

1 Tuesday, 12 October 2010

2 (10.00 am)

3 THE CHAIRMAN: Good morning, ladies and gentlemen. Yes,
4 Mr Halliday.

5 MR HALLIDAY: Good morning, Sir. We have Brigadier Purdy
6 and Colonel Green this morning.

7 THE CHAIRMAN: Yes.

8 ROBERT WILLIAM HUNT PURDY (called)

9 Questions to BRIGADIER PURDY by MR HALLIDAY

10 MR HALLIDAY: Could I start by inviting Brigadier Purdy to
11 state his full name, please?

12 A. Yes. I am Robert William Hunt Purdy.

13 Q. Thank you very much. What is your current post,
14 Brigadier?

15 A. I'm the army inspector in which position I work direct
16 for the chief of the general staff.

17 Q. What does that role consist of broadly?

18 A. I provide him with assurance of all army activity across
19 the whole range of what the army does. In principle, it
20 involves assuring him that, if you like, processes and
21 systems are in place to ensure that we do the right
22 thing in the right way.

23 Q. You have provided a statement to the Inquiry dated
24 3 August of this year, for which the Inquiry is very
25 grateful. As well as your statement, we have your

1 reports dated 15 July this year, entitled "Army
2 inspectorate review into the implementation of policy,
3 training and conduct of detainee handling".

4 There's an obvious overlap between your report and
5 this Inquiry, and I should say at the outset that the
6 Inquiry is not intended in any way to be a review of
7 your report, which contains many recommendations which
8 are evidently very sensible, if I may say so. So really
9 I intend to focus on just a selection of the
10 recommendations you make in your report.

11 Before I turn to that, could I introduce the person
12 who is accompanying you. Colonel Green, could you state
13 your full name, please?

14 COLONEL GREEN: Barry John Walter Green.

15 Q. What is your role, Colonel Green?

16 COLONEL GREEN: I'm the deputy army inspector.

17 Q. Did you have any particular involvement in the detainee
18 handling review that I've just mentioned?

19 COLONEL GREEN: Yes, I did. I did quite a lot of the field
20 work and in particular I took our independent experts to
21 Afghanistan in the first week of June.

22 Q. June of this year?

23 COLONEL GREEN: June 2010.

24 Q. Let me begin, Brigadier Purdy, by looking briefly at the
25 method by which you produced your review. Could you

1 describe that, briefly, please?

2 BRIGADIER PURDY: Yes. What we set out to do was to provide
3 a logical analysis from policy through to delivery that
4 said, "Are we telling our people to do the right things
5 such that, if they do what they are told to do, they do
6 everything that they should and nothing that they
7 shouldn't?" Having looked at whether we are telling
8 them the right things to do, then look at how that was
9 turned into training in terms of the training
10 specification and the delivery of that training and the
11 validation of that training. We recognised early on
12 that there was a direct linkage to the values and
13 standards of the army and, therefore, regarded that as
14 so important that it was a separate strand in itself.

15 There was then the question of what actually happens
16 on operations; in other words -- which is the ultimate
17 validation of the training, if you like -- are people
18 then doing what it is that we want them to do, and then,
19 finally, is there a process for learning lessons from
20 that. Now those were the five strands that we looked
21 at.

22 We began with looking at the chain from law through
23 policy through doctrine down to the sort of tactics,
24 techniques and procedures and the aide-memoires that we
25 give to our soldiers and from there developed a question

1 set, if you like, that carried us through the other
2 strands.

3 Having shaped up the report, we then recognised that
4 actually there was a sixth strand that we identified
5 from the start would run through all the others. But in
6 the report itself we thought it appropriate to separate
7 that out and that is the issue of governance: how is
8 this capability to be overseen from the Ministry of
9 Defence level right the way down to actual practice on
10 the ground?

11 Q. The six strands are described succinctly in your report,
12 aren't they, at pages 6 to 7? Could we have that
13 briefly on the screen? MIV005234, and the following
14 page.

15 What research did you and your team conduct in order
16 to fulfil the review?

17 A. We began with what you might describe as a "literature
18 search" and went through the extant policies. As I say,
19 right the way down through, for example, the SOI J3-9
20 PJHQ, we looked at the extant aide-memoires and training
21 material and so on. Having done that, we drew up a list
22 of those people and places that we assessed that we
23 needed to visit in order to test each of the strands and
24 to answer the questions that we had identified in each
25 of the strands.

1 Now that included a range of people. I should say
2 that what we were trying to do was not to look at the
3 system and process per se and say "Is the process in
4 place?" We were trying to look at the outcomes. In
5 other words, we specifically wanted to talk to the
6 soldiers, the officers who were going through the
7 training, the people who were delivering the training,
8 to look at the effect at ground level and to see that,
9 you know, the appropriate outcomes were being delivered
10 rather than the process itself being in place, if you
11 like.

12 Q. In an annex to your report you list, don't you, those
13 you consulted for the purposes of the review? It's at
14 page MIV005273. Did some of that consultation consist
15 of field work in Afghanistan?

16 A. It did. If you look at MIV005275, that specifically
17 addresses those who were spoken to during the two, in
18 fact, in-theatre visits.

19 Q. The Inquiry's principal area of interest is in detention
20 at unit level, at battlegroup level. At the bottom of
21 the list on that page, we see 1st Battalion Grenadier
22 Guards and 2nd Battalion Yorkshire Regiment. When
23 consulting those units, did you talk to soldiers who
24 were dealing with prisoner handling?

25 A. We talked to a range of people, from commanding officers

1 down to section commanders. I should say the team was
2 not able to go right forward into patrol bases. These
3 people were spoken to back -- I need to check with
4 Colonel Green -- but, as I understand it, in
5 Camp Bastion.

6 COLONEL GREEN: That's correct.

7 BRIGADIER PURDY: In Camp Bastion.

8 THE CHAIRMAN: Just pausing a moment, a patrol group in
9 Afghanistan, if you are able to tell me -- I don't know
10 whether it is in the open or not -- what does it consist
11 of in terms of the number of people?

12 A. Some of the patrol bases, as I understand it, Sir, are
13 very small --

14 THE CHAIRMAN: Yes.

15 A. -- potentially as a single multiple.

16 THE CHAIRMAN: Yes, and a single multiple would be, what,
17 12 people, something like that?

18 A. I wouldn't like to be too specific clearly, but of that
19 order.

20 THE CHAIRMAN: Were they an officer?

21 A. Not necessarily.

22 Q. A sergeant, colour sergeant or an officer?

23 A. Certainly an NCO.

24 THE CHAIRMAN: And a very, if I may put it this way,
25 rudimentary camp; is that right?

1 A. Some of them are very austere, yes, Sir.

2 THE CHAIRMAN: What about the communications to one of those
3 small camps?

4 A. I'm not in a position to give that detail, Sir.

5 THE CHAIRMAN: All right.

6 MR HALLIDAY: I'm just reminded that we, of course, don't
7 want you to give detail of operational activity where
8 there may be some sort of security risk. But bearing
9 that in mind, did you visit any unit holding areas in
10 these two battlegroups which you consulted?

11 A. No. The team was not able, for various operational
12 reasons, to deploy forward to battlegroup areas.

13 Q. Is this a fair summary of the conclusions of your
14 review, that policy, training and the conduct of
15 prisoner handling were generally appropriate and
16 adequate, but that there was still room for improvement
17 and that your recommendations -- and I paraphrase
18 here -- should really be seen as improvements to
19 a system which is already working, rather than as
20 mending a broken system?

21 A. Yes. I mean, as I recall, that's almost a direct quote
22 from the report.

23 Q. As for your recommendations, will you or anyone else
24 monitor the implementation of those?

25 A. I draw you to the sixth strand, which is the governance

1 piece. One of the things that we were concerned about
2 was to make sure that the Ministry of Defence puts in
3 place a proper oversight mechanism that holds to account
4 both the front-line commands in terms of delivering
5 people appropriately trained to the chief of joint
6 operations for employment on operations and the
7 operational chain of command as well. A lot of work has
8 been going on through the Ministry of Defence. I'm not
9 quite sure exactly where that stands at the moment, but,
10 as I understand it, a directive is in the late stages of
11 drafting.

12 Q. Are you able to pinpoint whether any particular part of
13 the MoD is responsible for monitoring of recommendations
14 and their implementation?

15 A. The proposal is that -- and I'm about to get the job
16 title wrong and I look to my MoD colleagues on the
17 left -- the director general --

18 Q. Land warfare?

19 A. No, the director general land warfare works within land
20 forces command and is responsible for training of the
21 army personnel to deliver to operations.

22 No, it's the security and -- sorry, I beg your
23 pardon -- it's the director general operational policy
24 within the Ministry of Defence, as I understand it,
25 working clearly upwards, ultimately to the Minister

1 Armed Forces, who has the ministerial responsibility in
2 this area. There's a mechanism being put in place that
3 we are very keen should be empowered to, if you like,
4 hold the front-line commands to account for delivering
5 on their responsibilities.

6 Q. Of all the issues identified in your report, which would
7 you suggest posed the greatest risk to detainees'
8 safety?

9 A. What we've said in the report is that the area in which
10 there is probably the greatest residual risk is the area
11 between the point of apprehension and the delivery of
12 detainees into a formal facility. I'm aware that a lot
13 of work has been going on to narrow that gap and I'm
14 aware that it's an area in which the Inquiry has focused
15 a lot of attention. An example of what's been going on
16 is that I know that the Permanent Joint Headquarters has
17 been pushing forward military police to make sure that
18 they are present in the forward areas and to provide
19 that expert advice and oversight.

20 I think -- if I may just make a comment on that,
21 I think that is right and appropriate. There is
22 a danger of a sort of perverse result in that what we're
23 trying to do is to make sure that every individual
24 understands that this is part of their responsibility.
25 We came across, in some areas, a perception that this

1 was the business of specialists. It just seems to me
2 that we need to be careful that, in putting these
3 experts right to the front, we don't unravel that and in
4 some way, if you like, reinforce the perception in those
5 who still have it that this is the business of
6 specialists. It's essential that we do ingrain in every
7 soldier and indeed marine and Royal Air Force regiment
8 soldier who is on the ground that this is their
9 business.

10 Q. That's a point you make in your report, isn't it? It
11 may be useful to turn up the reference. It is at
12 MIV005234. At paragraph 7(b) of the executive summary
13 you say:

14 "Recognition of the need for generic detainee
15 handling skills to be embedded in the instinctive
16 behaviour of every service person operating in the
17 contemporary or future land environment has yet to be
18 translated into reality; and some soldiers still see
19 this as the business of provost specialists. Within the
20 army this is being addressed through the land forces
21 force development and training action plan, but
22 leadership at all levels will be needed to drive through
23 real attitudinal change and really to deliver this
24 'mainstreaming' of the ethos and skills of detainee
25 handling."

1 This is the point you are making now, isn't it?

2 A. Yes, sir, that is exactly the point. I would say that
3 at a senior level it is fully grasped. I've heard
4 commander force development and training, who is the
5 responsible 3-star officer with inland forces,
6 describing it as "getting this into the DNA of every
7 soldier".

8 Q. Do you have any practical suggestions for how that could
9 be achieved?

10 A. We have, and I -- forgive me, I haven't got the exact
11 reference in the report -- but this needs to start right
12 at the beginning of initial training and carried through
13 both in terms of individual training and in terms of the
14 collective training of our people.

15 There is under development a law of armed conflict
16 training directive that I think is important in setting
17 this out and how this should be embedded within the
18 training. But, for example, while some areas have
19 updated their approach and what I call contemporised
20 their training, there are others that are lagging a bit.
21 We found, for example, that in some places the focus was
22 still on prisoner of war handling as opposed to detainee
23 handling.

24 Now we have responsibilities under our international
25 obligations to train people in the handling of prisoners

1 of war. My point is that we need to fulfil those
2 responsibilities, but in terms of the emphasis, in the
3 modern environment, I think the priority needs to be
4 making sure that people understand the detainee handling
5 piece above all.

6 Now that means that in the -- as I say, both in the
7 individual training courses -- and I think we're getting
8 there in that -- but also in terms of the collective
9 training, the field exercises and so on, there need to
10 be serials embedded in those exercises that bring out
11 the points that are relevant to this area.

12 Q. You mentioned a part of your report dealing with this
13 point. Is the reference MIV005249, paragraph 44?

14 A. Thank you. That's exactly it.

15 Q. Really I don't propose to read it out because you made
16 the points orally just now. Picking up on the last
17 point you made, you mentioned practical exercises.
18 Would you see those as a particularly effective way of
19 drilling home to soldiers the importance and the
20 practicalities of detainee handling?

21 A. Yes. I mean, I think one needs a range of media, if you
22 like, and that needs to range from basic instruction
23 through to the practicalities. You know, one can sit
24 soldiers in front of PowerPoint and watch them glaze
25 over. Actually there is nothing quite like physically

1 doing it to embed the habit.

2 Q. And as to what happens now, was your general conclusion
3 that there is sufficient practical experience amongst
4 soldiers in training of how to handle detainees or is
5 that something which could be improved?

6 A. We felt that there should be more. Particularly for
7 those -- there are two aspects to this. Those
8 individuals who do not necessarily go through the
9 collective training process with their units that
10 culminates in the mission-specific training, in-theatre
11 training and then deployment with their unit -- there
12 are individuals who go either as augmentees or as
13 reinforcements and so on, who go through the week's
14 course of the operational training advisory group, who
15 get a very good lecture and demonstration but don't do
16 hands-on. That's an example where in an ideal world it
17 would be good to do more.

18 The key resource at this stage, frankly, is time.
19 The more that one prescribes to go into the -- specifics
20 to go into the training, the more that squeezes
21 something else out. So, you know, one has to recognise
22 that in terms of time this is competing with -- whether
23 it is counter IED awareness, tactics, techniques,
24 procedures and so on that are life-saving for our own
25 forces. So we just need to be careful that we don't

1 prescribe too much specifically to go in there.

2 This is where I think the value of the point that we
3 made earlier comes out. This is something that needs to
4 be habitual right from the beginning of a soldier's
5 service. It should not be something that's left to the
6 last minute to train them up on and get it right.

7 Q. One of the points you make in your report is in-theatre
8 training should really just be refresher training in
9 existing skills.

10 A. Yes, that's right.

11 Q. A few questions, if I could, about your or your team's
12 first-hand experience of detention in Afghanistan. Did
13 the troops that you and your team encountered understand
14 the prohibition on the five techniques?

15 A. Can I address that firstly for those who were about to
16 deploy and those who had returned and then hand over to
17 Colonel Green who led the team physically in theatre?
18 Certainly talking to soldiers undergoing the OPTAG
19 course who were about to deploy, the answer is yes, very
20 clearly, and the team talking to soldiers who had
21 returned from Operation Herrick 10 earlier in this year,
22 they had clearly understood the prohibitions.

23 But I defer to Colonel Green, who led the team in
24 theatre.

25 COLONEL GREEN: Yes, the answer was for those that we

1 consulted -- we questioned in theatre, they were quite
2 clear.

3 Q. What about some of the more difficult areas at the
4 margins perhaps? Did the troops to whom you spoke
5 understand the circumstances in which sight deprivation
6 was and was not permitted?

7 BRIGADIER PURDY: Certainly from my perspective the answer
8 is yes, in that, you know, in terms of the way it has
9 been defined up until now -- and I'm aware of the
10 discussions that have been held over the past week
11 here -- in terms of the need to impress on people the
12 importance of avoiding those circumstances arising, and
13 I would agree the desirability of that completely. But
14 I'm clear, certainly, that the people to whom we spoke
15 understood that it was an issue of operational necessity
16 and for only as short a time as was necessary in order
17 to protect operational security and the security of
18 individuals.

19 Q. As to the point you just raised, the desirability of
20 avoiding any need for sight deprivation, was that
21 something which the troops which you and your team spoke
22 to understood or was that something which perhaps could
23 be taught further?

24 A. It's not something that I personally discussed with
25 them. I defer to Colonel Green.

1 COLONEL GREEN: The only time we came across it in
2 questioning troops was when they identified the need
3 because of operational security. So they never
4 considered it as a necessity unless there was an
5 operational security issue. It wasn't -- it never
6 featured in what they felt they would need to do.

7 BRIGADIER PURDY: But, if I may, to answer the second part
8 of your question, "Is that something that we should do
9 more to train people on?", I think the answer is
10 probably yes.

11 Q. What about restraint positions? Is that something which
12 you or your team talked to troops about?

13 COLONEL GREEN: It cropped up in one discussion, but merely
14 in the context of when somebody who was non-compliant
15 then had to be plasticuffed to be physically moved. But
16 it was never an issue in any of the discussions and any
17 of the evidence-gathering.

18 Q. There was no discussion, was there, about putting people
19 in particular enforced positions in order to maintain
20 control of them?

21 COLONEL GREEN: No, there wasn't. Everybody was very clear
22 what they could do and what they couldn't do. In fact,
23 during the discussions, the emphasis was mainly upon
24 getting them away safely from the point at which they
25 had been apprehended, especially if it was an area where

1 there was an ongoing contact.

2 Q. So was the use of restraint positions in order to
3 control a detainee something you simply did not come
4 across?

5 COLONEL GREEN: That's correct.

6 Q. We talked before about the limits of your ability to
7 witness detention at battlegroup level, so tell me if
8 it's not possible to answer these questions, but were
9 battlegroup personnel clear about who within the
10 battlegroup was responsible for detainees in their care?

11 BRIGADIER PURDY: I think what I would say is that everybody
12 in a command position understood that this was their
13 problem and their responsibility. That went from
14 commanding officers downwards.

15 Q. Did the battlegroups whom you consulted nominate
16 a particular officer to be in charge of detainees or in
17 charge of the unit holding area?

18 COLONEL GREEN: No, no, because those that we consulted were
19 back in Camp Bastion. On the one occasion we took
20 evidence from a military police sergeant, who was
21 forward deployed. The evidence that we got was that the
22 chain of command and responsibilities were quite clear
23 and that they themselves were acting as the adviser to
24 that chain of command, which was exactly what we were
25 expecting to uncover.

1 BRIGADIER PURDY: I think if I may just pick up on where --
2 the sort of inference behind your question. I think
3 there might be merit in, within a unit, a commanding
4 officer appointing an individual within his command team
5 who is responsible on his behalf for ensuring that
6 appropriate arrangements are in place and followed.

7 The issue is the ability of that individual actually
8 to get around and be at the right place at the right
9 time to confirm that the right procedures are being
10 followed. Because of that difficulty, it's essential
11 that actually each individual commander -- whether it's
12 a senior NCO, whether it's a junior officer, whether
13 it's a company commander -- understands that this is
14 a command responsibility and their individual role.

15 What I wouldn't want to see happen is, through the
16 appointment of a specific individual within the
17 battlegroup, any perception of dilution of that command
18 responsibility of those individuals.

19 THE CHAIRMAN: If I may just interrupt for a moment.

20 I understand that point, but could not -- if there was
21 some odd point about the commanding officer to take the
22 responsibility for prisoner handling in that way, could
23 not he be responsible for ensuring that at a lower level
24 in the sub-units that there was always someone, if he
25 wasn't able to be there, who would be personally

1 responsible?

2 A. Yes, Sir. I think what you're describing is, if you
3 like, an assurance role confirming that the chain of
4 command responsibilities are properly recognised and
5 properly delivered upon --

6 THE CHAIRMAN: Yes.

7 A. -- and I would certainly see merit in having an
8 assurance structure of that sort. The issue is,
9 particularly when you get right down to the front end,
10 who would do that if it's not the patrol base commander
11 himself.

12 THE CHAIRMAN: I would have thought that inevitably, on
13 a number of occasions, it is going to be the patrol base
14 commander, but he would be identified as that person by
15 whoever it was who was in charge on behalf of the
16 commanding officer.

17 A. Yes.

18 THE CHAIRMAN: I think inevitably, in some places, it will
19 have to be the patrol base commander.

20 A. I think that's right, Sir. Now the extent to which one
21 has, if you like, an independent assurance chain or one
22 uses the chain of command is a question of practicality.
23 If you go to the taskforce level, clearly there is an
24 independent assurance mechanism in terms of the
25 commander joint force support being the detention

1 authority and providing the assurance role to the
2 Permanent Joint Headquarters that the chain of command,
3 if you like, is fulfilling its responsibilities. As you
4 recognise, the further towards the front you go, the
5 less opportunity there is for that division of delivery
6 and assurance.

7 THE CHAIRMAN: I do recognise that, but that's the area that
8 the Inquiry is concerned with, isn't it, to a large
9 extent? It is at the unit area and below. At any rate,
10 it seems to me worth considering the merit of someone
11 being responsible to the commanding officer and who has
12 an overall responsibility to see that others are doing
13 their job.

14 A. Sir, I think there is definitely merit in that.
15 Commanding officers are enormously busy people.

16 THE CHAIRMAN: Yes.

17 A. Clearly this is but one aspect of what they have to do.
18 And to have somebody act on their behalf to provide that
19 oversight I think certainly has merit.

20 THE CHAIRMAN: I am sorry, Mr Halliday, I interrupted you.

21 MR HALLIDAY: It is a related but perhaps subtly different
22 question: would you see merit in having someone at
23 battlegroup headquarters held accountable for what
24 happens to detainees, even if they can't be everywhere
25 at once?

1 A. Well, ultimately the person at battlegroup headquarters
2 who is held accountable is the commanding officer.

3 Q. Would you see merit in another person also having that
4 accountability because of the many duties on the
5 commanding officer?

6 A. I'm not sure that is divisible. I think the commanding
7 officer is accountable and he needs to put in place
8 a structure that assures him to the best of his
9 ability -- and that's what, Sir, we have just been
10 discussing --

11 THE CHAIRMAN: Yes.

12 A. And --

13 THE CHAIRMAN: You wouldn't want to see the commanding
14 officer's responsibility diluted?

15 A. I wouldn't. I think that's part of the responsibility
16 of command --

17 THE CHAIRMAN: Yes.

18 A. -- and it's not clear to me how you would divide it.
19 Either he is responsible or he isn't. I think you could
20 be getting into quite difficult definition areas, as it
21 were, and if something were to go wrong, who is
22 responsible? Is it this other person? Is it the
23 commanding officer? Is it both? I would stick with
24 chain of command responsibility.

25 MR HALLIDAY: This is probably a question for Colonel Green.

1 Were battlegroups, so far as you could tell, making use
2 of those personnel who had been on the unit custody
3 course, the AAUCSC course?

4 COLONEL GREEN: The evidence that we uncovered is that in
5 some areas they were, but in other areas we felt they
6 could do better. But that in part was because the
7 course was primarily designed for providing them with
8 the training to conduct custody in their peace-time
9 locations. They had had some operational serials added
10 to it, but it wasn't originally an operationally based
11 training.

12 Q. Does that mean that there was a failure to perceive the
13 course as relevant to detention on operations and that
14 people principally saw it as relevant to detention in
15 the home base?

16 COLONEL GREEN: Well, that was the course. It is to provide
17 the training to run the unit custody facilities in
18 peace-time.

19 Q. Did units have personnel who had been on the course and
20 simply weren't being used in that kind of
21 detainee-handling role or did they have insufficient
22 numbers who had actually been on the course?

