but the prisoners ...
4 themselves. Many of the ... prisoners are dangerous and
5 indeed a significant proportion of those held are not
6 compliant. This is therefore considered the only way
7 (given the facilities available) to eliminate the
8 possibility that interviewees may be identified as
9 having cooperated and, therefore, become the victims of
10 reprisals by fellow prisoners. The hooding also makes
11 them far easier to control, isolating them from
12 potential sources of support and removing any physical
13 threat they may pose."

14 You would not have countenanced the use of hooding
15 for such purposes?

16 A. No, that is the received wisdom almost directly quoted
17 from doctrinal documents, but in the circumstances it
18 did not fit with the intent.

19 Q. He goes on, as you see, in the next paragraph:

20 "In my opinion, this course of action will be lawful
21 as long as it is carried out for valid military reasons,
22 such as those outlined above, and as long as it is
23 restricted to only that which is absolutely necessary in
24 terms of time and effect. To ensure the lawfulness of
25 hooding, G2X must take all steps possible to reduce the

1 time that these prisoners spend in these hoods to
2 a minimum. Major S002 has made a good start towards
3 this end."

4 Again, you would not have countenanced even that,
5 would you?

6 A. I would have needed to be convinced that that was
7 appropriate against our intent and, if convinced it was
8 appropriate -- which I doubt -- then I would need to be
9 convinced that it was legal.

10 Q. But perhaps the point is you don't recall the issue --
11 that issue in those terms -- ever being raised with you?

12 A. Correct.

13 THE CHAIRMAN: Mr Elias, we don't have a date for that,
14 except someone has put in "March 2003". Was that
15 someone from the Inquiry or is that ...?

16 MR ELIAS: I don't know that you have it on the copy, but
17 I think certainly that is what is thought to be --

18 THE CHAIRMAN: I am sure it is what is thought. I wondered
19 who had thought it.

20 MR ELIAS: I think it is just our view, if I may put it that
21 way.

22 THE CHAIRMAN: That's rather what I suspected. It is not
23 necessarily any contemporaneous --

24 MR ELIAS: I don't think so, Sir.

25 THE CHAIRMAN: It can't be contemporaneous because they

1 would have put the right date.

2 MR ELIAS: No. I think it is simply the content and the
3 context that seem to indicate it must be about that
4 time.

5 THE CHAIRMAN: Yes, and indeed we would and have heard from
6 the author.

7 MR ELIAS: May I move on, please, to, then, the order that
8 you issued? Perhaps we should go back to paragraph 28
9 of your statement, please, at BMI05332. As we noted
10 before, your immediate reaction that you did not
11 hesitate about was to direct "this is to stop". Was
12 that the order that you gave?

13 A. That was the order I gave.

14 Q. And by "this", what did you mean?

15 A. I meant, to the best of my recollection, using those
16 words, that: the use of hoods, which was the basis of
17 a potential ICRC complaint, was both unlawful and
18 inappropriate in my view. I am the commander, I am
19 responsible, this is an order.

20 Q. You will be perhaps aware that the Inquiry has heard
21 quite a lot of evidence that such an order, if given,
22 does not appear to have been recorded or indeed to any
23 great extent disseminated.

24 A. I am aware of that.

25 Q. Was the order, Air Chief Marshal, given in terms that

1 could have been interpreted that this meant that this
2 was to stop at Umm Qasr?

3 A. No.

4 Q. It was, what, a wider order than that?

5 A. It was clear from my reaction that this was
6 inappropriate and unlawful in my view.

7 Q. But you didn't specifically say, did you, that hooding
8 was to stop, as it were, everywhere?

9 A. I think it was clear to my subordinates that that is
10 what I meant.

11 Q. In giving that instruction, that hooding was to stop, as
12 you put it, how was that instruction then to be
13 disseminated, cascaded?

14 A. I would expect the chief of staff who drives the
15 headquarters to oversee the staff process to make that
16 happen. It may have been appropriate in the
17 circumstances for it to go down the J9 chain to remove
18 any legal grey areas or down the operational chain, the
19 J3 chain.

20 Q. When you say perhaps particularly going down the J9 line
21 to remove any possible operational grey areas, does it
22 follow that you would have envisaged that your order
23 would be put into writing?

24 A. Not necessarily. In the first instance, because
25 I attacked this with some urgency, I would have expected

1 a verbal order to go to the division, probably chief of
2 staff to chief of staff.

3 Q. That was to stop it immediately, as it were?

4 A. Correct.

5 Q. But you would have expected, would you, such an order to
6 find its way into writing to be cascaded down to those
7 who operated on the ground?

8 A. Given the plethora of activity that was taking place at
9 the time and the operational tempo, it would certainly
10 be the case that in best practice it would at some stage
11 have been committed to writing, either through the
12 downrep or even more simply as a signal or an email.
13 But given the nature of the tempo of operations at the
14 time, it is possible that it just had to take its place
15 against all the other aspects that were going on.

16 Q. Would you have expected the GOC to hear of your order?

17 A. Would I have expected ...?

18 Q. ... the GOC to hear of your order.

19 A. Depending on how it was transmitted, yes.

20 Q. So in what circumstances would you envisage that he
21 would or ought to have heard of your order?

22 A. I would imagine he would have heard from his chief of
23 staff.

24 Q. For what reason?

25 A. Because I conjecture, in answer to your question, that

1 the process by which this was passed would most likely
2 have been chief of staff to chief of staff in a verbal
3 way.

4 Q. Could it have been -- again it is to some extent
5 conjecture, of course -- that chief of staff to chief of
6 staff, the message was "Get the GOC to issue the order"?

7 A. I have no way of validating that one way or the other.

8 Q. Would that, as it were, have been in any way contrary to
9 any instruction that you had given?

10 A. No, it wouldn't.

11 Q. You are aware, are you -- we shall hear from
12 General Brims -- but it seems from evidence that it is
13 likely that he will say that on or about 3 April he
14 issued an order banning hooding. You were not aware of
15 that order at the time, were you?

16 A. I was made aware, I believe -- and it is seven years'
17 distance -- but I believe that on the evening of 1 April
18 it was reported to me that the division had already
19 issued orders to prevent hooding.

20 Q. It has been suggested, as you may know, to this Inquiry
21 that the position of the NCC at this time was that
22 hooding was not to be banned in total, as it were, but
23 that, for operational security reasons, deprivation of
24 sight and/or hooding might be used, and that it was
25 General Brims who took the view that operationally he

1 simply wasn't going to have it.

2 A. We need to be careful about the term "NCC". I am the
3 NCC, I was the NCC, I was clear and unequivocal that
4 hooding should stop. The use of term is used loosely to
5 suggest the headquarters, more properly the NCC HQ and
6 the staff therein. Whether there was a debate between
7 staffs on the degree to which my order would generate
8 complexity, I do not know, but my intent was clear.

9 Q. And the responsibility for disseminating or cascading
10 your intent lay with whom?

11 A. The headquarters and driven by the chief of staff, but
12 be under no illusion, I was the commander, I am
13 responsible.

14 Q. If, as may be the case, your order was not disseminated
15 or cascaded at least effectively, such that hooding went
16 on, in some cases from some evidence the Inquiry has
17 heard, for months, at whose doors should such fault be
18 laid?

19 A. The degree to which I execute my responsibility through
20 delegation is clear in a military campaign such as this,
21 with a huge number of moving parts, but if the
22 headquarters recognises that they have been given an
23 order by the commander, then it is the chief of staff's
24 role to ensure that the order is disseminated. That is
25 the distinction between command, which is the role of

1 the commander, and control, which is direction, which is
2 the role of the headquarters and its staff. All members
3 of that headquarters are empowered to act on behalf of
4 the commander on the basis of his or her intent.

5 Q. Given the nature of this particular direction that you
6 had given, was it, in your view, if this is the way it
7 were communicated, sufficient that it should be by word
8 of mouth alone?

9 A. The fact that I was informed that the divisional
10 commander had already gripped the situation, then that
11 at the time was indeed sufficient. This appeared to be
12 a tactical issue which was well within his powers of
13 command to solve.

14 Q. So from your perspective, from your direction anyway,
15 you say there was no need that that should be put in
16 writing?

17 A. There was no absolute need at that time.

18 Q. But it would have been desirable?

19 A. Correct.

20 MR ELIAS: Yes, thank you. Thank you very much.

21 THE CHAIRMAN: You will be asked some other questions,
22 I expect, by other counsel.

23 Mr Singh?

24 Questions by MR SINGH

25 MR SINGH: Sir, thank you.

1 Can I start, please, by asking you to look with me
2 at your witness statement at paragraph 20, which is at
3 BMI05330. Sir, you refer there to sometimes it being
4 "... necessary for security reasons to deprive
5 a prisoner of his sight temporarily, normally through
6 blindfolding ..." Just to be clear, sir, in the light
7 of some of the answers you gave to Mr Elias, do
8 I understand that not to be contemplating hooding for
9 that purpose?

10 A. Correct.

11 Q. Thank you.

12 Are you able to help us a little more about what you
13 meant by the word "temporarily" though?

14 A. Yes, I mean when, for security reasons, prisoners are
15 either moved through a group of their own compatriots or
16 when prisoners are moved through an area which has
17 security connotations for the detaining power, but in an
18 earlier response I said for a very, very short time.

19 Q. Indeed. So you would not be contemplating, sir, for
20 example, holding someone for many hours pending their
21 interrogation?

22 A. Absolutely not.

23 Q. What if someone from the intelligence community had said
24 to you -- I am not suggesting that they did, sir, but if
25 they had said to you, "Look, sir, we understand that the

1 primary reason for sight deprivation is security
2 reasons, but, by the way, there is a secondary benefit
3 to us because, when we come to interrogate them, it is
4 rather helpful because it tends to disorientate the
5 prisoner, maintains the shock of capture, things like
6 that", how would you have reacted to that kind of
7 suggestion?

8 A. I would have said "You are treading into danger because
9 you are in an area which is described as 'conditioning'
10 in both the JWP and indeed the Geneva Conventions".

11 Q. And danger because conditioning ...?

12 A. Conditioning is not lawful.

13 Q. Just finally on this particular aspect, sir, you
14 referred, in answer to Mr Elias, to several reasons why
15 you consider that hooding is inhumane. I think you
16 mentioned sensory deprivation, that it tends to muffle
17 hearing and that it increases the temperature close to
18 the skin. Would another reason perhaps be that it may
19 well have the effect of impairing a person's breathing?

20 A. It is possible, I imagine.

21 Q. Can I move to a different topic, please? I can
22 introduce this if we go, please, to your witness
23 statement at paragraph 26 which you were asked about
24 a few moments ago. It is particularly the reference in
25 the middle of that paragraph, please, to hooding and

1 harsh treatment. You say there that:

2 "By harsh treatment, my recollection was that it was
3 asserted that Iraqi detainees had been held in the open
4 and thus subject to prolonged exposure to high ambient
5 temperatures."

6 Other examples of harsh treatment that the Inquiry
7 has heard about concerning this period are kicking. Did
8 that come to your attention?

9 A. Not -- not according to my recollection.

10 Q. Another example that the Inquiry has been told about at
11 this time is the use of stress positions. Did that come
12 to your attention?

13 A. No.

14 Q. In that context, can we look, please, at a document
15 which is at MOD023001? This is a memorandum to the
16 private secretary of the Secretary of State by S034
17 about a year later, as we know -- 11 May 2004 -- but
18 I think, sir, that you have seen this document; is that
19 right?

20 A. That is correct.

21 Q. On the second page of that, the first paragraph on that
22 page is paragraph 4. Please take time to re-acquaint
23 yourself with that paragraph if you would like to.

24 A. Yes.

25 Q. Do you see, sir, that in the middle of that paragraph

1 S034 states that:

2 "Examples the ICRC gave of harsh treatment included
3 prisoners of war being made to sit in the sun ..."

4 But also mentions kicking and the use of stress
5 positions. Is that something that she brought to your
6 attention?

7 A. No, it was not, not to the best of my recollection.

8 Q. I know hindsight is a wonderful thing, sir, but looking
9 back on it, is that the kind of serious matter that she
10 should have brought to your attention if that's what the
11 ICRC were suggesting?

12 A. If it was part of the totality of the ICRC complaint,
13 then of course I would have wanted to know about it.

14 Q. In the later part of that paragraph, sir, S034 states
15 that:

16 "Air Marshal Burrigge acted immediately on ICRC's
17 complaint and gave orders that bagging was to stop
18 forthwith as was harsh treatment."

19 Is that an accurate account?

20 A. Correct.

21 Q. The meeting that took place when these things came to
22 your attention, which you refer to at paragraph 28 of
23 your witness statement, was that a formal meeting which
24 you convened?

25 A. I rather doubt it. 1 April, I have now been able to

1 recollect, was a rather busy day and I imagine that this
2 event took place at the end of what was a routine
3 command group meeting which I think had just broken up
4 or been on the point of breaking up.

5 Q. What led to this particular topic then having to be
6 discussed?

7 A. Because S034 took a phone call, which was the phone call
8 from the local ICRC representative, when the warning of
9 a potential complaint was delivered to her.

10 Q. Yes, I see. Was it a meeting with people sitting around
11 a table, as it were, having a discussion or was it just
12 a gathering of people in a corridor?

13 A. I think -- as I say, I think the meeting had broken up.
14 It had been a meeting in my office which was adjacent to
15 that of S034, the LEGAD, the chief of staff and others
16 in my command team, but I judge that it is possible that
17 the meeting had broken up, and I happen to know that
18 immediately after that meeting I had to call on the
19 Foreign Minister of Qatar, so it's possible that we made
20 this -- had this conversation and I delivered the order
21 in the corridor outside my office.

22 Q. But you are adamant, sir, are you, that you there and
23 then delivered that order and that it was categorical in
24 its terms?

25 A. I am absolutely adamant that I delivered that order and

1 I am absolutely adamant that it was categoric in its
2 terms.

3 Q. Presumably, sir, this took place before the meeting
4 which we know took place with the ICRC on 6 April or
5 am I wrong about that?

6 A. I'm sorry, could you repeat that?

7 Q. Yes. The discussion and the order you gave in the
8 corridor, that event, did that take place before or
9 after the meeting that some, like S034, attended with
10 the ICRC on 6 April?

11 A. It was on 1 April and, to the best of my recollection,
12 in the mid-afternoon.

13 Q. That is very helpful, sir. So it is an obvious
14 inference, can I put it to you, that therefore, by the
15 time that people attended the meeting with the ICRC on
16 6 April, they should have been absolutely clear that
17 there was this complete categorical ban on hooding in
18 place?

19 A. Correct.

20 MR SINGH: Sir, thank you very much. Those are my
21 questions.

22 THE CHAIRMAN: Who is next? Ms Edington?

23 MS EDINGTON: No questions, Sir, thank you.

24 THE CHAIRMAN: Thank you. Mr Evans?

25 Questions by MR EVANS

1 MR EVANS: Thank you, Sir.

2 You spoke, Air Chief Marshal, of a busy day on
3 1 April. How much else was going on that day to the
4 best of your recollection as regards the conduct of the
5 war in general?

6 A. I would need to put that in broader context. The period
7 at the end of March was characterised by very bad
8 weather. A sand storm was across the operating area and
9 in Iraq a sand storm is a strong wind like -- almost
10 like fog with sand in it. Visibility was almost zero
11 and it made it difficult to conduct land operations.

12 By 31 March it was clear that Republican guard
13 divisions were repositioning for the defence of Baghdad.
14 There were divisions to the north which needed to come
15 to the south because simultaneously the two US corps,
16 accompanied by significant coalition air power, were
17 positioned 120 miles south of Baghdad. There were two
18 points of significance in that: firstly, we believed
19 that that would be the point at which the Iraqis would
20 use chemical weapons; we were within range of the
21 artillery that they kept and what we believed would be
22 their chemical weapon installation at Al Kut. Therefore
23 this was a tense time.

24 We lost location of two Republican guard divisions.
25 We realised rapidly after that that was because they had

1 been destroyed from the air. We were flying 750 sorties
2 a day against the land -- the Iraqi land forces south of
3 Baghdad. We were flying a total of 1,200 sorties every
4 day. Much of that would involve high reaction
5 targeting. Of that air power 10 per cent was UK. At
6 the same time, the Iraqis were continuing to fire
7 surface to air missiles at our aircraft -- an average
8 day in that period was 80 and, by 2 April, more than
9 100 -- as well as anti-aircraft fire.

10 Subsequently -- or rather simultaneously -- UK
11 forces were around Basra. We did not siege Basra. That
12 was not in accordance with our intent. We controlled
13 the bridges and, at around that period, I recall that
14 the Baath militia were violently gunning down citizens
15 of Basra as they tried to leave across those bridges.

16 I believe on 2 April, it must have been, that we
17 located the nerve centre of the Baath military control
18 and attacked it from the air and we killed 200.
19 I believe later on in that period, probably the next
20 day, we located the commander in southern Iraq, in
21 Basra, known as "Chemical Ali", and we attacked his
22 headquarters as well. This allowed the people of Basra
23 to gain strength from the coalition intent, it allowed
24 the division to make an initial entry into Basra and
25 withdraw and then subsequently to dominate the ground.

1 At the same time, 15 miles away in Al Zabia, by
2 3 April, UK forces were wearing berets not body armour.
3 This is the complexity of the theatre, the texture of
4 warfare with a very high intensity warfare going on
5 around Baghdad through to the semblance of normality
6 arising in Al Zabia. The UK Government had a stake in
7 all of that. This was probably the most intense period
8 of joint manoeuvre warfare that we have seen since the
9 Second World War.

10 Q. Thank you. Without wanting to make light of the issues
11 with which this Inquiry is concerned, can you place
12 within that general context the relative importance of
13 the potential complaint to the ICRC and the issue about
14 hooding on 1 April 2003?

15 A. It was but one grain of sand, albeit an important grain
16 of sand, amongst many. That is not to make light
17 because, actually, the intent to gain hearts and minds
18 depends on getting all of those sorts of things right
19 and getting one wrong can immediately devalue the
20 others.

21 Q. In a phrase, can you encapsulate the nature of the
22 mission in strategic terms that your directive and the
23 directives to you had envisaged in terms of the invasion
24 of Iraq?

25 A. Yes, I think the UK media found it amusing that I would

1 describe this as "an invasion" where our objective was
2 in terms of not break the china. We needed to take
3 a very light touch. My directive was clear on the wider
4 political objectives, demonstrating to the Iraqi people
5 that our quarrel was not with them, but their security
6 and wellbeing was our concern.

7 Q. I follow.

8 A. I conveyed that onward in a -- not only in directives to
9 my commanders, but also in the message at the outbreak
10 of hostilities. I do recall saying that it is very hard
11 to know how this is going to unfold. Much depends on
12 whether the enemy wants to fight. If they want to
13 fight, we will fight and hit them and we will hit them
14 hard. However, if they want to give up, we will treat
15 them with dignity and consideration because many of them
16 will be the seed form(?) of the future Iraq.

17 Q. And that was a summary, was it, of your intent in terms
18 of mission?

19 A. Correct.

20 Q. Finally this, from those very general matters to a very
21 specific one: you were asked about the CJO directive.
22 Can I just have that, please, on screen? It is at
23 MOD049310. In response to a question from Mr Elias, you
24 said you were concerned about the provenance of this
25 document. Can you explain, please, what you meant by

1 that?

2 A. I can. First of all -- and I don't know whether it is
3 possible to have it slightly magnified.

4 Q. Yes. Thank you very much.

5 A. Thank you. First of all, in the "scope", it has what
6 is, in military writing, a throwaway line, "This
7 directive is for planning purposes only".

8 Q. You are looking in the paragraph headed "Scope", the
9 third line down?

10 A. Yes, paragraph 1.

11 Q. Yes, I follow.

12 A. Now the normal military way of conveying that is by
13 releasing a planning directive which has an altogether
14 different connotation to an operational commander and
15 his staff.

16 Q. What does a "planning directive" mean?

17 A. A planning directive means "Here is the outline of our
18 intent and the detail of what it is we are trying to
19 achieve in whatever area -- in this case in HUMINT --
20 and this is warning to you to understand that and to be
21 able to reflect that in your own campaign planning and
22 indeed in the orders and instructions that you are
23 currently drafting".

24 Q. So, in legal terms, is it a draft document?

25 A. It is a warning document. It should be.

1 Q. You said that there were matters within it that made you
2 absolutely certain that you hadn't seen it.

3 A. Yes.

4 Q. What were those?

5 THE CHAIRMAN: Just pause a moment. You need not go into
6 absolutely every one. If you just give us an example of
7 something which you think is quite wrong and therefore
8 you would not have seen it. All right?

9 A. Yes.

10 MR EVANS: There is, I think, exactly that if you just turn
11 to it.

12 A. Exactly. We need to turn to the next page and the next
13 page. We need to look at paragraph 11 and 12. Under
14 "Command and signal", it says in the table that full
15 command of HUMINT units is with CJO. That is
16 impossible. CJO does not have the power to have full
17 command.

18 Full command can only be rested -- sorry, vested --
19 in a single service commander in chief, and CJO, as
20 I point out in my evidence as the joint commander, has
21 operational command of UK forces, therefore it should
22 say against "operational command" not "NCHQ", but "CJO".
23 It should say under "OPCON", "NCC", with tactical
24 command going to 1 (UK) Div.

25 Q. Did 1 (UK) Div have OPCON?

1 A. No. Operational control, in accordance with all the
2 directives, was vested in me. Then the mounting
3 headquarters is shown as "HQ Land", which is bizarre.
4 The mounting headquarters is the Permanent Joint
5 Headquarters. So I am led -- any commander receiving
6 a directive looks at that paragraph. That is the nature
7 of life because that defines what it is that we are
8 responsible for. Had I seen that document, I would
9 immediately have said "This is fraud". I find it hard
10 to believe that the signatory actually saw that
11 document. I find it hard to believe that the CJO saw
12 that document.

13 Q. If we look at the end of the document for a moment,
14 there does not appear to be a signature block for CJO
15 upon it. Is that right?

16 A. That's correct. Given that it is a CJO directive to
17 ComBritFor -- ie, me as a national commander -- then you
18 would expect to see the CJO signature block there. He
19 may not sign it, but the Inquiry will have seen other
20 directives where, for example, in my directives or,
21 rather, in my orders, you may see the chief of staff's
22 signature block and signature and my signature block.

23 MR EVANS: Yes. Yes. Thank you very much. I have no
24 further questions.

25 THE CHAIRMAN: Anything else, Mr Evans?

1 MR EVANS: No, thank you, Sir.

2 THE CHAIRMAN: Mr Elias?

3 Further questions by MR ELIAS

4 MR ELIAS: So from that we may deduce that that, in your
5 view, could be a draft, albeit it contains serious
6 errors?

7 A. I have no idea what it is. I can't tell, given the
8 sloppiness of the drafting, what it actually is.

9 Q. But you can say you didn't receive it?

10 A. I can say unequivocally I did not see it.

11 MR ELIAS: Thank you.

12 Questions by THE CHAIRMAN

13 THE CHAIRMAN: If I may just -- I think you have dealt with
14 this mostly, but I just want to be quite clear in my own
15 mind. General Wall -- this is back to your order --
16 yesterday said that it arose out of a discussion in the
17 corridor which, as I understand it, you would not really
18 dispute that at all; is that right? It could easily
19 have taken place after a meeting and in the corridor?

20 A. Correct. I would not disagree with General Wall's
21 point.

22 THE CHAIRMAN: He accepted -- this is General Wall -- then
23 not General Wall, but he would be brigadier, wouldn't
24 he?

25 A. He was an acting general at that stage.

1 THE CHAIRMAN: He said he would have had the responsibility
2 to cascade the order. There again you would not
3 disagree with that?

