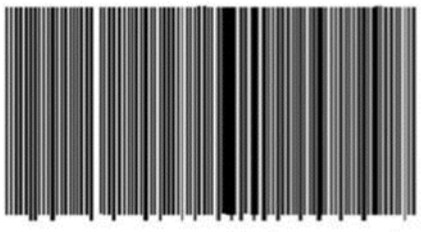
Prepared for OPEN publication in relation to the Independent Inquiry Relating to Afghanistan



RMP-221-0001804-A

Name Given **(SPO DJEP-Temp 6)**

From: SIB RMP-NORTHMOOR-HQ-SilverComd (Cox, Matthew Maj)
Sent: 04 July 2017 09:55
To: SIB RMP-NORTHMOOR-HQ-OC (Stitson, Tina Maj); SIB RMP-NORTHMOOR-T1-SIO (Wright, Jason Capt); SIB RMP-NORTHMOOR-T3-Disc-OIC (Smith, Danielle Capt); SIB RMP-NORTHMOOR-T1-DSIO (Williams, Delme WO2)
Cc: SIB RMP-RHQ-CO (Parke-Robinson, Julia Lt Col)
Subject: FW: 20170629_Mark_Ellison_Advice_request_AH-OS
Attachments: 20170629-Mr_Ellison_Advice_Letter_HQ_AH_Northmoor-OS.pdf

Danielle,

Please file.

Jas, SM,

Please note the letter refers to interview on or after 24 Jul. As the meeting is not being held till 6 Jul and therefore I would not expect a response to LDC until Fri and therefore response from them Mon, I would suggest the 24 is not going to be the day as this would only allow 14 days for flights and confirmation of the witness availability, that said, we march to the **last ORDER** and therefore be prepared for short notice turn around if the green light is given by all parties.

Many Thanks

Matt

Maj M Cox | SILVER COMD| Special Investigation Branch Regiment, Royal Military Police, RAF St Mawgan, Newquay, Cornwall TR8 4HP
Contact Details

From: SIB RMP-NORTHMOOR-HQ-GoldComd (Harvey, John Maj)
Sent: 04 July 2017 09:37
To: SIB RMP-NORTHMOOR-HQ-SilverComd (Cox, Matthew Maj)
Subject: FW: 20170629_Mark_Ellison_Advice_request_AH-OS

Matt,
FYSA and file, I will be meeting with Mark Ellison QC on Thu 6 Jul 17.

Regards
Lt Col John Harvey

SO1 Op NORTHMOOR | Special Investigation Branch Regiment, Royal Military Police, Bldg 84, Lowa Road | Tidworth | Wiltshire | SP9 7BT

Contact Details

From: NORTHMOOR TEAM-HQ-AH (Morris, Rob Col)
Sent: 29 June 2017 10:27

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

To: SIB RMP-NORTHMOOR-HQ-GoldComd (Harvey, John Maj)
Subject: 20170629_Mark_Ellison_Advice_request_AH-OS

John,

Please find attached a scanned copy of the letter and enclosures that are being sent to Mark Ellison. As discussed you go ahead and meet him next Thursday to discuss this in person.

Regards,

Rob

Colonel RH Morris| AH Op NORTHMOOR

HQ Provost Marshal (Army) & HQ 1 MP Brigade, Second Floor, Zone 5, IDL 431 Ramillies Building, Marlborough Lines, Monxton Road, Andover, SP11 8HJ

Contact Details

OFFICIAL-SENSITIVE

From: Colonel Rob Morris

Headquarters Provost Marshal (Army) and Headquarters 1 Military Police Brigade
Ramillies Building (IDL 431)
Marlborough Lines, Monxton Road
Andover, Hampshire SP11 8HJ

Provost Marshal (Army)

Telephone: Contact Details
Fax:
DII:
AH
e-mail:

Mark Ellison QC
Barrister
QEB Hollis Whiteman Chambers
1-2 Laurence Pountney Hill
London, EC4R 0EU

29th June 2017

Dear Mark,

Op NORTHMOOR INVESTIGATION – REQUEST FOR LEGAL ADVICE ON WHETHER RMP SHOULD FUND THE DEPLOYMENT OF A LEIGH DAY WITNESS SUPPORTER TO AFGHANISTAN AND THE TRAVEL COSTS FOR A WITNESS IN AFGHANISTAN

Issue

1. In Jan 2015 HQ PM(A) agreed in a letter to Leigh Day (LD) to fund reasonable travel and subsistence (T&S) costs for Afghan witnesses in Afghanistan and for a LD witness supporter to travel to Afghanistan to attend interviews in Kabul in relation to on-going Op NORTHMOOR (Op NM) Investigations. The current PM(A) does not wish to fund this deployment and seeks legal advice on this matter.

Background

2. Since the inception of Op NM in 2014 HQ PM(A) and LD have been in regular correspondence regarding the interviews of LD clients in Afghanistan by OP NM investigators in relation to on-going investigations. The agreed position for both sides is that any witness can be accompanied by a single witness supporter but that the RMP would not pay the professional fees of the latter.

3. Arrangements have now been made to conduct the witness interviews in Kabul in an Op RESOLUTE SUPPORT[1] base from 24 July 17 onwards. This has taken some time to achieve and has required agreement between CDS and SACUER along with the deployment

[1] NATO operation in Afghanistan.

of an RMP Lt Col to Afghanistan to facilitate all the necessary arrangements. LD briefed in May that only one witness[2] would now consent to be interviewed.

