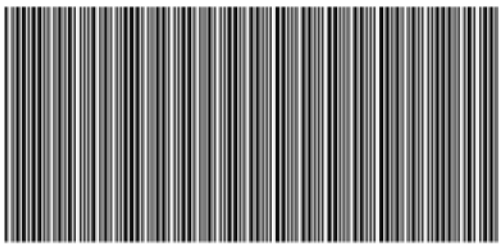
Prepared for OPEN publication in relation to the Independent Inquiry Relating to Afghanistan



RMP-221-0008842-A

Name Given **(Army PM-IIA-Paralegal 2)**

From: David.Pinder Contact Details
Sent: 27 August 2014 15:58
To: Mark Y. Crowley; Robert Ashton; Clare Carr; Debbie Conlon Houldershaw; Major Crime -Review Unit
Subject: *Confidential: Op Northmoor
Attachments: Op Northmoor CONFIDENTIAL.pdf

CONFIDENTIAL

All

Please see the attached PDF which relates to a **confidential** issue arising out of Operation Northmoor.
Martin and DCS Jackson are discussing the implications with RMP Command later today. Update in due course.

Not for dissemination outside the Review Team

Mr. David Pinder
Review Investigator
MCRU - Serious Crime Division
Greater Manchester Police
Contact Details

GREATER MANCHESTER POLICE

NOT PROTECTIVELY MARKED

From: Martin Bottomley
To: David Pinder
Subject: FW: 20140820_Recusal_Op_NORTHMOOR_Neal_and_Waterworth_DPMInv
Date: 27/08/2014 15:28

Force Review Officer
Major and Cold Case Crime
Nexus House
Alexandria Drive
Ashton under Lyne
Ol7 0QP

Contact Details

From: Army PM-Inv-SO1 (McAllister, John Lt Col) Contact details
Sent: 27 August 2014 14:03
To: Russ Jackson; Martin Bottomley
Cc: paul.williamson Contact Details
Subject: 20140820_Recusal_Op_NORTHMOOR_Neal_and_Waterworth_DPMInv

Russ/Martin,
In advance of the VTC this afternoon please see the issue (bottom e-mail) and the note sent to the head of the Service Prosecuting Authority.
This should proivide some context for the situation.
I am GOLD, SILVER is Gary Ward and Bronze are the SIOs of the three teams. Clare would be in Command of the unit which owns manpower (Silver, Bronze and all investigators) and would be responsible for all their staff reports (career management).
John

Lieutenant Colonel John McAllister | SO1 Investigations
Headquarters Provost Marshal (Army), 2nd Floor Zone 5, Ramillies Building, Marlborough Lines, Monxton Road, Andover, Hampshire SP11 8HJ
Contact details

From: Army PM-PM (Warren, Bill Brig)
Sent: 27 August 2014 13:49
To: SPA-HQ-DSP (Cayley, Andrew SCS)
Cc: SPA-HQ-DDSP (Lythgoe, Stuart Brig)
Subject: 20140827-Op_NORTHMOOR-PM(A)-OS

Andrew

I will try and ring you before you take leave – I know you are in the States – but, in case we don't get the chance to chat, you will want to know that:

- I have spoken to DDSP in your absence about Op NORTHMOOR, having been advised by my A/DPM (Inv) that there is a reasonable perception of a lack of impartiality to the investigation with Lt Col Clare Waterworth taking command of the SIB Regiment on 1 Sep 14; in that, her husband – Col Dave Neal – is my DPM (Ops) who provides much of the subject matter expert (SME) advice on operational detention matters to the Department and conducts assurance activity for me. DPM (Inv)'s concern is that Neal's

SME activity over the period relevant to the allegations that have been made to date are likely to be pertinent to the investigation, and any subsequent prosecutions that may follow, and it might be that having an officer (his wife) exercising overall command of investigative activity could lead to the perception of a lack of impartiality.