4 A. He is -- as the chief of staff of a headquarters, he is
5 responsible for driving the staff.

6 THE CHAIRMAN: He went on to say something about the
7 difference between an oral and a written order and he
8 said that there were very many oral orders at that
9 particular time. The words he used was "That's the way
10 we did business". Do you agree with that or not?

11 A. Given the tempo that I hope I have been able to describe
12 to the Inquiry --

13 THE CHAIRMAN: Yes.

14 A. -- in light of that, it was the way things often had to
15 be done in that sort of environment. In a lower tempo,
16 then the way you convey orders would be different.

17 THE CHAIRMAN: He also was frank enough to say, in
18 hindsight, it appears it would have been better if it
19 had been put in writing at some stage. I assume you
20 would agree with that.

21 A. I think I made that clear to Mr Elias.

22 THE CHAIRMAN: Yes.

23 A. Of course.

24 THE CHAIRMAN: You probably would put it a little further
25 than "better". It should have been put into writing at

1 some stage, should it not?

2 A. That would be best practice, yes.

3 THE CHAIRMAN: Yes. I see.

4 Now the only other thing I want to -- so that I get

5 these terms absolutely clear -- you were NCC, you say --

6 is that right?

7 A. Correct.

8 THE CHAIRMAN: -- commander. I have seen it referred to

9 somewhere as "joint forward headquarters". Is that

10 accurate or not?

11 A. In a UK operation, other than -- not a coalition

12 operation, I would have been called the "joint force

13 commander" --

14 THE CHAIRMAN: Yes.

15 A. -- but in a coalition -- and my headquarters would have

16 been called the "Joint Force Headquarters".

17 THE CHAIRMAN: Yes.

18 A. In a coalition, where we have a national contingent

19 blistered on, in this case to the US, then I am called

20 the "national contingent commander".

21 THE CHAIRMAN: So the correct description is the "national

22 contingent commander"?

23 A. And the "National Contingent Command Headquarters", yes,

24 Sir.

25 THE CHAIRMAN: Yes, I follow. That was born out of units

1 from or people from the PJHQ; is that right?

2 A. Correct, and within the PJHQ -- and this is where it is
3 confusing -- there is a standing Joint Force
4 Headquarters --

5 THE CHAIRMAN: I follow.

6 A. -- and it is those people that formed my headquarters.

7 THE CHAIRMAN: But properly you are the national contingent
8 commander?

9 A. Absolutely.

10 THE CHAIRMAN: When you came back from Qatar on, I think you
11 said, 8 May -- is that right -- was your staff then
12 subsumed back into PJHQ or not?

13 A. Those of my staff that came from PJHQ went back to their
14 normal jobs, but the headquarters was augmented by
15 a vast number of people, which I see has been redacted
16 from my statement, but it was much bigger than the core
17 that the PJHQ provided.

18 THE CHAIRMAN: Yes, I follow.

19 Now there is one other question I want to ask out of
20 pure curiosity and I hope you won't mind. The marshal
21 of the Royal Air Force as a rank has disappeared, has
22 it?

23 A. Correct.

24 THE CHAIRMAN: Did it disappear at the same time as field
25 marshals and admirals of the fleet?

1 A. Correct.

2 THE CHAIRMAN: So an air chief marshal is now the four star,
3 as you were until you retired -- is that right?

4 A. Correct.

5 THE CHAIRMAN: -- which previously would have been marshal
6 of the Royal Air Force?

7 A. No, the rank of marshal of the Royal Air Force five star
8 rank --

9 THE CHAIRMAN: It is five star, is it?

10 A. -- was only appropriate to the chief of defence staff
11 when that was an RAF officer.

12 THE CHAIRMAN: I follow.

13 A. The last five star chief of the defence staff was Field
14 Marshal Lord Inge. Subsequently five-star rank was set
15 aside -- not removed, simply set aside -- but all chiefs
16 of service on retirement took on five-star ranks. So
17 the chief of the air force, who was an air chief
18 marshal, on the day he retired became a marshal of the
19 Royal Air Force. If memory serves, this changed in
20 about 1996.

21 THE CHAIRMAN: I am not so concerned with the time. So what
22 is the rank title of the person who is one and two star
23 in the Air Force?

24 A. One star air commodore.

25 THE CHAIRMAN: Yes.

1 A. Two star air vice marshall.

2 THE CHAIRMAN: Thank you very much. I am sorry about that.

3 It just interested me to know what the right terms are.

4 Thank you very much for coming to the Inquiry. That

5 is all the questions that you are to be asked. I am

6 grateful to you for your evidence and you are now, so

7 far as we are concerned, free to go. It happens that we

8 take a break about this time of the morning, so we will

9 have our ten-minute break.

10 MR ELIAS: Thank you, Sir.

11 (11.26 am)

12 (A short break)

13 (11.36 am)

14 HUGH RALPH AIRD EATON (called)

15 THE CHAIRMAN: Could I ask you to stay standing for a moment

16 and I will ask that you be sworn?

17 Yes, Mr Moss.

18 Are you still in the army?

19 A. No, Sir.

20 HUGH RALPH AIRD EATON (sworn)

21 THE CHAIRMAN: Yes, do sit down.

22 A. Thank you, Sir.

23 THE CHAIRMAN: If you could position yourself as close to

24 that microphone as possible, then we will all be able to

25 hear.

1 Yes, Mr Moss.

2 Questions by MR MOSS

3 MR MOSS: Could you start by give the Inquiry your full
4 name, please?

5 A. Yes, Hugh Ralph Aird Eaton.

6 Q. I think, Mr Eaton, that when you retired from the army
7 you had risen to the rank of lieutenant colonel; is that
8 right?

9 A. That's correct, yes.

10 Q. You have since left the services. Are you happy that
11 I should call you "Mr Eaton"?

12 A. Yes, perfectly happy.

13 Q. Could you look at the table in front of you, please,
14 Mr Eaton? I think you will find there a hard copy of
15 your statement to this Inquiry. Please look on the
16 screen at BMI06070. Do you see there that you signed
17 this statement to the Inquiry back on 23rd November of
18 last year?

19 A. Yes, I do, yes.

20 Q. When you did so, were you telling the Inquiry that the
21 contents of that statement were true to the best of your
22 knowledge and belief?

23 A. I was.

24 Q. Thank you. My task is just to ask you questions about
25 some issues arising out of your statement, rather than

1 to go through it all. Your statement stands as part of
2 your evidence to your Inquiry, as I am sure has been
3 explained to you.

4 May we start just briefly with your career history?
5 I think it is right that you joined the army back in
6 1986.

7 A. That is correct.

8 Q. You were commissioned and I think you served first with
9 the Queen's Own Highlanders; is that right?

10 A. That's right, yes.

11 Q. As well as Op Telic in Iraq, I think you saw service in
12 Belize, Bosnia, Northern Ireland and Sierra Leone; is
13 that correct?

14 A. That is correct.

15 Q. In July 2001, in terms of the position most relevant to
16 this Inquiry, I think you were appointed as the chief of
17 staff to 19 Mechanised Brigade; is that right?

18 A. That is correct.

19 Q. Within that appointment, I think you served first of all
20 in Kosovo before taking part in the training year for
21 the brigade. Is that right?

22 A. That's correct, yes.

23 Q. Which would have included the large-scale exercise at
24 BATUS in Canada?

25 A. Yes.

1 Q. You then saw that service in Sierra Leone that you
2 mentioned a little earlier as part of your operational
3 service --

4 A. That's correct, yes.

5 Q. -- before, in due course, coming to serve on Op Telic 2,
6 for which you deployed in late June of 2003. Is that
7 right?

8 A. Yes, that's correct.

9 Q. Your own post as chief of staff, though, during
10 Op Telic 2, I think you didn't see out the whole of the
11 tour in the sense that you moved to a different job in
12 MoD. Is it right that within Op Telic 2 you handed over
13 the chief of staff role to Major Fenton on, I think,
14 19 August 2003?

15 A. Yes, that's correct. I mean basically I was promoted to
16 a job in the Ministry of Defence and then handed over to
17 Major Fenton.

18 Q. On promotion, was it as MOD director of operational
19 capability that you moved to in August?

20 A. That's correct, yes.

21 Q. Then retiring in due course from the army, as you have
22 indicated, as a lieutenant colonel in July 2004?

23 A. Yes.

24 Q. Thank you. May I ask you some questions then, please,
25 Mr Eaton about your training? You referred to annual

1 law of armed conflict training in your statement. Can
2 you remember whether your annual training in LOAC ever
3 covered the issue of sight deprivation of prisoners?
4 Did it descend to that level of detail?

5 A. I don't recall it having that level of detail in it, no.

6 Q. Could we have on screen, please, paragraph 10 of your
7 statement at BMI06058? You detail here that you did
8 receive some training in prisoner handling in Catterick,
9 although you say you can't recall when this training was
10 delivered or who presented it. You say that:

11 "It was limited to an awareness that plasticuffs
12 would be used ...", and so on.

13 Over the page:

14 "... and that detainees might be blindfolded in
15 order to preserve the secrecy of military locations and
16 intelligence."

17 Can I just clarify, what was the context of this
18 training at Catterick? Was this pre-deployment training
19 for Telic --

20 A. Yes, that's correct, yes.

21 Q. Thank you. Can you help us with who was delivering the
22 training? Can you remember that? Was it OPTAG who were
23 delivering the training?

24 A. Yes, it would have been people from OPTAG.

25 Q. Was this part of what I think is described in the

1 terminology as "all ranks briefing" or something along
2 the lines of specific train-the-trainer training?

3 A. Yes, there were several different ways in which the
4 training and information was provided, but we had, in
5 this case, a variety of briefings about how this sort of
6 thing should be carried out in theatre.

7 Q. Was this a sort of lecture room briefing or a practical
8 demonstration, do you remember?

9 A. No, a lecture room briefing for the brigade
10 headquarters, given that, you know, it is very unlikely
11 that the brigade headquarters staff were going to be
12 themselves engaged in the activity of taking prisoners.

13 Q. Right. So at some stage, then, a lecture-room-based
14 guidance being given which included sight deprivation;
15 would that be right?

16 A. That's correct, under particular circumstances.

17 Q. Those circumstances were all about, as you explain in
18 paragraph 10 -- is this right -- operational security
19 reasons?

20 A. That's correct, yes.

21 Q. Was a side benefit of maintaining the shock of capture
22 mentioned, so far as you remember?

23 A. No. The idea was to ensure that, if you had prisoners
24 in a headquarters area or in a sensitive area, they
25 couldn't pick up information that could be useful for

1 them at another time.

2 Q. I appreciate that it is some time ago. Please do not
3 guess and, if you simply can't remember, you must say
4 so. Can you help us with whether this instruction in
5 this lecture descended into any detail about the means
6 by which prisoners might be deprived of sight, whether
7 it was blindfolding or hooding or simply not mentioned?

8 A. I don't recall it being mentioned.

9 Q. Apart from that pre-deployment training for Telic, had
10 you received any other training during the course of
11 your army career on the use of hoods or blindfolds and
12 sight deprivation generally?

13 A. Yes. Prior to deployment for the first Gulf War, where
14 I was actually in a position where we did take
15 prisoners, we were trained on blindfolding them to
16 ensure that they couldn't pick up operational
17 intelligence.

18 Q. You say "blindfolding" then. Was that specifically
19 a blindfold as in a piece of material across the eyes,
20 different from hooding with a hessian sandbag, or again
21 did it not descend to that detail?

22 A. Well it did descend to that detail and I was involved in
23 taking prisoners and blindfolding them, but it was with
24 scarves or with hessian strips cut from sandbags.

25 Q. I follow. Had you, in the course of that, received any

1 indication that prisoners shouldn't be hooded --
2 a hessian bag right over the head -- or was it just that
3 the preferred method was with blindfolds?
4 A. The objective that we were trying to achieve -- which is
5 to stop them seeing things -- was achieved by the
6 blindfold.
7 Q. Correct me if I am wrong, but would it be fair to say
8 that you don't recall ever having received any specific
9 instruction that hooding was prohibited, other than on
10 the orders that we will look at?
11 A. Yes, that's correct.
12 Q. So taking matters, as it were, on the eve of your
13 deployment to Op Telic 2, can I just be clear what your
14 understanding would have been about the legality of
15 sight deprivation? I take it that depriving prisoners
16 of their sight for operational security grounds you
17 would have seen as legitimate --
18 A. Yes, I would.
19 Q. -- and using blindfolds for that purpose you would have
20 regarded as appropriate?
21 A. Yes, I would, for the times at which there was an
22 operational threat, if they could see individuals or
23 information or maps or things that would have been
24 useful to a terrorist.
25 Q. Would you have had an understanding one way or the other

1 as to whether it was legitimate to use hoods to deprive
2 prisoners of their sight for operational security
3 reasons?

4 A. I have never considered it legitimate to use hoods.

5 Q. Because ...?

6 A. Because it is inhumane.

7 Q. Again I just want to be clear what your evidence is
8 about this. So despite the fact that you had not
9 specifically been trained in any prohibition about
10 hooding, your own understanding from your general
11 training would have been that the use of hoods on
12 prisoners would be inhumane?

13 A. That's correct.

14 Q. Thank you. Can I ask you more briefly about stress
15 positions? First of all, what do you understand
16 a stress position to be?

17 A. Well, I understand it to be a position of discomfort
18 that a prisoner is put in.

19 Q. Had you had any specific training on whether stress
20 positions were permitted or prohibited?

21 A. They were prohibited.

22 Q. Had you had specific training on that or did that derive
23 from your general understanding of LOAC and the
24 Geneva Conventions?

25 A. Again, from LOAC and Geneva Convention education.

1 Q. Short of stress positions -- positions which, perhaps if
2 maintained for a long period, would be deliberately
3 uncomfortable -- had you come across the use of what
4 some witnesses have described as "control positions",
5 used for searches and on initial capture?

6 A. No.

7 Q. It is apparent from your statement that you will know
8 what I mean by reference to "the five techniques"; is
9 that right?

10 A. Yes.

11 Q. I think you tell us in your statement that in relation
12 to each of those five techniques, you understood them
13 all to be unlawful.

14 A. That's correct.

15 Q. You have told us about the Catterick training. So far
16 as later pre-deployment training in Kuwait is concerned,
17 can I just be clear as to whether you had any training
18 in Kuwait yourself or whether you went straight to
19 Basra?

20 A. I didn't have any training. I flew straight into
21 Basra Airport.

22 Q. It is not a criticism, Mr Eaton, but insofar as your
23 statement at paragraph 16 and onwards deals with what
24 you understood pre-deployment training in Kuwait to
25 contain, is that effectively secondhand from what others

1 told you that training was about?

2 A. Yes, that's correct -- I mean basically my staff
3 officers that were running that training.

4 Q. Thank you. Can I turn then, please, to your role and to
5 the chain of command on Op Telic 2? Of course your role
6 was that of chief of staff for 19 Mechanised Brigade.
7 You describe the post as being in one sense the first
8 amongst the equals, so the senior major -- would that be
9 fair --

10 A. Yes.

11 Q. -- within the formation headquarters?

12 A. Yes.

13 Q. The essence -- correct me if I have this wrong -- as you
14 describe it in your statement, the essence, you say, of
15 your role was to translate the brigadier's intent into
16 effect across the brigade.

17 A. Yes, that's correct.

18 Q. Presumably the role would also have included an element
19 of your being responsible for ensuring the smooth
20 running of the staff officers' work within the brigade
21 headquarters?

22 A. Yes.

23 Q. And another aspect of your role, which you set out in
24 your statement -- we don't need to turn it up -- would
25 also be, would it not, a responsibility to brief the

1 brigadier -- the brigade commander -- on issues which
2 you thought he ought to be aware of?

3 A. Yes.

4 Q. You, of course, reported directly to Brigadier Moore; is
5 that right?

6 A. That's correct, yes.

7 Q. Can I just ask you about reporting chains and how they
8 worked? When staff officers in the different branches
9 within the brigade wanted to get authorisation from the
10 top of the formation, would they brief the brigadier
11 directly or would those sort of issues go to the
12 brigadier through you?

13 A. It would depend on the degree of complexity in the
14 issue. By that I mean, if it was a legal issue, then
15 I would arrange for the legal adviser to brief the
16 commander directly because I would personally add no
17 value or have no understanding of the sort of context of
18 the issue. If it was an operational issue, then I would
19 probably brief the commander myself.

20 Q. The Inquiry has heard some evidence in relation to other
21 formation headquarters that the deputy chief of staff
22 would tend to deal with G1 and G4 matters while the
23 chief of staff would concentrate on G2 and G3 matters.
24 Did the same apply in your headquarters?

25 A. Yes, it did, yes.

1 Q. So would there be some issues, G1 and G4 issues, that
2 essentially the deputy chief of staff would report to
3 the brigadier on and you might not have particular
4 involvement in?

5 A. Yes, I mean, unless -- you know, G1 being personnel and
6 G4 being logistics, unless it had an operational impact,
7 if would be the norm for the deputy chief of staff to
8 brief the brigade commander on those issues.

9 Q. Thank you. Can we just then move from the general
10 theory to specific responsibilities for prisoner
11 handling and matters relating to internment? Could we
12 have a look, please, at paragraph 26 of your statement
13 at BMI06062? You say there that at the brigade
14 headquarters the senior RMP officer, the late
15 Major Titchener, the brigade legal adviser, whose name
16 you could not recall -- does Major Clifton now ring
17 a bell?

18 A. Yes, it does, thank you.

19 Q. -- and the plans officer, Major Steptoe, were
20 principally involved with internment.

21 So far as Major Clifton is concerned, we have heard
22 evidence from him about his involvement and advice he
23 gave and documents he drafted. I just wanted to ask you
24 a little bit more about the RMP side.

25 The Inquiry has seen evidence that after FRAGO 29,

1 an order that you may remember, that the RMP somewhat
2 dropped out of the picture in this sense, that when
3 prisoners were suspected of common criminality, they
4 were passed directly to the Iraqi police and the Iraqi
5 court system, whereas, when they were suspected
6 insurgents, they would be passed from the BGIRO and the
7 battlegroups directly to the TIF. Do you think that it
8 may be that by the time that you were in theatre, that
9 the RMP were not much involved on the prisoner handling
10 side?

11 A. Well, they certainly had fewer resources, so some of the
12 weight of the responsibility for managing that process
13 then fell on the battlegroups rather than the Royal
14 Military Police, yes.

15 Q. If that was happening on the ground, do you say that you
16 were still nevertheless looking to Major Titchener for
17 advice in this area? Would he still be involved --

18 A. Yes.

19 Q. -- on prisoner handling matters generally?

20 A. Yes.

21 Q. So far as Major Steptoe is concerned, on the G3 plans
22 side, it appeared to be his evidence that the extent of
23 his involvement would really be in the cascading of
24 orders that would have been drafted by others. Would
25 that be fair? Would you disagree with that?

1 A. I think specifically in relation to this, it would be in
2 cascading advice drafted by people like Major Clifton.
3 I should imagine that is what he was referring to
4 because there was a series of legal notes and legal
5 advice that were communicated to the battlegroups
6 through FRAGOs.

7 Q. If one looks at your paragraph 26, Mr Eaton, what one
8 does not see there, in terms of your descriptions for
9 dealing with prisoner handling matters at brigade HQ, is
10 any involvement of G2. Was there a reason for that?

11 A. On reflection, I cannot recall whether they were
12 involved in the process or simply in the management of
13 information that we might get from the TIF.

14 Q. It may be that we shall touch on the orders in due
15 course and say if you want to go to them now, but were
16 you not aware that by this stage FRAGO 29 and FRAGO 85,
17 which followed it, had stated that internment was to be
18 a process on which G2 had the overall lead and sometimes
19 described as a "G2-led G3 ops responsibility"?

20 A. Well, what I was aware of was that the battlegroup IROs
21 were running the process at the battlegroup level.
22 Those were the individuals that we communicated with
23 from a brigade perspective.

24 Q. But what about at brigade headquarters? Is it the case
25 that G2 were not seen as the leading staff branch for

1 internment matters?

2 A. Not for the process of internment. That was a G3
3 function.

4 Q. Might it be that there was an element of confusion about
5 where the leading responsibility for prisoner handling
6 matters and internment lay?

7 A. Well, that is possible, but if you consider that the
8 direction came out of the G3 plans cell in brigade and
9 went to the BGIROs, there was clear direction and
10 a clear hierarchical link between those two.

11 Q. May I turn, then, next -- thank you -- to the handover
12 that you yourself received and to deal alongside that
13 with the divisional order, FRAGO 152 and its brigade
14 equivalent, FRAGO 63. I think you will be familiar with
15 those orders.

16 A. Yes.

17 Q. Your predecessor, if you like, was of course
18 Major Parker -- wasn't it?

19 A. That's correct, yes.

20 Q. -- the chief of staff of 7 Armoured Brigade.

21 Could you just help us with the process -- and again
22 correct me if this is wrong -- is it right that in terms
23 of how the formations handed over, that there was
24 a staggering of the handovers so that you didn't have
25 the battlegroup --

1 A. That's correct.

2 Q. -- the brigade and the division handing over all at the
3 same time?

4 A. That's correct, yes.

5 Q. The evidence to the Inquiry seems to suggest that the
6 battlegroups would have handed over first, then the
7 brigade and then the division.

8 A. That's correct.

9 Q. Is that the conventional way that it is always done?

10 A. I'm just trying to recall other operations where we
11 relieved as an in-place force. That is certainly
12 a conventional way of doing it and an effective way of
13 doing it.

14 Q. Thank you. You set out within your statement that as
15 well as that staggering of the battlegroups and the
16 various formations, is it right that there was
17 a staggering within brigade headquarters of the
18 handovers from various staff such that you were one of
19 the last to come into place?

20 A. Yes. Again, it is conventional to leave the in-place
21 chief of staff running the show and running the
22 briefings to the new staff as they come in and then
23 a short handover, so essentially you don't have two
24 chiefs of staff so you don't have a confusion as to who
25 is controlling the headquarters.

1 Q. So the staff officers and the various branches get to
2 know their work and get in place first, reporting to the
3 old chief of staff --

4 A. That's correct.

5 Q. -- and then the chief of staff is handed over. Is that
6 essentially the process?

7 A. Yes, that is.

8 Q. Can we turn then, please, to the arrangements for the
9 handover of extant orders? I think you describe, don't
10 you, in your statement, that so far as you personally
11 were concerned as the chief of staff, your focus and
12 your expectation would have been on a verbal handover of
13 the key issues that were current at the time. That's
14 what you would have been expecting from Major Parker --

15 A. Yes, yes.

16 Q. -- rather than a great big folder with lots of orders in
17 it?

18 A. That's correct.

19 Q. In general terms, did the handover from Major Parker
20 meet your expectations --

21 A. Yes, it did.

22 Q. -- or not?

23 A. Yes, it did.

24 Q. So far as you can recollect it, was prisoner handling
25 and the system for internment something which featured

1 in the handover that you received from Major Parker?

2 A. It was not called out as a priority area.

3 Q. Can you remember more specifically whether the
4 prohibition on prisoners' faces being covered or the
5 prohibition on the use of hoods, whether that was
6 something which was mentioned during the course of your
7 handover?

8 A. No, we did not discuss that.

9 Q. Knowing, as you do now, that there were orders to that
10 effect, would you have expected Major Parker to deal
11 with that or not?

12 A. Not necessarily. I would have expected him to cover the
13 issues that were the most pressing of the day, of which
14 there were very many, but that was not one of them.

15 Q. Can we look then, please, at how extant 7 Armoured
16 Brigade orders ought to have been handed over and how
17 the process ought to have worked?