RMP Position 2014 -16

4. Ordinarily the RMP would never fund a legal representative to be present during the recording of a witness/complaint statement. However in Oct 14 in a discussion regarding whether RMP should fund the deployment of a LD witness supporter and the costs of a witness the then PM(A)[3] , in an entry in his Policy Book, directed the then SO1 Investigations and Policy[4] to *"ensure consistency of financial models with other such investigations (CESTRO...) or record a rationale about why there is a different practice being applied."*

5. In Dec 14 Lt Col McAllister wrote to LD (**PM(A) (02003/14 dated 4 Dec 14 and enclosed**) stating *"the RMP are willing to refund reasonable travel and subsistence costs for each of the witnesses .... and a single witness supporter."* The letter further noted that the level of funding must be agreed in advance, supported by receipts and represent reasonable value at all times. There is no documentary evidence explaining why Lt Col McAlister made the offer but the assumption is, that following PM(A)s direction, he applied the same financial model as being used by the IHAT, at the time as he has not given a rationale about why a different practice is being applied.

6. On 22 Dec 14, LDC responded (**SAP/TGY/70823/2 & 70823/3 dated 22 Dec 14 and enclosed**) with estimated costs based on their client(s) spending four nights in Kabul at a rate of $4k per client and the witness supporter spending 7 nights in Kabul at an estimated cost of £4.6K[5] The majority were fixed costs at a daily rate.

7. In Jan 15 HQ PM(A) replied to LD (**HQ PM(A) 02003/14 dated 16 Jan 15 and enclosed**) and agreed to fund for the witness: travel from home location to interview location; actual costs for accommodation; and actual costs for reasonably priced food items. For the witness supporter the agreement was: actual costs for the flight from UK to Kabul; actual costs for reasonably priced food items but receipts would be required; and actual costs for accommodation. The costs must represent value for money and receipts, in support of actual costs, must be produced. All of which complied with the then extant MOD regulations.

8. During the course of 2015 and as the security situation in Kabul deteriorated correspondence was exchanged between HQ PM(A) and LD about the latter using the MOD Airbridge[6] between UK and Afghanistan to deploy their witness supporter. This was scoped by HQ PM(A) with various departments in the MOD but has since been discounted for a number of reasons not least because it would set a precedent.

9. In Nov 15, a MinSub to the Secretary of State (**PMA/04_02/02/05 dated 18 Nov 15 and enclosed**) regarding witness interviews in Afghanistan asked the SofS to note various issues and agree that *"the MOD facilitates witness interviews in Afghanistan with secure accommodation provided for one LDC solicitor in theatre to be funded by OP*

---

[2] Witness in unlawful killing case.
[3] Brigadier RW Warren MBE - PM(A) Oct 12 to Jul16 and since retired.
[4] Lt Col JM McAlister - SO1 Inv & Pol Jan 14 to Sep 16 and since retired.
[5] There is no reason given in the letter as to why one cost is in US Dollars and the other in Sterling.
[6] Regular RAF flight from Brize Norton to Kabul.

NORTHMOOR". The submission also stated that Army Resources confirm that the cost of facilitating witness interviews is affordable from within the Army budget. In the same MinSub Central Legal Services advised "*that the RMP are obliged to allow representation in the interview and should take all reasonable steps to facilitate that representation*". The submission, which was sent via PS/SofS, was never shown to the Minister. In Jan 16 Army Resources addressed the issue of paying reasonable T&S costs for the witness and witness supporters with HM Treasury who approved the request subject to value for money scrutiny being applied and the money coming from the Army TLB.

Current RMP Position

10. In Jun 17, the OP NM Executive Group addressed the issue in question by looking at a number of courses of action open to them. **PM(A)/04/02/08 dated 19 Jun 17 and enclosed** outlined the pros and cons of each deployment option. During discussion Sir Jon Murphy raised the issue that by paying the witness to attend the interview it could be perceived that RMP was offering an inducement and that the view of the Op NM Senior Legal Mentor should be sought.

11. PM(A), following discussion and taking advice, directed that LD should be written to (**PM(A) 02003/14 dated 23 Jun and enclosed**) stating that they should present their clients for interview on an agreed date but that their "*representative and client will be required to make and be responsible for their own travel and subsistence arrangements*". PM(A) does not agree, now in 2017, with the rationale laid down by his predecessor that there needs to be a consistency of financial models with other investigations and that because other investigations may have in the past funded the deployment of witness supporters that Op NM should do as well. General RMP practice, as has already been noted, is not to fund a legal representative to be present during a witness interview and he wishes to hold to that practice. He cannot find, at this time, any rationale to record why that should be different now.

12. On 27 Jun 17 a response (**TGY/FCO/00070823/5 dated 26 Jun 17 and enclosed**) was received from LD noting our letter but asking for confirmation *"that the RMP remains willing to reimburse, upon production of receipts the...costs that were inventoried in Lt Col McAllister's letter of 16 Jan 2015".*

Advice Requested

13. Following receipt of the LD response and in line with direction given at the Op NM Executive Group PM(A) has requested that the Op NM Senior Legal Mentor provides advice on the following issues:

a. Based on the previous agreed position between PM(A) and LDC, to fund reasonable T&S costs for the witness and one supporter, are we bound by this agreement?

b. Does agreeing to pay reasonable T&S costs amount to an inducement to the witness to give evidence and would we be criticised for it in the future?

c. Specifically, would the payment of reasonable T&S costs in such a manner have a bearing (e.g. on any potential prosecution?) [7]

c. Does agreeing to pay reasonable T&S costs set a precedent which might impact on how MOD conducts its business in the future?

d. Legally should we do it?

14. AH Op NM and SO1 Gold are willing to come and discuss this matter face to face and to produce any further information as required.

