

# Summary of Findings

1. Baha Mousa was a 26 year old Iraqi. He was a hotel receptionist in Basra and father of two young children. His wife died in February 2003, a month before British Forces took part in Op Telic. Early in the morning of Sunday 14 September 2003, Baha Mousa was arrested following a weapons find on Op Salerno, a series of hotel searches carried out by British Forces in Basra. Along with others, Baha Mousa was taken to the Temporary Detention Facility (TDF) at Battlegroup Main (BG Main), the headquarters of 1 Queen's Lancashire Regiment (QLR). He arrived at the TDF at about 10.40hrs that Sunday morning. He spent the most part of the next 36 hours "hooded" with a hessian sandbag over his head. He was forced to adopt "stress positions", a term used to describe any posture which someone is forced to maintain which becomes painful, extremely uncomfortable or exhausting over time. Both techniques had been banned as aids to interrogation more than 30 years earlier. During his detention, Baha Mousa was subjected to violent and cowardly abuse and assaults by British servicemen whose job it was to guard him and treat him humanely. At about 21.40hrs on 15 September 2003, following a final struggle and further assaults, Baha Mousa stopped breathing. By that time he was in the centre room of the TDF, a small disused toilet, quite unfit as a place to hold a prisoner. All reasonable attempts were made to resuscitate Baha Mousa, to no avail. He was pronounced dead at 22.05hrs. A subsequent post mortem examination of his body found that he had sustained 93 external injuries. Nine other Iraqis were detained with him. All were subject to significant abuse. They all sustained injuries, physical and/or mental, some of them serious. These grave and shameful events were the subject of this Public Inquiry.

## The Purpose and Approach of this Summary

2. This Report is a lengthy document and therefore it seems to me appropriate and sensible to provide a Summary which sets out comparatively briefly my findings and conclusions relating to the more significant aspects of the Inquiry. It is not intended to be a substitute for the full Report, still less a Summary of all that I have considered and reviewed. Further, this Summary will not refer to the detailed evidence, whether of witnesses or documentary exhibits, as the full referencing will be found in the relevant Parts of the Report.
3. It follows that important matters may not be referred to here at all or only dealt with in part. This Summary takes a relatively broad approach and an editorial line demanding brevity and for obvious reasons, therefore, I do not repeat all the issues or detail which appear in the main body of the Report. I should make it clear, that if this brevity results in any actual or perceived shade of difference of meaning or emphasis as between the Summary and the full Report, it is the latter which fully and accurately expresses my intended findings and conclusions. Further, I point out that when it comes to criticism of individuals, it is very important that reference is made to the full text of the criticism in the appropriate Part of the Report.
4. Similarly, since the Introduction at Part I of this Report sets out a brief history leading to the setting up of this Inquiry as well as outlining my tasks and my approach to them, I need not repeat the matters there set out.
5. The issues addressed in this Summary need to be understood in the operational context in which they occurred: the tempo of operations; the poor state of the local

civilian infrastructure; a daily threat to life from both civilian unrest and an increasing insurgency; the deaths of fellow service personnel and incessant oppressive heat. In combination these factors made huge demands on soldiers serving in Iraq in 2003 as I detail in Part I Chapter 4 of this Report.

6. In this Summary, I propose to summarise as fairly as I can the events of 14 to 16 September, setting out in general terms my findings and comments on the responsibility of individual members of 1 QLR. I propose also to set out these events in the context of the historical background of the prohibition on the so-called “conditioning techniques”, how relevant doctrine and guidance then developed, leading up to the orders and guidance that were in place before Op Telic. I shall also review my findings on teaching and training and its adequacy in respect of prisoner handling and the Law of Armed Conflict (LOAC), touching upon issues relating to those responsible for training and carrying out tactical questioning and interrogation. In addition I shall briefly turn to events in Iraq, and the pre-invasion orders and guidance developed, including in the handover between units and formations between Op Telic 1 and Op Telic 2. I will consider the knowledge and use of conditioning techniques and what has been termed the Brigade sanction. Finally, I shall make reference to the events following the death of Baha Mousa.
7. The order of the matters summarised, with some exceptions, follows the order of the Parts of the main Report.

## The Events of 14 to 16 September 2003 (Part II)

### The Arrests and Transfer to BG Main and the TDF

8. On 14 September 2003, 1 QLR undertook Op Salerno, an operation seeking to identify and arrest specific individuals suspected of being former regime loyalists (FRLs) involved in terrorist activities in Basra. It involved searches of hotels thought to be harbouring these individuals. One of the hotels searched by 1 QLR was the Hotel Ibn Al Haitham (the Hotel). 1 QLR did not find any of the targeted individuals there, but following the discovery of weaponry and other suspicious items it arrested seven male Iraqi civilians, including Baha Mousa, at the Hotel.
9. The search and arrests were carried out inside the Hotel by a multiple from A Company, 1 QLR with the radio call-sign “G10A”. The multiple was commanded by Lt Craig Rodgers and has therefore come to be known as “the Rodgers Multiple”.<sup>1</sup> Another multiple under the command of CSgt Christopher Hollender, but on this day commanded by Cpl Kelvin Stacey, provided perimeter security outside the Hotel. The brigadier who commanded 19 Mech Bde, of which 1 QLR was a part, Brig William Moore, was present for at least a part of the operation, observing from the roof of the Hotel. 1 QLR’s Commanding Officer, Lt Col Jorge Mendonça, and the soldiers who accompanied him on patrol, known as his TAC group, were in the Hotel’s vicinity.
10. These seven Detainees were employed or connected with the Hotel as follows: D001 as a cleaner and part-time guard; D002 as night watchman; D003 as the restaurant manager; D004 with responsibility for the generator; Kifah Matairi as the electrician;

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<sup>1</sup> The expression “the Rodgers Multiple” has been used as convenient short hand for the Inquiry to describe G10A. Findings relating to individuals within the Rodgers Multiple do not imply findings relating to Craig Rodgers unless that is explicitly stated.

Ahmad Matairi as a co-owner of the Hotel; and Baha Mousa as the night receptionist. C001, the son of another co-owner, D006, was initially present at the Hotel but escaped.

11. The search of the Hotel revealed a number of weapons, ammunition, grenades, other military equipment, money, and fake identification cards. It was after these items were discovered, some of them concealed within a telecommunications shop in the premises and under his control, that C001 fled.
12. The Detainees make allegations of ill-treatment in the foyer and degrading treatment in the toilet at the Hotel, the detail of which I set out in the Report. To a limited extent some soldiers confirmed that there were relatively minor assaults and others that some Detainees were taken to the toilet.
13. In respect of the events at the Hotel, I conclude the following. The nature of the weaponry and military paraphernalia discovered justified the decision to arrest these Detainees. However, I regard it as highly unlikely that the Detainees or any of them were in fact involved in insurgent or terrorist activity.
14. Notwithstanding inconsistencies in the evidence of the Detainees concerning events at the Hotel, I find that there were some low-level assaults on some of the Detainees while they were lying on the floor of the reception area. Further, some of the Detainees, even if not all, were taken to the Hotel toilet area, and it is likely they were taken there in order to humiliate them. I am satisfied that toilet water was flushed over at least some of the Detainees.
15. Although I consider that some of the soldiers must have known about the abuse at the Hotel, and some must have taken part in it, the lack of satisfactory evidence makes it impossible and unfair to identify any particular soldier.
16. The 1 QLR radio logs for that morning reveal that guidance was sought by A Company in relation to the manner in which the Detainees were to be conveyed from the Hotel for tactical questioning. It was directed that the Detainees were not to be hooded and at this stage they were not. At around 10.00hrs, D001, D002, D004, Baha Mousa, Kifah Matairi and Ahmad Matairi were taken by truck to 1 QLR BG Main. They were to remain at BG Main for approximately 48 hours, until they and the other Detainees were transferred to the Theatre Internment Facility (TIF) at Um Qasr, 70 or so kilometres from BG Main.

## The Arrest of D006 and D005

17. D006 and D005 are respectively the father and brother of the escaped C001. After the escape, D003 indicated to Lt Michael Crosbie, the A Company Intelligence Officer, that he knew where C001 lived. D003 therefore went with Crosbie to C001's house. A forced entry, known as a "hard knock", was made on the house. I find that this was justified in the circumstances. I find that this violent entry resulted in broken and smashed furniture, but there is insufficient evidence to conclude that there was any physical mistreatment of D005 and D006, who occupied the house, while they were there.
18. D003, D006 and D005 were then taken to Camp Stephen, A Company's base. During this journey I find that an implied threat of physical violence was made to D003 by

Crosbie, and that an unidentified soldier struck D003 with a glancing blow to the face. It is possible that Crosbie did not see this assault.

## Events at Camp Stephen

19. D003 remained at Camp Stephen for only a short time before being transferred to BG Main. D005 and D006 were held at Camp Stephen for approximately two hours before being transferred to BG Main. D005 alleged that he was mistreated at Camp Stephen, although the detail of his allegations has varied in different accounts he has given. In respect of these allegations I accept that he was made to remain in a stress position for a lengthy period, but I am unable to make any finding of further abuse here.

## The Arrest of Maitham

20. Ahmed Maitham became the tenth Detainee when he was arrested at around 21:00hrs on Sunday night. Soldiers from B Company, 1 QLR, in a multiple led by Sgt Stephen Wilding, noted that the vehicle being driven by Maitham matched the description of a stolen vehicle. They found in the vehicle three AK 47 rifles, a quantity of ammunition, balaclavas and some paperwork. Maitham explained that his vehicle, with him in it, had been hijacked by armed men who had fled, leaving the weapons, after the car was involved in an accident.
21. Maitham was first taken to a local police station, and then to BG Main. Although Maitham has given inconsistent accounts of his treatment during this period and his explanation for the presence of weapons in the vehicle was implausible, I make no finding that he was involved in any insurgent activity. However, I reject the allegation that he made of mistreatment during his transfer to BG Main.

## Arrival at the TDF, 1 QLR BG Main

22. D001, D002, D004, Kifah Matairi, Ahmad Matairi and Baha Mousa arrived at BG Main at about 10.40hrs on Sunday 14 September 2003. They were received by Cpl Donald Payne, a member of the Regimental Provost Staff, and taken into an unfurnished building; the TDF. First D003, and then D005 and D006, were brought to the TDF later that Sunday. They were finally joined by Maitham later on Sunday evening.

## The detainees' accounts of their treatment

23. With a few exceptions, which I set out in the body of the Report, I found the Detainees' accounts of their treatment at BG Main to be broadly accurate. Omitting for now the aspects which I rejected, or making it clear where I have rejected their evidence, those accounts may be summarised as follows.
24. D001 described being hooded on arrival and soon thereafter being beaten and having his feet kicked into a stress position. He said that this treatment was continuous up to the time of Baha Mousa's death on Monday evening. D001 also referred to the Detainees being arranged in a circle on their knees, and soldiers going around the circle hitting and kicking the Detainees; causing them to emit groans and other noises and thereby playing them like musical instruments. This was undoubtedly a description

of a practice which was labelled by the soldiers who were involved as “the choir”. D001 recalled being given water, but only remembered being fed once, at breakfast on the second day.

25. D002 has suffered severe Post Traumatic Stress Disorder (PTSD) as a result of his arrest and detention in the TDF. Despite attempting on two separate occasions to give oral evidence to the Inquiry, it proved to be a very difficult and traumatic experience. I have no doubt that those difficulties were genuine. D002 nevertheless managed to confirm the truth of his Inquiry witness statement. He described having three sacks placed over his head and being forced to maintain a stress position. He was hit and kicked if he dropped his arms. He described being pulled up from the ground by the sandbag ties around his neck, which felt as if he was being strangled. D002 stated that he had been repeatedly hit on the head by the soldier accompanying him to and from his tactical questioning session. CSgt Robert Livesey has admitted to punching D002 twice in the head at this time. D002 also stated that his teeth had been broken when he was punched in the mouth, although no broken teeth were identified during D002’s medical examination a week later. He also stated that he was made to run around and dance.
26. D003 also recalled being hooded with first two, then three hoods, and that the beating and ill treatment started immediately and continued throughout the day and night. He was hit if he failed to maintain a stress position and also struck with a metal bar. D003 also said that he had been taunted and insulted, and made to dance.
27. D004 said that he had two hoods placed over his head. He was beaten and kicked and subjected to suffocating holds. The abuse had started very shortly after entering the TDF and it continued throughout the three days. He said he had suffered broken ribs and swollen kidneys, however a contemporaneous medical examination did not record his ribs being broken and the level of injuries he sustained does not match the level of beatings which he alleges.
28. D004 also was made to “dance”, and was the subject of photographs in which soldiers posed as if about to punch him.
29. Ahmad Matairi also described having more than one hood put on his head and being kicked and punched throughout his detention. He was suffering from a hernia, and this began to swell. There is no medical evidence to support his evidence that his ribs were broken as he asserted. Nevertheless, for the most part his evidence fits into the spectrum of complaints made by other Detainees.
30. Kifah Matairi sadly died following an unrelated accident in 2005. He had, however, described the treatment he experienced in statements to the Special Investigation Branch (SIB) of the Royal Military Police (RMP), who investigated Baha Mousa’s death and in a statement provided for judicial review proceedings. He described being hooded and forced to maintain a stress position involving his arms being held out and his knees being bent at 45 degrees. He was kicked repeatedly to the kidney area, abdomen, ribs and genitals whenever his arms dropped, and he had his eyes gouged.
31. Kifah Matairi also recounted how he had petrol rubbed under his nose, fluid poured over his head and a lighter held to his head with the intention, he thought, of causing him to believe he was about to be set alight.

- 32.** D005, the youngest at eighteen years old, said that he was hooded and beaten. Between his tactical questioning sessions, he was compelled to sit next to a hot and noisy generator. He alleged that he was later placed in the middle room of the TDF and forced to squat with his face directly over the hole in the ground which formed the toilet. D005's account of the physical assaults perpetrated on him was undermined by the lack of discernable injuries recorded in the medical examination conducted soon after being in the TDF. Nevertheless, much of his evidence fits with the evidence of other Detainees.
- 33.** D006 suffered from pre-existing arteriosclerosis. On reception into the TDF his pills were taken for safekeeping by Payne, and he and D005 were put into the left-hand room and hooded. He stated that he was beaten with a torch on the head and back, and kicked. D006 collapsed on Monday morning and was prescribed aspirin and propranolol. Photographs revealed no serious injuries or marks of injuries on his body. While I am sure he believed his evidence to be accurate and truthful, I find that his understandable resentment has caused him to exaggerate the mistreatment and injuries which he suffered. However, I do not doubt that he was the victim of some abuse probably falling short of beatings.
- 34.** Maitham arrived at the TDF later than the other Detainees. He saw other Detainees hooded and in stress positions. He was hooded soon after arrival and was then beaten and kicked. He thought his beatings continued throughout Sunday night, and became intermittent on Monday. He also described a soldier putting fingers into his mouth. Maitham suggested in his second statement to the Inquiry that Sgt Ray Smulski had slapped him during the tactical questioning process, but this was the first time that such an allegation had been made, and Maitham had previously said that he had not been beaten in the tactical questioning room. I find this allegation not proved. That incident aside, and although bearing in mind my findings concerning the lack of credibility in Maitham's evidence about the circumstances of his arrest, the rest of Maitham's account fits into the general pattern of the evidence of the other Detainees.
- 35.** In each case, I bear in mind the likely disorientation experienced by a Detainee who was hooded for lengthy periods of time and deprived of sleep, and the effect that may have on his ability accurately to remember the length and extent of any ill treatment. Further, I accept that the Detainees may have discussed what occurred among themselves and that there is a possibility of some exaggeration by them. I accept also submissions made on behalf of Core Participants that the beatings and enforcement of stress positions cannot have been incessant.
- 36.** That said, it is clear that there are underlying themes common to the accounts of all the Detainees and in some cases there is strong supporting medical evidence of injuries, both physical and psychiatric.

## The Injuries to the Detainees

37. On 21 September 2003, Dr Ian Hill OBE, an accredited Home Office pathologist, conducted an autopsy on the body of Baha Mousa. In a report dated 11 February 2004, Dr Hill provided his findings and also reported on the other Detainees he had physically examined on 22 September. In addition he commented on photographs showing injuries to the Detainees he had not himself physically examined that day.
38. In addition, the psychiatric injuries to the surviving Detainees and the father of Baha Mousa, Col Daoud Mousa, have been assessed and reported upon by a consultant psychiatrist named Dr Mohamed Adib Essali and by a Professor of Epidemiological and Liaison Psychiatry named Professor Simon Wessely.
39. A detailed summary of the findings is found at Part II, Chapter 7 of the Report. On any view, it is plain that serious physical injury was inflicted on a number of these Detainees and that the effect of the attacks was the understandable onset of psychiatric damage or disturbance to most or all of them as well as to Baha Mousa's father.
40. I conclude that the generality of the medical evidence demonstrates beyond doubt that most, if not all, of the Detainees were the victims of serious abuse and mistreatment by soldiers during their detention in the TDF.

## Events on the Detainees' Arrival at the TDF: Late Sunday Morning

41. When the Detainees arrived at BG Main, they were processed into the TDF under the supervision of Payne and other soldiers, including Stacey, the acting Commander of the Hollender Multiple.
42. The first six Detainees were placed in the right-hand room, hooded and placed into stress positions. The stress position used at this point is sometimes referred to as the "ski position". It involved the Detainees squatting with their knees bent and their arms held in front of them parallel to the floor. A sandbag, or in some cases two or three sandbags, were placed over each individual's head. When D003 arrived at around 11.51hrs, he was hooded and placed in the right-hand room, and when D005 and D006 arrived they were hooded and placed in the left-hand room. D005 and D006 were later to be joined in this room by Maitham.
43. Payne supervised the reception of the Detainees, put hoods over their heads and placed them in stress positions. On the day he gave his oral evidence to the Inquiry, Payne produced a further witness statement which disclosed that each time he returned to the TDF he had enforced the stress positions with greater force than he had hitherto been prepared to admit. In oral evidence he admitted that he routinely kicked and punched the Detainees each time he returned to the TDF. I am entirely satisfied that the actions of Payne went beyond the mere rigorous enforcement of stress positions and into the realm of assault. While he would not admit that this behaviour by him started before Sunday evening I reject his evidence on this point and find that it started soon after the Detainees' arrival at the TDF.

44. Stacey assisted Payne in returning the Detainees to their stress positions when they fell over or dropped their arms. I also find that Stacey kicked Detainees' legs back into the stress position.
45. Pte Johnathan Lee, a member of the Hollender Multiple, admitted punching a Detainee, about 30 minutes after their arrival.
46. Although I find that it is likely that assaults on the Detainees did start from the moment they were placed in the TDF, it is not possible for me to identify any individual soldiers other than Pte Lee and Payne as responsible for these assaults.

### The Fallon and Crowcroft Stag: Sunday Afternoon

47. Most of the soldiers who delivered the Detainees to BG Main, including Stacey, departed after an uncertain period in the region of one to two hours.
48. Thereafter, while the Detainees remained in the TDF they were guarded by soldiers either from the Hollender Multiple or from the Rodgers Multiple, who were supervised on an intermittent basis by Payne. Guard duties were divided into periods of time called "stags", consisting of two or three allocated soldiers. The evidence suggests that these stags were not rigidly adhered to and that other members of the relevant Multiple assisted with the guard duty from time to time.
49. Pte Darren Fallon and Pte Wayne Crowcroft manned the first stag. They were told by Payne to make sure that the Detainees did not speak, and that they be kept awake and in stress positions. I have no doubt that the conduct of Payne in forcefully enforcing the stress positions was the example followed by Fallon and Crowcroft. Both Fallon and Crowcroft denied kicking or punching the Detainees, or seeing anyone else assault them; but they accepted that the Detainees were manhandled into stress positions and kept hooded. As I explain below, I reject their evidence that they neither saw nor participated in assaults.

### The Payne Video

50. The Inquiry has seen a video clip depicting Payne shouting, swearing and manhandling into stress positions six of the hooded Detainees in the right-hand room of the TDF. I find that the video was filmed at around 12.00hrs on Sunday 14 September 2003 and therefore near the start of the Fallon and Crowcroft stag. They must have witnessed this type of behaviour. Further, I suspect they know who took the video but have declined to tell the Inquiry.

### Other Incidents during Sunday Afternoon

51. Lt Douglas Ingram, the 1 QLR A Company Crime Officer, visited the TDF and witnessed a soldier punch a Detainee in the stomach. It is probable that this soldier was either Fallon or Crowcroft. Ingram reported this punch to Maj Michael Peebles, the Battlegroup Internment Review Officer (BGIRO). LCpl Simon Kendrick from the Intelligence Cell of 1 QLR went into the TDF to photograph the Detainees. He noticed slight cuts and bruises on their faces, but did not report this state of affairs further than the photographic record he captured which was passed up the Intelligence Cell

and on to the Joint Forward Interrogation Team (JFIT). Kendrick went into the TDF several times during Sunday, witnessing the Detainees' condition steadily deteriorate as they were forcefully kept in stress positions. This must also have been obvious to Fallon and Crowcroft. In Part II, Chapter 7 there is a table which collates some of the key evidence about the extent to which the Detainees' deteriorating condition would have been visible to those present at the TDF.

52. At one point during Sunday afternoon, Fallon said that one of the Detainees lunged at him, as if making a rugby tackle, in an attempt to escape. Fallon and Crowcroft wrestled with the Detainee and put him face down lying on the floor. It is probable that this Detainee was Baha Mousa. Pte Craig Slicker admitted punching this Detainee in the stomach after being informed that he had tried to escape.
53. Crosbie described to the Inquiry visiting the TDF to check on D005 and D006. I find that it is likely that this occurred late on Sunday afternoon. A guard demonstrated to Crosbie "the choir" by kicking the Detainees on their backs causing them to make some noise such as a cry or groan. Crosbie then left the TDF as he thought what he had seen was distasteful. He assumed the soldier would stop, but he took no action to stop him nor did he report what he had seen. This was a serious and inexcusable breach of duty.
54. Peebles visited the TDF three or four times on Sunday. The third occasion was at around 16.30hrs. This was after he had been told by Brigade that the Detainees were not thought to be "friendlies". He told Crowcroft and Fallon that the Detainees might be connected with the murder of three Royal Military Policemen. This was an ill-judged comment to make to the guards as it ran the obvious risk of causing the guards to seek some retribution for the RMP killings. Final submissions on behalf of the MoD acknowledged that in fact none of the Detainees was implicated by evidence in the death of any British personnel.
55. The Inquiry also heard evidence from Pte Lee that on their return to Camp Stephen after the guard duty, Fallon and Crowcroft had boasted that they had punched and kicked the Detainees. Pte Gareth Hill, another member of the Hollender Multiple, had given similar evidence in a statement to the SIB, although this part of his account had changed by the time that he gave evidence to the Inquiry. Despite their denials I find that Fallon and Crowcroft did boast about assaulting the Detainees.
56. Moreover, I find that in November 2005 Crowcroft also told WO2 Paul Urey words to the effect, "We all kicked him to death". Crowcroft gave a different version of this conversation but I prefer Urey's account of it.
57. I conclude that during the Fallon and Crowcroft stag the Detainees were subjected to brutal assaults. It is possible that other soldiers were also involved, but I find that Fallon and Crowcroft witnessed these assaults and personally participated in them. The conduct displayed in the Payne video probably depicts less serious mistreatment or abuse than that used later by Payne, nevertheless it was an example of conduct towards the Detainees that was bound to affect the behaviour of the guards who saw it. I find that Payne was involved in the punching and kicking of the Detainees when he visited the TDF periodically throughout the Fallon and Crowcroft stag.

## The Arrival of the Rodgers Multiple: the “Free for All”

58. At 18.48hrs on Sunday the Rodgers Multiple left Camp Stephen to travel to BG Main to provide half the Multiple to serve as guards over Sunday night. In the hour that followed their arrival at the TDF, I find that a serious incident of violence against the Detainees took place involving members of the Multiple.
59. Payne admitted punching the Detainees in the presence of the whole Rodgers Multiple, including Rodgers himself. He also asserted that about ten of the Multiple joined in with violent acts against the Detainees. It is obvious that the allegations made by Payne concerning misconduct by others must be considered with great caution. There is however evidence from some members of the Multiple relating to this violent incident which supports the conclusion that it was not only Payne who was responsible, as does the evidence of the Detainees themselves.
60. Pte Christopher Allibone saw four or five soldiers punch Detainees. Pte Thomas Appleby said he saw Payne punching them and members of the Multiple shouting and swearing at them but not punching or kicking them. Pte Gareth Aspinall admitted that he had slapped the Detainees on this occasion. Pte Stuart MacKenzie also admitted that he had slapped them around the back of the head to shock them. I remain suspicious that both MacKenzie and Aspinall acted more violently than either was prepared to admit.
61. Pte Aaron Cooper admitted throwing about ten punches. He said other members of the Multiple were also punching Detainees. He named some of those he said were responsible, including Rodgers, but his evidence on this particular issue was inconsistent and, in my judgment, too weak to be relied upon to identify the individual perpetrators.
62. I do not accept that those who have admitted some violence during this incident, namely Payne, Pte Cooper, MacKenzie and Aspinall, were the only perpetrators of violence against the Detainees at this time. It is nevertheless not possible to determine with certainty the identity of those others who punched or kicked the Detainees.
63. The evidence is insufficient for me to find that Rodgers took part in or was present during the course of the violence. However, in my view Rodgers, even were he not present, must have become aware of this incident, which had the characteristics of a “Free for All” affray, at the time or very soon afterwards. As the Multiple Commander, Rodgers bears a significant responsibility for this disgraceful breach of discipline.

## Sunday Night from 20.00hrs to 06.00hrs

64. During this period the Rodgers Multiple provided the guard. They were briefed by Payne to keep the Detainees hooded and in stress positions and to prevent them speaking to each other. The Detainees allege that they remained hooded, handcuffed and in stress positions and that they were beaten by their guards and prevented from sleeping.
65. In addition, throughout Sunday night SSgt Mark Davies and Smulski carried out tactical questioning of the Detainees.

