

OFFICIAL-SENSITIVE

REPORT TO THE INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

REPORT OF ALAN PUGHSLEY

EXECUTIVE SUMMARY

1. I have been instructed to complete a documentary review of the investigations Operation NORTHMOOR and Operation CESTRO. I have been asked to come to a number of conclusions as to whether or not they were fit for purpose, focussing in particular on the investigations into allegations of unlawful killings. Below is a summary of the findings I have made in this regard.

Factual Background to Operation NORTHMOOR

2. In 2013, the solicitors firm Leigh Day raised a number of civil complaints relating to the mistreatment of Afghan detainees by members of the British Armed Forces. This led to the Royal Military Police ('RMP') investigating the matter under the name Operation ELSINORE.
3. At the same time, the Royal Air Force Special Investigation and Intelligence Branch ('RAF SIIB') were conducting investigations into allegations made by Afghan detainees that they had been subjected to assaults and mistreatment whilst in the custody of British Armed Forces. The RAF SIIB investigation was given the title Operation ISOPTIC. In December 2013, they completed their enquiries and handed jurisdiction to the RMP.
4. Other allegations, raised directly by Afghan detainees, were also simultaneously being investigated by 62 SIB Sect Regiment.
5. In March 2014, Operation NORTHMOOR was created and declared a critical incident by Brigadier Robert WARREN, the Provost Marshall (Army) ('PM(A)') - the chief officer of the RMP - bringing all these allegations under the umbrella of one investigation.

Signature

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

6. Operation NORTHMOOR included an allegation of an unlawful killing by UK soldiers made by one of the detainees alleging mistreatment, Mohammed Bang, together with a family member of those who had died, Saifullah Yar. The date of the alleged unlawful killing was cross-referenced with operational records and it was identified as an operation against 'Objective TYBURN'.
7. In January 2015, during the course of Operation NORTHMOOR, an individual known as N1466 approached investigators with his concerns about further possible unlawful killings. In April 2015 he informed the PM(A) that there was an apparent disparity in 2011 between the number of EKIA and the number of weapons recovered during the course of eleven Deliberate Detention Operations ('DDOs').
8. Further, he informed investigators that in February 2011, a member of UKSF3, N1799, had informed the Commanding Officer of UKSF3, N1785, that he had been told by a member of UKSF1 that UKSF were carrying out arbitrary killings upon fighting aged males. N1785 informed N1466 that this allegation had been made and they both informed the then Director Special Forces, N1802. N1799 provided a typed document dated 24th March 2011 to the effect of his allegations and this was locked into a controlled access security compartment, which came to be known as Compartment A. The contents of Compartment A were recovered by Operation NORTHMOOR in June 2015 during their investigation.
9. Operation NORTHMOOR was closed in July 2019 with no referrals for prosecution.
10. Operation CESTRO was an investigation into a single DDO which took place on 18th October 2012 after an allegation was made at the time of the operation that unarmed civilians had been killed. Operation CESTRO made three referrals for prosecution in April 2014 for offences of murder and perverting the course of justice. The Service Prosecuting Authority ('SPA') deemed the Evidential Sufficiency Test was not met in any of the cases referred and the investigation was closed.

Findings

Topic One: Operation NORTHMOOR: Inception to July 2016

11. The initial delay in relation to the commencement of the investigation - which was not in any way caused by the RMP- significantly affected the proficiency of Operation

Signature

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

NORTHMOOR, both at its beginnings and throughout. There was an opportunity for an investigation to be conducted shortly after the operations as senior officers were clearly aware of concerns around DDOs as early as March 2011. The investigation commenced 3 years later, after the allegations of unlawful killings were made known to the RMP, and therefore there was a near complete loss of forensic opportunities and of contemporaneous contact with potential witnesses in Afghanistan, as well as contemporaneous accounts of those members of UKSF involved in the operations.

