

## INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

### **GIST OF CONCERNS AND COMPLAINTS HEARINGS PART 1 – N2107**

***WARNING: This evidence is subject to the Inquiry's Restriction Order dated 12<sup>th</sup> February 2024. The Chair granted anonymity to witnesses who gave evidence during this set of CLOSED hearings ('Concerns and Complaints Part 1') for the reasons set out in his Ruling dated 30<sup>th</sup> January 2024. The Chair's Restriction Order prohibits publication or dissemination of the identity of N2107, or any information which might lead to their identification, and prohibits publication or dissemination of other restricted information.***

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

**N2107 was questioned by lead Counsel to the Inquiry, Oliver Glasgow KC, in a CLOSED hearing in early 2024, over approximately 1 day. N2107 was the first witness to give evidence in the CLOSED hearings relating to 'Concerns and Complaints'. The following is a gist and, where possible and relevant to do so, a transcript of sections of N2107's evidence, with any sensitive terms redacted and replaced with a gist or cipher. A short gist of N2107's evidence was included in Mr Glasgow KC's update to the Chair on 20 February 2024.**

**N2107 was asked about a series of e-mails exchanged between friends and colleagues between January and April 2011 in which they discussed information contained in OPSUMs (operational summaries for particular Deliberate Detention Operations ("DDOs")).**

N2107 confirmed that his witness statement to the Inquiry dated 31st October 2023 should stand as his evidence.

Mr Glasgow KC explained that he was going to deal with N2107's career, any periods of deployment that might be relevant to the terms for reference, and then take N2107 to the documents that were written at the time. The questioning started as follows:

*Q Now, just before we embark on your career, just thinking about the reasons why you have given witness statements and in particular why you have given a statement to the Inquiry, you know of course that there is interest in a series of emails that you exchanged with friends and colleagues between January and April of 2011.*

*A Yes.*

*Q And in those emails you provided information to the individuals to whom you sent the emails; in other words, you forwarded on occasions operational summaries of operations that had taken place in Afghanistan.*

*A Yes.*

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*Q* *And you expressed views about those operations.*

*A* *Yes.*

*Q* *And you raised on occasions concerns that you had about those operations.*

*A* *Observations, yes.*

*Q* *And ----*

*CHAIR: I am sorry, I did not quite catch that.*

*A* *Sorry, observations, Sir.*

*Q* *Not concerns, observations?*

*A* *No, I would say observations.*

*MR GLASGOW: And the observations that you raised were private exchanges that you had with two of your colleagues and friends.*

*A* *Correct.*

*Q* *And those are [N1791] ... and [N2349].*

*A* *Yes.*

....

*Q* *So an ability for you to express yourself in the way that you thought appropriate rather than how you might worry others would read it in due course?*

*A* *Yes.*

*Q* *So the simple point being these are private emails between friends rather than statements written for a public inquiry.*

*A* *Indeed.*

*Q* *So these are your views, couched in your language, is that fair?*

*A* *Correct.*

*Q* *And, again, they reply to you, as you understand it, on the same basis?*

*A* *Yes.*

*Q* *They believed it was a private exchange between friends.*

*A* *Yes.*

*Q* *And something that might never see the light of day again.*

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*A* *Indeed.*

*Q* *And now you find yourself, over ten years later, answering my questions about the content of those emails.*

*A* *Yes.*

*Q* *So everyone of course will understand that. In so far as those emails contain observations as you have described them today, those observations were not meant to be funny, were they?*

*A* *They weren't meant to be funny, although the backdrop, I mean, quite clearly you will um, you will understand the tone in which they were written. We were, we were casting um aspersions against [UKSF1], so they weren't necessarily meant to be funny but they were sort of um pointed at [UKSF1].*

*Q* *Pointed observations which cast aspersions at the conduct of [UKSF1]?*

*A* *Yes.*

*Q* *And those pointed observations were matters that you had made having read operational reports about the conduct of [UKSF1].*

*A* *Yes.*

*Q* *So is it fair to summarise them very generally in this sense? You read descriptions of what [UKSF1] had done. You had observations of a pointed nature to make about those reports and their conduct. Is that fair?*

*A* *That's fair.*

*Q* *And you shared those private pointed observations with friends of yours.*

*A* *Yes.*

*Q* *And those observations were intended to cast aspersions on the conduct of [UKSF1].*

*A* *They weren't intended necessarily to cast aspersions on them. I mean, um this was conversations between three members of [UKSF3] who quite clearly um weren't particularly interested in um in not shielding [UKSF1] from what we thought could be happening and what we um the conversations that were happening. So it wasn't necessarily designed to cast aspersions against [UKSF1], it was just the tone of the conversation, if that makes sense.*

*Q* *It does and it may be that it was an inelegant question by me, for which I am very sorry, but can I just pick up on what you have said? You were privately commenting on what you "believed", to use your very word a moment ago, you were privately commenting on what you believed [UKSF1] were up to?*

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*A Er so “believed” again is an interesting word because I think as it, as the email chain -- and you will undoubtedly lead us through it -- sort of plays out, there is confusion I think on my part at the start because I am expressing an opinion of what may have happened. Quite clearly if you take the report at face value, they will tell you what happened. We and the colleagues I was discussing it with had a different or a potential different take on that from reading it. So, um I think it’s, it was a gradual movement through once we saw one, two, three and however many reports, that then I would say I started to drift towards belief in my mind that something may have been going on, but yeah, I mean, I was still being only presented with the um, the writing in front of me.*

*Q And, based on your reading of the writing in front of you, you came to believe that something may have been going on?*

*A It was definitely um an option because I think there were a number of ways that you could, you could read the reports. You could take them at face value or you could question them, as I did, and propose an alternative view to it.*

...

*CHAIR: Mr Glasgow, asked you a specific question about your belief. Can you answer that question? You believed something was going on. Yes or no?*

*A I believed it was worthy of, of further detail I think is probably the best way I can put it.*

*MR GLASGOW KC: Well, if I just quote back the very words you just used, you just said you believed something was going on, which is why I asked you the question. Do you want to change that now that you did not believe something was going on and you just believed that something was worthy of looking at?*

*A (After a pause) Well, I feel like I’m painting myself into a corner here, but not wishing to*

*CHAIR: N2107, the purpose of this exercise is to tell the truth to the Inquiry.*

*A Sir, yes.*

*Q The absolute truth.*

*A Indeed. So I think “believed” is too strong a word because it suggests that I had detailed knowledge that led me, that there was, my belief would be that right, I’ve read this and there is only one interpretation of that. I think in my mind I chose not to see the interpretation that was laid out on paper, but I proposed a different um interpretation of that. So my belief was that this was my comments were something that could have happened but it wasn’t necessarily, I, I don’t claim that I knew exactly what was happening but I believed that this was potentially something or my comments could have reflected what happened on the ground. So I was honest in my um comments to them. So, I mean, if the question is about do I believe what I wrote in the um, in the emails that I*

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*did, I believe that the questions I posed and the um the questions that I posed were, I believed that they were, that they were legitimate things to ask.*

*MR GLASGOW: At the time you sent those emails, did you have concerns that something improper might be happening?*

*A At the start, no, but as the emails progressed, just the fact that it was happening so often led me to believe and then that was confirmed later on, um that was confirmed later on by [N1791], who said an investigation was ongoing in Afghanistan. That was the first time that to me it became apparent that this wasn't just a few people on an email chain proposing an alternate reading of the reports.*

*Q And just so we can avoid any misunderstanding, the alternate reading of the report as you have just described it was that [UKSF1] might have been committing extra judicial killing?*

*A Sir, that is what I have stated in my comments, that, yes, you can certainly read it that way.*

*Q Well, it is not how you could certainly read it; that is how you read it, [N2107]?*

*A Yes, I agree.*

*Q I am not asking for your opinion on how anyone else might read what was here; I am asking for your opinion because it is your emails in which you have expressed certain views. We can agree, even if not at the start in January, by April of 2011 you believed that [UKSF1] might have been committing extra judicial killings?*

*A Yes.*

*Q Thank you. When you came to tell the RMP about the emails, did you tell the RMP that you were concerned that [UKSF1] might have been committing extra judicial killings?*

*A No.*

*Q And when you gave ----*

*CHAIR: Why not?*

*A I wasn't shown the emails um if I recollect correctly when I had my first interview, which I think was six years after and, although I had memories of the time, I couldn't, I wouldn't have been able to say exactly what I had written in those emails and so it only became apparent when I was then interviewed later and shown the emails. It reminded me exactly what I had written.*

*Q You have just told Counsel about April 2011 you believed [UKSF1] might have been committing extra judicial killings. So why did you not tell the RMP?*

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*A At that time in April?*

*Q Yes... You have a duty to do so. Were you aware of that?*

*A To be honest, Sir, I was not. Um so my natural reaction would have been to elevate this to the chain of command um ----*

*MR GLASGOW KC: Can I ask you to pause for a moment because I would like to ask you a question? Did you elevate this through your chain of command, [N2107]?*

*A I did not.*

*Q So your natural reaction would have been to elevate it through your chain of command, but in fact you did not do that?*

*A I did not do that.*

*Q Do you regret that decision now?*

*A In hindsight and the fact that the Inquiry is going on and having read the opening statements and therefore seen more, then that was certainly a course open to me um but - ---*

*Q I am afraid, sorry to interrupt you, [N2107], but that is not what I asked you. I did not ask you whether the course was open to you or not. You have already told us that it was the obvious course to take, which you did not take. The question I asked you was this. Having not taken the obvious course back in 2011, do you now regret that?*

*A I do regret it.*

CTI then turned to key aspects of N2107's career and training, to place in context the evidence. This included sensitive identifying material and material that is operationally sensitive that is relevant to the evidence that followed, which cannot be gisted.