66. The first stag was conducted by Allibone and Pte Damien Kenny. In evidence, Allibone attempted to minimise what he had done. I strongly suspect that he was engaged in forcefully maintaining the stress positions. Kenny has very little memory of the events in question. I am unable to accept his assertions that no abuse of the Detainees took place and conclude that he must have seen the Detainees being abused, although it may be that he cannot now remember what he saw. There is insufficient evidence to determine whether Kenny took part in the assaults.
67. MacKenzie accepted the Detainees were handled firmly, and admitted that he slapped and hit them. Pte Cooper accepted the Detainees were kept in stress positions. He said that during his stag he began to feel guilty about what he and others had done to the Detainees during the “Free for All”, and therefore did not punch them, but accepted he may have tapped them on the back of the neck with moderate force.
68. I accept that during this stag Pte Cooper and MacKenzie dealt with the Detainees less harshly than previously. However, I think it probable that throughout their first stag both MacKenzie and Pte Cooper used significant force to keep the Detainees awake and in stress positions.
69. Appleby admitted that during his stag with Reader between midnight and 02.00hrs, he gave the Detainees a “tap” to keep them awake. Reader conceded that he had slapped a Detainee with a hard blow when enforcing a stress position. In an interview with an SIB officer he had indicated that he had used violent actions such as kicking.
70. During Appleby and Reader’s stag they were ordered by Smulski to take D005 outside the TDF and shout at him to disorientate him. I accept that the force used on D005 was not such as to cause him any serious or lasting physical injury, but this incident may have contributed, even if in a small way, to the consequent PTSD which I find D005 has suffered.
71. It is probable that Appleby and Reader used more force than they were prepared to admit in evidence and that the forcefulness of their actions when maintaining the stress positions amounted to abusive treatment of the Detainees.
72. At some point during the night time stags, D005 was placed kneeling with his head over the hole of the toilet in the middle room of the TDF. I am unable to determine the soldiers responsible for this. I do not think that this lasted for the whole night, as D005 stated, but whatever the length time, this was a cruel act and a horrible experience.

## Monday Morning

73. At around 05.45hrs on Monday morning the remainder of the Rodgers Multiple returned to the vicinity of the TDF. The principal guards on Monday morning were Pte Jonathan Hunt and Pte Paul Stirland, with other members of the Multiple also in and around the TDF during this period.
74. LCpl Adrian Redfearn graphically described the state in which he found the Detainees. They looked as though they had been in a car crash, exhausted, some with visible injuries, and the conditions in the TDF were indescribable. By this time other witnesses had also noticed injuries to the Detainees; such evidence is summarised in the table in Part II, Chapter 7. In contrast to Redfearn, Rodgers only described seeing the Detainees seated on the floor, sweating and moaning. On this point, I prefer the

evidence of Redfearn; I am satisfied that Rodgers' description was both inaccurate and untruthful.

75. A Multiple driver, Cpl John Douglas, gave clear, unequivocal evidence describing the treatment of the Detainees. I find that he was probably referring to a period encompassing the whole stag on Monday morning and possibly the night time stags on Sunday night. He described shouting to keep the Detainees in stress positions. He confirmed that excessive force was used on the Detainees by many members of the Multiple, including punching, kicking and slapping. Douglas himself accepted slapping Detainees in order to enforce stress positions.
76. D005 and D006 were medically treated during Monday morning. D006 was examined by Cpl Steven Winstanley and after consultation with Dr Derek Keilloh, he was given aspirin and propranolol. D005 was complaining of breathing difficulties and was also examined by a medic. However, when D005 thought he was going to be given some oxygen, an irritant, possibly fly killer, was sprayed on his nose. I accept that this incident occurred, but I do not find that Cpl Winstanley was responsible for it.
77. Redfearn said that he allowed the Detainees to rest out of the stress positions as often as he could. He had told the SIB that he had ordered their hoods to be removed, for them to be given water and allowed to lie down. I am sceptical about these assertions. He did say, however, that whenever Payne visited he countermanded these instructions. Redfearn denied using force or seeing the guards do so. However, I find that during Monday morning he himself did assault the Detainees.
78. Stirland said he had been told by the night time guards to give the Detainees a slap if they got out of hand. He admitted to slapping one of them around the head when he had managed to get free of his plasticuffs. Stirland denied using any other violence on the Detainees but said that he had seen Payne demonstrate the choir.
79. Fus Lee Richards was also a driver for the Multiple. Although his evidence was confused about dates and times I accept his account of some members of the Multiple striking the Detainees. In my judgment he saw this happen on Monday morning.
80. I find that during Monday morning the TDF was hot and smelt of urine. I accept Douglas' and Richards' evidence that Payne and members of the Rodgers Multiple assaulted the Detainees. With the exception of Redfearn, I find the evidence insufficient to identify the individuals responsible for these assaults. I am satisfied on the balance of probabilities that Redfearn, Pte Hunt and Stirland must have seen soldiers, in addition to Payne, assaulting the Detainees.
81. I think it probable that Pte Hunt knew the identity of some of those who assaulted the Detainees but has chosen not to reveal who they were. Moreover, he ought to have reported what he had seen up the chain of command. Similarly, I do not accept that Stirland has given full and accurate evidence about the state of the TDF or what happened. He too should have reported matters at that time.
82. In the case of Redfearn, I have preferred his evidence to that of Rodgers concerning the state of the Detainees and the conditions in the TDF on Monday morning. However, I prefer Richards' account over Redfearn's denial, that Redfearn did encourage the guards to treat the Detainees roughly and that he himself was involved in assaults on the Detainees during Monday morning.

## Monday Afternoon

83. At around 13.00hrs on Monday, most of the Rodgers Multiple went back to Camp Stephen, leaving Aspinall, Pte Peter Bentham and Pte Lee Graham at the TDF to guard the Detainees until around 21.00hrs when the Rodgers Multiple returned.
84. Aspinall saw injuries to the Detainees, but maintained that apart from slapping the Detainees' faces on three or four occasions, he and his two fellow guards did not themselves assault them. He said that Payne aggressively enforced stress positions throughout the afternoon, and demonstrated to others the choir. Aspinall said that he had to leave at about 14.00hrs or 15.00hrs as he could no longer bear to stay in the TDF due to the deteriorating conditions and the violence.
85. Bentham was very reluctant to give a description of what he had witnessed. He accepted that the Detainees were hooded and kept in uncomfortable positions. He stated that during his guard the Detainees were allowed to relax, but that unidentified Non-Commissioned Officers (NCOs) from BG Main told them to keep the Detainees in stress positions. Again with reluctance, he conceded that he had seen Payne demonstrate the choir. Bentham said he did not hit any of the Detainees, nor did any soldiers from his Multiple.
86. Pte Lee Graham, notwithstanding previous detailed written statements, in evidence to the Inquiry claimed he had little recollection of the events in question. However, he confirmed that he was endeavouring to tell the truth when he made his SIB statement. In that statement he had described seeing Payne repeatedly kick the Detainees, and demonstrate the choir. Pte Lee Graham's SIB statement supported much of the Detainees' claims about their treatment during Monday. Pte Lee Graham, himself, admitted slapping Detainees to shock them back into stress positions. His statement also contained an allegation that SSgt Christopher Roberts, of the Commanding Officer's TAC group, entered the TDF and kicked three Detainees (I return to this allegation below).

## The GMTV Group's Visit to the TDF on Monday Afternoon

87. Two independent groups of soldiers visited the TDF on Monday afternoon. The first comprised LCpl James Riley, LBdr Richard Betteridge and SAC Scott Hughes, members of a group of soldiers which was escorting a GMTV party visiting BG Main. All three entered the TDF.
88. All three heard shouting coming from the TDF, and saw Payne demonstrate the choir. Hughes went into the TDF twice. His description of what he saw went considerably further than LCpl Riley or Betteridge in describing the actions which occurred. He saw soldiers clicking their fingers and eliciting apparently trained responses from Detainees. He saw Payne karate chopping and pulling up by the eye sockets a Detainee nicknamed "*Granddad*". He also saw a Detainee with his hands and fingers plasticuffed, situated in the middle toilet room of the TDF. This latter Detainee was kicked in the genitals by Payne. I find this, probably, was Baha Mousa. Hughes identified Slicker, Bentham and Payne as soldiers involved in these incidents.
89. In so far as there are differences in degree between the conduct described by Hughes, Betteridge and LCpl Riley, this may be explained by Hughes spending more time in

the TDF and by an element of Betteridge and LCpl Riley playing down what they saw. Where there are material differences, I prefer Hughes' evidence.

90. I conclude that Payne did violently demonstrate the choir, and that he did assault a Detainee nicknamed "*Grandad*" (probably Kifah Matairi). He did so without apparent fear that his conduct might be reported up the chain of command. I find that it is more probable than not that Hughes correctly identified Bentham as having fiercely squeezed water into the mouths of two of the Detainees, and as having slapped two of the Detainees' heads and kicked most the Detainees' feet. I also find that D003 correctly identified Bentham as the guard who kicked him several times in the back and stomach on the second day.
91. Hughes, Betteridge and LCpl Riley ought to have intervened and reported what they had seen. It is some mitigation that Payne was senior in rank to them. Nevertheless, it is possible that if they had reported matters immediately, it might have prevented Baha Mousa's death.

## The G5 Visit

92. The second group, known as the "G5" group, was comprised of Capt Chris Good, 1 QLR's Civil and Military Cooperation Officer, there to attend an O Group meeting, Cpl David Schofield, LCpl Dean Liggins and Pte Anthony Riley.
93. Schofield heard cries of distress coming from the TDF, and on entering it saw the Detainees hooded and restrained. A Detainee kneeling in the centre of the room was punched as hard as physically possible in the kidney area. Schofield did not intervene as he thought the soldier punching was of senior rank to him. But he told Good what he had seen, after Good's return from the O Group meeting.
94. Pte Riley heard screaming coming from the TDF. He saw a Detainee in the middle room with a number of injuries to the face. It is probable that this was Baha Mousa. He also saw Detainees hooded, handcuffed and kneeling facing the wall. A Detainee called "*Grandad*" was kned in the back a number of times by a soldier.
95. Good agreed that Schofield had mentioned screams and shouts, but did not remember what Schofield had told him he had seen. On looking into the TDF himself, Good saw that some of the Detainees were injured but said that this was not unusual as Iraqis involved in crowd disturbances might have been kept in the camp. Good said that later that day he had expressed concerns about what he had seen to the Officer Commanding C Company, Maj Kenyon, but Kenyon had no recollection of such a conversation before Baha Mousa's death.
96. I conclude that the evidence of Schofield and Pte Riley was generally truthful and accurate. Liggins was not impressive as a witness and may also have confused this visit with a separate occasion on which he saw detainees at BG Main. Pte Riley immediately reported what he had seen to Schofield, his immediate superior. Likewise, Schofield reported to Good what he had seen.
97. I find it difficult to reconcile Good's evidence of what he saw with the evidence of Schofield and Pte Riley and others in relation to the condition and treatment of Detainees. In my view Good has sought to minimise the seriousness of what he saw.

In any event, he ought to have acted promptly and reported immediately to a more senior officer at BG Main.

98. The conditions in the TDF and the state of the Detainees deteriorated appreciably over the whole of Monday. The Detainees were kept hooded and forced to remain in stress positions throughout the day. Payne visited the TDF periodically to ensure that stress positions were maintained, and on a number of occasions he demonstrated the choir. Other 1 QLR soldiers, not from the Rodgers Multiple, also visited the TDF and it is possible that some of them also assaulted the Detainees.

## Other Visitors to the TDF Before the Death

99. I accept the evidence of the guards that there were a number of other visitors to the TDF during the whole 36 hours who have not been identified, some from 1 QLR and some from other units. Of the identified visitors to the TDF there are some about whom it is uncertain precisely when they visited.
100. LCpl Ali Aktash visited the TDF, probably on Monday morning or early Monday afternoon. I have kept in mind the fact that Aktash admitted previously exaggerating his allegations when speaking to journalists, in particular claims that senior members of 1QLR knew of and encouraged mistreatment of the Detainees. However, the evidence he gave concerning what he saw of the direct treatment of the Detainees in the TDF supports much of the evidence given by the Detainees and fits the general picture of the way in which the Detainees were treated. Aktash saw some of the Detainees in a stress position, with their arms out, being enforced by the guards and described kicking of the Detainees' hands. He claimed to have seen Payne push his thumb into the eye sockets of a hooded Detainee. Payne did not deny that his fingers went into a Detainee's eye socket but said it was an accident. I do not accept it was an accident.
101. WO2 Joel Huxley was the 1 QLR H Company Quartermaster Sergeant. Pte Daniel Ellis alleged that Huxley was personally involved in violence against the Detainees. Aktash said Huxley later admitted violence. Schofield and Pte Riley described assaults by a soldier who arguably fitted Huxley's description. Ellis was so vague and uncertain that I am unable safely to rely on his evidence. The descriptions of a large, older, soldier punching a Detainee given by Schofield and Pte Riley matched a description of Huxley at the relevant time. I think it very probable that they each saw and were attempting to describe the same man. No formal identification parade has ever taken place, but during his evidence to the Inquiry Schofield was shown a recent picture of Huxley and stated that it was not a picture of the man he saw in the TDF. For that reason it would be unsafe for me to find that the soldier seen by Schofield and Pte Riley punching a Detainee was Huxley. Finally, Aktash said that he had a conversation with Huxley in November 2003 during which Huxley had said he had beaten up one of the Detainees. Huxley denied the conversation. I found Huxley an unimpressive witness, but that was not a basis on which to conclude that he was lying. Although I found Aktash an honest witness I do not find his evidence alone of sufficient weight to base a finding that Huxley did assault the Detainees. Accordingly, I do not find this allegation proved on a balance of probabilities.
102. There is however evidence from, amongst others, Payne, Slicker and Cpl Chris Stout, all of whom worked or were based in and around the 1 QLR stores, that the noise of

Detainees being assaulted could be heard outside the TDF. I find that it is inconceivable that Huxley did not hear such noises when the Detainees were present in the TDF. As a senior NCO he ought to have intervened to prevent what was going on, and report it up the chain of command, but he did not.

- 103.** Additionally, a number of witnesses alleged that SSgt Roberts, the Battlegroup Physical Training Instructor (PTI), was involved in specific violence. SSgt Roberts accepted that he had visited the TDF on Monday. Pte Liam Felton alleged that SSgt Roberts struck a Detainee in a chopping motion and instructed the guards how to inflict pain on the Detainees without leaving marks. Slicker said he saw SSgt Roberts strike a Detainee with karate chops. Aspinall too said that SSgt Roberts had karate chopped a Detainee. Pte Lee Graham told the SIB that he saw SSgt Roberts kicking three of the Detainees, and Pte Lee told the Court Martial that he had seen SSgt Roberts coming out of the TDF effectively admitting he had punched and kicked Detainees.
- 104.** I found Felton to be a wholly unreliable witness and discount entirely his evidence in reaching a conclusion in relation to SSgt Roberts. I do not attach much weight to the evidence given by Pte Lee at the Court Martial. It was vague and in evidence to the Inquiry he was unable to remember the incident at all.
- 105.** Pte Lee Graham's evidence changed over time in order progressively to limit what he admitted knowing. However, his SIB statement of 12 October 2003 contained many details of what happened in the TDF during Monday which are clearly true and supported by the evidence of others. Although there are inconsistencies in Slicker's evidence, I do not consider that they wholly undermine his account. He had the courage to admit to his own shameful assaults on the Detainees. In my view, he may have been truthful when making his allegations against SSgt Roberts. In the same way, I accept Aspinall's allegation as honestly given.
- 106.** SSgt Roberts was an unsatisfactory witness: reluctant, evasive, and attempting to distance himself from what had happened and his part in it. There were inconsistencies between his Inquiry witness statement and his oral evidence. It is also very difficult to accept that, on Monday afternoon, he did not see the dreadful condition of the Detainees and the TDF itself. On an assessment of all the evidence, I find that Roberts karate chopped at least one Detainee and kicked probably three.
- 107.** Sgt Andrew Potter of B Company 1 QLR visited the TDF and saw prisoners being forcibly kept in stress positions. The guards were screaming at them. Potter was disgusted and ordered the guards to cease, but was told they had been ordered by someone of senior rank. Potter raised this issue later that day with Sgt Smith, the Provost Sergeant, who told him it was part of the tactical questioning procedure. Potter was an impressive witness and I accept his evidence as truthful and accurate.
- 108.** Slicker stated that he had seen Rodgers, Redfearn and SSgt Roberts assault the Detainees when they were hooded and standing in the shape of a horseshoe. Those soldiers were punching and striking the Detainees. I have dealt with the allegation against SSgt Roberts above. There are difficulties in reconciling what Slicker said he saw Rodgers and Redfearn do with the timing and with who else Slicker remembered being present. In my view Slicker's account is not of sufficient weight against Rodgers and Redfearn to reach the conclusion that they were involved in the violence described.

109. Slicker also admitted punching a Detainee in the stomach after he had been told that the Detainee had tried to escape. This Detainee was probably Baha Mousa. Further, on a separate occasion, Slicker assaulted a Detainee by kicking him in the area of the kidney. On 10 November 2005 Slicker was summarily dealt with by his Commanding Officer for the offence of assault relating to his admission of assaulting one of the Detainees.
110. Father Peter Madden was the padre for 1 QLR. He was unable to remember whether he visited the TDF when the Op Salerno Detainees were there. Stacey stated that Madden had visited the TDF on Sunday morning, and Rodgers said he visited on Monday morning, as did Pte Hunt. Aspinall said Madden visited the TDF during Monday.
111. I found Madden to be a poor witness, particularly in relation to inconsistencies as to whether he felt any responsibility for the welfare of detainees kept at BG Main, and whether, before Op Salerno, he had seen detainees being forced to maintain set positions.
112. I find that Madden did visit the TDF on Monday. Whether this was in the morning or afternoon, it follows from my findings that he must have seen the shocking condition of the Detainees, and the deteriorating state of the TDF. He ought to have intervened immediately, or reported it up the chain of command but, in fact, it seems he did not have the courage to do either.

## Tactical Questioning of the Detainees

113. During the period they were held at the TDF each Detainee was subjected to tactical questioning. One officer and three NCOs were principally involved. They were Peebles, the BGIRO, SSgt Davies and Smulski, the two tactical questioners, and Livesey, the second in command of the 1 QLR Intelligence Cell.
114. SSgt Davies arrived at BG Main at around 09.30hrs on Sunday. He thought that the hooding of the Detainees was permitted, operationally justified for security purposes, and could disorientate and thereby aid interrogation. He had been trained that stress positions were not permitted and noise was not to be used as an aid to tactical questioning. Sleep disruption, that is waking a prisoner to feed or question him, was permitted and appropriate, but sleep deprivation was not to be used. He had completed his tactical questioner's training only a few months before deployment and had no practical operational experience of tactical questioning before Op Telic 2.
115. SSgt Davies said he saw no signs of injuries on the Detainees. He said he never saw the Detainees being subjected to any violence; he did not witness the choir; he did not see them in any stress positions; and he saw no measures taken to prevent them from sleeping.
116. Peebles and Livesey gave evidence that SSgt Davies visited the TDF during Sunday. I find it is probable that SSgt Davies did visit the TDF on more than the one occasion he said he could remember. I think it probable that on his visit later on Sunday evening he must have seen the condition of the Detainees, and at the least, that they were uncomfortable and in distress; but he may not have seen them in stress positions. SSgt Davies ought to have reported what he had seen.

117. SSgt Davies used the harsh technique of questioning during all the tactical questioning sessions he conducted. The general use of the harsh technique is considered elsewhere in the Report.
118. SSgt Davies accepted that at one point D005 was placed very close to a large generator, which was loud and hot. SSgt Davies said he gave the instruction for this intending it to be for about five minutes only. I find that Peebles acquiesced in this decision. SSgt Davies explained D005 was sent to the generator so that he could think about his answers in isolation from the other Detainees and be quickly returned for questioning. Peebles, however, said it was part of a “*naughty boy routine*”. I am sure that the motive for placing D005 by the generator was to punish him and to pressure him into answering questions. He was left there for a period of about an hour and forty five minutes. This incident represents serious misconduct for which both Peebles and SSgt Davies were responsible.
119. Smulski arrived at BG Main at around 23.45hrs and sat in on SSgt Davies’ tactical questioning session with D002. Smulski had received his tactical questioning training in 1999, but had no practical operational experience of tactical questioning before Op Telic 2. He said that he thought hooding was permitted for security purposes, but did not know whether it was permitted as part of the conditioning process, to aid tactical questioning. He had been taught that stress positions were prohibited. He thought that the use of “*startling or unsettling noise*” was acceptable to maintain the shock of capture.
120. Smulski agreed that he had given the guard instructions to “*exercise*” the Detainees. In particular, this accords with the evidence of Appleby and Reader that they were told to take D005 out of the TDF to shake him up. Smulski also instructed the guards to use a metal bar to make a noise and keep the Detainees awake. He made two or three visits to the TDF on Monday and saw the Detainees looking agitated. He noticed bruising on the abdomen of one Detainee, but made no inquiry about it and did not report it.
121. It was Smulski who suggested that Baha Mousa be moved to the middle room after it had been reported that he was removing his plasticuffs and hood.
122. In my view, at this time Smulski was inadequately prepared for tactical questioning. He had been trained over four years previously and had no practical experience. I accept that he genuinely thought, clearly erroneously, that using noise to keep the Detainees awake was permissible. However, he was wrong to encourage the guards to do this by banging a metal pole. Furthermore, I find that by his visit to the TDF on Monday afternoon and during the course of the tactical questioning, Smulski would have been able to see the distressed condition of the Detainees. He ought to have taken action and reported this.
123. Both SSgt Davies and Smulski were aware that the Detainees were hooded although neither may have considered that this was solely as an aid to tactical questioning. While I think it possible that SSgt Davies was unaware that the Detainees were in stress positions, I find that Smulski, who made more visits to the TDF than SSgt Davies, did see the Detainees in stress positions.
124. Peebles agreed that in the TDF the Detainees would have been kept hooded, handcuffed and in stress positions. When he visited the TDF on Sunday afternoon,

he said he did not notice anything abnormal about the Detainees. Early on Monday morning he said he had looked into the TDF and the Detainees were not in stress positions, but were quiet and the conditions unremarkable. Later on Monday morning he again looked into the TDF and saw the Detainees hooded and dishevelled. Peebles did not at any time order the conditioning process to cease, even though he knew that it would have started shortly after the arrival of the Detainees and despite his understanding of when tactical questioning had finished.

- 125.** I find that Peebles must have become aware of the shocking state of the Detainees by Monday. I also suspect that Peebles did know of the physical abuse of the Detainees by Payne and other soldiers. Even if he did not know of that, he must have understood the serious adverse effects of hooding and stress positions in the significant heat for a period of around 36 hours. Peebles ought to have ordered the cessation of hooding and stress positions long before Baha Mousa's death. He also ought to have reported to the Battlegroup second in command, Suss-Francksen, or the Commanding Officer, Mendonça, what he had seen.
- 126.** It is relevant here to record the admission of violent conduct made by Livesey, who acted as a note taker for the tactical questioning sessions, and as escort to some of the Detainees. Livesey punched D002 to the head twice when returning him to the TDF after he had been questioned. It is probable that this blow caused the injury to D002's face identified by Dr Hill. This was an inexcusable serious breach of discipline. Livesey also admitted that he had visited the TDF on two or three occasions on Monday. He saw the Detainees still in stress positions and being roughly handled. Livesey ought to have intervened to stop this conduct or referred it up the chain of command.

## The Death of Baha Mousa

- 127.** By about 21.30hrs on Monday, the rest of the Rodgers Multiple returned to BG Main to relieve the afternoon stag. On arrival the vehicles parked outside the TDF. Rodgers went directly to a briefing with Peebles. Aspinall and Pte Lee Graham left the TDF and went to the vehicles. There is no evidence that Pte Hunt, Stirland or Kenny played any part in the final moments of Baha Mousa's life. Similarly, there is no material evidence that Appleby or MacKenzie were significantly involved, although they gave evidence as to what they had seen inside the TDF at the time.
- 128.** From the Multiple, Reader, Pte Cooper, Douglas and Redfearn were inside the TDF. These soldiers in the TDF saw Baha Mousa before the final struggle and agreed that he was standing in the doorway of the centre room or internal corridor. He had removed his hood and, according to some witnesses, had extracted himself from the plasticuffs around his wrists. Accounts of the witnesses to the final struggle thereafter diverge.
- 129.** I have set out in the Report (Part II Chapter 16) detailed evidence of those witnesses who were present in the TDF in the crucial moments before Baha Mousa died. I have also referred in the Report to the evidence of Dr Hill, who carried out a post mortem examination. It was from Dr Hill's findings that Dr Deryk James, a pathologist instructed by the Inquiry, based his conclusions on the cause of death. I also refer to the evidence of other pathologists who gave evidence at the Court Martial and provided statements for the Inquiry but did not give oral evidence to me.

130. So far as the factual issues in relation to the events immediately surrounding Baha Mousa's death are concerned, it is clear that Payne and Pte Cooper were involved in the final struggle.
131. Pte Cooper remembered responding to a shout for help coming from the TDF and going into the middle room and seeing Payne struggling with Baha Mousa. Payne and Pte Cooper got Baha Mousa to the floor, with Payne's knee in Baha Mousa's back and attempted to replace the plasticuffs. Baha Mousa broke free twice and Payne began punching and kicking him, and banging Baha Mousa's head against the wall with his hands. Pte Cooper said the assault lasted around 30 seconds and when it ceased Baha Mousa was no longer moving.
132. Payne's account was that he saw Baha Mousa outside the middle room with his hoods and plasticuffs off. He shouted, and Baha Mousa turned back to face the middle room. Payne put his knee into the small of Baha Mousa's back and put him to the floor. He and Pte Cooper attempted to replace the plasticuffs but Baha Mousa thrashed about and broke free. Payne said the plasticuffs were successfully applied at the second attempt. He made no allegation of violence by Pte Cooper. He stated that Baha Mousa was thrashing about and struck his own head on the wall or floor during the struggle to replace the plasticuffs.
133. Redfearn said that he arrived at the middle room of the TDF to see Baha Mousa face down on the floor with Payne and Pte Cooper on his back, attempting to replace the plasticuffs. Redfearn saw Baha Mousa thrashing about and his head banging the floor and wall. Redfearn denied jumping on Baha Mousa's legs as another witness said he had done. He believed that Payne and Pte Cooper could control what was going on and therefore went into the right-hand room. When he returned Baha Mousa was propped up, motionless, against the wall.
134. The Regimental Medical Officer (RMO), Dr Keilloh, was summoned and immediately gave mouth to mouth resuscitation at the TDF. Baha Mousa was then taken to the Regimental Aid Post (RAP) where CPR was carried out by the entire 1 QLR medical staff. At 22.05hrs Keilloh pronounced Baha Mousa dead.

## The Pathologists' Evidence

135. In addition to the post mortem report produced by Dr Hill on 31 September 2003, the Inquiry commissioned a report from James. There is no dispute that Baha Mousa sustained 93 identifiable external injuries, and a number of internal injuries. Dr Hill initially concluded that the cause of death was a combination of strangulation, postural asphyxia and multiple injuries. However, in the light of later, more comprehensive witness evidence, Dr Hill modified his opinion. Ultimately he said that, if the premise that someone was pulling tightly on the hood over Baha Mousa's head was incorrect, then strangulation did not play a part in the death, and the cause of death was positional asphyxia.
136. On the basis of the findings of physical injuries made by Dr Hill and the photographs of the post mortem, James concluded that the cause of death was "*struggle against restraint in a man exposed to whatever associated causal factors can be demonstrated to have been present*", with the final event being a cardio-respiratory arrest. Dr Hill,

although he preferred the description, “*postural or restraint asphyxia*” to “*struggle against restraint*”, did not dissent from this opinion.