- I have taken legal advice from my own legal advisor and from DGALS and, in considering that and my own view, I would like to discuss with you the situation and the consequences of having Clare Waterworth take command of the SIB Regiment and the conduct of all Army serious and specialist investigations, and Op NORTHMOOR in particular. The significant factors that I have considered are:
    - It is for others to judge the Public and Service interests, but I take the view that investigative interest is best served by RMP continuing to investigate the allegations grouped into Op NORTHMOOR; and you may recall being briefed on my decision to press ahead with the investigation for reasons of promptness and effectiveness, after the early attempts to investigate some of the allegations by other Service Police Forces and the chain of command. Plainly, the easy option for me would be to ask the MOD to revisit that issue and approach one of the other Provost Marshals and ask them to investigate, but I take (some would say the parochial view) that Service Justice is better provided for in this instance with RMP continuing to investigate, despite any associated legal risk. In addition, and if RMP were to retain the investigation,
    - Clare Waterworth is one of my most experienced Army and Military Police officers, with unit (she commanded an investigations company) and staff (she was an investigations staff officer in Headquarters PM(A)) investigations experience and with experience of Afghanistan in a police related role; and, if I were to remove her from command rather than limit my mitigations, to formally recusing her husband from any interest in the conduct of the investigation, and replace her with another officer, I suspect that command of the SIB Regiment and the conduct of Op NORTHMOOR would be less effective than it would be with her in command at this time.
    - If you were to agree to the two points above, I would imagine employing such mitigations as formally recusing Neal from any knowledge or conduct of the investigation and directing Waterworth to immediately bring to my attention any potential investigative conflicts as they revealed themselves. Otherwise, I could consider setting Op NORTHMOOR apart from other investigative activity conducted by the SIB Regiment, with DPM (Inv) exercising executive control and reaching directly to the SIOs, with the SIB Regiment and its CO limiting its responsibility to generating manpower and resources.

  In sum, I believe the investigative interest is best served by RMP investigating, Clare Waterworth in command of the SIB Regiment and employing mitigations such as formal recusal to counter any perception of a lack of impartiality.

So what? I would like to discuss with you whether or not you share my view, or whether you believe it would be better to hand the investigation to another Service Police Force or, subordinate to that, remove Clare Waterworth from

command to address any perception of a lack of impartiality, given that her husband is my principal deputy and SME on Operational Detention matters and has acted as such over the period subject to investigation. It would be a significant step to remove her from command and replace her with an officer who is, perhaps, not as well suited to the appointment.

Otherwise, I plan on taking advice from the NCA and Greater Manchester Police, who are mentoring the investigation and concurrently reviewing it.

I plan on calling you at 0915 hrs, your (Eastern Seaboard), if that is convenient.

Bill

Brigadier Bill Warren | Provost Marshal (Army)

HQ PM(A), Second Floor, Zone 5, IDL 431 Ramillies Building, Marlborough Lines, Andover, Hampshire SP11 8HJ

Contact details

From: Army PM-Inv-SO1 (McAllister, John Lt Col)
Sent: 20 August 2014 08:29
To: Army PM-PM (Warren, Bill Brig)
Subject: 20140820_Recusal_Op_NORTHMOOR_Neal_and_Waterworth_DPMInv

References:

A. D/PM(A)/414/01 dated 7 Feb 11.
B. Locabail (UK) Ltd v Bayfield Properties [2000] IRLR 96),
C. CPIA 1996 and associated Codes of Practice.

Issue

1. Proposed Courses of Action (CoA) to deal with the potential for a conflict of interest in Op NORTHMOOR following the assumption of command of SIB Regt by Lt Col C Waterworth, AGC (RMP) and the extension in assignment of Col D Neal, COS, HQ PM(A).

Recommendations

2. It is recommended that PM(A):

a. Seeks urgent legal advice on the issue.

b. Considers seeking policy advice from DJEP on the presentational aspects of the issue; and

c. Provides direction to the undersigned on his preferred CoA.

3. Timing: **Urgent**. Lt Col Waterworth assumes command on 1 Sep 14 and Col Neal remains as COS until Sep 15.

Background

4. Op NORTHMOOR is the main effort for SIB Regt and will subsume considerable resource for at least the next two years. The focus of the investigation is the treatment of Detainees within UK holding facilities in Afghanistan during Op HERRICK. As CO SIB Regt, Lt Col Waterworth will have considerable access to sensitive investigation information and a deciding role in the prioritisation of assets to support e investigation, as well as being able to influence lines of enquiry. In addition she will have a MS reporting role over almost all Op NORTHMOOR staff. Whilst Lt Col Waterworth has not been previously connected with the handling of detainees, her husband, Col D Neal has been directly responsible for the inspection of holding facilities, the development and implementation of detainee policy (including dealing with complaints) and has professional responsibility for a considerable proportion of the staff who have been employed in these roles and may therefore be subject to investigation.

5. Reference A directs that where there is potential for a conflict of interest that the Chain of Command must take positive action to record the reason for the conflict, the rationale on how the issue should be dealt with and the issue decision. This arose from the High Court direction when RMP commenced investigations into allegations in Iraq, noting that RMP were at risk of actual or the perception of bias, given their close involvement in the handling of detainees. The court directed that RMP should create a 'recusal policy' to cover this situation. The concept of recusal has no particular basis in policing but is required in Judicial proceedings and Tribunals. The civilian police deal with it as 'Conflict of Interest' but the processes are comparable.