Yours [redacted]
Signature

Enclosures:

1. PM(A) (02003/14 dated 4 Dec 14.
2. SAP/TGY/70823/2 & 70823/3 dated 22 Dec 14.
3. HQ PM(A) 02003/14 dated 16 Jan 15.
4. PMA/04_02/02/05 dated 18 Nov 15.
5. PM(A)/04/02/08 dated 19 Jun 17.
6. PM(A) 02003/14 dated 23 Jun.
7. TGY/FCO/00070823/5 dated 26 Jun 17.

[7] The issue concerns witness handling, which can on occasions, come under scrutiny and attack from Judges and Defence advocates. If payments are made in the manner described, are the accounting, auditing etc. arrangements to be put in place, sufficient to withstand such attack and scrutiny? Clearly it is important to avoid a situation where such payments can be portrayed as involving inducements of sorts and thereby avoid the reliability of a witness from being effectively challenged on this basis.

ENCLOSURE 1

From: Lieutenant Colonel JD McAllister, AGC (RMP)

Headquarters Provost Marshal (Army)
2nd Floor, Zone 5, Ramillies Building (IDL 431)
Marlborough Lines, Monxton Rd
Andover, Hampshire SP11 8HJ

ARMY

Telephone: Contact Details
Fax:
Email:

Leigh Day & Co
Priory House
25 St John's Lane
London
EC1M 4LB

Our Reference: 02003/14

Your Reference: KCA/PSF/00070823/1

Date 4th December 2014

ROYAL MILITARY POLICE INVESTIGATION

Dear Sirs,

I write further to your letter dated 31 October 2014.

Firstly I must apologise for the tardiness of my response. I confirm that the RMP are content for the witnesses referred to below to be accompanied by a single witness supporter. The RMP however will not pay the professional fees of the witness supporter.

I can confirm that the deaths of Mr Mohammed Bang's relatives are under investigation by the RMP. Accordingly the RMP seek to interview Mr Mohammed Bang and his nephew Mr Saituallah during the first round of interviews that we propose to conduct in Afghanistan. Arrangements in relation to the interviews of your four clients have yet to be finalised and a representative from the RMP Interview Team will contact you directly once we are in a position to advise a precise date, time and location for the first round of interviews. I hope you will appreciate that this has not been easy to arrange given the nature of the situation in Afghanistan.

In relation to Mr Saituallah, the RMP have received no information direct from your firm in relation to him. The limited detail the RMP possess was passed to us by TSol. I remind you that the RMP are independent from the MOD and TSol for the purpose of all investigations and accordingly information of use to those investigations should be sent directly to us.

The RMP currently have no information which confirms N6 or his brother N5 were detained by British Armed Forces. In order to assist in determining whether or not an investigation should be conducted by RMP into the death of N6's daughter, the RMP would also seek to interview both him and N5 during the first round of interviews in Afghanistan.

Your request to receive audio/visual copies of interviews on disc within 28 days of interviews being conducted is agreed and copies of the interviews on disc will be provided free of charge within 28 days where possible. Unfortunately it is not possible to produce written transcripts of those interviews within the same time frame due to staffing resources, however, I hope to be able to revisit this matter again once alternative arrangements have been researched and costed.

In order to facilitate travel to and from the proposed interviews in Afghanistan, the RMP are willing to refund reasonable travel and subsistence costs for each of the witnesses who it is hoped to interview and a single witness supporter. The level of funding which must be agreed in advance, must also be supported by receipts where possible and represent reasonable value at all times. Whoever the witness selects as his witness supporter is a matter for them but I re-iterate professional fees will not be paid by the RMP. As you are aware the funding arrangements in place with IHAT arise from an agreement

Signature

recorded in a sealed consent order. There is no such order in existence in relation to these investigations.

I look forward to receiving your funding proposals / estimates for consideration in due course.

Yours faithfully,

Signature

[redacted]

J McAllister
Lieutenant Colonel

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

ENCLOSURE 2

Leigh Day

By post

Headquarters Provost Marshal (Army)
2nd Floor, Zone 5
Ramilies Building (IDL 431)
Marlborough Lines, Monxton Road
Andover
Hampshire, SP11 8HJ

Direct Dial: Contact Details

Email: Contact Details

Your Ref:
Our Ref: SAP/TGY/70823/2 & 70823/3
Date: 22 December 2014

Dear Sirs,

Royal Military Police Investigation – Afghanistan

We write further to your letter dated 4 December 2014.

Interview Arrangements

We note that the RMP are willing to refund reasonable travel and subsistence costs for each witness and a single witness supporter. We are content to proceed on that basis and set out in the attached sheet the estimated costs of attendance for the four witnesses and a witness supporter. We have estimated that the clients will spend four nights in Kabul with the witness supporter spending seven nights in Kabul. Please let us know if these estimated costs are agreed.

Request for audio/visual copies

In relation to our request for audio/visual copies of the interviews, we would be grateful for confirmation by return that when you state "copies of the interviews on disc will be provided free of charge within 28 days where possible" that the "where possible" is in relation to the 28 day timeframe rather than the provision of the audio/visual copies of interviews per se.

N6 **and** N5

In relation to the above-named clients we note that you have no information which confirms that either were detained by the British. We are surprised that on the information provided to Treasury Solicitor you have not been able to establish if it was the British who captured and detained them. For ease of reference we reattach to this letter the "detention information note" and "property receipt" which N5 was given on capture sent to Treasury Solicitor on 29 March 2014 and remind you that as stated in our letter to Treasury Solicitor on 13 June 2014 that N6's Bagram detention number was NG.

