
FURTHER SUBMISSIONS ON BEHALF OF GEORGE BRISCOE

1. For the reasons given below Capt Briscoe (WO1 at the time) cannot fairly be held responsible for any ill-discipline of soldiers and officers in 1QLR generally, or for the events of 14-16 September 2003 in the TDF in particular. In short, he cannot properly be criticised in respect of events that he could not reasonably have known about, nor should the fact that his role during Op TELIC 2 was not that which the RSM would traditionally undertake count against him:
 - a. Any criticism of Capt Briscoe which is predicated on the traditional responsibilities of the RSM is unfair, because following the creation of the BGIRO post, Capt Briscoe was not a traditional RSM, and was taken out of the chain of command for the provost staff and detainees.
 - b. Furthermore, Capt Briscoe was predominantly preoccupied with command of a second vehicle in the CO's TAC group. He would spend up to 18 hours a day with the TAC, and 70% of his time out of the camp.
 - c. In any event, prior to Op Salerno Capt Briscoe had no reason to be concerned about the way detainees were treated in the TDF or generally. There was no 'culture of violence' in 1QLR (see generic submissions page 143-149), and before Operation Salerno, some 60 to 70 internees were processed by 1QLR and delivered to the TIF, without any evidence of mistreatment (see generic submissions page 142-143).

Capt Briscoe's responsibilities in Op Telic 2 generally

2. Capt Briscoe should not be singled out for criticism on the basis that he was the RSM, because at the material time, he was not undertaking the RSM role as it was traditionally understood in relation to provost staff or detainees.
3. It is clear that following the creation of the BGIRO role at the outset of Op TELIC 2, the BGIRO had total responsibility for the TDF at BG Main, and the RSM had no formal responsibility at all for the provost staff, the TDF, or detainees held there. This was the clear and consistent evidence of Capt Briscoe [BMI 43/107/23], and of all those others who were directly concerned when the BGIRO role was introduced – the CO Col Mendonca, the Adjutant Maj Moutarde, the BGIRO Maj Royce, and the Provo Sgt, Sgt Smith.
 - a. **Col Mendonca** said that following creation of BGIRO role, he took RSM Briscoe "out of the loop" in so far as responsibility for the TDF and detainees was concerned [Mendonca BMI 59/117/13], as he did not envisage the BGIRO requiring the services of the RSM in conducting his duties [Mendonca BMI 59/117/22]. The BGIRO "would be responsible for all aspects of detainee handling" [Mendonca BMI 59/118/2].

- b. **Maj Moutarde** likewise stated that early in tour, there was a change in practice with the establishment of the BGIRO. The BGIRO was responsible for the processing and the handling of detainees, assisted by Provo Sgt and Provo Cpl [Moutarde BMI 54/75/3]. The RSM, like the adjutant, under the new system had no responsibility for detainees [Moutarde BMI 54/78/16].
 - c. **Maj Royce**, the BGIRO, was absolutely clear what his responsibilities were and that the RSM had no part in them. The role of BGIRO put him in command of the TDF, and he “had total responsibility for it and all that happened therein” [Royce BMI 57/32/5]. In contrast, the RSM “didn’t have any responsibilities at all” for the TDF [Royce BMI 57/32/8], and had no specific tasks in relation to the TDF [Royce BMI 57/34/13]. Therefore as to the guard force, “whilst they were at Battlegroup Main, they would effectively be under my command and under Sergeant Smith” [Royce BMI 57/33/22].
 - d. **Sgt Smith**, the Provo Sgt, was similarly clear that the chain of command above him changed with the appointment of the BGIRO. Thereafter, he reported to BGIRO [Smith BMI 44/88/20, 44/90/2], and it would be from Maj Royce that he would get instruction as to how detainees were to be kept [Smith BMI 44/90/22]. The RSM was mainly out of the equation, and was with the CO’s TAC group [Smith BMI 44/91/4].
4. The only direct suggestion to the contrary comes from Maj Peebles (who had a clear motive to spread the blame). The only other evidence is general opinion derived from what an RSM’s role conventionally would be and is therefore of little weight.
- a. In evidence which was plainly self-serving, Major Peebles suggested that the RSM was in charge of Sgt Smith [Peebles BMI 40/193/3], and elsewhere that “the fact that there wasn’t a guard book and a register and so on at the TDF, I didn’t see as being a Royce responsibility or a Peebles responsibility. That is a day-to-day business of the RP staff and the RSM in my view” [Peebles BMI 40/194/2]. As BGIRO at the time of Baha Mousa’s death, Maj Peebles has an obvious motive for suggesting that the BGIRO did not have full responsibility for detainees, and, as a corollary, that the RSM *did* have that responsibility. In light of the clear and consistent evidence of every other officer directly involved, Maj Peebles’ evidence on this point is simply not credible. Even his own evidence was inconsistent on the issue: the chain of command diagram at MOD048028 clearly shows the BGIRO with a control and co-ordination function over RP Sgt and RP Cpl [Peebles BMI 40/192/17].
 - b. The evidence of those not themselves involved in the system carries little weight. Because they were not directly involved, their evidence necessarily took the form of assumption, proceeding on an understanding of what an RSM’s role normally is. For example, CSgt Livesey said that he was not aware whether the RSM retained responsibility for RP staff with regards to detainees after the creation of the BGIRO role [Livesey BMI 39/90/9]. In giving his evidence, “I was just going off the way we did things normally.” [Livesey BMI 39/90/9].