23 COLONEL GREEN: It was a combination of both. There was
24 those who had done the training, but in some cases, for
25 whatever reason, had to remain on the rear party and not

1 deployed, and there were some who had done some of the
2 training who were then being used where appropriate.

3 Q. Were you aware of any arrangements in place for
4 detainees to pray and to be provided with halal food?

5 COLONEL GREEN: Yes. We observed that in Camp Bastion and
6 that was very much -- the normal course of events were
7 structured around the prayer times and meal times for
8 the detainees.

9 Q. In your experience, were soldiers treating detainees in
10 a culturally sensitive way?

11 COLONEL GREEN: Yes. I mean all those that we questioned
12 were fully aware of their responsibilities and a key
13 plank of that is to respect their cultural
14 sensitivities.

15 Q. Now a number of improvements have already arisen out of
16 the review which you conducted. I won't by any means go
17 through all of them, but it is right, for example, that
18 the review identified that soldiers' aide-memoire failed
19 to mention the prohibition on the five techniques, and
20 that is something which has now been resolved, is it
21 not?

22 BRIGADIER PURDY: Yes. I mean, that was something that we
23 identified very early on and made the point at the end
24 of February. The reprint of the aide-memoires that was
25 done at the time of the start of Herrick 11 in April

1 then incorporated those, the prohibitions.

2 Q. On a similar note, the review identified an omission in
3 the Army Field Manual to mention a prohibition on four
4 of the five techniques. That is something which is in
5 hand, is it not?

6 A. That is in hand. It will take a bit longer in that the
7 manual had literally just been reprinted and re-issued.
8 Now, is that a lacuna? Yes, probably. Does it matter?
9 I do not think so because, if you look at the overall
10 body of direction that is given to people, the
11 prohibitions are quite clear. It is in the JDP; it's in
12 the PJHQ SOI; it's in the aide-memoires and so on. I'm
13 comfortable that that can go back and be incorporated at
14 the next reprint.

15 COLONEL GREEN: If I can add? Crucially, of course, it was
16 covered in the training material that -- so in our flow
17 through the conceptional framework down to the training
18 that was actually designed and delivered, it was being
19 delivered.

20 Q. This is perhaps a case in point of the system working,
21 but being capable of being improvement nonetheless.

22 BRIGADIER PURDY: Yes.

23 Q. You mentioned the non-delivery of MATT training to
24 personnel or at least an absence in the recording system
25 of evidence that everyone was undergoing that training.

1 Can we turn up that part of the report? It's at
2 MIV005250. At the top of paragraph 48 it stated:

3 "The review found that MATT compliance, as recorded
4 on the joint personnel administration system, the
5 authoritative repository of individual training records
6 is poor."

7 If we look down at the footnote, footnote 43 at the
8 bottom of the page, it is said that:

9 "As at 17 March 2010 (with 14 days remaining to the
10 end of the training year) only 33,853 persons had
11 completed MATT 6 and 14,654 MATT 7. This is from a JPA
12 total army audience of 113,059."

13 Do you know the extent to which this was a failure
14 of recording the delivery of MATT training as opposed to
15 actually failing to deliver the training?

16 A. The first point I would make is that I think the wording
17 of the footnote actually could have been clearer, and
18 what that should have said was that those numbers were
19 recorded as "having completed" as opposed to "had
20 completed".

21 Q. Yes.

22 A. The JPA system is particularly unfriendly when it comes
23 to recording this training. Just as an example, one
24 cannot produce a list of individuals, input that into
25 the programme and then each of those individual's

1 records is updated. You have to enter each individual's
2 record individually, update that, come out of it and go
3 into the next one. So when you have a battalion of 600
4 people, that is a long, laborious process. It is not
5 a friendly system for doing that. That is why the
6 recommendation is that headquarters land forces needs to
7 look at this and work out how they are going to record
8 this because what you found is that units maintain their
9 own spreadsheet.

10 I know, because I went and looked at, for example,
11 the 4 Brigade spreadsheet for those who were earmarked
12 as reserve people for deployment during their time on
13 Op Herrick, that they kept a very tight control over
14 exactly who had fulfilled which MATT and, indeed,
15 a range of other pre-deployment criteria. So units are
16 keeping a close track of this.

17 What concerns me is that if an individual is posted,
18 then, from one unit to another, unless that record is on
19 the JPA system -- because that is the single central
20 repository -- that record is lost and we don't then have
21 the audit trail, as he goes to his next unit, that says,
22 "Yes, this individual is up to date and qualified" or
23 "No, he is not".

24 Q. So you were impressed by the numbers undertaking MATT
25 training in 4 Mechanised Brigade. What about the rest

1 of the army? You have certainly identified a problem
2 with the recording system. Were you concerned that not
3 enough people were undergoing MATT training elsewhere?
4 A. I think what I would say is that I'm concerned that we
5 don't have the audit trails. I would also be prepared
6 to say that 100 per cent of MATT's compliance is not in
7 place. Life's not like that.

8 It is hugely better than is recorded here. I'm
9 entirely comfortable that those who are deploying on
10 operations are fully up to date with their full MATTs
11 suite. I am less comfortable that across the army,
12 every, year every soldier fulfil what is in theory is
13 mandatory training. It's an issue that in my role as
14 army inspector I have raised with headquarters land
15 forces and they are looking at this at the moment, both
16 in terms of the need to -- sort of recognising the need
17 to maintain compliance, how we actually go about
18 recording it and providing that audit trail.

19 Clearly, you know, I recognise that -- the
20 importance that this Inquiry is placing on that
21 continuity. This is part of my point about embedding
22 throughout a soldier's career. This is not just
23 an issue of doing it just in time before deployment.
24 This is sort of the basic fundamental bedrock of
25 professional standards.

1 Q. At various points in your report you endorse a greater
2 role for the military provost staff in various aspects
3 of detainee handling; in the review of policy and
4 doctrine and in the delivery of training in particular.
5 Could you explain briefly why you envisage this greater
6 role for the military provost staff?

7 A. Well, in short, because they are the subject matter
8 experts. They are the army's experts. They are, you
9 know, fully trained in accordance with, for example,
10 Home Office standards. And because they have that
11 expertise, I think they should be involved in a number
12 of ways.

13 One is, as you suggest, in terms of the development
14 of doctrine and tactics, techniques, procedures and
15 so on, what we are telling people to do. They, as the
16 experts, need to be entirely confident that what we are
17 telling people to do is correct. I think they have
18 a wider role as well, which is, as the subject matter
19 experts, to provide assurance of this through life
20 training.

21 So, for example, the detainee handling serials that
22 I would see embedded within the collective training
23 exercises, somebody needs to confirm that people, as
24 they go through those serials, are or indeed are not
25 doing the right things, and if the answer is that they

1 are not, then correcting them there and then rather than
2 letting bad habits become embedded. That assurance role
3 is something for which they are not currently resourced.

4 Q. On the issue of reviewing doctrine, your report mentions
5 the fact that the operational law branch now plans to
6 review formally all doctrine on detainee handling.

7 Is it necessary for doctrine to be reviewed both by the
8 operational law branch and also by the provost marshall
9 army?

10 A. I think it is. I mean, clearly what we are telling
11 people to do needs to be legally compliant. Now you
12 could argue that the provost marshall should not agree
13 to something that is not legally compliant, but he in
14 turn, in order to confirm that, would have to consult
15 his own legal experts.

16 Now, from my perspective, I would say that what the
17 operational law branch would do is to provide the
18 assurance that the doctrine is legally compliant. The
19 provost marshall brings the practical perspective and
20 the two together are both valid and important
21 perspectives.

22 Q. On a related but perhaps smaller point, MIV005247, the
23 review says at the top of the page the following:

24 "The land forces Operation Herrick mounting
25 instruction, in addition to a requirement to train for

1 detainee handling, also specifies that 'troops deploying
2 with an expectation of conducting detainee handling are
3 to contact [provost marshall army] for specific
4 training'. To date none have, relying on the training
5 provided by the OPTAG and by brigade provost companies."

6 Is that a matter for particular concern?

7 A. I don't think it is in that, effectively, the brigade
8 provost companies are acting on behalf of the provost
9 marshall. What we saw, for example, during -- forgive
10 me -- 4 Brigade's training was that their provost
11 company was indeed so committed to providing that
12 training to the rest of the brigade that to an extent
13 their own training suffered.

14 So coming back to your question, am I -- you know,
15 do I see it as an issue that they are not going to the
16 provost marshall directly? No, I don't, because I think
17 the mechanisms are in place to achieve that effect.

18 Q. This is something you have already touched upon in your
19 evidence and the review also mentions it: the forward
20 deployment of RMP in order to assist with prisoner
21 handling, how important is this in your view?

22 A. I think it is a part of the whole system and I think it
23 needs to be seen in the context -- in that context.

24 I don't think there is a single sort of ultimate
25 solution to this. What we need, it seems to me, to do

1 is to provide an end-to-end system that minimises the
2 risk of something going wrong and maltreatment in that
3 forward area -- that sort of gap between the point of
4 apprehension and the delivery to a facility that we
5 talked about earlier. Putting these experts forward is
6 part of that overall system and narrowing that gap of
7 risk, but it is only part of it and it needs to be seen
8 as a sort of system approach.

9 Q. On a different topic, at paragraph 64 of your report --
10 there is no need to turn it up -- you recommend the
11 provision of mid-tour refresher training where feasible.
12 The Inquiry heard from Colonel McNeil and
13 Brigadier Forster-Knight last week that mid-tour
14 refresher training no longer takes place and that
15 instead troops receive continuous and ongoing guidance
16 on prisoner handling from embedded RMP. What is your
17 reaction to that?

18 A. To be fair, sir, you have slightly misquoted the
19 recommendation --

20 Q. I apologise.

21 A. -- which is that "... when operational circumstances
22 permit and the requirement exists".

23 Q. Yes.

24 A. Now commander 11 Brigade identified a particular
25 requirement and he instituted a formal programme of

1 mid-tour refresher training for his people. If there is
2 now in place a continuous process of refreshment, then
3 that requirement for the particular package that
4 commander 11 Brigade introduced may no longer there.
5 I would suggest that's an issue for the commander's
6 judgment unless something changes, by which I mean you
7 have, for some reason, a dramatic change in policy,
8 a change in direction from the Permanent Joint
9 Headquarters; for example, if, for the sake of
10 argument --

11 Q. The policy changes mid-tour --

12 A. -- in a hypothetical case an inquiry were to produce
13 a report during a tour that made specific
14 recommendations, then clearly, in order to enact those
15 recommendations as soon as possible, there would need to
16 be some means of, you know, refreshing people's training
17 and introducing those new provisions.

18 Q. Can we look at paragraph 67 of the report, please, at
19 MIV005254? Picking it up halfway through the paragraph
20 near the end of the line, the review says this:

21 "... yet the review found a lack of awareness
22 amongst commanders of either the qualities needed or the
23 rules and constraints governing tactical questioning."

24 That's right, is it?

25 A. Yes, I mean I think to an extent. Recognising that this

1 is already a sort of historical perspective, that is
2 exactly what we found, that for some in the chain of
3 command the tactical questioning was a bit of a black
4 art, you sent people away and they did the course and
5 they were your tactical questioners.

6 I think already we have moved on significantly from
7 that. The key thing I would suggest is a provision in
8 the new policy that I saw at the end of last week that
9 requires commanding officers to be briefed by the
10 Permanent Joint Headquarters with respect to tactical
11 questioning. That briefing, I think, is important for
12 two reasons: one is with respect to the issue raised
13 earlier in that same paragraph about the quality of the
14 people who are sent on the course in the first place and
15 making sure that commanding officers really do
16 understand the sorts of people and the sorts of
17 qualities that they need to have in order to do the
18 course and then become their tactical questioners. The
19 second aspect is being quite clear as to their own
20 responsibilities within their units for ensuring the
21 safeness and the probity of any tactical questioning
22 that goes on.

23 Q. Did this lack of awareness amongst the chains of command
24 surprise you in light of the requirement in SOI J3-9
25 mentioned in your reports that commanders read the MoD's

1 tactical questioning policy?

2 A. I think -- possibly, but I think the point that I would
3 make there is -- I mean J3-9 is -- the instruction
4 applies in theatre, and commanding officers clearly need
5 to understand the environment in which they are going to
6 be working once they deploy and train to that
7 requirement, as it were.

8 I think it's a question of timing, though, at what
9 stage they start focusing on that as opposed to the
10 generic training provisions. I think that the timing,
11 therefore, of this briefing from PJHQ is quite
12 important. It needs to be early enough in the process
13 to make sure that the commanding officers understand
14 their responsibilities and therefore can shape their
15 unit training accordingly.

16 Q. This issue doesn't raise any concerns in your mind that
17 whilst the instructions are set out in J3-9, perhaps
18 some units aren't following them?

19 A. No, it doesn't. I've certainly seen no evidence to
20 suggest that people are not following the instruction in
21 theatre. I don't know whether Colonel Green saw
22 anything to suggest that.

23 Q. If commanders were unaware --

24 THE CHAIRMAN: Can we just pause a moment for Colonel Green
25 to respond?

1 COLONEL GREEN: We took -- we did take evidence of one
2 instance where an RMP adviser at battlegroup level had
3 to draw the attention of the battlegroup chain of
4 command to some issues within J3-9, but that was an
5 isolated incident. Again, we flagged up that in the
6 report and it is one of the recommendations that PJHQ
7 reiterate -- the Permanent Joint Headquarters reiterates
8 the requirement for the chain of command to be entirely
9 familiar with J3-9.

10 Q. Yes.

11 BRIGADIER PURDY: The point that I was trying and
12 inarticulately failing to make was I think it is partly
13 a question of timing. You know, at what stage does
14 a commanding officer's focus turn to the specific rather
15 than the generic, if I can put it like that.

16 Q. Yes. But you would hope, would you not, that commanding
17 officers would absorb J3-9 before deploying to theatre?

18 A. Oh, absolutely. No, I'm not saying that this is -- on
19 deployment suddenly it switches to J3-9. No. They need
20 to train to that throughout their mission-specific
21 training. It is specific to that mission. J3-9 is
22 specific to that mission and that therefore needs to
23 shape it. It is a question of quite how many months
24 before deployment.

25 Q. May we head to paragraph 98? This is MIV005261.

1 Picking it up at the third line, the review says this:

2 "Better feedback on intelligence gained from
3 individuals being interrogated could reduce any
4 perceived incentive for battlegroups to undertake
5 additional tactical questioning before passing detainees
6 back to established facilities."

7 Did you, Colonel Green, notice any incentive
8 perceived by battlegroups to increase the ambit of
9 tactical questioning because they weren't receiving
10 intelligence back from interrogation and further up the
11 prisoner handling chain?

12 COLONEL GREEN: There was -- it was more a sense that
13 battlegroups felt that once they had passed the detainee
14 up the chain for interrogation, that they would not get
15 anything back. Therefore, clearly, what they were
16 interested in were activities within their own area.
17 But when we questioned the staff in -- the theatre
18 headquarters staff, it was quite clear that they were
19 passing whatever intelligence they could back to the
20 battlegroups, and we identified that perhaps there was
21 a communication issue at battlegroup level down to their
22 sub-units.

23 BRIGADIER PURDY: I think, if I may, we put that in slightly
24 as a -- almost a speculative statement. We identified
25 that there was a potential risk here and, by

1 highlighting that potential risk, we might help to
2 remove it.

3 Q. Does that mean that you didn't actually encounter
4 examples of battlegroups taking tactical questioning too
5 far for this reason?

6 A. Certainly I am not aware of anything -- any evidence
7 that we saw that might have indicated that.

8 COLONEL GREEN: No, certainly not.

9 Q. At paragraphs 77 to 83 -- they begin at MIV005256 -- you
10 deal with the inculcation of values and standards which
11 is clearly an important issue for this Inquiry also.

12 There is a particular sentence at paragraph 80, over
13 the page, in which you say:

14 "It is a command responsibility, led at unit level
15 by the commanding officer and regimental sergeant major,
16 to emphasise the importance of living by the values and
17 standards and to set the tone within a unit."

18 Could you explain briefly why that responsibility
19 should lie with the commanding officer and the RSM?

20 BRIGADIER PURDY: Yes. I think because the way they behave
21 personally and the way they require others to behave and
22 the way in which they hold to account others for their
23 behaviour, as I say, sets the tone for the whole unit.

24 If you have -- if you were to have an individual in one
25 of those positions who either did not personally live by

1 those values and standards or did not insist upon them
2 amongst the members of the unit, that would very quickly
3 become apparent and I judge that there, you know, could
4 be a fairly rapid deterioration in standards. It's
5 an issue both of personal example and of the need to
6 insist on standards by others.

7 THE CHAIRMAN: I would have thought that's right at the
8 heart of the regimental system, isn't it, battalions and
9 battlegroups, that the commanding officer and the
10 regimental sergeant major are the two perhaps most
11 important people in the battalion?

12 A. They are indeed, Sir. Absolutely.

13 THE CHAIRMAN: What slightly surprises me is that it is
14 necessary now, when you are doing your review or your
15 report, actually to underline that. Is that because
16 there is some kind of, you think, falling off from those
17 standards or not?

18 A. No, Sir. I have no evidence of -- that we've got
19 commanding officers or regimental sergeant majors who do
20 anything other than understand that. The reason for
21 emphasising it is that, as you say, it is fundamental to
22 this. Therefore the point just merited re-making --

23 THE CHAIRMAN: Yes, I follow. So you would not have such
24 a report without actually saying "... and do remember
25 you've got to have the ..." It is an absolutely vital

1 part of the regimental system.

2 A. It is and it is leadership at all levels. The tone and
3 the environment are set by the commanding officer and
4 the RSM. But that then needs to be picked up down the
5 chain of command so that, for example --

6 THE CHAIRMAN: It needs to run right the way through down to
7 the bottom, does it not?

8 A. It does, Sir.

9 THE CHAIRMAN: Any falling off at the top will rapidly be
10 perceived and have an effect on the lower ends of the
11 organisation?

12 A. That's right, Sir.

13 MR HALLIDAY: Just one final topic if I may,
14 Brigadier Purdy. It is a few questions that I have
15 about what is often termed as "whistle-blowing". You
16 know what I mean by that term. Does the MoD or the army
17 have any policy on whistle-blowing?

18 A. I am not aware of a generic policy specifically on the
19 subject of whistle-blowing, but we have, in particular
20 areas, policy; for example, there is a defence policy on
21 fraud for which there is a specific hotline and
22 whistle-blowing is encouraged. I'm aware of a drugs
23 hotline, for example.

24 Now, this comes very firmly under the values and
25 standards piece and in particular moral courage -- under

1 the value of courage. People are -- it's made very
2 clear at all levels and in a number of ways that if
3 people see behaviour that is wrong, then it is their
4 duty to stand up and say so.

5 Q. That's made clear in MATT 6 training.

6 A. It's made clear in MATT 6 training. The important thing
7 about that is the relationship, I would suggest, with
8 the value of loyalty and to make quite clear that the
9 duty to stand up and be counted overrides the small team
10 loyalty that we try in other contexts to develop.

11 Q. To take a concrete example, if a soldier witnesses abuse
12 of detainees by his own units, to whom should he report
13 that abuse?

14 A. I think there are a number of channels. I mean, firstly
15 up the chain of command and that's the first duty. Now,
16 clearly, if we are talking about a patrol base and an
17 individual soldier has an issue with the way, for
18 example, his multiple commander is behaving, then he is
19 in a difficult position because we are not in
20 a situation where somebody can ring up, you know, on
21 a hotline and raise an issue. Therefore I would expect
22 that person either to remonstrate with the person with
23 whom he has an issue. That is easily said, not easily
24 done.

25 The alternative is to raise it at the next

1 opportunity with an outside person there. Whether that
2 person is a member of the Royal Military Police -- and
3 this is an example where pushing the Royal Military
4 Police has a particular benefit potentially -- or
5 whether it is a more senior member of the chain of
6 command on one of the regular sort of contacts that they
7 would have, there's the opportunity there.

8 Q. I would like to pick up the second group which you
9 mentioned before moving on to the third one. You said
10 that it's something more easily said than done, taking
11 up an issue with your own chain of command when you are
12 criticising their conduct. Can you think of any
13 practical ways in which soldiers could be given the
14 confidence to speak up when something is obviously
15 wrong?

16 A. Well I think -- I know the Inquiry has had evidence that
17 there have been examples of this, you know, where
18 soldiers have stood up and said, you know, "Something is
19 wrong here", and those cases have been properly
20 investigated and indeed dealt with appropriately. You
21 know, there are cases that have come to -- certainly
22 formal investigation as a result. I'm personally not
23 close enough to the detail of the particular cases to go
24 into that.

25 Q. Do you think more could be done to drill home to

1 soldiers that if they see something wrong, then they
2 should speak up, even if it means speaking against their
3 own chain of command?

4 A. I'm not sure that it should necessarily. I mean, you
5 know, it's a question of judgment and it's a question of
6 individual units. This comes back to the issue of
7 MATT 6 in some ways and who does the presentation and
8 who -- and how that is delivered in terms of bringing to
9 life the sort of vignettes and scenarios that raise the
10 difficult questions. It comes back to this leadership
11 question of creating the environment in which people
12 would have the confidence to do that.

13 As I say, it's easy for me to sit here and say that.
14 When you're talking about a private soldier dealing with
15 an issue with his own chain of command, that takes
16 courage.

17 THE CHAIRMAN: It is always going to be a difficult area for
18 the army, is it not? Do you think there is any room for
19 some kind of formal document or whatever, indicating to
20 the private soldiers that if they do feel that they must
21 report something up the chain of command, they will be
22 protected?

23 A. Sir, I think on the face of it I could see that as
24 a positive reassurance.

25 THE CHAIRMAN: Yes. I'm not sure how you work this out.

1 A. I think one would have to look at the detail of that --

2 THE CHAIRMAN: I can see that.

3 A. -- as to how it would be done because in all these

4 things there is a balance to be struck and you need to

5 ensure that, you know, you avoid the vexatious

6 complainers, as it were.

7 THE CHAIRMAN: Exactly.

8 A. But what we have in place anyway -- and if I can take it

9 out of the operational environment for a second -- is

10 a system of service complaints that do provide assurance

11 to the individual that if they have a complaint and they

12 make a complaint, they are protected as they do that.

13 Now quite the mechanics of transferring that into

14 the operational environment I think one would have to

15 look at very carefully. The principle, absolutely.

16 THE CHAIRMAN: You think it's something that ought to at

17 least have some more work done upon it to see what is

18 the best mechanism that can be achieved?

19 A. I think, Sir, that anything we can do to reassure the

20 junior soldier that if he has a legitimate complaint and

21 a legitimate issue with something that's been done that

22 he sees or witnesses that he is not happy is legal and

23 proper -- anything that reassures that individual that

24 if he speaks up, you know, he will be protected and not

25 discriminated against or got back at --

1 THE CHAIRMAN: Yes.

2 A. -- would be valuable.

3 MR HALLIDAY: Just picking up the final route which you

4 mentioned, which was to the RMP -- the final route by

5 which someone could report their concerns -- do embedded

6 RMP perform that kind of policing function in the units

7 to which they are attached?