Leigh Day

London office: Priory House, 25 St John's Lane, London EC1M 4LB
DX 53326 Clerkenwell

T 0207 650 1200
F 0207 253 4433

E postbox@leighday.co.uk
W www.leighday.co.uk

Manchester office: Central Park, Northampton Road, Manchester M40 5BP

A list of partners can be inspected at our registered office or website. Leigh Day is a partnership authorised and regulated by the

1. **Estimated Costs of Clients' Trip from Helmand Province to Kabul**

Description	Cost $, £, AFN	Calculation	Total $
Flights from LKG to KBL return per client	$280	280 x 4 clients = 1120	$1120
Taxi to and from LKG Airport	$50	50 x 2 trips to the Airport = 100 100 x 4 clients = 400	$400
Taxi to and from KBL Airport to hotel per client	$25	$25 x 2 trips to the Airport (2 sets of clients travelling together) = $50 $50 x 2 = $100	$100
Guesthouse p/p p/n	$100	$100 x 4 night = 400 400 x 4 clients = 1600	$1600
Taxi allowance whilst in Kabul	$50 pp	$50 x 4 clients = 200	$200
Food	$50 per person per day	($50 x 4 clients) 4 days = 800	$800
		Total	$4020

2. **Estimated Costs of one witness supporter from London to Kabul**

Description	Cost $, £, AFN	Calculation	Total $	
Fast track single entry Business Visa to Afghanistan	£140 plus £20 travel within London	1		
Taxi costs in LDN	£60	60 x 2 trips to the Airport = £120		
Flights from LDN to KBL	Approx. £700 (price varies)	1		
Food	$60 per day	60 x 7 days = 420		
		Total	$420	£980

3. **Estimated Costs fees for one witness support from London to Kabul for 7 nights (using security consultants)**

Description	Cost $, £, AFN	Calculation	Total $
Fit for International Travel Training: personal security advice with some contextual information of the destination and basic first aid training	£650	1	£650
Arrival Briefing	£225	1	£225
Satellite Phone	£290	£10 per day x 7 = £70 £28.75 subscription £1.67 per minute x 100 minutes = £167 Freight £25.00	£290
Transport: Low profile vehicle with security trained driver in a low profile regular Kabul car	£910	£130 x 7 night = £910	£910
Accommodation at Safe House in Kabul	£1260	180 x 7 nights = £1260	£1260
K&R insurance	£1272	Per person	£1272
		Total	£4607

[Total costs of approximately £8,587 ($4440 (approx. £3000) plus £5587)]

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

ENCLOSURE 3

From: Lieutenant Colonel JD McAllister, AGC (RMP)

Headquarters Provost Marshal (Army)
2nd Floor, Zone 5, Ramillies Building (IDL 431)
Marlborough Lines, Monxton Rd
Andover, Hampshire SP11 8HJ

ARMY

Telephone: Contact Details
Fax:
Email

Leigh Day & Co
Priory House
25 St John's Lane
London
EC1M 4LB

Our Reference: 02003/14

Your Reference: SAP/TGY/70823/2 & 70823/3

Date: 16th January 2015

Dear Ms Malik,

ROYAL MILITARY POLICE INVESTIGATION

I write further to your letter dated 22 December 2014.

Thank you for your list of estimated costs of travel and subsistence for the attendance of your four clients and a witness supporter. The RMP are willing to fund most but not all of these proposed costs from the public purse as follows:

Witness Costs

Witness flights / travel to and from the nearest airport – Approved. Actual costs to be refunded upon production of receipt(s).

Witness taxi costs to and from airports in Afghanistan and between guesthouse accommodation and interview location – Approved. Actual costs to be refunded upon production of receipt(s).

Guesthouse p/p/ p/n – Approved. Actual costs to be refunded upon production of receipt(s).

Food at $50 per person per day is not approved. Actual costs for reasonably priced food items on production of receipt(s) will be refunded.

Witness Supporter Costs

Visa Costs – Not approved.

Taxi to / from UK airport – Not approved.

Flights from UK to Afghanistan – Approved. Actual costs to be refunded upon production of receipt(s).

Food at $60 per person per day is not approved. Actual costs for reasonably priced food items on production of receipt(s) will be refunded.

International travel training, security advice, contextual information and first aid training – Not approved.

Arrival briefing – Not approved.

Satellite phone and cost of calls – Not approved.

Accommodation – Approved. Actual costs to be refunded upon production of receipt(s).

Transport to and from airports in Afghanistan and between accommodation and interview location – Approved. Actual costs to be refunded upon production of receipt(s).

Personal insurance costs – Not approved.

Whilst approving these costs, the RMP are required to ensure value for money before refunds can be paid and this includes the production of receipts in support of actual costs incurred. This is in accordance with current MOD accounting regulations applied to all such travel and subsistence claims made by MOD staff.

In relation to the provision of copies of interviews on disc which will be provided by RMP free of charge within 28 days where possible, I confirm that the 'where possible' condition is in relation to the timeframe and mechanical malfunction on the rare occasion where circumstances outside our control prevent us from providing the discs within the agreed time frame or at all.

Turning to N6 and N5, both the 'detention information note' and the 'property receipt' forwarded by you to the Treasury Solicitor do not contain any information that would determine the individual as a detainee whether UK or otherwise. No specific detail is included and the language used does not reference any particular nation. They do not on their own determine detainee status. N6's fingerprints, also provided by you, were cross referenced against existing biometric detail in an attempt to establish detainee status but no match was made. The number NG provided by you is not a detainee number issued by the British Armed Forces. Confirmation of the use of this number is being sought from Coalition Partners but I reconfirm our position that only in the event that there are grounds to believe that N6 and N5 were detained by the British Armed Forces, will their allegations be investigated by RMP.