137. At the Court Martial, Professor Christopher Milroy gave an opinion as to the cause of death similar to that of James. He found the death to have been caused by “*a combination of the restraint with associated struggle and the position that he was held in ... together with multiple injuries to the body*”.

## Conclusions on the Death of Baha Mousa

138. In reaching my conclusions concerning this final violent struggle, I have kept in mind the fact that witnesses can genuinely differ in their accounts when describing violent events taking place over only a few minutes, and occurring some years ago. Some witnesses have admitted to not being truthful in the past, and some have a reason to try to protect their actions from criticism. I have made allowance for those factors.
139. In summary form my conclusions are as follows. Baha Mousa was not attempting to escape shortly before the final struggle. I accept that from time to time during his detention in the TDF Baha Mousa may have extracted himself from his plasticuffs and removed his hood. However, as I find, his injuries show he was being subjected to sustained assaults and it is not at all surprising that he attempted to free himself from his plasticuffs and remove his hood in order to try to protect himself.
140. On Payne’s own evidence, Baha Mousa turned to face back into the middle room of the TDF when Payne shouted at him. By that stage, as the medical evidence tends to show, Baha Mousa was probably exhausted. I reject the suggestion that he intended or was trying to escape or that Payne had any valid reason to think so. I find that Payne acted to punish Baha Mousa for freeing himself from the plasticuffs, his hood, and for leaving the middle room.
141. Notwithstanding that Pte Cooper’s credibility had been undermined by previous contradictory statements and that he had an obvious interest in playing down his part in this dreadful incident, I nevertheless accept that Pte Cooper was genuinely endeavouring to do his best to tell the Inquiry the truth about the final struggle. I find that Pte Cooper did no more than exert sufficient force to attempt to put the plasticuffs back on Baha Mousa. After the second attempt to replace the plasticuffs, Pte Cooper took no further part in the struggle. Douglas’ account supported a conclusion that in the later stages of the struggle it was Payne alone who assaulted Baha Mousa.
142. I find that Payne lost his temper and continued unlawfully to assault Baha Mousa until it was obvious that he had stopped struggling.
143. So far as the pathologists’ evidence is concerned, I accept James’ explanation of the cause of death, which is largely supported by Dr Hill and Milroy. I find that there were two main causes of death. 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 also of kicks. It also involved an unsafe method of restraint, in particular by being held to the ground

in an attempt to re-apply plasticuffs. The combination of both causes was necessary to bring about Baha Mousa's death; neither was alone sufficient to kill him.

## Events on the Ground Immediately After Baha Mousa's Death

144. Shortly after the death of Baha Mousa, 19 Mech Bde Headquarters were informed. At about 22.30 an SIB investigation was initiated but only started in practical terms the following day. Before this, perhaps unsurprisingly, conversations occurred between the soldiers concerned relating to what had happened.
145. After the death, some members of the Rodgers Multiple remained in the vicinity of the TDF. Aspinall, Pte Cooper, Allibone and Appleby all gave similar evidence that Payne said to a group of soldiers from the Rodgers Multiple that, *"If anyone asks, we were trying to put his plasticuffs on and he banged his head."*
146. Rodgers was informed of the death by Payne. Rodgers said that he then reported the death to Maj Richard Englefield and then went to the TDF where he was informed by Mendonça that it was an SIB matter and that he should not speak to the soldiers. Nevertheless he did speak to Aspinall, who appeared to be wound up and stressed, and who told him that there had been a struggle and Baha Mousa had banged his head against a wall.
147. Payne's account was that he only discussed the circumstances of Baha Mousa's death immediately after it occurred with Capt Mark Moutarde, and that Reader, Pte Cooper and Redfearn were present. Payne said that he told Moutarde that Baha Mousa had banged his head; that he, Payne, had restrained Baha Mousa, and that he could not believe he was dead. Payne denied that he told members of the Multiple to tell a false story. Redfearn recalled a meeting with Moutarde, and remembered Payne saying that he could not believe Baha Mousa was dead. He formed the impression that Payne was endeavouring to cover his back. Pte Cooper and Reader accepted that the meeting had taken place, and confirmed what Payne had said. Moutarde, however, said he had no recollection of this meeting.
148. I accept the general tenor of the conversation between Payne and members of the Rodgers Multiple as described by Aspinall, Pte Cooper, Allibone and Appleby. I find Payne was seeking to ensure that there was a uniform explanation that Baha Mousa's death was an accident. I have found that there was a conversation between Payne and Moutarde and the gist of what Payne said was that he could not believe Baha Mousa had died. This too was part of an attempt to explain the death as being the result of an accident.

## Moutarde's Reporting of the Incident

149. Moutarde could not remember seeing anything untoward in the TDF after Baha Mousa's death. In his evidence up to and including his Inquiry witness statement he had said that he could not remember discussing the death of Baha Mousa with any of the soldiers involved. A document prepared by Moutarde on 15 September 2003 came to light late in the Inquiry's investigation and after Moutarde had produced his statement. Moutarde said that he still had no memory of any discussion with the

soldiers about this incident, but the document made clear that he had obtained their account.

150. The document was a memorandum to Mendonça. It named Payne and Pte Cooper as having been involved in a violent struggle with Baha Mousa and said that Baha Mousa had banged his head. It stated that Baha Mousa was of significant intelligence interest because he was suspected of being involved in the RMP killings. Moutarde asserted that he had been given this information and it was not a fabrication to blacken Baha Mousa's character. (As I have recorded earlier, there was in fact no evidence to substantiate this allegation.)
151. This document for Mendonça must be compared to a document headed "Provisional SINCREP" (a military abbreviation of "serious incident report") from 1 QLR to 19 Mech Bde Headquarters, timed and dated at 23.40hrs on 15 September. It did not name Payne and Pte Cooper as having been involved, nor did it mention the struggle or the banging of Baha Mousa's head. Moutarde told the Inquiry that this SINCREP would have been produced by the Operations Room staff possibly with some input from him.
152. I do not find that Moutarde attempted deliberately to provide Mendonça and the Brigade with a false picture of what happened. However, Moutarde must have known of the conditions in the TDF he encountered after the death, and that information is something which he ought to have communicated up the chain of command.

### Other Visitors to the TDF Following Baha Mousa's Death

153. In addition to Moutarde, a number of other soldiers from the Battlegroup or attached to 1 QLR visited the TDF almost immediately following Baha Mousa's death.
154. Possibly the first soldier, other than guards or medical staff, to visit the TDF was Sgt Charles Colley an RMP sergeant attached to 1 QLR. He took no steps to secure the TDF nor any to preserve physical evidence. He said he found the TDF smelt but was not disgusting and said the Detainees looked ruffled. He said that he saw no injuries.
155. Capt Gareth Seeds, the Operations Officer, gave a significantly different description of the TDF. He said the Detainees were still restrained; they were obviously tired, dirty and in pain; and one of the Detainees was in the foetal position on the floor. Seeds was embarrassed, ashamed and disgusted by what he saw. He enlisted the help of Maj Peter Quegan in taking to the toilet a Detainee who was obviously in pain. Although he did not see injuries on the Detainees, it was clear to Seeds that at least some of the Detainees had been beaten. Quegan essentially supported this account.
156. Seeds went to the 1 QLR second in command, Maj Chris Suss-Francksen. Suss-Francksen remembered that Seeds' concern was that the Detainees were still handcuffed, but he did not remember that Seeds had wanted to report the conditions in the TDF.
157. Englefield, the Officer Commanding A Company, accepted that he had been in the vicinity of the TDF on Monday evening before Baha Mousa's death, but asserted that he did not go into the TDF at any time when the Detainees were there.

- 158.** Mendonça, in his Inquiry witness statement, said that after being informed of the death, he went straight to the TDF but did not remember going into the building or seeing the Detainees. In oral evidence he accepted that it was possible that he went into the TDF but he maintained that he did not remember doing so. He was not aware of the conditions as described by Seeds and Quegan.
- 159.** I reached the following conclusions about the events in the immediate aftermath of the death of Baha Mousa.
- 160.** Both Seeds and Quegan were honest witnesses giving accurate descriptions of the conditions in the TDF and the physical state of the Detainees. I preferred their evidence to that of Colley and Suss-Francksen, who I find both substantially underplayed the seriousness of what they must have seen. I find it more probable than not that Moutarde did go into the TDF, and that being the case I do not accept that he can have thought there was nothing amiss. Suss-Francksen and Moutarde (and possibly Colley) should have ensured the surviving Detainees received medical attention and were properly cared for.
- 161.** Apart from Moutarde's memorandum to Mendonça, neither Keilloh, Suss-Francksen, Colley nor Moutarde made a formal report about what they had seen and none of them reported what they must have known regarding mistreatment of at least some of the Detainees. There was a reluctance to accept that 1 QLR had done anything wrong. I do not, however, conclude that there is a basis for finding that officers of 1 QLR sought to cover up Baha Mousa's death or to prevent the circumstances of it from being investigated; plainly the SIB were called upon by 1 QLR to instigate an investigation in the hours after the death.

## The Treatment of the Detainees after the Death of Baha Mousa

- 162.** D002 and D004 gave evidence that even after the death of Baha Mousa, they were subjected to physical assaults. Further, D004 stated that trophy photographs were taken on Tuesday morning, showing him being beaten. D002, D003, D004, D005 and Kifah Matairi all alleged that they were made to undertake forced exercises on Tuesday morning, which included being made to "*dance like Michael Jackson*".
- 163.** It is accepted by some soldiers that a period of exercise of the Detainees occurred before they were transferred to the TIF at Um Qasr. Rodgers, Stirland and Pte Hunt described the Detainees being walked up and down outside the TDF.
- 164.** Cpl Kenneth Simmons, attached to 1 QLR's Motor Transport Platoon, was the driver of the lorry which was to transfer the Detainees from BG Main to Um Qasr. He had been told by soldiers at the TDF that the Detainees had been the subject of "*a good kicking*". He noticed injuries to the face and body of some of the Detainees. Simmons was instructed to assist in the exercising of the Detainees, by walking them up and down over a distance of approximately twenty metres outside the TDF. The Detainee whom Simmons helped appeared to him to be in a lot of pain
- 165.** Cpl Claire Vogel, an RMP corporal, also visited the TDF on Tuesday morning. She described seeing the Detainees performing aerobics or warm-up type exercises, but

did not think that the smell or heat of the TDF nor the apparent exhaustion of the Detainees was in any way untoward.

166. I conclude that although it is not possible to rule out isolated instances of violence or other abusive behaviour by guards during Monday night, I am of the view that the level and frequency of any violence must have been far less than before his death. Furthermore, although I am unable to identify the individuals responsible, I am of the opinion that some of the soldiers did tell the Detainees to “*dance like Michael Jackson*” and forcibly made them exercise. I accept Simmons’ evidence in relation to the state of the TDF and the condition of the Detainees. It follows that Vogel, as an RMP should have taken steps to report what she must have seen of the TDF and of the state of the Detainees.

## The Detainees’ Arrival at the TIF

167. On arrival at the TIF, Simmons described the Detainees as needing assistance alighting from the lorry, and described a female American officer at the processing centre being furious, and threatening to report the condition of the Detainees. S018, the second in command of the JFIT interrogation facility based within the TIF, was shown injuries to two of the Detainees which resulted in them being evacuated to hospital. As a result he confronted Rodgers about the condition of the Detainees.

## 1 QLR’s Medics

168. At the relevant time there was no formal policy and no standing orders or general instructions within 1 QLR as to the medical care for civilian detainees. This lack of formal process is exemplified by the fact that Keilloh instructed his medical staff that no documentation was required in relation to any medical assessment of a detainee unless some medically adverse finding was made. No records were required when the medical findings were compatible with the detainees remaining at the TDF for up to 48 hours. A system of regular documented examinations of detainees was instituted promptly after Baha Mousa’s death.
169. In relation to the general treatment of detainees before Op Salerno, Sgt Ian Goulding, a Regimental Medical Assistant, Class One (RMA1), and LCpl Steven Baxter (also an RMA1) were aware that prisoners were hooded and placed in stress positions as part of a process of conditioning. Pte Steven Paul Winstanley was aware of the use of hooding. Keilloh too was aware of hooding, but had been told that hoods were not applied for more than ten to fifteen minutes at a time, and he did not perceive this to represent a medical problem.

## The Medical Treatment of the Op Salerno Detainees

170. Cpl Winstanley, Baxter and Pte Winstanley carried out the initial medical assessment of the Detainees on Sunday. I accept that an examination of the Detainees, apart from D005, D006 and Maitham, did take place, despite only D001 recalling one, and even he said that he was examined only because he was feeling unwell. An explanation for the other Detainees not remembering this is that, alongside their shock and confusion soon after arrest, I find it likely that any examination was cursory. Further, these examinations appear not to have been documented, save possibly for one.

171. Pte Winstanley told the Inquiry that he had attended the TDF again later on Sunday night to examine two Detainees who were refusing to stand up. Pte Winstanley's account was that this visit generated an "FMed 5", which was a type of form used to record medical examinations.
172. Cpl Winstanley examined D006, due to his heart condition, on Monday morning. D006 appeared in distress and therefore Cpl Winstanley consulted with Keilloh. Following this, aspirin and propranolol were prescribed to D006. This incident also resulted in an FMed 5 document.
173. Only two FMed 5 forms survive. The first, dated 14 September 2003 was contended by Pte Winstanley to relate to the visit to the TDF he made on Sunday night, and to refer to an examination of Baha Mousa. It recorded that he had no injuries or previous illnesses. Pte Winstanley states that this was thereafter countersigned by Cpl Winstanley. Cpl Winstanley however maintained that this FMed 5 was completed after the initial routine medical examination earlier on Sunday. Both soldiers denied that this FMed 5 had been made out after Baha Mousa's death in an attempt to show that Baha Mousa had been examined with a finding of no visible injuries.
174. The second FMed 5, relating to Cpl Winstanley's visit to D006 on Monday, does not record the name of the patient and was not disclosed by Cpl Winstanley to the SIB until 22 September 2003, after he had made his first statement on 17 September 2003, in which he made no mention of it.
175. The medics were all involved in the attempted resuscitation of Baha Mousa. Keilloh gave Baha Mousa mouth to mouth resuscitation at the TDF, Baha Mousa was then taken by stretcher to the RAP where CPR was carried out.
176. There were conflicts in the evidence given by members of the medical team in relation to the extent to which injuries had been visible on Baha Mousa's body. Keilloh maintained that apart from a small trace of blood under Baha Mousa's nose, he had not noticed any of the injuries subsequently found on the body. However, Goulding, Sgt Stephen Saxton and Pte Kevin Armstrong noticed bruising; Cpl Winstanley noticed bruising and swelling, and Baxter noticed Baha Mousa had a puffy face and torn skin on the wrists. Thus, Keilloh was the only medic not to observe injuries to Baha Mousa's body.
177. Keilloh spoke to Capt Andrew Le Feuvre at BMH Shaibah Hospital, the doctor who signed Baha Mousa's death certificate, in order to provide details about the death. Neither doctor remembered this conversation although a contemporaneous handwritten note by Le Feuvre indicated that it had occurred. The death certificate recorded that the disease or condition directly leading to death was a cardio-respiratory arrest. While it may have been wrong of Le Feuvre to sign this certificate (as he admitted), even if relying on Keilloh's word, having neither treated Baha Mousa before death nor even seen the body subsequent to death, I have rejected the serious allegation that there was an attempt by either of the doctors to cover up the real cause of death. The available evidence falls far short of substantiating such a suggestion.
178. After the death of Baha Mousa, D004 and Ahmad Matairi were examined by Keilloh. His evidence was that he understood D004 to have been complaining of being kicked once, resulting in pain in the abdomen and renal area of the lower right back. He remembered that Ahmed Matairi was complaining of lower back pain after being

kicked. Keilloh said that he saw no marks on the body of either man and he did not believe their allegations of assault, but he nevertheless prescribed each man pain relief medication and gave them an anti-inflammatory injection.

- 179.** Dr Hill recorded that D004 sustained a variety of mild injuries. Ahmad Matairi was also bruised, and as had been evident to a number of the guards and visitors to the TDF he had a visible hernia. It was Kellioh's evidence that he did not notice these injuries.
- 180.** In the light of all the evidence, I reached the following conclusions in relation to the activities of the medical staff.
- 181.** It is right that I record that in the challenging circumstances of the attempt to resuscitate Baha Mousa it appears that the medical staff did all that they could to preserve his life. However, there are other areas where I find fault with the actions of some of the medical staff.
- 182.** I find that Baxter and Pte Winstanley saw that the Detainees were hooded and in stress positions when they went into the TDF on Sunday 14 September. They ought to have reported this up the chain of command, particularly their medical chain of command, given their medical training and understanding of the effects of the intense heat in Iraq. I find that Cpl Winstanley saw Detainees hooded, and I suspect that he also saw Detainees in stress positions. He too should have reported what he had seen.
- 183.** The circumstances of the creation of the first FMed 5 are suspicious. Neither explanation given is convincing. However, Pte Winstanley and Cpl Winstanley gave differing explanations as to the origin of this document, which is inconsistent with them having agreed to forge the document after the event. I do not find that this is what they attempted to do. Similarly, although I am suspicious of the authenticity of the second FMed 5, there is not sufficient evidence to find that it was dishonestly drawn up after the event by Cpl Winstanley. In this connection however, I find that Cpl Winstanley must have seen the conditions in the TDF on Monday morning when he examined D006. Accepting, as I do, the evidence of Redfearn that the conditions at that time were appalling, I have found that Cpl Winstanley ought to have reported this up the chain of command.
- 184.** Goulding understood what the process of conditioning entailed and knew of the length of the detention of the Detainees. In the light of those factors, as a senior NCO in the medical section, his failure to go to the TDF to inspect the conditions there, either before or after, the death of Baha Mousa, amounted to a failing on his part.
- 185.** Keilloh was the senior medical officer within 1 QLR. He had not received any training or instructions in respect of prisoner handling, in general, or relating to his medical function in the prisoner handling process. I accept that he thought prisoners were only hooded for ten to fifteen minutes, and that he did not know they were put into stress positions.
- 186.** Keilloh rightly conceded that the procedure in place before Baha Mousa's death for examining and recording the results of the examination of detainees was inadequate. He ought to have realised this and changed the position before Baha Mousa's death.

187. I also find that Keilloh was probably aware of the presence of the Detainees as a group in the TDF before Baha Mousa's death. He certainly knew, probably on Monday morning, of D006's heart condition. He knew detainees might be held for up to 48 hours, and knew of the very poor facilities in the TDF and of the effects of the considerable heat.
188. It is difficult to accept that when attempting to resuscitate Baha Mousa, Keilloh did not see signs of mistreatment to his body. Furthermore, in the light of the evidence from other members of the medical staff that after the death, comments were made in the RAP in relation to the injuries to Baha Mousa, I conclude that after this attempt to revive Baha Mousa, Keilloh knew that he had sustained injuries in the TDF. He ought then to have gone to the TDF to check on the condition of the other Detainees.
189. It is also difficult to accept that Keilloh later missed the signs of injuries to D004 and Ahmad Matairi. Even if he did, his response to the complaint of both D004 and Ahmad Matairi was inadequate. He ought to have checked the TDF after the death of Baha Mousa shortly followed by complaints of assault made by two other Detainees.
190. Keilloh's failure to go to the TDF after Baha Mousa's death to examine all of the other Detainees was a serious failing. So was his failure to report what I find he must have known to a more senior officer in the Battlegroup.
191. The findings I have made in respect of the issues concerning the interaction of the 1 QLR medical staff with the Op Salerno Detainees can be properly put in context by recognising that in respect of military medics, there was a lack of training and guidance in respect of prisoner handling and checking detainees, record keeping, and their involvement, if any, in the process of interrogation. These important issues are discussed in Part XVI of the Report.

## Were the Events of 14 to 16 September 2003 a "One-off"? (Part III)

192. It has been necessary to consider other incidents in Iraq involving soldiers from 1 QLR, in order to establish whether the events of 14 to 16 September were a single incident with tragic consequences or whether they were indicative of a culture of violence within that Battlegroup. The Inquiry therefore heard evidence in relation to incidents involving the Rodgers Multiple; evidence given by 1 QLR witnesses regarding other isolated incidents; and evidence arising out of newspaper reports of statements given by two unidentified soldiers.
193. A diary kept by MacKenzie purported to record incidents involving the Rodgers Multiple. It indicated that on occasions, Iraqi civilians were treated violently. Mackenzie asserted that the diary entries were generally true and accurate, albeit they contained some assumptions. Some members of the Rodgers Multiple confirmed the type of violence described while some others denied it.
194. Evidence from Richards and Douglas lent some support to the diary entries. Heavily qualified agreement to some aspects of the diary came from Pte Cooper, Allibone and Bentham. Other witnesses from the Rodgers Multiple denied that there was any culture of violence and contradicted the diary entries. However, some independent

support for MacKenzie's account appears in the 1 QLR logs which recorded operations corresponding with entries in the diary.

195. It must clearly be acknowledged that Mackenzie's credibility as a witness was very poor. However, in the light of the supporting evidence from fellow members of the Rodgers Multiple and other contemporaneous sources, I find that the MacKenzie diaries generally give an accurate account of the sort of casual violence in which some members of the Multiple indulged. Moreover I find that Rodgers must have had some awareness of such incidents occurring.
196. The Inquiry also heard evidence from LCpl Graham Jones in relation to three specific incidents of violence, and the general rough treatment towards civilian prisoners, involving members of 1 QLR. Bdr Terence Stokes of S Company also described two incidents of ill disciplined violence against civilian detainees. Furthermore, I also accept that Simmons, the driver, saw hooded detainees on more than one occasion being thrown or kicked out of the back of vehicles while at either of the 1 QLR A or C Company locations.
197. I also briefly considered some other evidence in relation to a 1 QLR C Company operation on 9 September 2003, targeting members of the Garamsche tribe. In accordance with my terms of reference I made it clear during the course of the evidence that the Garamsche incident was of limited relevance to the main issues. However, I find that members of the Garamsche tribe were subjected to physical assaults that day.
198. Although at times racist language was used by soldiers, there is no sufficient evidential basis to suggest that the violence was racially motivated.
199. The evidence in relation to the Garamsche incident and the other specific incidents of violence against detainees does demonstrate that the events of 14 to 16 September cannot be described as a "one off" event. There were other incidents of abuse and mistreatment of Iraqi civilians by soldiers of 1 QLR. However, the evidence does not demonstrate disciplinary failures so widespread as to be regarded as an entrenched culture of violence within 1 QLR.

## **Broader Issues Raised by the Events of 14 to 16 September 2003**

200. The events of 14 to 16 September 2003 raise five areas of broader concern which inform my analysis of the wider context for these events, in Parts III to XV of the Report, and the recommendations I make in Parts XVI and XVII:
  - (1) the use of conditioning techniques;
  - (2) loss of discipline and lack of "moral courage";
  - (3) delay and breach of the fourteen hour limit;
  - (4) inadequate detention procedures: the TDF, custody records, food and water; and
  - (5) a failure to supervise and the dispute over who was responsible for the Detainees' welfare.

## The Use of Conditioning Techniques

- 201.** In relation to conditioning, I have found that the Op Salerno Detainees were subjected to the process of conditioning from their arrival at the TDF until the time of Baha Mousa's death. They were placed in the "ski" stress position, as can be seen in the Payne video, and later in other kneeling positions or with their arms held out. It is likely that there were some short breaks in the process, when hoods were taken off, and when the guards gave up enforcing stress positions. However, I find it likely that the Detainees were kept in stress positions for the overwhelming majority of the time between their arrival at the TDF and Baha Mousa's death. With the exception of D006 they also remained hooded during most of their time in the TDF.
- 202.** This conditioning process was 1 QLR's standard practice at that time. It was initiated by Payne on arrival of the Detainees, and from at least 16.30hrs on Sunday when he ordered it to start, Peebles knew it was taking place. There was widespread knowledge among members of H Company, at BG Main that the conditioning process was occurring; the Rodgers Multiple were aware of it, most as participants; and I find that SSgt Davies and Smulksi, the tactical questioners, knew of it also, although SSgt Davies may not have been aware that these Detainees were placed in stress positions.

## Loss of Discipline and Lack of Moral Courage

- 203.** My findings raise a significant concern about the loss of discipline and lack of moral courage to report abuse within 1 QLR. A large number of soldiers, including senior NCOs, assaulted the Detainees in a facility in the middle of the 1 QLR camp which had no doors, seemingly unconcerned at being caught doing so. Several officers must have been aware of at least some of the abuse. A large number of soldiers, including all those who took part in guard duty, also failed to intervene to stop the abuse or report it up the chain of command.
- 204.** Part II, Chapter 20 contains a table which summarises all findings I make of assaults by named individuals.

## Delay and Breach of the Fourteen Hour Rule

- 205.** At the time of the detention of the Op Salerno Detainees, FRAGO 29 as modified by FRAGO 005 mandated that internees be delivered to the TIF within fourteen hours of their arrest or as soon as possible thereafter. In the case of the Op Salerno Detainees, their arrest took place at around 07.00hrs on Sunday and their arrival at the TIF was not until about 14.00hrs on Tuesday, a period of approximately 55 hours.
- 206.** This was not the first occasion on which the fourteen hour rule had been breached by 1 QLR. A number of reasons probably contributed to these delays: a lack of resources to transport or escort internees to the TIF, the two hour journey time to the TIF, delays in obtaining tactical questioners from Brigade, and the erroneous belief that at night the TIF was closed and could not receive internees.
- 207.** As to why the fourteen hour rule was breached in the case of the Op Salerno Detainees, two reasons were put forward by 1 QLR witnesses: firstly, that there was a lack of manpower resources to transfer the Detainees; and secondly, that the Detainees

were not transferred in the late afternoon periods because it was understood that the TIF would shut at night. It is obvious that there was also a third reason, namely the duration of tactical questioning, which did not finish until mid-afternoon on Monday.