8 A. Absolutely they do, and I'm aware of one case that, as

9 a result of a Royal Military Police lance corporal

10 speaking up, eventually came to trial.

11 MR HALLIDAY: Thank you very much.

12 THE CHAIRMAN: There will be probably be one or two other

13 questions for you.

14 Yes, Ms Hetherington.

15 Questions to BRIGADIER PURDY by MS HETHERINGTON

16 MS HETHERINGTON: Just a few questions on your methodology.

17 You explained to Mr Halliday that you spoke to

18 battlegroup personnel both pre and post deployment and

19 also some at Camp Bastion. Could you give us an idea of

20 how many, in numerical terms, you were able to speak to

21 in each of those situations?

22 A. Pre and post, we went to a number of the courses running

23 through the OPTAG -- the operational training advisory

24 group -- and they run to several hundred on each course.

25 Clearly we didn't speak to everybody, but we spoke to

1 a number of the groups going through there -- they are
2 divided into groups of between 30 and 50 -- going round
3 the stands and we spoke to a number of the groups there.
4 In terms of the visiting the brigade training,
5 a cross-section. I mean, not hundreds; dozens, just to
6 give a feel. In theatre?

7 COLONEL GREEN: Certainly in theatre, no more than 100 in
8 various opportunities. Importantly both in the
9 preparatory phase and then in theatre, the independent
10 expert then also spoke to people on his own without any
11 members of either the training staff or the review team
12 present.

13 Q. Thank you. I think you may have answered this question
14 probably in the answer you just gave. But in terms of
15 those you spoke to, were they in any way selected by the
16 units and brigades in question to speak to you or could
17 you speak freely to anyone you chose?

18 BRIGADIER PURDY: Certainly those going through the OPTAG
19 training were those who happened to be there and were in
20 no way selected. Those whom we spoke to in units who
21 had returned from operations, we didn't take a random
22 selection from the unit nominal roll, as it were, so
23 I guess in that case you could say that the unit did
24 the -- you know, gathered a cross-section of people.

25 COLONEL GREEN: Certainly not on operations. We just walked

1 up to various groups as we were going through various
2 stands and, whilst they were having a cigarette or a cup
3 of tea, started to quiz them on their training.

4 Q. Thank you. You explained that you couldn't get to the
5 forward areas to actually physically inspect what was
6 going on there. Did you ask those at Camp Bastion about
7 their procedures in those areas and, for example, did
8 you see any written standard operating procedures about
9 detention at unit level?

10 COLONEL GREEN: We certainly took evidence of what happened
11 in one unit area, as I say, from an RMP sergeant who
12 happened to be back in Camp Bastion for another reason.
13 We also observed the procedure that was followed when
14 detainees were brought back into Camp Bastion and handed
15 over and watched that procedure going through.

16 Q. Just to clarify, you didn't specifically ask for any
17 written procedures that they had or take specific
18 evidence on that, other than from the one RMP soldier?

19 COLONEL GREEN: No, we didn't.

20 Q. Just in terms of the availability of your report,
21 Brigadier Purdy, I noticed that on the front, the first
22 page, it said that it is publicly available subject to
23 permission from you and CGS. What does that mean in
24 practice? Is it released openly or does one have to
25 apply for it?

1 BRIGADIER PURDY: Well, that's actually a standard
2 formulation that we put on the front of our work
3 generally. The fact that it's on the Inquiry website
4 means that it's publicly available.

5 Q. I understand that, but had it not been used in evidence
6 in this Inquiry, how is it accessible within the
7 military and more broadly?

8 A. Within the MoD, it has gone to -- it was submitted by
9 the chief of general staff to ministers, and ministers,
10 you know, agreed its release. It has also been placed
11 by the Minister of Armed Forces in the library of the
12 House of Commons and disclosed to Parliament. So to
13 that extent this report is a very public document.

14 Q. You mentioned just earlier, in response to one of my
15 questions, about the involvement of the independent
16 non-military expert that you had assisting you.
17 Obviously your review of this area was an ad hoc one,
18 but it recommended various governance and review
19 mechanisms going forward. Do you think that the input
20 of an independent non-military expert in those future
21 review processes would be a useful element?

22 A. I do. I think that it's always help to have an outside
23 perspective. Nobody has a monopoly of wisdom in this.

24 MS HETHERINGTON: Thank you. Thank you, Sir.

25 THE CHAIRMAN: Arising out of what Ms Hetherington was

1 asking you, is there any prospect that you will in, say,
2 six months or a year's time go back to see how your
3 recommendations have worked out?

4 A. Yes, Sir, there is. The chief of the general staff
5 wrote -- following the release of this report to this
6 Inquiry and to the House of Commons, the chief of
7 general staff wrote to the commander in chief land
8 forces directing him to get on with implementing the
9 recommendations and requiring him to report back in six
10 months and twelve months as to progress. Now, that's
11 within the army chain.

12 THE CHAIRMAN: Yes.

13 A. Clearly there are issues here that go more widely. In
14 terms of the wider piece, I would see the Ministry of
15 Defence's governance arrangements tracking those and
16 following them through. But it is our normal practice,
17 where we are have produced a report and recommendations,
18 to go back a while later and confirm that progress is
19 being made or identify where it isn't. So within the
20 army, which is where my remit normally runs, I would
21 expect to do that.

22 THE CHAIRMAN: So you of your own volition can say, "I need
23 to check back on what has happened to my
24 recommendations"?

25 A. I can, Sir, yes, with the authority of the chief of the

1 general staff.

2 THE CHAIRMAN: Yes, I follow. All right. Mr Garnham?

3 Mr Evans?

4 Questions to BRIGADIER PURDY by MR EVANS

5 MR EVANS: Can I just ask you a little about the mechanism
6 of the lessons learned procedure that you talk about in
7 your report? Your recommendation 28 suggests that:

8 "The land warfare centre should consider whether
9 there would be benefit in giving commanders the
10 opportunity also to make unattributable comment in their
11 post-operation interviews so as to encourage full
12 candour and disclosure of mistakes from which others
13 could learn."

14 I can see why that might be a useful procedure for
15 commanders for information that they knew about but
16 didn't feel able to attribute to any individual, but
17 this touches on the whistle-blowing aspect too because,
18 of course, that could only be as useful as the
19 information that comes to their attention.

20 Is the position this: that at the moment there is no
21 formal mechanism by which a junior rank soldier can
22 anonymously report a concern without having to go
23 through the chain of command?

24 A. I think we are talking about two slightly different
25 things here. If you are talking about reporting

1 a specific concern -- about a specific event with which
2 an individual has a concern, then they are at liberty to
3 go direct to the service police, for example, who would
4 protect their anonymity to the extent that it was
5 appropriate for investigation and so on.

6 What this was intended to get at was where
7 a commanding officer, for example, in the course of his
8 post-operational interviews, was minded to criticise --
9 were that to be the case -- his brigade commander --
10 a brigade commander who was still due to write his
11 annual appraisal, for example. So therefore, you know,
12 where a commanding officer might feel constrained
13 raising issues of -- you know, systemic issues where
14 actually the -- it would benefit the system and help to
15 ensure better practice in future if concerns were
16 raised.

17 The point of that recommendation was to make sure
18 that we weren't losing systemic lessons because
19 individuals might feel constrained by the fact that
20 a name -- their name -- was going to be attached to
21 a criticism made of, for example, their superior
22 headquarters.

23 Q. I follow. I want to focus more on the junior rank
24 soldier which was touched on by Mr Halliday earlier on.
25 What I was going to ask you earlier really was whether

1 you think that there should be a mechanism by which
2 private soldiers and/or soldiers of junior ranks can
3 bypass the chain of command to report a particular
4 concern in an anonymous way, in the same way, for
5 example, as the drugs hotline enables soldiers to report
6 narcotics abuse.

7 A. Yes, I think I mean potentially that has merit. But, as
8 I say, any individual can very well approach the service
9 police and make an allegation that would then be
10 investigated --

11 Q. I follow that. But a number of soldiers have given
12 evidence to the Inquiry that they were worried about
13 even doing that because, in the operational environment,
14 some of them were frank enough to say that they feared
15 what the people they were implicating might do to them
16 in an operational environment where perhaps they had
17 opportunities to do things that wouldn't be available to
18 them in a domestic environment. That is why I'm
19 suggesting to you that maybe the hotline idea might be
20 the best route to permit those kinds of soldiers to make
21 anonymous complaints -- perhaps when they go back on
22 leave or if they can get access to a telephone in
23 theatre -- to avoid any prospect of there being
24 reprisals at battalion level.

25 A. Yes, I can see where you are coming from and I can see

1 the potential benefit in that one might, in doing so,
2 raise evidence that, you know, you wouldn't otherwise
3 get. I think one would have to look at the
4 implementation of that in that somehow you need to get
5 round the potential issue of either sort of malicious
6 anonymous allegations or, you know, vexatious
7 allegations.

8 Q. Yes, I understand there would be detail to work out.

9 A. In saying that, I'm not rejecting the idea at all. I'm
10 saying one would have to --

11 THE CHAIRMAN: Mr Evans, I do not want to stop you, but is
12 this a topic which ought to be looked at in depth to see
13 what the best way forward is?

14 A. I certainly think, Sir, it is not something to decide on
15 the spur of the moment.

16 THE CHAIRMAN: That is rather what I -- I can see all the
17 points that Mr Evans is making and similarly your
18 reticence about saying anything that would bind somebody
19 in the future. It does seem to me that it may be
20 something that ought to be at least looked at.

21 MR EVANS: Can I just ask you finally this then? Assuming
22 that that process is going to be looked at, can you see
23 a role also for that feature to be trained into soldiers
24 throughout their training, in particular when they are
25 considering moral courage in the context of annual

1 training tests, so that the other side of moral courage
2 is that there is actually a mechanism by which you can
3 report these matters?

4 A. Yes.

5 MR EVANS: Thank you, Sir.

6 THE CHAIRMAN: Ms Dobbin?

7 MS DOBBIN: Sir, I am afraid Mr Evans beat me to it. I have
8 no questions.

9 THE CHAIRMAN: Mr Barr?

10 Questions to BRIGADIER PURDY by MR BARR

11 MR BARR: On the question of whistle-blowing, if you have
12 a situation where a soldier does come forward to report
13 abuse and for whatever reason the suspected abusers come
14 to know of the report, is it a duty of the chain of
15 command to protect the reporting soldier from
16 victimisation?

17 A. Absolutely it is.

18 Q. Is that well understood by commanders or is that
19 something which needs more emphasis?

20 A. That's a difficult question without, you know, actually
21 going and physically talking to people and asking the
22 question and testing the proposition. Instinctively
23 what I would say is that those who are sort of properly
24 imbued with the values and standards, including the
25 issue of respect for others and so on, would

1 instinctively understand that and therefore I would be
2 confident in saying that, you know, at the command level
3 that would be understood. Whether that understanding
4 necessarily would go all the way down, I wouldn't have
5 the evidence on which to offer an opinion.

6 Q. And if, for whatever reason, the chain of command fails
7 in its obligation to protect the whistle-blower -- you
8 mentioned earlier in your evidence the service
9 complaints procedure -- would it be open to the
10 whistle-blower to complain about any victimisation
11 through the service complaints procedure?

12 A. Absolutely it would.

13 Q. If this is outside your territory please say so, but
14 am I right that at the top of the service complaints
15 procedure is the service complaints commissioner?

16 A. No, that's not right. What the service complaints
17 commissioner does is to hold to account the chain of
18 command for its proper operation of the complaint
19 procedure.

20 Q. So what is the top of the complaints procedure?

21 A. It's the army board.

22 Q. The army board. Thank you very much.

23 MR HALLIDAY: No more questions, Sir.

24 Questions to BRIGADIER PURDY by THE CHAIRMAN

25 THE CHAIRMAN: Just before I let you go,

1 Brigadier Forster-Knight told me that he was seeking to
2 put forward his organisation to assist in just the areas
3 that we have been talking about. I assume from what you
4 said you are aware of that; is that right?

5 A. That's right, Sir, yes.

6 THE CHAIRMAN: I asked him the blunt question about whether
7 or not he was empire building.

8 A. I saw that in the transcript, yes.

9 THE CHAIRMAN: His desire to put forward his organisation
10 into this area, is that something that you would
11 recommend?

12 A. I think that's logical --

13 THE CHAIRMAN: Yes.

14 A. -- in that his people -- by which I mean the military
15 provost staff, of which he is the head, and the Royal
16 Military Police between them are the subject matter
17 experts --

18 THE CHAIRMAN: Yes.

19 A. -- within the army. I think that headquarters land
20 forces will have to look very carefully at their ability
21 to resource this against a lot of other priorities and
22 particularly the time of the defence review and so on.

23 THE CHAIRMAN: Yes.

24 A. I think there may be an opportunity as -- in terms of
25 rebalancing and so on, in the aftermath of the defence

1 review, to implement some of that. But clearly there
2 are going to have to be difficult decisions taken as to
3 where the resourcing should go.

4 THE CHAIRMAN: Obviously I recognise that, but that doesn't
5 inhibit me if I think the recommendation ought to be
6 made.

7 A. In principle, Sir, I'm with you.

8 THE CHAIRMAN: Thank you very much. Although I do take your
9 point that what you want to do is get correct prisoner
10 handling into the DNA of the soldiers. One doesn't want
11 to demolish or diminish that.

12 One other matter that I wanted to ask about.
13 I don't see anywhere, I don't think -- maybe I have
14 missed it -- in your report a comment about guards being
15 the same people who captured detainees.

16 A. No, Sir, I do not think you have missed anything.
17 I don't think we specifically commented on that.
18 I think firstly again, at the small unit level, if I can
19 put it like that, there is --

20 THE CHAIRMAN: It is impossible to avoid.

21 A. -- there were practicalities. Beyond that, the clear
22 direction that is clearly understood by everybody in
23 theatre is that anybody who is detained needs to be got
24 back to a formal facility as soon as is practically
25 possible.

1 THE CHAIRMAN: Yes.

2 A. Now, in the meantime, it's the responsibility of the
3 base commander, whether that is an NCO or whether it's
4 a commanding officer, to ensure that those who are
5 detained are properly treated.

6 THE CHAIRMAN: But you wouldn't expect, in a unit holding
7 area, those who had captured detainees or whoever to
8 carry out the guard duty? That would not be best
9 practice?

10 A. I think that's correct, Sir, with the proviso that it is
11 also good practice that an individual who has made the
12 detention actually accompanies the detainee back to the
13 formal facility because, in that way, you maintain
14 continuity of evidence and --

15 THE CHAIRMAN: Accountability as well.

16 A. Sorry, Sir?

17 THE CHAIRMAN: And accountability as well.

18 A. Indeed, but you are right, there needs to be that
19 separation as well.

20 THE CHAIRMAN: All right. Thank you very much.

21 Well, we have gone on a little bit longer, but we
22 will have our ten-minute break, that is all the
23 questions that the Inquiry has for both of you. I'm
24 very grateful to each of you for coming and giving
25 evidence to the Inquiry. Thank you very much.

1 A. Thank you, Sir.

2 COLONEL GREEN: Thank you, Sir.

3 THE CHAIRMAN: Very well. Ten minutes.

4 (11.35 am)

5 (A short break)

6 (11.45 am)

7 THE CHAIRMAN: Yes, Mr Moss.

8 MR MOSS: Sir may I call Professor Dickson, who is our next
9 witness?

10 THE CHAIRMAN: Yes.

11 SIDNEY BRICE DICKSON (called)

12 Questions to PROFESSOR DICKSON by MR MOSS

13 MR MOSS: Professor, could you start by giving the Inquiry
14 your full name?

15 A. Yes. It is Sidney Brice Dickson.

16 Q. Professor, there is no need for you to be sworn to give
17 your evidence today. Thank you very much for the report
18 you have produced for the Inquiry. Could we just have
19 a look, please, on screen, at the final page of your
20 report at MIV010125? I think we see that it's a report
21 that you signed on 22 September of this year.

22 Can I just confirm with you that when you provided that
23 statement to the Inquiry, the contents were true to the
24 best of your knowledge and belief?

25 A. Yes.

1 Q. I think it's right, isn't it, that since you provided
2 that statement to the Inquiry, you have subsequently
3 been provided with some of the tactical questioning and
4 interrogation documents which came to the Inquiry rather
5 late in the day and you have been able, very much more
6 recently, just to give some indications of comments on
7 those which, if I may, I'll take you to at the end of
8 your evidence. But is that right in terms of --

9 A. Yes, that's right.

10 Q. Thank you. As I am sure you will understand, everybody
11 in the Inquiry, including the chairman and all the
12 lawyers present, have had an opportunity to read your
13 report. I'm only going to ask you about certain topics
14 and I'm not going to ask you questions about some
15 matters, even if they are important ones, where, if
16 I may say so, your report is entirely clear as to what
17 it is that you're saying about the issues in question.

18 Some other issues that you raise in your report deal
19 with legal areas which, while of interest, are perhaps
20 not ultimately ones on which this Inquiry will be
21 expressing a view, so for similar reasons -- interesting
22 though they are -- I will not be taking you to all of
23 the legal issues which you raise in your report.

24 Could I just start briefly with your background
25 please? You tell us in your statement that you are

1 currently a professor of international and comparative
2 law at Queen's. Is that right?

3 A. That's right, yes.

4 Q. You tell us that you spent five years as a commissioner
5 for the Equal Opportunities Commission in Northern
6 Ireland --

7 A. Yes.

8 Q. -- and I think six years full-time as the chief
9 commissioner for the Northern Ireland Human Rights
10 Commission set up after the Good Friday agreement.

11 A. Yes, that's right.

12 Q. In terms of your areas of academic interest, amongst
13 other areas I think you have published on the ECHR and
14 civil liberties.

15 A. Yes.

16 Q. As far as military matters are concerned, I am sure that
17 your studies have included para-military and military
18 cases. This isn't a criticism of you at all.
19 Can I just check, do you have any direct military
20 experience yourself?

21 A. No, no, I don't. I freely own up to that.

22 Q. Thank you. As I say, it's not a criticism in any sense
23 at all. Have you been involved previously in any way in
24 advising armed forces, whether here or abroad, on
25 operational military matters or anything of that kind?

1 A. No, I haven't.

2 Q. Thank you. Now, I should like to start with just
3 looking very briefly at the first area of issues that
4 you addressed in your report, where you were asked by
5 the Inquiry, "What broad steps should national armed
6 forces reasonably be expected to take in order to avoid
7 physical and psychological mistreatment?"

8 The way that you addressed that question -- I think
9 this is right, isn't it -- was to break it down into the
10 policy-making stage, the training stage, the operational
11 stage and the post-operational stage; is that right?

12 A. Yes, that's right.

13 Q. So far as policy making is concerned, I think you make
14 clear that, as well as having sound policies in place,
15 you would place emphasis on the importance of
16 effectively disseminating those policies and procedures
17 through the armed forces.

18 A. Yes.

19 Q. When it comes to the next broad area, training, you set
20 out in your statement the importance of making the
21 training come alive. That much perhaps we understand.
22 You also talked in paragraph 7 -- we don't need to have
23 it up on the screen -- about the importance of making
24 soldiers see the benefit of policies in practice. What
25 sort of thing did you have in mind there and why is it

1 important?

2 A. Well, I think it's important that soldiers at every rank
3 in the services appreciate the importance of what they
4 are being taught because this will help them to realise
5 what the values and standards are of the organisation
6 which they are serving and they will thereby, I think,
7 be motivated to perform well for that organisation and
8 will be alive to the need for their colleagues to
9 perform well as well.

10 Q. One of the themes which perhaps emerged from evidence
11 last week was the importance in the various training
12 materials of not just giving clear instruction on what
13 was prohibited, but giving equally clear instruction on
14 what permitted activities would be. Would you agree
15 with that?

16 A. I would agree with that, yes. I think the clearer one
17 can be to people who are in this very difficult position
18 doing this very difficult job, the better. One cannot
19 be dogmatic because one has to take account of
20 particular circumstances virtually in every case, but
21 the clearer the guidance, the more effective the soldier
22 will be in my view.

23 Q. Thank you. Then the last two broad areas. The
24 operational stage was the next one. I think you
25 included within that a proper system for reviewing the

1 basis of the detention --

2 A. Yes, that's right.

3 Q. -- and having timelines in place that wherever practical
4 are stuck to.

5 A. Yes.

6 Q. It included also the importance -- if we can look,
7 please, at MIV010083, at the top of the page -- of
8 detainees being aware of their rights --

9 A. Yes.

10 Q. -- and also the ability to make complaints and be told
11 that they have the right to make complaints. Would that
12 be right?

13 A. Yes.

14 Q. Thank you.

15 Then at the post-operational stage you stress the
16 importance of reviews of procedure, what had gone right
17 and what could be improved, and you include, I think, at
18 the post-operational stage, the importance of inspection
19 of detention facilities.

20 So I've taken it at quite a speed. But in terms of
21 the broad outlines of effective procedures in place to
22 avoid abuse, were those the matters that you were
23 emphasising at the start of your report that we should
24 be looking for in terms of what the MoD actually
25 provides to seek to minimise the risk of abuse?

1 A. Yes, they are, yes.

2 Q. Can we come then to just a few points of detail within
3 that? So far as the policy-making stage is concerned,
4 may we look, please, at paragraph 5 of your statement at
5 MIV010080? You say there, halfway down the paragraph,
6 that:

7 "While judges sitting in the highest ... courts may
8 ultimately disagree over whether a particular form of
9 treatment is or is not cruel or inhuman or degrading, in
10 the vast majority of instances there will be substantial
11 unanimity amongst everyone concerned if they are asked
12 whether particular treatments are any of those types."

13 You said this:

14 "Besides, those terms can never be very precisely
15 defined. But they do have a core meaning which is
16 obvious to most people. A good guide is to ask whether
17 one would think it was cruel or inhuman or degrading if
18 one was to be subjected to the treatment in question
19 oneself if roles were reversed."

20 Without suggesting that there isn't a place for that
21 sort of guidance, the equivalence, if you were in that
22 position, the Inquiry did hear evidence that there might
23 be a danger in the stressing of equivalence of treatment
24 simply for this reason: that soldiers who had themselves
25 been deployed, who were acting in high temperatures,

1 under pressure, not having very much sleep -- if one
2 takes hooding and heat, for example, soldiers themselves
3 who have to wear helmets and body armour in patrolling
4 for lengthy periods may not so easily be able to relate
5 to that sort of test of "Do as you would be done by".
6 Do you have any observations on that?

7 A. There may indeed be something in that point, but when
8 I was writing here about the need to ask whether oneself
9 would complain about the treatment in question, I had in
10 mind the person on the Clapham omnibus, not the soldier
11 on active duty in theatre, and I would have hoped that
12 that soldier would be trained in such a way as to make
13 him or her realise that being in theatre is not the
14 normal type of situation. It's an extreme situation.
15 Part of the training that they receive should be to make
16 them appreciate that and to maintain the standards they
17 would want to apply in civilian life.

18 Q. Thank you. Now, another of the issues that's raised in
19 this broad area, the policy making, is whether various
20 military doctrinal publications should make clear or
21 make clearer that certain conduct may not just be
22 prohibited, but may also be unlawful. Can we just start
23 with this? If it is, in fact, plain that conduct would
24 be unlawful, would you see in general terms benefit of
25 the doctrinal publications stating clearly that such

1 conduct would be unlawful?

