THE Baha Moosa Public Inquiry

Victims' Written Closing Submissions

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PART I: INTRODUCTION
Introduction

PART II - THE TORTURE INCIDENT
Introduction
- The Victims' Account
- The Perpetrators
Operation Salerno
- The operation
- The suspects
- The arrests
- Op Salerno - Conclusions in terms of understanding the subsequent events at BG Main
Diversion of Two Separate Prisoners to Camp Stephen
- The victims’ accounts
- The logs
- The soldiers’ accounts
- Conclusions on this incident
The First Day of Detention at BG Main
- Arrival at BG Main
- The start of the abuse
- The TDF video
- Stacey, Fallon and Crowcroft
- Unauthorised entry during the day
- Other visitors from more senior chain of command
- Peebles’ conduct during the first day
- The Sunday evening handover
- Higher chain of command
- Tactical Questioning
- Arrest of Ahmed Maithem
- Smith’s order to stop conditioning
- Abuse for the rest of the night
- Experience of D006
The Second Day of Detention
- The breach of the 14 hour rule
- The witnessed events on Monday afternoon
- The absence of Sgt Smith
The Death
- Return of the Rodgers Multiple
- The principal role of Payne
- Pathology evidence
The Immediate Aftermath of the Death
The Role of the Medics from the Monday to the Wednesday
The Third Day of the Detention
- Further abuse in the night and early morning
- Simmons’ account
- Vogel and the RMP
- Forced exercises and Michael Jackson dancing
Food and Drink Over the Three Day Period
Arrival at the JFIT
The Post Mortem and Other Medical Evidence
- Post mortem evidence
- Other medical evidence
The Closing of the Ranks After the Event 234
Conclusions of the Torture Incident 240
   - Unlawful killing and torture 240
   - The key perpetrators (who can be identified) 241
   - Apparent indifference within the 1QLR community 249
   - Chain of command 251

PART III - BEFORE IRAQ 1
Introduction 1
Historical Context 1
"Doctrine" and "Capability" 2
LOAC and Lawyers 2
   - LOAC Training 2
   - Lawyers at War 8
Prisoner Handling 10
   - Pre-Deployment Training 12
Provost 18
Medical 22
Interrogation and Tactical Questioning 25
   - Capability 25
   - Written Guidance 32
   - Training: Chicksands 38
   - Conclusion on Interrogation and TQ 59
Conclusion 60

PART IV - FROM INVASION TO OCCUPATION 1
Overview 1
The ICRC Complaint in Late March 2003 1
   - The ICRC complaint and the leaked report 1
   - The Soldiers' Complaints 3
   - The Response of the Intelligence Corps 8
   - The Response of the Lawyers 15
   - The Response of the NCC and POLAD 18
   - The Response of the Division Commander 18
   - The Resolution of the ICRC complaint 19
   - Conclusions on the ICRC complaint 19
The Failure of Referral 20
   - Conflict of law and doctrine 20
   - The Failure of NCC 21
   - The Failure of Government 23
The Brims Ban on Hooding 27
The Crisis of Intelligence Facing the Occupying Power 29
Attempts to Provide Procedural Safeguards 32
Frage 29 38
   - Overview 38
   - Failure of consultation 39
   - Causes and Risks 42
   - Conclusions on Frage 29 45
The Absence of More Fundamental Safeguards 46
Conclusion: The Situation in Iraqi Society by the Time of Formal Occupation 52

PART V - THE CIRCUMSTANCES OF THE TORTURE INCIDENT 1
Introduction 1
   - Overview of the key circumstances in which the torture took place 1
The Handover 4
- Lt Col Barnett’s email after the death 4
- The failure to pass on and/or re-promulgate the key orders 6
- The failure of the lawyers 9

The Blindspots of the Lawyers 10

Deepening Crisis in Basra 17
- Lack of planning 18
- Lack of resources and the ensuing hardship 18
- Fatalities 20
- The shortcomings of intelligence 21

Dysfunctional Internment 22
- Devolved interrogation 22
- Lack of training and experience 26
- Lack of supervision 28
- Lack of legal oversight 34

Conditioning: The Brigade ‘Sanction’ 44
- Overview 44
- The G2 witnesses 48
- Clifton 59
- Discussions with Royce 66
- The non-involvement of other Brigade personnel 69

Conditioning: The Battlegroup Sanction 74
- The continuing requirement for clarification 74
- Lack of procedural safeguards 81
- Conclusions on Brigade/ Battlegroup sanction 91

The Culture of Violence 93
- Overview 93
- Pre-deployment origins 94
- Deployment into emergency 95
- Authorised force and robust/ rough treatment 97
- Racism and dehumanisation 100
- Anzio Company – the Mackenzie diaries and interviews with the Mirror newspaper 105
- Increasing violence across the Battle Group 108
- Responsibility of the chain of command 110

The Days Leading Up to Op Salerno 112
- The Garamshe Incident – 9 September 2003 113

Conclusion 122

PART VI - THE RESPONSE OF THE OCCUPYING POWER 1

Introduction 1

Battle Group, Brigade & Division – The Immediate Response 1

PJHQ & MOD – The Immediate Response 3
- Hooding 3
- Tactical Questioning 8
- Internment Review 10
- Conclusion as to Immediate Response 10

May 2004: The Bubble Bursts 11
- What was known, and what was not 13
- What was said 18
- Conclusion 22

Hooding: The MOD Stance 24

PART VII - CONCLUSION 1

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PART I: INTRODUCTION

1. This document sets out the victims' closing submissions for Modules 2 and 3 of the Inquiry. The victims' submissions on Module 1 were set out in their opening statement at pages 28 to 71 and the Chairman, C2I and Core Participants are referred to that document in this regard. Similarly, the victims’ submissions on the legal framework are made at pages 72 to 130 of their opening statement. They stand by those submissions and ask that they be reconsidered at this stage to inform what is said in closing.

2. This document sets out the victims' analysis of the evidence heard by the Inquiry in seven parts. Part I is this introduction. Part II addresses the incident, dealing with the evidence concerning the period from the arrest of the Operation Salerno detainees on 14 September 2003 to the transfer of the surviving detainees to the TIF two days later. Part III steps back to consider the context of Op TELIC itself, in terms of its historical context, the "steady state" training and written guidance in place, and the preparations for deployment. Part IV examines the key events in the period from invasion to occupation that were to shape subsequent developments, whilst Part V analyses the immediate operational context for the incident within the Battle Group, Brigade and Division. Part VI looks at the response of the occupying power to the incident, examining both the immediate response in theatre and the longer-term reaction within PJHQ and the MOD. Finally, Part VII offers some brief concluding thoughts, although it is the victims’ intention to return to these more fully in their oral submissions.

Note: The individuals listed on the title page of these submissions would like to acknowledge the assistance provided by Dan Leader and Kate Sannejadi of Leigh Day & Co and Aonghus Kelly of Public Interest Lawyers.
PART II – THE TORTURE INCIDENT

INTRODUCTION

1. In this Part the victims deal with the evidence concerning the period from their arrest at Hotel Al Haitham, Basra at approximately 06:30 on 14 September 2003 to their delivery to the UK-US run Temporary Internment Facility (the 'TIF') at Um Qasr in the early afternoon of 16 September 2003. They place the incident in its wider systemic context in the Parts that follow.

2. The victims’ written opening sought to introduce (at paragraphs 4 to 21) a critical overview of what happened to them. Save for minor details set out below, they stand by that analysis. In particular, the Inquiry is referred to Darius Rejali’s concept of "stealth torture" or "torture that does not leave marks" and the extent to which his historical research demonstrates that there is a link between such techniques and modern human rights monitoring. The opening statement posited that the core of the techniques used against the victims was carried out as a matter of Battle Group policy and not happenstance. There was then an escalation, or ‘force drift’, beyond the authorised techniques into more explicit violence. There were context specific reasons for the force drift including an increasing violence both from and towards sections of the Iraqi people during the first stage of a military occupation for which there had been insufficient planning, resourcing or training. These victims were also believed (wrongly) to be connected to the killings of British soldiers in the previous weeks. There were, however, features of force drift which the victims suggested are endemic to the authorisation of coercive techniques where, theoretically, some degree of proportionality is supposed to be in play. Coercive techniques generate the need for further force to sustain them. They at once de-professionalise the perpetrator and create a narrow professional incentive to succeed. For this reason it is wrong to describe the force drift element of the torture as indiscipline. It is the approved methods which are responsible for the indiscipline, rather than the indiscipline being responsible for the violation of the approved methods.

3. This still begged the question – both forensic and sociological – as to how members of 1 QLR could have done something so obviously wrong, both
legally and morally, with so little inhibition. The victims suggested at paragraphs 293 to 304 of their opening that while the soldiers might not have been carrying out explicit orders to beat the detainees they were conforming to mores that had become culturally acceptable in Iraq: they were acting under the pressure of emergency (real and imagined), where they were carrying out authorised conditioning techniques which involved force and that, rather than being exceptional and highly supervised, had become routine and unregulated, and that a form of racism and de-humanisation of the perceived enemy-other had come to exist both overtly, and at a more subconscious level.

4. The above factors are important to consider in terms of appreciating the pain that was caused to the victims, and the difficulties that the perpetrators had (and in some cases still have) in appreciating that pain.

The Victims’ Account

5. Very few lawyers practising (or judging) in the United Kingdom ever do a torture case. We do cases where the event of torture is relevant, but collateral to the issue. For example, in asylum appeals the client may have been tortured in the past and the court is required to assess the risk of him or her being ill-treated in the future. There will be criminal trials, where violence or sexual attack upon a victim contains elements of torture, but they lack the institutional setting that this event had. This is a torture case, where the task of dissecting the anatomy of the incident lies at the heart of the proceedings. Not only that, but the perpetrators of the torture were agents of the United Kingdom’s occupation of a foreign territory; and the victims of the torture came to the United Kingdom to tell an inquiry about it. It is important to recognise how truly unusual this Inquiry has been for all involved.

6. Although each of the victims wanted to give their account to the Inquiry it was, for each of them, difficult. The process of the publicly accountable investigation that they desired required them to re-engage with experiences that they have tried to put behind them. The printed word on the live-note transcript does not do justice to the visceral effort of trying to be forensically disciplined in the hearing room in the act of testifying to pain, whilst having one’s words translated into a foreign language. “Every time I remember the
events". D003 told the Chairman as the first witness who recalled the period of detention, "it is as if the whole thing has happened today. So please forgive me, I am being emotional". When asked to recall what effect wearing a hood hour after hour had on him, D001 explained, "I was terrified, afraid. I was in pain. I was afraid that I would be beaten at any minute. This state which they put us in ... couldn't be borne for more than seconds". D004 explains in his Inquiry witness statement that recalling what happened to him at BG Main makes him want to end his own life, that he suffers flashbacks and nightmares from the event, and that six years on his emotional problems are getting more complicated and increasing in severity. When he was asked in oral evidence to describe the conditions inside the TDF, he said it was "unimaginable" and "unspeakable". Ahmad Matairi described the incident as the worst day in his life: "I would not have imagined to [meet] people who were [so] inhuman and who lacked conscience to this degree. A man is distinguished by [his] mercy, sympathy, values and ... conscience. They had none of that". D006 said that at the time "one would have loved to die", because that would have been better. D002's attempts to give evidence at the Inquiry were difficult days, for him most of all. Those difficulties of themselves demonstrate the intense pain caused by this incident, and how it continues to be felt. More than anything, the event of D002 giving evidence demonstrates the embodiment of torture's after-effects.

7. Audiences tend to treat victims that have marks on their bodies differently to those that have no marks to show. The imagination is more easily stimulated by the evidence in this case that the man who died had 93 separate injuries on his body, that Kifah Matairi was suffering from acute kidney failure caused by his sustained beating, or that 6 of the survivors were diagnosed as having suspected broken ribs. Of course this evidence is important, not least

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1. BMI 10/64/24 to 85/2.  
2. BMI 12/18/10-17.  
3. BMI102052 [104] and BMI102055 [118-9].  
4. BMI 18/22/8.  
6. BMI 13/78/25 to 79/3.  
7. Kifah Matairi was diagnosed with fractured ribs at BMH Shaibah (MOD000362). D003 was also referred for a chest x-ray due to a suspected rib fracture (MOD015338-9, D003 BMI02390 [86]). Dr Hill, who later examined the survivors at the TIF, requested chest x-rays of D001 and D002 and a copy of the x-ray of D003 – see MOD001132, MOD000988-9. It appears that these requests were never actioned (see MOD000394 – 410, D001 BMI02003 [67], D002 BMI01966 [66]). D004 was diagnosed with broken ribs after his release (BMI0250
because it proves the degree of impunity under which soldiers must have believed they were operating. It also provides, in the case of several of the victims, conclusive corroboration of serious assault. From the point of view of a victim, however, a physical injury is paradoxical. This is because signs of injury provide relief from doubt. Physical injury helps to express the position to the authorities, as well as to one's own community, even to oneself, without having to explain anything. The scar testifies for itself. Stealth torture – or torture that does not leave marks – by definition denies this. It is much more taxing to put pain, fear and humiliation into words. In this respect a close (if not exact) analogy is rape. As Rejali puts it,

"When torturers turn to covert torture, they deliberately induce a breakdown in one's ability to show one's pain to others, stripping their words of the marks that give the speaker credibility. How horrible to be unable to use words in ways that elicit acknowledgement, to be unable to explain, to be uncertain, as in the case of some victims, even about what one has experienced." 8

8. Against such challenges to credibility, the account given by the victims embodies major hallmarks of it. The original statements to the SIB are remarkably consistent given the lack of time and opportunity to discuss the issues. Most of the men were detained in "Camp Silent", where opportunity for communication of any kind was prohibited. 9 Two of the men were detained separately in hospital. Kifah Matairi was completely incapacitated for several weeks.

9. There are features of the accounts that were not fully contained in the SIB statements, but such shortcomings in the original narrative have to be tested against the traumatic circumstances in which the statements were given and the extent to which only the passage of time has facilitated a recollection and understanding of what happened. Particularly in the criminal trial, what was incorrectly included or left out of the SIB statements was the source of

[96]), and Ahmad Matairi was told by a doctor at the TIF that his ribs were broken (BMI02275 [6]).

8 Darius Rejali, Torture and Democracy, p. 30.
9 D001 BMI02001 [61], D002 BMI01966 [64], D003 BMI02396 [92], D004 BMI02044 [75], D005 BMI02340 [112], D006 BMI02146 [47], Maithem BMI02095 [74], Ahmad Matairi BMI02276 [72]. Whilst SSgt Jay of the RMP, who visited the detainees at the TIF, stated in his Inquiry statement that the detainees were not being held in isolation and could communicate with each other (BMI00192 [14]) he confirmed in oral evidence that the ability to communicate was simply something he inferred from the fact that the detainees were being guarded in the same tent – see BMI 37/13/1-18.
prolonged (and not surprising) cross-examination. The context of giving those statements, within two to three days of the incident, and while still interned, cannot be forgotten. As D001 put it, there was scope to be misunderstood in those interviews, just as there was a risk of error on the part of the statement maker: “I was tired, worn down and in pain”.

10. Nevertheless, many of the complaints made were documented either with the SIB or the detainees’ lawyers at a time long before the detainees had access to the supporting documentation disclosed to them by the Inquiry. Crucial features of the case are now demonstrably supported by statements and exhibits, for example the logs show that the chain of command at both Anzio Company and the Battle Group were prepared to allow D005 and D006 to be taken to Anzio lines for two hours before being delivered to BG Main to face tactical questioning. Some of the complaints made would be difficult for any person to narrate in any circumstances, but particularly so for Muslim men raised in a traditional society. There is an allegation of the tweaking of nipples during the course of the second night which falls squarely into this category. Of his failure to mention being splashed with the toilet water at the hotel, D004 said “at the time I could not talk about this because I was in so much pain because of it”. Other parts of the abuse are more coherently described by those who watched it than those who were the victims of it. That is true of the ‘Choir’ which was designed to entertain the soldiers, whilst causing pain to the detainees. Only some of the detainees were able to appreciate it as a discrete form of abuse: as D001 put it, “They seemed to be playing us like

11 CM 27/53/10 to 54/9.
12 D005 says that whilst there he was made to carry out forced exercises and adopt stress positions on a gravelled surface: BMI02314-6 [18-19].
13 BMI 18/16/5-6.
musical instruments",\textsuperscript{15} or more simply, as experienced by D004, "they were trying to be creative in the way they were beating us".\textsuperscript{16} The fact of the choir as a discrete and stylised form of abuse is confirmed by a number of soldiers.\textsuperscript{17} For detainees who were subject to conditioning and disorientation techniques, it is not surprising that there could be errors in their own accounts, although when a man feels certain that he was beaten by twenty people, when it might have been five, or when he thinks he was interrogated by the commander of all the British forces in Basra, it is important to assess whether this is merely exaggeration, or an authentic expression of how he experienced the abuse. If there are problems with the reliability of any of the detainees’ accounts, particularly with some of the identification evidence, the problem has been caused by the disorientation techniques that were applied to them; and not by their own desire to exaggerate or mislead. If anything, they would consider that they have not done justice to explaining how bad it was.

11. Two features of the victims’ evidence particularly stand out in supporting their credibility. First, while their timing and sequencing may be confused, there are now key parts of the victims’ accounts, including their idiosyncrasies, which have been strongly corroborated by the soldier witnesses. The event of the Inquiry has caused many, if not all, of the soldiers to put the credibility of the core allegations beyond doubt. Donald Payne has now made it clear that he was involved in "routinely" kicking and punching the detainees during the 36 hours prior to Baha Mousa’s death and that almost all the other members of the Rodgers’ multiple were involved in this abuse as well.\textsuperscript{18} Rather than starting later in the day, the conditioning process began almost immediately upon arrival.\textsuperscript{19} Several witnesses say that they saw assaults during the

\textsuperscript{15} BMI01995 [34]. See also BMI 11/15/19-20 and 22/14-23.
\textsuperscript{16} BMI 19/23/17.
\textsuperscript{17} Crosbie BMI03968 [31-33] and BMI 19/208/24 to 213/13, Hill MOD00271, Allibone BMI01358 [66-7], [70-4], Appleby BMI02526 [81] and MOD000176, Cooper BMI04365 [126], Stirland MOD000161-3, Graham MOD000149, Aspinall MOD000125, Hughes MOD00078, Riley MOD000092 and Betteridge MOD00088.
\textsuperscript{18} BMI05822 [5-6] and BMI32/70/17 to 74/15.
\textsuperscript{19} See, for example: BMI04468 (for timing of this video see paragraphs 125 to 126 below); below); D004 BMI18/18/11-16, MOD000003; D001 BMI12/14/20 – 12/15/2; Ahmad Matair BMI12/64/11; D002 MOD000026; Kifah Matair MOD000053; D003 BMI02360 [43]; Stacey BMI01558 [29]; Crowcroft MOD020309; Fallon BMI12/170/21 – 22/172/2; Lee BMI02606 [45]; Hill MOD000270.
daytime of the first day. From the Sunday evening onwards, a number of the Rodgers multiple have admitted to being involved in beating the detainees or maintaining part of the guard while the beating occurred. There can be no doubt that at the handover between Fallon and Crowcroft and the Rodgers multiple just before 7 pm on the Sunday, there was a mass beating. Soldiers who arrived at this time attest to the fact that several of the detainees were already injured. D005, as the youngest detainee and one perceived to be most likely to know where C001 was, was sent to kneel in front of a loud generator as a means of breaking his will, an experience that several people made to guard him have regarded as inhumane and which probably happened on a number of other occasions when people were being tactically questioned. D005 also detailed in his first statement given in September 2003 that while wearing the sandbag, someone had urinated on his head.

The reality of that same scene was depicted in the fake photographs that were presented to the Mirror Newspaper in May 2004. Soldier A, who is almost certainly Pte Mackenzie and who was guarding in the TDF that night, was one of the people who handed over those photographs. When D002 maintains in his witness statement that he was beaten on his way back from being tactically questioned, the Inquiry now has an admission from Colour Sgt Livesey that it was he who did the beating. There is a body of supporting evidence to confirm complaints by at least one of the detainees that he was tricked into believing that he was about to be set alight.
obvious reasons this developing process of agreement and corroboration between the soldiers' accounts and the victims' accounts are particularly focused on below.

12. Second, and perhaps most significantly, the accounts themselves are excessively full of idiosyncrasy. They embody a unique, as opposed to a formulaic, narrative of abuse (examples of which include: water poured though their hoods or shunted down the mouth so it could not be ingested; believing oneself to be doused in petrol; being urinated upon and being forced to drink urine, eye sockets gouged through the material of the sandbag; the generator; the particular indignity to a Muslim man of being placed in the open toilet area between the two rooms, the use by a soldier of the homophobic Arabic term 'dudacky'). The victims emphasise this because it is in the idiosyncratic memories that one can discover both the credibility of the complaints and the depth of pain that the treatment caused. In this respect one moves beyond proof to understanding. There are certain key features of the incident which peculiarly demonstrate the victims' experience. Thus, the impact of being placed in the toilet at the hotel was experienced as something particularly humiliating at an early stage; all the more so if water from the toilet was splashed on them. An extremely profound moment, not necessarily appreciated because he could not give evidence about it, was when D002 said the prayer of the Shehadeh, which is the prayer that a Muslim says when he believes he is about to die. In the Court Martial, his recalling of that event was the point when he broke down. It may be that D002 is the man that Betteridge recalls praying on the second day when he visited the TDF, by which time all these men were quite obviously beaten and the condition of the room in terms of heat and smell was shocking.

“I can remember -- I still remember one of them, like, praying... He was like -- it sounded like singing to me, but obviously it was praying. It was just -- it was quite loud”

him and the wet sack being rubbed into his face (BMI02332 [86]), having urine thrown over him (BMI02332 [88]), and also having fly spray sprayed, or some other strong smelling household substance thrown on him (BMI02332 [87]). The gist of this evidence is that the soldiers have confirmed the willingness of members of the guard to inflict grossly humiliating and terrifying experiences on their captives.

32 See D005 BMI02333 [88].
33 See D005 BMI02333 [89], D004 BMI02041 [64-65].
34 BMI1957 [36].
35 CM 14/22/23 to 24/11.
36 BMI 15/22/19 to 23/1.
13. The Inquiry – and by extension British society – has the benefit of having heard from the victims in this particular incident. They provide testimony of how it feels to be hooded, to be forced to maintain stress positions, to be kept awake pending questioning and to be screamed at, verbally insulted and threatened. The evidence available to the Inquiry is that those features just mentioned were happening at BG Main for two months before under the auspices of 1QLR. Before that, similar treatment was imposed by members of 1 Black Watch. Variants of the same treatment were carried out by perceived expert members of the interrogation community in late March 2003 who ran the Joint Forward Intelligence Team camp-within-a-camp at the Prisoner of War Holding Organisation. If it is trite that those who do not learn from history are destined to repeat it, the key contribution that the victims can make to British society is to teach it the personal consequences of coercive techniques, short of outright physical violence, that have been favoured by democratic states looking to treat prisoners within what their lawyers and subject matter experts have advised them were the margins of the law.

The Perpetrators

14. Given that there can be little doubt that the victims suffered serious and traumatic injuries from the point of their arrest to their arrival at the TIF, this is a stark case of force drift. The finding of the weapons, though raising genuine suspicions, was hardly unusual by Basran standards at the time. A considered view of the suspects ought very strongly to have suggested that they were not a Former Regime Loyalist terrorist cell. Despite this, many members of 1 QLR became involved in a multi-act process of abuse in which the actors must have believed that they were operating with impunity. This case demonstrates the fact that torture has not one slippery slope, but three. It increasingly takes in more suspects than those approved, leads to harsher methods than those authorised, and leads to greater fragmentation within the chain of command. Notwithstanding the illegality of the techniques that the chain of command authorised, it was incumbent on Colonel Mendonca and

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37 See the regularity with which finds of multiple weapons were recorded in the Commander's Diary (MOD016813-42) and the observations of Crowcroft (BMI02553 [109]), Suss-Francksen (BMI01585 [47]) and Barnett (MOD019689).
his officers to design an anxious system of risk management given that they were asking their soldiers to use coercive techniques without any training in this.

15. In that context, the subjective test of humane treatment, namely to “treat others as you would have them treat you”, utterly collapsed in terms of its usefulness. This is an issue to return to in later Parts in terms of examining how the operational context in Basra served to unmake what might ordinarily be perceived as standard and common sense morality. In a soldiering environment there is a basis for saying that expectations about treatment of oneself by an ‘other’ become skewed, particularly if that ‘other’ is viewed in a racially stereotyped way. At the very least, the notion of “common sense” became strained in a belligerent environment. For the purposes of the incident itself, it remains striking how lacking in empathy the perpetrators must have been. The answers given by those who have admitted to morally repugnant behaviour tend to be unsatisfactory. For instance, when asked why he beat D002 twice while hooded and cuffed behind his back, causing a serious visible injury above his right eye, Livesey said:

“To this day, sir, I don’t really know. Whether it was out of frustration, whether it was out of what the rumour was about Captain Dai Jones and other things, it was just -- I just did it and I can’t -- you know, it goes against everything I have been taught. It goes -- you know, self-discipline and everything, sir, and I can’t think of why I did it, I just did it. There’s no explanation of why I did it at all, sir.”

16. Both Payne and Slicker sought to locate the reasons for their conduct in the circumstances of terrorist attacks in Basra and a subjective sense of justice given what British forces had to deal with. Consider the following exchange between Payne and Counsel to the Inquiry, after he admitted that he and others had been involved in a process of continuous kicking and punching throughout the period in which the detainees were in custody:

“Q. And in relation to these detainees, what I have called the Baha Mousa detainees, why did you involve yourself in kicking and punching them?
A. No reason.
Q. For no reason. I just want you to think about it. I am not suggesting it for one moment, but was it the case, for example, that you believed that they were involved in some previous killing?
A. Maybe, yes.

Q. Was that something that had anything to do with your behaviour?
A. Yes.
Q. Or was it that this simply was a gratuitous, or a series of gratuitous acts of violence for no reason whatsoever?
A. I think it was because we thought they had murdered the RMP.
Q. Who is the "we" in that sentence?
A. Everybody.
Q. That's why you applied much greater force than you have hitherto admitted?
A. Yes.  

17. Likewise when asked to explain his own assaults of detainees, who had nothing to do with him, and in circumstances where he was not even guarding, Slicker suggested in the Court Martial, that it was because he was "pissed off":

"Because there is no justice these days... You got 9 RMPs murdered, yes, their justice is not coming -- to come to account. So you got Iraqis shooting everyone and they got away with murder, but us, one person dead and everyone gets blamed for it. So where is the justice in that?"  

18. There is a danger in relying too heavily on such expressions of motivation. Just as it is difficult to express pain, it is also difficult to explain why one has caused it. There is also a danger that references to justice and the like are part of a reasoning process that took place after the event rather than during it. Accounts by those such as Cooper and Reader suggest a far more random and chaotic process in which violence escalated and soldiers became completely confused about what their orders were and where their loyalties lay. At worst, fixing on ex post facto self-analyses serves to suggest that the violence against these detainees was somehow unique, whereas the evidence suggests that it was far more widespread on the tour, and what is unique about the treatment of these detainees is that a pre-existing culture of violence produced unintended consequences. For all those reasons, it is often more instructive to ask how a torture incident was able to take place, rather than why it took place.

19. With those caveats, there is something to suggest that the aspects of the account given by Corporal Douglas, the driver for the Rodgers multiple who

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40 BMI 32/71/72 to 72/17.
41 CM 47/31/20-25. See also Slicker BMI 21/85/10-13: "Justice, basically. At the time you had six RMPs got shot and there were no justice in that, so it were just revenge, that's all. There were six RMPs killed for nothing really. There's still no justice now."
was more mature in age than most of the others, provides a strong indicator of what was considered culturally acceptable within the TDF at the time. The following evidence might well suggest where the centre of any ‘moral’ gravity lay during the three days of abuse:

“Q: Did you report what was going on to anyone else?
A. No.
Q. Why not?
A. I don’t know, it was just par for the course, I would have imagined.
Q. Par for the course. So was this typical of the way detainees were treated?
A. Not quite as savagely as that, no.
Q. Not quite as savagely as that?
A. Not as savagely as that.
Q. Would detainees typically [be] treated savagely to some extent?
A. Not savagely, no.
Q. Why did you say this was par for the course?
A. Well, when they went there, they were normally bagged and tagged anyway; put in these stress positions anyway. For some reason these guys got treated a bit more aggressively.”

He was subsequently asked at the time the violence was taking place, whether he saw anything wrong about the way the detainees were being treated?

“A. Well, they were being treated rather harshly.
Q. Again, it is a bit of an understatement, is it not, Mr Douglas?
A. Well, very harshly then, okay.
Q. Did you think it was wrong?
A. Well, by all accounts they had found things in their -- in the hotel, anyway. They had found weapons and ammunition, and hand grenades, so.
Q. Are you saying that that justified the way these detainees were treated?
A. Well, you don’t have timers and hand grenades for no other reason, do you?
…
Q. Did you think that the hand grenades et cetera justified the way that these detainees were being treated?
A. I would say, yes.”

20. Clearly these types of sentiments did not and could not have arisen of their own accord during Operation Salerno for the first time. Although we deal with the wider context for these views in Part V it is worthwhile to consider the

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42 BMI 31/41/20 to 42/13.
43 BMI 31/62/2-22. In the Court Martial, Douglas also recognised that the conduct was prompted by a suspicion that these detainees were responsible for the RMP killings: CM 46/45/10 to 46/46/10.
further evidence that Douglas gave in this regard and the extent to which it describes a normative position within the rank and file of 1 QLR as opposed to a deviant one:

"Q. From conversations you had with soldiers on the tour, do you know whether the view that you have expressed, that the violence was justified, was one that was commonly held?
A. I think it would have been, yes.
Q. Now, at the start of your evidence today, when you were asked by Mr Halliday whether you saw unjustified violence earlier on the tour, you said "no, none at all". If I may, I just want to briefly just understand where the line is drawn by you, as regards justified and unjustified violence. This was a very harsh tour, wasn't it?
A. It was quite a hard one, yes.
Q. Difficult for civilians to understand?
A. Possibly, yes.
Q. And for some soldiers, now, they may be squeamish about the types of things they had to get involved in, in their view, at the time?
A. Yes.
Q. Particularly -- and we have seen the quote from the court martial -- during the end of July and August there had been significant fatalities to the British forces?
A. Yes.
Q. Including Captain Jones from your own battalion?
A. Yes.
Q. Because of that, did it come about that zero tolerance on the streets, in terms of Iraqis not doing what they were commanded to do, was considered justified?
A. Possibly.
Q. Can we avoid, if we can, the word "possibly". Is it the case that a zero tolerance attitude was adopted?
A. That could have been the case, yes.
Q. Was it ordered and encouraged from what you saw, and what you were ordered, by Lieutenant Rodgers?
A. No.
Q. So how did it come about that it could have been the case that zero tolerance was justified on the streets?
A. Possibly could have been the situation.
Q. Let me see what situations might have arisen. If you asked an Iraqi on the street to move on, and he didn't, would it be permissible to slap him to get him to move on?
A. Not right away, no.
Q. But if he did not move on and wanted to argue, could he be slapped?
A. Never come down in orders to do that. That was never an order.
Q. So did you see what might be described as casual slapping of people who didn't do what they were told to do?
A. Yes.
Q. So this just developed as a culture, did it; an unordered culture?
A. It did get harder after the killings, yes."

44 BMI 31/66/11 – 31/68/14.
21. This provides the context in which the internal community of 1 QLR did not consider various forms of conditioning to be illegal or immoral – or, if they did, this did not inhibit them. Sociologists of war crimes describe such a phenomenon as a ‘crime of obedience’. The depth of the belief that the core features of the conditioning were permissible can be found in the evidence of Major Royce, who told the Inquiry that the use of stress positions with hoods for up to six hours “was humane within the constraints that we were being forced to operate and the guidance that we had been given”; and when pressed said, “I don’t think it was excessively inhumane".\(^{45}\) A similar loss of moral rigour can be seen in an obviously decent man like Major Seeds, who acted with due concern when he discovered the detainees beaten, but worked through weeks of the tour with the full knowledge that detainees would be routinely hooded and kept in stress positions for the purposes of aiding their interrogation. “There was no malice on anybody’s part” he said.\(^{46}\) When asked further about his views on the moral acceptability of the practices, he observed as follows:

“In context, being as I had seen hooding prior to going on Sky News -- there was no outcry about that -- it seemed to be -- it was not hidden in any way, shape or form. This was not -- you know, anybody could have walked around Battle Group headquarters and witnessed this. It wasn’t an underhand, you know, sleight of hand going on. There seemed to be procedures in place that had been handed over from the previous Battle Group, from Telic 1. So, you know, Brigade were aware of what was going on, the other regiments were using hooding and this -- so across the board it just seemed to be accepted.”\(^{47}\)

22. The fact that the authorisation of some force through conditioning then prompted the guard to use more force without fear of retribution suggests that the soldiers who further abused the detainees in the TDF believed they were conforming to something normal on the tour, even though they must have known that their conduct would be considered abnormal and wrong in the wider world. The extent of this inversion of ordinary morality can be appreciated by the contribution made by soldiers who accept that they stood by while others committed crimes. Not only were they impotent to stop the abuse, but they did not feel able to report it. If it is to be believed, the

\(^{45}\) BMI 57/675-9.
\(^{46}\) BMI 48/455/16-18.
\(^{47}\) BMI 46/473/9-20.
evidence of Pte Reader brings to light how such morally uncomfortable bystanders are capable of facilitating abuse:

A...I truly felt that anything that was going on there at the time was, what words I could use was "kept in house".
Q. Kept in house?
A. We had no other option. We were just private soldiers that was told what to do. Granted, a lot of us felt and thought that what was going on wasn't right and some people felt we had the power to abuse the prisoners, but my personal thinking was if I just keep my gob shut and just plod on, it will soon be over. I didn't want it to end like the way it did, but it did.48

23. The fact that such a culture of obedience and conformity could have developed within 1 QLR represents a serious failing on the part of the chain of command in terms of training, regulation, supervision and moral compass. The victims return to this issue in Part V.

OPERATION SALERNO

The Operation

24. According to its written order, Operation Salerno was a Battalion wide operation designed to conduct inspections of local hotels across Basra "to target criminal, Garamshe and terrorist activity...by the use of hotel searches, soft knocks and rummages in co-operation with the IZP".49 One of the hotels involved in the city wide operation was the Hotel Haitham, with which 9 of the 10 detainees were associated. The principal focus of the operation was upon the guests rather than the employees, although the intelligence pack produced for it, on the basis of an informant of unknown quality and without any corroboration, assessed that the manager of the Hotel Haitham must be suspicious on account that members of the Iraqi security services were believed to have hidden at the premises before the Coalition forces entered Basra.50 At that stage the name of the manager was not known. Although the Company intelligence officers were in possession of a 'Bravo list' (bearing the names of potential suspects), none of the detainees

48 BMI 28/187/16 to 188/1.
49 MOD030791.
50 MOD030796.
featured on the list. The intensity of the security in conducting the operation was ‘soft’ not ‘hard’, meaning broadly that the visits to the hotels were not designed at the outset to involve forceful entry and arrests or to necessarily involve or prompt a serious risk of violence. As Staff Sergeant Davies (the man who would eventually interrogate the detainees) put it on various occasions, there was no “hard, definite intelligence” on this particular hotel, but “street level stuff”, “scant” and “unreliable”. That appears to be the most accurate summary of the intelligence picture in relation to this hotel prior to the start of the operation in the early hours of the morning of 14 September 2003.

25. Intelligence work in preparing for the operation was carried out by battalion and brigade personnel. None of the statements taken by the SIB or this Inquiry ever produced a recollection that the Hotel Haitham was specifically suspected of having anything to do with the murder of Dai Jones on 14 August 2003, or the murder of 3 RMP officers on 23 August 2003. The evidence of the Battalion Intelligence Officer, Major Seaman, confirmed that position in his oral evidence. Colour Sgt Livesey who carried out pre-operation intelligence gathering on the hotel, confirmed that there was no pre-existing intelligence to that effect and that a generalised suspicion that the detainees and the hotels might have something to do with Dai Jones was “purely rumour”. The Inquiry statement of the 2IC in 21MI company in Brigade, WO2 Paterson, equally confirmed that any consideration that the death of Dai Jones or the members of the RMP “had nothing to do with either the planning of the operation, or the arrest of either Baha Mousa or the other detainees”. By contrast, in his oral evidence to the Inquiry, Paterson changed his position and said that intelligence to that effect existed before the operation. He speculated that such information would have been contained

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51 Ingram BMI00179 [34].
52 MOD030796.
53 For accounts of the difference between ‘soft’ and ‘hard’ knocks, see for example Redfearn BMI01782 [61] and [67]. Rodgers MOD003500, Crosbie BMI 19/184/9-16 and Stacey BMI 21/183/7-16.
54 MOD018937.
55 MOD019046.
56 CM 82/13/15-19.
57 BMI 55/76/17 to 78/8.
58 BMI 39/19/12 to 20/19.
59 BMI02823 [39].
60 BMI 76/114/11.
in previous summaries that went down to the Battle Group during August.\textsuperscript{61} The oral evidence of Mr Paterson is almost certainly incorrect and the fact that it is incorrect raises broader questions about the shortcomings of intelligence during the tour generally, which itself may provide an explanation for why tactical questioning at the Battle Group level was taken to such extreme lengths.\textsuperscript{62}

26. For present purposes, it is sufficient to observe that no previous Brigade level INTSUM concerning the hotel has ever been produced, and the INTSUM created for the Brigade by WO Paterson prior to 1600 on 15 September did not refer to any such previous reports.\textsuperscript{63} It is difficult to accept that there was any current intelligence linking the hotel to recent terrorist attacks as of the early hours of the morning of 14 September.\textsuperscript{64} Nothing of this sort was raised in the Operation Salerno intelligence packs. Paterson accepted that it would have been surprising not to include such intelligence in the packs.\textsuperscript{65} Seaman who produced the packs positively did not know of such intelligence at the time.\textsuperscript{66} Current intelligence of that sort would logically either have required a 'hard' knock of the hotel, or a careful risk assessment in conducting a 'soft knock', neither of which was the case.

27. The suggestion that the hotel or a vehicle seen outside the hotel was in fact linked to the RMP killings, although probably first noted in the report of Staff Sergeant Davies drafted at approximately 3am on 15 September,\textsuperscript{67} was never positively pursued by Brigade or Division intelligence personnel in justifying the detainees' internment.\textsuperscript{68} Indeed the Brigade INTSUM 197 drafted by WO

\textsuperscript{61} BMI 76/122/3-4.
\textsuperscript{62} The same can be said for the evidence of Sgt French, the collateral within the Bde G2 cell with responsibility for 1QLR's area of operations. He similarly attempted to reside from his initial witness statement (MOD00287) which clearly stated that he had not been aware of any link between the hotels and the RMP deaths. Like Paterson, his oral evidence to the contrary was deeply unconvincing and must be untrue: see BMI 77/2/11 – 77/4/22, BMI 77/38/1 – 77/48/16; BMI 77/56/1-16.
\textsuperscript{63} MOD048535.
\textsuperscript{64} MOD030796.
\textsuperscript{65} BMI 76/117/20 to 118/23.
\textsuperscript{66} BMI03281 [85-87] and BMI03283 [94-96]. See also BMI 55/76/17 to 78/8.
\textsuperscript{67} MOD030866. The report was attached to an INTSUM drafted by Major Peebles. MOD030811.
\textsuperscript{68} See, for example, MOD030748.
Paterson effectively lifted the wording of the Davies Report word for word.\textsuperscript{69} That wording is as follows:

"Previous intelligence stated that a vehicle similar to one used in attack on RMP on 23 Aug 03, was seen outside this hotel. Separate report (sic) stated that armed men were seen at the hotel around the time of the attack. This and other reports on FRL use of hotels prompted this operation" (emphasis added).

28. The victims submit that it is highly likely that the idea of the detainees being linked to the RMP killing developed after their arrests. The source or sources for the idea are unknown, and never seem to have been seriously pursued after 15 September. Neither was there ever an effort to corroborate them.\textsuperscript{70} As a matter of generality, Major Seaman, made it clear to the inquiry that the "vast majority of the intelligence" that he dealt with on the tour "would have been of an unknown quality and uncorroborated".\textsuperscript{71} If the intelligence in fact existed at all, WO Paterson and Staff Sgt Davies accepted that it was nothing but that, albeit that neither of them ever sought to emphasise the weaknesses in the intelligence in the documents that they drafted.\textsuperscript{72} While it is possible that a source of unknown reliability or corroboration came forward after the arrests, another possibility (suggested by Lance Corporal Redfearn) is that some of the arresting multiple saw a red pick-up truck in one of the photographs seized at the hotel, and that the arresting soldiers were in fact the source for the idea.\textsuperscript{73}

29. Of course, as already detailed above, the rumour and speculation that the detainees were linked to either the Dai Jones or the RMP killings was determinative of how they were treated from the point of their arrest onwards. As Sgt Stacey would emphasise, the rumour (or the putting of "two and two together") that the operation would expose the cell responsible for the Dai Jones murder was prevalent around the camp before it began,\textsuperscript{74} and there was jubilation at the camp on the Sunday afternoon when he returned from

\textsuperscript{69} MOD048540. The same word was subsequently copied into a Division intelligence report also dated 15 September: MOD011738.
\textsuperscript{70} A belated decision in 2005 to conduct ballistic testing on the weapons found in the hotel, apparently to determine whether there was any link to the shooting of the RMP in August 2003, produced a negative result: Griffiths MOD005834.
\textsuperscript{71} Seaman BMI 55/48/7 to 49/6. See also Moore MOD000598-602.
\textsuperscript{72} Paterson BMI 76/130/1 to 131/12.
\textsuperscript{73} BMI01802 [126].
\textsuperscript{74} Stacey BMI01553 [14] and BMI 21/140/4 – 21/141/14.
the arrests and doing the first guard, because the general assumption was that the people caught were the Dai Jones killers.76 There was just no evidence that this was the case, or could even have been reasonably suspected to be the case. Neither was there any documented intelligence of it, such as could be relied upon in due course. As WO Paterson accepted in evidence, some six years after the event, his recollection about the availability of prior intelligence was based on the paperwork and nothing else.77 The totality of the intelligence never mentioned any of the detainees by name.77 It was by its nature, “very preliminary”.78 Nevertheless, aside from those already mentioned, numerous witnesses considered these particular detainees to be connected to one or other of those attacks, either because they were told or because they assumed that to be the case.79 Major Peebles accepts that he communicated the suspicions that the detainees were connected to the RMP killings directly to Privates Fallon and Crowcroft at the start of the tactical questioning process during the first day of the detention and at the same time told them “not to go over the top”.80

30. The victims raise this matter first because they want to proclaim their innocence; second, because these false accusations no doubt influenced the excesses of what happened to them; but finally because events such as these profoundly demonstrate the utilitarian problems of allowing some degree of force to be applied to suspects based on a principle of necessity. Not only is there a risk of force drift, but the process ends up targeting innocent bystanders who have little to tell, but are suspected of much.

75 Stacey BMI01560 [36].
76 BMI 75/145/1-3.
77 BMI 76/148/21 to 150/6.
78 As accepted by Peebles in evidence: BMI 40/33/14 to 94/19.
79 Ellis BMI05456 [45] and [65] and BMI 45/38/18 to 39/7, Stokes BMI06148 [18] and BMI 43/184/7 to 191/21, Stacey BMI01553 [14] and BMI 21/140/4 – 21/141/14, Pte Winstanley MOD003630, BMI 34/66/14 to 68/10, Sgt Winstanley MOD003630, Woods BMI00423 [27], Lee MOD000260, CM50/43 and BMI02602 [31], Payne BMI01716 [100], G Hill BMI 16/191/13-19, Huxley BMI 23/2025 to 22/2, Roberts BMI 01201 [55], Stout BMI 32/198/17 to 199/3, Rodgers MOD000223, Mackenzie BMI01035 [33-35] and BMI 29/159/5-16, Allibone BMI 24/107/1 to 111/15, Cooper BMI04359 [94], [105] and [107], Bentham BMI 41/91/24 to 93/4, Brown BMI 38/113/6 to 115/6, 145/10-13 and 149/14 to 150/2, Walker BMI02645 [111], Hughes BMI00015 [27], Colley BMI 45/160/18 to 161/2, Vogel BMI00691 [50], Richards BMI 31/128/6-16.
80 MOD018824-5, CM 81/537 to 54/20, CM 82/165/15 to 167/10, BMI94/20 to 97/21. Payne says that Peebles also told him that the detainees were suspected of being linked to the RMP killings: BMI 32/53/24 to 54/23; as does Rodgers MOD000223.
The suspects

31. When one begins to understand who the suspects were and how they must have been seen, it becomes clear that principles of necessity and perceptions of emergency that are sometimes fashioned to justify torture quickly become routine and mundane.

