

Prepared for OPEN publication in relation to the Independent Inquiry Relating to Afghanistan

INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

SUMMARY OF N2252's EVIDENCE HEARD DURING CONCERNS AND COMPLAINTS PART 2

WARNING: This evidence is subject to the Inquiry's Restriction Order dated 31 May 2024. The Chair granted anonymity to witnesses who gave evidence during this set of CLOSED hearings ('Concerns and Complaints Part 2') for the reasons set out in his Ruling dated 31 May 2024. The Chair's Restriction Order prohibits publication or dissemination of the identity of N2252, or any information which might lead to their identification, and prohibits publication or dissemination of other restricted information.

For the avoidance of doubt, where documents published by the Inquiry have been redacted and a gist or cipher placed over the redaction, or where square brackets are used in a transcript extract, this is because the Inquiry is restricting from publication or dissemination the underlying information in accordance with the Chair's Restriction Order.

N2252 was questioned by Lead Counsel to the Inquiry, Oliver Glasgow KC, in a CLOSED hearing in Summer 2024, over approximately one and a half days. The following is a summary and, where possible and relevant to do so, a transcript of sections of N2252's evidence, with any sensitive terms redacted and replaced with a gist or cipher in square brackets.

N2252 gave evidence about his career as Chief of Staff ("COS") to the Director Special Forces ("DSF") in early 2010 until late 2011 and his relationships with N1802, N1788, N2108 and others. N2252 was asked about the frustrations that arose as a result of detention time limits and whether he considered an emerging trend of "*more bodies than weapons*" being recovered on Deliberate Detention Operations ("DDOs"). N2252 was also asked about the complaint made by a Third Party Entity ("a TPE") and his own journal notes in which he recorded conversations with DSF about concerns over UKSF operations and the allegations over the use of lethal force.

CTI took the witness through the key aspects of his career to assist and place in context the evidence to be given. This included sensitive identifying material and material that is operationally sensitive and relevant to the evidence that followed, which cannot be gisted.

N2252 explained when he joined UKSF. N2252 confirmed that he had a narrow range of operational experience in UKSF, which did not include working with UKSF1 or UKSF3 conducting the DDOs that are the subject of the Inquiry. During the period covered by the Inquiry's Terms of Reference, N2252 did not serve in Afghanistan but did visit four times.

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N2252 joined HQ DSF as the COS in early 2010 and remained in the role until late 2011. N2252's role as COS to DSF involved managing UKSF workstreams in line with the Director's requirements, acting as a lynchpin between DSF and those lower down the Chain of Command. N2252 worked with N1466 who he described as "*the first among equals amongst that level of command*", although N1466 did share a direct link to DSF. N2252 confirmed that he was number two to DSF, but clarified that he was not a Deputy Director, but a Chief of Staff. DSF had said he did not want a Deputy Director and N2252 explained that there was a broader sense that the UKSF governance structure needed to be improved by upgrading the seniority of ranking for DSF and Chief of Staff. When asked by CTI why the governance in UKSF needed to be improved, N2252 answered that he did not know, there had just been a sense that things could be done better.

N2252 stated that he would sometimes deputise for DSF when he was not available, such as by going to meetings, but that DSF did not delegate responsibility; the decisions were still the DSF's to make. N2252 confirmed he had an awareness of the issues concerning DSF but that he did not always have visibility of the operations area, because of DSF's direct link into the operations chain. N2252 explained that at the time there was a constant stream of stuff that had to be dealt with. He had to work long hours and described the period in early 2011 as "*particularly intense*".

N2252 then went on to list the several national and global matters that occupied UKSF's attention in 2011. N2252 confirmed that he and N1466 were exceptionally busy every day. In response to a question by CTI as to whether this had any impact on the quality of the output of the work he was doing, N2252 said that he "*can't think it wouldn't have*". UKSF always strove for excellence, but sometimes good enough would have to be good enough.

N2252 confirmed that the ACOSs beneath him were: Policy, Operations, Capability, Personnel, Sustainment, Resources and Programmes. That supporting structure would provide information to N2252 who would pass it on to DSF, but those teams would also provide information directly. CTI then asked N2252 how DSF worked and how others in HQ worked with him. N2252 described N1802 as an "*extra-ordinary man*", "*one of the most rigorous and forensic men*" he had ever met. He had an appetite for detail that was unusual. DSF's style was not only to prescribe what was to be done but also how it was to be done. N2252 stated he had to adapt his style to cater for that. N2252 came to like and admire N1802 and thought he was "*a really good Director at a really difficult time*".

CTI referred N2252 to parts of his statement in which he described N1802 as '*driven*' and '*difficult*'. N2252 described what drove N1802 was his passion and a desire to do the job properly. N1802 could be difficult as he was hard on people and very demanding on the staff. N1802 was a "*prodigious note taker*" with "*phenomenal recall*".

N2252 developed a very good working relationship with N1802. N2252 went on to describe one occasion, after a couple of months, on which N1802 had given him a "*bollocking*". N2252 thought it was a little bit over the top but he tried to do better in future and the relationship got

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better and better as time went on. N2252 admired N1802 a great deal by the time he left. N1802 had regular management board meetings and Ops briefings. N2252 confirmed he felt comfortable raising any issue with N1802, but because of the asymmetry of experience, N2252 would only challenge N1802 where it was something he knew and N1802 did not, or where there was something that needed to be said.

In response to a question from CTI about whether N1802 would only call on N2252 if he specifically needed his assistance or whether he would discuss matters more generally, N2252 explained that N1802 increasingly discussed things with him, more so in the latter period of his time as COS. N2252 explained that his role was not purely about feeding the Director, there would be a lot of 'COS work' that needed to be done that N2252 could do on his own initiative which N1802 expected N2252 to get on with without troubling him.

Q But if there were issues of potential significance ----

A Yeah.

Q -- do you think he would have felt comfortable discussing them with you?

A Do you know, before last week I would have said the answer to that question was "Yes". I'm still a bit, I'm still a bit uncertain about what happened on 7 and 8 April 2011.

N2252 said there was a distinction between some of the branches, in particular the Ops branch which N1466 protected. N2252 agreed that this may have been because he was short of operational experience in the conduct of DDOs compared to N1466. CTI asked N2252 whether nonetheless he had an awareness of what was going on operationally in UKSF, N2252 replied that he had an overview of it because so much of what UKSF did was driven by operations.

N2252 stated "so I tried to have an overview, but the criticism of UKSF in the past was always that everyone does operations and they do nothing else. It's like watching a load of kids play football. They all run after the same ball and the ball is operations. And [N1802] was very clear. He didn't want us to do that. He didn't want a kids' football team. He wanted a Premier League team where we all had our own division of responsibilities and we all had our structured jobs and we did those jobs. And I tried to keep an overview of the whole thing. I've probably looked less closely at Operations than other areas, and one of the reasons for that is the human capital."

N2252 described N1802 as the primary decision maker in the Headquarters, and this level of centralisation was unusual for UKSF which usually had quite a decentralised style. N1802 had been in command at every level of UKSF1, so he had a lot more experience than the rest of the team. N2252 recalled "*a sense that if we as a staff fed [N1802]'s information requirements, you know, the logarithms would whir and steam would come out of his ears and a decision would come out and it would normally be a good, well-judged decision*".

N2252's working relationship was such that he could, without a doubt, tell N1802 that his view was the wrong one or should be slightly different. N2252 explained "*[N1802] welcomed*

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challenge and one of the disappointments, I think, was that I couldn't entirely get the staff to understand that. They were, they were, some of them were a bit frightened of him, particularly at lower levels. You know, he was potentially quite an intimidating character, just the force of his intellect, but he liked to be challenged and he would be open to it. People who challenged [N1802] had to have their facts straight and they had to have done their homework. I don't consider that unreasonable personally, but if those two provisos were met, he would be quite open to having discussions...".

When asked whether there might be a risk that individuals within HQ DSF who were concerned about something did not want to take that to N1802 because they thought they would be shouted at or criticised or worse, N2252 responded that "[N1802] wouldn't show it. [N1802] wasn't a bully, absolutely not" but agreed "that is a risk". Whilst the more junior staff might have been more reluctant to go to DSF, it was the duty and responsibility of the ACOSs to say if something was not right. N2252 thought that the junior staff knew they could go to him or N1466 and they would "carry water for them into the Director".

CTI then asked N2252 about the other competing priorities that were on UKSF's agenda as well as operations in Afghanistan. N2252 stated that in general percentage terms, the amount of focus Afghanistan occupied was around 20% or possibly even less, as recorded on his personal task tracker of activity within HQ DSF. N2252 confirmed that the Ops branch was the principal focus of N1466 who had the relevant experience to assist him in governing that area. N2252 confirmed that the order of rank went DSF first, then N2252 and then N1466 third. N2252 did not know N1466 before he went to Headquarters.

Q And, as far as [N1466] was concerned, did you have a good working relationship with him?

A It was okay. It was, [N1466] was more protective about his area, his area than the other ACOSs tended to be. I'm still not quite sure why, but, you know, I kind of chipped away at him. Over time, you know, we became more comfortable with each other and we would, we would, as I've said in my statement, we would discuss issues of mutual concern... [N1466] often seemed to carry the weight of the world on his shoulders even before these events to which this Inquiry relates. He was kind of glass a bit half empty ... I thought that was an issue because for the Ops staff you had [N1802], forensic attention to detail, very demanding officer and [N1466] a bit downbeat. I didn't want those boys in the Ops Shop to feel that it was a punishment posting. I wanted to try and keep their mood and spirits up and so as a Chief of Staff I probably paid more attention to what we call in the military the "moral component", which is people's emotions, than I might have done in other Chief of Staff roles.

N2252 felt that the 'Ops shop' branch worked well together and thought that was reflected in the quality of the output on operations, whilst acknowledging this was thirteen years ago. N2252 then gave an example, in another international theatre, of the speed at which operations would be turned around.

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CTI then asked N2252 about his relationship with some of the other witnesses to the Inquiry. N2252 got on well with N2108 and felt that in so far as there was going to be a challenge function or external scrutiny, it would come from N2108 and himself as they were both outside UKSF1 and UKSF3. CTI then asked whether there was a danger, if an organisation such as HQ DSF was fully staffed from either UKSF1 or UKSF3, that there was not a sufficient independent check and challenge. N2252 thought there definitely was that danger but they did have challenge in HQ DSF. N2252 stated that "*the culture of UKSF is about challenge*". N2252 then gave an example of when he witnessed N1802 and UKSF personnel having a direct conversation. N2252 stated that there was a directness and frankness about the exchanges that you do not get in the conventional force. N2252 thought there was potentially an issue with external challenge in HQ DSF but the counterbalance for that was the culture of internal challenge.

N2252 then gave an example of an annual occasion when current practices were challenged. N2252 agreed that internally UKSF had a desire to see how they could do things better. In retrospect, N2252 could think of ways in which the organisation could be improved by external views: "*...looking at it now with the benefit of hindsight, that might be something that [UKSF] could do differently is use the experience of those who have gone before to give a fresh pair of eyes, because, you know, the working hours were such that you could get too close to problems... That's the challenge, in UKSF, is standing back.*" N2252 thought UKSF could benefit from having independent or external input from a non-executive individual, but that there was still scrutiny in UKSF as it was then. There was an SF Oversight Group chaired by N1802's superior and every number of months or so, N1802 or N2252 would go and receive external oversight on actions and concerns.

CTI then asked N2252 about N1803, ACOS Policy. N2252 interviewed N1803 for her role and N2252 "*always felt slightly responsible for [N1803], for getting [N1803] into all of this*". One of the reasons he selected N1803 was because "*at interview she appeared to be an independent thinker*". What stuck in N2252's mind about the interview was that N1803 was prepared to take a position that was not in line with the accepted thinking at that time. N2252 thought N1803 was great and never had any cause to regret recruiting her as ACOS Policy. N2252 had a good working relationship with N1803, despite not overlapping for a significant period at the start of their tenure, and N1803 interacted well with the rest of the ACOS community. N2252 denied that outsiders would have found it difficult to fit into the UKSF community within HQ DSF as there was "*an acceptance in the military that in the policy line in particular... you're going to get external challenge and external scrutiny. You are going to get civilian oversight of military operations, democratic control of military operations.*" and N2252 did not think anyone in UKSF had difficulty with that.

N2252 did not know whether there was a sense amongst those carrying out the operations that they knew best or should be able to take the necessary difficult decisions independently but said if there was, he did not think it was right. N2252 said there would be equal challenge from

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HQ DSF that operations have to be conducted in line with policy and law; this was certainly the Director's view.