2 A. Yes, I would, quite clearly, realising, however, that
3 the word "unlawful" can mean different things to
4 lawyers. It could mean, for example, criminal or
5 a violation of human rights law or perhaps a violation
6 of a civil law. But I think the word "unlawful"
7 captures it in a nutshell and it's the one that most
8 people will understand.

9 Q. So far as the five techniques is concerned, perhaps
10 without going to the detail of the documents for the
11 moment, it may be that nobody in this room would seek to
12 argue that the use of the five techniques, even at a low
13 level, in combination, to aid interrogation, would very
14 clearly be criminal. It might be said, though, that
15 there is a difficulty in that individual techniques
16 included within the five techniques might need to be
17 applied for purposes other than as an aid to
18 interrogation and that, therefore, there are
19 difficulties in simply listing the five techniques and
20 saying "These are unlawful". What would you say about
21 that?

22 A. Yes. I think virtually every legal statement has to be
23 qualified to take account of extreme circumstances. One
24 has to remember that the Prime Minister in 1972 did ban
25 these techniques and I don't think that that ban was

1 accompanied by express qualifications. In that sense
2 they are unlawful as well. They have been banned
3 whether or not they always amount to a crime. I can see
4 that in particular non-interrogation situations the use
5 of one or more of these techniques may not be unlawful
6 and it may be right to recognise that in some of the
7 documentation produced by the MoD.

8 Q. Thank you. Since you raised the matter of what was said
9 in 1972, just looking at one point of detail, may we
10 look together at paragraph 45, please, of your report at
11 MIV010096? You say there, in the middle of the
12 paragraph, in dealing with the risks of hooding and
13 whether it creates greater risks:

14 "Besides, of course, hooding has been expressly
15 prohibited by the UK Government at all times since
16 1972."

17 Quite understanding that that was shorthand in
18 a passage that was dealing with the risks of hooding,
19 are you aware that it is perhaps something of a moot
20 point as to whether hooding was banned for all purposes
21 in 1972 or whether it was hooding as an aid to
22 interrogation which was banned in 1972, but hooding for
23 other circumstances, operational security and so on, may
24 in some circumstances still have been permitted?

25 A. I don't at the moment recall the exact phraseology used

1 by the Prime Minister at the time and I have to admit
2 that I haven't double-checked that --

3 Q. Yes.

4 A. -- for the purposes of my evidence today. I've always
5 understood the use of hooding back in 1972 to have been
6 prohibited in virtually all, if not all, circumstances,
7 certainly in Northern Ireland --

8 Q. Yes.

9 A. -- at that time, and I don't recall having read any
10 exceptions to that ban.

11 Q. No. What seems to be the uncontested parts of the
12 evidence, if I can put it in that way, is that the
13 statement to Parliament gave the undertaking that
14 hooding would not be used as an aid to interrogation and
15 we know that there was in fact a signal given, I think
16 on the morning or the day before of Prime Minister
17 Heath's announcement -- there was a signal from the
18 chief of the general staff to the commander of land
19 forces, I think it was, in Northern Ireland, stating
20 that hooding would not be used at all in Northern
21 Ireland.

22 That leaves open a wider question about the use of
23 hoods, for example, at the point of capture on
24 a prisoner of war if it has nothing to do with
25 interrogation. As I say, in some senses it is a point

1 of detail, but would you accept that there may be at
2 least a debate about that and how far the prohibition on
3 hooding as a ban actually extended?

4 A. Yes, I would obviously accept that there could be
5 a debate about that. I understood the statement at the
6 time to refer not just to the way the army behaved in
7 Northern Ireland, but in all its operations.

8 Q. Yes. Certainly so far as the aid to interrogation --

9 A. That's correct, yes.

10 Q. -- in those sort of operations. Thank you.

11 Turning then to the dissemination of policy.

12 A point that you seek to draw out early on in your
13 report is that effective dissemination of policy doesn't
14 just mean getting the policy under the nose of those who
15 need to see it, but also ensuring that the doctrine and
16 policies are accessible in the sense of being written in
17 plain English that can be understood; is that right?

18 A. Yes, that's right, yes.

19 Q. What you have said about that, Professor, has been put
20 to a number of the witnesses who were here last week.

21 I don't intend to go to the detail of individual
22 documents. Could I just, as it were, put the contrary
23 argument to you for your comment?

24 I think what might be said first of all is that some
25 of the higher level doctrinal publications, JDP 1-10 in

1 particular but perhaps also SOI J3-9, which I know you
2 have both looked at, are targeted primarily at
3 commanders who are used to staffing documents of that
4 kind and not primarily aimed, as it were, at the soldier
5 on the ground, whereas different publications -- there
6 are aide-memoires for the soldiers on the ground -- take
7 a simpler and more straightforward approach in the
8 language that they use; in other words, this is all
9 tailored towards the target audience. Do you have any
10 comment on that?

11 A. I can see that you might want to use different language
12 depending upon the intended audience of the document.
13 But even given that these higher level documents, these
14 strategic documents, et cetera, doctrinal documents, are
15 intended to be read by commanders, I must say, even as
16 an academic lawyer of some years, I find them at times
17 pretty impenetrable. I find them hard to navigate. The
18 use of abbreviations was extreme. There was
19 duplication, repetition, which sometimes, I thought, led
20 to ambiguity, if not complete uncertainty, as to the
21 meaning. I just thought they were overly long and
22 complicated and not readily digestible even by the
23 highest commanders.

24 Q. So even when you take into account different target
25 audiences and acronyms being known by the military to

1 a certain extent, you still found them difficult to
2 navigate and not clearly set out; would that be right?

3 A. That would be very right, yes.

4 Q. I think the other aspect of it, perhaps, is this:
5 insofar as there are, for example, both annexes and
6 appendices and particular ways that pages are paginated
7 and so on, which to the uninitiated perhaps is
8 confusing, that it might be said that those all reflect
9 staffing protocols for these sort of staff office
10 documents which are understood and are there for
11 a reason within military documents. Would you have any
12 comment about that as the contrary argument to what you
13 are saying?

14 A. I can perhaps understand how these documents have come
15 to be as they are and they are the latest iteration of
16 earlier documents which have been amended and updated,
17 but even given all of that, I think -- and I am not
18 making this as a lighthearted comment -- I think someone
19 with experience of the Plain English Society's work
20 could profitably look at these documents. When I worked
21 for the Human Rights Commission in Northern Ireland, we
22 did put our documents past the Plain English Society in
23 order to ensure that they made sense to the average
24 person in the street.

25 Q. Yes.

1 A. Now I realise that the documents we are talking about
2 here are not for the average person in the street, but
3 nevertheless they should be written for the average
4 commander. With respect -- I do repeat that I have no
5 first-hand knowledge of how the services work -- I would
6 have thought that the average commander, even with
7 a hard copy of these documents -- not a copy online --
8 would find them a bit difficult to navigate because
9 annexes that are referred to are many pages ahead or
10 behind of the page in which the reference is made. They
11 sometimes refer, these annexes, to other documents which
12 are never summarised. They may be legal documents,
13 international treaties, which are never summarised. The
14 mere mention of the treaty may mean nothing at all to
15 the person reading the document. So I do think that
16 they could be gone through afresh and rewritten in a
17 much more accessible way.

18 THE CHAIRMAN: You may remember even Lord Justice Staughton
19 once said that lawyers should avoid Latin tags. That is
20 not totally different from what you are saying.

21 A. Yes, Sir.

22 MR MOSS: Thank you.

23 I just want to move on now to how the five
24 techniques and the prohibitions on them are addressed at
25 a general level. You raise quite a number of points

1 about JDP 1-10 and SOI J3-9, which I think I don't need
2 to take you to because your report is very clear about
3 them. I would just like to ask you about the highest
4 level policy document which we have at MIV002414. This
5 is the "Ministry of Defence strategic detention policy".
6 You will remember this document, I think, Professor. It
7 is one of those that the Inquiry provided to you --

8 A. Yes.

9 Q. -- the Secretary of State's policy document. If we can
10 look at 3, "Strategic principles", we see that the
11 legality is treated in 3.1 under (b):

12 "Ensure that all detained persons held by UK forces
13 are treated humanely at all times, in accordance with
14 applicable host state law, international law and UK
15 law."

16 Then over the page:

17 "(c) As a minimum, without prejudice to the legal
18 status of a detained person, apply the standards
19 articulated in Common Article 3 to the Geneva
20 Conventions. Where other standards are applicable they
21 must be applied."

22 So just pausing there, the law being dealt with,
23 perhaps for understandable reasons, at a high level of
24 generality in this document.

25 One of the aspects that the Inquiry has been

1 grappling with is the fact that this doesn't contain
2 a reference to the prohibition on the five techniques.
3 Did you have a view on that and its omission from this
4 document and whether that makes sense given the
5 strategic nature of it?

6 A. Yes, I did. More generally I was surprised that there
7 doesn't appear to be reference to international human
8 rights law -- that there is reference to international
9 law, but not to international human rights law, and
10 there are prohibitions in it of certain forms of
11 treatment, torture, inhuman and degrading treatment most
12 obviously. It is clear from those international
13 documents that even in times of war, they cannot be
14 derogated from. So I would have thought that some
15 reference to those non-derogable provisions, the right
16 to life, the right not to be tortured, et cetera, should
17 be mentioned even in this very high-level document.

18 Within that, given the very sensitive nature of the
19 five techniques, the fact that they were at the heart of
20 the interstate case brought by Ireland against the UK in
21 the 1970s, would mean that they too should be
22 specifically referred to.

23 Q. Yes. Again just, as it were, by way of testing what you
24 are saying and nothing more, the contrary argument that
25 might be mooted against that is this: as soon as one

1 descends into that sort of level of detail, for example
2 referring to the Article 3 ECHR prohibitions and the
3 five techniques as being an example of that and where
4 that comes from international human rights law,
5 questions arise about equally important prohibitions
6 that are not referred to. A specific example of that
7 might be the prohibitions in Article 17 of the Third
8 Geneva Convention on not, for example, insulting or
9 subjecting prisoners to disadvantageous treatment if
10 they refuse to answer questions.

11 So the issue almost becomes "Where do you draw the
12 line?", because as soon as you go to one specific, are
13 you therefore overlooking other provisions, for example
14 of the law of armed conflict, which may in some
15 circumstances give even greater protection than
16 Article 3 of ECHR?

17 A. Yes, I take that point, and that is partly why
18 I prefaced my previous answer by referring more
19 generally to the prohibitions in international human
20 rights treaties of torture or cruel or inhuman or
21 degrading treatment. One has to draw the line
22 somewhere, I agree. But I repeat that the five
23 techniques have been specifically banned by the
24 UK Government because of their use in Northern Ireland
25 in the 1970s and because they were referred to by

1 Ireland in the interstate case. The statement made by
2 the Prime Minister was made to Parliament I think
3 a month or two after the interstate case was lodged in
4 Strasbourg, way before the European Commission or the
5 European Court adjudicated on the complaint.

6 Q. Yes.

7 A. So it was clear that the UK Government wanted to put an
8 end to those practices throughout the army, and given
9 their history and given what we know has happened since,
10 it seems to me wise to include them specifically,
11 perhaps in a footnote, perhaps in a sub-paragraph, but
12 even at this very high-level document I think it makes
13 sense to make mention of this.

14 Q. So weighing the pros and cons, you would still come down
15 in favour of inclusion of a reference to the prohibition
16 on the five techniques even in this high-level strategic
17 document?

18 A. Yes, I would, and, you know, we all have in our minds
19 the fallout from the Abu Graib incidents as regards the
20 Americans in Iraq. Armed forces and countries, in fact,
21 are judged by the way they treat detainees in this kind
22 of situation and, therefore, I would have thought it's
23 a matter of high strategic importance to try to ensure
24 that these practices aren't used and therefore they
25 should be referred to in a document like this.

1 Q. Thank you. If we could just turn to one aspect of
2 JDP 1-10, perhaps. Can we look electronically please at
3 MOD028650? If we can look at paragraph 209. This is
4 where, in the current extant version of JDP 1-10, the
5 prohibition is dealt with. It refers to the Northern
6 Ireland background and then says at the end of the
7 second line:

8 "... the UK Government has proscribed the following
9 techniques, which [in capitals and in bold] MUST NEVER
10 be used as an aid to tactical questioning or
11 interrogation."

12 And then stress positions and so on are set out.
13 The emphasis there on "an aid to tactical questioning or
14 interrogation", one point that perhaps arises is that
15 the use of the five techniques for other purposes, for
16 example as a punishment, might also be equally in breach
17 of Article 3, might they not?

18 A. They definitely would, I think, yes.

19 Q. And would you see benefit in that being something which
20 is catered for in the re-drafting of these doctrinal
21 publications?

22 A. Yes. I think the words "or punishment" should always be
23 added to the citation of this prohibition from the
24 international treaties. Often is omitted just because
25 otherwise the sentence would be too long. But I think

1 one should always talk about treatment or punishment in
2 these situations.

3 Q. Thank you.

4 A. I think it might also bear stressing at some point in
5 a document like this that the phrase "as an aid to
6 tactical questioning or interrogation" is not always as
7 simple to interpret as it might appear. One has to
8 imagine the use of some of these techniques during
9 detention immediately preceding interrogation --

10 Q. Yes.

11 A. -- or questioning or, if used immediately afterwards, is
12 that or is that not an aid to tactical questioning or
13 interrogation. That's something which obviously needs
14 to be addressed at some point.

15 Q. Thank you. If I can just move on to the question of
16 timescales. I think, if I may say so, very helpfully
17 you flagged up in your report, did you not, a number of
18 what you saw as confusions within the documents that you
19 had seen in relation to timescales? You pointed out
20 that in JDP 1-10.3 there was that confusion over the 12
21 or the 20 hours in the flow diagram. I think you also
22 pointed out the specific paragraph in SOI J3-9, where
23 the time limit for sending captured persons to the TFH
24 appeared to be 36 hours, but that in the very same
25 paragraph 72 hours was referred to.

1 A. Yes, that's right.

2 Q. I don't need to ask you anything more about those
3 individual examples because witnesses dealt with them
4 last week. Can I just ask you this? What importance
5 would you attach to the military getting those sort of
6 provisions right and clear in these sort of doctrinal
7 publications and instructions?

8 A. Well, I would lay great importance on that. I'm the
9 first to admit that in a battle situation it may be very
10 difficult to adhere strictly to certain guidelines and
11 one should be wary of transposing the provisions of the
12 Police and Criminal Evidence Act, for example, into
13 a war-like environment. But I think people attempting
14 to operate these standards need absolute clarity and the
15 lower down the ranks perhaps, the more clear the
16 statements need to be.

17 I found the aide-memoires, so-called -- which
18 I understand are the documents carried by the soldiers
19 in a waterproof version, if I'm correct --

20 Q. Yes.

21 A. -- I found them particularly difficult to understand and
22 the lack of clarity as regards the time limit for
23 detention I thought was very curious indeed. I'm also
24 prepared to accept that there may be occasions when
25 detention has to be prolonged quite considerably beyond

1 the normal maximum and that there should be definite
2 criteria in place to allow that to take place. I'm not
3 always sure that the criteria mentioned in the documents
4 are as clear or as consistent as they need to be.

5 Q. Thank you. So far as the application of that to
6 Afghanistan is concerned, the Inquiry has heard evidence
7 that the timescales which are set out in JDP 1-10.3 for
8 handing detainees over to the forces of the host nation
9 are simply not practicable in Afghanistan because of the
10 situations on the ground. Presumably that is not
11 something, without criticism, that you have direct
12 knowledge or experience of.

13 A. No, I haven't any direct knowledge. I can well
14 understand how it might be difficult to hand over
15 a detainee within the stated time limits.

16 Q. Presumably though, where there does need to be
17 amendment, the amendments first of all need to be clear
18 if the timescales are going to be longer --

19 A. Yes.

20 Q. -- and if the timescales themselves are going to be
21 exceeded, there need to be criteria and procedures in
22 place for how one gets extensions, the reasons being
23 recorded and so forth.

24 A. Absolutely. I agree with that and I think I have made
25 that kind of point in my report. It is very important

1 that the criteria be clear, but in particular that they
2 be consistent and that some record is kept of how and
3 why they are applied in particular cases.

4 Q. Now I would like to turn, if I may, to the question of
5 sight deprivation and your comments in your report on
6 that. I think we perhaps most usefully can start at
7 paragraph 40, if we may, of your statement at MIV010094,
8 please. You are talking here, about five lines down
9 about sight deprivation, as I understand it, as opposed
10 to the narrower issue of hooding. What you say is that:

11 "Sight deprivation is almost certain, in and of
12 itself, to be characterised as inhuman or degrading
13 treatment, and therefore a violation of Article 3 of the
14 [ECHR] ... and of Article 7 of the [ICCPR] ... unless it
15 occurs only for a very short time and is for a clearly
16 justifiable reason."

17 So that is your starting point, the risk of breach
18 of Article 3 unless for a short time and for a clearly
19 justifiable reason.

20 You then went on, in paragraph 43, to again candidly
21 accept your lack of familiarity with the security issues
22 on the ground. You did go on to say:

23 "It would be easy for sight deprivation to become
24 routine."

25 You also commented that:

1 "... it is possible that members of the armed forces
2 may exaggerate the risks that could flow from allowing
3 detainees to see certain things."

4 Was there anything in particular that led you to
5 make your comment that members of the armed forces may
6 exaggerate the risks that could flow from allowing
7 detainees to see certain things?

8 A. Well, I can well understand that certain cultures or
9 practices may develop over time in a certain
10 environment, especially a battle environment, whereby
11 soldiers consider that giving access or sight of --
12 access to or sight of particular equipment, for example,
13 might be very dangerous as far as the soldiers are
14 concerned, whereas, in fact, any other observer might
15 think, "Well, there would not in fact be that danger".
16 In other words I can readily see how it becomes normal
17 to, in this case, deprive people of their sight just in
18 case something might happen when, in fact, it is very
19 unlikely to happen.

20 Again, I just go back to my knowledge of the
21 Northern Irish situation, where it was clear, not just
22 in the 1970s, but later in relation to other practices
23 in holding centres, that certain practices became the
24 norm because they weren't specifically prohibited or
25 because it was difficult to get evidence as to whether

1 they were actually occurring or not or because there was
2 no incentive to people inside the police or army who
3 knew that these things were going on to report that they
4 were going on.

5 So I'm just very conscious of the fact that these
6 cultures can arise within certain organisations,
7 especially security force organisations, whereby they
8 see risk and danger at almost every turn and that may
9 not actually be the case.

10 Q. So you would lay emphasis, would you, on the need for
11 sight deprivation, as it were, to be the exception
12 rather than the rule?

13 A. Absolutely, yes, and I do accept that in very particular
14 situations outside the interrogation situation that
15 there may be a need for those exceptions.

16 Q. Yes. If we can go on to paragraph 49 of your statement
17 at MIV010098, you say that before being able to approve
18 of points (c) and (d) -- and you were talking about the
19 use of goggles for sight deprivation and ear defenders
20 and so on -- that you would need to be given examples of
21 situations in which operational security would genuinely
22 be put at risk if such restrictions were not imposed.

23 Last week, without turning that paragraph of your
24 report up, I raised that matter with Colonel McNeil,
25 who, as I think you may be aware from what you have been

1 following in the Inquiry, was the colonel in the
2 operational side of Permanent Joint Headquarters who had
3 responsibility for operations on Op Herrick in
4 Afghanistan.

5 He essentially was able to give three examples. One
6 that he mentioned was the situation of forward holding
7 areas and experience of targeting information being
8 taken by prisoners at those sort of forward bases and
9 the targeting information creating a real security risk,
10 as they see it, because of the risks of mortar attack
11 and prisoners being able to direct where the mortars
12 should be targeted within a compound. So that was one
13 example, a forward deployed area.

14 Secondly, in terms of transport moves,
15 Colonel McNeil referred to the SOPs for helicopters, and
16 he mentioned in public hearing that there are certain
17 aspects about how helicopters landed and how the ground
18 was cleared and tactical movements really on the ground
19 relating to helicopters that he and the military would
20 not be happy with prisoners seeing because of the risks
21 involved in attacks on aircraft and so on.

22 Thirdly, capabilities and equipment inside vehicles
23 and other means of transport. I think Colonel McNeil
24 accepted that the military could do more to ensure that
25 some kit was covered up, but there would remain some

1 equipment that couldn't be covered up out of sight for
2 various reasons and which there would be a real security
3 risk about prisoners seeing.

4 So while there was an acceptance, I think it would
5 be fair to say, by Colonel McNeil that more could be
6 done to keep the cases of sight deprivation to the
7 minimum necessary and that more needed to be done,
8 I think it would be fair to characterise him as saying
9 that there would be an irreducible minimum, as it were,
10 of situations where there is a security need in the
11 military context for prisoners to be deprived of their
12 sight.

13 Having had the opportunity to consider those
14 examples, is that something which you would be prepared
15 to accept, that that might arise at least in some
16 circumstances in military operations?

17 A. My approach to this is that any exceptions to the ban on
18 torture or cruel or inhuman or degrading treatment have
19 to be justified in terms of the protection of the rights
20 of others. Those prohibitions cannot be derogated from
21 themselves, but they have to be applied in the light of
22 the rights of others, and in this case it would be the
23 right to life of others.

24 So I readily accept, applying the international
25 standards, that if there is a real and immediate threat

1 to the life of others, then certain practices could be
2 permitted which would not otherwise be permitted and
3 that would be a breach of Article 3 of the European
4 Convention, and I would apply that real and immediate
5 risk test in a contextual setting.

6 Obviously in Afghanistan, for example, where there
7 might be a real risk of the kind of mortar attack that
8 you described or an attack on a helicopter or
9 information obtained through sight of particular
10 equipment in an army vehicle, for example, there might
11 be a real risk there and there might be an immediate
12 risk in that such an attack may not ensue within the
13 next day or two days or a week or a month but somewhere
14 down the line.

15 I think it's right that under the law as it stands,
16 both nationally and internationally, the words
17 "immediate risk" have to be taken in context. So, yes,
18 those examples you have given me from Colonel McNeil's
19 evidence would, I think, be ones where sight deprivation
20 for the particular duration of the existence of the risk
21 would be justified under international law.

22 Q. Thank you. The Inquiry has been exploring with
23 different witnesses a number of principles that might be
24 thought to be applicable to this situation and it may be
25 that now there is not too much controversy about them.

1 Can I just see whether you agree or have any comment on
2 them?

3 Firstly, that there needs to be an emphasis on
4 avoiding the need to deprive prisoners of their sight in
5 the first place. So, in other words, if it can
6 practicably be avoided by the design of facilities or by
7 the planning of operations, if that can be done
8 practicably, it should be. Would you agree with that?

9 A. Yes, I very much agree with that, yes.

10 Q. Secondly, that sight deprivation should take place only
11 if there are genuine sensitivities about equipment or
12 facilities that might be seen or, to adopt the words in
13 the Red Cross guidance, "... only if it is truly
14 justified". Leaving aside the precise formulation of
15 that test, would you agree with that, sight deprivation
16 only if genuinely sensitive?

