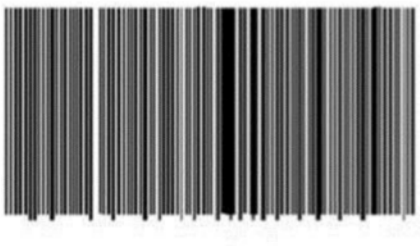
Prepared for OPEN publication in relation to the Independent Inquiry Relating to Afghanistan



RMP-221-0007056-A

SYSTEMIC ISSUES IDENTIFIED FROM SERVICE POLICE AND OTHER INVESTIGATIONS INTO MILITARY OPERATIONS OVERSEAS: AUGUST 2018

1. BACKGROUND

1.1. The Ministry of Defence (MOD) is committed to a continuous process of review and improvement in all matters arising from operational activity, including ensuring that mechanisms are in place to prevent the recurrence of any incidents of wrongdoing. As part of this, it has put in place a robust process for identifying, reviewing, and correcting areas where its doctrine, policy or training has been insufficient to prevent practices or individual conduct that breach its obligations under domestic and/or international law. These shortcomings of procedure are commonly termed systemic issues.[1] This is the fourth account of that work.

1.2. The first account, which was published in July 2014, dealt exclusively with systemic issues that had been identified through Service Police investigations or reviews of incidents involving individuals in custody that had occurred in UK-controlled detention facilities, or while in the custody of UK Forces, in Iraq. In all cases these systemic issues had been corrected through changes to doctrine, policy, training, or oversight arrangements.

1.3. Since then, MOD has expanded the scope of its systemic issues review processes. As well as continuing to review incidents in Iraq, including a number of non-detention cases, the Systemic Issues Working Group (SIWG) now also reviews incidents from Afghanistan. This is a necessary part of ensuring continuous improvement; it would be inefficient to correct systemic issues arising from one theatre if a lack of similar scrutiny elsewhere resulted in issues being missed.

1.4. This report covers the period 2016-2017, which has seen very significant developments with regard to the investigation of allegations of unlawful killing or ill-treatment of captured persons by UK Forces in Iraq and Afghanistan.

- The Iraq Historic Allegations Team (IHAT) closed on 30 June 2017, having completed or discontinued its investigations into 2,367 of the 3,629 allegations that it had received or identified.
- Service Police Legacy Investigations (SPLI), which was established following IHAT's closure to complete the remaining investigations, has completed or discontinued 88% of its inherited caseload in its first 12 months (as of 30 June 2018).[2]
- In November 2017, the Office of The Prosecutor of the International Criminal Court stated in its annual report on preliminary examinations that – on the basis of the allegations it had received (which had also been submitted to the IHAT) – it had concluded that there was a reasonable basis to believe that UK Forces had committed war crimes in Iraq.

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[1] The term "systemic issues" primarily envisages shortcomings of doctrine, policy, training, or supervision that result in unintentional breaches. It encompasses *inter alia* situations where an individual has complied with policy and training, but these have been flawed; where policies issued at different levels have been contradictory, leaving individuals unable to determine whether their actions are correct; and where supervision has been insufficient to identify and address such confusion, or failure to understand and apply training correctly. Deliberate acts by individuals in knowing contravention of the law and of doctrine, policy or training are not systemic issues, and are punishable through the Service Justice system.

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733658/20180630-SPLI_QTR_REPORT_Apr-Jun18.pdf

- The Royal Military Police's Operation Northmoor, which was established in 2014 to investigate a limited number of detention-related allegations from Afghanistan, has completed or discontinued over 90% of its caseload.

2. THE SIWG

2.1. The SIWG is the principal MOD body responsible for identifying relevant systemic issues and ensuring that effective corrective action is taken. It is chaired by the Director of Judicial Engagement Policy, and comprises civil servants and military personnel drawn from MOD Legal Advisers, the Operations Directorate, the Army Inspectorate, and the Services. The SIWG does not possess its own investigative capabilities, and is largely reliant on the Service Police or judicial proceedings (e.g. public inquiries) to obtain the evidence necessary to determine what happened and why. However, it will make or commission appropriate enquiries (through subject-matter experts across Defence) to ascertain how identified systemic issues could occur and how they have been, or should be, remedied.

2.2. The task of identifying potential systemic issues falls to the Review Group, a subset of the SIWG members who assess the available information, make inquiries of subject-matter experts, and present to the SIWG recommendations both as to the issues that the incidents reveal and any further actions that should be taken.

2.3. The SIWG is not constrained by the Review Group's recommendations: it can (and on occasion does) come to a different conclusion – either identifying an additional potential issue for the review group to track, or seeing a different underlying cause – and is able to direct the Review Group to obtain further information from subject-matter experts before deciding on the appropriate action.

3. METHODOLOGY FOR 2016-17 REPORTING PERIOD

3.1. The purpose of the SIWG process is to assist the MOD to identify and learn lessons from previous situations. The very large number of cases that have been closed by the IHAT and by Operation Northmoor during the 2016-17 reporting period has caused the MOD to implement an appropriately modified approach for cases involving less serious allegations of ill-treatment.

3.2. In previous reporting periods, the Review Group considered every case to confirm whether the evidence from the criminal investigation disclosed any systemic or potential systemic issues. Even where the systemic issues were ones that had been identified previously, the Review Group nevertheless still verified with the relevant subject-matter experts whether any changes to doctrine, training or oversight that had already been implemented would have prevented that specific manifestation. This approach remains appropriate for cases involving allegations of unlawful killing or of serious ill-treatment. Some cases in these categories may additionally be subject to an independent judicial investigation by Sir George Newman, whose findings and recommendations further assist the SIWG in ensuring that all applicable lessons have been learned.

3.3. However, the vast majority of allegations of ill-treatment are comparatively less serious and only disclose evidence of issues that have previously been identified and remedied. Cataloguing every manifestation of these issues and assessing them against the changes implemented over the past 14 years would require very significant resources without

contributing to the primary aim of learning lessons. Consequently, for cases of alleged minor ill-treatment, MOD has implemented a process that mirrors the "problem profiles" approach (under which cases that share common features, e.g. unit or location, are clustered and considered together), which because of the enormity of its caseload the IHAT adopted to permit the effective investigation of such incidents. Accordingly, the Review Group has grouped such cases, to identify the systemic issues or potential issues disclosed within those cases taken as a group, and asked the relevant subject-matter experts to confirm that any remedial actions would prevent a recurrence of that broad issue rather than of each manifestation.

3.4. The other innovation during this reporting period is that, whereas previously the Review Group and SIWG have proceeded on the basis of evidence uncovered by Service Police investigations and the conclusions of judicial processes, with regard to low-level ill-treatment we have had to proceed without the benefit of this evidential basis as the Service Police had discontinued most of the allegations of ill-treatment considered during this reporting period without a full investigation.[3] Consequently, the Review Group and SIWG have **not** formed any view as to whether the alleged ill-treatment actually occurred or even whether the allegations were accurately recorded.[4] Rather, we have confined our enquiries to ascertaining – in respect of the clusters identified – whether current policy, training, and oversight are sufficient to prevent the behaviour described in the allegations from occurring on future operations, and if not what additional remedial action is required.

3.5. These changes to the methodology, and the rationale for them, were explained to the High Court in June 2017 and June 2018.

