Monday, 26 October 2026

(9.55 am)

THE CLERK: Good morning. This is an open hearing of the Independent Inquiry into matters relating to Afghanistan. Please ensure that all mobile phones and other personal electronic devices are either switched off or in silent mode. Please may I also draw your attention to the fact that the Chair of the Inquiry, the Right Honourable Lord Justice Haddon-Cave, has made a general Restriction Order for Inquiry hearings which applies to the conduct of those who are attending and/or viewing this hearing.

The relevant parts of that order are contained within the specific Restriction Order made in respect of these hearings, which is displayed on the Inquiry website and on the door of this hearing room, but I will summarise its purpose.

The first part of the general Restriction Order for Inquiry hearings prohibits any person from making an audio or video recording of Inquiry proceedings without the express permission of the Chair. Furthermore, no person may take a photograph in any room in which Inquiry proceedings are taking place and at a time the Inquiry is sitting, without the express permission of the Chair.

The second part of the General Restriction Order for Inquiry hearings, which applies to this hearing, arises as the live stream of these Inquiry proceedings via YouTube will purposely be subject to a ten-minute delay. Where those who have supplied evidence to the Inquiry have applied to restrict information from publication outside of the Inquiry, in some instances, the Chair has made Restriction Orders, the effect of which is to protect that information.

The Chair has also made a Restriction Order prohibiting the use, publication or dissemination of certain information that is contained within the evidence and documents associated to these hearings. That Restriction Order is displayed on the door of the hearing room and copies are available on request.

Where material is restricted, it is redacted and, where appropriate, the gist of the evidence is provided. In the event that something is said during the course of this hearing which may breach a Restriction Order made by the Chair, the evidence may be halted and the hearing room may be cleared for closed legal submissions as to whether any Restriction Order has been breached and the live stream YouTube hearing will be temporarily stopped for this period.

Counsel to the Inquiry or the Solicitor to the

Inquiry must be informed of any request to make an application for a Restriction Order. If an application is made for a Restriction Order in relation to anything that has been said or done in the Inquiry hearing room in the preceding ten minutes, anything that was said or done during that period is subject to a Restriction Order prohibiting its disclosure, repetition or duplication, until the Chair has finally determined the application.

For the avoidance of doubt, where material or identities in documents shown on screen or subsequently published have been redacted, with or without an overwritten gist, the redacted material is restricted, and it is a breach of the Restriction Order to disclose what is thought to have been redacted.

All of the above orders are subject to a penal notice. This means that any breach of any element of the Restriction Orders may be certified to the High Court or the Court of Session, who will have the power to fine or imprison anyone found to have been in breach of the order.

(Pause)

SIR CHARLES HADDON-CAVE: Major Cox, thank you very much indeed for coming to give evidence to me and the Inquiry. Thank you for your very detailed witness

statement, which I've read very carefully, this isn't in any sense a memory test, so counsel will take you to those parts of your evidence that are particularly pertinent. We've got plenty of time today and we'll be taking lots of breaks. All right? Thank you. Could the witness be sworn, please.

MAJOR MATTHEW COX (sworn)

Questions from COUNSEL TO THE INQUIRY

MR GLASGOW: Major, could you give us your full name, please, sir.

A. Matthew Anthony Cox.

Q. You have in front of you two red lever-arch files which contain within them two witness statements of yours, the first dated May 2024 and, more recently, a statement dated in June 2025. There are also a significant number of documents which have either you have provided yourself to the Inquiry or that we have provided to you for you to review. Before we go any further, can I confirm this with you, please: that in addition to any questions, either mine or the Chair's, that you might answer over the course of the next two days, you might like those witness statements and the attached exhibits to stand as part of your evidence to the Inquiry?

A. That's correct.

Q. Now, Major, what I'd like to try to do is to deal early

on with a little about your career and the run-up that you had to your involvement in Operation Northmoor. I would like to look early on at some of the conclusions that you have provided about your assessment of Northmoor, those who worked on it and its overall effectiveness, and then what we'll try and do after that is to take, if I can, a chronological route through some of your evidence and to identify a number of different themes that you have picked out and that I've been asked to tackle with you.

If at any stage, as we are trying to find our way through the bundle or through the different parts of your witness statements, you find yourself lost, that is my fault and not yours. So if you're on the wrong document, if you're looking at the wrong page, you must tell me. It's really important that you're able to follow the questions that are asked and that we then have the benefit of the right answer to the right question.

As the Chair has already said, if at any stage you need a break for whatever reason, will you please let us know. I will try to find a sensible moment mid-morning for a good break when everyone can stretch their legs but if at any point you need a break, for any reason, you need only ask, sir.

SIR CHARLES HADDON-CAVE: And if I'm lost, it's Mr Glasgow's fault as well.

MR GLASGOW: As you can see, I'm going to be taking the blame for lots of things today.

A. Absolutely.

Q. Career, first of all, perhaps the easiest one for you and I'm not inviting you to look at it but for those that need to turn to it in your principal witness statement, which is behind divider 18, it's paragraphs 4 to 7. You had joined the RMP as a direct entry officer in 2004, we understand?

A. That's correct.

Q. There may be many reasons why you chose the RMP rather than any other regiment but just this, out of interest for me alone, was there a particular reason why you said to yourself, as a direct entry officer, "I know what I want to do, the RMP is for me"?

A. As it happens, I always wanted to join the army but also wanted to be a police officer so the best option was to be a Royal Military Police officer, really simply.

Q. Right. Have you, or did you, spend the majority of your career in pure policing roles, as you've described them?

A. With the exception of doing staff officer work, yes.

Q. In terms of your training and the expertise -- you've set some of that out in your witness statement -- you'd

explained that you'd done both the basic investigation training, as well as advanced investigation training, and that you were trained as an SIO, a Senior Investigating Officer?

A. That's correct.

Q. You had, shortly before joining Operation Northmoor, been the regimental 2IC, so the second in command, at the SIB regiment at RAF St Mawgan.

A. At -- based in Bulford.

Q. Sorry, based in Bulford, I apologise, thank you.

How long had you held that post for, please?

A. I believe it was approximately about six months I'd held the regimental 2IC post before I took over at Operation Northmoor.

Q. As far as your move to Operation Northmoor is concerned, a number of people have given us different versions of events as to how they come to be selective of different roles, some apply, some want to go, others are told "This is where you're being sent". As to you and Operation Northmoor, you were the 2IC, how is it that you then found yourself then appointed to Operation Northmoor?

A. I recall at the time, there was an opportunity for someone to take over the role as the Silver Commander and the SIO down there. I had put my name forward on

several occasions but wasn't considered the right person for the job. There were other, more senior, experienced officers in the SIB who were under selection, potentially, but my recollection is that no one really wanted the job and they needed to split out the role of the OC of the Northmoor company to actually get a Silver Commander in place, so to spread out the administration of the unit versus the actual investigation part, leading the investigation itself.

And as no one else really wanted the job and I kept putting my name forward to say, "Well, why not give me a go?" I do have the experience. I don't have the seniority in terms of perhaps the length of service some of the other candidates did but I was really the only one who was putting my name forward saying "I want to go and be part of the biggest investigation the Royal Military Police has ever done", very interesting policing opportunity for a -- I say a young major, a junior major, as it were, with my experience.

Q. If you're aware of the reasons why others had applied but decided they didn't want to take it up, can you help us with those or did no one actually tell you why that had come to pass?

A. From my understanding, a couple of people I did speak to just said it just was not something they ever wanted to

do. I think someone described it as a poisoned chalice, to be honest with you. It was a job that really no one wanted because it was a very, very high profile investigation with no real winners, to be honest with you. There was never going to be any medals at the end of it for anybody, you were either going to follow the lines of inquiry and potentially charge someone with some very serious offences but then they will have potentially been some of our heroes of battles in [countries given], soldiers who were considered to be heroes in many people's eyes. So you're either not going to find anything and therefore at fault for not finding anything or you potentially could be referring to some very, very experienced, well-respected soldiers for some very offences, in which case you would then be unpopular for doing that as well. So when I say "poisoned chalice", you're damned if you did, damned if you didn't. But that, for me, wasn't the consideration. It was all about the actual investigation itself, the opportunity to investigate at this sort of senior level. These are criminal and non-criminal opportunities, as it were.

Q. If we take you away from the possible excitement of that opportunity that presented itself in 2017 and ask you to reflect back now on how Northmoor went, in your

experience of Northmoor, would the description that you were given of it being a poisoned chalice be an accurate one?

A. As I say, I think it probably would be, in many respects because, as I say, I always went with the mindset of, there is never going to be anyone winning any medals at the end of it. It really was a case of, if you were able to fully investigate and come up with potentially positive conclusions, so referred people for charge, you were damned, and, if you didn't, you therefore ended up spending, as we did, viewed to have spent £10 million with nothing at the end of it and therefore what a waste of time.

So it was "You're damned if you do, damned if you don't", and I still hold that belief now.

Q. You candidly explained in your witness statement that, when it came to your appointment as Silver, you were chosen from a list of one?

A. More or less, yes.

Q. Always perhaps the most attractive position in which to find yourself when you're applying for a new job?

A. Yeah.

Q. Again, asking you to reflect with the benefit of what you now know, if you put yourself back in 2017, into the young Major Cox's shoes, would you still want to be on

that list of one?

A. Absolutely.

Q. The roles that you undertook within Operation Northmoor, you've identified straightaway, of course, that when you applied, you applied to be Silver and, at that stage, had you ever worked at that level in charge of that sort of team before?

A. Not in that -- not in -- as part of one investigation of 123 people, with the complexities of what Operation Northmoor was, no, I hadn't.

Q. Your time as Silver Commander, if I've got it right, ran from February 2017 through to July 2019?

A. Yes.

Q. In addition to being the Silver Commander, you were first appointed as the Senior Investigating Officer for Team 2, and that was from February 2017, through to about September or October of that year?

A. That's correct.

Q. Team 2, as we understand, was the team that was in charge of investigating the detainee abuse allegations?

A. That's correct.

Q. But in addition to that role, as well as being Silver, you found yourself for a short period of time triple hatted -- is a phrase you've used -- because you're appointed as the Senior Investigating Officer for Team 1

in July 2017 and that you held up until your conclusion with Operation Northmoor in July 2019?

A. That's correct.

Q. So for a period of about four months or so, triple hatted when you were the SIO for Team 1 and for Team 2 and for Silver but, throughout your time when you weren't triple hatted, you were always dual hatted because you were the Silver or a Senior Investigating Officer for one of the two teams throughout?

A. That's correct.

Q. As a young and enthusiastic major, perhaps the prospect of being double or triple hatted was exciting but did that present a challenge for you in order to be able to deal with all of those responsibilities to the best of your ability?

A. I don't think it did. The SIOs that were there were very experienced, so WO2 Duce, WO2 Dempster and Williams, et cetera for Team 1, were all very, very experienced individuals. So the reason I was brought in for the SIO as Team 2 was because Zoe Duce didn't have anybody above her as an officer to actually give the additional layer of direction or guidance or support and hence why I was brought in just to give her oversight, I suppose, and a bit of clear direction for the Team 2 investigations.

As I say, Team 1, because Jason Wright was there at the time to start with, again, very experienced, very capable individual, who did a very good job and, therefore, being Silver above that, just allowed me to have oversight of all of the investigations.

Now, as a company commander within the SIB regiment, in my previous role, I would be in charge of two smaller units, two teams of up to 12 people in each one, and overseeing all of those investigations in that respect. So although it was upscaled for Northmoor, in terms of the manpower, going from perhaps 30 people in two locations to 123 or 120 in Operation Northmoor, the whole structuring and investigation input as a Silver Commander was very, very similar to being the company commander based in Donnington and having a unit in Donnington and a unit in Bulford, who I would go and give overarching investigative guidance to, to the two OCs, which *de facto* would have been SIOs down in Northmoor.

So there wasn't so much of a difference, as such, apart from the upscaling of it. So to be able to -- because the SIOs were in place, I was able to actually have a better oversight and give direction. So double hatting, triple hatting, it wasn't too much of a problem; it was all in one location.

Q. If we leave aside the managerial side of the role -- and I don't mean that in a critical sense at all -- but if we put the organisation and the structuring of the teams and your direction to them to one side for a moment, could we just think about the subject matter that you had now been instructed to investigate. Did you have any previous experience of any homicide investigation before joining Operation Northmoor?

A. Not homicide. My closest experience was an attempted murder in Germany, very straightforward. Basically, a lady being pushed downstairs, threats to kill, et cetera. And that did involve the forensics, et cetera, but not on this scale of pure homicides, no.

Q. When you talk about scale, distinguishing the increase in the seriousness of the nature of the allegation that you're now tasked with investigating, can we put that to one side and now think about the scope of the investigation --

A. Yeah.

Q. -- because not only are you looking now at the most serious allegation that could be asked for you to investigate, you're now looking at it over the scale of a significant window, involving potentially a large number of different inquiries. Had you ever found yourself on an investigation or an inquiry that came

even close to the size of Operation Northmoor?

A. No, no.

Q. Given what you'd said before about your aspiration to join Northmoor because it was something that the RMP had never done before, do we conclude from that that this wasn't just new to you but it was new to the regiment?

A. I would agree. Absolutely.

Q. In terms of trying to put yourself in the best possible position to be an effective Silver and an effective SIO, did you undergo any pre-deployment training or any CPD training to try to either hone or improve or develop investigative skills?

A. Not prior to joining Operation Northmoor, no. I'd come from being the regimental 2IC and being the OC of the SIB northern area which, as I say, had just been a constant role of managing direction, or giving direction, managing investigations, of serious nature -- so up to and including sexual assault, serious sexual assaults, et cetera, arsons and suchlike -- but obviously we don't deal primarily with a murder and attempted murder because that is done by the civilian police. They retain the primacy, retain the jurisdiction in those matters and, therefore, I hadn't done any sort of any additional training prior to joining Northmoor, no.

Q. Had you had any attachments to any Home Office police force?

A. No.

Q. During the course of your time with Operation Northmoor, was any ongoing training made available to you so that you could, if you lacked any skills, develop them?

A. I wouldn't have said anything that was required by an SIO at my level. So things like placements, et cetera, they just weren't available to me. And because of the investigation itself, I don't think there would have been the opportunity for me to have taken three weeks out to go and be attached to, say, the homicide in Met Police or wherever. I may well have benefited from it but I don't think there was -- there was no opportunity to do that at my time in Northmoor, no.

Q. Major, I was about to ask you about the availability of any external assistance that you had had during your time as either Silver or SIO. We will, as I said, in due course, come to consider the involvement of individuals and bodies who offered assistance to the investigation but, for example, did you have a mentor or someone you could turn to with far greater experience than you, who you might be able to use as a sounding board?

A. Only John Harvey.

Q. Without meaning any discourtesy to John Harvey, did he lack the same experience that you lacked in terms of homicide investigations or investigations of this scale?

A. From my understanding, from John's background, he had been involved in murder investigations throughout his 30-year career, in various locations around the world and obviously on operations, et cetera, of -- with his experience. In terms of investigation on this scale, I'm not aware that he had that experience, no.

Q. As you candidly said, this was new to the RMP?

A. Very much so.

Q. Looking back at it now, would it have helped you, do you think, to have had someone with that sort of experience in their CV to be able to give you guidance or advice as to what you might do?

A. Absolutely. Reflecting on what we actually had in terms of my ability to reach back to experience and having, you know, having had the opportunity to look back on what we did, what resource we had, what was in place beforehand, yes, there was -- before I took over, there was a lot of interaction with the other policing organisations, Greater Manchester police, the MCA, et cetera, whereas when I took over, that was removed. We were purely dealing with the IRT and Sir Jon Murphy and the advice from them and, on reflection, actually

I should have, and would have definitely benefited from having experienced detectives, SIOs of that level, PIP 4 level and above, who would have been able to give me sound advice on what I was dealing with the investigation, without a shadow of a doubt.

Q. Just picking up on what you've spoken about resource wise, can I just invite you to consider the team, either Team 2 or Team 1, or indeed both teams together, because you were Silver of the investigation itself. You described them in your witness statement as "dedicated" and "extremely intelligent" and "diligent" and that may properly describe the effort that they put in into undertaking the inquiries they were tasked to look at. But can I ask you whether they had any limitations on their experience or training that had an impact on their ability to do their job?

A. Yeah. Again, whilst from the very outset, there were -- the aspiration was to get everyone trained to the right level, the right people trained to the right level -- there was always restrictions on availability of courses, the turnover of personnel, so my understanding was that certainly people were being trained up but, before we could even get down to RAF St Mawgan, they were either posted or their qualification had run out or we had new people in who weren't qualified. So there

was a constant churn of people who were either qualified and then moved on or unqualified in whatever role they were but there weren't enough courses to go round to get everyone up to speed.

So, yes, whilst there was opportunities for some limited people to go and do certain courses, for instance one of the girls who was in charge of the MIR, Selena Cottrell(?), she was able to go and do a placement for a while, which was great, so it allowed her to run the major incident room at a better standard with a better understanding of her role.

But that really was one example of very few opportunities for the boys and girls who were (a) dedicated, (b) experienced in their own field. Some had been on -- a lot of the seniors had been on operations and dealt with serious incidents in operational zones of this nature but not of this complexity. And there was a lot of kids, a lot of the youngsters who hadn't, who had just basically come from training, been put on Northmoor, been put on a HOLMES course perhaps, but that was them -- understanding of what any investigation was, let alone something of the complexities of Operation Northmoor.

So to answer your question: there weren't really enough opportunities for the boys and girls to continue

their own personal development in the role they had, no.

Q. In terms of your ability to manage the investigating teams and to drive them forwards to make progress, is that made more difficult when the members of the team are themselves struggling, perhaps, to keep up with what's being asked of them?

A. Yes, absolutely. There's only so much they can do with enthusiasm and dedication. Experience is everything and, to get that, you sometimes need to go on courses to get the qualifications to give you the confidence to actually take investigative decisions, to actually take things forward, to think like an investigator. If you don't have those qualifications or the opportunities for training in that respect or actual real-life experience, then you're always slightly up against it when you're asking people to do an investigation of this nature and look at some of the things that the boys and girls were asked to look at.

Q. If we pick up on one of the military acronyms that we've heard a lot mentioned in the course of these Inquiry hearings, SQEP, suitably qualified and experienced, do we need to think in terms of actually separating out those two requirements for the people you want to do the job?

A. Yes.

Q. It's one thing to be qualified but it's another thing entirely to be qualified and to have the relevant experience?

A. Very much so. I mean, I myself, whilst I was qualified SIO, I'd done the SIOs' course, I hadn't done the -- what would have required me, say, if I'd worked within a Home Office police environment, I certainly hadn't done the yearly cycle of enough investigations of this level to probably maintain that -- what would be described as the whole *(unclear)* of an SIO because it just didn't, those opportunities didn't present themselves within the RMP investigations that I had completed.

So yes, I'm a prime example of maybe not being -- having experience in one respect, qualified, yes, but the continuation of that qualification, that experience, I lacked --

Q. So "SQE" but not the "F"?

A. Yes, absolutely.

Q. If we put you in the position that you were in at the end of the investigation, so we're now in the summer of 2019, and we ask you to look back on where you had reached as an investigation, if you were trying to put together a report card for Northmoor, which was going to identify effort and results, if I've understood your

position on effort, the effort put in by you and your team is something that you were proud of?

A. Very much so.

Q. They had worked hard and diligently but, in terms of the actual progress that Northmoor had made, notwithstanding the effort put into it, did the progress match the effort?

A. I would agree, probably not. No. I mean, there is -- there is so much effort that went in from a lot of people. From the 120-plus individuals that worked on Operation Northmoor, there was an awful lot of dedication time, hours, long hours of thinking and trying to do their best with this investigation but with the restrictions we had in place of who we were investigating, what we were investigating, where they were, the locations of trying to get to people, that impacts on everybody, to be honest with you.

Q. Again, nothing that you do with an investigation is necessarily results based.

A. Yeah.

Q. So recognising that results is always a difficult metric to put on a criminal investigation but I'm going to try and do so for a moment. If I'm unfair, you must tell me. If understood it, over the course of the five years that Operation Northmoor was running, no one was

arrested; is that correct?

A. That's correct.

Q. No one was interviewed after caution?

A. Correct.

Q. Obviously no one was charged. Do you feel you got the investigation to a position where you could say one way or the other whether crimes had been committed?

A. We are there to look at -- to prove or disprove the allegations, to see whether a crime has or hasn't been committed and that is the crucial bit to it, in the fact that we never really proved it didn't happen and we never really proved it did happen. We didn't get to a stage where we can categorically say that nothing happened. Clearly, there are cases where we applied the Leggatt Test to, certainly for Team 2, a lot of Team 2, and, again, should information come to light, as we had on *(unclear)* reports, should new information come to light, consideration would have been given to reopening those investigations. At the time, we didn't have anything else that we could do it with or any information to pursue the investigations and, therefore, they were closed down.

So prove or disprove the allegation, well, you can't go either way because there's no more information, therefore you stop the investigation in those points.

When you look at the rest of it or you look at the more serious allegations, again, it was about proving or disproving the allegation and I would argue that, at the end, we kind of came to the conclusion that the lines of inquiry we had were completed and, therefore, there was no evidence to support the allegation. But that's not proving or disproving, in my opinion. We kind of got to a stage where it was nothing. It was neither one way or the other, at the conclusion of Operation Northmoor.

Q. If the purpose of the investigation, or an investigation, is to prove or disprove the allegation that has been made, which has been the subject of the investigation, if you find yourself in a position at the end of Operation Northmoor where you haven't got a decision either way, what measure of success might then be applied to that conclusion of Northmoor?

A. I think it's very difficult question to answer, in terms of measurement of success. As I say, a measurement of success is to prove or disprove an allegation. We didn't really do either, in the very conclusion. So I think putting a metric on the success of Operation Northmoor is very, very difficult.

Q. Well, if you're right in your assessment that you haven't managed to prove or disprove the allegation but that was the purpose of the investigation itself, would

it be fair or unfair to suggest that Northmoor failed?
A. It wouldn't be unfair to say that, no.
Q. In terms of where you were in the summer of 2019 and where you thought you had wanted to get to, were you ready for the investigation to stop at that point or had you wanted it to continue, in order for it potentially to succeed one way or the other?
A. I would have liked to have seen it continue, yes.
Q. Again, without putting words into your mouth, would it be fair or unfair to suggest that the investigations stopped too soon?
A. It did stop too soon.
Q. We remind ourselves, of course, that this is an investigation which ran, as I've just said, for over five years and, as you'd identified in earlier answers, to the tune of more than £10 million. If it hadn't reached a conclusion with that amount of time and that amount of money, was it ever going to reach a conclusion?
A. I think there were other lines of inquiry that could have been explored outside the terms of reference that we were given. So within the terms of reference that we were given, we did everything we possibly could, within the constraints of what we had and the time we had, and the limitations of the terms of reference.

That said, I still do believe that, actually, there were other elements of Operation Northmoor that didn't *(unclear)*. There were other incidents that were seen that we were made aware of, that, because of the nature of what they were and where they were, should have sat within Operation Northmoor and the terms of reference of Operation Northmoor should have been extended and therefore Operation Northmoor should have continued under new terms of reference.

Q. If we think again about the progress that had or had not been made with that investment and over that period of time, was Northmoor, if it's not effective, was it expeditious?

A. There were, at the very outset, some very -- what's the word I'm looking for? Not restrictive but debilitating for the investigation. So, whilst what we were looking at occurred several years before, the RMP were not informed until several years after the event and therefore we were on the back foot to start with. So expeditious: if you don't know about it, you can't start an investigation. And then, when you're starting three years later with information that's three years old, you're already on a back foot. So you're starting with very few people and, to build a team up, you could argue it wasn't very particularly expeditious to start with.

But once we got to the stage where we changed our strategy within the investigation itself, I think the pace did pick up. I think we actually did a very good job in what we managed to achieve in a shorter period of time, when we had reviewed the investigation strategy and gone for a more open approach to what we were doing.

