

Tuesday, 20 February 2024

(10.06 am)

SIR CHARLES HADDON-CAVE: We commenced formal Inquiry hearings on 9 October with three days of opening statements by lead Counsel for the Inquiry, Mr Glasgow KC, and lead counsel for all the core participants.

This was followed in the week of 23 October with OPEN background evidence from Admiral Sir Antony Radakin and other corporate witnesses from the Ministry of Defence and the Royal Military Police.

We then convened in OPEN on 4, 5 and 6 December to hear specific evidence from witnesses regarding the UKSF server known as ITS1.

Full transcripts of all of those OPEN hearings can be found on the Inquiry website, together with videos of those proceedings.

For those new to the work of the Inquiry, Mr Glasgow's full opening statement is also available and sets out in detail the important work that this Inquiry is undertaking and the manner in which it is going about it.

We now enter an important new evidential phase of the Inquiry entitled "Concerns and Complaints", relating to evidence regarding concerns and complaints expressed

1 about the activities of UKSF in Afghanistan, either
2 contemporaneously during the period in question, namely
3 mid-2010 to mid-2013, or in the intervening ten or so
4 years.

5 As highlighted in paragraph 7 of the terms of
6 reference, the Inquiry holds CLOSED hearings and takes
7 all necessary steps to protect sensitive material and
8 the security of witnesses. I'm going to ask Mr Glasgow
9 to give an update on some of the CLOSED hearings that
10 have taken place and that will take place in due course,
11 as well as outline some of the work and rulings that
12 have been made in preparation for CLOSED hearings, and
13 the nature of the OPEN hearings that are going to take
14 place in the next couple of days.

15 Before I do so, I want to reiterate the call for
16 evidence. If ever there was a time for individuals to
17 come forward with information for the Inquiry, it is
18 now. If anyone has any information or material which
19 may be relevant to the Inquiry and has not already got
20 in touch, I urge you to get in contact with the Inquiry
21 immediately and directly.

22 The Inquiry has set up secure and confidential
23 methods of getting in touch directly with the Inquiry
24 Team which you will find on the Inquiry website, and the
25 fact that you have made contact will be treated with the

1 utmost confidentiality.

2 Mr Glasgow.

3 Opening remarks by COUNSEL TO THE INQUIRY

4 MR GLASGOW: Sir, as you've just observed, we last met in
5 open in early December for the hearings that dealt with
6 the UKSF server which is known as ITS1.

7 This week, we have two OPEN hearings. The Right
8 Hon. Johnny Mercer MP will be giving evidence
9 today, and Mark Nicol, a journalist, giving evidence
10 tomorrow.

11 With your leave and prior to calling Mr Mercer,
12 I propose to provide a brief update of some of the work
13 that has been undertaken by the Inquiry since the
14 December hearings, and to set in context the evidence
15 that we are to hear over the course of the next
16 two days.

17 I can confirm that, in November of last year, the
18 Inquiry held CLOSED hearings at which two corporate
19 witnesses gave evidence. Air Commodore Matt Bressani
20 and a senior member of the Armed Forces with expertise
21 in Special Forces both gave evidence. Given the topics
22 and sensitivity, you decided that their evidence was to
23 be given in CLOSED, but that consideration should be
24 given to whether a gist could be provided at the
25 conclusion of the hearings. A copy of your final

1 decision in that regard will be published on the
2 Inquiry's website later today.

3 A short summary of the topics that their evidence
4 was to cover was provided to each of the core
5 participants in advance of those CLOSED hearings, and
6 that included those representing the Afghan families,
7 and that short summary will also be published as part of
8 the gist of their evidence in due course in order that
9 the public can better follow the process that has been
10 undertaken before CLOSED hearings have been held. The
11 core participants were then given the opportunity to
12 suggest questions for the individual witnesses, and
13 those questions were carefully considered by the Inquiry
14 legal team and pursued where appropriate.

15 Since those hearings, sir, work has been undertaken
16 to prepare an open gist of those hearings which will be
17 published, as well as opening up for publication
18 two exhibits referred to in that evidence.

19 I am pleased to report that that gist has now been
20 finalised and a copy was provided to each of the core
21 participants yesterday with a confidentiality
22 undertaking, and it will be published on the website
23 later today.

24 The two exhibits that I've just referred to will
25 follow in due course when final versions are received

1 from the Ministry of Defence.

2 Can I turn to deal with some of the work that has
3 been done to date.

4 Significant work has been undertaken by the Inquiry
5 Team in relation to a number of strands of evidence and
6 in preparation for the hearings to follow this year.
7 That work includes preparations for hearings relating to
8 concerns and complaints, which addresses, as its title
9 suggests, those concerns and complaints that were
10 expressed about the very conduct with which this Inquiry
11 is concerned. The first set of these hearings includes
12 evidence from seven UKSF witnesses which, for reasons
13 I will explain in a moment, you have determined will be
14 heard in CLOSED.

15 Today and tomorrow, as I've just said, we will hear
16 evidence from the Minister for Veterans' Affairs, the
17 Right Hon. Johnny Mercer MP, and from the defence
18 and diplomacy editor of the Daily Mail, the journalist
19 Mark Nicol. Both of them have provided statements to
20 this Inquiry.

21 I hope that it will be helpful for those present and
22 following the Inquiry remotely if I set out some of the
23 steps taken in preparation for today and tomorrow's
24 hearings and in advance of the CLOSED hearings.

25 In accordance with the Restriction Order protocol,

1 the Inquiry's proposed approach was set out in the first
2 instance to the MoD, as the provider of the material,
3 and to Mr Mercer's legal team in respect of his
4 evidence.

5 The MoD made an application for a hearing
6 Restriction Order in respect of the seven UKSF
7 witnesses, along with anonymity applications for each of
8 them and for appropriate redactions to the hearing
9 bundle and their statements.

10 In respect of Mr Mercer, the MoD applied for limited
11 redactions to his witness statement and redactions to
12 the documentation. They made no application for
13 a Restriction Order in respect of his evidence, but
14 they've made clear that they neither confirm nor deny
15 the contents of his evidence. They agree that his
16 evidence should be given in OPEN, and Mr Mercer did not
17 make any applications for a Restriction Order himself.

18 In accordance with the protocol, you reached
19 a provisional decision which was provided to all core
20 participants, including those representing the Afghan
21 families. The proposed approach, in light of the
22 material held by the Inquiry, was that the seven UKSF
23 witnesses should give evidence in CLOSED, but that
24 Mr Mercer's evidence could and should be given in OPEN.

25 The core participants were provided with a redacted

1 bundle of documents for both the concerns and complaints
2 hearing and a separate bundle in respect of Mr Mercer.
3 The provision of those documents to all parties, whether
4 it be core participants or witnesses, is subject to
5 a confidentiality undertaking and, to be clear, such
6 documents should and must not be given to the press or
7 otherwise put into the public domain unless and until
8 such time as they are published on the Inquiry's
9 website.

10 Those representing the Afghan families did not
11 object to the granting of anonymity for the seven UKSF
12 witnesses, nor did they seek OPEN hearings for their
13 evidence. They recognise that the hearings could not
14 take place in public, but they requested that they be
15 permitted to be present at those hearings, albeit
16 subject to a time delay.

17 You carefully considered those submissions and
18 reached your final decision regarding those hearings on
19 30 January. In summary, you decided: the UKSF witnesses
20 would be granted anonymity; the evidence of the UKSF
21 witnesses would be given in CLOSED; the evidence of
22 Mr Mercer would be given in OPEN; the MoD would be
23 permitted to redact the statements and documents, with
24 the details to be agreed with the Inquiry's legal team;
25 redacted bundles would be published on the Inquiry's

1 website at the conclusion of the hearings to enable the
2 public to see such evidence as has been possible to be
3 put into OPEN; a gist of the CLOSED hearings will be
4 provided at their conclusion.

5 The full reasons for your decision are set out in
6 the final decision which, with other documents, will be
7 published on the Inquiry's website today. However, to
8 summarise, in reaching your decision about the
9 complaints hearings being heard in CLOSED, you
10 considered that such an approach leads to a
11 significantly greater prospect of receiving the
12 witnesses' best evidence and the Inquiry being able to
13 get to the truth of the issues and, ultimately, allaying
14 public concern about the matters which are the subject
15 of the Terms of Reference. You also set out why the
16 proposed approach by the Afghan family representatives
17 would add a level of complexity and difficulty, which is
18 neither sensible, proportionate, or justified.

19 The approach has the following advantages, which
20 I believe the public would understand. In particular:
21 first, it enables the Counsel to the Inquiry Team to ask
22 searching questions without the need to fetter their
23 questioning in order to take account of national
24 security sensitivities; second, it enables the CTI Team
25 to challenge the evidence given, and to do so with the

1 full context and background that includes sensitive
2 topics; third, it removes entirely the prospect of
3 a witness who does not intend to assist the Inquiry
4 being able to use the sensitivity of material to avoid
5 or to prevent challenge; fourth, it prevents a chilling
6 effect on witnesses who are seeking to assist the
7 Inquiry and who would be concerned about the presence of
8 various representatives and the sensitivities around
9 what material can be provided.

10 The Inquiry has sought to minimise the redactions
11 wherever possible, but your decision recognises that
12 inadvertent disclosure remains a risk and, indeed, there
13 were a number of disruptions to the ITS1 hearings in
14 December. As you've set out in your decision, the
15 details redacted from the complaints hearing bundles
16 address some very sensitive material which, if
17 inadvertently revealed, could have a significant effect
18 on national security.

19 The seven UKSF witnesses will therefore give
20 evidence at CLOSED hearings, the location, dates and
21 times of which are not to be published, and about which
22 a Restriction Order has been made. A copy of that
23 Restriction Order will also be published on the
24 Inquiry's website very shortly.

25 Consideration will be given to providing a gist of

1 those hearings, and it is anticipated that a redacted
2 copy of the bundle will be published on the Inquiry's
3 website once all seven UKSF witnesses have given
4 evidence.

5 As explained earlier, a redacted bundle has been
6 disclosed to the core participants subject to
7 a confidentiality undertaking, and to facilitate all the
8 core participants in suggesting appropriate Rule 10
9 questions. The provision of documents by the Inquiry to
10 core participants in advance of the hearings is intended
11 to facilitate their engagement and involvement in the
12 process. However, the provision of that information is,
13 I re-emphasise, subject to a clear confidentiality
14 undertaking and must not be disclosed to anyone without
15 the express permission of the Inquiry.

16 I can confirm that one of the seven UKSF witnesses,
17 who is known by the cipher N2107, has given evidence
18 already. N2107 is an officer who joined UKSF3 after
19 completion of his training. I dealt with some of his
20 evidence in my opening statement and went through the
21 various emails that he had sent between January and
22 April 2011, which contained contemporaneous concerns
23 expressed about the activities of UKSF. At the time of
24 sending those emails, he was an officer commanding,
25 a role in a location based abroad but not in

1 Afghanistan, and was at that time under the command of
2 the commanding officer of UKSF3, albeit with no formal
3 command relationship with SFHQ(A). You substantially
4 limited the attendance at that hearing, including
5 restricting the numbers and individuals who were
6 permitted to be present.

7 A fuller gist will be prepared in due course, but,
8 sir, as you know, in summary, the witness's evidence
9 included evidence to the following effect. He believed
10 that members of UKSF1 might have committed murder whilst
11 conducting DDOs in Afghanistan during the relevant
12 period. He also believed that members of UKSF1 might
13 have deliberately falsified the post-operational reports
14 to cover up what they had done. He also confirmed that
15 he still had those beliefs as at the date he gave his
16 evidence.

17 Returning, then, to the OPEN hearings to take place
18 this week. Both the evidence of Mr Mercer and Mr Nicol
19 will be broadcast subject to a ten-minute time delay to
20 enable any applications for a Restriction Order, if
21 necessary, to be made. The witness statement of
22 Mr Mercer and the redacted bundle of documents, insofar
23 as any exhibits are referred to in these hearings, will
24 be published on the Inquiry's website later today. The
25 witness statement of Mr Nicol and his exhibit will be

1 published on the Inquiry's website at the conclusion of
2 his evidence, which I anticipate will be at some point
3 tomorrow.

4 Sir, with those introductory remarks having now been
5 concluded, can I invite Mr Mercer to take his place in
6 the witness box. I see him sat at the side of the
7 court.

8 SIR CHARLES HADDON-CAVE: Thank you.

9 RT HON JOHNNY MERCER MP (affirmed)

10 Questions from COUNSEL TO THE INQUIRY

11 MR GLASGOW: May it please you, sir.

12 Could you give the court your full name, please.

13 A. Yeah, my name is Johnny Mercer.

14 Q. Mr Mercer, have you provided a statement to the Inquiry
15 dated 24 November of last year?

16 A. I have.

17 Q. Is that statement available to you in the file that
18 you've got which you've just picked up?

19 A. Yes, it is.

20 Q. Have you had an opportunity to look at that statement
21 before coming in to court this morning to give evidence
22 to the Inquiry?

23 A. Yes, I did.

24 Q. Have you also got behind that a number of exhibits that
25 were provided either by you or given to you to assist

1 you in the giving of your evidence?

2 A. I do.

3 Q. And would you like that witness statement to stand as

4 your evidence to the Inquiry?

5 A. Yes.

6 Q. Now, sir, can I check what other material you've got

7 available to you.

8 Can I suggest, if you won't mind, that the jug of

9 water might be sensibly moved out of the way.

10 Experience has shown that, inevitably, the water will

11 end up going where it shouldn't, and you've got a number

12 of files to work with at the moment.

13 You have the black file, which has your witness

14 statement and exhibits.

15 A. Yeah.

16 Q. You have a red file, which you opened a moment ago,

17 which contains a number of ciphers, and it may be that

18 we will need to look at that at some point, but can I

19 just make this very clear to you: when we come to deal

20 with elements of UK Special Forces, with individuals who

21 have worked or work for UK Special Forces, I don't want

22 you to identify units or names, please.

23 A. Sure.

24 Q. If we need to, I will invite you to write that

25 information down with a pen and paper available to you,

1 and we will progress that way. Okay?

2 If there is a moment when you're not sure about

3 a unit, a name, part of the Armed Forces, can I invite

4 you to turn to that red file to check for yourself, and

5 if there is any concern, we will have a pause, I will

6 allow you to check where you are and, if necessary,

7 I will help you or others will help you. Okay?

8 A. Sure.

9 Q. There's also a copy of your book in the witness box with

10 you. I don't think we're going to need to turn to it,

11 but if we need to, I'll invite you to look to it. I'm

12 sure you're very familiar with it.

13 A. Last known copy, sir.

14 Q. Well, we paid full price, you'll be pleased to know.

15 A. Good.

16 Q. Can I identify the areas I'd like to touch on in your

17 evidence, and before I do so, can I give you what I hope

18 is some reassurance.

19 First, if you don't follow anything I ask or

20 anything I ask you to look at, that is my fault and not

21 yours. Please ask me to rephrase any question, to

22 repeat any question; if you need any help, ask and it

23 will be given. Okay? The purpose is to ensure that you

24 are able to give the best possible evidence to the

25 Inquiry, to assist the Inquiry in getting to the truth

1 of the allegations which are being reviewed. Okay?

2 Now, what I'd like to do, in terms of your evidence,
3 so you know where we are going, is to very briefly deal
4 with your career, because that will help put in context
5 some of the evidence you are able to give, and then what
6 I'd like to do is to take you through various
7 information that you have received at different times
8 about concerns you now have regarding the conduct of
9 UKSF, and I'd like to ask you what you have done with
10 those allegations, what has happened after you've spoken
11 to people, who you've spoken to, and how you now feel
12 about it as at today.

13 So to give you some sort of a roadmap, that's where
14 I'd like to try and go.

15 A. Great.

16 Q. The idea is to take you through your statement in the
17 order in which it was written, and again, I'll be
18 pointing you to individual paragraphs. But as I said
19 only two minutes ago, if you get confused, that's my
20 fault, not yours. The purpose of the questions are not
21 to confuse you; they are, I hope, to help you.

22 A. Great, thank you.

23 Q. So dealing with what I anticipate might be the easiest
24 bits straightaway.

25 Currently, you are a Member of Parliament for

1 Plymouth Moor View; is that correct?

2 A. I am guilty of that.

3 Q. And you are the Minister for Veterans' Affairs.

4 A. I am.

5 Q. And you set out in paragraphs 4, 5 and 6 what you

6 described as your relevant professional background.

7 What I'd like to do, please, is invite you to look to

8 those three paragraphs, and then I'll ask you just

9 a little bit about them, if I may.

10 A. Yeah, go ahead.

11 Q. You've recorded in your statement that you joined the

12 British Army in 2002 --

13 A. Yeah.

14 Q. -- and that you served until 2014.

15 A. Yeah.

16 Q. And items of relevance that you've identified for the

17 Inquiry were these: that you had served operationally in

18 Afghanistan on three separate occasions.

19 A. Yeah.

20 Q. The first with 29 Commando in 2006.

21 A. 2-9 Commando.

22 Q. I apologise, with 2-9 Commando in 2006.

23 Then you were attached to UK Special Forces from

24 2008 until early 2009.

25 A. That's correct.

1 Q. And then you served with 1 and 2 LANCs in the summer of
2 2010.

3 A. Correct.

4 Q. So three separate periods of deployment in Afghanistan?

5 A. Correct.

6 Q. Do you feel that that gives you a benefit of personal
7 knowledge that enables you to bring insight to bear on
8 some of the allegations that have been brought to your
9 attention?

10 A. Yeah. I mean, you know, I think operating in
11 Afghanistan has a unique context. I think every war,
12 every conflict, has unique natures to it, and this was
13 no different. I think it's very fortunate, in a way,
14 because I was able to operate at a very tactical
15 level -- when I first went there, I was commanding an
16 Afghan kandak of 92 Afghans and three UK soldiers under
17 my command -- right through to the strategic, when we
18 were operating in the UKSF taskforce, and it gave me
19 a sort of holistic view of the conflict, what was going
20 on, what we were trying to do, successes, failures, and
21 so on.

22 Q. After you left the Army in 2014, you were elected to
23 Parliament, was it, in 2015?

24 A. Yes.

25 Q. You became a member of the Defence Select Committee

1 between two periods: first, July 2015 to May 2017 --

2 A. Yeah.

3 Q. -- and then September 2017 until November 2019.

4 Then if we just deal with paragraph 6 very briefly,

5 on 28 July 2019 you were appointed by the then

6 Prime Minister, Boris Johnson, to the position of

7 Minister for Defence People and Veterans, and that was

8 a position that you held up until 2001.

9 You also held the following cabinet positions --

10 A. Sorry, 2021.

11 Q. Sorry, 2021. Thank you.

12 You've also held the following cabinet positions:

13 Minister for Veterans' Affairs between July and

14 September 2022, and that was at the appointment of the

15 then Prime Minister, Boris Johnson; and then currently

16 Minister for Veterans' Affairs, appointed in

17 October 2022, appointed by the Prime Minister,

18 Rishi Sunak.

19 A. Correct.

20 Q. As part of your time as Minister for Veterans' Affairs,

21 have you sought to advance the cause of current and

22 former members of the British Armed Forces?

23 A. Yeah, I think that's fair, Mr Glasgow. I have --

24 I essentially completed my combat service in 2010.

25 I then embarked on a period of -- I took commando

1 training for those who wish to be commandos in the Army.

2 I had for a long time struggled with the difference
3 between what our ministers and our prime ministers and
4 so on said about veterans, and then how it felt to be
5 a veteran, and I'd seen these veterans' experiences, I'd
6 seen the families of the bereaved, I'd seen what it felt
7 like to see that difference play out in public.

8 In 2012, we reached a moment in this country when
9 more of our people who were serving and veterans that
10 year took their own lives than were killed in
11 Afghanistan, which was still a relatively high-intensity
12 combat operation. The BBC made a programme about it.

13 There were a couple of cases that really stood out
14 to me. There was a chap called Lance Sergeant
15 Dan Collins who had served on a tour similar to mine.
16 He came home, he struggled to seek help for his mental
17 health challenges and, in the end, he went up to
18 Sennybridge, where everyone does a lot of training and
19 is a horrible place, and made a video for his mum and
20 said, "Look, I've tried everything, I've looked
21 everywhere, but there is just no help in this country",
22 and he then took his own life. For me, that was
23 a watershed moment, and I was determined that this
24 country would change the way, at Government level,
25 that it looked after veterans.

1 I -- yeah, I then decided that I would try and
2 become a Member of Parliament, and throughout that
3 process, clearly there's been a number of veterans'
4 issues that I've sought to address. Chiefly -- probably
5 chiefly amongst them around, you know, mental health
6 care and physical care is this issue of lawfare, where
7 my generation of combatants were chased by individuals
8 like Phil Shiner and others on what's proved to be false
9 allegations of torture and killing, and essentially
10 besmirching what I'd seen with my own eyes on
11 operations. This extended, obviously, back to Northern
12 Ireland, and I was intimately involved in what that felt
13 like for Northern Ireland veterans as well.

14 So, yes, when I came into my position as the
15 Minister for Veterans' Affairs, ending the vexatious
16 nature of the pursuit of veterans through lawfare,
17 whether it was Northern Ireland, Afghanistan, Iraq, was
18 a major campaign of mine, and I started that by
19 initiating the 2016 subcommittee inquiry into the
20 Iraq Historical Allegations Team.

21 Q. Can I just pick up on that and something else you just
22 mentioned.

23 When you made your maiden speech to the
24 House of Commons, did you in fact refer to the soldier
25 who had taken his life, Dan Collins, to identify that as

1 a particular motivating factor for what you wanted to
2 try to change when you came into office?

3 A. Yeah, absolutely. I feel politics is obviously very up
4 and down, and so on, but I've worked hard to be
5 consistent in my missions, and I mentioned Dan Collins
6 in my maiden speech, I mentioned individuals who had
7 died in my arms in combat, I had mentioned individuals
8 who had performed exceptionally well and, yeah, they are
9 my -- I feel like I'm incredibly privileged to end up
10 where I am, and I feel I have a responsibility to those
11 individuals.

12 Q. And when we think of that responsibility for a moment,
13 you mentioned one of the other principal motivating
14 factors for you was the concern that you had with
15 vexatious litigation against current or former members
16 of the Armed Forces.

17 A. Yeah.

18 Q. And you've touched upon the 2016 subcommittee for the
19 Defence Select Committee which you were involved in,
20 which looked into the Iraq Historic Allegations Team
21 investigations that had been set up in 2010 to look at
22 allegations made by Iraqi civilians of abuse that they
23 were said to have suffered at the hands of members of
24 the British Armed Forces.

25 A. Yeah. So, I mean, I guess what motivated me to do it

1 was that some of my personal friends were involved in
2 this and I'd seen the effect it had had on them, and it
3 had completely destroyed their lives.

4 I -- for me, it was always -- I never put beyond my
5 mind that individuals would not have stepped up to the
6 plate on operations because, you know, you see some of
7 that yourself. You know, I -- as much as I saw courage,
8 I saw cowardice in contact. As much as I saw moral
9 courage, I saw moral weakness as well. It is not
10 a perfect organisation. However, the industrial level
11 of these claims, the amount of public money that was
12 being made by those bringing the claims, and the level
13 of the allegations, it was clear to me that that would
14 require a systemic breakdown in an organisation
15 that I knew intimately in the British Army that was just
16 not plausible. And so I started to pick it apart and
17 find out what had actually happened, and when I did, the
18 whole thing fell apart.

19 Q. In terms of the report itself, the report was entitled,
20 "Who guards the guardians?"

21 A. Mm.

22 Q. Among the conclusions that you reached, did you conclude
23 that the allegations of abuse by the Iraqi civilians had
24 been exploited by two law firms?

25 A. I did, yeah.

1 Q. Did you identify that the caseload of allegations that
2 began with initially 165 ran by the end to over 3,500 in
3 number?

