

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

INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

SUMMARY OF N889's EVIDENCE HEARD DURING CONCERNS AND COMPLAINTS PART 2

WARNING: This evidence is subject to the Inquiry's Restriction Order dated 31 May 2024. The Chair granted anonymity to witnesses who gave evidence during this set of CLOSED hearings ('Concerns and Complaints Part 2') for the reasons set out in his Ruling dated 31 May 2024. The Chair's Restriction Order prohibits publication or dissemination of the identity of N889, or any information which might lead to their identification, and prohibits publication or dissemination of other restricted information.

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

N889 was questioned by Lead Counsel to the Inquiry, Oliver Glasgow KC, in a CLOSED hearing in Summer 2024, over approximately one day. The following is a summary and, where possible and relevant to do so, a transcript of sections of N889's evidence, with any sensitive terms redacted and replaced with a gist or cipher in square brackets.

N889 gave evidence about his role as Chief of Staff ("COS") for SFHQ(A) between mid-2010 to mid-2011. He was asked questions relating to his involvement in the Consequence Management process, the TTP Review, and the allegations of extra judicial killings raised by Afghan Partner Unit 1 ("APU1") and a Third Party Entity ("a TPE").

N889's Military career

N889 confirmed his statement dated 24 January 2024 to the Inquiry should stand as part of his evidence. CTI commenced by taking the witness through the key aspects of his military career, to assist and place in context the evidence to be given. This included sensitive identifying material, and material that is operationally sensitive and relevant to the evidence that followed, which cannot be gisted.

N889 passed the UKSF course in the mid-2000s. After various deployments to locations (not Afghanistan) with a UKSF1 Sub-Unit, N889 was posted to Afghanistan as COS SFHQ(A) between mid-2010 and mid-2011.

The Structure of SFHQ(A) and ISAF

CTI directed N889 to paragraphs 12-17 of his statement to the Inquiry. N889 set out the structure of SFHQ(A) which executed its role effectively "*like a large regiment*". N889 explained that the Director Special Forces ("DSF") built SFHQ(A) to be able to exercise command and control of deployed forces.

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A fairly standard structure was built beneath Commander SFHQ(A). The COS SFHQ(A) was largely responsible for the co-ordination and orchestration of operations and the Deputy Chief of Staff (“D-COS”) was largely responsible for sustaining SFHQ(A) including the workforce and infrastructure.

Under those two principal staff officers was a large number of people performing a series of functional roles that ran all of the routine functions of a headquarters, such as personnel, intelligence, operations, logistics, plans, communications, training and equipping, capabilities and policy. These individuals were a mixture of UKSF, UKAF and others. The part of the headquarters that N889 was responsible for orchestrating was a core staff consisting of around a third of the total staff.

N889 described SFHQ(A) as “*the largest deployment since the Second World War*”. N889 explained that there was in effect a dual Chain of Command split between ISAF and DSF. Operational command of deployed forces sat with DSF, which N889 described as “*unique*” to UKSF as this Chain of Command effectively bypassed the conventional Chain of Command at Permanent Joint Headquarters (“PJHQ”). In effect, the Chief of the Defence Staff (“CDS”) exercised command of deployed forces through DSF. A degree of control was imposed by ISAF. For example, ISAF was responsible for provision of certain intelligence, surveillance and reconnaissance (“ISR”) resources and ISAF owned the battlespace. N889 described the relationship with ISAF as “*a bit transactional*” but ultimately overall authority and responsibility sat with SFHQ(A).

N889 then explained that one of the key challenges whilst he was COS SFHQ(A) was responding to the ISAF direction and guidance to ‘capture or kill’ insurgent commanders.

N889 outlined that General McChrystal was replaced by General Petraeus as ISAF Commander, ending the period of the so-called ‘courageous restraint’ which felt like there was some fresh air and energy being injected into Afghanistan. UKSF’s focus was on the physical counter-insurgency, so chasing the networks that were relevant to or threatening the overall mission set. This led to a divide between those responsible for capturing or killing insurgent commanders and those responsible for training and securing the local population, which was not largely active. There was pressure on SFHQ(A) and Sub-Unit 1 (“SU1”) to achieve the counterinsurgency target to disrupt the insurgency and ISAF allocated a dedicated amount of the entire campaign ISR resources to this responsibility. N889 explained that the Americans described the operational orders as being ‘kill or capture’ but N889 had not seen the operational orders provided within UKSF to SU1 as being described as such.

N889’s Role, Responsibilities and Working Relationships

CTI directed N889 to paragraph 17 of his statement to the Inquiry and asked N889 about his working relationship with three Commanding Officers (“COs”) of SFHQ(A), namely N5225, N1786 and N1785. N889 had previously worked with N5225 whom he got on well with. N889 described N1786 as “*very mercurial*” but someone that he got on extraordinarily well with and with whom he had a very good working relationship. Whilst N889 had not had as long working with N1785, they enjoyed a good professional relationship. N889 explained his responsibilities

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as COS, which included supporting the CO, commanding the staff of individuals assigned to support SFHQ(A) and ensuring the headquarters operated efficiently to enable the Sub-Units of SFHQ(A) to conduct operations as successfully as they could. As COS, N889 was also responsible for managing the relationship between SFHQ(A) and HQ DSF. In order to be an effective COS, N889 explained that it was very helpful to understand SFHQ(A) as widely as possible. He took pride in trying to be as efficient and effective across the huge enterprise as possible. The Officers Commanding (“OCs”) Sub-Units would converse directly with the CO SFHQ(A) about issues, although some also flowed sideways into N889, which he would field in the first instance and provide counsel on how to handle the issue or how to take it to the CO. Where issues had been taken directly to the CO SFHQ(A), he did not always discuss the issues raised with N889. An example of this was the TTP Review, which “*did not come anywhere near*” N889.

N889 confirmed that he was routinely the lead for Consequence Management; in the event that something occurred on an operation for which there was a concern raised, N889 led on that part of it. If something had happened that was allegedly untoward or wrong on a Deliberate Detention Operation (“DDO”), it would have come across N889’s table. The pre-op and post-op material would come through SFHQ(A) and N889 would have access to, or an oversight of, all of it. As N889 was the lead for Consequence Management, he would directly report to the CO. N889 explained that the Chain of Command for Consequence Management was internal to Afghanistan because it directly related to operations. HQ DSF’s role was more about oversight, policy provision, legal support and trends; daily operational business for HQ DSF was largely about ISAF and Kabul. N889 was aware that the reports from daily operational business in Afghanistan were circulated back to HQ DSF.

Not all of the material, OPSUMs, or SINCREPs went back to London but N889 explained that “*these operations would generate [a large amount] of operational data... and intelligence that never made it onto the overall summary*”. N889 considered London to get the “*top end of it, the summary, but all the critical documents in the build would end up getting packaged and sent back to the UK. The vast bulk of it sat in Afghanistan*”.

In response to a question from the Chair, N889 explained that the trends HQ DSF would look at included organisational requirements of SFHQ(A), which included the effectiveness of operations against the resource that was being used at a cost to other opportunities around the UKSF operational framework. An important operational priority was operations in the UK but in terms of overseas operations, N889 thought that SFHQ(A) was the main effort of UKSF at this period of time.

In response to a question from CTI, N889 explained that there were concerns as to the role APU1 had whilst partnered on DDOs with SU1, for example where APU1 were positioned, what they could see and what they were allowed to take part in.

N889 also thought that it was relevant that ISAF would lay down mandates in relation to the ratios of APU on UKSF operations, which changed over the course of the campaign. N889 considered the term ‘DDO’ to be an “*Afghan-ism*” compared to similar methods of operating in other theatres. N889 confirmed that whilst UKSF3 had been involved in becoming mobile to go on to a target

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area to effect the detention of someone, UKSF1 brought with them experience that was uniquely theirs. UKSF1 was “*a very competent organisation that was in its absolute prime and had been extraordinarily successful in [Location Given (not Afghanistan) (“LG (not A)”)] and “was an organisation that was open-minded, ruthlessly focused on, on success, understood counter insurgency and was very keen to apply those skill sets um which had been developed”* to detention operations. N889 went on: “*was it a bit arrogant? Yes. Was it a bit too cocky? Yes. Could it have done things a bit better from the human factors perspective? Almost certainly, but that is how the thing kind of felt at the time”*”.

Q Given that ruthless focus and, as you have conceded, that arrogance or perhaps cockiness, was there any sense that, as you read it, [UKSF3] felt they were being replaced or displaced by [UKSF1]?

A So I think my comment then, you know, I wouldn't label [UKSF1] as arrogant, you know, I felt it was a very confident organisation, but I suspect others would find that highly arrogant in their approach, but it was an organisation that could deliver and had delivered some significant contributions to the, to the campaign in [LG (not A)] and I think the gist of your question is probably right. I suspect people had their noses out of joint in [UKSF3]. Can I evidence that in here? No.

N889 did not think there was increased pressure on UKSF1 to deliver results, not beyond the pressure that was normal for any of the operations; it was a standard operating environment.

N889 summarised the responsibilities of SU1, namely to undertake detention operations and non-DDOs. N889 then explained the way in which ISAF would resource SU1. The background work was led by the Call Sign Commanders within SU1 who were responsible for the targeting line and getting the resources in the right place. N889 described a very intense relationship between operational planners from SFHQ(A), SU1 and other stakeholders. In particular, there was constant footfall between SU1, SFHQ(A) and the ISR desk which was owned by N889 and responsible for allocating resources around the theatre.

N889 would work very long days from early morning to late at night.

The OC would write up the operations and build the Storyboards. The interaction post-operation between N889's staff and SU1 was much reduced. N889 was largely charged with ensuring that everything ran smoothly, dealing with disagreements between the Ops Officers or dealing with the fundamentals, such as resourcing.

