THE CHAIRMAN: Good morning, ladies and gentlemen. Do sit down.

Statement by Chairman

8 September 2011

Today my report to the Secretary of State for Defence entitled, "The Report of the Baha Mousa Inquiry" is published. The Secretary of State will be making a statement about the Report in Parliament later in the day.

The Report is necessarily a long one, since it covers a lot of ground, not just the events of 14 to 16 September 2003, themselves detailed and complex. At the end of the Report there is a Summary of my findings, itself lengthy. Today I shall make a much shorter statement summarising what I regard as some of the main findings. I stress that any summary, whether the longer one in Part XVIII of the Report, or this much shorter one, is just that: a Summary and not a substitute for the Report itself.

The Inquiry was set up by the Secretary of State for Defence on 1 August 2008. I was appointed Chairman. By the terms of reference the Inquiry was set three tasks. The first was to establish the facts of the events of 14
to 16 September 2003. The second was to establish where the responsibility lay for approving the practice of conditioning of the Detainees by members of the First Battalion of the Queen's Lancashire Regiment, (1 QLR), in this case principally the use of hooding by sandbags and placing the Detainees in stress positions. The third task was to make recommendations. In this statement I make brief comments on all three tasks and add two further general comments.

I am publishing my Report in full. There remains, however, one short and discrete issue relating to the Detainees upon which I have reached conclusions and reported to the Secretary of State, which I am withholding from publication at the request of the Detainees' legal representatives. I have acceded to this request under section 25(4) of the Inquiry's Act 2005. The reason for this is that the single issue in question is personal to the Detainees and I am satisfied on the statutory grounds that it is necessary not to publish my findings in that respect.

What happened.

On 14 September 2003, a group of soldiers from A Company, 1 QLR raided the Hotel Ibn Al Haitham in Basra looking for suspected insurgents. A multiple of soldiers from A Company, commanded by
Lieutenant Craig Rodgers ("the Rodgers' Multiple") played a principal role in the raid. After finding some weapons, grenades and other paraphernalia, seven men employed in the Hotel were arrested. One of these men was Baha Mousa. Another man in the Hotel at this time escaped. Six of the seven men were removed to 1 QLR's headquarters at BG Main in Basra. The seventh accompanied a further party of soldiers from A Company to a house nearby where in due course two civilians were arrested. They were an elderly man and his young son. All three arrested men were eventually transferred to BG Main. The elderly man, D006, not in the best of health, was the father of the man who had escaped. Later that day a tenth man, D007, was arrested in another part of Basra. He, too, was transported to BG Main. He was wholly unconnected with the Hotel and the nine other civilian Detainees. The MoD conceded that there was no evidence implicating them in the death of British personnel.

On arrival at BG Main the Detainees were received by Corporal Donald Payne, the 1 QLR Regimenental Provost Corporal. They were searched, handcuffed, hooded and placed in the temporary detention facility, the TDF. Some were hooded with two, if not three, hoods. In the TDF they were made to adopt stress positions, at first
in a ski position (as seen in the Payne video).

Subsequently they were permitted to sit down but had to maintain their hands outstretched in front of their bodies and still handcuffed. I find that for almost the whole of the period up to Baha Mousa's death on the evening of 15 September the Detainees were kept handcuffed, hooded and in stress positions in extreme heat and conditions of some squalor. They were guarded first by two men from another A Company multiple, but from about 19.00hrs on 14 September until Tuesday morning by members of the Rodgers' Multiple.

I find that from the outset of their incarceration in the TDF the Detainees were subjected to assaults by those who were guarding them and, in particular, by Payne. I find that they were also assaulted from time to time by others who happened to be passing by the TDF. The assaults by the guards were instigated and orchestrated by Payne. He devised a particularly unpleasant method of assaulting the Detainees, known as the "choir". It consisting of Payne punching or kicking each Detainee in sequence, causing each to emit a groan or other sign of distress. Payne, as Provost Corporal, was himself supposed to be supervising the welfare of the Detainees in the TDF. I also find that Payne and the guards should have been supervised by
Major Michael Peebles, the Battlegroup Internment Review Officer (the BGIR). 