So from the second half of it, I would say it was more expeditious. The first part, (a) we didn't know about it for three years, so that was not on us, and then, after that, yes, there was a slow, slow progress. But that was the restrictions or the issues that were found by Operation Northmoor in the setting up of the investigation, what they were dealing with, access to the information, access to witnesses, all these elements did actually impact on how fast the investigation could move in the first place.

Q. We will come, I assure you, to look at some of those matters in due course.

Can I ask you this, though: in terms of your ability to direct the investigation as you saw fit and to ask people to undertake the necessary inquiries that you thought were necessary, did you have enough autonomy as the Silver Commander to properly direct the investigation and to implement strategy?

A. No. From the outset, it would appear that I did --

I thought I did -- and when we had a change in direction with the IRT, I thought it was a very positive involvement and that I did think, "Excellent, we are going to" -- I did think at that point I had some sort of autonomy to get on with the investigation, having had a review, with a new direction after review, which is a good thing -- a review of any investigation is a very good thing -- to have that review and allow some different direction was great but I think, after that review, it became quite apparent to me that my autonomy in the investigation as to what I could do with lines of inquiry was going to be very restricted.

Q. How were you getting the information or the lines of inquiry which you then passed down to those beneath you?

A. So the process would be the IRT would come in, do a review, they would make some recommendations, which were then put to the senior command group of the Brigadier Sir Jon Murphy and his advisers. If those recommendations were accepted, that would literally pass down as direction of "This is your next part of the investigation, where it's going".

Now, whilst I could try and do those lines of inquiry, as it were, or pursue those lines of inquiry in the best way I could, I was still limited to those are the areas where you're going with this, rather than,

"That's just some advice, these are recommendations. Go with them the floor is yours". It was very much a case of "These are the recommendations from the Independent Review Team. That is now strategic direction. It is also your direction at the lowest level".

Q. What if you, as the trained investigator and experienced SIO, wanted to go in a different direction?

A. We were very much told no.

Q. Is that how you expected things to be run when you first joined --

A. No, absolutely not and, having come from being, as I say, in charge of investigations, serious crimes, whether they be criminal or non-criminal events, I've always had the ability to investigate, whilst I've had direction and review from senior commanders, et cetera, and I've given that review to junior teams in their own environments. It's always expected that, whilst you give some direction and some experience or perhaps a suggestion of an investigative strategy, it is very much up to them to pursue the investigation, and that's what I thought I was going to get when I went in as Silver Commander and as the SIO.

And for the first couple of months, as I say, it was going that way and then, once the IRT review -- first review had been, it was fine. After that, that's when

I felt I had no sort of autonomy or leeway, either way, to pursue lines of inquiry that I think we should have pursued with the independence that we should have had.

Q. Just bringing that back to the overall conclusions that you've been offering in respect of Northmoor, to what extent did that lack of autonomy or lack of ability to choose the route for the direction, to what extent did that have an impact, do you think, on the failure to make proper progress, if that's how it can be described?

A. Well, I do feel that a lot of it restricted the expediency of the investigation, for instance. So whereas we'd like to move on -- even if the IRT sent a recommendation, we'd know about them, we were sat there with them, we'd seen the report before, went then back up to the headquarters to be reviewed and then a meeting arranged and then a decision made.

So we're talking between the IRT making a review down in Operation Northmoor, while I'm sat there -- and, having seen their review, I could have got on with it. I would then have to wait, perhaps, up to six or seven weeks, potentially for it to have been sent back up the chain for then someone to review it, for the Brigadier to then decide he's happy with it and then direction to come back down again.

So that's six weeks of knowing their investigation,

lines of inquiry, I could have done and actually having to wait for it to be approved so I could get on with it. That's a big impact. That's just one example of it being a big impact on where I would have liked to have gone with the investigation and the team, and the rest of the team. The frustration's not just mine but certainly down to my DSIOs and the senior investigators, who, I'm sure, shared -- I know shared my frustrations with not being able to get on with things and also with lines of inquiry we thought were pertinent and should have been followed, being restricted as to how we could follow them and the way in which we could follow them.

Q. Again, we will come to consider some of those possible lines of inquiry together over the course of the next day or so.

Can I leave aside your overall impression or your general conclusions in respect of Northmoor? Can we go back to the beginning together and can we start -- what I'd like to do is have a little bit of your help in respect of Team 2 because when you joined as Silver, you were appointed to Team 2, almost before you joined as silver. I think the official appointment as SIO for Team 2 was in January 2017, not announced until February --

A. Yeah.

Q. -- but you became Silver officially in late February of 2017. Have I got that right?

A. That's correct, yes.

Q. Now, Team 2, as I'd already identified with your help, is the team that was concerned with the detainee abuse allegations and, without wanting to go into precise numbers, but we can look at the figures if we need to, at the time you joined as SIO for Team 2, there were over 600 allegations of detainee abuse which were the focus of investigation by that team?

A. That's correct.

Q. I think that the largest number that appears to be identifiable from within the paperwork is 675, which was around about the spring of 2017?

A. That's correct.

Q. Okay. Now, you'd identified that WO2 Duce had been not occupying the position of SIO but, in effect, had been managing the team prior to your arrival. Do we understand from that, that there had not been an official SIO until you were appointed SIO in late January/early February 2017?

A. That's my understanding, yes.

Q. So in terms of the investigation into over 600 separate allegations of detainee abuse, that investigation had been running by the time you arrived for over two years?

A. *(Witness nodded)*

Q. Presumably had taken up quite a large amount of Northmoor's horsepower in order for those inquiries to be taken forwards?

A. That's my understanding. So when I -- when I took over and went down to Northmoor, the Team 1 had a team of about 12, I think it was. Team 2 had a team of more or less 30 or 40 working on the investigations and then the rest of Northmoor was split down to the intelligence cell, the MIR, and disclosure cell, from what I recall correctly. So it was a good portion. There was about 40 investigators working on those allegations, yes.

Q. So at that stage, WO2 Duce was responsible for -- would it be organising and directing that team?

A. That's correct.

Q. Whilst not officially the SIO, was she acting in the position of an SIO?

A. Yes.

Q. To your knowledge, had she ever been trained as an SIO or did she have any experience in that role?

A. I think she may have done the DSIO's course but I can't 100 per cent confirm that.

Q. What I'd like to do is take you to one of your policy file reports. It's file 2, divider 58, please, sir. The reason for doing that is we can see on 15 January,

you have identified in your policy file report that you have been appointed as the Team 2 SIO.

A. Yeah.

Q. We see the decision and this is a format that we'll see replicated throughout your policy file reports:

"Decision: Major Cox appointed as SIO in support of WO2 Duce to focus inquiries for Team 2."

Then you identified the reason for that decision:

"Team 2 has been without an SIO for some time. In order to give support and clear direction, Major Cox has been directed to support the Deputy SIO, WO2 Duce, and ensure the timelines issued by Gold are met."

So do we see from your entry there that, whether there had or had not been an SIO at any point in time, we know that there certainly had not been one for some time --

A. Yes.

Q. -- and that you are now being asked to provide clear direction and to ensure the timelines are met.

Now, without trying to sound critical in any way of WO2 Duce, can I just ask this: when you were brought in to give clear direction and ensure the timelines were met, in any way might that suggest that the absence of an SIO meant that there hadn't been sufficiently clear direction or that timelines were not being met until you

arrived?

A. No, I think what WO2 Duce was doing was a very good job there. She was getting on with the process. This was, I think, much a result of consideration being given to the Leggatt Test being applied to Team 2 inquiries, so up until that point they would try and investigate as much information as much as they could with the information they had and they had a process of going through a review of the operation offending team where they review each case and say, you know, "Have we got enough information on this? How can we move this case forward?", in every single allegation.

The Leggatt Test had decided it could be applied to Operation Northmoor, if required, and certainly to Team 2 inquiries, just before I took over. So what this allowed me to do was to come and give the clear direction about, "Okay, let's review all the cases we've got. Is there already enough information to continue to pursue them?" Therefore, Leggatt Test does not apply because we have information, such as some of the allegations of abuse that were on videotape. So we had access to the videotape and so, therefore, absolutely no way were we going to just apply a Leggatt Test and say "well, no information". We had evidence that we could review and look at to see if the allegation had -- the

crime had been committed or hadn't been committed, so to prove or disprove the allegation of assault in, say, an interrogation interview.

The other -- lots of the other lines of inquiries were allegations that were made by people we had no access to, we had no further information to, and therefore bringing me in allowed me to refocus Zoe and allow her to focus on some of the lines of inquiry where we had positive result or positive lines of inquiry to follow, and actually go through the rest of this and say, "Right, focus on these ones we don't have enough information for. Can we or can we not apply the Leggatt Test? Let's engage with the OOT and do the joint case review panel process". And, therefore, if they met the standard requirement, the elements that were required by the Leggatt Test, we could discontinue that information, clearly based on the review of should information of a positive nature come to light, consideration be given to reopening those.

But for that time, it allowed me to come in and focus -- give Zoe Duce the ability to focus on what she was doing and also give that direction of "Okay, second pair of eyes on this. There's lots of investigations here". So it gave her the support to be able to go through all of these and sort out the ones we could

investigate and the ones we couldn't.

Q. In any way might the review conducted by the IRT in November 2016, which proposed the use of the Leggatt Test, in any way might that have been precipitous and in asking for an SIO to be appointed for Team 2?

A. I don't recall it saying about an SIO in -- as part of their review but certainly -- it certainly showed that there was a requirement for Zoe to have support in terms of an additional managerial role, as in the SIO, to get the job done.

Q. I certainly didn't mean to suggest that they, the IRT, had recommended the appointment of an SIO. What I was seeking to explore with you was this: with having had an opportunity to consider the IRT report and the recommendations about how to bring a fresh approach to Team 2, might that have lain behind a decision to appoint an SIO over Zoe Duce?

A. Possibly, but that was not really one of the decisions that was for me to make.

Q. If we just look on in your exhibit file number 2, on one tab to tab 59, please.

In terms of the direction that you were seeking to assist with:

"Direction received from Major Cox that he has been appointed overseeing officer for Team 2 by Colonel

Harvey [that's John Harvey you referred to earlier] and has been directed to ensure that the deadline for completion of the inquiries for the 24 January 2017 was met."

As to the reason:

"It was explained by Major Cox that, due to the absence of an SIO, he had been authorised to provide support and make decisions regarding ongoing inquiries specifically in respect of the three independent inquiries. This direction was not fed into me by Gold or Silver."

Now, this is a file entry report for Zoe Duce, WO2 Duce. We see her writing there, "This direction was not fed into me by Gold or Silver". Do we understand from that that she has been made aware of this new direction by you, after you have been appointed SIO for Team 2?

A. I can only assume that is the case, yeah.

Q. Now, in terms of directing to ensure the deadline for completion of inquiries for 24 January 2017 was met, that was only a week or so away. Can you remember now what the inquiries were that you needed to conclude within about a week?

A. In all honesty, no, I can't.

Q. What I'd like to do, in the chronology, is to go back to November 2016 and to look at the IRT review,

recognising, of course, that was conducted at a time that you were not in post but presumably you were, if not shown a copy of the report at some point, told what was in it, so you could understand what was being expected of you.

You'll find that in the same file but we need to go back to divider 56, please, and, within that, if we can turn first to page 6, which identifies the start of the document.

I've been advised there may be a problem regarding the link to the online feed. What I'd like to do -- ah, it's just been rectified. You so nearly had a coffee, Major. I'm very sorry.

Now, what we have at our page -- tab 56, page 6, is the start of the first of the IRT's reviews. I'm afraid they don't date the document itself but you can see from paragraph 1.2 that on 22 November, again before you were appointed, Phillip Jones and Clifford Evans had travelled to Newquay and commenced the review at RAF St Mawgan.

Now, in terms of their review, they focused initially on Team 2 because they didn't yet have the necessary classification in order to review the Team 1 unlawful killing allegations. So they did Team 2, and the detainee abuse in November, and they came back later

on to do the review in respect of Team 1.

Can we just look, please, at the possible impact that this review might have had on Team 2. If we go to page 56.7 and look to paragraph 2.6, please, sir:

"The IRT are profoundly uncomfortable with the basic information provided to date and believe there could be some merit in carrying out a scrutiny of the process adopted by Leigh Day and their intermediary in Afghanistan. Topics for scrutiny might include examination of the contract, records of payments, establishing the identity of the intermediary and interviewing that person, examining the notes, reassurance that no other additional material exists.

"However, as things currently stand, it may be prudent, more fruitful and crucially timely to simply apply the outlines applied in the Leggatt ruling as opposed to carrying out this additional work at this time."

If we just pause for a minute together to consider that. To date, as you understand it, Team 2 had been attempting to uncover whether there was any evidence to support the allegations that had been brought to the attention of Northmoor by Leigh Day, the solicitors firm.

A. That's correct.

Q. In the absence of witness statements from individuals making a complaint, when information provided in respect of a complaint had come to Northmoor, the investigators had tried to find out whether that person had been detained, when they had been detained, for how long they had been detained and where they might have been detained.

A. That's right.

Q. That, the investigation team viewed, as the starting point or the fundamental structure upon which an investigation might proceed?

A. Yes.

Q. Because, without a witness statement, they first wanted to find out whether there might be any truth at all in the named individual having been detained and questioned.

A. Yeah.

Q. That was the process, if I've understood it, that Team 2 were endeavouring to complete with each of the 675 separate allegations?

A. Absolutely. They had access also to the -- the Guard Service who were out in the operation environment kept very, very good records. So the MPGS kept very good records of all the detainees, all their medical records, any examinations, had any interviews that were conducted

with the detainees. They had very, very good records of them being in and out of those -- in those interviews. And because they had access to them, they could go through all the records and say, you know, if the information they had for, say, one individual gave maybe a time and what had happened in an interview or what happened in a compound, they could go back to those records and see if (a) that person existed, (b) if there was any medical intervention with them, what day it had happened, what exactly had happened to them. So there was a lot of thorough investigation done with every single one of these to try to find anything that could either prove or disprove that allegation.

So these were very, very thorough investigations at that time.

Q. This had been the process that had been adopted by Team 2 for over two years now?

A. Yes.

Q. An outside Review Team comes in and, as ever, a Review Team might identify things that had or that not been working, and here it seems that for Team 2, the Review Team are profoundly uncomfortable within the basic information that's been provided thus far?

A. Yeah.

Q. If you're a member of Team 2 and you've spent, for some

people, two years trying to work with that basic information to see if you can identify whether someone actually exists and was detained, to see if you can investigate the allegation, do you think that might have made, in fact, for profoundly uncomfortable reading?

A. Quite probably yes, but also, for some, it was quite a refreshing view to say, "Well, this is what we think as well". We don't have anything, so if we try to investigate with nothing, how can we take an investigation forward? So to have a Review Team come in and say, "You're right, you've got nothing", unless you get more then you can't investigate this and then being able to overlay the Leggatt Test on top of it, taking each case individually, going through the JCRP process and saying, okay can we apply the Leggatt Test to this, with the Review Team saying, "If you haven't got all this, then you can't really do it". Brilliant okay, if we review it again, is there anything else we can -- are there any further lines of inquiry we can do for this? If not, then with legal advice we can then apply the Leggatt Test, as I said, with the caveat being that, should more information come to light, consideration would have been given to reopening those investigations.

Q. If we just look at how that's translated within the report itself, if we turn over the page to 56.8 and

paragraph 3.2, sir.

"The referred operating model would focus on the complainant as opposed to the actual complaints. This change would permit the principles outlined in the Leggatt judgment to be applied fairly and consistently to both Project Elsinor and Operation Isoptic."

Those were the two investigations which had been combined under Operation Northmoor?

A. Yes.

Q. So a focus on the complainant, as opposed to the actual complaints. Essentially, does it come to this: in the absence of a signed witness statement from the complainant, alleging what had happened to them, the investigators were being told now, "You actually had judicial authority that permitted you to say, 'Without a statement, we can't go any further'"?

A. Basically, yes.

Q. Without trying to state the obvious, did it really need the decision, as he was then, of Mr Justice Leggatt to say, in the absence of a signed witness statement, an investigation is not going to go very far?

A. Well, I think the point was we were actually trying to do independently as much as we possibly could to investigate these allegations. At no point was there any consideration before applying the Leggatt Test that

we would just go "Well, we're just not going to investigate because we don't have" -- they were trying to look at any line of inquiry they could to pursue it to see if there was an allegation, to see if there was a line of inquiry that they could follow. Based on the information that they had, I say, looking at the records from the MPGS, to see if there was any correlation between the allegation that had been made, the complaint that had been made, and to any records we had that may support or not support their allegation.

So it wasn't just a case of "Well, if you haven't got a statement, we're not going to do it". It was a case of "Well, let's look at all the lines of inquiry we can do without a statement" and then obviously with the IRT and the Leggatt Test becoming applicable to Operation Northmoor and certainly Team 2 investigations, that allowed us to, the team, to go, well, actually, let's stop trying to pursue lines of inquiry which are not going to get us anywhere when the recommendation is actually, if you don't have the basics, which is a new, new -- a signed witness statement from a complainant, then actually where are you going with this? That allowed us to refine what we were doing, look at our investigation process and go, okay, well, yes, we will stop investigating these ones because we can't go any

further than we've got, which was fine. I think it was a correct decision to do.

Q. Again, this isn't meant critically but does that become then almost a sea change for the way in which Team 2 approaches the allegations they've hitherto been looking at?

A. Very much so.

Q. So did that enable Team 2 to sign off as "no further action" a significant number of the 675 complaints?

A. Yes, once they'd all been individually reviewed. So they all went back through the JCRP process. We all sat down with the OOT, the operational offending team, with some guys from the Service Prosecution Authority, and we looked at them all individually and said, "Okay, can we apply the Leggatt Test to this individual case?" And went through every single one of them and decided whether we could or couldn't. As you'll note, there were some which we couldn't, as I mentioned about the video tapes, and there was some where we did have a complainant, saying, well, let's see what we can pursue with this.

Q. Does it come to this: if you had an allegation where there was no separate evidence, such as a videotape to support it, and where there wasn't a signed witness statement, that was not an allegation that was going to

be further investigated, unless new information came to light?

A. That's correct.

Q. Now, in terms of how this was translated and passed down to the team, can we look on in the file you've got to divider 57, please, and to page 2 within it. Again, I'll identify this is a document which was in existence prior to your appointment. So this records decisions from the Gold meeting on 15 December 2016, almost exactly a month before you were appointed the SIO for Team 2.

We see present at the Gold meeting, Sir Jon Murphy, and then Brigadier Neal who was PM(A), and a number of names, including, for example, Mr Kell and Mr Davis from the Service Prosecuting Authority and also Mr Williamson from the NCA. So a collection of different individuals making up this particular meeting.

Can I just ask this before we look at its detail: in terms of the presence of independent advisers or lawyers or other Home Office investigating bodies, would it be normal for them to be present in the Gold meetings?

A. From my understanding, yes, at that time.

Q. Did you think that was appropriate?

A. For the NCA advisers, et cetera, yes, I do, because they were giving direct advice. I know that, obviously, Paul

Williamson at that time, from the NCA, was giving the overarching advice to Jason and the team in Northmoor.

Q. What about Sir Jon Murphy on behalf of the Independent Advisory Group.

A. I don't know, to be honest with you. I couldn't comment on that.

Q. If we just look at the impact of the advice that had been received by the IRT, if we look to item 3, a little further down the page:

"Gold briefed that IRT had produced their draft report which he also confirmed all present had seen. The recommendations allow for prioritisation of Team 2 activity and focus on how the Mr Justice Leggatt judgement is applied."

In terms of how it was applied:

"Gold briefed that the progress of Team 2 was very good and numbers were progressing."

Then, at the very bottom of the page, what was written was:

"... we must deal with the Team 2 issues in a timely fashion."

In terms of the progress and the numbers that were good, were the numbers declining in the sense that active investigations subjected to the Leggatt Test were no longer active investigations?

A. That's correct.

Q. So in terms of numbers being very good or progressing, do we need to understand that that means the numbers are going down, not up?

A. That's correct.

Q. And that the desire to see those numbers reduce was something that Gold wanted done in a timely fashion?

A. Yes.

Q. When you came on board, then, as the SIO for Team 2, about a month later, was it your understanding that Gold's expectation was that the numbers in Team 2 would continue to reduce?

A. Absolutely. By applying the Leggatt Test to those that we could.

Q. Insofar as the translation of the IRT's involvement into your language and then to your team, if we look on, please, to divider 64 and to page 2. We're now in early March and you've had a little opportunity to understand the significance of the IRT's review, to work with your team and get a handle on how the numbers are progressing. What you wrote here for your decision was:

"All investigative activity will be done in conjunction with the IRT recommendations accepted by PM(A) on 23 February 2017."

Then:

"This includes applying the Leggatt Test to all Team 2 activity and ensuring that all cases are processed through the JCRP process ..."

As to all investigative activity being done in conjunction with the IRT recommendations, does that mean that essentially you are taking what the IRT has said in its review and passing that down to those under your command as the direction the investigation will take?

A. Absolutely, yes.

Q. As a new SIO coming in, in any way did you want the opportunity to try to set investigative direction yourself?

A. Yes, but I think that this IRT review, as I say, was done prior to me taking over and then, since then, my policy, we say, well, because of what the IRT have done, we will then follow that. I think, actually, if I recall, at the time, having the review and having those recommendations, the review recommendations saying, "Well, actually, these are positive moves forward if you accept our recommendations and follow these lines of inquiry, or these procedures", I think was a good thing and, actually, why wouldn't I have followed an IRT, Independent Review Team, who have come in and said, "Well, here's your starting point, Matt, we recommend that this is the way you go forward with the

Team 2 investigations". That again is accepted by -- in the first instance, the Provost Marshal and he's passed it down, so, actually, as a starting point, I don't think it was a bad way to start.

From there, I think Team 2 was very much, actually, those, apart from the ones where I say that we say, well, we're not applying the Leggatt Test because there is potentially positive information, lines of inquiry, we could follow, following those recommendations and passing those down directly, I don't think at that time was a bad thing to do because it was a good way of giving clear directions to what we were doing with those 675 allegations that were outstanding for Team 2.

Q. As best as you could assess it, those who were working under you in Team 2, did they welcome the advice they had been provided by the IRT?

A. I think, if I recall rightly, yes. The majority actually saw it as, again, a positive thing, in that respect, because of the fact we were -- they had spent two years with very, very limited information, going round and round in circles, so asking for the complainants or the representatives of complainants to provide them with witness statements, further information, anything that would help them follow any line of inquiry to prove or disprove the allegations

that we brought forward.

So actually, having some clearer direction saying, well, actually, you've done this for two years, if you haven't got anything, then let's redirect, let's focus on what we do have, and anything else can be put through the Leggatt Test and, if there isn't anything of a positive nature there, then we can put them on hold. We can put those investigations on hold and focus on the amongst we can do so, yes, I do believe that the majority of people down there actually welcomed that change of direction for Team 2, so they could actually progress, finish, conclude those investigations that weren't going anywhere and focus on ones that had an opportunity to pursue any lines of inquiry and, again, get them to their own conclusion.

Q. In any way did you consider that the freeing up of the time for those individuals might mean more resources could then be focused on Team 1?

A. At one point, yes. But then the nature of what Team 1 were doing at the time didn't actually require, at that time, a massive amount of investigators being pulled across to what they were investigating because, at the time, they were investigating a limited amount of allegations. So when you've only got one allegation, you only need a team of 12 or so looking at what they

have with -- what we had with the disclosure cell, with the -- sorry, with the intelligence cell, doing a lot of background work as well, we didn't need another 30 investigators being pulled into that one investigation or that one incident.

Should we have opened up to more than one incident, then perhaps we would have taken a lot more investigators on board into Team 1, but they didn't need, at that time to be backfilled by any more investigators in Team 1.

Q. But if you had wanted to increase the number of allegations that you were investigating within Team 1, might you have had the capacity to improve the size of your team because individuals were being freed up from Team 2?