32. The Chairman has seen the detainees give evidence, though the images of 6 out of 10 of them are subject to reporting restrictions. Taking all the appearances into account, these men would not have looked like a dangerous Former Regime Loyalist terrorist cell. They came from a range of cultural backgrounds delineated by what job they held in the hotel. They were the receptionist, the generator man, an electrician, the cleaner, the night guard and the restaurant manager. There were two of the owners and a High School student son of one of them. Several of them were middle aged and three of them were comparatively old. Donald Payne accepted in his evidence to the Inquiry that it was immediately apparent that some of them were old men.81 Corporal Kendrick, the intelligence SNCO who took photographs of the men on the first day conceded that "as a bunch of men they were not the youngest and the fittest".82 Appleby, a guard on the first night that would help to maintain the detainees in stress positions, accepted that it was "apparent from just looking at them that they were obviously not fit soldiers".83 One of the striking features of the TDF video is that Ahmad Taha Matairi on the nearside right and D001 on the nearside left are self-evidently relatively old men being forced to maintain stress positions. Statements given to the Inquiry now make it clear that there may have been doubts about any suspicions held towards the detainees even at the time. Lance Corporal Crowcroft described his "immediate impression" that these men did not seem to be dangerous: "They seemed middle class, middle aged and overweight, not the type of persons I would have associated with insurgency".84 In his SIB interview, Sgt Smulski said of Baha Mousa that he looked like "he had gone to seed, he was quite podgy".85 More emphatically, Lance Corporal Redfearn now makes plain

81 BMI 32/63/11.
82 BMI 38/169/2:24.
83 BMI 25/40/20 to 41/25.
84 BMI02552 [104].
85 MOC006103.
the obvious conflict between the allegation that these men were part of a terrorist cell and the reality of their appearances and demeanour:

"... [It] was quite clear to me, and I would suggest equally as clear to the other soldiers at the hotel that the people that we had detained there were not the kind of people who would be involved in any extremist activity. On a number of occasions prior to this we had made many arrests and had contact with several former regime loyalists. When they were arrested they would show no fear: They were proud of their status. This was only a soft knock and the detainees were clearly terrified, particularly when we found the weapons and other items that were hidden. It seemed quite clear that they were unaware that they were there. At no point did they make any hostile move toward us. I would say that a terrorist, having seen British Army soldiers coming into the hotel would have not hesitated to use a gun if it was to hand."  

33. In his written statement to the Inquiry WO Paterson described an obviously relevant positive recollection that upon his return from tactically questioning the Baha Moussa suspects, Staff Sgt Davies told him that “his ‘gut feeling’ about the detainees, having questioned them, was that they were not insurgents and merely hotel workers”. He also remembered Davies mentioning that “they appeared to have been ‘roughed up’ a bit during their arrest”. This is again an area where WO Paterson changed his evidence to the Inquiry. As regards the evidence of Davies’ “gut feeling” – which he chose to sign off on as part of his statement with the inverted commas included – Paterson retracted that evidence in its entirety, because he was prompted to stand by the suggestion of previous intelligence as a result of reading the papers in the case. As regards the words, “they appeared to have been ‘roughed up’ a bit during their arrest”, Paterson sought to suggest that this discussion related to another occasion and different prisoners. Both of these rejections and the reasons given for them lack credibility.

34. At paragraphs 17 to 19 of their written opening the victims make it clear that what was actually found at the hotel could never sustain a case against any of them individually. Further at paragraphs 318 to 333 of the Opening they deconstruct the arguments that were made in favour of their internment, but were rejected in relation to all of the employees as of November 2003, and

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86 BMI01768 [127].
87 BMI02623 [41].
88 BMI 76/123/23 to 125/6, 143/22 to 145/3.
89 BMI 76/122/25 to 123/7, 131/13 to 136/4.
90 See the Chairman’s questions at BMI 76/150/11 to 155/22.
ultimately in relation to D006 and Ahmad Matairi in March 2004. It has not been within the terms of reference of this Inquiry to investigate the details of the internment decision by the Division, but the victims do maintain that it is shocking that they were interned at all, and all the more so that the two owners of the hotel were interned for so long. It is of some considerable significance that interrogation reports emanating from the JFIT after D006 and Ahmad Matairi were delivered there make it plain that the risk of terrorist activity by those men was excluded and their release was recommended as a result of interviews between 16 and 19 September, but they nevertheless remained in prison for six months. The Chairman and Core Participants are invited to take into account the redacted parts of the JFIT interrogation reports which make it plain that innocent explanations for incriminating intelligence generated against them were given at an early stage in their interrogation and without prompting.

35. At this stage, and pending any concerted efforts to argue otherwise by the Core Participants, the victims therefore stand by the original analysis in their written opening. The crux of the evidence was that a suspicious number of weapons were found in the hotel, although the relevant places where the weapons were found were in places controlled by the manager, C001, most significantly a locked disused toilet, the door of which had to be forced open. It was suggested in paragraph 18 of the opening that the two grenades in the toilet were “disused”. This was technically incorrect, but they lacked any fuses to ignite them. Other evidence before the Inquiry now makes it plain that at its very highest there was some basis for initial suspicion in findings of this nature, but there was nothing extraordinary or compelling about this particular arrest. The 2IC of the regiment, Major Suss-Francksen said he held the “personal view” at the time “that the paraphernalia seized did not appear to amount to much as evidence of wrongdoing but that it was suspicious”. Likewise, Crowcroft regarded it as odd to subject these prisoners to outside interrogation when the number of weapons found at the hotel was not

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91 As regards D006, see MOD047985 [12], MOD047990 [11], MOD047990 [12]. As regards Ahmad Matairi, see MOD047995 [19], MOD047995 [20], MOD047999 [10] and [11] and MOD048004 [15] and [16]. These conclusions were not brought into question when they were put to S018 who was responsible for conducting the interviews and reaching the assessments (BMI 43/78/8 to 79/14).
92 MOD047989 [10] MOD047990 [13], MOD047999 [7-8] and [13].
93 Burston MOD012585.
94 BMI01585 [47].
particularly large compared to the number of weapons we had found at other occasions".65 This is a feature of the wider evidence that a novice coming to view post-Occupation Basra for the first time would not appreciate.66 The common finding of significant amounts of guns is clear from numerous entries in the Commanders' Diary, just for the month of September.97 The exposure of the civilian population to the threat of armed violence, particularly a hotel with foreign national business guests, would have been extraordinary at this time. In Part V below, the victims recall the extent to which C Company regarded it as necessary to act against the Garamsche tribe less than 7 days earlier because they had effectively brought the city to a standstill by imposing a closed shop policy backed up by the threat of murder for anyone who broke it. The final position of the Intelligence Corps at the JFIT and within J2 at Division was that any connection to the weapons was criminal rather than security related.98 There was a failure to conduct forensic tests of any kind, including fingerprinting. No one (save C001 who was apparently buying and selling weapons on the black market) has ever been connected to the items found.

36. As regards the initial suggestion that materials found in the hotel indicated the preparation of improvised explosive devises, the initial assessment of the ATO officer who attended the scene was that the materials found were typical items that would be found in a hotel.99 Major Englefield would later recall that the Royal Engineers who then came to the scene also confirmed that "the items could be used for bomb making, they probably weren't...And they were probably just stuff that was hanging around from a hotel refurb".100 It is well to record that the items in question (found in a hotel) were, again, never fingerprinted and never traced for explosive substances, included delay timers, fuse boxes, ordinary fuses, switch boards and television remote

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65 BMI02553 [109].
66 See, for example, Lt Col Barnett's training presentation for Op TELIC 2, where he stated "weapons are a way of life in Iraq. It is lawful for people to have them at work and at home. Just because someone has a weapon it does not make them automatically a threat to security" MOD019689.
97 MOD016813-42.
98 MOD047999, MOD036895a, MOD047985, MOD047990, MOD046325.
99 Burston: MOD012742.
100 MOD004171.
controls. Although later reviews of the internment decisions would suggest that more tests should be carried out,\textsuperscript{101} there is no evidence that any were.

37. Even if the Inquiry reaches the position that the suspicions once held against the detainees provide no firm basis for criticism of them or the questioning of the credibility of the complaints that they have made, there are features of their personal biographies that have never been acknowledged publicly and which they would want acknowledged. Without necessarily going into great detail, it is important to reflect upon the type of men who met with members of the occupying British Forces on the morning of 14 September 2003. Their biographies do not just support their innocence, but further underscore the conflict between allegations made in an emergency situation and reality.

\textit{Baha Mousa}

38. The receptionist at the Hotel Haitham was Baha Mousa.\textsuperscript{102} He was 26 years old.\textsuperscript{103} His wife, Yasseh Samir, had died in February 26 of that year, less than a month before the invasion. He was left with two children to look after, Hussein and Hassan.\textsuperscript{104} His brother, Walla, had died at the end of 2002 after a failed operation. Baha was also the guardian of his two nephews.\textsuperscript{105} As Daoud Mousa was to put it to Colonel Mendonca when they met soon after his son’s death, one of the reasons why the whole family hated Saddam Hussein was “because Baha’s brother and wife had both died of treatable illnesses as a result of Saddam’s failure to provide an effective health service”.\textsuperscript{106}

39. The family was Shia, which of itself made it almost impossible as of September 2003 that they could have had any connection with terrorist activity fighting to re-install the former regime. It is a striking feature of the available intelligence documents that no one inside the Battle Group or Brigade intelligence cells seems to have considered this. Indeed, as Daoud Mousa sought to make clear, there was a long standing and particular history

\begin{footnotesize}
\begin{enumerate}
\item[101] MOD030784, MOD015774 and MOD015852.
\item[102] A portrait of him is at MOD021893.
\item[103] Daoud Mousa BMI02220 [2].
\item[104] BMI02222 [7].
\item[105] BMI02221 [6].
\item[106] MOD018108.
\end{enumerate}
\end{footnotesize}
that made his family happy to see the fall of Saddam. After a 24 year career in the Basran police force he had been dismissed from his post in 1991, because he — along with other Shia officials — were blamed for failing to sufficiently quell the Shia intifada that occurred in the wake of the first Gulf War. He told the Inquiry that the event of the British coming “was something to my delight”. He, amongst others, had given soldiers flowers. There was a football game, where Iraqis cheered the British team over their own. The anticipation in the city was one of optimism. What happened to his son was totally unexpected.

40. The father also explained his son’s position in relation to the regime. Like Daoud, Baha Mousa hated Saddam, felt personally aggrieved by the fact that his father’s career had been ended by him, and was happy with the British troops coming in. There was nothing at all in this man’s background to suggest that he presented a danger to British forces and there is much to challenge the picture painted by some of the soldiers that he posed a particular threat inside the Temporary Detention Facility (‘TDF’) in the days to come. He did his compulsory military service, holding only the rank of Private. By the end of the service he worked as a guard at a military fuel station inside Basra. After the death of Baha Mousa, his father told a meeting attended by Brigadier Moore that his son had actually run away from the Iraqi Army at one point and had paid bribes along with his brothers to avoid it. The reality of what Baha Mousa actually did in the military is in conflict with what Staff Sgt Smulski, the second tactical questioner, says that he told him during questioning, namely that he was “a previous Marine Infantry or Naval Infantry Marine”. Like all of Smulski’s TQ notes, the note of this information is missing. Either this is a deliberate fabrication, or the information that Baha Mousa was also working with his father at the port as a customs officer at the time of his death was lost in translation. Smulski also thought (wrongly) that the father was a naval officer, which makes it more likely (if this occurred at all) that the interpreter was told “customs officer” and translated the issue to

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107 MOD016108.
108 BMI02220 [4]. See also BMI 10/7/17-12.
110 BMI 10/10/19 to 11/3.
111 BMI 10/10/14-18.
112 MOD06102.
113 MOD06103.
indicate something akin to maritime officer. Smulski would rely on this erroneous belief that Baha Mousa was some kind of Marine in justifying his support to force him on to the floor of a middle-eastern toilet inside the detention facility on the Monday afternoon, where he would eventually die.

41. Baha Mousa had only started working at the hotel about two weeks before he was arrested and only intended the job to be temporary. The reason why he acquired the night job was so he could continue his work as a customs officer, as well as running a car sales business. He would also be able to attend to his children. The post at the hotel itself did not entail much work, but like several of the other detainees who worked at the hotel they all wanted to spend the night there, because the generator enabled the air conditioning to run, whereas the absence of electricity in most of the city meant that most people had to sleep without it. He acquired the job because his elder brother knew Ahmad Matarji. Otherwise the family had no connection with the hotel or anyone who worked there. Daoud Mousa’s habit was to meet his son at the end of his shift. That is how he came across British soldiers stealing from one of the safes in the hotel just before 8 am on the day of the arrest. The last thing he said to his son as he was being taken out of the hotel and placed in the lorry was “not to worry and he would be freed in a couple of hours”. This is what he had been told by a British Lieutenant named Mike who had taken his witness statement about witnessing the theft from the safe.

42. The summary of the life lost is therefore one of a single and newly bereaved parent, responsible for four children, holding down three jobs in Post-Occupation Iraq, with reasons of personal and family hardship both recent and historical not to support the former regime. No doubt calm, empathetic and professional questioning could have established all this relatively quickly. This was obviously an immensely close extended family, which may in part explain why Baha’s father was able to fight for justice for his son in due course. As the father puts it, “Baha was not just my son, he was my friend”. This is an appropriate place to emphasise again, as was done in the written opening, that the courage of Daoud Mousa in forcing his son’s case to

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114 BMI 41/38/12 to 44/25.
115 BMI02222 [9] and MOD016108.
116 BMI02222 [9].
117 BMI02225 [18].
118 BMI02221 [5].
international recognition is difficult to overstate. Aside from apparent political and legal impediments that stood in the way of an inquiry of this nature, the sheer danger of adopting a public profile in Basra in the autumn of 2003 in relation to a group of men accused of Baathist regime loyalism would have been extraordinary. This was a city where, as the soldiers’ evidence makes clear, the rule of law had broken down. From the point of view of a civilian, the position was potentially far more perilous than anything faced by the British Army.

D001

43. The first person who the soldiers met when they arrived on the premises of the hotel was the cleaner and part time night watch man, D001. He was [REDACTED] years old. He was married and had [REDACTED] children. He had completed his schooling only up to elementary level. He did his military service between 1975 and 1978. He was re-conscripted into the Army during the Iran-Iraq war between 1980 and 1988. As a Shia Muslim, he found it difficult to be in a side fighting Shia Muslims from Iran, but he knew that if he tried to desert, the Army would go after his family. During his own time of war, he never saw prisoners being treated the same way that he and the others were to be treated by the British over the coming days. At the time of his arrest, D001 had been working at the hotel for 18 months, having first started there when it was being renovated. In his cleaning work, he told the Inquiry that he had not entered the toilet at the back of the office, because it was locked for one or two months before and therefore not cleaned by him, a fact that is clearly suggested by the available photographs of the room. He shared his guard duties with D002.

119 MOD021840-1 UR. It is to be noted that the caption at the bottom of the photograph incorrectly describes the exhibit as a photograph of Ahmed Maithem.
120 BMI01988 [2].
121 BMI01987 [3].
122 BMI 126/12 to 7/16.
123 See, for example, the condition of the room as depicted by the photograph copied at MOD031397.
44. D002 was the night watchman at the hotel.\textsuperscript{124} His principal duty was to guard the car park at the front of the building. In the course of those duties, both D002 and D001 had access to Kalashnikov rifles which were owned by the hotel and kept under the reception desk when not being used.\textsuperscript{125} D002 was \underline{**} years old. Like D001 he had only completed elementary schooling.\textsuperscript{126} He also served in the Army throughout the Iran-Iraq war. He was married with \underline{**} child, who was \underline{**} and required considerable care. At the time he was arrested his wife was pregnant. Their child was born 2 or 3 months after the incident, but the baby would die after 5 days. D002 believes strongly that the stress that his wife suffered in the final stages of her pregnancy due to what happened to him was responsible for the death of the child.\textsuperscript{127} D002 had started working at the hotel just after the fall of Saddam Hussein. Due to the high level of local crime that arose at that time, the hotel needed security guards both day and night. Where possible he would supplement his night work with labouring work in the day.\textsuperscript{128} Aside from needing money for his own family, he was also supporting his parents, with \underline{**}.\textsuperscript{129} Although all of the detainees were to suffer mental and physical health problems after the incident, the Inquiry will be well aware from his profound difficulties in giving evidence that D002 suffers from \underline{**}.\textsuperscript{130}

45. D003 had been the manager of the restaurant connected to the side of the hotel since May 2003.\textsuperscript{131} He was \underline{**} years old and was engaged to be married. On giving this information to the tactical questioner on the Monday, Smulski would tell him that he would “destroy his future” unless he told him...

\textsuperscript{124} A portrait of him is at MOD021853\_UR.
\textsuperscript{125} D001 BMI01988 [10] BMI 10/63/1-14; D002 BMI01948 [4] BMI 14/5/10 – 14/6/1; D003 BMI 10/63/1-14; D004 BMI02024 [4], BMI 18/8/2-8.
\textsuperscript{126} PIL000514.
\textsuperscript{127} BMI01947 [2]. See also BMI01972 [87].
\textsuperscript{128} PIL000153 [8].
\textsuperscript{129} PIL000152 [4] and [6].
\textsuperscript{130} BMI 14/1/8 to 8/25 and BMI 20/1/3 to 11/24. A further report by Dr Brock Chisholm dated 17 June 2010 has now been served on the Inquiry.
\textsuperscript{131} A portrait of him is at MOD021852\_UR.
where C001 was.\textsuperscript{132} He avoided serving in the army under Saddam Hussein by prolonging his education.\textsuperscript{133} He was a trained electrician but unable to find work in that field. He and his father were the main breadwinners for an extended family.\textsuperscript{134} He often slept at the hotel, either because of the danger of travelling home late at night,\textsuperscript{135} or because of the availability of working air conditioning and was sleeping there for that reason on the day that the soldiers came.\textsuperscript{136} He was aware that the hotel used guns for its own protection. He was also aware that C001 was selling guns. Neither of these matters was of concern to him, because of the obvious dangers in Basra at that time.\textsuperscript{137} From his subsequent work in Basra he could confirm that up to twenty people were being murdered in a day.\textsuperscript{138} He did not regard the few weapons he saw in C001's safe as significant, "because these were dangerous times and there was always a risk of the hotel being attacked."\textsuperscript{139} D003 said that he and others were supporting the British and welcoming them, "especially because we anticipated that they were going to take away the bondage we were suffering from under Saddam".\textsuperscript{140} As to his own background he told the inquiry, "We were a peaceful family and did not have guns ourselves. Before my arrest and detention I was a normal young Iraqi...I wished the British Army no ill will and I had not experienced any problems with the Army prior to the incident".\textsuperscript{141}

\textit{D004}

46. D004\textsuperscript{142}, together with Kifah Matairi, was responsible for maintaining the generator at the hotel. For guests and staff the generator meant air-conditioning, which at the time was a precious commodity anywhere in Basra. It was necessary for him to be on call 24 hrs a day and he would often sleep at the hotel.\textsuperscript{143} He was \num{[]} years old. At the time of his arrest he was engaged

\textsuperscript{\textcopyright} \textsuperscript{132} BMI 10/102/24 to 103/7.  
\textsuperscript{133} BMI 11/48/10-16.  
\textsuperscript{134} BMI02367 [2-3].  
\textsuperscript{135} BMI02368 [4].  
\textsuperscript{136} BMI02372 [17].  
\textsuperscript{137} BMI02368 [6-9].  
\textsuperscript{138} BMI02368 [6].  
\textsuperscript{139} BMI02370 [9].  
\textsuperscript{140} BMI02372/12-16.  
\textsuperscript{141} BMI02309 [8].  
\textsuperscript{142} A portrait of him is at MOD016231.  
\textsuperscript{143} BMI02024 [3].
to be married.\textsuperscript{144} Due to the stigma of the allegations made against him, the father of his fiancée cancelled the engagement. He left school at 13 years old without any qualifications.\textsuperscript{145} Just before the invasion, he had run away to Syria, because he wanted to avoid being drafted into the Army. He hated the idea of going to war.\textsuperscript{146} He only returned once the regime had been deposed, a point he says he desperately tried to point out to his interrogator in BG Main.\textsuperscript{147} He had been working at the hotel for about 1 ½ months. He knew that C001 was trading in guns, but it was not a significant issue, as guns were common place in Iraq.\textsuperscript{148} He was sleeping on the reception floor when the soldiers arrived. He was happy to see them, because he had not had contact with the British since returning to Iraq, and he welcomed the invasion.\textsuperscript{149} The statements and psychiatric reports show that D004 was to suffer greatly as a result of his difficulties in recovery after his release.\textsuperscript{150} Even six years on, his position is still regarded as one of acute concern by the psychiatrists who assessed him prior to his giving evidence to the Inquiry.\textsuperscript{151} He has made a number of serious attempts to take his own life.\textsuperscript{152} As he puts it, prior to these events, "I used to be an easy going, jovial and cheerful person. People said I was a kind, polite and generous person. I do not know what has happened to this person now."\textsuperscript{153}

\textit{Kifah Matairi}

47. Kifah Matairi was the hotel electrician.\textsuperscript{154} He was the brother of one of the co-owners, Ahmad Matairi. He was 45 at the time, but died in 2006, leaving a widow and 6 children.\textsuperscript{155} While the cause of his death had no connection to the facts of this case, his brother's statement describes how the effects of this case would clearly blight the last years of his life.\textsuperscript{156} Kifah had begun working

\textsuperscript{144} BM102052 [105].
\textsuperscript{145} BM102023 [2].
\textsuperscript{146} Ibid, [3].
\textsuperscript{147} BM102033 [41].
\textsuperscript{148} BM102024 [6] and BMI18/8/2-18.
\textsuperscript{149} BMI 18/11/1-16.
\textsuperscript{150} BMI102071.
\textsuperscript{151} See, in particular, PIL000529-30.
\textsuperscript{152} BM102053 [109-114].
\textsuperscript{153} BM102055 [117].
\textsuperscript{154} A portrait of him is at MOD021813.
\textsuperscript{155} BM102254 [2].
\textsuperscript{156} BM102281 [99-92].
at the hotel as a full time electrician in 2002.\textsuperscript{157} As part of his duties, he would switch on the generator at midnight and switch it off at 3 am. If there was a vacant room at the hotel he would sleep in it, which is what he was doing when the soldiers arrived.\textsuperscript{158} As pictures after the event demonstrate, Kifah looked older than he was; a factor which caused his captors to call him ‘Graddad’. There are a number of very specific accounts of this man being assaulted in the TDF, including the evidence of Hughes,\textsuperscript{159} and Graham.\textsuperscript{160} By the time he arrived at the TIF on the afternoon of 16 September, his life was in extreme danger and steps were taken to airlift to Shaibah hospital almost immediately.\textsuperscript{161}

\textit{Ahmad Taha Matairi}

48. Ahmad Matairi was the co-owner of the hotel.\textsuperscript{162} He was 49 years old.\textsuperscript{193} He was married with three children.\textsuperscript{164} Ahmad Taha and Kifah were both Shia Muslims. Ahmad Taha was opposed to Saddam Hussein, particularly because he had ordered the death of one of his other brothers, Fawzi Taha Al Maitari, who had been in the navy during the Iran-Iraq war.\textsuperscript{165} He welcomed the coming of the British to Basra, going with his children to give the soldiers flowers: “Before they arrived I knew that the British nation is a civilised nation, and especially the people of Basra appreciated the British and they knew that they are well educated, well mannered and well civilised and they have a great history.”\textsuperscript{166} Ahmad Taha’s various businesses had done well since the end of the regime. The hotel had been renovated at the end of 2002. It was therefore in good condition to house people that travelled into Basra from around the Middle East, particularly Kuwait, UAE and Iran to develop new trade opportunities. There was about 95% occupancy in August/September 2003.\textsuperscript{167} Ahmad Taha also ran a ceramics business specialising in kitchen and bathroom tiles. It had its shop/show rooms across the road from the

\textsuperscript{157} BMI02255 [6].
\textsuperscript{158} PLT000659a.
\textsuperscript{159} MOD000074-8, BMI00161 [35-7], BMI 15/98/23 – 15/102/19.
\textsuperscript{160} MOD000148.
\textsuperscript{161} MOD000353, MOD000362.
\textsuperscript{162} A portrait of him is at MOD016236.
\textsuperscript{163} BMI02254 [2].
\textsuperscript{164} BMI02282 [93].
\textsuperscript{165} BMI02254 [2] and BMI 12/49/24 to 50/3.
\textsuperscript{166} BMI 12/50/4-23.
\textsuperscript{167} BMI02255 [4].
hotel. That business was also flourishing after the war due to many building contracts. For different reasons Ahmad Taha and Kifah Taha would feel guilty about what happened to each other. Ahmad Taha had encouraged his brother to work in the hotel, even though he was a trained electrician who could find work elsewhere. Kifah Taha called his brother on the day of arrest to come into the hotel with the keys to the safe because the soldiers could not open it. The steps that Ahmad Taha took to get to the hotel indicate his innocence. Having been told that the soldiers were on the premises, he went straight there. When he got to the front entrance, he could see through the glass frontage that his employees and his brother were already under arrest and on the floor. At that stage the soldiers at entrance would not let him in, but he argued his way past them saying he was the manager. He too was then detained. This is a man who had a mild pre-existing hernia, but by the accounts of all the soldiers walked into the hotel and walked out of it to get into the Saxon which took them to BG Main. When he left BG Main to go to the TIF he had to be transported on a stretcher.

D006

49. D006 was one of the other co-owners of the hotel, although he had put his share in his son’s name, C001, who managed the day to day affairs. He and his other son, D005, would be arrested after the initial arrests, in a raid on their home. The soldiers were looking for C001. D006 was married. The of their children was a girl who was also at home with the mother at the time of the arrest. The statements indicate that she has particularly suffered in her own right from the events that followed. The family is Shia Muslim. D006’s nephew had been executed by Saddam Hussein in the 1980’s. He described the coming of the British to Basra as “like a feast...a happy occasion” and until this incident he was happy with the conduct of the British Government. D006 had worked in the in the 1960s. In 1982 he began working in the hotel and tourist industry,

168 BMI02256 [9].
169 BMI 12/56/13 to 57/21.
170 BMI02256 [10], BMI02271 [53] and BMI02276 [70].
171 Ahmad Matain BMI02273 [59], Simmons BMI004499 [26], S018 MOD001428.
172 A portrait of him is at MOD016233.
173 BMI02198 [90].
174 BMI02132 [2], BMI13/60/12-24.
175 BMI 13/60/7-11.
gaining membership in the Basra Chamber of Commerce, and rising to a well
known figure in the community. He was a successful businessman, also

176 At the time

of his arrest his health had not been good because of the hardening of his
arteries and he was on regular medication. 177 In an emotional situation that
arose as the men were being taken from the house, D006 saw his wife beg
the commanding officer to take his medication. 178

D005

50. D005 was 18 at the time of his arrest and in his last year at high school. 179
Several of the soldiers who dealt with him were to comment that he looked
younger. 180 He too was against the old regime, because of the execution of
his cousin, 181 but was also against the invasion because he felt “that the
presence of British troops in the city was an occupation of our country”. In that
respect, he candidly told the Inquiry that he regarded the British “as the
enemy”. 182 At the same time he also said that his “family and indeed the
people generally in Basra had a good impression of the British Army as they
are generally quite polite and not as blatantly aggressive as the
Americans”. 183 When he was not at school he would assist his brother in
running the telecommunications shop that was attached to the side of the
hotel. 184 He knew that the hotel had guns available to it for security. He knew
that his brother acquired other guns because they were “cheap as dust”. 185
He was also aware that C001 had acquired permits for some of the guns, but
did not know that the permits were fake. 186 The very specific targeting of
D005, as the younger brother of C001 who was likely to know something and

176 BMI02132 [3-5].
178 BMI 13/93/6 to 94/2 and BMI 17/8/2-17.
179 A portrait of him is at MOD016234.
180 Kendrick BMI01489 [76] (who thought he was 14 or 15), Mackenzie BMI 24/49/24 [recalled an “adult and a child” in the left hand room], Aktash BMI 16/25/1 (“he seemed very young”), Stirland MOD000159 (“we learnt from the interpreter that this man was 17 years old”), Graham MOD000149 (“a young male”), Appleby MOD000171 (“approximately 17-18”) and CM 31/87/19 (“he looked like a teenager”), Hunt BMI00782 [60] (“I was surprised how young the son was given that the father was quite old”), and Douglas BMI 31/19/17-18 (“a young boy, maybe 15, 16”).
181 BMI02303 [2].
182 BMI 17/9/1-6
183 BMI02310 [24].
184 BMI02305 [10].
185 BMI02306 [12].
186 BMI02306 [14].
was most likely to crack, shows that the incident in BG Main was not just a chaotic episode of indiscipline and gratuitous violence, but a more methodical approach to extracting information. He was subjected to humiliating and strenuous exercises in Camp Stephen before he was taken to BG Main.\(^\text{187}\) He was the first person to be tactically questioned, because he was regarded as someone likely to yield to questioning, because of his relatively young age.\(^\text{188}\) He was placed – with the knowledge of the tactical questioners – into the middle room of the TDF, which was a Middle Eastern toilet.\(^\text{189}\) He was taken on a forced disorientation walk in the night.\(^\text{190}\) He was made to kneel by a generator in order to make him uncomfortable and to further disorientate him.\(^\text{191}\) He was urinated upon and tricked into drinking urine.\(^\text{192}\) He remembers a strong smelling household substance being sprayed in his face,\(^\text{193}\) an event that may or may not be the same event as that described by other soldiers of seeing or hearing of petrol being held under the nose of a detainee in an effort to make him believe that he would be set on fire.\(^\text{194}\)

\textit{Ahmed Maithem}

51. Ahmed Maithem was the tenth detainee and would be arrested in an entirely separate incident at about 2130 on the same day. He was 34 years old.\(^\text{195}\) He ran a furniture business. His family was also well known in the local community.\(^\text{196}\) He had been conscripted into the Army at the time of the first Gulf War, but had deserted. In 1994 he had been imprisoned for six months because he was suspected (wrongly) of subversion against the regime. At that time he had his hands cuffed behind his back, and he was elevated up into the air by a chain, during which time he was beaten.\(^\text{197}\) The vehicle that D007 was driving on the night of his arrest by the British forces contained

\(^{187}\) D005 BMI02313 [36-42].
\(^{188}\) Davies BMI04217 [38] and BMI 42/105/17 to 107/21.
\(^{189}\) D004 BMI02327 [74-75], Appleby CM 35/65/10ff and Smulski MOD001866.
\(^{190}\) Appleby BMI02525 [76] to [78] and MOD000175.
\(^{191}\) Kendrick BMI01468 [75] to [80] and BMI 38/185/23 to 189/14, Livesey BMI 39/38/16 to 40/12 and 71/17 to 72/11.
\(^{192}\) BMI02333 [88].
\(^{193}\) BMI02332 [87].
\(^{194}\) Payne BMI05822 [7], Cooper BMI04362 [108], Reader BMI03393 [40].
\(^{195}\) Although facial photographs were taken of him after his arrival at the JFIT, they were never produced, even at the Court Martial. The photographs that refer to Mr Maithem, or D007, are, in fact, D001.
\(^{196}\) BMI02074 [2-5].
\(^{197}\) BMI04224 [3-4].
some weapons and a balaclava. The circumstances of his arrest would be
unusual by English standards, but for reasons detailed in paragraphs 242 to
243 below simply were not so by Basran standards at the time. Conseque-
tly, the tactical questioner who dealt with him at BG Main would
accept that it was established very quickly that he was not a threat to
Coalition security, a matter which was confirmed by the JFIT that
recommended his immediate release. One possible reason why he was
kept at BG Main for so long, and in circumstances in which he would be
conditioned and beaten along with the other detainees, is that the Nissan
pickup he was driving matched an earlier description of a vehicle that had
been suspected of having some connection with another vehicle connected to
the RMP killings, albeit by the time of Maithem’s arrest this tenuous
intelligence had been discarded as having no probative value.

The arrests

The arrival of the Rodgers Multiple

52. The agreed position between the detainees and the soldier witnesses is that
when members of Call Sign 10A of Anzio Company, a multiple led by
Lieutenant Craig Rodgers, first entered the Hotel Haitham at about 06:30 on
14 September, the atmosphere was calm and the hotel staff did not obstruct
the operation in any way. On first meeting soldiers, D001 showed them to
reception, where Baha Mousa would assist them. It is likely that Baha
Mousa is the person who helped Captain Ingram, the Anzio Company Crime
officer to go through the ‘Bravo list’ of suspects, but none were found. When Lieutenant Rodgers found three guns at the front of reception, he did
not regard that finding in its own right as sufficiently suspicious to justify
detention. D001 would show other soldiers up stairs where they started
searching the individual rooms. Where necessary D001 helped to unlock
some of the rooms. A provisional request from the multiple for authorisation

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198 BMI01248 [90].
199 MOD030750.
200 Yogel BMI00688 [39] and [44]; MOD016818.
201 BMI01987 [5-6].
202 BMI00167 [37].
203 Rodgers MOD0000217.
204 BMI01987 [7-9] and BMI 12/8/16-19.
for the use of force on doors was therefore withdrawn.\footnote{205} No issue arose from any of guests submitting to room searches and nothing suspicious was found.\footnote{206} D004 actually went outside to get cigarettes and then came back to the hotel.\footnote{207} Kifah Matair remembered being woken up in one of the rooms by a soldier who wanted to search the room and then left. When Kifah subsequently went downstairs, the soldiers were asking who was a guest and who was an employee. Kifah made it clear to them that he was an employee.\footnote{208} He then volunteered to phone his brother to come with the keys for the safe.\footnote{209} Ahmad Matair dressed and came to the hotel as soon as he could, by which time the atmosphere had changed and the others were arrested and on the floor. Nevertheless, he convinced the guards to let him through the front door and was duly arrested himself.\footnote{210}

\textit{Arrests and escape}

53. Two matters changed the atmosphere in quick succession. A submachine gun, sniper goggles and two grenades were found in the locked toilet at the back of the hotel manager’s office; and C001, the hotel manager, escaped. Redfearn said that the findings in the toilet, the door of which he forced open, were “an alarming discovery” which caused him to call out for the arrests. Before that the soldiers did not regard the situation as threatening.\footnote{211} Rodgers’ recollection is that the escape of C001 triggered suspicion in the back room, which before that time they had not been able to open because it was locked.\footnote{212} At that stage it was still the case that employees were walking around. D001 was in the main hotel toilet when others were formally detained. He came out and saw D002 with his hands on his head, and was told that C001 had run away.\footnote{213} D004 remembers suddenly being told to lie on the floor, and realised that C001 was not with them.\footnote{214} How the escape occurred is unclear. Rodgers would later suggest that Captain Ingram may have allowed the suspect to walk out the front as all the guests were being allowed

\footnotesize
\begin{itemize}
\item \footnote{205} MOD016014.
\item \footnote{206} Rodgers MOD000217.
\item \footnote{207} D004 BMI02025 [10].
\item \footnote{208} PIL00659a-660.
\item \footnote{209} MOD000051.
\item \footnote{210} Ahmad Matair BMI02257 [11-14], BMI 13/56/13 to 57/8; Allibone MOD000133.
\item \footnote{211} BMI01786 [72-73].
\item \footnote{212} MOD003609. See also MOD016518.
\item \footnote{213} BMI 12/9/12-17.
\item \footnote{214} BMI 18/12/13 to 13/13.
\end{itemize}
to leave,\textsuperscript{215} although in an earlier interview he said that he did not know how it had happened.\textsuperscript{216} Another possibility is that C001 was taken to the toilet and escaped through the window.\textsuperscript{217} Reader remembers seeing the suspect coming out of a back door and escaping down an alleyway.\textsuperscript{218} Whatever the source of C001’s escape, the soldiers became far more aggressive in the wake of its discovery. As D003 put it, “it was from that moment that our whole world turned upside down.”\textsuperscript{219}

54. There can be little doubt that the violence towards these detainees started in the hotel at a time when Brigadier Moore, the GOC, Colonel Mendonca, the CO, and Major Englefield, the Company OC, were all either in the vicinity of the hotel, or potentially so.\textsuperscript{220} In the soldiers’ minds the violence was low level, and might not have even have registered as violence, but its detail goes some way to indicating what was considered culturally acceptable within the Battalion and the lack of concern that soldiers had about the risk of being discovered by their higher chain of command. D001 recalls soldiers “stepping across our backs”.\textsuperscript{221} Ahmad Taha Matair was kicked a number of times on his head, “not to hurt me as much, as to insult me”.\textsuperscript{222} D002 had a soldier stand on his back once.\textsuperscript{223} It is possible that Baha Mousa, as the perceived most senior in the line of authority,\textsuperscript{224} was mistreated while the detainees were lying on the floor. Several of the detainees specifically remember seeing him being nudged, kicked or stepped upon at this time. D004 had a direct view of Baha Mousa as he was made to lie in front of him: “one soldier, who was wearing heavy boots, lifted one of his legs and stamped on Baha’s head causing him to cry out in pain.” Whether the stamp was forceful or not, “it was enough to make Baha cry out”.\textsuperscript{225} D003 specifically described the soldiers

\textsuperscript{215} BMI01838 [79].
\textsuperscript{216} MOD003509.
\textsuperscript{217} Hollender BMI00645 [51], Bentham BMI 41/86/15 to 87/6.
\textsuperscript{218} BMI033389 [24].
\textsuperscript{219} BMI02375 [25].
\textsuperscript{220} Moore BMI06968 [107-113] and [110], Mendonca BMI01126 [92-98] and Englefield BMI04434 [170-205].
\textsuperscript{221} BMI01990 [17].
\textsuperscript{222} BMI 12/61/1-8. See also BMI02259 [19]. The description given by Ahmad Matair of the man who did this could fit with Allibone, who had a tattoo of a panther in the place where the witness described a tattoo of a scorpion. Although Allibone described the tattoo as “black greyish”, he accepted it could “possibly” be mistaken for “greenish brown” (BMI 24/212/19-24).
\textsuperscript{223} BMI01951 [16].
\textsuperscript{224} Rodgers appears to have believed him to be the ‘manager’. MOD000217 BMI02026 [14]. See also BMI 16/13/21 to 14/5.

37
asking Baha Mousa questions and becoming increasingly irritated that he was not able to answer them:

“They directed most of their questions to Baha Mousa – I think this was because he worked on the reception/information desk, but he kept telling them that he did not know the answers to their questions. They asked him several questions, for instance about the keys to the safe, I think they thought that he was lying.”

55. The account given by Kifah Taha Matairi would tend to suggest that Lieutenant Rodgers (as the man he heard being called ‘boss’) was probably involved and definitely present at the time that Baha Mousa and others were kicked. According to his SIB statement,

“Each time Baha was kicked he cried out in pain. The kicks looked to be quite hard. I would describe the person who was attacking Baha as follows: A white skinned male. Tall – over 180 cm. Medium. Between 25-30 years of age. Wearing brown combat uniform. The other soldiers called him Boss. I shall refer to this man as soldier 2. After he had finished attacking Baha he ordered the remainder of us to also lay face down. I am unsure whether I would be able to recognise this man again”.

56. The account that the detainees have given of being kicked and stamped upon is supported by Pte Lee. His SIB statement given in May 2004, at a time when he could not have known anything of what the detainees were alleging had occurred in the hotel, states that he “saw about five males all prone face down in the hallway” being guarded by members of c/s 10A in the presence of Lt Rodgers. He then saw Rodgers kick one of the detainees. He recalled the same event at the Court Martial, likening the motion to “kicking a football” and saying that other soldiers may also have kicked the detainees, but he could not identify them. He stood by his original allegation in his oral evidence before the Inquiry, noting that Rodgers had conveyed a threat to him through other soldiers once it got out that he had given a statement, but that he would not have put it in his original statement if it were not true. As he put it, “I wouldn’t want to -- even though I don’t like the man, I don’t want to

226 BMI02375 [26].
227 MOD00051. This description of the man who could have been Rodgers also bears some comparison with the description given by D004 (BMI02026 [14]): “White, about 180cm tall, green eyes, a round face, and was wearing a helmet and carrying a rifle.”
228 MOD000261.
229 CM 49/8/26 to 10/19.
230 BMI 18/105/23 to 106/22 and 121/8 to 122/21.
get him into trouble." The difficulty for those who detract from Pte Lee as a reliable witness, is that this is the one moment in his account where the detainees were not hooded and they were able to not only feel their assaults, but see by whom and how they were being perpetrated. Lee seems to have seen a similar event to the detainees.

57. It is likely that the unacceptable nature of this kind of 'low-level' violence simply did not register with most soldiers as a problem. Stacey, for instance, told the Inquiry (for the first time) that he saw a soldier use his foot to push a detainee down to the floor. Allibone expressed a "vague memory" of one of the soldiers stepping on one of the detainees, whether intentionally or accidentally, he could not say. In the Court Martial he said of the description of a man "lying face down having a foot placed on his head several times in a sort of insulting way" that "it sounds familiar". This was occurring in the context of a tour where soldiers were instructed to act far more robustly than they were required to act in previous tours in Northern Ireland and Bosnia because of perceived hostile environmental factors. In this particular operation Sgt Stacey did not therefore regard it unusual that detainees were kept lying prostrate on the floor for between 1 and 2 hours. Again, whatever his problems as a witness, Lee may well have provided the correct insight, that this conduct was part of a 'common sense' approach to prisoner handling that came to prevail within the 1QLR community during that tour. As he describes the hotel kicking incident in his Inquiry statement,

"This was nothing out of the ordinary, it happened anytime we had prisoners at Camp Stephen. A lance corporal or a corporal would hit them to stop them talking to each other. Actually everyone in the multiple was involved in this, and I probably did it myself at some point. The atmosphere in Iraq had become more aggressive. We had gone over there to help them, but they had turned on us. We got annoyed with this, and everyone was getting like that."

231 See, for example, the cross-examination of Mr Dingemans QC on this point at BMI 18/136/17 to 139/15.
233 BMI01345 [46].
234 CM 31/136/6 to 137/12.
235 BMI 21/182/13 to 183/16. The operational context of whether the companies received orders to use robust treatment upon civilians who posed a threat is considered in Part III below.
236 BMI 21/183/17 to 184/8.
237 BMI02604 [36].
For reasons returned to in Part V below, that is about as good a summary of the reality amongst many (if not all) of the soldiers during that tour as one could get.

58. Whatever the dispute as to whether the detainees and particularly Baha Mousa was assaulted at this point, none of the soldiers initially suggested that the detainees assaulted them. Redfearn described the situation in the hotel with the prisoners as “very calm” and “at no point did they make any hostile move towards us.” In his previous interviews and other statements to the SIB Englefield described seeing part of the arrest process involving Redfearn and another soldier without incident, and emphasised that “none of the [detained] males showed visible signs of injuries.” At the Court Martial, Englefield did not suggest that any particular degree of force was used at the hotel, or that any injuries were apparent, even when expressly asked about visible injuries. By contrast in his statement to the Inquiry, Englefield advanced a detailed account that Redfearn and others used what he describes as “proportionate force” to either bring detainees to the ground or to pacify detainees that were trying to get up, leading to one detainee having a cut face. Given its conflict with his previous accounts, as well as those given by detainees and soldiers, Englefield’s account to the Inquiry must be untrue. The suggestion that these are genuine late recollections does not fit with the fact that Englefield knew about the allegations that Pte Lee was making about events inside the hotel, at least at the time of his SIB interviews, and would have had cause to consider the matter prior to the Court Martial when it was brought to his attention that Lee was afraid of the implications of the evidence he was going to give in relation to the operation. All these matters took place before giving evidence himself at the Court Martial in December 2006, and, at least, by that stage, on the third time of asking, he would have been in a position to provide the account now given. The victims submit that this is one of several ways in which Englefield

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238 MOD000189.
239 BMI01803 [127].
240 MOD004178-179.
241 MOD000251.
242 CM 53/26/6 to 28/17.
243 BMI04435 [174-175] and [179].
244 BMI 85/55/14 to 60/18 and 95/21 to 97/18.
245 BMI 85/112/7 to 112/24.
246 BMI04452 [250].