4. THE REPORT

4.1. For the 2016-17 reporting period, the Review Group assessed several thousand allegations of low-level or medium-level ill-treatment from 665 individuals: 557 Iraqis (of whom, 345 were allegedly captured in 2003) and 108 Afghans. From this analysis, it identified the following 12 clusters of allegations, in relation to which it recommended – and the SIWG agreed – that enquiries should be made of subject-matter experts to ascertain whether current policy, training and oversight would prevent them occurring on future operations:

- Theft/Destruction of Property
- Sexual Assault
- Solitary Confinement
- Forced Labour or Exercise
- Collective Punishment

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[3] Some were discontinued because of a lack of evidence (including, in some cases, a failure by complainants or witnesses to provide statements). Others were discontinued because the Service Police assessed them in terms of severity as falling at the lower end (ranging from very minor ill-treatment to assaults occasioning actual bodily harm) or middle (ill-treatment of medium severity and/or assault not reaching the threshold of grievous bodily harm) of the spectrum, and determined that a full investigation would be disproportionate. The vast majority of the latter investigations were discontinued following the Solicitors Disciplinary Tribunal into allegations of serious misconduct (including dishonesty) by Phil Shiner, formerly principal of Public Interest Lawyers, which heard evidence that he had authorised payments to an unspecified number of Iraqis seeking to bring claims against the Ministry of Defence in the High Court. These revelations contributed to the Service Police's decision to discontinue investigations into uncorroborated allegations of low- or medium-level ill-treatment.

[4] In a small number of cases, it has not even been definitely established that the complainant was ever in the custody or under the control of UK Forces.

- Sleep Deprivation
- Plasticuffs
- Religious Insensitivity
- Threatening Behaviour/Language
- Use of Dogs
- Assault at Point of Capture
- Assault in Detention

4.2. Following these further enquiries, the SIWG satisfied itself that eleven clusters did not disclose a current systemic issue. These clusters have accordingly been designated **Not Accepted (Not Systemic)**. The remaining cluster, Assault in Detention, has been designated **Noted (Resolved).**[5]

4.3. Information on the cases considered during the 2016-17 reporting period is set out in the table at Annex A.

5. CHANGES TO AND ASSURANCE OF DOCTRINE, POLICY & TRAINING:

5.1. Before turning to the individual clusters, it may be helpful to summarise the periodic reviews of doctrine, policy and training in relation to captured persons, and the changes that have occurred in these areas, since 2003. This background is relevant to understanding why the SIWG has concluded that the alleged ill-treatment would not occur today.

5.2. The MOD Strategic Detention Policy was published in April 2010. An updated version was published in February 2014, and the current version in March 2016. This policy, which is issued by the Secretary of State for Defence, applies "*whenever UK Armed Forces undertake detention in an operational theatre*" and mandates that "*all Captured Persons held by UK Forces are treated humanely at all times, in accordance with applicable host state law, international law and UK law.*" This policy requires "*MOD and the Armed Forces to apply appropriate and comprehensive doctrine and, by training, to embed correct detention procedures at all levels.*"

5.3. The doctrine covering the treatment of captured persons has been thoroughly overhauled over the past thirteen years. Joint Warfare Publication 1-10 "Prisoners of War Handling," which had been published in 2001 and was in effect during the early period of operations in Iraq, was superseded in June 2005 by Joint Doctrine Note 2/05 "Prisoners of War, Internees and Detainees." Joint Doctrine Notes are issued under the authority of the Assistant Chief of the Defence Staff (ACDS) Development, Concepts & Doctrine in response to urgent requirements, and provide interim guidance pending more formal doctrine or policy. This followed in May 2006 with publication of the first edition of Joint Doctrine Publication (JDP) 1-10 "Prisoners of War, Internees and Detainees," which replaced both Joint Warfare Publication 1-10 and Joint Doctrine Note 2/05.

5.4. JDP 1-10 is the capstone doctrine for how UK armed forces treat all captured persons during military operations, and gives direction to those involved in planning, training for, or conducting activities involving captured persons. The doctrine is reviewed regularly. A second edition (under the revised title "Captured Persons") was issued in October 2011, and

[5] For an explanation of the categorisation used by the SIWG, see the introduction to the second and third annual reports.

incorporated recommendations from the Baha Mousa Inquiry. This was followed in October 2014 by a third edition, which was amended in January 2015 to take account of recommendations from the Al-Sweady Inquiry.[6] Work on the fourth edition is at an advanced stage.

5.5. The Army Inspector[7] continues to play an important role in ensuring the proper implementation of this doctrine – both in training and on operations. Recommendations in the Army Inspector's July 2010 report ("Army Inspectorate Review into the Implementation of Policy, Training and Conduct of Detainee Handling"[8]) were incorporated into the second edition of JDP 1-10. The Army Inspector conducted further reviews of detainee handling ("Follow-Up Review into the Handling of Captured Persons (CPERS)") in October 2012 and in 2016.

5.6. The aim of the 2016 review was "*to examine the effectiveness of policy, doctrine, training and governance… in order to confirm whether CPERS are likely to be treated humanely and in accordance with* [legal obligations]*… at all times and in all circumstances on future operations.*" The Executive Summary to the final report recorded that "*Policy and doctrine is clearly articulated. CPERS handling is firmly embedded within individual and collective training, and we have seen evidence that officers and soldiers at all levels understand the basic principles of humane and equivalent treatment, and are well aware of the potential repercussions of mistreating CPERS. This training and the British Army's values and standards, supported by the Army Leadership Code, help to create a culture and understanding where the risks of abuse of CPERS are significantly reduced.*" The report made 27 recommendations aimed at further improving compliance with doctrinal procedures. A further review is due to take place in 2019. **OR** The Army Inspector is satisfied with the progress towards implementing these recommendations and that there is no requirement for a further inspection in 2019.

5.7. The Provost Marshal (Army), as the Army Competent Advisor and Inspectorate for Custody and Detention, also plays an important role in ensuring the proper implementation of doctrine in training on operations. Between 2006 and 2014, the Provost Marshal (Army) conducted 6-monthly inspections of detention facilities in Afghanistan. The Provost Marshal has conducted reviews of contingency provisions for detaining captured persons both in the land environment (e.g. "PM(A) Assurance Inspection of the Op Toral Unit Holding Area (UHA)" May 2017) and at sea (e.g. "PM(A) ODME Validation Visit HMS Duncan," May 2017).

5.8. In addition to validating training material to ensure that training on handling captured persons is appropriate and progressive, the Provost Marshal (Army) delivers an annual week-long Strategic Detention Seminar for the Military Provost Staff, the aim of which is "*to develop and empower our Officers, Warrant Officers and Senior Non-Commissioned Officers who play a vital part on operations in the safeguarding of those held in detention.*"

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[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/455589/20150820-JDP_1_10_Ed_3_Ch_1_Secured.pdf

[7] The Army Inspector's mission is to "Ensure appropriate assurance and regulation for all Army activity across Defence, in order to enhance and sustain the operational effectiveness and reputation of the Army, now and in the future". The Army Inspector reports directly to the Chief of the General Staff and is independent from the Army chain of command.

[8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/28120/20100721_detainee_handling_final_report_AI.pdf

5.9. Finally, the Services have conducted their own reviews of their processes for dealing with captured persons. Of these, the SIWG particularly noted CPERS Battlefield Lesson 29 ("Dismounted Close Combat Fieldcraft, Battle Lessons and Exercises 2017"), which had been sponsored by the Director Land Warfare, which was issued in July 2016 and updated in June 2017.

5.10. All of these developments since 2003 (referred to below under the shorthand "enhancements to doctrine, policy and training") have enabled the SIWG to conclude that there are no current systemic issues in relation to the clusters examined during the reporting period.

6. ISSUES & ACTIONS:

6.1. THEFT OR DESTRUCTION OF PROPERTY AT THE POINT OF CAPTURE

6.1.1. Of the 665 cases analysed, 237 (35%) involved allegations that UK Forces entered the captured person's home to detain them and, in the course of searching their person or residence, had damaged, destroyed, or stolen property. The proportion of such allegations is significantly higher for Iraq (224 of 557 complainants, 40%) than for Afghanistan (13 of 108 complainants, 12%).

6.1.2. The SIWG noted that, although destruction of property and theft have always been prohibited, policy and training have been enhanced since these alleged incidents.