4 A. I did.

5 Q. And did you coin the term "lawfare" as being a way of
6 describing what you considered to be the exploitative
7 behaviour of lawyers who were subjecting members of the
8 Armed Forces to longstanding allegations which seemed to
9 have no end?

10 A. I mean, I wouldn't claim the term, that I was the first
11 to come up with it. I had heard of it before. But,
12 I mean, it was clear to me that essentially this
13 prosecution of -- it was the prosecution of conflict by
14 another means, in terms of what lawfare actually was.
15 So it was an attempt to -- you know, you have your
16 physical battle and you have your kinetic engagement and
17 so on and so forth, but then it was like this separate
18 sphere into which it got, where essentially it became --
19 at times, although very serious issues, it felt like
20 a bit of a game for legal teams and for lawyers to try
21 to make public money, try and make money for themselves
22 off the backs of some of the finest people that have
23 defended this nation in foreign shores, and that was
24 something I was not prepared to put up with.

25 Q. One of the conclusions that was reached by the

1 subcommittee was that the manner in which the Armed
2 Forces are investigated requires fundamental reform.

3 A. Yes.

4 Q. Did you also, though, conclude that the UK military must
5 be equally subject to the law as any civilian, whether
6 in barracks or on operations?

7 A. Mr Glasgow, it's a very clear point that there is nobody
8 who wishes for individuals to be held to account more
9 than those who are right in the zone who are operating
10 at this level, who are operating contact operations with
11 the enemy, because it is the only way -- it's not
12 about -- soldiers don't think about the moral case for,
13 "I want to be better than the enemy" and so on; that's
14 for bars and history books and so on. You have to have
15 your red lines in order to control men in an extremely
16 violent and emotional engagement. You have to have
17 those red lines. So when those red lines are crossed,
18 there are no more passionate advocates of keeping those
19 red lines than those who actually command men in combat.
20 And I have made that very clear from everything I've
21 done.

22 I've been constantly maligned by actors both, you
23 know, in Northern Ireland and elsewhere that I want to
24 give a free pass to those that break the law. It could
25 not be further from the truth. I have always instigated

1 that, and that remains my position today.

2 Q. You made that abundantly clear on a number of occasions,
3 but in particular in your statement to the Inquiry.

4 Can I invite you to turn on, please, to paragraph 11
5 initially, and then we'll look together at 12 and 13,
6 because I want to put in context any observations you've
7 made about industrial-scale litigation or vexatious
8 claims, because there are, as you've just identified,
9 two sides to the coin you were looking at.

10 The work that you undertook, both as part of the
11 subcommittee and as seeking to advance the Overseas
12 Operations Bill, you identify in your statement to the
13 Inquiry that the work was never about granting immunity
14 from prosecution to the Armed Forces. Presumably that's
15 an observation which you've not only made a number of
16 times, but which you still stand by.

17 A. Well, of course, yeah.

18 Q. And you make clear in the next two paragraphs, if we
19 look at paragraph 12 for a moment:

20 "... where there is clear evidence that crimes have
21 been committed by service personnel, those individuals
22 must be held to account for their actions irrespective
23 of the time that has passed."

24 A. Correct.

25 Q. "We rightly expect our service personnel to hold

1 themselves to high standards and the vast majority do
2 so. Where those high standards are not upheld, public
3 confidence is undermined and it is vitally important
4 that wrongdoers are seen to be held to account to ensure
5 that those standards are maintained."

6 So do we see from there a very clear view that you
7 hold about the need to hold wrongdoers to account?

8 A. Yeah, I mean, look, that's always been my position.
9 It's never changed. What happens when it becomes into
10 lawfare, you see, is that everything gets distorted,
11 depending on which side of the argument you want to be
12 on, and even today, you could probably pick up a
13 newspaper in Northern Ireland saying that I wanted to
14 excuse the behaviour of every serviceman in the Troubles
15 in Northern Ireland. I mean, it becomes essentially
16 a political campaign. But the truth is my view has
17 never changed, irrespective of who I've been speaking
18 to, whether it was in Afghanistan at the time when I was
19 conducting these operations or, indeed, sat here
20 14 years later.

21 Q. Can we just look together very briefly at your
22 paragraph 13. You identify here that:

23 "... industrial scale litigation and vexatious
24 claims do nothing to hold wrongdoers to account and
25 cause real harm to the service personnel and veterans

1 who are caught up in the system."

2 A. Yeah, I mean, so I can't adequately express to you the
3 damage done to some of these combatants by the nature of
4 these investigations. I know an individual who was
5 investigated 11 times, having been told that he could
6 move on through his life. That man is a broken man,
7 simply because of his service to this nation. I went
8 with a veteran from Plymouth to Northern Ireland who was
9 arrested at dawn by Northern Ireland Police at 6.30 in
10 the morning, taken over to Northern Ireland for
11 questioning, subsequently went through a trial, died
12 alone in his hotel room in the Hilton in Belfast, simply
13 because he was a serviceman, never convicted of anything
14 at all. I can't tell you the damage, the lifetime of
15 damage, these things do.

16 Secondarily to that is that the department and the
17 military machine simply cannot cope with getting to the
18 truth of what actually happened, because it's
19 overwhelmed with all these cases. I mean, millions and
20 millions of pounds -- 3,500 cases, how does a department
21 deal with that? The idea that there were 3,500 cases of
22 abuse in Iraq, if you were a serviceman, is insane.
23 Obviously you will get bad actors in every organisation,
24 but that is a catastrophic breakdown of law and order in
25 a major institution in this country, right? That has

1 not happened. And I'm surprised that it took me to come
2 in to actually call that out and put a stop to it.
3 Surprised and very disappointed in my kind of senior
4 commandos and senior leaders within the
5 Ministry of Defence.

6 Q. So can I make sure I've understood your position, which
7 I think has been made very clear. The point at which
8 you approach this is no desire to seek immunity from
9 anyone who has committed any form of wrong, particularly
10 a criminal wrong, whilst serving.

11 A. Absolutely.

12 Q. And you have a strong desire that those individuals,
13 where they have let down the very high standards that
14 are put upon them, should be held to account and to
15 answer for what they've done wrong.

16 A. That's absolutely vital in the existence of these units
17 and the ability to prosecute operations.

18 Q. But insofar as the drowning of the MoD or any other
19 investigation in thousands of allegations, why might
20 that be wrong? Just so we understand, what if there are
21 thousands of allegations? What is wrong about those
22 being made?

23 A. Because any department will have finite resources to
24 investigate these instances, and if it is hit with an
25 industrial-scale bow wave of claims, it is clearly going

1 to focus on fighting them, rather than the two or three
2 individuals within that organisation who may put their
3 hand up and say, "There's something not right here, I'm
4 not happy with this."

5 Q. When you were appointed as a minister by Boris Johnson,
6 was one of the specific tasks he gave to you to look
7 into this particular issue?

8 A. It was, particularly concerning Northern Ireland.

9 Q. So do we understand from that that your concerns about
10 industrial-scale litigation and vexatious claims were
11 shared by other people in Government, including the
12 Prime Minister?

13 A. Oh, yeah, look, I'm not going to be shy about it. I ran
14 a pretty brutal campaign against my own government in
15 2016, 2017, 2018, to get this on the political agenda.
16 I've had to do that for veterans' affairs from the start
17 of my political career to this point. I never wanted to
18 be a politician. I never wanted to really be in
19 politics. I didn't vote before I was an MP. I'm not
20 particularly interested in the politics. For me, it was
21 about looking after these people, treating these people
22 fairly. And so, yeah, I'd run a big campaign, I'd got
23 newspapers on board, I had got other MPs on board.
24 I mean, there was a Prime Minister's Questions where
25 Prime Minister Theresa May got hit by four questions in

1 a row on this, and I knew at that time the dam was
2 breaking and this was finally on the political agenda.

3 Q. In terms of the work that you then did to get this on to
4 the political agenda and the impact that that must have
5 had within the community from which you'd come -- and by
6 that I mean the military community, rather than the
7 constituency you serve --

8 A. Yeah.

9 Q. -- were your efforts well received by former colleagues
10 or former members of the Armed Forces?

11 A. Yeah. Yeah. But it's not a question of sort of -- you
12 obviously do it for them, but you don't do it to be well
13 received; you do it for the professionalism involved.

14 And there's a secondary issue here, which I feel
15 very strongly about, which is the besmirching of a whole
16 generation of service of these operations, which I'm
17 just not simply prepared to put up with, because I saw
18 individuals do the most incredibly selfless acts,
19 demonstrate the very best of everything we tried to
20 achieve from the moment you sign up to the commandos or
21 to another force, and lose their life in the process,
22 and I'm not prepared to let their service be besmirched
23 by individuals who are frankly making things up to make
24 money, and that goes in Northern Ireland, Afghanistan
25 and Iraq.

1 Q. Insofar as people were supportive from within your
2 military community of the work that you were doing, did
3 people approach you to tell you of allegations about
4 misconduct in Afghanistan?

5 A. So there was a general sort of pallor, odour, around the
6 switchover in organisations from 2009 to 2010 on the
7 operations that I had just finished and then were taken
8 over by UKSF1, and that's the sort of very earliest --
9 but no one really said anything to me personally,
10 because it wasn't within my remit. I just became aware
11 of the sort of -- when you're in the military, you know,
12 rumours go round all the time, and you have to be
13 really -- you know, you kind of notice it, but you don't
14 as well, because you know that people say things that
15 aren't true. I mean, I've heard some ridiculous things
16 about me from my time in the military.

17 It only really came to my attention properly when
18 I was doing the IHAT stuff, and there was this stuff
19 outstanding from Afghanistan from UKSF1, that I became
20 more kind of aware and different -- you know, it was
21 raised with me. I don't recall specific conversations,
22 but it was raised with me on a few occasions.

23 Q. Can I try to break down the difference in some of the
24 bits you've just mentioned.

25 You've described a general pallor or odour that

1 there was. Is that something that you noticed at the
2 time whilst on deployment?

3 A. No. So I then went to -- I then -- after 2010, I had
4 a pretty -- after 2008, 2009, I wanted to become UKSF
5 trained, okay? So there was a subtlety in the
6 qualifications of -- particularly in my job, involving
7 joint fires. And so instead of going to the unit for
8 a defined job and a defined purpose and a defined
9 operation, I wanted to change my career and go and be
10 permanently in that -- in one of those organisations.

11 I had a qualification at the time that meant I had
12 to do another tour of Afghanistan in 2010, and my
13 qualification was in the terminal control of indirect
14 weapon systems, so helicopters, jets, missiles,
15 long-range guns and so on, and essentially, we operated
16 in small teams attached to ground forces, and we would
17 prosecute operations in that manner. It's quite a long
18 course to qualify, and I understood -- I'll be honest
19 with you, I fought it, I didn't want to go back to
20 Afghanistan for the third time in four years, and I knew
21 where I was going, and there were a lot of injuries,
22 a lot of people getting shot, and you had this
23 feeling -- when you spend a lot of time in combat, you
24 have this feeling that -- it's a very strange feeling,
25 but you kind of feel like your luck is like a bank

1 account and it starts going down, and with that, your
2 kind of fear starts creeping up as well. And I'll hold
3 my hand up, I didn't want to go back.

4 But I went back that summer, and we had probably the
5 most brutal time of my time in service. And I occupied,
6 yeah, a patrol base that had never been occupied for
7 a fighting season before and, you know, the Taliban were
8 literally trying to come over the gate on a Sunday
9 morning and we were shooting them off the walls and all
10 sorts. So it was a pretty brutal time. Subsequent to
11 that, I wanted to go back to the other unit that I'd
12 been serving with during the period 2008/2009.

13 I then embarked on a series of UKSF courses, and
14 whilst you're on UKSF courses, you mix with people from
15 that unit, both units, and indeed support units, and
16 that's where I was kind of immersed in some of these
17 stories, as well. I was on the UKSF course for a long
18 time. I passed all the physical requirements, but I was
19 deemed unsuitable at one of the phases, and that was
20 that, and I went back to my regular career.

21 But, again, stories were pretty clear during that
22 time. But also, clearly I met a cohort of individuals
23 who then went on to have careers in those units as well,
24 that I've retained contact with today, and, you know, it
25 became -- it wasn't sort of -- you know, people don't

1 sit around talking about these things, it's just, you
2 know, when you -- it just -- yeah, it would just sort of
3 come up in conversation. Why are you, an Army officer,
4 going to UKSF3? Why are you not going to UKSF1? Things
5 like that. And that caused a few issues, yeah, and
6 probably ultimately led to what happened to me, yeah.

7 Q. Just to make sure again that I've understood this, the
8 pallor or the odour to which you referred is something
9 you became aware of whilst you were undertaking training
10 to see if you could become a member of UKSF, and it was
11 something that you became aware of through conversations
12 that you overheard or were party to?

13 A. Party to.

14 Q. And whilst we must always be careful before we descend
15 into rumour or gossip --

16 A. Yeah.

17 Q. -- but since you've labelled it as pallor or odour, can
18 you give us some idea of the sense of what the pallor or
19 odour was that you took away from these conversations?

20 A. Just a sort of level of discomfort. But I'll be honest
21 with you, you know, I was nothing special in the
22 military, right? I, you know, had a very average
23 career, a very average time. I was part of a very, very
24 small percentage of military personnel serving in
25 contact with the enemy in combat, very, very small

1 numbers, and I was very fortunate to be in that group.

2 So when you talk about combat with your fellow
3 operators, you know, you will -- you know, stories will
4 go round, but you have to be very -- you know, you have
5 to be very clear as to the difference between fact and
6 fiction and rumour and what's not true. And I'll be
7 honest with you, you know, a lot of things you hear are
8 absolute garbage. Some of it was about me. Some of it
9 was about people that I knew, that I knew not to be
10 true. But some stuff comes back time and again, and
11 then it has little nuances to it that you think: that's
12 not quite right. And that's where these stories started
13 to have a few problems.

14 SIR CHARLES HADDON-CAVE: Mr Mercer, you told Mr Glasgow
15 just now that when you embarked on these UKSF
16 courses, you became immersed in some of these stories.
17 Can you help us a little bit more with what these
18 stories were that you were --

19 A. Sir, if you spend three months walking around the hills
20 in Wales, that's a long time to have, to exchange
21 stories with other people from those units, and clearly
22 by that stage, we had been involved in operations in
23 Afghanistan for a long time. I had done a tour myself
24 with one of these units, and I was aware of these
25 stories coming to light, but if I'm honest with you, I

1 can't remember the sort of individuals that I would have
2 had those conversations with, I just became -- that's
3 why I used the term pallor or odour, because I didn't
4 have a kind of lightning rod where someone said to me,
5 "This is what I did", and suddenly an alarm went off.
6 It was more a sort of generic series of stories, rather
7 than something I could hang my hat on to actually put my
8 hand up on.

9 MR GLASGOW: Was the pallor or odour a positive one?

10 A. No.

11 Q. Was it directed at UKSF in general, or particular parts
12 of UKSF?

13 A. Well, it was directed at specific -- it was directed at
14 specific parts of UKSF, yeah.

15 Q. And you spoke of officers choosing to go to UKSF3 rather
16 than UKSF1. Why was it that you gave that as an example
17 in support of the pallor or odour that you were trying
18 to explain to the Inquiry?

19 A. Because people would ask you why, and you would have
20 to -- and I was a commando by background, and UKSF3 felt
21 like a more natural home to me, and culturally, I felt
22 I was a better fit with that organisation. And in my
23 dealings -- and I certainly don't, you know, tar
24 everyone with the same brush -- but in my dealings,
25 I think that was probably a fair assessment.

1 Q. Again, it's my fault, you may have misunderstood.
2 I wasn't asking about why you looked to UKSF3 rather
3 than UKSF1.
4 A. Yeah.
5 Q. What you told the Inquiry was that, whilst you'd been
6 undergoing the UKSF courses, there had been
7 conversations you'd overheard where officers other than
8 yourself had been asked, "Why are you going to UKSF3
9 rather than UKSF1?"
10 A. Yeah. Yeah. Yeah.
11 Q. And you gave that as an example of the sort of
12 information that helped inform the pallor or odour --
13 A. Yeah, because of the way they spoke to them. Yeah,
14 because of the way they spoke to officers, because of
15 the way that unit -- I mean, I'd had some pretty
16 unpleasant experiences with individuals from that unit
17 prior to this. There was an instance in Afghanistan in
18 2010 when I was conducting an operation, and three
19 soldiers from 1 LANCS, or it may have been 2 LANCS, but
20 three of them were shot with one round, stacked up
21 against the building. So there then became this
22 suspicion that there was a sniper operating in my area
23 of operations, and so a team from UKSF1 was sent to
24 assist us in flushing out some of the bed-down
25 locations, and potentially finding this sniper.

1 And the problem was, I'd been operating in that area
2 for about five months. I didn't believe the Taliban had
3 a sniper. I didn't believe they had a sniper's
4 capability. I thought they were very lucky one day.
5 But this was in stark disagreement with the team that
6 had been sent up to sort of, you know, help us with all
7 this. There were some pretty uncomfortable moments.

8 So, for example, I was in charge within that area of
9 operations of every single target effect going on,
10 right? So any bomb going down range, any missile,
11 anything like that. What that unit wanted to come in
12 and do, and that particular individual, was take that
13 away from me, and essentially take over control of those
14 fires in order to prosecute their own operations, and
15 I was not prepared to do that. And that led to almost
16 a sort of physical confrontation in my bed space in
17 Afghanistan in 2010, where I had to deal with a senior
18 NCO from UKSF1 in very firm terms, and made it clear
19 that wasn't going to happen.

20 We then embarked on a series of operations which
21 I would -- at the time, I specifically outlined was not
22 necessary, because we had cleared a lot of these
23 compounds already, but this unit wanted to do that again
24 and clear these compounds again, and I remember, you
25 know, blue on blues and British blokes getting shot

1 because they hadn't cleared their deconfliction lines
2 properly, and that led to another point of friction.

3 And then as a final kind of -- a final thing that
4 made me -- you know, sort of turned me away from wanting
5 to be part of that organisation, we went out on an
6 operation one day and it was clear to me that we were --
7 we'd sort of done a search operation, and we were
8 extracting down away from that area, and what would
9 happen is the Taliban would always let you in in the
10 morning, because you got there before they woke up, and
11 then they'd smash you on your way out and lay an ambush
12 for you, and we were extracting, and we got absolutely
13 hammered in this ambush, and a chap was shot in front of
14 me, and someone -- I was sat in a vehicle, actually, at
15 the time, controlling these fires and trying to get the
16 fires to go into the building, into this particular
17 murder hole that was spewing all this automatic fire out
18 at us, and I saw this guy get shot, and he was pulled
19 back, and his GPMG lay on the ground, and one of the
20 operators, the UKSF1 operators, got out, ran and got the
21 GPMG and started firing from the hip into the murder
22 hole in full view of the enemy, and I remember saying to
23 the guy next to me, "This guy is going to get shot,
24 watch this." Three, two, one, bang, and he was shot.

25 And I just thought -- and I was annoyed because

1 I was like, this is like -- this guy is trying to win
2 a medal, right? But at the same time, I was like, I'm
3 going to have to go and get this guy now, and the fire
4 is absolutely withering. I remember I went to open the
5 door of my vehicle and they just shot the wing mirror
6 straight off. And I had to get out. You know, we got
7 him in, and for me, again, you know, it was like: what
8 on earth are we doing? What is going on here? And, you
9 know, these are the factors that contributed to me not
10 wanting to join that unit.

11 Q. Insofar as the negative pallor or odour that you've
12 described related to one unit or another, are you
13 distinguishing between UKSF1 and UKSF3?

14 A. Yeah, because people would have expected me to go to
15 UKSF1, and I didn't want to go to UKSF1; I wanted to go
16 to UKSF3.

17 Q. Can I check, the negative pallor or odour that you
18 picked up on when you were undergoing the procedure for
19 joining UKSF, did that negative odour or pallor relate
20 to UKSF1, UKSF3 or both?

21 A. UKSF1.

22 Q. And in terms of the negative odour or pallor, the
23 stories or discussions which contributed to that effect,
24 did they relate to matters that had happened in
25 Afghanistan or elsewhere?

1 A. I was aware of allegations from other operations, but in
2 particular towards Afghanistan.

3 Q. Are there any specific allegations in respect of
4 Afghanistan which at that stage, whilst we're dealing
5 with a period of around 2009 or so -- so at that stage,
6 in respect of the allegations you were hearing in
7 connection with Afghanistan, did any of those go higher
8 than rumour or gossip, to your assessment?

9 A. It always struck me: why would people make this up? It
10 always struck me as to, yeah, why you would make it up.
11 But I'll be honest with you, I was a very -- you know,
12 I was a junior officer going through a rigorous
13 UKSF course of about a year, and, you know, if I'm
14 honest with you, you put it down to rumour and gossip
15 and bravado and all this rubbish.

16 The trouble is, by that stage -- yeah, I mean,
17 I hadn't really -- yeah, you just put it down to rumour
18 and gossip. Like I say, it generates a pallor, which is
19 why I used the word "pallor" and not a clear allegation.

20 Q. Insofar as it may be rumour or gossip or bravado, as
21 you've just said, are you able to describe any specific
22 rumour, gossip or piece of bravado that you received
23 that still sticks in your mind?

24 A. Erm ... (Pause)

25 No.

1 SIR CHARLES HADDON-CAVE: Are you able to help Mr Glasgow
2 with the type of rumour or gossip?

3 A. Concerning concerning behaviour on target.

4 MR GLASGOW: Insofar as that behaviour can be categorised as
5 improper or illegal, is there a distinction, to your
6 mind, in terms of what was being described to you? Did
7 it fall into the improper category or did it transgress
8 into potentially illegal?

9 A. Well, to my mind, whatever rules of engagement you're
10 operating under, if no one -- if someone does not
11 present a threat, there was no legal justification for
12 engaging that target.

13 Q. So if I've just understood what you've said to be
14 correct, insofar as you're able to, rumour or gossip was
15 being provided to you which involved the engagement of
16 people who did not pose a threat?

17 A. Yeah.

18 Q. And was that an engagement that led either to the injury
19 or death of individuals who did not pose a threat?

20 A. Yes.

21 Q. And was it both injury and death, or just injury or just
22 death, or can you not remember?

23 A. The conversation wouldn't have got that far.

24 Q. But as you understood it, the nature of the negative
25 pallor or odour was to the effect that, whilst in

1 Afghanistan, UKSF1 had engaged individuals who did not
2 pose a threat?

3 A. That was the pallor of the allegations.

4 Q. And so we're clear, when you describe engagement of
5 individuals, does that mean that members of UKSF1 used
6 weapons to fire upon individuals who, according to the
7 rumour or gossip, did not pose a threat?

8 A. That was the nature of the odour of the allegations,
9 without the specificity.

10 MR GLASGOW: Sir, I'm just looking at the time. I'm
11 conscious that Mr Mercer hasn't been going for that
12 long, but I know that those who are taking a note of the
13 proceedings have been, and I was asked if at all
14 possible we could have a break every hour or so.
15 I don't know if that would be a convenient moment.

16 If it is, sir, could I just simply invite you to
17 direct Mr Mercer, as I'm sure you will, that he's not to
18 discuss his evidence with anyone whilst he's in the
19 course of giving it.

20 SIR CHARLES HADDON-CAVE: Indeed.

21 We'll break now for ten minutes, please.

22 Mr Mercer, as I say to all witnesses, please do not
23 discuss your evidence with anybody in any break whilst
24 you're giving evidence. All right?

25 Ten minutes, please. Thank you.

1 (11.11 am)

2 (A short break)

3 (11.22 am)

4 SIR CHARLES HADDON-CAVE: Mr Glasgow.

5 MR GLASGOW: May it please you, sir.

6 Mr Mercer, can we move on from the pallor and odour
7 that you've been describing to us over the last
8 15 minutes or so of your evidence, and can I invite you,
9 in your statement, to look, please, to paragraph 16.