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sought to deliberately lie either to protect himself or to put the position of the
chain of command of the Regiment in its best possible light. It is likely that
Englefield witnessed unlawful low level violence at the hotel, although at the
time he would simply not have regarded this kind of robust treatment as
wrong.

The Theft

59. At some point in these events, at least one soldier, and probably more than
one, stole money from the hotel safe and Daoud Mousa witnessed it.
According to Mr Mousa,

“As I approached the hotel I could see a safe through a large window.
I do not know whether this was the hotel safe or the safe in the
communications centre, all I noticed was it was a safe. I was shocked
by what I saw next. About four to five British soldiers stood
surrounding the safe and I could see that the soldiers had a metal tool,
which looked like a hammer. They used the metal tool to break open
the safe. They made a big hole in the safe. The soldiers had a plastic
bag into which they put various items that they had found in the safe.
The soldiers then proceeded to take large amounts of money from the
safe and stuff it in their pockets. I saw one soldier stuff the money into
his shirt. I could not believe my eyes - these soldiers were blatantly
stealing money. They were behaving like mercenaries, not like
soldiers representing the British nation”.

60. In his evidence before the Inquiry, Colonel Mousa described the matter in the
following terms:

“A. They reached inside [the safe] from behind, and took packets of
money, part of which they put in their pockets. They had side pockets
in their uniform which had more than one pocket and they put the
others inside their shirts on their naked body.
Q. When you talk about packets of money, you mean do you, packets
of notes, paper money?
A. What I am talking about and what I mean is notes.
Q. Do you remember how many soldiers were actually putting money
in their pockets?
A. I didn’t focus on this side of events, but somehow I think there was
three or four”.

61. It is apparent that although Daoud Mousa had seen tanks and soldiers
outside the hotel, he did not at this stage know that his son had been

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247 Mousa BMI02223, [12] to [16].
248 BMI 10/13/21 to 14/7.

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detained. He would only realise that after entering the hotel and at that stage he sought to persuade ‘Lt Mike’ to release his son on the basis that he had provided assistance in uncovering the crime. However, his initial intervention over the theft appears to have been spurred by outrage that such a thing could happen:

"After I had seen that, I thought that it was a violation of English dignity and honour and the honour of English troops, so I asked a soldier standing by the door to allow me to get in as a crime had been committed inside".

62. Pte Fearon admits to carrying out the theft now, but in terms that are in conflict with what Daoud Mousa saw and patently not credible:

"I was seen through the window of the room taking some Dinars (Iraqi currency) from the safe. I believe I went into the room with LCpl Redfearn but I am not sure whether he was still in there at that time I took the dinars. I believe there may have been one other person in the room at the time. I do not recall who this was and they had nothing to do with what I did. I took one or two of each note of each value as I was making a collage. I believe that the notes were of very little value, perhaps less than £2. I am not aware of anyone else from my hotel taking anything from the hotel".

63. The reasons why this explanation is patently incredible are as follows. Daoud Mousa has maintained that he saw a number of soldiers, possibly 3 or 4, and they were stealing packets full of notes from the safe. The admission to being a sole thief and taking one or two notes for the purposes of making a collage, which no one ever saw, and quite clearly would not have resulted in any further action if that was the case, let alone a punishment of filling 250 sandbags, is incredible in its own right. However, it is also not supported by the evidence. Other soldier witnesses confirm that more than one person was involved. Crosbie recalls that the complaint made by Daoud Mousa was that he saw two people stealing and he witnessed Sgt Hollender “tearing a strip off” the two perpetrators. The Mackenzie diary refers to “Dinar Dave” (Fearon) in relation to the events and details the fact that he “grassed"
everyone else". In the Court Martial Englefield said that "another" soldier admitted involvement in the theft after the event and was punished.

64. The conduct of Regimental witnesses in the aftermath of this allegation being made is suspicious. Lt Crosbie accepts that he took a statement from Daoud Mousa, but that statement has been lost. Although he gave his number to Mr Mousa on a piece of paper, which in due course Daoud Mousa would give to the RMP, that number was never answered. Daoud Mousa was never able to make contact with "Lt Mike" at Camp Stephen and no number or address was taken from this witness by Crosbie so that he would have a reasonable prospect of contacting the witness to the crime in the future. Although he accepts that he knew about it at the time, the theft was not mentioned in Lieutenant Rodgers' witness statement for the purposes of FRAGO 29 compliance nor in the early statements of any of the multiple. The exact sums of money that were taken from the hotel have apparently never been clearly documented. The owners of the hotel never received any of the money back.

65. Lt Rodgers recalled in his inquiry statement that having positively identified the culprit and sent him away with the RMP, "I was not very popular with the rest of G10A as a result of having taken this action, however I was limited in what I could do as an Iraqi civilian had seen the act." By contrast in his SIB interview in March 2006, Major Englefield stated that the allegation having been made by Baha Mousa's father, he himself conducted a quick investigation on the spot and it was established to be untrue. Major Englefield had no explanation as to why he would forget that Fearon had admitted to the theft and in fact been punished, or why his initial suggestion to
the SIB should have been so wide of the mark.\textsuperscript{267} Hollender, while initially recalling only that the allegation had been made,\textsuperscript{268} told the Inquiry that through reading the evidence he had remembered that Fearon had admitted the offence. He accepted that he would have been required to inform Major Englefield as to what occurred and the punishment that was imposed.\textsuperscript{269} Although the statement that Daoud Mousa gave to Lt Crosbie on 14 September has never been produced, Crosbie accepted in evidence that he would have either given it to the acting CSM (WO Hollender), or the OC (Major Englefield).\textsuperscript{270}

66. Colonel Mendonca says that he was informed by Major Englefield that the allegation had been made (but not of its proof at the scene). He regarded the prospect of this allegation being correct as sufficient to address each of the companies that night. His expectation was that the matter would be the subject of further investigation.\textsuperscript{271} In his evidence to the Inquiry, Colonel Mendonca suggested that he was not necessarily aware of which multiple was the subject of the allegation.\textsuperscript{272} This account conflicted with Fearon who recalled the CO coming to lecture Anzio Company and specifically naming him.\textsuperscript{273}

67. A Coy CSM Tomkinson said that he was made aware of both the theft and the punishment when he returned from R and R, although in the circumstances of this case he said that he personally would have postponed taking any action at CSM level because there was an ongoing SIB investigation. In those days there was no requirement to document a so-called work parade punishment of the kind which Fearon says that he received.\textsuperscript{274} The fact of the theft clearly was not pursued by the SIB. When Pte Fearon gave a witness statement to the SIB on 23 February 2005, he mentioned that he was involved in an incident that was dealt with the Unit authorities, but he now cannot recall whether any further detail was sought or

\textsuperscript{267} BMI65/97/19 to 99/7.
\textsuperscript{268} BMI00645 [51].
\textsuperscript{269} BMI00645 [50] and BMI 51/24/11 to 27/17 and BMI51/58/16 to 59/6.
\textsuperscript{270} BMI 19/172/11-17.
\textsuperscript{271} MOD00581, BMI01128 [104] and [109]. MOD016474. See also the log references placing the CO at A Coy and C Coy that evening: BMI01169.
\textsuperscript{272} BMI 59/215/14-19.
\textsuperscript{273} BMI 14/28/10-16.
\textsuperscript{274} BMI 51/174/1-17.
given by him.\textsuperscript{275} It would be strange to conclude that it was not. Be that as it may, the fact of an admitted theft by a member of the multiple that was to guard Baha Mousa, which was only revealed as a result of a complaint made by his father, seems to have been seriously overlooked until the event of this Inquiry. That is the case, even though Lt Crosbie realised that he had received a complaint from the father of the deceased at the same time that he learnt about Baha Mousa’s death\textsuperscript{276} and Daoud Mousa was to refer to his complaint in a taped meeting that he had with Brigadier Moore on 25 September 2004.\textsuperscript{277} A lack of clarity about this incident continued to the settlement of the defence in his civil proceedings, where the MOD was to assert:

“\textit{It is admitted that British soldiers removed a quantity of money (the precise amount of which is not relevant to any issue arising in these proceedings) from the hotel safe...It is however denied that the soldiers were stealing the money in the sense of intending permanently to deprive the true owner thereof}”.\textsuperscript{278}

68. This is a matter which understandably troubles Mr Mousa when he queries why it was his son who received the worst beating of all of the detainees. He pointed out his son to Lt Mike in front of other soldiers in order to suggest that matters with his son should be expedited.\textsuperscript{279} He had helped the British to uncover the crime. He asked them to let his son go in kind. D003 remembers the father telling the soldiers who his son was and asking them to look after him.\textsuperscript{280} Kifah Matairi also recalled the father pointing his son out to an officer: “When he talked to the officer the soldiers were present, they heard him and saw him.”\textsuperscript{281} Major Englefield understood that Baha Mousa was the son of the complainant, because he specifically recalled the father pointing him out to him.\textsuperscript{282} Lt Crosbie knew the same.\textsuperscript{283} With hindsight, Mr Mousa told the inquiry, “I think they knew the one I was pointing to was my son, therefore

\begin{thebibliography}{99}
\bibitem{275} MOD005069 referred to at BMI01412 [1]. See also BMI 14/32/9 to 33/7.
\bibitem{276} BMI 19/224/14-18.
\bibitem{277} MOD016103.
\bibitem{278} BMI02239 [66].
\bibitem{279} BMI 10/22/21 to 23/1.
\bibitem{280} BMI02377 [32].
\bibitem{281} PIL000662.
\bibitem{282} MOD004171.
\bibitem{283} BMI 19/173/14-23.
\end{thebibliography}
they wanted revenge against me on him” (sic). As he puts it in his Inquiry statement:

"I believe that my son may have been treated worse than other people because I had made a complaint to Lt Mike that money was being stolen from the hotel safe. This is certainly the view that was reached by other men who were detained with Baha".

69. The significance of this event in the narrative is important in a number of ways. First, it indicates the lack of discipline and general respect for the local population. Second, for reasons developed below, the fact that the father of a detainee exposed a soldier would give the multiple a cause to target these detainees more severely in due course. At the very least it would make it highly inappropriate for the members of the arresting multiple to be guarding possible witnesses to a criminal act committed by one of their own. Third, the procedure for investigating and punishing the crime was informal, never documented and clearly not disclosed with vigour once the implications of the father of the dead man witnessing a crime by the arresting soldiers came to light. Despite the suggestion that Colonel Mendonca was critical of this theft when he learned of it, the punishment of the one culprit by the acting Company Sgt Major was never properly and formally dealt with by either the OC or the CO. Overall, the manner in which the complaint by Daoud Mousa was handled shows a significant lack of accountability for crimes committed by a UK soldier. From the point of Crosbie taking the statement from the witness but not his contact details, through to the fact that the SIB never investigated the complaint after the death despite Mr Mousa informing Brigadier Moore about it, to the MOD not admitting the theft in the civil proceedings, to the admission only being revealed by this inquiry, there was an unacceptable failure to investigate a crime that should have caused a soldier to face criminal charges.

The incident in the toilet

70. It is likely that, after the theft allegation, the detainees were taken into the toilets at the back of the ground floor. The plan of the premises shows that

294 BMI 10/23/4-3.
295 BM102239 [66].
those toilets can be reached by passing through a door to the left of the reception desk into a corridor that connects the hotel with the restaurant.\textsuperscript{286} Not all of the soldiers have recalled or otherwise been willing to admit that the victims were moved to this location. The fact they were taken to the toilets is not disputed, however, by at least Rodgers,\textsuperscript{287} Crosbie,\textsuperscript{286} Aspinall\textsuperscript{286} and Mackenzie.\textsuperscript{290} Why they were taken there and what occurred while they were there is in dispute.

71. The detainees’ experience of what happened in the toilets stands out for them as the first truly traumatic experience in their captivity. According to D002, who seems to have experienced the worst of the event, he “was made to sit in the [toilet] bowl for 25 minutes while soldiers repeatedly flushed it so that the waste water and excrement rose in the bowl”.\textsuperscript{291} Although he referred to being in the bathroom in his initial SIB statement,\textsuperscript{292} it was not until his later accounts that D004 also spoke about water being in the same cubicle and D002 and Baha Mousa, and that each of them had been made to sit in the bowl.\textsuperscript{293} Other detainees also refer to toilets being flushed while they were in the toilets,\textsuperscript{294} including Kifah al Matiairi who gave his statement while still in hospital and without the opportunity to discuss the matter with the others.\textsuperscript{296} Of some significance is that D003 also confirms that he at least was questioned by an intelligence officer while still in the toilet. Others had said that he would know where C001 lived, which he admitted to, thereby leading to his being taken separately to the home of D006 and his sons. The description of the intelligence officer which he gives matches Lieutenant Crosbie.\textsuperscript{296}

\textsuperscript{286} See the plan of the ground floor of the premises: MOD036907.
\textsuperscript{287} Rodgers MOD000218 and BMI01840 [86].
\textsuperscript{288} Crosbie BMI03964 [18]. BMI 19/176/9 to 177/3 and BMI 19/220/20 to 221/10.
\textsuperscript{289} Aspinall BMI 28/25/16 to 27/1.
\textsuperscript{290} Mackenzie MOD000111, CM 32/88/8-9 and BMI01028 [38].
\textsuperscript{291} BMI01952 [17].
\textsuperscript{292} MOD000003.
\textsuperscript{293} BMI02027 [15-16] and BMI 18/14/22 to 17/11. Note that during questioning of D003, it was suggested that he had given a fuller account to Panorama than in his inquiry statement (BMI 10/75/9 to 76/8). A close examination of the transcript, however, shows that the relevant passage is actually spoken by D004 (NCP000191).
\textsuperscript{294} Ahmad Matair BMI02263 [29], D001 BMI01991 [18-21] and BMI 12/10/11 to 11/20, D003 BMI02376 [30-33].
\textsuperscript{295} MOD000052.
\textsuperscript{296} MOD000059-060 and BMI02377 [32].
72. These were Middle Eastern toilets where the bowl has a hole in the ground at its centre. The idea that detainees should have been even crowded into this small area is deeply unpleasant, whether water was flushed on them or not. As to the effect of what did occur, D002 explained his experience in his Inquiry statement:

"I was nervous and scared by this point and I began to cry. I felt that I was not pure anymore because I had water and excrement all over my body. I still cannot comprehend why the soldiers humiliated me in that manner with no explanation given for such baffling, inhumane treatment. The soldiers were laughing during the time I was in the toilet and this added to my humiliation. In the Court Martial proceedings they played a DVD film which shows me (at a later time in my detention) wearing the same clothes which were soiled during this incident."\(^{297}\)

73. The evidence of the soldiers who admit to knowing that the detainees were taken into the toilets is clearly suspicious. In his SIB and Inquiry statements, Rodgers accepted that the detainees were moved from the lobby to a “toilet”. Rodgers described his reasons for ordering the move as based on the need to search the lobby.\(^{298}\) This was a large open plan lobby and it is difficult to understand what, in fact, needed to be searched. In his inquiry statement, Rodgers challenged the abuse allegation of dousing the detainees with toilet water, suggesting for the first time that “it was not a working toilet and was dry”.\(^{299}\) This was of course the main toilet in the reception of what Ahmad Matairi described as a 3 star equivalent hotel, connected to the side of a restaurant that was serving the public. No one else has ever suggested that this toilet was “dry” or not working. Rodgers also suggests in his Inquiry statement for the first time that the toilet area was so small, that the detainees were put in there, but the guards had to stand outside. By contrast, both Mackenzie and Crosbie accept that guards were inside. In any event, it is incongruous that Rodgers would have chosen to put detainees in a toilet which the guards could not fit into, as opposed to into a restaurant, where everyone could fit, which was immediately adjacent to the toilets.

\(^{297}\) BMI01952 [17]. See also his evidence about this experience in the Court Martial at CM 14/16/17 to 17/1.
\(^{298}\) MOD000218.
\(^{299}\) BMI01840 [86].
74. Perhaps suspecting that his account about the toilet lacked credibility, Rodgers changed it at the point of giving oral evidence. He told Counsel to the Inquiry that detainees were moved into a "kitchen" as opposed to a toilet, explaining in this context that there was no running water. When asked whether he recalled them being taken to a toilet area, he said "not at all." 300

75. The other soldiers’ accounts in relation to the toilet are as follows. Aspinall, who denied knowing anything about it in his witness statements, accepted when giving oral evidence to the Inquiry that he knew about the move to the toilet. He said that his "belief is that we would want to separate them, to keep them from talking to each other". 302

76. For his part, Mackenzie specifically recalled in his SIB statement the detainees being moved from lying down in the lobby to a "bathroom/toilet just off from the lobby". 303 At the Court Martial he said that he did not know why they were moved into the toilet or who ordered them to be so, but he volunteered that they "sat down in the toilet area". 304 In his Inquiry statement he only speculates now that the detainees were moved from the lobby to get them away from the full view of the outside public. 305 In his evidence before the Inquiry he said they were "sitting or crouching. They weren’t standing anyway". Again he said that the idea may have been to get the detainees out of public view, but he could not explain why this could not have been done by taking them into an empty restaurant. 306 This may be more than mere speculation, in the sense that the experience of Daoud Mousa’s allegation, coupled with the presence of local media looking through the full glass frontage of the hotel, prompted the guard to move the detainees from public gaze. If it is correct that Mackenzie was one of the guards, it becomes possible that the soldiers who guarded the detainees inside the toilets were the members of Private Fearon’s spur; in other words the immediate comrades of the man who had just been caught stealing. Those members of

300 BMI 30/23/6 to 24/5.
301 BM105220 [47].
302 BMI 28/25/25 to 26/2.
303 MOD000111. In the notes used by the SIB to take his statement, there is an indication that he may have mentioned Appleby also being in the toilet at the time (MOD001717). See also BMI 29/211/9 to 212/1.
304 CM 32/86/8 to 89/7.
305 BM101028 [38].
306 BMI 29/11/9 to 212/17.
the three-man team were Mackenzie, Allibone and Bentham, each of whom may well have played a clear part in the later violence at BG Main. One possibility for the move into the toilet would be an impromptu act of revenge and bullying of potential witnesses. Kifah Matair describes a man ('Soldier 1') who fits Mackenzie's description assaulting several of the detainees within the toilets.

77. Lt Crosbie's evidence about the toilet is contradictory and ultimately not credible. In his Inquiry statement he said the following:

"I remember walking through the foyer and seeing a group of prisoners under guard gathered together in the hotel toilets. In response to a question from the inquiry, I remember that the prisoners were kept standing in the toilet cubicles, with a guard standing at each of the open cubicles".

78. When he was asked about this during his oral evidence, Crosbie sought to distance himself from the clear implications of the statement that he himself had been inside the toilet area in order to view the detainees "in the toilet cubicles". Rather he suggested that "you could see the toilet area from the lobby". The feasibility of seeing the toilet area from the lobby is not supported by any of the other witnesses and is contrary to the sketch plan which shows doors and a corridor area linking the reception to the restaurant where the toilets were located. In any event it would be unusual in a Muslim country, and perhaps anywhere, to have the inside of a toilet area visible from a public lobby.

79. If, at least, some of the detainees were questioned in those toilets about the whereabouts of C001, the soiling them with toilet water may have been designed to put them in fear if they did not answer the questions. At some stage Pte Aktash recalls a discussion over the net radio in which a soldier asked Major Peebles, whether they should start the "shock of capture" and Peebles told them "Don't go as far as you did last time", referring to a previous occasion when a prisoner had been beaten. While this radio conversation may have happened once the detainees were at BG Main, it

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307 Fearon BMI 14/13/15-22.
308 MOD000052.
309 BMI 19/220/20 to 221/10.
310 MOD03907.
could also have happened at this point. The reason for Crosbie’s reticence on this issue is, no doubt, that D003 is very well placed to identify him and knows that he was questioning the detainees in the toilets before they were taken into the restaurant.\footnote{MOD000059-060 and BMI02377 [32].} As Crosbie accepted, he and D003 were in each other’s company for “several hours”.\footnote{BMI 19/221/23.} This evidence brings into doubt the suggestion by Crosbie that he simply questioned the detainees as a group when they were in the restaurant.\footnote{BMI 19/222/7-8.} It may be that some detainees, including Kifah Matairi, were taken into the restaurant to also be questioned there. His SIB statement detailed this, indicating that he told a soldier that D003 might know where C001 lived.\footnote{MOD000053.} The account of the questioning by at least two of the detainees suggests that the issue was approached strategically by the soldiers, and that the toilet incident was not just a random act of ill-treatment.

80. Again on this issue, Major Englefield’s evidence is also suspicious. From the questioning at the hotel, D003 would provide information that led to a ‘hard knock’ raid on the home of the man who had escaped and was believed to be primarily responsible for the weapons found that morning. Major Englefield refers to the matter only tangentially in his Inquiry statement.\footnote{BM04442 [204-205]. See also BMI 65/100/1 to 101/4.} He also denies any knowledge of the detainees being in the toilet. He originally accepted during his Court Martial evidence that they were questioned, and that he personally may have asked about 3 or 4 questions of one of the detainees about the whereabouts of the escaped man.\footnote{CM 51/57/5ff. By the time of his Inquiry evidence he could not “recall them particularly being questioned”.} However, by the time of his inquiry evidence he could not “recall them particularly being questioned”.\footnote{BMI 65/99/19.} It is difficult to believe that a separate operation to travel to C001’s home could have been authorised without close attention to the intelligence upon which it was based. That intelligence appears to have arisen as a result of detainees being kept on the floor face down for up to two hours, during which they were prodded, kicked and stamped upon, after which they were taken into the toilets, shouted at and had toilet water flushed upon at least some of them, after which they were tactically questioned to find the
escaped man. The idea that Major Englefield knew nothing about this is difficult to accept.

Removal of the detainees from the Hotel

81. This event of the removal of the detainees from the hotel indicates the extent to which the use of hoods and robust treatment of prisoners were standing operating procedures known to and authorised by the higher chain of command in 1 QLR.

82. According to the Battlegroup Watchkeeper’s log at 0950 a call came from the hotel from J10A (which denoted Major Englefield’s personal call sign319), which was noted as follows: “Fm J10A reports TV camera at A1. About to move 8 pax. Request direction on method to move to BG Main”. The noted “Action” to take reads: “Plasticuffs but no sandbags”.320 This log entry must be read together with the time equivalent entry on the Battlegroup Net Radio log, which reads as follows: “10A has […] TV camera in his loc, he needs to remove another party do we do it normally or gently”.321 The same discussion is logged slightly differently at A Company itself. At some point between 0934 and 0948, A Company relayed the question, “Due to presence of media, how do you wish us to proceed with prisoner handling”. At 0948, the reply is logged as “Our normal methods bar sandbagging”.322

83. The explanation for these log entries and the accounts of the general thinking at the time differ between the different soldier witnesses and have also been amended over time. The victims submit that the reality can be found in the earlier accounts of Hollender and Rodgers. Both of these men became aware that the local media had gathered outside of the hotel prior to the movement of the detainees.323 In that context they both referred to the operational need to depart from the more robust treatment to which detainees might usually have been subjected. In the statement which Hollender gave to the SIB in October 2003 he made it clear that “because of the amount of press present, we were conscious of being more gentle than normal when putting the

319 BMI04440 [193].
320 MOD016524.
321 MOD016571.
322 MOD016789.
323 Hollender BMI00645 [54] and Rodgers MOD000227.
detainees in the lorry*. When that observation was put to him in his interview under caution to the effect that “the outside person reading [that] particular passage” would conclude that “without the camera crew being present, the detainees would have been handled more roughly”, he replied, “Probably”. Although he would later say (no doubt realising the consequence of his admission) that the special treatment on this occasion “was like helping your grandmother as opposed to helping your mother on to the bus”, the wider context of the evidence available to the Chairman would suggest that he was patently lying.

84. In line with the above log entry asking “direction on the method to move” the detainees to BG Main, Lieutenant Rodgers has always maintained that he was told that the OC initially approached him in the hotel and in a “face to face” told him “that he had been ordered to hood the arrested males but he did not think this best practice”. According to this account given in a statement to the SIB in October 2003, Rodgers agreed. When Rodgers was asked about this in his SIB interview he provided more detail:

“A: We got a message down from the CO that he said he wanted them manhandling out and putting in the back of the wagon as a demonstration of, we’ve made an arrest and we’ve found this ‘cos there was a lot of press around. My OC spoke to me because we were quite uneasy with this, there was a large crowd, the press were there and we decided that it is best to march them out one soldier at a time and place them in the back of the Bedford”

Q: So the CO’s direction was to manhandle them?

A: Just, not manhandle them but forcefully demonstration in the back of the wagon. As you see after a riot or whatever, when people are being forcefully marched somewhere.”

Lieutenant Rodgers repeated this account in his second SIB statement in October 2005 and in his statement to this Inquiry, emphasising his specific recollection “that the suggestion was that we provide a show of force, however on a mission command basis both OC and I agreed that the situation on the ground required a more subdued approach”.

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324 MOD002795.
325 MOD004253-4. See also BMI 51/55/9 to 57/19 and 51/70/17 to 71/25.
326 MOD000219.
327 MOD000227.
328 BM101840 [91].
329 Note the Inquiry statement, ibid, refers to “CO”, but in the context that must be a typographical error.
85. Neither Major Englefield nor Colonel Mendonca agree with this account in full, but in this context (especially given the support for it by the log entry) the victims would submit that Lieutenant Rodgers has consistently told the truth and the original account that was given by WO Hollender corroborates his own account. Colonel Mendonca's dispute with Rodgers is straightforward. He denies giving any such order, and described the decision as "a Company Commander’s business".\textsuperscript{330} For his part, Major Englefield did accept in his SIB interview that "though it was common procedure to hood prisoners with a sandbag, I wasn't prepared to do that because there was press outside".\textsuperscript{331} Where he conflicts with both Major Rodgers and the relevant logs is that he maintains that he simply discussed this with Major Suss-Franscksen, the 2IC, on a mobile phone, because he was not able to get through on the radio. He has no real explanation as to why the terminology "do we do it normally or gently" appears in the radio log, speculating only that Captain Ainley, his Ops officer, would have been doing the asking on his behalf while he could not get through.\textsuperscript{332} Major Englefield more emphatically suggested in his oral evidence to the Inquiry that he was not requesting anything of the Battle Group, but simply made a decision and wanted them to be informed as such.\textsuperscript{333} If, as he and Colonel Mendonca suggest, the decision to hood was simply an operational choice, it is difficult to understand why he would have needed to inform the Battle Group of his decision not to hood, less still, why those manning the radios would have assumed that the requests were necessarily being made to depart from ordinary procedures.

**Op Salerno – Conclusions in terms of understanding the subsequent events at BG Main**

86. Before leaving Operation Salerno itself, the victims submit that the following key conclusions can be made about it in terms of what would happen next.

*Casual violence*

\textsuperscript{330} BMI 59/100/14 to 101/15.
\textsuperscript{331} MOD004172.
\textsuperscript{332} BMI04440 [194-196]. See also his failure to explain the language used at BMI 65/63/5 to 64/7.
\textsuperscript{333} BMI 65/61/18 to 63/4.
87. Firstly, a culture of casual violence existing across the various 1 QLR companies (and about which the Inquiry has heard evidence from numerous sources) occurred during these arrests. Many soldiers have denied that this was the case, but it is difficult to believe that the detainees would lie about the events at the hotel, but yet be so credible in the account of what happened at the base. In any event, the wider evidence as detailed in Part V below, including the evidence of several members of Anzio Company, suggests that a low level of casual violence had become the norm.

Violence designed to assist tactical questioning

88. Secondly, although the casual violence may have been part of a practice in Iraq to deal with civilians robustly in order to demonstrate control, in this instance it may also have been designed to assist on-site tactical questioning by the Company soldiers. Although these detainees had been arrested at 0834 and a decision to bring them to BG Main to TQ was made at that time, they would not arrive at BG Main until 1042. Contrary to the requirements that detainees should be delivered to the BGIRO as soon as possible, these detainees were kept at the hotel for nearly two hours. As detailed above, during that time they appear to have been taken to the toilet to be questioned. Certainly the questioners, in this case Crosbie and Englefield, were successful in ascertaining the home address of the escaped man.

Involvement of the Chain of Command

89. Thirdly, this was the first of many instances over the next two days where soldiers who carried out ill-treatment appear not to have been overly concerned about being discovered abusing civilians by their more senior chain of command who were in the immediate vicinity. In one sense a level of robust or forceful treatment must have been accepted at the very highest level in this Battalion, which is precisely why the language of the logs deals in terms of behaving more gently than ‘normal’ in the presence of the media. The victims return to evidence in Part V suggesting that rules of engagement

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334 MOD01652
335 MOD016524 and MOD016790.
336 MOD016166, MOD016356.
developed by this Battle Group positively required a form of robust treatment of civilians.

*Discrete factors that may have turned the Rodgers' multiple against these detainees*

90. Finally, there are discrete factors arising out of this incident that may have turned the Rodgers multiple, in particular, against these detainees. First, it is difficult to believe having read and heard the view of others and witnessed Colonel Mendonca himself that he would not have been furious about the escape of the principal suspect in relation to the weapons. His discontent would only have risen when Peebles and Davies formed the view that the hotel might be linked to the RMP killing. The matter can only have been further compounded by the fact that the Bde Commander, Brigadier Moore, had directly involved himself in this operation. As Mendonca himself put it during his SIB interview, on learning that C001 had escaped he would have thought that his reactions would have been one of “irritation” and “to demand an explanation....because that's the way I do business”\(^{337}\). Second, one of the multiple was disgraced as a result of an allegation made by the father of one of the detainees. That further matter caused the CO to come down even harder on this particular multiple, according to Pte Fearnon prompting a face to face dressing down of the entire company during which he was named. From an operational point of view it is difficult to fathom why this particular multiple were given such a considerable burden of responsibility in guarding potential witnesses to their crimes and the errors. At the very least it was negligence. However, it is more than possible that they were being given the opportunity to make amends. That they saw it this way is certainly the only logical conclusion from the way they approached their guard duty from just before 19:00 that night.

**DIVERSION OF TWO SEPARATE PRISONERS TO CAMP STEPHEN**

91. While the bulk of the prisoners were taken to BG Main, D005 was taken by Lieutenant Crosbie and members of c/s 30A of Anzio Company to the home of C001. The event of D005 and D006 being then diverted to Camp Stephen for just over two hours, instead of being taken to BG Main, warrants attention

\(^{337}\) MOD019091.
because it indicates that the approach to abusing prisoners in order to obtain information went beyond a set of 'disciplined' measures confined to the TDF in BG Main. As indicated above, the context for the diversion of the father and son to Anzio company lines was the escape of the suspect effectively on Anzio Company's watch.

The victims' accounts

Overview

92. The following features of the victims' accounts are not in dispute. As the summary of logs indicate below, D003 has told the truth that having provided the details of C001's address while still in the hotel, he was taken there while a raid on the home took place. He was then taken to Camp Stephen (known to him as Chemical Ali's home) along with D005 and D006, before being separated from the father and son and taken to BG Main on his own. Likewise, it is not in dispute that the raid on the home of D005 and D006 would have been a hard knock arrest involving the use of force, with gates and doors being broken upon entry and the occupants dragged from their rooms and forced into restraint positions at gun point. Whether intended or otherwise, the experience of the arrest was "like a terrorist raid". D006 saw his wife plead with the senior officer to take medication for his heart disease. Crobie accepts that this happened, although he does not recall what he did with the medication.

93. There are other parts of the victims' account that are disputed, but would tend to be corroborated by other evidence of casual violence and aggressive searching during the rest of the tour. D003 says that he was verbally threatened by Lt Crobie and assaulted by a large muscular guard while kept in the Land Rover during the raid. Aside from being a tense situation, it is

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338 BM102377 [33-38].
339 BM102377 [33-41].
340 D006 BM102136 [14] and D005 BM102308 [19-21]. Crobie BMI 19/182/15ff and 184/9 to 185/3. See also Grist MOD015905, Walker MOD015899, BMI102550 [143-152]; Brzezinski BMI00716 [67].
341 CM 27/13/16.
342 BMI 13/83/6 to 94/2.
343 BMI 19/183/14-19.
344 D003 BMI1023378 [36-37], BMI 10/79/16 to 80/21.
likely that he was taken on this raid not just to assist in direction, but to make him aware that adverse consequences would fall upon him if he provided wrong information or otherwise led the soldiers into harm’s way. D005 and D006 suggest that their home was significantly damaged during the raid.\footnote{D006 BM02137 [17], [19] and [59] and D005 BM02310 [23-24].}

Although denied, this is a scenario that has been described in relation to Anzio Company as well as the other companies, especially at this stage in the tour.\footnote{Moore BM106967 [102], S038 BM104270 [86-90].} Upon being taken to Camp Stephen, D005 has consistently provided accounts that he was abused there by being made to adopt stress positions in the sun while kneeling on gravel, as well as being made to carry out forced exercises with large water bottles.\footnote{BM02314 [38-41] and [44]. The same treatment was not applied to the father: BM02138 [19] to [20] although he does confirm that they were kept at Camp Stephen for between 30 minutes and 1 hour.} Upon finally being moved to BG Main, D005 says that he was assaulted by guards in the back of the vehicle,\footnote{BM02317 [46] and BMI 17/15/7 to 16/2.} again in accordance with accounts given by 1QLR soldiers as to what occurred during the rest of the tour.\footnote{Richards BM04161 [24-5], Ellis BM105462 [64], Jones BM105357 [16].}

The detail of the abuse at Camp Stephen

94. The treatment that D005 received at Camp Stephen was described to the SIB in his first statement given 7 days after the incident in the following terms:

“At Chemical Ali’s house, we were made to get out of the vehicle. My father sat on the ground outside the vehicle and I was told to take my shoes off. I was then made to put my arms out to the sides parallel to the ground my palms facing down. There were 2 soldiers with guns pointing towards me behind me and one of them kept yanking my arms up if I lowered them and made as though to punch me in the face showing me what he would do if I did it again. I could not see these men properly or describe them as I was made to face a wall and was not allowed to move. I felt a fist being pushed into the back of my neck on occasion when the soldier told me to raise my arms. I was then made to jump up and down for about an hour until I collapsed from the heat of the sun and tiredness. Someone then poured water over my head and I was given a small bottle to drink. I asked if I could use the toilet but was told ‘no’.”\footnote{MOD000017. See the earlier handwritten notes of the account which must have been given at an earlier meeting (MOD01910 and MOD01921).}
95. The fuller account of the incident is contained in the Inquiry statement. It includes an earlier part of the experience where D005 was made to kneel on a gravelled courtyard. In addition, his forced exercises are described as including the requirement to hold a number of water bottles at 90 degree angles:

"I was taken by a soldier to the gritty courtyard. I was then ordered by him to do what he was doing. He acted out by lifting his trousers, indicating that I should do the same to expose my knees. Then he knelted indicating that I should do the same. I was forced to kneel in the courtyard on a bed of sharp-edged pebbles. I had to do this for some time, in the hot blazing sun. It is very hot in Basra in the month of September with average temperatures at 45 degrees. At the time we arrived at Camp Stephen it was around midday, with the sun at his highest point, the hottest period of the day. The sharp pebbles hurt me and after a while my knees felt numb. After a short while, a soldier indicated that I should get up. When I did so I saw the deep imprints made by the pebbles on my knees. The skin around my knees was bruised and tender. The soldier simply laughed at my agony."  

96. As regards the forced exercises as described in the SIB statement he was able to provide the following further detail as a result of being questioned more extensively by his solicitors:

"A soldier or soldiers then balanced a full bottle of water on my arms and this made it even more difficult to keep them in the required position. This was done on purpose so that it was difficult to keep my arms straight. The soldier(s) then increased the load of water. When the soldier(s) noticed that I could just about maintain the stress position with one bottle of water on each arm for a short period of time, they placed another bottle of water, and then increased it to three full bottles of water."  

97. During his evidence to the Inquiry D006 confirmed the above account. He explained that the SIB had not asked him about the specific details of the incident and that they regarded what he told them to be sufficient. D005’s description of how he was after this treatment was “extremely tired” and “psychologically destroyed”.

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351 BMI02314 [39].
352 BMI02315 [41].
353 BMI 17/8/20 to 14/13.
354 BMI 17/11/12 to 12/10 and 12/25 to 13/4.
355 BMI 17/13/16-23.
The Logs

98. Once arrested – and that is clearly what occurred – the default position would have been to take the detainees to BG Main for processing by the BGiro. According to the 1QLR Internment Procedure, while it was necessary to consult with the Company Ops room to ascertain whether someone was to be interned, once the preliminary decision was made the internee was to be bought directly to BG Main as soon as possible and in any event within two hours of arrest.\textsuperscript{356} The same expectation was drafted into the terms of FRAGO 29.\textsuperscript{357} Although one could imagine a situation where it would be logical to take a detainee to Company lines pending their removal to BG Main, the situation here was one in which Lt Crosbie and the Anzio Company Ops room knew that the associates of the father and son had already been taken to BG Main. Instead the detainees were taken to Camp Stephen for more than two hours after their arrest, even though D003 was separated off and taken to BG Main within 15 minutes. The CSM, WO Tomkinson, accepted that a delayed diversion of this kind was “unusual”.\textsuperscript{358} When the full facts are considered, it clearly was an abnormal, unnecessary, and therefore highly suspicious occurrence. Detention at Camp Stephen, as Major Englefield had explained in his SIB interview, was always short, pending confirmation of space at BG Main and that the detainees are actually wanted for questioning.\textsuperscript{359} Both of those factors were a given in this situation.

99. The Log entries in relation to these events are as follows. At 11.42 the A Coy Watchman’s Log, states:

“Ref man in white t jeans blue the hard knock [illegible] his father and brother who have been invited here to aid with investigation and G30B is bringing the 7th pax to your location.”\textsuperscript{360}

100. The information logged by the QLR Watchman at 11.46 bore no reference to what had happened to the father and brother:

\textsuperscript{356} MOD0022165 [1] and [3].
\textsuperscript{357} MOD016167 [1 (iii)] and [2].
\textsuperscript{358} BMI 51/174/23 to 176/2.
\textsuperscript{359} MOD004163. Tomkinson agreed in his evidence to the Inquiry that detention at Camp Stephen was generally limited to low level risk suspects and not security risk suspects (BMI05025 [44] and BMI 51/156/3-15).
\textsuperscript{360} MOD016790a.
"8 pax arrested at A1 only 6 at BG Main. 7th was taken to further hard knock address nothing found will be brought to BG Main. 8th was hotel manager and will be released." 361

101. The QLR Radio logs further reflect the fact that D003, the above referred to "7th" man who "was taken to [the] further hard knock where nothing was found" was indeed brought to BG Main. The logs accord with D003’s recollection that he remained at Camp Stephen for a short while before being separated from D005 and D006.362 Thus, at 11.46 the QLR Radio log reads:

"Ref 6-8 pax, 6 pax to your loc, 7th further hard knock small electrical kit, small screwdriver. 8th pax is manager and not detained, so have 6 with you, 1 more to come along."363

102. At 11:51 the QLR Radio log reiterates that D003 is on route to BG Main, but there is also a reference to the father and brother having been brought to a separate location to locate the son:

"Ref msg, white t-shirt and blue jeans escaped, hard knock discovered father and brother, brought to loc to loc son and 7th pax on route to your location."364

103. According to the A Company log the father and son would remain at Camp Stephen for just over two hours. At 13.43, the Company log records,

"G20B about to go to the rainbow task but first will drop off two more detainees the brother and father of guy in white t-shirt and blue jeans we lost earlier." 365

104. The position was confirmed in the QLR Log at 13:54:

"G20B going on Rainbow 3 task, will drop off 2x siblings from man in white t-shirt and jeans that got away from A1 this morning."366

The soldiers’ accounts

105. It is a defining feature of this episode that few of the soldiers will even recall that the father and son were present at the Camp Stephen for any period of time. Sgt Stacey, who was part of c/s 30A and involved in guarding the
Salerno detainees when they arrived at BG Main (see below) appears to have arrived back at Camp Stephen at 13:11. Like many others, Sgt Stacey told the Inquiry that he had no recollection of the father and brother of the escaped prisoner being detained on site. Similarly, Pte Fearon who had to wait “quite a bit of time” before WO Hollender returned to Camp in order to deal with him was made to sit in the Ops room. Nevertheless, he does not recall detainees connected to the escaped suspect being brought to the camp. The logs show the members of the Rodgers multiple, including Rodgers who stayed at the hotel, arrived back at the Camp shortly before 12:46 pm. None of the multiple, including Rodgers, accept that they knew that arrested persons connected with their own arrest were at the camp. The logs also show that the c/s 0A, which denotes the OC’s TAC including Major Englefield and WO Hollender was “back in location” at 13:19 having possibly made a short stop at BG Main to drop off evidence. Neither of those witnesses admitted seeing the detainees in Camp Stephen or that they were ever made aware that they were brought to the Camp.

106. The context for whether these denials can be taken at face value is important. The mood of the camp at that particular time on that day was described by Stacey as excited in part because it was rumoured that the Dai Jones suspects may have been caught. The layout of the smaller Camp Stephen location is also relevant. There is a small overhead photograph of the site in the 1 QLR Magazine. The base was extremely open plan. The place where prisoners were usually kept was outside of the Ops room and opposite the cookhouse where the soldiers would eat their meals.
107. Certain witnesses such as Crosbie and the members of the arresting multiple are compelled to recall the event because of their direct involvement in it. Crosbie’s account for why he went to Camp Stephen six years after the event is that he had radio communication problems at the scene of the arrest and so he took the prisoners to Camp Stephen to await further orders. He told the Inquiry that the detainees were “removed from the vehicles and put on to the veranda and I went into my ops room”. At that point they were left guarded by members of the Hollender Multiple (If Crosbie is correct, this was c/s 30A who were being led by Corporal Stacey and had now returned from BG Main, as opposed to c/s 30B which was the Lawrence Multiple, which had come with him to the house). According to the arrest statement of Grist, the prisoners were left in the care of the “Ops Team”. Otherwise no one else recalls any detail in relation to these detainees whilst they were at Camp Stephen. Moreover, Major Englefield denies any recollection of knowing that the detainees were on the base. Given that Crosbie and c/s 30B had gone to the home of suspected Former Regime Loyalists to carry out an authorised ‘hard knock’, it is difficult to accept that Major Englefield would have devolved such a degree of so-called mission command to an Intelligence Officer.

108. With regard to the logs themselves, the explanations for them given by the Ops Officer of Anzio Company, Captain Ainley, are particularly unsatisfactory. Ainley accepted that he was responsible for drafting the Company Radio logs. As Crosbie, at least, made clear, these detainees were left within Ainley’s control. He would have been within the direct vicinity of the gravel

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378 BMI 19/192/19-20. This is the area shown in the photograph at MOD049413.
379 BMI03966 [25]
380 MOD015905. See also Grist BMI 37/147/16 – 37/148/15.
381 Of the arresting multiple, Cpl Lawrence maintained that D005 and D006 were taken straight to BG Main from the house (BMI00658 [40-44], BMI 37/69/5 – 37/76/18). Brzezinski was unable to recall whether they were taken to BG Main or Camp Stephen (BMI00717 [70], BMI 37/101/11 – 37/104/3) but suggested that it would not have been unusual for a detainee at Camp Stephen to have been placed in a stress position on stony ground at Camp Stephen (BMI 37/104/4 - 37/105/20). Walker stated that the detainees were handed over to some other soldiers at Camp Stephen and does not recall seeing them again until he took them to BG Main (BMI02653 [157-60]). Shakeshaft (BMI05381 [27-29]), Armstrong (BMI00829 [41-48]) Grist (BMI04899 [32], BMI 37/149/13-15) and Howarth (BMI06006 [B2]) deny all memory of these events.
382 BMI04442 [204-205]. See also BMI 65/100/1 to 101/4.
383 BMI 38/78/12-20.
courtyard outside of the Ops room when these events were going on. The language used in the A Company logs is deliberately obtuse given that it was clear that these men were arrested and clear that they were destined for 1 QLR. Without having the logs put to him, Captain Ainley maintained in his SIB interview that he would know where a multiple was with detainees because “my job is to know where they are on the ground”. At the same time he denied ever seeing the father and son of Salerno suspect at Camp Stephen. Having had the logs put to him, during his inquiry evidence, he sought to suggest that the logs themselves indicated no more than that the father and son “were assisting with inquiries”. Ultimately his position was that the detainees would not have been at his base for that time if their presence was not authorised by BG Main:

“Q. In a normal battalion-led operation such as Salerno, where would detainees normally go first of all?
A. To Battalion Main.
Q. So would you yourself ever, therefore, in this instance, have ordered them to come to Camp Stephen without first seeking orders?
A. No.
Q. Who would you have sought orders from, had you done so?
A. From Battalion Main ops room, whoever was manning their radio unit.”