17 A. I would agree with that, but I would emphasise the word
18 "genuinely" there. That would have to be demonstrated
19 by hard evidence that if the sensitive equipment or
20 information were to be available to the detainee, then
21 there would be a real and immediate risk to the life of
22 others.

23 Q. Then, thirdly, that when sight deprivation does take
24 place, it should only be for as long as is strictly
25 necessary.

1 A. Yes, absolutely. That's a clear qualification that
2 international law would insist upon.

3 Q. Fourthly, that sight deprivation must not become
4 routine. It always needs to be capable of justification
5 by reference to the actual facts on the ground?

6 A. Yes, again I would agree.

7 Q. Fifthly, when sight deprivation is used, it needs to be
8 recorded that it has been used, with a realistic, brief
9 explanation of the reasons why it was applied?

10 A. Yes. I think that's, at the very least, good practice
11 in order to be able to deal with any complaints that may
12 ensue from the use of the sight deprivation.

13 Q. Thank you. So far as the test, Professor, is concerned
14 that you would suggest here -- the real and immediate
15 risk or real and imminent risk, I think you put it in
16 one paragraph of your report -- I would just like to
17 explore that with you I hope relatively briefly, if
18 I may.

19 The real and immediate risk test is, of course,
20 familiar to us, isn't it, from *Osman v UK* as being the
21 test that applies where there is an obligation on states
22 to take positive action to take reasonable steps to
23 protect citizens who might be the victims of criminal
24 conduct by third parties. That is where it comes from
25 in the Strasbourg jurisprudence; is that right?

1 A. Yes, that's correct.

2 Q. Are you aware of any cases -- and I ask the question in
3 open terms to seek your assistance -- where that Osman
4 test has been taken from that sort of setting and
5 brought into this slight different context of the
6 measures that are taken against a prisoner for security
7 reasons? Are you aware of the Osman test having been
8 applied in the context with which this Inquiry is more
9 immediately dealing?

10 THE CHAIRMAN: Just pause a minute. I do not, I am afraid,
11 want a long treatise on the law because that is not the
12 object of this particular Inquiry.

13 A. Yes, sir. I am aware of cases that have gone to
14 Strasbourg that have emphasised the duty on the state
15 once it has people in custody or in detention to ensure
16 that they are well looked after -- well, at least that
17 their Article 2 and Article 3 rights in European
18 Convention terms are properly protected. We had
19 a recent example of this again in Northern Ireland with
20 the report of the Inquiry into Billy Wright's murder.

21 MR MOSS: Yes, of course.

22 A. It is quite clear that there is a heavy duty on the
23 state to ensure the safety of detainees. If they cannot
24 be safe in state custody, where can they be safe?

25 Q. It is just that that might be said to apply more to the

1 duty of keeping them safe -- and, of course, one sees
2 that in deaths in custody cases preventing self-harm as
3 well as other types of abuse -- but in terms of the
4 tests to be applied as to whether it is appropriate, for
5 example, to deprive them of their sight where there may
6 be security concerns about what they see, it is the
7 question of whether there is any immediate jurisprudence
8 that says "In that situation you can only deprive
9 prisoners of their sight or take similar security
10 measures if the risk that is balancing is a real and
11 immediate risk in Osman terms".

12 A. I cannot think of a particular decision that is directly
13 on that point. There is the Ocalan case that went to
14 Strasbourg, where the blindfolding of Mr Ocalan was
15 deemed not to be a breach of Article 3. I don't think
16 the European Court examined that in terms of the balance
17 between Article 3 rights and the Article 2 rights of the
18 capture of Mr Ocalan. I think they might have looked at
19 that in more detail frankly. Otherwise I cannot think
20 of a case.

21 THE CHAIRMAN: I'm really not keen to delve into these
22 points of law on this matter.

23 MR MOSS: No, I understand, Sir.

24 May we just look briefly in the same context -- you
25 set out in paragraph 81 of your report your reservations

1 about the reasoning in Ocalan. Can we just look at
2 BMI06667, please? I think you have had an opportunity
3 to look at this, albeit briefly this morning. This is
4 the Red Cross' manual, the ICRC manual, of model
5 instructions to armed forces. One sees at
6 paragraph 1405.7:

7 "Blindfolding and segregation may be necessary in
8 the interests of security, the physical restraint of
9 prisoners of war or to prevent collaboration prior to
10 interrogation, but these discomforts must be truly
11 justified and be for as short a period as possible."

12 Does it have a significant and a resonance, do you
13 think, that a body such as the Red Cross sets the test
14 at "truly justified", rather than "a real and immediate
15 risk"?

16 A. Well, I don't think that they are mutually exclusive.
17 "Truly justified" must, I think, be read in the light of
18 what's acceptable under international human right law.
19 I think I'm right in saying that the real and immediate
20 risk test is the one that normally applies. One has to
21 bear in mind, of course, that insofar as this paragraph
22 refers to the physical restraint of prisoners of war,
23 perhaps in order to prevent them attacking other people
24 or escaping, that's another restriction on the way
25 Article 3 of the European Convention, for example, would

1 be interpreted. That kind of restraint is justifiable
2 in terms of Article 3. I agree with the general gist of
3 this sub-paragraph, but I don't think it contradicts
4 necessarily the real and immediate risk test that I have
5 otherwise supported.

6 Q. Thank you. That's all I wanted to ask you about sight
7 deprivation. Could we just turn more briefly, I think,
8 to some of the other techniques? Could we just start
9 with "white noise", as it would have been in the early
10 1970s, and now "excessive noise". Can we look at
11 paragraph 66 of your report at MIV010105?

12 You again, for reasons that we understand, as it
13 were, pick up the documents in referring to
14 a "continuous, loud and hissing noise" and suggesting
15 that the prohibition on white noise, as it was
16 originally, was not intended to be so specific. You
17 say:

18 "Continuous and loud would be sufficient in this
19 context."

20 So far as that is concerned, is not the essence of
21 what is prohibited any noise that is unnecessarily
22 applied and is excessive or disturbing? Is that not the
23 essence of it, unnecessary application of excessive or
24 disturbing noise?

25 A. Again, I haven't gone back to look at the wording of

1 what the Prime Minister said in 1972. I'm not sure that
2 it was as specific --

3 Q. No, I don't think that was the wording used in 1972.
4 It's probably my fault. I think just this: your use of
5 "continuous", for example -- this Inquiry has heard
6 evidence of the intermittent banging of a metal pole,
7 for example, which wouldn't be continuous, but might
8 nevertheless, if it continued over a period of time, not
9 just deprive sleep, but also have a disturbing effect in
10 terms of the noise itself.

11 A. Yes. By "continuous", I didn't mean constant.

12 Q. No.

13 A. To my mind, intermittent, whether regularly or not,
14 would be continuous.

15 Q. I follow. But being realistic all the time in this
16 context, perhaps you would accept that one needs to be
17 careful to reflect the operational realities, which is
18 that military places of detention, especially near the
19 front-line but also higher up, can be inherently noisy
20 places.

21 A. Yes, certainly. I do accept that the prohibition does
22 not extend to noise that would be there anyway, ambient
23 noise that other people working or living in that
24 facility would have to endure anyway.

25 Q. Thank you.

1 Then so far as stress and restraint positions are
2 concerned, please, Professor, at paragraph 98 of your
3 report at MIV010119 -- again I think I can take this
4 relatively quickly because, in a sense, things have
5 moved on -- but the slide on stress and restraint
6 positions you say is unfortunate because it begins by
7 defining a stress position as one that is "intended" to
8 cause physical pain. That is something which we are
9 told that MoD is now already looking at.

10 If we can just go over the page, you set out, as it
11 were, the more objective nature of the test, saying
12 that:

13 "International law prohibits the use of cruel,
14 inhuman and degrading treatment, and the use of
15 any stress or restraint position which has that effect,
16 whether intended or not, will be a violation of that law
17 ..."

18 You go on to say:

19 "... although whether or not there is an intention
20 behind the use will be relevant in deciding if it
21 amounts to the minimum level of severity required to
22 breach the international standards."

23 Pausing there, were you intending to indicate there
24 that even, as it were, a lower level of stress or
25 restraint position which might in different

1 circumstances be justified as a security measure might
2 be deemed an unlawful stress position if, in fact, it
3 was being applied with the intention of breaking
4 somebody down for questioning?

5 A. I was meaning to say that these sorts of restraint
6 techniques can be a violation of international law,
7 whether or not they are intentionally applied. If they
8 are intentionally applied, I think the degree of
9 violation, if you like, goes up the scale.

10 Q. Yes.

11 A. Something which may be inhuman becomes torture, for
12 example, if it is deliberately intentionally applied.

13 Q. I follow. You go on to say that it makes no difference
14 whether it was applied during
15 a questioning/interrogation session. Then this:

16 "If the positions cause pain, they are a violation
17 of international law no matter when they are used."

18 One needs to be a little bit careful there, does one
19 not, in this sense: there would be circumstances in
20 which restraint positions that inflict temporary pain
21 might be perfectly lawful, for example, in the situation
22 at the point of capture, subduing a violent prisoner or
23 the reasonable use of self-defence or restraining
24 a prisoner who has become violent and recalcitrant
25 whilst in a holding area. He might legitimately be

1 subdued by means of a wrist lock or something like that
2 that might be painful, but that wouldn't be inhuman or
3 degrading treatment, would it?

4 A. No it would not. I'm referring here, I think, to
5 situations not at the time of capture, but some time
6 thereafter, and I'm suggesting that certain restraint
7 techniques may become painful just by the lapse of time
8 and they then would, I think, be a breach of
9 international law.

10 Q. Thank you.

11 I would just like to move on, then, to a different
12 topic, which is maintaining the shock of capture. We
13 don't need to turn it up, but earlier in your report you
14 refer to the idea that captured persons should be
15 "conditioned" and you mean that word to use "take
16 advantage of existing pressures". You refer to that
17 concept as a "dubious" one. The reference is
18 paragraph 10.

19 You come back to that, and can we have a look,
20 please, at paragraph 85 of your report? Now we don't
21 need to look for the moment at the document that you
22 were referring to, but you were looking at the tactical
23 questioning and interrogation policy, the 2008 version.
24 In the middle of paragraph 85 you said this:

25 "In the list of examples of self-induced pressures

1 we find 'fear of reprisals/punishment', 'fear of death
2 or dying' and 'fear of harsh physical treatment'. It is
3 in my view unfortunate that this serial does not
4 expressly require interrogators to dispel such fears or
5 at any rate to ensure that they are not added to."

6 Now, if I just pause the quotation there, again
7 things have moved on in this sense: last week those at
8 MoD responsible for this area indicated that they think
9 it would be helpful if the current equivalent of this
10 document did make clear that there could be no
11 increasing -- no artificial increasing -- of such fears
12 at all and it would be helpful if that was made clear in
13 the policy. So things have moved on to the extent that
14 that now seems to be accepted.

15 I wanted to ask you about the first part of your
16 formulation, where you were suggesting that it was
17 unfortunate that the serial does not expressly require
18 interrogators to dispel such fears. With your
19 expertise, do you think that the law does go that far
20 and requires interrogators to dispel fears of
21 mistreatment, fears of death or dying in the military
22 custodial setting?

23 A. Potentially, yes, in that I can imagine a situation
24 where not dispelling those fears in effect adds to them
25 or substantiates them. If it is obvious to the

1 interrogator, for example, that the detainee is very
2 fearful and might even refer to some of these specific
3 fears --

4 Q. Yes.

5 A. -- then by not dispelling them the interrogator is, in
6 effect, substantiating them. Whether that amounts to
7 adding to them or not, which you say the army has
8 already accepted should not happen, is a moot point
9 perhaps, but standing by and doing nothing when somebody
10 is in distress is, in my view, the same thing as adding
11 to that distress.

12 Q. So it comes down, perhaps, to a question of definition.
13 But what you are saying, if I've understood it
14 correctly, is that the very act of silence in the face
15 of such fears expressed could, in your view, properly be
16 categorised as adding to the fears. So that the
17 prisoner who says, "I'm worried that you are going to
18 torture me" and the interrogator says nothing, you would
19 see as, in effect, adding to those fears?

20 A. Yes, I would, yes.

21 Q. You tell us one way or the other, do timescales come
22 into that equation in that, for the most part, there is
23 an acceptance within the military doctrine that
24 instructions here are that the shock of capture wears
25 off, in any event, quite quickly. Could the process of

1 remaining silent become inhuman if maintained over
2 a period of days, whereas it may not be inhuman as an
3 initial response immediately after capture or in the
4 first 24 hours of capture or does it make no difference
5 when the interrogator remains silent?

6 A. If anything, I think remaining silent early on in the
7 period of capture is more likely to increase the
8 detainee's fears than remaining silent at a later stage
9 in the captivity because, as the captivity continues and
10 the detainee suffers no abuse, then he or she is perhaps
11 of the view that it is not going to happen. So, you
12 know, I think the duty to speak up and reassure the
13 detainee probably diminishes as time goes on, rather
14 than increases.

15 Q. Thank you. Again, I ask to seek your assistance and not
16 in any sense as a criticism. Understanding the point
17 that you are making as to how it should be interpreted,
18 are you aware of any jurisprudence that would help the
19 Inquiry in that area as to this difficult question of
20 whether there is a positive duty to dispel fear as
21 opposed to a duty not to increase it?

22 A. No, I'm not aware of any particular jurisprudence on
23 that point.

24 Q. Thank you. Just in terms of its practical application
25 then, I wonder if you could look on screen with us at

1 a presentation from the interrogation branch at
2 MIV010389.

3 This is within the "bridging" section, getting the
4 captured person to think on about the next session.
5 What's being cited here in the present materials as an
6 example of what can legitimately be done and doesn't
7 amount to a threat is example 2:

8 "If you answer my questions to my satisfaction you
9 will be held in British custody. While in custody I can
10 guarantee your personal safety and that you will be
11 treated in accordance with the GC.

12 "If you do not"

13 And then the interrogator stops talking there. The
14 interpretation in the speaking note below:

15 "This is not threatening the CPERS, this is merely
16 stating a fact. As long as he answers your questions he
17 will be held by British custody and therefore will be
18 safe. If he does not answer questions he ceases to be
19 of use to the questioner and will therefore be released.
20 If he is released the questioner cannot guarantee his
21 safety. Largely depends on the circumstances of capture
22 and the individual's personal circumstances."

23 Would you have a view, from the human rights point
24 of view, of an interrogator using that sort of example,
25 "If you do not ..." and then keeping quiet?

1 A. Yes, I would. I think that's a very unfortunate way to
2 address a detainee. It is implying, is it not, that if
3 the person does not answer questions to the satisfaction
4 of the captor, then the detainee's personal safety
5 cannot be guaranteed.

6 One has to realise that the custody may be prolonged
7 after this particular period of interrogation takes
8 place, so the detainee may well fear that during the
9 remaining period of custody he or she will be
10 mistreated.

11 THE CHAIRMAN: You see it as a not very subtle implied
12 threat?

13 A. I do, Sir, yes.

14 MR MOSS: Would you go so far, as you say in your statement
15 about "playing on the fears of prisoners", that that
16 perhaps is an example of playing on the fears of
17 a prisoner?

18 A. Yes, I would.

19 Q. So far as the harsh technique is concerned, the Inquiry
20 is grappling with the question, which is not perhaps an
21 easy one, of where the line is to be drawn. I think if
22 I've understood it, four points emerge from your own
23 report, Professor, about the harsh technique.

24 First of all, if we can look at paragraph 104,
25 page MIV010123, at the top of the page, I think we see

1 that:

2 "If the harsh approach amounts to producing feelings
3 of fear, anguish or inferiority, then they will tip over
4 into the category of degrading treatment."

5 Is that your view?

6 A. Yes, it is.

7 Q. So if the harsh technique is to be used, it mustn't be
8 such as to produce feelings of fear, anguish or
9 inferiority; is that right?

10 A. That's what the international human rights law requires,
11 yes.

12 Q. Then if we can skip back to paragraph 101 on the
13 previous page, MIV010121, toward the end of the
14 paragraph, you say that you accept -- it is about eight
15 lines up -- that:

16 "... shouting harsh words to the detainee or
17 expressing sympathy for the plight of the detainee or
18 increasing the detainee's sense that he or she is now
19 under the control of the captors may not amount to such
20 treatment and so be lawful under international human
21 rights standards."

22 So you don't in itself rule out the technique of
23 shouting harsh words as in itself as being unlawful, if
24 I have understood you correctly.

25 A. That is correct.

1 Q. But presumably it would depend on what is being shouted.
2 This Inquiry heard evidence of, for example, a prisoner
3 in a training video being referred to as the "unit
4 fucking rent boy", which was obviously a sexual slur,
5 and if things like that are shouted, presumably there
6 would be questions about its legality.

7 A. There would, certainly, yes. My statement there is,
8 I hope, to be taken in context. I go on to say that
9 there are fine lines to be drawn here --

10 Q. Yes.

11 A. -- and it is very easy for shouting or intimidatory
12 behaviour like that to spill over into inhuman
13 treatment.

14 Q. That is really the third point that I have drawn from
15 the various points you make about this. If we go back
16 to paragraph 104 at MIV010123, you say that:
17 "Sarcasm and cynicism are also not problematic,
18 provided they do not spill over into sexism, racism or
19 religious slurs."
20 So shouting by itself might be okay, but not sexism,
21 racism or religious slurs at all?

22 A. Yes, that's true. One has to bear in mind again the
23 duration of the shouting, the loudness of the shouting,
24 the content of the shouting. All of those things would
25 affect whether it is in fact degrading or inhuman

1 treatment.

2 Q. I think fourthly in this context, Professor, you note at
3 the end of that paragraph we have on screen at the
4 moment that whereas you are principally addressing
5 international human rights law, you note that Article 17
6 of the Third Geneva Convention prohibits prisoners of
7 war who refuse to answer questions from being
8 threatened, insulted, exposed to unpleasant or
9 disadvantageous treatment of any kind, and you indicate
10 an appreciation that that may, in fact, in this context,
11 be a higher standard than what is required by
12 international law, presumably international human rights
13 law.

14 A. Yes, I think that is the case, deriving from the fact
15 that there is a certain sort of respect paid by the
16 Geneva Conventions to fellow competence, if you like, or
17 there is a requirement that respect be paid to fellow
18 combatants in a way that would not apply to detainees.

19 Q. I think those points taken together lead to paragraph 78
20 of your report, MIV010111, to you asking the question --
21 you are dealing here with the serial that explains the
22 policy. Midway through the paragraph you say:

23 "The reference at point (b) to drill sergeants
24 'berating, cajoling and deriding' suggest that 'harsh
25 approaches' can take the form of shouts, roars and

1 belittling remarks, yet these would surely be at the
2 very least 'unpleasant' and 'degrading' forms of
3 behaviour. Likewise point (c) prohibits insults but
4 allows sarcasm, scolding and derision, which would
5 surely be 'unpleasant' (although not, probably,
6 degrading)."

7 That is where you make the point that drawing these
8 precise lines is not easy, but the serial makes
9 a valiant attempt to do so, and you state your
10 conclusion that there is still internal inconsistency in
11 the current policy and that further clarification would
12 be desirable; is that right?

13 A. Yes, that is right. I do re-emphasise that I appreciate
14 the difficulties that interrogators are faced with in
15 these situations. They need to obtain information and
16 yet adhere to quite stringent standards of international
17 human rights law.

18 Q. Thank you. If we can just bring that right up to date,
19 then, as it were, and look at the latest iteration of
20 the policy as to how this is now being set out. The
21 electronic reference is MIV012329.

22 I think you had a chance to have a look at this in
23 recent days. That is how the harsh is now being
24 addressed. Did you have any particular comments on how
25 it is now set out in the latest policy document?

1 A. I'm sorry, I just need to take a second to refresh my
2 memory of it.

3 I just again draw attention to the fact that in the
4 penultimate line of the main paragraph at (d), we have
5 the statement that:

6 "Under no circumstances must the captured person be
7 threatened or insulted."

8 Then in sub-paragraph 2 thereafter, we are told that
9 a captured person or the military performance of the
10 captured person can be ridiculed. I just point out
11 again the potential inconsistency there. If ridiculing
12 the military performance of a captured person isn't
13 insulting that person, I don't know what would be. So
14 I'm just pleading for consistency throughout these sorts
15 of documents.

16 THE CHAIRMAN: I see that pleading for consistency, but the
17 harsh itself surely, whether it crosses the line or not,
18 entirely depends upon the way in which it is operated by
19 the individual and what he says and to whom he says it
20 and the character of the --

21 A. Yes, I accept that, Sir.

22 THE CHAIRMAN: The problem about it is that it will always
23 run or may run the risk of going over the line --

24 A. Yes, I do accept that, Sir --

25 THE CHAIRMAN: -- and it is not all that easy to define when

1 reference to the UN special rapporteur on torture.

2 So far as recent British operations overseas are
3 concerned, it is relevant, isn't it, that the UN special
4 rapporteur only reports where he has been invited to
5 a state. It is inspection by invitation, essentially.

6 A. It is, yes.

7 Q. Whatever view may be taken by the British Armed Forces,
8 that poses a difficulty, doesn't it, where the UK is
9 acting in aid of a different sovereign state because the
10 question of whether the UN special rapporteur has access
11 depends on the view taken by the third-party state, as
12 it were?

13 A. Yes, that's right.

14 Q. In terms of the benefits of inspections being
15 unannounced, where they are specifically by invitation,
16 it stands to reason that those inspections and visits
17 are, by their very nature, announced visits and
18 inspections.

19 A. Yes.

20 Q. So far as the ICRC is concerned, to whom you made
21 reference under the heading (c) in paragraph 27 of your
22 report at MIV010089, the Inquiry has looked at ICRC
23 reports in the context of this Inquiry because one was
24 leaked. Ordinarily, as you set out in your statement,
25 of course, the ICRC inspection has an issue about

1 confidentiality and the fact that reports in the
2 ordinary course are not published, as this Inquiry has
3 heard quite a lot of evidence about. That is right,
4 isn't it?

5 A. That's correct, yes.

6 Q. Can I just deal with a point of detail so far as
7 paragraph 27 itself is concerned? You say that:

8 "The [ICRC] and the Red Crescent conduct visits to
9 detention facilities in times of war ..."

10 I think, in fact, it goes further than that in that
11 they will be involved in hostilities short of full
12 international armed conflict as well.

13 A. Yes, indeed. I should have made that clear, yes.

14 Q. The concept of the confidentiality which the ICRC
15 maintains presumably has the advantage that its reports
16 are not used, as it were, as a -- small "p" -- political
17 tool; they are kept confidential.

18 A. Yes, that is correct.

19 Q. But in terms of a disadvantage, it means that in terms
20 of public scrutiny, obviously, they are simply not
21 available in the ordinary course of events for that
22 aspect of public scrutiny.

23 A. Yes, that's correct. I think it's fair to say that the
24 continuing confidentiality of the way the ICRC operates
25 is a matter of some controversy in the modern age.

1 Q. So far as the armed forces are concerned, the Inquiry
2 has heard from the provost marshal army, as you will
3 know, that MoD is committed to introducing an element of
4 independence and is exploring the viability of
5 involvement of HMIP in the inspection of the main
6 facilities at the top of the CPERS chain.