From the evening of 14 September and into the afternoon of 15 September, the Detainees were questioned by two tactical questioners. The whole process was lengthy and in one instance involved a Detainee (D005, the youngest) being placed for over an hour very close to a noisy and hot generator. The tactical questioning went on well past the 14-hour time limit, at the end of which the Detainees should have been either released or transferred to the Theatre Internment Facility, the TIF. In fact, the nine surviving Detainees did not arrive at the TIF until Tuesday, 16 September, some 55 hours after the arrest of those in the Hotel.

Baha Mousa's death.

At about 21.30hrs on Monday the whole Rodgers' Multiple returned to the TDF to join three of their number who had been carrying out guard duty throughout Monday afternoon. At that time Rodgers left his Multiple at the TDF for another duty. Their followed a very serious incident when Baha Mousa was found standing in the TDF without his hood and handcuffs. A struggle ensued, involving principally Private Aaron Cooper, Payne and Baha Mousa. It did not last long, but in the final moments I find Payne violently assaulted
Baha Mousa, punching and possibly kicking him. This ended with Baha Mousa lying inert on the floor of the TDF. The Regimental Medical Officer was summoned but despite attempts to resuscitate him, Baha Mousa was pronounced dead at 22.05hrs.

A subsequent post mortem found that in the course of his detention in the TDF Baha Mousa had sustained 93 separate external injuries. He was also found to have internal injuries including fractured ribs. I find the cause of the death to be twofold. Firstly, Baha Mousa had been made vulnerable by a range of factors, namely, lack of food and water, the heat, rhabdomyolysis, acute renal failure, exertion, exhaustion, fear and multiple injuries. Both stress positions, which are a form of exertion, and hooding, which obviously must have increased Baha Mousa's body temperature, contributed to these factors. Secondly, against the background of this vulnerability, the trigger for his death was a violent assault, consisting of punches, being thrown across the room and possibly of kicks. It also involved an unsafe method of restraint, in particular being held to the ground in an attempt to re-apply plasticuffs. Neither cause alone was sufficient to kill him, but the combination of both did.

On the morning after Baha Mousa's death, the nine
Detainees were transferred to the Theatre Internment Facility, the TIF. Subsequently they were examined and most were found to be suffering from a number of injuries, some more serious than others and some very serious, namely those sustained by D003 and Kifah Matairi. Some physical injuries were comparatively minor, namely those sustained by D005. All of the Detainees, other than Kifah Matairi, who was not examined by a psychiatrist because of his death much later in a wholly unrelated accident, were subsequently found to be suffering from psychiatric injury, including, in most cases, post traumatic stress disorder of varying degrees of seriousness.

In the Report I have made findings in respect of soldiers whom I identify as being responsible for mistreating the Detainees. It has not been possible to determine the identity of all those involved in assaults on the Detainees, but the fact that they were assaulted is not in doubt. The injuries graphically demonstrate this to be so.

I ask now that various photographs are put up on the screen. First, MOD021790, a view of the injury site to the left flank of D001.

Next, MOD021809, a view of the injury site at the left side of Kifah Matairi.
Thirdly, a frontal view of Kifah Matairi, MOD021814.

Next, MOD021827, a view of injury sites to the front torso of D003.

Finally, MOD021857, a view of the injury site at the right-hand side of the waist of D002.

There are other photographs within the text of the report.

I find that one of the principal causes, but not the only cause, of the violence was an unfounded rumour circulating in 1 QLR to the effect that these Detainees were connected with the murder of Captain Dai Jones, a popular 1 QLR officer, or members of the RMP, also murdered. I find that Peebles, the BGIRO at the outset of the detention, informed two of the guards that the Detainees might be connected with the murder of three Royal Military Policemen.

Further, I find that although there had been previous incidents of ill-discipline involving members of 1 QLR before the events of 14 to 16 September, these incidents did not amount to an entrenched culture of violence in the Battlegroup.