109. This is not accepted by Major Seeds, the Battle Group Ops Officer at the time. Having being referred in summary to the above log evidence, his position was that the BG Main had been informed (wrongly) that the detainees were not arrested:

“A. Reading through the log and the particular log that Captain Ainley put down, it’s quite clear that although they informed zero, which is battlegroup headquarters, we were informed that they were not arrested.
Q. Yes. So you can't remember it now. You have gone back and looked at the logs. BG Main has understanding, so far as you are concerned, that they had [not] been arrested; okay?
A. That’s correct.
Q. Would you regard it as appropriate to take arrested people, in those circumstances, to Camp Stephen for a couple of hours before bringing them on to join the other suspected people at BG Main?
A. If they had been arrested, then no.

384 BMI 38/104/2 to 105/6.
385 MOD004086.
386 MOD004091-4.
387 See Alley’s oral evidence about the phrase “have been invited here”, which is contained in the logs (BMI 38/102/14-23).
388 BMI 38/102/4ff.
Conclusions on this incident

110. In terms of establishing whether D005 has told the truth about what happened to him at Camp Stephen, the victims therefore particularly rely upon the logs and the unsatisfactory evidence which key witnesses who are connected to events have given. At a more general level, however, the victims submit that D005 is perhaps the most corroborated witness out of any of the detainees and for that reason is highly likely to be telling the truth about what happened to him at Camp Stephen. As detailed in paragraph 50 above, he has been supported by soldier witnesses in relation to the generator, the subjection to the toilet in the middle room in the TDF, forced exercises and having household goods sprayed in his face (Payne says simulated petrol). The account he gives of forced exercises at Camp Stephen is highly idiosyncratic. He provided the general details of the account to the SIB at the first available opportunity. Given all the ill-treatment that in fact occurred thereafter, there is little reason for him to lie about this. Finally, the targeting of D005 in this episode accords with the subsequent approach of the tactical questioner to target the younger brother as being the prisoner most likely to yield under interrogation. From an objective point of view, this was apparently the prevailing ‘common sense’. Whether the abuse at Camp Stephen was deliberately co-ordinated with BG Main can only be a matter of inference. At the very least, however, that must be a suspicion. Even if the BGIRO, the BG Ops officer and the Tactical Questioner knew nothing of these events, this is a further instance of the lower chain of command being willing to countenance abuse under the noses of more senior officers.

111. What can definitely be concluded is that the A Company logs and QLR Radio logs are drafted in a deliberately tactical fashion in which the false conceit of a prisoner not being a prisoner and merely “helping with inquiries” is starkly in use. The text of the logs is designed to sustain deniability. Meanwhile the location of where this abuse took place was effectively in the middle of an open camp, between the Ops room and the dining room. It must have been

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388 BMI 48/180/20 ff.
389 Davies BMI 42/105/11-16; Seeds BMI 46/118/16 – 46/119/18. Peebles did not give evidence on this point.
seen and tolerated by members of Anzio Company of all different ranks. For reasons developed in Part V, at this stage in the tour, this type of treatment may well have become common practice to the extent that the battalion had lost the capacity to be critical of it. If Sgt Stacey’s account is accurate, it may well be that there was a particular incentive to use special measures upon these detainees, because the atmosphere in the camp was infected by the false premise that the murderers of Dai Jones had been caught. Although all of them denied it, the inference must be that when members of the Rodgers multiple returned to the base after finishing the search of the Hotel Haitham, they would have found out that the father and son had been there. Fearon would have received his punishment. It is possible that Colonel Mendonca came to the base in the early afternoon to lecture the troops.\textsuperscript{391} Thus, abuse at Anzio Company lines, Fearon’s punishment, admonishment for all the company by the CO, and the sense that they had lost a key suspect in the Dai Jones murder, set the context for the Rodgers multiple returning to BG Main that night to guard the Salerno prisoners.

THE FIRST DAY OF DETENTION AT BG MAIN

Arrival at BG Main

112. Following the decision not to hood the detainees on their journey from the hotel to BG Main, no hooding was used when they arrived at the base and were moved from the Saxons to the TDF.\textsuperscript{392} As when they finally left the camp three days later, the concept of hooding (or even blindfolding) for security reasons was not applied at those times. Neither was it applied to the tenth detainee when he arrived at the base just after 21:30 on the first night and stood for around ten minutes in the loading bay, while he, the pickup truck and the weapons found in it were photographed.\textsuperscript{393}

113. According to the logs, this initial batch of six detainees, that is D001, D002, D004, Baha Moussa, Kifah Matairi and Ahmad Matairi, arrived at BG Main at

\textsuperscript{391} The QLR Radio Log suggests he was at Camp Stephen between 14:30 and 14:55 (MOD016574-5) and again from 16:15 to 16:33 (MOD016575).
\textsuperscript{392} Stacey BMI 21/1 49/8-14
\textsuperscript{393} D007 BMI02081 [25], BMI 13/52/10-15; Gregory BMI01024 [41], BMI 37/41/21 – 37/42/17.
approximately 10:42.\textsuperscript{384} The detainees were taken into the TDF, searched – probably by Payne, although others would have been present – and almost immediately the ‘conditioning’ process began. At this stage, the conditioning of detainees in order to maintain ‘shock of capture’ was a standing operating procedure at BG Main. It is not in dispute by the Regimental witnesses that the process involved the use of hoods to disorientate and the use of stress positions. As detailed in Part V, the only dispute lies in the extent and duration to which these techniques were to be applied.

114. The atmosphere that met these detainees upon their arrival would have included shouting, verbal abuse, potentially quite a large number of soldiers, and during the day, a number of personnel coming to see them largely out of curiosity, and on some occasions (as admitted and witnessed) to abuse them. At this very initial stage, there is evidence to suggest that the detainees were greeted with a hostile reception. A number of people from the base have admitted (at one time or another) to being in the vicinity of the TDF when these detainees arrived or relatively soon thereafter. They included Pte Slicker,\textsuperscript{395} Pte Fenton\textsuperscript{396} and Colour Sgt Huxley.\textsuperscript{397} Crowcroft suggests that members of the c/s 10A, the arresting multiple were also present.\textsuperscript{398} These members included Allibone, Bentham and Mackenzie.\textsuperscript{399} As Colour Sgt Huxley accepted, “a lot of people were milling around” in the relatively short distance between the TDF and the accommodation block.\textsuperscript{400} In his original SIB statement, Corporal Stacey described tasking his multiple “to keep the other soldiers away from the detention centre”.\textsuperscript{401} In a SIB interview Slicker recalled being in the stores when the vehicles with the detainees arrived, hearing “all the noise, beating, crying...swearing”. Having come out he went towards the door and he “could see all the beatings and the punches”.\textsuperscript{402} At

\textsuperscript{384} A Coy log at MOD016790 – message from A Coy to BG Main watchkeeper, “G30A at your location with 8 pax”. The instruction regarding the method of loading the detainees into the vehicle was given at approximately 09:48 (MOD016789).
\textsuperscript{395} MOD004799 and MOD000899.
\textsuperscript{396} BMI000335 [23-25] (although Fenton described a night time arrival).
\textsuperscript{397} BMI 23/19/4-21.
\textsuperscript{398} BMI 22/16/13-23.
\textsuperscript{399} Allibone MOD000134, BMI 22/212/25 to 213/14, Kenny BMI03560 [33], Bentham BMI 41/68/6-24 and Mackenzie MOD000111 and BMI 29/144/21 to 145/10.
\textsuperscript{400} BMI 23/19/4-21.
\textsuperscript{401} MOD020306 and BMI 21/174/15 to 178/15.
\textsuperscript{402} MOD004799. Although he could not recall this event when he gave evidence, it may be of some significance that Lance Corporal Crowcroft recalled Slicker being present outside the TDF when the detainees first arrived (BMI 22/18/8 to 19/10 and BMI02548 [85]).
this early stage, Pte Lee describes a number of soldiers walking in and out all the time: "it was a free for all". Kifah Matarie told the Iraqi lawyer in a taped interview in 2005, "They drove us to the guest house, when we arrived the first thing I heard was a soldier shouting "terrorist terrorist", so I told the group, "This is a big case, they are calling us terrorists." Whether before or at the point of arrival, the signaller Aktash heard Peebles discussing the arrival of the prisoners, but mentioning that the soldiers should not go as far as they went last time. In so far as Daniel Ellis describes driving two detainees, on behalf of 2 or 3 platoon, it is probable that he was involved in bringing D005 and D006 to join up with the other detainees, at around 14:00. By that time he describes "a lot of people coming down to the TDF, in and out all the time" including two Staff Sergeants, one of whom was Colour Sergeant Huxley.

The start of the abuse

115. The timing of when the ill-treatment of the detainees began is in dispute. For the soldier witnesses, the issue breaks down into two questions: namely (1) at what point did the standing orders concerning conditioning begin? And (2) when did the more conventional violence begin? The predicate of this distinction is that (1) was authorised – at least in some part - and (2) was not. Most of the soldier witnesses have accepted that conditioning of some form started relatively soon after the detainees' arrival. Only Peebles and Davies sought to suggest that (to their knowledge) it was delayed until the late afternoon/early evening. For reasons particularly demonstrated by the timing of the TDF video involving Donald Payne, that cannot be correct, and the detainees would have been the subject of many hours of conditioning by the time they were being tactically questioned in the evening. Crowcroft, one of the two guards in the first stag on this first day, has consistently confirmed that he saw all of the detainees with two hoods on during this time. A still

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403 BMI 18/87/9-18.
404 PIL000662.
406 QLR Log MOD016024 – message from A Coy to BG Main at 13:54 – "G20B going on Rainbow 3 task will drop off 2x siblings from man in white t-shirt & jeans that got away from A1 this morning."
409 Peebles says that he only ordered Fallon and Crowcroft to start the conditioning at 16.30 (BMI 40/77/17 to 79/2).
photograph taken from the TDF video shows D001 with two hoods on.\textsuperscript{411} Their physical appearance during their tactical questioning after all these hours of multiple sandbagging and stress positioning would have been ghastly. There can be no doubt that Staff Sgt Davies and Major Peebles have lied about their failure to appreciate that. As to the timing of the start of the more conventional violence, this is a matter that is strongly disputed by the witnesses whose presence in and around the TDF during the day time on the first day is open to criticism. Those witnesses are principally as follows: Payne, Stacey, Fallon, Crowcroft, Hill, Slicker, Kendrick, Ingram, Huxley, Roberts, Allibone, Bentham, Mackenzie, Kenny, Briscoe and Crosbie. In so far as Davies and Peebles would have entered the TDF during the day time on the first day, they are also open to criticism on this front.

116. From the point of view of the detainees, the distinction between the two questions is artificial. Firstly, because all of the conduct would have been experienced as violent abuse, and secondly, because they do not accept that the more violent conduct was not authorised - or otherwise tolerated - by those higher up the chain of command. On the first of these concerns, it is even difficult to find words to explain the distinction between the two types of conduct, because both of them involve assaults as well as generating intense physical pain and psychological suffering. The victims have tried various ways to label the second form of conduct. Should it be called "more conventional" violence? Should it be called more "graphic" or "explicit" violence? Is plain "beating" to be distinguished from the "conditioning"? Use of language in this context is highly value laden. Many of the soldiers carried in their minds that actual physical violence was wrong, whereas conduct short of actual physical violence might be justified in certain circumstances. For instance, in his SiB interviews Peebles referred to the fact that it would be wrong to subject the detainees to "excessive force", by which he meant hitting them.\textsuperscript{412} He told the Inquiry that he did not regard the contents of the TDF video as "going over the top", because there was "no physical harm or assaults".\textsuperscript{413} The distinction is therefore very much a perpetrator’s distinction. At worst such a distinction serves to frame a conclusion that the victims are exaggerating about their ill-
treatment, as opposed to simply struggling to find the right words to express the pain that it caused.

117. If one takes the TDF video as an obvious example, and considers the treatment of D004 who is in the middle of the screen in a stress position against the back wall, a number of questions arise as to whether distinguishing between the two forms of conduct amounts to a distinction without a difference. As D004 can be seen to be physically pushed, poked and pulled as he tries to maintain a stress position, is it possible to say that he is not being “beaten”? Payne, no doubt, would not consider himself to be conducting a beating at that stage. He accepts that he beat the prisoners at other times. From the point of view of the recipient of the conduct seen on that video, would it not feel like a beating? Certainly it would be difficult to label a person as deliberately exaggerating, if when he testified to being beaten, he was including his experience of conduct of that nature. Moreover, from the point of view of the observer, one must take into account that this is a handcuffed and hooded prisoner, rendered particularly vulnerable by his loss of liberty, sight and freedom of movement, not knowing what will happen next. Is it therefore possible, even if what is seen on the video went on for a short time, to conclude that what one is seeing is anything other than a serious assault? When many of the detainees say that there was no respite in their beating throughout their time in the TDF, they must be including times when they were slapped, nudged, shouted at and the like, as well as the instances of harder kicking and punching. From an objective point of view there are distinctions to be drawn between the different types of assault. Some involve more force than others. But in terms of the experience of pain, and the effort to express their effect, these acts mould into one.

118. With all those caveats, the victims appreciate that the terms of reference of the Inquiry require it to focus on the wider systemic context in which the conditioning techniques became standard operating procedure in 1 QLR. Their own approach to the standardisation of coercive techniques also focuses upon the inherent risk of force drift from one form of authorised violence to unauthorised or quasi-authorised other forms of violence. In that sense, they have endeavoured to describe those discrete ‘conditioning’ aspects of their abuse when they can.
119. The victims' experience of the start of the abuse is that it began quickly and that it was terrifying. D004 thought a first hood was put onto his head at the door of the TDF.\(^414\) At that moment there were "about ten British soldiers" present.\(^415\) A second hood was added about two or three hours later, because a man who was hitting him believed he could see him.\(^416\) Having the hood on was suffocating. When asked what it felt like beyond that he said, "I felt that it was the end. I was in fear. I thought it was the end of my life".\(^417\) "Immediately" upon having the hood first put on his head, he told the SIB, "I was made to place [my] arms out to the front and bend my knees".\(^418\) At a time before the TDF video was discovered, D004 (like others) would thus describe the principal stress position which was used for the first part of the first day of detention. As stated above, he is in the centre of the frame at the back, against the window.\(^419\) If he bent his knees more than the soldier wanted then according to D004's Inquiry statement, "he would pull me up by my collar aggressively to get me to bend my knees less".\(^420\) The experience, reflecting what Payne is seen to do on the TDF video with this man, was returned to in oral evidence: "He was beating me up when I was by the window and he was the one who tried to suffocate me when I collapsed...[He] would put his hand – both hands around my neck, press and then pull me towards the wall".\(^421\) After a period of time he could no longer remain upright, but when he collapsed he was beaten by several soldiers.\(^422\)

120. D001 said that the treatment, including beating, started almost immediately after their arrival.\(^423\) For him, the beating was "punches, kicks, beating, poking".\(^424\) In that wide sense it would not stop. As they were led into the room the hoods were put on their heads.\(^425\) The experience of the hood made him terrified, because he was afraid that he would be beaten at any minute.\(^426\) He said we were "made to adopt a very difficult...posture. Our legs were bent

\(^{414}\) BMI 18/18/11-18.
\(^{415}\) MOD0000003.
\(^{416}\) BMI 18/19/10-18.
\(^{417}\) BMI 18/21/23 to 22/1.
\(^{418}\) MOD000003.
\(^{419}\) BMI04468. D002 is to the left of him. Baha Mousa is to the right. See also BMI04469.
\(^{420}\) BMI02301 [31].
\(^{421}\) BMI 18/29/11-19.
\(^{422}\) BMI02031 [32-33].
\(^{423}\) BMI 12/14/20 to 15/2.
\(^{424}\) BMI 12/15/16.
\(^{425}\) BMI 12/16/11-19.
\(^{426}\) BMI 12/16/14-15.
hands tied forwards. As soon as the hands went down a bit, a beating would come."\(^{427}\) He can be seen in a position similar to the one described in the near right hand side of the TDF video as one looks at it.\(^{428}\) He believes that he collapsed about an hour after the treatment began and that a doctor came to look at him. He was checked with a stethoscope but the abuse continued.\(^{429}\)

121. Ahmad Matairi said that the "brutal treatment" started "a minute or two after arrival".\(^{430}\) They were hooded and beaten afterwards.\(^{431}\) The beating would continue "mercilessly" until the death of Baha Moussa.\(^{432}\) When the beating first began he estimated that there were 8 or 10 soldiers in the room.\(^{433}\) When they thought he could see, he too had a second hood put on him.\(^{434}\) However even with one hood on he could not see well. "I was sweating heavily and it was so hot. I couldn’t distinguish anything." \(^{435}\) He recalled the first of several forced positions "was to stretch our arms out in front of us, bend our legs and lean against the wall."\(^{436}\) He can be seen in this position in the TDF video on the nearest right hand side as one views the screen.\(^{437}\)

122. In his SIB statement D002 said, "As soon as we entered the room and we were stood in a circle, the soldiers placed sandbags over my head, three in total, so I could not see."\(^{438}\) He specifically recalls each of the three separate sacks being put on him one at a time: "I did not like this at all as not being able to see made me feel totally disorientated and scared." \(^{439}\) He was made to adopt the stress position described by others and seen on the TDF video. He is to the left at the back of the screen.\(^{440}\) Although not seen on the video, he says that he was hit on his body when he dropped his arms: "When I fell to the floor, a soldier would tighten the ties of the hood around my neck and then pull me up by the ties so that I felt strangled, then the same process would be

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\(^{427}\) BMI 12/19/22 to 20/16. He described the similar position as seen on the TDF video in his first SIB statement (MOD000012).

\(^{428}\) BMI04468 and 4470.

\(^{429}\) BMI101994 [30].

\(^{430}\) BMI 12/64/11.

\(^{431}\) BMI 12/64/11-12.

\(^{432}\) BMI 12/64/24.

\(^{433}\) BMI 12/66/8.

\(^{434}\) BMI 12/66/22-24.

\(^{435}\) BMI 12/69/15-17.

\(^{436}\) BMI02285 [35].

\(^{437}\) BMI04467 and BMI 12/90/9 to 92/1.

\(^{438}\) MOD000026.

\(^{439}\) MOD000026 and BMI01955 [27].

\(^{440}\) BMI04488.
repeated. This can be seen on the video. At one point Payne calls him a "fucking ape" and tries to hoist him up by pulling at his sack in the way described. It may be because of this man’s size and emotions that he was targeted by the soldiers.

123. Kifah Matairai told the SIB that the hood was put on “once we were positioned in the room...I was then made to stand with my arms held out to the front with my knees bent at a 45 degree angle”. He is not in the video, because he is likely to be against the wall behind the person holding the camera. As he put it to the lawyer that interviewed him in 2005, “from the first moment the torture began...Continuous severe torture without mercy whilst they were laughing and enjoying the scene”. To that effect, “From the first hour, we were exhausted, we couldn’t even speak, ill health appeared from the first hour, because at the start they made us stand for more than nearly one hour in a straight position bending our legs and this was very hard for us.”

124. Upon his arrival sometime after 11:51 (according to the logs), D003 saw this treatment being played out in full. “As soon as I saw them” he recalls in his Inquiry statement, “I thought I was going to die; it was very apparent that they had been abused. Death seemed inevitable”. All of his colleagues were hooded and there were two soldiers in the room beating them, by punching them in the chest and raising their knees into the stomach. One of those soldiers was Payne. He recalls one of the soldiers spitting at him in the face. This must have occurred early in the detention because he did not have a hood on at the time. He then had two hoods put on his head, the second one being wet and used only after a soldier had carried out fake punches to determine if he could see. Later a third hood was added. “Basra was very hot and I was sweating. My face was rather wet. So whenever the hood was rubbed against my skin...I was very much in pain”. The deep grazing to the bridge of his nose can be seen in the

441 BM101955 [28].
442 MOD000053.
443 PIL000662.
444 MOD016572.
445 BM102380 [43]. See also BMI 10/96/20-22.
446 BM102381 [45-46].
447 BM102383 [49].
448 BMI 10/96/21 to 87/7.
449 BMI 10/96/2-7.
photograph that was taken of him after the incident. Like the others, he was put in a stress position with his knees bent and his arms out: he can be seen struggling with this on the middle right hand side of the screen in the TDF video. The experience of this, as detailed in his Inquiry statement, provides a clear account as to the intensity of the ill-treatment during the day time on the first day:

"The stress position was so painful that I could not hold it. I think that I would lower my arms approximately every 5 minutes, although the position got harder to hold the longer this went on and I would put my arms down more frequently. As a result the beatings would get more frequent. I could sense that there were two soldiers beating me at this stage. They would use their hands to punch me with and would also kick me with their boots. I think they kicked me because their arms got tired. Most of the blows were to my lower back, the sides of my torso, my stomach and my abdomen. The soldiers would come and beat me and then move on to the next detainee who could not hold the position. I could hear the groans of the other detainees so I knew that they were being similarly treated. They kept hitting me in the same place. They would even beat me when I was standing in the correct position. As I said to the RMP in my statement of 22 September 2003, I felt that the way that they were kicking me indicated that they had been trained to do it, because they kept kicking in the same place. At times we were made to sit on the floor with our legs crossed, but still with our cuffed hands held out to the front. If my arms dropped I was beaten.

Sometimes I preferred to be beaten on the floor rather than trying to maintain the position. The treatment was unbelievably cruel; it would have been better to die. Supposedly these were soldiers who came from a democracy, but I don't think that truly they were, it was as if they had been brought up by Saddam Hussein.

I collapsed after approximately 1 hour of this treatment because I was so tired. While I was lying on the ground two soldiers then kicked me on my back around both my kidneys with their boots. These blows were very hard. I cannot remember whether in those first few hours more soldiers came to join in."  

The TDF video

125. There are a number of features that enable the Inquiry to be reasonably precise about the timing of this video and by extension the culpability of various soldiers who were involved with the detainees. The scene which it captures suggests an early part of the detention. The positions forced upon

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450 MOD016229.
451 BMI02383 [50] and BMI04470.
452 BMI02383 [51-54].

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the detainees by Donald Payne are positions which each of them described independently in their SIB statements as the first positions that were imposed on them. Payne stated that these were the initial stress positions used.\footnote{\textit{BMI 32/63/15-17.}} A diagram drawn for the SIB by Gareth Hill, the driver with c/s 30A, also depicts this same stress position.\footnote{\textit{BMI00150 and BMI 16/146/19 to 149/17.}} The detainees are also all still wearing their clothes, which whilst sweaty are not torn. The floor of the TDF is relatively clean and appears dry. It is daylight. Given that several detainees experienced further hoods being placed on them, there are still a number of extra hoods strewn across the floor. To the left of Ahmad Taha Maitari (to his right) is some paper and what may be a black pen, the significance of which may relate to detainees (or the bags) being marked – which has not yet happened, as none of the detainees have any numbers or other markings on their hands and arms (so far as can be seen) or their hoods.\footnote{\textit{The writing of numbers on detainees' hands, arms and/or hoods was apparently a standard practice once their names had been obtained (see Smith MOD003239, MOD000383) and occurred with these detainees prior to Davies TQing them (see Livesey MOD005039, MOD003430, Redfearn MOD000190, Smulski MOD006037, Kendrick CM 48/60/24).}} The white object on the window sill may also be a marker pen.

126. Three factors cause the detainees to suggest specifically that the video was taken some time shortly after midday on 14 September 2003. First, for all of the above reasons it clearly was taken on the first day. Second, Payne accepts that its scenes “certainly show the earlier part of their detention” on the Sunday morning.\footnote{\textit{BMI 32/134/2-6.}} He would be well placed to recognise all the matters indicated above. Third, the analysis of the camera belonging to Gareth Hill,\footnote{\textit{BMI 16/172/11 to 16/181/12.}} which was used to make the original version of the film, confirms that the footage was shot on 14 September at 08:02:17.\footnote{\textit{MOD019659.}} If the camera was set to British Summer Time, the time in Basra would be 11:02:17. That would accord with Payne’s impression that the film was taken earlier than 12 o’clock on the Sunday.\footnote{\textit{BMI 32/134/2-6.}} If, however, Hill had not put his camera forward for BST, it would in fact be 09:02:17 in Britain, and 12:02:17 in Basra. The fact that D003 is present means that it must be some time after 11:51 when he was on route from Camp Stephen. Given the geography and his own account of how
quickly he was subjected to stress positioning, he could well have been put into the position he describes in his statement some time soon after noon. At that time Stacey, Fallon, Crowcroft and Hill were all still at BG Main.\footnote{Callsign 30A (of which Stacey and Hill were members) were not back in Camp Stephen until 13:11 (see A Coy Log at MOD016791). Crowcroft and Fallon remained at BG Main for the rest of the afternoon and early evening, returning to Camp Stephen with some of G10A at approximately 19:39 (see A Coy Log at MOD016793).} They knew about this treatment and would have been involved or otherwise witnessed the abuse which the detainees describe.

**Stacey, Fallon and Crowcroft**

*Response to the TDF video*

127. Corporal (now Colour Sgt) Stacey, leading Multiple c/s 30A in the absence of Colour Sgt Hollender, travelled to BG Main in a convoy with the detainees. In that multiple were Fallon and Crowcroft who were ordered to remain at the base carrying out a guard duty that would last until just before 19:00 that night. According to the logs c/s 30A arrived at BG Main at approximately 10:42 and would be back at Camp Stephen at 13:11.\footnote{MOD016790 and MOD016791.} Even if one accepts that those timings are approximate, it is clear that these three soldiers witnessed a considerable part of the abuse detailed above. Before the Inquiry, each man sought to grapple with the high degree of likelihood that the scene depicted in the Payne video took place while they were at the base. The direction of travel for each of them has been to admit some knowledge of the type of behaviour seen on the video, without accepting that what they saw was that bad. All of them maintain that they did not regard themselves as acting in an inhumane fashion at the time. The victims submit that these soldiers – all of whom remain in the Army – have not told the entire truth to the Inquiry.

128. Stacey’s initial position when he gave statements to the SIB is that he saw no ill-treatment at any time.\footnote{MOD0203586.} By the time of his SIB interview he accepted that the detainees were placed in stress positions while he was still on the base, but admitted nothing about his own involvement in positioning them, or that
similar positions had been used in Camp Stephen.\textsuperscript{463} By the time of his Inquiry statement, he maintained that the use of stress positions was common at Camp Stephen,\textsuperscript{464} and that he had helped Payne to re-position the detainees in the TDF when they could no longer maintain their positions. “This was done” he suggested in the relatively benign sense of he and Payne “taking an arm each and guiding the detainee into position.”\textsuperscript{465}

129. While continuing to deny any involvement in or witnessing of any physical violence, Stacey was thus accepting his involvement in a process that was going on soon after his arrival at the base and would have been continuing when he left sometime just after 13:00 that, in his words, was “firm but fair”. In response to being shown the video himself, Stacey would at first maintain that it was a different day because of the colour of Payne’s shirt, the presence of a water bottle and the fact that D001 had a second hood on. For reasons outlined above, that conclusion is unsustainable.\textsuperscript{466} Stacey wanted to distance himself from being involved in a scene similar to the video because he recognised that it was neither “firm but fair”, nor proper. At the same time he was compelled to accept that he could have been in the TDF at 12.02 on the Sunday.\textsuperscript{467} On this issue, Crowcroft would say of the video that, compared to what he saw Payne doing, it was “there or thereabouts”.\textsuperscript{468} Fallon sought to follow Stacey by saying that what he saw was different, in the sense that the shouting was not as loud and he was being quite careful to pick them up by their armpits.\textsuperscript{469} The position of Fallon and Stacey is almost certainly a lie given that Payne himself accepts that he was intermittently kicking and punching the detainees throughout their time in custody. Indeed, if the Chairman accepts that admission from Payne, the logical conclusion would be that the conduct on the video, perhaps because Payne appears to know that he is being filmed, is deliberately less aggressive than when the filming stopped as opposed to more so. During this time Pte Hill described Stacey kicking the feet of a detainee apart in order to maintain the stress positions.\textsuperscript{470}

\textsuperscript{463} MOD018784-85.
\textsuperscript{464} BMI01556 [24] and [26].
\textsuperscript{465} BMI 01558 [29].
\textsuperscript{466} BMI 21/159/25 to 161/12.
\textsuperscript{467} BMI 21/161/18 to 163/1.
\textsuperscript{468} BMI 22/40/24 to 41/16.
\textsuperscript{469} BMI 22/136/16 to 139/1.
\textsuperscript{470} BMI 16/149/18 to 151/10 and MOD0000270. See also BMI000150 and BMI 16/146/19 to 149/17.
130. Crowcroft accepted without qualification in his initial SIB statement that during his guard duty at the base he was ordered to put the detainees in stress positions.\textsuperscript{471} In his Inquiry statement he then qualified the matter by suggesting that by his own volition he stopped the stress positions after 1.5 hours,\textsuperscript{472} effectively in defiance of what Payne (a man he feared\textsuperscript{473}) had told him to do. This evidence conflicted with Fallon’s answers in his interview\textsuperscript{474} and before the Inquiry\textsuperscript{475} that the detainees were kept in the stress positions for the entire period of his stag. This only stopped for the short periods when they were given water. Fallon’s admissions were corroborated by Corporal Kendrick, who entered the TDF on a number of occasions during the first hours of the detention, and on each occasion saw the detainees in the same stress positions as one sees on the TDF video.\textsuperscript{476} The rightful conclusion must be that Crowcroft has sought to shorten the timespan that he and Fallon were primarily responsible for inflicting pain on these detainees. As someone who has since become a PT instructor in the Army he knows now, as he must have known then, that to put detainees in stress positions for even twenty minutes would be intolerable.\textsuperscript{477} He accepted that he was now ashamed for inflicting that form of treatment, but he was not then as he was ordered to do it.\textsuperscript{478} Crowcroft’s distinction between his moral understanding then and now,\textsuperscript{479} does not fit with his continuing refusal to acknowledge the level of the treatment that he and Fallon enforced at the time over the 8 hours. As regards the timing of when he first began the guard, even if an hour had passed, he would have been in the room when D003 arrived just before midday. D003 told the Inquiry that when he first arrived in the room and saw his colleagues in a terrible state, one of the two soldiers present was “thin, tall, [with] light hair, white skinned, very broad voice and he was quite young”.\textsuperscript{480} This description would fit Crowcroft.

\textsuperscript{471} MOD020309.
\textsuperscript{472} BM102556 [122] and [126].
\textsuperscript{473} BM102550 [94].
\textsuperscript{474} MOD001874.
\textsuperscript{475} BMI 22/170/21 to 172/2.
\textsuperscript{476} BM101442 [46], [54-57], [84]. See also BMI 38/159/3-10 and 167/19 to 170/21.
\textsuperscript{477} BM102540 [27] and BMI 22/9-15.
\textsuperscript{478} BMI 22/99/13 to 100/1.
\textsuperscript{479} BMI 22/44/2 to 46/18.
\textsuperscript{480} BMI 10/88/23-25.
131. Although Fallon admits that there was no hiatus to the treatment, he was largely unable to appreciate the consequences of what he was doing. In his Inquiry statement he sought to suggest that as a result of these forced stress positions over many hours, the detainees merely "moaned and groaned a bit, but nothing major and certainly no cause for concern".\(^{461}\) During his oral evidence he became somewhat more engaged with the physical consequence of the process:

"Q. Now, just in terms of this eight-hour stag, the facts are these: eight hours and all prisoners, as far as you were concerned, double-hooded?
A. Yes.
Q. No change of orders from Mr Payne?
A. No.
Q. And Mr Payne was not someone to be crossed?
A. I didn't know Corporal Payne. I had only just turned up to battalion. I didn't know him.
Q. You didn't know of any reputation about him –
A. I knew he was on the regimental police.
Q. Just in the sense of him being regimental police, was he someone that you would disobey or not do what he was saying?
A. No, he was full corporal. I am a private soldier new to the battalion.
Q. So the only break in the stress positions was when you briefly gave them water –
A. As I recall, yes.
Q. -- and when they could not maintain it any longer, then you had to bring them back up again?
A. Yes.
Q. That would have been absolutely excruciatingly painful over all those hours for these type of men, wouldn't it?
A. I guess so, yes.
Q. But nothing went through your mind at the time that it was wrong?
A. No.
Q. Just so we have this clear, they were being forced to maintain the same positions as on that DVD, the chair position?
A. Yes."\(^{462}\)

Involvement in other violence towards the detainees

132. Of course, there is evidence that Stacey, Fallon and Crowcroft were complicit in the infliction of further violence towards these detainees. The victims set out 8 reasons below as to why the Inquiry should come to that conclusion.

\(^{461}\) BMI02586 [24].
\(^{462}\) BMI 22/170/21 to 172/2.
133. First and foremost the detainees experienced physical hitting, punching and kicking in these early stages. Stacey may have left at approximately 13:00, but it is likely that those types of assaults had begun by that time. They certainly began in the daytime hours while Fallon and Crowcroft were on their guard duty. That evidence is detailed above. At the very least, these men were involved in a joint enterprise to cause those beatings, even if they did not carry out the assaults themselves. As with others, presence in the capacity of a guard constitutes some form of culpability for the beating in a way that mere presence would not lead to a finding of criminal liability in an ordinary case of public disorder.

134. Second, upon his return from a Brigade meeting in the late morning, Corporal Kendrick went to take pictures of the detainees for the Intelligence packs. At that stage, and this would have been close to the timing of the TDF video, he recalls seeing slight cuts and bruises to some of their faces.\(^{483}\)

135. Third, the evidence of Captain Ingram describes two soldiers matching the description of Fallon and Crowcroft guarding the detainees, when he arrived to take details.\(^ {484}\) The taller of the soldiers, with blond hair, which would fit Crowcroft’s description, was described to have punched a detainee in the side of his ribcage when he prevaricated in answering his name.\(^ {485}\) Whilst, for reasons outlined below, Ingram neither acted properly at the time, nor did he provide the Inquiry with completely candid evidence, this core allegation against at least one of these two men, and probably Crowcroft, dates back to a discussion that he had with Lt Crawford during the tour.\(^ {486}\) It is likely to be accurate.

136. Fourth, either in relation to that or some other matter, Stacey told the SIB in his interview in 2005, that Fallon and Crowcroft had told him recently that they were being investigated "...obviously because they were left [there] in the detention centre and obviously they clipped them. I wasn’t aware at the time,

\(^{483}\) BMI 38/164/6-17 and 165/11 to 167/4.
\(^{484}\) Ingram has never been able to identify the soldiers, not that he took steps to at an early stage after Baha Mousa has died. The only positive evidence he can give is that it would not have been Colour Sgt Stacey (BMI 17/17/4-23).
\(^{485}\) MOD000794, MOD004369-4415, BMI00185 [49], BMI 17/164/1 to 165/1, 169/6 to 170/16.
\(^{486}\) MOD005030. See also Crawford who repeats this at BMI00090 [35].
my last I gave a statement, but I know [now]. Stacey sought to suggest in his oral evidence in the Inquiry that this was a reference to Fallon being rugby tackled by one of the detainees, but the plain words in the interview do not support that explanation.

137. Fifth, Pte Lee saw Stacey, Fallon and Crowcroft, amongst others, kicking and punching the detainees, in what he told the Inquiry was a “free for all”. At that stage, Lee himself admits to punching a detainee. The victims accept that Lee was neither a disciplined nor always accurate witness, but the core question is whether he has truthfully identified the three men in the context of the early violence in the TDF. That question may be answered by combining various other pieces of evidence, which were delivered in a far more cogent fashion than they were at the Court Martial. In particular, both Hill and Urey accepted that their original accounts to the SIB were true, having obviously equivocated about those accounts in the Court Martial, thereby doing damage to the prosecution case that was predicated upon individualised assault accounts. Members of the Rodgers multiple, particularly Cooper and Reader, have now given more credible evidence about the presence of Fallon and Crowcroft at the handover and the extent of pre-existing injuries at that point.

138. The victims do not wish to enter into the myriad collateral debates about what Lee’s motivations as a whistleblower may have been and how that affects his overall credibility. They would prefer to look at the ways in which his accounts are corroborated by others. Features of Lee’s evidence that are credible and reliable in those terms include the following matters: he described the detainees being kicked on the ground in the hotel, which is strongly corroborated by their own accounts. In the TDF he describes the stress positions and beatings, which are again close to what the detainees describe as experiencing. Lee also notes a detail, described by D003 when he arrived, that one of the sandbags placed upon his head was wet.

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487 MOD018785.
488 BMI 21/171/6 to 173/3.
489 BMI02606 [45].
490 BMI 18/87/15
491 MOD000261, CM 49/8/25 to 10/19, BMI 18/105/23 and 121/8 to 122/21 and BMI02604 [36].
492 BMI002597 [16] and BMI02606 [45].
493 BMI02382 [49].
so Lee was told, to prevent people bruising if they were hit in the face. Lee then describes admissions that Fallon and Crowcroft made at Camp Stephen upon their return the next evening, including admissions to being involved in beatings, that part of which is supported by Hill who was privy to the same discussion.

139. Sixth, then, is the evidence of Hill. He (and his camera that filmed Payne abusing the detainees at 12:02) was at the TDF at this time. Although several members of c/s 30A have given evidence about Lee being untrustworthy, Hill was regarded as “sound in character”. He has identified Lee as also being present at the scene (contrary to the furious efforts over the years of some other members of Anzio Company to try to prove that he was not). Whilst a suspicion must lie against Hill for filming the TDF video, another suspicion must be that his camera was used by someone else whose identity is being protected. In the statement that he gave to the SIB in August 2004 after his tour had ended, he gave a clear and unequivocal account that Fallon and Crowcroft came back to the camp and made admissions to not only seeing violence, but participating in it:

“Later that same day, the exact time I do not recall, I recall Pte Fallon and Pte Crowcroft brag about assaulting detainees at QLR Main by means of a practice called ‘the choir’. The choir involves arranging detainees in a group and punching different individuals in the stomach so that they make a cry or groan. Every groan/cry would be of a different volume or pitch like a choir going up and down scales”.

140. Hill’s ability to stick by that account has been inconsistent. He repeated it in the same terms in examination-in-chief during the Court Martial:

“Q. Did you hear either [Fallon or Crowcroft] say anything about what I am going to call their experiences that day?  
A. They spoke about the choir.  
Q. What did they say about the choir?  
A. Just saying – that they were doing the choir, hitting people in the stomach and noises –  
Judge Advocate: You say they were doing the choir, yes.
Q. Hitting people – hitting people in the stomach did you say?
A. Yes. And they make noises, different pitch noises, which is why it is called the choir.500

141. However, under cross-examination, he yielded for the first time, saying "They talked about the Choir; I did not imply that they actually took part in the Choir."501 His written Inquiry statement then referred to them admitting to witnessing the Choir rather than taking part in it.502 He would tell the Inquiry in his oral evidence that he remembered the two men talking about the Choir, but he could not remember them saying they participated in it.503 Yet, he also accepted the truth of the original statement in the following terms:

"Q...That's what you told the Royal Military Police, isn't it?
A. Yes.
Q. That's the statement that you signed to as being the truth?
A. Yes.
Q. And it was the truth, was it?
A. Yes."504

142. In any respect, Hill’s evidence undermines the suggestion of Fallon and Crowcroft that they never witnessed any physical violence towards these detainees at all. Taken together with the additional evidence below, it is likely that his first account is the correct and truthful one (as he says). Other evidence from members of c/s 30A that they heard of no such evening conversation about the day’s events is suspicious.505 The evidence of Woods is especially open to concern. On Fallon and Crowcroft’s own account they had been involved in an 8 hour guard duty in which they were required to keep the prisoners in stress positions and hooded, and during which time one of them had lunged at Fallon.506 That they did not return to Camp Stephen and (at least) tell their multiple about those events would be unlikely. Fallon and Crowcroft both tried to say that they returned to base and had no

500 CM 59/159/24 to 160/14.
501 CM 59/166/23-25.
502 BMI00147 [34] ("I do not remember the detail of that conversation except that they had witnessed 'the choir' taking place").
503 BMI 16/160/2-8.
504 BMI 16/158/2-9.
505 See for example Altree BMI00005 [20], Strong BMI00387 [12], Broadbent MOD005057, MacMillan BMI06216 [53].
conversation at all about what had gone on.\(^{507}\) This was despite the fact that Fallon had said in his police interview that “Everybody asked what we had been doing”.\(^{508}\) For the two men, no conversation of any kind took place. However, according to Woods’ original SIB statement, he specifically recalled a detailed account by Fallon and Crowcroft on that night including giving the detainees water and medical checks, albeit where none of the above conduct was mentioned. Woods also positively suggested that the men had said that “they sat the detainees down around the edge of the room”.\(^{509}\) Woods is a soldier who Hill named as being present at the drop off at BG Main on the Sunday morning. He also said that he was present during the evening discussion with Fallon and Crowcroft where they admitted to being involved in violence.\(^{510}\) Woods is also the person who Lee originally recalled as being Lance Corporal ‘H’. Amongst other things, Lee said that he had his own video inside the TDF.\(^{511}\) After the death of Baha Mousa, Lee describes Corporal Woods as telling members of the multiple “to all say the same thing, which was that we simply handed the detainees over in the TDF and that nothing happened”.\(^{512}\) Woods denies all these matters, but the content of his statement to the SIB reflects the very type of stance that Lee says Woods was pressing upon the other members of the multiple.\(^{513}\)

143. Although the victims do not regard Crosbie as a witness of truth in other respects, he admits to coming to an Intelligence O Group meeting that (given the rest of his account) must have been at 1800 on the Sunday. After the

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\(^{507}\) Crowcroft BMI 22/ 83/15 to 85/14 and 102/12-18 and Fallon BMI 22/126/3 to 130/8 and 172/10 to 174/2. Although Fallon and Crowcroft may no longer have shared a room at this time with Lee (BMI 22/18/13-20), they did share a room with Hill (BMI 22/18/4/25 to 185/4).

\(^{508}\) MOD019767.

\(^{509}\) MOD001415 and MOD001708.

\(^{510}\) MOD000271.

\(^{511}\) Lee BMI02067 [46].

\(^{512}\) BMI02608 [48].

\(^{513}\) The one collateral issue relating to Pte Lee that the victims do regard as important to engage with is the suggestion by Crowcroft that Lee pointed a gun at him prior to these events (BMI02563 [162-168] and BMI00427 [43-6]). Aside from being denied by Lee, it is difficult to see how the multiple would not have used that event to get rid of a soldier who was regarded as a dangerous liability (BMI 19/127/11 to 128/12). The way this serious allegation was dealt with leads to uncomfortable conclusions either way. On the one hand it has just been made up by Crowcroft, with the support of Woods. Alternatively, low level informal dispute resolution was how such matters were handled within the companies, whereby serious misconduct would not get reported up. Crowcroft and Woods effectively admit that this is how the complaint against Lee was handled (Crowcroft BMI 22/102/22-25 and Woods BMI 32/215/6 to 216/10). If the failure to report the illegal use of a weapon by a soldier resulted in Lee going unpunished, it is difficult to conceive of people being willing to come forward to give statements about the misconduct of fellow soldiers against Iraqis.
meeting he went into the TDF (he says to check on the old man and the boy). At that point he saw soldiers who told him "we have the Choir boss", and then proceeded to tap each detainee on the back with his toe or the inside of his foot, "and each made a quiet noise or groan in response". Though the detail of the account is almost inevitably understated, this is the event that is likely to have been seen on the Sunday, because the third detainee (Ahmed Maithem) was not yet in the left hand room. If it did happen on the Sunday, then it happened just before the handover to the Rodgers' multiple.  

Similarly, if Stokes has the correct timing for his account that the shorter of a pair of young soldiers guarding at the TDF on Sunday afternoon kicked a detainee held outside the TDF in the face, the prime candidates for the guarding pair would be Fallon and Crowcroft (with Fallon, as the shorter, the assailant).