N2252 was then asked about N1788, who had recently returned from a UKSF1 Sub-Unit command appointment in Afghanistan. N2252 confirmed that in his witness statement when he described N1788 as the '*ideal man for the review*', he meant an ideal option out of the men available. N2252 said that, in retrospect, if there had been a Deputy Commander (DCOM – a deputy to DSF) it would have been a suitable task for that role, but from the options that were available, N1788 was the best. Notwithstanding this, N2252 agreed that it would have been an option for someone more senior or experienced to conduct the review, whilst noting that the review was conducted by N1786 with support from N1788. N2252 also understood the distinction that a DCOM, for example, would have provided an option to have an external review, rather than someone internally conducting the review. When asked whether that would at least provide an objective appearance of scrutiny, N2252 replied "*It's not about appearance. It would have been outside scrutiny. We weren't about appearances. We would have opted to do things properly.*"

CTI then asked N2252 about the concerns that he was aware of at the time in respect of the DDOs. N2252 confirmed that, as per his witness statement to the Inquiry, he would generally look at the operational reports provided to HQ DSF first thing in the morning when he arrived at work. After a while, N2252 changed his style and rather than read the reports himself with his lack of background in DDOs which meant the reports did not always mean a lot to him, he would ask the junior staff officers in the '*Ops Shop*' to talk to him about the reports to improve his understanding of what had happened.

N2252 explained that the UKSF Consequence Management Directive set out HQ DSF's role in SFHQ(A) Consequence Management. N2252 explained that he considered it was HQ DSF's role to provide an additional level of scrutiny to ensure UKSF's compliance with law and policy. His role, as he saw it, was to ensure that scrutiny was done to ensure such compliance and to identify any lessons to be learnt. N1788 and N2108 had the nominated responsibility for this additional level of scrutiny. In terms of policy, N2252 also had the assistance of N1803 if he needed it.

N2252 confirmed that his responsibilities as COS involved wanting to ensure things were done the way they should be, predominantly in the Headquarters, which was "*the boundary of [his] authority and probably the boundary of [his] influence*", but there was also an element of picking up on how things could be done differently in theatre. N2252 said that he would take issues he was aware of to the Director, N1788 or N1466, depending on the severity or seriousness of the issue.

N2252 obtained information about an operation itself in two ways. N2252 would read the reports about the operations, and have the assistance of others who understood the reports better to translate them for N2252. N2252 would also attend the Ops briefings about the operations themselves, during which he confirmed he would be on "*receive mode*". N2252 confirmed that

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he needed to understand what was happening at the operational level because if there were problems, N2252 wanted to be aware of them in order to understand the implications for the other parts of the HQ. If anything struck N2252 as needing to be addressed, he would bring that to the attention of ACOS Ops or DSF. N2252 confirmed that an overall awareness of the operations themselves was important to perform his function even better than he already did.

N2252 confirmed that he had never heard any issues surrounding the planting of weapons or the falsification of any record being talked about. N2252 was aware of fatalities that were being occasioned as a result of the operations themselves, but confirmed that he thought they were caused by the lawful use of self-defence. N2252 said he thought he saw N2108's email following Objective TYBURN. In the email, N2252 thought that N2108 was saying that the way the operations were being written up would not stand scrutiny in years to come. N2252 confirmed that he had thought about what N2108 may have meant quite a bit since receiving this email. N2252 said that the issue regarding the way operations had been written up was on his radar for his entire tenure at HQ DSF. The production of Shooting Incident Reports ("SIRs") and the recording of incidents had been the subject of an ongoing discussion with Provost Marshal (Army) throughout 2010 and 2011, and was a recurring theme throughout his tour. N2252 agreed that the way in which the information was recorded was significant as it was the only way for anyone to understand what actually happened on an operation. The statements were also of legal value in the event that an investigation was ever required.

N2252 thought N2108's email from 16 February 2011 (MOD-198-0003490-A) in which N2108 wrote that *'the way we are writing these up will not bear scrutiny in years to come'* could have referred to two things. The first was that there was cutting and pasting going on in the statements which was not necessarily malpractice. The second thing which N2252 explained was not in his statement but which he had thought about more recently is the process of the Ground Commander investigating the incident which had just taken place. N2252 noted that N1802 picked up on the Ground Commander point.

N2252 spoke to the issue of whether the information being written up was false or not. N2252 said that the *"ethos of [UKSF] is one of trust and the underpinning assumption is that if a firer puts something in their statement, they are telling the truth. And that is kind of put into UKSF [soldiers] from a very early stage."* N2252 recalled that if in the process of joining UKSF there was ever a question of your integrity *"you would be on the platform with a single ticket in your hand [no longer joining UKSF]."* N2252 said this conditioned the way he and others looked at these statements that were being produced.

N2252 said it *"would be putting it too strongly"* to say he and others automatically accepted the accounts from UKSF as accurate and truthful just because they were brought up in the SF community. N2252 discussed this idea of the truth and referred to a famous saying about perceptions in combat being like looking through a drinking straw. Each person just sees through their own straw, and when you put them all together, you would think the compendium

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of straws gets the truth, but it often does not. What you get is very subjective, very personal impressions and putting them together in a way that makes sense is not always easy.

CTI clarified that by *'truth'*, he was not meaning to suggest perfection. N2252 stated that their basic presumption when looking at these things was *"that the firers were telling the truth as they saw it"*.

CTI then asked N2252 about his multiple visits to Afghanistan. N2252 confirmed that the principal aim of his visits had been to solve staff problems and practical issues, *"...but there was also an element and this was less as Chief of Staff and just general...of just getting a sense of how the Unit is operating, and [N1802] as a Commander that would have been much more in his space. His visits were not about [logistical] problems, they were about "is the Unit doing the right things?" "is the Unit doing things right?""*. N2252 stated that after his visit in early 2011 and N1802's visit a few weeks earlier, N2252 thought they discussed the impression they had gained from visiting theatre.

N2252's diary note recorded that in early 2011 a very high percentage of detainees were *"back on the street"*. He would have recorded this percentage based on what he was told but he did not know whether it was true or not. N2252 explained that this related to the detention policy under which detainees could not be held for longer than 96 hours. Detention policy was a real issue during N2252's time and he recalled some frustrations being expressed to him about the detention period on his visit to theatre because UKSF soldiers were putting their lives at risk to detain suspects who would be held in relatively comfortable surroundings and then released within a matter of days.

N2252 could not remember whether frustrations were expressed in forthright terms but was not in doubt as to the general feeling of frustration. N2252 sensed there was little, if any, policy appetite in the UK for extending the period of detention. *"I think we had tried that and had exhausted that possibility. It was made clear that Ministers just didn't want to go there"* so questions were asked as to what could be done instead. For example, acquiring more interpreters and interrogators who were highly trained so that when detainees were in the holding facility, they had a better prospect of getting useful information out of them.

CTI suggested that the members of the Sub-Unit who put their lives at risk in a hostile situation, only to see a detainee released a matter of days later, must be angry rather than frustrated. N2252 thought that suggestion was not fair. N2252 stated that frustration was an integral part of counter insurgency. N2252 then gave details of a previous UK Armed Forces ("UKAF") deployment during which he dealt with suspected terrorists and stated he never felt the need to behave improperly or unprofessionally towards those people; those were not the rules.

N2252 confirmed that a DDO was conducted in respect of an identified target who was presumed to be of intelligence value. The purpose was to apprehend that individual or any of the individuals immediately associated with that person to see what could be learned about the insurgency, to frustrate it.

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CTI then referred N2252 to a diary entry in which he provided information that could not be gisted. N2252 did not know whether individuals in theatre had a desire to conduct as many DDOs as they could but that this went to the heart of the discussion on targeting. *“The principle of using UKSF is that they should be tasked on the best possible intelligence and against strategic targets. On the other hand, you know, we’d lost 100 people in Helmand the year before, with probably three times that number with life-changing injuries...”*. There was an argument that even if the targets were low level, the conduct of the DDOs could have a suppressive effect on the insurgency but N2252 could not say with certainty whether SFHQ(A) thought that at the time.

CTI then asked N2252 what he thought of the counter argument: that targeting individuals less intimately linked to the insurgency might turn the local nationals against the work being done. N2252 said that this was one of the two themes he discussed with N1802 in early 2011, *“is the juice worth the squeeze... is the disruption we are causing to the eco system worth the benefit we are getting from it? And there is no way as COS DSF I could have a view on that. That’s Commanders’ business and that’s a discussion between [N1802] and [N1786] that I thought he should have because I think it was clear that the number of Afghans...being killed on DDOs in February 2011 was rising”*. N2252 did not think numbers were a guide, but that numbers were *“not irrelevant because, if you disturb the eco system, it can make final resolution more difficult to achieve, in my view, because lots of dead people, emotions get, it just makes resolution more difficult to achieve. So I have always felt about counter-insurgency that you should use force as selectively as possible and you should use the minimum force you can get away with at any particular time”*. N2252 had a discussion with N1802 as to whether the targeting was right on or around 18 February 2011.

N2252 was referred to the four possible explanations he had given in his witness statement to the Inquiry at paragraph 47 for the increasing number of fatalities. N2252 added that there was a fifth explanation, that the numbers on an operation were not a reliable guide to what had happened and that there was a natural variance.

CTI referred N2252 to the part of his witness statement addressing the ‘*pressure on UKSF to do more*’. There were three sources of pressure N2252 was conscious of, though he did not know how far they were affecting SFHQ(A). Firstly, national pressure and senior pressure within the Ministry of Defence (“MOD”) to use the resources provided to UKSF to have an effect. N2252 explained that *“when you join UKSF that’s kind of the contract you make, that you know you’re gonna be tasked, you know you’re going to get the best equipment, the best intelligence, but you’ve got to deliver an effect.”* Second was the pressure personnel put on themselves. *“As I’ve said to you, you know, we wanted to do things right. We’d all been to lots of funerals in 2009/2010, 100 plus people killed in 2010. We didn’t want that to happen again....”*. Third, was what was coming down from ISAF. In respect of the final pressure, N2252 referred to a quote from Commander ISAF, General Petraeus: *“Do what you’re doing but do it better, have more effect”*. N2252 recalled there being a change in tone of what was coming from the Commander ISAF when Stanley McChrystal was removed from post and the

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idea of *'courageous restraint'* disappeared with him; Petraeus was more about *"have an effect"*. N2252 did not know what guidance SFHQ(A) was getting in terms of direction from the highest levels of ISAF Command and did not know whether that pressure was something that others within SFHQ(A) would have been alive to but at his level *"that was the mood I kind of got"*.

N2252 agreed that one of the purposes of UKSF was to make a difference to the conduct of operations and that UKSF would have been aware of the number of serious injuries and fatalities that had befallen members of the British Armed Forces.

CTI asked why N2252 perceived the new Sub-Unit to have *'brought energy'* and N2252 responded that this was the part of his statement that he was *"probably least comfortable with."* N2252 then explained that *"the point about rotating contingents, just to bring in people with a new, with a new energy is true, but it's a structural point. I don't in retrospect remember there being anything particularly different about [Sub-Unit 1A ("SU1A")]. So what had brought the energy was the rotation from my perspective."* N2252 agreed that the new Sub-Unit brought *'fresh legs'* and people ready to start anew. N2252 considered the energy of a particular unit or Sub-Unit to be set by the leader and agreed that it was possible for the change in energy to arise from a change in energy brought by the leader. N2252 also cited some other potentially relevant factors, including the availability of air assets, improving weather, and the return of Taliban fighters and leadership from Pakistan after the winter, potentially increasing the target set.

N2252 could not say whether one Sub-Unit would want to do better than the previous one. CTI then asked N2252 about the shift from UKSF3 to UKSF1 and the resulting rivalry. N2252 thought that N1802's decision was *"a matter of pure numbers...[N1802's] decision, I think, was based purely on numbers, which was very [N1802] by the way, but it did, I think, unlock this sort of sensitivity and pique in [UKSF3] who felt that it was a reflection on their professional performance and I don't think [N1802] ever intended it that way."* N2252 did not spend much time with UKSF3 and so did not know whether they saw N1802's decision as a reflection of his assessment of their performance. His witness statement to the Inquiry recorded that he thought that UKSF3 regarded this as a *'relegation'*. His statement also recorded his recollection of a degree of *'sniping'* at UKSF1 over their conduct of the Sub-Unit 1 ("SU1") role. N2252 did not initially notice this and it was only after N1802 pointed it out, that he noticed it. N2252 said that after it had been drawn to his attention by N1802, he noticed it came from N1466 particularly (and a couple of other UKSF3 officers in Headquarters). *"...it was like, you know, the Harry Enfield character, you know "You don't want to do it that way, we wouldn't do it that way"*. After N1802 pointed this out, N2252 said that he had an ear for it and listened to some of what he heard with N1802's remark in mind. N2252 agreed that he felt better able to interpret what was being said by UKSF3 because N1802 had alerted him to the possibility that those observers may have felt they had been replaced unfairly.