12. There is some evidence of good practice within the early months of the investigation. The requirements of the Murder Investigation Manual 2006 were met to some degree, including the immediate appointment of a Senior Investigating Officer ('SIO') and a GOLD commander. The SIO at this time, Captain WRIGHT, complied with best practice in the keeping of regular and detailed policy file reports.
13. However, there are also clear concerns with the structure and how the investigation was operating. GOLD during this period, Lieutenant Colonel John McALLISTER, declined to keep any meaningful records. There were a distinct lack of GOLD Group meetings during this period. GOLD was unresponsive to the requests of his SIO, and failed to provide rationale as to his decision making. No concrete decision was made about the use of a covert strategy. In terms of an overt strategy, very few key witness statements were taken and little progress was made in relation to obtaining data or digital exhibits. A decision was taken not to investigate all eleven DDOs about which concerns had been raised in April 2011 as a 'linked series', which meant that no evidence of a pattern of behaviour was obtained or examined.
14. Operation NORTHMOOR did, appropriately, appoint some independent advisors during this phase. Support was obtained in the first instance from the National Crime Agency (NCA) and then in the form of the Major Enquiry Review Team ('MERT') from Greater Manchester Police. Both teams provided a number of dedicated reports with advice and guidance on set-up, roles, and specialist investigative strategies. However, both sets of independent advisors raised concerns about the pace, resourcing and direction of the investigation and the need for clarity about their respective roles to avoid duplication. Ultimately, however, it seems that much of their advice was ignored.
15. NORTHMOOR had been declared a 'Category A+' investigation - *i.e.*, one which is extraordinarily serious and/or complex and will require out of the ordinary resourcing. I have found that the strategies adopted and implemented by GOLD and the SIO during

Signature

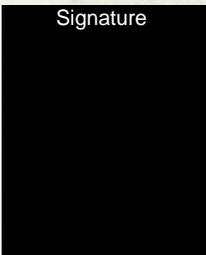
OFFICIAL-SENSITIVE

this period did not progress the investigation at the pace, breadth or depth that is required for a 'Category A+' investigation.

Topic Two: Operation NORTHMOOR: Investigative Strategy from July 2016 onwards

16. In 2016, Brigadier David NEAL became the PM(A) and the role of GOLD was assigned to Lieutenant Colonel John HARVEY after the premature departure of Lieutenant Colonel McALLISTER due to illness. A new set of advisors were instructed. The first were the Independent Advisory Group ('IAG'), consisting of Mark ELLISON QC and ex-Chief Constable of Merseyside Police, Sir Jon MURPHY. Sir Jon MURPHY then recommended that an Independent Review Team ('IRT') be formed, made up of two ex-Merseyside Police detectives, Philip JONES and Clifford EVANS. Major COX was appointed the new SIO in mid 2017 after Captain WRIGHT had a request to extend his tenure on Operation NORTHMOOR refused.
17. Major COX continued the good practices of Captain WRIGHT in keeping policy file reports which recorded his decisions, activity, and rationale. There was still an infrequent number of GOLD Group meetings. However, all of the recommendations put forward in the regular reviews conducted by the IRT were adopted, which in turn led to the investigation refocussing its strategy and its pace increasing. Witness statements were eventually taken from the relevant members of UKSF, albeit some seven years after the incident. Consistently individuals stated that they were unable to remember specific operations.
18. The introduction of the IRT and the IAG would be seen as national best practice, but what is unclear is why there was such a lengthy overlap with the NCA and the MERT, or how the arrangement with the latter two organisations was terminated.
19. The role of the IRT was to advise, support and provide guidance for the PM(A) and his team to consider. I believe the IRT have taken a step too far into the investigation, as it appears that their recommendations were accepted, with little or no debate by the PM(A) and his team, and were then used to heavily shape, influence and direct the future of the investigation. This change of focus appears to have caused tension and friction amongst some of the investigating staff.

Signature



OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

20. Further, despite Operation NORTHMOOR continuing to investigate a number of DDOs, there was still no suggestion of treating this as a linked series, which I regard as a failing of the investigation.