N889 confirmed that his staff would be involved from the beginning to the end of a DDO and described the complete cycle of operational planning for a DDO highlighting the key processes, most crucially in sequence, as well as the attendant level of decision making. He also referred to the amount of autonomy and delegated authority at certain levels within the SFHQ(A) Chain of Command in addition to the degree of oversight applied to a DDO. N889 described that his staff would be involved in targeting prioritisation and setting priorities along with other organisations. The manner in which an operation was carried out was down to the OC. The Ops Room and someone in SFHQ(A) would monitor the situation. N889 confirmed that no new authorisation was required if the situation went outside the Concept of Operations

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(“CONOPS”). There would be a 24/7 aspect to all of this and occasionally, when things went wrong, N889 would get a call at any time. N889 explained that in the build of the CONOPS, the team would try and foresee as many problems as they could to provide a resource envelope within which most eventualities were covered. However, it was pretty rare that the situation strayed out of the CONOPS and the CONOPS were quite robust and “*were largely fit for purpose*”.

CTI referred back to N889’s description of himself as being the lead for Consequence Management and asked for more information about what that meant. N889 responded:

A So I have reliances on, on the staff, but um in a built-on operation I would typically, the Ops Officer would lead on the..., the CONOPS, but, you know, routine business. Consequence Management was not routine because when something, when an allegation emerged out of the back of an operation and um if it was a fairly low level allegation, I would let the Ops Officer run with it but keep an oversight on it. If it was some of the bigger allegations, I would run it personally. I would drive the process, i.e., task people to do things for me um and occasionally edit directly the documents um that related to it so I could communicate those with confidence on behalf of the Commander at the speed they needed to be.

In response to questions from the Chair, N889 explained that he knew General McChrystal very well. N889 explained that the set of circumstances in which General McChrystal was in his role were such that “*everything was beginning to feel flat*” and General McChrystal’s imploration of ‘courageous restraint’ was “*extraordinarily badly communicated*” and was understood by UK soldiers to be an instruction “*to take more personal risk on behalf of the overall campaign*”. General Petraeus’ appointment led to a “*great deal of energy*” as he was a Commander with whom there was confidence, based on his work in Iraq, and was seen to be bringing nuance. It probably did not materially change what happened on the ground but “*it certainly marked a very significant change in tone from Stanley McChrystal, who talked about “courageous restraint” and General Petraeus who was saying “No, we have a fight on our hands and we need to be clear that this is a fight that is, that requires wrestling with an opponent.”*”

N889’s role – Consequence Management

Complaints about the wrong person being detained would not come to N889 and N889 could not recall any complaints about mistreatment of an individual during the course of a DDO. Every allegation of civilian casualties would come across N889’s desk and N889 expected such allegations to do so. N889 agreed that civilian casualties were the most serious thing that could be said to have happened during the course of a DDO. N889 told the Royal Military Police (“RMP”) that he would proofread all Storyboards, which included not only those where there was an allegation that required Consequence Management’s attention but every single Storyboard. N889 would therefore have the summary of every operation he looked at and would edit these where appropriate, not just for style or tone but also facts.

Q ...Why might you seek to amend the OC’s style or tone in the way that he had written up a DDO?

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A So, well firstly the OC would make a contribution to some of the post-operational reporting, yeah, but it wasn't necessarily the pen, so a range of contributions would be made to it. The Storyboard would probably be written by a young [officer] who probably came from outside of the er UKSF, who was sent in on a trawl across the [Armed Forces] to come and support UKSF. Their principal job was to do some of the operational staff work in the Sub-[Unit] headquarters and they would remain in the Ops Room. They wouldn't go on the ground and they would try and listen into the debrief after the operation and try and capture a summary of what happened and why and fill that Storyboard in so that we could inform or, firstly, maintain an operational record of what happened but share details of the operation around the coalition force.

So, in terms of style and tone, noting that there were different officers in different Sub-[Units], in the business of trying to build a UKSF level product from such an enormous investment in Afghanistan which was seen as accurate, making sure that the type of language in there was appropriate coming out of the back of a, you know, [Senior Commissioned Officer] -led pretty significant [Sub-Unit], making sure that the thing was right in terms of dates, numbers, locations, the operation name chimed with what was in the operational record and those kind of things, I was the last eye to go over it and make sure this thing was fit for purpose so that it could represent UKSF on an operation.

Q And if you could describe the style or tone that you had wanted those non-[UKSF] staff members to adopt when producing the OSW, how would you encapsulate the style or tone?

A Um so I would, I would expect a, a balanced product absent hyperbole that covered the facts um and that was open and transparent about what operation happened, why um and how did it happen, when did it happen and what was the, what do we judge the impacts of that operation to be.

Q And, in terms of the facts that you might need to correct, do we understand from that that you had access to the detail of each of the operations as well so you were able to check the detail on one hand with the Storyboard on the other to ensure there was an accurate reflection from that summary from the detail?

A Yes, maybe in some circumstances, but, you know, like many of these bits of editing, the original Storyboard written by the Sub-[Units] will be on a server somewhere. They were shared by email and this is kind of, you know, predates um editing a single document. There will be a track record of every single amendment made from every Storyboard submitted over the entire time we were there. So, you know, the record is there for you to go and have a look at and you will see the kind of adjustments that, that we're talking about.

Q ...I am asking how it is that you went about checking that the facts were accurately recorded in the Storyboard ----

...

A ...So typically there is an operational summary which covered some of the more operational detail and that was normally recorded by the Ops Room in [SUI] during the passage of the operation and that would cover timings, er events on the ground, um significant developments in the operation. Er it would have, it would have the operational facts as

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recorded and I would often fact check the Storyboard, i.e., what we were going to issue to ISAF and to our Liaison Officers against the OPSUM.

In the aftermath of an operation where there was enemy killed in action (“EKIA”), UKSF would leave the bodies of the deceased to be buried but remove all the weaponry. It was not uncommon for there to be confusion in the local area as to why ISAF had come and why there were bodies laid out after an operation. N889 stated that it was not common for UKSF to explain to people why they were there or what intelligence had led them there in the first place. In that information vacuum, it was quite common for locals to get in touch with the Afghan Provincial hierarchy to question what was going on. SFHQ(A) would then become aware that there was an issue following a DDO and N889 would initiate a Consequence Management process.

N889 explained that there were Standard Operating Instructions (“SOIs”) to be followed in the case of allegations of civilian casualties. N889 recalled there being an urgency about the process of handling an allegation as they would try to compete with the speed that information moved around Afghanistan. First, the team would try to work out where the complaints came from and confirm whether it related to UKSF or another force’s operation. If the allegation related to UKSF, they would put the pertinent facts of the relevant operation onto a Storyboard as a means of sharing it with the ISAF Chain of Command and Afghan leaders. N889 explained the next steps for more serious cases.

A When, when, where they got serious, and of course there’s, you know, some of the cases in here pertain to that, the um, the bits that then followed the initial sharing of the information was where we effectively built a document I think called a First Impression Report and that was really trying to provide another layer of information above that which we had already provided and we would normally give ourselves the day to try and cobble that stuff together, having sort of put our hands up and effectively said “Yes, this allegation pertains to us and we are working on trying to get the detail together”. The First Impression Report was the opportunity really to capture that operational detail. Quite often we had to wait for [SUI]...to verify some of the facts um in the, in the details of the First Impression Report and talk to the, to the OC around exactly what happened and why so we could account for it more accurately in the, in the First Impression Report.

...

A And would iterate that document for as long it was needed to and we would publish updates when new bits of information came in and send it around our networks and other Chain of Commands.

Q Now, if I understood what you have just said correctly, that is the First Impression Report that you are referring to?

A Yes.

Q And who was responsible for drafting that, please?

A Er I can’t remember off the top of my head, but it was, it would have been one of the staff in my headquarters.

Q And did you oversee that process?

A Yes.

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Q And presumably because there was an allegation that a civilian had lost his or her life during the course of an operation, this was something that you paid particular attention to?

A Yes, but it was very common because the allegations tended to assume that dead combatants were civilian until proven otherwise... It was normally very clear to us when civilians had been killed.

N889 then provided Objective PPP as an example of a non-DDO operation in which N1141 made the call to conduct a non-DDO operation, resulting in civilian casualties. In respect of this Objective, N889 led the process of reviewing the incident to understand the decision making and to learn lessons to ensure that it did not happen again. N889 considered that N1141's action in the immediate aftermath of the non-DDO, including efforts to see if there were any survivors, was an entirely appropriate and understandable course of action and one he would expect any OC in N1141's position to take.

N889 explained that in his view, allegations of civilian casualties in most cases arose from bodies being left to be discovered by members of the local population who came across the unarmed corpses of the deceased, which raised the question as to whether they were legitimately killed.

Consequence Management was a process adopted across the campaign, not just by SFHQ(A). It was to capture the salient points very quickly and get the facts to the ISAF Commander. N889 explained that intelligence was used to further help build a picture of the operation and was a really critical part of lending credibility into the Consequence Management process.

Q ... your general belief was that the right people had been targeted and that civilian casualties were the result of either confusion on the part of those reporting it or deliberate misreporting by people seeking to take advantage of the position?

A Or just simply trying to understand ----

Q Right.

A -- what had happened. So there are very, very few circumstances and [Objective PPP] might have been the only one in a year that I can recall sat here talking about this, describing this to you, where we knew that we got it wrong, um where we fundamentally knew.

Q And on the other occasions when civilian casualties were reported, was the assumption going forwards that we had not made a mistake and this could be explained either because of the intelligence or the [post-op assessment]?

A And I don't think our start point was the degree of confidence that you have just put actually. I think our start point was to follow the process, establish the facts, wait on the [post-op assessment] and, again, most of the conversations around this will be captured electronically on the server. Don't forget, this is a very accessible group of data discussing all of this stuff.

Q You told the RMP in your statement to them that "frequently [civilian casualties] were a political issue".

A Yes.

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Q By that did you mean to suggest to the RMP that people were exploiting the deaths of Afghan nationals for a political purpose and claiming them to have been civilians when in fact they were not?

A So, again, a personal view coming out of it. Others will be better able to judge precisely the temperaments of Karzai in all of this, but, but night raids were a very emotive thing for him...