18 The Inquiry has heard that in these handovers there
19 would be a handing over of what I think colloquially is
20 referred to as the "war diary"; would that be right?

21 A. That is not what I would typically expect to form the
22 backbone of the handover, no.

23 Q. In terms of at brigade headquarters, if there would have
24 been a collection of 7 Armoured Brigade's orders,
25 whether in hard copy or electronically, you say in your

1 statement -- entirely understandably, if I may say so --
2 that there would not be a job for any individual to pore
3 through all of those previous orders.

4 A. No.

5 Q. But physically, presumably, one way or the other, they
6 would have been handed over and passed to your brigade
7 headquarters?

8 A. That's correct, within the various different staff
9 cells.

10 Q. Was there anywhere -- we will come on to different staff
11 branches in a moment if we may -- where a single
12 collection of the entirety of the orders was handed over
13 as part of the record of 7 Armoured Brigade?

14 A. There would have been -- in the chief clerk's cell there
15 would have been a collection of all the orders that we
16 would have received. Now I can't remember whether that
17 was a physical collection or electronic, but within what
18 is called "the registry" there would have been a record
19 of everything that 7 Brigade had transferred and
20 everything that 19 Brigade had received.

21 Q. If it matters, within that, would that have included the
22 handing over of the war diary, the log of events, that
23 had happened during the previous brigade's time?

24 A. Yes.

25 Q. So that sits, as it were, in the RDC, in the registry?

1 A. Yes.

2 Q. Turning then to staff branches, do I understand your
3 statement correctly to suggest that you would have
4 expected orders that were extant to be something that
5 was dealt with in the handovers from relevant staff
6 branch to relevant staff branch?

7 A. Yes, yes, I would have expected that, and, moreover,
8 there would have been an emphasis placed on, again, the
9 prioritisation of issues, if you like, of pain points or
10 of concerns that would have been at the top of the list
11 of the handover. What would not have happened is
12 a process by which together the staff would have looked
13 at every single op order or FRAGO.

14 Q. No. Some of them no doubt become irrelevant --
15 operational orders for operations that have happened,
16 been and gone?

17 A. Exactly.

18 Q. But those orders that still had a currency and dealt
19 with how ongoing operations were to be conducted
20 presumably you would expect to be handed over from staff
21 branch to staff branch?

22 A. Yes. An example, which was a very live issue at the
23 time, was rules of engagement. So things like that,
24 which were being constantly reviewed in the light of the
25 operational context, would be right at the top of the

1 pile.

2 Q. Thank you. Can we then bear down on the detail of it so
3 far as orders relating to hooding are concerned? The
4 divisional order of 20 May was FRAGO 152. If we may
5 have MOD031014 on the screen, we have the brigade
6 equivalent, FRAGO 63. It is 21 May, so obviously before
7 Op Telic 2. Presumably it is FRAGO 63, the brigade
8 level order, that is more relevant to you --

9 A. Yes.

10 Q. -- rather than FRAGO 152. Thank you.

11 I think you will be familiar with the content of
12 this. One sees matters not entirely relevant relating
13 to graffiti analysis and so on. But detention of
14 civilians dealt with in the FRAGO had an annex which, if
15 we look at MOD031016, was dealing with the detention of
16 civilians, and -- over the page at paragraph 5 --
17 material now very familiar to the Inquiry about the
18 importance of treating prisoners humanity and dignity,
19 line 3 and about four lines up from the bottom:

20 "Under no circumstances should their faces be
21 covered as this might impair breathing."

22 I am sure that is now familiar to you as well; is
23 that right?

24 A. Yes, it is, yes.

25 Q. Looking broadly at the matters that were being dealt

1 with under "Detention of civilians", could we go back to
2 the previous page? It included the rules of engagement,
3 minimum force and then, over the page,
4 Geneva Convention, military law and conclusion. So that
5 gives the flavour of it.

6 A. Yes.

7 Q. Can you help us first of all with which staff branches
8 within the brigade headquarters ought to have been
9 engaged in this order being handed over?

10 A. Well, both G3 and G2.

11 Q. G3 and G2. What about between the legal advisers?

12 A. Well, I am including the legal advisers as part of the
13 G3 shop in its entirety. There is a series of
14 subdivisions within the G3 area, particularly in an
15 operation of this type when you have a lot of additional
16 staff cells.

17 Q. Thank you.

18 The Inquiry knows that, so far as Op Telic 1 is
19 concerned, there were orders -- I wonder if we could
20 just have the order back -- thank you -- and go back to
21 the front page perhaps at MOD031014.

22 The Inquiry knows that subsequent to 21 May there
23 were a number of other orders in Op Telic 1 that dealt
24 with timescales --

25 A. Yes.

1 Q. -- for prisoners and then, of course, FRAGO 29 which
2 brought in the BGIRO system --

3 A. Yes.

4 Q. -- in shorthand. Would you nevertheless have expected
5 this FRAGO -- FRAGO 63 -- detailing these aspects
6 relating to the detention of civilians and not covering
7 the faces, to be handed over, notwithstanding that there
8 were later orders that dealt with timescales and the
9 BGIRO?

10 A. I would certainly expect them to have been handed over.
11 The material point I think is how significant an issue
12 this was at the point of handover because there would
13 have been several extant directives and they would not
14 have gone through every single one.

15 Q. No. But that does mean, then, that as a document you
16 would have expected FRAGO 63 to be handed over from
17 staff branch to staff branch on both G2 and G3 side;
18 would that be right?

19 A. Yes, I would, yes.

20 Q. Would you have expected that guidance to be something
21 that was mentioned in the verbal handover as well as the
22 physical handing over of FRAGO 63 within the staff
23 branches that you mentioned?

24 A. I mean, I would repeat that I do honestly think that
25 depends on the profile of this sort of issue at the time

1 of handover because, you know, despite the structured
2 handover process, there is still limited time and a lot
3 to cover. It would have been a question of whether --
4 you know, how high up the priority of pressing issues
5 this was and whether the outgoing force considered this
6 to be an issue still or whether, given the date between
7 its issue and 19 Brigade relieving, it had been
8 disseminated and resolved.

9 Q. Can I turn, then, to a slightly different sub-aspect,
10 but still on the same theme? If we go back, please, to
11 the front page of the order, we see, do we not, that
12 within the circulation at the time 7 Armoured Brigade
13 were including 19 Mech Brigade as a "for information"
14 recipient. Do you see that on the bottom right?

15 A. Yes, I can, yes.

16 Q. That is on 21 May. Can you remember physically
17 whereabouts you were and the 19 Mech Brigade
18 headquarters staff were on 21 May and shortly
19 thereafter?

20 A. We were running Op Fresco and we were in Catterick --
21 well, certainly around the UK. I don't know exactly
22 around that date, but we would have been in the UK.

23 Q. As the chief of staff at that stage, obviously an order
24 of this kind might have come into the registry or to
25 clerks in the first place, but would you not have been

1 the staff officer who was the main recipient of orders
2 such as this prior to deployment?

3 A. Well, I would be responsible for all the information
4 that came into the brigade headquarters. I have to say
5 in all honesty that I do not recall seeing this at the
6 time. I am not even certain that it -- given the data
7 links between theatre and the UK at the time, certainly
8 19 Brigade headquarters, that it would necessarily have
9 arrived. I think it would be important to determine the
10 registry record for this because I do not recall seeing
11 this.

12 Q. So if we look at paragraph 61 of your statement for
13 a moment at BMI06069, when you said there that hooding
14 was not permitted as indicated by FRAGO 152, that does
15 not mean that you saw FRAGO 152 or its brigade
16 equivalent, FRAGO 63. That was a comment having now
17 seen it?

18 A. That was a comment, yes, having seen the op orders and
19 FRAGOs.

20 Q. There has been evidence to the Inquiry by Captain King,
21 for example, the SO3 ops, as he then was, that there
22 would have been an expectation that, on receipt of an
23 order such as this, it would have been expected that you
24 might have translated this FRAGO into a standard
25 operating instruction to inform 19 Mech Brigade as to

1 how they were to conduct prisoner matters once deployed.

2 Is that fair?

3 A. Yes, that is fair, yes.

4 Q. So had you received this, would it be right that you

5 should have included the guidance "Under no

6 circumstances should prisoners' faces be covered" as

7 some kind of SOI for 19 Mech Brigade battlegroups?

8 A. Yes.

9 Q. As you may be aware, the Inquiry has not seen any

10 subsequent SOI or order cascaded down which repeats that

11 prohibition on prisoners' faces being covered. Can you

12 help us as to why it is that there doesn't seem to have

13 been any SOI from you or from your headquarters to that

14 effect?

15 A. Well, I did not understand hooding to be an issue at the

16 time. I mean, we provided advice around people behaving

17 in a humane way; we provided direction that commanders

18 were responsible for the humane treatment of prisoners;

19 we provided direction that disciplinary action would be

20 taken against people who did not apply the

21 Geneva Convention and the law of armed conflict. So

22 I think the tenor and ethos of the brigade operating

23 procedure was clear in that and that was clear to the

24 battlegroups. I did not specifically address the issue

25 of hooding because I did not believe it to be a --

1 either going on or a point of concern when we arrived in
2 theatre.

3 Q. Can we take it in stages then? If we go back to
4 MOD031014 and the order itself, do I understand you
5 correctly to say that your starting point is that you
6 are not confident that this actually reached you at all
7 because of difficulties in data transmission?

8 A. Yes, that's correct. I mean, I have absolutely no
9 recollection of seeing this at the time.

10 Q. If we work for the moment -- bearing in mind that caveat
11 you give -- on the assumption that you did receive it,
12 are you saying that you may not have included
13 a direction not to hood or a direction not to cover
14 prisoners' faces in an SOI because you didn't think it
15 was necessary because soldiers had already been told to
16 treat prisoners humanely and it wasn't necessary --

17 A. Well, if you are working on the assumption that I had
18 received it, then I would have seen that it is
19 specifically -- you know, the covering of faces was
20 called out --

21 Q. Yes.

22 A. -- so therefore I would have included that as a specific
23 direction.

24 Q. So had you received this, you say, notwithstanding what
25 general training may have been, that specific direction

1 not to cover prisoners is something you would have
2 handed on in an SOI?

3 A. Yes, because I would have deduced that this was
4 a particular issue that required addressing
5 specifically, rather than general statements around
6 humane treatment and the Geneva Convention.

7 Q. No doubt you had a considerable workload at this stage
8 in late May in the preparations for Op Telic and the
9 Inquiry has heard lots of evidence about the tempo and
10 the burdens on staff officers as well as soldiers on the
11 ground. Is it possible that this was simply missed --
12 that you received it, but didn't include it in an SOI?

13 A. Yes, that is possible. What I do know is that we were
14 not getting regular traffic from theatre because of the
15 data link issues. I will give you an example. The vast
16 majority of my information prior to arrival in theatre
17 was done over a secure telephone link with Chris Parker
18 in theatre, so we didn't have a consistent secure link
19 from Basra Palace back into brigade headquarters in
20 Yorkshire. In fact it wasn't until 19 Brigade were in
21 theatre that they put more of those data links in place.

22 Q. So you had significant experience -- correct me if I am
23 wrong -- of documents that you should have seen not
24 actually arriving with you and you having to rely on
25 conversations with Major Parker? Is that the essence of

1 it?

2 A. The essence is that the majority of our -- of the
3 information flow was over the telephone because of
4 limited data links.

5 Q. Now a number of witnesses to the Inquiry have said that
6 their experience was that hooding prisoners at the point
7 of capture was pretty much a standard operating
8 procedure and something which they had seen in training.
9 It seems as though that was not your experience, first
10 of all; would that be right?

11 A. That's correct. It wasn't my experience.

12 Q. Can we look against that background about the concept of
13 the re-issuing of FRAGO 63 because, on any view, as an
14 Op Telic 1 order, it was not going to get to soldiers on
15 the ground in Op Telic 2 unless it was either re-issued
16 by brigade or was handed over at battlegroup level.

17 A. That is correct.

18 Q. If it be right that some soldiers saw it as an SOP for
19 hoods to be used at the point of capture, would you now
20 accept that it would have been desirable for FRAGO 63 to
21 be re-issued by your brigade headquarters?

22 A. Yes.

23 Q. In terms of how the process should have worked for that,
24 where do you think that the decision to re-issue
25 FRAGO 63 ought to have been made?

1 A. Well, that decision was -- would have been mine, so, you
2 know, if I had seen FRAGO 63, given the content of
3 FRAGO 63 and given the fact that it was very specific
4 about the covering of somebody's face --

5 Q. Yes.

6 A. -- then it would have been my responsibility to say "Of
7 the FRAGOs that we have received and of the information
8 we have received, this one is important, this one needs
9 to be cascaded down to our own battlegroups so that
10 we've got a sort of additional comms loop to the
11 battlegroups taking over from the battlegroups and the
12 extant SOPs of the in-place battlegroup".

13 Q. So you are accepting some ultimate responsibility for
14 that -- would that be right -- for it not being
15 re-issued?

16 A. What I am saying is that, if I had seen it, it would
17 have been my responsibility to ensure that it was
18 reinforced to the battlegroups.

19 Q. I follow.

20 THE CHAIRMAN: I think you are going, if I may, a little
21 further, aren't you, saying that if you had seen it, not
22 only would it have been your responsibility, but that's
23 what you would have actually done; is that right?

24 A. Yes, Sir, yes.

25 THE CHAIRMAN: Yes.

1 MR MOSS: That is, in a sense, what I wanted to ask about
2 because, of course, on the evidence that you have given,
3 you don't recall seeing it when you were at Catterick
4 and you don't recall it being something which was
5 specifically raised by Major Parker.

6 A. Well, more than that. I remember that it wasn't
7 specifically raised by Major Parker.

8 Q. At least as you remember it, FRAGO 63 is not something
9 which was drawn to your attention?

10 A. That is correct.

11 Q. Now, can I ask you, against that background, then, where
12 you would have expected others to pick up on it and
13 ensure that it was re-issued or bring it to you to
14 consider whether it should have been re-issued? Where
15 should that have happened if it wasn't something that
16 was being handed over at chief of staff level?

17 A. Well, it would have been an element of the legal
18 advisers' handover and it would have been an element of
19 the G3 handover.

20 Q. If it be right that the specific prohibition on
21 prisoners' faces being covered might have been news or
22 a change of procedure for some soldiers, would you then
23 have expected the G3 side or legal either to re-issue
24 FRAGO 63 or to raise it with you along the lines of,
25 "This was issued by the previous brigade. It is

1 something which perhaps we need to ensure has been
2 cascaded to our battlegroups"?

3 A. Well, it would depend on the information they picked up
4 from the in-place battlegroups because if it were the
5 case that, if you like, the point had been made and the
6 change had been made, then there would be no specific
7 point in going over old ground, if you like. I mean,
8 operations throw up a whole series of issues that get
9 addressed and resolved and we move on to the next one.
10 Only if this was an extant problem would it have come
11 back up the chain in terms of "We will need to address
12 this again because it's not being actioned on the
13 ground".

14 Q. Can I just ask this? Prior to your promotion and your
15 leaving theatre on about 19 August, do you remember
16 becoming aware at any stage that there had been
17 a specific prohibition on hooding or a specific
18 prohibition on prisoners' faces being covered?

19 A. No.

20 Q. Perhaps I ought to deal with one further matter which is
21 just this: would you have expected the contents of that
22 FRAGO and the direction about prisoners' faces not being
23 covered to be handed over from battlegroup to
24 battlegroup as well?

25 A. Yes. I mean it is largely a battlegroup issue. It is

1 not going to be the brigade staffs that are involved in
2 that process.

3 Q. Thank you.

4 May I turn, then, just to one or two orders, I hope
5 briefly. Could we look, please, at a slightly later but
6 still Op Telic 1 order of 30 May 2003. It is at
7 MOD016172. It is FRAGO 70, a brigade FRAGO.

8 If you just get your bearings again on this
9 document, Mr Eaton, it was dealing with internment and
10 detention procedures. We see over the page that there
11 was a section in it dealing with international law,
12 which included as its final sentence:

13 "Under no circumstances may a suspect be
14 interrogated until he has been processed by the TIF."

15 Do you remember being asked about that when you were
16 providing your witness statement?

17 A. Yes.

18 Q. Can I ask you first of all what you understood that
19 phrase "Under no circumstances may a suspect be
20 interrogated until he has been processed by the TIF" to
21 mean in practice?

22 A. Well, that the formal questioning process would be
23 carried out by people trained to do it, rather than the
24 patrol personnel on the ground.

25 Q. You say in your statement in terms that you did read it

1 and you were aware of the procedure, paragraph 46.

2 Can I be clear, would you have understood this to have

3 been a prohibition on tactical questioning before

4 prisoners were sent to the TIF?

5 A. At the time, yes, but related to the location of the

6 trained tactical questioners.

7 Q. What do you mean by that?

8 A. Well, because there was a time when the tactical

9 questioners were operating only in the JTIF [sic] and

10 there was a time when tactical questioners were put down

11 to battlegroup level.

12 Q. So you had understood that there was a time when --

13 what, on Op Telic 1, you had understood that TQers were

14 only at the JFIT?

15 A. That's right.

16 Q. There is quite a lot of evidence to the Inquiry to the

17 effect that in Op Telic 1, as in Op Telic 2, some

18 battlegroups had their own TQers who were operating at

19 battlegroup level. That's not something you were aware

20 of?

21 A. Well, I think that -- I had understood that to be part

22 of the sort of break in battle, the offensive operations

23 phase, and as we moved out of that offensive operations

24 phase into more of the sort of security conditioning,

25 that those TQs -- that that TQ activity was happening

1 back at the TIF.

2 Q. "Security conditioning" meaning?

3 A. Well, I mean moving from a war-fighting stance to a sort
4 of humanitarian support, reconstruction, returning Basra
5 to a functioning civil society.

6 THE CHAIRMAN: So in the what I might call -- no doubt
7 inaccurately -- the "peace phase", you thought that
8 interrogation or TQ'ing, whichever, would all go on at
9 the TIF?

10 A. That is right, Sir.

11 THE CHAIRMAN: Not at the battlegroup?

12 A. Not at the battlegroup.

13 THE CHAIRMAN: You may be asked more questions about that,
14 but for the moment I understand that.

15 MR MOSS: So just to be clear on the point the chairman has
16 just raised, coming on to Op Telic 2, did you understand
17 that TQers were operating at battlegroup level and
18 tactically questioning prisoners as part and parcel of
19 informing the BGIRO decision?

20 A. Yes -- I subsequently became aware, yes.

21 Q. When did you become aware of that?

22 A. I recall shortly after getting into theatre.

23 Q. So, what, your expectation prior to deployment would be
24 that TQ'ing and interrogation would all happen at the
25 TIF or at the JFIT, but when you got to theatre you

1 found out --

2 A. That's correct. I mean, my previous military experience
3 had been that it would happen at a TIF or similar
4 location, rather than at the battlegroup.

5 Q. When you saw FRAGO 70, had you understood that to be
6 a previous prohibition on tactical questioning at any
7 stage prior to the TIF?

8 A. That was my interpretation of it, yes.

9 Q. So what had changed? Where was the order or the
10 permission being granted to tactical questioning
11 happening at battlegroup level prior to the TIF?

12 A. I don't recall a specific order. What I'm recalling is
13 becoming aware that there was a view from the
14 battlegroups that they were losing the sort of
15 opportunity to question people on the spot and,
16 therefore, get information that may, you know, prevent
17 further loss of life or assist the operation by virtue
18 of this process of moving people to the TIF first.

19 Q. If we look at MOD016186, we see an order from late in
20 Op Telic 1, FRAGO 29, which again I think you will be
21 familiar with, which was the order that brought in the
22 BGIRO process and allowing battlegroups to hold
23 prisoners for longer.

24 If you take it from me for the moment that it is
25 silent about tactical questioning and tactical

1 questioning is not dealt with, did you have an
2 understanding one way or the other as to whether this
3 order, FRAGO 29, had changed the situation so far as
4 tactical questioning was concerned?

5 A. No, not specific to tactical questioning.

6 Q. So the change for you came about because you came to
7 receive representations, is this right, from
8 battlegroups that they had a need to get more
9 information out at battlegroup level before people were
10 moved to the TIF?

11 A. Well, they were asking for TQ-trained personnel to be
12 accessible at battlegroup headquarters, rather than only
13 at the TIF.

14 Q. And that was once you were in theatre?

15 A. Yes.

16 Q. If we just have a look at paragraph 51 of your statement
17 at BMI06067, you say there that you do not know where
18 tactical questioners fell within the chain of command.
19 You thought that the ultimate responsibility for TQ'ing
20 lay, you thought, with the RMP. What had led you to
21 that understanding?

22 A. On previous operations they were the individuals who had
23 controlled the location of TQ personnel in theatre. So,
24 for instance, in Kosovo that was the system.

25 Q. Did you have an understanding of -- apart from the

1 RMP -- which other staff branches might be involved with
2 the TQers?

3 A. Well certainly G2.

4 Q. If your previous understanding had been that
5 questioning, including TQ'ing, was not going to be
6 permitted before the TIF and that changed, was any order
7 given to deal with the change or any guidance given for
8 TQ'ing prior to the TIF?

9 A. I don't recall so, no.

10 Q. Do you think that that is something which ought to have
11 happened?

12 A. It is something that may well have happened. I am just
13 saying that I can't recall it.

14 Q. Again, to take it shortly, the Inquiry has not, first of
15 all, had any disclosure of guidance on TQ'ing or orders
16 that specifically dealt with TQ'ing, other than the
17 generic guidance which is in JWP 1-10, and has seen that
18 after Baha Mousa's death there was an email -- quite
19 a high level, chief of staff level at division -- saying
20 "no policy visible on TQ". If that is all right, did
21 you think it may be the case that there was something of
22 an absence of guidance and instruction relating to the
23 tactical questioning process going on?

24 A. I recall there was a lack of clarity over exactly where
25 that activity could or could not take place.

1 Q. Is that not something -- TQ'ing being bound up with
2 prisoners and how they are treated -- that gave rise to
3 a risk of mistreatment, if there was that sort of
4 confusion?

5 A. Well, that is possible.

6 Q. What, if anything, was done, then, to deal with the
7 confusion that you have just alluded to?

8 THE CHAIRMAN: I think he actually said it was
9 a possibility. It is not that he accepted necessarily
10 that there was a confusion.

11 MR MOSS: Forgive me.

12 THE CHAIRMAN: What part would you see as your role in the
13 question of TQ'ing at this stage as the chief of staff?

14 A. I would see my role, Sir, in addressing an issue that
15 had come to the surface, that we had a problem with it.
16 My role would be in then seeking guidance about how to
17 address the problem. What I don't recall in theatre,
18 Sir, or from memory since is that we had an issue with
19 the TQ process.

20 MR MOSS: In fairness to you, the answer that you gave was
21 that you recall there was a lack of clarity over exactly
22 where that activity could or could not take place. Was
23 anything done to deal with that lack of clarity?

24 A. I do not believe so, no.

25 Q. Is this your evidence: that was not a concern about how

1 prisoners were being treated so much as where the TQ'ing
2 took place?

3 A. The point of issue was where the tactical questioners
4 should be, rather than -- and there was absolutely no
5 sign or information that the process of tactical
6 questioning was resulting in inhumane treatment of
7 prisoners.

8 Q. Thank you. May we deal next just briefly, please, with
9 FRAGO 85? Can we have a look at that, please, at
10 MOD023089?

11 Mr Eaton, we see, don't we, at the bottom right,
12 that this is an order that went out under your name and
13 that of Major Steptoe --

14 A. Yes.

15 Q. -- on 13 July. If we go over two pages to MOD023091,
16 you may remember that it's the guidance which contained
17 an arrest procedures card, including notes at the bottom
18 about suspects being treated humanely and with respect
19 and mistreatment of suspects will be investigated and it
20 is a command responsibility to ensure it does not
21 happen, disciplinary action and so on.