- 208.** There was communication between 1 QLR and 19 Mech Bde in relation to the delay. It is likely that Peebles spoke to Maj Bruce Radbourne of the 19 Mech Bde G2 branch, on Sunday, to inform him that the Detainees would be held over the fourteen hour limit as tactical questioning was still taking place. Radbourne ought to have ordered the transfer immediately or referred the matter within Brigade, but he did not do so. On Sunday evening, 1 QLR requested a second tactical questioner from Brigade, resulting in Smulski's attendance. Peebles stated that on Monday morning he informed Maj Russell Clifton, the 19 Mech Bde legal officer, that the fourteen hour limit had been breached; although Clifton agreed there was a conversation, he denied that he was told the fourteen hour limit had already been breached and that tactical questioning was continuing. I prefer Clifton's account. Thereafter, on Monday morning, the Brigade Chief of Staff, Maj Edward Fenton spoke by telephone to either Seeds or Suss-Francksen seeking an explanation for the delay, and was told that there was a lack of resources to transport the Detainees to the TIF. On Monday evening Fenton spoke to Suss-Francksen, who told him that the delay was caused by lack of manpower and vehicles, and that it was too late to deliver the Detainees to the TIF that night. Fenton accepted this explanation and said that the Detainees should be moved early on Tuesday morning.
- 209.** While I have found that 1 QLR genuinely but mistakenly believed they could not transfer detainees to the TIF at night, this does not explain why the Detainees were not transferred during the day on Monday. Although I have some sympathy with the explanation that there was a lack of resources to transfer the Detainees, in my judgment the principal reason for their prolonged detention at BG Main was so that they could be further questioned.
- 210.** Had the fourteen hour rule been complied with then Baha Mousa would have been transferred to the TIF long before Monday night. I find that neither 1 QLR nor 19 Mech Bde were assiduous enough in ensuring the rule was adhered to.

## Inadequate Detention Procedures

- 211.** In addition to the deficiencies in the medical inspection of the Detainees, as outlined above, there were other serious shortcomings in the detention procedures used at BG Main.
- 212.** The facilities for holding the Detainees, particularly the TDF, were wholly inadequate. There were no beds or other furniture, and the lack of doors meant there were no restrictions on who could enter. There was no meaningful custody record, or even a log of personnel visiting the TDF. The Detainees were not properly fed whilst at BG Main. I find they were given only a breakfast on Monday morning and on Tuesday morning. They were given water in a cursory, and sometimes demeaning, fashion.
- 213.** It was also a significant error of judgment for the soldiers who had undertaken the arrest at the Hotel to be tasked to guard the Detainees.

## The Failure to Supervise and the Dispute over Responsibility

- 214.** These failings occurred against a background of a lack of supervision and meaningful responsibility over the guards at the TDF. Ever since the death of Baha Mousa there has been a sharp debate among Maj Antony Royce, Mendonça, WO1 George Briscoe, Payne, Sgt Smith and Peebles as to where the responsibility lay for the welfare of detainees. In essence, Royce, Mendonça, Briscoe and Payne thought that the BGIRO was responsible (at the time of Op Salerno, this was of course Peebles). Peebles asserted that Briscoe as the Regimental Sergeant Major (RSM), and below him the Regimental Provost staff, were responsible. Sgt Smith, the Provost Sergeant thought both the BGIRO and the RSM had some responsibility.
- 215.** It is clear that the creation of the BGIRO role affected the conventional chain of command for detention at unit level, which ordinarily ran from the Adjutant to the RSM and then the Regimental Provost staff. After the introduction of the BGIRO role, Royce, who had been Peebles' predecessor as BGIRO, drafted a "1 QLR Internment Procedure" document dated 9 July 2003, which addressed, amongst other matters, the BGIRO's responsibility for making the internment decision, but it did not state that the responsibility for prisoner handling had shifted from the RSM to the BGIRO. Having taken over the role of BGIRO from Royce, Peebles said that he considered the chain of command in Iraq to be the same as if the Battalion were in the United Kingdom. However, even if Peebles was never explicitly informed of a shift in responsibility, in my judgment, by the time of the events in question he should have appreciated that in practice he was the officer overseeing treatment of detainees at BG Main. He accepted in his own evidence that he had a "pivotal" role in dealing with detainees at BG Main.
- 216.** It is vitally important that this lack of clarity in the allocation of responsibility for the prisoner handling process, and for ensuring the welfare of detainees, is not repeated. I address this issue further in Parts XVI and XVII.

## Responsibility: The Key Personalities within 1 QLR

- 217.** In relation to some key individuals within 1 QLR, it is appropriate to describe in a little more detail the consequences of the findings I have made in relation to what occurred during 14 to 16 September 2003 at BG Main.

### Payne

- 218.** It is clear on any view that Payne played a fundamental role. At the Court Martial Payne pleaded guilty to the offence of a war crime, namely inhuman treatment of a person protected under the provision of the Fourth Geneva Convention. He was sentenced to twelve months' imprisonment and reduced to the ranks. On the day he gave evidence to the Inquiry, Payne accepted that the case put forward by him at the Court Martial was not the whole truth and that the basis of his guilty plea had been false. He conceded that he had used gratuitous violence on the Detainees, including kicks and punches, and also implicated the whole of the Rodgers Multiple, including Rodgers, in acts of violence. I accept Payne's admission that he used gratuitous

violence whenever he returned to the TDF. This accords with the evidence given by the Detainees and some other soldiers. However, where Payne makes allegations against others it has clearly been necessary carefully to consider his motives for doing so.

- 219.** Payne thought hooding and stress positions were a standard operating procedure for dealing with Detainees. In the light of the understanding at 1 QLR that this was a practice sanctioned by Brigade, this understanding was to some extent justified. It was nevertheless not a sanction for those techniques being applied for up to 36 hours or for the force actually used in applying them.
- 220.** I reject the suggestion that Payne's use of gratuitous violence did not occur until the "Free for All" incident on Sunday night (see Part II Chapter 10). The Payne video, taken on Sunday around midday, illustrates the nature of the force Payne used to maintain stress positions. I accept the Detainees' accounts that the violence, including being struck by kicks and punches, started shortly after they were placed in the TDF. I also find that at some point Payne demonstrated an episode of the choir to members of the Rodgers Multiple and himself precipitated the "Free for All" incident. Payne's numerous other visits to the TDF over the 36 hour period were routinely accompanied by violent acts against the Detainees.
- 221.** I have concluded that in the final minutes Payne was involved in a violent assault on Baha Mousa. I find that his conduct on this occasion was a contributory cause of Baha Mousa's death. After the death he sought to persuade others to say that the death was accidental, when, plainly, he knew it was not.
- 222.** I have described Payne's part in the events leading up to Baha Mousa's death as a dreadful catalogue of unjustified and brutal violence on the defenceless Detainees. D005 and D006 have given evidence that Payne was capable of some small acts of kindness. Nevertheless, I am driven to the conclusion that his actions demonstrate him to have been a violent bully. His example was followed by more junior soldiers. He bears a very heavy responsibility for the events in question.

## Sgt Smith

- 223.** The Provost Sergeant, Sgt Smith, was frequently unavailable to supervise Payne at the TDF, largely as a result of other duties he was required to fulfil. However, on Sunday evening he became aware that the Op Salerno Detainees were still being questioned, and he approached Peebles about this. I accept Sgt Smith's account that Peebles told him the Detainees would be moved after tactical questioning was completed. When Sgt Smith visited the TDF again on Sunday evening at around 21.45hrs, he ordered the guards to remove the Detainees' handcuffs and hoods, and to allow them to relax out of stress positions. After being tasked on other duties during Monday, he spoke again to Peebles at some time between 16.00hrs and 18.00hrs that day, voicing his concern about the length of time the Detainees had been at the TDF. He was told that the Detainees would be taken to the TIF the following morning.
- 224.** I find it is to Sgt Smith's credit that he made these attempts to raise with a more senior officer, Peebles, the necessity to transfer the Detainees. Nevertheless, by Monday morning Sgt Smith was aware of the length of time the Detainees had been hooded and in stress positions. He ought then, as Provost Sergeant, to have made time to go

to the TDF to supervise Payne. Had he then seen the condition of the Detainees I am confident he would have done something about it.

## Briscoe

- 225.** The RSM, Briscoe, after the BGIRO role was introduced, did not have the same level of responsibility for the detainees as Peebles. On balance, I accept Briscoe's account that he did not visit the TDF during the detention of the Op Salerno Detainees, and that he did not know what was going on in the TDF during that period of time.
- 226.** However, in my view, Briscoe ought to have known what was going on. The role of the RSM has been described as being the eyes and ears of the Adjutant and the Commanding Officer. The RSM, in part, is also responsible for the discipline of soldiers and NCOs. Had this function been carried out properly Briscoe should have discovered the abuse of the Detainees being perpetrated in the TDF.

## Rodgers

- 227.** Rodgers commanded the Multiple whose members guarded the Op Salerno Detainees for the majority of their detention. Rodgers denied that on any of his visits to the TDF he saw anything untoward. I do not accept that this can be true. By the time of Rodgers' first visit on Sunday evening the Detainees had been hooded and in stress positions for most of the day, and subject to assaults by Payne, Crowcroft and Fallon. By Monday morning, when Rodgers again visited, the conditions were shocking. Rodgers stated that even on Tuesday morning there was nothing he witnessed to cause him to think that the Detainees had been treated inhumanely. Simmons' evidence concerning the same period detailed the overt injuries to some Detainees and the smell of urine in the TDF. I infinitely prefer Simmons' evidence. Accordingly, Rodgers' denial of these aspects of the detention adversely affects his credibility.
- 228.** I strongly suspect that Rodgers was aware of the low-level incidents of violence and abusive treatment of the Detainees by the Multiple at the Hotel. I find that he knew at the time, or very soon after became aware, of what had happened during the "Free for All" on Sunday night. It is not credible that he did not know after his visit on Monday morning that the Detainees had been assaulted throughout the night. As commander of the Multiple he ought to have known, and I find that he did know.
- 229.** It represents a very serious breach of duty that at no time did Rodgers intervene to prevent the treatment that was being meted out to the Detainees, nor did he report what he knew was occurring up the chain of command. If he had taken action when he first knew what was occurring, Baha Mousa would almost certainly have survived. Furthermore, as the Officer Commanding the Rodgers Multiple he must accept responsibility for the serious instances of ill discipline by members of the Multiple.

## Englefield

- 230.** Above Rodgers in the chain of command was Englefield, the Officer Commanding A Company, who led the raid on the Hotel. Englefield's account included the recollection that he had visited the TDF, or its immediate vicinity, once on Sunday night, and once

on Monday night. He too asserted that on none of his visits to the TDF did he go into the TDF nor hear or see anything untoward.

- 231.** In some respects Englefield was an unsatisfactory witness whose credibility was undermined by two notable aspects of his evidence. Firstly, he attempted to say that Pte David Fearon had not stolen money from the Hotel; secondly, Englefield had referred in an SIB statement to the use of hoods as a method to “*break*” detainees. During his oral evidence to the Inquiry, initially, but without success, Englefield tried to deny the plain English meaning of this aspect of the account he had given to the SIB.
- 232.** Nevertheless, I am unable to find on the evidence available that Englefield witnessed anything amiss in the TDF on either occasion that he might have been in its vicinity. I am of the view also that Englefield was entitled to believe and accept that the Detainees were at that time the responsibility of the BGIRO and the Provost Staff.

## Moutarde

- 233.** As the Adjutant, Moutarde told the Inquiry that his usual practice was to visit the TDF about twice during every 24 hour period. He did not remember doing so in relation to the Op Salerno Detainees, but accepted that he probably would have made at least one visit, possibly more, while they were detained. He was unable to remember any specific detail of what he saw but said he would have seen what he was used to seeing routinely; namely, the type of action seen on the Payne video, but without the swearing.
- 234.** Moutarde accepted it was highly likely that he visited the TDF after the death of Baha Mousa, although again he had no recollection of doing so. If he did so, he must have seen the disgusting conditions as described by Seeds and Quegan. I accept the evidence from members of the Rodgers Multiple that Moutarde was party to a conversation with Payne and others in the vicinity of the TDF after the death. In those circumstances I find it more probable than not that Moutarde did go into the TDF soon after the death.
- 235.** Once he had seen the state of the Detainees and the TDF on Monday evening he ought to have taken immediate action to investigate and to ensure that they were not subjected to any further mistreatment.

## Peebles

- 236.** It follows from my findings concerning the allocation to the BGIRO of the responsibility for the welfare of detainees that the acts and omissions of Peebles also played a very central part in the events which occurred during 14 to 16 September 2003. Peebles ought to have known that hooding and stress positions being enforced by guards, in the heat, for a protracted period of time, was a situation fraught with danger. He ought to have known this, even if he considered himself not to be responsible for the welfare of the Detainees. Peebles’ failure to order conditioning to cease prolonged the ordeal the Detainees were subjected to and was an unacceptable failure.
- 237.** Furthermore, I also conclude that evidence given about the state of the Detainees and the condition of the TDF, in conjunction with what other soldiers such as Ingram

told Peebles, and Peebles' own evidence describing the timing of his visits, result in the finding that Peebles was aware that the Detainees were also being subjected to serious assaults.

## Mendonça

- 238.** As the Commanding Officer of 1 QLR, Mendonça shouldered very considerable responsibilities when leading 1 QLR through the challenging circumstances of the Op Telic 2 tour in Basra. Mendonça was ultimately awarded the Distinguished Service Order (DSO) for his service in Iraq. It is evident that he possessed impressive leadership qualities.
- 239.** During the course of the SIB investigation, the Court Martial and the Inquiry, Mendonça has been the subject of allegations from some soldiers that he was involved in or witnessed acts of violence towards civilians in Iraq. These allegations have all been addressed, and I do not repeat them here.
- 240.** It is possible that soldiers from 1 QLR were involved in some other instances of ill discipline during the tour. However I am not satisfied that the evidence justifies a finding that Mendonça knew that his Battlegroup was prone to incidents of gratuitous violence.
- 241.** Mendonça knew that 1 QLR practised conditioning of detainees. He understood that detainees would be hooded, put into stress positions, which he took to mean positions to prevent relaxation rather than cause pain, and that they would not be allowed to sleep before questioning.
- 242.** The central question is of course, what Mendonça knew about the treatment of the Op Salerno Detainees. Mendonça said that although he knew of their detention, and that he now accepted that during the course of their detention, the Detainees must have been assaulted by members of 1 QLR, he had no knowledge of the abuse and violence against them at the time.
- 243.** Mendonça visited the TDF on Sunday night, at some time after 22.17hrs. His account was that he saw the Detainees seated, quiet and to the best of his recollection, without hoods, not in stress positions and not exhibiting signs of pain or injury. I do not accept the evidence of Rodgers that Mendonça and Briscoe visited the TDF on Monday morning. Both Mendonça and Briscoe deny this, and I prefer their evidence to that of Rodgers. Mendonça also said that he went to the TDF, but could not remember entering the building, soon after Baha Mousa's death. He could give no explanation for not going into the TDF. He stated that he was unaware of the conditions in the TDF at this latter stage of the detention.
- 244.** In general terms Mendonça was an impressive witness. I formed the view that his evidence was given truthfully and in the main accurately. I have reached the following conclusions in relation to him.
- 245.** Mendonça knew that conditioning entailed the hooding of detainees and the use of stress positions. I accept that he believed that if a stress position was used, it was a mild technique designed to prevent detainees from relaxing. I also accept that he delegated to the discretion of the BGIRO the administration of this process and the control over how long it lasted.

- 246.** It is surprising, but not impossible, that Mendonça did not see the Detainees hooded or in stress positions on Sunday night. This visit may have occurred during the short period after Sgt Smith had ordered that the Detainees were not to be hooded, handcuffed or in stress positions. Bearing in mind my assessment of Mendonça's credibility I am not prepared to reject his account that he did not see anything untoward on this visit to the TDF.
- 247.** In relation to the visit to the TDF on Monday night, Mendonça would have known that the Detainees had been held far in excess of the fourteen hour deadline, and that the process of tactical questioning, and therefore conditioning, had been protracted. A Detainee had just died in the custody of his Battlegroup. I find that this situation called for Mendonça to take steps to ensure that the other Detainees came to no harm. If he had seen the conditions in the TDF at that time he would have been able to immediately improve the Detainees' situation.
- 248.** As the Commanding Officer, Mendonça ought to have recognised that a process enforcing hooding and stress positions involved a very serious risk of a detainee being exposed to inhumane treatment, and that the extreme heat compounded this risk. The failure of Mendonça to prevent the use of this type of conditioning process within his Battlegroup, or to even formally raise the matter with the Brigade, is a very significant one.
- 249.** In these circumstances, it was also an error of judgment for Mendonça not to involve himself more closely in the oversight of the prisoner handling process, notwithstanding the other priorities he faced. Further, I think it likely that he fostered a "robust" approach to operations. I accept that Mendonça thought that he made it clear that the robust posture was not to carry over to into the handling of prisoners. However, the risk that such an approach would spill over into the treatment of detainees made the requirement for proper supervision of the guards and oversight of the prisoner handling process all the more necessary.
- 250.** I find that Mendonça can properly be criticised for not inquiring into why the Detainees had not been sent to the TIF by Monday, and for not visiting the TDF himself that day to ensure that the Detainees were in a suitable condition.
- 251.** In respect of the acts of physical violence against the Detainees during 14 to 16 September 2003, I accept that Mendonça was unaware of such conduct. However, the assaults involved at least a number of junior soldiers from more than one multiple, four junior NCOs and two senior NCOs. Payne's conduct alone tends strongly to suggest that he was untroubled about being seen doing what he was doing. I have found that Rodgers, a platoon commander and junior officer, knew what was happening, as did Peebles, a Major. I conclude that Mendonça ought to have known what was happening in the TDF.
- 252.** Next, and in summary form, I shall point up some of the broader headline areas of particular concern which the Inquiry highlighted, and which inform both my analysis of events and the responsibility of individuals as well as my ultimate recommendations.

## The Historical Background (Part I)

### The Historical Context to 1996

- 253.** On 2 March 1972, the Prime Minister, Rt. Hon. Edward Heath MP, announced in the House of Commons a ban on the five techniques (the Heath Statement). The techniques were hooding, the use of white or background noise, sleep deprivation, wall-standing (a form of stress position) and a limited diet. Despite this ban it appears that the five techniques did not disappear.
- 254.** In the main body of the Report, I have been selective in my references to events before the Heath Statement. I do not consider it necessary or appropriate to make detailed findings on the use of conditioning techniques before that Statement.
- 255.** What is clear is that doctrine and practice had developed separately in relation to interrogation in warfare and interrogation in internal security/counter insurgency operations.
- 256.** In relation to the interrogation in warfare, guidance on interrogation was provided in both the 1951 Regulations for the Application of the 1949 Geneva Conventions and for the Treatment of Prisoners of War and the 1955 Pamphlet "Interrogation in War". While not beyond criticism on aspects such as the Geneva Convention prohibition on threats, the tenor of the guidance for the interrogation of prisoners of war was to make use of the prisoners' bewilderment, asking questions firmly in the form of orders, and maintaining strict discipline. There was no suggestion of the use of the five techniques in the guidance on interrogation in warfare.
- 257.** It was in internal security and counter insurgency operations that the five techniques had come to be used. It is clear that some or all of the five techniques had been in use by the Armed Forces for many years before their use in Northern Ireland. An MoD historical narrative produced in 1971 admitted to their use in Malaya, Kenya, Cyprus, British Cameroons, Swaziland, Brunei, Aden, British Guiana, Borneo-Malaysia and finally, Northern Ireland. Their use over the years resulted in a number of government inquiries. Arising from events in Aden, the Bowen Report of November 1966 made a number of recommendations in relation to interrogation procedures. The operative guidance, the 1965 Directive on Military Interrogation and Internal Security Operations Overseas, was amended as a result. The 1965 Directive made no mention of the five techniques, referring only in general terms to "*psychological attack*" and "*permissible techniques*".
- 258.** During the 1971 internment operations in Northern Ireland the five techniques were used. Allegations of mistreatment made by some of the men then arrested led to the establishment of the Compton Inquiry, which reported in November 1971. The report concluded that the five techniques constituted physical mistreatment but not "brutality". The men who had complained of ill-treatment during in-depth interrogation were subsequently to become the subjects of proceedings in the European Court of Human Rights in the Irish State Case in which that Court held the use of the five techniques in these cases amounted to a practice of inhuman and degrading treatment in breach of Article 3 of the European Convention on Human Rights.

259. The Compton Inquiry in a sense pleased no one. The Government of the day, unhappy with its findings, set up the Parker Inquiry to consider whether, and if so in what respects, the procedures then in place for the interrogation of terrorist suspects required amendment. Hooding, wall-standing and the use of noise were understood to carry important security benefits as well as the pressure they brought to bear for the purposes of interrogation. There was an active debate in relation to these techniques then thought by some to assist in obtaining intelligence in the context of terrorism/insurgency, and the extent to which their use should be presented as a security measure.
260. The Majority Report of Lord Parker and Mr Boyd Carpenter concluded that the moral question of whether the five techniques should be utilised depended upon the intensity with which they were applied and the provision of effective safeguards against excessive use. Subject to those safeguards, the Majority saw no reason to rule out the techniques on moral grounds.
261. The Minority Report of Lord Gardiner concluded that the five techniques were illegal in domestic law. He derided the decision to abandon, in colonial type emergency situations, the UK's "...*legal, well-tried and highly successful wartime interrogation methods and replace them with procedures which were secret, illegal, not morally justifiable and alien to the traditions of ... the greatest democracy in the world*".
262. The force of Lord Gardiner's argument and reasoning was recognised by the Government. While the Majority Report was not in terms disavowed, the Government's approach to future operations was more consistent with the Minority Report of Lord Gardiner.
263. Consequently, in the House of Commons on 2 March 1972, the Prime Minister, the Rt. Hon. Edward Heath MP, stated that the five techniques would not be used in future as an aid to interrogation. The Heath Statement was re-enforced in the Irish State Case when on 8 February 1977, the Attorney General stated that the United Kingdom gave an unqualified undertaking that the five techniques would not in any circumstances be reintroduced as an aid to interrogation. The Heath Statement is the real starting point for the Inquiry and I consider in the Report what it was intended to cover, what effect it had, and what consequences flowed from it.
264. An order of 1 March 1972, specific to Northern Ireland, had directed that the five techniques should not be used as an aid to interrogation, but also prohibited all use of hooding.
265. The true scope and extent of the Heath Statement has been a matter of debate. Having considered all of the materials available to the Inquiry I find firstly that the Heath Statement was intended to ban the use of the techniques as an aid to interrogation. I do not consider that it was intended to ban all use of hooding in all military operations, though it is undoubtedly the case that an order to that effect was issued for operations in Northern Ireland. Secondly, I think it most likely that the Heath Statement was intended to apply to operations worldwide. Thirdly, however, it is less clear whether it applied worldwide to all military operations or only worldwide to internal security/counter insurgency type operations as opposed to warfare/international conflict. The point may be largely academic. The MoD recognised in 1972 that the five techniques would already be prohibited and unlawful in warfare by reason of the Geneva Conventions.

- 266.** Following the Heath Statement, the 1965 Directive was revised. The 1972 Directive was formulated in two parts. Part I contained the main principles and was capable of being published. Part II gave more detailed instructions and was not intended to be published. After further debate about its extent, the 1972 Directive was limited to internal security operations. In making the decision, the discussions within the MoD again demonstrate that it was then recognised that the five techniques would be unlawful if used in warfare.
- 267.** Part I of the 1972 Directive contained the specific prohibition on the use of the five techniques. In contrast to the Heath Statement, it was not in terms specifically limited to the use of the techniques as an aid to interrogation. Moreover the prohibition in Part I referred to blindfolds as well as hoods. However, I am clear that it can properly be inferred that sight deprivation was banned only as an aid to interrogation. The whole Directive was addressing interrogation by the Armed Forces in internal security operations. Part I of the 1972 Directive remained in force up to 2003.
- 268.** Part II of the 1972 Directive was issued within the MoD 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 the methods and approaches that were permissible in interrogation.
- 269.** There was a contemporaneous rationale for limiting the 1972 Directive to internal security operations and for it being issued using the mechanism of two separate parts with cross references. However, I conclude that these features can now be seen to have contributed over time to the loss of MoD corporate knowledge about the prohibition and its extent. It perpetuated the divide between doctrine on interrogation and prisoner handling doctrine in warfare and in internal security operations.
- 270.** With hindsight, themes can be extracted from how matters developed after 1972:
- (1)** there was a failure to introduce any amendment to the doctrine on interrogation in wartime to mirror the specific prohibition on the five techniques that applied to internal security operations;
  - (2)** the separate treatment of interrogation in warfare and interrogation in internal security/counter insurgency operations was perpetuated;
  - (3)** the level of written guidance on interrogation, while often noted to be outdated, gradually degraded and became less specific; and
  - (4)** guidance on prisoner handling did not adequately address sight deprivation.
- 271.** The first of these failures is particularly regrettable because the undesirable difference between warfare and internal security interrogation doctrine was specifically noticed not long after the events of 1972. It was meant to be, and should have been, rectified. The point arose from SAS operations in Oman in 1973. There is no doubt that it was recognised as a concern at this time that the 1972 Directive and its constraints did not apply to warfare, and that doctrine in respect of interrogation in warfare was very outdated. Consequently, in September 1973, the Vice Chief of the General Staff directed the Intelligence Centre, Ashford to draft updated Joint Service guidance on interrogation in war. In doing so he required that close regard should be paid to the 1972 Directive including its constraints and principles. Such guidance, in the form of Joint Service Publication (JSP) 120(6) was finalised in June 1979, replacing the 1955 Pamphlet. Its production had taken almost six years, a reprehensible delay. Moreover,

although it set out sound principles in relation to the treatment of prisoners of war derived from the Geneva Conventions, JSP 120(6) did not contain any reference to the prohibition on the five techniques. I find that this document ought to have so referred. To that extent, the drafting of JSP 120(6) failed to meet the original instructions of the Vice Chief of the General Staff.

- 272.** JSP 120(6) nevertheless did contain a short section on sight deprivation, permitting prisoners to be blindfolded where necessary for operational security. It also reiterated the Geneva Convention requirement for humane treatment of prisoners. But the instruction in JSP 120(6) on sight deprivation for operational security did not endure later changes. JSP 120(6) also reflected the gradual decline in the level of detail provided on interrogation methods. The 1955 Pamphlet had given guidance on all aspects of interrogation of prisoners of war. JSP 120(6) was stated merely to provide guidance for those who were not trained interrogators.
- 273.** As regards guidance for prisoner of war handling, rather than interrogation, JSP 391 “Instructions for the Handling of Prisoners of War” was issued in 1990. It replaced the 1951 Regulations. Like JSP 120(6), JSP 391 contained much sound guidance on the principles of humane treatment of prisoners of war and reflected the prohibitions on violence, intimidation and insults. But it did not refer to the prohibition on the five techniques and it contained no guidance whatsoever on sight deprivation. Such guidance would have been obtained from JSP 391 only if the reader had followed an oblique cross reference to JSP 120(6).
- 274.** These shortcomings contributed to the situation that no Op Telic Order, nor any readily accessible MoD doctrine at the time of Baha Mousa’s death in 2003, referred to the prohibition on the five techniques. As the MoD concede, the five techniques should have been banned as an aid to interrogation in all situations and in all operations, wherever they took place. With respect to the gradual loss of the doctrine, the situation was only to get worse in years 1996 to 2003.