7 A. Yes, I'm aware of that.

8 Q. How important do you say it is that an independent
9 element is brought to bear?

10 A. I think it is very important. I think it is much more
11 likely that the relevant standards will be adhered to if
12 there is the prospect of a completely independent
13 inspection.

14 Q. It's apparent from your report, without going to the
15 detail, that you do accept, however, that so far as some
16 of the forward deployed areas are concerned, that you
17 would accept that there are practical difficulties with
18 independent inspections, let alone with unannounced
19 ones, at the very forward line when it is military
20 operations that are involved?

21 A. Yes, I would accept that in practical terms it is
22 probably impossible to ensure that they are
23 independently inspected.

24 Q. If fully independent inspection is not possible close to
25 the front-line, do you have views on how elements of

1 independent scrutiny may nevertheless be brought to
2 bear?

3 A. Well, yes. I have suggested that one possibility would
4 be for members of staff of existing inspectorates in
5 this country, the inspectorate of prisons, for example,
6 to be seconded to the provost marshall's office so that
7 advice on how best to conduct inspections of custodial
8 areas could take place. I have had a little bit of
9 experience in Northern Ireland where there are
10 conflicting organisations wanting to investigate or
11 inspect certain premises, and the inspectorate of
12 prisons has been quite happy to have people seconded
13 from organisations working with it to conduct
14 inspections. I see this as a similar kind of model to
15 that.

16 Q. Thank you. I think just finally then, turning to the
17 additional disclosure from MoD in relation to tactical
18 questioning and interrogation documents, you were kind
19 enough, I think yesterday, to send through an email with
20 some observations. I think one or two of them I have
21 picked up as we have been going through. But because
22 you are referring there to documents disclosed later and
23 it is not in your report, can we just turn to the
24 additional points that you would have on the disclosure?

25 Can we start, please, with MIV010129? I can take

1 this swiftly because it was addressed by witnesses last
2 week. I think you made the point to the Inquiry that
3 there was a infelicity of drafting in this slide in
4 that, within the chain of paragraph 16, the timescales,
5 there are two stages at which the blindfold is meant to
6 be removed with the potential for ambiguity and
7 confusion. Is that right?

8 A. That's right, yes.

9 Q. Thank you. If we can then turn, please, to MIV010371.
10 If we could just have the top half. This is the slide
11 presentation that deals with the basic approaches both
12 for tactical questioning and for interrogation. You see
13 one slide here relating to the friendly and -- if we can
14 go over the page -- the firm and then, over the page
15 again, the logical. So each of those approaches is set
16 out.

17 If we go back to page MIV010370 and just have that
18 expanded, please, I think we see that although the
19 friendly and the firm, both with logic, are the subject
20 of their own slides, you picked up on the fact that the
21 neutral and harsh did not have their own slides. What
22 was the observation that you wanted to make about that?

23 A. Well, I just think it's rather curious to make the
24 trainees aware of the existence of these other
25 approaches without actually explaining how they differ

1 from the three approaches which are explained in more
2 detail. Although I think it's right to say that this is
3 done because the expectation is that the trainees in
4 question would never have to resort to harsh or neutral
5 approaches, I think to make them aware of those
6 approaches without actually spelling out what they
7 entail or what consequences might flow from them is
8 rather unfortunate, to say the least.

9 Q. Thank you. Then can we turn to the latest interrogation
10 policy and have a look, please, at MIV012320?

11 I think, Professor, you wish to draw the Inquiry's
12 attention to an aspect about the wording in the extreme
13 right-hand column of sub-paragraph (a) and the use of
14 "for the purpose of interrogation".

15 A. Yes, that's right. I should perhaps preface my remarks
16 by saying that again -- and I'm not quite sure what the
17 rationale is for distinguishing between matters that are
18 mentioned in column (c) and matters that are mentioned
19 in column (d), and in any re-draft of this it may be
20 possible to amalgamate the two in a more helpful way.
21 But it appears to me that paragraph (a) in column (c)
22 purports to state a categorical prohibition on depriving
23 somebody of vision or hearing as an aid to interrogation
24 and yet paragraph (a) in column (d), on one reading at
25 least, suggests that in some situations a person can be

1 deprived of vision or hearing.

2 Now I can see that there's an alternative reading
3 given the way paragraph (a) of column (d) is worded. It
4 reads:

5 "During detention for the purpose of interrogation,
6 a captured person can only be deprived of vision or
7 hearing in the following circumstances ..."

8 You could read that to mean "during detention
9 leading up to or indeed subsequent to interrogation" or
10 you could read it, more unfortunately, as referring to
11 the period of detention including interrogation. If the
12 latter meaning is taken, then that paragraphs seems to
13 me to contradict paragraph (a) in column (c).

14 Q. Yes. So if the words "for the purpose of interrogation"
15 are meant to be referring to during detention, are
16 describing what the detention is for, it would be
17 helpful if that was made a lot clearer so one avoids a
18 risk that the words "for the purpose of interrogation"
19 would be linked with the deprivation of sight?

20 A. Yes, that's correct.

21 Q. Thank you. I wonder if we might put that on to the
22 left-hand side of the screen, MIV001320, and just
23 expand, so that it is legible, serial 7, the third and
24 fourth columns across the page. Then could we have on
25 right-hand side of the screen MIV012321, just from

1 figure 8 and the next column and the next column along.

2 Thank you.

3 Now these are two sequential pages. Serial 8 on the
4 right-hand side is dealing with the circumstances of
5 physical restraint of a CPERS during interrogation,
6 cuffs and the like, and reads:

7 "Once in the interrogation facility, any restraint
8 measures used during transportation of the CPERS must
9 only remain in place when necessary as detailed in
10 serial 7 column (d)."

11 And serial 7 column (d) is what you see on the
12 left-hand side of the screen and it is the right-hand
13 column of serial 7, where the various purposes set out
14 are "Force protection", "Preventing people from seeing
15 sensitive locations, equipment, personnel, overhearing
16 sensitive communications", and it could include also the
17 instance where a CPERS expresses concern about being
18 seen by another CPERS or locally employed civilians.

19 If I have understood it correctly, your concern is
20 that in fact the use of physical restraints would only
21 be justified by force protection and not by the other
22 situations set out in serial 7, the final column.

23 A. Yes, that is exactly the point. I think the reference
24 in serial 8 -- the cross-reference in serial 8 -- to
25 serial 7, column (d), should actually read "Serial 7,

1 column (d)(a)(i)".

2 Q. Thank you. Now I'm not going to take you to the point
3 that you alerted the Inquiry to about the use of the
4 harsh because we touched on that earlier on. I think
5 you made the point to the Inquiry yesterday that similar
6 issues to those last two appear in the TQ policy as
7 well. Perhaps it is not necessary to turn them up,
8 having gone through them in the interrogation policy.

9 Just still with the interrogation policy, could we
10 just have a look, please, at MIV012327? Thank you very
11 much. I think we see that the last serial in the
12 interrogation policy is one that deals with inspection
13 and audit. If we can look at the equivalent for
14 tactical questioning, which we have at MIV012293,
15 I think you were drawing the Inquiry's attention to
16 a concern that the tactical questioning policy did not
17 have an inspection and audit serial, whereas the
18 interrogation one did; is that right?

19 A. I did do that, though I -- I think I also expressed the
20 point that I'm not so au fait with the way tactical
21 questioning facilities operate to know whether, in
22 practice, they can be regularly inspected or audited.
23 But I just found it strange that there was no reference
24 whatsoever to inspection and audit in this policy
25 document.

1 Q. Thank you.

2 The next point which you alerted the Inquiry to is
3 MIV010497. This is the introductory talk by
4 Captain S004, the OC of the I Branch. I think you had
5 an observation about the list of sources from which UK
6 policy was derived.

7 A. Yes. Again I find it strange that there is no reference
8 to international human rights law on this slide. We
9 have a reference to the law of armed conflict and
10 international humanitarian law, when they are
11 essentially the same thing, and the omission of
12 international human rights law seems to suggest that,
13 you know, human rights considerations, apart perhaps
14 from those that are incidentally involved in the Geneva
15 Conventions or in international humanitarian law, are
16 not relevant in this context. But, in fact, of course,
17 they are. The prohibition on the five techniques
18 derives specifically from the prohibition in
19 international human rights treaties. So I thought
20 perhaps some reference should be made to that on this
21 slide.

22 Q. Thank you. If we go on, please, to page MIV010505
23 within the same presentation. I think perhaps the
24 point -- correct me if I am wrong -- that you were
25 raising on this slide, that whilst admirable and graphic

1 in terms of its absolute warnings against the use
2 torture, in your view it ought really also to emphasise
3 that cruel, inhuman and degrading treatment is also not
4 allowed and is equally illegal; is that right?

5 A. Yes, that is exactly my point, yes.

6 Q. If we can have MIV010637. Again I'm going to lead on it
7 because it is perhaps now not so controversial, but
8 I think you alerted the Inquiry to a concern that you
9 had that there was not, at least on the face of the
10 speaking note, very much guidance as to what "strictly
11 necessary" meant --

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

13 Q. -- and, moreover, that the speaking note gave a bold
14 indication that the inside of the interrogation facility
15 is a sensitive location without saying more.

16 A. Yes, indeed. I think more detail is required there.

17 Q. Then finally -- and again I lead on it because it was
18 dealt with on Friday -- if we just go over the page,
19 sight deprivation and hooding are referred to in this
20 presentation which is dealing with CPERS handling, but
21 you raised a concern or a note of concern to the Inquiry
22 that the other prohibitions weren't addressed in this
23 particular presentation.

24 A. Yes, that's correct.

25 Q. I have taken those at some speed, but does that fairly

1 summarise the additional points that you wish to make to
2 the Inquiry arising out of the additional disclosure?

3 A. Yes, I think it does.

4 MR MOSS: Thank you very much. Those are my questions.

5 THE CHAIRMAN: Mr Singh?

6 Questions to PROFESSOR DICKSON by MR SINGH

7 MR SINGH: Professor Dickson, there is just one topic

8 I would like to ask you about. It arises from

9 paragraph 80 of your witness statement where, under the
10 heading "Sleeping routines", you say, Professor:

11 "I found the wording of serial 7 of annex A to be
12 acceptable."

13 Just to see the document that you are there
14 referring to, can we please go on the screen, just to
15 see the title page, to MOD042380? That is the beginning
16 of the policy document on interrogation and tactical
17 questioning to which you were referring, Professor.

18 Now the Inquiry has seen a very recent and more
19 up-to-date version of this, but for the purpose of my
20 question and the answer that you have given in the
21 statement, there's no material difference in wording, so
22 we will use this one, if we may.

23 The annex you were referring to there, the page
24 reference is MOD042395, where, in serial 7, which deals
25 with sleeping routines, in the middle column it states

1 in (a) that "No CPERS can be deprived of sleep". Then,
2 in the right-hand column, you see, Professor:

3 "(a) A CPERS must be allowed at least eight hours
4 rest and sleep per 24-hour period."

5 It is (b) that I would like to ask you about.

6 "In order that a CPERS cannot work out what will
7 happen next, the pattern of sleep/rest allowed can be
8 determined by the officer commanding of the tactical
9 questioning and interrogation facility."

10 Now it's fair to say that last week the Inquiry
11 heard some evidence about this and the soldier we know
12 as S067 agreed, I think it's fair to say, that this was
13 something that perhaps needs to be looked at again. But
14 can I just ask you for your help on this, Professor? It
15 might be said, on one reading of that little paragraph
16 (b) that I have just read to you, that that, implicitly
17 at least, authorises the officer commanding to disrupt
18 someone's sleep in order to make sure they cannot work
19 out what will happen next.

20 A. Yes, I can see that that would be one reading of that,
21 yes.

22 Q. Might that not be thought to be equivalent to permitting
23 disorientation?

24 A. Yes, I can see that interpretation and I should add
25 that, when I wrote that I found this serial to be

1 acceptably worded, this was one sub-paragraph which gave
2 me some thought. In the end I decided that the
3 prohibition as it currently exists is of deprivation of
4 sleep, not of disruption of sleep per se. I can quite
5 see that in certain situations disruption might amount
6 to deprivation.

7 Q. I see.

8 A. But in and of itself I can't see that requiring somebody
9 to have their eight hours of sleep at a different time
10 of the day from the previous day, for example, is
11 deprivation of sleep.

12 Q. I see. Just a last question on that, then, Professor:
13 in your view, if the purpose of something were
14 disorientation and for that purpose in mind the officer
15 commanding deliberately disrupts someone's sleep, is
16 that something which is permissible?

17 A. I'm sorry, I didn't catch the end of that.

18 Q. Is it something which is permissible for an officer
19 commanding to disrupt sleep for the purpose of
20 disorientation?

21 A. No, I would have thought that disorientation would come
22 very close to if not -- well up with degrading treatment
23 at the very least, in that it would create the sort of
24 feelings of fear and anguish that we know is what
25 degrading treatment amounts to. So, yes, in that kind

1 of situation I would have my reservations about the
2 wording of that sub-paragraph.

3 MR SINGH: Thank you.

4 THE CHAIRMAN: Mr Garnham?

5 Questions to PROFESSOR DICKSON by MR GARNHAM

6 MR GARNHAM: Just a handful of questions, Professor.

7 First of all about the nature of your opinion when
8 you give it. You don't profess any expertise in
9 military matters?

10 A. That is correct.

11 Q. When you came to address question 1 in your report,
12 which reads, "What broad steps should national armed
13 forces reasonably be expected to take ..." and so on,
14 were you purporting to offer a legal opinion or were you
15 commenting as a matter of common sense?

16 A. I was commenting as someone who has had experience of
17 trying to ensure good practice in different
18 organisations. That's why I divided up my suggestions
19 in the way that I did. I ran the Human Rights
20 Commission for six years in Northern Ireland. It was
21 a new quite politically prominent body and we had to
22 instil certain values and standards throughout the
23 organisation. That was the kind of approach that
24 I adopted.

25 Q. So that was the nature of the expertise you were

1 bringing to that task, rather than a legal expertise?

2 A. Yes.

3 Q. Similarly in answering question 3, which was "What are
4 the significance and benefits of inspection" and so on,
5 were you bringing the same type of expertise in
6 answering that question?

7 A. The same kind of expertise as I have just talked about
8 that derived from my work experience?

9 Q. Yes, rather than legal expertise.

10 A. Yes, that's correct.

11 Q. Thank you.

12 In paragraph 47 and onwards of your report, you
13 advance a number of criticisms of JDP 1-10. You begin
14 by saying that in your view there was still plenty of
15 room for the document to be shortened and made more
16 user-friendly.

17 Over the course of the next nine or ten paragraphs,
18 you go on to suggest further often quite extensive
19 additions that need to be made. Does that not
20 demonstrate a problem with any critique of this sort
21 that whatever discipline is asked to comment will tend
22 to add rather than detract from what is already there?

23 A. Yes. I accept that, and it may be that if all the
24 suggestions I made for improving the document were taken
25 on board, the document may in the end be longer than it

1 is at the moment. But I had the impression, on reading
2 through it, that there were parts that could have been
3 presented in a more abbreviated manner without losing
4 any real impact. So I think I stand by my statement
5 overall.

6 THE CHAIRMAN: Of course the drafting is as much a matter
7 for the subject matter experts, as I am sure you would
8 agree --

9 A. Yes.

10 THE CHAIRMAN: -- and no doubt, with the best will in the
11 world, they will try and shorten it, but may not be able
12 to. I think that is something one would have to leave
13 to them. I think your criticism of the rest of it,
14 I have to say I do find some resonance in that.

15 MR GARNHAM: At paragraph 56 of your report, you say halfway
16 through that paragraph:

17 "In the documents I have reviewed in paragraphs 53
18 to 55 above, the time limits are, I believe, tight and
19 realistic, but there is a need for further clarity ...
20 as to the precise time limits, especially in relation to
21 the detention of 'detainees' as opposed to 'internees'
22 or 'prisoners of war'."

23 You would suggest, would you, that it would assist
24 to have different time limits for different classes of
25 detainees?

1 A. No, I am sorry, I'm not necessarily suggesting that.
2 I'm just saying that insofar as many soldiers will not
3 be confronted with the categories known as "internees"
4 or "prisoners of war", it is particularly important that
5 they be given clarity as regards the category of
6 detainees.

7 Q. You don't think there is benefit, then, in the lowest
8 common denominator; in other words the highest standards
9 being applied to all?

10 A. That may well be the case. That wasn't the point that
11 I was addressing in this paragraph or in this report.
12 But as you can understand, I'm in favour of high
13 standards being applied as broadly as possible.

14 Q. Finally this: you were asked about what it was suggested
15 might be an implied threat in one of the screens in the
16 PowerPoint presentation that we have at MIV010389.
17 I wonder if we could have that on the screen, please.
18 Do you recollect this?

19 A. I do, yes.

20 Q. What do you read as the implied threat?

21 A. That, "If you do not answer my questions to my
22 satisfaction, I cannot guarantee your personal safety
23 while you are in custody".

24 Q. Is that the implication that you read, rather than that
25 "I won't be able to keep you in British custody"?

1 A. No, I accept that both interpretations are possible.

2 Q. You wouldn't, would you, find it offensive if the effect
3 of what was said was, "If you don't answer my questions,
4 I won't be able to keep you in British custody"?

5 A. I don't think I would object to that, no.

6 MR GARNHAM: Thank you very much.

7 THE CHAIRMAN: Mr Dingemans?

8 MR DINGEMANS: No, thank you, Sir.

9 THE CHAIRMAN: Mr Barr?

10 Questions to PROFESSOR DICKSON by MR BARR

11 MR BARR: Professor, could I just try and establish exactly
12 the extent of your criticisms of the Ministry of
13 Defence's aide-memoires? To start with, could we go,
14 please -- if we can have it on the screen -- to today's
15 transcript at draft page 79, starting at line 7. You
16 will see there you said that you found the
17 aide-memoires, so-called, particularly difficult to
18 understand and then went on to make a specific criticism
19 about what they say about time limits.

20 So a broad criticism and then a more narrow
21 criticism. Now that broad criticism might be thought to
22 be surprising in the light of your written report.
23 Could we have now MIV010117? Paragraph 91 at the top of
24 the page, please, where we see in that paragraph you
25 deal with the tactical questioning and interrogation

1 policy's aide-memoire, and you say in the third line:

2 "Generally speaking this is a good document because
3 it clearly states a number of basic commands in
4 uncomplicated language."

5 Then you go on to make one or two specific points.
6 Would it be right, Professor, to say that your real
7 criticism of the aide-memoires is not the general use of
8 language, but the point about time limits which you went
9 on to describe?

10 A. Yes. I don't mean to be wholly negatively critical of
11 the aide-memoires. I do recall, when I looked at all
12 three of them together, I think I did see some
13 inconsistencies between them and I didn't think that
14 they were that easily understood as they stood. That
15 wasn't intended to suggest that they are wholly useless,
16 but rather that they could be improved in layout.

17 MR BARR: I see. Thank you.

18 THE CHAIRMAN: Mr Moss?

19 Further questions to PROFESSOR DICKSON by MR MOSS

20 MR MOSS: Professor, I think both my learned friends,
21 Mr Garnham and Mr Barr, have asked you about time limits
22 and aide-memoires. If we just go back to your
23 paragraph 56. It is at MIV010102. Mr Garnham took you
24 to the passage where you said that in the documents you
25 had reviewed, you found the time limits to be tight and

1 realistic and there was a need for further clarity to be
2 provided as to what the precise time limits are,
3 especially in relation to the detention of detainees.

4 I think when one looks at the earlier paragraphs
5 that you have been commenting on, we see a reference to
6 JDP 1-10.1 at MOD042420, please. If the left-hand side
7 timelines could just be highlighted. This is a very
8 similar one -- this is the prisoners of war one, but if
9 you remember there was a very similar one for internees,
10 with the timelines of eight hours and 32 hours on the
11 left-hand side.

12 It is the same for prisoners of war and internees.
13 But when one gets to detainees, it is different. If we
14 look at MOD028799. On the left-hand side, again the
15 timelines. On the left-hand side, "Move to unit holding
16 area as soon as practicable, no longer than eight hours"
17 and then "eight hours" in the box below. Then "Maximum
18 of 12 hours within unit holding areas where practicable.
19 Extended stay must be authorised by theatre legal
20 staff". Then "Detainees should be handed over to host
21 nation within 12 hours".

22 I think within that your report indicates that you
23 found the eight and the 12, but the total limit of 12,
24 somewhat confusing. It might be thought that the total
25 limit was 20 --

1 A. Yes, I did. Yes, thank you.

2 Q. Was that the lack of clarity to which you were
3 referring?

4 A. Yes, indeed, yes.

5 Q. So when one goes back to paragraph 56 of your statement
6 and see those words, "... I believe tight and realistic,
7 but there is a need for further clarity to be provided
8 as to what the precise time limits are, especially in
9 relation to the detention of 'detainees' as opposed to
10 'internees' or 'prisoners of war'", was that referring
11 to the fact that you find the aide-memoire timescales
12 for detainees particularly confusing, different to
13 prisoners of war and within itself it had some potential
14 ambiguities?

15 A. Yes, that's correct.

16 MR MOSS: Yes. Thank you very much.

17 THE CHAIRMAN: Well I haven't any questions for you,
18 Professor. I do want to say this to you: I want to
19 thank you very much for the enormous amount of work that
20 you put into this and I say that because you were
21 instructed rather late in the day, as I understand it,
22 which involved you doing a prodigious amount of work,
23 reading papers and the like, and as one can see from
24 your report, you have put a lot into it, a lot of care
25 and a lot of thought. On behalf of the Inquiry I would

1 like to thank you very much indeed for doing so.

2 Are you going back to Ireland tonight?

3 A. I am, Sir, yes.

4 THE CHAIRMAN: Well, thank you very much. Wait if you wish
5 to and hear the next witness or by all means go, if not.

6 A. Thank you.

7 MR ELIAS: Sir, our next witness is Professor Sir
8 Adam Roberts. May I call Professor Roberts, please.

9 EDWARD ADAM ROBERTS (called)

10 THE CHAIRMAN: Do sit down, Professor.

11 Questions to PROFESSOR ROBERTS by MR ELIAS

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

14 A. Edward Adam Roberts.

15 Q. Professor Roberts, you prepared a report for the
16 Inquiry, which I know the Inquiry is very grateful for.
17 You supplied your report in September and, as you tell
18 us on the frontispiece of it, you have written it as
19 though it were to be provided to a court under the civil
20 procedure rules.

21 A. That is correct.

22 Q. If we look please at MIV10313, the first page of your
23 report, you set out in paragraph 1 your name. You tell
24 us that you are president of the British Academy, a
25 senior research fellow in international relations at

1 Oxford University, emeritus fellow at Balliol College,
2 Oxford, and your main academic interests are in the
3 field of international security, international
4 organisations and international law, including the laws
5 of war.

6 Then you set out -- and I don't read it, if you will
7 forgive me -- in paragraph 2 your work in connection
8 with these areas which plainly demonstrates your
9 expertise in relation to the matters that you are
10 reporting upon.