22 Just dealing with this order then, I think you say
23 in your statement that you recall that this was
24 something that was drafted by Major Steptoe. Is that
25 still your recollection?

1 A. I think the order was drafted by Major Steptoe. The
2 arrest procedure would have been drafted by
3 Major Clifton.

4 Q. Thank you. We see, don't we, that although there were
5 those strong warnings about mistreatment not being
6 tolerated, command responsibility, disciplinary action
7 and the need to treat humanely, that a prohibition on
8 covering prisoners' faces was not addressed within that
9 particular guidance. That is right, isn't it?

10 A. That's correct.

11 Q. Is that something which you had noticed at the time?

12 A. No. I considered the notes at the bottom to be
13 appropriate and necessary guidance.

14 Q. Thank you. May I turn, then, to the practice in theatre
15 as to what was going on at battlegroup level? Were you
16 aware at any time that hooding was actually going on in
17 theatre?

18 A. No.

19 Q. There has been evidence to the Inquiry that within 1 QLR
20 it was a standard operating procedure, at least so far
21 as suspected insurgents were concerned, and some
22 evidence of its use at least in the early stage of
23 Op Telic 2 by other battlegroups as well, again taking
24 it shortly. If that is what was happening on the
25 ground, should that have come to your attention one way

1 or another?

2 A. Well, if it was happening on the ground, it didn't come
3 to my attention. I mean, I certainly didn't see it. It
4 was certainly not raised to me as an SOP. I mean, the
5 individual battlegroup SOPs would not be, you know,
6 individually referred to me in any case, but I was not
7 aware of it.

8 Q. Forgive me, I didn't mean to imply that it was a written
9 SOP so much as on the ground it was standard practice
10 that that was what was going on certainly within 1 QLR.

11 A. No, I understand that. But still the facts remain that
12 if that was the case, I was not aware of it and, if it
13 was the case, it was not referred to me.

14 Q. And that is the case, is it, despite what you set out in
15 your statement about all of the frequent contact that
16 you as chief of staff would have had with those at
17 battlegroup level where there were daily meetings where
18 liaison officers would be attending, whether in person
19 or by radio?

20 A. Yes, that's correct.

21 Q. Simply not raised, you say?

22 A. No, it wasn't.

23 Q. Could we have a look, please, at the operational order
24 for an operation called "Operation Quebec"? We have it
25 at MOD030899. It is a 1 QLR order, Mr Eaton, dated

1 13 August, so towards the end of your time in theatre.

2 If we go over the page, we will see that you, as
3 chief of staff, are not on the distribution list, but
4 that 19 Mech Brigade G3 ops are. One sees within this
5 order on that page, under 6 and "TQ":

6 "TQ will take place at BG Main HQ under the
7 direction of the IO, using brigade TQ assets, arresting
8 soldiers will be required. Prisoners should arrive for
9 TQ bagged and tagged unless over 45 years of age."

10 In the ordinary course of events, would you have
11 expected to see a battlegroup level operational order of
12 this kind?

13 A. No.

14 Q. Would either the commander of the battlegroup or the
15 liaison officer be expected to discuss these types of
16 operations with you at any kind of meeting?

17 A. Well, I mean activity in Iraq at the time was largely --
18 and remained largely -- battlegroup level operations, so
19 the points that would be relevant to brigade would be
20 issues of coordination of any other brigade assets. So
21 those sorts of issues would be discussed, timings would
22 be discussed, the potential for medical cover or Quick
23 Reaction Force, but the detail in such an op order would
24 not necessarily be discussed with brigade headquarters.

25 Q. So that sort of level of tactical on-the-ground process

1 that we see set out in 6 for the TQ you say might not be
2 raised in the discussions that you would be a party to?

3 A. That's correct.

4 Q. It may then be hypothetical, but can I ask you
5 nevertheless, what would your understanding in Iraq have
6 been of the phrase "bagged and tagged" or "should arrive
7 for TQ bagged and tagged"?

8 A. My understanding of that is really based on my time in
9 Northern Ireland, which means that you bag people's
10 hands to retain forensic evidence and you secure their
11 hands with plasticuffs or some other process.

12 Q. You refer to that in your statement -- at paragraph 58
13 I think it is -- that you had come across that in
14 Northern Ireland.

15 Were you aware in the context of Iraq that the
16 phrase "bagging and tagging" had taken on a different
17 meaning, meaning that prisoners would be hooded with
18 a hessian sandbag?

19 A. No, and I'm not sure that was everybody's interpretation
20 of it. It certainly wasn't mine and, I mean, in
21 discussions since I think there are lots of different
22 interpretations of "bagging and tagging".

23 Q. Can we look, please, at paragraphs 62 and 63 of your
24 statement, please? It is at BMI06070. So that the
25 Inquiry has it from you today, you set out there, in

1 clear terms, your assertion that you were not made aware
2 of any process of conditioning techniques being used by
3 1 QLR. Is that right?

4 A. That's correct.

5 Q. So if it be the case that a process of stress positions
6 of some kind being used and hooding being used as
7 a process of conditioning, you say, do you, that that
8 did not come to your ears at all?

9 A. No it did not.

10 Q. Specifically, do you have any recollection of those
11 matters being raised by either Major Clifton or by
12 Major Robinson from G2?

13 A. No.

14 Q. Can I ask you next briefly, please, about time limits?
15 I think you would have been aware, would you not, that
16 there was a time limit within which prisoners were meant
17 to be delivered to the TIF of 14 hours? Were you aware
18 of that?

19 A. Yes, yes, I was aware.

20 Q. Did it come to your attention that there were
21 occasions -- perhaps quite a number of occasions -- when
22 battlegroups for various reasons were not meeting that
23 deadline?

24 A. Yes, it did.

25 Q. How frequent an occurrence did you understand that to

1 be?

2 A. Well, I'm not sure I can put a frequency on it, but
3 I recall it certainly being raised on at least one
4 occasion and it was largely related to the limitations
5 we had on RMP resource and escort resource.

6 Q. Of course, some of the brigade areas of responsibility
7 would have been quite some distance from Umm Qasr.
8 That's right, isn't it?

9 A. Yes, and that was really the problem. You had limited
10 people on the ground actually involved in the operation
11 itself and then you had to have additional people to
12 take anybody off to Umm Qasr, and with the drawdown of
13 RMP strength, that was a problem.

14 Q. Was any thought given by you or, so far as you know, by
15 others within brigade headquarters to the fact that
16 there might be additional risk to prisoners if they were
17 being held for longer than 14 hours at battlegroup level
18 in terms of the risk of mistreatment?

19 A. No, and I don't personally think that necessarily
20 follows. I don't see why there should be a greater risk
21 at a battlegroup level than anywhere else.

22 Q. It may be said that one of the risks is that at
23 battlegroup it may be the case that feelings might run
24 high because of the circumstances in which the arrest
25 had been made, that soldiers who were involved in the

1 arrest or involved in the incident for which people may
2 be accused of criminal conduct, that they would then be
3 involved in holding the prisoners and a greater risk to
4 them for that reason.

5 A. Well, I think it is very unlikely that the soldiers
6 engaged in actually arresting the detainees are going to
7 then -- or the internees -- are then going to be
8 themselves holding them for an extended period of time.
9 I mean they would be -- they would be processed within
10 the battlegroup to, you know, elements like the
11 battlegroup provost staff. So I think there is
12 a separation there.

13 Q. So on that aspect you would not think it desirable --
14 would this be fair -- for arresting soldiers to be
15 involved in guarding at the detention facility of the
16 battlegroup itself?

17 A. For an extended period of time I think that would not be
18 desirable.

19 Q. What about the TIF and its hours of opening? Did you
20 have an understanding of whether the TIF was open for
21 24 hours a day or for a more limited period of time?

22 A. Well, I think this was also a point of confusion. There
23 was a claim from the TIF that it was only open for
24 a certain period of time when the operational
25 requirement clearly required it to be open for reception

1 at any time.

2 Q. It was suggested to the Inquiry by the OC of the JFIT
3 that in fact arrangements were made so that British
4 prisoners could be taken at the TIF at any time and
5 special arrangements were made to ensure that,
6 notwithstanding that the TIF was an American facility --

7 A. Exactly.

8 Q. -- with British elements in it. Were you aware that
9 those arrangements had been made?

10 A. I was aware that there was an accommodation in place to
11 get round some of the more rigid timings of opening for
12 the JTIF [sic].

13 Q. So far as you were aware, had anything been done to
14 communicate to battlegroups that the TIF was in fact
15 open 24 hours a day for British prisoners?

16 A. I cannot recall a specific order. I remember it being
17 discussed at a co-ord conference with the BGIROs.

18 Q. Just two last matters then very briefly, if I may. So
19 far as your handover to Major Fenton is concerned,
20 can I just ask whether you recall prisoner handling
21 issues being a feature within your handover to
22 Major Fenton at all?

23 A. No, I don't recall them being a feature.

24 Q. By that time, FRAGO 63, which we looked at, would that
25 physically have been a document that was handed over at

1 your handover to Major Fenton?

2 A. I would imagine it would be, you know, in the pile of
3 all op orders that would have been handed on, yes.

4 Q. So it would still have been available in the registry,
5 you think --

6 A. Yes.

7 Q. -- but not something which in any sense physically was
8 handed --

9 A. It might not have been pulled out, unless perhaps in the
10 LEGAD handover, but it would have existed in the
11 registry, yes.

12 Q. I haven't taken you, Mr Eaton, to your previous
13 statement or to your evidence to the court martial, but
14 can I just deal with one or two aspects from that very
15 briefly? Within your court martial evidence -- without
16 taking you to it -- you gave evidence at the time of the
17 court martial that 1 QLR were seen in brigade
18 headquarters as being a very efficient battlegroup; is
19 that right?

20 A. Yes.

21 Q. That they took time to ensure that they knew what they
22 had to do and they stood out in that regard. Is that
23 still your recollection?

24 A. Yes, it is.

25 Q. I think within that you said that Colonel Mendonca was

1 seen as by far the best CO or the best CO by some way
2 within the brigade. Does that remain your recollection
3 of his performance?

4 A. Yes, yes, it does.

5 Q. Thank you. Was there anything, as it were, on the debit
6 side about 1 QLR or indeed about Colonel Mendonca that
7 you can recall in terms of matters relating in
8 particular to prisoners?

9 A. No.

10 Q. You didn't hear of any casual violence or
11 heavy-handedness by 1 QLR in how they dealt with
12 prisoners?

13 A. No. I mean, if we had heard of casual violence, I would
14 have heard about that and we would have done something
15 about it.

16 Q. Do you have any recollection, following the murder of
17 Captain Dai Jones, of there being a risk of
18 ill-treatment or of the brigadier talking about the risk
19 of ill-treatment or any episodes that happened following
20 Dai Jones' murder?

21 A. I certainly recall Brigadier Moore explicitly directing
22 that people remain calm and retain their professionalism
23 after he was blown up in the ambulance, yes.

24 MR MOSS: Thank you. Those are my questions.

25 THE CHAIRMAN: I expect it would be nice if we finish for

1 you before lunch. Is that possible?

2 MS HETHERINGTON: I think I will be pretty quick.

3 THE CHAIRMAN: Good. Thank you.

4 Questions by MS HETHERINGTON

5 MS HETHERINGTON: Mr Eaton, just dealing first with the
6 question of oversight of the internment process, given
7 your role as chief of staff and as a coordinator of HQ
8 functions, if there was a situation whereby G2, who had
9 been nominated as the lead in FRAGO 29, did not consider
10 themselves as in overall control of the process, but
11 neither did G3, do you take some responsibility for
12 that?

13 A. Yes, although I would say at the time that we had
14 a process that worked. There were certainly not
15 people -- there was nobody coming to me saying, "We
16 don't understand who is doing what". That didn't
17 happen.

18 Q. In terms of the oversight of internment, from your
19 position as chief of staff, do you think it was
20 important to have one clearly nominated branch who had
21 oversight of the whole process to avoid matters falling,
22 as it were, between several stools?

23 A. I think the most important thing is that we had
24 a process that worked and that people understood their
25 roles within that. To that point, nobody at any stage

1 came to me and said "We don't understand what we are
2 doing here".

3 Q. In terms of the handover process between 7 Armoured
4 Brigade and 19 Mech Brigade, one witness from 19 Brigade
5 gave evidence to the effect that, given the inevitable
6 fatigue on the outgoing brigade, that there is, to some
7 extent at least, an onus on the incoming brigade to seek
8 out the key points and the relevant extant orders from
9 those from whom they are taking over. Would you agree
10 with that?

11 A. I am not sure I would, no. I would probably put it the
12 other way round. I think if a force has been in place
13 and has the context and the operational understanding,
14 I would say it is their responsibility to identify the
15 priority issues at the time, as indeed 7 Brigade did,
16 and ensure that, amongst the plethora of issues, events
17 and activities to deal with, those were an important and
18 a detailed part of the handover.

19 Q. In terms of FRAGO 70, which we have looked at and is the
20 FRAGO which has the bar on interrogation prior to the
21 TIF, you said in your statement and today that you did
22 see that. It may be that you can't remember, but it is
23 dated 30 May and it is copied to 19 Mech Brigade. Can
24 you recall whether that was an order that did get
25 through to you prior to deployment in hard copy or

1 whether you only saw it in theatre?

2 A. I can't remember seeing it in Catterick, but I do
3 remember seeing it in theatre.

4 Q. You said that you understood that order to include a bar
5 on tactical questioning prior to the TIF and that there
6 was no order changing this, as far as you are aware, but
7 battlegroups wanted to get information from prisoners
8 before they were, as it were, lost to the TIF. In what
9 way does that constitute grounds for not following an
10 order?

11 A. Well, I don't think it does. I don't think it does
12 constitute grounds. I think it constitutes grounds for
13 a discussion around where the tactical questioning
14 should happen. I remember those discussions going on.

15 Q. But if there was never an order saying clearly "Tactical
16 questioning can now happen at battlegroup and it should
17 happen in the following way", there was, in fact, no
18 authority for that to continue, was there?

19 A. Well, there may have been verbal authority, which was
20 the point I made earlier -- and I can't recall whether
21 there was or there was not -- but there may have been
22 verbal authority which would have been legitimate.

23 Q. So the situation was, then, that tactical questioning
24 was going on at battlegroup level, as you knew, there
25 were no written orders covering it and, as you were

1 aware from hearing from the battlegroups, there was
2 a pressure that they were feeling to get information
3 from prisoners at that stage. We have also heard that
4 that pressure was in an atmosphere of increasing
5 insurgency as the tour progressed. Would you accept
6 that it was very important to have clear oversight of
7 the tactical questioning process at battlegroup level
8 that was understood by all involved?

9 A. I would agree that it was important to have definition
10 on where the activity could take place, but I cannot
11 recall that there was an order that determined where
12 that could take place.

13 Q. What about definition of who was, at the command level,
14 responsible for this activity and responsible for the
15 TQers themselves?

16 THE CHAIRMAN: Isn't that what the BGIRO is all about?

17 MS HETHERINGTON: Well, at the brigade level I am asking.

18 A. Well, at the brigade level it's a question around
19 allocation of assets. I mean, there are limited
20 TQ-qualified people. If they are put in the right place
21 and governed by the process that we have put in place
22 through brigade direction and FRAGOs, then it becomes
23 the responsibility of the battlegroup to conduct and to
24 enable that activity.

25 Q. But if a tactical questioner has some issue that he

1 needs guidance on from someone senior or believes there
2 is a problem with a process that needs addressing, who
3 at brigade does he go to?

4 A. I do not recall who in brigade was handling the TQ
5 detail.

6 Q. You say in your statement that you, as part of your
7 role, got to know the G2 staff because they were an
8 important component. Did you, through that, get to know
9 the fact that the head of the G2 cell and his deputy
10 were inexperienced in their roles?

11 A. Are you talking about in the brigade headquarters?

12 Q. Yes, I am talking about -- I can give the names --
13 Major Robinson and Lieutenant Dickinson.

14 A. I would not have described Major Robinson as being
15 unusually inexperienced in his role. His appointment
16 was a sort of a standard appointment. I don't quite
17 understand the --

18 Q. You were not aware that it was his first experience in
19 that role?

20 A. No, no, I was aware of that. He was part of our core
21 staff, so he was a permanent -- we had about 26 core
22 members of staff and then about 100 additional people
23 come and join us for and in Iraq, so, yes, I was aware
24 that he was the new brigade G2 major, yes.

25 Q. But it didn't strike you, as a result of that, that he

1 A. Yes, I would.

2 Q. Would you just help the Inquiry as to, if that had been
3 the case, how it would come to the attention of brigade
4 that they were not well disciplined and there was
5 a culture of casual violence towards Iraqis?

6 A. Well, it would have come to my attention -- to our
7 attention at brigade headquarters -- probably through
8 friends in the headquarters having informal discussions
9 with friends in the battlegroup and little bits of
10 rumour and tittle-tattle, you know, flow around all the
11 time. But that was not the case. I mean, we were not
12 hearing that that was the case and we would not have
13 expected that from the QLR.

14 Q. In the army and in the structure you were engaged in in
15 relation to activities in Basra, would you have expected
16 it to come through to brigade in that sort of way, if
17 that had been the case?

18 A. Yes. I mean they were close by, they were the closest
19 battlegroup. There were a lot of friends -- you know,
20 there was a lot of friendship between the brigade and
21 the Queen's Lancashire officers. Yes, I think it would
22 have come through.

23 Q. Just one last aspect of that. You gave evidence at the
24 court martial that 1 QLR were heavily transited in the
25 sense that they were visited by people and their patch

1 was visited for more than one reason because of the
2 location they were at. Would you have expected that to
3 have revealed if there was a culture of ill-discipline
4 or casual violence?

5 A. Yes. I think again, you know, there would be -- I mean
6 there is always official comments and sort of unofficial
7 comments that come back from visitors and that was
8 certainly never raised.

9 MR LANGDALE: That is all I ask. Thank you, Sir.

10 THE CHAIRMAN: Thank you.

11 Mr Garnham?

12 I am sorry, I didn't see you there, Ms Simcock, nor
13 did I see your name down. But you are in both places,
14 here and on my piece of paper, and you may proceed.

15 Questions by MS SIMCOCK

16 MS SIMCOCK: Thank you, Sir. I will be very brief.

17 THE CHAIRMAN: For a short period of time, you understand.

18 MS SIMCOCK: Mr Eaton, you said, in answer to questions from
19 Mr Moss, that you have no recollection of hooding or the
20 use of stress positions being raised by either
21 Major Clifton or Major Robinson. Were you talking there
22 about them raising those matters directly to you?

23 A. Yes.

24 Q. And your evidence is that they did not?

25 A. That's correct.

1 Q. And you were also not aware of Major Clifton discussing
2 any such issues with anyone else; is that also right?

3 A. Yes, that is correct. He may have done, but I was not
4 aware of any of those conversations.

5 Q. Yes. So at no time prior to the death of Baha Mousa
6 were you aware of Major Clifton having given any legal
7 advice specifically that the hooding of detainees or the
8 use of stress positions was lawful and appropriate; is
9 that right?

10 A. That's right.

11 Q. Had such legal advice been given by Major Clifton to
12 a BGIRO, as the chief of staff you would have expected
13 to hear about that, wouldn't you?

14 A. If it had been given -- I certainly would have expected
15 to hear about it if it had been a brigade instruction of
16 the type we have seen today. If there had been
17 a conversation between Major Clifton and a BGIRO,
18 I would not necessarily have heard about it unless
19 Major Clifton then came and told me about it or the
20 BGIRO did.

21 Q. But in the context of legal advice being sought by
22 a BGIRO and given, whether it is in writing or by
23 conversation, as chief of staff that would be something
24 you would expect to be briefed on?

25 A. Yes, but I don't recall that ever happening.

1 Q. No. Does that comment also apply to Major Robinson
2 giving such advice as to the appropriateness of hooding
3 and stress positions to a BGIRO, in that, as chief of
4 staff, you would also have expected to hear about that?

5 A. Yes, I would have done.

6 Q. Yes, and you didn't?

7 A. And I didn't.

8 MS SIMCOCK: I am very grateful. Thank you, Sir.

9 THE CHAIRMAN: Mr Garnham?

10 Questions by MR GARNHAM

11 MR GARNHAM: Just one matter, please, Mr Eaton. You were
12 asked about the prolonging of the shock of capture by
13 the use of hoods by Mr Moss. Do you have any experience
14 of the shock of capture yourself?

15 A. Yes, I do. I mean I was taken prisoner in Bosnia, yes.

16 Q. Can you just describe to us what that taught you about
17 the shock of capture?

18 A. Well, I think it probably taught me that that phrase,
19 the "shock of capture", does exist in that there is an
20 initial period where one is probably more inclined to
21 talk and say things and give information and then there
22 is a period at which you become, rightly or wrongly,
23 a little more confident that you are going to live
24 through it and your sort of senses return to normal.

25 Q. Is that what happened to you?

1 A. Yes.

2 MR GARNHAM: Thank you.

3 THE CHAIRMAN: Mr Moss?

4 MR MOSS: No questions arising from that.

5 Questions by THE CHAIRMAN

6 THE CHAIRMAN: There are one or two things I would like to

7 ask you before we finish and you can go.

8 You were asked by Ms Simcock about expecting to hear
9 of conversations between the BGIRO and Majors Robinson
10 and Clifton.

11 A. Yes.

12 THE CHAIRMAN: Why would you expect to hear about such
13 conversations?

14 A. Because I -- that would be an unusual conversation to be
15 had -- perhaps I don't mean an "unusual conversation".
16 I mean that would be a very important conversation to
17 have taken place. We all lived together in
18 Basra Palace, we spent almost the whole time together,
19 and we would, you know, break out of things, go and have
20 a coffee, talk about these sorts of issues. I mean
21 that's a significant issue, that -- you know, that would
22 have been -- that would have been mentioned in the
23 conversations that we would have had.

24 THE CHAIRMAN: As you said, you would have expected it to
25 have been mentioned if it was in conversations?

1 A. Yes.

2 THE CHAIRMAN: That day, the next day, any day?

3 A. On an issue like that I would have thought pretty
4 immediately, but certainly that day, yes.

5 THE CHAIRMAN: I see. Thank you.

6 The next thing I want to ask you about is this:
7 I heard evidence about the difference between "tactical
8 questioning" and "interrogation" in that they are terms
9 of art, one different from the other; do you follow what
10 I mean?

11 A. I'm not sure I do, Sir.

12 THE CHAIRMAN: Well, I have heard it said that
13 "interrogation" is quite different as a term of what has
14 been occurring to "tactical questioning". Were you
15 aware of any such difference?

16 A. I'm not sure that I draw the distinction.

17 THE CHAIRMAN: That's what I want to know. If you had seen
18 no interrogation before going to the TIF, would you have
19 necessarily have thought that TQ'ing was different to
20 interrogation?

21 A. No, I would have seen the two terms as meaning the same
22 thing.

23 THE CHAIRMAN: Some, on the other hand, say there is
24 a definite difference between the two, but that would
25 not have occurred to you?

1 A. No, Sir.

2 THE CHAIRMAN: All right. Thank you.

3 The only other thing I want to ask you about is

4 this: did you meet Major Royce and Major Peebles?

5 A. Well, Major Royce, yes, sir. Major Peebles, I -- he was

6 Queen's Lancashire Regiment?

7 THE CHAIRMAN: You probably have gone by the time he came

8 in. I am not sure.

9 A. I am afraid I can't quite remember Major Peebles, Sir,

10 but Major Royce definitely.