N889 confirmed that he told the RMP that he believed more civilian casualty allegations were made than were probably true. N889 thought the vast majority of allegations proved false. N889 explained that the allegations would have arrived in SFHQ(A) in writing and they would have then initiated a Consequence Management process and the data would then sit on the server. N889 explained that all of these incidents were largely dealt with in the same way during the period that he was deployed to Afghanistan. N889 had faith in the intelligence picture which was presented as part of the pre-authorisation process of an operation. N889 described UKSF's sense of what intelligence was good and their judgment calls on what was happening on the ground as "*pretty exceptional*" and provided an example in support of this.

N889 stated that UKSF1 tried to execute operations faithfully and to the best of their knowledge, on the very best intelligence they could get their hands on at any particular time. N889 explained that intelligence was not infallible. UKSF1 would look to develop it to ensure that someone who had the requisite experience could be confident in making the judgment call about when to prosecute an operation. N889 described how intelligence was used and exploited to ensure that it was relevant to the campaign objectives. N889 reiterated that UKSF would apply judgment to any intelligence received in terms of prosecuting a DDO. In relation to how best to conduct that DDO, there would be discussions between the OC of SU1 and the CO of SFHQ(A). N889 described the process as "*very dynamic*" and explained that the dynamism was in the matching of the intelligence with what was found on the ground during a DDO.

N889 confirmed that the decision on who to detain could be difficult but was not always, even in circumstances where UKSF1 did not have a physical description to work from. N889 provided further details about this which cannot be gisted and did acknowledge that it could be problematic trying to work out who was who on the ground.

Q And you have spoken a number of times about the exploitation opportunities with detainees.

A Yeah.

Q One of the problems was that the detainees were released after 96 hours.

A Well, I mean, not in all circumstances, but it is a bigger topic, if you want to do the detention bit.

Q Well, we may need to "do the detention bit", but I am picking up on it because you have mentioned it on a number of occasions. In so far as "the detention bit" was a problem at the time, were you aware of a sense of frustration within [SU1] that they were being sent out on DDOs to detain individuals who once detained were released only a few days afterwards.

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A Certainly, well I don't think the frustration was isolated to [SU1]. It was a frustration that was felt in [SFHQ(A)] and in HQ DSF... by this stage in the campaign we were fighting a very extensive counter insurgency with large numbers of insurgent fighters and yet the policy background for all of these operations [was not counter-insurgency]. So trying to engine a detention pathway for [an Afghan Partner Unit] that's been built [for another effort] when you are picking up insurgents in a counter insurgency campaign, which is very different...when there is no pathway designed for those individuals, was highly problematic. It was a source of conversation -- I am sure again there will be a load of this in the server - - that happened every single day in [SFHQ(A)]. Every single senior that came through, again would see the slides. There would be a bullet point on every single one of the senior slides which the Commanding Officer would talk which would be around detention policy. It was constantly flagged.

N889 explained the difficulties with sharing intelligence which drove the operations with the Afghans to enable them to understand who was being targeted and why. N889 then explained tensions that existed within the Afghanistan political system which were a cause of friction on the ground. N889 went on to say the “*policy backdrop to detention was, was um, was not fit for purpose and I couldn't even begin to tell you how many times, how many hours were spent trying to unscramble this both in Afghanistan and in [HQ DSF], but I think the manifestation of a risk, a personal risk around this was felt in [SU1] because they were going out...into some very, very dangerous places, getting into fights in some periods [frequently] with multiple enemy killed in action and detainees they did bring back and put into the [Afghan detention] facility would have a very sterile kind of process applied to it...96 hours later he would be out on the ground.*”

Q The opportunity therefore to gain any actionable intelligence from that detainee almost non-existent in those circumstances?

A Well, no not always...What is challenging though is a bit higher up in the insurgent, the higher up the insurgent networks you go, the less they are fighting age males armed with AKs and IEDs. So, in many ways it is easier to target the foot soldiers who were just trying to get through their day in Afghanistan because they would be armed or they would have explosive residue on their fingers...but those who acted in the commissioning of the insurgency, the commanders that ISAF so wanted us to prosecute, weren't necessarily the guys running around Helmand with AKs or IEDs. So there is a layering of challenges around detention and the insurgency that simply didn't stack up at the time and um no matter how hard we lobbied for an appropriate detention pathway to be built to handle insurgents that we would take off the battlefield from enemy compounds that we could see were active in the insurgency.

Through...intelligence, and we couldn't even put them into a compound but give them three decent meals a day and a bed, which was more sleep than [SU1] was getting. So the paradox around all of this is that it was very easy to kill them on a, on a [non-DDO] and there was enough...to apply for a...target designation which will effectively declare them a part of the enemy machinery, in sort of mechanical terms, which would allow you to prosecute them and [carry out a non-DDO] against them. One of the awful challenges

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over this campaign and, you know, to summarise it very vividly, it was much easier to, to build cases to kill people than it was to detain people, through [a non-DDO] that is. So there was a multitude of layers of frictions around all of this that had been hammered to death over, over these several years around there and, you know, I didn't see the MOD end of all this at the time, but [the Sub-Unit] was, you know, equipped...to go and do the job. It wasn't equipped at the back end to be able to go and do the humane thing with insurgents, which was to take them off the battlefields and put them into a pen to give us a fighting chance to, to drive down the er, the insurgency.

Q So was there a sense among [the Sub-Unit] itself and particularly among [SU1], as you have rightly described going out...facing extreme hostility that their efforts were not meeting with any tangible success?

A Well, so I know that because that is precisely what [N1141] would represent to the Commanding Officer um and I went back... and lived it first-hand without this thing having moved a dial and we managed that and we made better choices around who we, who we, what detention operations we did um but it, but it was a constant factor throughout the entirety of the Afghan campaign, to fight a counter insurgency on a [different effort] policy.

In response to a question from the Chair about UKSF1's more hands on approach in the targeting process and whether there were any disadvantages in UKSF1 choosing their own targets, particularly if they were keen to get onto the next job, N889 responded:

A So I think it is a very, very interesting area. My instinct would be there is real value in the blend and I think some of the advantages lead to, I think, very, very good outcomes on operations.

N889 explained that UKSF1 only worked off the intelligence. N889 was of the view that UKSF1's involvement in the targeting process allowed trust and confidence to build between analysts and UKSF1. Their involvement therefore de-risked the operation.

Allegations of planted weapons and tensions with the APU

CTI referred N889 to page 8 of his Inquiry witness statement where he stated that '*allegations about the nature of some of the deaths in the aftermath of an operation were not uncommon*'. N889 confirmed that those allegations were that members of UKSF1 were said to have planted weapons on the bodies of the deceased or other individuals to give the appearance that that person was a member of the insurgency and therefore had been legitimately shot and killed.

N889 could not recall the details of the incidents. He explained that the allegations would be made in writing on the server somewhere, but they were not frequent. SU1 operated in one of the most kinetic parts of the counterinsurgency; it itself was very active and led by intelligence. N889 made the point that this would have been a very different experience for the APU compared to the much lower tempo operations in other provinces in Afghanistan. N889 said:

A I think the issues around the planting of weapons and, you know, I don't know the truth around this and you will have to talk to others who were there on the ground, but part of

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the judgement call is that the allegations were so incredible to me at the time, was that this was a means by which [APU1] could stall and a means by which they could withdraw their services, [meaning the Sub-Unit] wouldn't have a partner unit to deploy with....

Allegations that a member of SU1 had planted a weapon on the body of a deceased would not come across N889's desk for the purposes of Consequence Management. Allegations would normally emerge out of a frustrated OC who could no longer operate the Sub-Unit because the "APU had downed tools". N889 did not think those allegations were widespread and widely known at the time.

Q So if I have understood it, your perception of these allegations was that they were untrue and motivated by an APU that wanted to challenge the position in which they now found themselves?

A You know, and maybe that is, maybe that is hindsight beginning to hone some bits into, into more relief than they were at the time, but it's a pretty incredible thing to suggest. Certainly in my [extensive]experience... at this stage, when again the idea that British soldiers would be doing that just seems beyond my belief and so there was, there must have been other logical explanations for this behaviour was my first port of call and I think probably many around [SU1] at the time and certainly no one was looking at it in the way that we are now.

Q And so at the time because you did not or could not believe that this was true you looked for alternative explanations as to why these allegations might be being made?

A So I don't think we even looked at it in such a deliberate way as you are describing. I think this was largely in the, in the [N1141] and [N1791] world to unscramble, [N1141] in the first instance, who had to build a relationship with the APU and be able to work with them. I don't know what [N1786] or [N1787] or [N1785]'s involvement was around these conversations, but they weren't, these were not big business for me.

Q One of the complications of course though, if the APU took the view that something improper had happened and therefore did not want to work, meant that [SU1] could no longer operate.

A Well, a part of it.

Q Well [SU1] could not go out on a DDO if they did not have the APU with them.

A Yes but [N889 provided detail of the SU1 work that was able to continue]. You know, it's one aspect of a much wider enterprise that was working extremely hard and so you know it didn't kind of cause the whole thing to grind to a halt, but it was a, it was a very acute problem for the OC to solve.

...

Q You had said in your statement to the Inquiry and in your evidence earlier that one of the key challenges was ensuring that the ISAF direction that members of the insurgency be captured or killed was carried out and there was certainly no capturing going on if [SU1] could not take off the ground.

A Yes.

Q So that would have disrupted the key challenge as you described it?

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A Yes, it would, it would have had an impact, but what I am saying is that it wasn't, it wasn't all-encompassing in the way that I kind of felt it was being presented.

...

Q Presumably it came across your desk for something you needed to consider as the Chief of Staff?

A So well, in what sense, what came across my desk?

Q The fact that [SU1] could not [operate] ----

A Yes.

Q -- because there had been an allegation that weapons had been planted.