N2107 gave evidence as to his career and his training, leading to him completing UKSF training in the early 2000s. N2107 had been involved in his past career in conducting DDOs. These operations did not use the tactic technique or procedure ("TTP") referenced in emails he subsequently sent to colleagues.

N2107 gave evidence as to his more senior roles in the late 2000s including being part of SU3 (sub unit 3) as an officer. In that period, N2107 had conducted operations to secure compounds and to seek out people to detain who were the targets of the operations, but they were not then called DDOs. Pre deployment training would have taken place to carry out such operations, but the TTP about which concerns were subsequently expressed in emails were not part of such training. N2107 confirmed that he was not tracking UKSF1 operations in the late 2000s.

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In the event of someone being shot, on such operations, when they should not have been, N2107 understood the procedures that needed to be followed because this formed part of the pre-deployment training. If rounds were fired, N2107 thinks a SINCREP would be raised. If someone was shot who was not a combatant and identified as such, N2107 thinks a Serious Incident Report would be prepared to explain what had happened. That would then be elevated up the chain of command to decide if further investigation was needed. As the officer commanding the sub unit, N2107 was intimately involved in this reporting. It was important for such post-operational reporting to be accurate so that it explains what happened during a particular operation and so it could be understood by anyone reviewing it.

*Q And in terms of the documentation that was produced after any particular operation, were you involved in the production of that document, the documentation for the operations on which you went?*

*A Yes, for all of them regardless because I was the officer commanding the [sub unit] while I was in country. I deployed on the majority of the operations, but those that I didn't, I still signed the reports, so I was intimately involved in the reporting.*

*Q It may be that it is an obvious question and forgive me for asking it nonetheless, but is it important that that documentation is accurate?*

*A It is.*

*Q Is it important that that documentation explains what has happened on a particular operation?*

*A Yes.*

*Q And is it important that that documentation can be understood by someone who was not on the operation if they come to review it?*

*A Yes...*

*Q So in its simplest form, if the uninitiated wanted to review what has happened on a particular operation, they look to the post-operational reporting to understand?*

*A Yes.*

*Q And that is intended to set out in as much detail as is necessary what happened, why it has happened and ultimately the consequences of that operation.*

*A Correct.*

*Q And it may well be that everyone has their own unique style of how they complete these reports, but when you completed them, did you have an eye to ensuring that enough detail was included so that anyone who came to look at it weeks or months afterwards could understand exactly what your [sub unit] had done?*

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*A     Indeed, so my time um working in the headquarters of DSF on the operations side of things, I used to read the reports um and to me one of my jobs as a [sub unit] commander was to ensure certainly in the reporting in my view that there was a complete picture because, you know, if you've got a high tempo of operations you don't suddenly want to have questions six months later about some specifics on something. So I was quite assiduous in ensuring that actually this described what happened and why it happened to a degree that hopefully would not require simple questions to be asked of it.*

Between 2010 and 2012 (dates given), N2107 was employed as part of a UKSF coordination role based outside of Afghanistan. N2107 provided further details of his role.

N2107 explained that he was copied into operational reports relating to Afghanistan, even though they were not directly relevant to the role he was then undertaking. He would read some of them, but not all of them. N2107 read them partly to keep abreast of what was happening in Afghanistan, and partly out of curiosity as he was interested to read how the campaign was going from a sub unit perspective.

CTI directed N2107 to an email exchange dated 24th January 2011 (MOD-198-0003568-A). One email was sent to N2107 on the 24th January 2011 had the subject heading “*Operation [C(1)] Objective [QA]: Story Board OPSUM [MOD-221-0003588]*” and had attached the OPSUM and story board for Objective QA. The summary of the objective described three Afghan men (“Bravos”) being engaged resulting in three EKIA. N2107 agreed that there was no suggestion in the operational summary that any of the three Bravos had been armed with a weapon.

N2107 forwarded this email, including the attachments, to N1791 who was deployed as OC of SU2 in Afghanistan. N2107 would describe them as work colleagues not friends. N2107 was asking the questions that are asked in the e-mail, effectively questioning the detail in the storyboard and seeking N1791’s take on killing people without weapons. He forwarded the attachments to N1791 because N1791 was in Afghanistan and therefore likely to be closer to what was happening, be privy to more detail and may have seen more reporting. N1791 was a UKSF3 sub unit commander and N2107 knew him to be able to email him. N2107 only expected N1791 to answer the question posed “*Interesting or am I misreading this?*” and provide any further detail he was privy to. N2107’s reading of the report was that “*there is life threatening movements by people without weapons*”.

*Q     And we have looked at the detail of the report to help refresh your memory and from the reading of the report were you concerned that unarmed individuals might have been shot?*

*A     Not concern in the sense that there are procedures in place to deal with that, as I explained to you, because there are occasions -- and it happened on my tour -- somebody can be shot. I mean, a life threatening movement can appear just as that and an individual is engaged but they are subsequently found not to have a weapon. So, I mean,*

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*it has happened, but then you have the process to explain how that happened. So I think at this stage I am asking the questions because it is quite stark on the paper.*

*Q* *And by “stark on the paper” do you mean the operational summary does not appear to explain how six people have been killed?*

*A* *Indeed.*

*Q* *Because, looking at the paper, it does not suggest that any of those six people were armed.*

*A* *It says they well, yes, there is a difference between weapons recovered and the number of people who have been killed and correct.*

*Q* *Well, three people are shot dead and two AK47s are found in a different building, so it is unlikely that those two weapons were being held by them at the time they were shot.*

*A* *So I can’t comment on that because I wasn’t there. I mean, if the weapons were picked up by somebody and moved, I can’t say. I can only tell you what it says in the reporting. It doesn’t go into that detail, so there are questions.*

*Q* *Exactly and you had questions about the reporting.*

*A* *I did.*

*Q* *Because you did not think the reporting provided an explanation for what had happened, and the report needed to provide that explanation?*

*A* *I’m not sure if it necessarily would do in this because I think the Serious Incident Report, the Shooting Report, would provide greater detail, but I, I know that there was a series of steps to take, so I wouldn’t be surprised if this was more factual. However, I think it would have been useful certainly from my reading to have had greater detail in there.*

*Q* *Because, as you told us, when you compiled these reports, you were assiduous in the detail.*

*A* *I was.*

*Q* *So that everyone could understand what had happened and why it had happened.*

*A* *Yes.*

*Q* *And, if we look at the report again if we need to, there is no explanation for what happened or why it happened.*

*A* *Yes, indeed.*

*CHAIR: You just told Mr Glasgow that you were not concerned that unarmed people were shot, you were asking about the procedure. Why then did you say in the second sentence there:*

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*“I seem to recall that during our time we had examples but they tended to be more isolated”?*

*Why did you say that if you were not concerned that unarmed people were being shot and you were merely, as you have just told Counsel, interested in the procedure?*

*A Um ...*

*Q Do you want to read that again?*

*A Sir, thank you. So I think the comment is, would be about the number of people who will have been shot, but the process still remains the same.*

*Q So just to be clear, the question is were you or were you not concerned that unarmed people were shot?*

*A I don't express concern in here, so I'm not, I'm, no, I was not concerned at that moment in time that something had happened that might suggest um other outcomes. The reading of it could still be seen as legitimate activity at the ground that was unfortunate but happened.*

*Q Why then did you write, “I seem to recall that during our time we had examples but they tended to be more isolated”?*

*A Because I think that was a basis on the numbers here rather than anything else.*

*CHAIR: Thank you, Mr Glasgow.*

*MR GLASGOW: What do you mean by “the numbers here”?*

*A Well, I, if, I mean and I haven't read my own reporting, but I remember, if I recall correctly, that they were isolated incidents with us. So on the example, one person may have been shot that didn't have a weapon rather than a number of people, but it certainly didn't happen on every operation that I was deployed on with the [sub unit], so the incidents were more isolated. They would happen sporadically rather than routinely.*

*Q And, in January of 2011, were you already of the view that these incidents were happening routinely?*