144. Seventh, Crowcroft confessed his involvement in additional violence to his Company Sgt Major in Cyprus in November 2005. The crux of how that evidence has progressed over time is similar to the evidence of Pte Hill. WO Urey made a clear allegation in his SIB statement given 11 days after the event in question. While Crowcroft was drunk in a bar in Dhekelia, Urey had told him that he had nothing to worry about in relation to the impeding prosecution and Crowcroft replied, "Well we have got something to worry about 'cause we all kicked him to death". Urey immediately chastised the soldier and later summoned him to his office explaining that he had put him in a moral dilemma and that he was bound to report the words said. However, when he came to give evidence at the Court Martial, Urey said (of his own volition) that he took the above words to mean "that if everybody thinks he is guilty, then he must be guilty". During cross-examination, he then accepted that it was "possibly" the case that what was said to him was words to the effect of, "With the way things are going, we might as well have kicked them to death because everybody assumes we are guilty anyway". That is not the concession that WO Urey was prepared to make before the Inquiry, specifically preferring the account he gave in his statement two weeks before

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514 BMI03968 [31-33] and BMI 19/2011/11 to 213/13.
516 MOD000054.
517 CM 48/49/16-17.
518 CM 48/56/5-15.
the event. There can be no room for doubt as to what he heard in the night club from the following exchange:

"Q. Is it right that in that club on that night you got angry because a junior soldier thought it was okay to confess a crime to you and he imagined you would just do nothing about it?
A. Yes.
Q. And you knew fine well that he was confessing his part in a crime to you, didn't you?
A. Yes.
Q. So, doing the right thing and having the courage, you went to the sergeant major?
A. Yes."

145. As to his equivocation before the Court Martial, Urey accepted that it was not pleasant to have to give evidence against a soldier in his own regiment. In that respect it was possible that he had qualified his Court Martial testimony as a result of the pressure of doing so. Given that recognised pressure, the fact that Urey has sought to confirm his original statement to the Inquiry would tend to show that it is a reliable account.

146. Finally, Fallon and Crowcroft were present upon the arrival of the Rodgers multiple just before 1900 and were, at least, complicit in the violence that took place at the handover. The victims deal with this event in more detail below. For present purposes, several of the Rodgers' multiple suggest that the detainees were already physically injured by the time that they arrived, and that Fallon and Crowcroft were complicit in a series of assaults that then took place. Cooper states that they were told by the previous guard that the detainees had been roughed up, and that they were to give them a slap if they got out of line. He confirmed that the people who told him this were Fallon and Crowcroft. He also said that Fallon and Crowcroft were involved in the first mass-beating carried out by the Rodgers multiple upon their arrival, although he would subsequently equivocate to the extent that he was clear that they were in the room when the punching was going on, but he could not say whether they threw any punches. In his SIB statement

519 BMI101601 [33].
520 BMI 17/62/4-16.
522 BMI04356 [90] and MOD000192.
523 BMI 29/24/5-17.
524 BMI 29/100/16 to 104/2.
525 BMI 29/116/8 to 117/4.
Reader said that he saw either Fallon or Crowcroft "poking" one of detainees who was already nicknamed ‘Grannad’. He also said that he noticed injuries on the man nicknamed “Bruise” and another nicknamed “Young Guy”, although in his oral evidence he could not be 100% certain as to whether he saw the specific injuries when he arrived or later. However, he confirmed that the conditions and injuries to the detainees were essentially obvious to him from the time he entered the TDF at 1900. There could be no doubt that they had already been beaten up; and the environment they were in was obviously inhumane. Fallon and Crowcroft, even if not responsible, must have known this.

147. Allibone confirmed that the previous guard was present when the Choir was first shown to him. Of the two unknown soldiers seen by Allibone at this point, one (said not to be Fallon) was seen to punch a detainee. Appleby said in his original SIB statement that Fallon and Crowcroft were present when the multiple first arrived and Payne was beating the prisoners. Although he could not remember them being there now, he would not have put it in his statement if it were not the case. Rodgers also described Payne showing him a man, probably D003, who had an injured torso, although his explanation that Payne told him it was a pre-existing injury is patently untrue. The victims are understandably less willing to accept the veracity of these witnesses, given their own culpability and almost complete failure to admit it. At the same time, witnesses like Cooper and Reader went to much greater lengths to give truthful evidence to the Inquiry than they did before the Court Martial, and in that respect, their allegations against Fallon and Crowcroft bear more weight.

526 MOD000202. He repeated this evidence to the inquiry at BMI 28/136/22 to 137/19.
527 MOD000202 and BMI03392 [30] to [35].
528 BMI 28/140/17-20. See also BMI28/204/10-23.
529 BMI 28/185/10-21.
530 MOD000135 and MOD000139.
531 MOD000136, CM 30/86/17 and 31/26/10. See also BMI 24/151/21 to 156/20 and 187/10 to 190/21.
532 MOD000171-172.
533 BMI 25/28/7-16.
534 MOD000220 and BMI 30/30/14-19.
Conclusions on Stacey, Fallon and Crowcroft

148. Clearly, Stacey, Fallon and Crowcroft alone were not responsible for all of the violence towards the detainees before the Rodgers multiple arrived. It is highly likely that others, notably Payne, were primarily responsible, but these soldiers were not merely present, but acted as a guard to prevent escape and to disable any efforts at self-defence. Their complicity in the full abuse, not just the conditioning, was active. They would also have been present when other unauthorised entrants came into the TDF on the first day (for which see the next section). The suggestion by Fallon and Crowcroft that one of the detainees tried to rugby tackle them in the afternoon is open to question.\(^{536}\) The situation in the TDF would have justified a considerable use of force in self-defence in order to repel the attacks, but none of the detainees accept that it happened. The key witnesses that recall the ‘rugby tackle’ event would seem to have an interest in maintaining it, for instance Payne and Slicker (who suggests he entered the TDF to assist).\(^{537}\) Crowcroft and Fallon have both added details to the event over the years, including that the detainee was inciting the others to escape and that the interpreter was present at this point.\(^{537}\) This would suggest that either the fact is made up; or if something happened, it has been blown out of proportion by the soldiers in order to justify the far greater violence they were inflicting.

149. One feature of the Fallon and Crowcroft joint narrative is particularly unbelievable, namely that they are two of the very few people who deny any knowledge of the rumours about Dai Jones and/or the RMP killings being connected to these detainees.\(^{538}\) That is particularly suspicious, given that Stacey accepted that this was a widely circulated rumour,\(^{539}\) Peebles has given evidence that he briefed them to that effect,\(^{540}\) and that others who saw violence on this first day were told about that suspicion.\(^{541}\) The denials of the

\(^{535}\) Crowcroft BMI02558 [131-6] and Fallon BMI02588 [30-1].
\(^{536}\) Payne BMI 32/109/8-19. Slicker gives a hugely unlikely account of the event at BMI01859 [27]. See also Rodgers giving a highly suspicious explanation of this account in the context of seeing an injury to a man in a green shirt: MOD0000220 and BMI 30/33/17 to 34/14.
\(^{537}\) Crowcroft MOD020309 and MOD01871.
\(^{538}\) Crowcroft BMI 22/13/15 to 14/12, 74/18 to 75/5 and 77/13-16 and Fallon BMI 22/152/7 to 153/4.
\(^{539}\) BMI01553 [14] and BMI 21/140/4 – 21/141/14
\(^{540}\) MOD018824-5, CM 81/53/7 to 54/20, CM 82/165/15 to 167/10, BMI 40/64/20 to 97/21.
\(^{541}\) Ellis BMI02466 [46] and [55] and BMI 49/58/18 to 39/7, Stokes BMI06146 [18] and BMI 43/184/7 to 191/21, Woods BMI00423 [27]. Lee MOD0000260, CM 50/4/3 and BMI02602 [31].
guard on this issue, would tend to suggest that they are uncomfortable about revealing their knowledge of a matter that motivated their own actions and the actions of the others.

150. Although Stacey may be in a position to maintain that most of the above evidence does not implicate him, his major fault is that he was there at the beginning, participated in early violence, and must have known that he was leaving these two younger soldiers in a compromised position. His responsibility bears analogy with Craig Rodgers and his improper leadership of the follow-on guarding multiple.

Unauthorised entry during the day

151. In this first part of the abuse, the victims submit that there was unauthorised entry into the TDF by people who deliberately came to hurt them. The evidence below indicates the extent to which involvement in the abuse was far wider than the actual guards. That may explain why Fallon and Crowcroft have never been able to admit to the whole story. If they did so they would invariably implicate others, some of whom they still serve alongside. It may be that those others would also implicate them.

Allibone, Mackenzie, Bentham and Kenny

152. Allibone, Mackenzie, Bentham, and Kenny were all involved in dropping off the detainees at the TDF on the Sunday morning. Crowcroft recalls them being present, at least outside the building. Three of these men belonged to the ‘brick’ led by the recently disgraced Pte Fearon. Mackenzie was one of the soldiers who admitted to guarding the detainees in the toilet at the Hotel at some point soon after Fearon’s crime was revealed. During his oral evidence before the Inquiry, Stacey was understandably pressed on what he meant in his original SIB statement by the words, “I had tasked my multiple to keep the other soldiers away from the detention building”. He would

Payne BMI101716 [100], G Hill BMI 16/181/13-19, Huxley BMI 23/20/25 to 22/2, Roberts BMI101201 [55].
1542 Allibone MOD000134, BMI22/212/25 to 213/14, Kenny BMI03560 [33], Bentham BMI 41/68/6-24 and Mackenzie MOD0000111 and BMI 29/144/21 to 145/10.
1543 BMI 22/16/13-23.
1544 MOD020306 and BMI 21/174/15 to 178/15.
repeatedly refer to “other soldiers from Anzio Company” who had escorted the detainees. Each of these “other” Anzio soldiers who went to BG Main denied any wrong doing at this time, when they gave evidence to the Inquiry. Mackenzie in his SIB statement had called the TDF the ‘conditioning building’ from the first time he dropped the detainees off, but otherwise only Allibone gave any detail as to what went on there at this stage. In his SIB statement Allibone noted that “This was my first dealings with detainees and I had received no briefings or training, I was copying Pte Bentham and doing as he said”. Slicker, who may well have been involved in assaulting the detainees when they first arrived, recognised members of the Rodgers multiple. One of the soldiers that D004 identifies as beating him immediately after he was placed in TDF was Private Bentham. He was only inches away from his face so he was able to see him. He punched him to his stomach and the blows knocked him against the wall and, on one occasion, to the floor. The other soldier identified by D004 at this time is a man with moles on his face and neck. He punched him in the face, kicked him in the stomach and on one occasion hit his head against the wall. This very specific description of a man with moles matches Pte Allibone. D004 has thus identified two men from c’s 10A who were at BG Main on the Sunday morning. During his oral evidence to the Inquiry, Allibone’s answers on this part of the day were not convincing:

“Q. Going to BG Main, you weren’t asked about the fact that you were part of the group that dropped the prisoners off at BG Main in the mid-morning.
A. Yes.
Q. Were you involved in going into the building with them then?
A. I don’t know.
Q. There are accounts that suggest a man who has your description was involved in beating people then. Did you do anything then?
A. No.
Q. Did you see any beating then?
A. I’m not sure.
Q. Did you see them with hoods on then, in that morning?
A. I believe so, yes.”

546 MOD000111 and BMI 29/212/24 to 213/22.
547 MOD000134.
548 MOD004804 and MOD000899 (albeit that he would say that he saw Rodgers and Redfern at this stage which could not have been the case).
549 BMI02030 [28] and [34].
550 BMI02023 [29] and [35].
551 BMI 24/212/12 to 213/14.
Slicker

153. One soldier who admits to making multiple unauthorised entries into the TDF, including on two occasions when he assaulted the detainees, is Lance Corporal Slicker. This was a soldier who spent the first half of the tour working with the medics as an ambulance driver and the second part of the tour working in the stores under Colour Sgt Huxley. In a subsequent character reference produced when Slicker pleaded guilty to summary assault proceedings arising out of these events, Huxley would describe him "as a dependable and valued member of the team". According to Rodgers, Slicker and Payne were good friends. By his own reasoning, Slicker's assaults were motivated by a personal sense of seeking "justice" for Dai Jones who had taken his place in the ambulance that was blown up. Additional justice was sought for the RMPs. "It was just revenge, that's all".

154. From his position of working in the stores that were located opposite the TDF, Slicker had heard noises of detainees screaming and crying on previous occasions. He would hear them again on the day that these detainees were brought to BG Main. In relation to the first of his two assaults, he sought to suggest that he hit a man who was attempting to escape. Slicker's description of this detainee (including age, beard, 'rough look' and his certainty that this was not the man who later died) is questionable given that the man was hooded. The suggestion that "there was one soldier there and he was alone and was shaking and nervous" is not sustainable. A more likely scenario is that Slicker, along with others from Anzio Company, and Payne was in the TDF in the first twenty minutes, terrorising the detainees. Whether it was true or not, Slicker told the SIB in his interview that there was a rumour that the CO had informally authorised violence against the detainees. Even if this were not true, the likelihood that soldiers perceived that they would not
get into trouble for this kind of activity (with the CO already back on the base from Operation Salerno) is obviously apparent. According to Slicker's SIB statement, noise would continue for two hours thereafter.

155. A second assault is admitted by Slicker as taking place when he saw Lt Rodgers. If he did see Rodgers, this can only have occurred in the evening of the first day, or the earlier morning of the second day. He suggested in his interview that he was inspired by Rodgers' conduct suggesting "see a cat do it and a mouse does the same". Another occasion when Slicker was seen to assault the detainees was the afternoon of the third day (during which time Rodgers was definitely not at BG Main). It was witnessed by Hughes on the afternoon of the second day (who identified Slicker as Male 5) and formed the main basis of the summary proceedings. In Slicker's account this is his 'second assault'. It is dealt with below.

Huxley

156. The highest ranking soldier in command at the nearest company location to the detention block when the detainees were there was the CQMS, Acting Colour Sgt Huxley. He accepted that throughout the two days he would have been in and around the stores. That was where his daily job kept him. That was where he was, everyday, "quite a lot of the time". Payne, Slicker, and Stout, all of whom worked in those stores, accepted that the noise of beating the detainees that came from the TDF could be heard from outside. Huxley denied hearing any noises, and unlike several of his other staff who gave evidence to the Inquiry, states that he heard no rumours that the

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561 The logs show that the CO's TAC team was back at BG Main at 09:09 and did not arrive at Brigade HQ until 12:54.
562 MOD000700.
563 BM101860 [28].
564 MOD0006263.
565 MOD000077 and MOD000721-722.
566 BMI 23/48/19 to 49/4.
567 BMI 23/8/16-21, 22/12-14.
568 BMI 23/39/4-5. Stout said he was there "the majority of the time" (BMI05203 [26]).
569 Payne BMI 32/138/3-18; Slicker MOD000698-700, MOD0004802, CM 47/11/7-25 (Cf. BMI 21/66/5 to 69/20); Stout BMI05200 [13-15] and BMI 32/204/11-13. See also Quegan BMI00206, and BMI32/204/11-13, Brown BMI00454 [38], Livesey BMI00673 [33], all of whom lived in the accommodation block above the stores.
detainees were being beaten.\textsuperscript{570} Two of Huxley’s staff pleaded guilty to assaulting detainees in the TDF, both of whom he accepted were friends. He sought to distance himself from both of them. Although Payne was working in the stores part time, and others would confirm this, Huxley would deny it.\textsuperscript{571} Although he gave a reference for Slicker, saying the event was out of character, he denied any knowledge as to why Slicker had justified his offence. For Huxley, the death of Dai Jones had not had a problematic effect on the unit, and Slicker did not have a near-miss involvement in the event. There was no sense that Slicker’s so-described motivation to obtain justice was recognised by Huxley.\textsuperscript{572} He did accept going into the TDF on one occasion (“I just went over to the toilet and I just popped my head in”\textsuperscript{573}), but he saw no injuries and no violence. This was an account calculated to distance the witness as much as possible from events and people that he was in a primary position to know something about.

157. There are three pieces of evidence to suggest that Huxley was involved in violence. The first is that Pte Aktash, a signaller from 209 Squadron, says Huxley admitted so to him.\textsuperscript{574} In his original meetings with the Mirror newspaper, Aktash would refer to the CQMS as “a horrible bastard who beat up people who worked for him” and who had admitted beating “seven kinds of shit” out of one of the detainees after the event. According to Felton, who did work for Huxley, he was beaten by him to the extent to which he was hospitalised at the end of the tour with perforated eardrums.\textsuperscript{575} Huxley did not dispute the hospitalisation or the diagnosis, but said that Felton had told him it was caused by “play fighting”.\textsuperscript{576} There was no reason, to Huxley’s knowledge, why Aktash would have any reason to lie about him.\textsuperscript{577}

158. The second piece of evidence against Huxley is that some time on the first afternoon of the detention, Daniel Ellis saw him and another Staff Sergeant entering the TDF and abusing the detainees. There were others, but these

\begin{footnotes}
\textsuperscript{570} BMI 23/38/11 to 39/16. Cf. Slicker MOD004852, Stout BMI05200 [12] and Briscoe BMI 43/103/25 to 104/4 and 166/17-20 (referring to discussion about Payne being attached to the CQMS).
\textsuperscript{571} BMI 23/49/6-16. C.f. Payne BMI01734 [68], BMI 32/155/11-20, Stout BMI05201 [17].
\textsuperscript{572} BMI 23/51/4 to 53/14.
\textsuperscript{573} BMI 23/23/15.
\textsuperscript{574} BMI 03485 [53].
\textsuperscript{575} BMI00841 [37] and MOD046700-701.
\textsuperscript{576} BMI 23/54/10 to 55/13.
\textsuperscript{577} BMI 55/54/14-19.
\end{footnotes}
two were the highest rank. He thought both of them were from the stores. They said that the guard were not to give the detainees water because they did not deserve it: “The two of them were stocky one in a muscular sort of way and one was chubby.” 578 He positively identified Huxley. 579 He thought the other one could be Sgt Zyda, but he was careful to emphasise his uncertainty about the second identification. 580 One of them, although he could not be sure which, punched a detainee in the ribs. Corporal Payne was also in the TDF and Ellis saw him punching prisoners. 581 The timing of this event bears an element of doubt, because Ellis suggests he transported “two detainees” to BG Main as the driver straight from the hotel. 582 Given the number of detainees and the Saxon vehicle he was in, it would be more likely that he describes either transferring D003, or D005 and D006 from Camp Stephen at noon or in the mid-afternoon. 583 He was able to exclude the possibility that he was working with 1 Platoon, because he recalls relieving them at BG Main and they came back in the evening. 584 He describes the detainees, correctly for this time, as being “placed in stress positions up against the wall with their hands out and with their knees bent at 90° although he says, incorrectly, that they were not hooded. 585

159. The third piece of evidence against Huxley comes from the description of someone who said he was a “stores sergeant” in the TDF on the second day given by Pte Anthony Riley, who saw the man screaming at the detainees and kneeling the one known as Granddad in the back. The soldier was in his mid to late 30s, stocky and overweight, about 5ft 8ins. 586 That description matches Huxley. The soldier told Riley that he had worked in Provost in Northern Ireland. Huxley had not done that, but he had been involved in

578 BMI05459 [64-65] and BMI 45/62/21-25, 72/2 to 73/17 and 75/10 to 77/15.
579 Huxley has served a discrete rebuttal statement in relation to this allegation: BMI0898.
580 BMI 45/73/18 to 75/9.
581 BMI 45/79/8 to 80/12.
582 BMI05457 [48-55].
583 This would accord with the fact that he thought that he was driving with either 2 or 3 Platoon on the day (BMI05456 [43]).
584 BMI 45/40/6 to 41/16.
585 BMI05459 [62]. Ellis suggested that he saw other more junior soldiers punching detainees, but he was unable to name them. This was somewhat in conflict with his comment that within Anzio Company, “we were all friends, so we knew each other” (BMI 45/58/22). It may be that by his own admission he now felt more comfortable naming the higher ranks than the junior ones, even if he was certain about their identity (BMI 45/100/14-19).
586 A Riley MOD005725, MOD005929, CM 49/53/16, BMI0600.
running a guard for police stations and Riley may have misunderstood him. 587 Corporal Schofield also gave a description of a man who he saw assault a detainee who was a “large-built soldier, dark hair, approx 5ft9, wearing desert combat and t-shirt.” He believed he was from the Quartermaster’s department. 588 Just before giving evidence, Schofield was shown a photograph of Huxley taken some time after the event by Huxley’s legal team, which he said did not resemble the person he saw. For reasons of the passage of time and changed appearances that would not have been a reliable forensic exercise. 589 The significance of these sightings of someone who matches Huxley’s description on the Monday afternoon is that Slicker was also seen by Hughes assaulting a detainee on the same afternoon.

Roberts

160. Staff Sgt Roberts, the CO’s bodyguard and Regimental PTI, was repeatedly seen at the TDF over the two day period. Lee placed him at the scene when the detainees first arrived. 590 He saw him come out of the TDF and say that the detainees were being beaten. 591 Felton, who may have been in the TDF close to the initial arrival, said that he saw Roberts demonstrate to other guards how to hit the detainees with karate type chops, so as not to mark them. 592 Slicker refers to an event where the Rodgers multiple were present, during which Roberts was seen to strike a detainee. 593 While this could have been on Monday night, it might also have been at the very beginning of the detention where members of the multiple were present (but without Rodgers). By reference to the logs, Roberts would have been at BG Main at the time. 594 There are also allegations against Roberts at the TDF on the second day. Redfearn said that he saw him visiting in the morning. 595 Graham saw him

587 BM101689 [4].
588 MOD00012596 and BM1000374 [57]. This description (save height) could match Slicker. Huxley had light hair.
589 BM 18/200/16 to 201/10 and BM 23/46/17 to 47/17. See Huxley’s description of his appearance in September 2003, where he said his hair was “short” (BM101693 [21]). The photograph of Huxley that was put to Schofield had been taken the previous week.
590 MOD000262.
591 CM 50/43/21 to 44/6.
592 MOD046697.
593 BM101857 [19-21].
594 The logs show that the CO’s TAC team was back at BG Main at 09:09 am and did not arrive at Brigade HQ until 12:54 pm: MOD016019 and MOD016573.
595 MOD000181 and 193 and BM101801 [124].
kicking a detainee before he left at lunchtime.\textsuperscript{596} Aspinall believes that he came to the room at some point on the second day. He made one of the detainees kneel and gave him a karate chop to the neck.\textsuperscript{597} That event was described by Aspinall in his oral evidence:

"I remember at the time I think Graham might have been with me and we looked at each other as though to say, "God, that was -- that was pretty bad". And I remember I was quite worried at the time because he fell to the floor and I thought, my God, I hope he's not broke his neck."\textsuperscript{598}

161. Roberts may also be the Sergeant described by Stokes. Stokes says he saw a detainee kneeling outside the TDF on the Sunday afternoon who was then kicked in the face by a Private soldier in the presence of another soldier. When he challenged this, he was met in an aggressive manner by a third soldier, a Sergeant, who confirmed the Private's explanation that the detainees had killed Dai Jones.\textsuperscript{599} The descriptions are admittedly broad, but the two younger soldiers could be Fallon and Crowcroft, and the description of the Sergeant appears to fit Roberts, who would have been coming and going from BG Main at various points during the afternoon.\textsuperscript{600} Whilst none of the detainee witnesses to the Inquiry recall the event described by Stokes, there is, of course, no account from Baha Mousa or the Garamsche detainee. Private Royle does not support Stokes' account, but there are inconsistencies in his own evidence.\textsuperscript{601}

162. Roberts accepts that he went into the TDF to speak to Payne on one occasion. His account that it must have occurred on the Monday does not accord with the explanation for his visit, namely that Sgt Smith was taking detainees to Um Qasr and he wanted to find out when Payne would be available.\textsuperscript{602} That situation could only have arisen on the Sunday. If Roberts went into the TDF on the Monday, the scene that he would have discovered

\textsuperscript{596} MOD000152.
\textsuperscript{597} BM105226 [62].
\textsuperscript{598} BMI 28/678-13.
\textsuperscript{599} BMI06144 [12-20], BMI 43/181/25 – 43/191/21.
\textsuperscript{600} The logs suggest that the CO's TAC team would have left BG Main for Brigade shortly before 12:54 (MOD016573), returning by 15:18 (MOD016575) and then leaving again at approximately 16:11 (MOD016575). The description of the Sergeant is that he was about 5ft 11, thin or 'not hefty' build, clean shaven, blond hair, and in a smartly kept uniform.
\textsuperscript{601} BMI06873 [13-27]. Pte Royle maintains that he only ever delivered one detainee to BG Main, but there is a witness statement from him in connection to Op Border which deals with the arrest and delivery of two detainees (MOD054621).
\textsuperscript{602} MOD004679 and BMI01202 [60-66].
would have been terrible, a fact that is attested to by a range of independent witnesses who saw the detainees on the second day. The real reason why Roberts went to the TDF on apparently more than just one occasion could have been because he believed that the suspects were connected to the recent murders. He was deeply affected on a personal level by the deaths of the RMP soldiers, telling the SIB in interview that he arrived on the scene within minutes and pulled bodies from vehicles. He accepted that he knew that these detainees were suspected of that attack.

163. The fact that Roberts has been repeatedly named by people as being present and involved in assaults gives rise to two possible conclusions. Either people have (wrongly) named him in order to gain some false mitigation that the CO knew, or they were entitled to assume that he knew, because his bodyguard was repeatedly around. Alternatively too many people have named him, in too many time periods, to make this a simple conspiracy to blame the bodyguard. If it is true that there was a rumour afoot that the CO had authorised violence against these detainees, whether he did that or not, the repeated presence of his bodyguard in the TDF would have had highly damaging consequences in influencing other soldiers.

164. The victims submit that there are important reasons why the Inquiry should grapple with the weight of this evidence. Roberts and Huxley, along with Payne, were senior non-commissioned officers. Huxley and Payne had been members of 1 QLR for a long time. All three had a capacity to influence attitudes within the Regiment and there are good grounds to conclude that they were aware, if not involved, in the violence that occurred on these days. They may also have taken steps to force people to ultimately close ranks and edit evidence that was initially given to the SIB. After the death, Felton alleges that Roberts came to him after the event to urge him not to name him as being present. In due course Huxley would threaten Felton not to name Roberts. Roberts himself was asked to leave 1 QLR after he returned from the tour because of the suspicions hanging over him. That was a serious decision at that stage, when he had been arrested and not charged. It may

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603 MOD004872.
604 BM101201 [55]. See also BMI 20/135/17 to 136/7.
605 BM1000837 [26]. See also Felton BMI 17/82/22 to 97/2.
606 BM1000840 [35].
607 BM101206 [79].
have been felt that his position as PTI was incompatible with the allegations that soldiers within the Regiment had made. No one else under suspicion would be dealt with in this way. Without being able to look into the full background of characters like Roberts and Huxley, there are at least grounds to suspect that they were a malign influence on this Regiment.

Other visitors from more senior chain of command

165. Aside from Major Peebles and Lieutenant Rodgers who would be more directly involved in these events, four officers admit to going into the TDF on the first day. Each of them saw some form of conditioning, but have probably not been entirely truthful about what they saw. Each of them, although officer rank, waited for the SIB to contact them rather than contacting the SIB themselves.

Crosbie

166. Lieutenant Crosbie’s conduct is open to the most serious criticism. A TA officer, he is likely to have been involved in wrong doing when the detainees were in the toilet at the hotel and when D005 was diverted to Camp Stephen. His failure to come forward to the SIB or his chain of command and describe his dealings with Baha Mousa’s father at the hotel, as well as Baha Mousa (as he believed at the time) is suspicious in itself. His lack of attention to the welfare of the detainees earlier in the day would render it highly unlikely that he is telling the truth that he went to the TDF on the Sunday afternoon to check up on the welfare of people he had been involved in detaining. Certainly he appears not to have worried about the fact that detainees in the TDF were grubby and wet, “as if one has been jogging for a long time”. His suggestion that no one was hooded on the Sunday afternoon does not accord with anyone else’s evidence about that time. Indeed Fallon admits that the detainees were all double-hooded. The demonstration of “the choir” that Crosbie admits to being given, but describes as a light “tap” to detainees, was

608 BMI 20/143/1-11.
609 MOD07116-7, MOD011783.
610 BMI 19/204/1-2.
612 BMI 19/204/5-8, BMI 19/207/2-11.
613 BMI02588 [25].
almost certainly not what it was. The inference to be drawn is that the guard felt sufficiently comfortable to degrade a detainee in front of this officer. Either way, he accepts that he should have reported it (especially, one might argue, once he discovered in a subsequent Intelligence O Group that detainees had been placed by the generator). Crosbie was an obviously nervous witness. Attendance notes of the SIB indicate that he avoided making contact with them when they tried to meet with him.

*Ingram*

167. Lieutenant Ingram was in the hotel during the arrest and may well have witnessed some of the low level violence used upon the detainees while they were on the floor. By his own admission he entered the TDF in a situation where the detainees were hooded and in stress positions, but “whilst some of the men appeared to be in some distress I did not think they were in complete agony so did not intervene to correct their treatment”. A soldier punched one of the detainees in the ribs in front of him. Ingram says he did no more than to rebuke him. In 2005, he defended himself in an interview under caution by the SIB on the charge of neglect of duty by indicating that the matter was reported to Peebles. Although this is possible, a far more likely scenario is that the officer by this time did not regard himself as needing to say or do anything about such low level violence. The context involved him failing to take the details of the people arrested while they were still at the scene. Even after the death of one of his detainees he did not take steps to contact his chain of command or the SIB about the incident. His suggestion to the Inquiry that he did not know the death of Baha Mousa was linked to this incident must have been a lie. He was the crime officer of Anzio Company.

614 BM103969 [33], BMI 19/209/12 – 19/211/9.
615 BM103969 [34], BMI 19/212/23-5.
616 BM103970 [36].
617 See SIB log at MOD007116, MOD007117, MOD011783. The log entries suggest that Crosbie’s father refused to give the SIB his address, that he called the SIB but was reluctant to be involved, that he then failed to answer an email, and that his father then informed the SIB that he did not want to be involved. The fact that the SIB spoke with him directly (MOD007117) belies his claim that he thought the SIB were interested in a different matter (BMI 19/218/17 – 19/219/5).
618 MOD000784, BM00184 [46], BMI 17/167/2 - 17/169/20.
619 MOD000784, BM00185 [49], BMI 17/169/6 – 17/174/1.
620 MOD000785, MOD004969-4415, BM00186 [50], BMI 17/174/18 – 17/176/1.

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He knew which detainees related to this incident.\textsuperscript{622} He appears to have had discussions with Lieutenant Crawford about this and other concerns much closer to the time.\textsuperscript{623} Finally, Ingram’s evidence that the interpreter told him that the detainees were threatening him is also likely to be a lie.\textsuperscript{624} If it was not, he would surely have investigated that matter at the time, and also told Major Peebles about it, neither of which he did.\textsuperscript{625} If such threats were made, one assumes that other guards would have been told about them. Ingram’s failure of candour to the SIB and the Inquiry is a failure of someone who has since been to Sandhurst and is unwilling to jeopardise his army career.

\textit{The Padre}

168. The failure of the Padre, Peter Madden, to act upon what he saw tells the Inquiry something about the extent of the loss of moral compass within the Battle Group community in the face of conduct that was obviously immoral. He accepted at the Court Martial that he may have been present near to the TDF during the time when the Salerno detainees were at BG Main.\textsuperscript{626} This is confirmed by a number of soldiers who were present on those days.\textsuperscript{627} He originally told the SIB that he saw the detainees were in “forced” or “stress” positions. He said that he saw this and was told that it was necessary to prevent communication with one another.\textsuperscript{628} He apparently repeated the same explanation to lawyers who acted for Mendonca, however at that stage he added a further detail that the detainees were made to put their hands on their heads.\textsuperscript{629} At the Court Martial and before this Inquiry, the Padre sought to draw back from those accounts, saying that the detainees were squatting apparently of their own accord,\textsuperscript{630} albeit accepting that they were being shouted at while they squatted and told to stay apart.\textsuperscript{631} This evidence clearly downplays a previously clear account of conduct that he felt compelled to inquire about and was told was a ‘security’ measure. He advanced the same

\begin{footnotes}
\item[622] BMI 17/183/7 to 184/24.
\item[623] Crawford MOD005030 and BMI00090 [35].
\item[624] BMI 17/166/1-22.
\item[625] BMI 17/183/1 to 183/6.
\item[626] CM 56/25/2-8 and BMI00239 [34].
\item[627] As to the Sunday, see Stacey (MOD020306); and as to the Monday, see Rodgers (MOD003605-003608) and Aspinall (MOD000965 and BMI 28/65/3).
\item[628] MOD005025-26.
\item[629] MOD049666.
\item[630] CM 56/17/14 to 18/9.
\item[631] BMI 42/163/6 to 172/17.
\end{footnotes}
security rationale for the use of hoods when detainees were taken around base, which he also saw. He could not remember seeing people hooded inside the TDF. His explanation for accepting the soldiers’ explanation of stress positions was as follows:

“A. I mean you have got to sometimes question people, but also trust them that they are doing the right thing. I mean, the impression I got on that one occasion I do remember is that they were -- from what I was told, was they were being trouble, they were talking to each other, they were sort of not separating and, yes, they were told to -- that was the cause of the shouting.”

169. The Padre accepted that he had owed a moral duty to consider the welfare of the detainees, including making sure that they “were being fed, watered, [and] toileted”. Beyond his awareness and acceptance of the conditioning techniques, he must have granted the moral well-being of these detainee (“terrorist”) suspects very little consideration. That can be tested by the very basic point that he was the religious advisor to the Regiment based in a Muslim country and no arrangements were made for prayer and ablutions during the three days of this detention, or during any other detention. His presence around the TDF and on the base (without objecting) when these inhumane practices were carried out must have had the effect of influencing ordinary soldiers to believe that what they were doing was not morally objectionable. His failure to take the issue up with the chain of the command involves a neglect of duty on his own part, and again, would have served either to bolster their own sense that what they were allowing to happen was justified, or to provide them with a degree of moral cover in terms of explaining their actions to others. It remains possible that witnesses such as Stacey and Rodgers have lied about the presence of the Padre during these actual events. However, his movements and description of his normal practice would suggest that he was at least outside the TDF checking on the well-being of soldiers at various points while he waited for his lifts into town. If that be the case, then the Padre acted (willingly or otherwise) as a role model for consent. The evidence of Aspinall who saw him on the Sunday morning

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632 BM100239 [32]
633 BMI 42/165/14-21.
634 CM 36/31/18 to 32/1. See also MOD005025: “I ensured that there were sufficient water facilities nearby and that they were being fed the same food as ourselves, taking account of certain foodstuffs they did not eat due to their beliefs.”
635 BMI 42/169/15 to 152/2.
makes clear the scale of the problem in which the Padre allowed himself to become embroiled:

"And I just remember it because I thought, well, even the padre has visited and even he... is he going to say anything, and he didn't mention anything. So when people like that have come in of high authority you start to think, well, if I was going to report it who... is anyone bothered? I don't know. So that's why I was worried about reporting it." 636

After the death, Pte Anthony Riley reported his concerns about what he had seen in the TDF to Madden, who did not comment. 637

Seeds

170. Major Seeds visited the TDF on the Sunday during daytime hours. 639 This officer would act decisively when he saw the beaten detainees after the death, but he like others saw no problem in the basic conditioning techniques he witnessed in the room. He was speaking to the medic Goulding outside the building when he heard Payne’s voice inside. 638 He then went in and spoke to Payne. He saw prisoners hooded and kneeling in what he described as the "interrogation position", and appearing tired. 640 Assuming they were in the process of tactical questioning, he raised no concerns about what he saw, explaining that it was "nothing I hadn’t seen before" and that there was "no malice...nobody was trying to hide anything". 641 With hindsight, he accepted that what he saw was inhumane treatment and that had he stepped in, things might have been different. 642

Peebles’ conduct during the first day

171. Major Peebles was the Battle Group Internment Review Officer, seized with the responsibility of making the provisional decision as to whether they should be interned and sent to the TIF. The Inquiry heard evidence of a considerable
confusion between members of the chain of command as to how much the BGiro was expected to take responsibility for prisoner welfare. This is dealt with in Part V below. Regardless of that confusion, Peebles regarded himself as at least sharing in the responsibility for prisoner welfare. He had a "pivotal role" in relation to the detainees and an "oversight responsibility" to ensure their welfare and that they were not suffering ill-treatment.\textsuperscript{643} He would "coordinate and oversee" the handling of the prisoners.\textsuperscript{644} It was part of his "general function to ensure that the guards and Provost Staff were not going over the top".\textsuperscript{645}

172. Even on the first day of the detention in this case, Peebles must have known that the conditioning was going on for nearly eight hours before the start of the questioning, but he kept away from the TDF for very large parts of it. He says that he went to the building between 1500 and 1600 pm on the Sunday, in order to pick up a Garamshe prisoner who had been brought on the base separately by the CO's TAC team.\textsuperscript{646} His evidence was that nothing was happening at that stage. He claimed that he only ordered Fallon and Crowcroft to start the conditioning at 16.30,\textsuperscript{647} although the hoods would have remained on from the time of arrival, "it being pretty standard procedure to prepare them for questioning".\textsuperscript{648} Over his various accounts, Peebles' answers have been contradictory as to whether he had positively told the guard not to condition before then,\textsuperscript{649} although that is highly unlikely. Aside from being illogical, given that the theory of conditioning was predicated upon maintaining the 'shock of capture' in order to assist questioning, the contention that there was no conditioning for several hours is starkly in conflict with all of the above evidence of the conditioning and other forms of physical violence prior to that time. In all Peebles was to visit the TDF approximately 3 or 4 times on the Sunday, and three times on the Monday prior to the death.\textsuperscript{650}

\textsuperscript{643} BMI 40/17/9 to 19/1.
\textsuperscript{644} BMI 40/21/15 to 23/8.
\textsuperscript{645} BMI 40/48/13-17.
\textsuperscript{646} BMI 40/68/23 to 69/1.
\textsuperscript{647} BMI 40/77/17 to 79/2.
\textsuperscript{648} BMI 40/80/11 to 82/12.
\textsuperscript{649} MOD018645-6, BMI02733 [55], BMI 40/82/22 to BMI 40/86/9, BMI 40/173/2 to 40/174/3 and BMI 40/200/2-20.
\textsuperscript{650} BMI 40/69/1-2.
173. Peebles had replaced Major Royce during the tour. The latter was regarded as an influential figure in the Regiment. Peebles was not. He presented at the Inquiry as a man who was out of his depth, not ignorant of what was going on, but too invested in what he was doing to stop it. He expressed himself as “a little surprised when I saw conditioning for the first time, but assumed because we were in a high threat environment that it was probably what I ought to expect”. \(^{651}\) He described the use of sight deprivation as a mechanism of control, but “by default – they are disorientated”. \(^{652}\) His understanding of the stress positions were that it “fatigues the detainee and disorientates them to a degree and makes them more susceptible to questioning”. \(^{653}\) Both methods were used as a “prelude to tactical questioning”. \(^{654}\) On his first occasion seeing it, “it was not particularly pleasant to watch”. \(^{655}\) By the time of the Operation Salerno detention he would not have considered it inappropriate for hoods to be kept on for two days, although his answers to that effect in oral evidence suggested that he had closed his mind to the issue. \(^{656}\)

174. Peebles thus knew of all features of conditioning as described above. He understood those methods to aid the extraction of information during questioning, but he maintained he knew nothing of the other violence. However, a detainee with a bloody nose had been brought into the TDF as recently as 5 September, causing discussions with Payne and Major Englefield. \(^{657}\) In relation to these detainees, he expressed aloud within the operations room that he hoped that the guard did not go too far like they did last time. \(^{658}\) If Captain Ingram told the truth to the Inquiry, he informed Peebles at some time in the early afternoon that he had witnessed one of the guard punch a detainee in the ribs and a reprimand had been given. \(^{659}\) When Peebles did visit the TDF at 16:30, he says that he told the guards not to go “over the top”. By this he meant not to cause them physical injury or assault them. In that respect, he told the Chairman that he would not have regarded

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\(^{651}\) BMI02712 [18].
\(^{652}\) BMI 40/87-14.
\(^{653}\) BMI 40/152/13-21.
\(^{654}\) BMI 40/165/4-8.
\(^{655}\) BMI 40/165/11-15.
\(^{656}\) BMI 40/16/16 to 21/4.
\(^{657}\) MOD018624-25 and BMI02707 [35] and [61].
\(^{658}\) BMI 16/6/20 to 9/22, BMI03479 [32] to [35] and MOD000759.
\(^{659}\) BMI 17/174/18 to 175/21. Cf. Peebles does not accept this account, noting that he does not recall the officer or the complaint (BMI02730 [80] and BMI 40/133/16 to 134/21).
events on the TDF video as “going over the top”. They were “harsh” and “very close to the line”, but they did not involve physical violence. These interventions and comments were not made in the context of a one-off question mark about a ‘bloody nose’. The BGIRO was on notice of a risk of force drift beyond the authorised conditioning techniques. He knew, as others in the chain of command must have known, that infantry men untrained in specialist prisoner handling in any event were exhibiting a tendency to develop upon authorised forms of violence.

175. The admission of Peebles that he personally told Fallon and Crowcroft that these detainees were suspected of killing the RMP soldiers just days earlier was truly reckless (or as Counsel to the Inquiry suggested “highly irresponsible, to put it at its lowest”). Colonel Mendonca would accept in evidence that communicating such information would inflame a disposition amongst the soldiers to seek revenge. Peebles’ response to that suggestion indicates a mindset that rendered him incapable of protecting these detainees:

“Sir, they are responsible for dealing -- for looking after detainees, and they have a right to know. If anybody escaped or tried to escape, et cetera, they should -- you know, they should be aware of the type of people potentially they were dealing with.”

176. Responsibility for the substantial delay in the beginning of tactical questioning, although shared with Davies, must ultimately lie with Peebles. Under FRAGO 29, the role of the BGIRO was to make a preliminary assessment of whether a person posed a threat to the security of the coalition forces and, if so, send him to the TIF. The order said nothing at all about the use of tactical questioning to make that assessment. Assuming that an opportunity to conduct tactical questioning was being read into the order almost from inception, there was no right or power for a detainee to be held at BG Main once it was determined that they should be interned. Peebles came to that view prior to any of the detainees being asked a single question. Whether rightly or wrongly, upon their arrival he concluded this by reference

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660 BMI 40/203/14 to 204/15. The victims submit that they did, as a matter of fact and law, constitute serious assaults.
661 MOD018824-5, CM 81/537 to 54/20, CM 82/165/15 to 167/10, BMI 40/64/20 to 97/21.
662 BMI 40/65/15.
663 BMI 59/180/5-15.
664 BMI 40/66/22 to 97/1.
to the items found in the search: "My initial assessment was that this was a significant find....These were plainly not common criminals that we would arrest on the street." Discussions with Davies confirmed that "they were definitely involved in some sort of Anti-Coalition activity". The only query was whether the CPA licences to carry the weapons meant that they were working for the CIA. By approximately 1630, it was established that this was not the case. On that basis Peebles had reached a conclusion that they posed the requisite threat and the detainees should have been moved to the TIF there and then.

177. In Part V, the victims analyse how the FRAGO 29 system had given way to a form of Battle Group internment where ad hoc interrogation was allowed to develop. The dangers of such devolution of both internment and interrogation are exemplified here.

The Sunday evening handover

Victims’ account

178. For reasons accepted by several soldiers involved, there is no doubt that there was a mass beating of the victims when the Rodgers multiple arrived just before 1900 on the Sunday evening. It would have included Payne showing the soldiers the choir, which by that time was apparently an existing joke. The detainees must already have been in a highly disorientated and traumatised state, but the change of shift and increasing numbers in the room is something of which they were aware. D003 felt that by the end of the first day the number of soldiers in the room had multiplied to about 15. D001 recognised the change of shift by the change of voices and a form of beating that correlates with the description of the choir: "One of the nights soldiers came armed. We could hear the rattle of the weapons....The soldiers who were on duty, who came, they were making fun of us. I felt his fist went through my abdomen, my tummy, and they were laughing as they left the room." It was in that context that D001 described the soldiers as "playing us

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665 BM102723 [54].
666 MOD018845-6 and BM102723 [55].
667 BM102384 [55] and BMI 10/100/20 to 101/23.
like instruments”. Ahmad Matair specifically mentioned a shift change where there was “18 to 20” people in the room; “three or four were doing the beating for 15 minutes to half an hour, while laughing, striking strongly, shouting at the same time”. For him, “That was the most difficult period we ever passed through”. In a 2005 interview with an Iraqi investigator, Kifah Matairi said “at night there was more of them than the day time... It seemed whoever didn’t have a duty they would come to us to enjoy themselves”. It was in that context that the soldiers “invented games to enjoy themselves”. Kifah had described both the “punching game” and the “kicking game” in his original SIB statement. D004 gives a graphic account about how the beating in the night time on the first day intensified:

“I was hit on my head, shoulders, back and the sides of my stomach. Once when I collapsed to the floor, I remember a soldier leaning his full weight on me and pressing my stomach with his boots. It seemed to me as though I was singled out by the soldiers for severe beatings but I have no idea why. I was also pulled to the centre of the room simply to be attacked. I felt that there were many soldiers beating me hard at the same time. It just seemed to be sheer gratuitous violence for no reason. I can only describe it as merciless beatings. None of the detainees, including myself, were in a position to defend ourselves from the violence as we were hooded and our hands were tied. The soldiers behaved like animals. I cannot bear to think of how they treated fellow human beings like us.”