5. Not only was Capt Briscoe not an RSM in the conventional sense because he had been 'taken out of the loop' of the chain of command for the provost staff, but his capacity to undertake his residual duties as an RSM were very heavily constrained by the burden of the duties assigned to him as part of the TAC team by Col Mendonca.

a. Capt Briscoe commanded the second vehicle of the TAC team, and was with the TAC team in excess of 18 hours a day with the TAC [BMI 43/117/25], and out of camp 70% of time [BMI 43/174/18]. This evidence is unchallenged, and precludes any fair finding that Capt Briscoe would have been able to keep abreast of everything significant that was going on in 1QLR, across the five companies and four locations in Basra.

b. Col Mendonca himself acknowledged that his decision to keep Capt Briscoe in the TAC team to the extent he did necessarily diminished his ability to undertake the traditional role of an RSM in keeping up with matters of discipline and conduct in the battalion:

"In answer to your question about sharpening my antenna, it can only be a with hindsight comment that I might have released my regimental sergeant major from the TAC group and allowed him a freer hand perhaps." [BMI 59/202/8]

6. Capt Briscoe fairly acknowledged that an RSM's traditional responsibilities included keeping "his ears open and eyes open" [BMI 43/175/4], and that he retained a passing interest with everything in the BG, including detainees [Briscoe BMI 43/115/15]. But that does not alter the fact that, following the creation of the BGIRO role, he did not have any particular responsibility for the provost staff, TDF or detainees, and that his ability to undertake his residual RSM duties was severely curtailed by his duties in the TAC group.

7. Furthermore, criticism of Capt Briscoe presupposes that there was a significant amount of ill discipline by officers and soldiers of 1QLR, prior to Operation Salerno. But the evidence in relation to specific allegations of violence, has been insufficiently compelling to warrant a finding of a 'culture of violence' safely to be made. Moreover, many of the alleged incidents are self-evidently implausible. For example, S038 alleged that while a weapons haul was being laid out at B Coy, the CO Col Mendonca *"walked around the corner of building and went straight up to the oldest one of the prisoners, where they were still standing under the shade. He then punched him in the side of the face and called him a 'terrorist fucker'. I do not know who else was with the CO at this time but he did this in front of approximately 120 personnel of all ranks."* [BMI04272]. It is inconceivable that if the Commanding Officer had openly assaulted a prisoner in that way, news of it would not have been immediately around the battalion, and probably found its way to brigade – as Col Mendonca himself noted, *"if that incident had happened, I cannot imagine how the brigade commander would not have become aware within 24 hours."* [Mendonca BMI 59/60/19].

