

IN THE BAHA MOUSA INQUIRY
SUPPLEMENTARY SUBMISSIONS ON BEHALF OF MR RODGERS

MATTERS BASED ON THE EVIDENCE OF RICHARDS

1. The incident related by Lee Richards was not included in Lee Richards' witness statement. The reason that he gave for not providing details about this and other incidents in his witness statement (namely that he didn't want to get people in trouble (day 31, page 162, lines 20-21) did not make sense. This was because he had already named Redfearn in his witness statement as carrying out wrongful actions (paragraphs 24, 48 and 56 of the witness statement – BMT04156_R). Richards could offer no explanation for apparently remembering the alleged wrongdoing of Redfearn, but at the same time not wanting to get anyone into trouble (day 31, page 163, line 2). Indeed there is no reasonable explanation. Richards did not accept that he did not like Redfearn, saying that he liked Redfearn (day 31, page 163, line 16). (As is known, Redfearn alleges that Richards bore a grudge because Redfearn had told Richards off for freezing at an incident when the Saxon was surrounded, and because Redfearn not only reported Richards' negligent discharge but also documented it with photographs). This means that there are two possibilities: either Richards was not telling the truth about having no grudge against Redfearn, and this was the reason for referring to Redfearn but not Rodgers in his witness statement; or Richards had no reasonable explanation for not referring to this wrongdoing at an earlier stage, particularly

when he had signed his earlier witness statement with a statement of truth. On either basis it is simply not safe to rely on his evidence.

2. Other difficulties with Richards' evidence included his evidence about the date and timing. He knew the date of his return to the UK (Monday 15 September) and said he had attended the TDF on the day before his departure (day 31, page 124, line 16), which would have meant that he was at the TDF on Sunday. However he said he arrived at the TDF in the early morning at 6 am (day 31, page 125, line 18), which was not possible. Even after further questioning from the Chairman (day 31, pages 177-181) the position was unclear.
3. If it is assumed in Richard's favour that he was describing events on the Monday, his evidence was still impossible to reconcile with other known evidence. For example he described the whole of the multiple being present, save for Rodgers (day 31, page 126, lines 24-25). The evidence showed that the whole of the multiple was not present save for two short periods on Sunday and Monday night. Richards also described no one else as attending the TDF, and said he was around the TDF the whole day and would not have missed anyone and no one could have gone into the TDF without him seeing them (day 31, pages 165, lines 11-23), whereas there was clear evidence that others visited. It is perfectly understandable that a witness should make errors about dates and times, but Richards did not accept there were errors. At the least it demonstrated real unreliability which extends to all of Richards' evidence.

4. His evidence about assaults in the back of the Saxon in paragraph 24 of his witness statement was also impossible to reconcile with his evidence about his driving position (crawling over the engine, effectively detached from the back of the vehicle, wearing a helmet and headphones (day 31, page 160 line 21 – page 161, line 5)). When this was pointed out he changed his evidence to say that this did not happen when driving (day 31, page 161, lines 7-8), but this was impossible to reconcile with his witness statement where he said that Rodgers had not seen matters because he was up front in the cab of the vehicle and that “*LCpl Redfearn however travelled in the back with the rest of the multiple*” (paragraph 24 of the witness statement – emphasis added). Richards then suggested that there were lots of incidents, that the incident in the vehicle was when he turned round, and that other incidents occurred at the check point (day 31, pages 161-162). Either Richards’ evidence to the Inquiry was unreliable and poorly recollected, in which case no sensible reliance should be placed on it, or he was making it up, which leads to the same result.

5. A further difficulty with Richards’ evidence is that in any event Redfearn would have been commanding his own Saxon and not in the back. Richards’ recollection about detainees lying on their back with their feet in the air about which he was “*absolutely certain? Yes*” (day 31, page 167, lines 9-21) is completely inconsistent with all of the other evidence in the case.

6. In all of these circumstances it is respectfully submitted that no proper reliance can be placed on Richards' evidence about the incident at the VCP. He did not have the benefit of making a contemporaneous witness statement. He demonstrated that his recollection was unreliable. He has made errors in describing matters which should have been less susceptible to error caused by the passage of time.