*A I can't recall that, I've no more emails beforehand and I would have thought that I would have sent something prior to this had I thought there was a pattern being formed before this. I can't remember what, why if I will have had no emails to sort of comment on it beforehand.*

*Q Well, just think about that for a moment. If this was the first time you had come across an OPSUM that you were concerned about, that might of itself just have been an isolated incident. Do you agree?*

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*A Um it might, if this was the first reading of the first one... that could well have just been an isolated incident.*

*A Yes.*

*Q But you have chosen to send this out to somebody in Afghanistan who you think might be able to give you more information.*

*A Correct.*

*Q So clearly by this stage this cannot be an isolated incident itself because you have taken the decision to act.*

*A Correct.*

*Q So you must have already been aware of routine incidents like this before you sent this email?*

*A I can't recall, I cannot recall that detail, but the reading of this would suggest that, providing I am not referring to ... "During our time the examples tended to be more isolated", yes, no, I don't think that's referring to numbers of bravos, correct, but I can't recall when I would have first read something that may have given the cause for considering and then sort of logging it in my mind "Oh right, this has happened on this occasion and this occasion and this occasion". I'm afraid I can't recall.*

*Q But certainly by January of 2011 you have reached a point in your consideration of this that you want further information from somebody who is deployed at that stage in Afghanistan?*

*A Correct.*

*Q And what were you hoping that your colleague [N1791] might be able to tell you?*

*A To provide greater tactical detail as to why this was occurring and I presume to know what the thinking was within [SFHQ(A)].*

*Q What do you mean by "what the thinking was within [SFHQ(A)]"?*

*A Well, I would expect that during my time this would have been, this would have been picked up and that it would be being discussed.*

*Q So based on your experience when deployed as a [sub unit] commander ----*

*A Yes.*

*Q -- your view on reading this operational summary and limited of course just to that, your view was that you thought it should have been picked up and looked at?*

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*A I would fully expect this to have been, and certainly if the suggestion is that I had seen something beforehand and therefore this is not the first incident, I would fully expect this to have been picked up in [SFHQ(A)] and in the headquarters back in the UK, possibly even the headquarters in [UKSF1], so yes.*

*Q And when you say “picked up” do you mean by that examined by people higher up the chain of command?*

*A Indeed.*

*Q And looked at with an “unjaundiced view”, using language that you use later on in some of your emails.*

*A Yes.*

*Q So your view is that, thinking back now to the sending of this email some time ago of course, if this had been your operation ---*

*A Yes.*

*Q -- in your deployment --*

*A Yes.*

*Q -- you would have expected people to ask questions about what had happened?*

*A Certainly and had, I mean, the procedure would, I mean, I’m assuming procedure had been followed because that was set out as to what to do and, having not seen the Serious Incident Report, the Shooting Report or whatever, I would have, I would have assumed, well my assumption would be that they must have answered all the questions in there to explain how this outcome was arrived at, but certainly, you know, it’s not there for me to read on the actual OPSUM itself.*

*Q So the OPSUM does not give you the answer to the question you were asking.*

*A Indeed.*

*Q But hopefully you would have expected subsequent reporting would have answered those questions?*

*A If reporting had been sent to me or certainly what I will have been expecting from [N1791] is an explanation of yeah, you know, “This has been talked about, actually it’s a poor TTP that isn’t producing results” or I would have expected some flavour to the, to the, to the comments on here.*

*Q Did you get any flavour to the comments?*

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*A Not that I can recall. I don't think [N1791], and [N1791] was busy, so um I don't think he sort of replied to that many emails I sent.*

CTI referred N2107 to another email exchange on 9th February (MOD-198-0002064-A). N2107 received the OPSUM for Objective 2 (MOD-221-0001366-A). CTI read from the summary of the incident which referred to eight EKIA and three AK47.

The same day, N2107 sent the OPSUM to N2349 and another colleague, N5461, who both worked in the same location as N2107. N5461 was on the original distribution list, and N2107 was including N5461 in his thinking. He sent the email to N2349 possibly because N1791 might not have answered emails that he had sent to him so he wouldn't have pursued that. Again, N2349 as a senior officer for UKSF3 had far more engagement with headquarters, Special Forces and his counterpart in UKSF1. N2107 would have expected him to know more than he would and therefore may be able to shed some light on things. N2107 was "*following the chain of command*". N2349 was the operations officer of the unit that N2107 was working for and in effect was running operations for CO UKSF3. He was working directly for the CO, and had the ear of N2107's boss.

In addition to forwarding the email and OPSUM, N2107 copied into that email three sections from the body of the operational summary to highlight them. Those were the particular parts of the operational summary he wanted to make observations on.

*Q You begin your email with the words "Yeah right", so you are expressing a sense of disbelief?*

*A Correct.*

*Q And so I have understood what you mean when you agree with that, the way the DDO has been written up in the operational summary, do you not believe the way it has been written up or do you not believe what has happened or is it both?*

*A I think it is, it would be both.*

*Q Are you surprised therefore by what you read in that operational summary?*

*A I am surprised, yes.*

*Q Because the operational summary appears to suggest that a number of the bravos are killed by one of their own.*

*A That doesn't necessarily stand out as being the thing that I'd, that I would question most about that.*

*Q What is the thing that you would question most then about that first entry?*

*A As in the bit I've highlighted and the bit that I've cut out, all three of those paragraphs.*

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*Q Well, there must be a reason why those three paragraphs have been chosen by you.*

*A I mean, it's effectively it's the key bits of the operation, the kinetic bits of the operation. I think the bit that I find most confusing to me is the tactic of sending somebody back in once the compound has been, once the area has been secured. It makes no sense to me.*

*Q And when you say makes no sense to you, do you mean by that, based on your experience of having conducted detention operations in compounds at night, this particular method or TTP is not one that you recognise?*

*A It's not one that I recognise.*

*Q It is not one that you had been taught on pre-deployment training?*

*A Correct.*

*Q And it's one that makes no sense to you?*

*A Yes and, and you know I would venture that you don't need to be a Special Forces [soldier] to realise that once you've secured an area potentially then allowing somebody to go back into that area is tactically, in my view, not sound. You are giving the element of control back to the enemy in this case.*

*Q At its most basic level, and obviously I am approaching it from a very basic sense because I do not have anything like your experience, but at a basic level, having taken control of the compound, you are then allowing an individual to go out of sight into a building where he is free to do whatever he wants.*

*A Correct.*

*Q Which might be pick up a weapon, as it is reported he did in this case; it might be set a trap so that when members of the [sub unit] go into the building itself moments after him, they are then caught up in an explosion.*

*A Correct.*

*Q So you are handing back a sense of control to that one individual.*

*A Indeed.*

*Q And he is then able to take the [sub unit] by surprise?*

*A Yes, correct.*

*Q And although not successful here with the AK47, do you recognise that the real risk is that he might have shot and injured or worse even killed a member or members of the [sub unit]? So not only is it not a TTP that you recognise, it is one that you regard as operationally dangerous?*

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*A Yes, unsound, yes.*

*Q So when you used the phrase “Yeah right” is that in a sense expressing disbelief at what has happened to the two people to whom you were sending these details?*

*A Yes.*

*Q Is there a sense almost of incredulity here, that you cannot believe that a [sub unit] from UKSF would be this foolish?*

*A There’s two elements to this: very much that, I can’t understand why, you know, this tactic would be used because it’s just unsound; and (2) I find it incredible that somebody having seen that the overwhelming force that was against them, the Afghan individual in this case, would choose to go back inside and then try and come out and injure or kill members, you know, of the [sub unit] that was on the ground. To me it makes no sense as I sort of point out. I mean, I would have done it in a different way, but so there’s two elements to it. I think the tactics are unsound and (2) I am questioning whether an Afghan would do that because I wouldn’t do that.*

*Q Because based on your experience, anyone who was detained during the course of a detention operation is likely to be released at some point in the not too distant future.*

*A Yes, yeah.*

*Q And that was common knowledge.*

*A Yes, yeah, there was, there was a tension between evidence and intelligence so we might have the intelligence to know who somebody is, but the evidence didn’t exist, so I had a number of examples during my tour where people went in and were detained, went into the detention system but were released.*

*Q So at worse someone might face hours or a few days detained and the gamble that they are taking if this scenario is accurate, they are gambling a day or two’s detentions versus*

*A Their life.*

*Q -- certain death?*

*A Yes.*

*Q Because recognising the risk and reward here, the reward, if there is one for the individual bravo in this particular instance, is to injure or kill one, possibly more than one, member of the [sub unit], but the certain result for them if they were to do this is that they would be shot dead.*

*A Correct.*

*Q So in the risk/reward balance as you look at it at least is little reward for a lethal risk.*

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*A Yes.*

*Q You then continue, having quoted from the operational summary, using your own words. So if you look beneath the third of the three paragraphs you have quoted, you begin now with the following:*