11 A. That's correct. Thank you.

12 Q. I want to take you to your report but, as I think you
13 know, the report is in evidence in its entirety and
14 I don't propose to cover every aspect by any means that
15 you raise in your report. First of all, may I begin
16 by -- as I think we will all know -- at paragraph 7 --
17 that's at MIV010315, please -- before addressing the
18 questions posed to you by the Inquiry, you say:

19 "It may be useful to allude to an underlying issue,
20 the international legal framework regarding the
21 treatment of captured persons."

22 Then you do that over, if I may say so, many
23 paragraphs, setting out not least the details of
24 involving categorisation of prisoners and suggesting, as
25 I think you do ultimately, that maybe there are at least

1 three categories, prisoners of war, civilians and maybe
2 some other category into which individual persons
3 captured do not fall into those first two.

4 As I think you are aware, Professor Roberts, I don't
5 think the Inquiry is going to go into the legal aspect
6 of the status of detainees and I don't propose,
7 therefore, to debate those matters raised in your report
8 with you now. But may I ask, arising from those issues,
9 what I hope is a relatively simple and straightforward
10 question? Is there any reason that you can see why the
11 UK Government should not insist on humane treatment,
12 minimum acceptable standards of treatment, if you like,
13 of all prisoners regardless of their legal status, and,
14 further, is there any reason why this should not be
15 applicable wherever and whenever prisoners of whatever
16 category are taken and then set out in simple and
17 understandable policy documents?

18 A. No. I agree with that proposition. I think there has
19 been a tendency, which is reflected in some of the
20 documents before the tribunal, increasingly to recognise
21 that although the categorisations of different types of
22 detainee or prisoner or internee or whatever has a base
23 in law and in legal agreements which states have
24 concluded and remained valid, nonetheless, for all
25 practical purposes, including how you actually treat

1 these people and how you train members of the armed
2 forces to deal with them, it's much better to have
3 a basic standard template from which, of course, then
4 there may be variations because of particular rules
5 applying to particular categories of detainees. But the
6 standard template is increasing in the way in which this
7 matter is approached and it is reflected, as I say,
8 especially in some of the more recent documents before
9 this Inquiry.

10 Q. Of course for the most part -- and I think you touch on
11 this in your report -- the differences in treatment of
12 a prisoner, depending upon his or her category, becomes
13 more important, if you like, further down the line in
14 terms of internment, lengthy detention, what questions
15 may or may not be asked and, indeed, the duties and
16 responsibilities of the prisoner himself or herself.

17 A. Indeed.

18 Q. But as at the point of capture, what I might call the
19 early stages of capture and detention, my proposition
20 should cause no difficulty?

21 A. None at all.

22 Q. Now may I turn, please, to the four questions? There
23 are some other matters I want to touch upon as well, but
24 the four questions that you are specifically asked by
25 the Inquiry. Could we have first of all question 1 at

1 MIV010327, beginning at paragraph 36 of your report:

2 "What broad steps should national armed forces
3 reasonably be expected to take in order to avoid
4 mistreatment including torture of captured persons,
5 whether during interrogation or during any other period
6 in custody?"

7 Before we just look at your answer in respect of
8 that, in the light of questions asked earlier this
9 afternoon, I should perhaps just invite you to remind us
10 what you say in paragraph 4 of your statement. It
11 needn't be turned up.

12 "I do not have a formal legal training ... [and]
13 I have not visited a detention facility in current use."

14 Your answer, if we go back then, please, to the
15 question, "What broad steps should reasonably be
16 expected?", you then set out at paragraph 38 and onwards
17 in, as you put it, headline form with only the briefest
18 of explanations.

19 But you say there are critically important steps
20 that should be taken by any armed force in addition to
21 a whole range of practical training and skills
22 development that are crucial for professional management
23 of captured persons. That would include, would it,
24 Professor, ensuring that anyone who may come in contact
25 with a prisoner of whatever category should have the

1 requisite core skills of dealing with that situation?

2 A. Yes.

3 Q. So at letter (a) -- and I'll just touch on some of these
4 and stop and ask you just a little more about some of
5 the others -- at paragraph 38, "Instruction in the
6 provision of the law of armed conflict", this is
7 mandatory you tell us. At (b):

8 "Penal and other sanctions under the law of armed
9 conflict. Provision for penal sanctions encompasses an
10 obligation on states not simply to enact the necessary
11 legislation, but also to take 'measures necessary for
12 the supression of all acts contrary to the provisions'
13 of the four Geneva Conventions."

14 You go on:

15 "It is critically important that alleged violations
16 are investigated and that, where justified, actions are
17 taken against those accused of violations."

18 At (c):

19 "Instruction in relevant provisions of human rights
20 law."

21 At (d):

22 "Penal and other sanctions under human right law."

23 You say three lines from the bottom of this
24 paragraph:

25 "... such sanctions need to be covered in the formal

1 instruction given to members of armed forces, but also
2 of course are part of the overall environment in which
3 those forces operate."

4 At (e):

5 "Instruction in relevant provisions of UK law and
6 policy ..."

7 Over the page, please, at the top of the page:

8 "... including of course military law. It also
9 encompasses key UK policy statements, such as the 1972
10 decision that the UK would not use any of the five
11 techniques."

12 You would expect, Professor, would you,
13 notwithstanding that that is now obviously 38 years old,
14 that that would be drawn to the attention, what, of all
15 soldiers?

16 A. Yes. It was something with which I was very familiar
17 because of an interest in the events in Northern Ireland
18 and I had written here and there about the importance of
19 the decision taken in 1972. Against that background
20 I have to confess that I was somewhat concerned -- and
21 I also wrote about this during the last eight or nine
22 years -- that during the phase of the war on terror
23 since the events of 9/11, very few of our political
24 leaders made reference to that experience of
25 interrogation techniques in Northern Ireland and the

1 salutary lessons that might be drawn from it about the
2 importance of handling detainee issues professionally.

3 Q. And so important that it's kept, if you like, at the
4 forefront of those who have to handle these sort of
5 situations?

6 A. Um-hm.

7 Q. At (f) you say:

8 "Distillation of complex bodies of law into simple
9 rules."

10 You have been sitting in this Inquiry room listening
11 to the evidence of the last witness. Do you have any
12 comment to make -- I'll deal with a little more of this
13 paragraph -- on what Professor Dickson said, if you
14 like, about simple English, if I can put it shortly?

15 A. I heartily agree with him. I think there are many areas
16 of life in which law risks getting over-detailed or
17 using arcane language. When I was editing a book of
18 documents on the laws of war with a colleague,
19 Richard Guelff, our favourite document in the book was
20 the shortest one. It was a distillation by the
21 International Red Cross of the law of armed conflict
22 into a single page.

23 Sometimes when the advice is being given to armed
24 forces who will be facing a variety of very different
25 situations, not all of which can be provided for in

1 advance in legislation, making the underlying principles
2 crystal clear is very valuable.

3 Q. So hence no doubt you say at letter (f) --

4 THE CHAIRMAN: Can you just pause a moment?

5 Can you hear, Mr Garnham?

6 MR GARNHAM: No, Sir, I am having difficulty in hearing.

7 THE CHAIRMAN: Professor, please bring the microphone closer
8 to you.

9 MR GARNHAM: Thank you, Sir.

10 MR ELIAS: So you say at paragraph (f):

11 "A problem that trainers and commanders face is that
12 for the purposes of training and day-to-day command,
13 there is a need for straightforward rules and procedures
14 that can be applied in a very wide variety of
15 situations."

16 Then I think you go on really to answer, don't you,
17 the question that I was asking you just a few minutes
18 ago?

19 "For example, as indicated above, the question of
20 the exact legal framework that applies to non-prisoner
21 of war detainees is not simple, the answer being
22 contingent on several considerations, including the
23 nature and legal powers of the mission, the nature of
24 armed conflict and the nationality of the detainee."

25 You go on to say:

1 "It is necessary and not especially difficult to
2 devise a set of practices that covers all situations,
3 coupled with a clear set of procedures whereby in
4 particular cases variations in treatment may be
5 authorised by senior decision-makers."

6 And that encapsulates what you were saying a moment
7 or two ago?

8 A. Absolutely.

9 Q. At letter (g), still dealing with the broad steps:

10 "Instruction in best practice in matters relating to
11 detention and interrogation."

12 You say:

13 "This has many dimensions encompassing ...
14 distillation of experience taking into account both
15 legal and prudential considerations. An ethos in which
16 best practice is recognised and rewarded needs to be
17 developed. Instruction in this area needs also to take
18 into account the pressures leading to bad treatment ..."

19 Frustration because the enemy is the enemy, if
20 I short-circuit it.

21 You say:

22 "It needs to explore the range of negative
23 consequences -- for the perpetrator, the victim, the
24 military unit and the cause they are serving ..."

25 And you mean by that, do you, that people need to be

1 reminded that amongst others things they may be fighting
2 a hearts and minds war?

3 A. Absolutely, and reminded of, as it were, the long-term
4 interest as against the short-term passion for revenge
5 which would be more than understandable.

6 Q. "Throughout [you say] it needs to be evidence-based and
7 to include convincing case studies."

8 Have you given thought to whether instruction in
9 this regard ought to be of a more practical rather than,
10 if you like, theoretical nature?

11 A. I think instruction should usefully be in this, as in
12 other areas of military activity, based on experience in
13 all its complexity. What has struck me quite
14 forcefully, reading the various documents before this
15 Inquiry, is how little reference there is to actual
16 cases of past experience, of useful information gained
17 by skilful interrogation.

18 There is some very interesting literature on this,
19 and I won't burden the Inquiry with it at this late
20 stage in suggesting that this Inquiry needs to look at
21 the literature -- but there is some very interesting
22 writing, including some relating to the recent conflict
23 in Iraq, that strongly suggests that a friendly approach
24 to detainee treatment and interrogation yields results
25 where other approaches did not.

1 Q. What a friendly as opposed, for example, to a harsh
2 approach?

3 A. That is the message that comes across. It is perhaps
4 a crude simplification because we all know that life for
5 somebody being interrogated is never a holiday camp.
6 "Friendly" may be too simple a term to use. But skilful
7 professional interrogation, not based on threats to the
8 detainee, has a track record which is worthy of study,
9 and I don't find a lot of reflection of it in the
10 literature before us.

11 Q. Thank you. Then at point (h), "Maintaining a robust
12 system of record-keeping". Why is that a key critical
13 element?

14 A. The first and most important reason for having a robust
15 system of record-keeping has to do with ensuring that
16 people don't disappear out of the system. But it also
17 has to do with making the individuals who are doing the
18 detaining or interrogating -- making them aware of their
19 responsibilities and that there is a paper trail for
20 which, in the case of infractions, they will be
21 answerable.

22 Q. Letter (i) I don't think we need worry about for this
23 Inquiry, passing detainees on to other jurisdictions.
24 May I ask you just a little about (j), please,
25 "Provision for whistle-blowing". You say:

1 "It is vital that there be a system whereby
2 individual servicemen ... can report their concerns
3 about particular ... practices."

4 Do you have any view about the nature of the system
5 and what it should include?

6 A. I fully accept what was said to the Inquiry this
7 morning, that there is a difficulty inherent in it. On
8 the one hand team spirit is extremely important to the
9 activities of military units and, on the other hand,
10 whistle-blowing might be thought in some circumstances
11 or if it was done in the wrong way to be a hazard to
12 that kind of team solidarity.

13 What strikes me in the literature before us and most
14 particularly in the two MoD statements that were
15 submitted very recently -- the September 2010 ones, one
16 dealing with TQ and the other with interrogation --

17 Q. The latest policy documents you are referring to?

18 A. Exactly, the latest two MoD policy documents. What
19 strikes me there is that the obligation to report
20 infractions is only raised in the curious consequence of
21 alliance operations, where it may be that one sees
22 something being done by an ally which is unacceptable
23 and, in that case, it is made rather clear that there
24 should be a reporting up the chain of command.

25 I think there is a need to make that obligation to

1 report violations stronger, more strongly, and not
2 exclusively in the one context of alliance operations.
3 It is quite simply a matter of making sure that there is
4 a range of possibilities of how it might be reported,
5 not necessarily one single course.

6 Q. And what, if anything, would you say about protections
7 for the whistle-blower?

8 A. It is notorious that, whether in industry or in other
9 spheres of life, whistle-blowers can sometimes be the
10 victims of one kind or another of retaliation. I think
11 if there is going to be any recognition of the value of
12 whistle-blowing, if there is going to be any such
13 recognition, then there has to be a clear rule: those
14 who do engage in whistle-blowing should not be subject
15 to any kind of reprisal and there should be efforts made
16 to protect them.

17 Q. Plainly it would follow, would it, that that must be
18 known to all servicemen if such a system were to be
19 brought in?

20 A. Absolutely.

21 Q. May I just take you, please, to the document you
22 referred to a moment ago, where there is perhaps, if you
23 like, a whistle-blowing procedure? Could we look at
24 MIV012269, please? This is the last policy document on
25 tactical questioning. If we turn through to MIV012280,

1 at the very foot of the page we can see the heading --
2 I think you have referred to this -- "Multinational and
3 joint operations". Paragraph 36 says this:
4 "Within coalition operations there may be
5 a requirement for UK military personnel to operate
6 alongside or within other nation's interrogation or
7 tactical questioning organisations. In all
8 circumstances UK legal and policy standards,
9 specifically refs A, B and O and this policy must be
10 adhered to by all UK military personnel at all times.
11 UK military personnel are not to be involved in any
12 manner in any activities which breach these standards.
13 Involvement includes being present at, as well as active
14 participation in, any such activities."
15 Then perhaps unusually, not stopping there, as it
16 were, and prohibiting involvement, there is this
17 whistle-blowing provision, isn't there?
18 "Should military personal witness any activities
19 which contravene this policy or which they consider may
20 be unlawful, they must cease their involvement and
21 urgently report it to their chain of command, who should
22 immediately inform UK theatre J2X with a written report
23 to follow."
24 Then there is a set out what PJHQ J2X staff should
25 be told and so on. So, on its face, a provision for

1 whistle-blowing which is set out, as you point out, only
2 in that context.

3 A. That's correct.

4 Q. Just coming back then to the broad steps and to your
5 statement at MIV010330, please, letter (k):

6 "Maintaining strong arrangements for review,
7 monitoring and inspection."

8 I think the Inquiry has heard much of this and the
9 reasons for that are now apparent to us. As you say,
10 "This is discussed further under question 2". So may
11 I move on to that and just touch on some aspects of
12 this, Professor. You say this:

13 "The focus here on external bodies [in the question]
14 should not be taken to imply any underestimation of the
15 importance of other forms of investigation and review.
16 International investigatory and disciplinary processes
17 within armed forces are a first line of defence against
18 malpractice."

19 You would expect, therefore, would you, that there
20 was to be some internal inspection, self-inspection, if
21 you like, but nonetheless internal inspection?

22 A. Absolutely.

23 Q. And you refer to the role of the provost marshall army
24 in this regard. You say:

25 "In practice and taking into account overseas cases,

1 some of the most effective exposures of wrong-doing and
2 detention matters have been in the form of media reports
3 and in the reports of national commissions of Inquiry,
4 such as the Commission of Inquiry into the deployment of
5 Canadian forces to Somalia ..."

6 You then set out -- may I just take you please -- to
7 paragraph 45, where you deal with the ICRC. You heard
8 the point made that you make in this paragraph -- you
9 heard the point made with the last witness, I think, the
10 limitation of ICRC reporting. Do you agree with that
11 proposition, that perhaps thought should be given to
12 whether the ICRC reports do remain confidential as
13 between Government and ICRC?

14 A. I think the reasons why this tradition developed are
15 very persuasive and are still valid. The ICRC has built
16 up a situation of just about automatic access to the
17 detention camps and related centres of most belligerence
18 in most wars and has done that on the basis of
19 confidentiality.

20 Were it to have reports that were published
21 immediately, there would be obviously a reduced
22 likelihood of access and a reduced likelihood,
23 therefore, of ICRC being able to draw defects to
24 Government's minds and in some cases get action taken on
25 that basis.

1 Obviously one is uncomfortable at the
2 confidentiality of these reports and a number of
3 qualifications have arisen. For example, many reports
4 now are published, ultimately, under, for example, the
5 30-year rule of individual governance. That's how we
6 know about some past ICRC reports, one of which I cite
7 in my paper.

8 Also, there is nothing in the ICRC's mandate that is
9 exclusive, that prevents other bodies, which may have
10 a more public way of going about things, from also
11 engaging in prison visits and the like. So the one
12 approach does not exclude the other.

13 In my view, the Ministry of Defence position on
14 this, in principle, is a sensible one, that the ICRC
15 visits are welcome and they are entitled to turn up just
16 about any time, but that does not preclude the possible
17 legitimate interest of other bodies or the possible need
18 for further forms of inspection.

19 Q. You refer at paragraph 46 of your statement --
20 MIV010333, please -- to the UN special rapporteur to
21 torture. If we just move to paragraph 48, you say:

22 "It appears that to date the UN special rapporteur
23 on torture has not had a significant role in respect of
24 the UK and the actions of UK forces overseas."

25 That is right, is it?

1 A. As far as I'm aware, yes.

2 Q. And could not play a role without the consent of the
3 Government, is that right?

4 A. I think that that is correct, and it's an interesting
5 argument to be had whether that particular mechanism
6 would be the most fruitful one for extending the, as it
7 were, facilities for inspecting the activities of forces
8 overseas.

9 Q. Are there other independent inspectors that you would
10 have in mind who may carry out, if you like, a more
11 public inspection with the result being publicised?

12 A. Well there are -- there's one individual similar to the
13 one you just mentioned -- the special rapporteur on
14 torture -- the special rapporteur on extra-judicial
15 summary or arbitrary executions. The present holder of
16 that post, who is not mentioned in my statement of
17 evidence -- the present holder of that post has, in
18 fact, been to Afghanistan and has written a report which
19 indicates some degree of interest in the matter of
20 handling of detainees because some, under coalition or
21 Afghan auspices, have disappeared. So that is
22 a possibility, but the limit there is an obvious one.

23 Admirable as the particular individual is who is
24 doing that job, with the limit being on executions,
25 extra-judicial summary or arbitrary executions, it is

1 perhaps too specific a remit to cover the breadth of the
2 issues that need to be looked at in detention camps and
3 the like.

4 Q. Would it be reasonable to draw this from your report?
5 Although there may be other avenues, from your
6 perspective the ICRC does a good job in this area?

7 A. Yes. I've heard many prisoners praise the work of the
8 ICRC, and detainees -- former prisoners and detainees in
9 this area. But as I say, that wouldn't preclude
10 pursuing other possibilities, including the proposals
11 that I know have been considered by this Inquiry of
12 having, perhaps, Her Majesty's Inspector of Prisons
13 being able to look at certain overseas installations as
14 well as those in this country.

15 Q. I think we understand what you say. There may be other
16 avenues too.

17 A. Yes.

18 THE CHAIRMAN: We are obviously not going to take the whole
19 of the afternoon on this and I think it would be
20 sensible if we have our break now. We always have
21 a break in the afternoon.

22 (3.08 pm)

23 (A short break)

24 (3.16 pm)

25 MR ELIAS: Professor Roberts, I move to the third question

1 at MIV010340, please, where you were asked to address
2 a question relating to the significance and benefits of
3 inspection of detention facilities, detention time
4 limits and other related matters.

5 Just one or two additions to what you say in your
6 report, please. You say that:

7 "Inspection of whatever kind is a vital safeguard
8 against the many kinds of abuses that occur only too
9 easily in such situations. Such inspections can, of
10 course, take many forms, national authorities,
11 non-Government bodies and international bodies."

12 We discussed that a little earlier. Could I ask you
13 please about two aspects of detention? Firstly, the
14 period of time from point of capture, if you like, to
15 movement to what I will call, for these purposes, the
16 final destination of detention.

17 As I think you know, the Inquiry is focusing upon
18 the early stages, point of capture through to the early
19 holding units, and has not been able to reflect through
20 its terms of reference essentially what may happen
21 thereafter.

22 In that early stage, you suggest in your report that
23 that may be a time when there are quite high risks of
24 mistreatment in the early stages. Why do you say that?

25 A. In my report I give, I think, six reasons why the early

1 stages are risk-laden. Do you want me just to go
2 through the six briefly?

3 Q. You set them out at paragraph 69 at MIV010344, at the
4 foot of the page. Can we just take them in your
5 statement:

6 "... it is highly plausible that the risks of
7 mistreatment in the early stages of detention are
8 considerable ..."

9 You have said in the earlier paragraph, to remind
10 ourselves, that you don't know of any systematic study
11 which has established this, but you would take the view
12 that the risks would be greater earlier.

13 If we go on over the page in this paragraph, you set
14 out, I think, why, do you?

15 "The following six factors indicate a heightened
16 risk of mistreatment at this stage. (1) If the
17 arrest/capture of detainees takes place in a situation
18 of ongoing war, insurgency or sporadic violence, the
19 capturing forces are likely to have been exposed to
20 danger and, in the heat and confusion of the situation,
21 may have a desire to 'punish' the most easily available
22 persons, namely detainees under their control."

23 That comes down, does it, to endeavouring to ensure
24 that prisoners are removed from their captor, their
25 immediate captors, if you like, as early as possible in

1 the process?

2 A. That's right --

3 Q. So -- forgive me.

4 A. That's the most important single reason, yes.

5 Q. "(2) The forces involved in the arrest/capture may make
6 the more instrumental calculation that looking after
7 detained persons and making arrangements for their safe
8 transfer to a place of detention is a distraction from
9 their main job. (3) The forces involved in the
10 arrest/capture may not have been trained to a high level
11 in the management of detainees."

12 You would say it is important if they are, would
13 you?

14 A. Yes.

15 Q. "4, there may be a shortage of provision of both
16 personnel and infrastructure for holding detainees."

17 As you are probably aware from some of the more
18 recent evidence, but as the Inquiry has heard, in
19 forward positions, for example in Afghanistan today,
20 there may be very meagre resources, as it were, to house
21 prisoners who were taken in that area of operation.

22 A. Indeed.

23 Q. "5. There may not yet be a full written record of the
24 capture, condition and place of detention of the
25 detainee, and therefore any mistreatment of the detainee

1 may be expected to have a diminished likelihood of
2 a full paper trail."

3 That reflects on the point you were making earlier,
4 doesn't it, the need for record-keeping in order, as it
5 were, to be able to or have a better chance anyway of
6 holding accountable those who are detaining.

7 And 6:

8 "In the early phases there is a lower likelihood of
9 ICRC or other inspection and monitoring of the
10 conditions of detention."

11 And so what lessons perhaps do we draw from those
12 risks that you outline there? Would one of them be that
13 there is a need for the clearest regulation and guidance
14 at those stages of detention for those called upon to
15 handle prisoners?

16 A. That's certainly one lesson.

17 Q. What other steps could be taken to deal with these
18 issues that you highlight here?

19 A. The expediting of a move to a different and safer
20 location as soon as that can be done.

21 Q. The Inquiry has been grappling, as I think you will
22 know, with the issue of medical examination at as early
23 a stage as possible. Again I suppose that would be
24 something that you would be in favour of.