## 1996 to Early 2003

- 275.** A review of interrogation policy took place in 1996 to 1997. In the course of this review, both parts of the 1972 Directive, JSP 120(6), the Compton and Parker Reports and the most relevant Articles of the Geneva Convention were all correctly identified as extant doctrine. As had been the case in 1972 to 1973, it was explicitly recognised that the use of the five techniques in interrogation in warfare would be unlawful, being in breach of the Geneva Conventions. It was also recognised that Part 1 of the 1972 Directive was narrow in its remit, applying only to internal security operations.
- 276.** On 21 July 1997 the revised policy for interrogation and related activities was issued, having been agreed at Ministerial level. This revised policy:
- (1)** contained the strategic imperative that interrogation methods during all operations should comply with the Geneva Conventions and international and domestic law;
  - (2)** cancelled Part II of the 1972 Directive (which had only applied to internal security operations); and

- (3) required that the procedures to be used by UK interrogators in an operational theatre should be governed by a detailed directive that incorporated current legal advice and was issued on behalf of the UK Joint Commander.
277. In short summary, the effect was that for internal security operations, Part I of the 1972 Directive (and its prohibition on the five techniques) remained in place. But now, for all military operations across the whole conflict spectrum, a detailed directive had to be issued to govern the procedures to be used by UK interrogators.
278. While it is true that the changes introduced to interrogation policy in 1997 made clear that compliance with the Geneva Conventions and international and domestic law was required, this 1996/1997 review was another regrettable missed opportunity to have made clear in the doctrine that the prohibition on the five techniques applied as much to international conflict/warfare as in internal conflict situations. I have no doubt that those who drafted the 1997 Policy understood that to be the position, and would have expected the prohibition on the five techniques to be contained in any operation specific detailed directive.
279. Meanwhile the gradual degradation in the level of detailed guidance within interrogation doctrine continued. JSP 120(6) became obsolete. The precise date when this occurred cannot be ascertained. But it is clear that it was superseded by Joint Warfare Publication (JWP) 2-00 "Intelligence Support to Joint Operations", first promulgated in 1999. While JSP 120(6) had been far less specific than the 1955 Pamphlet on interrogation methods, JWP 2-00 was now yet more general in nature. It concentrated on the intelligence cycle and architecture. It did not deal with interrogation and tactical questioning. Such references as there were to interrogation were incidental. In contrast to JSP 120(6), JWP 2-00 included no guidance at all on sight deprivation.
280. Thus, the position had been reached whereby the only doctrinal guidance available in relation to the interrogation of prisoners of war was from NATO Standardisation Agreements, the 1997 Policy guidelines, both at a high or very high level of generality, and a further requirement for a detailed directive to be produced to govern procedures in any operational theatre.
281. It is a matter of great regret that by this time the UK had no adequate written doctrine for interrogating prisoners of war. The MoD creditably conceded as much in its closing submissions. But it is not as though this gap in doctrine went unnoticed at the time.
282. In 1999, S040 was a Naval Lt Cmdr (the equivalent of a Major in the Army) and the Officer Commanding the Reserves Wing and a Reserves Unit at the Joint Services Interrogation Organisation (JSIO). He had noted the absence of interrogation doctrine and the consequent difficulty of training and exercising the reserve companies. S040's Commanding Officer accordingly tasked him to conduct a review.
283. S040 was relatively new in post. He canvassed widely to gather the existing doctrine. S040 then sought input from the Army Legal Service (ALS) about interrogation. This request referred to the Geneva Conventions, NATO STANAGs 2044 and 2033, JSP 391, JSP 120(6) and JWP 1-10, but, significantly, the request did not refer to the Heath Statement, the 1972 Directive or the 1997 Policy. As the JSIO review progressed, those omissions were not rectified, and an ignorance of what those texts provided coloured the review's debate. This is representative, not of any failing on S040's part, but the wider MoD corporate loss of understanding of what doctrine was applicable.

- 284.** On the positive side, the JSIO review did identify a need for direction and clear policy. Both capability and doctrinal shortcomings were identified. When S040's paper was put up for consideration in May 2000, the Commanding Officer of the JSIO noted that the issues requiring clarification were complex and warned that this was traditionally a charter for procrastination. That was all too prophetic. No further policy or doctrine on tactical questioning or interrogation was drafted between 2 May 2000 and Baha Mousa's death in September 2003.
- 285.** While S040's paper was gradually taken forward by others, the emphasis shifted significantly towards the capability issues, rather than focusing on both doctrinal shortcomings and capability issues. By mid 2002, the review was still stating that there was no MoD endorsed doctrine for interrogation. But by now this was clearly a secondary concern. By early 2003 the concerns about the lack of doctrine appear to have been lost altogether, the review now stating that there was adequate doctrine, in JWP 1-10, but that the UK had not invested in the means to deliver it. Eventually the paper and the capability issues on interrogation were subsumed into a wider review of human intelligence capabilities that was then ongoing but was not completed until after Baha Mousa's death.
- 286.** It is baffling that by early 2003 the review paper had come to suggest that there was adequate interrogation doctrine. No further interrogation doctrine had been published since the earlier versions of the review had suggested that there was no MoD endorsed doctrine for interrogation. Nearly three years after drafting his initial paper correctly identifying doctrinal shortcomings, S040 was preparing to mobilise to Iraq where he was to command the JFIT. On 1 March 2003, weeks before the ground offensive, he wrote a lessons learned memorandum commenting that the JFIT had no interrogation doctrine on which to build its function and recommending, "*Interrogation doctrine must be promulgated without delay*".
- 287.** So much for interrogation doctrine and guidance. As to prisoner handling doctrine, in March 2001 JSP 391 was replaced by JWP 1-10 "Prisoners of War Handling". This was the main prisoner of war handling doctrine in place during Op Telic in 2003.
- 288.** JWP 1-10 expressly recorded that it was not a detailed guide to the interrogation of prisoners of war. It did address tactical questioning, albeit fairly briefly, including the prohibition on physical or mental pressure or other forms of coercion to induce prisoners of war to answer questions. Whilst clearly reiterating the need for humane treatment of prisoners, JWP 1-10 contained no reference to the prohibition on the five techniques. Like its predecessor publication, JWP 1-10 did not give any guidance whatsoever on sight deprivation.
- 289.** JWP 1-10 was a detailed and lengthy publication. It should have addressed both sight deprivation and the prohibition on the five techniques. I am satisfied that both omissions were wrong and brought about unfortunate consequences on the front line. A significant body of evidence discloses that during Op Telic it was plainly not evident to experienced officers and NCOs that stress positions and hooding were wrong. Specific reference to the five techniques, and hooding in particular, with guidance on the use and mechanics of sight deprivation of prisoners, was a necessary constituent of adequate written military doctrine at this time.
- 290.** By the time of Op Telic, a late draft of JSP 383 "The Manual of the Law of Armed Conflict" (finally published in 2004) was in circulation and available to some MoD and

Army legal advisers. It briefly addressed the subject of interrogation and stressed the importance of treating prisoners humanely. It warned that no physical or mental torture or any other form of coercion may be used to obtain information. Importantly, it also mentioned that blindfolding and segregation may be necessary in the interests of security, restraint or to prevent collaboration before interrogation, but that those measures must be truly justified and be for as short a period as possible. This guidance mirrored guidance produced by the International Committee of the Red Cross (ICRC). I reject the argument advanced by the MoD that this guidance was very clear about the method to be used. Without more, a reference to blindfolding would have been understood by many soldiers to permit the use of hoods as a form of blindfolding. The manual did not refer to the prohibition on the five techniques being designed as a manual on LOAC rather than on human rights law.

- 291.** It appears to be the case that, aside from Part 1 of the 1972 Directive, this part of JSP 383 was the only place within all of the available policy and doctrine publications in 2003 where sight deprivation was addressed in any way. I note, however, that JSP 383 was a manual, then only in draft form, and primarily for military lawyers. It was not readily accessible operational guidance for commanders on the ground.
- 292.** Taking a step back, it can be seen that at the time of Op Telic there was no proper MoD endorsed doctrine on interrogation of prisoners of war that was generally available. Knowledge of Part I of the 1972 Directive on internal security operations as a policy document containing the prohibition on the five techniques had largely been lost, and the prohibition was not contained in JWP 1-10. Despite JWP 1-10 status as the lead publication on the handling of prisoners of war, it also made no mention of sight deprivation.
- 293.** This position had developed over decades and was the product not only of failings but also of missed opportunities. In those circumstances, although I make comments about the role played by some individuals at certain times, it is fair and appropriate to conclude that the position outlined above was as a result of a corporate failure by the MoD.
- 294.** I do not lose sight of the fact that although doctrinal shortcomings may have contributed to the use of a process of unlawful conditioning being adopted by 1 QLR, it cannot excuse or mitigate the kicking, punching and beating of Baha Mousa which was a direct and proximate cause of his death, or the treatment meted out to his fellow Detainees.

## Teaching and training (Part VI)

- 295.** The training in relation to various functions carried out by the Armed Forces was of considerable relevance to the Inquiry's investigation of the course of events during Op Telic 1 and Op Telic 2.

## LOAC, Prisoner Handling training and Counter Insurgency Training

- 296.** Two aspects of the training for the infantry soldier on the ground were of particular interest; the training in the LOAC and prisoner handling exercises conducted at unit level.

- 297.** All soldiers undergo training in LOAC. At the relevant time leading up to Op Telic, it was mandated by Army Individual Training Directive 6 that all personnel were to receive one 40 minute period of training in LOAC annually. Such training was substantially based on the pamphlet, "The Soldier's Guide to the Law of Armed Conflict". Although the guide clearly emphasised the principle of the humane treatment of prisoners, it did not mention the prohibition on the five techniques or give any detailed guidance on prisoner handling and the treatment of civilian detainees.
- 298.** A significant number of soldiers giving evidence to the Inquiry recalled that the LOAC training sessions also involved the presentation of a video in relation to LOAC. The video that most witnesses remembered seeing was the 1986 video "The Law of Armed Conflict". The video was based on a conventional cold-war scenario. It addressed the legitimacy of targets, recognising protective emblems, the white flag and protecting non-combatants. But it did not address civilian detainees nor did it refer to the prohibition on the five techniques.
- 299.** A second video, "Handling prisoners of war" went into more detail. But the Inquiry received very little evidence to suggest that regular soldiers ever saw this second video. Unlike the first video, it did briefly cover sight deprivation stating that prisoners should only be blindfolded if moved through sensitive military locations. It did not include any express mention of the prohibition on the five techniques. Its content was probably largely academic because it appears to have had a very limited circulation.
- 300.** At Sandhurst, officers would receive more training than the annual training requirement for all personnel. But this was still training at a level of broad generality and there is no indication that it covered the prohibition on the five techniques.
- 301.** In general terms, although certainly not exclusively, the soldiers' evidence about the LOAC training gave the impression that it had become formulaic and outdated, that the age and style of the video training undermined the seriousness of the content, and that, insofar as the training may have consisted of a mere showing of a video, it was somewhat perfunctory.
- 302.** I accept that the basic message that violence towards prisoners was forbidden was asserted in LOAC training. The Inquiry heard a significant amount of evidence to illustrate that soldiers knew there was a clear duty to treat prisoners humanely. The difficulty is that what amounts to inhumane treatment may not always be clear. Military opinion varied on whether hooding was humane treatment, and some did not consider all use of stress positions to be inhumane.
- 303.** In relation to prisoner handling exercises, a number of soldiers deployed on Op Telic 1 and 2 told the Inquiry that they had witnessed the hooding of those playing prisoners and/or had been hooded themselves during exercises. I accept that these exercises were mainly attempting to train in the procedures at the point of capture, at which hooding was seemingly utilised for security purposes. However, such exercises ran the risk that soldiers might have been misled about what was acceptable in relation to the restriction of sight further up the prisoner handling chain. Most often, where prisoner handling was part of a military exercise, it stopped at the point of capture. For the most part, handling further up the prisoner handling chain tended not to be practised on exercises.

- 304.** Later in their careers, some officers would probably have been taught about the prohibition on the five techniques. Between 1977 and 1996 the Army Staff Course (ASC) included a Counter Insurgency (COIN) element and the teaching of this module included reference to the Parker Report. The Parker Report was required reading for this course from 1977 to 1996, and the various handbooks issued for the course, at least between 1989 and 1996, contained the history of the use of the five techniques in Northern Ireland, the Parker Report, the Heath Statement and the 1972 Directive. Mendonça, Commanding Officer of 1 QLR throughout the relevant events, attended this training course in 1995, as did at various other times a number of senior officers who deployed during Op Telic 1 or 2. The training records indicate that in 1995, the year Mendonça attended, the course would also have included a syndicate discussion on the use of force which included viewing a video which explained and included discussion on the history of the prohibition on the five techniques.
- 305.** As he was to tell me in evidence, by 2003 Mendonça had forgotten these elements of the course. He was not alone in failing to remember this aspect of training. Some 29 other witnesses to the Inquiry attended the ASC course. Of those only three gave evidence indicating that they specifically remembered being taught about the prohibition on the five techniques on the ASC. Accordingly, I conclude that regrettably the teaching did not succeed in instilling lasting knowledge of the prohibition in all officers who attended the course.

## Provost Staff Training

- 306.** Detention of soldiers at battalion level is dealt with by soldiers appointed as Regimental Police (RP), also known as Provost Staff. They are not the same, nor as thoroughly trained, as the Military Provost Staff (MPS). To equip them to detain soldiers within their own battalion base, at least one RP from each unit must have completed the Regimental Police Course (RPC).
- 307.** Unsurprisingly, the RP's familiarity with detention matters meant that on Op Telic they would often be used for prisoner of war, detainee and internee handling. That was certainly the case in 1 QLR.
- 308.** The RPC was a week long course. It obviously included the principle of using minimum force on prisoners, as well as how to escort prisoners and the use of restraints. However, the course focused on the detention of British soldiers. It did not include any teaching in relation to prisoner of war handling, or the handling of civilian detainees on operations outside the UK. It did not include the prohibition on the use of the five techniques. Neither did it include formal instruction in control and restraint techniques. However, a "general interest" demonstration of control and restraint techniques was a feature of the course. During this demonstration, RP staff had the opportunity to try out physical holds and locks, even though they would remain unqualified to apply them in practice. The Inquiry heard evidence that in this informal demonstration, students would be warned about the risks of positional asphyxia in prisoners subject to restraint.
- 309.** The lack of training relating to detention on operations and the informal glimpse of control and restraint techniques are areas of concern in relation to the RPC course. I consider the lack of any training in relation to detention of captured persons on operations to have been a deficiency in the RP training. At the very least RP should

have been taught that the same basic standards of treatment should have been applied to detention on operations as in the detention of British soldiers. Further they should have been told this should apply to all categories of prisoner, whether prisoners of war or suspected insurgents, terrorists or criminals.

- 310.** The identified insufficiencies in the RPC training programme were not, in my opinion, a causative factor in the treatment of the Op Salerno Detainees. Payne, the former Provost Sergeant of 1 QLR, restrained Baha Mousa during the fatal struggle partly by putting his knee into Baha Mousa's back. There is no sufficient evidence to support a finding that in doing so he was incorrectly applying a technique he had been taught on the RPC.

## JSIO Tactical Questioning and Interrogation Training

- 311.** The Inquiry considered in depth the training given to tactical questioners and interrogators by the JSIO. Most seriously, it has been necessary to investigate whether tactical questioners might have been expressly taught to use the five prohibited techniques, or any of them, by their instructors. Students and instructors gave evidence and I have considered all the relevant surviving teaching materials.
- 312.** The starting point is that for the historical reasons already analysed, there was an absence of policy or doctrine to which the JSIO could teach. However, I am confident that the JSIO courses taught that prisoners must be treated humanely. Relevant aspects of the Geneva Conventions and LOAC were referred to, although their full implications may not have been well understood. Students were taught to maintain a firm, fair and efficient prisoner handling process in part to help to maintain the shock of capture.
- 313.** As regards the written training materials, I conclude that it is very likely that by 2002 to 2003, these did not include any specific reference to the prohibition on the five techniques. Some individual instructors who were familiar with the background may well have included reference to the prohibition on the five techniques in their own teaching on the courses. Nevertheless, I am sure that insufficient emphasis was given to the prohibition on the five techniques in the JSIO teaching.
- 314.** While the specific prohibition on the five techniques was not sufficiently taught, during elements of the course it is likely that instructors referred to prohibitions on some of the individual techniques, in particular stress positions. It is likely that the courses taught the prohibition on sleep deprivation, but this was subject to different approaches on the part of instructors in relation to keeping prisoners awake pending initial tactical questioning soon after capture.
- 315.** As to sight deprivation, the surviving written training materials suggest that the teaching was that prisoners should be deprived of their sight for security reasons, using a blindfold. The prohibition on using hoods or blindfolds as an aid to interrogation was not specified within the written materials. It was stated, inappropriately, that the pressure on a blindfolded prisoner could be increased by walking around the blindfolded prisoner when he first arrived in the interrogation room, before the blindfold was removed. This was teaching the use of sight deprivation as an aid to interrogation contrary to the Heath Statement, and the 1972 Directive. This should not have been taught. It may

have weakened the message that sight deprivation as an aid to interrogation was prohibited.

- 316.** I am satisfied students were taught that sight deprivation for security purposes was acceptable and that sight deprivation actually during questioning was prohibited and counter productive. For the most part, I consider that the message conveyed was that sight deprivation *as an aid to interrogation* was prohibited. However, the teaching imparted the message that the deprivation of sight for security reasons had an incidental benefit of maintaining the shock of capture. This too risked undermining the message that sight deprivation as an aid to interrogation was prohibited. I find it likely that blindfolds were what were usually used on the course as the means of depriving the sight of those playing the part of prisoners. However, hoods were possibly used on some occasions. I find that teaching on what means could be used for security sight deprivation in an operational theatre most likely varied from instructor to instructor. This part of the teaching was particularly prone to different interpretation depending on the particular instructor. Students were at risk of coming away from the courses with an unclear understanding of the proper limits and purposes of sight deprivation.
- 317.** It is clear that in some aspects the teaching was unacceptable. As I have indicated, teaching students to walk around a blindfolded prisoner to increase the pressure before the blindfold was removed was wrong. The teaching of the harsh approach included direct insults and permitted racist and homophobic verbal abuse. Application of the harsh technique in an angry manner risked being a form of intimidation to coerce a prisoner, and the technique also included the use of indirect threats to instil fear.
- 318.** I find that some senior instructors, the heads of the branch and their immediate chain of command, might all have done more to ensure that not teaching the basics of the five techniques was made clear and to ensure compliance with the requirements of Article 17 of the Third Geneva Convention. Nevertheless, I attribute the main fault for the inclusion of inappropriate training and/or exclusion of appropriate material to a systemic failure over a number of years. As dealt with in detail in this Report, and touched on elsewhere in this Summary, central features of this systemic failure were a wholesale lack of MoD doctrine in interrogation under which JSIO could formulate its training, and the lack of proper accessible legal advice and legal assessment of JSIO training.
- 319.** 1 QLR did not have any trained tactical questioners. But the JSIO did run a shortened course before Op Telic 2 on 10 June 2003 which was attended by some members of 1 QLR, including Payne. I accept that this training made it clear that it did not qualify any attendees to conduct tactical questioning, and that blindfolds would have been used on the course to demonstrate sight deprivation rather than hoods. However, I am not convinced that the teaching would have made clear that blindfolds were preferred to hoods as the means to achieve sight deprivation on operations. I accept the training covered the maintenance of the shock of capture. However, I reject the suggestion made by Payne that sleep deprivation, specifically as an aid to interrogation, was encouraged on the course. It is possible, however, that those attending may have been told that it was acceptable to keep prisoners awake during the very early hours of detention pending imminent tactical questioning.

## Conduct After Capture training

- 320.** Conduct After Capture (CAC) training prepares British service personnel for the event of them being captured. I do not doubt that it is necessary for all, and that more intense practical training in CAC is necessary for those prone to capture.
- 321.** Most service personnel received only theoretical annual and pre-deployment training (PDT) in CAC. While this training was classroom based and theoretical, more express warnings should have been included in the theoretical training.
- 322.** Practical CAC training, in which a variety of the five techniques might actually be used on British soldiers to prepare them better to deal with being captured, was given only to a minority of personnel who were prone to capture. Such training consistently contained a warning by way of a briefing to all those involved in the training that procedures would be used on the course that would simulate what a non Geneva Convention compliant enemy might do. This warning would have been better if it had also included a specific reminder about the prohibition on the five techniques. Perhaps more significantly, the MoD has rightly accepted that the use of recently trained interrogators to take part in practical CAC exercises was an imprudent practice. I find it did run a real risk of contamination.
- 323.** There was evidence that unauthorised and informal CAC type training exercises were from time to time run at unit and sub-unit level. Where this might have occurred, I view it as highly unlikely that appropriate warnings were consistently issued about the techniques being used. There is anecdotal evidence that such training has been a repeated problem. It must cease.

## Medical Staff Training

- 324.** The final category of relevant specialist training is that given in relation to the medical care of detainees. Two aspects of this training are of particular interest. Firstly, the extent of the ethical duty to avoid involvement in interrogation, and secondly what instructions existed concerning the practical procedures for the medical treatment of detainees.
- 325.** Historically, in relation to the situation in Northern Ireland in the early 1970s, the MoD had in place a detailed policy as to the medical care of detainees. However, by 2003 this had regrettably been lost and there was no MoD or Armed Forces' policy dealing specifically with the provision of medical care to detainees. This was a serious lapse.
- 326.** Significantly, the result of this lack of policy was that RMOs deployed on Operation Telic 2, including Keilloh who was in direct contact with Baha Mousa and the other Op Salerno Detainees, were provided with no specific guidance as to how to deal with prisoners.

## PDT

- 327.** The most current training received by those soldiers in Iraq during Op Telic 1 and 2 was their PDT. Some PDT is provided by the Operational Training Advisory Group (OPTAG). Other training is designed and conducted by the Battlegroup itself, or as

part of training offered by higher formations. PDT is honed and improved the longer operations endure. It can be truncated and far less developed at the start of a major operation.

- 328.** There were significant pressures on PDT, in particular for Op Telic 1, but also for Op Telic 2. As regards prisoner handling, the training must also be assessed taking into account the doctrinal shortcomings I have already identified. Those shortcomings were not the fault of those providing training immediately prior to deployment on Op Telic.
- 329.** For Op Telic 1, the OPTAG contribution to PDT was in the form of a CD package containing PowerPoint presentations. The subjects addressed included CAC and a briefing on prisoner of war handling. The latter aimed to confirm what soldiers should already have known from their annual LOAC training. It included appropriate references to humane treatment, and the prohibitions on violence and coercion to obtain information from prisoners. But it was silent on sight deprivation and did not mention the prohibition on the five techniques. Since, by 2003, the prohibition on the five techniques had substantially disappeared from the doctrine and guidance on interrogation and tactical questioning, it is not fair to criticise those who created the Op Telic 1 CD package for this omission.
- 330.** Additionally, in relation to Op Telic 1, once in theatre but before the ground force invasion, the 1 (UK) Div Legal branch led LOAC training and the MPS led a 40 minute prisoner handling session, both aimed at combat troops. For those troops able to attend the latter sessions, it is likely they were advised not to put sandbags over prisoners' heads. The inclusion of this instruction arose from the particular experience of the Officer who led the MPS training. Since at least parts of the infantry appeared to have received the message from exercises and elsewhere that hooding was a routine practice for prisoner of war handling, it is very unlikely that a single in-theatre briefing would have been sufficient to eradicate that understanding. Self evidently, these MPS sessions were not sufficient to prevent the practice of hooding prisoners during Op Telic 1.
- 331.** I recognise that the training period for Op Telic 2 was also less than ideal. 1 QLR were still carrying out duties on Op Fresco covering the fire-fighters' strike. This was outside the MoD's control. Additionally, 1 QLR did not receive a formal warning order for deployment until May 2003. This resulted in 1 QLR not receiving priority treatment for their training needs. Due to the deployment of many of the F branch JSIO instructors on Op Telic 1, 1 QLR did not manage to have any of its personnel trained in tactical questioning before deployment.
- 332.** The OPTAG training for Op Telic 2 consisted of fuller training than a simple CD package. But even for Op Telic 2, the OPTAG training was adversely affected by the lack of time and resources. It was not possible to complete the full cycle by which OPTAG would normally check that their training had been fully received and understood.
- 333.** Three elements of the OPTAG training were of particular interest to the Inquiry. Firstly, as part of the All Ranks briefing, a presentation on "Legal Powers" was given by Lt Col Charles Barnett the 3 (UK) Div Commander Legal. This briefing conveyed the message that soldiers were not to humiliate or harm prisoners. Barnett did not think that this briefing addressed the ban on hooding which had been introduced in Iraq during Op Telic 1. This recollection conflicted with that of Royce of 1 QLR, an important Inquiry

witness, who attended the lecture. He thought that this presentation had specified that detainees (as opposed to prisoners of war) could not be hooded. In my view, both witnesses were honestly seeking to recall what was said. The explanation is probably that Royce gleaned his knowledge of the hooding ban from some part of the training, but not from Barnett in the course of this specific lecture. It would have been better if Barnett had included the hooding ban in his presentation but it was not a culpable omission taking into account the ground he had to cover.

- 334.** Secondly, one of the “Train the Trainer” packages was in “Patrol Skills and Public Order”. This addressed prisoner handling at or near the point of capture and contained some instruction on arrest and detention techniques, including “control positions”. These were described as prisoners kneeling back on their crossed calves with hands behind their head, for a limited period of time, and not “full” stress positions. However, explicit warnings that control positions could only go so far were probably not given.
- 335.** Thirdly, some members of 1 QLR gave evidence that the OPTAG training had included the hooding of prisoners for security purposes. I do not accept that the OPTAG “Train the Trainer” packages positively advocated hooding. Unfortunately, it is however also likely that the OPTAG training did not include any clear guidance that hooding had been prohibited in theatre during Op Telic 1.
- 336.** There was a clear need for more precise and detailed training in relation to sight deprivation. I do not single out the OPTAG trainers for criticism in failing to provide this in the context of the short notice, curtailed training and importantly, the inadequate doctrine at this time in 2003.
- 337.** 1 QLR also instigated an “in-house” training programme. The Inquiry heard evidence that this too was hindered by lack of time, resources, and a clear indication of 1 QLR’s intended role on deployment. As part of training, 1 QLR soldiers carried out public order/internal security type exercises at the Whinney Hill facility, Catterick. There is a significant body of evidence that hooding was used at least during some exercises as part of this training. There are a number of reasons forming the context in which this occurred: hooding had been taught on previous prisoner handling exercises, including promotion courses at Brecon; some 1 QLR soldiers had seen 1 Black Watch (BW) hood prisoners during the 1 QLR recce in early May 2003; the primary available doctrine JWP 1-10 did not mention hooding; and OPTAG training had not included the Op Telic 1 hooding ban.
- 338.** The inclusion of hooding as a method of sight deprivation in 1 QLR training occurred after hooding had been banned in theatre during Op Telic 1, so it was clearly inappropriate. Responsibility for this does not lie with those individuals who delivered PDT within 1 QLR. The fact hooding was included in the 1 QLR training reflects the wider lack of any clear or detailed training or policy on sight deprivation.