11 THE CHAIRMAN: How often did you see him?

12 A. Probably once a week, maybe twice a week.

13 THE CHAIRMAN: May I ask you this, if you are prepared to

14 say: what did you make of him as an officer?

15 A. I am not sure I was struck particularly one way or the

16 other, Sir. I didn't think him either inefficient nor

17 did I see him as a sort of rising star.

18 THE CHAIRMAN: Yes, I follow.

19 The final thing I want to ask you is this: you

20 presumably heard about the death of Baha Mousa --

21 A. Yes, sir.

22 THE CHAIRMAN: -- after you had left. What was your

23 reaction to that?

24 A. Well, I was pretty shocked and even more shocked with

25 the information that came out. I was very surprised

1 and, you know, clearly very disappointed.

2 THE CHAIRMAN: When you say that you were very surprised,
3 was that surprise because of your estimation and
4 knowledge of 1 Queen's Lancashire Regiment?

5 A. Well, it was two things. There was my estimation of
6 British soldiers and their ability to differentiate
7 between aggression and violence and also particularly
8 the Queen's Lancashires, who in every other way had been
9 outstanding.

10 THE CHAIRMAN: Thank you very much indeed. I am very
11 grateful to you for coming to the Inquiry and giving
12 evidence. You are now free to go. We will come back at
13 quarter past 2.

14 MR MOSS: Thank you, Sir.

15 (1.15 pm)

16 (The short adjournment)

17 (2.15 pm)

18 MR HALLIDAY: Sir, the next witness is Travis Dean Vincent.

19 THE CHAIRMAN: Yes. If you would be kind enough to stand
20 up, please, I will ask that you be sworn.

21 TRAVIS DEAN VINCENT (affirmed)

22 THE CHAIRMAN: Please sit down. If you could get as close
23 as you can to that microphone and speak into it, then we
24 shall all be able to hear you. Thank you.

25 Questions by MR HALLIDAY

1 MR HALLIDAY: Could you state your full name, please?

2 A. Travis Dean Vincent.

3 Q. Would you prefer that I address you as "Mr Vincent" or

4 "Captain Vincent"?

5 A. "Mr Vincent" is fine, thank you.

6 Q. Can you see a red folder to your side?

7 A. I can.

8 Q. Could you see if your witness statement is inside that

9 please?

10 A. Yes, it is.

11 Q. Could you turn to the final page, please? On the final

12 two pages there, can you see your signature dated 5 May

13 2010?

14 A. I can.

15 Q. When you signed this statement, were you attesting that

16 it was true to the best of your knowledge and belief?

17 A. I was.

18 Q. Thank you. Is it right that you joined the Australian

19 Army in 1994?

20 A. That's correct.

21 Q. And in 2002 you joined the British Army and were

22 commissioned into the Black Watch?

23 A. That is correct.

24 Q. Were you deployed to Iraq for Op Telic 1?

25 A. I was.

1 Q. What was your rank at that time?

2 A. Captain.

3 Q. What was your initial role during that tour?

4 A. During the tour I was a watchkeeper in battlegroup

5 headquarters.

6 Q. Did your role change at any point during the tour?

7 A. For about the last three weeks of the tour I took over

8 as OC Headquarter Company.

9 Q. You have to raise your voice, please.

10 A. Sorry.

11 Q. You took over as OC of HQ Company, is that right?

12 A. That is correct.

13 Q. And that would have been in early June 2003, would it?

14 A. I'm not sure of the exact date, but it was roughly the

15 last three weeks of the tour.

16 Q. The tour ended in early July 2003; is that right?

17 A. I cannot remember the date.

18 Q. From whom did you take over that role?

19 A. Anthony Fraser.

20 Q. Major Fraser has told the Inquiry that he thinks he left

21 theatre on about 30 May 2003. Would you disagree with

22 that date?

23 A. I can't remember.

24 Q. Did your new role as OC of HQ Company involve any

25 oversight into prisoner handling?

1 A. Not as far as OC Headquarter Company, no.

2 Q. Major Fraser has told the Inquiry that when he was OC of
3 H Company, he had a significant role in supervising
4 prisoner welfare and overseeing the work done in that
5 area by the RSM and the regimental provost staff. Did
6 you not perform the same function?

7 A. No, I didn't. I didn't take over any role pertaining to
8 prisoner handling.

9 Q. Did he not mention to you, in a handover with you, that
10 that could form part of your role?

11 A. I can't remember if he did or didn't.

12 Q. Major Fraser has also said that he always knew when
13 there were prisoners in camp and that he frequently
14 visited the detention centre. Did you do the same?

15 A. No, I didn't. I didn't visit the centre.

16 Q. Was it not part of your job, as the officer commanding
17 the company, to keep an eye on what was going on in the
18 camp and to keep an eye on how prisoners were handled?

19 A. No, it wasn't. It wasn't a task that the commanding
20 officer had me do. As I said, when I took over the
21 company, we were looking at drawing down and withdrawing
22 from theatre, so my tasks were primarily centred around
23 the organisation of withdrawing men and equipment.

24 Q. Is it not a natural part of an officer commanding
25 a company's job just to keep an eye on what is going on

1 within the company camp?

2 A. Yes, but you need to understand that OC Headquarter
3 Company is not like a rifle company commander. It is
4 a different job.

5 Q. A job which did not involve monitoring what was going on
6 in the camp generally?

7 A. Well, camp security was not my responsibility.

8 Q. Whose job was it to monitor what was going on around the
9 camp?

10 A. We were co-located with one of the rifle companies in
11 the camp.

12 Q. To ask the question again, whose job was it to monitor
13 what was going on around the camp?

14 A. Well, I imagine it was the OC of the co-located
15 rifle company.

16 THE CHAIRMAN: Could you speak a bit slower, please --

17 A. Sure.

18 THE CHAIRMAN: -- because these ladies in front of you are
19 producing a simultaneous transcript of what you are
20 saying and it's very difficult if you speak too quickly.

21 MR HALLIDAY: I will ask the question again. Whose job was
22 it to keep an eye on what was going on around the camp?

23 A. Okay, where we were located in Basra, we were co-located
24 with one of the rifle companies. The rifle companies
25 supplied the soldiers who man the sangers and who man

1 the front gate for that location. It was their
2 responsibility, to the best of my knowledge, for the
3 security of the camp location.

4 Q. What about specifically overseeing what was happening to
5 prisoners brought into the camp? Whose job was that?

6 A. To the best of my knowledge it was the RSM and his
7 provost staff.

8 Q. Was there any officer responsible for overseeing the
9 RSM's work in that area?

10 A. I mean, the RSM works, you know, could have been the
11 adjutant or the commanding officer. I do not have any
12 specific recollection of what his chain of command was.

13 Q. Moving on to a different topic, do you recall attending
14 pre-deployment training at a cinema in Fallingbostal?

15 A. I do.

16 Q. Do you recall whether that training covered prisoner
17 handling?

18 A. I recollect there was a prisoner handling component
19 to it.

20 Q. Can you remember what was taught during that component?

21 A. I believe Sergeant Gallacher ran a session talking about
22 prisoner handling. The exact content of that session
23 I have no recollection of.

24 Q. During the session did Sergeant Gallacher say anything
25 about the use of stress positions or hooding?

1 A. I can't remember, to be honest.

2 Q. Can you remember anyone else teaching prisoner handling
3 topics during the pre-deployment training?

4 A. No.

5 Q. Did you personally witness prisoners during your tour in
6 Iraq?

7 A. On one occasion. Just -- it would have been just after
8 we crossed into Iraq. We were travelling along a road
9 and there were some prisoners to the side of the road
10 and that is the -- who were being guarded by an unknown
11 unit, and that was the only time I ever saw any
12 prisoners.

13 Q. So you never saw any prisoners inside your camp with the
14 Black Watch?

15 A. Not to my knowledge. I don't specifically recollect
16 seeing any prisoners.

17 Q. Are you saying that you may have seen prisoners but you
18 simply can't remember now?

19 A. Well I can't remember seeing any prisoners.

20 Q. Were you aware that the Black Watch was hooding
21 prisoners during that particular tour with sandbags over
22 their heads?

23 A. No, I wasn't.

24 Q. It's not something you ever saw?

25 A. It's not something I ever saw, no.

1 Q. The Inquiry has heard a fair amount of evidence that
2 hooding prisoners was common practice amongst infantry
3 soldiers. Was that something you were aware of?

4 A. No. As I said -- I mean you need to understand my role
5 as a watchkeeper. I was either inside an armoured
6 vehicle during the invasion phase or, when we went
7 static, I was inside a building manning the radio net.
8 I wasn't out on the ground and certainly not at point of
9 capture.

10 Q. What about your general experiences in the infantry?
11 Are you not aware from those of any practice of hooding
12 prisoners?

13 A. I have no specific memory of ever being expressly taught
14 to hood prisoners.

15 Q. What about apart from being expressly taught? Were you
16 aware that this was a practice which sometimes went on?

17 A. Not to my recollection, no.

18 Q. Do you recall that the provost sergeant,
19 Sergeant Gallacher, whom you mentioned a few moments
20 ago, had some responsibility for taking care of
21 prisoners in the camp?

22 A. Yes.

23 Q. Were you aware that he was putting high value prisoners
24 into stress positions during that tour?

25 A. No.

1 Q. There is some evidence that the general officer
2 commanding 1 Division issued an oral order banning
3 hooding in about early April 2003. Were you ever
4 informed of that hooding ban?

5 A. I can't remember specifically reading anything, but
6 I may have been. I can't remember.

7 Q. In preparing your witness statement, you were referred
8 to a written FRAGO, FRAGO 63, which prohibited the
9 covering of prisoners' faces. Did you ever read that
10 FRAGO or were you ever told about that specific
11 prohibition?

12 A. Again, I may have. I can't recollect that specific
13 FRAGO.

14 Q. That FRAGO was issued on 21 May 2003, which appears to
15 be when you were still the watchkeeper. At that point
16 in time would you have been attending the CO's O Group
17 meetings?

18 A. No.

19 Q. Not as watchkeeper?

20 A. No.

21 Q. As watchkeeper, should you have been made aware of
22 a prohibition on the covering of prisoners' faces?

23 A. As I said, there is every chance I may have. I just
24 don't recollect that specific FRAGO.

25 Q. Is it something you should have been told as

1 watchkeeper?

2 A. Well, if there was a prohibition that something that --
3 you know, I may have read and if it was given due
4 emphasis, it is something that I am sure would have been
5 disseminated. As I said, I just can't remember ever
6 hearing it, that's all.

7 Q. Presumably in your role as officer commanding
8 HQ Company, you also should have been told about any
9 prohibition on hooding or the covering of prisoners'
10 faces.

11 A. Well, indeed. As OC Headquarter Company, I would have
12 attended CO's orders groups.

13 Q. And that kind of order would have been disseminated at
14 the orders groups, would it?

15 A. If it came in at the time that I was attending the
16 orders groups.

17 Q. The Inquiry understands that Black Watch's tour ended at
18 the end of Op Telic 1 in early July 2003. You have been
19 referred in your witness statement to the statement of
20 Major Royce. I would like to take you to that, please.
21 The relevant page appears at BMI03147. Major Royce is
22 describing a recce in June 2003, when he and a few other
23 members of 1 QLR were visiting the Black Watch. At
24 paragraph 50 he says the following:

25 "Whilst at Camp Stephen I observed in the periphery

1 of my vision a prisoner (he may have been an internee or
2 detainee) being brought into the camp hooded and
3 plasticuffed. Myself, the CO, OC and others were
4 discussing other issues at the time and hence I did not
5 raise this with them at the time. I subsequently did
6 raise the issue with the OC HQ Company 1 Black Watch.
7 I recall he was an Australian, quite young and (I think)
8 a senior captain, but I cannot recall his name. He
9 looked after me during my time with the Black Watch,
10 including organising who I would be seeing. I raised
11 this as hooding was contrary to advice given at
12 a lecture in Catterick which I had attended during the
13 pre-deployment training in May."

14 Then a few lines on:

15 "In discussions with OC HQ Company 1 Black Watch it
16 was clear that hooding and cuffing was an SOP from HQ
17 7 Armoured Brigade which had continued on from the
18 war-fighting phase. I do not remember the detail of the
19 conversation. He was my host and I spent a lot of time
20 with him, asking questions as I went along. As far as
21 I recall, shock of capture and TQ were not discussed,
22 but there were concerns that potential insurgents should
23 not be allowed to see the layout of the inside of our
24 camps which they could use for targeting purposes. He
25 gave me a brief overview that internees were transferred

1 to the JFIT (joint forces interrogation team) and the
2 detainees mostly were released. He did not go into any
3 detail but did confirm that hooding and cuffing was
4 carried out."

5 Does that account accord with your own recollection?

6 A. No, it does not.

7 Q. Are you saying that this conversation did not take place
8 or that it could be something you have forgotten?

9 A. No, I am saying that -- and would refute the allegation
10 that he makes that I would claim (a) that there was
11 an SOP from 7 Armoured Brigade detailing the use of
12 hooding and cuffing, (b) that I would have that level of
13 knowledge and information about the process and, (c),
14 that, you know, I ever hosted a Major Royce. I have no
15 knowledge of a Major Royce and certainly, as
16 OC Headquarter Company, I don't believe he was the
17 incoming OC Headquarter Company.

18 Q. Would you accept that the description given by
19 Major Royce of the OC of HQ Company, a young Australian
20 captain, is a description which fits you?

21 A. Well, it kind of narrowed it down. I was the only
22 Australian captain, so ...

23 Q. But you deny telling Major Royce that hooding was an SOP
24 for 1 Black Watch, do you?

25 A. Not at all. I mean, as I said, I would not have made up

1 such a claim, given that I wasn't part of the process,
2 and certainly I would have been rather --

3 Q. Pausing there, when you say "not at all", you mean you
4 do deny what he says?

5 A. I absolutely deny what he says.

6 MR HALLIDAY: Thank you.

7 Thank you, Sir.

8 THE CHAIRMAN: Ms Hetherington?

9 Questions by MS HETHERINGTON

10 MS HETHERINGTON: Just one question from me, Mr Vincent.

11 Mr Vincent, could we just look at paragraph 8 of
12 your statement? It is at BMI08167. This is about
13 pre-deployment training in prisoner handling. You say:

14 "I recall a briefing on prisoner handling whilst
15 with Black Watch prior to departure for Iraq where it
16 was mentioned during the training at the Jerboa Cinema
17 in Fallingbostel ..."

18 This is the training given by Sergeant Gallagher, is
19 that right?

20 A. That's correct.

21 Q. "... that only trained personnel were entitled to carry
22 out prisoner handling and tactical questioning and that
23 it was the RSM's task to look after prisoners in a war
24 situation."

25 Sergeant Gallacher has suggested that he did mention

1 hooding and stress positions in this lecture, but also
2 that he did explain that prisoner handling and tactical
3 questioning was a task not for general infantry
4 soldiers, but for specially trained personnel. Given
5 that, do you think it is possible that he did mention
6 those things and you just do not recall because it was
7 not on your radar, given the job that you were going to
8 conduct in theatre?

9 A. There is every chance he did mention it. As I mentioned
10 earlier, I have no recollection of it being mentioned.

11 MS HETHERINGTON: Thank you. Thank you, Sir.

12 THE CHAIRMAN: Thank you.

13 Ms Dobbin?

14 Questions by MS DOBBIN

15 MS DOBBIN: Major Fraser, when he gave evidence, said that
16 he had a particular focus and interest in prisoner
17 handling issues because the provost staff and the
18 intelligence cell were elements within Headquarter
19 Company who dealt with prisoners of war and were under
20 his command. So he was specifically saying, because
21 they came under his command, that he had an interest in
22 them.

23 A. I wouldn't say that the IO comes under his command. It
24 does for administrative purposes, but not for
25 operational purposes. The IO works to the staff within

1 the battlegroup headquarters. So if he said that he had
2 control of them, he may have for his time, but
3 I certainly did not.

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

5 THE CHAIRMAN: Thank you. Mr Evans?

6 Questions by MR EVANS

7 MR EVANS: Thank you, Sir, very briefly.

8 You were OC HQ Company, Mr Vincent, for the last
9 three weeks. How much of a task was it for you to wind
10 down the battalion, as you put it, with a view to
11 getting them back to the United Kingdom?

12 A. Well, it was a fairly all-consuming task, given the
13 nature of moving that amount of men and machinery back
14 from an operational theatre back to where we were based
15 in Germany.

16 Q. Were you pretty much devoted to that task, therefore,
17 over the course of that three weeks?

18 A. Absolutely.

19 Q. All right. You said in response to a question from
20 Mr Halliday, where you said you absolutely denied what
21 Mr Royce said -- you said:

22 "... I would not have made up such a claim, given
23 that I wasn't part of the process ..."

24 Can you explain what you meant by that?

25 A. Well, the people who captured prisoners and what-not

1 THE CHAIRMAN: Tell me about the major who you met.

2 A. I met a major who was either the battalion 2IC or the
3 warfare officer, I am not sure which.

4 THE CHAIRMAN: Could he have been the ISTAR?

5 A. He could have been. I have no recollection of what his
6 specific role was.

7 THE CHAIRMAN: And in what context did you meet him?

8 A. The fact that he had come into the camp and they were
9 doing a handover between 1 Black Watch and the QLR. So
10 we were co-located and indeed they would attend the
11 orders groups that we would run.

12 THE CHAIRMAN: So would you have met him at an orders group
13 or would you have met him socially in the mess or where?

14 A. Well, there is every chance we might have met in the
15 mess or -- I mean, if you are sitting down for lunch,
16 you would naturally speak to people. But I think the
17 point to be made here is I did not hand over to anyone
18 in my role as OC headquarters.

19 THE CHAIRMAN: No, I understand that.

20 But what you have been asked about is somebody who
21 identifies "... an Australian, quite young and (I think)
22 a senior captain". The description would appear to fit
23 you, would it not?

24 A. Well, it would appear to fit me, yes, Sir.

25 THE CHAIRMAN: As you graphically and rightly said, you are

1 the only Australian officer present at the time,
2 I assume.

3 A. That is correct, Sir, yes.

4 THE CHAIRMAN: You can't remember having a conversation
5 along the lines of hooding and the like, do I --

6 A. No, I do not, sir, no.

7 THE CHAIRMAN: Never discussed it at all?

8 A. I have no recollection of any conversation, Sir.

9 THE CHAIRMAN: When you say "no recollection", may I just
10 ask you this? Do you mean it could not have happened or
11 do you just mean that you have no recollection?

12 A. Well, I mean I would not have been discussing something
13 that I had no knowledge of, and if I hadn't been part of
14 the process and been intimately involved in it, I could
15 not have logically have said that this was the process
16 that we followed.

17 THE CHAIRMAN: All right. Thank you.

18 Yes, very well. Thank you very much for coming to
19 the Inquiry. A brief, but important visit for us.
20 There are no further questions and you are free to go.
21 Thank you very much.

22 MR ELIAS: Thank you, Sir. Then I call General Marriott,
23 please.

24 THE CHAIRMAN: Yes, please.

25 MR ELIAS: Could you remain standing for just a moment?

1 THE CHAIRMAN: General, I am going to ask that you be sworn.

2 Would you be kind enough to stand for that exercise?

3 PATRICK CLAUDE MARRIOTT (sworn)

4 THE CHAIRMAN: Thank you very much. Do sit down. If you
5 could position yourself as close as you can get to the
6 microphone. It is not perfectly comfortable, however,
7 if you speak into it, then we shall be able to hear you
8 and that, after all, is the object of the exercise.

9 A. Yes, Sir.

10 Questions by MR ELIAS

11 MR ELIAS: Would you give the Inquiry your full name,
12 please?

13 A. Yes, I am Patrick Claude Marriott.

14 Q. You are still in the army with the rank of major
15 general?

16 A. That's correct.

17 Q. General Marriott, could I ask you please to look to
18 a file which I hope is to your right hand and to find
19 within it your statement to this Inquiry and go to the
20 last page, if you will, which is our BMI06140. Could
21 you confirm, please, that you there find your signature
22 above the date of 26 November of last year?

23 A. That's correct and that is my signature.

24 Q. When you signed that statement, General, were you
25 attesting to the Inquiry that the contents of it were

1 true to the best of your knowledge and belief?

2 A. Yes, they were true to the best of my knowledge and
3 belief.

4 Q. Thank you. I don't propose to take you to every aspect
5 covered in that statement. Your statement, as I think
6 you know, forms part, anyway, of the evidence that you
7 give to this Inquiry, but I am going to concentrate, if
8 I may, upon certain aspects where it may be you can help
9 us further.

10 First of all, may I just very briefly -- as you do
11 in your statement -- deal with your career history? You
12 joined the army in 1976.

13 A. That's correct.

14 Q. You are now in what role, please?

15 A. I am now a major general and I am the commandant at the
16 Royal Military Academy Sandhurst.

17 Q. Thank you. You have served tours over your army career,
18 as you tell us in your statement, including Northern
19 Ireland, the Middle East, the Balkans. Perhaps relevant
20 particularly to this Inquiry, in September 2001 you were
21 appointed as chief of staff of 1 (UK) Armoured Division,
22 holding that post during 2003 on Op Telic 1.

23 A. That's correct.

24 Q. As it happens, just to complete the picture, as it were,
25 in 2005/2006 you were again deployed to Iraq on

1 Op Telic 7, you tell us --

2 A. That's correct.

3 Q. -- then as brigade commander.

4 May I just deal with training that you may have had

5 prior to deployment to Iraq? It is right, as your

6 statement puts it -- and I summarise -- that you had not

7 received any training relevant to prisoner handling?

8 A. That's correct.

9 Q. Just so that we understand it, does that mean that you

10 would not have received any training in relation, for

11 example, to hooding?

12 A. I received no training on that at all.

13 Q. So that you weren't, for example, told that hooding was

14 right or hooding was wrong; you simply received no

15 training at all?

16 A. It was implied that it was wrong within the law of armed

17 conflict training that we did all get, and that is an

18 annual requirement, because it is, in my view, inhumane.

19 Q. So that would have been, as it were, your deduction from

20 the law of armed conflict --

21 A. That's correct.

22 Q. -- that hooding was inhumane?

23 A. That's correct.

24 Q. Would that have been your view in 2003?

25 A. Yes, it was my view.

1 Q. And was it your view in 2003 that hooding was inhumane
2 and unlawful for all purposes?

3 A. I wouldn't be qualified to state the law on hooding, but
4 I will be able to say it was inhumane in my own opinion.

5 Q. For whatever purpose the hooding was used?

6 A. I think pretty much for whatever purpose, yes. As
7 I make clear in my statement, I am not a fan or
8 a supporter of hooding.

9 Q. You didn't receive ever any conduct after capture
10 training?

11 A. No, I did not.

12 Q. If I can just complete the picture, then, in relation to
13 training, in relation to the so-called techniques --
14 "conditioning techniques", as they are sometimes
15 referred to -- stress positions, deprivation of sleep,
16 food, water and so on, did you receive any training in
17 relation to those aspects?

18 A. No, I can't recall that.

19 Q. Again, would you have regarded those techniques as being
20 techniques which could or could not be used?

21 A. Could you repeat the techniques, please?

22 Q. Yes. Let's take them separately perhaps. Stress
23 positions?

24 A. And the next?

25 Q. Can we deal with them separately?

1 A. Yes -- no, that is fine.

2 Q. Would you have regarded the use of stress positions as
3 being appropriate for prisoners or not?

4 A. I have never been trained on them, so I would have
5 personally regarded them as not something one would want
6 to do. But I'm not trained on them.