6.1.3. JDP 1-10 sets out how captured persons are to be searched and how any property seized is to be managed. Specifically, Section 2 (Searches) to Chapter 7 (Point of Capture) includes the following provisions on procedures, processes, and training:

> ***706.*** *The chain of command is responsible for ensuring that our Armed Forces are instructed on the circumstances in which searches may be conducted, the procedures to be followed, and the mandatory standards of humane treatment to be afforded to all CPERS. Searches may be carried out prior to a suspect becoming a CPERS to determine whether or not to detain them; evidence discovered during a search may be useful, as well as identify their status such as a juvenile or member of a family group that has also been detained.*
>
> ***709.*** *Conduct of searches. When searching a suspect, CPERS or premises, vessels or vehicles, our Armed Forces should always adhere to theatre standing operating procedures and rules of engagement. In the unlikely event of no standing operating procedure being in force, our Armed Forces must apply the following minimum standards.*
>
> *a. The Service person conducting the search is to:*
> - *maintain a record of the search;*
> - *ensure the presence of a second Service person as a witness;*
> - *explain to those subjected to the search the reason for the search; and*
> - *issue a receipt for any property seized (Annex 7A).*
>
> *b. Our Armed Forces are to allow CPERS to retain property such as clothing, personal effects and religious items that do not represent a threat to security or the safety of the CPERS, or that do not have evidential value. ...*
>
> *f. Service personnel conducting the search should:*

- *remove weapons (including knives and anything capable of being used as a weapon), ammunition, associated improvised explosive device equipment, all communications equipment and IT, documents, maps and military equipment such as radios;*
- *record the above items as belonging to the CPERS;*
- *whenever possible, make weapons safe, and evacuate them with the CPERS;*
- *provide a receipt to the CPERS for all items removed (an example of a Property Receipt is at Annex 7A4); such items may be used for evidential or exploitation purposes; and*
- *prevent CPERS from destroying equipment or documents in their possession as these may be of interest to interrogators and J2.*

721. *The capturing unit must ensure property belonging to CPERS is properly accounted for, using the capture card at Annex 7B[9] and a property receipt as shown at Annex 7A. This is to ensure that property can be exploited, preserved as evidence or returned to the owner as appropriate. The capturing unit should give consideration to the items which may be retained, and the items which may constitute evidence that could be used in a later investigation. They must secure and clearly label any evidence and property as near to the point of capture as possible to avoid loss or contamination, as shown above.*

722. *The capturing unit must ensure that all property seized and retained is documented and a receipt in triplicate prepared. They must provide the CPERS with the original receipt, store one copy with the property and retain the third with the CPERS documents.*

6.1.4. CPERS Battle Lesson 29 includes the following directions regarding searches and recording of handling and property:

6-190. Recording Search Finds. *If tactically viable, all items and equipment found must be recorded with a property receipt. All property, evidence and documentation must accompany the CPERS throughout the evacuation chain and be protected from being destroyed or damaged.*

6-191. *Property and evidence bags must be serial numbered to ensure that they can be associated with the individual CPERS throughout the CPERS evacuation chain. Serial numbers should consist of the ZAP number of the searcher and the number of the CPERS in chronological order in which the searches where conducted. This enables the identity of the searcher to be specified thus enabling future clarification of search finds. It is imperative that the number written on the bag is the same as recorded on the capture tag.*

6.1.5. The armed forces train against the requirements laid down in JDP 1-10 and CPERS Battle Lesson 29, both of which have been revised and updated since the period in which these allegations were made.

6.1.6. With regard to oversight and remedial action, the SIWG also noted that during the period 2003-2010 four soldiers had been convicted of burglary at Court Martial and sentenced to 45 days' imprisonment.

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[9] The Capture Card at Annex 7B has since been replaced by MOD Form 2300A. This change will be reflected in JDP 1-10, Edition 4.

6.1.7. In light of the enhancements to doctrine, policy and training (see 5 above), and of the evidence of disciplinary action in appropriate cases, the SIWG concluded that there is not currently a systemic issue around theft or destruction of property.

6.2. SEXUAL ASSAULT:

6.2.1. Of the 665 cases analysed, 50 (7%) involved allegations that UK Forces sexually assaulted captured persons whilst conducting body searches. The proportion of such allegations is significantly lower for Iraq (21 of 557 complainants, 3.7%) than for Afghanistan (29 of 108 complainants, 26%).

6.2.2. Sexual assault is a serious criminal offence, and the SIWG noted assurances from subject-matter experts that all reports of sexual assault are investigated by the Service Police and dealt with through the Service Justice System. However, the SIWG also observed that all the cases considered during the current reporting period had been categorised by the Service Police as being of medium or low severity.

6.2.3. The SIWG concluded – from this categorisation and from the wording of the allegations – that the complainants were not in fact claiming to have been sexually assaulted, but rather to have been subjected to intimate searches that were not culturally acceptable. The SIWG considers that these allegations disclosed a potential communication issue in which the process of the search was either not explained or the detainees did not understand the explanation.

6.2.4. JDP 1-10 was updated following publication of the Al-Sweady Inquiry report to include more detailed guidance on strip searches. The current edition prohibits both strip searches and intimate searches (the method for which is set out diagrammatically at Annex 7G to that publication) at the point of capture, and makes such searches at unit collection areas and detention facilities subject to safeguards:

> ***707. Strip searches.*** *Strip searches constitute removing CPERS clothing layers to the skin. Therefore, such a search should not be conducted at the point of capture, but may be required at semi-permanent locations such as a unit holding area or theatre CPERS facilities, where dedicated CPERS personnel will be operating. …*
>
> ***709. e.*** *Service personnel carrying out searches may request those subject to the search to open their mouths but they must not insert fingers or any other items into the mouth because this would constitute an intimate search. Intimate searches must not be carried out under any circumstances at the point of capture.*
>
> ***912. Intimate searches.*** *Intimate searches (of body cavities and orifices) must not be conducted unless they have been authorised by the Force Provost Marshal. The Force Provost Marshal, having received medical and legal advice, should stipulate in theatre orders what constitutes an intimate search and the circumstances in which intimate searches may be conducted. Where an intimate search has been authorised, commander medical must be informed. Intimate searches will only be carried out under appropriate supervision:*
>
> - *after the reason for the search has been explained to the CPERS;*
> - *by staff with appropriate medical competencies; and*
> - *within a suitably equipped medical facility*

> ***1011.*** *The principles for conducting searches, including intimate searches, are explained in Chapter 7, Section 2 and Chapter 9, Section 4. Commandants must issue a clear set of procedures that describe, in detail, the circumstances in which searches should be carried out, who may conduct searches, the methods to be used and their frequency.*[10] *...*
>
> ***1012.*** *The type of search conducted will depend upon the circumstances. For example, when CPERS are moving in large numbers from their place of work back to their living accommodation, it is normal for staff to conduct security screening searches akin to those used at civilian airports. On other occasions, especially if there is reason to believe that CPERS may have something secreted about their person or when they are designated as high risk CPERS, staff will need to carry out a more detailed search. Guidance on intimate searches can be found in Chapter 9, Section 4.*

6.2.5. In relation to rub-down (body) searches of captured persons, CPERS Battle Lesson 29 emphasises the need to respect the individual's personal dignity and religious or cultural sensitivities:

> ***6-183. Overarching Principle.*** *All searches must be conducted with due respect for the CPERS' dignity and religious or cultural sensitivities must be considered and, when tactically able, observed.*

6.2.6. At unit level, mandated annual military training is delivered and assessed by qualified instructors, usually from that unit. Records of this training – including pass or fail results – should be held at unit level and archived. Commanding Officers have a responsibility to ensure all their personnel are adequately trained. Soldiers may also be issued with a tactical aide memoire (TAM) to assist them with the process of searching.

6.2.7. With regard to the requirement to explain the reason for searches to captured persons, the SIWG was satisfied that the provisions in JDP 1-10 are adequate. JDP 1-10 recalls (at paragraph 609d) the desirability of interpreters using standardised scripts to explain normal aspects of in-processing (which would include searches) and out-processing of captured persons, but additionally makes specific provision for interpreters to explain strip searches and intimate searches in advance:

> ***707. a.*** *After the reason for the search has been explained to the CPERS (an interpreter may be required), the CPERS cooperation should be requested. (A record must be made that the reason for the search and subsequent use of information was explained to the CPERS and whether the CPERS was cooperative or non-cooperative.)*
>
> ***912.*** *Intimate searches will only be carried out under appropriate supervision:*
> - *after the reason for the search has been explained to the CPERS;*

6.2.8. In light of the enhancements to doctrine, policy and training (see 5 above), the SIWG concluded that there is not currently a systemic issue around sexual assault.

