



MOD-198-0003884-A

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N2252

N1466

A

I have drafted a response to DSF's comments on the
Obj 1 SIR (below). He makes some very valid points about the shortcomings of the current SIR system (or perhaps the complacency that sometimes besets their completion). It is clear that the D wants more independence in the process (take OC of SU out of the process and replace with another OC - frictions between SUs) or that we involve COS (he is very busy) or does the conduct the investigation, etc.

A

Regarding witness statements there is a tendency for them to be bland, lack detail, etc. When legal advice is provided by the he will often send back for rescrubbing and more clarity: although the pace of ops causes the process to be extended even more. All I can suggest is that the could take the statements individually (this would have resource implications) and would change how the legal advice is provided (it would have to come from elsewhere).

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Lastly the involvement of APU - could this cause more problems than it solves?

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Before I press send, I would be grateful for your views. I have not exposed yet to SFHQ(A) as I suspect they will significantly push back on some of the implications.

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DRAFT TEXT

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N1802

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1. Thank you for your comments. Currently under the SIR process, it is customary for the OC of the relevant SU to conduct the overview of the operation as well as providing his assessment of the actions of the 'firers' on the operation. Indeed the current guidance stipulates that the relevant OC should be the person who provides this input. Once the SIR has been completed it is then reviewed in its totality by Comd SFHQ(A) who assesses whether any further investigation is required.

A

2. Should you feel that the input of the OC raise the risk of lacking the requisite objectivity then it may be possible for the guidance to be amended to stipulate that the SIR should be conducted and reviewed by another member of SFHQ(A) - such as one of the other OCS of the SU or alternatively by the COS SFHQ(A). I will discuss with ops and SFHQ(A) as to who should, in future, conduct SIRs.

A

3. With regard to the identity of the EKIA, I note that the reporting of the incident confirmed that the EKIA were Taliban. The legal advice has been provided on the basis that there is no conclusive evidence that they were Taliban but makes the point that, irrespective of their identity, the actions of the firers were lawful and in accordance with the law of self-defence and the ROE in force for the operation. I share your concerns about the nature/quality of the witness statements and it is fair to say that the quality of these varies enormously but should be managed by the person conducting the review. Where a statement is required it is pretty much left to the soldier to produce and I sense that there is a culture of 'cutting and pasting' going on. A possible solution could be that the witnesses are separately interviewed by someone (UKSF Lawyer?) to negate suggestions of collusion between witnesses and improve the quality of the detail in the statements.

A

4. Finally with regard to the Afghan involvement, I will speak to SFHQ(A) to ascertain whether the APU would agree to make such a statement: I agree that this would raise the credibility of the SIR process (and negate any subsequent allegations made) but could slow down the process.

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5. I am available to speak further

Page 1

JournalArchive2011-05-27-075502.doc

regarding this particular case but the wider issue of how SIRs are conducted.

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ENDS

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S01 Legal

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Contact Details

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From: SFHQ (UK) -COMD-DIRECTOR-SF-S

Sent: 23

May 2011 13:04

To: SFHQ (UK) -J1-S01-LEGAL-S

Cc:

SFHQ(UK) -COMD-COS-S

Subject: 20110523-SIR Obj

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Your File Reference Obj 1 dated 18 May 11

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1.

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I have

not yet signed Flag A to Reference.Â

I have carefully read it, and all the attachments.

2.

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I am

slightly surprised that the SIR was conducted by OC SU1.

Â I don't recall it being usual that the

Ground Commander investigates the incident.

Â If it is usual I would like an

alternative nominated to conduct such reviews in the future.

3.

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The SIR

implies (para 7c) that all 9 KIA were TB fighters, although the legal advice suggests this might not be the case.

Â Can you clarify this?

Â The witness statements are formulaic and

seem with very minor adjustments to be derived from a common draft.

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Can you brief me on the conventions that apply?

4.

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I see

some merits in the SIR including an observation on the APU's reactions or views

of an incident " such as: The

Afghan Judicial Officer who was present at the compound was satisfied with the conduct of the Coalition Forces given the threat posed by hostile forces

Â This is coherent with revised compound

TTPs which seek to put our APUs into a more central role.

DSF

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