## Early Theatre-specific Orders on Prisoner Handling and the HUMINT Directive for Op Telic 1 (Part VII)

- 339.** In assessing the early directives and orders for Op Telic, it is necessary to remember the application of the doctrine of “mission command” which guides how the Army operates. The principle of mission command means that higher level directives and orders are not to be expected to include detailed instruction in how to achieve the desired outcome. Instead, a clear intention is to be stated, with an explanation of what effect is to be created. The mode is one of setting out what is to be achieved and why, not dictating fine detail of how to do it. However, a commander will also have a duty of oversight in relation to directives and orders issued. Just as importantly, the commander still has responsibility for the outcome. Tasks can be delegated but not responsibility.
- 340.** The high level directives for the Op Telic campaign addressed prisoner handling and interrogation and tactical questioning (the latter usually under “HUMINT” instructions) in the following manner.
- 341.** Before the launch of Op Telic, there was a cascade of high level Directives which included some guidance in relation to prisoners of war. The Chief of the Defence Staff, Admiral the Lord Boyce, issued the CDS’s Execute Directive to Lt Gen Sir John Reith, the Chief of Joint Operations at Permanent Joint Headquarters (PJHQ). In turn, Reith issued a Mission Directive to Air Marshal Brian Burridge, the National Contingent Commander. Reference to prisoners of war in these Directives was at a high level of generality largely referring to, and relying upon, JWP 1-10.
- 342.** Burridge issued his own Directive to the commanders of the three Services and other recipients such as the Joint Force Logistics Commander. This made explicit the obligation to ensure that all those involved in prisoner of war and detainee handling had an understanding of and complied with the Geneva Conventions, the LOAC and the provisions of JWP 1-10.
- 343.** Maj Gen Robin Brims of 1 (UK) Div also issued Directives, in addition to operational orders. I acknowledge that Brims issued impressive guidance, communicating very clearly his intent and the critical importance of maintaining discipline.
- 344.** There was greater specific detail in relation to the prisoner handling process included in the operation orders, including the following.
- 345.** The main operation order covering the early stages of the war was the 1 (UK) Div Base OpO 001/03; which contained two annexes directly relevant to prisoner handling: a Legal Annex including the injunction that enemy prisoners of war were to be treated in accordance with the LOAC and any further policy issued by UK National Contingent Command (NCC), and an Annex comprising 1 (UK) Div’s “Enemy Prisoner of War Standard Operating Instruction”, emphasising the principle of humane treatment, the parameters of the Geneva Conventions and more detail on prisoner handling. The Divisional Order was reflected in, and cascaded by, Brigade level orders including 7 Armd Bde’s Operation Order dated 6 March 2003.

- 346.** 1 (UK) Div's Divisional Support Group issued DSG FRAGO 29 concerning prisoner of war handling. Once again this was a document which emphasised the importance of prisoners of war being handled in accordance with the Geneva Convention and made reference to the JWP 1-10. But as a predominantly logistics order, no other information was provided on the physical aspects of prisoner handling.
- 347.** An aide memoire on LOAC was also issued to all personnel, which included specific rules in respect of prisoners of war and civilians and reiterated the message of humane treatment.
- 348.** On the basis of the material disclosed to the Inquiry, the following conclusions are appropriate.
- 349.** I find that there was a clear message imparted to all soldiers about the importance of the humane treatment of prisoners of war and compliance with the Geneva Conventions and LOAC. In the higher level Directives, reference to and reliance upon JWP 1-10 and the Third Geneva Convention was not an unreasonable approach.
- 350.** Moving towards the more tactical level, the instructions naturally became more detailed. Yet none of the Divisional or Brigade orders addressed hooding or gave guidance on sight deprivation or the prohibition on the five techniques. For the most part, the approach remained either to refer to JWP 1-10 or to précis the advice contained within it, which was, as we have seen, silent on both the five techniques and sight deprivation. Thus as a result, on the ground, the guidance given to soldiers and junior commanders was inadequate. To answer the question of whether prisoners of war could be deprived of their sight, and if so by what means and for what purposes, units deployed on Op Telic 1 would have had to rely on their previous training.
- 351.** However, having reached this conclusion, I do not think it proper or appropriate to blame individual Division and Brigade level staff officers for this shortcoming. Commanders issuing orders addressing amongst many other things prisoners of war handling were entitled to rely on JWP 1-10. The MoD is corporately responsible for the fact that the guidance in JWP 1-10 was itself inadequate. I am satisfied that the historic failures to maintain adequate prisoner of war handling and interrogation doctrine led directly to inadequate prisoner of war handling guidance being issued in the lead-up to the warfighting phase of Op Telic 1.
- 352.** As can be seen, the authorisation for interrogation and tactical questioning to be undertaken and directions in respect of those procedures were required to be contained in a detailed directive as mandated by the 1997 Policy for Interrogation and Related Activities. Reith, the Chief of Joint Operations, did issue a HUMINT Directive for Op Telic.
- 353.** The version of the Directive seen by the Inquiry was dated 27 February 2003. I find that it was only a draft of the Directive. It is a concern that MoD did not retain the final version of such a significant document.
- 354.** The Directive did not include any reference to the prohibition on the five techniques or specify the actual methods and approaches that were permitted to be used in interrogation or tactical questioning. This arose because the key officers involved in drafting the Directive were not aware of the Heath Statement, nor were they even aware of the more recent 1997 Policy.

- 355.** The MoD rightly conceded that the HUMINT Directive did not meet the terms of the 1997 Policy. Its content was indeed inadequate. In my view this unacceptable position is not the fault of the individuals involved in drafting the HUMINT Directive. Rather, it is a consequence of the systemic failure within the MoD which allowed knowledge of the Heath Statement, the 1972 Directive, and even the current interrogation policy from 1997, to have effectively become lost.
- 356.** As I have concluded in Part VII of this Report, to this extent, the MoD did not have a grasp on, or adequate understanding of, its own interrogation policy. Whilst repeating that the omissions in the Directive cannot excuse the attacks perpetrated on Baha Mousa and the other Detainees, the absence of a clear statement in the Directive that the five techniques were prohibited as aids to interrogation may have contributed to the failure to prevent their use.
- 357.** On 25 February 2003 a submission was put to the Secretary of State for Defence, the Rt. Hon. Geoffrey Hoon MP. It sought approval for HUMINT operations, including interrogation and tactical questioning, in support of UK forces deployed on Op Telic. He, in turn sought the approval of the Foreign Secretary of the day, the Rt. Hon. Jack Straw MP. Both Ministers gave the recommended approval for HUMINT operations.
- 358.** On 14 March 2003, a minute to the Secretary of State invited him to note the arrangements that had been made for handling prisoners of war. Hoon's response duly noted these arrangements and in particular that they were designed to ensure that the UK met its legal obligations.
- 359.** I do not think it appropriate to criticise these two submissions to Ministers nor their response. It is not realistic to expect that the doctrinal shortcomings in relation to the five techniques and guidance on sight deprivation should have been apparent to those directly involved in these two submissions.

## **Early Hooding and Concerns about Prisoner Handling at the JFIT March / April 2003 (Part VIII)**

- 360.** In the first few weeks of the warfighting phase of Op Telic, it is clear that UK forces used hoods on prisoners at the JFIT. The ICRC and various British officers raised concerns about this practice, which led to the banning of the use of hoods in theatre.
- 361.** The JFIT was a self-contained compound within the prisoner of war facility at Um Qasr. This facility changed names a number of times. By the time of Baha Mousa's death it was known as the TIF. For ease of reference and consistency, I shall refer to it as the TIF, although in relation to the early hooding events, it held prisoners of war not internees.
- 362.** The TIF was run by the UK's Prisoner of War Handling Organisation under the command of Col S009. The JFIT staff ran the interrogation of suspected high value prisoners. The JFIT was commanded early in Op Telic 1 by Lt Cdr S040. His Operations Officer was Capt S014. S040 reported direct to the 1 (UK) Div J2X, Maj S002, who had responsibility for HUMINT matters at Divisional level. S009 also reported to Division but he did not control the activities of the JFIT. Thus there were separate chains of command for the JFIT and the Prisoner of War Handling Organisation.

- 363.** The controversy over the use of hoods at the JFIT arose during the warfighting phase of Op Telic. That context needs to be understood. The camp had to be constructed almost from scratch. Resources were few. Fighting was still going on nearby. The facility was sometimes targeted. Initially conditions and facilities were difficult for the military staff and prisoners alike. The JFIT compound, once constructed, was intended to deal with 30 prisoners but on occasions had to deal with considerably more.
- 364.** Shortly after the arrival of the JFIT at the TIF, S009 saw prisoners within the JFIT compound, kneeling on their haunches in the sun, cuffed to the rear and hooded with plastic sandbags. S009 assumed the positions they were in to be stress positions, although he had not seen positions used other than prisoners kneeling on their haunches. He did not know how long the prisoners had been kept hooded. When he raised his concerns directly with those in command at the JFIT, he was told that the methods being used were known and approved of by 1 (UK) Div.
- 365.** At the request of S009, Col Christopher Vernon, the Chief Media Operations 1 (UK) Div, visited the TIF. This was probably around 27 or 28 March 2003. He too witnessed a number of prisoners hooded, handcuffed to the rear and kneeling with their posteriors resting on their heels in what could be considered stress positions. Some were kneeling in this way but others were sitting.
- 366.** Brims visited the TIF and witnessed a single hooded prisoner being moved under escort. This was on 28 March 2003. Brims was concerned that hooding did not fit the type of operation in which UK forces were involved. He resolved to review the practice.
- 367.** Lt Col Nicholas Mercer, 1 (UK) Div's legal adviser, raised strong concerns. Over 28 and 29 March 2003 Mercer visited the Prisoner of War Handling Organisation and on one occasion saw a large group of prisoners hooded, handcuffed to the rear and kneeling in the sand. He noted a generator running outside an interrogation tent. He wrote a memo to Brims expressing his concern that this treatment violated the Geneva Convention. I accept the general tenor of Mercer's evidence as to what he witnessed.
- 368.** S014, the Operations Officer of the JFIT, explained that padded masks were initially used for sight deprivation, but the supply of these quickly ran out and sandbags as hoods were used as an alternative from early on in the JFIT's operations. Sometimes these hoods were folded up to give a double layer of covering to the eyes away from the prisoner's mouths. S014 stated that the hooding was for security reasons. However, I find that the maintenance of the shock of capture was also understood by him to be a side benefit of the use of hoods. S014 denied that stress positions were used. Prisoners were however not permitted to sleep before their initial interrogation.
- 369.** S040 also said that sight deprivation had been applied for the purposes of security. After the blindfolds had run out, the use of sandbags for this purpose was a naturally occurring process. S040 accepted that sometimes more than one hood was used, and that some sandbags made of synthetic fibres were used. He accepted that in some cases, prisoners may in total have been hooded for longer than 24 hours.
- 370.** S002, as J2X for 1 (UK) Div, had responsibility for matters across the whole HUMINT spectrum but I accept that tactical questioning and interrogation would have been only a small part of this responsibility. He witnessed prisoners hooded at the JFIT. He

understood that prisoners might be hooded for security reasons for up to 24 hours, but told the Inquiry that he believed that the hoods would be taken off intermittently for fifteen to twenty minutes every two hours or so. He recalled that S014 had indicated before the warfighting phase that hooding would carry benefits which included preserving the shock of capture. He was also aware that when prisoners were brought to the JFIT they were not allowed to sleep before being tactically questioned or interrogated.

- 371.** S002 also became aware, through concerns raised by the ICRC, of the practice of double hooding and the use of synthetic fibre hoods at the JFIT. Angered by this, he flew to the JFIT and intervened to prevent it. I accept that he did so. But S002's evidence was problematic. He told the Court Martial that he was not aware of the use of plastic hoods despite his Inquiry evidence that this practice had made him sufficiently concerned to fly straight to the TIF.
- 372.** The MoD has conceded, appropriately, that some of the practices applied during the early days of the JFIT were of concern. I find that some aspects of prisoner handling at the JFIT were inappropriate and unacceptable. This included hooding for unduly lengthy periods; the use in some instances of double hooding, and plastic weave sacks; prisoners kept for lengthy periods in the sun, and prisoners being prevented from sleeping prior to initial interrogation. Greater effort and improvisation could have reduced the need to deprive prisoners of their sight.
- 373.** On the available evidence, I conclude that there was no policy of holding prisoners in stress positions at the JFIT. The noise from generators was used to prevent interrogation sessions from being overheard, but this was more a case of a security precaution in a poorly resourced facility in the early stages of the war than the use of a coercive conditioning technique. It did not however meet current best practice.
- 374.** S040 and S014 bear responsibility for these aspects of prisoner handling at the JFIT. Both men considered security as the primary reason to justify the deprivation of sight of prisoners at the JFIT. However, for S014 I find that the desirability of maintaining the shock of capture was part of the reasoning for the continued use of hooding. S002 deserves some credit for the action he took to stop double hooding and the use of plastic weave sandbags. He gave impetus to improving resources so as to minimise the need for sight deprivation. In other respects, however, he shared in the errors of judgment of S014 and S040 in permitting prolonged hooding and keeping prisoners awake. The errors of judgment of these officers are however to be judged in the context of genuine security concerns about the layout of the JFIT, the lack of proper doctrine providing guidance about sight deprivation, the tempo and demands of their operations at the time and the lack of resources preventing the use of other means of sight deprivation such as purpose made blindfolds.
- 375.** Mercer was opposed to the hooding of prisoners in all circumstances and considered it unlawful. A range of staff officer lawyers took contrary views and supported hooding, but only for security purposes and with constraints. There was thus a disagreement amongst the lawyers in theatre. I have made different findings concerning certain of the legal officers involved. Ultimately, I find that the only fair criticism that can be made of the legal officers is that in most cases they did too little to find out precisely what was happening at the JFIT before giving advice.

## The Ban on Hooding

- 376.** The concerns of those officers who had seen hooding and did not agree with it led to the hooding issue being raised at the level of the higher formations in theatre.
- 377.** In addition to raising his concerns with the JFIT on the ground and inviting Vernon to visit, S009 contacted the ICRC about his concerns.
- 378.** Brims consulted his staff at 1(UK) Div on the matter. A series of meetings and discussions at Divisional level regarding hooding started on 28 or 29 March, and Brims' ban on hooding was made some days later.
- 379.** After seeing hooded prisoners at the TIF on 29 March 2003, Mercer wrote to Brims setting out his concerns. Mercer also spoke to S002. S002 drafted a memorandum replying to Mercer which defended the practice of hooding for security purposes and also acknowledged the practice of not allowing prisoners to sleep during the early stages of their detention at the JFIT. S002's reply was representative of a strongly defensive line presented in response to Mercer's concerns.
- 380.** Since Mercer and S002 could not agree, by 1 April 2003 at latest, Mercer had referred the issue of hooding to the NCC Headquarters. It seems that by this stage the majority view within 1 (UK) Div favoured a ban on hooding even if NCC Headquarters did not agree with the legal advice given by Mercer. S002 was however still arguing that the JFIT should be permitted to continue hooding.
- 381.** Concurrently with these steps, the ICRC visited the TIF and saw hooding being employed at the JFIT. On 1 April 2003 the ICRC informed the NCC policy advisor (POLAD) S034 that it intended to make a formal complaint about the UK's treatment of prisoners, one particular concern being in relation to the hooding of prisoners at the JFIT. An ICRC report dated February 2004 addressing allegations, amongst other things, of hooding and inappropriate conduct at the TIF, was leaked and thus, uncommonly, was in the public domain before the instigation of this Inquiry.
- 382.** As a result of the emerging concerns about the use of hooding through the various avenues described above, both Burridge, the NCC Commander, and Brims, the General Officer Commanding (GOC) 1 (UK) Div, issued bans on hooding in theatre by verbal orders made between 1 and 3 April. In outline these bans arose as follows.
- 383.** It is probable that S002 became aware of the ICRC concerns including in relation to double hooding and the use of synthetic plastic weave hoods on 31 March or 1 April 2003 and immediately went to the TIF to investigate. I accept that S002 stopped both these practices. It is possible that S002 also issued his own direct order to cease hooding altogether at the JFIT, but there is insufficient evidence to determine this with an appropriate level of certainty.
- 384.** Having been contacted by the ICRC, S034 raised the issue of hooding with Burridge. I am sure that Burridge directed that hooding was to stop. He understood that there was a legal grey area in relation to hooding for security purposes but that in most circumstances it would be inhumane; and that furthermore it was a practice in conflict with the intended impression the UK forces wanted to convey to the Iraqi people. Burridge accepted that, whilst there was no requirement for it, it would clearly have been desirable for the order to have been in writing.

- 385.** Brims ordered that hooding was to cease for all purposes, with the caveat that exceptions might be possible on application to 1 (UK) Div for permission. The decision was probably made and the order given some time between 1 April and 3 April 2003. This oral order was communicated by Divisional conference call by either the Chief of Staff, Col Patrick Marriott or Maj Justin Maciejewski the SO2 G3 Operations.
- 386.** A meeting with a delegation from the ICRC then took place at the TIF on 6 April 2003. I find that the position put to the ICRC was that sight deprivation for security purposes for the limited period necessary was lawful but that a decision had been taken to stop hooding, and that this reflected the seriousness with which the complaints by the ICRC were taken. The legality of hooding for security purposes was defended by the NCC Headquarters, despite the orders from Burridge and Brims that hooding should cease. Mercer was understandably frustrated at being prevented from expressing his view at this meeting that hooding for security purposes was unlawful and that any type of sight deprivation was wrong. However, S034 was not acting improperly in preventing Mercer from arguing an inconsistent legal view from that expressed by the NCC Headquarters.
- 387.** Before turning to the difficulties over how the hooding ban was implemented and communicated, I record that a number of officers deserve credit for raising concerns or being involved in the decision to ban hooding. Those officers were Burridge, Brims, Marriott, Vernon, Mercer and S009. In my opinion, their approach to the use of hooding was appropriate.
- 388.** In broad terms, there were two difficulties in communications that followed the orders of Burridge and Brims. As to Burridge's order, some senior staff officers at the NCC Headquarters were clearly not aware that Burridge had ordered that hooding should cease. Some in 1 (UK) Div wrongly understood the NCC Headquarters position to be that hooding was not regarded as unlawful but that 1 (UK) Div was free to issue its own order. In fact, I accept that the NCC Headquarters decision as articulated by Burridge was that hooding should cease. This particular confusion was not of any substantial causative significance given that 1 (UK) Div did in fact decide to stop hooding.
- 389.** As to Brims' ban, it is apparent that regrettably, the reception of his order was patchy. Significantly, neither the Brigade Commander of 7 Armd Bde, Brig Graham Binns nor his Chief of Staff, Maj Christopher Parker, were aware of Brims' order banning hooding. That meant, in turn, that the oral order banning hooding did not reach 1 Black Watch (BW), who were later to hand over to 1 QLR. Plainly, and with the benefit of hindsight, it would have been better had Brims' order been followed up by a written order issued by his Chief of Staff, Marriott. However, at this time the Division was coping with the massive demands of the warfighting operation. The communication of Brims' hooding ban is therefore something in respect of which 1 (UK) Div, and Marriot, could have performed better, rather than being a matter that is deserving of personal criticism.
- 390.** Despite the bans, some hooding of prisoners continued during Op Telic 1. The Inquiry identified several examples.
- (1)** For a period hooding continued within the JFIT even after Brims' order. This was justified on the basis of security while moving prisoners around the compound pending the arrival of alternative means to deprive prisoners of their sight. In

Part VIII of this Report, I am critical of S014 and to a lesser extent S040 for their role in this.

- (2) Prisoners were also continuing to arrive at the JFIT hooded. To some extent at least this was reported up the chain of command.
- (3) There is no factual dispute that 1 BW continued to hood some prisoners into May 2003. It would appear that two of the deaths in 1 BW custody involved detainees who had been hooded. Those deaths are not within my terms of reference but the limited evidence I received in relation to them did not suggest that hooding had contributed to the deaths.
- (4) On 5 April 2003, ITN News broadcast footage of a British arrest operation that had taken place the previous day. This showed prisoners hooded. It is possible that this operation took place only a day after Brims had banned hooding. Even so it ought to have registered as a sign that the order may not have been successfully communicated.
- (5) A coalition force operation took place on 11 April 2003 in which the RAF Regiment transported hooded prisoners by Chinook helicopter. One of the prisoners died. A report of the incident referred to the fact that the prisoners had been hooded.

**391.** In addition, an Amnesty International report dated 29 May 2003, addressed allegations of abuses in custody. Many abuses more serious than hooding were alleged. However, a perceptive and astute reading of the report might have picked up on a pattern of allegations of hooding after Brims' ban.

**392.** These several examples demonstrate repeated missed opportunities to recognise that hooding was continuing and then rectify what ought to have been appreciated was the poor communication of the hooding ban.

**393.** The legal and wider debate about the use of hooding continued even after Brims' ban. The Inquiry considered the extent to which the use of hooding was "staffed up" for an authoritative decision.

**394.** I find that more could have been done by some of the lawyers involved to ensure that the legal issue regarding hooding received further consideration. However, given the pressures of the warfighting operation at the time and the fact that an order had been issued prohibiting the use of hooding, I do not criticise any of them as having fallen below acceptable standards of conduct or performance.

**395.** On the intelligence side, I find that the controversy in theatre about the use of hooding had caused staff officers in the NCC Headquarters to notice that doctrine in relation to interrogation, including the use of hooding, was scarce. The HUMINT officer in theatre at this time was Lt Col Ewan Duncan. I accept that Duncan raised these issues with PJHQ. It was not seen by them as a priority task. The intelligence branch at PJHQ might have reacted more proactively. But again, it is relevant that an order had already been issued in theatre banning the use of hooding. The middle of a warfighting operation was not the time to be writing doctrine. Again, the key issue was the historical failure to have in place adequate tactical questioning and interrogation doctrine.

**396.** Between March 2003 (when the concerns in relation to hooding at the JFIT arose) and the death of Baha Mousa, the records of Ministerial correspondence show that on a number of occasions those at the highest level of the MoD were required to provide

information in relation to the policy on hooding. Some correspondence was plainly inaccurate where it purported to assure the addressee that the ICRC had expressed themselves content with the treatment of prisoners. Similarly, some gave an incorrect impression in relation to the duration and frequency of the use of hoods. In places the objective effect of the information was misleading. The MoD bears a corporate responsibility for the fact that inaccurate answers relating to hooding were sent out in the name of the Minister of State.

## The later Development of Orders through Op Telic 1 (Part IX)

397. The orders and instructions issued by 1 (UK) Div, and below that, by 7 Armd Bde, were either directly handed over to incoming formations at the start of Op Telic 2 or laid the foundations for the system of prisoner handling that was adopted and developed during Op Telic 2.
398. FRAGO 56 of 24 March 2003 was issued during the warfighting phase but looked ahead to how the stabilisation part of operations would be run. It identified arrest and detention as part of the law and order functions of 1 (UK) Div, together with a power to intern civilians. For arrests, it specified that as soon as practicable after an arrest, the arrested person should be transferred to the local police or handed over to the service police (the RMP). For internment, individuals who were deemed a security risk were to be handed over to the RMP or taken to an RMP station as soon as practicable. As soon as possible thereafter, and within 24 hours, the arrested person was to be handed over to what was planned as a Detention and Internee Management Unit.
399. FRAGO 79 of 3 April 2003 was drafted by Mercer and provided guidance on the power to stop, search and detain. In respect of detention, it required that prisoners be handed over to the RMP as soon as practicable and in any event within six hours. A 1 RMP FRAGO dated 9 April 2003 supplemented FRAGO 79 setting out the RMP responsibilities. Within 24 hours of being presented to the RMP Custody Senior NCO the arrested individual was either to be released or transported to the TIF.
400. Following a number of deaths in custody and the ICRC having received complaints about the handling of detainees, renewed guidance on the detention of civilians was issued by 1 (UK) Div's Daily Miscellaneous FRAGO 152, dated 20 May 2003. This was reproduced at Brigade level by 7 Armd Bde FRAGO 63 of 21 May 2003.
401. The FRAGO 152 guidance drafted by Mercer reiterated the requirement to hand detained persons to the RMP as quickly as possible and in any event within six hours (with an expectation that prisoners would be handed over within one hour, except by those units in remote locations). It also contained a clear warning that prisoners must be protected from violence and threats of violence and that breach of this would probably lead to disciplinary action.
402. Of particular significance, FRAGO 152 appears to have been the only written order before Baha Mousa's death which referred to a prohibition on hooding prisoners, directing that, "*under no circumstances should their faces be covered as this might impair breathing*". Although this injunction could have been phrased in more unequivocal terms, the wording was designed to prevent soldiers adopting forms of sight deprivation other than sandbags that might impair breathing. Mercer believed

that Brims' ban on hoods had already been communicated in theatre and FRAGO 152 was intended to be further guidance. Any proper reading of FRAGO 152 should have led the reader to conclude that hooding was indeed banned. It is to Mercer's credit that he ensured this order was issued, and I conclude that it would not be fair to criticise Mercer for failing to make the hooding ban clearer or more prominent in FRAGO 152.

403. FRAGO 163 (and its Brigade equivalent, FRAGO 70), were issued on 30 May 2003, and provided for the handover of prisoners to the RMP within one to two hours, save in exceptional circumstances. Delivery to the TIF was to be within six hours of arrest when practicable. This order also expressly instructed, that under no circumstances were suspects to be "interrogated" before being processed by the TIF.
404. Mercer confirmed to the Inquiry that these provisions within FRAGO 163 were included as safeguards to minimise the risk of prisoner abuse. He also confirmed that notwithstanding use of the word "interrogated" in the final language of FRAGO 163, his intention had been to ensure that the only questioning of prisoners by UK forces, whether tactical questioning or interrogation, should take place at the TIF. There was, therefore, an undesirable ambiguity in this instruction. I attach only limited criticism to Mercer in this regard. In very many respects he showed singular dedication to the highest practicable standards of prisoner handling.
405. A substantial change in the command structure for the Op Telic campaign was set out in OPO 005/003 of 8 June 2003. It established the new Multi National Division (South East) (MND(SE)), reflecting withdrawal of the NCC Headquarters and the extension of 1 (UK) Division's area of operation into four provinces in southern Iraq. This order also included an Annex setting out law and order and internment procedures which were to be adopted with immediate effect. Of note, it now became the SO2 Detention's responsibility to make the initial decision whether or not a prisoner should be interned.
406. The most significant changes to the processes for handling internees were however brought about by FRAGO 29, which came into effect on 5 July 2003, just before the start of Op Telic 2 and the handover from 1 (UK) Div to 3 (UK) Div.
407. The following key changes to internment procedures were instituted by FRAGO 29. Firstly, the G2 branch (Intelligence) assumed overall control of the internment process from the SO2 Detention. Secondly, responsibility for the assessment of prisoners detained by Battlegroups transferred from the RMP to the new Battlegroup post of BGIRO. Thirdly, Battlegroups no longer had to hand detainees over to the RMP within one to two hours, with the RMP having to deliver to the TIF within six hours. There was no handover to the RMP and the Battlegroups themselves had a new limit of fourteen hours from arrest to delivery to the TIF. Thus the period for which detainees could be held by Battlegroups was significantly extended.
408. There had been a significant reduction in the number of RMP troops in theatre by the end of Op Telic 1. This was a real factor in the changes brought in by FRAGO 29. I accept that it might to some degree have also been thought that the BGIRO would be more suitable as a decision maker in relation to threats to security than the RMP. The introduction of the BGIRO role was also in part to remedy the delay in intelligence from internees being fed back from the JFIT to the Battlegroups.