*“I find it quite incredible the amount of bravos that [SU1A] send back into a building who then decide to get weapons, grenades and engage the [sub unit] knowing it will achieve nothing.”*

*Can I just pause that paragraph there for a moment and just look at what you have written:*

*Well, this is an occasion where you were sent an operational summary and a bravo has been sent back in and managed to arm himself, and this is the second of the operational summaries which we have looked at in your emails. It did not happen in the first version that we looked at, so when you used the phrase “I find it quite incredible the amount of bravos that [SU1A] sent back in”, you must be referring to other operational summaries.*

*A Correct.*

*Q At the time you sent this email on 9 February, you are already aware of a pattern, to use your word from earlier, a pattern in which [UKSF1] are sending individual bravos back into a building and where they end up being shot dead because they have armed themselves?*

*A Correct.*

*Q So is it fair to say that by this stage it is not only something that you find incredible, but are you shocked by it?*

*A I wouldn't use the word “shocked”. I mean, it needs, it needs greater detail. I think I would have serious questions about this that if I was in [SFHQ(A)] in command chain in some way I would raise pointed questions about it because in my mind there is only a matter of time before somebody has some success and a member of the armed forces is shot, injured, killed on the ground. So I mean “shocked” isn't the word I would use, but I think I was suitably confused by this that, of why this tactic is being used, that I, you know, have questions about its appropriateness.*

N2107 sent this through to the UKSF3 COS, N2349, because he would have been privy to more information, would have had a direct contact to N1791, the UKSF3 sub unit commander in Afghanistan at the time, and would have expected N2349 might have more knowledge of what was happening and what was being said on the ground. He would have expected the flavour of the reply to be “I've heard this” or “You haven't seen the SIR” or further detail.

N2107 wanted greater detail if there was detail. In theory they will have had reasons for doing this, N2107 didn't understand why they were doing the TTP so he wanted it explained to him. It

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did not make any sense then or now. N2107 agreed that it cedes tactical advantage or control to the enemy and puts the lives of the sub unit at risk.

*Q In other words, if you are really intent on inflicting maximum damage in the certain knowledge that you will ultimately end up dying, the best thing would be to hide in the corner with your AK47 and wait for people to come in?*

*A Indeed.*

*Q Or to set off an IED if there was one available?*

*A Correct.*

*Q Rather than simply running out of the door with your AK47 to face a hail of gun fire from the [cover men] there?*

*A Correct.*

*Q And then you sign your email off with the following:*

*“Whilst murder and [UKSF1] have oft been regular bedfellows, this is beginning to look bone”.*

*And by that, well you say “this is beginning to look bone”, do you mean this just looks incredible; it seems stupid?*

*A It seems very stupid.*

*Q Right, so the actions of ceding control and allowing an unrestrained and unfollowed bravo back in is “stupid”?*

*A Correct.*

*Q And what did you mean when you wrote “murder and - [UKSF1] have oft been regular bedfellows”?*

*A So I’m referring to historic allegations that have been raised against [UKSF1]. [Sets out two allegations.] So, I mean, it is very unprofessional language on my behalf witnessing the fact that, you know, there are historic allegations against [UKSF1]. If you read this in the way that I have, it looks to me as though you are creating the conditions to be able to engage somebody and shoot them.*

*Q And you used the phrase or the word “murder and [UKSF1]”. So do we understand that your reading of what appears to have happened on this DDO from this OPSUM is that this might be murder?*

*A Indeed.*

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*Q And this is not the first time you have read an operational summary where you have been concerned that UKSF1 have been murdering bravos?*

*A Er, I will have read because the email chain clearly indicates that this action has been going on. Um I think if I may, I think I still come back to the first. I mean, I would see at this stage and this is, you know, unprofessional language, but you know mud-slinging with colleagues from [UKSF3], short of tactical explanation as to why this activity is happening, but it always seems to follow a similar outcome, you know, I will have had significant questions in my mind, you know, why is this happening, but the pattern will have begun to be somewhat worrying.*

*Q Well, you just agreed that your opinion is that on this and other operations where [UKSF1] has sent people back into the building and they have ultimately been shot, that that might amount to murder.*

*A It might do indeed.*

*Q That's not mud-slinging, is it? That is a very serious allegation to be making against UKSF.*

*A That is correct, yes.*

N2107 agreed that the fact that UKSF1 might have murdered people does not appear from his last sentence to be a surprise to N2107. N2107 had referenced two other allegations and there were also a number of books that have been released and he would have read a number of those that he thinks he would have had questions about.

N2107 received a reply on the same day from N2349 (MOD-198-0002064-A) saying: “*you may or may not have seen the recent stats from SFHQ(A) proudly comparing the SU1 EKIA rate to the PF1 and claiming that they kill more insurgents*”. N2107 agreed that N2349 appeared to be telling him there is some sort of statistical comparison between the number of insurgents shot by different deployments, and that UKSF1 are in effect boasting that they have killed more insurgents than anyone else.

*Q So, rather than having your mind put at ease that there might be a reason for the way the TTP has developed, what you are actually being told by [N2349] is that [UKSF1] are boasting about the number of people they have killed?*

*A I mean, you say that “proudly comparing”, I mean, it is one of the statistics that is being used whether you believe that that is a good, you know, a good method or a good method of, effectively to show that you are conducting operations and having an impact is one of the statistics that they will use. I mean, it says “proudly comparing”, so, you know, if that is boasting, fine, but you know.*

*Q Well, how did you read it, because you receive an email and you must have seen an email arrive from [N2349] and thought to yourself “I wonder whether this will offer the*

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*explanation that will set my mind at rest and I won't think that [UKSF1] are murdering people" and then you open the email to be told that in fact there is proud comparison between individuals, in particular between the number of people killed by [UKSF1]. Did that set your mind at rest?*

*A I can't recall at the time how my mind or what I would have been thinking at that time.*

*Q Have a think about it now, [N2107].*

*A Yes, Sir.*

*Q I will ask you to try and do so. You have sent an email to a colleague who you believe might have information to set your mind at rest and to reassure you that [UKSF1] are not murdering people on DDOs and in fact the reply you get is, rather than "This is an explanation for the DDO", "I find it quite depressing", which is what he is talking about, "that [UKSF1] are boasting about how many people they have killed. That could not have put your mind at rest, could it?*

*A It won't have put my mind necessarily at rest, but it is one of the statistics. I mean, if he is unaware of, of the tactic, of the detail behind it, if he's simply saying these are figures, you know, whichever [sub unit] has said we've killed/captured this many people and, you know, we've said we've done this many, I mean, he's just offering up one of the measurements of effect MOE.*

*CHAIR: But, with respect, read it again if you would not mind. As Counsel has pointed out, he is not simply giving you the figures. He is using the phrase "proudly comparing". Can you read it again? Can you answer Counsel's question again?*

*A Can you ask the question again, please? Sorry, would it put my mind, will this have put my mind at rest?*

*Q Yes.*

*A There is nothing that I can recall now where there were alarm bells in my mind at that time, but reading it, yes, I mean I won't have, it didn't offer any explanation as to the statistics and thinking and the tactics.*

*MR GLASGOW: So the concerns that you had raised with [N2349] have not been answered?*

*A Yes, I mean, there is no tactical detail on this.*

N2107 agreed that N2349's wording suggested that he was agreeing with N2107 that, from the reading of the OPSUM, that force has not been appropriately applied by UKSF1. N2107's reply to this email was "*they are clearly not considering...the fact that the ability to question a detainee may yield further tactical information or intelligence to be acted upon.*"

N2107 agreed that N2349 was suggesting there was somewhere within the chain of command for UKSF1 a "*massive failure of leadership*". That is concerning on any level, but UKSF1 weren't the operational headquarters running Afghanistan, so SFHQ(A) sat on top of it and HQ DSF sat

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on top of that. All things being equal, if the activity on the ground was inappropriate, it should have then been picked up in SFHQ(A) and certainly at the headquarters level.

There was an assumption from N2107 that N2349 was privy to greater detail than N2107 had simply reading the OPSUMs. N2107 didn't know how much N2349's comments are reflecting other reporting that he might have seen, or other conversations that he might have had with others in Afghanistan.

CTI asked N2107 if N2349's response that there was a massive failure of leadership within UKSF1 made N2107 even more concerned.

