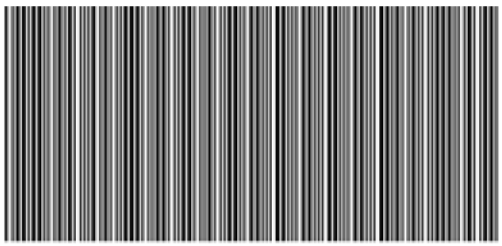
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RMP-221-0008555-A

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THE INVESTIGATION OF INCIDENTS INVOLVING UNITED KINDOM SPECIAL FORCES PERSONNEL BY THE ROYAL MILITARY POLICE

PROTOCOL

Parties

1. This protocol records an Agreement between Director Special Forces (DSF) and Provost Marshal (Army).

2. Commanding Officers (COs) of Special Forces (SF) units, groups or personnel and COs of Royal Military Police Regiments (including the Special Investigation Branch), or investigators deploying on operations or to overseas locations, are to ensure that both the SF ground commander and the officer in charge (OIC) of the SIB platoon have been briefed on, and provided with a copy of, this protocol.

Definitions

3. For the purpose of this protocol, SF are defined as:

This lists UKSF and supporting personnel covered by this protocol.

4. For the purpose of the protocol Royal Military Police Special Investigation Branch (RMP SIB) personnel includes members of the Royal Navy Police SIB and Royal Air Force Police Special Investigations and Intelligence Branch (SIIB) personnel when on the strength of a RMP SIB unit.

Aims

5. The aim of this protocol is to ensure that SF identities and operational security are protected and to provide the framework within which RMP (in particular the SIB) will conduct investigations that result from SF activity in operational theatres (excluding the United Kingdom).

This gives further details of the UKSF personnel who are within paragraph 3.

[3] A similar approach was adopted by the Court Martial Appeal Court in a case concerning a non-operational incident involving both trained and support personnel.

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It also provides the framework for dealing with SF personnel involved in non-operational incidents or crime, wherever it may have occurred, where matters are to be dealt with under the Service Justice System (SJS).

6. SF operational activity within the United Kingdom will ordinarily be dealt with in the first instance by the civil authorities in consultation with HQ DSF.

Purpose of RMP (in particular SIB) Investigations

7. The purpose of RMP investigations are broadly:

a. to establish whether, and if so by whom, any criminal or disciplinary offences have been committed contrary to the Armed Forces Act 2006;

b. to investigate the circumstances of all deaths, operational and non-operational, outside the United Kingdom for the purpose of facilitating the repatriation of the deceased and the provision of relevant evidence to HM Coroner, the Coroners Service (Northern Ireland) or the Procurator Fiscal, Scotland. Deaths that occur within the United Kingdom will be investigated in accordance with the agreed protocol[4] between the Secretary of State for Defence and the association of Chief Police Officers; or

c. exceptionally, at the request of the chain of command, to investigate any non-criminal/disciplinary incident that results in serious bodily harm or injury in support of a Service Inquiry or Service Administrative Action (AGAI 67).

Liaison

8. In all matters relating to investigations the Deputy Provost Marshal (Investigations) (DPM(Inv)), or the SO1 Investigations and Policing, HQ PM(A) are available to provide advice to HQ DSF as required.

9. In operational theatres the senior SF commander and/or the SF unit's LEGAD is to liaise with the senior SIB Officer/Investigator at the earliest opportunity to establish communications.

Co-operation

10. It is incumbent upon all SF personnel to assist the Service Police when they are undertaking one of the investigations detailed at paragraph 7 above. Where RMP intend to conduct such an investigation, the OIC of the SIB unit will, in the first instance, make contact with the CO, OC, LEGAD or ground commander of the SF unit (whomsoever is present in the relevant theatre) in order to obtain from the SF commander a brief on the circumstances of the incident that requires investigating unless the OIC of the SIB unit considers that the nature of the investigation is such that immediate police action must be taken without such prior knowledge in order to maintain the integrity of the investigation. The SF personnel involved in any incident that requires an investigation shall be permitted a period of 24 hours from the time of their complete recovery to their operating base before any section 9 Criminal Justice Act 1967 statements (section 9 statements) are taken by RMP. This does not preclude SIB from seeking a verbal account at an earlier point in order to expeditiously progress their investigation. Such verbal accounts should be recorded in a Service Police notebook and should be taken in the presence of the SF LEGAD.