Soldiers’ account

179. Several of the Rodgers multiple do not dispute this account. Originally some of them sought to suggest that the bulk of the violence was perpetrated by Payne. Now most of them accept that other members of the multiple joined in. Payne himself has now made it plain that every member of the multiple, excepting the drivers, was involved in punching and kicking the detainees. He includes Lieutenant Rodgers, the Platoon Commander.

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668 BM101996 [34]. See also BMI 11/15/19-20 and 22/14-23.  
669 BMI 12/65/0-25.  
670 PIL000663.  
671 MOD000054 and 055.  
672 BMI02036 [50].  
673 Reader MOD000202 and BMI 28/142/1ff and 182/4 to 185/21; Allibone MOD000135-6, MOD000140, BMI 24/123/4ff, 24/208/5ff, Appleby MOD000171, MOD000114, Aspinall MOD000123; Cooper BMI04358 [90-94, 103-4] and BMI 29/17/15 to 28/25.  
674 Allibone MOD000135 and 139, Mackenzie MOD000119, Aspinall MOD000123, Appleby MOD000171, MOD000114.  
675 Payne BMI05622 [5-6] and BMI 32/70/17 to 74/15.
Several members of the multiple also have now informed the Inquiry that Rodgers was either in the room, or must have known what was going on. 676

180. The two clearest sets of admissions as to what occurred came from Privates Cooper and Reader. Cooper arrived at BG Main believing with others that the detainees had something to do with the death of Dai Jones. He says that Rodgers had mentioned the possible connection in the briefing for Operation Salerno.677 After the arrest, while back at Camp Stephen, he had heard from a member of “another” Platoon who did guard duty earlier in the day, that if the detainees started to get out of control “we could slap them around a bit”.678 Upon arrival at the TDF there was “a large crowd of men [outside] discussing the detainees”. Those who had been on guard told them that they “had been ‘roughing [them] up’”. He identified by name as being present Rodgers, Payne, Fallon and Crowcroft. “Nobody seemed to have a problem with this behaviour”.679 He describes a period of violence lasting about 30 minutes that included punches to the head, ribs and stomach. “Apart from Corporal Douglas (our driver), I think that the majority of my multiple threw at least one punch including Lieutenant Rodgers and Corporal Redfearn”.680 At the Inquiry he would expressly name Rodgers, Redfearn, Aspinall, Appleby, Allibone, Kenny and Reader.681 He said each of them had admitted throwing punches to him in conversations that took place after the event.682 Like Payne, the only name he could positively exclude was a driver, Douglas. During the 30 minute period he also saw Payne, Fallon and Crowcroft throw punches.683 He was certain that Rodgers was present and throwing punches. This was not simply something he was told.684 There were many visitors to the TDF during the night, including soldiers, officers, NCOs and privates. They were coming in because there were rumours circulating that the detainees were connected with the Dai Jones killing.685 He described his own motivation for striking the detainees as rooted in that suspicion: “anger,
frustration in regards to Captain Dai Jones. I just -- I don't know, I just did what I felt inside”. 688 He attacked between 3 and 5 people himself. 687 When asked what his reaction was to what was going on in that room, including what he himself was doing, he replied:

“At the time, I feel, even though what I was doing was wrong, it was -- in regards to what the information passed on to us, I just felt like it was just desserts, so to speak, you know, they were getting what they deserved.” 688

181. Private Reader also believed that the multiple was briefed before the operation that they were looking for the murderers of Dai Jones. 689 That suspicion was in the minds of those around the TDF on the Sunday night. 690 The detainees were double sandbagged when he first saw them. 691 From their appearance he felt they had been beaten up. This was because he could see visible bruising; they all appeared to be petrified. 692 He admitted to being in the TDF for twenty minutes and then leaving. 693 The strong inference is that he is referring to the same period of time described by Cooper above. Reader would not accept his own involvement in the violence, but he made it plain that he knew it was going on at the time. In answers to Counsel to the Inquiry he said, “I am not saying it didn't happen. I am just saying I didn't see it”. 694 When pushed on the subject he conceded as follows:

“Q....Did you absent yourself shortly after you went into that TDF because you had reason to believe that there was going to be a beating?
A. I knew things had gone on. You know, I was not blind. I knew that they had been mistreated before we even got there.
Q. Yes?
A. My view on it was I wanted as little as possible to do with it, so, yes, I did leave. I didn't know there was going to be an exact beating shortly after I left or when the next beating was going to be, but I didn’t want to be present.
Q. So having absented yourself, is it right that you could hear the sounds of a beating then being carried out by others?

687 BMI 29/26/11.
689 BM103388 [19].
690 BM103394 [43].
691 BM103391 [31].
692 BM103392 [35].
A. You could hear sounds. You couldn't always distinguish what that sound was for.
Q. You understand the specific question I have asked you: You had very good grounds to believe that a beating went on when you absented yourself?
A. That's correct.  

182. Before starting their formal guard duties, Rodgers briefed them to the effect that they were to continue the same treatment to which the detainees had been subjected during the day. He referred to the use of hooding and stress positions. They were told that they could use force to maintain the positions by picking the detainees up and forcing them against the wall. From his previous experience of being placed in stress positions in Alma barracks, Reader knew the practice to be illegal. He had no doubt at the time that the multiple were being ordered to do something illegal. The context of this briefing, given right after the initial beating, would have had the effect of sanctioning other forms of violence. Reader was unable to say whether Rodgers had gone into the TDF when the beating was going on, but he had reason to believe that the Platoon commander knew about it: "If I could visibly see all the markings and the bruising then so could the others."  

183. Private Allibone is a man who had a clear set of moles on his face and his neck, such that he admitted to the inquiry that his appearance was easily memorable. D004 describes a soldier fitting this specific description beating him when he first arrived at the TDF that morning. That same soldier was also described by D004 as being involved in the taking of trophy photographs and otherwise assaulting him on the third day of the detention. The extent to which Allibone would be inclined to hide his own misconduct is therefore important to bear in mind when evaluating his evidence. He too knew of the Dai Jones rumour by the time the evening guard started. Some of the soldiers were talking explicitly about exacting revenge. When he arrived he...
discovered a scene of detainees in hoods and in stress positions. He saw detainees being hit but he could not identify by whom. People were struck with fists and were kicked, sufficiently hard to force them to the floor. They were picked back up and put back into the stress position. He would confirm that "quite a few" soldiers were involved in a beating when they first arrived. During this time he had seen Payne perform the Choir. He would not admit any specific wrongdoing on his own behalf, save to use his karate training to make it look like he was pushing a detainee into a wall hard, when in fact it was not hard. The victims do not accept this limited description of his own misconduct. In particular, his description of 'martial arts kicks', a form of abuse identified by Kifah Matain as acts committed by Payne may well be a description of his own misconduct, given his martial arts training and the identification of him as involved in other stylised abuse. As regards his failure to report the matters to Lieutenant Rodgers, he said that he already knew about it. As to why he could say that with certainty, the following questions and answers are relevant:

"Q. As clearly as you can -- you understand why it is important -- explain to us why you believe he already knew about it.
A. Because I believe he was present at some of the incidents which happened.
Q. Yes. You understand it is important?
A. Yes.
Q. Were you present when he was present at some of the incidents?
A. I think just the first day, but I am not sure about it.
Q. By "the first day", do you mean that period just before the sun went down when you first arrived?
A. Yes.
Q. That's a period where you told us four or five members of the multiple were there and there was punching going on.
A. Yes.
Q. That's the period where you say Lieutenant Rodgers was present?
A. I believe so, yes.
Q. Did he make any comment to you about this being wrong?
A. No.
Q. By his presence, did you take him to agree with what was going on?"
A. Yes.
Q. Did you discuss with other members of the multiple -- the stag members -- that Lieutenant Rodgers must agree with what is going on?
A. We never really talked about Lieutenant Rodgers much.
Q. Bearing in mind again why this would be important: did he indicate to you or others, in words, that it was going to be necessary to rough these particular detainees up a bit because of their important status, what they were suspected of?
A. Yes.
Q. Yes. Was that indicated in your hearing?
A. No.
Q. Who told you he had said that?
A. I'm not sure. 713

184. Private Appleby maintained (although probably untruthfully) that he did not remember the suspicion that the detainees were connected to the Dai Jones killing. Instead he believed that an Al Qaeda medal had been found at the hotel. 714 A sense therefore that these suspects were connected to Al Qaeda made them even more ripe for a soldier to believe that they could be the target of special measures. He went into the room in those first minutes and saw Payne beating people who were hooded and in stress positions. He could picture Rodgers' face being in the room at some point, but could not say when. 715 He confirmed his Court Martial evidence that Rodgers was present when the Choir was demonstrated at some stage, although it was either on the Sunday night or the Monday morning. 716 He accepted that Rodgers knew what was going on. 717 The beating certainly did not go on for a moment or two, and he did not dispute the twenty minutes suggested by Allibone. When people fell to the ground he and others placed them back in the stress positions. 718

185. Private Mackenzie also accepted a 30 minute period when they first arrived at the "conditioning room", where Payne briefed them to maintain stress positions. This occurred with everyone knowing beforehand that the suspects were suspected of connection with the Dai Jones or the RMP murders. 719 This included shouting, slapping, pulling up and manhandling. People were

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713 BMI 24/208/5 to 209/18.
714 MOD000169 and BMI 24/98/21 to 1003.
715 BMI 25/24/24 to 27/5.
716 BMI25526 [81] and BMI 25/66/5 to 68/22.
717 BMI 25/98/7.
718 BMI 25/31/8 to 33/2.
719 BMI 29/159/5-16.
punched, but he could not identify by whom. All this was at first demonstrated by Payne who told them to hit the detainees if they did not get up.\textsuperscript{720} Mackenzie would admit only slapping the detainees in the back of the head, the purpose being "to ensure they knew -- to shock them basically; to say: get up".\textsuperscript{721} According to this witness Rodgers had gone to the HQ building while the initial assaults occurred, and only returned at the end:

"Q. Of course, that first period on the Sunday night when the members of the multiple went in, and Payne was there, and you have said there was punching going on, you must have known that was wrong?  
A. Yes, probably yes.  
Q. And at that time did you worry about Mr Rodgers finding out about what you were doing?  
A. No.  
Q. And why was that?  
A. Well, I believe he knew what was going on.  
Q. And upon what basis did you come to that belief?  
A. I don't know. It's his multiple; it's his job to know. He knows what's going on. He's the commander. I believe he knew. He was there and thereabouts.  
Q. Well, on "there and thereabouts", was there a time when the punching was going on in the TDF and he was in the TDF and would have seen it?  
A. I don't remember." \textsuperscript{722}

186. Private Aspinall, like Private Mackenzie, watched Payne punch detainees, whilst (as in Mackenzie's account) Lieutenant Rodgers went to the Ops room.\textsuperscript{723} These "looked like full-on punches where he was bringing his arm back and, basically like a boxer, hitting them in the lower back area".\textsuperscript{724} He denied seeing any wrongdoing on behalf of anyone else in the multiple.\textsuperscript{725} However, he accepted (in accordance with his SIB statement) that he and others from the multiple "did actually slap the detainees on the face as this was an apparently an insult to Iraqis".\textsuperscript{726} When asked whether anything was said to Lieutenant Rodgers by him that Payne was beating the detainees, he said he could not remember.\textsuperscript{727} When the matter was further raised in the context of asking him whether as far he was concerned, the first time Lieutenant Rodgers knew there was anything amiss inside the TDF was after

\textsuperscript{720} BMI 29/153/23 to 156/18.  
\textsuperscript{721} BMI 29/157/19-20.  
\textsuperscript{722} BMI 29/210/16 to 211/8.  
\textsuperscript{723} BMI 28/30/6 to 40/6.  
\textsuperscript{724} BMI 28/37/13-16.  
\textsuperscript{725} BMI 28/39/17-23.  
\textsuperscript{726} MOD000123.  
\textsuperscript{727} BMI 28/41/9-20.
the death of Baha Mousa, he was careful to answer: "I don’t know. I can’t answer that...I don’t know if he did know or if he didn’t know." When pressed about the slapping, the following exchanges took place, which suggest a more random way in which the violence was perpetrated and then excused:

"Q. You see, we do want to understand this because here we are in a cold courtroom and you were in the TDF, you say you were shocked by what you had seen, but it must be the case, mustn’t it, that despite that shock, within a minute or so you and others begin to slap the faces of detainees?
A. Yes. Maybe because we felt, you know, what do we do here? What do we do in this situation? You know, was we to turn around, run out of the room and go straight to the ops room and report it to the commanding officer?
Q. Well, why not?
A. Because we didn’t know whether this is what happened in war. We was very young.
Q. That’s a truthful answer, is it?
A. We were confused at the time. If we had time to think about it back then, then, yes, obviously we would have thought, "This is wrong and this shouldn’t be happening". But at that very time we was tired, we had been up for nearly 24 hours. We was exhausted from weeks of patrolling, we didn’t know what to think, we didn’t know who to turn to, we didn’t know what to do."

187. The general observation made by the above witnesses was that “more or less” the whole multiple was in the TDF at one point or another during this first attack. There were other members of the multiple who did not assist the Inquiry in any way on these events, either because they did not want to implicate others, or because they may have been more involved in the events than they wished to admit. Kenny, a damaged and troubled witness, was clearly determined not to cooperate with the Inquiry in any way. He was at BG Main earlier that day. Cooper would suggest that he amongst others would later admit throwing punches in this first attack. Mackenzie has specifically mentioned that he saw him go into the TDF at that time. Hunt would cooperate with the Inquiry on other matters, but not on this. When the multiple went to BG Main he believed that he went to stores to get cold drinks and was

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728 BMI 28/84/16-25.
729 BMI 28/45/12 to 46/7.
730 MOD000123.
731 BM103580 [33].
732 BMI 29/22/3 to 23/5.
733 MOD000114.
always destined to return straight back to Camp Stephen leaving others to do the night guard. 734 Mackenzie can recall him going into the TDF at this time. 736 Graham was generally an uncooperative witness, but would attest to the truth of his original SIB statements that were significant in relation to describing the guard on the second day. Those statements mentioned nothing about this event. He too was recalled by Mackenzie going into the TDF. 736 Bentham was also an uncooperative witness. He was at the TDF earlier in the day when the prisoners were dropped off. A number of the detainees and soldier witnesses would identify him as being involved in violence on the second day. As regards this event, no one named him as being in the TDF at this time.

The fact that he had been arrested by the RMP in early October, at a time before all these statements were taken, would provide a compelling reason to seek to remove him from the picture. Bentham would tell the Inquiry that he dropped the multiple at BG Main, but he did not go in to the TDF, and heard nothing of the violence at the time or subsequently. 737 He did no more than to concede that by this time he "maybe" knew of the rumours that these prisoners were connected to either the Dai Jones or the RMP killings. As he put it, "Rumours spread sometime everywhere". 738

188. Redfearn also told the Inquiry that he did not believe that he travelled to BG Main that evening at all. This must be untrue. First, it is totally incongruous that the entire multiple went to the Headquarters, but the 2IC stayed behind, unless there was some good reason. Redfearn says that from his recollection he was bagging and tagging evidence found in the raid. 739 That is highly unlikely because it was taken to BG Main earlier in the day. 740 Every other witness emphasised that the whole multiple travelled to BG Main. Second, members of the multiple have named him as being there, 741 and in some cases involved in the violence. 742 Finally, others may also have seen him in the TDF at this time. If the recollection of Slicker and Felton of a night time

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734 BMI00778 [48-49].
735 MOD000114.
736 MOD000114.
737 BMI 41/89/23 to 91/5 and 138/25 to 139/14.
738 BMI 41/91/24 to 93/4.
739 BMI 30/150/7-20.
740 See Peebles BMI02723 [53-4], Davies BMI04213 [23], BMI04216 [27].
741 Rodgers MOD003546, MOD000221, Mackenzie MOD000114. See also Crowcroft BMI02560 [143].
742 BMI04361 [104].

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event is correct, then it may relate to the evening change over of the guard.\textsuperscript{745}

The one admission that Redfearn did make about these events is that others in the multiple would have told him about it:

\begin{quote}
"We had a close-knit team and certain members of that team, i.e. Allibone and Kenny; they were not the kind of guys to just basically go along with it. They would have come and spoke up to either me or Mr Rodgers."\textsuperscript{744}
\end{quote}

189. Rodgers’ own evidence that he knew of no violence on the first night is weak in a number of ways. The first is that he admits entering the TDF at this time. He gave the SIB an account of going from his Saxon to the detention room and seeing the detainees sitting on the floor facing the wall.\textsuperscript{746} They each had two sandbags on their heads.\textsuperscript{748} That description manifestly does not stand up to any of the above accounts of the detainees being forced into the Ski or Chair position at this point.\textsuperscript{747} As to their appearance, he told the Inquiry that apart from being hooded, “they looked the same as when I arrested them.”\textsuperscript{748}

190. Rodgers gave an account to the SIB about Payne showing him an injury on the midriff of a man in a green dress shirt, but claims, inexplicably, that nothing was said or asked about this injury.\textsuperscript{749} In his evidence to the Inquiry, Rodgers maintained that he assumed that Payne had pointed out this injury to show that the detainees had previously been involved in fighting and so his arresting multiple had not “wasted our time”.\textsuperscript{750} Rodgers then maintained that he assumed the man was a member of the Garamsche.\textsuperscript{751} This account is simply not credible, and is almost certainly a lie designed to cover either Rodgers’ knowledge of injuries to the detainees from the outset or to explain away injuries which he saw later and knew to have been inflicted by either

\textsuperscript{743} Slicker MOD000699 and Felton MOD001434.
\textsuperscript{744} BMI 30/15/1/7-11.
\textsuperscript{745} MOD0003535.
\textsuperscript{746} MOD000220 and BMI 30/33/3-15.
\textsuperscript{747} Allibone MOD000140, Aspinall MOD000123, Appleby CM 31/51/18ff; Cooper CM 62/7/19ff.
\textsuperscript{748} BMI 30/30/6.
\textsuperscript{749} MOD000220. See also BMI 30/30/14 to 31/12.
\textsuperscript{750} BMI 30/30/14 – 30/34/14, see also BMI 30/100/22 – 30/101/16.
\textsuperscript{751} BMI 30/100/22 – 30/101/16. Rodgers also told the SIB that this man had joined in with an escape attempt by the ‘manager’ (MOD000220). This links to the similar suggestion by Fallon, Crowcroft and Slicker, but this merely joins Rodgers to the list of inconsistent accounts of this incident from highly suspicious witnesses (Crowcroft BMI02558 [131-6], Fallon BMI02588 [50-1], Payne BMI 32/109/8-19 and Slicker BMI01859 [27]). Furthermore, Rodgers describes the manager as wearing a dark green shirt whereas Baha Mousa was wearing a beige shirt, as can be seen from the TDF video.
himself or members of his multiple. D003, who was wearing a green shirt when taken into custody (and which can be seen on him in the TDF video\textsuperscript{752}), did indeed develop a terrible degree of bruising around his middle area\textsuperscript{753}, which may have been visible by the time of the handover\textsuperscript{754} but is also likely to have developed during the night. Felton told the SIB in November 2003 that he had seen Rodgers attack a man wearing “a light green shirt”.\textsuperscript{755} His account could fit with the handover event.

191. By reference to his SIB interview, Rodgers accepted that he was inside the TDF with his multiple for a period of time at this stage.\textsuperscript{756} This puts him at the heart of an incident that he would not have appreciated at the time of his interview that victims and soldiers would isolate as a key event in this incident. Cooper positively recalled that Rodgers was present and involved in this particular episode of violence.\textsuperscript{757} Felton gave a description of seeing Rodgers attack a man who was wearing a light green shirt.\textsuperscript{758} This account could fit with the handover event. Equally Slicker may be describing this event.\textsuperscript{759} The evidence of others implying (with varying degrees of commitment) that the multiple commander must have known what was going on is set out above.\textsuperscript{760} Although Redfearn maintains that he was not present in the TDF that night, his evidence of discussions with Rodgers the following day, which is summarised below, make it clear that Rodgers knew what was going on and kept on telling his 2IC that the matter was “in hand”.\textsuperscript{761} Rodgers’ response to the suggestion that soldiers were punching and kicking detainees on the Sunday night perhaps goes to the heart of the matter:

“I did not see anything like that and those sort of accusations were ridiculous. It was Battlegroup Main, it was where the commanding officer lived, it is where all the officers in the battalion and external officers lived. That sort of thing just would not have happened in my presence.”\textsuperscript{762}

\textsuperscript{752} BMI04469.
\textsuperscript{753} MOD021825-8
\textsuperscript{754} Reader notices bruising to the stomach of a detainee he calls ‘Bruise’ at the time of the handover (MOD002001-2), and identified ‘Bruise’ as D003 at the Court Martial: see CM 44/105.
\textsuperscript{755} MOD001437.
\textsuperscript{756} MOD003563-565 and BMI 33/41/6 to 46/21.
\textsuperscript{757} BMI04358 [90-94, 103-4] and BMI 29/17/15 to 28/25.
\textsuperscript{758} MOD001437.
\textsuperscript{759} MOD000699.
\textsuperscript{760} See paragraphs 184 to 185.
\textsuperscript{761} BMI 30/159/9 to 160/3 and BMI 30/214/6-9.
\textsuperscript{762} BMI 30/472-7.
192. The victims consider the overall complicity of the Platoon Commander in the concluding section to this Part, but at the very least there appears to be a very serious neglect of duty – which Rodgers has endeavoured to camouflage under a concept of handing operational command to Donald Payne. If he was present at or otherwise aware of a group beating at 19:00, his decision to leave a skeletal guard at BG Main without himself or Redfearn being present to supervise is deeply reprehensible. At the very least, the position he left the multiple in is reflected in the following exchanges:

"Q. I just want to look at the context of going to BG Main on that first night. With regard to what we will call conditioning techniques, we understand they were not your orders and it wasn’t your policy. But the methods you and your multiple were ordered to use that night and afterwards, they weren’t trained in it, were they?
A. No.
Q. And never mind that you are not the TQ expert, you well understood that, rightly or wrongly, those methods were designed to coerce, soften up, detainees into giving information?
A. That’s correct." \(^{763}\)

193. Given that context, he was asked in terms of his own position whether there was anything that he regretted about his own conduct in relation to these events:

"A. Yes, with the benefit of hindsight I regret the fact that I allowed stress positions and hooding to take place. At the time I believed it was correct, but with the benefit of hindsight now, I believe it was wrong.
Q. Flowing from that, we know you absented yourself for paperwork reasons, but given the multiple were untrained and the sensitivity of the issue, do you not regret that you didn’t keep more of an eye upon them?
A. No, because the provost staff were trained. The provost staff go through training." \(^{764}\)

**Higher chain of command**

194. If either of them are actually telling the truth, then at some point after the Commanding Officer’s O Group meeting, which took place at 1900 each

\(^{763}\) BMI 30/100/1-13.
\(^{764}\) BMI 30/101/20 to 102/7.
night, both Colonel Mendonca, the CO, and Major Englefield, the Company OC, paid visits to the TDF to check on the prisoners. They would therefore have witnessed the aftermath of the severe group beating admitted to the Inquiry by members of the Rodgers multiple.

Mendonca

195. In a statement given to the SIB on 22 October 2003, Colonel Mendonca said that he had been to visit the TDF on the "evening" of 14 September “to ensure that prisoners had water available, which they did”. “Of the detainees” he recalled “only that they were seated and were quiet”.

Private Reader has consistently recalled the CO being present outside the TDF on the evening of the first day, in the company of RSM Briscoe, and talking to Lieutenant Rodgers. The memory has stayed with him, because instinctively he would have drawn away at the arrival of the senior chain of command. He puts the timing at no more than two hours after his arrival on that evening. If the CO was talking to Rodgers it would have had to be before 19:39, when according to the logs the multiple commander returned to Camp Stephen.

Reader is the only person who witnessed the CO near or inside the TDF at this time. Rodgers would suggest that the CO came on the following morning, which Mendonca denies. No other witness has confirmed that such a Monday morning visit took place.

196. Mendonca would describe his one visit on the Sunday “evening” in his SIB interview in 2005, saying that the detainees had arrived at the base at about 09:00 and he was visiting them “about twelve hours after they were arrested”. Strictly speaking, if the detainees were arrested in the hotel at approximately 07:30, then this visit would have occurred very soon after the “30 minutes” of attack described by the likes of Cooper, Aspinall, Mackenzie and Allibone. Even if one took the reference of 09:00 which Mendonca cited as their arrival time in the SIB interview, that would bring him to the TDF

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765 MOD007108.
766 MOD000209 and BM103393 [42].
767 MOD016793.
768 Rodgers MOD000230, MOD00358, BM101846 [112-4] and Mendonca BM 59/186/16-22.
769 See for example Graham MOD005000, Appleby MOD005002, Stirland MOD005006, Douglas MOD005013, Allibone MOD005012.
770 MOD019098-9.
771 MOD019098.
relatively soon after the attack. Tactical questioning would have been going on. The stag at that time consisted of Reader, Allibone and Kenny.\textsuperscript{772} Leaving aside Kenny who recalls nothing, they have admitted being involved in maintaining stress positions while detainees were hooded (on Reader’s account double hooded), with Payne continuing to punch detainees, ordering them to do so, and punches and kicks by other soldiers occurring.\textsuperscript{773} According to Allibone, the Choir was being performed during this stag.\textsuperscript{774} Reader made it abundantly clear during his oral evidence that certain matters were obvious to him the moment he walked into the TDF:

"Q. Just in terms of the conditions and injuries, from about 7 o’clock onwards when you were there, the detainees obviously were already beaten up; is that correct?  
A. That’s correct.  
Q. The heat, sweat and urine smell made conditions obviously not suitable for anyone?  
A. That’s correct.  
Q. And again, in your RMP statement you describe the clothing of the detainees, obviously ripped or not present or undone inappropriately. Again, was that obvious upon entry on Sunday night?  
A. That’s correct.” \textsuperscript{775}

197. In his Inquiry statement, Mendonca puts the visit some time after 22:17, when he says he returned from a visit to B Company lines. He said it was 22:30 or thereabouts.\textsuperscript{776} This is the first time he has suggested that the visit was in the night as opposed to the evening. The victims would strongly suggest that timing is designed to distance himself from the imminent aftermath of the beating by the Rodgers multiple. More specifically, he may be seeking to align his visit with a purported order given by Smith to stop the conditioning at some point during that night.

198. According to Mendonca’s Inquiry statement:

"The prisoners were not wearing sandbags, I do not think they were wearing plasticuffs and they did not appear to be injured in any

\textsuperscript{772} Allibone MOD000136, CM 31/131/10, Reader CM 44/117/17.  
\textsuperscript{773} Allibone MOD000135-134 and MOD000139-40, CM 30/82-83; and Reader BMI03391 [33] and BMI033393 [39].  
\textsuperscript{774} BMI01357 [64-74].  
\textsuperscript{775} BMI28/185/10-21.  
\textsuperscript{776} BMI 59/182/10. The QLR Radio Log suggests that he was at C Coy from 22:03 and then at B Coy from 22:14 to 22:17 (MOD018577).
way....There was nothing that alerted me to any type of problem. Nor was I aware of any unusually bad smell in the rooms....At that time I would have been aware that tactical questioning was still ongoing. 777

199. He would give the Inquiry a similar anodyne account of what he saw inside:
"they were seated round the edges of the room, as I recall, and they were quiet ....and all appeared well". 778

200. The timing of Smith's order to cease the conditioning (and indeed whether it occurred at all) remains unclear – as to which see further below. For present purposes it is sufficient to note that on any view the period during which the hoods remained off was at most half an hour and so, if the timing of 21:45 – 22:00 for the initial order is correct, the hoods would probably have been back on by the time of the CO's claimed visit. 779 There is also evidence to suggest that any order and counter-order was given much later, in the early hours of Monday morning. 780 There are good grounds for concluding that it never happened at all. 781 Even if the CO came to the building when the conditioning was not going on, he viewed his prisoners at a time where the conditions of the facility itself would have been terrible and the prisoners would have been physically unwell and marked from the treatment they received. The suggestion, made to the SIB in October 2003, that the "only" detail one could take away from that visit was "that they were seated and were quiet", must be a lie. The same conclusion can be made about his evidence to the Inquiry, assuming that any visit took place at all.

Englefield

201. Englefield gave evidence at the Court Martial that he visited the area just outside the TDF after the evening O Groups on both days that he attended. That would have been at approximately 19:00, although in his Inquiry statement he wrongly times the O Group meetings as at 16:00 to 17:00. 782 In

777 BMI01131 [111-113].
778 BMI 59/182/21 to 183/13.
779 MOD016373 (handwritten notes – half an hour); Cooper MOD000102 (five minutes);
Mackenzie MOD000115 (twenty to thirty minutes).
780 Livesey MOD000771, BMI 39/47/8 – 39/51/7.
781 As to which see paragraphs 245 to 247 below.
782 BMI04443 [206] and [213]. Englefield has made an error in his statement when he says that the O Groups were at 1600 to 1700. They were in fact usually held between 1700 and 1800 (Seaman MOD010353) or 1800 to 1900 (Hollender MOD000255, Quegan MOD000785,
his SiB interview and at the Court Martial, Englefield said he spoke to Rodgers on the Sunday. 785 If he did speak to him on the Sunday, Rodgers would not have been at BG Main until after 18:45 and he was headed back to Camp Stephen by 19:39. 784 Perhaps sensing the problem of any connection to timing his visit close to the 19:00 beating, he told the Inquiry that he had gone back to BG Main for a “second visit” after the O Group visit, when it was dark. 786 He still accepted, however, that he spoke to Lieutenant Rodgers, which would limit that visit to a period before 19:39. 786 When asked why he never went inside the TDF, he said “it was not my place to do so”, because the prisoners were not Anzio company prisoners and he “did not have a responsibility for the TDF or for what goes on in there.” 787

202. In his Inquiry statement Englefield sought to suggest that he spoke to Rodgers after the O Group on the Monday afternoon. 789 That is not possible, because Rodgers did not arrive at BG Main until approximately 21:30, during which time Englefield was out on Operation Centurion. The Inquiry knows that because the OC recalls having to travel to BG Main having been informed of the death while on the operation. 786 Given the problem for Englefield of his presence just outside the scene of beating that was either going on or had recently ended on the Sunday night, he has set out to distance himself from that event. This is a further example (as with his account of the events of the hotel) where Englefield has lied to protect his own position.

203. Based on the Court Martial evidence Englefield said that he was outside the TDF (on the Sunday) “in the region of 15 to 20 minutes”. 790 He never heard shouting, or swearing, which of itself would have been enough to make him go into the TDF to investigate. 791 He said that at no time was he aware that the guard were under instructions to maintain the prisoners in stress

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Mendonca BM101111 [53]) or 1900 – 2000 (Keiloh BM100504 [58]). The QLR Radio Log shows that on 14 September 2003 Mendonca was in any event out of BG Main at Camp Stephen between 16:15 and 16:33 (MOD016575).

783 MOD004174, MOD004196 and CM 21/73/12-10.
784 MOD016793.
786 BMI 65/68/13 to 69/11.
787 BMI 65/71/4-7.
788 BM04443 [209]. Cf. [206-208].
789 BM04445 [217-218].
790 CM 53/86/3. Cf. In his Inquiry statement he tries to say this was at 17:00 on the Sunday (BM04443 [209]).
positions. The suggestion that he did not even hear untoward noises on the Sunday is simply unsustainable. Even if (following his Inquiry statement) it is correct that Englefield was at the TDF at 17:00 on the Monday, this is just after a period when both the G5 group from C Company and the GMTV escort witnesses had been drawn to the building due to the shouting that they heard in the parking area.

**Noise and related matters**

204. For both Mendonca and Englefield the idea that they went close to the TDF and heard no untoward noises is in stark conflict, not only with the guarding multiple who were in there at the time, but with the evidence of several witnesses (including some based in the HQ building where the CO had his quarters) who have testified to the significant level of noise during the period when the detainees were on the base. Perhaps the best and most reliable example of this is the near contemporaneous record of Major Quegan who was that night “awoken by screaming, which it became clear was a prisoner.” Another diarist, Brown who noted that night that it was “bad that [the detainees] are having stress positions, sandbagged and plasticuffed” (sic), confirmed that although he did not hear screams from the detainees, he did hear lots of shouting from soldiers. As detailed above, several witnesses working in the stores accepted that you could hear the sound of beating if one stood outside them, or if one stood at the entrance of the accommodation block. Stout was aware of the detention of Baha Mousa and the others at the time. The “chitchat” around the stores was that these people were connected with the killing of Dai Jones. From that position he could hear the shouting of soldiers and the “moans and groans of pain” coming from the detainees. If these matters could be heard at this distance, the idea that the senior officers heard nothing when they approached the TDF is simply not believable.

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792 CM 53/86/6 to 87/15.
793 BMI00296. See also Livesey BMI00673 [33], Ingram MOD004399 – recounting what he was told at the time by Crawford).
794 BMI00467.
795 Brown BMI00454 [38].
797 BMI 32/197/5 to 199/10.
205. There is also evidence of detainees being seen by the generator, on the very public route between the stores and the cookhouse, in circumstances which were indicative of a process of disorientation. We return to this event below, but it is likely to have taken place at a time between after 21:00 on the Sunday night, when the CO was walking around.

Conclusions of the suggested visits by the Higher Chain of Command

206. There are three conclusions that can be made about the purported visits of the CO and the OC, each of which is damaging to them. The first conclusion is that they did indeed visit the TDF on the Sunday evening and they knew that detainees were in a state of great suffering, did nothing about it and/or condoned it. The second is that they made the visit, but that by that time they were so complacent with regard to the suffering of Iraqi prisoners in their custody that they were oblivious to what was obvious to other soldiers who walked into the TDF even earlier that evening. The final conclusion, and one which may well be the truth, is that neither Mendonca nor Englefield made any visits to the TDF, either then or at any other time. Instead, the chain of command kept a studied distance from the building because they knew that conditioning was going on there. After the death both of these witnesses must have realised that they would face criticism if it transpired that soldiers under their command were using untrained exceptional measures on the detainees for 36 hours and neither of them once went to the facility. So they picked a point in the narrative where they would put themselves at the scene, not realising that the time in question would be relatively soon after a mass beating; not to mention more than eight hours after the conditioning had begun. The detainees, who they claim were fine, were in a dire state.

Tactical Questioning

207. If an objectively useful purpose of time critical tactical questioning was to discover from the prisoners where the escaped man might be, the tactical

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798 Livesey BMI 39/38/16ff, Brown BMI 38/122/5, Kendrick BMI 38/185/23ff & 38/216/1ff, Hartley BMI 45/194/12ff, and the effective admissions of Peebles MOD018888 and MOD018890. See also Quegan BMI00296.
799 The expert report served by the prosecution in the Court Martial had indicated the importance of the CO making at least one visit as understood in army doctrine (see Brigadier Scott-Bowden MOD000317). Mendonca agreed with this view in his oral evidence (BMI 59/17/23 to 18/4).
questioner did not ask any of the detainees about that for more than 12 hours after he disappeared. By that time, any time sensitive reason for keeping the detainees at BG Main had been lost. That delay of itself emphasises the extent to which tactical questioning had by this stage in the tour become an unregulated and unsupervised form of Battle Group interrogation, carried out by barely trained practitioners, wrongly deferred to as subject matter experts. The Ops officer, Major Seeds, would describe TQ an "an expanding empire". The reasons for the ungoverned and damaging growth of TQ as a discipline are considered in Part V below. The extent to which the Staff Sergeant Davies had lost any proper perspective about his role and his capabilities by the time he came to BG Main on 14 September 2003 is exemplified by the following exchange in oral evidence:

"Q. I am not going to dwell on it too long, but there is an obvious tension, I am sure you would accept, between the primary purpose of wanting to find out where C001 is and the waiting 12 hours to ask anybody where he is.
A. Yes, sir. But that kind of intelligence requirement was a tactical issue because it was about getting the information as quickly as possible and then acting on that information immediately to then detain the C001. If he had been sent down the JFIT, there would have been too much time lapsed in order to cascade that situation.
Q. C001 is the man who ran away.
A. That's correct, yes.
Q. You wait 12 hours to ask any of these other detainees where he is.
A. Yes, sir, yes.
Q. You say it is better to wait twelve hours and then be able to act on any answer you get than sending them to the JFIT?
A. Correct, sir, yes.
Q. Does it go a little bit further than that, that actually there was not sufficient confidence in what would happen when they went to the JFIT and so what happens here is something closer to a mini-interrogation, to try to find out at battlegroup level what you can find out?
A. I suppose there is always a temptation to do that, sir, because certainly, when detainees captured by a battlegroup went down to the JFIT, in terms of intelligence reporting very little came back and what did was certainly, out of date, not timely. So maybe there was some temptation to do that, but with this particular case, whether the JFIT had been a highly efficient organisation or not, the primary intelligence requirement was capturing C001 and therefore that could only be done at tactical level, ie through TQ.\footnote{BMI 42/102/7 to 103/16.}
The Perspective of the Tactical Questioner

208. The knowledge that Major Peebles had of the ongoing conditioning is detailed above. Davies has consistently tried to deny that he knew that any form of conditioning was going on for so many hours before questioning began. He has also sought to deny any knowledge of stress positions at any time. He also sought to suggest that hooding was a security measure only. There are a number of reasons to doubt this account.

209. In his Inquiry statement Peebles said “it is not within my knowledge whether [Davies] was aware of conditioning or stress positions as those took place at the TDF which he did not regularly visit”. 801 However, at the Court Martial, Peebles’ evidence was more damaging. He said he had briefed the guard on starting conditioning within Davies’ earshot. 802 On Peebles’ account this was 16:30. This was the time when he told them not to go ‘over the top’. On Davies’ account he was also present at the TDF at 16:30. 803 Peebles said that Davies would have been in the vicinity of the TDF when the detainees were in stress positions, 804 and on a further visit to the TDF when they were also in stress positions. 805 Other witnesses connected to Battle Group Intelligence told the Inquiry that Davies was aware of the stress positions. Colour Sergeant Livesey, who believes he was in the TDF between 18:00 and 19:00, said that Davies was present and would have seen the positions. 806 Corporal Kendrick originally told the SIB that he was specifically ordered by Davies to make sure uncooperative detainees were put into a stress position. 807 He repeated the same allegation before the Inquiry. 808 The idea that stress positions would have been applied for the purposes of aiding tactical questioning, but the tactical questioner would not at least have been informed of that fact, would not make sense.

801 BM102721 [49].
802 CM 82/125/19ff.
803 BM104218 [43].
804 CM 81/51/13 and 82/160/3.
805 CM 82/79/8 and 83/9/16.
807 MOD000717.
808 BMI 38/190/7 to 191/6.
210. Davies evidence on his one visit to the TDF is inconsistent. In his SIB statement given in September 2003, he put the time of the visit at 21:00. In his Inquiry statement he admitted going to the TDF before the beginning of the TQ sessions to satisfy himself that the detainees were being kept in a manner “conducive to my questioning” so that he could “start”. According to his original SIB statement that would have been prior to 19:15, which would have meant he went to the TDF at a point extremely close to the end of the mass-beating. In his oral evidence, Davies returned to the suggestion that he went to the TDF at 21:00, although he could not be certain of the time. He knew it was “dark” and “it was very early on in the evening, so it is an estimate”. Having had the start time put to him, he could not say whether his visit was immediately prior to tactical questioning or whether it was earlier on in the questioning process. Either way the visit would still have been during a time when Reader and Allibone say that a process of full conditioning was underway, with stress positions and slapping being used to support it.

211. The implication for Davies by virtue of his own account is that, like Mendonca, he was in the TDF when the detainees were being conditioned and in the aftermath of the 19:00 beating. The only issue is whether he was there immediately after, or within less than two hours after. His own account of what he saw, namely shouting, the detainees kept in the dark in prostrate forward kneeling positions and hooded, is self-evidently inhumane and degrading. What he witnessed when he was in the TDF at some point between 19:00 and 21:00 on the Sunday night would have been far worse.

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909 MOD020302
910 MOD020302 and BMI04219 [43].
911 MOD020301.
912 BMI 42/38/12-13, 45/4-12 and 52/22ff.
913 BMI 42/54/7-10.
914 BMI 42/70/2-12.
915 CM 84/31/15 to CM 84/32/9, BMI04218 [43], BMI 42/67/4 to 64/25 and 104/12 to 105/9. It should be noted that Davies has given inconsistent answers about the guard shouting at the detainees. In his SIB statement he said the prisoners were shouted at but this is encouraged (MOD020302). In his SIB interview he said the guard was just moving around the prisoners, and that he did not recall any sort of shouting (MOD018978). In the Court Martial he admitted to a vague recollection of shouting (CM 84/34/7-15). In his Inquiry statement he recalled “some shouting but this did not concern me” (BMI04219 [43]). As he described it to the Inquiry: “To me it was just an element of control over the ... detainees” (BMI 42/62/18). The shouting was part of the conditioning: “[it] is one of the self-induced pressures. They are in an environment that is firm but efficient.” (BMI 42/88/21-23).
212. One then has to consider how the detainees must have appeared to the questioner during the sessions that took place from 19:15 onwards, which included D005, D006, Ahmad Matair, D004 and D002. With regard to the first three suspects, at least, Davies, who had spent all day reading the papers in order to assist his questioning, must have known that they were middle class people. D005 would have appeared to be extremely young. Davies put him at “17 or 18 years old…he was a very frightened young man”. D006 would have appeared to be old. While none of the first three suspects had injuries on their face, the latter three were by that time the victims of more than 12 hours of abuse. If Davies did not see bruising on their face, he must have seen signs of exhaustion and general ill-treatment. All Davies was to admit about their general appearance is that “they were dishevelled, unshaven, tired-looking, but again nothing out of the ordinary.” According to Private Reader, amongst others, they would have arrived in front of him in a horrible physical state: “obviously…beaten up”; smelling of “sweat and urine”; clothing that was “obviously ripped or not present or undone inappropriately.” He recalled that the condition of the detainees deteriorated through the night.

213. Two pieces of evidence suggest that Davies knew that at least some of the detainees were being beaten. First Private Reader identified D004 (‘Young Guy’) as showing signs of visible bruising before Davies tactically questioned him at approximately 02:00. Second when Davies returned from his assignment in BG Main to Brigade offices, WO Paterson recalled that he had mentioned that some of the detainees “appeared to have been ‘roughed up’ a bit during their arrest”. Paterson would withdraw that very specific piece of evidence at the Inquiry, suggesting (unconvincingly) that he was talking about another occasion and different prisoners.