*A So, again, [UKSF1] to me here is referring to the operational unit on the ground, the [sub unit], but [SFHQ(A)] sitting above this and HQ DSF are not mentioned in this email chain, so I don't know if he is aware whether others have picked this up as well and are questioning it. To me, I read that is he is, that the leadership he is pointing this at is the [sub unit] themselves, the OC, the SUM commanders right down, well the [sub unit] that is conducting this operation on the ground. I am not reading that as sort of leadership that spans all the way up to [UKSF1] back in [the UK].*

*Q It may be impossible to know ultimately where the buck stops, but what is being described to you in here according to [N2349]'s words are that there is somewhere within the chain of command a massive failure that is enabling UKSF1 possibly to get away with murder.*

*A Agreed.*

N2349 signed off his email with:

*"If we don't believe then, then no one else will and when the next WikiLeaks occurs then we will be dragged down with them."*

N2107 agreed N2349 was echoing his concerns that murder was being committed. N2349 was raising the possibility that were this all to get out, everyone involved in UKSF might be dragged down together. N2107's reply to him on the same day was:

*"I only hope that Headquarters DSF cast a similarly jaundiced eye over their spin. I suspect not."*

N2107 agreed that the "spin" that he was referring to was the spin within the OPSUM that appears to describe activity and to legitimise what he thought might be murder. He was expressing the hope that headquarters will look at this and not just put it to one side but would actually critically examine what was going on. However, at this stage, in February of 2011, N2107 agrees he was expressing the view to N2349 that he did not believe HQ DSF will actually do anything about this at all.

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On 14th February, N2107 received details of another SFHQ(A) operation and the OPSUM recorded (MOD-221-0001825).

CTI observed that the same typo seems to appear on a number of occasions. The phrase “they pose an immediate threat” seemed to constantly be written as “they pose and immediate threat”. CTI noted it was almost as if someone has copied a previous entry with the typographical error and pasted it in, leaving the same error in for this entry, or it is someone who thinks the word “an” is spelt with a “d” at the end of it.

N2107 forwarded the OPSUM to N2349 on the same day he received it. He did not quote directly from the OPSUM but he did provide a description. By these comments, he was referring N2349 to the entry in the OPSUM which described a Bravo being sent back in to the main building and reappearing with a weapon, before being shot and killed by UKSF1. N2107 agreed this described UKSF1 ceding tactical advantage to the enemy and allowing an insurgent to arm himself, introducing the new risk that members of the call sign could have been injured or worse.

Having pointed that particular point out to N2349, N2107 wrote posing a question to N2349 to see if he thought the same way as N2107, namely that UKSF1 might be directing insurgents back into a property in order that they can come out armed and therefore there is an excuse to shoot them. N2107 agreed that the concern is UKSF1 are creating a situation which might appear to justify the killing but is in fact covering up murder.

N2349’s response to N2107 was to say that is a good point. N2107 agreed that it appeared that N2349 was agreeing with the possibility he had raised.

*Q And, if there was any doubt with what the words “a good point” might mean, [N2349] follows up with the following:*

*“There appears to be a casual disregard for life, counterinsurgency principles and*

*credible reporting.”*

*Q And does that echo the concern that you had about a “casual regard” by [UKSF1] for those principles?*

*A I didn’t respond, so er that would have been helpful knowing the scene if I had actually responded to that. I mean, I mean that’s a genuine question of mine based on nothing else than thinking through the situation on the ground of me as an individual, you know, why would I choose over overwhelming force to come out and try and have a fire fight when I know the only outcome, the worse possible outcome, would be my own death? So it was a genuine question that I just thought. I mean, there is nothing. I had no further basis for it, but I wondered if, you know, a fair situation was being manufactured and created on the ground.*

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*Q Yes, and that is why you ask about whether they are “setting the conditions for the execution of the bravos” because from your reading of the reports and based on your experience and expertise, this simply did not make sense.*

*A Yes and because I didn’t use that TTP I had no direct comparison with which, with which I could make. However, I mean, even reading it now, it just doesn’t seem right and I would -- again, this is one of the things that I would wish to know the sort of tactical detail that sort of sits behind this, but of course [N2349] is not going to know that either.*

*Q No, so you are not asking for [N2349]’s tactical input.*

*A Well, I’m, I think what I’m asking is, I mean, just is will he at least read this and interpret it the same way that I do because there is no suggestion that I’ve not seen, read, heard or anything that says exactly that: [UKSF1] ask somebody to “Go back in and, if you have got any weapons, can you just bring them out”, so, I mean, it’s complete, I mean it’s just me raising that possibility.*

*Q But you think it might be a possibility?*

*A I think it is a, I think it is a possibility, so correct.*

*Q So, based on all your knowledge and experience in the UKSF community, you think it is a possibility ----*

*A Well I ----*

*Q -- let me finish, please, [N2107].*

*A I am sorry.*

*Q Based on your knowledge and experience within the UKSF community, you think it is a possibility that UKSF1 are deliberately setting conditions which will enable them to murder individuals and get away with it?*

*A I think it is a possibility, but that’s based on no SF experience or anything else. That is an interpretation. I mean, I don’t need to have X amount of years of experience in UKSF, having not used this tactic myself to think that. That’s just pure supposition from my perspective seeing what I’m seeing on the paper.*

*Q Well, did you think-[UKSF3] might go about murdering people in Afghanistan and trying to get away with it?*

*A Did I think they would?*

*Q Yes, is that something you might think of [UKSF3]?*

*A I would not, no.*

*Q But it is something you thought of [UKSF1]?*

*A Correct.*

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*Q And that thought appears to be echoed by your work colleague [N2349], do you agree?*

*A Correct, yes.*

*Q He does not write back to you and say in words that might be a bit more strident than this, but “Goodness gracious me, how can you say that”.*

*A No, no, he does not.*

*Q “You can’t possibly think that of [UKSF1]”.*

*A No, that’s correct. Sir, is it possible just to add, I mean, if I had read, if this had been an [UKSF3] [sub unit] writing the same stuff, the questions would remain the same in my mind. This isn’t purely a fact that it has a [UKSF1] title on it that makes me say that. I think the, my language would have been different as a serving member of [UKSF3] and knowing members of [UKSF3], I wouldn’t have jumped to a conclusion in the way that I think I have done for [UKSF1].*

*Q Right so just going back to the answers you gave a moment ago before you added something, you would not think-[UKSF3] would engage in murdering people and trying to cover it up and you said “No” to that.*

*A So, in my tenure with everything I saw, there was never any, there was never any allegations of murder that I never saw, witnessed, heard about, so no. I mean, I can’t, it’s during my time there I can say no, I never heard or thought that would be the case.*

*Q But you thought it might be the case with [UKSF1]?*

*A I chose to take that view, indeed.*

N2107 dealt with a further chain of emails from 14th February 2011 relating to Operation TYBURN, and the OPSUM relating to that operation (MOD-221-0001417).

N2107 agrees that entries in the OPSUM identified two of his previously expressed concerns. First bravos-being sent back inside to conduct searches and allowing them to arm themselves, and secondly insurgents acting in a manner that he found impossible to understand because against all odds they have tried to use either a grenade or an AK47 to engage UKSF.

N2107 raised the concerns with N1791 and N2349, asking N1791:

*“Is this being commented on in any way as it has become an interesting development?”*

And to N2349:

*“What do you think, worth an RFI (a request for information) to inform pre-deployment training?”*

N2107 was asking had that been picked up as an activity on the ground, were people in Afghanistan talking about it so that steps in theatre could be taken to combat this TTP by the

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insurgents, and secondly whether pre deployment training needed to be adjusted to combat it (MOD-198-0000333-A).

N1791 replied (MOD-198-0002877-A) that “*SFHQ(A) support staff have commented on it to the extent that a bollocking has occurred to ensure that the staff officers support the guys on the ground, which is slightly missing the point.*”

*Q Just pause there. What did you understand [N1791] to mean when he described a “bollocking” had happened with the [support staff] and that that “slightly missed the point”?*

*A So my assumption is that there will have been [support staff] involved in the headquarters who will have been commenting on possibly the tactics but certainly the outcome and the response to that is that they have been told “You are supporting the guys on the ground”. I suspect they will have been told “It’s not your place to question”.*

*Q In other words, UKSF know what they are doing and, if you are [support staff], you should not be questioning the activity of the UKSF units who are deployed?*

*A Correct.*

N2107 agreed that slightly misses the point because it means the activity that you want questioned isn’t being questioned.

N1791 then wrote:

*“[N889] and [N1141] fell out over this last week, but this week’s activity shows that nothing is being done to address it.”*

N2107 isn’t sure what N1791 meant by that. N2107’s reading of it, will have been probably commenting on the tactics and the outcome with N1141 as the sub unit commander justifying it as a legitimate thing and probably N889 saying that, you know, this doesn’t add up, the statistics don’t add up, the details don’t add up is N2107’s reading of that.

N2107 was then referred to the next paragraph of N1791’s response about the APU raising a civilian casualty allegation:

*‘The APU have raised a CIVCAS, a civilian casualty allegation, “over shooting runners and “assassination of innocents” on target and all in all our relationship and credibility including [SU2] is suffering. It is viewed as what doesn’t everyone get about how important these ops are. The guys appear to be beyond reproach. Astonishing.’*

N2107 agreed that it appears the APU’s complaint is a very serious allegation and the relationship between UKSF1 and the APU is struggling. N2107 agreed that there was

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relationship damage and reputational damage to SFHQ(A) as a result of what was happening in theatre.