8. Likewise, the evidence is that 60-70 detainees had been processed and delivered to the TIF by 1QLR prior to Operation Salerno without incident. S018, the 2iC of the JFIT during Op TELIC 2 (who it is submitted was a highly credible witness), was 'seething with anger' when he saw the state of the Salerno detainees on delivery to the TIF [S018 BMI 43/55/24], and took immediate action, questioning Lt Rodgers as to why they were so badly injured [BMI05405], and ensuring that they received adequate medical treatment. In the light of his concern for the welfare of internees delivered to the TIF, and his preparedness to challenge those from battlegroups delivering them, manifested in this episode, it is highly relevant that he remembers no prior instance of internees arriving injured from 1QLR [MOD000592]. In his evidence he observed: *"1QLR were generally a very good unit when it came to bringing prisoners in and taking them away, so this whole incident rather came as a shock that it was 1QLR because, up to that point, we had had very good relations with them. They had always seemed, when they arrived at the TIF, to be a well-disciplined unit"* [S018 43/77/3].

Operation Salerno

9. Similarly, no criticism can fairly be levelled against Capt Briscoe for not discovering prior to Baha Mousa's death that the Operation Salerno detainees were being abused.
 - a. Capt Briscoe at the time had no particular responsibility in relation to the provost staff, the TDF and detainees, having been replaced in the chain of command by the BGIRO. The BGIRO's responsibility was clear, and Maj Peebles' evidence to the contrary is self-serving and not credible.
 - b. Capt Briscoe was occupied with the TAC team, and out of BG Main, for the majority of both Sunday and Monday.
 - c. While he accepted that he had spoken to Cpl Payne early in the morning, directly after breakfast (which started at 5pm) [BMI 43/126/2] and could see vaguely beyond him into the TDF [BMI 43/124/11], he did not see anything that caused him concern; he reasonably expected that the couple with hoods on their heads were hooded because they were to be moved imminently for tactical questioning [BMI 43/125/19].
 - d. The fact that he had no concerns as regards the detainees must be considered not with the benefit of hindsight, but in the context of the time. That context included the facts that prior to Operation Salerno, previous detainees had been processed and delivered to the TIF by 1QLR without incident; nothing had caused him concern as to how they had been treated at the TDF when he visited on occasion [BMI 43/117/20]; and he was not aware of, nor had any reason to suspect, casual violence being used against detainees [BMI 43/138/9].
 - e. Indeed, rather than being a reason to single him out for criticism, the nature of the role Capt Briscoe had during Op TELIC 2 meant he spent far less time in BG Main, and in the vicinity of the TDF, than many others at BG Main,

including more senior officers. In fact, he had far less reason, or opportunity, to discover that the Operation Salerno detainees were being abused than those soldiers and officers who predominantly remained in BG Main.

10. Likewise, the fact that Capt Briscoe did not go to the TDF on return to BG Main on the night of 15 September, after Baha Mousa's death, is not something for which he should be criticised or from which adverse inferences can fairly be made. He reasonably took the view that it was not necessary for him to get involved, given that:
 - a. The adjutant was already in camp [BMI 43/130/22];
 - b. The commanding officer was going to get apprised of the situation [BMI 43/130/24];
 - c. The SIB would be involved and his understanding of normal protocol was not to get involved himself in undertaking investigations and questioning individuals [BMI 43/131/5]. Capt Briscoe was not questioned in respect of this understanding, and cannot properly now be criticised because of it;
 - d. At that point his understanding was that the death was attributed to natural causes [BMI 43/134/8];
 - e. He had not returned to camp until some hours after the death [BMI 43/130/22], having been up since around 5am [BMI 43/126/2]; and
 - f. He was not, as RSM, directly responsible for the TDF, detainees or provost staff.
11. Again, while in retrospect the fact that Capt Briscoe did not go to the TDF may seem surprising, at the time, and without the benefit of hindsight, it was understandable for the reasons given above and not something for which he can fairly be censured.

Conclusion

12. In conclusion, it is submitted that Capt Briscoe should not be made the scapegoat for events for which he was no more responsible than anyone else at BG Main. In particular, he should not be singled out for criticism on the basis that he was the RSM, because at the material time, he was not undertaking the RSM role as it was traditionally understood in relation to provost staff or detainees.