11. It is acknowledged [redacted]

[4] Protocol between MOD and ACPO on the investigation of deaths in military establishments (November 2005).

continued operational effectiveness of the SF. Therefore, the following procedures are to be adopted in respect of the conduct of RMP investigations involving SF personnel:

a. Witness Statements

(i) Where a witness statement is to be taken in accordance with section 9 of the Criminal Justice Act 1967 (section 9 statement) and the nature of the incident under investigation may involve operational or sensitive information, SF personnel providing the section 9 statement are to be supported by the SF LEGAD unless, in the opinion of the RMP Senior Investigating Officer (SIO) it would cause undue delay to the investigation;

(ii) The primary role of the SF LEGAD is to ensure that during this process guidance is available on matters of national security, sensitive information and operational security regarding SF capability. The SF LEGAD may also, however, raise issues such as the desirability of pursuing an interview under caution if appropriate.

b. Interview after Caution

Where SF personnel are to be interviewed after caution, in accordance with Service Police Codes of Practice for the questioning of persons suspected of having committed an offence (and without prejudice to their statutory rights), legal advice is to be available in the normal way from either an RAF Legal officer (who typically provide such a service in operational theatres) or from a civilian legal adviser.

Anonymity

Details of the anonymity procedure in respect of UKSF personnel.

[redacted]

[5] Joint Service Publication (JSP) 440 – Defence Manual of Security

Details of the anonymity procedure in respect of UKSF personnel continued.

[redacted]

Providing Evidence

18. **Witness evidence.** The normal method of providing evidence is in the form of a section 9 written statement. The procedure for providing a statement is that a witness is asked to give his account by an investigator. The investigator will make notes and then probe the account of the witness as appropriate before committing the account to a written statement. Once complete, the witness will read over and sign the statement in either the pseudonym or true identity, as appropriate. The statement interview is not to be audio or video recorded in a manner that may compromise the witness's anonymity unless, in the opinion of the RMP, there is an overriding requirement (e.g. significant witness status) that must be explained by the RMP to the SF LEGAD. In the event of any disagreement as to such use of audio or video recording, the issue is to be referred immediately to DPM(Inv) or SO1 Investigations and Policing so that consultation may take place with HQ DSF. Nothing in the foregoing shall prevent the expeditious, concurrent investigation of a matter while such considerations as to the recording of a witness statement take place.

19. It must be recognised by both the investigators and SF personnel that the process of providing a section 9 statement in respect of any matter, but in particular relating to fatalities or

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extended incidents, may take a considerable amount of time. It is imperative that section 9 statements are provided from each witness's own recollection providing the necessary detail of an incident so as to assist the purpose of the investigation. As part of the statement taking process, an investigator is legitimately entitled to probe a witness and explore his explanations. Investigators may ask any questions they feel pertinent, are not bound to accept any answer provided and may challenge a witness's explanation while in the process of providing a section 9 statement. In the event that an investigator forms a reasonable suspicion that an interviewee has, or may have, committed an offence, the section 9 statement taking process will be suspended and the procedure started with a view to conducting an interview after caution.

20. **Interviews after caution.** Interviews after caution with suspects are conducted in accordance with the current Service Police Codes of Practice and are recorded on audio tape (but not video recorded). The suspect's legal rights will be applied in every case without exception.

Distribution of Initial Case Reports, Progress Reports and Case Papers

21. All Service Police reports and case papers dealing with SF investigations will be subject to an immediate distribution through the following channels:

a. Action: HQ DSF for attention SO1 Pers; and

b. Copy: HQ PM(A) for attention SO2(A) Investigations and Policing, Service Prosecuting Authority (SPA),[6] Service Police Crime Bureau (SPCB) and, if considered appropriate by HQ PM(A), Directorate Judicial Engagement Policy (DJEP).