7 Q. Deprivation of sleep?

8 A. I think that would be inhumane.

9 Q. Deprivation of food and water?

10 A. Clearly inhumane.

11 Q. Could I just ask you, please, about what I think is
12 a personal view that you express at paragraph 27 in your
13 statement to this Inquiry. You refer to the use of
14 blacked-out goggles, "... where sight deprivation was
15 necessary for security purposes".

16 I am going to come back to General Brims' order in
17 due course. But you say this:

18 "Personally, I don't think that the use of a sandbag
19 as a hood impairs breathing."

20 Why did you say that?

21 A. I don't recall why I said it, to be honest, but I think
22 it's probably true. I have filled quite a few sandbags
23 in my time and I don't think necessarily it would impair
24 breathing, if that's the pure question.

25 Q. Because they are porous?

1 A. Because they are porous.

2 Q. But you have never worn one, have you, over your head --

3 A. No.

4 Q. -- or indeed witnessed anyone else with one on their
5 heads?

6 A. No.

7 Q. Does that affect your view, that statement in
8 paragraph 27, as to whether hooding was humane or
9 otherwise?

10 A. No. I remain absolutely of the view that it is inhumane
11 and unnecessary.

12 Q. Now, may I move on, then, please, to your role in Iraq?
13 You were deployed at the time, were you, in the rank of
14 colonel as chief of staff?

15 A. That's correct.

16 Q. Working to Major General Brims --

17 A. Yes.

18 Q. -- the GOC. You describe in paragraph 15 your role as
19 being the "staff linchpin". You ensured, did you, that
20 whatever Major General Brims directed was carried
21 through?

22 A. Yes, I think that's a good way to describe the role of
23 the chief of staff. He would state what he wanted to
24 achieve, we would work out how he might do it and then
25 it would be our task -- and I am the head of his

1 staff -- to ensure that his orders were passed down.

2 Q. And in ensuring that his orders were passed down, what,
3 in practice, did that involve?

4 A. In practice it meant giving them out.

5 Q. And to whom would you give them out?

6 A. I gave orders out to the staff and then a number of
7 staff branches and they would then trickle those orders
8 out down through their own individual columns and,
9 importantly and relevant here, I used to run the
10 twice-daily divisional conference calls, by which his
11 orders were passed down to the units within the
12 division.

13 Q. By conference call, therefore, the orders would be given
14 orally and not in writing?

15 A. There are many ways of giving out the orders, but the
16 prime means at the time was undoubtedly oral because
17 events were moving very fast indeed and you need to
18 consider the context in which we were operating at the
19 time.

20 Q. Can we have a look at paragraph 15, please, at
21 BMI066130? Towards the foot of that paragraph, General,
22 you set out -- and it can only be in a much compressed
23 form -- the tempo, which you describe as:

24 "... very fast, very 'twenty-four hour'. Such tempo
25 necessarily demands that it is not always possible or

1 desirable to write every order down, as one is seeking
2 to 'out-tempo' the enemy."
3 A. That's correct.
4 Q. I think perhaps you would want to tell us, would you,
5 that that, in a sense, hardly encapsulates the busy-ness
6 of the role that you had?
7 A. It was ferociously busy at the time and we were very
8 tired. We had been out there some considerable time
9 so -- and I think at this particular time -- we are
10 really talking about late March here. You need to bear
11 in mind, in terms of context, that this was only days
12 before the division entered Basra --
13 Q. Yes.
14 A. -- and the amounts of orders and volume of control
15 required to get that to work was very, very impressive,
16 to say the least.
17 Q. So the Inquiry should understand that, from your
18 perspective anyway, orders might frequently, regularly,
19 be issued orally?
20 A. I think orally would be the prime means of communication
21 for orders at that time, sir.
22 Q. And if there were a need or a perceived need for the
23 oral order to be, if you like, underlined or underscored
24 by some written confirmation, who would be expected to
25 carry that through?

1 A. It would depend on the context of the order and how it
2 was given. But generally, if oral orders were given
3 out, sometimes by General Robin himself at this
4 conference, sometimes by me on his behalf, one would
5 expect them to be recorded by everyone out there, if
6 possible, bearing in mind -- I go back to my point about
7 whether you could write things down or whether they
8 would immediately be passed on verbally -- and then,
9 when the tempo slowed, if the item was of sufficient
10 importance, we would catch them in a written order known
11 as a "fragmentary order" or "FRAGO", which amplifies the
12 original order.

13 Q. Who would decide if the order was, as you put it,
14 sufficiently important to need the written underscoring?

15 A. The general himself would often say "That's so important
16 it needs to go out in writing" or it would be my
17 decision or one of the members of staff. We would have
18 to be relying on his judgment. We, at this stage, would
19 have decentralised much of our operations down to the
20 good understanding of the staff whom we trusted.

21 Q. If the order were not underscored in writing in that
22 way, you say it would have been -- or it would be --
23 recorded, where would it be recorded?

24 A. Well, it might be recorded in the log as the -- which
25 was written by quite tired watchkeepers at the time --

1 as I was verbally giving them out. But clearly they
2 were not trained in speedwriting, so they would capture
3 probably a summary, really, of the order as it was given
4 and certainly only the key parts, the most important
5 parts of it. It should be recorded there. Likewise, at
6 the other end of the conversation, clearly you should
7 have a mirror image of that as well.

8 Q. The watchkeeper's logs?

9 A. The watchkeeper's log.

10 Q. If not there, would it in fact be recorded anywhere
11 else?

12 A. Well everyone around the table would have their own
13 notebook, so I am sure they would be writing it down as
14 well.

15 Q. But officially?

16 A. Officially, ultimately, it might well appear in the war
17 diary, if that has been collected, and there are
18 a number of other places it might appear, and in these
19 FRAGOs that I refer to.

20 Q. You tell us in your statement to the Inquiry that your
21 operations officer, Justin Maciejewski, was your deputy
22 in all but name.

23 A. For current operations, yes, he was.

24 Q. And you describe him as being pivotal in the orders
25 process.

1 A. Yes, he really owned the close process around the
2 operations table, if I can describe it there, where we
3 all gathered to give these orders out. That was his
4 terrain. He drove that part of the ship, as it were.

5 Q. So does that mean, if there were an order emanating from
6 the GOC through you, that you might leave it to the ops
7 officer to cascade it, as it were?

8 A. Yes, on occasion. I mean, these conference calls --
9 when the tempo is very fast, we could have had six or
10 eight of them in a day. There were two primary ones,
11 when the general was always present, and I was always at
12 the primary ones, but there were a number of other minor
13 ones which he might run himself as my deputy because
14 clearly we can't be there 24 hours a day.

15 Q. At paragraph 18 -- can we have that on the screen,
16 please, at BMI06130 -- you say this:

17 "In relation to the handling of prisoners,
18 I consider the key people at the time ...", and you set
19 them out.

20 Just to enlarge upon that, you mean in relation to
21 issues that may have arisen in this area; is that right?

22 A. In this area, yes. Nick Mercer was very important. He
23 was the key man really whose advice we sought.

24 Q. So you consider the key people were Andy Cowling, deputy
25 chief of staff, Nick Mercer and Eddie Forster-Knight?

1 A. Yes, and at different times in the many months we were
2 there, individuals there would gain or decrease in
3 importance.

4 Q. Of those, you regarded Nicholas Mercer as being the key
5 individual, did you?

6 A. Yes, absolutely.

7 Q. You recall, do you, an issue being raised about
8 complaint as to the treatment of prisoners at Umm Qasr?

9 A. I think the incident you are referring to is after
10 a visit by General Robin Brims down there.

11 Q. Yes.

12 A. I do recall that, yes.

13 Q. You were made aware of it, what, by the general?

14 A. As I recall, the general deployed out with Nick Mercer
15 to go to Umm Qasr and returned and there was some
16 discussion then concerning prisoners and there was some
17 disagreement about prisoners and their handling. And
18 I was involved to a degree with that discussion, but not
19 at the whole -- for the whole conversation because
20 Nick Mercer, as the general's legal adviser, was leading
21 on the issue.

22 Q. If we look, please, at paragraph 20 of what you say to
23 the Inquiry about this, about halfway through the
24 paragraph, you see where you describe their return:
25 "... there was discussion about what they had seen,

1 particularly as regards hooding. Lieutenant Colonel
2 Mercer advised that hooding should stop immediately as,
3 in his view, it was illegal in terms of the
4 Geneva Convention."

5 That was a view that Colonel Mercer took implacably,
6 was it?

7 A. He took it very robustly indeed and the debate
8 continued, in fact. I was uncertain of the legal
9 aspects to this issue, but I did personally feel it
10 inhumane. But more importantly, there were media
11 implications of hooding and I didn't think that it was
12 something that one would want to see on camera for an
13 army which was essentially going in to rescue a country
14 from a dictator who used such techniques.

15 Q. What other witnesses have described as "winning the
16 hearts and minds"?

17 A. I think that's exactly right and I was concerned about
18 that, as was a man called Chris Vernon, who also appears
19 here, who was effectively our media adviser. He and
20 I agreed absolutely on this and this was an area where
21 I could add value to the debate.

22 Q. The Inquiry has heard evidence from him.

23 A. Okay.

24 Q. So you, whilst not, as it were, necessarily taking the
25 same legal view because that was not your remit, you

1 took the view, because it was inhumane, that hooding
2 should not be permitted?

3 A. Certainly for reasons of humanity, yes, but also this
4 other view, which is quite important in terms of the
5 picture that it would present of British forces.

6 Q. Do you recall, General, there being another side
7 strongly put to the argument that for practical
8 operational reasons -- reasons of operational security,
9 if you like -- hooding or deprivation of sight should be
10 permitted?

11 A. Yes, the opposing view was put by S002 and he was very
12 much part of this debate. From what I recall, he
13 insisted that it was doctrine, it was what they had been
14 taught and he felt it was important to do it. And it
15 was -- the real debate was between him and Nick Mercer,
16 and General Robin, myself, Chris Vernon, all sided with
17 Nick Mercer.

18 Q. For your varying reasons?

19 A. For our varying reasons, exactly, sir.

20 Q. Do you recall whether anyone supported S002's version?

21 A. I don't recall that. It was very much between
22 Nick Mercer and S002.

23 Q. You say at paragraph 22 that you don't recall the
24 specifics of any discussion with Colonel Mercer or
25 Nick Ayling or the NCC on this issue:

1 "This is an issue that was dealt with chiefly by
2 Lieutenant Colonel Mercer and he may well have reported
3 on these issues directly to General Brims."

4 You do not recall yourself being involved in
5 discussion about it, do you?

6 A. I don't recall them directly. This debate went on for
7 some days.

8 Q. Could you have a look, please, at a document which we
9 find at MOD011447 please? We can perhaps just make out
10 it is under Nicholas Mercer's hand to the GOC. It
11 relates to Article 5 tribunals and questioning of
12 prisoners of war. I just want to take you to the last
13 paragraph, which would seem to be a reference to the
14 visit to the JFIT that we have been discussing in the
15 last few moments, where he says he:

16 "... witnessed a number of prisoners of war who were
17 hooded and in various stress positions. I am informed
18 that this is in accordance with British Army doctrine on
19 tactical questioning. Whereas it may be in accordance
20 with British Army doctrine, in my opinion, it violates
21 international law. Prisoners of war must at all times
22 be protected ..." and so on.

23 "I am informed that this is in accordance with
24 British Army doctrine on tactical questioning."

25 That is what you would remember, is it, as the view

1 that was being put forward essentially by S002?
2 A. Well, this aspect to British Army doctrine I am not
3 familiar with because what he is referring to here is
4 what the intelligence corps might have been taught.
5 That is certainly the case that was put by S002. But
6 I was not familiar with this because this was outwith
7 what a general officer would be expected to understand.
8 It is much more a skill of the intelligence corps.
9 Q. That I understand. But my question is simply confined
10 to whether that reflects the view that S002 was putting
11 forward. That is --
12 A. Broadly speaking I think it does reflect it, yes.
13 Q. Thank you.

14 Let me take you to the statement of Neil Brown,
15 please. Can we look at paragraph 55 at BMI05870? What
16 Neil Brown said to the Inquiry in his statement -- he
17 gave evidence to like effect -- was:

18 "It was my impression that in discussions it was
19 understood by all the lawyers and other staff officers
20 I dealt with that hooding for the purposes of
21 interrogation was not permitted by the UK. This
22 accorded with my general knowledge of the case law and
23 Heath directive ..."

24 You know what is referred to by the "Heath
25 directive"?

1 A. I do.

2 Q. Would you have known about the Heath directive at the
3 time?

4 A. No, I did not.

5 Q. "... and I was given assurances that hooding was not
6 taking place for this purpose although I cannot recall
7 whether this was from legal or other officers or both.
8 It was also my view (and I advised) that the law of
9 armed conflict did not permit hooding for the purposes
10 of interrogation, but did not prohibit the use of
11 hooding in other situations and that it could be
12 legitimate in limited circumstances, namely to protect
13 the immediate physical safety of UK troops and/or
14 operational security where, for example, prisoners of
15 war were being transferred from one area to another
16 within a UK facility.

17 "This issue was widely discussed with key NCHQ staff
18 and I am certain that I also discussed it with
19 Lieutenant Colonel Clapham, Rachel Quick and
20 Major Davies. However I made it clear in the advice
21 I gave that hooding was permissible only so long as
22 absolutely necessary in these limited circumstances.
23 I also advised that the chief of staff ...
24 [Colonel Marriott] should meet with ICRC representatives
25 to discuss this and any other prisoners of war issues."

1 Just pausing there, if I may, were you made aware of
2 the fact that there was this view being put forward that
3 hooding could be legitimate for the purposes of what is
4 sometimes, in shorthand, called "operational security"?

5 A. I recall elements of this debate, but only vaguely. You
6 have prompted it by putting that on the screen. I do
7 remember the discussions that went on, but in all
8 circumstances I remember holding to the line and getting
9 rather bored with the argument that I regarded it as
10 inhumane, that General Robin had said what he wanted and
11 that it was my duty to carry it out and I supported him
12 completely. So I got rather bored with this debate.

13 Q. Whether you got bored with it or not, did you
14 participate, as is suggested here, in any meeting with
15 the ICRC, as it were, to negotiate a basis upon which
16 sight deprivation might be carried out?

17 A. I don't recall meeting with them.

18 Q. Going back, then, to your statement about this issue,
19 can we have a look, please, at paragraph 21, where you
20 say this:

21 "I recall that Lieutenant Colonel Mercer and
22 Nick Ayling thereafter rapidly sought advice from the
23 NCC regarding hooding. I recall there being
24 a disagreement about the use of hoods which resulted in
25 the NCC advising that they were content to continue with

1 hooding."

2 Just pausing there, do you know or do you recall,
3 General, who gave that advice from the NCC?

4 A. I don't recall that, no. I do recall the debate, but
5 I don't recall who gave the advice.

6 Q. Are you able to say whether, as it were, it came from on
7 high or at the NCC?

8 A. No, I really don't know.

9 Q. How confident are you that that was the advice that came
10 from NCC at that time, that they were content that
11 hooding should continue?

12 A. Well, I do recall Nick Mercer being irritated with the
13 whole thing and there was clearly a disagreement between
14 Nick Mercer and someone in the NCC, but I don't recall
15 who that was.

16 Q. Because the Inquiry, as you may be aware, has this day
17 heard from Air Marshal Burrige, who has told the
18 Inquiry -- I hope I paraphrase him correctly -- in no
19 uncertain terms that, when he was aware of the use of
20 hooding, he categorically and instantaneously banned it.

21 A. Um-hm.

22 Q. That wasn't the message that came down according to what
23 you say here.

24 A. No, I don't recall that, because this was a debate that
25 went on for, I should think, almost a month and used up

1 a great deal of Nick Mercer's and my time, given that we
2 had other things -- more pressing things -- to
3 concentrate on.

4 Q. You go on to say in paragraph 21, as we can see:

5 "... Mercer was annoyed by this advice. I don't
6 know how long the advice took to obtain."

7 But you have a clear recollection of that, do you,
8 of him being annoyed by the advice to the effect that
9 hooding could still be employed?

10 A. Yes. I think one of the reasons -- I would also argue
11 that I was annoyed by the advice. The point here is
12 that General Robin had decided to stop hooding. He was
13 the commander. Once the commander makes the decision,
14 then whether we would agree or disagree with it, we
15 stand besides him and make sure that advice is carried
16 out, and I came at this subject from that position.

17 Q. I follow. So what you are telling us, so that we have
18 it crystal clear, is that this debate, as it were, was
19 going on after General Brims had issued his order?

20 A. That's correct.

21 Q. You say in paragraph 21:

22 "Eventually advice came through that hooding could
23 continue, but if General Brims thought it should be
24 stopped then the NCC would accede given his position as
25 commander."

1 A. I do recall that, yes.

2 Q. It may be thought, from the context, that that is
3 a suggestion that the advice was coming through before
4 any order issued by General Brims, but that wouldn't be
5 right?

6 A. I cannot recall the exact sequence. I do remember that
7 once General Brims was really -- once he returned from
8 Umm Qasr, it can only have been a matter of days before
9 he gave the order to stop hooding.

10 Q. I don't know whether you heard the evidence this morning
11 of Air Marshal, as he then was, Burr ridge -- Air Chief
12 Marshal Burr ridge -- to the effect that he issued, as
13 I have told you, the direct and, as he put it, clear
14 order prior to General Brims giving any such direction.

15 A. I really -- I am afraid I don't recall that.

16 Q. You weren't aware of it at the time, were you, if it
17 happened?

18 A. I just don't recall it.

19 Q. So moving on to paragraph 23, we come to the order
20 itself. As you describe it in your statement to this
21 Inquiry:

22 "The GOC made the decision to stop hooding, and that
23 blacked-out goggles should be used instead where sight
24 deprivation was necessary for security purposes."

25 That order, requiring the use of blacked-out goggles

1 rather than hoods, was an order, was it, that could,
2 from a practical point of view, be carried out?

3 A. It was the general's decision, as I said down there, to
4 permit blacked-out goggles and we went with that.

5 Q. You go on in paragraph 23 to say:

6 "I think that this order was passed on through
7 a divisional conference call ..."

8 That is a call of the nature you have already
9 described, is it?

10 A. That's correct, yes.

11 Q. But you can't be sure of the date nor of who passed it
12 on.

13 A. No.

14 Q. You do not yourself remember relaying the order, do you?

15 A. No, I don't recall that. It must have been given in
16 early April, but I don't recall it.

17 Q. You go on at the foot of paragraph 23 to say that at the
18 time -- five or six lines up from the bottom -- hooding
19 would have been a very minor item on a very long agenda.

20 A. Yes, that's correct. I think the visit to Umm Qasr, the
21 date when we entered into Basra, bearing in mind we had
22 had to pause on the outside of it -- and this was a huge
23 operation for the British Army -- was very close indeed,
24 so I was absolutely focused on the contact battle
25 itself. So an issue such as this, although it was

1 creating a certain amount of irritation, was just not my
2 priority at the time.

3 Q. It would have been given, would it, you say, because of
4 the circumstances, a very low priority?

5 A. That is correct.

6 Q. Would that have been true, General, of prisoner handling
7 issues generally, that they were given, in Iraq, a low
8 priority generally?

9 A. No, I think that is perhaps misleading. They were
10 obviously very important, but at the time and given the
11 context, this was well down our list.

12 Q. Hearts and minds was very high on your priority list, if
13 you like, wasn't it?

14 A. Yes.

15 Q. This was an element of it, wasn't it, the handling of
16 prisoners and the proper handling of them?

17 A. Yes, I think you could argue that perhaps it was.

18 Q. Others have said -- it is not for me to comment on it --
19 that perhaps one lapse in this area produces collateral
20 damage well beyond, as it were, the immediate effects of
21 that lapse. Would you agree with that?

22 A. Yes, and clearly we are all here to give evidence to
23 that.

24 Q. Yes. So this would have been a very minor issue on your
25 agenda because of everything else that you had to do?

1 A. I think "minor" might be the wrong word. I think it
2 would have been on the agenda, but it would have been at
3 the end of a very long agenda and there were many more,
4 at the time, items that we considered to be more
5 important.

6 Q. I used the word "minor", General, because in the
7 penultimate line of paragraph 23 you yourself refer
8 to it as "very minor".

9 A. Yes, and I think at the time that is probably correct.

10 Q. The Inquiry has heard quite a lot of evidence from
11 soldiers who suggest that the use of sandbags to hood
12 prisoners, particularly at the point of capture, was
13 an SOP, a standard operating procedure. Were you aware
14 that sandbags were used in that way as a standard
15 operating procedure to hood prisoners at the point of
16 capture?

17 A. I was not aware. As the chief of staff, I was rarely
18 allowed out of the headquarters.

19 Q. If that be the case -- and again it is not for me, of
20 course, to say whether it is or not -- if that be the
21 case that hooding was therefore prevalent, it would have
22 been appropriate, wouldn't it, if there were to be
23 a change of standard operating procedure, that any order
24 issued changing that procedure should be not only
25 cascaded down, but reinforced in writing?

1 A. Not necessarily. I go back to my original words.
2 I said at the time, given the context, it was very
3 minor, so it might not have been.

4 Q. Well, it was a minor issue, but it was changing, on one
5 view anyway, the policy of soldiers on the ground and
6 the practice of soldiers on the ground in an area where
7 they were used to using sandbags and hooding without, as
8 it were, giving another thought to it.

9 A. That's correct, but you have just got to think through
10 the context at the time. In the context at the time
11 this was not regarded as absolutely -- you know,
12 anything less than minor.

13 Q. Could that, therefore -- if that is right -- explain why
14 it wasn't reinforced in writing, because no one would
15 have regarded it as being serious enough in the context?

16 A. That is hypothetically possible, yes.

17 Q. The order issued by General Brims, what was its effect?

18 A. Well, I would rather hope that hooding was stopped.

19 Q. Forgive me, what was it that he said which you put into
20 operation?

21 A. Well, that hooding should be stopped. It was as clear
22 as that, I remember.

23 Q. So hooding should be stopped, what, for all purposes and
24 in all places?

25 A. That was my interpretation of what his order was, yes.

1 Q. So that is what should have been cascaded down?

2 A. That is correct.

3 Q. It could not have been interpreted as an order that
4 related only to those matters he had seen at Umm Qasr
5 and therefore applicable only to the JFIT, for example?

6 A. No, he was categorical. He did not want hooding. I go
7 back to the two reasons why he did not want them: partly
8 reasons of humanity and partly reasons of the image that
9 it would present.

10 Q. So did you understand that his order was banning hooding
11 for all purposes wherever and whenever it might be
12 thought to be necessary?

13 A. Yes, that is my interpretation.

14 Q. Can we have a look, then, please, at the statement of
15 General Brims to this Inquiry. It is at BMI07394,
16 paragraph 49.

17 As you perhaps know, General Brims is to give
18 evidence to the Inquiry next week, but he says this in
19 his statement to the Inquiry:

20 "My memory is that when I got back to divisional HQ
21 from the prisoner of war handling facility that day,
22 I had a meeting with Lieutenant Colonel Mercer and chief
23 of staff [you] ... and discussed the matter."

24 That is your recollection too, isn't it?

25 A. Yes.

1 Q. "I think that the ... (POLAD) Nick Ayling was also there
2 ..."

3 Do you recall him being at a meeting?

4 A. I don't recall him, no.

5 Q. "... and probably also Brigadier Andrew Gregory,
6 (commander Royal Artillery), the provost marshal ... the
7 FCO adviser Charles Bird, but I cannot remember exactly
8 now. As I recall ... Mercer said that it was legal to
9 deprive a prisoner of vision for security purposes ..."