10 You've already described to the Inquiry the work
11 that you've done on the Iraq Historic Allegations Team
12 and the subcommittee that you had been involved in which
13 had looked into the allegations that had been made, as
14 we've identified, over 3,500 in number. You also
15 identified that the work that you'd done had obviously
16 been well received by members within the community from
17 which you had come.

18 Can I in particular ask you about information that
19 was provided to you by serving officers who you knew
20 from your time in the Armed Forces, because you refer to
21 that in your paragraph 16, please.

22 So insofar as former colleagues of yours speaking to
23 you after your work on the subcommittee, did people come
24 to congratulate you on the work you've done, but also to
25 raise an issue that you needed to be aware of?

1 A. Yeah, I was made aware of that.

2 Q. And what was it that you were made aware of, please,

3 Mr Mercer?

4 A. I was made aware of allegations of incidents that had

5 occurred on operations that crossed the line from

6 rumour, pallor and smell, to serious allegations.

7 Q. So, in your mind, you're drawing a distinction between

8 the rumour, the gossip or the bravado that you'd

9 overheard whilst you'd been undergoing training, and now

10 we've got to the extent of what you've just described as

11 "serious allegations"?

12 A. Correct.

13 Q. And are these serious allegations made to you by one

14 person or by more than one person?

15 A. More than one person.

16 Q. And those individuals that made the serious allegations

17 to you, at the time they reported the allegations to

18 you, were they still members of the military?

19 A. Yes.

20 Q. And you've identified them in your statement by the

21 description "serving officers". So more than one

22 serving officer spoke to you about the serious

23 allegations that you needed to be aware of? (Pause)

24 A. I'm trying to disaggregate in my mind when different

25 individuals mentioned these to me.

1 Yeah, the first time was an officer, yeah.

2 Q. And what was it that the officer told you?

3 A. That -- you know, this individual is a personal friend
4 who I had served with in Afghanistan in 2006 and 2008
5 and 2009, and he is clearly a friend, and I'm a friend
6 to him, and we went through some pretty intense
7 experiences together, and he was looking out for me, in
8 that insofar as -- didn't want me to go too far in terms
9 of thinking that there was nothing there that would then
10 bring some -- you know, a challenge to the integrity of
11 my argument.

12 Q. And the argument you're talking about, is that the
13 argument in connection with the subcommittee report that
14 deals with vexatious litigation?

15 A. Correct. So the fear is always that -- you know, in
16 a lot of these cases, I was using a series of judgments
17 to try to understand what happened in certain cases,
18 with a blend of, of course, my own experiences, but
19 I knew a lot of people in the military by this stage,
20 and I also knew a lot of people -- you know, when I left
21 Afghanistan in 2010, my commanding officer at my
22 dining-out said I was probably the most combat
23 experienced terminal controller in the Army at that
24 time, so I knew a lot of these people who had been
25 engaged in a lot of these engagements, and for me there

1 was always the inherent risk, in batting for them and
2 being on their side, and being the public face of
3 standing up against the tide of lawfare, political
4 opinion who frankly had abandoned these people, the
5 press who seemed determined to believe people like
6 Phil Shiner, there was always the risk that something
7 horrendous was going to come up, and I trusted the
8 system and my cohort to let me know if I was coming
9 close to that risk, and I think this is that moment.

10 Q. So if we understand the position in which you were at
11 that time, back in 2017, there or thereabouts --

12 A. Yeah, I'm a backbencher, just done the report -- I mean,
13 the report came out, right, and this won't be a shock to
14 you, but my relationship with the MoD has never been
15 particularly kind of collegiate on their part, and
16 when I was investigating this stuff with IHAT, clearly
17 I was bucking the trend because I was saying, "Look,
18 you've paid out £92 million, and you have generated this
19 environment where lawyers can put in spurious claims,
20 you pay out without even investigating, and you're
21 destroying the lives of these veterans." So clearly
22 that presented a challenge to the Ministry of Defence.
23 When the inquiry reported and said it should be shut
24 down, the Secretary of State at the time tried to kind
25 of pre-empt the report by saying he was going to shut it

1 down anyway, and this all happened around about at the
2 same time.

3 Q. And when a friend of yours advises you that you need to
4 be careful, have I understood this correctly: you're
5 trying to strike a balance between fighting against what
6 you regard as substantial litigation and vexatious
7 litigation in the thousands of claims, so that's one
8 side of the balance; on the other side, you want to
9 ensure that if you're fighting it, there isn't going to
10 be truth in any allegation that comes back to bite you?

11 A. Correct. Correct.

12 Q. So, at its basic level, if you're going to champion the
13 claim that this is vexatious litigation, the last thing
14 you want --

15 A. Yeah, correct.

16 Q. -- is to discover the next day that, in fact, within
17 these claims, there are some which are in fact true?

18 A. Correct.

19 Q. So when your friend is advising you that you need to
20 take care, was he advising you that there were matters
21 you needed to be aware of before you pushed the agenda
22 that this was vexatious litigation and nothing else?

23 A. Correct.

24 Q. And this is a good friend of yours --

25 A. Yeah.

1 Q. -- who presumably felt able to speak to you candidly
2 about matters that you needed to be aware of?

3 A. Yeah, but it was a private conversation. It wasn't --
4 he wasn't approaching me in a formal capacity in any
5 way. It was a private conversation.

6 Q. Which enabled him, no doubt, to be completely candid and
7 open with you about what he wanted to say.

8 A. Of course. I mean, I have lots of very candid and open
9 relationships with lots of people across defence and
10 other areas of the country, yeah.

11 Q. If we need to talk about other candid discussions you
12 may have had, we'll come to them, but I'd like to focus
13 on this one for the moment, please.

14 This is a candid conversation with a good friend of
15 yours in which he reports to you -- have I understood it
16 right -- serious allegations? Because those are the
17 words you used.

18 A. Serious allegations backed up by -- allegations not only
19 of the behaviour on target, but then the subsequent
20 efforts to -- because my principal concern at that
21 stage, as a backbencher outside the department, is: do
22 ministers know? So I feel, you know -- the only thing
23 I have in all this is my integrity, right? So if
24 someone approaches me with that, the only thing I can
25 say to them is, "Do ministers know about this?" And

1 I was assured ministers did know, and that is my duty
2 done. I am not a minister in the department.

3 Q. I'm not asking at this stage about what the ministers
4 may or may not have known.

5 A. Sure.

6 Q. I'm asking you about the nature of the conversation you
7 had with your friend, and you've just told us that the
8 serious allegations concerned matters of what happened
9 on target --

10 A. Yeah.

11 Q. -- your words, and also things that happened afterwards.
12 So there's two strands to this allegation, if I've
13 understood it correct.

14 A. Yeah.

15 Q. Something that's happened at the time that an operation
16 is ongoing --

17 A. Yeah.

18 Q. -- and something that has happened after the operation.

19 A. Yeah.

20 Q. So what's the nature of the allegation, please?

21 A. That essentially attempts were made to sort of game the
22 system, to sort of -- I feel the word "cover-up" is too
23 strong, right? But to block a real aggressive, brutally
24 honest assessment and investigation into what happened.
25 For example, the things that you've already covered in

1 this Inquiry around computer systems being wiped and
2 things like that.

3 Q. Leaving aside what we may have already covered, can
4 I just make sure I've understood what it was that your
5 friend told you.

6 In connection with the serious allegations of what
7 happened on target, what did he tell you those serious
8 allegations were?

9 A. Well, they were -- they concerned the pallor of
10 allegations that we've already covered, and behaviours
11 on target that we've already covered this morning. But
12 then it moved on to how -- you know, there were concerns
13 around how, you know, that unit had been investigating
14 itself and what, you know, investigators had found when
15 they started looking into it, and that's the thing that
16 started to kind of prick my conscience, to make me
17 think: something is not right here, and then shift --
18 that paradigm shift we've talked about a number of
19 times, from rumour, bravado, pall, across to
20 allegations. Why would you do that if you're not
21 covering something up? Why did this happen? And asking
22 intellectual questions from an informed standpoint as to
23 why certain things were found.

24 Q. I'm sorry to keep going back to this, but I want to
25 understand what it was your friend actually told you.

1 Dealing with the serious allegations relating to
2 what happened on target, what did he actually say had
3 happened on target that you needed to be aware of,
4 Mr Mercer?

5 A. It wasn't so much that that was covered, because I was
6 aware of the allegations already. It was things like
7 a computer that could do what's called keystroke
8 recovery, so you could see where operational reports had
9 been changed, and that the Ministry of Defence had
10 invested money in that, and so this was likely to be
11 a bigger investigation and a bigger subject and you just
12 need to be aware of it. When you're on this crusade to
13 look after the majority of veterans not impacted by
14 this, you need to be aware that there is something going
15 on here and we don't quite know what it is.

16 Q. And when you say, "We don't quite know what it is", what
17 did you understand him to mean by that?

18 A. That nobody really knew.

19 Q. Did he describe to you any allegations of what happened
20 on target? Because those are the words you used about
21 seven minutes ago. So I just want to understand what it
22 was he said about what happened on target that you
23 needed to be aware of.

24 A. Well, the central allegations that this Inquiry is
25 concerned around the killing of individuals who posed no

1 threat.

2 Q. So your friend warned you that there were serious

3 allegations that people who pose no threat had been

4 killed?

5 A. Yes.

6 Q. In Afghanistan?

7 A. Yes.

8 Q. And by UKSF, or did he distinguish between UKSF1, UKSF3?

9 A. Everyone knew who it was.

10 Q. Who was it?

11 A. Well, everyone knows the unit concerned.

12 Q. Is the unit concerned UKSF1?

13 A. Yeah.

14 Q. Right. So your friend advised you that at least he

15 believed that there had been killings conducted by UKSF1

16 whilst on deployment in Afghanistan?

17 A. No, he didn't say that. He said, "You need to be aware

18 this is the situation. You have these allegations. You

19 have the department investing in equipment to try to

20 understand why operational reports were changed. Just

21 be aware that this is a situation that you need to be

22 aware of." That was the defined limit of that

23 conversation.

24 Q. If we look together to your paragraph 16 -- can we do

25 that, please, Mr Mercer.

1 A. Sure.

2 Q. What you describe there is that you were told about:

3 "... serious allegations of incidents that occurred

4 within UKSF that made members of that community feel

5 very uncomfortable."

6 What do you mean by those words, please, Mr Mercer?

7 A. I mean that around that time I was also approached by

8 another individual who was working in the task group at

9 that time who asked if he could see me. I'm just trying

10 to make sure I don't -- I deconflict the times correctly

11 and when this individual approached me. I think he

12 actually approached me when I was in the department

13 later, so it wouldn't have been at that time.

14 But making members of that cohort feel

15 uncomfortable -- of that community feel uncomfortable,

16 I mean, that had been a regular conversation over many

17 years with individuals who had gone on from my course,

18 for example, to serve in that community.

19 Q. So you had had regular conversations with individuals

20 who had gone on to serve as part of the UKSF in which

21 they told you of serious allegations?

22 A. Yeah. I mean, these are my friends, and they go away

23 and they conduct a tour, they come back, "What was it

24 like? How was it different to our time? What was this

25 like? What was that like?" You know, you don't -- you

1 know, this isn't a regular thing, but they may, you
2 know, come to your house for the weekend with their
3 family, and you'll go to the pub with them and have
4 a conversation and, you know, just check they're okay,
5 check they're dealing with it all alright. You know,
6 "What's it like now?", because conflict changes so
7 quickly, and, yeah, I was aware of these allegations.

8 Q. But in the course of the conversations you're having
9 with your friends, were you discussing those allegations
10 that you are aware of?

11 A. I was discussing the general practice of what you would
12 call, you know, techniques, you know, techniques on
13 target.

14 Q. Okay.

15 Can we just look together at what you wrote in your
16 statement in November last year:

17 "In approximately 2017, following my work on the
18 IHAT Inquiry, I was told by serving officers whom I knew
19 from my time in the armed forces that I had done
20 a 'great job' but I needed to be careful in relation to
21 Afghanistan because there were serious allegations of
22 incidents that occurred within UKSF that made members of
23 that community feel very uncomfortable."

24 What you've written there is that you were told by
25 "serving officers", so does that mean more than one?

1 (Pause)

2 A. More than one person mentioned it to me. I'm just
3 trying to disaggregate in my mind specifically when
4 those scenarios were. This wasn't one individual,
5 clearly.

6 Q. So leaving aside the question of timing -- and I'm not
7 seeking to put a particular time frame on this -- what
8 I want to clarify with you is this, Mr Mercer, and as
9 you've just --

10 A. Multiple sources told me that, yes.

11 Q. So multiple sources told you that there were serious
12 allegations of incidents that had occurred in
13 Afghanistan?

14 A. Correct.

15 Q. And the serious allegations relate to people who are
16 being engaged on target who did not pose a threat?

17 A. Correct.

18 Q. And the allegations also extended to the question of
19 what might have been done after those allegations had
20 come to light, as concerns the reporting?

21 A. Correct.

22 Q. So you had two strands in your mind at that time that
23 people were warning you to be alive to.

24 A. Yeah.

25 Q. One --

1 A. Because the sort of thing you talk about -- you know,
2 you talk about -- compound clearance, for example, there
3 were a number of different techniques to clear
4 a compound.

5 Q. I'm not going to ask you about the techniques to clear
6 a compound at the moment. If we come to do that, we'll
7 deal with that later on in the course of your evidence.

8 What I want to talk to you about is this. I'm just
9 simply trying to unpick the words in your statement.

10 Multiple sources --

11 A. Yeah.

12 Q. -- told you that there were serious allegations in the
13 way that UK -- is it SF1 or is it all members of UKSF?

14 A. Within UKSF1.

15 Q. So multiple sources told you that there were serious
16 allegations of the way in which UKSF1 had conducted
17 themselves on operation in Afghanistan?

18 A. Correct.

19 Q. And that those serious allegations concerned the
20 engagement of targets who did not pose a threat?

21 A. Correct.

22 Q. And that, in addition to that, there were also serious
23 allegations about what might have happened in the
24 aftermath as concerns the reporting or investigation
25 into those allegations?

1 A. Correct.

2 Q. And you were being warned by numerous sources so that
3 you didn't find yourself out on a limb.

4 A. Correct.

5 Q. Because you recognised and they recognised that if there
6 were serious allegations that might be true, you could
7 be left looking particularly foolish when you were
8 complaining about industrial-scale vexatious litigation
9 against the military.

10 A. Correct.

11 Q. Insofar as those numerous individuals are concerned,
12 they were friends of yours?

13 A. Yeah.

14 Q. And presumably still friends of yours?

15 A. Yeah.

16 Q. And are you able to provide their names to the Inquiry,
17 please?

18 A. Not at this stage, no.

19 Q. Why not?

20 A. Because there's been a -- this has been a prolonged saga
21 for me over many years, and my faith in the system to
22 interrogate these issues is not where it needs to be for
23 that to happen.

24 Q. Well, the ability of this Inquiry to interrogate the
25 issues is considerably hampered if you wouldn't tell us

1 who spoke to you, so I'm going to --

2 A. Of course, but you come into this place with very little

3 and you leave this place with very little as well, but

4 the one thing you can hold onto is your integrity, and

5 I will be doing that with these individuals.

6 Q. At the moment, you've come into this place armed with

7 the knowledge of the names of the people who spoke to

8 you.

9 A. Because they spoke to me. They're not direct-hand

10 witnesses. They were not there.

11 Q. That's not what I've asked, Mr Mercer. You have come

12 into this courtroom armed with the knowledge that you

13 can provide the names of people who spoke to you who

14 made very serious allegations about UKSF1; yes?

15 A. Well, I haven't come in here armed with anything, I've

16 simply given you a statement that reflects that

17 position.

18 Q. So back in November of 2023, you determined it was

19 appropriate to identify what you had been told by

20 multiple sources.

21 A. In order to help your Inquiry, yes.

22 Q. And presumably you must have thought to yourself: "If

23 I name multiple sources, someone is going to ask me at

24 some point what their names are."

25 A. I was aware that that would happen, yeah, but --

1 Q. Well, it is happening.

2 A. -- with the greatest respect, Mr Glasgow, I have dealt
3 with these allegations over a number of years. I've
4 dealt with different groups over a number of years.
5 There's a reason people have candid conversations with
6 me, so I can understand what actually happened and
7 separate rumour and speculation and gossip from what
8 actually happened, in order to protect myself, but also
9 to make sure there is 100% integrity in everything that
10 I've done around legislation and, you know, my behaviour
11 elsewhere, and the simple reality is at this stage that
12 I'm not prepared to burn them in order -- when there --
13 in my judgment, there is -- you are already speaking to
14 people who have far closer knowledge of what was going
15 on, because of the repercussions that may fall on them.

16 Q. This has nothing to do with the integrity of the
17 legislation that you sought to pass because it's been
18 passed, Mr Mercer, and this isn't an attack on your
19 integrity in any way at all.

20 I'm asking you quite simply this: you have told the
21 Inquiry in a statement and in evidence that multiple
22 people have warned you about allegations circulating
23 around UKSF1, and clearly you thought it important that
24 the Inquiry know that information.

25 A. Yeah.

1 Q. Otherwise, you wouldn't have written it down --

2 A. Yeah.

3 Q. -- and you wouldn't have answered the questions.

4 A. Mm-hm.

5 Q. And it must have been blindingly obvious to you that at

6 some point during the course of today, someone like me

7 was going to say to you, "Can we have the names of the

8 multiple sources?"

9 A. Indeed.

10 Q. So presumably you've spoken to those multiple sources

11 before coming to give evidence to say, "Would you mind

12 if I gave your name" --

13 A. Well, that's an assumption you've made. That's not what

14 I've said, is it?

15 Q. Well, let's just assume for the moment that that's the

16 blindingly obvious thing to do.

17 A. That's not the blindingly obvious thing to do.

18 Q. Well, you knew --

19 A. It may be to you, Mr Glasgow, but it's not to me.

20 Q. Let's try this, Mr Mercer: you knew you were coming to

21 give evidence; yes? You've known for some time you were

22 coming to give evidence.

23 A. I'm so sorry, but I don't understand the point of your

24 question. Of course I knew I was coming to give

25 evidence.

1 Q. And you knew that the evidence was to be about what was
2 in your witness statement.

3 A. Yes.

4 Q. And you must have known you were going to be asked about
5 the multiple sources.

6 A. Yes.

7 Q. And you were going to be asked to give their names.

8 A. Yes.

9 Q. And one or more of them might actually be willing to
10 have their name given to the Inquiry.

11 A. Potentially they may be, and that will be for them to
12 come forward to the Inquiry. You've made multiple
13 efforts to get individuals to come forward to the
14 Inquiry. If they were firsthand witnesses to this
15 behaviour, then that would be a different calculation,
16 but they were not.

17 Q. But you obviously thought what they had to say to you
18 was important, because you mentioned it in your
19 statement.

20 A. I -- you know, for me, it's about getting to the truth
21 of the matter, yeah.

22 Q. Well, no one can get to the truth of the matter,
23 Mr Mercer, if you won't give us the names.

24 A. Well, they can, because you're speaking to individuals
25 who have firsthand knowledge of this, and, you know,

1 provided everyone tells the truth, you will get to the
2 bottom of these allegations.

3 Q. So do I understand that you are refusing to help the
4 Inquiry?

5 A. No, I'm not refusing to help the Inquiry; indeed,
6 I volunteered to help the Inquiry. So -- of course,
7 that's a rather churlish way of looking at it.

8 Q. Would you like to write the names down on a piece of
9 paper --

10 A. No.

11 Q. -- so that only the Inquiry knows them?

12 A. No, because it is not -- it is --you know, I have --
13 I will look at it again and I will always reassess and
14 attempt to help the Inquiry in any way that I can, but
15 I have to retain my own integrity in this process, and
16 at every stage, as you will see from the evidence that
17 has been provided in disclosure, people have tried to
18 game me from that department, and I'm not prepared to
19 indulge in that further.

20 SIR CHARLES HADDON-CAVE: Mr Mercer, I'd like you to reflect
21 on this aspect, if you'd be so kind.

22 A. I will of course, sir.

23 SIR CHARLES HADDON-CAVE: I can appreciate that the last few
24 years have been difficult, and I understand the work
25 that you've done, but you can rest assured as to the

1 integrity of this Inquiry and its determination to get
2 to the truth, and you can also rest assured that I will
3 be the judge of what is and is not appropriate and
4 I will look at everything very carefully. But as
5 Mr Glasgow has said, it's important that we have all the
6 evidence, and that we talk to all the relevant people.

7 So I'd like you to reflect on this, if you'd be so
8 kind, in the course of perhaps the short adjournment at
9 lunchtime.

10 A. Of course.

11 SIR CHARLES HADDON-CAVE: And we can then perhaps discuss it
12 again. All right?

13 A. Sir.

14 MR GLASGOW: Let's leave aside, then, those who advised you
15 about matters that they might not have known about
16 firsthand, okay? Because you've drawn a distinction
17 between friends of yours that don't have firsthand
18 knowledge.

19 Can we look together at paragraph 17 of your witness
20 statement.

21 A. Oh, yes.

22 Q. And paragraph 17, if I've understood it correct,
23 concerns a firsthand allegation that was made to you.

24 A. Mm-hm.

25 Q. Is that correct?

1 A. Yeah, but not -- yes, different to the ones we were just
2 talking about, but yes.

3 Q. Yes. I'm just seeking to distinguish the difference
4 between the secondhand allegations we've been dealing
5 with for the last half hour or so --

6 A. Yes, but at the same time, you're trying to push these
7 two allegations together. They are very separate. One
8 is dealing with behaviour on target, the other -- this
9 particular allegation that is firsthand is to do with
10 sort of preparation of those acts, rather than the
11 behaviour on target. So the two are separate.

12 Q. I haven't got to the nature of the allegation yet, but
13 I'm just seeking to clarify with you that paragraph 17
14 deals with somebody who gave you firsthand information.

15 A. About a different allegation, yes.

16 Q. We'll get there in a moment, Mr Mercer.

17 So the allegation that you were made aware of by
18 that person was that he had been asked to carry
19 a dropped weapon; is that correct?

20 A. Correct.

21 Q. And this is somebody who was a serving member of the
22 UKSF?

23 A. Yeah.

24 Q. And as part of his period on deployment in Afghanistan,
25 someone had asked him to carry a dropped weapon?

1 A. Yeah.

2 Q. And what did you understand a "dropped weapon" to refer
3 to, please?

4 A. A dropped weapon is when you have a series of weapons
5 that cannot be linked with NATO forces, and that they --
6 it would appear, after my time, that it became practice
7 for some units to take these on the ground in order
8 to -- well, I don't know why you would do it but, you
9 know, if I was to go down that line, it would be so
10 that, you know, you could place them with unarmed
11 combatants or unarmed individuals.

12 Q. Well, since you want to go down that line, that's
13 exactly what you've said in your witness statement,
14 isn't it?

15 A. Indeed.

16 Q. What you've said in your witness statement was:
17 "I understood this to mean that he had been asked to
18 carry an extra weapon (one that could not be linked to
19 NATO forces) to be dropped on the body of a person to
20 make it appear as though they had been a legitimate
21 target as a combatant. "

22 So as you understood it, the purpose of a dropped
23 weapon was to place it beside the body of somebody who
24 had been killed because, if a photograph was taken, it
25 would give the impression that that dropped weapon had

1 been held by that person, and therefore might allow
2 somebody to say he was armed, presented a serious threat
3 to life, and therefore he was engaged?