A Yeah, but, yes, and um and I, I, I don't recall the circumstances with any great clarity, so this might, even with the best of my memory, have happened maybe once or twice in the year that I was there, but there may be more. It will all be on the server somewhere and there's probably a record of all the stuff we did around the place to try and cope with it. I simply can't remember it in here, but, yes, I definitely would have been aware of it. So would the Commander and the OC would have been the guy on point to try and resolve this.

...

Q Do you now remember, using the best of your recollection, how many times allegations of the planting of weapons were made?

A Um not with any degree of accuracy. They will be some in here.

Q But more than once?

A I, I think so and maybe I wasn't too precise, but yes, I'm almost certain that it's more than once. It may be twice, it may be three times but I genuinely can't remember.

When asked by CTI whether allegations relating to the detention of family members of the APU or former police officers by SU1 would have come across his desk, N889 stated that he could see from the emails that he was involved in a conversation around these allegations but could not remember how the matter was resolved. N889 thought "it was clearly another irritant in the...relationship between [SU1] and the APU". After being asked further questions by CTI about his use of the word 'irritant', N889 explained: "...I'm not trying to make light of any of this or, you know, by calling it an "irritant" say it was anything less than it was, and it was obviously very real for [N1791], but, you know, it's just a very complicated place and things aren't always what they seem they are and more often than not, if the intelligence leads you to go to a compound to go and detain someone, it's normally with good reason".

16 February 2011 email sent by N889 to N1791 (MOD-198-0000324-A)

CTI referred N889 to an email he received from N1791 relating to an allegation that a member of the APU had drawn a pistol during the course of a meeting with N1791. The wider email chain relates to complaints made by the APU about Objectives TURTON and TYBURN. N889 was not in SFHQ(A) at the time of the meeting, but thought he would struggle to imagine a period in

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which the relationship between SU1 and APU was worse. N889 was not aware of any other occasion in which a member of the APU drew a firearm on someone from UKSF.

N889 confirmed that the email referred to Objective TURTON which resulted in the detention of four males, one of whom was said to be a former member of the APU and the others who were said to be family members of some of the APU officers, and that what was being said was that the APU could guarantee the innocence of those detained. N2265, a senior member of APU1, was unhappy that the four men had been detained.

N889 was then referred to an allegation in the email relating to Objective TYBURN that a teacher and a cousin of an officer in the APU had been shot whilst trying to run away, and that two other men were assassinated after they had already been detained and searched. N889 agreed that this was a very serious allegation and that the implication of the two individuals "*trying to run away*" was that they were not posing a threat to anyone. N889 agreed that the implication of them being shot was that it was unnecessary and, at its worst, unlawful. He also agreed that the bland nature of the allegation is that the two men were murdered. N889 could not remember what he did about these allegations but thought the series of emails explained it to a degree.

N889 could not recall on how many other occasions an allegation was brought to his attention that men within his Chain of Command had murdered people. N889 thought he had not received a great deal of such allegations, but could not remember what actions he took in the immediate aftermath of receiving this email. N889 confirmed that it was fair to say that he would have seen the Storyboards for Objectives TURTON and TYBURN at the time. However, N889 distinguished between this discussion within SU1 and the Consequence Management that arose from allegations that came into SU1. N889 confirmed that he set himself the standard of reviewing every Storyboard for tone, style and factual accuracy, although he could not guarantee that he had checked every single one. Assuming N889 kept to that standard, he would have already had the opportunity to consider the facts that lay behind these two DDOs.

Handling of allegations arising from Objective TYBURN

CTI referred N889 to the OPSUM for Objective TYBURN from 2011 (MOD-221-0001417-A), a type of document that N889 agreed he would have been familiar with in 2011 and that he would have used to check the accuracy of the information contained within the relevant Storyboard. N889 confirmed that it was possible he may not have seen the OPSUM for Objective TYBURN when he read the email dated 16 February 2011 given how soon the email was sent after the operation was conducted. N889 could not remember what he did on receipt of the email and thought he could have read the OPSUM for Objective TYBURN or he could have had conversations in the Ops Room; there could have been a number of things that happened. It would not have been possible to speak to members of SU1 straight away. N889 could not remember what he did precisely but accepted that the OPSUM would have been available to him.

N889 added that another obvious thing to do would have been to talk to some of the members of staff in the Ops Room, including talking to the CO.

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- Q ...When you read that a bravo or when you heard that a bravo had been used in the house clearance and that he had been unrestrained so had managed to reach for a grenade, did that surprise you?*
- A No, that was the TTP at the time.*
- Q So the TTP was that you would take a potential member of the insurgency back into a compound, that he would be unrestrained and he would be able to reach behind doorways or curtains?*
- A Well I think er, yes. As you describe it like that, that is exactly how it, um how it was and I don't think we started that TTP. I don't know who brought that into our, our book, but that, that is what [SUI] was doing at the time.*
- Q Does it strike you as a risky TTP?*
- A Um in what sense?*
- Q Well, if the grenade had gone off, the members of the call sign who were in the immediate area might well have been hurt or worse.*
- A Well, there is a balance of risk here between going into the house with bomb makers or pressure plates, booby traps and you know the fact that there could be another armed man in the corner of a room which has happened, you know, on several occasions in [Sub-Unit] situations, so there, there's a balance of risks here that people kind of weigh up.*
- Q And thinking about how you balance the risk out, because you of course had the experience from [LG (not A)] as well, what about placing the male in some form of restraint so that he can use his hands to open a curtain or pull down a curtain but is not necessarily able to pick up, prime and throw a grenade? Would that be a good idea?*
- A Yes, potentially.*
- Q Right. What about not inviting someone to pull down a curtain when you do not know what is behind it?*
- A Well, so this is part of trying to understand Afghanistan. Curtains are doors, they're not curtains.*
- Q Exactly, you've got no idea who is behind it. So when you are the call sign and you invite someone who might be a member of the insurgency to go in unrestrained and to open what is effectively a doorway to another room, anything could be behind there, could it not?*
- A Um yes, you know, I agree and this is why I talked about the balance of risk because, you know, when you [arrive at] a compound or you initiate a call out, it takes [time given] for people to get organised and for them to come out and, you know, you are talking to all of those and through Afghans in the compound and you are explaining what you are doing and why. So, you know, there's been a period of time that's already passed, I'm sure you are aware, when you try and do these things, but that doesn't cover all eventualities that, you know, could, could arise with whatever in that [time given] people might configure in the household, which is a place you need to go and clear because you can't engage in a search of the compound without having cleared the thing in the first place. So, part of the balance of risk here is trying to ensure that you know you own the space and there are no risks to [SUI] or [soldiers] before you can proceed with the operation. So, you know, I do, I totally accept your line of questioning here, but it is just that there are a series of unsavoury choices to be made around how does one ensure that there are no further threats to [SUI] within the compound.*

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Q ... a male was sent “back into the ... compound to facilitate the search”. So rather than being invited to open doorways or remove curtains, this individual appears to be taking part in the search. What role might a local national have in the search of a compound being conducted by Special Forces?

A So again, you know, as this is my bag, I mean, these are the kind of errors in writing that, you know, [SFHQ(A)] is trying to, to pick up. Um so, you know, it’s, it’s not the role of the bravo to facilitate a search in the way that it is being interpreted in here. What he was doing was trying to de-risk the thing to [soldiers] by opening doors and, in the process of moving through the house, really showing us [...] if there are any pressure plate IEDs or any tripwires, you know, hanging between doors that have been put up to remain on the, on the way out. So, either it is saying, you know, and I agree this is a poorly configured TTP, but the design behind it or the intention or purpose behind it was to try and de-risk the operation to [SUI].

Q Well, given what this particular male was able to do, your description that it was “poorly configured” may be apt because, having gone in to take part in the clearance, if you don’t want to use “facilitate the search”, he is able to pick up an AK47 from behind a table. That cannot have been what anyone wanted to occur, can it?

A No.

Q The last thing that anyone would want would be a potential member of the insurgency armed with a lethal barrelled weapon.

A No, but equally you want to ensure there is not a booby trap in there so someone can sloppily walk around the house and set it off at no risk to any insurgents in the process. So, again, I totally, I’m with you on this, this is a poorly configured TTP.

N889 then explained that compared to his experiences in another theatre outside of Afghanistan, there tended to be “less propensity for kind of suicide type activity in the insurgency”.

CHAIR:... you talk about a “poorly configured” TTP and you just talked about “control”. I think the point that was put to you by counsel was how is it that they were not restrained and how was it that control was lost not just once [but twice]. I think that is the point that counsel wanted you to address.

A So I can’t account for that. You know, that is largely the question for the [Sub-Unit] who were responsible for this. [N1141], who was the OC, was a senior officer to me. He was the ground commander and responsible for the tactical execution of these tasks in hand, but the TTPs themselves were largely held by the [Sub-Units] and not [SFHQ(A)]. You know, I know there is a wider conversation that plays out of the back of this, but the conversation doesn’t necessarily come back to TTPs, it goes into um, well the intelligence sharing kind of question to try and sort of manage some of the issues in [APU1]. But, but to your question at the minute, I cannot account for this and I, and I didn’t feel responsible for the TTPs at the time.

MR GLASGOW: So when you, in light of [N1791’s] email, conducted the enquiries that you needed to about this particular DDO, did it strike you that what you were either told or what you read was not a particularly well executed operation?

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A I don't recall interpreting it like that.

Q Well, you just interpreted it like that here, did you not?

A Yeah, I mean, however many years later and having poured over the stuff in more detail, with all the implications that are attendant.

Q So it did not occur to you back at the time to question how it was that [UKSF1] had lost control of two potential insurgents so that they were only minutes apart from each other able to arm themselves with potential lethal weapons?

A No, and maybe that is a failure on my part, but it did not occur to me the way you put it.

Q Because, if you had read or come by that information, that would have chimed with the allegation that was being made, namely that two men were assassinated after they had been detained because these are two men who had been detained and then used in the search procedure.