As for responsibility for what happened, again I have made findings in respect of individual officers and men. In this Statement I draw attention only to the part played by four of them in these events. Payne, as
the person who instigated and orchestrated assaults on
the Detainees and the man who conducted the "choir",
bears a very heavy responsibility for what happened in
the TDF. Rodgers, the Multiple commander, must take
responsibility for the ill-discipline of members of his
Multiple. I find that at some time during Sunday night
he knew that serious assaults had taken place. He did
nothing to control his Multiple thereafter, let alone
report what he knew up the chain of command. Peebles,
the BGIRO, also bears a heavy responsibility as the
officer who, as I find, ought to have appreciated he had
responsibility for the welfare of the Detainees. I find
that during the course of the time leading up to
Baha Mousa's death he became aware that the Detainees
had been assaulted and, on any view, he ought to have
put a stop to hooding, stress positions and tactical
questioning long before Baha Mousa's death.

Finally, I draw attention to the responsibility of
Lieutenant Colonel Jorge Mendonca, the commanding
officer of 1 QLR. I acquit him of knowledge of the
beatings carried out on the Detainees in the TDF in the
36 hours up to Baha Mousa's death. But I find that, as
commanding officer, he ought to have known what was
going on in that building long before Baha Mousa died.
I find further that although he knew conditioning was
taking place he ought to have found out precisely what conditioning involved and appreciated the dangers of allowing Detainees to be hooded and placed in stress positions, not least because of the intense heat and the rudimentary conditions of the TDF, but also because of the obvious risk that in enforcing stress positions the guards might well resort to violent behaviour.

All four of these men bear a heavy responsibility for these events. I emphasise that in respect of the criticism of them and others in the Report, the specific passages in which my findings and the criticisms are made should be referred to for the full effect and context of such criticism.

Conditioning.

For many years it has been widely believed that a captured person may suffer a period of vulnerability when first taken prisoner. That vulnerability might take the form of feelings of fear, remorse or distress. This condition came to be known as the shock of capture. Those in the intelligence field who sought information from such individuals endeavoured to use the anxiety generated by the shock of capture to assist in obtaining information from them. Conditioning is a generic term to describe the techniques used to prolong, maintain or enhance the shock of capture. "Conditioning" can be
a dangerously ambiguous word. Historically it has been used to cover both lawful and legitimate means of exploiting the shock of capture as well as techniques for enhancing the shock of capture which have been banned or are unlawful.

I find that the use of hooping and stress positions by 1 QLR on these Detainees occurred because it was thought by those responsible for guarding them that hooping the Detainees and placing them in stress positions would aid tactical questioners whose job it was to obtain information from the Detainees by questioning them at Battlegroup Main before release or transfer to the TIF.

I find that quite apart from the violence carried out on the Detainees, the process of hooping them and placing them in stress positions was unjustified and wholly unacceptable.

The Inquiry has sought to understand why the use of these processes was not recognised by all concerned as unjustified and wrong. This has involved research into the background of the use of hoods, stress positions, and other techniques used in the intelligence field.

The historical background.

On 2 March 1972, the Prime Minister of the day, the Rt Hon Edward Heath MP, announced in the House of
Commons a ban on these five techniques (the Heath Statement). These techniques were hooding, the use of white background noise, sleep deprivation, wall-standing (a form of stress position) and a limited diet. These techniques came to be known as the five techniques and had originated in internal and counter-insurgency operations post the Second World War. What gave rise to the Heath Statement was the use of the five techniques in 1971 in Northern Ireland. This resulted in two Inquiries, the second being an Inquiry chaired by Lord Parker, the former Lord Chief Justice. The Minority report, written by Lord Gardiner QC, argued that the five techniques were already unlawful and that the law should not be amended to permit their use. While the Majority report was not formally disavowed, the force of Lord Gardiner's argument was recognised by the Government of the day.