4 A. Indeed, Mr Glasgow.

5 Q. Right. And this was a firsthand allegation made to you
6 by a member of the UKSF?

7 A. Correct.

8 Q. And was this UKSF1 or another part of the UKSF?

9 A. This was a UKSF3 member.

10 Q. And who had asked this UKSF3 member to carry a dropped
11 weapon?

12 A. I don't recall that part of the conversation.

13 Q. You must have asked --

14 A. "I was asked". "I was asked", that's how the
15 conversation went. I didn't say, "Who asked you to do
16 it?"

17 Q. You didn't?

18 A. No.

19 Q. Did you not think that might be important to know, who'd
20 asked him to carry a dropped weapon?

21 A. I think when you're engaged in these conversations, you
22 know when you go too far and you won't get any more
23 information.

24 Q. And who was the person who gave you that firsthand
25 information? Will you write the name of that individual

1 down?

2 A. No.

3 Q. Why not?

4 A. For the reasons I've outlined.

5 Q. What, your integrity?

6 A. For the reasons I've outlined.

7 Q. Well, that was the reason you outlined: that your

8 integrity would suffer if you were to write names down.

9 A. Yeah.

10 Q. Well, you sought to distinguish, 12 minutes ago, the

11 difference between friends of yours who told you about

12 things they didn't know firsthand, and that was why you

13 didn't need to name them, and now we've got somebody who

14 gives you firsthand information. So I'm asking you to

15 write down the name of that person and provide it to the

16 Inquiry.

17 A. Yeah. I'm obviously not going to do that. That was

18 a private conversation with that individual. But I will

19 reflect on the chair's comments and I will reflect very

20 carefully on this.

21 Q. Well, it may have been a private conversation, but it's

22 a private conversation you chose to set out in some

23 detail in your witness statement.

24 A. To help you get to the truth.

25 Q. And you're trying to help us get to the truth by not

1 giving us the name of the person who gave you the
2 information? How do you think the Inquiry can get to
3 the truth, Mr Mercer, if you deny us access to
4 a potentially important witness?

5 A. Because you -- I've seen your list of witnesses and you
6 have important firsthand witnesses on there, and they
7 are the individuals you need to speak to.

8 Q. You have no idea who our witnesses are, Mr Mercer.

9 A. I've seen a list of them.

10 Q. You've seen a list of names, Mr Mercer. You don't know
11 whether they are witnesses or not. So don't be silly.
12 Let's be sensible together.

13 Do you think it's important for the Inquiry to speak
14 to people who have firsthand evidence --

15 A. Of course. Of course. But you have to do this in a way
16 that is going to get you to the truth, that it's not
17 going to -- it's not so that at the end of this Inquiry
18 you can stand up and say, "Well, we asked everyone and
19 they said no." The whole point, as you know -- and
20 I want to tread very carefully, sir, because I would
21 never presume to direct anything like this, but we have
22 to try to get to the truth. Not a process to say,
23 "Well, we asked everyone and they said no", we have to
24 get to the truth. And that's different, and you have to
25 be sensitive and you have to understand what this is

1 like, and you have to understand the organisations, and
2 you have to understand what it's like to be in combat
3 for months on end with people, and then come back to
4 your country that has no interest or idea what it's like
5 to go through. Right?

6 So I recognise what you're trying to do, and
7 I respect that, and I respect you very much, and
8 I respect the Inquiry very much. But all I'm interested
9 in is the truth. I'm not interested in the process.
10 I'm interested in the truth.

11 SIR CHARLES HADDON-CAVE: But you can rest assured,
12 Mr Mercer, that I am interested in the truth, just as
13 you say, and I am very sensitive to all of these issues.

14 A. Thank you, sir.

15 SIR CHARLES HADDON-CAVE: All right?

16 MR GLASGOW: Can I invite you to reflect, Mr Mercer, over
17 the course of the lunch break.

18 A. Of course.

19 Q. And what I'd like to ask you to do is this, please: if,
20 as you say, you are committed to the Inquiry uncovering
21 the truth, I'd invite you to work out how you think the
22 Inquiry can do that without the assistance of people who
23 know things that have happened.

24 A. Well, I already -- I can answer that already. I mean,
25 you know, clearly it needs to speak to certain

1 individuals who have this, but there are multiple
2 individuals across these organisations who have
3 knowledge of things like, for example, this dropped
4 weapon. What we have to try to do is understand the
5 people who are actually involved so we can bottom out,
6 as you said a number of times, that difference between
7 rumour and gossip and what actually happened. That is
8 only fair for the whole gamut of service personnel who
9 served with distinction on these operations, some of
10 whom will come into this courtroom; it is fair to the
11 Afghan families; and it is fair to the British Army as
12 an institution, and I have to hold that line, I'm
13 afraid, Mr Glasgow, at the moment, but I will reflect
14 over lunch and subsequently.

15 I would suggest -- obviously, I'm not going to
16 change my mind today, because some of these individuals
17 are quite damaged by their service, and I think it would
18 be unfair, and I'll be honest with you, my first duty is
19 to them. But I will of course reflect very seriously on
20 what the chair has said.

21 SIR CHARLES HADDON-CAVE: Can I suggest, Mr Mercer, your
22 first duty is to this Inquiry and the truth, and
23 assisting this Inquiry in every way you can.

24 A. Of course.

25 SIR CHARLES HADDON-CAVE: You can have faith in this Inquiry

1 and its ability to get to the truth in a fair and proper
2 way.

3 A. What I would say to that --

4 SIR CHARLES HADDON-CAVE: I don't invite you to respond to
5 that.

6 A. Sir, of course.

7 SIR CHARLES HADDON-CAVE: I just invite you to reflect over
8 lunch about this important issue.

9 A. Sure.

10 SIR CHARLES HADDON-CAVE: All right?

11 MR GLASGOW: And as you seek to hold the line on the
12 difference between rumour and gossip and important
13 evidence, can we agree that the person whose name you're
14 refusing to give has important direct evidence to give?

15 A. I think there are a number of individuals with important
16 direct evidence to give.

17 Q. That's not what I asked you, Mr Mercer. I asked you if
18 the individual you are refusing to name has important
19 direct evidence to give to the Inquiry?

20 A. I think there are a number of individuals who have
21 important direct evidence to give.

22 Q. I will try you one more time, because the question
23 I don't think is a complicated one, but if I need to
24 rephrase it, I will.

25 Do you agree that the person whose name you are

1 refusing to give has important direct evidence to give
2 to the Inquiry?

3 A. I think there are a number of people who have important
4 direct evidence to give to the Inquiry.

5 Q. So not only are you refusing to give the name of the
6 individual, do you agree you're now refusing to answer
7 what might be thought to be a relatively straightforward
8 question?

9 A. No, I don't -- I totally refute that I'm refusing to do
10 anything at all. I'm trying to help you in the best way
11 that I possibly can. I haven't come here armed with
12 anything, I haven't refused to do anything.

13 Q. Well, you have. You've just refused to give the name of
14 someone.

15 A. I'm trying to help you -- I'm not refusing. I said
16 I would reflect on the chair's comments, right? That is
17 different from refusing, isn't it? And you know that
18 very well.

19 Q. What you said, Mr Mercer, was that you would reflect
20 over lunch, and then you told us that you weren't going
21 to change your mind today.

22 A. I said it was unlikely, so again, you have said
23 something that is definitive when I didn't say that.
24 I said it was unlikely.

25 Q. Have you spoken to this person?

1 A. Not about the Inquiry, because you asked me not to speak
2 to anybody about the Inquiry.

3 Q. You wrote a witness statement in which you've described
4 someone telling you something. Did you think to pick up
5 the phone to say to that person --

6 A. No, because you gave me a very clear direction
7 that I was not to speak to anyone involved in the
8 Inquiry -- or involved in this.

9 Q. Would you be willing to speak to this person over lunch?

10 A. Not over lunch, no, but I will have -- I've taken the
11 chair's remarks very seriously, and I am going to do
12 everything I can to follow his direction.

13 Q. Everything you can, other than speak to the person?

14 A. Mr Glasgow, this has been a long exercise for me, with
15 very little support, very, very -- made my life very,
16 very difficult by others when all -- you know, I am
17 afraid it'll take more than you gently probing me here
18 to change that line. Sorry.

19 Q. Can we look to the end of your paragraph 16, and I'll
20 stop the gentle probing for a moment.

21 You recall that, having been told by people who you
22 won't name that there were serious allegations of
23 incidents that had taken place in Afghanistan, you
24 specifically asked whether ministers were aware of the
25 issues and you were assured that they were.

1 A. Yeah.

2 Q. Are you prepared to tell us who you asked about
3 ministers being aware of this information?

4 A. Well, no, because that would then lead you straight to
5 identify who the individual was from that.

6 Q. Right. In which case, I've now understood. So you
7 asked the people who had given you the information --

8 A. I asked one of them, yes.

9 Q. Right. Okay. And so that person told you that, as far
10 as he or she was aware, ministers were aware of that
11 allegation?

12 A. Correct.

13 Q. Okay.

14 Did you speak to any of the ministers concerned?

15 A. No. I mean, I didn't have that sort of relationship
16 with ministers in the MoD. I've always been seen as
17 this kind of pain in the backside, and for me, it was
18 important to make sure that process -- you know, it was
19 very important that ministers were aware. What they did
20 with that information was up to them.

21 Q. Again, if it was important that they were aware, did you
22 think it might be a good idea to clarify with any of
23 them what they were actually aware of?

24 A. No.

25 Q. You didn't think it would be important to say to

1 someone, "I've been made privy to serious allegations,
2 I don't want to reveal the name or identity of my
3 sources, but I want to check that Government is aware of
4 these very serious allegations"?

5 A. No, I trusted the system.

6 Q. You record in paragraph 18 that the allegations that you
7 received of firsthand information, you found those
8 allegations very concerning.

9 A. Well, yes.

10 Q. Because it appeared to you that the person that you
11 won't name had been asked to take a weapon with them
12 whilst out on operation that could be used to be planted
13 on someone to give the impression that they'd been shot
14 lawfully rather than unlawfully?

15 A. Mm-hm.

16 Q. That was your belief?

17 A. Yeah.

18 Q. Right. And you record:

19 "... I believed that Ministers were aware of [those
20 allegations] ..."

21 What, did you believe that ministers were aware that
22 people had been asked to carry dropped weapons?

23 A. Sorry, where does it say that in my witness statement?

24 Q. Paragraph 18:

25 "I found these allegations very concerning but

1 I believed that Ministers were aware of them ..."

2 A. Yeah.

3 Q. Your words, Mr Mercer. Did you believe that ministers

4 were aware that someone, at least one person, had been

5 told to carry a dropped weapon?

6 A. Well, that's what it says, yes.

7 Q. I appreciate that's what it said. I'm asking --

8 A. Well, that's what I mean.

9 Q. That's what you mean. So you meant --

10 A. Well, yes.

11 Q. So you believed.

12 Did you check with ministers that they were actually

13 aware of this very important information?

14 A. That wasn't my responsibility. As I've said to you

15 already, I trusted that they were aware, and what those

16 ministers did with that information was up to them.

17 Q. Did you check what investigation was being carried out?

18 A. Absolutely not, no, because I was a backbench Member of

19 Parliament, I'm not a minister in the department, and

20 the department runs itself, and that would have been

21 rather impertinent of me.

22 Q. Okay. Well, let's just deal with the question of

23 impertinence.

24 In July 2019, you were a minister.

25 A. I was.

1 Q. Right. You'll find it in paragraph 19 on your
2 statement, Mr Mercer. And now, a minister and not
3 a backbencher --

4 A. Yes.

5 Q. -- did you think to check what investigation was being
6 conducted into an issue that you regarded as very
7 serious and important for your integrity?

8 A. I did, Mr Glasgow.

9 Q. Right. So who did you speak to? Or do you not want to
10 tell us?

11 A. I've written it all in my statement, haven't I?

12 Q. Okay. Well, we'll go through it then.

13 You had a number of meetings with the Director of
14 the Directorate of Judicial Engagement Policy, DJEP;
15 yes?

16 A. Yeah.

17 Q. The Chief of the Defence Staff?

18 A. Yeah.

19 Q. Secretary of State for Defence?

20 A. That's what it says.

21 Q. Anyone else?

22 A. Those are the individuals I spoke to.

23 Q. And did you --

24 A. Because I was now a minister.

25 Q. Did you speak to them one at a time or together?

1 A. So I saw DJEP with a group and then on his own. I saw
2 the Chief of Defence Staff on his own. I saw the
3 Defence Secretary on his own. The only real formal one
4 was with DJEP. The others were informal.

5 Q. And to the best of your recollection, what is it that
6 you told them?

7 A. That I have serious concerns that -- firstly, I'm not --
8 well, what I said -- the sort of nub of what I said to
9 them was: "Look, I've come into Government to try and
10 bring through legislation to stop things like IHAT
11 happening, and yet I am aware of serious allegations in
12 this space. What's going on?"

13 Q. Did you tell them what the serious allegations were?

14 A. They knew what the serious allegations were.

15 Q. Is that because they told you what the serious
16 allegations were and they matched the allegations you
17 heard, or did you just assume they knew?

18 A. No, when you say serious allegations concerning UKSF in
19 Afghanistan, they knew precisely what I was talking
20 about.

21 Q. And how did they convey that understanding to you?

22 A. Either by saying "Yes" or nodding their head,
23 Mr Glasgow.

24 Q. No, but how did you know they were talking about the
25 same serious allegations you were? It could have been

1 an entirely different set of allegations. So did you
2 say to them, "These are allegations about what happened
3 on target"?
4 A. No, because they -- you know, they -- clearly, you know,
5 there's the issue of on target, but then there's the
6 issue of what was done with computers and reports
7 afterwards. So the whole thing sort of sweeps into
8 a gamut of allegations that -- you know, you're right to
9 say -- did I ask them about specific allegations
10 concerning different targets and objectives, and then
11 subsequent, you know, technical details of keystroke
12 recovery? No. Did I say, "I'm aware of these
13 allegations and I'm not prepared to be the political
14 force" -- because I was receiving a lot of heat for
15 covering up abuses, right? I'm not prepared to be the
16 political force to drive this through whilst these
17 allegations remain unresolved. And that was the nature
18 of my position and, again, you know, that is -- I think
19 that's been reflected in the disclosure from the
20 Ministry of Defence.
21 Q. Did you distinguish between the two types of allegation,
22 on the one hand what had happened on target, and on the
23 other hand what happened afterwards as concerns
24 documentation?
25 A. I'm sorry, I don't understand that question.

1 Q. Did you distinguish between the two types of
2 allegation --

3 A. No.

4 Q. -- on the one hand -- so you did understand. Right.

5 Mr Mercer, it's not a complicated question. When
6 you spoke to the ministers --

7 A. I'm not very bright. I'm sorry, Mr Glasgow.

8 Q. Well, we're both struggling with the same problem, don't
9 worry.

10 When you spoke to the ministers, did you want to
11 make sure that they knew what you knew?

12 A. Of course.

13 Q. Okay. So presumably you said to them, "I just want to
14 check, have you" --

15 A. "Are you aware of these allegations in Afghanistan?"

16 "Yes, yes."

17 "The ones around computers, around killings?"

18 "Yes, yes, you know, we are ..."

19 You know -- I mean, we need to go into more detail
20 than that, but clearly -- you know when both people are
21 talking about the same thing. It's obvious, right?

22 Q. Well, I'm not sure we do, Mr Mercer, because I don't
23 know that you and I are talking about the same thing at
24 the moment, I'm afraid.

25 But you've just said that during the course to your

1 discussions with them you raised killings and computers.

2 A. Yeah.

3 Q. Right. So insofar as there was some sort of --

4 A. That's what these allegations surround: the behaviour on

5 target and the recording of that information on

6 computers.

7 Q. And what, if anything, did they say to you was being

8 done about these allegations?

9 A. I'd say my concerns were kind of noted, and then what --

10 so there was a difference between Secretary of State and

11 CDS. CDS was equally concerned with me, to be fair to

12 him. But I don't think there was that kind of curiosity

13 that I had, because I knew that my name was going to be

14 on the tin for taking this legislation through.

15 Secretary of State was aware of them, but my -- you

16 know, I had a rather interesting relationship with the

17 Secretary of State, and I don't know how raising those

18 concerns would have gone down. Probably not

19 particularly well.

20 I had a more fruitful conversation with the Director

21 of DJEP, Judicial Engagement Policy, within the MoD, and

22 it was far more detailed and it was far more -- you

23 know, because I'll be honest with you, in some ways

24 I wanted to go in and see evidence that would disprove

25 these allegations, so that -- you know, because these

1 allegations are horrific. No one wants to believe
2 they're true, right? So what I wanted to understand was
3 how we ended up here. Why have we ended up in
4 a position where we're being JR'd on these cases?
5 What's happened -- after all these years of Iraq and
6 Afghanistan, where we've been lawfared to the maximum,
7 how have we got to a place where this is still
8 happening? And that was the kind of nub of my
9 conversation with DJEP.

10 And then the second part of that is, like, what
11 would you do if you could do something now? How are we
12 going to stop this from happening, right? Because you
13 as a department are paying out millions of pounds,
14 you're fostering this environment that is paying out
15 millions of pounds, destroying these people's lives, and
16 at the same time you're not able to deal with serious
17 concerns. So how do we kind of fix that mess? And that
18 was the kind of detail I got into with DJEP. Not the
19 Secretary of State or CDS.

20 Q. Did you ask what was being done to look into these
21 allegations?

22 A. Of course, yeah, of course.

23 Q. So did you want reassurance from the Director of DJEP
24 that there was a thorough investigation into the
25 allegations?

1 A. Of course.

2 Q. And did he give you that reassurance?

3 A. It didn't give me a warm, fuzzy feeling, no. Because as

4 far as I was concerned -- you know, when I went into the

5 department, I'm not sure it was a particularly popular

6 move amongst the sort of senior leadership of the

7 Ministry of Defence, either civilian or serving, and

8 there was a certain sort of clearing of the air that had

9 to be done with the Director of Judicial Engagement

10 because, to my mind, their basic lack of competency had

11 fostered this environment that had destroyed a lot of my

12 friends' lives, and I made that very clear from before

13 I went into the department. So obviously there was

14 a bit of -- you know, I had to try to understand --

15 because I don't think people are bad and I don't believe

16 in cover-ups. I don't think, you know, they made

17 a deliberate decision, "We think all the troops are bad

18 and they did all this bad stuff so we're just going to

19 pay out the money." I don't think they thought that.

20 I think they thought: "What's the easiest way to protect

21 the department and make this problem go away?"

22 So I had to have a very sort of honest conversation

23 with them, and I did, and at times it was difficult,

24 without a shadow of a doubt. You know, I always made

25 clear to these individuals that I thought they were

1 equally to blame for the fostering of the lawfare
2 environment as much as the Phil Shiners of this world,
3 because they couldn't bring in practices to protect
4 themselves or protect the guys and girls from these
5 claims. And at the same time, you know, if you're just
6 going to pay out money like a cash machine, £92 million,
7 of course the lawyers are going to keep coming, because
8 they're just sucking at the fire hose of public money,
9 and these individuals made huge amounts of public money.

10 So, you know, there was a basic misunderstanding of
11 the very concept of lawfare and what it was about in the
12 Director of Judicial Engagement's team, and clearly,
13 when that collided with me, who'd been campaigning on
14 this stuff for a long time, it was going to be a bit
15 uncomfortable for a while.

16 MR GLASGOW: I'm told that we need a short break for those
17 who are operating the note. Could I ask just for
18 five minutes, if that's acceptable?

19 SIR CHARLES HADDON-CAVE: Indeed. Just the ordinary break
20 for five minutes?

21 MR GLASGOW: Please. Thank you very much, sir.

22 SIR CHARLES HADDON-CAVE: Thank you very much.

23 Break for five minutes until 12.25, please.

24 Thank you.

25 (12.17 pm)

1 (A short break)

2 (12.23 pm)

3 SIR CHARLES HADDON-CAVE: Mr Glasgow.

4 MR GLASGOW: May it please you, sir.

5 Mr Mercer, I'd asked you shortly before we broke if

6 you'd sought reassurance from the Director of Judicial

7 Engagement Policy whether or not there was a thorough

8 investigation being undertaken, and what you'd said was

9 that his response to you didn't give you a warm and

10 fuzzy feeling.

11 A. Yeah.

12 Q. So do we understand from that, that when an

13 investigation was described to you, you weren't left

14 with the sense that it was going to be thorough?

15 A. In my experience, you know, the MoD was terrible at

16 investigating itself. There were things that happened

17 in -- over many -- you know, in the course of my work on

18 IHAT and Afghanistan, clearly cases like Baha Mousa were

19 brought to my attention, clearly unacceptable

20 behaviours, and I had very little faith that the MoD had

21 the ability to hold itself to account.

22 Q. And so whilst you understood there was an

23 investigation --

24 A. Yeah.

25 Q. -- you had no faith in it?

1 A. I thought that now I was in the camp, I had to try to
2 make the investigation -- like, try and bring integrity
3 to the process, right? So there was no point saying,
4 "I don't believe you're investigating", all this stuff.
5 I then started to talk more in detail about, "Right,
6 what did you actually do to investigate these claims?
7 You've been presented with these claims; what have you
8 actually done to interrogate these claims and find out
9 what's going on?" And I sort of got more into the
10 nitty-gritty of the investigation to understand what
11 they had done to investigate the claims, yeah.

12 Q. And when you descended into the nitty-gritty, was that
13 with the director or with those who were carrying out
14 the investigation?

15 A. Sure. So, I mean, I would ask these questions, but
16 often people were not able to answer them. So the
17 director and others would go away and get answers, or
18 set me up a series of meetings with other individuals to
19 try and understand specific concerns I had.

20 Q. Did that allay the concerns you had?

21 A. I mean, I'm sure we'll come on to this, but there were
22 specific -- you know, I didn't think there was bad faith
23 on behalf of the investigators at all. I just thought
24 the big problem you had was that these were very
25 deliberate, sensitive operations, and if you've not

1 conducted those operations, you can give a series of
2 reasons for a series of outcomes, right? And you can
3 have potentially what the untrained eye would consider
4 would be plausible explanations. The problem you have,
5 if you've done those operations and you're intimately
6 involved with that cohort, when you start seeing these
7 explanations, you're like: yeah, that is not plausible.
8 And that becomes the problem.

9 Q. So in --

10 A. Because then you feel like you're kind of being
11 undermined by your own side, right? Because you're
12 saying to these people, "Look, I want to bring in this
13 legislation to protect the majority of servicemen and
14 women, right, but I need you to tell me everything.
15 Tell me everything so that I know the entire political
16 risk that we're taking, and I can present that to the
17 Secretary of State, who is my one-up, and we'll take it
18 from there."

19 When -- you know, as you start picking away at that
20 and the integrity of that process and you start having
21 these questions that they're unable to answer, that's
22 obviously when you start to hit problems.

23 Of course, the easy thing would be to go, "Oh, never
24 mind, you know, it is what it is, done an investigation,
25 gone", but I've never -- you know, I'm not -- you know,

1 I don't want to be pious or anything about it, but, you
2 know, for me it was about professionalism, right, as
3 a minister, and professionalism to the cause that I was
4 trying to address, which was the industrial nature of
5 the vexatious claims against our servicemen and women,
6 and that was very, very separate to covering up criminal
7 activity.

8 Q. So your discussions with the director didn't give you
9 a warm and fuzzy feeling.

10 A. No.

11 Q. Did your discussions with others about the investigation
12 make you feel any warmer?

13 A. No.

14 Q. So the concerns that you had about the ability of the
15 MoD to investigate itself were not allayed by any
16 discussions you had?

17 A. No.

18 Q. Can we just turn to look at a document together because
19 I'd like your assistance with it, please. It's the
20 black folder you've got available on your left-hand
21 side, and it's behind divider number 3.

22 For those who are not following in the same bundle
23 in which I'm looking, the reference from the MoD
24 exhibits is 1980004024. That's 1980004024.

25 You'll see, Mr Mercer, that your particular bundle

1 has your initials in red and a series of numbers
2 sequentially at the bottom to try to help us find the
3 different pages.