A Yes, which was a common TTP and many others had been through that and not ended up dead. So it certainly gives, you know, um I think that, I don't think it was an attempt to see beyond this or ignore it. I think the attempt was "Well, what do we understand about the four who have been detained?" rather than question how the [Sub-Unit] had conducted the operation.

Q I am not asking you about the four who had been detained because, as is clear from the way that is written up in [N1791's] email, claims as to their innocence are recorded in inverted commas. I am asking you about the allegation that was made by [N2265] that four people had been murdered on this DDO, and we are now looking at the circumstances that you must have come to know about in the immediate aftermath of receiving that email. You have agreed in your own words that this is a "poorly executed" DDO. So what did you do about that?

A Well, I don't think I regarded it as a poorly executed DDO at the time and you are asking me to comment now, which, you know, is many years later and having [more command experience] at this stage and being able to reflect on these things with the privilege of some experience and hindsight. At the time when I read it I think I loosely understood it and I think I tried to facilitate and enable some of the actions around it, but I don't recall, and again it may be a fault of mine, looking at that in the same way that you are implying.

N889 agreed that if SU1 did not have a description of the individual that they were looking for and a male was sent back into the compound, that male could have been a member of the insurgency for all SU1 knew. N889 confirmed that this was not a TTP that he ever executed and he therefore felt "ill-equipped" to answer questions about it. N889 did agree that with hindsight the matter was "more challenging than perhaps it was understood at the time". When asked by CTI what he meant by this, N889 responded:

A Well, so, like I said, I cannot remember exactly what we did at that point. I can't remember what conversations I had with the Commanding Officer about it, if any. I can't remember what actions were issued. All I've got is one email, probably out of many, that existed from around the time to go on. You know, as I think I said before lunch, some, some of the, some of the bits that were, some of the challenges with the APU, which is quite hard to, to, um to take in the way that perhaps, perhaps they were dismissed too

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quickly or we perhaps (inaudible) and I genuinely can't remember how we approached it.

The difference between these allegations and some of the others we had to deal with is the others came [into SFHQ(A) from external sources] and, you know, were, were dealt with in the Consequence Management process that I described earlier. For some reason these, and I don't know why, these didn't trigger that same approach I think probably because it was largely internal to [SUI]. So, I don't know what actions were taken. I don't know exactly what the Commanding Officer did about it and all I have got is the emails you have put in front of me.

Q So as the lead for Consequence Management at this stage, did you put in place any of the appropriate steps for a review of what had happened on one or other of these two DDOs?

A Um well I, so I, I don't think I triggered any review of processes, but even I don't think that was um, well I still don't think that was largely within my gift to do so. I mean, I think I have said to you I wish I'd spotted this same stuff with the degree of clarity that is now evident in this. At the time, we, I didn't read this in the same way that it is now being interpreted and we didn't take any positive actions to um, to, to deal with it in a way that perhaps we could have done had we been looking harder.

But, you know, in the same way that I talked about some of the, the weapon drops earlier, you know, at no point in my mind had I priced in an expectation that er the Brits were, were acting in a way that we would later be pulling over in an Inquiry like this. I mean, I assumed and had real trust and confidence in the [Sub-Units] which I'd largely grown up with... that we would act with integrity on the ground. So I think part of it is perhaps making too many assumptions around this and not looking hard enough into it, but I perhaps had a bias in here and, you know, when you compile it with some of the evidence around some of the targets and some more [post-op assessment] around this, you know, the truth tended to be that we ended up with dead Taliban fighters at the back end of these operations, which kind of underpins some of the judgment calls that were being made here, that were being taken on the, on the ground.

Q Can I just check that I have understood that? You are saying that because as a result of the intelligence..., you believe that those who had lost their lives were members of the Taliban insurgency, that that meant that there was not a need to scrutinise the way in which they had met their deaths?

A No, that's not, that's not what I'm saying. What I'm saying is that there was trust and confidence between [SFHQ(A)], including the Commander, about everyone in the Chain of Command and the [Sub-Units] to exercise their job properly and um and I, so, you know the first thing when you read a report that you didn't quite understand, the first thing you didn't do was go to the [Sub-Unit] and say "Hey, what's going on here? This doesn't make any sense".

Q Why not? Is that not the natural thing to do? If you read something that does not make sense, you go ask either the author or the person involved and they can clarify it for you.

A So, I'm sure there were conversations that took place around then, I know there were conversations, but I just can't remember the construct or the who or how or what we

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decided to do. Some of it has emerged in the email train afterwards.... [N1141] has clearly taken some actions in the [Sub-Unit] as the main target for the email or was the main agent to try and solve some of the problems that have been thrown up in the email, but, you know, the construct from here was built on, was built on a degree of trust.

You know, I totally accept, you know, all these years later looking back that perhaps one should have taken a slightly harder view on that, but that is not what we did at the time and, you know, I, I maybe naïvely read this stuff, believed it and um and carried on and we continued to do our work.

Q Well, when you look at it now in the light of your subsequent [command] experience... is that why you make the assessment that this is a poorly executed DDO or at least a “poorly executed TTP”?

A Well, potentially. So the real challenge is that, you know, operations are just, you know, they are really messy beasts and they can be unpredictable. They might look fairly templated because all of the DDOs have a broadly similar construct, but some of them can spin out and very unexpected things can happen which are hard to describe in writing. I know that. So, you know, I think it is easy to look at these things and go “Well, that looks insane, that cannot be true” and it is just as insane and played out just as it is. It is also very easy to, to look back on these things and anticipate it with a good deal or degree of clarity on the ground at the time that just simply wasn’t there. ...

So clearing a, clearing a compound...when it is hot and dusty... people are worried about dying on the Objective and you have gone into a particular insurgent commander’s house and you have to go back onto his home turf and he has been forewarned that you are about to go into and, you know, some of the judgement calls around all of this could be very finely tuned. People could have read body movements in some of the bravos and taken action quite quickly. So, you know, I think there is just a degree of human judgment and belief that is in all of this and I think there is a degree of strange things happen in combat and particularly in Afghanistan. Just because it reads weirdly all these years on doesn’t mean it’s not true.

CHAIR: And just taking that, I think the point that counsel was putting to you was that it is difficult, is it not, to imagine more serious allegations being made against SF than these? Is it?

A Yes, but perhaps so--

Q Four people murdered and [N1791] took the trouble over a page and a half to set it out in quite some clarity. I think what counsel is asking you is if you did not take any action about it, why not, given the gravity of these allegations and, as he says in his conclusion, “This is clearly a critical issue for [SFHQ(A)]”.

A So I think, Sir, what I am trying to say is I’m questioning how much credibility I gave the allegations in the first place, and that may have shaped some of the ways that these were handled and, as I said earlier, you try with all of these things, you try to be balanced and objective in how we, we looked at it. So I don’t know what other material relates to how we handled this, what other conversations were had in the aftermath of it and I really wish I can remember but I can’t.

...

MR GLASGOW: Did you speak to CO [SFHQ(A)], [N1786], and tell him that [N2265] was reporting allegations of murder against [SU1]?

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A *I can't remember.*

Q *If you had taken those allegations seriously, do you think they are the sort of thing you would have reported to your Commanding Officer?*

A *Well, I am certain that we had a conversation around it, but I just can't remember how or where.*

Q *Right, so you are certain that you and [N1786] spoke about this issue?*

A *To, to, well without being able to remember it, as certain as I could be, this is exactly the kind of stuff we would discuss, but can I remember the circumstances of that discussion? No, I can't.*

When asked by CTI whether he either did not or did not want to believe the allegations, N889 responded that he could not remember precisely how he felt about it at the time.

N889 agreed that the penultimate paragraph of N1791's email was making the point that until the issue was put to bed, it was impossible for SU1 to conduct DDOs and it was therefore a critical issue for the Sub-Unit. N889 considered detention to be a "very thorny issue" and explained the problems arising from the fact that there were separate parts of the Afghan judicial system.

CTI then referred N889 to a further email he received from N1791 on 16 February 2011 about a second, 'equally unpleasant' meeting N1791 had had with N2265. When asked whether he made a judgement call on the accuracy of the intelligence, N889 explained that he would not be the one to make judgement calls on the accuracy of intelligence, and that it was largely the responsibility "of the...[Sub-Unit] Commanders to judge the intelligence for the operation"; "It's really for the [Sub-Units] to judge the operational efficacy based on the intelligence and the desired outcomes". N889 thought the sharing of intelligence with N2265 might have helped him to understand what had triggered the operation in the first place. N889 confirmed that he thought releasing the intelligence to N2265 would assist him in saying to APU1 that the deceased were Taliban, which N889 saw as a positive contribution to try and help manage the situation.

CTI referred N889 to an email that he sent to N1791 and asked what N889 meant by 'I don't want to full expose the issue yet'. N889 could not recall but said that N2265 "could be quite a tricky customer" and thought that there was "a degree of being wary about how some of this [was] being represented up the [Afghan] Chain of Command".

N889 could not recall this being the source of any open discussion with SFHQ(A) regarding problems on the DDOs. If there had been those sorts of discussions, N889 would have expected any member of his staff who either was party to them or overheard them to report it to him.

N889 was then referred to an email exchange between N1791 and N2107 dated 16 February 2011, following Objective TYBURN (MOD-198-0002877-A). N889 did not recall there being any problems around this time about support staff making observations about the activity of the UKSF Sub-Unit but he certainly never saw a divide between UKSF personnel and support staff. N889 confirmed that as COS it would have been his role to give the support staff a 'bollocking' but he did not recall this particular incident. N889 was referred to the final line of

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N1791's email in which N1791 recounted a falling out between N889 and N1141. N889 recalled one falling out with N1141, but not the one in mid-February that N1791 was referring to in his email about the TTP being used by SU1. N889 could not recall having had a discussion, even a heated discussion, with N1141 about any of the DDOs prior to Objective TYBURN. N889 thought it possible that he and N1141 discussed the TTP being used by N1141's Sub-Unit on the DDOs, but N889 could not remember it.