22. In the event of a SF fatality the final RMP report including all case papers is to be sent to the Head of the Defence Inquest Unit (DIU).

23. HQ DSF is responsible for any further staffing arising from the receipt of the RMP final case report.

Disclosure

24. The disclosure of any information or material relating to SF and its personnel obtained through a RMP investigation, outside of the addressees detailed at paragraphs 21 and 22, is to be co-ordinated through HQ DSF. In particular, HQ DSF will advise upon and co-ordinate the disclosure of information and material relating to UKSF for the purposes of:

a. Civilian Court Proceedings (civil, criminal and HM Coroner's);

b. Service Disciplinary Proceedings; and

c. Service Inquiries.

HM Coroner

25. In the event of a SF fatality, RMP may act as the Coroner's Officer concurrently to their role as the lead Service Investigation Authority. RMP reports into the circumstances of deaths of UKSF personnel are to be distributed in accordance with paragraphs 24 and 25 to HQ DSF and to the head of the DIU. Disclosure of any information or material to HM Coroner, Coroners Service (NI) or the Procurator Fiscal, Scotland relating to a UKSF fatality will be carried out jointly by HQ DSF and the DIU.

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[6] In cases where persons are referred to either the CO or to the SPA.

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26. The DIU will store and handle the report in accordance with the Security Classification and Handling marking. The RMP report is to be accompanied by all case papers including the associated matrix.

Briefing and Training Support

27. In order to promote mutual understanding, co-operation and trust between SF personnel and RMP the following support is available:

a. briefing to HQ DSF – DPM (Inv) or SO1 Investigations & Policing HQ PM(A) are available to provide briefings to HQ DSF staff as required;

b. briefing to COs of [redacted] – CO SIB Regt RMP is available to provide briefings to DSF units as required;

c. briefings to Op Trg Packages – CO SIB Regt RMP will provide a suitably qualified and operationally experienced SIB Officer or Warrant Officer to brief units, groups or individuals prior to deployment; and

d. briefing to Level 3 Investigation Course (L3IC) – SO1 Legal, HQ DSF is available to provide briefings to the L3IC students.

Complaints

28. In the event that a party to this protocol has a complaint about the conduct or co-operation of either SF or RMP SIB personnel, it is to be forwarded through the respective CO to both HQ DSF and HQ PM(A).

29. From the date of its signature this protocol shall apply to all current and future investigations and other matters referred to in paragraph 7.

Review

30. The protocol shall be reviewed annually or at any such time as is deemed appropriate by the signatories.

[redacted]

Chief of Staff Special Forces

Date: 28 Aug 13

[redacted]

Deputy Provost Marshal (Investigations)

Date: 16 Aug 13

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THE INVESTIGATION OF INCIDENTS INVOLVING UNITED KINDOM SPECIAL FORCES PERSONNEL BY THE ROYAL MILITARY POLICE

PROTOCOL

Parties

1. This protocol records an Agreement between Director Special Forces (DSF) and Provost Marshal (Army).

2. Commanding Officers (COs) of Special Forces (SF) units, groups or personnel and COs of Royal Military Police Regiments (including the Special Investigation Branch), or investigators deploying on operations or to overseas locations, are to ensure that both the SF ground commander and the RMP officer in charge (OIC) have been briefed on, and provided with a copy of, this protocol.

Definitions

3. For the purpose of this protocol, SF are defined as:

This lists UKSF and supporting personnel covered by this protocol.

[redacted]

4. For the purpose of the protocol Royal Military Police Special Investigation Branch (RMP SIB) personnel includes members of the Royal Navy Police SIB and Royal Air Force Police Special Investigations and Intelligence Branch (SIIB) personnel when on the strength of an RMP unit.

This gives further details of the UKSF personnel who are within paragraph 3.