4 A. Yes.

5 Q. Can I ask that we look initially to page 28 together, so
6 that will be on three pages, I think, from the document
7 which we've now got on the screen. Thank you very much
8 indeed.

9 I'm entirely in your hands as to whether you read
10 from the screen or from the paper that you've got before
11 you, Mr Mercer, but what we've got here is an email sent
12 from your private office to Peter Ryan, who was the
13 director, and it records a note of a meeting that he had
14 had with you. That's the meeting the director had had
15 with you.

16 So I'll let you get your bearings for a moment. Do
17 you see, if you look to the middle of the page, "Peter"
18 is what is written.

19 A. Yeah.

20 Q. "Thank you for coming to brief the Minister, and for the
21 extremely prompt follow-up actions in advance of getting
22 the read-out ..."

23 A. Who sent this, my private secretary?

24 Q. Yes.

25 So back to 28 if you wouldn't mind.

1 "Peter,
2 "Thank you for coming to brief the Minister, and for
3 the extremely prompt follow-up actions in advance of
4 getting it the read-out, my apologies for the late
5 read-out. For your (and our) records, I have captured
6 the discussion below. Please do correct me if I have
7 missed anything or misrepresented the discussion."
8 Do you see that over the course of the next
9 two pages, although it goes on to a third, but in effect
10 covering two pages, there is your private secretary's
11 note of the discussion that you had had with Peter Ryan
12 when he'd come to brief you?
13 A. Yeah.
14 Q. Now, if we look on in the bundle, and forgive me for
15 doing this, but if we just turn to page 31 for a moment,
16 the email that your private secretary had sent to
17 Mr Ryan resulted in a reply from Mr Ryan, and he
18 provided a version of the read-out which he, Mr Ryan,
19 had edited.
20 A. Yeah.
21 Q. And you'll see that because the tracked changes appear
22 where additions have been made in red.
23 A. Yeah.
24 Q. Obviously you'll be familiar with that. And then if we
25 go over the page onto pages 32 and 33, you can see where

1 entries have also been deleted, and they appear in the
2 boxes to the right-hand side.

3 A. Right, yes.

4 Q. So I'll allow you to get your bearings for a moment, but
5 what we've got here is Peter Ryan's edited record of the
6 briefing meeting that he had had with you, shortly after
7 you'd been appointed a minister.

8 A. Mm-hm.

9 Q. If we look for a moment on to page 32, if you wouldn't
10 mind.

11 A. Yes, I'm on that page.

12 Q. Thank you so much.

13 "[In connection with] Afghanistan: PR [Peter Ryan]
14 updated the Minister [you] on Op Northmoor ..."

15 And then we can see what's recorded there: a number
16 of additions provided in red to the text that had
17 originally been sent out by your private secretary, and
18 a number of deletions that have been marked out on the
19 right-hand side.

20 A. Yeah.

21 Q. So as it now reads:

22 "... there had been some 600 allegations and a much
23 smaller number of civil suits. DPV [you] asked [Peter
24 Ryan] about the source of much of the civil
25 litigation -- and [Peter Ryan] said that Leigh Day had

1 played a significant role, although they were not the
2 sole source of allegations. The great majority of the
3 cases had been shut down in 2017; and the investigations
4 into the more serious allegations had ended last
5 month ..."

6 I'm sorry, are you not with me, Mr Mercer?

7 A. I am. I am just trying to -- there we go, right, "said
8 Leigh Day had played a significant role", and the in red
9 has been added, and on the side has been deleted; right?

10 Q. Yes.

11 A. Yeah. Right, okay, fine. I'm with you.

12 Q. Excellent.

13 "The great majority of the cases had been shut down
14 in 2017; and the investigation into the more serious
15 allegations had ended last month, when it was concluded
16 that the evidential sufficiency test for referral to the
17 [Service Prosecuting Authority] would not be met. The
18 [Provost Marshall (Army)] decision had been agreed by
19 the [Director of Service Prosecutions] and by
20 independent experts brought in to provide additional
21 assurance in handling such complex and high profile
22 investigations."

23 So that's how what was originally a relatively short
24 sentence had been amended to read, and those were
25 additions applied by Peter Ryan to the text that had

1 been set out by your private secretary.

2 A. Yeah.

3 Q. If we look to the next paragraph, you are recorded as

4 having expressed some surprise that the Northmoor

5 investigations had ended, and do we see that there is

6 a deletion which appears on the right-hand side, and

7 what's been removed that your private secretary had

8 noted is that you had:

9 "... provided his [that'll be your] view; based on

10 his own service and information provided to him

11 privately, he was unconvinced that there had been no

12 wrongdoing at all within Op Northmoor."

13 A. Yeah.

14 Q. So if that's an accurate record by your private

15 secretary, it would appear that, during the course of

16 the meeting, he's taken a note of an observation you

17 made to Mr Ryan, and that observation was to the effect

18 that you were unconvinced there had been no wrongdoing

19 at all within Op Northmoor?

20 A. Yeah. It was a she, just for clarity, so I don't get

21 confused. But it was a she, the female -- the private

22 secretary had taken that note of that discussion that

23 I'd had with Peter Ryan and that was her recollection,

24 and that's what I said.

25 Q. Does that accord with your recollection of what you said

1 in that meeting or --

2 A. Yeah, his -- her note does, yeah.

3 Q. What was it that led you to be unconvinced that there'd

4 been no wrongdoing at all within Operation Northmoor?

5 A. Because there were -- the specific nature of the

6 allegations, and inability of commanders of those units

7 and investigators and others to answer basic questions,

8 could not convince me.

9 So this whole time, if I'm honest with you --

10 I mean, no one wants to -- as I've said before, no one

11 wants to believe these allegations, and I wanted some

12 sort of evidence to be able to go in to bat for the unit

13 and for the organisation, and have some confidence that

14 we had investigated this, and in the very messy and

15 complicated nature of close combat, we, you know, could

16 hand on heart say, "Look, I don't think there's anything

17 here."

18 Q. But at that stage --

19 A. I was unconvinced I could do that.

20 Q. Right. So at that stage you were not convinced that you

21 could say there was nothing to these allegations?

22 A. Yeah.

23 Q. Right.

24 Can we just turn over the page to look at another

25 section that's deleted. If we look to the right-hand

1 side, to the deleted sections, do you see that, five
2 entries down, there's a block of text which reads as
3 follows:

4 "Deleted: was keen to understand how decisions had
5 been arrived at, in order to satisfy himself he could
6 defend them in public."

7 Does that refer to an expression that you had used
8 that you were keen to understand how decisions had been
9 arrived at in order so that you could satisfy yourself
10 that they could be defended in public?

11 A. Yes. I mean, that's what I wanted to do, right? I was
12 a minister, I'm proud of the organisation, and I wanted
13 to defend what we did in public, yeah.

14 Q. And if I've understood what you've said just before, you
15 were not convinced that the MoD could investigate itself
16 properly or effectively.

17 A. No, I don't think it understood lawfare, no, and the
18 nature of it and the pernicious nature of it, no.

19 I mean, you know, you've got to understand, when
20 I came into all this, you know, if you go into an
21 organisation like the MoD and you say, "Look, veterans
22 care is unacceptable", you're not going to be flavour of
23 the month, right, because they've been doing veterans
24 care for a long time. If you come in and say, "You
25 don't understand lawfare, and to back this up, you're

1 paying out £92 million, you're ruining all these
2 people's lives, you don't understand lawfare", but they
3 think they do, you're not going to be flavour of the
4 month, right? So those were the points of tension. It
5 wasn't personal. It was on those issues.

6 Q. Just to clarify, you'd expressed a moment ago that one
7 of the concerns you had was that you weren't convinced
8 there was nothing to the Northmoor allegations.

9 A. Yeah.

10 Q. So this isn't just about lawfare, vexatious, industrial
11 claims --

12 A. No, this is about criminal behaviour.

13 Q. Right. So the two sides of the concern that you spoke
14 of right at the outset of your evidence are engaged
15 here.

16 A. Yeah.

17 Q. On the one hand, the MoD doesn't understand the
18 pernicious effect of industrial-scale litigation.

19 A. On the men and women who serve, correct.

20 Q. Exactly. But on the other hand, you believed at this
21 stage that there might be substance to the allegations
22 that Northmoor was investigating.

23 A. Correct.

24 Q. And you wanted to be in a position where you could give
25 a public assurance that what needed to have been done

1 had been done.

2 A. Yeah. Look, my name is intimately wrapped up in this
3 stuff, right? And it's been an incredibly lonely
4 journey. In order to satisfy myself and kind of keep
5 going, the one thing I have to retain is that integrity
6 in what I'm doing, and it's obvious that if I was to do
7 that, I had to satisfy myself that there was nothing
8 there.

9 Q. Can we just turn back in the bundle, although it takes
10 us on in the exchange, if we go back to page 27 for a
11 moment --

12 A. Yes.

13 Q. -- which is the Director of Judicial Engagement Policy,
14 Mr Peter Ryan's, email to your team, which provided the
15 amended document. Do you understand?

16 A. I do.

17 Q. Right. So he writes:

18 "I have taken the liberty of treating this as
19 a draft record. The issues covered are incredibly
20 complex, so don't be surprised that I have made a lot of
21 suggestions.

22 "Among the challenges that we share is a need to
23 protect Ministers and the Department from the perils of
24 disclosure."

25 Were you concerned about the perils of disclosure?

1 A. I mean, "disclosure" is a very broad term. I don't know
2 what he's talking about there. I think he's talking
3 about the disclosure of UKSF sensitive stuff, and, you
4 know, it's pretty obvious that that's being used as
5 a blocker rather than an enabler, right? Because what
6 we have here are serious criminal allegations. There
7 shouldn't be any issues around disclosure. This
8 happened, you know, ten years ago. So I don't know what
9 he's talking about there.

10 I mean, I must say, I -- you know, it's obvious that
11 when I talked earlier in my evidence about being gamed
12 by the department, this is, in black and white, the
13 evidence of that gaming.

14 Q. Can we just go to the paragraph we were looking at. Can
15 I just help you with that, if possible.

16 A. Yes.

17 Q. In terms of the perils of disclosure, Mr Ryan wrote on:

18 "Given the ongoing and prospective legal challenges
19 on a wide range of issues, it is quite possible that
20 Ministerial records would be put into the public
21 domain."

22 So rather than it being a document that relates to
23 UKSF, it appears he is expressing -- you may or may not
24 agree -- a concern that ministerial documentation might
25 enter the public domain, hence the perils of disclosure.

1 A. Yeah, I mean, I don't have a concern around that.
2 That's his concern. I'm so sorry, I don't understand
3 the point you're getting at.
4 Q. What I want to identify is this.
5 A. Yeah, go on.
6 Q. He appears to express a concern about ministerial
7 documentation entering the public domain.
8 A. Yeah.
9 Q. So he's treated what he was sent, namely the note of
10 a meeting, as a draft.
11 A. Yeah.
12 Q. And he has edited it in the way that we've just seen.
13 A. Yeah. Well, that's what it says here, but you'll have
14 to ask him.
15 Q. Can we just look at this together, since it's a record
16 of a meeting that you're supposed to have had with him.
17 A. Sure.
18 Q. So presumably you looked at this.
19 A. Generally, you don't see read-outs, no. You generally
20 don't see read-outs.
21 Q. He writes, having expressed the concern that ministerial
22 records will be put into the public domain:
23 "So bland is often best."
24 In other words, it would appear that anything that
25 might be exciting or interesting needs to be removed

1 from the document so that it's just bland and vanilla.
2 Is that how you read that? Am I being unfair to
3 Mr Ryan?
4 A. I think you're being slightly unfair to me. I think you
5 should ask Mr Ryan. Because you're asking me -- this
6 is -- you're asking me to translate the English language
7 and take inferences from it. I'm not -- you know, he's
8 written this and, out of respect to him, I think, you
9 know, we need to ask him what he meant. Clearly you can
10 infer what you're saying, but you can also infer other
11 things.
12 Q. Were you told that the read-out had been edited in such
13 a way --
14 A. Of course not.
15 Q. -- to remove the passages that we've looked at?
16 A. No, of course not.
17 Q. If you had been told that, would you have wanted those
18 passages put back into the read-out?
19 A. Look, if I have a meeting and my private secretary has
20 no agenda but to record an accurate record of the
21 meeting, writes a read-out, and then it goes to the
22 relevant departments and they change that to make it
23 look like they said things which, you know -- I mean,
24 I said some pretty serious stuff there that's been taken
25 out of the record. For example, I don't have any

1 confidence in Op Northmoor.

2 Q. Yes.

3 A. Yeah, I'd have been like, "What's going on here?" Yeah,

4 of course. But this comes back to the point where

5 I felt the entire time I was being gamed, rather than --

6 I wanted to be an asset to that department in dealing

7 with lawfare, but it was never like that. It was like,

8 "We have just got to manage Johnny."

9 Q. Which is why I took you to the document, Mr Mercer. I'm

10 not seeking you to interpret somebody else's language,

11 but I'm asking --

12 A. Sure, but it does say those words you've read out, yes.

13 Q. So in dealing with Johnny, it would seem that bland is

14 often best. It's hard --

15 A. My wife would certainly agree, yes.

16 Q. It's hardly a motto for the Director of Judicial

17 Engagement Policy, is it?

18 A. Well, of course it's not, and it speaks to that point

19 that I've mentioned a number of times. You know, I --

20 but that sort of behaviour made it worse, because if

21 you're the guy who's trying to be, you know, "Just tell

22 me what happened here", right, and people are bland with

23 you, you know, it doesn't take the brains of an

24 Archbishop to think: well, what are you not telling me?

25 Q. Now, if we leave for a moment Mr Ryan and consider

1 others with whom you had conversations --

2 A. Yeah.

3 Q. -- because we have identified three people. If you want

4 to, we can look back at it in your statement, but it's

5 paragraph 20 for those that are following.

6 The Director of Judicial Engagement Policy we've

7 just dealt with, Mr Ryan.

8 A. Yeah.

9 Q. You told us that you had conversations with the Chief of

10 the Defence Staff --

11 A. Yeah.

12 Q. -- and the Secretary of State.

13 A. Yeah.

14 Q. So insofar as the conversations you had with those two

15 individuals, was that at the same time, or were they

16 separate conversations?

17 A. Yeah, look, I would always go -- I mean, I had a good

18 relationship with the Chief of General Staff, to be fair

19 of him -- Chief of Defence Staff, I'm sorry. And

20 I would -- the one thing I really missed in political

21 and ministerial life was having the kind of -- not

22 father figures, because that's too strong, but the kind

23 of senior people around that when you encountered issues

24 that you weren't quite 100 per cent sure what to do

25 about, you could go and knock on the door, shut the door

1 and ask for some advice, and I very much had that
2 relationship with that particular CDS, and if I'm
3 honest, I didn't know what to do, because you don't want
4 to be -- you know, you don't want to be isolated, you
5 don't want to be gamed, you don't want to be made to
6 feel like you're on your own, you don't want to be made
7 to feel like you're the fly in the ointment. But, at
8 the same time, it's very difficult when, you know,
9 presented with the facts of this particular matter.

10 Q. So did you discuss with CDS the allegations that you
11 were made privy to?

12 A. Yes. I couldn't tell you what sort of level of detail,
13 but yes.

14 Q. But at least the two of you in that room understood what
15 you were talking about?

16 A. On that rare occasion, I think so, yes.

17 Q. And did you discuss with him your concerns that there
18 might be more to the Op Northmoor investigation than
19 other people believed?

20 A. Everyone has always known those were my concerns. I say
21 the same thing to everybody in public and private. They
22 were unable to answer basic questions, and it made me
23 very uneasy.

24 Q. Did you express to him your concerns that the MoD was
25 not best placed to investigate itself?

1 A. No, I wouldn't say the MoD is not best placed to
2 investigate itself. All I'm concerned about is the
3 integrity and professionalism of that investigation.
4 I'm only interested in the truth, right? So whether the
5 MoD does it or -- you can clearly build in firewalls
6 within organisations to have competent investigations.
7 So it wasn't a question of the MoD is not good enough to
8 do this; it's a question of: is this -- you know, there
9 was always an overarching issue here where, you know,
10 I was bringing in this legislation, and then, you know,
11 you have -- you know, in 10, 15, 20 years' time, an
12 individual confesses to criminal behaviour, and then
13 that's a reflection on my professionalism as the
14 minister, professional curiosity to understand: well,
15 what actually is going on here? Have we investigated
16 this to the nth degree, where I can have confidence to
17 stand up and say, "Look, I recognise the absolute mess
18 that is close combat and all the rest of it, but I hand
19 on heart do not think there was something here and we
20 have to progress on those terms"?

21 And that's the position I've wanted to end up in
22 because I didn't want to be sat here today. I always
23 knew I would be sat here today. I always knew that.
24 And this was everything I tried to avoid at every stage.
25 Q. In terms of the discussion or discussions that you had

1 with CDS, were you reassured by anything that he said to
2 you that the investigation that was being carried out was
3 going to be properly rigorous and thorough?

4 A. So I wasn't convinced he had the granularity on the
5 investigation, because when you're talking about the
6 investigation and the kind of why -- you know, you can't
7 just look at an investigation and go, "Mm, I don't like
8 the smell of that"; you have to have real granularity,
9 intellectual application of methods of investigating, to
10 try and understand why there's a problem. I don't
11 expect him to have that, but I expected him to be
12 concerned about the allegations, and he was.

13 Q. Did he share your concern that there needed to be
14 a detailed and thorough investigation to find out where
15 the truth lay?

16 A. He made it clear to me that I needed to satisfy myself.

17 Q. Right.

18 A. I think he sort of entrusted me to satisfy myself and
19 then come back and tell him, "It's okay."

20 Q. So, in a sense, he was expecting you to go out to do
21 more work and to report back, just to let him know
22 whether you did or didn't have concerns?

23 A. Sure. So this was around about the same time as the
24 Secretary of State, where he said to me, "I want you to
25 get to the bottom of it." So I couldn't tell you if it

1 was just before or just after, but it was around about
2 the same time.

3 Q. I was just going to come to ask you about that.

4 So can I ask you about the discussion with the
5 Secretary of State and what it was he asked you to do.

6 A. Yeah.

7 Q. So in addition to discussions with the Director of
8 Judicial Engagement Policy, and Chief of Defence Staff,
9 you had a discussion with the Secretary of State about
10 the same issues.

11 A. Correct.

12 Q. And you and he each understood that when you spoke about
13 allegations, it was allegations of people being engaged
14 on target when they didn't pose a threat?

15 A. Yeah.

16 Q. And it was allegations that, in the aftermath of that,
17 something might have happened to documentation to --

18 A. Yeah, the Secretary of State was fully aware of the
19 allegations.

20 Q. Right.

21 Did you explain to him your concerns that there
22 was something in the allegations?

23 A. I worked hard at every stage to disaggregate rumour and
24 speculation, and why -- like, why are you not
25 comfortable with this? Why do you feel uncomfortable?

1 Why do you not have that warm, fuzzy feeling that tells
2 you, you know, there's nothing here? And I did attempt
3 to walk him down that path, but if I'm completely
4 honest, you know, he's Secretary of State, he's
5 extremely busy. The department is engaged across
6 multiple fronts. He essentially left it to me.

7 Q. Okay. And in leaving it to you, was that a specific
8 direction that he wanted you to resolve the situation
9 one way or the other?

10 A. Yeah, he pretty much told me to get to the bottom of it,
11 yeah.

12 Q. What did you understand that to mean?

13 A. Well, find out what's actually happened here. Did it
14 happen? Have we investigated it properly? Are we going
15 to look stupid in three or four years time? If we bring
16 in this legislation and everyone says we're covering up
17 abuses, are we actually doing that inadvertently?

18 Q. So this is a specific request by the Secretary of State,
19 "You need to get to the bottom of this"?

20 A. Yeah.

21 Q. And what did you do to try to get to the bottom of it?

22 A. Well, I saw -- I then engaged on a series of briefings
23 with individuals involved at different iterative stages
24 of the investigation.

25 Q. And we'll probably come to talk about those a little

1 later today, because I see we're shortly before lunch,
2 but can I ask you this: did there reach a point where
3 you were satisfied that you'd got to the bottom of it?

4 A. No, it's only ever got worse, to this day.

5 Q. And when you say worse, what do you mean by, "it's only
6 ever got worse"?

7 A. I've been desperate for some sort of evidence to
8 disprove these allegations because I don't want to
9 believe them. I don't want to believe them of that
10 unit. I have friends in that unit. I have friends who
11 were killed on operations. I have friends who were
12 never the same person again, after Afghanistan. And
13 I don't want to believe it. But -- and so at every
14 stage, I've tried to find something to disprove these
15 allegations, but I've been unable to.

16 Q. And what about the quality of the investigation that was
17 undertaken in respect of those allegations? Do you have
18 faith in that?

19 A. I think -- yeah, I don't think investigators acted in
20 bad faith at all. I just think there's a level --
21 there's a very privileged level where you really
22 understand how these operations work, and you have to
23 have that knowledge to be able to pick out the
24 anomalies. And unfortunately, they got a minister who
25 had that knowledge and the anomalies just couldn't stack

1 up.

2 Now, everybody else who sees the anomalies,
3 including the Secretary of State, I can understand why
4 they'd go, "Oh, well, there's no new evidence, no one is
5 going to say anything, let's get on with it."

6 Unfortunately, I had a series of experiences and then
7 ended up as a minister in the department, and that's why
8 we are where we are today.

9 Q. Can I clarify, I didn't mean by my question to imply
10 that any of the investigators behaved with bad faith.

11 A. Sure.

12 Q. It was whether you had faith in the result of the
13 investigation, not whether they behaved in bad faith.

14 A. No, because the commanders of those units were unable to
15 answer basic questions, to me personally, and I made it
16 clear in a letter I'm sure we'll come on to that I did
17 not believe them, and I made that clear at every stage.

18 Q. Did not believe who, Mr Mercer?

19 A. The individuals who were giving me these accounts.

20 Q. And were those individuals from UKSF?

21 A. Yes.

22 Q. Were they from UKSF1?

23 A. They were part of the joint organisation.

24 Q. And when you didn't believe them, do you mean to suggest
25 that you believe they were lying to you, or that they'd

1 said something that was inaccurate, therefore you didn't
2 believe it?

3 A. No, I've never said anybody lied to me. I've said
4 that -- and I'm very clear on this point -- you need to
5 have a degree of intellectual curiosity and rigour with
6 these issues, and you see that again -- you see that
7 time and again in Government, in that -- you know,
8 you've seen it with the Post Office Scandal, you've seen
9 it with the stuff that's going on with the Afghanistan
10 Special Forces. You have to have a degree of
11 intellectual and ministerial competence and interest in
12 this. And so I don't think they were kind of misleading
13 me. Sorry, I don't think they were deliberately sat
14 there thinking: "I'm going to tell this guy
15 a falsehood." But there wasn't that professional
16 curiosity to get to the bottom of it that I would have
17 had, if it was my organisation, because I wouldn't want
18 allegations like that anywhere near me.

19 Q. And those individuals with whom you spoke that lacked
20 this intellectual rigour, were they involved in some way
21 in enquiring into what had happened?

22 A. Yeah. When I say "intellectual rigour", I mean --
23 I don't -- obviously, they're far more intellectual than
24 me. I'm talking about the curiosity to be: well, why
25 has that happened? Not just accepting a version of

1 events that you know deep inside is implausible, but why
2 has that happened? And we'll come on to this, I'm sure,
3 this afternoon, but there's a series of events that
4 anybody who has any experience of these operations would
5 go: "That's not plausible in any way." And I expected
6 those senior commanders of those units to be able to
7 sort that out. Not me, but them. And that was their
8 responsibility.

9 Q. And from your discussions with them, did you have any
10 confidence that they were going to sort it out?

11 A. No. I thought they were going to have regular efforts
12 to say "Come forward with information", but as you'll
13 discover in this Inquiry, you have to do more than that.
14 You have to understand what you're dealing with, in
15 terms of culture, organisation, operations, in order to
16 really get to the truth.