214. In the face of detainees who must have been in a state of extreme psychological and physical vulnerability, both Davies and Smulski admit to using, amongst other things, the ‘harsh’ questioning technique that was taught at Chicksands at the time. The gist of the taught technique, further

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816 BMI 42/71/22-25.
817 BMI 42/74/21-25.
818 BMI 28/185/10-21.
819 BMI03394 [43].
820 MOD000204 and MOD000208.
821 BMI02523 [41].
822 BMI 76/122/25 to 123/7 and 131/13 to 136/4. See generally BMI 76/150/11 to 155/22.
discussed in Part III, is that there was no limitation to the verbal insults that could be used. As regards verbal threats, the only limitation was a practical one; namely that the questioner had to be careful not to lose credibility by making a threat that could not be carried out. At this stage in the victims’ experience of detention by the British Army, the scope for maintaining credibility in relation to threats was wide. Davies’ description of his own style was to “instil the fear of God” into those he questioned.\textsuperscript{823} The aim was to create “a harsh apparently ruthless regime”.\textsuperscript{824} With regard to D005, he described his “default stick” in the technique of “bridge-carrot-stick”, to refer to Basra as being a “dangerous place” and to warn him “that if his father and he were interned there would be no one to look after his mother and his sister and that certainly got a response from him”.\textsuperscript{825} The degree to which a very recent graduate from the PH&TQ course developed his approach in theatre is shown in the following answers:

“Q. You have described your default position, in terms of carrot and stick, that the type of threats you would make included reminding detainees that Basra was a dangerous place and they could be interned and then their family would be exposed to that danger.
A. That’s correct, sir. I am stating a raw fact of life, there, yes.
Q. Did you also play upon a myth that people who went to internment never got out of it?
A. Yes, certainly my feedback from a lot of the Iraqis -- and I had obviously regular dealings with them -- was that there was a myth around Basra that individuals went to the TIF and they wouldn’t be seen or heard of for some time. So, of course, as an interrogator, I did use that as a means to -- effectively as a ploy.
Q. So you threatened, “You will go to the TIF and you won’t get out of it”?
A. I believe on occasions I have used that as part of my stick approach, sir, yes.\textsuperscript{826}

\textit{The experience of the tactically questioned}

215. There are certain generic observations to make about this process.\textsuperscript{827} First, despite everything that the victims had experienced in the previous 12 hours and the extent to which their experience has been corroborated by the soldier

\textsuperscript{823} CM 85/11/5.
\textsuperscript{824} BMI 42/99/17.
\textsuperscript{825} CM 85/19/22.
\textsuperscript{826} BMI 42/88/11 to 99/4.
\textsuperscript{827} The observations below are based on Davies’ questioning which concerned D005, D006, Ahamad Matar, D002 and D004, and Smulski’s questioning which concerned D001, D004, Kifah Matar, Baha Mousa and D007.
witnesses, few of them felt able to complain about that treatment in any detail in the interview room. A number of the detainees emphasised the extent to which the questioner who made them stare into his eyes was adamant that they should only answer the questions asked.\textsuperscript{828} If they did say something about their treatment, it is unlikely that the interpreter translated. Most just said nothing out of fear. D002 did not speak about the beating "because he was shouting at me I was scared to say anything".\textsuperscript{829} D006 feared that something would happen to his family if he said anything.\textsuperscript{830} Davies’ admitted questioning style would obviously have contributed to the incapacity of the interrogation subject to make a complaint. The lesson learned is that detainees can be petrified and manipulated into submission, so that the questioner is insulated from the embarrassment of complaints about the guard.

216. Second (and bearing in mind that evidence obtained by torture is not ordinarily admissible in proceedings, either at common law or under Article 15 of UNCAT\textsuperscript{831}) the information obtained for all this trouble was minimal. According to the Davies TQ Report, C001 had some student connections with the Baath party, he acquired fake licences from C003 and he sold guns. No one knew where he could be found. One of the key sources was D002, who Davies records as saying, “C001 was a BP member (started to sob) stated that he was afraid of C001 who was a major.”\textsuperscript{832} The Inquiry knows that this detainee was to be objectively the most psychologically damaged victim of the process, and one could conclude the least reliable reporter under torture.

217. Third, the experience of being questioned in this context was a frightening, humiliating and generally inhumane experience in and of itself. Two witnesses, D005 and D007, believe now through being questioned by their lawyers that they were slapped, in D005’s case by the interpreter and in D007’s case by the interrogator.\textsuperscript{833} Although this is possible, it is more likely to be that they experienced a sense of being physically assaulted when the interrogators deliberately invaded their intimate space in accordance with the

\textsuperscript{828} D003 BMI 10/104/8, D001 BMI 12/28/21, D007 BMI 13/39/10.
\textsuperscript{829} BM01959 [43].
\textsuperscript{830} BM02142 [30].
\textsuperscript{831} A and Ors (No 2) v Secretary of State for the Home Department [2006] 2 AC 221, HL.
\textsuperscript{832} MOD030816.
\textsuperscript{833} D005 BM0102325 [68] and D007 BM04225 [5].
taught 'harsh' technique style. D005 recalls the questioner saying something would happen to his mother and sister. Ahmad Matair felt that he was being questioned by "the British Commander". This sense that he was dealing with someone of very high status was critical to his experience of the session. He was sure that his interrogator was "responsible for all the British troops in Basra." He could not believe (or did not want to believe) that the British Army was in such "chaos" that "a small officer" would come and graduate to having this degree of power over him. This traumatic nature of this wrong impression would tend to suggest that its creation was part of the questioning design. Davies offered to release him and all his employees if he told him the whereabouts of C001. Otherwise they would be taken to Camp Bucca. He gave him one minute to answer. When he could not, Mr Matair was sent back to the TDF. The minute he got back the beating started again. At that stage he thought he and the others were going to die and he told his workers to say the Shehadeh.

218. Finally, as the detainees pressed upon the Inquiry in their oral evidence, the idea that the tactical questioner did not know that they were being ill-treated was impossible. D006 said, "I was exhausted, I was shaking." D004 maintained, "He could have seen...He must have seen us and he must have seen the handcuffs."

The Generator

219. During this first round of tactical questioning Davies and Peebles knowingly placed D005 by a hot and extremely loud generator. Major Seeds, who would return to BG Main to assist the Army Prosecuting Authority to make a video of the site in 2006, told the Inquiry that this was not a small generator, but a

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934 D005 BM102329 [79].
935 BMI 12/68/3.
936 BMI 12/72/20.
937 BMI 12/73/18-21.
938 BM102268 [44-45] and BMI12/74/6 to 74/1.
939 BM102269 [48].
940 CM 10/86/10-12.
941 BMI 13/72/21-22.
942 BMI 18/27/18-19.
dismounted truck engine. Standing near the generator one had to shout to be heard.

Victim's account

220. D005 told the SIB about being taken to the generator in giving his first statement: "I was then punched and kicked and my head was pushed to the part of the generator that was hot". He recalled an assault from a soldier who was 5'6" to 5'8" with broad soldiers and muscular. At some point a second hood was added so that he could not see his assailant. From other witnesses it is apparent that D005 was at the generator for at least an hour and possibly longer. His disorientation from the experience would therefore have been profound. In his Inquiry statement he was able to add more detail about his experience:

"The soldiers pushed up my cheeks against the radiator section of the generator, which was very hot. I was instructed to remove my shirt, spread my legs, both my hands stretched out to my sides with my back to the generator and lean on the generator and one of the soldiers removed the lid of the radiator. Boiling water splattered out of the radiator and splashed onto my hands, back and face scalding my skin. I screamed in pain and agony and began to cry. The soldier continued to shout 'Keep Quiet! Shut up!' The generator was pumping out intense heat and was very hot; I was feeling quite hot already because of the hood, so the combined effect of both made the heat very intense and almost unbearable. I recall that, whilst this was happening, a soldier sat on a chair next to me, drinking coffee and laughing at me because I was crying and screaming. I saw that this soldier was holding a big mug and sipping this so I assumed it was coffee."

Peebles and Davies' account

221. That fact of placing D005 in the vicinity of the generator during a period between his two questioning sessions is accepted by Davies and Peebles. They admit to him being there for at least 90 minutes. The reason for doing so is in dispute. Their refined explanation to the Inquiry is that he was put there purely out of convenience in a break between his questioning. He was kept

\[843\] BMI 46/467/19-21.
\[844\] BMI 46/478/19-21.
\[845\] MOD000018.
\[846\] BMI02322 [60].
there instead of returning him to the TDF so that he could be kept in isolation and otherwise brought back into the interview room at short notice. This relatively firm distillation of the account has apparently been developed by both of these witnesses over time.

222. Davies was seemingly uncomfortable when he was asked whether he knew anything about the incident during his SIB interview. He essentially blamed the guard for choosing the generator, when all he wanted was for the detainee to be kept close by:

"A...the element of supposition to it, but the only explanation I can think for that after a questioning session where I'd said I wanted answers from him on certain issues, I can't remember exactly what the question was, rather than him going all the way back to the holding area he went a short distance away, which was close to a generator...and the flagpoles...and he was kept under guard there because as I say I wanted to get him back within five minutes to talk to him, so rather than go all the way back to holding area, to then five minutes later bring him back all the way back again he was kept a very close distance...So I left him there so, but yeah, I can't think of any other explanation as to where the generator thing come from

Q: Did you instruct anybody to take him to the generator?

A: No just to be close by...to the building.

Q: Was the generator ever mentioned?

A: Not that I recall, no, no. It was the generator was very very close to the building.

Q: Was it a consideration i.e. a tactic of...questioning?

A: No.«847

223. Later in the interview he appeared to indicate that he was genuinely sending D005 out for a breather:

"Q: ...did you direct him, the first guy we're talking about...to be placed anywhere for a specific purpose?

A: No, only as a holding time in order to get him back speedily within a few minutes, rather than doing that long hundred metre dogleg back, I said to him, I sent him back with the usual it's called the sort of carrot and stick is the technique used is to provide him with what I want, the information and I said, you know, if he gets me that information and then obviously things will be a lot better for him, it's the usual it's a

«847 MOD019009.
term, interrogation with a carrot and stick so I send him away for a quick think for five minutes and then I call him back, but I would say he’s been away maybe for five, ten minutes..."

224. The account of this incident provided in the Davies’ Inquiry statement is far less equivocal and takes responsibility for a matter that was based on convenience and nothing else:

"His placement at the generator was at my request and designed to be able to get the prisoner back for a second TQ session very quickly, as I had no doubt I would be speaking to him again, and to be absolutely sure that he would be unable to communicate with the other detainees about his initial TQ session... He was approximately 1-2 m from the generator with a guard close to him at all times. The generator was no more than a point-of-reference rather than an aid to interrogation. It was fairly loud, but equally something his guard was also subject to... He was by the generator for between 45 to 90 minutes".

225. During his oral evidence before the Inquiry Davies advanced this same account, but made it plain that he was sending him to the generator as part of the bridge-carrot-stick. He said his intention was to get him back at very short notice “in the hope that he was going to have had a long hard think about things, certainly in isolation from the other detainees, and would then answer the questions”. The generator was chosen because it was “a convenient reference point that was close to the TQ”. He was conscious that its noise would act as a “shield” to the detainee hearing anything going on in the interview room with another subject.

226. Peebles’ account in relation to the generator also became firmer over time. The victims point to his answers in his SIB interview as effective admissions to this treatment being imposed as part of the conditioning. In the context of answering questions about why it was not always necessary for someone to go to the TDF to pick up a detainee, he said the following without prompting:

"...the guys would go and collect the next one and bring him in...But for the first two, they were sat down to cut time and this was then later got rid of because actually, there was a discussion about the white noise issue, there was discussion about the fact that they were exposed near the, in the open ground and could escape and there

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848 BMI04221 [79].
849 BMI 42/76/6-18.
850 BMI 42/76/20-21.
851 BMI 42/77/12-14.
was more...guard required, that the people were sat down near the generator, which was outside, just outside the questioning room, off the pathway. Simply for the benefit of getting them in quick, and then the quick turn around, but that was it. But that was later, which was binned, I think after the first two people.852

227. Having then, in response to questions, emphasised that the placing of detainees at the generator was not for "disorientation" purposes, Peebles was asked what he meant by the term "white noise". He replied:

"A. A constant noise, a piercing noise that can cause distress to an individual

Q. Okay. And wasn't that what you were doing to D005, by placing him next to the generator?"

A. No. No it was not, it was not. The generator is located right next to the room and therefore it is sort of [a] over arching noise that, that is always there anyway. It's not there for the purpose of torture, which is what you are insinuating. Well I hope, I hope you're not but in a round about way [that] is what you are coming to.853

228. In his statement to the Inquiry Peebles supported the explanation given by Davies that D005 was put by generator as a matter for convenience so he did not have to be taken back to the TDF. He could be guarded by the same person guarding the intelligence cell door and he could be seen by the tactical questioner through the window. Peebles recalled seeing him there on two occasions about 90 minutes apart.854 In oral evidence, he referred to the detainee being "fairly non-responsive"; and being placed by the generator, "rather than sending him all the way back, which would involve five minutes getting him there, five minutes getting him back".855 Although he denied that the generator was used as a "punishment", he described the break in the interrogation style used against D005's during interview by analogy with the headmaster dealing with a "naughty school boy".856

Account of the guards and others witnesses

229. Several soldier witnesses saw D005 placed by the generator on this night. Their evidence categorically undermines the account of Davies and Peebles

852 MOD018888.
853 MOD018690.
854 BMI [62] and [63].
855 BMI 40/112/5-20.
856 BMI 40/116/25 to 117/4.
that this was not a low-tech variant of white noise conditioning. In his diary record drafted the following day, Major Quegan noted the following:

"I find myself in something of a dilemma. Last night before bed I was walking past the generators when I saw a figure very close to one of them, yet his profile was ill defined. He turned out to be a prisoner with a sack on his head. He was being watched from afar and had, so I was told, been standing there for 3 hrs exposed to white noise."

230. The experience of soldiers who were made to guard D005 during his time in front of the generator challenge the suggestion that this was a step taken for convenience. Kendrick gave an original statement to the SIB in which he detailed that at various times through this interview stage, "when the staff sergeant believed he wasn't getting satisfactory answers", he would instruct him or either Sergeant Brown and Lance Corporal Hartley "to remove the detainee from the room and place him next to a ...noisy generator in order to disorientate the detainee to assist me with the questioning." Kendrick's view expressed in his statement to the Inquiry was that it was "some form of punishment for not answering the questions". Contrary to the suggestion of Davies that the detainee was placed 2 metres from the generator, Kendrick recalled that the boy was "inches from it" and "whilst it was hot at night anyway, when stood close to the generator it was uncomfortably hot". Kendrick "was stood a maximum of about a foot away and it was very uncomfortable for me as well". The scene stayed in his mind as punishing to him as much as to his prisoner: "I remember feeling annoyed about the situation, as it was extremely hot when stood so close, so I felt as though I was being punished as much as the prisoner." In his oral evidence he confirmed that the purpose of the positioning was "to make him uncomfortable" and would have been "unbearably noisy" and "unbearably even hotter than Iraq generally was". He thought it was "very inhumane".

231. Both Sergeant Brown and Corporal Hartley did not recall the detail in the way that Corporal Kendrick did, but they both confirmed the incident to the Inquiry. According to Brown, the detainee was "no more than 2 feet away"

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857 Quegan BM100296.
858 MOD000849.
859 BM01469 [78] to [80]
860 BMI 38/187/18-21.
861 BMI 38/188/13.
862 Brown BMI 38/122/5 to 125/1 and Hartley BMI 45/194/12ff.
from the generator. Hartley said he was "a metre and a half to two metres away". He told Counsel to the Inquiry that he was not aware of the effort to punish the detainee, but following further questioning he confirmed that Corporal Kendrick "obviously was not happy about the job he had been asked to do" and that he himself wanted "to keep well out of it". 863

232. Colour Sergeant Livesey eventually recalled the incident in a similar detail to Kendrick once he came to give oral evidence. In his Inquiry statement he had said that he saw both the father and son by the generator ("which was pretty noisy") waiting to be taken in for questioning. They were in stress positions. 864 In previous evidence to the Inquiry, Lieutenant Crosbie had recalled an Intelligence O Group meeting, probably on the Monday, when Livesey mentioned this, in a fashion that appeared to criticise the practice. 865 When asked about the matter before the Inquiry, he would have been aware of the evidence of Kendrick and Brown on the previous day. His impression was the generator was being used to "disorientate" the detainees. 866 He did not regard the treatment as being "humane". 867 He had overheard subsequent discussions between Peebles and Smulski to the effect that the young boy was a "weak link" and he had been sent to the generator for that reason. 868

233. LCpl Aktash, a signaller from the Ops Room, also saw D005 by the generator, "about a foot or two away". 869

234. The final person who saw a detainee by the generator is Private Slicker. This is significant because his physical description, barring height, would match the description given by D005 of the man who assaulted him. Moreover, D005 had a discrete recollection of a man sitting down drinking what he thought was a hot drink ("a soldier sat on a chair next to me, drinking coffee and laughing at me because I was crying and screaming"). In his SIB interview Slicker did not say that he carried out the guard, but he said, "I sat on a chair watching them, so that they couldn't move". The question arises whether this is the man D005 describes being at the scene. Slicker said in interview "they

863 BMI 45/207/23 to 208/4.
864 BMI 00670 [18].
865 Crosbie BMI 03970 [37].
866 BMI 39/38/22-23.
867 BMI 39/40/17-19.
868 BMI 39, 71/17 and 72/11.
869 BMI 03465 [50], MOD006078, BMI 16/31/1-21.
were left there for two hours". When asked what the purpose of this was he replied, "trying to baffle their minds". 

235. The conclusion to be drawn from this incident is that it was indeed done as part of the conditioning process. Evidence from other members of 1 QLR suggests that it was done on other days. The reason for doing it to D005 is that he was, in effect, regarded as a weak link. There can be little doubt that during this incident he was targeted in this way, not only because he was the brother of C001, but because he was young and petrified. This is developed below, but objectively and subjectively there was no doubt that this would have been a terrible experience. Although the Inquiry ought not to believe the more innocent explanation given by Davies and Peebles, it is important to note how events such as this can be explained away through technical jargon like "bridge-carrot-stick", "isolation" and "operational justification. Even with the benefit of evidence to show that his direction had led to an inhumane experience (regardless of his stated purpose), Davies would not criticise this action:

"A. On the generator, do you recognise now -- regardless of the motive you say you had -- that it was wrong to leave that man there for so long?
A. In the operational context, sir, no --
Q. That's not the question. Knowing everything that you now do, knowing his experience that he had there, including the experience of people who guarded him, do you recognise that it was wrong to leave him there for that long?
A. In the operational context, no, sir. I mean, I do accept and concede that he was left there for certainly longer than I anticipated. I didn't anticipate him being there for more than half an hour, 45 minutes perhaps. But because of questioning, preparation, note- and report-writing, it ended up being longer. So in the operational context, sir, no, I don't think it was wrong and I do not see, other than being slightly uncomfortable, what sort of harm or damage could have come to him being a metre or 2 metres away from the generator."
Smulski’s arrival

236. Sergeant Smulski entered into this process some time just before midnight on the first day. According to notes made by him in some degree of consultation with Davies after the death he sat in on the TQ of D002 and was then “appraised of the TQ requirements.” He went to the TDF at approximately 01:40. He then “accompanied” Davies in the tactical questioning of D004 after which he tactically questioned Kifah al Matari, Baha Mousa, D003, D997, and Ahmed Maithem. The last TQ was at 15:00 when he questioned Mr Maithem, who he called the “pick-up truck” prisoner. 975

237. The lack of expertise of the tactical questioners who were seen by the Battle Group as “subject matter experts” is dealt with in more detail in Part V. Smulski had the very barest of subject matter experience, let alone expertise. He told the Inquiry that what he told Davies was that he had never done any real tactical questioning when he came to BG Main, and it was decided that he would seek “only low level information like names and addresses”. 976 Davies denied knowing that Smulski had no practical experience. As he put it, “When he arrived I became aware that he was trained and, as far as I was concerned, that was all I needed to know”. 977

238. Given this critical lack of experience, Smulski was to use his dated and limited training to the following ends. For the purposes of seeking self-described “low level information” he used a questioning style which, on his own admission, was designed to put the detainees “in fear of violence”. According to the Colour Sergeant, Livesey, it was Smulski who required him to tell the guards to keep the detainees in stress positions later into the night. 978 Although Smulski does not accept that evidence, guards who were on duty during Smulski’s time in BG Main recall the detainees still being in stress positions. 979 Smulski does admit to instructing the forced “exercising” of the detainees in order to deliberately disorientate them and thereby maintain the

975 MOD015395
976 BM101247 [84].
978 Livesey MOD003443, MOD005042, MOD000771.
979 As to Monday morning, see Aspinall MOD000124 (detainees put into stress positions after breakfast and throughout the day), Douglas MOD000184(stress positions during Monday morning), Graham MOD000147 (stress positions during Monday morning), Reader MOD000206 (prisoners in stress positions when he enters at 11.30), Richards BM104168 [49] (stress positions “at certain points in the day”).

*This is a typographical error. This should read D001.
shock of capture. He also accepts that he instructed the forced walking of D005 out of and back into the TDF in a deliberate attempt to disorientate and ‘unsettle’ him, on the basis that he was ‘about to break’. According to Private Appleby, Smulski was present in the TDF when D005 was in the toilet, and instructed that he should be moved from there to outside and back again on the forced walk. In the notes of his first meeting with the SIB there is a reference to the fact that he must have known about D005 being in the toilet, a fact that he admitted to in his oral evidence. Finally, Smulski accepts that it was he who instigated the use of the metal bar to keep the detainees awake, and encouraged the guard to shout at the detainees and make as much noise as possible, despite knowing that sleep deprivation was prohibited. There is evidence that during the rest of the night the detainees would be hit with that bar. The details of some of the abuse that Smulski admits to instigating or otherwise must have known about are set out below.

239. As a matter of generality, the victims strongly maintain that Smulski must have been aware that the people he questioned in the early hours and the following day had been seriously beaten. D001 said, “I didn’t tell him but the situation I was in was felt by him”. D003 was heavily grazed on his face by that time, and the bruising to his stomach was obvious to all. He described himself as looking like he had been in a car crash: “I was destroyed, I was so worn out, I was so injured.” Others, in particular Kifah Matairi, would have had extreme difficulty standing up at all by the second day. Private Reader, who was involved in taking detainees to Sergeant Smulski on that second morning, was asked about their objective appearance to those who confronted them:

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880 BM101253 [106] read with BM101228 [30].
881 BM101249 [94], BM101257 [112].
882 CM 35/85/10ff.
883 MOD001886 – “Toilet – young lad”.
884 BMI 41/24/7-17.
885 BM101254 [108].
886 BM101253 [106].
887 D002 BM101960 [47].
888 BMI 12/29/1-2.
889 See Stirland MOD000160 and BMI02822 [94], Graham MOD000151, Rodgers MOD000220, Reader MOD000201-2.
890 BMI 10/104/10 – 10/105/16. This same description was given by Redfern when describing the state of the detainees at the start of Monday morning (BMI101805 [134]).
“Q. Just thinking about what would have been obvious to those conducting the TQ -- the tactical questioning that you took a man to, the Granddad, so nicknamed, man on the following morning -- would it have been obvious to those conducting the TQ that this man was in a terrible state?
A. Yes.
Q. Why so?
A. Because he was visibly to the eye in a bad way. He didn't smell very nice, you could tell he had had lack of sleep and just the way he was. He was scared, petrified... He hadn't got a clue what was going to happen to him, had he. Just to look at him, you felt sorry for him.
Q. Was he obviously feeble at that stage?
A. Yes.
Q. Could injuries be seen?
A. Not visibly, I don't think. It was -- I can't recall any injuries being able, visible to be seen on the person that I took there. But they were visible on the other detainees at that time."

240. Private Stirland was also able to give the SIB a detailed description of the injuries and physical state of the four people he took to the TQ room that morning. They were detainees that he described as Males E, C, B and D. He in turn gave descriptions of those people that make it reasonably clear who they are. Male E's description is close to Kifah Matairí ("a pointy nose and grey short hair which was bald on top", in his late 40's or early 50's, "nicknamed granddad"). Male C's description is close to Baha Mousa (5'8" and fat, "a black moustache and goaty beard and black hair"). Male B's description is close to D003 ("a nearly luminous green shirt", in his early 30's, "black short hair and a moustache"). Male D's description is close to D001 ("wore a blue short-sleeved shirt", "late 40s and had grey short hair").

241. Of those men Stirland gave descriptions of the physical condition of some of them prior to being taken to tactical questioning. Those descriptions are supplemented by what other guards recall. Male E (Kifah Matairí) had recently complained about stomach pain, and he was left after a medic attended upon him to lie on the floor of the right hand room still hooded and plasticuffed. Male C (Baha Mousa) had been punched in the back of the neck by Payne and slapped by Stirland, and by this time was being kept in the middle toilet. Redfearn, who arrived at a time prior to the TQ sometime after 10:00

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891 BMI 28/185/22 to 186/24.
892 MOD000160.
893 MOD000158.
894 MOD000160 BMI02822 [93] and CM 34/36/17 to 37/1.
895 MOD000161 and BMI02823 [98].
(based on Smulski’s notes), said that Baha Mousa had a bloody nose.\textsuperscript{896} Aspinall appears to have seen facial injuries that early morning to someone he called ‘Fat Boy’, who was Baha Mousa.\textsuperscript{897} Male B (D003) had purple bruising just above his waist line on the front and side of his abdomen. Stirland suggested that this was apparent when his shirt was raised.\textsuperscript{898} This man, also known as “Bruise”, was said by Reader to also have swelling of his face.\textsuperscript{899} Smulski himself admits noticing on a visit to the TDF that a man with a ripped shirt or open shirt had “a lot of bruising across his midriff”. He reported this to nobody.\textsuperscript{900}

\textbf{Arrest of Ahmed Maithem}

242. In the meantime, the final detainee, Ahmed Maithem, was arrested at approximately 21:35 in an unconnected incident, when a multiple commander from B Coy saw a vehicle matching the description of one he had been briefed to look out for some 4-5 weeks previously. He found 3 AK-47s and associated paraphernalia inside.\textsuperscript{901} Mr Maithem has, from his initial interview with the SIB on 17 September 2003, given a consistent account of the hijacking of a borrowed vehicle he was driving.\textsuperscript{902} The fact that the full details were not provided until the Inquiry proceedings appears to reflect nothing more than the focus of the previous investigations.\textsuperscript{903} The presence of local people around the vehicle when soldiers arrived is consistent with his account, whilst the arresting soldiers could not be certain that there was no

\textsuperscript{896} BMI 01805 [134].
\textsuperscript{897} MOD000129.
\textsuperscript{898} MOD000160 and BMI02822 [94].
\textsuperscript{899} BMI03392 [34].
\textsuperscript{900} MOD006034.
\textsuperscript{901} Log MOD048557; Wilding MOD015807; Gregory MOD015810. On 7 September 2003 a car matching the description of one later driven by D007 was seen parked next to a car suspected of involvement in the RMP shooting of 24 August 2003. The owner of that vehicle and another vehicle voluntarily attended BG Main for questioning and a planned search of the Mosque outside which the vehicles were parked was then called off due to lack of evidence: see Commander’s Diary MOD016818, Vogel BMI00688 [39, 44].
\textsuperscript{902} MOD000177-1082a (notes made by Sgt Butlin, SIB, of interview with Ahmed Maithem on 17 September 2003); MOD000045-8 (SIB witness statement, 21 September 2003); PIL00355 [6-11] (Civil proceedings witness statement, 9 June 2007); BMI02075 [6-13] (Inquiry witness statement, 3 June 2009); BMI 13/3/18 – 13/13/4 (oral evidence, 29 September 2009).
\textsuperscript{903} See the transcript of his 2006 interview with the SIB, where he is stopped from talking about the incident with the car because “we're not focusing on that as part of our investigation” (MOD046678). He was asked nothing about his arrest at the Court Martial.
damage to the vehicle from the crash Mr Maithem says occurred.\(^{904}\) Mr Maithem did not resist arrest and provided the arresting officers with his name, possibly on some form of documentation.\(^{905}\) As with the weapons from the hotel, it appears that nothing was ever fingerprinted.\(^{906}\)

243. It is clear that initially the items found in the vehicle aroused only suspicion of criminal rather than insurgent activity, as the multiple commander took Mr Maithem to the nearest police station, consistently with the general policy for what he termed “minor offences”.\(^{907}\) Mr Maithem’s account of a sudden change in attitude towards him following receipt of a radio message whilst at the police station and the subsequent kicking he received on the journey from the police station to BG Main may well reflect a perceived change in his status in the eyes of the arresting multiple once they received instructions for him to be taken to BG Main to be questioned as a suspected insurgent.\(^{908}\) The attempts of both Sgt Wilding and LCpl Gregory to distance themselves from even a presence at the police station are suspicious.\(^{909}\) Gregory (who accepts he would have been in the vehicle with Mr Maithem during the journey) was an uncooperative witness who attempted to deny making any other arrests or ever seeing detainees hooded, whilst his multiple commander Wilding gave directly opposing evidence.\(^{910}\)

244. Mr Maithem arrived at BG Main at approximately 22:00 (coinciding with the start of a Mackenzie and Cooper stag).\(^{911}\) Once there, and not yet hooded, he

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\(^{904}\) As to the presence of a group of locals, see Gregory BMI01022 [32], BMI 37/45/2-10, Wilding BMI 20/3/15 – 20/3/4/5. As to damage to the vehicle, see Wilding BMI 20/3/4/6-18, Gregory BMI 37/3/4-15-18.

\(^{905}\) Wilding BMI00414 [51], MOD015808, BMI 20/3/419 – 20/3/5/5; Gregory BMI01023 [36], MOD01581, BMI 37/4/6-22. The name on the 2003 statements of Wilding and Gregory is “Maffle Mohammed Emilie”, which appears to be a misinterpretation of the first three names of Mr Maithem – “Maithem Mohammed Ameen”.

\(^{906}\) Despite Mr Maithem apparently offering this: see BMI 13/13/1-1-14.

\(^{907}\) Wilding BMI00408 [32], MOD015809.

\(^{908}\) BMI02090 [20-3].

\(^{909}\) Their original statements, made the day after the arrest, suggest that the multiple got to the police station (MOD015809, MOD015812). Wilding was then to suggest that he had not even started the trip to the police station (BMI00413 [47]) and raised for the first time a claimed difficulty with radio communications as the reason for the change in destination (BMI 202/47-15). Gregory denied getting out of the Saxon at the police station or even recalling reaching it (BMI01023 [39]). He was forced to accept in oral evidence that if (as he contended) Mr Maithem was put into a Saxon on the journey, he would have to have got out of it if he was to know that he had ever been taken to the police station at all (BMI 37/473-9).


\(^{911}\) See log MOD048558.
had his photograph taken with the vehicle and weapons whilst outside the TDF within BG Main, and giving him full view of the internal layout of the military base. He was then taken into the right hand room of the TDF where he saw the detainees from the hotel (not at this stage known to him), hooded and in stress positions, with torn clothing and in obvious distress. On being taken into the left hand room he was himself hooded with several hoods, made to adopt a stress position, and hit whenever his hands fell. He was not allowed to sleep. He particularly recalls the insult of being hit with his own shoe, and the pain of being picked up by the mouth and neck as if being strangled. On his arrest, Mr Maithem appeared in good health and had no torn or dirty clothing. By the time Sgt Smulski questioned him on Monday afternoon, he was “completely covered in dirt.”

Smith's order to stop conditioning

245. The evidence regarding the purported order by Sgt Smith to stop the conditioning is highly unsatisfactory. In his October 2003 witness statement, Smith stated that at approximately 21:45 on the Sunday evening he ordered MacKenzie to remove the detainees' hoods and cuffs. At this stage he mentioned nothing about the countermanding of this order and although he stated that he saw CSgt Livesey at the TDF when he was on his way to a watchkeeper stag in the Ops Room at 02:50, stated that he did not have a conversation with him and did not see the detainees. Mackenzie and Cooper, on stag between 22:00 and 24:00, stated in their October 2003 witness statements that they had been ordered to remove hoods and cuffs by the Provost Sergeant but between five and thirty minutes later this order had been countermanded by CSgt Livesey. Confusingly Reader, who assisted during Kenny and Allibone's stag from 20:00 to 22:00 but was not in the TDF between 22:00 and 24:00, maintains that he was on guard duty when Smith

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912 Maithem BMI02081 [25], BMI 13/48/18 – 13/49/9; Gregory BMI01024 [41]
913 BMI02082 [28], BMI 13/19/16 – 13/22/4.
915 BMI02086 [42].
916 As to the hitting with the shoe, see BMI02087 [43], MOD000048, MOD01080, MOD01082a. As to the lifting by the mouth and neck, see BMI02086 [42], MOD000048, PIL00364 [34], BMI 13/31/10 – 13/32/20 (suggesting that this occurred on the second night).
917 Wilding BMI00414 [50].
918 Smuleki BMI01243 [90].
919 MOD0000214.
920 MOD000115, MOD000102.
gave his order and Livesey countermanded it.\footnote{Livesey, in his first account, stated that on returning D005 from tactical questioning between 03:00 and 04:00, the TQer (Smulski) informed him that the detainees were without hoods and cuffs and these should be replaced. Smulski's timings would put the return of D005 at 04:15.\footnote{MOD000203.}}

246. By the time of his interview in March 2005, Smith was to produce (for the first time) a handwritten note, signed by Mackenzie and Cooper and apparently drafted a few days after Baha Mousa's death, setting out the countermanding of the Smith order within half an hour of its making at 21:45 - 22:00.\footnote{MOD000771-2.} He also gave a full account of seeing the detainees hooded and cuffed at 02:50 and having a conversation with Livesey regarding this.\footnote{MOD015395.} Livesey, interviewed some four days later, at first denied all recollection of any order from Smith, only a question from him as to whether the hoods could be removed, but then (after consulting his legal adviser) confirmed Smith's account, describing a conversation with both Smith and Smulski in which he was "piggy in the middle", but continuing to time this as taking place in the early hours of Monday morning.\footnote{MOD016373, MOD003191-2, MOD000835.} By 2006, Smith could not recall any conversation with Livesey on the matter, although he then recounted it in his Inquiry statement.\footnote{MOD003277.} 

247. There are a number of possible interpretations of this evidence. The first is that Livesey and Reader are wrong and the event occurred at approximately 22:00 (although Mr Maithem saw all of the detainees hooded when he arrived at around this time). The second is that it occurred after 04:00 during Mackenzie and Cooper's second stag, and they and Smith have given incorrect timings, probably motivated by a desire on Smith's part to shift his intervention to an earlier stage of the detention. The third, and in the victims' submission the most likely, is that the event never happened at all, and the account has instead been invented by Smith and adhered to (albeit imperfectly) by the others in an effort to protect the Provost Sergeant from inevitable accusations of neglect of duty. None of the detainees recall any

\footnote{MOD003453-61. See also BMI 39/47/8 – 39/51/7. MOD000834, BMI05007 [65].}
period during the first night when the hoods were taken off and they were
allowed to sleep. Neither of the TQers accept that they ordered the
reinstatement of hoods after their removal. Despite Smith’s apparent anger at
the countermanding of his order, and Livesey’s apparent dilemma at being
torn between conflicting orders from two (more junior) Sergeants, neither man
appears to have referred the issue to any officer at any stage.928 It is clear
that Smith’s order and Livesey’s countermanding of it quickly became part of
the ‘folklore’ of this incident. Aspinall and Redfearn cite it in their SIB
statements as occurring during the Monday morning.929 Neither man was
even present at BG Main at either of the times that Smith and Livesey claim
that these events took place.

Abuse for the rest of night

Overview

248. All of the victims recount that their abuse went on throughout the night.930 This
included the hoods, the stress positions and beating. Features of the night
time events that stand out for the victims are that Ahmad Matair and D002
recall being beaten either in the TDF immediately upon their return from being
tactically questioned, or before they even got there.931 None of the people
who were brought back from TQ were allowed to sleep, just as those awaiting
it were also not allowed to sleep. D006, recognised at this stage as an elderly
man who might be treated slightly differently, was hit in the face with a torch
as someone tried to keep him awake.932 There are two ways to look at this
ongoing abuse. The first is that those engaged in tactically questioning were
happy for this to occur, in the sense that it would raise the prospect of the
suspects providing better information if they were questioned again. The other
possibility is that the people associated with the process were taking it upon
themselves to aid the questioning. With regard to D002, there can be no

928 Smith MOD003300-6; Livesey MOD03456-61, BMI 39/50/17 – 39/51/7.
929 Aspinall MOD000127; Redfearn MOD000192-3. Redfearn tries to take credit for issuing
the initial order himself, but Hunt (on duty throughout Monday morning) is clear that the
detainees remained hooded and cuffed throughout – see MOD001400.
930 D001 BMI01996[40]; D002 BMI01956 [45, 47]; D003 BMI02385 [60]; D004 BMI02035 [49];
D005 BMI02327 [76]; D006 BMI02142 [33]; Ahmad Matair BMI02270 [52]; Ahmed Maither
BMI02086 [42]; Kifah Matair MOD000065.
931 Ahmad Matair BMI02269 [48] D002 BMI01959 [44].
932 BMI02142 [33].
doubt that he was seriously assaulted between leaving the TQ and returning to the TDF. Several people noticed the injury to his eye in the morning. Reader recalled him being brought back in circumstances where the soldier who brought him said that he had fallen over; an explanation which he took to be self-evidently false. Livesey accepted punching D002 twice as they walked back after questioning. That admission helps the Inquiry to attribute some responsibility for the particularly bad effects that the three days of abuse had on D002. It is important to recall, however, his own account of his journey back from the TQ. As far as he experienced, something far worse happened to him:

"The soldier who had brought me into the interrogation room pulled the sacks back over my head. On the way back from the room the same soldier pulled me by my collar and hit me several times on the right side of my head, which I believe caused the deep cut above my right eye which was one of the injuries shown on the photographs displayed in the Court Martial. I am unable to describe this soldier but I believe it was the same soldier who put the hood back on my head and then punched me repeatedly in the head as he was the one dragging me back to the detention room. As I was being dragged back to the detention room my tracksuit bottoms fell down and my backside was exposed. My hands were tied and so I was unable to pull them back up. I was dragged back to the room where I was originally detained... Once back in the room I was forced to sit down with my hands and arms stretched out again. If I dropped my hands I would be hit again. I recall that D004 somehow managed to help pull my trousers up. In all this I felt that I was being played with like a ball."

Focussed treatment of D005

249. For those who would be inclined to see the overall incident as merely gratuitous violence, the events of the night included a concerted set of quite considered efforts to break the will of D005. Those events must have taken place after he was returned from being tactically questioned by Staff Sergeant Davies. Davies' TQ report indicates that although the detainee had provided general information about his brother, he had not disclosed his whereabouts. The particular abuse levelled upon D005 in the hours before morning must have been designed to extract that information. It is noteworthy that while these other forms of abuse were carried out in relation to him, he

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933 Aspinall MOD000127 and 131 and Stirland MOD000158.
934 BMI 28/189/20 to 190/5.
935 BMI 39/2/5-15, 40/20 to 44/11 and 61/12-21.
936 D002 BMI01959 [44-45]. See also Aktash BMI03484 [48], BMI 16/30/3-9.
937 MOD030867-868.
was apparently (if one goes by the Court Martial photographs) not being beaten as much (or as hard) as the others. Again, that feature indicates an element of method to what went on.

250. Upon being taken back to the TDF, D005 was forced onto the floor of the Middle Eastern toilet in the centre room. 938 He described the event in his oral evidence in the following way:

   "I was ordered to put down the trousers, to lift the trousers up, sit on the toilet, [with] my right leg on this side and my left leg on the other side, and he lowered my head to the opening of the toilet and asked me to stay as such, looking into the hole of the toilet. The smell was extremely bad because it had been an abandoned toilet, as far as I know. So I stayed in that position about an hour – even more than an hour – and it was such a scene, such an abominable scene and very improper." 939

251. A suspicious feature of the soldiers’ account is that although several of them remember him being in that middle room, no one will recall how he got there or who put him there. 940 Livesey told the SIB that he returned D005 to the TDF, without further comment. 941 In his evidence to the Inquiry he denied any knowledge that he was put in the toilet. 942 Smulski did recall him being there, but said he “believed he had always been there since I arrived.” 943 If that was the case, he never took steps to move him on the health and safety grounds that he said he applied to the room when he visited it. 944 Appleby told the SIB of a Colour Sergeant coming to the TDF with someone who struck him as an Officer because of his attitude and speech and whose description matches Smulski. 945 The ‘officer’ was said to have introduced the metal pole as a method of keeping the detainees awake. Smulski admits this. 946 At this stage D005 was in the middle room. Smulski was seen to walk in there at one point and smash tiles. 947

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938 BM02327 [74-75].
939 BM1 17/22/5-14.
940 Reader BMI 28/188/22 to 189/19, Allibone BMI 24/31/14.
941 MOD005034.
942 BMI 39/57/23 to 58/2 and 72/12 to 72/19.
943 BMI 41/24/7-10.
944 BM101247 [86].
945 MOD000175 ("Scots accent......quite small about 5'4" wore glasses).
946 BM101254 [108].
947 MOD000175.
252. D005 is likely to have spent more than an hour in the middle room, even if the time was interrupted, because the soldiers that arrived in the early morning also recall him being there.\textsuperscript{948} This is in keeping with D005’s recollection of being moved to the toilet on a second occasion.\textsuperscript{949} By the time Stirland saw him some time after 06:00, “he was crying a lot, breathing heavily and patting his chest”.\textsuperscript{950} D005’s own recollection of being in the toilet, although confused as to timing, is extremely clear in terms of how he experienced the treatment:

“I felt I was not a human because a human would [not] be lowered to such a level – first of all, I felt inhuman. I felt a lack of respect, because the level of a man – human being – who was lowered to such an extent to foul – to a foul level, this moved me a lot and affected me psychologically.”\textsuperscript{951}

253. At some point D005 was taken on a forced disorientation walk in the night. Smulski accepts that he ordered this to happen in order to ‘unsettle’ him, on the basis that he was ‘about to break’.\textsuperscript{952} Reader and Appleby admit to being involved in carrying out the order.\textsuperscript{953} According to Reader, “We dragged him as he was hooded and probably didn’t want to go...some of the time he was walking and some of the time he was dragging his feet”.\textsuperscript{954} Appleby’s account in the Court Martial caught the deeply complex nature of the violence by this time, given that he did not agree with it at all, but he also thought being asked to carry out this treatment was a “preferable alternative” to what Payne was telling them to do.\textsuperscript{955} Indeed Appleby got the impression that the “officer” disagreed with Corporal Payne’s way of doing things.\textsuperscript{956} What he did is something he would subsequently describe himself as “emotional” about, asking for a break during the course of explaining this particular event.\textsuperscript{957} The account given of the event by Appleby at the Court Martial is as follows:

\textsuperscript{948} Redfearn MOD0192, Graham MOD000149 and BMI 26/90/14 to 92/2, Stirland MOD015411 and MOD000159, Rodgers MOD000221, Hunt MOD01399.
\textsuperscript{949} BM02330 [83-84], MOD000159.
\textsuperscript{950} BM17/22/16-21.
\textsuperscript{951} BM01249 [94] and BM01257 [112].
\textsuperscript{952} Appleby BM02525 [76] to [78] and MOD000175 and Reader MOD000204 and BM03297 [14].
\textsuperscript{953} BM03387 [14].
\textsuperscript{954} BM03387 [14].
\textsuperscript{955} CM 31/87 23 to 88/16.
\textsuperscript{956} CM 31/87/2 to 31/88/2 and 31/20/25ff. As to the reaction of the young man: “... he was screaming and I think he was speaking in Iraqi. I did not understand what he was saying, but he was quite scared”. (CM 31/98/23 to 31/99/2).
\textsuperscript{957} CM 31/89/3 and 31/89/18-22. See also BMI02528 [94] and BMI 25/96/17-21.
"He said...one of them was due to break or something like that....He said that he wanted -- he wanted us to go in there and start shouting at...I think the younger one...Started telling us to shout at him...He wanted -- he explained that he wanted -- I think.. I had to grab his legs and I think Reader grabbed his arms -- he said he wanted us to swear a lot and to shout really loudly and take him outside -- outside the detention centre ...and take him back in and just put him in there...He said it would be a good way to confuse him or something like that..."

254. D005 also detailed in his first statement given in September 2003 that during this period someone had urinated on his head, while still wearing the sandbag.\textsuperscript{959} The reality of that same scene was depicted in the fake photographs that were presented to the Mirror Newspaper in May 2004. Soldier A, who is almost certainly Pte Mackenzie and who was guarding in the TDF that night, was one of the people who handed over those photographs.\textsuperscript{960} In his Inquiry statement D005 states that at some point when he was returned to the toilet he was urinated upon and tricked into drinking urine.\textsuperscript{961}

255. During his time in the toilet, D005 also states that he had difficulty breathing. He remembers a strong smelling household substance being sprayed in his face.\textsuperscript{962} It is not possible to place this event with certainty. One possibility is that it accords with the moment after 06:00 when Stirland saw him "breathing heavily and patting his chest".\textsuperscript{963} D005’s account of that time in his Inquiry statement coincides with an attack by a soldier who poured water over him and started to rub the dirty coarse sack against his face. The (two) hoods were then tightened around his neck. He screamed because he could not breathe properly.\textsuperscript{964} He then speaks of a soldier, who could have been a medical officer, spraying something on his nose. He recognised it to be some kind of insect repellent which they used around the house. The effect of this

\textsuperscript{958} CM 31/86/20 to 87/13.
\textsuperscript{959} MOD0000018. See also MOD001913.
\textsuperscript{960} BM04283.
\textsuperscript{961} BM02333 [88].
\textsuperscript{962} BM02332 [87].
\textsuperscript{963} MOD000159.
\textsuperscript{964} BM02332 [86].
was to make his breathing much worse. A florescent liquid from a light rod was also poured over his body.