[redacted]

[4] A similar approach was adopted by the Court Martial Appeal Court in a case concerning a non-operational incident involving both trained and support personnel. Details of posited risks associated with naming SF personnel.

[redacted]

Aims

5. The aim of this protocol is to ensure that SF identities and operational security are protected and to provide the framework within which RMP (in particular the SIB) will conduct investigations that result from SF activity in operational theatres (excluding the United Kingdom). It also provides the framework for dealing with SF personnel involved in non-operational incidents or crime, wherever it may have occurred, where matters are to be dealt with under the Service Justice System (SJS).

6. SF operational activity within the United Kingdom will ordinarily be dealt with in the first instance by the civil authorities in consultation with HQ DSF.

Purpose of RMP (in particular SIB) Investigations

7. The purpose of RMP investigations are broadly:

a. to establish whether, and if so by whom, any criminal or disciplinary offences have been committed contrary to the Armed Forces Act 2006;

b. to investigate the circumstances of all deaths, operational and non-operational, outside the United Kingdom for the purpose of facilitating the repatriation of the deceased and the provision of relevant evidence to HM Coroner, the Coroners Service (Northern Ireland) or the Procurator Fiscal, Scotland. Deaths that occur within the United Kingdom will be investigated in accordance with the agreed protocol[5] between the Secretary of State for Defence and the association of Chief Police Officers; or

c. exceptionally, at the request of the chain of command, to investigate any non-criminal/disciplinary incident that results in serious bodily harm or injury in support of a Service Inquiry or Service Administrative Action (AGAI 67).

Liaison

8. In all matters relating to investigations the Assistant Head (Technical) (AH(T)) HQ PM(A) , or the SO1 Investigations and Policing, HQ PM(A) are available to provide advice to HQ DSF as required.

9. In operational theatres the senior SF commander and/or the SF unit's Disclosure Officer is to liaise with the senior SIB Officer/Investigator at the earliest opportunity to establish communications.

Co-operation

10. It is incumbent upon all SF personnel to assist the Service Police when they are undertaking one of the investigations detailed at paragraph 7 above. Where RMP intend to conduct such an investigation, the OIC of the RMP unit will, in the first instance, make contact with the CO, OC, Disclosure Officer or ground commander of the SF unit (whomsoever is present in the relevant theatre) in order to obtain from the SF commander a brief on the circumstances of the incident that requires investigating unless the OIC of the RMP unit considers that the nature of the investigation is such that immediate police action must be taken without such prior knowledge in order to maintain the integrity of the investigation[6]. The SF personnel involved in any incident that requires an investigation shall

[5] Protocol between MOD and ACPO on the investigation of deaths in military establishments (November 2005).
[6] This decision will not be taken without good reason and must be evidenced in the Service Police file.

be permitted a period of 24 hours from the time of their complete recovery to their operating base before any section 9 Criminal Justice Act 1967 statements (section 9 statements) are taken by RMP unless the witness agrees to be interviewed sooner. This does not preclude SIB from seeking a verbal account at an earlier point in order to expeditiously progress their investigation. Such verbal accounts should be recorded in a Service Police notebook and signed and dated by the witness.. The RMP should make every effort to secure the presence of the SF Disclosure Officer during this verbal account.

Investigations Relating to SF Operations

11. It is acknowledged that [redacted] continued operational effectiveness of the SF. Wherever possible maximum notice of any interview should be provided to the SF Disclosure Officer to allow appropriate arrangements to be made. Therefore, the following procedures are to be adopted in respect of the conduct of RMP investigations involving SF personnel:

Details of posited risks associated with naming SF personnel.

a. Witness Statements

(i) Where a witness statement is to be taken in accordance with section 9 of the Criminal Justice Act 1967 (section 9 statement) and the nature of the incident under investigation involves operational or sensitive information, the SF Disclosure Officer should be present during the interview unless, in the opinion of the RMP Senior Investigating Officer (SIO) it would cause undue delay to the investigation, would significantly impact on the effectiveness of the investigation[7] or the witnesses does not consent to the presence of a Disclosure Officer. The latter should be recorded in the body of the evidence.