Regarding the second sentence, N2107 assumes what N1791 is saying is that this is being justified by the sub unit as being an effective tactic to deal with the Taliban in country. The operations are sufficiently important that this tactic is a legitimate thing. N2107 agreed that, “*The guys appear to be beyond reproach*” meant in other words that no one can criticise them. This seems to be played out by the fact that, when support staff in the headquarters have raised things, they have been shut down.

*Q And that of course is described as “astonishing” by [N1791] in the last word that he puts into that paragraph. Is that a view that you then shared having read this information?*

*A Well, I have to take his, I have to take what he’s telling me as happening on the grounds, which was part of the reason for reaching out to him previously because I had no idea what’s being talked about and so, you know, I receive a lot of information, ground sort of based evidence, of what’s happening in the headquarters and how this being perceived there. So this is the first time um that I think I’ve become aware that in head, in country and in the headquarters it’s not just maybe myself, [N1791] and [N2349] who are having, who are commenting on this stuff, but others who are closer to it are certainly raising this as well.*

*Q And those others, if they are [support staff]], are being shut down?*

*A Yes.*

*Q The answer from [UKSF1] is “It’s all so important, don’t worry about it”.*

*A Yes.*

*Q And “We are [UKSF1], we are beyond reproach”?*

*A That is what [N1791] says as it appears that there is no come-back on this.*

*Q And did that surprise you?*

*A It disappoints. It will have disappointed me because I, my experience being on the ground um I don’t think I could ever have got into a position whereby um I would have been in this position. I don’t think my [sub unit] would have been able to do this without there being some questions raised certainly in theatre and back in UK.*

CTI asked if, given N2107’s belief that he thought UKSF1 were murdering people, N1791’s email set N2107’s mind at rest. N2107 replied that if the email is read in full it did, because N2349 also states that there was an investigation going on. The final paragraph of N1791’s email reads:

*“Not helped by the detention of four family members from [APUI] and the ongoing investigation”.*

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This was the first time that it really resonated with N2107 that this might have something more to it than just his personal opinion. N2107 had assumed at the time this indicated there was an investigation conducted into the activity of UKSF1. During the hearing N2107 now agreed with CTI that the wording actually suggested the investigation was simply into the detention of the four family members. N2107 thought he had jumped to the conclusion that the investigation was part of one of the operations where people will have been sent back into a building and shot, and was all sort of part and parcel of the same thing. When asked by the Chair, N2107 said he did not have a clear recollection of assuming it was an investigation into everything, but that was his reading of it. It is not until it was pointed out to him by CTI in the hearing that the investigation was only about the detention of four family members but not the activity ongoing on the ground.

CTI directed N2107 to his response back to N1791:

*“not long until N1785 and I hope a rescrubbing of activity.”*

N2107 explained that he hoped there would be a fresh start and a new approach upon the arrival of N1785 as the new Commander of SFHQ(A), with better TTP’s.

N2107’s response went on to say: *“I’m not sure that [N1786] is on top of this ...”*

A *So when I say “I am not sure that [N1786] is on top of this considering how damaging it is”, is am referring to the fact that there is an investigation going on, the APU are now saying they’re not, you know they’re not happy with the activity that’s happening on the ground and the Commander of [SFHQ(A)] has allowed a situation, he has allowed this situation to develop. That’s what I’m talking about when I’m saying, you know, how damaging this is, an investigation into the TTP and the activities thereon, I wouldn’t expect to be an immediate thing. It’s not, I would expect that to take some form of time and I think that’s referenced in [N1785]. I don’t think [N1785] would have been happy with forces going out and potentially putting themselves at risk in the way that this happens. Clearly [N1786] was because the TTP carries on during his time. So I don’t think that, well the top one in my mind is not me saying “I think this is an ultimate failure of leadership because any investigation will not reveal anything”. Yeah, I’m not saying that.*

N2107 genuinely believed the investigation would uncover any wrongdoing if wrongdoing was happening and took comfort from the fact that actually there were processes in place. If this was then scrubbed through it would do one of two things: it would show that there was nothing to be concerned about and therefore reputational damage to UKSF to potentially mitigate it, or actually there is something that needs to be investigated here. N2107’s comments were in the round, not about that specific bit. N2107’s observations as the timeline moves on and the narrative grows, and at that moment, there is concern because there is talk about an investigation ongoing.

N2107 said that he thought N2349’s comment *“not helped, not helped by it”* would suggest that the investigation was disassociated from the activity above. So it is not helped purely by the detention of those family members, and that is what the investigation is looking at. That is his

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understanding of “not helped”, it is putting a difference between the CIVCAS allegations and the investigation into the family members of the APU.

N2107 had a recollection of thinking at the time the investigation was into the TTP and it would take some time to conclude. His assumption was that it would have to involve somebody from outside the SFHQ(A) construct in order to be credible, but that the CO of SFHQ(A) would have been involved in some way.

N2107 agreed that there was the potential for someone to end up dead, for both friendly forces on the ground and Afghans. If somebody came out firing a weapon, somebody could have been injured or killed. It made sense to N2107 to stop the TTP being used quickly. N2107 is clear that if he had been Commander SFHQ(A) he would have done it differently, he would not have been content with the TTP as he had seen it employed. N2107 did not bring the issue to N1785’s attention. It did not occur to him, if it had that is exactly what he would have done because he knew N1785 to an extent that he could have done that. The reason why it did not occur to him is because he had misread the email, and took it to mean an investigation into the TTP was ongoing. Therefore going to N1785 wouldn’t have achieved anything more than he already thought was happening.

CTI then asked N2107 to look at his email exchange dated 16<sup>th</sup> February to N2349 about the manner in which matters would have been escalated if they had happened in the location outside Afghanistan where N2107 was based (MOD-198-0002879-A).

*“Please find attached an email concerning recording EJK.”*

N2107 agreed he was bringing to N2349’s attention the appropriate reporting restrictions if there is a suspected EJK.

*“I appreciated you were nervous whilst I’m more relaxed about the whole thing and if [Op D2/F] LO or anyone else connected with contact with [LG (not A)] authorities either sees or hears about any actual or suspected EJK then we would report it up immediately.”*

N2107 suspected EJKs were happening in Afghanistan. N2107 did not check whether anyone was reporting the concerns that he had about the activities of UKSF1 in January and February 2011. He did not report the concerns himself.

*Q. And his reply to you:*

*“You have the direction off-pat.”*

*In other words, you do understand exactly what would happen in the need to report matters and to escalate them, okay?*

*“In fairness to [other location, not Afghanistan], who is to say that they don’t routinely release detainees to remove some curtains which provoke said detainees to drop grenades from their pockets and try to shoot their captors. It seems a*

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*popular modus operandi in that part of the world. I also suspect that red on red incidents are often mistaken for EJK. Should we work this into the MINSUB do you think?"*

*And what do you think that [N2349] was referring to when he referred to "working this into the MINSUB"?*

*A To be honest, I don't know what he means by the MINSUB there because that is asking the Minister for permission or informing a minister of something.*

*Q Yes.*

*A So that doesn't sort of sit within.*

*Q No.*

*A So whether that is referring to something separate that is being done, but it doesn't, that doesn't make sense in the context of what he is putting to me.*

N2107's reply was: "*I like that so much I'm going to copy [N5461] in.*" N2107 said that N2349 was being glib, he was poking fun at the TTP that they've identified they have had issues with. There was a shared sense of disbelief that the TTP was a worthwhile and practical TTP. It would appear from their earlier conversations it was being used as an excuse to provoke actions on the ground.