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The Chair asked N2252 about page 22, paragraph 47 of his witness statement where he said that 100 British soldiers had been killed in 2010 and that they were under ‘*pressure to deliver effective DDOs*’. N2252 explained that what he meant by ‘*effective DDOs*’ was for the operations to have a disruptive effect on the making of IEDs to avoid the deaths of British soldiers. N2252 explained that another key purpose of the DDOs was that they should lead to information which then led to a further cycle of targeting.

CTI asked about how N2252 came to be aware of the concern he identified in his witness statement of the TTP ‘*having unintended consequences*’. N2252 thought it may have been from N1466 but he thought it was more likely to have been from officers in the ‘Ops Shop’ in the course of one of their morning briefings when someone had mentioned the way in which the TTP was operating and the fact that lethal force was being used against detainees “*who we had had off-target and then put back onto target in order to assist with the clearance process, but then re-armed themselves and then lethal force had been used to deal with that, that threat*”.

N2252 then explained:

“What is the nature of the concern? Well, I mean, I didn’t understand the TTP. It’s not immediately apparent to me why if you have got a detainee off-target under control and disarmed them you would want to put that individual back into a situation where they are able to re-arm themselves and put them in a position to pose a threat. When I say I didn’t understand, that’s not a euphemism. I genuinely didn’t understand because I gathered there are reasons in terms of force protection against [various different threats including IEDs, suicide vests and booby traps]. So I gather there are reasons and I gather that this TTP had been used for some time in [another international theatre] and Afghanistan, but I just couldn’t understand it myself and it seemed to me that, you know, we have two, we UKSF, had two duties of care. We had a duty of care to our soldiers to do everything we could to ensure that they were safe when they went about their duties, but we also had a duty of care, in my view, to the detainees. Having taken them off-target, I think we were maybe legally I don’t know but certainly morally I thought responsible for their wellbeing while they were in the care of UKSF detention.”

My concern with that TTP is I just wondered if we had the balance between those two things right. We seemed to be prioritising the safety of our own soldiers over the safety of the Afghan detainees. I am sorry to waffle, but going back to Stan McChrystal with the idea of courageous restraint, that’s not what courageous restraint is about. Courageous restraint is about being prepared to accept a higher risk of death or injury in the extreme to our own forces in order to, in order to achieve campaign objectives and I was and am a big fan of courageous restraint and [N1802] was, and I think is, a big fan of courageous restraint. Therefore, it was a sad day for me when Stan McChrystal was removed as Commander ISAF because I thought his approach to counter insurgency although not universally embraced I thought it was the right one.”

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CTI referred N2252 to paragraph 50 of his witness statement which specifically mentioned this concern and highlighted that N2252 has attributed the concern as existing amongst the 'Ops staff'.

Q So, it is not a concern by one individual, it is the "Ops staff" in general?

A Yeah, do you know, I don't know how widespread it was, but it wasn't always the same person who would come and brief me every day, so I think I had heard this from more than one person and most of our Ops staff were from [UKSF1] at that time and so, you know, I'm probably speculating now but I think I would have listened to that pretty closely because there was no sense from that of "You don't want to do it this way", it was people from the same background, from the same professional background looking at this and saying, I'm not sure what they were saying, but I did pick up on that this was a thing, do you know what I mean?

Q In a general sense is it that something was not working as it should do?

A Yeah.

Q Leaving aside precisely what the problem was or why the problem might have occurred, that something was not ending up being done right?

A It was a professional discussion. That is exactly it. It wasn't for me about legality or criminality, it was "Is this really the best and most professional way in which to mount operations?" That was the concern and there was a trend... The trend was slightly different because the trend I was asked about was a trend between Objective 1 and Objective 2. Objective 1 in this respect is irrelevant; it seems to me to be a violent firefight at extremely close range in which this TTP was never used. Objective 2, eight people killed...four by red on red, three by UKSF... on and off target, but the eighth man of Objective 2 as I recall was someone who was sent back onto target to remove the windows, re-armed themselves with an AK and then was engaged and shot.

I then, it's not part of my exhibit pack, but last week I looked at your website and I saw Objective 8 and I saw the unredacted Storyboards and again, Objective 8 on 14 February, goes back, is sent back on target, gets an AK, is shot and killed. Objective TYBURN on 16 February, there's two. There's one who re-arms himself with a grenade and there's one who re-arms himself with, with an AK47 and that's why I'm confident now I think that the conversation I had with the Director was on 18 February because I think I would have looked at this and thought, you know, there's a trend there and this needs to be on the Director's radar.

N2252 confirmed CTI's description of his two concerns as being about the increased number of fatalities and that the TTP in use was resulting in people losing their lives in avoidable circumstances. N2252 added "but in fact I think the first one, what alerted us to it, the increase in fatalities, I don't think is actually even in hindsight relevant. I think what you might, we

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might talk about those specific operations. So I think we were, we were alerted to this, but it's the second issue that's actually the most significant in my view."

CTI set out the number of DDOs conducted by Sub-Unit 1C and 1A noting the broadly similar number of DDOs and EKIA for both units. N2252 confirmed that if those figures were correct, there had not been an obvious increase in tempo, with only three more DDOs, or an obvious increase in fatalities, there being only one more. N2252 did not know the figures and did not think they were necessarily a useful guide because there were so many variables, but with hindsight he was interested in whether the TTP was a professional way to do operations. N2252 was reluctant to get into any discussion about tactics on the ground because he had never done a DDO nor been to Afghanistan at that point, but he did feel that this was something that needed to be on the Director's radar.

N2252 was referred to an email he sent to N2108 on 9 February 2011 at 10:33, copying in the Military Advisor ("MA") for DSF, in which he wrote *'Is this the one you were referring to this morning? If not, it's another one of "more bodies than weapons". Please review'* (MOD-198-0003478-A). N2252 confirmed that this email meant there had been a discussion between him and N2108 on the morning of 9 February, *"but I think our discussion had been about Objective 1 and this e-mail is about Objective 2"*, although he could not recall precisely what the discussion was about. N2252 accepted that in order to have written this, he must have looked at the operational reporting in respect of this particular DDO and Objective 1.

N2252 confirmed that this was an instance of more dead people than weapons with which they could have been armed, and that that must have been on his radar by 9 February if not before. N2252 explained that he would not have looked through the DDOs specifically in respect of his *"more bodies than weapons"* concern, but would have looked for anything that caught his eye. CTI asked N2252 why he thought it necessary to enquire into a DDO where there were more bodies than weapons. N2252 referred to paragraph 67 of his witness statement and explained *"my understanding of the law, I think it is the Criminal Law Act 1967, section 3 or something like that, I don't know, is that a firer has to have an honest and reasonable belief that their life is in danger if they use lethal force and if that force is judged to have been lawful but I think "more bodies than weapons" was worthy of note because, you know, the firer has to believe that. Therefore, if there are, if there are the same number of weapons as there are bodies, you might conclude that as a matter of fact all those firers were in fact armed and, therefore, as a matter of fact, presented an imminent threat to life to the firers. If there are fewer weapons than bodies, you might conclude that they were not, as a matter of fact, all armed but that in itself would not make the firers' actions necessarily unlawful, depending on what they believed in consideration of all the circumstances at the time. That's, I think, what I believed. I'm not a lawyer, but that is how I interpret the law."*

N2252 was referred to his email to N2108 in which he said *'it's another one of "more bodies than weapons"'* (MOD-1988-0003478-A). N2252 explained that *"in a short period of time it appears I had become aware of two operations in which 17 people had been killed and seven*

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weapons recovered. You know, I mean, you wouldn't just let that go. You would want to understand a bit more about the circumstances.” N2252 explained that he was instructing N2108, as per the UKSF Consequence Management Directive, to act as a further level of scrutiny; and the people charged with this scrutiny were N1788 and N2108 supported by N1803 with N2252 as a “*kind of overarching godfather in this process.*”

N2252 then confirmed the contents of the email chain to N2108 (MOD-1988-0003478-A), and CTI referred N2252 to N2108's comment that ‘*ultimately on the face of it the actions appear to be within the ROE*’. N2252 did not think he had a further discussion with N2108 as to why it was that he recorded he was satisfied that the actions were within the Rules of Engagement (“ROE”), because he had been out of the office in the intervening period. In the first discussion on Objective 1, N2252 was not sure whether he raised the “*more bodies than weapons*” issue with N2108 before these emails were sent. N2252 thought it was possible he discussed the issue with N1466 given he was the person directly supervising the operations, but equally N1466 was not “*hardwired*” into that additional chain of scrutiny and N1788, N2108 or N1803 were clearly nominated.

Q In terms of your decision that you were content with the recommendation not to ask for an SIR to be conducted, you said in your statement that it would be “highly unusual for me as Chief of Staff to request an SIR”.

A Yeah.

Q Was it within your power to direct one to be carried out if you thought it necessary?

A Technically, yes. I mean, if you look at the Consequence Management TTP, there is reference in there to Headquarters DSF having the ability to direct an SIR. In practical terms, that was the Director's business and the Director I think viewed it as his business, so there is reference in ... The Consequence Management document is not perfectly written, in my view, because it doesn't always make a completely rigorous distinction between the Director as an individual and Headquarters DSF as an entity. The way in which I interpreted it and the way in which it was interpreted by Headquarters was that it is the Director's business as higher authority.

Q Is that possibly the danger with using DSF for those two separate abbreviations?

A It could be, but, yeah, it is potentially a danger, yeah. I don't know how, I don't know to what degree also, I don't know how far Objective 2 had the Director's attention, so I think, “Content with your recommendation” is “Content with the line you are proposing to take with the Director”.

Q And in terms of the line that you think was going to be taken with the Director, did you anticipate then that there was to be a discussion between [N2108] as the legal adviser and the Director about this particular DDO?

A I think so but I can't say that with certainty. I just don't remember.

N2252 did not think that the explanation as to why the DDO was within the ROE and an SIR not needed i.e. that four people had died as a result of fratricide seemed odd. N2252 thought

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that four people might have been killed by one of their own, possibly through negligent discharge of an AK47. It was highly speculative but there were instances of operating against Taliban prisoners and this could have been one of them, in which case it could have been deliberate. N2252 did not know the circumstances but “...*the idea that a red on red had taken place did not strike me as implausible.*” N2252 did not ask to see the photographs. He did not see the role of COS to conduct a detailed investigation. It was the responsibility of the Commanding Officer (“CO”) SFHQ(A). N2252’s role in the additional level of scrutiny set out in the SFHQ(A) Consequence Management Directive was to verify that the scrutiny had taken place, and on the strength of N2108’s e-mail he would have been satisfied that that scrutiny had taken place.

Q ...Was your understanding of the email that you had received from [N2108] to the effect that the legal adviser had given legal approval in that sense of what had happened in theatre and that you did not need to further investigate the DDO?

A Well, I mean, I would go back to the text of his email:

*“... ultimately on the face of it the actions appear to be within the ROE”.
I think I took that as, I took that at face value.*

Q Well, save that he then said

“We could order an SIR into it if you feel that there are more questions than answers”.

A I didn’t have more questions.

Q Right, so on receipt of the email from [N2108], whatever questions you had went away?

A On the receipt of the email from [N2108], I felt that a high level of scrutiny had taken place, a process had been followed and no reason had been identified to flag this to the Director as a case in which we needed an SIR.”

CTI then referred N2252 to an email he received from N2108 at 10:39 on 9 February, a matter of minutes after he had sent his question in respect of enemy killed in action (“EKIA”) on Objective 1 and 9 (MOD-198-0003477-A). N2108 had written that he had ‘*already cottoned onto this one and will make some further enquiries today although this alleged that there was a ‘red on red’ which accounted for 4 of them’* and gone on to recount ‘*a recent trend I think of the ‘x bodies’ with ‘x minus 3 weapons’ recovered’*. N2252 agreed with his observation that there appeared to be a ‘*recent trend of more dead than weapons with which they could have been armed’*’.