N889 recalled very clearly a discussion he had with N1141 after the TTP Review and thought he *"would have recalled um any challenging conversation with an OC. Those things are not stepped into lightly by a subordinate and I certainly can remember most of the hard conversations I had with OCs across my time there, but this one I um I don't"*. In his witness statement, N889 had mentioned a heated exchange with N1141 related to the TTP Review which he explained would have taken place towards the end of April 2011, after the TTP Review. N889 then explained more about the heated exchange:

A So if I recall it correctly, it is just after the TTP Review, after I think, even after [N1788] had maybe just finished or was just leaving, just left, around that time and I think the implications of um what he had come out to look at um I, I think I learned of for the first time and um I recall being pretty shocked by it um... it was an understanding that there were six Storyboards from over a much longer period of time that, when you kind of pulled them out and laid them next to each other, talked of similar challenges around grenades and curtains and the death of Taliban insurgents in buildings and, when one lays those Storyboards out next to each other, they do appear incredible. Of course, the implications from that was that there was a deliberate policy to um to er um act unlawfully and I think I, being [several] months into a tour, was probably very tired and I think this kind of hit me quite squarely, probably for a number of reasons, but I do remember [...] having this short exchange with him and asked him if the [Sub-Unit] were deliberately killing people. He replied and asked if I was challenging his integrity and I said I was and he said that his [Sub-Unit] was not doing that and reassured me and I remember um being um, being sort of pretty um I think pretty sort of overcome by a fresh understanding of how this was, was all looking. Part of that was probably me reflecting on stuff that I had perhaps failed to notice or stitch together in hindsight. Part of that was because of the implications for a [Unit] that I worked very hard to be part of. Part of it was because I was [going] to undertake [a command role] and frustration at perhaps what this, some of this kind of meant for that. So I think there was a combination of emotions um in all of this um and it really challenged what I understood to be true.

Q In terms of those points that you have just made, in so far as you think that maybe at the time you were worried that you had failed to notice it yourself, does that mean that having had the opportunity to look at the post-op reporting to approve the Storyboards and the like that actually you think you should have seen or at least asked questions about what was happening on these DDOs?

A So partially. More a failure to recognise patterns emerging over time through some of the Storyboards, which I think to my point earlier this morning about the role of [London] was perhaps clearer when we stood back from it and were able to look at it in a, with a kind of sort of clearer eye without the sort of tyranny of the now and I think the Ops

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Room. So I think part of it was perhaps a sense of failure in all of this to recognise what was going on and part of it was shock and frustration um at, you know, how I felt, how it made me feel as an officer and a, and a commander in an organisation like this. You know, I still have no idea to what extent these things were true or not and, you know, part of what I've been trying to provide evidence on this morning and counsel again has jumped to conclusions because weird things do happen in Afghanistan and um, but it certainly has shaken me to understand that, you know, there is a possibility out there that we have strayed away from modern military terms and behaviours.

...

Q If one starts from the point that you have trust and faith in individuals and accept whatever it is they say or write, is there a danger that you do not cast a suitably jaundiced eye over things and actually challenge something that might not make sense when you stand back and look at it?

A So that is true and um, you know, you know of course that is true and um it's um you need in the military, you need to have trust in the system so if these allegations proved true and I seriously hope they don't, then it, then it challenges everything you know to be true about how we built [SFHQ(A)] and the people who were in it at the time (inaudible). I would struggle to understand how you could fight a force without that trust implicit in it because so much is about how Commanders act and behave and what they commission and how they, um how that sort of resonates down [SU1] and the behaviours on the ground.

My instincts on joining UKSF was that, was that it acted implicitly with integrity and perhaps it's a failure to sort of question that that I was frustrated with um but um my note of caution in all of this is just strange things happen in Afghanistan. The gang in the APU were acting for a range of reasons that aren't necessarily always as clear as they, as clear as they could be, appear to be on the surface.

You know, [N1791] was not on the ground. [N5461] was in [LG (Not A)], as was [N2107]. These are guys in a different country trying to look in and read into all of this and part of it was saying that we built, we built [SFHQ(A)] here and we have given them these responsibilities. There is a Commander that is accountable in [N1141] for all of this, you know, and if trust is at the heart of how you build a military, then you have got to work with the Commanders who are in it.

Hindsight is a little bit different when you look at all of this and I think the intervention around the Storyboards and the TTP Review did challenge our understanding of what was happening and why fundamentally, but I felt at the time, you know, and maybe I kind of held onto it for too long, that the trust was with [SU1] and we worked with them...

Objective 1: FIR and SIR

CTI then referred N889 to Objective 1 which, unlike Objective TYBURN and TURTON, did find itself the subject of a Shooting Incident Report ("SIR"). To aid the witness' memory, CTI explained that Objective 1 was a DDO following which N2132, an Afghan Official, raised a civilian casualty allegation which led to a First Impression Report ("FIR") and an SIR. N889 explained that SIRs and FIRs were not necessarily linked. SIRs were typically triggered even

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if there was not a Consequence Management allegation. N889 could not recall how the SIR was triggered on this occasion but he thought where there was “*a mismatch with numbers of EKIA and weapons*” it transitioned quickly into an SIR and was investigated. The FIR and SIR would have happened in parallel to each other.

N889 was referred to the FIR for Objective 1. N889 agreed that the way in which the FIR addressed the sequence that resulted in the death of nine individuals would appear to be almost a carbon copy of what was in the OPSUM. N889 agreed that his team’s FIR appears to take what was written in the OPSUM and records that as being the conduct of the operation. N889 confirmed that his team would not have asked to have sight of photographs from the operation to better assist in their understanding of what had happened. It was not really the team’s job to pick through it and try and understand it in that way; the FIR was an attempt to communicate the best of what they knew to be true at the time, very quickly in the aftermath of an incident, so it was inevitably a very close copy of the OPSUM. N889 was not, at this stage, questioning whether the way in which any of this was being written up was true but explained that there were clearly issues with this operation that were going to be looked at in an SIR.

N889 confirmed that an SIR took longer to pull together but had the advantage of speaking to soldiers to gain their understanding of what had happened during the course of the DDO, meaning everything could be drawn together.

CTI referred N889 to photographs of the EKIA from Objective 1: N889 agreed that they showed three EKIA lying in various poses on their back, who appeared to have sustained head shots whilst lying on pieces of fabric, possibly cushions or pillows. CTI then described four EKIA, who appeared to have sustained head shots and to be lying either on their backs or on their sides, on fabric or cushions or pillows. CTI described the final two EKIA as having sustained what appeared to be head shots, one of whom had an AK-47 to the side of them.

Q Reminding you of course that the description provided for the manner in which this DDO had taken place was that the [Sub-Unit] had received fire from within the room and had fired into it before they had gone in, there was no clear explanation as to how nine people had come to lose their lives; but it would appear when one looks at those photographs and in the photograph of everyone lying in the room they appear to have died by head shot and they appear to be in a room in which they were sleeping or making ready to go to sleep and some appear to be in what might be a bed. Do you think those photographs, if you had seen them at the time, would have caused you to question the description that you and your team gave in the FIR?

A So, I think it’s very hard to judge from photographs precisely how people were shot with a bullet that is 5¹/₂ millimetres across.

Q Well, we can look at the bleeding wounds again if you want to because they are bleeding wounds to their heads.

A I get it, but when people are shot blood can come out of lots of different orifices. It doesn’t mean it’s where the bullet has gone. So it is, it’s hard to judge and the other factor I would just point out is guest houses were very confined places. So, if someone is shooting out of that and it’s dark and it’s dusty [...] into effectively a thing that is only slightly larger than a garden shed or a garage is probably a better approximate size, then, then fire is

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coming out. Of course you don't necessarily know how many weapons are in there or what the weapon and bravo match is, how many weapons each bravo has got or none at all.

So, you know, whilst I can't account for the actions of the soldiers who have done this, it would, it's not beyond my expectation that they would fire into that room to neutralise the threat and if it is dark and dusty and enemy fire is coming out of it, it is conceivable that there is going to be lots of bullets flying around in that room and that people will die. That is, that is, you know, obviously the nature of the business. It's really hard to judge from these shots precisely where people were hit. When bullets hit heads, they tend to knock chunks off. I know that because I've seen it. Um so, so, you know, this is really hard to judge.

N889 did not know that the SIR raised the possibility that, rather than being shot by SU1, one or more of those inside the guest house could have died as a result of fratricide. When asked if this seemed plausible given where those individuals were lying, N889 responded:

A ...The other issue is there has been a call out which they have not responded to, so, you know, there has got a degree of if there is nothing wrong going on here, then why aren't they coming out of the guest house? ...

So in those pretty extraordinary circumstances I think it is conceivable that a Taliban with the weapon can fire in what he thought was the direction of the [entry point] or the threat. So it is perfectly plausible.

Q Someone was clearing firing out of it if what is written in the report is correct.

A Yes, but it is perfectly conceivable that when you are firing in any direction in a dark room you are fundamentally disorientated.

Q And they managed to hit one or more of their own but none of the [Sub-Unit].

A Well, the [Sub-Unit] are moving in the room from a very small angle.....So, you know, the odds on these things are really hard to stack sometimes, which is, which is kind of why I come back to trust in some of this, which has got to be at the heart of it because some of these things are really hard to comprehend.

Q Is that why on occasions you need to question to make sure that you have placed trust in the right account?

A And why you need to build trust as well, but you are right, Sir.

The TTP Review

The TTP Review conducted by N1788 considered six OPSUMs of DDOs that N889 had indicated that, when looked at together raised question marks. N889 could not recall who told him about the serious allegations behind the TTP Review, but thought it was either N2267, an officer that worked for N1788 in London or N1786, but more likely N2267.

N889 was made aware by N1786 that N1788 was coming to theatre but did not think he was told the topic at that time or what it related to; it was handled very carefully. N889 recalled lots of discussions between N1788 and N1786 around the time that N1788 reached the point of his findings, then he was gone. N889 thought the whole thing lasted nearly 48 hours, 72 hours at most. N889 did not help make arrangements for what the review needed to look at or the people

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N1788 needed to speak to; the core staff had no involvement in N1788's work, which was largely isolated to within SU1 and the CO. N889 was not privy to information as to whether this was N1788's review or a review that N1786 and N1788 were doing together.