17 Q. How best do you think we can get to the truth in this
18 Inquiry?

19 A. Well, I think -- well, that's not for me, and I won't --
20 I think, if I was -- I think that the first thing is to
21 have a real deep understanding of the sorts of
22 operations that were going on, to then see the
23 explanations in the reports that came back from that.
24 And in my mind, they're pretty obvious questions. But
25 I'm sure we'll come on to that this afternoon.

1 Q. And presumably you need to speak to people with
2 firsthand information?

3 A. You do need to speak to people with firsthand
4 information. I'm sure you will.

5 MR GLASGOW: Would that be a convenient moment, sir?

6 SIR CHARLES HADDON-CAVE: It would indeed.

7 Mr Mercer, your point is that you'd done the hard
8 yards in Afghanistan, unlike most of the others in this
9 area, and you knew which questions to ask and which
10 answers were or were not plausible, I think is your
11 point?

12 A. Yes, I think that's a fair point, sir, yeah.

13 SIR CHARLES HADDON-CAVE: Then we'll break now.

14 MS DAVIDSON: Before you rise, you've asked Mr Mercer to
15 reflect on an issue over lunch. Myself and other
16 members of the legal team would like to speak to him
17 specifically on that. May I have your leave to do so?

18 SIR CHARLES HADDON-CAVE: Indeed. I was going to give you,
19 of course, that liberty. Thank you for raising it.

20 We'll break now, please, until 2.00. If you need
21 more time, then do let me know.

22 And you may, Mr Mercer, speak to your legal team
23 about that particular aspect.

24 THE WITNESS: Thank you.

25 SIR CHARLES HADDON-CAVE: Good.

1 Thank you all. 2.00, please.

2 (12.58 pm)

3 (The short adjournment)

4 (2.00 pm)

5 (Proceedings delayed)

6 (2.09 pm)

7 SIR CHARLES HADDON-CAVE: Mr Mercer, I know you've had
8 a little time over the lunch break to speak to your
9 legal team and for them to have the opportunity to speak
10 with you about this particular issue.

11 I hope they've had some opportunity to explain to
12 you a number of important facts.

13 The first is that this Inquiry and I am wholly
14 independent of Government, the MoD, of all legal
15 participants, and that I'm acting with the Inquiry
16 purely in the public interest. But I am wholly
17 independent, as a serving Lord Justice of Appeal, and
18 I hope that is fully understood.

19 Secondly, my job is to get to the truth of the
20 allegations, one way or the other, as quickly as
21 possible in the public interest, and to do this, I need
22 the co-operation, and proactive co-operation, of
23 everybody, and for those who come before the Inquiry to
24 tell me everything that they know and not to hold back
25 any detail, whether for their own purposes or because of

1 some misplaced loyalty.

2 Thirdly, I hope they have emphasised to you that the
3 Inquiry is very used to dealing with highly sensitive
4 and highly confidential information, indeed information
5 of the most sensitive type, which includes the security,
6 the welfare, the wellbeing, and the confidentiality of
7 witnesses. Indeed, I have already issued numerous
8 Restriction Orders to that very effect, because I and
9 the Inquiry fully appreciate the difficulties that there
10 are, and that it is extremely important that witnesses
11 who come forward, or those who are asked for information
12 or come forward with it, are treated with the utmost
13 care. So you and, indeed, everyone can have complete
14 confidence in the Inquiry, and that the information that
15 is given to the Inquiry, the names and so on that are
16 provided to the Inquiry in confidence, will be treated
17 in confidence by me and the Inquiry team, and with the
18 very greatest care.

19 There is nothing for you or anybody to worry about
20 when they come forward and, as you will have heard this
21 morning, the Inquiry has set up a number of extremely
22 secure methods of individuals getting in touch with the
23 Inquiry direct, and many have already.

24 This has been, I know, a busy day, with lots of
25 questions and lots of evidence, and I am prepared,

1 because I want to get on with the rest of your evidence
2 today, to give a little bit more time for you to discuss
3 these issues, in particular to discuss these important
4 points that I made just now, and which I would like you
5 profoundly to understand, and indeed everyone who gets
6 in touch with the Inquiry and responds, indeed, to my
7 further call for evidence, that they can have complete
8 confidence in the integrity of the Inquiry, the desire
9 of the Inquiry to take the utmost care with all those
10 who come forward, and their wellbeing, but also to have
11 no doubt as to the determination of the Inquiry to get
12 to the bottom of these allegations as quickly as
13 possible, one way or the other, true or untrue, in the
14 public interest, so that I can make any recommendations
15 that need to be done and that everybody can move on.

16 So I am going to park this issue briefly. I'd like
17 you to have some further discussions with your legal
18 team, and for them to have discussions with you about
19 this. It is a very, very sensitive, difficult issue
20 that I am dealing with, and I want everybody to
21 understand that I fully appreciate the emotions
22 involved, the camaraderie involved, all these other
23 issues, some of which you've touched on this morning, if
24 I may say so, very eloquently. But it is very important
25 that everybody has faith in the Inquiry's ability, and

1 my ability, to get to the bottom of this with all due
2 speed, and that's why you must all trust me and the
3 Inquiry to handle what you tell us and tell me carefully
4 and with great confidence. There are mechanisms, which
5 I will set in train, whether it's another CLOSED hearing
6 or whether it's some other hearing, that you can speak
7 to me and the Inquiry Team, with your lawyers present,
8 in a completely secure surrounding.

9 We've got quite a lot of the rest of your very
10 detailed statement to go through, so unless there's
11 anything that you'd like to say to me now or your
12 counsel would like to say, that is how I'd like the
13 position to lie for the moment. But I would like this
14 issue to be dealt with, please, as rapidly as possible,
15 because it is important that this Inquiry proceeds at
16 pace. There are a lot of allegations flying around, and
17 as long as they are flying around, they are corrosive to
18 everybody who might have a cloud hanging over them. So
19 that is why I am very, very keen to secure the
20 co-operation and confidence of everybody who comes
21 before me.

22 All right?

23 THE WITNESS: Sir.

24 SIR CHARLES HADDON-CAVE: Thank you.

25 Mr Glasgow.

1 MR GLASGOW: May it please you, sir.

2 Mr Mercer, so that we are not confused about the

3 evidence you gave before lunch, can I please check with

4 you that the three people you've discussed matters with

5 that you've mentioned to us were the Chief of Defence

6 Staff; is that correct?

7 A. Yeah.

8 Q. The Director of Judicial Engagement?

9 A. Yeah.

10 Q. And the Secretary of State?

11 A. Yeah.

12 Q. So Director of Judicial Engagement was Peter Ryan.

13 A. Yeah.

14 Q. Chief of Defence Staff, was that Sir Nick Carter?

15 A. Yeah.

16 Q. And the Secretary of State, of course, was Ben Wallace

17 at the time.

18 A. Yeah.

19 Q. As part of your assurance to them that you would get to

20 the bottom of what had happened, what did you decide to

21 do?

22 A. Well, initially I engaged with Peter Ryan, Director of

23 Judicial Engagement, and from him sort of flowed

24 a series of requests for meetings, and that was included

25 but not limited to: Provost Marshal (Navy); Jon Murphy,

1 who was an external sort of chief constable, auditor of
2 the inquiry; Director of Special Forces. Yeah,
3 individuals like that.

4 Q. Provost Marshal (Navy). Why did you speak to Provost
5 Marshal (Navy), please?

6 A. Because, as I understood it, he was the sort of senior
7 rank dealing with this.

8 Q. When you say "with this", do you mean --

9 A. With the whole -- with both Northmoor and the sort of
10 complaints more broadly. Because there was always the
11 issue that I understood Northmoor, when it was initially
12 set up, was looking at issues in 2014 onwards, or 2013
13 onwards, and I was under the impression that two cases
14 in particular that have been JR'd in this case were
15 outside of that envelope. There was always that element
16 of confusion as to whether they were in that envelope or
17 outside that envelope. That question was never really
18 answered to me, but Provost Marshal (Navy) was the sort
19 of chief, you know, cardholder for investigating these
20 issues, as I understood it at the time.

21 Q. And were you reassured, following your conversations
22 with him, about the investigation that was being
23 undertaken?

24 A. Well, I was. I mean, I had a very public run-in with
25 his predecessor during the inquiry into the Iraq

1 Historic Allegations Team, because I felt that they were
2 unprofessional, I felt that they had made matters worse,
3 and essentially there was a level of incompetence that
4 I wasn't prepared to accept. I was pleased to see the
5 new Provost Marshal (Navy). Highlights of the
6 conversation are hard to recollect, I'm sure there must
7 be a note of it somewhere, but I asked him what he
8 thought of the allegations and, to the best of my
9 recollection, he sort of said they had been
10 investigated.

11 At no stage was I made aware of what subsequently
12 came out, that, for example, people were arrested and
13 cases went to the Service Prosecuting Authority. That
14 was never mentioned in those meetings.

15 Q. Let's deal with what was mentioned rather than what
16 wasn't mentioned.

17 A. Yeah.

18 Q. Did he reassure you that matters had been investigated?

19 A. He reassured me that they had been investigated. I did
20 not feel reassured.

21 Q. So he assured you they had been investigated --

22 A. Yeah.

23 Q. -- but you were not reassured by his words?

24 A. Yes.

25 Q. Did he give any assessment to you as to whether there

1 was any truth in the allegations that he said had been
2 investigated?

3 A. I mean, very much -- I don't have a lot of recollection
4 of that meeting, but it was very much he was doing his
5 job, you know, I would never question his
6 professionalism or integrity, and that they had been
7 investigated and there was kind of nothing more to say
8 on the matter. I didn't at that stage pick apart the
9 different individual sort of technical reasons as to why
10 I was concerned with him, to the best of my
11 recollection. That was more with Jon Murphy.

12 Q. So insofar as there was any assurance from Provost
13 Marshal (Navy), the assurance was that matters had been
14 investigated --

15 A. Yeah.

16 Q. -- and that there was nothing more to see here; does it
17 come to that?

18 A. Essentially, but I felt like he was saying that to --
19 because he'd done his job, right? It didn't give me
20 a warm, fuzzy feeling. When you're dealing with
21 soldiers, you know, and sailors and airmen and women,
22 you can tell if that's the end of the conversation,
23 right? And it didn't give me a sort of warm fuzzy as to
24 what was going on. But in a way, that didn't to me
25 because I was then going to go to Hawkins and DJEP and

1 DSF anyway, so ...

2 Q. Let's just deal with the other people with whom you

3 spoke.

4 You spoke to the Director of Special Forces.

5 A. I did.

6 Q. And did that person give you an assurance that the

7 allegations had been looked into?

8 A. Yes, I had a detailed conversation with him.

9 Q. And did the Director of Special Forces give you any

10 assurance as to whether there was or was not any truth

11 in the allegations that had been investigated?

12 A. He didn't have the professional curiosity I expected him

13 to have.

14 Q. We'll deal with his lack or presence of professional

15 curiosity in a moment. What I asked you was: did he

16 give you any assurance that the allegations that had

17 been investigated were or were not true?

18 A. It wasn't so much as were or were not true; it's that

19 there wasn't any evidence that they could find. So it

20 wasn't professing an opinion, "Minister, these are not

21 true" or "Minister, these are true"; you know, "There is

22 no evidence of this". There was no evidence to back up

23 these claims. And this was the very crux of the

24 problem.

25 Q. When you had your conversation with the Chief of the

1 General Staff -- who must have been Mark Carleton-Smith?

2 A. So, Chief of Defence Staff.

3 Q. No, your statement records the Chief of the General

4 Staff. Would you like to look at paragraph 22 --

5 A. Oh, sorry, I thought we were talking about the initial

6 conversations.

7 Q. No, we weren't. We've moved on from there. It's my

8 fault.

9 A. Okay.

10 Q. You were telling us about the conversations you'd had

11 with people after your initial conversations.

12 A. Right.

13 Q. One with Provost Marshal (Navy) --

14 A. Yeah.

15 Q. -- another with the Director of Special Forces --

16 A. Yeah.

17 Q. -- and the third with the Chief of the General Staff --

18 A. Yeah.

19 Q. -- who must have been Mark Carleton-Smith.

20 A. Correct, yeah.

21 Q. Right.

22 Did Mark Carleton-Smith assure you that the

23 allegations had been looked into?

24 A. If I'm completely honest, I can't recollect what

25 Mark Carleton-Smith said to me.

1 Q. Well, how about looking at the last sentence of your
2 paragraph 22, because you were completely clear when you
3 wrote that statement and signed it in November last
4 year.

5 A. Yeah.

6 Q. "During all of my conversations with [the Director of
7 Special Forces] and [Chief of General Staff] I was
8 assured that the allegations had been investigated and
9 were untrue."

10 A. Yeah, that's true, but the very --

11 Q. Well, I'd hope so, because it's in your statement.

12 A. -- particular nature of the conversations, I can't
13 recall. But that broad summation of them is true and
14 accurate.

15 Q. Again, Mr Mercer, I've not asked you for the detail of
16 the conversations; I'd simply asked you of two things --

17 A. Well, you're asking me for specific words, aren't you?
18 You're saying: "Did this individual say to you this is
19 not true?" And I'm saying to you: I don't recall the
20 specifics of that, but during all of my conversations,
21 the broad reflection of that was that I was assured the
22 allegations had been investigated and were untrue.

23 Q. So your take-away from your discussions with the
24 Director of Special Forces and Chief of the General
25 Staff was the allegations had been looked into, and they

1 were untrue?

2 A. Yes.

3 Q. And did that set your mind at ease?

4 A. No.

5 Q. Why not?

6 A. Because in the course of those conversations, I had

7 asked specific questions as to why there was no evidence

8 to disprove these allegations.

9 Q. Well, there's a difference between no evidence to

10 disprove, and untrue.

11 So let's just be clear: they assured you the

12 allegations were untrue; in other words, there was no

13 truth in them?

14 A. Yeah.

15 Q. Right, okay.

16 So, having spoken to the Director of UK Special

17 Forces and the Chief of the General Staff, both of whom

18 separately told you this has been looked at and there's

19 no truth in the allegations, you did not have a warm and

20 fuzzy feeling?

21 A. No, because that wasn't the only aspect of the

22 conversation. So during that conversation, we talked

23 about a number of issues around the actual

24 investigation. I remember this specifically with DSF,

25 less so with CGS, Mark Carleton-Smith, but I remember

1 specifically with DSF we had specific conversations
2 about the recording of evidence of these operations,
3 and, you know, where there would have been opportunities
4 to disprove these allegations, that did not now exist,
5 and that made me feel very uncomfortable because there
6 was no plausible reason for that evidence not to exist.

7 Q. You had discussions with representatives from Operation
8 Northmoor?

9 A. Erm ...

10 Q. If it helps, look at the first sentence of paragraph 22:
11 "... I received a briefing from officials in
12 relation to Operation Northmoor ..."

13 A. Yeah, not representatives from Op Northmoor.

14 Q. So you didn't speak to anyone from Op Northmoor?

15 A. I don't remember doing that, but it says here I received
16 a briefing from officials in relation to Op Northmoor.
17 That's what happened. DJEP and others.

18 Q. Did you speak to Sir Jon Murphy, who was providing --

19 A. Yeah, but he was an independent chief constable brought
20 in for --

21 Q. External advice.

22 A. Yeah, so he wasn't part of it.

23 Q. Did you want to speak with people directly involved in
24 the investigation to satisfy yourself, as you've been
25 asked to do by the Secretary of State, that there was

1 nothing to see here?

2 A. I think -- I'm not sure that would have been appropriate
3 because they wouldn't have been able to answer my very
4 specific questions around evidence. So, I mean, would
5 it have been useful? Probably. But as a minister, you
6 expect to be able to deal with the kind of heads of
7 sheds of these different lines of command, for example
8 DJEP and Provost Marshal (Navy) and CGS and CDS and DSF,
9 and have that integrity and that process without having
10 to then back pick into those organisations, and I think
11 that was a fair assessment to make.

12 Q. So at the time you left your various meetings, do
13 I understand that you were still of the view that there
14 was something to investigate with Op Northmoor and that
15 there might be truth in the allegations?

16 A. Something to investigate with Op Northmoor ... I came
17 away from those meetings with very clear concerns about
18 why evidence that I'd asked to see, or any evidence
19 indeed, that would help us disprove these allegations
20 did not exist. That was the specific point of my
21 concern.

22 Q. Did you go back to the Secretary of State and say, "I've
23 met with a number of people, I've tried to get to the
24 bottom of the position, I've been told there's nothing
25 to see here, but I have very real concerns"?

1 A. I said I did not believe DSF and CGS.

2 Q. When you told the Secretary of State that you didn't
3 believe the Director of Special Forces or the Chief of
4 the General Staff, what did you tell him you didn't
5 believe in what they'd said to you?

6 A. I told him that I did not believe there was nothing
7 there. I told him that I did not believe their account
8 as to why there was no full-motion video of any of the
9 ten operations that had been selected at random by
10 Jon Murphy. I did not believe the accounts of the
11 call-out procedure and the behaviour of detainees on
12 target that was, you know, recounted again and again and
13 again. And I did not believe that no one could remember
14 any of the operations that they'd been asked. And as an
15 integrity shout, being asked to sign that off, I didn't
16 believe them.

17 So maybe my fault, but I didn't believe them, and
18 I couldn't believe them, and my integrity wouldn't allow
19 me to say that I did.

20 Q. So your take-back to the Secretary of State was that,
21 having been tasked by him to get to the bottom of this,
22 you could not agree with what you were being told and
23 you wouldn't sign off on it as accurate?

24 A. Correct. I think my words were, "Something stinks".

25 Q. And when you advised the Secretary of State that the

1 allegations that were being made about UKSF1 were, in
2 effect, not being looked at properly, what was his
3 response, if any?

4 A. So the Secretary of State was concerned, but the
5 Secretary of State was certainly -- I guess, you know,
6 we -- we had a testy relationship at times, but I felt
7 we kind of balanced each other out quite well. He was
8 certainly more of the view that, you know, "Well, there
9 is no new evidence, Johnny, there is no new evidence,
10 this has been thoroughly investigated." And that wasn't
11 the point I was making. You know, the point I was
12 making was very clear, in that there should be something
13 to refute these -- just something to refute these
14 allegations. The absence of anything is what pricks
15 your conscience.

16 It's like when you're -- it's hard to explain,
17 right, but when you're in Afghanistan, you're looking
18 for IEDs, okay, you're looking for the presence of the
19 abnormal and the absence of the normal to understand
20 what's going on, to try and ascertain where these things
21 are all the time, and that's what happened with this:
22 there was the absence of the normal and the presence of
23 the abnormal.

24 Q. Did you ask to be provided with something to show you
25 the source of the allegations?

1 A. I did.

2 Q. In other words, you wanted to know how it was that UKSF1
3 were being accused of engaging people on target when
4 they didn't pose a threat?

5 A. I did.

6 Q. When you asked to be shown the evidence, what was the
7 response?

8 A. So a note was brought up to my office with an official.
9 I was made to sign --

10 Q. Can I interrupt you for a moment.

11 A. I'm so sorry.

12 Q. It's my fault. Can I just check.
13 Did you ask once or more than once before the note
14 arrived?

15 A. Oh, I had to press the point. Yeah, I had to press the
16 point. As you can see from before lunch, I mean, I was
17 trying to be gamed out of this, right, so I had to ask
18 a number of times.

19 Q. So you asked a number of times and someone came to your
20 office and --

21 A. Eventually someone -- an individual came to my office,
22 a senior official. I had to sign a bit of paper and
23 then I was shown this -- it was essentially a piece of
24 paper. So it's actually -- there's a --

25 Q. You'll find it in divider 1 if you're looking for it.

1 A. Thank you. There's a version of this note in divider 1,
2 but it wasn't in that format when I saw it; it was
3 printed off on what I would describe as a Word document.
4 That is military staff writing. It wasn't in that
5 format, but it broadly said pretty much the same thing.

6 Q. Can I again interrupt you for a moment so that others
7 who are trying to follow -- the exhibit reference of the
8 document I've just directed your attention to is the MoD
9 exhibit 1980001587. That's 1980001587. The document
10 has been brought up on the screen. You have a hard copy
11 available to you in tab 1. If I've just understood what
12 you've said, the text that you looked at is not the same
13 format as what we have here, but the content is the
14 same.

15 A. Correct.

16 Q. Right. So it's a document that's dated in the top
17 left -- if we just scroll up, I'm so sorry --
18 5 April 2011, identified for the attention of the DSF,
19 Director of Special Forces, and then if we look to the
20 body of the text, which you're familiar with:
21 "Allegations of EJK by UKSF."
22 So allegations of extra-judicial killings by UK
23 Special Forces.
24 "My apologies for not raising this with you during
25 my leaving call, but I was still formulating my thoughts

1 and our truncated meeting didn't seem the right moment."
2 I'm going to pause for a moment and just check this.
3 At the bottom of the document there is the cipher
4 for the individual who wrote this note, which is N1785,
5 the commanding officer of UKSF3.
6 I see you've opened the gist sheet. Please don't
7 say any name at all, Mr Mercer. The version that you
8 looked at, did it have a name on it?
9 A. Of course.
10 Q. And does the name accord with the name that is alongside
11 the cipher N1785?
12 A. I'll check that.
13 Yes. Yeah, that is the same --
14 Q. 1785, thank you, if I got the numbers the wrong way
15 round.
16 A. Yeah, that's the correct name.
17 Q. Thank you.
18 Then we'll begin again at paragraph 2:
19 "I have for some time been aware of rumours within
20 [UKSF3] that [UKSF1 subunits] have been conducting
21 summary executions of supposed Taliban affiliates on
22 target in [Afghanistan]."
23 I'll pause whilst you look at something else.
24 I don't want to read on.
25 A. No, that's fine. Please go ahead.

1 Q. "Until very recently, I have not reported this any
2 further and have cautioned my team against peddling
3 malicious speculation. However, I have now been given
4 more information of a nature which makes me seriously
5 concerned for the reputation of UKSF. One of my team,
6 an officer, has been told by an individual from [UKSF1]
7 that there is in effect an unofficial policy amongst the
8 [UKSF1 subunits] to kill wherever possible fighting age
9 males on target, regardless of the immediate threat they
10 pose to our troops. In some instances this has involved
11 the deliberate killing of individuals after they have
12 been restrained by [the subunit] and the subsequent
13 fabrication of evidence to suggest a lawful killing in
14 self defence.

15 "What I have been told does not amount to anything
16 as substantial as evidence. But to my sense it is more
17 than just what had been, until recently, vacuous rumour.
18 But if UKSF individuals are conducting EJKs then the
19 implications are clearly stark. Notwithstanding this,
20 I feel most strongly that thorough appropriate
21 investigation is warranted. To be frank, I do not know
22 what to do next and to that end I'd welcome your
23 assessment on how you think we should proceed?

24 "I am sorry to have to bring this to you at what is
25 already such a busy time. Rest assured I have only been

1 aware of this issue for several days, not longer, and
2 that I feel I needed to pass on my concerns before
3 I leave post as [commanding officer UKSF3] and before
4 I assume command of [SFHQ (Afghanistan)]."

5 A. Sure. Okay, thank you. Yeah.

6 Q. This document, written in April of 2011, was shown to
7 you for the first time certainly either in 2019 or
8 possibly early 2020.

9 A. Yeah, about that time.

10 Q. Okay. So you now have seen a document from the
11 commanding officer of UKSF3, written to the Director of
12 Special Forces, which records in the body of that
13 document that he, the commanding officer of UKSF3, has
14 been made aware of an allegation reported by an officer
15 to the effect individuals are being engaged on target
16 when they pose no threat.