10 Do you recall Colonel Mercer saying that or anything
11 like it?

12 A. I don't recall that.

13 Q. "... and that on the assumption that the hooding at the
14 facility had been to stop the prisoners seeing the
15 papers on the table while they were being moved, it was
16 legal. However, I did not approach it as being,
17 ultimately, a legal question. For me, as a matter of
18 operational policy, we simply did not want to be hooding
19 our prisoners in any circumstances."

20 That's really the hearts and minds point that you
21 have been making, isn't it?

22 A. Yes, it is.

23 Q. He goes on:

24 "Therefore I decided that from then on, hooding was
25 not to be used. However, I also said that if anyone

1 thought that they did need to hood for security or
2 operational reasons, then they could apply to division
3 for permission to do so ..."

4 Do you remember such a caveat coming from
5 General Brims?

6 A. I don't recall that, no.

7 Q. You would have been against such a proposition anyway,
8 wouldn't you?

9 A. I was against hooding under any circumstances, but that
10 was my personal view.

11 Q. But you don't remember, do you, discussing with
12 General Brims what I will call his "caveat" to the
13 order, that an application could be made by anyone who
14 wanted to state a case, as it were, for its use?

15 A. I don't recall that, no.

16 Q. Moving on then, please, you say at paragraph 24 --
17 I don't think it need go on the screen -- that you don't
18 know to what extent hooding continued within the
19 division's area of operation after General Brims' order.
20 Whose task was it to disseminate the order and know that
21 it was being obeyed, as it were?

22 A. Well, we obviously transferred or passed on
23 General Robin Brims' intent, "stop hooding", and that
24 would have gone down to the brigades through the chain
25 of command, through that conference call. It would then

1 become the responsibility of the commanders at that
2 level -- in this case the brigadier -- to carry out
3 General Robin's orders, albeit that they may have been
4 passed on by me or whoever it was who gave the order at
5 the conference call.

6 Q. Thereafter -- and I don't mean this in any way
7 derogatorily -- one would make the assumption, would
8 one, that the order that had been issued would be
9 followed?

10 A. Yes, you trust that orders are being carried out.

11 Q. You have no memory, do you, of yourself issuing the
12 order over a conference call or over the radio in any
13 shape or form?

14 A. I don't recall that, no.

15 Q. You say at the foot of paragraph 24 -- BMI06133 -- and
16 it really prompted my earlier question of you, but may
17 I just take you to this, the bottom line of
18 paragraph 24? You say:

19 "Certainly the JFIT knew of Major General Brims'
20 intent since I am sure that S002 had been involved with
21 the original discussions."

22 A. Yes, that is correct. S002 was absolutely a key part of
23 these discussions and he would certainly have known that
24 General Robin had banned hooding.

25 Q. But you didn't mean to give or make any suggestion, by

1 putting it that way, that the order may have been
2 interpreted, by some anyway, as only being applicable to
3 that which General Brims had seen at the JFIT?

4 A. No, I think that is unlikely. I think S002 would have
5 got that right. The debate continued, but S002 did as
6 he was told.

7 Q. I move on, then, please, to ask you just a little about
8 one or two FRAGOs which you address in your statement.
9 Can we look at paragraph 35, FRAGO 163:

10 "... important to lay down timings ...", you say.

11 I don't take you to the document. Two issues here
12 perhaps: a six-hour timing for handover of prisoners,
13 the timing being, if you like, squeezed to what might
14 have been thought the practicable minimum. Would that
15 be right?

16 A. Yes. There was debate about the timings. What we
17 sought to do was to get the timings down as tight as we
18 could practically deliver and the timings changed and
19 that's for practical reasons.

20 Q. Would you agree, as some witnesses have told this
21 Inquiry, that one of the reasons for, if you like,
22 tightening up the time limits was to lessen the risk of
23 anything untoward happening to prisoners if they were
24 left with battlegroups for longer periods, particularly,
25 for example, in a situation where it may have been the

1 battlegroup soldiers who effected the arrest, it may
2 have been a violent arrest, and the scope for possible
3 retaliation was being reduced if the timescale was being
4 reduced?

5 A. I don't think I wholly agree with that. Humanely we
6 wanted to get these people back as quickly as we
7 possibly could -- that was the prime driver here -- and
8 to get them to the people who understood what to do
9 next, the specialists. That was the real thing we
10 wanted to do.

11 Q. So was the risk, which I only gave an example of, not in
12 mind at all?

13 A. I don't recall it being a part of the discussion, no.

14 Q. Do you recall any discussion about whether there should
15 be questioning at battlegroup level, if you like, before
16 handover, after the six-hour period?

17 A. There is a series of three FRAGOs and the last of the
18 three FRAGOs that you are now going to draw our
19 attention to, which I think is FRAGO 29 --

20 Q. I am coming to that in a minute.

21 A. -- we changed the timings there and we introduced the
22 BGIRO, a captain, an officer. That was put in to
23 safeguard to make sure we had an officer -- a bright and
24 capable officer -- to act as a safeguard, to make sure
25 actually that that sort of thing did not happen.

1 Q. What, that there was no questioning?

2 A. He was there. All he had to do was to decide whether

3 the individual needed to be detained or not. But I

4 don't think the business of questioning was hugely

5 relevant at the time.

6 Q. Did you, do you recall, envisage that there would be

7 questioning? Prior to FRAGO 29, which we will come to

8 in just a moment --

9 A. Um-hm.

10 Q. -- did you envisage that there would be questioning at

11 battlegroup level, tactical questioning prior to

12 handover?

13 A. I think some degree of questions might be asked because

14 they would need to find out whether it was worth sending

15 this man back or not.

16 Q. Who was it envisaged would carry out that questioning,

17 do you recall?

18 A. I don't recall, no.

19 Q. Then let's move on, please, to FRAGO 29. You tell us in

20 your statement that, as we know, FRAGO 29 created the

21 role of BGIRO, as we have been calling him in this

22 Inquiry. You say that his purpose was to provide the

23 recommendation as to whether a prisoner should be

24 regarded as a prisoner to be interned or no.

25 A. Yes, I think that was his primary purpose, but we had

1 other thoughts behind it and I do recall some of this.
2 Part of that was to put an officer in charge effectively
3 of what was going on at the frontline, so there was some
4 degree of audit, as it were. That, I think, was part of
5 the discussion, as I recall it.

6 THE CHAIRMAN: When you say "in charge", you mean in charge
7 of those who were captured?

8 A. In charge of the situation, Sir, I think, so that there
9 was someone who we knew we could talk to and we had one
10 point of contact. That's the real reason, so we had one
11 person we could talk to, because up until then it was
12 quite difficult to work out who exactly was running
13 this, so we wanted one person in each unit to be talked
14 to.

15 THE CHAIRMAN: When you talk about "who was running this",
16 you mean the prisoner handling?

17 A. No, I mean just the decision of whether they were going
18 to be sent back or not.

19 THE CHAIRMAN: Just the decision to review them to see
20 whether they should be sent back or --

21 A. That was his prime purpose, yes, Sir.

22 MR ELIAS: Do you recall, was there concern that, if you
23 like, too many prisoners were being categorised as
24 internees?

25 A. I don't recall that, sir, no.

1 Q. FRAGO 29, of course, was a FRAGO signed by you. Do you
2 recall the other changes to the system -- perhaps what
3 I might call the principal changes to the system --
4 which FRAGO 29 brought about, extending to 14 hours the
5 period of time during which a detainee might be held
6 before handover, 14 hours at battlegroup level --

7 A. Yes, I do recall the timing was extended.

8 Q. Was there discussion about that prior to the FRAGO being
9 released under your name?

10 A. Yes, there was some discussion --

11 Q. Were any issues raised in that discussion as to whether
12 it was desirable to leave detainees in the hands of the
13 battlegroup for that period of time, given that there
14 had not long before been, as we have seen -- and this
15 Inquiry has seen a number of times now -- a tightening
16 of the time limit, as it were?

17 A. Yes, there were a number of factors that came into play
18 over the 14 hours. FRAGO 29, as I recall, was issued
19 only, I think, a couple of days after six members of the
20 Royal Military Police had been killed in Majar Al Kabir,
21 which was a fairly sobering event, and as a result
22 a considerable amount of resource had to be sent up
23 north to Al Amarah to deal with the situation up there.
24 That removal of resource meant that the time was going
25 to have to lengthen because we would not have sufficient

1 resource to get people back to the internment handling
2 facility or whatever and so it was a pragmatic decision.
3 We simply didn't have the resource to do it. There were
4 other issues as well --

5 Q. Before you go on to the other issues, just so we
6 understand the resources, do you mean the basic
7 resources such as the transport and the guard for --

8 A. Absolutely. It was a question of manpower in part,
9 military police, and also the transport. It was now
10 about 50 degrees centigrade and we had a number of
11 helicopters that were broken. The prime means of moving
12 these people around was helicopters and we now needed
13 more helicopters to be based, as I recall, in the north,
14 away from Basra, which reduced our ability. And so we
15 knew we just couldn't -- even though we wanted to reduce
16 that time and keep it as short as we could, we could not
17 pragmatically deliver it.

18 Q. So whatever the reason that it couldn't be delivered,
19 there was, was there, an appreciation that, in leaving
20 prisoners with the battlegroup for the extended period
21 of time, up to 14 hours as now was, that inevitably
22 meant that there was a greater risk of something
23 untoward happening to detainees left in the hands of
24 battlegroups?

25 A. I don't recall that being a factor. I think one of the

1 key factors was that we did not want units to have very
2 large numbers of prisoners which would be a huge burden
3 on a unit that was very busy.

4 Q. But you do not remember the question of the safety of
5 the detainee being raised at all in this discussion?

6 A. I don't recall that.

7 Q. The G2 lead in this area brought about by FRAGO 29, was
8 that something you approved of?

9 A. I can't quite recall why that happened. It did happen,
10 I have read the FRAGO, but I can't quite recall why we
11 did that. The question -- the difference between a G2
12 and a G3 lead, you need to understand that the two
13 functions worked very, very close together. They
14 overlap. So it may be that at the time we did not
15 regard this as a very large issue.

16 Q. Do you remember any discussion about that or the reasons
17 why G2 were given the lead?

18 A. No, I do not recall why.

19 Q. Do you recall, General, upon the issue of FRAGO 29, your
20 considering, as a result of discussion that you may have
21 had prior to it, that perhaps this was a system which
22 was less safe, so far as detainees were concerned, than
23 had been previous systems prior to FRAGO 29?

24 A. I think I recall the reverse, in fact, because the
25 advantage of FRAGO 29 is it put in place this BGIRO, who

1 was a sort of safety check to make sure that good
2 conduct was taking place and events on the ground were
3 being dealt with humanely. That was the real intent
4 behind FRAGO 29.

5 Q. So the role of the BGIRO wasn't simply to assess, if
6 I can put it this way, the prisoner value, whether he
7 was to an internee or released or dealt with under the
8 criminal system, if you like; the purpose of the BGIRO
9 was to, what, audit the prisoner handling system?

10 A. I think it would be fair to say that we did think that
11 through and we thought it would be useful to have
12 a captain in the headquarters -- and I seem to remember
13 we actually asked that it be the operations officer, so
14 it would be the commanding officer's right-hand man --
15 to own that little part of the system.

16 Q. So your understanding would have been that, for example,
17 part of the BGIRO's role would have been to go to
18 temporary detention facility where prisoners were held
19 to ensure that they were being held according to the
20 book and so on?

21 A. Well, I would not interpret as to exactly how he went
22 about his business, but I would state that the effect is
23 as you have implied, but not necessarily the way he
24 would do it. That was up to them.

25 Q. But that was his responsibility is what you are saying?

1 A. He had a sort of coordination function. I think we all
2 discussed that and thought it was a good thing.

3 Q. Was any training or instruction to be given to BGIROs
4 under this system, giving them this responsibility?

5 A. I seem to remember, but I might have muddled this in
6 time, that -- I mean Nick Mercer was frequently going
7 out and about and talking to people about various things
8 and may have -- there may have been a decision that they
9 would be called in and briefed, but I can't say that
10 with any degree of certainty. I would have thought it
11 unlikely that nothing was given. There would have been
12 some form of coordination and discussion with them. But
13 it would not have been led by me. It probably would
14 have been led by Nick Mercer.

15 Q. If, as you say in your statement at paragraph 41, it
16 was, in practice, the operations officer of each unit
17 who would act as the BGIRO, as you envisaged, the
18 operations officer not being specialised in the handling
19 of prisoners and matters of that kind, one would have
20 thought, he would have needed, wouldn't he, some
21 guidance or training in this area to carry out the role
22 that you foresee for him?

23 A. I think he would have been given the context at the
24 time. He would have certainly have reasonably expected
25 to have a little guidance and I would be surprised if he

1 wasn't given it.

2 Q. Sir, I have four miscellaneous matters to deal with.

3 THE CHAIRMAN: Well, we started later, but we will
4 nevertheless break off. We have a break in the
5 afternoon and we will break off now for ten minutes.
6 Thank you.

7 (3.33 pm)

8 (A short break)

9 (3.43 pm)

10 THE CHAIRMAN: Yes, Mr Elias.

11 MR ELIAS: Just two or three other miscellaneous matters,
12 General, if I may.

13 Were you ever made aware of the fact, when in Iraq,
14 that prisoners turning up at the JFIT were sometimes
15 found to be injured on arrival?

16 A. I don't recall that. It may have happened, but I don't
17 recall it.

18 Q. If you had been made aware of that, would that have been
19 something that would necessarily have alarmed you in any
20 event?

21 A. I think it probably would, yes.

22 Q. What, something that would have required you to
23 institute some sort of inquiry, investigation, if you
24 like?

25 A. I think it would depend on the severity and whether this

1 was just rumour or fact or whatever. I would certainly
2 seek -- well, I think I would try to find out the facts.
3 You never normally believe first reports.

4 Q. But at all events you don't recall any incidents of it
5 happening anyway?

6 A. Certainly not such that I can remember it now, no.

7 Q. A further and separate matter: can we have a look,
8 please, at MOD051133? This is not a document that
9 I think you will have seen at the time, but you have
10 seen it in preparation for your evidence, General. You
11 see it relates to draft written answers for answering
12 Parliamentary questions. I want to ask you about
13 a background note and the content.

14 If we go on to MOD051135, please, in the centre of
15 the page, in March 2003; do you see that? This is the
16 background note for the Secretary of State in answering
17 questions in Parliament. I just want to ask you about
18 this paragraph of the background note:

19 "In March 2003 ICRC expressed concerns about the
20 length of time which some prisoners were being hooded
21 for at the ... (JFIT). General Brims instructed his
22 chief of staff, Brigadier Patrick Marriott, to issue
23 a verbal order banning the practice in all
24 circumstances."

25 You would agree, would you, that General Brims did

1 instruct you to issue an order? Is that the way it
2 worked?

3 A. Yes, he certainly did.

4 Q. Did he instruct you to issue a verbal order, as this
5 says, or would that have been down to you, as it were?

6 A. I don't recall whether he asked for it to be written or
7 verbal.

8 Q. But then this:

9 "The decision was made", says the background note,
10 "because it was no longer judged to be militarily
11 necessary to continue with the practice."

12 Would that, in fact, have represented the reason why
13 hooding was stopped, that it was not considered to be
14 militarily necessary to continue with the practice?

15 A. Well, I go back to the two reasons why I understood it
16 to be stopped. The first was on grounds of humanity and
17 the law of armed conflict; and the second one was in
18 terms of the image that it might portray British
19 soldiers to the wider public and in particular the Iraqi
20 people.

21 Q. So you would not have suggested that it was stopped
22 because it was no longer judged to be militarily
23 necessary?

24 A. I think it is militarily necessary not to create an
25 adverse opinion with the Iraqi people.

1 Q. That would be perhaps rather stretching the language,
2 would it?

3 A. I would not have phrased it quite like that.

4 Q. Finally this -- and on a point that has been raised and
5 it is why I raise it with you, but it is, if you like,
6 on the fringes of that which the Inquiry is concerned
7 with. Can we look at two documents, please? At
8 MOD042910, a heavily redacted document -- I don't think
9 it matters for our purposes -- issued on 28 March 2003.
10 Can I take you over the page to paragraph 9, under
11 the heading "Prisoner of war/internees", to
12 sub-paragraph (b) and to three lines from the bottom:

13 "It should also be noted that the GOC wishes there
14 to be a civilian reviewing authority."

15 Do you see that?

16 A. I do, sir.

17 Q. Just bearing that in mind, if you will, can we look at
18 the document we find at MOD052965, said to be a note
19 from Colonel Mercer under the hand of "Rachel". You
20 will see at the top of the page:

21 "Following CJO's trip to theatre, you are aware I've
22 been speaking to Colonel Marriott and Colonel Mercer
23 about their request [note] for a judge advocate to sit
24 on their detention management team to review the cases
25 of all those who will remain detained or imprisoned

1 during phase 4 ..."

2 Just this question, then, General: was it, as you
3 understand it, your view and the view of the GOC that
4 there should be some reviewing mechanism put into the
5 system?

6 A. Just remind me who wrote this.

7 Q. The document we are now looking at, Rachel Quick.

8 A. Rachel. I don't recall it. I really don't. There was
9 quite a lot of legal discussion about this because, as
10 I said, I left Nick Mercer to advise us on the legal
11 matters.

12 Q. You don't recall yourself having a view, do you, that in
13 whatever guise or form there should be some reviewing
14 authority in relation to internees?

15 A. I don't recall that. I recall those sort of discussions
16 but I kept pretty quiet on them because they were
17 clearly of the legal niceties that I didn't perhaps
18 understand perfectly.

19 Q. The first document I showed you, the GOC's wish that
20 there should be a civilian reviewing authority, do you
21 recall that being the GOC's view?

22 A. I don't, but that doesn't mean it was not. But I don't
23 recall it.

24 MR ELIAS: We can ask him next week. Thank you very much.

25 THE CHAIRMAN: Yes, well you may be asked a few more

1 questions.

2 Mr Singh?

3 Questions by MR SINGH

4 MR SINGH: Sir, thank you.

5 General, can I start, please, with the period in
6 about March/April 2003 which led to the ban on hooding
7 by General Brims? At that time, were you aware yourself
8 that there had been concerns raised by the ICRC?

9 A. No, I was not aware of that.

10 Q. If you had been made aware at that time that the ICRC
11 was at least considering the possibility of making
12 a formal complaint about the treatment of prisoners to
13 the British Government, would that in any way have
14 changed your view that it was a subject that was
15 relatively very minor?

16 A. I think if I had been completely aware of it -- but this
17 is a hypothetical question -- it certainly would. But
18 at this stage I don't recall the ICRC being there and
19 I go back to my earlier point about the context. I was
20 focused on trying to get British forces into Basra
21 without Iraqi or British casualties.

22 Q. Different point, but still looking at that sort of
23 period if I may. At paragraph 21 of your witness
24 statement, which is BMI06132, you have told the Inquiry
25 about what you understood the NCC's position to be and

1 you were asked a few questions about this. Without
2 going into names and using ciphers, if necessary,
3 can I ask you: were you aware of any views coming from
4 a person we know as "S034" at NCC on this subject of
5 hooding?

6 A. No, I know S034. I wasn't aware of that. Those
7 conversations would almost certainly have been directly
8 to Nick Ayling --

9 Q. Yes.

10 A. -- and possibly to Nick Mercer, but unlikely to come to
11 me directly -- more likely through Nick Ayling.

12 Q. All right. Turning to a different topic now, please, it
13 is FRAGO 29.

14 The first question I would like to ask in relation
15 to this concerns the DCOS, a person called Cowling, whom
16 you referred to at paragraph 18 of your witness
17 statement. Perhaps we can just look at that briefly.
18 Over the page as well, just perhaps to get the full
19 picture of what you are saying, in particular the last
20 four lines:

21 "Andy Cowling also oversaw much of the work of the
22 prisoner of war handling organisation because it was in
23 the rear area."

24 First just a question about timetable. Are you
25 referring there to the whole period of the tour or any

1 specific part of it?

2 A. No. What happened here was the -- as the division moved
3 forward, clearly the area for which we were responsible
4 grew larger and larger and the span of command and our
5 ability to control that area grew greater and greater.
6 So what happens is what is called the "rear area" where
7 there is less fighting -- we hope -- is often handed
8 over to a slightly separate headquarters, the divisional
9 support group, and that is run by the deputy chief of
10 staff, Andy Cowling, and much of the prisoner of war
11 handling organisation now rested in an area for which he
12 was largely responsible.

13 So though the divisional headquarters was ultimately
14 responsible, we had effectively delegated down the
15 overseeing of much of this to that other separate
16 divisional headquarters. I think that is as clearly as
17 I can put it.

18 Q. Yes. Just one further question to follow that up, if
19 I may. The Inquiry has heard from Andy Cowling and his
20 evidence -- if I summarise it fairly, I hope -- has been
21 to the effect that, while he did have responsibility for
22 what might be called "logistics" -- in other words
23 ensuring adequate resources for this purpose -- that did
24 he not regard himself as responsible for the physical
25 process of handling prisoners. Is that your

1 understanding?

2 A. I think that's correct. I think that's why I used the
3 word "oversight". He did not have formal command over
4 it; it was within the area for which he was responsible.
5 But he did provide us at least with a full colonel in
6 that headquarters, who we could go to if we needed
7 someone who had the -- required the sort of judgment for
8 some decisions.

9 Q. Still staying with the subject of FRAGO 29, but
10 a different aspect, if I may: the Inquiry heard evidence
11 some time ago from Colonel Mercer, and he expressed the
12 view to the Inquiry that, as it were, the philosophy
13 behind FRAGO 29 was unusual because G2 were not usually
14 responsible for internment. Is that right?

15 A. Internment is rather a complicated aspect. I don't
16 recall him saying that at the time. If I had to venture
17 an opinion, I would say there's no particular -- there's
18 no one area within a headquarters which would probably
19 drive that, but we decided to give it to G2.

20 Q. Perhaps I can put it slightly differently, if I may,
21 General: it would be unusual, if not unprecedented,
22 wouldn't it, for G2 to have responsibility for prisoner
23 handling?

24 A. Well, there are aspects of prisoner handling they might
25 be responsible for, but not the whole process.

1 Ultimately the process is owned by G3, the operations
2 branch.

3 Q. The view he expressed -- I hope I summarise it fairly to
4 this Inquiry -- was that he thought the philosophy
5 behind FRAGO 29 was to, as it were, take back control
6 from lawyers and the provost staff something which it
7 appeared was undesirable they should retain and so it
8 was being handed over to G2. Is that right?

9 A. My understanding of the real purpose, as I recall it, of
10 FRAGO 29 was to try to get this BGIRO in and to give us
11 greater oversight. It was a protection measure to put
12 a responsible officer in the path with judgment who was
13 going to get this right. It was -- this was a safeguard
14 FRAGO.

15 Q. General, you have said more than once that it was
16 a protection measure or safeguard, but that is nowhere
17 spelt out as being part of the role of the BGIRO in
18 FRAGO 29 itself, is it?

19 A. I would have to look at it --

20 Q. We can look at it.

21 A. -- and read it.

22 Q. We can look at it if you wish to. The Inquiry has it at
23 MOD016186. By all means you can have further pages
24 obviously shown to you on this.

25 The role of the BGIRO is specifically dealt with at

1 MOD016188, if we can perhaps have that on the screen,
2 towards the bottom, under "Other tasks" of battlegroups.

3 It goes over the page obviously. Do we see at the
4 top of the next page, General, that the BGIRO is
5 responsible for maintaining an audit trail --

6 A. That is right.

7 Q. Is that what you had in mind?

8 A. Yes, that is exactly what I had in mind, and that made
9 him overall responsible for this process and making sure
10 that due care and diligence was carried out in it. And
11 indeed I go back to the remark that it was the aspect --
12 the whole treatment had to be humane. I remember this
13 discussion.