Conflict of Interest

6. Reference A defines a conflict of interest as:

a. A service policeman is involved in a matter as a witness or suspect which is, or could be, under investigation; or,
b. Where a service policeman has knowledge of a matter which is, or could be, under investigation where that knowledge has been gained outside their professional duties: or,
c. Where a service policeman has knowledge of a matter which is, or could be, under investigation where that knowledge has been gained from a previous job or role.

7. In Reference B, the Court of Appeal considered the three types of bias as;

a. Actual bias, where the judicial decision maker allows his decision to be influenced by partiality or prejudice
b. Bias giving rise to automatic disqualification, where the judicial decision maker is shown to have an interest in the outcome of the case, or where the outcome of the case could, realistically affect their interest (and is hence a 'Judge in his own cause').
c. Real danger or possibility of bias, arising either from the relationship between the judicial decision maker and a party or witness, or from the conduct of the hearing.

8. Whilst Reference C deals with the appointment of disclosure officers in investigations, the considerations are the same regardless of the role i.e. the Chain of Command must '*ensure that an individual is not appointed as disclosure officer, or allowed to continue in that role, if that is likely to result in a conflict of interest, for instance, if the disclosure officer is the victim of the alleged crime which is the subject*

of the investigation. The advice of a more senior officer must always be sought if there is doubt as to whether a conflict of interest precludes an individual acting as disclosure officer. If thereafter the doubt remains, the advice of the prosecutor should be sought'.

9. It is clear that the test is objective; would a reasonable independent observer, in full possession of the facts, consider that there was a real possibility of bias, arising either from the relationship between the individual and a suspect or witness. It is not actual bias that must be countered but the perception of bias.

Courses of Action

10. The following have been considered:

a. **Do Nothing**. This would not meet the requirements of existing policy and would leave RMP open to challenges relating to actual or perceptual bias.

b. **Accept Risk**. This would require seeking written assurances from both parties that no conversations will take place outside of the professional arena relating to HERRICK detention issues or Op NORTHMOOR. These documents would be placed on the HOMES account and disclosed as part of the CPIA process as they would meet the disclosure test.

c. **Self Recusal**. If either Lt Col Waterworth or Col Neal believe that there is a potential for the perception of bias, they could use self recusal to remove themselves from the investigation. This would have no impact on Col Neal other than when acting as PM(A) during periods of absence. During these periods he would be excluded for any involvement in Op NORTHMOOR activities and any decisions requiring PMA) support would have to be deferred until PM(A) return to duty or formally delegated to DPM Inv. The significant impact would be on Lt Col Waterworth and SIB Regt. In effect a considerable proportion of her Command would be delegated to her 2IC and she would have no input or knowledge of this area of Regimental activity. In relation to allocation of resources, she would potentially have to need to check any decision to vary resource within the Regiment with DPM Inv to ensure that any effect on Op NORTHMOOR is seen to be impartial. MS reporting of Op NORTHMOOR staff would need to be deferred to her 2IC.

d. **Change of CO SIB Appointment**. If the CoA suggested above are not deemed acceptable, the final CoA would be a change of assignment for Lt Col Waterworth to another E1 Command appointment to limit career impact. This would reduce the potential for conflict or perceptual bias but would still carry risk if the new appointment had direct influence on resources allocated to Op NORTHMOOR. The impact of this could only be considered if this CoA is selected and when the new appointment is known. It would still require the self recusal of Col Neal for those periods when he deputises in PM(A)'s absence.

11. Each of these proposals would require CLS legal advice and potentially policy support from DJEP. Both the NCA PiP 4 and GMP MERT would need to be made aware of the relationship and would provide their views to the SIO and Strategic Commander on the implications of this decision. As Op NORTHMOOR involves Sch2 AFA 06 matters, the view of the DSP would need to be sought.

Presentational Issues

12. The decision made in this matter; together with the opinion of the PiP 4 and MERT will be revealed to the prosecutor under CPIA and is likely to be disclosed to the defence in any subsequent disciplinary proceedings. The considerations and decisions will also be disclosed to the complainant's solicitors in the current civil proceedings. This may make the information available in the public domain. RMP independence and professionalism may again be raised in a public forum.

Summary

13. Whilst there are no allegations against Col Neal, due to his strategic role in this area he will at least be a significant witness in the case. The appointment of his wife as CO of the SIB Regt who are delivering Op NORTHMOOR leads to the potential conflict of interest and a potential perception of investigation. This must be considered and the rational for any decision recorded within the case papers. That decision will be open to scrutiny.