- 409.** Evidently, the geographical distances in question and the sometimes hazardous operational context were factors behind extending the timescale for delivery of detainees to the TIF from a maximum of six hours to fourteen hours. Furthermore, at the time of the issue of FRAGO 29, it is likely that the TIF was in fact closed to the reception of new prisoners during night hours. As I note in the Report, the position changed at some stage before Op Salerno.
- 410.** Notwithstanding these possible benefits in the changed regime, I find that there were significant risks associated with the introduction of FRAGO 29. The evidence reflected a degree of confusion as to which branch was in overall control of the processing of internees. There was risk in putting the G2 branch in overall charge in that G2 staff had a vested interest in exploiting detainees for intelligence gathering. The FRAGO 29 system required the BGIRO to gather enough information to determine whether an individual posed a threat to force security. This too ran the identifiable risk that questioning at Battlegroup level might go beyond the gaining of immediate tactical information and extend towards full-scale interrogation. Moreover, the ambiguity of FRAGO 163 prohibiting “interrogation” rather than tactical questioning and interrogation before the TIF, was now compounded by the absence of any instruction at all on tactical questioning and/or interrogation in FRAGO 29.
- 411.** I formed the impression that there was a disinclination to accept responsibility for the strategic direction that had been implemented by FRAGO 29. Communication about the order was inadequate within 1 (UK) Div. Legal staff were consulted only late and then did not question the order to the extent that might have been expected. Within the Divisional headquarters, staff officers held widely differing views as to what questioning could take place before the TIF. The level of consultation within the Division had not served to draw out these conflicts of view. Had it done so, the order could and should have given clear guidance. Instead FRAGO 29 was silent on tactical questioning and whether it was permitted prior to the TIF.
- 412.** Although it is of course easier in hindsight to identify the disadvantages of the approach mandated by FRAGO 29, I conclude that at the time more consideration should have been given to the changes the order was intended to bring about and the identifiable attendant risks. Such consideration may not have changed the overall approach of FRAGO 29 but it might have led to better guidance being issued.

## **Handover of Prisoner Handling Orders between Op Telic 1 and Op Telic 2 (Part X)**

- 413.** The Op Telic 1 formations and units handed over in theatre to their Op Telic 2 counterparts. The handovers were staggered so as to provide continuity and avoid all level of commands changing at the same time. At Battlegroup level, 1 BW handed over to 1 QLR on 27 June 2003. 7 Armd Bde handed over to 19 Mech Bde on 4 July 2003. Then finally 1 (UK) Div handed over to 3 (UK) Div on 12 July 2003.
- 414.** If the Op Telic 1 hooding ban had been effectively disseminated, and the handovers at all levels were thorough and efficient, all the Op Telic 2 units and formations ought to have known that it was prohibited for UK forces to hood prisoners in Iraq. This did not happen and I find that the practice of the hooding of detainees continued during the early part of Op Telic 2, not just by 1 QLR, but by also by other units.

## Battlegroup Level

- 415.** A number of witnesses from the 1 BW Battlegroup gave evidence to the Inquiry concerning the use of hooding by 1 BW and the process and content of the recce visit and handover with 1 QLR.
- 416.** It is very clear from this evidence that 1 BW did hood some of their detainees during their tour. But the vast majority of 1 BW witnesses did not see or know of stress positions being used by the Battlegroup.
- 417.** Sgt John Gallacher was 1 BW's Provost Sergeant. Gallacher's evidence was significantly different from most other 1 BW witnesses. Gallacher's evidence was that he had attended the JSIO PH&TQ course early in 2003. His mistaken but genuine understanding after completing this training was that stress positions and hooding were appropriate methods for conditioning high value intelligence prisoners. He returned to 1 BW and briefed the Brigade on the use of hooding. In that briefing his evidence was that he also mentioned stress positions, although in the context that British soldiers might be put in stress positions if captured.
- 418.** Once in theatre, Gallacher said that he hooded and put in stress positions those prisoners brought into 1 BW custody who were deemed to be of high intelligence value. He would put them in stress positions but would not kick or punch them or subject them to any similar treatment. He said the stress positions would be used for 20 to 30 minutes but had only been used on five to ten detainees. I accept that Gallacher's evidence in this regard was honest and accurate. His use of stress positions was limited to very few detainees and I find that other 1 BW personnel did not know what Gallacher was doing. Gallacher should have realised that the techniques might be inhumane. His responsibility for using the techniques is less than it might have been, given that I accept that he genuinely believed he was permitted to use them. It is a matter of concern that the Chicksands PH&TQ course had left him with that mistaken impression.
- 419.** A recce visit to 1 BW was conducted by 1 QLR during 7 to 10 May 2003. Brims' oral ban on hooding had not reached 7 Armd Bde or 1 BW and FRAGO 152 had not yet been issued. As a result, 1 BW were still hooding prisoners at this time. This in turn meant that several members of 1 QLR's recce party saw 1 BW hooding prisoners. 1 QLR's Commanding Officer, Mendonça, as well as Maj John Lighten, Capt Michael Elliott and Royce all saw prisoners hooded by 1 BW. They did not see prisoners in stress positions. Royce recalled that it was explained to him on the recce that the hooding and handcuffing of prisoners was a standard procedure and that it had been sanctioned by 7 Armd Bde.
- 420.** On 20 May 2003, as described above, FRAGO 152 had stated that "*Under no circumstances should their faces be covered as this might impair breathing*". The corresponding FRAGO from 7 Armd Bde to its sub-units was FRAGO 63. It attached the same Annex and wording. On its face, the order suggests that it was sent amongst others to 1 BW and, for information, to 19 Mech Bde.
- 421.** The evidence as to whether FRAGO 63 actually reached 1 BW was not all one way. On the balance of the evidence, I am satisfied that FRAGO 63 was sent to and received by 1 BW. Most of the 1 BW witnesses who remembered seeing FRAGO 152

or FRAGO 63 said that they believed that the part of the Annex set out above was an order banning hooding.

- 422.** FRAGO 63 ought to have put a stop to the use of hoods by all 1 BW sub-units by the time of the handover to 1 QLR. Some 1 BW sub-units indeed appear to have ceased hooding as a result of this order. But I find that FRAGO 63 did not put a stop to hooding throughout the 1 BW Battlegroup. The Commanding Officer of 1 BW, Lt Col Mike Riddell-Webster, and the RSM, WO1 David Bruce, must bear some responsibility for the failure to ensure FRAGO 63 was implemented throughout the Battlegroup.
- 423.** Since FRAGO 63 had not stopped all hooding by 1 BW, when they handed over to 1 QLR, some members of 1 QLR saw 1 BW hooding prisoners, as had also occurred at the recce. A number of 1 QLR witnesses said that they adopted the procedure of hooding prisoners because they had seen it in use by 1 BW.
- 424.** The Inquiry considered whether a copy of FRAGO 63 was given to 1 QLR as part of the handover from 1 BW. The operations officers at the time were Capt Nicolas Ord (1 BW) and Elliott (1 QLR). Ord believed that all the operative orders would have been handed over to 1 QLR and these ought to have included FRAGO 63. He went through the orders one by one with Elliott. Elliott took issue with the suggestion that he received a copy of FRAGO 63. He understood hooding to be a standard procedure and would have remembered an order prohibiting its use. There was insufficient evidence satisfactorily to resolve this dispute. It is possible that FRAGO 63 was not in the set of orders handed over to 1 QLR, perhaps because subsequent orders had addressed the internment process. Alternatively it may be that FRAGO 63 was in the orders given to Elliot and that he did not alight on that part of the order which prohibited covering prisoners' faces. In these circumstances it is not fair to criticise either officer.
- 425.** There is no evidence to suggest that members of 1 QLR were aware of the use made by Gallacher of stress positions. I have considered carefully the application of this finding in the case of Sgt Smith and Payne to whom Gallacher would personally have handed over. However, Payne, particularly, would have a strong motive for suggesting he learnt of stress positions from Gallacher, yet he stated that he did not.
- 426.** To complete the picture, I also heard evidence from a limited number of members of other Battlegroups deployed on Op Telic 2 at the same time as 1 QLR. 1 QLR was by no means the only Op Telic 2 Battlegroup to use hooding. But the evidence, albeit from a small number, was that hooding was a method already applied by their units rather than directly adopted from the Op Telic 1 units they had relieved.

## Brigade Level

- 427.** 19 Mech Bde assumed responsibility for Basra from 7 Armd Bde on 4 July 2003. Even before the stage of the handover from 7 Armd Bde to 19 Mech Bde, the prohibition on hooding ought to have reached 19 Mech Bde because FRAGO 63 was copied to 19 Mech Bde for information. As the Chief of Staff for 19 Mech Bde, Maj Hugh Eaton would have been responsible for the orders sent for information to 19 Mech Bde during Op Telic 1, including FRAGO 63 which contained the prohibition on covering prisoners' faces. He had no recollection of seeing FRAGO 63 and said that he had doubts as to whether it was in fact received by 19 Mech Bde. There were significant problems with data and correspondence to and from theatre. Nevertheless, Eaton

also admitted that it was possible that the content of FRAGO 63 was simply missed as a point which needed to be made subject of an instruction to 19 Mech Bde troops. There is doubt as to whether FRAGO 63 was received by 19 Mech Bde, but if it was, it is highly regrettable that it engendered no further action.

428. Moving on to the Brigade handover, there was evidence from 7 Armd Bde witnesses that FRAGO 152 would have been handed over in paper and electronic form, and some suggestion that the orders for prisoner handling would have been discussed as well.
429. There was an initial conflict of evidence between Brig Adrian Bradshaw the Commander of 7 Armd Bde, who had stated that all existing FRAGOs would have been handed over, and that prisoner handling issues would have been discussed; and Moore, the Commanding Officer of 19 Mech Bde who was not aware of any ban on hooding and did not remember prisoner handling issues being raised. Bradshaw accepted the possibility that the issue might not in fact have been commented upon.
430. At Chief of Staff level, Parker of 7 Armd Bde maintained that FRAGO 152 would have been handed over in paper and electronic form, although he himself did not remember referring to FRAGO 152 during the handover. Parker was not aware of any oral order prohibiting hooding before FRAGO 152. His counterpart at 19 Mech Bde, Eaton stated that the relevant orders were not discussed with him.
431. By the time of the handover, it seems that for many Brigade officers neither prisoner handling nor hooding appeared to be particularly high profile issues. As a result, prisoner handling may have been seen as relatively low priority in the handover process.
432. The evidence suggested that 19 Mech Bde would not usually reissue 7 Armd Bde FRAGOs which had already been issued to Battlegroups. The expectation was that Battlegroups on the ground would pass on all relevant information to their successor Battlegroups.
433. The Brigade level handover process left many of the key 19 Mech Bde witnesses unaware that hooding had been prohibited. The Brigade Commander Moore, the Chief of Staff Eaton and Deputy Chief of Staff Maj Jim Landon, and a number of the senior staff officers within the intelligence operations and plans branches fell into this category. Others, most notably Clifton the 19 Mech Bde legal adviser, did know of the prohibition on hooding. Overall, however, the handover process left an unsatisfactorily high number of Brigade officers unaware of the prohibition on hooding.

## Divisional Level

434. At Divisional level the handover from 1 (UK) Div to 3 (UK) Div occurred between 10 to 12 July 2003. Whilst the prohibition on hooding and/or FRAGO 152 was handed over at least to some of the incoming officers, the prohibition on hooding was not by any means universally understood within 1 (UK) Div and nor was the issue of prisoner handling accorded any special priority as a subject for handover.
435. The GOC 1 (UK) Div at the time of the handover was Maj Gen Peter Wall. He knew of Burridge's order banning hooding but not that of Brims. Wall did not raise the matter with his 3 (UK) Div counterpart, Maj Gen Graeme Lamb. At the level of Divisional

Commander it is perhaps not surprising that this level of detail was not covered. Maj Gen Lamb was not aware that hooding was prohibited.

- 436.** At the Divisional Chief of Staff level, Marriott of 1 (UK) Div appears to have informally mentioned to Col Richard Barrons of 3 (UK) Div that hooding was banned, although Barrons said he did not see the written order FRAGO 152 during the handover. I have concluded that although the prohibition on hooding was mentioned to Barrons, it was not unreasonable in the circumstances that he took no further action such as re-issuing an order prohibiting hooding or ensuring by other means that the incoming 3 (UK) Div forces were definitely aware of it. It was not raised as a particular concern to him, and it was not unreasonable for him to believe that this prohibition would have been handed over “horizontally” from Brigade to Brigade and Battlegroup to Battlegroup, as well as from relevant 1 (UK) Div staff officers to the staff officers within 3 (UK) Div.
- 437.** The Deputy Chief of Staff of 3 (UK) Div, Col Barry Le Grys did not remember seeing FRAGO 152 or any other order relating to hooding during the handover to him.
- 438.** Lt Col Robert Le Fevre, the 3 (UK) Div Senior Intelligence Officer did not remember being made aware of either FRAGO 152 or any other order prohibiting the hooding of prisoners. On the HUMINT side of the J2 branch, S002, the SO2 J2X for 1 (UK) Div conducted a direct handover with S015, the SO2 J2X for 3 (UK) Div. Although the evidence was not consistent as to the information passing between S002 and S015 during their handover, S015’s understanding regardless of what was said at the handover, was that hooding was not permitted.
- 439.** In the Legal branch there was clearly a full handover of the relevant issues and orders including Brims’ oral order and FRAGO 152. This is unsurprising as it was Mercer who was handing over to Barnett. There was a difference in the evidence of Mercer and Barnett as to the emphasis that was put on the concerns held by Mercer in relation to prisoner handling. I think that it is more likely that it was raised with Barnett as one of a number of areas of concern rather than as the most important legal issue in theatre.
- 440.** Viewed as a whole, the evidence of the handover at Divisional level suggested that the topic of prisoner handling was for the most part not given a high priority by the Divisional Commanders and their Chiefs of Staff. I view this as unsurprising given the breadth of their responsibilities. Within the individual branches of the Division, a number of staff officers accepted that the prohibition on hooding ought to have been handed over during the transition between Op Telic 1 and 2, but thought that the responsibility for doing so rested with a different branch in the headquarters or even with a different formation. No one single branch appears to have regarded it as its responsibility to lead in matters of prisoner handling and detention. It was a recurring feature of the evidence the Inquiry heard concerning the handover between Op Telic 1 and 2 that officers in close hierarchical, and sometimes physical, proximity seem to have emerged from the handover period with inconsistent and sometimes conflicting knowledge in respect of the prohibition on hooding. Some within 3 (UK) Div clearly did know of the prohibition on hooding. But while not perhaps as serious as the position at Brigade, knowledge of the ban was still patchy.
- 441.** It is both an exaggeration and an over-simplification to suggest, as some have done, that the prohibition on hooding was lost in the handovers between Op Telic 1 and

Op Telic 2. Knowledge of the ban on hooding was not as widespread as it should have been even before the handovers. It is certainly right, however, that the level of knowledge of the ban on hooding diminished as a result of inadequacies in the handovers at every level. This effect was most pronounced at Battlegroup level but it extended to higher formations as well. A key lesson to emerge from such difficulties is that instructions in relation to internment, detention and prisoner handling are too important to be governed by a lengthy series of fragmentary orders which are all too prone to be lost and cause ambiguities of interpretation. The far better approach is to have a single enduring standard operating instruction governing the procedures. Such an instruction can be amended as necessary, but it should be a single reference document that all ranks know to consult.

## The Development of Prisoner Handling Orders during Op Telic 2 (Part XI)

442. Just after the start of Op Telic 2, on 13 July 2003, 19 Mech Bde issued FRAGO 85. It included an arrest procedures card, intended to outline correct arrest procedures and the process for interning a person. This card had been issued down to the level of patrol commanders.
443. The card stated that suspects were to be treated humanely and with respect, and the guidance required suspects to be handed to the BGIRO within two hours of apprehension. Neither the card nor the accompanying guidance further addressed the physical aspects of prisoner handling. They did not refer to the prohibition on hooding.
444. Clifton explained that the prohibition on hooding was not referred to on the card as he thought that it was already sufficiently understood in theatre, having been banned during Op Telic 1. He also thought that the over-arching command that prisoners ought to be treated humanely should have sufficed.
445. It would have been better if the arrest procedures card had included the prohibition on hooding, but I do not think it would be fair to criticise Clifton for this omission. The card referred to the need to treat prisoners humanely. It warned of disciplinary action. It was issued very early in Op Telic 2 and did not follow the same detailed staffing consideration as did the later Divisional FRAGO 005. It was contemplated at the time that further guidance would be issued by Division.
446. Towards the end of Op Telic 1, Mercer had prepared a separate draft card intended to go to all soldiers, and not just to junior commanders. This had not been issued before the handover to 3 (UK) Div. Mercer's draft had included specific guidance against the use of both hooding and stress positions.
447. In the early stages of Op Telic 2, the Legal branch of 3 (UK) Div, after some uncertainty, correctly identified that the issuing of a soldier's card similar to Mercer's draft was a task that needed to be completed. But it was deferred pending the Divisional guidance that was being prepared. Barnett stated that he did not view the issuing of a soldier's card as being a particularly urgent matter, partly because the arrest procedures card had already been issued, and also because previous guidance had been issued in the legal annexes to the Concept of Operation Orders; in the Soldier's guide to the LOAC; the aide memoires on LOAC, in FRAGO 152, and in soldiers' training.

- 448.** However, no such soldiers' card was issued before the death of Baha Mousa. The decision to defer issuing the soldiers' card until the guidance in FRAGO 005 had been issued was not unreasonable. But Barnett and his legal team were responsible for the failure to issue such a card once that guidance had been issued. I bear in mind that all soldiers had, however, received clear instruction to treat prisoners humanely.
- 449.** Further instructions in relation to the Rules of Engagement and Legal issues were included as Annex M to the MND(SE) CONOPS 03/03 Order of 30 August 2003. Although the guidance on detainees and internees within the legal annex was at a fairly high level of generality, it included reference to treating prisoners of war humanely and protecting them from physical and mental harm. The order indicated that further guidance on the handling of detainees and internees was to be promulgated separately. This was a reference to FRAGO 005.
- 450.** FRAGO 005 "Policy for Apprehending, Handling and Processing of Detainees and Internees" was issued on 3 September 2003. It replaced 1 (UK) Div's FRAGO 29 of 26 June 2003 as the main order on internment procedures. It was therefore the policy operative at the time of the detention and abuse of Baha Mousa and the other Detainees.
- 451.** FRAGO 005 retained the BGIRO system of assessment at Battlegroup level. It qualified the previously absolute fourteen hour deadline for delivery of detainees to the TIF, now specifying that this should be done within fourteen hours, "or as soon as possible thereafter". Importantly, FRAGO 005 did not include any reference to the prohibition on hooding, nor to other aspects of the physical handling of prisoners, nor to tactical questioning, and did not include guidance to be issued down to frontline soldier level in the form of a soldier's card.
- 452.** Barnett stated that the original intention had been to include more detail on tactical questioning and custodial procedures in FRAGO 005, but that he had decided not to after consultation with the various staff branches. Their rationale had been that the procedures had already been specifically trained and that each unit had on their strength individuals trained in these specialist areas. Therefore it was not thought appropriate to put further guidance into FRAGO 005 when there were already procedures in place.
- 453.** Barnett did not include a prohibition on hooding because he did not at that time think it was an issue. He thought that soldiers were aware that hooding had been banned. Evidence of other staff officers revealed the general perception that hooding was not an issue of any particular prominence at this stage.
- 454.** FRAGO 005 was issued in the name of the Divisional Chief of Staff, Barrons. He too did not think that the issue of hooding or prisoner handling was particularly prominent at the time. He also argued, which I accept, that FRAGO 005 was MND(SE) guidance, multi national in scope, and any prohibition on hooding would have had to have been cleared with other troop contributing nations.
- 455.** However, these reasons do not completely justify or explain the absence of any reference to the prohibition on hooding in the consolidating guidance in FRAGO 005. In my view, the process of consolidating guidance should have led to the prohibition being included in FRAGO 005. This was an unfortunate omission and an error of judgment for which Barnett must take some responsibility.

- 456.** It would also have been better if FRAGO 005 had contained further guidance on detention and tactical questioning principles. However, I find that Barnett was advised against the inclusion of this type of information by Le Fevre and Lt Col Robert Warren, the Provost Marshal of MND(SE) for Op Telic 2. I find that their advice to Barnett was too reassuring in the light of the limited guidance available at the time. However, it was not unreasonable for Barnett to have followed their advice.
- 457.** Unfortunately, in the sequence of orders during Op Telic 2, from the Divisional handover right through to Baha Mousa's death, it is striking that none referred in any way to the prohibition on hooding or stress positions. Had they done so it is doubtful that the 1 QLR process of conditioning would have developed or continued in the way that it did.
- 458.** As with the shortcomings in handovers, this reinforces the need for the MoD to avoid in future the situation whereby prisoner handling becomes governed by scattered fragmentary orders. As well as improved training and doctrine, prisoner handling calls for a clear and appropriately detailed written standard operating instruction that is maintained through the roulement of formations and units in enduring operations.

## Knowledge of the Ban and Knowledge of the Use of Hooding (Part XII)

- 459.** The Inquiry examined the extent to which soldiers and officers on Op Telic 2 knew that hooding was occurring. It also examined the extent to which they knew of the prohibition on hooding whether from the handovers they received or from prior knowledge of the Heath Statement, from Op Telic 1 oral orders, or, from 1 (UK) Div's FRAGO 152 or 7 Armd Bde's FRAGO 63. I have already addressed the handovers, above, and in Part X of the Report.
- 460.** Witnesses broadly fell into three groups in this regard: (1) those who had no knowledge of the ban on hooding and were also unaware of the practice of hooding; (2) those who did know of the ban on hooding but did not know it was occurring on operations; and (3) those who did not know of a ban on hooding but were aware of the practice being used to one extent or another.
- 461.** The Inquiry has also carefully considered the evidence of those soldiers of whom it might be said that they occupy a further category: those who both knew of the existence of a ban on hooding but also became aware that hoods were used in practice during Op Telic 2 and therefore had a duty to intervene and to report the practice.
- 462.** The evidence did not reveal any significant pattern of those who knew that hooding was occurring and condoned it despite knowing of the prohibition on hooding.
- 463.** For those witnesses ignorant of the practice of hooding occurring during Op Telic 2, it has also been important to assess whether they ought to have known, to have inquired, or to have been on notice of the practice due to the language appearing in some operation orders. Similarly, of those who were ignorant of the ban on hooding, ought the practice itself to have aroused their concern?

## Divisional Level

- 464.** Maj Gen Lamb, the GOC, knew of the Heath Statement. He understood that sight deprivation for a short period of time on security grounds was acceptable. Hoods were not ideal for this but could be used if necessary and if care was taken. Maj Gen Lamb had no direct knowledge of hooding prior to Baha Mousa's death. Le Grys, the Deputy Chief of Staff, did not know of the prohibition on hooding and did not know that hooding was occurring. Barrons, the Chief of Staff, did know of the ban on hooding, but stated that he was not aware of the use of hooding or blindfolding. I accept therefore that the highest level of command at 3 (UK) Division did not know that hooding was occurring. It is of concern that the practice of hooding was not reported up the chain of command to the most senior Divisional level.
- 465.** Quite a number of other officers in the individual staff branches at Divisional level fell into the category of those who did not know that hooding had been banned and were also not aware that it was occurring in theatre.
- 466.** Barnett and Capt Sian Ellis-Davies in the Divisional legal team were exceptions to this general pattern. They both knew that hooding had been prohibited. A significant conflict of evidence emerged in relation to an assertion from S017, the Officer Commanding the JFIT on Op Telic 2, that prisoners were being delivered wearing hoods to the JFIT by the arresting units, and that she had reported this to Le Fevre, S015, Barnett, and Ellis-Davies. On the balance of probabilities I accept that Barnett and Ellis-Davies did not know before Baha Mousa's death that hooding was occurring by virtue of being told by S017 that prisoners were arriving at the JFIT hooded. I find that S017 did raise this issue with her superior, S015. However, S015 did not treat this matter with the level of concern and priority that it deserved. He ought to have done more in respect of S017's concerns.
- 467.** A pattern that emerged in the evidence, although not universal, was that the legal staff tended to be aware that hooding was prohibited but not aware that it was occurring. Whereas intelligence staff tended to have some awareness that hoods were being used but were not aware that it had been specifically prohibited. Amongst those who were aware of the prohibition of hooding, there was a misplaced confidence that this was widely known by others.
- 468.** A range of factors contributed to the preponderance of Divisional level witnesses who had not been aware that hooding was occurring: prisoner handling was at most one of several responsibilities they held; they tended not to see individual Battlegroup level orders; many were physically isolated from detention operations on the ground, and other than S017's reporting, hooding was not raised as a matter of concern.

## Brigade Level

- 469.** The majority of officers from 19 Mech Bde who gave evidence to the Inquiry, apart from Clifton, did not know of a prohibition on the use of hooding. Moore (the Brigade Commander), the Chiefs of Staff Eaton and Fenton, and their deputy Landon, Capt Charles Burbridge and Capt Oliver King (SO3 G3 Operations), Maj Rupert Steptoe (SO2 Plans), Capt Miles Mitchell (SO3 Plans), and those in the Intelligence branch, Maj Mark Robinson (SO3 G2), Radbourne and WO2 Rhoderick Paterson, were all unaware of the prohibition on hooding.