The Heath Statement banned the use of these techniques as an aid to interrogation. I find that the ban clearly applied worldwide. What was not clear was whether the five techniques were banned from all military operations, including full warfare, or only to worldwide security or counter-insurgency operations. Whether or not it was intended that the techniques were banned in all operations is not material, because the
MoD recognised then, as they do now, that the five techniques were already prohibited and unlawful in warfare by reason of the Geneva Conventions.

In 1972, the 1965 Directive on Military Interrogation and Internal Security Operations Overseas was revised. Part I of it (the 1972 Directive) contained a ban which specifically prohibited the use of the five techniques. Part II of the Directive was issued with the intention that it was to be observed in all future training on interrogation in internal security operations and was to be reflected in all interrogation training instructions. Part II included guidance on methods and approaches that were permissible in interrogation. It also had cross references to Part I. I conclude that the limitation of Part II to internal security operations had the unfortunate effect of perpetuating the divide between doctrine on interrogation and prisoner handling in warfare and in internal security operations.

I find that what the Heath Statement did not do was to ban hooding for all purposes. I further find there was no ban on deprivation of sight by the use of blindfolds for security purposes.

Further, the evidence demonstrates that over the years the Heath Statement became largely forgotten and
apart from hearing in Part I of the 1972 Directive it
mainly faded from policy and training materials and was
not replicated in doctrine that related to full warfare.
Although compliance with the Geneva Conventions was
taught at all levels, there was little reference in any
of the policy and training manuals to the prohibition of
the five techniques.

By 1997, a revised policy for interrogation and
related activities was issued. The revised policy
contained the strategic imperative that all operations
should comply with the Geneva Conventions and
international and domestic law. It cancelled Part II of
the 1972 Directive, but not Part I. It provided that
procedures used by United Kingdom interrogators in an
operational theatre were to be governed by detailed
directive which incorporated current legal advice.
There was no reference to the prohibition on the five
techniques.

I find that by the time of Op Telic there was no
proper MoD doctrine on interrogation of prisoners of war
that was generally available. Further, knowledge of
Part I of the 1972 Directive (at the time still
operative) and the ban on the five techniques on
internal security operations had largely been lost.
I conclude that this came about by corporate failure of
Similarly, and not surprisingly because of the loss of knowledge of this ban on the five techniques, the written doctrine for prisoner handling, like the training materials for the tactical questioning, and interrogation, did not contain any reference to the ban on the five techniques.

I find that training at the Joint Services Intelligence Organisation (the JSIO) did deal with sight deprivation to the extent that prisoners could be deprived of their sight for security purposes. But the prohibition on use using hoods or blindfolds as an aid to an interrogation was not specified in the written material. Further, I find that the teaching imputed the message that the deprivation of sight for security reasons had an incidental benefit of maintaining the shock of capture. Finally, so far as the JSIO is concerned, I find there was a wholesale lack of doctrine in interrogation and a lack of legal assessment of JSIO training.

Op Telic.

The use of hoods of prisoners surfaced in the early stages of Op Telic and attracted the attention of the ICRC. Major General Robin Brims, the General Officer Commanding of 1 (UK) Division, when he became aware of
instances of hooding of prisoners, took the pragmatic
decision to ban all hooding; pragmatic because at that
time there was no legal consensus on whether hooding was
legal or illegal and in what circumstances this practice
might be legal. At about the same time, the National
Contingent Commander also gave such an order.

Brims' order was an oral order. The evidence shows
that the cascading down of this order to subordinate
units appears to have been distinctly patchy. The
original verbal order does not appear to have reached
the First Battalion of the Black Watch (1 BW). A later
Fragmentary Order (FRAGO) referring to the prohibition
on covering prisoner's faces, I find, did reach them.
However, that order was firstly not put into effect
consistently by all elements of 1 BW, and secondly was
not successfully communicated between 1BW and 1 QLR in
their handover.