*Q Did you wonder whether it was possible that the write-ups in the OPSUMS were in fact completely inaccurate?*

*A There was definitely, and I have had time to reflect on this, there was definitely part of me that thought I must have this wrong, that, because I couldn't see from my experience of being on the ground, if my interpretation was correct and that was what was happening, I couldn't understand how it could happen because there are so many checks and balances in place from everybody on the ground to everybody watching it in the sky and in the ops room and then the follow-up procedures on paper, it seemed incredible to me that this could be as I was portraying it.*

*Q But I know what you said to mislead yourself, but it's not that you are portraying it, this is you believed, to use your words from before, that there might be murder being committed by UKSF1 that they were covering up.*

*A Yes.*

CTI asked N2107 what he meant when he wrote to N2349: "*out of sheer badness, I'm sorely tempted to dig into the change in Taliban TTP's in order to see how pre-deployment training can benefit from the lesson.*"

*A So that um, that would expose er in theory the TTP for being a non-effective TTP.*

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*Q So, I mean “out of sheer badness”, are you hoping to make mischief here then by revealing the TTP as being operationally unsound?*

*A Yes.*

*Q But this is a TTP that you believe might have been deployed to enable people to get away with murder.*

*A So, I mean, the TTP might not necessarily have been designed to do that but people may be using it in that way, but the reality is -- there's two bits to it -- the first that it poses a threat to anybody on the ground um and the second one that, if it was being employed incorrectly, it could be providing the um, the ability for those people to be engaged because it is being misappropriately (sic) used.*

*Q So there is still a concern in your mind that ongoing use of this TTP could lead to possible deaths of UKSF serving members ----*

*A Correct.*

*Q -- and also further EKIA.*

*A Yes.*

*Q Who might in fact be EJK.*

*A Indeed.*

*CHAIR: What did you mean by “badness”?*

*A Um so I think, well it, in a sense it wouldn't have been my place to have questioned the tactics being outside of the chain of command in Afghanistan. So, it would be, I can imagine the response I would have had, so I would have been, I would have been doing it in order to sort of, in order to um not provoke a response but in order to expose, expose the, the activity and the tactical detail I think is probably a proper way of putting it.*

*MR GLASGOW: If you had sought to question this through the chain of command and if you had sought to ask questions, do you think you might have received in the response you have just referred to, the “bollocking” that the [support staff] received when they raised questions about this?*

*A I do. I mean, in my own mind I think I would have, yes, been given short shrift.*

*Q Firmly put in your place and told to keep your nose out of other people's business?*

*A Well indeed and again because I wasn't (1) part of the chain of command or (2) privy to seeing activity in the ops room or on the ground, I think they would have clearly told me that this isn't my, you know, it isn't my responsibility, I don't understand what's going on, so you know “Your focus is [location given (where witness was based)]”.*

N2107 agreed there is a moral responsibility on people to identify conduct that they think is inappropriate or improper, which is one of the fundamental values that underpins every part of

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British Armed Forces. He agreed that there is moral courage to call out misconduct and to draw attention to something that might be bringing the Armed Forces into disrepute, and N2107 felt he clearly fell short of that.

N2107 was directed to his response:

*“Why are we the only ones who see this bollocks for what it is? DSF is keen to threaten people when disclosure is breached, not that anything ever comes of it, and here there is a serious amount of questionable behaviour from his premier SF [sub] unit that is gathering momentum.”*

And then:

*“I’m unimpressed by [N1786]’s lack of control over this.”*

As to the first sentence, N2107 explained that what he means by this:

A *I think it’s related to the next sentence. When I am talking about DSF here I am referring to the sort of headquarters rather than the actual director himself. Disclosure, we all have to sign the disclosure contract. It is waved at us a number of times and I think I am referring to the fact that [support staff] had been told “It’s not your business” and I suspect, though I don’t know because it is not mentioned, but I suspect they will have had disclosure brought against them and it said “Right, you’re not able to discuss this because you are bound by the disclosure bit” and that’s my assumption. So saying “... are we the only ones [that] see the bollocks for what [this] is”, there had been a number of occasions where disclosure has been breached and [UKSF1] has been on the receiving end of unfavourable reporting in the media and nothing ever came of it despite the fact that we were all told, you know, “You will be found and you will be disciplined”.*

Q *Just let us look at that entire paragraph together ... Leaving the last sentence to one side for a moment, the “bollocks” that you are identifying, is that the difference between DSF kicking up a fuss “when disclosure is breached” and DSF not kicking up a fuss when “there is a serious amount of questionable behaviour from [UKSF1]”?*

A *The latter.*

Q *Right so you are, in effect, juxtaposing two attitudes. On the one hand, DSF gets angry when disclosure is breached ----*

A *Yes.*

Q *-- but it appears that DSF is not getting upset with serious questionable behaviour by [UKSF].*

A *Well, it, it would appear that if the, if the comments that the [support staff] made in the headquarters hadn’t come to light, then DSF wouldn’t necessarily be aware of that. So I think I’m, I mean it seems a bit disconnected, but from my reading of that there I think I am talking about the fact that I saw this as it will have been a disclosure order, the bollocking*

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*given to the [support staff] in the headquarters and the fact that I've got a, you know, personal gripe about [UKSF1] or what I would have perceived elements within [UKSF1] breaching disclosure and it never, you know that nothing ever comes of it. It happens.*

*Q Let us just look at that again, and I am conscious that we do not have that much time. So DSF is keen to threaten people. That is the DSF. It is not headquarters.*

*A No, no, no, it is headquarters. We talk about DSF and we don't always say HQ DSF. You just talk about DSF, the directorate rather than director.*

*Q That might be right that you do not always use HQ DSF but you have used it in other emails but you may not have used it here.*

*A No.*

*Q "DSF is keen to threaten people when disclosure is breached ...and here he has ..." That "he" cannot be "they" at HQ DSF. That must be he as in the DSF.*

*A Agreed, sorry about that.*

*Q So we can agree that you have misread this?*

*A Yes.*

*Q And the right reading of this is in fact "The Director of Special Forces is keen to threaten people over disclosure but doesn't want to do anything about the questionable behaviour of [UKSF1] which is gathering momentum". That is the "bollocks", is it not?*

*A Er yes, agreed with that, yes.*

*Q You are struggling to work out how the DSF kicks up a fuss about disclosure but does not appear to be doing anything about allegations of murder by [UKSF1] on DDOs?*

*A Correct.*

N2107 also thought N1786, the CO of SFHQ(A), also appeared to have no control over what was going on. That was the failure of leadership that had been discussed. In the context of the 9<sup>th</sup> February email exchange, N2107 didn't think it said "*failure of leadership bottom to top*", so his early comments about failure of leadership was trying to reflect the fact that depending on where this was known about or talked about, that might stop within Afghanistan. It might not go further up. When questioned by CTI, N2107 agreed that the failure of leadership did not stop at officer commanding level within the OC of the sub unit here. Now the DSF is demonstrating a massive failure of leadership in failing to tackle the serious amount of questionable behaviour by UKSF1. N2107 agreed that the failure of leadership on this occasion went to the very top.

N2107 was asked about N2349's comments about the "*rash of curtain shootings*". He agreed it was a real pattern and that N2349's response "*Cuffing the detainee to the front will probably allow him to pull down the curtains without operating a weapon, for example, he's looking at it*" was a simple amendment to the TTP might enable control to exist over the relevant compound.

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N2107 agreed that you do not allow a potential insurgent to go back inside with hands free. He would be escorted too. As at 16th February 2011, N2107 agreed that UKSF seemed “beyond reproach” and with “a golden pass allowing them to get away with murder.

N2107 gave evidence about the OPSUM relating to Objective 9 (MOD-198-0001793). N2107 sent an email to N1791 (MOD-198-0002880-A) on 4th March 2011 commenting: “*Back to the good ole tactics.*” N2107 explained that this was a reminder to N1791 that the TTP used before and referred to in emails almost a month before was still being used with the same dangers associated with it. N2107 still considered the TTP to be “*tactically unsound*”; one that he would not have used; and one that he believed might be a justification for murder.

N1791 replied: “*Hmm; guess at least there was one bravo who actually fired at the [sub unit]!*” N2107 agreed that this expressed a sense of sarcasm. There was no evidence of anyone in the sub unit actually being injured in the operation. N1791 also commented that “*it is still a lot of EKIA for the number of weapons that are reported. I suspect they were wearing green jackets.*” N2107 explained that suspected Taliban members were said to be wearing a particular green jacket at that time, and that this was another sarcastic comment.

N2107 replied: “*indeed*”, and explained that he shared N1791’s disbelief in the way that the OPSUMs were being written up. N2107’ email went on to say: “*In Afghanistan, the various individuals are more sporting and appear keen to engage in a quick draw challenge once the sub unit has made entry into the (building).*”

N2107 explained that he found it “*too incredible that that tactic, if that is what they are saying the Taliban is doing, it makes no sense to me. So I don’t think the tactic from the Taliban is credible, and therefore I would question the reporting.*” N2107 did not share his concerns more widely, or elevate them.

N2107 was asked about Objective 10, in April 2011 (OPSUM at MOD-221-0001766-A).

N2107 stated that if the “*escort man*” was allowing the bravo sufficient time to pick up a grenade at the other side of the room, “*the escort was not doing their job.*” The escort would not have the job of searching the room as that would not permit them to do their escort duties effectively. N2107 “*thought it would be possible to try and prime a grenade*” if handcuffed, but insofar as picking up an AK47 was concerned, “*you wouldn’t be holding it in a particularly stable manner*”, though it would be possible to pick it up. N2107 did not read the OPSUM entries as indicating that the bravo was restrained, as there was no mention of that. To do that with your hands cuffed is far more challenging than it would be if your hands were not cuffed.

N2107 sent this to N2349 by email on 4 April 2011 (MOD-198-0002881-A) with the comment: “*Return to the good old days.*” N2107 explained that using sarcasm, he was again pointing out that UKSF1 appeared to have gone back to the habit of creating circumstances in which bravos ended up being murdered. N2107’ received a reply that “*these Afghans are so stupid they*

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*deserve to die*" which N2107 interpreted as "*a glib comment on his part reflecting the fact that the way it is described that the Afghans were killed doesn't add up.*"

N2107 did not recall discussing the issues raised in the emails outside of the email chain. N2107 thought that there was an investigation already in train, but did not ask what the conclusions of that investigation were.