470. Of these, a number such as Moore, Eaton and Landon, told the Inquiry, and I accept, that they did not know that hooding was occurring. However at Brigade level there was much more extensive knowledge of the actual practice of hooding than was the case at Division. As noted above, those in the Intelligence branch, or involved in the tactical questioning process, in this instance including Robinson, Radbourne, and Paterson tended to know that hoods were being used as a method of sight deprivation. In the G3 operations branch, Capt Oliver King was aware that sandbags were used to hood, and Burbridge saw prisoners wearing hoods on one occasion.
471. The Inquiry also investigated the extent to which staff at Brigade understood that hoods and conditioning were used by virtue of Battlegroup level FRAGOs. Brigade was copied into FRAGOs for Op Quebec, Op Quintessential, and Op Lightning, all operations run by 19 Mech Bde units and containing various concerning references to “bagging and tagging”, “bag out of sight once in vans” and “conditioning”.
472. Those Brigade level witnesses who were unaware of the ban on hooding but who were aware of the use of hooding included a number who appreciated that hooding was being used in part to maintain the shock of capture. These included Radbourne, whose roles included acting as a tactical questioner, and Robinson the SO3 Intelligence Officer. Robinson was an important witness in respect of the Brigade sanction of hooding. He eventually, after some reluctance, accepted that his understanding at the time was that hooding to maintain the shock of capture would have been appropriate. In the case of the Burbridge, the SO3 operations officer at Brigade, he told the Inquiry that he was not aware before Baha Mousa’s death that hooding was used as part of the conditioning process. But there are grounds for suspecting that he may have had some such knowledge.
473. It is extremely unfortunate that none of those within Moore’s Brigade headquarters who knew hooding was occurring, raised it as a concern for consideration, and that individual orders referring to hooding and conditioning did not lead to more questions being asked. For the most part, the reason for the former appears to have been that those who were aware of the use of hooding were not aware that it had been subject to a prohibition in theatre, nor did their training lead them to question the practice. References to hooding and conditioning in individual Battlegroup operation orders copied to Brigade were badly missed opportunities to notice, and put a stop to, inappropriate use of hooding and conditioning. I accept, however, that the ambiguous nature of the term conditioning, which was sometimes used to denote the lawful use of post-capture pressures on prisoners, is some mitigation for this omission.

## Battlegroup Level

474. In addition to 1 QLR, it is clear that other Op Telic 2 Battlegroups used hooding. Although this was not the focus of the Inquiry’s investigations, the evidence suggests that 1 The King’s Regiment (Kings) and probably to a slightly lesser extent 1 King’s Own Scottish Borderers (KOSB) and 40 Regt RA did use hooding in the early part of Op Telic 2. In the case of 1 Kings, it is likely that hooding was stopped before Baha Mousa’s death, following an internal Battlegroup decision. The timing in relation to this is, however, uncertain.

## The Brigade Sanction (Part XIII)

- 475.** At the time of Op Salerno and the events of 14 to 16 September 2003, 1 QLR were employing as a standard procedure the process of “conditioning” some detainees before tactical questioning, a process including the use of hoods to deprive prisoners of their sight and stress positions. One of the most contentious issues the Inquiry has had to determine is the extent to which, if at all, the use of these techniques had been sanctioned by 19 Mech Bde.
- 476.** After the promulgation of FRAGO 29, Royce became the first BGIRO of 1 QLR, and was operating as such by early July 2003. I accept that initially Royce understood the hooding of detainees to be prohibited and that he genuinely remembered this information formed part of his PDT (although there remains some real doubt about Royce’s claim that he was specifically taught this in a lecture given by Barnett). I also accept that Royce, during either the recce visit or formal handover from 1 BW, saw a prisoner hooded and handcuffed, and was informed that hooding a detainee on capture was a standard operating procedure.
- 477.** Royce’s account in evidence to the Inquiry was that early in the tour, as a result of the inconsistent information he had received, he queried the use of hooding with Robinson and was told that it was permissible. About two weeks later, before the first arrest operation undertaken by 1 QLR he talked to Robinson about what the Battlegroup should do to maintain the shock of capture and conditioning of detainees before the arrival of tactical questioners. Robinson’s answer was that hooding and stress positions were permitted techniques to be used as part of the conditioning process. Royce suggested that this conversation was also witnessed by a member of the Field HUMINT Team. This witness to an important conversation had not been mentioned previously by Royce. The Inquiry made extensive efforts to trace this individual. Four witnesses were identified as being possible candidates or possibly able to assist identify the individual in question. Three of those were traced and each denied they were the person involved as Royce suggested. The fourth could not be traced.
- 478.** Royce said that subsequently he spoke to Clifton about being required to keep detainees in hoods and stress positions to maintain the shock of capture, and approval for this process was also given by Clifton. Thereafter, Royce spoke to the Commanding Officer of 1 QLR, Mendonça about stress positions, hooding and the conditioning process. Mendonça himself did remember that Royce clarified at a 1 QLR Group meeting that hooding had been sanctioned by Brigade.
- 479.** The detail in Royce’s account of the Brigade sanction had developed over time. He did not refer to conditioning, hooding, stress positions or the Brigade sanction in the first statement he made to the SIB in 2004, although the questions asked of him were narrow in scope. In 2005, in his second statement to the SIB, Royce referred to having a passing conversation with Robinson and then with Clifton, in which hooding was approved as a technique. Royce did not mention receiving approval for stress techniques in this statement. The prosecution at the Court Martial did not regard Royce as a witness upon whom it could rely, however he was called as a witness by the Judge Advocate, gave evidence and was cross examined. Aside from the lack of any reference to the presence of a Field HUMINT Team officer, Royce’s evidence at the Court Martial on this issue was consistent with his evidence to the Inquiry.

480. Robinson had no recollection of any such discussion. He accepted the possibility such a conversation might have taken place but denied that he would ever have given a sanction for the use of stress positions.
481. Clifton denied such a discussion with Robinson had taken place, and emphatically denied that he would have advised hooding might take place or that he had sanctioned conditioning.
482. Robinson's evidence essentially was that he could not remember a conversation of the type described by Royce, but accepted that he could not definitively deny it occurred. He conceded that at the time in question he would have said that hooding for security reasons and for aiding conditioning was permissible. However, he maintained that if he had been asked about stress positions he would have said they were prohibited.
483. Clifton's account was that he clearly understood that hooding had been banned as a result of a discussion with Mercer during the handover between 1 (UK) Div and 3 (UK) Div. As a result of a conversation with Robinson he also knew that a process of conditioning using certain techniques to maintain the shock of capture was applied to detainees prior to tactical questioning. He did not know and had not considered that the use of stress positions might be one of these techniques.
484. Further, Clifton categorically denied that the conversation as described by Royce actually took place. He said that as he knew of the ban on hooding he would certainly not have sanctioned the use of hoods. His evidence to the Inquiry was that he would not have told Royce that the use of stress positions was permitted.
485. There was some inconsistency in relation to stress positions between Clifton's Inquiry evidence and evidence he had given previously in the context of the Court Martial. He had previously stated that, while not remembering any such conversation, he might at the time have answered that there were certain situations when the use of stress positions would be acceptable but that without knowing the full details of the situation he would not be able to advise on their use, or that the use of stress positions was more the province of trained tactical questioning experts in theatre.
486. Despite the sharp contrasts in their accounts I do not believe that Royce, Robinson or Clifton deliberately sought to mislead the Inquiry. They each attempted to explain brief conversations that took place six years ago and occurred during an intensely busy period. All three men had given previous statements, to the SIB and in evidence at the Court Martial. There were some inconsistencies between these statements. When attempting to explain these inconsistencies Royce, Robinson and Clifton have sought to rationalise what has been said on previous occasions.
487. There is also some evidence from others within 1 QLR which might be viewed as tending to lend support to the claim that there was a Brigade sanction. For example, Mendonça had been told by Royce that the process of conditioning was sanctioned by Brigade. Maj Paul Davis, the Officer Commanding A Company 1 QLR, remembered Royce raising the issue of hooding at a 1 QLR O Group meeting and stating that the issue of whether it was permitted was under discussion. Capt Alan Sweeney the 1 QLR Signals Officer understood Brigade to have sanctioned hoods and stress positions to Royce. Moutarde, the Adjutant gave evidence to similar effect, also stating that he understood there to be a specific direction from Brigade approving hooding. Sgt Ian Topping, the Mortar Platoon Commander in S Company 1 QLR described having

seen detainees hooded when at the Brigade headquarters location. To some extent Topping's evidence was supported by Pte Mark Andrew, a member of his platoon. Sgt Smith and Payne both stated that tactical questioners gave orders as to how detainees were to be treated. Payne believed hooding and stress positions had been cleared by Brigade.

- 488.** In addition, the Inquiry also heard a limited amount of evidence that other Battlegroups under 19 Mech Bde also used sandbags to hood detainees, in some cases with an apparent understanding that it helped maintain the shock of capture. Furthermore, soldiers who operated as tactical questioners for Brigade, such as SSgt Davies, Smulski, Radbourne and Sgt Michael Porter, thought hooding to be permissible and some applied the practice of hooding themselves. These two features also form part of the relevant factual background against which a consideration of the conflict of evidence between Royce, Robinson and Clifton needs to take place.
- 489.** In reaching a conclusion on the issue of the Brigade sanction I have borne in mind the following significant factors. Many individuals within 19 Mech Bde appear to have been ignorant of the Op Telic 1 prohibitions on hooding. The totality of the evidence suggests that tactical questioners during Op Telic 2 did advise Battlegroup soldiers to keep detainees hooded, but there is very little evidence that stress positions were used or permitted. There is support from individuals within 1 QLR for Royce's account that at a 1 QLR O Group he communicated his belief that the practice of hooding was approved at 19 Mech Bde level. I also take into consideration the fact that separate witnesses to the same conversation can genuinely misunderstand or be at cross-purposes with each other. That fact together with the effect of the passage of time and how it tempers what people believed they heard or said, goes some way to explain the differences in recollection between Royce, Robinson and Clifton.
- 490.** I have found that Royce was not mistaken in his assertion that conversations with Robinson and Clifton took place. I am not persuaded that Royce fabricated the fact that these conversations took place. Other 1 QLR personnel to varying degrees support the fact that Royce communicated his understanding about the conditioning process, hooding and stress positions, after discussing these issues at Brigade level. He communicated the fact that the Brigade had authorised a conditioning process to the Mendonça, even if the detail of the process was not fully explained.
- 491.** In his evidence concerning the purpose for which hooding was applied, Robinson was not an impressive witness. But to his credit, Robinson accepted the possibility that he may have spoken to Royce about conditioning and I find that he did. Given what Robinson said he believed at the time, I find that Robinson told Royce that detainees should be hooded. On balance, although I am less confident of this point, I also accept Royce's assertion that Robinson also approved the use of stress positions. It is more likely than not that Robinson did so as at the time he believed conditioning as an aid to tactical questioning was permissible and that it involved some form of restraint procedure. I accept the possibility that in the context of what was described by Royce as a passing conversation, this may not have seemed significant to Robinson.
- 492.** I also accept that Royce at some subsequent point had a conversation with Clifton. The content of such a conversation is difficult to determine. I find it difficult to accept, that having been directly informed by Mercer of the ban on hooding, Clifton then approved the use of hoods. Conversely, Clifton had previously given evidence suggesting that his state of mind at this time meant that, if asked, he would have

answered that there were certain situations when the use of stress positions would be acceptable. I ultimately find that Clifton did not say or give the impression that hooding was permissible, but that if he did give advice on stress positions, he was likely to have said that they were permissible in some circumstances, if approved by a subject matter expert (SME).

- 493.** I have found that Royce genuinely believed he had received assurance from Brigade through Robinson and Clifton that the use of hooding and stress positions before questioning was permissible. It cannot be ruled out that this belief was the product of a genuine misunderstanding between the three officers. It is likely the conversations were of short duration, concentrating more upon the term “conditioning” rather than the specifics of hooding and stress positions.
- 494.** However, I do not find that a genuine belief in this type of assurance amounted to a formal sanction by 19 Mech Bde of the use of hooding or stress positions. These were passing conversations. Moreover, Royce correctly thought this issue important, which is why he approached Brigade officers in the first instance. I find that Royce would have been well advised to have obtained written confirmation of what he regarded as a Brigade sanction.
- 495.** Furthermore, this level of assurance could not and did not absolve 1 QLR from ensuring that detainees in their care were treated humanely and in accordance with the Geneva Conventions. Nor do these findings absolve Royce from all further responsibility for what happened in the TDF between 14 and 16 September 2003. During his tenure as BGIRO, I accept he carefully supervised those prisoners subjected to conditioning. However, the whole process of hooding detainees and placing them in stress positions was unacceptable. Royce should have recognised this and should have recognised the risk of young soldiers using violence to impose stress positions. At the very least he should have alerted his successor, Peebles, to these dangers.

## Events Immediately after Baha Mousa’s Death (Part XIV)

- 496.** The Inquiry examined the reporting soon after Baha Mousa’s death to discover what light it might cast on the events and to assess whether they were sufficient, accurate and timely.
- 497.** It is clear that the SIB was contacted by the 1 QLR’s Adjutant, Moutarde, later on the same night as Baha Mousa’s death. The SIB personnel in fact arrived to begin their investigations the following day.
- 498.** A serious incident report, or SINCREP was sent by 1 QLR to 19 Mech Bde. Moutarde had some input into the information contained in this report. The content of this report differed from the 1 QLR internal memo, entitled “Brief on Sudden Death of Internee” that had been sent to Mendonça. The description of a graphic struggle having occurred and the names of those some of those soldiers who played a part in the struggle with Baha Mousa: Payne, Pte Cooper, Redfearn, were absent from the SINCREP. The differences between these two documents are suspicious but there is insufficient evidence to conclude that Moutarde intended to provide misleading information to Brigade.

- 499.** Peebles was responsible for the documents sent with the other Op Salerno Detainees to the TIF. He omitted to include information in these documents in relation to the medical conditions of, or treatment received by, the Detainees. In this regard I find that Peebles failed in his duty to ensure that the internment records for the Detainees properly reflected the complaints made and injuries suffered by the Detainees during the period in which they were in 1 QLR custody.
- 500.** Suss-Francksen, 1 QLR's second in command, wrote a memorandum to Fenton as Brigade Chief of Staff arising out of the dispute at the TIF between Rodgers and S018 when the Detainees were delivered there. I find that in so doing, Suss-Francksen sought to counter any emerging criticism of 1 QLR. On balance, I find this memo to have been an attempt, ill judged in hindsight, to manage the reputation of 1 QLR in the eyes of the Brigade, rather than an attempt to mislead the investigations.
- 501.** As stated, the SIB was properly informed of the death in order to begin the necessary investigation. However, there was an element of defensiveness within 1 QLR as illustrated by the actions of Suss-Francksen, Peebles and Moutarde. I find that individually each of these officers could have done more properly to communicate to senior levels the seriousness of the events that had occurred.
- 502.** The death of Baha Mousa was also reported to the highest levels of Brigade and Division within a very short period. Both formation commanders were aware of the incident, at the latest, by early morning on Tuesday 16 September 2003.
- 503.** It is apparent from the evidence which has emerged, notably email correspondence between staff officers at Brigade and Divisional level, that the level of tactical questioning resources was identified as a cause of the delay in transferring the Detainees to the TIF. It is also evident that it was rapidly understood that there needed to be a review of the tactical questioning procedure.
- 504.** At Brigade level, on 16 September 2003, Fenton issued directions to the Legal and Intelligence branches of 19 Mech Bde to comment on the tactical questioning procedure and legal obligations. He also instructed the operations branch to be prepared to issue a Brigade standard operating procedure.
- 505.** Two emails studied by the Inquiry were also relevant insofar as they revealed that there had been some knowledge, at Brigade level and before the death of Baha Mousa, of the use of hooding as part of the tactical questioning process, and not merely confined to security purposes.
- 506.** In his email to other members of the Brigade directing that there be a review of procedures, Fenton had asked whether keeping detainees handcuffed and hooded was still allowed. He then followed this question by stating that he understood "... *the need to maintain the 'pressure' in order to get a better product, but I feel we are going to have to work hard to justify this in future*". I accept however that Fenton did not know of the use of hooding and stress positions before Baha Mousa's death.
- 507.** Burbridge, the SO3 Ops at 19 Mech Bde, sent an email to Division and to colleagues in Brigade, providing details in relation to the treatment of the Detainees. He said that there was a requirement to hood as part of the tactical questioning, conditioning and disorientation process. I suspect that despite saying that he was not aware before Baha Mousa's death that hooding was used as part of the conditioning process, Burbridge may have had some such knowledge.

508. The death of Baha Mousa was also communicated promptly up to Ministerial level via PJHQ submissions. As part of this information, some of the detail of the reported circumstances of the detention of Baha Mousa was explained, such as the length of the period he was hooded, and the fact that he had persistently tried to escape from his handcuffs and hoods. Regrettably, it is now apparent that some of the information provided to Ministers in this initial report, in particular the suggestion that Baha Mousa repeatedly tried to escape, was not accurate. I have no doubt, however, that it recorded information that was being provided from theatre.
509. At Divisional level, Barnett, the Divisional legal adviser, sent an email on 17 September 2003, which made it clear that hooding for all purposes must immediately cease. He also directed that the Divisional Intelligence and Operations branches should prepare a Divisional standard operating instruction for both tactical questioning and guarding at Battlegroup and Brigade level. Having made some criticism of Barnett in relation to the content of FRAGO 005, it is right to note the clear and appropriate lead he gave following Baha Mousa's death in this email. I find that by 18 September 2003, there was a clear recognition that Divisional level guidance was required, and the Intelligence branch had taken the lead in creating these new instructions.
510. By 18 September 2003, as a result of the information gathered by 19 Mech Bde, Fenton produced a Brigade level report headed "*Death in Detention*", to his Commander, Moore. It provided information including a chronology in relation to Baha Mousa's death. The detail for this chronology was provided by 1 QLR, and some of it was inaccurate. There was a notable omission in the report in that Fenton did not include his own telephone conversation with Suss-Francksen on Monday evening of the detention, concerning the reasons 1 QLR had not complied with the fourteen hour time limit.
511. On 18 September 2003, further information was provided to Ministers concerning the death. It was for information rather than seeking a decision. Ministers were told that it appeared hooding had taken place on the advice of one of the tactical questioners. They were told there was no documentation in theatre covering tactical questioning procedures but this was being reviewed urgently. The Minister of State, the Rt. Hon. Adam Ingram MP, expressed surprise that there were no such policies but noted the assurance that the shortcomings were being addressed.
512. From 19 to 20 September 2003 up to 30 September 2003 the new Divisional order Standard Operating Instruction 390 was being drafted. It was intended to be in two parts, one dealing with tactical questioning and the other dealing with detention. Email correspondence within Division during the draft stage revealed that it was understood at the time that such instruction should already have been in place.
513. The totality of the evidence demonstrates that this absence of proper instruction was immediately obvious at every level of the Op Telic 2 hierarchy after the death of Baha Mousa. In response, at 1 QLR, Peebles reviewed the Battlegroup's practices; at Brigade level a new standard operating procedure was directed to be drawn up; and at Divisional level it was recognised that an standard operating instruction was needed.
514. The changes in practice and procedure in theatre that were then put in place after the death were as follows.

- 515.** At 1 QLR, Peebles drafted “Recommendations for 1 QLR Internment Procedures” dated 18 September 2003. It addressed the facilities used for holding detainees and the need for routine medical monitoring. It recommended that permission be sought for using blacked out goggles, that tactical questioning cease until a clearly defined policy was issued, and it recommended the reinstatement of the responsibility of the RP chain of command for the guarding of detainees.
- 516.** Peebles also drew up a revised “1 QLR Internment Procedure”, the document previously introduced by Royce. Captured persons were to be brought to BG Main as soon as possible and in any event within two hours of arrest. They were to be seen by the BGIRO and RMO, and had to be delivered to the TIF within fourteen hours. It was specified that there must be a medical inspection on arrival and at least three times within the fourteen hours of detention. Peebles also drafted a “Prisoner Handling Brief”.
- 517.** It is very surprising that these documents made such limited reference to the techniques of hooding and conditioning and no mention at all of stress positions, despite Peebles’ knowledge of these practices by 1 QLR before and during Op Salerno. The content of the documents produced by Peebles in the aftermath of the death of Baha Mousa may have been intended in part to help to distance him from sole responsibility for the recent events. I accept, however, that he also recognised by this stage the inadequacy of the previously issued guidance.
- 518.** At Brigade level, Fenton instructed Radbourne to produce a report into tactical questioning and prisoner handling procedures. As a result, on 27 September 2003, 19 Mech Bde issued a document entitled “Prisoner Handling and Tactical Questioning Procedures” which had been produced by Radbourne. This document, comprising a letter and annexes, provided guidance and set out instructions for the handling and tactical questioning of internees. Some but not all of it was drawn from the Divisional standard operating instruction that was in preparation.
- 519.** Some of the guidance was perfectly appropriate. But other passages within this document referred to the guarding process as an important part of the conditioning process, and appeared to condone sleep deprivation as a method of continuing the shock of capture and conditioning process. The drafting, circulation and final approval of this text involved not only Radbourne, but also Fenton and Robinson. It is of concern that it was not recognised that some of the content of this document was inappropriate. The explanations for the more concerning aspects of its content were not convincing.
- 520.** At Divisional level, Standard Operation Instructions 390 the “Policy for Apprehending, Handling and Treatment of Detainees and Internees”, was issued by Barnett on 30 September 2003. It set out detailed requirements for the medical supervision of detainees, and directed that permission was to be sought from at least Brigade level to establish a tactical questioning operation. It specifically prohibited hooding and stress positions.
- 521.** Thus, it can clearly be seen that before the death of Baha Mousa, the gap in prisoner handling and tactical questioning policy had not been addressed. Very soon after the death, each level of the hierarchy in theatre moved to close this gap. But there still remained some lack of clarity about the techniques that might be permitted within a process of conditioning.

## Later Events Within The MoD (Part XV)

- 522.** From the significant amount of evidence disclosed both to the Court Martial and to the Inquiry, this Report refers to the key developments within the MoD in the chronology after the death of Baha Mousa. I have focused on some illustrative examples of the statements and assurances that were given in relation to hooding and the other prohibited techniques and on the key developments in policy.
- 523.** In October 2003, Reith, the Chief of Joint Operations reinforced the ban on hooding in letters to the Chief of Defence Intelligence, Maj Gen Andrew Ridgway, and to Maj Gen Lamb the GOC MND(SE).
- 524.** In the letter to Maj Gen Lamb, it was directed that hooding was to stop and that Reith had been advised that blindfolding was an acceptable alternative means of sight deprivation and that he had accepted this advice. Blindfolds were only to be used for security purposes or to protect the detainee by preventing identification by other detainees. Additionally it was specified that blindfolds were only to be used for the minimum period necessary and with regular medical assessments. By the time this letter was sent, Standard Operating Instruction 390 had been issued in theatre, already prohibiting the practice of hooding.
- 525.** The legal advice provided to Reith at this time was that hooding as an aid to interrogation would always be unlawful, but that hooding for security purposes might be lawful where sight deprivation by other means was not possible, provided appropriate precautions were taken. It can be seen that Reith, nevertheless, took the decision totally prohibit hooding in Iraq. I find this to have been a correct and responsible course to have taken.
- 526.** In Reith's letter to Ridgway, in addition to the above direction on hooding and guidance on the use of blindfolds, Reith identified the need to review the doctrine and training in relation to prisoner handling techniques in order to ensure their legality. He sought to designate this task to Ridgway. Ridgway's reply to Maj Gen Lamb on 27 November 2003 highlighted the fact that the responsibilities in this area were complex and he suggested by whom appropriate action should be taken. Ridgway assured Reith that hooding had never been taught on any of the tactical questioning or interrogation courses at Chicksands. The letter also referred to hooding at the JFIT having been stopped due to medical advice. I accept Ridgway included this information in good faith. Objectively, however, these aspects were not wholly accurate.
- 527.** Ridgway instituted a JSIO review relating to hooding in the context of tactical questioning and interrogation. This was not a wholesale review of all training in tactical questioning and interrogation. The prohibition on the use of hoods became somewhat more clearly emphasised on the training courses as a result. However, despite this review I find that the tactical questioning and interrogation doctrine remained inadequate. To take but one example, it was inadequate in the continuing guidance advocating walking around a blindfolded prisoner to increase the pressure before the blindfold was removed for questioning.
- 528.** Ridgway was entitled to point out that the action required in respect of Reith's request for a review lay with a number of other departments. However, I find that the collective response to Reith's request for a review of doctrine and training was limited and slow. By 2004, there were still complaints that doctrine in this area was notably lacking.

- 529.** The Inquiry has identified an unsatisfactory pattern of inaccurate assurances and explanations given within the MoD statements and Ministerial briefing materials. In particular, in the light of evidence available at the time, the MoD should not have made the positive suggestion that hooding had not been used in the context of tactical questioning during Op Telic 1 and 2. There was no justification at all for the suggestion that hooding had been stopped “*when conditions on the ground permitted*”. Further statements suggesting that hooding at the JFIT had not gone beyond the normal use for arrest/transit were also inaccurate and prone to mislead.
- 530.** There are no proper grounds to conclude that any individual sought deliberately to mislead in providing this information and I do not seek to single out individuals for criticism. However, it is fair to say that officials could and should have done more to ensure the accuracy of these statements. The existence of other statements also given by the MoD which were fuller and more accurate is testament to a lack of intention to mislead. But this also points to a failure in the MoD’s systems for ensuring the greatest possible accuracy of its public statements. I accept that the understandably incomplete picture transmitted from theatre, some inconsistencies in the information which was provided to those outside theatre, and the high number of requests for information which had to be met while other operational demands were extremely high, are likely to have been contributory factors to the inaccuracies in statements that were made. However, I detect that there was at times a corporate tendency towards an overly defensive line in response to difficult questions. It would have been better had the MoD faced more squarely and more openly the mistakes and shortcomings that had already been identified in relation to hooding and tactical questioning.
- 531.** By May 2004 the hooding of prisoners had been prohibited in all theatres of operations. However, it had not been expressly determined that hoods would never be used in the future for security and transit purposes. A review into whether or not the use hoods for limited purposes was a policy that should be retained was then instigated by the Chief of the Defence Staff, Lord Walker. A draft submission and detailed background paper had been produced by August 2004.
- 532.** It recommended that despite legal, medical and presentational concerns, it remained operationally desirable to restrict temporarily the vision of detainees in particular circumstances. It was also recommended that UK Armed Forces should be provided with clear guidance on when the restriction of vision was acceptable and by what means. It suggested that blacked out goggles should be the preferred method, but that an ability to use hoods as a last resort should be retained. It was recognised that this course of action would require Parliament to be advised of the change in policy and practice, and that it may be controversial and attract negative publicity.
- 533.** That recommendation, permitting hooding *in extremis*, was not ultimately adopted by the MoD and, accordingly, the use of hoods has continued to be prohibited albeit as a matter of operational policy rather than legal obligation.

## Recommendations (Part XVII)

- 534.** Arising out of the Inquiry’s investigation, I have made 73 recommendations. These follow what I believe was an open and beneficial examination of current policy and practice during the Inquiry’s Module 4 hearings. Current practice and the background to my recommendations are discussed in Part XVI of this Report. The recommendations themselves are listed in Part XVII.