The Officer in Overall Command of the investigation namely Major Gary Ward, will be in touch with your office directly to invite you to a meeting to discuss practical aspects of the interview process including the role and conduct of the witness supporter during interviews and provide a copy of the regulations governing refunded expenditure.

Yours faithfully,

Signature

J McAllister
Lieutenant Colonel

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

ENCLOSURE 4

OFFICIAL - SENSITIVE

TO: PS/SofS **FROM: Provost Marshal (Army) Brigadier Warren**

18 Nov 15

PMA/04_02/02/05

OP NORTHMOOR - WITNESS INTERVIEWS IN AFGHANISTAN

REFERENCE:

A. [redacted] – MinSub dated 26 Jun 15 – [redacted]

ISSUE

1. Providing for the prompt and effective investigation of allegations of abuse emanating from operations in Afghanistan.

RECOMMENDATION

2. That the Secretary of State **notes**:

a. He was briefed on the details and implications of Op NORTHMOOR in the MinSub at Ref A;

b. The Provost Marshal (Army) (PM(A)) is of the view that without direct access to Afghan witnesses, he is not in a position to promptly or effectively as possible investigate many of the allegations (including murder) that have been made, and should an effective investigation not be possible then the Department's position may be challenged in the courts;

c. The investigation process will involve the interview of a significant number of Afghan witnesses who have requested the presence of one Leigh Day & Co (LDC) solicitor to support them at interview in accordance with the Istanbul Protocol.

3. And **agrees**:

d. That the MOD facilitates witness interviews in Afghanistan with secure accommodation provided for one LDC solicitor in theatre to be funded by Op NORTHMOOR.

e. That PJHQ should complete an estimate to allow for an initial deployment of a twelve person Royal Military Police (RMP) investigation team in early 2016.

4. **Timing** Routine

BACKGROUND

5. Op NORTHMOOR is prioritising the investigation of multiple allegations of murder and, in order to progress these investigations to the satisfaction of the courts, the RMP need to interview witnesses to UK evidential standards. Many of the witnesses have previously been in UK detention [redacted]. In accordance with

the Istanbul Protocol, witnesses can request supporters during police interview; they have chosen solicitors from LDC.

6. A number of options (Annex A) have been considered to enable interviews of Afghan witnesses; including in the UK, use of a third country, and the British Embassy in Kabul. Given the status of the witnesses, the only viable option is to conduct the interviews over a series of deployments to Afghanistan. An initial deployment of a twelve person investigation team to conduct twelve interviews is likely to last two to three months, with one LDC solicitor required to be repeatedly present for several weeks at a time. Further deployments of a similar scale will be dictated by the progression of the overarching investigation.

7. The FCO travel advice for Afghanistan advises against all but essential travel to the city of Kabul and to avoid travelling along Airport Road except for essential movements, as attacks are likely throughout the day. FCO travel advice also states that the British Embassy does not allow official visitors to stay in any hotel overnight, and has placed restaurants off limits to staff. In light of this, LDC has asked the MOD to provide travel and secure accommodation. Central Legal Services have advised that the RMP are obliged to allow representation during interviews and should take all reasonable steps to facilitate that representation. Given the FCO travel advice it would be unreasonable to expect LDC to stay in hotels and travel around Kabul without force protection and, therefore, it is intended to provide LDC with secure accommodation. It will be made clear to LDC that this should not be considered as a precedent and is being offered on a case by case basis in order to facilitate an RMP inquiry. PJHQ are now carrying out more detailed planning to deliver this option.

RESOURCE IMPLICATIONS

8. DD Res Army has confirmed that the cost of facilitating witness interviews in the way described in this submission is affordable within the Army's budget.

PRESENTATION

10. Op NORTHMOOR is already the subject of media interest including recent articles in the Daily Mail and Sun, among other publications. It is not proposed to announce the deployment or witness interviews, which should be seen as routine military police activity. However, given political and media interest in the case of Marine A and civil claims made against the department during recent conflicts, along with current discussions relating to a British Bill of Rights, it is likely that these developments will attract comment should they become public. The MOD's funding of secure accommodation for LDC could prove particularly controversial. Based on previous experience, it is expected that LDC will publicise on their website that they are handling claims in that part of the world and this may generate questions about the investigation. Lines to take are at Annex B.

Brigadier Bill Warren MBE
Provost Marshal (Army)
Contact Details

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

Copy to:

PS/Min AF
PS/Min DPV
PS/Min Lords
PS/PUS
MA/CDS
MA/VCDS
MA/CGS
MA/JFC
MA/CJO
MA/DCDS MSO
PS/DG Sec Pol
D Res (A)
PS/DJEP
CLS-CDC Hd Div
Army Dep Command Sec Secretariat
IHAT-HQ-DIR
DDC-PR-Hd
Special Advisors
FCO Afghan Security Pol

Annexes:

A – Summary of Options explored by PM(A)
B – Lines to Take

Annex A to
PM(A)/04_02/02/05
Dated 18 Nov 15

Summary of Options explored by PM(A)[1]

1. **Interview in the UK**. The witnesses [redacted] are unlikely to be granted visas to visit the UK. There is also a risk that should they come to the UK, they might claim asylum. **Discounted**