Q Did you agree with his observation that there appeared to be a “recent trend” that there were more dead than weapons with which they could have been armed?

A Yeah, I mean mathematically that’s true and I said that a few minutes ago, a total of 17 dead and a total of eight weapons, but looking at those two instances in isolation, they appear to be very different and it would appear to be that in both cases an explanation had been given for the use of force which appeared lawful in each case.

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Q And you had said that before, but what I had asked and forgive me, I had asked you whether you agreed with his observation that there was a “recent trend” to the effect that there were more deceased than weapons.

A I mean, we can, this is angels dancing on the head of a pin but I’m not sure that two instances is a trend. So in that sense I wouldn’t describe two instances as a trend and we might get on to trends, but they appear, Objective 1 and Objective 2 seem to me to be two very different, very distinct cases, in each case of which there was an explanation for the use of lethal force which appeared to be legal.

CHAIR: The legal adviser seemed to think that there was a trend.

A I mean, I don’t, believe me I really don’t want to be flippant, Sir, ... I can understand “trend”, I just don’t think two instances is a trend.

MR GLASGOW: Well, might he be referring to more than just the two that are in the subject of these emails? Might he be referring to other instances that have been the subject of discussion?

A I wasn’t aware of any and bear in mind that I had been in Afghanistan [early 2011] and I just don’t know.

CTI then referred N2252 to an email sent to DSF, copied to N2252, from May 2011 with a list of recommendations (MOD-198-0001326-A). N2252 confirmed that the legal advice section chimed with what he had said about someone being armed with an AK47 and accidentally pressing the trigger. N2252 did not recall this being the subject of the conversation he had with DSF or with N1466. N2252 recalled looking at the opinion jointly signed by N1802 and Brigadier Op Law, one of the Army’s most senior lawyers (MOD-198-0001326-A). “...If he looked at this, considered all of the facts in the way that I as Chief of Staff just didn’t have the time to do and was nonetheless content that this was a legitimate use of lethal force, I think I would have been reassured by the fact of this signature.” N2252 said he was not required to take a view on this; the primary decision maker was CO SFHQ(A) who had the awareness, experience and knowledge of all the firers taking a view on whether a Service Police investigation was required. N1802 then took further legal advice and decided that he agreed with that decision, which was sufficient for N2252. N2252 highlighted that his email to N2108 asking him to have a look at this DDO was right at the start of the process, before the formal process undertaken in SFHQ(A) and HQ DSF.

CTI then referred N2252 to an email dated 16 February 2011 timed at 08:10 that he sent to N2108 writing ‘4 EKIA - 2 weapons recovered. Worth a look?’ in respect of the post-op reporting from Objective TYBURN (MOD-198-0003490-A). N2252 explained that in this email, he had analysed the details of the DDO and felt there was enough to trigger this additional process of internal, higher-level scrutiny.

Q So, as at 16 February, you are still alive to the need to check whether there is a trend of more weapons than bodies?

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A Well, I mean, again, as I said to you before, not, I wasn't looking at DDOs, OPSUMs specifically for that. I was looking for anything either that we could learn from professionally or that we needed to investigate in the way in which force had been used.

Q And on this instance, because of the more bodies than weapons, you want this to be reviewed by the lawyer working at DSF.

A Yeah and SOI Campaigns. I wanted to trigger that additional level of scrutiny which we were charged to deliver.

Q Well, that email, your email of "Worth a look?" was not sent to SOI Campaigns; it was only sent to SOI Legal.

A Yes, you're right, but I am completely confident that the mechanism would have swung into, swung into play as [N2108] would not have looked at this in isolation.

CTI then referred N2252 to N2108's reply that same day: *'I have approached this review in a slightly more objective fashion, ie I have approached it from the 'hindsight police' perspective'*. N2252 explained that he interpreted N2108's 'hindsight police perspective' comment and N2108's later comment that he was speaking to the kinds of things that public interest lawyers may *'undoubtedly raise in the inevitable public inquiries'* as a questioning of how things would be perceived in years to come.

CTI referred N2252 to N2108's email text: *'my comments are not meant to be accusations against [the Sub-Unit] but an attempt to highlight areas of potential concern'* and that he shared *'DSF's concerns about the recent spate of high EKIA and have noted the emerging [Taliban] TTP of supposedly hiding grenades behind curtains.'* N2252 agreed that N2108 appeared to have had a conversation with DSF about DSF's concerns of the *"recent spate of high EKIA"* but N2252 could not recall being party to that discussion. N2252 could also not recall whether, prior to 17 February, he or DSF had discussed concerns about EKIA and did not think he would have.

N2252 then explained that he wanted to speak to DSF about what he saw as a trend being established by Objective 2, Objective 10 and Objective TYBURN; namely people being sent back on target and having to be killed by the Sub-Unit using lethal force to remove an imminent threat to life. N2252 confirmed that what had been identified as *"DSF's concern about the recent spate of high EKIA"* was slightly different to the matter that he wanted to speak to DSF about. N2252 did not know whether he had spoken with N2108 about the fact that if the operational staff report was accurate, members of the insurgency were hiding grenades behind curtains.

Q Well, when you read this, did you then think to yourself "I think I'm alive to the high EKIA, but I hadn't spotted the hiding grenades behind curtains, I must do something about that" or "I must look into it"?

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- A I didn't consider it implausible. To a degree I still don't on the basis of having later [spent time in Afghanistan]. There are just weapons everywhere in Afghanistan, so the idea that ----*
- Q Forgive me, but if there are weapons everywhere, they do not need to be hidden behind curtains, do they?*
- A Well, forgive me if I can finish ----*
- Q Of course.*
- A -- the idea that Afghans might have weapons secreted in places around their houses that they could use in the event of attack by security forces or even by other Afghans didn't strike me as implausible and it still doesn't.*
- Q But the difficulty with the grenade is whether it is an effective measure of dealing with whatever is in front of you. Did it occur to you that a grenade might not be the most effective means of self-defence?*
- A I didn't analyse it with that, with that level of rigour I suppose. The idea, the idea that an Afghan around the house might have weapons for personal protection did not strike me as implausible.*

N2252 did not agree that a grenade was a less sensible weapon to defend oneself with compared to an AK47, given an individual has to prime a grenade before throwing it. N2252 explained that when you are using an AK47, you have to be able to see what you are aiming at whereas when you are using a grenade, you do not. The compounds have high walls and a grenade gives the opportunity to engage a target not in the field of view. N2252 therefore did not find it implausible that Afghans might have them in their houses.

CTI asked N2252 about the TTP of escorting local nationals back onto target. N2252 said that he did not have a good feel for how the TTP was being implemented, but his "*understanding of the TTP is that the individual could either be sent back onto target to remove blankets and coverings so that those in positions of cover could see into the house or that or that they would be accompanied back onto target.*" N2252 had never conducted a DDO as he had never been in UKSF1 or UKSF3. He went on to explain that he was Chief of Staff at the Headquarters 3,500 miles away, with a range of stuff to deal with, of which Afghanistan was only a tiny percentage, and he did not think it was realistic to expect him to have a feel for detailed tactics on the ground. N2252 thought that of those in his immediate circle, N1788 someone who had held a Sub-Unit command appointment would have been best placed to assess what was happening on target during the DDOs, even better placed than N1466 or N1802. If N1788 or someone similarly placed had come to N2252 and said the DDOs did not look right, he would have taken that very seriously but N2252 did not remember anyone doing that. N2252 thought the members of the Ops Room raising questions were questioning the professionalism of it.

The Chair then referred to N2108's correspondence to N2252 dated 16 February 2011 (MOD-198-0003490-A) and the comment that N2108 made of '*the emerging ... TTP of supposedly hiding grenades behind curtains*'. N2252 detected a "*note of scepticism*" but did not think

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N2108 was *“in a position to be offering that scepticism”* and was not sure why he was doing so. When the Chair highlighted that N2108 was the legal advisor, N2252 said *“that’s the point. I don’t think he had that, that operational feel.”*

On return, N2252 stated that he reviewed the diaries he brought with him and that on 14 February he was doing the UKSF1 budget screening and on 17 February he was doing another Unit’s budget screening. This type of work was the reality of his role. N2252 stated that as Chief of Staff, he initiated a process of scrutiny that others conducted. CTI then asked N2252 to provide further detail on his role.

N2252 confirmed that his role was to keep the business running across the whole J1 to J9 piece, *“rather than diving into detail in something in the J3 [operations] area which I felt was already being covered admirably by the Director and ACOS Ops”*. N2252 had a number of ACOSs who were working one rung lower than him and he had to trust that they would do the work within their remit to the best of their ability. N2252 confirmed that reflected the integrity he mentioned before and that people were trusted within the UKSF community to do what was expected of them to the best of their ability. There was always an additional level of scrutiny required under the SFHQ(A) Consequence Management Directive and the Director’s focus would inevitably be on operations. Whilst his link was through N1466, N2252 confirmed he had to have an awareness of the issues so that he could be of use if needed.

N2252 explained that he and N2108 were *“slight outsiders”* as they were not part of the UKSF1 and UKSF3 *“boys’ club”* and could look at things with an objectivity those in UKSF1 and UKSF3 may have lacked.

CTI then referred N2252 back to N2108’s correspondence to N2252 dated 16 February 2011 (MOD-198-0003490-A) and his comment *‘...I get the sense that the way we are writing these up will not bear scrutiny in years to come...’*. N2252’s interpretation now of what N2108 meant was that either he was alluding to a formulaic way of recording statements or the idea that the Ground Commander was the investigator of the incident and that that lacked the necessary objectivity. When asked about N2108’s comment that he *‘would appreciate a discussion’*, N2252 could not remember the content of any discussion but if N2108 asked for it, they would have had one.

N2252 did not recall having any concern about the way things were being written up but was not sure whether he ever saw a final statement as that was a level of detail he did not routinely engage in. They had a process throughout 2010 where this was vigorously discussed and which culminated in the production of the UKSF Consequence Management Standard Operating Procedure (“SOP”) dated 10 November 2010. N2252 was confused by what N2108 meant because he had been part of that process.

N2252 could not recollect whose concerns N2108 was referring to when he mentioned *‘How do we highlight our concerns’*. N2252 thought one possible interpretation was that it referred to the concerns he shared with N2108, but it could have also been a reference to concerns

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N2108 shared with others, such as N1466 or some of the Ops staff. N2252 did not remember having a discussion with N2108 about shared concerns. N2252 then explained that N2108 was raising his concerns in the operations chain to the Director and ACOS Ops; he was not sure and could not recall how central he was in those discussions. CTI noted that the correspondence was sent directly to N2252 and N2252 confirmed that N2108 might have been raising these issues with him because they were kindred spirits as 'outsiders to the boys' club'. N2252 confirmed that there was not a response to N2108 in the documents, but it may have been that they simply had a discussion and N2252 may have "just gone and grabbed him".

N2252 confirmed that the following morning, just before midday at 11:55, he sent an email to the Director's MA asking if he could have a chat with DSF about this area.

Q So it was about the trend that had been identified by [N2108]?

A The trend that I think had probably been identified by me as well by that point.

Q So you think you had identified a trend at this point?

A Yes, I think I probably did. You know, I would say that, I would say that with a degree of hindsight, but I think I probably did.

Q What you had said before lunch was that the two DDOs did not make a trend ----

A No.

Q -- but it was the third DDO that did?

A No, the two DDOs, Objective 1 and Objective 2, in my view, don't make a trend. The trend that I think I identified, Objective 2, the eighth man killed when he went back onto target and got an AK47; Objective 10, which I saw on your website, 14 February, again someone goes back onto target and gets an AK47; Objective TYBURN 16 February, one guy goes back onto target or was taken, I can't remember, gets an AK47 and one gets a grenade. That, I think, that starts to feel like a trend to me.

Q Right, so those three DDOs caused you to believe that there, is it, might be a trend or there was a trend?

A I can't remember at the time.

Q So either there was or there is the possibility of the trend that, what, in some way the TTP is not working?

A The TTP is having unintended consequences, yeah.

N2252 was not sure whether he discussed that with N1466 and did not remember who else was around at that time. N2252 said he was intending to put this on N1802's radar as something to think about and have a conversation with N1786 about.

N2252 recalled that when he told N1802 about his concern, N1802 thanked him and said something to the effect of "I've got this". N2252 left his office thinking DSF was going to take some action.

Q ...Did [N1802] appear surprised or do you not remember that?