During the course of 1 QLR's recce to Basra in
May 2003 and at the handover between 1 BW and 1 QLR,
I find that a number of 1 QLR officers and soldiers saw
civilians who had been hooded by 1BW personnel. In view
of the ban on hooding issued by Brims, this practice
should have ceased. However, it may be that what some
members of 1 QLR saw may have influenced them in how
they treated prisoners.
The Brigade Sanction.

In late June 2003, 1 (UK) Division issued FRAGO 29. This FRAGO created at Battlegroup level a new post of the Battlegroup Internment Review Officer (the BGiro). Hereafter the BGiro was after at Battlegroup level for deciding whether those civilians arrested by the Battlegroup should be released or sent to the TIF for further questioning. FRAGO 29 also provided a 14-hour time limit at the end of which prisoners should either be released, or transferred to the civilian police, or sent to the TIF. In order to assist the BGiro to make this decision, a practice developed in theatre whereby the BGiro could be assisted by trained tactical questioners. In 1 QLR's case, it had no trained tactical questioners attached to it. Such men would have been sent to 1 QLR from 19 Mechanised Brigade (19 Mechanised Brigade), its superior unit.

Major Anthony Royce was the first 1 QLR BGiro.

I find that he spoke separately to both Major Mark Robinson, head of 19 Mech Brigade's intelligence cell, and Major Russell Clifton, the 19 Mechanised Brigade legal officer about procedures to preserve the shock of capture, conditioning, during the interval between the arrest of civilians and the arrival of tactical questioners at BG Main. There was a dispute
between all three officers as to whether any such conversations took place and if so, what was said.

I find that each of these conversations were "passing conversations" of short duration. I find that Robinson told Royce that hooding was permissible and that Clifton, if he did give any advice on stress positions, is likely to have said that stress positions would have been permissible in some circumstances, if approved by a subject matter expert. I find that following these conversations, Royce genuinely believed that he had received some assurance from Brigade that the practices of hooding and stress positions for the purpose of conditioning detainees before they were questioned was lawful and permissible.

Thereafter, hooding continued to be used by 1 QLR and I find that along with a form of stress position, this became a standard operating procedure at 1 QLR for prisoners suspected of having been involved in the insurgency. This explains why these Detainees on their arrival at BG Main were hooded and placed in stress positions.

I find that hooding and stress positions as a form of conditioning were wholly unacceptable in any circumstances. In addition, they carried the risk of young soldiers using unjustified force when enforcing
stress positions.

The loss of knowledge of the Heath Statement and the ban on the five techniques does not provide an excuse for the treatment of these Detainees. All the guards and other officers and men who were aware of what was going on in the TDF must have realised that the treatment of the Detainees was wrong. Assaults on them could never be justified. But if the ban on the five techniques had not been lost, and had it in 2003 been the subject of policy, doctrine and training, it is in my view inconceivable that hoods and stress positions would have been used on these Detainees. That loss provides a not insignificant background to the events of the 14th to 16th September 2003.

Recommendations.

I have made 73 separate Recommendations. I say separate, but a number of closely linked. This is more than ideally I would have liked. But I regard all as important. A large number are short and, I believe, simple to implement (see, for example, Recommendations 1 and 2). However, it may take longer for others to be implemented. No doubt those which involve alterations in training (Recommendations 47 onwards) fall into this category. I might add that in my view steps should be taken immediately to set in train the implementation of
such recommendations so that they come into effect as soon as possible.

My recommendations include the important requirement that each unit should designate an existing officer as a Detention Officer, so that there is a clearer line of responsibility for ensuring prisoner welfare. Further, I make a range of specific recommendations to deal with what I see as very necessary improvements to tactical questioning and interrogation training.

Length of the Inquiry and costs.

This publication of the Report is made just over three years from the date the Inquiry was set up. Throughout the whole of this period I have been conscious of the need for the Inquiry to be conducted as expeditiously as possible. It is for others to judge whether this was achieved. For myself, at the outset, I would have hoped for this time span to have been shorter. But the work of the Inquiry has been considerable. Some 10,600 documents were disclosed on Concordance, but many more had to be assessed for relevance. The Inquiry obtained witness statements from 388 potential witnesses. Of those 277 were called to give oral evidence. The remaining 111 witness statements were read into the transcript. In addition to calling witnesses, the Inquiry was engaged in
directions hearings, legal arguments on various issues, and closing submissions which, together with the Counsel to the Inquiry's Opening Statement and the Module 4 hearings, make a total of 115 sitting days.