A. Well, yes, we would have been, if we'd had -- if they'd required -- if Team 1 had required the additional manpower, then we would have been able to have those people brought across from Team 2 to Team 1. As it stood at that time, there was the ability to reduce manpower because we didn't have the 675 allegations going on. Therefore, those investigations weren't required and they weren't required to be transferred across either. So there was a natural -- a natural reduction in numbers of individuals in Northmoor because

they weren't required for Team 2, there was no requirement to pull them across to Team 1 or any of the other positions and, therefore, they were released back to the Royal Military Police regiments to continue their policing duties there, if that makes sense.

Q. Just before we leave this document, can we just look together at your reason that you set out for the investigative activity being done in conjunction with the recommendations of the IRT. What you wrote was:

"Following the Gold meeting on 23 February, PM(A) delivered his strategic direction through Gold."

So that's Brigadier Neal --

A. Yes.

Q. -- giving his direction through John Harvey?

A. Correct.

Q. "He [that's the PM(A)] accepted all recommendations and advice from the [Director of Service Prosecutions] ..."

At the time, Andrew Cayley --

A. Yes.

Q. -- and his mentors and is [that must be that the PM(A) is] prepared to take greater risk based on the Leggatt judgment."

Do you understand now what you meant by the "greater risk" that the PM(A) was prepared to take at that stage?

A. Yes. If I recall, the greater risk was that there could

have been -- information did come through, so we applied the Leggatt Test to -- let's just say 500 of the cases, discontinued 500 cases, and the risk being that actually the legal challenge, or that all of a sudden a bus ticked up at RAF St Mawgan with all 50 complainants on board and, therefore, we had that information back and we'd downscaled the investigation and then a busload of 50 people -- actually what we needed, the 50 witnesses or complainants turn up, that would have been the risk of going, well, actually, we've applied the Leggatt Test, we've downscaled the investigation, we've reduced the numbers of investigators available, and the risk being that should the busload turn up at RAF St Mawgan, we could have had to -- relooked at the manning of Operation Northmoor and bumped up -- restarted lots of investigations, pulling manpower back from where we'd reduced those. That would have been the risk.

Q. The reality of the position, of course, was it was highly unlikely that a busload or even taxi full of people would arrive?

A. Very unlikely but that was always a risk.

Q. But asking you this: what did you consider the likelihood that you might get a collection of statements from complainants because, over the last two and a bit years, none had been forthcoming?

A. Very unlikely.
Q. So in terms of it being a risk that the Leggatt judgment was being applied to Team 2, did you regard it as a risk or did you consider it as an appropriate course of action?
A. For Team 2, absolutely appropriate cause of action.
Q. Drawing the distinction between Team 2 activity and Team 1 activity, at any stage was the Leggatt judgment applied to Team 1 activity, that team investigating allegations of unlawful killing?
A. It was not. It was considered and it -- quite rightly appropriately, it was considered. So could we have applied that to Team 1 activities? And the answer was definitely not because we had potential access to the complainants, to potential witnesses, there were still lines of inquiry in terms of Afghan witnesses, whether they'd been serving or in or around the incident itself. So there were definitely plenty of lines of inquiries we could have followed and did try and pursue, so therefore the Leggatt Test was definitely not appropriate to apply but it was definitely considered, quite rightly so.
MR GLASGOW: Sir, I'm going to change topic and to turn to consider the Major's appointment as Silver in February 2017. I'm entirely in your hands as to whether that's an appropriate moment or you'd like me to go a little

further this morning?

SIR CHARLES HADDON-CAVE: No, indeed, Mr Glasgow, that's fine. How long would you like?

MR GLASGOW: I'm entirely in your and the witness's hands but I anticipate that for those who are listening patiently, if they want an opportunity to get a coffee, it will need to be at least 15 minutes and, given the number of people present and the one coffee machine available, I think I might be asked to make it 20. I anticipate that if we have a break, if we were to sit again at just after 11.35, that would mean we could have a clear run from there through to lunch.

SIR CHARLES HADDON-CAVE: 11.37, please. Thank you.

MR GLASGOW: Thank you, sir.

(11.18 am)

(A short break)

(11.39 am)

SIR CHARLES HADDON-CAVE: Thank you, Mr Glasgow.

MR GLASGOW: May it please you, sir.

Major, having dealt briefly with your position as the SIO for Team 2 the other early appointment you'd had when you were, at that stage, dual hatted was the appointment to Silver which became official, I think, in February 2017, although the appointment was actually made before then.

A. That's correct.

Q. You took over from Major Stitson, who had, at that stage, been both the officer commanding the regiment as well as the Silver Commander; is that right?

A. That's right.

Q. You described in your witness statement that the position in which she found herself with those two roles was, to use your words, "contentious and confused".

Can I ask for your help in what you mean by that, so we can understand what change was put in place to bring clarity to the different roles at that time?

A. So, the role of the officer commanding the Operation Northmoor company was very much your traditional role, would be to oversee not only investigations of a general level, but more about manning of them. So in terms of their career profiles, in terms of their welfare, their courses they were doing, deployments and, in a normal -- what we would be a normal structure for a company like that, RMP company, they would have deployed on exercises and potentially operations abroad, et cetera, et cetera, in support of whether it be brigade exercises or deployments or local events, potentially.

Operation Northmoor was very, very different in the fact that it was very, very -- all the 123 investigators were dedicated to doing investigations rather than

deployments abroad, support to exercise, et cetera.

That said, the requirements for the officer commanding was to support the regiment, who was -- Operation Northmoor was -- Northmoor company was still part of the regimental set-up, it was also embedded within RAF St Mawgan and, therefore, there were requirements to support the station activities as well.

So Tina Stitson's role as to oversee Northmoor was to administer all of that but also she was then expected to be the Silver Commander of the investigation, and that's a lot of pressure when you've got 675 allegations Team 2, you've then got the allegations that sat under Team 1 and then you have all the additional elements of the MIR, the intelligence cell and disclosure, as well. That is an extreme amount of different roles you have to perform.

So not only was she torn between the investigative priority, which is to get the investigation done, you then have the overarching piece where you -- part of the regiment, part of the requirement to ensure that the boys and girls were trained to deploy on operations should they be required, attend all the additional mandatory military training that was required from across the army, and then any additional in-house or additional training that was required from the RMP

brigade, the SIB regiment or anything else within the camp.

So she was trying to deal with all of the administration of a normal RMP unit, at a strength of 123, which was quite large in itself, but also being told to focus on what is the biggest investigation the RMP has ever done, with all the allegations that sat underneath Operation Northmoor. So, in order to separate that out, it was decided that this was just too much for one person to be able to do multi-hatted on those two very, very big roles.

And therefore, things may have not been focused in terms of the investigation or the priorities in terms of being -- the conflict of interest between the investigation being the priority for Northmoor versus the requirement of the military to complete your annual training or deployments or support the regiment or the brigade to do things like -- such as we had military -- annual military tests or competitions in Worthy Down, for instance. There was a requirement at one point to provide a team to go and do that.

Well, that was completely at odds with the priority being the investigation. So, for her, it was a very, very difficult position to be pulled -- part of the investigation but also provide manpower to support

everything else which was required of a normal RMP company and, therefore, in order to split those two roles out, to free up direction on one and also allow her to manage the administration of the unit, the administration of the manpower, their own welfare, as I say courses, et cetera, it was decided that, actually, it was more appropriate to have a Silver Commander separate to the overarching administration of the unit, which is what Tina did.

Q. The challenges that she was facing at the time, picking that line between the solder-first interest and the investigation-first interest, if I can call it that, do you think those who were working within the investigating teams also had similar difficulties in that devoting themselves to the investigation was what Northmoor expected of them but, at the same time, they were also pulled in another direction to ensure that they were doing what the RMP asked of them?

A. Very much so. If you look at things like the career progression of individuals, when you come to promotion boards, individuals consider what they've done outside of work, outside of just the working environment. So opportunities for people to shine in things such as military competitions, lead expeditions or adventure training, or things like that, which are part of the

military environment, which are expected to be done, and actually give someone an opportunity to show leadership above and beyond what they're doing, which allows them to be promoted, those are opportunities that sometimes you either weren't afforded through Northmoor or it would have been at the expense -- the direct expense of the investigation itself.

So sometimes those opportunities weren't given to the guys, which quite rightly so they resented, and other times they were forced to go and do military training which was required by the army when they were trying to get an investigation, trying to take statements, et cetera. So even at the lowest levels, you could feel the frustrations of, well, what are we doing? Is the priority getting this investigation done or is the priority going to be we need to do these mandatory military tasks that the army requires us to do on a regular basis?

Now, things such as ranges were required because we needed to deploy people potentially into Afghanistan or wherever and they therefore needed to be able to shoot a weapon straight. So those sort of mandatory things were (a) incredibly important and (b) essential for us to be able to deploy, whether that be on operations or in support of the wider regiment, brigade, army. That

said, again, (a) where we were based and (b) the build-up and the time it takes to do these military requirements was always an expense of time that could have been spent on the investigation itself.

Q. If you ignore Operation Northmoor for a moment and think about the normal bread and butter investigation that fell in the path of either the RMP or the SIB, would the length and size and complexity of those more bread and butter investigations still permit people to be sent on courses, required to do the ranges, to go on the competitions?

A. Yes, yeah, it would have done.

Q. Is it that Northmoor, because of its size and all-consuming nature, that it identified the challenge that there was for everyone, the managers as well as the team members, to try to fulfil both roles: one, the roles of the RMP and the wider army, and the other to the investigation?

A. Yeah, very much so.

Q. Looking back now, how do you think it might have been better to restructure the investigation to avoid that problem, either at managerial or at investigator level?

A. I think it was a very difficult one. At one point the -- there was an exemption put in place for mandatory military training, which did allow, you know, the

investigation to focus on investigations, I suppose, but, that said, there was always a requirement, as I said, to deploy on operations and therefore a lot of the mandatory things -- requirements, such as the fitness test, such as the ability to shoot straight, were always going to impact on investigations because you still needed to go and do that training.

And that's not training that's directly, say, beneficial to an investigation itself. So going away and doing placements on -- with the Met Police, or whoever it is, or forensics or whatever. These are just things that we needed to do to be not just soldiers first but to be able to deploy as part of Operation Northmoor. So it was always very, very difficult to balance them.

Restructuring it, I don't think -- it would be very, very difficult to look at a restructuring of Operation Northmoor to try to incorporate both. Given the exemption parts to it, so we didn't necessarily have to go and do a week's long navigation course or some of the other things that were perhaps, you know, exclusion from things, the military competitions that were on offer in various forms, having an exemption from them certainly helped, but the exemption was only for a certain time. So, therefore, at the start, people had -- were taken

away and, towards the end, there were elements that were, okay, the exemption from military training is no longer in place, you must still get on with this, which again impacted on it.

So without saying, "Right, you're not going to be a solder", that's the only way you can restructure and say, right, all mandatory military training is -- you're exempt from it. That said, picking and choosing the parts would be required to deploy, such as shooting, first aid, et cetera, it would be very difficult to bespoke, well we'll only do this, and we'll only do that. Very, very difficult to restructure a unit such as that when you have to do those mandatory bits to be able to deploy as well anyway, within Operation Northmoor.

Q. In fairness to those who were working within Operation Northmoor, presumably they had an eye to being useful and deployable at the end of the investigation itself?

A. Yes, absolutely. So we had requirements to, on rotation, to support other elements, so things like Estonia, for instance, would there have been a requirement to deploy to Estonia or certain operations or all around the world. Because we were held at readiness to be able to deploy, it kind of made sense that we were also on the rotation to be held on

readiness to deploy to other parts of the world, shall we say, should there have been an immediate requirement to do so. Being held at readiness for that is great because you're trained but, should something have occurred in another part of the world, we would have had a four or six-man team taken off us to deploy to that -- to that area. So it was a vicious circle.

Q. In terms of the challenges that were faced by Major Stitson, you very candidly described in your witness statement that she was under a lot of pressure at the time the two roles were separated and you also had said in your witness statement that she had taken on, in your words, a huge task and that the pressure had sometimes affected her decision making.

Are you able to give any examples of the way in which that pressure on her affected her decision making?

A. I'm trying to think of an appropriate example. I think, for me, it was, without giving specifics, it was more of a general sort of view of the way she often got very frustrated, quite rightly so, with not being able to do both and actually being told "You've got to do this and you've got to do that" but also provide a lot of information, a lot of manpower or time and effort to another requirement, whether it be regimental, whether it be station, or whatever.

Pulling up a specific example, I think, would be difficult.

Q. Right. In terms of your position as Silver Commander, can we look in file number 2 to tab 60 and to page 2, please, sir.

You set out here, in a policy file report for 23 February 2017, so not long after you'd been appointed as the SIO for Team 2, you wrote:

"I have now been appointed Silver Commander for Operation Northmoor."

The reason:

"The chain of command, ([including] PM(A), assistant head Northmoor and Gold Commander) have acknowledged there is a requirement to have an SO2 with the requisite [skillset, I think you must have meant] to oversee the investigation elements at the tactical level. I have been identified as the SQEP."

Now the requirement to have an SO2, that has now been acknowledged as a requirement. In any way might that reflect the fact that there hadn't been an appropriate SO2 before you'd been appointed?

A. Well, looking back on who we had, obviously Major Tina Stitson had some qualifications but she -- I don't think -- she hadn't had the level of SIB investigative overview that I'd had, to start with. Then you look

back at Captain Steve Robbins, vast experienced individual but not an SO2 so he wasn't a major so he hadn't had the overarching manpower responsibility that myself and Tina had had and, therefore, it really was a case of well, actually, Major Cox has been the regimental 2IC, so he has been in oversight of a regiment. He has also been a company commander, therefore he's been in charge of high-level investigations, serious investigations, with -- having been qualified an SIO. It literally was the best ticks in the box they could find was me.

Q. Does that mean that when you were appointed, essentially you were filling a gap that had only just been recognised as having been present?

A. I believe so, yes.

Q. So would it be fair or unfair to observe that, prior to your arrival, Team 1 had not had -- sorry, the investigation had not had an effective Silver Commander?

A. Not in your classic terms, no.

Q. In terms of it being an SO2, as you have identified here, SO2, of course, that, as we know, relevant to the military, the Gold, Silver, Bronze position relevant to Home Office policing. When you identified a requirement to have an SO2, did you mean that to be the equivalent of the Silver Commander?

A. I've -- just the rank of major.
Q. Just the rank of major, okay. The use of that structure of Gold, Silver and Bronze, that we understand was imported into Operation Northmoor, following advice from Paul Williamson from the NCA. Was that a structure that you were familiar with yourself?
A. I had been aware of it in previous investigations through the RMP but me being a Silver Commander, that's not a position I'd held before, personally.
Q. In terms of trying to understand what was expected of you as the Silver Commander, rather than as the SO2 coming in, what advice or what documentation were you provided with to help you about that?
A. Having done the SIO's course, the documentations I were using were things like the MIRSAP and the Murder Investigation Manual, which sets out a good structure for how investigations could be run, and basic experience of senior commanders, such as John Harvey.
Q. It may be that there's nothing in this, but just an idle curiosity from me, you've signed this off as the SIO to Team 1, this policy team file report. In fact, if I've understood your evidence, at this stage are you the SIO for Team 2 and were not appointed the SIO for Team 1 until July 2017?
A. Yeah.

Q. Is there any reason why, in February 2017, you were describing yourself as Silver and SIO for Team 2 and SIO for Team 1?

A. I can only assume it's just a mistake in how they recorded it.

Q. Right. In which case, I'll take it no further.

You've described in your witness statement, when it came to setting out the role you had performed as Silver, that you were responsible for providing tactical level direction?

A. Mm.

Q. Did you have proper independence to provide that tactical level direction or was it tactical level direction that was given to you that you provided to those beneath you?

A. At the initial outset, it was independent and then, after the IRT came in, it really did become very much the ability to pass on strategic level as tactical level direction.

Q. In which case, if we look at the beginning, first of all, can I invite you to turn on in the file you have to tab 69 and to page 69-4.

These are the terms of reference you signed on 30 March 2017. It sets out your principal tasks in section 6:

"As OC Investigations, you are to:

"Command the Operation Northmoor teams in accordance with current policies, regulations and to execute the strategic direction within resources available.

"To perform the role of Silver Commander and officer in overall charge of the investigation."

Then over the page, please:

"Implement and adapt the investigative strategy in line with the strategic direction.

"Oversee the information, management and decision-making systems for the investigation.

"Be accountable to senior officers for the conduct of the investigation.

"Liaise with civilian agencies in order to foster understanding, goodwill and progress the investigation."

As to those, please, commanding the Operation Northmoor teams, given your experience and the fact that you'd been 2IC thus far, presumably 6(a) didn't present any real challenge in terms of understanding what was expected of you?

A. No.

Q. Performing the role of Silver Commander or "Silver Command", as it's set out there, at that stage did you understand what was actually expected of you as Silver Command or Commander?

A. I did at the time, yes.

Q. That was what, please?

A. So, in order for to fulfil the Silver Commander's role, it was to provide -- receive strategic direction, understand it, pass the strategic direction down to the investigating teams, as in this is the strategic piece, and then oversee how the SIOs would lead forward with those strategic directions and take their own lines of inquiry forward. So it was not to give them "This is it; this is what we're doing". This was that Silver Command was to be the middle man between Gold, strategic, down to tactical and say, okay, this is what strategic thinking is, now go ahead and do what you do, with overarching being the strategic thinking, the strategic direction, but not to say, "This is what you are doing".

That was the initial part of being Silver Commander, not to delve down with a long-handled screwdriver but to give an overarching "Okay, are you keeping in line with strategic direction? How you achieve that is up to you".

Q. So, at the outset, with your short-handled screwdriver we see at page 2 of this document, 69-5 that you were to implement and adapt the investigative strategy in line with the strategic direction.

Sorry, 69-5, I apologise. My fault. I'll allow the screen to catch up, thank you very much indeed. So at the outset, in anticipation that you will be responsible for implementing and adapting the investigative strategy --

A. Mm-hm.

Q. -- is that how it ended up being?

A. No, very much strategic direction became the direction.

Q. Without suggesting in any way that this was the fault of yours, did you become the mouthpiece for direction given from higher up the chain of command, simply repeating what you were told to direct others?

A. I would argue overarching, yes, and whilst we did try and do -- you know, follow our own lines of inquiry and, as you say, as we say, adapt the investigative strategy based on that as strategic direction, stepping outside the strategic direction became quite difficult.

Q. In terms of stepping outside the strategic direction, can we just go, please, to divider 61 and to page 2 within it, which is a further policy file report that you recorded on 23 February 2017. So this is, in fact, before you had signed the terms of reference, about five weeks before you applied your wet signature to it.

A. Mm-hm.

Q. We have here:

"I will implement the recommendations of the IRT reports for both Team 1 and Team 2. The recommendations are set out in the IRT report."

Then, for Team 1, the recommendations are:

"1. Obtain witness accounts from Afghan.

"2. Recover datasets by consent.

"3. Suspect categorisation to be removed.

"4. Ten similar events to be investigated.

"5. No covert tactics at this time are to be utilised.

"6. Individual duty statements/reports to be obtained from participants in Op Tyburn still serving."

As to the recommendations which are now the investigative direction and strategy, does this provide an early example, rather than you being able to implement or to adapt the investigation, being told "This is the path the investigation will take"?

A. Yeah, I mean, as I say, this was the first IRT review of Team 1, really, and the complete Team 1, Team 2 review. So they came in, they had a look, they said, "Okay, actually, we believe you could progress this investigation doing these ways, these recommendations".

So as I said, as a starting point, I thought this was being, you know, new boots on the ground, as it were, just taking over. This was a very deciding point

in terms of, okay, this is your overarching strategic piece. Take it forward with this. And, at that point, I genuinely believed that that was going to be our overarching strategic part and, therefore, we could adapt anything from that list, as long as we were within it, but follow our own methods to get the right conclusions or get the -- follow any line of inquiry to its nth degree. These were overarching, as far as I was concerned, review points, accepted by the Brigadier, accepted by our Chief Officer, right? That's the new direction of the investigation: how you achieve it is up to you. Go outside, go investigate.

But after this, that's when I soon realised that actually it wasn't as simple as just saying, "Okay, well this is our overarching piece, we can do what we like with this". It was very much a case of, well, that's your direction, stick to it".

Q. In terms of the direction being set from people higher up the chain than you, did it occur to you that you might be the person with the best investigative experience and, therefore, the voice to be listened to?

A. Well, actually we had some very, very good, as I say, some DSIOs who were very experienced and often challenged me and the strategic direction, saying, "You know, look, boss, this -- why can't we do this?" or

"Yes, I get that but why aren't we doing it, because we could and should be doing it this way?"

But not just me having the experience but actually there were some very good senior SIOs, staff sergeants, warrant officers, who had lots of operational experience, lots of experience doing this sort of thing in environments around the world, who did, quite rightly so, challenge and say, "Well, surely we've got more scope than this as we are doing an investigation at tactical level. This shouldn't just be our only remit. We should be able to go outside of this".

So yeah, there was lots of experience and lots of voices.

Q. Were those voices listened to?

A. I don't think so, no.

Q. Presumably listened to by you.

A. Yes.

Q. Was there a forum or a means by which those voices could at least be heard by higher up the chain of command?

A. The opportunities were there when we gave briefings to senior officers. Whether those opinions were accepted, it's clear they weren't, and whilst sometimes there were opportunities for some of the senior NCOs to voice their opinion, they clearly were not listened to on many occasions.

SIR CHARLES HADDON-CAVE: Did you feel able to escalate those concerns to those above you?

A. Only to the direct Gold Commander above me. Not any further up than that, sir.

SIR CHARLES HADDON-CAVE: And with what result?

A. Not a lot, sir, to be fair because the strategic direction had already been accepted by PM(Army) and his advisory group and very much the answers were "You've been given your direction, get on with it. Whatever you think, whatever you disagree with, noted. Get on with it". That was the direction we were given, sir.

SIR CHARLES HADDON-CAVE: Thank you, Mr Glasgow.

MR GLASGOW: Did Brigadier Neal, who was the PM(A), have much experience in investigating homicide offences?

A. Not that I'm aware of.

Q. Can we look together, please, to the IRT's first review, which was done, I think, just before you came into position, because they travelled down on 3 January 2017 to Newquay, it's file 1, divider 22, page 4, please.

Divider 22, page 4. If we look to the first section, "Introduction" on page 22-4, we'll see at 1.1:

"On 3 January Phillip Jones and Clifford Evans, the IRT travelled to Newquay and commenced the review at RAF St Mawgan of the sensitive issues appertaining to Operation Northmoor."

This was the investigation into the Team 1 allegations that were being considered.

A. Mm-hm.

Q. They described themselves as having travelled on 3 January and commencing the review. For the avoidance of any misunderstanding, it would seem that the first time they engaged in any review of paperwork was on 5 January when Captain Wright briefed them. That's the first entry that appears in their workbooks. They left Newquay on 13 January, which would seem gives them somewhere in the region of seven working days to review what was, at that stage, a three-year long investigation. They then provided their report on 24 January, which is the document we're now looking at.

When did you become aware that the IRT had done a seven-day review of Team 1's investigation?

A. I would have been aware at the time -- of it happening at the time because I was still the regimental 2IC, so as regimental 2IC, as Operation Northmoor was part of the regiment, I was aware that a team was doing a review and had done a review into Team 2 as well, so I was aware at and around that time.

Q. Can you remember now at what point you were given either the content of or even a copy of this review as it related to Team 1?

A. It would have been after they'd published their report.
Q. So at some point after 24 January?
A. I wouldn't have been -- accessed this until I'd become officially appointed towards the Silver Commanding role, as it were.
Q. If we just look at the introductory points for a moment together, they identify their terms of reference in 1.4. I'm not going to go with all of them. I'd just like to look to the last bullet point:

"Based upon all the evidence available [the question they're asking themselves is], whether Team 1 matter [or matters] merit further investigation."

So, in terms of the various issues that they've been invited to look at as the reviewing team, would it appear that one of them is whether, in fact, the Team 1 investigation ought to stop?

A. Yes.
Q. So it's not just a review of what's been done, they're actually being asked to say "yes" or "no", "Go" or "No go"?
A. Absolutely.
Q. You, of course, were not the SIO at this point but, given what you were aware of by the time you did become the SIO, were you surprised that an outside body was being asked to conclude whether the investigation should

stop or should continue into the Team 1 matters?