(ii) The SF Disclosure Officer is present to ensure that during this process guidance is available to both the witness and investigator on matters of national security, sensitive information and operational security regarding SF capability. No information relating to the evidence given or other investigative matters disclosed during the process is to be disclosed by the SF Disclosure Officer to the military chain of command without the consent of the RMP investigator. For the avoidance of doubt the SF Disclosure Officer has a duty to inform his military chain of command and/or the Service Police, as appropriate, if he has concerns about the conduct of the investigation[8]. Notes made by the Disclosure Officer are not subject to Legal Privilege and although they will not be retained by the Service Police, may be subject to 'Third Party Disclosure' under the Criminal Procedure and Investigations Act 1997[9].

b. Interview after Caution

Where SF personnel are to be interviewed after caution, in accordance with Service Police Codes of Practice for the questioning of persons suspected of having committed an offence. All service personnel have a statutory right to legal advice in interview after caution (advice which is typically available from

[7] This is to cater for those who may be reticent to provide evidence if a member of the Chain of Command is present. In all cases this must be agreed in advance by DPM Inv or SO1 Inv at HQ PM(A).

[8] Being a failure to apply the Service Police Codes of Practise or the terms of this Protocol in order for the issue to be raised with SO1 Inv by HQ DSF

[9] On the basis the Disclosure Officer is not providing legal advice to either the witness or the Service Police.

either an RAF Legal officer in operational theatres or from a civilian legal adviser in all other circumstances). In the event there is a conflict between the terms of this protocol and a person's statutory rights, the statutory rights will prevail. Where the facility exists the SF Disclosure Officer shall be permitted to remotely view the interview in order to advise on the appropriate classification at the completion of the interview, unless in the opinion of the RMP Senior Investigating Officer (SIO) it would cause undue delay to the investigation, would significantly impact on the effectiveness of the investigation or the suspect does not consent to the presence of a Disclosure Officer.

Anonymity

Details of the anonymity procedure in respect of UKSF personnel.

[redacted]

[10] Joint Service Publication (JSP) 440 – Defence Manual of Security

Details of the anonymity procedure in respect of UKSF personnel continued.

[redacted]

Providing Evidence

18. **Witness evidence.** In operational cases, the normal method of providing witness evidence is in the form of a section 9 written statement. The procedure for providing a statement is that a witness is asked to give his account by an investigator. The investigator will make notes and then probe the account of the witness as appropriate before committing the account to a written statement. Once complete, the witness will read over and sign the statement in either the pseudonym or true identity, as appropriate. A witness may be interviewed utilising audio and/or video if they are to be considered as 'vulnerable or intimidated or are considered a 'Significant Witness'[11] in accordance with 'Achieving Best Evidence' principles. In either case the consent of the witness is required. Where the evidence is audio or video recorded in a manner that may compromise the witness's anonymity, the RMP will hold the interview product at a certain classification.

19. The process of providing a section 9 statement in respect of any matter, but in particular relating to fatalities or extended incidents, may take a considerable amount of time. Witness evidence is provided from each witness's own recollection providing the necessary detail of an incident so as to assist the purpose of the investigation. As part of the statement taking process, an investigator is legitimately entitled to probe a witness and

[11] Under the Sect 16, 17 and 18 of Youth Justice and Criminal Evidence Act 1999.

explore his explanations. Investigators may ask any questions they feel pertinent, are not bound to accept any answer provided and may challenge a witness's explanation. The SF Disclosure Officer will advise on the appropriate classific-ation of the material contained within the evidence and the RMP will undertake to comply with JSP 440 when handling this information. Disclosures will be managed in accordance with paras 23 – 25 below.

20. **Interviews after caution.** Interviews after caution with suspects are conducted in accordance with Code F of the Service Police Codes of Practice and may be recorded on video and/or audio. The suspect's legal rights will be applied in every case without exception. Where it is agreed that a pseudonym should be used only audio recording will be made. Where a suspect declines to be interviewed on video the RMP will not video the interview.