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[10] It is intended that JDP 1-10, Edition 4 will contain further guidance on this point, to reduce the risk of individual commanders adopting different approaches to searching.

6.3. SOLITARY CONFINEMENT:

6.3.1. Of the 665 cases analysed, 68 (10%) involved allegations that UK Forces placed captured persons in solitary confinement. The proportion of such allegations is similar for Iraq (55 of 557 complainants, 9%) and for Afghanistan (13 of 108 complainants, 12%).

6.3.2. The SIWG concluded – from this categorisation and from the wording of the allegations – that, with the exception of relatively short periods of solitary confinement while undergoing interrogation, the complainants were not in fact claiming to have been placed in solitary confinement, but did not in fact understand the reasons they were being temporarily held in a single cell. The SIWG considers that these allegations disclosed a potential communication issue in which the reasons for the detainee being held in a single cell was either not explained properly or the detainees did not understand the explanation.

6.3.3. Being held in a single cell for legitimate and justifiable reasons does not necessarily amount to solitary confinement. JDP 1-10 provides for various methods of segregation which do not amount to solitary confinement:

> ***729.*** *It is essential that from point of capture, the capturing unit segregate and provide separate accommodation for females, juveniles, children, rival groups and vulnerable CPERS. In any event, living conditions in segregated units should allow for sufficient meaningful human interaction. Further detail on such groups is at Chapter 2, Section 4.*
>
> ***730.*** *Segregation of individuals should not result in solitary confinement. Whilst there is no universal definition of solitary confinement the United Nations Special Rapporteur on torture has assessed it as being any regime where an inmate (or detainee) is held in isolation from others, except guards, for at least 22 hours per day.*
>
> ***731.*** *In addition, there is a legal requirement to accommodate and administer other categories of CPERS separately. It is acknowledged that resources, facilities and manpower may be limited at this stage of the CPERS handling process, but the capturing unit are to make every effort to categorise and segregate the following.*
>
> *a. Prisoners of war. In international armed conflict, if our Armed Forces capture both prisoners of war and internees, they must clearly segregate these two categories. This is a legal requirement under the Geneva Conventions. Our Armed Forces should also segregate officers and senior non-commissioned officers who are prisoners of war from their subordinates to prevent them from organising escapes, sabotage or generally giving encouragement and moral support.*
> *b. Detainees. Where possible our Armed Forces should separate criminal detainees from other CPERS to preserve evidence and for reasons of safety. Additionally, they should segregate detainees from each other to avoid contamination of evidence and prevent collusion. If segregation is impossible our Armed Forces must closely guard detainees to avoid conversation and contamination of evidence.*
> *c. Internees. Where individuals are being interned for security reasons alongside prisoners of war and criminal detainees, our Armed Forces must ensure that they are accommodated and administered separately. In addition, where necessary to prevent collusion and contamination of evidence, they should separate internees from one another.*
>
> ***732.*** *Influential leaders. Irrespective of the category into which they fall, our Armed Forces should segregate a CPERS who displays leadership influence, which could lead to security issues being encountered. This is common with any group of CPERS, with influential leaders in custody either passive or aggressive influence over the CPERS*

population. Influential CPERS must be reported upon through the appropriate J2 chain. Such segregation should be reviewed on a regular basis and, if the reason for such treatment no longer exists, the CPERS should be returned to the general CPERS population.

6.3.4. If a captured person was being disruptive at a Holding Facility and undermining discipline, then they could legitimately be removed from a compound and held in another Holding Facility under segregation, or moved to another part of the same Holding Facility, dependant on size and layout of the facility. The policy for discipline of captured persons – which would include segregation and confinement – would be articulated in the Holding Facility Standing Orders.

6.3.5. JDP 1-10 provides comprehensive guidance regarding disciplinary procedures and sanctions (for which records are to be retained for audit purposes) that may be awarded – these sanctions include the use of confinement –

> ***1026.*** *When reaching decisions on punishment, the commandant must at all times remember that the accused CPERS is not a UK national. The Geneva Conventions provides specific direction on disciplinary sanctions which may be awarded to certain categories of CPERS.*
>
> ***Disciplinary sanctions***
>
> *Prisoner of war*
> - *A fine which shall not exceed 50% of the advances of pay and working pay which the prisoner of war would otherwise receive under provisions of Articles 60 and 62 during a period of not more than 30 days.*
> - *Discontinuance of privileges granted over and above the treatment provided for by the present Convention.*
> - *Fatigue duties not exceeding two hours daily.*
> - ***Confinement.***
> - *The duration of a punishment shall not exceed 30 days, even if the prisoner of war is answerable for several acts at the same time.*
> - *Time spent in confinement prior to a disciplinary hearing shall be deducted from the award pronounced.*
> - *The period between pronouncing an award of disciplinary punishment and its execution shall not exceed one month.*
> - *When a prisoner of war is awarded a further disciplinary punishment, a period of three days must elapse between the execution of the punishment if the duration of one of the awards is ten days or more.*
>
> *Internees*
> - *A fine not exceeding 50% of 30 days' pay.*
> - *Withdrawal for up to 30 days of any privileges granted over and above the minimum provided for by the Convention.*
> - *Fatigue duties for up to 30 days, not exceeding two hours per day and connected with the maintenance of the camp.*
> - ***Confinement for not more than 30 days.***

6.3.6. The courts have discussed the circumstances in which solitary confinement may breach Article 3 ECHR and have ruled that the duration necessary to reach that threshold is considerably longer than the periods alleged by these claimants in the cases analysed by the SIWG:

> *"The criteria which determine whether solitary confinement violates article 3 of the Convention are now well established in case law of the European Court of Human Rights which has been endorsed by the Supreme Court. As stated by the European Court in Ahmad v United Kingdom[2013] 56 EHRR 1, para 209:*
> *"whilst prolonged removal from association with others is undesirable, whether such a measure falls within the ambit of article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned."*
> *In applying these criteria, the European Court has never specified a period of time beyond which solitary confinement will attain the minimum level of severity necessary to infringe article 3. Cases in which violations have been found, however, have involved far longer periods than the period of 13 days during which Mr Al-Waheed was segregated from other prisoners. In Shahid v Scottish Ministers [2015] UKSC 58, [2016] AC 429, the Supreme Court held that segregation (albeit not complete) from other prisoners with a total duration of four years eight months did not violate article 3, although there was found to be a violation of the right to respect for private life guaranteed by article 8. International reports referred to in the judgment of the Supreme Court at paras 78-80 express concern about the potentially harmful effects of (total) solitary confinement exceeding 14 or 15 days. Even by that standard, the period of Mr Al-Waheed's segregation was not excessive."*[11]

6.3.7. Noting the wording of the allegations and the case law on solitary confinement, the SIWG considered that these claims appeared to point to a problem with the way in which the reasons for accommodating captured persons within single-occupancy cells or in solitary confinement were explained to them, rather than to a problem with the policy of holding them in isolation.

6.3.8. With regard to the requirement to explain the reason for being held in a single cell, Chapter 9, Section 2 ("Staffing of the unit holding area") and Chapter 10 ("The CPERS holding facility") of JDP 1-10 emphasise the need to ensure that interpreters are always present at detention facilities:

> ***907. e.*** *Interpreters. The officer in charge of the unit holding area should ensure that sufficient interpreters are available.*
>
> ***1016.*** *Interpreters will be essential at a CPERS holding facility. Further guidance can be found in Chapter 6, Section 1.*

6.3.9. In light of the enhancements to doctrine, policy and training (see 5 above), and specifically with the improvements to the information provided to captured persons, the SIWG concluded that there is not currently a systemic issue around solitary confinement.