25 A. I'd be in favour of it while recognising the difficulty

1 that getting equipped medical staff to a position which
2 may be a front-line position in an ongoing armed
3 conflict may be extremely difficult. So that's an area
4 where, in my view, it is desirable to spell out what it
5 is desirable should be done. But to make it legally
6 mandatory within a very short period, let us say the
7 first 24 hours, may be very difficult.

8 Q. Rapidly moving prisoners down the line or up the line,
9 whichever way it should be described, rapidly moving
10 prisoners, therefore timelines and time requirements for
11 the holding of prisoners you would say, would you, is
12 important that these are defined and as short as
13 possible?

14 A. Yes.

15 Q. You know, I think -- correct me if I'm wrong about
16 that -- that in Iraq [sic], at present, as the Inquiry
17 has been advised, a prisoner may be kept from the point
18 of capture through to what I'll call the temporary
19 holding units for a period of as long as 36 hours before
20 being taken to the final detention destination, the more
21 permanent arrangements, and then, as is now practised in
22 Iraq [sic], we have been told, he should be medically
23 examined within four hours of arrival. So there may be,
24 for example, detention for up to 40 hours before
25 a medical examination takes place. What observations

1 would you have on such a system, bearing in mind, of
2 course, the practicalities?

3 A. Forgive me for asking, but did you mean Iraq in that
4 question or Afghanistan?

5 Q. Did I say "Iraq"? I meant "Afghanistan".

6 A. Yes.

7 Q. Forgive me.

8 A. I think that those limits are desirable, but there may
9 be difficulties in realising them in practice and there
10 have, I know from many cases in Afghanistan -- I have
11 spoken with many military personnel who have served
12 there -- there may be many cases where it's not possible
13 to achieve those timelines for whatever reason or even
14 some where it's not desirable to achieve them because,
15 for example, if they were handing over to an Afghan unit
16 that was known to be incapable of looking after the
17 prisoners to a high standard, there may be good reasons
18 to delay.

19 Q. So the emphasis should be on moving as fast as possible,
20 but one has to accept the practical situation in the
21 theatre in which one finds oneself?

22 A. Absolutely.

23 Q. Do you have a difficulty with the proposition that
24 a medical examination should take place in those
25 circumstances as soon as possible or practicable, but

1 not later than four hours after reception at what I will
2 call the final destination, if you like, the permanent
3 facility?

4 A. No, no difficulty with that proposition.

5 Q. Thank you very much. Then may I turn, please, to
6 question 4, which we find at MIV10345, paragraph 71,
7 which deals with the deprivation of the sight of
8 captured persons.

9 "In broad terms [the top of the next page, please]
10 what role does sight deprivation tend to play in the
11 mistreatment of prisoners and to what extent ... does
12 the deprivation of sight, whether by hooding or other
13 means, increase the risk of mistreatment ...

14 "How should the balance be struck between reducing
15 any such risk ... and maintaining operational security?"

16 I know that you were here to hear these issues being
17 raised with the last witness by Mr Moss and others. You
18 say at paragraph 72, in answering these points:

19 "This question is about practice and in particular
20 about the correlation, if any, between sight deprivation
21 and mistreatment ... of captured persons."

22 You offer a few observations.

23 "Some of the captured persons seen being abused in
24 various ways in the shocking photographs from Abu Graib
25 prison ... published in April 2004 had been hooded."

1 You have an impression that that issue was one that
2 was raised in a number of other cases. So if, as now
3 seems to be the point from all that the Inquiry has
4 heard, seems to be the position, that hooding at least
5 is now banned, that should eliminate that particular
6 problem.

7 A. It certainly should.

8 Q. You make the point that there have been many cases that
9 didn't involve sight deprivation where prisoners have
10 been mistreated and you make the third point, that:

11 "Sight deprivation may not only constitute
12 mistreatment [in itself] ... but it may also provide
13 cover for mistreatment ...", because obviously the
14 prisoner can't identify the person or persons who are
15 attacking or assaulting him.

16 Could we look, please, at a document we find at
17 MOD036232? This is the "Joint service manual of the law
18 of armed conflict", Professor, the 2004 edition, as you
19 see from the frontispiece. Can I just take you to
20 one section at MOD036434 to paragraph 8.34.2? As
21 I think you can see on the screen, Professor,
22 paragraph 8.34.2:

23 "Blindfolding and segregation may be necessary in
24 the interests of security, the physical restraint of
25 prisoners of war, or to prevent collaboration prior to

1 interrogation, but these discomforts must be truly
2 justified and be for as short a period as possible."

3 Perhaps we would prefer, would we, the use of
4 blacked out goggles for blindfolding?

5 A. Clearly something other than hooding is more desirable,
6 yes.

7 Q. Something other than hooding would be desirable?

8 A. Um-hm.

9 Q. I'll come back to segregation, if I may, in a moment.

10 "Blindfolding ... may be necessary in the
11 interests of security, the physical restraint of [the
12 prisoner] ... or to prevent collaboration prior to
13 interrogation, but these discomforts must be truly
14 justified and be for as short a period as possible."

15 You will have heard the proposition put to
16 Professor Dickson that perhaps the army should now be
17 expanding upon conditions to be placed upon the use of
18 deprivation of sight. You may remember the points that
19 were put to Professor Dickson. I'll put them to you for
20 your consideration please.

21 There should, first of all, be an emphasis on
22 avoiding, in the first place, the use of any blindfold
23 or goggles, if it is at all possible, by using
24 a different route, not taking the prisoner through or
25 into an area where there are security considerations --

1 A. Yes.

2 Q. -- so that this blindfolding, by whatever means,
3 deprivation of sight, should be a last resort?

4 A. Yes.

5 Q. The term "truly justified" has to mean just that. There
6 has to be a specific reason, genuine reason, for the use
7 of sight deprivation?

8 A. Yes.

9 Q. Thirdly, sight deprivation should only go on for as long
10 as strictly necessary?

11 A. Yes.

12 Q. Fourthly it mustn't be accepted, as it were, at any
13 stage as being a routine matter --

14 A. Yes.

15 Q. -- such that goggles are put on willy-nilly. It must
16 always be justified in every case?

17 A. Yes.

18 Q. Fifthly, that there should be a record made with a brief
19 explanation as to why sight has been deprived in each
20 case that it is used?

21 A. Yes.

22 Q. Would you agree, Professor, that those would be both
23 workable and sensible conditions to lay down if sight
24 deprivation is to be used?

25 A. I would. If I may, I would just add two minor comments

1 about that paragraph. I think it's odd to link
2 blindfolding and segregation in a common, as it were,
3 chapeau term because segregation is actually required or
4 mandatory under the Geneva Conventions for certain
5 purposes and it's a very different issue from that of
6 blindfolding.

7 Secondly -- I think your questions hint at this --
8 actually the categories of physical restraint of
9 prisoners of war and preventing collaboration are all
10 part of the category of security, and it would, I think,
11 be better if it were in clearer and simpler language
12 that it is only on the grounds of security that this can
13 be done and the other thing that might be mentioned in
14 a subordinate clause if at all.

15 Q. Thank you very much.

16 And segregation self-evidently can frequently be
17 achieved without sight deprivation at all.

18 A. Absolutely. It may be segregation of officers from NCOs
19 and privates, it may be segregation of the sexes and it
20 raises a completely different set of issues.

21 Q. Now the fifth question that you were asked to answer by
22 the Inquiry we find it at MIV010348, paragraph 78:

23 "What are your views as to the appropriateness and
24 adequacy of the following aspects of the armed forces'
25 policy, training and practice in relation to the

1 treatment of captured persons?"

2 You considered JDP 1-10, SOI J3-9 -- the current
3 Op Herrick document -- and policy and doctrine on
4 interrogation and tactical questioning. You have now
5 been able to consider the new documentation there.

6 I don't propose, Professor Roberts, to take you
7 through your comments here because, if I may say so, to
8 some extent issues have now moved on and there has been
9 acceptance, as I think you are aware, of some of the
10 apparent deficiencies and inconsistencies and possible
11 contradictions in the documents that exist and are being
12 drafted.

13 I just take you to one or two. You've raised
14 here -- perhaps I should just record this -- haven't
15 you, concerns about some of the definitions, some of the
16 consistency of the documents and you have raised some
17 concerns about the timelines that are expressed within
18 them. I'm not going to take you to those details, if
19 I may be forgiven for not so doing.

20 At paragraph 87, please, you refer to SOI J3-9,
21 "Detention operations in Afghanistan", a document the
22 Inquiry is now quite familiar with, I think. You say
23 about that, at the top of the next page, please:

24 "Much of this information presents a reassuring
25 picture of extensive provision for treating detainees in

1 a neutral and professional manner and for ensuring that
2 reports of abuse are acted upon."

3 It is part of the picture which is rather more
4 satisfactory than some of the earlier materials; is that
5 right?

6 A. That's correct.

7 Q. Could I ask you, please, about three separate matters
8 now, the final three matters I want to ask you about.
9 The first is the harsh technique. You know what I mean
10 by that and it was referred to by the last witness in
11 some detail. Is there, in your view, Professor, any
12 place for the harsh technique in interrogation or
13 tactical questioning?

14 A. I have a lot of difficulty with what's written about the
15 harsh approach in some of the documents before us. One
16 difficulty is that actually what is written about it is
17 extremely vague. It's not clear what actually
18 constitutes the harsh approach. A second concern is
19 that some of it seems to be based upon a view of
20 psychology, which seems to me to be at least
21 questionable, and a view of the record of interrogation,
22 which is at least questionable.

23 A lot of the harsh approach or what is implied by
24 the harsh approach in these documents is actually going
25 to be quite difficult to square in the clear provisions

1 of the Geneva Conventions. I think it's Article 17 in
2 the Prisoner of War Convention and there is an
3 equivalent article in the Civilians Convention. That's
4 a very small correction to what Professor Dickson said
5 this morning, when he implied it was only prisoners of
6 war who were, as it were, guaranteed respect and so on.
7 That applies also to civilian detainees under
8 Geneva Convention IV.

9 If a category is created, described as "harsh",
10 without clarity as to what it involves, this may, of
11 course, lead some to conclude that "harsh" means "harsh"
12 and anything goes. I think the category of "firm",
13 which is another of the categories that we find in these
14 documents, is admirable. I have no problems at all with
15 that. But I do think that creating a notional category
16 of "harsh" and then failing to provide much content
17 to it is asking for trouble.

18 Q. So -- if I don't put words in your mouth. I am sure you
19 won't accept it from me -- are you saying that it's
20 difficult to envisage how the harsh approach can be
21 carried through without breaching the Convention,
22 without breaching the law?

23 A. Yes.

24 THE CHAIRMAN: When you talk about "based on a view of
25 psychology which is at least questionable", do you mean

1 it doesn't work?

2 A. I would not say that the harsh approach never works.
3 That is no part of my argument.

4 THE CHAIRMAN: No.

5 A. And I have spoken with a number of victims of torture
6 who have admitted to me that they confessed under
7 torture things that they would not have confessed in
8 other circumstances. So I'm not arguing --

9 THE CHAIRMAN: Right.

10 A. -- that this can never yield any results. But I'm
11 suggesting, first of all, as is well known, that torture
12 sometimes leads to fictitious results --

13 THE CHAIRMAN: Yes.

14 A. -- or useless information. People will say anything
15 to --

16 THE CHAIRMAN: Get out of it.

17 A. And secondly that other approaches have a stronger track
18 record than is implied by those who argue that somehow
19 the law is an impediment. And there are echoes of this
20 in some of the documents before us, that the law is
21 somehow a restraint and good interrogation must operate
22 almost despite this restraint when, in many
23 circumstances at least, the law provides a framework for
24 the efficient and professional conduct of interrogation
25 and tactical questioning.

1 MR ELIAS: I don't know whether you are aware, Professor,
2 but I think the Inquiry was looking at an email at an
3 earlier stage of this Inquiry which might have been
4 interpreted as making that point.

5 A. I wasn't aware of that email.

6 Q. The final point then from me, I think, please. Can you
7 assist? The shock of capture -- and you know to what
8 I'm referring when I say that -- is it, in your view,
9 permissible to prolong the shock of capture by any means
10 of a prisoner?

11 A. A prisoner -- and the documents are right about this --
12 who has just been captured or indeed an internee who has
13 just been seized or whatever is likely to be suffering
14 a degree of shock of capture and I have no quarrel with
15 the argument that that is a fact and the background
16 against which some policy has to be constructed.

17 The position of a prisoner or detainee is never a
18 particularly enviable one and especially not in the
19 first phases, as we have discussed. But having said
20 that, I have to say that the information before the
21 tribunal about the shock of capture and pressures on
22 a prisoner and the implication that this can in some way
23 be prolonged or extended or used I didn't find
24 particularly impressive.

25 I have in mind, for example, two documents, both

1 without a date. I hope, if this Inquiry achieves
2 nothing else, it will encourage the Ministry of Defence
3 to put more dates on documents. Half of the documents
4 I have been supplied with by the tribunal have no date
5 on them and it is very hard to know which comes first
6 and which comes afterward and it may even be hard for
7 those who work with and on these documents to know which
8 was first and which was later --

9 Q. What is the latest document.

10 A. Exactly. I have come across, in working on the UK
11 military manual, officers who are in real difficulty on
12 that very issue. Sorry, that is an aside.

13 The two documents are the one at MIV000444 and the
14 one at MIV000468, both of which -- sorry, the second one
15 was MIV000679. Neither of them actually say very much
16 or go into a great deal of detail about how the shock of
17 capture can supposedly be, as it were, utilised or
18 prolonged or why that is a particularly good approach.
19 So all I can say is I didn't find these particular
20 documents, which I think are the main ones before the
21 tribunal on this topic, terribly persuasive. The first
22 of them is extremely short. It is only two pages.

23 Q. So just on the question of prolonging, do you see that
24 there is anything wrong with the practice, if it exists,
25 of prolonging the shock of capture?

1 A. It's a bit like the harsh approach. It's not clear from
2 the information we've got what exactly is in it. I can
3 see -- I can perfectly imagine circumstances where one
4 might want to prolong the shock of capture in some way.
5 For example, you have a detainee who doesn't know
6 whether his family are safe after recent operations.
7 You, as the captor, may know that. I can imagine
8 circumstances where you would not want to tell the
9 detainee or you would want to trade information with him
10 and get something from him first. I don't find it hard
11 to imagine such circumstances. But it is a very
12 different thing to say, "Yes, one can imagine
13 circumstances where that would be valid" to saying that
14 should form the basis of an approach. As a basis of an
15 approach, I come back to the point that I think it's at
16 least questionable --

17 Q. So it is questionable -- forgive me.

18 A. Yes -- whether the approach based on shock is going to
19 be as effective as a more professional, friendly and
20 secure approach.

21 Q. So given that it is questionable, given that it's
22 questionable whether it crosses the line between lawful
23 and unlawful, as I understand you to be saying, if --
24 and that may be a debatable point -- if it is to be
25 used, there must be very clear instruction, guidance and

1 regulation as to how it is?

2 A. Indeed. But I come back to the point that the shock of
3 capture could encompass a range of things, some of which
4 would be doubtful legally, some of which might not
5 particularly, because the circumstances -- as the
6 document rightly says, the circumstances themselves
7 create much of the shock of capture. So I would oppose
8 any attempt to construct a general policy around it and
9 I would regard that as legally questionable. But the
10 fact of there being some objective element of the shock
11 of capture in the situation and some circumstances where
12 it might be legitimate to build on that I don't have
13 a particular difficulty with.

14 MR ELIAS: Thank you very much for your help.

15 THE CHAIRMAN: So you perhaps would not go as far as to say
16 that if someone is in the period when he is likely to be
17 in the shock of capture, you shouldn't wait until he is
18 finished being in that period, however long that takes?
19 You don't think that is necessary?

20 A. Before, for example, asking him --

21 THE CHAIRMAN: Any questions.

22 A. -- tactical questions or whatever?

23 THE CHAIRMAN: Yes.

24 A. Yes. I think that that is a reasonable conclusion, yes.

25 THE CHAIRMAN: Well, you may be asked some more questions.

1 Mr Singh?

2 Questions to PROFESSOR ROBERTS by MR SINGH

3 MR SINGH: Sir, yes, thank you.

4 Professor Roberts, there are two questions I would
5 like to ask you. The first arises from what you have
6 just been saying to Mr Elias about possibly prolonging
7 the shock of capture being permissible. I just wanted
8 to explore, if I may, the scenario you were portraying
9 a moment ago of where the captor has information about
10 whether the family of the detainee is safe or not.

11 I think you said that in that context it might be
12 legitimate for the captor asking questions, as it were,
13 to trade information about the safety of the family in
14 order to obtain answers from the detainee. Is that what
15 you were saying?

16 A. Yes.

17 Q. How does that square, if I can ask this, with the
18 prohibition on all moral coercion in Article 31 of
19 Geneva Convention IV?

20 A. I think it is extremely difficult to square the two.
21 But in reality, in a situation like that, if the
22 information that you want from the detainee also is
23 a matter of life and death, I don't find it -- I think
24 it's unwise to create a system of rules that makes it
25 impossible to pursue questions in the kind of manner

1 I described.

2 Q. The other topic I would like to ask you about is
3 something the Inquiry has heard about from a number of
4 witnesses and I would be grateful if you could give the
5 Inquiry any assistance that you are able to.

6 It arises from the well-known ban on the five
7 techniques. I am sure you are aware, as the Inquiry is,
8 that for some time, to a large extent, sight seems to
9 have been lost of that ban. Do you think that there
10 would be any merit in therefore expressly and
11 specifically attaching criminal sanctions to use of the
12 five techniques?

13 A. If, as is the present situation, the use of the five
14 techniques is prohibited, it is already entirely open
15 and within the law for those using those five techniques
16 to be charged. I don't think any new legal enactment is
17 needed to create that situation. It's a matter of there
18 being the knowledge and the will to take action that's
19 important, not the legal background.

20 MR SINGH: Thank you. Sir, thank you.

21 THE CHAIRMAN: Thank you very much. Mr Garnham?

22 Questions to PROFESSOR ROBERTS by MR GARNHAM

23 MR GARNHAM: Just one matter.

24 Professor, in assessing its lawfulness, would you
25 distinguish between making use of the effects of shock

1 of capture on the one hand and prolonging the shock of
2 capture on the other --

3 A. Yes.

4 Q. -- so that the former might well be lawful and the
5 latter might well be unlawful?

6 A. The latter is certainly more difficult to square with
7 the law. Yes.

8 MR GARNHAM: Thank you.

9 THE CHAIRMAN: Mr Dingemans?

10 Questions to PROFESSOR ROBERTS by MR DINGEMANS

11 MR DINGEMANS: Just in relation to that, can I ask that
12 MIV000468 be put up?

13 I think this was one of the documents that you
14 referred to which is prisoner handling within the TQ
15 process, and CPERS handling in the TQ process. At
16 paragraph 2 of that document we have the "Aim":

17 "The aim of correct prisoner/detainee handling is to
18 ensure that whilst the provisions of the Geneva
19 Convention governing the treatment of CPERS are
20 observed, the shock of capture and the disorientation
21 experienced by a prisoner on capture are prolonged by
22 correct handling procedures ..."

23 Am I to infer from your last answer that you doubt
24 the legality of that proposition?

25 A. Yes.

1 Q. And can I then just ask that we go to the next page, and
2 just ask you one thing about "removal". If we look at
3 (c):
4 "... two guards ... allocated to move a prisoner."
5 And then there is reference to a blindfold, and then
6 (d):
7 "The prisoner should be moved by extending his/her
8 arms and linking their hands together ..."
9 And effectively if you read it all you see that the
10 prisoner is effectively force-marched around.
11 In circumstances where that is done to prolong the
12 shock of capture, would your legal position be the same,
13 namely that is unlawful?
14 A. I have difficulty in giving a definitive answer. I'd
15 need to look at the whole document and the context in
16 which this is said.
17 Q. Right --
18 A. If you can give me a moment I would happily do that.
19 Q. Of course. I think in fact it was one of the documents
20 you looked at.
21 A. Yes.
22 Q. For everyone else it is 4.1.17.
23 A. MIV--
24 Q. MIV000444.
25 A. "Shock of capture".

1 Q. Yes, and pressures on a prisoner.

2 A. And pressures on a prisoner. That's the one that is
3 only two pages.

4 Q. Yes. Well, mine is three pages but the notes page is
5 completely blank.

6 A. Yes, yes. Now if we can go back to the second page --

7 Q. Sorry, in fact it was 468 was this one, which is
8 prisoner handling --

9 A. The second one, yes.

10 Q. -- within the TQ process, which is six pages.

11 A. I was puzzled by that statement and put a query against
12 it in the margin of my copy, and that query indicated
13 that I thought it was hard to square with the law as it
14 stood.

15 MR DINGEMANS: Thank you very much.

16 THE CHAIRMAN: Mr Barr?

17 MR BARR: I have no questions, Sir, thank you.

18 MR ELIAS: And I have no further questions, Sir, thank you.

19 THE CHAIRMAN: No, I have no questions.

20 Thank you very much, Professor, for coming. I am
21 grateful, as I was to the last witness, for all the hard
22 work that you put into looking at documents and
23 producing your statement for us. Prodigious work and
24 I am extremely grateful. Thank you very much.

25 A. Thank you very much.

1 THE CHAIRMAN: There is a read only but not today, is that
2 right?

3 MR ELIAS: Not today, Sir.

4 THE CHAIRMAN: Yes, Mr Barr?

5 MR BARR: Sir, you asked me yesterday about the definition
6 of stress positions.

7 THE CHAIRMAN: Yes, I did.

8 MR BARR: I'm now in a position to answer that if it is
9 a convenient moment to do so.

10 THE CHAIRMAN: By all means, yes.

11 MR BARR: Sir, I can say that the Ministry of Defence
12 continues to endorse the definition which was agreed for
13 discussion purposes at the end of Module 3 in the
14 context of questioning. That is to say as a prohibition
15 as an aid to questioning.

16 However, we see that on its own if it is applied
17 more widely some problems arise --

18 THE CHAIRMAN: Yes.

19 MR BARR: -- in that legitimate activities such as for
20 example the application of approved control and
21 restraint techniques or the use of force in
22 self-defence, or possibly even voluntary PT for
23 prisoners --

24 THE CHAIRMAN: I can't actual see any problem with
25 self-defence. That brings you into something completely

1 different, doesn't it? Presumably the ordinary rules or
2 law in criminal cases would apply.

3 MR BARR: Yes. And what it amounts to is we are saying
4 outside the context of questioning one has to be careful
5 to make clear that the ordinary rules of law will apply
6 to things like control and restraint --

7 THE CHAIRMAN: Yes.

8 MR BARR: -- self-defence and strenuous voluntary exercise.

9 THE CHAIRMAN: I follow.

10 MR BARR: But that was the only qualification that I wanted
11 to make.

12 THE CHAIRMAN: Thank you very much.

13 MR ELIAS: Sir, tomorrow Dr Payne-James and Dame Anne Owers.

14 THE CHAIRMAN: Thank you. We will start at 10 o'clock as
15 usual. Very well. Thank you all very much. 10 o'clock
16 tomorrow.

17 (4.00 pm)

18 (The Inquiry adjourned until 10.00 am on Wednesday,
19 13 October 2010)

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