John

Lieutenant Colonel John McAllister | SO1 Investigations
Headquarters Provost Marshal (Army), 2nd Floor Zone 5, Ramillies Building, Marlborough Lines, Monxton Road, Andover, Hampshire SP11 8HJ
Contact details [redacted]

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) This email has been certified virus free.
Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

To contact the police in an emergency call 999 or to contact Greater Manchester Police for a less urgent matter call 101.
For the latest news and information about your Neighbourhood Policing Team visit www.gmp.police.uk. You can also follow us on Twitter: www.twitter.com/gmpolice or find us on Facebook: www.facebook.com/GtrManchesterPolice , Flickr: www.flickr.com/gmpolice1 or YouTube: www.youtube.com/gmpolice

You can find your local policing team on social media at www.gmp.police.uk/socialmedia.
Download our smartphone app from the App Store or Google Play www.gmp.police.uk/apps

This e mail carries a disclaimer, a copy of which may be read at:

http://www.gmp.police.uk/emaildisclaimer

From: Martin Bottomley
To: David Pinder
Subject: FW: 20140827-Op_NORTHMOOR-PM(A)-OS - addendum
Date: 27/08/2014 15:28

Force Review Officer
Major and Cold Case Crime
Nexus House
Alexandria Drive
Ashton under Lyne
Ol7 0QP

[redacted]

From: Army PM-Inv-SO1 (McAllister, John Lt Col) [redacted]
Sent: 27 August 2014 15:09
To: Martin Bottomley; Russ Jackson
Subject: 20140827-Op_NORTHMOOR-PM(A)-OS - addendum

The advice from DSP.

PM(A) would still like to talk this through.

John

Lieutenant Colonel John McAllister | SO1 Investigations
Headquarters Provost Marshal (Army), 2nd Floor Zone 5, Ramillies Building, Marlborough Lines, Monxton Road, Andover, Hampshire SP11 8HJ
[redacted]

From: Army PM-PM (Warren, Bill Brig)
Sent: 27 August 2014 14:47
To: Army PM-Inv-SO1 (McAllister, John Lt Col)
Cc: Army PM-Legal (Frend, David)
Subject: 20140827-Op_NORTHMOOR-PM(A)-OS - addendum

John

Please accept this E-Mail trail as an acknowledgment of your advice to me - **From:** Army PM-Inv-SO1 (McAllister, John Lt Col) **Sent:** 20 August 2014 08:29 **To:** Army PM-PM (Warren, Bill Brig) **Subject:** 20140820_Recusal_Op_NORTHMOOR_Neal_and_Waterworth_DPMInv – and have it held on the OP NORTHMOOR Files as a matter of record of my rationale applied to the issue you raised.

PM(A)

From: Army PM-PM (Warren, Bill Brig)
Sent: 27 August 2014 14:42
To: SPA-HQ-DSP (Cayley, Andrew SCS)
Cc: SPA-HQ-DDSP (Lythgoe, Stuart Brig)
Subject: 20140827-Op_NORTHMOOR-PM(A)-OS - addendum

Andrew

Thank you for taking my telephone call, regarding the issue raised in the E-Mail below. As we discussed, it would be an unfair criticism to levy against two married individuals that they would not act professionally and properly when faced with a conflict of interest or the perception of such that arose through the course of their duties, without evidence or an allegation to the contrary; as it would be equally unfair to be concerned about close friends in RMP, where policy generated by one party might be potentially relevant to an investigation being overseen by the other. And you alluded to a matter that had been raised in the Court of Appeal, following the occasion of a married couple that had one prosecuting and one defending, but that their relationship wasn't seen as undermining the case that had been considered.

We agreed that there is a danger in being overly cautious, and not trusting in peoples integrity and professionalism, and that as I do trust both Neal and Waterworth to do what is right that both officers should continue in their duties, but that I would write to Waterworth – as a matter of record – directing her to immediately bring to my personal attention any conflict or potential conflict of interest that she identified so that I could take any necessary and proportionate action; and that I would copy this correspondence to you.