2. **Interview in 3rd Country**. PM(A) has considered carrying out interviews in Turkey. However, previous experience on another investigation met with significant delay and opposition from the Turkish Ministry of Justice. Although IHAT carry out interviews in Turkey, the situation is different in that Iraq has an effective passport and visa system, and share a border with Turkey. The RMP have consulted IHAT and they are of the view that an approach by Op NORTHMOOR could jeopardise that activity. It is unlikely that given the nature of the individuals, who all appear [redacted] as former detainees, any other 3rd party country would issue a visa solely for the purpose of interview by the UK authorities. Even if this was an option, it would require significant effort by the MOD, HO and FCO. Such an option is also likely to cost more, generate wider international awareness of the investigation and require additional force protection effort for RMP Personnel. **Not Achievable**

3. **VTC**. The nature and subject matter of the interviews mean that the VTC would have to be [redacted], and still require a secure location within Afghanistan for the witness supported by LDC to attend. It would require almost constant use of the VTC system to the exclusion of other users. Contact via VTC would prevent the RMP from being able to verify the identity of the witnesses or have them assessed by a psychologist. [redacted] **Not Achievable**

4. **Interview at British Embassy Kabul (BEK)**. The FCO have advised that there is no location within the Embassy compound that would be suitable or acceptable for such interviews. [redacted] Travelling to and from the secure accommodation to BEK both for the RMP personnel and LDC might require additional force protection effort and represent increased risk to UK personnel. **Not Achievable**

5. **Interview within Kabul under Op RESOLUTE SUPPORT**. PJHQ continue to assess options to conduct the interviews and accommodate the LDC solicitor with the RMP within Kabul. One option remains within an OP RESOLUTE SUPPORT Coalition Force Base. This option reduces the risk of travelling around Kabul, and the associated force protection. A CF base likely represents the most secure location for RMP personnel, and facilities that meet the standard required for carrying out police interviews. However, because many of the witnesses appear [redacted] a risk assessment of each witness will have to be conducted and a waiver obtained to allow them individually within any base. Detailed planning is still required, but this option is the only one to appear achievable in the near term. **Recommended**

[1] Other options are being worked up by PJHQ

Annex B to
PM(A)/04_02/02/05
Dated 18 Nov 15

LINES TO TAKE

1. **What is Op NORTHMOOR?** Operation NORTHMOOR is an independent Royal Military Police (RMP) led investigation examining allegations of criminal abuse and ill treatment made by more than 100 civilians who claim to have been detained by British Forces during Operation Herrick in Afghanistan between 2005 – 2013. The investigation is being conducted at the direction of the Provost Marshal (Army) (PM(A)) following receipt of allegations made either directly to RMP, or via solicitors acting on behalf of alleged victims.

The National Crime Agency (NCA) and Greater Manchester Police (GMP) are acting as Senior Command Mentor and Review Officers respectively.

2. **Why are the RMP deploying to Afghanistan?** It is a routine matter for RMP investigators to deploy to theatres of operation in order to interview witnesses in criminal investigations when bringing those witnesses to the UK is impractical.

3. **Why is the MOD paying for Leigh Day and Co to help Afghans sue the MOD?** It is not. Leigh Day & Co are supporting witnesses in police interviews concerning criminal inquiries. The UK is obliged to allow their presence and is taking reasonable steps to facilitate that by providing basic military accommodation in order to progress police inquiries quickly for the benefit of all concerned.

4. **Will this be affected by the Government's plans to scrap the Human Rights Act?** No. Allegations of criminal activity by Service Personnel must be investigated appropriately as a matter of Service Law.

5. **How long will it take?** We will not speculate on the time frame for Operation NORTHMOOR as a whole. This is a highly complex, interlinked investigation but the RMP will follow the evidence as quickly as professionally possible.

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

ENCLOSURE 5

OFFICIAL SENSITIVE

PM(A)/04/02/08

19 Jun 17

PM(A)

Copy to:

OP NM GOLD Group

OP NORTHMOOR – DECISION BRIEF FOR THE DEPLOYMENT OF A LEIGH DAY & Co (LDC) WITNESS SUPPORTER TO AFGHANISTAN

Issue

1. The requirement for a UK based LDC representative to be present as witness supporter during an interview of an Afghan national witness in Afghanistan and possible COAs for their (LDC) deployment to Theatre.

Recommendation

2. PM(A) is requested to note that:

a. In response to initial claims submitted by LDC in Jun 2013, correspondence commenced between PM(A) and LDC wrt the requirement to interview witnesses. By mid 2014 it was clear that there was a requirement for the RMP to travel to Afghanistan to plan and conduct interviews and that, at the request of their clients, LDC wished to be present;

b. During the following years PM(A) and LDC continued to discuss the requirement and detail of a deployment to Kabul. LDC have been told in writing[1] that HQ PM(A) would fund travel and subsistence costs by civilian air carrier. Subsequently MOD and HM Treasury were consulted, resulting in confirmation of this funding from the Army TLB. In addition to this, a further option for deployment of an LDC representative via the MOD airbridge was scoped[2] but this latter option has never been confirmed;

c. By Dec 16, and with the application of the Leggatt judgement, it became clear that only two witnesses remained to be interviewed. This figure subsequently reduced to one individual upon advice received from LDC on 10 May 17;

d. Building on previous work conducted in Afghanistan by RMP personnel, Lt Col Hipkins deployed to Kabul from Apr until Jul. He has confirmed that all arrangements are in place to conduct the interview;

e. Various COAs for the deployment of LDC witness supporter to Afghanistan ranging from 'do nothing' to 'end to end (E2E) funding and hosting' are outlined in the table below; and

PM(A) is requested to agree:

f. SO1 OP NM GOLDs preferred option; COA 4 (E2E funding and hosting); or

g. Direct development of another COA.