Topic Three: Decision to Close the Investigation

21. Inappropriate resourcing allocated to Operation NORTHMOOR, both in actual numbers and the skills they possessed, remained a weakness throughout the investigation. Colonel Kris ROTCHELL comments in his witness statement to the Inquiry that all resources required for the investigation were not in place until 2018. In essence, the investigation was slow to commence, sluggish in its progress, and was never properly resourced.
22. Operation NORTHMOOR was closed on 15th July 2019. It was recorded by GOLD and the SIO that the PM(A) had made the decision to close the investigation and that all lines of enquiry had been considered.
23. Some records have been kept of this decision, which indicate that the PM(A) was satisfied that all lines of enquiry had been followed and NORTHMOOR could be closed. If this were the case, then a decision to close the investigation, would have been within the guidelines for national best practice. However, at the time of the decision to close Operation NORTHMOOR, there was still an investigative team in Afghanistan conducting interviews with Afghan witnesses. In excess of **NG** potential witnesses had been identified, and at the time of closure, only **NG** had been interviewed. There is no justification provided in any of these documents for not continuing these lines of enquiry.
24. During their reviews, the IRT stated that the investigation should only focus on Objectives 1 and 2 and Objective TYBURN. No other DDO was to be investigated unless there was clear evidence of a crime in relation to one of these three Objectives. The rationale for this decision again is unclear. Further, the ITS1 server, which Captain WRIGHT made significant attempts to obtain, was never in fact seized, and only searches by consent using a data searching tool were conducted. It is not clear what search terms were used.

Signature

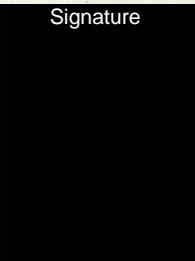
OFFICIAL-SENSITIVE

25. In addition, I have found no 'overarching comprehensive report'. Such a report is standard best practice and would normally be completed as part of the closure process. Amongst many other things it should contain a clear rationale for, and summary of, the decisions relating to closure.
26. In light of the fact that there were clearly outstanding lines of enquiry that were not followed, the decision to close down Operation NORTHMOOR was inappropriate and premature.

Topic Four: Operation NORTHMOOR Capability

27. The correct number of appropriately skilled staff, deployed throughout such a difficult investigation, is critical to success. Aside from the obtaining of specialist and independent advice, the resourcing of Operation Northmoor, in terms of both dedicated staff and location, in my view was very poor and not in line with the national requirements of a Category A+ investigation.
28. Operation NORTHMOOR failed to identify a permanent location from which to operate until July 2015, and did not reach full operational capability until late 2018. Colonel Kris ROTCHELL has provided evidence to this Inquiry that it was 2018 '*before all the required resources were in place*'. The Forensic Data Handling capability ('FDHC'), a multi-million-pound piece of technology, was never made fully operational.
29. Team 1 had a significantly smaller number of officers, despite investigating the most serious allegations. Team 3, tasked with conducting the administration of the investigation did not have the skills to do so. For example, a number of individuals required to use HOLMES to assist with the administration of the investigation had not taken the appropriate courses to use the software.
30. Fundamentally, officers throughout all three teams on Operation Northmoor lacked the skills, clearances and experience to conduct an investigation on this scale, and the investigation was not provided with the necessary resources to be successful.

