

**Baha Mousa Public Inquiry**  
**Supplementary Submissions for Appleby**

We respectfully submit that it would not be reasonable to suggest that Thomas Appleby's mistreatment of D005 contributed to his PTSD.

First Thomas Appleby's treatment of D005 was carried out pursuant to orders, and although it will be a matter for the Inquiry to determine the extent to which orders of the type carried out by Thomas Appleby were known to MOD, it is (for the reasons given in opening and closing submissions) a defence for soldiers in the position of Appleby to rely on orders reasonably believed to be lawful. There is agreed evidence that Appleby was following direct orders from Smulski (Appleby BMI 25/57/6 – 59/22 & Smulski BMI 41/23/13) which both he and Smulski reasonably believed to be lawful. In these circumstances it would not be fair to criticise Appleby for these actions. Indeed Appleby could have faced sanctions if he had not followed his orders, and the system for governance in the army would break down if he had refused to follow his orders.

Secondly it is not possible to say that the actions carried out by Appleby contributed to D005's PTSD. Dr Essali's report does not, in its description of the index event at pages 4-6 of the report [PIL000481-483], include a description of Appleby's treatment of D005, and this was a description of the index event given by D005 (page 4 of the report [PIL0000481] under the heading 'The index event'). This suggests that Appleby's actions did not feature in D005's assessment of what had contributed to the index event. Further Dr Essali's conclusion was that '*the index event* and its consequences seem to be the most probable cause for Mr [D005]'s psychiatric problems' (page 9-10 of the report [PIL000486-487]) (emphasis added). Given that the description of the index event does not include Appleby's treatment of D005, there is in the circumstances no medical support for the proposition that Appleby's treatment of D005 contributed to his psychiatric state.

If a different interpretation is to be put on Dr Essali's report it might be noted that it is not clear that it should be taken as the definitive conclusion about the extent of or causation of D005's PTSD. It is known that the MOD obtained other medical evidence inconsistent with the conclusions set out by Dr Essali in relation to other detainees, see for example the report from Professor Simon Wessely on D006 [MOD045286\_R]. It is not known whether any other reports were obtained by the MOD in relation to D005.

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**James Dingemnas QC  
Clair Dobbin  
Kingsley Napley LLP**

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