[1] PM(A) 02003/14 dated 4 Dec 14 and 02003/14 dated 16 Jan 15.
[2] PM(A) 02003/14 dated Sep15

Timing

3. **Urgent**. The witness is available for interview at the end of Ramadan on 24 Jun and Lt Col Hipkins' deployment as OP NM LO in Kabul ends on 15 Jul and final preparation needs to take place ahead of that to facilitate the interview.

Background

4. SO1 Op NM Gold has determined that an Afghan National witness, a client of LDC, needs to be interviewed in order to progress the Op NM investigation[3] but the witness, through LDC, has indicated that he will only consent to the interview if a witness supporter, an LDC representative, is present. The witness is not available for interview until Ramadan has concluded at the end of Jun.

5. On 16 Apr Lt Col Hipkins deployed to Afghanistan on a 45 day Op TORAL endorsed surge, subsequently this has been extended to 90 days. Over the period of his deployment he has built on previous work to facilitate the necessary arrangements to allow an Afghan witness to be interviewed. The final preparations will take place once it is known how the LDC witness supporter is to deploy to theatre and the level of support they will require once there.

Previously stated position

6. The initial response to LDC's request was met with an MOD endorsed response of agreeing to an LDC representative being present, however it would be for LDC to arrange travel to and accommodation in Kabul. Correspondence between HQ PM(A) and LDC dated 4 Dec 2014 confirms that PM(A) was "*willing to refund reasonable travel and subsistence costs for each witness and a single witness supporter*". Indeed, the level of funding agreed in a letter from HQ PM(A) to LDC, dated 16 Jan 2015, for the witness amounted to travel from his home location to the interview and actual costs for subsistence. Whilst for the witness supporter, it was actual costs for the flight from London to Afghanistan and subsistence in country.

7. However, as the security situation in Afghanistan deteriorated through 2015 and travel advice shifted to UK Citizens should not go, the deployment of witness supporter using the MOD air bridge was investigated. By mid-2015 this approach was communicated to LDC but to date no definitive statement has ever been made to them regarding whether or not this would be a feasible option. The risk to UK citizens travelling to Afghanistan remains high with current FCO travel advice, taken from the Government website[4] stating "*the FCO advise against all but essential travel to the city of Kabul and the other remaining districts of Kabul province*".

Funding

8. HQ PM(A) sought funding authority for the deployment of LDC to Afghanistan and DD Res Army confirmed that the Treasury had approved costs subject to the usual value for money scrutiny being applied. Funding would be through the Army TLB and in turn this is likely to be against the Op NM funding line(s). A financial paragraph stating this was detailed in a Ministerial Submission to PS/SofS in Nov 15. However, no response was formally recorded from the Minister and approval has not been revisited in the past 18 months. It is a fair assumption that the appetite from the Centre to follow this course of action may have changed and would be subject to review.

9. Current rough order of costs for a return flight London to Kabul are in the region of £1,000 to £1,500 with hotel accommodation per night around £200. It is assumed that utilising the airbridge and Op RS provided accommodation 'inside the wire' would also attract costs which could be provided by PJHQ J8. It is also acknowledged that although these are the head line costs there will be other subsidiaries to consider.

---

[3] This requirement is IRT Recommendation 1 and a high priority.

[4] www.gov.uk/foreign-travel-advice/afghanistan/safety-and-security dated 15 Jun.

OFFICIAL SENSITIVE

COAs for deployment of LDC witness supporter

10. The COAs for the deployment of the witness supporter to Afghanistan are outlined in the table below:

COA	Advantages	Disadvantages
1. **Do Nothing – do not interview witness**	• Consistent application of Justice Leggatt judgement to all LDC clients	• Noncompliance with IRT Recommendation 1 • Intelligence relating to the allegations has already been received from other sources • Risks adverse judicial comment as to the investigation • Reputational risk to RMP
2. **LDC deploy using civilian air transport and have no support for deployment or in-country**	• No risk to MOD • Speed of deployment • No requirement to 'host' until LDC arrive for interview at Op RS base • Not setting precedent	• Some cost to MOD • FCO advice precludes all but essential travel to Kabul • LDC may not decide to take the risk of this type of deployment and interview will not take place
3. **LDC deploy using civilian air transport but have support for deployment and limited in-country hosting (accommodation/ feeding in HKIA)**	• Some risk lies with MOD • Speed of deployment • Guarantees witness interview will occur	• Risk lies with MOD when LDC rep is in Op RS base • Sets precedent for future investigations
4. **LDC deploy through Airbridge with E2E hosting**	• De-risks the possibility of the interview taking place • Enables RMP/MOD control of process	• Risk completely lies with MOD • Sets precedent for future investigations • Will require a RMP 'minder' to accompany LDC individual throughout • Cost to Op NM/MOD budget of deployment and hosting in country • Risks adverse media comment • Depending on status - elongated timeframe for LDC individual to be trained (course availability etc) if goes as a 'sponsored civilian' rather than a 'contractor' • Means LDC rep could be longer in theatre – interview only likely to require 3 days but airbridge timings may not fit in

11. **Discounted COAs.**

a. COA 1. SO1 Op NM GOLDs view is that for investigative reasons (IRT recommendation 1) we must interview the witness otherwise we could have obvious adverse reputational risk and investigative risk.

b. COA 2. Little risk to the MOD and allows for greater speed of deployment but LDC are unlikely to accept risk to their rep and therefore not deploy which means the interview will not take place potentially bringing considerations as above into play.

c. COA 3. Allows for greater speed of deployment but places some risk on the MOD whilst not allowing as much control of the process and sets a precedent for future

12. **Preferred COA. COA 4.** SO1 Op NMGOLDs view is that this is the best investigative option and mitigates the risk that has been outlined in the rejection of COA 1. It ensures that the interview will take place as if LDC rep is guaranteed deployment then the onus is on them to produce the client. It also controls the process. However it has the most disadvantages of all COAs not least the risk placed on the MOD and the danger of setting precedent. In addition it will require centre agreement to funding and deployment through the airbridge.