A. I don't think it's a surprise. I think it's something that quite rightly, you say, they probably need to consider as part of a review. As you say, the investigation had been going on for several years already. The IRT were brought in to see where we stood with it and give an independent review, which is -- like any major investigation, is the correct thing to do to have a periodic review.

Whether their criteria to say go or no go, I don't know whether their terms of reference came from, whether that was discussed with Sir Jon Murphy or the Brigadier or whoever. I'm not necessarily surprised that they considered it because if, after several years, there had been absolutely nothing there, then maybe they could have recommended that it shut down. But I think for me it was just a question to say, well, clearly, we've put it down as a term of reference to consider but I don't think it was something they're ever going to turn around and say "Stop" because we already knew at that time there were still two complainants/witnesses, who hadn't even been interviewed yet.

So I think whilst they'd got it down as a question, realistically, they were never going to say "stop it" because we had -- we hadn't even spoken to the

witnesses, the complainants, yet. So you can't stop it without even speaking to a complainant.

Surprised? No, not really, but I don't think they were ever really going to realistically going to consider shutting down Team 1 activities.

Q. What you said a moment ago was, if there had been absolutely nothing there, then perhaps there could have been the recommendation to go no further?

A. Yeah.

Q. Was they're absolutely nothing there --

A. Well, we hadn't even spoken to the complainant yet, so there was definitely something there to start with.

Q. If we look over the page, please, to 22-5, the presentation provided by the SIO -- that was Captain Wright at the time -- on 5 January, setting out the main lines of inquiry. They described themselves in paragraph 3.1 as having received a comprehensive presentation delivered by the SIO, Captain Wright. Then at 3.4, as you've just identified:

"The SIO outlined his desire to obtain statements from both Mr Bang and Mr Saitullah."

I think that might be a typo. It should be "Saifullah":

"He also expressed a desire to engage with the APU ..."

So in terms of major lines of inquiry which were outstanding, at that stage it would seem, and would you agree, Captain Wright wanted to speak to two potential complainants about the allegation of unlawful killing, as well as engaging with the Afghan Partner Unit to see whether they might be able to shed light on what had or had not happened.

A. Absolutely.

Q. Whether those are main or major lines of inquiry, because they're differently described at different points in the documents, do you think those are some of the most important lines of inquiry?

A. Very much so. I mean, you've got the -- there are two witnesses or complainants, quite rightly so, the families of potentially deceased people, and any potential witness that was at the scene in terms of the APU. So essential witnesses to speak to.

Q. Again, just before we leave that, this is an investigation which has been running for several years now, and you are either about to or have now just become the SIO for -- sorry, Silver in charge of the investigations. Are you concerned that, despite the number of years the investigation has been going, that it's not been possible to speak to the two complainants who are said to be behind the allegation that is the

focus of this team?

A. Certainly, when I took over, I did find it slightly odd that we hadn't spoken to them already. But I do understand the difficulties in getting hold of them. That was the problem. So from outside looking in, why haven't we spoken to these two complainants yet; it's been 2 years? Very much a raise your eyebrows. But then when you delve into where they are, how to get hold of their evidence, I can see that, you know, the difficulties in getting to them and getting -- and actually recovering that evidence in the first place with the situation in the operational environment it was, being able to get back to the APU as well, identifying who those individuals were after all those years was quite a challenge.

But access to those two individuals, the two complainants, again, from my understanding, from what I was briefed, it was quite a challenge to get to them in the first place. So yeah, an eye-opener to think, well, after all this time, we haven't even spoken to our two complainants but, then when you delve into the reasons why, the complications of getting hold of them, you can understand why there had been doing so.

Q. Had the lawyers acting for them, Leigh Day, been able to provide you with any more information other than the

initial complaint?

A. At that time, I didn't have access to that information.

Q. Did you come to learn in due course that they'd been able to provide anything further other than the initial complaint?

A. I did, yes.

Q. As to other main lines of inquiry set out here, if we look to paragraph 3.5, what's described as an additional significant action is the recovery of relevant datasets, the existing servers that may contain relevant incident material.

Just pausing for a moment, were you surprised when you took over as the SIO for Team 1 -- that was in July of this year -- or even as the Silver Commander, that there had been continuing difficulty obtaining the electronic data that was relevant to this or any other inquiry?

A. Yes. But also, because of the level of content of what was on those servers, I also understood the security implications of being able to (a) access it and (b) store it and then view it. So, again, in a -- if you were to do a normal investigation, you were just taking someone's laptop, for instance, and then accessing it, quite simple. But for the -- the servers that were in question, where they were, what they were being used

for, who they belonged to, et cetera, and what was contained on them, a little bit more difficult than just taking someone's laptop, and I did -- I did actually understand that, in order to be able to view the content, you had to write security clearances for the right IT facilities to be able to store and view this material and, therefore, quite difficult to get hold of it, where it was. So yes.

Surprised in terms of surprised we hadn't got it, but understood the reasons why.

Q. There was a £7.5 million IT facility that had been commissioned for Northmoor --

A. There had.

Q. -- to enable the Northmoor team and its investigators to look at this material?

A. There had.

Q. Presumably, getting the clearance for members of the Northmoor team to be able to review the material was something that could be done if the applications were processed?

A. Yes, but also the 7.5 million super computer, let's call it, for want of a better reason, was never built. There was still a lot of issues down in Northmoor as to how to get the security clearances to build the damn thing in the first place, which was one of the issues. So very

nice to say we had the money for it and maybe the equipment but having security clearances, security of the building itself, to be able to put it in, build it and then use it, we just kept going on and on and on. So again, these were factors outside our control in the first place. We hadn't been able to even build the damn thing because the building wasn't secure enough in the first place.

Q. The "damn thing" you just described was, in fact, sat in boxes, wasn't it?

A. Yes, it was.

Q. In any sense was there any frustration on your part and on the part of the team members that they weren't able to make progress because things like clearance, the building --

A. Yes.

Q. -- the "damn thing", just couldn't be put into effect?

A. Yes, because the investigation team all knew that there was an opportunity there, that there was going to be, or they had planned to be, a system-built, an IT system built which would allow us to interrogate thousands of hard drives, et cetera, to look for lines of inquiry, to look for evidence, to prove or disprove many allegations.

So the boxes were there, the team knew what they

were there for, and clearly frustration being that some teams were stuck in Collingwood, some people were stuck in other areas of the country, and we couldn't do anything, they couldn't be brought back, they couldn't be one team in one place because there wasn't enough security within the building. There wasn't enough -- yeah, there weren't the means to be able to build the supercomputer to bring all the information back in to one location for us to be able to review it as a team. So, clearly, there were lots of frustrations from the lowest right up through the chain of command.

Q. In terms of the material that you had wanted to use the supercomputer for, if we just look again at paragraph 3.5:

"The timescales outlined extend to the summer of 2018. This work is currently ongoing. However, the IRT consider it may be prudent and more expeditious if the Northmoor inquiry team sought the consent of those that currently have custody of these datasets to allow relevant and appropriate inquiry to take place."

In terms of using consent as a means to either access or obtain copies of the relevant data, did you consider that to be a sensible way forward?

A. I think at the time, it was the only way forward. Whether it was the right way forward or not, you are

putting your hands in the people you are investigating to provide you with the evidence you are requiring, which is a very strange way to do an investigation.

If you -- any criminal where, you don't usually go "Well, I don't have the means to interrogate your laptop but would you mind giving us the stuff we're looking for?" is a very, very strange way of doing an investigation, in my opinion. But, at the time, to ensure there was not further delay, I can understand why they went "Well, you could just ask for it" and we were given it. As far as we are aware, we were given what we asked for. But in terms of, from a purist investigation outlook, very strange way of obtaining evidence.

Q. Were you aware though, when it came to attempting to seize ITS1, that it transpired that material had been deleted from the deleted section of the drive before it had been taken?

A. I was aware after that, when I took over.

Q. Do you know whether -- did the investigation ever get hold of a copy of ITS1?

A. Not that I'm aware of, not with all the full investigation -- not with the full dataset of it, no.

Q. If consent as an approach has failed to provide a copy of what was considered to be an important data repository, might there have been other means at the

disposal of the RMP that could have persuaded or even forced compliance with the request?

A. Well, they could have taken it, as far as I'm aware. But the decision was made above our level that that was not going to be the way forward.

Q. In any way did that enhance or diminish the frustrations of the investigating team, that they were told "You can't just go and take it"?

A. Very much frustrated the investigation team because, as far as they were aware, they have a legitimate reason to go and seize that computer and the evidence within it, or potential evidence within it.

Q. When the direction is passed down from you to the teams, that, "Actually, when it comes to the datasets we've just got to ask nicely and hope they provide it", was that met with a round of applause or a shrug of shoulders or a sense of exasperation?

A. Very much exasperation and very much pushback from the investigating teams, and quite rightly so.

Q. Were you able to take that pushback further up the chain to see if it would yield a different answer?

A. No, apart from mentioning the frustrations and saying well, you know, the team disagree, it wasn't going any further than that.

Q. If we then look to paragraph 3.6, Captain Wright

outlined in detail his categorisation of two suspects N1141 and N1201. Insofar as that categorisation is concerned, the IRT concluded it was inappropriate and that they should be declassified as suspects. Did Captain Wright agree with that?

A. No, Captain Wright didn't agree with it.

Q. Did the other investigators working beneath Captain Wright agree that they should be decategorised as suspects?

A. I'm not sure, I didn't really ask them, to be honest with you.

Q. Did Captain Wright voice his frustrations to you?

A. Yes, Captain Wright did but I actually agreed with the IRT report on this one. I generally agree with their recommendation on this point. Jason did, absolutely quite rightly so, disagree with me and voice his opinion, as he should do, as an SIO.

Q. When he voiced that opinion with you, you agreeing with the IRT, did you take his opinion further up or did you leave it there?

A. Again, I passed this opinion up to say, "Look, Jason has disagreed with you, he doesn't believe this is right", but again, on these points, certainly on this one, I agreed with the IRT and have explained to Jason that that is the way forward and actually I do agree with the

IRT review.

Q. Why did you agree with the IRT review?

A. I want to word this correctly. The individuals that are named in there, having reviewed their involvement in the information and why they were put in suspect status, I believe was wrong. They are suspected of doing what, was my take on it, to -- they -- the information that we -- they had provided or we had, relating to those individuals, to me didn't suggest they were suspects, didn't suggest they had directly done anything that required that they have suspect status. Hence why I agreed with the IRT to remove that suspect status from those two individuals.

Q. Now, N1141, as we see here, was the Commanding Officer of the unit that carried out Op Tyburn and N1201 was a member of the Special Forces team that had carried out that particular operation. Did you consider the information that N1799 had provided about N1201? In other words, the suggestion, the allegation, the claim -- however you phrase it -- that N1201 had said to N1799 there was a policy of killing all fighting-age males on target?

A. Yeah.

Q. Did you think to yourself that that might be possibly a confession on the part of N1201 to having been

involved in unlawful killings?

A. It was consideration by me, yeah, but, as I say, having reflected on the -- how close the individual was and what they'd actually said, I don't believe that it, at that time, reached the criteria for suspect status.

Q. Did you consider that, if what was reported to have been said by N1201 was accurate, namely that there was a policy, that that might have implicated the commanding officer of that particular unit in what had gone on?

A. Absolutely.

Q. So did you consider whether or not N1141 might be a suspect for an offence?

A. The consideration was given to a lot of them being considered up for an offence but it was based on where they were at the time. So if they were on the ground at the time of an incident, if they weren't, then they couldn't have been involved in that incident. They may have had knowledge of it and therefore come under a different category of suspect in terms of for different offences, potentially, but what they were being looked at as suspects for, I didn't believe they met that criteria at that time.

SIR CHARLES HADDON-CAVE: Did you give consideration to the fact that Captain Wright had been investigating this matter for two years --

A. Yes.

SIR CHARLES HADDON-CAVE: -- and that his views might contain some substance?

A. Absolutely, sir, and, as I say, we --

SIR CHARLES HADDON-CAVE: You yourself had not at that stage investigated at all?

A. No, sir. I think that was when, having come in new, as it were, to the Operation Northmoor and then having had the IRT review, that is where I thought, well, actually, the review was very good in terms of, whilst Jason had believed in what -- believed in what he was doing, quite rightly so, the suspect status of these individuals, and rationalised it very well, on review, I thought that, actually, he'd got that bit wrong because re-looking at the detail of how they'd become suspects and what they'd potentially said or known about, for what he categorised them as suspects for, I didn't believe he was right. So the review being, well, what have these guys done? I was like, you're quite right, ask yourself the question, Jase, what have they actually done to make them suspects? They haven't, in my opinion.

So the review was very good at actually giving a new set of eyes on a problem that was several years old, Jason had had his view for several years that these guys were suspects but, on review with a fresh set of eyes on

it, I did actually believe that, at that time, the suspect status should be removed, sir.

MR GLASGOW: You say at that time the suspect status should be removed. Did you change your opinion about suspect status at any point?

A. Not with those gentlemen, no.

Q. If we just look over the page to 22-6, the IRT response to Captain Wright's presentation is set out there. Subsection 4.1:

"The absence of a detailed complaint and associated witness statements and an over-reliance on the Leigh Day claim has given rise to considerable doubt in the minds of the IRT that this incident cannot be confidently categorised as a crime at the current time."

I pause to ask you this, please: if the allegation can't be categorised as a crime, does that mean there's nothing to investigate?

A. Um, I'd say that Operation Northmoor always had something to investigate. The categorisation as a crime, well, as I say, this is their opinion of -- their view of the categorisation. The allegation was that a crime had been committed and, therefore, we needed to follow every line of inquiry.

Q. Well, with respect, aren't the IRT saying that, actually, there may be an allegation but there isn't

even a crime? Isn't that what 4.1 means?

A. That is the way it reads, yes, that's the way it is reading, yes.

Q. Do you think that might have been difficult reading for Captain Wright and others in Northmoor who had spent years trying to investigate this allegation?

A. Very much so because that is very much saying, well, if there's nothing there, stop.

Q. Yes.

A. But that's definitely not the case because, as I say, we firmly believe that there was potential evidence of a crime being -- having been committed.

Q. So whilst you don't agree with the suspect categorisation being removed, you don't -- sorry, whilst you do agree with the suspect categorisation being removed, you don't agree with the assertion of the IRT team that crime has not been committed?

A. That is correct.

Q. Okay. They continue in paragraph 4.2 to observer:

"... there is no evidence in relation to any individual who took part in the raid of Operation Tyburn or indeed any other alleged connected incidents."

As to that and there being no evidence, did you have in mind what was reported by N1799 as to have been said by N1201?

A. Yeah. Again, I think myself and Jason both felt that that that was far too strongly worded to say there's no evidence. Just not right in the first place to say there's no evidence.

You know, we have a complainant. Although we did not have at that time the complainant statement, we had a complaint made to us that this had happened and, therefore, as far as we were concerned, there was enough to suspect something had happened, evidentially-wise. We all disagreed that saying there was no evidence was wrong, in that report.

Q. But in addition to the complaint made on behalf of both Mr Bang and Mr Saifullah that unlawful killings had taken place, you also had the reported confession, allegation --

A. Allegation --

Q. -- description said to have been made by a member of the team that had carried out Operation Tyburn --

A. They did.

Q. -- that fighting-age males were killed, irrespective of the threats they posed, and that photographs would be placed with weapons alongside them to suggest they were in possession of weapons they hadn't had at the time?

A. Yes, and they also had information from other individuals who had suggested the same thing had

happened, as well. They may not have been present at the time but they certainly suggested that they believed things were happening that were not right.

Q. In terms of how the IRT continued to describe the information that we've just discussed together, they say, in paragraph 4.3, that they can appropriately categorise:

> "... the available information as: judgement/statistics, third-party disclosure, speculation, rumour and chit-chat at various levels. The information is untested, untried and without provenance. It remains at this current time [to be] of a poor quality and cannot support the contention that criminal offences have taken place."

A. Mm.

Q. Did you agree with the way in which they categorised the information --

A. No, again, I was very much with Jason on this in terms of it was very strongly worded to say that nothing had happened; it was just chit-chat. Describing emails where people have made references to incidents, et cetera as just "chit-chat", well, without having the opportunity to speak to those individuals and explore what they said, you can't just ignore it as chit-chat. They were, as far as we were concerned, lines of

inquiry.

Q. Given your response to the paragraphs we've just looked at and your obvious disagreement with the way it's set out, did you go back and discuss, either with Gold or with the PM(A), your view that the IRT had got it wrong in the way that they'd come down in this report?

A. No, I didn't. Not on this report.

Q. Do you know if anyone else did?

A. Not as far as I'm aware, no. I know that Jason definitely voiced his opinion to say this is wrong and disagreed with the report but what discussions went on, I'm not sure.

Q. I mean, when you come to take over as SIO for Team 1, as you have told us to in July of that year, July 2017, there's now been an IRT report in existence for six or so months, some of which you appear to disagree with. Did you sit down with Gold, Lieutenant Colonel Harvey, and say sir, or John, or however you described him at the time, "I am concerned about the IRT conclusions. I don't agree with some of them. Suspect designation, that's one thing but the idea we've got no evidence and no crime has been committed, that can't be right"?

A. I definitely recall having conversations with John Harvey about exactly that, saying, look, you know, I think their conclusions are a little overwrought. You

can't just say there's nothing there whatsoever, especially when you've given recommendations to say, well, actually, this is the way to pursue this investigation and take it forward.

So they were never documented down. There were just discussions with myself and Colonel John Harvey about our thoughts on the IRT and the way forward for investigation.

Q. Can you remember now whether he agreed or disagreed with your assessment of what the IRT had written?

A. To be honest with you, I can't.

Q. At any stage were you concerned that a Review Team continued reviewing the investigation when they'd said at the outset, "You haven't got any evidence, there isn't a crime that's been committed and you don't have any suspects"?

A. As I said, you know, I think the Review Team -- the idea of having the Review Team in and their presence was a good thing to start with to actually review and see where we'd got to and give some good direction. When they kept coming back in, it was then clear that, actually, unless you are -- unless we'd shown that there were further lines of inquiry and forcefully set in there, you know, "We need to do this", then it was quite clear it was more a case of slowly but surely, "Yeah,

there's less and less for you to do. Unless you actually find something positive, close it down".

It was quite clear that was the sort of remit they were going towards, the agenda they had. Over the course of the reviews you can quite clearly see that that was the direction they were heading in.

Q. Did you interpret that direction in which they were heading from the very first review?

A. No, I don't think so, no.

Q. When was it that you determined that they had an agenda which was directed at stopping the investigation?

A. I think by the time we came to the second or third review, when we talked about getting the forensic -- the photos forensically analysed, we had authority and we'd already looked with our specialist -- the special -- SBCB, about sourcing the forensic scientist to look at the photographs and we were confident we were going to go forward with it. That was put on hold until such time as the IRT had come in and had a look at it and I was very surprised when they said, "No, don't look at them. You need X, Y and Z to prove the provenance of them, who took them, where they were taken, at exactly what time, before we'd recommend you even get them looked at".

That, I think, was the turning point where

I thought, well, you know, with all great respect, that is a massive line of inquiry, it is an evidential changer, whether those photographs are looked at and forensically examined and if it's a no to start with, very surprised that they said no.

Q. Was there a sense the writing was on the wall at that point?

A. Looking back, for me, yes. I think it probably was because, without getting the simplest things such as support of forensic analysis of photographs, what conclusions we'd have had, we'll never know. The inquiry team, I'm sure, will have something different but, without access to that, you kind of -- you're back to just being able to take statements off people who have done 1,000 operations and slept, and they're going to give you the same answer.

So without those lines of inquiry, which were -- could have been a -- of a positive nature for us, to prove or disprove an allegation, you then are limiting yourself to just taking some statements off people without furthering lines of inquiry which would have taken us to the nth degree.

Q. In terms of a particular line of inquiry that was recommended by the IRT in their first review, can we look together at paragraph 4.7 at the bottom of our

page 22-6:

"The IRT consider that there would be merit in obtaining an individual duty statement/report from each participant in Operation Tyburn, who is still in service ..."

Then over the page, to our page 22-7, still part of the same paragraph, if we look three lines down to the right:

"The IRT are not suggesting that these duty statements/reports should be under provisions of Section 9 of the Criminal Justice Act ... or indeed under caution."

What, to your mind, is the investigative value of obtaining a duty statement or a report?

A. None whatsoever. From our experience, you know, we'd have -- in a normal regimental investigation, you have an adjutant who dutifully, as I say, in an assault case, dutifully puts all his soldiers in to parade them and give a statement, which then dutifully gave to us. Very nice of him to do so. All we do is go and retake those statements because not one of them has been independently taken and recorded with a statement from the individual. So, on that basis, we looked at this and just went, well, a duty statement is worthless because you were just asking someone to give you a quick

account on a fag packet of what they thought happened that evening.

So for evidential value, it's not even a signed statement, it's not even -- it means nothing, as far as we're concerned. So we took -- we did take the decision to disagree and actually not take that recommendation forward, under discussions with Lieutenant Colonel Harvey, who did agree with me that duty statements were not to be taken because they just didn't -- evidentially didn't mean anything to us. Actually getting the evidence correctly recorded in the Section 9 statement, or the use of video recorded evidence meant that we actually had something proper, which was recorded properly, was a signed statement at the very minimum, to say that what they had given us was accurate and correct. So, yeah, as far as we were concerned, duty statements were a non-starter.

Q. Would they even be worth the paper they were written on?

A. No, not as far as we were concerned, apart from giving us a starting point to read, to go back to the individual and say, "Thank you for your duty statement. In it you've mentioned this, please explore further", and for our investigators to actually challenge what they'd said in their duty statements or provide further information. But, evidentially, apart from slapping an

exhibit label on it, evidentially nothing at all.

Q. Were you surprised that the IRT were recommending this particular avenue as a way forwards to gaining the essential understanding of what had happened on Op Tyburn?

A. I think it was just their old-school way of recording it and they didn't understand the way we, as the RMP, conducted our investigations. None of us really understood why they would have recommended duty statement which was, when we asked them to explain, was literally a pocket note account of what they'd seen. And we explained to them "That's not what we do and we wouldn't take that evidence anyway".

So whether it was just their old-school way of thinking that's what they used to do, I'm not sure, but as far as we were concerned, it was just something we were never going to do in the first place.

Q. Take it out of a military context for a moment into civilian life and a Home Office police force, do you think that a duty statement or a note on a piece of paper is going to be of any assistance to an investigating team?

A. Not the slightest. Not without having some sort of signature on it and even that is just someone -- it could be anyone's signature. It's not been witnessed,

it's not been recorded correctly; it's just a bit of paper.

SIR CHARLES HADDON-CAVE: Did you think the suggestion was odd, two years into the investigation?

A. To be honest with you, sir, I just thought the whole duty statement thing was just bizarre because I just totally disagreed with it in the first place. If you're going to pursue lines of inquiry and investigation, you record the evidence correctly, not just on scrap bits of paper and ask -- if you are certainly dealing with something as serious as an allegation of murder, you don't then go to the potential witnesses and say, "Can you just write down on a bit of paper what you think might have happen or what you saw". You do it properly, you get the correct evidence recorded correctly, sir. It was just such a charge thing to be told "Take duty statements".

SIR CHARLES HADDON-CAVE: Why do you think they were making that recommendation?

A. I have no idea, sir, to be honest with you. As I say, the only thing I can think of it was just something they used to do in their investigations many years ago and it's something that maybe they did in their previous investigations themselves. But it certainly is something we would never have considered and we didn't.

We very much said we're not doing it.

MR GLASGOW: In terms of how they, the IRT, saw the progress of Team 1 inquiries, if we just look to the bottom of our page 22-7, sir, and if we look to 7.1 and the last two lines set out therein:

"The IRT do not believe it would be necessary to maintain a major incident room and staffing at the current levels between now and the summer of 2018."