Signature



OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

Topic Five: Operation NORTHMOOR Leadership and Command Structure

31. In relation to the key roles of SIO, GOLD and SILVER, it appears, in the main, that those appointed did have the relevant qualifications to fulfil those roles, albeit it appears that Captain WRIGHT may have undertaken his SIO course just before being assigned the role on Operation NORTHMOOR. The documentation provided to me, also suggests that Lieutenant Colonel HARVEY had limited qualifications for the role of GOLD Commander.
32. In terms of individuals, both SIOs, Captain WRIGHT and Major COX, worked to a degree in line with best practice in terms of recording decisions and formulating strategies. However, neither of them progressed the investigation in a particularly timely manner and further efforts should have been made to drive forward key lines of enquiry.
33. The first GOLD, Lieutenant Colonel McALLISTER, was not up to standard in his record keeping or his decision making, providing little support to Captain WRIGHT's proposed investigative strategies or tasks. The second GOLD, Lieutenant Colonel HARVEY, improved in terms of record keeping and in listening to Major COX, as well as implementing the PM(A)'s direction. However, again, upon the documentation, neither of them made significant efforts to establish the urgency of key lines of enquiry.
34. The PM(A), Brigadier NEAL, also had difficulty with his levels of experience, expertise and confidence in dealing with Regulation of Investigatory Powers Act 2000 (or 'RIPA') applications needed to support covert operations. On appointment, he paused any covert operational activity, in order that he could seek further expert advice in this area. This decision caused further delay. The covert strategy was eventually abandoned without any operational product.
35. Aside from qualifications, organisational and operational experience plays a fundamental role in how well individuals perform and deliver. It has been difficult to establish on the documents how much experience each individual had before they came to Operation Northmoor, but it is clear from the evidence of both Colonel Robert MORRIS and Colonel Kris ROTCHELL that those within the RMP did not regularly, if at all, investigate multiple allegations of murder, and that there had been little to no history of any similar investigations within the organisation previously. This suggests

Signature

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

that it is unlikely that those playing key roles would have had the organisational and operational experience required to carry out this investigation in the manner required.

Topic Six: Operation CESTRO

36. Operation CESTRO was carried out in a thorough, methodical and determined manner. The investigation commences a number of weeks after the operation, which leads to a marked difference in the acquisition of key witness statements and forensic exhibits. This demonstrates the impact that early control, grip and leadership can have on serious and complex investigations. There are other areas of good practice and national compliance, with the early appointment of an SIO, good record keeping and the adoption of appropriate investigative strategies.

37. An issue is a lack of an apparent GOLD structure for this investigation. The appointment of a dedicated GOLD Commander and GOLD meetings allow for greater support to an investigation. There is also a lack of wider, independent, external advice. Both of these are recommended as national best practice for serious and complex investigations.

Conclusion

38. Bar some minor issues relating to its structure, Operation CESTRO was a sound investigation.

39. Operation NORTHMOOR, on the other hand, was a complex and incredibly serious investigation that was fundamentally poorly resourced. An adequate location for the investigation was not provided until halfway through its lifespan. It appears that some personnel did not have sufficient experience to carry out their roles, and that there was a high turnover of personnel within important roles. There were a distinct lack of GOLD Group Briefings. The investigative strategies were hampered by both indecision and/or apathy within the chain of command and by a lack of assistance from UKSF. There was overlap with the organisations selected to provide external advice, with no real rationale for adding or removing those organisations at various times later in the investigation. The investigation was closed whilst lines of enquiry were still outstanding in Afghanistan with no real rationale provided for this decision, without any individuals

OFFICIAL-SENSITIVE

or cases being referred for prosecution, and after concerns about the manpower issues for the RMP stemming from Operation NORTHMOOR having been raised as early as August 2016.

40. Ultimately, whilst some elements were in line with best practice, the RMP simply did not have the resourcing or staffing capabilities to carry out Operation NORTHMOOR to an acceptable standard.

Signature

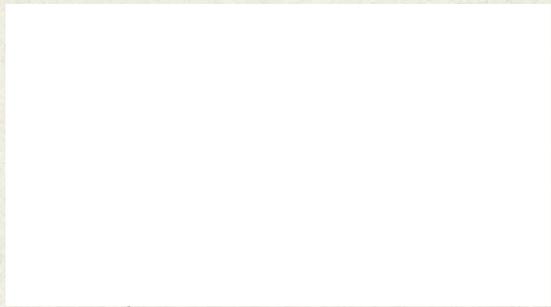
Signed:

Print name:

Dated:

14/08/24.

OFFICIAL-SENSITIVE



AMN KUCHMEL

14/08/04