17 A. Yes.

18 Q. And also, it would appear, that there's been
19 a fabrication of evidence.

20 A. Yes. Well, that's what it says.

21 Q. That must have chimed with the information that you had
22 received from the people whose identities you don't want
23 to disclose.

24 A. Indeed.

25 Q. In particular, it chimed with a number of different

1 strands. First, the engagement of individuals who pose
2 no threat.

3 A. Yeah.

4 Q. Second, it engaged the allegation that something might
5 have been done in the aftermath to cover this up.

6 A. Yeah.

7 Q. You've spoken about the changes to the documents and the
8 like.

9 A. Yes.

10 Q. And also, it possibly chimed with the information you'd
11 had from somebody firsthand that they had been asked to
12 carry a throw-down which you understood might be used to
13 plant on the body of a deceased to in some way justify
14 that person's killing.

15 A. Well, the fabrication of evidence to suggest a lawful
16 killing is very broad. There's many things you can do,
17 and those are two of the ones that have been brought to
18 my attention.

19 Q. Right. So on reading this document, it immediately
20 chimed with information you had received from friends
21 and from trusted sources, and it also echoed the pallor
22 and the odour that you had become aware of at a time
23 when you had been trying to join UKSF.

24 A. Correct.

25 Q. So in and around the end of 2019/early 2020, you now

1 have a document from the commanding officer of UKSF3
2 which echoes information you've been receiving for
3 a period of about 12 years.

4 A. Yes.

5 Q. Prior to the reading of this document, you had no
6 confidence in those conducting the investigation. They
7 lacked the intellectual curiosity, you told us.

8 A. Well, firstly, it was eight years, so -- it was
9 eight years before I started hearing these, from 2012
10 through to 2020.

11 Clearly, I mean, this letter reinforced those
12 concerns, but again, touched on the requirement to
13 separate rumour from fact.

14 Q. If I've got the dates wrong, it's my fault. I thought
15 you told us that you first became aware of the odour or
16 pallor in 2008 and 2009?

17 A. No, 20 -- it was after that. It was after that.

18 Q. My misunderstanding, then. So for a period of
19 eight years --

20 A. Yes.

21 Q. -- you'd been receiving allegations from trusted
22 sources --

23 A. Yeah.

24 Q. -- and now you have a document in your hands --

25 A. Yeah.

1 Q. -- which completely echoes those allegations, but it's
2 written by the commanding officer of UKSF3 --
3 A. Yeah.
4 Q. -- and sent to the Director of Special Forces.
5 A. Yeah. Yeah.
6 Q. So if there hadn't been a warm, fuzzy feeling up until
7 now --
8 A. This wasn't going to help.
9 Q. -- this wasn't going to help.
10 A. No.
11 Q. Things had gone particularly frosty.
12 A. Yes, they'd gone south.
13 Q. And as they went south, presumably you were extremely
14 angry at the fact you had not been shown this before?
15 A. I was -- yeah, I was disappointed, because this was
16 early on in my tenure as Min DPV, and I wanted to go in
17 there with a sort of clean book and try and help out as
18 part of the team to deal with this stuff, one way or the
19 other. Not to cover it up, not to prosecute it, but
20 just find out what happened. And it was clear to me,
21 you know, when I was shown things like this, that
22 I wasn't being shown the whole picture, and as the
23 minister, clearly that then is a bit of
24 a confidence-shatterer in your own department.
25 So, yeah, I was annoyed, because I felt that when

1 you go into a department, it's a kind of watershed line.
2 All your campaigning as a backbencher and so on that you
3 have to do to get national strategic change in this
4 country, that's one period of time. You then enter the
5 department and it's a new start. But this clearly was
6 not a new start. And so, yes, I was disappointed.

7 Q. Did you speak to the Secretary of State about this?

8 A. So my conversations with the Secretary of State were
9 often informal, because it was very hard to get time to
10 see him. But I would at regular -- so when I -- if I'm
11 honest, I can't remember a specific moment where I went
12 in with this letter and I said, "Here's this letter",
13 but I remember speaking to him about this on numerous
14 occasions as the evidence began to build up that there
15 was something not right, and I imagine I would have done
16 so after that letter, yes. But it literally involved
17 knocking on his door, "Ben, have you got a sec?",
18 usually he's busy doing something else, and I was like,
19 "Look, this is not good."

20 Q. Presumably it's too important and can't wait.

21 A. Well, that was my view, but I was -- I think I placed
22 a higher importance on this than anyone else. And
23 that's understandable because, you know, Defence
24 Secretary, dealing with Ukraine and all the rest of it,
25 and this was -- you know, I very much knew that there

1 were people out there trying to sully my name around
2 vexatious litigation and legislation, and so clearly
3 something like this is going to be pretty important to
4 me.

5 Q. And if, of course, this is true, it does no end of harm
6 to you and the cause that you've been trying to fight.

7 A. Yeah, it's horrific, and --

8 Q. So what did -- I'm so sorry, you were --

9 A. No, no, no.

10 Q. So what enquiries did you undertake? Because the
11 Secretary of State has asked you to get to the bottom of
12 what's going on.

13 A. Yeah.

14 Q. And you now find that, despite assurances that
15 everything has been investigated and the allegations are
16 untrue, there is in existence a letter from the
17 commanding officer of UKSF3 which accuses UKSF1 of
18 committing executions.

19 A. Sure, but those two things are not mutually exclusive,
20 right, because this -- you know, in terms -- you know,
21 the scheduling of this, he could have raised these
22 issues, which he has, and then there could have been an
23 investigation, and then that could have been the end
24 of it.

25 Q. Yes.

1 A. So the two are not mutually exclusive and don't
2 contradict each other. I'm not suggesting you're
3 suggesting they do, but that's my view.

4 Q. But presumably you wanted to satisfy yourself that this
5 had been investigated and it wasn't true.

6 A. Of course.

7 Q. So presumably you got hold of the Director of Special
8 Forces and said, "I've just been shown a top secret
9 memo. I need to speak to you about this. Can I have
10 five minutes in your diary?"

11 A. I don't know why you'd presume that. I mean, I was
12 working my way through a series of meetings, and this
13 was one of the presentations of evidence that was shown
14 to me. I didn't get this piece of evidence and then
15 suddenly go round demanding a meeting with DSF and CDS.
16 I just read this piece of evidence, I was concerned, but
17 I knew I had these other meetings coming up, and
18 I banked it in my mind and I continued in a professional
19 manner.

20 Q. Did you ever ask the DSF about this memo?

21 A. I didn't ask him; I asked the senior official, who I can
22 give you his cipher. (Pause)

23 So if his name is in black, I'm allowed to say his
24 name, right?

25 Q. Can I check which of the tabs you're looking at?

1 A. I'm looking at tab 2.

2 Q. Thank you. Yes, you can.

3 A. Great.

4 So the individual who showed me the document is

5 Mr Dominic Wilson, and I asked him, like, "What is going

6 on with this?" And he expressed a frustration that, you

7 know, [N1785] had written it down.

8 Q. He expressed a frustration that this had been written

9 down?

10 A. Yeah. Sorry, sir.

11 SIR CHARLES HADDON-CAVE: What, that the memo we have just

12 been looking at had been written down?

13 A. Sorry, sir?

14 SIR CHARLES HADDON-CAVE: He expressed frustration that the

15 memo --

16 A. Had been written down.

17 SIR CHARLES HADDON-CAVE: -- of DSF had been written down?

18 A. Correct, sir.

19 MR GLASGOW: It's the memo to DSF, sir, not the memo of DSF.

20 SIR CHARLES HADDON-CAVE: To DSF had been written down.

21 Thank you.

22 MR GLASGOW: Sir, can I just check something. I do

23 apologise for turning my back.

24 It's a little earlier than I planned, but I think

25 now might be a convenient moment just for a very short

1 break, and can I make it clear that when we have the
2 break -- Mr O'Connor is, as ever, ahead of me -- could
3 we deal with the transcript, because at the present
4 moment there is a delay, and we need to check that
5 something is removed from the transcript.

6 I'm sorry, it's my fault and no one else's.

7 THE WITNESS: No, it's my fault.

8 MR GLASGOW: If it can be dealt with now, we can move
9 swiftly on to the rest of the evidence.

10 SIR CHARLES HADDON-CAVE: Indeed, thank you.

11 A point has been raised regarding the transcript.
12 Before I rise, I'd like to remind everyone that, in
13 these circumstances, as I rise, everything that has been
14 said in the last ten minutes of this hearing is now
15 subject to a provisional Restriction Order, which I now
16 make, pending any further direction, which I now
17 indicate to you. That means that anything said during
18 that period, ie from 2.39, must not be repeated or
19 otherwise communicated or Tweeted until further
20 direction. Any breach of my order may be punished by
21 imprisonment.

22 This live feed will now stop and I will rise briefly
23 so that a short restricted hearing can occur if
24 necessary, or discussion between counsel, and that
25 hearing will only be attended by state core participants

1 My Restriction Order remains in place in relation to
2 that name. The transcript will be published in due
3 course.

4 MR GLASGOW: Insofar as the temporary Restriction Order was
5 imposed over the entire ten-minute period, do we take it
6 that that has now been lifted, save insofar as it
7 relates to the name that has been replaced by the
8 cipher?

9 SIR CHARLES HADDON-CAVE: Indeed. I lift it and replace it
10 with the specific Restriction Order in relation to the
11 name at 14.46.44.

12 MR GLASGOW: Sir, thank you very much.

13 SIR CHARLES HADDON-CAVE: All right.

14 Anything else I need to do?

15 MR GLASGOW: No, thank you, sir.

16 SIR CHARLES HADDON-CAVE: Well, these things happen from
17 time to time. I'm grateful for everybody dealing
18 with it quickly.

19 I gather the intention is now to try to sit to
20 finish, and I'm very happy to take a second break later
21 on.

22 MR GLASGOW: Sir, thank you very much indeed.

23 SIR CHARLES HADDON-CAVE: Let's see how we go, shall we?

24 MR GLASGOW: To indicate to Mr Mercer, who wasn't party to
25 any discussion, the idea is that we will sit from now to

1 about 4 o'clock, have another short break, and then to
2 sit through until just before 5.00 in the hope we can
3 finish your evidence, sir, today. I am sure that is
4 something that you would prefer.

5 If it becomes very obvious that I am not going to do
6 that, I won't hold everyone here until 5 o'clock.

7 I will make it clear much earlier than that.

8 SIR CHARLES HADDON-CAVE: I think the gates shut at 5.00, so
9 that's an incentive, and I'm sure that you, Mr Mercer,
10 would like to finish today, so we will do everything we
11 can to do that. All right?

12 THE WITNESS: Thank you, sir.

13 MR GLASGOW: I should make it clear, of course, that there
14 is still the issue you have been asked to reflect on.

15 A. Yes, of course.

16 Q. That's an entirely separate matter outside of the
17 evidence I'm asking about now.

18 A. Yes.

19 Q. Now, then, Mr Mercer, you told us before we had the
20 short break that, having asked on a number of occasions
21 for the source of the allegations, and in particular who
22 had first raised them, you were then shown the document
23 at your tab 1 that I took you through.

24 A. Yeah.

25 Q. I asked you whether you then raised the content of that

1 document with either the DSF, with the Chief of the
2 General Staff or, indeed, with the Secretary of State.
3 You'd said that you believe you would have spoken to the
4 Secretary of State, although he was difficult to get
5 hold of because he was very busy; is that fair?

6 A. Yes.

7 Q. Do you remember whether you did or did not raise it with
8 the Director of Special Forces?

9 A. I can't remember if I raised the note. I raised a lot
10 of issues with him. I can't specifically remember the
11 note.

12 Q. Did you raise the note with the Chief of General Staff,
13 Mark Carleton-Smith?

14 A. Same answer.

15 Q. Other than being shown that one document, were you shown
16 any other documents in response to your request what the
17 source of the allegations was?

18 A. No.

19 Q. Did you ask whether it was possible to see any of the
20 full-motion video of the detention operations?

21 A. I did.

22 Q. Why did you believe there would be full-motion video
23 available for you to review?

24 A. So, as I understood it, in terms of auditing
25 Op Northmoor and some of these allegations, Chief

1 Constable Jon Murphy had selected ten operations at
2 random, and he was informed that there was no FMV
3 available for any of those ten operations. Now,
4 full-motion video became a statutory requirement to
5 conduct these operations after a particular operation in
6 I believe it was around 2006 that didn't go too well.
7 It is literally a go/no-go criteria. There will be
8 a number of platforms that have additional FMV
9 capabilities assisting operations like this. It was
10 simply not plausible to try to ask me to believe that
11 there was nothing available for each of these ten
12 operations selected at random.

13 Q. Insofar as full-motion video is a go or no-go
14 requirement, as you've just described it, what was your
15 understanding of what happened to the full-motion video
16 at the end of an operation?

17 A. Well, look, you have to -- firstly, there's the way it
18 comes into the operations room. It's piped in through
19 one of the feeds. When I was there, we then recorded it
20 onto a subsequent device at the same time, so that if we
21 were monitoring a target and you think you've seen
22 something, you can then go back to your secondary tape,
23 rewind it, and check what you've actually seen. For
24 example, a handover of something or individuals
25 travelling in cars and so on. You needed to be able to

1 go back and look at that. So there were those two
2 copies in the ops room.

3 Secondly, I'd have to prepare what are called
4 storyboards and so on, and they would have video clips
5 in them to assist in the kind of explanation of the
6 operation in post-operation reports.

7 Q. Who was it who told you that the full-motion video was
8 not available?

9 A. Jon Murphy.

10 Q. Did you raise with him the matters that you've just
11 given in evidence, namely that your understanding was
12 that it was a go or no-go requirement, and that it would
13 be separately recorded on at least one, if not more than
14 one, device?

15 A. I did. I raised that with him, I raised that with the
16 Secretary of State and I raised that with the Director
17 of Special Forces.

18 Q. Dealing with each of those in turn, then, when you
19 raised those concerns with Sir Jon Murphy, who was one
20 of the independent assessors for Operation Northmoor,
21 what, if any, response did he give to you?

22 A. He said, "I can't do anything about that, that's as far
23 as I can go."

24 Q. Did he appear to share your concerns or did he appear to
25 have accepted the explanation that the full-motion video

1 was not available?

2 A. He appeared to accept the explanation that full-motion
3 video was not available for any of the ten operations he
4 selected at random that he asked to have a look at.

5 Q. When you raised that with the Secretary of State, the
6 same questions, please: what, if any, was the reaction
7 of Ben Wallace when you told him about the full-motion
8 video?

9 A. He repeatedly told me that there was no new evidence.
10 I said to him that it is not a plausible explanation to
11 me to say that we have no FMV, or that the FMV is in
12 America, or we are unable to retrieve any FMV of any of
13 these ten operations selected at random that could help
14 us understand the atmospherics, the sort of type of
15 operation and the tactics and the techniques and
16 procedures that were being used in that operation. The
17 idea that none of that existed was a significant concern
18 to me.

19 The Secretary of State, you know, he's a busy man.
20 I don't think he really understood the gravity of that.

21 Q. When you say he didn't understand the gravity of it,
22 what, did you think that Ben Wallace didn't understand
23 the seriousness of your suggestion that there must be
24 full-motion video available, therefore the claim it
25 doesn't exist is implausible?

1 A. Yeah, I don't think he understood the gravity of that.

2 Q. Did he offer any reason to you why he accepted the

3 explanation, as you appear to suggest he did do, that

4 full-motion video was not available?

5 A. No. (Pause)

6 Sorry, no.

7 Q. I'm so sorry. I didn't hear you. I apologise.

8 A. I'm sorry.

9 Q. Can I ask about the conversation or conversations you

10 had about this subject with the Director of Special

11 Forces?

12 A. Yeah. I mean, I said to him, "Where is this stuff?

13 I want to bat for you, I want to help you. Where is

14 this stuff?" I remember he leant back and went like

15 that (shrugs).

16 Q. So apart from leaning back and apparently shrugging his

17 shoulders and holding his hands out, did he offer any

18 explanation to you as to where this material was?

19 A. "It's not available, Johnny."

20 Q. Did you press him on that?

21 A. I made clear to him that it wasn't plausible. It was

22 not a plausible explanation to me.

23 Q. And when you told the Director of Special Forces that

24 what he was saying to you was not plausible, what, if

25 anything, was his response?

1 A. I seem to remember they started challenging me on --
2 because he was with another individual who was a senior
3 enlisted rank within UKSF, sort of challenging me on
4 whether or not we actually -- whether or not FMV was
5 a go or no-go criteria, which it was. And then, you
6 know, there was an attempt to sort of challenge as to
7 why I'd be interested in this. And I kept repeatedly
8 saying that I wasn't interested in -- you know,
9 I understand the nature of these operations and you're
10 not going to see, you know, for want of a better phrase,
11 a "smoking gun" and something happening, but you can get
12 a generic feel for an operation and what's going on, and
13 I wanted to see that in order to, you know, have the
14 integrity to stand in the House of Commons and stand up
15 for him and his unit.

16 Q. To your mind, was the full-motion video a potentially
17 important piece of evidence that might point in favour
18 or against the honesty and accuracy of the allegations
19 that were being made?

20 A. Of course, that's absolutely critical.

21 Q. So the most critical?

22 A. If it was my -- if it was my unit, and there was no FMV
23 available for ten operations selected at random by an
24 external chief constable, I'd rip the place apart to
25 find out what was going on, because if they're not

1 telling me the truth on that, what else are they not
2 telling me the truth about? It is not plausible to tell
3 me that nothing exists. There are all sorts of other
4 things you can say, but you can't tell me it doesn't
5 exist, because it exists somewhere.

6 Q. So when the Secretary of State, Chief of the General
7 Staff and the Director of Special Forces each told you
8 the same thing that was, in your opinion, completely
9 implausible, did you place any faith in anything else
10 they told you?

11 A. Well, no, I mean -- look, I don't believe people lie to
12 me as a minister. I don't believe people lie and get
13 out of bed in the morning to do wrong and cover up.
14 I just -- I am still surprised to this day that there
15 wasn't that intellectual curiosity or command curiosity
16 to find out what had been going on, because for me, you
17 know -- in the military, you have all this -- you know,
18 people go on about values and standards and integrity
19 and all this stuff, right, but it's precisely for these
20 reasons, so that you know everything, you know what's
21 going on, you know, it's about -- you have to be able to
22 trust each other and trust what's going on in the
23 system, and the truth is, you know, that trust was
24 broken at that stage, yeah, and I then struggled to
25 believe much more of what was said around the issue.

1 Q. Leaving aside the question, therefore, of whether you
2 did or did not place any trust in what was being said to
3 you about the issue --
4 A. Yeah.
5 Q. -- you'd been asked by the Secretary of State to get to
6 the bottom of the situation.
7 A. Yeah.
8 Q. Did you continue to do that?
9 A. Yeah, I did. So ... let me just get the timelines right
10 in my head. So, I mean, I did a number of things.
11 I looked at the procedures that were operated on target,
12 and something called the call-out procedure, and
13 I became aware -- I'm not sure how I became aware of it,
14 but I became aware of the sort of TTPs that were used on
15 target by that unit, and again, you know, this was the
16 slow -- so that initial -- there's no FMV available to
17 me was the alarm bell. That's when -- right? And then
18 a series of creeping things happened. Another one is
19 the TTP, like -- and asking me to believe a series of
20 unbelievable events that happened a number of times,
21 unbelievable behaviours from detained personnel in
22 Afghanistan. Well, I'm not going to believe them
23 anyway, but certainly on top of having no FMV available,
24 I'm not going to believe them. And then all these
25 things build up into a position where you're like, you

1 know, "You guys are not telling me the truth."
2 Q. And insofar as you were conducting your own inquiry or
3 investigation --
4 A. Yeah.
5 Q. -- other than looking at documentation that you
6 requested to look at, did you speak to individuals? And
7 can I give you this assurance at the moment: I'm not
8 about to ask you to name somebody. So did you speak to
9 individuals for their assistance in understanding what
10 might or might not have happened?
11 A. Of course.
12 Q. And did you speak to members within the SF community?
13 A. Of course.
14 Q. Did you reach out to your own contacts? (Pause)
15 A. Yes.
16 Q. And therefore you had conversations with people you
17 know --
18 A. Yes.
19 Q. -- about the concerns that you then had?
20 A. Yeah.
21 Q. And was this with a view to trying to get to the truth?
22 A. It was all about getting to the truth. It was all about
23 getting to the truth. I've always, you know -- yeah.
24 I mean, we can come on to this later, but all I'm
25 interested in is the truth.

1 I think, you know, at this juncture, you know, as we
2 go down this path and you look at certainly what's
3 happened in Australia and so on, I think, you know,
4 there's -- you know, I think you're going to struggle to
5 get to a place where it's kind of like black and white,
6 right? But it's all these different issues. And what
7 I was doing -- I was never able to get to a place where
8 I met a guy and he said, "I did this." But in the real
9 world, that's never going to happen. All that will
10 happen is someone might find God in 20 years.
11 Otherwise, it's not going to happen. So what I had to
12 do is build this picture of what was going on, and try
13 and understand in my mind, with all those different
14 experiences that I'd had up to that point, from fighting
15 in Afghanistan, to operating with the sub-units, to
16 fighting lawfare, to bringing legislation into the
17 House of Commons, trying to understand what I thought
18 had happened.

19 SIR CHARLES HADDON-CAVE: I can assure you --

20 A. That's what I did.

21 SIR CHARLES HADDON-CAVE: I can assure you, Mr Mercer, it is
22 going to happen.

23 A. Good.

24 SIR CHARLES HADDON-CAVE: If I have anything to do with it.

25 MR GLASGOW: Just dealing with some of the areas of concern

1 that you identified in your witness statement, can
2 I take you to them just to help you.

3 A. Sure.

4 Q. We've dealt with the question of the full-motion video
5 and your obvious refusal to accept the implausible
6 accounts you've been given as to its absence.

7 A. Do you mind just giving me a paragraph number, please?

8 Q. Of course I will. I'm going to turn to look together to
9 paragraph 27. You'll find that on page 10, and I'll let
10 you find your place.

11 A. Thank you. Yeah, I'm ready to go.

12 Q. In terms of the nature of the allegations that were
13 being made and the explanations, you record in this
14 paragraph that:

15 "In addition to the absence of any [full-motion
16 video], there were other aspects to the allegations (as
17 I understood them at the time) that I found concerning.
18 There was the detail and the specific way they were
19 presented, along with the implausibility of the
20 explanations that alarmed me."

21 Can I have your help, please, Mr Mercer, with what
22 you actually mean by that.

23 What was the detail and the specific way in which
24 the allegations were presented?

25 A. Sure.

1 Q. And what was the implausibility of the explanations?
2 A. Sure. So the way these individuals -- the
3 post-operation reports were indicating these individuals
4 had died was that the sub-unit would arrive on target,
5 would secure the location, do a call-out procedure in
6 order to get people out of the compound so you didn't
7 have to go into it, and then take back in what we would
8 know as perhaps the main individual we're looking at --
9 I'm just looking -- I don't want to break the rules
10 again around what I can and can't say. But there's
11 a cipher attached to the main individual we would go out
12 looking for on these operations, right? So you would
13 use him or her to initiate a call-out. To then take
14 that individual back in and suggest that individual, who
15 knows the game is up, and as -- you know, then pulls out
16 a grenade or steps behind a curtain and pulls out
17 a weapon and starts taking on an entire sub-unit, what
18 was it, 14 times, is not plausible.

19 I've never seen that behaviour myself, I've never
20 heard of that behaviour myself, and to be asked to
21 believe it time and again is, frankly, a bit of an
22 insult to those of us who operated in the same way.

23 So there was that issue. There was the issue of
24 this particular procedure of calling out the main
25 individual, getting everyone out of the compound, taking

1 them back in, and claiming they suddenly decided to get
2 a weapon or grenade and start taking on the entire
3 sub-unit, right? It's never going to happen. So
4 obviously once or twice, you're like: that doesn't sound
5 right. Fourteen times? Obviously something is going
6 on. The idea they could do that whilst under control,
7 under detention, again, is just not credible.