6.4. FORCED LABOUR OR EXERCISE:

6.4.1. Of the 665 cases analysed, 69 (10%) involved allegations that UK Forces ordered captured persons to undertake forced labour or exercise. The proportion of such allegations is higher for Iraq (67 of 557 complainants, 12%) than for Afghanistan (2 of 108 complainants, 1.8%). These claims were vague and most referenced nothing more than the captured person being asked to undertake routine tasks such as being asked to erect their own tents, or being required to walk to a collection point13

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[11] *Alseran & Others v Ministry of Defence* [2017] EWHC 3289 (QB) (14 December 2017), at §683.

6.4.2. The 1949 Geneva Conventions and JDP 1-10 provide clear guidance on what labour captured persons may lawfully be asked to undertake -

> ***10D15.*** *Geneva Convention III allows the employment of prisoners of war in physical labour. The objective is, by providing physical and mental stimuli, to keep them in a sound state of physical and mental health.*
>
> ***10D16.*** *The Directorate of Operations will provide the requisite policy where the employment of prisoners of war is envisaged. It is unlikely that there will be wide opportunities for employing prisoners of war who are held in a CPERS holding facility located in theatre. Prisoners of war will be required to carry out work, however, where there is an opportunity for employment. Such employment must take into account their rank, sex, age and physical aptitude, as follows.*
> *a) Officers. Officers cannot be compelled to work but they may volunteer. The commandant will provide work of a suitable nature, if it is available.*
> *b) Warrant and non-commissioned officers. Warrant officers and non-commissioned officers will only be required to carry out work of a supervisory nature. They may volunteer for other types of work which they will be allowed to perform, if it is of a suitable nature.*
> *c) Other ranks prisoners of war. Other ranks will be required to carry out any work that is consistent with Geneva Convention III.*
> *d) Female prisoners of war. Female prisoners of war are to be considered for work in the same manner as male prisoners of war with the exception that:*
> - *they are only to be employed in supervising male prisoners of war who, prior to their capture, they could have commanded in the field – the same restriction applies to male prisoners of war supervising female prisoners of war's work if prior to capture, they could not have commanded them in the field; and*
> - *pregnant female prisoners of war are not to be employed on any work that might, directly or indirectly, endanger their health or that of their unborn child.*

> *e) Juveniles. May be employed in light work only.*
>
> ***10D19.*** *Unhealthy or dangerous work. Prisoners of war are not to be employed in work which is dangerous or presents a risk to health. Each specific task, rather than the industry as a whole, should be considered when making an assessment of the danger inherent in the work. Applying Health*
> *and Safety at Work Risk Assessments and providing appropriate training, safety equipment or protective clothing, can render an otherwise potentially dangerous task safe. Prisoners of war are not to be employed in the following circumstances, unless they are volunteers:*
> - *tasks requiring physical exertion beyond the normal capabilities of the average person;*
> - *involvement in dealing with explosives (for example, mine clearance);*
> - *using machinery which, without appropriate training or necessary skills or knowledge, is dangerous; or*
> - *work at dangerous heights.*

6.4.3. In order to protect their health and wellbeing, JDP 1-10 also provides for compulsory medical checks of captured persons to ensure fitness to undertake work:

> ***10D17.*** *Medical examinations. Medical staff are to examine all ranks of prisoners of war before they commence work and thereafter at least once a month. Medical staff are to grade prisoners of war as a result of these inspections as either:*
> - *fit for heavy work;*
> - *fit for light work; or*
> - *not permitted to work.*
>
> *In accordance with good medical practice, documentation of this examination is to be regarded as medical records and treated accordingly in terms of storage and confidentiality. Clearly, if there is a change in the medical condition of the CPERS, a further examination*

should be conducted to determine fitness for employability and the medical records updated accordingly.

6.4.4. JDP 1-10 also sets out the minimum exercise rights afforded to captured persons:

211.n. Right to exercise. CPERS shall be allowed a minimum of two hours of exercise in the open air every 24 hours. For best interests, good governance and running the facilities, additional exercise should be considered.

6.4.5. As stated, virtually all allegations of forced exercise reference captured persons being required to walk to collection points due to the unavailability of transport. The few allegations that reference group exercise as a form of punishment were considered under Collective Punishment.

6.4.6. Any allegations which reference group exercise as a form of punishment will be dealt with below at 6.5, Collective Punishment.

6.4.7. In light of the enhancements to doctrine, policy and training (see 5 above), the SIWG concluded that there is not currently a systemic issue around forced labour or exercise.

6.5. COLLECTIVE PUNISHMENT:

6.5.1. Of the 665 cases analysed, 14 (2%) involved allegations that UK Forces implemented collective punishment upon captured persons. The proportion of such allegations is significantly lower for Iraq (2 of 557 complainants, 0.3%) than for Afghanistan (12 of 108 complainants, 11%).

6.5.2. Collective punishment is prohibited by the 1949 Geneva Conventions which is clearly referenced in JDP 1-10:

214. In accordance with the 1949 Geneva Conventions, the 1977 Additional Protocols, the 1998 International Criminal Court Statute the International Covenant on Civil and Political Rights and Customary International Law and the UK domestic law, the following are Prohibited Acts:

- *Violence to the life, health and physical or mental well-being of CPERS, in particular murder as well as cruel treatment and torture, mutilation or any form of corporal punishment*
- ***Collective punishments***
- *Taking hostages*
- *Acts of terrorism*
- *Slavery and the slave trade in all their forms*
- *Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilisation and any other form of sexual violence*

1027. *Disciplinary punishments will not be inhuman, brutal or dangerous to the health of CPERS. The Geneva Conventions impose specific restrictions in relation to sanctions or punishments. For all CPERS, the following are forbidden.*

- *Collective punishment for individual acts.*

6.5.3. JDP 1-10 further references the prohibition of collective punishment in relation to the specific rules for sanctions that may be awarded to captured persons:

1027. Disciplinary punishments will not be inhuman, brutal or dangerous to the health of CPERS. The Geneva Conventions impose specific restrictions in relation to sanctions or punishments. For all CPERS, the following are forbidden.

- *Any form of torture or cruelty.*
- ***Collective punishment for individual acts.***
- *Corporal punishments.*
- *Holding CPERS in a facility without daylight.*
- *The duration of any single punishment exceeding a maximum of 30 consecutive days, even if the CPERS is convicted of several breaches of discipline, whether connected or not.*
- *Failure to allow an interval of at least three days between the execution of any two punishments if the duration of one of them is ten days or more, when a further punishment is awarded.*
- *A delay of more than one month between pronouncement and commencement of the sentence.*
- *Punishment more than once for the same offence.*
- *Different treatment of CPERS who have completed their sentence to CPERS of the same category. The only exception is the rule relating to special surveillance of CPERS who have attempted to escape.*
- *Reduction of food and water as a punishment.*
- *Use of restraints as a punishment.*
- *Sensory deprivation as a punishment (for example, deprivation of sight or hearing).*
- *In addition to the above, no prisoner of war may be deprived of their rank or prevented from wearing their badges; a prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to their rank.*

6.5.4. In light of the enhancements to doctrine, policy and training (see 5 above), the SIWG concluded that there is not currently a systemic issue around collective punishment.

6.6. SLEEP DEPRIVATION:

6.6.1. Of the 665 cases analysed, 138 (20%) involved allegations that UK Forces use sleep deprivation against captured persons. The proportion of such allegations is similar for Iraq (114 of 557 complainants, 20%) and Afghanistan (24 of 108 complainants, 22%).

6.6.2. In 1972, following publication of the Parker Report, the Prime Minister gave an assurance to Parliament that five enhanced interrogation techniques (including sleep deprivation) would never again be used by UK Forces.[12]

6.6.3. Following intense scrutiny during the Baha Mousa Inquiry in 2010, the five techniques were redefined:

The five techniques are as follows.
a) Stress positions. Any physical posture which a CPERS is deliberately required to maintain will be a stress position if it becomes painful, extremely uncomfortable or exhausting to maintain.
b) Hooding. Placing a cover over a CPERS' head and face.
c) Subjection to noise. Holding a CPERS in an area where there is unnecessary excessive noise.
d) Deprivation of sleep and rest. Depriving a CPERS of the minimum requirement of sleep and rest.
e) Deprivation of food and water. Depriving a CPERS of the minimum requirement of food and water.