Given the fact that they've just told you you've got no evidence, there's not a crime, and suspect designation is inappropriate, was it a helpful observation that you should get rid of the major incident room and reduce the staffing levels?

A. No, I don't think so because, as I said before, we (a) hadn't even taken a witness statement so we do not know what's going to happen, what's going to come out of it. What could literally fall out of any statement, any lines of inquiry, could escalate and you don't remove your back-up, your background staff who actually are processing anything before you've even got the ball rolling. So yes, a recommendation to say you don't need those levels of staff, I think was potentially a wrong recommendation. They probably did it based on the fact that, in their opinion, we weren't going anywhere and this wasn't going anywhere but, until you actually got

the ball rolling and actually getting information in, you don't know what staff you need. If you've got them there to start with, you certainly don't remove the -- your capacity to have a fully manned MIR in the first place, until such time as you really, really, really don't need it. But we didn't even know what we were dealing with at that time.

Q. Looking back at it now and considering this first review with those stark conclusions about the lack of evidence and the apparent absence of even a crime having been committed, does the suggestion that you don't need a major incident room and you don't need the current staffing, does that suggest the writing on the wall was there from the very outset: that they, the IRT, didn't see this investigation going anywhere?

A. I mean, it would certainly read that way, yes.

Q. Would it be unfair to read it that way?

A. No, it wouldn't be unfair to read it that way.

Q. If we just look over the page very quickly to paragraph 9 and to the recommendations, I'm not going to read them out because, in fact, they are the same lines of inquiry that you had identified in your policy file report of February that we looked at a moment ago, almost in exactly the same sequence and very similarly worded.

A. Yeah.

Q. Is the position that, having been provided, therefore, with this document or at least a summary of it which contained these recommendations, that you translated those recommendations into your investigative strategy, which was what you were going to work with, with your investigators?

A. That is correct. That was the starting point from when I took over, basically.

Q. Insofar as that may have been well or badly received by those that you were now in command of, what impact, if any, did this seven-day review that ended up with "You don't have any evidence and there isn't even a crime", what impact did that have on team morale?

A. I certainly think for Team 1, because the report itself was never actually published amongst the -- everybody else, it was only given to Jason and the senior team, whether he'd passed it down to the individuals, I'm sure he did, the impact was clearly always going to be a negative impact. Individuals having worked hard for two years and being told that "Actually, you've got nothing, basically back up and go home very soon", would have been very much detrimental to their morale. And I know Jason took it very, very hard in the first one, in the first instance, and quite rightly so.

Q. You're now, as Silver, in charge of the investigation teams. What steps, if any, did you try to put in place to bolster Jason Wright's confidence so that he didn't take this to heart and it didn't affect his approach to his work?

A. In all honesty, I can't remember what I would have put in place. I think just maybe talking to him, reassuring him that, actually, there was stuff there and he was doing the right thing in many respects but we obviously disagreed on the IRT report in terms of the bits that I accepted and said yes, you know, the decategorisation of suspect status, for instance; the other bits where they're no longer using certain tactics, et cetera. Jason disagreed with me on that and didn't actually think the report was very good at all -- was quite opposite to what Jason thought.

Now, apart from saying to Jason, "Well, yeah, this isn't over but we have to follow the lines of inquiry that have now been given to us" -- because they were given to us -- this became the strategic direction which Jason clearly, quite rightly in his own opinion, disagreed with, and as an SIO, and he should do. If he didn't feel that was right, then he voiced it, and he did.

What reassurance I recall giving him, I genuinely

can't recall exactly what reassurance I gave him all those years ago, apart from to say, you know, we just need to get on with it. The investigation is still going, there is still lines of inquiry, so it's not a "We're shutting now" because we've not spoken to the complainants, the witnesses, the APU. We've not explored any -- we've not found any of the video footage, if there -- anything exists, we've not completed searches of the systems and, therefore, the lines of inquiry, this investigation continues, just not the way that Jason potentially viewed it was going to.

Q. I mean, given those lines of inquiry you've just set out, we are still talking about an investigation that's been running for several years now. In any sense, are you surprised that there hadn't been better progress over the course of the last two or so years?

A. As I say, the difficulty that Jason had was access to a lot of the material to start with. Things like, as I say, the backwards and forwards of can we recover the server, yes or no; by consent, yes or no; where are you going to put it; where are you going to interrogate it; the manpower itself. Yes, from an outsider's point of view, you could quite easily say, well, you haven't done anything in three years but then the understanding that they didn't even have a home until 2016, when they moved

to RAF St Mawgan, they weren't fully manned until that time, they weren't fully qualified with all the people, you can understand as to why it didn't progress as quickly as maybe it should have done and the strategies that were put in place as well at the time weren't as overt as they became and therefore, moving forward overtly, was always -- other than overtly, was always going to be a long, drawn out slow process.

With the lack of manpower, with the lack of security clearance, with the lack of a home, with the lack of a server to actually interrogate the material we wanted to look at, you're always going to have a massive delay and then, on top of that, we didn't even get the information for three years, so we were three years behind, don't even start properly until 2016, five years after incidents have occurred. You are then only just up to speed to start doing the investigations. So, yes, outwardly, you can look at it and be like very, very slow progress, very slow progress, but there are lots of reasons as to why there were delays in the progress.

Q. It's obvious from what you've said and from what you've written in the reports we've looked at that the PM(A) accepted and adopted the recommendations from the IRT and that they were passed down from PM(A) to Gold, from Gold to you and down to the investigators.

A. Yeah.

Q. There was almost, as we've described it together, a sea change in the approach, first to Team 2 and how you would look at the investigations. But now to Team 1, the investigators are being told "You haven't got any evidence, we don't even know a crime has been committed, you haven't got any suspects and you need to go about this in a completely different way".

For that message to be accepted and provided by the PM(A), is there a risk that he might alienate either the SIO or indeed the investigators working within Team 1 because he's giving them a direction which they think, "Hang on a minute, that's not right"?

A. Very much so. Without any sort of discussion in terms of the SIO having -- being able to actually speak up and say, disagree, actually not doing that, is always going to have a massive effect on right down to the lowest level because they'd been working on it for so long and, if they desperately disagree with someone who is sat in their ivory tower, for want of a better word, having just received a brief, having received recommendations from a Review Team, he didn't have to accept those recommendations but he did and that then became strategic directions straight down to tactical level.

So you can imagine that the base level of where the

investigators are working hard on the ground, being told that "actually, flip it all on its head, these two chaps are coming in, they've done a review. Actually, they've decided you've got it wrong, do it this way". Then your big boss has said, "Do it that way", it's going to be a bit of a kick in the teeth for them, to be honest with you. They did feel very, very much "We've been wasting our time. If this is what we're doing, why are we doing it?" There was very much a feeling of that when I got down there.

Q. Would it have been helpful if Brigadier Neal had left his ivory tower and come down to RAF St Mawgan to explain why there was now a new strategic direction?

A. Yes, I think there might have been but I don't think, knowing the individual, that he would have listened and therefore it wouldn't have been actually that much use at all, to be fair, because they -- the troops on the ground, opinion was that, actually, Brigadier Neal wasn't running, wasn't making decisions. So the joke was that Sir Jon Murphy was running the RMP, making all the strategic decisions for this sort of level. So actually, having your Chief Constable come -- Chief Officer come down and explain to you would just have been laughable to them, in all fairness.

Q. The joke that it was Sir Jon Murphy who was running the

investigation or indeed the RMP as you've just said --

A. Yes.

Q. -- rather than PM(A), was that a joke that was made at all levels throughout Operation Northmoor?

A. As far as I was concerned, yes.

Q. Before we mix too many metaphors between ivory towers and dressing rooms, is there a risk that PM(A) had lost the dressing room in this particular investigation, that he didn't actually have the support or confidence of those he needed to do the job?

A. I would suggest that actually the guys at the bottom felt very much that way, that they felt, well, the new Brigadier has come in, a team has come, all our hard work, which we're trying to do has been undone by two chaps who have come in, done a seven-day review of two years' work and decided we got it all wrong. And, as I say, the standing joke being that whatever decision was made wasn't made by Brigadier Neal, it was just made by Sir Jon Murphy, who brought in the IRT in the first place, so ...

Q. In terms of whether or not there is an obvious example of the response to the IRT report, could we just look together in file 2 to behind divider 57 to 57-9, please. We may just be able to deal with this document before we break for lunch so 57-9, file 2, please. The reason for

inviting you to look at this is because, in the aftermath of the IRT report having been provided before it was actually signed off on 24 January, Captain Wright wrote a note, and I'll pause while you find your place. I'm very sorry, major. Do you have 57-9 there?

A. Got it.

Q. At the top, dated 20 January and, in stark terms, the document is entitled "Implications of the delay to the forensic recovery of the ITS1 server".

In this document, Captain Wright sets out what he considers to be real problems that might be faced by the investigation and in particular Team 1, if the recommended approach of the IRT is adopted. If we just look, please, to paragraph 3, "Loss of Evidence", it's called:

"In lieu of full recovery ... RMP directed that HQDSF were not to delete, amend, move or otherwise alter any of the data on the ITS1 server. HQDSF provided written assurance of this. On 19 December, following scheduled and complete migration of the ITS1 data to a more modern system, Northmoor technical staff attended the headquarters sub-unit location where ITS1 is held and identified that in the two weeks preceding the visit, data had been permanently deleted; due to the method of deletion, it is not possible to identify what

has been removed. SO1 Northmoor has agreed that HQDSF should conduct an internal review to determine why the data has been deleted contrary to direction by RMP and in direct conflict with their own assurances."

If we pause for a moment. That goes back to the question I'd asked you before about ITS1 and about the deletion of deleted data. You explained you were aware that it had happened, but not that you were in post at the time. And clearly you weren't, because it occurred in December '16, according to this note.

A. Yeah.

Q. And then, he wrote on:

"To delay the recovery of ITS1 creates significant risks to the evidential integrity of data created pertaining to operations in Afghanistan. Digital evidence, by design, is susceptible to deletion of data from both routine use and targeted deletion by individuals who may wish to conceal facts. To delay any longer further exposes risks to loss of data beyond recovery."

And if we think for a moment, what is being recommended by the IRT is in fact delay to the recovery of the ITS1 server, because they've said it should happen by consent.

A. Mm.

Q. As to the recommendation of Captain Wright, we turn, please, to the second page of this document, which is page 57.10. And in very clear terms he wrote:

"It is recommended that the Northmoor team recover the ITS1 server immediately in order to comply with best practice and guidance provided by MPID and ACPO, and taking into consideration the risk posed to the original data, along with our ability to recreate and interpret that data. Under Section 95 of the Armed Forces Act 2006, RMP have the lawful authority to do this. Beyond this, a judicial officer can be requested to make an order to enable RMP to do so. Any delay in recovery risks the loss of evidence and the ability to conduct a prompt and effective investigation, leaving the Inquiry and RMP open to criticism."

The implications that Captain Wright has set out here, does that put him in direct opposition to the recommendation provided by the IRT?

A. It does.

Q. And does that -- and it's perhaps best for Captain Wright to answer it in due course, but does that suggest that the SIO now fundamentally disagree with the direction that is being implemented on the team?

A. Absolutely.

Q. And given that you now have an SIO in Team 1 who does

not agree with the PM(A)'s direction, and who set out the risks to the evidence, to the investigation, and indeed to the RMP, what, if anything, did you try to do to pick a path between those two opposing sides: the IRT on the one hand, who say "No, you should do this by consent and ask nicely"; and Captain Wright on the other hand who says, "I'm not interested in asking nicely, I want to go down there and seize it"?

A. Well, at the time this was Tina Stitson in post, so this was the OC. This would have been written to -- not me -- to Tina Stitson.

Q. But you became --

A. I did, yeah.

Q. -- the Silver Commander and signed up five days before. You were the Silver Commander from 15 January 2017.

A. So in terms of what would have done, as I say, the IRT report went up to be -- went up to PM (Army) who looked at it, accepted the recommendations, and came back down to strategic direction. So when we've looking at the recovery of this, the answer would have been, "Jason, we're not doing that. I get it, but the strategic direction from the Chief Officer is that the recommendation has been accepted by PM (Army) and therefore we are not going to recover it under our powers, but by consent."

MR GLASGOW: Sir, I see the time. Would that be a convenient moment?

SIR CHARLES HADDON-CAVE: Indeed, Mr Glasgow. Thank you.

MR GLASGOW: Thank you, major.

SIR CHARLES HADDON-CAVE: We'll break now, please, until 2.00, and Major Cox, I remind all witnesses, please don't discuss your evidence with anybody during the break.

THE WITNESS: Sir.

SIR CHARLES HADDON-CAVE: All right.

(1.02 pm)

(The Short Adjournment)

(1.58 pm)

THE CLERK: Good afternoon. This is an open hearing of the Independent Inquiry into matters relating to Afghanistan. Please ensure that all mobile phones and other personal electronic devices are either switched off or in silent mode. Please may I also draw your attention to the fact that the Chair of the Inquiry, the Right Honourable Lord Justice Haddon-Cave, has made a general Restriction Order for Inquiry hearings which applies to the conduct of those who are attending and/or viewing this hearing.

The relevant parts of that order are contained within the specific Restriction Order made in respect of

these hearings, which is displayed on the Inquiry website and on the door of this hearing room, but I will summarise its purpose.

The first part of the general Restriction Order for Inquiry hearings prohibits any person from making an audio or video recording of Inquiry proceedings without the express permission of the Chair. Furthermore, no person may take a photograph in any room in which Inquiry proceedings are taking place and at a time the Inquiry is sitting, without the express permission of the Chair.

The second part of the General Restriction Order for Inquiry hearings, which applies to this hearing, arises as the live stream of these Inquiry proceedings via YouTube will purposely be subject to a ten-minute delay. Where those who have supplied evidence to the Inquiry have applied to restrict information from publication outside of the Inquiry, in some instances, the Chair has made Restriction Orders, the effect of which is to protect that information.

The Chair has also made a Restriction Order prohibiting the use, publication or dissemination of certain information that is contained within the evidence and documents associated to these hearings. That Restriction Order is displayed on the door of the

hearing room and copies are available on request.

Where material is restricted, it is redacted and, where appropriate, the gist of the evidence is provided. In the event that something is said during the course of this hearing which may breach a Restriction Order made by the Chair, the evidence may be halted and the hearing room may be cleared for closed legal submissions as to whether any Restriction Order has been breached and the live stream YouTube hearing will be temporarily stopped for this period.

Counsel to the Inquiry or the Solicitor to the Inquiry must be informed of any request to make an application for a Restriction Order. If an application is made for a Restriction Order in relation to anything that has been said or done in the Inquiry hearing room in the preceding ten minutes, anything that was said or done during that period is subject to a Restriction Order prohibiting its disclosure, repetition or duplication, until the Chair has finally determined the application.

For the avoidance of doubt, where material or identities in documents shown on screen or subsequently published have been redacted, with or without an overwritten gist, the redacted material is restricted, and it is a breach of the Restriction Order to disclose

what is thought to have been redacted.

All of the above orders are subject to a penal notice. This means that any breach of any element of the Restriction Orders may be certified to the High Court or the Court of Session, who will have the power to fine or imprison anyone found to have been in breach of the order.

SIR CHARLES HADDON-CAVE: Mr Glasgow.

MR GLASGOW: May it please you, sir.

Major, before we broke for lunch, we were looking at some of the material Captain Wright's approach to some of the information that he had been provided with pursuant to his presentation to the IRT. With your help, can we look at a further document that was an exchange of emails between him and Gold, Colonel Harvey, file 2, divider 57 and within it it's 57-11, please. File 2, tab 57, page 11.

What had happened is that, on 27 January -- sorry, on 25 January, I apologise, at the bottom of the page, the following day that the IRT review had been made available, it having been signed off on the 24th, there was a discussion between the SIO Captain Wright and Gold, Lieutenant Colonel Harvey, about the steps that the SIO was or was not permitted now to take. The response that we can see to his request is set out at

the top of our page 11:

"Jason,

"[With regard] to your questions ..."

It may well be that this was simply adopted as a short-form response because what Colonel Harvey has done is he has cut and pasted the bullet points from Jason Wright's email and appended his straightforward answers to the end of those questions.

If we just look at some of those together, to see what may or may not be the impact felt by Captain Wright following the IRT review:

"I am to take no action in respect of data recovery from ITS1 until after the meeting highlighted at bullet 2 below, a date for which has not been arranged; you are engaging with N1805 to arrange."

And the simple response: "Yes, correct."

The next bullet point:

"I am to take no action in respect of the deletion of data from the ITS1 server; this will be an internal investigation by UKSF4 only."

"Correct", is the response.

Then:

"PM(A) has written to DSF but to date no response has been received."

Response: "Correct, there has been no response from

DSF personally."

Then the fourth bullet point:

"The IRT findings will be forwarded to PM(A) for consideration but no direction regarding proposed tactics is anticipated until after this time (likely to be weeks 3 or 4 in February '17)."

The response:

"Wait out, dates will become clearer next week."

Then bullet point 5:

"I am to take no action in respect of suspect/witness engagement (for the N50 matters) [that's the Saifullah-Bang Op Tyburn matter] until after the next Gold Group meeting."

The simple response to that: "Correct."

There are three more, which I'm not going to go to unless I am asked to. The reason for just dealing with those that I have done is this: is there a sense that Captain Wright, having raised what he understands now to be what he's not allowed to do, very firmly and succinctly, he is being told: yes, you can't do that; no, that won't happen; and, yes, you have to wait?

A. Absolutely.

Q. Should we read anything into the fact that Gold has dealt with this request with such short and final responses or is that simply efficiency of communication?

A. I think from my experience of Lieutenant Harvey, very much that was the way he responded to most emails, most requests, with very short answers.

Q. In any way do we read into this a sense of frustration on the part of Captain Wright that he has very clear avenues that he, as the SIO, wants to pursue and is now seeking confirmation that, actually, everything he'd thought of before is no longer on the table?

A. I think its very accurate. You can quite clearly sense from the tone of the email that it is very much that "So we're not going to do what I wanted to do, we're not going to do what I want to do", just reconfirming that all his current lines of inquiry are to cease.

Q. In terms of how one delivers that sort of message, in other words "No, no more", might it have been sensible for Colonel Harvey to ensure that Captain Wright had a very careful discussion with him to try to soften the message?

A. Well, I think it would have been more appropriate if it had been a face-to-face discussion about the IRT recommendations and about what was probably going to be direction, strategic direction, rather than just an email.

Q. In fairness to Colonel Harvey, it should be observed that at the very bottom of our page 57-11, Captain

Wright has written "To confirm our chat today and to better manage my team", before he then sets out his bullet points. So there had been a discussion between the two of them but it does appear, or is it at least fair to observe, that Captain Wright, having come back after that meeting with very clear points that he wants to pursue that he doesn't think he's going to be able to, he's almost setting out the problem in which he now finds himself?

A. I would agree.

Q. It's a bit like, if I can observe, some of the policy file reports that we'll come to that you've made where you set out "This is the direction, I have been given this by Gold from PM(A) in accordance with the IRT and I will follow it"?

A. Yes.

Q. Again, you, as Silver and trying to grapple with the problems that you now have in front of you, did you recognise at that early stage that Captain Wright was almost being alienated from the chain of command and the strategy that they wanted implemented?

A. Well, I would say that he was quite clear that Jason had his own views on the investigation where he wanted it to go and, as an SIO, he was doing what he thought was correct with the lines of inquiry, and he was very much

adamantly against the recommendations of the IRT, and was very clearly just getting -- to ensure that he was under no illusions to the fact that all his lines of inquiry were now going to cease and he was going to have to take direction from above and making sure it was very, very clear that that was what was going to happen, hence his quite direct and re-assertive email to say, "This is not going to happen, is that correct?"

Quite clearly, his take on what the IRT and the way forward for the investigation.

Q. In any way does this chime with a comment that you made in your witness statement, to the effect that the guidance you were provided with was automatically implemented as tactical direction?

A. Very much so.

Q. Thinking back now, would it have been more effective if there was going to be a change in tactical direction for there to have been open discussion and debate about what was to happen, so that every voice in the room could be heard?

A. I think it would have been more appropriate but it would have been needed to be done at the right level, so perhaps from the staff sergeants and above, having that discussion with myself and Gold, and then perhaps the DSIO/SIO having discussions with Gold and the PM. But

it was kind of never going to happen.

It was quite clear those discussions, whilst we could have discussions about IRT reports, you know, what was said in them, any suggestion of, well, actually we completely disagree with it and we want that noted anywhere, just wasn't -- it just didn't happen. It was never -- apart from as you see from Jason, the way I recorded my direction was through the policy notes to say, well, email trails are very nice but, actually, I've been given that and the policy book is there to say, well, this is what we are doing and the rationale behind that, the reason for it, is because that decision has been made at a strategic level and we have now been told that that is what we are doing and hence why you use the policy books to show that is exactly very, very clearly the way the investigation was being run.

SIR CHARLES HADDON-CAVE: Can I ask, do you think that if you'd had discussion along the lines that Mr Glasgow has suggested, it would have made any difference?

A. I think it would have been better for people to understand, it would have been better for the guys to actually have had that engagement but, as we are aware, you know, WO2 Williams, for instance, raised a point with the Gold Commander and he was quite firmly shut down, with regard to his thoughts on the way forward

with certain strategies.

Whilst it may have been advantageous for them to understand it, I don't think it would have changed the direction of the investigation and the decisions above. I think those were set and that was it, sir.

MR GLASGOW: In terms of those directions being set can we go on in file 2, please, to divider 63 and can we look to see how Gold interpreted the direction that had been to him by PM(A) in light of the IRT conclusions. So file 2, tab 63 and it's page 3 please.

In March 2017, Colonel Harvey recorded what he had described as the strategic direction in a policy note.

If we look, please, to paragraph 2, which is a little further down the page that we are currently on:

"Op Northmoor to date has not established tangible evidence to support the allegation of unlawful killing, nor any corroborative evidence that would justify covert activity; this has been confirmed by the Independent Review Team appointed by PM(A). The IRT conclusion is that the investigation, strategy and focus must change."

Now, I've already asked you about the question of tangible evidence and I'm not going to go through that again but can I ask you this: when you and others received from Gold the observation that the IRT conclusion is the investigation, strategy and focus must

change, did that leave you in any doubt that the IRT conclusions were now, in effect, law?

A. Absolutely not. This is the, you know, this is the policy note and strategic direction from Gold. This is your guidance from above to say "This is what's happening". So there was absolutely no wiggle room, no discussion. That is very clearly the way forward.

Q. Again, if there is any doubt that this is the way forward, if we look to paragraph 3 together:

"The IRT recommendations have been accepted by PM(A) and the investigation strategy must align accordingly ..."

So if one interprets that as succinctly as one can do, "You've been told what to do and you must do it".

A. Absolutely.

Q. The same observations are set out in bullet points (a) through to (h) that we've already seen. I'm not going to go through those again. But, once a document like this was received as it was by the SIO for Team 1 and for Team 2, so that is you as SIO for Team 2, Captain Wright as SIO for Team 1 and, obviously, you received it as Silver, was there any doubt in anyone's mind that PM(A) was going with the IRT approach?

A. None whatsoever.

Q. At any stage, did anyone think "We really ought to try

and argue against this" or was the approach now, "Command has issued a direction, it is an order and we must abide by it"?

A. As I say, with the exception of things like the duty statements, which is the strategic direction which, you know, we did push back on eventually and got agreement that wasn't the right way forward and we did our own thing, there was unequivocally this -- we knew this was the way forward and that was it. There weren't going to be any full discussions about individual points in the IRT report or that strategic direction.

Q. In terms of the possibility of a full discussion, it was probably cut off completely by paragraph 5, which is the second page of the document, page 63-4, as we look at the numbering, if one turns to paragraph 5:

"Any issues concerning the content of this policy note should be referred to the undersigned."

In other words, "Come and speak to Gold if you've got a problem".

A. Yes.

Q. If anyone had chosen to speak to Colonel Harvey, is the likely response from him going to be "I have direction from PM(A) and you have direction from me"?

A. Yes, it would have been. That would have been exactly it.

Q. Is that the product of there being a very clear command structure within a military setting or was that simply the product of how Brigadier Neal wanted to run the investigation?

A. I think it was a mixture of both. You know, we have a military structure and, therefore, a major reports to a colonel, a colonel reports to a full colonel, et cetera, et cetera, so you have that clear military structure but also that is the way Brigadier Neal commanded. That's the way he directed.

Q. I'll be very careful as to how I phrase this next question but, if one has a boss who doesn't know what he's doing and you have to act in accordance with his instructions and there is a chain of command that passes the instruction from him to you, is it difficult in those circumstances to challenge the instructions you've been given?

A. Well, as I've said, the very, very little wiggle room for challenge. You know, Jason was very clear to push back and then have discussions as has been mentioned but then what Jason did was write it in an email to say, "Well, actually, so following our discussions, this is what you're saying, there is no change to direction. Where I am to do this? Is that correct? Correct? Correct?"

So whilst Jason would challenge and, as I say, we discussed things like the duty statements, the way it was written down and the way the direction is given is exactly as is put in Colonel Harvey's policy decision and that is the direction: you are to follow it and not challenge.

Q. When it came to offering a short assessment of Brigadier Neal's performance as, in effect, the investigative Head of Op Northmoor, you wrote in your witness statement:

"I do not believe he had the experience or confidence to make the requisite decisions or allow the investigative teams to do their jobs."

Is that a fair and accurate assessment, as you see it, of the Brigadier's performance.

A. In my belief, yes.

Q. Might that explain why he was so wedded to the advice he was given by the IRT?

A. That is why I wrote it in the statement because that's my belief that, actually, whilst he was the head of our organisation, he relied so much on the advice from his Independent Advisory Group, Sir Jon Murphy, et cetera, that decisions just weren't made. He did not make those decisions. Whilst he was the figurehead that said, "This is my direction" the IRT were appointed by Colonel Neal -- Brigadier Neal, sorry, but under the advice of

Sir Jon Murphy, so, therefore, Sir Jon Murphy's team were advising the Brigadier on what to do and the Brigadier would look at Sir John and say "Are they right?", and the answer would be yes, in which case "That's my decision".

So as I've said before, the decisions at the top were not just made by Brigadier Neal, it was very clear that the IRT who worked for Sir Jon Murphy or were recommended by Sir Jon Murphy were reporting straight back in and their recommendations were discussed between Sir Jon Murphy and Brigadier Neal and, if Sir John Murphy said "We'll do that", that's what we did. So decisions were not being made by Brigadier Neal as independently reviewed and discussed, just, "Well, they've made a report, what do you think Sir John?" And Sir Jon would say "Go with what they recommend", and that is the way I saw it.

Q. Hence the joke that you referred to previously that Sir Jon Murphy was in charge?

A. Absolutely.

Q. Although the decisions he was advising the PM(A) to take were based on what the IRT had concluded?

A. Absolutely.

Q. Might that, in fairness to Colonel Harvey explain why complaint to him is unlikely to have any effect because

if one goes to Colonel Harvey and says "I don't like the direction. This isn't what I want to do. My investigator's nose tells me we need to go in another way", he can't say, "I'll take it to PM(A)" because actually he's really got to take it to Sir John Murphy?

A. Precisely. Just no room for discussion any further up the chain you go. It's the decision was made and that is it. There's no discussion or reasoning or actually change of direction. Once that had been made, that was it. So even going back to Lieutenant Colonel Harvey, to be fair, you could voice your opinion but it's not going to go up the chain because it's not going to change the opinion at the top, the direction has been given, follow it.

Q. Rather than simply having lost the dressing room, is the risk here that the investigators on the ground have no confidence in the chain of command to direct the investigation the right way?

A. I think there was a lot of feeling from within them, certainly through the ranks, that actually they just did feel that they were no longer trusted to follow their own lines of inquiry and that actually, yes, it really was a case of do as we're told and get on with it, which was, in effect, exactly what it was.

Q. If we just pick on that as an example of being told what

to do and getting on with it, and whether that, as a direction, made sense to the people that were being told to do it, could we look on in file 2, please, to tab 65 and page 65-2. It's a policy file report that you dealt with on 10 March. You wrote there, under "Decision":

"The serving members of military linked to Op Tyburn are NOT [in capital letters] to be spoken to until after PM(A) and acting head Northmoor have briefed DSF."

As to the reason:

"Direction received from gold that PM(A) wanted to brief DSF in person prior to any engagement and interview of SF personnel (still serving) being conducted."

Were you surprised by the desire of the head of the investigation, Brigadier Neal, to privately brief DSF who was in command of the units that you were seeking to investigate?

A. Surprise, I think, is probably the wrong word. Annoyed, frustrated, the fact that, again, delay in -- whilst we're told to get on with it, on the left hand, we are then told to stop on the right hand until such time as the unit we're investigating has been briefed on what we are investigating, which makes no sense, in many respects.

So -- but you're adding further delay by saying you're going to go and give a briefing to someone that why did they need a briefing? So the frustration for us at the bottom was, all right, we're being told to get on with it but now we're being told to stop because you need to go and give a briefing to the unit command, which is -- whilst in many normal investigations you may give the adjutant a heads-up, prior to arresting a senior officer, perhaps just to say "Just to let you know your boss is going to be briefed that this is happening" seconds before it happens, as a courtesy, or say "We were going to arrest a big group of soldiers for a fight or something, a serious assault. Just to warn you to say the SIB were on site and we're about to arrest 20 of your soldiers", that's a courtesy call.

Giving a full briefing before allowing us to go and speak to potential witnesses, potential suspects, in all fairness, seemed incredibly ridiculous, in my opinion, and the rest of the investigations, because it was very much against what we would usually do as an investigative process.

As I say, a courtesy call on the way in the door as you're about to go and arrest a group of soldiers is one thing; putting an investigation on hold to allow briefing to occur to the head of a unit you're

investigating, just before we were then allowed at some further date to go and speak to these individuals just delays the investigation. It's complete madness, in all fairness.

Q. It may be that there are welfare issues that want to be discussed that PM(A) wants to be alive to or possibly operational issues that he needs to be alive to before any steps are taken. But were you ever fed back what had been in the briefing?

A. Absolutely not.

Q. Were you ever told, in light of the discussion with DSF, we can't speak to A, B and C at the moment but you can speak to D, E and F?

A. We didn't even need to do that. Usually, if we were going to speak to a witness we would go through the adjutant of the unit, and therefore say "We need to speak to X, Y and Z" and then they would automatically say, "Well, you can't speak to them because they are not available" for whatever reason, whether it be leave or operational issues or whatever, so we would never have needed to speak to the commanding officer of the unit to find out the availability of the troops; we would just go straight to the unit and find them or phone them up and say, "We are on our way to speak to A, B and C, are they available now, are they on site?"

Hence why our policy -- the policy to say that, actually, again, this, our -- read between the lines, our investigation is being delayed again because we are at the mercy of senior ranking people needing to brief other senior ranking people about our investigation, which, again, made no sense to any of us. It just put more delay on the investigation.

You wouldn't go -- you wouldn't be investigating a serious organised crime organisation, a gang, and go and speak to the head of the gang and say, "By the way I'm going to want to speak to some of your hoodlums in half an hour or three weeks' time about a murder investigation". You just wouldn't do it. So it's always seemed a ridiculous extra layer of courtesy to the unit we're investigating, to let them know we're investigating them and what we were doing. And, as I say, we were never even given a back brief on what was said in those meetings, so we don't know what the head of the organisation was told, what was briefed down to those individuals before we had an opportunity to go and speak to them as witnesses or what could have been potential suspects.

Q. You'd identified in your executive summary one of the concerns that you had and one of the possible lessons for the future as "regimental amnesia", is how you put

it.

A. Yes.

Q. When you used the phrase "regimental amnesia" can you help us with what you mean and whether that has anything to do with the concerns you've just alighted on about briefing the head of an organisation whose members you want to speak to?

A. It was my opinion at the time, and still is, and many of the others in the unit, that once we started to go of a -- an open, more overt investigation and start speaking to people, it became quite clear that there was a standard response to a lot of our questions and the standard response was "I've done 1,000 operations since then. I clearly can't be able to remember certain exact operations". And that became very, very much a standard response to a lot of questions we put to them, when the witnesses were interviewed with a disclosure officer, the -- the bog-standard response from many of them was simply the same, "I've slept since then, I've done thousands of operations, I couldn't possibly remember one operation".

So it did become, as I say, the phrase we used was "regimental amnesia" because everyone seemed to have the same amnesia: thousands of operations, slept since then, really can't remember one operation amongst as many as

we've done. Which was, again, frustrating to have the same answer over and over again from various different people.

Q. Frustrating obviously because it doesn't enable you to take your inquiries very much further?

A. No.

Q. But did you consider the possibility that the account you were being given was actually the truth: that because they had conducted a significant number of operations and there was now a large gap in time from the date you're asking about to the date of the interview, that they simply couldn't remember?

A. Absolutely, and you'd be quite right to actually say, well, realistically, there are, if you have done that many operations, then quite rightly, there would be occasions where you wouldn't remember exact ones.

But when we posed certain difficult questions to some individuals and were more direct with our questioning, some of those individuals actually did remember certain ops when they'd -- they conducted certain actions on an operation, for instance, and then remembered quite clearly.

So when -- then, when we challenged them on a different operation, they were back to "Well, I can't remember, I've done lots of operations". When you are

treating them as a witness, clearly you would try and challenge their accounts but they're not suspects. So it's very difficult to challenge somebody and say, "Well, you remember this one but you don't remember that one", without upsetting the witness and you make them a hostile witness and don't get any more information out of them.

So the investigators tried their very hardest to actually -- when they started getting some traction and some honest answers out of people, to take that as far as they could, whether it was in relation to the investigation we were looking at or whether it was something else, to, again, try and prove or disprove these incidents occurred, by teasing out as much information as we could from those who were willing to talk to us. But if they weren't willing to talk to us, then we were just back to the same standard answers, then it's very, very difficult to get anywhere.

Q. In terms of the courtesy that was afforded them and the way in which you spoke to them, can we look, please, on in the file to divider 72 and to page 2, another of your file policy reports. This time about a month later.

"An interview of SF personnel still serving will be conducted in line with the SF protocol."

The protocol -- and you touched upon it a moment ago

when you spoke about the disclosure officer present in the interviews you had with the members of SF when you spoke to them as witnesses -- in any way, did the protocol operate as an impediment to getting evidence from SF or did it facilitate the provision of evidence from them.

A. Very much it hindered. Again, A document which hindered our ability to conduct witness interviews, would I say interference? I think interference is possibly a strong word, certainly influence when you have a disclosure officer present and being briefed before the witness, before we take a witness statement off somebody. We certainly felt that there were individuals who were very uncomfortable with having a disclosure officer present, whether they -- I mean, they had the ability to say no but virtually all the time there was always a disclosure officer present there.

Again, having to go through the -- with the SF protocol saying, we have to go through an individual to get an individual to come and see us, and they're going to have to be afforded a disclosure officer, who then gets a brief beforehand, we -- whilst we knew some of the background of these individuals, there are examples of where witnesses were -- stated afterwards that they were incredibly uncomfortable with having a disclosure

officer who was present from a different unit, especially as we were investigating them.

So the SF protocol itself, whilst it allowed us one small provision to exclude things like the SF -- to go to witnesses direct, if we thought that the presence of a disclosure officer or the line of inquiry we could not wait for a disclosure officer to become available, I think it's 11(1)(c) or something of the protocol, which allowed me to invoke, with permission from PM (Army) again, to allow to go directly to the witness without going to the unit, which again, caused issues because a lot of the time they would phone back to you and say the Royal Military Police want to speak to me, which then upset the unit because we hadn't gone through them first. They didn't know what we were doing with our investigation.

So it goes back to the SF protocol very much hampered the way we conducted our interviews of people because it was very much based on the unit themselves having a lot of control -- far too much control, in our opinion -- as to where, when and how an interview was conducted, which again made frustrations and delays throughout the investigation.

Q. Is there a similar protocol with any other unit within the British Army?

A. Not that I'm aware of.

Q. Is there a Royal Marine protocol --

A. Not that I'm aware of.

Q. -- commando protocol?

A. No, as far as I'm aware of, this is the only protocol that I'm aware of, unless -- please correct me if I'm wrong and you've seen anything else, that certainly gives the unit itself the ability to almost dictate as to who is going to be present in a witness interview, which, again -- and the way it's conducted. So it is very frustrating from our point of view and, as I say, one of the observations from our investigations were that having a disclosure officer present in the first place, who was briefed, resulted in some of the bog-standard answers which gave us the feeling of regimental amnesia because they were briefed to start with on what we were going to be asked and then, when we went to interview or went to the witness statement or whichever form of statement we recorded, resulted in the bog-standard answers, which I say I alluded to as a regimental amnesia, when they'd become very much standard and the same.

Q. In terms of disapplying the protocol and you've touched on the particular paragraph, 11(1), which permits, in certain circumstances, the protocol to be disapplied and

the interview to take place without a disclosure officer, a matter you able to persuade PM(A) that that should be adopted as a cause of action?

A. On the individual occasions, absolutely. I'd never -- when I asked for it, I never had any pushback because I could justify it, quite rightly so, and actually I shouldn't -- but my point is I shouldn't have needed to have justified it in the first place. There shouldn't have been a -- in my opinion, there should not have been a protocol provision that made one line in the whole document allowed us to do something positive rather than be restrained by all the caveats that were in the protocol itself.

Q. Did you feel that you were getting sufficient cooperation from Special Forces to assist with the investigation?

A. In the organisation of interviews, yes, we did. We never really -- I can't say we ever had much pushback once we started going, in terms of people, and again, we completely understood that the availability of some individuals, it was just impossible to see them immediately, because of locations, et cetera.

As I say, just going back to the protocol, it was just very much a frustration of having those disclosure officers there, who they were, what they were allowed to

say, not say, and, in terms of the evidence we recorded, the whole point of the disclosure officer in the first place was to stop issues of national security, et cetera, being exposed. Fine. We get that.

But then everything is redacted anyway, so I never understood why we couldn't just go ahead and just do what we normally do and take a direct witness statement from somebody in whatever context it may be, whether a section 9, whether it be achieve best evidence, whether it be on tape or a significant witness statement, in full and then afterwards do any sort of redactions which would have made all of the witness interviews much more open, much more free, much more flowing, without having to be potentially stopped every five minutes to say, "You can't talk about that, you can't write that down."

Again, very much a -- the wrong face -- arse about face, if you would, a way of doing, of conducting an interview, whereas it should have been much more free flowing, allowing us to ask the questions and for the individual to answer them without being restrained and then afterwards, if there were any issues, redactions, et cetera, are put in place for security reasons.

Q. In terms of the change in investigative direction and how that was provided by way of information to others who might be interested in the course of the

investigation, can we look with your help, please, to tab 67, which is in file 2, to 67.4, please. And the reason for inviting your attention to this is that Brigadier Neal provided an update on Operation Northmoor to a number of people including the Secretary of State. We can see here in a document dated 14th March, either Brigadier Neal himself or someone else and signed by him, this update has been provided, and the recommendations are set out in the second first paragraph. You'll see there are in fact two paragraph 1s but we'll leave that alone for a moment. But the second paragraph 1:

"Secretary of State has invited note that almost 300 of the 675 complaints under review by Op Northmoor have been discontinued. By the end of summer 2017, we expect all but a handful of the remaining cases to have been discontinued."

Now at this stage, if we just pause, you are the SIO for Team 2.

A. Yeah.

Q. Were you confident that by the end of the summer, all but a handful of cases would be discontinued?

A. I was. The -- when we -- once we'd applied the Leggatt Test, allowed us to apply the Leggatt Test to the Team 2 investigations, by putting them through the JCRP

process, at the pace we were doing them and making sure they were looked at properly, et cetera, and then applying the appropriate caveat of continue or discontinue, it was -- it would have been appropriate to set an objective of the end of the summer, yeah. By the end of the summer 2017, was a realistic timeframe, to be fair. Unless of course, we'd had the coach load at the front of RAF St Mawgan, it was absolutely appropriate that that was a good time-set to make sure it was done properly and concluded provided there was no additional evidence that came forward all lines of inquiry.

Q. In terms of the progress for Team 1, if we looked at (1)(b):

"We plan to interview complainants in the remaining unlawful killings case and will write shortly to their solicitors Leigh Day to facilitate this. An assessment of the case will take place if cooperation is refused."

What does that mean, please?

A. I think, from the reading of this, it would suggest that if we had not had access to the complainants through Leigh Day & Co, which we did in the end, then it would not have surprised me if they'd looked -- relooked at the application of the Leggatt Test and said, okay, well, we don't have access to the witness, we don't have a fresh witness statement signed any further lines of

inquiry. Is there anything else that we can do? And the assessment would have gone back to "What do we have left? If we don't have a witness or a complainant's signed statement, what actually do we have left in this investigation?"

Q. I mean, thus far over the course of the three years or so that Northmoor had been aware of the allegations from Leigh Day about unlawful killing, Leigh Day haven't been able to facilitate access to their clients.

A. No.

Q. Is there a risk that the Secretary of State being briefed about this might think, well, nothing has happened for three years, it's unlikely to happen now, this is going to go away, isn't it, because there will be an assessment if cooperation is refused?

A. I don't know. To be honest with you, I don't know what the Secretary of State might have thought on this.

Q. Okay. It then continues:

"We also plan to engage with UK personnel involved in the incident to establish a clearer picture of the event."

Presumably that engagement would only take place after PM(A) had had a chat with the DSF.

A. Yes.

Q. Or, to use his words, to brief the DSF?

A. Brief. Absolutely.

Q. Then:

"We anticipate a steady drawdown in RMP personnel committed to the operation following a manning review."

Did you anticipate such a drawdown?

A. Yes. As I mentioned earlier, with the 675 complainants being dealt with, so I would have absolutely envisaged that once the Team 2 investigations had come to conclusion, as I mentioned earlier, we didn't need at that time 30 to 40 investigators being transferred to the Team 1 -- to Team 1, and therefore it would be absolutely appropriate that those personnel, if no longer required, would have been redeployed back into the regiment. So yes, with that in mind, certainly a small drawdown or release of that manpower would have been appropriate.

Q. Couldn't they have been deployed to look at the eight objectives from the TTP review that were on the backburner?

A. Well, at the time I think, again, we'd only just started to do the overt investigation. So the information they had so far was Tyburn and the other operations they were looking at, they had enough manpower as it was with the information they had. Until such time as we'd actually had any full lines of inquiry to pursue people, I don't

think there was any point in redeploying all that manpower to Team 1.

Q. Well, the decision that had been taken, if I understand it, in respect of the matters set out in the TTP review was that Tyburn, which was the focus of the Leigh Day complaint, that was going to be investigated?

A. Yes.

Q. And that two other additional DDOs, objectives 1 and 2 as they are known, would be scoped --

A. Mm-hm.

Q. -- and that the remaining 8 from the 11 that had formed the TTP review would sit, to use my phrase, on the backburner, and they may or may not be scoped and/or investigated?

A. Yeah.

Q. If you've got the possibility of deploying Team 2 investigators who have knowledge of Northmoor and have knowledge at least very generally of the allegations, is that not a time to say, "Well, actually, I've got a load of investigators available, we could really do with them to look at these other eight DDOs"?

A. Yes, but, as you've already pointed out, the recommendation was from the IRT that actually only Tyburn and objectives 1 and 2 would be looked at, and therefore there was enough manpower to look at Tyburn

and 1 and 2. There was no requirement, because we weren't there yet, to look at the other eight sitting behind it. So therefore there really would have been very much a case of stood around.

Q. Okay. Then paragraph (c) continues:

"Work on a forensic data handling centre has been suspended pending a review of the requirement."

A. Mm.

Q. And we remind ourselves at that stage you still didn't have ITS1.

A. No.

Q. Which was the server you'd been trying to get hold of for a number of years?

A. Yes.

Q. But the facility that would be necessary to review its contents, if you got it, was the FDHC, but that was now suspended?

A. Yes.

Q. In any sense, were you frustrated that that facility would not be available to you if you got hold of the data that you'd been after for so long?

A. I mean, personally at the time, no, because when I came into it, we were then at the stage of getting information by consent, and it was working. And therefore, when I look back, I think, yes, well,

actually we should have just gone taken -- we should have taken the server and had the forensic data having the capability built because it would have allowed us to search more information, et cetera. But the decision had already been taken that we were going to recover information by consent, and then at that time, because it was only information by consent, and we were not going to recover the thousands of hard drives that they initially thought we were going to recover, that's when the decision above was: well, do we really need this massive forensic data handling capability if we're not going to have the usage that we thought for it?

So in many respects, again, those decisions were above my seniority, in terms of whether or not we needed it, from a tactical, Silver point of view, from a head on, at that time we were getting information we required from the unit. So it wasn't impactuous(?) at that time.

Q. We'll just pick up on the point about ITS1 and whether the FDHC would or would not be of any help. If we just leave 67 for a moment and turn on to tab 70 and look to page 4 within that section, please, sir.

If we look at the bottom email on that page sent out on 3 April *[audio disruption]* the Gold Commander, Lieutenant Colonel Harvey, was written to and you see in the second paragraph:

"We're reaching a stage in the ITS1 Life Extension Programme where we need to begin decommissioning legacy hardware which is no longer required and which from all data has been transferred to the new hardware."

At any stage did anyone say, "Well, actually, if they're decommissioning some stuff, maybe we can get hold of it and have a look at it, we'd better put the FDHC back online"?

A. Not that I'm aware of, no.

Q. Okay. If we just turn back for a moment to page 2 within tab 70. The reason for inviting you to look at this is this is your email, as part of this chain:

"In my capacity as Silver Commander I've now started to review the material that we currently hold. From the material already supplied from HQDSF and in conjunction with the material that's been viewed through *[audio disruption]* identified several extremely important evidential emails that I require to be recovered as a starting point."

Then if one turns over the page, again, I'll look at any section that anyone wants me to, but if we look at the top of page 73, that paragraph there that begins:

"It is therefore kindly requested that the server is not decommissioned until we are in possession of, and have reviewed, the most recent request for evidence in

order to establish if there's any further connected evidence we require."

In your involvement in this, was there any hope or expectation that you might still be provided with the ITS1 server, decommissioned or otherwise?

A. As far as I was aware, the process they were content with was that we continued to ask for information by consent and hence why I asked them "Do not decommission it" because what I didn't want to have was another deletion of a material, potential deletion of material. And therefore, until we actually had the request I'd already put in for, I've seen these documents, those are the documents I want, until we had those in hand, and reviewed them and decided whether there were any further lines of inquiry from there, they weren't to start decommissioning anything just in case there was another accident and they lost them all to deleted material.

In terms of actually getting the ITS1 system itself, I was kind of under no illusion that we were never going to get that whole system straight off. It was always going to be about consent and, because they'd said they were going to transfer it to the new hardware, we were always going to have the continued access by consent to the information that we required. So at that time there was, again, no thoughts on us actually acquiring the

ITS1 system complete as it was, because we were still using the consent and actually it was working.

Q. You'd indicated earlier that when it came to being forced to ask for evidence to be provided to you by the people you were investigating, you would have preferred to be able to conduct those searches yourself?

A. Yeah.

Q. So in terms of having an FDHC and obtaining a copy of ITS1, would that have been your preferred route as the SIO?

A. That would have been the perfect solution, yes.

Q. So that simply required Special Forces to give you the server you knew they had, which they weren't using?

A. Yes.

Q. And for you to then turn on, once appropriately accredited, the system you had in your office inboxes?

A. Yes. But that would have taken, again, an extreme amount of time because again, the accreditation, the build of the FDHC had been put on hold again and again and again. We would have been -- again, that would have been the perfect solution but would have taken -- extended that process at least by another year, I suspect, by the time they actually built it, got it accredited, got it uploaded, got the right people in place, made sure they were trained and still competent

and had the sweat to do it.

So yes, absolutely the ultimate solution would have been: recover ITS1, have the FDHC built, all in one place, all the troops in one place, all the evidence in our *(unclear)*, all the information in our control, so that we can interrogate it correctly. But that was never going to be the case. It was quite clear that once people had decided they were "do we need this or not?", we are getting information, you just -- we just had to get on with what we could, with the resources we had.

Q. I mean, haven't you just identified the problem that when the will goes to make the necessary steps towards progress, you stagnate?

A. Yes.

Q. And there was progress that could have been made, no matter how long it might have taken, to put you, to use your words, in the perfect position?

A. Yes.

Q. But it seems that, for whatever reason, the perfect position was never reached?

A. No. As I say, the perfect solution had been identified by Jason and the technical team when they looked at setting up Northmoor, which was the requirement for the fully manned team who were all qualified with the MIR,

with the FDHC build that could handle all the information that they'd envisaged they were going to recover to be able to search to look for any lines of inquiry to prove or disprove the allegations. But it never got there.

Q. If we just go back to divider 67 to finish off the briefing that was provided by Brigadier Neal to the Secretary of State and to others, if we look, please, to page 67-6 -- so the last in that divider in the end of the note -- if we look to paragraph 11, please, together:

"DDC is looking to promote positive updates on the Department's efforts to tackle historic investigations, and has already updated the media on the reduction of Operation Northmoor's caseload as part of the announcement to close IHAT."

We pause for a moment, IHAT, the Iraq Historic Allegations Team, that is about to be closed down, and do we understand from this the suggestion is that that closure might sound less detrimental if one is able to say at the same time, "We've also reduced the detainee abuse allegations by hundreds in the Afghan Inquiry alongside it". Is that --

A. I think that's an accurate reflection, yes.

Q. So DDC are looking for some sort of positive spin on the

way they can explain the closure of IHAT and what they're going to do is say, "Well, don't worry about IHAT because we've been doing the same for Afghan and in fact 675 allegations are now down to very few"?

A. That would certainly be the way that Brigadier Neal has written it.

SIR CHARLES HADDON-CAVE: DDC stands for?

A. The communication so the --

SIR CHARLES HADDON-CAVE: It's definitely comms somewhere.

A. Comms, yes.

MR GLASGOW: Defence Department Communications?

A. I believe it is, sir.

MR GRAY: *(Sotto voce)*

MR GLASGOW: Ah, Director of Defence Communications. Thank you very much, Mr Gray.

SIR CHARLES HADDON-CAVE: Thank you, Mr Gray.

MR GLASGOW: Then if we continue paragraph 11:

"DDC will continue to take a reactive stance on Op Northmoor and will consider using this news as an example of progress. DDC would proactively update the media on Op Northmoor once we have reached the handful of cases which is likely to fit the timescale in which the Department can proactively offer an update on the closure of IHAT."

So in some way, the closure of IHAT and the

reduction of the detainee abuse allegations under Op Northmoor might become a good news day.

A. By the way that is written, yes.

Q. Or perhaps not, if you're one of the detainees who's alleged abuse?

A. Absolutely.

Q. We leave Brigadier Neal's briefing, and if we can consider some of the work that you yourself did prior to being appointed the SIO of Team 1, because if we look at some of your notebooks, it appears to be the case that you conducted a review of the available information in respect of the 11 DDOs, the subject of the TTP review.

A. Mm-hm.

Q. Do you recollect now doing that, albeit only by probably going back to the original notes?

A. Yes.

Q. Okay. Before we look at the notes, can I ask this: when you conducted that review, was that because you were Silver, or because you knew you were going to become the SIO for Team 1, or because of both?

A. Both.

Q. Okay. So this is May 2017. So at that stage, you understood that Captain Wright would be leaving as the SIO for Team 1?

A. Correct.

Q. Did Captain Wright want to leave?

A. I think Jason -- no, I don't think Jason wanted to leave the investigation at all but I think he realised that it was not going to go following the lines of inquiry that he wanted to and therefore decided that, yes, it was probably an appropriate time to go because his investigation had been his investigation and the way he had been running it for two years. And then, when IRT came in, obviously changed with myself, the direction of his investigation had changed, and I don't think he wanted to do that -- those lines of inquiry in the way that he had been directed, and therefore, actually, whilst I don't think he ever wanted to leave Operation Northmoor because he fully believed in what he was doing, because he didn't believe in the new direction, I think that Jason was probably actually quite relieved that he was no longer part of it, because it was not -- it is no longer the investigation that he believed in and the way it was being run.

Q. If we look with your help, please, to the notebooks or at least some of the notebook entries you've done in respect of this review, we need to go to file 1, please. So the file in front of you, you can put that to one side, and if we turn to divider 37 together, please.

If I've understood the way you've constructed your

review, what you've done is you've identified the different either objective or operation numbers. We can see how they've been correctly blanked out to give them the individual unique number we see. So, for example, Objective 9 as it appears and then Objective 2 on this page.

A. Yeah.

Q. And have you looked at, as you've described it at the very top line, the associated documents to identify matters that appear to you to be noteworthy as an investigator?

A. Yes.

Q. And questions have been asked at the top. Forgive me, I will attempt to decipher your handwriting. If I get it wrong, you must correct me, and if you can't get it right, then we are in trouble. But, as the -- and I'm not entirely sure -- is the next word, "as the" -- is that "right"?

A. As the adjutant.

Q. "As the adjutant to RIC and SM ever been spoken to, mentioned in statement of M1785?"

A. Mm-hm.

Q. Then, "confirmed spoken to, denied all knowledge."

Then question 2, in respect of OpA, search of ITS1, what results.

In other words, had there or was there going to be a search of the server that the RMP had wanted to get access to --

A. Yeah.

Q. -- for the operation anniversary information?

A. Absolutely.

Q. As to the next section, do you now go through DDO by DDO, the 11 different DDOs that were the subject of what's been referred to as the TTP review?

A. That's correct.

Q. So Objective 9 is first. "Lone" -- is that "insurgent", in quotation marks?

A. It is.

Q. "Lone, insurgent, same TTP" and by "same TTP", is that the TTP that you've identified elsewhere in here of an Afghan male going back into a compound?

A. Yes, posing a substantial threat and then being engaged.

Q. Then have you written "Escape, grab weapons, is agreed" followed by exclamation marks?

A. That's "engaged".

Q. Sorry, "engaged", I do apologise. "Escape, grabs weapons, is engaged."

Now, in terms of the escape, grabbing weapon and engaged, does that come from your reading of the staff work?

A. It does.

Q. And did the staff work have three exclamations after it or did you apply the three exclamation marks?

A. I applied the three exclamation marks.

Q. Is there any reason why you applied three exclamation marks relating to the entry relating to a lone individual escaping from the Special Forces and managing to grab a weapon?

A. Because of exactly what you've just said: it raised eyebrows to me that someone was able to -- who was unarmed, is able to escape from heavily armed, highly trained individuals, who have just surrounded the building, and they managed to escape from their custody, and go and grab a weapon, and then go to engage these heavily armed gentlemen who have come in the middle of the night, who have surrounded you. It made no sense to me. Hence why the exclamation marks as to, okay, is that account accurate?

Q. When you come to question whether the account is or is not accurate, if we look at the next entry:

"Does not make a coherent version of events."

A. That's correct.

Q. By that, do we understand that your assessment of the OSW or the post-operational descriptions doesn't appear to be coherent?

A. It does not.

Q. So as an investigator, when you look simply at the post-op written descriptions of Objective 9, did you have questions that you wanted answered in respect of that particular DDO?

A. These were the questions, as in the statement doesn't make coherent sense. Well, so what? And that is what was the real -- what was the actual sequence of events? Again, I was limited at the time to the photographs that we had, and in conjunction with the photographs that we actually had and the storyboards that we were given, hence why full review of SSE and full review of the photos is required. So the additional lines of inquiry, the additional elements to look at, it's okay, well, we've got one photograph, where's the rest?

Q. In terms of wanting a full review of the SSE and the photographs as a requirement, and you've set out here, what did you think or did you hope might be gleaned from such a review?

A. Well, as I say, my review was based on the limited storyboards and photographs we actually had. Now, we knew that multiple SSE photographs would have been taken because we'd seen that in other operations and, therefore, what I required was the rest of them so we could make an evaluation of what did happen if we could

put a picture together of, yes, boss, to me, apparently it didn't make sense. Quite happy to say that the sequence of events didn't make sense.

If there had been other photographs, images, further storyboards, further witness statements, or if there'd been an SIR for instance for some of these, then that would have given us more information, more witness statements to examine, to look at and piece together as to whether my initial observations just based on the small storyboard were incorrect and, actually, with the further information with SIRs. Et cetera, it would have provided a bigger picture, a more in-depth picture, and therefore maybe turned my opinion from "That looks suspicious", to actually, that's kind of disproved my initial theory that that is suspicious. And hence why the full review of SSE and photographs were required.

Q. And in terms of your suspicions and the basis upon which you formed them, can I just check this with you, please: had you been present on any DDO at any time to understand the process that is gone through by Special Forces?

A. No. I hadn't, no.

Q. Had you ever spoken in detail to anyone about the different TTPs used by Special Forces on DDOs?

A. Me personally, no. But the -- as the investigation went

on, I did send a couple of investigators to go and speak to the specialists at the training school where they took a detailed witness statement and recovered the presentations as to how the TTPs for these operations were conducted. So my knowledge of how this was done, these were supposed to be done, was based on recovery of witness evidence from the experts in the training environment that my investigators went and recovered for me.

Q. Had you got that evidence available to you at the time you did this initial review?

A. What's the date on it?

Q. This is in -- I think it's in --

A. This is --

Q. -- May -- March of --

A. At that time, I definitely did not have that -- those experts.

Q. Right.

SIR CHARLES HADDON-CAVE: Where would that statement be now?

A. I'm trying to recall who took the statement, sir. That would have -- I believe, in general course, Staff Sergeant Nick Smith might have taken it, sir, if I recall correctly. So any sort of evidence surrounding Nick Smith would probably be the -- I think he took the witness statement and recovered the presentation itself,

sir.

MR GLASGOW: If we just continue, if we can for a moment, dealing with that particular objective number 9 because you've got further notes in your workbook. If we turn on to page 37-6 -- I'm afraid that the number 6 is partially obliterated by some black redaction that is placed upon it, so you'll need to just turn on. If it helps, top right-hand corner as we look at it -- oh no, that won't help either. Top of the page, you might find page 20 if you're looking for it in the original typed numbering in the book itself.

A. Yeah, got it.

Q. If you run your finger down the left-hand side, you'll see the numbers 7 to 8 and then 9.

A. Mm-hm.

Q. Then beneath that, "footage??" What was the footage you had questions about at that stage?

A. Whether there had been any footage, any headcam footage, any aerial footage.

Q. Did you ever recover any of that?

A. No, we didn't.

Q. If we look along that side, we can see COI, compound of interest 1, B, bravo, escorted back in, and then, quotations, "lost control" and then beneath that "Pistol!!"

A. Yeah.

Q. What is it about "lost control" and "pistol" that appeared to you to be worthy of note in your notes?

A. If I recall correctly, the -- again, it was a heavily armed -- an unarmed individual being escorted back in by heavily armed troops who have got a surrounding force, so therefore not going anywhere. Why would a male be escorted back in and then how would you lose control of the individual to therefore make them arm themselves with a pistol? And I recall -- if I can recall correctly, the annex G made no reference to the pistol being recovered.

So if I am correct on this one, the annex Gs were the post-operation reporting of what was recovered, et cetera, and if I recall correctly, on this occasion there might just have been an innocent mistake, tiredness, whatever, but if I recall correctly whilst in this story it talks about pistol, in the annex G there was no recovery of a pistol, hence the question mark "Where's the pistol?"

Q. And when you have exclamation marks or quotation marks which indicate something you've got a question in your own mind about, are you leaping to the conclusion that that therefore means that there is something suspicious, or are you just identifying it as something you need to

bottom out?

A. What I need to bottom out. It's a question mark for me. It's an: okay, well, there's a line of inquiry, there's something I need to bottom out, there's something I need to find. It's been mentioned. It's a query over why it's been mentioned and therefore I need to have a look into it further as to what that is.

Q. Major, if we go back where we were, please, in file number 1 to divider 37 and back to page 2. So the start of your notebook that we had begun on. The next DDO that you had reviewed was Objective 2, we can see that set out towards the bottom third of that page. Again, I will -- allow me to attempt to read the handwriting. If I get it wrong, please correct me but does it read "Initial review of photos versus INSUM"?

A. Correct.

Q. "Suggest the accounts do not marry up."

A. Yes.

Q. The review that you've conducted between the photos and the INSUM, what's the "INSUM" please?

A. So the INSUM would have been a document provided by the unit, which described the events of the day.

Q. Right, and is that a document which was compiled after the operation, setting out what you understood to have happened on it?

A. The -- my understanding is yes.
Q. When you talk about an initial review of photos versus INSUM, is that your review comparing the photographs to the account that's written down.
A. It is my review.
Q. All right, so the suggestion that the accounts don't marry up is your suggestion having done that review?
A. It's mine, yes, absolutely.
Q. Then you wrote:

"Requested photos enlarged and OPSUM. Request engagement with forensic digital expert and DSP etc after briefing to Gold."

Now requested photos enlarged may be obvious. So the photographs you had, you wanted increased in size to see whether you could make out more detail from them?
A. Of course.
Q. The OPSUM, the operational summary, which is part of the operational staff work, is that something you wanted enlarged, as well?
A. It's something that I required because I didn't have it.
Q. Right. I'm so sorry. So you wanted the photos to be enlarged, the OPSUM to be provided to you and then "Engagement with forensic digital expert and DSP".

DSP: Director of Service Prosecutions?
A. Correct.

Q. So the head of the SPA, the Service Prosecuting Authority?

A. Correct.

Q. When you were seeking with engagement with a forensic digital expert, was that for someone to look at the photographs?

A. Correct.

Q. What was it that you were hoping an expert could do to assist you as the investigator?

A. Well, I was hoping that they'd actually be able to give us, based on the -- with the accounts, such as the OPSUM, INSUM, et cetera, providing that information to me with the lack of any witness accounts, if they'd be able to provide a professional opinion as to what may have occurred, based on those photographs with the INSUM and the OPSUM, the storyboards that were provided, so without the witness evidence but based purely on the descriptions of what happened, in comparison with the photographs that are there, if a forensic digital expert would be able to actually -- or a forensic expert would be able to give us an opinion of those photographs as to what may have happened.

Q. In terms of the opinion that you hoped or thought they might be able to give, was that based on a comparison like you had done between the photographs, on the one

hand, and the write-up, on the other --

A. Yes.

Q. -- to see whether they did or didn't marry up?

A. That's correct.

Q. Why did you want also engagement with the Director of Service Prosecutions?

A. It was my belief that certainly this operation caused me some concern and, obviously, the photographs themselves caused concern and, therefore, engagement in an early stage with the Director of Service Prosecution would have been the appropriate thing to do, to say this is what I have, this is what I believe and, if appropriate with a forensic expert, this is what they opine to have potentially happened, DSP, if we are -- if, based on all that, the EST(?) is potentially met, the process would have had to have been to engage with the SP anyway and with his experience of investigations of this nature, it would have been absolutely appropriate to get him involved at the earliest level to get his thoughts.

Q. You continue your notes in respect of Objective 2 on page 37-4. So if you skip the next page and go on to our page 37-4 and on one more page, please. I'm so sorry. Thank you very much indeed. Top right, as we look at it. Objective 2, "Further review", you wrote:

"The TTP of allowing of Bravo to enter the building

alone resulting in the Bravo then ..."

Presenting or possessing?

A. Posing.

Q. Posing, I'm so sorry. Thank you.

"... 'posing an immediate threat' brings again the question of cut and paste mentality. The questions the validity of the account as a whole."

Cut and paste mentality was what, please, sir?

A. Where the storyboards themselves were basically identical. So it would appear that the accounts had been literally lifted, so the account of what had occurred had been lifted from one document and put directly into another document because the wording was exactly the same. So the cut and paste mentality of the accounts. Now, this was backed up by a further incident, where it was noted -- I'm trying to find where -- that, actually, it was even acknowledged by the unit themselves, during -- conducted by one of their reviews that there appeared to be some cut and paste happening in the reports and, therefore, being recognised by their own unit, by their own legal adviser that cut and paste may or may not have occurred, clearly raised concerns with me as the SIO.

Q. Cut and paste may be used because a previous description applies equally to the next event?

A. Very much so.

Q. It may be an error or it may be a short form for all sorts of things but what was it about a cut and paste appearing in a post-operational summary of Special Forces activity that made you think "I want to know a bit more about this"?

A. When the stories become very much exactly the same and the wording is very much the same, you can't be telling me that in two different situations, in two very different areas of a country that exactly the same things happened in exactly the same way. So, therefore, it quite -- to me, it became quite evident that there was some perhaps just lazy -- some lazy reporting, by going, well, it's similar to last night, so we'll just cut and paste, save me having to rewrite it again. That was my sort of opinion, my thought process behind it.

Q. Okay. You then continue:

"It appears to me three of the individuals were shot in their beds."

Was that assessment made by you following a review of the photographs?

A. It was.

Q. So when you looked at the pictures of this particular DDO, you were of the opinion that three individuals who had been shot and killed appeared to have been shot

whilst in their beds?

A. That's correct.

Q. As an investigator, did that raise any question in your mind about the propriety or legality of what might have happened on this particular DDO?

A. Absolutely, because the accounts, as I say, raised questions as to what they say had happened versus what appeared to me from the photographs, as to what my opinion was, based on those photographs, as to what could have happened.

Q. Now, insofar as you were able to offer an expert opinion about where someone was when they were shot, do you have any particular expertise or experience in conducting these sorts of operations that allows you to make any conclusion like that?

A. No. No, I don't but what I have is experience of viewing material like this, photographs, et cetera, and understanding that in a situation, that does not look right. If the account says that somebody perhaps has stood up, then I would expect to see certain things and I didn't. You know, I would expect to see certain marks on the wall or patterns on the wall. Well, actually, it was all on the floor. So, as far as I was concerned, the photographs did not match the account and, therefore, either the photographs may have been wrong,

the account was wrong, were they the right photographs for that account? Did someone accidentally put in photographs from a different operation, which would explain the difference between the accounts and the photographs represented with that.

However, as we went on and looked into the metadata and actually looked into the detail of those photographs, they had been recorded by the unit as corresponding to that date, time, place and that operation. And therefore, it just -- for me, just raised more questions, based on my limited experience and hence why my thoughts on getting a forensic expert, rather than me, to give an opinion on what has been presented to us.

Q. In terms of the next entry, if we look at that, please:

"All EKIAs [enemies killed in action] appear to have accurate head wounds from an unknown source. I question the accuracy of the Bravos to shoot each other with accurate head shots, especially given the assessment [the] OC that their weapons training would be 'basic at best'."

A. Yes.

Q. In terms of you questioning the accuracy of Bravos to shoot each other with accurate head shots, did you make that observation because a suggestion had been made that

fratricide had been occurred on this particular DDO?

A. Absolutely.

Q. Again, before anyone thinks that I'm helping you unfairly or inappropriately, if we just keep our finger in page 37-4 and turn back to 37-6, please, halfway down the left-hand side, Objective 2, you've written there "Fratricide??" with two question marks.

A. Yes.

Q. Applying the question marks alongside the entry for fratricide, might that suggest you have a question as to whether or not fratricide is appropriate as an explanation for how these men came to lose their lives?

A. Yes.

Q. Is that because, when we go back to 37-4, that they appear to have accurate head wounds and, if their weapons training is "basic at best", you're questioning how they managed to shoot each other accurately in the head?

A. Absolutely, and, of course, the other parts of this were that the description was it was dark and confused and these are close-quarter AK-47s, which, having done the research on it, they are quite -- in inexperienced hands would very much be a wild weapon and, therefore, you would not expect to see accurate head shots in the dark from people who have basic weapons training. The

pictures and the description does not reflect what we are talking about in terms of my belief as to what could have happened.

Q. Did you harbour suspicions about what might have happened on this particular operation?

A. I did not believe that the account given was accurate at all.

Q. If we go, please, back to page 37-3, which is the second page in your notebook, dealing with Objective 1, you wrote in respect of this:

"SIR (Serious Incident Review)

"Concludes not SP. Investigation required."

In other words it concluded the service police investigation was not required.

A. Correct.

Q. "The photos are limited but do show men in their bedded down area."

Then you wrote:

"Further review of all imagery taken at the scene is required."

What was the review that you wanted, please?

A. Again, I wanted someone with sort of -- well, (a) to get more imagery, if there was any out there -- so further search of the systems to see what other pictures were taken, rather than just the ones from the storyboards --

and then, if available, again, a forensic individual to have an assessment of those photographs and the storyboard and give us their opinion as to what may or may not have occurred.

Q. You then continue to write in your note:

"Only 1 weapon can be seen near any Bravos."

Again, were you aware whether or not any of the weapons might have been moved out of the way before photographs were taken?

A. No, because, at that time, we didn't have any witness statements to give us an account. The account we'd go on is by the INSUMs, the extract provided to us after request from the unit and, therefore, the information we have are the storyboards that were provided, plus the photographs we had access to and therefore my assumptions, my interpretation is based on those documents alone, without any evidence, witness evidence, from those involved because, at the time, we hadn't interviewed anybody.

Q. Given the number of EKIA on this particular DDO and the fact that from the photographs you could only see the one weapon, were you concerned in any way that there appeared to be, to use a phrase that we've heard evidence about, "more bodies than weapons"?

A. Yes, and this is where -- well, the two objectives, 1

and 2, did raise the biggest concerns when we're talking about weapons recovered versus individuals who were deceased. And when we say earlier -- when I've put down "Only 1 weapon can be seen near any of the Bs; what's accurate fire?" et cetera, these were all questions posed in my head and written down, because, from what I'd read, it didn't, again, tally up with the account that's been given versus my assessment of the photographs in terms of the story.

Q. When you have the question next "How many rounds did the assaulters fire?", were you trying to work out in your own mind how it was that so many dead bodies appeared in that one room?

A. Yes, and also these were questions that were sort of forming for should we get to speak to somebody. Once we identified who was actually on these operations, these are sort of basic questions you could put to them and say, "Okay, well, you're saying this -- you fired two rounds but actually we got ten people on the floor". That wouldn't make sense. So these are questions in my head, going, okay, we need to establish how many rounds were fired, by whom, at what height, et cetera, et cetera.

Q. In this instance, it's in fact nine on the floor not ten.

A. Yeah.

Q. But you then record at least one person that's been spoken to as remembering only firing four shots:

"Where did they arrive? At who?"

And then PID: positive identification?

A. Yeah.

Q. So were you questioning in your own mind how it was that so many people appeared to have lost their lives in that room?

A. Yes, and also, when I talk about who did it, and who, for the rules of engagement, et cetera, was there positive identification which would have allowed them the justification under the rules of engagement to engage that individual? Well, it appeared -- I mean, from the information I had, there's no suggestion that PID had been made. So, again, if we'd been made to bottom out, it would prove or disprove my theories or what's going in my head as to what may or may not have occurred.

SIR CHARLES HADDON-CAVE: So we're talking about nine bodies, are we?

A. In this instance, sir, yes.

SIR CHARLES HADDON-CAVE: And "PID" is positive identification?

A. Positive identification, sir.

SIR CHARLES HADDON-CAVE: Thank you.

MR GLASGOW: Insofar as how you describe this incident a little later on in your notes, if you go to page 37-5, and to the bottom right-hand entry on that double page, you wrote, alongside there for Objective 1, in the bottom:

"Mass shooting in one room.

"Witness statements -- cut and paste."

Then:

"Correspondence on ITS1.

"Concerns raised [with] DSF.

"N2108.

"Amended statements."

A. Yes.

Q. In terms of mass shooting and one room, that description you've applied there, was that based on your review of the photographs?

A. Yeah, that was absolutely my review of the photographs.

Q. I mean, so far as the photographs are concerned, those who have the documents available to them, if they want to, the photographs that you were able to review at the time can be found in file 2, and can I pause before I ask you to do this, sir. It's entirely a matter to you whether you want to turn to look at the photographs or not. If you do not want to, I will describe them

very simply and you don't need to turn to them. If, on the other hand, you want to look at them, you're entitled to do so.

A. I'm happy to continue.

Q. They're behind divider 161. I'm going to pause for a moment. What I'm going to invite, with the assistance of the electronic presentation team, to take place is that the bottom photograph on page 161-3 is brought on to the screen but, before that happens, what I would like to indicate is the following: it contains an image of a number of deceased individuals lying in what appears to be a single room and it may well be that those who come to view this material on the screen do not wish to look at it so I pause to give people the opportunity, if they want to, to turn off their screens, or if they're viewing on the feed to not continue to do so for the next few moments but very briefly and with your help I would like to look, please, now at that bottom photograph on page 161-3.

Do we see here what is described as the "stab shot" of room, in other words a shot that captures the bodies of the deceased within that room, and it is possible to make out a number of individuals who appear to be lying on the floor, some possibly on bedding, as you've described, and it's difficult to make out many more

details. But, by way of example alone, if one looks to the top of the photograph, to the left, one can see horizontally across the screen what appears to be the body of a deceased male, as we look at it, feet to the left head to the right. He appears to be either on his back or almost on his back, his face appears turned towards the ceiling and it may be that his head is on something, possibly bedding, and possibly there is bedding or some sort of cover towards his feet. Do you see that, sir?

A. Yes.

Q. Can I ask, please, that that photograph is taken off the screen for a moment.

When you talk about, in your notes, mass shooting in one room, is that a photograph which you used to describe the incident in the way that you did?

A. Yes, it was.

Q. The other photographs -- and I'm not going to ask them to be brought up on the screen because it's unnecessary for that to happen -- but do we see in the other photographs on our pages 161-1 and 2, and a little bit on 3, photographs of individuals -- and again, for description purposes, some appear to be lying on their backs with their heads on what might be described as bedding or possibly pillows -- they appear to have, in

many instances, head shots which have been sustained?

A. Correct.

Q. Again, I'm not going to ask any of those to be brought up on the screen unless anyone wants me to or unless anyone thinks I may have misdescribed or wrongly characterised those photographs?

SIR CHARLES HADDON-CAVE: These photographs are much clearer, would you say?

A. Yes, sir.

MR GLASGOW: Major, I'm going to invite you to put that to one side for a moment. We don't need to turn to it again and thank you very much for your help with that.

Insofar as you had identified only one weapon that you could see, that this was a mass shooting in one room, as described by you, and that you were unclear as to how many rounds had been fired by the call signs, so that's the members of Special Forces who had gone into that room, what were you hoping you might be able to uncover, in terms of what had taken place by way of speaking to experts?

A. Well, again, with the limited information we had by the photographs, the photographs themselves, as far as I'm concerned, pose an automatic question mark as to the validity of the accounts that we received and, therefore, if that is the only information that they are

saying is a true and accurate account, against the photographs, it seems quite clear to me that they did not match up and, therefore, if to a layman like me, who can automatically see that -- it causes worry beads and actually I don't believe that is an accurate reflection, then asking an expert, a forensic expert on photography -- digital photography and blood pattern analysis, et cetera, to give an opinion based on the same information I had, would have allowed us, okay, given us the opportunity to challenge the individuals in any accounts we'd got given. So if we had an expert give their opinion as to what happened, when we had been able to interview people, we'd have been able to challenge them as to what actually happened and their version of events.

Q. In terms of the sort of expertise that you had in mind, so you think in terms of ballistics?

A. Ballistics was always -- would have been an option but we didn't have the weapons. I was thinking more about the blood pattern analysis of what you can see from the photographs, in terms of, yes, what they would expect to see if someone had been stood up or if someone had been lying down; what they expect to see in the areas where they are lying, as opposed to where -- or wall lines et cetera. So from someone who has had a lot more

experience in these sort of situations.

Q. Would you have wanted the help of pathologists or trauma specialists?

A. Anyone who could give a valid -- an accurate opinion, professional opinion, of what they have seen, based on -- and the account given as to whether they actually match up, whether there is actually some accuracy in there, or whether what has been described is at total odds with what is shown. A picture paints a thousand words, at the end of the day, but there is always a story behind it and if there is a story behind it, then, with an expert giving their opinion as to what had happened, then we could have either taken it to the individuals to challenge any account they gave, or take it forward to potentially identifying suspects in what I believe to be was a situation that was not right.

Q. Were you equally open to the possibility that, if the expert said in fact there's nothing to see here, then that would have closed off any suspicion in your mind and ended the inquiry?

A. Would not -- I don't think it would have ended the inquiry, it certainly would have bottomed out one line of it, one significant line of inquiry that we never actually pursued, which was the forensic analysis of the photographs because, as far as I was concerned, without

witness statements, et cetera, et cetera, this was actually an incredibly important part of the investigation, that was never bottomed out.

Q. Now we've dealt with three of the DDOs. In the order in which they appear, we dealt with 9 first of all, because it was the first you reviewed, but as far as Objectives 2 and 1 are concerned, are they the two DDOs out of the remaining ones, other than Tyburn, over which you had the greatest concern?

A. They were.

Q. So can we just look at the others, and do so relatively quickly. If anyone wants me to deal with an entry, of course I will, but if we go back to 37-3 with your help, please, Major. Number 7:

"2 Bs EKIA [so two males enemy killed in action], one sent back into the house, returned with a weapon?? Where is the SSE photographs?? Age of 2 Bs is fighting-age male!!"

First this, please: why were you questioning, after one sent back in, "returned with a weapon"?

A. Again, from my recollection of the storyboards, there was no explanation as to why these gentlemen would be sent back into a house for whatever reason and then return armed, knowing that outside was some very, very heavily armed individuals. With what I had at the time,

the full SSE photographs would have helped either explain or give a further account of what actually had occurred, and the two males, the fighting-age males, harks back to Op A, the compartmental piece where actually it talks about fighting-age males. And therefore the mere sight of those with also the information that had started this sort of inquiry in many respects raised an eyebrow as to, well, what is the accuracy of this? You've got fighting-age males and yet they've been killed. And you have a document which suggests that fighting-age males are being sent back in and killed.

So there was a clear correlation, as far as I'm concerned, of actually, this one raised another eyebrow as to the accuracy of what actually occurred.

Q. Major, can we continue, please. I was about to invite you to look at the second entry down on page 37.3, on the right-hand side as we look at it, in respect of Objective 8. You wrote again:

"1 x B [so one male] sent back in, apparently alone!! Reappeared armed. Shot dead. TTP cut and paste!!?!"

As to those entries, please, why did the entry "One male sent back in apparently alone", why has it got exclamation marks applied after it?

A. Again, based on the reading and the INSUMs, the OPSUMs, the information provided, the story is just -- the wording was just exactly the same as in previous accounts and previous operations. And therefore, I had to question as to whether this was just cut and paste, or whether it was actually the exact same actions by the individuals at the time.

Q. You wrote thereafter:

"The SSE appears to show the AK-47 on a shelf! How does this pose a threat? Requirement to review all photos."

The requirement to review all photos, does that mean to review photographs already in your possession, or were you hoping to get more photographs?

A. I was hoping to get more. As I say, a lot of the photos provided in the first place were generally based on the storyboards we had. So, as you've seen in one of the previous ones, there was nine photographs there. I know that there are -- when we requested them, there was a lot of more photographs behind that. Different angles, different pictures, some repetition of the same individuals. So I knew there was more than just two photographs for this operation. There would have been a lot more. So, actually, if we could go back and say: okay, I want everything, every photograph pertaining to

this date, time, place, rather than just the ones that are correctly on the storyboards. It was a review of everything that they had in their possession on the IT systems that we could then recover to review to get a bigger, better picture of what actually happened.

Q. When it came to your observation that the AK-47 on a shelf might not pose a threat, did you consider the possibility that, prior to the photograph being taken, someone had picked it up to check it was safe and had then placed it on the shelf and a photograph was taken after that?

A. Quite possibly. And it was considered. But these are questions that, you know, once we've identified those involved in the operation, we can put to them.

Going on the storyboard, which says the individual posed a threat and there was -- was engaged, is fine. But then the review of the photographs without any context, of course, as to whether that weapon had been in the hands and then put on the shelf for safety, absolutely. But no mention of that weapon being moved onto a shelf, and unless it's the only weapon, my automatic response is: how does it pose a threat? So therefore it's a question for me and my investigators to ask the individuals, once we've identified -- if we could identify -- who had been the individual in that

room and had engaged the said insurgent?

Q. Your last entry in respect of Objective 8 reads:

"The loss of control over the Bravo is of concern."

What do you mean by that, please?

A. Again, the individual being sent back in, as I say, apparently then reappearing and appearing armed, considering, as I've already alluded to, they would have known that outside there was a -- heavily armed individuals waiting for them, makes no sense that you'd lose control of an individual, allowing them to go and arm themselves, allowing them to, by one -- for a better reason, commit suicide by coming back out. Because, by arming themselves, they clearly put themselves in a position which, posing a threat, they were going to be engaged and potentially result in their deaths.

So the question of how do you lose control of an individual and allow them to get in possession of a weapon, pose an immediate threat to life, and then have to be engaged and shot, poses all sorts of questions, and hence why we needed to ask the individuals, once identified, how that happened, why that happened, and, you know, if this was a reoccurring theme, why weren't people doing something about it? Because clearly, it was a reoccurring theme that people were being lost control of, managing to re-arm

themselves, then posing an immediate threat to life, and quite rightly so within the rules of engagement, being engaged and unfortunately killed. But it was happening too -- in the accounts that we were given, it was a pattern of this occurring. So at what point was someone going to stop this from reoccurring, or was this something that wasn't actually accurate?

Q. If we look over the page, please, to 37-4, you next considered Objective 11 and you wrote:

"1 x EKIA tried to engage with grenade. The description of how he became in possession of grenade is carbon copy of previous and subsequent incidents. On the face of this, it is hard to comment either way as to the legality of the engagement. SSE photos required."

A. Yeah.

Q. What was it about the carbon copy description of the individual who was shot and killed coming into possession of the grenade that concerned you?

A. Well, as I'd identified, it was a carbon copy of -- in the incidents we had seen previously. Was this a TTP of the insurgents to find grenades away -- scurry them away and then actually use them? Because it's a lot easier to hide a grenade than it is a machine gun or an AK-47 or any other weapon, for that matter. So the question I was posing myself was: okay, is this a TTP that the

enemy are using, or actually, is this again just some sort of cut and paste that they are using when they are saying, "Once again reached behind a curtain and produced a grenade"?

It posed questions to me as to why there was such repetitiveness of the same event occurring in different operations -- as I say, quite legitimately, could well have been a new thing they were doing -- or was this just copy and paste to cover what actually happened?

Q. As to some of the other descriptions, if we look further down the same page, Objective 6, you wrote:

"The description of the first engagement is that they 'moved to engage the sub-unit'. This is a standard phrase which doesn't provide any clear understanding of the engagement."

Now, what is it about the phrase "move to engage" that caused you to note it, in particular when considering Objective 6?

A. The "move to engage" was a phrase, as I say, that was used continuously throughout the reports it received, but no description of what exactly that meant. So how did they do it? What exactly were they doing? Where were they? What position did they appear to be threatening you? It's just a very standard "move to engage" to, as far as I was concerned, raise questions

to me as to what that was. It seems to be repetition again. And was this just cut and paste? Is it just a standard phrase? Well, for me, I need to explore that more and find out exactly what they meant by that, because that's not good enough for me.

Q. I mean, when you talk about it possibly being a standard phrase, might that be exactly what it is: a short form to describe any number of ways in which someone has presented themselves as a threat and made ready to engage?

A. Very much so, but as -- my job was to investigate to prove or disprove an allegation, and therefore to understand what that meant in every individual operation would allow us to do that. Just a standard phrase, well, "move to engage", what does that mean? And how did they -- would they do exactly the same thing in every operation, or what was it that that operation, that individual, posed a threat by moving to engage? How did they do that? For us, that was the understanding to, once we -- if we got the opportunity to identify and then speak to the individuals who engaged as to what their understanding of "move to engage" was? What was it that posed a threat? What was it that gave them the legal right to engage those individuals?

Q. You then wrote:

"For the third EKIA, again the TTP used is to allow the detained individual to enter the house, freely allowing them allegedly to again move to engage the C/S resulting in executive action being taken."

A. Mm-hm.

Q. In terms of the TTP being used, allowing the detained individual to enter the house freely, what is it about that particular TTP that causes you to note it here?

A. Why would they, again, allow them to -- well, we needed more explanation as to what that -- why they were doing that; why they were letting these individuals go back in freely. Okay, there must have been a very good reason for it. There probably was: house clearance or whatever, I'm not sure. But then this, the "move to engage" piece, it's allowing them to move to engage to then pose an immediate threat and therefore have to be engaged by our forces against them, resulting in the death of an individual. Why is this being used again and again and again in order to have executive action, as was quoted out of the documentation?

Q. You finished up for the entry for Objective 6 with:

"No SSE photographs [so no sensitive site exploitation photographs] of weapons of EKIA seen.

"Must be recovered and reviewed."

A. Yes.
Q. We've already had your answer to why those photographs were important to you, but here it seems there were none in respect of Objective 6 available for you at this is point?
A. At that point in time, yes.
Q. Then, if we look across the page, we've already dealt with the top entry for Objective 2, the lower entry in respect of the Objective 5:

"Again, whilst the OPSUM would usually not give rise to any suspicions, it's noted that the wording is very similar to that of other ops. The TTP of allowing the B to enter the house is a constant and recognised practice."

In respect of Objective 5, other than similar wording or the use of the TTP, were there any other concerns you had about that when you conducted this initial review?
A. On this one, I think that was about as much concern as I actually had on this one.
Q. In terms of this review that you conducted in May of 2017, you'd said, when I first asked you questions about it, that you -- from recollection, you believe it was undertaken by you because you knew you were going to become the SIO of Team 1?

A. Yes.

Q. And in any event, presumably it was relevant to the exercise of your duties as Silver Commander?

A. Yes.

Q. When it came to what should happen in respect of these DDOs, at any stage did you go to someone and say, "These are the ones I think we should be looking at"?

A. Yes. So when we were -- when we changed tactics to a more open investigation process, the overt process rather than the other way, these then became, as far as I was concerned, into contention to have a look at. Now the IRT said, well, they should keep them in review and do scoping. As far as I was concerned, we want to move forward with Tyburn, and any other -- and the whole lot, all the rest of them, needed to be looked at.

Now as far as I'm concerned, scoping -- this scoping looking at -- collecting as much information -- was almost complete. We either needed to launch into a full investigation and to properly look at them, or we weren't getting -- we were not going to be getting anywhere. But you could not ignore my suspicions. My hypothesis was that actually something not right had occurred, and therefore we needed to investigate as many as we could.

When I proposed this to the chain of command, I was

told that actually, you know, they were not in contention just yet, and the appetite to launch investigations into all of them was definitely not there. I had discussions with my investigators and again with Gold, and said, you know, at the end of the day we need to look at some, if not all, of these as a starting point. I'd like to do them all. And with Gold, he said, "Well, okay, you can't just launch investigation into all of them. Pick the ones which actually create the biggest concern with the greatest opportunities for investigating lines of inquiry".

And therefore, I originally picked four of them and was told, "Well, you can't have four. You can present two and with Tyburn and the next two, which you believe are the most concerning and with the most opportunity for lines of inquiry, you can present those, and they will then be considered by Provost Marshal (Army) and his advisers as to whether or not we should launch full investigations into them".

So I then presented for 1 and 2, as was agreed with Gold that that is what I could do at the time, and if we were able to get the investigations up and running and actually have a positive result in these two, then therefore the consideration would be given by the Gold Commander and above to investigate the other eight that

were within this review.

Q. So if I've understood the maths correctly, at the outset you had wanted to investigate -- not to scope but to investigate -- all 11.

A. Yes.

Q. That's Tyburn plus the other --

A. Absolutely, yes.

Q. -- numbered 10?

A. Yes.

Q. You then pitched -- because you knew you couldn't get that, you pitched for Tyburn plus four?

A. Yeah.

Q. But were told you couldn't have that; you could only have Tyburn plus two?

A. Yes.

Q. Do you think that was the right decision to take?

A. By whom? By myself, or by --

Q. Not by yourself; by those who told you you could only have Tyburn plus two?

A. I think that -- right decision -- I think it was a considered decision, in terms of well, actually, what we have is a lot of the same people on the same operations. As noted in, you know -- so for Objective 5, for instance, I didn't have as many concerns about Objective 5, as I certainly did against

Objectives 1 and 2. They caused me grave concern and, therefore, I was adamant that we were going to get investigative status given to them and look at them properly rather than just scoping them in the background. And given that actually, I was only allowed to put forward two, was that the right decision? Well, actually, at least they allowed me to put forward two to present and, if we could, get full investigative status, which is what I achieved.

So allowing us to have more than just -- also, I'd like to investigate -- had them all, but as a staged approach, that may well have been -- you could argue it probably was the appropriate thing to do, from the chain of command, to say, okay, well pick the two most concerning ones first, and if there is traction, if there is lines of inquiry, for instance positive lines of inquiry, and this goes somewhere, then absolutely start looking at the other ones because it's the same people. But if the ones that present the biggest concern with the best opportunity for lines of inquiry with the storyboards of the SIR, with photographs and access to the individuals, if they do not go anywhere, then you're asking the same questions of the same people for ones that potentially don't have anywhere near as much lines of inquiry or evidential options for you,

then maybe that was the right decision to say "Pick two first and then go for the rest".

Q. Did you consider the possibility that the investigation might have been strengthened if all 11 had been looked at as a piece to see whether there were links between them?

A. That was considered. I mean, apart from the individuals on the operations and the similarities with things like the TTPs and the wording of the INSUMs, clearly, if it's all the same people in the operations, they are going to be linked in some form by the mere presence of the same people on those operations.

As to whether each individual one was the same, we didn't know, because we could never actually -- or we didn't actually ever believe the information was written down in the first place.

As mentioned by -- in one of the ops, where I've said the -- even the legal team said it's cut and paste, and then the statements were changed afterwards so that they were no longer cut and paste. It's in the documentation, it's in the emails. So after you've got that, you can therefore no longer just say, "Well, I'll accept the veracity of every report we got". We needed to go back and ask them, "Okay, who wrote this? When was it written? Why did you write the same thing over

and over again?", if it was them.

The problem is we never identified who actually wrote the INSUMs, the paperwork that we had given. There was no one to remember who actually wrote it. Therefore we'd never actually say, "Right, what is the veracity of this? Were you there? Why is it cut and paste? Who did the cut and paste, et cetera", or was it actually exactly the same thing that happened exactly the same.

Q. You just said a moment ago that "We didn't believe what was written down"?

A. No.

Q. In other words, you didn't accept as accurate --

A. No.

Q. -- what appeared in the operational staff work as a description for what was said to have taken place during the operations?

A. Absolutely not, and hence why we went for upgrading just a scoping exercise into 1 and 2, into requesting that we actually launched full investigative status to actually see whether or not what was written in these accounts was right. But without having the full operation -- the full investigation status, we couldn't then approach the individuals to say, "Okay, we've identified you on the operation, we now need to find out what happened and by

whom, when, where -- and therefore find out if this was an accurate reflection of what happened".

Q. If we just continue with that for a moment, you didn't believe what was written down. In terms of what you could see in the photographs, you obviously had information provided from Op A that what was said by one of the members of the unit that had conducted these DDOs was that photographs would be taken of individuals who'd had weapons placed alongside them to give the impression they were armed at a time when they were not. Did you trust the photographs you were looking at?

A. Again, this is where we needed to look at who took the photographs, when they were taken, identify who it was who took them, before we can say, okay, well, as Sir said to me, you know, were those weapons moved afterwards? Were they actually moved afterwards for safety reasons or not? We need to actually understand when those photographs were taken and by whom, as to whether the account is just, well, they were all there, there were weapons there, but they were moved to safety afterwards; or whether actually that's just a complete and utter nonsense of an account.

So trying to get to the bottom of it was essential to actually speak to these people, and not just trust what was written down, knowing that even the legal team

had said some of this is cut and paste.

Q. Well, if you don't trust what's written down and if you're suspicious that the photographs might have been staged to tell a story that is not in fact the accurate one, what does that do to your suspicions that there may or may not have been something untoward that took place on there is DDOs?

A. Absolutely increased it. Hence why, when -- I pushed for the status of 1 and 2 being upgraded from just a scoping exercise into full-blown investigations to actually try and work out actually what happened and uncover the truth.

Q. When you took over as the SIO for Team 1, in terms of your briefing to your investigators, what was the message you gave to them as to how they should approach Tyburn and Objectives 1 and 2?

A. If I recall rightly, well, once we had changed the strategy of how we were approaching the investigations themselves. So IRT came in and gave them the recommendations and said, "Okay, we'll now go openly about this, which allows you to go and speak to people directly". And they said -- you know, they gave their recommendation that we actually spoke to individuals on the operations and any witnesses, whether they be Afghan, British, et cetera.

So briefing the guys, we were like, "Look, we're now actually going to go and speak to people, rather than just sitting in a building and look at photographs and documentation". We now need to actually go and ask the serious questions of people as to what actually happened. Clearly, the focus was on Tyburn to start with but once we had been given the opportunity to look at 1 and 2 properly and investigate them properly, that is when you kind of say to the guys, well, look, we've got a standard approach to these individuals but look at what's written down. What can we challenge about it? What -- how can we interview these people and find out exactly who was doing what and think about the wording of questions to allow us to identify who was involved properly.

Q. The IRT of course had said in January that you had no evidence, you had no suspects --

A. Yeah.

Q. -- and there wasn't actually even a crime that had been committed, as far as they could see.

A. Yeah.

Q. If we just look to your policy file report, shortly after you took over as SIO for Team 1. You'll find it in file 2, please. So not the one you're looking at, I'm afraid. File 2, divider 74, page 2. It's a policy

file report from 25 July 2017.

What you wrote was, in respect of witness interviews, so clearly not duty statements or reports:

"Those I did identify as the triggermen in each op will be IAC [interviewed after caution] ..."

A. Yeah.

Q. "... voluntary, unless further evidence suggests otherwise."

Why was it that you took the decision that you wouldn't adopt the IRT approach of worthless pieces of paper, and actually have interviews after caution for the triggermen, so for those who had discharged their weapons during a DDO?

A. Because I firmly believe that actually, if something had occurred -- which I did believe, my hypothesis was that something untoward had occurred in these operations -- then the triggermen, once identified, would have been responsible for the deaths of the individuals on the operations, which makes them *de facto* a suspect in a potential murder investigation.

So you couldn't -- well, if we've -- if my belief was, actually, something untoward happened on Tyburn and the 1 and 2 then, quite rightly so, you need to treat those individuals as potential suspects in the Inquiry. But the first point to this was to identify those

triggermen.

Now if, by -- through our lines of inquiry, it transpired that actually, the accounts from other individuals who identified them suggested that I was completely wrong and my hypothesis was wrong, and therefore these were quite legitimate engagements of the rules of engagement, then I could quite happily change from an interview after caution to a significant witness interview. Quite happily. But you have to have a starting point, and my starting point was my belief was something untoward had happened and therefore triggermen, if identified, need to be interviewed after caution, unless of course information suggested that the rules of engagement had been used appropriately and therefore there was no requirement to interview after caution, but to recover their evidence in the most appropriate fashion, which would probably be a significant witness or just a witness.

SIR CHARLES HADDON-CAVE: The good news is that we're now going to adjourn. So my next order is that we will adjourn, please, until 10.00 tomorrow morning, Mr Glasgow.

I remind all witnesses: Major, please don't discuss your evidence with anybody overnight. It's been a long day, so it's time for a cup of tea and a break.

THE WITNESS: Sir.

SIR CHARLES HADDON-CAVE: All right? Thank you very much indeed.

Mr Glasgow, thank you very much, and your team. I'll rise now, please. 10.00 tomorrow morning.

(4.39 pm)

(The hearing adjourned until 10.00 am the following day)

I N D E X

MAJOR MATTHEW COX (sworn) 4
Questions from COUNSEL TO THE INQUIRY 4