8 And I'm so sorry that I can't sit there and say:
9 yeah, okay, I can understand how you can handcuff a guy
10 and he can go back in and start fishing around for
11 a weapon and come back out guns blazing so you've got no
12 other alternative but to shoot this guy in the head.
13 But I can't do that, because it's not true.

14 Q. And is that based on your involvement in detention
15 operations whilst you were in deployment or is it based
16 on conversations that you've had with other people --

17 A. Both.

18 Q. -- or both? So both?

19 A. Both.

20 Q. As to the opinion you've just explained to us, that what
21 you were being asked to believe simply wasn't credible,
22 did you express that view to the Secretary of State?

23 A. Yes.

24 Q. To the Director of Special Forces?

25 A. Yes.

1 Q. And the Chief of General Staff?

2 A. Yes.

3 Q. And when you expressed that view to them, each in turn,

4 what, if anything, was their reaction, Mr Mercer?

5 A. "There's no new evidence. There's no new evidence.

6 Johnny, there's no new evidence, we've had external

7 validation of this."

8 I remember saying, "Look, you realise this is just

9 not plausible to me, right? This -- you know, you're

10 asking me to" -- we'll come on to the next bit about

11 people remembering things. It's just -- "I don't

12 believe you, you know, what do you want me to do?

13 I don't believe you. I don't believe what you're saying

14 to me."

15 Q. And in particular, when you don't believe what you're

16 being told about people's memory, could you just help us

17 with what you mean by that, Mr Mercer? Your

18 paragraph 28.

19 A. Yeah. So, I mean, I think there was an investigation

20 into this and I saw a report where a judge described

21 the --

22 Q. Paragraph 28, I think, page 11.

23 A. Yeah, sure, I'm just looking at the cipher list.

24 Yeah, when he spoke to the UKSF individuals, they

25 all -- none of them could remember any detail of any of

1 the operations selected at random, despite the killings
2 of juveniles. That is not credible.

3 SIR CHARLES HADDON-CAVE: And the judge described it, as
4 I think you were about to say, as "collective amnesia".

5 A. Correct, sir, and that is not credible. I've been on
6 target when people have been -- you know, you never --
7 if I look back to my 2010 tour, and I went in March and
8 I came back in October, and I was fighting twice a day
9 for every day, of course I'm not going to remember every
10 single contact and every single round I fired, but you
11 do remember usually when people die, and you would
12 particularly remember it if you killed children. It is
13 not credible to sit there and tell me you don't remember
14 killing children.

15 MR GLASGOW: One of the other items you identify as a layer
16 of implausibility was the fact that the number of
17 persons killed significantly and repeatedly exceeded the
18 number of weapons found on target.

19 A. Yeah. But, I mean --

20 Q. It may be an obvious question, Mr Mercer, but why is it
21 that you find that wholly implausible?

22 A. Because the whole point of shooting someone dead when
23 you're trying to detain them is that there is no other
24 option available, right, and there is a threat presented
25 to you and the sub-unit and there is no other way of

1 dealing with that threat, and it is a last resort to
2 take the life of that individual, which is an incredibly
3 serious thing, irrespective of their background,
4 nationality, race, religion, or whatever. An incredibly
5 serious thing to take that individual's life. That is
6 a last resort when nothing else is available. So the
7 idea that you would find twice the number of bodies on
8 target than you did weapons would immediately make me
9 say -- even as a junior commander, I'd be like, "What is
10 going on here?"

11 And I would -- you know, because I can't stress this
12 enough, why I'm so annoyed with the junior commanders
13 and the sub-unit commanders, is that we never needed to
14 be here today, and, you know, that is a -- in my view,
15 that is a -- you know, it's a crying shame, because this
16 could have been cleared up years ago with facts like
17 that coming out: double the bodies to weapons.

18 MR GLASGOW: Can I pause you there, Mr Mercer.

19 There's a matter, I believe, that Mr O'Connor wishes
20 to raise, and I'm so sorry. I do apologise.

21 MR O'CONNOR: I apologise for interrupting, but there's
22 a matter I've been instructed to raise.

23 Could I invite you to make an emergency Restriction
24 Order of a similar type that you made earlier this
25 afternoon?

1 SIR CHARLES HADDON-CAVE: Indeed. Thank you, Mr O'Connor.

2 Another matter has arisen relating to the
3 transcript. Before I rise, I would like to remind
4 everyone that, in these circumstances, everything that
5 has been said in the last ten minutes of this hearing is
6 now subject to a provisional Restriction Order pending
7 my further direction. That means that anything said
8 during the last ten minutes must not be repeated or
9 otherwise communicated until further direction. Any
10 breach of this order may be punished by imprisonment.

11 The live feed will have been stopped -- and it has
12 been stopped, I've just been indicated. I will rise
13 briefly so that a discussion can take place.

14 The court should be cleared, attended only by state
15 core participants, please, and subject matter experts,
16 if necessary, so that this issue can be discussed, and
17 I'll return, as I did before, when called back in.

18 All right, thank you. Clear the court, please.

19 (3.36 pm)

20 (A short break)

21 (3.51 pm)

22 SIR CHARLES HADDON-CAVE: Thank you for drawing that to my
23 attention, Mr O'Connor.

24 My Restriction Order will remain in place in
25 relation to everything said from 15.28.00 to 15.35.59,

1 until the transcript is published.

2 MR GLASGOW: Sir, thank you very much.

3 Mr Mercer, you identified, therefore, to us a number
4 of concerns: concerns about the allegations themselves
5 and the explanation that had been provided to them;
6 concerns about the failure of people to recall what had
7 happened, what a judge had described as "collective
8 amnesia"; and concerns about the fact that on a number
9 of occasions it appeared that the number of people
10 killed significantly exceeded the number of weapons that
11 had been found on target.

12 Did you raise those concerns with everyone that you
13 could?

14 A. I mean, to be honest with you, Mr Glasgow, I didn't go
15 round talking about it with everybody I could and
16 I couldn't tell you, hand on heart, if I raised every
17 single one of those concerns with every single
18 individual. I made it very clear to those relevant
19 individuals, such as the Secretary of State, CGS, CDS
20 and DSF, of my concerns that encompassed those four
21 clear strands in paragraph 27.

22 Q. Insofar as you saw the implausibility, as you've
23 described it, as having an impact on anything else you
24 were trying to do, did you consider that there was any
25 need to advise anyone about potential risks to your work

1 if you were being given implausible explanations for
2 things that you thought simply --

3 A. Oh, yeah, of course. I mean, I said to the Secretary of
4 State that, you know, whilst I wasn't a sort of
5 investigator or police officer -- in some ways, whether
6 I believed these things or not was not relevant, in some
7 ways, because it wasn't my job. What was relevant was
8 that we were being asked to carry political risk for
9 bringing legislation that was clearly contentious, and
10 that eventually, when all is said and done with all
11 these issues, the names on the tin for all this stuff
12 come back to the ministers, and it would be me,
13 predominantly, and Ben Wallace, whose names would be
14 around this legislation, and ultimately, if this played
15 out and the legislation came in and we protect all these
16 people from lawfare, but also it was then shown that we
17 couldn't investigate serious allegations like this, that
18 is not -- the political risk of that is not acceptable
19 and it is not something I would try and get to
20 a position of.

21 Q. And given the implausible explanations that you had been
22 offered for some of the concerns you'd raised, did you
23 have confidence in the ongoing investigation?

24 A. I mean, by that stage, I think Northmoor -- they'd
25 decided Northmoor was going to come to an end.

1 Q. Did you have any confidence that Northmoor's findings
2 would withstand scrutiny?

3 A. Well, no, because I gave them a bit of -- you know, my
4 deeply unqualified, uneducated scrutiny had been unable
5 to -- they hadn't been able to satisfy me, who was, you
6 know, the number 1 defender of these people, so how on
7 earth was that going to survive contact with the public
8 domain?

9 Q. So, to your mind, the process that had been put in
10 place, was it an effective one or not?

11 A. I think they did the best they could with the knowledge
12 and the envelope they were asked to operate in, yeah.
13 I wouldn't criticise them because unless you knew -- you
14 know, unless you knew, for example, that FMV was
15 a go/no-go criteria, you wouldn't stick your hand up and
16 say, "Why is there literally no platform with any FMV
17 available for any operations selected at random by
18 Jon Murphy?"

19 I do think somebody else should have picked that up.
20 Yeah, of course. But not one of the investigators who
21 was, you know, on the ground doing it. Someone at
22 command level should have thought, "Hmm, there's
23 something not quite right here."

24 Q. Someone, say, at DSF level should have pointed it out,
25 do you think?

1 A. Well, of course. But, you know, he had seemingly
2 satisfied himself that there was nothing here.

3 Q. But you didn't believe him.

4 A. I didn't believe him, no, and I don't know what people
5 want me to do about that. I'm just being honest with
6 you. I didn't believe him. I've never believed that
7 version of events, and I said that to everybody who
8 asked me. I said the same thing in public and in
9 private, that I did not believe the accounts that were
10 presented to me of these operations.

11 Q. Can I just ask you to look in your statement -- are you
12 still on page 11?

13 A. I'm on 10. I'm now on 11.

14 Q. Paragraph 30:

15 "At this stage, although I was very concerned,
16 I maintained my faith in the processes that had been set
17 up by the MOD to properly and fully investigate these
18 allegations."

19 A. Yeah.

20 Q. Given what you just told us a moment ago, can that be
21 right?

22 A. Well, I mean, I did have faith in them because -- you
23 know, there's lots of context here. I -- you know, when
24 I came into all this and came into politics and came
25 into the department, you know, I came in -- you know,

1 initially, when you're starting down this track of
2 improving things like veterans care, everyone is very
3 supportive. When you actually get into the weeds of it
4 and you're like, well, you know, people shouldn't really
5 pay for their own prosthetics and stuff like that, you
6 start to hit a bit of resistance and you feel like a bit
7 of an outsider, and, you know, that then colours your
8 judgment on things like this, because you don't want to
9 be a stick in the mud for every issue. You don't want
10 to be, you know, "Well, I'm sorry, but I just don't
11 accept this." I had faith in the processes and in what
12 was going on in the Ministry of Defence, and people who
13 were more experienced, more qualified, better officers
14 than me when they were in, and better ministers than me,
15 senior ministers to me at the time.

16 So, you know, as far as I'm concerned, the
17 professional thing was to put my hand up and say, "Look,
18 I'm not happy and I don't believe this, but I'm
19 a professional minister and I will go with your
20 direction."

21 Q. Mr Mercer, you've just told the Inquiry that you
22 believed the DSF was lying to you.

23 A. I've never said that anybody lied to me.

24 Q. You just said that you didn't believe --

25 A. Correct.

1 Q. You didn't believe what the --

2 A. Yeah, and that is different. I've never said anybody

3 lied to me. I've been very clear on that, Mr Glasgow.

4 Q. You didn't believe the DSF when he told you there was no

5 FMV.

6 A. I did not believe that there was no FMV available, yes.

7 Q. But you had faith in the process?

8 A. I had faith that maybe I was wrong. I had faith that --

9 Q. What do you mean --

10 A. I guess I had faith that the system and the structure

11 and the organisation was bigger than me, and in some

12 ways you begin to think: maybe I've got this all wrong.

13 Q. Can I remind you of what you told the Inquiry this

14 morning, Mr Mercer, and these are your words:

15 "... I had very little faith that the MoD had the

16 ability to hold itself to account."

17 A. Yeah.

18 Q. That's what you said earlier today.

19 A. Yeah.

20 Q. How do you square that observation with what is written

21 in your statement, where you profess to have had faith

22 in the process?

23 A. Because -- I had little faith in it but, you know,

24 I felt like I had to have faith in what was going on at

25 the time.

1 Look, you know, at the end of the day, I was the
2 only one calling this out, and at some stage -- you
3 know, publicly and at a senior level, and, you know, if
4 nobody else is -- thinks there's an issue here, you're
5 left with, you know, a couple of options: one is you
6 resign and leave; the other is you try and fight through
7 all the other issues you're doing as a politician or as
8 a minister which I was doing at the time. And I decided
9 that, on balance, you know, provided there were no
10 further disclosure issues or information came to boot,
11 that I would just have to swallow this, sit on it. You
12 know, I was a junior minister at the time, and, you
13 know, support the Secretary of State and DSF and the
14 senior officers in the MoD. That was the decision
15 I made at the time.

16 Q. The Secretary of State had specifically tasked you to
17 get to the bottom of this.

18 A. Yeah, I came back with my findings and he decided that
19 we would carry on as we were.

20 Q. So when you say you came back with your findings, do you
21 mean you reported to him that you believed that what you
22 were being told was utterly implausible?

23 A. I said that I did not believe what I was being told,
24 yeah.

25 Q. And his response to that was what, please, Mr Mercer?

1 A. "There is no new evidence. This has been investigated.
2 Jon Murphy has had a look at it. I don't know what else
3 we can do, Johnny."
4 Q. You record in your statement that in late 2019, you were
5 aware of more significantly serious allegations that
6 were being made by the Sunday Times and BBC Panorama in
7 a joint investigation.
8 A. Are you referring to paragraph 33?
9 Q. I am, yes.
10 A. Thank you.
11 Q. The matter that you were concerned about, as had been
12 reported, included a reference to alleged death squads.
13 A. Yeah. (Pause)
14 Q. Have you had a chance to refresh your memory of that?
15 A. Yes, yes, I'm ready to go.
16 Q. Right.
17 What was it about the reporting in late 2019 of
18 allegations that there had been death squads that you
19 didn't accept?
20 A. The premise was that I did not believe, in
21 a professional unit like that, that death squads could
22 operate unencumbered, and I did not believe that
23 could -- that was a kind of -- you know, there would
24 have to be some degree of turning a blind eye to a level
25 that I didn't really believe could exist, and so

1 I thought those allegations were a step too far.

2 I was very concerned at that stage -- I was --

3 I remained very concerned, particularly around the

4 killing of children, and I remember very clearly

5 thinking in my mind at that time -- and it was a very

6 difficult time, and, you know, I felt very, very torn as

7 to what I should do, because ultimately you have to

8 decide what side you're on. You're either on the side

9 of people who -- you know, whatever happened on these

10 operations, kids ended up dead, and people are saying

11 they don't remember what happened. Well, you're going

12 to do the right thing. And as you navigate that, it's

13 not always a straight line.

14 Q. Well, which side were you on, Mr Mercer?

15 A. Well, I think it's pretty obvious, isn't it?

16 Q. What, the side to do the right thing?

17 A. Well, I'm here today, aren't I?

18 Q. To tell the truth? To help the Inquiry?

19 A. I think we have been over this, haven't we?

20 Q. Insofar as you didn't recognise the allegations being

21 made, did you understand that UKSF were acting to carry

22 out "kill or capture" missions in Afghanistan?

23 A. Look, in my experience, which was limited to what it

24 was, and I don't profess to know everything and, you

25 know, I had a very ordinary career, so I couldn't have

1 seen everything, but, you know, the idea of a "kill or
2 capture" operation, as a defined term, was not something
3 I was familiar with. I was familiar with things like
4 deliberate detention operations, I was familiar with
5 kinetic strikes and I have carried out a number of
6 kinetic strikes myself in very controlled conditions.
7 The idea that you could land a force on and deliberately
8 kill individuals who posed no threat, that's not
9 a mission I've ever heard of or, indeed, sits within
10 regular understanding of the rule of law.

11 Q. Whilst you were investigating these allegations, did you
12 come to learn that operations had been termed as "kill
13 or capture" missions?

14 A. Well, only after the -- if I'm honest, only in the
15 disclosure for this process. So what happened was there
16 was this story, and I think it was Panorama that started
17 talking about "kill or capture" operations. I believe,
18 at that time, I said there's no such thing as a "kill or
19 capture" operation. You know, it's either a DDO or
20 a kinetic strike, you know -- yeah, as separate. So you
21 could have kill missions, which are kinetic strikes, or
22 you could have capture operations. But you don't just
23 turn up and kill everyone.

24 Q. Do you agree that you are now familiar with
25 documentation, because it's been provided to you by the

1 Inquiry, which identifies missions as having been "kill
2 or capture" missions?

3 A. It would appear that that terminology has crept in, yes,
4 but that's not something I was familiar with at the
5 time. I believe it's an Americanism that's crept into
6 UKSF parlance.

7 Q. I'm not asking where you think it has come from; I'm
8 asking whether you now accept that you have been
9 provided with documentation from UKSF which describes
10 their operations as "kill or capture" missions. Do you
11 accept that or not? (Pause)

12 A. I mean, I think I've seen that verb used on -- or those
13 verbs used as a title of a PowerPoint deck of slides
14 that would have been a no(?) group. I haven't seen it
15 in proper staff work sort of doctrine for UKSF, no.

16 Q. So we can --

17 A. As far as I can recall.

18 Q. So we can agree, at least, that you have seen
19 presentations prepared by UKSF in which the author has
20 described the operation as being a "kill or capture"
21 mission?

22 A. Yeah, sure. I'd have to come back to you on that. I'd
23 have to come back to you on that.

24 Q. Well, if it's something you weren't aware of before you
25 read that disclosure, it must have been something that

1 jarred with you.

2 A. Of course. And when I saw it --

3 Q. So you did see it?

4 A. -- you know, I remember -- I mean, I was provided with

5 these disclosure documents -- and I'm happy to have

6 a look at them again and to bring them out -- that

7 showed a set of slides that talked about these

8 operations, and I think that had "kill or capture" on

9 it, but I may be incorrect. But I remember seeing that,

10 and that was something that did not chime with my

11 experiences, yeah.

12 Q. Insofar as your experiences are concerned, can I ask,

13 please, that a passage from your book, in particular in

14 chapter 10, is brought up. You'll find it on the

15 screen. It's the easiest way to look for it, Mr Mercer.

16 "I was housed in the very comfortable SF compound

17 named after an operator who had been killed the summer

18 before on a counter-terrorist operation. It is always

19 difficult joining a close-knit team, particularly on

20 operations, but this group of individuals made me feel

21 entirely welcome. My role was to be very fluid. The

22 guy before me had seemingly got the pizzas and coffees

23 in when an operation went into the early hours; I was

24 keen to play a far more active part, and early on it was

25 made clear to me that the opportunity was there to do

1 so.

2 "Al Qaeda and the Taliban were very much an

3 interchangeable title at the time although the Al Qaeda

4 influence in Afghanistan was nowhere near what it was in

5 Iraq. These terrorist networks establish themselves

6 very much like any other organizations that have

7 a hierarchy of power and pursue their aims ruthlessly.

8 The Sub Unit's specific job was to kill or capture as

9 many of the Taliban/Al Qaeda leadership within the

10 country as possible. They were directing a campaign of

11 terror and intimidation on the local populations, and

12 hounding the International Security Assistance Force

13 operating on behalf of the NATO mission with a daily

14 wave of bombings and shootings.

15 "We would spend most of our days trying to find the

16 targets before deciding on a time and place for an

17 attempted detention. In almost all cases these

18 individuals resisted strongly, and attempted detentions

19 became killings. It would be inappropriate to outline

20 the methods employed."

21 A. Yeah.

22 Q. So here you've described the specific job of the SF unit

23 that you had joined as being to kill or capture as many

24 of the Taliban/Al Qaeda leadership as possible?

25 A. Yeah.

1 Q. So "kill or capture" is how you've actually termed their
2 overall role.

3 A. Right, no, so you're mixing two things. A kill/capture
4 operation is mission verb, right? "Kill/capture" as one
5 entity. What that says there was to kill, ie in kinetic
6 strikes, or to capture, in DDOs, as many of the Taliban
7 and Al Qaeda leadership we could. So they're two
8 separate issues.

9 Q. So the DDOs that certainly you were involved in, whilst
10 you were deployed, were missions to detain individuals?

11 A. Of course, yeah.

12 Q. But missions which you observed, in the section that
13 I've just read, in many cases where individuals resisted
14 strongly and attempted detentions became killings?

15 A. Yeah, so when attempted detentions -- you know, the guys
16 went on target and the whole world opened up, clearly,
17 you know, there's -- people are resisting detention,
18 then the whole thing is going to escalate. But, you
19 know, the idea wasn't to go in there and just kill them
20 straight away, otherwise -- you wouldn't risk the
21 sub-unit and everything associated with it.

22 I'm sorry, sir.

23 SIR CHARLES HADDON-CAVE: Not at all.

24 A. I do think, you know, it's an over --

25 MR GLASGOW: Sir, the simplest thing is simply to make an

1 order to restrict the last two minutes, and that can be
2 done pending the publication of the transcript.

3 SIR CHARLES HADDON-CAVE: Thank you, Mr Mercer.

4 I make a Restriction Order restricting publication
5 of the last two minutes of the transcript, or anything
6 that has been said in court in the last two minutes, on
7 the same terms as I did before. I don't think it's
8 necessary, then, to rise, since I think the position is
9 well understood, Mr O'Connor; is that right?

10 MR O'CONNOR: Correct, sir, yes.

11 SIR CHARLES HADDON-CAVE: Indeed, good.

12 And thank you, Mr Mercer, for raising that.

13 THE WITNESS: Sorry.

14 SIR CHARLES HADDON-CAVE: These things inevitably arise from
15 time to time. The intention of the Inquiry, as you
16 know, is to hold as much in public as possible, but of
17 course there are bumps and scrapes along the way.

18 MR GLASGOW: Sir, in addition, we'll need to cut the feed
19 because whilst there is, of course, a ten-minute delay,
20 the passage that's just been given in evidence will
21 inevitably be played in about seven and a half minutes
22 from now.

23 SIR CHARLES HADDON-CAVE: Indeed. There is a ten-minute
24 lead, of course, and we'll need to cut the feed so it
25 doesn't go outside this court.

1 So this is an afternoon of probably welcome breaks,
2 another tea break. Let's do that.

3 Call me back, please. Thank you.

4 (4.13 pm)

5 (A short break)

6 (4.28 pm)

7 SIR CHARLES HADDON-CAVE: Mr Glasgow, I gather there have
8 been some discussions, and the general consensus is that
9 it's been a long day, particularly for the shorthand
10 writer, and that it may be sensible now, given the hour,
11 4.30, to draw stumps for today.

12 MR GLASGOW: Sir, yes. I'm not confident that if we began
13 now I'd conclude the evidence in time for everyone to
14 get out through the gate before 5.00.

15 SIR CHARLES HADDON-CAVE: Although I didn't tell everybody,
16 I do have a pass to the side gate, so we could stay
17 until midnight.

18 MR GLASGOW: So Mr Mercer has discussed the matter with his
19 legal team, and he has kindly made himself available for
20 us first thing tomorrow morning. So he could return at
21 10.00, and we've made arrangements for Mark Nicol to be
22 contacted so that his evidence will start, we
23 anticipate, at 11.30, to allow Mr Mercer's evidence to
24 conclude within about an hour, and then there will be
25 a break in the morning before we turn to the next

1 chapter of evidence.

2 SIR CHARLES HADDON-CAVE: Mr Mercer, that's very helpful.

3 Thank you.

4 We'll break now until 10.00 tomorrow morning. Thank

5 you, everybody, for your attention today, and

6 particularly to the shorthand writers and the court

7 staff.

8 Mr Mercer, thank you for coming today to give your

9 evidence. I repeat the same warning that I do to all

10 witnesses: please don't discuss your evidence with

11 anybody overnight, unless it's on the topic that your

12 counsel discussed with you over lunch.

13 Anything else I need to deal with, Mr Glasgow?

14 MR GLASGOW: No, thank you, sir.

15 SIR CHARLES HADDON-CAVE: Good.

16 Thank you all. 10.00 tomorrow morning, please.

17 (4.30 pm)

18 (The hearing adjourned until 10.00 am the following day)

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