[12] https://api.parliament.uk/historic-hansard/commons/1972/mar/02/interrogation-techniques-parker

The five techniques, as redefined above, must never be used as:
- *an aid to tactical questioning or interrogation;*
- *a form of punishment;*
- *discriminatory conduct;*
- *intimidation;*
- *coercion; or*
- *deliberate mistreatment.*

6.6.4. There is extensive policy and guidance on the prohibition of the use of sleep deprivation. JDP 1-10 has clear direction on sleep deprivation:

> ***211. g.*** *Sleep and rest. CPERS shall be given at least eight hours of rest per 24-hour period, during which there shall be an opportunity to sleep for a single undisturbed period of no less than four hours.*

6.6.5. The strict policy on the prohibition of sleep deprivation also applies during periods of interrogation and is closely monitored to ensure adherence to the policy, as JDP 1-10 states:

> ***221. g.*** *Disruption of sleep. It is prohibited to deliberately keep CPERS awake, even for short periods, merely because they may shortly face tactical questioning or interrogation. They may be woken to be tactically questioned or interrogated, if the questioning is ready to take place, provided that the minimum sleep requirement is respected. Aside from being woken for questioning, it is also recognised that operational circumstances may result in sleep being disrupted or delayed. Moreover, CPERS may need to be woken or disturbed for reasons of the CPERS' safety or the CPERS' welfare. It may be difficult to ensure CPERS receive the minimum sleep requirement during transfer between facilities. The discretion to wake a CPERS for immediate questioning is not to be abused by way of repeated or random waking of the CPERS with a view to disorientation. In addition, CPERS should not be regularly subjected to sleep disruption.*

6.6.6. These provisions regarding sleep have been carried across into the MOD's interrogation policy, which is reviewed biennially. The current version, which was reviewed in November 2016, includes at Annex A (Minimum Standards of Treatment) the following provisions:

> *2d.* ***Deprivation of Sleep and Rest****. Depriving a CPERS of the minimum requirement of sleep and rest. CPERS must receive a minimum of 8 hours sleep or rest per 24 hours, of which no less than 4 hours must be a continuous, undisturbed period.*

> *4f.* ***Sleep and Rest****. CPERS shall be given at least 8 hours of rest per 24 hour period (the 8 hour rule), during which there shall be an opportunity to sleep for a single undisturbed period of no less than 4 hours (the 4 hour rule), free from any restraint, sight or hearing deprivation. CPERS may be woken from sleep* ***only to undergo immediate interrogation*** *and provided that the 4 and 8 hours rules are still adhered to. The latitude to wake a CPERS from rest or sleep in order to conduct immediate interrogation is not to be exploited to cause disorientation. To this end, every possible effort must be made to hold a CPERS in a location free from noise, to permit the CPERS to sleep.*

6.6.7. In light of the enhancements to doctrine, policy and training (see 5 above), the SIWG concluded that there is not currently a systemic issue around sleep deprivation.

6.7. PLASTICUFFS:

6.7.1. Of the 665 cases analysed, 298 (44%) involved allegations that UK Forces misapplied or misused plasticuffs. The proportion of such allegations is significantly higher for Iraq (283 of 557 complainants, 50%) than for Afghanistan (15 of 108 complainants, 13%).

6.7.2. Following publication of the report of the Baha Mousa Inquiry in 2010, the doctrine and training on the use of plasticuffs have been reviewed and enhanced. There is clear guidance in JDP 1-10 on the use of plasticuffs:

> ***221c.*** *Restraint equipment. Circumstances may also require using restraining equipment, for example plasticuffs, specifically issued for such purposes to personnel engaged in CPERS handling. These must only be applied to the hands in front of the body as shown and must in all circumstances allow for normal blood circulation.*

> ***Annex 8A:*** *If the use of restraints is specifically authorised, CPERS hands may be secured in front of them using plasticuffs or any other form of restraint that has been authorised by Provost Marshal (Army).*

6.7.3. This is reinforced in Military Annual Training Test 7 (which provides annual training on international humanitarian law, including the humane treatment of captured persons,[13] and has "*become the default subject content taught across career courses at all levels*"[14]) within CPERS Battle Lesson 29:

> *6.Plasticuffs should only be used to secure the hands to the front of the body and the decision to apply the plasticuffs must be recorded. To prevent injury to the CPERS, plasticuffs must be applied using the 'Rule of Thumb' ensuring that when applied, they are not too tight resulting discomfort and pain.*

6.7.4. In light of the enhancements to doctrine, policy and training since the Baha Mousa Inquiry, the SIWG concluded that there is not currently a systemic issue around the use of plasticuffs.

6.8. RELIGIOUS INSENSITIVITY:

6.8.1. Of the 665 cases analysed, 140 (21%) involved allegations that UK Forces acted insensitively towards captured persons' religious beliefs and practices. The proportion of such allegations is significantly lower for Iraq (94 of 557 complainants, 16%) than for Afghanistan (46 of 108 complainants, 42%). The majority of these claims reference insufficient facilities in order to pray, a failure to provide water to enable captured persons to wash prior to prayer, or the timings of meals conflicting with prayer times.

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[13] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-16/31271/

[14] 2016 Follow-Up Review into the Handling of Captured Persons, at §7a.

6.8.2. Subject-matter experts confirmed that operating practice today dictates that for medium- to large-scale Detention Facilities the requirement for religious practice would be considered in the design and build of the facility. JDP 1-10 provides clear guidance to commanders that captured persons must be allowed to undertake religious activity to observe their own faith/religion:

> ***1076.*** *Religious activity. The commandant is to permit CPERS to practice their religion or exercise their beliefs provided that this is carried out within the rules of holding facility discipline. Where possible, they are to provide a place of worship and allow chaplains and other spiritual leaders to minister to CPERS of the same religion or belief. Where there is no minister or religious leader, a lay CPERS may be appointed by the commandant to lead worship.*

6.8.3. All training covers the need for soldiers to treat all captured persons humanely, and with dignity. This is evidenced in CPERS Battle Lesson 29 which states –

> ***Basic Principles***
> *6-157. Explain: International Law lays down the minimum standards of treatment that are required when handling CPERS. All CPERS must be treated humanely at all times and are entitled to respect for their person, honour and religion.*

6.8.4. Subject-matter experts have confirmed that captured persons are allowed to observe their religious practice, but for justifiable operational and logistical reasons this may not be in purpose built surroundings (e.g. a Unit Holding Area could be a tent), and the provision of religious articles e.g. a prayer mat and Quran may not be available.

6.8.5. Based on the content of the allegations, the SIWG has noted that these claims appear to be the result of justifiable operational and logistical limitations in the facilities available at the time (e.g. shortages of water for ablutions in detention facilities that had not been purpose built). The SIWG concluded that there is not currently a systemic issue around religious insensitivity.

6.9. THREATENING BEHAVIOUR OR LANGUAGE

6.9.1. Of the 665 cases analysed, 295 (44%) involved allegations that UK Forces used threatening behaviour or language towards captured persons. The proportion of such allegations is significantly higher for Iraq (269 of 557 cases, 48%) than for Afghanistan (26 of 108 cases, 24%).

6.9.2. There is extensive policy, guidance and training on the behaviour expected of the UK Armed Forces in dealing with captured persons which is detailed in Military Annual Training Test 6 (Values and Standards), Military Annual Training Test 7 (Law of Armed Conflict), and CPERS Battle Lesson 29.

6.9.3. Following a specific recommendation within the 2016 Army Inspectorate's CPERS Review, the Headquarters Provost Marshal (Army) (HQ PM(A)) now visit Royal Military Academy Sandhurst (RMAS) Group and Army Recruiting and Training Division (ARTD) units to review and validate the delivery of captured persons training to all Officer Cadets and recruits in training. Recommendations are made within the HQ PM(A) validation reports as

necessary, to improve delivery of captured persons training, and/or to ensure compliance with policy. Deviation from training policy at RMAS Group or ARTD units would receive criticism in the HQ PM(A) validation report, with a recommendation(s) to rectify the problem(s).