256. Another explanation for this event or a separate event is that the soldiers were putting petrol under D005’s nose and pouring water over him in an effort to make him believe he was about to be set on fire. In a supplementary statement to the Inquiry, Payne described such abuse in relation to this detainee. This occurred in the early morning. He told the Inquiry that other members of the multiple were present in the middle room when it happened. The effect of the action was to make D005 go “hysterical”. He was 100% sure this had occurred, notwithstanding that D005 was not describing it.

257. The fact that this is not an experience that D005 described does not necessarily mean that it did not happen. It might mean only that the desired fear of the perpetrators did not register. As detailed above, D005 does refer to having water thrown over him and rubbed into his face, having urine thrown over him, and also having fly spray or some other strong smelling household substance thrown on him. What can be certain is that this treatment did happen to someone and possibly more one than detainee. Cooper says that he saw this happening to someone in the TDF. Reader says he was told about such a thing happening to more than one of the prisoners by Redfearn after the event. Kifah Matairi made a complaint of a similar nature to the SIB:

"On one occasion I had petrol rubbed under my nose and my blindfold/sandbag was replaced. Shortly afterwards a liquid I knew to be water was poured over my head. I knew that it was water because I could taste it. It involved Soldier 1 and Soldier 3. They would then ignite a lighter close to my head and one of them would say, "I am going to burn you". This was said to me in English. I do have a limited grasp of the English language, therefore I could understand what was being said to me. I could clearly see the flame through my hood."

965 BM102332 [87].
966 BM102335 [96].
967 Payne BM105822 [7].
969 BM102332 [86].
970 BM102333 [88].
971 BM102332 [87].
972 BM04382 [108].
973 BM103393 [40].
974 MOD000055.
258. Kifah Matai describes Soldier 1 as also being present in the toilets in the hotel.\textsuperscript{975} The description he gives fits MacKenzie, who accepts that he was in the hotel toilets with the detainees. He also shared a stag with Cooper, who recalls seeing the petrol incident. Kifah further recalls hearing the name 'MacKenzie' whilst he was being beaten in the TDF.\textsuperscript{976} He describes Soldier 1 as being "the hardest and the cruelest" and states that "he would attack me at my most vulnerable points i.e. kidneys, chest, abdomen".\textsuperscript{977} Kifah's description of Soldier 3, the other "main antagonist", fits Payne.\textsuperscript{978}

**Experience of D006**

259. Approaching the end of this first 24 hours of the incident, D006 was finally given some limited medical attention which resulted in someone ordering his hood to be taken off.\textsuperscript{979} This happened at some point after 06:00. Greater certainty is not possible because of the gross deficiency in the medical treatment that this man and all the other detainees received during their time in BG Main. An overall assessment of the conduct of the medics is carried out below. For present purposes one would emphasise that although D006 did not receive as many physical injuries as some of the other detainees from outright beating, his experience must have been particularly bad for someone of his age and health. He spent something in the region of 18 hours hooded and in stress positions.\textsuperscript{980} He was hit with a torch and was otherwise hit.\textsuperscript{981} He was kept awake all night.\textsuperscript{982} He either had no serious medical consultation on the Sunday or no consultation at all.\textsuperscript{983} This was the case despite the fact that his wife had given medication to Lieutenant Crosbie at the scene of his arrest.

\textsuperscript{975} MOD000052.
\textsuperscript{976} MOD000055.
\textsuperscript{977} MOD000055.
\textsuperscript{978} He describes the soldier as white, big bodied, medium height, about 28 years old and with short brownish hair. He describes this soldier as grabbing his face through his sandbag and trying to force his fingers into his eyes (MOD000054). Hughes sees Payne doing this to Kifah: MOD000076.
\textsuperscript{979} D006 BMI02143 [38-7]; Winstanley MOD005108; Redfearn MOD000192.
\textsuperscript{980} D006 BMI02139 [23-5], BMI 13/66/5-16, BMI 13/72/10-13.
\textsuperscript{981} D006 BMI02140 [26], BMI 13/66/21 – 13/69/3.
\textsuperscript{982} D006 BMI02142 [33], BMI 13/66/21-21-22.
\textsuperscript{983} D006 BMI 13/70/19 – 13/71/5.
and his age and frailty were noted during the day. His ill-treatment only stopped at some point after the early morning guard arrived from Camp Stephen. Rodgers, Redfearn, Stirling and Payne all appear to seek some acknowledgement for giving assistance to D006. At that stage he was having serious heart palpitations. Some soldiers would speak of him having had a heart attack – a layman’s description that underscored a very serious state. Despite a prescription of propranolol, it is apparent that Dr. Keiloh did not visit him personally. For reasons developed below there is good reason for the Inquiry to conclude that all of the medical documents were forged after the events. Perhaps worst of all for D006, he spent a considerable period of the night in earshot of and only a few steps away from his teenage son being beaten, humiliated and terrified in an attempt to extract information. For his son, concern for his frail father was understandably a source of extreme anxiety. Eventually they were brought together in the left hand room at some point during the Monday morning.

THE SECOND DAY OF DETENTION

260. The second day of the detention, just short of 24 hours since the first 8 persons were detained in the hotel, has a natural evidential beginning with the arrival of the second half of the Rodgers multiple, including Rodgers and Redfearn, as well as Stirling, Hunt, Aspinall, Bentham and Graham. Some of the evidence seen by and relating to these witnesses has been already touched upon. The difference between the accounts of Rodgers and Redfearn of the scene that confronted them upon arrival could not be greater.

261. In his previous accounts Rodgers steadfastly avoided describing anything in detail about the conditions he encountered on the Monday morning. The

984 See for example Crowcroft BMI02551 [10], Mackenzie MOD000115, Livesey MOD003416, MOD005039, Rodgers MOD000221. As to the giving of medication at the house, see D006 BMI02137 [17] and BMI 13/93/6, D005 BMI02312 [31], Crosbie BMI 19/183/14-19.
985 Rodgers MOD000221-2, MOD003059; Redfearn BMI01797 [109-112]; Stirling BMI02821 [90-93]; Payne BMI01739 [84].
986 D005 MOD00042, BMI02143 [36]; Keiloh BMI00521 [103]; Winstanley BMI04614 [32], MOD015391.
987 Hughes MOD000075, Betteridge MOD000087.
988 Keiloh BMI00521 [103]; Winstanley BMI04614 [32].
989 D006 BMI02142 [34].
990 D005 BMI02316 [43], BMI02334 [91], Hunt BMI00782 [61], Stirling MOD000159, Rodgers MOD000221-2.
991 D006 BMI02144 [40], D005 BMI02334 [92].
fullest description he gives in his second statement to the SIB, dated 30 June 2005:

"When I entered the detention facility I saw the men were still seated on the ground, hooded, with their hands restrained with plastic cuffs. I cannot confirm they were seated in the same positions in the building as that in which I had seen them the evening previous. I noticed all of the detained men were wet, which I opined was due to their sweating and this thought was compounded by a strong smell of body odour present in the facility. Some of the detained men were also complaining, by which I mean that they were moaning".992

262. This account can be starkly contrasted with the account given by Corporal Redfearn as to what he saw when he first arrived at the TDF at roughly the same time as his Multiple Commander. In his statement to the SIB he originally said:

"I could not believe what I was seeing, the floor seemed to be covered in urine and the smell was awful. The prisoners appeared to be at best in discomfort at worst in pain. Some were moaning as if in distress, some were breathing heavily."993

263. The SIB statement contained a description of injuries that he immediately saw in relation to probably D003 (bruising across his stomach) and Ahmad Mataiiri (a visible lump in the centre of his pelvic area). Redfearn elaborated upon what he first saw in the TDF in his Inquiry statement. He noted that as far as the temperature was concerned “it was mid 40s outside and it was like a sauna inside”. The humidity was “incredible”. This “combined with the stench of urine, made the conditions disgusting”.994 Further on in the statement he said the following:

“Conditions in the TDF were indescribable. When the detainees were originally arrested they were tidily dressed and not in any kind of distress. The next time I saw them in the TDF on the Monday morning they all looked like they had been in a car crash. The majority of their clothes were ripped and most if not all of them had heavy bruising across their abdomens and upper arms. This was visible through their ripped clothing. The bruising that I saw was not just simple round bruises that you might normally see. The bruises I saw ran in a line across the detainees’ stomachs and were perhaps five inches wide. The detainees also looked exhausted. When I started my guard shift..."
and removed the detainees’ hoods I could see that at least two of them had bloody noses and bruising around their eyes. I remember that Baha Mousa was one of those with a bloody nose. During my shift I had called out for a medic to come, but none ever did.”

264. Another feature which Redfearn and Rodgers disagree on is how closely they were to supervise the multiple during the day. Rodgers maintained in his Inquiry statement that he attended to paper work while at the base, and did not involve himself in the TDF in any great detail, because the multiple were effectively seconded to the Provost. By contrast, Redfearn would emphasise that he and Rodgers alternated in their supervision and it was likely that Rodgers gave the initial briefing. When it was put to him that supervision might be delegated to the Provost team he said as follows:

“A. They were in charge of the detention, sir, but they were still my guard. I still had to administer them through food, water and sleep.
Q. In terms of concern about your guard, did you have an additional concern about the fact that, one, they were not trained in these conditioning techniques, in terms of supervising them?
A. Sir, we should never have been there, but yes, I had a major concern.
Q. And secondly, whether they were responsible for it or not, once there you knew pretty quickly that untoward things were happening?”
A. Yes, sir.”

265. Private Hunt, who did the first stag after Rodgers arrived and then another one at midday, recalled being briefed by him inside the TDF and being shown how to use the metal pole to startle the detainees into staying awake. Hunt’s oral evidence again paints a picture of the scene that Rodgers must have been aware of:

“Q. Leaving aside the fact you say you didn't see violence, you are clear now that these people were being kept in a pretty inhumane situation, aren't you?
A. Yes.
Q. Made to have discomfort?
A. Yes.
Q. It smelled?
A. I can't remember.
Q. They hadn't been able to sleep and you kept them awake?
A. Yes.

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995 BMI01805 [134].
996 BMI01793 [96-97] and BMI 30/216/18 to 218/3.
997 BMI 30/217/13 to 218/3.
998 BMI00786 [72].
Q. And Lieutenant Rodgers came in at one time and demonstrated this dropping of the pole to you?
A. Yes.
Q. You have got at least one person who you saw obviously bruised?
A. Yes.
Q. Told about it by the multiple -- the men coming off and you saw it. You have another person you refer to as having the hernia?
A. I can't remember that one.
Q. But it is noted in your meetings.
A. Yes.
Q. Why did you think all this was going on?
A. I don't know.
Q. Did Lieutenant Rodgers, when he had this conversation with you, when he was in the TDF, give you any indication about why it was to go on?
A. No."999

266. Private Richards came to BG Main during the course of the morning and spent a short period guarding.1000 His evidence to the Inquiry in his statement was that in the briefing given to him outside the TDF by Corporal Redfearn he was informed, "we have been told to rough them up, not to give them an easy time and not to let them sleep". 1001 By "roughing up", Richards understood they were to hit them. He "believed" that this was an order from Colonel Mendonca.1002 Later on in the guard duty that morning he gave the following description of events:

"When I was in the room, I saw the detainees being slapped by the soldiers in the room and after a while, they were hit and kicked. The detainees did not have shoes on and the soldiers were stamping on their feet. LCpl Redfearn started treating detainees in this way and the others followed what he was doing. This type of treatment continued all day. I can recall Pte Appleby, Pte Cooper and Pte Bentham being involved in hitting and kicking the detainees. Hunt was also in the room a lot but not involved in hitting and kicking the detainees. I cannot recall who else was there from my multiple but there were others who were around and popping in and out of the room".1003

267. The guards that day would describe the detainees as still in hoods and still undergoing stress positions, of one form or another, and not allowed to

999 BMI 27/141/6 to 142/8.
1000 Although in his oral evidence he thought he went to BG Main at 0600 on the Sunday, it more likely to have been on the Monday (BMI31/125/13-18).
1001 BMI04167 [42].
1002 BMI 31/130/22 to 131/3.
1003 BMI014168 [48]. See also BMI 31/127/24 to 131/2, BMI 31/131/18-25 and BMI 31/132/24 to 133/5.
Private Douglas (one of the other drivers) was also present at the TDF for some of this time and recalled that situation in relation to the detainees in the right hand room. By his own admission he used slaps or nudges to maintain the positions. Other violence ensued, with members of the multiple and other soldiers coming in and slapping the detainees in the face. He confirmed his original SIB statement that excessive force was then used, including prisoners being "punched in the back, kicked in the ribs, back and kidney areas while all were facing the wall." He had specifically seen Payne punch, slap and kick prisoners, as well as grabbing their throats. He also said that a lot of the multiple were involved in similar violence. When giving water to one or two of the detainees he could see that their faces and lips were injured. Some of detainees had urinated and defecated themselves, which he could smell and see from their stained clothing. At a period almost ten hours before he would see a doctor for it, soldiers were commenting upon Ahmad Matair’s obviously painful hernia.

It is Mr Matair’s evidence that on this second day soldiers played a game to hit and kick his groin, betting to see how quickly they could cause him to collapse.

At some stage during the second day, and whilst D005 was still in the middle room, LCpl Aktash, a signaller from the Ops Room, was drawn to the TDF by noise coming from it. He too saw detainees hooded and cuffed, including both the men in the left hand room (thus including D006). The men in this room were also in stress positions, which they were unable to maintain. The detainees in both rooms were groaning with pain and one in the right hand room was unable to maintain a sitting position. Their clothing was messed up and when one man’s hood was lifted he had bruising beneath his right eye.

1004 Richards BMI04168 [45] and [49], Graham MOD000146-147, Aspinall MOD000124, Bentham BMI01639 [73], Appleby MOD000176, Rodgers BMI01847 [118], Redfearn BMI01804 [131].
1005 BMI 31/20/6 to 21.
1006 MOD000185.
1007 BMI 31/22/10-22 and 30/10-24.
1008 MOD000185 and BMI31/32/7-16.
1009 BMI 31/35/2-13.
1010 BMI 31/35/22.
1011 BMI 31/37/3-4.
1012 BMI 31/40/3-9.
1013 BMI 31/88/23 to 40/1.
1014 BMI02270 [53].
1015 MOD005075, BMI03480 [37], BMI 16/10/7 - 16/13/8. As to the presence of D005 in the middle room, see MOD005076, BMI03482 [42], BMI 16/32/6-7.
When one man dropped his hands, Payne slapped him and kicked his hands. He poked the eyes of another.\textsuperscript{1016}

269. Private Appleby also makes clear that the Choir was still being carried out on this second day. In a final part of his SIB statement which he asked to be added, he said the following about what happened when he woke from a short sleep after being relieved by the morning guard:

“One thing I left out is that once I awoke I went back into the right hand room where I saw the prisoners stood up still cuffed with hoods on, with arms out in front roughly in the same positions as before. Stood between them was Corporal Payne with Lt Rodgers, Aspinall, Bentham and a couple of others who I can't recall watching. Cpl Payne then said something like "let's have a sing-song," after which he went around punching each one in the chest which forced them to moan out loud. He did this progressively faster one after the another, to make them sound like a tune. He hit all of them except Prisoner A at least once. I then left the room, as I was not really interested. About 5-10 minutes later the multiple left".\textsuperscript{1017}

270. Given those comments Appleby was asked during his oral evidence before the Inquiry to confirm what his Multiple Commander knew was going on at the time:

“A...You have explained that you never complained or raised the matter with Lieutenant Rodgers, and the way you put it today is that you didn't consider it would be your place to do it. A. Yes.
Q. Now I want to ask you a very specific question about Lieutenant Rodgers. You are certain, aren't you, that Lieutenant Rodgers knew what was going on anyway?
A. I don't know.
Q. Just take a moment because you can understand why this is an important question.
A. Yes.
Q. I'm not going to go through all the evidence about the whole multiple going back in and you have been shown times when you say in statements that Lieutenant Rodgers saw the choir.
A. Okay.
Q. You are certain that Lieutenant Rodgers knew what was going on anyway, aren’t you?
A. I can't -- I don't know. I can't remember now, but like it said on that statement, that he was present. I wouldn't have said his name if he wasn't there, so.”\textsuperscript{1018}

\textsuperscript{1016} BMI03480 [37-48], MOD0050075-79, BMI 16/10/7 – 16/26/23.
\textsuperscript{1017} MOD000176.
\textsuperscript{1018} BMI 25/6/7/11 to 98/7.
271. Redfearn’s evidence to the Inquiry was clear that Rodgers did know about the violence and they discussed it in terms:

“A. There would have come a time, would there, later in that day when you would have seen your own multiple commander?
A. Yes, sir.
Q. To whom you were directly answerable?
A. Yes, sir.
Q. Did you tell him?
A. He was already aware, sir.
Q. And how was Lieutenant Rodgers aware?
A. Because other members of the multiple had told him and the fact that he had been in the TDF, sir.
Q. So other members of the multiple had told Lieutenant Rodgers. How did you know, were you there when he was told?
A. I have some recollection of him mentioning that the prisoners had been assaulted. Not by members of my multiple, but he did mention that they had been assaulted, sir.
Q. That's how you say you know that he knew?
A. Yes, sir.”

272. Later in his evidence Redfearn underscored the same point:

“I just explained what had happened, tried to get his point of view. And his point of view was the same as mine: That everybody knew about it, who you can report to if everybody already knows.”

The breach of the 14 hour rule

273. A striking feature of this episode of detention is that by the time of the second day the Battle Group had significantly exceeded the order in Division FRAGO 005 requiring delivery to the TIF within 14 hours or as soon as possible thereafter. If that was a critical safeguard to protect detainees from abuse at the point at capture when they did not enjoy the benefit of trained and more independent handling by custody specialists, then the safeguard was hopelessly frustrated in this case. In Part V the victims consider the extent to which that order was breached on a regular basis before this event. It is apparent that legal and operational staff officers viewed the matter in different ways. For present purposes, the evidence relating to the contemporaneous

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1019 BMI 30159/9 to 180/3.
1020 BMI 30/214/6-9.
1021 MOD022825-6.
consideration of the breach of the 14 hour rule in relation to these detainees is as follows.

274. Within the Battle Group, Colonel Mendonca accepts that he was aware of the issue from the Sunday evening, as were other members of the Chain of Command.\textsuperscript{1022} The CO explained the delay in terms of the potential link to the RMP killings and the fact that the prisoners still needed to be tactically questioned. He told Peebles that if the deadline were to be exceeded he should contact Brigade. At this stage the manpower issues that would arise on the following day because of Operation Centurion were not being mentioned. Major Suss-Francksen, the Battle Group 2IC, recalls a conversation with Peebles on the Sunday evening in which he was told that the tactical questioning was going slowly and he therefore suggested that Peebles should contact Brigade to see if they could get an additional questioner.\textsuperscript{1023}

275. There is then a dispute between the various witnesses as to how the issue was communicated up to Brigade and back again. Major Peebles approached Major Clifton, the Brigade Legal Adviser, after Brigade prayers on the Monday morning, requesting an extension to the time limit for manpower reasons. Peebles says that he told Clifton that the movement to the TIF was for the purposes of continuing questioning.\textsuperscript{1024} Clifton recalls being told that the delay was due to manpower in organising the move.\textsuperscript{1025} Either way, the position of Clifton is that he told Peebles that the movement of the detainees had to be prioritised. In effect he did not regard the reason given as acceptable and said so.\textsuperscript{1026} Peebles' understanding appears to have been different, to the effect that Clifton reluctantly agreed that the detainees could be delivered late.\textsuperscript{1027} Clifton, or another Brigade Legal officer, later called JFIT and checked the position regarding extensions of the time limit with S017 on the basis of manpower shortages. She said they should be brought to the TIF, but if that was not to be the case the matter should be referred to the Division's Legal

\textsuperscript{1022} Mendonca BMI001129 [105], Moutarde BMI04023 [161], BMI 54/116/9 – 54/117/17, Suss-Francksen BMI01585 [48-51] and Seeds BMI04197 [103].
\textsuperscript{1023} BMI01585 [48].
\textsuperscript{1024} Peebles BMI02731 [82].
\textsuperscript{1025} Clifton MOD000577-578, 580-581 and CM 43/166/5 to 166/15 and MOD04577 [62].
\textsuperscript{1026} CM 43/166/23 to 167/4. and MOD04577 [62].
\textsuperscript{1027} BMI02707 [82].
Commander, Lt Colonel Barnett.\textsuperscript{1028} Clifton says having told Peebles about the manpower reason not being acceptable he then communicated the logistical issue to the head of G2, which he believed to be Major Robinson (but who was on R and R at the time and so may have been Major Radbourne), as well as to the Chief of Staff.\textsuperscript{1029}

276. At some point on 15 September 2003 there was a phone call between Major Peebles and Major Radbourne.\textsuperscript{1030} This is perhaps the most controversial matter in the sequence of calls. In his Inquiry statement and evidence, Major Radbourne suggests that the reason given for the delay by Major Peebles was "operational" in terms of manpower to effect the journey.\textsuperscript{1031} In his statement to the SIB in January 2006, however, Major Radbourne said he was told by Peebles that the reason for the delay was "information [was] forthcoming".\textsuperscript{1032} Either way, Major Radbourne was to continue to stand by an account that he did not sanction the continuing delay.\textsuperscript{1033} Neither did he refer the matter up, although in hindsight he accepted that he should have done so.\textsuperscript{1034}

277. There is then a conflict between Major Radbourne and Major Fenton as to what the Battle Group were told to do as of Monday morning. Major Fenton understood the conversation between Radbourne and the BGiro to have included an order from Major Radbourne that the detainees should be taken to the TIF.\textsuperscript{1035} In his evidence to the Inquiry Major Fenton emphasised again that when he learned of the delay in completing the tactical questioning because of the need for another questioner he came to the view that the detainees should be sent to the TIF that morning and understood that the order had been communicated to the Battle Group. Major Radbourne denies having given any such instruction to the Battle Group to that effect, claiming (somewhat disingenuously given his roles within Brigade) that as he was not

\textsuperscript{1028} MOD000596 and BMI 06814 [61].
\textsuperscript{1029} MOD04577 [62].
\textsuperscript{1030} MOD000982, CM 60/30/13ff.
\textsuperscript{1031} BM104163 [81].
\textsuperscript{1032} MOD000982.
\textsuperscript{1033} BM104152 [79-80].
\textsuperscript{1034} BMI 78/172/22 to 175/9.
\textsuperscript{1035} MOD030851, CM 40/47/5 and 106/9.
involved in the operation and Major Peebles was the BGIRo, it was not his place to comment. 1036

278. Finally at some time after 17:00 on the Monday, Major Fenton believes he spoke to the 2IC (and not the Ops Officer as previously thought). At that stage the 2IC told him he wanted to keep the detainees over night for manpower reasons. 1037 In his Inquiry statement, Suss-Francksen did not recall this call, but does not dispute it. 1038 The reason why the Chief of Staff could remember this call was because he had realised that his order (or expectation) arising earlier in the morning had not been followed by the Battle Group. He made sure that he spoke to Major Suss-Francksen directly because he regarded him as the “weakest of 2ICs in the Battle Groups” and “did not have the strongest of relationships with him”. 1039 On being given manpower reasons arising as to why the move could not happen that night, Major Fenton accepted the reason at that stage. According to his report, written after the death of Baha Mousa, that authorisation was given at 18:55, 1040 nearly 36 hours after the arrest.

279. The only other evidence regarding the delay comes from the Battle Group Operations officer, Major Seeds. He (unusually for him on the tour) left the Ops room during the day on the Monday to participate in Operation Centurion. He arrived back at the base after the death. At this stage he was informed by the Ops room that the delay in moving the detainees concerned their continuing questioning. He therefore informed the Inquiry that as far as he understood it, the failure to move the detainees had nothing to do with manpower. 1041 The most likely conclusion is that “manpower” was used as an excuse by the evening of 15 September, but had not been the original reason for the delay. It is difficult to see how Major Radbourne would have signed a statement in 2006 with the Court Martial approaching where he chose to describe the reason for the delay as “information forthcoming”, if that was not the case. The question of whether this feature of the delay should have or

1036 MOD000982, CM 59/162/14.
1037 MOD000704, CM 40/9, BMID5688 [87]. BMI 101/108/7 to 123/9.
1038 BMI01586 [50].
1040 MOD030849. Notably the report suggests that the authorisation was given by a watch keeper who did not refer the matter to any of the Bde staff – suggesting that Fenton tried to distance himself from involvement with the incident when writing his report to the GOC.
1041 BMI04195 [94] and BMI46/481/13 to 483/6.
ought to have been appreciated by Major Fenton and Major Clifton, and if so
to what consequence, is considered in Part V.

The witnessed events on Monday afternoon

_Baha Mousa is moved to the middle room_

280. At around 13:00 on the Monday, the majority of the Rodgers multiple
(including the multiple commander and 2IC) left BG Main, leaving Privates
Aspinall, Bentham and Graham to guard the detainees, with a brief to keep
them in stress positions and slap them if they got "out of line". 1042

281. It appears that fairly soon after the change in shift, Baha Mousa was moved
away from his colleagues and into the middle toilet room in the TDF. 1043 The
precise reasons for this move are unclear. 1QLR was later to report to the
Chief of Joint Operations (via Brigade and Division) that Baha Mousa had
"attempted escape repeatedly throughout detention, on average every 10
minutes." 1044 This appears to be the high point of an escape narrative
enshrined soon after Baha Mousa’s death, but that has been at best wildly
exaggerated and at worst invented in its totality. 1045 The inconsistencies of the
account given by Fallon, Crowcroft and Sticker about a detainee ‘rugby-
tackling’ a guard on the Sunday afternoon have been highlighted above, but it
is clear from their descriptions that, even if true, the detainee was not Baha
Mousa, and at no point did he manage to break free of his cuffs. 1046 By the
Monday morning, Redfearn was apparently told that “the biggest prisoner”
had “snapped” his cuffs and pinned Fallon against the wall. He says that
during the morning he saw a detainee frantically trying to remove his cuffs

1042 Stirland MOD000160.
1043 The move was made during the Bentham, Graham and Aspinall shift: see Aspinall
MOD000124, Graham MOD000150, and after Smulski had tactically questioned him as the
second detainee in the morning (MOD006038). Baha Mousa was in the middle room by the
time the soldiers escorting a GMTV crew visited the TDF at approximately 14:00 – 15:00; see
Hughes MOD000068.
1044 MOD016120-1.
1045 See Moutarde’s report to the CO at MOD052586. See also the SINCREP MOD030957.
1046 Crowcroft MOD020310, BMI02558 [131] (describing the man as wearing a ‘grey car
racing t-shirt’, confirming that it was not Baha Mousa, and stating that his cuffs were removed
by the guards after the incident), Fallon MOD020311, BMI02558 [11] (confirming that the
cuffs remained on), and Sticker MOD004628-33, BMI01859 [27] (confirming that he did not
see the event, that the man pointed out to him was wearing a long white robe, and stating that
it was not the man who later died).
(but not succeeding) and being threatened with separation by Payne.\textsuperscript{1047} The description given of this man's clothing does not match that of Baha Mousa.\textsuperscript{1048} Despite this, Payne appears to have concluded (perhaps only after his death) that these events involved Baha Mousa.\textsuperscript{1049} Stirland maintains that during the last hour of his morning guard duty he, Payne and Hunt saw Baha Mousa lying down with his cuffs removed "again", but his stag partner Hunt has always maintained that the detainees remained hooded and cuffed throughout his stag.\textsuperscript{1050} In his inquiry statement Hunt explains:

"The detainees were constantly trying to lift up their hoods, possibly because it was hot. When they did this, I would just pull the hood back down again. I would also shout at them to stop pulling up their hoods. This is what I observed Pte Stirland do as well. The detainees also tried to wiggle out of their plastic cuffs, probably because they were uncomfortable, but I did not see anyone actually manage to get them off." \textsuperscript{1051}

282. Graham and Aspinall suggest that Baha Mousa kept removing his cuffs during the Monday afternoon, but Payne maintains that once in the middle room "he was fine until the changing of the guard again at night time.\textsuperscript{1052} Smulski states that on advising and assisting the moving of Baha Mousa into the middle room he did not struggle and made no attempt to remove his hood or cuffs.\textsuperscript{1053} None of the visitors to the TDF that afternoon have recalled seeing any detainee removing his cuffs or being told about this (aside from SAC Hughes, who recalls Baha Mousa removing additional cuffs to his thumbs only).\textsuperscript{1054} No senior soldier with managerial responsibility for the TDF appears to have been told about the problem at the time.\textsuperscript{1055} Beyond all this, one has to ask how it was that Baha Mousa, by then undoubtedly exhausted, was apparently able to repeatedly break out of thick plastic cuffs. No witness

\textsuperscript{1047} MOD0000190, MOD0000193.
\textsuperscript{1048} MOD0000190 (a dark green sports shirt with short sleeves. Baha Mousa was wearing a white vest and long-sleeved shirt).
\textsuperscript{1049} Payne BM01740 [88], Smulski MOD006038.
\textsuperscript{1050} Stirland MOD000161, Hunt MOD001400.
\textsuperscript{1051} BM00786 [73].
\textsuperscript{1052} BM01746 [111].
\textsuperscript{1053} MOD006038.
\textsuperscript{1054} See the 'GMV' group of witnesses, the 'G5' witnesses, and Kendrick BMI 38/197/25 – 38/198/3. Hughes describes Payne plasticuffing Baha Mousa's thumbs together and him managing to release his thumbs from this additional restraint, but not his wrists (MOD00077-8, BMI 15/177/20 – 15/178/15). Aktash also recalls the plasticuffing of a detainee's fingers: MOD005082-3, BMI 16/10/7-13, BMI 16/21/24 – 16/22/12. His description of this man could fit Baha Mousa.
\textsuperscript{1055} Payne maintains that he told Peebles (BM01746 [111]) but Peebles suggests he first heard the escape narrative after the death (BMI 40/122/13 – 40/123/13, BMI 40/178/23 – 40/177/8).
has described that event occurring before or after in their operational
dtory. Aspinall, perhaps sensing this difficulty, suggested “they
weren’t snapping just coming undone”, but this seems equally implausible.
Furthermore, if Baha Mousa was able to repeatedly remove his cuffs, why
was it that none of the other detainees (some of whom were equally large
men) were able to do so?

283. What seems much more plausible is that the attempts of a terrified, injured
and exhausted man to ease his own suffering by lying down and/or lifting his
hood provoked frustration and anger on the part of his captors, who have
since attempted to portray him as an aggressive menace with exceptional
strength in an effort to justify their grossly disproportionate response. LCpl
Kendrick, who had given (inconsistent) accounts of Baha Mousa becoming
“aggressive”, and “causing trouble”, “goading the others” who responded by
moving towards the guards “like a zombie film”, gave more frank evidence to
the Inquiry.

“Q: What was the reason, as you saw it, for that man being put into
the middle room?
A: Because he was being disobedient, in the words I use in my
statement, but because he was talking to the other prisoners and
refusing to carry out the stress positions, which is understandable
because his condition at the time at the time would have been
exhausted.
Q: What, he was finding it impossible?
A: Yes.
Q: So he was being disobedient in that he could no longer carry out
the stress position; is that what you are saying?
A: Yes, and he was also encouraged – he was speaking Arabic to the
other prisoners and they were reacting to I believe, what he was
saying.
Q: In what way were they reacting?
A: They were moving towards the centre of the room.
Q: They were all hooded, weren’t they?
A: Yes.
Q: You wouldn’t really have called what Baha Mousa was doing
“aggressive”, would you?
A: No.
Q: You wouldn’t really have called what the others were doing
“aggressive”, would you?
A: No.”

1056 Payne BMI 32/139/11-17, Smulski BMI 41/40/1-20, Stirland BMI 25/48/14 to 47/24,
Bentham BMI 41/143/22 to 144/17, Potter BMI 44/13/8-10.
1057 MOD000124.
1058 Kendrick MCIO00850-1, BMI01474 [89-91].
"Q: Effectively it is correct that today, having had time to think about it, you have withdrawn the suggestion in your earlier statements that this man was behaving in an aggressive fashion?
A: Because of the situation he was put upon, as in physically exhausted, I think if I had been in that situation I would have been, you know, exhausted and trying to make it stop.
Q: Taking that further forward, given the situation he had been in –
A: Yes.
Q: – and you knew that had gone on for, now, two days, highly fit physically trained guards would not have had a problem controlling it, would they?
A: No, no."

The GMTV visit

284. One set of witnesses who describe the condition of the detainees and the conduct of the soldiers towards them on the Monday afternoon are the group of soldiers who escorted a GMTV crew to BG Main. Three soldiers were drawn to the TDF by the noises emanating from it and, despite being from a different unit and unknown to the 1 QLR soldiers inside and around the TDF, were provided with a display of the ‘choir’ by Payne. The prisoners were still hooded and in stress positions, and Bentham explained that they had “pissed and shit themselves”. Senior Aircraftsman Hughes was told by Graham that the men inside the TDF were the suspects for the RMP killings. Bentham explained that the men had “pissed and shit themselves” and, apparently by way of justification for their treatment, explained that “if they caught you, they’d cut off your balls and make you eat them.” Hughes’ detailed account, given within days of the event, describes Bentham kicking the feet of detainees, slapping them round the head, and squirting water in their mouths so fast they were unable to drink it – an experience described by

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1066 BMI 38/197/10-24.
1067 Hughes MOD000069, MOD000078, Riley MOD000092, MOD000096; Betteridge MOD000087, BM100026 [37] (Hughes and Riley identified Payne as ‘Male 1’ in a later ID parade – see MOD015455, MOD015459. Payne introduced himself to Betteridge – see BM100021 [23], MOD000086).
1068 Hughes MOD000071-2; Riley MOD000094-6; Betteridge MOD000086, BM100025 [33] .
1069 Hughes MOD000071-2. Hughes’ description of ‘Male 4’ matches Bentham, and he identified him in a street identification – see MOD0006177. His description of Male 2 matches Graham, whilst Male 3 appears to be Aspinall.

166
many of the detainees.\textsuperscript{1064} His account of Payne’s treatment of Kifah includes the following passage:

"Male 1 shouted at Granddad to lift his head up and his arms which Granddad seemed incapable of doing, when Male 1 using both hands performed ‘karate chops’ bringing the outer side of the hand down on the outer side and on each side of Granddad’s neck. Granddad groaned and I heard him start sobbing as though he was crying. At this I saw that the remainder in the room then all seemed to lift their heads and raise their arms. Male 1 placed his fingers back into the position as if trying to ‘gouge’ at Granddad’s eyes. Granddad was groaning all the time now and as soon as Male 1 released his hold Granddad’s head slumped forward. Granddad then began to slide to his left as if he were going to fall on his side, but Male 1 stopped him with his left knee. Male 1 said, "Sit the fuck up" then "you’re really pissing me off now," or words to this effect. Male 1 then delivered another ‘karate chop’ type strike to Granddad’s neck, at the back of the neck with his right hand when Granddad again groaned and fell over onto his left side.\textsuperscript{1065}

From a hospital bed in Basra, and in a different language, Kifah Matair was to give this account:

"I was also struck on the back of my neck by someone using the side of their hand. This too was done on many occasions over the three days. I would be able to describe this soldier as follows: White skinned male, big bodied, medium height, about 28 years of age, brownish hair that was cut short. This is Soldier 3. Soldier 3 would also grab my face through my blindfold/sandbag very hard. He would try and force his fingers into my eyes.\textsuperscript{1066}

285. The identity between the account of Hughes and the accounts of others does not end there. Bentham and Graham showed Hughes how they had taught Baha Moussa to recite learned responses when they clicked their fingers – a 'game' also described by D005 and Kifah.\textsuperscript{1067} Hughes’ account of an assault by a man he later identified as Slicker is essentially accepted by the assailant himself.\textsuperscript{1068} The extreme level of violence inflicted on Kifah by Payne during this afternoon is graphically described not only by Hughes but also Graham, who accepted his earlier account before the Inquiry despite being the most reluctant of witnesses.\textsuperscript{1069} Baha Moussa is described by Hughes as a pathetic

\textsuperscript{1064} D001 BMI01996 [37].
\textsuperscript{1065} MOD0000076.
\textsuperscript{1066} MOD0000054. Kifah described Soldier 3 as also involved in the incident where petrol was rubbed under his nose, and as one of 'the two main antagonists for me' – see MOD000055.
\textsuperscript{1067} Hughes MOD000075-6; Kifah Matair MOD000055; D005 BMI02336 [98].
\textsuperscript{1068} MOD000077, MOD00175, Slicker BMI01860 [28].
\textsuperscript{1069} Hughes MOD000074-77; Graham MOD000148; Graham BMI 26/81/13-19.
figure – red-eyed, barefoot, with ripped clothing including at his crotch, leaving his genitals exposed.\textsuperscript{1070} In his Inquiry statement Hughes explained:

"He was on the floor struggling to sit up and was slouched over with one leg out straight in front of him. At one point Payne tried to pull him up from his slouching position but the detainee fell back down and his head hit the floor. It was a tiled floor and I heard his head make a slap sound against the floor. I think the man was too tired to stay sitting up, and I think he was still in agony from being stood on."\textsuperscript{1071}

LCpl Riley gave a similar description of either Baha Mousa or a detainee in the left hand room, including this:

"I think that the man who fell over was exhausted. I believe this not just because he fell backwards again as soon as he was picked up, but also because his body was limp. Also, even though I could not see his face, I could hear his heavy breathing – it was as if he had just done a marathon."\textsuperscript{1072}

Payne's response to an attempt by Baha Mousa to lift his hood was to stamp on his groin.\textsuperscript{1073}

\textit{The G5 visit}

286. The GMTV escorts were not the only external visitors to the TDF that afternoon. In the early evening, the G5 team from C Coy arrived at BG Main. Also intrigued by the shouting and cries of pain from the TDF, two of these soldiers visited the facility.\textsuperscript{1074} At this point, well after tactical questioning had finished, the detainees were still hooded and in kneeling stress positions.\textsuperscript{1075}

Schofield told the Inquiry in his statement that even before he looked into the building it was clear that "something was very wrong".\textsuperscript{1076} On looking inside, he saw a man fitting Huxley's description punch a detainee in the kidneys with "punches that could break walls".\textsuperscript{1077} Pte Riley then saw this man kneel Kifah Matair in the back.\textsuperscript{1078} Riley describes how the detainees were "groaning and shaking with what I perceived with exhaustion from the stress position". He

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{1070} Hughes' account of trousers ripped at the crotch is consistent with the records of the clothes removed from Baha Mousa's body (MOD001135) and the evidence of Saxton, who transported the body to BMH Shaibah (BMI00888 [55]).
\item \textsuperscript{1071} BMI00160 [33].
\item \textsuperscript{1072} Riley BMI00334 [112]. See also BMI00333 [109-111].
\item \textsuperscript{1073} MOD000078.
\item \textsuperscript{1074} Riley BMI00596 [16], MOD000624; Schofield MOD000612, BMI 18/183/19-25.
\item \textsuperscript{1075} Schofield MOD000612; Riley MOD005724, MOD000625, BMI00600 [132].
\item \textsuperscript{1076} BMI00372 [54].
\item \textsuperscript{1077} MOD00612, BMI 18/186/2-8.
\item \textsuperscript{1078} MOD005724; MOD000625-6; BMI00600 [133-4].
\end{itemize}
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noticed that the men had wet and soiled themselves.\textsuperscript{1079} Riley, who entered the TDF, also saw Baha Mousa in the central room, laid out on the floor (having previously been placed in this position by Payne, according to Graham).\textsuperscript{1080} He noted bruising to his face and nose, which appeared possibly to be broken.\textsuperscript{1081} As he was to reflect on hearing the escape narrative after the death, “none of the detainees I had seen were in a fit condition to escape”.\textsuperscript{1082}

287. The C Coy G5 Officer, Captain Good, also entered the TDF at this time, having been alerted to the situation there by Cpl Schofield. He too saw the detainees hooded and cuffed, with blood on the sandbags. Clothing was torn or missing and the detainees were covered in a “film of sweat”. Good saw cuts and bruises, and one young detainee was curled up on the floor, groaning with pain.\textsuperscript{1083} In his statement to the SIB, Good commented that “my instincts told me that something had taken place within the detention block”.\textsuperscript{1084} Despite this, he did not conduct any immediate investigation as to what this might be, but waited until he had returned to C Coy when he mentioned it to the C Coy Commander, Major Kenyon.\textsuperscript{1085} Perhaps sensing likely criticism for this approach, his account to the Inquiry tried to distance himself from his earlier acceptance that Schofield had reported an assault, and claimed that he assumed the detainees had been in a fight with other Iraqis and had not himself seen anything unusual: it was “within the constraints of what was normal at the time”.\textsuperscript{1086} Liggins, the final G5 witness, was not a convincing witness as to these events, whether because he was confusing them with an earlier visit, or because he went into only the left hand

\textsuperscript{1079} MOD000626, BMI00600 [135].
\textsuperscript{1080} MOD000150. In his oral evidence to the Inquiry, Riley accepted that his earlier recollection that Baha Mousa’s face was over the latrine must have been wrong if he could also see his face, but explained that this was the impression he had at the time (BMI 19/49/10 – 19/52/4). Given the size of the room and the stench that must have been in the TDF, it is hardly surprising that Riley was struck that Baha Mousa was very close to the toilet.
\textsuperscript{1081} BMI00599 [130-1].
\textsuperscript{1082} BMI00603 [146].
\textsuperscript{1083} Good MOD000632, BMI00122 [45].
\textsuperscript{1084} MOD000632.
\textsuperscript{1085} MOD000633, BMI00123 [49-50].
room, or because he was generally unwilling to give evidence against members of his Regiment.¹⁰⁸⁷

288. That none of these external visitors intervened directly in the scene at the TDF can be viewed in a number of ways. Either the concepts of loyalty to and fear of fellow soldiers or compliance with the formal reporting chain were so embedded that even serious gratuitous violence could overcome them, or they simply thought that what was going on was par for the course, or somehow justified by the supposed wrongdoing of the victims and/or a need to defer to those of senior rank or with supposed ‘expertise’.¹⁰⁸⁸ It may have been a combination of factors. This complexity of response is perhaps reflected by Hughes, who appeared to be a man with compassion for the detainees (he spoke to one of the detainees and was one of the few witnesses to refer to them as ‘gentlemen’ and ‘civilians’ rather than ‘prisoners’ or ‘Iraqis’):¹⁰⁸⁹

“I didn’t say anything immediately because I didn’t know whether the treatment I had witnessed was normal. I had never received any training on the handling or interrogation of detainees and so I did not know what the correct procedures were. Looking back, I think that at the time I was shocked by what I had seen and deep down I probably knew it was wrong. However I was not certain and I did not want to say anything in case it turned out that this was normal and I would then look stupid. I liked the job that I was doing out there and I did not want to risk being moved to another post by saying something out of turn.”¹⁰⁹⁰

¹⁰⁸⁷ Liggins BMI00215 [37-41] (suggesting, contrary to the other accounts, that the group parked near the HQ buildings, and that the detainees were not hooded or cuffed); MOD000616 (suggesting he saw only the room with the father and son in it); CM 49/81/13-15 (suggesting he went into the left hand room). As to the earlier visit to BG Main by C Coy G5 soldiers where they were shown detainees said to be suspects for the Dai Jones murder, see Schofield BMI00368 [49]. Liggins’ account of the Garamsche incident (MOD000616) is at odds with the accounts of many others and the photographic evidence (MOD044624-MOD044751) suggesting he is an unreliable witness.

¹⁰⁸⁸ A Riley BMI 19/63/24 – 19/65/18; Schofield BMI 18/187/1-18; Good BMI 19/140/22-5; Hughes BMI00158 [25], BMI00164 [41]; Betteridge BMI00026 [37], BMI00028 [42]; J.Riley BMI00338 [129-130], BMI00339 [138], BMI00340 [141].

¹⁰⁸⁹ BMI 15/94/18-23.

¹⁰⁹⁰ BMI00164 [141]. See also BMI 15/127/1 – 15/129/8.