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A *I don't. I don't. You know it's a funny thing. It's one of very few sort of flashbulb memories I have from that time that I remember where we were in his office when we were discussing it and we had a chat and he went over to his desk and he made some notes and at the end of it he kind of said "Thanks I've got this", that kind, that kind of thing.*

Q *Did you discuss it with him again?*

A *What the DDOs thing?*

Q *Yes.*

A *I don't recall, I don't recall doing so because what happened, and here you know the chronology is not insignificant, we would have had that conversation on the 18, 18 February or thereabouts.*

N2252 stated that several urgent issues then developed, including a major operation in Location Given (not Afghanistan) and a number of security issues that completely absorbed all of his bandwidth in February and March 2011.

CTI therefore moved to April 2011. Having reviewed his diary entries for 2010 and 2011, N2252 had identified 8 April 2011 as a potentially important date. He set out the chronology of his diary entries from 2010 and 2011 that were relevant to the Inquiry in his witness statement. N2252 confirmed that he and N2108 exchanged emails about two different DDOs that might involve more bodies than weapons. N2252 confirmed that there was then a further DDO followed by an email requesting discussion with DSF but after 17 or 18 February, there was no relevant email to suggest there was any further discussion. There were a number of other issues that drew N2252's focus away from the DDOs. CTI asked N2252 whether there was a renewed focus on DDOs from 8 April and N2252 stated that his diary entry on or around that date recorded a back brief from the Director but he was not entirely sure what prompted this. He added that based on his reading of CTI's Opening Statement to the Inquiry, the Director became privy to information which led him to want to have a meeting with N2252.

CTI then referred N2252 to paragraph 54 of his witness statement and his diary entry which recorded '*examine the TTP to ascertain the optimum balance between achieving detention and mitigating personal risk/threat to force*'. N2252 said that he could not recall the conversation to which the notes refer, but would do his best to reconstruct what he thought was meant by them. N2252 confirmed that he had recorded '*allegations regarding [SU1]*' and '*second-hand bar rumour*', and that the way he had recorded it indicated that DSF must have told him that allegations of some kind had been made. N2252 could not recall what was discussed in the conversation or whether he asked any questions about what the allegations were about, but agreed it would have been the natural thing to have asked. N1802 would have requested that N2252 go to see him and told him the information set out because it was of potential relevance to him performing his role as Chief of Staff. The way N2252 recorded the notes, it did not feel like it was a discussion between equals, rather N2252 took notes of stuff that he was being told by N1802.

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When N2252 was told on 8 April that the TTP was going to be examined, it reminded him of the conversation he had had with DSF on 18 February. N2252 had gone to him on that occasion because he considered it N1802 and N1786's business as they were involved in the use of the TTP that appeared to be having unintended consequences. The tone of N2252's challenge was "*are you really sure about this*" and he recalled suggesting N1802 have a conversation with N1786 to satisfy himself that the Sub-Unit was operating in a way N1802 was comfortable with.

N2252 said his tone was "*are you sure about this?*" and that he was in no position to judge the relative merits of the TTP. N2252 explained that N1802 did go on to discuss the issue with N1786, giving N2252 a read out of the discussion which N2252 could not remember the contents of. N2252 was satisfied by the outcome of him questioning this issue, and felt that he had put it on N1802's radar sufficiently. At least prior to 8 April, N2252 felt that N1802 had done what he had hoped to do by speaking to N1786; N2252 was not conscious of the issue in February/early March. N2252 explained he could not remember what the result of N1802 and N1786's conversation was "*if he did, I don't remember it and that's what it says in my statement. I don't recall the conversation, but I do recall that I was satisfied by the outcome and I thought that it was then on his radar, on [N1786]'s radar and that I'd kind of, I'd satisfied myself that they as Commanders knew what they needed to know.*"

N2252 confirmed that he thought he had sufficiently dealt with the situation and it was over to others to do their bit. N2252 then confirmed that when the conversation took place on 8 April, he linked that conversation back to the previous conversation about TTPs of some six or so weeks ago.

N2252 either assumed or was told that the TTP that was going to be examined was the one over which he had concerns. He said it was what he expected to hear because the TTP had already been identified and N2252 had spoken to N1802 on 18 February about the potential concern. When discussing the need to examine the TTP, N1802 did not say anything about a review that had been undertaken by N1788 or others; N1788 had been back in HQ DSF for that time period.

When asked by CTI whether N2252 linked the bullet point in his diary entry which read: '*second-hand bar rumour*' with the bullet point that read: '*[UKSF3] not a disinterested party*', N2252 stated that it had always been N1786's position that it was "*second-hand bar rumour, second-hand hearsay*". The note read to N2252 as N1802 giving N1786's impression of whatever the allegations were. From the way in which his note was recorded, N2252 thought he was present during a subsequent discussion between N1802 and N1786 during which N1786 used the phrase '*second-hand bar rumour*' or similar. When asked again whether a link should be interpreted between the '*second-hand bar rumour*' which appeared to be coming from UKSF3 who are themselves not disinterested, N2252 stated: "*Well that's what I put in my statement. I...believe or I gather that the source of the allegations was [a UKSF3 delegation that was in theatre prior to their deployment]. So my understanding is that things were said to*

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them that were then reported back to [N1785] who then reported them to the Director, but...there is a degree of hindsight in that. How much of that I knew at the time, I can't say." N2252 confirmed that he was told this by the Director on 8 April. Although he did not recall the conversation and it is not recorded in his notes, N2252 said that it was a natural deduction from the notes he did record.

N2252 could not recall what the 'serious issues' were in his desk diary entry from 8 April 2011 where he wrote of 'serious issues and cumulatively there may be a problem with TTPs'.

Q Again, recognising you do not recall it, but if you had been told, for example, that there was a suggestion of a policy that fighting aged males be killed on target, is that the sort of thing that you think you might have remembered?

A Yes, I do and I didn't record that and you know I said to you first thing this morning that I'm still not quite sure what happened on 7 and 8 March¹ because [N1466]'s note, which I had not seen, was quite explicit that that was the allegation, that there was a policy go kill fighting aged males on target that posed no threat. What I have recorded the following day it doesn't have that tone and tenor about it. It's about the use of lethal force on target, yes, but it is about degrees of restraint and it's about the professionalism of the TTP. I don't recall that that allegation, you know, the policy to kill people and lie about it, I don't recall that ever being something that I was briefed on on 8 April and if I may, Mr Glasgow, I would say that if I had been briefed on that, I'm pretty sure I would have recorded it.

N2252 confirmed that even with the benefit of looking at the email N1466 sent on 7 April to the Director, he did not believe that the content of the email was discussed at his meeting on 8 April with the Director. N2252 would have taken a note about the allegations, had they been raised, and might have given the Director advice in respect of that allegation. CTI asked N2252 what advice he might have given if he had been privy to the allegation. N2252 said that "I would have said to him that, if people were putting things in writing, and there is reference in [N1466's] note to a letter from [N1785], I would have said to him that if people were putting things in writing, then for his own protection if nothing else, he should consider having a Service Police investigation. That, that, forgive me, let me qualify that. That's me...looking at it with a degree of hindsight and what I would have said to him at the time I cannot be completely sure."

When asked whether, had he been aware that written allegations had been made at the time, he would have said to the Director that the matter needs to be brought to the attention of the Service Police, N2252 responded:

A Do you know, I think it would still have depended on the quality of the allegations that were made, and that's what I just don't know. You know, there is an asymmetry of information between what the Director had and what I had and the Director had

¹ The witness has subsequently confirmed that he meant April.

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contacts in both of the two main units. I don't know what had been said to whom on what and when and I don't know what had been reported to the Director. My point to the Director would have been that, you know, 'If people are now writing this down, it may be second-hand, it may still be "second-hand bar rumour", that may be the original source of it, but if people are now writing this down, you Director want to think about this and, for your own protection if nothing else you, you should think about having a Service Police investigation". That is what I think, with the benefit of experience, I would have said to him.

The Chair then asked N2252 whether he would change his response given the two men writing down these allegations were N1785 and N1466, men of considerable operating experience. N2252 said that the fact it was two men of considerable experience does not change the essential fact that what they were writing down was hearsay, and that N2252 did not know who was having the original conversation.

N2252 confirmed that he could not recall being told the nature of the allegation in the meeting on 8 April; N2252 could recall, and recorded, a conversation about the degrees of restraint on target and effectiveness of the TTP but not the more serious allegations that were made. N2252 then explained that he felt *"a bit blindsided because, you know, in that meeting of 8 April I've recorded, you know, a certain conversation which was about degrees of restraint on target and was about the effectiveness of the TTP. What I now know as of last week is that a much more serious allegation was being made, but I didn't know that at the time and I don't remember that being surfaced at that meeting of 8 April."* In respect of his note of the 8 April meeting, N2252 agreed that it did not suggest a structured meeting, he did not set out the start and end time of the meeting nor who attended. N2252 could not remember whether anyone other than the Director was present at those meetings.

N2252 agreed that as per the note at paragraph 57 of his witness statement, it is likely that he went on to have a discussion with the UKSF lawyer, likely to be N2108, soon after his conversation with the Director. However, whilst it was most likely that one meeting led to another, N2252 did not have an independent recollection of the events in April 2011 and thought it possible that there was just one discussion in which DSF and the UKSF lawyer were present.

N2252 had written of the *'obligation to report if a reasonable man would believe that a serious crime may have been committed'* as probably being the advice of N2108. Where he had written *'we have no firm evidence of that'*, N2252 thought the *'of that'* referred to a serious crime that may have been committed. N2252 read that comment and the comment *'even [N1785] accepts that his allegations are not evidence'* as being the Director's assessment. The fact that that comment used the first name of N1785 further suggests it was the Director who said it, rather than N2108. N2252 confirmed that the note at paragraph 57 of his witness statement was likely to be his recount of a conversation with the Director and N2108.

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In respect of paragraph 57 of his witness statement, N2252 thought that his note that the '*RMP enquiry without specifics is unlikely to find anything*' was the Director's analysis. N2252 thought it was too strong to interpret this as N1802 discounting the possibility of the RMP having value at this point; N2252 thought it reflected N1802's opinion that "*the RMP might find this difficult to have an investigation without a start point*". N2252 was not entirely sure what his note that '*an internal Inquiry into TTPs may be more effective*' meant.

N2252 confirmed that, like N1802, he thought the enquiry into criminal allegations and the lessons learned aspects of professionalism were two separate matters. N2252 referenced paragraph 114 in his witness statement where he described N1802 as "*a rigorous thinker and he saw investigation and lessons learned as distinct processes.*"

By reference to paragraph 57 of his witness statement, N2252 thought that the words '*this is on the cusp but probably on the right side of the cusp*' were likely to be the words of DSF. N2252 had not seen N2108's note of advice to N1466 (MOD-198-0002062-A) at the time but thought there was a dissonance between what N2108 wrote in his note on 7 April and his apparent concurrence in '*this is on the cusp but ... on the right side of the cusp*' on 8 April.

N2252 agreed that a legal advisor should give advice in a clear and structured way. Putting aside N2108's advice, which N2252 had not seen at this point, the conclusion reached by the Director was that this was on the cusp. CTI highlighted that nowhere was the argument that taken together a serious offence might have been committed.

A *Well, there's a couple of things here and some of it is points of law. My reading of the Armed Forces Act 2006 is that the obligation to inform RMP is placed on the Commanding Officer. The role of higher authority is just not clear. So we kind of have this strange position where the allegations have been made to higher authority whose legal obligation is not clear, and the Commanding Officer whose legal obligation is clear viewed them all as "second-hand bar rumour". So it is not entirely clear to me what higher authority, what his legal and moral obligations were and, you know, I've tried to think this through and I'm not still sure about the legal obligation. What could he have done? I think he could have rung up [N1786] if he, the Director, had believed that these were serious allegations that needed to be investigated. I think he could have rung up [N1786] and said to him "You need to have an RMP investigation" and I think [N1786] would have complied with that. I think he could have himself initiated an RMP investigation by ringing up the Provost Marshal and I can't believe they would have disregarded it on the basis that it hadn't come from the CO. So I think those two options were open to him. And the third option open to him was to do nothing or to decide that, on the basis of the information open to him, an RMP investigation wasn't required.*

If I may, I think there are reasons in the wider context why, and I think this is captured in his note about "need to guard [SUI] against spurious allegations", I think there are reasons why a Commander would not want to have an investigation unless it was

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absolutely required. Those reasons are, first of all, that there would inevitably be a drop in tempo. You know, you would take the [Sub-Unit] out, you would conduct the investigation and they would be thinking about the investigation and not on planning the next, the next operation. So I think that's an issue and that could have an effect on the overall suppressive effect we were trying to have on the network. So that's one.