6.9.4. With regard to threats during tactical questioning and/or interrogation, the SIWG noted that the specific policies governing these activities are reviewed biennially. The current interrogation policy, which was reviewed in November 2016, provides:

> **27.** Where a CPERS is entitled to protection under Geneva Conventions III or IV, the interrogator must adhere to the protections which apply in addition to Common Article 3. Geneva Convention III Article 13 requires that PWs are '*protected against acts of violence or intimidation and against insults and public curiosity'*. Article 17 prohibits '*physical and mental torture and any form of coercion to secure information of any kind whatsoever from a PW. PWs who refuse to answer may not be threatened, insulted or exposed to any unpleasant or disadvantageous treatment of any kind'*. Article 27 of Geneva Convention IV requires that protected persons are '*treated humanely and protected against all acts of violence, threats, insults and public curiosity'*. Article 31 also '*prohibits the use of physical or moral coercion against protected persons in particular to obtain information from them or third parties'*. These provisions do not prevent UK Armed Forces from conducting interrogation on PWs but they set strict limitations on its conduct; indeed it is recognised as entirely legitimate in customary international law and the Geneva Conventions for parties to a conflict to seek to collect military information from PWs.

6.9.5. Annex B (Authorised Approaches) to the interrogation policy provides further guidance:

> 1. **As a matter of policy and by law, UK Armed Forces will, as a minimum, treat all CPERS detained during international or non-international armed conflict or other military deployments in adherence to Common Article 3**. Additional protections are provided to entitled civilians by virtue of their protected status under Geneva Convention IV. Prisoners of War (PWs) are provided with additional protections under Geneva Convention III, the most pertinent article of which is Article 17:
>
> > *No physical or mental torture, nor any other form of coercion, may be inflicted on Prisoners of War to secure from them information of any kind whatever. Prisoners of war who refuse to answer must not be threatened, insulted or exposed to unpleasant or disadvantageous treatment of any kind.*
>
> 2. All Approaches described in this Annex are compliant with this standard and are to be conducted in accordance with the prohibition against '*outrage upon personal dignity, humiliation, and degrading treatment'*. Despite being fully consistent with Geneva Convention III Art 17, MOD policy direction is that the Challenging Approach is not to be used against those personnel who qualify for PW status; thereby mitigating the risk of an interrogator inadvertently breaching this Geneva Convention. All other Approaches are authorised for use against PWs and are to be conducted in accordance with the prohibition in Art 17 against '*threats, insults, or unpleasant or disadvantageous treatment of any kind whatsoever'*.
>
> 9d. Interrogators and Interrogator Controllers must be cognisant that touching could be viewed as threatening, instilling a fear of violence and also ensure it does not risk being perceived as insulting or degrading.

6.9.6. In light of the enhancements to doctrine, policy and training (see 5 above), the SIWG concluded that there is not currently a systemic issue around threatening language or behaviour.

6.10. USE OF DOGS:

6.10.1. Of the 665 cases analysed, 77 (11%) involved allegations that UK Forces inappropriately used military dogs around captured persons. The proportion of such allegations is similar for Iraq (67 of 557 complainants, 12%) and Afghanistan (10 of 108 complainants, 9%).

6.10.2. In most cases, these allegations do not refer to dogs being used to intimidate captured persons, but rather express dissatisfaction (often citing cultural sensitivities) about the presence of dogs in and around the holding facilities.

6.10.3. JDP 1-10 provides guidance on the use of Military Working Dogs:

> ***6B5. Dogs.*** *Wherever possible, the guard force is to be augmented with dogs and their handlers. The dogs should include at least* NG tracker dogs *. Deploying and using dogs is to be at the discretion of the CPERS holding facility commandant bearing in mind both the threat posed by the CPERS and the impact of using dogs on some religious and cultural groupings.*

6.10.4. In the experience of the subject-matter experts, Military Working Dogs are used at fixed locations i.e. large Holding Facilities or Prisoner of War Camps, as opposed to a Unit Holding Area (small scale) in a forward location. The training for dogs and their handlers is governed by the Royal Army Veterinary Corps (RAVC). The fact that dogs may be culturally unacceptable in some countries would not prevent their use if the security situation or Force Protection demanded this additional (escalatory) control measure.

6.10.5. Having assessed the allegations, the SIWG was satisfied that they do not relate to the misuse of dogs in theatre. The SIWG concluded that there is not currently a systemic issue around the use of dogs.

6.11. ASSAULT AT POINT OF CAPTURE

6.11.1. Of the 665 cases analysed, 451 (67%) involved allegations that UK Forces assaulted captured persons at the point of capture. The proportion of such allegations is significantly higher for Iraq (434 of 557 complainants, 78%) than for Afghanistan (17 of 108 complainants, 15%). These claims allege the use of violence at the point of capture by UK Armed Forces leading to injuries varying in severity from cuts and bruises to the breaking of teeth.

6.11.2. The SIWG noted that significant changes have been made to policy and training requirements and practises, particularly following a specific recommendation within the 2016 Army Inspectorate CPERS Review. Headquarters Provost Marshal (Army) (HQ PM(A)) now visit Royal Military Academy Sandhurst (RMAS) Group and Army Recruiting and Training Division (ARTD) units to review/validate the delivery of captured persons training to all Officer Cadets and recruits in training. Recommendations are made within the HQ PM(A) validation reports as necessary, to improve delivery of captured persons training, and/or to ensure

compliance with policy. Deviation from training policy at RMAS Group or ARTD units would receive criticism in the HQ PM(A) validation report, with a recommendation(s) to rectify the problem(s).

6.11.3. There has been further development of training and policy guidance, including: JDP 1-10, which applies to regular and special forces and provides clear strategic guidance on captured persons training requirements; Army Briefing Note 180/15, dated 11 December 2015, which sets out the mandatory captured persons training that units must carry out; Military Annual Training Test 7, which instructs that force can only be used when it is justifiable in the circumstances, and then only the minimum amount of force necessary can be used to achieve the aim; and Battle Lesson 29 – CPERS Handling. Within captured persons training it is made abundantly clear to all soldiers and officers that any breaches of doctrine/policy – e.g. employing any of the five prohibited techniques, or engaging in cruel, inhumane and degrading treatment or punishment of captured persons – would result in disciplinary action being taken against those responsible.

6.11.4. The SIWG also noted that the courts have held that regard must be had to the context in which any ill-treatment is inflicted, such as an atmosphere of heightened tension. The High Court has drawn a distinction between the levels of force used at point of capture and the motivation behind its use compared to levels of force used in comparatively less dangerous situations when considering what level of force would amount to a violation of Article 3 ECHR:

> *"In the present case the context of Mr Alseran's capture and detention was a war. That context cannot excuse cruelty or brutality but account needs to be taken of the acute stress and constant danger under which soldiers are operating in combat conditions. In that context, kicks and blows inflicted on Mr Alseran at the time of his capture may have involved more violence than was strictly necessary to detain him. But the evidence does not justify a finding that the force used was motivated by any purpose other than to prevent his escape and protect the soldiers' safety. The treatment was not prolonged and there is no evidence that it caused any injury or intense suffering. In the circumstances I reject the claim that there was a breach of article 3."*[15]

6.11.5. The SIWG recalled that assault is a criminal offence, and noted that JDP 1-10 (Chapter 13 "Adverse incidents and allegations of abuse involving CPERS") reinforces the obligation to report all allegations to the Service Police. This obligation is reinforced in training:

> ***242.*** *If a CPERS complains that they have suffered some form of abuse or been mistreated in any way, the person receiving the complaint is to report it to their chain of command and the Service police immediately and summon medical assistance if required. The details of all complaints must be recorded in full in the personal file of the CPERS, including details of the actions taken to resolve the complaint. It is the responsibility of the chain of command to ensure that all complaints have been brought to the attention of the Service police without delay. ...*
>
> ***504.*** *Training should cover the principle of individual and command responsibility and the requirement to prevent and suppress violations by others. It is essential that all members of our Armed Forces are aware of the system to follow should they be concerned about the actions of others; the procedure to report concerns must be included in any training. In addition, training should include the measures that the chain of command will put in place*

[15] *Alseran & Others v Ministry of Defence* [2017] EWHC 3289 (QB) (14 December 2017), at §232.

to protect members of our Armed Forces who make allegations against others for violations of the LOAC. To reinforce the requirement to comply with the LOAC, training should also cover the consequences, including the sanctions, of violating the LOAC.