Bill

Brigadier Bill Warren | Provost Marshal (Army)

HQ PM(A), Second Floor, Zone 5, IDL 431 Ramillies Building, Marlborough Lines, Andover, Hampshire SP11 8HJ

Contact details [redacted]

From: Army PM-PM (Warren, Bill Brig)
Sent: 27 August 2014 13:49
To: SPA-HQ-DSP (Cayley, Andrew SCS)
Cc: SPA-HQ-DDSP (Lythgoe, Stuart Brig)
Subject: 20140827-Op_NORTHMOOR-PM(A)-OS

Andrew

I will try and ring you before you take leave – I know you are in the States – but, in case we don't get the chance to chat, you will want to know that:

- I have spoken to DDSP in your absence about Op NORTHMOOR, having been advised by my A/DPM (Inv) that there is a reasonable perception of a lack of impartiality to the investigation with Lt Col Clare Waterworth taking command of the SIB Regiment on 1 Sep 14; in that, her husband – Col Dave Neal – is my DPM (Ops) who provides much of the subject matter expert (SME) advice on operational detention matters to the Department and conducts assurance activity for me. DPM (Inv)'s concern is that Neal's SME activity over the period relevant to the allegations that have been made to date are likely to be pertinent to the investigation, and any subsequent prosecutions that may follow, and it might be that having an officer (his wife) exercising overall command of investigative activity could

lead to the perception of a lack of impartiality.

- I have taken legal advice from my own legal advisor and from DGALS and, in considering that and my own view, I would like to discuss with you the situation and the consequences of having Clare Waterworth take command of the SIB Regiment and the conduct of all Army serious and specialist investigations, and Op NORTHMOOR in particular. The significant factors that I have considered are:
    - It is for others to judge the Public and Service interests, but I take the view that investigative interest is best served by RMP continuing to investigate the allegations grouped into Op NORTHMOOR; and you may recall being briefed on my decision to press ahead with the investigation for reasons of promptness and effectiveness, after the early attempts to investigate some of the allegations by other Service Police Forces and the chain of command. Plainly, the easy option for me would be to ask the MOD to revisit that issue and approach one of the other Provost Marshals and ask them to investigate, but I take (some would say the parochial view) that Service Justice is better provided for in this instance with RMP continuing to investigate, despite any associated legal risk. In addition, and if RMP were to retain the investigation,
    - Clare Waterworth is one of my most experienced Army and Military Police officers, with unit (she commanded an investigations company) and staff (she was an investigations staff officer in Headquarters PM(A)) investigations experience and with experience of Afghanistan in a police related role; and, if I were to remove her from command rather than limit my mitigations, to formally recusing her husband from any interest in the conduct of the investigation, and replace her with another officer, I suspect that command of the SIB Regiment and the conduct of Op NORTHMOOR would be less effective than it would be with her in command at this time.
    - If you were to agree to the two points above, I would imagine employing such mitigations as formally recusing Neal from any knowledge or conduct of the investigation and directing Waterworth to immediately bring to my attention any potential investigative conflicts as they revealed themselves. Otherwise, I could consider setting Op NORTHMOOR apart from other investigative activity conducted by the SIB Regiment, with DPM (Inv) exercising executive control and reaching directly to the SIOs, with the SIB Regiment and its CO limiting its responsibility to generating manpower and resources.

  In sum, I believe the investigative interest is best served by RMP investigating, Clare Waterworth in command of the SIB Regiment and employing mitigations such as formal recusal to counter any perception of a lack of impartiality.

So what? I would like to discuss with you whether or not you share my view, or whether you believe it would be better to hand the investigation to another Service Police Force or, subordinate to that, remove Clare Waterworth from command to address any perception of a lack of impartiality, given that her husband is my principal deputy and SME on Operational Detention matters and has acted as such over the period subject to investigation. It would be a significant step to remove her from command and replace her with an officer who

is, perhaps, not as well suited to the appointment.

Otherwise, I plan on taking advice from the NCA and Greater Manchester Police, who are mentoring the investigation and concurrently reviewing it.

I plan on calling you at 0915 hrs, your (Eastern Seaboard), if that is convenient.

Bill

Brigadier Bill Warren | Provost Marshal (Army)

HQ PM(A), Second Floor, Zone 5, IDL 431 Ramillies Building, Marlborough Lines, Andover, Hampshire SP11 8HJ

Contact details

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) This email has been certified virus free.
Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

To contact the police in an emergency call 999 or to contact Greater Manchester Police for a less urgent matter call 101.
For the latest news and information about your Neighbourhood Policing Team visit www.gmp.police.uk. You can also follow us on Twitter: www.twitter.com/gmpolice or find us on Facebook: www.facebook.com/GtrManchesterPolice , Flickr: www.flickr.com/gmpolice1 or YouTube: www.youtube.com/gmpolice

You can find your local policing team on social media at www.gmp.police.uk/socialmedia.
Download our smartphone app from the App Store or Google Play www.gmp.police.uk/apps

This e mail carries a disclaimer, a copy of which may be read at:

http://www.gmp.police.uk/emaildisclaimer