The second thing is that, as I have said, [UKSF] operates on a basis of trust and all these firers have produced statements saying that certain things have happened and, if the Director had had an investigation, and I'm absolutely not saying he shouldn't have had an investigation, the message that will have gone back to them is "We don't believe you, you've been on these operations, you've put your lives at risk and you have given statements but we don't believe you" and that may be appropriate, but I think it's not something that a DSF would do lightly because of the culture of trust etc.

The third thing is the source of the allegations, you know, this business that they had originated in [UKSF3] and the complaint was that [UKSF1] was using force improperly. So, there was potential for sort of friction and [inter-unit] friction that I think would have made, would have made the Director inclined to have a police investigation only if he were, only if he were sure that the, that the allegations warranted it.

Q If he was of the view that serious offences may have been committed, that would trigger, would it not, his certainty that something should be done?

A If he was of that view, but in that meeting of 8 April he didn't appear to be of that view...

N2252 asked CTI to turn to the SFHQ(A) Consequence Management and SIR document (MOD-198-0000913-A) which he thought reflected the discussions being had in 2010, and in particular paragraph 1, fourth line:

"Legal and policy requirements take absolute precedence; however, judgement is always required to ensure that the 'worst case' procedures do not become the default setting for all shooting incidents."

That, I think, is the Director's way of saying, you know, we want to have investigations when we have to, not as a safety blanket to cover all shooting incidents because of the disruption that it will cause; and that disruption is not measured in inconvenience, it is measured in removing the suppressive effect from the networks which means that more IEDs get produced, more bombs go off and more British soldiers get killed and lose legs. You know, these were serious issues the Director was dealing with and that, I think, was on his mind, I think."

The difficulty N2252 had was that he never knew what the allegations were. It would have been unsafe for N2252 to advise when DSF knew more than N2252. The way it was described

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to N2252 was “*restraint on target, effectiveness of the TTP, not the context of serious criminal allegations*”. N2252 confirmed that his note from 8 April was that N1788 was to conduct an internal investigation into the TTPs rather than embark on a criminal investigation; it had to be the RMP to investigate a criminal investigation.

Q And of course you were not even privy to the nature of the allegations to help [N1802] whether he should choose an internal review versus the Service Police.

A I wasn't and I don't think, I honestly don't think he needed my advice. You know, again, we had this sort of asymmetry of experience and sometimes you're quite grateful that you're not the decision maker and I'm quite grateful I wasn't the decision maker on that particular one.

Day Two of Evidence

At the start of Day 2, N2252 said that he had reflected on Day One and wanted to offer four points of explanation and clarification. The first related to a question asked by the Chair regarding the reasons for elevating the seniority in rank of the DSF and the COS post.

N2252 confirmed that he did not think UKSF was trying to fix anything by elevating the seniority in rank of the DSF post and the COS post. It was the next stage in a journey “*in that there was a sense that, you know, it was appropriate, in that operations in the mid-what noughties would they be now, yeah, with [N2252 gave examples by reference to a location (not Afghanistan)]. We were starting to have the potential, I think, to embarrass the Government from a policy and legal perspective and they were starting to have the ability to have strategic implications and I think there was just this sense that [UKSF] would benefit from having the additional experience and wisdom that [a more senior ranked] Commander might bring and the additional experience that [a more senior ranked] COS might bring.*”. When it came to UKSF governance, N2252 was conscious that the problem at the time was finding a mechanism that met Ministers’ requirements for assurance and oversight without suppressing creativity and ingenuity at the lowest levels “*because that is what makes [UKSF] what it is*”.

Secondly, N2252 recorded DSF going on a pre-planned holiday on 7 April, so there was something a bit unusual about the meeting on 8 April. N2252 thought that DSF came in to give his direction and then went on leave. Part of the reason N2252 thinks he did not challenge the DSF about what he had heard was that he could not reflect and go back to him on the following Monday because N1802 was on holiday. N2252 thought that DSF injured himself on leave and worked away from the office on his return. When N2252 looked at the SIR timeline for Objective 1, it looked longer than he expected it to be and one of the reasons for this may have been the Director not being fully fit.

Thirdly, another reason why N2252 thought he had not enquired about what was on N1802’s mind was due to how punishing a month March had been. N2252 then gave examples of international incidents (not relating to Afghanistan) which cannot be gisted. Both N2252 and

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DSF were “ground down” and bruised by the difficult meetings that took place in response to those issues. As a result, N2252 said he was not his normal inquisitive self.

Fourthly, N2252 stated that as a result of a number of security issues within UKSF at that time, “*there was just a fragility about [UKSF] at that time which I think is clearer in retrospect*”. N2252 said that the context at the time was “*one of pressure and it’s one of fragility on the one hand and yet this sense that, you know, we didn’t want another 2011 like 2010 with a hundred dead.*” There was a sense in the smaller community within which UKSF operated that all eyes were on UKSF.

N2252 said that UKSF had had a successful operation and then a week later a major security issue came to light which left N1802 in the “*cross hairs*”, making it a difficult time for those involved. “*We went from heroes to zeroes in the course of a week*”.

N2252 explained that there was an ambivalent attitude in MOD to UKSF and a number of senior officers who were not fans and the title of ‘special’ did not help. N2252 went on “*there is a sense, you know, “Special Forces you all think you’re a bit special”. Not the case. As I said to you yesterday, you know, the two things that I took away from the Special Forces’ ethos is humility and humour, humility and the pursuit of excellence. But there is this perception of “You all think you’re a bit special, don’t you?” and then a bit of Schadenfreude perhaps when it goes, when it goes a little bit wrong and I did think that was present in that March, yes.*”

N2252 described several security lapses that had happened around this time, which as a professional military officer he felt a bit embarrassed by. In hindsight, N2252 reiterated that those incidents reflected the fragility of UKSF at the time. N2252 then described a measure proposed to address this fragility which N2252 thought was never delivered. N2252 explained that N1802 was a “*big group man in the way that many of his predecessors and successors were not*”. He wanted “*governance to be done*” and took responsibility for anything that went wrong under his command, including the international incident mentioned previously (not related to Afghanistan). The fragility at that time was not just for UKSF but also for N1802 and his position. N2252 described N1802 as “*admirably resilient*” but thought that the pressure must have had an effect on him. N2252 got the sense that N1802’s “*star was falling*” in 2011 and “*he was being seen slightly as damaged goods*” principally for what was happening in the security realm.

Referring back to N1802’s period of planned leave, CTI asked N2252 whether in N1802’s absence N2252 was left fulfilling N1802’s function. N2252 stated that on the functional level he did not think it did. N2252’s recollection was that upon his return from leave N1802 worked out of the office but remained quite involved; it just added an “*additional layer of friction*”.

CTI thanked N2252 for his helpful observations and the time he had clearly spent in reflection. Referring N2252 back to paragraph 57 of his IIA witness statement, CTI asked N2252 what he meant by the note he made: “*this is on the cusp, but probably the right side of the cusp*”.

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N2252 said that he did not recall the conversation but that this felt like N1802's analysis of the situation. N2252 did not think he was able to make that analysis at that stage as he was not privy to all the knowledge that N1802 was privy to.

Referring to another part of his note which recorded '*RMP enquiry without specifics is unlikely to find anything*' and '*an internal inquiry into TTPs may be more effective*', N2252 explained the two tracks for dealing with the TTP concerns: the investigatory track and the lessons learned track, which he described as "*distinct but related*". N2252 highlighted that "*...The difference between, one of the differences between them was in terms of timescale. If you have an investigation, clearly it takes a while to ramp up and it takes a while to conclude. A lessons learned element was within our own control. And I look at that statement now and I, and I think it "may be more effective" and I think what [N1802] was grasping at was something that could be done quickly and would have effect and would send a signal, if a signal were required, and that he could deliver, that he could deliver rapidly. That's how I read it now.*"

Q ... so on the one hand there could be an RMP investigation that would take time ----

A Yeah.

Q -- and therefore a long time before either results could be achieved or lessons could be learned from it.

A Yeah.

Q That's at one end of the extreme.

A Yeah.

Q At the other end is a review or an internal enquiry, whatever one calls it, which would be faster, agile and better at delivering quicker results and, if there needs to be, a lesson learned?

A Yes, that's it in a nutshell, yeah, yeah.

N2252 thought the cusp N1802 was on was between having an investigation or not having an investigation "*because the legal obligations on the Commanding Officer in particular are quite clear and a certain bar has to be, has to be reached. I think the legal obligations on higher authority are less clear but a certain bar still has to be reached. So I think the cusp he was referring to is: does this, does this clear the bar?*"

CTI referred N2252 back to paragraph 57 of his witness statement and his note from his meeting with N2108 that '*[N1788] to conduct [an] internal investigation into TTPs.*' N2252 confirmed that he would not have had authority to direct that sort of investigation so considered this to have been a decision made by N1802.

At paragraph 58 of his witness statement, N2252 detailed a telephone conversation between N1786 and N1802. N2252 explained that from the style of his note, this was likely a telephone conversation N1802 wanted him to hear. N2252 said his note read as though the Director was introducing the subject of the conversation and the words '*kinetic or otherwise*' refer to the degree of restraint that they had shown on target. N2252 thought that N1802 was

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big on courageous restraint and referred to N1466's e-mail of 7 April which N2252 had now seen. N2252 explained that: *"I said to you yesterday that it was a sad day in my military career when Stanley McChrystal handed over at ISAF because the idea, the top-level idea of courageous restraint died with him, and I think that may have been true in ISAF. It was not true where [N1802] was concerned...[N1802] expected there to be restraint and part of the reason for that is that these were DDOs and as his Lordship said yesterday there is a clue in the title. The aim was to detain and there is some loose language in some of the [SFHQ(A)] stuff that I've seen about "kill or capture". I never regarded those operations in those terms. There may have been operations conducted under Rules of Engagement which enabled that, but I didn't regard these operations in those terms. They were deliberate detention operations and that, I think, is how the Director saw them because that gave us the maximum potential for exploitation, despite the limitations of our detention policy and despite only having people for a discrete period of time, you know, people say things, people say things under pressure and, even in 96 hours, I think there were, there were times that people did part with information. So these were detention operations on which restraint was expected."*

Q And just picking up on what you have said about loose language, if something is a detention operation but it is described as a "kill or capture" mission, those two descriptions do not sit well alongside each other, do they?

A I would agree with you and language is important and, you know, from what I have seen in some of those papers where "kill or capture" is mentioned, I think it's an error. I don't think these were those type of operations, but language is important. It should have been deliberate detention operations, I think.

Q So the question of restraint was being identified early in the conversation as a means of introducing what was to be discussed.

A I think so, yeah.

N2252 confirmed that his diary entry included at paragraph 58 of his witness statement outlining N1802's comment that *'[N1785]'s folks allegedly told stuff'*, was a reference to UKSF3 and the recce party that had gone to theatre. N2252 confirmed that his understanding of how this information had come back was that the recce party had gone out prior to N1785 taking over as CO SFHQ(A) and rumours had been brought to the attention of N1785, who brought them to the attention of DSF.

A But can I just say one thing on that and again, it is something I didn't explain particularly well yesterday, I don't think. It is this idea of the credibility or otherwise of those rumours and, you know, they were recorded by serious men: [N1785] and [N1466], serious men. I think they were probably relayed to them by serious men. And I'm not sure they were generated in that spirit. I just don't know the nature of these allegations, but what I was trying to communicate yesterday was that Special Forces can be absolute scallywags when it comes to, you know, sort of bantering with each other, winding each other up. They are generally more intelligent than the normal run

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of the mill soldier. They are at the top of their game physically and mentally and they enjoy winding each up and what I was trying to communicate yesterday is that, when you look at the nature and the way in which these allegations were relayed, yes, they were recorded by serious men but I think it would be unsafe to necessarily conclude from that that they were necessarily generated in a serious spirit. That's what I was trying to convey yesterday. I don't, I don't know what information you're getting or what people have said to you, but I think that, that would be a slightly unsafe conclusion to draw.

N2252 did agree that escalating idle chit-chat up the Chain of Command requires each person escalating it to have thought to themselves “*should I take this seriously, is it significant, does it warrant escalation?*” N2252 confirmed that if something had gone through that filter process and passed by one rung down to the very top, it should be taken seriously. One would hope that people with the experience of N1466 and N1785 to be attuned to dismissing idle gossip.