Perhaps I might also be forgiven for stating that the task of writing the Report was not inconsiderable.

The total cost of the Inquiry is not yet final, but the figure will be just over £13 million. Once again, I recognise that this is a substantial sum. But throughout the Inquiry the Secretary, Lee Hughes, together with his deputy, Frances Currie, have kept a close eye and control on costs. They have done their best to keep them to the minimum. We are within budget which was allocated to us at the outset in the figure of £17 million.

Inquiries such as this one are expensive. I like to think that the Inquiry has done its best to keep the cost as low as possible. However, it would be wrong for me to give the impression that the costs are restricted solely to the Inquiry's costs. The cost to the MoD as a whole will be greater when account is taken of its work as a Core Participant in the Inquiry, and as the entity paying for a large number of the Core Participants' representation.

Finally, in final comments in this statement,
I paraphrase a passage which appears in Chapter 1 of Part I of the Report. I have been very conscious that throughout the whole of the time of this Inquiry a fierce conflict has been conducted in Afghanistan involving soldiers of the British Army and other national forces. Casualties have been heavy. Hardly a week has gone by without some reference in the media to the death or serious injury of members of the Armed Forces. I have also been acutely conscious of the additional pain and stress which this Inquiry has put on members of the Armed Forces and the MoD. I am also conscious that criticisms made by me may seem to some, not only those in the Armed Forces, particularly ungrateful and insensitive. On the other hand, there has been a clear need to expose the wrongs which have been done to the Detainees and their families.

It has to be appreciated that the events described in the Report represent a very serious and regrettable incident. Such an incident should not have happened and should never happen again.

Captain Gareth Seeds, 1 QLR Operations Officer at the time, in evidence was asked by Counsel to the Inquiry, as were a number of witnesses, his reaction to what had happened. He confirmed that in his Inquiry witness statement he expressed his anger at what he had
seen in the TDF on his visit shortly after Baha Mousa's death. He agreed that in his witness statement he had said:

"It seemed to me at the time that this treatment would undermine all the hard work we had done to win the support of the Iraqi people for our operation in their country."

And in oral evidence, he added succinctly:

"Everything we did was undone in an oner."

General Sir Michael Jackson, the Chief of the General Staff from 2003 to 2006, when asked the same question, said he was on record ... "in the aftermath of the dreadful events that led to the death of Baha Mousa of saying 'this is a stain on the character of the British Army'."

I agree with both these observations. The events of 14 to 16 September 2003 were indeed a very great strain on the reputation of the Army and no doubt they did, at the time, greatly damage some of the good work done by 1 QLR and other units in Iraq.

My judgment is that they constituted an appalling episode of serious, gratuitous violence on civilians, which resulted in the death of one man and injuries to others. They represented a very serious breach of discipline by a number of members of 1 QLR.
Now, that is the end of my statement. What I have
to say next is for the internal consumption and anybody
who wishes to leave can leave now.

All I have to say, in fact, now, is to thank
everybody. I have done so in the report, thanked all in
the Inquiry team who have worked prodigiously
throughout. I have also thanked all those representing
the core participants who have done no less work
throughout and who have been extremely cooperative with
all concerned, which has made it much easier to conduct
the Inquiry.

Those who I have not properly thanked are those who
are responsible for the administration of 1 Finlaison
House. They have also been extremely cooperative. Very
kind. They have kept the Inquiry room and the offices
of the Inquiry and the building open until late hours in
the evening on weekdays and at weekends. Without them
we simply could not have got through the work and I am
extremely grateful to them.

That is all I have to say. Thank you all very much.

(11.39 am)

(The Inquiry concluded)