14 Q. Yes. Because it could be said, General, that that is
15 really a reference to the assessment of the evidence
16 role; in other words deciding whether someone should be
17 released or detained, reading the whole of that
18 sentence.

19 A. Well that's his prime purpose, but there is
20 a subsequent purpose there and it says it quite clearly.
21 He was responsible for maintaining an audit trail.

22 Q. I suppose it depends, General, on what the audit trail
23 is designed to achieve. It might be said that it is
24 about his primary purpose, as you have called it, of
25 assessment of whether to release or not. But you are

1 saying, are you, that you understood this very clearly,
2 explaining to those who would have to implement this
3 FRAGO, that prisoner handling had become part of the
4 responsibility of the BGIRO?

5 A. I think that might be stretching the point.

6 Q. Right.

7 A. He is responsible for the audit trail. I think it may
8 be unfair to give him that extra bit.

9 MR SINGH: I see. General, thank you. Those are my
10 questions.

11 THE CHAIRMAN: Ms Dobbin?

12 Questions by MS DOBBIN

13 MS DOBBIN: General, was part of the thinking behind the
14 BGIRO system or FRAGO 29 that it would also improve
15 intelligence-gathering on the ground?

16 A. I don't recall that being a driver.

17 Q. You have expressed the view, when giving evidence, that
18 the BGIRO system wouldn't involve much in the way of
19 asking questions. The Inquiry knows that subsequently
20 brigades routinely sent out tactical questioners to take
21 part in this process. Is that something that you
22 wouldn't have foreseen?

23 A. I don't think we would have foreseen that really.

24 Hindsight is a great tool.

25 Q. Would you have regarded there being anything wrong with

1 that, if that had happened?

2 A. I don't think at the time we gave it a huge amount of
3 thought, not that aspect of it.

4 Q. Would it be fair to say that the whole issue of how this
5 system would actually work in practice hadn't been given
6 a great deal of thought, given the timing of this FRAGO?

7 A. I think that might be unfair. I think it had been given
8 thought, but I go back to the context and you are right.
9 It was only a couple of days before that that we had
10 lost these six Royal Military Police and this was
11 a pretty shocking event, so the headquarters was almost
12 certainly focused on, as I was, the contact battle, as
13 we would call it, rather than this process.

14 Q. Was FRAGO 29 itself subject to legal scrutiny? Did any
15 lawyer look at its provisions or consider them?

16 A. I don't know for certain, but I would have found it
17 incredibly surprising for it to have gone out -- I would
18 certainly have assumed that it would have been subject
19 to legal scrutiny, absolutely. That would have been my
20 assumption.

21 Q. And who ought to have made sure that it was subject to
22 that?

23 A. Well, I think at this stage we had one or two legal
24 advisers. I think we had more than just Nick Mercer, so
25 I would have assumed at the time that at least one of

1 have said "Give this back to the LEGADs, I am not very
2 comfortable with it". But at the time I would have
3 assumed, given that it had been presented to me, that it
4 had that legal oversight. But I might not at the time
5 have asked "Have the lawyers seen this?" I might have
6 just assumed that because I had a pretty joined-up staff
7 by this stage.

8 Q. But to be fair, you are saying you assumed they had seen
9 it; you do not know really whether one or other did see
10 it?

11 A. I don't recall asking specifically "Have the lawyers
12 seen this?"

13 Q. Thank you. Going back to the prohibition on hooding at
14 the beginning, you were read a part of General Brims'
15 statement by Mr Elias, which said that Nicholas Mercer
16 had said that it was permissible in security situations,
17 hooding --

18 THE CHAIRMAN: Could you speak up a bit? I am sure it is my
19 fault.

20 MS EDINGTON: I do apologise, Sir.

21 You were read a part of General Brims' Rule 9
22 statement, where it says that he was under the
23 impression that Nicholas Mercer said that hooding was
24 permissible in certain security situations. That isn't
25 your understanding of Nicholas Mercer's advice at all,

1 is it?

2 A. I can't remember Nick Mercer saying that. As I said, my
3 prime grounds for stopping this thing were humanity and
4 the image that it would portray when the media saw it,
5 and that was not the image we wanted to portray to the
6 Iraqis or to our own people.

7 Q. But he was robust in his defence of non-hooding?

8 A. Who, General Robin?

9 Q. And Nicholas Mercer.

10 A. I think we all agreed at the end of that meeting that we
11 should stop hooding.

12 MS EDINGTON: Thank you very much.

13 THE CHAIRMAN: Yes, Mr Evans?

14 Questions by MR EVANS

15 MR EVANS: Thank you, Sir.

16 Just dealing with the sequence of events first,
17 please, General. Once General Brims did give his order
18 to cease hooding, in the normal course of events would
19 you, as the chief of staff, have promulgated that fairly
20 soon afterwards, ie within a matter of hours or days?
21 What would have been the normal practice?

22 A. I think within hours is most likely or certainly within
23 24 hours, 48 hours, something like that.

24 Q. And is this right, that notwithstanding the promulgation
25 of that order, the legal debate nonetheless went on in

1 the background?

2 A. Annoyingly so it did.

3 Q. Yes. Did you have any sense of why it was that
4 Colonel Mercer was continuing to conduct the legal
5 debate, notwithstanding that the ban had already been
6 put into place by General Brims?

7 A. Yes, I did understand that because -- and -- because
8 Colonel Mercer and indeed, I think, Nick Ayling, but
9 I cannot be sure, had had this debate going on with the
10 NCC who, as I understood it at the time, supported the
11 concept in some way. And Nick Mercer wanted to bottom
12 this out and that he sought to do. But we had already
13 taken the decision, and what irritated me was the fact
14 that this debate was still going on which was contrary
15 to my general and what he wanted.

16 Q. I follow. You were asked a little about FRAGO 29. At
17 the time that FRAGO 29 was being considered in
18 June 2003, did you have any reason to fear for the
19 safety of detainees, as Mr Elias put it, at the hands of
20 British troops?

21 A. No, I don't recall any concern at all. As I said, I was
22 much more concerned with what was going on at
23 Majar Al Kabir and I was really concerned for the lives
24 of British troops.

25 Q. I want to just take you, please, to FRAGO 29 briefly.

1 It is at MOD017089, please. If we could have that on
2 the screen. Thank you. Yes, I want, please, to look at
3 paragraph 1, if we could just blow that up. Thank you.

4 You were asked a little about this by Mr Singh. It
5 says this at the very end of that paragraph -- do you
6 see this?

7 "Internees are assessed to be a threat to CF and
8 their processing is now a G2-led G3 ops responsibility."

9 What did you understand that phrase to mean?

10 A. For a soldier that is straightforward. G2 is
11 traditionally always subordinate to G3. G3 is the prime
12 staff division within any headquarters. What it means
13 is that G3 have effectively subcontracted that element
14 down to G2, but it does not mean it excludes G3. They
15 are still reporting up through G3.

16 Q. You said in evidence -- these were your words -- that
17 ultimately the process is owned by G3, the ops branch.
18 Is that phrase in FRAGO 29 in any way inconsistent with
19 that proposition as you read it?

20 A. As I read that, G2 are leading on that, but subordinate
21 to G3 ops.

22 Q. Thank you.

23 Finally this: may we have, please, FRAGO 152,
24 MOD017063, on the screen? Thank you.

25 This is, General, a part of FRAGO 152 drafted by

1 Nick Mercer, as you will see from the bottom of the page
2 there, on 20 May. I want just to ask you about a phrase
3 at the top of the page in that paragraph, please. You
4 were asked a little about whether there should have been
5 a written order banning hooding and I want to ask you
6 what you consider the phrase "Under no circumstances
7 should their faces be covered as this might impair
8 breathing" to mean.

9 A. Could I see the previous page please?

10 Q. By all means. May we have the previous page on screen
11 please?

12 A. That is fine. Then refer back to the next one. Thank
13 you.

14 This is from a very key document that was put out
15 fairly early on by Nick Mercer on minimum force, which
16 we all agreed and which remained effectively extant and
17 was not necessarily removed out by subsequent FRAGOs, so
18 it is a very important document.

19 But back to your original question to do with
20 covering faces, I think Nick Mercer sums it up
21 absolutely correctly, that "Under no circumstances
22 should their faces be covered as this might impair
23 breathing" means no hooding.

24 MR EVANS: Yes, thank you very much.

25 Thank you, Sir.

1 Further questions by MR ELIAS

2 MR ELIAS: Would you be then surprised, General, to learn
3 that the evidence of the author, Colonel Mercer, to this
4 Inquiry about that phrase is that it means nothing of
5 the kind? It was actually said because soldiers might
6 do something which -- hooding already being banned -- by
7 the use, for example, of some face covering to cover the
8 eyes, might thereby impair breathing. Does that
9 surprise you if that was the evidence --

10 A. The only thing that is surprising about it is that it
11 doesn't explicitly say "no hooding". That might have
12 surprised me. But I think it is pretty clear.

13 Q. That is how you would interpret it?

14 A. I would interpret it as no hooding.

15 THE CHAIRMAN: Well, you would not have been alone. It is
16 just curious that Colonel Mercer did not think that was
17 right.

18 MR ELIAS: He is the author, as you point out, of the
19 document.

20 I just wanted to ask you, in the light of questions
21 that Ms Dobbin and indeed your own counsel have asked
22 you about those FRAGOs, 152 and 29 -- to ask you
23 specifically about, if you like, the gestation period
24 for FRAGO 29. Can we just look first of all at
25 FRAGO 152 at MOD019145?

1 You have referred to this as an important document,
2 FRAGO 152. We can see its date, can't we, was 20 May?
3 If we go over the page under the heading of "Minimum
4 force" to which you were referred, we there see, under
5 paragraph 4, the reference which I was questioning you
6 about a little earlier to the six hours of detention
7 before handover.

8 "However, this does not mean that a unit can hold
9 for up to six hours but rather the delivery to the RMP
10 should occur as soon as possible. The guidance ... is
11 to take account of those units which might be in remote
12 locations. All other units should attempt to deliver
13 the detained person in under an hour."

14 Do you see that?

15 A. Yes, I do.

16 Q. That was 20 May and the policy being brought in by that
17 FRAGO. If we now look at FRAGO 29 at MOD016186, please,
18 we have now moved on to 26 June, so rather five weeks
19 almost exactly I think. Of course, amongst other things
20 this was the -- if we go on to MOD016189, there under
21 (d) and "Timings" is the 14-hour delivery time, as it
22 were --

23 A. I can see that, yes.

24 Q. -- and the other changes to policy, the creation of the
25 BGIRO and so on which were brought about by this FRAGO.

1 You told us that the focus -- and it is understandable
2 perhaps that the focus at or about the time that this
3 was being issued was the deaths of soldiers which had
4 occurred and which were requiring resources as well as
5 other things very shortly before its issue. But over
6 what period of time was there discussion about the
7 change of policy that resulted in FRAGO 29? Can you
8 assist about that? Would it have been hours or days or
9 weeks?

10 A. I don't recall. I know the circumstances why it went
11 from six to 14 and why we had to stretch the time, but
12 I don't recall why the debate took so long. I can
13 conjecture, but I wouldn't do that.

14 Q. Forgive me, I do not understand the answer "why the
15 debate took so long". That is really the question I am
16 asking you. For how long was there discussion and
17 debate before the six-hour rule -- to take just that
18 aspect of it -- was changed to 14 hours?

19 A. As I said, there were a whole series of different
20 circumstances because it is -- that month was a very,
21 very long time. During that time clearly we moved into
22 Basra, we had forces moving out, we had less lift
23 capacity, distances had been stretched because of
24 Al Amarah, so we had a time and distance problem. We
25 did not want to stretch that out to 14 hours. We

1 wanted, I remember, to keep it as short as we possibly
2 could for all the reasons that you will understand, but
3 we had to do this pragmatically because of resource.
4 That was the real problem.

5 Q. So my question is: was this, then, a decision that might
6 have been made, as it were, overnight or within a day or
7 was it the subject of discussion for weeks or more?

8 A. I don't recall fully, but I am sure it would have been
9 discussion over several days before this came out.

10 Q. Was there any aspect, do you recall, of the need for the
11 system that FRAGO 29 introduced being driven by
12 resources, the drawdown of soldiers and RMP which the
13 Inquiry has heard about?

14 A. It was more than just resources. I will give you one
15 other example --

16 Q. Was that a factor? Forgive me for interrupting.

17 A. It was a factor, certainly.

18 Q. It was a factor.

19 A. Yes. But there other factors as well: friction on the
20 ground; the fact that the situation on the ground which,
21 up until then, had been really quite benign became less
22 so and therefore movement became much more difficult and
23 more slow because the tactical situation put us more at
24 risk; and the other factor I think was, as I said
25 earlier, these were primarily helicopter moves -- that

1 was the way we sought to get people back -- and the
2 temperature had gone up to some 50 degrees by this stage
3 and that has an effect on helicopters. It means they
4 cannot fly with the same amount of lift or over the same
5 hours. So there were a whole series of quite
6 complicated factors that meant that we just had to sit
7 down and stretch the time out.

8 Q. It was not the case then, was it, in the light of all
9 that you have now told us, that to an extent anyway
10 FRAGO 29 might have been what I might describe as
11 a "knee-jerk reaction" to the circumstances you found
12 yourself in?

13 A. No, I don't think -- I think that would be unfair.
14 I don't think it was a knee-jerk. I think there had
15 been some discussion which led to FRAGO 29. I am sure
16 that would have taken place.

17 Q. Finally, General, this: you were referred in
18 paragraph 1, if we can have that on page MOD016186 -- at
19 the foot of paragraph 1, the very end of it, Mr Evans,
20 a moment ago, was asking to look at processing being now
21 a G2-led G3 ops responsibility. You were asked that in
22 the light of the questions that Mr Singh was asking you
23 and you have given your answer as to that. What do we
24 make of what is said a little higher in FRAGO 29, under
25 "Scope of order"?

1 would know exactly what it was meaning, but what does it
2 mean? Does it mean that the internment process is to be
3 in the hands of the G2 branch?

4 A. I think it does mean that. But what it does not then
5 make clear is that they remain subordinate to G3. We
6 would have taken that as understood, but perhaps it
7 should have reinforced that.

8 THE CHAIRMAN: Might it not have been better if it actually
9 said that?

10 A. It might have been better, yes, Sir.

11 THE CHAIRMAN: I think it might have been quite a bit better
12 if it had actually said it.

13 The other thing about it is that I have heard a lot
14 of evidence from other witnesses, all of whom have said
15 that the important thing about capturing prisoners --
16 whether they are civilians or prisoners of war -- is to
17 get them back out of the hands of the unit who has
18 captured to the TIF or wherever as fast as possible.
19 Now was that something that you agree with or not?

20 A. I would agree. It is absolutely right to try to get
21 them back where they can be best looked after away from
22 harm for one thing.

23 THE CHAIRMAN: And that means, in the non-combat time, away
24 from the battlegroup who have actually lifted them or
25 captured them, does it not?

1 A. I think the key thing is to get them out of harm's way
2 and harm's way tends to be in that frontline where those
3 forward battlegroups are.

4 THE CHAIRMAN: And also, of course, to have detainees -- to
5 use that term neutrally at the moment -- within
6 a battlegroup area is a distraction from the normal work
7 that they have to carry out?

8 A. That's correct, yes.

9 THE CHAIRMAN: That all has been impressed upon me by other
10 witnesses to a great extent and I understand that. What
11 I don't quite follow, then, is why suddenly FRAGO 29
12 comes in with the inevitable effect of delaying that
13 process.

14 A. None of us wanted to stretch that time, as I said. It
15 was purely for pragmatic reasons. We simply could not
16 deliver the rules that we had originally set out, the
17 one to two hours and so on.

18 THE CHAIRMAN: Well, you could not deliver the one to two
19 hours because you could not get them to the Royal
20 Military Police; is that right? Is that really what it
21 comes down to?

22 A. It really comes down to the resource. We just realised
23 that we were not able to achieve our own rules. We had
24 set too high a standard for what we could practically
25 deliver.

1 THE CHAIRMAN: When you say your own rules, to whom were you
2 delivering those whom the battlegroups had captured?

3 A. I can't recall where they went back to. I think it was
4 at various times they went to the TIF, then it changed,
5 whether they were prisoners, detainees or internees,
6 whether they went to the prisoner of war handling
7 organisation, but the main aim was to get them out of
8 harm's way, as far as I was concerned.

9 THE CHAIRMAN: Again I have heard evidence from those in the
10 Royal Military Police that their regiment had been cut
11 down to one company in Op Telic 2, which made great
12 difficulties for them. Is that the sort of resource
13 that you are talking about?

14 A. That is exactly the sort of resource, Sir. We could not
15 generate sufficient.

16 THE CHAIRMAN: Did that mean that you had to design a scheme
17 at which the decision to be taken as to whether they
18 should be treated as criminals, people of no interest or
19 people of some interest for internment had to be made at
20 battlegroup level?

21 A. I think to a degree you are correct, sir. This was
22 a resource-driven decision.

23 THE CHAIRMAN: At the moment I find it difficult to see why
24 you would want to have extended the time when everybody
25 seems to think it should have been as short as possible

1 unless there were some very good reason for your not
2 being able to do it. The only candidate that I can see
3 is the fact that you hadn't got the resources to cope
4 with what had been the normal practical solution.

5 A. As I recall it, the prime driver for lengthening the
6 time was purely resources, yes, Sir.

7 THE CHAIRMAN: So I can concentrate my mind upon what
8 resources, does that mean the resource of the Royal
9 Military Police who had the expertise to deal with and
10 hold in custody those who had been captured?

11 A. Certainly the Royal Military Police were important, but
12 it was also the lift capacity.

13 THE CHAIRMAN: How do you mean "the lift capacity"?

14 A. That's the helicopters, Sir. It was getting hotter so
15 we had less helicopters that could fly and the
16 helicopter lift was now spread over a very, very wide
17 area, so we had less helicopters to lift people.

18 THE CHAIRMAN: Then you are always going to have that if you
19 are going to get them back to somewhere different,
20 whether you spend eight hours holding them at
21 battlegroup or whether you take them off instantly. The
22 lift problem remains, doesn't it?

23 A. It does, but it had got worse because of the heat and
24 so on. We could not fly as many.

25 THE CHAIRMAN: Sorry, I am not making myself clear. I am

1 sure it is my fault. The problem of getting them back
2 to the TIF or whatever is always going to be the same at
3 whatever point that it starts, do you see?

4 A. Yes, I do.

5 THE CHAIRMAN: So I can understand that that must have been
6 a difficulty, but I don't see why that was a driver for
7 FRAGO 29.

8 A. Well, it wasn't the sole driver --

9 THE CHAIRMAN: I don't see why it is any driver.

10 A. Well, one of the key drivers for FRAGO 29, as I recall
11 it, was to try to get this BGIRO in, so that we had some
12 degree of oversight and control of the process forward.
13 That was one of the key drivers.

14 THE CHAIRMAN: I can again understand that point, but was it
15 really the need for a BGIRO because you realised that
16 they were going to be held for rather longer at
17 battlegroup level than they would otherwise have been
18 held?

19 A. I see, and therefore effectively what you are saying is
20 the BGIRO -- you would therefore have a responsible
21 officer forward who may have to look after them for
22 longer and therefore put an officer in charge.

23 THE CHAIRMAN: Yes.

24 A. I think that is a very fair deduction, Sir.

25 THE CHAIRMAN: I mean, you were there. I want to know

1 whether that is a correct deduction.

2 A. I think it may have been, I can't quite recall it.

3 THE CHAIRMAN: As I see it at the moment, you had a resource

4 problem with the Royal Military Police, which I quite

5 understand: they could not take on the responsibilities

6 they had before --

7 A. Yes.

8 THE CHAIRMAN: -- that itself meant that you had to provide

9 another system for organising it for which you put in

10 place the BGIRO?

11 A. That is correct.

12 THE CHAIRMAN: I do not understand how lifting them back to

13 the TIF or whatever had any impact on that at all

14 because that has to take place in any event.

15 A. Yes, it has. I think we probably -- we put two issues

16 in one FRAGO. The driver behind the FRAGO was

17 undoubtedly the BGIRO and the RMP issue. We stretched

18 the timings out because we simply were not meeting our

19 timings.

20 THE CHAIRMAN: You were obviously not going to meet them if

21 you have a BGIRO who has to make what is essentially

22 a quasi judicial decision.

23 A. That may have been discussed, but I don't recall that,

24 Sir.

25 THE CHAIRMAN: You don't?

1 A. No.

2 THE CHAIRMAN: Did you discuss whether it was a sensible
3 move to put in place a BGIRO who is actually going to
4 have to make quite an important decision about whether
5 or not they were going to be interned initially at any
6 rate?

7 A. I don't recall that. I am sure we did discuss it, but I
8 don't recall it.

9 THE CHAIRMAN: Did you envisage that that might mean that
10 there would inevitably have to be at least one or two
11 questions asked of the detainee to make that decision?

12 A. I think it would be logical to assume that he was going
13 to be -- we didn't define it like that. I seem to
14 remember the wording would have gone something like that
15 "he had to decide", but whether and how he did that was
16 his call.

17 Logically, yes, he would have to ask some kind of
18 questions certainly of the troops or whoever it was who
19 had caught him. They may not have had to have
20 questioned the individual; they could probably do that
21 just from the troops.

22 THE CHAIRMAN: So they would have to -- as Major Peebles
23 told us -- get statements from the soldiers who had
24 actually lifted them?

25 A. Absolutely.

1 THE CHAIRMAN: All of which would take more time, wouldn't
2 it?

3 A. Yes, but probably more time -- probably quicker to do
4 that than actually to question the suspect. I don't
5 think we ever envisaged the BGIRO going forward and
6 having to question individual suspects.

7 THE CHAIRMAN: I dare say you didn't, no.

8 A. No.

9 THE CHAIRMAN: I can see that. But the BGIRO might think he
10 needs to have some information upon which to make this
11 decision --

12 A. Yes.

13 THE CHAIRMAN: -- so he asks for a TQer.

14 A. That may be a reasonable deduction, Sir.

15 THE CHAIRMAN: I just wonder how much thought really went
16 into this particular order.

17 A. Well, I suspect given the circumstances as I said --
18 Major Al Kabir had just kicked off two days before --
19 the headquarters was primarily focused in the largest
20 loss of British lives up until that point.

21 THE CHAIRMAN: I follow.

22 A. Undoubtedly this will have had less thought than it
23 probably should. I think that would be a fair
24 deduction. But as I say hindsight is a great thing.

25 THE CHAIRMAN: Of course. And please do not think I am

1 remotely unsympathetic to or glossing over the enormous
2 workload that all of you were carrying at that
3 particular time.

4 Now does anybody want to ask any questions arising
5 out of those I have asked?

6 Thank you, General, very much for coming to the
7 Inquiry. I am extremely grateful to you for giving your
8 evidence and answering questions. You are now free to
9 go with my thanks.

10 A. Thank you, Sir.

11 THE CHAIRMAN: Do we have any other business?

12 MR ELIAS: I think not today, Sir.

13 THE CHAIRMAN: Other than to say --

14 MR ELIAS: Tomorrow we have Messrs Moore, Barrons, French
15 and Martin, in that order.

16 THE CHAIRMAN: Very good. Thank you very much. 10 o'clock
17 tomorrow then. It is a Friday, isn't it?

18 MR ELIAS: It is, Sir.

19 THE CHAIRMAN: We don't normally sit on a Friday.

20 (4.26 pm)

21 (The Inquiry adjourned until 10.00 am, Friday, 4 June

22 2010)

23 I N D E X

24 BRIAN KEVIN BURRIDGE (sworn)1

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