Timing

13. Notwithstanding it has taken nearly three years to get the point of interviewing witnesses in Afghanistan there still remains three issues to consider. Firstly is the availability of the witness for interview only at the end of Ramadan which falls at the end of this month. Second is the EOT date in mid-Jul of Lt Col Hipkins. His 45 day Op TORAL surge has been extended to 90 days and is very unlikely to be extended any further. If the interview is not arranged before his EOT then we will need to seek permission from PJHQ and Ops Dir for a short Op TORAL surge to allow a member of the Op NM interview team to conduct a handover of all practical issues in country so that when the interview does finally take place then we can be sure that all arrangements have been made. The third consideration is the confirmation of the status of the LDC witness supporter as a 'sponsored civilian' or 'a contractor' or 'other' as alluded to in the preferred COA. Depending on the status, this may add a delay of a number of weeks to any deployment as there will be a need for them to satisfy PJHQ directed medical assessment, training requirements and personal kit issue, if not already done so.

Presentational aspects and Ministerial engagement

14. It is acknowledged that the deployment of the LDC witness supporter to Afghanistan carries many risks. In presentational terms, and notwithstanding LDCs recent clearance of all misconduct charges brought against them in the Solicitors Disciplinary Tribunal, it is likely that public perception of the MOD funding a law firm to deploy to Afghanistan to assist in bringing allegations of wrong doing against the military will not be favourable. Also the impact of any story that may, or may not, be run by The Sunday Times, could bring unwanted attention on to NORTHMOOR.

15. Given these known risks and with the intent from of SofS very clear, DJEP have already indicated that they, as a minimum, will need to endorse any preferred COA. Indeed depending on the public profile of NORTHMOOR and in line with previous advice provided to the SofS[5] it is anticipated that any deployment by LDC will be subject to either a 'to note' or even 'to agree' Ministerial Submission. This of course will take additional time.

AH Op NORTHMOOR

[5] PM(A) Min Sub PMA/04_02/08/02 dated 27 Apr 17.

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

ENCLOSURE 6

From: Lieutenant Colonel J Harvey



ARMY

Op NORTHMOOR, Special Investigation Branch
Regiment, Royal Military Police, Bldg 84, Lowa
Road, Tidworth, Wiltshire, SP9 7BT

Contact Details [redacted]





Leigh Day & Co
Priory House
25 St John's Lane
London
EC1M 4LB

Our Reference: 02003/14

Your Reference: TGY/FCO/00070823/5

Date: 23rd June 2017

ROYAL MILITARY POLICE INVESTIGATION

Dear Francis,

Thank you for your previous letter by email dated 10 May 17. I note that Mohammed Bang is unwell and feels unable to travel for interview.

The process of securing interview facilities in Kabul has been difficult and not without problem, but I can confirm that it is now a viable option, therefore I would like to agree a mutually convenient date for the interview to take place in Kabul with your client Saifullah and Mohammed Bang if he should feel well enough to travel. I propose the tentative date for the interview(s) to commence as being Monday 24th July 2017.

Please note your representative and client will be required to make and be responsible for their own travel and subsistence arrangements.

Yours sincerely

J Harvey
Lieutenant Colonel

ENCLOSURE 7

Leigh Day

By email only

FAO Lieutenant Colonel J Harvey
Op NORTHMOOR, SIB Regiment
Royal Military Police

Direct Dial: Contact Details

Email: Contact Details

Your Ref:02003/14

Our Ref: TGY/FCO/00070823/5

Date: 26 June 2017

Dear Lt. Col Harvey

RMP Investigation: Mohammad Bang & Saifullah

Thank you for your letter of 23 June 2017 confirming the viability of conducting interviews in Kabul and proposing Monday 24 July 2017 as the tentative date for commencement of the interview(s).

We will, of course, seek instructions from our clients with regard to your proposal. To enable us to have fully informed discussions with our clients, we would be thankful for clarification of two points:

i. Location for interviews

You previously indicated that the RMP was investigating the possibility of conducting interviews in NATO HQ in Kabul. Can you please confirm that this is the proposed location for interviews and, if not, identify the chosen site?

ii. Travel and subsistence arrangements

Your letter indicates that our client(s) and their representative will be required to make and be responsible for their own travel and subsistence arrangements.

Whilst we do not expect the RMP to make travel/subsistence arrangements for our clients, we would ask the RMP to refund reasonable travel and subsistence costs for each witness and a single witness supporter as you had previously undertaken to do (see enclosed correspondence).

In particular, we would be grateful for confirmation that the RMP remains willing to reimburse, upon production of receipts, the following costs which were inventoried in Lt. Col McAllister's letter of 16 January 2015: flights to and from Kabul; taxis to and from airports in Kabul and between guesthouse accommodation and interview location; guesthouse; and reasonable priced food items.

Leigh Day

As you will appreciate, our clients are impecunious and would be unable to attend interviews in Kabul should they be required to do so at their own expense.

We look forward to hearing from you as soon as possible in relation to two issues addressed above.

Please do not hesitate to contact with any queries arising out of this letter.

Yours faithfully

Leigh Day

Leigh Day

Enc: