

**RMP-221-0006502-A**



# NCA

National Crime Agency

## **Organised Crime Command**

### **PIP 4 Report**

Operation Northmoor  
Royal Military Police – Special  
Investigation Branch

**Detective Superintendent Paul WILLIAMSON**

Date 18/02/2015

Version number 6

## Disclosure Statement

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## Administration

Investigation	Operation Northmoor – Investigation into allegations of unlawful killing and ill treatment by UK Military Forces in Afghanistan
Force	Royal Military Police
Gold	Lt Colonel John McCALLISTER
OIOC	Major Gary WARD, Special Investigation Branch Regiment, Royal Military Police.
SIO	Team 1 Captain J.L. WRIGHT; Team 2 WO1 Debbie HAYES; Team 3 Captain Steve ROBBINS; Team 4 Captain Moira Penman - 1 Platoon, 4 Investigation Company, Special Investigation Branch Regiment, Royal Military Police.
NCA Reference No.	[REF]
PIP 4	Detective Superintendent Paul WILLIAMSON
Crime Investigation Support Officer	DS Bob COOPER
Behavioural Investigative Adviser	N/A
Geographic Profiler	N/A
Peer Review	Detective Superintendent George BARR (PIP4 accredited)

## Terms of Reference

Recent Command and Leadership changes have necessitated a review of the NCA PIP 4 terms of reference. The NCA PIP 4 has sought advice from National PIP 4 Coordinator [NCA E6] and the following terms of reference have now been devised and approved by NCA Organised Crime Command Deputy Director, Gold and OIOC:

1. Where appropriate provide advice and support to the Gold Commander, particularly in relation to development of a professional and proportionate investigative response to the wider policing operation

2. To provide investigative support and advice to the OIOC
3. Support the OIOC with strategic organisational issues such as resource levels, financial management, identification and engagement of strategic partners, community impact issues and communications strategies. Final decisions in all areas remain with the OIOC.
4. To provide investigative support and advice to the SIO(s)
5. To assist the SIO(s) in decision making to allow the SIO to make rational and robust decisions through appropriate discussion.

In performing the PIP 4 role nothing will be done in isolation of Gold, the OIOC or SIOs.

## Introduction

There have been a number of recent significant international and national events that have an impact on the operating environment for Operation Northmoor including:

- December 2014 Senate Intelligence Committee report on CIA Torture and interrogation released which was met by condemnation from Afghan government;
- January 7-9 2015 attack on Paris office of satirical French newspaper Charlie Hebdo and 3 days of terror involving Islamist Terrorists which left 20 people dead;
- February 14 2015 two separate shooting attacks in Copenhagen by Islamist militant;
- The security situation in Afghanistan is still hostile. BBC reports indicate 2014 was the deadliest year since the UN began keeping records in 2009. Foreign troops formally ended their combat role in December 2014. Intensified ground fighting with the Taliban is also reflected in the latest figures published by the International Committee of the Red Cross (ICRC). The UN figures also show the highest recorded losses for the Afghan Army and Police with nearly 5000 killed in 2014<sup>1</sup>. Recent events include the killing of 3 American contractors by Taliban insurgents who had infiltrated Afghanistan security forces on 30/01/2015 and the killing of 22 Police Officers in Logar province outside the capital Kabul in February 2015<sup>2</sup>;
- The UK terror threat level remains at 'severe' in response to conflicts in Iraq and Syria.

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<sup>1</sup> [www.bbc.co.uk/news/world-asia-31515140](http://www.bbc.co.uk/news/world-asia-31515140)

<sup>2</sup> [www.bbc.co.uk/news/world-asia-31499548](http://www.bbc.co.uk/news/world-asia-31499548)

Further to the submission of the NCA Crime Operational Support Regional Adviser Report version 5 dated 26/09/2014 the NCA PIP 4 has had the opportunity to undertake the following:

- 02/10/2014 Meeting SIO Team 1;
- 20/10/2014 Meeting OIOC and SIOs Teams 1-3;
- 20/10/2014 Meeting with Gold, OIOC and SIOs;
- 20/10/2014 Meeting with Gold Commander regarding the Haidar Ali Hussein judicial review findings;
- 06/11/2014 Gold Group meeting;
- Weekly meetings with OIOC and Team 1 – 4 SIOs from 11/11/2014;
- 02/12/2014 Lessons Learnt meeting of Team 2 deployment to Afghanistan;
- 10/12/2014 Conference Call with SIO Team 2, NCA National Vulnerable Witness Interview Adviser;
- 10/12/2014 PIP4 and SIO Team 1 visit to CTU West Midlands;
- 11-12/12/2014 Istanbul Protocol Awareness Raising and Training, Tidworth Barracks;
- 18/12/2014 Gold Group meeting;
- 06/01/2015 PIP4 briefing of NCA Organised Crime Command Deputy Director Roy McComb;
- 13/01/2015 Case Conference with Service Prosecuting Authority; SIO Team 1; National interview Adviser and National Vulnerable Witness Interview Adviser;
- 04/02/2015 – Meeting of OIOC, SIO Team 1, NCA PIP 4 with Leigh Day representatives Tessa Gregory and Satna Malik, London;
- Liaison with [Name Given] Ministry of Defence Service Police Assurance Adviser; [Name Given] Media Officer IHAT; [Name Given] [Institute name] (Human Rights) Institute; NCA Specialist Operations Centre researcher Karen Harber; NCA National Injuries Database Manager Sonya Baylis; NCA Borders International and Martin Bottomley Greater Manchester Police Major Investigation Review Team during the course of research.

A number of points and observations have been made during these meetings and time spent with Gold, OIOC and SIOs. The following points summarise some of those that are considered worthy of inclusion in this report.

## **Strategic Management Issues**

### **Command Structure and Leadership**

The Operation Northmoor is accountable to the Provost Marshal (Army) who reports on the effectiveness, efficiency and impartiality of the Chief of Staff. The Operation Northmoor now has a senior command team that is led by Gold Commander Lt Colonel John McCallister who sets the

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strategic direction. Major Gary WARD is the appointed Officer in Overall Command (OIOC) responsible for implementation of Gold strategy.

Senior Investigating Officers (SIOs) lead the teams and manage cases allocated to them. The Operation Northmoor has adopted a systematic and prioritised approach to dealing with cases.

On 20/10/14 NCA PIP 4 met with Gold and was informed of developments resulting from the continuing scrutiny of interrogation operations in Afghanistan in the aftermath of the Haidar Ali Hussein judgment in the Court of Appeal.

By way of background, on 31/07/2014, the Court of Appeal published the judgment in the case of *The Queen (Haidar Ali Hussein) and the Secretary of State for Defence*<sup>3</sup>. This case sought to challenge the lawfulness of a policy adopted in May 2012 authorising the use of Challenge Direct in the interrogation of captured persons. Solicitors for Hr Hussein argued that the approach constituted inhumane treatment contrary to Article 3 of the Geneva Conventions, and alternatively, that there was an unacceptable risk that the policy will be exercised in a way that would not be lawful, having regard to the circumstances in which it would be used. In considering the case, the Judge viewed footage of thirteen interrogation sessions from Afghanistan in which the Challenge Direct approach had been used. Although he endorsed the policy, when viewing the footage he identified conduct which he considered amounted to abusive and insulting behaviour, religious and racial abuse/insults, threats and physical intimidation on behalf of the interrogators. He stated that many of these matters would constitute breaches of the general MOD policy in relation to the treatment of captured persons. This conduct was not limited to those instances of Challenge Direct but was found throughout the footage. He also identified instances where interrogators had breached the Challenge Direct policy itself, for example, the prohibition on physical contact.

As a result of the Judge's observations, and in accordance with obligations under the Armed Forces Act 2006, Joint Forces Intelligence Group (JFIG) referred these matters to the RMP. A decision was made by PM(A) to incorporate the investigation of these alleged offences into the scope and terms of reference of Operation NORTHMOOR. The NCA PIP 4 notes that Operation Northmoor was already investigating a number of complaints relating to interrogation.

The Hussein Judgment has been internally circulated to military interrogation staff by the Service Prosecuting Authority lawyers and is also publicly available via the British and Irish Legal Information Institute Website at:

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<sup>3</sup> [2014] EWCA Civ 1087

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2014/1087.html&query=haidar+and+ali+and+hussain&method=boolean>

As a result this direction from Gold, the OIOC made a Policy decision on 02/12/2014 'To set up a new and 4<sup>th</sup> Team within Op NORTHMOOR headed by a newly appointed SIO – Capt. M Penman. The Team 4 task is to review the initial 33 hours of footage (of 13 separate interrogations) seen by the Judge in order to:

1. Identify and categorise any criminal and non-criminal (military) offence including any breaches of service policy committed.
2. Make recommendations to OIOC to formally investigate those incidents that do amount to an offence or breach of policy. Liaise with SPA as required.
3. Utilising a focussed and incremental approach, make recommendations to OIOC what other detainee interrogation footage also requires to be reviewed by Op NORTHMOOR.
4. Make recommendations to OIOC as to what additional staff and equipment is required in order to achieve a prompt and effective investigative response to all the additional work identified'.

Both Gold and OIOC are taking a focussed and incremental approach to this new strand of investigation and their recorded rationale is that firstly, 'there are insufficient investigative staffing assets available' and secondly 'the investigations into the more serious offences of murder / manslaughter and sexual assault, have been prioritised.

The SIO for Team 4 arrived in post on 02/12/2014 and the initial review of interrogations is ongoing. The Ministry of Defence was successful in defending the allegations against the policy itself. The main line of enquiry at present will be to identify all subjects of interrogation, interrogators and commanding officers overseeing the interrogation process as well as determining those interrogations that cross the minimum threshold of seriousness to constitute inhumane treatment or coercion, threatening or insulting conduct or unpleasant or disadvantageous behaviour amounting to criminal and / or disciplinary offences.

Further to recommendations made in NCA PIP 4 report (v.5) a weekly 'OIOC Management Meeting' has been established. The standing agenda includes investigation team updates and current situation reports; Investigation Strategies; Staffing; G2 Security and Vetting; G3/5/7 Operations, Planning and Training requirements; G4 Logistical Support;

HOLMES / MIR updates; Finance and AOB. This has greatly assisted effective communication amongst SIOs on the team as well as provision of NCA PIP4 advice and support. Meetings are minuted to provide an effective audit trail of decisions and actions arising.

The last Gold Group meeting was on 18/12/2014. To assist in resolution of outstanding key strategic issues and to maintain effective leadership, the Gold Commander may wish to convene a further meeting at the earliest possible opportunity as well as setting regular meeting dates in advance.

### **Resource Management**

During the OIOC meeting of 11/11/2014 at which the NCA PIP 4 was present the resourcing requirements of Operation Northmoor were discussed. There are 66 staff currently employed on the operation: 28 x SIB, 29 x GPD, 8 x civilian support staff, and 1 x ALS. An additional 66 staff were requested by the OIOC: 29 x SIB specialists, 25 x GPD, 1 x SPS, 1 x RAMC and 10 x civilian support staff. This request included 4 members of RAF/RN SIB to create a separate investigation pod to investigate members of RMP and MP implicated in offences. This request did not take account of investigators that may be required in Team 4 to investigate matters arising from Captain Penman's review. Of the 66 requested, 22 are considered critical to RMPs ability to perform a prompt and effective investigation. On 01/12/2014 the staffing uplift received approval from Commanding Officers.

The Operation Northmoor has to operate, in an extraordinarily challenging environment where past and present conflict divides communities across Afghanistan. The operation is a hugely ambitious and indeed unique project for any police force to undertake. The operation is the largest faced by the RMP and its progress is being severely frustrated.

In addition to comments made by the NCA PIP4 in previous reports, it is again disappointing that the additional staff have yet to be deployed to Operation Northmoor. The further delay appears to be due to difficulties in securing [REDACTED] appropriately compliant accommodation coupled with the current MIR at Campion Lines being deemed unable to cater for additional staff. It is frustrating that further delay has been encountered which appears beyond the control of PM(A) and Gold to resolve. I have no option but to again strongly recommend to the Ministry of Defence that accommodation and resourcing is quickly resolved. It can be foreseen that unless these critical issues are resolved quickly, the UK will suffer reputational damage in its inability to deliver on ECHR and CPIA requirements for a diligent, expeditious and effective investigation.

It has previously been recommended that Operation Northmoor staff receive appropriate training in ABE interview. SIO Team 2 WO1 Hayes continues to progress ABE interview training bespoke for the requirements of Operation Northmoor staff as detailed within the weekly OIOC meeting minutes.

As part of the investigation strategy there will be an ongoing requirement for Operation Northmoor to conduct witness interviews, medical examinations and psychological assessments of complainants in Afghanistan. The identification of suitable accommodation is becoming increasingly problematic following the withdrawal of armed forces. The OIOC is keeping this under constant review and has submitted a request to PJHQ to assist RMP SIB to secure an appropriate location in Afghanistan to facilitate these requirements. It is proposed that some of these interviews must occur face to face inside an ISAF Base. Research is also being conducted into the viability of remote VTC interviews (see later).

*now not occurring*

**Intelligence and Information Management**

The OIOC should ensure that appropriate processes are put in place within the Intelligence Strategy that cater for sharing useful information into local/Police Force/National Intelligence systems or units in accordance with the 'Protocol between Ministry of Defence and Metropolitan Police Counter Terrorism Command on Handling of National Security Cases in England and Wales'. An example was raised at the Team 2 Lessons Learned de-brief conducted on 02/12/2015 regarding the behaviour of a Big Word interpreter during Team 2 deployment to Afghanistan. Behaviour was felt to be of sufficient concern to dispense with the interpreters services. [REDACTED]

*Debrief  
action*

The OIOC could consider developing an Operational Guide to provide clear and unequivocal guidance on policies and processes to be followed. This is particularly important when considering issues such as the records of interview and the storage of material. The much anticipated influx of new staff would also necessitate an effective induction process which will be critical to promoting the necessary high standards of work required.

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Further to NCA PIP 4 Report (v.5) at the OIOC management meeting of 02/12/2014 attended by the NCA PIP 4 a process for 'Pre Investigation Assessment' and Tactical Tasking and Co-ordination was agreed taking identified learning from IHAT but minimising unnecessary phases and bureaucracy. The process includes introduction of an 'Independent Case Review Panel' (see later in report). The OIOC should consider

✓ implementing the agreed process and communicating this to all team members as soon as practicable.

### **Risk Management**

On 02/12/2014 the OIOC and SIO Team 2 conducted a 'Lessons Learned' de-brief following the deployment of the team to Afghanistan. One of the key issues that arose was the need to consider and further research use of remote Video Telephone (VT) ABE interviews for the following reasons:

- Safety of complainants and military interview teams due to continued security risks involving threat to life;
- To minimise necessity of searching complainants prior to entering military / government establishments as there are many complaints subject of Operation Northmoor regarding search;
- Complainants may feel more comfortable in a neutral environment.

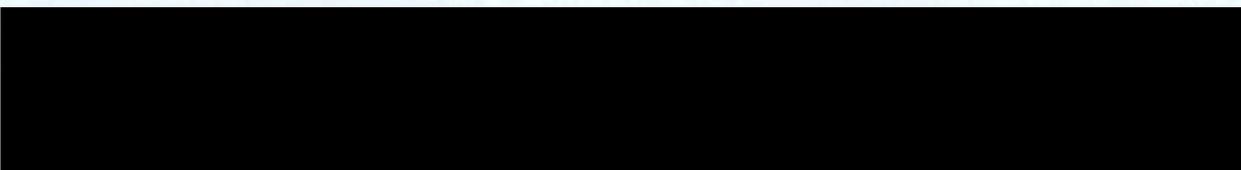
ℓ Further meetings have been held with SIO Team 2, NCA PIP 4, National Interview Adviser Dr Shaw and the National Vulnerable Witness Interview Adviser Dr Smith. Mr Smith has advised that such interview methods would 'not be ideal' but acknowledges the complex operating environment necessitating considerations of such methodology. Dr Smith stressed that there is nothing preventing remote VT ABE interviews either in law or authorised professional practice (APP). The key issues that need addressing are:

- Research into technical feasibility;
- Use of biometric identification;
- Detailed recording of rationale in SIO policy and interview strategy;
- Requirement to make decisions on a 'case by case' basis dependant on factors such as seriousness of allegation and views of victim;
- The need to consider contingency planning should more serious allegations be made during the course of a VT ABE interview.

NCA PIP 4 will continue to play an active role in supporting the development of a suitable remote ABE interview strategy

### **Identification and Engagement of partners**

The Department of Judicial Engagement Policy (DJEP) continues to consider civil claims made by Leigh Day solicitors on behalf of complainants. The stay on civil proceedings has been agreed by relevant parties and is being kept under review by all parties.



[REDACTED]

On 04/02/2015 a meeting took place between the OIOC, SIO Team 1, NCA PIP4 and Leigh Day Solicitors represented by T. Gregory and S. Malik. Due to the problems being encountered in updating victims of the progress of investigations Leigh Day agreed that they would act as a conduit for updates to their victim clients. The problem remains as to how complainants not legally represented will be updated. Enquiries are currently being made with the Office of High Commissioner for Human Rights. The NCA has also researched NGOs based in Afghanistan that may be able to assist with establishing lines of communication. A report detailing these is attached for use by the Operation Northmoor team.



NGO and Legal  
System Afghanistan.r

### **Public Confidence and Reputation Management**

In a letter dated 01/12/2014 Leigh Day have challenged whether the RMP investigation is 'Article 2 compliant'.

Article 2 ECHR imposes an obligation on states to conduct an effective official investigation where individuals have been killed as a result of the use of force. The criteria that must be satisfied before an investigation is compliant with Article 2 was identified by the court in *Jordan v UK*. The Court identified four requirements that an adequate investigation for the purposes of Article 2 must satisfy, including a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard their legitimate interests.

There would be considerable public interest in Operation Northmoor not least due to the impact on Afghanistan communities and the long term cost of UK public monies being spent on the investigation. The Gold Commander may wish to review openness and transparency with the public about the role and remit of Operation Northmoor, what it has done and how it has done it within a communications and engagement strategy which is outlined in further detail later in this report.

To further assist in public accountability a complaints procedure which is easily accessible to those who might wish to complain should be established. The Gold Commander may wish to consider publishing an

What is this?  
A route to complain?

annual report to the public setting out what it has done to achieve its objectives, how it has responded to constructive feedback, and an acknowledgement about those things that might not have been achieved.

Further to the Gold meeting of 06/11/2014 NCA PIP 4 has conducted research with a view to establishing further independence and quality assurance processes to Operation Northmoor.

**Case Review Panel** - The purpose of this panel would be to quality assure and make recommendations as to no further action or further investigation in respect of complaints that may not meet the threshold for further criminal and / or disciplinary investigation or where enquiries have revealed no British Forces involvement. Following discussions at the weekly OIOC meetings it is proposed that this panel would be made up of the following representatives:

- Gold;
- OIOC;
- NCA PIP 4;
- SPA.

The process would involve a first line review of the panel's decisions by DPM (Investigations) and a second line review by the Greater Manchester Police Major Investigation Review Team. The NCA PIP4 has outlined these plans with Mr M. Bottomley of the GMP MIRT and he is supportive of both aims and structure which crucially has adopted independent elements. The OIOC should now consider recording and policy decision and strategy on how the process is to be managed.

**Independent Oversight Panel** - As a publicly funded body, operating in an area of significant public interest, the NCA PIP 4 considers it necessary for the operation to be subject to appropriate levels of independent oversight and inspection. The Gold Commander may wish to consider establishing an independent oversight panel to oversee and scrutinise in the public interest strategic aspects of the operation. This could be quite challenging in terms of finding the right people, security of data and funding but the benefits would include:.

- Providing the investigation with independent and non military scrutiny and therefore an element of transparency.
- Providing a route for any families or interested parties who have queries, concerns etc to highlight for attention, not an alternative route for complaints but more as a voice for families.
- Produce annual reports for internal and external use.

The advice provided by the SPAA is that the principles of an Independent Advisory Group are applicable to a certain extent, however due to the

complexity, scale and different elements involved the panel would have to be more 'professional' in its membership which could include:

- A chair whom is suitably independent from the military and has the correct level of experience and seniority to chair the panel;
- An advisor to the chair who has an understanding of the military context and police investigative context;
- Members who can represent the diversity of alleged victims. These could be drawn from IAG's in the UK;
- Representatives from [REDACTED] Third Party Entities who work across agencies/political divides with no bias or agenda;
- A legal representative who would be prepared to provide advice on Human rights issues.

A further option would be to build a bespoke IAG with selected members from around the country but with a more experienced chair and an advisor to the chair. I have attached the latest IAG guidance supplied by SPAA.



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Independent Advisor

The NCA PIP 4 has researched the potential to utilise the Service Police Assurance Adviser (SPAA). The duties and responsibilities of the SPAA are to provide expert and professional advice and guidance to SPF to assist them in maintaining the independence and effectiveness of their investigations. In particular he will:

- Provide advice in respect to policing capabilities and the training and skills that are required to undertake effective investigations under the Armed Forces Act 2006;
- Assist SPF in preparing for inspections on the independence and effectiveness of service police investigations by HMIC; and on the development of Action Plans in response to recommendations made in HMIC inspection reports;
- Assist HMIC in its appreciation of SPF practice and context;
- Assist with the formulation of appropriate doctrine and development of people and systems to reinforce the independence and effectiveness of SPF investigations;
- Assist on work aimed at developing a framework for the external assessment of complaints against members of the SPF;
- Assist the Provost Marshals in developing and maintaining relationships with the Home Office Police Forces and national UK policing bodies and their involvement in emerging national police policy and training agendas.

The opening paragraph outlines the strategic intent and this is clear in terms of providing expert advice and guidance in relation to independence and effectiveness of investigations.

The Gold Commander has also requested the NCA PIP4 to identify other potential chairs for an Independent Oversight Panel who have the requisite skills, investigative experience but crucially independence to add real value to the role.

The Operation Northmoor has clearly endeavoured to ensure that its processes reflect the necessary independence. A recusal policy is in place but the OIOC may wish to consider introducing a policy about the deployment of staff to the team. This should include the proactive vetting of staff regarding previous involvement in cases, in order to safeguard the independence of investigations.

The NCA PIP 4 recognises that in one respect, the operation is not in a position to satisfy the promptness requirement of Article 2, given its focus on historical cases. The question of whether the operation is progressing at a satisfactory speed is therefore primarily a concern in terms of good practice, compliance with current policing investigation standards and victim satisfaction.

**Communications and Engagement Strategy** - Operation Northmoor are not seeking to utilise the MOD Media Office due to it being an independent investigation by the RMP into the military. Following a request for advice, the NCA PIP4 has produced a draft strategy as attached below which outlines some of the key issues that need to be addressed in a 'Communications and Engagement' strategy as well as an overview of media reporting to date. The NCA PIP 4 stresses that this draft strategy has been prepared from experience as an SIO and PIP 4 and the NCA PIP 4 is not a trained or experienced media comms manager. The OIOC is now considering appointment of a civilian media communications firm to manage this important aspect of the investigation.



Op Northmoor  
Comms and engagem

I also attach the communications strategy to trace victims and witnesses shared by the IHAT Media manager for reference.



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On 10/12/2014 a meeting was held between SIO Team 1, [REDACTED] N73 [REDACTED], and NCA PIP4 and CTU West Midlands representatives. NCA PIP4 also met with [REDACTED] Name Given [REDACTED] regarding good practice in conducting CIA. Advice was provided on the format that this could take, including:

- Executive summary;
- Level of impact;
- Current situation;
- Background intelligence;
- Locations;
- Media interest;
- Stakeholder analysis – this is key and as outlined in previous NCA PIP4 reports key stakeholders include complainants; Afghanistan community UK and Afghanistan; [REDACTED] a TPE [REDACTED]; US Army; [REDACTED] M1 [REDACTED]; UK Defence Exploitation Facility; Association of Chief Police Officers Terrorism and Allied Matters (ACPO-TAM); Metropolitan Police SO15; [REDACTED] [REDACTED]; NCA International Liaison Officers (Afghanistan); Ministry of Defence; Directorate of Special Forces; Iraq Historic Allegations Team (IHAT); Director of Judicial Engagement and Policy; [REDACTED]; MOD Corporate Memory; Leigh Day solicitors; Afghan NGOs; Special Rapporteur on Torture; Office of Commissioner for Human Rights. (List not exhaustive).
- CIA;
- Distribution.

The NCA PIP 4 stresses yet again, the importance of allocating responsibility for initiating and managing the CIA to an appropriate named Lead Responsible Officer. This is not a matter that should be taken lightly or seen as an unnecessary activity but is central to an effective investigation. ✓

The importance of researching Afghanistan culture and Afghanistan Culture, History, Languages, Religion was stressed at the ARTIP training event and is crucial to inform the CIA. The NCA PIP4 acknowledges that the British Army will be well informed on such issues but a research pack has been prepared by the NCA Specialist Operations Centre which may prove a useful reference tool.



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Language Culture Cu:



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## Learning

The NCA PIP 4 has reiterated the importance of referring systemic issues identified to the DJEP Systemic Work Group as a priority. On 04/07/2014 Captain Wright then SIO Operation Northmoor produced a Systematic

Prevent Strategy attached and recorded on HOLMES policy decision 51/02.



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Following the identification of potential systematic behaviours, it was recommended that this strategy be looked at again. To date, Operation Northmoor has not referred any such matters to DJEP (Systematic Working Group) despite identification of relevant learning. The NCA PIP4 considers it essential that all this policy is reviewed and the importance of complying with the investigations Terms of Reference set by PM(A) is further communicated to all managers and staff engaged on the operation. In agreement with Captain Wright's observations recorded on 17/10/2014 it is suggested that OIOC amends the policy to reflect that upon identification of systematic issues:

- Relevant SIO conducts review and where necessary refer it to the OIOC;
- OIOC makes a judgement whether to refer to Gold;
- Gold reviews and decides whether to release to DJEP;

The deployment of Team 2 to Afghanistan resulted in lessons learned for future deployments. These included learning in pre deployment administration; security; operations planning and training; communication and staffing and were de briefed at a meeting at SIB Campion Lines on 02/12/2014 by OIOC and SIO Team 2.

There is relevant learning that emanated from the Al Sweady Inquiry (ASI) following the publication of the report of the Chairman Sir Thayne Forbes. This has been shared by Army (PM) Legal and is included in appendix A for reference.

## General Investigative Suggestions

A key purpose of this report is to provide considerations to assist SIOs in the development and recording of the tactical investigative strategies. In addition to the tactical suggestions made in NCA PIP4 Report (V.5) the following key issues are stressed:

### Suspect identification and Interview of Military Personnel

A primary objective for the investigation is the identification of those suspected to be responsible for criminal offences. In the context of Operation Northmoor, suspect management will require careful strategic and operational planning with consideration of:

- Methods of identifying suspects;

- For what, when, why, how, where and who is to be arrested or interviewed under caution;
- Legal powers;
- Maximising physical and forensic search and recovery opportunities;
- Preparing and conducting interviews;
- Charging and processing procedures.

Suspects can be revealed from a variety of sources such as witness interviews and description, forensic evidence, passive data such as CCTV and interrogation videos, information such as operational deployment and detention records and intelligence, analytical work on existing complaints etc.

The OIOC may wish to produce a policy that outlines the various methods in which the suspects if not already known can be identified. The OIOC may wish to consider a 'data wash' of nominal with the IHAT HOLMES system to identify any commonality of 'suspects in the system'.

The NCA PIP 4 has identified relevant learning from the HMIC Inspection of the Police Service of Northern Ireland Historical Enquiries Team<sup>4</sup> regarding 'state involvement' cases.

Murder is defined as follows: *'subject to three exceptions, the crime of murder is committed where a person of sound mind and discretion unlawfully kills any reasonable creature in being and under the Queen's Peace with intent to kill or cause grievous bodily harm'*.

By reference to this definition, a soldier who kills a person with the necessary intent to kill or cause grievous bodily harm, and who does not fall within any of the exceptions referred to in the definition (the most obviously applicable exception being self-defence) will, be guilty of murder. It is clear that, when a soldier fires his weapon at a person, he is *"almost certain to cause serious injury or death"* and the Judicial Committee of the House of Lords has recognised that there is *"no scope for graduated force"*. It follows, therefore, that a soldier who intentionally fires his weapon in these circumstances may in principle be guilty of murder subject to additional considerations of the Law of Armed Combat (LOAC).

The decision to record suspect status is critical and needs careful consideration. Such a decision needs to be based upon solid justification and good rationale, supported by reliable information and/or evidence. The term 'suspect' implies there are reasonable grounds to suspect a person's involvement in an offence. It affords them protection and rights

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<sup>4</sup> HMIC Inspection of the Police Service of Northern Ireland Historical Enquiries Team. HMIC 2013. ISBN: 978-1-78246-163-0.

under the Police and Criminal Evidence Act 1984, including legal advice and being cautioned before questioning. It is important not only to declare suspect status when appropriate but also in circumstances such as the ongoing N50 investigation to justify why a person who may have been present on an operation is not a nominated suspect in order to defend possible accusations of deliberately circumventing their legal rights<sup>5</sup>. Further advice can be obtained from the College of Policing Authorised Professional Practice internet site.

Interviewing of suspects is a major part of any investigation which requires detailed and careful planning. The subject of investigative interviewing was discussed at a minuted case conference on 13/01/2015, attended by amongst others [Name Given] of SPA. Amongst matters discussed were interviews under caution.

An interview under caution is part of an investigative process, as its purpose is to put the allegation to the suspect and elicit their side of the story. The NCA PIP 4 highlighted learning from the HMIC Inspection of the Police Service of Northern Ireland Historical Enquiries Team<sup>6</sup> (HET) criticised what was referred to as the '*pragmatic approach*'. This involved the notion that where suspects would have been interviewed under caution in the normal course of events, a member of the HET could decide to dispense with the caution in order to interview a suspect so that they could obtain as much information as possible about the death for the benefit of the family.

It was the view of HMIC that the '*pragmatic approach*,' could only be defensible if a decision had already been made that criminal proceedings could never be taken against the suspect. As a matter of law, there remains, in all cases, a remote chance that a prosecution could take place'.

When categorising witnesses, significant witnesses and suspects and planning interview strategies Operation Northmoor must be cognisant of this report, good investigative practice and the Protocol on 'The Investigation of Incidents involving UK Special Forces Personnel by the Royal Military Police'<sup>7</sup>. Further advice and guidance on interview strategies can be found on the College of Policing Authorised Professional Practice internet site.

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<sup>5</sup> Senior Investigating Officers Handbook. Tony Cook and Andy Tattersall. Blackstones.2014. Pp. 302-303.

<sup>6</sup> HMIC Inspection of the Police Service of Northern Ireland Historical Enquiries Team. HMIC 2013. ISBN: 978-1-78246-163-0.

<sup>7</sup> The Investigation of Incidents involving UK Special Forces Personnel by the Royal Military Police. Chief Of Staff Special Forces and Deputy Provost Marshal (Army) August 2013.

A discussion also took place at this meeting on interviewing military witnesses prior to complainants due to the time delays caused by the logistical planning required in deployment to Afghanistan. Albeit not ideal, this type of interview could be useful if it is likely to be some time before complainant interviews can take place. Witnesses should be assessed and categorised e.g. vulnerable, intimidated, and significant. The NCA National Interview Adviser recommended that any such interview should be restricted to an initial account obtained by using open questions without much prompting or probing which complies with the 'best evidence' rule. This would provide the opportunity to offer an initial explanation of events and any important information to progress enquiries.

### **Pre Interview Disclosure**

Another highly contentious issue highlighted within the HMIC report and involving state involvement cases and legal interpretation arises from the amount of material that the HET provided to a former soldier or his legal representative in advance of any such interview. This is commonly referred to as pre-interview disclosure and generally applies to suspect interviews under caution. HMIC 'found that the HET used different approaches based on whether the suspect was a state actor or not. The suspect in state involvement cases would get full disclosure of material whereas a paramilitary suspect would get very little. When asked to explain the difference in approaches, the HET stated that it operated on the assumption that, unlike non-state actors, soldiers involved in a shooting had co-operated with investigators at the time and had provided their identities and produced their weapons for inspection - two things which non-state actors did not do'<sup>8</sup>.

### **Securing and preserving Special Forces forensic data**

Further to the meeting attended on 25/09/2014 at the Directorate of Special Forces as detailed in NCA PIP 4 report (v.5) initial data capture revealed highly relevant material to the investigation. Negotiations have now moved on to phase 3 i.e. 'Further considerations ... to the necessity, proportionality and reasonableness of wider data capture from Special Forces databases taking into account national security and how this may impact upon other [redacted] relations'.

The importance of securing and preserving this evidence in a manner which satisfies investigation needs but takes account of [classified] third party information is well understood by the investigation team who have drawn

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<sup>8</sup> HMIC Inspection of the Police Service of Northern Ireland Historical Enquiries Team. HMIC 2013. ISBN: 978-1-78246-163-0.

upon learning from the Al Sweady inquiry, Digital Forensic Report on the Liverpool Server<sup>9</sup> and the ACPO Good Practice Guide for Digital Evidence version 5. Following a further meeting of 12/02/15 agreement has been reached for RMP SIB to secure and preserve data held on both servers.

The OIOC is aware of the need to comply with 'The Investigation of Incidents involving UK Special Forces Personnel by the Royal Military Police'<sup>10</sup> and the matrix of pseudonyms is being managed on the suitable 'WATSON' system.

### Awareness Raising and Training for Istanbul Protocol (ARTIP)

This was delivered to Operation Northmoor staff on 11-12/12/2014 and was attended by the NCA PIP 4. Key issues arising included:

- All policy decisions should include 'limitations' on action taken which take account of the complex operating environment;
- Potential useful sources of information can be found in the UN Special Rapporteur on torture and UN Committee against Torture. These bodies also provide a good resource on CPT Standards of Detention. NCA PIP 4 has read reports of interest which are included below for OIOC and SIO awareness:



Key issues are highlighted as:

- Report 1 – Inquiries into allegations of torture overseas as well as reference to 'The Report of the Detainee Inquiry December 2013 by Sir Peter Goodman'<sup>11</sup>. Albeit this latter report is clearly aimed at whether 'Britain was implicated in the improper treatment of detainees held by other countries' there it could be considered useful for this report to be researched within the MIR to identify

<sup>9</sup> Al Sweady inquiry, Digital Forensic Report on the Liverpool Server. Peter Sommer.

<sup>10</sup> The Investigation of Incidents involving UK Special Forces Personnel by the Royal Military Police. Chief Of Staff Special Forces and Deputy Provost Marshal (Army) August 2013.

<sup>11</sup> UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. UN. 24 June 2013. P.6

areas of commonality and learning for Operation Northmoor and for this reason I have included a copy;



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eport\_SIO-O.pdf

- Report 1 - Accountability for abuses in Iraq and comments made regarding IHAT which are of note;
- Report 2 - 'Transfer of Detainees in Afghanistan'; regrettably, the progress in investigating all of these allegations has been very slow. The IHAT has completed investigations into only eight cases; and has ordered only one fine against a British soldier. The report comments of direct relevance to Operation Northmoor reflecting '...The UK NHRIs do not believe this is consistent with the prompt investigative duty under Articles 2 and 3 of the ECHR, (as confirmed by the European Court of Human Rights in its Al Skeini judgment) and the UK Government's obligations under Article 12 of the UN Convention Against Torture. The UK NHRIs recommend that further reforms are needed of the way in which these allegations are being investigated, not only to avoid further unacceptable delays in the resolution of individual cases, but also to ensure that systemic issues are identified and lessons learnt'<sup>12</sup>.
- Report 3 - Q7. The Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas. Q12 Transfers in Afghanistan and Allegations of torture and ill-treatment in Iraq and Afghanistan and Allegations of torture and ill-treatment in Iraq and Afghanistan Q21, 27 and 27<sup>13</sup>.
- Report 4 UK Involvement in Conflict Overseas and p.12 Allegations of Ill Treatment by UK Forces in Afghanistan<sup>14</sup>.
- From reading these and other reports and inquiries it is apparent to the NCA PIP4 that the Gold Commander could anticipate being called upon to provide the Committee's Rapporteur and the UK Judiciary information on all investigations undertaken by the Operation Northmoor on behalf of the state into allegations of torture and ill-treatment by its forces in Afghanistan; the results of these investigations; the number of resulting prosecutions before courts; and the outcomes of any such prosecutions as well as the legal means available to challenge final decisions and how the RMP has ensured the independence of such investigations. It may be

<sup>12</sup> Follow-up regarding Concluding Observations adopted by the Committee against Torture on the 5th periodic report of the UK. September 2014. Pp. 4-5.

<sup>13</sup> EHRC Submission to the UN Committee against Torture: response to list of issues on the UK's 5th periodic report. April 2013.

<sup>14</sup> EHRC Submission to the UN Committee against Torture: list of issues on the UK's 5th periodic report. August 2012. P.9.

advisable to review Operation Northmoor performance management processes and systems to ensure that such data is recorded and readily retrievable.

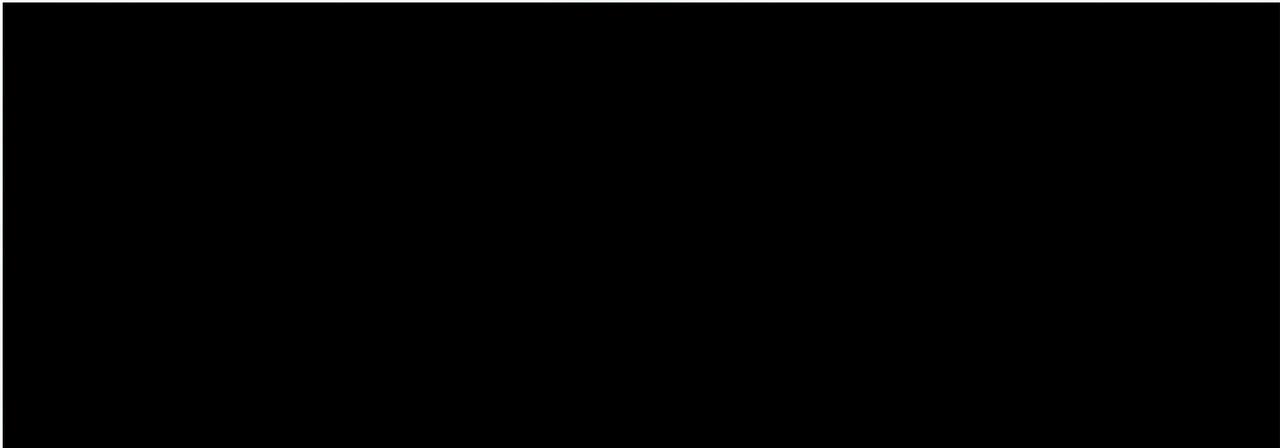
### Medical Examination Strategy

Following the ARTIP event the NCA PIP 4 has considered the benefits of preparing an examination strategy and identification of additional equipment that may be required by Operation Northmoor when examining complainants (X-ray; CT scan; MRI; EEG; Bone sonography; Nerve Conductive Velocity). The NCA National Injuries Database (NID) is a resource that can be utilised by the OIOC and SIOs in preparing a strategy for Operation Northmoor. With regards to techniques and specialisms there are not that many and NCA NID have supplied a number of documents in existence already that may assist, including image overlay technique, alternative light sourcing methods, photography and odontology which are attached for reference. Initial feedback from Sonya Baylis NCA NID includes '...if you wish to examine a potential victim with a previous allegation of assault, the medical experts are very reluctant to do a follow up X-Ray/MRI/CT scan because of unnecessary radiation exposure unless the technique will support and assist with medical treatment or a long term prognosis. I have been involved with historic allegations before and no hospital or medical professional will partake in an unnecessary scan. But other non-invasive techniques may assist. As for a reference document already in existence I don't know of any and would be interested in supporting (Operation Northmoor in producing) such a document'.

-  Digital Superimposition & Im
-  Homicide Journal\_6.2\_\_FINAL
-  JJPJ - Quality of Images - FSMP 2012.
-  Guidelines for photography of cutar
-  NID Flyer NCA.pdf

Information Development

On 27/01/2015 the NCA PIP4 [redacted]  
Information development relating to Operation Northmoor [redacted]



### Ill Treatment Investigation Plans

With the approval of additional staffing the OIOC may wish to consider establishing 'Investigation Pods' comprising investigation staff under a supervisor to drive forward investigation plans in respect of the ill treatment allegations. Since the submission of PIP4 report version 5 and advice on the 'Development and recording of tactical investigative strategies - Article 3 ill treatment allegations' progress on these investigations has been slow. Some Team 2 members are working through the Parwan detainee interviews conducted on the most recent deployment to Afghanistan and with further deployments of team 2 projected for spring 2015 there is reduced capacity and capability of this team to progress investigation strategies in an expeditious manner. The OIOC could consider assigning ownership and responsibility to these investigation plans which Team 2 in its current structure do not appear to have the resilience to conduct. The investigation plans should be subject of regular supervision and a process could be adopted at the weekly OIOC meeting to hold SIOs to account on progress of not only the 'Pursue' element of investigations but also under the 'Prevent' theme, referral of any systemic issues identified.

### Unlawful Killing Investigation Plans

Enquiries into N50 allegations are progressing. N6 remains unidentified and information indicates that this relates to a Partner Force only deployment. The SIO Team 1 is focused on corroboration of evidence from several sources which will either increase or decrease the probative value of complaints and prove or disprove involvement of UK Forces. The SIO is mindful of establishing an auditable process for how this will be evidenced, presented to the Case Review Panel as well as communicated with complainant and Leigh Day solicitors.

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<sup>15</sup> Protocol on the Investigation of Incidents Involving [redacted] Personnel by the Royal Military Police. Commander Joint Forces Intelligence Group and Provost Marshal(Army). Aug 2014.

## Conclusion

This remains a highly complex, interlinked investigation with significant geographical and threat challenges that needs to be emphasised on all occasions to the MOD and outside parties. There is an urgent need to progress strategic accommodation and resourcing issues as well as tactical investigative plans, particularly those relating to ill treatment.

I hope our support to your investigation continues to prove useful. Meanwhile please consider me to be your NCA point of contact as well as PIP4 and do not hesitate to make contact at anytime to discuss matters relating to your investigation or to ask for further assistance. I would also ask if you would keep us updated on any interesting or significant developments as and when appropriate.

Paul Williamson  
Detective Superintendent  
Regional Organised Crime Coordinator  
Regional Operations East Midlands  
Organised Crime Command  
National Crime Agency

Contact Details

[www.nationalcrimeagency.gov.uk](http://www.nationalcrimeagency.gov.uk)

[www.facebook.com/NCA](https://www.facebook.com/NCA) Twitter: @NCA\_UK

NCA mission: leading the UK's fight to cut serious and organised crime.

## Appendix A

1. **Recommendations** (extracted from the Executive Summary paras 708-730 a. **Collection of storage and ability to search documents and other records in whatever form.** The ASI was set up in Jul 2009 following the concession of the MOD in civil litigation that searches for relevant documents had not been effective. The ASI has been hampered by the difficulties in obtaining information. Significant steps have now been adopted by the MOD to ensure all relevant information can be identified and searched. However the ASI recommends that:

(Recommendations are numbered as per numbering in the ASI report)

(1) All operational documentation material be retrieved, catalogued and securely preserved for at least 30 years from conclusion of the operation so that it may be retrieved if necessary. Particular emphasis was placed on the value of recording both Tactical Questioning and Interrogation sessions as an accurate record.

(2) Digital video and audio recording should be made of both TQ and I sessions. These recordings should be held as per recommendation (1).

(3) All training materials should be dated, appropriately retained and archived so that it can be established what policy applied when.

b. **Shooting Incident (SIR) Policy.** The SIR policy was as at May 2004 unworkable due to the kinetic activity. As a result this delayed the RMP investigation. The policy should enable a speedy investigation. The ASI noted changes introduced by the AFA06 that required immediate referral to the of Schedule 2 and Prescribed Circumstance matters to the RMP but did not hear evidence on this. The ASI stated that fundamental deficiencies remained to be considered on this point given the judgement in the Al Skeini case. The ASI recommended that

(4) That a SIR policy be drafted which is achievable in theatre, complies with Art 2 of the ECHR which enables ascertainment of the relevant facts leading up to during and consequent to the shooting incident, by an independent body such as the RMP within a time limited but reasonable period after the shooting incident.

c. **Need for Accurate and contemporaneous record of the circumstances of detention.** There were inaccuracies between the stated detaining soldier and the real identity of the soldier responsible for the detention thereby limiting the assurance / audit trail of responsibility. The ASI noted that changes had been made in this respect since. The ASI expressed concern to ensure proper procedures exist for ensuring any injuries to detainees are properly recorded and explained at the time not least to enable adequate investigation of complaints. The ASI recommended that:

(5) Appropriate procedures should be introduced to ensure there is an accurate and detailed contemporaneous record of the circumstances relating to the original capture detention and his physical condition on arriving at the Prisoner Handling Area together with explanation from the soldier responsible for the detention for any obvious injuries suffered by the detainee.

d. **Various identified shortcomings in existing practises and procedures.** The ASI recommended that;

(6) Detainees should clearly be informed of their rights and obligations as soon as is practicable upon arrival at any detention facility.

(7) Appropriate measures be put in place to ensure minimum safeguards are in place where a detainee is to be strip searched. To include informing a detainee of the necessity for doing so and requesting co-operation. Respect for the detainee's dignity/ cultural sensitivities / in front of minimum number of persons necessary and use of screens if possible. Persons conducting the search should be of the same gender unless none are available.

(8) Appropriate review of all current relevant policy and procedures to ensure that a sufficient number of suitably trained interpreters are readily available during detainee handling, interrogation and questioning, issuing of food and medication, food /water/ convenience breaks and to help deal with problems before during flight transfers.

(9) Appropriate forms are made available to allow a medical examiner to declare a detainee unfit for questioning and detention. The decision should be readily apparent and the reasons for that recorded. Any conclusion to the contrary effect should be expressed in the ethically acceptable terms.

2. **Comments on the RMP investigation** (paras 669 to 707). The RMP investigated the Danny Boy incident on 2 occasions. First in 2004 and secondly in 2008. The ASI only examined the 2004 investigation on the basis that the suggestion had been made that the RMP had been prevented from conducting a prompt and full investigation as it was known that such an investigation would uncover misconduct by soldiers. The 2 issues of concern to the Inquiry regarding the 2004 investigation were:

a. **The extent to which the investigation was actually obstructed by the Battle Group (BG).** Shooting Incident Policy (SIR) in place at the time envisaged all shooting incidents to be investigated by

the RMP. It had become apparent that in May 2004 due to the amount of kinetic activity that the SIR policy was unworkable as cumulative investigations caused fatigue on soldiers and impacted on the BG operational effectiveness. Whilst there were delays due to debate over the Brigade Commanders decision to depart from the SIR policy, there was no evidence of anyone at Brigade or BG seeking to delay the commencement of an investigation to cover up actual, possible or anticipated wrongdoing. Understandable but regrettable tensions existed between the RMP and the BG given the conflicting positions of a requirement to investigate and the need to preserve the BG capability to conduct operations.

b. **The extent to which detainees made complaints to the RMP during the investigation.** A number of the allegations were fabricated by the detainees. None of the findings of fabrication relied solely on the fact that a detainee had failed to make an allegation to the RMP when interviewed in Jul 2004. The RMP witness interviews were nowhere near as detailed as the statements later made to the Inquiry. However the RMP did offer an adequate and obvious opportunity for the detainees to raise at least some of the more serious allegations which were later made. There was thus no basis to criticise the RMP for the manner in which the interviews were conducted.

### 3. **Summary.**

a. The Chairman found that the conduct of individual UK Armed Forces Personnel fell below the high standards expected to the extent that in some cases the way in which the nine Iraqi detainees were treated amounted to actual or possible ill treatment. Significant comment is made on the concern over training provided on TQ & I to service personnel. There were a number of incidents which the Chairman describes as amounting to ill treatment including the inappropriate use of sight deprivation, invasion of detainees' personal space, the banging of a tent peg on a table, shouting and the use of the 'bridge-carrot-stick' ploy to stimulate co-operation. Minor concerns over failure to comply with procedures regarding provision of food and water are mentioned but these were there was no evidence this was deliberate.

b. The vast majority and the most serious allegations of murder, torture, mutilation of the dead were baseless and the product of deliberate and calculated lies. In other cases they were the result of inappropriate and reckless speculation.

c. Individuals who have been criticised in the Report have been written to. The Chairman's view is that those criticisms are justified in light of all the evidence heard and seen.

d. HQ PM(A) has (through SO2 Custodial and SO1 Legal) during the course of the ASI, following engagement led by the Centre, provided input to DCDC as to proposed amendments to JDP 1.10 (CPERS doctrine) to incorporate the recommendations which apply to that publication. It is expected further refinement / consultation will be required before the JDP is re-issued following the ASI report.

e. The failure to disclose relevant information which led to the ASI being established in 2009 have been addressed across Defence by a series of orders and directives formalising the procedures for operational information identification, preservation, storage and retrieval. PM CBM SO2 (Major Phil Hacker) was tasked with work to ensure HQ PM (A) and 1 MP Brigade compliance with that direction.

4. **Wider Reporting of the Findings.** The press release issued by Public Interest Lawyers (PIL) who represented some the Iraqi witnesses to the Inquiry (and Claimants in civil litigation against the MOD can be found at [http://www.publicinterestlawyers.co.uk/go\\_files/files/PW3ZFRGF73UL.pdf](http://www.publicinterestlawyers.co.uk/go_files/files/PW3ZFRGF73UL.pdf)