CTI asked N889 why he thought he was not made privy to that information given his position as COS, and the need to be aware of what was happening in SFHQ(A), N889 responded:

A Um so I, you know, I do, you know, there was definitely a question mark in the back of my mind, but I don't think I dwelt on it more than a couple of seconds. You know, there is a, there is a bit of a need to know aspect to the job, which I knew prior to taking it and I was pretty comfortable with which clearly, at that time, it didn't appear to relate to whatever it was and it didn't seem to relate to what we were doing more widely. So I think I was perfectly fine in this kind of role and um so, you know, I was, I was um clearly involved in some of the post-TTP, TTP Review follow-up work, but in terms of core content or enablements or facilitation I literally had no involvement whatsoever.

N889 was referred to an email he wrote on 27 May 2011 at 09:20 to N1141, N2267 and some of the training staff (MOD-198-0002063-A). N889 could not recall which of the two different write outs from DSF to N1786 he saw but he did not think he ever saw the detailed TTP Review. When asked by CTI if this was the first time that N889 was made aware of what the TTP Review was about, N889 responded that he could not be sure but thought that he had a bit of an understanding before. N889 thought that N1788 came and went and there was a significant pause before anything came out following the Review.

In the write out from DSF to N1786 relating to the TTP Review (MOD-198-0002063-A), N889 agreed that DSF's comment about the need to 'instigate a cultural shift in the thinking of our personnel' was a clear message to Commander SFHQ(A) as to what needed to be instilled in members of the Sub-Unit. By 'instigating a cultural shift', N889 thought DSF meant that Sub-Unit 1A ("SU1A") had not done a good job of looking after the relationship with APU1, leading to tensions. N889 thought it was an operational level view from the Operational Commander, DSF, who was trying to set the trajectory or change the trajectory of SU1 to attend to some of the issues that were made "clearly an element through the process of the TTP Review". As to the comment to avoid 'unintended consequences', N889's response was:

A So my interpretation of that comment is relating to the balance of risk and the objective where you are trying to solve one problem but you may create others in the process. So in terms in trying to protect the [soldiers] by ensuring the safety of the house, for example, in the compound as you clear it. You are putting, you are putting um in jeopardy the, not necessarily the tribe, but you creating an opportunity for jeopardy where you should be exercising a duty of care.

Q Right, because anyone who has been detained and/or surrendered to the [Sub-Unit] at the compound is under the duty of care of the [Sub-Unit]?

A Yes.

Q And they are owed obligations in law and their safety should be protected?

A Yes.

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Q And if the TTP is being correctly written up, then they are being placed in a position in which they are potentially in jeopardy?

A Yes.

Q If, on the other hand, the TTP is not being correctly written up and what is happening on target is as alleged by [N2265], murder, is this a warning that those who are taking part in the DDOs need to obey the law?

A Um I, I think it's, well I don't know what's in his mind as he created that, but that is certainly how I understood it and, you know, I think perhaps the TTP had been slid into or there was a degree of creep into operating like that. I don't think it was ever, and again I am speculating and others will know better, but where did that come from I'm unclear. But it, but I think what was evident to the likes of [N2267], me and a few others who were [going on to Command roles] at the time was that you couldn't take any of this for granted and, and that you had responsibilities for thinking this through the whole time. So I think, I don't think it was quite as direct and I don't think it was meant in the way that you described it, but I think he was talking about it in the wider sense of, of the widest sense of the terms.

N889 was referred to the direction sent out by Commander SFHQ(A) to the Commander of SU1 on 20 May 2011, to which N889 and N1791 were copied (MOD-198-0002063-A). N889 thought he was likely to have read it when it was sent and given it was a direction about the way in which the Sub-Unit was operating, coming from Commander SFHQ(A), N889 confirmed he would have paid extra attention to it. N889 confirmed the note made clear that an individual detained in the custody of a Sub-Unit is owed a duty of care pursuant to the Law of Armed Conflict ("LOAC"). N889 thought that prior to this note, this duty was not as crystal clear in the minds of members of SU1 as it should have been and agreed that it should not have taken a formal directive from Commander SFHQ(A) to remind SU1 what their obligations were under the LOAC.

CTI then referred N889 through the five stages of clearance set out by N1786. By reference to the first stage, which required Afghan males to be suitably restrained, N889 agreed that had the version of the TTP set out in this direction been used the two EKIA in Objective TYBURN could not have lost their lives in the circumstances they did. N889 agreed that the second stage was "pretty clear" as set out by N1786. N889 agreed that the third stage appeared to suggest that occupants should not be sent back inside the compound restrained or not, but that it did give Commanders on the ground room for judgement. N889 agreed that in accordance with this direction, use of occupants who were restrained in the subsequent clearance should have only happened where a Commander deemed it absolutely necessary, but that it should not have formed part of the normal compound clearance procedure. CTI read out the fourth stage which related to getting the engagement of the APU so they were part of the search process. As to the fifth stage, N889 explained he thought N1786 was suggesting that the officers should be clear on collecting any imagery, relevant evidence or data to help Afghans understand what had happened on the Objective.

N889 could not recall discussing N1786's direction with him to better understand it. However, given "the magnitude of all this", N889 was almost certain he would have talked about the

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direction in a Command group, which N1786 would have led. When asked what he meant by the magnitude of all of this, N889 responded:

A Well, I think it was, it was really, and we were talking about this, in the aftermath of [N1788's] review it was very clear what the implications were.

Q And they were what, please...?

A Well, that when um several Storyboards are put together, that the sum of the parts look incredible and, and the implications are that there is a degree of lawless behaviour on the Objective. So, I think, you know, the conversation around the TTP Review was, my understanding and interpretation of it was that it was done sensibly in order to set different conditions um around how operations were conducted.

Q And as you understood it, was the purpose behind the setting of different conditions to ensure that, if there was lawless behaviour on target, it stopped?

A Well, I think there was an expectation in the Chain of Command that there would not be lawless behaviour on, on the Objective and, you know, I am sure [N1141] and [N1786] would have had conversations around this, but I don't think I was privy to those, but um, you know, I think, I think it's pretty clear what the, what the note was designed to do. It was to lay down in writing in a form of orders how things are being conducted.

Q And in particular reminding [SU1] of the duty of care they owed to a detainee pursuant to the Law of Armed Conflict.

A Yes.

Whilst N889 was not privy to most of the conversations about the TTP Review, he agreed with the assertion that the purpose of the Review was to stop any lawless conduct.

N889 thought it likely that in-between the receipt of the direction on 20 May and N889's email to N1141 and N2267 on 27 May, there would have been a discussion between N889 and his CO, N1786, about how to put into effect what N1786 wanted done. N889 thought there also might have been other bits around the email and recalled that there was quite a bit of work needing to be done with Sub-Unit 1D as they deployed, as some of this was being done at the end of SU1A's tour. There was a desire to resolve this quickly and to field these new tactics for obvious reasons, and N889 thought that N2267 was open to it.

A TPE's complaints

At the same time as these documents were being circulated, a TPE was conducting enquiries into the same DDOs that had caused concern in February 2011. At the time of completing his RMP witness statement, N889 recalled interactions with this TPE but did not think these interactions related to the TTP or SU1's detention of personnel to enter and search buildings post capture.

N889 had no discussions with this TPE but was involved in an exchange of emails in which the TPE had approached Task Force Helmand ("TFH") to ask some questions. N889 recalled trying to work out the process of UKSF talking to the TPE, which also required input from HQ DSF.

N889 was referred to an email dated May 2011 relating to Objective TYBURN from N5462 to N889 (MOD-198-0003437-A). N889 confirmed that as the email was thanking him for

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something, N5462 must have written this in response to a previous email or discussion. N889 agreed that the complaint made by the TPE which detailed that *'one man was seen to be 'under control' - handcuffed and led into a room. He was later found KIA (inferring that he was shot out of hand)'* appeared to be referring to the TTP. N889 agreed that this email confirms he was privy to information about a TPE raising allegations of unlawful killing which he had forgotten about when he gave his statement to the RMP. N889 could not remember whether he had linked the emails that had been exchanged in mid-February 2011 about Objectives TURTON and TYBURN to what was set out in this email concerning the TPE's complaint.

Further down this email, N5462 wrote of wanting to stop this allegation being fed into the national or ISAF Chains of Command. When asked why it may be helpful to do this, N889 explained that if those killed were dead Taliban members, there tended to be less of a political challenge in Afghanistan. In these circumstances, the ISAF Chain of Command would also be less exercised. N889 thought the Consequence Management process was important as intelligence shared with Afghan officials and the ISAF Chain of Command relating to the identity of the detainees or EKIA could help manage or de-escalate some of the issues.

CTI noted that this email was received by N889 in May 2011, after the conclusion of the TTP Review. When asked whether upon reading the TPE's complaint, he thought that this was what the TTP Review related to, N889 could not recall his thoughts from the time, but as per the email chain he rapidly escalated it to HQ DSF as he thought the problem transcended the theatre. We *"tried to push this up to London for them to take some sort of role on it. This was way beyond the scope of what [SFHQ(A)] could handle"*. N889 thought they tried to equip N5462 with enough information to be able to handle the enquiries from the TPE. N889 could not remember how many *'recent queries'* were raised by this TPE, as per his email to N2108, but confirmed that there were clearly other queries. He could not remember what those other queries related to but they were likely to be captured on the server. When asked whether he thought that this was something that could have been nipped in the bud, N889 repeated that within SFHQ(A) they realised that they were not equipped to deal with this and explained that he viewed N2108 as someone who would be able to provide credible advice from a different level of assistance to help TFH handle this better at the next meeting.