Distribution of Initial Case Reports, Progress Reports and Case Papers

21. Where a person to whom this protocol applies is referred for an offence all Service Police reports and case papers dealing with SF investigations will be distributed in accordance with the provisions of the Armed Forces Act 2006:

a. Where still serving with SF and where the matter must be referred to the CO.

(1) Action: CO; and

(2) Copy: HQ DSF (using the extant cover title) for attention SO1 J1/J9 Legal and HQ PM(A) for attention SO1 Inv, Service Police Crime Bureau (SPCB).

b. Where still serving but no longer with SF and where the matter must be referred to the CO.

(1) Action: CO of current Unit.; and

(2) Copy: HQ DSF (using the extant cover title) for attention of SO1 J1/J9 Legal and HQ PM (A) for attention SO1 Inv, Police Crime Bureau (SPCB).

c. Where the matter must be referred to the DSP.

(1) Action: DSP; and

(2) Copy: HQ PM (A) for attention SO1 Inv, HQ DSF for attention SO1 J1/J9 Legal, Service Police Crime Bureau (SPCB).

22. In the event of a SF fatality the final RMP report including all case papers is also to be sent to the Head of the Department of Judicial Engagement Personnel (DJEP).

Disclosure

23. The disclosure of any information or material relating to SF operations and its personnel obtained through a RMP investigation, outside of the addressees detailed at paragraphs 21 and 22, is to be co-ordinated through HQ DSF. In particular, HQ DSF will advise upon and co-ordinate the disclosure of information and material relating to UKSF for the purposes of:

a. Civilian Court Proceedings (civil, criminal and HM Coroner's);

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b. Service Disciplinary Proceedings; and,

c. Service Inquiries.

HM Coroner

24. In the event of a SF fatality, RMP may act as the Coroner's Officer concurrently to their role as the lead Service Investigation Authority. RMP reports into the circumstances of deaths of UKSF personnel are to be distributed in accordance with paragraphs 21 and 22 to HQ DSF and to the head of the DIU. Disclosure of any information or material to HM Coroner, Coroners Service (NI) or the Procurator Fiscal, Scotland relating to a UKSF fatality will be carried out jointly by HQ DSF and the DIU.

25. The DIU will store and handle the report in accordance with the Security Classification and Handling marking. The RMP report is to be accompanied by all case papers including the associated matrix.

Briefing and Training Support

26. In order to promote mutual understanding, co-operation and trust between SF personnel and RMP the following support is available:

a. briefing to HQ DSF – AH(T) or SO1 Investigations & Policing HQ PM(A) are available to provide briefings to HQ DSF staff as required;

b. briefing to COs of [redacted] – CO SIB Regt RMP is available to provide briefings to DSF units as required;

c. briefings to Op Trg Packages – CO SIB Regt RMP will provide a suitably qualified and operationally experienced SIB Officer or Warrant Officer to brief units, groups or individuals prior to deployment; and

d. briefing to Level 3 Investigation Course (L3IC) – SO1 Legal, HQ DSF, SO1 Legal HQ PM(A) and 1MP Bde are available to provide briefings to the L3IC students.

Complaints

27. In the event that a party to this protocol has a complaint about the conduct or co-operation of either SF or RMP SIB personnel, it is to be forwarded through the respective CO to both HQ DSF and HQ PM(A).

28. From the date of its signature this protocol shall apply to all current and future investigations and other matters referred to in paragraph 7.

Review

29 The protocol shall be reviewed annually or at any such time as is deemed appropriate by the signatories.

Signature [redacted]

[redacted] Special Forces

Date: 4 AUG 16

Signature [redacted]

Deputy Provost Marshal

Date: 18 Aug 16

EXAMPLE MATRIX

MATRIX 1 OF [Total number of matrix]

Investigation Reference Number (IRN) [The case reference number provided by OC SIB]

Pseudonym	Service Number	Rank	Surname	First Names	Unit
Soldier A; or					
N1; or					
UKSF [ref]					

EXAMPLE MATRIX