N2252 confirmed that when it came to assessing what members of UKSF wrote down, he would assume the information to be correct according to their belief as they had been brought up on the integrity principle. N2252 confirmed that one relied upon those members of UKSF to tell the truth and that trust operated from bottom to top and top to bottom. Similarly, N2252 confirmed that the same integrity principle applied to individuals who passed information up the Chain of Command. N2252 would proceed on the basis that whatever had been passed up had been faithfully recorded, but he did not have any feel for what it was based on.

N2252 confirmed that the report from the Director to N1786 was that ‘*[UKSF3] have allegedly been told stuff*’ and that N1786 response was that whatever was said only amounts to ‘*second hand hearsay*’. N2252 said he had the sense that whatever the Director was relaying to N1786 was not new; N1786 had some sense that something was afoot. N2252 thought that, based on how his note read, it appeared that N1786 and N1802 had either spoken about this issue previously or had information passed to them so that they knew what the other is talking about.

N2252 explained that where the Director identified that he wanted ‘*... a review of the TTP and the actions on target so we have the balance right between effecting detention and mitigating risk*’, he thought he was referring to the business of taking people back onto target. In respect of ‘*... the balance ... between effecting detention and mitigating risk*’, N2252 thought N1802 and N1786 were referring to the two duties of care. These were “*the duty of care to the soldiers to have a TTP that, where possible, protects them from suicide vests or manned IEDs, booby traps on target and the duty of care to the detainees and I think that is what it was about*”.

N2252 agreed that on reading his note, he had recorded that N1786 had informed the Director that he ‘*has already initiated a re-look at the TTP*’ which showed that N1786 had already looked at this TTP. N2252 said there was nothing in that note that he thought was surprising as he had hoped the issues were already on N1802’s mind following their conversation on 18 February. N2252 confirmed that where he wrote ‘*was due to have back brief yesterday*’, that

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was N1786 saying that he was due to have a back brief as a result of the 're-look' he had initiated. N2252 presumed this did not happen or N1786 could have told DSF the outcome.

That entry was followed by a recorded entry attributed to the Director of the '*need to guard [SU1] against spurious allegations*'. N2252 did not think that N1802 was describing these allegations as spurious and did not read the note in that sense, rather that it was a general sense that "*we need to guard the [Sub-Unit] against spurious allegations...*". N2252 thought '*spurious*' allegations referred to a desire as per the Consequence Management Directive to avoid going to the worst case in every instance and have an investigation as it would affect the tempo of operations. N2252 said "*there has to be a certain bar that has to be cleared, so we don't want to be having investigations -- and, again, I'm extrapolating from what's in the Directive -- so we don't want to be having investigations on spurious allegations. I think the Director felt he would only want to have an investigation if that bar had been cleared.*" The bar is laid down in the Armed Forces Act 2006 ("AFA") which N2252 described as "*would a reasonable man look at this and think that a serious crime may have been committed?*" N2252 did not know if there was a sense the allegations might in fact just be spurious. "*I just don't know what the Director was privy to on that day or what conversations he had had either before or after.*"

N2252 thought the description of the atmosphere being '*febrile*' referred to the atmosphere in theatre, rather than the atmosphere in HQ DSF. N2252 explained "*...there's a point here, there's a wider point that perhaps we could touch on. I think it must have been the atmosphere in theatre. The atmosphere in [HQ] DSF at the time was not febrile. You know, forgive me, there is just one thing I would like to say generally and that is that, you know, you guys come at this with the lens of 2022 or whenever you were engaged and you come at this, you know, from the perspective of 2022 and 2024 and the context that you come with to that is one of really serious criminal allegations being made. And you are yourself a very distinguished criminal barrister and you come at this with a, with a perspective of criminal activity. That's not my recollection of how the sense was in [HQ] DSF at the time and unusually, I feel like I've been stuck in a bit of a time warp on this, because I left DSF in 2011, didn't go back, wasn't interviewed by Northmoor, I didn't take an interest in the BBC programme, I haven't read much of what is on the Inquiry website, and one of the reasons for that, Mr Glasgow, is not that I'm not interested, it's just that I sense that the value I can give you, if any, is to tell you what it looked like in 2011, and it was not being viewed in [HQ] DSF through a criminal lens. I was trying to think last night what word could I use to describe how it was being regarded and the word was "quizzical". There is just something there about, and I said to you yesterday, I just don't understand why they're doing this TTP which appears to be having adverse consequences. [N2108] clearly, you know, he's sceptical about aspects. There was just something that made us quizzical but it wasn't, it wasn't criminal, if you see what I mean, and I think this period, 8 May² and [N1466] may have got there on 7 or 6 April, you know,*

² N2252 has subsequently corrected this date to 8 April.

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when he wrote that note, but this is kind of the first period where that possibility I suppose might even have surfaced, yeah.”

Q The possibility that it might be criminal?

A Yeah. It wasn't being considered in those terms. That wasn't our, that wasn't our mind set at the time.

N2252 confirmed that he was not privy to the information given to N1802 by N1466 or N1785. N2252 had subsequently seen the report made by N1466 and parts of N1785's letter as referred to in CTI's Opening Statement on the Inquiry's website. He agreed that those reports, if correctly written, were to the effect that serious criminal allegations had been made and agreed that a policy of killing fighting age males on target whether they presented a risk or not was a serious criminal allegation.

Q So, whilst you at this stage were not considering the allegations in a criminal context --

A Yeah.

Q -- if the Director had understood what was written to him in the way that you have just understood it ----

A Yeah.

Q -- as at 8 April when he is talking to you ----

A Yeah.

Q -- he is seized of the most serious criminal allegations against his premier [Sub-Unit].

A Depending on the way in which he, depending on the way in which he weighed and how he evaluated what he was hearing...

N2252 went on to explain that there was still dissonance about what N1466 and N2108 were discussing on 7 April and the tone of the record N2252 made on 8 April. From various records, N2252 deduced that N1466 and N1788 must have both been in HQ DSF on 8 April and an email from N1788 suggested that he had had a discussion with N1466 and N2252 but N2252 did not recall N1466 pressing the point of serious criminal allegations. *“So, I mean, he'd clearly written that note and this is the dissonance I still can't figure out what was happening on 7 and 8 April because both the tenor and tone of those notes that [N2108] and [N1466] exchanged in writing on the 7th I do not recall being repeated verbally on the 8th.”*

N2252 said that he must have been present in a meeting with N2108 and from the tone of his note he believed that N1802 was also there. He could not remember whether N1466 had been there. N2252 did not recall N1466 coming to him and speaking to him about what he had written to the Director. *“If I'm honest, Mr Glasgow, am I disappointed? I don't know.”* N2252 thought N1466 was slightly protective of his area, but thought they had a reciprocal relationship in which they would tell each other things they thought the other should know. However, N1466 did not copy N2252 in to the note of 7 April which left him feeling *“blindsided”*, N2252

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added that *“it was clear that there were things going on at that time that I just didn’t know about and it’s a little hard to come in here and try and explain. I can’t entirely explain it”*.

Q I mean, might it be because [N1466] as ACOS Ops regarded what was happening on the DDOs as a particular Ops-centric issue and so he would keep that to himself and the Director and inform you as and when you needed to be informed?

A Yeah, it could be. It could be and that, I think, is one possible explanation for it and I have a lot of sympathy with that because, as I said to you earlier, you know, I was very hard on security and [UKSF] operates on compartments. If you need to know something, you know, you need to know it and, if you don’t, then you can be kept outside. So that is one possible explanation.

Another possible explanation is that he, you know, as he uses in his note, he says “These allegations are potentially explosive” and yeah, they are, and I think he may have wanted to keep it as tight as possible.

The third explanation, and I just don’t know, is how much confidence did he have in what he was hearing because by then he was basically reporting to the Director kind of fifth hand allegations? It had started in [UKSF1]. It had been reported to someone in [UKSF3]. It had been reported to [N1785]. It had then been reported to him, [N1466], and he had then reported it to the Director. That is five links in the chain. It was starting to feel a bit like Chinese whispers, you know, and I just wonder how much confidence he himself personally, and I am sure you will ask him, how much confidence he had in the veracity of the allegations he was dealing with.

Q Well, he certainly had enough confidence in them to report them to the Director.

A Yeah, he did. He did. No, you’re right, yeah.

Q And he knew from his note to the Director that [N1785] had enough confidence in the matter to separately report it to the Director.

A Yeah.

Q So ----

A I know, in a sense it’s the same report. It’s come from, it’s come to the Director by a few different routes. It’s has come via [N1466] and then directly in the letter from [N1785].

Q So two serious individuals have assessed this information as worthy of bringing to the attention of the Director.

A Yeah.

Q And they have done so in writing.

A Yeah.

Q Does that help you just whether they might take this matter seriously?

A Well, they clearly did take it seriously, yeah.

Q So clearly they assessed it as worthy of note?

A Yeah.

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CTI referred back to N2252's note of the phone call between the Director and N1786 recorded at paragraph 58 of his witness statement, in particular to '*[We] must set the rheostat very safely and in safe mode.*' N2252 explained that he could not entirely explain what '*febrile*' or '*rheostat*' meant as they were both "*[N1802] word[s]*". However, N2252 interpreted it "*as a direction that members of [SU1] should have been kept in theatre to contribute to that TTP Review because I think they were just about on the cusp of their, of their rotation.*" N2252 noted that the words drafted for the TTP Review made clear to N1786 in the footnote the obligations under the AFA, and to N1788 in the text that if he came across activity which may be criminal, "*...stop this Inquiry or, you know, take it out of the professional track and put it into the investigation track*". N2252 thought that is what they did and the wording '*must set the rheostat very safely*' had an element of let us be conscious of our legal obligations which N1802 would have been.

N2252 agreed that he recorded N1786's support of the TTP Review and the fact that at the end of the conversation both DSF and N1786 were content with the proposed course. N2252 reiterated that he did not remember the conversation at all, he was trying to read the note he made at the time and reconstruct what that might have meant in his own mind.

CHAIR: ...can I ask the Witness, the third line from the bottom reads:

"... even if it means some people staying out on the battlefield a little longer than we would ideally like."

A Yeah.

Q What do you think was meant by that?

A Again, "battlefield" is a Director word. I would not have thought of it in those terms, but I think it's this business of there was a roulement coming up and that [SU1], [SU1A] were about to come out of theatre and presumably go on leave and I think what the Director was trying to convey to [N1786] was "Don't let that happen. If there are people who are able to contribute to the TTP Review, we need to harvest their expertise and not have them back in the UK on leave". So I think that's what it refers to, Sir.

N2252 did not think that he was involved any further in the TTP Review process beyond the discussion on 8 April. As he was not UKSF1 or UKSF3 and had not done a DDO, N2252's role was just to initiate and oversee the process.

N2252 then stated that the 'Ops Shop' was not an area that required constant supervision. He said that as N1803, N1466 and N2108 had been in HQ DSF for some time and were getting towards the top of their game, N2252 could devote his attention to areas of work other than operations.

As to whether at any stage N2252 discussed the Review whilst it was being prepared or after it was prepared, N2252 said there was one email dated 8 May from N1788 in which he said '*I have discussed this a bit further with the COS and the ACOS Ops*'. However, N2252 did not

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remember this discussion. N2252 confirmed that there appeared to be no other entry after 8 April in his diary that touched on the TTP Review or other issues relevant to the Inquiry such as dropped weapons, falsification of records or extra judicial killing (“EJK”). N2252 thought he would have taken an interest in the Review, in his role as COS as he tried to integrate the Ops chain with other areas of the HQ but could not recall whether he discussed it with anybody, such as N1802. N2252 did not have any role in passing on information to SU1 relating to the subsequent steps put in place by the Director; that would have come from the Ops chain. N2252 knew N1786 very well and may well have picked up the phone to him in the winter of 2011, but he did not have that relationship with N1785.

Q Whilst [N1786] remained in theatre during the review and assisting with the handover to [N1785] and prior to his return so whilst he is still out there, at any stage with you can you recall having discussions with him about this particular set of issues?

A No, I can't. I had a lot of confidence in [N1788] ... You know, he is clearly a capable bloke and I remember feeling that we'd given this, the Director had given this task to the right man and I had confidence it would be done properly and I just didn't have any value to add.

N2252 agreed that he was of the view, as described in his witness statement, that there was a sense that the issue had been resolved following the TTP Review. He explained that there was little in his diaries about Afghanistan from the end of the TTP Review up until the time he left HQ DSF. N2252 thought the Review appeared to resolve whatever it was that he was “quizzical” about.

Q ... if there was a question, it was answered and that particular question wasn't being asked again?