N889 thought that N2108 in particular needed to be made aware of this as it related to *"how we handle dealing with an...organisation which is outside of clearly government business"* (MOD-198-0003437-A). It was a very unusual set of circumstances for an operational Sub-Unit to be trying to handle and it was outside N889's experience layer, so he sought N2108's guidance on how to handle it. CTI queried the unusualness of the circumstances given N889's evidence that these concerns were similar to the recent queries from the TPE. When asked whether he had escalated the previous concerns to London, N889 responded that the complaint handled by N5462 was the first time that SFHQ(A) had any first-hand involvement. N889 thought this TPE had regular meetings with TFH but he could not remember precisely what they were about. N889 could not speak to the meaning of N2108's email where he wrote about seeking to *'head things off'* and expressed concern over an RMP investigation.

CTI referred to the part of N2108's email to N889 in May 2011, in respect of Objective QR, where N2108 wrote

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“... we could say that an [individual] was taken under control but was later allowed to go back into the compound ...”

Q Is the implication behind that that at one stage the individual was under control but then he was not under control because, having been allowed to go back into the compound, he is then no longer under control? Is that what that is getting at?

A So I think that sounds reasonable and, you know, it is not unlimited control, but it's, it's your point earlier about handcuffs. It was without sufficient control.

Q Well, if someone is under control but then allowed to go back in and therefore not under control, might that allow the excuse that “Well, we don't owe him a duty of care under the Law of Armed Conflict because we have released him from our control and he is now doing what he wants to do”?

A Yes, I think you're right, it doesn't make sense.

N889 confirmed that his email in response agreed with N2108's position and that N889 was proposing to share in some form with the Consequence Management team in TFH as to how to move forwards.

Q So the plan was to 'nip' the allegation in the bud at the lowest level and, if you release anything, to say that the individual had been under control but was later allowed to go back in when he attempted to engage members of the [Sub-Unit]?

A So, so I think um part of this here is about providing [information] effectively to [a TPE] that is appropriate and, you know, I agree that it's not as cleanly worded as it, as it could have been and I agree that his language and approach to it feels to be quite loose around some really important things, but in essence I think we were trying to um engage the higher Headquarters to take a bit of ownership of this and to provide some, provide support.

CTI referred to N2108's note from May 2011 to DSF about a meeting that took place with the TPE (MOD-198-0002033-A). N889 agreed that the allegation raised by the TPE was that an individual was murdered. N889 explained that it was the first time he had seen this document and that when he looked back on it his instinct was to raise this to HQ DSF because of the nature of it. N889 described it as “heartening” to see that some action was taken with some recommendations, although he did not necessarily agree with the recommendations, but thought it seemed like a question for a response from DSF.

N889 was referred to an email that he was copied into from SO2 Legal, N910, in May 2011(MOD-198-0000249-A). N889 could not remember whether the issues detailed in the email were in fact raised on the regular call with DSF. N889 stated that today was the first time he had seen this email but acknowledged that he was a copy recipient of it.

N889 was referred to an earlier email in the chain from N1141 to N910.

Q ...Were you aware of any suggestion being made in the course of this developing TTP that the call sign at the time were selecting between various individuals who might go back into a compound?

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A *Well, it is obvious there would need to be a degree of selection, but this is the first time I have seen that, acknowledging again that it has been copied to my email address.*

Q *Well, how do you make a selection between those at the time? Do you always pick the oldest? What if the oldest happens to be a commander?*

A *Well, that's true, but you know, again in terms of owning the property, selecting a young male, he might not be privy to a female's quarters...there might be a pretty tricky thing or a tricky position to put that young male in. So, you know, there will be more to that and I think there are some pretty obvious reasons around it.*

N889 agreed that what N910 was told by N1141 was that on this particular DDO there was no choice as to who they sent back into the compound. N889 also agreed that there was more than confusion between what the OC, N1141, was saying happened on the DDO and what SO2 Legal, N910, proposed to represent to this TPE as what happened, which N889 agreed was the very opposite.

Q *Do you think it might be unfortunate for [a TPE], who are enquiring into allegations of potential murder, to leave a meeting at which they are briefed inaccurately by a lawyer on behalf of UK Special Forces?*

A *Yes.*

CTI referred to an email from N2108 outlining the concerns of the TPE (MOD-198-0000328-A), which was sent to N889 following the meeting at which N889 agreed that this TPE received inaccurate information. N889 remembered receiving this email. N889 agreed that, as per N910's email, N910 briefed the TPE on the documents shared and did not step outside of them, leaving the TPE very satisfied. N889 thought it a fair observation that this TPE might have been less satisfied had they known they had not been given the full picture.

CTI referred back to N910's email to N889 in which N910 stressed that the outcome for the bravo sent back into the building *'very much depended on the compliance of those on the compounds with instructions and their choice as to reaction to the troops'*. N889 would have been confounded if N910 meant by that that if people do what they are told and comply with what is requested of them then they are unlikely to end up being shot. N889 did not think he would have read N910's email in that way at the time. As to what N910 subsequently meant by the *'outcome hinges on the individual's conduct'*, N889 agreed that it could be interpreted as there will be no need to engage an individual if they comply with instructions, but stated that he would find it *"staggering"* if a lawyer was writing something like that down on text as a write-up or even describing it to a TPE in such a way. N889 did not raise this with N910 and thought this was perhaps because he was not sure he processed it in that same way.

N889 did not think he had given much credence to the TPE's enquiry as to whether there was a manufactured self-defence scenario. N889 confirmed that this was three days after he received a direction from Commander SFHQ(A) reminding those who take part in the DDOs of the need to adhere to the LOAC and explained that he was looking at this in the context of pre-TTP Review challenges. N889 was not sure what he did with this but thought that perhaps

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he did not do anything. He noted that he could not see any more interventions he made in this email chain and did not recall having any discussions following this email.

When N1785 arrived in theatre to take over as CO SFHQ(A), N889 thought N1786 would have had conversations with N1785 around the TTP Review and conduct. N889 remembered N1785 asking him for his views on it. N889 told the Inquiry that he shared the same view with N1785 as he had given during this evidential hearing. N889 did not remember much being made of the TPE's complaint after this engagement. N889 agreed that this TPE was making a very serious allegation if true, similar to the allegation raised previously by N2265.

A ...I think the issues were known issues. It was just coming out of a different portal and it was our intention to try and get this out of the hands of the operational [Sub-Unit] and put some experts in who could handle it. It was not our business. We are not equipped to deal with this.

Q And your belief was that the purpose of the directive sent out in the aftermath of the TTP review was to remind the [Sub-Unit] of their legal obligations that they owed to a detainee.

A So the orders were to reset the process of delivering a DDO and to remind people of their, their legal duties.

Q And to ----

A And the relationship with the Afghans.

Q -- and to stop any illegal activity if it was going on.

A And, and that would have been, yes, part of the intent, yeah, but I don't, I don't recall being privy to that conversation behind it. I think I saw the notes you largely provided to me.

N889 then gave the following closing remarks:

A ... the only bits I would raise I would probably just amplify just a couple of points that I made through the course of the day.

The first is that there was a paradox between the ease with which one could conduct a [non-DDO] to kill an insurgent and the huge challenges around detaining someone, an insurgent, and take them off the battlefield. I think that sense of frustration around the policy configuration that underpinned the operation was felt at most of the higher echelons of [SFHQ(A)] and certainly in London as well.

If one is in the business of trying to help configure UKSF for the challenges, then trying to get the operational envelope and the policy envelope to overlap so this thing could work clearly as intended I think is a really critical thing because many of the challenges that have been talked to today um I think may well have spun out differently had the policy envelope adapted at the speed that the demands of the operation were progressing. I think the policy bit got so far and then it stalled and then the demand of the operation continued to escalate.

I think within the cracks of all of that I suspect challenges emerged and, if that sort of difference between [non-DDO] and the ease with which you could, within the Rules of Engagement kill, an insurgent commander, which creates a dead end in the targeting because you end up with a body in the middle of the desert and no one there to exploit what he knows,

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his [personal property] and conversations with him or any other part of it, that's a dead end ratio, which is why it wasn't used and practiced as heavily as it, as it could have been and a desire by the [Sub-Unit] to actually detain people and take them off the battlefield so that you could create space. I dread to think how many insurgent commanders were entering the revolving door of VARSITY to go straight back out onto the street to keep going and what they learnt in the process about our TTPs. So there is something in this issue around policy and operations matching.

The second thing is, and again easier with the benefit of hindsight, but there was a mismatch in [SFHQ(A)] between trying to overlap [APUI] with [SU1] and I think a lot of the frictions that came out of it would be for its day writ large. I do think it is worth, as I am sure you will, Sir, applying some judgment as to how the Afghans saw some of this, saw some of the challenges in the relationship from the battlefield. They were in a very, they were in a very invidious position trapped between a [Sub-Unit] and all of the local challenges of being an Afghan local working for GIROA in a heavily contested, heavily contested country. But I don't think we got the orchestration of which partner unit and which force and which detention pathway lined up so that this thing could actually work smoothly. I think that is another, another area to opine on.

And then the final answer is just to say that it would be remiss of me not to talk to the tensions between the contributing units at the time. [UKSF1] came out of [LG (not A)] and did supplant [UKSF3] in [a region of Afghanistan] and I think that was the source of huge tension and frustration within [UKSF3] at the time. I think there was a very conscious um dislike -- as much as that -- across [SU1] between both parties at the time and I think that could well have influenced people's judgment around some of these, some of these scenes.

As an example, [NI791] was put in a very challenging position in (inaudible) which I had set and he did an absolutely outstanding job trying to manage it all, but he, he bore the brunt of some of the frictions that were in part out of the shifting of [UKSF1] into Afghanistan and [UKSF3] being moved into what they perceived in their own minds as a lesser role training Afghans...in [another region of Afghanistan] and all of the kind of human factors... that came out of that move I think are, are a minor but important contributing factor to some of the frictions that elements when you look at this, all of this work.

And finally just a genuine thank you. I think this is really important. This really shocked me when I learnt about it and I wish you all good fortune in chasing through (inaudible)...

Evidence concluded.