***1306.** All members of our Armed Forces must, to the utmost of their ability, prevent and stop abuse and mistreatment of CPERS by others as well as incidents of self harm. In addition, our Armed Forces are to report any allegations of abuse, mistreatment or instances of witnessed abuse or mistreatment, which may include unexplained injuries, to CPERS immediately to the chain of command and the Service police and keep a record of that allegation and to whom reported.*

6.11.6. With regard to oversight and remedial action, the SIWG also noted that during the period 2003-2010 seven soldiers had been convicted of assault at Court Martial and given sentences ranging from a severe reprimand to Dismissal with Disgrace and imprisonment. During the same period, a further 12 allegations were investigated but did not result in prosecution.

6.11.7. In light of enhancements to doctrine, policy and training (see 5 above), and of the evidence of disciplinary action in appropriate cases, the SIWG concluded that there is not currently a systemic issue around assault at the point of capture.

7. Case cluster evidencing resolved systematic issues

7.1. ASSAULT IN DETENTION:

7.1.1. The case cluster from which the SIWG identified potential systemic issues which have since been resolved concerns allegations of assault in detention. Of the 665 cases analysed, 324 (48%) involved allegations of assault by UK Forces upon captured persons whilst in detention. The proportion of such allegations is significantly higher for Iraq (309 of 557 complainants, 55%) than for Afghanistan (15 of 108 complainants, 13%). These claims allege the use of violence by UK Armed Forces leading to injuries varying in severity from cuts and bruises to bowel, knee and head injuries.

7.1.2. As mentioned above at 6.11.4. the courts have drawn a distinction between the levels of force used at point of capture compared to the level of force used in comparatively less dangerous situations. In December 2017, the High Court found that, in some instances, the use of force against captured persons in detention facilities or in transit has constituted inhuman and degrading treatment:

"By contrast, the incident at Al-Seeba in which soldiers deliberately ran over the backs of prisoners clearly crossed the threshold level of severity to amount to a breach of article 3. Those assaults involved the gratuitous infliction of pain and humiliation for the amusement of those who perpetrated them. They have caused Mr Alseran deep and long-lasting feelings of anger and mental anguish and were an affront to his dignity as a human being. I find that they constituted both inhuman and degrading treatment. They also constituted a clear breach of the Geneva Conventions, which require prisoners at all times to be humanely treated: see article 13 of Geneva III and article 27 of Geneva IV."[16]

[16] *Alseran & Others v Ministry of Defence* [2017] EWHC 3289 (QB) (14 December 2017), at 233

7.1.3. As is set out in 6.11. (assault at the point of capture), the SIWG noted that significant changes have been made to policy and training requirements and practices. Following a specific recommendation within the 2016 Army Inspectorate CPERS Review, Headquarters Provost Marshal (Army) (HQ PM(A)) now visit Royal Military Academy Sandhurst (RMAS) Group and Army Recruiting and Training Division (ARTD) units to review and validate the delivery of CPERS training to all Officer Cadets and recruits in training. Recommendations are made within the HQ PM(A) validation reports as necessary, to improve delivery of CPERS training, and/or to ensure compliance with policy. Deviation from training policy at RMAS Group or ARTD units would receive criticism in the HQ PM(A) validation report, with a recommendation(s) to rectify the problem(s).

7.1.4. In addition to this, further development of training and policy guidance has also been introduced since the date of the allegations. JDP 1-10 provides detailed guidance on all aspects of the treatment of captured persons (Chapter 2, "Standards of Treatment") and reinforces the obligation on all service personnel to prevent and report improper treatment of captured persons (see 6.11.5 above):

> ***201.*** *We must apply basic principles of humane treatment when dealing with all captured persons (CPERS), at all stages of the CPERS handling process, from point of capture to release or transfer.*
>
> ***203.*** *CPERS handling requires firm command, leadership and a strong commitment to treat individuals humanely. Commanders must ensure that all personnel under their command are fully aware of the obligations to treat CPERS humanely and of the prohibition on torture, cruel, inhuman or degrading treatment. These prohibitions must be stated in the operational directives and regulations and in the unit standing orders applicable to those responsible for CPERS.*

7.1.5. In addition, JDP 1-10 mandates the appointment – within each unit – of dedicated and appropriately trained detention officers and holding officers, who are responsible *inter alia* for ensuring that all personnel within the unit have undertaken and understood the requisite training and for assuring the proper treatment of captured persons. They are supported by a detention sergeant.

> ***428. Detention officer.*** *Each combat and combat support unit, air or maritime equivalent, must have a detention officer, who should be a commissioned officer, within their headquarters. The detention officer is not to be the intelligence officer or the unit tactical questioning coordinator. The role should encompass:*
> - *coordinating and managing CPERS;*
> - *acting as a focus on CPERS matters during mission-specific training;*
> - *ensuring that, as soon as a battlegroup is established, Service specific military annual training tests (for example, Naval Military Training, Military Annual Training Test 7) and other training relevant to CPERS (a core military skill) which inculcates the vital messages about the correct handling of CPERS are being carried out;*
> - *assisting the commanding officer during operations by monitoring compliance with timescales, record keeping and other CPERS handling standards;*
> - *acting as a clear point of contact with higher headquarters on CPERS matters and liaising as necessary, with the Military Provost Staff;*
> - *ensuring that the responsibility for CPERS does not fall between the gap of other battlegroup-level officers, or their maritime equivalent; and*
> - *completing the detention officers course, which is delivered twice yearly.*

> ***429. Unit holding officer.*** *In addition to a unit detention officer, each unit is to nominate and train a unit holding officer (for the maritime environment this function will ordinarily be conducted by embarked Royal Navy Police). The unit holding officer is the officer responsible for CPERS handling at a unit holding area. They are responsible for their lawful and humane treatment at this stage of the process. They are also responsible through the chain of command for all unit-holding activity matters, to include security, administration, logistics and other operational support requirements including identifying medical support. They are directly responsible for the safety and security of all CPERS at the unit holding area and shall conduct regular inspections of the treatment and conditions of CPERS. They shall also ensure that a daily occurrence book is maintained. The unit holding officer must be supported by guards, sufficient staff to complete CPERS documentation and medical support staff. ...*
>
> ***431. Detention sergeant.*** *The detention sergeant may be a member of the Military Provost Staff or Royal Military Police or a SNCO* [Senior Non-Commissioned Officer] *that has attended the CPERS SNCO course: The detention sergeant is to support the detention officer within the unit, or maritime equivalent, prior to deployment on operations and the detention officer, or the unit holding officer as necessary, while deployed on operations. They are to have specific responsibilities for the administration of CPERS.*

7.1.6. As mentioned above at 6.11.6, with regard to oversight and remedial action, the SIWG also noted that during the period 2003-2010 seven soldiers had been convicted of assault at Court Martial and given sentences ranging from a severe reprimand to Dismissal with Disgrace and imprisonment. A further 12 allegations were investigated but did not result in prosecution.

7.1.7. In light of the Court's findings, the SIWG considered that there was sufficient evidence to conclude that assaults in detention had occurred, and *may* have been systemic. Nevertheless, given the enhancements to doctrine, policy and training, and the evidence of disciplinary action in appropriate cases, the SIWG was satisfied that there is not currently a systemic issue around assaults in detention. The SIWG therefore recorded this issue as **Noted (Resolved).**