N2107 was interviewed by the RMP in 2016.

*Q And did you tell the Royal Military Police that it was your belief that [UKSF1] might have been committing murder?*

*A I didn't at the first interview.*

*Q Why not?*

*A Because I wasn't presented with my emails I couldn't recall the detail and certainly the detail that are in the emails. The first time I saw it reminded me.*

*Q When they visited you in 2016, had you forgotten that five years before you thought that [UKSF1] were murdered?*

*A I don't think I thought, er yeah, I mean I can't, I can't recall what I thought when in 2016 when the Royal Military Police came to speak to me.*

*Q Well, let us just think about that for a moment. Either you thought to yourself "There are police investigators before me and they want to talk to me about the conduct of [UKSF1] whilst in Afghanistan, I remember I thought they committed murder I must tell them about it"; or you thought "There are people from the Royal Military Police Investigation Team who want to ask me about [UKSF1], I can't remember anything that might have happened"; or you thought "There are police officers who want to speak to me about what I know about [UKSF1], I'm not going to tell them". So which is it: (a) because you are forgetful, (b) because you might not be very bright or (c) because you are trying to cover things up?*

*A Well it is certainly not (c). The first interview I had in 2016 with the Royal Military Police, I would have been surprised because they, they had assumed that I was part of [SFHQ(A)] construct, so I seem to recall having to explain to them why I was in [location given], who I, what I was doing and who I sort of reported to. I can't yeah, I mean, there was, there was putting them straight on actually who I was because, as I say, there was a mis, they had misunderstood that I wasn't actually part of [SFHQ(A)].*

N2107 was taken to his first statement to the RMP in June 2016, and the first two paragraphs on the second page. "*I was not made aware of any issues within [SFHQ(A)] or the [sub units]. However, I knew from reading the SINCREPs that new tactics had been implemented that I had not seen during my time operating in Afghanistan.*"

*"I noted reference to the wearing of specific jackets by the Taliban. Another new tactic was after people had come out of a compound, an individual was sent back in unescorted to make*

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*sure that windows and doors were open and that no one was still inside. Once back inside, this person would engage the [sub unit], resulting in that individual being engaged and killed."*

*Q So without need to look to the emails, you remembered exactly the TTP that you were concerned about.*

*A Correct, but, yes, yes, correct.*

*Q Yes, you remembered exactly the TTP of people going back in to search, to open windows and doors, coming back armed and then being killed.*

*A Er I remember the TTP because I remember, I think I, I think my recollection at the time was the concern for individuals within on the ground that they would have been injured as a result of it. I don't think that my mind instantly leapt to there is a potential allegations of murder here. I think it was the focus for me at that moment was on the TTP and it being an unsound TTP.*

*Q Can I just check that I have understood what you have said? You are telling the Chair that when the Royal Military Police visited you and you recalled in some detail the TTP that you were worried about, that did not jog your memory that one of the principal concerns you had had about the TTP was that it was being used as a device by [UKSF1] to execute innocents?*

*A Because I had and I was never presented with anything that had said that that was the case and um and to this day I still have not, I would not have raised it because, you know, any thinking that I may have had would have not, would have purely been my thinking so I didn't have any evidence in my view -- evidence as opposed to opinion is the way I would put it -- that something had gone on and I mean I still hold by the fact that, if my assumptions were correct, if my assumptions were correct, that this wasn't picked up in some way and at some level beforehand.*

*Q You agreed that you lacked the moral courage in 2011 to do the right thing and to report your concerns?*

*A Correct.*

*Q Did you lack the moral courage in 2016 to identify to the RMP that those concerns were ones that you had had back in 2011?*

*A I think had I been presented with the emails, I would have, that would have meant more to me than having to rely on memory before.*

N2107 was interviewed again by the RMP in 2018 when the relevant emails were provided. N2107 did not however refer to his suspicion of murder.

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*Q* *What I am asking you about, [N2107], is why there is a total lack of any reference to your suspicions of murder when you have just told us that, if you had had the emails, you would have been able to say “Now I have seen them, that jogs my memory, I will have the moral courage to say the right thing”.*

*A* *Yeah, I mean you are correct um I should have said that. I didn’t say that um yeah.*

*Q* *Let us just look at what you did say. You did not say “By the way I would like to mention that I thought people were being murdered”. What you wrote was:*

*“I will add there is a strong rivalry in the UKSF community between [UKSF1 and UKSF3]. There is a certain amount of mud-slinging that goes in both directions.”*

*And you actually describe some of your emails as being “very much in the spirit of that rivalry”. Those emails were nothing to do with rivalry. They were to do with raising your concerns that [UKSF1] might be murdering people. How do you balance the evidence you have given before this Inquiry today about those very real concerns with what you told the RMP five years ago, that the content of these emails is meant to be taken as some sort of banter among the UKSF community?*

*A* *So um I have chosen in the emails to interpret them in the way I did because of my personal experiences and er past with [UKSF1] so I mean that is, I mean rivalry, I mean yeah, dislike of [UKSF1] would have been a more appropriate thing. So I have chosen to read into this the worse possible outcome. So that, you know, that is how I would interpret that and what I have told the RMP.*

*Q* *Do you agree that what you should have told the RMP if you had the moral courage is “I believed that [UKSF1] might have been murdering people”?*

*A* *I could certainly have said that. I think that, by the time all of this had happened, I was aware that a TTP review had happened that I, that would have had, would have provided far more information than my potential, my assessment of what I was reading.*

*Q* *You do not mention the TTP review or any other document there, [N2107]. I am asking you about you and your moral courage or lack of it. You have told the Chair repeatedly that you believed [UKSF1] were trying to lie about murder and you told the Chair that even today you think that might have happened.*

*A* *It is certainly one of the outcomes you could read from it, yes, correct.*

*Q* *It is not an outcome you could read from it. You said you believed even as at today that [UKSF1] might have been murdering people in Afghanistan.*

*A* *I believed they might have been, correct, yes.*

*Q* *So the simple question is this: when you had the opportunity to tell the service police your concerns, why did you say nothing?*

*A* *I can’t recall. It would, lack of moral courage.*

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*Q Well, is it a lack of moral courage or is it that you did not want to have to speak out?*

*A No, it would have been a lack of moral courage.*

*Q Is it that nobody wants to speak out against [UKSF1] they are “beyond reproach”?*

*A No, I don’t think it is. I think, if, if the, if you have more concrete information than I assessed I had then um I, people will.*

*CHAIR: Was it more than lack of moral courage, [N2107], because you appear in the second statement to the RMP who came to you with the emails, who were as you know investigating these grave allegations because you appear to be seeking to explain away your emails, in a sense to cover them up? It was not simply neutral. You were trying to put a spin, it appears, on your emails so they did not seem as bad or as candid as you told us earlier today and told Counsel they were and indeed truthfully that they were. Is that a fair comment?*

*A I have, sorry can I speak to Counsel, Sir?*

*MR O’CONNOR: Sir, the point is that that is an allegation of perverting the course of justice. So my submission always ought to be caution to the fore before it is answered.*

*CHAIR: Indeed, again, you do not have to answer that question I put to you because it may incriminate you. You could take legal advice about it and we can break to consider that issue.*

*A Sir, can I seek legal advice?*

The proceedings adjourned to allow N2107 to seek legal advice.

*MR GLASGOW: [N2107] I know that you have had an opportunity to have a private discussion with those looking after your interests. In light of what has taken place, I am not going to ask you about the advice you have been given -- I am not allowed to do so, so please do not tell me anything that has been passed between you and your legal team -- but can I ask you this? Would you like to answer the Chair’s question or not?*

*A It was not and never my intent to mislead the Royal Military Police in their investigation.*

N2107 thought that he had become aware of a review of the TTP in around 2015. He did not find out what the review had looked at or what its conclusions were. At the time therefore he did not know what those conducting the review looked at, although he had now read information about this in the opening statements.

*Q So you could not have thought to yourself at any stage there was a TTP review, therefore someone in authority has looked at what [UKSF1] were doing in January, February, March and April of 2011?*

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*A I was aware of the TTP review in Afghanistan, but I wouldn't have told you, wouldn't have been able to tell you what it was looking at and when.*

*Q So, again coming back to what I have just asked you, at no point were you able to say to yourself "I don't need to worry about there needing to be an investigation because there has already been a TTP review"?*

*A No, I didn't say that to myself.*

*Q So the first formal investigation that you were personally aware of was when the RMP came to visit you first in 2016 in June?*

*A Yes.*

*Q And then in December 2018?*

*A Correct.*

*Q And you wanted to assist them in their investigation?*

*A Correct.*

Evidence concluded.