A Not that I recall, no. There was still the implications obviously and you may come onto those, TYBURN and things like that, you know, there was a, there was a sort of strand of stuff relating to the operations that had taken place in the winter of 2011, but there seemed to be no fresh material.

Complaint made by a TPE

CTI then referred N2252 to a letter sent by N2108 to DSF from May 2011, to which N2252 was copied, relating to a complaint from a TPE in respect of one the DDOs that N2252 had discussed by email with N2108, Objective TYBURN (MOD-198-0002033-A). CTI drew N2252's attention to paragraph 5. N2252 agreed that the allegation being made by the TPE was serious and when asked if he thought it looked like the allegation had strayed into criminality, N2252 responded that did not know whether or when he saw this email as he was on leave when the email came in. Upon returning from leave, N2252 did not know whether he would have looked at the document, noting that he would have had a backlog of work to catch up on. Having been referred to paragraph 6 of N2108's letter, N2252 agreed that the aspiration was

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to deal with the allegation at the lowest level and to sort it quickly without it being escalated. N2252 agreed that escalation to ISAF level meant far more people would become aware of the complaint. When asked whether in seeking to dispose of the complaint at the lowest level, it was a way of avoiding a lot of people hearing about something that you would rather they did not know about, N2252 responded that he could not recall this document at the time or when reading the exhibit pack. When referred back to the sentence: *'The aspiration is to deal with the complaint informally at the lowest level without it being raised unnecessarily to the ISAF level'*, N2252 thought that this was *"in-theatre handling"* and *"the aspiration was also always from a pragmatic point of view to try and deal with allegations as quickly and efficiently and at the lowest level possible."* N2252 went on to say that, looking at it now, an allegation of the nature made by this TPE *"doesn't appear to be the sort of thing that one would readily resolve at the lowest level"*. N2252 agreed that, looking at it now and being unsure of how much he had seen of this before, to try and dispose of such an allegation at the lowest level would strike him as unusual and that it might not be appropriate. N2252 agreed that the intention at that stage seemed to be to get rid of the allegation at the lowest level through the use of a lawyer.

CTI referred N2252 to an email from the Director to N2108 dated May 2011 (MOD-198-0002047-A). N2252 confirmed that he was copied into this email but he received it whilst he was away so there was a question as to whether he had a chance to catch up on it. Having been referred to DSF's sentence: *'Thank you. Let me know when [a TPE] meeting is scheduled not just the outcome'*, N2252 agreed DSF had a very high appetite for understanding detail. N1802 was then informed by N2108 of the scheduled time for the meeting, which was around the time N2252 thought he returned from leave.

CTI referred to an email relating to Objective 1 sent by N1802 to N2108 and copied to N2252 (MOD-198-0003884-A) in which DSF raised two matters. First, why the Ground Commander was investigating his own operations, and second that it appeared as if a common draft was used for all the witness statements. N2252 explained that he did not think he discussed this with the Director, and that he almost certainly declined the opportunity to add value as he did not think he had any value to add. N2252 had no recollection of providing a view on N2108's proposed response to DSF's observations, but he thought he would have either emailed or spoken to N2108 to that effect, he would not have just ignored N2108's email request. N2252 did not recall asking DSF whether he had spoken to N2108 about the SIR process.

Knowing DSF and N2108 as he did, if they were engaged and having a conversation, N2252 would not have needed to energise that conversation at any stage. N2252 agreed that N2108's email request to N1466 and N2252 for their views on his proposed response to the Director might have been made so that N2108 did not appear under-prepared to the Director. N2252 had had some experience with the SIR process before but it *"was not for business"*. He thought N2108 was someone he could delegate to with confidence when there were other areas in HQ DSF that required N2252's attention.

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N2252 confirmed that the call out procedure that had been raised as a concern in February and again in early April and was the subject of the TTP Review, was raised as a concern by this TPE.

- Q So what you were concerned might be an inappropriate aspiration to “nip the complaints in the bud” appears from this document to possibly be coming to fruition. Is this a document that you considered either on [date given May 2011] or whenever you came to it when you got through your inbox following your return from holiday?*
- A I’m not sure, I’m really not. I may have thought “in the hands of experts”. Clearly this is, you know, a serious issue. It would not just have been a matter of me reading this document. If I was to add any value, and I’m not sure I could have done because it’s way outside my area of core expertise, it, it would have been something I would have had to educate myself on, on the background and I may just have taken the view “First day back at work, in the hands of experts, [N2108] has got it, [N1466]’s got it” and I may just have let them run with it. As I say, this is not ringing the same bells with me as other documents do that you have shown me.*

N2252 agreed that this was potentially significant for HQ DSF because a TPE had reported complaints of potentially criminal conduct. N2252 explained that, on reading his diary, he was tracking Objective TYBURN, Objective 1 and other issues engaging Headquarters at the time including this TPE’s complaint when it arose because the sense that he had felt that the matter had been dealt with disappeared when this TPE raised concerns about the same matter. CTI then referred N2252 to an email sent by DSF to N2108 dated May 2011 which N2252 was not copied into (MOD-198-0003887-A).

- Q ... written to SO1 Legal following the report that had been provided:*
- “Thank you. Egg sucking I know but can you ensure that SO2 Legal produces a full written record of the meeting.”*
- A Yeah.*
- Q So, in other words, “The document that I have got goes only so far and I want more”.*
- A Hmm mm.*
- Q Does that chime with his forensic attention to detail that matters such as this he would be all over?*
- A Not only his forensic attention to detail, but his determination that things were done properly.*
- Q And you were part of the process that ensured those intentions were put into effect, is that fair?*
- A I was, yeah.*

N2252 confirmed that a fortnight later, on 8 June 2011, he had emailed N2108, N1466 and N1788 (MOD-198-0003888-A), which referred to a discussion between them at the

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'Stocktake'. N2252 explained that the stocktake could have referred to the Director's weekly Management Board, which was a de facto co-ordination meeting, or a separate meeting, a COS stocktake. N2252 confirmed that he discussed this issue at the stocktake and that the "outstanding itch" was the separation in the Director's mind between the two independent but co-existing strands, investigation on the one hand and lessons learned on the other.

Q And you questioned whether in fact it might be more appropriate to consider them as overlapping.

A Not whether it might be more appropriate. In fact, the more I think about this issue, the more I incline to the Director's view that they are independent strands of operation. But, in practical terms, you know, people don't think with that level of rigour and there is often a sort of intuitive overlap between what happens on the investigative strand and what happens on the lessons learned strand.

Q And what you wrote is:

"I sense this problem may be more theoretical than practical but there you go."

A That's my point, that people generally don't think with [N1802]'s level of rigour.

Q

'As I see it there are two parts to the task:

First, a review [of] the procedures for SIRs, to reinforce the position of CO [SFHQ(A)] as the "owner" of the inquiry, rather than the Ground Commander.'

A Yeah.

Q In other words, rather than the Ground Commander who is directly involved in the operation that is being questioned, use the Commanding Officer because he has oversight of everything that occurs on his watch.

A Well, he has the responsibility as well. I mean, the SIR is the CO's process.

Q Exactly and it also ensures that there is not only that senior oversight but an appearance of objectivity.

A As I said to you yesterday, I'm not interested in appearances. You know, we really were not. It was about, if there needed to be objectivity, there should be objectivity.

Q Well, is there any concern that the Ground Commander cannot be objective?

A Well, clearly [N1802] seemed to have that concern, yeah.

Q So it is not simply a case of instinctively trusting the integrity of everything that is said and done by those under his command. In so far as this issue is concerned, where there is a Serious Incident Review ----

A [N1802], I mean, [N1802] was like that in a number of areas. They were nothing to do with Afghanistan, but, you know, he wouldn't take what [UKSF1] said to him, probably because he had had command of it and understood it with a pinch of salt....

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N2252 considered N1802 to be a rigorous critical thinker. N2252 did not know whether N1802, if he was considering reviewing the actions of UKSF1, would involve the Commanding Officer of UKSF1, N1787, in discussions and would not have expected N1802 to as N1787 was a force generating Commander. Once N1787 had generated the forces and committed them under the Commander of SFHQ(A), he kind of did not need to be involved in that discussion. N2252 agreed the two issues identified were a review of the procedures for SIRs and a review of the relationship between the SIR and lessons learned process to confirm that appropriate mechanisms exist to identify and disseminate lessons from any incident for which an SIR is required. N2252 asked N2108 to pull it together in the form of advice to the Director by close of play on 15 June. N2252 could not recall whether he discussed this further with N2108 but he was completely confident that if he asked N2108 to do something, it would be done.

Q And would you have expected him to provide that advice to you?

A Not necessarily because it was to go directly to the Director who was directly engaged with the issues.

Q Was there a sense in the days that followed or in the weeks that followed that the itch had been scratched?

A Do you know I think there must have been because I don't recall, I haven't got a sort of series of entries in my task tracker suggesting this was an ongoing thing. So from that I would conclude that it probably had been.

CTI then referred N2252 to a document from N2108 to the Director addressing the TPE concerns in respect of Objective TYBURN and Objective 9 into which N2252 was copied (MOD-198-0003613-A). CTI highlighted the recommendations at paragraph 3. CTI observed and N2252 confirmed that despite aspirations to 'nip it in the bud', this TPE escalated their concerns with Commander ISAF 2 who served a document to that effect. Moving to the 'Next Steps' section, N2252 was not sure what the 'legal health-check' of the TTP entailed. N2252 did not recall N2108 asking for his help in overseeing or reviewing his 'legal health-check' as he had done with the advice he sent in May. N2252 did not recall any discussion between him and DSF about what appeared to be ongoing concerns then at a much higher level about the TTP. N2252 was not entirely surprised that the Director was not saying to him that the TPE's concerns should be acted upon given they had been escalated to ISAF 2, as the matter was in the hands of experts, N1803 and N1466. N2252 thought he remained focused on other areas of activity in the Headquarters.

N2252 was then asked about his role after his posting to UKSF and, in particular, whether he picked up that concerns were being raised about the conduct of the DDOs. N2252 was not entirely sure what he was picking up at that time.

Q I mean, given that DSF had involved you in April in the infancy stages of the TTP ----

A Yeah.

Q -- do you think it is likely that as the TTP issue rumbled on he might have kept you up to speed and you have just forgotten?

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A No, no, I think he wanted to get it off the ground and, once it was off the ground, it was in the hands of experts.

Q Right.

A Could I just go back to my fundamental lack of expertise in this particular area? I had never done a DDO. I have never served with [UKSF1]. There were loads of people who had done: you know, [N1788], [who had held a Sub-Unit command appointment]. You know, it was in the hands of experts.

Q And your assessment was that, following that initial review by the experts, there was a sense that the problem had gone away?

A That was definitely my sense, but I don't know what was generated. I saw from your opening statements to the Inquiry that two letters were sent, but I don't know, I haven't seen those letters and I know that only from what you told the Inquiry on Day One.

CTI then asked whether N2252 had anything else he wanted to raise and N2252 said there were three things. First, N2252 made a correction to his statement at paragraph 28(d) in relation to his support to operational work outside of Afghanistan which was not material.

Secondly, N2252 suggested that the Inquiry speak with Commander ISAF 2 regarding the direction given from Commander ISAF, and the parallel track of review. “...because, if you look at paragraph 4 of the [SFHQ(A)] Consequence Management Directive, it is clear that there is this independent chain of review, DSF and ISAF acting independently as an extra level of scrutiny, and they were seeing the same documents that [N1802] was seeing and they were reaching similar conclusions...”

A If I may, the third and final thing. You know, I don't know where your Inquiry is going. I genuinely wish you luck. I suspect most of your focus will be on in theatre, but the role [of HQ DSF] is not insignificant and clearly you know you will look at that and you will say what you will say. In a sense, I want to get my retaliation in first because, from my perspective, you know, we were not lazy, we were not reckless, we were not careless. We did our best to support the Director. We did not turn a blind eye to things that we thought were, we thought were serious. We were just ordinary people at a fairly extraordinary time trying to do our best. I think that is where I will leave it.

Q Can I assure you that, if I have sought to suggest in any way that you did not fulfil your duties and roles properly and to the fullest that has never been my intention by my questions...

N2252 also confirmed that he was content for his witness statement dated 8 February 2024 to be entered as part of his evidence to the Inquiry. He went on to say that clearly there were things that he had become aware of in the last week in particular, that he was not aware of when he wrote his statement. CTI said that that was understood by the Inquiry and that it was a matter that the Chair also had an eye to.

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Evidence concluded.