7. Following Richards' evidence, Rodgers provided a further written statement to the Inquiry in relation to an incident at a Vehicle Checkpoint that Richards described in his evidence to the Inquiry (BMI07172). In that statement Mr Rodgers states "*This allegation is completely untrue. Each multiple would be tasked to man a specific VCP and there would not be anyone from another multiple present. It was common that interpreters were threatened, but the alleged treatment of the civilian did not happen in my presence and I would certainly not have ordered such behaviour.*" Rodgers does not recollect ever working with Jordan on any VCP (and Rodgers recollects Jordan was part of 3 Platoon). The Inquiry, which is the best position to check these matters, should be able to verify that from records. We understand there were records maintained of names and ZAP numbers for each patrol.

8. It has been suggested that this may have been a reference to an incident described in Pte MacKenzie's diary for 27 July 2003, but this is also not sustainable. First Richards did not describe McKenzie as having been involved at all, which is not

the description in the McKenzie diary. Secondly McKenzie's diary does not seem to describe Rodgers as having any involvement. Thirdly there is no evidence which has been provided to the KN core participants and witnesses to suggest that McKenzie has ever suggested that is the proper interpretation of his diary. Fourthly it seems that inquiries in relation to Jordan have not yielded any evidence. Fifthly McKenzie has, in any event, confirmed in evidence that his diary is not a reliable document and on occasions has been embellished and exaggerated.

9. In this last respect MacKenzie accepted in his witness statement that it was possible that he had overstated events in his diary [MacKenzie BMI1053, para 79], and he confirmed in his oral evidence that matters had been overstated in his diary for effect. MacKenzie accepted before the Inquiry that several of the incidents portrayed in his diary were exaggerated and that the force used was appropriate [MacKenzie BMI29/223/18]. Although it is plainly right to consider contemporaneous documents, and assess whether they are accurate, there are very many examples over history in which participants in military campaigns have been tempted to embellish the difficulties, dangers, violence and their part in affairs in contemporaneous descriptions. In the light of these examples, a diary kept by a private soldier which the soldier himself has admitted was exaggerated, is not a sound basis for making findings of fact of the type suggested in the letter. It is respectfully submitted that for all these reasons, it would be unsupported speculation to draw this as a conclusion.

10. Finally, without repeating matters set out in earlier submissions, it might be noted that Rodgers was highly regarded by many soldiers and by many above him in the chain of command (see for example para 186, SUB000801). His soldiers regarded him as in control and quick to react to disciplinary matters (see for example para 187, SUB000802). This was supported by evidence from third parties such as the Padre.

MATTERS BASED ON THE EVIDENCE OF REDFEARN

11. It is respectfully submitted that Rodgers' evidence about his knowledge of conditions in the TDF should be accepted. It is clear, from all the evidence, that he was not a frequent visitor to the TDF over the period 14-16 September 2003, and the evidence shows that he was involved with other operations at this time and planning other operations at this time. It is also clear, from all the evidence, that when members of his multiple were guarding at the TDF, they were under the immediate command of the Provost Staff (in particular Payne) and, although Rodgers subjectively believed that that chain of command led up to the RSM (day 30, page 18, lines 15-16), the chain of command actually led up to Peebles as BGIRO, meaning that Peebles was responsible for supervision at the TDF.

12. Rodgers made it clear to the Inquiry that he was aware of bruising which he had been shown on one detainee (day 30, page 30), and of the use of hooding and stress techniques on the detainees.

13. It was Payne who informed Rodgers that the detainees had to be kept in positions of discomfort prior to TQing and that the Brigade TQers had given this order [Rodgers, BMI01844 para 104].
14. Rodgers also made it clear in his statements and evidence that a material part of his thinking about the continuation of the stress positions was that *“given neither the CO or RSM took action to change the position or condition as I observed ... I did not find it necessary to take any action myself ... that’s correct, sir”* (day 30, page 58, lines 5-17).
15. In these circumstances it is respectfully submitted that Redfearn’s recollection of his conversation with Rodgers is very likely to be a conflation of what Redfearn accepted was Redfearn’s knowledge of what was going on, with what Rodgers was referring to about Rodgers’ and the general knowledge of the hooding and stress conditions.
16. It is respectfully submitted that it was the processes of hooding and conditioning, together with the influence of Payne, that led to the corruption of the guard, so that some (but certainly not all) then carried out assaults.

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